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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–267–AD; Amendment 39–10284; AD 98–02–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped with Pratt & Whitney JT9D–3 and –7 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires repetitive inspections for discrepancies of the forward engine mount bulkhead of the nacelle strut, and corrective action, if necessary. That AD also provides for optional terminating action for the repetitive inspections. For certain airplanes, this amendment adds repetitive inspections for discrepancies in the forward engine mount bulkhead and in the forward lower spar web, and corrective actions, if necessary. For other airplanes, this amendment adds a one-time inspection to detect stop drilled cracks of the exterior of the forward engine mount chord, and replacement of the chord with a new chord, if necessary. This amendment also adds an additional optional terminating action for the repetitive inspections. This amendment is prompted by reports that fatigue cracking was found in an area adjacent to the inspection area specified in the existing AD. The actions specified in this AD are intended to detect and correct such fatigue cracking, which could lead to the failure of the forward engine mount bulkhead and consequent separation of the engine from the airplane.

DATES: Effective February 2, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 2, 1998.

Comments for inclusion in the Rules Docket must be received on or before March 17, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–267–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamara L. Dow, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On October 2, 1982, the FAA issued AD 82–22–02, amendment 39–4476 (47 FR 46842, October 21, 1982), applicable to certain Boeing Model 747 series airplanes, to require repetitive inspections for discrepancies of the forward engine mount bulkhead of the nacelle strut, and corrective action, if necessary. That AD also provides for optional terminating action (installation of a new doubler) for the repetitive inspections. That action was prompted by reports of cracks in doublers that were installed as terminating action for AD 80–03–09, amendment 39–3832. The actions required by AD 82–22–02 are intended to prevent failure of the forward engine mount bulkhead and possible separation of an engine from the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of AD 82–22–02, the FAA has received two reports of fatigue cracking in an area adjacent to the inspection area specified in that AD on the affected airplanes. In one incident, a 5-inch long crack was found in the forward lower spar web aft of the bulkhead-to-firewall channel, and a 2-inch long crack was found in the bend radius of the chord of the forward mount bulkhead. These cracks occurred on the number 4 pylon. The airplane had accumulated 15,200 total landings and 67,600 total flight hours. In the other incident, a 2.5-inch crack was found in the chord of the forward mount bulkhead, and a 1.5-inch and 4-inch cracks were found in the forward lower spar web. These cracks occurred on the number 3 pylon.

Such fatigue cracking, if not detected and corrected in a timely manner, could lead to the failure of the forward engine mount bulkhead and consequent separation of the engine from the airplane.

Discussion of Relevant Service Information

Subsequent to the finding of this new cracking, the FAA reviewed and approved Boeing Alert Service Bulletin 747–54A2069, Revision 9, dated May 29, 1997. The revised alert service bulletin continues to describe procedures identical to those described in Revision 2 of the alert service bulletin (which was referenced in AD 82–22–02 as the appropriate source of service information). However, the revised alert service bulletin also describes new procedures for various repetitive inspections to detect discrepancies (i.e., cracks, damage, loose fasteners) in the forward engine mount bulkhead and in the forward lower spar web, and corrective actions, if necessary. The revised alert service bulletin also deletes the procedures for stop drilling cracks in the bulkhead chords.

The FAA also has reviewed and approved the following Boeing service information:

- Alert Service Bulletin 747–54A2069, Revision 3, dated May 23, 1980;
- Alert Service Bulletin 747–54A2069, Revision 4, dated November 26, 1980;
- Service Bulletin 747–54A2069, Revision 5, dated August 21, 1981;
- Alert Service Bulletin 747–54A2069, Revision 6, dated October 22, 1982;
- Service Bulletin 747–54A2069, Revision 7, dated July 28, 1988; and

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• Service Bulletin 747–54A2069, Revision 8, dated June 9, 1994.

The inspection procedures specified in Revisions 3 through 8 of the service bulletin are similar to those specified in Revision 2 of the service bulletin. Therefore, the FAA has included in this AD references to these service bulletin revisions as additional sources of service information.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 82–22–02 to continue to require repetitive inspections for discrepancies of the forward engine mount bulkhead of the nacelle strut, and corrective action, if necessary. This AD adds various repetitive inspections to detect discrepancies (i.e., cracks, damage, loose fasteners) in the forward engine mount bulkhead and in the forward lower spar web, and corrective actions, if necessary. This AD also adds an additional optional terminating action for the repetitive inspections. Unlike the requirements of AD 82–22–02, this AD does not permit further flight with cracks in the bulkhead chords.

Differences Between the AD and the Relevant Service Information

Operators should note that, although the referenced service bulletins specify that the manufacturer must be contacted for disposition of certain conditions, this AD requires the repair or replacement of any cracked chord and/or web to be accomplished in accordance with a method approved by the FAA.

The referenced service bulletins also specify that accomplishment of AD 95–10–16, amendment 39–9233 (59 FR 65733, December 21, 1994), is terminating action for the repetitive inspections. However, for airplanes on which the strut/wing modification required by AD 95–10–16 has been accomplished, this AD requires a one-time detailed visual inspection to detect stop drilled cracks of the exterior of the forward engine mount chord. The FAA has determined that accomplishment of this inspection will ensure that all chords with stop drilled cracks are replaced.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–267–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–4476 (47 FR 46842, October 21, 1982), and by adding a new airworthiness directive (AD), amendment 39–10284, to read as follows:

98–02–02 Boeing: Amendment 39–10284. Docket 97–NM–267–AD. Supersedes AD 82–22–02, Amendment 39–4476.

Applicability: Model 747 series airplanes; as listed in Boeing Alert Service Bulletin 747–54A2069, Revision 9, dated May 29, 1997; certificated in any category.

Note 1: The airplanes specified in the applicability of this AD are the same as those specified in the applicability of AD 82–22–02.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the forward engine mount bulkhead, which could lead to the failure of the forward engine mount bulkhead and consequent separation of the engine from the airplane, accomplish the following:

(a) For airplanes on which the terminating action specified in AD 80–03–09, amendment 39–3832, has been accomplished: Within 300 hours time-in-service after October 27, 1982 (the effective date of 82–22–02, amendment 39–4476), accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD. Repeat the inspections thereafter at intervals not to exceed 4,000 flight hours, until accomplishment of the inspections required by paragraphs (c)(1) and (c)(2) of this AD or the terminating action specified in paragraph (e) of this AD.

(1) Perform an inspection to detect loose or missing fasteners of the fasteners attaching the forward engine mount bulkhead of the nacelle strut to the horizontal fire wall, in accordance with one of the following service bulletins listed below. If any loose or missing fastener is detected, prior to further flight, replace all fasteners in both rows of fasteners, in accordance with the service bulletin.

• Boeing Alert Service Bulletin 747–54A2069, Revision 2, dated February 1, 1980;
• Boeing Alert Service Bulletin 747–54A2069, Revision 3, dated May 23, 1980;
• Boeing Alert Service Bulletin 747–54A2069, Revision 4, dated November 26, 1980;
• Boeing Service Bulletin 747–54A2069, Revision 5, dated August 21, 1981;
• Boeing Alert Service Bulletin 747–54A2069, Revision 6, dated October 22, 1982;
• Boeing Service Bulletin 747–54A2069, Revision 7, dated July 28, 1988;
• Boeing Service Bulletin 747–54A2069, Revision 8, dated June 9, 1994; or
• Boeing Alert Service Bulletin 747–54A2069, Revision 9, dated May 29, 1997.

(2) Remove by hand the protective coating of the area to be penetrant inspected using 400 grit or equivalent abrasive, and perform a penetrant inspection to detect cracks of the bulkhead chords, in accordance with one of the service bulletins listed below:

• Boeing Alert Service Bulletin 747–54A2069, Revision 2, dated February 1, 1980;
• Boeing Alert Service Bulletin 747–54A2069, Revision 3, dated May 23, 1980;
• Boeing Alert Service Bulletin 747–54A2069, Revision 4, dated November 26, 1980;
• Boeing Service Bulletin 747–54A2069, Revision 5, dated August 21, 1981;
• Boeing Alert Service Bulletin 747–54A2069, Revision 6, dated October 22, 1982;
• Boeing Service Bulletin 747–54A2069, Revision 7, dated July 28, 1988;
• Boeing Service Bulletin 747–54A2069, Revision 8, dated June 9, 1994; or
• Boeing Alert Service Bulletin 747–54A2069, Revision 9, dated May 29, 1997.

(i) If any crack is detected on the outside radius of the chord, and it is within the limits specified in the service bulletin, prior to further flight, perform a penetrant inspection to detect cracks on the inside radius of the chord, in accordance with the service bulletin.

(A) If any crack is detected on the inside radius of the chord, and it is within the limits specified in the service bulletin, prior to further flight, rework the cracked part in accordance with the service bulletin. Repeat the penetrant inspection required by paragraph (a)(2) of this AD thereafter at intervals not to exceed 600 flight hours, until accomplishment of the inspections required by paragraphs (c)(1) and (c)(2) of this AD or the terminating action specified in paragraph (e) of this AD.

(B) If any crack is detected on the inside radius of the chord, and it is outside the limits specified in the service bulletin, prior to further flight, replace the cracked part with a new part, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(ii) If any crack is detected on the outside radius of the chord, and it is outside the limits specified in the service bulletin, prior to further flight, replace the cracked part with a new part in accordance with a method approved by Seattle ACO.

(3) Perform an inspection to detect evidence of looseness of the fasteners attaching the forward engine mount fittings to the strut bulkhead. If any loose fastener is detected, prior to further flight, replace it with a new fastener.

(b) For airplanes on which only loose fasteners have been replaced as required by telegraphic AD T79–NW–21, amendment 39–3687: Within 600 hours time-in-service after October 27, 1982, replace all fasteners in both rows of fasteners with new fasteners in accordance with one of the service bulletins listed below:

• Boeing Alert Service Bulletin 747–54A2069, Revision 2, dated February 1, 1980;
• Boeing Alert Service Bulletin 747–54A2069, Revision 3, dated May 23, 1980;
• Boeing Alert Service Bulletin 747–54A2069, Revision 4, dated November 26, 1980;
• Boeing Service Bulletin 747–54A2069, Revision 5, dated August 21, 1981;
• Boeing Alert Service Bulletin 747–54A2069, Revision 6, dated October 22, 1982;
• Boeing Service Bulletin 747–54A2069, Revision 7, dated July 28, 1988;
• Boeing Service Bulletin 747–54A2069, Revision 8, dated June 9, 1994; or
• Boeing Alert Service Bulletin 747–54A2069, Revision 9, dated May 29, 1997.

(c) For airplanes on which the strut/wing modification required by AD 95–10–16, amendment 39–9233, has not been accomplished: Within 90 days after the effective date of this AD, accomplish paragraphs (c)(1) and (c)(2) of this AD.

(1) Perform various inspections to detect discrepancies (i.e., cracks, damage, loose fasteners) in the forward engine mount bulkhead and in the forward lower spar web, in accordance with Figure 1 of Boeing Alert Service Bulletin 747–54A2069, Revision 9, dated May 29, 1997. If any discrepancy is detected, prior to further flight, perform the applicable corrective action in accordance with Figure 1 of the alert service bulletin; except the repair or replacement of any cracked chord and/or web shall be accomplished in accordance with a method approved by the Manager, Seattle ACO. Repeat the inspections thereafter at intervals not to exceed 4,000 flight hours.

(2) Perform an inspection to detect evidence of looseness of the fasteners attaching the forward engine mount fittings to the strut bulkhead. If any loose fastener is detected, prior to further flight, replace it with a new fastener in accordance with Boeing Document D6–13592, "747 Structural Repair Manual (SRM)," Chapter 51, Subject 51–30–04, Revision 8, dated September 5, 1997.

(d) For airplanes on which the strut/wing modification required by AD 95–10–16, amendment 39–9233, has been accomplished: Within 90 days after the effective date of this AD, perform a detailed visual inspection to detect stop drilled cracks of the exterior of the forward engine mount chord. Inspect to the height of the engine mount fitting (approximately 12 inches). If any crack (including a stop drilled crack) is detected, prior to further flight, replace the chord with a new chord in accordance with a method approved by the Manager, Seattle ACO.

Note 3: Inspections required by AD 94–17–17, amendment 39–9012, are similar and somewhat overlap the inspections required by this AD.

(e) Accomplishment of either paragraphs (e)(1) and (e)(2), or paragraphs (e)(2) and (e)(3) of this AD constitutes terminating action for the requirements of this AD.

(1) Modify the fasteners and install a doubler on the forward lower spar web, or replace the doubler of the forward lower spar web with a new doubler, in accordance with Figure 2 or Figure 3, as applicable, of Boeing Alert Service Bulletin 747–54A2069, Revision 6, dated October 22, 1982; Boeing Service Bulletin 747–54A2069, Revision 7, dated July 28, 1988; Boeing Service Bulletin 747–54A2069, Revision 8, dated June 9, 1994; or Boeing Alert Service Bulletin 747–54A2069, Revision 9, dated May 29, 1997.

(2) Replace any cracked forward engine mount bulkhead chord with a new chord, and replace any cracked forward lower spar web with a new web, in accordance with a method approved by the Manager, Seattle ACO.

(3) Modify the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994; Revision 1, dated June 1, 1995; or Revision 2, dated March 14, 1996.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) Except as provided in paragraphs (a)(2)(i)(B), (a)(2)(ii), (c)(1), (c)(2), (d), and

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(e)(2) of this AD, the actions shall be done in accordance with the following Boeing service bulletins, as applicable, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
Alert Service Bulletin 747–54A2069, Revision 2, February 1, 1980	1–9	2	February 1, 1980.
Alert Service Bulletin 747–54A2069, Revision 3, May 23, 1980	1–7	3	May 23, 1980.
	8	2	February 1, 1980.
Alert Service Bulletin 747–54A2069, Revision 4, November 26, 1980.	1, 9, 10, 12, 19–21	4	November 26, 1980.
	2–7, 11, 13–18	3	May 23, 1980.
	8	2	February 1, 1980.
Service Bulletin 747–54A2069, Revision 5, August 21, 1981	1–7, 9, 10, 17	5	August 21, 1980.
	8	2	February 1, 1980.
	11, 13–16, 18	3	May 23, 1980.
	12, 19–21	4	November 26, 1980.
Alert Service Bulletin 747–54A2069, Revision 6, October 22, 1982	1–28	6	October 22, 1982.
Service Bulletin 747–54A2069, Revision 7, July 28, 1988	1–5, 7–16, 24, 28	7	July 28, 1988.
	6, 17–23, 25–27	6	October 22, 1982.
Service Bulletin 747–54A2069, Revision 8, June 9, 1994	1–28	8	June 9, 1994.
Alert Service Bulletin 747–54A2069, Revision 9, May 29, 1997	1–28	9	May 29, 1997.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on February 2, 1998.

Issued in Renton, Washington, on January 6, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–713 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–94–AD; Amendment 39–10285; AD 98–02–03]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 and Mark 0070 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 and Mark 0070 series airplanes, that requires modification of the hook and latch engagement assemblies of the engine cowl doors, measurement of the aerodynamic mismatch between the fixed cowl and lower cowl door, and repair, if necessary. This amendment is prompted by reports of operational experience that indicate that an aerodynamic mismatch may exist between the fixed engine cowl and the lower cowl door, and may be the result of one or more hooks of the engagement assemblies not engaging adequately. This condition may cause the other hooks to carry loads higher than they were originally designed to carry, and could result in the failure of those hooks that are engaged. The actions specified by this AD are intended to prevent possible separation of the lower cowling from the airplane due to failure of the hooks of the engagement assemblies.

DATES: Effective February 20, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 20, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P. O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 and Mark 0070 series airplanes was published in the **Federal Register** on November 5, 1996 (61 FR 56925). That action proposed to require modification of the hook and latch engagement assemblies of the engine cowl doors, measurement of the aerodynamic mismatch between the fixed cowl and lower cowl door, and repair, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request to Extend the Compliance Time

Two commenters request that the compliance time for accomplishing the proposed inspection specified in paragraph (a)(2) of the AD be changed from "Within 2,500 flight cycles since the last inspection * * *" to "Within 2,500 flight cycles or 3,500 flight hours since the last inspection * * *, whichever occurs later." One of these commenters states that it is currently accomplishing the proposed inspection on its fleet of Fokker Model F28 Mark 0100 series airplanes during its regularly scheduled maintenance checks at 3,500 flight hour intervals. The commenter notes that the proposed 2,500 flight cycle inspection time may fall short of its currently scheduled 3,500 flight hour maintenance check.

The FAA does not concur with the commenters' request to change the compliance time. The FAA points out that the proposed compliance time of paragraph (a)(2) of the AD was developed in consideration of not only the degree of urgency associated with addressing the unsafe condition, but such factors as the manufacturer's and the foreign airworthinesss authority's [i.e., Rijksluchtvaartdienst (RLD)] recommendations, and the practical aspect of inspecting the affected airplanes within an interval of time that parallels normal scheduled maintenance for the majority of affected operators.

Based on the average utilization rate of the worldwide fleet of Fokker Model F28 Mark 0100 series airplanes (approximately 1 flight hour per flight cycle), the request to include a 3,500 flight hour compliance time option, if granted, would be approximately equal to 3,500 flight cycles. This option would result in a 1,000 flight cycle extension to the compliance time. The commenters have not provided any data to substantiate why extending the compliance time by approximately 1,000 flight cycles would not compromise safety. However, under the provisions of paragraph (e) of the final rule, the FAA may approve requests for adjustments to the compliance time if sufficient data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Service Bulletin Change Notification

One commenter states that certain errors were found in the service information referenced in the proposed AD. Paragraph C.(2) of Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–71–019, dated March 21, 1996, should refer to Figure 5 (not Figure 4) for dimensions X and Y. Additionally, Figure 5 of the service bulletin should refer to Figure 6 (not Figure 5) for tool geometry.

The FAA agrees with the commenter. Since issuance of the proposal, Fokker has issued Service Bulletin Change Notification (SBCN) SBF100–71–019/1, dated February 28, 1997, which revises paragraph C.(2) of Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–71–019 to correctly reference Figure 5 for dimensions X and Y. The final rule has been revised to reference SBCN SBF100–71–019/1, dated February 28, 1997, in addition to the previously referenced service information.

In addition, the FAA has determined that the reference in Figure 5 to Figure 5 (rather than Figure 6) for tool geometry is merely a typographical error, since paragraph C.(2) of Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–71–019 states "As a reference, to obtain the correct measurements, use tool as shown in Figures 5 and 6." However, the FAA has forwarded information regarding this error to Fokker Services.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 124 Fokker Model F28 Mark 0100 and 0070 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the initial inspection and modification, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $22,320, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–02–03 Fokker: Amendment 39–10285. Docket 95–NM–94–AD.

Applicability: Model F28 Mark 0100 and Mark 0070 series airplanes as listed in Fokker Service Bulletin SBF100–71–019, dated March 21, 1996, as revised by Fokker Service Bulletin Change Notification SBF100–71–019/1, dated February 28, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the lower cowling from the airplane due to failure of the hook and latch engagement assembly of the cowl door, accomplish the following:

(a) Accomplish the requirements of paragraph (b) of this AD at the latest of the times indicated in paragraphs (a)(1), (a)(2), and (a)(3) of this AD:

(1) Prior to the accumulation of 2,500 total flight cycles; or

(2) Within 2,500 flight cycles since the last inspection performed in accordance with Fokker Service Bulletin SBF100–71–003, dated April 14, 1989; Revision 1, dated August 8, 1989, or Revision 2, dated November 21, 1994; or

(3) Within 30 days after the effective date of this AD.

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(b) At the time specified in paragraph (a) of this AD, accomplish the actions specified in either paragraph (b)(1) or (b)(2) of this AD, as applicable:

(1) For airplanes specified in Part 1 of Fokker Service Bulletin SBF100–71–019, dated March 21, 1996, as revised by Fokker Service Bulletin Change Notification SBF100–71–019/1, dated February 28, 1997: Modify the hook and latch engagement assemblies of the left and right engine cowl doors, and inspect to determine the aerodynamic mismatch between the fixed cowl and lower cowl door; in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–71–019, dated March 21, 1996, as revised by Fokker Service Bulletin Change Notification SBF100–71–019/1, dated February 28, 1997.

Note 2: Accomplishment of the modification of the hook and latch engagement assemblies of the left and right engine cowl doors, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–71–003, dated April 14, 1989; Revision 1, dated August 8, 1989; or Revision 2, dated November 21, 1994; is considered acceptable for compliance with the applicable modification specified in paragraph (b)(1) of this amendment.

(2) For airplanes specified in Part 2 of Fokker Service Bulletin SBF100–71–019, dated March 21, 1996, as revised by Fokker Service Bulletin Change Notification SBF100–71–019/1, dated February 28, 1997, excluding those airplanes subject to paragraph (b)(1) of this AD: Perform a one-time inspection to determine the aerodynamic mismatch between the fixed cowl and the lower cowl door, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–71–019, dated March 21, 1996, as revised by Fokker Service Bulletin Change Notification SBF100–71–019/1, dated February 28, 1997.

(c) If the aerodynamic mismatch measured between the fixed cowl and lower cowl door is less than or equal to 4.5 mm, no further action is required by this AD.

(d) If the aerodynamic mismatch measured between the fixed cowl and lower cowl door is greater than 4.5 mm, prior to further flight, perform a one-time inspection to measure the mis-engagement between the left and right engine hooks of the fixed cowl door and the clevis fittings of the lower cowl door; in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–71–019, dated March 21, 1996, as revised by Fokker Service Bulletin Change Notification SBF100–71–019/1, dated February 28, 1997.

(1) If the mis-engagement is less than or equal to 6.5 mm, no further action is required by this AD.

(2) If the mis-engagement is greater than 6.5 mm: Within 1 year after measuring the mis-engagement required by this paragraph, modify the mid-clevis fitting on the right and left engine lower cowl door; in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–71–019, dated March 21, 1996, as revised by Fokker Service Bulletin Change Notification SBF100–71–019/1, dated February 28, 1997. After accomplishment of this modification, no further action is required by this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with Fokker Service Bulletin SBF 100–71–019, dated March 21, 1996, as revised by Fokker Service Bulletin Change Notification SBF 100–71–019/1, dated February 28, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Dutch airworthiness directive 1989–049/3 (A), dated June 28, 1996.

(h) This amendment becomes effective on February 20, 1998.

Issued in Renton, Washington, on January 7, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–822 Filed 1–15–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–30]

Amendment to Class E Airspace; Audubon, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Audubon County Airport. The FAA has developed a Global Positioning System (GPS) Runway (RWY) 32 Standard Instrument Approach Procedure (SIAP) to serve the Audubon County Airport. Additional controlled airspace 700 feet Above Ground Level (AGL) is needed to accommodate this SIAP. The enlarged area will contain the new GPS RWY 32 SIAP in controlled airspace at and above 700 feet AGL in order to contain the new SIAP within controlled airspace. The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the GPS RWY 32 SIAP.

DATES: Effective date: 0901 UTC, April 23, 1998.

Comments for inclusion in the Rules Docket must be received on or before February 17, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 97–ACE–30, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed a GPS RWY 32 SIAP to serve the Audubon County Airport, Audubon, IA. The amendment to Class E airspace at Audubon, IA, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAP within controlled airspace. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, aeronautical, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–ACE–30." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the Earth.

* * * * *

ACE IA E5 Audubon, IA [Revised]

Audubon County Airport, IA
(lat. 41°42'05"N., long. 95°55'14"W.)
Audubon NDB
(lat. 41°41'25"N., long. 94°54'36"W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Audubon County Airport and within 2.6-miles each side of the 146° bearing from the Audubon NDB extending from the 6.4-mile radius to 7 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on October 24, 1997.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 98–1105 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–11]

Amendment to Class E Airspace; Lee's Summit, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Lee's Summit, MO.

EFFECTIVE DATE: The direct final rule published at 62 FR 53740 is effective on 0901 UTC February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on October 16, 1997 (62 FR 53740). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective

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February 26, 1998. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on November 20, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division Central Region.

[FR Doc. 98–1102 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–24]

Amendment to Class E Airspace; Lincoln, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Lincoln Municipal Airport, Lincoln, NE. A review of the airspace for Lincoln Municipal Airport indicates it does not meet the criteria for 700 feet Above Ground Level (AGL) Class E airspace as required in FAA Order 7400.2D. The area has been enlarged to conform to the criteria of FAA Order 7400.2D. The intended effect of this rule is to comply with the criteria of FAA Order 7400.2D, and to provide additional Class E airspace for instrument operations.

DATES: Effective date: 0901 UTC, April 23, 1998.

Comment date: Comments must be received on or before February 17, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Airspace Docket Number 97–ACE–24, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION: A review of the airspace for Lincoln Municipal Airport indicates it does not meet the criteria for 700 feet AGL Class E airspace as required in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile, plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile increment. The amendment to Class E airspace at Lincoln, NE, will comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that support the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory aeronautical economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–ACE–24." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5, Lincoln, NE [Revised]

Lincoln Municipal Airport, NE
(lat. 40°51′03″N., long. 96°45′33″W.
Lincoln VORTAC
(lat. 40°55′26′N., long. 96°44′31′W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of the Lincoln Municipal Airport and within 3.9 miles each side of the 014° radial of the Lincoln VORTAC extending from the 7.4-mile radius to 10 miles north of the VORTAC and within 6 miles each and 4 miles west of the Lincoln ILS localizer course extending from the 7.4-mile radius to 18 miles south of the airport and within 4 miles east and 6 miles west of the Lincoln ILS localizer course extending from the 7.4-mile radius to 14.7 miles north of the airport, excluding that airspace within the Lincoln Municipal Airport, NE, Class C airspace area.

* * * * *

Issued in Kansas City, MO, on October 27, 1997.

Hermon J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 98–1104 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–13]

Amendment to Class E Airspace; Vinton, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Vinton, IA.

EFFECTIVE DATE: The direct final rule published at 62 FR 53946 is effective on 0901 UTC February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on October 17, 1997 (62 FR 53946). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 26, 1998. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on November 20, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–1101 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–10]

Amendment to Class E Airspace; Kansas City, Richards-Gebaur Airport, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Kansas City, Richards-Gebaur Airport, MO.

EFFECTIVE DATE: The direct final rule published at 62 FR 53944 is effective on 0901 UTC February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on October 17, 1997 (62 FR 53944). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 26, 1998. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on November 20, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–1100 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29107; Amdt. No. 1845]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of

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new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAP's, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 14 CFR 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with a Global Positioning System (GPS) and or Flight Management System (FMS) equipment. In consideration of the above, the applicable SIAP's will be altered to include "or GPS or FMS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS or FMS procedure is developed, the procedure title will be altered to remove "or GPS or FMS" from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as "RNAV" will be redesignated as "VOR/DME RNAV" without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 years.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on January 9, 1998.

Quentin J. Smith, Jr.,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

§§ 97.23, 97.27, 97.33 and 97.35 [Amended]

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates specified:

Effective On Publication

New York, NY, John F. Kennedy Intl, VOR or GPS RWY 13L/13R, Amdt 18 CANCELLED

New York, NY, John F. Kennedy Intl, VOR or FMS or GPS RWY 13L/13R, Amdt 18

[FR Doc. 98–1097 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29115; Amdt. No. 1847]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on January 9, 1998.

Quentin J. Smith, Jr.,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

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Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective upon publication

FDC Date	State	City	Airport	FDC Number	SIAP
01/01/98	AK	Huslia	Huslia	FDC 8/0032	VOR/DME Rwy 21, Orig.
01/01/98	AK	Huslia	Huslia	FDC 8/0033	VOR/DME Rwy 3, Orig.
01/01/98	CA	Los Angeles	Los Angeles Intl	FDC 8/0008	ILS Rwy 25R.
01/01/98	CA	Modesto	Modesto City-County Arpt—Harry Sham Field.	FDC 8/0011	GPS Rwy 28R Orig.
01/01/98	MO	St Louis	Lambert-St Louis Intl	FDC 8/0031	ILS Rwy 6, Orig.
01/01/98	NY	Syracuse	Syracuse Hancock Intl	FDC 8/0017	VOR or TACAN Rwy 32 Orig
01/07/98	NY	Weedsport	Whitfords	FDC 8/0217	VOR–A Orig
12/09/97	OH	Marion	Marion Muni	FDC 7/8055	VOR or GPS–A, Orig.
12/22/97	OH	Millersburg	Holmes County	FDC 7/8348	NDB or GPS Rwy 27, Amdt 5.
12/22/97	OH	Millersburg	Holmes County	FDC 7/8349	VOR or GPS–A, Amdt 6.
12/23/97	SD	Aberdeen	Aberdeen Regional	FDC 7/8364	ILS Rwy 31, Amdt 12A.
12/23/97	SD	Aberdeen	Aberdeen Regional	FDC 7/8365	NDB Rwy 31, Amdt 9A.
12/23/97	SD	Aberdeen	Aberdeen Regional	FDC 7/8366	LOC/DME BC Rwy 13, Amdt 9A.
12/23/97	SD	Aberdeen	Aberdeen Regional	FDC 7/8367	VOR/DME or GPS Rwy 13, Amdt 11A.
12/23/97	SD	Aberdeen	Aberdeen Regional	FDC 7/8368	VOR or GPS Rwy 31, Amdt 19A.
12/23/97	SD	Brookings	Brookings Muni	FDC 7/8362	ILS/DME Rwy 30, Amdt 1.
12/23/97	SD	Mitchell	Mitchell Muni	FDC 7/8363	ILS/DME Rwy 30, Amdt 2.
12/30/97	VT	Burlington	Burlington Intl	FDC 7/8471	ILS/DME Rwy 33 Orig.

[FR Doc. 98–1099 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29114; Amdt. No. 1846]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorproation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials.

Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on January 9, 1998.

Quentin J. Smith, Jr.,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31. 97.33 and 97.35 Amended

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

...Effective January 29, 1998

New York, NY, John F. Kennedy Intl, ILS RWY 4L, Amdt 9

...Effective February 26, 1998

Ames, IA, Ames Muni, GPS RWY 13, Orig
Ames, IA, Ames Muni, GPS RWY 19, Orig
Plymouth, MA, Plymouth Muni, GPS RWY 6, Amdt 2
Worcester, MA, Worcester Regional, GPS RWY 29, Orig
Morris, MN, Morris Muni, GPS RWY 32, Orig
Lebanon, NH, Lebanon Muni, ILS RWY 18, Amdt 4
Manville, NJ, Central Jersey Regional, VOR OR GPS–A, Amdt 6
Manville, NJ, Central Jersey Regional GPS RWY 7, Orig
Newark, NJ, Newark Intl, ILS RWY 4R, Amdt 10
Fredricksburg, VA, Shannon, NDB RWY 24, Amdt 2
Fredricksburg, VA, Shannon, GPS RWY 24, Orig
Appleton, WI, Outagamie County, NDB RWY 29, Amdt 1
Appleton, WI, Outagamie County, ILS RWY 29, Amdt 2
Wisconsin Rapids, WI, Alexander Field South Wood County, GPS RWY 20, Orig

Note: The following Standard Instrument Approach Procedures (SIAPs) published in TL 98–01 effective February 26, 1998, have been rescinded:

Yuma, AZ, Yuma MCAS-YUMA Intl, GPS RWY 17 Orig
Yuma, AZ, Yuma MCAS-Yuma Intl, GPS RWY 21R, Orig

...Effective April 23, 1998

Ashland, OH, Ashland County, VOR OR GPS-A, Amdt 8
Ashland, OH, Ashland County, NDB OR GPS RWY 18, Amdt 10
Georgetown, OH, Brown County, GPS RWY 35, Orig
Wilmington, OH, Airborne Airpark, ILS RWY 4L, Amdt 4
Wilmington, OH, Airborne Airpark, ILS/DME RWY 4R, Amdt 1A, CANCELLED
Wilmington, OH, Airborne Airpark, ILS RWY 4R, Orig
Wilmington, OH, Airborne Airpark, ILS/DME RWY 22L, Amdt 1, CANCELLED
Wilmington, OH, Airborne Airpark, ILS RWY 22L, Orig
Rice Lake, WI, Rice Lake Regional-Carl's Field, VOR RWY 1, Orig

[FR Doc, 98–1098 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 203

RIN 1010–AC13

Royalty Relief for Producing Leases and Certain Existing Leases In Deep Water

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This rule establishes conditions for reducing royalties on producing leases; provides for suspension of royalty payments on certain deep water leases issued as the result of lease sales held before November 28, 1995; and describes the information required for a complete application for royalty relief.

EFFECTIVE DATE: This rule is effective February 17, 1998. However, the information collection requirements contained in § 203.61 will not become effective until approved by the Office of Management (OMB). MMS will publish

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a document at that time announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Dr. Marshall Rose, Chief, Economics Division, at (703) 787–1536.

SUPPLEMENTARY INFORMATION:

I. Objectives of Royalty Relief

Royalty relief can lead to increased development and production of natural gas and oil, creating profits for lessees and royalty and tax revenues for the government that it might not otherwise receive. This rule establishes economic incentives that encourage Outer Continental Shelf (OCS) lessees to spend or invest the money needed to promote development and encourage increased production. For all Federal offshore planning areas, we may provide enough relief to allow a reasonable operating profit if expenses plus royalties are approaching revenues. For cases in certain deep water (water at least 200 meters deep) planning areas of the Gulf of Mexico (GOM), we may suspend royalty payments to permit lessees to earn a reasonable return on their capital investments.

The Secretary of the Interior (Secretary) carries out royalty relief as part of his stewardship and sound management of public lands. This includes conserving resources, getting a fair return to the public on OCS resources, and ensuring all OCS development is safe and consistent with sound environmental standards.

II. Legislative Background

The Secretary has broad legislative authority to reduce royalty rates on OCS leases. Section 8(a)(3)(A)of the Outer Continental Shelf Lands Act (OCSLA), as amended (43 U.S.C. 1337(a)(3)(A)), gives the Secretary authority to reduce royalties on leases in order to increase production. Relief must be justified and granted case by case.

On November 28, 1995, President Clinton signed Public Law 104–58, which included the Deep Water Royalty Relief Act (DWRRA). Section 302 of the DWRRA amends section 8(a) of the OCSLA (43 U.S.C. 1337(a)(3)(B)) authority so the Secretary may grant relief on a producing or non-producing lease, or category of leases. Its purpose is to promote development or increased production, or to encourage production of marginal resources, for GOM leases lying west of 87 degrees, 30 minutes West longitude.

The DWRRA also covers leases issued in water depths greater than 200 meters (deep water) as a result of sales held before the DWRRA's enactment. Section 302 of the DWRRA singles out "new production", from a lease or unit existing on the date of its enactment and in the GOM's deep water west of 87 degrees, 30 minutes West longitude. The amended OCSLA (43 U.S.C. 1337(a)(3)(C)) says this new production doesn't qualify for royalty suspension if the Secretary determines that this new production would be economic without royalty relief. Otherwise, the Secretary must determine for each case how much production to exclude from royalty in order to make the new production economic.

Existing leases or units having no royalty-bearing production, other than test production, before November 28, 1995, and qualified for relief under Section 302, need not pay royalties from a field on the first:

- 17.5 million barrels of oil equivalent (MMBOE) for leases in fields in 200 to 400 meters of water,
- 52.5 MMBOE for leases in fields in 400 to 800 meters of water, and
- 87.5 MMBOE for leases in fields in more than 800 meters of water.

These leases or units may qualify for a larger suspension volume if this specified volume wouldn't make the field economic.

Under § 8(a) of the OCSLA as amended by § 302 of the DWRRA, we may also grant a royalty-suspension volume for production from lease development involving a substantial capital investment (e.g., fixed-leg platform, subsea template and manifold, tension-leg platform, multiple well projects, etc.) proposed in a Development Operations Coordination Document (DOCD), or a supplement to an approved DOCD, approved by the Secretary after November 28, 1995. This type of relief is available to leases that produced before November 28, 1995. In this case, we'll grant the suspension volume we determine necessary to make the new production economic.

We issued the Interim Rule for Royalty Relief for Producing Leases and Certain Existing Leases in Deep Water on May 31, 1996 (61 FR 27263). We asked for comments, received many, and are now issuing a final rule.

III. Response to Comments

Fifteen respondents—the American Petroleum Institute (API), the National Ocean Industries Association (NOIA), the Independent Petroleum Association of America (IPAA), and 12 oil and gas companies—submitted comments on the Interim Rule and the supplementary guidelines. We analyzed all comments and sometimes revised the final language based on them. We first address the general concern expressed about the Net Revenue Share (NRS) royalty relief system, followed by the three main themes raised in the comments on the Deep Water royalty relief system. Finally, we provide responses to the other individual comments and answer questions relating to selected provisions retained from the Interim Rule.

Comment on Utility of NRS Relief

Comment: The regulations dealing with NRS leases will be of little or no utility. Regarding leases with inadequate revenues to sustain production, the qualifying requirement stipulating that royalty payments must be at least 75 percent of net revenues over the most recent 12-month period is unrealistic and too stringent (§§ 203.50, 52 and 53).

Response: We've chosen to keep the two principal features of the proposed NRS system. These are a qualification requirement based on a 75 percent royalty share of net revenue and a feature whereby the average lease rate gradually rises back to the pre-relief level when production made possible by the relief rises sufficiently. However, we've made changes in this form of relief that will make it easier to implement and operate under the NRS system. These changes will reduce the application burden, simplify the qualification requirements, and modify the operational framework.

We proposed the NRS system to implement the OCS Lands Act (43 U.S.C. 1337(a)(3)(A)) authority to offer royalty relief to a producing lease to promote increased production. We specified different qualification conditions for two situations: end-of-life leases with inadequate revenues to sustain production and marginally economic projects to expand production. We've decided to no longer offer a separate form of royalty relief for expansion projects, because lessees with such projects should generally prefer applying for, and operating under, the revised end-of-life relief system in this final rule. Also, by dropping project relief we've simplified the program by eliminating the need for the applicant to show that production would be economic only with relief and that the project would add at least 1 year's worth of production. To emphasize this narrower scope and avoid confusion with an NRS system that has been generally avoided by industry, we've adopted the new name "end-of-life relief." However, we have retained the underlying conceptual framework of the proposed NRS system in the new end-of-life royalty relief system.

For end-of-life situations, the interim rule required a demonstration that royalties were taking 75 percent of net revenues and were projected to take an increasing share in the future. We designed these stipulations to fulfill the "increase production" condition in the statute. However, we now believe that the increasing share requirement added little to the assurance that royalty relief would result in increased production. Also, it was burdensome and placed us in a position of relying unnecessarily on projections made by the applicant. Accordingly, we've dropped the increasing share condition.

Moreover, we've reduced the extent of information that must be submitted in an application. Instead of 36 months of cost history and 12 months of prospective data, under the new end-of-life system, applicants provide cost and production for the 12 out of the past most recent 15 months that have average daily production of at least 100 barrels of oil equivalent (BOE). Note the 100 BOE per day threshold applies to whole leases, not individual wells. The 12 out of 15 months provision protects producers from being disqualified by temporary shut down events like well work-overs, and it mitigates misrepresentations due to seasonal variation. The 100 BOE average daily production requirement gives us more assurance than the previous proposed "increasing share" requirement of the interim rule that relief would make the increased production economic. We believe that leases with production smaller than 100 BOE cannot cover platform operating costs and that they likely continue to operate for reasons beyond those that royalty relief would affect. That is, while royalty relief may reduce losses for under 100 BOE/day operators, it will not increase production from them.

The proposed NRS relief system took 50 percent of increases or decreases in net revenue, regardless of the cause. We designed this feature to allow the public to share automatically in unforeseen expansions of production, price increases, or cost decreases while cushioning lessee losses from unforeseen deterioration in these factors. The absence of applications suggests to us that these advantages were outweighed by a perception that the NRS system imposed on lessees a heavy and ongoing data collection burden and extracted from them too much of their upside profit potential.

Fortunately, we've found that a simpler and less burdensome royalty system can approximate the sliding rate structure of the NRS system. Therefore, we've replaced the NRS terms, which typically included a 50 percent rate over any possible level of production, with a 2-tier royalty rate. We give you relief with a rate fixed at one-half the pre-relief rate for a specific monthly amount of production followed by an incremental rate fixed at 50 percent above the pre-relief rate for production above that monthly amount. We added other features to balance the end-of-life system. Features that encourage lessees include a cap on the average royalty rate at the pre-relief rate and a lessee option to end relief at any time. Features that protect public interest include lifting of relief during periods of very high prices, an eventual end of relief if prices or production, or both, remain high for an extended period, and a provision allowing us to identify conditions in individual cases which would lead to terminating the relief arrangement because those conditions are inconsistent with an end-of-life situation.

Main Themes in Comments on the Deep Water Interim Rule

1. Qualification Circumstances

Comment: The current interim rule is too complex. As an alternative, API, NOIA, and IPAA suggest setting minimum economic field sizes (MEFS) by water depth and development system that automatically qualify fields for royalty relief (§ 203.67).

Response: Automatic MEFS are too impractical and difficult to develop and maintain. So, we won't use them to decide if a field qualifies for the amount of royalty relief the DWRRA specifies.

We estimate that calculating an MEFS requires values for more than 90 parameters, such as price, quality, water and drilling depth, gas-to-oil ratio, production rates, and scheduling of costs and production. We'd need to calculate many MEFS and would have to update them regularly as prices, costs and other significant values change. With large amounts of relief and rapidly changing values, and given the nearly explicit statutory mandate to provide sufficient relief, but not too much, we'd have to carefully set the qualifying field sizes. As a result, we'd not be able to set MEFS at sizes that would be worth developing even with royalty relief.

In contrast, the potential number of non-producing leases that may come in for relief looks relatively small. These are pre-Act leases, formerly pre-enactment deep water leases, or PDWLs. We can now identify fewer than 75 fields in this category, a small fraction of which may need relief. More importantly, we can't justify relying on generic data to determine an MEFS when an application gives us specific data for each field.

2. Early Relief Indication

Comment: MMS requires that a DOCD be approved before an applicant can submit a complete application for royalty relief on a pre-Act lease. Unfortunately, that pushes the request for royalty relief too late into development to be useful. Lessees won't prepare expensive DOCDs for projects that might not go into production, so they want some assurance royalty relief will be granted before preparing one (§ 203.83).

Rather than require an approved DOCD before submission of an application, break approval into two phases. In phase one, an applicant would file a preliminary application early in the life of a project based on the best information available at the time but with significantly less data than required in a final application. Based on a less extensive review than required for a final application, MMS would give a preliminary finding about whether the project qualified for relief and the appropriate suspension volume. Unless there were material changes, the preliminary finding would be binding. In phase two, a final application would either confirm the relief or cause MMS to do a new evaluation because of material changes (§ 203.61).

Response: We agree that the DOCD requirement is unnecessarily restrictive and have removed it in the final rule. Instead, we'll depend on other means to ensure appraisals are complete enough for the applicant to make an informed decision to develop and for us to evaluate the need for royalty relief. We will:

- Shorten the period allowed from 2 years to 1 year between the approval of relief and the start of construction on the development and production system,
- Allow significant new geological and geophysical (G&G) data to qualify only for the initial redetermination, and
- Use our own professional judgment on whether the appraisal is sufficient for decision making.

Breaking the approval into two phases as proposed by industry comments has a number of flaws. MMS would have to make a conditionally binding relief decision in phase one with less data and certainty than the company would have when it decides whether to develop after phase two. Foregoing Federal property rights to royalty income under the existing lease contract without sufficient information would be too arbitrary. Also, our conditional approval may discourage an applicant from developing more information that might

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change the preliminary finding, before filing a phase two application.

We've changed the rule to fit industry's request for an assessment of relief early in the project. In certain circumstances, a lessee or operator may request a nonbinding assessment of whether a field would qualify for royalty relief before submitting the first complete application on a field. This option will help those who don't want to risk having to meet qualifications for a redetermination if we reject a complete application, but want to know early about the chances for royalty relief on a marginal prospect.

The request would involve a draft application plus a processing fee. It could come any time after discovery (after a well qualifies under 30 CFR 250.11 or production is allocated under an approved unit agreement). The detail must be comparable to a complete application to ensure we assess the same prospect the lessee or operator envisions. We would develop a nonbinding assessment presuming that continued appraisal would produce expected values for unknown, but essential, data. Therefore, applicants must also send in an appraisal plan to drill one or more wells should MMS issue a favorable nonbinding assessment. After at least 90 days, a final, complete application can confirm or revise the data in the draft application and present the applicant's binding proposal as a condition for receiving royalty relief.

3. Complexity of Methods and Data Requirements

Comment: MMS proposes to use Monte Carlo simulations to account for the uncertainty in application data. Probability distributions in Monte Carlo techniques may be appropriate to analyze exploration and evaluate the adequacy of lease sale bids for which most data are unavailable and estimated. However, these approaches are less appropriate to analyze development. After discovering hydrocarbons, drilling delineation wells and taking seismic readings, the data are much more certain. Companies typically use simple scenario modeling and sensitivity analyses on development projects. MMS should adopt the scenario approach most used by industry (§§ 203.85–89).

Response: We've kept the Monte Carlo methods, though somewhat simplified, for several reasons. No clear milestones show when appraisal or delineation is adequate for making the development decision, so scenario modeling would not be suitable for many applications. Also, we must systematically handle the uncertainty associated with applications to be submitted at an early stage of development and we've been given a mandate to deal with the extra risk deep water poses. The Monte Carlo approach handles these diverse situations and requirements by allowing for the incorporation of as much or as little risk as perceived, a full range of sensitivity analysis, and the small but positive chance for all the circumstances an operation needs to become highly profitable.

We differ from the scenario approach industry describes mainly in the way we estimate reserves. The scenario approach offers no systematic way to arrive at a reserve size and chance of occurrence. We use careful descriptions of reservoirs and a standard procedure for calculating resources and aggregating them to the field level. Generally, we have adopted the reserves and resource definitions of the Society of Petroleum Engineers. This standardized procedure treats all applicants alike. It keeps our evaluators from having to learn the subtleties of each applicant's definition of reserves in order to verify and perhaps change that part of the evaluation. The level of detail proposed will ensure that we apply a consistent, analytically supportable method, especially for estimating producible reserves and resources.

The G&G report requests measurable reservoir data to help us validate inputs to the evaluation model. Distributions for all data items provide a way to document the uncertainty about these factors, but we don't need estimates for all data items because the model combines some items and derives other inputs. We've tried to clarify and simplify the data requirements in the spirit of the "scenario" approach.

Under our Monte Carlo procedure, applicants may use up to three discrete development scenarios, and they may include ranges for many of their variables. We need this detail so we can clearly understand the options and uncertainties an applicant faces. Our model has a less complex structure than publicly available models for estimating reserves and evaluating economics.

Individual Comments on the Deep Water Interim Rule and Guidelines

The following tables respond to the comments we received on the interim rule and supplementary guidelines. Each row references appropriate sections in the final rule and subject areas in the interim rule that relate to that comment and response.

COMMENT ON GENERAL PROVISIONS

Requirement/Subject	Comment	MMS Response
203.3/Processing Fees	The fees for royalty relief are too high and more than cover the costs of processing and deterring nuisance applications. Applicants should get refunds if fees are more than actual processing costs, which could be the case if screens for minimum field size are used to approve relief.	We estimate fees based on how many hours of work we expect the average application to take. After we have more experience with applications, we'll review processing costs and adjust fees if necessary. We plan to give refunds only for incomplete applications. But, we won't charge more when processing costs exceed the established fees.

COMMENTS ON NET REVENUE SHARE (NRS) ROYALTY RELIEF

Requirement/Subject	Comment	MMS Response
203.52/NRS Relief—Approval Criteria for Multiple-field Leases	If a lease produces from two or more fields, one or more of which do not qualify for NRS relief, royalty relief should still be possible for the lease production which would otherwise qualify.	Relief for end-of-life cases is designed for and granted to a whole lease or unit, not to a project or field. If a lease as a whole qualifies for end-of-life relief, it gets it regardless of how many fields are involved.

COMMENTS ON NET REVENUE SHARE (NRS) ROYALTY RELIEF—Continued

Requirement/Subject	Comment	MMS Response
Guidelines—Supplementing 203.53/Relief Operation	Requiring the operator to act as a single payor could not have been anticipated at the time the producer agreed to become the operator and exposes the operator to unforeseen legal implications or burdens. Getting money and accurate information to pay and report royalties from other lease owners is difficult, if not impossible, and could obligate the operator for late or improper payment and reporting interest and penalties.	Agree. We've dropped this requirement. It was proposed because the scope of an audit for a lease receiving royalty relief is greater than for normal leases. A single payor is designated to keep our audit expenses reasonable wherever multiple lease owners enjoy relief. However, the Royalty Simplification and Fairness Act contains language which precludes our insistence on a single payor.
203.56/NRS Relief—Lease Transfers or Assignments	If a lease is assigned, the NRS terms should be transferred to the assignee upon request. If the assignee doesn't ask to retain NRS terms, the lease should revert to the standard lease royalty rate.	In concept, relief is granted to a lease or unit, not to a lessee. We've changed the rule to automatically transfer relief terms to the assignee. Lessees also have the option to end relief at anytime.

COMMENTS ON DEEP WATER ROYALTY RELIEF (DWRR)

Requirement/Subject	Comment	MMS Response
203.60 & 78/Field Definition Decision Level & Appeals.	MMS should elevate the level for field definition decisions, notify lessees of the field designations, and allow them to object. It should also extend the period for appealing a field decision from 15 to 30–60 days. And it should allow companies to review current field designations for the GOM and industry input in any revisions	Agree in part. The Chief, Reserves Section, Office of Resource Evaluation, GOM Region (GOMR), will make field decisions after a lease has been qualified as producible. As part of that process, affected lessees and operators will be able to review and discuss any data with us before we make the final field decision. We won't extend the formal appeal period after this decision. Until the GOMR issues a final decision on the field designation, lessees of a pre-Act lease can't apply for DWRR. However, a DWRR application based on the GOM Regions' final field designation decision can be filed and processed while the field designation is under appeal.
203.60/Field Concept and Designation—Methodology.	Industry is accustomed to delineating a field for reasons of infrastructure, not geology, so disagreements over "field" designation can be expected. Recommend that MMS make public the methods it uses to identify fields and work with industry to develop a more precise definition for "field."	Agree. The term "field" in geological and petroleum literature is usually defined relative to geologic structure or stratigraphic conditions. The *Field Naming Handbook*, already available on the INTERNET from the GOMR, explains our methods. The GOMR will gladly entertain suggestions for improvements. Meetings on a field designation before starting the completeness review can improve understanding. But the basic entity for relief on royalties in deep water is the geologic field, not the project.
Deep Water Guidelines Supplementing 203.62/Applications—Informal Consulting.	Will MMS answer questions on preparing an application before it is filed and a fee paid?	Yes. As the revised guidelines state, we'll informally advise you how to fill out an application, but not whether to file one. Given the extensive guidelines and model documentation, informal advice can save you time before filing and us time during the completeness review and evaluation.
203.62 & 65(f)/Applications & Revising Applicants' Assumptions.	The economic, geologic, and engineering reports are too complicated, voluminous, and costly for marginal opportunities that depend on royalty relief. But MMS should not revise any assumptions without consulting the applicant and, if necessary, letting a third party settle disputes. At the very least MMS should justify any revisions to an applicant's assumptions	Agree in part. Application requirements impose a small cost in comparison to the size of the royalty relief at stake. We'll use our judgment and discretion in deciding whether to ask an applicant for more information or for clarification before making any changes, tolling the clock as needed to complete a full evaluation. We also will identify changes in related variables that may need to be discussed. Where major assumptions are unsupported by backup or important data elements are inconsistent with other parts of the application, we'll fully explain the source of the problem and provide a chance to explain or resolve the outstanding issues before deciding on an application. We aren't planning to use third parties to resolve disputes.
203.63/Applications—Joint Application Difficulties.	Industry is pleased that DWRR doesn't mandate unitization. However, joint applications may be unworkable due to different reserve numbers, costs, etc., estimated by different lessees	If lessees want DWRR; they will have to at least design applications jointly and, if approved, make sure they meet performance conditions for retaining relief. In cases where a party refuses to cooperate in submitting a joint application, it won't be eligible to receive any relief granted, and we'll likely need to make assumptions about how it might have participated in and contributed to joint development of the field.

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COMMENTS ON DEEP WATER ROYALTY RELIEF (DWRR)—Continued

Requirement/Subject	Comment	MMS Response
203.63/Applications—Joint Application Coercion.	MMS shouldn't require lessees that share the same geologic structure to file joint applications because this requirement could inhibit applications or restrict how companies operate offshore. For instance, on multi-lease fields, an economic project might negate another's less robust project; or a more advanced project may refuse to co-operate with a competitive, but lagging, project, etc	Joint applications don't require joint development, but they are an inescapable feature of a field-based system. The rules allow good-cause exceptions to joint applications. Should other lessees on the field choose not to apply for relief, they're still free to develop their leases as they wish, but they won't share any relief granted.
203.64/Applications with Assignments.	A limit of one application per field restricts a company from seeking relief on a farmed-out lease if the prior owner applied for relief on that field and was rejected. The new company that thinks it could develop the field with royalty relief must qualify for a redetermination to apply	The limit is intended in part to close the potential loophole of assigning leases to get around requirements for redetermination.
203.65/Review and Evaluation—Notification of MMS Determinations.	MMS should notify all affected lessees when royalty relief is granted and publish when, who, and how much relief is given	Agree. We will notify all designated lease operators within a field when royalty relief is granted. The basic summary information will be published on MMS's and GOMR's home pages on the INTERNET.
203.65/Review and Evaluation—Determination Period.	MMS's determination review is too long and will delay field development because lessees can't invest without knowing whether royalty relief will be available. Reduce the review time to 3 months	Public law sets the allowed review periods. However, we don't plan to use the entire time if we can do determinations faster. Yet careful review often requires time, especially when new and complex developments are proposed and huge amounts ($100 million plus) of royalty relief and taxpayer assets are at stake.
203.65/Review and Evaluation—Tolling the Clock—Measurement.	The clock should be tolled by using one measure of time, either work days or calendar days	DWRRA stipulated calendar days for its deadlines of 120 or 180 days for approval or rejection. We'll continue to use work days for reviewing applications for completeness because of the short time allowed. MMS must review each application thoroughly to ascertain whether it is complete before we start the statutory clock in calendar days to analyze economic viability. Industry is accustomed to our using work days to conduct completeness checks for other filings.
203.65/Review and Evaluation—Method for Tolling the Clock.	Evaluation time should be tolled "upon receipt by the applicant of written notification" of an information deficiency and the clock should be restarted "upon receipt of the needed information in the [GOM] Regional MMS office."	Agree. As the rule states, the evaluation clock will be stopped when the applicant receives written notice from us and will begin when the requested information is received in the regional office.
Deep Water Guidelines Supplementing 203.65/Review and Evaluation—Consistency with Differences in Geologic Interpretation.	How will MMS account for costs and production (revenues) that it believes should be added to the economic evaluation of a field because they are associated with developing reservoirs omitted from an application?	Each application and scenario presents a unique proposal. We'll adjust data as necessary. For example, if we determine that an applicant omitted prospective reservoirs, it's reasonable to assume they'll be found and developed later. By adding the necessary costs after production begins, we avoid the complexity of having to adjust the estimated pre-production costs used as a performance condition.
203.67/Review and Evaluation—Dual Test Role in Evaluation Model (Royalty Suspension Viability Program (RSVP)).	Eliminate the dual test, at least for applicants seeking only the minimum suspension volume. MMS should grant relief and not interject itself into the process by which a lessee decides to develop and incur costs to bring a field into production	We've kept the dual test, but have modified the calculations to reflect industry concerns that our determinations may not always coincide with industry decisions, even using the same input data. If, under these altered conditions, the dual test indicates that no amount of royalty relief will make the field economic, we can reasonably infer that the application is missing some key factor in the decision to develop.
203.68/Review and Evaluation—Dual Test Treatment of Sunk Costs.	Because sunk costs aren't in the dual test, it doesn't prove development is economic without royalty when compared to the way the primary test defines "economic-ness." Treat sunk costs the same in both tests and include them in the volume determination. Chance of relief is lost in a redetermination by defining all of the expended development costs as sunk	The difference in the way the two economic tests treat sunk costs favors the applicant. Omission of sunk costs from the dual test raises the net present value (NPV), improving chances for passing that part of the viability test. Their inclusion in the primary test has the opposite effect on NPV, again improving chances for passing that part of the viability test. As for volume determinations, the DWRRA directs us to consider sunk costs in determining eligibility for relief but not in setting a volume suspension to recover them. Finally, there is no difference in the treatment of sunk costs in the original application and redetermination. The only difference is in timing, i.e., more development costs may have been expended and hence treated as sunk at time of resubmission. That will raise the NPV in the dual test more than it will raise the NPV in the primary test, expanding the range of qualifying values.

COMMENTS ON DEEP WATER ROYALTY RELIEF (DWRR)—Continued

Requirement/Subject	Comment	MMS Response
203.70 & 91/Review and Evaluation—Post-production development report.	Full development cost is seldom known before first production, so a pre-production report would come before all wells would be drilled. Drilling costs are significant, often around 50 percent. Keep self-disclosure to encourage efficiency and reduce audit requirements but have an updated estimate of development costs provided before the first anniversary of start of production.	We agree that a review before production starts may be premature. The rules require the start-of-production cost report within 60 days after production begins. We may grant short extensions for extenuating circumstances. This gives applicants time to compile data on expenditures up to a well-defined point and avoids the ambiguity surrounding the actual start date and the need to estimate some cost items.
203.70, 76 & 90/Change in Material Fact—Start of Construction.	What constitutes start of construction or fabrication?	The revised rule stipulates the following requirements to verify when construction starts: (1) a copy of the contract with the fabrication yard, (2) a letter from the contractor certifying that construction has started on a specific system for a specific location, and (3) evidence of a payment of appropriate size based on current industry standards for the proposed development and production system.
203.71/Applying Suspension Volumes—Adding leases to a field.	Can a higher minimum suspension volume apply if the MMS evaluation of the application includes potential resources on unleased blocks and or leases not currently assigned to the field?	No. Minimum suspension volumes are based on the deepest lease assigned to the field up to the time the application is approved. Of course, we can still grant larger amounts of relief than the minimum suspension volumes, if we find them necessary to make the whole field economic.
203.73/Applying Suspension Volumes—Gas-to-Oil Conversion Factor.	The fixed conversion factor ignores fluctuations in the relative values of oil and gas and introduces bias as it overvalues gas relative to oil properties at current value ratios. The 8-to-1 ratio implied in the DWRRA may be better than the 5.62-to-1 ratio in the interim rule	The oil/gas ratio will continue to be based on the British thermal unit (Btu) conversion factor. Because the RSVP model values oil and gas separately, the conversion ratio affects only the size of the volume suspension, not qualification for relief. Qualified applicants already get minimum volumes under the DWRRA even if only small volume suspensions are needed. These minimum stipulated volumes were based on our studies using the Btu ratio. Hence, it would be inconsistent to have the volume suspension amounts based on relative prices when the minimum volumes were based on studies using the Btu ratio.
203.74/Redeterminations—Reprocessed Seismic Data.	Conditions for redeterminations should include reprocessed seismic data (using new algorithms). This differs from reinterpreting existing data, which is explicitly excluded as a basis for redetermination	We often can't distinguish a new algorithm from a reinterpretation of an old one, so we'll limit this requirement to new data developed by the applicant as a basis for a redetermination.
203.74/Redeterminations—Price Change Size.	A decline of 25 percent in oil or gas price is much too low to trigger a redetermination. Cash flow is very sensitive to price and a 10 percent drop in price can be enough to trigger a redetermination	Sharp price swings are often short-run phenomena not matched by changes in forecasts of long-term price trends used in a redetermination. Also price/cost differences, not just prices, drive cash flow. Some cost-cutting inevitably accompanies price declines. Only sustained, sizeable price declines, such as 25 percent, are likely to overwhelm cost-cutting opportunities enough to warrant a redetermination.
203.74/Redeterminations—Price Base.	What is the relevant price which must drop by 25 percent to qualify an applicant for a redetermination?	Applicants may seek a redetermination if a weighted 12-month—moving average of daily closing New York Mercantile Exchange (NYMEX) prices for oil or gas has decreased by more than 25 percent since the most recent complete application. As the revised rule explains, the before and after prices are weighted using the volumes of oil and gas identified in the most likely scenario described in that application.
Deep Water Guidelines Supplementing 203.74/Redeterminations—Price Assumptions.	The minimum oil price of $16.30 per barrel and the average annual growth rate of 1.67 percent is too high for the next 25 years	Starting price assumptions are based on Energy Information Administration (EIA) historical data and growth rates in EIA's *Annual Energy Outlook* and will be updated regularly. To match the GOM market better, we'll use recent prices for Petroleum Administration for Defense District (PADD) III imports as a benchmark for starting prices. Adjustments for gravity differences are allowed. As with all projections, experience may prove starting prices representative or not and growth rates right or wrong. But applicants will be on an equal footing because we mandate specific parameters.
Deep Water Guidelines Supplementing 203.76/Changes in Material Fact—Limits.	The guidelines aren't consistent with the interim rule language and preamble discussion regarding "material change."	Agree. We have changed the guidelines to be consistent with the rule. In particular, the four circumstances (change of system, excess delay in starting, underspending on development, or false statements/omitted reports) used to signify a material change are the only ones—not just examples—of what justifies withdrawal of already granted relief.

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COMMENTS ON DEEP WATER ROYALTY RELIEF (DWRR)—Continued

Requirement/Subject	Comment	MMS Response
203.76 & 87–89/Changes in Material Fact & Engineering, Production, and Cost reports—Multiple Development Scenarios.	MMS doesn't need three development scenarios to test viability because the section on withdrawing approval for royalty relief protects against significant changes	The withdrawal conditions focus on underspending development costs and changes in development systems evaluated in the application. They don't consider adjustments to planned capacity before or after production begins. We consider up to three scenarios to reflect uncertainty about final project size, timing, and production rates. We have clarified the options for simplifying the input data. Generally, whenever observed conditions or formal decisions foreclose some or all the uncertainty about particular variables, we accept fewer scenarios or point estimates for reservoirs, costs, and production.
203.76/Change in Material Fact—Reapplication with Sunk Development Costs.	Conversion of proposed development costs to sunk costs in a reapplication compounds the penalty from withdrawal. The reapplication is allowed less cost with which to justify relief	Agree. We'll allow applicants to renounce relief at any point after approval is granted and before production starts. When violation of a withdrawal condition is anticipated, giving up relief early can reduce the share of development costs that get considered as sunk costs in a subsequent application.
Deep Water Guidelines Supplementing 203.76 & 89/Change in Material Fact—Defining Development Cost.	What expenditures are included in development costs?	We'll count all eligible expenses planned for the most likely scenario between application and start of production. The spending threshold and any disallowed costs (for uneconomic reservoirs) will be specified in the relief approval. In assessing the economic viability of the subject field, we may remove the cash flows associated with uneconomic reservoirs.
Deep Water Guidelines Supplementing 203.76/Change in Material Fact—Development Period.	What happens if the development period (i.e., time to first production) deviates from an applicant's proposal?	We'll compare actual to approved pre-production costs, regardless of how much or little time it takes to start production.
203.76/Only "Significant" Change in Material Fact before Withdrawal of Approved Relief.	Withdrawal as a result of actual cost below 80 percent (or 90 percent for redetermination that follows withdrawal of previously granted relief) of application estimates discourages capital efficiency. Also a 10 to 20 percent cost reduction may not greatly improve project economics. MMS should withdraw relief only if reduction in capital costs "substantially" improve project economics beyond those on which the project qualified. Even if such a change occurs, the applicant ought to be allowed to appeal to keep relief so as not to encourage inefficient expenditures	Withdrawal conditions need to be fixed and obvious, not flexible combinations to be determined later. We've taken three steps to soften the danger of a fixed threshold. First, the applicant may keep one-half of the relief if we're notified of the shortfall. Second, the withdrawal date is now after production begins. Third, the pre-production period is variable, so we count an applicant's costs over a flexible interval. As a result, it's unlikely that the company would substantially underspend its earlier capital cost projections by the time of review.
203.78/Applying Suspension Volumes—Price Ceilings on Different Products.	Will a market gas price increase that is not accompanied by a rise in oil price trigger a lifting of all the royalty-suspension volume for a field with mostly oil reserves or vice versa?	No. The statute doesn't explicitly answer this question. We've interpreted the applicable text to mean that price ceilings prescribed in the law for lifting relief should apply separately to each product for fields that produce both. Relief can be suspended on just the part of total production from a field whose price exceeded the threshold. Gas prices above $3.50 per million Btus (escalated to then-current dollars) won't lift relief on oil volumes if oil prices remain below $28 per barrel (escalated to then-current dollars) and vice versa. Escalation by the Gross Domestic Price deflator raises the thresholds each year.
203.78/Applying Suspension Volumes—Time Limits for Royalty Refunds or Credits.	A time limit should be set for MMS to make royalty refunds or credits, as are set for companies to repay back royalties with interest, under the price escalation clause	Agree. The new Royalty Simplification and Fairness Act requires that MMS process refunds or credits on production after September 1996 within 120 days of a lessee's request. Future rules will set forth procedures which deal with this request. The repayment period for companies is also set at 120 days.

COMMENTS ON THE REQUIRED REPORTS

Requirement/Subject	Comment	MMS Response
203.81/Independent Certification.	A certified public accountant (CPA) certification of historical expenditures reported in either the application or the pre-production report imposes unnecessary costs. Internal records and self certification are adequate	A CPA certification is an independent check and so might substitute for our audit. Besides, only eligible expenditures must be certified. However, to reduce the cost of the independent audit, we will accept a CPA opinion which identifies questionable elements or an unqualified opinion on the accuracy and relevance of the historical information presented.

COMMENTS ON THE REQUIRED REPORTS—Continued

Requirement/Subject	Comment	MMS Response
Deep Water Guidelines Supplementing 203.81/Certification Format.	What is a CPA certification for sunk costs?	It's a CPA report that certifies your historical information is accurate and meets our stipulations on eligibility. As the revised guidelines state, an agent of the CPA firm must sign the certification and identify someone who knows the case and is authorized to respond to questions on it.
203.83/Administrative report—Certification of Non-Development.	Requiring certification that reserves won't be produced without relief is not enforceable and can be outdated as conditions change	Agree. We've eliminated this requirement. Considering sunk costs in the evaluation means that some fields that qualify for relief would be worth developing without relief.
203.85/Economic viability report—Inflation.	The spreadsheet model should allow for cost inflation	Future versions of the spreadsheet model may include a variable to account for cost-specific inflation or deflation. Technological progress could actually lower real costs over time despite general inflation of all prices and costs.
203.85/Economic viability report— Updating Price Assumptions Schedule.	MMS should fix a schedule for revising price assumptions (e.g., quarterly, annually). If MMS issues new assumptions while reviewing an application, they should clarify which assumptions apply (those at time of application or latest issued before the determination)	Agree. We'll publish updated price assumptions on the INTERNET annually, probably in the late spring when EIA's *Annual Energy Outlook* releases new data and forecasts. We'll use the price assumptions in place on the date of application submission.
203.85/Economic viability report—Revising Applicants' Assumptions-Discount Rates.	Will MMS accept the discount rate an applicant selects, or reserve the right to revise the discount rate?	We'll use the discount rate an applicant proposes in both the dual and primary tests, with no appropriateness review as long as it is within the range provided in the guidelines.
203.85/Economic viability report—Discount Rate Size.	The 10 percent discount rate is too low. Even 15 percent is too low because it risks rejected projects being abandoned	In all cases, the rates of return apply to a field with a discovery, so the risk of not finding oil or gas is gone. The range specified in the guidelines for the discount rate is based on recent historical experience, which in future years may assume a different trend. The industry's average after-tax, real rate of return, has been estimated to range from a high of 10.9 percent to a low of 1.4 percent between 1959 and 1988. (See A.T. Guernsey on behalf of Shell Oil Company, *Profitability Study: Crude Oil and Natural Gas Exploration, Development, and Production Activities in the USA, 1959–1988,* November 1990). Simulations with a version of our model found before-tax rates of return ranged from 1.2 to 4 percent higher than after-tax rates of return over various project conditions. Together, these estimates indicate that expecting before-tax discount rates, and hence rates of return, in the range of 10 to 15 percent are appropriate.
203.85/Economic viability report—Discount Rate Range.	Allowing variability in discount rates could lead to unequal treatment. Where applicants choose discount rates, the playing field isn't level. Instead, specify one for each of three water-depth thresholds and apply uniformly	The goal of a range of discount rates is to fit differences in companies' risk tolerance and opportunity cost. Applicants can tailor their risk preferences by water depth within this range if they choose to. We use probability methods that don't require a risk premium in the discount rate. However, a fixed discount rate across fields and companies within a water-depth category places all the burden for dealing with differences in risk on these probability distributions. We believe a better compromise is to give applicants the chance to use both factors to express their risks and uncertainties. Allowing companies to choose a rate for their projects is eminently fair, as long as they stay within our stipulated range and we use it in both economic viability tests.
203.89/Cost report—Sunk Costs Measurement.	The way MMS includes sunk costs doesn't recognize the time value of money, as past expenditures are carried forward without escalation. It's inappropriate to combine after-tax sunk costs with future costs and revenues expressed on a before-tax basis	The DWRRA directs us to consider all exploration, development, and production costs. Because the decision to proceed on a project is independent of sunk costs, the proper treatment of sunk costs for economic viability is to value them as zero. We balance these considerations by carefully defining expenses that constitute sunk costs, then we allow them as a deduction in the primary test and exclude them from the dual test. The after-tax part of sunk costs, like the before-tax size of prospective costs, is what the company still has to recover from the proposed project.
203.89/Sunk Costs—Scope	Sunk costs should include all reasonable post-lease acquisition costs (seismic data costs, overhead expenses, etc.). Extend the definition to include all project costs incurred by the lessee or on behalf of a lessee	We won't consider sunk costs incurred by previous owners of your lease or by third-parties. Also, we won't consider portions of sunk costs on your lease that you incurred prior to when you last bought into your lease. Further, if you have maintained continous ownership but changed the share of the lease you own, we count your sunk costs only in proportion to the share you owned when you incurred these costs. We do this because previous owners and third-parties already have been compensated through market transactions. Also, we do not believe we can really verify the relevance to current development of expenditures by third-parties or previous owners.

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COMMENTS ON THE REQUIRED REPORTS—Continued

Requirement/Subject	Comment	MMS Response
203 91 & 76/Review and Evaluation—Post-production development report.	What must the post-production report contain? What happens if it isn't submitted?	The report must show and compare planned and actual pre-production costs. If you don't submit the report, you'll lose relief, just as you would for providing false historical or intentionally inaccurate information.

IV. Recovery of Costs

By Federal policy and law, we'll charge lessees applying for royalty relief under this rule an amount which recovers our cost of processing their applications. The Independent Office Appropriation Act (31 U.S.C. 9701) and OMB Circular A–25 require agencies to recover their costs when they provide services that confer special benefits or privileges to identifiable non-Federal recipients. Processing of applications for royalty relief clearly falls within this mandate. Furthermore, the Omnibus Appropriations Bill (Pub. L. 104–134, 110 Stat. 1321, April 26, 1996) authorizes collecting such fees.

We issued NTL No. 96–3N (signed June 21, 1996), which gives detailed amounts for processing royalty-relief applications and when and how applicants may pay us. Processing applications for royalty relief to increase production will cost $8,000. Complete applications under DWRR will cost either $16,000 to $34,000. Draft applications will cost either $10,500 to $28,500. For some applications, we may need to audit the financial data submitted to determine the proposed development's economics. That would cost up to $37,500. Ordinarily, no refund is given when we reject an application. However, if we reject a deep water application for incompleteness during the first 20 business days after receiving it, we'll refund all but $5,500 of the application fee. We'll revise the Notice to Lessees (NTL) periodically to reflect our cost experience and to provide other information helpful or necessary for administering this program.

Authors: Sam Fraser and Marshall Rose, Economics Division, prepared this document.

V. Administrative Matters

Executive Order (E.O.) 12866

This rule is significant due to novel policy issues arising from legal mandates, and OMB has reviewed this rule. We will make a copy of our determination of the effects of this rule available on request.

In summary, the DWRRA instructs us to grant royalty relief only in situations that are uneconomic at the lease-stipulated royalty rate. Hence, the economic effects can be estimated by the additional royalties that may be collected from fields that would otherwise not be developed until a later time, if at all. We estimated these effects by extrapolating to all known deep water fields the results of detailed analyses of 30 fields in the relevant water depths. MMS's field-based approach generates up to $45 million per year in additional royalty revenue, which is less than the threshold amount of $100 million annually.

The field-based approach provided in this final rule gives a single royalty-suspension volume for each qualifying field. The main alternative approach gives each individual lease or unit a separate royalty-suspension volume, subject to the minimum volumes specified in the DWRRA.

We chose the field-based approach because:

- The DWRRA's primary author stated that he intended the DWRRA to encourage production from new fields without providing any more relief than needed;
- The field-based approach provides a substantial incentive for developing marginal fields in deep water while still ensuring a fair return to the Treasury;
- The minimum suspension volumes specified in the DWRRA were derived from an analysis of fields, not individual leases; and
- This rule needs to be consistent with the rules for royalty suspensions on deep water tracts leased after November 28, 1995, in the same parts of the GOM so that all deep water leases on the OCS receive equitable treatment.

Regulatory Flexibility Act

This rule can have a positive economic effect on some small entities. A copy of our analysis of this impact is available on request.

In summary, this rule sets the terms and conditions for granting royalty relief under the provisions of section 8(a)(3)(A) of the OCSLA. These terms reduce costs for end-of-life operations by 6 to 10 percent, more than doubling profits. That should significantly prolong operations on marginally economic leases. We can't estimate the number of leases that may be affected from past experience, because the terms have been changed from those previously available to marginal OCS leases. We estimate that small entity operators account for under 10 percent of production from OCS leases.

This rule also sets terms and conditions for granting royalty-suspension volumes under the DWRRA for certain deep water leases on the OCS in the GOM. These leases were issued as a result of a lease sale held before November 28, 1995. The conditions limit these terms to the rare situations in which royalty costs are the difference between unprofitable and profitable development. One of two applications for deep water relief received under the interim version of this rule was from a small entity.

Paperwork Reduction Act

In connection with the interim final rulemaking (IFR) process, we submitted the information collection requirements in 30 CFR 203 to OMB and conducted a full review and comment process for this collection of information. OMB approved the information collection (OMB No. 1010–0071) on October 7, 1996, to expire on October 31, 1999.

Earlier in the preamble we discussed comments received on the information collection aspects of the IFR. Based on experience and the changes made in this rule, we will submit a revised information collection package to OMB for approval 60 days after this rule is published. With this rule, we are starting the 60-day comment period. The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The information collection aspects of this final rule will not take effect until approved by OMB.

We invite the public and other Federal agencies to comment on the collection of information as discussed below. Send comments regarding any aspect of the collection to the Minerals Management Service, Attention: Rules Processing Team, 381 Elden Street, Mail Stop 4020, Herndon, VA 20170. Your comments should be received by March 17, 1998.

We use the information to determine whether royalty relief will result in production that wouldn't otherwise occur. We rely largely on your information to make these determinations. Your application for royalty relief must contain enough information on finances, economics, reservoirs, G&G characteristics, production, and engineering estimates for us to determine whether: (1) We should grant relief under the law, and (2) the requested relief will ultimately recover more resources and return a reasonable profit on project investments. Your fabricator confirmation and post-production development reports must contain enough information for us to verify that your application reasonably represented your plans.

Applicants (respondents) are Federal OCS oil and gas lessees. Applications are required to obtain or retain a benefit. Therefore, if you apply for royalty relief, you must provide this information. We will protect information considered proprietary under applicable law and under regulations at § 203.63(b) and part 250 of this chapter.

We estimate the annual public reporting burden for this information collection will average approximately 14,700 hours, not the 38,730 hours originally estimated for the interim final rule. The reduction is due primarily to an adjustment in re-estimating the number of applications we expect to receive. We also made minor program reductions in the estimate based on the changes in the final rule. The average burden per response is estimated at 335 burden hours. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A breakdown of the estimated burden is included in the supporting statement we submitted to OMB for this collection of information. You may obtain a copy of that supporting statement from MMS's Information Collection Clearance Officer (202/208–7744). In calculating the burdens, we've assumed that respondents perform some of the requirements and maintain records in the normal course of their activities. We consider these to be usual and customary. You are invited to provide information in your comments if you disagree with this assumption.

We specifically solicit comments on the following questions:

(a) Is the proposed collection of information necessary for us to properly perform our functions, and will it be useful?

(b) Are the burden hours estimates reasonable for the proposed collection?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on the applicants, including the use of appropriate automated electronic, mechanical, or other forms of information technology?

In addition, the Paperwork Reduction Act requires us to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. We need your comments to identify any reporting and recordkeeping cost burdens other than those discussed above. Your response should split the cost estimate into two components: (a) Total capital and startup cost component; and (b) annual operation, maintenance, and purchase of services component. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

Takings Implication Assessment

DOI certifies that this rule does not represent a governmental action that can interfere with constitutionally protected property rights. Therefore, we don't need to do a Takings Implication Assessment under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

E.O. 12988

DOI has certified to OMB that the rule meets the applicable reform standards provided in sections 3(a) and 3(b)(2) of E.O. 12988.

National Environmental Policy Act

DOI has determined that this rule isn't a major Federal action that significantly affects the quality of the human environment, so we don't need an Environmental Impact Statement.

Unfunded Mandates Reform Act of 1995

DOI has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on State, local, and tribal governments or the private sector.

"Plain English" Style of Writing

We've written this regulation in the form of questions in the first person (I) and answers in the second person (you) because readers may find it simpler to read and understand. A question and its answer combine to establish a rule. The applicant and the agency must follow the language in the question and its answer.

List of Subjects in 30 CFR Part 203

Continental shelf, Government contracts, Indians-lands, Minerals Royalties, Oil and gas exploration, Public lands-mineral resources, Sulphur.

Dated: November 6, 1997.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service (MMS) is amending 30 CFR part 203 as follows:

PART 203—RELIEF OR REDUCTION IN ROYALTY RATES

1. The authority citation for part 203 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 9701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. Subpart A is revised to read as follows:

Subpart A—General Provisions

Sec.

203.0 What definitions apply to this part?
203.1 What is MMS's authority to grant royalty relief?
203.2 When can I get royalty relief?
203.3 Why must I pay a fee to request royalty relief?
203.4 How do the provisions in this part apply to different types of leases and projects?

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Subpart A—General Requirements

§ 203.0 What definitions apply to this part?

Authorized field means a field in a water depth of at least 200 meters and in the Gulf of Mexico west of 87 degrees, 30 minutes West longitude from which no current pre-Act lease produced, other than test production, before November 28, 1995.

Complete application means an original and two copies of the six reports consisting of the data specified in 30 CFR 203.81, 203.83 and 203.85 through 203.89, along with one set of digital information, which MMS has reviewed and found complete.

Determination means the binding decision by MMS on whether your field qualifies for relief or how large a royalty-suspension volume must be to make the field economically viable.

Draft application means the preliminary set of information and assumptions you submit to seek a nonbinding assessment on whether a field could be expected to qualify for royalty relief.

Eligible lease means a lease that results from a lease sale held after November 28, 1995; is located in the Gulf of Mexico (GOM) in water depths 200 meters or deeper; lies wholly west of 87 degrees, 30 minutes West longitude; and is offered subject to a royalty-suspension volume authorized by statute.

Expansion project means a project you propose in a Development Operations Coordination Document (DOCD) or a Supplement approved by the Secretary of the Interior after November 28, 1995, that will increase the ultimate recovery of resources from a pre-Act lease and that involves a substantial capital investment (e.g., fixed-leg platform, subsea template and manifold, tension-leg platform, multiple well project, etc.).

Fabrication (or start of construction) means evidence of irreversible commitment to a concept and scale of development, including copies of a binding contract between you (as applicant) and a fabrication yard, a letter from a fabricator certifying that construction has begun, and a receipt for the customary down payment.

Field means an area consisting of a single reservoir or multiple reservoirs all grouped on, or related to, the same general geological structural feature or stratigraphic trapping condition. Two or more reservoirs may be in a field, separated vertically by intervening impervious strata or laterally by local geologic barriers, or both.

Lease means a lease or unit.

New production means any production from a current pre-Act lease from which no royalties are due on production, other than test production, before November 28, 1995. Also, it means any production resulting from lease-development activities involving a substantial capital investment (e.g., fixed-leg platform, subsea template and manifold, tension-leg platform, multiple well project, etc.) on a current pre-Act lease under a Development Operations Coordination Document—or its supplement—approved by the Secretary of the Interior after November, 28, 1995.

Nonbinding assessment means an opinion by MMS of whether your field could qualify for royalty relief. It is based on your draft application and does not entitle the field to relief.

Performance conditions means minimum conditions you must meet, after we have granted relief and before production begins, to remain qualified for that relief. If you do not meet each one of these performance conditions, we consider it a change in material fact significant enough to invalidate our original evaluation and approval.

Pre-Act lease means a lease issued as a result of a lease sale held before November 28, 1995; in a water depth of at least 200 meters; and in the Gulf of Mexico west of 87 degrees, 30 minutes West longitude.

Production means all oil, gas, and other relevant products you save, remove, or sell from a tract or those quantities allocated to your tract under a unitization formula, as measured for the purposes of determining the amount of royalty payable to the United States.

Project means any activity that requires at least a permit to drill.

Redetermination means your request for us to reconsider our determination on royalty relief if we have rejected your application or if we have granted relief but you want a larger suspension volume.

Renounce means action you take to give up relief after we have granted it and before you start production.

Sunk costs means costs (as specified in 30 CFR 203.89(a)) of exploration, development, and production that you incur after the date of first discovery on the field and before the date we receive your complete application for royalty relief. Sunk costs include the costs of the discovery well qualified as producible under 30 CFR part 250, subpart A but do not include any pre-discovery activity costs or lease acquisition and holding costs such as cash bonus and rental payments.

Withdraw means action we take on a field that has qualified for relief if you have not met one or more of the performance conditions.

§ 203.1 What is MMS's authority to grant royalty relief?

The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1337, as amended by the OCS Deep Water Royalty Relief Act (DWRRA), Public Law 104–58, authorizes us to grant royalty relief in three situations.

(a) Under 43 U.S.C. 1337(a)(3)(A), we may reduce or eliminate any royalty or a net profit share specified for an OCS lease to promote increased production.

(b) Under 43 U.S.C. 1337(a)(3)(B), we may reduce, modify, or eliminate any royalty or net profit share to promote development, increase production, or encourage production of marginal resources on certain leases or categories of leases. This authority is restricted to leases in the Gulf of Mexico (GOM) that are west of 87 degrees, 30 minutes West longitude.

(c) Under 43 U.S.C. 1337(a)(3)(C), we may suspend royalties for designated volumes of new production from any lease if:

(1) Your lease is in deep water (water at least 200 meters deep);

(2) Your lease is in designated areas of the GOM (west of 87 degrees, 30 minutes West longitude);

(3) Your lease was acquired in a lease sale held before the DWRRA (before November 28, 1995);

(4) We find that your new production would not be economic without royalty relief; and

(5) Your lease is on a field that did not produce before enactment of the DWRRA, or if you propose a project to significantly expand production under a Development Operations Coordination Document (DOCD) or a supplementary DOCD, that MMS approved after November 28, 1995.

§ 203.2 When can I get royalty relief?

We can reduce or suspend royalties for OCS leases or projects that meet the criteria in the following table.

IF YOU HAVE A LEASE—	AND IF YOU—	THEN YOU MAY BE GRANTED—
That generates earnings which cannot sustain production (*End-of-Life lease*),.	Seek to increase production by operating the lease beyond the point at which it is economic under the existing royalty rate,.	A reduced royalty rate on current production flows along with a higher royalty rate on some additional production flows.
In designated areas of the deep water GOM, acquired in a lease sale held before November 28, 1995, and you propose activity in a DOCD or supplement to significantly expand production,.	Are producing and seek to increase ultimate recovery of resources from the field with a substantial investment (e.g., platform, multiple wells, subsea template) (an *expansion project*),.	A royalty suspension for an increment to production large enough to make the project economic.
In designated areas of the deep water GOM, acquired in a lease sale held before November 28, 1995 (*pre-Act lease*),.	Are on a field from which no current pre-Act lease produced (other than test production) before November 28, 1995 (*authorized field*),.	A royalty suspension for a minimum production volume plus any additional volume needed to make the field economic.

§ 203.3 Why must I pay a fee to request royalty relief?

(a) When you submit an application or ask for a preview assessment, you must include a fee to reimburse us for our costs of processing your application or assessment. Federal policy and law require us to recover the cost of services that confer special benefits to identifiable non-Federal recipients. The Independent Offices Appropriation Act (31 U.S.C. 9701), Office of Management and Budget Circular A–25, and the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996) authorize us to collect these fees.

(b) We will specify the necessary fees for each of the types of royalty-relief applications and possible MMS audits in a Notice to Lessees. We will periodically update the fees to reflect changes in costs as well as provide other information necessary to administer royalty relief.

§ 203.4 How do the provisions in this part apply to different types of leases and projects?

The tables in this section summarize how similar provisions in this part apply in different situations.

(a) Provisions relating to application content in §§ 203.51, 203.62 and 203.81 through 203.89.

Information elements	End-of-life lease	Deep water expansion project	Pre-act deep water lease
Administrative information report	x	x	x
Net revenue and relief justification report (prescribed format)	x		
Economic viability and relief justification report (Royalty Suspension Viability Program (RSVP) model inputs justified with Geological & Geophysical (G&G), Engineering, Production, & Cost reports)		x	x
G&G report		x	x
Engineering report		x	x
Production report		x	x
Deep Water cost report		x	x

(b) Provisions relating to verification in §§ 203.70, 203.81 and 203.90 through 203.91.

Confirmation elements	End-of-life lease	Deep water expansion project	Pre-act deep water lease
Fabricator's confirmation report		x	x
Post-production development report (approved by certified public accountant (CPA)		x	x

(c) Provisions relating to approval criteria contained in §§ 203.50, 203.52, 203.60 and 203.67.

Approval conditions	End-of-life lease	Deep water expansion project	Pre-act deep water lease
At least 12 of the last 15 months have the required level of production	x		
Already producing	x	x	
Well can produce			x
Royalties for qualifying months exceed 75 percent of net revenue (NR)	x		
Substantial investment (e.g., platform, multiple wells, subsea template)		x	
Determined to be economic only with relief		x	x

(d) Provisions related to redetermination in §§ 203.52 and 203.74 through 203.75.

Redetermination conditions	End-of-life lease	Deep water expansion project	Pre-act deep water lease
After 12 months under current rate, criteria same as for approval	x		
For material change in geologic data, prices, or costs		x	x

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(e) Provisions related to the format of relief in §§ 203.53 and 203.69.

Relief rate & volume	End-of-life lease	Deep water expansion project	Pre-act deep water lease
One-half pre-application effective lease rate on the qualifying amount, 1.5 times pre-application effective lease rate on additional production up to twice the qualifying amount, and the pre-application effective lease rate for any larger volumes	x		
Qualifying amount is the average monthly production for 12 qualifying months	x		
Zero royalty rate on the suspension volume and the original lease rate on additional production		x	x
Field Suspension volume is at least 17.5, 52.5 or 87.5 million barrels of oil equivalent (MMBOE)			x
Amount needed to become economic		x	x

(f) Provisions related to discontinuing relief §§ 203.54 and 203.78.

Full royalty resumes when—	End-of-life lease	Deep water expansion project	Pre-act deep water lease
Average NYMEX price for last 12 months is at least 25 percent above the average for the qualifying months	x		
Average NYMEX price for last 12 months exceeds $28/bbl or $3.50/mcf, escalated by the gross domestic product deflator since 1994		x	x

(g) Provisions related to the end, loss or reduction of relief in §§ 203.55 and 203.76.

Relief withdrawn or reduced	End-of-life lease	Deep water expansion project	Pre-act deep water lease
Recipient so requests	x		
Lease rate is at the effective rate for 12 consecutive months	x		
Conditions that we may specify in the approval letter in individual cases actually occur	x		
Not submitting post-production report that compares expected to actual costs		x	x
Change of development system		x	x
Excess delay in starting fabrication		x	x
Spending less than 80 percent of proposed pre-production costs but notifying us in post-production report		x	x
Amount of relief volume is produced		x	x

3. Subpart B is revised to read as follows:

Subpart B—OCS Oil, Gas, and Sulfur General

Royalty Relief for end-of-life Leases

Sec.

203.50 Who may apply for end-of-life royalty relief?
203.51 How do I apply for end-of-life royalty relief?
203.52 What criteria must I meet to get relief?
203.53 What relief will MMS grant?
203.54 How does my relief arrangement for an oil and gas lease operate if prices rise sharply?
203.55 Under what conditions can my end-of-life royalty relief arrangement for an oil and gas lease be ended?
203.56 Does relief transfer when a lease is assigned?

Royalty Relief For Deep Water Expansion Projects And Pre-Act Deep Water Leases

203.60 Who may apply for deep water royalty relief?
203.61 How do I assess my chances for getting relief?
203.62 How do I apply for relief?
203.63 Does my application have to include all leases in the field?
203.64 How many applications may I file on a field?
203.65 How long will MMS take to evaluate my application?
203.66 What happens if MMS does not act in the time allowed under § 203.65, including any extensions?
203.67 What economic criteria must I meet to get royalty relief on an authorized field or expansion project?
203.68 What pre-application costs will MMS consider in determining economic viability?
203.69 If my application is approved, what royalty relief will I receive?
203.70 What information must I provide after MMS approves relief?
203.71 How does MMS allocate a field's suspension volume between my lease and other leases on my field?
203.72 Can my lease receive more than one suspension volume?
203.73 How do suspension volumes apply to natural gas?
203.74 When will MMS reconsider its determination?
203.75 What risk do I run if I request a redetermination?
203.76 When might MMS withdraw or reduce the approved size of my relief?
203.77 May I voluntarily give up relief if conditions change?
203.78 Do I keep relief if prices rise significantly?
203.79 How do I appeal MMS's decisions related to Deep Water Royalty Relief?

Required Reports

203.81 What supplemental reports do royalty-relief applications require?
203.82 What is MMS's authority to collect this information?
203.83 What is in an administrative information report?
203.84 What is in a net revenue and relief justification report?
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203.86 What is in a G&G report?
203.87 What is in an engineering report?
203.88 What is in a production report?
203.89 What is in a deep water cost report?
203.90 What is in a fabricator's confirmation report?
203.91 What is in a post-production development report?

Subpart B—OLS Oil, Gas, and Sulfur General

Royalty Relief for End–of–life Leases

§ 203.50 Who may apply for end-of-life royalty relief?

You may apply for royalty relief in two situations.

(a) Your end-of-life lease (as defined in § 203.2) is an oil and gas lease and has average daily production of at least 100 barrels of oil equivalent (BOE) per month (as calculated in § 203.73) in at least 12 of the past 15 months. The most recent of these 12 months are considered the qualifying months.

(b) Your end-of-life lease is other than an oil and gas lease (e.g., sulphur) and has production in at least 12 of the past 15 months. The most recent of these 12 months are considered the qualifying months.

§ 203.51 How do I apply for end-of-life royalty relief?

You must submit a complete application and the required fee to the appropriate MMS Regional Director. Your MMS regional office will provide specific guidance on the report formats. A complete application for relief includes:

(a) An administrative information report (specified in § 203.83) and

(b) A net revenue and relief justification report (specified in § 203.84).

§ 203.52 What criteria must I meet to get relief?

(a) To qualify for relief, you must demonstrate that the sum of royalty payments over the 12 qualifying months exceeds 75 percent of the sum of net revenues (before-royalty revenues minus allowable costs, as defined in § 203.84).

(b) To re-qualify for relief, e.g., either applying for additional relief on top of relief already granted, or applying for relief sometime after your earlier agreement terminated, you must demonstrate that:

(1) You have met the criterion listed in paragraph (a) of this section, and

(2) The 12 required qualifying months of operation have occurred under the current royalty arrangement.

§ 203.53 What relief will MMS grant?

(a) If we approve your application and you meet certain conditions, we will reduce the pre-application effective royalty rate by one-half on production up to the relief volume amount. If you produce more than the relief volume amount:

(1) We will impose a royalty rate equal to 1.5 times the effective royalty rate on your additional production up to twice the relief volume amount; and

(2) We will impose a royalty rate equal to the effective rate on all production greater than twice the relief volume amount.

(b) Regardless of the level of production or prices (see § 203.54), royalty payments due under end-of-life relief will not exceed the royalty obligations that would have been due at the effective royalty rate.

(1) The effective royalty rate is the average lease rate paid on production during the 12 qualifying months.

(2) The relief volume amount is the average monthly BOE production for the 12 qualifying months.

§ 203.54 How does my relief arrangement for an oil and gas lease operate if prices rise sharply?

In those months when your current reference price rises by at least 25 percent above your base reference price, you must pay the effective royalty rate on all monthly production.

(a) Your current reference price is a weighted average of daily closing prices on the NYMEX for light sweet crude oil and natural gas over the most recent full 12 calendar months;

(b) Your base reference price is a weighted average of daily closing prices on the NYMEX for light sweet crude oil and natural gas during the qualifying months; and

(c) Your weighting factors are the proportions of your total production volume (in BOE) provided by oil and gas during the qualifying months.

§ 203.55 Under what conditions can my end-of-life royalty relief arrangement for an oil and gas lease be ended?

(a) If you have an end-of-life royalty relief arrangement, you may renounce it at any time. The lease rate will return to the effective rate during the qualifying period in the first full month following our receipt of your renouncement of the relief arrangement.

(b) If you pay the effective lease rate for 12 consecutive months, we will terminate your relief. The lease rate will return to the effective rate in the first full month following this termination.

(c) We may stipulate in the letter of approval for individual cases certain events that would cause us to terminate relief because they are inconsistent with an end-of-life situation.

§ 203.56 Does relief transfer when a lease is assigned?

Yes. Royalty relief is based on the lease circumstances, not ownership. It transfers upon lease assignment.

Royalty Relief For Deep Water Expansion Projects And Pre-Act Deep Water Leases

§ 203.60 Who may apply for deep water royalty relief?

Under conditions in §§ 203.61(b) and 203.62, you may apply for royalty relief if:

(a) You are a lessee of a lease in water at least 200 meters deep in the GOM and lying wholly west of 87 degrees, 30 minutes West longitude;

(b) We have assigned your lease to a field (as defined in § 203.0); and

(c) You hold a pre-Act lease on an authorized field (as defined in § 203.0) or you propose an expansion project (as defined in § 203.0).

§ 203.61 How do I assess my chances for getting relief?

You may ask for a nonbinding assessment (a formal opinion on whether a field would qualify for royalty relief) before turning in your first complete application on an authorized field. This field must have a qualifying well under 30 CFR part 250, subpart A, or be on a lease that has allocated production under an approved unit agreement.

(a) To request a nonbinding assessment, you must:

(1) Submit a draft application in the format and detail specified in guidance from the MMS regional office for the GOM;

(2) Propose to drill at least one more appraisal well if you get a favorable assessment; and

(3) Pay a fee under § 203.3.

(b) You must wait at least 90 days after receiving our assessment to apply for relief under § 203.62.

(c) This assessment is not binding because a complete application may contain more accurate information that does not support our original

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assessment. It will help you decide whether your proposed inputs for evaluating economic viability and your supporting data and assumptions are adequate.

§ 203.62 How do I apply for relief?

You must send a complete application and the required fee to the MMS GOM Regional Director.

(a) Your application for deep water royalty relief must include an original and two copies (one set of digital information) of:

(1) Administrative information report;
(2) Deep water economic viability and relief justification report;
(3) G&G report;
(4) Engineering report;
(5) Production report; and
(6) Deep water cost report.

(b) Section 203.82 explains why we are authorized to require these reports.

(c) Sections 203.81, 203.83, and 203.85 through 203.89 describe what these reports must include. The MMS GOM Regional Office will guide you on the format for the required reports.

§ 203.63 Does my application have to include all leases in the field?

For authorized fields, we will accept only one joint application for all leases that are part of the designated field on the date of application, except as provided in paragraph (c) of this section and § 203.64.

(a) The Regional Director maintains a Field Names Master List with updates of all leases in each designated field.

(b) To avoid sharing proprietary data with other lessees on the field, you may submit your proprietary G&G report separately from the rest of your application. Your application is not complete until we receive all the required information for each lease on the field. We will not disclose proprietary data when explaining our assumptions and reasons for our determinations under § 203.67.

(c) We will not require a joint application if you show good cause and honest effort to get all lessees in the field to participate. If you must exclude a lease from your application because its lessee will not participate, that lease is ineligible for the royalty relief for the designated field.

§ 203.64 How many applications may I file on a field?

You may file one complete application for royalty relief during the life of the field. However, you may send another application if:

(a) You are eligible to apply for a redetermination under § 203.74;

(b) You apply for royalty relief for an expansion project;

(c) You withdraw the application before we make a determination; or

(d) You apply for end-of-life royalty relief.

§ 203.65 How long will MMS take to evaluate my application?

(a) We will determine within 20 working days if your application for royalty relief is complete. If your application is incomplete, we will explain in writing what it needs. If you withdraw a complete application, you may reapply.

(b) We will evaluate your first application on a field within 180 days and a redetermination under § 203.75 within 120 days after we say it is complete.

(c) We may ask to extend the review period for your application under the conditions in the following table.

If—	Then we may—
We need more records to audit sunk costs	Ask to extend the 120-day or 180-day evaluation period. The extension we request will equal the number of days between when you receive our request for records and the day we receive the records.
We cannot evaluate your application for a valid reason, such as missing vital information or inconsistent or inconclusive supporting data.	Add another 30 days. We may add more than 30 days, but only if you agree.
We need more data, explanations, or revision	Ask to extend the 120-day or 180-day evaluation period. The extension we request will equal the number of days between when you receive our request and the day we receive the information.

(d) We may change your assumptions under § 203.62 if our technical evaluation reveals others that are more appropriate. We may consult with you before a final decision and will explain any changes.

(e) We will notify all designated lease operators within a field when royalty relief is granted.

§ 203.66 What happens if MMS does not act in the time allowed under § 203.65, including any extensions?

If we do not act within the timeframes established in § 203.65, the conditions in the following table apply.

If you apply for royalty relief for—	And we do not decide within the time specified—	As long as you—
An authorized field	You get the minimum suspension volumes specified in § 203.69	Abide by §§ 203.70 & 76
An expansion project	You get a royalty suspension for the first year of production	Abide by §§ 203.70 & 76

§ 203.67 What economic criteria must I meet to get royalty relief on an authorized field or expansion project?

Your field or project must require royalty relief to be economic and must become economic with this relief. That is, we will not approve applications if we determine that royalty relief cannot make the field or project economically viable.

§ 203.68 What pre-application costs will MMS consider in determining economic viability?

(a) We will not consider ineligible costs as set forth in § 203.89(h) in determining economic viability for purposes of royalty relief.

(b) We will consider sunk costs (allowable expenditures on and after the discovery well as specified in § 203.89(a)) in accordance with the following table.

We will—	When—
Include sunk costs	The field has not produced, other than test production, before the application submission date.
Not include sunk costs	Determining whether an authorized field can become economic with any relief (see § 203.67).
Not include sunk costs	Determining how much suspension volume is necessary to make development economic (see § 203.69(c)).
Not include sunk costs	Evaluating an expansion project.

§ 203.69 If my application is approved, what royalty relief will I receive?

This section applies only to leases on which you have applied for and received a royalty-suspension volume under section 302 of the DWRRA. We will not collect royalties on a specified suspension volume for your field. Suspension amounts include volumes allocated to a lease under an approved unit agreement and exclude any volumes that do not bear a royalty under the lease or the regulations of this chapter.

(a) For authorized fields, the minimum royalty-suspension volumes are:

(1) 17.5 million barrels of oil equivalent (MMBOE) for fields in 200 to 400 meters of water;

(2) 52.5 MMBOE for fields in 400 to 800 meters of water; and

(3) 87.5 MMBOE for fields in more than 800 meters of water.

(b) If the application for the field includes leases in different categories of water depth, we apply the minimum royalty-suspension volume for the deepest lease then associated with the field. We base the water depth and makeup of a field on the water-depth delineations in the "Royalty Suspension Areas Map" and the Field Names Master List and updates in effect at the time your application is approved. These publications are available from the GOM Regional Office.

(c) You will get a royalty-suspension volume above the minimum if we determine that you need more to make developing the field economic.

(d) For expansion projects, the minimum suspension volumes do not apply. If we determine that your expansion project may be economic only with relief, we will determine and grant you the royalty-suspension volume necessary to make the project economic.

(e) A royalty-suspension volume will continue through the end of the month in which cumulative production reaches that volume. The cumulative production is from all the leases in the authorized field or expansion project that are entitled to share the royalty suspension volume.

§ 203.70 What information must I provide after MMS approves relief?

You must submit reports to us as indicated in the following table. Sections 203.81 and 203.90 through 203.91 describe what these reports must include. MMS's GOM Regional Office will tell you the formats.

Required report	When due to MMS	Due date extensions
Fabricator's confirmation report.	Within 1 year after approval of relief	MMS Director may grant you an extension under § 203.79(c) for up to 1 year.
Post-production report	Within 60 days after the start of production that is subject to the approved royalty-suspension volume.	With acceptable justification from you, MMS's GOM Regional Director may extend due date up to 60 days.

§ 203.71 How does MMS allocate a field's suspension volume between my lease and other leases on my field?

The allocation depends on when production occurs, when the lease is assigned to the field, and whether we award the volume suspension by an approved application or establish it in the lease terms.

(a) If your authorized field has an approved royalty-suspension volume under §§ 203.67 and 203.69, we will suspend payment of royalties on production from all applying leases in the field until their cumulative production equals the approved volume. The following conditions also apply as appropriate:

If—	Then—	And—
We assign an eligible lease to your field after we approve or establish relief.	We will not change your field's royalty-suspension volume.	The newly assigned leases may share in any remaining royalty relief.
We assign a pre-Act lease to your field after you submit a complete application.	We will not change your field's royalty-suspension volume.	The newly assigned leases may share in any remaining royalty relief by filing the short form application specified in § 203.83 and authorized in § 203.82.
We assigned a pre-Act lease to your field before you submitted the royalty relief application.	We will not change your field's royalty-suspension volume.	The newly assigned lease will not share in the relief if it did not participate in the application.
We reassign a well on a pre-Act lease to another field.	The past production from that well counts toward the royalty-suspension volume of the field to which the well is reassigned.	The past production from that well will not count toward any royalty suspension volume granted to the field from which it was reassigned.

(b) If your authorized field has an automatic royalty-suspension volume established under § 260.110 of this chapter, we will suspend payment of royalties on production from all eligible leases in the field until their cumulative production equals the automatic volume. The following conditions also apply as appropriate:

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If—	Then—	And—
Another eligible lease is assigned to your field	Your field's royalty-suspension volume does not change.	The newly assigned lease may share in relief only to the extent that cumulative production from your field is less than the automatic volume.
A pre-Act lease applies (along with the other leases in the field) and qualifies (subject to the field's automatic suspension volume) for royalty relief under §§ 203.67 and 203.69.	Your field's royalty-suspension volume may increase or stay the same.	All leases in the field share the one, higher royalty-suspension volume if we approve the application; *or* The eligible leases in the field keep the automatic volume if we reject the application.

(c) If you have an expansion project with more than one lease, the royalty-suspension volume for each lease equals that lease's actual incremental production from the project (or production allocated under an approved unit agreement) until cumulative incremental production for all leases in the project equals the project's approved royalty-suspension volume.

(d) You may receive a royalty-suspension volume only if your entire lease is west of 87 degrees, 30 minutes West longitude. If the field lies on both sides of this meridian, only leases located entirely west of the meridian will receive a royalty-suspension volume.

§ 203.72 Can my lease receive more than one suspension volume?

Yes. You may apply for royalty relief that involves more than one suspension volume under § 203.62 in two circumstances.

(a) Each field that includes your lease may receive a separate royalty-suspension volume, if it meets the evaluation criteria of § 203.67.

(b) An expansion project on your lease may receive a separate royalty-suspension volume, even if we have already granted a royalty-suspension volume to the field that encompasses the project. But the reserves associated with the project must not have been part of our original determination, and the project must meet the evaluation criteria of § 203.67.

§ 203.73 How do suspension volumes apply to natural gas?

You must measure natural gas production under the royalty-suspension volume as follows: 5.62 thousand cubic feet of natural gas, measured in accordance with 30 CFR part 250, subpart L, equals one barrel of oil equivalent.

§ 203.74 When will MMS reconsider its determination?

Under certain conditions, you may request a redetermination if we deny your application, if you want your approved royalty-suspension volume to change, after we withdraw approval, or after you renounce royalty relief. To be eligible for a redetermination, at least one of the following three conditions must occur.

(a) You have significant new G&G data and you previously have not either requested a redetermination or reapplied for relief after we withdrew approval or you relinquished royalty relief. "Significant" means that the new G&G data:

(1) Results from drilling new wells or getting new three-dimensional seismic data and information (but not reinterpreting old data);

(2) Did not exist at the time of the earlier application; and

(3) Changes your estimates of gross resource size, quality, or projected flow rates enough to materially affect the results of our earlier determination.

(b) Your current reference price decreases by more than 25 percent from your base reference price. For royalty relief on deep water expansion projects and pre-Act deep water leases:

(1) Your current reference price is a weighted average of daily closing prices on the NYMEX for light sweet crude oil and natural gas over the most recent full 12-calendar months;

(2) Your base reference price is a weighted average of daily closing prices on the NYMEX for oil and gas for the most recent full 12-calendar months preceding the date of your most recently approved application for this royalty relief; and

(3) The weighting factors are the proportions of the total production volume (in BOE) for oil and gas associated with the most likely scenario (identified in §§ 203.85 and 203.88) from your most recently approved application for this royalty relief.

(c) Before starting to build your development and production system, you have revised your estimated development costs, and they are more than 120 percent of the eligible development costs associated with the most likely scenario from your most recently approved application for this royalty relief.

§ 203.75 What risk do I run if I request a redetermination?

If you request a redetermination after we have granted you a suspension volume, you could lose some or all of the previously granted relief. This can happen because you must file a new complete application and pay the required fee, as discussed in § 203.62. We will evaluate your application under § 203.67 using the conditions prevailing at the time of your redetermination request. In our evaluation, we may find that you should receive a larger, equivalent, smaller, or no suspension volume. This means we could find that you do not qualify for the amount of relief previously granted or for any relief at all.

§ 203.76 When might MMS withdraw or reduce the approved size of my relief?

We will withdraw approval of relief for any of the following reasons.

(a) You change the type of development system proposed in your application (e.g., change from a fixed platform to floating production system, tension leg platform to a moored catenary system such as a SPAR platform, an independent development and production system to one with subsea wells tied back to a host production facility, etc.).

(b) You do not start building the proposed development and production system within 1 year of the date we approved your application—unless the MMS Director grants you an extension under § 203.79(c).

(c) You do not tell us in your post-production development report (§ 203.70), and we find out your actual development costs are less than 80 percent of the eligible development costs estimated in your application's most likely scenario. Development costs are those incurred between the application submission date and start of production. If you tell us about this result in the post-production development report, you may retain 50 percent of the original royalty-suspension volume.

(d) We granted you a royalty-suspension volume after you qualified for a redetermination under § 203.74(c), and we find out your actual development costs are less than 90 percent of the eligible development costs associated with your application's most likely scenario. Development costs are those expenditures defined in § 203.89(b) incurred between your application submission date and start of production.

(e) You do not send us the fabrication confirmation report or the post-production development report, or you provide false or intentionally inaccurate information that was material to our granting royalty relief under this section. You must pay royalties and late-payment-interest determined under 30 U.S.C. 1721 and § 218.54 of this chapter on all volumes for which you used the royalty suspension. You also may be subject to penalties under other provisions of law.

§ 203.77 May I voluntarily give up relief if conditions change?

You may renounce approved royalty-suspension volumes as soon as you anticipate violating one of the withdrawal conditions, or for any other reason, before you start production.

§ 203.78 Do I keep relief if prices rise significantly?

No, you must pay full royalties if prices rise above the statutory base price for light sweet crude oil or natural gas.

(a) Suppose the arithmetic average of the daily closing NYMEX light sweet crude oil prices for the previous calendar year exceeds $28.00 per barrel, as adjusted in paragraph (f) of this section. In this case, we retract the royalty relief authorized in this section and you must:

(1) Pay royalties on all oil production for the previous year at the lease stipulated royalty rate plus interest (under 30 U.S.C. 1721 and § 218:54 of this chapter) by April 30 of the current calendar year, and

(2) Pay royalties on all your oil production in the current year.

(b) Suppose the arithmetic average of the daily closing NYMEX natural gas prices for the previous calendar year exceeds $3,50 per million British thermal units (Btu), as adjusted in paragraph (f) of this section. In this case, we retract the royalty relief authorized in this section and you must:

(1) Pay royalties on all natural gas production for the previous year at the lease stipulated royalty rate plus interest (under 30 U.S.C. 1721 and § 218.54 of this chapter) by April 30 of the current calendar year, and

(2) Pay royalties on all your natural gas production in the current year.

(c) Production under both paragraphs (a) and (b) of this section counts as part of the royalty-suspension volume.

(d) You are entitled to a refund or credit, with interest, of royalties paid on any production (that counts as part of the royalty-suspension volume):

(1) Of oil if the arithmetic average of the closing oil prices for the current calendar year is $28.00 per barrel or less, as adjusted in paragraph (f) of this section, and

(2) Of gas if the arithmetic average of the closing natural gas prices for the current calendar year is $3.50 per million Btu or less, as adjusted in paragraph (f) of this section.

(e) You must follow our regulations in part 230 of this chapter for receiving refunds or credits.

(f) We change the prices referred to in paragraphs (a), (b) and (d) of this section during each calendar year after 1994. These prices change by the percentage the implicit price deflator for the gross domestic product changed during the preceding calendar year.

§ 203.79 How do I appeal MMS's decisions related to Deep Water Royalty Relief?

(a) Once we have designated your lease as part of a field and notified you and other affected operators of the designation, you can request reconsideration by sending the MMS Director a letter within 15 days that also states your reasons. The MMS Director's response is the final agency action.

(b) Our decisions on your application for relief from paying royalty under § 203.67 and the royalty-suspension volumes under § 203.69 are final agency actions.

(c) If you cannot start construction by the deadline in § 203.76(b) for reasons beyond your control (e.g., strike at the fabrication yard), you may request an extension up to 1 year by writing the MMS Director and stating your reasons. The MMS Director's response is the final agency action.

(d) We will notify you of all final agency actions by certified mail, return receipt requested. Final agency actions are not subject to appeal to the Interior Board of Land Appeals under 30 CFR part 290 and 43 CFR part 4. They are judicially reviewable under section 10(a) of the Administrative Procedure Act (5 U.S.C. 702) *only* if you file an action within 30 days of the date you receive our decision.

Required Reports

§ 203.81 What supplemental reports do royalty-relief applications require?

(a) You must send us the supplemental reports listed below that apply to your field. §§ 203.83 through 203.91 describe these reports in detail.

Required reports	End-of-life lease	Deep water expansion project	Pre-act deep water lease
Administrative information report	x	x	x
Net revenue & relief justification report	x		
Economic viability & relief justification report (RSVP model inputs justified by other required reports)		x	x
G&G report		x	x
Engineering report		x	x
Production report		x	x
Deep water cost report		x	x
Fabricator's confirmation report		x	x
Post-production development report		x	x

(b) You must certify that all information in your application, fabricator's confirmation and post-production development reports is accurate, complete, and conforms to the most recent content and presentation guidelines available from the MMS GOM Regional Office.

(c) You must submit with your application and post-production development report an additional report prepared by a CPA that:

(1) Assesses the accuracy of the historical financial information in your report; and

(2) Certifies that the content and presentation of the financial data and

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information conforms to our most recent guidelines on royalty relief.

(d) You must identify the people in the CPA firm who prepared the reports referred to in paragraph (c) of this section and make them available to us to respond to questions about the historical financial information. We may also further review your records to support this information.

§ 203.82 What is MMS's authority to collect this information?

The Office of Management and Budget (OMB) approved the information collection requirements in part 203 under 44 U.S.C. 3501 *et seq.* and assigned OMB control number 1010–0071.

(a) We use the information to determine whether royalty relief will result in production that wouldn't otherwise occur. We rely largely on your information to make these determinations.

(1) Your application for royalty relief must contain enough information on finances, economics, reservoirs, G&G characteristics, production, and engineering estimates for us to determine whether:

(i) We should grant relief under the law, and

(ii) The requested relief will ultimately recover more resources and return a reasonable profit on project investments.

(2) Your fabricator confirmation and post-production development reports must contain enough information for us to verify that your application reasonably represented your plans.

(b) Applicants (respondents) are Federal OCS oil and gas lessees. Applications are required to obtain or retain a benefit. Therefore, if you apply for royalty relief, you must provide this information. We will protect information considered proprietary under applicable law and under regulations at § 203.63(b) and part 250 of this chapter.

(c) The Paperwork Reduction Act of 1995 requires us to inform you that we may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(d) You may send comments regarding any aspect of the collection of information under this part, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Minerals Management Service, Mail Stop 4230, 1849 C Street, N.W., Washington, DC 20240; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior (1010–0071), Washington, DC 20503.

§ 203.83 What is in an administrative information report?

This report identifies the field or lease for which royalty relief is requested and must contain the following items:

(a) The field or lease name;

(b) The serial number of leases we have assigned to the field, names of the lease title holders of record, the lease operators, and whether any lease is part of a unit;

(c) Lessee's designation, the API number and location of each well that has been drilled on the field or lease or project (not required for non-oil and gas leases);

(d) The location of any new wells proposed under the terms of the application (not required for non-oil and gas leases);

(e) A description of field or lease history;

(f) Full information as to whether you will pay royalties or a share of production to anyone other than the United States, the amount you will pay, and how much you will reduce this payment if we grant relief;

(g) The type of royalty relief you are requesting;

(h) Confirmation that we approved a DOCD or supplemental DOCD (Deep Water expansion project applications only); and

(i) A narrative description of the development activities associated with the proposed capital investments and an explanation of proposed timing of the activities and the effect on production (Deep Water applications only).

§ 203.84 What is in a net revenue and relief justification report?

This report presents cash flow data for 12 qualifying months, using the format specified in the "Guidelines for the Application, Review, Approval, and Administration of Royalty Relief for End-of-Life Leases", U.S. Department of the Interior, MMS. Qualifying months for an oil and gas lease are the most recent 12 months out of the last 15 months that you produced at least 100 BOE per day on average. Qualifying months for other than oil and gas leases are the most recent 12 of the last 15 months having some production.

(a) The cash flow table you submit must include historical data for:

(1) Lease production subject to royalty;

(2) Total revenues;

(3) Royalty payments out of production;

(4) Total allowable costs; and

(5) Transportation and processing costs.

(b) Do not include in your cash flow table the non-allowable costs listed at 30 CFR 220.013 (a), (b), and (d) through (k) or:

(1) OCS rental payments on the lease(s) in the application;

(2) Damages and losses;

(3) Taxes;

(4) Any costs associated with exploratory activities;

(5) Civil or criminal fines or penalties;

(6) Fees for your royalty relief application; and

(7) Costs associated with existing obligations (e.g., royalty overrides or other forms of payment for acquiring the lease).

(c) We may, in reviewing and evaluating your application, disallow costs when you have not shown they are necessary to operate the lease, or if it appears you spent the money only to qualify for royalty relief.

§ 203.85 What is in an economic viability and relief justification report?

This report should show that your project appears economic without royalties and sunk costs using the RSVP model we provide. The format of the report and the assumptions and parameters we specify are found in the "Guidelines for the Application, Review, Approval and Administration of the Deep Water Royalty Relief Program," U.S. Department of the Interior, MMS. Clearly justify each parameter you set in every scenario you specify in the RSVP. You may provide supplemental information, including your own model and results. The economic viability and relief justification report must contain the following items for an oil and gas lease.

(a) Economic assumptions we provide which include:

(1) Starting oil and gas prices;

(2) Real price growth;

(3) Real cost growth or decline rate, if any;

(4) Base year;

(5) Range of discount rates; and

(6) Tax rate (for use in determining after-tax sunk costs).

(b) Analysis of projected cash flow (from the date of the application using annual totals and constant dollar values) which shows:

(1) Oil and gas production;

(2) Total revenues;

(3) Capital expenditures;

(4) Operating costs;

(5) Transportation costs; and

(6) Before-tax net cash flow without royalties, overrides, sunk costs, and ineligible costs.

(c) Discounted values which include:

(1) Discount rate used (selected from within the range we specify).

(2) Before-tax net present value without royalties, overrides, sunk costs, and ineligible costs.

(d) Demonstrations that:

(1) All costs, gross production, and scheduling are consistent with the data in the G&G, engineering, production, and cost reports (§§ 203.86 through 203.89) and

(2) The development and production scenarios provided in the various reports are consistent with each other and with the proposed development system. You can use up to three scenarios (conservative, most likely, and optimistic), but you must link each to a specific range on the distribution of resources from the RSVP Resource Module.

§ 203.86 What is in a G&G report?

This report supports the reserve and resource estimates used in the economic evaluation and must contain each of the following elements.

(a) Seismic data which includes:

(1) Non-interpreted 2D/3D survey lines reflecting any available state-of-the-art processing technique in a format readable by MMS and specified by the deep water royalty relief guidelines;

(2) Interpreted 2D/3D seismic survey lines reflecting any available state-of-the-art processing technique identifying all known and prospective pay horizons, wells, and fault cuts;

(3) Digital velocity surveys in the format of the GOM region's letter to lessees of 10/1/90;

(4) Plat map of "shot points;" and

(5) "Time slices" of potential horizons.

(b) Well data which includes:

(1) Hard copies of all well logs in which—

(i) The 1-inch electric log shows pay zones and pay counts and lithologic and paleo correlation markers at least every 500-feet,

(ii) The 1-inch type log shows missing sections from other logs where faulting occurs,

(iii) The 5-inch electric log shows pay zones and pay counts and labeled points used in establishing resistivity of the formation, 100 percent water saturated (R_o) and the resistivity of the undisturbed formation (R_t), and

(iv) The 5-inch porosity logs show pay zones and pay counts and labeled points used in establishing reservoir porosity or labeled points showing values used in calculating reservoir porosity such as bulk density or transit time;

(2) Digital copies of all well logs spudded before December 1, 1995;

(3) Core data, if available;

(4) Well correlation sections;

(5) Pressure data;

(6) Production test results; and

(7) Pressure-volume-temperature analysis, if available.

(c) Map interpretations which includes for each reservoir in the field:

(1) Structure maps consisting of top and base of sand maps showing well and seismic shot point locations;

(2) Isopach maps for net sand, net oil, net gas, all with well locations;

(3) Maps indicating well surface and bottom hole locations, location of development facilities, and shot points; and

(4) Identification of reservoirs not contemplated for development.

(d) Reservoir-specific data which includes:

(1) Probability of reservoir occurrence with hydrocarbons;

(2) Probability the hydrocarbon in the reservoir is all oil and the probability it is all gas;

(3) Distributions or point estimates (accompanied by explanations of why distributions less appropriately reflect the uncertainty) for the parameters used to estimate reservoir size, i.e., acres and net thickness;

(4) Most likely values for porosity, salt water saturation, volume factor for oil formation, and volume factor for gas formation;

(5) Distributions or point estimates (accompanied by explanations of why distributions less appropriately reflect the uncertainty) for recovery efficiency (in percent) and oil or gas recovery (in stock-tank-barrels per acre-foot or in thousands of cubic feet per acre foot);

(6) A gas/oil ratio distribution or point estimate (accompanied by explanations of why distributions less appropriately reflect the uncertainty) for each reservoir; and

(7) A yield distribution or point estimate (accompanied by explanations of why distributions less appropriately reflect the uncertainty) for each gas reservoir.

(e) Aggregated reserve and resource data which includes:

(1) The aggregated distributions for reserves and resources (in BOE) and oil fraction for your field computed by the resource module of our RSVP model;

(2) A description of anticipated hydrocarbon quality (i.e., specific gravity); and

(3) The ranges within the aggregated distribution for reserves and resources that define the development and production scenarios presented in the engineering and production reports. Typically there will be three ranges specified by two positive reserve and resource points on the aggregated distribution. The range at the low end of the distribution will be associated with the conservative development and production scenario; the middle range will be related to the most likely development and production scenario; and, the high end range will be consistent with the optimistic development and production scenario.

§ 203.87 What is in an engineering report?

This report defines the development plan and capital requirements for the economic evaluation and must contain the following elements.

(a) A description of the development concept (e.g., tension leg platform, fixed platform, floater type, subsea tieback, etc.) which includes:

(1) Its size and

(2) The construction schedule.

(b) An identification of planned wells which includes:

(1) The number;

(2) The type (platform, subsea, vertical, deviated, horizontal);

(3) The well depth;

(4) The drilling schedule;

(5) The kind of completion (single, dual, horizontal, etc.); and

(6) The completion schedule.

(c) A description of the production system equipment which includes:

(1) The production capacity for oil and gas and a description of limiting component(s);

(2) Any unusual problems (low gravity, paraffin, etc.);

(3) All subsea structures;

(4) All flowlines; and

(5) Schedule for installing the production system.

(d) A discussion of any plans for multi-phase development which includes:

(1) The conceptual basis for developing in phases and goals or milestones required for starting later phases; and

(2) An explanation for excluding the reservoirs you are not planning to develop.

(e) A set of development scenarios consisting of activity timing and scale associated with each of up to three production profiles (conservative, most likely, optimistic) provided in the production report for your field (§ 203.88). Each development scenario and production profile must denote the likely events should the field size turn out to be within a range represented by one of the three segments of the field size distribution. If you send in fewer than three scenarios, you must explain why fewer scenarios are more efficient across the whole field size distribution.

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§ 203.88 What is in a production report?

This report supports your development and production timing and product quality expectations and must contain the following elements.

(a) Production profiles by well completion and field that specify the actual and projected production by year for each of the following products: oil, condensate, gas, and associated gas. The production from each profile must be consistent with a specific level of reserves and resources on the aggregated distribution of field size.

(b) Production drive mechanisms for each reservoir.

§ 203.89 What is in a deep water cost report?

This report lists all actual and projected costs for your field, must explain and document the source of each cost estimate, and must identify the following elements.

(a) Sunk cost, which are all your eligible post-discovery exploration, development, and production expenses (no third party costs), and also include the eligible costs of the discovery well on the field. Report them in nominal dollars and only if you have documentation. We count sunk costs in an evaluation (specified in § 203.68) as after-tax expenses, using nominal dollar amounts.

(b) Appraisal, delineation and development costs. Base them on actual spending, current authorization for expenditure, engineering estimates, or analogous projects. These costs cover:

(1) Platform well drilling and average depth;

(2) Platform well completion;

(3) Subsea well drilling and average depth;

(4) Subsea well completion;

(5) Production system (platform); and

(6) Flowline fabrication and installation.

(c) Production costs based on historical costs, engineering estimates, or analogous projects. These costs cover:

(1) Operation;

(2) Equipment; and

(3) Existing royalty overrides (we will not use the royalty overrides in evaluations).

(d) Transportation costs, based on historical costs, engineering estimates, or analogous projects. These costs cover:

(1) Oil or gas tariffs from pipeline or tankerage;

(2) Trunkline and tieback lines; and

(3) Gas plant processing for natural gas liquids.

(e) Abandonment costs, based on historical costs, engineering estimates, or analogous projects. You should provide the costs to plug and abandon only wells and to remove only production systems for which you have not incurred costs as of the time of application submission. You should also include a point estimate or distribution of prospective salvage value for all potentially reusable facilities and materials, along with the source and an explanation of the figures provided.

(f) A set of cost estimates consistent with each one of up to three field-development scenarios and production profiles (conservative, most likely, optimistic). You should express costs in constant real dollar terms for the base year. You may also express the uncertainty of each cost estimate with a minimum and maximum percentage of the base value.

(g) A spending schedule. You should provide costs for each year (in real dollars) for each category in paragraphs (a) through (f) of this section.

(h) A summary of other costs which are ineligible for evaluating your need for relief. These costs cover:

(1) Expenses before first discovery on the field;

(2) Cash bonuses;

(3) Fees for royalty relief applications;

(4) Lease rentals, royalties, and payments of net profit share and net revenue share;

(5) Legal expenses;

(6) Damages and losses;

(7) Taxes;

(8) Interest or finance charges, including those embedded in equipment leases;

(9) Fines or penalties; and

(10) Money spent on previously existing obligations (e.g., royalty overrides or other forms of payment for acquiring a financial position in a lease, expenditures for plugging wells and removing and abandoning facilities that existed on the application submission date).

§ 203.90 What is in a fabricator's confirmation report?

This report shows you have committed in a timely way to the approved system for production. This report must include the following (or its equivalent for unconventionally acquired systems):

(a) A copy of the contract(s) under which the fabrication yard is building the approved system for you;

(b) A letter from the contractor building the system to the MMS's GOM Regional Supervisor—Production and Development, certifying when construction started on your system; and

(c) Evidence of an appropriate down payment or equal action that you've started acquiring the approved system.

§ 203.91 What is in a post-production development report?

For each cost category in the deep water cost report, you must compare actual costs up to the date when production starts to your planned pre-production costs. If your application included more than one development scenario, you need to compare actual costs with those in your scenario of most likely development. Keep supporting records for these costs and make them available to us on request.

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 260

RIN 1010–AC14

Royalty Relief for New Leases in Deep Water

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The Secretary of the Interior is authorized to offer Outer Continental Shelf (OCS) tracts in parts of the Gulf of Mexico for lease with suspension of royalties for a volume, value, or period of production. This applies to tracts in water depths of 200 meters or more. This final rule specifies the royalty-suspension terms for lease sales using this bidding system.

DATES: This final rule is effective February 17, 1998.

FOR FURTHER INFORMATION CONTACT: Walter Cruickshank, Chief, Washington Division, Office of Policy and Management Improvement, at (202) 208–3822.

SUPPLEMENTARY INFORMATION:

I. Background

Legislative

On November 28, 1995, President Clinton signed Public Law 104–58, which included the Outer Continental Shelf Deep Water Royalty Relief Act ("Act"). The Act contains four major provisions concerning new and existing leases. New leases are tracts leased during a sale held after the Act's enactment on November 28, 1995. Existing leases are all other leases.

First, section 302 of the Act clarifies the Secretary's authority in 43 U.S.C. 1337(a)(3) to reduce royalty rates on existing leases to promote development, increase production, and encourage production of marginal resources on

producing or non-producing leases. This provision applies only to leases in the Gulf of Mexico west of 87 degrees, 30 minutes West longitude.

Second, section 302 also provides that "new production" from existing leases in deep water (water at least 200 meters deep) qualifies for royalty suspensions if the Secretary determines that the new production would not be economic without royalty relief. The Act defines "new production" as production (1) From a lease from which no royalties are due on production, other than test production, before the date of the enactment of the Outer Continental Shelf Deep Water Royalty Relief Act; or (2) resulting from lease development activities under a Development Operations Coordination Document (DOCD), or supplement thereto that would expand production significantly beyond the level anticipated in the DOCD approved by the Secretary after the date of the Act. The Secretary must determine the appropriate royalty-suspension volume on a case-by-case basis, subject to specified minimums for leases not in production before the date of enactment. This provision also applies only to leases in the Gulf of Mexico west of 87 degrees, 30 minutes West longitude.

Third, section 303 establishes a new bidding system that allows the Secretary to offer tracts with royalty suspensions for a period, volume, or value the Secretary determines.

Fourth, section 304 provides that all tracts offered within 5 years of the date of enactment in deep water (water at least 200 meters deep) in the Gulf of Mexico west of 87 degrees, 30 minutes West longitude, must be offered under the new bidding system. The following minimum volumes of production are not subject to a royalty obligation:

- 17.5 million barrels of oil equivalent (MMBOE) for leases in 200 to 400 meters of water;
- 52.5 MMBOE for leases in 400 to 800 meters of water; and
- 87.5 MMBOE for leases in more than 800 meters.

Regulatory

On February 2, 1996, we published a final rule modifying the regulations governing the bidding systems we use to offer OCS tracts for lease (61 FR 3800). New § 260.110(a)(7) implements the new bidding system under section 303 of the Act.

We published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** on February 23, 1996 (61 FR 6958), and informed the public of our intent to develop comprehensive regulations implementing the Act. The ANPR sought comments and recommendations to assist us in that process. In addition, we conducted a public meeting in New Orleans on March 12–13, 1996, about the matters the ANPR addressed.

On March 25, 1996, we published an interim final rule in the **Federal Register** (61 FR 12022) specifying the royalty-suspension terms under which the Secretary would make tracts available under the bidding system requirements of sections 303 and 304 of the Act. We issued an interim final rule, in part, because we needed royalty relief rules in place before the lease sale held on April 24, 1996. However, in the interim final rule we asked for comments on any of the provisions and stated that we would consider those comments and issue a final rule. This final rule now modifies some of the provisions in the March 25, 1996, interim final rule.

On May 31, 1996, we published another interim final rule in the **Federal Register** (61 FR 27263) implementing section 302 of the Act. The interim final rule established the terms and conditions under which the Minerals Management Service (MMS) would suspend royalty payments on certain deep water leases issued as a result of a lease sale held before November 28, 1995. (The rule also contained provisions dealing with royalty relief on producing leases under the authority granted the Secretary by the OCS Lands Act.) We again asked for comments that we would consider before issuing a final rule.

Simultaneous with the publication of this rule, we are issuing another final rule (RIN 1010–AC13) to replace the interim final rule implementing section 302 of the Act. The final rule will revise 30 CFR 203 to establish conditions for suspension of royalty payments on certain deep water leases issued as a result of lease sales held before November 28, 1995.

II. Responses to Comments

One respondent—Exxon Exploration Company (Exxon)—submitted comments on the Interim Final Rule for Deep Water Royalty Relief for New Leases, issued March 25, 1996.

Exxon disagreed with our definition of the term "Field" (§ 260.102). Exxon said that our definition could be applied in such a way as to place unrelated and widely separated reservoirs within the same field. Exxon offered an alternative definition that it said provides for the creation of fields based on geology by allowing the inclusion of separate reservoirs in the same field when there is a meaningful geologic relationship between those reservoirs and avoids inclusion of reservoirs when such a relationship does not exist.

Exxon offered this alternative definition:

"Field means an area consisting of a single hydrocarbon reservoir or multiple hydrocarbon reservoirs all grouped on or related to same local geologic feature or stratigraphic trapping condition. There may be two or more reservoirs in a field that are separated vertically by intervening impervious strata. Separate reservoirs would be considered to constitute separate fields if significant lateral separation exists and/or they are controlled by separate trapping mechanisms. Reservoirs vertically separated by a significant interval of nonproductive strata may be considered as separate fields when their reservoir quality, fluid content, drive mechanisms, and trapping mechanisms are sufficiently different to support such a determination."

Except for a minor editorial change, we have decided to leave the definition of "Field" unchanged from the interim final rule for the following reasons:

- The definition in the interim final rule is similar to, or consistent with, standard definitions used in industry and government, including the American Petroleum Institute, the National Petroleum Council, and the Department of Energy's Energy Information Administration.
- We do not segregate reservoirs vertically since the reservoirs are developed from the same platforms and use the same infrastructure. Affected lessees/operators typically make development decisions based on a primary objective(s) knowing that secondary targets exist which they will pursue subsequently.
- Reservoir quality, fluid content, and drive mechanisms are not appropriate determinants for field designations. These factors are reservoir performance/recovery issues. Indeed, such information is rarely available to MMS at the time field determinations are made. We have not considered these factors in our past field designations and their inclusion now would complicate the process significantly and lead to too much subjectivity.
- Elements of the alternative definition, e.g., "a significant interval of nonproductive strata" and "significant lateral separation" would be difficult to define and even more difficult to apply consistently.

We recognize industry's concerns about field designations. This rule establishes, as discussed below, a process whereby lessees may appeal field designations to the Director, MMS.

Other steps include:

- The MMS *Field Naming Handbook*, which explains our methodology for

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designating fields, is available on the Internet (www.mms.gov). The Gulf of Mexico Region will entertain suggestions for improvements in the methodology.

• We will elevate the level at which we make field definition decisions in the Gulf of Mexico Region. The Chief, Reserves Section, Office of Resource Evaluation, will make these determinations after a lease has a well into the field qualified as producible.

• As part of the field designation process, affected lessees/operators will have the chance to review and discuss the field designation with Gulf of Mexico Region personnel before MMS makes a final decision.

III. Summary of Modifications to the Interim Final Rule

As discussed below, we have modified the interim final rule to:

• Allow for appeals of field designations;

• Clarify when the cumulative royalty-suspension volume ends;

• Describe how MMS will establish and allocate royalty-suspension volume in fields that have a combination of *eligible* leases and leases that are granted a royalty-suspension volume under section 302 of the Act; and

• Eliminate the reference to a pressure base standard in the provision for the conversion of natural gas to oil equivalency (§ 260.110(d)(14)). The rule now indicates you must measure that natural gas in accordance with the procedures set forth in 30 CFR 250, subpart L.

1. We have added a new provision (§ 260.110(d)(2)) establishing that you or any other affected lessees may appeal to the Director the decision designating your lease as part of a field. The Director's decision is a final agency action subject to judicial review.

2. The preamble to the interim final rule indicated that a royalty-suspension volume would continue until the end of the month in which cumulative production from *eligible* leases in the field reached the royalty-suspension volume for the field. The interim final rule itself did not include this provision. This final rule now includes a provision (§ 260.110(d)(10)) that a royalty-suspension volume will continue through the end of the month in which cumulative production from leases in the field entitled to share the royalty-suspension volume reaches that volume. The purpose of this provision is to avoid the complications that would occur for royalty payors if the royalty rate changed in the middle of the month.

3. We have modified § 260.110(d)(9) and added a new § 260.110(d)(10) to describe how MMS will establish and allocate royalty-suspension volumes in fields having a combination of pre-Act and *eligible* leases. (Pre-Act leases are defined as OCS leases issued as a result of a sale held before November 28, 1995; in a water depth of at least 200 meters; and in the Gulf of Mexico west of 87 degrees, 30 minutes West longitude. See 30 CFR 203.60 through 203.80). The provisions are necessary to account for and ensure consistency with the deep water royalty relief rules for pre-Act leases (§ 203.60). We published the interim final rule for pre-Act leases on May 31, 1996 (61 FR 27263), after publication of the interim final rule for new leases in deep water on March 25, 1996.

We have added wording in § 260.110(d)(9) for cases where an *eligible* lease is added to a field that includes pre-Act leases granted a royalty-suspension volume under section 302 of the Act. This rule provides that the addition of the *eligible* lease will not change the field's established royalty-suspension volume. The added lease(s) may share in the suspension volume even if the volume is more than the *eligible* lease would qualify for based on its water depth.

The new § 260.110(d)(10) describes a case where pre-Act leases in a field that includes *eligible* leases apply for and receive a royalty-suspension volume larger than the suspension volume established for the field by the *eligible* leases. This rule provides that the *eligible* leases may share in the larger suspension volume to the extent of their actual production until cumulative production by all lessees equals the royalty-suspension volume.

4. This final rule states that lessees must measure natural gas in accordance with 30 CFR 250, Subpart L. We have eliminated the specific measurement procedures from the interim final rule because a forthcoming final rule will change those procedures.

IV. Administrative Matters

Executive Order (E.O.) 12866

This rule is a significant rule under E.O. 12866 due to novel policy issues arising out of legal mandates. You may obtain a copy of the determination from MMS. The Office of Management and Budget (OMB) has reviewed this rule.

Regulatory Flexibility Act

The Department of the Interior (DOI) has determined that the primary impact of this rule, i.e., royalty relief to spur deep water oil and gas development, may have a significant effect on small entities although we can't estimate their number at this time. The number of small entities affected will depend on how many of them acquire leases that meet the statutory and regulatory criteria for royalty relief at lease sales between November 28, 1995, and November 28, 2000.

Exploration and development activities in the deep water areas of the Gulf of Mexico have traditionally been conducted by the major oil companies because of the expertise and financial resources required. "Small entities" (classified by the Small Business Administration as oil and gas producers with fewer than 500 employees) are increasingly active on the OCS, including in deep water, and we expect that trend to continue. The only firm to whom we have granted royalty relief so far under section 302 of the Act is a small entity.

In any case, this rule will have positive impacts on OCS oil and gas companies, large or small. Royalty relief in the form of a royalty-suspension volume is automatically established for leases that meet the statutory and regulatory criteria. No applications or special reports are necessary.

The beneficial effect of this relief on companies' financial operations will be substantial. Once we determine that a lease is *eligible* for a royalty-suspension volume, the value of that relief may range from tens of millions of dollars to over $100 million. The suspensions will allow companies to recover more of their investment costs before paying royalties, which may allow greater opportunity for small companies to operate in deep water.

This rule also will have a very positive impact on small entities. Constructing and equipping the platforms and other infrastructure associated with deep water development are huge projects that involve not only large companies but numerous small businesses nationwide as well. Once the platforms are operational, other small businesses will provide supplies and services.

Paperwork Reduction Act

This rule contains no reporting and recordkeeping requirements subject to the Paperwork Reduction Act of 1995.

Takings Implication Assessment

DOI certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment prepared pursuant to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, is not required.

Unfunded Mandates Reform Act of 1995

DOI has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this final rule will not impose a cost of $100 million or more in any given year on State, local, and tribal governments, or the private sector.

E.O. 12988

DOI has certified to OMB that this regulation meets the applicable standards provided in section 3(b)(2) of E.O. 12988.

National Environmental Policy Act

We examined this rulemaking and have determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

List of Subjects in 30 CFR Part 260

Continental shelf, Government contracts, Minerals royalties, Oil and gas exploration, Public lands—mineral resources.

Dated: September 22, 1997.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service (MMS) amends 30 CFR part 260, as follows:

PART 260—OUTER CONTINENTAL SHELF OIL AND GAS LEASING

1. The authority citation for part 260 continues to read as follows:

Authority: 43 U.S.C. 1331 and 1337.

2. In § 260.102, the definitions for "Eligible lease" and "Field" are revised to read as follows:

§ 260.102 Definitions.

* * * * *

Eligible lease means a lease that results from a sale held after November 28, 1995; is located in the Gulf of Mexico in water depths 200 meters or deeper; lies wholly west of 87 degrees, 30 minutes West longitude; and is offered subject to a royalty-suspension volume authorized by statute.

Field means an area consisting of a single reservoir or multiple reservoirs all grouped on, or related to, the same general geological structural feature and/or stratigraphic trapping condition. Two or more reservoirs may be in a field, separated vertically by intervening impervious strata, or laterally by local geologic barriers, or by both.

* * * * *

3. In § 260.110, paragraph (d) is revised to read as follows:

§ 260.110 Bidding systems.

* * * * *

(d) This paragraph explains how the royalty-suspension volumes in section 304 of the Outer Continental Shelf Deep Water Royalty Relief Act, Public Law 104–58, apply to *eligible* leases. For purposes of this paragraph, any volumes of production that are not royalty bearing under the lease or the regulations in this chapter do not count against royalty-suspension volumes. Also, for the purposes of this paragraph, production includes volumes allocated to a lease under an approved unit agreement.

(1) Your *eligible* lease may receive a royalty-suspension volume only if your lease is in a field where no current lease produced oil or gas (other than test production) before November 28, 1995. Paragraph (d) of this section applies only to *eligible* leases in fields that meet this condition.

(2) We will assign your lease to an existing field or designate a new field and will notify you and other affected lessees of that assignment. Within 15 days of that notification, you or any of the other affected lessees may file a written request with the Director, MMS, for reconsideration accompanied by a statement of reasons. The Director will respond in writing either affirming or reversing the assignment decision. The Director's decision is final for the Department and is not subject to appeal to the Interior Board of Land Appeals under 30 CFR part 290 and 43 CFR part 4.

(3) The Final Notice of Sale will specify the water depth for each *eligible* lease. Our determination of water depth for each lease is final once we issue the lease. The Notice also will specify the royalty-suspension volume applicable to each water depth. The minimum royalty-suspension volumes for fields are:

(i) 17.5 million barrels of oil equivalent (MMBOE) in 200 to 400 meters of water;

(ii) 52.5 MMBOE in 400 to 800 meters of water; and

(iii) 87.5 MMBOE in more than 800 meters of water.

(4) When production (other than test production) first occurs from any of the *eligible* leases in a field, we will determine what royalty-suspension volume applies to the *eligible* lease(s) in that field. The determination is based on the royalty-suspension volumes specified in paragraph (d)(3) of this section.

(5) If a new field consists of *eligible* leases in different water depth categories, the royalty-suspension volume associated with the deepest *eligible* lease applies.

(6) If your *eligible* lease is the only *eligible* lease in a field, you do not owe royalty on the production from your lease up to the applicable royalty-suspension volume.

(7) If a field consists of more than one *eligible* lease, payment of royalties on the *eligible* leases' initial production is suspended until their cumulative production equals the field's established royalty-suspension volume. The royalty-suspension volume for each *eligible* lease is equal to each lease's actual production (or production allocated under an approved unit agreement) until the field's established royalty-suspension volume is reached.

(8) If an *eligible* lease is added to a field that has an established royalty-suspension volume as the result of an approved application for royalty relief submitted under 30 CFR part 203 or as the result of one or more *eligible* leases having been assigned previously to the field, the field's royalty-suspension volume will not change even if the added lease is in deeper water. If a royalty-suspension volume has been granted under 30 CFR part 203 that is larger than the minimum specified for that water depth, the added *eligible* lease may share in the larger suspension volume. The lease may receive a royalty-suspension volume only to the extent of its production before the cumulative production from all leases in the field entitled to share in the suspension volume equals the field's previously established royalty-suspension volume.

(9) If a pre-Act lease(s) receives a royalty-suspension volume under 30 CFR part 203 for a field that already has a royalty-suspension volume due to *eligible* leases, then the *eligible* and pre-Act leases will share a single royalty-suspension volume. (Pre-Act leases are OCS leases issued as a result of a sale held before November 28, 1995; in a water depth of at least 200 meters; and in the Gulf of Mexico west of 87 degrees, 30 minutes West longitude. See 30 CFR part 203). The field's royalty-suspension volume will be the larger of the volume for the *eligible* leases or the volume MMS grants in response to the pre-Act leases' application. The suspension volume for each lease will be its actual production from the field until cumulative production from all leases in the field equals the suspension volume.

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(10) A royalty-suspension volume will continue through the end of the month in which cumulative production from leases in a field entitled to share the royalty-suspension volume reaches that volume.

(11) If we reassign a well on an *eligible* lease to another field, the past production from that well will count toward the royalty-suspension volume, if any, specified for the field to which it is reassigned. The past production will not count toward the royalty suspension volume, if any, for the field from which it was reassigned.

(12) You may receive a royalty-suspension volume only if your entire lease is west of 87 degrees, 30 minutes West longitude. A field that lies on both sides of this meridian will receive a royalty-suspension volume only for those *eligible* leases lying entirely west of the meridian.

(13) Your lease may obtain more than one royalty-suspension volume. If a new field is discovered on your *eligible* lease that already benefits from the royalty-suspension volume for another field, production from that new field receives a separate royalty suspension.

(14) You must measure natural gas production subject to the royalty-suspension volume as follows: 5.62 thousand cubic feet of natural gas, measured in accordance with 30 CFR part 250, subpart L, equals one barrel of oil equivalent.

[FR Doc. 98–843 Filed 1–15–98; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–5950–4]

National Emission Standards for Gasoline Distribution Facilities; Bulk Gasoline Terminals and Pipeline Breakout Stations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of limited exclusion for gasoline distribution facilities.

SUMMARY: The EPA publishes today notification of a limited exclusion from applicability for gasoline distribution facilities that would be, but for this action, subject to the air toxic provisions of 40 CFR part 63, subpart R, the National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).

DATES: This policy took effect on December 12, 1997, the day that the attached letter detailing this policy was signed. Petitions for review of this determination must be filed on or before March 17, 1998 in accordance with the provisions of section 307(b)(1) of the Clean Air Act (CAA).

ADDRESSES: The related material in support of this policy may be examined during normal business hours at the United States Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Air Enforcement Division, Ariel Rios Building, Room 1119, 12th and Pennsylvania Ave., NW, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Charles Garlow of the U.S. EPA, Air Enforcement Division (Mail Code 2242A), 401 M St SW, Washington, DC 20460, telephone (202) 564–1088.

SUPPLEMENTARY INFORMATION: On October 15, 1997, the American Petroleum Institute (API) requested relief from the applicability of the Gasoline Distribution National Emission Standard for Hazardous Air Pollutants (NESHAP) as the compliance date of December 15, 1997 was approaching. Certain members of the API trade association had timely applied for synthetic minor permits so as to qualify as area or minor sources not subject to the Gasoline Distribution MACT standard. However, state or local permitting authorities had, in many instances, not been able to process the otherwise-approvable applications before December 15, 1997. Since many states have a public comment period, it was apparent that these permits could not be issued prior to the compliance date even if every effort was made. Therefore, API asserted, through no fault of their members, they would be subject to the requirements of this NESHAP when they assumed they would not be, resulting in some sources potentially facing operational shutdowns or violation of the standard.

The EPA responded, as is detailed in the attached letter, by granting a time limited exclusion from applicability to those sources that notify the EPA that they have timely applied and have otherwise made good faith efforts to obtain the synthetic minor permits in question. Due to delays in publishing this document, sources wishing to avail themselves of this policy have until January 30, 1998, to notify EPA of their status, if they have not already done so.

In addition to publication of this document, US EPA has placed a copy of this policy letter on its Technology Transfer Network (TTN) bulletin board service and Website.

(Sec. 112, Clean Air Act (42 U.S.C. 7412))

Bruce Buckheit,

Director, Air Enforcement Division.

December 12, 1997.

Ms. Ellen Siegler,

American Petroleum Institute, 1220 L Street, NW, Washington, DC 20005–4070.

Re: Gasoline Distribution MACT Standard.

Dear Ms. Siegler: The American Petroleum Institute recently approached the Environmental Protection Agency (EPA) seeking relief from the Gasoline Distribution Maximum Achievable Control Technology (MACT) standard for those facilities that timely sought permits limiting their potential to emit so as to qualify as area sources not covered by that standard. We were then informed that numerous facilities (through no fault of their own) have not yet been issued such permits by their permit issuing authorities. Under EPA's "once in—always in" policy, such facilities will become subject to the Gasoline Distribution MACT standard on that rule's compliance date (December 15, 1997).

As a general matter, we believe that it is the source's obligation to achieve compliance with the regulation as of the effective date of that regulation. Where, as here, the regulation provided 3 years to achieve compliance, we believe that sources that wish to avoid the imposition of major source obligations by seeking "synthetic minor" permits should do so shortly after the date of rule promulgation. Given the substantial workload imposed on permitting authorities by the Title III and Title V programs, those who wait until there is less than 1 year from the compliance date to submit their permit application should anticipate that there is a substantial risk, that they must bear, that the synthetic minor permit may not be issued in time. However, because this is an issue of first impression, and facilities may have relied in good faith on representations of permitting authorities that permits received within a shorter time frame would be processed by December 15, 1997, we have agreed to provide a limited enforcement discretion as set out below.

Based on the facts presented and subject to the terms, conditions and limitations outlined herein, we concluded that the EPA should and, therefore, will provide limited relief for certain facilities:

Limited Exclusion—EPA will not consider an otherwise covered facility to be subject to the Gasoline Distribution MACT standard (1) if the facility owner or operator filed a complete application with its appropriate permitting authority for a permit limiting its potential to emit so as to qualify as an area source not covered by that standard prior to June 15, 1997, and (2) if it identifies the facility to EPA not later than January 15, 1998. This limited exclusion is limited to a 90-day period and will expire on March 15, 1998.

Conditional Extension—If a facility has not yet received its permit by March 15, 1998, it will be subject to the Gasoline Distribution MACT standard as of this date *unless* such facility notifies EPA, prior to March 15, 1998, that an additional period of time is needed for good cause shown. If the facility has not yet received such permit and then certifies to EPA that it has made diligent efforts to obtain the needed permit by (1) providing all information requested by the permitting authority and (2) accepting reasonable permit conditions, then EPA may grant an additional extension for up to 90 days beyond March 15, 1998. Failure to accept reasonable permit terms and conditions will not be recognized as a good cause basis for seeking an extension. If a facility has not yet received its permit by that later date, it will be subject fully to the Gas Distribution MACT standard as of its compliance date.

General Conditions/Limitations—As an express condition of benefiting from and operating under the above-described limited exclusion, each facility must comply at all times with each of the following:

- The source must have submitted the synthetic minor permit by June 15, 1997.
- The permit application terms and conditions must effectively limit emissions to area source levels.
- The source must certify to EPA and maintain full compliance with all the terms, conditions and representations reflected or referred to in its timely, complete permit application.
- The reason for the delay in the issuance of the permit must not be the fault of the source (e.g., at least one source will not be issued a permit because of unresolved New Source Performance Standards violations at the facility. Such source does not qualify for this exclusion.
- The source must submit, by January 15, 1998, supporting documentation, including the executive summary and enforcement provisions of the permit application with transmittal date, any indication from the permitting agency regarding the completeness of the application and recent communication from or to the permitting authority indicating the current status of the application (e.g., public comment being sought, etc.). Such documentation must be mailed to Air Enforcement Division, Attention: Charles Garlow, Esq., US EPA, Mail Code 2242A, 401 M St. SW, Washington, D.C. 20460, or sent by delivery service to the same Division, Ariel Rios Building, Room 2111, 12th and Pennsylvania Aves., N.W., Washington, DC 20004.

A failure to fully comply with each and every requirement, as may be determined by EPA, will void this grant of discretionary enforcement relief, cause such facility to be subject to the requirements of the Gasoline Distribution MACT standard as of its compliance date (December 15, 1997), and subject the facility to possible enforcement for violation of the MACT standard.

Sources in this situation should be reminded that if they presently qualify as synthetic minor sources, by operation of the January 25, 1995 Seitz/Van Heuvelen policy memorandum entitled "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act", then these sources do not need to utilize the option described here prior to the termination date of that policy. For example, if a source has documented actual emissions since January 1994 of less than 50% of the major source thresholds, then a permit is not needed to limit the PTE. Other options are described in this memorandum.

As the Gasoline Distribution MACT standard compliance date is fast approaching, you have agreed to endeavor to distribute this memorandum broadly at the earliest practicable time to all facilities that may be subject to the MACT standard.

Questions regarding this matter should be directed to the Air Enforcement Division, 202–564–1088.

Sincerely,

Steven A. Herman,

Assistant Administrator.

Identical letters sent to:

Mr. John Prokof, Independent Liquid Terminal Association (ILTA), 1133 15th Street, NW, Suite 650, Washington, D.C. 20005.

Ms. Michele Joy, Association of Oil Pipelines (AOPL), 110 Vermont Ave, NW, Washington, D.C. 20005.

Mr. Tom Osburn, Society of Independent Gasoline Marketers of America (SIGMA), 11911 Freedom Drive, Reston, Virginia 20190.

cc: Regional Counsel, Regions I–X, Regional Air Program Directors, Regions I–X, John Seitz, Director, OAQPS, Lydia Wegman, Deputy Director, OAQPS, Bruce Jordan, Director, ESD.

[FR Doc. 98–1133 Filed 1–15–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102, FCC 97–402]

Wireless Compatibility With Enhanced 911 Emergency Calling Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule, petitions for reconsideration.

SUMMARY: The Federal Communications Commission has adopted a *Memorandum Opinion and Order* in the wireless Enhanced 911 (E911) rulemaking proceeding, reaffirming its commitment to the rapid implementation of technologies needed to bring emergency help to wireless callers throughout the United States. The action is taken to resolve petitions for reconsideration of the rules adopted in the *First Report and Order* concerning the availability of basic 911 services and the implementation of E911 for wireless telecommunications services. The primary goal of this proceeding is to ensure that reliable, effective 911 and E911 service is available to wireless users as soon as technologically possible. The limited revisions to the Commission's rules adopted in this decision are intended to remedy technical problems raised in the record. This *Memorandum Opinion and Order* contains proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

EFFECTIVE DATE: The definition of "designated PSAP" in § 20.3, and §§ 20.18(a), (b), (c), and (g) become effective January 16, 1998. The remaining rule amendments become effective February 17, 1998. Written comments on the proposed or modified information collections by the public are due January 20, 1998. Written comments must be submitted by the OMB on the proposed information collections on or before February 10, 1998.

ADDRESSES: A copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, N.W., Washington, D.C. 20503, or via the Internet to fain_t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Won Kim or Dan Grosh, Policy Division, Wireless Telecommunications Bureau, at (202) 418–1310. For additional information concerning the information collections contained in the *Memorandum Opinion and Order*, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *memorandum Opinion and Order* (MO&O) in CC Docket No. 94–102, FCC 97–402 , adopted December 1, 1997, and released December 23, 1997. The complete text of this MO&O is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, at (202) 857–3800, 1231 20th Street, N.W., Washington, D.C. 20036.

Synopsis of the Memorandum Opinion and Order

1. In this MO&O, pursuant to Section 1.429 of the Commission's Rules,[1] the

[1] *See* Section 1.429(b) of the Commission's Rules, 47 CFR 1.429(b).

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Commission made limited revisions to its rules by (1) modifying basic 911 rules to require wireless carriers to transmit all 911 calls without regard to validation procedures and regardless of code identification; (2) temporarily suspending enforcement of the requirement that wireless carriers provide 911 access to customers using TTY devices until October 1, 1998, but only for digital systems that are not compatible with TTY calls and subject to a notification requirement; (3) modifying the definition of "covered Specialized Mobile Radio (SMR)" service for E911 purposes to include only providers of real-time, two-way interconnected voice service the networks of which utilize intelligent switching capability and offer seamless handoff to customers, and to extend this definition to broadband Personal Communications Services (PCS) and cellular service as well as SMR providers; and (4) clarifying the Phase I requirement for call back numbers and modifying associated rule definitions. The Commission also reemphasized that its 911 rules are intended to be technology-neutral, and to encourage the most efficient and effective technologies to report the location of wireless handsets, the most important E911 feature both for those seeking help in emergencies and for the public safety organizations that respond to emergency calls.

2. On June 12, 1996, the Commission adopted a First Report and Order (R&O) and a Further Notice of Proposed Rulemaking in this proceeding, establishing rules requiring wireless carriers to implement 911 and enhanced 911 (E911) services.[2] The Commission received 16 petitions for reconsideration of the R&O. In the MO&O, the Commission resolved issues raised in the petitions for reconsideration or clarification of the rules adopted in the R&O.

3. For basic 911 services, the MO&O first reviewed the rules that require wireless carriers to transmit 911 calls from all handsets with a "code identification" without validation and to transmit all 911 calls, even those without code identification, if requested to do so by a Public Safety Answering Point (PSAP) administrator.[3] Based on the record of this reconsideration proceeding, the Commission revised the rules by requiring covered carriers to forward all 911 calls, without regard to validation procedures and regardless of code identification. Accordingly, the Commission deleted the definitions of "code identification" and "mobile identification number" from the Commission's Rules. The Commission also eliminated the PSAP choice to selectively receive wireless 911 calls, while generally reaffirming basic 911 requirement schedules.

4. The MO&O also reexamined the requirement that, no later than October 1, 1997, covered carriers be capable of transmitting 911 calls from individuals with speech or hearing disabilities through means other than mobile radio handsets, such as through the use of Text Telephone Devices (TTYs). Based on the record in the reconsideration proceeding, the Commission modified the Section 20.18(c) TTY implementation deadlines for analog wireless systems and digital wireless systems. For analog systems, the implementation deadline is December 1, 1997, the expiration of the stay of the rule.[4] For digital systems, the Commission decided to temporarily suspend enforcement of the TTY requirement until October 1, 1998, subject to conditions that protect consumers, encourage compliance, and ensure minimal delay.

5. Under the revised rules, carriers whose digital systems are not compatible with TTY calls must make every reasonable effort to notify current and potential subscribers that they will not be able to use TTYs to call 911 with digital wireless devices and services. In addition, wireless industry associations and consumer groups are required to file quarterly progress reports on efforts and achievements in E911–TTY compatibility, including efforts made to implement the notification requirements. Based on these quarterly status reports, the Wireless Telecommunications Bureau, under delegated authority, may extend the suspension of enforcement of section 20.18(c) for an additional three months, until January 1, 1999, if necessary.

6. In the MO&O, the Commission concluded that the "covered SMR" definition adopted in the R&O is overinclusive with respect to certain types of SMR systems and should be narrowed to include only those systems that will directly compete with cellular and PCS in providing comparable public mobile interconnected service. Accordingly, the Commission modified its rules to change the definition of "covered SMR" for 911 purposes to include only providers of real-time, two-way interconnected voice service the network of which utilize intelligent switching capability and offer seamless handoff to customers, and to extend this definition to broadband PCS and cellular as well as SMR providers.

7. In addition, under the revised rules, "covered" SMR systems that offer dispatch services to customers may meet their 911 and E911 obligations to their dispatch customers either by providing customers with direct access to 911 services, or alternatively, by routing dispatch customer emergency calls through a dispatcher. A covered carrier who chooses the latter alternative for its dispatch customers must make every reasonable effort to explicitly notify current and potential dispatch customers and their users that they will not be able to directly reach a PSAP by calling 911 and that, in the event of an emergency, the dispatcher should be contacted.

8. As to E911 Phase I requirements and implementation schedule, the Commission upheld its decision to require that, as of April 1, 1998, covered carriers be able to provide automatic number identification (ANI) and cell site information for 911 calls to the PSAP. At the same time, the MO&O clarified carriers' obligations to provide call back numbers and modified associated rule definitions. With respect to the call back obligation, the Commission clarified that where the handset's directory number is not known to the serving carrier, the carrier's obligations extend only to delivering 911 calls to PSAPs. Therefore, covered carriers will not be required to provide reliable call back numbers to PSAPs in the case of mobile units that are not associated with a dialable telephone number. However, carriers will be expected to transmit all calling party information that is compatible with their systems for 911 calls from validated customers.

9. The MO&O also upheld Phase II requirements and the implementation schedule by clarifying that, as of October 1, 2001, covered carriers provide to the designated PSAP the location of all 911 calls by longitude and latitude such that the accuracy for all calls is 125 meters or less using a Root Mean Square (RMS) methodology. In denying petitions for reconsideration of the Phase II implementation schedule, the Commission concluded that broadband PCS and other digital system providers had sufficient notice to prepare for the implementation of the E911 features and it is not necessary to delay the October 1, 2001 implementation schedule at this time. In addition, the Commission reaffirmed that its rules and their application are intended to be technologically and competitively neutral.

10. The MO&O also reaffirmed the Commission's decision not to exempt providers of E911 service from liability for certain negligent acts, finding that none of the petitioners presents arguments sufficient to persuade the Commission to modify its determination that it is unnecessary to exempt providers of E911 service from liability and to preempt state tort law. Likewise, the Commission reaffirmed the decision in the R&O not to prescribe a particular E911 cost recovery methodology. The Commission continued to find no adequate basis on this record for preemption of the various state and local funding mechanisms that are in place or under development, or for concluding that state and local cost recovery mechanisms will be discriminatory or inadequate.

Paperwork Reduction Act

11. This MO&O contains either proposed or modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this MO&O, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due on January 20, 1998. OMB comments are due on February 10, 1998. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (2) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060-xxxx.

Title: Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling System (Memorandum Opinion and Order, CC Docket 94–102).

Form Number: N/A.

Type of Review: New Collection.

Respondents: Cellular, broadband PCS, and SMR carriers subject to the modified rules; State and local government entities; Public Safety Answering Points.

Number of Respondents: 42,031.

Estimated Time Per Response:

a. Two time notification burden on 4,700 PSAPs @ 1 hr per=9,400 hours.

b. Two time response burden on carriers @ 1 hr per=9,400 hours.

c. One time review or establishment of cost recovery program by 375 government entities @ 10 hrs per=3,750 hours.

One time burden for consultation for remaining 125 government entities using contractors to review and/or establish cost recovery program @ 1 hr per=125 hours.

d. One time burden for 3,469 digital licensees to place notification information in digital user manuals or service contracts @ ½ hr per=1,735 hours.

e. One time burden on 3,469 digital licensees to notify existing digital subscribers @ ¼ hr per=868 hours.

f. One time burden on 7 representative organizations to draft survey for quarterly TTY report @ 1 hr per=7 hours.

Quarterly burden on 7 representative organizations to review survey results @ 12 hrs per=84 hours.

Quarterly burden on 7 representative organizations to draft joint quarterly TTY report @ 20 hrs. per=140 hours.

Quarterly burden on 3,469 licensees to respond to survey @ 8 hrs. per=27,752 hours.

g. One time burden on 31,530 SMR licensees offering direct dispatch capability to place notification in user manuals and service agreements @ ½ hour per=15,765 hours.

h. One time burden on 31,530 SMR licensees offering direct dispatch capability to notify existing customers @ ¼ hr per=7,884.

i. One time burden on 35,424 carriers to consult on determining a designated PSAP @ 1 hr per=35,424 hours.

j. One time burden on 500 government entities to consult with 35,424 carriers in determining a designated PSAP @ 1 hr per=35,424 hours.

k. One time burden on 1,400 telephone systems to consult on definition of pseudo-ANI @ 3 hr per=4,200 hours.

l. One time burden on 8,500 licensees to prepare a deployment schedule to accompany a waiver request @ 4 hours per=34,000 hours.

One time burden on 8,500 licensees to consult with a contract engineer to prepare a deployment schedule to accompany a waiver request @ 1 hr per=8,500 hours.

Total Annual Burden: 194,457 hours.

Estimated Costs Per Respondent: $7,050,000.

Review and/or establishment of cost recovery program to 125 state and local entitities using contract CPAs @ $200 per hour=$2000 per entity.

Preparation of deployment schedule to 8,500 licensees using contract engineers @ $100 per hour=$800.

Needs and Uses: The notification burden on PSAPs will be used by carriers to verify that wireless 911 calls are referred to PSAPs who have the technical capability to use the data to the caller's benefit. TTY and dispatch notification requirements will be used to avoid consumer confusion as to the ability to reach 911 services using their wireless handsets. These notifications will also avoid delays in emergency response time. The quarterly reports will be used to monitor the progress of TTY compatibility. Consultations on the specific meaning assigned to pseudo-ANI are appropriate to ensure that all parties are working with the same information. Coordination between carriers and State and local entities to determine the PSAPs that are appropriate to receive 911 calls is necessary because of the difficulty in assigning PSAPs based on the location of the caller. The deployment schedule that should be submitted by carriers seeking a waiver of the Phase I or Phase II schedule will be used by the Commission to guarantee that the rules adopted in this proceeding are enforced in as timely a manner as possible within technological constraints.

Procedural Matters

Supplemental Final Regulatory Flexibility Analysis

12. As required by the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), a Final Regulatory Flexibility Analysis (FRFA) was incorporated the *E911 First Report and Order* in this proceeding. The Commission's Supplemental Final Regulatory Flexibility Analysis (SFRFA) in this *Memorandum Opinion and Order* (MO&O) reflects revised or additional information to that contained in the FRFA. The SFRFA is thus limited to matters raised in response to the R&O and addressed in this MO&O. This SFRFA conforms to the RFA, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law No. 104–121, 110 Stat. 846 (1996).[5]

[2] *See* 61 FR 40348; 61 FR 40374 (August 2, 1996).

[3] "Code Identification" was defined in section 20.03 of the Commission's Rules to mean a handset that transmits the 34-bit Mobile Identification Number (MIN) typically used by cellular or PCS licensees, or the functional equivalent of a MIN in the case of SMR services.

[4] The October 1, 1997 implementation date for section 20.18(c) of the Commission's Rules was temporarily stayed until November 30, 1997. *See* Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94–102, Order, DA 97–2119 (released Sept. 30, 1997).

[5] Title II of the Contract with America Act is "The Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), codified at 5 U.S.C. § 601 *et seq.*

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I. Need For and Objectives of the Action

13. The actions taken in this MO&O are in response to petitions for reconsideration or clarification of the rules adopted in the *E911 First Report and Order* requiring wireless carriers to implement 911 and Enhanced 911 (E911) services. The limited revisions made in the MO&O are intended to remedy technical problems raised in the record while otherwise reaffirming the Commission's commitment to the rapid implementation of the technologies needed to bring emergency help to wireless callers throughout the United States.

II. Summary of Significant Issues Raised by the Public Comments in Response to the Final Regulatory Flexibility Statement

14. No comments were received in direct response to the FRFA, but the Commission received 16 petitions for reconsideration of the *E911 First Report and Order*. The majority of petitioners ask that the Commission reconsider the rules governing when covered wireless carriers must make 911 access available to callers. Other petitioners ask that the Commission reconsider or clarify a variety of issues ranging from the implementation date for covered carriers to provide 911 access to people with hearing or speech disabilities through the use of Text Telephone Devices, such as TTYs, to the definition of which wireless carriers must comply with the rules, particularly in regard to "covered Special Mobile Radios (SMRs)." Paragraphs 1–5 of this MO&O provide a more detailed discussion of the petitions and the resulting actions. Additionally, as discussed in paragraphs 10–12, several parties filed *ex parte* presentations raising technical issues which prompted the Commission to stay the October 1, 1997 implementation dates for § 20.18 (a), (b), and (c) through November 30, 1997, and to seek further comment.

III. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

15. The rules adopted in this MO&O will apply to providers of broadband Personal Communications Service (PCS), Cellular Radio Telephone Service, and Specialized Mobile Radio (SMR) Services in the 800 MHz and 900 MHz bands. Service providers in these services are subject to 911 requirements solely to the extent that they offer real-time, two way switched voice service that is interconnected with the public switched network and utilize an in-network switching facility which enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls.

a. Estimates for Cellular Licensees. 16. As indicated in the FRFA, the Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons.[6] In addition to the data supplied in the FRFA, a more recent source of information regarding the number of cellular services carriers nationwide is the data that the Commission collects annually in connection with the Telecommunications Relay Service (TRS) Worksheet.[7] That data shows that 792 companies reported that they were engaged in the provision of cellular services. Although it seems certain that some of these carriers have fewer than 1,500 employees, and because a cellular licensee may have several licenses, we are unable at this time to estimate with greater precision the number of cellular carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that, for purposes of our evaluations and conclusions in the SFRFA, all of the current cellular licensees are small entities, as that term is defined by the SBA.

b. Estimates for Broadband PCS Licensees. 17. As indicated in the FRFA, the broadband PCS spectrum is divided into six frequency blocks designated A through F. The FRFA provides a full explanation as to the definition of small business in the context of broadband PCS licensees, using the definition SBA approved, developed by the Commission for Blocks C–F, that a small business is an entity that has average gross revenues of less that $40 million in the three previous calendar years.[8] In addition, the SBA has approved a Commission definition (for Block F) of "very small business" which is an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[9] No small businesses within the SBA approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[10] However, not all licenses for Block F have been awarded. Because licenses were awarded only recently, there are few small businesses currently providing broadband PCS services. Based on this information, we conclude that the number of small broadband PCS licensees includes the 90 small business winning C Block bidders and the 93 qualifying bidders in the D, E, and F Blocks, for a total of 183 small broadband PCS providers as defined by the SBA and the Commission's auction rules.

c. Estimates for SMR Licensees. 18. The FRFA indicates that, pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small entity" for geographic area 800 MHz and 900 MHz SMR licenses as firms that had average gross revenues of less than $15 million in the three previous calendar years. This regulation defining "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.[11] As the FRFA noted, we do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. The number of licensees cannot be estimated, because, although we know that there are a total of slightly more than 31,000 SMR licensees, one licensee can hold more than one license. We do know, however, that one of these firms has over $15 million in revenues: We assume, for purposes of our evaluations and conclusions in this SFRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

19. Further, the Commission has no way of accurately determining which licensees would fall under the definition of "covered carrier" as expressed in the MO&O. The Commission still concludes that the number of geographic area SMR licensees affected by our action in this proceeding includes the 55 small entities who bid for and won geographic licenses in the 900 MHz SMR band. These 55 small entities hold a total of 245 licensees.

As of the adopted date of this decision, the auction for 800 MHz geographic area SMR licenses had not yet been completed. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis to estimate, moreover, how many small entities within the SBA's definition will win these licenses. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of our evaluations and conclusions in this SFRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

20. The Commission is submitting several burdens to the Office of Management and Budget for approval. First, Public Safety Answering Points (PSAP) who are willing to participate in Phase I and Phase II of E911 service must notify the covered carrier that they are capable of receiving and utilizing the data elements associated with the service and request the service. Also, cost recovery mechanisms must be in place as a prerequisite to the imposition of enhanced 911 service requirements upon covered carriers. In the MO&O, the Commission requires that covered carriers whose digital systems are not compatible with TTY calls must make every reasonable effort to notify current and potential subscribers that they will not be able to use TTYs to call 911 with digital wireless devices and services.

21. In addition, to monitor the progress of the wireless industry regarding TTY compatibility, the Commission requires that the signatories to the TTY Consensus Agreement file quarterly progress reports in this docket within ten days after the end of the quarter beginning January 1, 1998, until the quarter ending September 30, 1998. At the same time, the Commission grants the request of extension of time to file a Joint Status Report on TTY issues, that was due on October 1, 1997, and requires the signatories to the Consensus Agreement to file the Joint Status Report on TTY issues by December 30, 1997.

22. In the MO&O, the Commission also requires that covered carriers who offer dispatch service to customers and choose to comply with Commission rules by routing dispatch customer emergency calls through a dispatcher, rather than directly routing to the PSAP, must make every reasonable effort to explicitly notify the current and potential dispatch customers and their users that they will not be able to directly reach a PSAP by calling 911 and that, in the event of an emergency, the dispatcher should be contacted.

23. The MO&O, while revising the definition of "pseudo-ANI," provides that the specific meaning assigned to the pseudo-ANI is determined by agreements, as necessary, between the telephone system originating the call, intermediate telephone systems handling and routing the call, and the destination telephone system. Additionally, in recognition of the difficulty involved in assigning wireless 911 calls to the appropriate PSAP based on location, the MO&O clarifies that the responsible local or State entity has the authority and responsibility to designate the PSAPs that are appropriate to receive wireless E911 calls, noting that this will require continued coordination between carriers and State and local entities. The MO&O lastly provides that covered carriers can request a waiver of the Phase I implementation schedule based on inability to transmit 10-digit telephone numbers and cell site information, but requires that any waiver request based on a LEC's capability must be accompanied by a deployment schedule for meeting the Phase I requirements.

V. Significant Alternatives and Steps Taken By Agency To Minimize Significant Economic Impact on Small Entities Consistent With Stated Objectives

24. This MO&O is adopted in response to petitions for reconsideration, including several filed by small businesses. After consideration of these petitions, the MO&O first modifies the rules by requiring covered carriers to transmit all 911 calls. Section 20.18(b) of the Commission's Rules, 47 CFR 20.18(b), as adopted in the R&O, required that carriers transmit 911 calls from all handsets which transmit "code identifications" and transmit all 911 calls, even those without code identification, if requested to do so by a PSAP administrator. Thirteen of the sixteen petitioners ask that the Commission reconsider this requirement. After a review of the arguments raised by the petitioners in opposition to the rule, the MO&O finds that the rules adopted in the *E911 First Report and Order* would impose unreasonable cost, delay, and administrative burdens on wireless carriers, and that, at least for the present, the most practical, least expensive and most efficient option is to require covered carriers to forward all 911 calls.

25. Three original petitioners request that the Commission modify or defer the implementation dates of rules requiring covered carriers to provide 911 access to people with hearing or speech disabilities through the use of TTYs with respect to digital wireless systems, due to technical incompatibility. Although the Commission decides against deferring the implementation date indefinitely until the industry standards bodies resolve all the technical issues, as these petitioners request, it temporarily suspends enforcement of the TTY requirement for digital wireless systems until October 1, 1998, subject to a notification requirement.

26. Also, in response to 5 petitions seeking reconsideration of the Commission's decision as to the wireless carriers to whom the rules apply particularly for covered SMRs, the MO&O narrows the definition of "Covered SMRs" for E911 purposes to include only those systems that offer real-time, two way switched voice service that is interconnected with the public switched network and utilize an in-network switching facility which enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. The Commission also decides to extend the modified definition to covered broadband PCS and cellular as well as SMR providers. We agree with the petitioners on this issue that the current rule could encompass SMR providers that primarily offer traditional dispatch services but also offer limited interconnection capability and that such traditional dispatch providers would have to overcome significant and potentially costly obstacles to provide 911 access. Furthermore, under the revised rules, the "covered" SMR systems that offer dispatch services to

[6] 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812.

[7] Federal Communications Commission, CCB Industry Analysis Division, Telecommunication Industry Revenue: TRS Worksheet Data, Tbl. 1 (Average Total Telecommunication Revenue Reported by Class of Carrier) (December 1996) (TRS Worksheet).

[8] See Amendment of parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96–59, Report and Order, 61 FR 33859 (July 1, 1996).

[9] *Id.*

[10] FCC News, Broadband PCS, D, E, and F Block Auction Closes, No. 71744 (released Jan. 14, 1997).

[11] See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896–901 MHz and the 935–940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89–553, Second Order on Reconsideration and Seventh Report and Order, 60 FR 48913 (September 21, 1995); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93–144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 61 FR 06212 (February 16, 1996).

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customers may meet their 911 obligations either by providing customers with direct capability for 911 purposes, or alternatively, by routing dispatch customer emergency calls through a dispatcher, subject to a notification requirement.

27. The Commission also reviewed and rejected the Coast Guard's petition, which requested the Commission to apply E911 requirements to Mobile Satellite Services (MSS) and to issue a further notice of proposed rulemaking regarding the provision of emergency communications by MSS systems. In the MO&O, the Commission upholds its decision that MSS should be exempt from the 911 and E911 rules because adding specific regulatory requirements to MSS in this early stage of its growth may impede the development of service in ways that might reduce its ability to meet public safety needs. However, the Commission does urge the MSS industry and the public safety community to continue their efforts to develop and establish public safety standards along with international standards bodies.

28. Finally, although several petitioners asked the Commission to establish a specific cost recovery program (rather than the flexible alternative adopted in the *E911 First Report and Order*, the Commission declined to do so preferring to provide government entities with the option of keeping their existing cost recovery program in place or to create a cost recovery program that best suits the needs of all parties concerned in their locality.

Report to Congress

29. We will submit a copy of this Supplementary Final Regulatory Flexibility Analysis, along with the MO&O, in a report to Congress pursuant to 5 U.S.C. 801(a)(1)(A). A copy of this SFRFA will also be published in the **Federal Register**.

Authority

30. The Commission's action is taken pursuant to Sections 1, 4(i), 201, 303, 309, and 332 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151, 154(i), 201, 303, 309, 332.

Ordering Clauses

31. Accordingly, *it is ordered* that the Petitions for Reconsideration of the First Report and Order, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94–102, filed by parties listed in Appendix A of the full text of this decision, are granted in part, as provided in the text of the MO&O, and otherwise denied.

32. *It is further ordered* that Part 20 of the Commission's Rules is amended as set forth below.

33. *It is further ordered* that §§ 20.18(a), 20.18(c), and 20.18(g) of the Commission's Rules, 47 CFR 20.18(a), 20.18(c), 20.18(g), as amended by this MO&O as set forth below, and the foregoing provisions of this MO&O that pertain to sections 20.18(a), 20.18(c), and 20.18(g) of the Commission's Rules, shall become effective January 16, 1998. This action is taken on the basis of our finding that, because the amended provisions of §§ 20.18(a), 20.18(c), and 20.18(g) are substantive rules that have the effect of granting an exemption, the effective date of these provisions may occur less than 30 days before publication of the provisions, pursuant to Section 553(d)(1) of Title 5, United States Code.

34. *It is further ordered* that: (1) § 20.18(b) of the Commission's Rules, 47 CFR 20.18(b), as amended by this MO&O below; (2) the definition of "designated PSAP" in section 20.3 of the Commission's Rules, 47 CFR 20.3, as added by this MO&O below; and (3) the foregoing provisions of this MO&O that pertain to section 20.18(b) of the Commission's Rules, and to the definition of "designated PSAP" in § 20.3 of the Commission's Rules shall become effective January 16, 1998. This action is taken, pursuant to Section 553(d)(3) of Title 5, United States Code, on the basis of our finding that there is good cause that the effective date of these provisions should occur less than 30 days before publication of the provisions. The Commission's finding of good cause is based upon its finding that the rule change will serve the purpose of "promoting the safety of life and property" under Section 1 of the Communications Act and that the particular safety issues involved—extending the benefits of 911 services to as many wireless phone users as possible—are of sufficient importance to warrant making the rule requirements immediately effective upon publication in the **Federal Register**. In addition, the Commission notes that, since the adoption of the *E911 First Report and Order* in June 1996 there has been considerable confusion and uncertainty regarding the ability of covered carriers to comply with the provisions of § 20.18(b) of the Commission's Rules, as those provisions were initially prescribed in the *E911 First Report and Order*. This confusion and uncertainty were heightened by assertions made by the Wireless 911 Coalition regarding technical issues associated with requirements imposed by the rule. Although the decision of the Wireless Telecommunications Bureau in the *Stay Order* was an appropriate step in this case in light of the continuing pendency of these issues at the time the *Stay Order* was issued, it also resulted in a continuation of the confusion and uncertainty surrounding the question of whether all users of wireless services provided by covered carriers could expect and rely upon the fact that their 911 calls would go through to emergency service providers. Now that the Commission has resolved this issue by the action taken today, it can find no basis for any failure to end as quickly as possible this confusion and uncertainty regarding the obligations of covered carriers and the public safety expectations of the users of wireless services.

35. *It is further ordered* that the remaining rule amendments made by this MO&O and specified below shall become effective February 17, 1998.

36. *It is further ordered* that the Wireless Telecommunications Bureau is hereby delegated authority to grant an additional 3-month suspension of enforcement of section 20.18(c) of the Commission's Rules, 47 CFR 20.18(c), until January 1, 1999, with respect to wireless carriers who use digital wireless systems, upon reviewing the joint quarterly status reports on TTY compatibility with digital systems filed by the signatories to the TTY Consensus Agreement.

37. *It is further ordered* that the signatories to the TTY Consensus Agreement SHALL FILE a joint quarterly status report regarding TTY compatibility with digital systems within 10 days after the end of each calendar quarter during the period beginning January 1, 1998, and ending September 30, 1998, with the first report due April 10, 1998, as set forth in the foregoing provisions of this MO&O.

38. *It is further ordered* that the Request of an Extension of Time to File the Joint Status Report on TTY Issues, filed by the Cellular Telecommunications Industry Association on October 1, 1997, IS GRANTED, and that the signatories to the Consensus Agreement, the Personal Communications Industry Association, and Telecommunications for the Deaf, Inc. must file a Joint Status Report on or before December 31, 1997.

39. *It is further ordered* that the information collections contained in the rule amendments set forth below WILL BECOME EFFECTIVE following approval by the Office of Management and Budget. The Commission will publish a document at a later date establishing the effective date.

40. *It is further ordered* that, the Director of the Office of Public Affairs shall send a copy of this MO&O including the Supplementary Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

List of Subjects in 47 CFR Part 20

Communications common carriers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 20 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for Part 20 continues to read as follows:

Authority: Sections 4, 251–2, 303, and 332, 48 Stat. 1066, 1062, as amended; 47 U.S.C. 154, 251–4, 303, and 332 unless otherwise noted.

2. Section 20.3 is amended by removing the definitions *Code Identification* and *Mobile Identification Number*; by adding a definition for *Designated PSAP*; and revising definitions for *Automatic Number Identification*, and *Pseudo Automatic Number Identification* to read as follows:

§ 20.3 Definitions

Automatic Number Identification (ANI). A system that identifies the billing account for a call. For 911 systems, the ANI identifies the calling party and may be used as a call back number.

* * * * *

Designated PSAP. The Public Safety Answering Point (PSAP) designated by the local or state entity that has the authority and responsibility to designate the PSAP to receive wireless 911 calls.

* * * * *

Pseudo Automatic Number Identification (Pseudo-ANI). A number, consisting of the same number of digits as ANI, that is not a North American Numbering Plan telephone directory number and may be used in place of an ANI to convey special meaning. The special meaning assigned to the pseudo-ANI is determined by agreements, as necessary, between the system originating the call, intermediate systems handling and routing the call, and the destination system.

* * * * *

3. Section 20.18 is revised to read as follows:

§ 20.18 911 Service.

(a) *Scope of section.* The following requirements are only applicable to Broadband Personal Communications Services (part 24, subpart E of this chapter), Cellular Radio Telephone Service (part 22, subpart H of this chapter), and Geographic Area Specialized Mobile Radio Services and Incumbent Wide Area SMR Licensees in the 800 MHz and 900 MHz bands (included in part 90, subpart S of this chapter). In addition, service providers in these enumerated services are subject to the following requirements solely to the extent that they offer real-time, two way switched voice service that is interconnected with the public switched network and utilize an in-network switching facility which enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls.

(b) *Basic 911 Service.* Licensees subject to this section must transmit all wireless 911 calls without respect to their call validation process to a Public Safety Answering Point, provided that "all wireless 911 calls" is defined as "any call initiated by a wireless user dialing 911 on a phone using a compliant radio frequency protocol of the serving carrier."

(c) *TTY Access to 911 Services.* Licensees subject to this section must be capable of transmitting 911 calls from individuals with speech or hearing disabilities through means other than mobile radio handsets, *e.g.*, through the use of Text Telephone Devices (TTY).

Note to paragraph (c): Enforcement of the provisions of this paragraph is suspended until October 1, 1998, in the case of calls made using a digital wireless system that is not compatible with TTY calls, provided that the licensee operating such a digital system shall make every reasonable effort to notify current and potential subscribers who use or may use such a system that they will not be able to make a 911 call over such system through the use of a TTY device.

(d) *Phase I enhanced 911 services.* (1) As of April 1, 1998, licensees subject to this section must provide the telephone number of the originator of a 911 call and the location of the cell site or base station receiving a 911 call from any mobile handset accessing their systems to the designated Public Safety Answering Point through the use of ANI and Pseudo-ANI.

(2) When the directory number of the handset used to originate a 911 call is not available to the serving carrier, such carrier's obligations under the paragraph (d)(1) extend only to delivering 911 calls and available calling party information to the designated Public Safety Answering Point.

Note to paragraph (d): With respect to 911 calls accessing their systems through the use of TTYs, licensees subject to this section must comply with the requirements in paragraphs (d)(1) and (d)(2) of this section, as to calls made using a digital wireless system, as of October 1, 1998.

(e) *Phase II enhanced 911 services.* As of October 1, 2001, licensees subject to this section must provide to the designated Public Safety Answering Point the location of all 911 calls by longitude and latitude such that the accuracy for all calls is 125 meters or less using a Root Mean Square (RMS) methodology.

(f) *Conditions for enhanced 911 services.* The requirements set forth in paragraphs (d) and (e) of this section shall be applicable only if the administrator of the designated Public Safety Answering Point has requested the services required under those paragraphs and is capable of receiving and utilizing the data elements associated with the service, and a mechanism for recovering the costs of the service is in place.

(g) *Dispatch service.* A service provider covered by this section who offers dispatch service to customers may meet the requirements of this section with respect to customers who utilize dispatch service either by complying with the requirements set forth in paragraphs (b) through (e) of this section, or by routing the customer's emergency calls through a dispatcher. If the service provider chooses the latter alternative, it must make every reasonable effort to explicitly notify its current and potential dispatch customers and their users that they are not able to directly reach a PSAP by calling 911 and that, in the event of an emergency, the dispatcher should be contacted.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1111

[STB Ex Parte No. 527 (Sub-No. 1)]

Expedited Procedures for Processing Simplified Rail Rate Reasonableness Proceedings

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rule.

SUMMARY: The Board amends its complaint and investigation regulations at 49 CFR part 1111 to reflect the adoption of *Simplified Rate Guidelines.*[1]

EFFECTIVE DATE: February 17, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas J. Stilling, (202) 565–1567. (TDD for the hearing impaired: (202) 565–1695.)

SUPPLEMENTARY INFORMATION: In a Notice of Proposed Rulemaking (NPR) served September 24, 1997, and published in the **Federal Register** on September 26, 1997 (62 FR 50550), we proposed to include in our regulations a list of the information that a complainant should supply when seeking to challenge the reasonableness of a rail rate using the *Simplified Rate Guidelines.* We also proposed to determine within 50 days of the filing of a complaint whether the *Simplified Rate Guidelines* could be used in a particular case. We indicated, however, that we were not inclined at this time to adopt a general procedural schedule for processing rate complaints under the *Simplified Rate Guidelines* until we gained more experience using those guidelines. The Association of American Railroads (AAR) and the National Industrial Transportation League (NITL) filed comments in response to the NPR.

Evidentiary Factors

Both AAR and NITL support the proposal to list in our regulations the nine evidentiary factors that a complaint seeking to use the *Simplified Rate Guidelines* should address.[2] AAR suggests that the regulations also explicitly require a complainant to provide the assumptions, calculations and workpapers on which the information on factors (6) through (9) is based.[3]

In our proposal, we assumed that a complainant would provide sufficient support for its responses to the evidentiary factors. Without adequate support, it would be difficult for us to determine whether use of the simplified guidelines should be permitted in a particular case. To ensure that adequate information is supplied to enable us quickly to decide the appropriateness of using the simplified guidelines, we will add a tenth factor requiring that "the assumptions, calculations and any documentation necessary to support the responses to the above listed factors" also be provided.

Use of Simplified Procedures

In *Simplified Rate Guidelines,* slip op. at 38, we noted that a decision as to whether to apply the simplified guidelines or the more sophisticated constrained market pricing procedures (specifically the stand-alone cost test) for evaluating the reasonableness of a challenged rate needs to be determined at the outset of a case.[4] We also suggested that a reasonable time frame for making such a determination appeared to be within 45 days after the filing of the complaint. In its original comments responding to the Advanced Notice of Proposed Rulemaking (ANPR) in this proceeding, AAR complained that a 45-day time frame would be too tight, as it would provide a defendant railroad only two weeks to respond to a complainant's request to use the simplified guidelines. To afford the railroad more time to prepare its response and to allow that response to be filed together with the answer to the rate complaint, in the NPR we proposed a 50-day period instead. NITL asserts that the initial 45-day schedule is sufficient and that the additional five days are unnecessary.

We adopt the 50-day schedule proposed in the NPR. The additional five days will not unduly prolong the process. As indicated in the NPR, it should also alleviate some administrative burden by allowing a railroad to simultaneously answer the complaint and respond to the request for using the simplified guidelines, rather than requiring the filing of separate pleadings 5 days apart.

Procedural Schedule

NITL expresses concern that, without a general procedural schedule, the processing of cases will be unduly delayed. NITL suggests that cases processed under the simplified guidelines be handled under the basic structure of the procedures used to process stand-alone cost cases.

We appreciate NITL's concern that these cases be expedited, but we believe that expedition can best be accomplished, at least at the outset, on a case-by-case basis. Absent experience processing cases under the *Simplified Rate Guidelines,* we cannot practically establish a general schedule to govern the filing of evidence for all cases. To facilitate the prompt establishment of appropriate procedural schedules in individual cases, the parties are expected to discuss, and if possible agree on, a procedural schedule at the conference of the parties that is to be convened no later than 12 days after the defendant files an answer to the complaint.[5] Under the regulations we are adopting, the parties are to file a report on the issues discussed at the conference within 19 days of the filing of an answer, and this report should include a proposed procedural schedule. Following receipt of this report, we will move quickly to establish the procedural schedule for the filing of evidence.[6]

Waybill Access

In response to the ANPR, NITL suggested that our Rules of Practice governing the filing of a rate complaint cross reference the regulations at 49 CFR 1244.8 concerning access to the Waybill Sample. In its comments on the NPR, NITL repeated its cross-referencing suggestion. In light of NITL's position that a cross reference may "avoid confusion that may create delays and subsequent difficulties in meeting the procedural schedule," we will include a new paragraph (d) in part 1111.1 referencing our regulation regarding access to the Waybill Sample.

The Board certifies that these rules will not have a significant economic effect on a substantial number of small entities. The rules should result in the more expeditious processing of rail complaints using the simplified procedures.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1111

Administrative practice and procedure, Investigations.

Decided: January 7, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49 chapter X, Part 1111 of the Code of Federal Regulations is amended as follows:

PART 1111—COMPLAINT AND INVESTIGATION PROCEDURES

1. The authority citation for part 1111 is revised to read as follows:

Authority: 49 U.S.C. 721, 10704, and 11701.

2. Section 1111.1 is amended by revising the last two sentences of paragraph (a), adding paragraphs (a)(1) through (a)(10), and adding new paragraph (d) to read as follows:

§ 1111.1 Content of formal complaints; joinder.

(a) * * * In a complaint challenging the reasonableness of a rail rate, the complainant should indicate whether, in its view, the reasonableness of the rate should be examined using constrained market pricing or using the simplified standards adopted pursuant to 49 U.S.C. 10701(d)(3). If the complainant seeks to use the simplified standards, it should support this request by submitting, at a minimum, the following information:

(1) A general history of the traffic at issue, including how the traffic has moved in the past, how it currently moves, and how it can and will be moved in the future. This information should address not only the physical movement of the traffic, but the type and level of rates actually used. It should include all carriers (rail and nonrail) that have participated in the transportation of this traffic or could do so.

(2) The specific commodity description(s) for the traffic at issue, the shipping characteristics and requirements of the traffic, and the type of railroad cars required or used for the traffic.

(3) All origins, destinations, and origin-destination (O–D) pairs involved in the complaint, by commodity type.

(4) The amount of traffic involved (by commodity type), including total annual carloadings, average tons per car, number of carloads per shipment, and number of carloads per week or month.

(5) Total or average revenue per carload paid to the defendant railroad(s), by commodity type.

(6) The feasibility and anticipated cost of preparing a stand-alone cost presentation in the case.

(7) An estimate of the other costs to be incurred in pursuing the rate complaint, including preparing necessary jurisdictional threshold and market dominance evidence.

(8) The relief sought, including all reparations as well as the level and duration of any rate prescription.

(9) The present value of the relief sought.

(10) The assumptions, calculations and any documentation necessary to support the responses to the above listed factors.

* * * * *

(d) *Request for access to waybill data.* Parties needing access to the Waybill Sample to prepare their case should follow the procedures set forth at 49 CFR 1244.8.

3. Section 1111.8 is amended by removing the phrase "section 1111.9(b)" and adding the phrase "§ 1111.10(b)" in its place.

4. Section 1111.9 is redesignated as section 1111.10 and a new section 1111.9 is added to read as follows:

§ 1111.9 Procedural schedule to determine whether to use simplified procedures.

Absent a specific order by the Board, the following procedural schedule will apply in determining whether to grant a request under § 1111.1(a) to use the simplified procedures (with the remainder of the procedural schedule to be determined on a case-by-case basis):

Day 0—Complaint filed, discovery period begins.
Day 20—Defendant's answer to complaint and opposition to use of simplified procedures due.
Day 30—Complainant's response to use of simplified procedures due.
Day 50—Board's determination of whether simplified procedures should be used.

5. In newly designated § 1111.10, paragraph (a) is revised to read as follows:

§ 1111.10 Meeting to discuss procedural matters.

(a) *Generally.* In all complaint proceedings, other than those challenging the reasonableness of a rail rate based on stand-alone cost, the parties shall meet, or discuss by telephone, discovery and procedural matters within 12 days after an answer to a complaint is filed. Within 19 days after an answer to a complaint is filed, the parties, either jointly or separately, shall file a report with the Board setting forth a proposed procedural schedule to govern future activities and deadlines in the case.

* * * * *

[FR Doc. 98–1066 Filed 1–15–98; 8:45 am]
BILLING CODE 4915–00–P

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[1] *Rate Guidelines—Non-Coal Proceedings,* Ex Parte No. 347 (Sub-No. 2) (STB served Dec. 31, 1996), __ S.T.B. __ (1996), *pet. for judicial review pending sub nom. Association of Am. Railroads* v. *Surface Transp. Bd.,* No. 97–1020 (D.C. Cir. filed Jan. 10, 1997).

[2] The evidentiary factors are set forth in *Simplified Rate Guidelines,* slip op. at 37–38.

[3] Factors (6) through (9) are:

(6) The feasibility and anticipated cost of preparing a stand-alone cost presentation in the case.

(7) An estimate of the other costs to be incurred in pursuing the rate complaint, including preparing necessary jurisdictional threshold and market dominance evidence.

(8) The relief sought, including all reparations as well as the level and duration of any rate prescription.

(9) The present value of the relief sought.

[4] Constrained market pricing, including the stand-alone cost test, was adopted in *Coal Rate Guidelines—Nationwide,* 1 I.C.C.2d 520 (1985), *aff'd sub nom. Consolidated Rail Corp.* v. *United States,* 812 F.2d 1444 (3d Cir. 1987).

[5] Both AAR and NITL support the NPR proposal concerning a conference of the parties.

[6] 49 U.S.C. 10704(c)(2) requires us to decide the rate reasonableness issue within months after the close of the administrative record.

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Proposed Rules

Federal Register
Vol. 63, No. 11
Friday, January 16, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 10

[Docket No. 98–01]

RIN 1557–AB62

Municipal Securities Dealers

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) proposes to revise its Municipal Securities Dealers regulation to remove unnecessary provisions. This change would not have any substantive effect on the operations of national banks, but would simplify the OCC's rule regarding bank municipal securities dealers (MSDs) by removing a redundant restatement of rules found elsewhere.

DATES: Comments must be received by March 17, 1998.

ADDRESSES: Comments should be directed to: Office of the Comptroller of the Currency, Communications Division, 250 E Street, SW, Washington, DC 20219, Attention: Docket No. 98–01. Comments will be available for public inspection and photocopying at the same location. In addition, comments may be sent by facsimile transmission to FAX number (202) 874–5274 or by electronic mail to regs.comments@occ.treas.gov.

FOR FURTHER INFORMATION CONTACT: Joe Malott, National Bank Examiner, Capital Markets (202) 874–5070; Donald Lamson, Assistant Director, Securities and Corporate Practices; or Ursula Pfeil, Attorney, Legislative and Regulatory Activities (202) 874–5090.

SUPPLEMENTARY INFORMATION:

Background and Discussion of Proposal

Section 15B(b) of the Securities Exchange Act of 1934 (Exchange Act) (15 U.S.C. 78o–4(b)) created the Municipal Securities Rulemaking Board (MSRB) and mandated that the MSRB adopt rules that establish qualification criteria for municipal securities brokers or dealers and associated persons. To implement section 15B(b), the MSRB adopted Rule G–7 (Information Concerning Associated Persons) (Rule G–7).[1] Rule G–7 requires, among other things, that municipal securities principals and representatives associated with a bank MSD file with the bank either (a) Form MSD–4 (Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer) or (b) a similar form prescribed by the bank's primary regulator. A national bank MSD is in turn required by Rule G–7 to submit to the OCC the form that the bank's associated municipal securities principals and representatives file with it. Rule G–7 also requires bank MSDs to update information as necessary, to retain records for specified periods of time, and to file with the appropriate banking agency "such of the information prescribed by [Rule G–7] as such * * * agency * * * shall by rule or regulation require." Rule G–7(g).

Shortly after the MSRB adopted Rule G–7, the OCC adopted part 10 in order to prescribe the information and forms that national bank MSDs are to submit. (42 FR 16813 (March 30, 1977)). Part 10 currently sets out the scope of the rule (§ 10.1); definitions used therein (§ 10.2); information about where and how to file the appropriate forms (§ 10.3); and requirements governing the submission and retention of Form MSD–4 and Form MSD–5 (Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer) (§ 10.4).

As explained in the following section-by-section analysis, much of current part 10 either is substantively identical to the requirements contained in Rule G–7 or is otherwise unnecessary.

[1] The MSRB rules may be obtained by contacting the Municipal Securities Rulemaking Board by telephone at (202) 223–9347 or by mail at 1150 18th Street, NW., Suite 400, Washington, DC 20036–3816.

Section-by-Section Analysis

Section 10.1 of Current and Proposed Rules

This section identifies the entities and individuals covered by part 10. Section 10.1 of the proposed rule clarifies that subsidiaries of national banks are not covered by the rule. This clarification is consistent with MSRB Rule G–7, which states that "bank dealers" are to comply with the rules and requirements adopted by the appropriate bank regulatory agency. The term "bank dealer" is defined in Rule D–8 of the MSRB's rules to include "a municipal securities dealer which is a bank or a separately identifiable department or division of a bank as defined in rule G–1 of the [Municipal Securities Rulemaking] Board." Subsidiaries of banks are not included in the definition of "bank dealer," and are, therefore, governed directly by the MSRB's filing requirements. The proposed change to § 10.1 reflects this fact. It does not, however, affect the content of what these subsidiaries are to file or who regulates their municipal securities activities.[2]

Section 10.2 of Current Rule

The terms defined in current § 10.2 are not used in part 10 as proposed. Accordingly, this section is removed.

Section 10.3 of Current Rule

Section 10.3 provides information about the mechanics of filing the MSD–4 and MSD–5 forms with the OCC. This information is unnecessary in light of the filing instructions that accompany these forms. Therefore, the proposed rule removes this section.

Section 10.4 of Current Rule/§ 10.2 of Proposed Rule

Section 10.4(a)(1) of the current rule states that Form MSD–4 is an appropriate means of carrying out the purposes of Rule G–7(b). Two provisions in Rule G–7 make it appropriate for the proposed rule to retain a provision identifying which form national bank MSDs are to use and what information is to be submitted in order to comply with Rule G–7. First,

[2] Subsidiaries of national banks that engage in municipal securities activities must register with the NASD and are regulated by NASD Regulation, Inc., the subsidiary of NASD charged with regulating the securities industry and the Nasdaq Stock Market.

paragraph (b) of Rule G–7 states that "in the case of a bank dealer a completed Form MSD–4 or similar form prescribed by the appropriate regulatory agency for such bank dealer, containing the foregoing information [i.e., the information listed in Rule G–7(b)(i)–(x)], shall satisfy the requirements of this paragraph [(b)]." Given that Rule G–7(b) provides bank regulators the option of using a form other than Form MSD–4, there remains a need for the OCC to clarify which form national banks should use. Second, as previously noted, paragraph (g) of Rule G–7 states that bank MSDs are to file with their appropriate regulatory agency "such of the information prescribed by this rule [i.e., Rule G–7] as such * * * agency * * * shall by rule or regulation require." Repealing all of part 10 arguably would create an unintended gap in the filing requirements for bank MSDs, because there would be no rule or regulation requiring national banks to file.

In light of paragraphs (b) and (g) of Rule G–7, the proposed rule retains a requirement, at § 10.2(a), stating that a national bank is to use Form MSD–4 to submit the information required by Rule G–7(b)(i)-(x) to be obtained from a person identified in § 10.1(b). Section 10.2(a) also states that a national bank receiving completed MSD–4 forms must submit these forms to the OCC before permitting any person to be associated with it as a municipal securities principal or a municipal securities representative. Should the MSRB amend Rule G–7 to remove the reference to rules or regulations issued by the banking agencies, the OCC will revisit the need for a continued reference to the MSRB rules in part 10.[3]

Section 10.4(a)(2) of the current rule repeats filing requirements found in Rule G–7 and, therefore, is removed.

Section 10.4(b) of the current rule instructs national bank MSDs regarding how they should proceed if a Form MSD–4 contains materially inaccurate or incomplete information. This section is unnecessary, given that paragraph (c) of Rule G–7 requires that the information required to be submitted must remain accurate and complete. A national bank MSD receiving updated information from an associated municipal securities representative or municipal securities principal is obligated pursuant to Rule G–7 to submit the amended information to the OCC in order to ensure that the individuals are properly registered. Accordingly, the proposed rule removes current § 10.4(b).

Current § 10.4(c) requires national bank MSDs to file Form MSD–5 within 30 days of terminating a person's association with the bank as a municipal securities representative or principal. This requirement does not appear in Rule G–7. In order to facilitate the effective supervision of MSD activity by national banks, the proposal retains the requirement, at proposed § 10.2(b), that a termination notice be submitted.

Finally, current § 10.4(d)(1) restates record retention requirements found in Rule G–7(e) while § 10.4(d)(2) states that the MSD–4 and MSD–5 forms are covered by section 32(a) of the Exchange Act (15 U.S.C. 78ff). These provisions in current § 10.4 are unnecessary and are, therefore, removed.

[3] The Board of Governors of the Federal Reserve System (Board) and Federal Deposit Insurance Corporation (FDIC) recently published proposed amendments to each agency's MSD regulation. *See* 62 FR 15272 (March 31, 1997) (Board) and 62 FR 26994 (May 16, 1997) (FDIC). Both the Board and the FDIC propose to repeal their MSD rules altogether. However, both agencies intend for banks within their respective jurisdictions to continue filing the MSD–4 and MSD–5 forms with those agencies. Accordingly, the OCC, Board, and FDIC intend to impose substantively identical requirements on bank MSDs. The stylistic differences between the OCC's proposed rule and those of the Board and FDIC reflect the OCC's view that it is necessary and helpful to national bank MSDs for the OCC's rule to address those areas identified in Rule G–7 where bank dealers are to look to the rules of their primary regulator.

Comments

The OCC invites general comments on all aspects of this proposal, including specific comments on the proposed changes.

Regulatory Flexibility Act

It is hereby certified that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

As noted earlier, the OCC has only eliminated unnecessary provisions that appear in the current rule. This proposal will, therefore, reduce the regulatory burden on national banks, regardless of size. No new burden is added by the proposed changes.

Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Act of 1995 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a proposal likely to result in a rule that includes a Federal mandate that may result in the annual expenditure of $100 million or more in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act requires an agency to identify and consider a reasonable number of alternatives before promulgating a proposal.

The OCC has determined that the proposal, if adopted, will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 10

National banks, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set out in the preamble, the OCC proposes to revise part 10 of chapter I of title 12 of the Code of Federal Regulations as set forth below:

PART 10—MUNICIPAL SECURITIES DEALERS

Sec.
10.1 Scope.
10.2 Filing requirements.

Authority: 5 U.S.C. 93a, 481, and 1818; 15 U.S.C. 78o–4(c)(5) and 78q–78w.

§ 10.1 Scope.

This part applies to:

(a) Any national bank, District bank, and separately identifiable department or division of either (collectively, a national bank) that acts as a municipal securities dealer, as that term is defined in section 3(a)(30) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(30)); and

(b) Any person who is associated or to be associated with a national bank in the capacity of a municipal securities principal or a municipal securities representative, as those terms are defined in Rule G–3 of the Municipal Securities Rulemaking Board (MSRB).[1]

§ 10.2 Filing requirements.

(a) A national bank shall use Form MSD–4 (Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer) for obtaining the information required by MSRB Rule G–7(b)(i)–(x) from a person identified in

[1] The MSRB rules may be obtained by contacting the Municipal Securities Rulemaking Board at 1150 18th Street, NW., Suite 400, Washington, DC 20036–3816.

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§ 10.1(b). A national bank receiving a completed MSD–4 form from a person identified in § 10.1(b) must submit this form to the OCC before permitting the person to be associated with it as a municipal securities principal or a municipal securities representative.

(b) A national bank must submit Form MSD–5 (Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer) to the OCC within 30 days of terminating a person's association with the bank as a municipal securities principal or municipal securities representative.

(c) Forms MSD–4 and MSD–5, with instructions, may be obtained by contacting the OCC at 250 E Street, SW., Washington, DC 20219, Attention: Bank Dealer Activities.

Dated: December 1, 1997.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 98–815 Filed 1–15–98; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, 62, 70, and 71

RIN–AA53

Health Standards for Occupational Noise Exposure

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; Extension of comment period.

SUMMARY: On December 23, 1997, MSHA published a notice soliciting comments on a report from the National Institute for Occupational Safety and Health (NIOSH) entitled "Prevalence of Hearing Loss For Noise-Exposed Metal/Nonmetal Miners." This notice extends the original comment period on the report.

DATES: Submit written comments on the report on or before February 23, 1998.

ADDRESSES: Comments may be transmitted by electronic mail, fax, or mail. Comments by electronic mail must be clearly identified and sent to: comments@msha.gov. Faxed comments must be clearly identified and sent to: MSHA, Office of Standards, Regulations, and Variances, 703–235–5551. Send mail comments to: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203–1984. Commenters are encouraged to supplement written comments with computer files or disks.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, MSHA, Office of Standards, Regulations, and Variances, 703–235–1910.

SUPPLEMENTARY INFORMATION: On December 17, 1996, MSHA published a proposed rule in the **Federal Register** (61 FR 66348) revising its health standards for occupational noise exposure in coal and metal and nonmetal mines.

On December 16, 1997, MSHA published a notice in the **Federal Register** (62 FR 65777) announcing the availability of a report from NIOSH entitled "Prevalence of Hearing Loss For Noise-Exposed Metal/Nonmetal Miners." The Agency further stated its intent to supplement the rulemaking record with this report and to make it available to interested parties upon request.

MSHA received several requests from the mining community that they be provided an opportunity to comment on the report. On December 23, 1997, MSHA published a notice in the **Federal Register** (62 FR 67013) allowing the public 30 days in which to review the report and submit comments.

In response to a request from the mining community, MSHA is extending this comment period an additional 30 days to February 23, 1998. Interested persons are encouraged to submit comments by this date.

Dated: January 12, 1998.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 98–1139 Filed 1–15–98; 8:45 am]

BILLING CODE 4510–43–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL–5950–9]

Outer Continental Shelf Air Regulations Consistency Update for California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf (OCS) Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 (the Act). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the Santa Barbara County Air Pollution Control District (Santa Barbara County APCD) and South Coast Air Quality Management District (South Coast AQMD) are the designated COAs. The intended effect of approving the OCS requirements for the above Districts, contained in the Technical Support Document, is to regulate emissions from OCS sources in accordance with the requirements onshore. The changes to the existing requirements discussed below are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

DATES: Comments on the proposed update must be received on or before February 17, 1998.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (Air-4), Attn: Docket No. A–93–16 Section XVI, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

Docket: Supporting information used in developing the rule and copies of the documents EPA is proposing to incorporate by reference are contained in Docket No. A–93–16 Section XVI. This docket is available for public inspection and copying Monday–Friday during regular business hours at the following locations:

EPA Air Docket (Air-4), Attn: Docket No. A–93–16 Section XVI, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE–131), Attn: Air Docket No. A–93–16 Section XVI, Environmental Protection Agency, 401 M Street SW, Room M–1500, Washington, DC 20460.

A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air Division (Air-4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1197.

SUPPLEMENTARY INFORMATION:

I. Background

On September 4, 1992, EPA promulgated 40 CFR part 55 [1], which

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to section 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent under section 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This proposed action is being taken in response to the submittal of rules by two local air pollution control agencies. Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rule.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. EPA Evaluation and Proposed Action

In updating 40 CFR part 55, EPA reviewed the rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules,[2] and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards.

A. After review of the rule submitted by Santa Barbara County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rule revision applicable to OCS sources for which the Santa Barbara County APCD is designated as the COA:

Rule 321 Solvent Cleaning Operations (Adopted 9/18/97)

B. After review of the rules submitted by South Coast AQMD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rules applicable to OCS sources for which the South Coast AQMD is designated as the COA.

1. *The following rules were submitted as revisions to existing requirements:*

Rule 102 Definition of Terms (Adopted 6/13/97)
Rule 301 Permit Fees (Adopted 5/9/97) except (e)(6) and Table IV
Rule 304 Equipment, Materials, and Ambient Air Analyses (Adopted 5/9/97)
Rule 304.1 Analyses Fees (Adopted 5/9/97)
Rule 306 Plan Fees (Adopted 5/9/97)
Rule 309 Fees for Regulation XVI Plans (Adopted 5/9/97)
Rule 701 Air Pollution Emergency Contingency Actions (Adopted 6/13/97)
Rule 1122 Solvent Degreasers (Adopted 7/11/97)
Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 8/8/97)
Rule 1168 Control of Volatile Organic Compound Emissions from Adhesive Application (Adopted 4/11/97)
Rule 1610 Old-Vehicle Scrapping (Adopted 5/5/97)
Rule 2000 General (Adopted 4/11/97)
Rule 2011 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_X) Emissions (Adopted 4/11/97)
Rule 2012 Requirement for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions (Adopted 4/11/97)

2. *The following new rule was submitted:*

Rule 2100 Registration of Portable Equipment (Adopted 7/1/97)

3. *The following rules were submitted but will not be included because either they do not apply to OCS Sources or are administrative/procedural rules:*

Rule 303 Hearing Board Fees (Adopted 5/9/97)
Rule 308 On-Road Motor Vehicle Mitigation Options Fees (Adopted 5/9/97)
Rule 311 Air Quality Investment Programs (AQIP) Fees (Adopted 5/9/97)
Rule 1421 Control of Perchloroethylene Emissions from Dry Cleaning Operations (Adopted 6/13/97)
Rule 2501 Air Quality Investment Program (Adopted 5/9/97)
Rule 2506 Area Source Credits for NO_X and SO_X (Adopted 4/11/97)

[2] Each COA which has been delegated the authority to implement and enforce part 55, will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14(c)(4).

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the

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Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 17, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, and Sulfur oxides.

Dated: December 22, 1997.

Felicia Marcus,

Regional Administrator, Region IX.

Title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is proposed to be amended by revising paragraphs (e)(3)(ii)(F) and (e)(3)(ii)(G) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states seaward boundaries, by state.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources.*

(G) *South Coast Air Quality Management District Requirements Applicable to OCS Sources* (Part I and Part II).

* * * * *

Appendix to Part 55—[Amended]

3. Appendix A to CFR Part 55 is proposed to be amended by revising paragraph (b)(6) and (7) under the heading "California" to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference into Part 55, by State

* * * * *

California

* * * * *

(b) Local requirements.

* * * * *

(6) The following requirements are contained in *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 102 Definitions (Adopted 4/17/97)
Rule 103 Severability (Adopted 10/23/78)
Rule 201 Permits Required (Adopted 4/17/97)
Rule 202 Exemptions to Rule 201 (Adopted 4/17/97)
Rule 203 Transfer (Adopted 4/17/97)
Rule 204 Applications (Adopted 4/17/97)
Rule 205 Standards for Granting Applications (Adopted 4/17/97)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207 Denial of Application (Adopted 10/23/78)
Rule 210 Fees (Adopted 4/17/97)
Rule 212 Emission Statements (Adopted 10/20/92)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter—Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration—Southern Zone (Adopted 10/23/78)
Rule 306 Dust and Fumes—Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate—Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/2/90)
Rule 316 Storage and Transfer of Gasoline (Adopted 4/17/97)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems—Southern Zone (Adopted 10/23/78)
Rule 321 Solvent Cleaning Operations (Adopted 9/18/97)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 7/18/96)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Crude Oil Production and Separation (Adopted 1/25/94) Rule 326 Storage of Reactive Organic Liquid Compounds (Adopted 12/14/93)
Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 330 Surface Coating of Miscellaneous Metal Parts and Products (Adopted 4/21/95)
Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 6/11/79)
Rule 333 Control of Emissions from Reciprocating Internal Combustion Engines (Adopted 4/17/97)
Rule 342 Control of Oxides of Nitrogen (NO_X) from Boilers, Steam Generators and Process Heaters) (Adopted 4/17/97)
Rule 343 Petroleum Storage Tank Degassing (Adopted 12/14/93)
Rule 344 Petroleum Sumps, Pits, and Well Cellars (Adopted 11/10/94)
Rule 359 Flares and Thermal Oxidizers (6/28/94)
Rule 370 Potential to Emit—Limitations for Part 70 Sources (Adopted 6/15/95)
Rule 505 Breakdown Conditions Sections A., B.1., and D. only (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 6/15/81)
Rule 702 General Conformity (Adopted 10/20/94)
Rule 801 New Source Review (Adopted 4/17/97)
Rule 802 Nonattainment Review (Adopted 4/17/97)
Rule 803 Prevention of Significant Deterioration (Adopted 4/17/97)
Rule 804 Emission Offsets (Adopted 4/17/97)
Rule 805 Air Quality Impact Analysis and Modeling (Adopted 4/17/97)
Rule 1301 Part 70 Operating Permits—General Information (Adopted 4/17/97)
Rule 1302 Part 70 Operating Permits—Permit Application (Adopted 11/09/93)
Rule 1303 Part 70 Operating Permits—Permits (Adopted 11/09/93)
Rule 1304 Part 70 Operating Permits—Issuance, Renewal, Modification and Reopening (Adopted 11/09/93)
Rule 1305 Part 70 Operating Permits—Enforcement (Adopted 11/09/93)

(7) The following requirements are contained in *South Coast Air Quality Management District Requirements Applicable to OCS Sources:*

Rule 102 Definition of Terms (Adopted 6/13/97)
Rule 103 Definition of Geographical Areas (Adopted 1/9/76)
Rule 104 Reporting of Source Test Data and Analyses (Adopted 1/9/76)
Rule 108 Alternative Emission Control Plans (Adopted 4/6/90)
Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 3/6/92)
Rule 201 Permit to Construct (Adopted 1/5/90)
Rule 201.1 Permit Conditions in Federally Issued Permits to Construct (Adopted 1/5/90)
Rule 202 Temporary Permit to Operate (Adopted 5/7/76)
Rule 203 Permit to Operate (Adopted 1/5/90)
Rule 204 Permit Conditions (Adopted 3/6/92)
Rule 205 Expiration of Permits to Construct (Adopted 1/5/90)
Rule 206 Posting of Permit to Operate (Adopted 1/5/90)
Rule 207 Altering or Falsifying of Permit (Adopted 1/9/76)
Rule 208 Permit for Open Burning (Adopted 1/5/90)
Rule 209 Transfer and Voiding of Permits (Adopted 1/5/90)
Rule 210 Applications (Adopted 1/5/90)
Rule 212 Standards for Approving Permits (Adopted 8/12/94) except (c)(3) and (e)
Rule 214 Denial of Permits (Adopted 1/5/90)
Rule 217 Provisions for Sampling and Testing Facilities (Adopted 1/5/90)
Rule 218 Stack Monitoring (Adopted 8/7/81)
Rule 219 Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 12/13/96)
Rule 220 Exemption—Net Increase in Emissions (Adopted 8/7/81)
Rule 221 Plans (Adopted 1/4/85)
Rule 301 Permit Fees (Adopted 5/9/97) except (e)(6) and Table IV
Rule 304 Equipment, Materials, and Ambient Air Analyses (Adopted 5/9/97)
Rule 304.1 Analyses Fees (Adopted 5/9/97)
Rule 305 Fees for Acid Deposition (Adopted 10/4/91)
Rule 306 Plan Fees (Adopted 5/9/97)
Rule 309 Fees for Regulation XVI Plans (Adopted 5/9/97)
Rule 401 Visible Emissions (Adopted 4/7/89)
Rule 403 Fugitive Dust (Adopted 2/14/97)
Rule 404 Particulate Matter—Concentration (Adopted 2/7/86)
Rule 405 Solid Particulate Matter—Weight (Adopted 2/7/86)
Rule 407 Liquid and Gaseous Air Contaminants (Adopted 4/2/82)
Rule 408 Circumvention (Adopted 5/7/76)
Rule 409 Combustion Contaminants (Adopted 8/7/81)
Rule 429 Start-Up and Shutdown Provisions for Oxides of Nitrogen (Adopted 12/21/90)
Rule 430 Breakdown Provisions, (a) and (e) only (Adopted 7/12/96)
Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 10/2/92)
Rule 431.2 Sulfur Content of Liquid Fuels (Adopted 5/4/90)
Rule 431.3 Sulfur Content of Fossil Fuels (Adopted 5/7/76)
Rule 441 Research Operations (Adopted 5/7/76)
Rule 442 Usage of Solvents (Adopted 3/5/82)
Rule 444 Open Fires (Adopted 10/2/87)
Rule 463 Organic Liquid Storage (Adopted 3/11/94)
Rule 465 Vacuum Producing Devices or Systems (Adopted 11/1/91)
Rule 468 Sulfur Recovery Units (Adopted 10/8/76)
Rule 473 Disposal of Solid and Liquid Wastes (Adopted 5/7/76)
Rule 474 Fuel Burning Equipment-Oxides of Nitrogen (Adopted 12/4/81)
Rule 475 Electric Power Generating Equipment (Adopted 8/7/78)
Rule 476 Steam Generating Equipment (Adopted 10/8/76)
Rule 480 Natural Gas Fired Control Devices (Adopted 10/7/77)
Addendum to Regulation IV (Effective 1977)
Rule 518 Variance Procedures for Title V Facilities (Adopted 8/11/95)
Rule 518.1 Permit Appeal Procedures for Title V Facilities (Adopted 8/11/95)
Rule 518.2 Federal Alternative Operating Conditions (Adopted 1/12/96)
Rule 701 Air Pollution Emergency Contingency Actions (Adopted 6/13/97)
Rule 702 Definitions (Adopted 7/11/80)
Rule 704 Episode Declaration (Adopted 7/9/82)
Rule 707 Radio—Communication System (Adopted 7/11/80)
Rule 708 Plans (Adopted 7/9/82)
Rule 708.1 Stationary Sources Required to File Plans (Adopted 4/4/80)
Rule 708.2 Content of Stationary Source Curtailment Plans (Adopted 4/4/80)
Rule 708.4 Procedural Requirements for Plans (Adopted 7/11/80)
Rule 709 First Stage Episode Actions (Adopted 7/11/80)
Rule 710 Second Stage Episode Actions (Adopted 7/11/80)
Rule 711 Third Stage Episode Actions (Adopted 7/11/80)
Rule 712 Sulfate Episode Actions (Adopted 7/11/80)
Rule 715 Burning of Fossil Fuel on Episode Days (Adopted 8/24/77)
Regulation IX—New Source Performance Standards (Adopted 4/8/94)
Rule 1106 Marine Coatings Operations (Adopted 1/13/95)
Rule 1107 Coating of Metal Parts and Products (Adopted 3/8/96)
Rule 1109 Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 8/5/88)
Rule 1110 Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/6/81)
Rule 1110.1 Emissions from Stationary Internal Combustion Engines (Adopted 10/4/85)
Rule 1110.2 Emissions from Gaseous and Liquid-Fueled Internal Combustion Engines (Adopted 12/9/94)
Rule 1113 Architectural Coatings (Adopted 11/8/96)
Rule 1116.1 Lightering Vessel Operations—Sulfur Content of Bunker Fuel (Adopted 10/20/78)
Rule 1121 Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 3/10/95)
Rule 1122 Solvent Degreasers (Adopted 7/11/97)
Rule 1123 Refinery Process Turnarounds (Adopted 12/7/90)
Rule 1129 Aerosol Coatings (Adopted 3/8/96)
Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 8/8/97)
Rule 1136 Wood Products Coatings (Adopted 6/14/96)
Rule 1140 Abrasive Blasting (Adopted 8/2/85)
Rule 1142 Marine Tank Vessel Operations (Adopted 7/19/91)

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Rule 1146 Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 5/13/94)
Rule 1146.1 Emission of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 5/13/94)
Rule 1148 Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)
Rule 1149 Storage Tank Degassing (Adopted 4/1/88)
Rule 1168 Control of Volatile Organic Compound Emissions from Adhesive Application (Adopted 4/11/97)
Rule 1171 Solvent Cleaning Operations (Adopted 9/13/96)
Rule 1173 Fugitive Emissions of Volatile Organic Compounds (Adopted 5/13/94)
Rule 1176 VOC Emissions from Wastewater Systems (Adopted 9/13/96)
Rule 1301 General (Adopted 6/28/90)
Rule 1302 Definitions (Adopted 5/3/91)
Rule 1303 Requirements (Adopted 5/10/96)
Rule 1304 Exemptions (Adopted 6/14/96)
Rule 1306 Emission Calculations (Adopted 6/14/96)
Rule 1313 Permits to Operate (Adopted 6/28/90)
Rule 1403 Asbestos Emissions from Demolition/Renovation Activities (Adopted 4/8/94)
Rule 1605 Credits for the Voluntary Repair of On-Road Vehicles Identified Through Remote Sensing Devices (Adopted 10/11/96)
Rule 1610 Old-Vehicle Scrapping (Adopted 5/5/97)
Rule 1701 General (Adopted 1/6/89)
Rule 1702 Definitions (Adopted 1/6/89)
Rule 1703 PSD Analysis (Adopted 10/7/88)
Rule 1704 Exemptions (Adopted 1/6/89)
Rule 1706 Emission Calculations (Adopted 1/6/89)
Rule 1713 Source Obligation (Adopted 10/7/88)
Regulation XVII Appendix (effective 1977)
Rule 1901 General Conformity (Adopted 9/9/94)
Rule 2000 General (Adopted 4/11/97)
Rule 2001 Applicability (Adopted 2/14/97)
Rule 2002 Allocations for Oxides of Nitrogen (NOx) and Oxides of Sulfur (SOx) Emissions (Adopted 2/14/97)
Rule 2004 Requirements (Adopted 7/12/96) except (1) (2 and 3)
Rule 2005 New Source Review for RECLAIM (Adopted 2/14/97) except (i)
Rule 2006 Permits (Adopted 10/15/93)
Rule 2007 Trading Requirements (Adopted 10/15/93)
Rule 2008 Mobile Source Credits (Adopted 10/15/93)
Rule 2010 Administrative Remedies and Sanctions (Adopted 10/15/93)
Rule 2011 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SOx) Emissions (Adopted 4/11/97)
Appendix A Volume IV—(Protocol for oxides of sulfur) (Adopted 3/10/95)
Rule 2012 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NOx) Emissions (Adopted 4/11/97)
Appendix A Volume V—(Protocol for oxides of nitrogen) (Adopted 3/10/95)
Rule 2015 Backstop Provisions (Adopted 2/14/97) except (b)(1)(G) and (b)(3)(B)
Rule 2100 Registration of Portable Equipment (Adopted 7/1/97)
XXX Title V Permits (Adopted 8/11/95)
XXXI Acid Rain Permit Program (Adopted 2/10/95)

* * * * *

[FR Doc. 98–1137 Filed 1–15–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 440

[WH–FRL–5937–6]

Withdrawal of Amendment to Ore Mining and Dressing Point Source Category; Effluent Limitations Guidelines and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; withdrawal.

SUMMARY: EPA is withdrawing a proposed rule published in the **Federal Register** on February 12, 1996 (61 FR 5364). The proposed rule would have amended the applicability of certain effluent limitations guidelines and new source performance standards governing mines with froth-flotation mills to the Alaska-Juneau (A–J) gold mine project near Juneau, Alaska. Specifically, EPA proposed to exempt dewatered tailings produced by the proposed A–J mine and mill from effluent guidelines based on best practicable control technology (BPT) and best available control technology economically achievable (BAT), and from new source performance standards (NSPS) that appear at 40 CFR part 440, subpart J. EPA also proposed that a definition of "dewatered tailings" be added to 40 CFR part 440, subpart L.

DATES: This proposed rule is withdrawn as of January 16, 1998.

ADDRESSES: Supporting information used in developing the proposed rule, including studies prepared as part of a supplemental environmental impact statement prepared on the A–J project and comments received during the period for public comment on the proposed rule, are available for public inspection and copying at the EPA Water Docket at Headquarters, Waterside Mall, Room M2616, 401 M Street, SW., Washington DC 20460. For access to the Docket materials, call (202) 260–3027 between 9:00 a.m. and 3:30 p.m. for an appointment. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed rule that is being withdrawn, you may contact Ronald G. Kirby, Address: Engineering and Analysis Division (Mail Code 4303), 401 M Street SW., Washington, DC 20460; Telephone Number: (202) 260–7168; Facsimile Number: (202) 260–7185 or by e-mail at kirby.ronald@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The proposed rule would have excluded mill tailings from the definition of process wastewater, thereby exempting dewatered tailings from the no discharge requirement and in turn allow consideration of other disposal technologies. Process wastewaters separated from the dewatered tailings and mine drainage wastewater would have continued to be covered by the Subpart. In addition, EPA solicited comments on whether other mine sites exhibit extreme environmental conditions such as those at the A–J mine site. This information was requested because the A–J mine site was the only site known to EPA that might warrant an exemption from the current Subpart J regulations as a result of extreme environmental conditions. In addition, EPA solicited information on the types of criteria that could be used to establish a more general exemption from the requirements of subpart J than that proposed for the A–J site, in the event that additional, potentially eligible sites were identified. However, very little information was submitted during the comment period that warrants further EPA review regarding any other site or criteria.

On January 14, 1997, Echo Bay Mines announced that it would terminate its development plans for the A–J mine project. EPA has concluded, in light of the closure of the A–J mine project and the lack of information about other mine sites exhibiting similarly extreme environmental conditions, that it is unnecessary to continue this rulemakig. Therefore, EPA withdraws the proposed rule.

Dated: December 15, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 98–1115 Filed 1–15–98; 8:45 am]
BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 232

[FRA Docket No. PB–9, Notice No. 10]

RIN 2130–AB22

Two-Way End-of-Train Telemetry Devices and Certain Passenger Train Operations

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA proposes to revise the regulations regarding the use and design of two-way end-of-train telemetry devices (two-way EOTs) to specifically address certain passenger train operations where multiple units of freight-type equipment, material handling cars, or express cars are part of a passenger train's consist. Trains of this nature are currently being operated by the National Railroad Passenger Corporation (Amtrak), and swift action is necessary to clarify and address the applicability of the two-way EOT requirements to these types of operations.

DATES: Written comments regarding this proposal must be filed no later than February 2, 1998. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: Written comments should identify the docket number and the notice number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Stop 10, Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: James Wilson, Motive Power and Equipment Division, Office of Safety, RRS–14, FRA, 400 Seventh Street, S.W., Stop 25, Washington, D.C. 20590 (telephone 202–632–3367), or Thomas Herrmann, Trial Attorney, Office of the Chief Counsel, RCC–12, FRA, 400 Seventh Street, S.W., Stop 10, Washington, D.C. 20590 (telephone 202–632–3178).

SUPPLEMENTARY INFORMATION:

Background

On January 2, 1997, FRA published a final rule amending the regulations governing train and locomotive power braking systems at 49 CFR part 232 to add provisions pertaining to the use and design of two-way end-of-train telemetry devices (two-way EOTs). *See* 62 FR 278. The purpose of the revisions was to improve the safety of railroad operations by requiring the use of two-way EOTs on a variety of freight trains pursuant to 1992 legislation, and by establishing minimum performance and operational standards related to the use and design of the devices. *See* Pub. L. No. 102–365 (September 3, 1992); 49 U.S.C. 20141. In this document, FRA proposes to revise the regulations on two-way EOTs to specifically address certain passenger train operations where numerous freight-type cars, material handling cars, or express cars are part of a train's consist. Trains of this nature are currently being operated by the National Railroad Passenger Corporation (Amtrak), and prompt action is necessary to clarify and address the applicability of two-way EOT requirements to these types of operations.

The current regulations regarding two-way EOTs provide an exception from the requirements for "passenger trains with emergency brakes." *See* 49 CFR 232.23(e)(9). The language used in this exception was extracted in total from the statutory exception contained in the statutory provisions mandating that FRA develop regulations addressing the use and operation of two-way EOTs or similar technology. *See* 49 U.S.C. 20141(c)(2). A review of the legislative history reveals that there was no discussion by Congress as to the precise meaning of the phrase "passenger trains with emergency brakes." Consequently, FRA is required to effectuate Congress' intent based on the precise language used in that and the other express exceptions and based on the overall intent of the statutory mandate. *See* 49 U.S.C. 20141(c)(1)–(c)(5). Furthermore, any exception contained in a specific statutory mandate should be narrowly construed. *See Chesapeake & Ohio Ry. v. United States*, 248 F. 85 (6th Cir. 1918) *cert. den.*, 248 U.S. 580; *DRG R.R. v. United States*, 249 F. 822 (8th Cir. 1918); United States v. ATSF Ry., 156 F.2d 457 (9th Cir. 1946).

The intent of the statutory provisions related to two-way EOTs was to ensure that trains operating at a speed over 30 mph or in heavy grade territory were equipped with the technology to effectuate an emergency application of the train's brakes starting from both the front and rear of the train. The specific exceptions contained in the statute were aimed at trains (i) that do not operate within the express parameters or (ii) that are equipped or operated in a fashion that provides the ability to effectuate an emergency brake application that commences at the rear of the train without the use of a two-way EOT. *See* 49 U.S.C. 20141(c)(1)–(c)(5). Based on the intent of the statute and based upon a consistent and narrow construction of the specific language used by Congress in the express exceptions, FRA believes it is clear that Congress did not intend the phrase "passenger trains with emergency brakes" to constitute a blanket exception for all passenger trains. If that was Congress' intent, it would not have added the qualifying phrase "with emergency brakes." In FRA's view, this language limits the specific statutory exception to passenger trains equipped with a separate emergency brake valve in each car throughout the train and, thus, to passenger trains possessing the ability to effectuate an emergency application of the train's brakes from the rear of the train. Therefore, passenger trains that include RoadRailers®, auto racks, express cars, or other similar vehicles that are designed to carry freight that are placed at the rear of the train, that are not equipped with emergency brake valves, would not fall within the specific statutory or regulatory exception as they are incapable of effectuating an emergency brake application that commences at the rear of the train. Further, FRA does not believe that Congress envisioned freight-type equipment being hauled at the rear of passenger trains when the specific exception was included in the statute.

FRA believes that Congress intended to except only those trains traditionally considered to be passenger trains, which would include passenger trains containing baggage and mail cars as these have consistently been considered passenger equipment with emergency brakes. However, passenger trains which operate with numerous inaccessible baggage or mail cars attached to the rear of the train that lack any ability to effectuate an emergency brake application from the rear of the train would, in FRA's view, fall outside the specific statutory and regulatory exception for "passenger trains with emergency brakes."

Subsequent to the issuance of the final rule and the period permitted for the submission of petitions for reconsideration of the rule, Amtrak raised concerns regarding the applicability of the final rule to some of its passenger train operations, particularly those which recently began to operate with numerous express, material handling cars, or RoadRailers® entrained in the consist. These concerns focused on FRA's enforcement guidance provided to its field inspectors, which stated that the exception for "passenger trains with emergency brakes" was intended to apply only to trains traditionally considered to be passenger trains, a category that would include passenger trains containing a limited

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number of baggage and mail cars at the rear of the train. This guidance was based on the reasoning provided in the preceding discussion. Amtrak contended that FRA's interpretive guidance was an improper reading of the statutory and regulatory exception and did not adequately consider the superior braking capabilities of passenger equipment. Although FRA disagrees that its guidance was improper, FRA does agree that a closer examination of the applicability of the two-way EOT requirements to passenger trains needed to be performed in light of the superior braking ratios of passenger cars and the presence of emergency brake valves on the passenger cars in mixed train consists which provide certain safety assurances that are not present in traditional freight operations. Consequently, FRA agrees that the mixed passenger and "express" service currently being operated by Amtrak is unique and needs to be handled separately from traditional freight operations.

None of the consists proposed to be excepted raises any issue with respect to the ability to stop on grade using the rearmost available conductor's valve. The issue is the ability to stop within normal signal spacing after determining that there is a blockage in the train line. To gain a perspective on the stopping characteristics and safety implications of the "mixed" passenger train operations, FRA requested the Volpe National Transportation Systems Center (Volpe) to review the information and procedures used by Amtrak in developing various stopping distance calculations submitted to FRA. In addition, FRA requested that Volpe develop and analyze its own data regarding these types of "mixed" passenger trains. In making their calculations, both Volpe and Amtrak used variables of grade; train configuration; and the number, weight, and types of cars and locomotives expected to be used in these types of operations. Although all of the calculations were based on worse-case scenarios (e.g., the angle cock was assumed to be closed just behind the last car with an accessible emergency brake valve, and only friction braking—tread or disc brakes of locomotives and cars—was considered available to stop the train), all stops were achieved on the specified grade used in the calculation.

In making its calculations Volpe used a MathCad program to compute stopping distances. Volpe used the results of its calculations as a check against the results Amtrak had produced and submitted to FRA. Volpe concluded that Amtrak's procedures predicted longer (more conservative) stopping distances than the approach taken by Volpe. Amtrak's results were also compared to the requirements of the Amtrak Communication and Signal Department, Specification S–603, Curve 8, which is used to determine stopping distances for passenger equipment for signal block spacing. Curve 8 values for stopping distances are augmented by a factor of 25 percent to account for conditions which may impair brake performance. The absolute (actual) signal block spacing on the Northeast Corridor is actually greater than any of the stopping distances produced by either Volpe or Amtrak in their calculations. Therefore, stopping distances within established signal blocks should not be a problem. The process Amtrak used was sufficiently conservative so that predicted stopping distances were greater than would be experienced in reality. Nevertheless, FRA has worked with Amtrak to define further limitations adequate to ensure safety under identified worst-case conditions, and these limitations are set forth in this proposal.

Need for 15-Day Comment Period

As previously discussed, Amtrak currently operates a number of trains that include numerous material handling cars, express cars, auto racks, mail cars, and/or RoadRailer® equipment. These types of rolling equipment are either not equipped with emergency brake valves or, if equipped with such valves, they are not accessible to any member of the train crew. Amtrak expects that the operation of this type of rolling equipment will continue to grow and that many of its trains will eventually have a number of these vehicles in their consists. As explained earlier, FRA believes that a passenger train operated with this rolling equipment falls outside the statutory and regulatory exception to the two-way EOT requirement for "passenger trains with emergency brakes," and thus, would be required under the existing rules to be equipped with an operative two-way EOT or alternative technology. However, FRA also recognizes the unique nature of these types of "mixed" operations and realizes that the safety assurances provided by the braking ratios and the presence of emergency brake valves at various locations through much of the consist on certain mixed passenger trains make requiring the use of a two-way EOT unnecessary.

As will be further clarified, FRA believes that swift action must be taken with regard to the provisions proposed in this document and that a lengthy comment period would be impracticable, unnecessary, and contrary to the public interest. A number of freight railroads are currently expressing concern and apprehension over permitting these "mixed" passenger trains to operate over their rails in light of FRA's above-mentioned interpretive guidance. In fact, at least one instance has occurred in which a "mixed" Amtrak train was detained for six hours by a freight railroad until a two-way EOT was applied because the freight railroad refused to permit the train to operate without the device. In addition, requiring Amtrak to acquire a number of two-way EOTs and operate under the provisions of the current regulatory scheme during a lengthy comment period would impose a substantial and unwarranted financial and operational burden without improving the safety of Amtrak operations. Furthermore, the proposals contained in this document include certain restrictions on the operation and make-up of certain passenger trains that are proposed for exception from the two-way EOT requirements, restrictions that FRA believes enhance the safety of those operations and that are not currently mandated.

The current situation mandates swift action to address both safety concerns and practical operating concerns. On the one hand, Amtrak is continuing to take delivery of express and other equipment and to build this line of business in order to close its operating deficit and to support continued intercity rail passenger service in a time of declining support from the public treasury. The public's interest in continued rail passenger service warrants reasonable flexibility to achieve this business objective. This development has corresponded with the implementation of two-way EOT requirements, rapidly complicating what appeared at the outset to be a relatively straightforward issue. Prior to the effective date of the rule, Amtrak had implemented a two-way EOT system on its AutoTrain, previously the only Amtrak train operated with any significant number of unoccupied cars at the rear of the train. Anticipating the need to equip other trains as the express business grows, Amtrak is equipping over 100 locomotives and deploying rear-end units at appropriate points along its lines where trains are built. Meanwhile, Amtrak has committed to FRA to operate cars with cables for head-end power transmission (such as mail and baggage cars) at the front of trains where practicable given constraints on loading and unloading, in order limit the number of cars to the rear of the train that are beyond the last car with an accessible emergency valve. As noted above, passenger trains have historically operated with small numbers of unoccupied cars at the rear and without difficulty from the point of view of effective braking. However, as express service grows and Amtrak builds trains responsive to that growth (a phenomenon that is well underway), the danger increases that Amtrak's own internal policies for use of available two-way EOT systems may not be honored in the field through oversight. That is, having clear and certain Federal requirements becomes essential to public safety. FRA recognizes that previous interpretive guidance has been excessively narrow in relation to the safety issues presented by mixed consists.

In conclusion, FRA believes that prompt action is necessary in order to alleviate and avoid the concerns noted above. Consequently, FRA is issuing this NPRM with a comment period of only 15 days in order to quickly address the applicability of the two-way EOT requirements to "mixed" passenger train operations.

FRA wishes to make clear that if no substantive adverse comments are received on this proposal within the 15-day comment period, it will immediately issue a final rule containing the provisions of this proposal. Any comments received during this 15-day comment period will be fully considered prior to the issuance of a final rule. FRA intends for any final rule issued to take effect immediately upon publication. FRA is now soliciting comments on this proposal and will consider those comments in determining whether there is a need to amend the proposal at the final rule stage. It should be noted that, FRA will continue to exercise its enforcement discretion pursuant to 49 CFR part 209, Appendix A, and not require strict adherence to the current requirements by certain "mixed" passenger train operations in order to prevent further confusion within the industry regarding FRA's previous interpretative guidance while ensuring the continued safety of such operations.

Section-by-Section Analysis

FRA proposes to amend § 232.23 by revising paragraphs (e) and (g) and by adding a new paragraph (h) to specifically address passenger train operations that include using cars that do not have readily accessible emergency brake valves.

Paragraph (e) of § 232.23 contains a listing of the trains that are excepted from the two-way EOT requirements.

FRA proposes conforming changes to paragraphs (e)(8) and (e)(9). In paragraph (e)(9) FRA proposes to retain the exception for passenger trains in which all of the cars in the train are equipped with a readily accessible emergency brake valve, as discussed in detail above.

In paragraph (e)(10) FRA proposes an exception to the requirements regarding two-way EOTs for passenger trains that operate with a car placed at the rear of the train that is equipped with an emergency brake valve readily accessible to a crew member in radio communication with the locomotive engineer of the train. FRA intends for this proposed exception to be applicable to passenger trains containing cars that do have a readily accessible emergency brake valve at the rear of the train. FRA believes this proposed exception is justified as it is virtually identical to the exception granted to freight trains with an occupied caboose (contained in paragraph (e)(3)) since it would permit an emergency application of brakes to be initiated from the occupied car at the rear of the passenger train.

In paragraph (e)(11) FRA proposes to except certain passenger trains that have cars placed at the rear of the train that do not have readily accessible emergency brake valves. This proposed exception is intended to recognize the safety of these types of trains if configured and operated in accordance with the provisions of this exception. The proposed exception contained in this subparagraph applies only to trains of twenty-four (24) cars or fewer. Therefore, passenger trains that have more than 24 cars in the consist and that do not fall within the exceptions contained in subparagraphs (e)(9) or (e)(10) would be required to be equipped with an operative two-way EOT device or alternative technology. It should be noted that FRA intends that each bogie used in RoadRailer® operation be counted as a car for purposes of calculating the number of cars in a passenger train consist. Furthermore, FRA proposes that a locomotive that is not designed to carry passengers should not be considered a car for purposes of these calculations.

Based on data and information submitted by Amtrak and reviewed by Volpe and based upon Volpe's independent analysis regarding passenger train braking ratios and the response of passenger train brakes, FRA believes that certain "mixed" passenger trains can be safely operated without being required to be equipped with a two-way EOT or alternative technology provided certain operational and train configuration restrictions are maintained. Paragraph (e)(11)(i) proposes that if the total number of cars in a passenger train consist is twelve (12) or fewer, a car located no less than halfway through the consist must be equipped with an emergency brake valve readily accessible to a crew member. For example, in a consist containing twelve (12) cars, the sixth (6th) car (or a car closer to the rear) in the consist must have a readily accessible emergency brake valve; likewise, in an eleven (11) car consist, the sixth (6th) car (or a car closer to the rear) must have a readily accessible emergency brake valve, since all half numbers will be rounded up. Paragraph (e)(11)(ii) proposes that if the total number of cars in a passenger train consist is from thirteen (13) to twenty-four (24), a car located no less than two-thirds (⅔) of the way through the consist (counting from the first car in the train) must be equipped with an emergency brake valve readily accessible to a crew member. For example, in a twenty-one (21) car consist, the fourteenth (14th) car (or a car closer to the rear) must have a readily accessible emergency brake valve.

In addition to these train-configuration requirements, paragraphs (e)(11)(iii) and (iv) contain certain proposed operating requirements that must be followed by any passenger train operating pursuant to this specific exception. Such trains would be required to have a train crew member occupy the rearmost car equipped with a readily accessible emergency brake valve and remain in constant radio communication with the locomotive engineer whenever the train is operating over a section of track with an average grade of two percent or higher over two continuous miles. FRA recommends that the engineer alert the train crew member approximately ten (10) minutes prior to descending the heavy grade, so the crew member will be in place at the crest of the grade. Furthermore, FRA proposes that the crew member not leave his or her position until the locomotive engineer advises that the train has traversed the grade. FRA believes that these proposed operational requirements will ensure that immediate action can be taken by a member of the train crew to effectuate an emergency brake application whenever the train is descending a heavy grade.

FRA proposes to amend paragraph (g) to indicate that the operating limitations that will be imposed on a passenger train required to be equipped with a two-way EOT that experiences an en route failure of the device will be

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contained in paragraph (h). It should be noted that FRA intends that the criteria contained paragraph (g) to determine when a loss of communication between the front and rear units will be considered an en route failure will be applicable to passenger train operations.

Paragraph (h) contains the operational limitations and restrictions that are proposed to be placed on passenger trains that experience en route failures of two-way EOTs. Due to the time-sensitive nature of passenger operations, FRA believes that placing a speed restriction on these trains would not be the most effective method of handling en route failures of a device. Rather, FRA believes that other operating restrictions can be imposed to ensure the safety of these trains. FRA believes that in order to realize the benefits of a two-way EOT as contemplated by Congress, the device must be operative when the train descends a heavy grade. Therefore, FRA proposes that if a passenger train is required to be equipped with an operable device, it shall not be permitted to descend an average grade of two percent or more for two continuous miles until an operable device is installed or an alternative method of initiating an emergency brake application from the rear of the train is achieved. However, FRA further proposes that passenger trains that develop an en route failure of the two-way EOT may continue to operate over track that is not in heavy grade territory as long as a crew member occupies the rearmost car with a readily accessible emergency brake valve and remains in constant radio communication with the locomotive engineer. FRA also believes that since the train no longer has the safety assurances provided by a two-way EOT, the engineer must periodically test the braking characteristics of the train by making running brake tests. If the engineer suspects the brakes are not functioning properly, immediate action shall be taken to bring the train to a stop until corrections can be made. FRA also proposes that all en route failures of the devices must be corrected either at the next location where the necessary repairs can be made or at the next location where a required brake test of the train is to be conducted, whichever point the train arrives at first.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposal has been evaluated in accordance with existing policies and procedures. Because the requirements contained in this proposal clarify the applicability of the two-way EOT regulations to a specific segment of the industry and generally reduce the regulatory burden on these operators, FRA has concluded that this NPRM does not constitute a significant rule under either Executive Order 12866 or DOT's policies and procedures.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. FRA certifies that this proposal does not have a significant impact on a substantial number of small entities. Because the requirements contained in this proposal clarify the applicability of the two-way EOT regulations to a specific segment of the industry and generally reduce the regulatory burden on these operators, FRA has concluded that there are no substantial economic impacts for small units of government, businesses, or other organizations.

Paperwork Reduction Act

This proposal does not change any information collection requirements.

Environmental Impact

FRA has evaluated this proposal in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. It has been determined that this proposal does not have any effect on the quality of the environment.

Federalism Implications

This proposal does not have a substantial effect on the States, on the relationship between the national government on the States, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Request for Public Comments

FRA proposes to revise part 232 regarding two-way EOTs as set forth below. FRA is contemplating eventually moving the two-way EOT requirements related to passenger train operations to proposed part 238 containing the Passenger Equipment Safety Standards and would potentially seek the consultation of the working group currently involved with finalizing those standards on the issues addressed in this proposal. Consequently, FRA solicits comments on all aspects of this proposal whether through written submissions, participation in the passenger equipment working group, or both.

List of Subjects in 49 CFR Part 232

Penalties, Railroad power brakes, Railroad safety, Two-way end-of-train devices.

The Proposal

In consideration of the foregoing, FRA proposes to amend part 232, title 49, Code of Federal Regulations to read as follows:

PART 232—RAILROAD POWER BRAKES AND DRAWBARS

1. The authority citation for part 232 is revised to read as follows:

Authority: 49 U.S.C. 20102, 20103, 20107, 20108, 20110–20112, 20114, 20133, 20141, 20301–20304, 20701–20703, 21301, 21302, 21304, and 21311; and 49 CFR 1.49 (c), (g), and (m).

2. Section 232.23 is amended by revising paragraphs (e) introductory text, (e)(8), and (e)(9); adding a new sentence to the beginning of the introductory text of paragraph (g) and adding and reserving paragraph (g)(2); and adding new paragraphs (e)(10), (e)(11), and (h) to read as follows:

§ 232.23 Operations requiring use of two-way end-of-train devices; prohibition on purchase of nonconforming devices.

* * * * *

(e) The following types of trains are excepted from the requirement for the use of a two-way end-of-train device:

* * * * *

(8) Trains that operate exclusively on track that is not part of the general railroad system;

(9) Passenger trains in which all of the cars in the train are equipped with an emergency brake valve readily accessible to a crew member;

(10) Passenger trains that have a car at the rear of the train, readily accessible to one or more crew members in radio contact with the engineer, that is equipped with an emergency brake valve readily accessible to such a crew member; and

(11) Passenger trains that have twenty-four (24) or fewer cars (not including locomotives) in the consist and that are equipped and operated in accordance with the following:

(i) If the total number of cars in a passenger train consist is twelve (12) or fewer, a car located no less than halfway through the consist (counting from the first car in the train) must be equipped with an emergency brake valve readily accessible to a crew member;

(ii) If the total number of cars in a passenger train consist is thirteen (13) to twenty-four (24), a car located no less than two-thirds (⅔) of the way through the consist (counting from the first car in the train) must be equipped with an emergency brake valve readily accessible to a crew member;

(iii) Prior to descending a section of track with an average grade of two percent or greater over a distance of two continuous miles, the engineer of the train shall communicate with the conductor, to ensure that a member of the crew with a working two-way radio is stationed in the car with the rearmost readily accessible emergency brake valve on the train when the train begins its descent; and

(iv) While the train is descending a section of track with an average grade of two percent or greater over a distance of two continuous miles, a member of the train crew shall occupy the car that contains the rearmost readily accessible emergency brake valve on the train and be in constant radio communication with the locomotive engineer. The crew member shall remain in this car until the train has completely traversed the heavy grade.

* * * * *

(g) Except on passenger trains required to be equipped with a two-way end-of-train device (which are provided for in paragraph (h) of this section), en route failures of a two-way end-of-train device shall be handled in accordance with this paragraph. * * *

* * * * *

(2) [Reserved]

(h) A passenger train required to be equipped with a two-way end-of-train device that develops an en route failure of the device (as explained in paragraph (g) of this section) shall be operated in accordance with the following:

(1) The train shall not operate over a section of track with an average grade of two percent or greater over a distance of two continuous miles until an operable two-way end-of-train device is installed on the train;

(2) A member of the train crew will be immediately positioned in the car which contains the rearmost readily accessible emergency brake valve on the train and shall be equipped with an operable two-way radio that communicates with the locomotive engineer;

(3) The locomotive engineer shall periodically make running tests of the train's air brakes until the failure is corrected; and

(4) Each en route failure shall be corrected at the next location where the necessary repairs can be conducted or at the next location where a required brake test is to be performed, whichever is reached first.

3. Appendix A to Part 232, "Schedule of Civil Penalties," is amended by revising the heading of the entry for § 232.23 and revising the entry for § 232.23(g) and adding an entry for § 232.23(h), to read as follows:

Appendix—A to Part 232—Schedule of Civil Penalties

* * * * *

Section	Violation	Willful violation
232.23 Operating standards:		
(g) En route failure, freight	5,000	7,500
(h) En route failure, passenger	5,000	7,500

Issued in Washington, DC, on January 12, 1998.

Jolene M. Molitoris,

Administrator.

[FR Doc. 98–1082 Filed 1–15–98; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 052097C]

Fisheries of the Northeastern United States; Decision on Petition for Rulemaking for Redistribution of the Summer Flounder Quota

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Decision on petition for rulemaking.

SUMMARY: NMFS announces its decision to not undertake the rulemaking requested in a petition submitted by the State of Connecticut, Commissioner of Environmental Protection (Connecticut). Connecticut petitioned the Secretary of Commerce (Secretary) to eliminate the current state-specific allocation of the commercial quota for summer flounder and implement one of two options specified in its place. The decision to deny the petition at this time is based on public comments received on this petition for rulemaking and on the Mid-Atlantic Fishery Management Council's (Council) and on the Atlantic States Marine Fisheries Commission's (Commission) decision to retain the current state-by-state quota system for summer flounder in Amendment 10 to the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP).

FOR FURTHER INFORMATION CONTACT: Gary C. Matlock, Ph.D., Director, Office of Sustainable Fisheries, (301) 713–2334, or Mark R. Millikin, (301) 713–2341.

SUPPLEMENTARY INFORMATION: On June 2, 1997 (62 FR 29694), NMFS published a notice of receipt of a petition for rulemaking submitted by Connecticut. The petition requested the Secretary to implement either a commercial allocation for summer flounder of two winter coastwide periods and a state-by-state summer period, or a coastwide allocation system for all three periods (two winter periods and a summer period). Connecticut further petitioned that any regulation implementing a state-by-state allocation system base the percent shares for each state upon landings data for the period 1990 through 1992. On behalf of the Secretary, NMFS considered the petition and comments received on the petition.

In considering this petition, NMFS also considered actions surrounding Amendment 10 to the FMP (Amendment 10) as they relate to the summer flounder quota. Amendment 10 was approved by NMFS on November 21, 1997 (62 FR 63872, December 3,

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1997). In Amendment 10, the Council and Commission reconsidered the method by which the FMP allocates the quota for the summer flounder commercial fishery. All of the alternatives advocated by Connecticut in its petition were thoroughly considered by the Council in the development of Amendment 10. After considering the alternatives, the Council and Commission chose to maintain the status quo for the commercial summer flounder fishery and to retain the current state-by-state allocation. The Council and Commission noted during the discussions of Amendment 10 that many states have developed quota management systems to account for seasonal variations in abundance and in the size of the vessels that target summer flounder. With a coastwide system, as suggested in Connecticut's petition, states would lose that flexibility either during the winter or over the entire year.

No alternative system was identified that could provide the same level of equity as the current system, particularly between the northern and the southern states and between the small day boats and larger offshore vessels. The Council and Commission further noted that revising the years for the baseline allocation to 1990-92 was discussed at length during the development of Amendment 10. This time period was rejected under Amendment 10 because the shorter time period did not account adequately for historical participation in the fishery when summer flounder were more abundant and generally more available to the fishery along the entire coast. In light of the deficiencies noted in the alternatives, the Council and Commission decided to maintain the current state-by-state system.

Given that the Council and Commission thoroughly considered these proposed alternatives before proposing to retain the state-by-state allocation system and that the Council's actions were determined to be consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the national standards, and other applicable laws, NMFS could find no compelling justification for any action other than what was approved in Amendment 10.

Since the approved commercial quota allocation system complies with the Magnuson-Stevens Act and other applicable laws, NMFS believes that any changes to the allocation system are better handled through the FMP amendment process, which affords all members of the affected public an opportunity to comment on proposed measures. Connecticut participated in the Amendment 10 process as a member of the Commission but was not able to convince the Council or the Commission to make the modification it advocates.

In October 1997, the Commission attempted again to address the issue of different minimum fish sizes in various states over past years. The Commission conducted public hearings on a proposed Commission amendment (Amendment 11) in October 1997. Amendment 11 contained an analysis that would be used to redistribute the quota among the states. The redistribution would have been achieved for 1998 through the quota transfer provision already contained in the FMP. The Commission Board disapproved Amendment 11 during the annual meeting held on October 20–23, 1997. The disapproval noted that "the Board could find no compromise sufficient to resolve the many regional differences invoked by this Amendment."

Comments and Responses

A total of 74 letters; including 1 letter from the Commonwealth of Massachusetts, 1 letter from the State of New Hampshire, 1 letter from the State of Connecticut, 1 cosigned letter from Connecticut senators and from one representative, 1 letter from the Southern New England Fishermen's and Lobstermen's Association, and 33 individual form letters and 36 individual form postcards were received during the comment period for this action, which ended on August 1, 1997. Several of the letters contained comments on the FMP in general or offered suggestions for future management that are not within the scope of this action. Only comments relevant to the proposed petition for rulemaking that were received by NMFS prior to the close of business on the date specified as the close of comments were considered for this action.

Comment: The State of New Hampshire, the Commonwealth of Massachusetts, and several individuals support the petition. New Hampshire specifically agreed with Connecticut's point in the petition regarding the inequities in state quota shares based on historical summer flounder landings because some states had smaller minimum fish sizes than those implemented by Connecticut and by other states during the base period 1980–89. Connecticut Senators Lieberman and Dodd and Representative Gejdenson also feel that the current quota system did not take into consideration the stricter conservation requirements in some states, including in Connecticut. New Hampshire feels that the current system is flawed and in need of correction.

Response: NMFS believes the Council addressed the minimum fish size issue clearly in Amendment 10 to the FMP. The Council explained that landings data reflect minimum size regulations implemented in each of the states. Landings do not reflect the actual sizes of fish available to the gear, caught by commercial fishermen, and discarded dead. Hypothetically speaking, if more restrictive minimum size regulations had been implemented in southern states during those years, more fish would have been discarded dead and there would have been increased pressure on, and increased landings of, larger fish. As such, the availability of larger fish to the northern states could have been reduced. Consequently, the landings in the northern states could have been reduced. In reality, the fact that some northern states had a larger minimum size than some southern states reflects that fewer fish smaller than that length had been traditionally available to commercial fishermen in the northern states.

Comment: Connecticut Senators Lieberman and Dodd and Representative Gejdenson support a coastwide quota and uniform landing limits, as described in the petition.

Response: As with the response to the comment above, NMFS believes the Council addressed the coastwide quota and uniform trip limits issue clearly in Amendment 10 to the FMP. The Council and Commission determined, and NMFS agrees, that a coastwide quota would not provide the flexibility afforded under the state-by-state system. Since the inception of the current system, state personnel have developed and refined management systems to account for seasonal variations in abundance, as well as in the vessels that harvest summer flounder. In addition, the Council and Commission noted, and NMFS agrees, that it would be difficult to design a coastwide system that provides for an equitable distribution between the northern and southern participants, as well as between the smaller day boats and the larger offshore vessels. Uniform landing limits, it was noted, may not be suitable for all vessels, gears, or areas. For these reasons, the Council and Commission concluded that the coastwide systems proposed in Amendment 10, and again proposed by this petition, were found to not provide the same level of equity to all user groups and areas as the existing quota allocation system.

Comment: The Commonwealth of Massachusetts commented that, since the commercial quota allocation and management regimes for the related fisheries of summer flounder, scup, and black sea bass are all different, the state-by-state allocation system for summer flounder discriminates between residents of different states and violates national standard 4.

Response: That three fisheries have different allocation systems does not mean that one is discriminatory. Each system was implemented through an FMP amendment that was found consistent with all of the national standards. NMFS notes that to recognize the varying levels of historical participation in each of the states is not inherently discriminatory. Because each state participated in a fishery to varying degrees, each state receives a different portion of the whole, reflecting its relative level of historical participation. The same basis for distribution is employed for all states. Thus, there is no discrimination between residents of different states.

Comment: The State of Connecticut feels that the current commercial quota management system violates (1) national standard 1 (overfishing) because it has not prevented overfishing, (2) national standard 5 (efficiency) because it does not consider efficiency in the utilization of the resource, (3) national standard 7 (minimize costs) because it fails to minimize costs, and (4) national standard 10 (safety at sea) because fishermen travel to states with the most favorable trip limit, increasing the risk of mishap or disaster at sea. The Commonwealth of Massachusetts also feels that the current state-specific commercial quota system violates national standard 1 because it has been unsuccessful in reducing fishing mortality although it has been implemented for 5 years. Massachusetts urges NMFS to develop the regulations suggested in the petition since, as the current system has not reduced fishing mortality, quotas are likely to get smaller. Lastly, Massachusetts notes that the current system forces fishermen to travel to ports that are open to landings or that have higher trip limits, therefore increasing the risk to vessel and life at sea, in violation of national standard 10 and negatively impacting New England ports, which lose those landings while other ports benefit from them.

Response: Since Amendment 10 to the FMP contemplated alternatives to the commercial quota allocation method, the Council was required to review all alternatives for consistency with the national standards. As with the minimum fish size issue, NMFS believes the Council addressed this issue adequately and clearly in that document. The points of those discussions are reiterated here.

National standard 1 - The most recent stock assessment, completed in August 1997, indicates that the summer flounder stock is at a medium level of historical (1968–96) abundance and is overexploited. The fishing mortality rate (F) estimated for 1996 was 1.0 (an exploitation rate of 58 percent). While this estimate of fishing mortality is above the overfishing definition (F_{max} = 0.24), it is significantly below the peak fishing mortality rate estimated for 1992 (F = 2.1). More importantly, the spawning stock biomass estimate for 1996 indicated the highest level since 1983. Additionally, the age structure is improving, with 34 percent of the biomass age 2 and older in 1996, compared with 17 percent in 1992. The size of the stock older than age 2 is an important indicator of the stock health, as it may reflect more accurately the number of successful spawners. While the stock is showing signs of improvement, the improvement is not occurring at as high a rate as anticipated by managers. NMFS notes that quota overages and unaccounted for mortality (underreporting and/or discard) are more likely to explain the slow recovery than the manner in which the quota is allocated. Overall, the management scheme is allowing a stock rebuilding and a progression toward an end of overfishing.

National standard 5 - The Council and Commission have developed a system that is intended to operate at the lowest possible cost with regard to effort, administration, and enforcement, given the objectives of the FMP. NMFS has determined that the state-by-state allocation system makes efficient use of fishery resources and is, therefore, consistent with national standard 5.

National standard 7 - Amendment 10, a joint document from both the Council and Commission, contains management measures that will be implemented by the Commission as part of its interstate management process. These measures, called compliance criteria, include a requirement that states document all summer flounder commercial landings in their states. This will aid in the elimination of double counting of any landings and, therefore, help keep enforcement costs down, as much effort is spent tracking down landings in order to maintain the integrity of the quota. Such costs are independent of the allocation system. Under any other scenario proposed in this petition, costs are still incurred with regard to quota monitoring, enforcement of trip limits, and seasons.

National standard 10 - The state-by-state quota allocation system for summer flounder is not inconsistent with national standard 10. Many of the New England vessels are permitted to land in neighboring states. These and other vessels have traditionally traveled long distances to fish for and land summer flounder, so risks at sea cannot be ascribed solely to behavior resulting from a state-by-state quota allocation. The state-by- state quota system does not require a vessel to travel to distant ports, and an individual vessel operator must weigh the benefits of landing in a distant port versus the costs associated with that travel with regard to steaming time, fuel consumption, weather, and other factors.

Comment: Connecticut's petition stated that, should the alternative embracing a state-by-state summer allocation be implemented, the percent shares for each state should be based upon landings data for the period 1990 through 1992.

Response: When the quota allocation system was developed, the Council and Commission reviewed the history of the fishery and recommended a 10-year time frame as the appropriate historical period upon which quotas would be based. This decision was discussed thoroughly. While proposals were made to shorten the period to as little as 3 years, it was recognized that short-term variations in landings did occur and that quotas based on a short time series would penalize one segment of the fishery while granting others what was considered an excessive share. The states, through the Commission, approved the 10-year time period and the method of allocating the quota.

Comment: One form letter requests the Secretary to use his office to assure that Council plans comply with the requirements of the Magnuson-Stevens Act which, the letter states, the plans do not currently do.

Response: The Magnuson-Stevens Act requires that any management plan prepared, and any regulation promulgated to implement any such plan, shall be consistent with the 10 national standards for fishery conservation and management, other provisions of the Magnuson-Stevens Act, and other applicable laws. Indeed, any Council regulatory submission adopted by NMFS has been thoroughly reviewed for its consistency with every applicable legal requirement. There is no exception to this requirement.

Authority: 16 U.S.C. 1801 *et seq.*

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Dated: January 9, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–1154 Filed 1–15–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971231319–7319–01; I.D. 112697A]

RIN 0648–AK09

Fisheries of the Exclusive Economic Zone Off Alaska; Maximum Retainable Bycatch Percentages

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a regulatory amendment to separate shortraker rockfish and rougheye rockfish (SR/RE) from the aggregated rockfish bycatch species group and reduce maximum retainable bycatch (MRB) percentages for SR/RE in the Aleutian Islands Subarea (AI) groundfish fisheries. This action is necessary to slow the harvest rate of SR/RE thereby reducing the potential for overfishing. This action is intended to further the objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP).

DATES: Comments must be received at the following address by February 17, 1998.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for this action may be obtained from the same address or by calling the Alaska Region, NMFS, at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Alan Kinsolving, 907–586–7228.

SUPPLEMENTARY INFORMATION: Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) is managed by NMFS according to the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

Regulations at 50 CFR 679.20(e) establish MRB percentages for groundfish species or species groups that are closed to directed fishing. The MRB amount is calculated as a percentage of the species on bycatch status relative to the amount of other species retained onboard the vessel that are open for directed fishing. MRB percentages serve as a management tool to slow down the harvest rates of bycatch species by limiting the amount that can be retained on board a vessel. By not placing the bycatch species on "prohibited" status, thereby prohibiting all retention, MRB's also serve to minimize regulatory discard of bycatch species when they are taken incidental to other directed fisheries. MRB percentages reflect a balance between the need to slow harvest rates while at the same time, minimizing the potential for undesirable discard. Although MRB percentages limit the incentive to target on a bycatch species, fishermen can "top off" their retained catch with these species up to the MRB amount by deliberately targeting the bycatch species.

At its June 1997 meeting, the Council requested that NMFS initiate a regulatory amendment to reduce the MRB percentages for SR/RE to reduce harvest rates of SR/RE in the groundfish fisheries, thereby reducing the potential for overfishing and minimizing industry incentives to top off retained catch with SR/RE. Based on the analysis presented to the Council at its September 1997 meeting, the Council recommended that SR/RE be separated from the aggregated rockfish bycatch species group, and that MRB percentages for SR/RE in the AI be reduced to 7 percent relative to deep-water complex species (primarily POP) and to 2 percent relative to shallow-water complex species (primarily Atka mackerel). The MRB percentage relative to arrowtooth flounder would remain at 0 percent. Further justification for these MRB adjustments is discussed below.

Separation of SR/RE From Aggregated Rockfish

MRB percentages are established for aggregate rockfish species that are closed to directed fishing. Rockfish species were aggregated because of concerns that separate MRB percentages for each rockfish TAC category would increase the overall amount of rockfish that could be retained and increase incentives to vessel operators to "top off" their retained catch of target species with rockfish. As part of the aggregate rockfish MRB, the combined amounts of rockfish on bycatch status must not exceed specified percentages of other retained species that are open to directed fishing. These percentages are 15 percent relative to deep-water complex species (other rockfish species, sablefish, Greenland turbot, and flathead sole) and 5 percent relative to shallow-water complex species (Atka mackerel, pollock, Pacific cod, yellowfin sole, rock sole, "other flatfish", squid, and other species).

SR/RE are highly valued, but amounts available to the commercial fisheries are limited by a relatively small TAC amount that is fully needed to support bycatch needs in other groundfish fisheries. As a result, the directed fishery for SR/RE typically is closed at the beginning of the fishing year. Nonetheless, bycatch amounts of SR/RE can exceed TAC and approach the overfishing level. In 1997, the SR/RE bycatch in the Pacific ocean perch (POP) and Atka mackerel trawl fisheries (778 mt and 162 mt, respectively) exceeded the acceptable biological catch and caused overfishing concerns. This resulted in the closure of these and other trawl fisheries in the AI, as well as the hook-and-line gear fisheries for Pacific cod and Greenland turbot. Although closure of the individual fishing quota (IFQ) fisheries for AI sablefish and halibut was a possibility, SR/RE bycatch did not reach the overfishing level and those fisheries remained open.

Based on the discussion above, NMFS proposes to remove SR/RE from the aggregated rockfish bycatch species group and establish an SR/RE bycatch species group for the AI.

Reduction of the SR/RE MRB Percentages

The majority of SR/RE bycatch is taken in the POP and Atka mackerel fisheries. Based on data reported by the industry since 1995, the amount of retained SR/RE bycatch in the POP fishery has ranged from 4.5 to 5.7 percent. During the same time period, the retained amount of SR/RE in the Atka mackerel fishery relative to other retained catch has ranged from 0.08 to 0.2 percent.

Analyses of 1995–1996 observer data from observed hauls in the AI Atka mackerel and POP fisheries indicate that most SR/RE bycatch is taken in the minority of hauls. In the Atka mackerel fishery during 1995 and 1996, only 2 percent of observed hauls had bycatch rates higher than 2 percent, but those hauls were responsible for 50 percent of the observed SR/RE bycatch. In the POP fishery during 1995, only 10 percent of the observed hauls exceeded a bycatch rate of 7 percent but these hauls were responsible for 50 percent of the SR/RE bycatch. In the 1996 POP fishery, 29 percent of the observed hauls exceeded a bycatch rate of 7 percent, but were responsible for 78 percent of the SR/RE bycatch.

To the extent that these high-bycatch hauls represent topping off, a reduction in MRB percentages would limit the incentive to do so and reduce the risk of approaching the overfishing level for SR/RE stocks. At the same time, the proposed MRB percentages would be at a level that is unlikely to increase regulatory discards.

Classification

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant impact on a substantial number of small entities. NMFS prepared a regulatory impact review (RIR) that describes the impact this proposed rule, if adopted, would have on small entities.

The Small Business Administration has defined all fish-harvesting or hatchery businesses that are independently owned and operated, not dominant in their field of operation, with annual receipts not in excess of $3,000,000 as small businesses. Additionally, seafood processors with 500 employees or fewer, wholesale industry members with 100 employees or fewer, not-for-profit enterprises, and government jurisdictions with a population of 50,000 or less are considered small entities. NMFS has determined that a "substantial number" of small entities would generally be 20 percent of the total universe of small entities affected by the regulation. A regulation would have a "significant economic impact" on these small entities if it reduced annual gross revenues by more than 5 percent, increased total costs of production by more than 5 percent, resulted in compliance costs for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities, or would be likely to cause approximately 2 percent of the affected small business to go out of business. NMFS assumes that catcher vessels participating in the Alaska groundfish fisheries are "small entities" for purposes of the Regulatory Flexibility Act (RFA).

In 1996, 213 vessels participated in the Aleutian Islands groundfish fisheries all of which would be affected by this rule. Of these, 140 vessels (66 percent) were catcher vessels and would be considered small entities by NMFS. One hundred percent of these small entities would be affected by this rule. Thus, this rule affects a "substantial number of small entities."

This rule could have a variety of different impacts on different entities depending on each small entity's previous fishing history. For vessels that have never landed SR/RE, this rule's impacts would be strictly beneficial in that the only impacts would be that there would be less likelihood of other fisheries in which those vessels operate being closed due to excessive SR/RE bycatch. For entities that have historically landed SR/RE, this rule's impact could vary as well. NMFS' data indicate that most vessels typically harvest SR/RE at a rate substantially below this rule's new MRB of 7 percent. Vessels in the POP fishery typically harvest SR/RE at a rate ranging from 4.5 to 5.7 percent. Vessels in the Atka mackerel fishery typically have SR/RE bycatch rates of .08 to 0.2 percent. Forty-eight small entities landed SR/RE in 1996. For those vessels whose SR/RE bycatch rates are already under 7 percent, this rule's impacts will be only positive as well. However, it is possible that one or more of these 48 small entities landed SR/RE at a rate greater than 7 percent. For any such vessel, this rule could result in an economic loss.

In 1996, small entities took only 0.2 percent of the total SR/RE that was landed. Using an assumed exvessel price of $1.10 per pound, the total value of the 1996 SR/RE retained catch is estimated at $1.8 million, of which less than $3,600 was taken by the 48 small entities (34 percent of the total universe of small entities, a substantial number). Data is not available on how many, if any, small entities have historically landed SR/RE at a bycatch rate greater than 7 percent. However, if NMFS assumes that all 48 small entities retained bycatch at the maximum rate of 14 percent, then the most any vessel could stand to lose as a result of this rule would be 50 percent (because the new maximum retainable level, 7 percent, is one-half of the current maximum retainable level, 14 percent) of $3,600, divided by 48: $37.50 per vessel. If only 20 percent of the affected small entities (28 vessels) landed SR/RE at a rate higher than 7 percent, the greatest economic loss they could be expected to suffer would be $64.30. If only 10 percent of the small entities landed over 7 percent of SR/RE, the most these vessels could expect to lose as a result of this rule would be $129 each. Based on the total value of the SR/RE landed by small entities, NMFS can conclude that very few, if any, small entities would be likely to experience a reduction in gross annual income of greater than 5 percent or be forced to go out of business because of this rule. In addition, any losses would be offset for these vessels to the extent that other lucrative fisheries such as POP and Sitka mackerel would not risk early closure due to excessive SR/RE bycatch.

Also, data indicate that this rule is not likely to result in compliance costs proportionally higher for small entities than for large entities. Annual compliance costs are not likely to increase production costs by more than 5 percent. Compliance costs as a percent of sales for small entities are not likely to be greater than 10 percent of sales for large entities.

Thus although NMFS is not able to ascertain the exact number of small entities that would experience negative economic impact as a result of this rule, NMFS is able to conclude that substantially fewer than 20 percent of the affected small entities would experience any negative impact at all, and that in no case would this rule result in a significant impact on a substantial number of small entities.

As a result, a regulatory flexibility analysis was not prepared. A copy of the EA/RIR is available from NMFS (See **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 12, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

2. In part 679, Table 11 is revised to read as follows:

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TABLE 11.—BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA RETAINABLE PERCENTAGES

	Bycatch Species[1]													
	Pollock	Pacific cod	Atka mackerel	Arrowtooth	Yellowfin sole	Other flatfish	Rocksole	Flathead sole	Greenland turbot	Sablefish	Shortraker rougheye (AI)	Aggregated rockfish[2]	Squid	Other species
Basis species:														
Pollock	[3]na	20	20	35	20	20	20	20	1	1	2	5	20	20
Pacific cod	20	[3]na	20	35	20	20	20	20	1	1	2	5	20	20
Atka mackerel	20	20	[3]na	35	20	20	20	20	1	1	2	5	20	20
Arrowtooth	0	0	0	[3]na	0	0	0	0	0	0	0	0	0	0
Yellowfin sole	20	20	20	35	[3]na	35	35	35	1	1	2	5	20	20
Other flatfish	20	20	20	35	35	[3]na	35	35	1	1	2	5	20	20
Rocksole	20	20	20	35	35	35	[3]na	35	1	1	2	5	20	20
Flathead sole	20	20	20	35	35	35	35	[3]na	35	15	7	15	20	20
Greenland turbot	20	20	20	35	20	20	20	20	[3]na	15	7	15	20	20
Sablefish	20	20	20	35	20	20	20	20	35	[3]na	7	15	20	20
Other rockfish	20	20	20	35	20	20	20	20	35	15	7	15	20	20
Other red rockfish–BS	20	20	20	35	20	20	20	20	35	15	7	15	20	20
Pacific ocean perch	20	20	20	35	20	20	20	20	35	15	7	15	20	20
Sharpchin/Northern–AI	20	20	20	35	20	20	20	20	35	15	7	15	20	20
Shortraker/Rougheye–AI	20	20	20	35	20	20	20	20	35	15	[3]na	15	20	20
Squid	20	20	20	35	20	20	20	20	1	1	2	5	[3]na	20
Other species	20	20	20	35	20	20	20	20	1	1	2	5	20	[3]na
Aggregated amount non-groundfish species	20	20	20	35	20	20	20	20	1	1	2	5	20	20

[1] For definition of species, see Table 1 of the Bering Sea and Aleutian Islands groundfish specifications.
[2] Aggregated rockfish of the genera Sebastes and Sebastolobus except in the Aleutian Islands Subarea where shortraker and rougheye rockfish is a separate category.
[3] na–not applicable.

[FR Doc. 98–1155 Filed 1–15–98; 8:45 am]
BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 63, No. 11
Friday, January 16, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Economic Research Service

Notice of Intent to Seek Approval to Collect Information

AGENCY: Economic Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub.L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the Economic Research Service's (ERS) intention to request approval for a new information collection from day care home sponsoring organizations participating in the Child and Adult Care Food Program (CACFP); from day care homes that participate in CACFP; from day care homes that have dropped out of the program; and from parents of children cared for in participating day care homes in order to answer the legislative mandate in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193, Sec. 708 (l)) to study the impact of amendments to the CACFP's authorizing legislation on participation and day care home licensing.

DATES: Comments on this notice must be received by March 23, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Linda Ghelfi, Food Assistance, Poverty, and Well-Being Branch, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M. St., NW, Room 2145, Washington, DC 20036–5831, 202–694–5351.

SUPPLEMENTARY INFORMATION:

Title: Application for ERS collection of information on day care home sponsoring organizations, current and "dropout" day care homes, and parents of children cared for in day care homes that receive food assistance through the Child and Adult Care Food Program (CACFP).

Type of Request: Approval to collect information on the sponsors, current and "dropout" day care homes, and parents of children cared for in day care homes that receive food assistance through the Child and Adult Care Food Program (CACFP).

Abstract: The Economic Research Service has the responsibility to provide social and economic intelligence on consumer, food marketing, and rural issues, including: Food consumption determinants and trends; consumer demand for food quality, safety, and nutrition; food market competition and coordination; food security status of the poor; domestic food assistance programs; low-income assistance programs; and food safety regulation.

The Food and Nutrition Service (FNS) administers the nutrition assistance programs of the U.S. Department of Agriculture. FNS" Child and Adult Care Food Program (CACFP) provides cash reimbursements and commodity foods for meals served in child and adult care centers, and day care homes. Some 2.3 million children, of which about 988,000 were cared for in day care homes, participated in the program in June 1997. Generally, day care homes provide care in a licensed or approved private home for a small group of children. Day care homes must be administered by a sponsoring organization that ensures compliance with Federal and State regulations and prepares a monthly food reimbursement claim. The sponsoring organization also receives Federal reimbursement for administrative expenses, based on the number of homes it sponsors.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub.L. 104–193, Sec. 708) amended the CACFP's authorizing legislation, instituting, on July 1, 1997, a tiered reimbursement system that reimburses day care homes in low-income areas and those in other areas that are run by low-income providers (tier I) at a higher rate than day care homes in other areas that are run by higher income providers (tier II). Meals served to low-income children in tier II homes may be reimbursed at the tier I rate if the parents of those children apply to the sponsoring organization.

The data collection effort proposed here will obtain information necessary to complete the Study of Impact of Amendments on Program Participation and Family Day Care Licensing mandated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub.L. 104–193, Sec. 708 (l)).

A sample of day care home sponsoring organizations will be asked about the number of homes they sponsored before July 1, 1997, the number of homes by tier they sponsor at the time of the interview, and changes in their business operations or recruitment efforts related to the introduction of tiering. A sample of day care homes participating in CACFP will be asked about the number of children they care for, their tier status, and changes in their operations related to the tiering. Tier II homes in the sample will additionally be asked about the foods they serve and to obtain waivers from parents so that the portions of foods eaten by children they care for may be recorded. A sample of day care homes that dropped out of CACFP but continued to provide child care will be asked about the reasons they dropped out. They will also be asked about the foods they serve and to obtain waivers from parents so that the portions of foods eaten by children they care for may be recorded. A sample of parents whose children are cared for in tier I and tier II day care homes will be asked about their household characteristics on a voluntary basis.

Information gathered in these surveys is crucial to completing the Study of Impact of Amendments on Program Participation and Family Day Care Licensing mandated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub.L. 104–193, Sec. 708 (l)). The U.S. Department of Agriculture is required to report to Congress on changes in the numbers of participating day care homes, the nutritional adequacy and quality of meals served in tier II and "dropout" day care homes, and the income levels of children cared for in participating day care homes. Data collected in the surveys will provide the basis for that report.

ERS, working with Abt Associates, will conduct the surveys of CACFP day

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care home sponsoring organizations, participating day care homes, "dropout" day care homes, and parents of children cared for in participating day care homes. The sampling process is four staged. Twenty States have been selected for the survey as a nationally representative sample of CACFP. The CACFP-administering agencies in those States will be asked for lists of sponsors. A random sample of the sponsors will be drawn and surveyed. From lists of participating and "dropout" homes provided by the sampled sponsors, random samples of participating and "dropout" homes will be selected and surveyed. From lists of parents provided by the participating day care homes, a random sample of parents will be drawn and surveyed.

Survey data will be collected through mail surveys, Computer-Assisted Telephone Interviewing (CATI), and, when necessary, personal interviews. With each stage of the sampling process dependent upon the success of the previous stage, every effort will be made to make the process as simple and user friendly as possible. For example, parents will be able to choose between a phone interview or mail survey to answer the household questions. Responses are voluntary and confidential. Survey data will be used with other data for statistical purposes and reported only in aggregate or statistical form.

No existing data sources, including FNS administrative data, can provide the information needed to complete the Study of Impact of Amendments on Program Participation and Family Day Care Licensing mandated by Congress. These data and the research they will support are vital to the Department's ability to assess the impact of amendments to CACFP.

Estimate of Burden: Public reporting burden for this data collection is estimated to vary by the type of respondent. Responses by sponsors and tier I providers are estimated to average 30 minutes. Responses by tier II and "dropout" homes are estimated to average 3 hours, with those who prepare foods needing an additional hour to answer an additional set of questions. Responses by parents of children cared for in participating day care homes are estimated to average 17 minutes. The estimates include time for listening to instructions, gathering data needed, and responding to questionnaire items.

Respondents: Representatives of day care home sponsoring organizations, participating day care providers, "dropout" day care providers, and parents of children cared for in participating day care homes.

Estimated Number of Respondents: 400 sponsors, 580 tier I providers, 580 tier II providers of which 145 prepare their own foods, 580 "dropout" day care providers of which 145 prepare their own foods, and 1,536 parents of children cared for in participating day care homes.

Estimated Total Annual Burden on Respondents: 4,521 hours.

Copies of the information to be collected can be obtained from Linda Ghelfi, Food Assistance, Poverty, and Well-Being Branch, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M. St., NW, Room 2145, Washington, DC 20036–5801, 202–694–5351.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques. Comments may be sent to Linda Ghelfi, Food Assistance, Poverty, and Well-Being Branch, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M. St., NW, Room 2145, Washington, DC 20036–5831. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C.

Betsey Kuhn,

Director, Food and Rural Economics Division.

[FR Doc. 98–1085 Filed 1–15–98; 8:45 am]

BILLING CODE 3410–18–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 17, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Slacks, Woman's
8410–01–NSH–0001 thru –0048
(Requirements for the U.S. Coast Guard)
NPA: Vocational Guidance Services, Cleveland, Ohio

Services

Food Service, Naval Nuclear Power Training Command, Naval Weapons Station Charleston, Goose Creek, South Carolina
NPA: Goodwill Industries of Lower South Carolina, Inc., Charleston, South Carolina
Furnishings Management Service, Travis Air Force Base, California
NPA: Pacific Coast Community Services, Alameda, California

Janitorial/Custodial

U.S. Coast Guard Air Station, Sitka, Alaska
NPA: REACH, Inc., Juneau, Alaska
Naval Air Station Atlanta, Marietta, Georgia
NPA: Nobis Enterprises, Inc., Marietta, Georgia
Locator Operator, Department of Housing and Urban Development, Washington, DC
NPA: Fairfax Opportunities Unlimited, Inc., Alexandria, Virginia
Switchboard Operation, Veterans Affairs Medical Center, 5901 East Seventh Street, Long Beach, California
NPA: The Lighthouse of Houston, Houston, Texas

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–1140 Filed 1–15–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 17, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action will result in authorizing small entities to furnish the commodities and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Frame, Mattress, Wooden
37—½" x 74"
35—½" x 74"
37—½" x 79"
52—½" x 74"
59—½" x 79"
52—½" x 79"
35—½" x 79"
NPA: Wilkes County Vocational Workshop, Inc., North Wilkesboro, North Carolina

Service

Medical Transcription, Veterans Affairs Medical Center, Clarksburg, West Virginia
NPA: National Industries for the Blind, Alexandria, Virginia

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–1141 Filed 1–15–98; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 948]

Relocation/Expansion of Foreign-Trade Subzone 143A; C. Ceronix, Inc., Auburn, California

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Sacramento-Yolo Port District, grantee of Foreign-Trade Zone 143, requesting authority on behalf of C. Ceronix, Inc., to relocate subzone status (Subzone 143A) to a larger facility (21 acres) located in Auburn, California, was filed by the Board on April 21, 1997 (FTZ Docket 35–97, 62 FR 24393, 5/5/97);

Whereas, notice inviting public comment was given in **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to relocate/expand SZ 143A is approved, subject to the Act and the Board's regulations, including Section 400.28. The existing site of SZ 143A will retain FTZ status for a period of six months from the date of approval, subject to concurrence of the U.S. Customs Service Port Director.

Signed at Washington, DC, this 7th day of January 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce, for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–1163 Filed 1–15–98; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 84–97]

Foreign-Trade Zone 136—Brevard County, FL; Application for Foreign-Trade Subzone Status Harris Corporation—Electronic Systems Sector (Telecommunication/ Information Systems), Brevard County, FL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Canaveral Port Authority, grantee of FTZ 136, requesting special-purpose subzone status for the manufacturing facilities (telecommunication/information systems) of the Electronic Systems Sector (ESS) business unit of Harris Corporation, located at sites in Brevard County, Florida. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 22, 1997.

The Harris ESS facilities are located at four sites in Brevard County, Florida (388 acres, 1.9 million sq. ft.): *Site 1* (44 buildings/1.9 million square feet on 181 acres)—located at 2400 NE Palm Bay Road, Palm Bay; *Site 2* (4 buildings/ 315,000 sq. ft. on 50 acres)—located at 150 S. Wickham Road, Melbourne; *Site 3* (2 buildings/114,000 sq. ft. on 30 acres)—located at 505 N. John Rodes Blvd., West Melbourne; and *Site 4* (3 buildings/215 sq. ft. on 127 acres)—located at 2800 Jordan Boulevard, Malabar.

The facilities (6,200 employees) are used for the development and manufacture of telecommunication and information systems products and related software for defense, aerospace, transportation and energy management, meteorology and publishing. Applications include digital maps, cockpit controls and displays, antennas, land and satellite communications terminals and networks, satellite antenna testing, electronic warfare and evaluation systems, global positioning control systems, signal and imaging processing, weather support systems, civil and military air traffic control systems, integrated airport communication and management systems, and information processing systems for publishing. Some of the components used in the manufacturing process are purchased from abroad (an estimated 10–15% of finished product value), including power supplies, mobile data terminals, optical switch modules, transmission apparatus, printed circuits, connectors, optical instruments and appliances, testing equipment, audio-frequency electrical amplifiers, static connectors, electronic parts and equipment, and antennae reflectors (duty rates range from duty-free to 8.5%; weighted average—3.4%).

Zone procedures would exempt Harris from Customs duty payments on foreign components used in export production. On its domestic sales, Harris would be able to choose the lower duty rate that applies to the finished products (duty-free to 6.0%; weighted average—2.5%) for the foreign components noted above. FTZ procedures will also help Harris ESS to implement a more cost-effective system for handling Customs requirements (including reduced brokerage fees and Customs merchandise processing fees). FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 17, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 1, 1998. A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

U.S. Department of Commerce Export Assistance Center, 200 E. Robinson St., Suite 1270, Orlando, Florida 32801

Dated: December 23,1997.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–1161 Filed 1–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 1–98]

Foreign-Trade Zone 92, Harrison County, Mississippi Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Greater Gulfport/ Biloxi Foreign-Trade Zone, Inc., grantee of FTZ 92, based in Harrison County, Mississippi, requesting authority to expand its zone at sites in Jackson and Hancock Counties, Mississippi, within the Pascagoula and Gulfport Customs ports of entry. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 6, 1998.

FTZ 92 was approved on November 4, 1983 (Board Order 232, 48 FR 52107, 11/16/83) and expanded on August 17, 1992 (Board Order 595, 57 FR 39388, 8/ 31/97). The zone project currently consists of the following sites in Harrison County: *Site 1* (167 acres)—Port of Gulfport complex, Highway 90 and 30th Avenue, Gilbert; *Site 2* (717 acres)—industrial area within the Gulfport/Biloxi Regional Airport, Gulfport; *Site 3* (2,471 acres)—Bernard Bayou Industrial Park, 1 mile north of Gulfport, Harrison County; and, *Site 4* (484 acres)—Long Beach Industrial Park, 5 miles west of Gulfport between Espy Avenue and Beat Line Road, Long Beach.

The applicant, in a major revision to its zone plan, now requests authority to expand the general-purpose zone to include nine new sites (1,731 acres) in Jackson and Hancock Counties (Proposed Sites 5–13): *Site 5* (254 acres)—Trent C. Lott International Airport, 8301 Saracennia Road, Moss Point (Jackson County); *Site 6* (148 acres)—Greenwood Island, Bayou Casotte area of Pascagoula (Jackson County); *Site 7* (193 acres)—Port of Pascagoula (2 harbors)—West Harbor (112 acres), located on the Pascagoula River, and East Harbor (81 acres), located in the Bayou Casotte industrial area, Pascagoula (Jackson County); *Site 8* (283 acres)—John C. Stennis Industrial Park (formerly the Jackson County Airport), Highway 611/63, adjacent to the Bayou Casotte Harbor's deep water port facility, Pascagoula (Jackson County); *Site 9* (13 acres)—Heinz facility, east bank of the Pascagoula River, across from the Port of Pascagoula West Harbor, Pascagoula (Jackson County); *Site 10* (65 acres)—within the 300-acre Sunplex Industrial Park, Mississippi Highway 57 between Interstate 10 and US Highway 90, within one mile of the city limits of Ocean Springs (Jackson County); *Site 11* (621 acres)—within the 3,600-acre Port Bienville Industrial Park, mouth of the Pearl River, 2.7 miles south of U.S. Highway 90, Pearlington (Hancock County); *Site 12* (87 acres)—Mississippi Army Ammunition Plant (part of the 14,000-acre John C. Stennis Space Center), 4 miles north of Interstate 10, State Highway 607, Kiln, (Hancock County); and, *Site 13* (67 acres)—Stennis International Airport, Kiln (Hancock County). All of these sites are owned or controlled by either the Jackson County Port Authority or the Hancock County Port and Harbor Commission. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 17, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 1, 1998.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Gulf Regional Planning Commission, 1232 Pass Road, Gulfport, MS 39501

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: January 7, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–1162 Filed 1–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–820]

Ferrosilicon From Brazil: Notice of Partial Termination and Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to timely requests for administrative review, the Department of Commerce has conducted an administrative review of the antidumping duty order on ferrosilicon from Brazil. Because we determined that Companhia Brasileria Carbureto de Calcio had no shipment of the subject merchandise, we are terminating this review with regard to that firm. This notice of preliminary results covers one manufacturer/exporter, Companhia de Ferro Ligas da Bahia, for the period March 1, 1996, through February 28, 1997. The review indicates that there was no dumping margin during this period. If these preliminary results are adopted for purposes of the final results of our administrative review, we will instruct the Customs Service to assess antidumping duties of zero on entries during the period of review. Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the arguments (1) a statement of the issues, and (2) a brief summary of each argument.

EFFECTIVE DATE: January 16, 1998.

FOR FURTHER INFORMATION CONTACT: Wendy Frankel or Sal Tauhidi, AD/CVD Enforcement Group II, Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5849 or (202) 482–4851, respectively.

SUPPLEMENTAL INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the Department of Commerce's (the Department's) regulations are to the regulations as codified at 19 CFR Part 353 (1997). Where appropriate, we have cited the Department's new regulations, codified at 19 CFR Part 351 (62 FR 27296, May 19, 1997). While not binding on this review, the new regulations serve as a restatement of the Department's policies.

Background

On March 7, 1997 (62 FR 10521), the Department published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on Ferrosilicon from Brazil covering the period March 1, 1996, through February 28, 1997. In accordance with 19 CFR 353.22(a)(2), in March 1997, Companhia de Ferro Ligas da Bahia (Ferbasa), Companhia Brasileira Carbureto De Calcio (CBCC), and Companhia Ferroligas Minas Gerais (Minasligas) requested that the Department conduct an administrative review of their respective shipments of ferrosilicon to the United States during this period. On April 24, 1997, the Department published a notice of initiation of administrative review (62 FR 19988). The Department is now conducting this administrative review in accordance with section 751 of the Act.

On May 14, 1997, the Department issued an antidumping duty questionnaire to Ferbasa, CBCC, and Minasligas. On June 20, 1997, CBCC submitted a letter to the Department stating that it had no shipments or sales of the subject merchandise to the United States during the period of review (POR). On June 25, 1997, we requested the Customs Service (Customs) to confirm that CBCC had no shipments of the subject merchandise during the POR. On June 27, 1997, Customs did so. Therefore, because we determined that CBCC had no shipments of the subject merchandise during the POR, we are terminating this review with respect to CBCC. Further, on July 7, 1997, Minasligas requested that it be allowed to withdraw its request for review and that the review be terminated pursuant to 19 CFR 353.22(a)(5). On July 29, 1997, the Department published a partial termination notice of the administrative review on ferrosilicon from Brazil with respect to Minasligas. (*See Ferrosilicon From Brazil: Partial Termination of Antidumping Duty Administrative Review (62 FR 40501) (July 29, 1997).*)

Ferbasa submitted its response to the questionnaire on July 11, 1997. The Department issued supplemental questionnaires on August 13, 1997, and October 14, 1997. We received Ferbasa's

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responses to the supplemental questionnaires on September 2, 1997, and October 24, 1997, respectively. Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of a preliminary determination if it determines that it is not practicable to complete the review within the statutory time limit. On September 15, 1997, the Department published an extension of the time limits for the preliminary results. (*See Ferrosilicon from Brazil: Extension of Time Limits of Antidumping Duty Administrative Review,* (62 FR 48218).)

Verification

In accordance with section 782(i) of the Act, we verified the sales and cost questionnaire responses of Ferbasa from November 3, 1997 to November 11, 1997. We conducted verification of home market and U.S. sales information provided by Ferbasa using standard verification procedures, including on-site inspection of the company's sales and production facility, the examination of relevant sales and financial records, and original documentation containing relevant information.

Scope of Review

The merchandise subject to this review is ferrosilicon, a ferro alloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element. Ferrosilicon is a ferro alloy produced by combining silicon and iron through smelting in a submerged-arc furnace. Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages by weight of contained silicon and other minor elements. Ferrosilicon is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon. Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of this review. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon, and 28 to 32 percent calcium. Ferrocalcium silicon is a ferro alloy containing, by weight, not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferro alloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium. Ferrosilicon is currently classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this review is dispositive.

Ferrosilicon in the form of slag is included within the scope of this order if it meets, in general, the chemical content definition stated above and is capable of being used as ferrosilicon. Parties that believe their importations of ferrosilicon slag do not meet these definitions should contact the Department and request a scope determination.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Ferbasa, covered by the description in the "Scope of the Review" section, above, and sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to the U.S. sale. During the month of the U.S. sale, Ferbasa had home market sales of identical merchandise; therefore, pursuant to section 771(16) of the Act we used those sales for comparison purposes and made no adjustments for differences in merchandise.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine normal value (NV) based on sales in the comparison market at the same level of trade (LOT) as the export price (EP) or constructed export price (CEP) transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See Notice of Final Determination of Sales at Less Than Fair Value: *Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we obtained information from Ferbasa regarding the marketing stages involved in the reported home market and U.S. sales, including a description of the selling activities performed by Ferbasa for each channel of distribution. Pursuant to section 773(a)(1)(B)(i) of the Act and the SAA at 827, in identifying levels of trade for EP and home market sales we considered the selling functions reflected in the starting prices before any adjustments. Ferbasa made only one U.S. sale during the period of review, which was to an unaffiliated reseller in the U.S. market. It made sales to unaffiliated resellers and to steel producers in the home market. The selling functions for the U.S. sale and for all home market sales are almost identical. The selling functions include invoicing, order acknowledgment, order processing, quality control, marketing, and price negotiation. With regard to the U.S. sale, Ferbasa also incurred freight expenses for movement of the subject merchandise from the factory to the port of embarkation. This does not represent a significant difference in selling functions. Thus, based on our analysis of the selling functions performed by Ferbasa, we conclude that a single level of trade exists in each market and that home market sales and the U.S. sale were all made at the same level of trade. Therefore, we have not made a level of trade adjustment because the price comparison is at the same level of trade and an adjustment pursuant to section 773(a)(7)(A) of the Act is not appropriate.

Export Price

We calculated EP, in accordance with subsections 772(a) and (c) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price was not otherwise warranted based on the facts of record. We calculated EP based on the packed FOB prices to Ferbasa's unaffiliated customer in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions, where appropriate, for foreign inland freight from the plant to the port and for brokerage and handling, because these expenses were incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery. No other adjustments to EP were claimed or allowed.

Normal Value

Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Ferbasa's volume of home market sales of foreign like product to the volume of U.S. sales of the subject merchandise in accordance with section 773(a)(1)(C)(ii) of the Act. Since the aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for Ferbasa. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the prices at which the foreign like products were first sold for consumption in the exporting country. We calculated NV as noted in the "Price-to-Price Comparisons" section of this notice, below.

Cost of Production (COP) Analysis

Because we disregarded sales below the COP in the last completed segment of the proceeding for Ferbasa (*i.e., Ferrosilicon from Brazil; Final Results of Administrative Review* (61 FR 59407) (November 22, 1996)), we had reasonable grounds to believe or suspect that sales of the foreign product under consideration for the determination of NV in this review may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Ferbasa in the home market.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of Ferbasa's cost of materials and fabrication employed in producing the foreign like product, plus amounts for general and administrative expenses (G&A). We adjusted Ferbasa's reported costs to calculate the cost of manufacturing for the months corresponding to the company's sales reporting period. We further adjusted Ferbasa's reported net interest expense calculations to account for certain items of income or expense that were improperly excluded or included in the company's calculation.

2. Net Home Market Prices for Comparison to COP

We calculated net price by reducing the gross unit price by amounts for IPI and ICMS taxes, indirect selling expenses, home market packing expenses, direct selling expenses, and billing adjustments. We also made upward adjustments to the home market prices for interest revenue and packing revenue earned by Ferbasa. We adjusted Ferbasa's reported home market packing costs for errors found at verification.

3. Test of Home Market Prices

We used Ferbasa's weighted-average COP, as adjusted (see above), for the period September 1996, through February 1997. We compared the weighted-average COP figure to the net home-market sales prices (see above) of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices below the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices (which did not include value added taxes) (VAT) less any applicable movement charges, discounts, and rebates. Since the COP did not contain VAT, for purposes of our sales-below-cost analysis, we used home market prices which were exclusive of VAT.

4. Results of the COP Test

In accordance with section 773(b)(2)(C), where less than 20 percent of Ferbasa's sales of ferrosilicon were at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of Ferbasa's sales during the POR were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) of the Act, and not at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded such below-cost sales of Ferbasa.

Fair Value Comparisons

To determine whether sales of ferrosilicon by Ferbasa to the United States were made at less than fair value, we compared the EP to the NV, as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated a monthly weighted-average price for NV and compared this to the U.S. transaction.

Price to Price Comparisons

We based NV on the price at which the foreign like product was first sold for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade, and at the same level of trade as the export price, as defined by section 773(a)(1)(B)(i) of the Act. We increased NV by U.S. packing costs in accordance with section 773(a)(6)(A) and reduced it by home market packing costs and ICMS and IPI taxes in accordance with 773(a)(6)(B) (i) and (iii) of the Act. We adjusted Ferbasa's reported U.S. and home market packing costs to correct for errors found at verification. In addition, we increased NV for packing revenue and interest revenue earned by Ferbasa and decreased NV for billing adjustments reported by Ferbasa. We made a circumstance of sale adjustment for credit expenses under 773(a)(6)(C)(iii). Further, in accordance with 19 CFR 353.56(a)(2), we made an offset to NV for U.S. commissions. No other adjustments to NV were claimed or allowed.

Currency Conversion

We made currency conversions in accordance with section 773(A) of the Act. Currency conversions were made based on the rates certified by the Federal Reserve Bank. Section 773(A) directs the Department to use a daily exchange rate to convert foreign currencies into U.S. dollars unless the daily rate involves a "fluctuation." It is our practice to find that a fluctuation exists when the daily exchange rate differs from a benchmark rate by 2.25 percent. *See Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel*

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Pipe and Tube from Turkey (61 FR 35188, 35192) (July 5, 1996). The benchmark rate is defined as the rolling average of the rates for the past 40 business days.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the weighted-average dumping margin for Ferbasa is zero percent for the period March 1, 1996, through February 28, 1997.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties are invited to comment on the preliminary results. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) A statement of the issue and (2) a brief summary of the argument. All case briefs must be submitted within 30 days of the date of publication of this notice. Rebuttal briefs, which are limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments within 120 days from the publication of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For duty assessment purposes, because this review covers only one importer, we will divide the total dumping margin (calculated as the difference between NV and EP) by the total number of metric tons imported. We will direct Customs to assess the resulting per-metric ton dollar amount against each metric ton of subject merchandise entered by the importer during the POR. Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of ferrosilicon from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Ferbasa will be the rate established in the final results of this administrative review, except if the rate is less than 0.5 percent, *ad valorem* and, therefore, *de minimis* within the meaning of 19 CFR 353.6, the cash deposit rate will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less than fair value (LTFV) investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published in the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 35.95 percent, the "All Others" rate made effective by the antidumping duty order (59 FR 11769, March 14, 1994) and; (5) consistent with our practice in previous reviews of this order, for those companies that did not have shipments of the subject merchandise during the POR but which had previously been reviewed or investigated, their cash deposit rate will continue to be the company-specific rate published for the most recently reviewed period. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 12, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–1157 Filed 1–15–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–803]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Atlantic Salmon From Chile

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 16, 1998.

FOR FURTHER INFORMATION CONTACT: Gabriel Adler or Kris Campbell, Office of AD/CVD Enforcement 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1442 or (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations last codified at 19 CFR part 353 (April 1, 1997).

Preliminary Determination

We preliminarily determine that fresh Atlantic salmon from Chile is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins are shown in the *Suspension of Liquidation* section of this notice.

Case History

This investigation was initiated on July 2, 1997. *See Initiation of Antidumping Duty Investigation: Fresh Atlantic Salmon From Chile*, 62 FR 37027 (July 10, 1997) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred:

On July 12, 1997, the United States International Trade Commission (the ITC) preliminarily determined that there is a reasonable indication that imports of the product under investigation are materially injuring the United States industry.

On July 21, 1997, the Department invited interested parties to submit comments regarding selection of respondents and model matching. After considering those comments, on August 26, 1997, the Department selected the following companies as respondents in this investigation: Pesquera Mares Australes Ltda. (Mares Australes); Marine Harvest Chile (Marine Harvest); Aguas Claras S.A. (Aguas Claras); Pesquera Eicosal Ltda. (Eicosal); and Cia. Pesquera Camanchaca S.A. (Camanchaca) (collectively "respondents"). *See Selection of Respondents*, below. On the same date, the Department issued an antidumping questionnaire to the selected respondents.[1]

The respondents submitted their initial responses to that questionnaire in September and October of 1997. After analyzing these responses, we issued supplemental questionnaires to the respondents to clarify or correct the initial questionnaire responses.

On October 6, 1997, the Coalition for Fair Atlantic Salmon Trade (the petitioners) requested that the Department initiate a sales-below-cost investigation with respect to sales in Canada by Aguas Claras.[2] The petitioners' allegation was timely, and provided reasonable grounds to believe that Aguas Claras had made sales below cost in Canada. Therefore, in accordance with section 773(b) of the Act, on October 21, 1997, we initiated a sales-below-cost investigation with respect to Aguas Claras' sales to Canada. *See Cost of Production*, below.

On October 17, 1997, in accordance with section 773(a)(1) of the Act, the Department determined that a particular market situation existed in the home market that rendered sales in that market an inappropriate basis for comparison to U.S. sales. The Department requested that Eicosal and Mares Australes, the two respondents that had provided a response to Section B of our questionnaire based on home market sales, provide a revised response based on sales to Japan, the only viable third-country market for those two companies. Eicosal and Mares Australes complied with this request, but argued that to the extent that the Department considered that the home market presents a particular market situation, it should find that Japan also presents a particular market situation. *See Selection of Comparison Markets*, below.

On October 17, 1997, the petitioners filed a timely request for a 50-day postponement of the preliminary determination. Absent compelling reasons to deny this request, and in accordance with section 733(c)(1)(A) of the Act and section 353.15(c) of the Department's regulations, on October 23, 1997, the Department postponed the preliminary determination until not later than January 8, 1998. *See Notice of Postponement of Preliminary Antidumping Determination: Fresh Atlantic Salmon from Chile*, 62 FR 56151 (October 29, 1997).

Postponement of Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination, if in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise.

On December 18, 1997, the respondents in this investigation, who account for a significant proportion of exports of subject merchandise, made such a request. In their request for an extension of the deadline for the final determination, the respondents consented to the extension of provisional measures to no longer than six months. Since this preliminary determination is affirmative, and there is no compelling reason to deny the respondents' request, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register**.

Period of Investigation

The period of investigation (POI) is April 1, 1996, through March 31, 1997. This period corresponds to each respondent's four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, June 1996).

Scope of Investigation

The scope of this investigation covers fresh, farmed Atlantic salmon, whether imported "dressed" or cut. Atlantic salmon is the species Salmo salar, in the genus Salmo of the family salmoninae. "Dressed" Atlantic salmon refers to salmon that has been bled, gutted, and cleaned. Dressed Atlantic salmon may be imported with the head on or off; with the tail on or off; and with the gills in or out. All cuts of fresh Atlantic salmon are included in the scope of the investigation. Examples of cuts include, but are not limited to: crosswise cuts (steaks), lengthwise cuts (fillets), lengthwise cuts attached by skin (butterfly cuts), combinations of crosswise and lengthwise cuts (combination packages), and Atlantic salmon that is minced, shredded, or ground. Cuts may be subjected to various degrees of trimming, and imported with the skin on or off and with the "pin bones" in or out.

Excluded from the scope are (1) fresh Atlantic salmon that is "not farmed" (*i.e.*, wild Atlantic salmon); (2) live Atlantic salmon; and (3) Atlantic salmon that has been subject to further processing, such as frozen, canned, dried, and smoked Atlantic salmon, or processed into forms such as sausages, hot dogs, and burgers.

The merchandise subject to this investigation is classifiable as item numbers 0302.12.0003 and 0304.10.4093 of the Harmonized Tariff Schedule (HTS) of the United States. Although the HTS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Class or Kind

We have preliminarily determined that the products subject to this investigation comprise a single class or kind of merchandise. Our determination is based on an evaluation of the criteria set forth in *Diversified Products v. United States*, 572 F. Supp. 883, 889 (CIT 1983) (*Diversified Products*), which look to differences in: (1) The general physical characteristics of the merchandise, (2) the expectations of the ultimate purchaser, (3) the ultimate use of the merchandise, (4) the channels of trade in which the merchandise moves, and (5) cost. In making this determination, we have rejected a request by two of the respondents in this investigation, Mares Australes and Eicosal, that the Department determine that there are two separate classes or kinds of merchandise subject to investigation: (1) Fresh whole dressed Atlantic salmon, and (2) fresh Atlantic salmon meat. *See* letter from Arnold & Porter to Department of Commerce (November 3, 1997). In our analysis of the *Diversified Products* criteria, we found first, with respect to physical differences, that although certain differences between the two forms of the

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market. Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation.

[2] The petition had demonstrated reasonable grounds to believe that Chilean producers/exporters of the foreign like product had made sales below cost in Japan and Brazil, and the Department had initiated country-wide cost investigations with respect to these markets. However, the petition did not make an allegation of sales below cost with respect to Canada. *See Initiation Notice* at 37029.

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merchandise exist, these differences have not been shown to outweigh the similarities among the products. With respect to the expectations of the ultimate purchaser and the ultimate use of the merchandise, we found that both whole dressed salmon and salmon cuts are ultimately destined for human consumption. Moreover, even if we were to consider restaurants/supermarkets as the "ultimate purchaser," there is insufficient evidence to support the respondents' claim that whole salmon is sold to gourmet restaurants and fillets of salmon are sold to supermarkets and warehouse retailers. Finally, with respect to cost, we found while there is a cost difference involved in the additional cutting procedure required to make a fillet from a dressed fish, that difference alone is not significant enough to warrant a finding that there are two classes or kinds of merchandise. For a more detailed discussion of our preliminary determination with respect to the class or kind issue, *see* Memorandum from Gary Taverman to Richard W. Moreland, Fresh Atlantic Salmon from Chile: Issues Concerning the Preliminary Determination of Sales at Less Than Fair Value (January 8, 1998) (Preliminary Determination Memorandum).

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either: (1) A sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined.

After consideration of the complexities expected to arise in this proceeding (including issues of model matching, market viability, and cost of production), and the resources available to the Department, we determined that it was not practicable in this investigation to examine all known producers/exporters of subject merchandise. Instead, we found that given our resources we would be able to investigate the five producers/exporters with the greatest export volume, as identified above. These companies accounted for slightly less than 50 percent of all known exports of the subject merchandise during the POI. For a more detailed discussion of respondent selection in this investigation, *see* Memorandum from the Team to Richard W. Moreland, (August 26, 1997) (Respondent Selection Memorandum).

Product Comparisons

Pursuant to section 771(16) of the Act, all products produced by the respondents that fit the definition of the scope of the investigation and were sold in the comparison third-country markets during the POI fall within the definition of the foreign like product. We have relied on three criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: form, grade, and weight band. We have determined that it is generally not possible to match across forms, grades, or weight bands, because there are significant differences among products that cannot be accounted for by means of a difference-in-merchandise adjustment. (The exception to this general rule is that dressed salmon with gills in can be compared to dressed salmon with gills out, after making a difference-in-merchandise adjustment.) Therefore, we have compared U.S. sales to comparison market sales of identical merchandise, and have not compared U.S. sales to comparison market sales of similar merchandise. A detailed description of the matching criteria, as well as our matching methodology, is contained in the Preliminary Determination Memorandum.[3]

Fair Value Comparisons

To determine whether sales of fresh Atlantic salmon from Chile were made in the United States at less than fair value, we compared the export price (EP) or constructed export price (CEP) to the normal value (NV), as described in the *Export Price and Constructed Export Price* and *Normal Value* sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs.

[3] Certain respondents contend that, in the Japanese market, there is a distinction between premium and super-premium salmon. While we have accepted this claim for the preliminary determination, we intend to examine this issue thoroughly at verification.

Export Price and Constructed Export Price

In accordance with section 772 of the Act, we calculated either an EP or a CEP, depending on the nature of each sale. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the exporter or producer outside the United States to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation, by or for the account of the producer or exporter of the merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under sections 772 (c) and (d) of the Act.

Consistent with these definitions, we have found that Aguas Claras, Mares Australes, and Camanchaca made EP sales during the POI. These sales are properly classified as EP sales because they were made by the exporter or producer outside the United States to unaffiliated customers in the United States prior to the date of importation. We note that the Aguas Claras EP sales were indirect (*i.e.*, these sales were made through an affiliated U.S. reseller that facilitated the processing of sales documentation).

We also found that all the respondents made CEP sales during the POI. Marine Harvest and Aguas Claras made sales through an affiliated reseller in the United States after the date of importation. Mares Australes, Eicosal, and Camanchaca made sales classifiable as CEP sales because the sales were made for the account of the producer/exporter by an unaffiliated consignment agent in the United States after the date of importation.[4]

[4] On October 31, 1997, the petitioners alleged that respondents Mares Australes, Camanchaca, and Eicosal are affiliated with their U.S. consignment sellers because the nature of a consignment relationship is such that the consignment seller controls the exporter. We have not adopted that position for this preliminary determination. In recent cases involving consignment sales of agricultural products, we explicitly recognized that a consignment relationship does not per se establish affiliation between the producer and the consignment seller. *See, e.g., Certain Fresh Cut Flowers from Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53287, 53295 (October 14, 1997) (rejecting petitioners' contention that "any consignment sale implies affiliation between the exporter and the consignment importer"). Beyond the consignment nature of the relationship between the parties, the evidence on the record does not warrant a finding of affiliation. For a further discussion of this issue, see Preliminary Determination Memorandum.

In their original questionnaire responses, Mares Australes, Eicosal, and Camanchaca reported prices based on the aggregated revenues reported periodically by unaffiliated consignment sellers. Because it is the Department's preference to examine transaction-specific data wherever possible, we requested that these three respondents prepare a listing of all sales made by unaffiliated consignment sellers to their U.S. customers. *See* letters from Department of Commerce to Arnold & Porter (October 31, 1997) (regarding sales by Eicosal and Camanchaca), and (November 20, 1997) (regarding sales by Mares Australes). The respondents complied with this request, but argued that since this data is not normally in their possession, the Department should instead rely on prices calculated on the basis of the aggregated revenues reported by the unaffiliated consignment sellers. *See* letters from Arnold & Porter to Department of Commerce (November 18, 1997) (submitting sales data for Eicosal and Camanchaca), and (December 8, 1997) (submitting sales data for Mares Australes). Given the Department's preference for transaction-specific data, we have relied on that data for this preliminary determination.

For all respondents, we calculated EP and CEP, as appropriate, based on packed prices charged to the first unaffiliated customer in the United States. (Where sales were made through consignment sellers, we did not consider the consignment seller to be the customer; rather, the relevant customer was the consignment seller's customer.) We based the date of sale on the date of the invoice issued to the U.S. customer.

In accordance with section 772(c)(2) of the Act, we reduced the EP and CEP by movement expenses and export taxes and duties, where appropriate.

Section 772(d)(1) of the Act provides for additional adjustments to the CEP. Generally, where sales were made through an unaffiliated consignment seller for the account of the exporter, we deducted commissions from the CEP.[5] Where sales were made through an affiliated reseller, we deducted direct and indirect selling expenses that related to commercial activity in the United States.

Section 772(d)(3) of the Act requires that the CEP be adjusted for the profit allocated to the selling expenses of a producer/exporter's affiliated reseller. For Marine Harvest and Aguas Claras, which made sales through affiliated resellers, we calculated a CEP profit ratio following the methodology set forth in section 772(f) of the Act.

We made company-specific adjustments as follows:

Aguas Claras. We based EP and CEP on delivered or C&F prices to unaffiliated customers in the United States. For both EP and CEP sales, we made deductions from the starting price, where appropriate, for movement expenses including foreign inland freight from the plant to Santiago airport, international air freight/insurance, and U.S. brokerage and handling fees and port charges. We also made deductions for post sale price adjustments corresponding to quality claims.

In addition, for CEP sales, we made deductions for U.S. inland freight to the customer, imputed credit, direct advertising, export documentation fees, quality control/inspection fees, and U.S. repacking costs.

Camanchaca. We based EP on either delivered, CIF Miami airport, or delivered, C&F Los Angeles airport, prices to unaffiliated customers in the United States. We based CEP on either delivered to customer or delivered FOB warehouse prices to unaffiliated customers of the consignment seller. For both EP and CEP sales, we made deductions from the starting price, where appropriate, for movement expenses including foreign inland freight from plant to Santiago airport, international air freight, transportation insurance from plant to final destination, and customs export documentation fees.

In addition, for CEP sales, we made deductions for U.S. customs duties, handling and warehousing fees, U.S. inland freight from the consignee to customer, as well as imputed credit, direct advertising, and wire transfer fees.

Eicosal. We based CEP on either FOB Miami, or delivered prices to the unaffiliated consignment seller's customers in the United States. We made deductions from the starting price, where appropriate, for movement expenses including foreign inland freight from plant to Chilean port of exit, international air freight, Chilean brokerage and handling fees, and U.S. inland freight from warehouse to customer. We also deducted post-sale price adjustments, including quality claims and invoicing errors; imputed credit; direct advertising; quality control/inspection fees; expenses for maintaining bank accounts in the United States for sales of the subject merchandise; and expenses associated with gill tags. We made an upward adjustment to the starting price for duty drawback.

Mares Australes. We based EP and CEP on either ex-factory, C&F U.S. port, or FOB Santiago prices to unaffiliated customers in the United States. For both EP and CEP sales, we made deductions from the starting price, where appropriate, for movement expenses including foreign inland freight from plant to Santiago airport, international air freight, U.S. customs duty, U.S. brokerage and handling, and post sale price adjustments including quality claims and a consignment broker's surcharge.

In addition, for CEP sales, we made deductions for U.S. inland freight from the consignee to customer, as well as for imputed credit, direct advertising, Chilean customs export documentation fees, and quality control/inspection fees.

Marine Harvest. We based CEP on FOB U.S. port and delivered prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for movement expenses including foreign inland freight from plant to Santiago airport, international air freight, U.S. customs duty, U.S. brokerage and handling, and post sale price adjustments including quality claims and rebates. In addition, we deducted U.S. inland freight from the port to the affiliated reseller and from the affiliated reseller to customer, as well as indirect selling expenses incurred by the affiliated reseller, repacking costs, imputed credit, inventory carrying costs, advertising, Chilean customs fees, quality control/inspection fees, and Association membership fees.

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market (or third country market), provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the EP or CEP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate

[5] Consistent with our practice, we did not deduct from the CEP the expenses of the unaffiliated consignment seller, since such expenses are effectively covered by the commission charged by the consignment seller to the producer/exporter. *See, e.g., Certain Fresh Cut Flowers from Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53287, 53295 (October 14, 1997).

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quantity (or value) of sales of the subject merchandise to the United States.

In their responses to our antidumping questionnaires, Mares Australes and Eicosal claimed that NV should be based on home market sales because the home market was viable. Marine Harvest and Aguas Claras indicated that their respective home markets were not viable, and claimed that NV should instead be based on sales to Japan and Canada, respectively, the only viable third-country market for each of these companies. Camanchaca stated that it had no viable comparison market at all, and claimed that NV should be based on the constructed value.

In determining the appropriate comparison market for each respondent, we examined several issues, as discussed in detail in the Preliminary Determination Memorandum. First, we determined that Chile was not an appropriate comparison market for Mares Australes and Eicosal because a particular market situation existed in Chile. Our determination was based on record evidence indicating that this market involves almost exclusively "industrial" or "off-quality" grades sold directly from the factory depending on availability. Since the Chilean market is incidental to the respondents, it is not appropriate for comparison with the U.S. market, which is one of the respondents' primary marketing targets and which involves sales of primarily high-grade "premium" salmon made through distributors.

After rejecting the use of the home market for Mares Australes and Eicosal, we determined that Japan is the appropriate comparison market for Mares Australes, Eicosal, and Marine Harvest. In making this determination, we rejected a contention by Mares Australes and Eicosal that, by the logic of the Department's decision to reject the home market, the Department should also find that Japan presents a particular market situation. We determined that the Japanese market, unlike the home market, is not incidental to the respondents. Sales to that market involve export-quality merchandise which, while often different in grade from merchandise sold in the United States, is not so different as to render the Japanese market as a whole an unsuitable basis for NV. By contrast, as explained above, the merchandise sold in the home market involved a relatively small volume of merchandise that was not of export-quality. Further, we note that the Department's decision to reject the use of the home market was predicated in part on the manner in which the foreign like product is sold in that market. Sales in Chile are made directly from the respondents' processing facilities, with no guarantee of quality, on an "as available" basis. By contrast, sales to both the United States and Japan involve much more elaborate distribution systems, which are designed to ensure customer satisfaction. In view of these considerations, we determined that Japan could serve as a proper market on which to base NV.

We note that for Eicosal and Marine Harvest, we were unable to find any appropriate price-to-price comparisons based on sales to Japan for this preliminary determination. Accordingly, for these companies we compared all U.S. sales to constructed value (CV), *i.e.*, the cost of the merchandise sold in the United States as if it were sold in Japan. However, for Mares Australes we were able to make price-to-price comparisons for some U.S. sales.

For Aguas Claras, we determined that the appropriate comparison market is Canada. For this company, we were able to find appropriate price-based NV matches for some U.S. sales; for the others, we resorted to CV. Finally, we based NV for Camanchaca entirely on CV, as that company did not have a viable comparison market.

Adjustments made in deriving the NVs for each company are described in detail in *Calculation of Normal Value Based on Third-Country Prices and Calculation of Normal Value Based on Constructed Value*, below.

B. Cost of Production Analysis

We tested whether comparison market sales were made below cost for all respondents except Camanchaca, which did not have a viable comparison market. Although Eicosal and Marine Harvest did not have comparison market sales of comparable merchandise during the POI, we performed a cost analysis based upon the petitioners' timely cost allegation for purposes of determining the proper basis for calculation of profit for CV.

Based on an allegation contained in the petition, we found reasonable grounds to believe or suspect that sales of fresh Atlantic salmon made in Japan and Brazil were made at prices below the cost of production (COP). *See Initiation Notice*, 62 FR at 37029, and Memorandum from the Team to Richard Moreland, (July 1, 1997) (Initiation Checklist), at 10. In addition, based on a timely allegation filed by the petitioners on October 6, 1997, the Department found reasonable grounds to believe or suspect that sales made by Aguas Claras in Canada were made at prices below the COP. *See* Memorandum from the Team to Richard Moreland, Regarding Petitioners' Allegation of Sales Below the Cost of Production for Aguas Claras (October 21, 1997). As a result, the Department has conducted investigations to determine whether the respondents made sales in their respective third-country markets at prices below their respective COPs during the POI within the meaning of section 773(b) of the Act.

1. Calculation of COP. In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP for each form of fresh Atlantic salmon, based on the sum of the cost of materials, fabrication and general expenses, and packing costs. We relied on the COP data submitted by each respondent in its supplementary cost questionnaire response, except, as discussed below, in specific instances where the submitted costs were not appropriately quantified or valued.

Aguas Claras. We revised Aguas Claras' financial expenses to exclude an offset for accounts receivables and finished goods inventory.

Camanchaca. We revised Camanchaca's financial expenses to reflect the ratio of net financial expenses to cost of goods sold, consistent with our general practice in the calculation of financial expenses.

Eicosal. We recalculated Eicosal's net financial expense on the basis of the consolidated financial expenses of Eicosal's parent company, Sociedad Pesquera Eicosal S.A. We also recalculated Eicosal's general & administrative (G&A) expenses to exclude an affiliated company's G&A expenses.

Mares Australes. We revised Mares Australes' financial expenses to exclude an offset for accounts receivables and finished goods inventory. We also rejected Mares Australes' claim that the calculation of costs should not include the costs associated with a particular group of salmon that had reached sexual maturation prior to harvesting (*i.e.*, salmon that had reached a "grilse" stage), because we found that the respondent did not adequately support its claim that this is an unusual, isolated event. We relied on the average cost to produce *all* groups of salmon sold during the POI.

Marine Harvest. We increased the reported cost of eggs and feed purchased from affiliated parties to reflect the difference between transfer prices and market prices, since the transfer prices were below market prices.

2. Test of Third-Country Comparison Market Sales Prices. We compared the adjusted weighted-average COP for each respondent to the third-country comparison market sales of the foreign like product as required under section 773(b) of the Act (except for Camanchaca, which had no viable comparison market), in order to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities,[6] and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

On a product-specific basis, we compared the revised COP to the third-country comparison market prices, less any applicable movement charges, taxes, rebates, commissions and other direct and indirect selling expenses.

3. Results of the COP Test. After performing the COP test, we determined that Aguas Claras, Eicosal, Marine Harvest, and Mares Australes made third-country comparison market sales of certain products at prices below the COP, within an extended period of time in substantial quantities. Further, we found that the sales prices did not permit for the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis.

For Aguas Claras and Mares Australes, which had sales of comparable merchandise during the POI, we did not conduct price-to-price comparisons where all sales of a particular product were made at prices below the COP. Instead, we based NV on CV, and calculated profit for CV on the basis of third-country sales that did not fail the cost test. *See Calculation of Normal Value Based on Constructed Value*, below. For Marine Harvest and Eicosal, which had no sales of comparable merchandise in the third-country market that would permit price-to-price comparisons, the finding of sales below cost affected only the calculation of profit for CV, inasmuch as profit for these companies was based only on third-country sales that did not fail the cost test.

C. Calculation of Normal Value Based on Third-Country Prices

We performed price-to-price comparisons where there were sales of comparable merchandise in the third-country market that did not fail the cost test. Such comparisons were possible only for Aguas Claras and Mares Australes.

Aguas Claras. We calculated NV based on delivered or C&F prices, and made deductions from the starting price, where appropriate, for movement expenses including inland freight and insurance from the plant to the Chilean airport, international air freight and insurance, customs export documentation fee, and U.S. brokerage and handling fees. We also adjusted the starting price for quality claims. In addition, we made circumstance of sale (COS) adjustments for direct expenses, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act. These included imputed credit expenses and quality control/inspection fees. In accordance with section 773(a)(6)(A) and (B) of the Act, we deducted third country market packing costs and added U.S. packing costs.

As discussed in the *Level of Trade/CEP Offset* section of this notice below, we preliminarily determined that it was appropriate to make a CEP offset to NV.

Mares Australes. We calculated NV based on C&F Japanese port or FOB Santiago prices to unaffiliated customers and made deductions, where appropriate, from the starting price for inland freight from the plant to Santiago airport and international air freight. We adjusted for COS differences in imputed credit expenses, quality control/inspection fees, Chilean customs export document fees, repacking costs, and direct advertising expenses.

D. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. Accordingly, for those fresh Atlantic salmon products for which we could not determine the NV based on comparison market sales, either because (1) there were no sales of a comparable product (as was the case for Eicosal, Marine Harvest, and Camanchaca) or (2) all sales of the comparison product failed the COP test (as was the case for Aguas Claras and Mares Australes, with respect to certain products), we based NV on CV.

Section 773(e)(1) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (SG&A), profit, and U.S. packing costs. For each respondent, we calculated the cost of materials and fabrication based on the methodology described in the *Calculation of COP* section of this notice, above. Except for Camanchaca, for every respondent we based SG&A and profit on the actual amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act. Because there is no viable comparison market for Camanchaca, and hence no actual company-specific profit and SG&A data available for Camanchaca, we calculated profit and indirect selling expenses in accordance with section 773(e)(2)(B)(iii) of the Act and the SAA at 841. Specifically, the SAA at 841 provides that where, due to the absence of data, the Department cannot determine amounts for profit under alternatives (i) or (ii) of section 773(e)(2)(B) of the Act or a "profit cap" under alternative (iii) of section 773(e)(2)(B) of the Act, the Department may apply alternative (iii) on the basis of the facts available. In this case, we are unable to determine an amount for profit under alternatives (i) or (ii) or a profit cap under alternative (iii) because none of the respondents have viable home markets. *See* 19 CFR 405(b)(2) of the Department's revised regulations (clarifying that under section 773(e)(2)(B) of the Act, "foreign country" means the country in which the merchandise is produced), (62 FR 27296, 27412–13 (May 19, 1997)). As a result, we are applying alternative (iii) on the basis of the facts available consistent with the SAA. As facts available, we calculated Camanchaca's profit and indirect selling expenses based on the weighted-average actual profit and indirect selling expenses of the other respondents in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in their respective comparison markets.

In addition, for each respondent we used U.S. packing costs as described in the *Export Price and Constructed Export Price* section of this notice, above.

We made adjustments to CV for differences in COS in accordance with section 773(a)(8) of the Act and 19 CFR 353.56. For comparisons to EP, we made

[6] In accordance with section 773(b)(2)(C)(i) of the Act, we determined that sales made at below the COP were made in substantial quantities if the volume of such sales represented 20 percent or more of the volume of sales under consideration for the determination of normal value. We note that on December 18, 1997, the respondents submitted a letter arguing that fresh Atlantic salmon is a highly perishable product and that the Department should not use the 20-percent "substantial quantities" test, but instead apply the test set forth by section 773(b)(2)(C)(ii) of the Act (which compares the average sales price to the average unit cost for the period). Because the respondents did not raise their argument until shortly before the issuance of this preliminary determination, we have not had an adequate opportunity to consider it. We have therefore relied on the standard 20 percent test, which has been used in past investigations involving salmon. *See Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway* 56 FR 7661 (February 25, 1991). However, we intend to examine this issue further for the final determination of this investigation.

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COS adjustments by deducting direct selling expenses incurred on third-country market sales and adding U.S. direct selling expenses. For comparisons to CEP, we made COS adjustments by deducting direct selling expenses incurred on third-country market sales and adding U.S. direct selling expenses except those deducted from the starting price in calculating CEP pursuant to section 772(d) of the Act. We also made adjustments, where applicable, for indirect selling expenses incurred on third-country market sales to offset U.S. commissions in EP and CEP comparisons; specifically, we deducted from NV the lesser of (1) the amount of commission paid on a U.S. sale for a particular product, or (2) the amount of indirect selling expenses incurred on the third-country market sales for a particular product.

Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In implementing these principles in this investigation, we obtained information from each respondent about the marketing stage involved in the reported U.S. and third-country market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying levels of trade for EP and third-country market sales we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. We expect that, if claimed levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar.

For Mares Australes and Eicosal, we found one level of trade in Japan and one level of trade in the United States, between which there were no significant differences. Other than expenses related to movement, these companies performed few or no selling functions. Therefore, we preliminarily determine that these companies' Japanese levels of trade constitute neither more or less advanced stages of distribution than the levels of trade found in the United States at the levels of trade of the CEP. Accordingly, no adjustment for differences in levels of trade is warranted for either company.

For both Aguas Claras and Marine Harvest, we found that there is one level of trade for sales to Canada and Japan, respectively, and one level of trade for sales to the United States. As explained below, we also preliminarily determine that these companies' comparison market sales are made at a more advance level of trade than that of the CEP.

Aguas Claras makes all sales to Canada and all CEP sales to the United States through its affiliated consignee, Bowrain Corp. Information on the record indicates that Bowrain performs the same services with respect to both groups of sales, including identifying customers, arranging for handling and storage, and sales support to the final customer. As noted above, for CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. Thus, the level of trade of Aguas Claras' Canadian sales involves substantially more selling functions (those performed by Bowrain) than the level of trade of the CEP. We also note that the level of trade of Canadian sales differs from that of the CEP with respect to customer class: Canadian sales by Bowrain Corp. are to Canadian distributors, retailers, restaurants, and further processors; the customer at the CEP level of trade is Aguas Claras' reseller, Bowrain Corp. In light of these facts, we have determined that Aguas Claras' Canadian sales are made at a different, and more advanced, stage of marketing than the level of trade of the CEP. Aguas Claras also made indirect EP sales to the United States that are at a level of trade in the United States that is not substantially different from that of the level of trade of the CEP.

Similarly, Marine Harvest's comparison market sales are made at a more advanced stage of marketing than its CEP sales. Marine Harvest sells in Japan to a trading company that subsequently sells to processors and fishmongers through layers of wholesalers. The respondent maintains a sales office in Japan (Marine Harvest Japan) that coordinates with the trading company. Marine Harvest Japan sets prices and establishes order quantities with the trading company's primary wholesaler, coordinating the terms and conditions of the sale with the trading company. Marine Harvest Japan also assists in marketing salmon by accompanying the primary wholesaler on sales trips to secondary wholesalers and by working directly with the secondary wholesaler's customers. Further, Marine Harvest Japan provides after-sales service and quality claims. For CEP sales to its affiliated consignee in the United States, Marine Harvest performs few or no selling functions other than services related to movement of merchandise. Thus, Marine Harvest performs fewer selling functions for sales to the United States, at a different stage of marketing. We therefore preliminarily determine that Marine Harvest's sales to Japan are at a more advanced level of trade than the level of trade of the CEP.

Accordingly, for Aguas Claras and Marine Harvest, a level-of-trade adjustment is appropriate. However, neither company sells salmon or any other product at any other level of trade in their comparison markets than that of their fresh Atlantic salmon sales. Therefore, because the data available do not permit a determination that there is a pattern of consistent price differences between sales at different levels of trade in the comparison markets, section 773(a)(7)(B) of the Act permits a CEP offset to be made to NV. We granted such an offset equal to the amount of indirect expenses incurred in the comparison markets, but not exceeding the amount of the deductions made from the U.S. price in accordance with 772(d)(1)(D) of the Act. For Aguas Claras, we made no LOT adjustment for comparisons to EP.

Finally, with respect to Camanchaca, we did not perform a level-of-trade analysis because this company does not have a viable comparison market.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act. The Department's preferred source for daily exchange rates is the Federal Reserve Bank. The Federal Reserve Bank publishes daily exchange rates for Japanese yen, but not for Chilean pesos. For purposes of the preliminary results, we made conversions of figures denominated in Japanese yen based on the official exchange rates published by the Federal Reserve. For conversions of figures involving Chilean pesos, we relied instead on daily exchange rates published by Dow Jones News/Retrieval on-line system.

Verification

In accordance with section 782(i) of the Act, we intend to verify information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of fresh Atlantic salmon from Chile, except for subject merchandise produced and exported by Camanchaca, Mares Australes, and Marine Harvest (which have *de minimis* weighted-average margins), that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice. We note that, as stated in the *Case History* section of the notice above, we have extended the provisional measures from four months to no more than six months.

The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin percentage
Aguas Claras	3.31
Eicosal	8.27
Camanchaca	0.18
Mares Australes	1.21
Marine Harvest	1.87
All Others	5.79

Section 735(c)(5)(A) of the Act directs the Department to exclude all zero and *de minimis* weighted-average dumping margins, as well as dumping margins determined entirely under facts available under section 776 of the Act, from the calculation of the "all others" rate. We have excluded the *de minimis* dumping margins for Camanchaca, Mares Australes, and Marine Harvest from the calculation of the "all others" rate. No dumping margins were based entirely on facts available.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs must be submitted to the Assistant Secretary for Import Administration no later than April 13, 1998. Rebuttal briefs will be due no later than April 20, 1998. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made, the hearing will tentatively be held on Monday, April 28, 1998, at 8:30 A.M., at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within ten days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination no later than 135 days after the date of publication of this notice in the **Federal Register**.

This determination is published pursuant to section 733(f) of the Act.

Dated: January 8, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–1164 Filed 1–15–98; 8:45 am]

BILLING CODE 3510–DS–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Wednesday, January 21, 1998, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Bicycle Helmets

The staff will brief the Commission on options for a final safety standard for bicycle helmets.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: January 14, 1998.

Sadye E. Dunn,

Secretary.

[FR Doc. 98–1287 Filed 1–14–98; 2:49 pm]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Friday, January 23, 1998, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

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MATTER TO BE CONSIDERED:

Shopping Carts Petition CP 97–2

The staff will brief the Commission on Petition CP 97–2 submitted by Mr. John S. Morse requesting that the Commission develop a standard for shopping cart stability.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: January 14, 1998.

Sadye E. Dunn,

Secretary.

[FR Doc. 98–1288 Filed 1–14–98; 2:49 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Going to Space Panel Meeting in support of the HQ USAF Scientific Advisory Board will meet in Washington, DC on January 20–21, 1998, from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings for the 1998 USAF Scientific Advisory Board Summer Study on Going to Space.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98–1156 Filed 1–15–98; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by January 16, 1998. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before March 17, 1998.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506(c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 13, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: European Community(EU)/United States of America (US) Joint Consortia for Cooperation in Higher Education and Vocational Education.

Abstract: The EC/US Joint Consortia for Cooperation in a program that will support new types of cooperation and the exchanges between institutions of Higher Education in the U.S. and counterparts in the member states of the European Community.

Additional Information: This program's European translators need this clearance immediately in order to convert the information into eleven languages and clear the necessary governmental processes throughout Europe. This program must run simultaneously there and in America.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs

Reporting and Recordkeeping Hour Burden: Responses: 80; Burden Hours: 2,400.

[FR Doc. 98–1116 Filed 1–15–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Advisory Council on Education Statistics, Policy Committee

AGENCY: National Center on Education Statistics, Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Policy Committee of the Advisory Council on Education Statistics (ACES). Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES: January 28, 1998.

TIMES: 9:00 a.m.-5:00 p.m., (closed).

LOCATION: 555 New Jersey Avenue, NW, Board Room #100, Washington DC.

FOR FURTHER INFORMATION CONTACT: Barbara Marenus, National Center on Education Statistics, 555 New Jersey Ave., NW, Room 400j, Washington, DC 20208–5530 (202) 219–1835.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics (ACES) is established under Section 406(c)(1) of the Education Amendments of 1974, Pub. L. 93–380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) in the Office of Educational Research and Improvement and is responsible for advising on standards to insure that statistics and analyses disseminated by NCES are of high quality and are not subject to political influence. In addition; ACES is required to advise the Commissioner of NCES and the National Assessment Governing Board on technical and statistical matters related to the National Assessment of Education Progress (NAEP).

The proposed agenda for the Policy Committee's meeting includes the following:

- Review and discussion of cost estimates for planned procurements in the bear 2000. Because the discussion will include information on cost estimates on future procurements, this session must be closed to the public. The public disclosure of this information would be likely to significantly frustrate the implementation of planned agency action if conducted in open session. Such matters are protected by exemption (9)(B) of section 552(c) of title 5 U.S.C.

A summary of the activities and related matters, which are informative to the public and consistent with the policy of 5 U.S.C. 552b, will be available to the public within 14 days after the meetings. Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, NW, Room 400J, Washington, DC 20208–7575.

Ricky Takai,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 98–1153 Filed 1–15–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Department of Energy, Los Alamos National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos National Laboratory.

DATES: Saturday, January 24, 1998: 9:00 a.m.–12:00 p.m. 10:30 a.m. to 11:00 a.m. (public comment session).

ADDRESSES: San Ildefonso Pueblo, Tewa Center, State Route 4.

FOR FURTHER INFORMATION CONTACT: Ms. Ann DuBois, Los Alamos National Laboratory Citizens' Advisory Board, 528 35th Street, Los Alamos, NM 87544, (505) 665–5048.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

9:00 a.m.
Call to Order
Adoption of Bylaws
Election of Officers
9:30 a.m. Old Business
10:00 a.m. New Business
10:30 a.m. Public Comment Session
12:00 p.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ms. Ann DuBois, at (505) 665–5048. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Joe Vozella, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185–5400.

Issued at Washington, DC on January 12, 1998.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–1125 Filed 1–15–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board—Task Force on Education.

Dates and Times: Monday, February 2, 1998, 9:00 a.m.–4:00 p.m.

Addresses: Madison Hotel, Dolley Madison Ballroom, 15th & M Streets, NW., Washington, DC.

For Further Information Contact: Bruce Bornfleth, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4040 or (202) 586–6279 (fax).

Supplementary Information: The purpose of the Task Force on Education is to provide information and recommendations to the Secretary of Energy Advisory Board on ways to make the Department's scientific, technical and supercomputing capabilities more available to our Nation's schools, colleges and universities, and to provide recommendations on how the Department can best enhance science, technology, engineering and mathematics education in the United States. The Task Force on Education will prepare a report for submission to the Secretary of Energy Advisory Board.

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Tentative Agenda: Monday, February 2, 1998.

9–9:45 a.m. Welcome and Opening Remarks—Dr. Hanna Gray, Task Force Chairman and Secretary Fedrico Peña
9:45–10:00 a.m. Report on DOE's Initiatives
10:00–10:15 a.m. Break
10:15–12:00 a.m. Panel I: Discussion of DOE's Historical and Ongoing Education Activities
12:00–1:00 p.m. Lunch
1:00–2:30 p.m. Panel II: Overview of Federal Activities in Math/Science Education
2:30–3:30 p.m. Discussion of Task Force Action Plan
3:30–4:00 p.m. Public Comment Period

This tentative agenda is subject to change. The final agenda will be available at the meeting.

Public Participation: The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, DC, the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Minutes: Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday except Federal holidays. Information on the Task Force on Education and future reports may be found at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on January 13, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–1124 Filed 1–15–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–170–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

January 12, 1998.

Take notice that on January 5, 1998, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, NY 14203, filed in Docket No. CP98–170–000 a request pursuant to sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to install and operate a new sales tap, located in Mercer County, Pennsylvania, to render service to a new residential customer of National Fuel Gas Distribution Corporation (Distribution) under National's blanket certificate issued in Docket No. CP83–4–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

National proposes to construct and operate a new residential sales tap on its Line S, located in Mercer County, Pennsylvania, for delivery of approximately 150 Mcf annually of gas to Distribution, an existing firm transportation customer. National states the proposed sales tap is estimated to cost $1,500, for which National will be reimbursed by Distribution.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1089 Filed 1–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1927–008]

PacifiCorp; Notice of Meeting

January 12, 1998.

A meeting will be convened by staff of the Office of Hydropower Licensing on February 4, 1998, at 10:00 a.m. at the Kingstad Meeting Center, Suite A, located at 850 SW Broadway, Portland, OR. The purpose of this meeting is to discuss PacifiCorp's October 10, 1997, additional information filing on the relicense application for the North Umpqua Project. The meeting will primarily focus on PacifiCorp's response to staff's information request on soil erosion and slope stability at the project's canals and flumes, and alternatives for obtaining the information needed. However, other issues will be discussed as time permits.

Any person wishing to attend or needing additional information should contact Vince Yearick at (202) 219–3073 or e-mail at vince.yearick@ferc.fed. us. Please notify Mr. Yearick by January 28, if you plan to atttend.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1090 Filed 1–15–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5950–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Exports From and Imports to the United States Under the OECD Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: "Exports From and Imports To the United States Under the OECD Decision," EPA ICR Number 1647.02, OMB Control Number 2050–0143, which expires on January 31, 1998. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 17, 1998.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No.1647.02.

SUPPLEMENTARY INFORMATION:

Title: Exports from and imports to the United States under the OECD Decision OMB Control Number 2050–0143; EPA ICR No. 1647.02 expiring 1/31/98. This is a request for extension of a currently approved collection.

Abstract: Authority to promulgate this rule is found in sections 2002(a) and 3017(a)(2) and (f) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and as amended by the Hazardous and Solid Waste Amendments, 42 U.S.C. 6901 *et seq.* The OECD Decision is considered legally binding on the United States under Articles 5(a) and 6(2) of the OECD Convention, 12 U.S.T. 1728. In addition, the OECD Decision and the rule implementing the OECD Decision (61 FR 16290–16316, April 12, 1996) ensure that exports and imports of recoverable hazardous waste between the U.S. and OECD member countries may proceed even though the U.S. is not yet a "Party" to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. The Office of Enforcement and Compliance Assurance, U.S. EPA, uses the information provided by each U.S. exporter and U.S. importer to determine compliance with the applicable OECD regulatory provisions. In addition, the information will be used to determine the number, origin, destination, and type of exports from and imports to the U.S. for tracking purposes and for reporting to the OECD. This information also will be used to assess the efficiency of the program.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 8/26/97 (62 FR 45248); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 8.74 hours for the U.S. exporter and 5.83 hours for the U.S. importer. These estimates include all aspects of the information collection including the time necessary to obtain and read the regulations and assess applicability, to complete a notification of intent to export hazardous waste, to complete the tracking document, sign and transmit copies of the tracking document, as well as the reduced response time (3 working days as compared to 30 days) to transmit a signed copy of a tracking document. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Estimated Number of Notification of Intent to Export: 437.

Estimated Number of Notification of Intent to Import: 771.

Estimated Total Annual Burden for Respondents: 8,314 hours.

Frequency of Response: On occasion.

Estimated Total Annualized Cost Burden: $391,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No.1647.02 and OMB Control No. 2050–0143 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460, or Email:
farmer.sandy@epamail.epa.gov;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: January 12, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–1134 Filed 1–15–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5950–5]

Pesticides; OMB Review of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the Information Collection Request (ICR) entitled: Asbestos-Containing Materials in Schools Rule and Asbestos Model Accreditation Plan Rule [EPA ICR No. 1365.05; OMB Control No. 2070–0091] has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden.

The Agency is requesting that OMB renew for 3 years the existing approval for this ICR, which is scheduled to expire on March 31, 1998. A **Federal Register** document announcing the Agency's intent to seek the renewal of this ICR and the 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on October 3, 1997 (62 FR 51853). EPA did not receive any comments on this ICR during the comment period.

DATES: Additional comments may be submitted on or before February 17, 1998.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone on (202) 260–2740, by e-mail: "farmer.sandy@epamail.epa.gov," or download off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 1365.05.

ADDRESSES: Send comments, referencing EPA ICR No. 1365.05 and OMB Control No. 2070–0091, to the following addresses:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Regulatory Information Division (Mailcode: 2137), 401 M Street, SW., Washington, DC 20460.
And to:
Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA 725 17th Street, NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR No. 1365.05; OMB Control No. 2070–0091.

Current Expiration Date: Current OMB approval expires on March 31, 1998.

Title: Asbestos-Containing Materials in Schools Rule

Abstract: The Asbestos Hazard Emergency Response Act (AHERA) requires local education agencies (LEAs) to conduct inspections, develop

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management plans, and design or conduct response actions with respect to the presence of asbestos-containing materials in school buildings. AHERA also requires states to develop model accreditation plans for persons who perform asbestos inspections, develop management control plans, and design or conduct response actions. This information collection addresses the burden associated with recordkeeping requirements imposed on LEAs by the asbestos in schools rule, and reporting and recordkeeping requirements imposed on states and training providers related to the model accreditation plan rule.

Responses to the collection of information are mandatory (see 40 CFR part 763, subpart E).

Burden Statement: The annual public reporting burden for this collection of information is estimated to range between 6 hours and 140 hours per response, depending upon the category of respondent, for an estimated 107,551 respondents making one or more submissions of information annually. These estimates include the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these regulations are displayed in 40 CFR part 9.

Respondents/Affected Entities: Entities potentially affected by this action are local education agencies and states with recordkeeping and/or reporting responsibilities under the Asbestos-Containing Materials in Schools rule, and training providers and states with recordkeeping and/or reporting responsibilities under the Model Accreditation Plan rule.

Estimated No. of Respondents: 107,551.

Estimated Total Annual Burden on Respondents: 2,367,293 hours.

Frequency of Collection: On occasion.

Changes in Burden Estimates: There is a decrease of 19,857 hours in the total estimated respondent burden as compared with that identified in the information collection request most recently approved by OMB, from 2,387,150 hours currently to an estimated 2,367,293 hours. Most of this decrease reflects the completion of startup costs associated with the Model Accreditation Plan. A smaller portion of the decrease is due to the reduction in the number of training providers and changes in the numbers of school buildings containing friable asbestos.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this document, as described above.

Dated: January 12, 1998

Joseph Retzer,

Director, egulatory Information Division.

[FR Doc. 98–1136 Filed 1–15–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5487–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed January 05, 1998 Through January 09, 1998 Pursuant to 40 CFR 1506.9.

EIS No. 980000, Draft EIS, COE, MN, WI, Duluth-Superior Harbor Phase II, Dredge Material Management Plan, Cities of Duluth, St. Louis County, MN and Douglas County, WI, Due: March 02, 1998, Contact: Terry A. Long (313) 226–6758.

EIS No. 980001, Draft EIS, BLM, AK, Northern Intertie Project, Construction of 230 kV Transmission Line from Healy to Fairbanks, AK, Application for Right-of-Way Grant, Gold Valley Electric Association, AK, Due: March 05, 1998, Contact: Gary Foreman 1 (800) 437–7021.

EIS No. 980002, FINAL EIS, FHW, AK, Kenai River Bridge Crossing Project, Construction from Sterling Highway to Funny River Road, Funding, COE Section 10 and 404 Permits, US CGD Permit and EPA NPDES Permit, Kenai Peninsula, AK, Due: March 03, 1998, Contact: Jim Bryson (907) 586–7428.

EIS No. 980003, Draft EIS, UMC, CA, Tustin Marine Corps Air Station (MCAS) Disposal and Reuse, Implementation, Orange County, CA, Due: March 02, 1998, Contact: Cpt. George Opria (714) 726–5565.

EIS No. 980004, Draft EIS, AFS, AK, Canal-Hoya Timber Sale, Implementation, Stikine Area, Tongass National Forest, Value Comparison Unit (VCU), AK, Due: March 02, 1998, Contact: Scott Posner (907) 874–2323.

EIS No. 980005, DRAFT EIS, NPS, OR, Oregon Caves National Monument, General Management Plan, Development Concept Plan, Josephine County, OR, Due: March 13, 1998, Contact: Craig Ackerman (541) 592–2100.

Amended Notices

EIS No. 970489, DRAFT EIS, DOE, KY, TN, OH, TN, Programmatic EIS—Alternative Strategies for the Long-Term Management and Use of Depleted Uranium Hexafluoride, Paducah Site, McCracken County, KY; Portsmouth Site, Pike County, OH; and K–25 Site on the Oak Ridge Reservation, Anderson and Roane Counties, TN, Due: April 23, 1998, Contact: Charles E. Bradley (301) 903–4781. Published FR—12–24–97—Due Date Correction.

EIS No. 970497, FINAL EIS, URC, UT, Provo River Restoration Project (PRRP), Riverine Habitat Restoration, Reconstruction and Realignment of the existing Provo River Channel and Floodplain System between Jordanell Dam and Deer River Reservoir, Wasatch County, UT, Due: February 06, 1998, Contact: Mark A. Holden (801) 524–3146. Published FR—1–2–98—Due Date Correction.

Dated: January 13, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–1159 Filed 1–15–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5486–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 29, 1997 Through January 02, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 1997 (62 FR 16154).

Draft EISs

ERP No. D–FHW–C40141–NY Rating EC2, Judd Road Connector Transportation Improvements, Funding and COE Section 404 Permit, Village of New York Mills, Towns of New Hartford and Whitestown, Oneida County, NY.

Summary: EPA expressed environmental concerns about impacts to wetlands and recommended the Southern alignment and the single point interchange be chosen.

ERP No. D–FHW–G40146–NM Rating LO, New Mexico Highway 126 (NM–126), Cuba-La Cueva Road (also Known as Forest Highway 12) Improvement, COE Section 404 Permit and NPDES Permit, Sandoval and Rio Arriba Counties, NM.

Summary: EPA had no objection to the selection of the lead agency's preferred alternative as described in the DEIS.

ERP No. D–GSA–J81009–CO Rating EC2, Denver Federal Center Master Site Plan, Implementation, City of Lakewood, Jefferson County, CO.

Summary: EPA expressed environmental concerns regarding potential water quality and wetland impacts. EPA requested that these issues be fully addressed in the final EIS. EPA also requested that clarification on how future development relate to the on going clean-up under RCRA and CERCLA.

ERP No. DS–COE–G32054–00 Rating LO, Red River Waterway, Louisiana, Texas, Arkansas and Oklahoma and Related Projects, New and Updated Information, Red River Below Denison Dam Levee Rehabilition, Implementation, Hempstead, Lafayette and Miller Counties, AR.

Summary: EPA expressed no objection to the selection of the mitigation measures as described in the EIS based on the Corp's preferred alternative.

ERP No. DS–USA–E65040–MS Rating EC2, Camp Shelby Continued Military Training Activities, Use of National Forest Lands, Updated Information, Final Site Selection Authorization for Implementation of the Proposed G.V. (Sonny) Montgomery Ranges, Special Use Permit, DeSoto National Forest, Forrest, George and Perry Counties, MS.

Summary: EPA expressed environmental concerns regarding potential wetland, wildlife habitate loss/modification and noise impacts. EPA requested that additional information on these issues be provided in the final document.

ERP No. D1–FAA–C51020–NY Rating EC2, Terminal Doppler Weather Radar (TDWR) Installation and Operation, Serve the John F. Kennedy International Airports (JFK) and La Guardia (LFA), Site Specific, Air Station Brooklyn, Borough of Queens, King County, NY.

Summary: EPA expressed environmental concerns regarding potential hazardous waste and carbon monoxide air quality impacts. EPA requested that FAA commit to comprehensively characterize any contamination prior to implementation and do carbon monoxide hot spot analysis.

Final EISs

ERP No. F–DOE–E09802–SC, Savannah River Site, Shutdown of the River Water System (DOE/EIS–0268D), Implementation, Aiken, SC.

Summary: EPA continues to express concerns about the project's ecological risks and impacts on endangered species. EPA encourages completion of consultations with the Natural Resources Trustees before issuing any CERCLA Record of Decision on the River Water Distribution System.

ERP No. F–FHW–C40138–NY, NY–17 Highway Conversion from a Partial to a Full Access Control Facility, Five-Mile Point to Occanum and NY–17 Rehabilitation or Reconstruction, Funding and COE Section 404 Permit Issuance, Towns of Kirkwood and Windsor, Broome County, NY.

Summary: EPA's concerns were addressed in the final EIS and has no objections to implementing the project as proposed.

ERP No. F–TVA–E06017–AL, Bellefonte Nuclear Plant Conversion Project, Construction and Operation, NPDES Permit and COE Section 404 Permit, Tennessee River near Hollywood, AL.

Summary: EPA expressed environmental concerns primarily involve the EIS connected issue of impacts associated with the construction of a natural gas pipeline (separate NEPA issue and federal lead agency) logically needed to adequately supply the proposed conversion of Bellefonte to natural gas. Proposed coordination with local residents was also recommended.

Regulations

ERP No. R–ACH–A99216–00, 36 CFR part 800—Revised Regulation Implementing Section 106 of the National Historic Preservation Administration.

Summary: EPA's primary issue is the definition of "undertaking" EPA would like to resolve interpretation of this definition before the regulations are adopted as final.

Dated: January 13, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–1160 Filed 1–15–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5950–6]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Call Sandy Farmer at (202) 260–2740, or E-mail at "farmer.sandy@epamail.epa.gov," and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1503.03; Data Acquisition for Registration; was approved 12/04/97; OMB No. 2070–0122; expires 12/31/2000.

EPA ICR No. 1250.05; Request for Contractor Access to TSCA Confidential Business Information; was approved 12/05/97; OMB No. 2070–0075; expires 12/31/2000.

EPA ICR No. 1666.03; NESHAP Subpart O: National Emission Standards for Hazardous Air Pollutants (NESHAP) for Commercial Ethylene Oxide Sterilization and Fumigation Operations; was approved 12/05/97; OMB No. 2060–0283; expires 12/31/2000.

EPA ICR No. 1678.03; National Emission Standards for Magnetic Tape Manufacturing Operations—Subpart EE; was approved 12/05/97; OMB No. 2060–0326; expires 12/31/2000.

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EPA ICR No. 0586.08; Preliminary Assessment Information Rule (PAIR)—TSCA Section 8(a); was approved 12/09/97; OMB No. 2070–0054; expires 12/31/2000.

EPA ICR No. 1611.03; National Emission Standards for Hazardous Air Pollutants (NESHAP) for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; was approved 12/09/97; OMB No. 2060–0327; expires 12/31/2000.

EPA ICR No. 1287.05; Questionnaires for Reviewing Operations and Maintenance (O&M), Biosolids Use (Biosolids), Combined Sewer Overflow (CSO), and Storm Water (SW) Awards Nominees under the NWMEAP; was approved 12/17/97; OMB No. 2040–0101; expires 12/31/2000.

EPA ICR No. 1805.01; National Emissions Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills (Proposed Rule); was approved 12/22/97; OMB No. 2060–0377; expires 12/31/2000.

EPA ICR No. 1767.02; Reporting and Recordkeeping Requirements for Primary Aluminum Reduction Plants; was approved 12/19/97; OMB No. 2060–0374; expires 12/31/2000.

EPA ICR No. 1591.08; Regulation of Fuels and Fuel Additives: Baseline Requirements for Gasoline Produced by Foreign Refiners; was approved 12/23/97; OMB No. 2060–0277; expires 12/31/2000.

Change in Expiration Date

EPA ICR No. 1778.01; Authorization of Indian Tribe Hazardous Waste Program; OMB No. 2050–0155; expiration date was changed from 08/31/99 to 11/30/97.

OMB Disapproval

EPA ICR 1811.01; National Emission Standards for Hazardous Air Pollutant for Polyester Polyols Production; was disapproved by OMB 12/10/97.

Dated: January 12, 1998.

Joseph Retzer,

Division Director, Regulatory Information Division.

[FR Doc. 98–1135 Filed 1–15–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5950–8]

Notice of Proposed Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; Request for Public Comment.

SUMMARY: In accordance with section 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9622, notification is hereby given that a proposed purchaser agreement associated with the Grant Chemical Superfund Site in Philadelphia, PA, was executed by the Agency on September 30, 1997, and is subject to final approval by the Department of Justice. The Purchaser Agreement would resolve certain potential EPA claims under section 107 of CERCLA, 42 U.S.C. 9607, against National Street Associates, Inc., a Pennsylvania Corporation ("the Purchasers"). The settlement would require the purchaser to pay a principal payment of $15,500 to the Hazardous Substance Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107.

DATES: Comments must be submitted on or before February 17, 1998.

AVAILABILITY: The proposed agreement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107. A copy of the proposed agreement may be obtained from Suzanne Canning, U.S. Environmental Protection Agency, Regional Docket Clerk (3RC00), 841 Chestnut Street, Philadelphia, PA 19107. Comments should be forwarded to Suzanne Canning at the address above.

FOR FURTHER INFORMATION CONTACT: Rodney T. Carter (3RC21), Senior Assistant Regional counsel, U.S. Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107; (215) 566–2478.

Thomas Voltaggio,

Regional Administrator, Region III.

[FR Doc. 98–1132 Filed 1–15–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5949–3]

Lorentz Barrel and Drum Superfund Site; Notice of Proposed Administrative Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA," commonly referred to as Superfund), 42 U.S.C., 9622(i) and section 7003(d) of the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. 6973, notification is hereby given of a proposed cost recovery administrative settlement concerning the *Lorentz* Barrel and Drum Superfund Site in San Jose, CA (the "Site"). The United States Environmental Protection Agency ("EPA") is proposing to enter into a *de minimis* settlement pursuant to section 122(g)(4) of CERCLA. This proposed settlement is intended to resolve the liabilities under CERCLA and RCRA of 42 *de minimis* parties for all past and future response costs associated with the *Lorentz* Barrel and Drum Site. The names of the settling parties are listed below in the Supplementary Information section. These 42 parties collectively have agreed to pay $1,042,296.53 to EPA and $490,492.51 to the California Department of Toxic Substances Control ("DTSC").

EPA is entering into this agreement under the authority of section 122(g)(4) of CERCLA. Section 122(g) authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund sites without incurring substantial transaction costs. A *de minimis* party is one that contributed a minimal amount of hazardous substances at a site, and contributed hazardous substances that are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at a site. Under the authority granted by Section 122(g), EPA proposes to settle with 42 potentially responsible parties at the *Lorentz* Barrel and Drum Superfund Site, each of whom is responsible for no more than one percent of the total hazardous substances sent to the Site, as that total is reflected on the July 29 waste-in list developed by EPA.

De minimis settling parties will be required to pay their allocated share of all past response costs and the estimated future response costs at the *Lorentz* Barrel and Drum Site, including all federal and state response costs, and a premium to cover the risks of remedy failure and cost overruns.

EPA may withdraw or withhold its consent to this settlement if comments received during the 30-day public comment period disclose facts of considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

DATES: Pursuant to section 122(i)(1) of CERCLA and section 7003(d) of RCRA, EPA will receive written comments relating to this proposed settlement on or before February 17, 1998. If EPA receives a request for a public meeting on or before February 17, 1998, pursuant to section 7003(d) of RCRA, EPA will hold a public meeting.

ADDRESSES: Comments and requests for a public meeting should be addressed to the Docket Clerk, U.S. EPA Region IX (RC–1), 75 Hawthorne Street, San Francisco, CA 94105 and should refer to: *Lorentz* Barrel and Drum Superfund Site, San Jose, CA, U.S. EPA Docket No. 97–10. A copy of the proposed Administrative Order on Consent may be obtained from the Regional Hearing Clerk at the address provided above. EPA's response to any comments received will be available for inspection from the Regional Hearing Clerk; at the Dr. Martin Luther King, Jr. Public Library, Reference Desk, 180W. San Carlos Street, San Jose, CA 95113; and at San Jose State University, Clark Library, Government Publications Desk, One Washington Square, San Jose, CA 95192.

FOR FURTHER INFORMATION CONTACT: Vicky Lang, Assistant Regional Counsel, (415) 744–1331, U.S. Environmental Protection Agency (RC–1), Regional IX, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION: The proposed *de minimis* settlement resolves EPA and DTSC's claims under section 107 of CERCLA and section 7003 of RCRA against the following respondents: Almaden Vineyards Inc., American Home Foods, Apache Enterprises, Apex Marble, Armour Grocery Products Co., Beatrice Foods Co., Borden Inc., Bruce Church Co., Cal Stone, California Cheese Co., California Roofing, Concrete Chemicals, FMC Corp., Four Phase, Garratt-Callahan Co., Gibson Homans Co., Globe Union Inc., Hal Crumly Inc., Industrial Models, ITT, L.M. Quartaroli, Libby Labs, Monsanto Chemical Co., Olocco Agricultural Pest Control, Pacific Coast Lacquer, Pacific Coast Producers, Power & Communication Systems, Precision Technical Coatings, Protect-o-Top, Racor Industries Inc., Safeway Stores Inc., Savnik & Co. Inc., SCM Corp. Glidden Div., Sears Roebuck & Co., Stokely Van Camp, Teledyne McCormick Selph, Teralive Mfg., Tri-Valley Growers Packing, U.S. Printing Ink Corp., United Technologies Corp., Western Farm Service, and Witco Chemical Co.

Dated: January 8, 1998.

Michael Hingerty,

Acting Director, Superfund Division.

[FR Doc. 98–1131 Filed 1–15–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5951–4]

Proposed CERCLA Administrative Cost Recovery Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; Stickney Avenue Landfill, Toledo, OH

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(I), notification is hereby given of a proposed administrative settlement by consent, pursuant to CERCLA sections 106(a), 107 and 122(h), 42 U.S.C. sections 9606(a), 9607 and 9622, concerning the Stickney Avenue Landfill and Tyler Street Landfill Sites in Lucas County, Toledo, Ohio. The settling parties are listed in section B of this document.

The settlement requires that the settling parties construct multi-layer landfill cover systems over the Stickney Avenue Landfill, the Tyler Street Landfill, and the central portion of the XXKem facility, as defined in the Enforcement Action Memoranda for the Stickney Avenue and Tyler Street Landfills. The settlement includes EPA's covenant not to sue the settling parties pursuant to section 106 and 107 of CERCLA, 42 U.S.C. sections 9606 and 9607, for the work which is to be completed pursuant to the settlement, and for the recovery of past response costs and the payment of oversight costs. The EPA's authority to enter into this administrative settlement agreement was conditioned upon the approval of the Attorney General of the United States (or her delegatee); this approval has been obtained.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the 7th Floor Records Center, (for address, see below).

DATES: Comments must be submitted on or before February 17, 1998.

ADDRESSES: Comments should be addressed to Sherry Estes, Office of Regional Counsel, Mail Code C–14J, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604–3590, and should reference the Stickney Avenue Landfill and Tyler Street Landfill Sites, Toledo, Ohio.

The proposed AOC embodying the settlement agreement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, Region 5, Superfund Division Record Center (address above), or a copy of the proposed AOC may be obtained from Sherry L. Estes.

FOR FURTHER INFORMATION CONTACT: Sherry L. Estes, Office of Regional Counsel, (address above) or call (312) 886–7164.

SUPPLEMENTARY INFORMATION:

A. Background

The Stickney Avenue Landfill and Tyler Avenue Landfill are located in Lucas County, Toledo, Ohio. The Sites are 50-acre and 41-acre, respectively, inactive municipal, commercial, industrial and institutional landfills located along the Ottawa River, upstream from the point where the Ottawa River discharges into the Maumee Bay and Lake Erie. Fifty-eight known dump sites, including Stickney

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and Tyler, along with combined sewer overflows, agricultural pollution and sediment desposition, have caused severe pollution problems in the Maumee Bay.

Separate Engineering Evaluations/Cost Analyses (EE/CAs) were performed for the Stickney Avenue and Tyler Street Landfills, which studied the nature and extent of the contamination at the sites and evaluated the presumptive remedy for municipal landfills. Based upon the analyses contained in the EE/CA, EPA issued proposed plans for public comment from October 16, 1995, through December 15, 1995 and responded to the substantive comments received during this period. Enforcement Action Memoranda (EAM), embodying the EPA's response action decision for the two sites, were issued on January 22, 1996. The EAM call for the installation of a multi-layer cover system in compliance with the functional requirements of the Ohio Administrative Code, landfill gas collection and passive venting to the atmosphere, and institutional controls.

Immediately south of the Stickney Avenue Landfill is the XXKem facility, which formerly was occupied by companies which performed waste solvent and waste fuel oil blending operations. This site is divided by a fence line which separates the front (east) portion from the central portion, which contains a closed lagoon. The EAM for the Stickney Avenue Landfill also calls for the same multi-layer cover system that will be installed at Stickney to be installed over the closed lagoon area. It should also be noted that further EPA response action decisions are anticipated for the central portion of the XXKem facility.

B. Settling Parties

Proposed settling parties are: Allied Signal Inc.; AP Parts International, Inc.; Blade Communications, Inc.; BFI Waste Systems of North America, Inc., successor to Browning-Ferris Industries of Ohio and Michigan, Inc.; Centerior Energy Corporation; Chevron U.S.A., Inc.; Chrysler Corporation; City of Toledo, a municipal corporation; Cooper Industries; Cytec Industries, Inc.; Dana Corporation; E.I. du Pont de Nemours and Company; Envirosafe Services of Ohio, Inc. f/k/a Fondessey Enterprises Inc.; Flower Hospital; Gencorp, Inc.; Mercy Hospital of Toledo, Ohio Inc.; Owens-Illinois, Inc. and Libbey Glass Inc.; Riverside Hospital; Northcoast Health Systems, Inc.; St. Charles Hospital of Oregon, Ohio; St. Luke's Hospital; St. Vincent Medical Center, Inc.; The Toledo Hospital; Promedica Health Systems, Inc.; City Auto Stamping Division of Shellar-Globe Corporation, n/k/a United Technologies Automotive Systems, Inc.; and Waste Management of Ohio, Inc.

C. Description of Settlement

In exchange for the settling parties' agreement to design, finance and construct the multi-layer cover systems at the Stickney Avenue and Tyler Street Landfills and the central portion of the XXKem facility, according to the EAM for the Stickney and Tyler sites, EPA covenants not to sue or issue administrative orders to the settling parties, pursuant to section 106 and 107 of CERCLA, as described above. The EAM estimated that the cumulative costs for the multi-layer cover systems at Stickney, Tyler and the central portion of the XXKem sites would total approximately $26 million.

During the 1995 public comment period on the proposed plans, several commenters raised concerns that the proposed plans did not call for the installation of a leachate collection system at the sites. However, in the EAM, EPA found that the installation of multi-layer cover systems should obtain the rapid reduction in risk to human health and to the Ottawa River which is anticipated in the EE/CAs. The Scope of Work which is incorporated into the proposed AOC calls for the detailed monitoring of the leachate and modeling of the reduction in risk. If, contrary to the expectations of the settling parties and EPA, the anticipated reduction in risk is not achieved, EPA retains the authority to determine that additional response actions are required. While the settling parties would not be required to perform these additional response actions under the terms of the proposed AOC, EPA has reserved its rights to initiate additional enforcement actions under sections 106(a) and 107 of CERCLA.

EPA is not, pursuant to this document, requesting further comment on the response action determinations embodied in the EAM. This Notice requests comment on the fairness and appropriateness of the proposed AOC, including the AOC's covenant not to sue provisions. EPA's unreimbursed past costs total approximately $500,000; oversight costs for the work would be completed pursuant to the proposed AOC are estimated at $200,000. Thus, in exchange for compromising potential claims for approximately $700,000 against the settling parties, EPA is assuring that removal actions worth over $26 million are accomplished at the Stickney and Tyler sites, and the central portion of the XXKem facility.

If, after the consideration of comments during the public comment period, EPA retains its prior consent to the AOC and finalizes the settlement, the Contribution Protection Section of the AOC states EPA's belief that the settling parties are entitled to contribution protection to the extent provided by section 113(f) and 122(h)(4), 42 U.S.C. sections 9613(f)(2), and 9622(h)(4). It should also be noted that the contribution protection section of the AOC expressly reserves contribution claims as to the central portion of the XXKem facility. Therefore, the settling parties have reserved any claims that they might have as against each other for the central portion of the XXKem facility, and would also be subject to contribution claims for the central portion of the XXKem facility, to the extent that such claims exist, from entities which are not parties respondent to this proposed AOC.

Dated: January 13, 1998.

William E. Muno,

Director, Superfund Division.

[FR Doc. 98–1247 Filed 1–15–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

January 12, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of

information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 17, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0633.

Title: Station Licenses—Sections 73.1230, 74.165, 74.432, 74.564, 74.664, 74.765, 74.832, 74.965, and 74.1265.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for profit; not-for-profit institutions.

Number of Respondents: 10,000.

Estimated Time Per Response: .083. hours.

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: $14,000.

Total Annual Burden: 830 hours.

Needs and Uses: Licensees of broadcast stations are required to post, file or have available a copy of the instrument of authorization at the station and/or transmitter site. The data is used by FCC staff in field investigations and the public to ensure that a station is licensed and operating in the manner specified in the license. The information posted at the transmitter site are used by the public and FCC staff to know by whom the transmitter is licensed.

OMB Control No.: 3060–0627.

Title: Application for AM Broadcast Station License.

Form No.: FCC Form 302–AM.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for profit.

Number of Respondents: 350.

Estimated Time Per Response: Direct of measurement of power applications—206 hours (8 hours per respondent, 8 hours per legal, 190 hour per engineer); new license applications—1,016 (40 hours per respondent, 16 hours per attorney, 960 hours per engineer).

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: $26,075,000.

Total Annual Burden: 8,400 hours.

Needs and Uses: Licensees and permittees of AM broadcast stations are required to file FCC Form 302–AM to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities of these stations. Additionally, when changes are made to an AM station which alter the resistance of the antenna system, a licensee must initiate a determination of the operating power by the direct method. The results of this are reported to the Commission using the FCC 302–AM. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit, and to update FCC station files. Data is then extracted from FCC 302–AM for inclusion in the subsequent license to operate the station.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–1109 Filed 1–15–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

FEDERAL REGISTER NUMBER: 1169.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, January 22, 1998, 10:00 a.m. Meeting open to the public.

THE FOLLOWING ITEM HAS BEEN ADDED TO THE AGENDA: Rulemaking Petition of National Reform Party Organizing Committee, John J. Wheeling, Treasurer.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 98–1286 Filed 1–14–98; 2:48 pm]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1193–DR]

Territory of Guam; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for Territory of Guam (FEMA–1193-DR), dated December 17, 1997, and related determinations.

EFFECTIVE DATE: December 21, 1997.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3630.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as authorized by the President in a letter dated December 17,1997, FEMA is extending the time period for Direct Federal assistance at 100 percent Federal funding for total eligible costs approved by FEMA through December 23, 1997, for the Territory of Guam.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–1142 Filed 1–15–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1193–DR]

Territory of Guam; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Territory of Guam (FEMA–1193–DR), dated December 17, 1997, and related determinations.

EFFECTIVE DATE: December 29, 1997.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3630.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective December 17, 1997.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–1144 Filed 1–15–98; 8:45 am]

BILLING CODE 6718–02–P

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FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1194–DR]

The Commonwealth of the Northern Mariana Islands; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of the Northern Mariana Islands (FEMA–1194–DR), dated December 24, 1997, and related determinations.

EFFECTIVE DATE: January 2, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective December 17, 1997.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–1143 Filed 1–15–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, January 21, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 14, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–1222 Filed 1–14–98; 11:23 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation.

DATES: The meeting will be held on Thursday, February 12, 1998 from 9:00 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at the Natcher Conference Center, National Institutes of Health, 45 Center Drive, Bethesda, MD 20892.

FOR FURTHER INFORMATION CONTACT: Nancy Foster, Coordinator of the Advisory Council at the Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 502, Rockville, MD 20852, (301) 594–1349 ext. 1307.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Linda Reeves, Assistant Administrator for Equal Opportunity, AHCPR, on (301) 594–6655 ext. 1055 no later than February 8, 1998.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) establishes the National Advisory Council for Health Care Policy, Research, and Evaluation. The Council provides advice to the Secretary and the Administrator, Agency for Health Care Policy and Research (AHCPR), on matters related to AHCPR activities to enhance the quality, appropriateness, and effectiveness of health care services and access to such services through scientific research and the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services.

The Council is composed of members of the public appointed by the Secretary and Federal ex-officio members.

II. Agenda

On Thursday, February 12, 1998, the meeting will begin at 9:00 a.m., with the call to order by the Council Chairman. The Administrator, AHCPR, will update the status of current Agency funding, programs, and initiatives. The Council will then discuss strategic directions for the Agency, ethical dilemmas in health services research, and how to assure AHCPR research is meeting the needs of clinicians.

The meeting will adjourn at 4:00 p.m. Agenda items are subject to change as priorities dictate.

Dated: January 9, 1998.

John M. Eisenberg,

Administrator.

[FR Doc. 98–1107 Filed 1–15–98; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Arthritis Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting is open to the public.

Name of Committee: Arthritis Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on February 20, 1998, 8 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Kathleen R. Reedy or LaNise S. Giles, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12532. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss preliminary planning of a claims structure for a future guidance for the development of drugs, biologics, and devices for the treatment of osteoarthritis.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 13, 1998. Oral presentations from the public will be scheduled between approximately 8 a.m. and 9 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 13, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 9, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–1083 Filed 1–15–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Council on Drug Abuse, National Institute on Drug Abuse (NIDA) on February 3–4, 1998, at the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

On February 3, from 9 a.m. to 4 p.m., in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, this portion of the meeting will be closed to the public for the review, discussion, and evaluation of grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

On February 4, from 9 a.m. to 5 p.m., this portion of the meeting will be open to the public for announcements and reports of administrative, legislative, and program developments in the drug abuse field. Attendance by the public will be limited to space available.

A summary of the meeting and a roster of committee members may be obtained from Ms. Camilla L. Holland, NIDA Committee Management Officer, National Institutes of Health, Parklawn Building, Room 10–42, 5600 Fishers Lane, Rockville, MD 20857, (301/443–2755).

Substantive program information may be obtained from Dr. Teresa Levitin, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville MD 20857, (301/443–2755).

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Levitin in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs)

Dated: January 8, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–1121 Filed 1–15–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Behavioral and Neurosciences.

Date: January 20, 1998.

Time: 11:00 a.m.

Place: NIH, Rockledge 2, Room 5060; Telephone Conference.

Contact Person: Dr. Samuel Rawlings, Scientific Review Administrator, 6701 Rockledge Drive, Room 5060, Bethesda, MD 20892, (301) 435–1243.

Name of SEP: Biological and Physiological Sciences.

Date: January 20, 1998.

Time: 3:00 p.m.

Place: NIH, Rockledge 2, Room 4148; Telephone Conference.

Contact Person: Dr. Philip Perkins, Scientific Review Administrator, 6701 Rockledge Drive, Room 4148, Bethesda, MD 20892, (301) 435–1718.

Name of SEP: Biological and Physiological.

Date: January 21, 1998.

Time: 12:00 p.m.

Place: NIH, Rockledge 2, Room 4150; Telephone Conference.

Contact Person: Dr. Marcia Litwack, Scientific Review Administrator, 6701 Rockledge Drive, Room 4150, Bethesda, MD 20892, (301) 435–1719.

Name of SEP: Biological and Physiological Sciences.

Date: January 8, 1998.

Time: 4:00 p.m.

Place: NIH, Rockledge 2, Room 4150; Telephone Conference.

Contact Person: Dr. Marcia Litwack, Scientific Review Administrator, 6701 Rockledge Drive, Room 4150, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Biological and Physiological Sciences.

Date: February 22, 1998.

Time: 6:00 p.m.

Place: Hyatt Regency, Bethesda, MD.

Contact Person: Dr. Sooja Kim, Scientific Review Administrator, 6701 Rockledge Drive, Room 5178, Bethesda, MD 20892, (301) 435–1780.

Name of SEP: Biological and Physiological.

Date: February 18, 1998.

Time: 11:00 a.m.

Place: NIH, Rockledge 2, Room 9112.

Contact Person: Dr. Mushtaq Khan, Scientific Review Administrator, 6701 Rockledge Drive, Room 4124, Bethesda, MD 20892, (301) 435–1778.

Name of SEP: Biological and Physiological Sciences.

Date: February 23, 1998.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 6168; Telephone Conference.

Contact Person: Dr. Syed Amir, Scientific Review Administrator, 6701 Rockledge Drive, Room 6168, Bethesda, MD 20892, (301) 435–1043.

Name of SEP: Biological and Physiological Sciences.

Date: February 24, 1998.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 4172; Telephone Conference.

Contact Person: Dr. Donald Schneider, Scientific Review Administrator, 6701 Rockledge Drive, Room 4172, Bethesda, MD 20892, (301) 435–1165.

Name of SEP: Multidisciplinary Sciences.

Date: March 18–20, 1998.

Time: 6:00 p.m.

Place: Radisson Hotel, Los Angeles, CA.

Contact Person: Dr. Bill Bunnag, Scientific Review Administrator, 6701 Rockledge Drive,

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Room 5212, Bethesda, MD 20892, (301) 435–1177.

The meetings will be closed in accordance with the provisions set forth in secs. 552(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 39.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 9, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–1120 Filed 1–15–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Advisory Committee Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Center for Scientific Review Advisory Committee, February 17–18, 1998, Building 31C, Conference Room 6, National Institutes of Health, Bethesda, MD 20892.

The entire meeting will be open to the public from 8:30 a.m. on February 17 to adjournment on February 18. The meeting will include, among other topics, a discussion of some recent experiences and experiments in streamlining the peer review system. Attendance by the public will be limited to space available.

The Office of Committee Management, Center for Scientific Review, Rockledge 2 Building, Suite 3016, National Institutes of Health, Bethesda, MD 20892–7778, telephone (301) 435–1124, will furnish a summary of the meeting and a roster of the committee members.

Dr. Samuel Joseloff, Executive Secretary of the Committee, Rockledge 2 Building, Suite 3176, National Institutes of Health, Bethesda, MD 20892–7762, phone (301) 435–0691, will provide substantive program information upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary at least two weeks in advance of the meeting.

Dated: January 8, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–1122 Filed 1–15–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–38]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1998 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.C.C.).

Properties reviewed are listed in this Notice according to the following categories. Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interests as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: ARMY: Mr. Jeff Holste, CECPW–FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22315; (703) 428–6318; INTERIOR: Ms. Lola Knight, Department of the Interior, 1849 C Street, NW, Mail Stop 5512–MIB, Washington, DC 20240; (202) 208–4080; GSA: Mr. Brain K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–2059; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–7342; (These are not toll-free numbers).

Dated: January 8, 1998.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM, FEDERAL REGISTER REPORT FOR 01/16/98

Suitable/Available Properties

Buildings (by State)

Alaska

Bldg. 303
Fort Richardson
Anchorage AK 99505–6500
Landholding Agency: Army
Property Number: 219740272
Status: Excess
Comment: 13,056 sq. ft., presence of asbestos/lead paint, most recent use—family housing, off-site use only

Bldg. 304
Fort Richardson
Anchorage AK 99505–6500
Landholding Agency: Army
Property Number: 219740273
Status: Excess
Comment: 13,506 sq. ft., presence of asbestos/lead paint, most recent use—family housing, off-site use only

Bldgs. 312, 313
Fort Richardson
Anchorage AK 99505–6500
Landholding Agency: Army
Property Number: 219740275
Status: Excess
Comment: 13,506 sq. ft., presence of asbestos/lead paint, most recent use—family housing, off-site use only

Bldgs. 420, 422, 426, 430
Fort Richardson
Anchorage AK 99505–6500
Landholding Agency: Army
Property Number: 219740276
Status: Excess
Comment: 13,056 sq. ft., presence of asbestos/lead paint, most recent use—family housing, off-site use only

Bldg. 660
Fort Richardson
Anchorage AK 99505–6500
Landholding Agency: Army
Property Number: 219740277
Status: Excess
Comment: 21,124 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 670
Fort Richardson
Anchorage AK 99505–6500
Landholding Agency: Army
Property Number: 219740278
Status: Excess
Comment: 24,763 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 1101
Fort Richardson
Anchorage AK 99505–6500
Landholding Agency: Army
Property Number: 219740279
Status: Excess
Comment: 16,702 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 1102
Fort Richardson
Anchorage AK 99505–6500
Landholding Agency: Army
Property Number: 219740280
Status: Excess
Comment: 16,327 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Arizona

5 Bldgs.
Fort Huachuca
73910, 76912, 82014, 82017, 84005
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219740281
Status: Excess
Comment: various sq. ft., presence of asbestos/lead paint, most recent use—motor pool/admin., off-site use only

California

Vallejo Federal Building
823 Marin Ave.
Vallejo Co: Solano CA
Landholding Agency: GSA
Property Number: 549740014
Status: Excess
Comment: 15,134 sq. ft., most recent use—office, possible asbestos/lead paint, historic significance
GSA Number: 9–G–CA–1502

Hawaii

Bldg. T–105
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219740282
Status: Unutilized
Comment: 13,600 sq. ft., needs rehab, most recent use—offices, off-site use only

Bldg. S–305
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219740283
Status: Unutilized
Comment: 3883 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldg. S–307
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219740284
Status: Unutilized
Comment: 2852 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldgs. T–306, T–308, T–312
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219740285
Status: Unutilized
Comment: 400 sq. ft., needs rehab, most recent use—garages, off-site use only

10 Bldgs.
Fort Shafter
P–604 thru P–613
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219740286
Status: Unutilized
Comment: 4992 sq. ft., needs rehab, most recent use—housing, off-site use only

11 Bldgs.
Fort Shafter
P–614 thru P–624
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219740287
Status: Unutilized
Comment: 4992 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldg. P–631
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219740288
Status: Unutilized
Comment: 5028 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldg. P–633
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219740289
Status: Unutilized
Comment: 4554 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldg. P–635
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219740290
Status: Unutilized
Comment: 6828 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldg. 691
Pearl City Peninsula, Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779810002
Status: Excess
Comment: 48,581 sq. ft., most recent use—warehouse, possible asbestos/lead paint, off-site use only

Bldg. 695
Pearl City Peninsula, Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779810003
Status: Excess
Comment: 92,897 sq. ft., most recent use—warehouse, possible asbestos/lead paint, off-site use only

Bldg. 696
Pearl City Peninsula, Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779810004
Status: Excess

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Comment: 67,137sq. ft., most recent use—warehouse, possible asbestos/lead paint, off-site use only

Bldg. 697
Pearl City Peninsula, Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779810005
Status: Excess
Comment: 72,289 sq. ft., most recent use—warehouse, possible asbestos/lead paint, off-site use only

Bldg. 698
Pearl City Peninsula, Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779810006
Status: Excess
Comment: 41,377 sq. ft., most recent use—warehouse, possible asbestos/lead paint, off-site use only

Kansas

Bldg. P–355
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21974091
Status: Unutilized
Comment: 3523 sq. ft., most recent use—pole barn, off-site use only

Bldg. P–356
Fort Leavenworth
Landholding Agency: Army
Property Number: 219740292
Status: Unutilized
Comment: 2898 sq. ft., most recent use—quonset barn, off-site use only

Bldg. P–358
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219740293
Status: Unutilized
Comment: 1960 sq. ft., presence of lead based paint, most recent use—barn, off-site use only

Bldg. P–389
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219740294
Status: Unutilized
Comment: 576 sq. ft., presence of lead based paint, most recent use—storage, off-site use only

Bldg. P–390
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219740295
Status: Unutilized
Comment: 4713 sq. ft., presence of lead based paint, most recent use—swine house, off-site use only

Bldg. P–411
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219740296
Status: Unutilized
Comment: 2898 sq. ft., most recent use—barn, off-site use only

Bldg. P–416
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219740297
Status: Unutilized
Comment: 2760 sq. ft., presence of lead based paint, most recent use—horse stable, off-site use only

Maryland

Bldg. 4039
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219740304
Status: Unutilized
Comment: 249 sq. ft., concrete block, presence of asbestos/lead paint, most recent use—storage

Bldg. 2446
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740305
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 2472
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740306
Status: Unutilized
Comment: 7670 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 2802
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740307
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—lab., off-site use only

Bldg. 3179
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740308
Status: Unutilized
Comment: 7670 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 4700
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740309
Status: Unutilized
Comment: 36,619 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 2805
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740351
Status: Unutilized
Comment: 2208 sq. ft., presence of asbestos/lead paint, most recent use—lab., off-site use only

Massachusetts

Bldgs. T–2011, 2012, 2014
Devens RFTA
Devens RFTA MA 01432–
Landholding Agency: Army
Property Number: 219740298
Status: Underutilized
Comment: 4890 sq. ft., need rehab, presence of asbestos/lead paint, most recent use—office

Bldg. T–2013
Devens RFTA
Devens RFTA MA 01432–
Landholding Agency: Army
Property Number: 219740299
Status: Unutilized
Comment: 9110 sq. ft., need rehab, presence of asbestos/lead paint, most recent use—office

Bldg. T–2015
Devens RFTA
Devens RFTA MA 01432–
Landholding Agency: Army
Property Number: 219740300
Status: Underutilized
Comment: 2497 sq. ft., need rehab, presence of asbestos/lead paint, most recent use—storage

Bldgs. T–2446, 2479
Devens RFTA
Devens RFTA MA 01432–
Landholding Agency: Army
Property Number: 219740301
Status: Underutilized
Comment: 3108 sq. ft., need rehab, presence of asbestos/lead paint, most recent use—storage

Bldg. T–3553
Devens RFTA
Devens RFTA MA 01432–
Landholding Agency: Army
Property Number: 219740302
Status: Underutilized
Comment: 1160 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage

Bldg. T–3555, 3568
Devens RFTA
Devens RFTA MA 01432–
Landholding Agency: Army
Property Number: 219740303
Status: Underutilized
Comment: 7277 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage

Michigan

S. Haven Keeper's Dwelling
91 Michigan Ave.
South Haven Co: Van Buren MI 49090–
Landholding Agency: GSA
Property Number: 549740012
Status: Excess
Comment: 3257 sq. ft., 2-story dwelling and 800 sq. ft. garage, presence of asbestos/lead paint
GSA Number: 1–U–MI–475C

Minnesota

Duluth Duplex Housing
725 & 725½ Lake Ave.
Duluth Co: St. Louis MN 55802–
Landholding Agency: GSA
Property Number: 549740013
Status: Excess
Comment: 2-story brick dwelling, possible lead paint

GSA Number: 1–U–MN–571

Nevada

5 Units, Tonopah Housing (902, 904, 920, 922, 927)
Air Force Road
Tonopah Co: Nye NV 89049–
Landholding Agency: GSA
Property Number: 549810002
Status: Excess
Comment: 1191–1382 sq. ft., most recent use—residential, fair condition, presence of asbestos, possible lead based paint
GSA Number 9–U–NV–467E

New Jersey

Bldg. 22
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740311
Status: Unutilized
Comment: 4220 sq. ft., needs rehab, most recent use—machine shop, off-site use only

Bldg. 178
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740312
Status: Unutilized
Comment: 2067 sq. ft., most recent use—research, off-site use only

Bldg. 213
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740313
Status: Unutilized
Comment: 915 sq. ft., most recent use—explosives research, off-site use only

Bldg. 642
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740314
Status: Unutilized
Comment: 280 sq. ft., most recent use—explosives testing, off-site use only

Bldg. 732
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740315
Status: Unutilized
Comment: 9077 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 975
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740316
Status: Unutilized
Comment: 1800 sq. ft., most recent use—admin., off-site use only

Bldg. 1222D
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740317
Status: Unutilized
Comment: 36 sq. ft., most recent use—storage, off-site use only

Bldg. 1604
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740321
Status: Unutilized
Comment: 8519 sq. ft., most recent use—loading facility, off-site use only

Bldg. 3117
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740322
Status: Unutilized
Comment: 100 sq. ft., most recent use—sentry station, off-site use only

Bldg. 3201
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740324
Status: Unutilized
Comment: 1360 sq. ft., most recent use—water treatment plant, off-site use only

Bldg. 3202
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740325
Status: Unutilized
Comment: 96 sq. ft., most recent use—snack bar, off-site use only

Bldg. 3219
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740326
Status: Unutilized
Comment: 288 sq. ft., most recent use—snack bar, off-site use only

New Mexico

4 units—Ravenna
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219740327
Status: Unutilized
Comment: 1126 sq. ft., needs rehab, presence of asbestos, most recent use—housing, off-site use only

17 units
White Sands Missile Range
Picatinny, Dart, Hawk, LaCrosse
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219740328
Status: Unutilized
Comment: 1207 sq. ft., needs rehab, presence of asbestos, most recent use—housing, off-site use only

2 units
White Sands Missile Range
Picatinny
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219740329
Status: Unutilized
Comment: 1264 sq. ft., needs rehab, presence of asbestos, most recent use—housing, off-site use only

30 units
White Sands Missile Range
Hawk, LaCrosse, Ravenna
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219740330
Status: Unutilized
Comment: 1426 sq. ft., needs rehab, presence of asbestos, most recent use—housing, off-site use only

5 units
White Sands Missile Range
Dart, Hawk
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219740331
Status: Unutilized
Comment: 2080 sq. ft., needs rehab, presence of asbestos, most recent use—housing, off-site use only

3 units
White Sands Missile Range
Dart, Hawk
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219740332
Status: Unutilized
Comment: 2220 sq. ft., needs rehab, presence of asbestos, most recent use—housing, off-site use only

North Carolina

Bldg. 1–3151
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219740310
Status: Excess
Comment: 481 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Ohio

Keeper's Dwelling & Shed
110 Wall Street
Huron OH 55802–
Landholding Agency: GSA
Property Number: 549740015
Status: Excess
Comment: 5100 sq. ft., single family residence and a 216 sq. ft. storage shed, possible lead based paint
GSA Number: 1–U–OH–800

Oklahoma

Bldg. P–901
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219740334
Status: Unutilized
Comment: 101 sq. ft., concrete, most recent use—storage, off-site use only

Pennsylvania

Bldg.T–3–52
Fort Indiantown Gap
Annville Co: Lebanon PA 17003–5000
Landholding Agency: Army
Property Number: 219740335
Status: Unutilized
Comment: 2290 sq. ft., most recent use—dining, off-site use only

Bldg. T–3–86
Fort Indiantown Gap
Annville Co: Lebanon PA 17003–5000
Landholding Agency: Army
Property Number: 219740336
Status: Unutilized
Comment: 4720 sq. ft., most recent use—barracks, off-site use only

Bldg. T–3–87
Fort Indiantown Gap
Annville Co: Lebanon PA 17003–5000

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Landholding Agency: Army
Property Number: 219740337
Status: Unutilized
Comment: 1144 sq. ft., most recent use—classroom, off-site use only

Bldg. T–4–3
Fort Indiantown Gap
Annville Co: Lebanon PA 17003–5000
Landholding Agency: Army
Property Number: 219740338
Status: Unutilized
Comment: 1750 sq. ft., most recent use—admin., off-site use only

Texas

Bldg. 1020
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740339
Status: Unutilized
Comment: 1505 sq. ft., concrete block, most recent use—hdgts. bldg., off-site use only

Bldg. 2518
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740340
Status: Unutilized
Comment: 15,078 sq. ft., needs major rehab, presence of lead paint, most recent use—vehicle maint. shop, off-site use only

68 Bldgs. (4000 series)
Fort Bliss
Enlisted Unaccompanied Personnel Housing
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740341
Status: Unutilized
Comment: 4800 sq. ft. each, concrete block, most recent use—housing, off-site use only

Bldg. 4255
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740342
Status: Unutilized
Comment: 2880 sq. ft., concrete block, most recent use—dining facility, off-site use only

Bldg. 4258
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740343
Status: Unutilized
Comment: 750 sq. ft., metal shelter, most recent use—covered training area, off-site use only

Bldg. 4574
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740344
Status: Unutilized
Comment: 11,215 sq. ft., concrete block, most recent use—dining facility, off-site use only

Bldg. 4575
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740345
Status: Unutilized
Comment: 8904 sq. ft., metal shelter, most recent use—covered training area, off-site use only

Bldg. 4591
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740346
Status: Unutilized
Comment: 3094 sq. ft., concrete block, most recent use—hdqts. bldg., off-site use only

Bldg. 4674
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740347
Status: Unutilized
Comment: 11,217 sq. ft., concrete block, most recent use—dining facility, off-site use only

Bldgs. 4880–4882, 4884–4890
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740348
Status: Unutilized
Comment: various sq. ft., metal frame, most recent use—instruction bldg., off-site use only

Bldg. 4973
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740349
Status: Unutilized
Comment: 11,052 sq. ft., concrete block, most recent use—dining facility, off-site use only

Bldg.4974
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740350
Status: Unutilized
Comment: 3018 sq. ft., concrete block, most recent use—hdqts. bldg. off-site use only

Virginia

Bldg. 1520
Naval Amphibious Base Little Creek
Norfolk VA 23521–2616
Landholding Agency: Navy
Property Number: 779810007
Status: Excess
Comment: 984 sq. ft., most recent use—storage, off-site use only

Bldg. 2080
Naval Amphibious Base Little Creek
Norfolk VA 23521–2616
Landholding Agency: Navy
Property Number: 779810008
Status: Excess
Comment: 510 sq. ft., most recent use—storage, off-site use only

Bldg. 3319
Naval Amphibious Base Little Creek
Norfolk VA 23521–2616
Landholding Agency: Navy
Property Number: 779810009
Status: Excess
Comment: 9254 sq. ft., most recent use—maintenance, off-site use only

Bldg. 3551
Naval Amphibious Base Little Creek
Norfolk VA 23521–2616
Landholding Agency: Navy
Property Number: 779810010
Status: Excess
Comment: 384 sq. ft., most recent use—bus waiting station, off-site use only

Washington

Vancouver Info Center
Interstate Rt 5
Vancouvr Co: Clark WA 98663–
Landholding Agency: GSA
Property Number: 549740011
Status: Excess
Comment: 1200 sq. ft., most recent use—visitor info center, excellent condition.
GSA Number: 9–GR–WA–514E

Suitable/Unavailable Properties

Buildings (by State)

New York

McGrath USAR Center
Robinson Road
Village of Massena Co: St. Lawrence NY 13662–2497
Landholding Agency: Army
Property Number: 219740333
Status: Unutilized
Comment: 12,930 sq. ft. reserve center and 1325 sq. ft. motor repair shop

Land (by State)

Arizona

0.23 acre
Ron Burke II/West of 124th Street
Scottsdale Co: Maricopa AZ 85259–
Landholding Agency: Interior
Property Number: 619740001
Status: Excess
Comment: narrow strip

Unsuitable Properties

Buildings (by State)

California

Bldg. 89, Naval Station
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 779810001
Status: Excess
Reason: Other
Comment: unsound

Maine

Aircraft Hangar #2
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 779810015
Status: Excess
Reason: Extensive deterioration

Massachusetts

Cook House
North Great Road
Lincoln Co: Middlesex, MA 01773–
Landholding Agency: Interior
Property Number: 619810001
Status: Excess
Reason: Extensive deterioration

Giurleo House
North Great Road
Lincoln Co: Middlesex MA 01773–
Landholding Agency: Interior
Property Number: 619810002
Status: Excess
Reason: Extensive deterioration.

Nevada

Former Weather Service Office
Winnemucca Airport
Winnemucca Co: Humbolt NV 89445–
Landholding Agency: GSA
Propoerty Number: 549810001
Status: Excess
Reason: Within airport runway clear zone
GSA Number: 9–C–NV–509

Oregon

Portion, Former Kingsley Field
Air Force Base
Arnold Ave. & Joe Wright Rd.
Klamath Falls Co: Klamath OR 97603–
Landholding Agency: GSA
Property Number: 549810003
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 10–D–OR–434–J

Washington

Bldg. 604, Pier 91
Naval Station Everett
Seattle Co: King WA
Landholding Agency: Navy
Property Number: 779810011
Status: Excess
Reason: Extensive deterioration

Bldg. 1008
Naval Submarine Base, Bangor
Silverdale Co: Kitsap WA 98315–1199
Landholding Agency: Navy
Property Number: 779810012
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1010
Naval Submarine Base, Bangor
Silverdale Co: Kitsap WA 98315–1199
Landholding Agency: Navy
Property Number: 779810013
Status: Unutilized
Reason: Extensive deterioration

Bldg. 6460
Naval Submarine Base, Bangor
Silverdale Co: Kitsap WA 98315–1199
Landholding Agency: Navy
Property Number: 779810014
Status: Unutilized
Reason: Extensive deterioration

Land (by State)

Washington

Tract No. 092902
Pasco Co: Franklin WA 99301–
Landholding Agency: Interior
Property Number: 619740008
Status: Excess
Reason: Within airport runway clear zone

Tract No. 092912
Pasco Co: Franklin WA 99301–
Landholding Agency: Interior
Property Number: 619740009
Status: Excess
Reason: Within airport runway clear zone

Tract No. 0923022
Co: Franklin WA 99301–
Landholding Agency: Interior
Property Number: 619740010
Status: Excess
Reason: Other
Comment: no public access

Tract No. 103026
Co: Franklin WA 99301–
Landholding Agency: Interior
Property Number: 619740011
Status: Excess
Reason: Other
Comment: no public access

Tract No. 103032
Co: Franklin WA 99301–
Landholding Agency: Interior
Property Number: 619740012
Status: Excess
Reason: Other
Comment: no public access

Tract No. 132816
Co: Franklin WA 99330–
Landholding Agency: Interior
Property Number: 619740013
Status: Excess
Reason: Other
Comment: no public access

Tract No. 132929
Co: Franklin WA 99330–
Landholding Agency: Interior
Property Number: 619740014
Status: Excess
Reason: Other
Comment: no public access

Tract No. 142517
Co: Franklin WA 99349–
Landholding Agency: Interior
Property Number: 619740015
Status: Excess
Reason: Other
Comment: no public access

Tract No. 172314
Co: Grant WA 98950–
Landholding Agency: Interior
Property Number: 619740016
Status: Excess
Reason: Other
Comment: No public access

Tract No. 172433
Co: Grant WA 99321–
Landholding Agency: Interior
Property Number: 619740017
Status: Excess
Reason: Other
Comment: No public access

Tract No. 172833
Co: Grant WA 99357–
Landholding Agency: Interior
Property Number: 619740018
Status: Excess
Reason: Other
Comment: No public access

Tract No. 182620
Co: Grant WA 98824–
Landholding Agency: Interior
Property Number: 619740019
Status: Excess
Reason: Other
Comment: No public access

Tract No. 192328
Co: Grant WA 98848–
Landholding Agency: Interior
Property Number: 619740020
Status: Excess
Reason: Other
Comment: No public access

Tract No. 192332
Co: Grant WA 98848–
Landholding Agency: Interior
Property Number: 619740021
Status: Excess
Reason: Other
Comment: No public access

Tract No. 192520
Co: Grant WA 98837–
Landholding Agency: Interior
Property Number: 619740022
Status: Excess
Reason: Other
Comment: No public access

Tract No. 192524
Co: Grant WA 98837–
Landholding Agency: Interior
Property Number: 619740023
Status: Excess
Reason: Other
Comment: No public access

Tract No. 192620b
Co: Grant WA 98837–
Landholding Agency: Interior
Property Number: 619740024
Status: Excess
Reason: Other
Comment: No public access

Tract No. 192909
Co: Grant WA 98837–
Landholding Agency: Interior
Property Number: 619740025
Status: Excess
Reason: Other
Comment: No public access

Tract No. 202436
Co: Grant WA 98848–
Landholding Agency: Interior
Property Number: 619740026
Status: Excess
Reason: Other
Comment: No public access

Tract No. 202529b
Co: Grant WA 98823–
Landholding Agency: Interior
Property Number: 619740027
Status: Excess
Reason: Other
Comment: No public access

Tract No. 202530
Co: Grant WA 98823–
Landholding Agency: Interior
Property Number: 619740028
Status: Excess
Reason: Other
Comment: No public access

Tract No. 202635
Co: Grant WA 98823–
Landholding Agency: Interior
Property Number: 619740029
Status: Excess
Reason: Other
Comment: No public access

Tract No. 212808
Co: Grant WA 98837–
Landholding Agency: Interior
Property Number: 619740030
Status: Excess
Reason: Other
Comment: No public access

[FR Doc. 98–824 Filed 1–15–98; 8:45 am]
BILLING CODE 4210–29–M

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Meeting

SUMMARY: The Lower Snake River District Resource Advisory Council will meet in Boise to discuss management of redband trout and sage grouse in southwest Idaho, as well as implementation of new grazing management plans in the Bruneau and Owyhee Resource Areas.

DATES: February 26, 1997. The meeting will begin at 9:00 a.m. Public comment periods will be held beginning at 9:30 a.m. And 3:00 p.m.

ADDRESS: The Lower Snake River District Office is located at 3948 Development Avenue, Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Lower Snake River District Office (208–384–3393).

Dated: January 9, 1998.

Howard Hedrick,

Resource Coordinator.

[FR Doc. 98–1088 Filed 1–15–98; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1020–00: GP8–0076]

Notice of Meeting of John Day-Snake Resource Advisory Council

AGENCY: Bureau of Land Management, Prineville District, Interior.

ACTION: Meeting of John Day-Snake Resource Advisory Council: Pendleton, Oregon; February 19 & 20, 1998.

SUMMARY: A meeting of the John Day-Snake Resource Advisory Council will be held on February 19, 1998 from 1:00 p.m. to 5:00 p.m. and on February 20 from 8:00 a.m. to noon at the Doubletree Inn, 304 SE Nye Ave., Pendleton, Oregon. The meeting is open to the public. Public comments will be received at 3:00 p.m. on February 19. Topics to be discussed by the Council will include the Interior Columbia Basin Ecosystem Management Project, implementation of Standards for Rangeland Health and Guidelines for Livestock Grazing on public lands, an update on the Oregon Governor's Forest Health Advisory Committee and a discussion of operating agreements for future Council meetings. There will be a satellite video conference with the Secretary of the Interior and BLM Director on February 20.

FOR FURTHER INFORMATION CONTACT: James L. Hancock, Bureau of Land Management, Prineville District Office, 3050 NE Third Street, P.O. Box 550, Prineville, Oregon 97754, or call 541–416–6700.

Dated: January 7, 1998.

James L. Hancock,

District Manager.

[FR Doc. 98–1123 Filed 1–15–98; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–990–1020–00]

Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Upper Columbia—Salmon Clearwater Districts, Idaho.

ACTION: Notice of Resource Advisory Council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, the Bureau of Land Management (BLM) announces the meeting of the Upper Columbia—Salmon Clearwater Districts Resource Advisory Council (RAC) on Friday, February 20, 1998, in Coeur d'Alene, Idaho.

Agenda items include: a video conference featuring Secretary of the Interior Bruce Babbitt and BLM Director Pat Shea, reports from the weeds and recreation subgroups, discussion of future issues to consider, and other Council business. The meeting will begin at 8:00 a.m. (PST) and be held at the BLM Coeur d'Alene Field Office, 1808 North Third Street, Coeur d'Alene, Idaho. The public may address the Council during the public comment period from 2:00 p.m.–2:30 p.m.

SUPPLEMENTARY INFORMATION: All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

The Council's responsibilities include providing long-range planning and establishing resource management priorities.

FOR FURTHER INFORMATION CONTACT: Ted Graff (208) 769–5004.

Dated: January 8, 1998.

Fritz U. Rennebaum,

District Manager.

[FR Doc. 98–1148 Filed 1–15–98; 8:45 am]

BILLING CODE 4130–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR 53130; OR–080–08–7122–00–8977; G8–0077]

Realty Action; Proposed Noncompetitive Lease

The following described parcel of public land is being considered for a noncompetitive lease under the authority of Section 302 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1732), at not less than the appraised fair market value:

Williamette Meridian, Oregon

T. 5 S., R. 4 E.,

Sec. 19, a portion of the SW¼NE¼

The above-described parcel contains approximately 40 acres in Clackamas County. The external boundary of the area will be surveyed and a metes and bounds description used for the lease.

The purpose of the lease would be to accommodate a proposed shooting range with three firing lanes and appurtenant facilities. Since there is no known interest to develop the shooting range by anyone else, the land would be offered for lease without competition.

The above-described parcel is being considered for lease to the Molalla Rifle Club, an Oregon non-profit corporation. The lease would be issued for a term of 10 years, with a right to renewal the lease for additional years.

Detailed information concerning this proposal, including the environmental assessment, is available for review at the Salem District Office, 1717 Fabry Road SE, Salem, Oregon 97306.

For a period of 45 days from the date of this notice, interested parties may submit comments regarding the proposed exchange to the Cascades Area Manager at the above address. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this decision.

Richard C. Prather,

Cascades Area Manager.

[FR Doc. 98–1146 Filed 1–15–98; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1110–00:G8–0070]

Prineville District; Shooting Restriction on Public Lands; Oregon

January 6, 1998.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice is hereby given that the area legally described below is seasonally closed to shooting.

LEGAL DESCRIPTION: This closure order applies to all areas within Township 15 South, Range 11 East, Section 16, SE of the SW and SW of the SE; and Section 21, NE of the NW and NW of the NE.

Effective immediately, all areas as described above are closed to shooting between January 1 and August 31, annually. Shooting is defined as "the discharge of firearms". A firearm is defined as "a weapon, by whatever name know, which is designed to expel a projectile by the action of powder and which is readily capable of use as a weapon". The purpose of this closure is to protect wildlife resources. More specifically, this closure is ordered to protect a nesting pair of golden eagles. Currently, the occurrence of shooting at this site jeopardizes the persistence and nesting success of the golden eagles at this location. Exemptions to this closure order may be made on a case-by-case basis by the authorized officer. This emergency order will be evaluated in the Urban Interface Amendment to the Brothers/La Pine Resource Management Plan of 1989. The authority for this closure is 43 CFR 8364.1: Closure and restriction orders.

FOR FURTHER INFORMATION CONTACT: Sarah Nichols, Wildlife Biologist, BLM Prineville District Office, P.O. Box 550, Prineville, Oregon 97754, telephone (541) 416–6725

SUPPLEMENTARY INFORMATION: Violation of this closure order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months as provided in 43 CFR 8360.0–7.

Dated: January 6, 1998.

James G. Kenna,

Deschutes Resource Area Manager, Prineville District Office.

[FR Doc. 98–1127 Filed 1–15–98; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–933–4310–00; GP8–0073]

Salem, Eugene, Roseburg, Medford and Coos Bay Districts and Klamath Falls Resource Area, Oregon; Intent to Initiate Third Year Evaluations of Approved Resource Management Plans

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to collect and analyze data as part of third year evaluations for the Salem, Eugene, Roseburg, Medford, Coos Bay, Klamath Falls and Upper Klamath Basin Resource Management Plans and invitation for the public to participate.

SUMMARY: The Bureau of Land Management (BLM) Salem, Eugene, Roseburg, Medford, and Coos Bay Districts and Klamath Falls Resource Area (in the Lakeview District) are initiating the collection of the supplemental information and analyses required for simultaneous Resource Management Plan (RMP) evaluations. All of the comprehensive land use plans were completed and approved in 1995 and included a commitment to evaluations based on three full years of implementation. The seven plans guide and control management actions on over 2,560,000 acres of BLM surface ownership throughout western Oregon. The public is invited to review the available annual District program summary reports and quarterly project update reports, as well as the approved plans and their plan monitoring and evaluation appendices. The public may contribute by identifying new sources of information or analyses which may have a bearing on the continued validity of the individual or collective plans. The evaluations will be based on the implementation actions and plan and project monitoring from the dates of approval through September 30, 1998. BLM staff have already taken actions to determine if there has been any significant change in the related plans of other federal agencies, state or local governments, or Indian tribes, or whether there is other new data of significance to the plan.

EFFECTIVE DATE: There is no specific legal or regulatory requirement for public notification or participation in BLM plan evaluations. This notice, together with similar notices to electronic and print media in the local areas, initiates a 60-day comment period ending March 17, 1998. During this time period, local BLM staff will be scheduling open houses or other forums where members of the public may visit field offices and talk directly with key staff about the annual reports, quarterly updates, and RMP monitoring and evaluation schedule. The actual evaluations will be conducted during fiscal year 1999 (October 1998 through September 1999) by BLM staff from the Oregon State Office. Any supplemental analyses on regional, provincial, watershed or other level issues will be made available for public review as they are completed and approved. For example, analyses are expected on cumulative economic and employment effects and changes in regional conditions which may be attributed to Bureau natural resource product sales and ecosystem recovery actions, such as stream restoration and road closure projects. All of the supplemental analyses and RMP evaluations are expected to be completed by the summer of 1999, when they will be available for public review, prior to State Director approval. The State Director's findings will indicate whether or not the plans are individually or collectively still valid for continued management direction or require plan amendments or revisions, together with the appropriate environmental analyses and public participation.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS, CONTACT ANY OF THE FOLLOWING:

Salem District: Mark Lawrence, Assoc. District Manager, Bureau of Land Management, 1717 Fabry Road, SE, Salem, OR 97306, (503) 375–5646

Eugene District: Denis Williamson, District Manager, Bureau of Land Management, 2890 Chad Drive, P.O. Box 10226, Eugene, OR 97440, (541) 683–6600

Roseburg District: Cary Osterhaus, District Manager, Bureau of Land Management, 777 NW Garden Valley Blvd., Roseburg, OR 97470, (541) 440–4930

Medford District: Van Manning, Acting District Manager, Bureau of Land Management, 3040 Biddle Road, Medford, OR 97504, (541) 770–2200

Coos Bay District: Neil Middlebrook, Acting Assoc. District Manager, Bureau of Land Management, 1300 Airport Lane, North Bend, OR 97459, (541) 756–0100

Klamath Falls Resource Area: Barron Bail, Area Manager, 2795 Anderson Avenue, Bldg. 25, Klamath Falls, OR 97603, (541) 883–6916

Oregon State Office: William Bradley, Deputy State Director for Resource Planning, Use, and Protection, Bureau of Land Management, 1515 SW 5th

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Avenue, P.O. Box 2965, Portland, OR 97208, (503) 952–6056

SUPPLEMENTARY INFORMATION: The Bureau's procedures for Monitoring and Evaluation are found at 43 Code of Federal Regulations 1610.4–9. Each District has distributed annual District program summaries to report plan monitoring by fiscal year and quarterly updates for the applicable approved RMPs to their lists of known interested addressees. There is no fixed public review or comment period for the annual and quarterly reports, and comments or questions may be raised to the applicable office staff at any time. Interested persons may request copies of past reports and to be added to the applicable mailing lists by contacting the applicable District offices. Each District has a limited number of the approved RMPs and the supporting Environmental Impact Statement document(s) available upon request. Each plan contains an appendix for plan monitoring evaluation, which includes up to 20 pages of specific monitoring questions which will form the basis for the specific RMP evaluations. Portions of the documents listed above may be available in an electronic format and some may be available on Bureau electronic Internet "web sites." Interested individuals should contact the individual District offices to determine availability of planning documents and reports in local libraries or in electronic formats. Single copies of all of the plans and annual reports are also available for inspection during normal working hours in the Oregon State Office (7th floor Lands Office) at the address listed above.

Dated: January 5, 1998.

Elaine Y. Zielinski,

State Director, Oregon/Washington.

[FR Doc. 98–1147 Filed 1–15–98; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–08–1420–00]

Montana: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The plat of survey of the following described land is scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

Meridian, South Dakota

T. 6 S., R. 9 E.

The plat, representing the dependent resurvey of portions of the north boundary and subdivisional lines, and the adjusted original meanders of the left bank of the South Fork of the Cheyenne River in section 4, and the subdivision of section 4, and the survey of the new meanders of a portion of the present left bank of the South Fork of the Cheyenne River in section 4, Township 6 South, Range 9 East, Black Hills Meridian, South Dakota, was accepted December 18, 1997.

This survey was executed at the request of the U.S. Forest Service, Custer National Forest, and was necessary to identify lands administered by the U.S. Forest Service.

A copy of the preceding described plat will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against this survey, as shown on this plat, is received prior to the date of the official filing, the filing will be stayed pending consideration of the protest. This particular plat will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: January 8, 1998.

Daniel T. Mates,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 98–1128 Filed 1–15–98; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–942–08–1420–00]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filing is effective at 10:00 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: Robert H. Thompson, Acting Chief, Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702–785–6541.

SUPPLEMENTARY INFORMATION:

1. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on December 11; 1997:

The plat, representing the dependent resurvey of a portion of the east boundary and a portion of the subdivision-of-section lines of section 24, and a metes-and-bounds survey in section 24, Township 19 South, Range 60 East, of the Mount Diablo Meridian, in the State of Nevada, under Group No. 769, was accepted December 9, 1997.

This survey was executed to meet certain needs of the Bureau of Land Management.

2. The Plat of Survey of the following described lands will be officially filed at the Nevada State Office, Reno, Nevada on February 24, 1998:

The plat, representing the dependent resurvey of the Third Standard Parallel North, through a portion of Range 22 East, a portion of the west boundary and a portion of the subdivisional lines, and the survey of a portion of the subdivisional lines, and the subdivision of section 30, Township 16 North, Range 22 East, of the Mount Diablo Meridian, in the State of Nevada, under Group No. 761, was accepted January 6, 1998.

This survey was executed to meet certain needs of the Bureau of Land Management and John Lawrence (Nevada), Inc.

3. Subject to valid existing rights the provisions of existing withdrawals and classifications, the requirements of applicable laws, and other segregation of record, those lands listed under item 2 are open to application, petition, and disposal, including application under the mineral leasing laws. All such valid applications received on or prior to February 24, 1998, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

4. The above-listed surveys are now the basic records for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: January 6, 1998.

Robert H. Thompson,

Acting Chief Cadastral Surveyor, Nevada.

[FR Doc. 98–1087 Filed 1–15–98; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–776–779 (Preliminary)]

Certain Preserved Mushrooms From Chile, China, India, and Indonesia

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations Nos. 731–TA–776–779 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Chile, China, India, and Indonesia of certain preserved mushrooms,[1] provided for in subheadings 0711.90.40 and 2003.10.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by February 20, 1998. The Commission's views are due at the Department of Commerce within five business days thereafter, or by February 27, 1998.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207), as amended in 61 FR 37818 (July 22, 1996).

EFFECTIVE DATE: January 6, 1998.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on January 6, 1998, by L.K. Bowman, Inc., Nottingham, PA; Modern Mushroom Farms, Inc., Avondale, PA; Monterrey Mushrooms, Inc., Watsonville, CA; Mount Laurel Canning Corp., Temple, PA; Mushroom Canning Co., Kennett Square, PA; Sunny Dell Foods, Inc., Oxford, PA; and United Canning Corp., North Lima, OH.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on January 27, 1998, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Olympia DeRosa Hand (202–205–3182) not later than January 23, 1998, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before January 30, 1998, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

[1] The imported products subject to these investigations consist of certain preserved mushrooms, whether imported whole, sliced, or as stems and pieces. The preserved mushrooms covered under the investigations are of the species *Agaricus bisporus and Agaricus bitorquis.* "Preserved mushrooms" refers to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers, including but not limited to cans or glass jars, in a suitable liquid medium that may include, but is not limited to, water, brine, or butter (or butter sauce). Preserved mushrooms may be imported whole, sliced, or as stems and pieces. Included within the scope of the petition are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of the petition are: (1) all other species of mushroom, including straw mushrooms (HTS statistical reporting number 2003.10.0009); (2) all fresh and chilled mushrooms (HTS subheading 0709.51.00), including "refrigerated" or "quick blanched" mushrooms; (3) dried mushrooms (HTS subheadings 0712.30.10 and 0712.30.20); (4) frozen mushrooms (HTS subheading 0710.80.20); and (5) "marinated," "acidified," or "pickled" mushrooms, which are packed with solutions such as oil, vinegar, or acetic acid (HTS subheading 2001.90.39).

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Issued: January 12, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–1095 Filed 1–15–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

In accordance with Departmental policy, 28 CFR 50.7, and with Section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that a consent decree in *United States* v. *American Cyanamid Company, Inc., et al.,* Civ. A. No. L–98–27, was lodged on January 7, 1998, with the United States District Court for the District of Maryland. The consent decree resolves the claims of the United States under Sections 106(a), 107(a), and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), for reimbursement of response costs incurred at the Bush Valley Landfill Superfund Site located in Harford County, Maryland and for declaratory judgment as to liability that will be binding in actions to recover further response costs related to the Site. The consent decree obligates American Cyanamid Company, Inc. (formerly known as Cytec Industries, Inc.), Bata Shoe Company, Inc., Browning-Ferris, Inc. (formerly known as Eastern Disposal, Inc.), Case-Mason Filling, Inc., Cello Corporation, the city of Aberdeen, Maryland, the City of Havre de Grace, Maryland, Constar Plastics, Inc., Covance Preclinical Corporation (formerly known as Corning Life Sciences), Harford County, Maryland, Harford Sanitation Services, Inc., Alco Industries, Inc., Maryland State Highway Administration, and McCorquodale Process, Inc. to perform the remedial design and remedial action the U.S. Environmental Protection Agency has selected for the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C., 20530, and should refer to *United States* v. *American Cyanamid Company, Inc., et al.,* DOJ Ref. #90–11–2–1162.

The consent decree may be examined at the office of the United States Attorney, 6625 U.S. Courthouse, 101 W. Lombard Street, Baltimore, Maryland 21201; the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA; and at the Consent Decree Library, 1120 G Street, NW 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the consent decree may be obtained in person or by mail from the Consent Decree Library 1120 G Street, NW, 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $33.75 (25 cents per page reproduction cost), payable to the Consent Decree library. Attachments to the consent decree can be obtained for an additional $32.25.

Joel M. Gross,

Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 98–1092 Filed 1–15–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq., in United States v. Curtiss-Wright Corp., et al.

In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. 122(i), and Department policy, 28 CFR 50.7 38 FR 19029, notice is hereby given that a proposed Consent Decree in *United States* v. *Curtiss-Wright Corp., et al.,* Civil Action No. 98–CV–0014, was lodged in the United States District Court for the Northern District of New York on January 5, 1998. The proposed consent decree, if entered, will resolve the liability of eleven defendants, owners and/or operators, under Section 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), in connection with alleged releases of hazardous substances at the Malta Rocket Fuel Area ("Site"), a 165-acre parcel located on Plains Road in the Towns of Malta and Stillwater, Saratoga County, New York, New York. Under the settlement reflected in the proposed consent decree, defendants will perform certain remedial design/remedial action work at the Site implementing the Record of Decision issued July 18, 1996 and pay response costs of up to $956,581.77 to the United States.

The Department of Justice will receive, for a period of thirty (30 days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to Lois J. Schiffer, Assistant Attorney General of the Environment and Natural Resources Division, United States Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Curtiss-Wright Corp., et al.,* Department of Justice No. 90–11–3–1575.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Northern District of New York, U.S. Courthouse, Room 231, 445 Broadway, Albany, New York 12207; at Region I office of the United States Environmental Protection Agency, 290 Broadway, New York, New York 10007; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, at the above address. In requesting a copy, please enclose a check in the amount of $31.25 (25 cents per page reproduction costs) payable to Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–1094 Filed 1–15–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act and the Resource Conservation and Recovery Act

In accordance with 28 CFR 50.7, the Department of Justice gives notice that a proposed consent decree in *United States* v. *Marathon Oil Company,* Civil No. 96–4117–JLF (S.D. Ill.), was lodged with the United States District Court for the Southern District of Illinois on January 5, 1998. The proposed consent decree would resolve the United States' civil claims against the Marathon Oil Company for certain of its operations at its refinery in Robinson, Crawford County, Illinois, under the Clean Air Act, 42 U.S.C. §§ 7401–7671q, and the Resource Conservation and Recovery Act, 42 U.S.C. 6901–6992k. Under the terms of the proposed consent decree, defendant Marathon Oil Company will pay a civil penalty of $75,000 and perform a supplemental environmental project, which will include the implementation of an early-compliance program with projected Clean Air Act regulations for which Marathon Oil Company will expend not less than $382,000 net after-tax.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resource Division, United States Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Marathon Oil Company,* Civil No. 96–4117–JLF (S.D. Ill.) and DOJ Reference No. 90–5–2–1–1978.

The proposed consent decree may be examined at: (1) the Office of the United States Attorney for the Southern District of Illinois, 9 Executive Drive, Suite 300, Fairview Heights, Illinois 62208, 618–628–3700; (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Mary T. McAuliffe (312–886–6237); and (3) the U.S. Department of Justice, Environment and Natural Resources Division Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $9.00 (36 pages at 25 cents per page reproduction costs), made payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–1093 Filed 1–15–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 147–98]

Privacy Act of 1974; Removal of a System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice, is removing Subsystem K., entitled "Microfilmed Manifest Records," from its "Immigration and Naturalization Service Index System, Justice/INS–001." (Justice/INS–001 was most recently published on October 5, 1993 (58 FR 51847).

The removal of Subsystem K. is part of a long-term review initiative of the INS–001 system of records—which includes a number of subsystems—in an effort to improve the reporting accuracy thereof. During this ongoing review, INS found that the information identified in Subsystem K. was misidentified initially as Privacy Act records, and thus was erroneously reported as part of the INS–001 system. Information in the Subsystem is not retrieved by personal identifier; rather, the information consists of a manifest from which information is retrieved by date of entry, port of entry, ships name, and/or aircraft identification code.

In addition, not all of these records remain in the custody of INS. Records dated up through December 1982 have been accepted by the National Archives and Records Administration (NARA) for permanent retention; only those records dated January 1983 to the present have been retained by INS.

Accordingly, requests for access to these records should be made under the Freedom of Information Act (FOIA) and addressed as follows:

For records dated up through December 1982, address any access requests to the NARA, Attention FOIA Officer, Seventh Street and Pennsylvania Avenue, NW., Washington, DC 20408. For records dated January 1983 to the present, address any access requests to the FOIA/Privacy Act Officer at the INS Nebraska Service Center, 850 S. Street, Lincoln, NE 68508.

Dated: January 5, 1998.

Stephen R. Colgate,

Assistant Attorney General for Administration.

[FR Doc. 98–1091 Filed 1–15–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1904–98]

Correction Concerning the Second Meeting of the New York District Advisory Council on Immigration Matters

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of correction.

SUMMARY: On January 8, 1998, the Immigration and Naturalization Service (Service), published a notice in the **Federal Register** at 63 FR 1125. That notice announced that the District Advisory Council on Immigration Matters (DACOIM) meeting scheduled for January 22, 1998, would be held at 10:00 A.M. The purpose of this notice is to correct the time of the meeting.

DATES AND TIMES: The correct time of the meeting will be 1:00 P.M. on January 22, 1998.

ADDRESSES: The address of the meeting has not changed. It will still be held at 201 Varick Street, New York, New York 10278, 11th Floor, Room 1107–A.

FOR FURTHER INFORMATION CONTACT: Susan Young, Designated Federal Officer, Immigration and Naturalization Service, 26 Federal Plaza, Room 14–100, New York, New York 10278, telephone: (212) 264–0736.

Dated: January 13, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–1207 Filed 1–14–98; 1:03 pm]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 12, 1998.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen, ((202) 219–5096 ext. 143) or by E-Mail to Owen-Todd@dol.gov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday—Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days form the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

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including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Title: Labor Market Information (LMI) Cooperative Agreement.

OMB Number: 1220–0079 (reinstatement with change).

Affected Public: State, Local or Tribal.

Collection forms	Number of respondents	Frequency	Total annual responses	Average time per response	Total hours
Works statements	55	1	55	1–2 Hours	55–110.
Budget Information Form (BIF) (LMI 1A, 1B)	55	1	55	1–6 Hours	55–330.
Quarterly Automated Financial Reports	48	4	192	10–50 Minutes	32–160.
Monthly Automated Status Reports	48	*8	384	5–25 Minutes	32–160.
BLS Cooperative Statistics Financial Report (LMI 2A)	7	12	84	1–5 Hours	84–420.
Quarterly Status Report	1–30	4	4–120	1 Hour	4–120.
Total Ranges	1–55		774–890		262–1300.
Totals (Average)			832	56.3 Minutes	781.

*Reports are not received for end-of-quarter month, i.e. December, March, June and September.

Total Annualized capital/startup costs: $0.

Total Annual cost (operating/maintaining systems or purchasing services): $0.

Description: The Bureau of Labor Statistics awards funds to State Employment Security Agencies (SESAs) in the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa each year to assist them in operating one or more of five LMI cooperative statistical programs: Current Employment Statistics, Local Area Unemployment Statistics, Occupation Employment Statistics, Covered Employment and Wages Report, and Mass Layoff Statistics. The LMI Cooperative Agreement includes all information needed by the SESAs to apply for these funds and once awarded, report on the status of obligation and expenditure of these funds, as well as close out the cooperative agreement.

Agency: Employment Standards Administration.

Title: Request for Employment Information (CA–1027).

OMB Number: 1215–0105.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 1,000.

Estimated Time Per Respondent: 15 minutes.

Total Burden Hours: 250 hours.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $320.

Description: Payment of Compensation for partial disability to injured Federal employees is required under 5 U.S.C. 8106. This section also requires the Office of Workers' Compensation to obtain information regarding a claimant's earnings during a period of eligibility to compensation. The CA–1027 is used to obtain earnings information for an individual employed by a private employer and is used as criteria for determining the claimant's entitlement to compensation benefits.

Agency: Employment Standards Administration.

Title: Notice of Issuance of Insurance Policy (CM–921).

OMB Number: 1215–0059.

Frequency: Annually.

Affected Public: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 60.

Estimated Time Per Respondent: 10 minutes.

Total Burden Hours: 667 hours.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $1,600.

Description: The CM–921 provides insurance carriers with the means to supply the Employment Standards Administration with information showing that a responsible coal mine operator is insured against its Federal Black Lung compensation liability pursuant to the requirements established in the Federal Black Lung Benefits Act.

Agency: Employment and Training Administration.

Title: Job Training Partnership (JTPA) Title III Biennial State Plan.

OMB Number: 1205–0273.

Frequency: Annually.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 52.

Estimated Time Per Respondent: 20 Hours.

Total Burden Hours: 1,040.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The State Plan will provide the Department of Labor with a general description of each State's plans for the operation of Title III program and its utilization of JTPA funds for this purpose.

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 98–1150 Filed 1–15–98; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Solicitation for Grant Applications (SGA); Extension of the Closing Date for Receipt of Applications

AGENCY: Employment and Training Administration, Labor.

ACTION: Extension of the closing date for receipt of applications.

SUMMARY: In the **Federal Register** of December 9, 1997 (62 FR 64886), the Department of Labor published a notice of availability of funds and SGA for engaging employers in State and local School-to-Work (STW) systems through efforts undertaken by industry groups and trade associations. This notice extends the closing date for receipt of applications for an additional 30 days. This action is necessary to insure adequate preparation time for receiving quality proposals.

DATES: The revised closing date for receipt of application is February 23, 1998.

ADDRESSES: Applications shall be mailed to: U.S. Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, Attention: Ms. Laura Cesario, Reference: SGA/DAA 98–003, 200 Constitution Ave., N.W., Room S–4203, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Division of Acquisition and Assistance, telephone (202) 219-8694 (this is not a toll free number). This notice will also be published on the Internet, on the Employment and Training Administration's Home Page at http://www.doleta.gov.

Signed at Washington, D.C., this 12th day of January, 1998.

Laura A. Cesario,

Grant Officer.

[FR Doc. 98–1106 Filed 1–15–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration/Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. M0970041 dated February 14, 1997.

Agencies with construction projects pending, to which this wage decision would have been applicable, should utilize Wage Decision No. M0970013. Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

Modifications of General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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UT970011 (Feb. 14, 1997)
UT970015 (Feb. 14, 1997)
UT970023 (Feb. 14, 1997)
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WA970008 (Feb. 14, 1997)
WA970011 (Feb. 14, 1997)
WA970013 (Feb. 14, 1997)

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

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Signed at Washington, DC this 9th day of January 1998.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determination.

[FR Doc. 98–949 Filed 1–15–98; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Jim Walter Resources, Inc.

[Docket Nos. M–97–128–C and M–97–129–C]

Jim Walter Resources, Inc., P.O. Box 133, Brookwood, Alabama 35444 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its No. 5 Mine (I.D. No. 01–01322), and its No. 7 Mine (I.D. No. 01–01401) both located in Tuscaloosa County, Alabama. The petitioner requests that paragraph 11 of its previous petitions, docket numbers M–85–45–C and M–85–9–C, be amended to read as follows: Where high-voltage cable that moves during normal operation of the longwall is damaged to the extent that any metallic component of the cable is damaged, the cable shall be repaired and the outer jacket of such repair shall be vulcanized with flame-resistant material. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Par L Coal Company

[Docket No. M–97–130–C]

Par L Coal Company, R.D. #1, Box 56A, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.364(b) (1), (4), and (5) (weekly examination) to its Tracy Vein Slope (I.D. No. 36–08685) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake haulage slope and primary escapeway cannot be traveled safely. The petitioner proposes to examine these areas from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Par L Coal Company

[Docket No. M–97–131–C]

Par L Coal Company, R.D. #1, Box 56A, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1100–2 (quantity and location of firefighting equipment) to its Tracy Vein Slope (I.D. No. 36–08685) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Par L Coal Company

[Docket No. M–97–132–C]

Par L Coal Company, R.D. #1, Box 56A, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1200 (d) & (i) (mine map) to its Tracy Vein Slope (I.D. No. 36–08685) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000-foot intervals of advance from the intake slope and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Par L Coal Company

[Docket No. M–97–133–C]

Par L Coal Company, R.D. #1, Box 56A, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75–1400 (hoisting equipment; general) to its Tracy Vein Slope (I.D. No. 36–08685) located in Schuylkill County, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) in transporting persons without installing safety catches or other no less effective devices but instead use increased rope strength/safety factor and secondary safety rope connection in place of such devices. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Par L Coal Company

[Docket No. M–97–134–C]

Par L Coal Company, R.D. #1, Box 56A, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its Tracy Vein Slope (I.D. No. 36–08685) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps annually instead of every 6 months, as required, and to update maps daily by hand notations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. Turris Coal Company

[Docket No. M–97–135–C]

Turris Coal Company, P.O. Box 21, Elkhart, Illinois 62634 has filed a petition to modify the application of 30 CFR 75.332(a)(2) (working sections and working places) to its Elkhart Mine (I.D. No. 11–02664) located in Logan County, Illinois. The petitioner proposes to use the gathering arms and conveyor chain of the continuous miner to clean and load the loose rock and coal that is left on the mine floor after the continuous miner has completed its cut while the second continuous miner on the high performance unit simultaneously starts its cut; and to have the continuous miner maintain the same ventilation and water sprays required during the cut. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. Jim Walter Resources, Inc.

[Docket No. M–97–136–C]

Jim Walter Resources, Inc. P.O. Box 133, Brookwood, Alabama 35444 has filed a petition to modify the application of 30 CFR 75.1002 (trolley wires, trolley feeder wires, high-voltage cables and transformers) to its No. 3 Mine (I.D. No. 01–00758) located in Jefferson County, Alabama; and its No. 4 Mine (I.D. No. 01–01247) located in Tuscaloosa County, Alabama. The petitioner requests that paragraph 13 of its previous petition, docket number M–93–209–C, be amended to read as follows: Where a high-voltage cable that moves during normal operation of the longwall is damaged to the extent that any metallic component of the cable is damaged, the cable shall be repaired and the outer jacket of such repair shall be vulcanized with flame-resistant material. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. Dominion Coal Corporation

[Docket No. M–97–137–C]

Dominion Coal Corporation, P.O. Box 70, Vansant, Virginia 24656 has filed a petition to modify the application of 30 CFR 75.360(b)(5) (preshift examination) to its Mine No. 36 (I.D. No. 44–06759) located in Buchanan County, Virginia. The petitioner requests a variance from preshift of seals along intake air courses since the intake air passes by both sides of the seals to ventilate working sections where anyone is scheduled to work during the oncoming shifts. The petitioner asserts that application of the mandatory standard would provide at least the same measure of protection as would the mandatory standard.

10. Consolidation Coal Company

[Docket No. M–97–138–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.1906(b) (transport of diesel fuel) to its Buchanan Mine (I.D. No. 44–04856) located in Buchanan County, Virginia. The petitioner requests a variance to permit transportation of multiple safety cans on a single vehicle for certain specified applications. The petitioner proposes to refuel equipment involved in longwall moves; to transport multiple safety cans, not to exceed six, by any one vehicle from the portal bottom or underground storage facility to the longwall section to refuel equipment; to equip three 20-pound fire extinguishers on a vehicle transporting more than one safety can filled with diesel fuel; to equip a manually actuated fire suppression system on a vehicle transporting more than one safety can filled with diesel fuel; to provide additional fire protection by a mine-wide computerized CO detection system; to secure the safety cans in the vehicle by protective retaining cylinders; to have the vehicle transport only miners, and

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the vehicle operator while transporting diesel-filled safety cans; and to transfer the diesel fuel from the safety cans to equipment fuel tanks upon arrival on the longwall section. The petitioner states that the safety cans would not be stored on the longwall section; and that following refueling, the empty safety cans would be returned to the vehicle and transported to the surface or underground storage facility. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

11. Energy West Mining Company

[Docket No. M–97–139–C]

Energy West Mining Company, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Trail Mountain Mine (I.D. No. 42–01211) located in Emery County, Utah. The petitioner requests that Item (o) of the Proposed Decision and Order for its previously granted petition, docket number M–94–166–C, be amended to incorporate new language specified in this petition. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

12. Energy West Mining Company

[Docket No. M–97–140–C]

Energy West Mining Company, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.352 (return air courses) to its Trail Mountain Mine (I.D. No. 42–01211) located in Emery County, Utah. The petitioner requests that Item (o) of the Proposed Decision and Order for its previously granted petition, docket number M–94–167–C, be amended to incorporate new language specified in this petition. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

13. M & M Anthracite Coal Company

[Docket No. M–97–141–C]

M & M Anthracite Coal Company, 245 2nd Street, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Little Tracey Slope (I.D. No. 36–08693) located in Schuylkill County, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) in transporting persons without installing safety catches or other no less effective devices but instead use increased rope strength/safety factor and secondary safety rope connection in place of such devices. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

14. Elk Run Coal Company

[Docket No. M–97–142–C]

Elk Run Coal Company, Box 497, Sylvester, West Virginia 25193 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Laurel Eagle Mine (I.D. No. 46–08181) located in Raleigh County, West Virginia; and its Black Knight II Mine (I.D. No. 46–08402) located in Boone County, West Virginia. The petitioner proposes to use permanently installed, spring-loaded locking devices on mobile battery-powered machines to prevent unintentional loosening of battery plugs from battery receptacles in order to eliminate the hazards associated with difficult removal of padlocks during emergency situations, instead of using padlocks. The petitioner asserts that application of the mandatory standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

15. Tg Soda Ash, Inc.

[Docket No. M–97–13–M]

Tg Soda Ash, Inc., P.O. Box 100, Granger, Wyoming 82934 has filed a petition to modify the application of 30 CFR 57.22305 (approved equipment (III mines) to its Wyoming Soda Ash Trona Mine (I.D. No. 48–00639) located in Sweetwater County, Wyoming. The petitioner proposes to operate a non-permissible pump in an area of the mine that was previously a shortwall panel. The petitioner proposes to operate approved equipment in by the last open break or in areas where methane may enter the airstream. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

16. Getchell Gold Corporation

[Docket No. M–97–14–M]

Getchell Gold Corporation, P.O. Box 220, 28 Miles N.E., Golconda, Nevada 89414 has filed a petition to modify the application of 30 CFR 57.14130 (roll-over protective structures (ROPS) and seat belts for surface equipment) to its Getchell Mine (I.D. No. 26–02233) located in Humboldt County, Nevada. The petitioner requests variance from the use of the ROPS portion of the mandatory standard for its John Deere Model 570B Grader, serial number DW570BX5544565 and the Caterpillar D3C Dozer, serial number 6SL0153 equipment used primarily underground. The petitioner asserts that using this equipment underground without rollover protection would present a minimum exposure to the miners.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 17, 1998. Copies of these petitions are available for inspection at that address.

Dated: January 13, 1998.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 98–1152 Filed 1–15–98; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–1–93]

Wyle Laboratories, Inc., Request for Change of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of change in recognition as a Nationally Recognized Testing Laboratory (NRTL).

SUMMARY: This notice announces the Agency's final decision on the Wyle Laboratories' request to remove a restriction in its recognition as a NRTL under 29 CFR 1910.7.

DATES: The change is effective this January 16, 1998.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653, Washington, D.C. 20210, (202) 219–7056.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

Wyle Laboratories, Inc. (Wyle), previously made application pursuant to 29 CFR 1910.7, for recognition as a Nationally Recognized Testing Laboratory (see 59 FR 783, 1/6/94), and was so recognized (see 59 FR 37509, 7/22/94). As a part of this notice of recognition, a condition was imposed by OSHA that Wyle "will not test certify any equipment or materials for a client which installs its equipment in an electronic enclosure cabinet manufactured or distributed by Wyle." This condition stemmed from the ownership by Wyle of an Electronic Enclosures Division, which manufactured and distributed electronic enclosures. Wyle Laboratories informed OSHA by letter dated July 15, 1997, that it has sold its Electronic Enclosure Division in its entirety to Electronic Enclosures, Inc., a U.S. subsidiary of the Walker Dickson Group of Edinburgh, Scotland. Wyle also requested that OSHA remove the previously described condition, and notice is hereby given that this condition of Wyle's recognition is removed. While the sale of Division moots this restriction, a notice is appropriate to amend the public record of Wyle's recognition.

The address of the laboratory covered by this request is: Wyle Laboratories, 7800 Highway 20 West, Huntsville, Alabama 35807.

All other conditions and requirements of Wyle's recognition remain the same.

Since this request by Wyle does not fall within the public notice requirements of 29 CFR 1910.7, this is the only notice that OSHA will publish on this decision. A copy of Wyle's July 15, 1997 letter to OSHA is available for inspection and duplication at the Docket Office, Room N–2634, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (Docket No. NRTL–1–93).

(Authority: 29 CFR 1910.7)

Signed at Washington, D.C. this 7th day of January 1998.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 98–1151 Filed 1–15–98; 8:45 am]

BILLING CODE 4510–26–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Legal Services Corporation Board of Directors will meet by teleconference on January 22, 1998, at 2:00 p.m. EST.

STATUS OF MEETING: Open.

LOCATION: Members of the Board will participate by way of telephonic conferencing equipment allowing them all to hear one another. Members of the Corporation's staff and the public will be able to hear and participate in the meeting by means of telephonic conferencing equipment set up for this purpose in the Corporation's Conference Room, on the 11th floor of 750 First Street, NE., Washington, DC 20002.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Consider and act on whether to reduce the Corporation's budget mark.
3. Consider and act on proposed appointments to the Vice Presidencies established by the Board on November 15, 1997.
4. Consider and act on an individual Corporate officer's request for permission to receive compensation from a source other than the Corporation while on leave from LSC.
5. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify JoAnn Gretch, at (202) 336–8810.

Dated: January 14, 1998.

Victor M. Fortuno,

General Counsel and Secretary of the Corporation.

[FR Doc. 98–1242 Filed 1–14–98; 12:04 pm]

BILLING CODE 7050–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–410]

New York State Electric & Gas Corporation, Nine Mile Point Nuclear Station, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an Order approving, under 10 CFR 50.80, an application regarding a proposed indirect transfer of control of ownership and possessory rights held by New York State Electric & Gas Corporation (NYSEG) under the operating license for Nine Mile Point Nuclear Station, Unit No. 2 (NMP2). The indirect transfer would be to a holding company, not yet named, to be created over NYSEG in accordance with an executed "Agreement Concerning the Competitive Rate and Restructuring Plan of New York State Electric & Gas Corporation." NYSEG is licensed by the Commission to own and possess an 18-percent interest in NMP2, located in the town of Scriba, Oswego County, New York.

Environmental Assessment

Identification of the Proposed Action

The proposed action would consent to the indirect transfer of control of the license to the extent effected by NYSEG becoming a subsidiary of the holding company in connection with a proposed plan of restructuring. Under the restructuring plan, the outstanding shares of NYSEG's common stock (other than shares for which appraisal rights are properly exercised) are to be exchanged for common stock of the holding company on a share-for-share basis, such that the holding company will own all of the outstanding common stock of NYSEG. NYSEG would divest its interest in coal-fired power plants, but would continue to be an "electric utility" as defined in 10 CFR 50.2, engaged in the transmission, distribution and, in the case of NMP2 and hydroelectric facilities, the generation of electricity. NYSEG would retain its ownership interest in NMP2 and continue to be a licensee of NMP2. No direct transfer of the operating license or ownership interests in the station would result from the proposed restructuring. The restructuring of NYSEG would not involve any change to either the management organization or technical personnel of Niagara Mohawk Power Corporation (NMPC), which is responsible for operating and maintaining NMP2 and is not involved in the restructuring of NYSEG. The proposed action is in accordance with NYSEG's application dated September 18, 1997, as supplemented October 20 and 27, 1997.

The Need for the Proposed Action

The proposed action is required to enable NYSEG to restructure as described above.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed corporate restructuring and concludes that there will be no physical or operational changes to NMP2 as a result. The corporate restructuring will not affect the qualifications or organizational affiliation of the personnel who operate

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and maintain the facility, as NMPC will continue to be responsible for the maintenance and operation of NMP2 and is not involved in the restructuring of NYSEG.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the restructuring would not affect nonradiological plant effluents and would have no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements Related to the Operation of Nine Mile Point Nuclear Station, Unit No. 2, (NUREG–1085) dated May 1985.

Agencies and Persons Contacted

In accordance with its stated policy, on January 12, 1998, the staff consulted with the New York State official, Mr. Jack Spath, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see NYSEG's application dated September 18, as supplemented by letters dated October 20 and 27, 1997, and January 6, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 12th day of January 1998.

For the Nuclear Regulatory Commission.

S. Singh Bajwa,

Director Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–1108 Filed 1–15–98; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Sunshine Act Meeting, Board of Governors; Notification of Items Added to Meeting Agenda

DATE OF MEETING: January 5, 1998.

STATUS: Closed.

PREVIOUS ANNOUNCEMENT: 62 FR 66884, December 22, 1997.

CHANGE: At its meeting on January 5, 1998, the Board of Governors of the United States Postal Service voted unanimously to add two items to the agenda of its closed meeting held on that date:

1. Performance Measurement.
2. Facilities Redevelopment Project.

CONTACT PERSON FOR MORE INFORMATION

CONTACT: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W. Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 98–1190 Filed 1–13–98; 4:39 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22998; File No. 812–10604]

The Dreyfus Socially Responsible Growth Fund, Inc., and The Dreyfus Corporation

January 9, 1998.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 (the "1940 Act") for exemptions from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of The Dreyfus Socially Responsible Growth Fund and shares of any other investment company or portfolio thereof that is designed to fund insurance products and for which The Dreyfus Corporation or any of its affiliates may serve in the future, as investment adviser, administrator, manager, principal underwriter, or sponsor (such other investment companies or investment portfolios thereof being hereinafter referred to, individually, as a "Future Fund" and collectively, as the "Future Funds") to be sold to and held by: (1) Separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; and (2) qualified pension and retirement plans outside of the separate account context.

APPLICANTS: The Dreyfus Socially Responsible Growth Fund, Inc. (the "Fund") and The Dreyfus Corporation ("Dreyfus").

FILING DATE: The application was filed on April 4, 1997, amended and restated on October 20, 1997, and amended on December 16, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on February 3, 1998, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 200 Park Avenue, New York, NY 10166.

FOR FURTHER INFORMATION CONTACT: Zandra Y Bailes, Senior Counsel, or Mark C. Amorosi, Branch Chief, Division of Investment Management, Office of Insurance Products, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The

complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. The Fund is a Maryland corporation and is registered under the 1940 Act as an open-end diversified management investment company. Its authorized capital stock presently consists of one class of stock, but in the future the Fund may create one or more additional classes of stock, each corresponding to a portfolio of securities.

2. Dreyfus, an investment adviser registered under the Investment Advisers Act of 1940, is the investment adviser for the Fund. NCM Capital Management Group, Inc. is the sub-investment adviser for the Fund and provides day-to-day management of the Fund's portfolio.

3. The Fund currently offers its shares to insurance companies as the investment vehicle for their separate accounts that fund variable annuity contracts and intends to offer its shares to affiliated and unaffiliated insurance companies as the investment vehicle for their separate accounts that fund variable life insurance contracts (together, variable annuity contracts and variable life insurance contracts are referred to herein as "Variable Contracts"). Separate accounts owning shares of the Fund and their insurance company depositors are referred to herein as "Participating Separate Accounts" and "Participating Insurance Companies," respectively.

4. Each Participating Insurance Company will enter into a participation agreement with the Fund on behalf of its Participating Separate Account. The role of the Fund under this agreement, insofar as the federal securities laws are applicable, will consist of offering shares to the Participating Separate Accounts and complying with any conditions that the Commission may impose upon granting the order requested in the application.

5. Applicants also propose that the Fund offer and sell its shares directly to qualified pension and retirement plans ("Qualified Plans" or "Plans") outside of the separate account context.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provisions of the 1940 Act or the rules or regulations thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) under the 1940 Act provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–2(b)(15) are available, however, only where the management investment company underlying the separate account ("underlying fund") offers its shares *"exclusively* to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company" (emphasis supplied).[1] Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or a flexible premium variable life insurance separate account of the same company or of any affiliated life insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same insurance company or of any affiliated life insurance company is referred to herein as "mixed funding." In addition, the relief granted by Rule 6e–2(b)(15) is not available if shares of the underlying management investment company are offered to variable annuity or variable life insurance separate accounts of unaffiliated life insurance companies. The use of a common management investment company as the underlying investment medium for separate accounts of unaffiliated life insurance companies is referred to herein as "shared funding." Furthermore, Rule 6e–2(b)(15) does not contemplate that shares of the underlying fund might also be sold to Qualified Plans.

3. In connection with the funding of flexible premium variable life insurance contracts issues through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions, however, are available only where the separate account's underlying fund offers its shares "*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company" (emphasis supplied).[2] Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account but does not permit shared funding. Also, Rule 6e–3(T) does not contemplate the sale of shares of the underlying fund to Qualified Plans.

4. Applicants state that changes in the federal tax law have created the opportunity for the Fund to substantially increase its net assets by selling shares to Qualified Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the "Code"), imposes certain diversification standards on the assets underlying Variable Contracts. The Code provides that Variable Contracts will not be treated as annuity contracts or life insurance contracts, as the case may be, for any period (or any subsequent period) for which the underlying assets are not, in accordance with regulations issued by the Treasury Department (the "Regulations"), adequately diversified. On March 2, 1989, the Treasury Department issued regulations (Treas. Reg. 1.817–5) which established specific diversification requirements for investment portfolios underlying Variable Contracts. The regulations generally provide that, in order to meet these diversification requirements, all of the beneficial interests in the underlying investment company must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, the Regulations also contain an exception to this requirement that permits trustees of a Qualified Plan to hold shares of an investment company, the shares of which are also held by insurance company segregated asset accounts, without adversely affecting the status of the investment company as an adequately diversified underlying investment for Variable Contracts issued through such segregated asset accounts (Treas. Reg. 1.817–5(f)(3)(iii)).

[1] The exemptions provided by Rule 6e–2 also are available to the investment adviser, principal underwriter, and sponsor or depositor of the separate account.

[2] The exemptions provided by Rule 6e–3(T) also are available to the investment adviser, principal underwriter, and sponsor or depositor of the separate account.

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5. Applicants note that if the Fund and Future Funds were to sell their shares only to Qualified Plans, exemptive relief under Rule 6e–2 and Rule 6e–3(T) would not be necessary. The relief provided under Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15) does not relate to qualified pension and retirement plans or to a registered investment company's ability to sell its shares to such plans.

6. Applicants also note that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Regulations. Thus, the sale of shares to both separate accounts and Qualified Plans was not contemplated at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

7. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2) of the 1940 Act. Rules 6e–2(b)(15)(i) and (ii) and 6e–3(T)(b)(15)(i) and (ii) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying fund.

8. Applicants state that the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9 of the 1940 Act limits, in effect, the amount of monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants state that those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals involved in an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies funding the separate accounts.

9. Applicants state that neither the Participating Insurance Companies nor the Qualified Plans are expected to play any role in the management or administration of the Fund or Future Funds. Those individuals who participate in the management or administration of the Fund and Future Funds will remain the same regardless of which separate accounts, insurance companies or Qualified Plans use such Funds. Applicants maintain that applying the requirements of Section 9(a) because of investment by other insurers' separate accounts and Qualified Plans would be unjustified and would not serve any regulatory purpose. Moreover, Qualified Plans, unlike separate accounts, are not themselves investment companies, and therefore are not subject to Section 9 of the 1940 Act. Furthermore, it is not anticipated that a Qualified Plan would be deemed to be an affiliated person of the Fund or any Future Fund by virtue of its shareholders.

10. Applicants state that Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. More specifically, Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contractowners with respect to the investments of an underlying fund or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority and subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of the Rules. In addition, Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that the insurance company may disregard contractowner's voting instructions if the contractowners initiate any change in such company's investment policies, principal underwriter or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii) (B) and (C) of the Rules).

11. Applicants assert that Qualified Plans, which are not registered as investment companies under the 1940 Act, have no requirement to pass through voting rights to plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with Plan assets to certain specified persons. Under Section 403(a) of the Employee Retirement Income Security Act ("ERISA"), shares of a fund sold to a Qualified Plan must be held by the trustees of the Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) When the Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA, and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the above two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies.

12. Where a named fiduciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from participants.

13. Where a Qualified Plan does not provide participants with the right to give voting instructions, Applicants submit that there is no potential for material irreconcilable conflicts of interest between or among variable contract holders and Plan investors with respect to voting of the respective Fund's shares. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to such Qualified Plans since the Qualified Plans are not entitled to pass-through voting privileges.

14. Even if a Qualified Plan were to hold a controlling interest in the Fund or a Future Fund, Applicants argue that such control would not disadvantage other investors in such Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in the Fund or a Future Fund by a Plan will not create any of the voting complications occasioned by mixed funding or shared funding. Unlike mixed or shared funding, Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

15. Where a Plan provides participants with the right to give voting instructions, Applicants see no reason to believe that participants in Qualified Plans generally or those in a particular Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage variable contract holders. The purchase of shares of the Fund or Future Funds by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

16. Applicants submit that the prohibitions on mixed and shared funding might reflect some concern with possible divergent interests among different classes of investors. Applicants assert that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. Where insurers are domiciled in different states, it is possible that the particular state insurance regulatory body in a state which one insurance company is domiciled could require action that is inconsistent with the requirements of insurance regulators of other states in which other insurance companies are domiciled. The fact that a single insurer and its affiliates offer their insurance products in different states does not create a significantly different or enlarged problem.

17. Applicants submit that shared funding is, in this respect, no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit under various circumstances. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, Applicants submit that the conditions set forth in the application and included in this notice are designed to safeguard against and provide procedures for resolving any adverse effects that differences among state regulatory requirements may produce. For instance, if a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its Participating Separate Account's investment in the relevant Fund.

18. Applicants assert that the right of an insurance company under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) to disregard contractowners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contractowner voting instructions only with respect to certain specified items and under certain specified conditions. Affiliation does not eliminate the potential, if any exits, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contractowners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that an insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations.

19. A particular insurer's disregard of voting instructions nevertheless could conflict with the majority of contractowner voting instructions. The insurer's action could arguably be different from the determination of all or some of the other insurers (including affiliated insurers) that the contractowners' voting instructions should prevail, and could either preclude a majority vote approving the change or could represent a minority view. If the insurer's judgment represents a minority position or would preclude a majority vote, the insurer may be required, at the election of the relevant Fund to withdraw its Participating Separate Account's investment in such Fund, and no charge or penalty would be imposed as a result of such withdrawal.

20. Applicants submit that there is no reason why the investment policies of the Fund or any Future Fund would or should be materially different from what those policies would or should be if the Funds funded only annuity contracts or only scheduled or flexible premium life contracts. In this regard, Applicants note that each type of insurance product is designed as a long-term investment program. In addition, Applicants represent that neither the Fund or any Future Fund will be managed to favor or disfavor any particular insurer or type of insurance product.

21. Furthermore, applicants submit that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contractowners is composed of individuals of diverse financial status, age, insurance and investment goals. A fund supporting even one type of insurance product must accommodate those factors in order to attract and retain purchasers.

22. Applicants do not believe that the sale of shares of the Fund and Future Funds to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance contractowners. Applicants note that Section 817(h) of the Code requires that the investments made by variable annuity and variable life insurance separate accounts be "adequately diversified." Treasury Department Regulations issued under Section 817(h) provide that, in order to meet the statutory diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Regulation specifically permits "qualified pension or retirement plans" and separate accounts to invest in the same underlying fund. For this reason, Applicants have concluded that neither the Code, nor the Treasury Regulations or Revenue Rulings thereunder, present any inherent conflicts of interest if Qualified Plans, variable annuity separate accounts, and variable life insurance separate accounts all invest in the same underlying fund.

23. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Fund and Future Funds. When distributions are to be made, and a Separate Account or Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account and Qualified Plan will redeem shares of the Fund and the Future Funds at their respective net asset value. A Qualified Plan will make distributions in accordance with the terms of the Plan.

24. Applicants state that they do not see any greater potential for material irreconcilable conflicts arising between the interests of participants under Qualified Plans and contractowners of Participating Separate Accounts from possible future changes in the federal tax laws than that which already exist between variable annuity contractowners and variable life insurance contractowners.

25. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving voting rights to Participating Separate Account contractowners and to Qualified Plans. Applicants represent that the Fund and Future Funds will inform each shareholder, including each Participating Insurance Company and Qualified Plan, of information necessary for the shareholder meeting, including their respective share of ownership in the relevant Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its participation agreement with the

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relevant Fund. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of the Fund and Future Funds would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.

26. Applicants submit that there are no conflicts between the contractowners of the Participating Separate Accounts and Qualified Plan participants with respect to the state insurance commissioners' veto powers over investment objectives. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming complex transactions must be undertaken to accomplish such redemptions and transfers. Conversely, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans can make the decision quickly and redeem their interest in the Fund and Future Funds and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts or, as is the case with most Qualified Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants have concluded that even if there should arise issues where the interests of contractowners and the interests of Qualified Plans are in conflict, the issues can be almost immediately resolved since the trustees of (or participants in) the Qualified Plans can, on their own, redeem the shares out of the Fund and Future Funds.

27. Applicants assert that various factors have limited the number of insurance companies that offer variable annuities and variable life insurance contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments) and the lack of name recognition by the public of certain insurers as investment experts. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the Variable Contract business on their own.

28. Applicants contend that the use of the Fund and Future Funds as common investment vehicles for Variable Contracts would reduce or alleviate these concerns. Participating Insurance Companies will benefit not only from the investment and administrative expertise of the Fund's and Future Funds' investment adviser, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Fund and Future Funds available for mixed and shared funding may encourage more insurance companies to offer Variable Contracts, and accordingly could result in increased competition with respect to both Variable Contract design and pricing, which can be expected to result in more product variation and lower charges. Applicants state that mixed and shared funding would benefit variable contractowners by eliminating a significant portion of the costs of establishing and administering separate funds. Applicants also assert that the sale of shares of the Fund and Future Funds to Qualified Plans in addition to separate accounts of Participating Insurance Companies will result in an increased amount of assets available for investment by such Funds. This may benefit variable contractowners by promoting economies of scale, by permitting increased safety of investments through greater diversification, and by making the addition of new portfolios more feasible.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Board of each Fund shall consist of persons who are not "interested persons" of such Fund, as defined by Section 2(a)(19) of the 1940 Act, and the Rules thereunder, as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification or bona fide resignation of any Trustee or Director, then the operation of this condition shall be suspended (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its Fund for the existence of any material irreconcilable conflict among the interests of the contract holders of all Participating Separate Accounts and of participants of Qualified Plans investing in such Fund and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of such Fund are being managed; (e) a difference in voting instructions given by variable annuity contractowners and variable life insurance contractowners; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contractowners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of plan participants.

3. The Participating Insurance Companies, Dreyfus, and any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of the Fund or a Future Fund (the "Participants") shall report any potential or existing conflicts to the applicable Board. Participants will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever it has determined to disregard contractowners voting instructions, and, if pass-through voting is applicable, an obligation by each Participant to inform the Board whenever it has determined to disregard plan participant voting instructions. The responsibility to report such conflicts and information, and to assist the Board will be contractual obligations of all Participants under their agreements governing participation in the Fund and Future Funds, and such agreements, in the case of Participating Insurance Companies, shall provide that such responsibilities will be carried out with a view only to the interests of the contractowners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Participants, and such agreements will provide that their responsibilities will be carried out with a view only to the interests of plan participants.

4. If it is determined by a majority of a Board, or a majority of its disinterested members, that a material irreconcilable conflict exists, the relevant Participants shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested members of the Board), take whatever steps are necessary to eliminate the material irreconcilable conflict, including: (1) Withdrawing the assets allocable to some or all of the Participating Separate Accounts from the relevant Fund and reinvesting such assets in a different investment medium, which may include another portfolio of such Fund, if any, or, in the case of Participating Insurance Companies, submitting the question whether such segregation should be implemented to a vote of all affected contractowners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contractowners, life insurance contractowners or Variable Contractowners of one or more Participant) that votes in favor of such segregation, or offering to the affected contractowners the option of making such a charge; and (2) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contractowners' voting instructions and that decision represents a minority position or would preclude a majority vote, such Participant may be required, at the relevant Fund's election, to withdraw its separate account's investment in such Fund and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represent a minority position or would preclude a majority vote, the Plan may be required, at the election of the Fund, to withdraw its investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal.

The responsibility to take remedial action in the event of a determination by a Board of a material irreconcilable conflict, and to bear the cost of such remedial action, will be a contractual obligation of all Participants under their agreements governing participation in the relevant Fund and this responsibility, in the case of Participating Insurance Companies, will be carried out with a view only to the interest of contractowners and, in the case of Qualified Plans, will be carried out with a view only to the interests of plan participants. A majority of the disinterested members of the Board shall determine whether any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Fund, any Future Fund or Dreyfus be required to establish a new funding medium for any Variable Contract. No Participating Insurance Company will be required to establish a new funding medium for any Variable Contracts if an offer to do so has been declined by the vote of a majority of contractowners materially and adversely affected by the irreconcilable material conflict. Further, no Qualified Plan will be required by this condition to establish a new funding medium for the Plan if: (a) A majority of the plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to documents governing the Qualified Plan, the Plan makes each decision without a plan participant vote.

5. The determination by a Board of the existence of a material irreconcilable conflict and its implications shall be promptly made known in writing to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all contractowners to the extent that the Commission continues to interpret the 1940 Act to require pass-through voting for contractowners. Accordingly, such Participants, where applicable, will vote shares of the applicable Fund held in its Participating Separate Accounts in a manner consistent with voting instructions timely received from contractowners. Participating Insurance Companies shall be responsible for assuring that each Participating Separate Account investing in a Fund calculates voting privileges in a manner consistent with other Participants. The obligation to calculate voting privileges as provided in the application shall be a contractual obligation of all Participating Insurance Companies under their agreement governing participation in a Fund. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions as well as shares it owns in the same proportion as it votes those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law government Plan documents.

7. All reports received by a Board with respect to potential or existing conflicts and all Board action with regard to (a) determination of the existence of a conflict, (b) notification of Participants of the existence of a conflict and (c) determination of whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the meetings of the Board or other appropriate records, and such minutes or other records will be made available to the Commission upon request.

8. The Fund and each Future Fund will notify all Participants that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund shall disclose in its prospectus that: (a) Shares of such Fund may be offered to insurance company separate accounts of both annuity and life insurance variable contracts, and to Qualified Plans; (b) due to differences of tax treatment and other considerations, the interest of various contractowners participating in such Fund and the interest of Qualified Plans investing in such Fund may conflict; and (c) the Board will monitor such Fund for any material conflicts and determine what action, if any, should be taken.

9. The Fund and each Future Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of such Fund), and, in particular, each Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Fund and Future Funds are or will not be the type of trust described in Section 16(c) of the 1940 Act), as well as with Section 16(a), and, if applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

10. If and to the extent Rule 6e–2 or 6e–3(T) is amended, or proposed Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules promulgated under the 1940 Act with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested in the application, then the Fund and each Future Fund and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 or 6e–3(T), as amended, or Rule 6e–3, as adopted, to the extent such rules are applicable.

11. The Participants shall at least annually submit to the Board of each Fund such reports, materials or data as a Board may reasonably request so that the Board may fully carry out obligations imposed upon them by the conditions contained in the application. Such reports, materials and data shall be

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submitted more frequently if deemed appropriate by the applicable Board. The obligations of the Participants to provide these reports, materials and data to a Board when it so reasonably requests, shall be a contractual obligation of all Participants under their agreement governing participation in the Fund and Future Funds.

12. Neither the Fund nor any Future Fund will accept a purchase order from a Plan if such purchase would make the Plan shareholder or owner of 10% or more of the assets of such Fund unless such Plan executes a fund participation agreement with the relevant Fund, including the conditions set forth herein to the extent applicable. A Plan shareholder will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of such Fund.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–1113 Filed 1–15–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39540; File No. SR–CHX–97–26]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Display of Limit Orders

January 12, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 1, 1997, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Article XX, Rule 7 to expressly provide for the display of customer limit orders as contained in Rule 11Ac1–4 under the Act and other limit orders. Proposed new language is italicized.

Article XX

Rule 7

. . . Interpretation and Policies

.05 Quotation sizes, unless otherwise specified, shall be assumed to be for 100 shares. Where bids or offers are made at the same price the aggregate quotation size of such equal bids or offers shall be inputted into the quotation system. Such aggregate sizes shall remain firm until withdrawn unless exempted under one of the conditions specified in paragraphs .06–.09 of this Rule. *With respect to limit orders received by specialists, each specialist shall publish immediately (i.e., as soon as practicable, which under normal market conditions means no later than 30 seconds from time of receipt) a bid or offer that reflects:*

(i) the price and full size of each limit order that is at a price that would improve the specialist's bid or offer in such security; and

(ii) the full size of each limit order that is priced equal to the specialist's bid or offer for such security;

The requirements with respect to specialists' display of limit orders shall not apply to any limit order that is:

(i) executed upon receipt of the order;

(ii) placed by a person or entity who expressly requests, either at the time the order is placed or prior thereto pursuant to an individually negotiated agreement with respect to such person's orders, that the order not be displayed;

(iii) and odd-lot order;

(iv) delivered immediately upon receipt to an exchange or association-sponsored system or an electronic communications network that complies with the requirements of Securities and Exchange Commission Rule 11Ac1–1(c)(5) under the Securities Exchange Act with respect to that order;

(v) delivered immediately upon receipt to another exchange member or over-the-counter market maker that complies with the requirements of Securities and Exchange Commission Rule 11Ac1–4 under the Securities Exchange Act with respect to that order; or

(vi) an "all or none" order.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has recently adopted Rule 11Ac1–4 under the Act [2] which, among other things, requires specialists to immediately display the price and full size of any customer limit order that improved their quoted bid or offer in a security. The proposed amendments to Article XX, Rule 7 would make Rule 7 more consistent with the limit order display requirements of SEC Rule 11Ac1–4 and Commission interpretations thereunder.[3]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

[1] 15 U.S.C. § 78s(b)(1).

[2] See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1997) ("SEC Limit Order Adopting Release").

[3] See letters from Richard R. Lindsey, Director, Division of Market Regulation, SEC, to Mr. Richard Grasso, Chairman and Chief Executive Officer, NYSE, dated November 22, 1996; to Mr. Richard G. Ketchum, Chief Operating Officer, NASD, dated January 3, 1997; and to Mr. James E Buck, Senior Vice President and Secretary, NYSE, dated January 17, 1997.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–97–26 and should be submitted by February 6, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission believes that the Exchange's proposal to adopt a limit order display rule is consistent with the policies behind the Commission's own Limit Order Display rule.[4] The Commission recognizes that the Exchange's proposal has the additional requirements that CHX specialists display all limit orders, not just customer limit orders, unless a specified exception exists. In addition, a CHX specialist, under the Exchange's proposal, must increase the size of its quote upon receipt of a limit order even if such order creates a de minimis increase. The Commission recognized, in adopting the Limit Order Display Rule, that SRO's may impose more stringent standards.[5]

The Commission finds that the Exchange's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] which requires an exchange to have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission therefore finds good cause for approving the proposed rule change (SR–CHX–97–26) prior to the thirtieth day after date of publication of notice thereof ion the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–1111 Filed 1–15–98; 8:45 am]

BILLING CODE 8010–01–M

[4] See SEC's Limit Order Adopting Release.

[5] See SEC's Limit Order Adopting Release at note 147.

[6] 15 U.S.C. § 78f(b)(5).

[7] 15 U.S.C. § 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39539; File No. SR–NASD–97–92]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to By-Law Amendment to Require Members To Update Firm Contact Information Electronically, To Maintain Electronic Mail Account, and for Other Purposes

January 12, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 19, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Association is proposing the following changes to its by-laws, to require its members to update firm contact information electronically, to maintain an electronic mail (e-mail) address, and to make certain other technical changes:

By-Laws of the National Association of Securities Dealers, Inc.[2]

Article IV—Executive Representative

Sec. 3. Each member shall appoint and certify to the Secretary of the NASD one "executive representative" who shall represent, vote, and act for the member in all the affairs of the NASD, except that other executives of a member may also hold office in the NASD, serve on the Board or committees appointed under Article IX, Section 1 or otherwise take part in the affairs of the NASD. A member may change its executive representative upon giving notice thereof via electronic process or such other process the NASD may prescribe to the Secretary, or may, when necessary, appoint, by notice via electronic process to the Secretary, a substitute for its executive representative. An executive representative of a member or a substitute shall be a member of senior management and registered principal of the member. *Not later than January 1, 1999, each executive representative shall maintain an Internet electronic mail account for communication with the NASD and shall update firm contact information via the NASD Regulation Web Site or such other means as prescribed by the NASD.*

* * * * *

Article VII—Board of Governors

* * * * *

Sec. 9. (b) The National Nominating Committee shall consist of no fewer than six and no more than nine members. The number of [Industry] *Non-Industry* committee members shall equal or exceed the number of [Non-Industry] *Industry* committee members. If the National Nominating Committee consists of six members, at least two shall be Public committee members. If the National Nominating Committee consists of seven or more members, at least three shall be Public committee members. No officer or employee of the Association shall serve as a member of

[1] 15 U.S.C. 78s(b)(1).

[2] This version of the NASD By-Laws was approved by the Commission in Securities Exchange Act Release No. 39326 (Nov. 14, 1997), 62 FR 62385 (Nov. 21, 1997). Additions are italicized, deletions are bracketed.

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the National Nominating Committee in any voting or non-voting capacity. No more than three of the National Nominating Committee members and no more than two of the Industry committee members shall be current members of the NASD Board.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

(a) Amendment to Article IV, Section 3. On August 5, 1997, the Membership Committee of the NASD Regulation, Inc. ("NASD Regulation") Board of Directors recommended the adoption of an amendment to the NASD By-Laws to require each executive representative, beginning not later than January 1, 1999, to maintain an Internet electronic mail account for communication with the NASD and to update firm contact information via the NASD Regulation Web Site. The NASD Regulation Board approved the recommendation at its September 23, 1997 meeting. The NASD Board of Governors approved the amendment at its December 11, 1997 meeting.

The NASD has long wrestled with how to collect and administer in an effective manner the names of members, executive representatives and other individuals who hold positions of significant responsibility within member firms. This information is used by the NASD Corporate Secretary for member balloting. Member Regulation for compliance purposes, and Corporate Communications in identifying Key individuals for use in target mailings. The current method for acquiring this information is through the filing of an NASD form entitled "NASD Member Firm Contact Questionnaire" (NMFCQ).

The data requested on the NMFCQ is not required on any other form filing (*e.g.*, Form BD or U–4). The data is available in the Central Registration Depository ("CRD"), but in a text form that renders it nearly impossible to interface to another system. Thus, members are required to file the NMFCQ with the CRD, where the information is data captured into the Member Profile System, an adjunct to the existing CRD system. The data is then viewable throughout the organization via the Member Profile System and is interfaced to regulatory and finance systems as well as the existing corporate mailing system for use in distributing publications, reports, voting ballots, and mail.

A new procedure for collecting NMFCQ information in the future is necessary for two reasons. First, the CRD modernization effort does not include rebuilding this function, so another alternative is required. Second, members are rarely updating these filings. Because the information solicited via the form is very important to support the NASD's business, the NASD must have a more efficient means for firms to update this information, thereby encouraging them to do so more regularly.

The proposed By-Law change will improve the data collection process by requiring a firm to access its NMFCQ via the NASD Regulation Web Site and update it on a periodic basis. (A firm would be able to access only its own NMFCQ; the information would be password-protected to prevent any public access.) The information then would be interfaced to the internal NASD Regulation systems requiring this set of data. Further, the By-Law also would require each member to maintain an Internet electronic mail address on behalf of its executive representative. This electronic mail address would be used proactively to send messages reminding the member to review and update its contact information.

There are other reasons the staff is interested in member Internet access and electronic mail. Once established, it opens up many options for timely communications with members and associated cost savings. It also can assist members with timely internal distribution of NASD information, notices, and publications. Other potential initiatives include eliminating or reducing printed publications, sending more timely announcements and notices, and providing value-added services to members.

The NASD is proposing a one-year transition period to accommodate small firms that may not currently have Internet access or electronic mail accounts.

(b) Technical Amendment to Article VII, Section 9(b). The NASD also proposes a technical amendment to Article VII, Section 9(b) of the NASD By-Laws. In Special Notice to Members 97–75, the NASD proposed a comprehensive revision to its By-Laws to provide for a more streamlined corporate structure. The membership approved these changes on November 13, 1997, and the Securities and Exchange Commission ("Commission") approved them on November 14, 1997.[3] Article VII, Section 9(b) contained a typographical error that provided that the number of Industry committee members on the National Nominating Committee should equal or exceed the number of Non-Industry committee members. The terms "Industry" and "Non-Industry" were transported. Section 9(b) should provide that the number of Non-Industry committee members should equal or exceed the number of Industry committee members. The National Nominating Committee is required to be composed in such a manner by the Undertakings agreed to by the NASD on August 8, 1996.[4]

2. Statutory Basis

The NASD believes the proposed rule change is consistent with Section 15A(b)(2) in that the proposed rule change will assist the NASD in carrying out the purposes of the Act and to enforce compliance with the Act, the rules and regulations thereunder, and the Rules of the Association.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will by order approve such proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.

The NASD proposes to make the rule change effective upon Commission approval.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–97–92 and should be submitted by February 6, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–1110 Filed 1–15–98; 8:45 am]

BILLING CODE 8010–01–M

[3] *See* Securities Exchange Act Release No. 39326 (Nov. 14, 1997), 62 FR 62385 (Nov. 21, 1997).

[4] Securities Exchange Act Release No. 37538 (Aug. 8, 1996) (SEC Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, In the Matter of National Association of Securities Dealers, Inc., Administrative Proceeding File No. 3–9056).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39532; File No. SR–PCX–97–28]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Exchange-Sponsored Hand-Held Terminals for Options Floor Brokers

January 9, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 3, 1997 and December 12, 1997, respectively, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change and amendment No. 1 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt a new program to allow floor brokers on the Options Floor to use Exchange-sponsored hand-held terminals to receive orders sent electronically by Member Firms located off the floor. The proposal will also establish new procedures for electronic order flow handling, routing, execution and trade reporting under the program. The test of the proposed rule change is available at the Office of the Secretary, the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

General Description. The Exchange's Member Firm Interface ("MFI")[3] currently permits Exchange Member Firms to use an electronic link with the Exchange to send their option orders directly to the Exchange for delivery to POETS (Pacific Option Exchange Trading System).[4] Under the proposal, member firms would be able to use the MFI connection to route orders directly to the member firm booth (not by default) or to a floor broker's hand-held terminal located in the trading crowd.[5]

Under the program, Member Firms will be permitted to send their orders electronically to the Exchange via MFI and route them to one of three destinations on the trading floor: (a) To a floor broker standing in the trading crowd; (b) to a Member Firm booth location on the trading floor; or (c) to POETS, where they will be automatically executed by Auto-Ex or maintained in Auto-Book. All orders so transmitted will first be sent through the Server.[6] Orders sent to a Member Firm booth via the Server may be sent subsequently either to POETS or to a floor broker in the trading crowd. Orders sent via the Server to a floor broker in the trading crowd may subsequently be transmitted to a Member Firm booth, to POETS, or to another floor broker on the trading floor.

The Exchange intends to furnish hand-held terminals to be used by floor brokers under the program. In addition, the Exchange will supply booth devices that will have the capability to retrieve and display all orders that were submitted through the device. The Exchange intends to assess users a monthly rental fee for such use.[7]

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The MFI is an electronic order delivery and reporting system that allows member firms to route orders for execution by the automatic execution feature of POETS as well as to route limit orders to the Options Public Limit Order Book. Orders that do not reach those two destinations are defaulted to a member firm booth. MFI also provides member firms with instant confirmation of transactions to their systems. Member firms may access POETS by establishing an MFI mainframe-to-mainframe connection.

[4] Orders entered via MFI are delivered to one of three destinations: (a) to Auto-Ex, where they are automatically executed at the disseminated bid or offering price; (b) to Auto-Book which maintains non-marketable limit orders based on limit price and time of receipt; or (c) to a Member Firm's default destination—a particular firm booth or remote entry site—if the order fails to meet the eligibility criteria necessary for either Auto-Ex or Auto-Book or if the Member Firm requests such default for its orders. *See generally* Exchange Act Release No. 27633 (January 18, 1990), 55 FR 2466 ("POETS Approval Order").

[5] In that regard, the Exchange is proposing to add a new Rule 6.88(a), which provides: "Members and Member Organizations may send orders electronically through the Exchange's Member Firm Interface and route them directly to POETS, to a Member Firm booth on the Options Floor, to a Floor Broker Hand-Held Terminal located on the Options Floor, or to any other location designated by the Exchange, provided that the Member or Member Organization has been approved by the Exchange to do so."

[6] The Exchange notes that there will be no appreciable delay in order entry due to the transmission of orders through the Server. The Exchange also notes that if a Member Firm routes an order to POETS via MFI for automatic execution or maintenance in Auto-Book, the order will not be sent through the Server. Only orders to be transmitted through the Hand-Held Terminal system will be sent through the Server.

[7] The Exchange will submit a separate rule filing to the Commission to establish these fees.

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Exchange rules on order representation and order execution will generally be unchanged under the program.[9] However, the Exchange is proposing to modify its rules on orders to provide that an order sent electronically through MFI will be deemed to be a "written order" for purposes of Rule 6.67. The order information that must be reported to the Exchange in connection with each transaction that is executed on the trading floor will be also unchanged under the program.[9]

Prohibition of Market Making Function. The Exchange is proposing to adopt new Rule 6.88(b) providing that no Floor Broker may knowingly use a Floor Broker Hand-Held Terminal, on a regular and continuous basis, to simultaneously represent orders to buy and sell options contracts in the same series for the account of the same beneficial holder. The rule further provides that if the Exchange determines that a person or entity has been sending, on a regular and continuous basis, orders to simultaneously buy and sell option contracts in the same series for the account of the same beneficial holder, the Exchange may prohibit orders for the account of such person or entity from being sent through the Exchange's Member Firm Interface for such period of time as the Exchange deems appropriate.[10]

Implementation. The Exchange is proposing a two-phase approach to integrating the new hand-held technology into the floor environment. In Phase I, the Exchange will allow limited implementation of the program to evaluate the use of hand-held terminals and to identify and correct any problems that may arise. In this regard, the Exchange will select a representative cross-section of floor members and off-floor members for the execution of various types of order flow in both lightly-traded and heavily-traded issues. Phase I will last for about four months. It will involve approximately two off-floor Member Firms, two Member Firm booth devices and 12 floor broker hand-held terminals. The Exchange, in conjunction with its Options Floor Trading Committee, will select Members and Member Firms to participate in Phase I on an objective basis.[11] During Phase I, floor brokers will not be permitted to transmit orders to other floor brokers (they will be limited to transmitting orders either to POETS or to a Member Firm booth).

In Phase II, the Exchange will roll out the program on a floor-wide basis, allowing any qualified Floor Member or off-floor Member who wishes to participate in the program to do so.[12]

Order Tickets. Under the proposal, initially, floor brokers using terminals will not need to write up order tickets because the trade-related floor broker terminal information will be passed electronically to POETS and then to POPS (Pacific Options Processing Information) for clearing purposes. Yet the party on the other side of the trade, if it is executed by a market maker of a floor broker not using a terminal, will have to submit a paper order ticket to the Exchange for processing. Later, when advancements in technology allow for it, no paper tickets will be required because all market makers and floor brokers will be able to interface with each other through hand-held terminals—but that change will be the subject of another filing. With regard to proprietary hand held terminals, the order ticket requirement would be the same as with the Exchange-sponsored terminals, i.e., if the trade information is not sent to the Exchange electronically, it will have to be conveyed by means of a written order ticket.

Clearing and Trade Reporting. Once an order has been executed, the Hand-Held Terminal system will route trade information to POETS, which, in turn, will route the information to a computer for trade match and clearing purposes. At the same time, the Exchange will send a trade report to the Member Firm that entered the order. In addition, the Exchange will transmit trade information to OCC, OPRA and certain vendors.

Audit Trail. Order information sent through the Hand-Held Terminal system will become audit trail information that is available to the Exchange for regulatory purposes. However, if an order is routed to the Member Firm booth by telephone or wire, and not through MFI, and the order is then sent to POETS or to a floor broker in the crowd, the audit trail information will commence when the order is sent from the booth. An audit trail of all actions taken by the hand-held terminal that result in an interaction with the Server will be maintained. Upon receipt of an order in the Server from POETS or a booth device, the order will be time stamped and retained in the Server's database. When orders are executed at a hand-held device, they will be time stamped upon receipt by the Server. The Exchange believes that the audit trail information will be more accurate than current information, which is recorded manually on order tickets.

System Capacity. The Exchange believes, based upon extensive analysis and testing, that implementation of the program will not adversely affect POETS system capacity or functionality.

Use of Other Hand-Held Terminal Devices. The Exchange will not prohibit floor brokers from using proprietary hand-held terminals [13] for order entry on the Options Floor as long as they do not interfere with any Exchange-sponsored hand-held terminals, with POETS or with other equipment on the floor.[14]

2. Statutory Basis

The Exchange represents that the proposal is consistent with Section 6(b) of the Act,[15] in general, and Section 6(b)(5) of the Act,[16] in particular, is that it is designed to promote just and equitable principles of trade; to foster

[8] *See, e.g.*, PCX Rules 5.1(e), 6.43–6.48 and Options Floor Procedure Advices A–1–A–11 and G–1–G12.

[9] *See* PCX Rule 6.69.

[10] The Exchange notes that the Commission has previously approved rule change proposals that prohibit the use of floor-broker hand-held terminals from performing a market maker function. *See, eg.*, Securities Exchange Act Release No. 38054 (Dec. 16, 1996), 61 FR 67365 (Dec. 20, 1996) (Order Approving SR–CBOE–95–48). The PCX has filed a similar proposal, which is currently pending with the Commission. *See* Securities Exchange Act Release No. 38270 (Feb. 11, 1997), 62 FR 7286 (Feb. 18, 1997) (Notice of filing of SR–PSE–97–02).

[11] Factors will include the nature of order flow (retail or institutional), the nature of the issue (lightly-traded or heavily-traded), nature of the floor brokerage operation, time of application, limitations in the number of participants who may participate, and other such factors.

[12] The term "qualified Floor Member or off-floor Member" refers to the requirement that all floor brokers and order flow providers who participate in the program must be approved by the Exchange to do so. Floor brokers are eligible to participate if they are registered with the Exchange as floor brokers pursuant to Rule 6.44 and have arranged with a member firm to receive order flow through the system. Member firms are eligible to participate in the program if they have made arrangements with a floor broker for the transmission and execution of orders. Moreover, program participants will be required to pay the Exchange a fee in an amount to be specified in a rule change proposal to be filed with the Commission.

[13] The Exchange notes that a rule filing to permit Exchange floor brokers to use proprietary order routing terminals on the Options Trading Floor is currently pending before the Commission. *See* Securities Exchange Act Release No. 38270 (Feb. 11, 1997), 62 FR 7286 (Feb. 18, 1997) (Notice of filing of SR–PSE–97–02).

[14] The term "interfere" refers to electronic interference that may occur between a member's proprietary device and another electronic system or piece of equipment on the Trading Floor. For example, if the use of a proprietary device on the floor caused the POETS automatic execution to halt, or if it disrupted telephonic communications on the floor, or if it prevented another member firm from being able to receive electronic orders through another order-routing system, then the device causing the interference could not be used on the floor until it was rendered compatible with the order electronic systems in use.

[15] 15 U.S.C. § 78f(b).

[16] 15 U.S.C. § 78f(b)(5).

cooperation and coordination with persons engaged in regulating, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of free and open market and a national market system; to protect investors and the public interest; and is not designed to permit unfair discrimination between customer, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-PCX–97–28 and should be submitted by February 6, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–1112 Filed 1–15–98; 8:45 am]

BILLING CODE 8010–01–M

[17] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending January 9, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–3300.
Date Filed: January 5, 1998.
Parties: Members of the International Air Transport Association.
Subject: PTC3 Telex Mail Vote 904, Korea-Japan/China fares, Intended effective date: February 1, 1998.

Docket Number: OST–98–3301.
Date Filed: January 5, 1998.
Parties: Members of the International Air Transport Association.
Subject: PTC1 Telex Mail Vote 905, Chile-Brazil PEX fares, Intended effective date: January 15, 1998.

Docket Number: OST–98–3302.
Date Filed: January 5, 1998.
Parties: Members of the International Air Transport Association.
Subject: PTC23 AFR–TC3 0028 dated December 5, 1997, Africa TC3 Resos r1–40, Minutes—PTC23 AFR–TC3 0029, dated December 23, 1997, Tables—PTC23 AFR–TC3 Fares 0012, dated December 19, 1997, Intended effective date: April 1, 1998.

Docket Number: OST–98–3315.
Date Filed: January 7, 1998.
Parties: Members of the International Air Transport Association.
Subject: PTC3 Telex Mail Vote 906, Japan-China fares, Intended effective date: January 15, 1998.

Docket Number: OST–98–3316.
Date Filed: January 7, 1998.
Parties: Members of the International Air Transport Association.
Subject: PSC/Reso/090 dated December 1, 1997, Finally Adopted Resolutions r1–r52, Minutes—PSC/Minutes/004 dated December 1, 1997, Intended effective date: June 1, 1998.

Docket Number: OST–98–3320.
Date Filed: January 9, 1998.
Parties: Members of the International Air Transport Association.
Subject: PTC12 NMS–ME 0036 dated December 19, 1997, r1–17, PTC12 NMS–ME 0037 dated December 19, 1997, r18–r35, Minutes—PTC NMS–ME 0035 dated December 19, 1997, Table—PTC12 NMS–ME Fares 0016 dated January 6, 1998, Intended effective date: April 1, 1998.

Paulette V. Twine,

Documentary Services.

[FR Doc. 98–1166 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Application for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending January 9, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (see 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each Application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or, in appropriate cases, a final order without further proceedings.

Docket Number: OST–95–495.

Date Filed: January 7, 1998.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 4, 1998.

Description: Amendment No. 2 to the Application of United Air Lines, Inc. pursuant to 49 U.S.C. Section 40103 and Subpart Q of the Rules (14 CFR 302.1701, *et seq.*) to realign Segment 1 of its Certificate of Public Convenience and Necessity for Route 632 by adding to the route the following coterminal points in South America: Colombia (to be substituted for Barranquilla, Colombia), Ecuador, Peru, Bolivia, and Paraguay.

Paulette V. Twine,

Documentary Services.

[FR Doc. 98–1165 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–62–P

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Aircraft Certification Procedures Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting cancellation.

SUMMARY: The FAA is issuing this notice to advise the public that the January 22 meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee, scheduled to discuss Aircraft Certification Procedures Issues (63 FR 122), has been cancelled.

FOR FURTHER INFORMATION CONTACT: Ms. Angela O. Anderson, (202) 267–9681, Office of Rulemaking (ARM–200), 800 Independence Avenue, SW., Washington, DC 20591.

Issued in Washington, DC, on January 12, 1998.

Brian Yanez,

Assistant Executive Director for Aircraft Certification Procedures Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–1129 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Meeting Cancellation

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting cancellation.

SUMMARY: The FAA is issuing this notice to advise the public that the January 22, 1998, meeting of the Aviation Rulemaking Advisory Committee (ARAC) scheduled to discuss general aviation operations issues (63 FR 122, January 2, 1998) has been cancelled.

FOR FURTHER INFORMATION CONTACT: Noreen Hannigan, Office of Rulemaking (ARM–106), Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591; telephone (202) 267–7476; fax (202) 267–5075.

Issued in Washington, DC, on January 13, 1998.

Louis C. Cusimano,

Assistant Executive Director for General Aviation Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–1223 Filed 1–14–98; 1:03 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application (98–06–C–00–PHL) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Philadephia International Airport, Philadelphia, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to Notice of Intent to Rule on Application to impose and use the revenue from a Passenger Facility Charge (PFC) at Philadelphia International Airport, Philadelphia, PA.

SUMMARY: This notice corrects the application number which was erroneously identified as 98–05–C–00–PHL in the previously published notice.

In notice document 97–33286 beginning on page 66886 in the issue of Monday, December 22, 1997, on the second column under Notice of Intent To Rule on Application, change the number in parenthesis from 98–05C–00–PHL to 98–06–C–00–PHL. In addition on the third column last, on the paragraph, after Application number: Change from 98–05C–00–PHL to 98–06–C–00–PHL

FOR FURTHER INFORMATION CONTACT: Thomas Felix, Manager Planning & Programming Branch, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamacia, NY 11430.

Issued in Jamaica, NY, on January 8, 1998.

Thomas Felix,

Manager, Planning & Programming Branch, Airports Division, Eastern Region.

[FR Doc. 98–1103 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application No. 97–03–C–00–ICT To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Wichita Mid-Continent Airport, Wichita, KS

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Wichita Mid-Continent Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before February 17, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bailis F. Bell, Director of Airports, at the following address: Wichita Airport Authority, 2173 Air Cargo Road, Wichita, KS 67277–0130.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Wichita Airport Authority, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 601 E. 12th Street, Kansas City, MO 64106, (816) 426–4730. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Wichita Mid-Continent Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On December 23, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Wichita Airport Authority, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 25, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 1998.

Proposed charge expiration date: July 31, 2004.

Total estimated PFC revenue: $10,839,500.

Brief description of proposed projects: Airfield pavement program; airfield safety improvements (Phase III); terminal building modifications; and aircraft rescue and firefighting facilities improvements.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Wichita Mid-Continent Airport.

Issued in Kansas City, MO, on December 23, 1997.

Michael J. Faltermeier,

Acting Manager, Airports Division, Central Region.

[FR Doc. 98–1096 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 3240]

Notice of Request for Reinstatement of an Expired Information Collection; Federal Motor Carrier Safety Regulations, Accident Recordkeeping Requirements

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3051, 3506(c) (2) (A)), the FHWA is requesting public comment on its intent to ask the Office of Management and Budget (OMB) to reinstate the expired information collection that documents information on commercial motor vehicle crashes (accidents) collected and maintained by motor carriers.

DATES: Comments must be submitted on or before March 17, 1998.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Motor Carrier Research and Standards, (202) 366–4009, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Availability

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. An electronic copy of this document may be downloaded using a modem and suitable communications software from the **Federal Register** electronic bulletin board service (telephone number: 202–512–1661). Internet users may reach the **Federal Register**'s home page at: http://www.nara.gov/nara/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/su_docs.

Title: Accident Recordkeeping Requirements.

OMB Number: 2125–0526

Background: Title 49 of the Code of Federal Regulations, Section 390.15 of the Federal Motor Carrier Safety Regulations (FMCSRs), requires motor carriers to make all records and information pertaining to crashes (accidents) available to an authorized representative or special agent of the Federal Highway Administration (FHWA) upon request or as part of an inquiry. For the purposes of § 390.15, "accident" is defined as an occurrence involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in (1) A fatality; (2) bodily injury to a person who, as a result of the injury, receives medical treatment away from the scene of the accident; or (3) one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle (49 CFR 390.5). Occurrences involving only boarding and alighting from a stationary motor vehicle or involving only the loading or unloading of cargo are not included in the definition.

Motor carriers are required to maintain an accident register for one year after the date of the accident. The register must include a list of each accident. The information for each accident must include, at a minimum, the following elements: date of accident; city or town in which or most near where the accident occurred and the State in which the accident occurred; driver name; number of injuries; number of fatalities; and whether hazardous materials, other than fuel spilled from the fuel tanks of motor vehicles involved in the accident, were released. In addition, the register must contain copies of all accident reports required by State or other governmental entities or insurers.

There are no prescribed forms. The records are used by the FHWA and its representatives as a source of information for investigations or special studies, and to assess the effectiveness of motor carriers' safety management controls.

Respondents: Motor carriers.

Estimated Total Annual Burden Per Record: The FHWA estimates approximately 129,000 accidents involving trucks and 16,000 accidents involving buses as defined in Section 390.5 of the FMCSRs occur annually (source: Truck and Bus Crash Factbook, 1995). Of these, approximately 75 percent involve trucks and buses operated by interstate motor carriers. About 80 percent of the buses involved in crashes are school or transit buses and are not subject to this recordkeeping requirement. The number of accidents is therefore estimated to be (0.75×129,000)+(0.75×0.20×16,000) =99,150 .

The agency estimates it takes approximately two minutes for interstate motor carriers to collect and record the seven elements of information on the accident register. Based on these assumptions, the agency estimates a time burden of 3,305 hours per year for accident report register information.

Interested parties are invited to send comments regarding any aspect of these information collections, including, but not limited to: (1) Whether the collection of information is necessary for the proper performance of the functions of the FHWA, including whether the information has practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information.

Authority: 49 U.S.C. 31136, 31141, and 31502 and 49 CFR 1.48.

Issued on: January 7, 1998.

George S. Moore,

Associate Administrator for Administration.

[FR Doc. 98–1130 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: City of Lawrence, Douglas County, Kansas

AGENCY: Federal Highway Administration (FHWA), DOT.

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ACTION: Notice of Intent cancellation.

SUMMARY: The FHWA is issuing this notice to advise the public that a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for a proposed highway project located in the City of Lawrence, Douglas County, Kansas, is cancelled. The NOI was originally published in the **Federal Register** on November 5, 1993. The cancellation is based on a decision not to proceed with the project at this time.

FOR FURTHER INFORMATION CONTACT: Johnny R. Dahl, P.E., Operations Engineer, FHWA, 3300 South Topeka Boulevard, Suite 1, Topeka, Kansas 66611–2237, Telephone: (785) 267–7284. Warren L. Sick, P.E., Chief of Bureau of Design, Kansas Department of Transportation (KDOT), Docking State Office Building, Topeka, Kansas 66612, Telephone: (785) 296–2270. George Williams, Director of the Department of Public Works, City of Lawrence, Box 708, Lawrence, Kansas 66044–0708, Telephone: (785) 832–3124.

SUPPLEMENTARY INFORMATION: The Lawrence Eastern Parkway Environmental Impact Study was initiated by the City of Lawrence in 1989. In 1997, the City elected to withdraw its support and sponsorship of the Lawrence Eastern Parkway EIS. The City has directed that their staff bring closure to the study effort. The EIS documentation compiled to date for the proposed Lawrence Eastern Parkway will become a resource document and will not be considered a completed study document. There is agreement that there will be transportation needs that warrant this improvement in the future. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA, KDOT, or the City of Lawrence at the addresses provided.

Issued on: January 9, 1998.

David R. Geiger,

Division Administrator, Kansas Division, Federal Highway Administration, Topeka, Kansas.

[FR Doc. 98–1126 Filed 1–5–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. RSAC–96–1, Notice No. 8]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Railroad Safety Advisory Committee ("RSAC") meeting.

SUMMARY: FRA announces the next meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. The meeting will address a wide range of topics, including possible adoption of specific recommendations for regulatory action.

DATES: The meeting of the RSAC is scheduled to commence at 9:30 a.m. and conclude at 4:00 p.m. on Tuesday, January 27, 1998.

ADDRESSES: The meeting of the RSAC will be held at The Westin Hotel, 1400 M Street, NW, Washington, DC. The meeting is open to the public on a first-come, first-served basis and is accessible to individuals with disabilities. Sign language interpreters will be available for individuals with hearing impediments.

FOR FURTHER INFORMATION CONTACT: Vicky McCully, RSAC Coordinator, FRA, 400 7th Street, SW, Washington, DC 20590, (202) 632–3330, Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 400 7th Street, SW, Washington, DC 20590, (202) 632–3309, or Lisa Levine, Office of Chief Counsel, FRA, 400 7th Street, SW, Washington, DC 20590, (202) 632–3189.

SUPPLEMENTARY INFORMATION:. Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the Railroad Safety Advisory Committee ("RSAC"). The meeting is scheduled to begin at 9:30 a.m. and conclude at 4:00 p.m. on Tuesday, January 27, 1998. The meeting will be held at The Westin Hotel, 1400 M Street, NW, Washington, DC. All times noted are Eastern Standard Time.

RSAC was established to provide advice and recommendations to the FRA on railroad safety matters. The Committee consists of 48 individual representatives, drawn from among 27 organizations representing various rail industry perspectives, and 2 associate non-voting representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico. Staff of the National Transportation Safety Board and Federal Transit Administration also participate in an advisory capacity.

During this meeting, the RSAC will receive status reports, containing progress information, from the Locomotive Crashworthiness Working Group, the Locomotive Cab Working Conditions Working Group, and the Event Recorder Working Group.

In addition, the Committee will receive a status report from the recently constituted Positive Train Control (PTC) Working Group, tasked with: (1) Facilitating understanding of current PTC technologies, definitions, and capabilities; (2) addressing issues regarding the feasibility of implementing fully integrated PTC systems; and (3) facilitating implementation of software based signal and operating systems through consideration of revisions to the Rules, Standards and Instructions to address processor-based technology and communication-based architectures.

Finally, the Committee may be asked to consider for approval the Tourist and Historic Railroad working group's proposal for the revision of the steam locomotive inspection and testing standards contained in 49 CFR part 230.

Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740) for more information about the RSAC.

George A. Gavalla,

Acting Associate Administrator for Safety.

[FR Doc. 98–784 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20913]

Peter Pan Bus Lines, Inc.—Pooling—Greyhound Lines, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed pooling application.

SUMMARY: Applicants, Peter Pan Bus Lines, Inc., of Springfield, MA, and Greyhound Lines, Inc., of Dallas, TX, jointly seek approval under 49 U.S.C. 14302 of a pooling agreement to govern their motor passenger and express operations (but not the revenues earned from those operations) between Albany, NY, and Boston, MA.

DATES: Comments are due by February 17, 1998, and, if comments are filed, applicants' rebuttal statement is due by March 9, 1998.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20913 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. Also, send one copy of comments to each of applicants' representatives: (1) Jeremy Kahn, Suite 810, 1730 Rhode Island Avenue, N.W., Washington, DC 20036; (2) Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, N.W., Washington, DC 20005–3934.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Applicants are competitors on certain intercity routes between Albany, NY, and Boston, MA. They seek to pool portions of their passenger and express services over routes which they both operate.[1] They will not, however, share the revenues derived from their operations over these routes.[2] Applicants state that their services between these points overlap and that excess schedules are operated because of the need to protect their respective market shares. According to applicants, this has resulted in unacceptably low load factors, an over-served market, and inefficient operations.

Applicants submit that the pooling agreement will allow them to reduce excess bus capacity, cement their business relationship, and allow them to share in the financial vicissitudes of the pooled-route operations. They claim public benefits that will include: (1) rationalization of schedules, eliminating some duplicative departures while adding some departures at other times of the day, resulting in more frequent bus service over a broader time period; (2) consolidation of terminals and coordination of ticketing at Boston, MA, Newton, MA, Worcester, MA, Springfield, MA, and Albany, NY, resulting in greater flexibility for passengers to use buses, tickets, and terminals; (3) capital improvements; and (4) continued bus service by more sound and financially stable carriers. In addition, they assert that approval of the pooling agreement will not significantly affect either the quality of the human environment or the conservation of energy resources. Rather, they claim that the reduction in the number of schedules each carrier operates will result in a salutary effect on the environment.

Applicants state that competition will not be unreasonably restrained. They argue that: (1) the pooled service is subject to substantial intermodal competitive pressure from Amtrak, the airlines, and private automobiles; and (2) other motor passenger carriers may easily enter and compete in the market.

Copies of the application may be obtained free of charge by contacting applicants' representatives. A copy of this notice will be served on the Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530.

Decided: January 7, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–1117 Filed 1–15–98; 8:45 am]

BILLING CODE 4915–00–P

[1] Applicants have already received authority to pool their operations and revenues for their motor passenger and express transportation service between Philadelphia, PA, and New York, NY, in *Peter Pan Bus Lines, Inc.—Pooling—Greyhound Lines, Inc.*, STB Docket No. MC–F–20904 (STB served June 30, 1997). A similar request involving operations between New York City and Washington, DC, is pending in *Peter Pan Bus Lines, Inc.—Pooling—Greyhound Lines, Inc.*, STB Docket No. MC–F–20908. A third request involving operations between Boston and New York City, and between Springfield, MA, and New York City, is also pending in *Peter Pan Bus Lines, Inc.—Pooling—Greyhound Lines, Inc.*, STB Docket No. MC–F–20912. According to applicants, the instant application is a logical extension of their other pooling agreements. Applicants state that they consider the four agreements to be interrelated and intend to implement them simultaneously after approval by the Board. We note that the United States Department of Justice, Antitrust Division, has filed comments in STB Docket No. MC–F–20908, recommending that the Board find that there is a substantial likelihood that the proposed pooling of operations between New York City and Washington would unduly restrain competition.

[2] Applicants state that each bus line will set its own passenger fares and express rates, and each will retain its individual revenues from operations on the pooled routes.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33533]

Illinois Central Railroad Company and New Orleans Public Belt Railroad—Joint Relocation Project Exemption—in New Orleans, LA

On December 23, 1997, Illinois Central Railroad Company (IC) and New Orleans Public Belt Railroad (NOPB) jointly filed a notice of exemption under 49 CFR 1180.2(d)(5) to reconfigure IC and NOPB operations over their adjacent track. The proposed transaction was scheduled to be consummated on or after the December 30, 1997 effective date of the exemption.

IC is a Class I railroad operating approximately 2,600 miles of rail line in six states, and NOPB is a Class III terminal switching railroad owned by the City of New Orleans, LA. NOPB operates approximately 25 miles of rail line in and around New Orleans.

Within the City of New Orleans, IC and NOPB own and operate adjacent mainlines. Under the joint project, IC and NOPB propose the following transactions: (1) NOPB will grant IC non-exclusive bridge trackage rights over 3.4 miles of NOPB's Main Line and Siding Track between milepost JO.3, at Lampert Junction, and milepost 3.4, at Nashville Avenue; [1] (2) IC will relocate its operation to NOPB trackage and will abandon its adjacent Main Line trackage between milepost 917.77, at Nashville Avenue, and milepost 921.13, at Lampert Junction, a distance of approximately 3.36 miles; (3) IC will grant NOPB non-exclusive bridge trackage rights over approximately 5,568 feet of IC's Main Line from Station 120+00.00, at Nashville Avenue, to Station 175+68.09, at Valence Street; and (4) IC and NOPB will perform such incidental relocation of signals and power switches as necessary to complete the proposed reconfiguration of operations contemplated by the exemption.

The transaction will simplify rail operations in the area and will reduce the number of unnecessary tracks on street right-of-way and reduce the number of tracks in grade crossings in the area. The joint project will not change service to shippers, expand the operations of IC or NOPB into new territory, or alter the existing competitive situation.

The Board will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into new territory. *See City of Detroit* v. *Canadian National Ry. Co., et al.*, 9 I.C.C.2d 1208 (1993), *aff'd sub nom., Detroit/Wayne County Port Authority* v. *ICC*, 59 F.3d 1314 (D.C. Cir. 1995). Line relocation projects may embrace trackage rights transactions such as the one involved here. *See D.T.&I.R.—Trackage Rights*, 363 I.C.C. 878 (1981). Under these standards, the incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the

[1] IC will continue to serve the Sewerage and Water Board track near Oak Street.

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exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33533, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on (1) Anne E. Keating, Esq., Illinois Central Railroad Company, 455 North Cityfront Plaza Drive, Chicago, IL 60611–5504, and (2) A. J. Waechter, Esq., Jones, Walker, Waechter, Portevent, Carrere and Denegre, 202 St. Charles Avenue, 50th Floor, New Orleans, LA 70170–5100.

Decided: January 9, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–1118 Filed 1–15–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33535]

Maumee & Western Railroad Corporation—Operation Exemption—Maumee & Western, L.L.C.

Maumee & Western Railroad Corporation, a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire operating rights over a line of railroad owned by Maumee & Western, L.L.C., from Liberty Center, OH (milepost TN–28.0), to Woodburn, IN (milepost 79.0), a distance of approximately 51 route miles.

The transaction was scheduled to be consummated on or after December 31, 1997.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33535, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Richard R. Wilson, Esq., 1126 Eighth Avenue, Suite 403, Altoona, PA 16602.

Decided: January 7, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–1067 Filed 1–15–98; 8:45 am]

BILLING CODE 4915–00–P

FR–4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33449]

Union Pacific Railroad Company—Trackage Rights Exemption—Southern Pacific Transportation Company

Southern Pacific Transportation Company (SP) has agreed to grant overhead trackage rights to Union Pacific Transportation Company (UP) over SP's tracks known as the Bakersfield Line from milepost 479.1 near Keenbrook to milepost 481.0 near Dike, a distance of 1.9 miles, in the vicinity of Los Angeles, CA. [1]

The transaction was expected to be consummated on or as soon as possible after January 7, 1998, the effective date of the exemption.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980)*.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C.10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33449, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Joseph D. Anthofer, General Attorney, 1416 Dodge Street, #830, Omaha, NE 19381–0796.

Decided: January 7, 1998.

[1] UP states that it filed this notice of exemption to extend the trackage rights it received from SP in STB Finance Docket No. 33128 (STB served Oct. 8, 1996), which included, among others, the Bakersfield Line between Dike (MP 481.0) and West Colton (MP 494.2).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–1069 Filed 1–15–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33536]

Wabash Central Railroad Corporation—Operation Exemption—Wabash Central, L.L.C.

Wabash Central Railroad Corporation, a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire operating rights over a line of railroad owned by Wabash Central, L.L.C., from Craigsville, IN (milepost 117.8), to Van Buren, IN (milepost 108.6), a distance of approximately 26.4 miles of rail line and incidental trackage rights.

The transaction was scheduled to be consummated on or after December 31, 1997.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33536, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Richard R. Wilson, Esq., 1126 Eighth Avenue, Suite 403, Altoona, PA 16602.

Decided: January 7, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–1068 Filed 1–15–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–32 (Sub–No. 83)] and [STB Docket No. AB–355 (Sub-No. 23)]

Boston and Maine Corporation—Abandonment and Springfield Terminal Railway Company—Discontinuance of Service—in Hartford and New Haven Counties, CT

On December 29, 1997, the Boston and Maine Corporation (B&M) and Springfield Terminal Railway Company (ST) (referred to collectively as applicants) filed with the Surface Transportation Board (Board), Washington, DC 20423, an application for permission for B&M to abandon and ST to discontinue service on a line of railroad known as the Canal Branch extending from milepost 14.50 in Cheshire, CT, to milepost 24.00 in Southington, CT, a distance of approximately 9.50 miles, in Hartford and New Haven Counties, CT. The line traverses U.S. Postal Service ZIP Codes 06410, 06467, 06479, and 06489. Applicants have indicated that there are no agency stations located on the line.

The line does not contain federally granted rights-of-way. Any documentation in B&M's possession will be made available promptly to those requesting it. The applicants' entire case for abandonment and discontinuance was filed with the application.

The line of railroad has appeared on B&M's system diagram map or has been included in its narrative in category 1 since February 28, 1997.

The interest of railroad employees will be protected by *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

Any interested person may file with the Board written comments concerning the proposed abandonment and discontinuance or protests (including the protestant's entire opposition case), by February 12, 1998. All interested persons should be aware that following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 10905 (49 CFR 1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. 1247(d) (49 CFR 1152.29 of the Board's rules) must be filed by February 12, 1998. Persons who may oppose the abandonment or discontinuance but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence should file comments. Persons interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed abandonment or discontinuance that do wish to participate actively and fully in the process should file a protest.

In addition, a commenting party or protestant may provide:

(i) An offer of financial assistance, pursuant to 49 U.S.C. 10904 (due 120 days after the application is filed or 10 days after the application is granted by the Board, whichever occurs sooner);

(ii) Recommended provisions for protection of the interests of employees;

(iii) A request for a public use condition under 49 U.S.C. 10905; and

(iv) A statement pertaining to prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29.

Parties seeking information concerning the filing of protests should refer to 49 CFR 1152.25.

Written comments and protests, including all requests for public use and trail use conditions, must indicate the proceeding designation STB Nos. AB–32 (Sub-No. 83) and AB–355 (Sub-No. 23) and should be filed with the Secretary, Surface Transportation Board, Washington, DC 20423, no later than February 12, 1998. Interested persons may file a written comment or protest with the Board to become a party to this proceeding. A copy of each written comment or protest shall be served upon the applicants' representative, John R. Nadolny, General Counsel, Law Department, Boston and Maine Corporation, Iron Horse Park, N. Billerica, MA 01862. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the proceeding. 49 CFR 1104.12(a).

The line sought to be abandoned and discontinued will be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment and discontinuance, in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicants will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The carriers' representative to whom inquiries may be made concerning sale or subsidy terms is set forth above.

Persons seeking further information concerning abandonment procedures may contact the Board or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA).

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact SEA. EAs in abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Decided: January 12, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–1119 Filed 1–15–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. § 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, N.W., Washington, D.C., on February 3, 1998, of the following debt management advisory committee:

The Bond Market Association
Treasury Borrowing Advisory Committee

The agenda for the meeting provides for a technical background briefing by Treasury staff, followed by a charge by the Secretary of the Treasury or his designate that the committee discuss particular issues, and a working session. Following the working session, the committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 9:30 a.m. Eastern time and will be open to the public. The remaining sessions and the committee's reporting session will be closed to the

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public, pursuant to 5 U.S.C. App. § 10(d).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. App. § 10(d) and vested in me by Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. § 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. § 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. § 552b(c)(9)(A).

The Office of the Assistant Secretary for Financial Markets is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. § 552b.

Gary Gensler,

Assistant Secretary (Financial Markets).

[FR Doc. 98–736 Filed 1–15–98; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8800

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8800, Application for Additional Extension of Time To File U.S. Return for a Partnership, REMIC, or for Certain Trusts.

DATES: Written comments should be received on or before March 17, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Additional Extension of Time To File U.S. Return for a Partnership, REMIC, or for Certain Trusts.

OMB Number: 1545–1057

Form Number: 8800

Abstract: Form 8800 is used by partnerships, REMICs, and by certain trusts to request an additional extension of time (up to 3 months) to file Form 1065, Form 1041, or Form 1066. Form 8800 contains data needed by the IRS to determine whether or not a taxpayer qualifies for such an extension.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 20,000

Estimated Time Per Respondent: 13 min.

Estimated Total Annual Burden Hours: 4,210

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 8, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–1079 Filed 1–15–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8038, 8038–G, and 8038–GC

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning Forms 8038, Information Return for Tax-Exempt Private Activity Bond Issues, 8083–G, Information Return for Tax-Exempt Governmental Obligations, and 8038–GC, Information Return for Small Tax-Exempt Governmental Bond Issues, Leases, and Installment Sales.

DATES: Written comments should be received on or before March 17, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Information Return for Tax-Exempt Private Activity Bond Issues (Form 8038), Information Return for Tax-Exempt Governmental Obligations (Form 8038–G), and Information Return for Small Tax-Exempt Governmental Bond Issues, Leases and Installment Sales (Form 8038–GC).

OMB Number: 1545–0720.

Form Number: 8038, 8038–G, and 8038–GC.

Abstract: Issuers of state or local bonds must comply with certain information reporting requirements contained in Internal Revenue Code section 149 to qualify for tax exemption. The information must be reported by the issuers about bonds issued by them during each preceding calendar quarter. Forms 8038, 8038–G, and 8038–GC are used to provide the IRS with the information required by Code section 149 and to monitor the requirements of Code sections 141 through 150.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments and not-for-profit institutions.

Estimated Number of Respondents: 14,500.

Estimated Time Per Respondent: 59 hr., 7 min.

Estimated Total Annual Burden Hours: 857,140.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 8, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–1080 Filed 1–15–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1024

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1024, Application for Recognition of Exemption Under Section 501(a).

DATES: Written comments should be received on or before March 17, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Recognition of Exemption Under Section 501(a).

OMB Number: 1545–0057.

Form Number: 1024.

Abstract: Organizations seeking exemption from Federal income tax under Internal Revenue Code section 501(a) as an organization described in most paragraphs of section 501(c) must use Form 1024 to apply for exemption. The information collected is used to determine whether the organization qualifies for tax-exempt status.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 4,718.

Estimated Time Per Respondent: 61 hr., 32 min.

Estimated Total Annual Burden Hours: 290,290.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

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Approved: January 9, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–1081 Filed 1–15–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

1998 Electronic Filing: Low-Income Housing Credit Forms

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Low-Income Housing Credit forms.

SUMMARY: The Internal Revenue Service is planning to conduct an automated pilot program during 1998 for filing Low-Income Housing Credit forms to be filed electronically (via modem to modem). This pilot program will be available without geographic limitation, although all processing is centralized at the Internal Revenue Service Center in Philadelphia, Pennsylvania. Participants must have secured prior authorization from the Internal Revenue Service. Interested parties can obtain information by writing or calling the IRS. Comments on the program are welcome.

DATES: Application can be submitted year round.

ADDRESSES: Internal Revenue Service, Philadelphia Service Center, Magnetic Media Project Office, D.P. 115, 11601 Roosevelt Blvd., Philadelphia, PA 19154. Telephone: (800) 829–6945 or (215) 516–7533 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The IRS is receiving an increasing number of computer-prepared forms, and is exploring methods to use the flexibility provided by computer preparation to achieve processing efficiencies. Electronic filing eliminates most of the manual processes required by IRS to handle paper documents, which will increase the quality of the final product, speed up the processing and reduce unnecessary correspondence.

Generally, the procedures for electronic filing will require all the data currently supplied on the paper form including attachments which usually accompany the form. Additionally, filers will be required to test before acceptance into the program. The LIHC pilot program is being offered to State Housing Agencies and software developers.

Joseph H. Cloonan,

Director, Philadelphia Service Center.

[FR Doc. 98–1078 Filed 1–15–98; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy meeting; Notice

SUMMARY: The U.S. Advisory Commission on Public Diplomacy will meet on January 21 in Room 600, 301 4th Street, S.W., Washington, D.C., from 10:00 a.m. to 11:00 a.m.

The Commission will meet with Mr. Kevin Klose, Director, International Bureau of Broadcasting, to discuss television policies, programs, and potential in U.S. international broadcasting.

FOR FURTHER INFORMATION: Please call Betty Hayes, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: January 13, 1998.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 98–1149 Filed 1–15–98; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register

Vol. 63, No. 11

Friday, January 16, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Title I, P.L. 480 Agreements With the Private Trade

Correction

In notice document 97–31480 beginning on page 63694, in the issue of Tuesday, December 2, 1997, make the following correction:

On page 63694, in the second column, in the **DATES** section, in the second line, "February 2, 1997" should read "February 2, 1998".

BILLING CODE 1505-01-D

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-0960]

Truth in Lending

Correction

In rule document 97–31087 beginning on page 63441, in the issue of Monday, December 1, 1997, make the following correction:

Appendix H to Part 226 [Corrected]

On page 63444, in the third column, in appendix H to part 226, the heading "*Example*" should read "[*Example*".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 513 and 602

[TD 8734]

RIN 1545-AU43; 1545-AT77

General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds, and Credits; Revision of Information Reporting and Backup Withholding Regulations; and Removal of Regulations Under Part 35a and of Certain Regulations Under Income Tax Treaties

Correction

In rule document 97–25998, beginning on page 53387, in the issue of Tuesday, October 14, 1997, make the following correction:

§ 513.2 [Corrected]

1. On page 53497, in the first column, in § 513.2, in the fifth line, "does" should read "does not".

§ 602.101 [Corrected]

2. On page 53498, in the second column, in § 602.101(c), in the last table, in the third line, "11.1441–8" should read "1.1441–8".

BILLING CODE 1505-01-D

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Part II

Environmental Protection Agency

40 CFR Part 81
Identification of Ozone Areas Attaining the 1-Hour Standard and to Which the 1-Hour Standard is No Longer Applicable; Final and Proposed Rules

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–5945–7]

Identification of Ozone Areas Attaining the 1-Hour Standard and to Which the 1-Hour Standard Is No Longer Applicable

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking action today to identify ozone areas where the 1-hour standard is no longer applicable. Therefore, the 40 CFR part 81 for ozone is being amended to reflect such changes. Today's regulation is being published in direct response to the President's memorandum of July 16, 1997. The President's memo directed EPA to publish within 90 days an action identifying ozone areas to which the 1-hour standard will cease to apply because they have not measured a current violation of the 1-hour standard. For all other areas, the 1-hour standard will continue to apply. Furthermore, this action is being done to assist in the phasing-out of the 1-hour standard since the recently promulgated new 8-hour standard is now in effect and is more protective of public health than the 1-hour ozone standard. The goal is to move toward implementation of the new 8-hour standard. Following today's action, the Agency intends to publish, in early 1998, a subsequent document which takes similar action to revoke the 1-hour standard in additional areas that have air quality that does not violate the 1-hour standard. Furthermore, the Agency will publish, on an annual basis, similar actions identifying areas where the 1-hour standard is no longer applicable.

DATES: This regulation will become effective on March 17, 1998 unless adverse comments are received during the public comment period. Written comments on this rulemaking must be limited to addressing the technical correctness of these determinations. All comments must be received on or before February 17, 1998. If adverse comments are timely received on any provision of the direct final rule, that provision will be withdrawn and only those provisions on which no such adverse comments are received will become effective on March 17, 1998.

ADDRESSES: Documents relevant to this rulemaking are available for inspection at the Air and Radiation Docket and Information Center (6101), Attention: Docket No. A–97–42, U.S. Environmental Protection Agency, 401 M Street SW, Room M-1500, Washington, DC 20460, telephone (202) 260–7548, between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Comments and data may also be submitted electronically by following the instructions under **SUPPLEMENTARY INFORMATION** of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Questions concerning this notice should be addressed to Annie Nikbakht (policy) or Barry Gilbert (air quality data), Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Ozone Policy and Strategies Group, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5246/5238. In addition, the following Regional Contacts may be called for individual information regarding monitoring data and policy matters specific for each Regional Office's geographic area:

Region I—Richard P. Burkhart, (617) 565–3578
Region II—Ray Werner, (212) 637–3706
Region III—Marcia Spink, (215) 566–2104
Region IV—Kay Prince, (404) 562–9026
Region V—Todd Nettesheim, (312) 353–9153
Region VI—Lt. Mick Cote, (214) 665–7219
Region VII—Royan Teter, (913) 551–7609
Region VIII—Tim Russ, (303) 312–6479
Region IX—Morris Goldberg,(AIR 7), (415) 744–1296
Region X—William Puckett, (206) 553–1702

SUPPLEMENTARY INFORMATION: *Electronic Availability*—The official record for this rulemaking, as well as the public version, has been established under docket number A–97–42 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in **ADDRESSES** at the beginning of this document. Electronic comments can be sent directly to EPA at: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–97–42. Electronic comments on this direct final rule may be filed online at many Federal Depository Libraries.

If adverse comments are timely received on any provision of this direct final rule, all such comments will be addressed in a subsequent final rule based on those provisions of the proposed rule contained in the Proposed Rules Section of this **Federal Register** that is identical to this direct final rule. Such provisions will be withdrawn from the Direct Final Rule.

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I. Background

On November 6, 1991, the Agency issued a rulemaking (56 FR 56694) which set forth the attainment status, including designations and classifications, for selected areas affected by ozone, carbon monoxide, particulate matter, and lead national ambient air quality standards (NAAQS). That rulemaking established on a State-by-State, pollutant-by-pollutant basis, the attainment status of the above-mentioned NAAQS. Such air quality data used in the determinations for the rulemaking were submitted by the appropriate States; the data were approved and the areas were then designated and classified by the EPA. Subsequent to the November 6, 1991 action, on November 30, 1992, the Agency issued corrections (57 FR 56762) to the tables for some of the designations, boundaries, and classifications as provided for under section 110(k)(6) of the Clean Air Act (CAA).

Under the CAA, designations can be changed if sufficient data are available to warrant such changes and if certain other requirements are met (see CAA section 107(d)(3)(D)). Section 107(d)(3)(E) of the CAA provides that the Administrator may promulgate a redesignation of a nonattainment area to attainment if certain criteria are met. Such has been the case for several ozone nonattainment areas which have been redesignated to attainment over the course of years following the CAA Amendments of 1990. The Agency has promulgated these redesignations to attainment in the **Federal Register** and thus has amended 40 CFR parts 52 and 81 accordingly.

On July 16, 1997, the President issued a memorandum (62 FR 38421, July 18, 1997) to the Administrator of the EPA which indicates that within 90 days of promulgation of the new 8-hour standard, the EPA will publish an action identifying ozone areas to which the 1-hour standard will cease to apply. The memorandum states that for areas where the air quality does not currently attain the 1-hour standard, the 1-hour standard will continue in effect. The provisions of subpart 2 of title I of the CAA would also apply to currently designated nonattainment areas until such time as each area has air quality meeting the 1-hour standard.

On July 18, 1997 (62 FR 38856), EPA promulgated a regulation replacing the 1-hour ozone standard with an 8-hour standard at a level of 0.08 parts per million (ppm). The form of the 8-hour standard is based on the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area. The new primary standard which became effective on September 16, 1997 will provide increased protection to the public, especially children and other at-risk populations. On July 18, 1997, EPA also announced that revocation of the 1-hour ozone NAAQS would be delayed until areas achieved attainment of the 1-hour NAAQS. This was done in order to facilitate continuity in public health protection during the transition to the new NAAQS.

II. Summary of Today's Action

The purpose of this document is to revoke the 1-hour standard in those areas that EPA has determined are not violating the 1-hour standard. For all other areas the 1-hour standard will continue in effect. The purpose of retaining the current standard for such areas is to ensure a smooth transition to the new standard. When the areas not meeting the 1-hour standard have air quality that meets the 1-hour standard, as determined by EPA, then the Agency will likewise revoke the 1-hour standard for such areas.

In the immediate future, the Agency intends to issue guidance regarding the regulatory implications of today's action (revoking the 1-hour standard) as related to those areas where the 1-hour standard is no longer applicable.

III. Analysis of Air Quality Data

This action, revoking the 1-hour standard in selected areas, is based upon analysis of quality-assured, ambient air quality monitoring data showing no violations of the 1-hour ozone standard. The method for determining attainment of the ozone NAAQS is contained in 40 CFR part 50.9 and Appendix H to that section. The level of the 1-hour primary and secondary NAAQS for ozone is 0.12 ppm.

The 1-hour standard no longer applies to an area once EPA determines that the area has air quality not violating the 1-hour standard. Determinations for this notice were based upon the most recent data available, generally 1994-1996 data. The Agency did use 1997 air quality data where violations were documented during the early portion of the 1997 ozone season. In order to revoke the 1-hour standard based upon 1995–1997 air quality data, measurements encompassing the complete ozone season would need to be available and examined. Therefore, after today's action, the Agency intends to publish, in early 1998, a subsequent notice which takes similar action to revoke the 1-hour standard in additional areas that have air quality data for 1995–1997 that do not violate the 1-hour standard. Detailed air quality data information used for today's determinations is contained in the Technical Support Document (TSD) to Docket No. A–97–42.

IV. Tables

The ozone tables codified in today's action are significantly different from the tables now included in 40 CFR part 81. The current 40 CFR part 81 designation listings (revised as of November 6, 1991) include, by State and NAAQS pollutant, a brief description of areas within the State and their respective designation. Today's action includes completely new tables for ozone which indicate areas where the 1-hour standard no longer applies, as well as where the 1-hour standard remains in effect.

V. Other Regulatory Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. The EPA is certifying that this rule will not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 18, 1998. Filing a petition for reconsideration by the

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Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: December 29, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.301, the table entitled "Alabama—Ozone" is revised to read as follows:

§ 81.301 Alabama.

* * * * *

ALABAMA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Birmingham Area:				
Jefferson County	11/15/90	Nonattainment	11/15/90	Marginal.
Shelby County	11/15/90	Nonattainment	11/15/90	Marginal.
Rest of State		1 hr. std. N.A.[2]		
Autauga County				
Baldwin County				
Barbour County				
Bibb County				
Blount County				
Bullock County				
Butler County				
Calhoun County				
Chambers County				
Chilton County				
Choctaw County				
Clarke County				
Clay County				
Cleburne County				
Coffee County				
Colbert County				
Conecuh County				
Coosa County				
Covington County				
Crenshaw County				
Cullman County				
Dale County				
Dallas County				
De Kalb County				
Elmore County				
Escambia County				
Etowah County				
Fayette County				
Franklin County				
Geneva County				
Greene County				
Hale County				
Henry County				
Houston County				
Jackson County				
Lamar County				
Lauderdale County				
Lawrence County				
Lee County				
Limestone County				
Lowndes County				
Macon County				
Madison County				
Marengo County				
Marion County				
Marshall County				
Mobile County				
Monroe County				
Montgomery County				
Morgan County				
Perry County				
Pickens County				
Pike County				
Randolph County				
Russell County				
St. Clair County				
Sumter County				
Talladega County				
Tallapoosa County				
Tuscaloosa County				
Walker County				
Washington County				
Wilcox County				
Winston County				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

ALABAMA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type

* * * * * * *

3. In § 81.302, the table entitled "Alaska—Ozone" is revised to read as follows:

§ 81.302 Alaska.

* * * * * * *

ALASKA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type[2]	Date[1]	Type[2]
AQCR 08 Cook Inlet Intrastate		1 hr. std. N.A.[2]		
Anchorage Election District				
Kenai Penninsula Election District				
Matanuska-Susitna Election District				
Seward Election District				
AQCR 09 Northern Alaska Intrastate		1 hr. std. N.A.[2]		
Barrow Election District				
Fairbanks Election District				
Kobuk Election District				
Nome Election District				
North Slope Election District				
Northwest Arctic Borough				
Southeast Fairbanks Election District				
Upper Yukon Election District				
Yukon-Koyukuk Election District				
AQCR 10 South Central Alaska Intrastate		1 hr. std. N.A.[2]		
Aleutian Islands Election District				
Aleutians East Borough				
Aleutians West Census				
Bethel Election District				
Bristol Bay Borough Election District				
Bristol Bay Election District				
Cordova-McCarthy Election District				
Dillingham Election District				
Kodiak Island Election District				
Kuskokwim Election District				
Valdez-Cordova Election District				
Wade Hampton Election District				
AQCR 11 Southeastern Alaska Intrastate		1 hr. std. N.A.[2]		
Angoon Election District				
Haines Election District				
Juneau Election District				
Ketchikan Election District				
Outer Ketchikan Election District				
Prince Of Wales Election District				
Sitka Election District				

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ALASKA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type [2]	Date [1]	Type [2]
Skagway-Yakutat Election District Wrangell-Petersburg Election District				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * * * *

4. In § 81.303, the table entitled "Arizona—Ozone" is revised to read as follows:

§ 81.303 Arizona.

* * * * * * *

ARIZONA-OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Phoenix Area: Maricopa County (part) ..... The Urban Planning Area of the Maricopa Association of Governments is bounded as follows: 1. Commencing at a point which is at the intersection of the eastern line of Range 7 East, Gila and Salt River Baseline and Meridian, and the southern line of Township 2 South, said point is the southeastern corner of the Maricopa Association of Governments Urban Planning Area, which is the point of beginning; 2. thence, proceed northerly along the eastern line of Range 7 East, which is the common boundary between Maricopa and Pinal Counties, as described in Arizona Revised Statute Section 11–109, to a point where the eastern line of Range 7 East intersects the northern line of Township 1 North, said point is also the intersection of the Maricopa County Line and the Tonto National Forest Boundary, as established by Executive Order 869 dated July 1, 1908, as amended and shown on the U.S. Forest Service 1969 Planimetric Maps; 3. thence, westerly along the northern line of Township 1 North to approximately the southwest corner of the southeast quarter of Section 35, Township 2 North, Range 7 East, said point being the boundary of the Tonto National Forest and Usery Mountain Semi- Regional Park; 4. thence, northerly along the Tonto National Forest Boundary, which is generally the western line of the east half of Sections 26 and 35 of Township 2 North, Range 7 East, to a point which is where the quarter section line intersects with the northern line of Section 26, Township 2 North, Range 7 East, said point also being the northeast corner of the Usery Mountain Semi-Regional Park; 5. thence, westerly along the Tonto National Forest Boundary, which is generally the south line of Sections 19, 20, 21 and 22 and the southern line of the west half of Section 23, Township 2 North, Range 7 East, to a point which is the southwest corner of Section 19, Township 2 North, Range 7 East; 6. thence, northerly along the Tonto National Forest Boundary to a point where the Tonto National Forest Boundary intersects with the eastern boundary of the Salt River Indian Reservation, generally described as the center line of the Salt River Channel;	11/15/90	Nonattainment	12/08/97	Serious.

ARIZONA-OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
7. thence, northeasterly and northerly along the common boundary of the Tonto National Forest and the Salt River Indian Reservation to a point which is the northeast corner of the Salt River Indian Reservation, and the southeast corner of the Fort McDowell Indian Reservation, as shown on the plat dated July 22, 1902, and recorded with the U.S. Government on June 15, 1902; 8. thence, northeasterly along the common boundary between the Tonto National Forest and the Fort McDowell Indian Reservation to a point which is the northeast corner of the Fort McDowell Indian Reservation; 9. thence, southwesterly along the northern boundary of the Fort McDowell Indian Reservation, which line is a common boundary with the Tonto National Forest, to a point where the boundary intersects with the eastern line of Section 12, Township 4 North, Range 6 East; 10. thence, northerly along the eastern line of Range 6 East to a point where the eastern line of Range 6 East intersects with the southern line of Township 5 North, said line is the boundary between the Tonto National Forest and the east boundary of the McDowell Mountain Regional Park; 11. thence, westerly along the southern line of Township 5 North to a point where the southern line intersects with the eastern line of Range 5 East which line is the boundary of Tonto National Forest and the north boundary of McDowell Mountain Regional Park; 12. thence, northerly along the eastern line of Range 5 East to a point where the eastern line of Range 5 East intersects with the northern line of Township 5 North, which line is the boundary of the Tonto National Forest; 13. thence, westerly along the northern line of Township 5 North to a point where the northern line of Township 5 North intersects with the easterly line of Range 4 East, said line is the boundary of the Tonto National Forest; 14. thence, northerly along the eastern line of Range 4 East to a point where the eastern line of Range 4 East intersects with the northern line of Township 6 North, which line is the boundary of the Tonto National Forest; 15. thence, westerly along the northern line of Township 6 North to a point of intersection with the Maricopa-Yavapai County line, which is generally described in Arizona Revised Statute Section 11–109 as the center line of the Aqua Fria River (Also the north end of Lake Pleasant); 16. thence, southwesterly and southerly along the Maricopa-Yavapai County line to a point which is described by Arizona Revised Statute Section 11–109 as being on the center line of the Aqua Fria River, two miles southerly and below the mouth of Humbug Creek; 17. thence, southerly along the center line of the Aqua Fria River to the intersection of the center line of the Aqua Fria River and the center line of Beardsley Canal, said point is generally in the northeast quarter of Section 17, Township 5 North, Range 1 East, as shown on the U.S. Geological Survey's Baldy Mountain, Arizona Quadrangle Map, 7.5 Minute series (Topographic), dated 1964;				

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ARIZONA-OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
18. thence, southwesterly and southerly along the center line of Beardsley Canal to a point which is the center line of the Beardsley Canal where it intersects with the center line of Indian School Road;				
19. thence, westerly along the center line of West Indian School Road to a point where the center line of West Indian School Road intersects with the center line of North Jackrabbit Trail;				
20. thence, southerly along the center line of Jackrabbit Trail approximately nine and three-quarter miles to a point where the center line of Jackrabbit Trail intersects with the Gila River, said point is generally on the north-south quarter section line of Section 8, Township 1 South, Range 2 West;				
21. thence, northeasterly and easterly up the Gila River to a point where the Gila River intersects with the northern extension of the western boundary of Estrella Mountain Regional Park, which point is generally the quarter corner of the northern line of Section 31, Township 1 North, Range 1 West;				
22. thence, southerly along the extension of the western boundary and along the western boundary of Estrella Mountain Regional Park to a point where the southern extension of the western boundary of Estrella Mountain Regional Park intersects with the southern line of Township 1 South;				
23. thence, easterly along the southern line of Township 1 South to a point where the south line of Township 1 South intersects with the western line of Range 1 East, which line is generally the southern boundary of Estrella Mountain Regional Park;				
24. thence, southerly along the western line of Range 1 East to the southwest corner of Section 18, Township 2 South, Range 1 East, said line is the western boundary of the Gila River Indian Reservation;				
25. thence, easterly along the southern boundary of the Gila River Indian reservation, which is the southern line of Sections 13, 14, 15, 16, 17 and 18, Township 2 South, Range 1 East, to the boundary between Maricopa and Pinal Counties as described in Arizona Revised Statutes Section 11–109 and 11–113, which is the eastern line of Range 1 East;				
26. thence, northerly along the eastern boundary of Range 1 East, which is the common boundary between Maricopa and Pinal Counties, to a point where the eastern line of Range 1 East intersects the Gila River;				
27. thence, southerly up the Gila River to a point where the Gila River intersects with the southern line of Township 2 South; and.				
28. thence, easterly along the southern line of Township 2 South to the point of beginning which is a point where the southern line of Township 2 South intersects with the eastern line of Range 7 East.				
Tucson Area:				
Pima County (part)				
Tuscon area	.....	1 hr. std. N.A.[2]		
Rest of State	.....	1 hr. std. N.A.[2]		
Apache County				
Cochise County				
Coconino County				
Gila County				

ARIZONA-OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Graham County				
Greenlee County				
La Paz County				
Maricopa County (part)				
area outside of Phoenix				
Mohave County				
Navajo County				
Pima County (part)				
Remainder of county				
Pinal County				
Santa Cruz County				
Yavapai County				
Yuma County				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * * * *

5. In § 81.304, the table entitled "Arkansas—Ozone" is revised to read as follows:

§ 81.304 Arkansas.

* * * * * * *

ARKANSAS—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
AQCR 016 Central Arkansas Intrastate (part)	.....	1 hr. std. N.A.[2]		
Pulaski County				
AQCR 016 Central Arkansas Intrastate (Remainder of)	.....	1 hr. std. N.A.[2]		
Chicot County				
Clark County				
Cleveland County				
Conway County				
Dallas County				
Desha County				
Drew County				
Faulkner County				
Garland County				
Grant County				
Hot Spring County				
Jefferson County				
Lincoln County				
Lonoke County				
Perry County				
Pope County				
Saline County				
Yell County				
AQCR 017 Metropolitan Fort Smith Interstate	.....	1 hr. std. N.A.[2]		
Benton County				
Crawford County				
Sebastian County				
Washington County				
AQCR 018 Metropolitan Memphis Interstate	.....	1 hr. std. N.A.[2]		
Crittenden County				
AQCR 019 Monroe-El Dorado Interstate	.....	1 hr. std. N.A.[2]		
Ashley County				
Bradley County				
Calhoun County				
Nevada County				
Ouachita County				
Union County				
AQCR 020 Northeast Arkansas Intrastate	.....	1 hr. std. N.A.[2]		
Arkansas County				
Clay County				
Craighead County				
Cross County				
Greene County				
Independence County				

ARKANSAS—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Jackson County				
Lawrence County				
Lee County				
Mississippi County				
Monroe County				
Phillips County				
Poinsett County				
Prairie County				
Randolph County				
Sharp County				
St. Francis County				
White County				
Woodruff County				
AQCR 021 Northwest Arkansas Intrastate	.....	1 hr. std. N.A.[2]		
Baxter County				
Boone County				
Carroll County				
Cleburne County				
Franklin County				
Fulton County				
Izard County				
Johnson County				
Logan County				
Madison County				
Marion County				
Montgomery County				
Newton County				
Pike County				
Polk County				
Scott County				
Searcy County				
Stone County				
Van Buren County				
AQCR 022 Shreveport-Texarkana-Tyler Interstate	.....	1 hr. std. N.A.[2]		
Columbia County				
Hempstead County				
Howard County				
Lafayette County				
Little River County				
Miller County				
Sevier County				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * * * *

B. In 81.305, the table entitled "California—Ozone" is revised to read as follows:

§ 81.305 California.

* * * * * * *

CALIFORNIA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Amador County Area	11/15/90	Unclassifiable/Attainment	11/15/90	
Calaveras County Area:				
Calaveras County	11/15/90	Unclassifiable/Attainment	11/15/90	
Chico Area:				
Butte County	.....	1 hr. std. N.A.[2]		
Imperial County Area:				
Imperial County	11/15/90	Nonattainment	11/15/90	Sec. 185A Area.[3]
Los Angeles-South Coast Air Basin Area:				
Los Angeles County (part)—that portion of Los Angeles County which lies south and west of a line described as follows.	11/15/90	Nonattainment	11/15/90	Extreme.

CALIFORNIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
1. Beginning at the Los Angeles-San Bernardino County boundary and running west along the Township line common to Township 3 North and Township 2 North, San Bernardino Base and Meridian;				
2. then north along the range line common to Range 8 West and Range 9 West;				
3. then west along the Township line common to Township 4 North and Township 3 North;				
4. then north along the range line common to Range 12 West and Range 13 West to the southeast corner of Section 12, Township 5 North and Range 13 West;				
5. then west along the south boundaries of Sections 12, 11, 10, 9, 8, and 7, Township 5 North and Range 13 West to the boundary of the Angeles National Forest which is collinear with the range line common to Range 13 West and Range 14 West;				
6. then north and west along the Angeles National Forest boundary to the point of intersection with the Township line common to Township 7 North and Township 6 North (point is at the northwest corner of Section 4 in Township 6 North and Range 14 West);				
7. then west along the Township line common to Township 7 North and Township 6 North;				
8. then north along the range line common to Range 15 West and Range 16 West to the southeast corner of Section 13, Township 7 North and Range 16 West;				
9. then along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 7 North and Range 16 West;				
10. then north along the range line common to Range 16 West and Range 17 West to the north boundary of the Angeles National Forest (collinear with the Township line common to Township 8 North and Township 7 North);				
11. then west along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant;				
12. then west and north along this land grant boundary to the Los Angeles-Kern County boundary.				
Orange County	11/15/90	Nonattainment	11/15/90	Extreme.
Riverside County (part)—that portion of Riverside County which lies to the west of a line described as follows.	11/15/90	Nonattainment	11/15/90	Extreme.
1. Beginning at the Riverside-San Diego County boundary and running north along the range line common to Range 4 East and Range 3 East, San Bernardino Base and Meridian;				
2. then east along the Township line common to Township 8 South and Township 7 South;				
3. then north along the range line common to Range 5 East and Range 4 East;				
4. then west along the Township line common to Township 6 South and Township 7 South to the southwest corner of Section 34, Township 6 South, Range 4 East;				
5. then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, Township 6 South, Range 4 East;				
6. then west along the Township line common to Township 5 South and Township 6 South;				
7. then north along the range line common to Range 4 East and Range 3 East;				

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CALIFORNIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
8. then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 5 South, Range 3 East;				
9. then north along the range line common to Range 2 East and Range 3 East;				
10. then west along the Township line common to Township 4 South and Township 3 South to the intersection of the southwest boundary of partial Section 31, Township 3 South, Range 1 West;				
11. then northwest along that line to the intersection with the range line common to Range 2 West and Range 1 West;				
12. then north to the Riverside-San Bernardino County line,				
San Bernardino County (part)—that portion of San Bernardino County which lies south and west of a line described as follows.	11/15/90	Nonattainment	11/15/90	Extreme.
1. Beginning at the San Bernardino-Riverside County boundary and running north along the range line common to Range 3 East and Range 2 East, San Bernardino Base and Meridian;				
2. then west along the Township line common to Township 3 Nogth and Township 2 North to the San Bernardino-Los Angeles County boundary.				
Monterey Bay Area:				
Monterey County		1 hr. std. N.A.[2]		
San Benito County		1 hr. std. N.A.[2]		
Santa Cruz County		1 hr. std. N.A.[2]		
Sacramento Metro Area:				
El Dorado County (part)	11/15/90	Nonattainment	6/1/95	Severe-15.
All portions of the county except that portion of El Dorado County within the drainage area naturally tributary to Lake Tahoe including said Lake.				
Placer County (part)	11/15/90	Nonattainment	6/1/95	Severe-15.
All portions of the county except that portion of Placer County within the drainage area naturally tributary to Lake Tahoe including said Lake, plus that area in the vicinity of the head of the Truckee River described as follows: commencing at the point common to the aforementioned drainage area crestline and the line common to Townships 15 North and 16 North, Mount Diablo Base and Meridian (M.D.B.&M.), and following that line in a westerly direction to the northwest corner of Section 3, Township 15 North, Range 16 East, M.D.B.&M., thence south along the west line of Sections 3 and 10, Township 15 North, Range 16 East, M.D.B.&M., to the intersection with the said drainage area crestline, thence following the said drainage area boundary in a southeasterly, then northeasterly direction to and along the Lake Tahoe Dam, thence following the said drainage area crestline in a northeasterly, then northwesterly direction to the point of beginning.				
Sacramento County	11/15/90	Nonattainment	6/1/95	Severe-15.
Solano County (part) That portion of Solano County which lies north and east of a line described as follows.	11/15/90	Nonattainment	6/1/95	Severe-15.

CALIFORNIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Description of boundary in Solano County between San Francisco and Sacramento: Beginning at the intersection of the westerly boundary of Solano County and the ¼ section line running east and west through the center of Section 34; T. 6 N., R. 2 W., M.D.B.&M., thence east along said ¼ section line to the east boundary of Section 36, T. 6 N., R. 2 W., thence south ½ mile and east 2.0 miles, more or less, along the west and south boundary of Los Putos Rancho to the northwest corner of Section 4, T. 5 N., R. 1 W., thence east along a line common to T. 5 N. and T. 6 N. to the northeast corner of Section 3, T. 5 N., R. 1 E., thence south along section lines to the southeast corner of Section 10, T. 3 N., R. 1 E., thence east along section lines to the south ¼ corner of Section 8, T. 3 N., R. 2 E., thence east to the boundary between Solano and Sacramento Counties.				
Sutter County (part—southern portion)	11/15/90	Nonattainment	6/1/95	Severe-15.
South of a line connecting the northern border of Yolo Co. to the SW tip of Yuba Co. and continuing along the southern Yuba County border to Placer County.				
Yolo County	11/15/90	Nonattainment	6/1/95	Severe-15.
San Diego Area:				
San Diego County	2/21/95	Nonattainment	2/21/95	Serious.
San Francisco-Bay Area:				
Alameda County	6/21/95	Attainment		
Contra Costa County	6/21/95	Attainment		
Marin County	6/21/95	Attainment		
Napa County	6/21/95	Attainment		
San Francisco County	6/21/95	Attainment		
San Clara County	6/21/95	Attainment		
San Mateo County	6/21/95	Attainment		
Solano County (part)	6/21/95	Attainment		
That portion of the county that lies south and west of the line described that follows: Description of boundary in Solano County between San Francisco and Sacramento: Beginning at the intersection at the westerly boundary of Solano County and the ¼ section line running east and west through the center of Section 34; T. 6 N., R. 2 W., M.D.B.&M., thence east along said ½ section line to the east boundary of Section 36, T. 6 N., R. 2 W., thence south ½ mile and east 2.0 miles, more or less, along the west and south boundary of Los Putos Rancho to the northwest corner of Section 4, T. 5 N., R. 1 W, thence east along a line common to T. 5 N., and T. 6 N. to the northeast corner of Section 3, T. 5 N., R. 1 E., thence south along section lines to the southeast corner of Section 10 T. 3 N., R. 1 E., thence east along section lines to the south ¼ corner of Section 8 T. 3 N., R. 2 E., thence east to the boundary between Solano and Sacramento Counties.				
Sonoma County (part)	6/21/95	Attainment		
San Joaquin Valley Area:				
Fresno County	11/15/90	Nonattainment	11/15/90	Serious.
Kern County	11/15/90	Nonattainment	11/15/90	Serious.
Kings County	11/15/90	Nonattainment	11/15/90	Serious.
Madera County	11/15/90	Nonattainment	11/15/90	Serious.
Merced County	11/15/90	Nonattainment	11/15/90	Serious.
San Joaquin County	11/15/90	Nonattainment	11/15/90	Serious.
Stanislaus County	11/15/90	Nonattainment	11/15/90	Serious.
Tulare County	11/15/90	Nonattainment	11/15/90	Serious.
Santa Barbara-Santa Maria-Lompoc Area:				
Santa Barbara County	11/15/90	Nonattainment	1/09/98	Serious.
Southeast Desert Modified AQMA Area:				

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CALIFORNIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Los Angeles County (part)—that portion of Los Angeles County which lies north and east of a line described as follows. 1. Beginning at the Los Angeles-San Bernardino County boundary and running west along the Township line common to Township 3 North and Township 2 North, San Bernardino Base and Meridian; 2. then north along the range line common to Range 8 West and Range 9 West; 3. then west along the Township line common to Township 4 North and Township 3 North; 4. then north along the range line common to Range 12 West and Range 13 West to the southeast corner of Section 12, Township 5 North and Range 13 West; 5. then west along the south boundaries of Sections 12, 11, 10, 9, 8, and 7, Township 5 North and Range 13 West to the boundary of the Angeles National Forest which is collinear with the range line common to Range 13 West and Range 14 West; 6. then north and west along the Angeles National Forest boundary to the point of intersection with the Township line common to Township 7 North and Township 6 North (point is at the northwest corner of Section 4 in Township 6 North and Range 14 West); 7. then west along the Township line common to Township 7 North and Township 6 North; 8. then north along the range line common to Range 15 West and Range 16 West to the southeast corner of Section 13, Township 7 North and Range 16 West; 9. then along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 7 North and Range 16 West; 10. then north along the range line common to Range 16 West and Range 17 West to the north boundary of the Angeles National Forest (collinear with the Township line common to Township 8 North and Township 7 North); 11. then west along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant; 12. then west and north along this land grant boundary to the Los Angeles-Kern County boundary.	11/15/90	Nonattainment	11/15/90	Severe-17.
Riverside County (part)—that portion of Riverside County which lies to the east of a line described as follows. 1. Beginning at the Riverside-San Diego County boundary and running north along the range line common to Range 4 East and Range 3 East, San Bernardino Base and Meridian; 2. then east along the Township line common to Township 8 South and Township 7 South; 3. then north along the range line common to Range 5 East and Range 4 East; 4. then west along the Township line common to Township 6 South and Township 7 South to the southwest corner of Section 34, Township 6 South, Range 4 East; 5. then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, Township 6 South, Range 4 East; 6. then west along the Township line common to Township 5 South and Township 6 South; 7. then north along the range line common to Range 4 East and Range 3 East;	11/15/90	Nonattainment	11/15/90	Severe-17.

CALIFORNIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
8. then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 5 South, Range 3 East; 9. then north along the range line common to Range 2 East and Range 3 East; 10. then west along the Township line common to Township 4 South and Township 3 South to the intersection of the southwest boundary of partial Section 31, Township 3 South, Range 1 West; 11. then northwest along that line to the intersection with the range line common to Range 2 West and Range 1 West; 12. then north to the Riverside-San Bernardino County line, and that portion of Riverside County which lies to the west of a line described as follows: 13. beginning at the northeast corner of Section 4, Township 2 South, Range 5 East, a point on the boundary line common to Riverside and San Bernardino Counties; 14. then southerly along section lines to the centerline of the Colorado River Aquaduct; 15. then southeasterly along the centerline of said Colorado River Aquaduct to the southerly line of Section 36, Township 3 South, Range 7 East; 16. then easterly along the Township line to the northeast corner of Section 6, Township 4 South, Range 9 East; 17. then southerly along the easterly line of Section 6 to the southeast corner thereof; 18. then easterly along section lines to the northeast corner of Section 10, Township 4 South, Range 9 East; 19. then southerly along section lines to the southeast corner of Section 15, Township 4 South, Range 9 East; 20. then easterly along the section lines to the northeast corner of Section 21, Township 4 South, Range 10 East; 21. then southerly along the easterly line of Section 21 to the southeast corner thereof; 22. then easterly along the northerly line of Section 27 to the northeast corner thereof; 23. then southerly along section lines to the southeast corner of Section 34, Township 4 South, Range 10 East; 24. then easterly along the Township line to the northeast corner of Section 2, Township 5 South, Range 10 East; 25. then southerly along the easterly line of Section 2, to the southeast corner thereof; 26. then easterly along the northerly line of Section 12 to the northeast corner thereof; 27. then southerly along the range line to the southwest corner of Section 18, Township 5 South, Range 11 East; 28. then easterly along section lines to the northeast corner of Section 24, Township 5 South, Range 11 East; 29. then southerly along the range line to the southeast corner of Section 36, Township 8 South, Range 11 East, a point on the boundary line common to Riverside and San Diego Counties.				
San Bernadino County (part)—that portion of San Bernardino County which lies north and east of a line described as follows. 1. Beginning at the San Bernardino-Riverside County boundary and running north along the range line common to Range 3 East and Range 2 East, San Bernardino Base and Meridian;	11/15/90	Nonattainment	11/15/90	Severe-17.

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CALIFORNIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
2. then west along the Township line common to Township 3 North and Township 2 North to the San Bernardino-Los Angeles County boundary; and that portion of San Bernardino County which lies south and west of a line described as follows: 3. latitude 35 degrees, 10 minutes north and longitude 115 degrees, 45 minutes west.				
Ventura County Area:				
Ventura County	11/15/90	Nonattainment	11/15/90	Severe-15.
Yuba City Area:				
Sutter County (part—northern portion).				
North of a line connecting the northern border of Yolo County to the SW tip of Yuba County and continuing along the southern Yuba County border to Placer County		1 hr. std. N.A.[2]		
Yuba County		1 hr. std. N.A.[2]		
Great Basin Valleys Air Basin		1 hr. std. N.A.[2]		
Alpine County				
Inyo County				
Mono County				
Lake County Air Basin		1 hr. std. N.A.[2]		
Lake County				
Lake Tahoe Air Basin		1 hr. std. N.A.[2]		
El Dorado County (part)				
Lake Tahoe Area: As described under 40 CFR 81.275.				
Placer County (part)				
Lake Tahoe Area: As described under 40 CFR 81.275.				
Mountain Counties Air Basin (Remainder of):				
Mariposa County		1 hr. std. N.A.[2]		
Nevada County		1 hr. std. N.A.[2]		
Plumas County		1 hr. std. N.A.[2]		
Sierra County		1 hr. std. N.A.[2]		
Tuolumne County		1 hr. std. N.A.[2]		
North Coast Air Basin		1 hr. std. N.A.[2]		
Del Norte County				
Humboldt County				
Mendocino County				
Sonoma County (part)				
Remainder of County				
Trinity County				
Northeast Plateau Air Basin		1 hr. std. N.A.[2]		
Lassen County				
Modoc County				
Siskiyou County				
Sacramento Valley Air Basin (Remainder of):				
Colusa County		1 hr. std. N.A.[2]		
Glenn County		1 hr. std. N.A.[2]		
Shasta County		1 hr. std. N.A.[2]		
Tehama County		1 hr. std. N.A.[2]		
South Central Coast Air Basin (Remainder of):				
Channel Islands		1 hr. std. N.A.[2]		
San Luis Obispo County		1 hr. std. N.A.[2]		
Southeast Desert NON-AQMA:				
Riverside County (part)				
Remainder of County		1 hr. std. N.A.[2]		
San Bernadino County (part).				
Remainder of County		1 hr. std. N.A.[2]		

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.
[3] An area designated as an ozone nonattainment area as of the date of enactment of the CAAA of 1990 that did not violate the ozone NAAQS during the period of 1987–1989.

7. In § 81.306, the table entitled "Colorado—Ozone" is revised to read as follows:

§ 81.306 Colorado.

COLORADO—OZONE (1-HOUR STANDARD)

Designation area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Denver—Boulder Area:				
Adams County (part)				
West of Kiowa Creek		1 hr. std. N.A.[2]		
Arapahoe County (part)				
West of Kiowa Creek		1 hr. std. N.A.[2]		
Boulder County (part)				
excluding Rocky Mtn. National Park		1 hr. std. N.A.[2]		
Denver County		1 hr. std. N.A.[2]		
Douglas County		1 hr. std. N.A.[2]		
Jefferson County		1 hr. std. N.A.[2]		
State AQCR 01		1 hr. std. N.A.[2]		
Logan County				
Morgan County				
Phillips County				
Sedgwick County				
Washington County				
Yuma County				
State AQCR 02		1 hr. std. N.A.[2]		
Larimer County				
Weld County				
State AQCR 03 (Remainder of)		1 hr. std. N.A.[2]		
Adams County (part)				
East of Kiowa Creek				
Arapahoe County (part)				
East of Kiowa Creek				
Boulder County (part)				
Rocky Mtn. National Park Only				
Clear Creek County				
Gilpin County				
State AQCR 11		1 hr. std. N.A.[2]		
Garfield County				
Mesa County				
Moffat County				
Rio Blanco County				
Rest of State		1 hr. std. N.A.[2]		
Alamosa County				
Archuleta County				
Baca County				
Bent County				
Chaffee County				
Cheyenne County				
Conejos County				
Costilla County				
Crowley County				
Custer County				
Delta County				
Dolores County				
Eagle County				
El Paso County				
Elbert County				
Fremont County				
Grand County				
Gunnison County				
Hinsdale County				
Huerfano County				
Jackson County				
Kiowa County				
Kit Carson County				
La Plata County				
Lake County				
Las Animas County				
Lincoln County				
Mineral County				
Montezuma County				
Montrose County				
Otero County				
Ouray County				
Park County				
Pitkin County				
Prowers County				

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COLORADO—OZONE (1-HOUR STANDARD)—Continued

Designation area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Pueblo County				
Rio Grande County				
Routt County				
Saguache County				
San Juan County				
San Miguel County				
Summit County				
Teller County				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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8. In § 81.307, the table entitled "Connecticut—Ozone" is revised to read as follows:

§ 81.307 Connecticut.

* * * * * * *

CONNECTICUT—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Greater Connecticut Area:				
Fairfield County (part)	11/15/90	Nonattainment	11/15/90	Serious.
Shelton City				
Hartford County	11/15/90	Nonattainment	11/15/90	Serious.
Litchfield County (part)	11/15/90	Nonattainment	11/15/90	Serious.
all cities and townships except: Bridgewater Town, New Milford Town				
Middlesex County	11/15/90	Nonattainment	11/15/90	Serious.
New Haven County	11/15/90	Nonattainment	11/15/90	Serious.
New London County	11/15/90	Nonattainment	11/15/90	Serious.
Tolland County	11/15/90	Nonattainment	11/15/90	Serious.
Windham County	11/15/90	Nonattainment	11/15/90	Serious.
New York-N. New Jersey-Long Island Area:				
Fairfield County (part).	11/15/90	Nonattainment	11/15/90	Severe-17.
all cities and towns except Shelton City				
Litchfield County (part)	11/15/90	Nonattainment	11/15/90	Severe-17.
Bridgewater Town, New Milford Town				

[1] This date is March 17, 1998, unless otherwise noted.

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9. In § 81.308, the table entitled "Delaware—Ozone" is revised to read as follows:

§ 81.308 Delaware.

* * * * * * *

DELAWARE—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Philadelphia-Wilmington-Trenton Area:				
Kent County	11/15/90	Nonattainment	11/15/90	Severe-15.
New Castle County	11/15/90	Nonattainment	11/15/90	Severe-15.
Sussex County Area:				
Sussex County		1 hr. std. N.A.[2]		

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard not applicable.

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10. In Section 81.309, the table entitled "District of Columbia—Ozone" is revised to read as follows:

§ 81.309 District of Columbia.

* * * * * * *

DISTRICT OF COLUMBIA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Washington Area:				
Washington				
Entire Area	11/15/90	Nonattainment	11/15/90	Serious.

[1] This date is March 17, 1998, unless otherwise noted.

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11. In § 81.310, the table entitled "Florida—Ozone" is revised to read as follows:

§ 81.310 Florida.

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FLORIDA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Statewide		1 hr. std. N.A.[2]		
Alachua County				
Baker County				
Bay County				
Bradford County				
Brevard County				
Broward County				
Calhoun County				
Charlotte County				
Citrus County				
Clay County				
Collier County				
Columbia County				
Dade County				
De Soto County				
Dixie County				
Duval County				
Escambia County				
Flagler County				
Franklin County				
Gadsden County				
Gilchrist County				
Glades County				
Gulf County				
Hamilton County				
Hardee County				
Hendry County				
Hernando County				
Highlands County				
Hillsborough County				
Holmes County				
Indian River County				
Jackson County				
Jefferson County				
Lafayette County				
Lake County				
Lee County				
Leon County				
Levy County				
Liberty County				
Madison County				
Manatee County				
Marion County				
Martin County				
Monroe County				
Nassau County				
Okaloosa County				
Okeechobee County				
Orange County				
Osceola County				
Palm Beach County				
Pasco County				
Pinellas County				

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FLORIDA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Polk County				
Putnam County				
Santa Rosa County				
Sarasota County				
Seminole County				
St. Johns County				
St. Lucie County				
Sumter County				
Suwannee County				
Taylor County				
Union County				
Volusia County				
Wakulla County				
Walton County				
Washington County				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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12. In § 81.311, the table entitled "Georgia—Ozone" is revised to read as follows:

§ 81.311 Georgia.

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GEORGIA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Atlanta Area:				
Cherokee County	11/15/90	Nonattainment	11/15/90	Serious.
Clayton County	11/15/90	Nonattainment	11/15/90	Serious.
Cobb County	11/15/90	Nonattainment	11/15/90	Serious.
Coweta County	11/15/90	Nonattainment	11/15/90	Serious.
De Kalb County	11/15/90	Nonattainment	11/15/90	Serious.
Douglas County	11/15/90	Nonattainment	11/15/90	Serious.
Fayette County	11/15/90	Nonattainment	11/15/90	Serious.
Forsyth County	11/15/90	Nonattainment	11/15/90	Serious.
Fulton County	11/15/90	Nonattainment	11/15/90	Serious.
Gwinnett County	11/15/90	Nonattainment	11/15/90	Serious.
Henry County	11/15/90	Nonattainment	11/15/90	Serious.
Paulding County	11/15/90	Nonattainment	11/15/90	Serious.
Rockdale County	11/15/90	Nonattainment	11/15/90	Serious.
Spalding County Area:				
Spalding County	11/15/90	Unclassifiable/Attainment	11/15/90	
Rest of State		1 hr. std. N.A.[2]		
Appling County				
Atkinson County				
Bacon County				
Baker County				
Baldwin County				
Banks County				
Barrow County				
Bartow County				
Ben Hill County				
Berrien County				
Bibb County				
Bleckley County				
Brantley County				
Brooks County				
Bryan County				
Bulloch County				
Burke County				
Butts County				
Calhoun County				
Camden County				
Candler County				
Carroll County				
Catoosa County				

GEORGIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Charlton County				
Chatham County				
Chattahoochee County				
Chattooga County				
Clarke County				
Clay County				
Clinch County				
Coffee County				
Colquitt County				
Columbia County				
Cook County				
Crawford County				
Crisp County				
Dade County				
Dawson County				
Decatur County				
Dodge County				
Dooly County				
Dougherty County				
Early County				
Echols County				
Effingham County				
Elbert County				
Emanuel County				
Evans County				
Fannin County				
Floyd County				
Franklin County				
Gilmer County				
Glascock County				
Glynn County				
Gordon County				
Grady County				
Greene County				
Habersham County				
Hall County				
Hancock County				
Haralson County				
Harris County				
Hart County				
Heard County				
Houston County				
Irwin County				
Jackson County				
Jasper County				
Jeff Davis County				
Jefferson County				
Jenkins County				
Johnson County				
Jones County				
Lamar County				
Lanier County				
Laurens County				
Lee County				
Liberty County				
Lincoln County				
Long County				
Lowndes County				
Lumpkin County				
Macon County				
Madison County				
Marion County				
McDuffie County				
McIntosh County				
Meriwether County				
Miller County				
Mitchell County				
Monroe County				
Montgomery County				
Morgan County				

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GEORGIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Murray County				
Muscogee County				
Newton County				
Oconee County				
Oglethorpe County				
Peach County				
Pickens County				
Pierce County				
Pike County				
Polk County				
Pulaski County				
Putnam County				
Quitman County				
Rabun County				
Randolph County				
Richmond County				
Schley County				
Screven County				
Seminole County				
Stephens County				
Stewart County				
Sumter County				
Talbot County				
Taliaferro County				
Tattnall County				
Taylor County				
Telfair County				
Terrell County				
Thomas County				
Tift County				
Toombs County				
Towns County				
Treutlen County				
Troup County				
Turner County				
Twiggs County				
Union County				
Upson County				
Walker County				
Walton County				
Ware County				
Warren County				
Washington County				
Wayne County				
Webster County				
Wheeler County				
White County				
Whitfield County				
Wilcox County				
Wilkes County				
Wilkinson County				
Worth County				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * * * *

13. In § 81.312, the table entitled "Hawaii—Ozone" is revised to read as follows:

§ 81.312 Hawaii.

* * * * * * *

HAWAII—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Statewide		1 hr. std. N.A.[2]		
Hawaii County				
Honolulu County				
Kalawao				
Kauai County				
Maui County				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * * * *

HAWAII—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Kalawao				
Kauai County				
Maui County				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * * * *

14. In § 81.313, the table entitled "Idaho—Ozone" is revised to read as follows:

§ 81.313 Idaho.

* * * * * * *

IDAHO—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
AQCR 61 Eastern Idaho Intrastate		1 hr. std. N.A.[2]		
Bannock County				
Bear Lake County				
Bingham County				
Bonneville County				
Butte County				
Caribou County				
Clark County				
Franklin County				
Fremont County				
Jefferson County				
Madison County				
Oneida County				
Power County				
Teton County				
AQCR 62 E Washington-N Idaho Interstate		1 hr. std. N.A.[2]		
Benewah County				
Kootenai County				
Latah County				
Nez Perce County				
Shoshone County				
AQCR 63 Idaho Intrastate		1 hr. std. N.A.[2]		
Adams County				
Blaine County				
Boise County				
Bonner County				
Boundary County				
Camas County				
Cassia County				
Clearwater County				
Custer County				
Elmore County				
Gem County				
Gooding County				
Idaho County				
Jerome County				
Lemhi County				
Lewis County				
Lincoln County				
Minidoka County				
Owyhee County				
Payette County				
Twin Falls County				
Valley County				
Washington County				
AQCR 64 Metropolitan Boise Interstate		1 hr. std. N.A.[2]		
Ada County				
Canyon County				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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15. In § 81.314, the table entitled "Illinois—Ozone" is revised to read as follows:

§ 81.314 Illinois.

* * * * * * *

ILLINOIS—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Chicago-Gary-Lake County Area:				
Cook County	11/15/90	Nonattainment	11/15/90	Severe-17.
Du Page County	11/15/90	Nonattainment	11/15/90	Severe-17.
Grundy County (part):				
Aux Sable Township	11/15/90	Nonattainment	11/15/90	Severe-17.
Goose Lake Township	11/15/90	Nonattainment	11/15/90	Severe-17.
Kane County	11/15/90	Nonattainment	11/15/90	Severe-17.
Kendall County (part):				
Oswego Township	11/15/90	Nonattainment	11/15/90	Severe-17.
Lake County	11/15/90	Nonattainment	11/15/90	Severe-17.
McHenry County	11/15/90	Nonattainment	11/15/90	Severe-17.
Will County	11/15/90	Nonattainment	11/15/90	Severe-17.
Jersey County Area:				
Jersey County		1 hr. std. N.A.[2]		
St. Louis Area:				
Madison County	11/15/90	Nonattainment	11/15/90	Moderate.
Monroe County	11/15/90	Nonattainment	11/15/90	Moderate.
St. Clair County	11/15/90	Nonattainment	11/15/90	Moderate.
Adams County		1 hr. std. N.A.[2]		
Alexander County		1 hr. std. N.A.[2]		
Bond County		1 hr. std. N.A.[2]		
Boone County		1 hr. std. N.A.[2]		
Brown County		1 hr. std. N.A.[2]		
Bureau County		1 hr. std. N.A.[2]		
Calhoun County		1 hr. std. N.A.[2]		
Carroll County		1 hr. std. N.A.[2]		
Cass County		1 hr. std. N.A.[2]		
Champaign County		1 hr. std. N.A.[2]		
Christian County		1 hr. std. N.A.[2]		
Clark County		1 hr. std. N.A.[2]		
Clay County		1 hr. std. N.A.[2]		
Clinton County		1 hr. std. N.A.[2]		
Coles County		1 hr. std. N.A.[2]		
Crawford County		1 hr. std. N.A.[2]		
Cumberland County		1 hr. std. N.A.[2]		
De Kalb County		1 hr. std. N.A.[2]		
De Witt County		1 hr. std. N.A.[2]		
Douglas County		1 hr. std. N.A.[2]		
Edgar County		1 hr. std. N.A.[2]		
Edwards County		1 hr. std. N.A.[2]		
Effingham County		1 hr. std. N.A.[2]		
Fayette County		1 hr. std. N.A.[2]		
Ford County		1 hr. std. N.A.[2]		
Franklin County		1 hr. std. N.A.[2]		
Fulton County		1 hr. std. N.A.[2]		
Gallatin County		1 hr. std. N.A.[2]		
Greene County		1 hr. std. N.A.[2]		
Grundy County (part):				
All townships except Aux Sable and Goose Lake		1 hr. std. N.A.[2]		
Hamilton County		1 hr. std. N.A.[2]		
Hancock County		1 hr. std. N.A.[2]		
Hardin County		1 hr. std. N.A.[2]		
Henderson County		1 hr. std. N.A.[2]		
Henry County		1 hr. std. N.A.[2]		
Iroquois County		1 hr. std. N.A.[2]		
Jackson County		1 hr. std. N.A.[2]		
Jasper County		1 hr. std. N.A.[2]		
Jefferson County		1 hr. std. N.A.[2]		
Jo Daviess County		1 hr. std. N.A.[2]		
Johnson County		1 hr. std. N.A.[2]		
Kankakee County		1 hr. std. N.A.[2]		
Kendall County (part):				
All townships except Oswego		1 hr. std. N.A.[2]		
Knox County		1 hr. std. N.A.[2]		

ILLINOIS—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
La Salle County		1 hr. std. N.A.[2]		
Lawrence County		1 hr. std. N.A.[2]		
Lee County		1 hr. std. N.A.[2]		
Livingston County		1 hr. std. N.A.[2]		
Logan County		1 hr. std. N.A.[2]		
Macon County		1 hr. std. N.A.[2]		
Macoupin County		1 hr. std. N.A.[2]		
Marion County		1 hr. std. N.A.[2]		
Marshall County		1 hr. std. N.A.[2]		
Mason County		1 hr. std. N.A.[2]		
Massac County		1 hr. std. N.A.[2]		
McDonough County		1 hr. std. N.A.[2]		
McLean County		1 hr. std. N.A.[2]		
Menard County		1 hr. std. N.A.[2]		
Mercer County		1 hr. std. N.A.[2]		
Montgomery County		1 hr. std. N.A.[2]		
Morgan County		1 hr. std. N.A.[2]		
Moultrie County		1 hr. std. N.A.[2]		
Ogle County		1 hr. std. N.A.[2]		
Peoria County		1 hr. std. N.A.[2]		
Perry County		1 hr. std. N.A.[2]		
Piatt County		1 hr. std. N.A.[2]		
Pike County		1 hr. std. N.A.[2]		
Pope County		1 hr. std. N.A.[2]		
Pulaski County		1 hr. std. N.A.[2]		
Putnam County		1 hr. std. N.A.[2]		
Randolph County		1 hr. std. N.A.[2]		
Richland County		1 hr. std. N.A.[2]		
Rock Island County		1 hr. std. N.A.[2]		
Saline County		1 hr. std. N.A.[2]		
Sangamon County		1 hr. std. N.A.[2]		
Schuyler County		1 hr. std. N.A.[2]		
Scott County		1 hr. std. N.A.[2]		
Shelby County		1 hr. std. N.A.[2]		
Stark County		1 hr. std. N.A.[2]		
Stephenson County		1 hr. std. N.A.[2]		
Tazewell County		1 hr. std. N.A.[2]		
Union County		1 hr. std. N.A.[2]		
Vermilion County		1 hr. std. N.A.[2]		
Wabash County		1 hr. std. N.A.[2]		
Warren County		1 hr. std. N.A.[2]		
Washington County		1 hr. std. N.A.[2]		
Wayne County		1 hr. std. N.A.[2]		
White County		1 hr. std. N.A.[2]		
Whiteside County		1 hr. std. N.A.[2]		
Williamson County		1 hr. std. N.A.[2]		
Winnebago County		1 hr. std. N.A.[2]		
Woodford County		1 hr. std. N.A.[2]		

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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16. In § 81.315, the table entitled "Indiana—Ozone" is revised to read as follows:

§ 81.315 Indiana.

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INDIANA-OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Chicago-Gary-Lake County Area:				
Lake County	11/15/90	Nonattainment	11/15/90	Severe-17.
Porter County	11/15/90	Nonattainment	11/15/90	Severe-17.
Evansville Area:				
Vanderburgh County		1 hr. std. N.A.[2]		
Indianapolis Area:				
Marion County		1 hr. std. N.A.[2]		

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INDIANA-OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
La Porte County Area:				
La Porte County	11/15/90	Unclassifiable/Attainment	11/15/90	
Louisville Area:				
Clark County	11/15/90	Nonattainment	11/15/90	Moderate.
Floyd County	11/15/90	Nonattainment	11/15/90	Moderate.
South Bend-Elkhart Area:				
Elkhart County		1 hr. std. N.A.[2]		
St. Joseph County		1 hr. std. N.A.[2]		
Warrick County Area:				
Warrick County	11/15/90	Unclassifiable/Attainment	11/15/90	
Allen County		1 hr. std. N.A.[2]		
Adams County		1 hr. std. N.A.[2]		
Bartholomew County		1 hr. std. N.A.[2]		
Benton County		1 hr. std. N.A.[2]		
Blackford County		1 hr. std. N.A.[2]		
Boone County		1 hr. std. N.A.[2]		
Brown County		1 hr. std. N.A.[2]		
Carroll County		1 hr. std. N.A.[2]		
Cass County		1 hr. std. N.A.[2]		
Clay County		1 hr. std. N.A.[2]		
Clinton County		1 hr. std. N.A.[2]		
Crawford County		1 hr. std. N.A.[2]		
Daviess County		1 hr. std. N.A.[2]		
De Kalb County		1 hr. std. N.A.[2]		
Dearborn County		1 hr. std. N.A.[2]		
Decatur County		1 hr. std. N.A.[2]		
Delaware County		1 hr. std. N.A.[2]		
Dubois County		1 hr. std. N.A.[2]		
Fayette County		1 hr. std. N.A.[2]		
Fountain County		1 hr. std. N.A.[2]		
Franklin County		1 hr. std. N.A.[2]		
Fulton County		1 hr. std. N.A.[2]		
Gibson County		1 hr. std. N.A.[2]		
Grant County		1 hr. std. N.A.[2]		
Greene County		1 hr. std. N.A.[2]		
Hamilton County		1 hr. std. N.A.[2]		
Hancock County		1 hr. std. N.A.[2]		
Harrison County		1 hr. std. N.A.[2]		
Hendricks County		1 hr. std. N.A.[2]		
Henry County		1 hr. std. N.A.[2]		
Howard County		1 hr. std. N.A.[2]		
Huntington County		1 hr. std. N.A.[2]		
Jackson County		1 hr. std. N.A.[2]		
Jasper County		1 hr. std. N.A.[2]		
Jay County		1 hr. std. N.A.[2]		
Jefferson County		1 hr. std. N.A.[2]		
Jennings County		1 hr. std. N.A.[2]		
Johnson County		1 hr. std. N.A.[2]		
Knox County		1 hr. std. N.A.[2]		
Kosciusko County		1 hr. std. N.A.[2]		
Lagrange County		1 hr. std. N.A.[2]		
Lawrence County		1 hr. std. N.A.[2]		
Madison County		1 hr. std. N.A.[2]		
Marshall County		1 hr. std. N.A.[2]		
Martin County		1 hr. std. N.A.[2]		
Miami County		1 hr. std. N.A.[2]		
Monroe County		1 hr. std. N.A.[2]		
Montgomery County		1 hr. std. N.A.[2]		
Morgan County		1 hr. std. N.A.[2]		
Newton County		1 hr. std. N.A.[2]		
Noble County		1 hr. std. N.A.[2]		
Ohio County		1 hr. std. N.A.[2]		
Orange County		1 hr. std. N.A.[2]		
Owen County		1 hr. std. N.A.[2]		
Parke County		1 hr. std. N.A.[2]		
Perry County		1 hr. std. N.A.[2]		
Pike County		1 hr. std. N.A.[2]		
Posey County		1 hr. std. N.A.[2]		
Pulaski County		1 hr. std. N.A.[2]		
Putnam County		1 hr. std. N.A.[2]		

INDIANA-OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Randolph County		1 hr. std. N.A.[2]		
Ripley County		1 hr. std. N.A.[2]		
Rush County		1 hr. std. N.A.[2]		
Scott County		1 hr. std. N.A.[2]		
Shelby County		1 hr. std. N.A.[2]		
Spencer County		1 hr. std. N.A.[2]		
Starke County		1 hr. std. N.A.[2]		
Steuben County		1 hr. std. N.A.[2]		
Sullivan County		1 hr. std. N.A.[2]		
Switzerland County		1 hr. std. N.A.[2]		
Tippecanoe County		1 hr. std. N.A.[2]		
Tipton County		1 hr. std. N.A.[2]		
Union County		1 hr. std. N.A.[2]		
Vermillion County		1 hr. std. N.A.[2]		
Vigo County		1 hr. std. N.A.[2]		
Wabash County		1 hr. std. N.A.[2]		
Warren County		1 hr. std. N.A.[2]		
Washington County		1 hr. std. N.A.[2]		
Wayne County		1 hr. std. N.A.[2]		
Wells County		1 hr. std. N.A.[2]		
White County		1 hr. std. N.A.[2]		
Whitley County		1 hr. std. N.A.[2]		

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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17. In § 81.316, the table entitled "Iowa—Ozone" is revised to read as follows:

§ 81.316 Iowa.

* * * * * * *

IOWA—OZONE (1-HOUR STANDARD)

Designation area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Statewide		1 hr. std. N.A.[2]		
Adair County				
Adams County				
Allamakee County				
Appanoose County				
Audubon County				
Benton County				
Black Hawk County				
Boone County				
Bremer County				
Buchanan County				
Buena Vista County				
Butler County				
Calhoun County				
Carroll County				
Cass County				
Cedar County				
Cerro Gordo County				
Cherokee County				
Chickasaw County				
Clarke County				
Clay County				
Clayton County				
Clinton County				
Crawford County				
Dallas County				
Davis County				
Decatur County				
Delaware County				
Des Moines County				
Dickinson County				
Dubuque County				
Emmet County				

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IOWA—OZONE (1-HOUR STANDARD)—Continued

Designation area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Fayette County				
Floyd County				
Franklin County				
Fremont County				
Greene County				
Grundy County				
Guthrie County				
Hamilton County				
Hancock County				
Hardin County				
Harrison County				
Henry County				
Howard County				
Humboldt County				
Ida County				
Iowa County				
Jackson County				
Jasper County				
Jefferson County				
Johnson County				
Jones County				
Keokuk County				
Kossuth County				
Lee County				
Linn County				
Louisa County				
Lucas County				
Lyon County				
Madison County				
Mahaska County				
Marion County				
Marshall County				
Mills County				
Mitchell County				
Monona County				
Monroe County				
Montgomery County				
Muscatine County				
O'Brien County				
Osceola County				
Page County				
Palo Alto County				
Plymouth County				
Pocahontas County				
Polk County				
Pottawattamie County				
Poweshiek County				
Ringgold County				
Sac County				
Scott County				
Shelby County				
Sioux County				
Story County				
Tama County				
Taylor County				
Union County				
Van Buren County				
Wapello County				
Warren County				
Washington County				
Wayne County				
Webster County				
Winnebago County				
Winneshiek County				
Woodbury County				
Worth County				
Wright County				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

4. In § 81.317, the table entitled "Kansas—Ozone" is revised to read as follows:

§ 81.317 Kansas.

* * * * * * *

KANSAS—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Kansas City Area:				
Johnson County	7/23/92	Attainment.		
Wyandotte County	7/23/92	Attainment.		
Allen County		1 hr. std. N.A.[2]		
Anderson County		1 hr. std. N.A.[2]		
Atchison County		1 hr. std. N.A.[2]		
Barber County		1 hr. std. N.A.[2]		
Barton County		1 hr. std. N.A.[2]		
Bourbon County		1 hr. std. N.A.[2]		
Brown County		1 hr. std. N.A.[2]		
Butler County		1 hr. std. N.A.[2]		
Chase County		1 hr. std. N.A.[2]		
Chautauqua County		1 hr. std. N.A.[2]		
Cherokee County		1 hr. std. N.A.[2]		
Cheyenne County		1 hr. std. N.A.[2]		
Clark County		1 hr. std. N.A.[2]		
Clay County		1 hr. std. N.A.[2]		
Cloud County		1 hr. std. N.A.[2]		
Coffey County		1 hr. std. N.A.[2]		
Comanche County		1 hr. std. N.A.[2]		
Cowley County		1 hr. std. N.A.[2]		
Crawford County		1 hr. std. N.A.[2]		
Decatur County		1 hr. std. N.A.[2]		
Dickinson County		1 hr. std. N.A.[2]		
Doniphan County		1 hr. std. N.A.[2]		
Douglas County		1 hr. std. N.A.[2]		
Edwards County		1 hr. std. N.A.[2]		
Elk County		1 hr. std. N.A.[2]		
Ellis County		1 hr. std. N.A.[2]		
Ellsworth County		1 hr. std. N.A.[2]		
Finney County		1 hr. std. N.A.[2]		
Ford County		1 hr. std. N.A.[2]		
Franklin County		1 hr. std. N.A.[2]		
Geary County		1 hr. std. N.A.[2]		
Gove County		1 hr. std. N.A.[2]		
Graham County		1 hr. std. N.A.[2]		
Grant County		1 hr. std. N.A.[2]		
Gray County		1 hr. std. N.A.[2]		
Greeley County		1 hr. std. N.A.[2]		
Greenwood County		1 hr. std. N.A.[2]		
Hamilton County		1 hr. std. N.A.[2]		
Harper County		1 hr. std. N.A.[2]		
Harvey County		1 hr. std. N.A.[2]		
Haskell County		1 hr. std. N.A.[2]		
Hodgeman County		1 hr. std. N.A.[2]		
Jackson County		1 hr. std. N.A.[2]		
Jefferson County		1 hr. std. N.A.[2]		
Jewell County		1 hr. std. N.A.[2]		
Kearny County		1 hr. std. N.A.[2]		
Kingman County		1 hr. std. N.A.[2]		
Kiowa County		1 hr. std. N.A.[2]		
Labette County		1 hr. std. N.A.[2]		
Lane County		1 hr. std. N.A.[2]		
Leavenworth County		1 hr. std. N.A.[2]		
Lincoln County		1 hr. std. N.A.[2]		
Linn County		1 hr. std. N.A.[2]		
Logan County		1 hr. std. N.A.[2]		
Lyon County		1 hr. std. N.A.[2]		
Marion County		1 hr. std. N.A.[2]		
Marshall County		1 hr. std. N.A.[2]		
McPherson County		1 hr. std. N.A.[2]		
Meade County		1 hr. std. N.A.[2]		
Miami County		1 hr. std. N.A.[2]		
Mitchell County		1 hr. std. N.A.[2]		
Montgomery County		1 hr. std. N.A.[2]		

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KANSAS—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Morris County		1 hr. std. N.A.[2]		
Morton County		1 hr. std. N.A.[2]		
Nemaha County		1 hr. std. N.A.[2]		
Neosho County		1 hr. std. N.A.[2]		
Ness County		1 hr. std. N.A.[2]		
Norton County		1 hr. std. N.A.[2]		
Osage County		1 hr. std. N.A.[2]		
Osborne County		1 hr. std. N.A.[2]		
Ottawa County		1 hr. std. N.A.[2]		
Pawnee County		1 hr. std. N.A.[2]		
Phillips County		1 hr. std. N.A.[2]		
Pottawatomie County		1 hr. std. N.A.[2]		
Pratt County		1 hr. std. N.A.[2]		
Rawlins County		1 hr. std. N.A.[2]		
Reno County		1 hr. std. N.A.[2]		
Republic County		1 hr. std. N.A.[2]		
Rice County		1 hr. std. N.A.[2]		
Riley County		1 hr. std. N.A.[2]		
Rooks County		1 hr. std. N.A.[2]		
Rush County		1 hr. std. N.A.[2]		
Russell County		1 hr. std. N.A.[2]		
Saline County		1 hr. std. N.A.[2]		
Scott County		1 hr. std. N.A.[2]		
Sedgwick County		1 hr. std. N.A.[2]		
Seward County		1 hr. std. N.A.[2]		
Shawnee County		1 hr. std. N.A.[2]		
Sheridan County		1 hr. std. N.A.[2]		
Sherman County		1 hr. std. N.A.[2]		
Smith County		1 hr. std. N.A.[2]		
Stafford County		1 hr. std. N.A.[2]		
Stanton County		1 hr. std. N.A.[2]		
Stevens County		1 hr. std. N.A.[2]		
Sumner County		1 hr. std. N.A.[2]		
Thomas County		1 hr. std. N.A.[2]		
Trego County		1 hr. std. N.A.[2]		
Wabaunsee County		1 hr. std. N.A.[2]		
Wallace County		1 hr. std. N.A.[2]		
Washington County		1 hr. std. N.A.[2]		
Wichita County		1 hr. std. N.A.[2]		
Wilson County		1 hr. std. N.A.[2]		
Woodson County		1 hr. std. N.A.[2]		

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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19. In § 81.318, the table entitled "Kentucky—Ozone" is revised to read as follows:

§ 81.318 Kentucky.

* * * * *

KENTUCKY—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Cincinnati-Hamilton Area:				
Boone County	11/15/90	Nonattainment	11/15/90	Moderate.
Campbell County	11/15/90	Nonattainment	11/15/90	Moderate.
Kenton County	11/15/90	Nonattainment	11/15/90	Moderate.
Edmonson County Area:				
Edmonson County		1 hr. std. N.A.[2]		
Louisville Area:				
Bullitt County (part)	11/15/90	Nonattainment	11/15/90	Moderate.

KENTUCKY—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
The area boundary is as follows: Beginning at the intersection of Ky 1020 and the Jefferson-Bullitt County Line proceeding to the east along the county line to the intersection of county road 567 and the Jefferson-Bullitt County Line; proceeding south on county road 567 to the junction with Ky 1116 (also known as Zoneton Road); proceeding to the south on Ky 1116 to the junction with Hebron Lane; proceeding to the south on Hebron Lane to Cedar Creek; proceeding south on Cedar Creek to the confluence of Floyds Fork turning southeast along a creek that meets Ky 44 at Stallings Cemetery; proceeding west along Ky 44 to the eastern most point in the Shepherdsville city limits; proceeding south along the Shepherdsville city limits to the Salt River and west to a point across the river from Mooney Lane; proceeding south along Mooney Lane to the junction of Ky 480; proceeding west on Ky 480 to the junction with Ky 2237; proceeding south on Ky 2237 to the junction with Ky 61 and proceeding north on Ky 61 to the junction with Ky 1494; proceeding south on Ky 1494 to the junction with the perimeter of the Fort Knox Military Reservation; proceeding north along the military reservation perimeter to Castleman Branch Road; proceeding north on Castleman Branch Road to Ky 44; proceeding a very short distance west on Ky 44 to a junction with Ky 2723; proceeding north on Ky 2723 to the junction of Chillicoop Road; proceeding northeast on Chillicoop Road to the junction of KY 2673; proceeding north on KY 2673 to the junction of KY 1020; proceeding north on KY 1020 to the beginning; unless a road or intersection of two or more roads defines the nonattainment boundary, the area shall extend outward 750 feet from the center of the road or intersection.				
Jefferson County	11/15/90	Nonattainment	11/15/90	Moderate.
Oldham County (part)	11/15/90	Nonattainment	11/15/90	Moderate.

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KENTUCKY—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
The area boundary is as follows: Beginning at the intersection of the Oldham-Jefferson County Line with the southbound lane of Intestate 71; proceeding to the northeast along the southbound lane of Interstate 71 to the intersection of Ky 329 and the southbound lane of Interstate 71; proceeding to the northwest on Ky 329 to the intersection of Zaring Road and Ky 329; proceeding to the east-northeast on Zaring Road to the junction of Cedar Point Road and Zaring Road; proceeding to the north-northeast on Cedar Point Road to the junction of Ky 393 and Cedar Point Road; proceeding to the south-southeast on Ky 393 to the junction of (the access road on the north side of Reformatory Lake and the Reformatory); proceeding to the east-northeast on the access road to the junction with Dawkins Lane and the access road; proceeding to follow an electric power line east-northeast across from the junction of county road 746 and Dawkins Lane to the east-northeast across Ky 53 on to the La Grange Water Filtration Plant; proceeding on to the east-southeast along the power line then south across Fort Pickens Road to a power substation on Ky 146; proceeding along the power line south across Ky 146 and the Seaboard System Railroad track to adjoin the incorporated city limits of La Grange; then proceeding east then south along the La Grange city limits to a point abutting the north side of Ky 712; proceeding east-southeast on Ky 712 to the junction of Massie School Road and Ky 712; proceeding to the south-southwest on Massie School Road to the intersection of Massie School Road and Zale Smith Road; proceeding northeast on Zale Smith Road to the junction of KY 53 and Zale Smith Road; proceeding on Ky 53 to the north-northwest to the junction of New Moody Lane and Ky 53; proceeding on New Moody Lane to the south-southwest until meeting the city limits of La Grange; then briefly proceeding north following the La Grange city limits to the intersection of the northbound lane of Interstate 71 and the La Grange city limits; proceeding southwest on the north-bound lane of Interstate 71 until intersecting with the North Fork of Currys Fork; proceeding south-southwest beyond the confluence of Currys Fork to the south-southwest beyond the confluence of Floyds Fork continuing on to the Oldham-Jefferson County Line; proceeding northwest along the Oldham-Jefferson County Line to the beginning; unless a road or intersection of two or more roads defines the nonattainment boundary, the area shall extend outward 750 feet from the center of the road or intersection.				
Owensboro Area:				
Daviess County		1 hr. std. N.A.[2]		
Hancock County		1 hr. std. N.A.[2]		
The area boundary is as follows: Beginning at the intersection of U.S. 60 and the Hancock-Daviess County Line; proceeding east along U.S. 60 to the intersection of Yellow Creek and U.S. 60; proceeding north and west along Yellow Creek to the confluence of the Ohio River; proceeding west along the Ohio River to the confluence of Blackford Creek; proceeding south and east along Blackford Creek to the beginning.				
Morgan County Area:				
Morgan County	11/15/90	Unclassifiable/Attainment	11/15/90	

KENTUCKY—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Adair County		1 hr. std. N.A.[2]		
Allen County		1 hr. std. N.A.[2]		
Anderson County		1 hr. std. N.A.[2]		
Ballard County		1 hr. std. N.A.[2]		
Barren County		1 hr. std. N.A.[2]		
Bath County		1 hr. std. N.A.[2]		
Bell County		1 hr. std. N.A.[2]		
Bourbon County		1 hr. std. N.A.[2]		
Boyd County		1 hr. std. N.A.[2]		
Boyle County		1 hr. std. N.A.[2]		
Bracken County		1 hr. std. N.A.[2]		
Breathitt County		1 hr. std. N.A.[2]		
Breckinridge County		1 hr. std. N.A.[2]		
Bullitt County (part):				
Remainder of County		1 hr. std. N.A.[2]		
Butler County		1 hr. std. N.A.[2]		
Caldwell County		1 hr. std. N.A.[2]		
Calloway County		1 hr. std. N.A.[2]		
Carlisle County		1 hr. std. N.A.[2]		
Carroll County		1 hr. std. N.A.[2]		
Carter County		1 hr. std. N.A.[2]		
Casey County		1 hr. std. N.A.[2]		
Christian County		1 hr. std. N.A.[2]		
Clark County		1 hr. std. N.A.[2]		
Clay County		1 hr. std. N.A.[2]		
Clinton County		1 hr. std. N.A.[2]		
Crittenden County		1 hr. std. N.A.[2]		
Cumberland County		1 hr. std. N.A.[2]		
Elliott County		1 hr. std. N.A.[2]		
Estill County		1 hr. std. N.A.[2]		
Fayette County		1 hr. std. N.A.[2]		
Fleming County		1 hr. std. N.A.[2]		
Floyd County		1 hr. std. N.A.[2]		
Franklin County		1 hr. std. N.A.[2]		
Fulton County		1 hr. std. N.A.[2]		
Gallatin County		1 hr. std. N.A.[2]		
Garrard County		1 hr. std. N.A.[2]		
Grant County		1 hr. std. N.A.[2]		
Graves County		1 hr. std. N.A.[2]		
Grayson County		1 hr. std. N.A.[2]		
Green County		1 hr. std. N.A.[2]		
Greenup County		1 hr. std. N.A.[2]		
Hancock County (part):				
Remainder of County		1 hr. std. N.A.[2]		
Hardin County		1 hr. std. N.A.[2]		
Harlan County		1 hr. std. N.A.[2]		
Harrison County		1 hr. std. N.A.[2]		
Hart County		1 hr. std. N.A.[2]		
Henderson County		1 hr. std. N.A.[2]		
Henry County		1 hr. std. N.A.[2]		
Hickman County		1 hr. std. N.A.[2]		
Hopkins County		1 hr. std. N.A.[2]		
Jackson County		1 hr. std. N.A.[2]		
Jessamine County		1 hr. std. N.A.[2]		
Johnson County		1 hr. std. N.A.[2]		
Knott County		1 hr. std. N.A.[2]		
Knox County		1 hr. std. N.A.[2]		
Larue County		1 hr. std. N.A.[2]		
Laurel County		1 hr. std. N.A.[2]		
Lawrence County		1 hr. std. N.A.[2]		
Lee County		1 hr. std. N.A.[2]		
Leslie County		1 hr. std. N.A.[2]		
Letcher County		1 hr. std. N.A.[2]		
Lewis County		1 hr. std. N.A.[2]		
Lincoln County		1 hr. std. N.A.[2]		
Livingston County		1 hr. std. N.A.[2]		
Logan County		1 hr. std. N.A.[2]		
Lyon County		1 hr. std. N.A.[2]		
Madison County		1 hr. std. N.A.[2]		
Magoffin County		1 hr. std. N.A.[2]		

KENTUCKY—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Marion County		1 hr. std. N.A.[2]		
Marshall County		1 hr. std. N.A.[2]		
Martin County		1 hr. std. N.A.[2]		
Mason County		1 hr. std. N.A.[2]		
McCracken County		1 hr. std. N.A.[2]		
McCreary County		1 hr. std. N.A.[2]		
McLean County		1 hr. std. N.A.[2]		
Meade County		1 hr. std. N.A.[2]		
Menifee County		1 hr. std. N.A.[2]		
Mercer County		1 hr. std. N.A.[2]		
Metcalfe County		1 hr. std. N.A.[2]		
Monroe County		1 hr. std. N.A.[2]		
Montgomery County		1 hr. std. N.A.[2]		
Muhlenberg County		1 hr. std. N.A.[2]		
Nelson County		1 hr. std. N.A.[2]		
Nicholas County		1 hr. std. N.A.[2]		
Ohio County		1 hr. std. N.A.[2]		
Oldham County (part):				
Remainder of County		1 hr. std. N.A.[2]		
Owen County		1 hr. std. N.A.[2]		
Owsley County		1 hr. std. N.A.[2]		
Pendleton County		1 hr. std. N.A.[2]		
Perry County		1 hr. std. N.A.[2]		
Pike County		1 hr. std. N.A.[2]		
Powell County		1 hr. std. N.A.[2]		
Pulaski County		1 hr. std. N.A.[2]		
Robertson County		1 hr. std. N.A.[2]		
Rockcastle County		1 hr. std. N.A.[2]		
Rowan County		1 hr. std. N.A.[2]		
Russell County		1 hr. std. N.A.[2]		
Scott County		1 hr. std. N.A.[2]		
Shelby County		1 hr. std. N.A.[2]		
Simpson County		1 hr. std. N.A.[2]		
Spencer County		1 hr. std. N.A.[2]		
Taylor County		1 hr. std. N.A.[2]		
Todd County		1 hr. std. N.A.[2]		
Trigg County		1 hr. std. N.A.[2]		
Trimble County		1 hr. std. N.A.[2]		
Union County		1 hr. std. N.A.[2]		
Warren County		1 hr. std. N.A.[2]		
Washington County		1 hr. std. N.A.[2]		
Wayne County		1 hr. std. N.A.[2]		
Webster County		1 hr. std. N.A.[2]		
Whitley County		1 hr. std. N.A.[2]		
Wolfe County		1 hr. std. N.A.[2]		
Woodford County		1 hr. std. N.A.[2]		

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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4. In § 81.319, the table entitled "Louisiana—Ozone" is revised to read as follows:

§ 81.319 Louisiana.

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LOUISIANA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Baton Rouge Area:				
Ascension Parish	11/15/90	Nonattainment	11/15/90	Serious.
East Baton Rouge Parish	11/15/90	Nonattainment	11/15/90	Serious.
Iberville Parish	11/15/90	Nonattainment	11/15/90	Serious.
Livingston Parish	11/15/90	Nonattainment	11/15/90	Serious.
West Baton Rouge Parish	11/15/90	Nonattainment	11/15/90	Serious.
Beauregard Parish Area:				
Beauregard Parish		1 hr. std. N.A.[2]		
Grant Parish Area:				

LOUISIANA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Grant Parish		1 hr. std. N.A.[2]		
Lafayette Area:				
Lafayette Parish		1 hr. std. N.A.[2]		
Lafourche Parish Area:				
Lafourche Parish	1/05/98	Nonattainment	1/05/98	Incomplete Data
Lake Charles Area:				
Calcasieu Parish		1 hr. std. N.A.[2]		
New Orleans Area:				
Jefferson Parish		1 hr. std. N.A.[2]		
Orleans Parish		1 hr. std. N.A.[2]		
St. Bernard Parish		1 hr. std. N.A.[2]		
St. Charles Parish		1 hr. std. N.A.[2]		
Pointe Coupee Area:				
Pointe Coupee Parish		1 hr. std. N.A.[2]		
St. James Parish Area:				
St. James Parish		1 hr. std. N.A.[2]		
St. Mary Parish Area:				
St. Mary Parish		1 hr. std. N.A.[2]		
AQCR 019 Monroe-El Dorado Interstate		1 hr. std. N.A.[2]		
Caldwell Parish				
Catahoula Parish				
Concordia Parish				
East Carroll Parish				
Franklin Parish				
La Salle Parish				
Madison Parish				
Morehouse Parish				
Ouachita Parish				
Richland Parish				
Tensas Parish				
Union Parish				
West Carroll Parish				
AQCR 022 Shreveport-Texarkana-Tyler Inters.		1 hr. std. N.A.[2]		
Bienville Parish				
Bossier Parish				
Caddo Parish				
Claiborne Parish				
De Soto Parish				
Jackson Parish				
Lincoln Parish				
Natchitoches Parish				
Red River Parish				
Sabine Parish				
Webster Parish				
Winn Parish				
AQCR 106 S. Louisiana-S.E. Texas Interstate		1 hr. std. N.A.[2]		
St. John The Baptist Parish				
AQCR 106 S. Louisiana-S.E. Texas Interstate		1 hr. std. N.A.[2]		
Acadia Parish				
Allen Parish				
Assumption Parish				
Avoyelles Parish				
Cameron Parish				
East Feliciana Parish				
Evangeline Parish				
Iberia Parish				
Jefferson Davis Parish				
Plaquemines Parish				
Rapides Parish				
St. Helena Parish				
St. Landry Parish				
St. Martin Parish				
St. Tammany Parish				
Tangipahoa Parish				
Terrebonne Parish				
Vermilion Parish				
Vernon Parish				
Washington Parish				
West Feliciana Parish				

[1] This date is March 17, 1998, unless otherwise noted.

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[2] 1 hour standard Not Applicable.

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21. In § 81.320, the table entitled "Maine—Ozone" is revised to read as follows:

§ 81.320 Maine.

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MAINE—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Franklin County Area:				
Franklin County (part)		1 hr. std. N.A.[3]		
Hancock County and Waldo County Area:				
Hancock County		1 hr. std. N.A.[3]		
Waldo County		1 hr. std. N.A.[3]		
Knox County and Lincoln County Area:				
Knox County		1 hr. std. N.A.[3]		
Lincoln County		1 hr. std. N.A.[3]		
Lewiston-Auburn Area:				
Androscoggin County		1 hr. std. N.A.[3]		
Kennebec County		1 hr. std. N.A.[3]		
Oxford County Area:				
Oxford County (part)		1 hr. std. N.A.[3]		
Portland Area:				
Cumberland County	11/15/90	Nonattainment	11/15/90	Moderate.[2]
Sagadahoc County	11/15/90	Nonattainment	11/15/90	Moderate.[2]
York County	11/15/90	Nonattainment	11/15/90	Moderate.[2]
Somerset County Area:				
Somerset County (part)		1 hr. std. N.A.[3]		
AQCR 108 Aroostook Intrastate		1 hr. std. N.A.[3]		
Aroostook County (part) see 40 CFR 81.179				
AQCR 109 Down East Intrastate		1 hr. std. N.A.[3]		
Penobscot County (part), as described under 40 CFR 81.181.				
Piscataquis County (part) see 40 CFR 81.181				
Washington County				
AQCR 111 Northwest Maine Intrastate		1 hr. std. N.A.[3]		
(Remainder of) see 40 CFR 81.182				
Aroostook County				
Franklin County (part)				
Oxford County (part)				
Penobscot County (part)				
Piscataquis County (part)				
Somerset County (part)				

[1] This date is March 17, 1998, unless otherwise noted.
[2] Attainment date extended to November 15, 1997.
[3] 1 hour standard Not Applicable.

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22. In § 81.321, the table entitled "Maryland—Ozone" is revised to read as follows:

§ 81.321 Maryland.

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MARYLAND—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Baltimore Area:				
Anne Arundel County	11/15/90	Nonattainment	11/15/90	Severe-15.
City of Baltimore	11/15/90	Nonattainment	11/15/90	Severe-15.
Baltimore County	11/15/90	Nonattainment	11/15/90	Severe-15.
Carroll County	11/15/90	Nonattainment	11/15/90	Severe-15.
Harford County	11/15/90	Nonattainment	11/15/90	Severe-15.
Howard County	11/15/90	Nonattainment	11/15/90	Severe-15.
Kent County and Queen Anne's County Area:				
Kent County	1/6/92	Nonattainment	1/6/92	Marginal.

MARYLAND—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Queen Anne's County	1/6/92	Nonattainment	1/6/92	Marginal.
Philadelphia-Wilmington-Trenton Area:				
Cecil County	11/15/90	Nonattainment	11/15/90	Severe-15.
Washington, DC Area:				
Calvert County	11/15/90	Nonattainment	11/15/90	Serious.
Charles County	11/15/90	Nonattainment	11/15/90	Serious.
Frederick County	11/15/90	Nonattainment	11/15/90	Serious.
Montgomery County	11/15/90	Nonattainment	11/15/90	Serious.
Prince George's County	11/15/90	Nonattainment	11/15/90	Serious.
AQCR 113 Cumberland-Keyser Interstate		1 hr. std. N.A.[2]		
Allegany County				
Garrett County				
Washington County				
AQCR 114 Eastern Shore Interstate (Remainder of)		1 hr. std. N.A.[2]		
Caroline County				
Dorchester County				
Somerset County				
Talbot County				
Wicomico County				
Worcester County				
AQCR 116 Southern Maryland Intrastate (Remainder of)		1 hr. std. N.A.[2]		
St. Mary's County				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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23. In § 81.322, the table entitled "Massachusetts—Ozone" is revised to read as follows:

§ 81.322 Massachusetts.

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MASSACHUSETTS—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Boston-Lawrence-Worcester (E. Mass) Area:				
Barnstable County	11/15/90	Nonattainment	11/15/90	Serious.
Bristol County	11/15/90	Nonattainment	11/15/90	Serious.
Dukes County	11/15/90	Nonattainment	11/15/90	Serious.
Essex County	11/15/90	Nonattainment	11/15/90	Serious.
Middlesex County	11/15/90	Nonattainment	11/15/90	Serious.
Nantucket County	11/15/90	Nonattainment	11/15/90	Serious.
Norfolk County	11/15/90	Nonattainment	11/15/90	Serious.
Plymouth County	11/15/90	Nonattainment	11/15/90	Serious.
Suffolk County	11/15/90	Nonattainment	11/15/90	Serious.
Worcester County	11/15/90	Nonattainment	11/15/90	Serious.
Springfield (W. Mass) Area:				
Berkshire County	11/15/90	Nonattainment	11/15/90	Serious.
Franklin County	11/15/90	Nonattainment	11/15/90	Serious.
Hampden County	11/15/90	Nonattainment	11/15/90	Serious.
Hampshire County	11/15/90	Nonattainment	11/15/90	Serious.

[1] This date is March 17, 1998, unless otherwise noted.

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24. In § 81.323, the table entitled "Michigan—Ozone" is revised to read as follows:

§ 81.323 Michigan.

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MICHIGAN—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Allegan County Area:				
Allegan County	11/15/90	Nonattainment	11/15/90	Incomplete Data.

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MICHIGAN—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Barry County Area:				
Barry County		1 hr. std. N.A.[2]		
Battle Creek Area:				
Calhoun County		1 hr. std. N.A.[2]		
Benton Harbor Area:				
Berrien County		1 hr. std. N.A.[2]		
Branch County Area:				
Branch County		1 hr. std. N.A.[2]		
Cass County Area:				
Cass County		1 hr. std. N.A.[2]		
Detroit-Ann Arbor Area:				
Livingston County	4/6/95	Attainment.		
Macomb County	4/6/95	Attainment.		
Monroe County	4/6/95	Attainment.		
Oakland County	4/6/95	Attainment.		
St. Clair County	4/6/95	Attainment.		
Washtenaw County	4/6/95	Attainment.		
Wayne County	4/6/95	Attainment.		
Flint Area:				
Genesee County		1 hr. std. N.A.[2]		
Grand Rapids Area:				
Kent County	6/21/96	Attainment.		
Ottawa County	6/21/96	Attainment.		
Gratiot County Area:				
Gratiot County		1 hr. std. N.A.[2]		
Hillsdale County Area:				
Hillsdale County		1 hr. std. N.A.[2]		
Huron County Area:				
Huron County		1 hr. std. N.A.[2]		
Ionia County Area:				
Ionia County		1 hr. std. N.A.[2]		
Jackson Area:				
Jackson County		1 hr. std. N.A.[2]		
Kalamazoo Area:				
Kalamazoo County		1 hr. std. N.A.[2]		
Lansing-East Lansing Area:				
Clinton County		1 hr. std. N.A.[2]		
Eaton County		1 hr. std. N.A.[2]		
Ingham County		1 hr. std. N.A.[2]		
Lapeer County Area:				
Lapeer County		1 hr. std. N.A.[2]		
Lenawee County Area:				
Lenawee County		1 hr. std. N.A.[2]		
Mason County Area:				
Mason County	11/15/90	Unclassifiable/Attainment	11/15/90	
Montcalm Area:				
Montcalm County		1 hr. std. N.A.[2]		
Muskegon Area:				
Muskegon County	11/15/90	Nonattainment	11/15/90	Moderate.
Saginaw-Bay City-Midland Area:				
Bay County		1 hr. std. N.A.[2]		
Midland County		1 hr. std. N.A.[2]		
Saginaw County		1 hr. std. N.A.[2]		
Sanilac County Area:				
Sanilac County		1 hr. std. N.A.[2]		
Shiawassee County Area:				
Shiawassee County		1 hr. std. N.A.[2]		
St. Joseph County Area:				
St. Joseph County		1 hr. std. N.A.[2]		
Tuscola County Area:				
Tuscola County		1 hr. std. N.A.[2]		
Van Buren County Area:				
Van Buren County		1 hr. std. N.A.[2]		
AQCR 122 Central Michigan Intrastate (Remainder of)		1 hr. std. N.A.[2]		
Arenac County				
Clare County				
Gladwin County				
Iosco County				
Isabella County				
Lake County				

MICHIGAN—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Mecosta County				
Newaygo County				
Oceana County				
Ogemaw County				
Osceola County				
Roscommon County				
AQCR 126 Upper Michigan Intrastate (part):				
Marquette County		1 hr. std. N.A.[2]		
AQCR 126 Upper Michigan Intrastate (Remainder of)		1 hr. std. N.A.[2]		
Alcona County				
Alger County				
Alpena County				
Antrim County				
Baraga County				
Benzie County				
Charlevoix County				
Cheboygan County				
Chippewa County				
Crawford County				
Delta County				
Dickinson County				
Emmet County				
Gogebic County				
Grand Traverse County				
Houghton County				
Iron County				
Kalkaska County				
Keweenaw County				
Leelanau County				
Luce County				
Mackinac County				
Manistee County				
Menominee County				
Missaukee County				
Montmorency County				
Ontonagon County				
Oscoda County				
Otsego County				
Presque Isle County				
Schoolcraft County				
Wexford County				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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25. In § 81.324, the table entitled "Minnesota—Ozone" is revised to read as follows:

§ 81.324 Minnesota.

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MINNESOTA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Minneapolis-Saint Paul Area:				
Anoka County		1 hr. std. N.A.[2]		
Carver County		1 hr. std. N.A.[2]		
Dakota County		1 hr. std. N.A.[2]		
Hennepin County		1 hr. std. N.A.[2]		
Ramsey County		1 hr. std. N.A.[2]		
Scott County		1 hr. std. N.A.[2]		
Washington County		1 hr. std. N.A.[2]		
Aitkin County		1 hr. std. N.A.[2]		
Becker County		1 hr. std. N.A.[2]		
Beltrami County		1 hr. std. N.A.[2]		
Benton County		1 hr. std. N.A.[2]		
Big Stone County		1 hr. std. N.A.[2]		
Blue Earth County		1 hr. std. N.A.[2]		

MINNESOTA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Brown County		1 hr. std. N.A.[2]		
Carlton County		1 hr. std. N.A.[2]		
Cass County		1 hr. std. N.A.[2]		
Chippewa County		1 hr. std. N.A.[2]		
Chisago County		1 hr. std. N.A.[2]		
Clay County		1 hr. std. N.A.[2]		
Clearwater County		1 hr. std. N.A.[2]		
Cook County		1 hr. std. N.A.[2]		
Cottonwood County		1 hr. std. N.A.[2]		
Crow Wing County		1 hr. std. N.A.[2]		
Dodge County		1 hr. std. N.A.[2]		
Douglas County		1 hr. std. N.A.[2]		
Faribault County		1 hr. std. N.A.[2]		
Fillmore County		1 hr. std. N.A.[2]		
Freeborn County		1 hr. std. N.A.[2]		
Goodhue County		1 hr. std. N.A.[2]		
Grant County		1 hr. std. N.A.[2]		
Houston County		1 hr. std. N.A.[2]		
Hubbard County		1 hr. std. N.A.[2]		
Isanti County		1 hr. std. N.A.[2]		
Itasca County		1 hr. std. N.A.[2]		
Jackson County		1 hr. std. N.A.[2]		
Kanabec County		1 hr. std. N.A.[2]		
Kandiyohi County		1 hr. std. N.A.[2]		
Kittson County		1 hr. std. N.A.[2]		
Koochiching County		1 hr. std. N.A.[2]		
Lac qui Parle County		1 hr. std. N.A.[2]		
Lake County		1 hr. std. N.A.[2]		
Lake of the Woods County		1 hr. std. N.A.[2]		
Le Sueur County		1 hr. std. N.A.[2]		
Lincoln County		1 hr. std. N.A.[2]		
Lyon County		1 hr. std. N.A.[2]		
Mahnomen County		1 hr. std. N.A.[2]		
Marshall County		1 hr. std. N.A.[2]		
Martin County		1 hr. std. N.A.[2]		
McLeod County		1 hr. std. N.A.[2]		
Meeker County		1 hr. std. N.A.[2]		
Mille Lacs County		1 hr. std. N.A.[2]		
Morrison County		1 hr. std. N.A.[2]		
Mower County		1 hr. std. N.A.[2]		
Murray County		1 hr. std. N.A.[2]		
Nicollet County		1 hr. std. N.A.[2]		
Nobles County		1 hr. std. N.A.[2]		
Norman County		1 hr. std. N.A.[2]		
Olmsted County		1 hr. std. N.A.[2]		
Otter Tail County		1 hr. std. N.A.[2]		
Pennington County		1 hr. std. N.A.[2]		
Pine County		1 hr. std. N.A.[2]		
Pipestone County		1 hr. std. N.A.[2]		
Polk County		1 hr. std. N.A.[2]		
Pope County		1 hr. std. N.A.[2]		
Red Lake County		1 hr. std. N.A.[2]		
Redwood County		1 hr. std. N.A.[2]		
Renville County		1 hr. std. N.A.[2]		
Rice County		1 hr. std. N.A.[2]		
Rock County		1 hr. std. N.A.[2]		
Roseau County		1 hr. std. N.A.[2]		
Saint Louis County		1 hr. std. N.A.[2]		
Sherburne County		1 hr. std. N.A.[2]		
Sibley County		1 hr. std. N.A.[2]		
Stearns County		1 hr. std. N.A.[2]		
Steele County		1 hr. std. N.A.[2]		
Stevens County		1 hr. std. N.A.[2]		
Swift County		1 hr. std. N.A.[2]		
Todd County		1 hr. std. N.A.[2]		
Traverse County		1 hr. std. N.A.[2]		
Wabasha County		1 hr. std. N.A.[2]		
Wadena County		1 hr. std. N.A.[2]		
Waseca County		1 hr. std. N.A.[2]		
Watonwan County		1 hr. std. N.A.[2]		

MINNESOTA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Wilkin County		1 hr. std. N.A.[2]		
Winona County		1 hr. std. N.A.[2]		
Wright County		1 hr. std. N.A.[2]		
Yellow Medicine County		1 hr. std. N.A.[2]		

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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26. In Section 81.325, the table entitled "Mississippi—Ozone" is revised to read as follows:

§ 81.325 Mississippi.

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MISSISSIPPI—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Memphis:				
DeSota County	11/15/90	Unclassifiable/Attainment	11/15/90	
Rest of State		1 hr. std. N.A.[2]		
Adams County				
Alcorn County				
Amite County				
Attala County				
Benton County				
Bolivar County				
Calhoun County				
Carroll County				
Chickasaw County				
Choctaw County				
Claiborne County				
Clarke County				
Clay County				
Coahoma County				
Copiah County				
Covington County				
Forrest County				
Franklin County				
George County				
Greene County				
Grenada County				
Hancock County				
Harrison County				
Hinds County				
Holmes County				
Humphreys County				
Issaquena County				
Itawamba County				
Jackson County				
Jasper County				
Jefferson County				
Jefferson Davis County				
Jones County				
Kemper County				
Lafayette County				
Lamar County				
Lauderdale County				
Lawrence County				
Leake County				
Lee County				
Leflore County				
Lincoln County				
Lowndes County				
Madison County				
Marion County				
Marshall County				
Monroe County				
Montgomery County				

MISSISSIPPI—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Neshoba County				
Newton County				
Noxubee County				
Oktibbeha County				
Panola County				
Pearl River County				
Perry County				
Pike County				
Pontotoc County				
Prentiss County				
Quitman County				
Rankin County				
Scott County				
Sharkey County				
Simpson County				
Smith County				
Stone County				
Sunflower County				
Tallahatchie County				
Tate County				
Tippah County				
Tishomingo County				
Tunica County				
Union County				
Walthall County				
Warren County				
Washington County				
Wayne County				
Webster County				
Wilkinson County				
Winston County				
Yalobusha County				
Yazoo County				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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27. In § 81.326, the table entitled "Missouri—Ozone" is revised to read as follows:

§ 81.326 Missouri.

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MISSOURI—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Kansas City Area:				
Clay County	7/23/92	Attainment.		
Jackson County	7/23/92	Attainment.		
Platte County	7/23/92	Attainment.		
St. Louis Area:				
Franklin County	11/15/90	Nonattainment	11/15/90	Moderate.
Jefferson County	11/15/90	Nonattainment	11/15/90	Moderate.
St. Charles County	11/15/90	Nonattainment	11/15/90	Moderate.
St. Louis	11/15/90	Nonattainment	11/15/90	Moderate.
St. Louis County	11/15/90	Nonattainment	11/15/90	Moderate.
AQCR 094 Metro Kansas City Interstate (Remainder of)		1 hr. std. N.A.[2]		
Buchanan County				
Cass County				
Ray County				
AQCR 137 N. Missouri Intrastate (part):				
Pike County		1 hr. std. N.A.[2]		
Ralls County		1 hr. std. N.A.[2]		
AQCR 137 N. Missouri Intrastate (Remainder of)		1 hr. std. N.A.[2]		
Adair County				
Andrew County				
Atchison County				
Audrain County				

MISSOURI—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Boone County				
Caldwell County				
Callaway County				
Carroll County				
Chariton County				
Clark County				
Clinton County				
Cole County				
Cooper County				
Daviess County				
De Kalb County				
Gentry County				
Grundy County				
Harrison County				
Holt County				
Howard County				
Knox County				
Lewis County				
Lincoln County				
Linn County				
Livingston County				
Macon County				
Marion County				
Mercer County				
Moniteau County				
Monroe County				
Montgomery County				
Nodaway County				
Osage County				
Putnam County				
Randolph County				
Saline County				
Schuyler County				
Scotland County				
Shelby County				
Sullivan County				
Warren County				
Worth County				
Rest of State		1 hr. std. N.A.[2]		
Barry County				
Barton County				
Bates County				
Benton County				
Bollinger County				
Butler County				
Camden County				
Cape Girardeau County				
Carter County				
Cedar County				
Christian County				
Crawford County				
Dade County				
Dallas County				
Dent County				
Douglas County				
Dunklin County				
Gasconade County				
Greene County				
Henry County				
Hickory County				
Howell County				
Iron County				
Jasper County				
Johnson County				
Laclede County				
Lafayette County				
Lawrence County				
Madison County				
Maries County				
McDonald County				

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MISSOURI—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Miller County				
Mississippi County				
Morgan County				
New Madrid County				
Newton County				
Oregon County				
Ozark County				
Pemiscot County				
Perry County				
Pettis County				
Phelps County				
Polk County				
Pulaski County				
Reynolds County				
Ripley County				
Scott County				
Shannon County				
St. Clair County				
St. Francois County				
Ste. Genevieve County				
Stoddard County				
Stone County				
Taney County				
Texas County				
Vernon County				
Washington County				
Wayne County				
Webster County				
Wright County				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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28. In § 81.327, the table entitled "Montana—Ozone" is revised to read as follows:

§ 81.327 Montana.

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MONTANA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Beaverhead County		1 hr. std. N.A.		
Big Horn County (part) excluding Crow, Northern Cheyenne Indian Reservations.		1 hr. std. N.A.[2]		
Blaine County (part) excluding Fort Belknap Indian Reservation.		1 hr. std. N.A.[2]		
Broadwater County		1 hr. std. N.A.[2]		
Carbon County		1 hr. std. N.A.[2]		
Carter County		1 hr. std. N.A.[2]		
Cascade County		1 hr. std. N.A.[2]		
Chouteau County (part) excluding Rocky Boy Indian Reservation.		1 hr. std. N.A.[2]		
Custer County		1 hr. std. N.A.[2]		
Daniels County (part) excluding Fort Peck Indian Reservation.		1 hr. std. N.A.[2]		
Dawson County		1 hr. std. N.A.[2]		
Deer Lodge County		1 hr. std. N.A.[2]		
Fallon County		1 hr. std. N.A.[2]		
Fergus County		1 hr. std. N.A.[2]		
Flathead County (part) excluding Flathead Indian Reservation.		1 hr. std. N.A.[2]		
Gallatin County		1 hr. std. N.A.[2]		
Garfield County		1 hr. std. N.A.[2]		
Glacier County (part) excluding Blackfeet Indian Reservation		1 hr. std. N.A.[2]		
Golden Valley County		1 hr. std. N.A.[2]		
Granite County		1 hr. std. N.A.[2]		
Hill County (part) excluding Rocky Boy Indian Reservation		1 hr. std. N.A.[2]		

MONTANA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Jefferson County		1 hr. std. N.A.[2]		
Judith Basin County		1 hr. std. N.A.[2]		
Lake County (part) excluding Flathead Indian Reservation		1 hr. std. N.A.[2]		
Lewis and Clark County		1 hr. std. N.A.[2]		
Liberty County		1 hr. std. N.A.[2]		
Lincoln County		1 hr. std. N.A.[2]		
Madison County		1 hr. std. N.A.[2]		
McCone County		1 hr. std. N.A.[2]		
Meagher County		1 hr. std. N.A.[2]		
Mineral County		1 hr. std. N.A.[2]		
Missoula County (part) excluding Flathead Indian Reservation.		1 hr. std. N.A.[2]		
Musselshell County		1 hr. std. N.A.[2]		
Park County		1 hr. std. N.A.[2]		
Petroleum County		1 hr. std. N.A.[2]		
Phillips County (part) excluding Fort Belknap Indian Reservation.		1 hr. std. N.A.[2]		
Pondera County (part) excluding Blackfeet Indian Reservation.		1 hr. std. N.A.[2]		
Powder River County		1 hr. std. N.A.[2]		
Powell County		1 hr. std. N.A.[2]		
Prairie County		1 hr. std. N.A.[2]		
Ravalli County		1 hr. std. N.A.[2]		
Richland County		1 hr. std. N.A.[2]		
Roosevelt County (part) excluding Fort Peck Indian Reservation.		1 hr. std. N.A.[2]		
Rosebud County (part) excluding Northern Cheyenne Indian Reservation.		1 hr. std. N.A.[2]		
Sanders County (part) excluding Flathead Indian Reservation.		1 hr. std. N.A.[2]		
Sheridan County (part) excluding Fort Peck Indian Reservation.		1 hr. std. N.A.[2]		
Silver Bow County		1 hr. std. N.A.[2]		
Stillwater County		1 hr. std. N.A.[2]		
Sweet Grass County		1 hr. std. N.A.[2]		
Teton County		1 hr. std. N.A.[2]		
Toole County		1 hr. std. N.A.[2]		
Treasure County		1 hr. std. N.A.[2]		
Valley County (part) excluding Fort Peck Indian Reservation		1 hr. std. N.A.[2]		
Wheatland County		1 hr. std. N.A.[2]		
Wibaux County		1 hr. std. N.A.[2]		
Yellowstone County (part) excluding Crow Indian Reservation.		1 hr. std. N.A.[2]		
Yellowstone Natl Park		1 hr. std. N.A.[2]		
Blackfeet Indian Reservation		1 hr. std. N.A.[2]		
Glacier County (part) area inside Blackfeet Reservation				
Pondera County (part) area inside Blackfeet Reservation				
Crow Indian Reservation		1 hr. std. N.A.[2]		
Bighorn County (part) area inside Crow Reservation				
Yellowstone (part) area inside Crow Reservation				
Flathead Indian Reservation		1 hr. std. N.A.[2]		
Flathead County (part) area inside Flathead Reservation				
Lake County (part) area inside Flathead Reservation				
Missoula County (part) area inside Flathead Reservation				
Sanders County (part) area inside Flathead Reservation				
Fort Belknap Indian Reservation		1 hr. std. N.A.[2]		
Blaine County (part) area inside Fort Belknap Reservation				
Phillips County (part) area inside Fort Belknap Reservation				
Fort Peck Indian Reservation		1 hr. std. N.A.[2]		
Daniels County (part) area inside Fort Peck Reservation				
Roosevelt County (part) area inside Fort Peck Reservation				
Sheridan County (part) area inside Fort Peck Reservation				
Valley County (part) area inside Fort Peck Reservation				
Northern Cheyenne Indian Reservation		1 hr. std. N.A.[2]		
Bighorn County (part) area inside Northern Cheyenne Reservation				

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MONTANA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Rosebud County (part) area inside Northern Cheyenne Reservation				
Rocky Boy Indian Reservation		1 hr. std. N.A.[2]		
Chouteau County (part) area inside Rocky Boy Reservation				
Hill County (part) area inside Rocky Boy Reservation				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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29. In § 81.328, the table entitled "Nebraska—Ozone" is revised to read as follows:

§ 81.328 Nebraska.

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NEBRASKA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Statewide		1 hr. std. N.A.[2]		
Adams County				
Antelope County				
Arthur County				
Banner County				
Blaine County				
Boone County				
Box Butte County				
Boyd County				
Brown County				
Buffalo County				
Burt County				
Butler County				
Cass County				
Cedar County				
Chase County				
Cherry County				
Cheyenne County				
Clay County				
Colfax County				
Cuming County				
Custer County				
Dakota County				
Dawes County				
Dawson County				
Deuel County				
Dixon County				
Dodge County				
Douglas County				
Dundy County				
Fillmore County				
Franklin County				
Frontier County				
Furnas County				
Gage County				
Garden County				
Garfield County				
Gosper County				
Grant County				
Greeley County				
Hall County				
Hamilton County				
Harlan County				
Hayes County				
Hitchcock County				
Holt County				
Hooker County				
Howard County				

NEBRASKA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Jefferson County				
Johnson County				
Kearney County				
Keith County				
Keya Paha County				
Kimball County				
Knox County				
Lancaster County				
Lincoln County				
Logan County				
Loup County				
Madison County				
McPherson County				
Merrick County				
Morrill County				
Nance County				
Nemaha County				
Nuckolls County				
Otoe County				
Pawnee County				
Perkins County				
Phelps County				
Pierce County				
Platte County				
Polk County				
Red Willow County				
Richardson County				
Rock County				
Saline County				
Sarpy County				
Saunders County				
Scotts Bluff County				
Seward County				
Sheridan County				
Sherman County				
Sioux County				
Stanton County				
Thayer County				
Thomas County				
Thurston County				
Valley County				
Washington County				
Wayne County				
Webster County				
Wheeler County				
York County				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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30. In § 81.329, the table entitled "Nevada—Ozone" is revised to read as follows:

§ 81.329 Nevada.

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NEVADA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Reno Area		1 hr. std. N.A.[2]		
Washoe County				
Rest of State		1 hr. std. N.A.[2]		
Carson City				
Churchill County				
Clark County				
Douglas County				
Elko County				
Esmeralda County				

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NEVADA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Eureka County				
Humboldt County				
Lander County				
Lincoln County				
Lyon County				
Mineral County				
Nye County				
Pershing County				
Storey County				
White Pine County				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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31. In § 81.330, the table entitled "New Hampshire—Ozone" is revised to read as follows:

§ 81.330 New Hampshire.

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NEW HAMPSHIRE—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Belknap County Area:				
Belknap County	.....	1 hr. std. N.A.[2]		
Boston-Lawrence-Worcester Area:				
Hillsborough County (part)	11/15/90	Nonattainment	11/15/90	Serious.
Pelham Town, Amherst Town, Brookline Town, Hollis Town, Hudson Town, Litchfield Town, Merrimack Town, Milford Town, Mont Vernon Town, Nashua City, Wilton Town.				
Rockingham County (part)	11/15/90	Nonattainment	11/15/90	Serious.
Atkinson Town, Brentwood Town, Danville Town, Derry Town, E. Kingston Town, Hampstead Town, Hampton Falls Town, Kensington Town, Kingston Town, Londonderry Town, Newton Town, Plaistow Town, Salem Town, Sandown Town, Seabrook Town, South Hampton Town, Windham Town.				
Cheshire County Area:				
Cheshire County	.....	1 hr. std. N.A.[2]		
Manchester Area:				
Hillsborough County (part)	.....	1 hr. std. N.A.[2]		
Antrim Town, Bedford Town, Bennington Town, Deering Town, Francestown Town, Goffstown Town, Greenfield Town, Greenville Town, Hancock Town, Hillsborough Town, Lyndeborough Town, Manchester city, Mason Town, New Boston Town, New Ipswich Town, Petersborough Town, Sharon Town, Temple town, Weare Town, Windsor Town.				
Merrimack County	.....	1 hr. std. N.A.[2]	.....	
Rockingham County (part)	.....	1 hr. std. N.A.[2]		
Auburn Town, Candia Town, Chester Town, Deerfield Town, Epping Town, Fremont Town, Northwood Town, Nottingham Town, Raymond Town.				
Portsmouth-Dover-Rochester Area:				
Rockingham County (part)	11/15/90	Nonattainment	11/15/90	Serious.
Exeter Town, Greenland Town, Hampton Town, New Castle Town, Newfields Town, Newington Town, Newmarket Town, North Hampton Town, Portsmouth City, Rye Town, Stratham Town.				
Strafford County	11/*5/90	Nonattainment	11/15/90	Serious.
Sullivan County Area:				
Sullivan County	.....	1 hr. std. N.A.[2]		
AQCR 107 Androscoggin Valley Interstate:				
Coos County	.....	1 hr. std. N.A.[2]		
AQCR 149 Central New Hampshire Interstate:				

NEW HAMPSHIRE—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Carroll County	.....	1 hr. std. N.A.[2]		
Grafton County	.....	1 hr. std. N.A.[2]		

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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32. In § 81.331, the table entitled "New Jersey—Ozone" is revised to read as follows:

§ 81.331 New Jersey.

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NEW JERSEY—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Allentown-Bethlehem Easton Area:				
Warren County	.....	1 hr. std. N.A.[2]		
Atlantic City Area:				
Atlantic County	.....	1 hr. std. N.A.[2]		
Cape May County	.....	1 hr. std. N.A.[2]		
New York-N. New Jersey-Long Island Area:				
Bergen County	11/15/90	Nonattainment	11/15/90	Severe-17.
Essex County	11/15/90	Nonattainment	11/15/90	Severe-17.
Hudson County	11/15/90	Nonattainment	11/15/90	Severe-17.
Hunterdon County	11/15/90	Nonattainment	11/15/90	Severe-17.
Middlesex County	11/15/90	Nonattainment	11/15/90	Severe-17.
Monmouth County	11/15/90	Nonattainment	11/15/90	Severe-17.
Morris County	11/15/90	Nonattainment	11/15/90	Severe-17.
Ocean County	11/15/90	Nonattainment	11/15/90	Severe-17.
Passaic County	11/15/90	Nonattainment	11/15/90	Severe-17.
Somerset County	11/15/90	Nonattainment	11/15/90	Severe-17.
Sussex County	11/15/90	Nonattainment	11/15/90	Severe-17.
Union County	11/15/90	Nonattainment	11/15/90	Severe-17.
Philadelphia-Wilmington-Trenton Area:				
Burlington County	11/15/90	Nonattainment	11/15/90	Severe-15.
Camden County	11/15/90	Nonattainment	11/15/90	Severe-15.
Cumberland County	11/15/90	Nonattainment	11/15/90	Severe-15.
Gloucester County	11/15/90	Nonattainment	11/15/90	Severe-15.
Mercer County	11/15/90	Nonattainment	11/15/90	Severe-15.
Salem County	11/15/90	Nonattainment	11/15/90	Severe-15.

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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33. In § 81.332, the table entitled "New Mexico—Ozone" is revised to read as follows:

§ 81.332 New Mexico.

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NEW MEXICO—OZONE (1-HOUR STANDARD)

Designation area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
AQCR 012 New Mexico-Southern Border Intrastate	.....	1 hr. std. N.A.[2]		
Grant County				
Hidalgo County				
Luna County				
AQCR 014 Four Corners Interstate	.....	1 hr. std. N.A.[2]		
see 40 CFR 81.121				
McKinley County (part)				
Rio Arriba County (part)				
San Juan County				
Sandoval County (part)				
Valencia County (part)				
AQCR 152 Albuquerque-Mid Rio Grande Intrastate	.....	1 hr. std. N.A.[2]		

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NEW MEXICO—OZONE (1-HOUR STANDARD)—Continued

Designation area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Bernalillo County (part)				
AQCR 152 Albuquerque-Mid Rio Grande		1 hr. std. N.A.[2]		
Sandoval County (part)				
see 40 CFR 81.83				
Valencia County				
see 40 CFR 81.83				
AQCR 153 El Paso-Las Cruces-Alamogordo	7/12/95	Nonattainment	7/12/95	Marginal.
Dona Ana County (part)-(Sunland Park Area) The area bounded by the New Mexico-Texas State line on the east, the New Mexico-Mexico international line on the south, Range 3E-Range 2E, line on the west, and the N3200 latitude line on the north				
Dona Ana County (remainder of)		1 hr. std. N.A.[2]		
Lincoln County		1 hr. std. N.A.[2]		
Otero County		1 hr. std. N.A.[2]		
Sierra County		1 hr. std. N.A.[2]		
AQCR 154 Northeastern Plains Intrastate		1 hr. std. N.A.[2]		
Colfax County				
Guadalupe County				
Harding County				
Mora County				
San Miguel County				
Torrance County				
Union County				
AQCR 155 Pecos-Permian Basin Intrastate		1 hr. std. N.A.[2]		
Chaves County				
Curry County				
De Baca County				
Eddy County				
Lea County				
Quay County				
Roosevelt County				
AQCR 156 SW Mountains-Augustine Plains		1 hr. std. N.A.[2]		
Catron County				
Cibola County				
McKinley County (part)				
see 40 CFR 81.241				
Socorro County				
Valencia County (part)				
see 40 CFR 81.241				
AQCR 157 Upper Rio Grande Valley Intrastate		1 hr. std. N.A.[2]		
Los Alamos County				
Rio Arriba County (part)				
see 40 CFR 81.239				
Santa Fe County				
Taos County				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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34. In § 81.333, the table entitled "New York—Ozone" is revised to read as follows:

§ 81.333 New York.

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NEW YORK—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Albany-Schenectady-Troy Area:				
Albany County		1 hr. std. N.A.[3]		
Greene County		1 hr. std. N.A.[3]		
Montgomery County		1 hr. std. N.A.[3]		
Rensselaer County		1 hr. std. N.A.[3]		
Saratoga County		1 hr. std. N.A.[3]		
Schenectady County		1 hr. std. N.A.[3]		
Buffalo-Niagara Falls Area:				
Erie County		1 hr. std. N.A.[3]		

NEW YORK—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Niagara County		1 hr. std. N.A.[3]		
Essex County Area:				
Essex County (part)		1 hr. std. N.A.[3]		
The portion of Whiteface Mountain above 4500 feet in elevation in Essex County				
Jefferson County Area:				
Jefferson County		1 hr. std. N.A.[3]		
New York-Northern New Jersey-Long Island Area:				
Bronx County	11/15/90	Nonattainment	11/15/90	Severe-17.
Kings County	11/15/90	Nonattainment	11/15/90	Severe-17.
Nassau County	11/15/90	Nonattainment	11/15/90	Severe-17.
New York County	11/15/90	Nonattainment	11/15/90	Severe-17.
Orange County (part)	1/15/92	Nonattainment	1/15/92	Severe-17.
Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, and Woodbury				
Queens County	11/15/90	Nonattainment	11/15/90	Severe-17.
Richmond County	11/15/90	Nonattainment	11/15/90	Severe-17.
Rockland County	11/15/90	Nonattainment	11/15/90	Severe-17.
Suffolk County	11/15/90	Nonattainment	11/15/90	Severe-17.
Westchester County	11/15/90	Nonattainment	11/15/90	Severe-17.
Poughkeepsie Area:				
Dutchess County	1/6/92	Nonattainment	11/7/94	Moderate.
Orange County (remainder)	[2] 4/21/94	Nonattainment	[2] 11/7/94	Moderate.
Putnam County	1/15/92	Nonattainment	11/7/94	Moderate.
AQCR 158 Central New York Intrastate (Remainder of)		1 hr. std. N.A.[3]		
Cayuga County				
Cortland County				
Herkimer County				
Lewis County				
Madison County				
Oneida County				
Onondaga County				
Oswego County				
AQCR 159 Champlain Valley Interstate (Remainder of)		1 hr. std. N.A.[3]		
Clinton County				
Essex County				
Franklin County				
Hamilton County				
St. Lawrence County				
Warren County				
Washington County				
AQCR 160 Genessee-Finger Lakes Intrastate		1 hr. std. N.A.[3]		
Genesee County				
Livingston County				
Monroe County				
Ontario County				
Orleans County				
Seneca County				
Wayne County				
Wyoming County				
Yates County				
AQCR 161 Hudson Valley Intrastate (Remainder of)		1 hr. std. N.A.[3]		
Columbia County				
Fulton County				
Schoharie County				
Ulster County				
AQCR 163 Southern Tier East Intrastate		1 hr. std. N.A.[3]		
Broome County				
Chenango County				
Delaware County				
Otsego County				
Sullivan County				
Tioga County				
AQCR 164 Southern Tier West Intrastate		1 hr. std. N.A.[3]		
Allegany County				
Cattaraugus County				
Chautauqua County				
Chemung County				
Schuyler County				
Steuben County				

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NEW YORK—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Tompkins County				

[1] This date is March 17, 1998, unless otherwise noted.
[2] However, the effective date is November 15, 1990, for purposes of determining the scope of a "covered area" under section 211(k)(10)(D), opt-in under section 211(k)(6), and the baseline determination of the 15% reduction in volatile organic compounds under section 182(b)(1).
[3] 1 hour standard Not Applicable.

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35. In § 81.334, the table entitled "North Carolina—Ozone" is revised to read as follows:

§ 81.334 North Carolina.

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NORTH CAROLINA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Statewide		1 hr. std. N.A.[2]		
Alamance County				
Alexander County				
Alleghany County				
Anson County				
Ashe County				
Avery County				
Beaufort County				
Bertie County				
Bladen County				
Brunswick County				
Buncombe County				
Burke County				
Cabarrus County				
Caldwell County				
Camden County				
Carteret County				
Caswell County				
Catawba County				
Chatham County				
Cherokee County				
Chowan County				
Clay County				
Cleveland County				
Columbus County				
Craven County				
Cumberland County				
Currituck County				
Dare County				
Davidson County				
Davie County				
Durham County				
Duplin County				
Edgecombe County				
Forsyth County				
Franklin County				
Gaston County				
Gates County				
Graham County				
Granville County				
Greene County				
Guilford County				
Halifax County				
Harnett County				
Haywood County				
Henderson County				
Hertford County				
Hoke County				
Hyde County				
Iredell County				
Jackson County				
Johnston County				

NORTH CAROLINA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Jones County				
Lee County				
Lenoir County				
Lincoln County				
McDowell County				
Macon County				
Madison County				
Martin County				
Mecklenburg County				
Mitchell County				
Montgomery County				
Moore County				
Nash County				
New Hanover County				
Northhampton County				
Onslow County				
Orange County				
Pamlico County				
Pasquotank County				
Pender County				
Perquimans County				
Person County				
Pitt County				
Polk County				
Randolph County				
Richmond County				
Robeson County				
Rockingham County				
Rowan County				
Rutherford County				
Sampson County				
Scotland County				
Stanly County				
Stokes County				
Surry County				
Swain County				
Transylvania County				
Tyrrell County				
Union County				
Vance County				
Wake County				
Warren County				
Washington County				
Watauga County				
Wayne County				
Wilkes County				
Wilson County				
Yadkin County				
Yancey County				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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36. In § 81.335, the table entitled "North Dakota—Ozone" is revised to read as follows:

§ 81.335 North Dakota.

* * * * * * *

NORTH DAKOTA—OZONE (1-HOUR STANDARD)

Designation area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
AQCR 130 Metropolitan Fargo-Moorhead:				
Interstate		1 hr. std. N.A.[2]		
Cass County				
Rest of State, AQCR 172		1 hr. std. N.A.[2]		
Adams County				
Barnes County				

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NORTH DAKOTA—OZONE (1-HOUR STANDARD)—Continued

Designation area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Benson County				
Billings County				
Bottineau County				
Bowman County				
Burke County				
Burleigh County				
Cavalier County				
Dickey County				
Divide County				
Dunn County				
Eddy County				
Emmons County				
Foster County				
Golden Valley County				
Grand Forks County				
Grant County				
Gnggs County				
Hettinger County				
Kidder County				
La Moure County				
Logan County				
McHenry County				
McIntosh County				
McKenzie County				
McLean County				
Mercer County				
Morton County				
Mountrail County				
Nelson County				
Oliver County				
Pembina County				
Pierce County				
Ramsey County				
Ransom County				
Renville County				
Richland County				
Rolette County				
Sargent County				
Sheridan County				
Sioux County				
Slope County				
Stark County				
Steele County				
Stutsman County				
Towner County				
Traill County				
Walsh County				
Ward County				
Wells County				
Williams County				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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37. In § 81.336, the table entitled "Ohio—Ozone" is revised to read as follows:

§ 81.336 Ohio.

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OHIO—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Canton Area:				
Stark County		1 hr. std. N.A.[2]		
Cincinnati-Hamilton Area:				
Butler County	11/15/90	Nonattainment	11/15/90	Moderate.
Clermont County	11/15/90	Nonattainment	11/15/90	Moderate.

OHIO—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Hamilton County	11/15/90	Nonattainment	11/15/90	Moderate.
Warren County	11/15/90	Nonattainment	11/15/90	Moderate.
Cleveland-Akron-Lorain Area:				
Ashtabula County		1 hr. std. N.A.[2]		
Cuyahoga County		1 hr. std. N.A.[2]		
Geauga County		1 hr. std. N.A.[2]		
Lake County		1 hr. std. N.A.[2]		
Lorain County		1 hr. std. N.A.[2]		
Medina County		1 hr. std. N.A.[2]		
Portage County		1 hr. std. N.A.[2]		
Summit County		1 hr. std. N.A.[2]		
Clinton County Area:				
Clinton County		1 hr. std. N.A.[2]		
Columbiana County Area:				
Columbiana County		1 hr. std. N.A.[2]		
Columbus Area:				
Delaware County		1 hr. std. N.A.[2]		
Franklin County		1 hr. std. N.A.[2]		
Licking County		1 hr. std. N.A.[2]		
Dayton-Springfield Area:				
Clark County	7/5/95	Attainment.		
Greene County	7/5/95	Attainment.		
Miami County	7/5/95	Attainment.		
Montgomery County	7/5/95	Attainment.		
Preble County Area:				
Preble County		1 hr. std. N.A.[2]		
Steubenville Area:				
Jefferson County		1 hr. std. N.A.[2]		
Toledo Area:				
Lucas County		1 hr. std. N.A.[2]		
Wood County		1 hr. std. N.A.[2]		
Youngstown-Warren-Sharon Area:				
Mahoning County		1 hr. std. N.A.[2]		
Trumbull County		1 hr. std. N.A.[2]		
Adams County		1 hr. std. N.A.[2]		
Allen County		1 hr. std. N.A.[2]		
Ashland County		1 hr. std. N.A.[2]		
Athens County		1 hr. std. N.A.[2]		
Auglaize County		1 hr. std. N.A.[2]		
Belmont County		1 hr. std. N.A.[2]		
Brown County		1 hr. std. N.A.[2]		
Carroll County		1 hr. std. N.A.[2]		
Champaign County		1 hr. std. N.A.[2]		
Coshocton County		1 hr. std. N.A.[2]		
Crawford County		1 hr. std. N.A.[2]		
Darke County		1 hr. std. N.A.[2]		
Defiance County		1 hr. std. N.A.[2]		
Erie County		1 hr. std. N.A.[2]		
Fairfield County		1 hr. std. N.A.[2]		
Fayette County		1 hr. std. N.A.[2]		
Fulton County		1 hr. std. N.A.[2]		
Gallia County		1 hr. std. N.A.[2]		
Guernsey County		1 hr. std. N.A.[2]		
Hancock County		1 hr. std. N.A.[2]		
Hardin County		1 hr. std. N.A.[2]		
Harrison County		1 hr. std. N.A.[2]		
Henry County		1 hr. std. N.A.[2]		
Highland County		1 hr. std. N.A.[2]		
Hocking County		1 hr. std. N.A.[2]		
Holmes County		1 hr. std. N.A.[2]		
Huron County		1 hr. std. N.A.[2]		
Jackson County		1 hr. std. N.A.[2]		
Knox County		1 hr. std. N.A.[2]		
Lawrence County		1 hr. std. N.A.[2]		
Logan County		1 hr. std. N.A.[2]		
Madison County		1 hr. std. N.A.[2]		
Marion County		1 hr. std. N.A.[2]		
Meigs County		1 hr. std. N.A.[2]		
Mercer County		1 hr. std. N.A.[2]		
Monroe County		1 hr. std. N.A.[2]		

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OHIO—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Morgan County		1 hr. std. N.A.[2]		
Morrow County		1 hr. std. N.A.[2]		
Muskingum County		1 hr. std. N.A.[2]		
Noble County		1 hr. std. N.A.[2]		
Ottawa County		1 hr. std. N.A.[2]		
Paulding County		1 hr. std. N.A.[2]		
Perry County		1 hr. std. N.A.[2]		
Pickaway County		1 hr. std. N.A.[2]		
Pike County		1 hr. std. N.A.[2]		
Putnam County		1 hr. std. N.A.[2]		
Richland County		1 hr. std. N.A.[2]		
Ross County		1 hr. std. N.A.[2]		
Sandusky County		1 hr. std. N.A.[2]		
Scioto County		1 hr. std. N.A.[2]		
Seneca County		1 hr. std. N.A.[2]		
Shelby County		1 hr. std. N.A.[2]		
Tuscarawas County		1 hr. std. N.A.[2]		
Union County		1 hr. std. N.A.[2]		
Van Wert County		1 hr. std. N.A.[2]		
Vinton County		1 hr. std. N.A.[2]		
Washington County		1 hr. std. N.A.[2]		
Wayne County		1 hr. std. N.A.[2]		
Williams County		1 hr. std. N.A.[2]		
Wyandot County		1 hr. std. N.A.[2]		

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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38. In § 81.331, the table entitled "Oklahoma—Ozone" is revised to read as follows:

§ 81.337 Oklahoma.

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OKLAHOMA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
AQCR 017 Metropolitan Fort Smith Interstate		1 hr. std. N.A.[2]		
Adair County				
Cherokee County				
Le Flore County				
Sequoyah County				
AQCR 022 Shreveport-Texarkana-Tyler:				
Intrastate		1 hr. std. N.A.[2]		
McCurtain County				
AQCR 184 Central Oklahoma Intrastate (part)		1 hr. std. N.A.[2]		
Cleveland County				
Oklahoma County				
AQCR 184 Central Oklahoma Intrastate (Remainder of)		1 hr. std. N.A.[2]		
Canadian County				
Grady County				
Kingfisher County				
Lincoln County				
Logan County				
McClain County				
Pottawatomie County				
AQCR 185 North Central Oklahoma Intrastate		1 hr. std. N.A.[2]		
Garfield County				
Grant County				
Kay County				
Noble County				
Payne County				
AQCR 186 Northeastern Oklahoma Intrastate.		1 hr. std. N.A.[2]		
Craig County				
Creek County				
Delaware County				
Mayes County				
Muskogee County				

OKLAHOMA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Nowata County				
Okmulgee County				
Osage County				
Ottawa County				
Pawnee County				
Rogers County				
Tulsa County				
Wagoner County				
Washington County				
AQCR 187 Northwestern Oklahoma Intrastate		1 hr. std. N.A.[2]		
Alfalfa County				
Beaver County				
Blaine County				
Cimarron County				
Custer County				
Dewey County				
Ellis County				
Harper County				
Major County				
Roger Mills County				
Texas County				
Woods County				
Woodward County				
AQCR 188 Southeastern Oklahoma Intrastate		1 hr. std. N.A.[2].		
Atoka County				
Bryan County				
Carter County				
Choctaw County				
Coal County				
Garvin County				
Haskell County				
Hughes County				
Johnston County				
Latimer County				
Love County				
Marshall County				
McIntosh County				
Murray County				
Okfuskee County				
Pittsburg County				
Pontotoc County				
Pushmataha County				
Seminole County				
AQCR 189 Southwestern Oklahoma Intrastate		1 hr. std. N.A.[2]		
Beckham County				
Caddo County				
Comanche County				
Cotton County				
Greer County				
Harmon County				
Jackson County				
Jefferson County				
Kiowa County				
Stephens County				
Tillman County				
Washita County				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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39. In § 81.338, the table entitled "Oregon—Ozone" is revised to read as follows:

§ 81.338 Oregon.

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OREGON—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Portland-Vancouver AQMA Area:				
Air Quality Maintenance Area:				
Clackamas County (part)		1 hr. std. N.A.[2]		
Multnomah County (part)		1 hr. std. N.A.[2]		
Washington County (part)		1 hr. std. N.A.[2]		
Salem Area:				
Salem Area Transportation Study:				
Marion County (part)		1 hr. std. N.A.[2]		
Polk County (part)		1 hr. std. N.A.[2]		
AQCR 190 Central Oregon Intrastate (Remainder of)		1 hr. std. N.A.[2]		
Crook County				
Deschutes County				
Hood River County				
Jefferson County				
Klamath County				
Lake County				
Sherman County				
Wasco County				
AQCR 191 Eastern Oregon Intrastate		1 hr. std. N.A.[2]		
Baker County				
Gilliam County				
Grant County				
Harney County				
Malheur County				
Morrow County				
Umatilla County				
Union County				
Wallowa County				
Wheeler County				
AQCR 192 Northwest Oregon Intrastate		1 hr. std. N.A.[2]		
Clatsop County				
Lincoln County				
Tillamook County				
AQCR 193 Portland Interstate (part)		1 hr. std. N.A.[2]		
Lane County (part)				
Eugene Springfield Air Quality Maintenance Area				
AQCR 193 Portland Interstate (Remainder of)		1 hr. std. N.A.[2]		
Benton County				
Clackamas County (part)				
Remainder of county				
Columbia County				
Lane County (part)				
Remainder of county				
Linn County				
Marion County (part)				
area outside the Salem Area Transportation Study.				
Multnomah County (part)				
Remainder of county				
Polk County (part)				
area outside the Salem Area Transportation Study.				
Washington County (part)				
Remainder of county				
Yamhill County				
AQCR 194 Southwest Oregon Intrastate (part):				
Jackson County (part):				
Medford-Ashland Air Quality Maintenance Area		1 hr. std. N.A.[2]		
AQCR 194 Southwest Oregon Intrastate (Remainder of)		1 hr. std. N.A.[2]		
Coos County				
Curry County				
Douglas County				
Jackson County (part)				
Remainder of county				
Josephine County				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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40. In § 81.339, the table entitled "Pennsylvania—Ozone" is revised to read as follows:

§ 81.339 Pennsylvania.

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PENNSYLVANIA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Type	
	Classification	Date(1)	Date(1)	Type
Allentown-Bethlehem-Easton Area:				
Carbon County		1 hr. std. N.A.[3]		
Lehigh County		1 hr. std. N.A.[3]		
Northampton County		1 hr. std. N.A.[3]		
Altoona Area:				
Blair County		1 hr. std. N.A.[3]		
Crawford County Area:				
Crawford County		1 hr. std. N.A.[3]		
Erie Area:				
Erie County		1 hr. std. N.A.[3]		
Franklin County Area:				
Franklin County:		1 hr. std. N.A.[3]		
Greene County Area:				
Greene County:		1 hr. std. N.A.[3]		
Harrisburg-Lebanon-Carlisle Area:				
Cumberland County		1 hr. std. N.A.[3]		
Dauphin County		1 hr. std. N.A.[3]		
Lebanon County		1 hr. std. N.A.[3]		
Perry County		1 hr. std. N.A.[3]		
Johnstown Area:				
Cambria County		1 hr. std. N.A.[3]		
Somerset County		1 hr. std. N.A.[3]		
Juniata County Area:				
Juniata County		1 hr. std. N.A.[3]		
Lancaster Area:				
Lancaster County	11/15/90	Nonattainment	11/15/90	Marginal
Lawrence County Area:				
Lawrence County		1 hr.std.N.A.[3]		
Northumberland County Area:				
Northumberland County		1 hr.std.N.A.[3]		
Philadelphia-Wilmington-Trenton Area:				
Bucks County	11/15/90	Nonattainment	11/15/90	Severe-15
Chester County	11/15/90	Nonattainment	11/15/90	Severe-15
Delaware County	11/15/90	Nonattainment	11/15/90	Severe-15
Montgomery County	11/15/90	Nonattainment	11/15/90	Severe-15
Philadelphia County	11/15/90	Nonattainment	11/15/90	Severe-15
Pike County Area:				
Pike County		1 hr.std.N.A.[3]		
Pittsburgh-Beaver Valley Area:				
Allegheny County	11/15/90	Nonattainment	11/15/90	Moderate.[2]
Armstrong County	11/15/90	Nonattainment	11/15/90	Moderate.[2]
Beaver County	11/15/90	Nonattainment	11/15/90	Moderate.[2]
Butler County	11/15/90	Nonattainment	11/15/90	Moderate.[2]
Fayette County	11/15/90	Nonattainment	11/15/90	Moderate.[2]
Washington County	11/15/90	Nonattainment	11/15/90	Moderate.[2]
Westmoreland County	11/15/90	Nonattainment	11/15/90	Moderate.[2]
Reading Area:				
Berks County		1 hr. std. N.A.[3]		
Schuylkill County Area:				
Schuylkill County		1 hr. std. N.A.[3]		
Scranton-Wilkes-Barre Area:				
Columbia County		1 hr. std. N.A.[3]		
Lackawanna County		1 hr. std. N.A.[3]		
Luzerne County		1 hr. std. N.A.[3]		
Monroe County		1 hr. std. N.A.[3]		
Wyoming County		1 hr. std. N.A.[3]		
Snyder County Area:				
Snyder County		1 hr. std. N.A.[3]		
Susquehanna County Area:				
Susquehanna County		1 hr. std. N.A.[3]		
Warren County Area:				
Warren County		1 hr. std. N.A.[3]		
Wayne County Area:				
Wayne County		1 hr. std. N.A.[3]		
York Area:				
Adams County		1 hr. std. N.A.[3]		
York County		1 hr. std. N.A.[3]		
Youngstown-Warren-Sharon Area:				
Mercer County		1 hr. std. N.A.[3]		
AQCR 151 NE Pennsylvania Intrastate (Remainder of)..				

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PENNSYLVANIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Type	
	Classification	Date[1]	Date[1]	Type
Bradford County	.....	1 hr. std. N.A.[3]		
Sullivan County	.....	1 hr. std. N.A.[3]		
Tioga County	.....	1 hr. std. N.A.[3]		
AQCR 178 NW Pennsylvania Interstate (Remainder of).				
Cameron County	.....	1 hr. std. N.A.[3]		
Clanon County	.....	1 hr. std. N.A.[3]		
Clearfield County	.....	1 hr. std. N.A.[3]		
Elk County	.....	1 hr. std. N.A.[3]		
Forest County	.....	1 hr. std. N.A.[3]		
Jefferson County	.....	1 hr. std. N.A.[3]		
McKean County	.....	1 hr. std. N.A.[3]		
Potter County	.....	1 hr. std. N.A.[3]		
Venango County	.....	1 hr. std. N.A.[3]		
AQCR 195 Central Pennsylvania Intrastate (Remainder of).				
Bedford County	.....	1 hr. std. N.A.[3]		
Centre County	.....	1 hr. std. N.A.[3]		
Clinton County	.....	1 hr. std. N.A.[3]		
Fulton County	.....	1 hr. std. N.A.[3]		
Huntingdon County	.....	1 hr. std. N.A.[3]		
Lycoming County	.....	1 hr. std. N.A.[3]		
Mifflin County	.....	1 hr. std. N.A.[3]		
Montour County	.....	1 hr. std. N.A.[3]		
Union County	.....	1 hr. std. N.A.[3]		
AQCR 197 SW Pennsylvania Intrastate (Remainder of):.				
Indiana County	.....	1 hr. std. N.A.[3]		

[1] This date is March 17, 1998, unless otherwise noted.
[2] Attainment date extended to 11/15/97.
[3] 1 hour standard Not Applicable.

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41. In § 81.340, the table entitled "Rhode Island—Ozone" is revised to read as follows:

§ 81.340 Rhode Island.

* * * * * * * * *

RHODE ISLAND—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Providence (all of RI) Area:				
Bristol County	11/15/90	Nonattainment	11/15/90	Serious.
Kent County	11/15/90	Nonattainment	11/15/90	Serious.
Newport County	11/15/90	Nonattainment	11/15/90	Serious.
Providence County	11/15/90	Nonattainment	11/15/90	Serious.
Washington County	11/15/90	Nonattainment	11/15/90	Serious.

[1] This date is March 17, 1998 unless otherwise noted.

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42. In § 81.341, the table entitled "South Carolina—Ozone" is revised to read as follows:

§ 81.341 South Carolina.

* * * * * * * * *

SOUTH CAROLINA—OZONE (O3). (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Statewide	.....	1 hr. std. N.A.[2]		
Abbeville County				
Aiken County				
Allendale County				
Anderson County				

SOUTH CAROLINA—OZONE (O3). (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Bamberg County				
Barnwell County				
Beaufort County				
Berkeley County				
Calhoun County				
Charleston County				
Cherokee County				
Chester County				
Chesterfield County				
Clarendon County				
Colleton County				
Darlington County				
Dillon County				
Dorchester County				
Edgefield County				
Fairfield County				
Florence County				
Georgetown County				
Greenville County				
Greenwood County				
Hampton County				
Horry County				
Jasper County				
Kershaw County				
Lancaster County				
Laurens County				
Lee County				
Lexington County				
Manon County				
Marlboro County				
McCormick County				
Newberry County				
Oconee County				
Orangeburg County				
Pickens County				
Richland County				
Saloda County				
Spartanburg County				
Sumter County				
Union County				
Williamsburg County				
York County				

[1] This date is March 17, 1998 unless otherwise noted.
[2] 1 hour standard Not Applicable.

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43. In § 81.342, the table entitled "South Dakota—Ozone" is revised to read as follows:

§ 81.342 South Dakota.

* * * * * * * * *

SOUTH DAKOTA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Statewide	.....	1 hr. std. N.A.[2]		
Aurora County				
Beadle County				
Bennett County				
Bon Homme County				
Brookings County				
Brown County				
Brule County				
Buffalo County				
Butte County				
Campbell County				
Charles Mix County				
Clark County				

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SOUTH DAKOTA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Clay County				
Codington County				
Corson County				
Custer County				
Davison County				
Day County				
Deuel County				
Dewey County				
Douglas County				
Edmunds County				
Fall River County				
Faulk County				
Grant County				
Gregory County				
Haakon County				
Hamlin County				
Hand County				
Hanson County				
Harding County				
Hughes County				
Hutchinson County				
Hyde County				
Jackson County				
Jerauld County				
Jones County				
Kingsbury County				
Lake County				
Lawrence County				
Lincoln County				
Lyman County				
Marshall County				
McCook County				
McPherson County				
Meade County				
Mellette County				
Miner County				
Minnehaha County				
Moody County				
Pennington County				
Perkins County				
Potter County				
Roberts County				
Sanborn County				
Shannon County				
Spink County				
Stanley County				
Sully County				
Todd County				
Tripp County				
Turner County				
Union County				
Walworth County				
Yankton County				
Ziebach County				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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44. In § 81.343, the table entitled "Tennessee—Ozone" is revised to read as follows:

§ 81.343 Tennessee.

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TENNESSEE—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Jefferson County Area:				
Jefferson County	11/15/90	Unclassifiable/Attainment	11/15/90	
Memphis Area:				
Shelby County	2/16/95	Attainment.		
Rest of State		1 hr.std.N.A. [2]		
Anderson County				
Bedford County				
Benton County				
Bledsoe County				
Blount County				
Bradley County				
Campbell County				
Cannon County				
Carroll County				
Carter County				
Cheatham County				
Chester County				
Claiborne County				
Clay County				
Cocke County				
Coffee County				
Crockett County				
Cumberland County				
DeKalb County				
Decatur County				
Dickson County				
Davidson County				
Dyer County				
Fayette County				
Fentress County				
Franklin County				
Gibson County				
Giles County				
Grainger County				
Greene County				
Grundy County				
Hamblen County				
Hamilton County				
Hancock County				
Hardeman County				
Hardin County				
Hawkins County				
Haywood County				
Henderson County				
Henry County				
Hickman County				
Houston County				
Humphreys County				
Jackson County				
Johnson County				
Knox County				
Lake County				
Lauderdale County				
Lawrence County				
Lewis County				
Lincoln County				
Loudon County				
Macon County				
Madison County				
Marion County				
Marshall County				
Maury County				
McMinn County				
McNairy County				
Meigs County				
Monroe County				
Montgomery County				
Moore County				
Morgan County				
Obion County				
Overton County				

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TENNESSEE—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Perry County				
Pickett County				
Polk County				
Putnam County				
Rhea County				
Roane County				
Robertson County				
Rutherford County				
Scott County				
Sequatchie County				
Sevier County				
Smith County				
Stewart County				
Sullivan County				
Sumner County				
Tipton County				
Trousdale County				
Unicoi County				
Union County				
Van Buren County				
Warren County				
Washington County				
Wayne County				
Weakley County				
White County				
Williamson County				
Wilson County				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

45. In § 81.344, the table entitled "Texas—Ozone" is revised to read as follows:

§ 81.344 Texas.

TEXAS—OZONE (1-HOUR STANDARD)

Designated Area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Beaumont/Port Arthur Area:				
Hardin County	11/15/90	Nonattainment	6/3/96	Moderate
Jefferson County	11/15/90	Nonattainment	6/3/96	Moderate
Orange County	11/15/90	Nonattainment	6/3/96	Moderate
Dallas-Fort Worth Area:				
Collin County	11/15/90	Nonattainment	11/15/90	Moderate
Dallas County	11/15/90	Nonattainment	11/15/90	Moderate
Denton County	11/15/90	Nonattainment	11/15/90	Moderate
Tarrant County	11/15/90	Nonattainment	11/15/90	Moderate
El Paso Area:				
El Paso County	11/15/90	Nonattainment	11/15/90	Serious
Houston-Galveston-Brazoria Area:				
Brazoria County	11/15/90	Nonattainment	11/15/90	Severe-17
Chambers County	11/15/90	Nonattainment	11/15/90	Severe-17
Fort Bend County	11/15/90	Nonattainment	11/15/90	Severe-17
Galveston County	11/15/90	Nonattainment	11/15/90	Severe-17
Harris County	11/15/90	Nonattainment	11/15/90	Severe-17
Liberty County	11/15/90	Nonattainment	11/15/90	Severe-17
Montgomery County	11/15/90	Nonattainment	11/15/90	Severe-17
Waller County	11/15/90	Nonattainment	11/15/90	Severe-17
Longview Area:				
Gregg County	11/15/90	Unclassifiable /Attainment.	11/15/90	
Victoria Area:				
Victoria County	.....	1 hr. std. N.A.[2]		
AQCR 022 Shreveport-Texarkana-Tyler	.....	1 hr. std. N.A.[2]		
Anderson County				
Bowie County				

TEXAS—OZONE (1-HOUR STANDARD)—Continued

Designated Area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Camp County				
Cass County				
Cherokee County				
Delta County				
Franklin County				
Harrison County				
Henderson County				
Hopkins County				
Lamar County				
Marion County				
Morris County				
Panola County				
Rains County				
Red River County				
Rusk County				
Smith County				
Titus County				
Upshur County				
Van Zandt County				
Wood County				
AQCR 106 S Louisiana-SE Texas Interstate (Remainder of)	.....	1 hr. std. N.A.[2]		
Angelina County				
Houston County				
Jasper County				
Nacogdoches County				
Newton County				
Polk County				
Sabine County				
San Augustine County				
San Jacinto County				
Shelby County				
Trinity County				
Tyler County				
Walker County				
AQCR 153 El Paso-Las Cruces-Alamogordo	.....	1 hr. std. N.A.[2]		
Brewster County				
Culberson County				
Hudspeth County				
Jeff Davis County				
Presidio County				
AQCR 210 Abilene-Wichita Falls Intrastate	.....	1 hr. std. N.A.[2]		
Archer County				
Baylor County				
Brown County				
Callahan County				
Childress County				
Clay County				
Coke County				
Coleman County				
Comanche County				
Concho County				
Cottle County				
Eastland County				
Fisher County				
Foard County				
Hardeman County				
Haskell County				
Jack County				
Jones County				
Kent County				
Knox County				
McCulloch County				
Menard County				
Mitchell County				
Montague County				
Nolan County				
Runnels County				
Scurry County				
Shackelford County				
Stephens County				

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TEXAS—OZONE (1-HOUR STANDARD)—Continued

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Stonewall County				
Taylor County				
Throckmorton County				
Wichita County				
Wilbarger County				
Young County				
AQCR 211 Amarillo-Lubbock Intrastate		1 hr. std. N.A.[2]		
Armstrong County				
Bailey County				
Briscoe County				
Carson County				
Castro County				
Cochran County				
Collingsworth County				
Crosby County				
Dallam County				
Deaf Smith County				
Dickens County				
Donley County				
Floyd County				
Garza County				
Gray County				
Hale County				
Hall County				
Hansford County				
Hartley County				
Hemphill County				
Hockley County				
Hutchinson County				
King County				
Lamb County				
Lipscomb County				
Lubbock County				
Lynn County				
Moore County				
Motley County				
Ochiltree County				
Oldham County				
Parmer County				
Potter County				
Randall County				
Roberts County				
Sherman County				
Swisher County				
Terry County				
Wheeler County				
Yoakum County				
AQCR 212 Austin-Waco Intrastate		1 hr. std. N.A.[2]		
Bastrop County				
Bell County				
Blanco County				
Bosque County				
Brazos County				
Burleson County				
Burnet County				
Caldwell County				
Coryell County				
Falls County				
Fayette County				
Freestone County				
Grimes County				
Hamilton County				
Hays County				
Hill County				
Lampasas County				
Lee County				
Leon County				
Limestone County				
Llano County				
Madison County				

TEXAS—OZONE (1-HOUR STANDARD)—Continued

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
McLennan County				
Milam County				
Mills County				
Robertson County				
San Saba County				
Travis County				
Washington County				
Williamson County				
AQCR 213 Brownsville-Laredo Intrastate		1 hr. std. N.A.[2]		
Cameron County				
Hidalgo County				
Jim Hogg County				
Starr County				
Webb County				
Willacy County				
Zapata County				
AQCR 214 Corpus Christi-Victoria Intrastate (Remainder of)		1 hr.std.N.A.[2]		
Aransas County				
Bee County				
Brooks County				
Calhoun County				
De Witt County				
Duval County				
Goliad County				
Jackson County				
Jim Wells County				
Kenedy County				
Kleberg County				
Lavaca County				
Live Oak County				
McMullen County				
Refugio County				
San Patricio County				
AQCR 214 Corpus Christi-Victoria Intrastate (part)		1 hr. std. N.A.[2]		
Nueces County				
AQCR 215 Metro Dallas-Fort Worth Intrastate (Remainder of).		1 hr.std.N.A.[2].		
Cooke County				
Ellis County				
Erath County				
Fannin County				
Grayson County				
Hood County				
Hunt County				
Johnson County				
Kaufman County				
Navarro County				
Palo Pinto County				
Parker County				
Rockwall County				
Somervell County				
Wise County				
AQCR 216 Metro Houston-Galveston Intrastate (Remainder of).		1 hr.std.N.A.[2]		
Austin County				
Colorado County				
Matagorda County				
Wharton County				
AQCR 217 Metro San Antonio Intrastate (part)		1 hr. std. N.A.[2]		
Bexar County				
AQCR 217 Metro San Antonio Intrastate (Remainder of)		1 hr.std.N.A.[2]		
Atascosa County				
Bandera County				
Comal County				
Dimmit County				
Edwards County				
Frio County				
Gillespie County				
Gonzales County				
Guadalupe County				

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TEXAS—OZONE (1-HOUR STANDARD)—Continued

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Karnes County				
Kendall County				
Kerr County				
Kimble County				
Kinney County				
La Salle County				
Mason County				
Maverick County				
Medina County				
Real County				
Uvalde County				
Val Verde County				
Wilson County				
Zavala County				
AQCR 218 Midland-Odessa-San Angelo Intrastate (part).	.....	1 hr.std.N.A.[2]		
Ector County				
AQCR 218 Midland-Odessa-San Angelo Intrastate (Remainder of).	.....	1 hr.std.N.A.[2]		
Andrews County				
Borden County				
Crane County				
Crockett County				
Dawson County				
Gaines County				
Glasscock County				
Howard County				
Irion County				
Loving County				
Martin County				
Midland County				
Pecos County				
Reagan County				
Reeves County				
Schleicher County				
Sterling County				
Sutton County				
Terrell County				
Tom Green County				
Upton County				
Ward County				
Winkler County				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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45. In § 81.345, the table entitled "Utah—Ozone" is revised to read as follows:

§ 81.345 Utah.

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UTAH—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Salt Lake City Area:				
Davis County	.....	1 hr. std. N.A.[2]		
Salt Lake County	.....	1 hr. std. N.A.[2]		
Rest of State	.....	1 hr. std. N.A.[2]		
Beaver County				
Box Elder County				
Cache County				
Carbon County				
Daggett County				
Duchesne County				
Emery County				
Garfield County				
Grand County				
Iron County				

UTAH—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Juab County				
Kane County				
Millard County				
Morgan County				
Piute County				
Rich County				
San Juan County				
Sanpete County				
Sevier County				
Summit County				
Tooele County				
Uintah County				
Utah County				
Wasatch County				
Washington County				
Wayne County				
Weber County				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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47. In § 81.346, the table entitled "Vermont—Ozone" is revised to read as follows:

§ 81.346 Vermont.

* * * * * * *

VERMONT—OZONE (1-HHOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
AQCR 159 Champlain Calley Interstate (part)	.....	1 hr. std. N.A.[2]		
Addison County				
Chittenden County				
AQCR 159 Champlain Calley Interstate (Remainder of)	.....	1 hr. std. N.A.[2]		
Franklin County				
Grand Isle County				
Rutland County				
AQCR 221 Vermont Intrastate (part).	.....	1 hr. std. N.A.[2]		
Windsor County				
AQCR 221 Vermont Intrastate (Remainder of)	.....	1 hr. std. N.A.[2]		
Bennington County				
Caledonia County				
Essex County				
Lamoille County				
Orange County				
Orleans County				
Washington County				
Windham County				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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48. In Section 81.347, the table entitled "Virginia—Ozone" is revised to read as follows:

§ 81.347 Virginia.

* * * * * * *

VIRGINIA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Norfolk-Virginia Beach-Newport News (Hampton Roads) Area:				
Chesapeake	.....	1 hr. std. N.A.[2]		
Hampton	.....	1 hr. std. N.A.[2]		

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VIRGINIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
James City County		1 hr. std. N.A.[2]		
Newport News		1 hr. std. N.A.[2]		
Norfolk		1 hr. std. N.A.[2]		
Poquoson		1 hr. std. N.A.[2]		
Portsmouth		1 hr. std. N.A.[2]		
Suffolk		1 hr. std. N.A.[2]		
Virginia Beach		1 hr. std. N.A.[2]		
Williamsburg		1 hr. std. N.A.[2]		
York County		1 hr. std. N.A.[2]		
Richmond Area:				
Charles City County (part)		1 hr. std. N.A.[2]		
Beginning at the intersection of State Route 156 and the Henrico Charles City County Line, proceeding south along State Route 5/156 to the intersection with State Route 106/156, proceeding south along Route 106/156 to the intersection with the Prince George/Charles City County line, proceeding west along the Prince George/Charles City County line to the intersection with the Chesterfield/Charles City County line, proceeding north along the Chesterfield/Charles City County line to the intersection with the Henrico/Charles City County line, proceeding north along the Henrico/Charles City County line to State Route 156.				
Chesterfield County		1 hr. std. N.A.[2]		
Colonial Heights		1 hr. std. N.A.[2]		
Hanover County		1 hr. std. N.A.[2]		
Henrico County		1 hr. std. N.A.[2]		
Hopewell		1 hr. std. N.A.[2]		
Richmond		1 hr. std. N.A.[2]		
Smyth County Area:				
Smyth County (part)		1 hr. std. N.A.[2]		
The portion of White Top Mountain above the 4,500 foot elevation in Smyth County.				
Washington Area:				
Alexandria	11/15/90	Nonattainment	11/15/90	Serious.
Arlington County	11/15/90	Nonattainment	11/15/90	Serious.
Fairfax	11/15/90	Nonattainment	11/15/90	Serious.
Fairfax County	11/15/90	Nonattainment	11/15/90	Serious.
Falls Church	11/15/90	Nonattainment	11/15/90	Serious.
Loudoun County	11/15/90	Nonattainment	11/15/90	Serious.
Manassas	11/15/90	Nonattainment	11/15/90	Serious.
Manassas Park	11/15/90	Nonattainment	11/15/90	Serious.
Prince William County	11/15/90	Nonattainment	11/15/90	Serious.
Stafford County	11/15/90	Nonattainment	11/15/90	Serious.
AQCR 207 Eastern Tennessee—SW Virginia Interstate (Remainder of).		1 hr. std. N.A.[2]		
Bland County				
Bristol				
Buchanan County				
Carroll County				
Dickenson County				
Galax				
Grayson County				
Lee County				
Norton				
Russell County				
Scott County				
Smyth County (part)				
Remainder of county				
Tazewell County				
Washington County				
Wise County				
Wythe County				
AQCR 222 Central Virginia Intrastate		1 hr. std. N.A.[2]		
Amelia County				
Amherst County				
Appomattox County				
Bedford				
Bedford County				

VIRGINIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Brunswick County				
Buckingham County				
Campbell County				
Charlotte County				
Cumberland County				
Danville				
Franklin County				
Halifax County				
Henry County				
Lunenburg County				
Lynchburg				
Martinsville				
Mecklenburg County				
Nottoway County				
Patrick County				
Pittsylvania County				
Prince Edward County				
South Boston				
AQCR 223 Hampton Roads Intrastate (Remainder of)		1 hr. std. N.A.[2]		
Franklin				
Isle Of Wight County				
Southampton County				
AQCR 224 NE Virginia Intrastate (Remainder of)		1 hr. std. N.A.[2]		
Accomack County				
Albemarle County				
Caroline County				
Charlottesville				
Culpeper County				
Essex County				
Fauquier County				
Fluvanna County				
Fredericksburg				
Gloucester County				
Greene County				
King And Queen County				
King George County				
King William County				
Lancaster County				
Louisa County				
Madison County				
Mathews County				
Middlesex County				
Nelson County				
Northampton County				
Northumberland County				
Orange County				
Rappahannock County				
Richmond County				
Spotsylvania County				
Westmoreland County				
AQCR 225 State Capital Intrastate (Remainder of)		1 hr. std. N.A.[2]		
Charles City County (part)				
Remainder of county				
Dinwiddie County				
Emporia				
Goochland County				
Greensville County				
New Kent County				
Petersburg				
Powhatan County				
Prince George County				
Surry County				
Sussex County				
AQCR 226 Valley of Virginia Intrastate		1 hr. std. N.A.[2]		
Alleghany County				
Augusta County				
Bath County				
Botetourt County				
Buena Vista				
Clarke County				

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VIRGINIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Clifton Forge				
Covington				
Craig County				
Floyd County				
Frederick County				
Giles County				
Harrisonburg				
Highland County				
Lexington				
Montgomery County				
Page County				
Pulaski County				
Radford				
Roanoke				
Roanoke County				
Rockbridge County				
Rockingham County				
Salem				
Shenandoah County				
Staunton				
Warren County				
Waynesboro				
Winchester				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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49. In § 81.348, the table entitled "Washington—Ozone" is revised to read as follows:

§ 81.348 Washington.

* * * * * * *

WASHINGTON—OZONE (1-HOUR STANDARD)

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Portland—Vancouver AQMA Area:				
Clark County (part)				
Air Quality Maintenance Area	.....	1 hr.std. N.A.[2]		
Seattle-Tacoma Area:				

WASHINGTON—OZONE (1-HOUR STANDARD)—Continued

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
The following boundary includes all of Pierce County, and all of King County except a small portion on the north-east corner and the western portion of Snohomish County: Starting at the mouth of the Nisqually River extend northwesterly along the Pierce County line to the southernmost point of the west county line of King County; thence northerly along the county line to the southermost point of the west county line of Snohomish County; thence northerly along the county line to the intersection with SR 532; thence easterly along the north line of SR 532 to the intersection of I–5, continuing east along the same road now identified as Henning Rd., to the intersection with SR 9 at Bryant; thence continuing easterly on Bryant East Rd. and Rock Creek Rd., also identified as Grandview Rd., approximately 3 miles to the point at which it is crossed by the existing BPA electrical transmission line; thence southeasterly along the BPA transmission line approximately 8 miles to point of the crossing of the south fork of the Stillaguamish River; thence continuing in a southeasterly direction in a meander line following the bed of the River to Jordan Road; southerly along Jordan Road to the north city limits of Granite Falls; thence following the north and east city limits to 92nd St. N.E. and Menzel Lake Rd; thence south-southeasterly along the Menzel Lake Rd. and the Lake Roesiger Rd. a distance of approximately 6 miles to the northernmost point of Lake Roesiger; thence southerly along a meander line following the middle of the Lake and Roesiger Creek to Woods Creek; thence southerly along a meander line following the bed of the Creek approximately 6 miles to the point the Creek is crossed by the existing BPA electrical transmission line; thence easterly along the BPA transmission line approximately 0.2 miles; thence southerly along the BPA Chief Joseph-Covington electrical transmission line approximately 3 miles to the north line of SR 2; thence southeasterly along SR 2 to the intersection with the east county line of King County; thence south along the county line to the northernmost point of the east county line of Pierce County; thence along the county line to the point of beginning at the mouth of the Nisqually River.	.....	1 hr. std. N.A.[2]		
AQCR 062 E Washington-N Idaho Interstate (part)	.....	1 hr. std. N.A.[2]		
Spokane County				
AQCR 062 E Washington-N Idaho Interstate (Remainder of)	.....	1 hr. std. N.A.[2]		
Adams County				
Asotin County				
Columbia County				
Garfield County				
Grant County				
Lincoln County				
Whitman County				
AQCR 193 Portland Interstate (Remainder of)	.....	1 hr. std. N.A.[2]		
Clark County (part)				
Remainder of County				
Cowlitz County				
Lewis County				
Skamania County				
Wahkiakum County				
AQCR 227 Northern Washington Intrastate	.....	1 hr. std. N.A.[2]		
Chelan County				
Douglas County				
Ferry County				
Okanogan County				
Pend Oreille County				
Stevens County				
AQCR 228 Olympic,-Northwest Washington Intrastate	.....	1 hr. std. N.A.[2]		
Clallam County				
Grays Harbor County				
Island County				
Jefferson County				
Mason County				

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WASHINGTON—OZONE (1-HOUR STANDARD)—Continued

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Pacific County				
San Juan County				
Skagit County				
Thurston County				
Whatcom County				
AQCR 229 Puget Sound Intrastate (Remainder of)	.....	1 hr. std. N.A.[2]		
King County (Part)				
Remainder of County				
Kitsap County				
Snohomish County (Part)				
Remainer of County				
AQCR 230 South Central Washington Intrastate	.....	1 hr. std. N.A.[2]		
Benton County				
Franklin County				
Kittitas County				
Klickitat County				
Walla Walla County				
Yakima County				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * * * *

50. In § 81.349, the table entitled "West Virginia—Ozone" is revised to read as follows:

§ 81.349 West Virginia.

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WEST VIRGINIA—OZONE (1-HOUR STANDARD)

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Charleston area:				
Kanawha County	.....	1 hr. std. N.A.[2]		
Putnam County	.....	1 hr. std. N.A.[2]		
Greenbrier Area:				
Greenbrier County	.....	1 hr. std. N.A.[2]		
Huntington-Ashland Area:				
Cabell County.	.....	1 hr. std. N.A.[2]		
Wayne County	.....	1 hr. std. N.A.[2]		
Parkersburg-Marietta Area:				
Wood County	.....	1 hr. std. N.A.[2]		
Rest of State	.....	1 hr. std. N.A.[2]		
Barbour County				
Berkeley County				
Boone County				
Braxton County				
Brooke County				
Calhoun County				
Clay County				
Doddridge County				
Fayette County				
Gilmar County				
Grant County				
Hampshire County				
Hancock County				
Hardy County				
Harrison County				
Jackson County				
Jefferson County				
Lewis County				
Lincoln County				
Logan County				
Marion County				
Marshall County				
Mason County				
McDowell County				
Mercer County				
Mineral County				

WEST VIRGINIA—OZONE (1-HOUR STANDARD)—Continued

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Mingo County				
Monongalia County				
Monroe County				
Morgan County				
Nicholas County				
Ohio County				
Pendleton County				
Pleasants County				
Pocahontas County				
Preston County				
Raleigh County				
Randolph County				
Ritchie County				
Roane County				
Summers County				
Taylor County				
Tucker County				
Tyler County				
Upshur County				
Webster County				
Wetzel County				
Wirt County				
Wyoming County				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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51. In § 81.350, the table entitled "Wisconsin—Ozone" is revised to read as follows:

§ 81.350 Wisconsin.

* * * * * * *

WISCONSIN—OZONE (1-HOUR STANDARD)

Designation area	Designated		Classification	
	Date[1]	Type	Date[1]	Type
Door County Area:				
Door County	1/6/92	Nonattainment	1/6/92	Rural Transport (Marginal).
Kewaunee County Area:				
Kewaunee County	.....	1 hr. std. N.A.[2]		
Manitowoc County Area:				
Manitowoc County	1/6/92	Nonattainment	1/6/92	Moderate.
Milwaukee-Racine Area:				
Kenosha County	11/15/90	Nonattainment	11/15/90	Severe-17.
Milwaukee County	11/15/90	Nonattainment	11/15/90	Severe-17.
Ozaukee County	11/15/90	Nonattainment	11/15/90	Severe-17.
Racine County	11/15/90	Nonattainment	11/15/90	Severe-17.
Washington County	11/15/90	Nonattainment	11/15/90	Severe-17.
Waukesha County	11/15/90	Nonattainment	11/15/90	Severe-17.
Sheboygan County Area:				
Sheboygan County	.....	1 hr. std. N.A.[2]		
Walworth County Area:				
Walworth County	.....	1 hr. std. N.A.[2]		
Adams County	.....	1 hr. std. N.A.[2]		
Ashland County	.....	1 hr. std. N.A.[2]		
Barron County	.....	1 hr. std. N.A.[2]		
Bayfield County	.....	1 hr. std. N.A.[2]		
Brown County	.....	1 hr. std. N.A.[2]		
Buffalo County	.....	1 hr. std. N.A.[2]		
Burnett County	.....	1 hr. std. N.A.[2]		
Calumet County	.....	1 hr. std. N.A.[2]		
Chippewa County	.....	1 hr. std. N.A.[2]		
Clark County	.....	1 hr. std. N.A.[2]		
Columbia County	.....	1 hr. std. N.A.[2]		
Crawford County	.....	1 hr. std. N.A.[2]		
Dane County	.....	1 hr. std. N.A.[2]		
Dodge County	.....	1 hr. std. N.A.[2]		

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WISCONSIN—OZONE (1-HOUR STANDARD)—Continued

Designation area	Designated		Classification	
	Date[1]	Type	Date[1]	Type
Douglas County		1 hr. std. N.A.[2]		
Dunn County		1 hr. std. N.A.[2]		
Eau Claire County		1 hr. std. N.A.[2]		
Florence County		1 hr. std. N.A.[2]		
Fond du Lac County		1 hr. std. N.A.[2]		
Forest County		1 hr. std. N.A.[2]		
Grant County		1 hr. std. N.A.[2]		
Green County		1 hr. std. N.A.[2]		
Green Lake County		1 hr. std. N.A.[2]		
Iowa County		1 hr. std. N.A.[2]		
Iron County		1 hr. std. N.A.[2]		
Jackson County		1 hr. std. N.A.[2]		
Jefferson County		1 hr. std. N.A.[2]		
Juneau County		1 hr. std. N.A.[2]		
La Crosse County		1 hr. std. N.A.[2]		
Lafayette County		1 hr. std. N.A.[2]		
Langlade County		1 hr. std. N.A.[2]		
Lincoln County		1 hr. std. N.A.[2]		
Marathon County		1 hr. std. N.A.[2]		
Marinette County		1 hr. std. N.A.[2]		
Marquette County		1 hr. std. N.A.[2]		
Menominee County		1 hr. std. N.A.[2]		
Monroe County		1 hr. std. N.A.[2]		
Oconto County		1 hr. std. N.A.[2]		
Oneida County		1 hr. std. N.A.[2]		
Outagamie County		1 hr. std. N.A.[2]		
Pepin County		1 hr. std. N.A.[2]		
Pierce County		1 hr. std. N.A.[2]		
Polk County		1 hr. std. N.A.[2]		
Portage County		1 hr. std. N.A.[2]		
Price County		1 hr. std. N.A.[2]		
Richland County		1 hr. std. N.A.[2]		
Rock County		1 hr. std. N.A.[2]		
Rusk County		1 hr. std. N.A.[2]		
St. Croix County		1 hr. std. N.A.[2]		
Sauk County		1 hr. std. N.A.[2]		
Sawyer County		1 hr. std. N.A.[2]		
Shawano County		1 hr. std. N.A.[2]		
Taylor County		1 hr. std. N.A.[2]		
Trempealeau County		1 hr. std. N.A.[2]		
Vernon County		1 hr. std. N.A.[2]		
Vilas County		1 hr. std. N.A.[2]		
Washburn County		1 hr. std. N.A.[2]		
Waupaca County		1 hr. std. N.A.[2]		
Waushara County		1 hr. std. N.A.[2]		
Winnebago County		1 hr. std. N.A.[2]		
Wood County		1 hr. std. N.A.[2]		

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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52. In § 81.351, the table entitled "Wyoming—Ozone" is revised to read as follows:

§ 81.351 Wyoming.

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WYOMING—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Statewide		1 hr. std. N.A.[2]		
Albany County				
Big Horn County				
Campbell County				
Carbon County				
Converse County				
Crook County				
Fremont County				

WYOMING—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Goshen County				
Hot Springs County				
Johnson County				
Laramie County				
Lincoln County				
Natrona County				
Niobrara County				
Park County				
Platte County				
Sheridan County				
Sublette County				
Sweetwater County				
Teton County				
Uinta County				
Washakie County				
Weston County				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * * * *

53. In § 81.352, the table entitled "American Samoa—Ozone" is revised to read as follows:

§ 81.352 American Samoa.

* * * * * * *

AMERICAN SAMOA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Statewide		1 hr. std. N.A.[2]		

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * * * *

54. In § 81.353, the table entitled "Guam—Ozone" is revised to read as follows:

§ 81.353 Guam.

* * * * * * *

GUAM—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Statewide		1 hr. std. N.A.[2]		

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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55. In Section 81.354, the table entitled "Northern Mariana Islands—Ozone" is revised to read as follows:

§ 81.354 Northern Mariana Islands.

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NORTHERN MARIANA ISLANDS—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Whole State		1 hr. std. N.A.[2]		

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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56. In § 81.355, the table entitled "Puerto Rico—Ozone" is revised to read as follows:

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§ 81.355 Puerto Rico.

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PUERTO RICO—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Statewide	.....	1 hr. std. N.A.[2]		
Adjuntas Municipio				
Aguada Municipio				
Aguadilla Municipio				
Aguas Buenas Municipio				
Aibonito Municipio				
Anasco Municipio				
Arecibo Municipio				
Arroyo Municipio				
Barceloneta Municipio				
Barranquitas Munic.				
Bayamon County				
Caba Rojo Municipio				
Caguas Municipio				
Camuy Municipio				
Canovanas Municipio				
Carolina Municipio				
Catano County				
Cayey Municipio				
Ceiba Municipio				
Ciales Municipio				
Cidra Municipio				
Coama Municipio				
Comeria Municipio				
Corozal Municipio				
Culebra Municipio				
Dorado Municipio				
Fajardo Municipio				
Florida Municipio				
Guanica Municipio				
Guayama Municipio				
Guayanilla Municipio				
Guaynabo County				
Gurabo Municipio				
Hatillo Municipio				
Hormigueros Municipio				
Humacao Municipio				
Isabela Municipio				
Jayuya Municipio				
Juana Diaz Municipio				
Juncos Municipio				
Lajas Municipio				
Lares Municipio				
Las Marias Municipio				
Las Piedras Municipio				
Loiza Municipio				
Luquillo Municipio				
Manati Municipio				
Maricao Municipio				
Maunabo Municipio				
Mayaguez Municipio				
Moca Municipio				
Morovis Municipio				
Naguabo Municipio				
Naranjito Municipio				
Orocovis Municipio				
Patillas Municipio				
Penuelas Municipio				
Ponce Municipio				
Quebradillas Municipio				
Rincon Municipio				
Rio Grande Municipio				
Sabana Grande Municipio				
Salinas Municipio				
San German Municipio				
San Juan Municipio				
San Lorenzo Municipio				

PUERTO RICO—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
San Sebastian Municipio				
Santa Isabel Municipio				
Toa Alta Municipio				
Toa Baja County				
Trujilla Alto Municipio				
Utuado Municipio				
Vega Alta Municipio				
Vega Baja Municipio				
Vieques Municipio				
Villalba Municipio				
Yabucoa Municipio				
Yauco Municipio				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * * * *

57. In § 81.356, the table entitled "Virgin Islands—Ozone" is revised to read as follows:

§ 81.356 Virgin Islands.

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VIRGIN ISLANDS—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Statewide	.....	1 hr. std. N.A.[2]		
St. Croix				
St. John				
St. Thomas				

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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[FR Doc. 98–935 Filed 1–15–98; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–5945–6]

Identification of Ozone Areas Attaining the 1-Hour Standard and to Which the 1-Hour Standard is No Longer Applicable

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the identification of ozone areas attaining the 1-hour standard and to which the 1-hour standard is no longer applicable. In the final rules section of this **Federal Register**, the EPA is approving the amendment to 40 CFR part 81 to reflect ozone areas where the 1-hour standard will cease to apply because they have not measured a current violation of the 1-hour standard. For all other areas, the 1-hour standard will continue to apply; such ozone areas will also be shown in 40 CFR part 81. Because the Agency views such action as a noncontroversial amendment and anticipates no adverse comments, the EPA is approving the amendment to 40 part 81 as a direct final rule without prior proposal. Today's regulation is being promulgated in direct response to the President's memorandum of July 16, 1997 which directed the EPA to publish within 90 days this action. A detailed rationale for this action is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document.

DATES: To be considered, comments must be received on or before February 17, 1998.

ADDRESSES: Written comments should be addressed to: Annie Nikbakht (policy) or Barry Gilbert (air quality data), Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Ozone Policy and Strategies Group, MD–15, Research Triangle Park, NC 27711. Electronic comments can be sent directly to EPA at: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–97–42. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: December 29, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 98–934 Filed 1–15–98; 8:45 am]

BILLING CODE 6560–50–P

federal register

Friday
January 16, 1998

Part III

Federal Reserve System

12 CFR Parts 207, 220, 221, 224, and 265
Securities Credit Transactions; Borrowing by Brokers and Dealers; Final Rule

12 CFR Parts 207, 220, 221, 224, and 265
Securities Credit Transactions; Proposed Rule

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FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221, 224 and 265

[Regulations G, T, U and X; Docket Nos. R–0905, R–0923 and R–0944]

Securities Credit Transactions; Borrowing by Brokers and Dealers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting final amendments to Regulations G, T and U, the Board's securities credit regulations. These amendments are based on proposed amendments issued for comment by the Board in December 1995 (Docket R–0905), April 1996 (Docket R–0923) and November 1996 (Docket R–0944). The final amendments include the extension of Regulation U to cover lenders formerly subject to Regulation G and the elimination of Regulation G. The amendments reduce regulatory distinctions between broker-dealers, banks, and other lenders and implement changes to the Board's securities credit regulations to reflect changes to the Board's statutory authority under the Securities Exchange Act of 1934, as amended by the National Securities Markets Improvement Act of 1996. Conforming changes are also made to Regulation X, "Borrowers of Securities Credit" and the Board's Rules Regarding Delegation of Authority.

DATES: *Effective date:* April 1, 1998.

Compliance date: Compliance with the revised Regulation T (12 CFR part 220) is optional until July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel (202) 452–3625; Scott Holz, Senior Attorney (202) 452–2966, Jean Anderson, Staff Attorney, (202) 452–3707, Legal Division; for the hearing impaired only, Telecommunications Device for the Deaf (TDD), Diane Jenkins (202) 452-3544.

SUPPLEMENTARY INFORMATION: Discussed below are final amendments to the Board's securities credit regulations based on three requests for comment issued in 1995 and 1996. The December 1995 request (Docket R–0905; 60 FR 63660, Dec. 12, 1995) covered only Regulation U and dealt with mixed collateral loans and the financing of purchases effected on a delivery-versus-payment basis. The April 1996 request (Docket R–0923; 61 FR 20399, May 6, 1996) dealt primarily with credit extended to customers by broker-dealers and other lenders, such as loan value for securities under Regulations G, T and U and the account structure of Regulation T. The November 1996 request (Docket R–0944; 61 FR 60168, Nov. 26, 1996) was issued in response to the changes in the Board's margin authority contained in the National Securities Markets Improvement Act of 1996 (NSMIA) and dealt primarily with borrowing by broker-dealers from any lender and the borrowing and lending of securities by broker-dealers.

The statutory changes from NSMIA regarding borrowing by broker-dealers require parallel amendments to the Board's various margin regulations and are discussed first. The second section deals with amendments to Regulation T and the third section with amendments to Regulations G and U. The final section describes a conforming change to Regulation X.

In a separate document published elsewhere in today's **Federal Register** the Board is issuing an advance notice of proposed rulemaking to solicit views on any further amendments to its margin regulations that should be proposed to complete the Board's periodic review of these regulations.

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I. Borrowing By Broker-Dealers

A. All Regulations: Implementation of NSMIA

The National Securities Markets Improvement Act of 1996 ("NSMIA")[1] repealed section 8(a) of the Securities Exchange Act of 1934 (the "'34 Act") and exempted the extension of credit to certain broker-dealers from the Board's margin regulations. Section 8(a) of the '34 Act had required broker-dealers obtaining credit against the collateral of exchange-traded equity securities to borrow from only other broker-dealers, banks that were members of the Federal Reserve System, or banks that agreed to abide by certain restrictions applicable to member banks. After the enactment of NSMIA, the Board proposed to delete § 220.15 of Regulation T and § 221.4 of Regulation U, the regulatory sections that implemented section 8(a) of the '34 Act. No adverse comments were received, and the Board is deleting the sections as proposed. The Board is also deleting the definition of *nonmember bank* from § 220.2 of Regulation T because the term was used only in § 220.15 of Regulation T. Finally, the Board is deleting its delegation of authority to the Reserve Banks to accept agreements filed under section 8(a) of the '34 Act.

NSMIA amended section 7 of the '34 Act to grant a transactional exemption for credit extended to a broker-dealer "to finance its activities as a market maker or an underwriter." NSMIA also granted a status exemption for all borrowing by broker-dealers "a substantial portion of whose business consists of transactions with persons other than brokers or dealers." These statutory exemptions apply to borrowers, although the Board's margin regulations generally apply to lenders. It is therefore necessary for the Board to amend Regulations G, T and U to provide uniform treatment for broker-dealers whose borrowings are exempted from the Board rules under NSMIA.

[1] Pub. L. 104–290, 110 Stat. 3416.

1. Scope Section vs. the Definition of *Customer*

The Board sought comment on whether broker-dealers who qualify for an exemption from the Board's margin regulations when borrowing ("exempted borrowers") should be excluded from the scope provisions in the first section of each regulation or the definition of *customer* in the second section of each regulation. All but two of the responsive commenters preferred the use of the scope section. The Board is amending the scope section to exclude loans to an "exempted borrower" and adding a definition of "exempted borrower" to cover those broker-dealers who have a substantial portion of their business conducted with persons other than broker-dealers (when they borrow for any purpose). The Board is also excluding an "exempted borrower" from the definition of "customer" in each regulation.

2. Appropriateness of Adopting a "Substantial" Test

The Board sought comment on whether it needs to provide a test to identify exempted borrowers. Only one commenter expressed its belief that a "substantial" test was not needed. The Board is adopting several safe harbor tests to provide guidance to lenders as to those broker-dealers who qualify under NSMIA for exempted borrower status.

One commenter stated that once the Board has decided on an appropriate test, but before it is implemented, the self regulatory organizations (SROs)[2] should survey their member firms to ascertain how many would be qualified. The Board is not adopting this suggestion as the Board believes that it would delay unnecessarily the ability of some exempted borrowers to take advantage of the Board's implementation of the NSMIA.

[2] All SEC-registered broker-dealers belong to one or more SRO, such as the New York Stock Exchange, Chicago Board Options Exchange, or the National Association of Securities Dealers. If a broker-dealer belongs to more than one SRO, one of the SROs is designated as its examining authority and becomes its primary regulator at the SRO level. "Examining authority" is defined in § 220.2 of Regulation T.

3. Test for Determining "Substantial" Customer Business

a. Description of test: The Board is adopting three alternative tests for broker-dealers to qualify as exempted borrowers. Exempted borrowers are being defined to include registered brokers or dealers or members of a national securities exchange who have at least: (1) 1000 active accounts for persons other than brokers, dealers, or persons associated with a broker or dealer; or (2) $10 million in annual gross revenues from transactions with such persons; or (3) 10 percent of their annual gross revenues derived from transactions with such persons. These tests will be included in the definition of "exempted borrower" in §§ 220.2 of Regulation T and 221.2 of Regulation U. The Board believes that these tests should not be excessively onerous to satisfy or monitor, but they should exceed the levels that an entity is likely to be willing or able to achieve artificially merely to obtain exempt credit. The first test provides a straightforward mechanism for large, customer-oriented firms to determine that they meet the substantial customer business requirement. The second test covers large firms that have made a substantial commitment to transacting business with persons other than broker-dealers, but do not have a large number of customer accounts. The third test compares the relative size of a broker-dealer's customer-related securities business to its overall securities business.

The Board believes these tests meet the statutory standard that a substantial portion of an exempted borrower's business consist of transactions with persons other than brokers or dealers. The Board believes that 10 percent of gross revenues is a substantial portion of a broker-dealer's business. Similarly, the Board believes that 1000 customer accounts is a substantial number of accounts, and therefore broker-dealers with this many customer accounts have a substantial portion of their business with persons other than broker-dealers. Finally, the Board believes that having $10 million in gross customer revenues is a substantial amount of revenue, and therefore these broker-dealers have a substantial portion of their business with customers.

Two of the three tests adopted by the Board today refer to "revenue." Two commenters suggested that the Board adopt its own definition of "revenue," although one of these commenters suggested that the Board build upon the definition of "gross revenues from the securities business" in section 16(9) of the Securities Investor Protection Act of 1970. The Board believes it would be more appropriate for broker-dealers to determine "revenue" in accordance with generally accepted accounting principles (GAAP). This should be easier than a new standard because broker-dealers are required under SEC rules to file annual reports that have been audited by an independent public accountant[3] and these reports are prepared according to GAAP. Although the Board is not specifying a methodology for comparing customer revenues to gross revenues, it expects that broker-dealers will develop appropriate methods for doing so and apply them consistently over time.

The Board believes that the statutory requirement that a substantial portion of an exempted borrower's business must consist of transactions with persons other than "brokers or dealers" should be interpreted to require that these transactions also be effected with persons other than "persons associated with a broker or dealer" as defined in the '34 Act.[4] This exclusion is included in the Board's definition of "exempted borrower" and will prevent a firm from qualifying as an exempted borrower by engaging in transactions only with related persons and corporate entities.

Several commenters responding to the Board's request for appropriate tests to identify exempted borrowers focused on the appropriate period of time over which to measure whether a broker-dealer has a substantial customer business. Some commenters suggested a broker-dealer should be deemed to have a substantial customer business if it meets one of the Board's tests on an annual basis while others suggested using a six month period. The Board believes an annual test is appropriate. Therefore, to meet any one of the tests, a broker-dealer must have met the test on average for a 12 month period. However, the Board will permit a newly registered broker-dealer to qualify as an exempted borrower if it meets one of the Board's tests after six months.[5]

The Board believes that broker-dealers with exempt borrowing status should reevaluate their status on an annual basis. If a broker-dealer determines that it is no longer an exempted borrower, it

[3] SEC Rule 17a–5(d): 17 CFR 240.17a–5(d).

[4] Section 3(a)(18) of the§'34 Act, 15 U.S.C. 78c(a)(18).

[5] *See* Section 220.3(j) of the revised Regulation T and § 221.3(e) of the revised Regulation U.

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should notify its lenders before obtaining additional credit. Once a broker-dealer ceases to be an exempted borrower, credit obtained in reliance on the exempted borrower exception cannot be rolled over or renewed and the lines of credit should be adjusted appropriately as positions are liquidated. If the borrowing broker-dealer maintains its positions, the lender can continue to maintain the credit extended on an exempt basis. Once a borrowing broker-dealer is no longer an exempted borrower any new securities transactions requiring financing must be effected in conformity with the provisions of the Board's margin regulations other than the exempted borrower exception.[6]

b. "Safe harbor" status of test: The term *exempted borrower* will be defined to "include" the three tests described above. Each of the three alternatives therefore will be a non-exclusive safe harbor. This will allow broker-dealers who meet any one of the three tests to borrow on an exempt basis, but will not preclude the possibility of demonstrating a substantial customer business in other ways.

c. Burden of proof for exempted borrower status: A commenter stated that a lender should be able to rely on a borrowing broker-dealer's representation of its exempted status "irrespective of what additional facts are known by the lender." Two other commenters recommended that lenders be able to use a "good faith" standard in accepting a borrowing broker-dealer's representation of its exempted status. The Board believes lenders should be required to apply a "good faith" standard in determining whether the Board's margin regulations apply to borrowings by specific broker-dealers. Under former Regulations G and U, "good faith" in accepting a representation required a lender to be "alert to the circumstances surrounding the credit, and if in possession of information that would cause a prudent person not to accept the notice or certification without inquiry, investigates and is satisfied that it is truthful."[7] The Board believes that in certain situations a lender may be able to determine whether a broker-dealer qualifies as an exempted borrower without requiring a statement from the borrower. Therefore, the Board is modifying the definition of *good faith* in § 221.2 of Regulation U (which will also cover lenders formerly subject to Regulation G) in a way that will allow lenders to use their judgment as to whether a statement is necessary. The Board is adopting the same definition of *good faith* in § 220.2 of Regulation T so that all lenders will be subject to a uniform standard.

4. Borrowing Exemption for Other Broker-Dealers

CBOE requested the creation of a borrowing exception in Regulations G and U for broker-dealers whose business consists of financing and carrying the accounts of registered market makers.[8] CBOE noted that while some broker-dealers that carry the accounts of market makers also engage in a general customer business and may qualify for the exempted borrower exception created under NSMIA, there are a few clearing firms virtually all of whose business consists of carrying the accounts of options market makers. CBOE explained that it has encouraged these firms to refrain from carrying the accounts of public customers so that such firms would not be subject to liquidation proceedings under SIPA, which CBOE believes would make the transfer of market maker accounts to other clearing firms more difficult. CBOE stated its belief that failure of these firms to obtain an exempt borrowing status under Regulations G and U will have negative consequences for the safety and liquidity of the options markets.

The Board is adopting an exception from certain of its margin rules for broker-dealers whose nonproprietary business is limited to transactions with market makers and specialists. This exemption will be found in § 221.5(c)(10) of Regulation U (which is being amended to cover all lenders other than brokers and dealers) and not in Regulation T. This means that broker-dealers who qualify for the exception will not be limited by the Board's margin regulations if they borrow from a lender other than another broker-dealer, but borrowings from broker-dealers will be subject to the provisions of Regulation T. CBOE did not request an exemption in Regulation T for loans to market maker clearing firms and the Board's authority to grant exemptions under Regulations G and U is greater than its ability to grant exemptions under Regulation T. NSMIA amended section 7(d) of the '34 Act (the section which applies to lenders other than broker-dealers and under which the Board has adopted Regulations G and U) to allow the Board to exempt such credit "as it may deem necessary or appropriate in the public interest or for the protection of investors." The Board believes that establishing a Regulation U borrowing exception for broker-dealers actively engaged in clearing and carrying the accounts of market makers is appropriate in the public interest by enhancing market liquidity and protecting that liquidity in times of market volatility.

B. Regulations G and U

1. Need for Separate Regulations

The Board noted last year that the current structure of its margin regulations is based in part on the requirements of recently repealed section 8(a) of the '34 Act. Section 8(a) mandated a distinction between bank and nonbank lenders with respect to loans to broker-dealers. In light of the repeal of section 8(a), the Board sought comment on whether it is still appropriate to distinguish between Regulation G and Regulation U lenders and whether the regulations should be combined. No commenters believed there is a need for differing substantive regulation of banks and Regulation G lenders. The Board is merging Regulation G into Regulation U. Except as otherwise noted, substantive provisions of Regulation G have been incorporated into Regulation U.

On a technical level, the title of Regulation U is being changed to reflect its coverage of persons other than banks, brokers and dealers. Entities that were known as "lenders" under Regulation G will be known as "nonbank lenders" under Regulation U and the term "lender" will be used in Regulation U to refer to banks and former Regulation G lenders collectively. Similar but not identical provisions, such as the definition of "affiliate" in § 221.2 and the requirements for obtaining a purpose statement in § 221.3(c), have been left with their differences intact. The Board is soliciting comment via an advance notice of proposed rulemaking published elsewhere in today's Federal Register to determine whether and how to harmonize further the treatment of bank and nonbank lenders. The Board is also amending its rules regarding delegation of authority to eliminate references to Regulation G.

2. Special Purpose Loans to Broker-Dealers

Regulation U has always included an exemption for loans to broker-dealers in

[6] *See* Section 220.3(j) of the revised Regulation T and § 221.3(e) of the revised Regulation U.

[7] This language was found in the definitional section of each regulation (§ 207.2 of Regulation G and § 221.2 of Regulation U).

[8] Although CBOE refers to these member firms as "market makers," the firms qualify as "specialists" under the '34 Act.

specific circumstances.[9] In response to the Board's request for appropriate amendments to Regulation U to reflect the broader exemption for broker-dealer borrowing contained in the NSMIA, two commenters stated their belief that the following special purpose loans to brokers and dealers found in § 221.5(c) of Regulation U no longer need to be listed separately: loans to specialists, OTC market makers, third market makers, block positioners, and odd-lot dealers; and distribution loans.[10] The Board is deleting these provisions as unnecessarily detailed in light of the NSMIA amendments to section 7 of the '34 Act and replacing them with a general exclusion for market makers, specialists and underwriters in §§ 221.5(c)(6) and 221.5(c)(7) of Regulation U based on the language of NSMIA. Lenders formerly subject to Regulation G will also be able to extend special-purpose loans to broker-dealers under all of the exemptions contained in § 221.5(c) of Regulation U. As proposed, the Board is adding the definition of *examining authority* currently found only in Regulation T to § 221.2 of Regulation U because the term appears in § 221.5(c)(9) of Regulation U.

3. Board Interpretations

Before its merger into Regulation U, Regulation G contained 14 Board interpretations codified as 12 CFR 207.101–207.114. Seven of these interpretations[11] were already codified in Regulations T or U as well and will be unaffected by the elimination of Regulation G. The interpretation concerning credit extended to purchase mutual shares before July 8, 1969, which has been codified at 12 CFR 207.107 (and 12 CFR 221.119), is being deleted as obsolete. The remaining six Regulation G interpretations are being moved to Regulation U.

The Board has reviewed the 25 interpretations in Regulation U (at 12 CFR 221.101–125) and decided to delete six of them. As noted in the previous paragraph, the interpretation at 12 CFR 221.119 is being deleted as obsolete. The same is true of the interpretation at 12 CFR 221.111, which deals with "retention requirements" eliminated by the Board the last time the margin regulations were comprehensively revised. The interpretations at 12 CFR 221.102 and 221.121 are being deleted because they have been superceded by NSMIA. Deletion of the interpretation at 12 CFR 221.123 (also codified in Regulation T at 12 CFR 220.126) is discussed below in the Regulation T section on the use of options in short sales and arbitrage transactions (*See* section II. B. 3). The interpretation at 12 CFR 221.124 ("Application of the single-credit rule to loan participations") is being deleted because the Board amended the single-credit rule (§ 221.3(d) of Regulation U) in 1996 to incorporate this interpretation. The six remaining Regulation G interpretations will replace the six Regulation U interpretations being deleted today.

C. Regulation T

1. Broker-Dealer Accounts

The former Regulation T required that all financial relations between a broker-dealer and its customer (which may include another broker-dealer) be recorded in one of the eight accounts described in the regulation. The Board requested comment on whether the NSMIA eliminated the need for the following Regulation T accounts that were generally limited to broker-dealers: omnibus account (former § 220.10), broker-dealer credit account (former § 220.11), and the market functions account (former § 220.12). Most commenters requested retention of the omnibus account, which allows financing of a broker-dealer's customers' positions, for broker-dealers who do not have a "substantial" customer business but nevertheless finance some customer transactions. Most commenters also requested retention of the broker-dealer credit account, which permits certain extensions of credit to SEC-registered broker-dealers and allows certain other transactions to be effected without regard to the "90-day freeze" provision contained in the cash account.[12] In support of their request to retain the broker-dealer credit account, commenters cited the provisions of the account that may be used by persons who are not SEC-registered broker-dealers (and therefore not affected by the NSMIA) and stated their belief that the Board should not eliminate the ability of these persons to avail themselves of the account. These provisions allow foreign broker-dealers to buy and sell securities on a delivery-versus-payment (DVP) basis[13] and allow the use of this account for "prime-broker" customers.[14] Most commenters recommended repeal of the market functions account, which permits good faith credit to be extended to broker-dealers who perform a market function such as acting as a specialist, as long as the Board indicates that its action is based on its belief that the NSMIA exemptions covers all transactions previously recorded in this account.

The Board is eliminating the market functions account because the transactions previously permitted therein have been exempted from Board regulation by the NSMIA, with one exception.[15] The Board is also deleting the definitions of *in or at the money, in the money, overlying option, permitted offset*, and *specialist joint account* from § 220.2 of Regulation T because the terms were used only in the market functions account. Consistent with its action regarding customer accounts,[16] the Board believes that additional flexibility for broker-dealers can be achieved by merging the omnibus account into the broker-dealer credit account. The different types of credit are described in separate paragraphs; the SEC and/or the SROs may require that broker-dealers keep separate records within this account, for example to segregate omnibus credit (for customers) from other types of (proprietary) broker-dealer credit. The provision allowing certain "prime broker" transactions to be effected in the broker-dealer credit account will be moved to the new good faith account to reflect the fact that these transactions are effected on behalf of non-broker-dealer customers. Former § 220.11(b), which defined the term *affiliated corporation*, is being moved to the definitional section of the regulation (§ 220.2).

A commenter recommended that the Board allow foreign broker-dealers to open omnibus accounts at U.S. broker-dealers. This practice was permitted under Regulation T until 1969, as long as the foreign broker-dealer certified that it made its customers margin their transactions in conformity with the requirements of Regulation T. The Board then amended Regulation T to require that the broker-dealer obtaining omnibus credit be registered with the SEC and therefore subject to the jurisdiction of the SEC and SROs to

[9] *See* Section 221.5(c) of Regulation U.

[10] These loans were described in paragraphs (c)(6), (7), (10), (11), (12) and (13) of former § 221.5 of Regulation U.

[11] The Regulation G citations for these interpretations were 12 CFR 207.102, 207.103, 207.106, 207.108, 207.110, 207.113, and 207.114.

[12] Section 220.8(c) of Regulation T.

[13] Former § 220.11(a)(1) of Regulation T.

[14] For a description of "prime-broker" arrangements, see SEC no-action letter of January 25, 1994, reprinted in *CCH Fed. Sec. L Rptr* ¶ 76,819.

[15] See 220.12(b)(2)(ii) of former Regulation T provided that the margin for the purchase or short sale of a security that does not qualify as a specialist or permitted offset position shall be the margin required by the Supplement. Purchases on credit and short sales of such securities by specialists will henceforth be required to be effected in the margin or good faith account.

[16] See the discussion in section II. A. 2. d of the Supplementary Information.

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ensure Regulation T compliance for customer margin transactions. The Board believes that it is extremely difficult to ensure that an unregulated entity complies with its regulations and does not believe it is appropriate to impose Regulation T on foreign broker-dealers' transactions with customers. Therefore, the Board is not amending the omnibus account at this time.

In response to the Board's request for comment on appropriate amendments to Regulation T to reflect the changes contained in the NSMIA, one commenter recommended incorporation of § 221.5 of Regulation U ("Special purpose loans to brokers and dealers") into Regulation T, so that broker-dealers may make loans to other broker-dealers on the same basis as other lenders. The Board is adding those portions of § 221.5 of Regulation U that are not already in Regulation T to the broker-dealer credit account. These provisions allow the following types of credit without regard to other Regulation T requirements: credit to finance the purchase or sale of securities for prompt delivery or to finance securities in transit, if the credit is to be repaid upon completion of the transaction, and intraday credit. The broker-dealer credit account is also being amended to allow its use for loans to exempted borrowers, market makers, specialists, and underwriters for those broker-dealers who wish to record such credit in a Regulation T account.

2. Borrowing and Lending of Securities

The Board has regulated the borrowing and lending of securities to prevent a customer from evading the margin requirements by recharacterizing a margin loan from the broker-dealer to the customer (which requires a deposit of 50 percent of the stock's value by the customer) as the lending of securities by the customer to the broker-dealer (in return for which the customer can receive 100 percent of the stock's value in cash from the broker-dealer). With the exception of U.S. government securities,[17] former Regulation T on its face applied to any loan of securities in which a creditor was either borrowing or lending. The Regulation T provision that covers borrowing and lending securities (formerly § 220.16; now § 220.10) has traditionally contained collateral requirements (the "collateral test") and limited the situations for which securities may be borrowed or lent (the "purpose test"). With the adoption of the good faith account, Regulation T restrictions on the borrowing and lending of securities will only apply to those securities not entitled to good faith loan value.

a. Collateral test: Regulation T has reflected industry practice by requiring 100 percent collateral against a borrowing of securities, with the collateral limited to cash and cash equivalents. Although the Board believes requiring 100 percent liquid collateral is consistent with prudent securities lending practices, it sought comment on whether the existing collateral requirements are necessary for Regulation T purposes and proposed three alternatives. Two of the alternatives would retain the 100 percent collateral requirement. Of those two alternatives, one would allow any security as collateral as long as it was valued at its regulatory loan value [18] and the other would allow any collateral without specifying limits as to how the collateral is to be valued. The third alternative would eliminate the collateral requirements in their entirety.

No commenter opposed an expansion of the types of collateral permitted for borrowing and lending securities. Two commenters supported allowing all securities at their regulatory loan value and three commenters supported allowing all collateral. Total elimination of collateral requirements in connection with the borrowing and lending of securities was explicitly supported by four commenters (including two who also supported one of the other alternatives) and specifically opposed by two commenters. One of the opposing commenters gave no reason for its opposition, while the other expressed dissatisfaction with the purpose test and suggested that the collateral test was necessary to make up this deficiency. Commenters supporting elimination of the collateral requirements stated that the purpose test adequately limits circumvention of the margin requirements by limiting the situations in which securities may be lent. The commenters stated that the current collateral requirement of 100 is at odds with the 50 percent requirement for margin loans on equity securities. Commenters also noted that the SEC's customer protection rule specifies acceptable collateral for securities lending transactions conducted by broker-dealers with customers. The Board notes that in addition to the SEC's customer protection rules and the reasons cited above, the SROs may choose to impose safety and soundness requirements on the borrowing and lending of securities by their member firms. The Board is eliminating the collateral requirements for borrowing and lending securities.

b. Purpose test: In addition to the collateral test, Regulation T also contains a "purpose test" generally limiting the borrowing or lending of securities by broker-dealers to situations involving short sales or "fails" to receive securities needed for delivery. Although the Board did not specifically propose to amend the purpose test, several commenters recommended modifications to the purpose test. These recommendations included: (1) Broadening the exception added last year for foreign securities to cover those that trade in the United States, (2) broadening the exception added last year to permit borrowing of securities before a short sale has occurred to cover fail transactions and to allow more time to borrow foreign securities, and (3) expanding the purpose test to cover dividend reinvestment plans.

(1) Foreign Securities Exception

Last year the Board created an exception to its general rule regarding the borrowing and lending of securities for certain foreign securities. Under former § 220.16(b) of Regulation T, foreign securities that are not publicly traded in the United States could be lent to foreign persons without regard to the purpose test and on any collateral.[19] Although several commenters responding to the Board's proposal of this exception in 1995 objected to the fact that it did not cover foreign securities listed on a U.S. securities exchange or the Nasdaq Stock Market, other commenters, including U.S. securities exchanges, stressed the importance of equal treatment in this area for all securities that are publicly traded in the United States. One commenter responding to last year's request for public comment repeated its earlier comment requesting that the Board eliminate this limitation on the foreign security exception and added an alternative request that the Board narrow this limitation to U.S. traded foreign securities being lent for short sales effected in the United States. The commenter pointed out that (1) the foreign securities exception only applies to securities lent to foreign persons and therefore "equal treatment" for all U.S. traded securities is already assured for securities lent to U.S. persons; (2) denying the foreign securities exception to U.S. traded foreign securities could create a disincentive to foreign companies considering a dual listing arrangement in the United States; and (3) U.S. broker-dealers are disadvantaged vis-a-vis foreign broker-dealers if their ability to lend foreign securities is curtailed once those securities are listed for trading in the United States. In light of these considerations, the Board is amending the foreign securities exception from the purpose test to cover all foreign securities without regard to whether the securities are traded in the United States.

(2) "Pre-borrowing"

Last year the Board also amended Regulation T to allow the borrowing of a security up to one standard settlement cycle [20] in advance of the trade date of a short sale. Two commenters requested that the Board allow creditors to borrow securities three days before the trade date of a transaction they reasonably anticipate will result in a fail to deliver. The Board sees no reason to maintain a different time frame for borrowings to accommodate fails versus short sales, as long as the fail is not intended to evade the requirements of Regulation T. The last sentence of § 220.10(a) of Regulation T (former § 220.16(a)) is therefore being amended to cover fails as well as short sales.

Three commenters also requested that the Board allow creditors to borrow foreign securities with extended settlement periods (i.e., more than three business days) up to one foreign settlement period in advance of the trade date of a short sale or fail to deliver transaction. The Board is not adopting such an amendment. The three day period adopted by the Board last year was an attempt to balance the need to complete short sales and fail transactions while guarding against the potential for manipulative transactions such as squeezes. The Board does not believe there is a compelling reason to treat foreign securities differently.

(3) Dividend Reinvestment and Purchase Plans

Last year, the Board declined to adopt a suggestion by commenters that the purpose test for borrowing and lending securities be expanded to allow creditors to borrow securities in order to take advantage of dividend reinvestment programs. Three commenters in this docket repeated the suggestion. The Board continues to believe that allowing a broker-dealer to borrow customer securities to take advantage of a dividend reinvestment and purchase plan could allow customers to obtain greater credit than could be obtained via a conventional margin loan and unlike borrowing to cover a short sale or fail is not necessary for efficient functioning and clearing of transactions in the securities market. Therefore, the Board is not amending Regulation T to accommodate dividend reinvestment and purchase plans.

c. Exempted borrowers: In its request for comment on appropriate amendments to implement the changes contained in the NSMIA, the Board stated that it appeared that Regulation T's requirements for borrowing and lending securities no longer applied to the borrowing and lending of securities between two exempted borrowers. The Board requested comment on how to amend the rules regarding borrowing and lending of securities to reflect the NSMIA. Although the SROs that commented responded by stating their belief that borrowing and lending of securities by brokers and dealers should still be subject to a "purpose test," all other responsive commenters supported the Board's view that Regulation T no longer appears to apply to securities lending transactions between exempt broker-dealers. Three commenters suggested that Regulation T also should not apply when only one party to the securities lending transaction is an exempt broker-dealer; however, the commenters were not in agreement as to how this principal should be applied. Following the Board's stated logic that Regulation T has covered the borrowing and lending of securities to prevent a customer from lending securities against 100 percent cash in order to evade the 50 percent maximum otherwise allowed, the Board is amending Regulation T by adding a new paragraph (c) to the section entitled "Borrowing and lending securities" (§ 220.10) to exclude a broker-dealer that is an exempted borrower from the restrictions of Regulation T if it is lending securities, but not if it is borrowing securities. In order to prevent circumvention of the Board's margin rules for nonexempted equity securities, a broker-dealer that is an exempted borrower and is therefore entitled to lend securities without regard to Regulation T will not be permitted to borrow securities from a customer or a broker-dealer that is not an exempted borrower in order to relend them unless the relending is for a permitted purpose such as a short sale or fail transaction.

II. Regulation T

A. Debt Securities and Portfolio Margining

1. Loan Value

Debt securities listed on a national securities exchange have always had loan value under Regulation T.[21] Beginning in 1978, the Board created the concept of an "OTC (over-the-counter) margin bond" to allow loan value for unlisted debt securities that meet Board established criteria. These criteria have been expanded over the years. Nevertheless, not all OTC debt securities qualify as "OTC margin bonds." Debt securities that are neither exchange-listed nor OTC margin bonds have no loan value in a margin account.

a. Good faith loan value for all non-equity securities: Last year, the Board amended Regulation T to include all investment-grade debt securities under the definition of *OTC margin bond* and therefore ensured good faith loan value for these securities.[22] At the same time, the Board proposed to grant good faith loan value to all non-equity securities.[23] The Board noted that banks and other lenders are not subject to the Board's margin requirements when extending credit on non-equity securities.

The Board's proposal was supported by all responsive commenters except for one commenter. This commenter argued that broker-dealers have a "salesman's stake" not shared by non-broker-dealer lenders and this difference justifies the continuation of denying loan value to certain non-investment-grade debt securities. On the other hand, another commenter stated that there is no policy justification for distinguishing between broker-dealers and other U.S. lenders and several commenters noted that allowing good faith loan value for non-equity securities would increase the

[17] Borrowing and lending of government (exempted) securities has been permitted in the government securities account without regard to the borrowing and lending of securities provision of Regulation T.

[18] The regulatory loan value of a security is the difference between 100 percent and the margin required by the Supplement to Regulation T (formerly § 220.18, now § 220.12).

[19] When the foreign securities exception was adopted, it permitted the use of any legal collateral, but required that the collateral's value be at all times at least equal to the value of the securities being lent. The requirement for 100 percent collateral against a loan of these securities is being eliminated in conjunction with the Board's elimination of the collateral test for all securities lending transactions.

[20] The phrase "standard settlement cycle" refers to SEC Rule 15c6–1 (17 CFR 240.17c6–1) which currently sets this period at three business days.

[21] From 1934 until 1968, exchange-listed debt securities were subject to the same margin requirements as exchange-listed equity securities. Since 1968, marginable debt securities have been subject to a *good faith margin* requirement.

[22] Many investment-grade debt securities were already covered under the existing definition of "OTC margin bond." However, some classes of debt securities, such as domestic debt securities exempt from SEC registration, were unable to qualify under the existing definition.

[23] Formerly, debt securities met the definition of *margin security* and were entitled to good faith loan value only if they were registered on a national securities exchange, rated investment-grade, or otherwise qualified as *OTC margin bonds*.

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ability of U.S. broker-dealers to compete with other domestic and foreign lenders.

The Board is amending Regulation T as proposed to permit broker-dealers to extend good faith credit against all non-equity securities. Broker-dealers should be no less competent to determine the loan value of non-investment-grade debt securities than a bank or other lender would be. In addition, self regulatory organizations (SROs) such as the New York Stock Exchange will still be able to set margin requirements for non-equity security transactions effected by their member brokerage firms. To implement this change, the Board is amending § 220.2 of Regulation T by deleting the definition of *OTC margin bond*, replacing paragraph (3) of the definition of *margin security* (currently "any OTC margin bond") with "any non-equity security" and changing the Supplement [24] that provides good faith loan value for these securities to refer to any "non-equity security" where the regulation currently specifies "registered nonconvertible debt security or OTC margin bond." The Board is also adding the word "equity" to paragraph (e) of the Supplement to make clear that the only securities that have no loan value under Regulation T are nonmargin nonexempted equity securities.

b. "Equity-linked" and preferred securities: The Board proposed to define *non-equity security* as "a security that is not an equity security." [25] Under the proposed definition, debt securities that are equity-linked securities still would be afforded good faith loan value. The Board also sought comment on whether it should modify this proposed definition to exclude "equity-linked securities," and if so, what securities should be excluded. Modification of the proposed definition of *non-equity security* to exclude "equity-linked" securities would result in their being treated as equity securities and therefore subject to either a 50 percent or 100 percent margin requirement.

Comment on the appropriate treatment of equity-linked securities was mixed. Several commenters stated that equity-linked securities trade like equity securities and are often priced in reliance on equity securities and therefore should be subject to the same margin requirements as equity securities.[26] Other commenters stated that it was unnecessary for the Board to exclude equity-linked securities from its proposed definition of *non-equity security* in light of the SEC's authority to elaborate on the definition of "equity security" under the '34 Act to address questions that may arise regarding novel or hybrid products whose status might otherwise be unclear. Staff of the SEC commented that equity-linked securities, because they present many of the same type of risks as equity securities, should be treated as equity securities for purposes of the Board's margin regulations. SEC staff further commented that they view a equity-linked security as one under which any part of the issuer's obligations is contingent upon, or requires the delivery on an optional or forward basis of, an equity security or group or index of equity securities. The Board is adopting the definition of the term *non-equity security* that was proposed, with the result that equity-linked securities which do not meet the '34 Act definition of *equity security* will be entitled to good faith loan value. The Board will defer to the SEC on the appropriate definition of *equity security*.

One commenter suggested that preferred stock be margined at a good faith level because its dividend rate is generally tied to current interest rates. Another commenter sought confirmation that the term *non-equity security* would include all mortgage and other asset-backed securities, including debt instruments, trust certificates, or partnership/participation interests. As noted above, the Board is deferring to the SEC on the exact parameters of the definition of *equity security*.

2. Good Faith Account

a. Appropriateness: In addition to proposing good faith loan value for all non-equity securities, the Board proposed creating an account separate from the margin account described in § 220.4 of Regulation T to effect transactions involving these securities. The new account would allow purchases and sales of non-equity securities on a credit or cash basis, repurchase and reverse repurchase agreements on non-equity securities and the purchase or sale of options on non-equity securities. All commenters supporting good faith loan value for all debt securities supported creation of a new account. The Board is adopting its proposal for a non-equity account and, as discussed below, is merging it with the government securities account and other accounts and naming it the "good faith account." The good faith account replaces the government securities account formerly found in § 220.6 of Regulation T.

b. Prohibition on transactions causing a deficit: The Board has generally viewed section 7 of the '34 Act as prohibiting broker-dealers from extending purpose credit [27] that is either unsecured or secured by collateral other than securities. In proposing to create a new non-equity account, the Board included a prohibition on transactions that would cause the account to liquidate to a deficit (i.e., cause the market value of the collateral to fall below the customer's debit balance). This proposed provision was included to prevent broker-dealers from extending unsecured purpose credit, which might be an evasion of the good faith margin requirement. Commenters generally opposed the proposal to prohibit transactions that would cause the account to liquidate to a deficit, stating that the restriction would seriously undermine the usefulness of the proposed account for transactions in fixed-income securities because it would present substantial uncertainty with respect to bilateral extensions of credit such as reverse repurchase agreements, which may liquidate to a deficit, and would continue to place broker-dealers at a disadvantage vis-a-vis banks and other lenders.

Several commenters argued that section 7(c)(1)(B)(ii) of the '34 Act does not prohibit unsecured credit if the credit is either "not for the purpose of purchasing or carrying securities" or not extended for the purpose of "evading or circumventing" the Board's rules regarding credit secured by securities. This reading of the statute allows broker-dealers to extend unsecured purpose credit if the Board concludes that such credit is not for the purpose of evading or circumventing its rules regarding secured credit. The Board believes that this interpretation is consistent with the statute and therefore is eliminating the proposed "liquidate to a deficit" prohibition for the good faith account. The Board believes that permitting transactions in a non-equity securities account to liquidate to a deficit is not necessarily an evasion or circumvention of the rules permitting

[24] The Supplement, which contains the margin requirements for various securities transactions, is the last section of each of the Board's margin regulations. The Supplement was formerly § 220.18; the Supplement under the revised Regulation T adopted today is § 220.12.

[25] The term *equity security* is defined in section 3(a)(11) of the Securities Exchange Act of 1934 (15 U.S.C. 78(c)(a)(11)).

[26] Some of these commenters included convertible debt securities in their discussion of the types of "equity-linked" securities they believe should be subject to equity margin requirements. The Board has always treated convertible debt securities as equity securities because section 3(a)(11) of the Securities Exchange Act of 1934 defines "equity security" to include a security convertible into an equity security.

[27] "Purpose credit" is defined as credit for the purpose of buying, carrying, or trading in securities.

good faith loan credit for these securities as a lender extending good faith credit may consider factors other than the immediate liquidation value of the collateral.

c. Money market and other financial instruments: In commenting on the Board's proposal to grant good faith loan value to non-equity securities, many commenters sought good faith loan value for money market and other financial instruments such as bankers acceptances, certificates of deposit, and commercial paper when used in a margin account.[28] In effect, commenters argued that broker-dealers should be able to consider the collateral value of these financial instruments in extending good faith credit on non-equity securities. The Board believes section 7 of the '34 Act permits the extension of unsecured purpose credit if the Board concludes that such credit is not for the purpose of evading or circumventing its rules regarding credit collateralized by securities. This reasoning also applies to purpose credit secured by collateral that may not meet the definition of a "security" in the '34 Act. The Board believes that allowing good faith loan value for all assets other than equity securities in the new good faith account does not evade or circumvent its rules requiring good faith margin for transactions involving non-equity securities. The Board therefore is expressly allowing the inclusion of such assets in the good faith account described below.

d. Merging non-equity account into other accounts: The Board sought comment on merging the non-equity account into the government securities account (former § 220.6) and/or the nonsecurities credit account (former § 220.9). Several commenters supported merging the proposed non-equity account into the government securities account. One commenter opposed merging the new account into any existing account because it believes transactions in the proposed non-equity account should be subject to a requirement for timely payment, a requirement not imposed for the other two accounts suggested by the Board. A second commenter opposed allowing purpose and non-purpose credit in the same account, although another commenter noted that purpose and nonpurpose credit could be segregated within the account.

In order to provide maximum flexibility, the Board is merging all three accounts for purposes of Regulation T. The new account will be called the "good faith account" and will be described in § 220.6 of the revised Regulation T. Creditors may keep separate records for each type of credit extended within the account. In addition, the Board is amending Regulation T to allow other customer transactions for which the Board does not specify margin or payment requirements to be effected in the good faith account. These include all transactions currently effected in the arbitrage account [29] and those transactions effected in the broker-dealer credit account pursuant to a "prime brokerage" arrangement.[30] This merger of accounts will leave most customers with three possible accounts: a cash account, a margin account (with the possibility of a linked special memorandum account) and a good faith account.[31] The good faith account could be used for transactions involving securities entitled to good faith margin (including the borrowing and lending thereof), as well as nonpurpose credit, bona fide arbitrage,[32] and prime broker transactions. Rules of the SROs and individual brokerage firms may require separation of specific types of credit within the new account for their own administrative or regulatory purposes, but this would not be required by Regulation T. All credit extended by a broker-dealer to a non-broker-dealer customer that is either subject to good faith margin or not specifically subject to any Regulation T margin requirement could be recorded in the new account. Transactions formerly effected in the margin account could continue to be effected there, and the restrictions contained in the margin account, such as the requirement for timely deposit of payment or margin, would continue to apply to transactions conducted in that account.

3. Portfolio Margining

Regulation T prescribes margin requirements for each security held in a margin account. Certain positions involving more than one security, such as a long position in a convertible bond coupled with a short position in the underlying security, are defined as a single position and given lower margin requirements than would be required individually. Any combination of securities not specifically identified in Regulation T must be margined without regard to any possible offsetting positions. The Board noted last year that commenters have requested greater flexibility to engage in cross-margining (using financial futures to offset securities margin requirements) and more broadly "portfolio" or "risk-based" margining of customer assets. The Board identified several provisions in Regulation T that are impediments to the possible adoption of a portfolio margining system. These include: the definition of *good faith margin*, the requirement that items in one account not be considered in meeting requirements in another account (see § 220.3(b), "Separation of accounts"), and the special memorandum account (SMA).

a. Portfolio margining as an alternative to Regulation T: The Board sought comment on any implementation problems that might arise with a partial or complete move to portfolio margining, including the need for delaying the effective date of any final rule in order to allow the SROs time to amend their rules. A commenter suggested an amendment to Regulation T that would permit a creditor, in lieu of compliance with Regulation T, to comply with any portfolio margining system permitted by an SRO under SEC-approved rules. This would not require a delay between Board action and SRO implementation. The Board is amending the scope provision of Regulation T [33] to allow portfolio margining to be developed by the industry and approved by the SEC as an alternative to

[28] Money market and other financial instruments that may not meet the definition of "security" in the '34 Act are currently valued at good faith when used as collateral for nonpurpose credit in the nonsecurities credit account. These instruments currently have no loan value when used in a margin account.

[29] The arbitrage account was formerly found in § 220.7 of Regulation T.

[30] This provision was formerly found in § 220.11(a)(5) of Regulation T. "Prime brokerage" is an arrangement involving a customer and at least two broker-dealers, one of whom is the "prime broker." Transactions on behalf of the customer are effected by the non-prime broker-dealer (known as an "executing broker") and immediately sent to the prime broker. The prime broker enforces Regulation T vis-a-vis the customer for all transactions, wherever executed. The broker-dealer credit account is used by the executing broker to record the customers transactions because recordkeeping requirements are less onerous than if the transaction were recorded in a cash or margin account. The new good faith account will eliminate the need to record these customer transactions in the broker-dealer credit account.

[31] Customers who are broker-dealers will be able to have a fourth possible account if they take advantage of the broker-dealer credit account.

[32] The Board is not modifying the scope of transactions that may be effected as "bona fide arbitrage." One commenter suggested permitting margin-free arbitrage that is not based on locking in a profit from a current disparity in the prices of the two securities, and lesser or no margin on transactions that would qualify as arbitrage if they had been effected simultaneously. The Board is not adopting these two suggestions, as they do not comport with the underlying policy of the arbitrage account of allowing special credit for transactions that perform a market function by eliminating real-time disparities in pricing between identical or closely related securities.

[33] Section 220.1(b) of Regulation T.

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compliance with Regulation T by broker-dealers.

b. Definition of good faith margin: The Board stated that a revised definition of *good faith margin* [34] is a necessary prerequisite to eventual implementation of a portfolio margining system. The Board requested comment on a proposed amendment that would modify the definition of *good faith margin* by deleting references to a specific security and eliminating the requirement that the credit be extended without regard to the customer's other assets.[35] This change would facilitate portfolio margining on good faith basis. Almost all of the responsive commenters supported this proposal. One commenter suggested that the Board determine what type of portfolio margining systems should be adopted before modifying the definition of good faith. The Board believes that broker-dealers will be afforded greater flexibility by changing the definition of good faith at this time while permitting portfolio margining to be developed and implemented at a later date when agreed upon by the SEC and SROs. The Board therefore is adopting a definition of "*good faith* with respect to margin" in § 220.2 of Regulation T that substantially follows the proposal.

The Board also sought comment on whether an amended definition of good faith should be limited to the proposed non-equity account or made applicable for all accounts. All of the commenters expressing an opinion supported modifying the definition of good faith for all accounts. The new definition of "*good faith* with respect to margin" in § 220.2 of Regulation T will cover transactions recorded in the good faith account. The Board is retaining the requirements of the former definition of *good faith margin* for transactions recorded in the margin account by adding a new paragraph, "sound credit judgment" (§ 220.4(b)(8)), to the provisions concerning the margin account. Allowing a broker-dealer to determine margin requirements by taking into account the customer's other unrelated assets or securities positions is inconsistent with limiting the loan value of equity securities to 50 percent of its current market value. Therefore, securities entitled to "good faith" margin treatment, if used in a margin account, must be valued without regard to the customer's other assets and securities positions held in connection with unrelated transactions.

c. Separation of accounts: Section 220.3(b) of Regulation T, "Separation of accounts," generally provides that requirements for an account may not be met by considering items in any other account.[36] Consistent with its action last year to allow financial futures to serve in lieu of margin for securities options pursuant to SRO rules, the Board proposed to modify the separation of accounts provision to allow commodities and foreign exchange positions in the nonsecurities credit account to be considered in calculating margin for any securities transaction in the proposed good faith account for non-equity securities transactions or the margin account for any securities transaction. Responsive commenters supported the Board's proposal. The Board is adopting the amendment to § 220.3(b) of Regulation T as proposed.

The Board also invited comment on whether it should modify further the separation of accounts provision in § 220.3(b) of Regulation T to facilitate portfolio margining. Several commenters pointed out that the separation of accounts provision will have to be relaxed if portfolio margining is made part of Regulation T. One commenter supported complete elimination of the separation of accounts provision, while two other commenters did not believe broker-dealers should be required to link accounts, but should be permitted to do so if they wish. The Board is not taking any additional action with respect to § 220.3(b) of Regulation T at this time, as the development of portfolio margining systems can be accommodated as an alternative to compliance with the account-based system contained within Regulation T, as is provided in § 220.1(b)(3)(i) of the revised regulation. Further, the Board notes that the reduction in the number of customer accounts resulting from combining the proposed good faith account with the arbitrage, government securities, nonsecurities credit and prime brokerage portion of the broker-dealer credit account will result in fewer situations in which the separation of accounts provision of Regulation T will apply.

d. Retention of the special memorandum account: Section 220.5 of Regulation T provides that a broker-dealer may maintain a special memorandum account (SMA) for a customer in conjunction with the customer's margin account and use the SMA to hold customer moneys not required to be maintained in the margin account. The Board sought comment on eliminating the SMA in conjunction with adoption of a portfolio margining system. Several commenters expressed support for retaining the SMA and one commenter noted that the SMA could be recreated by use of the cash account, which it believes would be less efficient. This commenter also pointed out that the concept of the SMA would not be necessary under a portfolio margining system because initial and maintenance margin requirements would be the same. Another commenter wanted broker-dealers to be able to establish multiple margin accounts for the same person in cases other than those identified in Regulation T [37] and operate separate SMAs for each account.

The Board is not making any changes to the SMA at this time. The SMA will continue to be available for use in conjunction with a margin account, but will not be available for use in conjunction with a good faith account. The concept of locking in "buying power" from the appreciated value of securities held in an account or monies not required by Regulation T is inconsistent with the revised definition of "*good faith* with respect to margin" which is based on the creditor's judgment of the customer's creditworthiness and collateral at a given time. The issue of using an SMA in connection with adoption of portfolio margining systems may be addressed by the SEC, SROs and securities industry.

B. Equity Securities and Options

1. Domestic Stocks

Prior to the adoption of today's amendments, the following United States traded stocks [38] were subject to the Board's 50 percent margin requirement: [39] (1) Stocks traded on a national securities exchange, (2) stocks in the National Market tier of the Nasdaq Stock Market ("NMS" securities), and (3) stocks in the Small Capitalization ("SmallCap" securities) tier of the Nasdaq Stock Market that are identified by the Board as "OTC margin stocks." These stocks were subject to the same margin requirements regardless of whether the lender is a broker-dealer, bank, or other lender.[40]

In its request for comment issued last year, the Board noted that although the definition and treatment of domestic margin stocks is currently the same in Regulations G, T and U, nonmargin stocks are treated differently at broker-dealers (where they have no loan value) than at banks and other lenders (where the Board's margin rules do not limit their value). The Board sought comment on the possibility of expanding the types of securities with loan value at broker-dealers by amending the definition of *margin security* in § 220.2 of Regulation T to cover all domestic equity securities that have a "ready market" for purposes of the SEC's net capital rule.[41] This would cover all Nasdaq SmallCap stocks [42] and thousands of additional over-the-counter ("OTC") stocks not traded on Nasdaq. In light of the disparate treatment of nonmargin stock at broker-dealers versus other lenders, the Board also sought comment on the appropriate definition of *margin stock* under Regulations G and U and on possible solutions to the current structure of its margin regulations that results in an increase in burden for lenders other than broker-dealers whenever burden is reduced for broker-dealers. The Board suggested its regulations might be amended to cover more securities for broker-dealers and fewer securities for banks and other lenders.

The proposal to make all domestic "ready market" stocks marginable under Regulation T was supported by four commenters and opposed by four commenters, while another commenter stated its belief that further clarification is needed before such an amendment could be adopted. Three commenters suggested expanding the definition of *OTC margin stock* at least to cover all stocks listed on the Nasdaq Stock Market.

Regulation T has always included all securities (other than options) registered on any national securities exchange as margin securities.[43] In allowing loan value for certain over-the-counter securities, the Board has attempted through its criteria to ensure similar levels of liquidity and transparency.[44] The NASD has recently raised listing requirements for both the National Market and SmallCap tiers of the Nasdaq Stock Market.[45] The minimum standards for listing on Nasdaq (i.e., the SmallCap tier) generally equal or exceed those of the American, Boston, Chicago, Pacific, and Philadelphia Stock Exchanges. The Board believes that Nasdaq SmallCap issues, which meet or exceed many national securities exchange requirements, should not be denied margin status solely because they are not traded on an "exchange." Therefore the Board is including all Nasdaq listed issues in its definition of margin security.[46] The Board's quarterly OTC List will no longer be necessary for broker-dealers because the Board will no longer choose which Nasdaq stocks are marginable, but will instead rely on Nasdaq listing standards to the same extent it relies on the listing standards of U.S. securities exchanges.

SEC staff have asked for a delay in the effective date of the amendment giving 50 percent loan value to all Nasdaq securities to address possible sales practice issues. The Board is delaying the effectiveness of this provision until January 1, 1999 and will cease publication of its quarterly OTC List for U.S. traded securities after publication of the November 1998 list.[47] The Board may revisit the issue of allowing credit on other equity securities at a later date.

2. Foreign Stocks

The Board has been identifying those foreign equity securities that are eligible for margin at broker-dealers since 1990 by publishing a *List of Foreign Margin Stocks* ("Foreign List") on a quarterly basis. As in the case of OTC margin stocks, the Board has based its decisions on criteria aimed at ensuring liquidity and price transparency for all margin securities. Last year, the Board amended its criteria for foreign margin stocks to encompass foreign stocks deemed to have a "ready market" under the SEC's net capital rule.[48] This action allowed the inclusion of hundreds of additional foreign stocks on the Foreign List, based on a "no action" position from the SEC that effectively treats all stocks on the Financial Times/Standard & Poor's World Actuaries Indices ("FT/S&P Indices") as having a "ready market" for capital purposes.[49] Although there was considerable overlap between stocks on the FT/S&P Indices and the Board's Foreign List, there were also a significant number of foreign stocks that appeared on the Foreign List but not the FT/S&P Indices. The Board sought comment on whether it should phase

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[34] Margin is the amount of equity a customer must have against a given position and the complement of the security's loan value. A margin requirement of 60 percent for a security is the same as assigning it a loan value of 40 percent. In determining *good faith margin*, a broker-dealer is assigning a "good faith" loan value to a specific non-equity security.

[35] The Board proposed to modify the current definition to read as follows: "*good faith margin* means the amount of margin which a creditor would require in exercising sound credit judgment."

[36] An exception is provided for maintaining a special memorandum account (SMA) with a margin account.

[37] The Board allows multiple margin accounts for a single customer under conditions found in § 220.4(a)(2) of Regulation T. These margin accounts may be operated with separate SMAs.

[38] Stocks that are not traded in the United States are subject to Regulation T (although they are not covered by Regulations G and U) and their margin status is discussed in section II.B.2 of the Supplementary Information.

[39] Although section 7 of the '34 Act instructs the Board to limit the amount of credit that can be extended against nonexempted securities, it does not require the Board to make individualized determinations for every security.

Section 7 originally mandated that the Board prescribe rules with respect to the amount of credit that may be extended on "any security (other than an exempted security) registered on a national securities exchange." The Board originally subjected all securities registered on a national securities exchange to the same margin requirement. It later established different margin requirements for convertible and nonconvertible debt securities, but at no time denied loan value (i.e., required 100 percent margin) to exchange-listed securities (with the exception of options).

In 1968, Congress amended section 7 of the '34 Act to delete the reference to exchange listed securities so that the Board is now instructed to prescribe rules with respect to the amount of credit that may be extended on "any security (other than an exempted security)." The Board chose to implement this authority to establish margin requirements for securities not traded on a national securities exchange by subjecting every over-the-counter stock to a set of Board-established criteria and publishing a list of those OTC securities which meet these criteria. However, in 1983 the Board deferred to the listing requirements of Nasdaq's National Market tier as an additional method of qualifying as a *margin security*. Thereafter, domestic stocks that were not listed on a national securities exchange qualified for margin treatment either by being listed on Nasdaq's National Market tier or by appearing on the Board's List of Marginable OTC Stocks after meeting the Board's criteria formerly found in § 220.17 of Regulation T.

[40] Lenders other than broker-dealers and banks are responsible for applying Federal Reserve margin requirements only after they have extended margin stock secured credit in an amount that surpasses one of two dollar thresholds: $200,000 in credit extended in one calendar quarter or $500,000 in credit outstanding at any time.

[41] 17 CFR 240.15c3–1, "Net capital requirements for brokers or dealers."

[42] The SmallCap tier of the Nasdaq Stock Market contains over 1800 stocks, of which approximately 442 are currently marginable at broker-dealers.

[43] Although the term "national securities exchange" is not defined in the Board's margin regulations or section 3(a) of the '34 Act (whence terms are incorporated by reference into the Board's margin regulations), the Board has always understood the term to mean a securities exchange registered with the SEC under section 6 of the '34 Act ("National securities exchanges," 15 U.S.C. 78f). In a separate document published elsewhere in today's **Federal Register**, the Board is requesting comment on whether it should propose to incorporate this definition into its margin regulations.

[44] The Board definition of *OTC margin stock* in the second (definitional) section of Regulations G, T and U referred to stock "that the Board has determined has the degree of national investor interest, the depth and breadth of market, the availability of information respecting the security and its issuer, and the character and permanence of the issuer to warrant being treated like an equity security traded on a national securities exchange."

[45] SEC approval was received on August 22, 1997.

[46] The definition of *margin security* formerly included "any OTC security designated as qualified for trading in the national market system under a designation plan approved by the Securities and Exchange Commission (NMS security)" as well as "any OTC margin stock." The former referred to Nasdaq listed stocks trading in the National Market tier, while the latter referred to those Nasdaq listed stocks trading in the SmallCap tier that the Board identified on a quarterly basis as meeting the requirements found in § 207.6 of Regulation G, § 220.17 of Regulation T, and § 221.7 of Regulation U. These two paragraphs have been replaced with a reference to "any security listed on the Nasdaq Stock Market."

[47] For a discussion of the effect of the elimination of the OTC List for lenders other than broker-dealers, see section III. A. 1. In the Supplementary Information.

[48] 17 CFR 240.15c3–1.

[49] *See*, 58 *FR* 44310; August 20, 1993.

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out its original criteria and Foreign List and rely exclusively on the SEC's "ready market" test.

Most commenters opposed the idea of phasing out the Board's original eligibility requirements for foreign margin stocks in favor of reliance on the FT/S&P Indices or the SEC's "ready market" concept because they did not want to eliminate the marginability of stocks that appear on the Board's Foreign List but that may not meet the other tests. The Board therefore is retaining its Foreign List to identify those foreign stocks that have been found to meet the Board's original eligibility and continued listing requirements and amending the definition of *foreign margin stock* in § 220.2 of Regulation T to include both securities on the Board's Foreign List and those deemed to have a "ready market" for capital purposes, as determined by the SEC. This will allow a stock appearing on the FT/S&P Indices to qualify as a *margin security* without the need to be included on the Board's Foreign List, a request made by several commenters. Several other commenters also requested the ability to have broker-dealers make their own determination that a specific foreign stock has a "ready market" and should therefore be a margin security. The Board views the process of increasing the coverage of its definition of *margin security* as an incremental one and believes it is appropriate at this time to limit the margin status of foreign stocks to those that either meet the Board's original criteria for foreign margin stock and therefore appear on the Board's Foreign List or are deemed by the SEC to have a "ready market" for purposes of their net capital rule.[50]

3. Options: Short Sales and Arbitrage Transactions

When options first began trading on a national securities exchange in 1973, the Board issued an interpretation concluding that options may not be considered securities "exchangeable or convertible into other securities, within 90 calendar days, without restriction other than the payment of money."[51] The quoted language appears in the bona fide arbitrage provision of the good faith account (§ 220.6(b) of Regulation T, formerly the arbitrage account in § 220.7) and in the Supplement (§ 220.12 of Regulation T, formerly § 220.18) under the margin required for short sales. The effect of the interpretation was to preclude the possibility of effecting "bona fide arbitrage" (which requires no margin under Regulation T) between options and their underlying securities and to preclude the use of an option in lieu of the 50 percent margin required for short sales in addition to the short sale proceeds. Last year, the Board proposed to rescind the 1973 interpretation. A majority of commenters supported this proposal, although the Treasury Department commented that this may have merit for certain options but is premature until an approach is more fully developed.

The Board is rescinding its interpretation that options are not convertible securities and amending the Supplement of Regulation T to allow a listed call option to serve as partial margin for short sales of the underlying security. To ensure that a call option adequately covers a customer's obligation in a short sale, the Supplement of Regulation T requires that a call option serving in lieu of part of the required margin is an American style option[52] issued by a registered clearing corporation and traded on a national securities exchange with an exercise (strike) price that is not greater than the price at which the underlying security was sold short. This will ensure that the short sale proceeds and option can be used to cover the short position in the underlying security if necessary. In addition, rescission of the Board interpretation will allow "bona fide" arbitrage between options and their underlying securities to be effected without further regulatory changes in the good faith account on the same basis as other convertible securities such as convertible bonds.

In response to the Board's request for comment on using long calls to offset some of the required margin for a short sale, several commenters also suggested that the Board should not require margin for the long purchase of a security if the customer has a long put on that security. The Board believes the use of a put option in lieu of margin for the purchase of a security may be appropriate in the context of a future portfolio margining system, which is permitted as an alternative to Regulation T.[53]

When the Board adopted amendments to Regulation T in 1996, it made several provisions of the regulation concerning options effective only until June 1, 1997.[54] These provisions have been replaced with SRO rules and the Board is deleting the provisions from the revised Regulation T.

C. Miscellaneous Issues

1. Foreign Issues

a. Credit by foreign branches of U.S. broker-dealers: The Board proposed to amend Regulation T to exempt credit extended by foreign branches of U.S. broker-dealers if the credit is extended to foreign persons against foreign securities. This proposal was supported by all responsive commenters, although one commenter expressed concern about foreign securities whose principal trading market is in the United States and another commenter suggested exempting all credit extended by U.S. broker-dealers outside the United States. The Board is adopting its proposal and amending the scope section of Regulation T to exclude financial relations between a foreign branch of a U.S. broker-dealer and a foreign person involving foreign securities.[55] This will remove restrictions from foreign branches of U.S. broker-dealers that are not imposed on foreign branches of U.S. banks or foreign affiliates of U.S. lenders.

b. Foreign currency: The Board is moving former § 220.4(b)(8) of Regulation T, which permits a creditor to extend credit in a margin account denominated in any freely convertible foreign currency, to the general provisions section of the regulation (specifically, § 220.3(i)). This will make clear that creditors may also extend credit denominated in any freely convertible currency in the good faith account and the broker-dealer credit account.

2. Technical Amendments

There were no negative comments on the first two technical amendments described below, which were proposed by the Board in April 1996. The third amendment is also technical in nature and was suggested by a commenter.

a. Definition of covered option transaction: The Board proposed to amend the definition of *covered option transaction* in § 220.2 of Regulation T to shorten the list of permissible options transactions in the cash account by referring to SRO rules generically. These rules were most recently amended in June of this year and the Board's action should result in a shorter and simpler Regulation T without having a substantive effect for broker-dealers. The Board is adopting the amendment as proposed.

b. Definition of margin equity security: The Board proposed to add a definition of the term *margin equity security*, which appears in the Supplement to Regulation T. No adverse comments were received. The definition, which is being adopted as proposed, states that a *margin equity security* means a *margin security* (as defined in Regulation T) that is an *equity security* (as defined in section 3(a) of the '34 Act, whence definitions are incorporated into the Board's margin regulations if not otherwise defined by the Board).

c. Definition of current market value: Regulations G and U each contained a definition of the phrase "current market value" used to determine the loan value of margin securities. Regulation T did not contain a definition of *current market value* but addressed the same issue in former § 220.3(g), "Valuing securities." One commenter noted that while Regulation T contains several references to a security's "current market value," it does not contain a definition of this term as do Regulations G and U. The Board is adding a definition of *current market value* to § 220.2 of Regulation T that is the equivalent of former § 220.3(g) and is deleting former § 220.3(g) from Regulation T. This action will have no substantive effect, but will make the structure of the Board's margin regulations more consistent.

3. Cash Account: 90-Day Freeze

Customers who do not have sufficient funds in their cash account to pay for a security on trade date must agree to pay for the security before selling it. According to § 220.8(c)(1) of Regulation T, if a nonexempted security "is sold or delivered to another broker or dealer without having been previously paid for in full by the customer, the privilege of delaying payment beyond the trade date shall be withdrawn for 90 calendar days." This is known as a "90-day freeze." However, § 220.8(c)(2) says the freeze "shall not apply" if full payment is received within the required payment period and the proceeds from the sale are not withdrawn before payment is received. In response to requests for clarification from commenters, the Board is of the view that when a customer sells or delivers out securities that have not been paid for, the 90-day freeze contained in § 220.8(c) of Regulation T need not be applied until the permissible payment period has passed.

4. Board Interpretations

The Board is reviewing its interpretations of Regulation T as part of its periodic review. In 1996, the Board deleted eleven interpretations that had either been incorporated directly into the regulation or had become moot due to subsequent amendments. As discussed above in section II.B.3, the Board is deleting an additional interpretation today that prevented the use of options as margin for short sales of the underlying security and prevented the use of the bona fide arbitrage provision for transactions involving options and their underlying securities.

In an advance notice of proposed rulemaking published elsewhere in today's **Federal Register**, the Board is also specifically soliciting comment on whether it should propose amendments to incorporate and broaden two additional interpretations: a 1962 interpretation[56] regarding the retirement of stock by an issuer and a 1990 interpretation[57] regarding the application of the arranging provision[58] to broker-dealer activities under SEC Rule 144A.

III. Regulations G and U

A. Loan Value

1. Over-the-Counter Stocks

Prior to the adoption of today's amendments, all of the Board's securities credit regulations permitted 50 percent loan value for: (1) Stocks traded on a national securities exchange, (2) stocks in the National Market tier of the Nasdaq Stock Market ("NMS" securities), and (3) stocks in the Small Capitalization ("SmallCap" securities) tier of the Nasdaq Stock Market that are identified by the Board as "OTC margin stocks."

In its request for comment issued last year, the Board noted that although the definition and treatment of domestic margin stocks is currently the same in Regulations G, T and U, nonmargin stocks are treated differently at broker-dealers (where they have no loan value) than at banks and other lenders (where the Board's margin rules do not limit their value). In light of the disparate treatment of nonmargin stock at broker-dealers versus other lenders, the Board sought comment on the appropriate definition of *margin stock* under Regulations G and U and on possible solutions to the current structure of its margin regulations. This structure results in an increase in burden for lenders other than broker-dealers whenever burden is reduced for broker-dealers if the definition of *margin stock* in Regulations G and U is expanded whenever the definition of *margin security* is expanded in Regulation T. The Board suggested its regulations might be amended to cover more securities for broker-dealers and fewer securities for banks and other lenders.

Although three commenters argued for uniform coverage of equity securities under the Board's margin regulations, most commenters opposed increasing the coverage of Regulations G and U if Regulation T is amended to permit broker-dealers to extend credit against more securities. Because banks and other lenders already have experience in valuing smaller issues, the Board believes that definition of *margin stock* in Regulation U (which incorporates Regulation G) can be amended to exclude stocks trading in the SmallCap tier of the Nasdaq Stock Market.[59] The Board's quarterly OTC List will no longer be required for banks and other nonbroker lenders because the Board will no longer choose which Nasdaq stocks qualify as a *margin stock* for purposes of Regulation U. These lenders can determine whether an OTC stock is in Nasdaq's National Market tier by consulting a newspaper, contacting the NASD or SEC, or checking the NASD's web site at *http://www.nasdaq.com*. The Board is therefore deleting the requirements for inclusion on the OTC List formerly found in § 221.7 of Regulation U, the definition of *OTC margin stock* in § 221.2 of Regulation U, and the provision concerning "lack of notice of NMS security designation" formerly found in § 221.3(j) of Regulation U.

2. Options

Options, whether traded on an exchange (also known as listed options) or over-the-counter (also known as unlisted options), have traditionally had no loan value under the Board's margin

[50] In this regard, the Board is confirming that broker-dealers may rely on written "no action" or interpretative letters issued by the SEC or its staff regarding its "ready market" criteria.

[51] 12 CFR 220.126 and 12 CFR 221.123, reprinted in the *Federal Reserve Regulatory Service* at 5–488.

[52] American style options are exercisable on any business day until expiration. European style options may be exercised only at expiration.

[53] *See* Section 220.1(b)(3)(i) of the revised Regulation T.

[54] *See* e.g., §§ 220.4(b)(9) and 220.12(b)(6) of the former Regulation T.

[55] *See* Section 220.1(b)(3)(iv) of the revised Regulation T.

[56] 12 CFR 220.119, reprinted in the *FRRS* at 5–490.

[57] 12 CFR 220.131, reprinted in the *FRRS* at 5–470.1.

[58] As proposed in 1996, the Board is moving the arranging provision from former § 220.13 of Regulation T to the general provisions found in § 220.3.

[59] Approximately 442 SmallCap issues qualify as "OTC margin stock" under the Board's criteria formerly found in § 221.7 of Regulation U. If today's amendments were adopted with an immediate effective date, these stocks would no longer be subject to a 50 percent loan value limitation when used as collateral for purpose loans. The number of stocks that will actually be affected when the new regulation goes into effect is likely to be somewhat smaller once the new Nasdaq listing requirements are fully phased in.

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regulations.[60] In 1995, the Board proposed giving listed options 50 percent loan value at broker-dealers (under Regulation T) and banks (under Regulation U).[61] Based on comments received in connection with the proposed amendments to Regulation T, the Board decided in 1996 to incorporate rules of the options exchanges (also known as self-regulatory organizations or SROs) regarding options loan value into Regulation T instead of the 50 percent requirement it had proposed. At the same time, the Board proposed to amend Regulations G and U to allow these lenders to extend credit against listed options to the extent permitted by the rules of the options exchanges. The Board sought comment on the practicality of requiring banks and others to comply with rules of SROs of which they are not members.[62] Five commenters supported uniform margin requirements for all lenders, while four other commenters opposed making lenders who are not broker-dealers, and therefore not members of a securities SRO, comply with SRO rules. The SRO margin rules for options are complex and the Board does not believe it is practical to require banks to comply with the rules of national securities exchanges of which they are not members, nor to expect bank examiners to be familiar with these rules in verifying compliance with Regulation U. The Board is therefore adopting the original 1995 Regulation U proposal and amending the Supplement to Regulation U to allow lenders other than broker-dealers to extend 50 percent loan value against listed options. Unlisted options continue to have no loan value when used as part of a mixed-collateral loan. However, banks and other lenders can extend credit against unlisted options if the loan is not subject to Regulation U. The Board is requesting comment on the future status of unlisted options under Regulation U in an advance notice of proposed rulemaking published elsewhere in today's **Federal Register**.

3. Money Market Mutual Funds

Although Regulation U treats most mutual funds as margin stock subject to 50 percent loan value, it has always allowed good faith loan value for mutual funds whose portfolios consist of exempted securities.[63] In 1995, the Board proposed to extend this treatment to all money market mutual funds under both Regulations T and U. All responsive commenters supported this proposal, which was adopted for Regulation T purposes in 1996. The Board is therefore amending the definition of *margin stock* in Regulation U to exclude money market mutual funds. This will have the effect of permitting good faith loan value for these securities when they are used as collateral for a purpose loan that is secured in part by margin stock.[64]

B. Financing of Securities Purchased on a DVP Basis

Banks may act as custodians for their customers' securities. These securities are often purchased at registered broker-dealers and delivered to the bank on a delivery-versus-payment (DVP) basis. In the late 1980s and early 1990s, Federal Reserve System examiners and staff of the SEC alleged that certain banks were accepting the delivery of customer margin securities without having the customer's full payment on hand, thereby extending purpose credit in excess of the Regulation U margin requirements. In many cases, payment for the customer's purchase was made in reliance on the proceeds of the sale of the same security.[65]

The purchase and same-day sale of a security without independent funds to pay for the purchase is prohibited at a broker-dealer if effected in a cash account (where it is known as "free-riding"), because the customer is obtaining intraday credit from the broker-dealer to pay for the security so it can own the security in order to sell it. This practice, however, is not prohibited at a broker-dealer if effected in a margin account, because the broker-dealer has entered into a credit relationship with the customer before extending credit to cover the purchase. In order to allow banks to extend credit in a manner similar to broker-dealers using a margin account, the Board proposed to amend the existing provision in § 221.3(c) of Regulation U for revolving credit agreements to include such credit. The Board stated its belief that applying the revolving credit provision would ensure that banks financing customer securities transactions establish credit limits for their customers, including limits on intraday trading.

Ten commenters, including five Reserve Banks, supported the Board's proposal. Two bank trade associations opposed the proposal. The trade associations made similar arguments. Each acknowledged that in providing custodial services banks sometimes extend credit to pay for customer securities and this credit may be intraday or extend for a longer period of time. The trade associations stated that this credit is extended by a bank in its own discretion and not pursuant to an agreement with their customer. The trade associations stated banks do not have written agreements with their customers because they do not want to be required to extend this type of credit. The trade associations stated that custodial banks generally have a lien only on the assets in a customer's account, and they believed it would be inconsistent for a bank to demand that a customer post additional assets to cover overdraft extensions of credit. The trade associations were also concerned that the Board's proposal might be seen as superseding staff opinions in this area permitting some overdrafts when banks carefully monitor their customer's transactions.

As an alternative to the Board's proposal to cover extensions of credit used to finance a customer's purchase of securities on a DVP basis under the provision for revolving lines of credit, the trade associations suggested exempting these transactions by amending § 221.6(f) of Regulation U. Section 221.6(f) provides that a bank may extend and maintain purpose credit without regard to the requirements of Regulation U if the credit is to "temporarily finance the purchase or sale of securities for prompt delivery, if the credit is to be repaid in the ordinary course of business upon completion of the transaction." The Board proposed to amend this section to restore language inadvertently deleted in 1983 that makes clear the exception cannot be used to finance the purchase of securities at a broker-dealer (see, e.g. staff opinions at *FRRS* 5–884.68 and 5–942.2). The trade associations suggested that if the Board's primary concern in this area is preventing banks from aiding and abetting free-riding violations by their customers, § 221.6(f) of Regulation U should be amended not by restating that it cannot be used to finance transactions effected at a broker-dealer, but by stating that the exception is not available if the bank "knowingly" relies on the proceeds of a security's sale as a source of payment for the security.

The Board is amending the revolving credit agreement provision in § 221.3(c)(2)(iii)(B) of Regulation U as proposed to require a lender to call for additional collateral when the lender is relying on margin stock which is insufficient to cover an extension of purpose credit. This will clarify that a lender who has an agreement with its customer covering credit extended in connection with custodial or clearing services is properly secured or truly unsecured and should therefore be free from allegations of aiding and abetting customer free-riding violations. The Board is also readopting the language inadvertently dropped from § 221.6(f) of Regulation U, as proposed. The exemption in § 221.6(f) of Regulation U has never been available to cover the same-day purchase and sale of a security bought in a cash account at a broker-dealer, and the restoration of the former language will eliminate any ambiguity. Finally, the Board notes that its action is not intended to supersede the staff opinions in this area.

In the advance notice of proposed rulemaking published elsewhere in today's **Federal Register**, the Board is soliciting comment on proposals to address the supervisory and credit implications of free-riding.

C. Mixed Collateral Loans

Regulation U does not apply to extensions of securities credit that are not secured at least in part by margin stock. Purpose loans secured in part by margin stock and in part by other collateral are known as "mixed-collateral" loans and Regulation U has always required some kind of separation for these types of loans.[66] Section 221.3(e) of Regulation U provided that mixed collateral loans "shall be treated as two separate loans." This was intended to prevent a bank from inflating the value of nonmargin stock collateral to make up for the 50 percent limitation for purpose loans secured by margin stock.

The provision for mixed collateral loans did not present a problem when applied at the time the loan commitment is made, as it merely required a bank to determine the loan value of margin stock collateral and then verify that the other collateral has a good faith loan value sufficient to make up the difference between the loan value of the margin stock and the amount of credit being extended and allocate the credit secured by each tranche.

The Board has received a number of inquiries about the interplay of the provision for mixed-collateral loans and § 221.3(f) of Regulation U, which covers withdrawals and substitution of collateral. For example, if the value of a customer's nonmargin stock collateral has increased since a mixed collateral loan was made, but the value of the margin stock has stayed the same, the customer cannot withdraw margin stock even though the overall value of the collateral has increased, because the "separate" loan secured by margin stock does not have excess value that would permit its withdrawal. In other words, changes in collateral value in one tranche have no effect on the other.

Noting that the separation requirement for mixed collateral loans makes collateral management extremely difficult, the Board proposed to modify the provision on mixed-collateral loans so that instead of separating margin stock from all other collateral, a bank would separate margin stock and other financial instruments such as nonmargin stock, bonds, and cash equivalents. This collateral would secure one loan and nonfinancial instruments (such as real estate), if any, would be treated as securing a "separate" loan. The Board noted that financial instruments generally have readily available prices and are therefore less susceptible to being assigned an inflated value to offset the 50 percent loan value limitation for margin stock. The Board also invited comment on the continuing need for separation of financial and nonfinancial collateral.

Ten commenters supported the Board's proposal and no commenter expressed a preference for maintaining the status quo. One commenter suggested providing additional flexibility by amending the regulation to provide that margin stock and other financial instruments *may* be treated as a single loan. Three commenters supported complete elimination of any separation requirements.

The Board is deleting the mixed collateral loan provision in former § 221.3(e) of Regulation U. Banks will still be required to make a good faith determination that nonmargin stock collateral, if any, has sufficient good faith loan value to make up the difference between the regulatory loan value of margin stock and the amount of credit extended for a purpose loan. Although nonfinancial instruments are often more difficult to value than securities, the Board believes the requirement of good faith on the part of the lender is sufficient to guard against circumvention of the Board's margin requirements for equity securities. With the elimination of the requirement to separate purpose loans secured by margin stock from other purpose loans will allow a bank to release any type of collateral if the overall loan value of the pool of collateral is greater than the amount required under Regulation U.

IV. Regulation X

Regulation X ("Borrowers of securities credit") applies the Board's margin regulations to United States persons and related parties who obtain credit outside the United States to purchase or carry United States securities. Borrowers must conform the credit they receive with one of the Board's other margin regulations, according to the lender involved. The regulation also applies to borrowers who obtain credit within the United States to purchase or carry any security if the borrower willfully causes the credit to be extended in contravention of the Board's other margin regulations. Both of these provisions refer to Regulation G. The Board is amending Regulation X to remove the references to Regulation G. Borrowers obtaining credit outside the United States who were formerly required to conform their credit to Regulation G will now be required to conform their credit to Regulation U as it applies to nonbank lenders.

V. Regulatory Flexibility Act

The amendments being adopted are intended to accomplish two goals. As discussed in the preamble, some of the amendments have been developed to implement the National Securities Markets Improvement Act (Pub. L. 104–290), which reduced the scope of the Board's statutory authority for margin regulation. The others are intended to simplify regulatory requirements and eliminate restrictions currently imposed on broker-dealers, other lenders of securities credit, and their customers. For example, smaller companies whose stock is listed on Nasdaq's Small Capitalization market will no longer be

[60] Listed options were the only securities denied loan value by the Board under all of its securities credit regulations, in spite of the fact that they qualify as margin stock because they are listed on a national securities exchange. Although unlisted options do not qualify as margin stock and most nonmargin stock has good faith loan value under Regulation U, unlisted options have no loan value if the loan is a purpose credit secured at least in part by margin stock. Of course, Regulations G and U by their terms would not cover a loan that was solely secured by an unlisted option.

[61] The Regulation T proposal for broker-dealers was part of Docket No. R–0772 and appeared at 60 FR 33763 (June 29, 1995). The Regulation U proposal for banks was part of Docket No. R–0905 and appeared at 60 FR 63660 (December 12, 1995).

[62] The final action on Regulation T and revised proposal for Regulations G and U appeared at 61 FR 20385 (May 6, 1996).

[63] Section 221.2 of Regulation U excludes from the definition of "margin stock" any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 "which has at least 95 percent of its assets continuously invested in exempted securities."

[64] Regulation T was amended last year to provide similar treatment for money market mutual funds. The Board is using the same definition used at that time; i.e., a security issued by a registered investment company that is considered a money market fund under SEC Rule 2a–7 (17 CFR 270.2a–7, "Money market funds").

[65] In response to banks who argued that they were relying on the sale proceeds of the unpaid-for security, Board staff opined that reliance on sale proceeds is tantamount to reliance on the security itself.

[66] The mixed-collateral loan provision does not apply to nonpurpose loans.

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subject to Regulation G registration and reporting requirements if they extend credit to employees secured by company stock. The Board believes the amendments will not have a substantial adverse effect on a significant number of small lenders.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OMB control numbers are listed below.

The collections of information that may be affected by this rulemaking are found in 12 CFR 207 and 12 CFR 221. These information collections are mandatory (15 U.S.C. 78g and 78w). The respondents and recordkeepers are for-profit financial institutions, including banks and nonbank lenders. The Federal Reserve collects the information in order to identify lenders subject to Regulation G, to verify compliance with Regulation G, and to monitor the size of the market for margin credit. The purpose statements collect information on the amount and purpose of the loans secured by margin stock. The burden associated with the FR U–1 and the FR G–3 is recordkeeping burden. Because the records would be maintained by respondents and are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises. The FR G–2 does not contain confidential information. The information in the FR G–1 and the FR G–4 are given confidential treatment under the Freedom of Information Act (5 U.S.C. § 552 (b)(4)).

In a separate document published elsewhere in today's **Federal Register**, the Board is soliciting comment on the disposition of certain reporting forms currently used by Regulation G lenders, the FR G–1, FR G–2, and FR G–4, and on further amendments to Regulation U that would affect the margin credit "purpose statements," the FR G–3 and the FR U–1. Accordingly, until the Board has collected and analyzed such comments as may be forthcoming, it will extend for three years, without revision, under delegated authority by the Office of Management and Budget, the following collections of information: FR G–1 (OMB No. 7100–0011), FR G–2 (OMB No. 7100–0011), FR G–3 (OMB No. 7100–0018), FR G–4 (OMB No. 7100–0011), and FR U–1 (OMB No. 7100–0115). The Board anticipates that these information collections will be revised before the full three-year period has ended.

In proposed amendments issued for comment by the Board in December 1995 (Docket R–0905), April 1996 (Docket R–0923), and November 1996 (Docket R-0944), no comments specifically addressing the burden estimates for these information collections were received.

The estimated annual burden for these information collections is summarized in the table below.

	Estimated number of respondents	Annual frequency	Estimated average hours per response	Estimated annual burden hours
FR G–1	81	1	2.50	203
FR G–2	68	1	0.25	17
FR G–3	700	20	0.16	2,240
FR G–4	629	1	2.00	1,258
FR U–1	10,637	12	0.07	157,853
Total				161,571

The Federal Reserve has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Projects (7100–0011, 7100–0018, and 7100–0115), Washington, DC 20503.

List of Subjects

12 CFR Part 207

Banks, banking, Credit, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, banking, Brokers, Credit, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, banking, Brokers, Credit, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, banking, Brokers, Credit, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

12 CFR Part 265

Authority delegations (Government agencies), Banks, banking, Federal Reserve System.

For the reasons set out in the preamble, and under the authority of 12 U.S.C. 78c, 78g, 78q, and 78w, 12 CFR chapter II is amended as follows:

PART 207—[REMOVED]

1. Part 207 is removed.

PART 220—CREDIT BY BROKERS AND DEALERS (REGULATION T)

2. The authority citation for part 220 continues to read as follows:

Authority: 15 U.S.C. 78c, 78g, 78q, and 78w.

3. Sections 220.1 through 220.12 are revised to read as follows:

§ 220.1 Authority, purpose, and scope.

(a) *Authority and purpose.* Regulation T (this part) is issued by the Board of Governors of the Federal Reserve System (the Board) pursuant to the Securities Exchange Act of 1934 (the Act) (15 U.S.C.78a *et seq.*). Its principal purpose is to regulate extensions of credit by brokers and dealers; it also covers related transactions within the Board's authority under the Act. It imposes, among other obligations, initial margin requirements and payment rules on certain securities transactions.

(b) *Scope.* (1) This part provides a margin account and four special purpose accounts in which to record all financial relations between a customer and a creditor. Any transaction not specifically permitted in a special

purpose account shall be recorded in a margin account.

(2) This part does not preclude any exchange, national securities association, or creditor from imposing additional requirements or taking action for its own protection.

(3) This part does not apply to:

(i) Financial relations between a customer and a creditor to the extent that they comply with a portfolio margining system under rules approved or amended by the SEC;

(ii) Credit extended by a creditor based on a good faith determination that the borrower is an exempted borrower;

(iii) Financial relations between a customer and a broker or dealer registered only under section 15C of the Act; and

(iv) Financial relations between a foreign branch of a creditor and a foreign person involving foreign securities.

§ 220.2 Definitions.

The terms used in this part have the meanings given them in section 3(a) of the Act or as defined in this section as follows:

Affiliated corporation means a corporation of which all the common stock is owned directly or indirectly by the firm or general partners and employees of the firm, or by the corporation or holders of the controlling stock and employees of the corporation, and the affiliation has been approved by the creditor's examining authority.

Cash equivalent means securities issued or guaranteed by the United States or its agencies, negotiable bank certificates of deposit, bankers acceptances issued by banking institutions in the United States and payable in the United States, or money market mutual funds.

Covered option transaction means any transaction involving options or warrants in which the customer's risk is limited and all elements of the transaction are subject to contemporaneous exercise if:

(1) The amount at risk is held in the account in cash, cash equivalents, or via an escrow receipt; and

(2) The transaction is eligible for the cash account by the rules of the registered national securities exchange authorized to trade the option or warrant or by the rules of the creditor's examining authority in the case of an unregistered option, provided that all such rules have been approved or amended by the SEC.

Credit balance means the cash amount due the customer in a margin account after debiting amounts transferred to the special memorandum account.

Creditor means any broker or dealer (as defined in sections 3(a)(4) and 3(a)(5) of the Act), any member of a national securities exchange, or any person associated with a broker or dealer (as defined in section 3(a)(18) of the Act), except for business entities controlling or under common control with the creditor.

Current market value of:

(1) A security means:

(i) Throughout the day of the purchase or sale of a security, the security's total cost of purchase or the net proceeds of its sale including any commissions charged; or

(ii) At any other time, the closing sale price of the security on the preceding business day, as shown by any regularly published reporting or quotation service. If there is no closing sale price, the creditor may use any reasonable estimate of the market value of the security as of the close of business on the preceding business day.

(2) Any other collateral means a value determined by any reasonable method.

Customer excludes an exempted borrower and includes:

(1) Any person or persons acting jointly:

(i) To or for whom a creditor extends, arranges, or maintains any credit; or

(ii) Who would be considered a customer of the creditor according to the ordinary usage of the trade;

(2) Any partner in a firm who would be considered a customer of the firm absent the partnership relationship; and

(3) Any joint venture in which a creditor participates and which would be considered a customer of the creditor if the creditor were not a participant.

Debit balance means the cash amount owed to the creditor in a margin account after debiting amounts transferred to the special memorandum account.

Delivery against payment, Payment against delivery, or a C.O.D. transaction refers to an arrangement under which a creditor and a customer agree that the creditor will deliver to, or accept from, the customer, or the customer's agent, a security against full payment of the purchase price.

Equity means the total current market value of security positions held in the margin account plus any credit balance less the debit balance in the margin account.

Escrow agreement means any agreement issued in connection with a call or put option under which a bank or any person designated as a control location under paragraph (c) of SEC Rule 15c3–3 (17 CFR 240.15c3–3(c)), holding the underlying asset or required cash or cash equivalents, is obligated to deliver to the creditor (in the case of a call option) or accept from the creditor (in the case of a put option) the underlying asset or required cash or cash equivalent against payment of the exercise price upon exercise of the call or put.

Examining authority means:

(1) The national securities exchange or national securities association of which a creditor is a member; or

(2) If a member of more than one self-regulatory organization, the organization designated by the SEC as the examining authority for the creditor.

Exempted borrower means a member of a national securities exchange or a registered broker or dealer, a substantial portion of whose business consists of transactions with persons other than brokers or dealers, and includes a borrower who:

(1) Maintains at least 1000 active accounts on an annual basis for persons other than brokers, dealers, and persons associated with a broker or dealer;

(2) Earns at least $10 million in gross revenues on an annual basis from transactions with persons other than brokers, dealers, and persons associated with a broker or dealer; or

(3) Earns at least 10 percent of its gross revenues on an annual basis from transactions with persons other than brokers, dealers, and persons associated with a broker or dealer.

Exempted securities mutual fund means any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), provided the company has at least 95 percent of its assets continuously invested in exempted securities (as defined in section 3(a)(12) of the Act).

Foreign margin stock means a foreign security that is an equity security that:

(1) Appears on the Board's periodically published List of Foreign Margin Stocks; or

(2) Is deemed to have a "ready market" under SEC Rule 15c3–1 (17 CFR 240.15c3–1) or a "no-action" position issued thereunder.

Foreign person means a person other than a United States person as defined in section 7(f) of the Act.

Foreign security means a security issued in a jurisdiction other than the United States.

Good faith with respect to:

(1) Margin means the amount of margin which a creditor would require in exercising sound credit judgment;

(2) Making a determination or accepting a statement concerning a borrower means that the creditor is alert to the circumstances surrounding the credit, and if in possession of information that would cause a prudent

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person not to make the determination or accept the notice or certification without inquiry, investigates and is satisfied that it is correct.

Margin call means a demand by a creditor to a customer for a deposit of additional cash or securities to eliminate or reduce a margin deficiency as required under this part.

Margin deficiency means the amount by which the required margin exceeds the equity in the margin account.

Margin equity security means a margin security that is an equity security (as defined in section 3(a)(11) of the Act).

Margin excess means the amount by which the equity in the margin account exceeds the required margin. When the margin excess is represented by securities, the current value of the securities is subject to the percentages set forth in § 220.12 (the Supplement).

Margin security means:

(1) Any security registered or having unlisted trading privileges on a national securities exchange;

(2) After January 1, 1999, any security listed on the Nasdaq Stock Market;

(3) Any non-equity security;

(4) Any security issued by either an open-end investment company or unit investment trust which is registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8);

(5) Any foreign margin stock;

(6) Any debt security convertible into a margin security;

(7) Until January 1, 1999, any OTC margin stock; or

(8) Until January 1, 1999, any OTC security designated as qualified for trading in the national market system under a designation plan approved by the Securities and Exchange Commission (NMS security).

Money market mutual fund means any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8) that is considered a money market fund under SEC Rule 2a–7 (17 CFR 270.2a–7).

Non-equity security means a security that is not an equity security (as defined in section 3(a)(11) of the Act).

Nonexempted security means any security other than an exempted security (as defined in section 3(a)(12) of the Act).

OTC margin stock means any equity security traded over the counter that the Board has determined has the degree of national investor interest, the depth and breadth of market, the availability of information respecting the security and its issuer, and the character and permanence of the issuer to warrant being treated like an equity security treaded on a national securities exchange. An OTC stock is not considered to be an OTC margin stock unless it appears on the Board's periodically published list of OTC margin stocks.

Payment period means the number of business days in the standard securities settlement cycle in the United States, as defined in paragraph (a) of SEC Rule 15c6–1 (17 CFR 240.15c6–1(a)), plus two business days.

Purpose credit means credit for the purpose of:

(1) Buying, carrying, or trading in securities; or

(2) Buying or carrying any part of an investment contract security which shall be deemed credit for the purpose of buying or carrying the entire security.

Short call or short put means a call option or a put option that is issued, endorsed, or guaranteed in or for an account.

(1) A short call that is not cash-settled obligates the customer to sell the underlying asset at the exercise price upon receipt of a valid exercise notice or as otherwise required by the option contract.

(2) A short put that is not cash-settled obligates the customer to purchase the underlying asset at the exercise price upon receipt of a valid exercise notice or as otherwise required by the option contract.

(3) A short call or a short put that is cash-settled obligates the customer to pay the holder of an in the money long put or long call who has, or has been deemed to have, exercised the option the cash difference between the exercise price and the current assigned value of the option as established by the option contract.

Underlying asset means:

(1) The security or other asset that will be delivered upon exercise of an option; or

(2) In the case of a cash-settled option, the securities or other assets which comprise the index or other measure from which the option's value is derived.

§ 220.3 General provisions.

(a) *Records.* The creditor shall maintain a record for each account showing the full details of all transactions.

(b) *Separation of accounts*—(1) *In general.* The requirements of one account may not be met by considering items in any other account. If withdrawals of cash or securities are permitted under this part, written entries shall be made when cash or securities are used for purposes of meeting requirements in another account.

(2) *Exceptions.* Notwithstanding paragraph (b)(1) of this section:

(i) For purposes of calculating the required margin for a security in a margin account, assets held in the good faith account pursuant to § 220.6(e)(1)(i) or (ii) may serve in lieu of margin;

(ii) Transfers may be effected between the margin account and the special memorandum account pursuant to §§ 220.4 and 220.5.

(c) *Maintenance of credit.* Except as prohibited by this part, any credit initially extended in compliance with this part may be maintained regardless of:

(1) Reductions in the customer's equity resulting from changes in market prices;

(2) Any security in an account ceasing to be margin or exempted; or

(3) Any change in the margin requirements prescribed under this part.

(d) *Guarantee of accounts.* No guarantee of a customer's account shall be given any effect for purposes of this part.

(e) *Receipt of funds or securities.* (1) A creditor, acting in good faith, may accept as immediate payment:

(i) Cash or any check, draft, or order payable on presentation; or

(ii) Any security with sight draft attached.

(2) A creditor may treat a security, check or draft as received upon written notification from another creditor that the specified security, check, or draft has been sent.

(3) Upon notification that a check, draft, or order has been dishonored or when securities have not been received within a reasonable time, the creditor shall take the action required by this part when payment or securities are not received on time.

(4) To temporarily finance a customer's receipt of securities pursuant to an employee benefit plan registered on SEC Form S–8 or the withholding taxes for an employee stock award plan, a creditor may accept, in lieu of the securities, a properly executed exercise notice, where applicable, and instructions to the issuer to deliver the stock to the creditor. Prior to acceptance, the creditor must verify that the issuer will deliver the securities promptly and the customer must designate the account into which the securities are to be deposited.

(f) *Exchange of securities.* (1) To enable a customer to participate in an offer to exchange securities which is made to all holders of an issue of securities, a creditor may submit for exchange any securities held in a margin account, without regard to the other provisions of this part, provided

the consideration received is deposited into the account.

(2) If a nonmargin, nonexempted security is acquired in exchange for a margin security, its retention, withdrawal, or sale within 60 days following its acquisition shall be treated as if the security is a margin security.

(g) *Arranging for loans by others.* A creditor may arrange for the extension or maintenance of credit to or for any customer by any person, provided the creditor does not willfully arrange credit that violates parts 221 or 224 of this chapter.

(h) *Innocent mistakes.* If any failure to comply with this part results from a mistake made in good faith in executing a transaction or calculating the amount of margin, the creditor shall not be deemed in violation of this part if, promptly after the discovery of the mistake, the creditor takes appropriate corrective action.

(i) *Foreign currency.* (1) Freely convertible foreign currency may be treated at its U.S. dollar equivalent, provided the currency is marked-to-market daily.

(2) A creditor may extend credit denominated in any freely convertible foreign currency.

(j) *Exempted borrowers.* (1) A member of a national securities exchange or a registered broker or dealer that has been in existence for less than one year may meet the definition of exempted borrower based on a six-month period.

(2) Once a member of a national securities exchange or registered broker or dealer ceases to qualify as an exempted borrower, it shall notify its lender of this fact before obtaining additional credit. Any new extensions of credit to such a borrower, including rollovers, renewals, and additional draws on existing lines of credit, are subject to the provisions of this part.

§ 220.4 Margin account.

(a) *Margin transactions.* (1) All transactions not specifically authorized for inclusion in another account shall be recorded in the margin account.

(2) A creditor may establish separate margin accounts for the same person to:

(i) Clear transactions for other creditors where the transactions are introduced to the clearing creditor by separate creditors; or

(ii) Clear transactions through other creditors if the transactions are cleared by separate creditors; or

(iii) Provide one or more accounts over which the creditor or a third party investment adviser has investment discretion.

(b) *Required margin*—(1) *Applicability.* The required margin for each long or short position in securities is set forth in § 220.12 (the Supplement) and is subject to the following exceptions and special provisions.

(2) *Short sale against the box.* A short sale "against the box" shall be treated as a long sale for the purpose of computing the equity and the required margin.

(3) *When-issued securities.* The required margin on a net long or net short commitment in a when-issued security is the margin that would be required if the security were an issued margin security, plus any unrealized loss on the commitment or less any unrealized gain.

(4) *Stock used as cover.* (i) When a short position held in the account serves in lieu of the required margin for a short put, the amount prescribed by paragraph (b)(1) of this section as the amount to be added to the required margin in respect of short sales shall be increased by any unrealized loss on the position.

(ii) When a security held in the account serves in lieu of the required margin for a short call, the security shall be valued at no greater than the exercise price of the short call.

(5) *Accounts of partners.* If a partner of the creditor has a margin account with the creditor, the creditor shall disregard the partner's financial relations with the firm (as shown in the partner's capital and ordinary drawing accounts) in calculating the margin or equity of the partner's margin account.

(6) *Contribution to joint venture.* If a margin account is the account of a joint venture in which the creditor participates, any interest of the creditor in the joint account in excess of the interest which the creditor would have on the basis of its right to share in the profits shall be treated as an extension of credit to the joint account and shall be margined as such.

(7) *Transfer of accounts.* (i) A margin account that is transferred from one creditor to another may be treated as if it had been maintained by the transferee from the date of its origin, if the transferee accepts, in good faith, a signed statement of the transferor (or, if that is not practicable, of the customer), that any margin call issued under this part has been satisfied.

(ii) A margin account that is transferred from one customer to another as part of a transaction, not undertaken to avoid the requirements of this part, may be treated as if it had been maintained for the transferee from the date of its origin, if the creditor accepts in good faith and keeps with the transferee account a signed statement of the transferor describing the circumstances for the transfer.

(8) *Sound credit judgment.* In exercising sound credit judgment to determine the margin required in good faith pursuant to § 220.12 (the Supplement), the creditor shall make its determination for a specified security position without regard to the customer's other assets or securities positions held in connection with unrelated transactions.

(c) *When additional margin is required*—(1) *Computing deficiency.* All transactions on the same day shall be combined to determine whether additional margin is required by the creditor. For the purpose of computing equity in an account, security positions are established or eliminated and a credit or debit created on the trade date of a security transaction. Additional margin is required on any day when the day's transactions create or increase a margin deficiency in the account and shall be for the amount of the margin deficiency so created or increased.

(2) *Satisfaction of deficiency.* The additional required margin may be satisfied by a transfer from the special memorandum account or by a deposit of cash, margin securities, exempted securities, or any combination thereof.

(3) *Time limits.* (i) A margin call shall be satisfied within one payment period after the margin deficiency was created or increased.

(ii) The payment period may be extended for one or more limited periods upon application by the creditor to its examining authority unless the examining authority believes that the creditor is not acting in good faith or that the creditor has not sufficiently determined that exceptional circumstances warrant such action. Applications shall be filed and acted upon prior to the end of the payment period or the expiration of any subsequent extension.

(4) *Satisfaction restriction.* Any transaction, position, or deposit that is used to satisfy one requirement under this part shall be unavailable to satisfy any other requirement.

(d) *Liquidation in lieu of deposit.* If any margin call is not met in full within the required time, the creditor shall liquidate securities sufficient to meet the margin call or to eliminate any margin deficiency existing on the day such liquidation is required, whichever is less. If the margin deficiency created or increased is $1000 or less, no action need be taken by the creditor.

(e) *Withdrawals of cash or securities.* (1) Cash or securities may be withdrawn from an account, except if:

(i) Additional cash or securities are required to be deposited into the

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account for a transaction on the same or a previous day; or

(ii) The withdrawal, together with other transactions, deposits, and withdrawals on the same day, would create or increase a margin deficiency.

(2) Margin excess may be withdrawn or may be transferred to the special memorandum account (§ 220.5) by making a single entry to that account which will represent a debit to the margin account and a credit to the special memorandum account.

(3) If a creditor does not receive a distribution of cash or securities which is payable with respect to any security in a margin account on the day it is payable and withdrawal would not be permitted under this paragraph (e), a withdrawal transaction shall be deemed to have occurred on the day the distribution is payable.

(f) *Interest, service charges, etc.* (1) Without regard to the other provisions of this section, the creditor, in its usual practice, may debit the following items to a margin account if they are considered in calculating the balance of such account:

(i) Interest charged on credit maintained in the margin account;

(ii) Premiums on securities borrowed in connection with short sales or to effect delivery;

(iii) Dividends, interest, or other distributions due on borrowed securities;

(iv) Communication or shipping charges with respect to transactions in the margin account; and

(v) Any other service charges which the creditor may impose.

(2) A creditor may permit interest, dividends, or other distributions credited to a margin account to be withdrawn from the account if:

(i) The withdrawal does not create or increase a margin deficiency in the account; or

(ii) The current market value of any securities withdrawn does not exceed 10 percent of the current market value of the security with respect to which they were distributed.

§ 220.5 Special memorandum account.

(a) A special memorandum account (SMA) may be maintained in conjunction with a margin account. A single entry amount may be used to represent both a credit to the SMA and a debit to the margin account. A transfer between the two accounts may be effected by an increase or reduction in the entry. When computing the equity in a margin account, the single entry amount shall be considered as a debit in the margin account. A payment to the customer or on the customer's behalf or a transfer to any of the customer's other accounts from the SMA reduces the single entry amount.

(b) The SMA may contain the following entries:

(1) Dividend and interest payments;

(2) Cash not required by this part, including cash deposited to meet a maintenance margin call or to meet any requirement of a self-regulatory organization that is not imposed by this part;

(3) Proceeds of a sale of securities or cash no longer required on any expired or liquidated security position that may be withdrawn under § 220.4(e); and

(4) Margin excess transferred from the margin account under § 220.4(e)(2).

§ 220.6 Good faith account.

In a good faith account, a creditor may effect or finance customer transactions in accordance with the following provisions:

(a) *Securities entitled to good faith margin*—(1) *Permissible transactions.* A creditor may effect and finance transactions involving the buying, carrying, or trading of any security entitled to "good faith" margin as set forth in § 220.12 (the Supplement).

(2) *Required margin.* The required margin is set forth in § 220.12 (the Supplement).

(3) *Satisfaction of margin.* Required margin may be satisfied by a transfer from the special memorandum account or by a deposit of cash, securities entitled to "good faith" margin as set forth in § 220.12 (the Supplement), any other asset that is not a security, or any combination thereof. An asset that is not a security shall have a margin value determined by the creditor in good faith.

(b) *Arbitrage.* A creditor may effect and finance for any customer bona fide arbitrage transactions. For the purpose of this section, the term "bona fide arbitrage" means:

(1) A purchase or sale of a security in one market together with an offsetting sale or purchase of the same security in a different market at as nearly the same time as practicable for the purpose of taking advantage of a difference in prices in the two markets; or

(2) A purchase of a security which is, without restriction other than the payment of money, exchangeable or convertible within 90 calendar days of the purchase into a second security together with an offsetting sale of the second security at or about the same time, for the purpose of taking advantage of a concurrent disparity in the prices of the two securities.

(c) *"Prime broker" transactions.* A creditor may effect transactions for a customer as part of a "prime broker" arrangement in conformity with SEC guidelines.

(d) *Credit to ESOPs.* A creditor may extend and maintain credit to employee stock ownership plans without regard to the other provisions of this part.

(e) *Nonpurpose credit.* (1) A creditor may:

(i) Effect and carry transactions in commodities;

(ii) Effect and carry transactions in foreign exchange;

(iii) Extend and maintain secured or unsecured nonpurpose credit, subject to the requirements of paragraph (e)(2) of this section.

(2) Every extension of credit, except as provided in paragraphs (e)(1)(i) and (e)(1)(ii) of this section, shall be deemed to be purpose credit unless, prior to extending the credit, the creditor accepts in good faith from the customer a written statement that it is not purpose credit. The statement shall conform to the requirements established by the Board.

§ 220.7 Broker-dealer credit account.

(a) *Requirements.* In a broker-dealer credit account, a creditor may effect or finance transactions in accordance with the following provisions.

(b) *Purchase or sale of security against full payment.* A creditor may purchase any security from or sell any security to another creditor or person regulated by a foreign securities authority under a good faith agreement to promptly deliver the security against full payment of the purchase price.

(c) *Joint back office.* A creditor may effect or finance transactions of any of its owners if the creditor is a clearing and servicing broker or dealer owned jointly or individually by other creditors.

(d) *Capital contribution.* A creditor may extend and maintain credit to any partner or stockholder of the creditor for the purpose of making a capital contribution to, or purchasing stock of, the creditor, affiliated corporation or another creditor.

(e) *Emergency and subordinated credit.* A creditor may extend and maintain, with the approval of the appropriate examining authority:

(1) Credit to meet the emergency needs of any creditor; or

(2) Subordinated credit to another creditor for capital purposes, if the other creditor:

(i) Is an affiliated corporation or would not be considered a customer of the lender apart from the subordinated loan; or

(ii) Will not use the proceeds of the loan to increase the amount of dealing in securities for the account of the creditor, its firm or corporation or an affiliated corporation.

(f) *Omnibus credit* (1) A creditor may effect and finance transactions for a broker or dealer who is registered with the SEC under section 15 of the Act and who gives the creditor written notice that:

(i) All securities will be for the account of customers of the broker or dealer; and

(ii) Any short sales effected will be short sales made on behalf of the customers of the broker or dealer other than partners.

(2) The written notice required by paragraph (f)(1) of this section shall conform to any SEC rule on the hypothecation of customers' securities by brokers or dealers.

(g) *Special purpose credit.* A creditor may extend the following types of credit with good faith margin:

(1) Credit to finance the purchase or sale of securities for prompt delivery, if the credit is to be repaid upon completion of the transaction.

(2) Credit to finance securities in transit or surrendered for transfer, if the credit is to be repaid upon completion of the transaction.

(3) Credit to enable a broker or dealer to pay for securities, if the credit is to be repaid on the same day it is extended.

(4) Credit to an exempted borrower.

(5) Credit to a member of a national securities exchange or registered broker or dealer to finance its activities as a market maker or specialist.

(6) Credit to a member of a national securities exchange or registered broker or dealer to finance its activities as an underwriter.

§ 220.8 Cash account.

(a) *Permissible transactions.* In a cash account, a creditor, may:

(1) Buy for or sell to any customer any security or other asset if:

(i) There are sufficient funds in the account; or

(ii) The creditor accepts in good faith the customer's agreement that the customer will promptly make full cash payment for the security or asset before selling it and does not contemplate selling it prior to making such payment;

(2) Buy from or sell for any customer any security or other asset if:

(i) The security is held in the account; or

(ii) The creditor accepts in good faith the customer's statement that the security is owned by the customer or the customer's principal, and that it will be promptly deposited in the account;

(3) Issue, endorse, or guarantee, or sell an option for any customer as part of a covered option transaction; and

(4) Use an escrow agreement in lieu of the cash, cash equivalents or underlying asset position if:

(i) In the case of a short call or a short put, the creditor is advised by the customer that the required securities, assets or cash are held by a person authorized to issue an escrow agreement and the creditor independently verifies that the appropriate escrow agreement will be delivered by the person promptly; or

(ii) In the case of a call issued, endorsed, guaranteed, or sold on the same day the underlying asset is purchased in the account and the underlying asset is to be delivered to a person authorized to issue an escrow agreement, the creditor verifies that the appropriate escrow agreement will be delivered by the person promptly.

(b) *Time periods for payment; cancellation or liquidation.* (1) *Full cash payment.* A creditor shall obtain full cash payment for customer purchases:

(i) Within one payment period of the date:

(A) Any nonexempted security was purchased;

(B) Any when-issued security was made available by the issuer for delivery to purchasers;

(C) Any "when distributed" security was distributed under a published plan;

(D) A security owned by the customer has matured or has been redeemed and a new refunding security of the same issuer has been purchased by the customer, provided:

(*1*) The customer purchased the new security no more than 35 calendar days prior to the date of maturity or redemption of the old security;

(*2*) The customer is entitled to the proceeds of the redemption; and

(*3*) The delayed payment does not exceed 103 percent of the proceeds of the old security.

(ii) In the case of the purchase of a foreign security, within one payment period of the trade date or within one day after the date on which settlement is required to occur by the rules of the foreign securities market, provided this period does not exceed the maximum time permitted by this part for delivery against payment transactions.

(2) *Delivery against payment.* If a creditor purchases for or sells to a customer a security in a delivery against payment transaction, the creditor shall have up to 35 calendar days to obtain payment if delivery of the security is delayed due to the mechanics of the transaction and is not related to the customer's willingness or ability to pay.

(3) *Shipment of securities, extension.* If any shipment of securities is incidental to consummation of a transaction, a creditor may extend the payment period by the number of days required for shipment, but not by more than one additional payment period.

(4) *Cancellation; liquidation; minimum amount.* A creditor shall promptly cancel or otherwise liquidate a transaction or any part of a transaction for which the customer has not made full cash payment within the required time. A creditor may, at its option, disregard any sum due from the customer not exceeding $1000.

(c) *90 day freeze.* (1) If a nonexempted security in the account is sold or delivered to another broker or dealer without having been previously paid for in full by the customer, the privilege of delaying payment beyond the trade date shall be withdrawn for 90 calendar days following the date of sale of the security. Cancellation of the transaction other than to correct an error shall constitute a sale.

(2) The 90 day freeze shall not apply if:

(i) Within the period specified in paragraph (b)(1) of this section, full payment is received or any check or draft in payment has cleared and the proceeds from the sale are not withdrawn prior to such payment or check clearance; or

(ii) The purchased security was delivered to another broker or dealer for deposit in a cash account which holds sufficient funds to pay for the security. The creditor may rely on a written statement accepted in good faith from the other broker or dealer that sufficient funds are held in the other cash account.

(d) *Extension of time periods; transfers.* (1) Unless the creditor's examining authority believes that the creditor is not acting in good faith or that the creditor has not sufficiently determined that exceptional circumstances warrant such action, it may upon application by the creditor:

(i) Extend any period specified in paragraph (b) of this section;

(ii) Authorize transfer to another account of any transaction involving the purchase of a margin or exempted security; or

(iii) Grant a waiver from the 90 day freeze.

(2) Applications shall be filed and acted upon prior to the end of the payment period, or in the case of the purchase of a foreign security within the period specified in paragraph (b)(1)(ii) of this section, or the expiration of any subsequent extension.

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§ 220.9 Clearance of securities, options, and futures.

(a) *Credit for clearance of securities.* The provisions of this part shall not apply to the extension or maintenance of any credit that is not for more than one day if it is incidental to the clearance of transactions in securities directly between members of a national securities exchange or association or through any clearing agency registered with the SEC.

(b) *Deposit of securities with a clearing agency.* The provisions of this part shall not apply to the deposit of securities with an option or futures clearing agency for the purpose of meeting the deposit requirements of the agency if:

(1) The clearing agency:

(i) Issues, guarantees performance on, or clears transactions in, any security (including options on any security, certificate of deposit, securities index or foreign currency); or

(ii) Guarantees performance of contracts for the purchase or sale of a commodity for future delivery or options on such contracts;

(2) The clearing agency is registered with the Securities and Exchange Commission or is the clearing agency for a contract market regulated by the Commodity Futures Trading Commission; and

(3) The deposit consists of any margin security and complies with the rules of the clearing agency that have been approved by the Securities and Exchange Commission or the Commodity Futures Trading Commission.

§ 220.10 Borrowing and lending securities.

(a) Without regard to the other provisions of this part, a creditor may borrow or lend securities for the purpose of making delivery of the securities in the case of short sales, failure to receive securities required to be delivered, or other similar situations. If a creditor reasonably anticipates a short sale or fail transaction, such borrowing may be made up to one standard settlement cycle in advance of trade date.

(b) A creditor may lend foreign securities to a foreign person (or borrow such securities for the purpose of relending them to a foreign person) for any purpose lawful in the country in which they are to be used.

(c) A creditor that is an exempted borrower may lend securities without regard to the other provisions of this part and a creditor may borrow securities from an exempted borrower without regard to the other provisions of this part.

§ 220.11 Requirements for the list of marginable OTC stocks and the list of foreign margin stocks.

(a) *Requirements for inclusion on the list of marginable OTC stocks.* Except as provided in paragraph (f) of this section, OTC margin stock shall meet the following requirements:

(1) Four or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) The minimum average bid price of such stock, as determined by the Board, is at least $5 per share;

(3) The stock is registered under section 12 of the Act, is issued by an insurance company subject to section 12(g)(2)(G) of the Act, is issued by a closed-end investment management company subject to registration pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), is an American Depository Receipt (ADR) of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of an issuer required to file reports under section 15(d) of the Act;

(4) Daily quotations for both bid and asked prices for the stock are continously available to the general public;

(5) The stock has been publicly traded for at least six months;

(6) The issuer has at least $4 million of capital, surplus, and undivided profits;

(7) There are 400,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors or beneficial owners of more than 10 percent of the stock;

(8) There are 1,200 or more holders of record, as defined in SEC Rule 12g5–1 (17 CFR 240.12g5–1), of the stock who are not officers, directors or beneficial owners of 10 percent or more of the stock, or the average daily trading volume of such stock as determined by the Board, is at least 500 shares; and

(9) The issuer or a predecessor in interest has been in existence for at least three years.

(b) *Requirements for continued inclusion on the list of marginable OTC stocks.* Except as provided in paragraph (f) of this section, OTC margin stock shall meet the following requirements:

(1) Three or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) The minimum average bid price of such stocks, as determined by the Board, is at least $2 per share;

(3) The stock is registered as specified in paragraph (a)(3) of this section;

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public; ;

(5) The issuer has at least $1 million of capital, surplus, and undivided profits;

(6) There are 300,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock; and

(7) There continue to be 800 or more holders of record, as defined in SEC Rule 12g5–1 (17 CFR 240.12g5–1), of the stock who are not officers, directors, or beneficial owners of 10 percent or more of the stock, or the average daily trading volume of such stock, as determined by the Board, is at least 300 shares.

(c) *Requirements for inclusion on the list of foreign margin stocks.* Except as provided in paragraph (f) of this section, a foreign security shall meet the following requirements before being placed on the *List of Foreign Margin Stocks:*

(1) The security is an equity security that is listed for trading on or through the facilities of a foreign securities exchange or a recognized foreign securities market and has been trading on such exchange or market for at least six months;

(2) Daily quotations for both bid and asked or last sale prices for the security provided by the foreign securities exchange or foreign securities market on which the security is traded are continuously available to creditors in the United States pursuant to an electronic quotation system;

(3) The aggregate market value of shares, the ownership of which is unrestricted, is not less than $1 billion;

(4) The average weekly trading volume of such security during the preceding six months is either at least 200,000 shares or $1 million; and

(5) The issuer or a predecessor in interest has been in existence for at least five years.

(d) *Requirements for continued inclusion on the list of foreign margin stocks.* Except as provided in paragraph (f) of this section, a foreign security shall meet the following requirements to remain on the *List of Foreign Margin Stocks:*

(1) The security continues to meet the requirements specified in paragraphs (c)(1) and (2) of this section;

(2) The aggregate market value of shares, the ownership of which is unrestricted, is not less than $500 million; and

(3) The average weekly trading volume of such security during the preceding six months is either at least 100,000 shares or $500,000.

(e) *Removal from the list.* The Board shall periodically remove from the lists any stock that:

(1) Ceases to exist or of which the issuer ceases to exist; or

(2) No longer substantially meets the provisions of paragraphs (b) or (d) of this section or the definition of OTC margin stock.

(f) *Discretionary authority of Board.* Without regard to other paragraphs of this section, the Board may add to, or omit or remove from the list of marginable OTC stocks and the list of foreign margin stocks an equity security, if in the judgment of the Board, such action is necessary or appropriate in the public interest.

(g) *Unlawful representations.* It shall be unlawful for any creditor to make, or cause to be made, any representation to the effect that the inclusion of a security on the list of marginable OTC stocks or the list of foreign margin stocks is evidence that the Board or the SEC has in any way passed upon the merits of, or given approval to, such security or any transactions therein. Any statement in an advertisement or other similar communication containing a reference to the Board in connection with the lists or stocks on those lists shall be an unlawful representation.

§ 220.12 Supplement: Margin requirements.

The required margin for each security position held in a margin account shall be as follows:

(a) Margin equity security, except for an exempted security, money market mutual fund or exempted securities mutual fund, warrant on a securities index or foreign currency or a long position in an option: 50 percent of the current market value of the security or the percentage set by the regulatory authority where the trade occurs, whichever is greater.

(b) Exempted security, non-equity security, money market mutual fund or exempted securities mutual fund: The margin required by the creditor in good faith or the percentage set by the regulatory authority where the trade occurs, whichever is greater.

(c) Short sale of a nonexempted security, except for a non-equity security:

(1) 150 percent of the current market value of the security; or

(2) 100 percent of the current market value if a security exchangeable or convertible within 90 calendar days without restriction other than the payment of money into the security sold short is held in the account, provided that any long call to be used as margin in connection with a short sale of the underlying security is an American-style option issued by a registered clearing corporation and listed or traded on a registered national securities exchange with an exercise price that does not exceed the price at which the underlying security was sold short.

(d) Short sale of an exempted security or non-equity security: 100 percent of the current market value of the security plus the margin required by the creditor in good faith.

(e) Nonmargin, nonexempted equity security: 100 percent of the current market value.

(f) Put or call on a security, certificate of deposit, securities index or foreign currency or a warrant on a securities index or foreign currency:

(1) In the case of puts and calls issued by a registered clearing corporation and listed or traded on a registered national securities exchange or a registered securities association and registered warrants on a securities index or foreign currency, the amount, or other position specified by the rules of the registered national securities exchange or the registered securities association authorized to trade the option or warrant, provided that all such rules have been approved or amended by the SEC; or

(2) In the case of all other puts and calls, the amount, or other position, specified by the maintenance rules of the creditor's examining authority.

§§ 220.13—220.18 [Removed]

4. Sections 220.13 through 220.18 are removed.

§ 220.126 [Removed and Reserved]

5. Section 220.126 is removed and reserved.

6. Part 221 is revised to read as follows:

PART 221—CREDIT BY BANKS AND PERSONS OTHER THAN BROKERS OR DEALERS FOR THE PURPOSE OF PURCHASING OR CARRYING MARGIN STOCK (REGULATION U)

Sec.

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221.118 Bank arranging for extension of credit by corporation.
221.119 Applicability of plan-lender provisions to financing of stock options and stock purchase rights qualified or restricted under Internal Revenue Code.
221.120 Allocation of stock collateral to purpose and nonpurpose credits to same customer.
221.121 Extension of credit in certain stock option and stock purchase plans.
221.122 Applicability of margin requirements to credit in connection with Insurance Premium Funding Programs.
221.123 Combined credit for exercising employee stock options and paying income taxes incurred as a result of such exercise.
221.124 Purchase of debt securities to finance corporate takeovers.
221.125 Credit to brokers and dealers.

Authority: 15 U.S.C. 78c, 78g, 78q, and 78w.

§ 221.1 Authority, purpose, and scope.

(a) *Authority.* Regulation U (this part) is issued by the Board of Governors of the Federal Reserve System (the Board) pursuant to the Securities Exchange Act of 1934 (the Act) (15 U.S.C. 78a *et seq.*).

(b) *Purpose and scope.* (1) This part imposes credit restrictions upon persons other than brokers or dealers (hereinafter lenders) that extend credit for the purpose of buying or carrying

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margin stock if the credit is secured directly or indirectly by margin stock. Lenders include "banks" (as defined in § 221.2) and other persons who are required to register with the Board under § 221.3(b). Lenders may not extend more than the maximum loan value of the collateral securing such credit, as set by the Board in § 221.7 (the Supplement).

(2) This part does not apply to clearing agencies regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission that accept deposits of margin stock in connection with:

(i) The issuance of, or guarantee of, or the clearance of transactions in, any security (including options on any security, certificate of deposit, securities index or foreign currency); or

(ii) The guarantee of contracts for the purchase or sale of a commodity for future delivery or options on such contracts.

(3) This part does not apply to credit extended to an exempted borrower.

(c) *Availability of forms.* The forms referenced in this part are available from the Federal Reserve Banks.

§ 221.2 Definitions.

The terms used in this part have the meanings given them in section 3(a) of the Act or as defined in this section as follows:

Affiliate means:

(1) For banks:

(i) Any bank holding company of which a bank is a subsidiary within the meaning of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841(d));

(ii) Any other subsidiary of such bank holding company; and

(iii) Any other corporation, business trust, association, or other similar organization that is an affiliate as defined in section 2(b) of the Banking Act of 1933 (12 U.S.C. 221a(c));

(2) For nonbank lenders, *affiliate* means any person who, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with the lender.

Bank. (1) *Bank.* Has the meaning given to it in section 3(a)(6) of the Act (15 U.S.C. 78c(a)(6)) and includes:

(i) Any subsidiary of a bank;

(ii) Any corporation organized under section 25(a) of the Federal Reserve Act (12 U.S.C. 611); and

(iii) Any agency or branch of a foreign bank located within the United States.

(2) *Bank* does not include:

(i) Any savings and loan association;

(ii) Any credit union;

(iii) Any lending institution that is an instrumentality or agency of the United States; or

(iv) Any member of a national securities exchange.

Carrying credit is credit that enables a customer to maintain, reduce, or retire indebtedness originally incurred to purchase a security that is currently a margin stock.

Current market value of:

(1) A security means:

(i) If quotations are available, the closing sale price of the security on the preceding business day, as appearing on any regularly published reporting or quotation service; or

(ii) If there is no closing sale price, the lender may use any reasonable estimate of the market value of the security as of the close of business on the preceding business day; or

(iii) If the credit is used to finance the purchase of the security, the total cost of purchase, which may include any commissions charged.

(2) Any other collateral means a value determined by any reasonable method.

Customer excludes an exempted borrower and includes any person or persons acting jointly, to or for whom a lender extends or maintains credit.

Examining authority means:

(1) The national securities exchange or national securities association of which a broker or dealer is a member; or

(2) If a member of more than one self-regulatory organization, the organization designated by the Securities and Exchange Commission as the examining authority for the broker or dealer.

Exempted borrower means a member of a national securities exchange or a registered broker or dealer, a substantial portion of whose business consists of transactions with persons other than brokers or dealers, and includes a borrower who:

(1) Maintains at least 1000 active accounts on an annual basis for persons other than brokers, dealers, and persons associated with a broker or dealer;

(2) Earns at least $10 million in gross revenues on an annual basis from transactions with persons other than brokers, dealers, and persons associated with a broker or dealer; or

(3) Earns at least 10 percent of its gross revenues on an annual basis from transactions with persons other than brokers, dealers, and persons associated with a broker-dealer.

Good faith with respect to:

(1) The loan value of collateral means that amount (not exceeding 100 per cent of the current market value of the collateral) which a lender, exercising sound credit judgment, would lend, without regard to the customer's other assets held as collateral in connection with unrelated transactions.

(2) Making a determination or accepting a statement concerning a borrower means that the lender or its duly authorized representative is alert to the circumstances surrounding the credit, and if in possession of information that would cause a prudent person not to make the determination or accept the notice or certification without inquiry, investigates and is satisfied that it is correct;

In the ordinary course of business means occurring or reasonably expected to occur in carrying out or furthering any business purpose, or in the case of an individual, in the course of any activity for profit or the management or preservation of property.

Indirectly secured. (1) Includes any arrangement with the customer under which:

(i) The customer's right or ability to sell, pledge, or otherwise dispose of margin stock owned by the customer is in any way restricted while the credit remains outstanding; or

(ii) The exercise of such right is or may be cause for accelerating the maturity of the credit.

(2) Does not include such an arrangement if:

(i) After applying the proceeds of the credit, not more than 25 percent of the value (as determined by any reasonable method) of the assets subject to the arrangement is represented by margin stock;

(ii) It is a lending arrangement that permits accelerating the maturity of the credit as a result of a default or renegotiation of another credit to the customer by another lender that is not an affiliate of the lender;

(iii) The lender holds the margin stock only in the capacity of custodian, depositary, or trustee, or under similar circumstances, and, in good faith, has not relied upon the margin stock as collateral; or

(iv) The lender, in good faith, has not relied upon the margin stock as collateral in extending or maintaining the particular credit.

Lender means:

(1) Any bank; or

(2) Any person subject to the registration requirements of this part.

Margin stock means:

(1) Any equity security registered or having unlisted trading privileges on a national securities exchange;

(2) Any OTC security designated as qualified for trading in the National Market System under a designation plan approved by the Securities and Exchange Commission (NMS security);

(3) Any debt security convertible into a margin stock or carrying a warrant or right to subscribe to or purchase a margin stock;

(4) Any warrant or right to subscribe to or purchase a margin stock; or

(5) Any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), other than:

(i) A company licensed under the Small Business Investment Company Act of 1958, as amended (15 U.S.C. 661); or

(ii) A company which has at least 95 percent of its assets continuously invested in exempted securities (as defined in 15 U.S.C. 78c(a)(12)); or

(iii) A company which issues face-amount certificates as defined in 15 U.S.C. 80a–2(a)(15), but only with respect of such securities; or

(iv) A company which is considered a money market fund under SEC Rule 2a–7 (17 CFR 270.2a–7).

Maximum loan value is the percentage of current market value assigned by the Board under § 221.7 (the Supplement) to specified types of collateral. The maximum loan value of margin stock is stated as a percentage of its current market value. Puts, calls and combinations thereof that do not qualify as margin stock have no loan value. All other collateral has good faith loan value.

Nonbank lender means any person subject to the registration requirements of this part.

Purpose credit is any credit for the purpose, whether immediate, incidental, or ultimate, of buying or carrying margin stock.

§ 221.3 General requirements.

(a) *Extending, maintaining, and arranging credit*—(1) *Extending credit.* No lender, except a plan-lender, as defined in § 221.4(a), shall extend any purpose credit, secured directly or indirectly by margin stock, in an amount that exceeds the maximum loan value of the collateral securing the credit.

(2) *Maintaining credit.* A lender may continue to maintain any credit initially extended in compliance with this part, regardless of:

(i) Reduction in the customer's equity resulting from change in market prices;

(ii) Change in the maximum loan value prescribed by this part; or

(iii) Change in the status of the security (from nonmargin to margin) securing an existing purpose credit.

(3) *Arranging credit.* No lender may arrange for the extension or maintenance of any purpose credit, except upon the same terms and conditions under which the lender itself may extend or maintain purpose credit under this part.

(b) *Registration of nonbank lenders; termination of registration; annual report*—(1) *Registration.* Every person other than a person subject to part 220 of this chapter or a bank who, in the ordinary course of business, extends or maintains credit secured, directly or indirectly, by any margin stock shall register on Federal Reserve Form FR G–1 (OMB control number 7100–0011) within 30 days after the end of any calendar quarter during which:

(i) The amount of credit extended equals $200,000 or more; or

(ii) The amount of credit outstanding at any time during that calendar quarter equals $500,000 or more.

(2) *Deregistration.* A registered nonbank lender may apply to terminate its registration, by filing Federal Reserve Form FR G–2 (OMB control number 7100–0011), if the lender has not, during the preceding six calendar months, had more than $200,000 of such credit outstanding. Registration shall be deemed terminated when the application is approved by the Board.

(3) *Annual report.* Every registered nonbank lender shall, within 30 days following June 30 of every year, file Form FR G–4 (OMB control number 7100–0011).

(4) *Where to register and file applications and reports.* Registration statements, applications to terminate registration, and annual reports shall be filed with the Federal Reserve Bank of the district in which the principal office of the lender is located.

(c) *Purpose statement*—(1) *General rule*—(i) *Banks.* Except for credit extended under paragraph (c)(2) of this section, whenever a bank extends credit secured directly or indirectly by any margin stock, in an amount exceeding $100,000, the bank shall require its customer to execute Form FR U–1 (OMB No. 7100–0115), which shall be signed and accepted by a duly authorized officer of the bank acting in good faith.

(ii) *Nonbank lenders.* Except for credit extended under paragraph (c)(2) of this section or § 221.4, whenever a nonbank lender extends credit secured directly or indirectly by any margin stock, the nonbank lender shall require its customer to execute Form FR G–3 (OMB control number 7100–0018), which shall be signed and accepted by a duly authorized representative of the nonbank lender acting in good faith.

(2) *Purpose statement for revolving-credit or multiple-draw agreements or financing of securities purchases on a payment-against-delivery basis*—(i) *Banks.* If a bank extends credit, secured directly or indirectly by any margin stock, in an amount exceeding $100,000, under a revolving-credit or other multiple-draw agreement, Form FR U–1 must be executed at the time the credit arrangement is originally established and must be amended as described in paragraph (c)(2)(iv) of this section for each disbursement if all of the collateral for the agreement is not pledged at the time the agreement is originally established.

(ii) *Nonbank lenders.* If a nonbank lender extends credit, secured directly or indirectly by any margin stock, under a revolving-credit or other multiple-draw agreement, Form FR G–3 must be executed at the time the credit arrangement is originally established and must be amended as described in paragraph (c)(2)(iv) of this section for each disbursement if all of the collateral for the agreement is not pledged at the time the agreement is originally established.

(iii) *Collateral.* If a purpose statement executed at the time the credit arrangement is initially made indicates that the purpose is to purchase or carry margin stock, the credit will be deemed in compliance with this part if:

(A) The maximum loan value of the collateral at least equals the aggregate amount of funds actually disbursed; or

(B) At the end of any day on which credit is extended under the agreement, the lender calls for additional collateral sufficient to bring the credit into compliance with § 221.7 (the Supplement).

(iv) *Amendment of purpose statement.* For any purpose credit disbursed under the agreement, the lender shall obtain and attach to the executed Form FR U–1 or FR G–3 a current list of collateral which adequately supports all credit extended under the agreement.

(d) *Single credit rule.* (1) All purpose credit extended to a customer shall be treated as a single credit, and all the collateral securing such credit shall be considered in determining whether or not the credit complies with this part, except that syndicated loans need not be aggregated with other unrelated purpose credit extended by the same lender.

(2) A lender that has extended purpose credit secured by margin stock may not subsequently extend unsecured purpose credit to the same customer unless the combined credit does not exceed the maximum loan value of the collateral securing the prior credit.

(3) If a lender extended unsecured purpose credit to a customer prior to the extension of purpose credit secured by margin stock, the credits shall be

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combined and treated as a single credit solely for the purposes of the withdrawal and substitution provision of paragraph (f) of this section.

(4) If a lender extends purpose credit secured by any margin stock and non-purpose credit to the same customer, the lender shall treat the credits as two separate loans and may not rely upon the required collateral securing the purpose credit for the nonpurpose credit.

(e) *Exempted borrowers.* (1) An exempted borrower that has been in existence for less than one year may meet the definition of exempted borrower based on a six-month period.

(2) Once a member of a national securities exchange or registered broker or dealer ceases to qualify as an exempted borrower, it shall notify its lenders of this fact. Any new extensions of credit to such a borrower, including rollovers, renewals, and additional draws on existing lines of credit, are subject to the provisions of this part.

(f) *Withdrawals and substitutions.* (1) A lender may permit any withdrawal or substitution of cash or collateral by the customer if the withdrawal or substitution would not:

(i) Cause the credit to exceed the maximum loan value of the collateral; or

(ii) Increase the amount by which the credit exceeds the maximum loan value of the collateral.

(2) For purposes of this section, the maximum loan value of the collateral on the day of the withdrawal or substitution shall be used.

(g) *Exchange offers.* To enable a customer to participate in a reorganization, recapitalization or exchange offer that is made to holders of an issue of margin stock, a lender may permit substitution of the securities received. A nonmargin, nonexempted security acquired in exchange for a margin stock shall be treated as if it is margin stock for a period of 60 days following the exchange.

(h) *Renewals and extensions of maturity.* A renewal or extension of maturity of a credit need not be considered a new extension of credit if the amount of the credit is increased only by the addition of interest, service charges, or taxes with respect to the credit.

(i) *Transfers of credit.* (1) A transfer of a credit between customers or between lenders shall not be considered a new extension of credit if:

(i) The original credit was extended by a lender in compliance with this part or by a lender subject to part 207 of this chapter in effect prior to April 1, 1998, (See part 207 appearing in the 12 CFR parts 200 to 219 edition revised as of January 1, 1997), in a manner that would have complied with this part;

(ii) The transfer is not made to evade this part;

(iii) The amount of credit is not increased; and

(iv) The collateral for the credit is not changed.

(2) Any transfer between customers at the same lender shall be accompanied by a statement by the transferor customer describing the circumstances giving rise to the transfer and shall be accepted and signed by a representative of the lender acting in good faith. The lender shall keep such statement with its records of the transferee account.

(3) When a transfer is made between lenders, the transferee shall obtain a copy of the Form FR U–1 or Form FR G–3 originally filed with the transferor and retain the copy with its records of the transferee account. If no form was originally filed with the transferor, the transferee may accept in good faith a statement from the transferor describing the purpose of the loan and the collateral securing it.

(j) *Action for lender's protection.* Nothing in this part shall require a bank to waive or forego any lien or prevent a bank from taking any action it deems necessary in good faith for its protection.

(k) *Mistakes in good faith.* A mistake in good faith in connection with the extension or maintenance of credit shall not be a violation of this part.

§ 221.4 Employee stock option, purchase, and ownership plans.

(a) *Plan-lender; eligible plan.* (1) Plan-lender means any corporation, (including a wholly-owned subsidiary, or a lender that is a thrift organization whose membership is limited to employees and former employees of the corporation, its subsidiaries or affiliates) that extends or maintains credit to finance the acquisition of margin stock of the corporation, its subsidiaries or affiliates under an eligible plan.

(2) *Eligible plan.* An eligible plan means any employee stock option, purchase, or ownership plan adopted by a corporation and approved by its stockholders that provides for the purchase of margin stock of the corporation, its subsidiaries, or affiliates.

(b) *Credit to exercise rights under or finance an eligible plan.* (1) If a plan-lender extends or maintains credit under an eligible plan, any margin stock that directly or indirectly secured that credit shall have good faith loan value.

(2) Credit extended under this section shall be treated separately from credit extended under any other section of this part except § 221.3(b)(1) and (b)(3).

(c) *Credit to ESOPs.* A nonbank lender may extend and maintain purpose credit without regard to the provisions of this part, except for § 221.3(b)(1) and (b)(3), if such credit is extended to an employee stock ownership plan (ESOP) qualified under section 401 of the Internal Revenue Code, as amended (26 U.S.C. 401).

§ 221.5 Special purpose loans to brokers and dealers.

(a) *Special purpose loans.* A lender may extend and maintain purpose credit to brokers and dealers without regard to the limitations set forth in §§ 221.3 and 221.7, if the credit is for any of the specific purposes and meets the conditions set forth in paragraph (c) of this section.

(b) *Written notice.* Prior to extending credit for more than a day under this section, the lender shall obtain and accept in good faith a written notice or certification from the borrower as to the purposes of the loan. The written notice or certification shall be evidence of continued eligibility for the special credit provisions until the borrower notifies the lender that it is no longer eligible or the lender has information that would cause a reasonable person to question whether the credit is being used for the purpose specified.

(c) *Types of special purpose credit.* The types of credit that may be extended and maintained on a good faith basis are as follows:

(1) *Hypothecation loans.* Credit secured by hypothecated customer securities that, according to written notice received from the broker or dealer, may be hypothecated by the broker or dealer under Securities and Exchange Commission (SEC) rules.

(2) *Temporary advances in payment-against-delivery transactions.* Credit to finance the purchase or sale of securities for prompt delivery, if the credit is to be repaid upon completion of the transaction.

(3) *Loans for securities in transit or transfer.* Credit to finance securities in transit or surrendered for transfer, if the credit is to be repaid upon completion of the transaction.

(4) *Intra-day loans.* Credit to enable a broker or dealer to pay for securities, if the credit is to be repaid on the same day it is extended.

(5) *Arbitrage loans.* Credit to finance proprietary or customer bona fide arbitrage transactions. For the purpose of this section bona fide arbitrage means:

(i) Purchase or sale of a security in one market, together with an offsetting sale or purchase of the same security in a different market at nearly the same time as practicable, for the purpose of taking advantage of a difference in prices in the two markets; or

(ii) Purchase of a security that is, without restriction other than the payment of money, exchangeable or convertible within 90 calendar days of the purchase into a second security, together with an offsetting sale of the second security at or about the same time, for the purpose of taking advantage of a concurrent disparity in the price of the two securities.

(6) *Market maker and specialist loans.* Credit to a member of a national securities exchange or registered broker or dealer to finance its activities as a market maker or specialist.

(7) *Underwriter loans.* Credit to a member of a national securities exchange or registered broker or dealer to finance its activities as an underwriter.

(8) *Emergency loans.* Credit that is essential to meet emergency needs of the broker-dealer business arising from exceptional circumstances.

(9) *Capital contribution loans.* Capital contribution loans include:

(i) Credit that Board has exempted by order upon a finding that the exemption is necessary or appropriate in the public interest or for the protection of investors, provided the Securities Investor Protection Corporation certifies to the Board that the exemption is appropriate; or

(ii) Credit to a customer for the purpose of making a subordinated loan or capital contribution to a broker or dealer in conformity with the SEC's net capital rules and the rules of the broker's or dealer's examining authority, provided:

(A) The customer reduces the credit by the amount of any reduction in the loan or contribution to the broker or dealer; and

(B) The credit is not used to purchase securities issued by the broker or dealer in a public distribution.

(10) Credit to clearing brokers or dealers. Credit to a member of a national securities exchange or registered broker or dealer whose nonproprietary business is limited to financing and carrying the accounts of registered market makers.

§ 221.6 Exempted transactions.

A bank may extend and maintain purpose credit without regard to the provisions of this part if such credit is extended:

(a) To any bank;

(b) To any foreign banking institution;

(c) Outside the United States;

(d) To an employee stock ownership plan (ESOP) qualified under section 401 of the Internal Revenue Code (26 U.S.C. 401);

(e) To any plan lender as defined in § 221.4(a) to finance an eligible plan as defined in § 221.4(b), provided the bank has no recourse to any securities purchased pursuant to the plan;

(f) To any customer, other than a broker or dealer, to temporarily finance the purchase or sale of securities for prompt delivery, if the credit is to be repaid in the ordinary course of business upon completion of the transaction and is not extended to enable the customer to pay for securities purchased in an account subject to part 220 of this chapter;

(g) Against securities in transit, if the credit is not extended to enable the customer to pay for securities purchased in an account subject to part 220 of this chapter; or

(h) To enable a customer to meet emergency expenses not reasonably foreseeable, and if the extension of credit is supported by a statement executed by the customer and accepted and signed by an officer of the bank acting in good faith. For this purpose, emergency expenses include expenses arising from circumstances such as the death or disability of the customer, or some other change in circumstances involving extreme hardship, not reasonably foreseeable at the time the credit was extended. The opportunity to realize monetary gain or to avoid loss is not a "change in circumstances" for this purpose.

§ 221.7 Supplement: Maximum loan value of margin stock and other collateral.

(a) *Maximum loan value of margin stock.* The maximum loan value of any margin stock is fifty per cent of its current market value.

(b) *Maximum loan value of nonmargin stock and all other collateral.* The maximum loan value of nonmargin stock and all other collateral except puts, calls, or combinations thereof is their good faith loan value.

(c) *Maximum loan value of options.* Except for options that qualify as margin stock, puts, calls, and combinations thereof have no loan value.

Interpretations

§ 221.101 Determination and effect of purpose of loan.

(a) Under this part the original purpose of a loan is controlling. In other words, if a loan originally is not for the purpose of purchasing or carrying margin stock, changes in the collateral for the loan do not change its exempted character.

(b) However, a so-called increase in the loan is necessarily on an entirely different basis. So far as the purpose of the credit is concerned, it is a new loan, and the question of whether or not it is subject to this part must be determined accordingly.

(c) Certain facts should also be mentioned regarding the determination of the purpose of a loan. Section 221.3(c) provides in that whenever a lender is required to have its customer execute a "Statement of Purpose for an Extension of Credit Secured by Margin Stock," the statement must be accepted by the lender "acting in good faith." The requirement of "good faith" is of vital importance here. Its application will necessarily vary with the facts of the particular case, but it is clear that the bank must be alert to the circumstances surrounding the loan. For example, if the loan is to be made to a customer who is not a broker or dealer in securities, but such a broker or dealer is to deliver margin stock to secure the loan or is to receive the proceeds of the loan, the bank would be put on notice that the loan would probably be subject to this part. It could not accept in good faith a statement to the contrary without obtaining a reliable and satisfactory explanation of the situation.

(d) Furthermore, the purpose of a loan means just that. It cannot be altered by some temporary application of the proceeds. For example, if a borrower is to purchase Government securities with the proceeds of a loan, but is soon thereafter to sell such securities and replace them with margin stock, the loan is clearly for the purpose of purchasing or carrying margin stock.

§ 221.102 Application to committed credit where funds are disbursed thereafter.

The Board has concluded that the date a commitment to extend credit becomes binding should be regarded as the date when the credit is extended, since:

(a) On that date the parties should be aware of law and facts surrounding the transaction; and

(b) Generally, the date of contract is controlling for purposes of margin regulations and Federal securities law, regardless of the delivery of cash or securities.

§ 221.103 Loans to brokers or dealers.

Questions have arisen as to the adequacy of statements received by lending banks under § 221.3(c), "Purpose Statement," in the case of loans to brokers or dealers secured by margin stock where the proceeds of the loans are to be used to finance customer transactions involving the purchasing or

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carrying of margin stock. While some such loans may qualify for exemption under §§ 221.1(b)(2), 221.4, 221.5 or 221.6, unless they do qualify for such an exemption they are subject to this part. For example, if a loan so secured is made to a broker to furnish cash working capital for the conduct of his brokerage business (i.e., for purchasing and carrying securities for the account of customers), the maximum loan value prescribed in § 221.7 (the Supplement) would be applicable unless the loan should be of a kind exempted under this part. This result would not be affected by the fact that the margin stock given as security for the loan was or included margin stock owned by the brokerage firm. In view of the foregoing, the statement referred to in § 221.3(c) which the lending bank must accept in good faith in determining the purpose of the loan would be inadequate if the form of statement accepted or used by the bank failed to call for answers which would indicate whether or not the loan was of the kind discussed elsewhere in this section.

§ 221.104 Federal credit unions.

For text of the interpretation on Federal credit unions, see 12 CFR 220.110.

§ 221.105 Arranging for extensions of credit to be made by a bank.

For text of the interpretation on Arranging for extensions of credit to be made by a bank, see 12 CFR 220.111.

§ 221.106 Reliance in "good faith" on statement of purpose of loan.

(a) Certain situations have arisen from time to time under this part wherein it appeared doubtful that, in the circumstances, the lending banks may have been entitled to rely upon the statements accepted by them in determining whether the purposes of certain loans were such as to cause the loans to be not subject to the part.

(b) The use by a lending bank of a statement in determining the purpose of a particular loan is, of course, provided for by § 221.3(c). However, under that paragraph a lending bank may accept such statement only if it is "acting in good faith." As the Board stated in the interpretation contained in § 221.101, the "requirement of 'good faith' is of vital importance"; and, to fulfill such requirement, "it is clear that the bank must be alert to the circumstances surrounding the loan."

(c) Obviously, such a statement would not be accepted by the bank in "good faith" if at the time the loan was made the bank had knowledge, from any source, of facts or circumstances which were contrary to the natural purport of the statement, or which were sufficient reasonably to put the bank on notice of the questionable reliability or completeness of the statement.

(d) Furthermore, the same requirement of "good faith" is to be applied whether the statement accepted by the bank is signed by the borrower or by an officer of the bank. In either case, "good faith" requires the exercise of special diligence in any instance in which the borrower is not personally known to the bank or to the officer who processes the loan.

(e) The interpretation set forth in § 221.101 contains an example of the application of the "good faith" test. There it was stated that "if the loan is to be made to a customer who is not a broker or dealer in securities, but such a broker or dealer is to deliver margin stock to secure the loan or is to receive the proceeds of the loan, the bank would be put on notice that the loan would probably be subject to this part. It could not accept in good faith a statement to the contrary without obtaining a reliable and satisfactory explanation of the situation".

(f) Moreover, and as also stated by the interpretation contained in § 221.101, the purpose of a loan, of course, "cannot be altered by some temporary application of the proceeds. For example, if a borrower is to purchase Government securities with the proceeds of a loan, but is soon thereafter to sell such securities and replace them with margin stock, the loan is clearly for the purpose of purchasing or carrying margin stock". The purpose of a loan therefore, should not be determined upon a narrow analysis of the immediate use to which the proceeds of the loan are put. Accordingly, a bank acting in "good faith" should carefully scrutinize cases in which there is any indication that the borrower is concealing the true purpose of the loan, and there would be reason for special vigilance if margin stock is substituted for bonds or nonmargin stock soon after the loan is made, or on more than one occasion.

(g) Similarly, the fact that a loan made on the borrower's signature only, for example, becomes secured by margin stock shortly after the disbursement of the loan usually would afford reasonable grounds for questioning the bank's apparent reliance upon merely a statement that the purpose of the loan was not to purchase or carry margin stock.

(h) The examples in this section are, of course, by no means exhaustive. They simply illustrate the fundamental fact that no statement accepted by a lender is of any value for the purposes of this part unless the lender accepting the statement is "acting in good faith", and that "good faith" requires, among other things, reasonable diligence to learn the truth.

§ 221.107 Arranging loan to purchase open-end investment company shares.

For text of the interpretation on Arranging loan to purchase open-end investment company shares, see 12 CFR 220.112.

§ 221.108 Effect of registration of stock subsequent to making of loan.

(a) The Board recently was asked whether a loan by a bank to enable the borrower to purchase a newly issued nonmargin stock during the initial over-the-counter trading period prior to the stock becoming registered (listed) on a national securities exchange would be subject to this part. The Board replied that, until such stock qualifies as margin stock, this would not be applicable to such a loan.

(b) The Board has now been asked what the position of the lending bank would be under this part if, after the date on which the stock should become registered, such bank continued to hold a loan of the kind just described. It is assumed that the loan was in an amount greater than the maximum loan value for the collateral specified in this part.

(c) If the stock should become registered, the loan would then be for the purpose of purchasing or carrying a margin stock, and, if secured directly or indirectly by any margin stock, would be subject to this part as from the date the stock was registered. Under this part, this does not mean that the bank would have to obtain reduction of the loan in order to reduce it to an amount no more than the specified maximum loan value. It does mean, however, that so long as the loan balance exceeded the specified maximum loan value, the bank could not permit any withdrawals or substitutions of collateral that would increase such excess; nor could the bank increase the amount of the loan balance unless there was provided additional collateral having a maximum loan value at least equal to the amount of the increase. In other words, as from the date the stock should become a margin stock, the loan would be subject to this part in exactly the same way, for example, as a loan subject to this part that became under-margined because of a decline in the current market value of the loan collateral or because of a decrease by the Board in the maximum loan value of the loan collateral.

§ 221.109 Loan to open-end investment company.

In response to a question regarding a possible loan by a bank to an open-end investment company that customarily purchases stocks registered on a national securities exchange, the Board stated that in view of the general nature and operations of such a company, any loan by a bank to such a company should be presumed to be subject to this part as a loan for the purpose of purchasing or carrying margin stock. This would not be altered by the fact that the open-end company had used, or proposed to use, its own funds or proceeds of the loan to redeem some of its own shares, since mere application of the proceeds of a loan to some other use cannot prevent the ultimate purpose of a loan from being to purchase or carry registered stocks.

§ 221.110 Questions arising under this part.

(a) This part governs "any purpose credit" extended by a lender "secured directly or indirectly by margin stock" and defines "purpose credit" as "any credit for the purpose, whether immediate, incidental, or ultimate, of buying or carrying margin stock, " with certain exceptions, and provides that the maximum loan value of such margin stock shall be a fixed percentage "of its current market value."

(b) The Board of Governors has had occasion to consider the application of the language in paragraph (a) of this section to the two following questions:

(1) *Loan secured by stock.* First, is a loan to purchase or carry margin stock subject to this part where made in unsecured form, if margin stock is subsequently deposited as security with the lender, and surrounding circumstances indicate that the parties originally contemplated that the loan should be so secured? The Board answered that in a case of this kind, the loan would be subject to this part, for the following reasons:

(i) The Board has long held, in the closely related purpose area, that the original purpose of a loan should not be determined upon a narrow analysis of the technical circumstances under which a loan is made. Instead, the fundamental purpose of the loan is considered to be controlling. Indeed, "the fact that a loan made on the borrower's signature only, for example, becomes secured by registered stock shortly after the disbursement of the loan" affords reasonable grounds for questioning whether the bank was entitled to rely upon the borrower's statement as to the purpose of the loan. 1953 Fed. Res. Bull. 951 (*See*, § 221.106).

(ii) Where security is involved, standards of interpretation should be equally searching. If, for example, the original agreement between borrower and lender contemplated that the loan should be secured by margin stock, and such stock is in fact delivered to the bank when available, the transaction must be regarded as fundamentally a secured loan. This view is strengthened by the fact that this part applies to a loan "secured directly or indirectly by margin stock."

(2) *Loan to acquire controlling shares.* (i) The second question is whether this part governs a margin stock-secured loan made for the business purpose of purchasing a controlling interest in a corporation, or whether such a loan would be exempt on the ground that this part is directed solely toward purchases of stock for speculative or investment purposes. The Board answered that a margin stock-secured loan for the purpose of purchasing or carrying margin stock is subject to this part, regardless of the reason for which the purchase is made.

(ii) The answer is required, in the Board's view, since the language of this part is explicitly inclusive, covering "any purpose credit, secured directly or indirectly by margin stock." Moreover, the withdrawal in 1945 of the original section 2(e) of this part, which exempted "any loan for the purpose of purchasing a stock from or through a person who is not a member of a national securities exchange . . ." plainly implies that transactions of the sort described are now subject to the general prohibition of § 221.3(a).

§ 221.111 Contribution to joint venture as extension of credit when the contribution is disproportionate to the contributor's share in the venture's profits or losses.

(a) The Board considered the question whether a joint venture, structured so that the amount of capital contribution to the venture would be disproportionate to the right of participation in profits or losses, constitutes an "extension of credit" for the purpose of this part.

(b) An individual and a corporation plan to establish a joint venture to engage in the business of buying and selling securities, including margin stock. The individual would contribute 20 percent of the capital and receive 80 percent of the profits or losses; the corporate share would be the reverse. In computing profits or losses, each participant would first receive interest at the rate of 8 percent on his respective capital contribution. Although purchases and sales would be mutually agreed upon, the corporation could liquidate the joint portfolio if the individual's share of the losses equaled or exceeded his 20 percent contribution to the venture. The corporation would hold the securities, and upon termination of the venture, the assets would first be applied to repayment of capital contributions.

(c) In general, the relationship of joint venture is created when two or more persons combine their money, property, or time in the conduct of some particular line of trade or some particular business and agree to share jointly, or in proportion to capital contributed, the profits and losses of the undertaking.

(d) The incidents of the joint venture described in paragraph (b) of this section, however, closely parallel those of an extension of margin credit, with the corporation as lender and the individual as borrower. The corporation supplies 80 percent of the purchase price of securities in exchange for a net return of 8 percent of the amount advanced plus 20 percent of any gain. Like a lender of securities credit, the corporation is insulated against loss by retaining the right to liquidate the collateral before the securities decline in price below the amount of its contribution. Conversely, the individual—like a customer who borrows to purchase securities—puts up only 20 percent of their cost, is entitled to the principal portion of any appreciation in their value, bears the principal risk of loss should that value decline, and does not stand to gain or lose except through a change in value of the securities purchased.

(e) The Board is of the opinion that where the right of an individual to share in profits and losses of such a joint venture is disproportionate to his contribution to the venture:

(1) The joint venture involves an extension of credit by the corporation to the individual;

(2) The extension of credit is to purchase or carry margin stock, and is collateralized by such margin stock; and

(3) If the corporation is not a broker or dealer subject to Regulation T (12 CFR part 220), the credit is of the kind described by § 221.3(a).

§ 221.112 Loans by bank in capacity as trustee.

(a) The Board's advice has been requested whether a bank's activities in connection with the administration of an employees' savings plan are subject to this part.

(b) Under the plan, any regular, full-time employee may participate by

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authorizing the sponsoring company to deduct a percentage of his salary and wages and transmit the same to the bank as trustee. Voluntary contributions by the company are allocated among the participants. A participant may direct that funds held for him be invested by the trustee in insurance, annuity contracts, Series E Bonds, or in one or more of three specified securities which are listed on a stock exchange. Loans to purchase the stocks may be made to participants from funds of the trust, subject to approval of the administrative committee, which is composed of five participants, and of the trustee. The bank's right to approve is said to be restricted to the mechanics of making the loan, the purpose being to avoid cumbersome procedures.

(c) Loans are secured by the credit balance of the borrowing participants in the savings fund, including stock, but excluding (in practice) insurance and annuity contracts and government securities. Additional stocks may be, but, in practice, have not been pledged as collateral for loans. Loans are not made, under the plan, from bank funds, and participants do not borrow from the bank upon assignment of the participants' accounts in the trust.

(d) It is urged that loans under the plan are not subject to this part because a loan should not be considered as having been made by a bank where the bank acts solely in its capacity of trustee, without exercise of any discretion.

(e) The Board reviewed this question upon at least one other occasion, and full consideration has again been given to the matter. After considering the arguments on both sides, the Board has reaffirmed its earlier view that, in conformity with an interpretation not published in the Code of Federal Regulations which was published at page 874 of the 1946 Federal Reserve Bulletin (*See* 12 CFR 261.10(f) for information on how to obtain Board publications.), this part applies to the activities of a bank when it is acting in its capacity as trustee. Although the bank in that case had at best a limited discretion with respect to loans made by it in its capacity as trustee, the Board concluded that this fact did not affect the application of the regulation to such loans.

§ 221.113 Loan which is secured indirectly by stock.

(a) A question has been presented to the Board as to whether a loan by a bank to a mutual investment fund is "secured * * * indirectly by margin stock" within the meaning of § 221.(3)(a), so that the loan should be treated as subject to this part.

(b) Briefly, the facts are as follows. Fund X, an open-end investment company, entered into a loan agreement with Bank Y, which was (and still is) custodian of the securities which comprise the portfolio of Fund X. The agreement includes the following terms, which are material to the question before the Board:

(1) Fund X agrees to have an "asset coverage" (as defined in the agreements) of 400 percent of all its borrowings, including the proposed borrowing, at the time when it takes down any part of the loan.

(2) Fund X agrees to maintain an "asset coverage" of at least 300 percent of its borrowings at all times.

(3) Fund X agrees not to amend its custody agreement with Bank Y, or to substitute another custodian without Bank Y's consent.

(4) Fund X agrees not to mortgage, pledge, or otherwise encumber any of its assets elsewhere than with Bank Y.

(c) In § 221.109 the Board stated that because of "the general nature and operations of such a company", any "loan by a bank to an open-end investment company that customarily purchases margin stock * * * should be presumed to be subject to this part as a loan for the purpose of purchasing or carrying margin stock" (purpose credit). The Board's interpretation went on to say that: "this would not be altered by the fact that the open-end company had used, or proposed to use, its own funds or proceeds of the loan to redeem some of its own shares * * *."

(d) Accordingly, the loan by Bank Y to Fund X was and is a "purpose credit". However, a loan by a bank is not subject to this part unless: it is a purpose credit; and it is "secured directly or indirectly by margin stock". In the present case, the loan is not "secured directly" by stock in the ordinary sense, since the portfolio of Fund X is not pledged to secure the credit from Bank Y. But the word "indirectly" must signify some form of security arrangement other than the "direct" security which arises from the ordinary "transaction that gives recourse against a particular chattel or land or against a third party on an obligation" described in the American Law Institute's Restatement of the Law of Security, page 1. Otherwise the word "indirectly" would be superfluous, and a regulation, like a statute, must be construed if possible to give meaning to every word.

(e) The Board has indicated its view that any arrangement under which margin stock is more readily available as security to the lending bank than to other creditors of the borrower may amount to indirect security within the meaning of this part. In an interpretation published at § 221.110 it stated: "The Board has long held, in the * * * purpose area, that the original purpose of a loan should not be determined upon a narrow analysis of the technical circumstances under which a loan is made * * *. Where security is involved, standards of interpretation should be equally searching." In its pamphlet issued for the benefit and guidance of banks and bank examiners, entitled "Questions and Answers Illustrating Application of Regulation U", the Board said: "In determining whether a loan is "indirectly" secured, it should be borne in mind that the reason the Board has thus far refrained * * * from regulating loans not secured by stock has been to simplify operations under the regulation. This objective of simplifying operations does not apply to loans in which arrangements are made to retain the substance of stock collateral while sacrificing only the form".

(f) A wide variety of arrangements as to collateral can be made between bank and borrower which will serve, to some extent, to protect the interest of the bank in seeing that the loan is repaid, without giving the bank a conventional direct "security" interest in the collateral. Among such arrangements which have come to the Board's attention are the following:

(1) The borrower may deposit margin stock in the custody of the bank. An arrangement of this kind may not, it is true, place the bank in the position of a secured creditor in case of bankruptcy, or even of conflicting claims, but it is likely effectively to strengthen the bank's position. The definition of *indirectly secured* in § 221.2, which provides that a loan is not indirectly secured if the lender "holds the margin stock only in the capacity of custodian, depositary or trustee, or under similar circumstances, and, in good faith has not relied upon the margin stock as collateral," does not exempt a deposit of this kind from the impact of the regulation unless it is clear that the bank "has not relied" upon the margin stock deposited with it.

(2) A borrower may not deposit his margin stock with the bank, but agree not to pledge or encumber his assets elsewhere while the loan is outstanding. Such an agreement may be difficult to police, yet it serves to some extent to protect the interest of the bank if only because the future credit standing and business reputation of the borrower will depend upon his keeping his word. If the assets covered by such an agreement include margin stock, then, the credit is "indirectly secured" by the margin stock within the meaning of this part.

(3) The borrower may deposit margin stock with a third party who agrees to hold the stock until the loan has been paid off. Here, even though the parties may purport to provide that the stock is not "security" for the loan (for example, by agreeing that the stock may not be sold and the proceeds applied to the debt if the borrower fails to pay), the mere fact that the stock is out of the borrower's control for the duration of the loan serves to some extent to protect the bank.

(g) The three instances described in paragraph (f) of this section are merely illustrative. Other methods, or combinations of methods, may serve a similar purpose. The conclusion that any given arrangement makes a credit "indirectly secured" by margin stock may, but need not, be reinforced by facts such as that the stock in question was purchased with proceeds of the loan, that the lender suggests or insists upon the arrangement, or that the loan would probably be subject to criticism by supervisory authorities were it not for the protective arrangement.

(h) Accordingly, the Board concludes that the loan by Bank Y to Fund X is indirectly secured by the portfolio of the fund and must be treated by the bank as a regulated loan.

§ 221.114 Bank loans to purchase stock of American Telephone and Telegraph Company under Employees' Stock Plan.

(a) The Board of Governors interpreted this part in connection with proposed loans by a bank to persons who are purchasing shares of stock of American Telephone and Telegraph Company pursuant to its Employees' Stock Plan.

(b) According to the current offering under the Plan, an employee of the AT&T system may purchase shares through regular deductions from his pay over a period of 24 months. At the end of that period, a certificate for the appropriate number of shares will be issued to the participating employee by AT&T. Each employee is entitled to purchase, as a maximum, shares that will cost him approximately three-fourths of his annual base pay. Since the program extends over two years, it follows that the payroll deductions for this purpose may be in the neighborhood of 38 percent of base pay and a larger percentage of "take-home pay." Deductions of this magnitude are in excess of the saving rate of many employees.

(c) Certain AT&T employees, who wish to take advantage of the current offering under the Plan, are the owners of shares of AT&T stock that they purchased under previous offerings. A bank proposed to receive such stock as collateral for a "living expenses" loan that will be advanced to the employee in monthly installments over the 24-month period, each installment being in the amount of the employee's monthly payroll deduction under the Plan. The aggregate amount of the advances over the 24-month period would be substantially greater than the maximum loan value of the collateral as prescribed in § 221.7 (the Supplement).

(d) In the opinion of the Board of Governors, a loan of the kind described would violate this part if it exceeded the maximum loan value of the collateral. The regulation applies to any margin stock-secured loan for the purpose of purchasing or carrying margin stock (§ 221.3(a)). Although the proposed loan would purport to be for living expenses, it seems quite clear, in view of the relationship of the loan to the Employees' Stock Plan, that its actual purpose would be to enable the borrower to purchase AT&T stock, which is margin stock. At the end of the 24-month period the borrower would acquire a certain number of shares of that stock and would be indebted to the lending bank in an amount approximately equal to the amount he would pay for such shares. In these circumstances, the loan by the bank must be regarded as a loan "for the purpose of purchasing" the stock, and therefore it is subject to the limitations prescribed by this part. This conclusion follows from the provisions of this part, and it may also be observed that a contrary conclusion could largely defeat the basic purpose of the margin regulations.

(e) Accordingly, the Board concluded that a loan of the kind described may not be made in an amount exceeding the maximum loan value of the collateral, as prescribed by the current § 221.7 (the Supplement).

§ 221.115 Accepting a purpose statement through the mail without benefit of face-to-face interview.

(a) The Board has been asked whether the acceptance of a purpose statement submitted through the mail by a lender subject to the provisions of this part will meet the good faith requirement of § 221.3(c). Section 221.3(c) states that in connection with any credit secured by collateral which includes any margin stock, a nonbank lender must obtain a purpose statement executed by the borrower and accepted by the lender in good faith. Such acceptance requires that the lender be alert to the circumstances surrounding the credit and if further information suggests inquiry, he must investigate and be satisfied that the statement is truthful.

(b) The lender is a subsidiary of a holding company which also has another subsidiary which serves as underwriter and investment advisor to various mutual funds. The sole business of the lender will be to make "non-purpose" consumer loans to shareholders of the mutual funds, such loans to be collateralized by the fund shares. Most mutual funds shares are margin stock for purposes of this part. Solicitation and acceptance of these consumer loans will be done principally through the mail and the lender wishes to obtain the required purpose statement by mail rather than by a face-to-face interview. Personal interviews are not practicable for the lender because shareholders of the funds are scattered throughout the country. In order to provide the same safeguards inherent in face-to-face interviews, the lender has developed certain procedures designed to satisfy the good faith acceptance requirement of this part.

(c) The purpose statement will be supplemented with several additional questions relevant to the prospective borrower's investment activities such as purchases of any security within the last 6 months, dollar amount, and obligations to purchase or pay for previous purchases; present plans to purchase securities in the near future, participations in securities purchase plans, list of unpaid debts, and present income level. Some questions have been modified to facilitate understanding but no questions have been deleted. If additional inquiry is indicated by the answers on the form, a loan officer of the lender will interview the borrower by telephone to make sure the loan is "non-purpose". Whenever the loan exceeds the "maximum loan value" of the collateral for a regulated loan, a telephone interview will be done as a matter of course.

(d) One of the stated purposes of Regulation X (12 CFR part 224) was to prevent the infusion of unregulated credit into the securities markets by borrowers falsely certifying the purpose of a loan. The Board is of the view that the existence of Regulation X (12 CFR part 224), which makes the borrower liable for willful violations of the margin regulations, will allow a lender subject to this part to meet the good faith acceptance requirement of § 221.3(c) without a face-to-face interview if the lender adopts a program, such as the one described in

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paragraph (c) of this section, which requires additional detailed information from the borrower and proper procedures are instituted to verify the truth of the information received. Lenders intending to embark on a similar program should discuss proposed plans with their district Federal Reserve Bank. Lenders may have existing or future loans with the prospective customers which could complicate the efforts to determine the true purpose of the loan.

§ 221.116 Bank loans to replenish working capital used to purchase mutual fund shares.

(a) In a situation considered by the Board of Governors, a business concern (X) proposed to purchase mutual fund shares, from time to time, with proceeds from its accounts receivable, then pledge the shares with a bank in order to secure working capital. The bank was prepared to lend amounts equal to 70 percent of the current value of the shares as they were purchased by X. If the loans were subject to this part, only 50 percent of the current market value of the shares could be lent.

(b) The immediate purpose of the loans would be to replenish X's working capital. However, as time went on, X would be acquiring mutual fund shares at a cost that would exceed the net earnings it would normally have accumulated, and would become indebted to the lending bank in an amount approximately 70 percent of the prices of said shares.

(c) The Board held that the loans were for the purpose of purchasing the shares, and therefore subject to the limitations prescribed by this part. As pointed out in § 221.114 with respect to a similar program for putting a high proportion of cash income into stock, the borrowing against the margin stock to meet needs for which the cash would otherwise have been required, a contrary conclusion could largely defeat the basic purpose of the margin regulations.

(d) Also considered was an alternative proposal under which X would deposit proceeds from accounts receivable in a time account for 1 year, before using those funds to purchase mutual fund shares. The Board held that this procedure would not change the situation in any significant way. Once the arrangement was established, the proceeds would be flowing into the time account at the same time that similar amounts were released to purchase the shares, and over any extended period of time the result would be the same. Accordingly, the Board concluded that bank loans made under the alternative proposal would similarly be subject to this part.

§ 221.117 When bank in "good faith" has not relied on stock as collateral.

(a) The Board has received questions regarding the circumstances in which an extension or maintenance of credit will not be deemed to be "indirectly secured" by stock as indicated by the phrase, "if the lender, in good faith, has not relied upon the margin stock as collateral," contained in paragraph (2)(iv) of the definition of *indirectly secured* in § 221.2.

(b) In response, the Board noted that in amending this portion of the regulation in 1968 it was indicated that one of the purposes of the change was to make clear that the definition of *indirectly secured* does not apply to certain routine negative covenants in loan agreements. Also, while the question of whether or not a bank has relied upon particular stock as collateral is necessarily a question of fact to be determined in each case in the light of all relevant circumstances, some indication that the bank had not relied upon stock as collateral would seem to be afforded by such circumstances as the fact that:

(1) The bank had obtained a reasonably current financial statement of the borrower and this statement could reasonably support the loan; and

(2) The loan was not payable on demand or because of fluctuations in market value of the stock, but instead was payable on one or more fixed maturities which were typical of maturities applied by the bank to loans otherwise similar except for not involving any possible question of stock collateral.

§ 221.118 Bank arranging for extension of credit by corporation.

(a) The Board considered the questions whether:

(1) The guaranty by a corporation of an "unsecured" bank loan to exercise an option to purchase stock of the corporation is an "extension of credit" for the purpose of this part;

(2) Such a guaranty is given "in the ordinary course of business" of the corporation, as defined in § 221.2; and

(3) The bank involved took part in arranging for such credit on better terms than it could extend under the provisions of this part.

(b) The Board understood that any officer or employee included under the corporation's stock option plan who wished to exercise his option could obtain a loan for the purchase price of the stock by executing an unsecured note to the bank. The corporation would issue to the bank a guaranty of the loan and hold the purchased shares as collateral to secure it against loss on the guaranty. Stock of the corporation is registered on a national securities exchange and therefore qualifies as "margin stock" under this part.

(c) A nonbank lender is subject to the registration and other requirements of this part if, in the ordinary course of his business, he extends credit on collateral that includes any margin stock in the amount of $200,000 or more in any calendar quarter, or has such credit outstanding in any calendar quarter in the amount of $500,000 or more. The Board understood that the corporation in question had sufficient guaranties outstanding during the applicable calendar quarter to meet the dollar thresholds for registration.

(d) In the Board's judgment a person who guarantees a loan, and thereby becomes liable for the amount of the loan in the event the borrower should default, is lending his credit to the borrower. In the circumstances described, such a lending of credit must be considered an "extension of credit" under this part in order to prevent circumvention of the regulation's limitation on the amount of credit that can be extended on the security of margin stock.

(e) Under § 221.2, the term *in the ordinary course of business means* "occurring or reasonably expected to occur in carrying out or furthering any business purpose. * * *" In general, stock option plans are designed to provide a company's employees with a proprietary interest in the company in the form of ownership of the company's stock. Such plans increase the company's ability to attract and retain able personnel and, accordingly, promote the interest of the company and its stockholders, while at the same time providing the company's employees with additional incentive to work toward the company's future success. An arrangement whereby participating employees may finance the exercise of their options through an unsecured bank loan guaranteed by the company, thereby facilitating the employees' acquisition of company stock, is likewise designed to promote the company's interest and is, therefore, in furtherance of a business purpose.

(f) For the reasons indicated, the Board concluded that under the circumstances described a guaranty by the corporation constitutes credit extended in the ordinary course of business under this part, that the corporation is required to register pursuant to § 221.3(b), and that such guaranties may not be given in excess of the maximum loan value of the collateral pledged to secure the guaranty.

(g) Section 221.3(a)(3) provides that "no lender may arrange for the extension or maintenance of any purpose credit, except upon the same terms and conditions on which the lender itself may extend or maintain purpose credit under this part". Since the Board concluded that the giving of a guaranty by the corporation to secure the loan described above constitutes an extension of credit, and since the use of a guaranty in the manner described could not be effectuated without the concurrence of the bank involved, the Board further concluded that the bank took part in "arranging" for the extension of credit in excess of the maximum loan value of the margin stock pledged to secure the guaranties.

§ 221.119 Applicability of plan-lender provisions to financing of stock options and stock purchase rights qualified or restricted under Internal Revenue Code.

(a) The Board has been asked whether the plan-lender provisions of § 221.4(a) and (b) were intended to apply to the financing of stock options restricted or qualified under the Internal Revenue Code where such options or the option plan do not provide for such financing.

(b) It is the Board's experience that in some nonqualified plans, particularly stock purchase plans, the credit arrangement is distinct from the plan. So long as the credit extended, and particularly, the character of the plan-lender, conforms with the requirements of the regulation, the fact that option and credit are provided for in separate documents is immaterial. It should be emphasized that the Board does not express any view on the preferability of qualified as opposed to nonqualified options; its role is merely to prevent excessive credit in this area.

(c) Section 221.4(a) provides that a plan-lender may include a wholly-owned subsidiary of the issuer of the collateral (taking as a whole, corporate groups including subsidiaries and affiliates). This clarifies the Board's intent that, to qualify for special treatment under that section, the lender must stand in a special employer-employee relationship with the borrower, and a special relationship of issuer with regard to the collateral. The fact that the Board, for convenience and practical reasons, permitted the employing corporation to act through a subsidiary or other entity should not be interpreted to mean the Board intended the lender to be other than an entity whose overriding interests were coextensive with the issuer. An independent corporation, with independent interests was never intended, regardless of form, to be at the base of exempt stock-plan lending.

§ 221.120 Allocation of stock collateral to purpose and nonpurpose credits to same customer.

(a) A bank proposes to extend two credits (Credits A and B) to its customer. Although the two credits are proposed to be extended at the same time, each would be evidenced by a separate agreement. Credit A would be extended for the purpose of providing the customer with working capital (nonpurpose credit), collateralized by margin stock. Credit B would be extended for the purpose of purchasing or carrying margin stock (purpose credit), without collateral or on collateral other than stock.

(b) This part allows a bank to extend purpose and nonpurpose credits simultaneously or successively to the same customer. This rule is expressed in § 221.3(d)(4) which provides in substance that for any nonpurpose credit to the same customer, the lender shall in good faith require as much collateral not already identified to the customer's purpose credit as the lender would require if it held neither the purpose loan nor the identified collateral. This rule in § 221.3(d)(4) also takes into account that the lender would not necessarily be required to hold collateral for the nonpurpose credit if, consistent with good faith banking practices, it would normally make this kind of nonpurpose loan without collateral.

(c) The Board views § 221.3(d)(4), when read in conjunction with § 221.3(c) and (f), as requiring that whenever a lender extends two credits to the same customer, one a purpose credit and the other nonpurpose, any margin stock collateral must first be identified with and attributed to the purpose loan by taking into account the maximum loan value of such collateral as prescribed in § 221.7 (the Supplement).

(d) The Board is further of the opinion that under the foregoing circumstances Credit B would be indirectly secured by stock, despite the fact that there would be separate loan agreements for both credits. This conclusion flows from the circumstance that the lender would hold in its possession stock collateral to which it would have access with respect to Credit B, despite any ostensible allocation of such collateral to Credit A.

§ 221.121 Extension of credit in certain stock option and stock purchase plans.

Questions have been raised as to whether certain stock option and stock purchase plans involve extensions of credit subject to this part when the participant is free to cancel his participation at any time prior to full payment, but in the event of cancellation the participant remains liable for damages. It thus appears that the participant has the opportunity to gain and bears the risk of loss from the time the transaction is executed and payment is deferred. In some cases brought to the Board's attention damages are related to the market price of the stock, but in others, there may be no such relationship. In either of these circumstances, it is the Board's view that such plans involve extensions of credit. Accordingly, where the security being purchased is a margin security and the credit is secured, directly or indirectly, by any margin security, the creditor must register and the credit must conform with either the regular margin requirements of § 221.3(a) or the special "plan-lender" provisions set forth in § 221.4, whichever is applicable. This assumes, of course, that the amount of credit extended is such that the creditor is subject to the registration requirements of § 221.3(b).

§ 221.122 Applicability of margin requirements to credit in connection with Insurance Premium Funding Programs.

(a) The Board has been asked numerous questions regarding purpose credit in connection with insurance premium funding programs. The inquiries are included in a set of guidelines in the format of questions and answers. (The guidelines are available pursuant to the Board's Rules Regarding Availability of Information, 12 CFR part 261.) A glossary of terms customarily used in connection with insurance premium funding credit activities is included in the guidelines. Under a typical insurance premium funding program, a borrower acquires mutual fund shares for cash, or takes fund shares which he already owns, and then uses the loan value (currently 50 percent as set by the Board) to buy insurance. Usually, a funding company (the issuer) will sell both the fund shares and the insurance through either independent broker/dealers or subsidiaries or affiliates of the issuer. A typical plan may run for 10 or 15 years with annual insurance premiums due. To illustrate, assuming an annual insurance premium of $300, the participant is required to put up mutual fund shares equivalent to 250 percent of the premium or $600 ($600 x 50 percent

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loan value equals $300 the amount of the insurance premium which is also the amount of the credit extended).

(b) The guidelines referenced in paragraph (a) of this section also:

(1) Clarify an earlier 1969 Board interpretation to show that the public offering price of mutual fund shares (which includes the front load, or sales commission) may be used as a measure of their current market value when the shares serve as collateral on a purpose credit throughout the day of the purchase of the fund shares; and

(2) Relax a 1965 Board position in connection with accepting purpose statements by mail.

(c) It is the Board's view that when it is clearly established that a purpose statement supports a purpose credit then such statement executed by the borrower may be accepted by mail, provided it is received and also executed by the lender before the credit is extended.

§ 221.123 Combined credit for exercising employee stock options and paying income taxes incurred as a result of such exercise.

(a) Section 221.4(a) and (b), which provides special treatment for credit extended under employee stock option plans, was designed to encourage their use in recognition of their value in giving an employee a proprietary interest in the business. Taking a position that might discourage the exercise of options because of tax complications would conflict with the purpose of § 221.4(a) and (b).

(b) Accordingly, the Board has concluded that the combined loans for the exercise of the option and the payment of the taxes in connection therewith under plans complying with § 221.4(a)(2) may be regarded as *purpose credit* within the meaning of § 221.2.

§ 221.124 Purchase of debt securities to finance corporate takeovers.

(a) Petitions have been filed with the Board raising questions as to whether the margin requirements in this part apply to two types of corporate acquisitions in which debt securities are issued to finance the acquisition of margin stock of a target company.

(b) In the first situation, the acquiring company, Company A, controls a shell corporation that would make a tender offer for the stock of Company B, which is margin stock (as defined in § 221.2). The shell corporation has virtually no operations, has no significant business function other than to acquire and hold the stock of Company B, and has substantially no assets other than the margin stock to be acquired. To finance the tender offer, the shell corporation would issue debt securities which, by their terms, would be unsecured. If the tender offer is successful, the shell corporation would seek to merge with Company B. However, the tender offer seeks to acquire fewer shares of Company B than is necessary under state law to effect a short form merger with Company B, which could be consummated without the approval of shareholders or the board of directors of Company B.

(c) The purchase of the debt securities issued by the shell corporation to finance the acquisition clearly involves purpose credit (as defined in § 221.2). In addition, such debt securities would be purchased only by sophisticated investors in very large minimum denominations, so that the purchasers may be lenders for purposes of this part. *See* § 221.3(b). Since the debt securities contain no direct security agreement involving the margin stock, applicability of the lending restrictions of this part turns on whether the arrangement constitutes an extension of credit that is secured indirectly by margin stock.

(d) As the Board has recognized, indirect security can encompass a wide variety of arrangements between lenders and borrowers with respect to margin stock collateral that serve to protect the lenders' interest in assuring that a credit is repaid where the lenders do not have a conventional direct security interest in the collateral. *See* § 221.124. However, credit is not "indirectly secured" by margin stock if the lender in good faith has not relied on the margin stock as collateral extending or maintaining credit. *See* § 221.2.

(e) The Board is of the view that, in the situation described in paragraph (b) of this section, the debt securities would be presumed to be indirectly secured by the margin stock to be acquired by the shell acquisition vehicle. The staff has previously expressed the view that nominally unsecured credit extended to an investment company, a substantial portion of whose assets consist of margin stock, is indirectly secured by the margin stock. *See* Federal Reserve Regulatory Service 5–917.12. (*See* 12 CFR 261.10(f) for information on how to obtain Board publications.) This opinion notes that the investment company has substantially no assets other than margin stock to support indebtedness and thus credit could not be extended to such a company in good faith without reliance on the margin stock as collateral.

(f) The Board believes that this rationale applies to the debt securities issued by the shell corporation described in paragraph (b) of this section. At the time the debt securities are issued, the shell corporation has substantially no assets to support the credit other than the margin stock that it has acquired or intends to acquire and has no significant business function other than to hold the stock of the target company in order to facilitate the acquisition. Moreover, it is possible that the shell may hold the margin stock for a significant and indefinite period of time, if defensive measures by the target prevent consummation of the acquisition. Because of the difficulty in predicting the outcome of a contested takeover at the time that credit is committed to the shell corporation, the Board believes that the purchasers of the debt securities could not, in good faith, lend without reliance on the margin stock as collateral. The presumption that the debt securities are indirectly secured by margin stock would not apply if there is specific evidence that lenders could in good faith rely on assets other than margin stock as collateral, such as a guaranty of the debt securities by the shell corporation's parent company or another company that has substantial non-margin stock assets or cash flow. This presumption would also not apply if there is a merger agreement between the acquiring and target companies entered into at the time the commitment is made to purchase the debt securities or in any event before loan funds are advanced. In addition, the presumption would not apply if the obligation of the purchasers of the debt securities to advance funds to the shell corporation is contingent on the shell's acquisition of the minimum number of shares necessary under applicable state law to effect a merger between the acquiring and target companies without the approval of either the shareholders or directors of the target company. In these two situations where the merger will take place promptly, the Board believes the lenders could reasonably be presumed to be relying on the assets of the target for repayment.

(g) In addition, the Board is of the view that the debt securities described in paragraph (b) of this section are indirectly secured by margin stock because there is a practical restriction on the ability of the shell corporation to dispose of the margin stock of the target company. Indirectly secured is defined in § 221.2 to include any arrangement under which the customer's right or ability to sell, pledge, or otherwise dispose of margin stock owned by the customer is in any way restricted while the credit remains outstanding. The purchasers of the debt securities issued by a shell corporation to finance a takeover attempt clearly understand that the shell corporation intends to acquire the margin stock of the target company in order to effect the acquisition of that company. This understanding represents a practical restriction on the ability of the shell corporation to dispose of the target's margin stock and to acquire other assets with the proceeds of the credit.

(h) In the second situation, Company C, an operating company with substantial assets or cash flow, seeks to acquire Company D, which is significantly larger than Company C. Company C establishes a shell corporation that together with Company C makes a tender offer for the shares of Company D, which is margin stock. To finance the tender offer, the shell corporation would obtain a bank loan that complies with the margin lending restrictions of this part and Company C would issue debt securities that would not be directly secured by any margin stock. The Board is of the opinion that these debt securities should not be presumed to be indirectly secured by the margin stock of Company D, since, as an operating business, Company C has substantial assets or cash flow without regard to the margin stock of Company D. Any presumption would not be appropriate because the purchasers of the debt securities may be relying on assets other than margin stock of Company D for repayment of the credit.

§ 221.125 Credit to brokers and dealers.

(a) The National Securities Markets Improvement Act of 1996 (Pub. L. 104–290, 110 Stat. 3416) restricts the Board's margin authority by repealing section 8(a) of the Securities Exchange Act of 1934 (the Exchange Act) and amending section 7 of the Exchange Act (15 U.S.C. 78g) to exclude the borrowing by a member of a national securities exchange or a registered broker or dealer "a substantial portion of whose business consists of transactions with persons other than brokers or dealers" and borrowing by a member of a national securities exchange or a registered broker or dealer to finance its activities as a market maker or an underwriter. Notwithstanding this exclusion, the Board may impose such rules and regulations if it determines they are "necessary or appropriate in the public interest or for the protection of investors."

(b) The Board has not found that it is necessary or appropriate in the public interest or for the protection of investors to impose rules and regulations regarding loans to brokers and dealers covered by the National Securities Markets Improvement Act of 1996.

PART 224—BORROWERS OF SECURITIES CREDIT (REGULATION X)

7. The authority citation for part 224 is revised to read as follows:

Authority: 15 U.S.C. 78g.

§ 224.1 [Amended]

8. Section 224.1 is amended as follows:

a. Remove "G," and "207," from the last sentence in paragraph (a).

b. Remove "G," from paragraph (b)(1).

§ 224.2 [Amended]

9. Section 224.2 is amended by removing "G," from the introductory text.

10. Section 224.3 is revised to read as follows:

§ 224.3 Margin regulations to be applied by nonexempted borrowers.

(a) *Credit transactions outside the United States.* No borrower shall obtain purpose credit from outside the United States unless it conforms to the following margin regulations:

(1) Regulation T (12 CFR part 220) if the credit is obtained from a foreign branch of a broker-dealer;

(2) Regulation U (12 CFR part 221), as it applies to banks, if the credit is obtained from a foreign branch of a bank, except for the requirement of a purpose statement (12 CFR 221.3(c)(1)(i) and (c)(2)(i)); and

(3) Regulation U (12 CFR part 221), as it applies to nonbank lenders, if the credit is obtained from any other lender outside the United States, except for the requirement of a purpose statement (12 CFR 221.3(c)(1)(ii) and (c)(2)(ii)).

(b) *Credit transactions within the United States.* Any borrower who willfully causes credit to be extended in contravention of Regulations T and U (12 CFR parts 220 and 221), and who, therefore, is not exempted by § 224.1(b)(1), must conform the credit to the margin regulation that applies to the lender.

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

11. The authority citation for part 265 continues to read as follows:

Authority: 12 U.S.C. 248(i) and (k).

12. Section 265.11(f) is revised to read as follows:

§ 265.11 Functions delegated to Federal Reserve Banks.

* * * * *

(f) *Securities.* To approve applications by a registered lender for termination of the registration under § 221.3(b)(2) of Regulation U (12 CFR 221.3(b)(2)).

* * * * *

By order of the Board of Governors of the Federal Reserve System, January 8, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98–871 Filed 1–15–98; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Parts 220, 221 and 224

[Regulations T, U and X; Docket No. R–0995]

Securities Credit Transactions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Advance notice of proposed rulemaking and request for comment.

SUMMARY: In 1995 and 1996, the Board proposed three sets of amendments to its securities credit or margin regulations (Regulations G, T and U). These amendments were proposed in part based on a review of the margin regulations the Board is conducting pursuant to its internal policy of periodically reviewing its regulations and section 303 of the Riegle Community Redevelopment and Regulatory Improvement Act of 1994 and in part on statutory amendments to the Board's margin authority under the Securities Exchange Act of 1934 (the '34 Act) contained in the National Securities Markets Improvement Act of 1996. In a separate document published elsewhere in today's **Federal Register**, the Board is adopting final amendments to Regulations G, T and U in response to the three proposals. The final amendments include the extension of Regulation U to cover lenders formerly subject to Regulation G and the elimination of Regulation G.

In the course of the comment process for the Board's 1995–1996 proposals, commenters raised a number of issues not addressed by the Board in the proposals. In order to complete the periodic review of its margin regulations, the Board is publishing this advance notice and request for comment for Regulations T, U and X. After reviewing the comments, the Board may issue specific proposed amendments for public comment.

DATES: Comments should be received by April 1, 1998.

ADDRESSES: Comments should refer to Docket No. R–0995 and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. between Constitution Avenue and C Street, N.W. at any time. Comments received will be available for inspection in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.14 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel (202) 452–3625; Scott Holz, Senior Attorney (202) 452–2966; or Jean Anderson, Staff Attorney (202) 452–2966, Legal Division; for the hearing impaired only, Telecommunications Device for the Deaf (TDD), Diane Jenkins (202) 452–3544.

SUPPLEMENTARY INFORMATION: Pursuant to its authority under sections 3, 7, 17 and 23 of the Securities Exchange Act of 1934, the Board is requesting comment on its securities credit or margin regulations: Regulation T ("Credit by brokers and dealers"),[1] Regulation U ("Credit by banks and lenders other than brokers or dealers for the purpose of purchasing or carrying margin stock")[2] and Regulation X ("Borrowers of securities credit").[3] The Board is soliciting comment on all aspects of these regulations, including issues stemming from the consolidation of Regulation G into Regulation U and issues that have been raised by commenters in the past two years and not addressed in the Board's earlier amendments. The Board is soliciting comment on whether and how to address these issues. Any additional amendments would be proposed for public comment before adoption.

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[1] 12 CFR Part 220.
[2] 12 CFR Part 221.
[3] 12 CFR Part 224.

I. Regulation T

A. Definitions

1. Current Market Value

The Board's margin requirement for an equity security is a percentage of the security's current market value. As a technical amendment contained in a separate document published elsewhere in today's **Federal Register**, the Board adopted a Regulation T definition of the phrase *current market value* that incorporates former § 220.3(g) of Regulation T ("Valuing securities"). This definition is not exactly the same as the definition in Regulation U. Under the Regulation T definition, a broker-dealer must use the cost of a security or the proceeds of its sale to compute the current market value of a security on trade date. Under the Regulation U definition, a lender other than a broker-dealer extending credit on trade date may use either the security's cost or the closing price of the security on the preceding day. The Board is soliciting comment on whether the definitions of current market value in the two regulations should be harmonized.

2. Good Faith

The Board is requesting comment on whether it should propose to replace the current definition of *good faith* found in § 220.2 of Regulation T with a simpler, more universal definition. For example, the Uniform Commercial Code defines "good faith" in § 3–103(a)(4) as "honesty in fact and the observance of reasonable commercial standards of fair dealing." The Board seeks comment on whether this definition would be appropriate in the context of margin regulation.

3. Margin Security

Last year, the Board amended the definition of *margin security* to include "any debt security convertible into a margin security." The Board stated that this would mirror the treatment of convertible bonds in Regulations G and U. The actual language of Regulation U (which now covers banks and lenders formerly subject to Regulation G) is somewhat broader: "any debt security convertible into a margin stock or carrying a warrant or right to subscribe to or purchase a margin stock." The Board is soliciting comment on whether it should propose to use the same regulatory language in Regulation T. The Board is also soliciting comment on whether it should propose to further amend Regulation T's definition of *margin security* to include "any warrant or right to subscribe to or purchase a margin stock," as this language is also found in Regulation U. Finally, the Board is soliciting comment on whether it should propose to broaden the coverage of convertible securities under the Regulation T definition of *margin security* to include any security convertible into a margin security. This last change would allow loan value for nonmargin equity securities which are convertible into a margin security.

B. Margin Account

1. Guarantees as Collateral

Guarantees are currently given no effect for purposes of meeting federal margin requirements pursuant to § 220.3(d) of Regulation T, but guaranteed accounts are permitted by the rules of some self-regulatory organizations (SROs)[4] for maintenance margin purposes. These SRO rules effectively allow two or more customers with accounts at a single broker-dealer to "cross-guarantee" some or all of their accounts. The guarantee must be in writing and allow the broker-dealer to use the money and securities in the guaranteeing account without restriction to carry the guaranteed account or pay any deficit therein. The Board is soliciting comment on whether it should propose an amendment to Regulation T to allow broker-dealers to recognize guarantees to the extent permitted by their SROs.

2. Cashless Exercise of Employee Benefit Securities

Section 220.3(e)(4) of Regulation T was adopted in 1988 to allow broker-dealers to temporarily finance the exercise of their customers' employee stock options. This procedure has come to be known as "cashless exercise." In 1995, the Board proposed new language for § 220.3(e)(4) to expand its coverage to other types of employee benefit securities, such as employee stock warrants. The proposed amendment, which was adopted in 1996 substantially in the form proposed, changed the reference in § 220.3(e)(4) of Regulation T from "a stock option issued by the customer's employer" to securities received "pursuant to an employee benefit plan registered on SEC Form S–8." After adoption of the amendment, the Board received several comments which noted that the amended provision in some respects covers *fewer* securities than the original version in that it no longer covered employee stock options not registered on SEC Form S–8. The Board is soliciting comment on whether it should propose further amendments to § § 220.3(e)(4) to ensure that broker-dealers may use the provision to help all customers who need short-term financing to acquire employee benefit securities. Comment is invited on whether the Board should define what is meant by the phrase "employee benefit securities."

C. Cash Account: Net Settlement and Free Riding

All transactions in a margin account on a given day are combined to determine whether additional margin is required. In contrast, transactions in the cash account are generally settled on a transaction-by-transaction basis. Although net settlement in the cash account would be more efficient than current practice, the requirement that securities be paid for before being sold and the 90-day freeze[5] on delaying payment beyond trade date for customers who have sold securities before paying therefor have been adopted to prevent "free riding," the purchase of a security that is paid for with the proceeds of its sale. The Board believes that free riding raises supervisory as well as credit issues and is soliciting comment on whether it would be appropriate to modify the cash account to encourage efficiencies while still preventing free riding and if so, how. The Board is also soliciting comment on whether it should leave the issue of free riding to the broker-dealers' supervisory authorities: the Securities and Exchange Commission (SEC) and SROs. The Board is also soliciting comment on appropriate methods for addressing free riding in Regulation U.

D. Lending Foreign Securities to Foreign Branches of U.S. Banks

The Regulation T section on borrowing and lending securities[6] was amended in 1996 to allow broker-dealers to lend most foreign securities to foreign persons without many of the restrictions applied to loans of U.S. securities. Three commenters pointed out that the term "foreign persons" does not include foreign branches of U.S. banks. The Board is soliciting comment on whether it should propose an amendment to allow foreign branches of U.S. banks to qualify as foreign persons for purposes of Regulation T's requirements for borrowing and lending equity securities.

E. Broker-Dealer Purchases of Privately Placed Debt Securities

The Board views the purchase of a privately placed debt security as an extension of credit to the issuer. Broker-dealers who wish to purchase privately placed debt securities (generally for resale) whose proceeds will be used by the issuer to purchase or carry securities have been unable to do so if the debt securities are unsecured or secured by collateral other than margin and exempted securities because the Board had interpreted section 7 of the '34 Act to prohibit the extension of purpose credit that is unsecured or secured by collateral other than securities valued in accordance with Regulation T. Banks and persons other than broker-dealers who purchase these privately placed securities have not had the same problem as they have never been restricted in their ability to make purpose loans that are unsecured or secured by collateral other than securities.

In 1990, the Board issued an interpretation of the arranging provision in Regulation T to address purchases by broker-dealers of debt securities issued pursuant to SEC Rule 144A.[7] Under the interpretation, the purchase of a privately placed debt security whose proceeds will be used by the issuer to purchase, carry, or trade securities is permitted for a broker-dealer if the security is issued pursuant to SEC Rule 144A on the theory that the broker-dealer is arranging for the ultimate purchaser to acquire the security.[8]

The Board is soliciting comment on whether it should propose any amendments to Regulation T to allow broker-dealers to purchase privately placed securities that either comply with or are not covered by Regulations U and X. Possible amendments could address this issue as one of extending

[4] The primary SROs for broker-dealers in this area are the New York Stock Exchange and the National Association of Securities Dealers.

[5] *See* § 220.8(c) of Regulation T.

[6] Formerly § 220.16, now § 220.10 of Regulation T.

[7] The Board interpretation is codified at 12 CFR 220.131 and reprinted in the *Federal Reserve Regulatory Service* at 5–470.1. SEC Rule 144A, "Private resales of securities to institutions" is codified at 17 CFR 230.144A.

[8] The Board interpretation described the broker-dealer's role as an "investment banking service" because the version of Regulation T in effect at the time had limited exceptions to the general arranging prohibition. The Board has since amended the arranging section in Regulation T to broaden permissible activities and in the process has eliminated the need for a specific investment banking services exception.

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rather than arranging credit and could cover debt securities beyond those covered in the Board's 1990 interpretation.

F. Presumption of Purpose Credit

Section 220.6(f)(2) of Regulation T (formerly § 220.9(b)) states that every extension of credit (aside from those effected to carry transactions in commodities or foreign exchange) is deemed to be purpose credit unless the broker-dealer obtains in good faith a written statement from its customer that the credit is not purpose credit. The Board is soliciting comment on whether it should propose to modify or eliminate this presumption and if so, how to assure compliance with the Board's margin requirements in Regulation T.

II. Regulation U

A. Forms

1. Purpose Statement

Both Regulation G and Regulation U require lenders to obtain a written statement from their customers as to the purpose of a loan if the credit is secured by margin stock. This form is known as a "purpose statement" and is designated as the FR G–3 and FR U–1, respectively. Although the margin requirements apply to all purpose loans secured by margin stock, banks are not required to obtain a purpose statement for loans that do not exceed $100,000. Nonbank lenders, who are not required to register with the Board until they have extended at least $200,000 in margin stock secured credit,[9] must obtain a purpose statement for every loan they make after reaching the registration threshold. The Board is soliciting comment on whether it would be appropriate to amend Regulation U to provide uniform requirements for purpose statements, including possible elimination of the form.

2. Other Forms and Registration Requirements

a. Use of Regulation G forms under Regulation U: The FR G–1 ("Registration Statement For Persons Who Extend Credit Secured by Margin Stock (Other Than Banks, Brokers or Dealers)"), FR G–2 ("Deregistration Statement For Persons Registered Pursuant to Regulation G") and FR G–4 ("Annual Report") were retained as part of Regulation U when it was extended to cover lenders formerly subject to Regulation G. These forms' approval from the Office of Management and Budget expires on July 31, 1998. Pending review of the comments received in response to this request for comment, the Board intends to redesignate these forms as Regulation U forms and is soliciting comment on ways to improve the reporting requirements and eliminate unnecessary burden, including possible elimination of the forms.

b. Registration requirements: The registration requirements for lenders formerly subject to Regulation G have been moved to § 221.3(b) of Regulation U. Nonbank lenders who extend credit secured by margin stock for any purpose are required to register with the Federal Reserve within 30 days after any calendar quarter in which the lender either: (1) Extends $200,000 or more in credit secured by margin stock; or (2) has a total of $500,000 or more in credit secured by margin stock outstanding. Persons other than banks and broker-dealers who extend securities credit below these thresholds are not subject to the registration requirements and are not limited by the Board's 50 percent margin requirement for purpose loans secured by margin stock.

(1) Dollar thresholds: When Regulation G was first adopted in 1968, the Board established dollar thresholds for registration so that lenders other than banks and broker-dealers who extended small amounts of credit secured by margin stock would not be regulated. These thresholds were initially $50,000 in margin stock secured credit extended or arranged in one calendar quarter or $100,000 in such credit outstanding at any time. These thresholds were last raised in 1983 to $200,000 and $500,000 and the scope of the regulation was reduced at that time to eliminate coverage of persons who arranged, but did not extend, securities credit.

The Board is soliciting comment on whether it should propose changes to the $200,000 and $500,000 thresholds for nonbank lenders.

(2) Nonpurpose lenders: When Regulation G was first proposed by the Board in 1967, lenders other than banks and broker-dealers were to be subject to the regulation only if they extended or arranged purpose credit (which was proposed to mean credit to purchase or carry an exchange traded security). Regulation G lenders who extended or arranged nonpurpose credit would not have been required to register with the Federal Reserve System even if the collateral for the loan included exchange-traded securities. When Regulation G was adopted the following year, the collateral coverage of the regulation was reduced to eliminate debt securities but the registration requirement was broadened to include any lender other than a bank or broker-dealer involved in a loan secured by margin equity securities, regardless of the purpose of the loan. Although the Board was originally concerned with the difficulty of assuring that previously unregulated lenders understood the concept of "purpose credit" (i.e. credit for the purpose of purchasing or carrying securities covered by Board regulation), the passage of time may have reduced the need to register nonpurpose lenders solely to determine that the registrants are not extending credit that is subject to the margin requirements.

The Board is soliciting comment on whether it should propose changes to the registration requirements for lenders other than banks and broker-dealers who do not extend purpose credit, such as eliminating the need for registration or establishing higher dollar thresholds. An example of a nonpurpose lender would be a mortgage finance company that extends only purchase money mortgage loans but occasionally takes margin stock as collateral in addition to mortgages.

B. Loan Value

1. Options

In a separate document published elsewhere in today's **Federal Register**, the Board is eliminating the Regulation U prohibition on loan value for exchange-traded options. When the Board first proposed this change in 1995, it did not propose to remove the prohibition on loan value for unlisted or over-the-counter (OTC) options.[10] Since that proposal however, the Board has amended Regulation T to allow securities self-regulatory organizations such as the New York Stock Exchange to adopt SEC-approved rules granting loan value to all options, both exchange-traded and over-the-counter. The Board is soliciting comment on whether it should propose to modify the prohibition on loan value for OTC options currently contained in Regulation U.

[9] The $200,000 threshold is based on the amount of credit secured by margin stock extended in any calendar quarter. Lenders who extend less than $200,000 in credit secured by margin stock in any calendar quarter are required to register with the Board if they have $500,000 in credit secured by margin stock outstanding during any calendar quarter.

[10] Unlisted or OTC options are not *margin stock* as defined in § 221.2 of Regulation U. Therefore, a loan secured by OTC options and other nonmargin stock collateral would not be subject to Regulation U. However, a purpose loan secured in part by margin stock (a "mixed collateral loan") would be subject to Regulation U and any OTC options that secure such a loan have no loan value under the current version of Regulation U.

2. Mutual Funds

Although most mutual funds are covered by the definition of *margin stock* in Regulation U, the Board has long excluded mutual funds that have at least 95 percent of its assets continuously invested in exempted securities.[11] In a separate document published elsewhere in today's **Federal Register**, the Board is excluding money market mutual funds from the definition of *margin stock* in Regulation U as well. The Board is soliciting comment on whether it should propose additional exclusions from the definition of margin stock for mutual funds which invest almost exclusively in securities entitled to good faith loan value under Regulation T, such as corporate bond funds.

C. Exempted Transactions

The Board extended Regulation U to cover lenders formerly subject to Regulation G because the National Securities Market Improvement Act eliminated the distinction between bank and nonbank lenders with respect to loans to broker-dealers. The Board now permits bank and nonbank lenders to make loans to broker-dealers on the same basis, including the exemptions contained in § 221.5, "Special purpose loans to brokers and dealers." Banks are also permitted to make unregulated loans to persons other than broker-dealers pursuant to § 221.6, "Exempted transactions." The only one of the eight exemptions listed in § 221.6 was contained in former Regulation G: loans to employee stock ownership plans (ESOPs) qualified under section 401 of the Internal Revenue Code. This exemption, formerly found in § 207.5(c) of Regulation G, has been retained for nonbank lenders in § 221.4(c) of Regulation U. The Board is soliciting comment on whether it should propose to extend the exemptions for banks in § 221.6 of Regulation U to nonbank lenders as well. The Board seeks comment on whether it should propose to consolidate the exemption for loans to ESOPs with loans to "plan lenders" as defined in § 221.4(b) of Regulation U.

III. Regulation X

Regulation X ("Borrowers of securities credit") implements section 7(f) of the '34 Act, which applies the margin requirements to borrowers.[12] Most of the language in Regulation X is taken directly from the statute. If the Board were to repeal Regulation X, section 7(f) would still apply to borrowers of securities credit. The only substantive reason for the Board's adoption of a regulation covering borrowers is to exercise its authority under section 7(f)(3) of the '34 Act to exempt persons from the application of section 7(f). These exemptions are found in §§ 224.1(b)(1), (b)(2) and (b)(3) of Regulation X.

A. National Securities Markets Improvement Act

In response to the Board's request for comment on appropriate amendments to its margin regulations to reflect the statutory changes contained in NSMIA, two commenters expressed concern that foreign affiliates of exempt U.S. broker-dealers continue to be subject to Regulation X (because they are "foreign persons controlled by a U.S. person") and their borrowings therefore have to comply with Regulation U, while the borrowings of their parent would not be subject to Board regulation. The commenters urged the Board to exempt foreign broker-dealer affiliates of exempt U.S. broker-dealers from Regulation X. The Board seeks comment on whether it should propose such an amendment.

B. Periodic Review

In conjunction with its periodic review of the margin regulations, and the requirements of section 303 of the Riegle Community Redevelopment and Regulatory Improvement Act of 1994, the Board is requesting comment on other appropriate amendments to Regulation X to reduce unnecessary regulatory burden.

IV. All Regulations

A. Definition of National Securities Exchange

The Board's margin regulations have always covered all equity securities registered on a national securities exchange. Although the phrase "national securities exchange" is not defined in the Board's margin regulations or section 3(a) of the Securities Exchange Act of 1934,[13] the Board has understood the term to mean a securities exchange registered with the Securities and Exchange Commission (SEC) under section 6 of the '34 Act ("National securities exchanges;" 15 U.S.C. 78f). The Board is soliciting comment on whether it should propose to add a definition of the phrase "national securities exchange" into Regulations T and U.

B. Purpose Statements as Model Forms

The Board has established three purpose statements (FR G–3, FR T–4, and FR U–1) for the three types of lenders covered under its securities credit regulations. Lenders other than broker-dealers are specifically required by the Board's regulation to obtain the FR G–3 and FR U–1 in certain circumstances. However, Regulation T does not refer to the FR T–4 and states only that in certain circumstances a broker-dealer shall accept "a written statement" that "shall conform to the requirements established by the Board."

The Board is requesting comment on the continuing need for purpose statements, the form of which is prescribed by regulation, or whether model forms would serve the Board's purposes, or whether the form of the statement should be left to the affected institution or its regulatory supervisors.

C. Repurchase of Securities by Issuer

The Board held in 1962 that credit extended to an issuer to repurchase its own securities *for immediate retirement* is not purpose credit subject to the Board's margin requirements.[14] The 1962 interpretation states that "[i]t should not be regarded as governing any other situations; for example, the interpretation does not deal with cases where securities are being transferred * * * to the issuer for a purpose other than immediate retirement. Whether the margin requirements are inapplicable to any such situations would depend upon the relevant facts of actual cases presented." Three commenters requested that this interpretation be expanded to cover all credit extended to an issuer to repurchase its securities. While the interpretation requires immediate retirement of the securities repurchased, this limitation can be circumvented by having the issuer retire the securities it repurchases and then reissue those or similar securities later. The Board is soliciting comment on whether it should propose to incorporate its 1962 interpretation into Regulations T and U and whether the coverage of the interpretation should be broadened.

D. Forward Transactions

Commenters in earlier dockets and members of the securities bar and industry have requested guidance from the Board on the proper treatment of forward purchases and sales of

[11] The definition of *margin stock* is found in § 221.2 of Regulation U.

[12] In contrast, the Board's other margin regulations were adopted under the authority of sections 7(c) and 7(d) of the '34 Act and apply to lenders of securities credit.

[13] Definitions found in section 3(a) of the '34 Act are incorporated by cross-reference in the Board's margin regulations.

[14] 12 CFR 220.119, reprinted in the *Federal Reserve Regulatory Service* at 5–490.

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securities. Forwards on nonequity and exempted securities are permitted in the good faith account in Regulation T and are not covered by Regulation U. The Board is soliciting comment on whether and how it should amend Regulations T and U to address transactions involving forward purchases and sales of equity securities.

By order of the Board of Governors of the Federal Reserve System, December 18, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98–885 Filed 1–15–98; 8:45 am]

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January 16, 1998

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 997 and 998

Peanuts Marketed in the United States; Relaxation of Handling Regulations; Final Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 997 and 998

[Docket Nos. FV97–997–1 IFR and FV97–998–1 IFR]

Peanuts Marketed in the United States; Relaxation of Handling Regulations

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule relaxes, for 1997 and subsequent crop peanuts, several provisions regulating the handling of domestically produced peanuts marketed in the United States. The relaxation includes: Eliminating need for approval of certain facilities; allowing minimum grade requirements for lots of splits to correspond with grade standards; allowing certain lots to be custom blanched; providing that under the Agreement, all lots of edible quality peanuts be eligible for indemnification benefits; providing that peanuts which have been certified as meeting the minimum grade requirements, but fail on aflatoxin, may be roasted prior to being certified as meeting the latter; and allowing rejected peanuts to be placed in "suitable containers", not just "bagged". This rule will improve efficiency and reduce program costs resulting in a similar reduction in assessment rates charged Agreement signer and non-signer handlers.

DATES: Effective January 20, 1998; comments received by March 17, 1998 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. All comments should reference the docket numbers, the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart or Jim Wendland, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, D.C., 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 146 (7 CFR Part 998) and the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act." The marketing agreement and the regulations issued thereunder (7 CFR Part 998) and the non-signatory peanut handler regulations (7 CFR Part 997) regulate the quality of domestically produced peanuts.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Following explanation of each change to the Agreement's regulation, the corresponding change to the non-signatory regulation is discussed.

Incoming Regulations

Farmers Stock Storage and Handling Facilities: The Committee recommended amending § 998.100 Incoming quality regulation for 1995 and subsequent crop peanuts by removing paragraph (g) *Farmers Stock Storage and Handling Facilities* which currently regulates the condition of such facilities and authorizes Committee inspection. The Committee recommended the change to save approximately $450,000, by eliminating the positions of the seven fieldmen whose specified duties through last crop year included spending an estimated 60–65 percent of their time inspecting and approving such facilities. The vote was 17 "For" and 1 "Against", with the dissenting voter contending that the fieldmen were providing valuable services and their positions should not be eliminated and that inspection and approval of such facilities by the Committee staff was important. Handlers contend they are already paying their own employees to do facilities inspections and the cost of such duplication of effort needs to be eliminated. Also, this cost-cutting will not adversely affect quality since peanuts must still meet the Outgoing Quality Regulation.

Elimination of the regulatory provision will allow the Committee to reduce its non-headquarters staff from seven to one compliance officer in each of the three production areas and reduce the current "fieldmen" staffing costs to zero. The compliance officers will conduct compliance audits of Agreement signers similar to AMS approved non-signer program compliance plan procedures where AMS Compliance Staff auditors check non-signers' records. A revised 1997–98 compliance plan from the Committee includes this new procedure. AMS believes this will continue to assure compliance under the Agreement.

The non-signer regulation contains no similar requirements for inspection and approval of such facilities, so no change is needed.

Outgoing Regulations

The Committee unanimously recommended that § 998.200(a) be amended to provide that minimum grade requirements for lots of "splits" (the separated halves of peanut kernels) be modified to correspond with "United States Standards For Grades Of: (1) Cleaned Virginia Type Peanuts In The Shell; or (2) Shelled Runner Type Peanuts; or (3) Shelled Spanish Type Peanuts; or (4) Shelled Virginia Type Peanuts" (7 CFR Part 51: Sections 51.1235–1242; 51.2710-2721; 51.2730–2741; and 51.2750–2763, respectively. This increase to 2.00 percent from the current 1.50 percent for unshelled peanuts and damaged kernels is needed to provide consistency with the grade standards. Under the current regulation, a handler could have a lot of peanuts which met U.S. Grade Standards for U.S. Splits, but failed to meet Agreement requirements for edible quality. It was expected that this change might reduce the number of lots which will need to be remilled to meet outgoing quality requirements. Although this reduction was roughly estimated at something less than 10 percent in an average year, this year's crop has been stressed by drought conditions and virtually all peanut producing States have expressed having problems with quality. Thus, this change could still result In significant reductions in costs for handlers.

Another modification to § 998.200(a) will remove Table 2.—INDEMNIFIABLE GRADES. The Committee had originally established this table in its regulations to qualify higher grade peanut lots for its indemnification program covered in § 998.300. However, coverage under this provision has been greatly reduced by recent Committee action, to the point that the table is no longer deemed necessary. The Department agrees that Table 2 is not needed and its removal will simplify the Agreement regulations and therefore it is hereby removed.

Similar changes are made to the corresponding § 997.30(a) of the non-signer regulation.

The Committee unanimously recommended that § 998.200(h)(1) be amended to allow lots of peanuts which fail edible quality requirements, due to excessive fall through, to be custom blanched. However, such lots will have to be certified as meeting minimum "fall through" requirements after blanching. The change eliminates the current requirement that prior to movement of such peanuts, handlers have to submit a form to the Committee and receive authorization for movement and blanching of each such lot.

Section 997.40(d) of the non-signer regulation currently does not require such handlers to submit a request to the Department and receive authorization for movement and blanching of each such lot. Therefore, no similar change to that provision is needed. However, it is being amended to add "fall through" to the category of items allowed in the first and third sentences.

The Committee also unanimously recommended a further change to paragraph (h), specifically that subparagraphs (h)(1) and (h)(2) be further amended to provide that reject peanuts may be placed in suitable containers acceptable to the Committee. The current requirement specifies "bagged," which refers to the older standard-sized burlap bags. It does not include the many newer and more efficient containers which are easier to handle such as tote bags, corrugated containers (including those with capacities of over a ton), Super Sacks, and other various company containers used by individual peanut product manufacturers. The change will allow handlers to use more efficient containers or those desired by their customers. For purposes of this provision, most any container that handlers use other than bulk loads—i.e., those in which peanuts are not in any type of receptacle other than the vehicle transporting them—will be considered suitable.

Section 997.40(c) of the non-signer regulation currently provides for "in bulk or bags or other suitable containers." To make it consistent with the Agreement's amended regulation, the words "in bulk or" are being removed. Paragraphs (d) and (e) are also being amended by removing the word "bagged" and replacing it with the words "placed in suitable containers."

The Committee also unanimously recommended that § 998.200 Outgoing quality regulation and § 998.300 Terms and conditions of indemnification . . . be amended to make all lots of edible quality peanuts indemnifiable, for freight reimbursement, when rejected on appeal after being certified "negative" as to aflatoxin. Under provisions specified in § 998.300, product claim lots of edible quality peanuts will now also be indemnifiable. This involves lots where a handler sustained a loss as a result of a buyer withholding from human consumption any or all of the product made from a lot of peanuts which had been determined to be unwholesome due to aflatoxin after such lot had originally been certified "negative" as to aflatoxin. This change will provide consistency by treating all edible quality peanuts equally, whether appeal claims or product claims. Although these changes should further reduce costs and will promote uniformity in the handling of indemnification of all edible quality peanuts, there is no way to accurately quantify how much these reductions would be, because the savings would be different for each handler. However, the total savings would be significantly less than the projected approximately $200,000 total 1996 crop indemnification costs.

The non-signer enabling legislation does not provide authority for indemnification. Therefore, no similar change is being made in the non-signer regulation.

The Committee further unanimously recommended that § 998.200(h)(3) be amended to provide that peanuts which have been certified as meeting minimum grade requirements specified in § 998.200(a)(1), but fail to meet requirements for aflatoxin, may be roasted while being blanched prior to being certified as meeting the aflatoxin requirements. After roasting, such peanuts must be sampled and assayed for aflatoxin content but do not have to be re-sampled and analyzed for grade again. This simplified process is recommended by the Committee because blanched peanuts, after certification, often are placed back into blancher for additional heating. Removing the blanched peanuts short of the complete roasting process for sampling and aflatoxin analysis, and then reinserting them back into the blancher adds costs to the roasting process and usually causes additional, unintentional damage due to the extra handling of the kernels. Also, the roasting will enhance the blanching efforts to eliminate aflatoxin, thus improving the wholesomeness, quality and value of such shelled peanuts. The savings involved in blanching and roasting in one step should far outweigh the approximately $40 per hour costs of having an inspector present during this process to maintain needed positive lot identification. Any residual peanuts, excluding skins and hearts, resulting from this roasting process, must be red tagged and disposed of to non-edible peanut outlets. A similar change is being made to § 997.40(d) of the non-signer regulation.

The unchanged portions of the incoming and outgoing regulations currently in effect for 1996 and subsequent crop peanuts will remain in effect for 1997 and subsequent crop peanuts.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

There are approximately 27 signatory and 30 non-signatory peanut handlers who are currently subject to regulations under the Agreement and non-signer program respectively and approximately 25,000 commercial peanut producers in the 16-State production area. Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. Approximately 25 percent of the signatory handlers, virtually all of the non-signers, and most of the producers may be classified as small entities. This action will be favorable to the industry by tending to improve efficiency, reducing costs and increasing returns.

The relaxations to handling regulations specified in this rule will simplify requirements and enable handlers, both large and small, to cut costs and more efficiently handle their peanut supplies, without jeopardizing safeguard requirements in the current regulations.

The relaxations include: 1. The elimination of the requirement for inspection and approval of farmers stock storage and handling facilities will save approximately $450,000 by eliminating the positions of the seven fieldmen, who had performed this activity through last crop year. Handlers contend they already paid their own employees to do this and the duplicate cost should be eliminated;

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2. Relaxing the minimum grade requirements for "splits" to correspond with U.S. grade standards might reduce the number of lots which need to be remilled this year by 10 percent due to stressed growing conditions in virtually all areas. This should result in significant reductions in costs for handlers;

3. Another relaxation is to provide that all lots of edible quality peanuts, whether appeal claims or product claims, will be eligible for handler indemnification benefits. Thus, handlers with product claim lots will now also be eligible for reimbursement of most transportation expenses on such lots. Such additional reimbursement was not publicly quantified by the Committee, but would be less than the projected approximately $200,000 total 1996 crop indemnification costs;

4. The revised provision to allow lots which fail edible quality requirements, due to excessive fall through, to be custom blanched eliminates the current requirement that handlers have to submit a form to the Committee and receive authorization for movement and blanching of each such lot. This relaxation will eliminate unnecessary paperwork and save time for all affected handlers;

5. Relaxing the requirement that peanuts be "bagged" (i.e., placed only in older standard-size burlap bags) by allowing the use of suitable containers, will permit use of the many newer and more efficient containers or those desired by handlers' customers; and

6. Another relaxation will allow peanuts which have been certified as meeting the minimum grade requirements, but fail to meet requirements for aflatoxin, to be roasted while being blanched prior to being certified as meeting the latter requirements. This simplified process eliminates reinserting such peanuts back into the blancher, which doubles the processing costs and tends to lower the peanuts' quality and value by causing additional damage to them. Such savings should far outweigh the approximately $40 per hour expense of having an inspector present to maintain needed positive lot identification.

The relaxed requirements will significantly improve efficiency and have enabled the Committee to cut in half for the 1997–98 and subsequent crops years its administrative costs and assessment rate charged Agreement signer and non-signer handlers to finance their respective programs. Further, the rate of assessment last season was $0.70 per net ton of assessable peanuts. The rate for the 1997–98 crop year has been reduced to $0.35 per net ton by another rulemaking action, as published in the September 17, 1997, issue of the **Federal Register** (62 FR 48749). This will save regulated domestic handlers approximately $500,000 in administrative assessment costs which should, to a great extent, also correspond to the savings from this relaxation action.

The specifics of each change and why they will tend to increase returns to handlers were covered in detail near the beginning of this rule under the discussion starting with "Incoming regulations.". These changes will relax requirements on regulated domestic peanut handlers, improve their efficiency and cut costs, to benefit the peanut industry, manufacturers, and consumers, while still assuring quality of all peanuts in domestic human consumption markets.

As with all Federal marketing agreement and order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. Consistent with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Committee unanimously recommended greatly reducing reporting and recordkeeping requirements on both large and small domestic peanut handlers regulated under these two programs. It will eliminate 20 of the 21 Committee forms currently approved by OMB that might accompany peanut shipments, to only require use of the Form PAC–1. The PAC–1 is mailed to handlers on a monthly basis and is used to report receipts and acquisitions of farmers stock peanuts and to remit assessments. It is estimated this will eliminate 95 percent (or about 2,291 hours and assuming $10 per hour, would save respondents nearly $23,000 in costs) of the current estimated 2,417 hours of total reporting burden on Agreement signers, including small businesses, and a proportional, smaller reduction in non-signer reporting burden. A notice of the proposed revision was published in the July 31, 1997, issue of the **Federal Register** (62 FR 41021). Sixty days were allowed for comments. One comment was received, from the American Peanut Shellers Association, supporting the reduced burdens. This information collection package has been submitted to the Office of Management and Budget (OMB) for approval.

In addition, the Department has not identified any Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the peanut industry and all interested persons were invited to attend the meeting and participate in the Committee's deliberations. Like all Committee meetings, the April 29–30, 1997, meeting was a public meeting and all entities, both large and small, were able to express their views on the issues. The 18-member Committee is composed of an equal number of peanut handlers and producers, the majority of whom are small entities.

Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations to the Committee. The Committee's Regulations, Indemnification and Quality Subcommittee and "New Concept" Subcommittee met on January 28, 1997, and discussed these issues in detail. On March 25, 1997, the Committee held an informational meeting to hear a presentation by the National Peanut Council's Peanut Industry Revitalization Project Steering Committee and discuss those issues there and back with their industry peers before voting on those issues at the April Committee meeting. The Committee's Administrative Budget Subcommittee also meet March 25, 1997, to discuss budget recommendations. These meetings were also public meetings and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

An objective of the two domestic programs is to ensure that only high quality and wholesome peanuts enter human consumption markets in the United States. About 70 percent of domestic handlers, handling approximately 95 percent of the crop volume, have signed the Agreement. The remaining 30 percent are non-signatory handlers handling the remaining 5 percent of domestic production.

Under these regulations, farmers stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) are required to be diverted to inedible uses. Each lot of milled peanuts must be sampled and the samples chemically analyzed for aflatoxin content. Costs to administer the Agreement and to reimburse the Department for oversight of the non-signatory program are paid by an assessment levied on handlers in the respective programs.

The 18-member Committee, which is composed of an equal number of peanut producers and handlers, meets at least annually to review the Agreement's rules and regulations, which are effective on a continuous basis from one year to the next. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department assesses Committee recommendations, as well as information from other sources, prior to making any recommended changes to the regulations under the Agreement.

Section 608b of the Act was amended in 1989 to require that all peanuts handled by persons who have not entered into the Agreement (non-signers) be subject to the same quality and inspection requirements to the same extent and manner as are required under the Agreement. Section 608b was further amended in 1993 to impose similar requirements regarding administrative assessments. The non-signatory handler regulations have been amended several times thereafter and are published in 7 CFR part 997.

Thus, the Committee's recommended changes to the Agreement regulation, as established in this rule, also are established for the Agreement non-signers. This interim final rule identifies the corresponding change to the non-signer regulation for each change to the Agreement regulation.

According to the Committee, the domestic peanut industry is undergoing a period of great change. The Committee bases its view, in part, on findings in a recent study entitled "United States Peanut Industry Revitalization Project" developed by the National Peanut Council and the Department's Agricultural Research Service (May 1996).

According to the study, the U.S. peanut industry has been in a period of dramatic economic decline since 1991 because: (1) Per capita peanut consumption has steadily declined a total of 11 percent; (2) harvested acreage has declined 25 percent; (3) production has declined 30 percent and farm value dropped 29 percent; and (4) imports of peanuts and peanut products have increased from insignificant quantities to 48,736 raw farmer stock tons in 1995 and 55,536 in 1996.

The study points to recent increases in the duty-free import quota for raw peanuts due to the North American Free Trade Agreement (NAFTA) and the Uruguay Round Agreements under the General Agreement on Tariffs and Trade (GATT). Under Section 22 import quota provisions, the volume of U.S. peanut imports had been limited to about 2.3 million pounds, in-shell basis, annually. Thus, imports have historically represented about one-tenth of 1 percent of U.S. food use of peanuts. Under NAFTA, Mexico has been granted a minimum access level for duty-free entry of peanuts of about 10 million pounds, in-shell basis. This level will increase about 3 percent annually through 2008, when quantitative limits will cease. Mexico's 1998 duty-free quota will total 8.4 million pounds. Under GATT, the 1995 quota was 74.5 million pounds. This year it is 86.8 million pounds, will increase to 96.7 million pounds (Argentina 81.2 and all other 15.5) in 1998, and can grow to about 155 million pounds (about 4 percent of U.S. disappearance) in 2000.

The study also projects that farm production costs and revenue will be equal by the year 2000, as will handler costs and revenue, leaving no profit.

In addition, the modification of the Federal farm peanut poundage quota regulations implemented under the Agricultural Market Transition Act of 1996 (1996 Act) has resulted in the domestic industry undergoing significant changes scheduled to continue through the year 2002. The peanut support price has been reduced from $670 per ton in 1995 to $610 per ton through 2002. The USDA's Farm Service Agency final rule implementing the Act was published May 9, 1997 (62 FR 25433). That rule indicates that economic impacts of the 1996 Act include expected reductions in domestic peanut producers' revenue of $1.25 billion from 1996 through 2002. Quota lease holders could absorb a loss of about $40 million annually because of reduced leasing rates due to the lower peanut price support. Also, capitalized value of quotas could decline $200 to $300 million, thus reducing land values and the tax base of rural communities.

The Committee agrees that all of these factors combined show that the domestic peanut industry had been in decline and that the outlook was not expected to change without some positive intervention by the industry.

World supply and demand are less important for peanuts than most U.S. farm commodities. Much of world peanut production is for non-food uses, although production for food use might increase a little if there were no U.S. import restrictions. Also, import quotas, though increased recently, still are set at relatively low levels.

Domestic peanut production in 1996 was approximately 3.66 billion pounds, with a farm value of slightly under $1 billion. The Department's November 1 forecast pegs the 1997 peanut crop production at 3.5 billion pounds, down approximately 4 percent from last year. Harvested acreage for 1997 is forecast to be 1.384 million acres, up 4,500 acres from a year ago. The U.S. average yield per acre for the 1997 crop is forecast at 2,528 pounds, down 11 pounds per acre from the 1996 crop.

Production is expected to gradually increase from 1996 to 2002 because domestic food use is projected to rise about 1.5 percent annually. Imports are expected to remain at a relatively small percentage of total U.S. peanut use.

Estimated exports of 750 million pounds in Marketing Year (MY) 1997 are below the average for the prior 3 years, but are 11 percent more than a year earlier. Peanut oil prices are expected to average about 38 cents a pound of oil in MY 1997, 6 percent lower than MY 1996 as vegetable oil supplies return to more normal levels. Peanut meal prices for MY 1997 are expected to decline to $175 a ton, down 25 percent from MY 1996 because of larger soybean meal supplies.

The season average price of farmer stock peanuts for MY 1997 may remain unchanged from the 28.5 cents per pound average for 1996. This was the lowest price of the last two years and reflects the adjustment to the reduced quota support level and an unexpected change in the proportions of quota and additionals in 1997 production. Average prices to growers are expected to increase, but will remain below 1995 prices because of the lower quota price support level. The value of farm production is expected to gradually rise and surpass that of 1995 by 2000/01.

The Committee recommended the changes in this rulemaking to the Agreement's Incoming and Outgoing regulations for 1997 and subsequent crop peanuts at its April 30, 1997, public meeting.

Alternative Actions Considered

Although the Committee could have recommended no changes or less changes to the current regulations, it unanimously concluded that those were not satisfactory solutions. It believes that all possible simplification and cost-cutting should be done and that these regulations should focus more on outgoing quality and less on the shelling and milling processes necessary to meet the outgoing, human consumption requirements. Newer, high technology milling and blanching equipment enable handlers to recondition failing peanut lots that could not have been economically reconditioned when the regulations were first promulgated. Therefore, it is no longer necessary to impose restrictions that hinder the efficiency of handling operations and result in the loss of potentially good quality peanuts. Thus, the Committee believes these changes will tend to improve the returns to growers and handlers, while still maintaining consumer safeguard provisions in the current domestic regulations, because

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all peanuts intended for human consumption must still be inspected and certified acceptable for such use.

After review of the recommendations, the Department concurs that the recommended changes will tend to improve returns to the industry and be in the public interest. Expected benefits of the changes were included in the previous discussion of each individual change.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Nos. 0581–0067 (for Agreement signers) and 0581–0163 (for non-signers).

After consideration of all relevant material presented, including the Committee's recommendations, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on changes to the quality regulations currently prescribed under the Agreement and the non-signers program. All written comments timely received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes requirements currently in effect; (2) the 1997 peanut crop year began July 1, 1997, and the changes should be effective as soon as possible to allow the industry to receive the benefits for as much of the remainder of the crop year as possible; (3) the Committee unanimously recommended these changes at a public meeting and all entities, both large and small, were able to express views on these issues; (4) this rule provides a 60-day opportunity for comment, and all written comments timely received will be considered prior to finalization of the rule.

List of Subjects

7 CFR Part 997

Food grades and standards, Peanuts, Reporting and recordkeeping requirements.

7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 997 and 998 are amended as follows:

PART 997—PROVISIONS REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS HANDLED BY PERSONS NOT SUBJECT TO THE PEANUT MARKETING AGREEMENT

1. The authority citation for 7 CFR part 997 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 997.30 is amended by revising paragraph (a), to read as follows:

Quality Regulations

§ 997.30 Outgoing Regulation.

(a) *Shelled peanuts.* (1) No handler shall dispose of shelled peanuts for human consumption unless such peanuts are positive lot identified, certified "negative" as to aflatoxin and certified as meeting the following requirements:

MAXIMUM LIMITATIONS

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign material (percent)	Moisture (percent)
			Sound split and broken kernels	Sound whole kernels	Total		
Excluding lots of "splits"							
Runner	1.50	2.50	3.00%; 17/64 inch round screen.	3.00%; 16/64x3/4 inch slot screen.	4.00%; both screens.	.20	9.00
Virginia (except No. 2).	1.50	2.50	3.00%; 17/64 inch round screen.	3.00%; 15/64x1 inch slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia.	1.50	2.50	3.00%; 16/64 inch round screen.	3.00%; 15/64x3/4 inch slot screen.	4.00%; both screens.	.20	9.00
No. 2 Virginia	1.50	3.00	6.00%; 17/64 inch round screen.	6.00%; 15/64x1 inch slot screen.	6.00%; both screens.	.20	9.00
Lots of "splits"							
Runner (not more than 4% sound whole kernels).	2.00	2.50	3.00%; 17/64 inch round screen.	3.00%; 14/64x3/4 inch slot screen.	4.00%; both screens.	.20	9.00
Virginia (not less than 90% splits).	2.00	2.50	3.00%; 17/64 inch round screen.	3.00%; 14/64x1 inch slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia (not more than 4% sound whole kernels).	2.00	2.50	3.00%; 16/64 inch round screen.	3.00%; 13/64x3/4 inch slot screen.	4.00% both screens.	.20	9.00

(2) The term *fall through*, as used in this paragraph, shall mean sound split and broken kernels and whole kernels which pass through specified screens. Prior to shipment, appropriate samples for pretesting shall be drawn in accordance with paragraph (c) of this section from each lot of peanuts. For the current crop year, "negative" aflatoxin content means 15 parts per billion (ppb) or less for peanuts which have been certified as meeting edible quality grade requirements.

* * * * *

3. In § 997.40, paragraph (c) introductory text is amended by removing the words "bulk or", paragraph (e) is amended by removing the word "bagged" and adding in its place the words "placed in suitable containers acceptable to AMS", paragraph (d) is amended by removing the word "bagged" and adding in its place the words "placed in suitable containers acceptable to AMS", and adding after the last sentence, 5 additional sentences, to read as follows:

§ 997.40 Reconditioning and disposition of peanuts failing quality requirements.

* * * * *

(d) * * * Handlers may contract with Committee approved blanchers for roasting positive lot identified shelled peanuts, which originated from Segregation 1 peanuts, that meet the grade requirements of paragraph (a) of this section but are positive as to aflatoxin. Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate and a valid aflatoxin certificate. To be eligible for disposal into human consumption outlets, such peanuts after roasting, shall have had the positive lot identity maintained and be accompanied by a negative aflatoxin certificate. The residual peanuts, excluding skins and hearts, resulting from roasting under these provisions, shall be placed in suitable containers acceptable to AMS and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition; or that in the alternative, such residuals shall be positive lot identified by a Federal or Federal-State Inspection Service, and shall be disposed of, by the blancher, to handlers who are crushers, or to crushers who are not handlers under the Agreement only on the condition that they agree to comply with the terms of paragraph (c) of this section and all other applicable requirements of this regulation. Roasting under the provisions of this paragraph shall be performed only by blanchers who are approved by the Committee.

* * * * *

MAXIMUM LIMITATIONS

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broker kernels	Sound whole kernels	Total		
Excluding lots of "splits"							
Runner	1.50	2.50	3.00%; 17/64 inch round screen.	3.00% 16/64 × 3/4 inch slot screen.	4.00%; both screens.	.20	9.00
Virginia (except No. 2.	1.50	2.50	3.00%; 17/64 inch round screen.	3.00%; 15/64 × 1 inch slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia.	1.50	2.50	3.00%; 16/64 inch round screen.	3.00%; 15/64 × 3/4 inch slot screen.	4.00% both screens.	.20	9.00
No. 2 Virginia	1.50	3.00	6.00%; 17/64 inch round screen.	6.00%; 15/64 × 1 inch slot screen.	6.00%; both screens.	.20	9.00
Lots of "splits"							
Runner (not more than 4% sound whole kernels.	2.00	2.50	3.00%; 17/64 inch round screen.	3.00%; 14/64 × 3/4 inch slot screen.	4.00%; both screens.	.20	9.00
Virginia (not less than 90% splits.	2.00	2.50	3.00%; 17/64 inch round screen.	3.00%; 14/64 × 1 inch slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia (not more than 4% sound whole kernels).	2.00	2.50	3.00%; 16/64 inch round screen.	3.00%; 13/64 × 3/4 inch slot screen.	4.00%; both screens.	.20	9.00

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 998.100 [Amended]

2. Section 998.100 is amended by removing paragraph (g), redesignating paragraphs (h) and (i) as paragraphs (g) and (h), and removing the number "1996" in the section heading and adding in its place the number "1997".

3. In § 998.200, the section heading and paragraphs (a), (h)(1) and (h)(2) are revised and a new paragraph (h)(3) is added to read as follows:

§ 998.200 Outgoing quality regulation for 1997 and subsequent crop peanuts.

* * * * *

(a) *Shelled peanuts.* (1) No handler shall dispose of shelled peanuts for human consumption unless such peanuts are positive lot identified, certified "negative" as to aflatoxin, and certified as meeting the following requirements:

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(2) The term *fall through*, as used in this paragraph, shall mean sound split and broken kernels and whole kernels which pass through specified screens.

* * * * *

(h) * * * (1) Handlers may blanch or cause to have blanched positive lot identified shelled peanuts, which originated from Segregation 1 peanuts, that fail to meet the requirements of paragraph (a) of this section. Lots of peanuts which are moved under these provisions must be accompanied by a valid grade inspection certificate and the title shall be retained by the handler until the peanuts are blanched and certified by an inspector of the Federal or Federal-State Inspection Service as meeting the requirements for disposal into human consumption outlets. To be eligible for disposal into human consumption outlets, such peanuts after blanching, must meet specifications as listed in paragraph (a) of this section and be accompanied by an aflatoxin certificate determined to be negative by the Committee. Lots of peanuts which have been certified as meeting fall through requirements as specified in paragraph (a) of this section, prior to blanching, shall be exempt from fall through requirements after blanching. The residual peanuts, excluding skins and hearts, resulting from blanching under these provisions, shall be placed in suitable containers acceptable to the Committee and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition; or, in the alternative, such residuals shall be positive lot identified by the Federal or Federal-State Inspection Service, and shall be disposed of, by the blancher, to handlers who are crushers, or to crushers who are not handlers under the Agreement only on the condition that they agree to comply with the terms of paragraph (g) of this section and all other applicable requirements of the Agreement. Blanching under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such blanching.

(2) Handlers may contract with Committee approved remillers for remilling shelled peanuts, which originated from Segregation 1 peanuts, that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of this section: *Provided*, That such lots of peanuts contain not in excess of 10 percent fall through. Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate and must be positive lot identified and the title of such peanuts shall be retained by the handler until the peanuts have been remilled and certified by the Federal or Federal-State Inspection Service as meeting the requirements for disposition to human consumption outlets specified in paragraph (a) of this section, and be accompanied by an aflatoxin certificate determined to be negative by the Committee. Remilling under these provisions may include composite remilling of more than one such lot of peanuts owned by the same handler. However, such peanuts owned by one handler shall be held and remilled separate and apart from all other peanuts. The residual peanuts resulting from remilling under these provisions, shall be placed in suitable containers acceptable to the Committee and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition; or, in the alternative, such residuals shall be positive lot identified by the Federal or Federal-State Inspection Service, and shall be disposed of, by the remiller, to handlers who are crushers, or to crushers who are not handlers under the Agreement only on the condition that they agree to comply with the terms of paragraph (g) of this section and all other applicable requirements of the Agreement. Remilling under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such remilling.

(3) Handlers may contract with Committee approved blanchers for roasting positive lot identified shelled peanuts, which originated from Segregation 1 peanuts, that meet the grade requirements of paragraph (a) of this section but are positive as to aflatoxin. Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate and a valid aflatoxin certificate. To be eligible for disposal into human consumption outlets, such peanuts after roasting, shall have had the positive lot identity maintained and be accompanied by an aflatoxin certificate determined to be negative by the Committee. The residual peanuts, excluding skins and hearts, resulting from roasting under these provisions, shall be placed in suitable containers acceptable to the Committee and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition; or in the alternative, such residuals shall be positive lot identified by a Federal or Federal-State Inspection Service, and shall be disposed of, by the blancher, to handlers who are crushers, or to crushers who are not handlers under the Agreement only on the condition that they agree to comply with the terms of paragraph (g) of this section and all other applicable requirements of the Agreement. Roasting under the provisions of this paragraph shall be performed only by blanchers who are approved by the Committee.

* * * * *

Dated: January 9, 1998.

Sharon Bomer Lauritsen,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–1052 Filed 1–15–98; 8:45 am]

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January 16, 1998

Part V

Securities and Exchange Commission

17 CFR Part 240

Amendments to Beneficial Ownership Reporting Requirements; Final Rule

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–39538; File No. S7–16–96; International Series—1111]

RIN 3235–AG81

Amendments to Beneficial Ownership Reporting Requirements

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is today adopting amendments to its rules relating to the reporting of beneficial ownership in publicly held companies. These amendments make the short-form Schedule 13G available, in lieu of Schedule 13D, to all investors beneficially owning less than 20 percent of the outstanding class that have not acquired and do not hold the securities for the purpose of or with the effect of changing or influencing the control of the issuer of the securities. The purposes of the amendments are to improve the effectiveness of the beneficial ownership reporting scheme and to reduce the reporting obligations of passive investors.

EFFECTIVE DATE: The amendments are effective February 17, 1998.

FOR FURTHER INFORMATION CONTACT: Dennis O. Garris, Chief, Office of Mergers and Acquisitions, Division of Corporation Finance, Securities and Exchange Commission at (202) 942–2920, 450 Fifth Street N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is adopting amendments to Regulation 13D–G [1] and Schedules 13D and 13G.[2] In addition, the Commission is adopting conforming amendments to Rule 16a–1 [3] under the Securities Exchange Act of 1934 ("Exchange Act").

I. Executive Summary

Today, for the first time, the Commission is permitting certain large shareholders to use the short-form Schedule 13G, rather than the long-form Schedule 13D, to report accumulations and changes in stock holdings. This expanded eligibility to file on Schedule 13G applies only to persons not seeking to acquire or influence "control" of the issuer and who own less than 20 percent of the class of securities ("Passive Investor").[4] The existing reporting scheme imposed unnecessary disclosure obligations on persons whose acquisitions do not affect the control of issuers. The amendments adopted today will reduce the reporting obligations of these Passive Investors. The amendments also will improve the effectiveness of the beneficial ownership reporting scheme. The reduced number of Schedule 13D filings will allow the marketplace, as well as the staff of the Commission, to focus more quickly on acquisitions involving the potential to change or influence control.

Since a control purpose reflects the state of mind of a filing person and there are incentives to disclose less information, the Commission is imposing some safeguards on this new class of short-form filers:

- Initial Schedule 13G must be filed within 10 days (instead of year end);
- Prompt amendments are required every time the Passive Investor acquires more than an additional five percent;
- Loss of Schedule 13G-eligibility occurs when Passive Investor acquires 20 percent or more of the class; and,
- If the person no longer passively holds their shares or the person acquires 20 percent or more of the class, a Schedule 13D is due within ten days and the person is not permitted to vote the shares or acquire more shares during the period of time beginning from the change in investment purpose or the acquisition of 20 percent or more until ten days after the Schedule 13D is filed.

The Commission also is adopting related and clarifying amendments including the simplification of the Schedule 13G dissemination requirements to reflect the ready availability of those reports on the Commission's EDGAR system. Schedules 13G will no longer be required to be sent to the exchanges, since all Schedules 13D and 13G must now be filed electronically with the Commission.[5]

II. Amendments to Regulation 13D–G

A. Expansion of the Class of Investors Eligible To Report on Schedule 13G

The Commission proposed the amendments adopted today on July 3, 1996.[6] The amendments are being adopted substantially as proposed with some important modifications. In addition to the two existing categories of Schedule 13G filers ("Qualified Institutional Investors" [7] and "Exempt Investors" [8]), today's amendments create a third category ("Passive Investors"),[9] significantly expanding the classes of persons eligible to file on the short form. Under the amendments, all Passive Investors are permitted to use the short-form Schedule 13G.[10] Passive Investors choosing to report on Schedule 13G will file that schedule within 10 calendar days after acquiring beneficial ownership of more than five percent of a class of subject securities. Persons unable or unwilling to certify that they do not have a disqualifying purpose or effect because, for example, the possibility exists that they may seek to exercise or influence control, would be ineligible to file a Schedule 13G and would be required to file a Schedule 13D.[11] Qualified Institutional Investors remain eligible to file the short-form report on Schedule 13G within 45 calendar days after the calendar year end. Exempt Investors also will continue to file their initial Schedule 13G within 45 calendar days after the calendar year in which they became subject to Section 13(g) and new Rule 13d–1(d).

Even though a Passive Investor may report on Schedule 13G, it will be permitted to file a Schedule 13D instead. The fact that an investor can represent that it does not have a disqualifying purpose or effect but nevertheless chooses to file on a Schedule 13D may provide important information concerning the filing person's investment purpose.

B. Filing Periods for Passive Investors Filing on Schedule 13G

As adopted, Passive Investors choosing to file a Schedule 13G will file the initial schedule within 10 calendar days of crossing the five percent threshold. Requiring the filing within 10 days, rather than the 45 days following year end as is currently applicable to Qualified Institutional Investors and Exempt Investors, will provide more timely notice to the market and to investors of the existence of voting blocks that have the potential of affecting or influencing control of the issuer.

Although the Commission is adopting the initial reporting obligations for Passive Investors as proposed that are more stringent than those for Qualified Institutional Investors, the Commission is adopting a more liberal approach for amending Schedule 13G. The rule permits Passive Investors to amend in a manner similar, but more promptly than, Qualified Institutional Investors reporting on Schedule 13G.[12]

As proposed, Passive Investors would have been subject to the more stringent amendment requirements that currently apply to Schedule 13D filers. Seven commenters specifically addressed the proposed amendment requirements and five commenters believed that the proposals were too complex and overly cautious. Those commenters believed that the application of the more stringent amendment requirements to Passive Investors would significantly diminish the benefits of the proposals overall to Passive Investors and would be inconsistent with the Commission's intent to reduce the reporting obligations of Passive Investors. One commenter noted that if the Passive Investors have no intent to influence or change control of the issuer, then there is no substantially greater need to track the percentage changes in holdings of Passive Investors, and therefore they should be treated no differently than Qualified Institutional Investors. In contrast, other commenters argued that the proposed accelerated filing of these Schedule 13G amendments for Passive Investors is necessary to provide notice to investors, issuers, and to the market of voting blocks of securities that have the potential of affecting or influencing control of the issuer.

While the Commission appreciates that the beneficial ownership rules are already complex, separate amendment requirements for Passive Investors appear to be necessary to address these competing concerns raised by the commenters. The views of the commenters on the amendment issue suggest that neither the current 13D nor 13G approach would be appropriate. By requiring prompt reporting of more than five percent changes in position, the Commission believes that sufficient information will be provided to investors, issuers, and to the market regarding the changes in percentage ownership of Passive Investors. To further prevent any possible abuse in the use of Schedule 13G by investors that have a disqualifying purpose or effect, the Commission is adopting, as proposed, the "cooling-off" period upon a change in investment purpose and the same "cooling-off" period will apply upon acquiring 20 percent or more of the class.[13]

Accordingly, as adopted, Passive Investors must amend the Schedule 13G within 45 calendar days after the end of the calendar year to report any change in the information previously reported. Passive Investors also will amend the Schedule 13G during the year if they acquire greater than 10 percent of the subject securities. This amendment will be required to be filed "promptly" [14] upon acquiring greater than 10 percent. Between 10 percent and less than 20 percent, Passive Investors will be required to file additional amendments "promptly" during the year if they increase or decrease their beneficial ownership by more than five percent of the class.

These new amendment requirements for Passive Investors that acquire greater than 10 percent of the class are different than the amendment requirements for Qualified Institutional Investors that acquire greater than 10 percent. Qualified Institutional Investors have until 10 days after the month in which they acquired greater than ten percent to amend their Schedule 13G. Qualified Institutional Investors holding more than 10 percent have until 10 days after the month in which they increased or decreased their beneficial ownership by more than five percent. In each case, the Qualified Institutional Investor's beneficial ownership is computed as of the last day of the month. The Qualified Institutional Investors are permitted greater flexibility in filing amendments in recognition of the fact that Qualified Institutional Investors routinely buy and sell securities in the ordinary course of business and are less likely to abuse the process.

C. 13D Filing Requirement and Cooling-Off Period for Changes in Investment Purpose or Effect

When Qualified Institutional Investors and Passive Investors determine they hold the subject securities with a disqualifying purpose or effect, they must file a Schedule 13D no later than 10 calendar days after the change in investment purpose.[15] The Commission is adopting, as proposed, a "cooling-off" period that will begin with the change in investment purpose and last until the expiration of the tenth calendar day from the date of the filing of a Schedule 13D. During the cooling-off period, the reporting person is prohibited from voting or directing the voting of the subject securities or acquiring additional beneficial ownership of any equity securities of

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[1] Rules 13d–1, 13d–2, 13d–3, and 13d–7 [17 CFR 240.13d–1, 240.13d–2, 240.13d–3, and 240.13d–7].

[2] K 17 CFR 240.13d–101 and 240.240.13d–102.

[3] 17 CFR 240.16a–1.

[4] *See* fn. 9, infra.

[5] Schedules 13D and 13G are not required to be filed electronically with respect to securities of foreign private issuers. See Note to paragraph (c)(4) to 17 CFR 232.901.

[6] Exchange Act Release No. 37403 (July 7, 1996) ("Reproposing Release"). The comment letters, as well as a summary of the comments, are available from the Commission's Public Reference Room (File No. S7–16–96).

[7] The institutional investors include a broker or dealer registered under Section 15(b) of the Exchange Act [15 U.S.C. 78o(b)], a bank as defined in Section 3(a)(6) of the Exchange Act [15 U.S.C. 78c(a)(6)], an insurance company as defined in Section 3(a)(19) of the Exchange Act [15 U.S.C. 78c(a)(19)], an investment company registered under Section 8 of the Investment Company Act of 1940 [15 U.S.C. 80a–8], an investment adviser registered under Section 203 of the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 *et seq.*], an employee benefit plan or pension fund that is subject to the provisions of the Employee Retirement Income Security Act of 1974 [codified principally in 29 U.S.C. 1001–1461], and related holding companies and groups (collectively, "institutional investors"). Rule 13d–1(b)(1)(ii) [17 CFR 240.13d–1(b)(1)(ii)].

[8] The term "Exempt Investors" refers to persons holding more than five percent of a class of subject securities at the end of the calendar year, but who have not made an acquisition subject to Section 13(d). For example, persons who acquire all their securities prior to the issuer registering the subject securities under the Exchange Act are not subject to Section 13(d) and persons who acquire not more than two percent of a class of subject securities within a 12-month period are exempted from Section 13(d) by Section 13(d)(6)(B), but in both cases are subject to Section 13(g). Section 13(d)(6)(A) exempts acquisitions of subject securities acquired in a stock-for-stock exchange which is registered under the Securities Act of 1933.

[9] The term "Passive Investors" is used in this release to refer to shareholders beneficially owning more than five percent of the class of subject securities and who can certify that the subject securities were not acquired or held for the purpose of and do not have the effect of changing or influencing the control of the issuer of such securities and were not acquired in connection with or as a participant in any transaction having such purpose or effect. *See* Rule 13d–1(c) and revised Item 10 of Schedule 13G. Shareholders that are unable to certify to this effect are considered to have, for purposes of this release, a "disqualifying purpose or effect".

[10] Rule 13d–1(c).

[11] The Commission has revised, as proposed, the certification on the Schedule 13G for Qualified Institutional Investors to provide that such investors certify that the securities were acquired *and are held* in the ordinary course of business and were not acquired *and are not held* for the purpose of and do not have the effect of changing or influencing the control of the issuer of such securities and were not acquired *and are not held* in connection with or as a participant in any transaction having such purpose or effect (*emphasis added*). This amendment to the certification is to conform the language of the certification to amended Rule 13d–1(e).

[12] Amended Rule 13d–2(b) requires Qualified Institutional Investors to amend Schedule 13G 45 days after the end of each calendar year if, as of the end of such calendar year, there are any changes in the information reported in the previous filing on that Schedule. Further, under amended Rule 13d–2(c) if their beneficial ownership exceeds 10 percent of the class at the end of any month, an amendment would be required to be filed within 10 days after the end of that month, as well as within 10 days after the end of any month in which their ownership increases or decreases by more than five percent of such class.

[13] *See* Sections II.C. and II.D. infra.

[14] The determination of what constitutes "promptly" under Regulation 13D–G is based upon the facts and circumstances surrounding the materiality of the change in information triggering the filing obligation and the filing person's previous disclosures. Any delay beyond the date the filing reasonably can be filed may not be prompt. *See In the Matter of Cooper Laboratories, Inc.*, Release No. 34–22171 (June 26, 1985).

[15] Rule 13d–1(e).

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the issuer or any person controlling the issuer.

Seven commenters specifically addressed the proposals regarding the Schedule 13D filing requirement upon a change in investment purpose or effect and the related cooling-off period. Three of those commenters supported the Schedule 13D filing requirement and cooling-off period as proposed. The other four commenters supported the concept of a cooling-off period but thought the period should be shortened. However, in light of the changes being adopted today to liberalize the amendment requirements for Passive Investors reporting on Schedule 13G, the Commission believes the 10 day cooling-off period, as adopted, is necessary and appropriate. The earlier commencement of the cooling-off period will encourage the prompt filing of a Schedule 13D.[16] The cooling-off period will prevent further acquisitions or the voting of the subject securities until the market and investors have been given time to react to the information in the Schedule 13D filing.

D. Twenty-Percent Limit on Ownership Interest Reportable on Schedule 13G and Related Cooling-Off Period

Under today's amendments, Passive Investor status is limited to holders of less than 20 percent of the class of subject securities. Upon acquiring 20 percent or more, the investor must report the acquisition on Schedule 13D within 10 calendar days.[17] Additionally, the investor will be subject to a "cooling-off" period commencing from the time the investor reaches the 20 percent threshold until ten calendar days after the filing of the Schedule 13D.[18] During this period, the investor will be prohibited from voting or directing the voting of the subject securities and from acquiring additional beneficial ownership in any equity securities of the issuer. This cooling-off period is the same period that applies to Passive Investors and Qualified Institutional Investors when they change their investment purpose. The Commission proposed a standstill[19] period upon the acquisition of 20 percent or more of the class. The Commission is adopting the cooling-off period in lieu of the standstill period at the 20 percent threshold in order to further prevent abuse of the liberal amendment requirements adopted today for Passive Investors and to simplify Regulation 13D–G.

Six commenters specifically addressed the proposal regarding the 20 percent limitation and related standstill period. A majority of those commenters supported the 20 percent limitation. One commenter believed the ownership limit should be lowered to 10%. Three commenters supported the standstill period as proposed. Two commenters believed that it would be unfair to Passive Investors to impose a limit on beneficial ownership reportable on Schedule 13G and to apply any standstill period. Those commenters believed that if an investor can make the passive certification, then it should be treated the same as Qualified Institutional Investors. The Commission believes that the 20 percent limitation and the cooling-off period adopted today are necessary and appropriate for prompt disclosure of sizeable blocks of securities because of the inherent control implications corresponding to such ownership positions held by persons that do not purchase securities in the ordinary course of business.[20]

The 20 percent limit applies only with respect to Passive Investors reporting on Schedule 13G pursuant to new Rule 13d–1(c). Qualified Institutional Investors and Exempt Investors are not subject to the 20 percent limitation because the Commission recognizes that institutions that purchase securities in the ordinary course of business may be burdened by a limitation on the amount of securities that can be reported on the short-form Schedule 13G. Further, the Commission believes that Schedule 13G strikes an appropriate balance between furnishing disclosure to the market and the burdens placed on such institutions.

E. Re-establishing Schedule 13G Eligibility

The amended rules allow persons who have lost their eligibility to file on Schedule 13G to re-establish their Schedule 13G-eligibility and again report on Schedule 13G.[21] Specifically, a Qualified Institutional Investor that has lost its Schedule 13G eligibility, because it is no longer a qualified entity under Rule 13d–1(b)(1)(ii) or cannot make the required certification, is allowed to switch back to Schedule 13G pursuant to the Qualified Institutional Investor provision[22] once it re-establishes its status under Rule 13d–1(b)(1)(ii) or can again make the necessary certification. Similarly, a Passive Investor that has lost its Schedule 13G-eligibility under Rule 13d–1(c), because it can no longer certify that it does not have a disqualifying purpose or effect or because it reached the 20 percent threshold, is able to switch back to Schedule 13G when it can once again make the certification or when its beneficial ownership falls below 20 percent. The Commission believes that investors and the market will be better informed if reporting persons are able to switch back to Schedule 13G after re-establishing their eligibility, since the filing of a Schedule 13D will be a clearer indicator of investors that currently have a disqualifying purpose or effect or investors that hold 20 percent or more of the class.

Once a Schedule 13D reporting person decides to switch to a Schedule 13G, the Schedule 13G would be filed to reflect that decision.[23] The filing of the Schedule 13G will be deemed to amend the Schedule 13D. Therefore, no formal amendment to the Schedule 13D will be required.

F. Expansion of the Class of Qualified Institutional Investors

1. Foreign Institutional Investors

Under the amended rules, the use of the short-form Schedule 13G pursuant to the Qualified Institutional Investor provisions of Rule 13d–1(b) will continue to be limited essentially to institutions such as brokers, dealers, investment companies, and investment advisers registered with the Commission, or regulated banks or insurance companies. The use of Schedule 13G by similar non-domestic institutions has been limited in the past to those institutions that have obtained an exemptive order from the Commission[24] or, under the current practice, a no-action position from the Division of Corporation Finance. The no-action relief was based on the requester's undertaking to grant the Commission access to information that would otherwise be disclosed in a Schedule 13D and the comparability of the foreign regulatory scheme applicable to the particular category of institutional investor.

The Commission is not expanding the list of qualified institutional investors to include foreign institutions. The Passive Investor provisions adopted today make Schedule 13G available to all investors that do not have a disqualifying purpose or effect, including foreign investors. These new provisions have more lenient filing requirements for amendments to Schedule 13G than as originally proposed.[25] Therefore, foreign institutional investors wanting to report on Schedule 13G should be able to rely on the passive investor provisions without significant difficulty. Any foreign institutional investor that would rather report on Schedule 13G as a Qualified Institutional Investor and does not want to rely on the Passive Investor provisions may continue to seek no-action relief from the staff under current practices.

2. State and Local Governmental Employee Benefit Plans

The Commission is expanding the list of Qualified Institutional Investors under Rule 13d–1(b)(1)(ii) to allow employee benefit plans maintained primarily for the benefit of state or local government employees to report on Schedule 13G. The Commission believes that these plans are now generally subject to fiduciary obligations and standards for investment that are substantially similar to those imposed by Employee Retirement Income Security Act of 1974 ("ERISA"). The Commission has revised the language in Rule 13d–1(b)(1)(ii)(F) to eliminate the phrase "pension fund" because such entities are included in the definition of employee benefit plan in Section 3(3) of ERISA.

The Commission is making a conforming change to the beneficial owner definition under Section 16 by amending Rule 16a–1(a)(1)(vi) to include state and local government employee benefit plans in the list of persons that are not deemed to be the beneficial owners of securities held for the benefit of third parties.

3. Savings Associations

Based upon the suggestions of commenters, the Commission is expanding the list of Qualified Institutional Investors under Rule 13d–1(b)(1)(ii) by adding new paragraph (H) to allow savings associations to report on Schedule 13G. Adding savings associations to the list of Qualified Institutional Investors codifies the staff no-action relief granted to *Columbia Savings and Loan* (June 15, 1987).

The Commission is making a conforming change to the Section 16 rules by adding new Rule 16a–1(a)(1)(viii) to include savings associations in the list of persons that are not deemed to be the beneficial owners of securities held for the benefit of third parties.

4. Church Plans

Also upon the suggestion of commenters, the Commission is expanding the list of Qualified Institutional Investors under Rule 13d–1(b)(1)(ii) by adding new paragraph (I) to allow church employee benefit plans to report on Schedule 13G. Adding church plans to the list of Qualified Institutional Investors is consistent with the treatment of church plans under the National Securities Markets Improvement Act of 1996[26] which exempts such plans from most federal securities regulation.

The Commission is making a conforming change to the Section 16 rules by adding new Rule 16a–1(a)(1)(ix) to include church plans in the list of persons that are not deemed to be the beneficial owners of securities held for the benefit of third parties.

5. Control Persons of Qualified Institutional Investors

The Commission is expanding the list of Qualified Institutional Investors under Rule 13d–1(b)(1)(ii) to allow control persons of Qualified Institutional Investors to report indirect beneficial ownership through the controlled entity on Schedule 13G. In order to use Schedule 13G, the control person must not own directly, or indirectly through an ineligible entity or affiliate, more than one percent of the subject company's stock and is not seeking to change or influence control of the subject company.[27]

The Commission is making a conforming change to the Section 16 rules by amending Rule 16a–1(a)(1)(vii) to include control persons of qualified institutions in the list of persons that are not deemed to be beneficial owners of securities held for the benefit of third parties.[28]

Four commenters have requested some form of relief or guidance on when beneficial ownership under Rule 13d–3 should be attributed among entities under common control. This issue arises in the case of a consolidated group of corporations under common control or in the case of a single entity that has separately managed businesses within the same legal entity. The Commission recognizes that certain organizational groups are comprised of many different business units that operate independently of each other. They may nevertheless have to aggregate beneficial ownership for Regulation 13D–G reporting purposes.[29] The need to aggregate may have the effect of requiring diverse business units to share sensitive information, when it is otherwise not necessary for business purposes.

Because the Rule 13d–3(a) definition of beneficial ownership includes persons who have both direct and indirect, as well as shared, voting and investment power, beneficial ownership by the business units, divisions or subsidiaries that hold the securities normally should be attributed to the parent entities that are in a control relationship to the shareholder entity. In those instances where the organizational structure of the parent and related entities are such that the voting and investment powers over the subject securities are exercised independently, attribution may not be required for the purposes of determining whether a filing threshold has been exceeded and the aggregate amount owned by the controlling persons.[30]

The determination as to whether the voting and investment powers are exercised independently from the parent and other related entities is based on the facts and circumstances. One circumstance in which beneficial ownership may not be required to be attributed to the parent entities is when these entities have in place certain informational barriers that ensure that the voting and investment powers are exercised independently from parent

[16] The sooner the Schedule 13D filing is made, the sooner the cooling-off period will end, since the cooling-off period ends 10 calendar days from the date the Schedule 13D is filed.

[17] Upon reaching the 20 percent limit, the investor is not required to amend its Schedule 13G in addition to filing the Schedule 13D.

[18] Rule 13d-1(f).

[19] The "standstill" period would have commenced upon acquiring 20 percent or more of the class and terminated upon the filing of the Schedule 13D. During the standstill period, the investor would have been prohibited from voting its securities or acquiring additional equity securities in the issuer.

[20] As stated in the Reproposing Release, the Commission does not intend these new rules to create a presumption that beneficial ownership of 20 percent or more indicates control or a control purpose. Further, no presumption is intended that beneficial ownership below 20 percent cannot indicate control or a control purpose. Indeed, the Commission believes that it would be unusual for an investor to be able to make the necessary certification of a passive investment purpose when beneficial ownership approaches 20 percent.

[21] Rule 13d–1(h).

[22] Rule 13d–1(b).

[23] The Schedule 13G would be filed as an initial Schedule 13G as opposed to an amendment even if the reporting person had reported on Schedule 13G before losing its Schedule 13G-eligibility.

[24] *See* Exchange Act Release No. 14692 (April 21, 1978) [43 FR 18484].

[25] See Section II.B. above.

[26] Title V, Section 508.

[27] Rule 13d–1(b)(1)(ii)(G). This amendment codifies the no-action position set forth in *Warren E. Buffet & Berkshire Hathaway, Inc.*, (available December 5, 1986). Two commenters addressed this proposal and both commenters supported the proposal.

[28] This amendment under Section 16 codifies the interpretive position set forth in *Edward C. Johnson 3d.*, (available August 20, 1991).

[29] Since state takeover statutes and shareholder rights provisions are triggered by certain "beneficial ownership" or "voting power" thresholds—and may even use the beneficial ownership definition under Rule 13d–3—there is a concern that reporting ownership on an aggregate basis may trigger some of those provisions.

[30] Likewise, under these circumstances, attribution may not be required under Rule 16a–1(a)(1).

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and affiliated entities.[31] This approach assumes that there will not be arbitrary or artificial separation of business units. One factor militating against separation would be participation in a common compensation pool that may align voting and investment decisions.

When informational barriers are relied upon to avoid attributing beneficial ownership to the parent entities, the various companies or groups should maintain and enforce written policies and procedures reasonably designed to prevent the flow of information to and from the other business units, divisions and entities that relate to the voting and investment powers over the securities. Those companies or groups also should obtain an annual, independent assessment of the operation of the policies and procedures established to prevent the flow of information among the related entities. The frequency in which an informational barrier is crossed with respect to a particular security (and therefore beneficial ownership would be attributed for that security) would raise questions regarding the efficacy of the informational barrier overall. However, an isolated instance in which this occurs would not necessarily impact the ownership treatment of securities of other issuers held by the reporting person.[32]

Finally, the parent entities should have no officers or directors (or persons performing similar functions) or employees (other than clerical, ministerial, or support personnel) who are involved in the exercise of the voting and investment powers in common with the shareholder.[33] For example, the existence of an independent investment committee would be evidence of an effective separation between the parent and the affiliated entities.

6. Investment Advisers Prohibited From Registering Under the Investment Advisers Act of 1940 Pursuant to Section 203A of That Act

Since the issuance of the Reproposing Release, Congress passed the National Securities Markets Improvement Act of 1996.[34] Among other things, the Act amended the Investment Advisers Act of 1940 (the "Advisers Act") by adding Section 203A, which prohibits certain investment advisers from registering with the Commission. For the most part, only advisers that have "assets under management" of $25 million or more, that advise registered investment companies, or that meet one of several exemptions from the prohibition on registration will be registered with the Commission. Other advisers will be regulated by state securities authorities. Currently, Rule 13d–1(b)(1)(ii)(E) restricts the use of Schedule 13G to investment advisers registered under Section 203 of the Advisers Act. Today the Commission is amending this rule to allow those investment advisers that are prohibited from registering under the Advisers Act pursuant to Section 203A of that Act to report on Schedule 13G as a Qualified Institutional Investor. Although these persons will not be subject to the federal regulatory regime for investment advisers, they will continue to buy and sell securities in the ordinary course of business and their businesses will be regulated by state law.

The Commission is making a conforming change to the Section 16 rules by amending Rule 16a–1(a)(1)(v) to include these investment advisers in the list of persons that are not deemed to be the beneficial owners of securities held for the benefit of third parties.

G. Shareholder Communications and Beneficial Ownership Reporting

The Commission requested comment as to whether the Section 13(d) reporting obligations restrict a shareholder's ability to engage in proxy related activities including the ability to use the proxy rule exemptions that were adopted in 1992 to facilitate communications among shareholders. The Commission asked whether relief, in addition to that adopted today, from Schedule 13D filing obligations with respect to soliciting activities is necessary and appropriate.

Only seven commenters responded to this request for comment. Two commenters believed that the Section 13(d) reporting obligations do not restrict the use of the proxy rule exemptions. The other five commenters believed that the reporting obligations do restrict the use of the proxy rule exemptions and all those commenters requested the Commission to provide various forms of relief or guidance on the matter. The two primary concerns raised by the five commenters are that activities exempt from the rules:

(i) May constitute the formation of a "group" under Rule 13d–5(b); or

(ii) May be construed as having the purpose or effect of changing or influencing the control of the issuer, and therefore would disqualify a person from eligibility to use Schedule 13G.

Although the Commission agrees that it can provide some further guidance in this area as discussed below, the Commission does not believe that the current beneficial ownership and group concepts unduly interfere with the type of shareholder communications contemplated by the proxy rule exemptions. The Commission believes that no further relief from the Section 13(d) filing obligations is required.

Specifically, the Commission believes that a shareholder who is a passive recipient of soliciting activities, without more, would not be deemed a member of a group under Rule 13d–5(b)(1) with persons conducting the solicitation. This would be true even where the soliciting activities result in the shareholder granting a revocable proxy. Similarly, when a shareholder solicits and receives revocable proxy authority (subject to the discretionary limits of Rule 14a–4), without more, that shareholder does not obtain beneficial ownership under Section 13(d) in the shares underlying the proxy.

The eligibility to use Schedule 13G by a shareholder who submits, supports, or engages in exempt soliciting activity in favor of a shareholder proposal submitted pursuant to Rule 14a–8, will depend on whether that activity was engaged in with the purpose or effect of changing or influencing control of the company. That determination normally would be based upon the specific facts and circumstances accompanying the solicitation and the vote. For that reason, the Commission is not able to provide extensive guidance on this issue.

In some cases the subject matter of the proposal or solicitation may be dispositive. For example, most solicitations regarding social or public interest issues (*e.g.*, environmental policies, apartheid, etc.) would not have the purpose or effect of changing or influencing control of the company. Corporate governance proposals, however, may or may not be control related. Proposals and soliciting activity relating to matters such as executive compensation, director pensions, and confidential voting normally would not prevent the use of a Schedule 13G. Even corporate governance issues that are presumably control related (*e.g.*, removal of a poison pill, opting out of state takeover statutes, or removal of staggered boards) might not have a disqualifying purpose or effect, depending on the circumstances. In contrast, most solicitations in support of a proposal specifically calling for a change of control of the company (*e.g.*, a proposal to seek a buyer for the company or a contested election of directors or a sale of a significant amount of assets or a restructuring of a corporation) would clearly have that purpose and effect. Some relevant factors to consider in assessing the purpose and effect of the type of proposal and related soliciting activity include:

(1) Does the filing person purchase securities in the ordinary course of business and by its nature does not seek to acquire control of companies?

(2) Was the proposal submitted or solicitation undertaken based upon the filing person's investment policies regarding good corporate governance for all the filer's portfolio companies, rather than to foster a control transaction for the particular company?

(3) Was the proposal submitted, or solicitation commenced, under circumstances where, given the subject matter of the particular proposal, it is likely to have the effect of facilitating a change of control of that particular company by another person or group (for example, the submission of a proposal to eliminate a staggered board that may facilitate a non-management solicitation, even by an unrelated third party)?

(4) Did the filing person commence an independent solicitation, exempt or otherwise, in favor of a proposal (the mere submission of a proposal under Rule 14a–8, without any independent soliciting activity, would be less likely to have a disqualifying purpose or effect)?

(5) Was the activity undertaken in opposition to a proposal put forth by management for shareholder approval, rather than in support of a proposal submitted by the filing person or some other shareholder?

Some proxy-related activities, by their nature, will have only limited effect on control of the company, and therefore should normally not cause a shareholder to lose its 13G eligibility. For example, voting in favor of an insurgent or making a voting announcement under Rule 14a–1(*l*)(2)(iv) in favor of a corporate governance proposal, without more, would not cause the loss of Schedule 13G eligibility, regardless of the subject matter. This is true even if the voting announcement supports a non-management shareholder proposal.

Although in many instances these determinations will be difficult and fact intensive, the Commission believes that the amendment adopted today that allows a person to re-establish its Schedule 13G eligibility[35] should serve to lessen the concern that a Schedule 13G filing person may lose its eligibility to report on Schedule 13G by engaging in or being a part of soliciting activities. Under new Rule 13d–1(h), if a reporting person loses its Schedule 13G eligibility due to its soliciting activities and is required to then report on Schedule 13D, the reporting person can switch back to Schedule 13G when the reporting person is no longer involved in the soliciting activities and can make the necessary certifications.[36]

H. Related and Clarifying Amendments

The Commission also has eliminated the redundancies that existed in Regulation 13D–G regarding the filing and dissemination requirements by setting forth such requirements in one rule, Rule 13d–7(b). The Commission believes that Schedule 13G will become the primary reporting document for beneficial ownership, since a majority of investors will now file Schedule 13G in lieu of Schedule 13D. For this reason, the Commission proposed that the original and amendments to Schedules 13G be provided to each exchange where the security is traded as is currently required for Schedules 13D. However, since these filings will be made by persons without a disqualifying purpose or effect and are now required to be filed electronically on the Commission's Electronic Data Gathering and Retrieval System and therefore available in the electronic media, including on the Commission's World Wide Web site (http://www.sec.gov), the Commission is not adopting this proposal. Likewise, due to the electronic availability of Schedules 13D, the Commission is not adopting the proposal that a copy of the Schedule 13D and amendments thereto be provided to the National Association of Securities Dealers for securities quoted on the National Association of Securities Dealers Automated Quotation System ("NASDAQ").[37]

Additionally, because of the electronic availability of filings and the fact that Schedules 13G do not represent control transactions, the Commission is further simplifying the dissemination requirements for all Schedule 13G filers by eliminating the requirement that Schedules 13G be sent to the exchanges. Accordingly, copies of all initial Schedules 13G and amendments filed with the Commission by Passive Investors, Qualified Institutional Investors, and Exempt Investors will only be required to be sent to the issuer and will not be required to be sent to any exchange or automated quotation system on which the securities are traded.

The amendments clarify the number of copies required to be filed to the extent paper filings may be made. The Commission notes that paper filings would be relatively rare, since all Schedules 13D and 13G must be filed in electronic format, unless they relate to the securities of a foreign private issuer or the filer has received a hardship exemption. Additionally, the rules have been revised to eliminate language regarding filing fees for Schedules 13D and 13G since such fees have been previously eliminated.[38] Finally, technical amendments to Schedules 13D and 13G have been made to conform the schedules to the proposed rules and to amend the filing deadlines and the number of copies in the instruction.

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[31] The Commission adopted a similar approach in modifying the definition of "affiliated purchaser" under Regulation M. See Exchange Act Release No. 38067 (December 20, 1996) [62 FR 520]. Although informational barriers may serve to prevent the attribution of beneficial ownership to the parent entities, a group under Rule 13d–5(b) can still be formed among commonly controlled entities or with the parent entity that otherwise own securities in the issuer if these persons agree to act together for the purpose of acquiring, holding, voting or disposing of the subject securities. See *e.g., In the Matter of the Gabelli Group, Inc., et al,* Exchange Act Rel. No. 26005 (August 17, 1988).

[32] To the extent the informational barrier is crossed, beneficial ownership of that class of security should be reported on an aggregate basis by the entities sharing the information.

[33] The entities may have common officers, directors, and employees but those persons must not be involved in the exercise of the voting and investment powers or otherwise made aware of specific securities positions which are not publicly available. This factor would ensure that persons involved in the exercise of the voting and investment powers are not the same persons that would exercise such powers for the parent entity and therefore no information concerning the exercise of such powers would pass through the informational barrier.

[34] Pub. L. No. 104–290, 110 Stat. 3416 (1996) (codified in scattered sections of the United States Code).

[35] Rule 13d–1(h).

[36] On September 18, 1997, the Commission proposed amending Rule 14a–8 to provide an override mechanism from the exclusion of the shareholder proposal under Rule 14a–8 (c)(5) and (c)(7). See Release No. 34–39093. The 13G-eligibility of a shareholder who would use the proposed override mechanism to submit a shareholder proposal would be determined in the same manner as discussed in this section.

[37] Schedules 13D will, however, continue to be sent to each exchange on which the security is traded, which is a statutory requirement.

[38] See Exchange Act Release No. 7331 (September 24, 1996).

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III. Effects of Amendments to Regulation 13D-G

ISSUE	OLD SCHEDULE 13D	NEW SCHEDULE 13D	OLD SCHEDULE 13G	NEW SCHEDULE 13G
Person required to file	Any person acquiring more than 5% of an equity security. Rule 13d-1(a).	No change.	Qualified Institutional Investors: Eligible institutions acquiring more than 5% of an equity security. Rule 13d-1(b). Exempt Investors: Persons holding more than 5% of an equity security who are not subject to, or whose acquisitions are exempt from Section 13(d). Rule 13d-1(c).	Qualified Institutional Investors: Expanded to include (i) investment advisers registered under state law; (ii) control persons of qualified institutions; (iii) federal, state and local employee benefit plans; (iv) savings associations; and (v) church plans. Rule 13d-1(b)(1)(ii)(E)-(I). Exempt Investors: No change. Passive Investors: Any person acquiring more than 5% but less than 20% of an equity security and did not acquire such securities with a purpose or effect of changing or influencing control of the issuer or in a transaction having that effect. Rule 13d-1(c).
Initial Filing	Within 10 days after the acquisition. Rule 13d-1(a).	No change.	Qualified Institutional Investors: Within 45 days after calendar year in which the person holds more than 5% as of the year end, or within 10 days after the end of the first month in which the person's beneficial ownership exceeds 10% of the class of equity securities computed as of the end of the month. Rule 13d-1(b)(2). Exempt Investors: Within 45 days after calendar year in which the person becomes obligated to file. Rule 13d-1(d).	Qualified Institutional Investors: No change. Exempt Investors: No change. Passive Investors: Within 10 days after the acquisition. Rule 13d-1(c).

ISSUE	OLD SCHEDULE 13D	NEW SCHEDULE 13D	OLD SCHEDULE 13G	NEW SCHEDULE 13G
Amendment	File promptly to reflect any material change including a change in investment purpose. An acquisition or disposition of beneficial ownership of securities equal to 1% or more of the class is deemed to be a material change. Rule 13d-2(a).	No change.	All Filers: Within 45 days after the end of the calendar year to report any change in the information. Rules 13d-2(b), (c) and (d). Qualified Institutional Investors: In addition to the requirement stated above, within 10 days after the end of the first month in which the person's beneficial ownership exceeds 10% of the class computed as of the end of the month, and thereafter within 10 days of the end of any month in which the person's beneficial ownership increases or decreases more than 5% computed as of the end of the month. Rule 13d-1(b)(2) and 13d-2(c).	Qualified Institutional Investors: No change. Exempt Investors: No change. Passive Investors: Within 45 days after the end of the calendar year to report any change in the information. In addition, an amendment must be filed promptly upon the person's beneficial ownership exceeding 10% of the class and thereafter promptly upon the person's beneficial ownership increasing or decreasing more than 5%. Rule 13d-2(a).
Purpose of Acquisition	Disclose purpose of the transaction. Schedule 13D, Item 4.	No change.	Qualified Institutional Investors: Requires certification that the securities were acquired in the ordinary course of business, were not acquired for the purpose of and does not have the effect of changing or influencing control of the issuer, and were not acquired in a transaction having such an effect. Schedule 13G, Item 10 and Rule 13d-1(b). Exempt Investors: No certification required.	Qualified Institutional Investors: Requires certification that the securities were acquired in the ordinary course of business, were not acquired for the purpose of and does not have the effect of changing or influencing control of the issuer, and were not acquired in a transaction having such an effect. Schedule 13G, Item 10 and Rule 13d-1(b). Exempt Investors: No certification required. Passive Investors: Same certification as for Qualified Institutional Investors except that acquisitions need not occur in the ordinary course of business. Schedule 13G, Item 10(b) and Rule 13d-1(c).

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ISSUE	OLD SCHEDULE 13D	NEW SCHEDULE 13D	OLD SCHEDULE 13G	NEW SCHEDULE 13G
Filing an initial Schedule 13D following previous filing on Schedule 13G.	Qualified Institutional Investors: Promptly, but not more than 10 days after the person determines that it no longer holds the securities (i) in the ordinary course of business or (ii) without the purpose or effect of changing or influencing the control of the issuer, or within 10 days the person ceases to be an eligible institution. Rules 13d-1(b)(3) and (4). Exempt Investors: Within 10 days upon making an acquisition subject to or not exempt from Section 13(d).	Qualified Institutional Investors: Within 10 days after the person determines that it no longer holds the securities (i) in the ordinary course of business or (ii) without the purpose or effect of changing or influencing control of the issuer or ceases to be an eligible institution. Rules 13d-1(e) and (g). Exempt Investors: No change. Passive Investors: Within 10 days of: (i) acquiring or holding the securities with the purpose or effect of changing or influencing control of the issuer or in a transaction having that effect (Rule 13d-1(e)), or (ii) the person's beneficial ownership equals or exceeds 20% of the class of equity securities. Rule 13d-1(f).	Not applicable.	Note: The filing person may refile on Schedule 13G once the disqualification has ended.

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ISSUE	OLD SCHEDULE 13D	NEW SCHEDULE 13D	OLD SCHEDULE 13G	NEW SCHEDULE 13G
Cooling-Off Period upon a change in investment purpose.	Qualified Institutional Investors: 10 day period after the filing of a Schedule 13D because the person no longer holds the securities in the ordinary course of business or not with the purpose or effect of changing or influencing control of the issuer. Rule 13d-1(e).	Qualified Institutional Investors: Form the time the person no longer holds the securities without the purpose or effect of changing or influencing control of the issuer until the expiration of the tenth day after the date the Schedule 13D is filed. Rule 13d-1(e). Passive Investors: Same as Qualified Institutional Investors. Rule 13d-1(e).	Not applicable.	Not applicable.
Cooling-Off Period upon acquiring 20% or more of the class.	Not applicable.	Passive Investors: From the time the person's beneficial ownership equals or exceeds 20% of the class until the expiration of the tenth day after the date the Schedule 13D is filed. Rule 13d-1(f).	Not applicable.	Not applicable.

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IV. Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis ("FRFA") has been prepared in accordance with 5 U.S.C. 604 concerning the amendments to the beneficial ownership rules of Regulation 13D–G and related Schedules 13D and 13G and the amendments to Rule 16a–1(a)(1). The analysis notes that the principal effect of the revisions to Regulation 13D–G will be to reduce the disclosure obligations and associated costs to a majority of persons, including small entities, required to report beneficial ownership under Sections 13(d) and 13(g) of the Exchange Act and would eliminate the reporting obligations under Section 16 of the Exchange Act of certain governmental employee benefit plans, church plans, savings associations, investment advisers registered with the state and certain control persons of Qualified Institutional Investors. The analysis also indicates that there are no current federal rules that duplicate, overlap or conflict with the rules and forms to be amended.

As stated in the analysis, alternatives to the proposed amendments were considered, including, among other things, changing or simplifying the compliance or reporting requirements for small entities or exempting small entities from all requirements to file the schedules under Regulation 13D–G. As discussed in the analysis, there is no less restrictive alternative to the amendments that would serve the purposes of the beneficial ownership provisions of the Exchange Act. As originally proposed, Passive Investors would have been subject to more stringent amendment requirements that would have required amendments to be filed upon every one percent change in their beneficial ownership. However, in order to further reduce the reporting burdens of Passive Investors, the Commission is not adopting the proposed amendment requirements. Under the adopted rules, Passive Investors will only file amendments to their Schedules 13G upon greater than five percent changes in their beneficial ownership, as well as the annual amendment. Further, the Commission originally proposed that a copy of the Schedule 13G be sent to each exchange on which the security is traded and to NASDAQ if the security trades there. However, in order to simplify the dissemination requirements, copies of the Schedule 13G will not be required to be sent to any exchange or NASDAQ and will only continue to be sent to the issuer, as well as being filed with the Commission.

The Commission received no comments on the Initial Regulatory Flexibility Analysis ("IRFA") prepared in connection with the proposing release. Five commenters indicated that the amendments would improve the effectiveness of the beneficial ownership reporting system and would reduce the reporting burdens of Passive Investors.

A copy of the FRFA may be obtained by contacting Dennis O. Garris in the Office of Mergers and Acquisitions, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

V. Paperwork Reduction Act

The beneficial ownership reporting requirements are intended to provide investors and the subject issuer with information about accumulations of securities that may have the ability to change or influence control of the issuer. Before the amendments adopted today, Regulation 13D–G required that most persons file a detailed disclosure statement on the long-form Schedule 13D upon acquiring more than five percent of the subject securities. Certain qualified institutions (Qualified Institutional Investors) and persons who have not made an acquisition subject to Section 13(d) (Exempt Investors) may file the short-form disclosure statement Schedule 13G which requires less detailed disclosure than Schedule 13D.

The amendments make Schedule 13G available, in lieu of Schedule 13D, to all Passive Investors beneficially owning less than 20 percent. The Commission anticipates that the amendments will reduce the existing information collection requirements associated with Regulation 13D–G and Schedules 13D and 13G. The amendments will allow more individuals and non-institutional investors to file the short-form Schedule 13G. An important change from the proposed rules is that Passive Investors filing on Schedule 13G will be subject to the more liberal filing requirements with respect to amending the Schedule 13G. This change further reduces the reporting obligations of Passive Investors. Under the amended rules, Passive Investors must amend the Schedule 13G within 45 calendar days after the end of the calendar year to report any change in the information previously reported. Passive Investors also will promptly amend the Schedule 13G during the year if they acquire greater than 10 percent of the subject securities and thereafter upon an increase or decrease of greater than five percent. Further, in order to reduce the dissemination requirements for all persons filing Schedules 13G, the Commission is not adopting the proposed requirement that Schedules 13G be sent to each exchange on which the security is traded and to NASDAQ if the security trades on its system. As adopted, Schedules 13G will only be required to be sent to the issuer as well as being filed with the Commission.

In a recent study performed by the Office of Economic Analysis,[39] 63 percent of the Schedules 13D surveyed disclosed a passive investment purpose. Of the total surveyed, 53 percent disclosed a passive investment purpose and held less than 20 percent of the class of equity securities and therefore would be eligible to file on Schedule 13G under the new rules as Passive Investors.[40] It is estimated that 1646 Schedules 13D will be filed each year under the new rules.[41] Each Schedule 13D would impose an estimated burden of 14.75 hours for a total annual burden of 24,278.50 hours.[42] It is estimated that 9,044 Schedules 13G will be filed each year under the new rules.[43] Each Schedule 13G would impose an estimated burden of 10 hours for a total annual burden of 90,440 hours.

The Commission did not receive any Paper Work Reduction Act comments. Providing the information required by Schedules 13D and 13G is mandatory under Sections 13(d) and 13(g) and Regulation 13D–G of the Exchange Act. The information will not be kept confidential. Unless a currently valid OMB control number is displayed on the Schedules 13D and 13G, the Commission may not sponsor or conduct or require response to an information collection. The OMB control number is 3235–0145. The collection is in accordance with the clearance requirements of 44 U.S.C. § 3507.

[38] See Exchange Act Release No. 7331 (September 24, 1996).

[39] The sample included 100 Schedules 13D filed from May 21, 1997 to June 2, 1997.

[40] In an earlier survey discussed in the Reproposing Release, 110 Schedules 13D filed in November and December 1994 were surveyed and 76 percent disclosed a passive investment purpose. Of the total surveyed, 63 percent disclosed a passive investment purpose and held less than 20 percent of the class of securities and would therefore be eligible to use Schedule 13G as Passive Investors.

[41] This estimated number of respondents is based upon the number of Schedules 13D filed in fiscal year 1996 and assumes no increase each year. This represents an estimated 53 percent reduction from the 3,503 Schedules 13D filed in fiscal year 1996. The estimated 53 percent reduction in Schedule 13D filings is based upon the sample data provided by the Office of Economic Analysis.

[42] Total annual burden hours are determined by multiplying the estimated average burden hours for completing the particular schedule by the estimated number of respondents that file that schedule.

[43] This number of respondents is based upon the number of Schedules 13G filed in fiscal year 1996 (7,187) plus the additional 1,857 respondents that are expected to file on Schedule 13G under the proposed rules and assumes no increase each year.

VI. Cost-Benefit Analysis

No specific data was provided in response to the Commission's request regarding the costs and benefits associated with amending the filing requirements under Regulation 13D–G.[44] Making Schedule 13G available to all Passive Investors holding less than 20 percent of subject securities should significantly reduce the reporting costs incurred by those investors. Regulation 13D–G applies to any person that acquires more than five percent of a class of equity securities. The amendments will decrease the disclosure obligations of a significant number of persons currently required to file the long-form Schedule 13D. Based upon data provided by the Commission's Office of Economic Analysis, 53 percent of Schedules 13D studied by that office disclosed a passive investment purpose and held less than 20 percent of the class of securities and, therefore, would be eligible to file on Schedule 13G as Passive Investors under the amendments adopted today.[45]

An important change from the proposed rules is that Passive Investors filing on Schedule 13G will be subject to the more liberal filing requirements with respect to amending the Schedule 13G. This change further reduces the reporting obligations of Passive Investors. Commenters believed that the amendment requirements, as proposed, were too burdensome and that the potential benefit of the proposals to Passive Investors would have been substantially outweighed by the costs of monitoring their holdings and reporting the changes. Under the amended rules, Passive Investors must amend the Schedule 13G within 45 calendar days after the end of the calendar year to report any change in the information previously reported. Passive Investors also will promptly amend the Schedule 13G during the year if they acquire greater than 10 percent of the subject securities and thereafter upon an increase or decrease of greater than five percent. Further, in order to reduce the dissemination requirements for all persons filing Schedules 13G, the Commission is not adopting the proposed requirement that Schedules 13G be sent to each exchange on which the security is traded and to NASDAQ if the security trades on its system. As adopted, Schedules 13G will only be required to be sent to the issuer as well as being filed with the Commission.

The Commission does not believe that the amendments adopted today will have any burden on competition or capital formation since the purpose of the Regulation 13D–G filing requirements is only to report beneficial ownership in public companies. The amendments adopted today will increase market efficiency because with the reduced number of Schedule 13D filings the market will be able to focus more quickly on acquisitions involving the potential to change or influence control.

VII. Statutory Basis and Text of Amendments

The amendments to Rules 13d–1, 13d–2, 13d–3 and 13d–7 and Schedules 13D and 13G and Rule 16a–1 are being adopted pursuant to the authority set forth in Sections 3(b), 13, 16 and 23 of the Securities Exchange Act of 1934.

Lists of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. By amending § 240.13d–1 to revise paragraph (a), the introductory text of paragraph (b)(1), paragraphs (b)(1)(ii) and (b)(2), to remove paragraphs (b)(3) and (b)(4) and to redesignate paragraphs (c), (d), (e) and (f) as paragraphs (d), (i), (j) and (k), revise newly designated paragraph (d) and to add paragraphs (c), (e), (f), (g) and (h) to read as follows:

§ 240.13d–1 Filing of schedules 13D and 13G.

(a) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is specified in paragraph (i) of this section, is directly or indirectly the beneficial owner of more than five percent of the class shall, within 10 days after the acquisition, file with the Commission, a statement containing the information required by Schedule 13D (§ 240.13d–101).

(b)(1) A person who would otherwise be obligated under paragraph (a) of this section to file a statement on Schedule 13D (§ 240.13d–101) may, in lieu thereof, file with the Commission, a short-form statement on Schedule 13G (§ 240.13d–102), *Provided*, That:

(i) * * *

(ii) Such person is:

(A) A broker or dealer registered under section 15 of the Act (15 U.S.C. 78o);

(B) A bank as defined in section 3(a)(6) of the Act (15 U.S.C. 78c);

(C) An insurance company as defined in section 3(a)(19) of the Act (15 U.S.C. 78c);

(D) An investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8);

(E) Any person registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3) or under the laws of any state;

(F) An employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1001 *et seq.* ("ERISA") that is subject to the provisions of ERISA, or any such plan that is not subject to ERISA that is maintained primarily for the benefit of the employees of a state or local government or instrumentality, or an endowment fund;

(G) A parent holding company or control person, provided the aggregate amount held directly by the parent or control person, and directly and indirectly by their subsidiaries or affiliates that are not persons specified in § 240.13d–1(b)(1)(ii)(A) through (I), does not exceed one percent of the securities of the subject class;

(H) A savings association as defined in Section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813);

[44] However, eight commenters expressed general views as to the costs and benefits associated with the amendments, without attempting to quantify either the costs or benefits. Five commenters stated that the proposed amendments would reduce passive filers' reporting burdens and associated costs. Seven commenters expressed concern that the proposed 20 percent limitation upon the availability of Schedule 13G to institutional investors that are passive would impose increased compliance burdens and costs without providing any useful information to the public. Finally, three commenters believed that requiring Schedule 13G filers to provide each exchange upon which the security is traded a copy of the Schedule would be overly burdensome because such information is not readily available. The proposal to provide copies of Schedule 13G to each exchange is not being adopted.

[45] The sample included 100 Schedules 13D filed from May 21, 1997 to June 2, 1997.

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(I) A church plan that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 (15 U.S.C. 80a–3); and

(J) A group, provided that all the members are persons specified in § 240.13d–1(b)(1)(ii)(A) through (I); and

(iii) * * *

(2) The Schedule 13G filed pursuant to paragraph (b)(1) of this section shall be filed within 45 days after the end of the calendar year in which the person became obligated under paragraph (b)(1) of this section to report the person's beneficial ownership as of the last day of the calendar year, *Provided*, That it shall not be necessary to file a Schedule 13G unless the percentage of the class of equity security specified in paragraph (i) of this section beneficially owned as of the end of the calendar year is more than five percent; *However*, if the person's direct or indirect beneficial ownership exceeds 10 percent of the class of equity securities prior to the end of the calendar year, the initial Schedule 13G shall be filed within 10 days after the end of the first month in which the person's direct or indirect beneficial ownership exceeds 10 percent of the class of equity securities, computed as of the last day of the month.

(c) A person who would otherwise be obligated under paragraph (a) of this section to file a statement on Schedule 13D (§ 240.13d–101) may, in lieu thereof, file with the Commission, within 10 days after an acquisition described in paragraph (a) of this section, a short-form statement on Schedule 13G (§ 240.13d–102). *Provided*, That the person:

(1) Has not acquired the securities with any purpose, or with the effect of, changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect, including any transaction subject to § 240.13d–3(b);

(2) Is not a person reporting pursuant to paragraph (b)(1) of this section; and

(3) Is not directly or indirectly the beneficial owner of 20 percent or more of the class.

(d) Any person who is or becomes directly or indirectly the beneficial owner of more than five percent of any equity security of a class specified in paragraph (i) of this section and who is not required to file a statement under paragraph (a) of this section by virtue of the exemption provided by Section 13(d)(6)(A) or (B) of the Act (15 U.S.C. 78m(d)(6)(A) or 78m(d)(6)(B)), or because the beneficial ownership was acquired prior to December 22, 1970, or because the person otherwise (except for the exemption provided by Section 13(d)(6)(C) of the Act (15 U.S.C. 78m(d)(6)(C))) is not required to file a statement, shall file with the Commission, within 45 days after the end of the calendar year in which the person became obligated to report under this paragraph (d), a statement containing the information required by Schedule 13G (§ 240.13d–102).

(e)(1) Notwithstanding paragraphs (b) and (c) of this section and § 240.13d–2(b), a person that has reported that it is the beneficial owner of more than five percent of a class of equity securities in a statement on Schedule 13G (§ 240.13d–102) pursuant to paragraph (b) or (c) of this section, or is required to report the acquisition but has not yet filed the schedule, shall immediately become subject to §§ 240.13d–1(a) and 240.13d–2(a) and shall file a statement on Schedule 13D (§ 240.13d–101) within 10 days if, and shall remain subject to those requirements for so long as, the person:

(i) Has acquired or holds the securities with a purpose or effect of changing or influencing control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect, including any transaction subject to § 240.13d–3(b); and

(ii) Is at that time the beneficial owner of more than five percent of a class of equity securities described in § 240.13d–1(i).

(2) From the time the person has acquired or holds the securities with a purpose or effect of changing or influencing control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect until the expiration of the tenth day from the date of the filing of the Schedule 13D (§ 240.13d–101) pursuant to this section, that person shall not:

(i) Vote or direct the voting of the securities described therein; or

(ii) Acquire an additional beneficial ownership interest in any equity securities of the issuer of the securities, nor of any person controlling the issuer.

(f)(1) Notwithstanding paragraph (c) of this section and § 240.13d–2(b), persons reporting on Schedule 13G (§ 240.13d–102) pursuant to paragraph (c) of this section shall immediately become subject to §§ 240.13d–1(a) and 240.13d–2(a) and shall remain subject to those requirements for so long as, and shall file a statement on Schedule 13D (§ 240.13d–101) within 10 days of the date on which, the person's beneficial ownership equals or exceeds 20 percent of the class of equity securities.

(2) From the time of the acquisition of 20 percent or more of the class of equity securities until the expiration of the tenth day from the date of the filing of the Schedule 13D (§ 240.13d–101) pursuant to this section, the person shall not:

(i) Vote or direct the voting of the securities described therein, or

(ii) Acquire an additional beneficial ownership interest in any equity securities of the issuer of the securities, nor of any person controlling the issuer.

(g) Any person who has reported an acquisition of securities in a statement on Schedule 13G (§ 240.13d–102) pursuant to paragraph (b) of this section, or has become obligated to report on the Schedule 13G (§ 240.13d–102) but has not yet filed the Schedule, and thereafter ceases to be a person specified in paragraph (b)(1)(ii) of this section or determines that it no longer has acquired or holds the securities in the ordinary course of business shall immediately become subject to § 240.13d–1(a) or § 240.13d–1(c) (if the person satisfies the requirements specified in § 240.13d–1(c)), and §§ 240.13d–2 (a), (b) or (d), and shall file, within 10 days thereafter, a statement on Schedule 13D (§ 240.13d–101) or amendment to Schedule 13G, as applicable, if the person is a beneficial owner at that time of more than five percent of the class of equity securities.

(h) Any person who has filed a Schedule 13D (§ 240.13d–101) pursuant to paragraph (e), (f) or (g) of this section may again report its beneficial ownership on Schedule 13G (§ 240.13d–102) pursuant to paragraphs (b) or (c) of this section provided the person qualifies thereunder, as applicable, by filing a Schedule 13G (§ 240.13d–102) once the person determines that the provisions of paragraph (e), (f) or (g) of this section no longer apply.

* * * * *

3. By amending § 240.13d–2 by revising paragraphs (a), (b), and the note to § 240.13d–2; redesignating paragraph (c) as paragraph (e), and adding paragraphs (c) and (d) to read as follows:

§ 240.13d–2 Filing of amendments to Schedules 13D or 13G.

(a) If any material change occurs in the facts set forth in the Schedule 13D (§ 240.13d–101) required by § 240.13d–1(a), including, but not limited to, any material increase or decrease in the percentage of the class beneficially owned, the person or persons who were required to file the statement shall promptly file or cause to be filed with the Commission an amendment disclosing that change. An acquisition or disposition of beneficial ownership of securities in an amount equal to one percent or more of the class of securities shall be deemed "material" for purposes of this section; acquisitions or dispositions of less than those amounts may be material, depending upon the facts and circumstances.

(b) Notwithstanding paragraph (a) of this section, and provided that the person filing a Schedule 13G (§ 240.13d–102) pursuant to § 240.13d–1(b) or § 240.13d–1(c) continues to meet the requirements set forth therein, any person who has filed a Schedule 13G (§ 240.13d–102) pursuant to § 240.13d–1(b), § 240.13d–1(c) or § 240.13d–1(d) shall amend the statement within forty-five days after the end of each calendar year if, as of the end of the calendar year, there are any changes in the information reported in the previous filing on that Schedule: *Provided, however*, That an amendment need not be filed with respect to a change in the percent of class outstanding previously reported if the change results solely from a change in the aggregate number of securities outstanding. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required unless the person thereafter becomes the beneficial owner of more than five percent of the class and is required to file pursuant to § 240.13d–1.

(c) Any person relying on § 240.13d–1(b) that has filed its initial Schedule 13G (§ 240.13d–102) pursuant to that paragraph shall, in addition to filing any amendments pursuant to § 240.13d–2(b), file an amendment on Schedule 13G (§ 240.13d–102) within 10 days after the end of the first month in which the person's direct or indirect beneficial ownership, computed as of the last day of the month, exceeds 10 percent of the class of equity securities. Thereafter, that person shall, in addition to filing any amendments pursuant to § 240.13d–2(b), file an amendment on Schedule 13G (§ 240.13d–102) within 10 days after the end of the first month in which the person's direct or indirect beneficial ownership, computed as of the last day of the month, increases or decreases by more than five percent of the class of equity securities. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required by this paragraph (c).

(d) Any person relying on § 240.13d–1(c) and has filed its initial Schedule 13G (§ 240.13d–102) pursuant to that paragraph shall, in addition to filing any amendments pursuant to § 240.13d–2(b), file an amendment on Schedule 13G (§ 240.13d–102) promptly upon acquiring, directly or indirectly, greater than 10 percent of a class of equity securities specified in § 240.13d–1(d), and thereafter promptly upon increasing or decreasing its beneficial ownership by more than five percent of the class of equity securities. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required by this paragraph (d).

* * * * *

Note to § 240.13d–2: For persons filing a short-form statement pursuant to Rule 13d–1 (b) or (c), see also Rules 13d–1 (e), (f), and (g).

4. By amending § 240.13d–3 by revising paragraph (d)(1)(ii) to read as follows:

§ 240.13d–3 Determination of beneficial ownership.

* * * * *

(d) * * *

(1) * * *

(ii) Paragraph (d)(1)(i) of this section remains applicable for the purpose of determining the obligation to file with respect to the underlying security even though the option, warrant, right or convertible security is of a class of equity security, as defined in § 240.13d–1(i), and may therefore give rise to a separate obligation to file.

* * * * *

5. By adding § 240.13d–7 to read as follows:

§ 240.13d–7 Dissemination.

One copy of the Schedule filed pursuant to §§ 240.13d–1 and 240.13d–2 shall be sent to the issuer of the security at its principal executive office, by registered or certified mail. A copy of Schedules filed pursuant to §§ 240.13d–1(a) and 240.13d–2(a) shall also be sent to each national securities exchange where the security is traded.

6. By amending § 240.13d–101 by revising the language preceding the first box on the cover page, revising the note on the cover page, revising Instruction (2) for the Cover Page, and in Item 7 revise the cite "Rule 13d–1(f) "(§ 240.13d–1(f))" to read "§ 240.13d–1(k)" as follows:

§ 240.13d–101 Schedule 13D—Information to be included in statements filed pursuant to § 240.13d–1(a) and amendments thereto filed pursuant to § 240.13d–2(a).

* * * * *

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§ 240.13d–1(e), 240.13d–1(f) or 240.13d–1(g), check the following box.

* * * * *

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See § 240.13d–7(b) for other parties to whom copies are to be sent.

* * * * *

Instructions for Cover Page

* * * * *

(2) If any of the shares beneficially owned by a reporting person are held as a member of a group and the membership is expressly affirmed, please check row 2(a). If the reporting person disclaims membership in a group or describes a relationship with other person but does not affirm the existence of a group, please check row 2(b) [unless it is a joint filing pursuant to Rule 13d–1(k)(1) in which case it may not be necessary to check row 2(b)].

* * * * *

7. By amending § 240.13d–102 by revising the section heading, before the first paragraph on the cover page add a line for the date of the reportable event and boxes to check for the appropriate filing provision, revising Instruction (2) for the Cover Page, revising Instruction A following the Notes, revising Items 3, 4, 8, and 10, and revising the Note at the end of the schedule, to read as follows:

§ 240.13d–102 Schedule 13G—Information to be included in statements filed pursuant to § 240.13d–1(b), (c) and (d) and amendments thereto filed pursuant to § 240.13d–2.

* * * * *

(Date of Event Which Requires Filing of this Statement)

Check the appropriate box to designate the rule pursuant to which this Schedule is filed:

[ ] Rule 13d–1(b)

[ ] Rule 13d–(c)

[ ] Rule 13d–1(d)

* * * * *

Instructions for Cover Page

* * * * *

(2) If any of the shares beneficially owned by a reporting person are held as a member of a group and that membership is expressly affirmed, please check row 2(a). If the reporting person disclaims membership in a group or describes a relationship with other person but does not affirm the existence of a group, please check row 2(b) [unless it is a joint filing pursuant to Rule 13d–1(k)(1) in which case it may not be necessary to check row 2(b)].

* * * * *

Notes

* * * * *

Instructions. A. Statements filed pursuant to Rule 13d–1(b) containing the information required by this

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schedule shall be filed not later than February 14 following the calendar year covered by the statement or within the time specified in Rules 13d–1(b)(2) and 13d–2(c). Statements filed pursuant to Rule 13d–1(c) shall be filed within the time specified in Rules 13d–1(c), 13d–2(b) and 13d–2(d). Statements filed pursuant to Rule 13d–1(c) shall be filed not later than February 14 following the calendar year covered by the statement pursuant to Rules 13d–1(d) and 13d–2(b).

* * * * *

Item 3. If this statement is filed pursuant to §§ 240.13d–1(b) or 240.13d–2(b) or (c), check whether the person filing is a:

(a) [ ] Broker or dealer registered under section 15 of the Act (15 U.S.C. 78o).

(b) [ ] Bank as defined in section 3(a)(6) of the Act (15 U.S.C. 78c).

(c) [ ] Insurance company as defined in section 3(a)(19) of the Act (15 U.S.C. 78c).

(d) [ ] Investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C 80a–8).

(e) [ ] An investment adviser in accordance with § 240.13d–1(b)(1)(ii)(E);

(f) [ ] An employee benefit plan or endowment fund in accordance with § 240.13d–1(b)(1)(ii)(F);

(g) [ ] A parent holding company or control person in accordance with § 240.13d–1(b)(1)(ii)(G);

(h) [ ] A savings associations as defined in Section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(i) [ ] A church plan that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 (15 U.S.C. 80a–3);

(j) [ ] Group, in accordance with § 240.13d–1(b)(1)(ii)(J).

If this statement is filed pursuant to § 240.13d–1(c), check this box. [ ]

Item 4. Ownership

Provide the following information regarding the aggregate number and percentage of the class of securities of the issuer identified in Item 1.

(a) Amount beneficially owned: _____.

(b) Percent of class: _____.

(c) Number of shares as to which the person has:

(i) Sole power to vote or to direct the vote _____.

(ii) Shared power to vote or to direct the vote _____.

(iii) Sole power to dispose or to direct the disposition of _____.

(iv) Shared power to dispose or to direct the disposition of _____.

Instruction. For computations regarding securities which represent a right to acquire an underlying security *see* § 240.13d–3(d)(1).

* * * * *

Item 8. Identification and Classification of Members of the Group

If a group has filed this schedule pursuant to § 240.13d–1(b)(1)(ii)(J), so indicate under Item 3(h) and attach an exhibit stating the identity and Item 3 classification of each member of the group. If a group has filed this schedule pursuant to § 240.13d–1(d), attach an exhibit stating the identity of each member of the group.

* * * * *

Item 10. Certifications

(a) The following certification shall be included if the statement is filed pursuant to § 240.13d–1(b):

By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were acquired and are held in the ordinary course of business and were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of the issuer of the securities and were not acquired and are not held in connection with or as a participant in any transaction having that purpose or effect.

(b) The following certification shall be included if the statement is filed pursuant to § 240.13d–1(c):

By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of the issuer of the securities and were not acquired and are not held in connection with or as a participant in any transaction having that purpose or effect.

* * * * *

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See § 240.13d–7(b) for other parties for whom copies are to be sent.

* * * * *

8. By amending § 240.16a–1 to revise paragraphs (a)(1)(i), (ii), (iii), (iv), (v), (vi) and (vii), redesignate paragraph (a)(1)(viii) as paragraph (a)(1)(xi) and to add paragraphs (a)(1)(viii), (ix) and (x) to read as follows:

§ 240.16a–1 Definition of terms.

* * * * *

(a) * * *

(1) * * *

(i) A broker or dealer registered under section 15 of the Act (15 U.S.C. 78o);

(ii) A bank as defined in section 3(a)(6) of the Act (15 U.S.C. 78c);

(iii) An insurance company as defined in section 3(a)(19) of the Act (15 U.S.C. 78c);

(iv) An investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8);

(v) Any person registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3) or under the laws of any state;

(vi) An employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1001 *et seq.* ("ERISA") that is subject to the provisions of ERISA, or any such plan that is not subject to ERISA that is maintained primarily for the benefit of the employees of a state or local government or instrumentality, or an endowment fund;

(vii) A parent holding company or control person, provided the aggregate amount held directly by the parent or control person, and directly and indirectly by their subsidiaries or affiliates that are not persons specified in paragraphs (a)(1)(i) through (ix), does not exceed one percent of the securities of the subject class;

(viii) A savings association as defined in Section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(ix) A church plan that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 (15 U.S.C. 80a–3); and

(x) A group, provided that all the members are persons specified in § 240.16a–1(a)(1)(i) through (ix).

* * * * *

By the Commission.

Dated: January 12, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–1084 Filed 1–15–98; 8:45 am]

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federal register

Friday
January 16, 1998

Part VI

The President

Proclamation 7062—Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Are Members of the Military Junta in Sierra Leone and Members of Their Families

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Title 3—

The President

Proclamation 7062 of January 14, 1998

Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Are Members of the Military Junta in Sierra Leone and Members of Their Families

By the President of the United States of America

A Proclamation

In light of the refusal of the military junta in de facto control in Sierra Leone to permit the return to power of the democratically elected government of that country, and in furtherance of United Nations Security Council Resolution 1132 of October 8, 1997, I have determined that it is in the foreign policy interests of the United States to suspend the entry into the United States of aliens described in section 1 of this proclamation.

NOW, THEREFORE, I, WILLIAM J. CLINTON, by the power vested in me as President of the United States by the Constitution and the laws of the United States of America, including sections 212(f) and 215 of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182(f) and 1185), hereby find that the entry into the United States of aliens described in section 1 of this proclamation, as immigrants or nonimmigrants would, except as provided for in section 2 of this proclamation, be detrimental to the interests of the United States. I do therefore proclaim that:

Section 1. The entry into the United States as immigrants and nonimmigrants of members of the military junta in Sierra Leone and members of their families, is hereby suspended.

Sec. 2. Section 1 shall not apply with respect to any person otherwise covered by section 1 where the entry of such person would not be contrary to the interests of the United States.

Sec. 3. Persons covered by sections 1 and 2 shall be identified by the Secretary of State.

Sec. 4. This proclamation is effective immediately and shall remain in effect until such time as the Secretary of State determines that it is no longer necessary and should be terminated.

Sec. 5. The Secretary of State is hereby authorized to implement this proclamation pursuant to such procedures as the Secretary of State may establish.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of January, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

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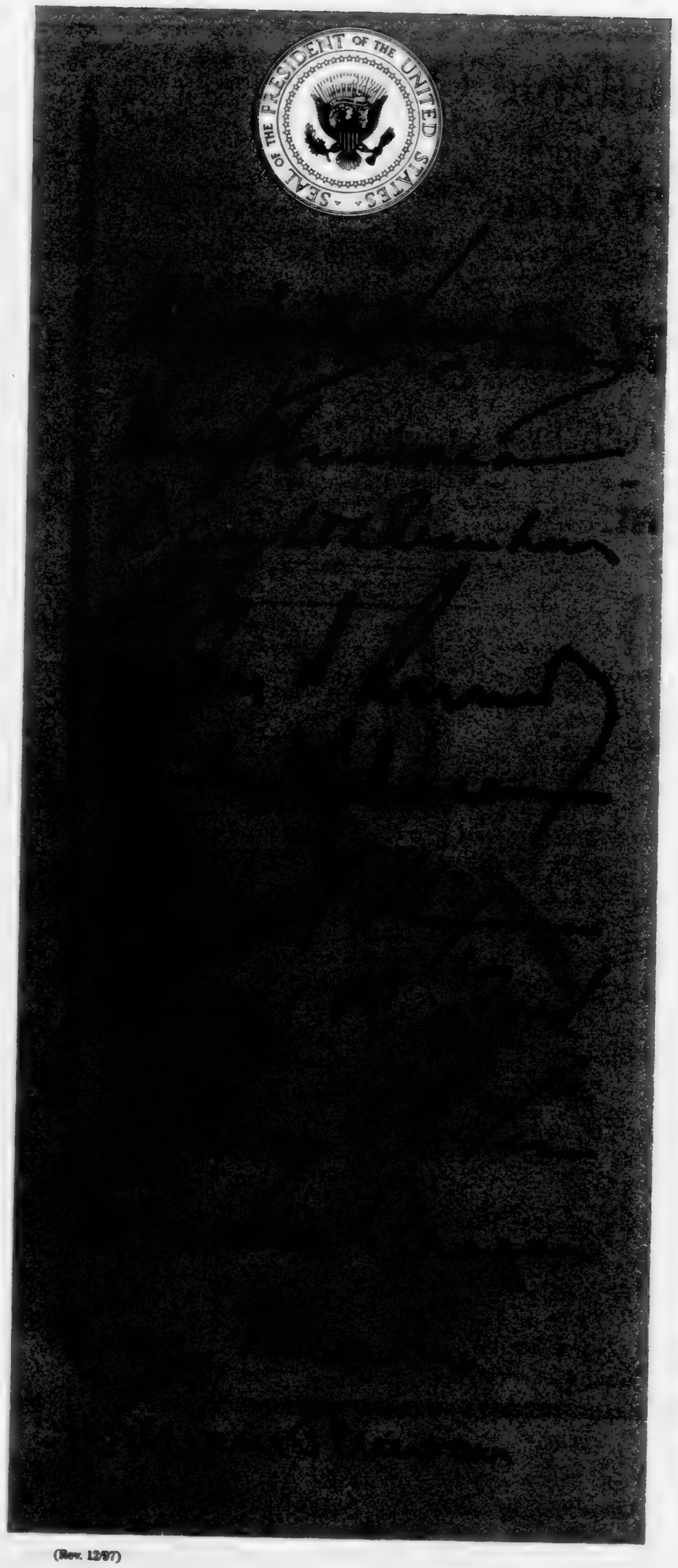
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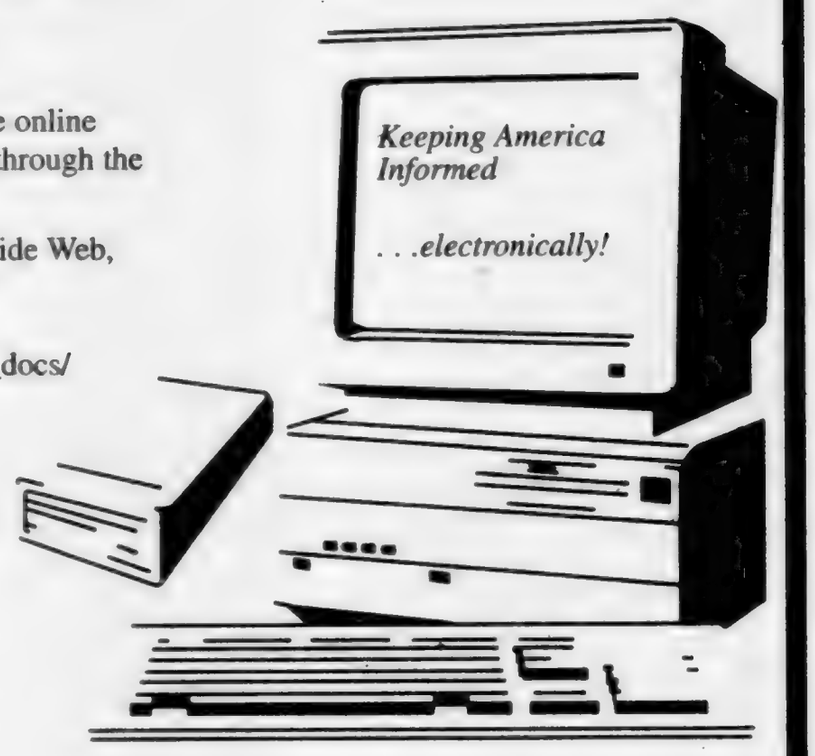
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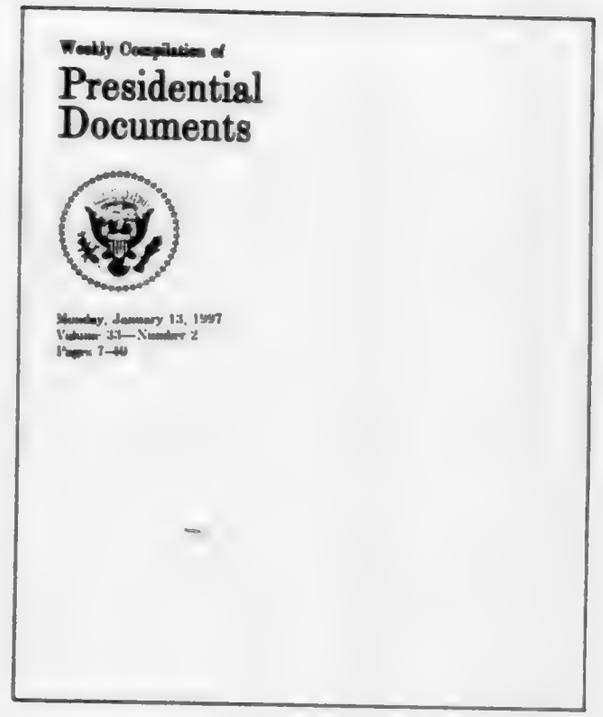
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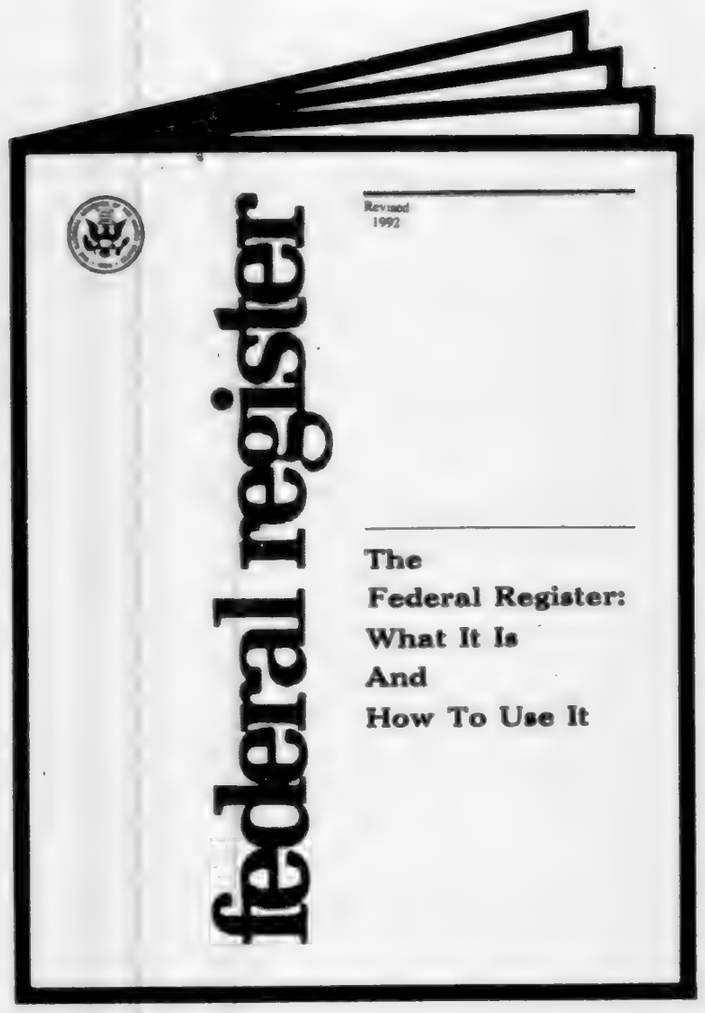
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

RIN 3150–AF78

Electronic Freedom of Information Act: Implementation

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to implement the Electronic Freedom of Information Act Amendments of 1996 (EFOIA), which are designed to bring the Freedom of Information Act (FOIA) into electronic age by clarifying that FOIA applies to records maintained in hardcopy or electronic format. The rule implements statutory provisions of the law that broaden public access to government information by placing more records on-line. The rule implements statutory amendments that recognize the difficulty in responding to requests in the 10 working days formerly required and extend that time to 20 working days. It also provides procedures for agencies to discuss with (FOIA) requesters ways of tailoring requests to improve responsiveness. The rule amends NRC's FOIA regulations to comply with the requirements of the new statute. Certain other changes have been made to correct administrative errors and to update or remove obsolete information.

EFFECTIVE DATE: February 19, 1998.

FOR FURTHER INFORMATION CONTACT: Russell A. Powell, Chief, Freedom of Information/Local Public Document Room Branch, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–7169, e-mail: RAP1@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background Information

On October 2, 1996, the President signed into law the Electronic Freedom of Information Act Amendments of 1996 (EFOIA), Pub. L. 231, 110 Stat. 3048 (1996). EFOIA includes provisions authorizing or requiring agencies to promulgate regulations implementing certain of its requirements, including the tracking of Freedom of Information Act (FOIA) requests, the aggregation of FOIA requests, and the expedited processing of FOIA requests. In addition, EFOIA changes the time limit for responding to a FOIA request from ten to twenty working days, the requirements for reporting FOIA activities to Congress, and the cases in which an agency may extend the time within which it will respond to a FOIA request. EFOIA also includes provisions regarding the availability of documents in electronic form, the treatment of electronic records, and the establishment of "electronic reading rooms."

This final rule revises the NRC's FOIA regulations, 10 CFR part 9, to comply with EFOIA. The NRC published a proposed rule on September 5, 1997 (62 FR 46922). In response, the NRC received two comments from the public.

The Reporters Committee for Freedom of the Press commented that the NRC regulations should allow for the waiver of the certification requirement for requests for expedited processing. The EFOIA allows agencies to require requesters seeking an expedited review to certify that the reasons provided for expedited processing are true and correct. The requested waiver would avoid delays in processing a FOIA request that would result from an exchange of correspondence with a requester to obtain this certification. Although the proposed regulations tracked the language of the EFOIA amendments, the agency agrees with the comment that it has the flexibility to waive the certification requirement. Therefore, the NRC has revised the wording of the regulation to allow the waiver of the certification as a matter of agency discretion.

Commonwealth Edison Company (ComEd) commented on what appeared to be the establishment of a new title, Freedom of Information Act and Privacy Act Officer (FOIA/PA Officer). ComEd was concerned that the NRC was creating an additional staff position and that the creation of additional staffing could directly affect the cost of administration. The NRC is not establishing a new position, but only using the title for the person designated to administer the agency's Freedom of Information Act and Privacy Act responsibilities. The FOIA/PA Officer will be designated by the Chief Information Officer and the designated person will use the FOIA/PA Officer title in actions involving the FOIA and Privacy Act. The regulation has been modified to more clearly reflect that this is only a designated title for the responsible official to use in the performance of his/her responsibilities connected with the FOIA and Privacy Act.

ComEd was also concerned that the establishment of an electronic reading room for certain records created after November 1, 1996, "may prove to be prohibitively expensive." The NRC has a previously established website. Most of the documents that are required to be posted in an electronic reading room were already posted on the website or are available electronically through the NRC Public Document Room's on-line Bibliographic Retrieval System (BRS). Therefore, the additional cost to add the few remaining documents to the NRC website is minimal and does not have any significant economic impact on the NRC or the public.

The final rule also includes several non-substantive editorial corrections. The definition of the term "Review time" at § 9.13 has been revised to remove the phrase "to determine if they are in fact responsive" because that is search time, not review time. The definition of the term "Search time" has been revised in § 9.13 by substituting the term "reviewing * * * agency records" with "looking for * * * agency records" to avoid confusion since the term "reviewing" has its own definition.

In addition, paragraphs (d)(2), (3), and (4) of § 9.41 have been combined to eliminate redundancies. Section 9.41(d)(2), (3), and (4) have been combined in a single paragraph at § 9.41(d)(2). Paragraphs (d)(5) and (6) of § 9.41 have been combined in a single paragraph at § 9.41(d)(3).

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New Provisions

A. New and Revised Definitions

The rule establishes a new title, Freedom of Information Act and Privacy Act Officer, to be designated by the Chief Information Officer as the designated official responsible for administering the FOIA and Privacy Act. This new title is being used in lieu of using the organizational title of the responsible individual because the organizational title may not be indicative of the specific responsibilities under these Acts. A new definition is added to 10 CFR 9.13 to reflect this new title.

The definition of record is amended to add "any information that would be an agency record subject to the requirements of (5 U.S.C. 552) when maintained by an agency in any format, including electronic format" and to read "Record also includes a book, * * * drawing, diagram, * * *".

The definition of review time is revised to remove from the definition the period spent "excising from the records those portions which are to be withheld."

B. Electronic Records

Section 3 of EFOIA amends 5 U.S.C. 552(f)(2) to define "agency record" for purposes of FOIA as including "any information that would be an agency record subject to the requirements of (5 U.S.C. 552) when maintained by an agency in any format, including an electronic format." Therefore, section 552(f) clarifies that the term "agency record" includes information stored in any computer readable format as well as traditional paper documents. The final rule amends 10 CFR 9.13 to specifically include information in an electronic format within the definition of the term "agency record." 10 CFR 9.13 specifically includes in the definition of "search" time spent looking for records by automated means as well as manually.

C. Electronic Reading Room

Section 4 of EFOIA amends 5 U.S.C. 552(a)(2), which previously required agencies to make available for public inspection and copying certain information, such as agency opinions and policy statements, administrative staff manuals and staff instructions that affect a member of the public. The new law expands these categories to include agency records that have been made publicly available and are likely to be the subject of repetitive public requests, as well as a general index of these frequently sought documents. The amendments further provide that section 552(a)(2) records created on or after November 1, 1996, must be made available by computer telecommunications within one year after such date, or if computer telecommunications have not been established, by other electronic means. The general index of these records is to be available by computer telecommunications by December 31, 1999. These new requirements, as well as the on-line address for NRC's homepage on the Internet, are now incorporated in 10 CFR 9.21(c)(6) and (f).

Finally, where material has been withheld in electronic records made available to the public, the extent of the deletions must now be indicated on the portion of the record made available or published and, where technically possible, must be indicated at the place in the record where the deletion occurred. This new requirement is included at 10 CFR 9.19(d).

D. Honoring Form or Format of Requests

EFOIA, 5 U.S.C. 552(a)(3), contains three significant new provisions. First, 5 U.S.C. 552(a)(3)(B) requires agencies, when making records available to the public, to do so "in any form or format requested by the person if the record is readily reproducible by the agency" in the requested manner. This new requirement is included in 10 CFR 9.15. Second, 5 U.S.C. 552(a)(3)(C) makes it clear that when a FOIA request is received, an agency should not only search for hard copies, but should also search for the records in their electronic form. This requirement is included in 10 CFR 9.15. Finally, a "search" under the amendments means to look for agency records manually "or by automated means" for the purpose of locating those records which are responsive to a request. This requirement is incorporated in 10 CFR 9.13 in the definition of "search time."

E. Time Limits for Responding to Requests

In recognition of the fact that 10 working days is not a realistic timeframe, the EFOIA amendments, 5 U.S.C. 552(a)(6)(A)(i), extend the time to respond to a request from 10 to 20 working days. 10 CFR 9.25 is amended to reflect the change in the time limits for initial disclosure determination from 10 to 20 working days effective October 2, 1997.

F. Multitrack Processing of Requests

However, Congress recognized that even with the increase in time to process requests, many agencies may not be prepared to meet a 20 working-day deadline for some requests. Therefore, to help ensure timely agency responses to requests, the new law, 5 U.S.C. 552(a)(6)(D)(i), authorizes agencies to establish separate systems within the agency for handling simple and complex requests. Under these types of systems, called "multitrack processing," requests are categorized based on the amount of agency effort involved in processing the request. This replaces the current first-in, first-out approach generally employed at the NRC. Agencies must still exercise due diligence within each track. The new law, 5 U.S.C. 552(a)(6)(D)(ii), also requires agencies to give requesters the opportunity to limit the scope of their requests to qualify for processing under a faster track. This provision is intended to permit more requests to be completed more quickly by providing an incentive for requesters to frame narrower requests for fewer documents. These new provisions are incorporated in NRC's three-track system described in 10 CFR 9.25(c).

The first track is for simple requests or requests of moderate complexity that are expected to be completed within 20 working days (e.g., a request that does not involve a large volume of documents, retrieval of documents from regional offices, or extensive coordination between NRC offices).

The second track is for requests involving unusual circumstances that are expected to take between 21–30 working days to complete.

The third track is for requests that, because of their unusual volume or complexity, are expected to take more than 30 working days to complete.

Upon receipt of a request, NRC will notify the requester of the track in which the request has been placed for processing and the estimated time for completion of action on the request. Should subsequent information substantially change the estimated time to process the request, the requester will be notified telephonically or in writing. A requester may modify the request to allow it to be processed under a different track for a faster response.

G. Unusual Circumstances

Even with use of multitrack processing, Congress recognized that in some circumstances the statutory response time will not be met. The EFOIA retains the provisions for agencies to extend the initial 20 working day response time for an initial request, or the 20 working day response time for an appeal, by an additional 10 working days in "unusual circumstances." Agencies must provide the requester with a written justification for the extension that contains the date of the expected agency response. The amendments define "unusual circumstances" as time needed to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; the need to search for, collect, and appropriately examine a voluminous amount of material demanded in a single request; or the need for consultation with another agency having a substantial interest in the determination of the request or among two or more parts of the agency having substantial interest in the request. These consultations must be conducted "with all practicable speed." 5 U.S.C. 552(a)(6)(B)(iii).

H. Exceptional Circumstances

In addition to extensions under unusual circumstances, the EFOIA amendments, 5 U.S.C. 552(a)(6)(B)(ii), authorize the agency to negotiate a response time with a requester that may exceed the statutory maximum (20 working days plus a 10 working-day extension) for those FOIA requests that the agency determines cannot be processed within the statutory time limits. The agency must offer the requester an opportunity to limit the scope of the request so that it may be processed within the prescribed 20 working days. Congress asserted that this process for negotiated time limits reflects the policy that FOIA works best when requesters and agencies work together to define and fulfill reasonable requests. This new provision is incorporated in 10 CFR 9.25(c).

I. Aggregation of Requests

The EFOIA amendments, 5 U.S.C. 552(a)(6)(B)(iv), authorize agencies to promulgate regulations that allow for the aggregation of FOIA requests by the same requester or by a group of requesters acting together. Aggregation may occur if the agency "reasonably believes" that these multiple requests do indeed constitute a single request. This new provision is implemented in 10 CFR 9.39(e).

J. Requests for Expedited Processing

The EFOIA amendments, 5 U.S.C. 552(a)(6)(E)(i), require agencies to promulgate regulations to provide for "expedited processing" in cases where the person requesting the records demonstrates a "compelling need" and in other cases where the agency determines expedited processing is warranted. The amendments define "compelling need" in two ways. One is where "a failure to obtain requested records on an expedited basis * * * could reasonably be expected to pose an imminent threat to the life or physical safety of an individual." The other is where a "person primarily engaged in disseminating information" to the public has "an urgency to inform the public concerning actual or alleged Federal Government activity." The House Committee report explaining the legislation states that a person "primarily engaged" in the business of dissemination of information "should not include individuals who are engaged only incidentally in the dissemination of information," but requires that "information dissemination be the main activity of the requester, although it need not be their sole occupation." A requester who is "only incidentally" involved in information dissemination, in addition to other activities, would not satisfy this requirement.

The report further explains that the term "urgency to inform," one of the qualifying elements for expedited processing, must involve a matter of "current exigency to the American public" such that any reasonable person could conclude that delaying a response to a FOIA request would compromise a "significant recognized interest." The public's right to know, while "significant and important," would not stand alone as sufficient to satisfy this standard. Agencies will have to make both "factual and subjective judgments" about situations cited by requesters as reasons for expedited processing and must demonstrate "fairness and diligence" in exercising their discretion. Requesters must provide detailed explanations to support their expedited requests.

The EFOIA amendments, 5 U.S.C. 552(a)(6)(E)(ii), require that agency regulations provide that requesters be given notice within 10 calendar days after the date of the request as to the determination whether it qualifies for expedited processing. Once expedited processing is granted, agencies must process it "as soon as practicable" (5 U.S.C. 552 (a)(6)(E)(iii)). Any administrative appeal to a denial of expedited processing must be handled with "expeditious consideration" (5 U.S.C. 552 (a)(6)(E)(ii)(II)). If an agency denies the request for expedited processing or fails to act upon the request within the prescribed 10 calendar days, petitioner may seek judicial review. The NRC has implemented the EFOIA requirements for expedited processing at 10 CFR 9.25(e) and 9.29.

K. Estimates of the Volume of Materials Denied

EFOIA, 5 U.S.C. 552(a)(6)(F), requires agencies to make a reasonable effort to estimate the volume of any requested record material that is denied in whole or in part, and to provide the estimate to the requester unless providing such estimate would harm an interest protected by a FOIA exemption. This new requirement has been implemented at 10 CFR 9.19(c).

L. Annual Report to Congress

The EFOIA, 5 U.S.C. 552(e), amended the annual requirements for reporting agency FOIA activities to Congress. On or before February 1 of each year beginning in 1999, agencies must submit to the Attorney General an annual report that covers the preceding fiscal year and includes the number of determinations made by the agency not to comply with the requests for records made to the agency and the reasons for those determinations; the number of appeals made by persons, the results of those appeals, and the reason for the action upon each appeal that results in a denial of information; a complete list of all statutes that the agency used to authorize the withholding of information under Section 552 (b)(3), which exempts information that is specifically exempted from disclosure by other statutes; a description of whether a court has upheld the decision of the agency to withhold information under each of those statutes cited, and a concise description of the scope of any information upheld; the number of requests for records pending before the agency as of September 30 of the preceding year, and the median number of days that these requests had been pending before the agency as of that date; the number of requests for records received by the agency and the number of requests the agency processed; the median number of days taken by the agency to process different types of requests; the total amount of fees collected by the agency for processing requests; the average amount of time that the agency estimates as necessary, based on the past experience of the agency, to comply with different types of requests; the number of full-time staff of the agency devoted to the processing of requests for records under this section; and the total amount expended by the agency for processing these requests. The NRC has implemented this amended EFOIA reporting requirement in 10 CFR 9.45.

The amendments require each agency to make these annual reports available to the public through a computer

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network, or by other electronic means if computer networking is not a possibility for the agency. The NRC has posted its annual report on its website on the Internet that is accessible through the NRC homepage at: http//www.nrc.gov. The report is also available in the NRC Public Document Room.

Environmental Impact—Categorical Exclusion

The NRC has determined that this rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

Paperwork Reduction Act Statement

The final rule includes an information collection requirement that persons seeking expedited processing under 10 CFR 9.25(e)(2) should certify the reasons justifying their request. The estimated burden for this certification is one hour per request, with approximately 20 requests expected annually. The NRC does not consider this burden increase of 20 hours to be significant enough to trigger the requirements of the Paperwork Reduction Act when compared to the overall burden for this 10 CFR part 9 and when the amount of staff effort required to comply with requirements of the Paperwork Reduction Act and seek OMB's implementing guidance is factored in. Existing requirements were approved by the Office of Management and Budget, approval number 3150–0043.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

This rule implements the EFOIA by amending 10 CFR part 9, subpart A—Freedom of Information Act Regulations. This is an administrative regulatory action that conforms NRC's regulations to the new provisions of the EFOIA. The rule will not have any adverse economic impact on any class of licensee or the NRC; to the contrary, the rule with its new provisions allowing expedited and multitrack processing may provide some new and additional benefit to those who choose to use these regulations to obtain access to NRC records and information.

This constitutes the regulatory analysis for this rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The amendments to 10 CFR part 9 are procedural in nature and are required to implement the Electronic Freedom of Information Act Amendments of 1996 (EFOIA), 5 U.S.C. 552.

Backfit Analysis

The NRC has determined that the backfit rule 10 CFR 50.109 does not apply to this rule.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996 the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 9

Criminal penalties, Freedom of information, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552, 552a, and 553; the NRC is adopting the following amendments to 10 CFR part 9, subpart A—Freedom of Information Act Regulations.

PART 9—PUBLIC RECORDS

1. The authority citation for Part 9 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Subpart A is also issued under 5 U.S.C. 552; 31 U.S.C. 9701; Pub. L. 99–570.

Subpart B is also issued under 5 U.S.C. 552a.

Subpart C is also issued under 5 U.S.C. 552b.

2. In § 9.8, paragraph (b) is revised to read as follows:

§ 9.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 9.23, 9.29, 9.40, 9.41, 9.53, 9.54, 9.55, 9.65, 9.66, and 9.67.

3. In Part 9, Subpart A is revised to read as follows:

Subpart A—Freedom of Information Act Regulations

9.11 Scope of subpart.
9.13 Definitions.
9.15 Availability of records.
9.17 Agency records exempt from public disclosure.
9.19 Segregation of exempt information and deletion of identifying details.
9.21 Publicly-available records.
9.23 Requests for records.
9.25 Initial disclosure determination.
9.27 Form and content of responses.
9.29 Appeal from initial determination.
9.31 Extension of time for response.
9.33 Search, review, and special service fees.
9.34 Assessment of interest and debt collection.
9.35 Duplication fees.
9.37 Fees for search and review of agency records by NRC personnel.
9.39 Search and duplication provided without charge.
9.40 Assessment of fees.
9.41 Requests for waiver or reduction of fees.
9.43 Processing requests for a waiver or reduction of fees.
9.45 Annual report to Congress.

Subpart A—Freedom of Information Act Regulations

§ 9.11 Scope of subpart.

This subpart prescribes procedures for making NRC agency records available to the public for inspection and copying pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552) and provides notice of procedures for obtaining NRC records otherwise publicly available. This subpart does not affect the dissemination or distribution of NRC-originated, or NRC contractor-originated, information to the public under any other NRC public, technical, or other information program or policy.

§ 9.13 Definitions.

Agency record means a record in the possession and control of the NRC that is associated with Government business. Agency record does not include records such as—

(1) Publicly-available books, periodicals, or other publications that are owned or copyrighted by non-Federal sources;

(2) Records solely in the possession and control of NRC contractors;

(3) Personal records in possession of NRC personnel that have not been circulated, were not required to be created or retained by the NRC, and can be retained or discarded at the author's sole discretion, or records of a personal nature that are not associated with any Government business; or

(4) Non-substantive information in logs or schedule books of the Chairman or Commissioners, uncirculated except for typing or recording purposes.

Commercial-use request means a request made under § 9.23(b) for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

Direct costs mean the expenditures that an agency incurs in searching for and duplicating agency records. For a commercial-use request, direct costs include the expenditures involved in reviewing records to respond to the request. Direct costs include the salary of the employee category performing the work based on that basic rate of pay plus 16 percent of that rate to cover fringe benefits and the cost of operating duplicating machinery.

Duplication means the process of making a copy of a record necessary to respond to a request made under § 9.23. Copies may take the form of paper copy, microform, audio-visual materials, disk, magnetic tape, or machine readable documentation, among others.

Educational institution means an institution that operates a program or programs of scholarly research. Educational institution refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education.

Freedom of Information Act and Privacy Act Officer means the NRC official designated by the Chief Information Officer to fulfill the responsibilities for implementing and administering the Freedom of Information Act and the Privacy Act as specifically designated under the regulations in this part.

Noncommercial scientific institution means an institution that is not operated on a commercial basis, as the term "commercial" is referred to in the definition of "commercial-use request," and is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

Office, unless otherwise indicated, means all offices, boards, panels, and advisory committees of the NRC.

Record means any information that would be an agency record subject to the requirements of the Freedom of Information Act when maintained by the NRC in any format, including an electronic format. Record also includes a book, paper, map, drawing, diagram, photograph, brochure, punch card, magnetic tape, paper tape, sound recording, pamphlet, slide, motion picture, or other documentary material regardless of form or characteristics. Record does not include an object or article such as a structure, furniture, a tangible exhibit or model, a vehicle, or piece of equipment.

Representative of the news media means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term news means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscriptions by the general public.

Review time means the period devoted to examining records retrieved in response to a request to determine whether they are exempt from disclosure in whole or in part. Review time also includes the period devoted to examining records to determine which Freedom of Information Act exemptions, if any, are applicable and identifying records, or portions thereof, to be disclosed.

Search time means the period devoted to looking for agency records, either manually or by automated means, for the purpose of locating those records that are responsive to a request. This includes a page-by-page or line-by-line identification of responsive information within the records.

Unusual circumstances mean—

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request; or

(3) The need for consultation, which will be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the NRC having substantial subject-matter interest therein.

§ 9.15 Availability of records.

The NRC will make available for public inspection and copying any reasonably described agency record in the possession and control of the NRC under the provisions of this subpart, and upon request by any person. Records will be made available in any form or format requested by a person if the record is readily reproducible by NRC in that form or format. NRC will make reasonable efforts to maintain its records in forms or formats that are reproducible. NRC will make reasonable efforts to search for records in electronic form or format when requested, except when these efforts would significantly interfere with the operation of any of the NRC's automated information systems. Records that the NRC routinely makes publicly available are described in § 9.21. Procedures and conditions governing requests for records are set forth in § 9.23.

§ 9.17 Agency records exempt from public disclosure.

(a) The following types of agency records are exempt from public disclosure under § 9.15:

(1) Records—

(i) That are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and

(ii) That are in fact properly classified pursuant to such Executive Order;

(2) Records related solely to the internal personnel rules and practices of the agency;

(3) Records specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that the statute—

(i) Requires that the matters be withheld from the public in a manner that leaves no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person that are privileged or confidential;

(5) Interagency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of these law enforcement records or information—

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

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(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, or information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, if the disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Matters contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) Nothing in this subpart authorizes withholding of information or limiting the availability of records to the public except as specifically provided in this part, nor is this subpart authority to withhold information from Congress.

(c) Whenever a request is made that involves access to agency records described in paragraph (a)(7) of this section, the NRC may, during only the time as that circumstance continues, treat the records as not subject to the requirements of this subpart when—

(1) The investigation or proceeding involves a possible violation of criminal law; and

(2) There is reason to believe that—

(i) The subject of the investigation or proceeding is not aware of its pendency; and

(ii) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

§ 9.19 Segregation of exempt information and deletion of identifying details.

(a) For records required to be made available under 5 U.S.C. 552(a)(2), the NRC shall delete information that is exempt under one or more of the exemptions cited in § 9.17. The amount of information deleted will be indicated on the released portion of the record, unless providing this indication would harm an interest protected by the exemption(s) under which the matter has been withheld.

(b) In responding to a request for information submitted under § 9.23, in which it has been determined to withhold exempt information, the NRC shall segregate—

(1) Information that is exempt from public disclosure under § 9.17(a) from nonexempt information; and

(2) Factual information from advice, opinions, and recommendations in predecisional records unless the information is inextricably intertwined, or is contained in drafts, legal work products, and records covered by the lawyer-client privilege, or is otherwise exempt from disclosure.

(c) In denying a request for records, in whole or in part, NRC will make a reasonable effort to estimate the volume of any information requested that is denied and provide the estimate to the person making the request, unless providing the estimate would harm an interest protected by the exemption(s) under which the information has been denied.

(d) When entire records or portions thereof are denied and deletions are made from parts of the record by computer, the amount of information deleted will be indicated on the released portion of the record, unless providing this indication would harm an interest protected by the exemption(s) under which the matter has been denied.

§ 9.21 Publicly-available records.

(a) Publicly-available records of NRC activities described in paragraphs (c) and (d) of this section are available through the National Technical Information Service. Subscriptions to these records are available on 48x microfiche and may be ordered from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Single copies of NRC publications in the NUREG series, NRC Regulatory Guides, and Standard Review Plans are also available from the National Technical Information Service.

(b) For the convenience of persons who may wish to inspect without charge or purchase copies of a record or a limited category of records for a fee, publicly available records of the NRC's activities described in paragraph (c) of this section are also made available at the NRC Public Document Room. The NRC Public Document Room is located at 2120 L Street, NW., Washington, DC, and is open between 7:45 a.m. and 4:15 p.m. on Monday through Friday, except Federal holidays.

(c) The following records of NRC activities are publicly available at the NRC Public Document Room for public inspection and copying:

(1) Final opinions including concurring and dissenting opinions as well as orders of the NRC issued as a result of adjudication of cases;

(2) Statements of policy and interpretations that have been adopted by the NRC and have not been published in the **Federal Register**;

(3) Nuclear Regulatory Commission rules and regulations;

(4) Nuclear Regulatory Commission Manuals and instructions to NRC personnel that affect any member of the public;

(5) Copies of records that have been released to a person under the Freedom of Information Act that, because of the nature of their subject matter, the NRC determines have become or are likely to become the subject of subsequent requests for substantially the same records.

(6) A general index of the records released under the FOIA.

(d) Current indexes to records that are made publicly available are listed in NUREG–0540, "Title of List of Documents Made Publicly Available," which is published monthly. The records required to be made available under 5 U.S.C. 552(a)(2) are included in this listing.

(e) Records made publicly available under paragraphs (c) (1) and (2) of this section are also available for purchase through the National Technical Information Service.

(f) After November 1, 1997, NRC will begin making records identified in paragraph (c) of this section that were created after November 1, 1996, available by electronic means, including computer telecommunications to the extent NRC has implemented its telecommunications capability, unless the records have been promptly published and copies offered for sale. Telecommunications access can be obtained via the Internet by accessing the NRC Home Page on the Internet at :http//www.nrc.gov/.

§ 9.23 Requests for records.

(a)(1) A person may request access to records routinely made available by the NRC under § 9.21 in person or in writing at the NRC Public Document Room, 2120 L Street, NW., Washington, DC 20555.

(i) Each record requested must be described in sufficient detail to enable the Public Document Room to locate the record. If the description of the record is not sufficient to allow the Public Document Room staff to identify the record, the Public Document Room will advise the requester to select the record from the indexes published under § 9.21(d).

(ii) In order to obtain copies of records expeditiously, a person may open an account at the Public Document Room with the private contracting firm that is responsible for duplicating NRC records.

(2) A person may also order records routinely made available by the NRC under § 9.21 from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia, 22161.

(b) A person may request agency records by submitting a request authorized by 5 U.S.C. 552(a)(3) to the Freedom of Information Act and Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555. The request must be in writing and clearly state on the envelope and in the letter that it is a "Freedom of Information Act request." The NRC does not consider a request as received until it has been received and logged in by the office of the Freedom of Information Act and Privacy Act Officer.

(1) A Freedom of Information Act request covers only agency records that are in existence on the date the Freedom of Information Act and Privacy Act Officer receives the request. A request does not cover agency records destroyed or discarded before receipt of a request or which are created after the date of the request.

(2) All Freedom of Information Act requests for copies of agency records must reasonably describe the agency records sought in sufficient detail to permit the NRC to identify the requested agency records. Where possible, the requester should provide specific information regarding dates, titles, docket numbers, file designations, and other information which may help identify the agency records. If a requested agency record is not described in sufficient detail to permit its identification, the Freedom of Information Act and Privacy Act Officer will contact the requester within 10 working days after receipt of the request and inform the requester of the additional information or clarification needed to process the request.

(3) Upon receipt of a request made under paragraph (b) of this section, the NRC will provide written notification to the requester that indicates the request has been received, the name and telephone number of the NRC point of contact to find out the status of the request, and other pertinent matters regarding the processing of the request.

(4)(i) The NRC shall advise a requester that fees will be assessed if—

(A) A request involves anticipated costs in excess of the minimum specified in § 9.39; and

(B) Search and duplication is not provided without charge under § 9.39; or

(C) The requester does not specifically state that the cost involved is acceptable or acceptable up to a specified limit.

(ii) The NRC has discretion to discontinue processing a request made under this paragraph until—

(A) A required advance payment has been received;

(B) The requester has agreed to bear the estimated costs;

(C) A determination has been made on a request for waiver or reduction of fees; or

(D) The requester meets the requirements of § 9.39.

(c) If a requested agency record that has been reasonably described is located at a place other than the NRC Public Document Room or NRC headquarters, the NRC may, at its discretion, make the record available for inspection and copying at the other location.

(d) Except as provided in § 9.39—

(1) If the record requested under paragraph (b) of this section is a record available through the National Technical Information Service, the NRC shall refer the requester to the National Technical Information Service; and

(2) If the requested record has been placed in the NRC Public Document Room under § 9.21, the NRC may inform the requester that the record is in the Public Document Room and that the record may be obtained in accordance with the procedures set forth in paragraph (a) of this section or, if applicable, that the record is available on line electronically.

(e) The Freedom of Information Act and Privacy Act Officer will promptly forward a Freedom of Information Act request made under § 9.23(b) for an agency record to the head of the office(s) primarily concerned with the records requested, as appropriate. The responsible office will conduct a search for the agency records responsive to the request and compile those agency records to be reviewed for initial disclosure determination and/or identify those that have already been made publicly available in the Public Document Room and Local Public Document Rooms.

§ 9.25 Initial disclosure determination.

(a) *Time for initial disclosure determination.* The NRC will notify a requester within 20 working days of its determination. If the NRC cannot act upon the request within this period, the NRC will provide the requester with the reasons for the delay and provide a projected response date.

(b) *Extension of time limit in unusual circumstances.* In unusual circumstances, the NRC may extend the time limit prescribed in paragraph (a) of this section by not more than 10 working days. The extension may be made by written or telephonic notice to the person making the request to explain the reasons for the extension and indicate the date on which a determination is expected to be made. "Unusual circumstances" is limited to one or more of the following reasons for delay:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which will be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the NRC having substantial subject-matter interest therein.

(c) *Exceptional circumstances.* A requester may be notified in certain exceptional circumstances, when it appears that a request cannot be completed within the allowable time, and will be provided an opportunity to limit the scope of the request so that it may be processed in the time limit, or to agree to a reasonable alternative time frame for processing. For purposes of this paragraph, the term "exceptional circumstances" does not include delays that result from the normal predictable workload of FOIA requests or a failure by the NRC to exercise due diligence in processing the request. A requester's unwillingness to agree to reasonable modification of the request or an alternative time for processing the request may be considered as factors in determining whether exceptional circumstances exist and whether the agency exercised due diligence in responding to the request.

(d) *Multiple-Track processing.* To ensure the most equitable treatment possible of all requesters, the NRC will process requests on a first-in, first-out basis, using multiple tracking systems based upon the estimated time it will take to process the request.

(1) NRC uses a three-track system.

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(i) The first track is for requests of simple to moderate complexity that are expected to be completed within 20 working days.

(ii) The second track is for requests involving "unusual circumstances" that are expected to take between 21–30 working days to complete (e.g. requests involving possible records from two or three offices and/or various types of files of moderate volume, of which, some are expected to be exempt)

(iii) The third track is for requests that, because of their unusual volume or other complexity, are expected to take more than 30 working days to complete (e.g. requests involving several offices, regional offices, another agency's records, classified records requiring declassification review, records from businesses that are required to be referred to the submitter for their proprietary review prior to disclosure, records in large volumes which require detailed review because of the sensitive nature of the records such as investigative records or legal opinions and recordings of internal deliberations of agency staff).

(2) Upon receipt of requests, NRC will notify requesters of the track in which the request has been placed for processing and the estimated time for completion. Should subsequent information substantially change the estimated time to process a request, the requester will be notified telephonically or in writing. A requester may modify the request to allow it to be processed faster or to reduce the cost of processing. Partial responses may be sent to requesters as documents are obtained by the FOIA office from the supplying offices.

(e) *Expedited processing.* (1) NRC may place a person's request at the front of the queue for the appropriate track for that request upon receipt of a written request that clearly demonstrates a compelling need for expedited processing. For purposes of determining whether to grant expedited processing, the term compelling need means—

(i) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

(2) A person requesting expedited processing must include a statement certifying the compelling need given to be true and correct to the best of his or her knowledge and belief. The certification requirement may be waived by the NRC as a matter of agency discretion.

(3) The Freedom of Information Act and Privacy Act Officer will make the initial determination whether to grant or deny a request for expedited processing and will notify a requester within 10 calendar days after the request has been received whether expedited processing will be granted.

(f) *Disclosure review.* The head of the responsible office shall review agency records located in a search under § 9.23(b) to determine whether the agency records are exempt from disclosure under § 9.17(a). If the head of the office determines that, although exempt, the disclosure of the agency records will not be contrary to the public interest and will not affect the rights of any person, the head of the office may authorize disclosure of the agency records. If the head of the office authorizes disclosure of the agency records, the head of the office will furnish the agency records to the Freedom of Information Act and Privacy Act Officer, who will notify the requester of the determination in the manner provided in § 9.27.

(g) *Initial disclosure determinations on requests for records located in offices under the Executive Director for Operations, the office of the Chief Financial Officer, and the office of the Chief Information Officer.* Except as provided in paragraph (h) of this section, if, as a result of the review specified in paragraph (f) of this section, the head of the responsible office finds that agency records should be denied in whole or in part, the head of the office will submit that finding to the Freedom of Information Act and Privacy Act Officer, who will, in consultation with the Office of the General Counsel, make an independent determination whether the agency records should be denied in whole or in part. If the Freedom of Information Act and Privacy Act Officer determines that the agency records sought are exempt from disclosure and disclosure of the records is contrary to the public interest and will adversely affect the rights of any person, the Freedom of Information Act and Privacy Act Officer will notify the requester of the determination in the manner provided in § 9.27.

(h) *Initial disclosure determinations on requests for records located in offices other than offices under the Executive Director for Operations.* For agency records located in the office of a Commissioner or in the Office of the Secretary of the Commission, the Assistant Secretary of the Commission will make the initial determination to deny agency records in whole or in part under § 9.17(a) instead of the Freedom of Information Act and Privacy Act Officer. For agency records located in the Office of the General Counsel, the General Counsel will make the initial determination to deny agency records in whole or in part instead of the Freedom of Information Act and Privacy Act Officer. For agency records located in the Office of the Inspector General, the Assistant Inspector General for Investigations will make the initial determination to deny agency records in whole or in part instead of the Freedom of Information Act and Privacy Act Officer. If the Assistant Secretary of the Commission, the General Counsel, or the Assistant Inspector General for Investigations determines that the agency records sought are exempt from disclosure and that their disclosure is contrary to the public interest and will adversely affect the rights of any person, the Assistant Secretary of the Commission, the General Counsel, or the Assistant Inspector General for Investigations will furnish that determination to the Freedom of Information Act and Privacy Act Officer, who will notify the requester of the determination in the manner provided in § 9.27

(i) *Records and information originated by another Federal agency.* If a requested record is located that was originated or contains information originated by another Federal Government agency, or deals with subject matter over which an agency other than the NRC has exclusive or primary responsibility, the NRC will promptly refer the record to that Federal Government agency for disposition or for guidance regarding disposition.

(j) If the NRC does not respond to a request within the 20 working-day period, or within the extended periods described in paragraph (b) of this section, the requester may treat that delay as a denial of the request and immediately appeal as provided in § 9.29(a) or sue in a Federal District Court as noted in § 9.29(c).

§ 9.27 Form and content of responses.

(a) When the NRC has located a requested agency record and has determined to disclose the agency record, the Freedom of Information Act and Privacy Act Officer will promptly furnish the agency record or notify the requester where and when the agency record will be available for inspection and copying. The NRC will also advise the requester of any applicable fees under § 9.35 and § 9.37. The NRC will routinely place copies of non-sensitive agency records disclosed in response to Freedom of Information Act requests in the NRC Public Document Room and on microfiche in Local Public Document Rooms. Records will not be routinely placed in the NRC Public Document Room and Local Public Document Rooms that contain information personal to the requester, involve matters that are not likely to be of public interest to anyone other than the requester or contain privileged or proprietary information that should only be disclosed to the requester.

(b) When the NRC denies access to a requested agency record or denies a request for expedited processing or for a waiver or reduction of fees, the Freedom of Information Act and Privacy Act Officer will notify the requester in writing. The denial will include as appropriate—

(1) The reason for the denial;

(2) A reference to the specific exemption under the Freedom of Information Act, or other appropriate reason, and the Commission's regulations authorizing the denial;

(3) The name and title or position of each person responsible for the denial of the request, including the head of the office recommending denial of the record;

(4) A statement stating why the request does not meet the requirements of § 9.41 if the request is for a waiver or reduction of fees; and

(5) A statement that the denial may be appealed within 30 calendar days from the date of the denial to the Executive Director for Operations, to the Secretary of the Commission, or to the Inspector General, as appropriate.

(c) The Freedom of Information Act and Privacy Act Officer will maintain a copy of each letter granting or denying requested agency records, denying a request for expedited processing, or denying a request for a waiver or reduction of fees in accordance with the NRC Comprehensive Records Disposition Schedule.

§ 9.29 Appeal from initial determination.

(a) A requester may appeal a notice of denial of a Freedom of Information Act request for access to agency records, denial of a request for waiver or reduction of fees, or denial of a request for expedited processing under this subpart within 30 calendar days of the date of the NRC's denial. For agency records denied by an Office Director reporting to the Executive Director for Operations, the appeal must be in writing and addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555. For agency records denied by an Office Director reporting to the Commission, the Assistant Secretary of the Commission, or the Advisory Committee Management Officer and for a denial of a request for a waiver or reduction of fees, or denial of a request for expedited processing, the appeal must be in writing and addressed to the Secretary of the Commission. For agency records denied by the Assistant Inspector General for Investigations, the appeal must be in writing and addressed to the Inspector General. The appeal should clearly state on the envelope and in the letter that it is an "Appeal from Initial FOIA Decision." The NRC does not consider an appeal that is not marked as indicated in this paragraph as received until it is actually received by the Executive Director for Operations, Secretary of the Commission, or the Inspector General.

(b) The NRC will make a determination on any appeal made under this section within 20 working days after the receipt of the appeal, except an appeal of the denial of a request for expedited processing will be determined within 10 working days after receipt of the appeal.

(c)(1) If the appeal is denied in whole or in part, the Executive Director for Operations or a Deputy Director, the Secretary of the Commission, or the Inspector General, as appropriate, will notify the requester of the denial, explaining the exemptions relied upon and how the exemptions apply to the agency records withheld.

(2) If, on appeal, the denial of a request for expedited processing or for a waiver or reduction of fees for locating and reproducing agency records is upheld in whole or in part, the Secretary of the Commission will notify the person making the request of the decision to sustain the denial, including a statement explaining why the request does not meet the requirements of § 9.25(e)(1) and (2) or § 9.41.

(3) The Executive Director for Operations, or a Deputy Executive Director, or the Secretary of the Commission, or the Inspector General will inform the requester that the denial is a final agency action and that judicial review is available in a district court of the United States in the district in which the requester resides or has a principal place of business, in which the agency records are situated, or in the District of Columbia.

(d) The Executive Director for Operations, or a Deputy Executive Director, or the Secretary of the Commission, or the Inspector General will furnish copies of all appeals and written determinations on appeals to the Freedom of Information Act and Privacy Act Officer.

§ 9.31 Extension of time for response.

(a) In unusual circumstances defined in § 9.13, the NRC may extend the time limits prescribed in § 9.25 or § 9.29 by not more than 10 working days. The extension may be made by written notice to the person making the request to explain the reasons for the extension and indicate the date on which a determination is expected to be dispatched.

(b) An extension of the time limits prescribed in §§ 9.25 and 9.29 may not exceed a combined total of 10 working days per request, unless a requester has agreed to an alternative time frame as described in § 11.25 (c).

§ 9.33 Search, review, and special service fees.

(a) The NRC charges fees for—

(1) Search, duplication, and review, when agency records are requested for commercial use;

(2) Duplication of agency records provided in excess of 100 pages when agency records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, or a representative of the news media;

(3) Search time that exceeds two hours and duplication of agency records of more than 100 pages for requests from all other categories of requesters not described in paragraphs (a)(1) and (a)(2) of this section;

(4) The direct costs of searching for agency records. The NRC will assess fees even when no agency records are located as a result of the search or when agency records that are located as a result of the search are not disclosed; and

(5) Computer searches which includes the cost of operating the Central Processing Unit for the portion of operating time that is directly attributable to searching for agency records plus the operator/programmer salary apportionable to the search.

(b) The NRC may charge requesters who request the following services for the direct costs of the service:

(1) Certifying that records are true copies;

(2) Sending records by special methods, such as express mail, package delivery service, courier, and other means other than first class mail; or

(3) Producing or converting records to formats specified by a requester other than ordinary copying processes that are readily available in NRC.

§ 9.34 Assessment of interest and debt collection.

(a) The NRC will assess interest on the fee amount billed starting on the 31st

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day following the day on which the billing was sent in accordance with NRC's regulations set out in § 15.37 of this chapter. The rate of interest is prescribed in 31 U.S.C. 3717.

(b) The NRC will use its debt collection procedures under part 15 of this chapter for any overdue fees.

§ 9.35 Duplication fees.

(a)(1) Charges for the duplication of records made available under § 9.21 at the NRC Public Document Room (PDR), 2120 L Street, NW, (Lower Level), Washington, DC., by the duplicating service contractor are as follows:

(i) Paper to paper reproduction is $0.08 per page standard size (up to and including 11 x 17 inches reduced). Pages 11 x 17 inches are $0.15 each. Pages larger than 11 x 17 inches, including drawings, are $1.50 each. Pages greater than legal size, 8½ x 14 inches, and smaller than or equal to 11 x 17 inches will be reduced to legal size and reproduced for $0.08 per page, unless the order specifically requests full size reproduction.

(ii) Microfiche to paper reproduction is $0.08 per page. Aperture card blowbacks are $3.00 each (reduced size) or $5.00 (full size).

(iii) Microfiche or aperture card duplications are $0.75 each.

(iv) Rush processing is offered for standard size paper to paper reproduction and blowbacks, excluding standing order documents and pages reproduced from bound volumes. The charge is $0.15 per page.

(v) Facsimile charges are: $0.30 per page—local calls; $0.50 per page—U.S. long distance; and $1.50 per page—foreign long distance.

(2) Self-service duplicating machines are available at the Public Document Room for the use of the public. Paper to paper copy is $0.08 per page. Microfiche to paper is $0.10 per page on the reader printers.

(3) A requester may submit mail-order requests for contractor duplication of NRC records made by writing to the NRC Public Document Room. The charges for mail-order duplication of records are the same as those set out in paragraph (a)(1) of this section, plus mailing or shipping charges.

(4) A requester may open an account with the duplicating service contractor. A requester may obtain the name and address and billing policy of the contractor from the NRC Public Document Room.

(5) Any change in the costs specified in this section will become effective immediately pending completion of the final rulemaking that amends this section to reflect the new charges. The Commission will post the charges that will be in effect for the interim period in the Public Document Room. The Commission will publish a final rule in the **Federal Register** that includes the new charges within 15 working days from the beginning of the interim period.

(b) The NRC will assess the following charges for copies of records to be duplicated by the NRC at locations other than the NRC Public Document Room located in Washington, DC or at local Public Document Rooms:

(1) Sizes up to 8½ x 14 inches made on office copying machines— $0.20 per page of copy; and

(2) The charge for duplicating records other than those specified in paragraphs (a) and (b) of this section is computed on the basis of NRC's direct costs.

(c) In compliance with the Federal Advisory Committee Act, a requester may purchase copies of transcripts of testimony in NRC Advisory Committee proceedings, which are transcribed by a reporting firm under contract with the NRC directly from the reporting firm at the cost of reproduction as provided for in the contract with the reporting firm. A requester may also purchase transcripts from the NRC at the cost of reproduction as set out in paragraphs (a) and (b) of this section.

(d) Copyrighted material may not be reproduced in violation of the copyright laws. As such, requesters will be given the citation to any copyrighted documents and a copy of the material will be placed in the Public Document Room where it may be viewed by requesters.

(e) The cost for duplicating NRC records located in NRC Local Public Document Rooms are established by the institutions maintaining the NRC Local Public Document Room collections.

§ 9.37 Fees for search and review of agency records by NRC personnel.

The NRC will charge the following hourly rates for search and review of agency records by NRC personnel:

(a) Clerical search and review at a salary rate that is equivalent to a GG–7/step 7, plus 16 percent fringe benefits;

(b) Professional/managerial search and review at a salary rate that is equivalent to a GG–13/step 6, plus 16 percent fringe benefits; and

(c) Senior executive or Commissioner search and review at a salary rate that is equivalent to an ES–4, plus 16 percent fringe benefits.

§ 9.39 Search and duplication provided without charge.

(a) The NRC will search for agency records requested under § 9.23(b) without charges when agency records are not sought for commercial use and the records are requested by an educational or noncommercial scientific institution, or a representative of the news media.

(b) The NRC will search for agency records requested under § 9.23(b) without charges for the first two hours of search for any request not sought for commercial use and not covered in paragraph (a) of this section.

(c) The NRC will duplicate agency records requested under § 9.23(b) without charge for the first 100 pages of standard paper copies, or the equivalent cost of 100 pages of standard paper copies when providing the requester copies in microfiche or electronic form such as computer disks, if the requester is not a commercial use requester.

(d) The NRC may not bill any requester for fees if the cost of collecting the fee would be equal to or greater than the fee itself.

(e) The NRC may aggregate requests in determining search and duplication to be provided without charge as provided in paragraphs (a) and (b) of this section, if the NRC finds a requester or group of requesters acting in concert, has filed multiple requests that actually constitute a single request, and that the requests involve clearly-related matters.

§ 9.40 Assessment of fees.

(a) If the request is expected to require the NRC to assess fees in excess of $25 for search and/or duplication, the NRC will notify the requester that fees will be assessed unless the requester has indicated in advance his or her willingness to pay fees as high as estimated.

(b) In the notification, the NRC will include the estimated cost of search fees and the nature of the search required and estimated cost of duplicating fees.

(c) The NRC will encourage requesters to discuss with the NRC the possibility of narrowing the scope of the request with the goal of reducing the cost while retaining the requester's original objective.

(d) If the fee is determined to be in excess of $250, the NRC will require an advance payment.

(e) Unless a requester has agreed to pay the estimated fees or, as provided for in paragraph (d) of this section, the requester has paid an estimated fee in excess of $250, the NRC may not begin to process the request.

(f) If the NRC receives a new request and determines that the requester has failed to pay a fee charged within 30 calendar days of receipt of the bill on a previous request, the NRC may refuse to accept the new request for processing until payment is made of the full amount owed on the prior request, plus any applicable interest assessed as provided in § 9.34.

(g) Within 10 working days of the receipt of NRC's notice that fees will be assessed, the requester will provide advance payment if required, notify the NRC in writing that the requester agrees to bear the estimated costs, or submit a request for a waiver or reduction of fees pursuant to § 9.41.

§ 9.41 Requests for waiver or reduction of fees.

(a)(1) The NRC will collect fees for searching for, reviewing, and duplicating agency records, except as provided in § 9.39, unless a requester submits a request in writing for a waiver or reduction of fees. To ensure that there will be no delay in the processing of Freedom of Information Act requests, the request for a waiver or reduction of fees should be included in the initial Freedom of Information Act request letter.

(2) Each request for a waiver or reduction of fees must be addressed to the Freedom of Information Act and Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(b) A person requesting the NRC to waive or reduce search, review, or duplication fees will—

(1) Describe the purpose for which the requester intends to use the requested information;

(2) Explain the extent to which the requester will extract and analyze the substantive content of the agency record;

(3) Describe the nature of the specific activity or research in which the agency records will be used and the specific qualifications the requester possesses to utilize information for the intended use in such a way that it will contribute to public understanding;

(4) Describe the likely impact on the public's understanding of the subject as compared to the level of public understanding of the subject before disclosure;

(5) Describe the size and nature of the public to whose understanding a contribution will be made;

(6) Describe the intended means of dissemination to the general public;

(7) Indicate if public access to information will be provided free of charge or provided for an access fee or publication fee; and

(8) Describe any commercial or private interest the requester or any other party has in the agency records sought.

(c) The NRC will waive or reduce fees, without further specific information from the requester if, from information provided with the request for agency records made under § 9.23(b), it can determine that disclosure of the information in the agency records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government and is not primarily in the commercial interest of the requester.

(d) In making a determination regarding a request for a waiver or reduction of fees, the NRC will consider the following factors:

(1) How the subject of the requested agency records concerns the operations or activities of the Federal Government;

(2) How the disclosure of the information is likely to contribute significantly to public understanding of Federal Government operations or activities;

(3) The extent to which, the requester has a commercial interest that would be furthered by the disclosure of the requested agency records; and whether that commercial interest exceeds the public interest in disclosure.

(e) The Freedom of Information Act and Privacy Act Officer will make an initial determination whether a request for a waiver or reduction of fees meets the requirements of this section. The Freedom of Information Act and Privacy Act Officer will inform requesters whenever their request for a waiver or reduction of fees is denied and will inform them of their appeal rights under § 9.29.

§ 9.43 Processing requests for a waiver or reduction of fees.

(a) Within 20 working days after receipt of a request for access to agency records for which the NRC agrees to waive fees under § 9.39 (a) through (d) or § 9.41(c), the NRC will respond to the request as provided in § 9.25.

(b) In making a request for a waiver or reduction of fees, a requester shall provide the information required by § 9.41(b).

(c) After receipt of a request for the waiver or reduction of fees made in accordance with § 9.41, the NRC will either waive or reduce the fees and notify the requester of the NRC's intent to provide the agency records promptly or deny the request and provide a statement to the requester explaining why the request does not meet the requirements of § 9.41(b).

(d) As provided in § 9.29, a requester may appeal a denial of a request to waive or reduce fees to the Secretary to the Commission. The appeal must be submitted within 30 calendar days from the date of the notice.

§ 9.45 Annual report to Congress.

(a) On or before February 1 of each year, the NRC will submit a report covering the preceding fiscal year to the Attorney General of the United States which shall include—

(1) The number of determinations made by the NRC to deny requests for records made to the NRC under this part and the reasons for each determination;

(2) The number of appeals made by persons under § 9.29, the results of the appeals, and the reason for the action taken on each appeal that results in a denial of information;

(3) A complete list of all statutes that the NRC relied upon to withhold information under subsection (b)(3) of 5 U.S.C. 552, a description of whether a court has upheld the decision of the NRC to withhold information under each such statute, and a concise description of the scope of any information withheld;

(4) The number of requests for records pending before the NRC as of September 30 of the preceding year, and the median number of days that such requests had been pending before the agency as of that date;

(5) The number of requests for records received by the NRC and the number of requests that the NRC processed;

(6) The median number of days taken to process different types of requests;

(7) The total amount of fees collected by the NRC for processing requests;

(8) The number of full-time staff of the NRC devoted to processing requests under the FOIA and the total amount expended for processing these requests.

(b) The NRC will make a copy of each report available to the public on the NRC homepage on the Internet that can be accessed at: http//www.nrc.gov. A copy will also be available for public inspection and copying in the NRC Public Document Room.

Dated at Rockville, Maryland, this 31st day of December, 1997.

For the Nuclear Regulatory Commission.

Lynn B. Scattolini,

Acting Chief Information Officer.

[FR Doc. 98–1212 Filed 1–16–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–21]

Amendment to Class D and Class E Airspace Areas; Manhattan, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes a new Class E surface area for the Manhattan Municipal Airport, Manhattan, KS, and changes the times of designation for the Manhattan, KS, Class E surface area extensions from part-time to full-time. The Class E surface area and surface area extensions are necessary to accommodate Instrumental Flight Rules (IFR) operations during periods when the airport traffic control tower (ATCT) is closed. This action also makes editorial amendments to the legal description of the Manhattan, KS, Class D airspace area, but does not change the dimensions or operating requirements of the Class D airspace area. This change was made necessary by the recent conversion of the adjacent Class D airspace area at Marshall Army Airfield, Ft. Riley, KS, to a Class E surface area. This action also modifies the Class E airspace area extending upward from 700 feet above ground (AGL) at Manhattan, KS, by increasing the radius of the area from 6 nautical miles (NM) to 6.7 NM. A review of the airspace at Manhattan, KS, indicated that the 700 AGL area did not meet the requirements of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, April 23, 1998.

Comments for inclusion in the Rules Docket must be received on or before February 19, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 97–ACE–21, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The Class D airspace area at Marshall Army Airfield, Ft. Riley, KS, has been removed and a new Class E surface area established, which requires an editorial amendment to the Class D airspace at Manhattan Municipal Airport, Manhattan, KS. The reference to Class D airspace for Ft. Riley in the Manhattan Class D airspace description has been changed to Class E.

There are Part 135 operations at Manhattan Municipal Airport when the control tower is closed. A revision to the Class E surface area extension changes the status from part-time to full time. A new Class E surface area has been developed. The new Class E surface area and Class E surface area extension will provide controlled airspace for Part 135 and IFR operations when the control tower is closed.

A review of the airspace for Manhattan Municipal Airport indicates it does not meet the criteria for 700 feet AGL Class E airspace as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile, plus the distance to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile increment. The Class E airspace at the above 700 feet has been enlarged to conform to the criteria in FAA Order 7400.2D.

The intended effect of this rule is to contain Part 135 and IFR operations within controlled airspace and to facilitate separation of aircraft operating under IFR conditions. The area will be depicted on appropriate aeronautical charts.

Class D airspace areas are published in paragraph 5000, Class E airspace areas designated as an extension to a Class D or Class E surface area are published in paragraph 6004, Class E airspace areas designated as a surface area for an airport are published in paragraph 6002, and Class E areas extending upward from the 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all fight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, aeronautical, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–ACE–21." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATIONS OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp. p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class D airspace

* * * * *

ACE KS D Manhattan, KS [Revised]

Manhattan Municipal Airport, KS
(Lat. 30°08′27″N, long. 96°40′15″W)
Manhattan VOR/DME
(Lat. 39°08′44″N, long. 96°40′07″W)
McDowell Creek NDB
(Lat. 39°07′03″N, long. 96°37′46″W)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.2-mile radius of Manhattan Municipal Airport, excluding that airspace within the Fort Riley, Marshall Army Airfield, KS, Class E airspace area and excluding that airspace within Restricted Area R–3602B. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

ACE KS E2 Manhattan, KS [New]

Manhattan Municipal Airport, KS
(Lat. 39°08′27″N, long. 96°40′15″W)

Within a 4.2-mile radius of Manhattan Municipal Airport, excluding that airspace within the Fort Riley, Marshall Army Airfield, Class E airspace area and excluding that airspace within Restricted Area R–3602B.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D or Class E surface area

* * * * *

ACE KS E4 Manhattan, KS [Revised]

Manhattan Municipal Airport, KS
(Lat. 39°08′27″N, long. 96°40′15″W)
Manhattan VOR/DME
(Lat. 39°08′44″N, long. 96°40′07″W)
McDowell Creek NDB
(Lat. 39°07′03″N, long. 96°37′46″W)

That airspace extending upward from the surface within 1.8 miles each side of the Manhattan VOR/DME 147° radial extending from the 4.2-mile radius of the Manhattan Municipal Airport to 9.5 miles SE of the VOR/DME and within 1.8 miles northeast and 2.6 miles southwest of the 127° bearing from the McDowell Creek NDB extending from the NDB to 8.7 miles southeast of the NDB.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ACE KS E5 Manhattan, KS [Revised]

Manhattan Municipal Airport, KS
(Lat. 39°08′27″N, long. 96°40′15″W)
Manhattan VOR/DME
(Lat. 39°08′44″N, long. 96°40′07″W)
McDowell Creek NDB
(Lat. 39°07′03″N, long. 96°37′46″W)
HATAN OM
(Lat. 39°03′30″N, long. 96°45′35″W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Manhattan Municipal Airport and within 3.5 miles each side of the 046° radial of the Manhattan VOR/DME extending from the 6.7 mile radius to 9.5 miles northeast of the VOR/DME and within 1.8 miles northeast and 2.6 miles southwest of the 126° bearing from McDowell Creek NDB extending from the 6.7-mile radius to 9.5 miles southeast of the NDB and within 3.5 miles each side of the 147° radial of the Manhattan VOR/DME extending from the 6.7-mile radius to 9.6 miles southeast of the VOR/DME and within 6 miles each side of the Manhattan ILS localizer course extending from the 6.7-mile radius to 8 miles southwest of the HATAN OM and within 2.6 miles each side of the Manhattan localizer course extending from the HATAN OM to 14 miles southwest of the HATAN OM; excluding that airspace within the boundaries of Restricted Areas R–3602A and R–3602B.

* * * * *

Issued in Kansas City, MO, on November 6, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–1229 Filed 1–16–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–20]

Amendment of Class E Airspace; Marshall Army Airfield, Fort Riley, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: The control tower at Marshall Army Airfield, Ft. Riley, KS, has been closed and will not be operational in the foreseeable future. With the closure of the control tower, the Class D surface area has been removed. This action removes the Class E surface area extension and establishes a new Class E surface area at Marshall Army Airfield, Ft. Riley, KS. The new Class E surface area provides controlled airspace to accommodate Instrument Flight Rules (IFR) operations. The intended effect of this action is to contain IFR operations within controlled airspace and to facilitate separation of aircraft operating under instrument flight rules.

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DATES: Effective date: 0901 UTC, April 23, 1998.

Comments for inclusion in the Rules Docket must be received on or before February 19, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 97–ACE–20, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The control tower at Marshall Army Airfield, Ft. Riley, KS, has been closed and will not be operational in the foreseeable future. With the closure of the control tower, the Class D surface area airspace has been removed. This action removes the Class E surface area extension and establishes a new Class E surface area at Marshall Army Airfield. The new Class E surface area provides controlled airspace to accommodate IFR operations. The intended effect of this action is to contain IFR operations within controlled airspace and thereby facilitate separation of aircraft operating under instrument flight rules. The area will be depicted on appropriate aeronautical charts. Class E surface areas designated as an extension to a Class D or Class E surface area are published in paragraph 6004, and Class E airspace areas designated as a surface area for an airport are published in paragraph 6002 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all fight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, aeronautical, environmental, and energy-regulated aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–ACE–20." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in a adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATIONS OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp, p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002—Class E airspace areas designated as a surface area for an airport

* * * * *

ACE KS E2 Fort Riley, KS [New]

Fort Riley, Marshall Army Airfield, KS
(lat. 39°03′19″N., long. 96°45′52″W.)
Junction City, Freeman Field, KS
(lat. 39°02′36″N., long. 96°50′36″W.)
Fort Riley VOR
(lat. 38°58′13″N., long. 96°51′40″W.)
Cavalry NDB
(lat. 39°01′34″N., long. 96°47′40″W.)

Within a 3.7-mile radius of Marshall Army Airfield and within 1.8 miles each side of the Fort Riley VOR 042° radial extending from the 3.7-mile radius of Marshall Army Airfield to the VOR and within 1.8 miles each side of the 216° bearing from Cavalry NDB extending from the 3.7-mile radius of Marshall Army Airfield to 7 miles southwest of the NDB; excluding that airspace within R–3602B and excluding that airspace within a 1-mile radius of the Junction City, Freeman Field, KS. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004—Class E airspace areas designated as an extension to a Class D or Class E surface area

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ACE KS E4 Fort Riley, KS [Removed]

* * * * *

Issued in Kansas City, MO, on November 13, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division Central Region.

[FR Doc. 98–1231 Filed 1–16–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–32]

Amendment to Class E Airspace; Columbus, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the description of Class E airspace area at Columbus, NE. The current description indicates part-time operation for the Class E airspace area for Columbus Municipal Airport, Columbus, NE. The actual hours of operation for the Class E airspace area are continuous. The Class E airspace area description at Columbus, NE, is revised to indicate that the area is in effect continuously. The intended effect of this amendment is to indicate that the Class E airspace area is in effect continuously and to facilitate separation of aircraft operations under Instrument Flight Rules (IFR). An editorial revision to reflect a change in the Airport Reference Point (ARP) is included.

DATES: Effective date: 0901 UTC, April 20, 1998.

Comments for inclusion in the Rules Docket must be received on or before February 19, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 97–ACE–32, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA is amending 14 CFR part 71 (part 71) to revise the description of the Class E airspace area at Columbus, NE, by removing the statement which indicates part-time status. The Class E airspace area description does not reflect the actual hours of operation, which are continuous. This action will correct the description for Class E airspace area at Columbus, NE. The ARP coordinates have been revised. The area is depicted on appropriate aeronautical charts. Class E airspace surface areas are published in paragraph 6002 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, aeronautical, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–ACE–32." The postcard will be date stamped and returned to the commenter.

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Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

ACE NE E2 Columbus, NE [Revised]

Columbus Municipal Airport, NE
(Lat 41°26'52"N., long. 97°20'24"W.)
Columbus VOR/DME
(Lat 41°27'00"N., long. 97°20'27"W.)

Within a 4-mile radius of Columbus Municipal Airport and within 2.6 miles each side of the 157° radial of the Columbus VOR/DME extending from the 4-mile radius to 8.7 miles southeast of the VOR/DME and within 2.6 miles each side of the 317° radial of the Columbus VOR/DME extending from the 4-mile radius to 7.4 miles northwest of the VOR/DME and within 3.5 miles each side of the 360° bearing from the Columbus Municipal Airport extending from the 4-mile radius to 10.5 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on November 13, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division Central Region.

[FR Doc. 98–1230 Filed 1–16–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–33]

Amendment to Class E Airspace; Norfolk, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the description of Class E airspace area at Norfolk, NE. The current description indicates part-time operations for the Class E airspace area for Norfolk, Karl Stefan Memorial Airport, Norfolk, NE. The actual hours of operation for the Class E airspace area are continuous. The Class E airspace area description at Norfolk, NE, is revised to indicate that the area is in effect continuously. The intended effect of this amendment is to indicate that the Class E airspace area is in effect continuously and to facilitate separation of aircraft operations under Instrument Flight Rules (IFR).

DATES: *Effective date:* 0901 UTC, April 20, 1998. Comments for inclusion in the Rules Docket must be received on or before February 19, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 97–ACE–33, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA is amending 14 CFR part 71 (part 71) to modify the description of the Class E airspace area at Norfolk, NE, by removing the statement which indicates part-time status. The Class E airspace area description does not reflect the actual hours of operation, which are continuous. This action will correct the description for Class E airspace area at Norfolk, NE. The area is depicted on appropriate aeronautical charts. Class E airspace surface areas are published in paragraph 6002 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, aeronautical, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–ACE–33." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ACE NE E2 Norfolk, NE. [Revised]

Norfolk, Karl Stefan Memorial Airport, NE
(Lat. 41°59'08" N., long. 97°26'06" W.)
Norfolk VOR/DME
(Lat. 41°59'17" N., long. 97°26'04" W.)

Within a 4.1-mile radius of the Karl Stefan Memorial Airport and within 1.8 miles each side of the Norfolk VOR/DME 020°, 148°, 195° and 314° radials extending from the 4.1-mile radius to 7 miles southeast, south, northwest and northeast of the Norfolk VOR/DME.

* * * * *

Issued in Kansas City, MO, on October 30, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–1228 Filed 1–16–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–28]

Amendment to Class E Airspace; Poplar Bluff, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Poplar Bluff Municipal Airport, Poplar Bluff, MO. The FAA has developed Global Positioning System (GPS) Runway (RWY) 18 and GPS RWY 36 Standard Instrument Approach Procedures (SIAPs) to serve the Poplar Bluff Municipal Airport. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the new GPS RWY 18 and GPS RWY 36 SIAPs in controlled airspace. A minor correction has been made to the Airport Reference Point (ARP) geographic coordinates and is reflected in this document.

DATES: *Effective date:* 0901 UTC, April 20, 1998.

Comments for inclusion in the Rules Docket must be received on or before February 19, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Federal Aviation Administration (FAA), Manager, Airspace Branch, Air Traffic Division, ACE–520, Attention: Rules Docket Number 97–ACE–28, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 18 and GPS RWY 36 SIAPs at Poplar Bluff Municipal Airport, Poplar Bluff, MO. The amendment to Class E airspace at

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Poplar Bluff, MO, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace and thereby facilitate separation of aircraft operating under IFR. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. A minor correction has been made to ARP geographic coordinates for the Poplar Bluff Municipal Airport and is reflected in this document. The ARP geographic coordinates and the Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, aeronautical, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–ACE–28." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Poplar Bluff, MO [Revised]

Poplar Bluff Municipal Airport, MO
(Lat. 36°46′26″ N., long. 90°19′29″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Poplar Bluff Municipal Airport and within 2.6 miles each side of the 181° bearing from the Poplar Bluff Municipal Airport extending from the 6.5-mile radius to 7 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on November 21, 1997.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 98–1226 Filed 1–16–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–11]

Amendment to Class E Airspace; Gillette, WY; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published on October 31, 1997, that inadvertently changed the coordinates of the Gillette-Campbell County Airport, Gillette, WY. This action corrects the final rule by reflecting the proper coordinates.

EFFECTIVE DATE: January 20, 1998.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 97–ANM–11, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION: On October 31, 1997, the FAA published a final rule that amended the Gillette, WY, Class E airspace designation (62 FR 58897). However, that action provided an inadvertent error to the coordinates of the Gillette-Campbell County Airport, WY. This action corrects the final rule by reflecting the proper coordinates.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the Class E airspace description at Gillette, WY, as published in the **Federal Register** on October 31, 1997 (62 FR 58897), (**Federal Register** Document No. 97–28956) is corrected as follows:

§ 71.1 [Corrected]

On page 58898, in the second column, in the airspace description, line 3, correct the geographical coordinates of the Gillette-Campbell County Airport by removing "(Lat. 44°20′93″ N, long. 105°32′36″ W)" and adding "(Lat. 44°20′56″ N, long. 105°32′22″ W)" in its place.

Issued in Seattle, Washington, on December 22, 1997.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–863 Filed 1–16–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29101; Amdt. No. 1843]

RIN 212–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which

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frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on December 26, 1997.

Richard O. Gordon,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs; identified as follows:

** * * Effective January 29, 1998*

Plymouth, MA, Plymouth Muni, NDB RWY 6, Amdt 4
Gettysburg, SD, Gettysburg Muni, GPS RWY 31, Orig
Galeton, PA, Cherry Springs, VOR–A, Amdt 6
Suffolk, VA, Suffolk Muni, LOC RWY 4, Amdt 1
Suffolk, VA, Suffolk Muni, NDB RWY 4, Amdt 1

** * * Effective February 26, 1998*

Cortez, CO, Cortez, Muni, GPS RWY 3, Orig
Keokuk, IA, Keokuk Muni, LOC/DME RWY 26, Orig
Moose Lake, MN, Moose Lake Carlton County, NDB or GPS RWY 4, Amdt 1
Moose Lake, MN, Mose Lake Carlton County, GPS RWY 4, Orig
Ogallala, NE, Searle Field, GPS RWY 26, Orig
Butler, PA, Butler County/K W Scholter Field, ILS RWY 8, Amdt 5
Millington, TN, Millington Muni, ILS RWY 22, Orig
Dallas, TX, Dallas Love Field, RADAR–1, Amdt 26, Cancelled
Rutland, VT, Rutland State, LOC/DME 1 RWY 19, Amdt 1
South Boston, VA, William M. Tuck, VOR OR GPS–A, Amdt 7
Chetek, WI, Chetek Muni-Southworth, GPS RWY 35, Orig

[FR Doc. 98–869 Filed 1–16–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8758]

RIN 1545–AU28

Nuclear Decommissioning Funds; Revised Schedules of Ruling Amounts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to requests for revised schedules of ruling amounts for nuclear decommissioning reserve funds. The regulations amend existing regulations to ease the burden on affected taxpayers by permitting electing taxpayers with qualifying interests in nuclear power plants to adjust their ruling amounts under a formula or method rather than by filing a request for a revised schedule of ruling amounts.

DATES: The final regulations are effective January 20, 1998.

FOR FURTHER INFORMATION CONTACT: Peter Friedman, (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under the control number 1545–1511. Responses to this collection of information are voluntary.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated average annual burden per recordkeeper is 5 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20024, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains final regulations under section 468A of the Internal Revenue Code. Section 468A was added to the Internal Revenue Code by section 91(c) of the Tax Reform Act of 1984 (Pub. L. 98–369). Significant amendments were made to section 468A by section 1917 of the Energy Policy Act of 1992 (Pub. L. 102–486).

Section 468A(a) allows an electing taxpayer to deduct the amount of payments made by the taxpayer to a nuclear decommissioning reserve fund. Section 468A(b) limits the amount of these payments for any taxable year to the lesser of the ruling amount or the amount of decommissioning costs included in the taxpayer's cost of service for ratemaking purposes for that taxable year.

Section 468A(d) provides that no deduction shall be allowed unless the taxpayer requests, and receives, a schedule of ruling amounts from the Secretary. A ruling amount is, with respect to any taxable year, the amount determined by the Secretary as necessary to (1) fund that portion of the nuclear decommissioning costs of the taxpayer with respect to the nuclear power plant which bears the same ratio to the total nuclear decommissioning costs with respect to the nuclear power plant as the period for which the nuclear decommissioning fund is in effect bears to the estimated useful life of such nuclear power plant; and (2) prevent any excessive funding of such costs or the funding of such costs at a rate more rapid than level funding, taking into account such discount rates as the Secretary deems appropriate. Section 468A(d)(3) provides that the

Secretary shall, at least once during the useful life of the nuclear power plant (or more frequently, upon the request of the taxpayer), review and, if necessary, revise the schedule of ruling amounts.

Section 1.468A–3 sets forth the rules relating to the determination of ruling amounts. The regulations permit the use of a formula or method for determining a schedule of ruling amounts (in lieu of a schedule of ruling amounts specifying a dollar amount for each taxable year), but only if the public utility commission establishing or approving the amount of decommissioning costs to be included in cost of service for ratemaking does not estimate the cost of decommissioning in future dollars.

The regulations contain provisions for the review and revision of schedules of ruling amounts and set forth circumstances under which a taxpayer must request a revision to its schedule of ruling amounts. In general, a schedule of ruling amounts must be reviewed at 10 year intervals. If the schedule is determined under a formula or method, however, the period between reviews may not exceed 5 years.

The regulations provide that a taxpayer may request an elective review of its schedule of ruling amounts. A taxpayer seeking to maximize its deductions under section 468A generally needs to request an elective review of its schedule of ruling amounts each time a public utility commission changes previously established amounts of decommissioning costs. A notice of proposed rulemaking (REG–209828–96) relating to these rules was published in the **Federal Register** on December 23, 1996 (61 FR 67510). The notice proposes to amend § 1.468A–3(a)(4) by eliminating the restriction on the use of a formula or method for determining a schedule of ruling amounts and to revise the mandatory review requirements.

Written comments were received in response to the notice of proposed rulemaking, and a public hearing was held on May 13, 1997. After considering the written comments and the statements made at the public hearing, the proposed rules are adopted as modified by this Treasury Decision.

Explanation of Provisions

The final regulations provide that a taxpayer may request approval of a formula or method for determining a schedule of ruling amounts (rather than a schedule specifying a dollar amount for each taxable year) that is consistent with the principles and provisions of the rules relating to the determination of ruling amounts.

The final regulations ease the filing burden on taxpayers by permitting them to adjust their ruling amounts under a formula or method (rather than by filing a request for a revised schedule of ruling amounts). Thus, a taxpayer may maximize its deductions under section 468A without requesting a revised schedule of ruling amounts each time a public utility commission changes the amount of decommissioning costs included in the taxpayer's cost of service if, under the taxpayer's formula or method, the commission's action results in a corresponding change in ruling amounts. The commentators all agreed with the expanded availability of ruling amounts based on formulas or methods.

In addition, the final regulations modify the mandatory review provisions applicable to schedules of ruling amounts determined under a formula or method. The proposed regulations eliminate the rule requiring review of those schedules after 5 years but make those schedules subject to the general rule requiring review at 10 year intervals. In addition, the proposed regulations require taxpayers to request a revised schedule of ruling amounts if, beginning with the second taxable year during which the most recently issued formula or method is in effect, the ruling amount for a taxable year (1) differs by more than 25 percent from the ruling amount for any preceding taxable year during which such formula or method was in effect; or (2) differs by more than 10 percent from the ruling amount for the immediately preceding taxable year. The commentators generally favored either a retention of the 5 year review period without limits on differences in ruling amounts or an increase in the percentage by which ruling amounts are permitted to differ. In response to these suggestions, the final regulations retain the 5 year review requirement, increase the overall percentage by which ruling amounts may differ, and eliminate the 10 percent limitation on changes from one year to the next.

Some commentators suggested that all elements of a formula should be permitted to be variable. Nothing in the proposed regulations was meant to suggest otherwise. In order to afford different taxpayers maximum flexibility in using a formula, the regulations do not specify which elements must be fixed and which must be variable. Instead, the formula, itself, will determine whether an element is fixed or variable. A fixed element is one that is assumed to retain the same value regardless of action by the applicable public utility commission.

Some commentators suggested that a taxpayer that recently received a schedule of ruling amounts should be permitted to vary this schedule using a formula or method that has not been approved by the Service. This suggestion is inconsistent with the Service's obligation to issue and review schedules of ruling amounts and is not adopted.

Several commentators requested that the existing user fee for obtaining a schedule of ruling amounts under section 468A is excessive and should be waived or reduced. Because this subject is not within the scope of this regulations project, it is not addressed in the final regulations.

Finally, some commentators suggested that the regulations should address the situation where a taxpayer, based on a good faith but erroneous calculation of the percentage limitations, fails to comply with the mandatory review provisions. Partly in response to this suggestion, the percentage limitation has been simplified.

Effective Date

These regulations are applicable for requests for schedules of ruling amounts made on or after January 20, 1998.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in the regulation will not have a significant impact on a substantial number of small entities. This certification is based on the fact that taxpayers with qualifying interests in a nuclear power plant are generally large entities. Thus, because the regulation applies only to these taxpayers and does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Peter Friedman, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other

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personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.468A–2 is amended as follows:

1. The text of paragraph (f)(3) following the heading is designated as paragraph (f)(3)(i).

2. Paragraph (f)(3)(ii) is added.

The addition reads as follows:

§ 1.468A–2 Treatment of electing taxpayer.

* * * * *

(f) * * *

(3) * * *

(i) * * *

(ii) The requirement of this paragraph (f)(3) does not apply if the taxpayer determines its schedule of ruling amounts under a formula or method obtained under § 1.468A–3(a)(4) and the cost of service amount is a variable element of that formula or method.

* * * * *

Par. 3. Section 1.468A–3 is amended as follows:

1. Paragraph (a)(4) is revised.

2. Paragraph (e)(5) is added.

3. Paragraphs (i)(1)(ii)(A), (i)(1)(iii)(A)(*3*), and (i)(1)(iii)(B) are revised.

4. Paragraph (i)(1)(iii)(C) is added.

The revisions and additions read as follows:

§ 1.468A–3 Ruling amount.

(a) * * *

(4) The Internal Revenue Service will approve, at the request of the taxpayer, a formula or method for determining a schedule of ruling amounts (rather than a schedule specifying a dollar amount for each taxable year) that is consistent with the principles and provisions of this section. See paragraph (i)(1)(ii) of this section for a special rule relating to the mandatory review of ruling amounts that are determined pursuant to a formula or method.

* * * * *

(e) * * *

(5) A formula or method obtained under paragraph (a)(4) of this section may provide for changes in an estimated date described in paragraph (e)(1) or (2) of this section to reflect changes in the ratemaking assumptions used to determine rates (whether interim or final) that are established or approved by the applicable public utility commission after the filing of the request for approval of a formula or method.

* * * * *

(i) * * *

(1) * * *

(ii)(A) Any taxpayer that has obtained a formula or method for determining a schedule of ruling amounts for any taxable year under paragraph (a)(4) of this section must file a request for a revised schedule on or before the earlier of the deemed payment deadline for the fifth taxable year that begins after its taxable year in which the most recent formula or method was approved or the deemed payment deadline for the first taxable year that begins after a taxable year in which there is a substantial variation in the ruling amount determined under the most recent formula or method. There is a substantial variation in the ruling amount determined under the formula or method in effect for a taxable year if the ruling amount for the year and the ruling amount for any earlier year since the most recent formula or method was approved differ by more than 50 percent of the smaller amount.

* * * * *

(iii) * * *

(A) * * *

(*3*) Reduces the amount of decommissioning costs to be included in cost of service for any taxable year;

(B) The taxpayer's most recent request for a schedule of ruling amounts did not provide notice to the Internal Revenue Service of such action by the public utility commission; and

(C) In the case of a taxpayer that determines its schedule of ruling amounts under a formula or method obtained under paragraph (a)(4) of this section, the item increased, adjusted, or reduced is a fixed (rather than a variable) element of that formula or method.

* * * * *

Par. 4. Section 1.468A–8 is amended by adding paragraph (b)(12) to read as follows:

§ 1.468A–8 Effective date and transitional rules.

* * * * *

(b) * * *

(12) *Use of formula or method.* Section 1.468A–2(f)(3)(ii) and § 1.468A–3(a)(4) (to the extent it permits a formula or method when the applicable public utility commission estimates the cost of decommissioning in future dollars), (e)(5), (i)(1)(ii)(A) (to the extent it requires the taxpayer to file a request for a revised schedule because of a substantial variation in ruling amounts), and (i)(1)(iii)(C) apply only to requests for a formula or method submitted on or after January 20, 1998 and to formulas and methods obtained in response to those requests.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. In § 602.101(c), the entry for 1.468A–3 in the table is revised to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified or described	Current OMB control No.
. . . . .	.
1.468A–3	1545–1269 1545–1378 1545–1511
. . . . .	.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved: January 9, 1998.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 98–1177 Filed 1–16–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–96–002]

RIN 2115–AE47

Drawbridge Operation Regulations: Mystic River, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating rules for the S99, Alford Street Bridge, mile 1.4, over the Mystic River in Boston, Massachusetts by requiring an eight hour advance notice for openings be provided during the evenings in the winter months.

The Coast Guard has also removed the regulations governing the draws of the Boston and Maine Railroad Bridge, mile 1.8, and the General Lawrence Bridge, mile 3.6, since both bridges have been replaced with fixed bridges.

Additionally, the requirement to pass public vessels as soon as possible has been removed because it is not listed under the general requirements for the operation of bridges.

These changes are expected to provide for the reasonable needs of navigation and relieve the bridge owner of the burden of unnecessarily crewing the bridge at night during the winter months as well as removing obsolete regulatory language from the regulation.

DATES: This final rule is effective February 19, 1998.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the First Coast Guard District Office, 408 Atlantic Avenue, Boston, Massachusetts, 02116, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory History

The Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations: Mystic River, MA. in the **Federal Register** (62 FR 3636; Jan. 24, 1997) to evaluate changes to the operating rules. The Coast Guard received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

The S99 Alford Street Bridge owned by the City of Boston, has a vertical clearance of 16 feet at mean low water and 7 feet at mean high water. The operating regulations listed under § 117.609(a) require that the S99 Alford Street Bridge and the Boston and Maine Railroad Bridge shall open on signal; except that, from 7:45 a.m. to 9 a.m., 9:10 a.m. to 10 a.m., and 5 p.m. to 6 p.m. except Sundays and holidays, the draw need not be opened for the passage of vessels with a draft of less than 18 feet. Additionally, § 117.609(b) states that the Wellington and General Lawrence Bridges need not be opened for the passage of vessels.

The Coast Guard received a request from the City of Boston, in November 1995, to change the operating rules for the S99 Alford Street Bridge by amending § 117.609(a) to require an eight hour advance notice to the bridge owner for bridge openings between 11 p.m. and 7 a.m. November 1 to March 31, yearly. The Coast Guard believes that the operating hours for the S99 Alford Street Bridge should be changed based upon the fact that the Mystic River users that transit through the bridge are recreational users and seldom use the waterway during the winter months at the time period requested.

The exemption in the existing rules for vessels with a draft of eighteen feet is removed as part of this final rule because the commercial vessels to which this provision once applied no longer transit through the S99 Alford Street Bridge.

The requirement that public vessels be passed as soon as possible is removed from § 117.609(a) since it is now listed as a requirement under § 117.31 of the general operating regulations for bridges.

This final rule also eliminates references to the Boston and Maine Bridge and the General Lawrence Bridge which have been replaced by fixed bridges.

Discussion of Comments and Changes

No comments were received in response to the notice of proposed rulemaking; therefore, no changes to the final rule have been made.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. This regulation has not been reviewed by the Office of Management and Budget under that order. This regulation is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; Feb. 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that bridges must operate in accordance with the reasonable needs of navigation while providing for the reasonable needs of land transportation. This final rule adopts the operating hours which the Coast Guard believes to be appropriate since the recreational boaters that use this waterway seldom transit during night time in winter and, thus, a requirement for the bridge operator to be present during that time period is unwarranted. The Coast Guard believes this final rule achieves the requirement of balancing the navigational rights of recreational boaters and the needs of land based transportation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Therefore, for the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under section 2.B.2.e.(34) of Commandant Instruction M16475.1B, this final rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

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PART 117—[AMENDED]

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.609 is revised to read as follows:

§ 117.609 Mystic River.

(a) The draw of the S99 Alford Street Bridge, mile 1.4, small open on signal; except that Monday through Saturday (excluding holidays) from 7:45 a.m. to 9 a.m., 9:10 a.m. to 10 a.m. and 5 p.m. to 6 p.m., the draw need not open for the passage of vessels. From November 1 through March 31, between 11 p.m. and 7 a.m., at least an 8 hour advance notice is required for bridge openings by calling the number posted at the bridge.

(b) The draw of the Wellington Bridge, mile 2.5, need not be opened for vessels.

Dated: January 5, 1998.

R. M. Larrbee,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 98–1274 Filed 1–16–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–5948–1]

Hazardous Waste Management Program: Incorporation by Reference of Approved State Hazardous Waste Program for Florida

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Under the Resource Conservation and Recovery Act of 1976, as amended (RCRA), the United States Environmental Protection Agency (EPA) may grant Final Authorization to States to operate their hazardous waste management programs in lieu of the Federal program. EPA uses Part 272 of Title 40 Code of Federal Regulations (CFR) to provide notice of the authorization status of State programs, and to incorporate by reference those provisions of the State statutes and regulations that EPA will enforce under RCRA Sections 3008, 3013 and 7003. Thus, EPA intends to codify Florida's authorized State program in 40 CFR Part 272. The purpose of this action is to incorporate by reference EPA's approval of Florida's base hazardous waste program and its revisions to that program.

DATES: This document will be effective March 23, 1998 unless EPA publishes a prior **Federal Register** (*FR*) action withdrawing this immediate final rule. All comments on this action must be received by the close of business February 19, 1998. The incorporation by reference of certain Florida statutes and regulations was approved by the Director of the Federal Register as of March 23, 1998 in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.

ADDRESSES: Written comments should be sent to Narindar Kumar, RCRA Programs Branch, Waste Division, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303. Telephone number is 404–562–8440.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, RCRA Programs Branch, Waste Division, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303. Telephone number is 404–562–8440.

SUPPLEMENTARY INFORMATION:

Background

Section 3006 of RCRA 42 U.S.C. 6926 *et seq.*, allows the EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. The purpose of today's **Federal Register** document is to incorporate by reference EPA's approval of Florida's base hazardous waste management program and its twelve revisions to that program.

On January 29, 1985, EPA published a **Federal Register** notice announcing its decision to grant final authorization for the RCRA base program to the State of Florida (see 50 *FR* 3908). Effective January 30, 1988 (52 *FR* 45634); October 30, 1988 (53 *FR* 34759); January 3, 1989 (53 *FR* 50529); February 12, 1991 (55 *FR* 51416); April 6, 1992 (57 *FR* 4370 and 57 *FR* 4371); April 7, 1992 (57 *FR* 4738); July 20, 1992 (57 *FR* 21351); January 10, 1994 (58 *FR* 59367); September 9, 1994 (59 *FR* 35266); October 17, 1994 (59 *FR* 41979); December 27, 1994 (59 *FR* 53753); and June 2, 1997 (62 *FR* 15407), EPA granted Florida additional authorization.

On January 29, 1989, Florida transferred Parts I, II, III, IV and V of Chapter 17–30 F.A.C. to a new rule, Chapter 17–730 F.A.C. The Chapter entitled Hazardous Waste remained the same.

EPA provides both notice of its approval of State programs in 40 CFR Part 272 and incorporates by reference therein the State statutes and regulations that EPA will enforce under Sections 3008, 3013 and 7003 of RCRA. This effort will provide clearer notice to the public of the scope of the authorized program in Florida. Such notice is particularly important in light of the Hazardous and Solid Waste Act Amendments of 1984 (HSWA), Public Law 98–616. Revisions to State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. Because HSWA extensively amended RCRA, State programs must be modified to reflect those amendments. By incorporating by reference the authorized Florida program and by amending the Code of Federal Regulations whenever a new or different set of requirements is authorized in Florida, the status of Federally approved requirements of the Florida program will be readily discernible.

The Agency will only enforce those provisions of the Florida hazardous waste management program for which authorization approval has been granted by EPA. This document incorporates by reference provisions of State hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program. Concerning HSWA, some State requirements may be similar to HSWA requirements that are in effect under Federal statutory authority in that State. However, a State's HSWA-type requirements are not authorized and will not be codified into the CFR until the Regional Administrator publishes his final decision to authorize the State for specific HSWA requirements. Until such time, EPA will enforce the HSWA requirements and not the State analogues.

Florida's Authorized Hazardous Waste Program

To incorporate by reference the Florida authorized hazardous waste program, EPA intends to add Subpart K to 40 CFR Part 272. The State statutes and regulations are incorporated by reference at 40 CFR 272.501(b)(1) and the Memorandum of Agreement, the Attorney General's Statement and the Program Description are referenced at 40 CFR 271.501(b)(5), (b)(6) and (b)(7), respectively.

The Agency retains the authority under Sections 3007, 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and the Federal

Administrative Procedure Act rather than the authorized State analogues to these requirements. Therefore, the Agency does not intend to incorporate by reference for purposes of enforcement such particular, authorized Florida enforcement authorities. Section 272.501(b)(2) of 40 CFR lists those authorized Florida authorities that are part of the authorized program but are not incorporated by reference.

The public also needs to be aware that some provisions of the State's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions include:

(1) Provisions that are not part of the RCRA Subtitle C program because they are "broader in scope" than RCRA Subtitle C (see 40 CFR 271.1(i));

(2) Federal rules for which Florida is not authorized, but which have been incorporated into the State regulations because of the way the State adopted Federal regulations by reference;

(3) Unauthorized amendments to State provisions previously reviewed and approved by EPA.

State provisions which are "broader in scope" than the Federal program are not incorporated by reference for purposes of enforcement in 40 CFR 272. Section 272.501(b)(3) of 40 CFR lists for reference and clarity the Florida statutory and regulatory provisions which are "broader in scope" than the Federal program and which are not, therefore, part of the authorized program being incorporated by reference. "Broader in scope" provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions.

Florida has adopted but is not authorized for the corrective action portion of the HSWA Codification Rule published on July 15, 1985 (50 *FR* 28702); the Corrective Action portions (for injection wells and for corrective action beyond the facility boundary) and the permit modification portion of the HSWA Codification Rule 2 published on December 1, 1987 (52 *FR* 45788); Burning of Hazardous Waste in Boilers and Industrial Furnaces rules published on February 12, 1991, July 1, 1991, August 27, 1991, August 25, 1992, and September 30, 1992 (56 *FR* 7134, 56 *FR* 32688, 56 *FR* 42504, *57 FR* 38558, and *57* FR 44999, respectively); the Coke Ovens Administrative Stay rule published on September 5, 1991 (56 *FR* 43874); the Recycled Coke By-Product Exclusion rule published on June 22, 1992 (57 *FR* 27880); amendments to 40 CFR Parts 260, 261, 264, 265, and 266 relative to Recycled Used Oil Management Standards rules published on September 10, 1992 and May 3, 1993 (57 FR 41566 and 58 FR 26420, respectively); and the Corrective Action Management Units and Temporary Units rule published on February 16, 1993 (58 *FR* 8658). Therefore, these Federal rules which are included in the Florida Administrative Code (F.A.C.), effective September 7, 1995, Sections 62–730.020(1), 62–730.030(1), 62–730.180(1), 62–730.180(2), 62–730.181, 62–730.183 and 62–730.220(3) are not federally enforceable.

Since EPA cannot enforce a State's requirements which have not been reviewed and approved according to the Agency's authorization standards, it is important that EPA clarify any limitations on the scope of a State's approved hazardous waste program. Thus, in those instances where a State's method of adopting Federal law by reference has the effect of including unauthorized requirements, EPA will provide this clarification by: (1) incorporating by reference the relevant State legal authorities according to the requirements of the Office of Federal Register; and (2) subsequently identifying in 272.501(b)(4) any requirements which while adopted and incorporated by reference, are not authorized by EPA, and therefore are not Federally enforceable. Thus, notwithstanding the language in the Florida hazardous waste regulations incorporated by reference at 272.501(b)(1), EPA would only enforce the State provisions that are actually authorized by EPA. With respect to HSWA requirements for which the State has not yet been authorized, EPA will continue to enforce the Federal HSWA standards until the State receives specific HSWA authorization from EPA.

HSWA Provisions

As noted above, the Agency is not amending 40 CFR Part 272 to include HSWA requirements and prohibitions that are immediately effective in Florida and other States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time that it takes effect in non-authorized States. Thus, EPA has immediate authority to implement a HSWA requirement or prohibition once it is effective. A HSWA requirement or prohibition supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (See 50 *FR* 28702, July 15, 1985).

Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously authorized and incorporated by reference State provisions will be affected. The States are required to revise their programs to adopt the HSWA requirements and prohibitions by the deadlines set forth in 40 CFR 271.21, and then to seek authorization for those revisions pursuant to 40 CFR Part 271. EPA expects that the States will be modifying their programs substantially and repeatedly. Instead of amending the 40 CFR Part 272 every time a new HSWA provision takes effect under the authority of RCRA Section 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's 40 CFR Part 272 incorporation by reference. In the interim, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt HSWA provisions are authorized.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under Sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. The Sections 202 and 205 requirements do not apply to today's action because it is not a "Federal mandate" and because it does not impose annual costs of $100 million or more.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector for two reasons. First, today's action does not impose new or additional enforceable duties on any State, local or tribal governments or the private sector because it merely makes federally enforceable existing requirements with which regulated entities must already comply under State law. Second, the

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Act also generally excludes from the definition of a "Federal mandate" duties that arise from participation in a voluntary Federal program. The requirements being codified today are the result of Florida's voluntary participation in accordance with RCRA Subtitle C.

Even if today's rule did contain a Federal mandate, this rule will not result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector because today's action merely codifies an existing State program that EPA previously authorized. Thus, today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

The requirements of Section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, Section 203 of UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, this codification incorporates into the Code of Federal Regulations Florida's requirements which have already been authorized by EPA under 40 CFR Part 271 and, thus, small governments are not subject to any additional significant or unique requirements by virtue of this codification.

Certification Under the Regulatory Flexibility Act

EPA has determined that this codification will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the State requirements authorized by EPA under 40 CFR Part 271. EPA's codification does not impose any additional burdens on these small entities. This is because EPA's codification would simply result in an administrative change, rather than a change in the substantive requirements imposed on small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this codification will not have a significant economic impact on a substantial number of small entities. This codification incorporates "State's" requirements which have been authorized by EPA under 40 CFR Part 271 into the Code of Federal Regulations. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: December 30, 1997.

Phyllis Harris,

Acting Regional Administrator, Region IV.

For the reasons set forth in the preamble, 40 CFR Part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for Part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Subpart K is amended by adding § 272.501 to read as follows:

§ 272.501 Florida State-Administered Program: Final Authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), Florida has final authorization for the following elements as submitted to EPA in Florida's base program application for final authorizations which was approved by EPA effective on February 12, 1985. Subsequent program revision applications were approved and effective January 30, 1988; October 30, 1988; January 3, 1989; February 12, 1991; April 6, 1992; April 7, 1992; July 20, 1992; January 10, 1994; September 9, 1994; October 17, 1994; December 27, 1994; and June 2, 1997.

(b) *State Statutes and Regulations.* (1) The Florida statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(i) EPA Approved Florida's Statutory Requirements Applicable to the Hazardous Waste Management Program, dated December 1997.

(ii) EPA Approved Florida's Regulatory Requirements Applicable to the Hazardous Waste Management Program, dated December 1997.

(2) The following statutes and regulations concerning State procedures and enforcement, although not incorporated by reference, are part of the authorized State program:

(i) Florida Statutes, 1993, Chapter 119: 119.01; 119.011; 119.0115 through 119.031; 119.041; 119.05; 119.06; 119.07(1), (2), (3)(a)–(j), (3)(k)(1) first sentence, (3)(l)–(u), (4), (5), and (8); 119.072; 119.08(1)(a), (2) and (3); 119.085; 119.09; 119.092; 119.10; and 119.11 through 119.14.

(ii) Florida Statutes, 1993, Chapter 120: 120.53; 120.57; 120.59; 120.68; and 120.69.

(iii) Florida Statutes, 1993, Chapter 403: 403.021(1)–(9); 403.051(1) and (2); 403.061(21); 403.087(1) second and third sentences, (2)–(4), and (8); 403.0875; 403.091; 403.121; 403.131; 403.141(1) and (2); 403.151; 403.161; 403.201(1)–(3); 403.412; 403.702; 403.703(1); 403.704 (except (8), (11), (20)–(23), (25), and (31)); 403.721(1); 403.721(2)–(4) (except (4)(a)); 403.721(5); 403.721(6)(a)–(g), (j), (k); 403.721(7); 403.722(7) and (9)–(11); 403.7222(3); 403.724(3)–(6); 403.726 (except 403.726(3)); 403.73; 403.7545; 403.8055; and 403.814.

(iv) Florida Statutes, 1994 Supplement to 1993, Chapter 403: 403.061(14); 403.088; 403.707; 403.722(12); 403.7222(3); and 403.727.

(v) Florida Administrative Code, Chapter 62–4, effective July 4, 1995: 62–4.050(1)–(3); 62–4.070(4); and 62–4.070(5).

(vi) Florida Administrative Code, Chapter 62–103, effective October 20, 1996: 62–103.150; and 62–103.155.

(vii) Florida Administrative Code, Chapter 62–730, effective September 7, 1995: 62–730.020(2); 62–730.184; 62–730.200(3); 62–730.220(4); 62–730.220(9); 62–730.231(10); 62–730.240(3); and 62–730.310.

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not codified herein for enforcement purposes.

(i) Florida Statutes, 1993, Chapter 403: 403.087(5); 403.201(4) (only the phrase "may require by rule a processing fee for and"); 403.704(8); 403.721(4)(a); 403.7215(1)–(4); 403.722(8); 403.723; 403.724(7); 403.754(1)–(7); 403.767(1)–(3)(c); 403.78 through 403.7893; and 403.7895.

(ii) Florida Administrative Code, Chapter 62–4, effective July 4, 1995: 17–4.050(4)(k), (n)–(p), (r) and (s)–(x); 62–4.050(5)–(7).

(iii) Florida Administrative Code, Chapter 62–730, effective September 7, 1995: 62–730.170(2) and (3);62–730.180(10); 62–730.290 (only the phrase "and submittal of the appropriate permit modification fee").

(4) Unauthorized State Provisions. The State's adoption of the following Federal rules is not approved by EPA and are, therefore, not enforceable:

Federal requirement	Federal Register reference	Publication date
HSWA Codification Rule: Corrective Action (Checklist 17 L)	50 FR 28702	7/15/85
HSWA Codification Rule 2: Corrective Action Beyond Facility Boundary (Checklist 44 B); Corrective Action for Injection Wells (Checklist 44 C); and Permit Modification (Checklist 44 D).	52 FR 45788	12/1/87
Burning of Hazardous Waste in Boilers and Industrial Furnaces (Checklist 85)	56 FR 7134	2/12/91
Burning of Hazardous Waste in Boilers and Industrial Furnaces; Corrections and Technical Amendments I (Checklist 94).	56 FR 32688	7/1/91
Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendments II (Checklist 96).	56 FR 42504	8/27/91
Coke Ovens Administrative Stay (Checklist 98)	56 FR 43874	9/5/91
Recycled Coke By-Product Exclusion (Checklist 105)	57 FR 27880	6/22/92
Burning Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendment III (Checklist 111).	57 FR 38558	8/25/92
Recycled Used Oil Management Standards (Checklist 112)	57 FR 41566: Amendments to 40 CFR Parts 260, 261, and 266.	9/10/92
Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendment IV (Checklist 114).	57 FR 44999	9/30/92
Corrective Action Management Units and Temporary Units (Checklist 121)	58 FR 8658	2/16/93
Recycled Used Oil Management Standards; Technical Amendments and Corrections I (Checklist 122).	58 FR 26420: Amendments to 40 CFR Parts 261, 264, and 265.	5/3/93

(5) Memorandum of Agreement. The Memorandum of Agreement between EPA Region IV and the Florida Department of Environmental Protection, signed by the EPA Regional Administrator on October 23, 1993, as amended on November 28, 1994, and on December 9, 1994, is referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) Statement of Legal Authority. "Attorney General's Statement for Final Authorization" certifications signed by the General Counsel of Florida on June 21, 1984; March 12, 1987; June 16, 1988; February 21, 1989; May 30, 1989; June 13, 1990; May 28, 1991; October 9, 1991; July 14, 1992; September 24, 1993; December 20, 1993; February 27, 1994; January 25, 1996; and May 20, 1996, is referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921.

(7) Program Description. The Program Description and any other materials submitted as part of the original application, or as supplements thereto, are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to Part 272 is amended by adding in alphabetical order, "Florida" and its listing to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

Florida

The statutory provisions include:

Florida Statutes, 1991, Chapter 1: 1.01 (1) and (2).

Florida Statutes, 1993, Chapter 403: 403.031 introductory paragraph; 403.031 (2)–(7); 403.087(1) first sentence, and (6); 403.201(4) (except the phrase "may require by rule a processing fee for and"); 403.703 introductory paragraph; 403.703 (2)–(6), (8)–(28), (30)–(34), (36), and (40), (42)–(44); 403.7045(1) introductory paragraph, (1) (a), (b) and (d); 403.7045(2) introductory paragraph; 403.7045(2) (a)–(c); 403.7045(3) introductory paragraph; 403.7045(3) (a)–(c); 403.72(2); 403.721(1); 403.722 (1)–(6); 403.7221; 403.724(1) (except the phrase "or corrective action"); 403.724(2); 403.728; 403.74 (1), (3)–(5); 403.751(1) (except (d) & (e); and (2).

Florida Statutes, 1994 Supplement to 1993, Chapter 403: 403.031(1); 403.703(1); 403.7222 (1) and (2); 403.74(2).

Florida Statutes, 1993, Chapter 404: 404.031(13).

Copies of the Florida Statutes that are incorporated by reference are available from the Florida Department of State, Division of Elections, Bureau of Administrative Code, Weekly and Laws, The Elliot Building, 401 South Monroe Street, Tallahassee, Florida 32399–0250.

The regulatory provisions include:

The Florida Administrative Code, Chapter 62–4, effective July 4, 1995: 62–4.070(2); 62–4.080; and 62–4.100.

The Florida Administrative Code, Chapter 62–730, effective September 7, 1995: 62–730.001; 62–730.020 (1), (3), and (4); 62–730.021; 62–730.030; 62–730.140; 62–730.150; 62–730.160; 62–730.161; 62–730.170(1); 62–730.171;

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62–730.180 (1)–(5), (7), and (8); 62–730.181; 62–730.183; 62–730.185; 62–730.200 (except (3)); 62–730.210; 62–730.220 (1), (2), (3), (5)–(8), (10), and (11); 62–730.231 (except (10)); 62–730.240 (1) and (2); 62–730.250; 62–730.260; 62–730.270(1) (except (1)(b)(4) and (1)(c)(3)), (2), and (3); 62–730.280; 62–730.290 (except the phrase "and submittal of the appropriate permit modification fee" at subparagraph (3)); 62–730.300; 62–730.320; 62–730.330; and 62–730.900.

Copies of the Florida Administrative Code are available from the Florida Department of State, Division of Elections, Bureau of Administrative Code, Weekly and Laws, The Elliot Building, 401 South Monroe Street, Tallahassee, Florida 32399–0250.

* * * * *

[FR Doc. 98–1250 Filed 1–16–98; 8:45 am]
BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 63, No. 12
Tuesday, January 20, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3 and 292

[EOIR No. 112P; A.G. ORDER No. 2138–98]

RIN 1125–AA13

Executive Office for Immigration Review; Professional Conduct for Practitioners—Rules and Procedures

AGENCY: Immigration and Naturalization Service and the Executive Office for Immigration Review, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to change the rules and procedures concerning professional conduct for practitioners, which includes attorneys and representatives, who practice before the Executive Office for Immigration Review (EOIR), which includes the Board of Immigration Appeals (the Board) and the Immigration Courts, as well as the rules and procedures concerning professional conduct for practitioners who practice before the Immigration and Naturalization Service (the Service). This rule also includes a provision pursuant to section 545 of the Immigration Act of 1990, concerning sanctions against attorneys or representatives who engage in frivolous behavior in immigration proceedings. This rule outlines the authority EOIR has to investigate and impose disciplinary sanctions against practitioners who practice before its tribunals, and clarifies the authority of the Service to investigate complaints regarding practitioners who practice before the Service. The procedures by which disciplinary proceedings may be initiated before EOIR against practitioners who appear before the Service are also outlined. This proposed rule will allow EOIR and the Service to investigate, present, and complete disciplinary proceedings more effectively and efficiently while ensuring the due process rights of the practitioner. This proposed rule will allow frivolous claims to be resolved and meritorious cases to be completed quickly and without unnecessary delay, since the need for expeditious resolution of these cases is critical to and in the best interests of all parties involved.

DATES: Written comments must be received on or before March 23, 1998.

ADDRESSES: Please submit written comments to both Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia, 22041 and Janice B. Podolny, Associate General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Room 6100, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041, telephone (703) 305–0470, or Janice B. Podolny, Associate General Counsel, Immigration and Naturalization Service, 425 I Street, NW, Room 6100, Washington, DC 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION: This rule proposes to amend 8 CFR parts 3 and 292 by changing the present rules and procedures concerning professional conduct for practitioners, which includes attorneys and representatives, who practice before the Executive Office for Immigration Review (EOIR), which includes the Board of Immigration Appeals (the Board) and the Immigration Courts. Currently, the regulations at 8 CFR 292.3 require the Immigration and Naturalization Service (the Service) to investigate complaints filed regarding the conduct of attorneys and representatives practicing before both the Service and EOIR. If the investigation establishes, to the satisfaction of the Service, that disciplinary proceedings should be instituted, the General Counsel of the Service serves a copy of the written charges upon the attorney or representative and upon the Office of the Chief Immigration Judge. The present procedure provides for the government to be represented by a Service attorney in disciplinary proceedings before an Immigration Judge. The decision of the Immigration Judge may be appealed to the Board by either party.

This proposed rule includes several major changes to the current regulation. First, it separates and distinguishes the investigation of complaints and the disciplinary proceedings involving attorneys and representatives practicing before EOIR from the investigation of complaints and the disciplinary proceedings involving attorneys and representatives practicing before the Service. Under the proposed rule, the Office of the General Counsel of EOIR will accept complaints made against attorneys or representatives (referred to as "practitioners") who appear before the Board, the Immigration Courts, or both. The Office of the General Counsel of the Service will accept complaints made against practitioners who appear before the Service. The Office of the General Counsel that receives the complaint will conduct a preliminary inquiry. If the Office of the General Counsel of EOIR or the Service determines that a complaint is without merit, no further action will be taken. If the Office of the General Counsel of EOIR or the Service determines, by a preponderance of the evidence, that a practitioner has engaged in professional misconduct as set forth in the rule, it will issue a Notice of Intent to Discipline to the practitioner named in the complaint. When making a decision as to whether a Notice of Intent to Discipline should be issued, the Office of the General Counsel of EOIR or the Service will consider the contents of the complaint (including the nature and recency of the conduct or behavior of the practitioner and the harm or damages sustained by the complainant), the results of the preliminary inquiry, and other relevant information. The practitioner will have an opportunity to file an answer and request a hearing.

Second, the proposed rule establishes a new disciplinary process for the adjudication of all complaints. Upon the filing of an answer by the practitioner, the Director of EOIR will appoint an adjudicating official and, if a hearing is requested, will designate the time and place of the hearing. Failure to file an answer in a timely manner will be deemed an admission to the factual allegations set forth in the Notice of Intent to Discipline. The recommended disciplinary sanctions in the Notice of Intent to Discipline then will become final, unless a motion to set aside the final order is granted. The Office of the

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General Counsel of EOIR will represent the government in the hearing, unless the proceeding is initiated by the Service, in which case the Office of the General Counsel of the Service will represent the government. The practitioner may be represented by counsel of his or her own choice at no expense to the government. The adjudicating official will hold a hearing, take testimony, examine witnesses, and will report his or her findings and recommendations to the Disciplinary Committee. The Disciplinary Committee will be a three-member panel appointed by the Deputy Attorney General, with at least one Committee member from EOIR. The Deputy Attorney General will designate one Committee member to serve as Chairperson. The Disciplinary Committee may adopt, modify, or otherwise amend the recommended disciplinary sanctions and issue a final order which may apply to practice before the Board and the Immigration Courts or the Service, or before all three authorities. There is no administrative appeal from the order of the Disciplinary Committee. A practitioner who wishes to obtain a judicial review of a decision of the Disciplinary Committee can do so in federal district court pursuant to 28 U.S.C. 1331.

Third, the proposed rule includes a reinstatement procedure, which will permit a practitioner to petition for his or her reinstatement if he or she has been expelled or, in the case of a suspension, if the period of suspension has not yet expired.

Fourth, the proposed rule revises and restates the grounds for disciplinary sanctions, which will be reduced from fifteen to twelve by combining several previous grounds, eliminating several others, and adding two new grounds. Ten of the grounds for disciplinary sanctions will apply to all practitioners appearing before the Board, the Immigration Courts, and the Service, while the two additional grounds will only apply to practitioners appearing before the Board and the Immigration Courts. Wherever possible, the grounds have been revised to include language that is similar, if not identical, to language found in the American Bar Association Model Rules of Professional Conduct (1995). EOIR has made these revisions in order to provide practitioners with a set of disciplinary standards that are widely known and accepted within the legal profession.

For example, one of the grounds for disciplinary sanctions prohibits the charging of grossly excessive fees. This ground has been expanded in the proposed rule to include a number of factors to be considered in determining whether a fee is grossly excessive, such as the time and labor required, the fee customarily charged in the locality for similar legal services, and the experience and ability of the attorney. The disciplinary ground banning the solicitation of professional employment has been revised to permit a practitioner to solicit professional employment from a prospective client known to be in need of legal services in a particular matter with certain restrictions. If the practitioner has no family or prior professional relationship with the prospective client, the practitioner must include the words "Advertising Material" on the outside of the envelope of any written communication and at the beginning and ending of any recorded communication. This change is made in light of the United States Supreme Court decision in *Shapero* v. *Kentucky*, 486 U.S. 466 (1988), in which the Court held that legal advertising, in the form of targeted, direct-mail solicitation, is a form of commercial speech protected by the First Amendment but subject to regulation, such as the requirement that a solicitation letter bear a label identifying it as an advertisement. *Shapero*, 486 U.S. at 477. The disciplinary ground regarding false or misleading communications about a practitioner's qualifications now includes a prohibition against a practitioner's use of the term "certified specialist" in immigration and/or nationality law, unless the practitioner has been granted such certification by the appropriate state regulatory authority or by an organization that has been approved by the appropriate state regulatory authority to grant such certifications. This amendment is included in order to ensure the public that a practitioner who holds himself or herself out as a certified specialist does so only after demonstrating proficiency in immigration and/or nationality law, and to prevent false, deceptive, or misleading advertising.

One of the two new grounds for disciplinary sanctions concerns conduct by a practitioner that constitutes ineffective assistance of counsel as previously determined in a finding by the Board or an Immigration Judge in an immigration proceeding. A practitioner who is the subject of an ineffective assistance of counsel claim heretofore has been able to plead *mea culpa* when an alien raises the issue on a motion to reopen with the Board or an Immigration Judge without any disciplinary consequences from his or her admissions. In addition, a practitioner who is consistently accused of providing ineffective assistance of counsel has not experienced any ramifications from such repeated claims before the Board or an Immigration Judge. By adding this ground to the disciplinary standard, practitioners now may face the consequences of claims of ineffective assistance of counsel from former clients.

A factual finding of ineffective assistance of counsel in an immigration proceeding will be necessary in order to support the issuance of a Notice of Intent to Discipline for this ground. A mere grant of a motion to reopen based on a claim of ineffective assistance of counsel, absent a specific factual finding of ineffective assistance of counsel, will not support the issuance of a Notice of Intent to Discipline.

Federal caselaw has repeatedly addressed the standards to be used in determining whether an alien has been the victim of ineffective assistance of counsel. Thus, in order for an alien to prevail on a claim of ineffective assistance of counsel, he or she must show that his or her counsel's performance was so ineffective as to have impinged upon the fundamental fairness of the hearing in violation of the fifth amendment due process clause. *Rabiu* v. *INS*, 41 F.3d 879, 882 (2d Cir. 1994). *See also Lopez* v. *INS*, 775 F.2d 1015, 1017 (9th Cir. 1985) (ineffective assistance of counsel is denial of due process only if proceeding was so fundamentally unfair that alien was prevented from reasonably presenting his case); *Paul* v. *INS*, 521 F.2d 194, 199 (5th Cir. 1975) (alien must present sufficient facts to allow court to infer that competent counsel would have acted otherwise).

Situations may arise where the Board or the Immigration Judge makes a factual finding of ineffective assistance of counsel in an immigration proceeding but the adjudicating official in the disciplinary proceeding recommends that no disciplinary action be imposed upon the practitioner. Since the practitioner in question is not a party to an alien's motion to reopen on the basis of ineffective assistance of counsel and may not have presented any evidence in his or her defense with regard to this issue, the adjudicating official in the disciplinary proceeding, upon further development of the facts, may determine, notwithstanding the finding of the Immigration Judge or the Board, that the attorney's conduct does not rise to a level for which disciplinary sanctions should be imposed. Such a ruling is subject to review by the Disciplinary Committee, which will then issue a final decision in the matter.

Fifth, the proposed rule contains a provision that allows for the immediate suspension of any practitioner who has been convicted of a serious crime, or any practitioner who has been disbarred or is currently under suspension or resignation with an admission of misconduct by the bar of any state, possession, territory, commonwealth, or the District of Columbus, or by any Federal court. Such immediate suspension may be imposed upon the practitioner while any appeal from the underlying conviction or discipline is pending and will continue until such time as a final administrative decision is made by the Disciplinary Committee. If a final administrative decision includes the imposition of a period of suspension, any time spent by the practitioner under immediate suspension will be credited toward the period suspension imposed by the final administrative decision. This provision will enable EOIR and the Service to take immediate action against such practitioners and will provide a certain degree of protection to those individuals most likely to be affected by the practitioner's misconduct.

For those practitioners who are immediately suspended, the proposed rule allows for the initiation of a summary disciplinary proceeding. Such a proceeding will be conducted in a manner similar to the standard disciplinary proceeding set forth in this rule, except that a certified copy of a judgment of conviction or judgment or order of discipline shall serve as a rebuttable presumption of the commission of the crime or the professional misconduct, and the burden of proof shall be upon the practitioner to show cause why the proposed disciplinary sanctions should not be imposed. This summary proceeding will enable EOIR and the Service to expeditiously bring disciplinary proceedings against practitioners who have engaged in criminal or unethical conduct while providing an opportunity for the practitioner to challenge the disciplinary charges and proposed sanctions.

Finally, the proposed rule contains a provision that addresses the issue of confidentiality with regard to complaints, preliminary inquiries, settlement agreements, and disciplinary proceedings. The provision provides that information concerning complaints or preliminary inquiries will be confidential unless a waiver is made, but in certain circumstances a waiver is not required before information can be disclosed. Resolutions, such as warning letters, admonitions, and agreements in lieu of discipline reached prior to the issuance of a Notice of Intent to Discipline will remain confidential. Notices of Intent to Discipline and action taken subsequent thereto, including settlement agreements, may be disclosed to the public. Disciplinary hearings will also be open to the public. This provision will adequately protect practitioners who may be the subject of a complaint or preliminary inquiry and also will maintain the integrity and credibility of the disciplinary process by keeping the sytem open to the public.

This proposed rule will allow EOIR and the Service to investigate, present, and complete disciplinary proceedings more effectively and efficiently while ensuring the due process rights of the practitioner. This proposed rule will allow frivolous claims to be resolved and meritorious cases to be completed quickly and without unnecessary delay because the need for expeditious resolution of these cases is critical to and in the best interests of all parties involved. EOIR and the Service recognize that the primary purposes of disciplinary proceedings, and any sanctions that are imposed as a result of such proceedings, include the protection of the public, the preservation of the integrity of the immigration courts and the legal profession, and the maintenance of high professional standards by practitioners.

The proposed rule regarding the authority of EOIR to investigate complaints and to conduct disciplinary proceedings has been placed in 8 CFR part 3 for several reasons: (1) To highlight the independence of EOIR from the Service; (2) to provide EOIR with the ability to police its own tribunals and the persons who come before them; and (3) to provide a more efficient and effective disciplinary system. The proposed rule and the amendments to 8 CFR part 292 clarify the authority of the Service to investigate complaints regarding attorneys and representatives who practice before the Service and outline the procedures by which disciplinary proceedings may be initiated before EOIR against practitioners who appear before the Service. Once the Service decides to issue a Notice of Intent to Discipline, the complaint will be heard and decided under the same procedures used for disciplinary actions initiated by the Office of the General Counsel of EOIR. Moreover, the rule also provides for notice of the initiation of disciplinary actions and coordination of disciplinary sanctions regarding the Service as well as the Board and the Immigration Courts.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule affects only those practitioners who practice immigration law before EOIR and the Service. Approximately 5000 immigration attorneys and 400 accredited representatives will be subject to this rule. This rule will not have a significant adverse economic impact on a substantial number of small entities because the rule is similar in substance to the existing regulatory process and will only affect those practitioners who have committed serious crimes or who have lost their license to practice law or otherwise engaged in professional misconduct. Therefore, this rule does not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United states-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Attorney General has determined that this rule is not a significant regulatory action under Executive Order No. 12866, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

This rule has no federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order No. 12612.

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Executive Order 12988

The rule meets the applicable standards provided in sections 3 (a) and 3 (b) (2) of Executive Order No. 12988.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration, Legal services, Organizations and functions (Government agencies), Reporting and recordkeeping requirements.

8 CFR Part 292

Administrative practice and procedure, Immigration, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103; 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002.

2–3. Section 3.1 is amended by revising the reference to "§ 292.3(a)(15) of this chapter" in the first sentence of paragraph (d)(1–a)(ii) to read "§ 3.52(j)", and by revising paragraph (d)(3) to read as follows:

§ 3.1 General authorities.

* * * * *

(d) * * *

(3) *Rules of practice.* The board shall have authority, with the approval of the Director, EOIR, to prescribe rules governing proceedings before it. It shall also determine whether any organization desiring representation is of a kind described in § 1.1(j) of this chapter.

* * * * *

4. Section 3.12 is amended by revising the reference to "§ 292.3 of this chapter" in the second sentence to read "part 3 of this chapter".

5. Subpart D is added to part 3 after Subpart C, to read as follows:

Subpart D—Professional Conduct for Practitioners—Rules and Procedures

Sec.

3.51 General provisions.
3.52 Grounds.
3.53 Filing of an preliminary inquiry into complaints; resolutions; referral of complaints.
3.54 Notice of Intent to Discipline.
3.55 Hearing and disposition.
3.56 Reinstatement after expulsion or suspension.
3.57 Confidentiality.
3.58 Discipline of government attorneys.

Subpart D—Professional Conduct for Practitioners—Rules and Procedures

Authority: 8 U.S.C. 1103, 1252b, 1362.

§ 3.51 General provisions.

(a) *Disciplinary Committee.* The Disciplinary Committee is a three-member panel appointed by the Deputy Attorney General, with at least one Committee member from the Executive Office for Immigration Review. The Deputy Attorney General will designate one Committee member to serve as Chairperson. A designee appointed by the Deputy Attorney General may serve as an alternate Disciplinary Committee member when, in the absence or unavailability of a Disciplinary Committee member or for other good cause, his or her participation is deemed necessary. Once designated, his or her participation in a case shall continue to its normal conclusion.

(b) *Authority to sanction.* The Disciplinary Committee may impose disciplinary sanctions against any practitioner if it finds it to be in the public interest to do so. It will be in the public interest to impose disciplinary sanctions against a practitioner who is authorized to practice before the Board of Immigration Appeals (the Board) and the Immigration Courts when such person has engaged in criminal, unethical, or unprofessional conduct, or in frivolous behavior, as set forth in § 3.52. In accordance with the disciplinary proceedings set forth in this subpart and outlined below, the Disciplinary Committee may impose any of the following disciplinary sanctions:

(1) Expulsion, which is permanent, from practice before the Board and the Immigration Courts or the Immigration and Naturalization Service (the Service), or before all three authorities;

(2) Suspension, including immediate suspension, from practice before the Board and the Immigration Courts or the Immigration and Naturalization Service (the Service), or before all three authorities;

(3) Public or private censure; or

(4) Such other disciplinary sanctions as the Disciplinary Committee deems appropriate.

(c) *Persons subject to sanctions.* Persons subject to sanctions include any practitioner. A practitioner is any attorney as defined in § 1.1(f) of this chapter who does not represent the federal government, or any representative as defined in § 1.1(j) of this chapter. Attorneys employed by the Department of Justice shall be subject to discipline pursuant to § 3.58.

(d) *Immediate suspension and summary disciplinary proceedings*—(1) *Immediate suspension.* The Office of the General Counsel of EOIR may ask the Disciplinary Committee to immediately suspend from practice before the Board and the Immigration Courts any practitioner who has been convicted of a serious crime, as defined in § 3.52(h), or who has been disbarred or is currently under suspension or resignation with an admission of misconduct by the bar of any state, possession, territory, commonwealth, or the District of Columbia, or by any Federal court. Such immediate suspension may be imposed upon the practitioner while any appeal from the underlying conviction or discipline is pending and shall continue until such time as a final administrative decision is made by the Disciplinary committee. If a final administrative decision includes the imposition of a period of suspension, any time spent by the practitioner under immediate suspension pursuant to this paragraph will be credited toward the period of suspension imposed by the final administrative decision.

(2) *Summary disciplinary proceedings.* The Office of the General Counsel of EOIR may initiate summary disciplinary proceedings against any practitioner described in paragraph (d)(1) of this section. Summary proceedings may be initiated by the issuance of a Notice of Intent to Discipline if accompanied by a certified copy of a judgment of conviction or a judgment or order of discipline. Summary proceedings shall be conducted in accordance with the provisions set forth in §§ 3.54 and 3.55, except that a certified copy of a judgment of conviction or judgment or order of discipline shall serve as a rebuttable presumption of the commission of the crime or the professional misconduct. The imposition of disciplinary sanctions shall follow, unless the practitioner can rebut the presumption by demonstrating that:

(i) The underlying criminal or disciplinary proceeding was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(ii) There was such an infirmity of proof establishing the practitioner's guilt or professional misconduct as to give rise to the clear conviction that the adjudicating official could not, consistent with his or her duty, accept as final the conclusion on that subject; or

(iii) The imposition of discipline by the adjudicating official would result in grave injustice.

(3) *Ineligibility to rebut the presumption of professional misconduct.* An attorney shall not be eligible to rebut the presumption of the commission of professional misconduct unless he or she is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia.

(e) *Duty of practitioner to notify EOIR of conviction or discipline.* Any practitioner who has been convicted of a serious crime, as defined in § 3.52(h), or who has been disciplined for professional misconduct by the bar of any state, possession, territory, commonwealth, or the District of Columbia, or by a Federal court must notify the Office of the General Counsel or EOIR of any such conviction or disciplinary action within 30 days of the issuance of the initial order, even if an appeal of the conviction or discipline is pending. Failure to do so may result in immediate suspension as set forth in paragraph (d)(1) of this section. This duty to notify applies only to convictions for serious crimes or rulings of professional misconduct entered after the effective date of this regulation.

§ 3.52 Grounds.

It is deemed to be in the public interest for the Disciplinary Committee to impose disciplinary sanctions against any practitioner who falls within one or more of the categories enumerated in this section, but these categories do not constitute the exclusive grounds for which disciplinary sanctions may be imposed in the public interest. A practitioner who falls within one of the following categories may be subject to disciplinary sanctions in the public interest if he or she:

(a) Charges or receives, either directly or indirectly:

(1) In the case of an attorney, any fee or compensation for specific services rendered for any person that shall be deemed to be grossly excessive. The factors to be considered in determining whether a fee or compensation is grossly excessive include the following: the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the attorney; the fee customarily charged in the locality for similar legal services; the amount involved and the results obtained; the time limitations imposed by the client or by the circumstances; the nature and length of the professional relationship with the client; and the experience, reputation, and ability of the attorney or attorneys performing the services,

(2) In the case of an accredited representative as defined in § 292.1(a)(4) of this chapter, any fee or compensation for specific services rendered for any person, except that an accredited representative may be regularly compensated by the organization of which he or she is an accredited representative, or

(3) In the case of a law student or law graduate as defined in § 292.1(a)(2) of this chapter, any fee or compensation for specific services rendered for any person, except that a law student or law graduate may be regularly compensated by the organization or firm with which he or she is associated as long as he or she is appearing without direct or indirect remuneration from the client he or she represents;

(b) Bribes, attempts to bribe, coerces, or attempts to coerce, by any means whatsoever, any person (including a party to a case or an officer or employee of the Department of Justice) to commit any act or to refrain from performing any act in connection with any case;

(c) Knowingly makes a false statement of material fact or law to, or willfully misleads, misinforms, threatens, or deceives any person (including a party to a case or an officer or employee of the Department of Justice) concerning any material and relevant matter relating to a case, including knowingly offering evidence that the practitioner knows to be false. If a practitioner has offered material evidence and comes to know of its falsity, the practitioner shall take appropriate remedial measures;

(d) Solicits professional employment, through in-person or live telephone contact or through the use of runners, from a prospective client with whom the practitioner has no family or prior professional relationship when a significant motive for the practitioner's doing so is the practitioner's pecuniary gain. If the practitioner has no family or prior professional relationship with the prospective client known to be in need of legal services in a particular matter, the practitioner must include the words "Advertising Material" on the outside of the envelope of any written communication and at the beginning and ending of any recorded communication. Such advertising material or similar solicitation documents may not be distributed by any person in or around the premises of any building in which an Immigration Court is located;

(e) Is currently subject to a final order of disbarment, suspension, or resignation with an admission of misconduct

(1) In the jurisdiction of any state, possession, territory, commonwealth, or the District of Columbia, or in any Federal court in which the practitioner is admitted to practice, or

(2) Before any executive department, board, commission, or other governmental unit;

(f) Makes a false or misleading communication about his or her qualifications or services. A communication is false or misleading if it:

(1) Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading, or,

(2) Contains an assertion about the practitioner or his or her qualifications or services that cannot be substantiated. A practitioner shall not state or imply that he or she has been recognized or certified as a specialist in immigration and/or nationality law unless such certification is granted by the appropriate state regulatory authority or by an organization that has been approved by the appropriate state regulatory authority to grant such certification;

(g) Engages in contumelious or otherwise obnoxious conduct with regard to a case in which he or she acts in a representative capacity, which, in the opinion of the Disciplinary Committee, would constitute cause for suspension or disbarment if the case were pending before a court, or which, in such a judicial proceeding, would constitute a contempt of court;

(h) Has been convicted in any court of the United States, or of any state, possession, territory, commonwealth, or the District of Columbia, of a serious crime. A serious crime includes any felony and also includes any lesser crime, a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involved interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, dishonesty, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a serious crime. A plea or verdict of guilty or a conviction after a plea of nolo contender is deemed to be a conviction within the meaning of this section;

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(i) Falsely certifies a copy of a document as being a true and complete copy of an original;

(j) Engages in frivolous behavior in a proceeding before the Immigration Court, the Board, or any other administrative appellate body under title II of the Immigration and Nationality Act.

(1) A practioner engages in frivolous behavior when he or she knows or reasonably should have known that his or her actions lack an arguable basis in law or in fact, or are taken for an improper purpose, such as to harass or to cause unnecessary delay. Actions that, if taken improperly, may be subject to disciplinary sanctions include, but are not limited to, the making of an argument on any factual or legal question, the submission of an application for discretionary relief, the filing of a motion, or the filing of an appeal. The signature of a practioner on any filing, application, motion, appeal, brief, or other document constitutes certification by the signer that the signer has read the filing, application, motion, appeal, brief, or other document and that, to the best of the signer's knowledge, information, and belief, formed after inquiry reasonable under the circumstances, the document is well-grounded in fact and is warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, and is not interposed for any improper purpose.

(2) The imposition of disciplinary sanctions for frivolous behavior under this section in no way limits the authority of the Board to dismiss an appeal summarily pursuant to § 3.1(d)(1–a);

(k) Engages in conduct that constitutes ineffective assistance of counsel, as previously determined in a finding by the Board or the Immigration Court in an immigration proceeding, within five years preceding the filing of the complaint; or

(l) Repeatedly fails to appear for scheduled hearings in a timely manner.

§ 3.53 Filing of and preliminary inquiry into complaints; resolutions; referral of complaints.

(a) *Filing of complaints*—(1) *Practitioners authorized to practice before the Board and the Immigration Courts.* Complaints of criminal, unethical, or unprofessional conduct, or frivolous behavior by a practioner who is authorized to practice before the Board and the Immigration Courts shall be filed with the Office of the General Counsel of EOIR. Complaints must be submitted in writing and must state in detail the information that supports the basis for the complaint, including, but not limited to, the names and addresses of the complainant and the practitioner, the date(s) of the conduct or behavior, the nature of the conduct or behavior, the individuals involved, the harm or damages sustained by the complainant, and any other relevant information. Any individual may file a complaint with the Office of the General Counsel of EOIR. The Office of the General Counsel of EOIR shall notify the Office of the General Counsel of the Service of any complaint filed that pertains, in whole or in part, to a matter involving the Service.

(2) *Practitioners authorized to practice before the Service.* Complaints of criminal, unethical, or unprofessional conduct, or of frivolous behavior by a practitioner who is authorized to practice before the Service shall be filed with the Office of the General Counsel of the Service pursuant to the procedures set forth in § 292.3(c) of this chapter.

(b) *Preliminary inquiry.* Upon receipt of a complaint or on its own initiative, the Office of the General Counsel of EOIR will initiate a preliminary inquiry. If a complaint concerning a practitioner is filed by a client or former client, the complainant thereby waives the attorney-client privilege and any other applicable privilege, as between the complainant and the practitioner, to the extent necessary for the preliminary inquiry and any subsequent prosecution of the allegations. If the Office of the General Counsel of EOIR determines that a complaint is without merit, no further action will be taken. The Office of the General Counsel of EOIR may, in its discretion, close a preliminary inquiry if the complainant fails to comply with its reasonable requests for assistance, information, or documentation. The complainant and the practitioner shall be notified of such determinations in writing.

(c) *Resolutions reached prior to the issuance of a Notice of Intent to Discipline.* The Office of the General Counsel of EOIR, in its discretion, may issue warning letters and admonitions, and may enter into agreements in lieu of discipline, prior to the issuance of a Notice of Intent to Discipline.

(d) *Referral of complaints of criminal conduct.* If the Office of the General Counsel of EOIR receives credible information or allegations that a practitioner has engaged in criminal conduct in connection with an immigration matter, the Office of the General Counsel of EOIR shall refer the matter to the Inspector General and, if appropriate, to the Federal Bureau of Investigation. In such cases, in making the decision to pursue disciplinary sanctions, the Office of the General Counsel of EOIR shall coordinate in advance with the appropriate investigative and prosecutive authorities of the Department to ensure that neither the disciplinary process nor criminal prosecutions are jeopardized.

§ 3.54 Notice of Intent to Discipline.

(a) *Issuance of Notice to practitioner.* If, upon completion of the preliminary inquiry, the Office of the General Counsel of EOIR determines, by a preponderance of the evidence, that a practitioner has engaged in professional misconduct as set forth in § 3.52, it will issue a Notice of Intent to Discipline to the practitioner named in the complaint. This notice will be served upon the practitioner by personal service as defined in § 103.5a of this chapter. Such notice shall contain a statement of the charge(s), a copy of the preliminary inquiry report, the proposed disciplinary sanctions to be imposed, the procedure for filing an answer or requesting a hearing, and the mailing address and telephone number for the Disciplinary Committee.

(b) *Copy of Notice to the Service; reciprocity of disciplinary sanctions.* A copy of the Notice of Intent to Discipline shall be forwarded to the Office of the General Counsel of the Service. The Office of the General Counsel of the Service may submit a written request to the adjudicating official asking that he or she recommend that any discipline imposed against a practitioner's right to practice before the Board or the Immigration Courts also apply to the practitioner's right to practice before the Service. Proof of service on the practitioner of any request to broaden the scope of the proposed discipline must be filed with the adjudicating official.

(c) *Answer.* The practitioner shall file an answer to the Notice of Intent to Discipline with the Office of the General Counsel of EOIR within 30 days of the date of service of the Notice of Intent to Discipline, unless an extension of time is granted for good cause by the Disciplinary Committee. A request for an extension of time to answer must be received by the Disciplinary Committee at least three (3) working days before the time to answer has expired. A copy of such request shall be served on the Office of the General Counsel of EOIR. The answer shall be in writing, must respond to each charge in a substantive and detailed manner, and may include any supporting documents, including affidavits or statements. The answer shall state whether the practitioner requests a hearing on the matter.

(d) *Failure to file an answer.* Failure to file an answer in a timely manner shall be deemed an admission to the factual allegations set forth in the Notice of Intent to Discipline and no further proof shall be required to establish the truth of such facts. The Office of the General Counsel of EOIR shall submit proof of personal service of the Notice of Intent to Discipline. The practitioner shall be precluded thereafter from requesting a hearing on the matter. The recommended disciplinary sanctions in the Notice of Intent to Discipline shall then become final and the Disciplinary Committee shall issue a final order adopting the recommended disciplinary sanctions against the practitioner. A practitioner may file a motion to set aside a final order of disciplinary sanctions, issued pursuant to this paragraph, with the Disciplinary Committee if:

(1) Such a motion is filed within 15 days of service of the final order; and

(2) His or her failure to file an answer was due to exceptional circumstances (such as serious illness of the practitioner or death of an immediate relative of the practitioner, but not including less compelling circumstances) beyond the control of the practitioner.

§ 3.55 Hearing and disposition.

(a) *Hearing*—(1) *Procedure.* (i) The Director of EOIR shall, upon the filing of an answer, appoint an adjudicating official. An adjudicating official may be an Immigration Judge, an Assistant Chief Immigration Judge, a Board Member, or an Administrative Law Judge. Upon the practitioner's request for a hearing, the Director of EOIR shall designate the time and place of the initial hearing. Pre-hearing conferences may be scheduled at the discretion of the adjudicating official in order to narrow issues, to obtain stipulations between the parties, to exchange information voluntarily, and otherwise to simplify and organize the proceeding. Settlement agreements reached after the issuance of a Notice of Intent to Discipline are subject to final approval by the adjudicating official and the Disciplinary Committee.

(ii) The practitioner may be represented at the hearing by counsel at no expense to the government. At the hearing, the practitioner shall have a reasonable opportunity to examine and object to evidence presented by the government, to present evidence on his or her own behalf, and to cross-examine witnesses presented by the government. The adjudicating official shall consider: the complaint, the preliminary inquiry report, the Notice of Intent to Discipline, the answer and any supporting documents; and any other evidence presented at the hearing (or, if the practitioner files an answer but does not request a hearing, any pleading, brief, or other materials submitted by counsel for the government). Counsel for the government shall bear the burden of proving the grounds for disciplinary sanctions enumerated in the Notice of Intent to Discipline by clear, unequivocal, and convincing evidence.

(iii) The record of the hearing, regardless of whether the hearing is held before an Immigration Judge, an Assistant Chief Immigration Judge, a Board Member, or an Administrative Law Judge, shall conform to the requirements of 8 CFR 240.9. Disciplinary hearings shall be conducted in the same manner as immigration court proceedings as is appropriate, and shall be open to the public, except that:

(A) Depending upon physical facilities, the adjudicating official may place reasonable limitations upon the number in attendance at any one time,

(B) For the purposes of protecting witnesses, parties, or the public interest, the adjudicating official may limit attendance or hold a closed hearing.

(2) *Fairlure to appear at hearing.* Failure to appear at the hearing shall be deemed an admission to the factual allegations set forth in the Notice of Intent to Discipline, even when the practitioner filed an answer, and no further proof shall be required to establish the truth of such facts. The Office of the General Counsel of EOIR or the Office of the General Counsel of the Service shall submit proof of personal service of the Notice of Intent to Discipline. The practitioner shall be precluded thereafter from participating further in the proceedings. The recommended disciplinary sanctions in the Notice of Intent to Discipline shall then become final and the Disciplinary Committee shall issue a final order adopting the recommended disciplinary sanctions against the practitioner. A practitioner may file a motion to set aside a final order of disciplinary sanctions issued pursuant to this paragraph if:

(i) Such a motion is filed within 15 days of service of the final order; and

(ii) His or her failure to appear at the hearing was due to exceptional circumstances (such as serious illness of the practitioner or death of an immediate relative of the practitioner, but not including less compelling circumstances) beyond the control of the practitioner.

(b) *Recommendation.* The adjudicating official shall consider the entire record, including any testimony and evidence presented at the hearing, and shall report his or her findings and recommendations to the Disciplinary Committee. If the adjudicating official finds that the grounds for disciplinary sanctions enumerated in the Notice of Intent to Discipline have been established by clear, unequivocal, and convincing evidence, he or she shall recommend that the disciplinary sanctions set forth in the Notice of Intent to Discipline be adopted, modified, or otherwise amended. If the adjudicating official recommends that the practitioner be suspended, the time period for such suspension shall be specified. Court costs also may be assessed against the practitioner, including the costs of a transcript, an interpreter, or any other costs necessary to conduct the hearing. If the adjudicating official finds that the grounds for disciplinary sanctions enumerated in the Notice of Intent to Discipline have not been established by clear, unequivocal, and convincing evidence, he or she shall recommend to the Disciplinary Committee that the case be dismissed.

(c) *Decision.* Upon a de novo review of the findings and recommendations of the adjudicating official, the Disciplinary Committee may adopt, modify, or otherwise amend the recommended disciplinary sanctions. The decision of the Disciplinary Committee is a final administrative order and shall be served upon the practitioner by personal service as defined in § 103.5a of this chapter. A copy of the final administrative decision of the Disciplinary Committee shall be served upon the Office of the General Counsel of EOIR and the Office of the General Counsel of the Service. If disciplinary sanctions are imposed against a practitioner (other than a private censure), the Disciplinary Committee may require that a notice of such sanctions be posted at the Immigration Courts, the Board, or the Service for the period of time during which the sanctions are in effect, or for any other period of time as determined by the Disciplinary Committee.

(d) *Referral.* In addition to or in lieu of initiating disciplinary proceedings against a practitioner, the Office of the General Counsel of EOIR may notify the appropriate state and/or local professional licensing or regulatory authority of a complaint filed against a practitioner. Any final administrative decision imposing sanctions against a practitioner (other than a private censure) shall be reported to the

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appropriate state and/or local professional licensing or regulatory authority.

§ 3.56 Reinstatement after expulsion or suspension.

(a) *Expiration of suspension.* A practitioner who has been suspended will be reinstated automatically to practice before the Board and the Immigration Courts or the Service, or before all three authorities, once the period of suspension has expired, provided that he or she meets the definition of attorney or representative as set forth in § 1.1 (f) and (j), respectively, of this chapter. If a practitioner cannot meet the definition of attorney or representative, the Disciplinary Committee will decline to reinstate the practitioner.

(b) *Petition for reinstatement* A practitioner who has been expelled or who has been suspended for one year or more may file a petition for reinstatement directly with the Disciplinary Committee after one-half of the suspension period has expired or one year has passed, whichever is greater, provided that he or she meets the definition of attorney or representative as set forth in § 1.1 (f) and (j), respectively, of the chapter. A copy of such petition shall be served on the Office of the General Counsel of EOIR. In matters in which the practitioner was also ordered expelled or suspended from practice before the Service, a copy of such petition shall be served on the Office of the General Counsel of the Service. The practitioner shall have the burden of demonstrating by clear, unequivocal, and convincing evidence that he or she possesses the moral and professional qualifications required to appear before the Board and the Immigration Courts or the Service, or before all three authorities, and that his or her reinstatement will not be detrimental to the administration of justice. The Office of the General Counsel of EOIR, and in matters in which the practitioner was ordered expelled or suspended from practice before the Service, the Office of the General Counsel of the Service, may respond to the petition in the form of a written response, which may include documentation of any complaints filed against the expelled or suspended practitioner subsequent to his or her expulsion or suspension. If a practitioner cannot meet the definition of attorney or representative as set forth in § 1.1 (f) and (j), respectively, of this chapter, the Disciplinary Committee will deny the petition for reinstatement. If reinstatement is found to be inappropriate or unwarranted, the petition shall be denied and any subsequent petitions for reinstatement may not be filed before the end of one year from the date of the previous denial. If reinstatement is found to be appropriate and the practitioner is found to be qualified to practice before the Board and the Immigration Courts or the Service, or before all three authorities, the practitioner will be reinstated.

§ 3.57 Confidentiality.

(a) *Complaints and preliminary inquiries.* Except as otherwise provided by law or regulation, information concerning complaints or preliminary inquiries is confidential. A practitioner whose conduct is the subject of a complaint or preliminary inquiry, however, may waive confidentiality, except that the Office of the General Counsel of EOIR may decline to permit a waiver of confidentiality if it is determined that an ongoing preliminary inquiry may be substantially, prejudiced by a public disclosure before the filing of a Notice of Intent to Discipline.

(1) *Disclosure of information for the purpose of protecting the public.* The Office of the General Counsel of EOIR, after private notice to the practitioner, may disclose information concerning a complaint or preliminary inquiry for the protection of the public when the necessity for disclosing information outweighs the necessity for preserving confidentiality in circumstances including, but not limited to, the following:

(i) A practitioner has caused, or is likely to cause, harm to client(s), the public, or the administration of justice, such that the public or specific individuals should be advised of the nature of the allegations. If disclosure of information is made pursuant to this paragraph, the Office of the General Counsel of EOIR may define the scope of information disseminated and may limit the disclosure of information to specified individuals or entities;

(ii) A practitioner has committed criminal acts or is under investigation by law enforcement authorities;

(iii) A practitioner is under investigation by a regulatory or licensing agency, or has committed acts or made omissions that may reasonably result in investigation by a regulatory or licensing agency;

(iv) A practitioner is the subject of multiple complaints and the Office of the General Counsel of EOIR has determined not to pursue all of the complaints. The Office of the General Counsel of EOIR may inform complainants whose allegations have not been pursued of the status of the other preliminary inquiries or the manner is which the other complaint(s) against the practitioner have been resolved.

(2) *Disclosure of information for the purpose of conducting a preliminary inquiry.* The Office of the General Counsel of EOIR, in the exercise of discretion, may disclose documents and information concerning complaints and preliminary inquiries to the following individuals or entities:

(i) To witnesses or potential witnesses in conjunction with a complaint or preliminary inquiry;

(ii) To other governmental agencies responsible for the enforcement of civil or criminal laws;

(iii) To agencies and other jurisdictions responsible for professional licensing;

(iv) To the complainant or a lawful designee;

(v) To the practitioner who is the subject of the complaint or preliminary inquiry or the practitioner's counsel of record.

(b) *Resolutions reached prior to the issuance of a Notice of Intent to Discipline.* Resolutions, such as warning letters, admonitions, and agreements in lieu of discipline, reached prior to the issuance of a Notice of Intent to Discipline will remain confidential. However, such resolutions may become part of the public record if the practitioner becomes the subject of a subsequent Notice of Intent to Discipline.

(c) *Notices of Intent to Discipline and action subsequent thereto.* Notices of Intent to Discipline and any action that takes place subsequent to their issuance, except for the imposition of private censures, may be disclosed to the public, except that private censures may become part of the public record if introduced as evidence of a prior record of discipline in any subsequent proceeding. Settlement agreements reached after the issuance of a Notice of Intent to Discipline may be disclosed to the public upon final approval by the adjudicating official and the Disciplinary Committee. Disciplinary hearings are open to the public, except as noted in § 3.55.

§ 3.58 Discipline of government attorneys.

Complaints regarding the conduct and behavior of government attorneys shall be directed to the Office of Professional Responsibility of the Department of Justice.

PART 292—REPRESENTATION AND APPEARANCES

6. The authority citation for part 292 continues to read as follows:

Authority: 8 U.S.C. 1103, 1252b, 1362.

7. Section 292.3 is revised to read as follows:

§ 292.3 Professional Conduct for Practitioners—Rules and Procedures.

(a) *General provisions*—(1) *Disciplinary Committee. The Disciplinary Committee established under § 3.51 of this chapter may impose disciplinary sanctions against any practitioner if it finds it to be in the public interest to do so.*

(2) *Authority to sanction.* It will be in the public interest to impose disciplinary sanctions against a practitioner who is authorized to practice before the Service when such person has engaged in criminal, unethical, or unprofessional conduct, or in frivolous behavior, as set forth in § 3.52 of this chapter. In accordance with the disciplinary proceedings set forth in part 3 of this chapter, the Disciplinary Committee may impose any of the following disciplinary sanctions:

(i) Expulsion, which is permanent, from practice before the Board of Immigration Appeals and the Immigration Courts or the Service, or before all three authorities;

(ii) Suspension, including immediate suspension, from practice before the Board and the Immigration Courts or the Service, or before all three authorities;

(iii) Public or private censure; or

(iv) Such other disciplinary sanction as the Disciplinary Committee deems appropriate.

(3) *Persons subject to sanctions.* Persons subject to sanctions include any practitioner. A practitioner is any attorney as defined in § 1.1(f) of this chapter who does not represent the federal government, or any representative as defined in § 1.1(j) of this chapter. Attorneys employed by the Department of Justice shall be subject to discipline pursuant to paragraph (h) of this section.

(4) *Immediate suspension and summary disciplinary proceedings*—(i)*Immediate suspension.* The Office of the General Counsel of the Service may ask the Disciplinary Committee to immediately suspend from practice before the Service any practitioner who has been convicted of a serious crime, as defined in § 3.52(h) of this chapter, or who has been disbarred or is currently under suspension or resignation with an admission of misconduct by the bar of any state, possession, territory, commonwealth, or the District of Columbia, or by any Federal Court. Such immediate suspension may be imposed upon the practitioner while any appeal from the underlying conviction or discipline is pending and shall continue until such time as a final administrative decision is made by the Disciplinary Committee. If a final administrative decision includes the imposition of a period of suspension, any time spent by the practitioner under immediate suspension pursuant to this paragraph will be credited toward the period of suspension imposed by the final administrative decision.

(ii) *Summary disciplinary proceedings.* The Office of the General Counsel of the Service may initiate summary disciplinary proceedings against any practitioner described in paragraph (a)(4)(i) of this section. Summary proceedings may be initiated by the issuance of a Notice of Intent to Discipline if accompanied by a certified copy of a judgment of conviction or a judgment or order of discipline. Summary proceedings shall be conducted in accordance with the provisions set forth in §§ 3.54 and 3.55 of this chapter, except that a certified copy of a judgment of conviction or judgment or order of discipline shall serve as a rebuttable presumption of the commission of the crime or the professional misconduct. The imposition of disciplinary sanction shall follow, unless the practitioner can rebut the presumption by demonstrating that:

(A) The underlying criminal or disciplinary proceeding was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(B) There was such an infirmity of proof establishing the practitioner's guilt or professional misconduct as to give rise to the clear conviction that the adjudicating official could not, consistent with his or her duty, accept as final the conclusion on that subject; or

(C) The imposition of discipline by the adjudicating official would result in grave injustice.

(iii) *Ineligibility to rebut the presumption of professional misconduct.* An attorney shall not be eligible to rebut the presumption of the commission of professional misconduct unless he or she is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia.

(5) *Duty of practitioner to notify the Service of conviction or discipline.* Any practitioner who has been convicted of a serious crime, as defined in § 3.52(h) of this chapter, or who has been disciplined for professional misconduct by the bar of any state, possession, territory, commonwealth, or the District of Columbia, or by a Federal court must notify the Office of the General Counsel of the Service of any such conviction or disciplinary action within 30 days of the issuance of the initial order, even if an appeal of the conviction or discipline is pending. Failure to do so may result in immediate suspension as set forth in paragraph (a)(3)(i) of this section. This duty to notify applies only to convictions for serious crimes or rulings of professional misconduct entered after the effective date of this regulation.

(b) *Grounds of discipline as set forth in § 3.52 of this chapter.* It is deemed to be in the public interest for the Disciplinary Committee to impose disciplinary sanctions as described in paragraph (a) of this section against any practitioner who falls within one or more of the categories enumerated in § 3.52 of this chapter, with the exception of paragraphs (k) and (l) of that section, but these categories do not constitute the exclusive grounds for which disciplinary sanctions may be imposed in the public interest.

(c) *Filing of and preliminary inquiry into complaints, resolutions; referral of complaints—(1) Practitioners authorized to practice before Service.* Complaints of criminal, unethical, or unprofessional conduct, or of frivolous behavior by a practitioner who is authorized to practice before the Service shall be filed with the Office of the General Counsel of the Service. Complaints must be submitted in writing and must state in detail the information that supports the basis for the complaint, including, but not limited to, the names and addresses of the complainant and the practitioner, the date(s) of the conduct or behavior, the nature of the conduct or behavior, the individual involved, the harm or damages sustained by the complainant, and any other relevant information. Any individual may file a complaint with the Office of the General Counsel of the Service. The Office of the General Counsel of the Service shall notify the Office of the General Counsel of the Executive Office for Immigration Review (EOIR) of any complaint filed that pertains, in whole or in part, to a matter before the Board or the Immigration Courts.

(2) *Practitioners authorized to practice before the Board and the Immigration Courts.* Complaints of criminal, unethical, or unprofessional conduct, or of frivolous behavior by a practitioner who is authorized to practice before the Board and the Immigration Courts shall be filed with the Office of the General Counsel of EOIR pursuant to the procedures set forth in § 3.53(a) of this chapter.

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(3) *Preliminary inquiry.* Upon receipt of a complaint or on its own initiative, the Office of the General Counsel of the Service will initiate a preliminary inquiry. If a complaint concerning a practitioner is filed by a client or former client, the complainant thereby waives the attorney-client privilege and any other applicable privilege, as between the complainant and the practitioner, to the extent necessary for the preliminary inquiry and any subsequent prosecution of the allegations. If the Office of the General Counsel of the Service determines that a complaint is without merit, no further action will be taken. The Office of the General Counsel of the Service may, in its discretion, close a preliminary inquiry if the complainant fails to comply with its reasonable requests for assistance, information, or documentation. The complainant shall be notified of such determinations in writing.

(4) *Resolutions reached prior to the issuance of a Notice of Intent to Discipline.* The Office of the General Counsel of the Service, in its discretion, may issue warning letters and admonitions, and may enter into agreements in lieu of discipline, prior to the issuance of a Notice of Intent to Discipline.

(5) *Referral of complaints of criminal conduct.* If the Office of the General Counsel of the Service receives credible information or allegations that a practitioner has engaged in criminal conduct in connection with an immigration matter, the Office of the General Counsel of the Service shall refer the matter to the Inspector General and, if appropriate, to the Federal Bureau of Investigation. In such cases, in making the decision to pursue disciplinary sanctions, the Office of the General Counsel of the Service shall coordinate in advance with the appropriate investigative and prosecutive authorities of the Department to ensure that neither the disciplinary process nor criminal prosecutions are jeopardized.

(d) *Notice of Intent to Discipline*—(1) *Issuance of Notice to practitioner.* If, upon completion of the preliminary inquiry, the Office of the General Counsel of the Service determines, by a preponderance of the evidence, that a practitioner has engaged in professional misconduct as set forth in § 3.52 of this chapter, it will issue a Notice of Intent to Discipline to the practitioner named in the complaint. This notice will be served upon the practitioner by personal service as defined in § 103.5a of this chapter. Such notice shall contain a statement of the charge(s), a copy of the preliminary inquiry report, the proposed disciplinary sanctions to be imposed, the procedure for filing an answer or requesting a hearing, and the mailing address and telephone number for the Disciplinary Committee. The Office of the General Counsel of the Service shall forward a copy of the Notice of Intent to Discipline to the Disciplinary Committee.

(2) *Copy of Notice to EOIR; reciprocity of disciplinary sanctions.* A copy of the Notice of Intent to Discipline shall be forwarded to the Office of the General Counsel of EOIR. The Office of the General Counsel of EOIR may submit a written request to the adjudicating official asking that he or she recommend that any discipline imposed against a practitioner's right to practice before the Service also apply to the practitioner's right to practice before the Board and the Immigration Courts. Proof of service on the practitioner of any request to broaden the scope of the proposed discipline must be filed with the adjudicating official.

(3) *Answer.* The practitioner shall file an answer to the Notice of Intent to Discipline with the Office of the General Counsel of the Service within 30 days of the date of service, unless an extension of time is granted for good cause by the Disciplinary Committee. A request for an extension of time to answer must be received by the Disciplinary Committee at EOIR Headquarters at least three (3) working days before the time to answer has expired. A copy of such request shall be served on the Office of the General Counsel of the Service. The answer shall be in writing, must respond to each charge in a substantive and detailed manner, and may include any supporting documents, including affidavits or statements. The answer shall state whether the practitioner requests a hearing on the matter. The Office of the General Counsel of the Service shall forward a copy of the practitioner's answer to the Disciplinary Committee or, if no answer was filed, notification of such shall be filed with the Disciplinary Committee.

(4) *Failure to file an answer.* Failure to file an answer in a timely manner shall be deemed an admission to the factual allegations set forth in the Notice of Intent to Discipline and no further proof shall be required to establish the truth of such facts. The Office of the General Counsel of the Service shall submit proof of personal service of the Notice of Intent to Discipline. The practitioner shall be precluded thereafter from requesting a hearing on the matter. The recommended disciplinary sanctions in the Notice of Intent to Discipline shall then become final and the Disciplinary Committee shall issue a final order adopting the recommended disciplinary sanctions against the practitioner. A practitioner may file a motion to set aside a final order of disciplinary sanctions, issued pursuant to this paragraph, with the Disciplinary Committee if:

(i) Such a motion is filed within 15 days of service of the final order, and

(ii) His or her failure to file an answer was due to exceptional circumstances (such as serious illness of the practitioner or death of an immediate relative of the practitioner, but not including less compelling circumstances) beyond the control of the practitioner.

(e) *Hearing and disposition.* Upon the filing of an answer, the matter shall be heard and decided according to the procedures set forth in §§ 3.55 and 3.56 of this chapter. The Office of the General Counsel of the Service shall represent the government.

(f) *Referral.* In addition to or in lieu of initiating disciplinary proceedings against a practitioner, the Office of the General Counsel of the Service may notify the appropriate state and/or local professional licensing or regulatory authority of a complaint filed against a practitioner. Any final administrative decision imposing sanctions against a practitioner (other than a private censure) shall be reported to the appropriate state and/or local professional licensing or regulatory authority.

(g) *Confidentiality*—(1) *Complaints and preliminary inquiries.* Except as otherwise provided by law or regulation, information concerning complaints or preliminary inquiries is confidential. A practitioner whose conduct is the subject of a complaint or preliminary inquiry, however, may waive confidentiality, except that the Office of the General Counsel of the Service may decline to permit a waiver of confidentiality if it is determined that an ongoing preliminary inquiry may be substantially prejudiced by a public disclosure before the filing of a Notice of Intent to Discipline.

(i) *Disclosure of information for the purpose of protecting the public.* The Office of the General Counsel of the Service, after private notice to the practitioner, may disclose information concerning a complaint or preliminary inquiry for the protection of the public when the necessity for disclosing information outweighs the necessity for preserving confidentiality in circumstances including, but not limited to, the following:

(A) A practitioner has caused, or is likely to cause, harm to client(s), the public, or the administration of justice, such that the public or specific individuals should be advised of the nature of the allegations. If disclosure of information is made pursuant to this paragraph, the Office of the General Counsel of the Service may define the scope of information disseminated and may limit the disclosure of information to specified individuals or entities;

(B) A practitioner has committed criminal acts or is under investigation by law enforcement authorities;

(C) A practitioner is under investigation by a regulatory or licensing agency, or has committed acts or made omissions that may reasonably result in investigation by a regulatory or licensing agency;

(D) A practitioner is the subject of multiple complaints and the Office of the General Counsel of the Service has determined not to pursue all of the complaints. The Office of the General Counsel of the Service may inform complainants whose allegations have not been pursued of the status of the other preliminary inquiries or the manner in which the other complaint(s) against the practitioner have been resolved.

(ii) *Disclosure of information for the purpose of conducting a preliminary inquiry.* The Office of the General Counsel of the Service, in the exercise of discretion, may disclose documents and information concerning complaints and preliminary inquiries to the following individuals or entities:

(A) To witnesses or potential witnesses in conjunction with a complaint or preliminary inquiry;

(B) To other governmental agencies responsible for the enforcement of civil or criminal laws;

(C) To agencies and other jurisdictions responsible for professional licensing;

(D) To the complainant or a lawful designee; and

(E) To the practitioner who is the subject of the complaint or preliminary inquiry or the practitioner's counsel of record.

(2) *Resolutions reached prior to the issuance of a Notice of Intent to Discipline.* Resolutions, such as warning letters, admonitions, and agreements in lieu of discipline, reached prior to the issuance of a Notice of Intent to Discipline will remain confidential.

(3) *Notices of Intent to Discipline and action subsequent thereto.* Notices of Intent to Discipline and any action that takes place subsequent to their issuance, except for the imposition of private censures, may be disclosed to the public, except that private censures may become part of the public record if introduced as evidence or a prior record of discipline in any subsequent proceeding. Settlement agreements reached after the issuance of a Notice of Intent to Discipline may be disclosed to the public upon final approval by the adjudicating official and the Disciplinary Committee. Disciplinary hearings are open to the public, except as noted in § 3.55(a)(iii) of this chapter.

(h) *Discipline of government attorneys.* Complaints regarding the conduct and behavior of government attorneys shall be directed to the Office of Professional Responsibility of the Department of Justice.

Dated: January 12, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–1192 Filed 1–16–98; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–130–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Model PC–7 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Pilatus Aircraft Ltd. Model PC–7 airplanes. The proposed AD would require inspecting the elevator and rudder attachment brackets for cracks and/or corrosion, and repairing or replacing any cracked or corrosion-damaged parts, as applicable. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by the proposed AD are intended to prevent failure of the elevator and rudder attachment brackets because of cracks or corrosion damage, which could result in the elevator and/or rudder separating from the airplane with consequent loss of airplane control.

DATES: Comments must be received on or before February 23, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–130–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 6509; facsimile: +41 41 610 3351. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Roman T. Gabrys, Aerospace Engineer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–130–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–130–AD, Room 1558,

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601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified the FAA that an unsafe condition may exist on certain Pilatus Model PC–7 airplanes. The FOCA of Switzerland reports instances of corrosion and cracking in the elevator and rudder attachment brackets on the above-referenced airplanes that have been operated in areas of high humidity or salt content.

This condition, if not detected and corrected in a timely manner, could result in the elevator and/or rudder separating from the airplane with consequent loss of airplane control.

Relevant Service Information

Pilatus has issued Service Bulletin No. 55–002, dated November 7, 1997, which specifies procedures for inspecting the elevator and rudder attachment brackets for cracks and/or corrosion, and repairing or replacing any cracked or corrosion-damaged parts, as applicable.

The FOCA of Switzerland classified this service bulletin as mandatory and issued Swiss AD HB 97–440, dated November 20, 1997, in order to assure the continued airworthiness of these airplanes in Switzerland.

The FAA's Determination

This airplane model is manufactured in Switzerland and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the FOCA of Switzerland has kept the FAA informed of the situation described above.

The FAA has examined the findings of the FOCA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus PC–7 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require inspecting the elevator and rudder attachment brackets for cracks and/or corrosion, and repairing or replacing any cracked or corrosion-damaged parts, as applicable. Accomplishment of the proposed installation would be in accordance with the previously referenced service bulletin.

Cost Impact

The FAA estimates that 8 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 7 workhours per airplane to accomplish the proposed inspection, and that the average labor rate is approximately $60 an hour. Inspection kits cost approximately $106 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,208, or $526 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Pilatus Aircraft LTD.: Docket No. 97–CE–130–AD.

Applicability: Model PC–7 airplanes, serial numbers MSN 001 through MSN 612, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of the elevator and rudder attachment brackets because of cracks or corrosion damage, which could result in the elevator and/or rudder separating from the airplane with consequent loss of airplane control, accomplish the following:

(a) Within the next 100 hours time-in-service after the effective date of this AD, inspect the elevator and rudder attachment brackets for cracks and/or corrosion in accordance with Pilatus Service Bulletin No. 55–002, dated November 7, 1997.

(b) If cracked or corrosion-damaged parts are found during the inspection required by paragraph (a) of this AD, prior to further flight, repair or replace any cracked or corrosion-damaged parts, as specified in and in accordance with Pilatus Service Bulletin No. 55–002, dated November 7, 1997.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to Pilatus Service Bulletin No. 55–002, dated November 7, 1997, should be directed to Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 6509; facsimile: +41 41 610 3351. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Swiss AD HB 97–440, dated November 20, 1997.

Issued in Kansas City, Missouri, on January 12, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–1203 Filed 1–16–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–27]

Proposed Revision of Class E Airspace; Alice, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace at Alice, TX. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to runway (RWY) 16 and 34 at Old Hoppe Place Airport, Agua Dulce, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations at Old Hoppe Place Airport, Agua Dulce, TX.

DATES: Comments must be received on or before March 23, 1998.

ADDRESSES: Send comments on the proposal in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 97–ASW–27, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meachum Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meachum Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX, 76193–0520; telephone (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 97–AWS–27." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A repot summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0520. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to revise the Class E airspace at Alice, TX. The development of a GPS SIAP to RWY 16 and 34 at Old Hoppe Place Airport, Agua Dulce, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for IFR operations at Old Hoppe Place Airport, Agua Dulce, TX.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 19, 1997, and effective

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September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Alice, TX (Revised)

Alice International Airport, TX
(Lat. 27°44'27" N., long. 98°01'38" W.)
Orange Grove NALF, TX
(Lat. 27°54'04" N., long. 98°03'06" W.)
Navy Orange Grove TACAN
(Lat. 27°53'43" N., long. 98°02'33" W.)
Kingsville, Kleberg County Airport, TX
(Lat. 27°33'03" N., long. 98°01'51" W.)
Agua Dulce, Old Hoppe Place Airport, TX
(Lat. 27°48'01" N., long. 97°51'04" W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Alice International Airport and within 2 miles each side of the 135° bearing from the airport extending from the 7.5-mile radius to 9.8 miles southeast of the airport and within a 7.2-mile radius of Orange Grove NALF and within 1.6 miles each side of the 129° radial of the Navy Orange Grove TACAN extending from the 7.2-mile radius to 11.7 miles southeast of the airport and within 1.5 miles each side of the 320° radial of the Navy Orange Grove TACAN extending from the 7.2-mile radius to 9.7 miles northwest of the airport and within a 6.5-mile radius of Kleberg County Airport and within a 6.3-mile radius of Old Hoppe Place Airport excluding that airspace within the Corpus Christi, TX, Class E airspace area.

* * * * *

Issued in Fort Worth, TX, on January 7, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–1225 Filed 1–16–98; 8:45 am]

BILLING CODE 4910–13–M

RAILROAD RETIREMENT BOARD

20 CFR Part 209

RIN 3220–AB21

Railroad Employers' Reports and Responsibilities

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board proposes to amend its regulations to expand the methods by which compensation and service reports may be filed with the Board and to require that a social security account number be furnished for each employee for whom creditable railroad service and compensation is reported to the Board.

DATES: Comments must be submitted on or before March 23, 1998.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Senior Attorney, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, (312) 751–4513, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Employer reports are used to establish employee compensation and service records. These reports are based on payroll records. Due to changes in technology, employers now file their reports on magnetic tape and diskettes and transmit their reports by facsimile or computer-to-computer transmission (electronic filing). The punch card referred to in §§ 209.6, 209.7, 209.11, and 209.14 of the Board's regulations is an outdated medium of reporting. The quarterly report required by § 209.8 has been eliminated by the Employer Data Maintenance System. The Board proposes to amend part 209 of its regulations in order to reflect these changes. See proposed § 209.4.

The Board also proposes to amend § 209.2 to add a provision that requires each employer to furnish a social security number (SSN) for each employee for whom creditable railroad service and compensation is reported to the Board. The proposed amendment simply puts into regulation a current reporting requirement. Although not required, employers are encouraged to validate the social security numbers of their employees. In addition, the Board proposes to modify the present § 209.11 to provide that the Board shall mail annual certificates of service and compensation to employees performing service for covered employers. Under present regulation these certificates may be provided through the employer.

Finally, the Board has eliminated references to offices and titles that were eliminated as the result of a recent reorganization.

Proposed § 209.12 contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the RRB has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

Collection of Information

Employee home address report. This proposed rule would require all railroad employers to furnish to the RRB home addresses of their employees, except that after the first year in which they submitted home address information for all their employees, they would be required to submit home address information only for new hires. The purpose of this requirement is to enable the RRB to annually mail to each active railroad employee a statement of service and compensation (Form BA–6). Railroad employers may submit this information either electronically (magnetic tape, tape cartridge, or PC diskette) or on a paper form prescribed by the RRB (Form BA–6a).

The RRB estimates that the average time for each railroad employer to furnish home address information is 15 minutes for electronic submissions and 30 minutes for paper submissions. The annual burden imposed as a result of this proposed rule would be 209 hours (94 responses × ¼ hour per response for electronic responses and 370 responses × ½ hour per response for paper responses.) The burden is based on approximately 15,000 new hires a year, of which approximately 80 percent would be reported electronically by 94 railroad employers and 20 percent would be reported on paper by 370 railroad employers.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to Laura Oliven, the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 226 Jackson Place, NW., Room 10235, Washington, D.C. 20503 and to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092.

The RRB considers comments by the public on this proposed collection of information in——

(a) Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the RRB, including whether the information will have a practical use;

(b) Evaluating the accuracy of the RRB's estimate of the burden on the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhancing the quality, usefulness, and clarity of the information to be collected; and

(d) Minimizing the burden of collection of information on those who are to respond, including the use of appropriate electronic, mechanical, or other automated collection techniques.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 15 days of publication. This does not affect the deadline for the public to comment to the RRB on the proposed regulations.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a major rule under Executive Order 12866; therefore, no regulatory impact analysis is required.

List of Subjects in 20 CFR Part 209

Railroad employees, Railroad retirement, Railroads.

For the reasons set out in the preamble, Title 20, Chapter II, Part 209 of the Code of Federal Regulations is proposed to be amended as follows:

PART 209—RAILROAD EMPLOYERS' REPORTS AND RESPONSIBILITIES

1. The authority citation for Part 209 continues to read as follows:

Authority: 45 U.S.C. 231f.

§§ 209.3 through 209.17 [Redesignated]

2. Sections 209.3 through 209.17 are redesignated as follows:

Old section	New section
209.3	209.5
209.4	209.6
	(1)
209.5	209.7
209.6	209.8
209.7	209.9
209.8	(2)
209.9	209.10
209.10	209.11
209.11	209.12
209.12	209.13
209.13	209.14
209.14	209.15
209.15	209.16
209.16	209.17
209.17	209.18

[1] New 209.4 added.
[2] Removed.

3. A new § 209.3 is proposed to be added as follows:

§ 209.3 Social security number required.

Each employer shall furnish to the Board a social security number for each employee for whom any report is submitted to the Board. Employers are encouraged to validate any social security number provided under this section.

(Approved by the Office of Management and Budget under control number 3220–0008)

4. A new § 209.4 is proposed to be added as follows:

§ 209.4 Method of filing.

Any report or information required to be furnished under this part shall be prepared in accordance with instructions of the Board and shall be filed with the Board electronically, which includes the use of magnetic tape, computer diskette, electronic data interchange, or on such form as prescribed by the Board. If not filed electronically, reports shall be transmitted by facsimile or mailed directly to the Board. Any report which includes, or should include, information for 250 or more employees must be filed electronically, as described in this section.

5. Newly designated § 209.6 is proposed to be revised to read as follows:

§ 209.6 Employers' notice of death of employees.

Each employer shall notify the Board immediately of the death of an employee who, prior to the employee's death, performed compensated service which has not been reported to the Board.

(Approved by the Office of Management and Budget under control number 3220–0005)

6. Newly designated § 209.7 is proposed to be revised to read as follows:

§ 209.7 Employers' supplemental reports of service.

Each employer shall furnish the Board a report of the current year service of each employee who ceases work for the purpose of retiring under the provisions of the Railroad Retirement Act.

(Approved by the Office of Management and Budget under control number 3220–0005)

7. Newly designated § 209.8 is proposed to be revised to read as follows:

§ 209.8 Employers' annual reports of creditable service and compensation.

Each year, on or before the last day of February, each employer is required to make an annual report of the creditable service and compensation (including a report that there is no compensation or service to report) of employees who performed compensated service in the preceding calendar year. The annual report shall include service and compensation previously furnished in supplemental reports and notices of death. The reports must be accompanied by a report specification sheet prescribed by the Board as described in § 200.2 of this chapter.

(Approved by the Office of Management and Budget under control number 3220–0008).

8. Newly designated § 209.9(c) is proposed to be revised to read as follows:

§ 209.9 Employers' adjustment reports.

* * * * *

(c) Employers submitting adjustment reports covering pay for time lost as an employee shall report this compensation as provided for in § 211.3 of this chapter. Adjustment reports may be submitted to the Board each month.

(Approved by the Office of Management and Budget under control number 3220–0008)

9. Section 209.8 is proposed to be removed.

10. Newly designated § 209.10 is amended by removing "Director of Research and Employment Accounts" and adding in its place "Board", and by removing "§ 209.6(a)" and adding in its place "§ 209.8(a)".

11. Newly designated § 209.11 is proposed to be revised to read as follows:

§ 209.11 Employee representatives' reports.

An individual claiming status as an employee representative shall describe his or her duties as an employee representative on the form prescribed by the Board. The Board shall determine whether the individual claiming to be an employee representative meets the requirements for such a status. If the individual is determined to be an employee representative, he or she is required to make an annual report of creditable compensation as provided for in § 209.8 of this part. If an employee representative's status is terminated, the last report of service and compensation shall be marked Final Compensation Report.

(Approved by the Office of Management and Budget under control number 3220–0014)

12. Newly designated § 209.12 is proposed to be revised to read as follows:

§ 209.12 Certificates of service months and compensation.

(a) Each year the Board shall provide each employee who performed compensated service in the preceding calendar year a certificate of service months and compensation. This certificate is the employee's record of the service and compensation credited to his or her account at the Board. An employee who for any reason does not receive a certificate may obtain one from the nearest Board district office or may write the Board for one.

(b) By April 1 of each year each employer shall provide the Board the current address of each employee for whom it had reported compensation. This requirement shall not apply in the case of an employee for whom the employer had previously provided an address.

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13. Newly designated § 209.13(b) is proposed to be revised to read as follows:

§ 209.13 Employers' gross earnings reports.

* * * * *

(b) Employers shall submit reports annually for employees in the gross earnings sample. Such reports shall include the employee's gross annual earnings, both taxable and non-taxable compensation, for the year. Employers with 5,000 or more employees shall provide a monthly or quarterly breakdown of the year's earnings. Employers with fewer than 5,000 employees may submit an annual amount only, although a monthly or quarterly breakdown is preferable. Gross earnings are to be counted for the same time period as used in determining the employer's annual report of creditable compensation. The reports are to be prepared in accordance with prescribed instructions and filed in accordance with § 209.4 of this part.

(Approved by the Office of Management and Budget under control number 3220–0132)

14. Newly designated § 209.14 is proposed to be amended by removing paragraph (a), by removing paragraph designation "(b)" before the second paragraph, and by removing the terms "Director of Research and Employment Accounts" and "Director" wherever those terms appear, and by adding in their place "Board".

15. Newly designated § 209.15 is proposed to be revised to read as follows:

§ 209.15 Report of separation allowances subject to tier II taxation.

For any employee who is paid a separation payment, the employer must file a report of the amount of the payment. This report shall be submitted to the Board on or before the last day of the month following the end of the calendar quarter in which payment is made. The report must be accompanied by a report indication/specification sheet prescribed by the Board as described in § 200.3(a)(2)(ii) of this chapter.

(Approved by the Office of Management and Budget under control number 3220–0173)

16. Newly designated § 209.16 is amended by revising the reference "§ 209.7" to read "209.9"; "209.13" to read "209.14" and "209.14" to read "209.15" wherever they appear; and by removing "Director of Research and Employment Accounts" wherever it appears and adding in its place "Board".

Dated: January 8, 1998.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 98–1245 Filed 1–16–98; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[SPATS No. IL–098–FOR]

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; withdrawal of proposed amendment.

SUMMARY: OSM is announcing the withdrawal of a proposed amendment to the Illinois regulatory program (hereinafter the "Illinois program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment concerned a revision to the Illinois regulations pertaining to administrative review. Illinois is withdrawing the amendment at its own initiative.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office, Telephone: (317) 226–6700.

SUPPLEMENTARY INFORMATION: By letter dated November 3, 1997 (Administrative Record No. IL–5000), Illinois submitted a proposed amendment to its program pursuant to SMCRA. Illinois submitted the proposed amendment at its own initiative. In its submission letter, Illinois stated the amendment was necessitated by a permit review case wherein the hearing officer found that the Department's burden of proof standard was improper. The hearing officer ruled that a preponderance of the evidence standard was the appropriate standard to apply in a permit review proceeding. On a subsequent appeal of the administrative case, the circuit court agreed that the clearly erroneous standard was invalid and that the preponderance of the evidence standard was the correct standard to apply (Citizens Organizing Project v. IDNR, 96–MR–126, Sangamon County Circuit Court). The provision of Title 62, Illinois Administrative Code (IAC) that Illinois proposed to amend is at 62 IAC 1847.3(g), permit hearings. Specifically, Illinois proposed to delete the existing language at 62 IAC 1847.3(g) and replace it with the following language:

The standard of proof in a hearing conducted under this Section shall be the preponderance of the evidence.

OSM announced receipt of the proposed amendment in the November 26, 1997, **Federal Register** (62 FR 63045) and invited public comment on its adequacy. The public comment period ended December 26, 1997.

On December 17, 1997 (Administrative Record No. IL–5005), Illinois requested that the proposed amendment be withdrawn, and stated the proposal is being revised and will be resubmitted when it is finalized. Therefore, the proposed amendment announced in the November 26, 1997, **Federal Register** is withdrawn.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 9, 1998.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 98–1214 Filed 1–16–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

[SPATS No. KS–017–FOR]

Kansas Regulatory Program and Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed Rule; Reopening and Extension of Public Comment Period on Proposed Amendment.

SUMMARY: OSM is announcing receipt of revisions pertaining to a previously proposed amendment to the Kansas regulatory program (hereinafter referred to as the "Kansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions for Kansas's proposed rules pertain to definitions; application for mining permit; civil penalties; permit transfers, assignments, and sales; termination of jurisdiction; exemption for coal and extraction incident to government-financed highway or other construction; exemption for coal extraction incident to the extraction of other minerals; coal exploration; bonding procedures; performance standards; eligible lands and water; liens; contractor responsibility;

exclusion of certain noncoal reclamation sites; and reports. The amendment is intended to revise the Kansas program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., c.s.t. February 4, 1998.

ADDRESSES: Written comments should be mailed or hand delivered to Russell W. Frum, Mid-Continent Regional Coordinating Center at the address listed below.

Copies of the Kansas program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contracting OSM's Mid-Continent Regional Coordinating Center.

Russell W. Frum, Mid-Continent Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, Alton Federal Building, 501 Belle Street, Alton, IL 62002, Telephone: (618) 463–6460.

Kansas Department of Health and Environment, Surface Mining Section, 4033 Parkview Drive, Frontenac, KS 66763, Telephone (316) 231–8540.

FOR FURTHER INFORMATION CONTACT: Russell W. Frum, Mid-Continent Regional Coordinating Center, Telephone: (618) 463–6460.

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Program

The Secretary of the Interior conditionally approved the Kansas regulatory program on January 21, 1981, and the Kansas abandoned mine land reclamation plan on February 1, 1982. General background information on the Kansas regulatory program and the Kansas abandoned mine land reclamation plan, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the January 21, 1981, **Federal Register** (46 FR 5892) and the February 1, 1982, **Federal Register** (47 FR 4513), respectively. Subsequent actions concerning Kansas' program and program amendments can be found at 30 CFR 916.10, 916.12, 916.15, 916.16, 916.20, and 916.25.

II. Discussion of the Proposed Amendment

By letter dated May 7, 1997 (Administrative Record No. KS–615), Kansas submitted a proposed amendment to its program pursuant to SMCRA. Kansas submitted the proposed amendment in response to letters dated May 20, 1996, and January 6, 1997 (Administrative Record Nos. KS–608 and KS–612, respectively) that OSM sent to Kansas in accordance with 30 CFR 732.17(c) and in response to a letter dated September 26, 1994 (Administrative Record No. AML–KS–169), that OSM sent to Kansas in accordance with 30 CFR 884.25(b). Kansas also proposed changes to its regulations at its own initiative. The provisions of the Kansas Administrative Regulations (K.A.R.) that Kansas proposes to amend are: K.A.R. 47–1–1, title of rules; K.A.R. 47–1–3, communication; K.A.R. 47–1–4, sessions; K.A.R. 47–1–8, petitions to initiate rulemaking; K.A.R. 47–1–9, notice of citizen suits; K.A.R. 47–1–10, general notice requirement; K.A.R. 47–1–11, permittee—preparation and submission of reports; K.A.R. 47–2–14, definition of complete and accurate application; K.A.R. 47–2–21, definition of employee; K.A.R. 47–2–53, definition of regulatory authority; K.A.R. 47–2–53a, definition of regulatory program; K.A.R. 47–2–58, definition of significant, imminent, environmental harm to land, air or water resources; K.A.R. 47–2–64, definition of state act; K.A.R. 47–2–67, definition of surety bond; K.A.R. 47–2–74, definition of public road; K.A.R. 47–2–75, definitions—adoption by reference; K.A.R. 47–3–1, application for mining permit; K.A.R. 47–3–3a, permit application—maps; K.A.R. 47–3–42(a), application for mining permit—adoption by reference; K.A.R. 47–4–14, public hearings; K.A.R. 47–4–14a, administrative hearing procedure; K.A.R. 47–4–15, administrative hearings—discovery; K.A.R. 47–4–16, interim orders for temporary relief; K.A.R. 47–4–17, administrative hearings—award of costs and expenses; K.A.R. 47–5–5a, civil penalties; K.A.R. 47–5–16, final assessment and payment of civil penalty; K.A.R. 47–6–1, permit review; K.A.R. 47–6–2, permit revision; K.A.R. 47–6–3, permit renewals; K.A.R. 47–6–4, permit transfers, assignments, and sales; K.A.R. 47–6–6, permit conditions; K.A.R. 47–6–7, permit suspension or revocation; K.A.R. 47–6–8, termination of jurisdiction; K.A.R. 47–6–9, exemption for coal extraction incident to government-financed highway or other construction; K.A.R. 47–6–10, exemption for coal extraction incident to the extraction of other minerals; K.A.R. 47–7–2, coal exploration; K.A.R. 47–8–9, bonding procedures; K.A.R. 47–8–11, use of forfeited bond funds; K.A.R. 47–9–1, performance standards; K.A.R. 47–9–2, revegetation; K.A.R. 47–9–4, interim performance standards K.A.R. 47–10–1, underground mining; K.A.R. 47–11–8, small operator assistance program K.A.R. 47–12–4, lands unsuitable for mining; K.A.R. 47–13–4, training and certification of blasters; K.A.R. 47–13–5, responsibilities of operators and blasters-in-charge; K.A.R. 47–13–6, training; K.A.R. 47–14–7, employee financial interest; K.A.R. 47–15–1a, inspection and enforcement; K.A.R. 47–15–3, lack of information—inability to comply; K.A.R. 47–15–4, injunctive relief K.A.R. 47–15–7, state inspections; K.A.R. 47–15–8, citizen's requests for state inspections; K.A.R. 47–15–15, service of notices of violations and cessation orders; K.A.R. 47–15–17, maintenance of permit areas; K.A.R. 47–16–1, eligible lands and water; K.A.R. 47–16–2, reclamation project evaluation; K.A.R. 47–16–3, consent to entry; K.A.R. 47–16–4, entry for study or exploration; K.A.R. 47–16–5, entry and consent to reclaim; K.A.R. 47–16–6, liens; K.A.R. 47–16–7, appraisals; K.A.R. 47–16–8, satisfaction of liens; K.A.R. 47–16–9, contractor responsibility; K.A.R. 47–16–10, exclusion of certain noncoal reclamation sites; and K.A.R. 47–16–11, reports.

OSM announced receipt of the proposed amendment in the June 4, 1997, **Federal Register** (62 FR 30535) and invited public comment on its adequacy. The public comment period ended July 7, 1997.

During its review of the amendment, OSM identified concerns relating to K.A.R. 47–2–53, definition for regulatory authority; K.A.R. 47–2–75(6)(A), definition for director; K.A.R. 47–3–42 (a)(49)(B) and (a)(49)(E), procedures for challening ownership and control links shown in AVS; K.A.R. 47–3–42 (a)(50)(E), standards for challening ownership and control links and the status of violations; K.A.R. 47–5–5a(c)(4)(D), review of waiver determination; K.A.R. 47–5–5a(c)(6)(C)(i) and (c)(6)(E), summary disposition; K.A.R. 47–6–4(c), permit transfers, assignments and sales; K.A.R. 47–6–8(b), termination of jurisdiction; K.A.R. 47–6–9(b)(3), exemption for coal extraction incident to government-financed highway or other construction; K.A.R. 47–6–10(b)(4), exemption for coal extraction incident to the extraction of other minerals; K.A.R. 47–7–2 (b)(6) and (b)(8), coal exploration; K.A.R. 47–8–9 (a)(1) and (b)(8), bonding procedures; K.A.R. 47–9–1(c), performance standards; K.A.R. 47–9–1 (c)(17) and (e)(17), use of explosives: general requirements; K.A.R. 47–9–1(c)(35), backfilling and grading: time

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and distance requirements; K.A.R. 47–9–1(j)(9), substitution of Kansas terms for Federal terms in 30 CFR Parts 816 and 817; K.A.R. 47–16–1, eligible lands and water; K.A.R. 47–16–6(d), liens; K.A.R. 47–16–9(a), contractor responsibility; K.A.R. 47–16–10(b)(1), exclusion of certain noncoal reclamation sites; and K.A.R. 47–16–11 (a)(2)(A) and (b)(2)(A), reports. OSM notified Kansas of the concerns by letter dated October 8, 1997 (Administrative Record No. KS–615.5). Kansas responded in a letter dated November 14, 1997 (Administrative Record No. KS–615.6), by submitting a revised amendment.

Via the facsimile machine on December 31, 1997 (Administrative Record No. KS–615.7), OSM notified Kansas of additional concerns regarding its November 14, 1997, response. These concerns involved typographical errors at K.A.R. 47–9–1(c)(35)(a), backfilling and grading: time and distance requirements, and K.A.R. 47–16–11(a), reports. Kansas responded to the concerns by correcting the typographical errors in a letter dated on December 31, 1997 (Administrative Record No. KS–615.8). The proposed revisions are discussed below.

A. Kansas Regulatory Program

1. Regulations With Editorial Changes

Kansas proposes minor wording changes, paragraph notation changes, citation corrections, and other editorial changes in the following sections of the K.A.R.: 47–2–53, definition of regulatory authority; 47–2–75(6)(A), definition of director, 47–3–42 (a)(2), violation information; 47–3–42 (a)(49)(B), (a)(49)(E), and (a)(49)(G), procedures for challenging ownership or control links shown in AVS; 47–3–42 (a)(50)(E), standards for challenging ownership or control links and the status of violations; 47–5–5a(c)(4)(D), review of waiver determination; 47–5–5a (c)(6)(C)(i) and (c)(6)(E), summary disposition; 47–6–8(b), termination of jurisdiction; 47–6–9(b)(3), exemption for coal extraction incident to government-financed highway or other construction; 47–6–10(b)(4), exemption for coal extraction incident to the extraction of other minerals; 47–7–2 (b)(6) and (b)(8), coal exploration; 47–8–9(b)(8), bonding procedures; 47–9–1(c), performance standards; 47–9–1 (c)(17) and (e)(17), use of explosives: general requirements; and 47–9–1(j)(9), substitution of Kansas terms for Federal terms in 30 CFR Parts 816 and 817.

2. K.A.R. 47–3–42 (a)(49), Procedures for Challening Ownership or Control Links Shown in AVS

Kansas proposes not to adopt by reference 30 CFR 773.24(a)(1).

3. K.A.R. 47–6–4, Permit Transfers, Assignments, and Sales

Kansas proposes to add paragraph (c)(4) to read as follows:

"Act" shall be replaced by "state act."

4. K.A.R. 47–8–9(a)(1), Regulatory Authority Responsibilities

Kansas proposes to add the phrase, "deleting subsection (d)," at the end of this paragraph because the Kansas program does not have provisions for self-bonding.

5. K.A.R. 47–9–1(c)(35), Backfilling and Grading: Time and Distance Requirements

Kansas proposes to incorporate into its regulations language that is substantively identical to the Federal regulations at 30 CFR 816.101.

B. Kansas Abandoned Mine Land Reclamation Plan

1. Regulations With Editorial Changes

Kansas proposes minor wording changes, paragraph notation changes, citation corrections, and other editorial changes in the following sections of the K.A.R.: 47–16–1, eligible lands and water; 47–16–6(d), liens; 47–16–9(a), contractor responsibility; and 47–16–10(b)(1), exclusion of certain noncoal reclamation sites.

2. K.A.R. 47–16–11, Reports

Kansas proposes to delete sections (a)(1)(A) through (c) and to revise section (a) to read as follows:

(a) For each grant, cooperative agreement or both, the department shall semiannually or annually (whichever the case may be) submit to the office of surface mining reclamation and enforcement any reporting as required by OSM.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Kansas program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kansas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Mid-Continent Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 730.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 9, 1998.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 98–1216 Filed 1–16–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD–033–FOR]

Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: OSM is reopening the public comment period on a proposed amendment to the Maryland permanent regulatory program (hereinafter referred to as the "Maryland program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments consist of revisions to the Maryland regulations pertaining to excess spoil disposal, conditions of surety and collateral bonds, and procedures for release of general bonds. The amendments are intended to revise the Maryland program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., E.S.T., February 4, 1998.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to George Rieger, Field Branch Chief, at the address listed below.

Copies of the Maryland program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Appalachian Regional Coordinating Center.

George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2153

Maryland Bureau of Mines, 160 South Water Street, Frostburg, MD 21532, Telephone: (301) 689–4136

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Telephone: (412) 937–2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 18, 1982, **Federal Register** (47 FR 7214). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 920.15 and 920.16.

II. Description of the Proposed Amendment

Maryland provided an informal amendment to OSM regarding excess spoils on March 11, 1994. OSM completed its reviews of the informal amendment and requested a formal proposal from Maryland in a letter dated August 6, 1996. By letter dated January 7, 1997 (Administrative Record No. MD–576–00), Maryland submitted a proposed amendment to its program pursuant to SMCRA at OSM's request. Additionally, by letter dated January 14, 1997 (Administrative Record No. MD–552–13), Maryland submitted proposed amendments to its program pursuant to SMCRA. These amendments pertain to conditions of surety and collateral bonds, and procedures for release of general bonds and are intended to comply with required program amendments identified in 30 CFR 920.16 (k) and (m). The proposed amendments were announced in the January 30, 1997, **Federal Register** (62 FR 4502). (At the time of announcement, the proposed amendment was identified as [MD–041]. Please note that the amendment is now identified as [MD–033]). However, OSM's review determined that several items contained in the proposed amendments required clarification. As a result, a letter requesting clarification on four items was sent to Maryland dated June 13, 1997 (Administrative Record No. MD–576–05). Maryland responded in its letter dated June 27, 1997 (Administrative Record No. MD–576–06), by requesting a meeting with OSM and stating that additional information would not be available until after that meeting. A meeting was held on August 14, 1997, and a response was received from Maryland in its letter dated December 8, 1997 (Administrative Record No. MD–576–07). Therefore, OSM is reopening the public comment period regarding the following clarifications to Maryland's proposed amendments:

1. COMAR 25.20.26, Excess Spoil Disposal

a. Maryland was asked to clarify how it would fund projects in cases where the operator defaults on the contract or otherwise fails to perform the necessary reclamation. This funding source would be in addition to the "contractor incentive provisions proposed at COMAR 25.20.26.05(D)(2). Maryland responded that the proposed amendment at COMAR 25.20.26.05(A)(1) provides that the abandoned mine land must be eligible for funding under Environment Article, Title 15, Subtitle 11, Annotated Code of Maryland. Any default by the operator on a contract or failure to perform reclamation could be funded by specially ear-marking a portion of Maryland's AML grant funds to complete the reclamation. This would be in addition to the sanctions provided in the proposed amendment.

b. Maryland was asked to clarify which requirements in the approved

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program will apply to the placement of excess spoil on abandoned mine lands as referenced in proposed COMAR 25.20.26.05 (A)(3) and (B)(4). Maryland responded that since existing conditions on abandoned mine lands differ at each site, it would be extremely difficult to clarify exactly which requirements of Maryland's approved program would apply in every case for the placement of excess spoil. A field review during the application review process would verify conditions at the AML site and will determine which requirements are necessary to ensure that the excess spoil is placed in an environmentally sound manner.

c. Maryland was asked to clarify how placement of excess spoil on abandoned mine lands would achieve compliance with its AML program. Maryland responded that it considers the environmental reviews, public notice requirements and inspection requirements of its federally approved regulatory program to be comparable to those required by the AML program. Each abandoned mine lands site proposed for placement of excess spoil will be reviewed in conjunction with the application for a surface mining permit and subjected to the same requirements.

2. COMAR 25.20.14.09, Procedures for Release of Bonds

a. COMAR 25.20.14.09B(2)(e) is further modified by changing the word "approximate" to "appropriate".

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. Specifically, OSM is seeking comments on the clarifications to the State's regulations that were submitted on December 8, 1997 (Administrative Record No. MD–576–07). Comments should address whether the proposed amendment with these clarifications satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate. it will become part of the Maryland program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Appalachian Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 9, 1998.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 98–1215 Filed 1–16–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Chapter IV

[HCFA–1014–NC]

RIN 0938–AI45

Medicare Program: Request for Public Comments on Implementation of the Medicare+Choice Program, and Notice of Timeframes for Submission of Applications for Contracts

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of intent to regulate; solicitation of comments.

SUMMARY: The Balanced Budget Act of 1997 (BBA) establishes a new Medicare+Choice program. Under this program, eligible individuals may elect to receive Medicare benefits through enrollment in one of an array of private health plans that contract with us.

The BBA directs the Secretary to publish by June 1, 1998, regulations establishing standards for the Medicare+Choice program. We have already received comments and inquiries from the public on a number of issues associated with the Medicare+Choice program. This document solicits further public comments on issues related to implementation of the Medicare+Choice program. We intend to consider these comments as we develop an interim final rule to implement the Medicare+Choice program.

This document also includes preliminary information regarding application procedures for organizations that intend to contract with us to participate in the Medicare+Choice program.

This document also informs the public of a meeting to discuss the Medicare+Choice program.

DATES: We request that comments be submitted on or before February 19, 1998.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1014–NC, P.O. Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850

Comments may also be submitted electronically to the following e-mail address: hcfa1014nc.hcfa.gov. E-mail comments must include the full name and address of the sender and must be submitted to the referenced address in order to be considered. All comments must be incorporated in the e-mail message because we may not be able to access attachments. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1014–NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Medicare+Choice Regulation Team, (410) 786–7660.

SUPPLEMENTARY INFORMATION:

I. Background

A. General

Medicare historically has consisted of two primary parts: Hospital insurance, also known as "Part A," and supplementary medical insurance, also known as "Part B." Part A is generally provided automatically to persons age 65 and over who are entitled to social security or railroad retirement board benefits. Similarly, individuals who have received either of these benefits based on their disability, for a period of at least 24 months, are also entitled to Part A benefits. Health care services covered under Part A include: inpatient hospital care, skilled nursing facility care, home health agency care, and hospice care.

Part B benefits are available to almost all resident citizens age 65 and over; certain aliens age 65 or over; and disabled beneficiaries who are entitled to Part A. Part B coverage is optional and requires payment of a monthly premium. Part B covers physician services (in both hospital and nonhospital settings) and services furnished by certain nonphysician practitioners. It also covers certain other services, including: clinical laboratory tests, durable medical equipment, most supplies, diagnostic tests, ambulance services, prescription drugs that cannot be self-administered, certain self-administered anticancer drugs, some other therapy services, certain other health services, and blood not supplied by Part A.

B. The Balanced Budget Act of 1997

Subsequent to its initial enactment in 1965, the Medicare program has been subject to numerous legislative and administrative changes. However, one of the most significant changes results from the August 5, 1997 enactment of the Balanced Budget Act of 1997 (BBA), Public Law 105–33. Section 4001 of the BBA adds a new Part C to the Medicare program, by establishing sections 1851 through 1859 of the Social Security Act. The new Part C is known as "Medicare+Choice." Section 4002 of the BBA establishes transitional rules for the current Medicare health maintenance organization (HMO) program; and section 4006 establishes special rules for Medicare+Choice medical savings accounts. Prior to the BBA, Medicare beneficiaries could choose between receiving their Medicare benefits on a fee-for service basis or enrolling in an HMO with a Medicare contract. In the latter case, the beneficiary selects a specific HMO or competitive medical plan (CMP) within a service area for Medicare-covered health care services. This selected plan coordinates all of the Medicare-covered health care services for the beneficiary and receives a per-person payment from Medicare that is predetermined. Under the new Medicare+Choice program, the beneficiaries' options have been expanded to include provider-sponsored organizations (PSOs), preferred provider organizations (PPOs), private fee-for-service plans, and, for those who qualify, religious fraternal benefit society plans. In addition, up to 390,000 beneficiaries nationwide (and prior to the year 2003) may elect a new Medical Savings Account (MSA) option. A Medicare+Choice MSA is a tax-exempt trust created to pay the qualified medical expenses of the account holder. A beneficiary who elects the MSA option will receive a catastrophic health care policy paid by Medicare. Any difference between the MSA plan insurance premium and the amount that Medicare would have paid if the beneficiary had elected Medicare+Choice coverage under any of the other options will be deposited into the beneficiary's MSA.

Under Medicare+Choice, plans with which we contract must have quality programs that stress outcomes, create utilization protocols, assess consumer satisfaction, and monitor high-risk and high-volume services. In addition, all plans, other than non-network MSAs and certain private fee-for-service plans, must provide for external review. Each Medicare+Choice plan must provide Medicare members all benefits (other than hospice care) that are available under Parts A and B. In the case of an MSA plan, however, these benefits are not provided until after a catastrophic deductible amount has been satisfied.

The law sets forth provisions relating to the following topics:

- Eligibility, election, and enrollment.
- Benefits and beneficiary protections.
- Organizational relationships with participating providers.
- Payments to Medicare+Choice organizations.
- Premiums.
- Organizational and financial requirements for Medicare+Choice organizations.
- Establishment of standards.
- Contract requirements.

Additional information about the Medicare+Choice program is available on our Internet site (http://www.hcfa.gov).

C. Issues and Questions To Be Resolved

As stated earlier, we are required to publish regulations implementing the Medicare+Choice program by June 1, 1998. The statute provides that these regulations may be issued as an interim final rule. We intend to use this mechanism and will formally request comments on our policies at that time.

We have already received comments and inquiries from the public on a number of issues associated with the

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Medicare+Choice program. However, to ensure that we receive the full range of public opinion, we are using this notice as a vehicle to request public suggestions on specific policy issues that are detailed in the following sections. In addition, at this time, we encourage the public to comment on any other relevant Medicare+Choice program policy areas, with the exception of comments on Federal solvency standards for PSOs. (A discussion of PSO solvency standard policy decisions and implementation issues and a request for public comment were contained in a notice published on September 23, 1997 (62 FR 49649).) We will consider public comments that are received timely as we develop the interim final rule, but we will not otherwise issue a separate set of responses to those comments. We request that commenters provide a brief summary of any detailed comments. Also, commenters should, whenever possible, identify the relevant section or subsection of the BBA or of the Social Security Act. Note that in the following sections, citations to the law are to sections of the Social Security Act as established by the BBA.

1. Information for Informed Choice

One of the objectives of the Medicare+Choice program is to expand Medicare beneficiaries' options for health care. In order to ensure that beneficiaries have the appropriate information necessary to choose from the various Medicare+Choice options, section 1851(d) of the Act requires that we collect and disseminate information on the coverage options available. For example, the statute requires that, prior to each open season, we provide a notice to Medicare-eligible individuals that includes a list of the Medicare+Choice plans, a comparison of plan options that includes information on benefits and premiums, a general description of the benefits under the original Medicare fee-for-service program, and other general information. The statute also requires, at 1851(e)(3)(D), that, during November 1998, we provide for an educational and publicity campaign to inform Medicare+Choice eligible individuals about the availability of Medicare+Choice plans and the Medicare fee-for-service option. The statute further requires that we maintain a toll-free number for inquiries regarding Medicare+Choice options and an Internet site providing information on Medicare+Choice options. As we begin the information collection process, and analyze how best to provide information to beneficiaries, we ask that interested parties respond to the following questions:

- What are the most effective ways to communicate Medicare+Choice information to beneficiaries, individuals, advocates, ombudsmen, providers, and other groups that have need of and will use this information?
- How can we reduce confusion for beneficiaries who also receive health care information from other sources, for example, from employers who offer retiree coverage or Federal purchasers such as the Federal Employees Health Benefit Plan, the Department of Defense, and sellers of health care insurance products?
- How can the information programs best recognize the special needs of certain populations, such as beneficiaries with disabilities?

2. Enrollment/Disenrollment Process

Under section 1851(e) of the Act, we are charged with establishing a process, including the format and procedures, through which Medicare+Choice elections are made. According to section 1851(e), a beneficiary's enrollment in a Medicare+Choice option is initially made at the time the individual becomes entitled to Part A and enrolled in Part B. Beneficiaries may change their Medicare+Choice plan election during continuous open enrollment periods through the year 2001. After 2001, beneficiaries are locked in to their Medicare+Choice election for defined time periods, except for special election periods under certain circumstances. The process must permit a beneficiary to make enrollment and disenrollment elections by filing a form with the Medicare+Choice organization. The statute also permits, at section 1851(g), that a Medicare+Choice organization may terminate an individual's election with respect to a Medicare+Choice plan that it offers if (1) required premiums are not paid on a timely basis, (2) the individual has engaged in disruptive behavior, or (3) the plan is terminated with respect to all individuals residing in the area in which the individual resides. We request comments related to the election and enrollment procedures in general, and the Medicare+Choice organization's ability to disenroll a beneficiary. For example—

- Should our standards be specific with regard to each of the factors; for example, timeframes for timely payment of premiums or a definition for "disruptive"? Should we require a mechanism for appealing termination of a beneficiary's enrollment "for cause"?

3. Medicare+Choice Enrollment Demonstrations

Section 4018 of the BBA requires that we conduct a 3-year demonstration project to evaluate the use of a third-party contractor to conduct the Medicare+Choice plan enrollment and disenrollment functions. We are soliciting comments on how this demonstration could be designed. For example—

- What constitutes an enrollment or disenrollment "function"? Is it distributing applications, collecting applications, processing applications, providing benefits counseling, ascertaining reasons for disenrollment, or other activities?
- What functions should the contractor perform?
- What exactly are the tasks involved in enrollment/disenrollment?
- What would be the most desirable/efficacious processes for enrollment/disenrollment from the perspective of the beneficiaries and plans?
- What is a demonstration "area"?
- Should all Medicare+Choice plans in the demonstration area be involved in the demonstration? If not, which ones should be exempt?
- What requirements under Medicare Part C, if any, is the Secretary likely to have to waive in order for the demonstration to work?
- Should a single, standard form be used for enrollment?
- What standards should be used to monitor the performance of the contractor, given that enrollment in Medicare+Choice plans is voluntary and that disenrollment may be due to various causes? Should any of these standards be tied to contractor payment?
- What would constitute "substantial compliance" with the performance standards?
- What criteria should we use to select the third-party contractor?

4. Post-Stabilization Coverage

Section 1852(d)(2) of the Act authorizes us to develop policies to ensure coordination of care and appropriate payment between Medicare+Choice organizations and out-of-plan providers after the beneficiary's medical condition is determined to be stable. We are particularly interested in comments about the following issues:

- Should we specify which provider is responsible for developing a plan of care to appropriately maintain the beneficiary's health, or should this be negotiated between the emergency providers and the plan providers?
- Should we establish a requirement that the Medicare+Choice plan respond to an emergency service provider's request for approval/authorization within a certain period of time? If so, what should that time period be?
- Should we require that Medicare+Choice plans make available a central contact for emergency providers to call for authorization and medical history data?
- Finally, with regard to post-stabilization benefits and coverage, our primary objective is to ensure that Medicare enrollees are held harmless in payment disputes between the Medicare+Choice plans and the non-network service provider. What are the most appropriate standards to accomplish this goal?

5. Grievances, Organization Determinations and Reconsiderations

Appropriate and meaningful appeals and grievance procedures for the resolution of individual enrollee complaints about their health care are among the most important beneficiary protections in the Medicare+Choice program. Section 1852(g) requires that all Medicare+Choice organizations have procedures for making determinations regarding whether an enrollee is entitled to receive specific health services. The organization must provide for reconsideration of adverse coverage determinations at the request of the enrollee within a time period specified by us, but not later than 60 days after the date of the receipt of the request for reconsideration. However, the Medicare+Choice organization must have in place procedures for expedited reconsiderations under certain circumstances.

We are soliciting comments with regard to these protections. For example—

- Should guidelines for a grievance process be established?
- What is an appropriate timeframe for a reconsideration of a nonexpedited determination?
- Should plans be able to subcontract organization determinations and reconsiderations to subcontractors?
- Should Medicare+Choice plans be required to continue coverage during the reconsideration process?
- Should reductions in care be subject to the reconsideration process?

6. Provider Rights in Medicare+Choice Plans

Section 1852(b)(2) provides that a Medicare+Choice organization may not discriminate with respect to participation, reimbursement, or indemnification as to any provider that is acting within the scope of the provider's license or certification under applicable State law, solely on the basis of the license or certification. The statute provides, however, that this prohibition is not to be construed to prohibit a plan from including providers only to the extent necessary to meet the needs of the plan's enrollees or from establishing any measure designed to maintain quality and control costs consistent with the responsibilities of the plan.

In addition, provider rights set forth in section 1852(j) include the right of health care professionals to advise Medicare beneficiaries of possible medical procedures, treatments, or care, regardless of whether benefits for the treatment or care are provided under the plan. Section 1852(j) also establishes certain provider protections, including the physician's right to written notice of a Medicare+Choice plan's decision to exclude him or her from participation in the plan and provides that a process for appealing such a decision be established. We would like to obtain general comments about the scope of the various provider protection requirements. In addition, we would like comments regarding the following:

- What procedures should Medicare+Choice plans be required to put in place to ensure that providers are notified of adverse participation decisions?
- In a case where multiple types of providers or practitioners can provide a specific service, how should we interpret the anti-discrimination provision at section 1852(b)?

7. Encounter Data Collection

The payment standards and methodology contained in the new Part C anticipate an eventual transition from a payment based on Medicare fee-for-service utilization and cost, to a payment adjusted for the individual medical conditions of the enrolled population—a process known as risk adjustment. In response to the requirement that inpatient hospital encounter data be collected from health plans for services on or after July 1, 1997, we have developed instructions concerning collection of inpatient hospital encounter data for hospitals, plans, and contractors. Many questions, however, remain about non-inpatient encounter data. For example—

- What information systems issues do organizations face when asked to submit non-inpatient hospital encounter data?
- What are appropriate transmission mechanisms for collection of non-inpatient hospital encounter data? Should they vary by type of plan, by size of plan, or by type of data collected?
- What issues do organizations face relating to the transmission of non-inpatient hospital encounter data, especially regarding the frequency and the methodology of transmission? Under what circumstances and for what purposes are such data currently being generated? How could we coordinate our data collection efforts with ongoing activities?

In addition to a January 28, 1998 general meeting (discussed in section II. of this notice), we are considering holding a public meeting specifically regarding the collection of hospital encounter data that will be used for the implementation of risk adjustment for payment of health plans. Individuals and organizations interested in attending such a meeting should write to Cynthia Tudor, HCFA Center for Health Plans and Providers, Room C3–15–06, 7500 Security Blvd., Baltimore, MD 21244, or by Internet at "Ctudor@hcfa.gov" (please specify "Encounter Data Meeting" in the Subject line).

8. Private Fee-for-Service Plans

One of the new Medicare+Choice health care options for beneficiaries is the "private fee-for-service (PFFS)" plan. These plans are defined at 1859(b)(2). Private fee-for-service plans must meet most of the same requirements as other Medicare+Choice plans and will be capitated on a full risk basis in exchange for providing enrollees with the full package of Medicare benefits. Unlike coordinated care Medicare+Choice plan options however, PFFS plans are expressly prohibited from placing the provider at financial risk or from varying payment based on utilization experience. PFFS plans must pay all service providers (regardless of contracting status) on a fee-for-service basis. We request public comments expressing opinions on the most effective implementation of the unique PFFS plan program requirements, including, but not limited to the following topics:

Section 1852(j) states that a provider furnishing covered services to PFFS plan enrollees must be treated as if the provider had a direct contract with the PFFS if, before furnishing the services, the provider is informed of or given a reasonable opportunity to obtain information about the terms and conditions of payment for these services. We are soliciting comments on appropriate standards to determine when a provider has an implied contract under section 1852(j). For example—

- What notification requirements, if any, must be met by the PFFS plan or

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the provider in order to establish a de facto contracting arrangement?

With regard to "fee-for-service payment" as specified in the statute—

• Could the definition of these payments include bundled provider fees, or global fees?

• What should be the enrollee's responsibility for payment of claims?

• As with other Medicare+Choice options, should providers in PFFS plans be *prohibited* from billing beneficiaries in most cases?

PFFS plans must meet substantially different requirements than other Medicare+Choice plans with regard to utilization review requirements and enrollee premiums. We are interested in the public's perception of the most effective ways to implement statutory requirements that apply certain utilization review standards to these entities. For example—

• How should utilization protocols based on standards of medical practice be defined?

• Should PFFS plans that use utilization review to determine medical necessity be required to include limitation on liability as a mechanism to protect PFFS plan enrollees against liability for full payment when they did not know or have reason to know that the PFFS would deny the services as being not medically necessary?

• How can these entities be able to comply with the access standards in section 1852? That is, to what extent are Medicare+Choice program access requirements met by establishment of a health service delivery network?

9. Medical Savings Accounts

As part of the Medicare+Choice program implementation, we are establishing procedures for a maximum of 390,000 beneficiaries to enroll under an MSA option in accordance with section 1851. Under the MSA option, a beneficiary's Medicare capitated payment rate will be used to purchase a MSA high deductible health insurance plan meeting certain standards. An MSA plan must pay for at least all Medicare-covered items and services after the enrollee meets the annual deductible, which for 1999 cannot exceed $6,000. The difference between the individual's capitated payment rate and the insurance premium will be placed in an MSA designated by the enrollee. These funds can then be used by the individual to meet medical expenses under the insurance deductible, they can be allowed to accrue from year to year, or they can be withdrawn for nonmedical expenses subject to applicable tax and penalty rules.

We are requesting input from the public regarding the appropriate standards for MSA insurers and account managers. For example—

• What types of information should potential MSA insurers be required to submit to us as part of the application process?

• What other standards and requirements should approved MSA entities meet for monitoring and evaluation purposes?

10. Other Issues

We are also interested in receiving responses to the following questions:

• A Medicare+Choice contract may include more than one plan. We view this as permitting an entity to offer more than one Medicare+Choice product (for example, an HMO and an PPO) as well as allowing a national contract. How can these contracts be structured to facilitate the application and approval process, including the need for multiple State licenses?

• What standards for out-of-area dialysis should apply?

• How should accrediting bodies be treated for purposes of deeming that a plan meets standards for internal quality review, external quality review, and confidentiality of records?

• Under what circumstances should we waive independent external review for plans with an excellent record of quality and other performance?

• How should State agreements to monitor and enforce Medicare+Choice requirements be structured?

• What procedures or requirements for a hearing for the organization prior to termination of its contract should we establish?

• How should Medicaid-only plans be treated for Medicare+Choice purposes? For example, how should we define "licensed under State law as a risk-bearing entity eligible to offer health insurance or health benefits coverage in [a] State" (section 1855(a)(1))?

II. Timelines and Procedures for Participation in the Medicare+Choice Program

The following discussion applies to Medicare+Choice applications and to Medicare risk contract applications submitted in calendar year 1998 for contracts with an effective date of on or before January 1, 1999. We will discuss application requirements for subsequent contracting periods in subsequent HCFA policy notices.

It should also be noted that we will submit, as required, the three applications and related information collection requirements, that is, the adjusted community rate (ACR) proposal and the Medicare+Choice and PSO applications, referenced in this notice to the Office of Management and Budget (OMB) for emergency Paperwork Reduction Act (PRA) approval, prior to implementation. A **Federal Register** notice will be published soliciting public comment on each of the proposed information collections submitted for emergency PRA approval. Although the notices will allow the public only an abbreviated public comment period, the maximum approval period of an emergency approval is 6 months. Once, we have obtained the required OMB approval, we will resubmit the approved information collections to OMB for reapproval under the routine PRA approval process. As part of the routine process, we will publish two consecutive **Federal Register** notices, soliciting public comment for a total of 90 days, on the reapproval of the collections.

We plan to apply the following procedures to organizations that submit applications for new risk contracts under section 1876. In accordance with the BBA, we may not enter into any new risk contracts under section 1876 after publication of the interim final rule. Therefore, all applications for risk contracts under section 1876 that are not approved prior to the publication of the interim final rule (regardless of when submitted) will automatically be reviewed under the Medicare+Choice contracting standards, and organizations will need to submit a supplemental application as discussed below.

Adjusted Community Rate Proposals

Section 1854(a) requires that Medicare+Choice organizations submit ACR proposals for Medicare+Choice plans by May 1st of the calendar year prior to the benefit year in question. This statutory requirement does not apply, however, to entities that have not yet been certified as Medicare+Choice organizations under the interim final rule to be published by June 1. The June 1 regulation will establish ACR deadlines that apply when the statutory May 1 deadline does not apply. In 1999 and thereafter, organizations that apply for new contracts will be required to submit their ACR proposals by May 1st. Risk contractors that have contracts in effect prior to May 1, 1998 should submit ACRs by May 1, 1998 in order to ensure timely processing.

Applicants for risk contracts whose applications are not approved before the publication of the interim final rule will be reviewed as applicants for Medicare+Choice contracts. Because we will publish payment rates for 1999 on March 1, 1998, these applicants must resubmit their ACR proposals to cover the proposed contract period. The contract period must cover all of calendar year 1999 and may include a period of time involving 1998. However, persons are not required to comply with the information collection requirements associated with the ACR proposal until OMB, PRA emergency approval has been obtained.

Application Process for Medicare+Choice Plans

We encourage organizations that wish to participate in the Medicare+Choice program to submit their applications as soon as possible and no later than August 1, 1998. Although our goal is to process applications in a timely manner, we cannot guarantee that complete applications submitted by August 1, 1998 will be approved for an effective date of January 1, 1999; let alone for those applications submitted after August 1. We may experience delays in processing applications, as current resources are reassigned to respond to the requirements of the Medicare+Choice program.

This section applies to State-licensed organizations. The procedures for PSOs that seek Federal waiver of the State licensure requirement are discussed in a subsequent section. Upon receipt of a State-licensed candidate's application for a Medicare+Choice contract, we will immediately review the application to determine whether the responses and documentation are complete. If we identify incomplete responses, we will allow only 60 days for the applicant to submit the necessary information. We will consider an application that, for any reason, is not complete after the 60-day period to be nonresponsive, and we will return it to the applicant. Once we determine that an application is complete, we will initiate an extensive review of the data, including a site visit for most plans. We will provide applicants a 15-day time period in which to provide any information required as a result of the site visit.

Note that an approved organization must be ready to enroll and serve beneficiaries on the first day that the contract becomes effective. To ensure that new applicants are approved in time for the contract to be implemented by January 1, 1999, we plan to establish a two-step process whereby new contractors may submit a core application at any time prior to publication of the final interim rule and then submit a supplemental application after the interim final rule is published. The core application will be similar to the current application for a risk contract. At present, we expect that it will contain the following information:

• Medicare+Choice option (HMO, State-licensed PSO, MSA, etc.).

• General information: description of plan, brief history, banking information, board of directors, management staff, geographic region, and other pertinent data for the Medicare product.

• Organization and contract information: type of legal entity, State authority to operate, organizational charts, and management contracts.

• Health services delivery network: detailed description of delivery system, Medicare subscriber agreements, evidence of coverage, membership information, and quality assurance systems.

• Financial information: certified audits, financial projections, and all information necessary to demonstrate a fiscally-sound operation.

• Marketing information: marketing plans, projections, and enrollment assumptions.

• Any additional information to support the Medicare+Choice application.

The core application package will be available on our Internet web site (http://www.hcfa.gov) on or about February 1, 1998. Additional information regarding the core application process can be obtained by writing to us at—HPPAG, Field Liaison Staff, Health Care Financing Administration, Center for Health Plans and Providers, Health Plan Purchasing and Administration Group, 7500 Security Blvd., 03–18–13 South Building, Baltimore, MD 21244–1850. Alternatively, you may call the Health Plan Purchasing and Administration Group (HPPAG) at 410–786–7623.

ACR instructions will also be available beginning February 1, 1998 on the Internet or from the above address. However, persons are not required to comply with the information collection requirements associated with the core Medicare+Choice application and ACR proposal until OMB, PRA emergency approval has been obtained.

Supplemental Medicare+Choice Application Process

Our plans are that Medicare+Choice applicants that submit a core application must complete the application process by submitting a supplemental application. The supplemental application will cover provisions that are specific to the Medicare+Choice program as specified by the interim final rule, including the fiscal solvency standards for PSOs, which are scheduled to be published on April 1, 1998. The supplemental application will also solicit plan specific information relevant to each of the different types of Medicare+Choice program options (for example, PSO, PFFS, MSA). The supplemental applications will be available beginning June 1, 1998, when the interim final rule is published. The application will be available from our Internet web site or from HPPAG at the above address. Persons are not required to comply with the information collection requirements associated with the Medicare+Choice supplemental application until OMB, PRA emergency approval has been obtained.

Federal Waiver of State Licensure Requirement for PSOs

Consistent with current policy, only applications that have obtained State licenses will be approved for Medicare+Choice contracts. The only exception to this requirement are PSOs, which are allowed to request waivers of the State licensure requirement as specified by BBA. In accordance with section 1855(a)(2), PSO applicants may request waivers of the State licensure requirement under any of the following circumstances:

• The State failed to act on a timely basis, that is, within 90 days of its receipt of a substantially complete application.

• The denial of the application was based on discriminatory treatment. The ground for approval of such a waiver on the basis of discriminatory treatment is that the State has denied a licensing application and (1) the standards or review process imposed by the State as a condition of approval of the license imposes any material requirements, procedures, or standards (other than solvency requirements) to such organizations that are not generally applicable to other entities engaged in a substantially similar business, or (2) the State requires the organization, as a condition of licensure, to offer any product or plan other than a Medicare+Choice plan.

• The denial was based on application of solvency requirements. With respect to waiver applications filed on or after the date of publication of solvency standards under section 1856(a), the ground for approval of the waiver application on this basis is that the State denied the licensing application based (in whole or in part) on the organization's failure to meet applicable solvency requirements and (1) the requirements are not the same as the solvency standards established under section 1856(a), or (2) the State has imposed a condition of approval of the license documentation or

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information requirements relating to solvency or other material requirements, procedures, or standards relating to solvency that are different from the requirements, procedures, and standards applied by us under section 1856(d)(2).

Once a prospective Medicare+Choice contractor submits documentation that one or more of the above conditions has been met, we have 60 days to grant or deny the waiver application. A separate application for PSOs seeking a waiver from State licensure will be available on or about February 15, 1998, on our Internet web site or from HPPAG at the address given above. This application will include the waiver forms as well as the contract application and all definitions. In addition, solvency standards for PSOs seeking a waiver will be available on April 1, 1998. PSOs requesting a waiver that submitted an application prior to April 1 will be required to submit a supplemental application showing how they meet the solvency standards. However, persons are not required to comply with the information collection requirements associated with the PSO application until OMB, PRA emergency approval has been obtained.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Information Campaign

To assist Medicare beneficiaries' decision-making process relative to new Medicare+Choice health care options, we will incorporate information on newly-approved plans into our plan comparison database. This database will contain information on all existing and new plans, except for MSAs. Plan comparison information will be posted on the Internet and will be updated at least quarterly. Thus, newly-approved plans will be entered into the plan comparison database at the next update cycle.

February 4, 1998 Public Meeting

In addition to seeking written comments from the public, we will hold a public meeting on Wednesday, February 4, 1998 from 9 a.m. to 3 p.m. in our auditorium at 7500 Security Boulevard, Baltimore, Maryland. The purpose of this meeting will be to discuss issues and concerns from plans, providers, beneficiaries, and other interested parties on the requirements and implementation of the Medicare+Choice program. The agenda for this meeting will be posted on our Internet web site. Further information can be obtained from Rondalyn Kane at (202) 690–7874.

(Secs. 1851 through 1857, 1859, 1876, and 1877 of the Social Security Act (Secs. 4001, 4002, and 4006 of Pub.L. 105–33, 42 U.S.C. 1395l and 1395mm))

Dated: December 23, 1997.

Nancy-Ann Min DeParle,

Adminstrator, Health Care Financing Administration.

[FR Doc. 98–1381 Filed 1–16–98; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 424

[HCFA–1864–P]

RIN 0938–AH19

Medicare Program; Additional Supplier Standards

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish additional standards for an entity to qualify as a Medicare supplier for purposes of submitting claims for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). This proposed rule would establish additional standards that must be satisfied before a DMEPOS supplier could receive payment from the Medicare program. The Social Security Act Amendments of 1994 require that a DMEPOS supplier meet standards related to compliance with State and Federal licensure requirements, maintaining a physical facility on an appropriate site, proof of appropriate liability insurance, and other standards the Secretary may specify.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on March 23, 1998.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1864–P, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201,

or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1864–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890). Electronically submitted comments will also be available for public inspection at the Independence Avenue address.

FOR FURTHER INFORMATION CONTACT: Larry Bonander, (410) 786–4479.

SUPPLEMENTARY INFORMATION:

I. Background

Medicare services are furnished by two types of entities, that is, providers and suppliers. The term "provider", as defined in our regulations at § 400.202, means a hospital, a rural primary care hospital, a skilled nursing facility, a comprehensive outpatient rehabilitation facility, a home health agency, or a hospice that has in effect an agreement to participate in Medicare. A clinic, a rehabilitation agency, or a public health agency that has a similar agreement to furnish outpatient physical therapy or speech pathology services, or a community mental health center with a similar agreement to furnish partial hospitalization services, is also considered a provider (see sections 1861(u) and 1866(e) of the Social Security Act (the Act)).

In general, a supplier is an individual or entity that furnishes certain types of medical and other health services under Medicare Part B. There are different definitions of the term "supplier" and specific regulations governing different types of suppliers. A supplier that furnishes durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) is one category of supplier. Other categories of suppliers could include, for example, physicians, nurse practitioners, and physical therapists. The term "DMEPOS" encompasses the types of items included in the definition of medical equipment and supplies found at section 1834(j)(5) of the Act.

For purposes of DMEPOS supplier standards, the term "supplier" is currently defined in § 424.57(a) of our regulations as an entity or individual, including a physician or Part A provider, that sells or rents Part B covered DMEPOS items to Medicare beneficiaries, and that meets certain standards. We are retaining this

definition for purposes of identifying those entities that must meet DMEPOS supplier standards in order to obtain a supplier number. Those individuals or entities that do not furnish DMEPOS items but only furnish other types of health care services, such as physicians' services or nurse practitioner services, would not be subject to these standards. Moreover, a supplier number is not necessary before Medicare payment can be made with respect to medical equipment and supplies furnished "incident to" a physician's service.

Durable Medical Equipment

Durable medical equipment (DME) is included in the definition of "medical and other health services" as indicated by section 1861(s)(6) of the Act. The term DME is defined at section 1861(n) of the Act. This definition, in part, excludes from coverage as DME, items furnished in skilled nursing facilities and hospitals. (Equipment furnished in those facilities is paid for as part of their routine or ancillary costs.) The term is also defined in § 414.202 of our regulations as meaning "equipment, furnished by a supplier or a home health agency that—

(1) Can withstand repeated use;

(2) Is primarily and customarily used to serve a medical purpose;

(3) Generally is not useful to an individual in the absence of an illness or injury; and

(4) Is appropriate for use in the home." Examples of DME include such items as blood glucose monitors, hospital beds, nebulizers, oxygen delivery systems, and wheelchairs.

Prosthetic Devices

Prosthetic devices are also included in the definition of "medical and other health services" under section 1861(s)(8) of the Act. They are defined in this section of the Act as "devices (other than dental) which replace all or part of an internal body organ (including colostomy bags and supplies directly related to colostomy care), including replacement of such devices, and including one pair of conventional eyeglasses or contact lenses furnished subsequent to each cataract surgery with insertion of an intraocular lens." Other examples of prosthetic devices include cardiac pacemakers, cochlear implants, electrical continence aids, electrical nerve stimulators, and tracheostomy speaking valves.

Orthotics and Prosthetics

Section 1861(s)(9) of the Act provides for the coverage of "leg, arm, back, and neck braces, and artificial legs, arms, and eyes * * *" under the term "medical and other health services." As indicated by section 1834(h)(4)(C) of the Act, these items are often referred to as "orthotics and prosthetics."

Supplies

Section 1861(s)(5) of the Act includes "surgical dressings, and splints, casts, and other devices used for reduction of fractures and dislocations;" as one of the "medical and other health services" that is covered by Medicare. Other items that may be furnished by suppliers would include (among others):

(1) Prescription drugs used in immunosuppressive therapy furnished to an individual who receives an organ transplant for which payment is made under this title, and that are furnished within a certain time period after the date of the transplant procedure as noted at section 1861(s)(2)(J) of the Act.

(2) Extra-depth shoes with inserts or custom molded shoes with inserts for an individual with diabetes as listed at section 1861(s)(12) of the Act.

(3) Home dialysis supplies and equipment, self-care home dialysis support services, and institutional dialysis services and supplies included at section 1861(s)(2)(F) of the Act.

(4) Oral drugs prescribed for use as an anticancer therapeutic agent as noted at section 1861(s)(2)(Q) of the Act.

(5) Self-administered erythropoietin (as described in section 1861(s)(2)(O) of the Act).

II. Publication of Final Rule With Comment Period

On December 11, 1995, we published a final rule with comment period in the **Federal Register** (60 FR 63440) to reflect the changes made to section 1834 of the Act by section 131 of the Social Security Act Amendments of 1994 (SSA '94, Public Law 103–432, enacted on October 31, 1994). In the SSA '94, a new subsection (j) was added to section 1834 of the Act that established additional requirements that a DMEPOS supplier must meet in order to obtain a supplier number. The final rule set forth additional supplier standards consistent with the new subsection by revising § 424.57(c) of our regulations.

The standards in the final rule included all of the standards that were in the prior § 424.57(c) and those standards specifically required by section 1834(j)(1)(B)(ii)(I) through (III) of the Act. The standards specifically identified in section 1834(j)(1)(B)(ii) require that a DME supplier—

(1) Comply with all applicable State and Federal licensure and regulatory requirements;

(2) Maintain a physical facility on an appropriate site; and

(3) Have proof of appropriate liability insurance. Congress also has expressly delegated authority to the Secretary to specify other requirements through section 1834(j)(1)(B)(ii)(IV) of the Act.

In SSA '94, the Congress enacted numerous substantive provisions designed to protect beneficiaries from abusive practices by suppliers. These legislative changes indicate that the Congress has serious concerns about the business practices employed by certain suppliers, and that beneficiaries require additional protection from these practices. We believe it is the Congress' intent to strengthen existing standards in order to protect the public interest. We also view this proposed rule as another tool to further our efforts to prevent fraud and abuse in the Medicare program. After consulting with representatives of medical equipment and supply companies, carriers, and consumers, we are now proposing to establish additional standards to protect beneficiaries. These standards would not apply to physicians or other practitioners that are only submitting claims for coverage of items that are furnished as incident to their professional services. However, in order to submit claims for items that are not covered under the incident to benefit, physicians must obtain a supplier number and meet supplier standards.

III. Proposed Revisions

Medicare will not pay for any items furnished by a DMEPOS supplier prior to the date a supplier number is issued. In order to obtain a supplier number, a supplier must complete an application certifying that it meets the supplier standards found in § 424.57 of our proposed regulation. In addition, when renewing an application for a DMEPOS supplier billing number, a supplier must recertify that it meets all of the supplier standards.

Under current regulations, a DMEPOS supplier must renew its application for a billing number 3 years after the billing numbers are first issued, except for the first reissuance process. For the first reissuance process, one-third of suppliers must renew their applications 2 years after initial issuance of billing numbers. Another one-third of suppliers must reapply 3 years after initial issuance. The last third of suppliers must reapply 4 years after initial issuance. Thereafter, a supplier must reapply 3 years after its last number is issued.

We do not intend to require all DMEPOS suppliers to submit new applications for billing numbers on the date this regulation becomes effective, but will require DMEPOS suppliers to

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submit new applications as the old numbers expire. We believe this to be the least burdensome approach for a supplier, as well as the most cost-effective approach, to obtain the required information. However, in certain circumstances (such as an investigation regarding compliance with standards) a supplier may be required to demonstrate compliance with all standards prior to the supplier's billing number expiration date. Although we do not intend to require suppliers with current numbers to certify compliance with these revised standards until they reapply, it is important to note that as of the effective date of this regulation, all DMEPOS suppliers must comply with these standards. We may revoke a supplier number if we find evidence that the standards are not satisfied.

A. Specific Requirements for Supplier Standards

Compliance With Medicare Statutory Provisions and Applicable Regulations (§ 424.57(c)(1))

In addition to the specific standards cited in this proposed rule, there are other Medicare statutory provisions that establish requirements pertaining to the activities of DMEPOS suppliers. For example, section 1848(g) of the Act establishes requirements regarding the completion and submission of Medicare claims by certain entities, including DMEPOS suppliers. To be consistent and to support and reinforce the implementation of the other provisions of the Act and regulations that pertain to DMEPOS suppliers, we are proposing adding this new standard. This standard would require a DMEPOS supplier to comply with Medicare statutory provisions, as well as all other applicable regulations.

Compliance with Applicable Federal and State Licensure and Regulatory Requirements (§ 424.57(c)(2))

We propose amending § 424.57(c)(9) of current regulations to require a DMEPOS supplier to operate its business and furnish Medicare covered items in compliance with all applicable Federal and State licensure and regulatory requirements. If a DMEPOS supplier is found to be out of compliance with any Federal or State licensure or regulatory requirement by the appropriate enforcement agency for that requirement, we may revoke that supplier's number. We will focus on whether the violation negatively affects a supplier's ability to furnish DMEPOS supplies in a manner that protects beneficiaries and the Medicare program. When a supplier is actually found out of compliance, and is cited by the appropriate enforcement agency for a violation, we would determine whether that violation should be deemed indicative of a failure to meet this standard.

Clearly, it is not in the interest of beneficiaries for us to revoke a supplier number for reasons that are unrelated to a DMEPOS supplier's ability to furnish Medicare covered items. For example, and by way of illustration only, it would not ordinarily seem necessary to consider as a violation of this standard necessitating revocation, situations where a supplier is involved in a zoning dispute or has built a fence three feet over the property line. However, when the supplier's violation of applicable Federal or State licensure or regulatory requirements affects the health and safety of Medicare beneficiaries, we would determine that this standard has not been met.

Misrepresentation of Facts (§ 424.57(c)(3))

As stated, a DMEPOS supplier's certification that the standards are met must be completed before a supplier number will be issued. A government contractor verifies the data in the supplier number application and issues numbers to approved DMEPOS suppliers. When a supplier submits an inaccurate or incomplete application, it impedes the ability of the contractor to determine, with reasonable confidence, that a supplier meets and will comply with the DMEPOS supplier standards.

We propose amending the regulations to clarify that a DMEPOS supplier is responsible for accurately completing the application for a supplier number. Any deliberate misrepresentation or concealment of material information in the application constitutes a violation of this supplier standard and may subject a supplier to liability under civil and criminal laws. Also, since the government, through its contractor, issues a supplier number based upon, and after verification of, the information contained in the application, a DMEPOS supplier must notify us within 35 days of any change in the data provided on the supplier number application.

Signature Used on a Supplier Number Application (§ 424.57(c)(4))

When a DMEPOS supplier signs the application for a supplier number, it certifies that all information provided on the application is accurate and that the supplier meets the standards set forth in § 424.57(c). These standards affect how the supplier does business. This proposed standard would require that the individual signing the application understand his or her responsibility for confirming the accuracy of all of the statements in the application and have the authority to certify that the supplier will comply with these standards. The person who signs the application must have the authority to bind the business entity. This standard would help ensure the accuracy of the information on the supplier number application and will help ensure that the DMEPOS supplier is committed to taking the necessary steps to comply with these standards.

Providing Requested Information and Documentation (§ 424.57(c)(5))

We propose adding a standard that specifically requires a DMEPOS supplier to agree to provide us with pertinent information and documentation. As a basic condition for payment, a supplier must furnish sufficient information and documentation for us to make a correct payment determination. We are responsible for ensuring that all claims are medically and reasonably necessary, that all services are rendered as billed, and that all claims are billed in accordance with local, regional and national policies.

Upon request, a supplier must also provide a copy of any contract it has with another company to furnish DMEPOS items or supplies. A DMEPOS supplier also must provide, upon request, documentation substantiating that it has advised beneficiaries about their option to rent or purchase inexpensive or routinely purchased equipment, and also about the purchase option for capped rental equipment. It is important that beneficiaries understand that the overall Medicare payments for renting inexpensive or routinely purchased DME may not exceed the Medicare fee schedule amount for that item.

A DMEPOS supplier must provide, upon request, documentation substantiating that it has explained to beneficiaries the warranty coverage for supplies and equipment. We believe that explaining to beneficiaries the warranty coverage for a particular item will prevent the Medicare program from being billed for repairs to supplies or equipment covered under warranty. A supplier must provide, upon request, documentation that it maintains and repairs directly, or through a service contract with another company, items it has rented to beneficiaries. This would ensure that beneficiaries are aware that any services needed for rented items will be provided by the supplier of the items.

A supplier also must provide, upon request, documentation demonstrating that it has delivered Medicare covered items to beneficiaries. A supplier must provide, upon request, proof of appropriate liability insurance protecting retail customers against accidents or negligence in the sale or rental of medical equipment or supplies.

Scope of Exclusions (§ 424.57(c)(6) and (d))

We propose amending § 424.57(c)(1) and (d) of the current regulations to be consistent with the Office of Inspector General (OIG) regulations on program integrity for the Medicare and State Health Care programs at § 1001.1901. The OIG program exclusion regulations were amended effective August 25, 1995, in accordance with the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355), and with the Department's Common Rule at 45 FR Part 76, to explain the scope and effect of an OIG exclusion. The OIG regulations now provide that an OIG exclusion will be recognized and given effect not only for all departmental programs but also for all Executive Branch procurement and nonprocurement activities. Therefore, consistent with the OIG regulations, these regulations would require that a DMEPOS supplier must agree not to contract with entities subject to an OIG exclusion for the purchase of items necessary to fill their orders. These proposed regulations also would provide that if a DMEPOS supplier is subject to an QIG exclusion, we will revoke its supplier number automatically, effective with the date of the exclusion.

Rental or Purchase Option (§ 424.57(c)(7))

A DMEPOS supplier must advise beneficiaries of their option to rent or purchase inexpensive or routinely purchased equipment. A DMEPOS supplier also must advise the beneficiary of the purchase option for capped rental equipment. Currently, the decision as to whether inexpensive or routinely purchased equipment should be rented or purchased is made by the beneficiary. Because of the coinsurance implications involved, it is important that beneficiaries understand that the overall Medicare payments for renting such DME may not exceed the Medicare fee schedule amount for that item. If the beneficiary needs an item after Medicare has made its last rental payment, the beneficiary becomes financially liable for any additional payment. Therefore, if a beneficiary anticipates needing an item of inexpensive or routinely purchased DME for an extended period of time, purchasing that item may result in a savings for the beneficiary. This information must be provided in an easily understood and clear manner and should include an explanation of the implications of the rental or purchase choice.

Warranties (§ 424.57(c)(8))

Our current regulations provide that a supplier must honor all expressed and implied warranties. However, in some instances, a supplier does not fully explain warranty coverage to beneficiaries and the Medicare program is billed for repairs to supplies or equipment covered under warranty. We propose to amend § 424.57(c)(3) of our current regulations to require that a DMEPOS supplier check with manufacturers to determine the extent of a warranty for an item they are supplying. A DMEPOS supplier is prohibited from billing either beneficiaries or the Medicare program for repairs, parts, or other equipment or supplies covered either by an expressed warranty or an implied warranty. Items that are furnished to the beneficiary, whether purchased or rented, must include copies of warranty information.

Delivery (§ 424.57(c)(9))

Under our current regulations at § 424.57(c)(2), a supplier is responsible for the delivery of Medicare covered items to beneficiaries. Consistent with the goal of protecting beneficiaries, we propose expanding this standard to require a DMEPOS supplier, at the time of delivery, to provide beneficiaries with necessary information and instructions on how to use Medicare covered items safely and effectively. In addition, we anticipate that beneficiaries may have questions subsequent to delivery and should have telephonic access to the supplier to receive additional instructions, as necessary. Telephonic access is addressed in proposed supplier standard § 424.57(c)(17).

Reassignment of Supplier Numbers (§ 424.57(c)(15))

This proposed standard would prohibit a DMEPOS supplier from conveying or reassigning a supplier number. We have the authority, through our authorized agents, to issue DMEPOS supplier billing numbers. These numbers are issued only after we have verified pertinent information about a supplier and have otherwise taken measures intended to protect the Medicare program, as well as beneficiaries. The supplier billing numbers are issued for the use of a specific supplier. A DMEPOS supplier does not have independent authority to transfer or convey the billing number we issue. All DMEPOS suppliers must undergo our application process in order to obtain a supplier number.

Physical Facility (§ 424.57(c)(16) and (f))

We propose amending § 424.57(c)(10) and (f) of our current regulations to require a DMEPOS supplier to have a physical facility where it can conduct its business operations. The physical facility must be a site where a supplier's delivery, maintenance, and beneficiary communication records can be properly stored and mail can be delivered. In addition, all written complaints and related correspondence taken in response to a beneficiary complaint must be kept at the physical facility.

Using these minimal requirements for a physical facility, there should be no burden on a legitimate supplier. Section 1834(j) of the Act was amended to ensure beneficiary protection. We believe protection of the beneficiary includes requiring a supplier to conduct business at a physical facility that is beneficiary accessible. In the past, a supplier was not required to conduct business at a fixed physical location. We found evidence of vans, as well as station wagons, being claimed as supplier business locations. A supplier using these types of "establishments" for business are not easily accessible to the beneficiary or HCFA if there is a problem with the supply or equipment, a repair is needed, or the beneficiary has a question. Requiring that a supplier operate out of a fixed physical facility will help protect beneficiaries, as well as aid in eliminating fraudulent suppliers.

Business Telephone (§ 424.57(c)(17))

In order to accept inquiries from potential customers, maintain relationships with current customers, and conduct business with contractors in today's business markets, virtually every business must allow access by telephone. Telephonic access to a DMEPOS supplier is crucial also to the Durable Medical Equipment Regional Carrier in obtaining additional information to process and pay a claim.

In this proposed rule, a DMEPOS supplier must have a business telephone located at the physical facility. This telephone number must be listed under the name of the business (i.e., name of supplier company) and listed in the business portion of the local telephone company directory. A beeper number, answering machine, answering service, pager, facsimile machine, car phone or residential listing would not adequately

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provide telephonic access equivalent to a primary business telephone and, therefore, would not fulfill this requirement. Requiring a business telephone at the physical facility would help ensure that a supplier is a valid business company that is soliciting and conducting business at the physical facility. This requirement would also help filter out those companies that do not have a physical site and may be conducting business out of mobile vans, making it difficult for beneficiaries and the general public to determine the legitimacy of the business, resolve questions, obtain demonstrations of a DMEPOS item and resolve any maintenance or repair concerns.

Liability Insurance (§ 424.57(c)(18))

The December 11, 1995, final rule with comment implementing the changes made by section 1834(j) of the Act, added a standard requiring suppliers to have proof of appropriate liability insurance. One member of the DME industry commented on this standard and suggested certain insurance requirements and limitations. In addition, we consulted with an insurance industry trade group with expertise in liability insurance. Based on the comment received and our consultation, we propose requiring that a supplier have a comprehensive liability insurance policy that covers both the supplier's place of business and any and all customers and employees of the supplier.

While this proposal would only require comprehensive liability insurance, our concern for beneficiary safety is such that we feel we should specify in the final rule a dollar amount for this coverage. We believe that coverage in the amount of $500,000 would be adequate for most businesses. According to industry sources, there are no State requirements concerning either mandatory liability insurance or the recommended level of protection. However, we believe that most suppliers follow common business practices and obtain adequate insurance in order to limit their financial exposure. We invite the public to comment on the need for and the extent to which suppliers maintain liability insurance and the appropriate coverage level for that insurance.

Telemarketing (§ 424.57(c)(19))

This proposed standard reiterates restrictions found at sections 1834(a)(17)(A) and 1834(h)(3) of the Act that bar a supplier from violating existing telemarketing rules.

Prescription Drugs (§ 424.57(c)(20))

This proposed standard would protect the health and safety of our beneficiaries by ensuring that only those DMEPOS suppliers that are licensed to dispense drugs may furnish drugs used as Medicare covered supplies with durable medical equipment (DME) or prosthetic devices. Although a supplier that furnishes oxygen may not have to be a pharmacy, it must meet applicable State licensure laws. This standard would stipulate that unless a supplier meets applicable State licensing requirements, it may not bill Medicare for prescription drugs used with DME or a prosthetic device.

This standard also would help to ensure payment is not made for prescription drugs, other than oxygen, that are prepared or dispensed by companies not properly licensed and not regulated or monitored by a State's pharmacy board. In addition, this standard would support Medicare's policy of not paying for prescription drugs used with DME or a prosthetic device unless the drugs are furnished by an entity that is licensed to dispense these drug products.

B. Additional Revisions

Section 4312(a) of the Balanced Budget Act of 1997 (BBA '97), Pub. L. 105–33, which was enacted on August 5, 1997, amended section 1834(a) of the Social Security Act by adding a new paragraph (16). That new paragraph requires the Secretary, as a condition of providing for the issuance or renewal of a provider number for a DME supplier for purposes of payment under the Medicare statute, to provide the Secretary, on a continuing basis, with a surety bond. Section 1834(a)(16), as amended by section 4312(c) of the BBA '97, further provides that the Secretary may, at the Secretary's discretion, impose a surety bond on some or all providers or suppliers who furnish items or services under Medicare Part B other than physicians or other practitioners. We request comments on the advisability of exercising this authority to impose a surety bond on all suppliers of prosthetics, orthotics, and supplies to the same extent as required for suppliers of durable medical equipment.

We are adding a new paragraph (e) to stipulate that for every tax identification number for which a supplier billing number is issued, a DMEPOS supplier must obtain a surety bond. The surety bond must be in a form specified by the Secretary and in an amount not less than $50,000.

Although we are authorized to waive the surety bond requirement if a DMEPOS supplier provides a comparable surety bond under State law, we have not implemented that waiver authority in this rule. The limited amount of time available to us, between the enactment of BBA '97 and the effective date of the surety bond requirement, did not permit us sufficient time to effectively analyze the potential specifications of a waiver provision. However, we are mindful that some States may already have, or may be considering implementing, surety bond requirements that could affect DMEPOS suppliers. Moreover, section 4712 of the BBA '97 establishes a Medicaid surety bond requirement that the States will be implementing. We do not want to add unnecessary costs to DMEPOS suppliers that may be required to obtain multiple surety bonds. However, our principal concern is to safeguard the Medicare Trust Funds from the losses resulting from dramatically increasing unrecovered Medicare debts. We solicit comments on useful standards and criteria for implementing a waiver of our surety bond requirements that would, nonetheless, maintain the same or a greater level of protection of the Medicare Trust Funds than our requirements achieve.

A "surety bond" is a three-party written agreement under which the surety guarantees to HCFA as surety that it will be responsible for debts owed to HCFA by a DMEPOS supplier. The surety bond can only be obtained through a surety bond company that has been approved by the Department of Treasury and listed in the current edition of the Department of Treasury's Department Circular No. 570 "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies".

We propose establishing a sliding scale for the penal amount of the bond that relates to the volume of business a supplier does with Medicare. The penal amount is the amount for which a surety company would be liable to HCFA. The sliding scale would be used in combination with a $50,000 minimum and a $3,000,000 ceiling. For chain organizations, these amounts would pertain to the chain as a whole. The sliding scale will be based on 15 percent of the amount paid to the supplier by the Medicare program in the previous year with a $50,000 minimum and a $3,000,000 maximum penal bond amount. Thus, the penal amount of the surety bond and the premium for the surety bond are directly tied to the amount of Medicare payments received by the supplier. We believe that 15 percent is a reasonable percentage on which to base the penal amount of the bond since it would not be too high as to be a barrier to entry for small companies, yet high enough to provide the Medicare Trust Fund with access to funds to recover debts owed to the program. Also, in determining this percentage amount, we consulted with an insurance industry trade group.

In accordance with section 4312(a) of the BBA '97, paragraph (e) includes a $50,000 floor per supplier. Therefore, we are proposing that this $50,000 amount represent the penal amount for a supplier that has not previously participated in the Medicare program. We also propose establishing a penal amount ceiling of $3,000,000 per supplier to accommodate national companies that have several locations. The $3,000,000 ceiling would lessen the burden on national companies that have one supplier number with multiple locations.

HCFA would verify that each supplier has purchased the correct bond amount by having the National Supplier Clearinghouse access either the supplier's IRS Form No. 1099 prepared by the supplier's DMERC (DME Regional Carrier) or historic payment information from the DMERC's provider payment history file. The IRS Form No. 1099 will show the amount of Medicare revenues received by the DMEPOS supplier during the previous year. This verification would be done on an annual basis by the National Supplier Clearinghouse.

As stated, we believe that Congressional intent of section 4312 of the BBA '97 is to protect both Medicare beneficiaries and the Medicare Trust Fund. Under current law, a DMEPOS supplier only may receive payment from the Medicare program if it demonstrates that it meets the standards imposed in the Act and in regulations. Section 4312 of the BBA '97, in effect, authorizes as a supplier standard the requirement that a DMEPOS supplier provides, on a continuing basis, a surety bond of at least $50,000. We believe that Congressional intent is that a surety bond be of an adequate amount to ensure supplier performance and to prompt compliance with Medicare program rules and requirements. The amount of the surety bond must be sufficient to protect both Medicare beneficiaries and the Medicare Trust Fund by providing a mechanism for recovering debts owed to the program. (Debts to the program include overpayments, interest, and any civil money penalties and assessments.) We also believe it will decrease spurious applications for supplier numbers, and ensure that only viable companies who are financially stable obtain supplier numbers. Therefore, we believe it is necessary that the surety bond be based on a sliding scale of 15 percent of the amount paid to the supplier by the Medicare program, for claims for Medicare covered items provided in the previous year and with a floor of $50,000 and a ceiling of $3,000,000.

We also considered including within the scope of the Surety's potential liability a guarantee of payment for unpaid civil money penalties and assessments that were imposed by the Office of the Inspector General. However, because of the short time period between when the BBA '97 was enacted and the effective date of the Surety bond provision, we were unable to fully consider this option. In addition, because of our unfamiliarity with surety bonds as a component of program administration, we believed that we did not fully understand how best to implement this option. We solicit comments on the advisability of including within the scope of the Surety's potential liability unpaid Office of Inspector General-imposed civil money penalties and assessments.

Financial Rationale for the Surety Bond

We have a statutory responsibility under the Act to be a prudent purchaser of medical services. Therefore, we need to address the issue of how to reduce risk to the Medicare Trust Fund. Bonding is a method that has long been employed in the private sector to assure a satisfactory level of performance. We believe a surety bond is a cost effective method to reduce risk to the Medicare Trust Fund. This requirement would provide the Medicare program with the ability to mitigate its losses should a supplier billing number be revoked or if the company no longer conducts business with Medicare. In other words, a surety bond would provide us with the means to recover a portion of the monies due the Medicare program. A claim could be made against the surety bond should a demand letter for overpayments not be satisfied, whether due to insufficient assets by a supplier or inability to locate a supplier.

We do not have a fail-safe method of ensuring that DMEPOS items for which we have been billed actually have been supplied to a beneficiary in the quantity or the type billed. Only with the passage of time do we discover that DMEPOS items for which Medicare payments have been made were not actually supplied in the manner represented in the claim. With Medicare DMEPOS expenditures of $10.2 billion in 1995, even a small percentage of improper payments represents excessive program losses.

In calendar year 1995, as a part of our activities associated with Operation Restore Trust, we revoked the supplier billing number of approximately 1,700 Florida suppliers who were found to have billed for DMEPOS items that either were not furnished or were not furnished as billed. These supplier billings were associated with erroneous payments amounting to approximately $40 million.

Our belief is that many of these suppliers would never have sought or obtained a Medicare supplier number if, as a prerequisite, they would have been required to obtain a surety bond. Even if some of these suppliers had been able to obtain a surety bond and still received erroneous payments, the Medicare program, by making a claim against the surety bond, would have had a source to mitigate some of its losses. Based on our estimates of the scope of past fraudulent and excessive expenditures, we must take steps to prevent such practices from continuing. Surety bonds will enhance our control of Medicare Trust Fund expenditures by expanding our options for recovering payments later determined to be improper, whether due to fraud or other reasons. We are interested in any recommendations or suggestions anyone may have on this proposed standard.

In addition to the changes discussed above, we have taken this opportunity to make several clarifying and editorial changes to the existing regulations.

C. Patient Care Standards

The proposed DMEPOS supplier standards set forth business operation standards, however, they do not include standards that relate directly to patient care. By patient care, we are referring to care that goes beyond that which is directly furnished by the covered equipment, such as taking the patient's vital signs. Determinations relating to patient care would be the subject of another rulemaking.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the "DATES" section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

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V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the information collection requirements discussed below.

The following sections of this document contain information collection requirements as described below:

Section 424.57(c)(3) (Supplier Enrollment Form HCFA-855) would require a supplier to provide complete and accurate information on its application for a billing number. However, the burden associated with the requirements set forth in 424.57(c)(3) and (c)(4) are currently captured in HCFA–855 (OMB Approval No. 0938–0685). Thus, there is no additional collection of information burden associated with § 424.57(c)(3) and (c)(4).

Section 424.57(c)(5) (Providing Requested Information and Documentation) would set forth several information collection requirements, as referenced below, which we believe are exempt under the terms of the PRA for the following reasons:

(1) Under 5 CFR 1320.4(a)(2), information collections are exempt during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities;

(2) As described in 5 CFR 1320.3(h)(9), facts or opinions obtained or solicited through nonstandardized follow-up questions designed to clarify responses to approved collections, are exempt from the PRA; and/or

(3) Nonstandardized information collections directed to less then 10 persons, does not constitute an information collection as outlined in 5 CFR 1320.3(c).

The following information collection requirements arise as a result of requiring DMEPOS suppliers to submit all supplemental information or documentation necessary to adjudicate claims. A DMEPOS supplier bears the burden of providing records and information sufficient to support the determination of appropriate Medicare payment. Since we believe that the following collection requirements are either part of the administrative, audit and/or adjudicatory process, collected in a nonstandardized manner, and/or collected from less then ten persons, they fall under these exceptions. We explicitly solicit comment on this PRA determination. The excepted sections are:

—Section 424.57(c)(5)(i)—Adjudication of Claims

—Section 424.57(c)(5)(viii)—Supplemental Documentation

Under 5 CFR 1320.3(b)(2), the burden associated with the time, effort and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of business will be excluded from an information collection. The burden in connection with such types of collection activities can be disregarded if it can be demonstrated that such collection activities are usual and customary. Each of the collection requirements referenced below are of the type that are usual and customary in the conduct of commercial business. Thus, we believe they fall under this exception and solicit comment on this determination:

—Section 424.57(c)(5)(ii)—Contracts with Third Parties

—Section 424.57(c)(5)(v)—Delivery Documentation

—Section 424.57(c)(5)(vi)—Maintenance documentation

—Section 424.57(c)(5)(vii)—Proof of Liability Insurance

—Section 424.57(c)(5)(viii)—Supplemental Documentation.

The information collection requirements and associated burden as summarized below are subject to the PRA:

—Section 424.57(c)(5)(iii) would require a supplier to develop, disclose to beneficiaries, and maintain an attestation document demonstrating that beneficiaries have been advised about their option to rent or purchase inexpensive or routinely purchased equipment and of the purchase option for capped rental equipment. We believe that during the normal course of business the vast majority of suppliers currently advise their beneficiaries of their rental and purchase options. Therefore, the burden associated with this provision is the one-time burden on the provider to create an attestation form and the recordkeeping requirement on the supplier to retain a copy of the beneficiary attestation in their files. We believe that most suppliers would create and maintain a form to suit their specific business needs that a beneficiary would sign to attest that the beneficiary was advised of the rent or purchase option described above (Refer to § 424.57(c)(7)).

—Section 424.57(c)(5)(iv) would require a supplier to maintain documentation demonstrating that beneficiaries have been adequately informed about items covered under warranty. We do not prescribe a specific format and rely on the supplier to develop some mechanism to note that it has advised a beneficiary about warranty coverage. (Refer to § 424.57(c)(8)). We anticipate that suppliers will simultaneously advise beneficiaries of their purchase/rental equipment options and warranty disclosure, and capture the required acknowledgments for both § 424.57(c)(5)(iii) and 424.57(c)(5)(iv) in one form. Thus, the burden associated with § 424.57 paragraph (c)(5)(iv) is reflected in the burden calculations for paragraph (c)(5)(iii). The chart below summarizes the estimated annual reporting and recordkeeping burden for the attestation requirements and the additional requirements referenced below.

—Section 424.57(e) would require when current suppliers apply for renewal of their supplier billing number that they submit a copy of their current surety bond and, as appropriate, copies of previous surety bonds that have been obtained annually for the appropriate amount, thus demonstrating that their surety bond has been in effect. New suppliers must submit a copy of their surety bond at the time of initial application in order to have it approved. The only burden we are imposing would be the amount of time it takes to mail a copy of the surety bond concurrent with the initial submission or renewal of a provider's application (form HCFA–855).

As a note, the provider/supplier enrollment forms HCFA–855, HCFA–855C, HCFA–855R, and HCFA–855S and related instructions, which are currently approved under OMB Approval No. 0938–0685, are in process of being revised. In particular, an emergency clearance of these information collection requirements was requested by HCFA. A notice was published in the **Federal Register** on December 18, 1997, requesting that OMB approve the revised collection by December 31, 1997. In that notice the public was given from the date of the notice's publication, until December 29, 1997 to comment on the proposed collection. It should be noted that the emergency clearance sought by HCFA would have a maximum approval period of 6 months from the date of OMB approval.

The table below indicates the annual number of responses for each regulation section in this proposed rule containing information collection requirements, the average burden per response in minutes or hours, and the total annual burden hours.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

CFR sections	Annual Number of responses	Annual frequency	Average burden per response (minutes)	Annual burden hours
424.57(c)(5)(iii) and(iv)	68,000	50	5	283,333
424.57(e)	68,000/3=22,667	1	1	378
Total hours				283,711

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirements in § 424.57 (c) and (e). These requirements are not effective until they have been approved by OMB.

If you comment on any of these information collection and recordkeeping requirements, please mail copies directly to the following:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850. ATTN: John Burke HCFA–1864–P

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. Attn.: Allison Herron Eydt, HCFA Desk Officer

VI. Regulatory Impact Analysis

We have examined the impacts of this proposed rule under Executive Order 12866, the Unfunded Mandate Act of 1995, and the Regulatory Flexibility Act. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits. In addition, a Regulatory Impact Analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). The costs associated with this rule are the following:

- Surety bond requirement (§ 424.57(e)). Approximately $57 million annually. See Table 3 in this section for computations.
- Liability insurance requirement (§ 424.57(c)(18)). We estimate that only 10 percent of DMEPOS suppliers do not already have liability insurance that meets this requirement. Ten percent of the total DMEPOS suppliers is approximately 6,800 suppliers. Multiplying 6,800 by $250 results in an approximate additional liability insurance cost of $1.7 million annually to the DMEPOS industry due to this rule.
- Primary business telephone at a physical facility requirement (§ 424.57(c)(17)). We estimate that only 1% of DMEPOS suppliers do not already meet this requirement. Therefore, 680 times the approximate $600 annual cost of telephone service results in an additional cost of $410,000 annually.

Total Cost = $57 Million + $1.7 Million + $410,000 = $59,110,000 annually.

The Unfunded Mandates Reform Act of 1995 requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. The proposed rule has no consequential effect on State, local, or tribal governments. We believe that the private sector costs of this rule fall below these thresholds but nonetheless, due to uncertainties of these estimates, have prepared this RIA providing such an assessment.

Consistent with the Regulatory Flexibility Act, we prepare a Regulatory Flexibility Analysis (RFA) unless we certify that a rule would not have a significant economic impact on a substantial number of small entities. For purposes of the Act, suppliers with annual sales of $5 million or less are considered to be small entities. (Individuals and States are not included in the definition of a small entity.) The RFA is to include a justification of why action is being taken, the kinds and number of small entities which the proposed rule will affect, and an explanation of any considered meaningful options that achieve the objectives and would lessen any significant adverse economic impact on the small entities.

We believe that our proposed standards would help bar fraudulent suppliers from participating in the Medicare program, or in the event that a supplier should provide excessive supplies or defraud the Medicare program, we will be assured of recovering a portion of those funds. Therefore, we expect to have a significant impact on an unknown number of persons and entities who will effectively be prevented from repeating their aberrant billing activities. The vast majority of suppliers will not be significantly affected by this rule. The significant reduction in program overpayments that we expect to achieve as a result of this rule justifies the relatively small burden the rule would impose on all entities.

The following analysis, together with the rest of this preamble, explains the rationale for and purposes of the rule, details the costs and benefits of the rule, analyzes alternatives, and presents the measures we propose to minimize the burden on small entities.

A. Rationale and Purposes

We expect this rule to deter some entities that supply DME to Medicare beneficiaries from abusive billing practices or defrauding the Medicare program. For example, abusive practices include refusing to honor manufacturers' warranties or improperly installing equipment in Medicare beneficiaries' homes. Fraudulent practices include billing the Medicare program for supplies that were not furnished. In a surprisingly large

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number of instances, when either the beneficiaries or HCFA attempted to contact suppliers alleged to have committed abuses, it was difficult to reach them because they did not have a fixed address or had closed the business and fled. Our experience has been that the market has failed to address these problems because of the motivation for unseemly profits, inadequate control by gatekeepers, and insufficient information on the part of Medicare beneficiaries to detect abuse. This market failure makes it necessary for HCFA to impose standards on DME suppliers and establish safeguards that enable the Medicare program to better recover improper payments.

B. Characteristics of Suppliers

The single most striking characteristic of Medicare DMEPOS suppliers is their diversity. DMEPOS suppliers fill a business need and do it in a variety of ways. Some set out from the beginning to establish a business furnishing DMEPOS items. Others evolve into being suppliers. For example, a firm dealing with oxygen needs of the medical community, may add a department that provides oxygen services and supplies as a medical supply as a logical extension of an existing business. Similarly, a retail rental store may add wheelchairs or hospital beds and a pharmacy may add walkers to an inventory of otherwise unrelated commodities and use existing advertisements to announce the availability of these items.

Based on the small size of the businesses, it is more characteristic that suppliers furnish a limited number of items in greater demand than to maintain a large inventory of items covering the gamut of covered DMEPOS items. Thus, the only things any two suppliers may have in common is their provision of DMEPOS items and their understanding that the activity will meet the needs of the business. Suppliers are in a position to direct their marketing activities to optimize their most profitable revenue sources, and in seeking to meet patient demand, can choose to provide only those items that meet their business objectives.

For purposes of the RFA, a small entity is one with annual revenues of less than $5 million. As indicated by Table 1, which examines reimbursements to unique billing numbers (a supplier may have multiple locations, e.g., a chain organization, but use only one unique billing number), 97 percent of all DMEPOS suppliers generate billings of less than $350,000 in Medicare revenues annually.

TABLE 1.—TOTAL NUMBER OF SUPPLIERS ARRANGED BY REIMBURSEMENTS

[Dates of Service—January to December 1995]

Dollars reimbursed	Unique billing Nos.
>$3,000,000	102
$1,000,000–2,999,999	430
$500,001–999,999	933
$350,000–499,999	740
<$350,000	66,106
Total	68,311

C. Geographic Distribution of Suppliers

Individual patients may receive their durable medical equipment, supplies, and prosthetics either from a local supplier or from a regional or national concern that functions much like a mail order catalogue distribution center. As shown in Table 2, suppliers locate in areas where there is greatest demand, leaving other areas to be served by catalogue, mail order or drop shipments. No States appear to be underserved, and competition exists in large population areas, leading us to believe that the imposition of some additional standards will not have adverse effects on competition or on the availability of an adequate number of suppliers to meet patients' needs.

TABLE 2

State	Number of suppliers per state	Number of beneficiaries using DME per state	Beneficiary per supplier
AK	206	3300	16
AL	2111	63700	30
AR	1450	59300	40
AZ	2051	59300	28
CA	13028	361000	27
CO	2055	41800	20
CT	2095	50000	23
DC	241	7800	32
DE	371	10000	26
FL	10137	259700	25
GA	3710	82600	22
HI	427	14800	32
IA	2236	47300	21
ID	829	14900	17
IL	5524	161000	29
IN	4152	81900	19
KS	1752	38100	21
KY	2427	58200	23
LA	2254	57700	25
MA	2981	92800	31
MD	2384	59700	24
ME	856	20100	23
MI	4319	134000	21
MN	2513	62800	24
MO	3076	82800	26
MS	1312	39400	30
MT	792	12900	16
NC	4134	101800	24
ND	500	10300	20

TABLE 2—Continued

State	Number of suppliers per state	Number of beneficiaries using DME per state	Beneficiary per supplier
NE	1390	24800	17
NH	669	15500	23
NJ	4447	116200	26
NM	669	20900	31
NV	664	19000	28
NY	7720	262300	33
OH	6675	165700	24
OK	2062	48400	23
OR	1828	46500	25
PA	7610	206000	27
RI	651	16700	25
SC	2041	50400	25
SD	639	11600	18
TN	2762	206200	27
TX	8219	206200	25
UT	829	18600	22
VA	3225	81100	25
VT	355	8200	23
WA	3355	68200	20
WI	2922	75700	26
WV	1134	32800	28
WY	373	6000	16
Total	140,162		

We note that the purpose of Table 2 is to illustrate the locations that provide durable medical equipment and supplies to Medicare beneficiaries. Many of these entities are members of chain organizations. While there are more than 140,000 individual suppliers, due to the affiliation of some suppliers with chains, as of December 1995, there were only 68,311 unique billing numbers. Hence, Tables 1 and 3, which describe Medicare payments to 68,311 billing numbers, and Table 2, which describes the more than 140,000 actual locations, describe the same universe of suppliers.

According to an industry source, Medicare accounts for approximately 40 percent of the average DMEPOS supplier's revenue. The approximate percentage amounts for other revenue sources are 25 percent private insurance, 15 percent Medicaid, 10 percent institutional, and 10 percent private credit and cash sales. For calendar year 1995, submitted charges for DMEPOS items were $10.2 billion. We believe that for most suppliers any additional costs imposed by our standards would be outweighed by the benefits gained by continuing to be a Medicare DMEPOS supplier.

These standards, of themselves, should not result in changes in the number of legitimate business suppliers, because, as set forth below and elsewhere in this preamble, most requirements are logical extensions of good business practices that we believe currently are being met by the vast majority of suppliers.

D. Discussion of Alternatives

We believe it was the Congress' intent to strengthen DMEPOS supplier standards to protect beneficiaries and the Medicare program from potential fraud and abuse in billing practices. Therefore, we did not choose the alternative of staying with the existing supplier standards which we believe are minimal safeguards. Instead of relying on minimal supplier standards, we have expanded the supplier standards, using as our statutory basis either the specific section of the law referenced in this discussion (for example, section 4312 of the BBA'97), or section 1834(j)(1)(B)(ii)(IV) of the Act, which states that the supplier must "meet such other requirements as the Secretary may specify." This proposed rule would provide a basis to better screen applicants and to revoke the supplier numbers of those who do not meet these standards.

For purposes of this impact statement, we have divided the proposed supplier standards into the following two broad categories: statutory requirements and good business practices.

E. Statutory Requirements

Liability Insurance—The statutory authority for § 424.57(c)(18) is section 1834(j)(1)(B)(ii)(III) of the Act. The proposed rule would require a supplier to have comprehensive liability insurance protecting the supplier's place of business and any and all retail customers and employees. We have not specified a minimum amount in this proposed rule, but, as explained elsewhere, suggest a minimum of $500,000 in coverage. We estimate that approximately 10 percent of all suppliers do not currently carry liability insurance. We estimate the cost per year for a supplier to carry liability insurance in the amount of $500,000 would be approximately $250. We believe that the $250 cost per supplier does not represent a significant economic impact on the estimated 10 percent of suppliers not currently carrying liability insurance.

In order to provide the greatest safeguards to Medicare beneficiaries, we considered imposing liability insurance that included: (1) Coverage for damages resulting from the failure of a Medicare covered item to perform as expected that are not otherwise fully covered by the manufacturer's warranty; (2) coverage for liability arising in connection with the rental, sale, delivery, installation and retrieval of the Medicare covered items, including customized items; (3) coverage for damages that arise from premises operations, such as, for example, those arising out of showroom operations or equipment demonstrations; and (4) coverage for damages that arise from

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personal injury and from breaches of customer privacy or confidentiality. While the above provisions would provide significant liability protection for beneficiaries, we believe that for two of the provisions, coverage for damages that are not covered by the manufacturer's warranty and coverage for damages that arise from breaches of customer privacy or confidentiality, coverage is not generally available from the insurance industry. Furthermore, we believe that the above provisions, taken as a whole, would be much more costly and rigid requirements than the alternative selected, and would impose an unnecessary burden on suppliers.

Thus, we have chosen an alternative that we believe is cost effective and will ensure that suppliers have appropriate liability insurance. Nonetheless, we request comments on whether there are alternative insurance coverage standards that would strengthen protections in a cost effective manner and information about the cost and availability of such coverage.

F. Good Business Practices

Most of our proposed supplier standards speak directly to business practices. We do not believe that these would result in a significant impact on any sizeable number of legitimate suppliers. For these additional proposed standards, the economic impact on most suppliers is negligible, although the benefits to the program and to the beneficiary may be greater. For example, the requirement at § 424.57(c)(8) that a supplier must not charge Medicare for repair or replacement of Medicare covered items or for services covered under warranty, coupled with the requirement at § 424.57(c)(5)(iv) that the supplier provide documentation, upon request, that it has advised Medicare beneficiaries about Medicare covered items covered under warranty, should result in claims for repairs, parts or replacement being made against the warranty, thus decreasing the monies paid by the program. The monies paid out by the program and the beneficiary may also decrease as a result of the requirement that the supplier inform the beneficiary of the rental or purchase option and the copay implications involved. More beneficiaries may elect to purchase their equipment, instead of renting for long periods of time.

In most instances, these proposed standards do not exceed the usual business practices necessary for any retail business to succeed. In other words, we believe that a supplier that expects to conduct a successful business would already have in place procedures to meet these standards. Because, we consider these basic requirements that a business would have to meet to provide satisfactory customer service and to manage properly its inventory we did not develop alternatives.

Under § 424.57(c)(17), a supplier would be required to maintain a separate phone that is used primarily for business purposes at its physical facility. In order to accept inquiries from potential customers, maintain relationships with current customers, and conduct business with contractors in today's business market, it is necessary that virtually every business have telephonic access. Beneficiaries also need to have access to their supplier in case they have a problem with or questions about their DMEPOS items.

We believe that this standard would be met by nearly all legitimate businesses. However, we believe approximately one percent of DMEPOS suppliers currently do not meet the fixed telephone requirement. The estimated cost per year for any supplier to establish and maintain a separate phone line to conduct business would be approximately $600 ($50 a month). Thus, the aggregate cost is negligible. We believe the benefits of full time access to the supplier would far exceed any minor economic impact on a supplier. In addition, we note that requiring the supplier to have a primary business telephone listed in the business portion of the local telephone directory and maintained at the physical location of the supplier business may even result in increased business for a supplier.

This proposed requirement would help beneficiaries to contact their suppliers in the event of equipment problems, failures, and to resolve questions. Telephonic access to a supplier is crucial so that the Durable Medical Equipment Regional Carriers may call and obtain additional information to process and pay claims. We are aware that telephone technology is rapidly changing. We had considered putting limitations on the use of mobile telephones, which have been associated with abusive practices. However, we concluded that additional limitations might penalize legitimate suppliers, or might not be responsive to technological change. We specifically solicit comments on whether there are alternative ways to establish telephone requirements that minimize potential abusive practices while not raising costs for legitimate small businesses.

G. Protection of the Trust Fund and Beneficiary

While each of these proposed supplier standards is designed to protect the Medicare trust fund and beneficiaries, one standard warrants separate discussion. In accordance with section 4312 of the BBA '97, a surety bond will be required as long as an entity remains a DMEPOS supplier. Under § 424.57(e), a supplier would be required to obtain a surety bond equal to at least 15 percent of the amount paid to the supplier by the Medicare program for the previous year as reflected in their IRS Form No. 1099, or by the historic payment information from the DMERC provider payment history file. We propose establishing a sliding scale that reflects the volume of business a supplier does with Medicare. The sliding scale would be used in combination with a $50,000 floor and a $3,000,000 ceiling. By using a sliding scale, based on 15 percent of the amount paid to the supplier by the Medicare program for the previous year, the penal amount of the surety bond and the premium for the surety bond are directly tied to the amount of Medicare payments received by the supplier. We believe that 15 percent is a reasonable percentage on which to base the penal amount of the bond since it would not be too high as to be a barrier to entry for small companies, yet high enough to provide the Medicare Trust Fund with some recourse for compensation for debts owed to the program. We are interested in comments about the reasonableness of the percent amount and the proposed floor and ceiling.

A surety company charges its underwriting fee based on the penal amount of the bond. For this type of surety bond, the industry usually has an underwriting charge of 1 to 2 percent. Based on this information Table 3 indicates the costs of a surety bond based on the supplier's annual Medicare revenue assuming that bonds cost 1.5 percent of the protected amount. This table also shows that the total costs of bonds is likely to be about $57 million and that on average the cost of bonds will be about one-half of one percent of gross sales (somewhat less for larger suppliers) for the smallest suppliers who make up the overwhelming majority of all suppliers. We request comment on the accuracy of these estimates.

TABLE 3.—COST OF PROGRAM-UNIVERSAL BONDING WITHOUT TIME LIMIT

Range of sales (1000s)	Bond cost	Number of suppliers	Total sales (1000s)	Total bond cost (1000s)	Cost/sales (percent)
<$350	$788	58,106	$9,915,900	$52,092	0.53
$350–499	956	740	314,500	707	0.22
$500–999	1,688	933	699,750	1,575	0.23
$1,000–2,999	4,388	430	860,000	1,887	0.22
>3,000	6,750	102	408,000	689	0.17
Total		68,311	12,198,150	56,950	0.47

For 97 percent of the suppliers the cost of a surety bond would be on average $788 annually. The Durable Medical Equipment Regional Carriers report that each year tens of millions of dollars cannot be recovered because the supplier has gone out of business or does not have resources to repay debts owed to Medicare. We believe that if these suppliers had possessed a surety bond, the Medicare program could decrease its potential losses.

We realize that surety bonds represent a new cost of approximately $57 million to DMEPOS suppliers, with the use of a sliding scale adding approximately $5 million to the cost when compared to what it would cost if we required only the $50,000 surety bond amount for each supplier. However, we believe that the benefits to the Medicare program and Medicare beneficiaries would outweigh these costs. For example, as part of Operation Restore Trust in 1995 in Florida we found that $40 million was billed for nonfurnished DMEPOS items. This $40 million represented 8% of the total Medicare expenditures made for DMEPOS items in the State of Florida in 1995. If we assume that this 8% figure represents a typical experience, and multiply the 8% times the total Medicare expenditures made nationally, we can project potential Medicare erroneous payments to be $492 million for the entire nation. However, Florida may not necessarily be typical of other States or the Nation as a whole.

In addition, the use of an 8% figure, which has been extrapolated from 1995 data, to make cost saving projections in 1997 does not take into account the advances that Medicare has made over the last two years to protect Medicare funds. For example, as a result of the Operation Restore Trust project, which was conducted in five States, Medicare has strengthened its efforts to identify and exclude from the program companies engaged in fraud or that fail to meet other supplier standards.

Efforts to reduce improper Medicare payments include section 201(b) of the Health Insurance Portability and Accountability Act of 1996 (P.L. 104–191), enacted August 21, 1996, that amended section 1817 of the Act by creating a Health Care Fraud and Abuse Control Account. Funds will be appropriated to this Account each year to carry out the Medicare Integrity Program under section 1893 of the Act.

While it is not possible to estimate with accuracy the savings that will result from this provision, we believe it is important to set standards for DMEPOS suppliers that do business with the Medicare program, for program integrity purposes. We believe that surety bonds combined with other efforts will diminish the number of suppliers that currently fraudulently bill Medicare, while serving as a deterrent to others tempted to engage in fraudulent behavior.

H. Conclusion

As indicated elsewhere in this preamble, to the extent that we are imposing a burden it is a necessary one. The public interest is best served by establishing safeguards that prevent suppliers from taking advantage of the current minimal supplier standards, even though some may view the additional standards as impeding their competitiveness. It is by design that these standards would have the greatest impact on those suppliers that need to change the most. We believe that the loss of a supplier as a result of these supplier standards, for example one who operates out of a van or who does not provide a value added service, is far outweighed by what these standards would do in terms of protecting the health and safety of beneficiaries and preserving the Medicare Trust Fund.

I. Rural Hospital Impact Statement

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing a rural impact statement since we have determined, and certify, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare.

42 CFR Chapter IV would be amended as set forth below:

PART 424—CONDITIONS FOR MEDICARE PAYMENT

1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 424.57 is amended by revising paragraphs (b) through (f) and adding a new paragraph (g) to read as follows:

§ 424.57 Special payment rules for items furnished by DMEPOS suppliers and issuance of DMEPOS supplier billing numbers.

* * * * *

(b) Medicare will not pay for any Medicare covered items provided by a DMEPOS supplier prior to the date HCFA issues a DMEPOS supplier number. Medicare will not pay for any covered items provided by a DMEPOS supplier during any period when a DMEPOS supplier number is revoked or during a period of exclusion.

(c) Medicare will issue a DMEPOS billing number, or reissue a number previously issued, to a supplier that submits a completed application to furnish Medicare covered medical equipment and supplies, as defined in section 1834(j)(5) of the Act, after the

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supplier meets, and certifies in its application for a billing number that it meets, the following standards:

(1) A supplier must agree to comply with the provisions of Title XVIII of the Act and any applicable regulations.

(2) A supplier must operate its business and furnish Medicare covered items in compliance with all applicable Federal and State licensure and regulatory requirements.

(3) A supplier must not make, or cause to be made, any false statement or misrepresentation of a material fact on an application for a billing number. A supplier must provide complete and accurate information in response to questions on its application for a billing number. Any changes in information supplied on the application must be reported within 35 days of the change.

(4) A supplier's application for a billing number must be signed by an individual whose signature binds a supplier.

(5) A supplier must agree to furnish to HCFA all information or documentation HCFA requires, including—

(i) Information or documentation needed to process or adjudicate Medicare claims;

(ii) Upon request, copies of contracts with third parties for furnishing Medicare covered items to Medicare beneficiaries;

(iii) Upon request, documentation that it has advised beneficiaries that they may either rent or purchase inexpensive or routinely purchased equipment and about the purchase option for capped rental equipment;

(iv) Upon request, documentation that it has advised Medicare beneficiaries about Medicare covered items covered under warranty;

(v) Upon request, documentation demonstrating that it has delivered Medicare covered items to Medicare beneficiaries;

(vi) Upon request, documentation that it maintains and repairs directly, or through a service contract with another company, Medicare covered items rented to beneficiaries;

(vii) Upon request, proof of liability insurance; and

(viii) Any other information required by this or other Medicare requirements.

(6) A supplier must fill orders from its own inventory or by contracting with other companies for the purchase of items necessary to fill the order. A supplier may also fabricate or fit items for sale from supplies it buys under contract. A supplier may not contract with any entity that currently is excluded from the Medicare program, any State health care programs, or from any other Federal Government Executive Branch procurement or nonprocurement program or activity.

(7) A supplier must advise beneficiaries that they may either rent or purchase inexpensive or routinely purchased equipment, and of the purchase option for capped rental equipment, as defined in § 414.220(a) of this subchapter.

(8) A supplier must honor all warranties expressed and implied under applicable State law. A supplier must not charge the beneficiary or the Medicare program for the repair or replacement of Medicare covered items or for services covered under warranty. This standard applies to all purchased and rented items, including capped rental items, as described in § 414.229 of this subchapter.

(9) A supplier must be responsible for the delivery of Medicare covered items to beneficiaries. A supplier must provide beneficiaries with necessary information and instructions on how to use Medicare covered items safely and effectively.

(10) A supplier must answer questions and respond to complaints a beneficiary has about the Medicare covered item that was sold or rented. A supplier must refer beneficiaries with Medicare questions to the appropriate carrier.

(11) A supplier must maintain and repair directly, or through a service contract with another company, Medicare covered items it has rented to beneficiaries.

(12) A supplier must accept returns from beneficiaries of substandard (less than full quality for the particular item) or unsuitable items (inappropriate for the beneficiary at the time it was fitted and/or sold).

(13) A supplier must disclose consumer information, which must include these supplier standards, to each beneficiary whom it supplies a Medicare covered item.

(14) A supplier must comply with the disclosure provisions in § 420.206 of this subchapter.

(15) A supplier cannot convey or reassign a supplier number.

(16) A supplier must maintain a physical facility on an appropriate site. The physical facility must contain space for storing business records including the supplier's delivery, maintenance, and beneficiary communication records. For purposes of this requirement, a post office box or commercial mailbox is not considered a physical facility.

(17) A supplier must maintain a primary business telephone at the physical facility. This telephone number must be listed under the name of the business and in the business portion of the local telephone company directory. The exclusive use of a beeper number, answering service, pager, facsimile machine, car phone, or an answering machine may not be used as the primary business telephone for purposes of this regulation.

(18) A supplier must have a comprehensive liability insurance policy that covers both the supplier's place of business and any and all customers and employees of the supplier.

(19) As required by sections 1834(a)(17)(A) and 1834(h)(3) of the Act, a supplier of a Medicare covered item must agree not to contact a beneficiary by telephone regarding the furnishing of a Medicare covered item to the individual unless one of the following applies—

(i) The individual has given written permission to the supplier to make contact by telephone regarding the furnishing of a Medicare covered item;

(ii) The supplier has furnished a Medicare covered item to the individual and the supplier is contacting the individual only regarding the furnishing of such Medicare covered item; or

(iii) If the contact is regarding the furnishing of a Medicare covered item other than a covered item already furnished to the individual, the supplier has furnished at least one covered item to the individual during the 15-month period preceding the date on which the supplier makes such contact.

(20) Only a supplier that is licensed to dispense the drug may bill for a drug used as a Medicare covered supply with durable medical equipment or prosthetic devices. A supplier of drugs must bill and receive payment for the drug in its own name.

(d) If a supplier is found not to meet the standards in paragraph (c) of this section, its billing number will be revoked. The revocation will be effective 15 days after the entity is sent notice of the revocation, as specified in § 405.874(b) and (e) of this subchapter.

(e) *Surety bond.* (1) A supplier must obtain a surety bond for each tax identification number for which it has a billing number issued by Medicare. When a supplier applies for renewal of its supplier billing number the supplier must submit with the supplier application to the National Supplier Clearinghouse a copy of its current surety bond. Copies of previous surety bonds demonstrating compliance with the surety bond requirement since the last renewal or initial application must also be submitted when renewing a supplier number. New suppliers must submit a copy of their surety bond for the appropriate amount at the time of their initial application in order to have the application approved. The company issuing a surety bond must be listed in the Treasury Department Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies." This list appears in the **Federal Register** on or about July 1 of each year. Copies of the Circular and interim changes may be obtained directly from the Government Printing Office (202) 512–1800, or contact the U.S. Department of the Treasury, Financial Management Service, Surety Bond Branch, 3700 East West Highway, Room 6F04, Hyattsville, Maryland 20782, telephone (202) 874–6850 or Fax (202) 874–9978.

(2) The surety bond must be for a term of 12 months and must be renewed annually. The surety bond must be in an amount equal to at least 15 percent of the amount paid to the supplier by the Medicare program for claims for Medicare covered items provided in the previous year, as reflected in a supplier's IRS Form No. 1099, or by the historic payment information from the durable medical equipment regional carrier provider payment history file. The minimum surety bond amount for a supplier billing number, regardless of its Medicare revenues, is $50,000 annually. The maximum surety bond amount for a supplier billing number, regardless of its Medicare revenues, is $3,000,000 annually.

(3) For a supplier that has not previously participated in the Medicare program, the amount of the surety bond for each billing number must be equal to the sum of $50,000 for the first year of participation in the Medicare program. Thereafter, the rules set forth in § 424.57(e)(1) and (2) apply.

(4) As the obligee of the bond, HCFA may seek recovery by resorting to the surety bond if there are outstanding debts to the Medicare program, including overpayments, interest, civil money penalties and assessments or if a supplier's number is revoked.

(f) A supplier number will expire and a supplier must renew its application for a billing number 3 years after the billing number is first issued. Each supplier must complete an application for a billing number 3 years after its last number is issued.

(g) A supplier must have a complaint resolution protocol to address beneficiary complaints that relate to supplier standards in paragraph (c) of this section and to keep written complaints and related correspondence and any notes of actions taken in response to written and oral complaints. Failure to maintain such information may be considered evidence that supplier standards have not been met. Such information must be kept at its physical facility and made available to HCFA, upon request. A supplier must maintain the following information on all written and oral beneficiary complaints, including telephone complaints, it receives:

(1) The name, address, telephone number, and health insurance claim number of the beneficiary.

(2) A summary of the complaint and the date it was made; the name of the person taking the complaint; and a summary of any actions taken to resolve the complaint.

(3) If an investigation was not conducted, the name of the person making the decision and the reason for the decision.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 24, 1997.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: August 14, 1997.

Donna Shalala

Secretary.

[FR Doc. 98–963 Filed 1–16–98; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 15

[USCG 98–3323]

RIN 2115–AF57

Federal Pilotage for Vessels In Foreign Trade

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to require that foreign-trade vessels, under way on the Cape Fear River and the Northeast Cape Fear River in North Carolina, be under the direction and control of Federal pilots when not under the direction and control of State pilots. This measure is necessary to ensure that vessels are navigated by competent, qualified persons, knowledgeable in the local area and accountable to either the State or the Coast Guard. This measure would promote navigational safety by increasing the level of accountability and reducing the risk of accidents and the discharge of oil and other hazardous substances into these waters.

DATES: Comments must reach the Coast Guard on or before February 19, 1998.

ADDRESSES: You may mail comments to the Docket Management Facility, USCG 98–3323, U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10:00 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the above address between 10:00 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, telephone 202–366–9329 or Mr. Stewart Walker, Licensing and Manning Division, Office of Compliance (G–MOC–1), room 1116, 202–267–0745.

SUPPLELMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking USCG 98–3323 and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations would aid this rulemaking, the Coast

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Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Under subsection 8503(a) of title 46, United States Code, the Secretary of Transportation may require a Federally-licensed pilot to be aboard a self-propelled vessel engaged in foreign trade and operating on the navigable waters of the United States when State law does not require a pilot. Under this authority, on May 10, 1995 [60 FR 24793], the Coast Guard amended 46 CFR part 15 and required Federal pilots to be aboard vessels engaged in foreign trade and operating on certain navigable waters of the United States, within California, Hawaii, Massachusetts, and New York and New Jersey. At the same time, subsection 8503(b) provides that Federal authority to require Federally-licensed pilots on vessels in foreign trade terminates when the State having jurisdiction establishes a superseding requirement for a State pilot and notifies the Secretary of that fact.

Commercial vessels transit the Cape Fear River and Northeast Cape Fear River carrying various types of freight, oil, and hazardous substances and hazardous materials, as well as large quantities of bunkers. Under North Carolina law [General Statutes of North Carolina, 76A–16], every foreign vessel and every domestic vessel sailing under register must use a State-licensed pilot, except that the vessel need not use a State-licensed pilot if it is under the control of a docking master for certain movements on the Cape Fear River. These movements include berthing and unberthing, passing through bridges, and shifting within a port or terminal. North Carolina does not license, establish qualifications for, or regulate the competency of, docking masters. Although all docking masters currently operating on the Cape Fear River and Northeast Cape Fear River already hold valid Federal pilots' licenses (or pilotage endorsements on Federal licenses), holding these is voluntary and is currently neither a State nor a Federal requirement. Anyone may serve as docking master, and no one need demonstrate proficiency.

Recently, a foreign-flag bulk carrier under the control of a docking master was caught by the wind and current when leaving a pier above the Cape Fear Memorial Bridge. The vessel was set down river, perpendicular to the channel, while the docking master tried to rotate its bow downstream. Its stern struck and destroyed about 30 meters of the pier that it had just left. The docking master was not operating under the authority of either a Federal or a State pilot's license. North Carolina did not investigate this incident; and, in such a case, unless the person is operating under the authority of a Federal pilots' license (or endorsement), or the Coast Guard has some other basis for jurisdiction, the Coast Guard could not suspend or revoke his or her Federal license (or endorsement) for violations of statutes or rules intended either to promote marine safety or to protect the navigable waters, for misconduct, or for negligence [46 U.S.C. Chapter 77]. Even if the Coast Guard considered him or her professionally or medically incompetent, its ability to deny him or her the opportunity to serve as a docking master on foreign-trade vessels would be severely restricted.

The Coast Guard has determined that it is unsafe for vessels to undertake intra-port transits, undertake transits when not bound to or departing from ports, or otherwise navigate in the waters of the Cape Fear River or Northeast Cape Fear River except when under the direction and control of pilots accountable to the State or to the Coast Guard. These vessels represent an unacceptable risk to human life, property, and the environment. Therefore, the Coast Guard has determined that to require persons to serve under the authority of Federal first-class pilots' licenses (or endorsements), and so be accountable for their actions and competency, would increase maritime safety.

Currently, to obtain a Federal pilot's license (or endorsement), a person must pass a comprehensive examination, which includes, but is not limited to, performing a chart sketch of the area, demonstrating proficiency in the use of navigational aids, and maneuvering and handling ships in high winds, tides, and currents. Further, a person must complete a specific number of round trips and demonstrate specialized knowledge of the waters for which the license (or endorsement) is issued. Therefore, the Coast Guard proposes a Federal pilots' requirement for foreign-trade vessels operating in the designated waters of the Cape Fear River and Northeast Cape Fear River, unless the vessels are under the direction and control of State-licensed pilots operating under the authority of valid State pilots' licenses.

Discussion of Proposed Rule

This proposed rule would add a new section to 46 CFR part 15, subpart I, to require that every foreign-trade vessel operating on the Cape Fear River and Northeast Cape Fear River be under the direction and control of a Federally-licensed pilot except when under the direction and control of a State-licensed pilot operating under the authority of a valid State license. This rule would apply only to the Cape Fear River and Northeast Cape Fear River, since North Carolina allows docking masters to take control of foreign-trade vessels only in these waters.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) [44 FR 11040 (February 26, 1979)].

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Foreign-trade vessels are normally under the direction and control of docking masters or State pilots when making intra-port transits or transits in congested waters. Those persons currently serving as docking masters do hold Federal pilots' licenses, although not required to do so by State or Federal regulation. Therefore, this proposed rule would not impose any immediate additional costs on the persons acting as docking masters. However, those persons entering this profession in the future would now be required to hold Federal pilots' licenses. Historically, persons filling these vacancies have already obtained Federal pilots' licenses and necessary endorsements in the normal course of advancement in this profession. Nevertheless, this rule would require an initial expense to obtain the license, in addition to a yearly physical and the five-year renewal fees. These costs should be insignificant as those persons currently acting as docking masters already have, and those likely to enter this profession would already have, the required license. This rule would promote responsibility and safety by requiring a Federal pilot, where the State requires no pilot, for foreign-trade vessels transiting or making intra-port transits within the waters of the Cape Fear River or Northeast Cape Fear River. The Coast Guard believes that the benefits of requiring licensed, qualified persons aboard these vessels significantly outweigh the small costs associated with implementing this rule.

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601–612], the Coast Guard considers whether this proposed rule, if adopted, would have a significant economic impact on a substantial number of small entities. These include independently owned and operated small businesses, that are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard expects that this proposed rule would have minimal economic impact on small entities. The Coast Guard doubts whether vessels affected by this rule are owned or operated by small entities. However, State pilots' associations may qualify as small entities. The Coast Guard understands that persons now providing pilotage to foreign-trade vessels calling at ports on the Cape Fear River and Northeast Cape Fear River already hold Federal first-class pilots' licenses (or endorsements) for those waters. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule would have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule would economically affect it.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this rule would affect your small business or organization, and if you have questions concerning its provisions or options for compliance, please contact Mr. Stewart Walker, Licensing and Manning Division, Office of Compliance (G–MOC–1), Room 1116, 202–267–0745.

Collection of Information

This proposed rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520].

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Congress specifically, under 46 U.S.C. 8503(a), authorized the Federal Government to require a Federally licensed pilot where State law requires no pilot. North Carolina permits a docking master, not licensed by the State, to serve as pilot on certain waters of the State. Therefore, the Federal Government may require Federally-licensed pilots on those waters. The Federal authority to require that pilots hold Federal licenses is effective only until the State establishes a superseding requirement that pilots hold State licenses and notifies the Coast Guard of that fact according to 46 U.S.C. 8503(b).

Since this proposed rule aims primarily at requiring Federal pilots to supplement State pilots, the Coast Guard does not believe that the preparation of a Federalism Assessment is warranted. This rule would not impinge upon existing State laws. If North Carolina adopted superseding legislation requiring foreign vessels, and domestic vessels sailing on registry, to be under the direction and control of State-licensed pilots, the Coast Guard would withdraw its requirement. Thus, the Federal statute itself lets North Carolina preempt Federal authority. Still, the Coast Guard specifically seeks public comment on the implications of this rule for Federalism.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under paragraph 2.B.2.e.(34)(a) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. The Coast Guard has determined that most people now providing pilotage to foreign-trade vessels within the Cape Fear River and Northeast Cape Fear River would continue to provide it since most pilots already hold Federal first-class pilots' licenses for these waters. Therefore, this rule would let affected vessels continue to operate according to current industry practices. The Coast Guard also recognizes that this rule may minimize the risk of environmental harm that may result from collisions and groundings of vessels. Nevertheless, this impact should not be significant enough to warrant further documentation. The "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 15

Crewmembers, Marine safety, Navigation (water), Seamen, Vessels.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR part 15 as follows:

PART 15—MANNING REQUIREMENTS

1. The authority citation for part 15 continues to read as follows:

Authority: 46 U.S.C. 2101, 2103, 3306, 3703, 8101, 8102, 8104, 8105, 8301, 8304, 8502, 8503, 8701, 8702, 8901, 8902, 8903, 8904, 8905(b), 9102; 49 CFR 1.45 and 1.46.

2. Add § 15.1050 to read as follows:

§ 15.1050 North Carolina.

(a) The following navigable waters of the United States within the State of North Carolina when the vessel is maneuvering while berthing or unberthing, is approaching or passing through a bridge, or is making any intra-port transit, which transit may include but is not limited to movement from a dock to a dock, from a dock to an anchorage, from an anchorage to a dock, or from an anchorage to an anchorage, within either of the following areas:

(1) The waters of the Cape Fear River from the boundary line established by 46 CFR 7.60 to Latitude 34°–15.7′ N.

(2) The waters of the Northeast Cape Fear River from its confluence with the Cape Fear River at Point Peter to Latitude 34°–17′ N.

(b) This subpart does not apply to the waters specified in paragraph (a) of this section if a vessel is under the direction and control of a State-licensed pilot operating under the authority of a valid State pilot's license.

Dated: January 7, 1998.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–1271 Filed 1–16–98; 8:45 am]

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Notices

Federal Register
Vol. 63, No. 12
Tuesday, January 20, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act: Renewal of a Computer Matching Program

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of renewal of a computer matching program.

SUMMARY: The U.S. Department of Agriculture (USDA) is giving notice of a renewal of a computer program between the Food and Nutrition Service (FNS) and the U.S. Postal Service (USPS) for the purpose of debt collection.

DATES: This renewal will become effective on March 2, 1998, unless modified by a subsequent notice to incorporate comments received from the public. To be assured of consideration, comments must be received by the contact person listed below on or before February 19, 1998.

ADDRESSES: Comments should be addressed to James I. Porter, Assistant Branch Chief, State Administration Branch, Program Accountability Division, Food Stamp Program, 3101 Park Center Drive, Room 905, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Joseph M. Scordato, Food and Nutrition Service Privacy Act Officer, 3101 Park Center Drive, Room 308, Alexandria, Virginia 22302. Telephone (703) 305–2244.

SUPPLEMENTARY INFORMATION: This computer matching program is conducted to (1) identify postal employees who owe delinquent debts to the Federal government under the Food Stamp Program (FSP) administered by USDA's FNS and (2) collect those debts under the salary offset provisions of the Debt Collection Act of 1982 when voluntary repayment is not forthcoming. As part of their responsibility for administering the FSP, State agencies are responsible for establishing claims for these overissued benefits and for taking certain steps to try to collect those claims.

The Debt Collection Improvement Act of 1996 expanded the statutory authority for administrative offset by creating the Treasury Offset Program (TOP). Under TOP, agencies are required to transfer delinquent non-tax debt to Treasury for the purpose of offsetting Federal payments for debt collection. When fully implemented TOP will operate in accordance with statutory and regulatory authorities, including those contained in 31 U.S.C. 3716 and 4 CFR part 102. Because TOP has not yet been fully implemented, FNS will collect the debts through the Federal Salary Offset Program (FSOP).

FNS has been referring delinquent food stamp debts that were the result of an intentional Program violation or an inadvertent household error. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 broadened the scope of referable debts to include State agency error claims.

This computer match will provide otherwise unavailable information which State agencies can use to try to collect delinquent food stamp claims owed by USPS employees. The public was given notice of the current matching program in a General Notice at 59 FR 42205, dated August 17, 1994. This Notice is being published as required by Subsection (e)(12) of the Privacy Act of 1974 (5 U.S.C. 552a(e)(12)), as amended by the Computer Matching and Privacy Act of 1988 (Pub. L. 100–503).

The following information is provided as required by paragraph (b)(3) of Appendix I to Office of Management and Budget Circular A–130, dated February 20, 1996.

1. *Participating agencies*: The recipient agency is USPS. The source agency is USDA.

2. *Beginning and ending dates:* The matching program will begin with the effective date of this notice and continue in effect no longer than December 31, 1998. If within 3 months of the termination date, the Data Integrity Boards of both USDA and the USPS find that the matching program can be conducted without change, and both USDA and the USPS certify that the matching program has been conducted in compliance with the matching agreement, the matching program may be extended for 1 additional year.

3. *Purpose of the match*: In addition to providing information to assist in collecting delinquent food stamp recipient claims, the names of USPS employees identified through this matching program will be removed from lists of delinquent debts being referred to the Internal Revenue Service (IRS) for collection from Federal income tax refunds. This action is required to conform to an IRS requirement for the Federal Income Tax Refund Offset Program (FTROP). (A description of FTROP is contained in a final rulemaking at 60 FR 45990, dated September 1, 1995.)

4. *Description of the match*: The subject matching program will involve several steps. USDA will provide USPS a magnetic computer tape of claims submitted by State agencies participating in FTROP. By computer, USPS will compare that information with its payroll file, identifying matched individuals on the basis of Social Security Numbers (SSNs). For each matched individual, the USPS will provide to USDA the individual's name, SSN, home address, date of birth, work location, and employee type (permanent or temporary).

USDA will prepare lists of matched individuals according to the State agencies which established the claim for the overissued benefits and will distribute the State agency lists accordingly. The respective State agencies will review those lists and their casefiles. In this review State agencies will verify identity and debtor status of the matched individuals by comparing those lists of matched individuals to their records on the debts and by conducting independent inquiries when necessary to resolve questionable identities. State agencies will also review the records of payments to determine if the debt is still delinquent and the correct amount of the debt.

In addition to verifying debtor identity and the status of the debt, prior to USDA taking any steps to refer debts for offset, State agencies will provide debtors with a 30-day written notice stating the amount of the debt and that the debtor may repay the debt voluntarily by entering into a written agreement with the State agency. Debts not repaid voluntarily would be referred to USDA for involuntary offset. Prior to such action, USDA will notify debtors of

the intended collection action and offer them an opportunity for a hearing on the debt, including the right to copy documentation relating to the debt.

5. *Legal authorities*: This matching program will be conducted under the following authorities:

(a) The Debt Collection Act of 1982 (5 U.S.C. 5514), which gives authority to Federal agencies to offset the salaries of Federal and USPS employees who are delinquent on debts owed to the Federal government.

(b) The Debt Collection Improvement Act of 1996 (5 U.S.C. 5514(a)) which provides for salary offset and (31 U.S.C. 3716(c)) which mandates centralized administrative offset through the Treasury Offset Program.

(c) The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (7 U.S.C. 2022(b)(1)) which added a new category of claims, State agency error claims, to those eligible for offset.

(d) Office of Personnel Management (OPM) regulations, 5 CFR part 550, subpart K (Collection by Offset from Indebted Government Employees), §§ 550.1101–1108, which set the standards for Federal agency rules implementing the Debt Collection Act.

(e) USDA regulations at 7 CFR part 3, subpart C, which implement 5 U.S.C. 5514 and OPM regulations, and which authorize USDA agencies to issue regulations governing debt collection by salary offset (7 CFR 3.68).

(f) USDA regulations at 7 CFR 273.18 (g)(6) which set the procedures for the operation of the Federal salary offset program for the FSP.

(g) Section 13941 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66), which amended Sections 11(e)(8) and 13 of the Food Stamp Act of 1977, 7 U.S.C. 2020(e)(8), 2022, to authorize the Federal salary offset program for the FSP.

6. *Categories of individuals involved:* Two groups of individuals will be involved with this matching program. One group is USPS employees. The other group is individuals who have participated in the Food Stamp Program but are no longer participating, and who owe delinquent debts for overissued food stamp benefits for which they are not making repayments.

7. *Record systems used:* (a) USPS will use records from its Privacy Act system of records "Finance Records—Payroll System, USPS 050.020," containing payroll records for approximately 700,000 current employees. Disclosure will be made pursuant to routine use Number 24 of USPS 050.020, (57 FR 57515, dated December 4, 1992).

(b) USDA will use records from its Privacy Act system of records "Claims Against Food Stamp Recipients—USDA/FNS—3," containing approximately 350,000 records. Disclosure will be made pursuant to routine use Number 4 of record system USDA/FNS—3, (58 FR 48633, dated September 17, 1993).

8. *Agency contact*: Inquiries about this matching program should be directed to James I. Porter, Assistant Branch Chief, State Administration Branch, Program Accountability Division, Food Stamp Program, FNS, USDA, 3101 Park Center Drive, Room 905, Alexandria, Virginia 22302, telephone (703) 305–2385.

Dated: January 6, 1998.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 98–1184 Filed 1–16–98; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Notice of Request for Reinstatement and Revision of a Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Farm Service Agency's (FSA) intention to request a reinstatement and revision of a currently approved information collection in support of the Dairy Indemnity Payment Program (DIPP) contingent upon the appropriation of funds.

DATES: Comments on this notice must be received on or before March 23, 1998 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Raellen Erickson, Agricultural Program Specialist, Price Support Division, USDA, FSA, STOP 0512, 1400 Independence Avenue, SW, Washington, DC 20250–0512; telephone (202) 720–7320; e-mail rerickso@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION: This notice announces FSA's intention to request a reinstatement and revision of the currently approved information collection in support of the DIPP. The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998 (Pub. L. 105–86, 111 Stat. 2079) appropriated funds and authorized DIPP to be carried out until all available funds are expended.

Title: 7 CFR Part 760, Dairy Indemnity Payment Program.

OMB Control Number: 0560–0116.

Expiration Date: June 30, 1997.

Type of Request: Reinstatement and revision of a currently approved information collection.

Abstract: This information is needed to administer the DIPP. The information will be gathered from milk producers and milk handlers to determine the amount of indemnity payment a dairy producer or manufacturer is eligible to receive. Producers are required to meet certain eligibility requirements to ensure the integrity of the program so that only eligible producers receive indemnity payments. The number of times producers or manufacturers have been removed from the market has declined in recent years. Accordingly, fewer requests for assistance have been received. Therefore, the currently approved information collection is revised to reduce the number of responses per request and the annual burden per respondent to half of the currently approved estimate. The emergency clearance of the Information Collection Package for Indemnity Payment Programs was approved by the Office of Management and Budget on November 20, 1997, and extended the expiration date to April 30, 1998.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 17 minutes per response.

Respondents: Dairy farms and small businesses.

Estimated Number of Respondents: 80.

Estimated Number of Responses per Respondent: 6.

Estimated Total Annual Burden on Respondents: 140 hours.

Proposed topics for comments include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Raellen Erickson, Agricultural Program Specialist, USDA-Farm Service Agency-

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Price Support Division, STOP 0512, 1400 Independence Avenue, SW, Washington, D.C. 20250–0512; telephone (202) 720–7320; e-mail rerickso@wdc.fsa.usda.gov. Copies of the information collection may be obtained from Raellen Erickson at the above address.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on January 8, 1998.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 98–1185 Filed 1–16–98; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice Appealable Decisions for Pacific Southwest Region, California

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Pacific Southwest Region to publish legal notice of all decisions subject to appeal under 36 CFR parts 215 and 217. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after January 1, 1998. The list of newspapers will remain in effect until January 1999 when another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Sue Danner, Regional Appeals Coordinator, Pacific Southwest Region, 630 Sansome Street, San Francisco, CA 94111, phone: (415) 705–2553.

SUPPLEMENTARY INFORMATION: On November 4, 1993, 36 CFR parts 215 and 217 were published requiring publication of legal notice of decisions subject to appeal. Sections 215.5 and 217.5 require notice published in the **Federal Register** advising the public of the principal newspapers to be utilized for publishing legal notices. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins is the day following publication of the notice.

In addition to the principal newspaper listed for each unit, some Forest Supervisors and District Rangers have listed newspapers providing additional notice of their decisions. The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

Pacific Southwest Regional Office

Pacific Southwest Regional Forester decisions:
Sacramento Bee, Sacramento, California

Angeles National Forest

Angeles Forest Supervisor decisions:
Los Angeles Times, Los Angeles, California
Los Angeles River District Ranger decisions:
Daily News, Los Angeles, California
Newspaper providing additional notice of Los Angeles River District decisions:
Pasadena Star News, Pasadena, California
Foothill Leader, Glendale, California
San Gabriel River District Ranger decisions:
Inland Valley Bulletin, Los Angeles, California
Newspaper providing additional notice of San Gabriel River District decisions:
San Gabriel Valley Tribune, eastern San Gabriel Valley, California
Santa Clara & Mojave Rivers District Ranger decisions:
Daily News, Los Angeles, California
Newspaper providing additional notice of Santa Clara & Mojave Rivers District decisions:
Antelope Valley Press, Palmdale, California
Mountaineer Progress, Wrightwood, California

Cleveland National Forest

Cleveland Forest Supervisor decisions:
San Diego Union-Tribune, San Diego, California
Descanso District Ranger decisions:
San Diego Union-Tribune, San Diego, California
Palomar District Ranger decisions:
San Diego Union-Tribune, San Diego, California
Newspaper providing additional notice of Palomar decisions:
Riverside Press-Enterprise, Riverside, California
Trabuco District Ranger decisions:
Orange County Register, Santa Ana, California
Newspaper providing additional notice of Trabuco decisions:
Riverside Press-Enterprise, Riverside, California

Eldorado National Forest

Eldorado Forest Supervisor decisions:
Mountain Democrat, Placerville, California
Amador District Ranger decisions:
Mountain Democrat, Placerville, California
Georgetown District Ranger decisions:
Mountain Democrat, Placerville, California
Pacific District Ranger decisions:
Mountain Democrat, Placerville, California
Placerville District Ranger decisions:
Mountain Democrat, Placerville, California

Inyo National Forest

Inyo Forest Supervisor decisions:
Inyo Register, Bishop, California
Mammoth District Ranger decisions:
Inyo Register, Bishop, California
Mono Lake District Ranger decisions:
Inyo Register, Bishop, California
Mount Whitney District Ranger decisions:
Inyo Register, Bishop, California
White Mountain District Ranger decisions:
Inyo Register, Bishop, California

Klamath National Forest

Klamath Forest Supervisor decisions:
Siskiyou Daily News, Yreka, California
Happy Camp District Ranger decisions:
Siskiyou Daily News, Yreka, California
Goosenest District Ranger decisions:
Siskiyou Daily News, Yreka, California
Oak Knoll District Ranger decisions:

Siskiyou Daily News, Yreka, California
Salmon River District Ranger decisions:
Siskiyou Daily News, Yreka, California
Scott River District Ranger decisions:
Siskiyou Daily News, Yreka, California
Ukonom District Ranger decisions:
Siskiyou Daily News, Yreka, California

Lake Tahoe Basin

Lake Tahoe Basin Forest Supervisor decisions:
Tahoe Daily Tribune, So. Lake Tahoe, El Dorado County, California

Lassen National Forest

Lassen Forest Supervisor decisions:
Lassen County Times, Susanville, Lassen County, California
Almanor District Ranger decisions:
Chester Progressive, Plumas County, California
Eagle Lake District Ranger decisions:
Lassen County Times, Susanville, Lassen County, California
Hat Creek District Ranger decisions:
Intermountain News, Burney, Shasta County, California
Newspaper providing additional notice of Hat Creek decisions:
Mountain Echo, Fall River Mills, Shasta County, California

Los Padres National Forest

Los Padres Forest Supervisor decisions:
Santa Barbara News Press, Santa Barbara, California
Ojai District Ranger decisions:
Star Free Press, Ventura, California
Monterey District Ranger decisions:
Monterey Herald, Monterey, California
Mount Pinos District Ranger decisions:
The Bakersfield Californian, Kern, California
Santa Barbara District Ranger decisions:
Santa Barbara News Press, Santa Barbara, California
Santa Lucia District Ranger decisions:
Telegram Tribune, San Luis Obispo, California

Mendocino National Forest

Mendocino Forest Supervisor decisions:
Chico Enterprise-Record, Chico, California
Corning District Ranger decisions:
Chico Enterprise-Record, Chico, California
Covelo District Ranger decisions:
Ukiah Daily Journal, Ukiah, California
Stonyford District Ranger decisions:
Chico Enterprise-Record, Chico, California
Upper Lake District Ranger decisions:
Ukiah Daily Journal, Ukiah, California
Chico Tree Improvement Center Director decisions:
Chico Enterprise-Record, Chico, California

Modoc National Forest

Modoc Forest Supervisor decisions:
Modoc County Record, Alturas, Modoc County, California
Big Valley District Ranger decisions:
Modoc County Record, Alturas, Modoc County, California
Devil's Garden District Ranger decisions:
Modoc County Record, Alturas, Modoc County, California
Doublehead District Ranger decisions:
Modoc County Record, Alturas, Modoc County, California
Newspaper providing additional notice of Doublehead decisions:
Herald News, Klamath Falls, Oregon
Warner Mountain District Ranger decisions:
Modoc County Record, Alturas, Modoc County, California

Plumas National Forest

Plumas Forest Supervisor decisions:
Feather River Bulletin, Quincy, California
Beckwourth District Ranger decisions:
Portola Reporter, Portola, California
Feather River District Ranger decisions:
Oroville Mercury Register, Oroville, California
Mt. Hough District Ranger decisions:
Feather River Bulletin, Quincy, California

San Bernardino National Forest

San Bernardino Forest Supervisor decisions:
San Bernardino Sun, San Bernardino, California
Arrowhead District Ranger decisions:
Mountain News, Blue Jay, California
Big Bear District Ranger decisions:
Big Bear Life and Grizzly, Big Bear, California
Cajon District Ranger decisions:
San Bernardino Sun, San Bernardino, California
San Gorgonio District Ranger decisions:
Yucaipa News Mirror, Yucaipa, California
San Jacinto District Ranger decisions:
Idyllwild Town Crier, Idyllwild, California

Sequoia National Forest

Sequoia Forest Supervisor decisions:
Porterville Recorder, Porterville, California
Cannell Meadow District Ranger decisions:
Porterville Recorder, Porterville, California
Greenhorn District Ranger decisions:
Porterville Recorder, Porterville, California
Hot Springs District Ranger decisions:
Porterville Recorder, Porterville, California
Hume Lake District Ranger decisions:
Porterville Recorder, Porterville, California
Tule River Ranger District decisions:
Porterville Recorder, Porterville, California

Shasta-Trinity National Forest

Shasta-Trinity National Forest decisions:
Record Searchlight, Redding, Shasta County, California
Big Bar District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
Hayfork District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
McCloud District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
Mount Shasta District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
Shasta Lake District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
Weaverville District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
Yolla Bolla District Ranger decisions:
Record Searchlight, Redding, Shasta County, California

Sierra National Forest

Sierra Forest Supervisor decisions:
Fresno Bee, Fresno, California
Kings River District Ranger decisions:
Fresno Bee, Fresno, California
Pineridge District Ranger decisions:
Fresno Bee, Fresno, California
Mariposa District Ranger decisions:
Fresno Bee, Fresno, California
Minarets District Ranger decisions:
Fresno Bee, Fresno, California

Six Rivers National Forest

Six Rivers Forest Supervisor decisions:
Times Standard, Eureka, California
Gasquet District Ranger decisions:
Del Norte Triplicate, Crescent City, California
Lower Trinity District Ranger decisions:
The Kourier, Willow Creek, California
Mad River District Ranger decisions:
Times Standard, Eureka, California
Orleans District Ranger decisions:
The Kourier, Willow Creek, California

Stanislaus National Forest

Stanislaus Forest Supervisor decisions:
The Union Democrat, Sonora, California
Calaveras District Ranger decisions:

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The Union Democrat, Sonora, California
Groveland District Ranger decisions:
The Union Democrat, Sonora, California
Mi-Wok District Ranger decisions:
The Union Democrat, Sonora, California
Summit District Ranger decisions:
The Union Democrat, Sonora, California

Tahoe National Forest

Tahoe Forest Supervisor decisions:
The Union, Grass Valley-Nevada City, California
Downieville District Ranger decisions:
Mountain Messenger, Downieville, California
Foresthill District Ranger decisions:
Auburn Journal, Auburn, California
Nevada City District Ranger decisions:
The Union, Grass Valley-Nevada City, California
Sierraville District Ranger decisions:
Mountain Messenger, Downieville, California
Newspapers providing additional notice of Sierraville decisions:
Sierra Booster, Loyalton, California
Portola Recorder, Portola, California
Truckee District Ranger decisions:
Sierra Sun, Truckee, Nevada County, California
Newspaper providing additional notice of Truckee decisions:
Tahoe World, Tahoe City, Placer County, California

Dated: January 9, 1998.

G. Lynn Sprague,

Regional Forester.

[FR Doc. 98–1280 Filed 1–16–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Christy Basin Timber Sales, Willamette National Forest, Lane County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) on a Proposal Action to harvest and regenerate timber, thin young stands created by past regeneration harvest. The proposal also calls for the construction, reconstruction, and decommissioning of roads, restoration of degraded stream channels, and improvement of big game forage within the Christy Creek drainage of the North Fork of the Middle Fork of the Willamette River watershed. The planning area is bounded by the North Fork of the Middle Fork of the Willamette River on the south, Hiyu Ridge (the watershed boundary between the North Fork and the McKenzie River) on the east, Sinker Mountain and Sardine Butte on the northwest and north (the watershed boundary between the North Fork and Fall Creek) and Alpine Ridge on the west. The area is approximately 40 air miles east of the City of Eugene and 16 air miles northeast of the City of Oakridge. The Forest Service proposal will be in compliance with the 1990 Willamette National Forest Land and Resource Management Plan as amended by the 1994 Northwest Forest Plan, which provides the overall guidance for management of this area. These proposals are tentatively planned for implementation in fiscal years 1999–2003.

The Willamette National Forest invites written comments and suggestions on the scope of the analysis in addition to those comments already received as a result of local public participation activities. The agency will also give notice of the full environmental analysis and decision-making process so that interested and affected people are made aware as to how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and implementation of the analysis should be received in writing by February 28, 1998.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Rick Scott, District Ranger, Rigdon Ranger District, Willamette National Forest, P.O. Box 1410, Oakridge, Oregon 97463.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and the scope of analysis to Kristy Miller, Planning Resource Management Assistant or Tim Bailey, Project Coordinator, Oakridge Ranger District, phone 541–782–2283.

SUPPLEMENTARY INFORMATION: The Christy Basin Planning area is entirely within the North Fork of the Middle Fork of the Willamette River watershed, which is designed as a Tier 2 Key watershed by the Northwest Forest Plan (ROD, C–7). Tier 2 Key watersheds contain important sources of high quality water. A Watershed Analysis was completed for the North Fork of the Middle Fork of the Willamette River in September, 1995.

The purpose of this project is to harvest timber in a manner that implements the management objectives, and to implement various resource restoration activities to meet Key Watershed objectives.

The proposal includes harvesting timber by thinning in nine separate timber sales over the next five years, and regeneration harvest methods in four separate timber sales over the next four years. Both thinning and regeneration timber sale proposals would involve road construction, reconstruction, and decommissioning. This analysis will evaluate a range of alternatives addressing the Forest Service proposals to harvest approximately 70.0 million board feet; approximately 43.4 million board feet would be generated from thinning some 3900 acres of young stands created by past clearout harvest, and approximately 26.4 million board feet would be generated by regeneration harvest on approximately 550 acres. All the above proposed harvest would require a total of 8 miles of temporary road construction and 21 miles of road reconstruction.

The Christy Basin planning area comprises about 34,000 acres, all of which is federal land. Of the 34,000 acres about 18,500 acres (54%) have been previously harvested and regenerated. Of the remaining acres, approximately 5300 (15%) acres is in a mature stand condition, ranging in ages from 90 to 170 years, and 10,000 acres is in an old-growth stand condition, stand ages exceeding 200 years. The planning area contains about 600 acres (1.7%) of non-forested vegetation types and rock outcrops. Management areas that provide for programmed timber harvest are Scenic (11c) and General Forest (14a). Other land allocations in this planning area are Late-Successional Reserves, Riparian Reserves, Wild and Scenic River Corridor, and Dispersed Recreation—Semi-primitive Nonmotorized Use.

The project area includes a small portion (about 700 acres) of the Chucksney Mountain inventoried roadless area, which was considered but not selected for wilderness designation. Most of this inventoried roadless area is included within the above Dispersed Recreation—Semi-Primitive Nonmotorized Recreation Management Area.

Issues identified for this analysis are water and stream quality, habitat fragmentation, economic benefit, old-growth habitat reduction, big game habitat quality, biodiversity effects, road management, and soil compaction.

Initial scoping for this analysis began in 1990 but the project was put on hold due to a Federal Court injunction. Scoping was initiated again in March of 1996. Alternatives were developed and preliminary analysis was completed during the summer and fall of 1997. The developed alternative consisted of: (A) low management intensity; retention of more than the prescribed amount of standing green trees and down logs (20–30% retention), (B) conventional management intensity; retention of prescribed amounts of standing green trees and down logs (15% retention), (C) No old-growth harvest, and (D) No Action. All action alternatives were developed to avoid forest fragmentation and system road construction. Results of the above analysis indicated a potential for significant effects to the human environment, hence the need for documentation with the Environmental Impact Statement.

The Forest Service will be seeking additional information, comment and assistance from Federal, State, local agencies, tribes, and other individuals or organizations who may be interested or affected by the proposed project. Additional input will be used to help verify the existing analysis and determine if additional issues and alternatives should be developed. This input will be used in preparation of the draft EIS.

The scoping process will include the following:

- Identification of potential additional issues;
- Identification of issues to be analyzed in depth;
- Elimination of insignificant issues or those which have been covered by a relevant previous environmental process;
- Exploration of potential additional alternatives based on the issues identified during the scoping process; and
- Verification of and potential addition to environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by February 28, 1998. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, a reviewer of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir., 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled to be completed in June, 1998. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. Rick Scott, District Ranger, is the responsible official and as responsible official, he will document the Christy Basin Timber Sales and restoration project decision and rationale in a Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: January 5, 1998.

Rick Scott,

District Ranger.

[FR Doc. 98–1198 Filed 1–16–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Capital Construction Fund Agreement and Certificate.

Agency Form Number: NOAA 88–14.

OMB Approval Number: 0648–0090.

Type of Request: Extension of a currently approved collection.

Burden: 2,250 hours.

Number of Respondents: 1,000.

Avg. Hours Per Response: 2.25 hours.

Needs and Uses: The Merchant Marine Act provides for the administration of the Capital Construction Fund (CCF) by NOAA. This program enables fishermen to construct, reconstruct, or (under limited circumstances) acquire fishing vessels with before-tax, rather than after-tax, dollars. NOAA collects information from fishermen to determine their eligibility to participate in the program and to certify completion of the agreement objectives.

Affected Public: Businesses or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: January 2, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–1264 Filed 1–16–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census 2000 Special Place Facility Questionnaire

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing

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effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before March 23, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Charles Moore, Bureau of the Census, SFC2, MS–5700, Room 1304, 4301 Suitland Road, Suitland, Maryland 20746, phone number (301) 457–2050.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau must provide everyone in the United States and Outlying Areas the opportunity to be counted in the Census 2000, including persons living in group quarters (GQs), (ex. student dormitories and shelters) and housing units (HUs) at and/or associated with SPs.

To that end, the Census Bureau is currently developing final plans for implementing the Census 2000 Special Place Facility Questionnaire Operation. This operation replaces the Special Place Prelist field operation conducted in previous censuses. During that operation, census enumerators visited each special place (SP) and conducted personal interviews to identify and classify the types of GQs and HUs for each SP. One of the major requirements for enumeration of persons at SP facilities is to identify the GQs and any associated HUs at each SP.

We obtain an updated SP/GQ master file from the Census 2000 Dress Rehearsal which contains the names, addresses and phone numbers of each special place. Phone numbers for these SPs were obtained through the use of telephone books, directory assistance and contractors.

We will then mail advance letters to each SP informing them about the upcoming Census 2000 and letting them know that a Census Bureau representative will be phoning in the next few weeks to update the list of places where people stay and to collect other administrative information.

By phoning each SP and conducting interviews, we will identify and collect updated information about the GQs and HUs at each SP using Form D–351, Special Place Facility Questionnaire. The types of information collected during the interviews consists of collecting administrative information, updating existing information, identifying GQs/HUs at each SP, determining facility type and expected population count.

Throughout the Facility Questionnaire Operation, the SP/GQ master file is continually updated. Once the Facility Questionnaire Operation is completed, files will be created based on the requirements for each of the upcoming SP operations, i.e., Local Knowledge Update, Transient Night, Group Quarters Enumeration and Service-Based Enumeration.

II. Method of Collection

Computer Assisted Telephone Interviewing (CATI) will be used for the majority of cases using a computerized questionnaire. Nonrespondents (including SPs that request personal visit follow-up) and adds from other field operations will require a personal visit or telephone interview (non-CATI) by regional office or local census office staff using a paper D–351 questionnaire.

To collect the GQ information for military installations, a census representative will visit each of the military installations to interview military personnel on Form D–351(MIL), Military Installation Group Quarters Address List. Information to be collected consists of the installation name, state, county, military contact, group quarters location, type of GQ and expected population count.

Once completed, the D–351s and the D–351(MIL)s will be sent to the Data Capture Center (DCC) in Jeffersonville, Indiana for processing.

III. Data

OMB Number: Not available.
Form Number: D–351, D–351(MIL).
Type of review: Regular Submission.
Affected Public: Individuals, businesses or other for-profit organizations, non-profit institutions and small businesses or organizations.
Estimated number of Respondents: 450,000 Special Places in Census 2000.
Estimated Time Per Response: Each interview should take about 15 minutes (0.25 hours).
Estimated Total Annual Burden Hours: 112,500 hours.
Estimated Total Annual Cost: There is no cost to respondents for providing information on this operation, except for a few minutes of their time.
Respondent's Obligation: Mandatory.
Legal Authority: Title 13, United States Code, Sections 141 and 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c), ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 13, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–1209 Filed 1–16–98 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Master Address File (MAF) and Topologically Integrated Geographic Encoding and Referencing (TIGER) Update Activities

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 23, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to Lynn Minneman, Bureau of the Census, SFC–2, Room 1308–A, Washington, DC 20233. Phone number 301–457–2036.

SUPPLEMENTARY INFORMATION:

I. Abstract

Note: The present clearance expires June 30, 1998. This request covers field activities to be conducted from July 1, 1998 through September 30, 2000. Operations occurring during the period from October 1, 1997 through June 30, 1998 are listed here only to explain the total respondent burden for FY98 shown in part III.

The Census Bureau presently operates a generic clearance covering activities involving respondent burden associated with updating our Master Address File (MAF) and Topologically Integrated Geographic Encoding and Referencing (TIGER). We now propose to extend that generic clearance to cover update activities we will undertake during the next three fiscal years.

Under the terms of the generic clearance, we plan to submit a request for OMB clearance that will describe all planned activities for the entire period; we will not submit a separate clearance package for each updating activity. We will send a letter to OMB at least five days before the planned start of each activity that gives more exact details, examples of forms, and final estimates of respondent burden. We also will file a year-end summary with OMB after the close of each fiscal year giving results of each activity conducted. This generic clearance enables OMB to review our overall strategy for MAF and TIGER updating in advance, instead of reviewing each activity in isolation shortly before the planned start.

The MAF is a national address list that is being created and continually updated with information from the U.S. Postal Service Delivery Sequence File. The Census Bureau plans to use the MAF for mailing or delivering questionnaires to households for Census 2000 and as a sampling frame for our demographic current surveys. In the past, the Census Bureau has built a new address list for each decennial census. The MAF we are building during Census 2000 is meant to be kept current thereafter, eliminating the need to build a completely new address list for future censuses and surveys. The TIGER is a geographic system that maps the entire country in Census blocks with applicable address range or living quarter location information. Linking MAF and TIGER allows us to assign each address to the appropriate Census Block, produce maps as needed and publish results at the appropriate level of geographic detail. The following are descriptions of each activity we plan to conduct under the clearance for the next three fiscal years.

1. Address Listing (AL)

Census 2000 Address Listing will be conducted in 2.93 million blocks that have a preponderance of noncity-style addresses; for example, "RR 1, Box 89," "PO Box 678," or "General Delivery." AL also will be conducted in all of Puerto Rico. Temporary Census Bureau employees called "listers" will canvass (walk or drive) each of these blocks, identifying each structure where people live or could live, including housing units and group quarters. They will record the block number and each physical location address or description on Form D–101B, Address Listing Page. For each living quarters, the lister will attempt to conduct an interview to collect the mailing address, an E–911 address for living quarters with no posted city-style mailing address, occupant name or group quarters contact person name, and telephone number. If no one is at home, the lister will attempt to interview a neighbor to obtain this information. If unable to obtain the information, the lister will attempt up to two telephone callbacks to obtain the information. There will be no personal callbacks to conduct an interview during Address Listing. The lister will also spot the location of the living quarters on a Block Map and update the Block Maps by adding missing roads, road names, or other map features as necessary, and deleting roads that no longer exist.

The information collected will be used to create our Master Address File (MAF) for Census 2000 and survey use. The map additions and deletions will be used to update our TIGER maps. The processed address information and map spots will be directly used to deliver a Census 2000 Questionnaire to each housing unit in these blocks.

The operation will be conducted from August through December, 1998. There will be approximately 22.4 million respondents with an estimated response time of 1.5 minutes per living quarters. Approximately 4.7 million respondents will be interviewed in FY98 with a respondent burden of 117,500 hours. Approximately 17.7 million respondents will be interviewed in FY99 with a respondent burden of 442,500 hours.

In addition to the blocks mentioned above, AL will be conducted in the rural portion of 39 counties that are in the 1999 American Community Survey. Since a MAF is needed earlier in these counties than in the rest of the country, the Address Listing will be conducted between February and May, 1998, using slightly different forms and callback rules. Housing units will be listed on Form DX–101B, Housing Unit Address Listing Page. Special places will be listed on Form DX–101C, Special Place Listing Page. The information collected will be almost identical to that listed above, however, more callbacks are authorized to obtain the mailing address. The lister will make up to three personal and two telephone callbacks to obtain the information for households where no one is home on the initial visit. There will be approximately 320,000 respondents with an estimated response time of two minutes per household. The total respondent burden is estimated at 10,666 hours.

2. Block Canvass (BC)

The Census 2000 Block Canvass is scheduled to take place from January 18, 1999 through June 4, 1999 in all areas where there is predominately city-style addressing and mail delivery and where the Census Bureau will conduct a mailout/mailback census. BC is a dependent field canvassing activity where listers will canvass assigned blocks looking for every place where people live or could live using Form D–451A, Address Listing Page, which lists every living quarters currently in the MAF for these blocks. Listers will attempt to interview at predesignated living quarters (every third housing unit and all multi-unit structures) to verify that living quarters' address and unit designation, as necessary, and the addresses of the living quarters on either side. They will also obtain mailing addresses when these are different from the house number and street name address. They will visit the next housing unit to obtain the information if no one is home at the predesignated unit. Listers also will contact the resident manager, superintendent, or other knowledgeable person at all multi-unit structures to verify addresses and unit designations for each unit. For special places, the lister will visually check those on the list and add any that are missing. Listers will visit living quarters not on their list to obtain the house number and street name address and a mailing address (if different) for each living quarters. This information will be listed on Form D–451B, Block Canvass Add Page, or Form D–451B, Block Canvass Special Place Add Page. For special places, the lister will also obtain a contact person name and telephone number.

BC will improve coverage by verifying addresses on our MAF, making

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corrections to those addresses as necessary, deleting nonexistent, uninhabitable, or nonresidential living quarters, capturing non-city style mailing addresses when the posted city-style address is not used for mail, and adding addresses for living quarters missing from the MAF. The processed MAF after BC will be used to label and deliver Census 2000 Questionnaires and for other Census Bureau surveys.

The estimated number of respondents for BC is 27,500,000. The estimated time per response is 2 minutes. The total estimated respondent burden is 916,667 hours.

3. Field Verification for Local Update of Census Addresses (LUCA FV)

This operation will verify the existence of predominately noncity-style addresses that the local government officials add during their review of the MAF. This operation will take place around May of 1999. LUCA FV will increase the integrity of the MAF by validating addresses that are added by local government officials prior to these updates being included in the Census Mailout/Delivery.

Listers will receive Form D–137, LUCA Field Verification Address Listing Page, that will include all addresses within a block that contains at least one add from a LUCA participant. Addresses that need to be verified will be identified on the listing pages by a blank action code field. Listers will conduct a brief interview to verify the existence and address of the specified unit and enter an action code on the listing page indicating that the unit exists or does not exist.

We will verify approximately 5 million addresses across the United States. The estimated time per response is 1.5 minutes. The total estimated respondent burden is 125,000 hours.

In addition to the above, LUCA FV will be conducted in the Census 2000 Dress Rehearsal sites of Columbia, SC, Sacramento, CA, and Menominee, WI. This operation will verify the existence of 100% of the addresses, both city-style and noncity-style, that the local governments have added to the address list during LUCA. The operation will be the same as described above for Census 2000, using Form DX–137, LUCA Field Verification Address Listing Page. The operation will take place in December, 1997.

We will verify approximately 22,423 addresses in the Dress Rehearsal sites. The estimated time per response is 1.5 minutes. The total estimated respondent burden is 561 hours.

4. Update Leave (U/L)

Update/leave will occur in the same counties as specified above for operation 1, Address Listing, and throughout Puerto Rico. Each U/L enumerator will receive an Address Register, which includes a listing and Block Maps, and a pre-addressed Census 2000 Questionnaire for each address included in the listing. The Form D–105A, Address Listing Page, will include a record for each living quarters processed during Address Listing. The Block Maps will show a map spot for each listed structure that contained living quarters. The enumerator will completely canvass each assigned block in March of 2000. U/L will update the inventory of housing units by adding any new residential construction to the Form D–105B, U/L Add Page, and the Block Maps, and will deliver a Census 2000 Questionnaire to each housing unit.

The enumerator will attempt to complete a short interview at each address to verify the address information collected during Address Listing or to obtain the address information for new units. They will also give the respondent the Questionnaire to complete and mail back. (The Questionnaire is covered by a different OMB clearance and is not described in this notice.) When no one is home, the enumerator will place the Questionnaire in a bag and hang it on the doorknob. There will be no callbacks for U/L.

The estimated number of households for U/L is 22.4 million, however, we estimate that the total number of respondents will be 7.5 million. The estimated time per response is 1.5 minutes. The total estimated respondent burden is 187,500 hours.

In addition to the above, U/L will be conducted in the rural portions of the Columbia, SC and Menominee, WI Census 2000 Dress Rehearsal sites. This operation will occur in March and April of 1998. It will update the address lists and Block Maps and deliver the Dress Rehearsal Questionnaire in these counties using Form DX–105A, Address Listing Page, and DX–105B, U/L Add Page. The procedures will be the same as described above for Census 2000. The estimated number of households is 75,000, however, we estimate that the total number of respondents will be 25,000. The estimated time per response is 2 minutes. The total estimated respondent burden is 834 hours.

5. Urban Update Leave (UU/L)

The Urban Update/Leave operation for Census 2000 will be conducted in March 2000, in areas where there is predominately city-style addressing but in which the U.S. Postal Service does not deliver mail to housing units at their posted city-style address. UU/L may also be done in areas where the U.S. Postal Service delivers mail to a central drop point with no identifiable mail receptacles for each individual housing unit. The procedures for this operation are the same as described for operation 4, Update/Leave. The enumerators will use Form D–XXXX, Address Listing Page, and Form D–XXXY, UU/L Add Page, for this operation. The total estimated number of households is 1 million, however, we estimate that the total number of respondents is 334,000. The estimated time per response is 2 minutes. The total estimated respondent burden is 11,134 hours.

6. List/Enumerate (L/E)

List/Enumerate is a method of taking Census 2000 in some very rural parts of the country where we will not have a MAF with mailing addresses prior to the Census. During the period from March 31 through May 1, 2000, enumerators will canvass each assigned block to list each living quarters and spot its location on a Block Map. The enumerator will ask a short series of questions using Form D–104A to determine the household name, mailing address and/or physical location/description of the housing unit. The enumerator will then pick up the completed Census 2000 Questionnaire or enumerate the household using the Questionnaire. (The Questionnaire is covered by a different OMB clearance and is not included in this notice.)

The estimated number of respondents for the listing portion of L/E is 420,000. The estimated time per response is 1.5 minutes. The estimated total respondent burden for the listing portion is 10,500 hours.

7. Master Address File Quality Improvement Program (MAF QIP)

The MAF is a national address list that is being created and continually updated with information from the U.S. Postal Service Delivery Sequence File. The Census Bureau plans to use this file for mailing questionnaires to households for Census 2000 and as a sampling frame for our demographic current surveys. The goal of the MAF QIP is to assess the completeness and accuracy of the housing units on the MAF by providing coverage and geocoding error estimates. The operation consists of creating an independent listing of housing units which will be computer matched to the MAF with a field reconciliation follow up of nonmatched units.

Field Representatives will contact each housing unit in the MAF QIP sample areas to obtain and list address information on Form S–676, Master Address File Quality Improvement Program 1998 Independent Listing Book. Listers will also inquire at each special place and commercial structure to identify housing units. Addresses and geocoding information obtained during the independent listing will be computer matched to the MAF. During the reconciliation phase, field staff will resolve nonmatched housing units by verifying address information using Form S–XXX, Housing Unit Followup Form. The independent listing phase will be conducted in March through July of 1998. The reconciliation phase will be conducted in May through September of 1998.

The total estimated number of respondents for the listing phase is 250,000. The total estimated number of respondents for the reconciliation phase is 20,700. The estimated time per response is 3 minutes for the listing phase and 1 minute for the reconciliation phase. The total estimated respondent burden is 10,000 hours for the listing phase and 345 hours for the reconciliation phase.

A 1999 MAF QIP will also be conducted. The procedures will be similar to the 1998 MAF QIP, however, form numbers, exact workloads, and exact timing have not yet been determined. We estimate the maximum possible number of respondents for the listing phase at 500,000 with approximately 250,000 interviews done in late FY99 and 250,000 interviews done in early FY2000. The reconciliation phase will be conducted in FY2000 with approximately 41,400 respondents. The estimated time per response is 3 minutes for the listing phase and 1 minute for the reconciliation phase. The total estimated respondent burden is 10,000 hours in FY99 and 10,000 hours in FY2000 for the listing phase and 690 hours in FY2000 for the reconciliation phase. (The total number of respondents for the 1999 MAF QIP could be as small as 200,000 which would decrease respondent burden proportionately.)

In addition to the above, an FY97 pilot study to test MAF QIP methodology was conducted in six counties. The procedures for this study were the same as outlined above for the 1998 MAF QIP. The reconciliation phase was still in progress at the end of FY97 and was halted due to the continuing resolution on budget. Field Representatives will resolve the remaining 3,770 nonmatched housing units in November and December of 1997 using Form S–663, Housing Unit Followup Form. The estimated number of respondents is 3,770. The estimated time per response is 1 minute. The estimated total respondent burden is 313 hours.

8. Master Address File Update for Otero County, New Mexico

We will update the current MAF for Otero County, NM by identifying new housing units in the area outside Alamogordo City and field list these housing units to obtain a complete mailing and physical location address. This listing will occur sometime between February and June of 1998. The new units are defined as those coming into existence after September, 1996. The new units will be identified using local administrative records (probably building permits); we do not plan to conduct any large scale block recanvass operation. The new units will be address listed using the forms and procedures described above for American Community Survey counties in operation 1, Address Listing. The estimated number of respondents is 200. The estimated time per response is 2 minutes. The estimated total respondent burden is 7 hours.

II. Method of Collection

The primary method of data collection for all operations will be personal interview by Census Listers or Enumerators using the operation's listing form. In some cases, the interview could be by telephone callback if no one was home on the initial visit. See part I for details for each operation.

III. Data

OMB Number: 0607–0809.

Form Number: The form numbers for some activities have not yet been assigned. See the descriptions of the activities in part I for form numbers where applicable.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: Varies by operation, see chart below.

Estimated Time Per Response: Varies by operation, see chart below.

Estimated Total Annual Burden Hours: FY98 140,226; FY99 1,494,167; FY2000 219,824.

Estimated Total Annual Cost: The only cost to respondents is that of their time to respond.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 141 and 193.

Activity	FY 1998 respondent ($)	FY 1999 respondent ($)	FY 2000 respondent ($)	Average hours per response	Responses per respondent	FY 1998 burden hours	FY 1999 burden hours	FY 2000 burden hours
AL	4,700,000	17,700,000	0	.025	1	117,500	442,500	0
AL–ACS	320,000	0	0	.033	1	10,666	0	0
BC	0	27,500,000	0	.033	1	0	916,667	0
LUCA FV	22,423	5,000,000	0	.025	1	561	125,000	0
U/L	0	0	7,500,000	.025	1	0	0	187,500
U/L–DR	25,000	0	0	.033	1	834	0	0
UU/L	0	0	334,000	.033	1	0	0	11,134
L/E	0	0	420,000	.025	1	0	0	10,500
MAFQIP	250,000	250,000	250,000	.050	1	10,000	10,000	10,000
MAFQIP–R	24,470	0	41,400	.016	1	658	0	690
MAF/U	200	0	0	.033	1	7	0	0
Totals	5,342,093	50,450,000	8,545,400			140,226	1,494,167	219,824

IV. Request For Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and

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clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 13, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–1210 Filed 1–16–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

[A–405–802]

Certain Cut-to-Length Carbon Steel Plate From Finland; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of Antidumping Duty Administrative Review.

SUMMARY: On July 15, 1997, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Finland (62 F.R. 37866). The review covers one manufacturer/exporter, Rautaruukki Oy (Rautaruukki), for the period August 1, 1995 through July 31, 1996.

EFFECTIVE DATE: January 20, 1998.

FOR FURTHER INFORMATION CONTACT: Heather Osborne or Linda Ludwig, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482–3019 or (202) 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 1997, the Department of Commerce (the Department) published in the **Federal Register** (62 FR 37866) the preliminary results of its administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Finland (58 FR 44165, August 19, 1993). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practical to complete the review within the statutory time limit of 365 days. On November 3, 1997, the Department extended the time limits for the final results in this case. See Extension of Time Limit for Antidumping Duty Administrative Review, 62 FR 60683 (November 12, 1997).

Applicable Statute and Regulations

Unless otherwise stated, all citations to the Tariff Act of 1930, as amended (the Tariff Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the Department's regulation are to 19 CFR part 353 (April 7, 1997).

Scope of the Review

The products covered by this administrative review constitute one "class or kind" of merchandise: certain cut-to-length carbon steel plate. These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling") for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispostive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received briefs and rebuttal comments from Bethlehem Steel Corporation, U.S. Steel Group, a Unit of USX Corporation, Inland Steel Industries, Inc., LTV Steel Company, Inc., National Steel Corporation, AK Steel Corporation, Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, and WCI Steel Inc., petitioners, and from Rautaruukki Oy (Rautaruukki), a producer/exporter of the subject merchandise. At the request of petitioners and respondent, we held a hearing on October 31, 1997.

Comment 1: Petitioners argue that Rautaruukki's interest revenues should be accounted for and that the Department should adjust Rautaruukki's home market sales prices to account for unreported late payment charges. Petitioners contend that Rautaruukki's stated policy of charging interest to all of its customers for late payments conflicts with Rautaruukki's assertion that in practice, its customers rarely pay interest. Petitioners note that Rautaruukki enters all interest revenues into one general account and argue that charges for late payments constitute interests revenue.

Petitioners assert that the Department confirmed at verification that Rautaruukki's financial records account for total interest revenue received in 1996, but that no information was provided for 1995. Petitioners argue that neither of the transactions cited by respondent support Rautaruukki's claim that it did not accrue and receive interest revenue. Petitioners state that the Department should employ facts available in calculating Rautaruukki's interest revenue due to respondent's failure to provide information on interest revenue earned in 1995 and its failure to identify the sales for which late payment charges were assessed. Petitioners state that, as facts available, the Department should calculate an interest revenue adjustment for all sales for which, pursuant to their terms of payment, payment was recorded as late.

Respondent claims that it has reported interest revenue, and no further adjustment is required. Respondent states the Department verified that interest revenue was properly reported. Respondent contends that it has provided information on the total interest revenue which it received during calender year 1995 and 1996.

Department Position: We partially agree with both petitioners and respondent. At verification, the Department specifically identified one sale solely for verification of interest revenue. As noted in the verification report, the Department verified that for this sale, no interest revenue was received. See Sales Verification Report at 24. We also examined other sales for which the customer had initially been billed for late charges (interest revenue) that were ultimately not paid by the customer. These sales were also properly reported. Rautaruukki reported a negative amount for interest revenue in 1995, and a positive amount for 1996. See Respondent's Rebuttal Brief of September 15, 1997, at 11. Rautaruukki did not, however, allocate interest revenue to 1996 sales in its sales database.

Section 776(a)(2) of the Act provides that if an interested party or any other persons—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

Because Rautaruukki did not report any interest revenue in its sales database, although the interest revenue was received, the Department must, pursuant to section 776, use facts otherwise available in these final results. We are allocating as facts available the amount of interest revenue reported for 1996 to all 1996 sales on a per-ton basis.

Comment 2: Petitioners argue that Rautaruukki's submitted gross unit prices should be adjusted, because the Department found a very large discrepancy with respect to the reported gross unit price of a pre-selected home market sale. Petitioners claim Rautaruukki deducted the full amount of the credit from the selected sale rather than applying this credit to all sales listed on the invoice. Petitioners contend that since the error was uncovered pursuant to a small sampling, this suggests that similar errors may well exist elsewhere in the dataset. Petitioners argue that based upon variation in prices within a given product control number, the understatement discovered by the Department at verification could also exist in other product control numbers and, in fact, pervade the dataset. Petitioners contend that the Department should make an adjustment to the entire dataset to account for the errors uncovered with the sample sales. Specifically, petitioners suggest that gross unit prices be increased by the percentage that the samples sales were under-reported.

Respondent argues that it has submitted correct home market gross unit price data and that no adjustment is warranted. Respondent claims that the discrepancy in question was the result of offsetting a credit to a customer against a single line item or transaction which was one of several transactions on a single invoice. Respondent argues that this allocation error works both ways. Although the gross unit price of the sale in question was artificially depressed, the gross unit prices of the remaining transactions on the invoice were artificially increased. Overall, according to Rautaruukki, the errors offset each other. Respondent also contends that, as noted during the sales verification, this was a special project credit involving an end-user (shipyard) in Finland, and that such special or one-time projects are rare. Moreover, respondent notes that the Department's verification of other home market sales did not disclose a similar problem.

Department Position: We agree with respondent. At verification, we found that, for one sale a credit to a customer was offset against a single line item, rather than crediting this amount to all the items to which it applied. We agree with respondent that the consequences of this allocation error serve to artificially depress the gross unit price of the sale in question, while artificially increasing the gross unit prices of the remaining transactions on the invoice. We noted that the one sale in question was found to be below cost, and is therefore already being excluded from our calculation of normal value. We found no evidence at verification of any other discrepancies in the reporting of gross unit prices. No further adjustment of reported gross unit prices is warranted for these final results.

Comment 3: Petitioners state that Rautaruukki should be denied any home market credit expense adjustment because the Department determined at verification that the Finnish short-term interest rate that Rautaruukki used to calculate the reported home market credit expense could not be verified. Petitioners argue that the Department must use facts available in establishing the interest rate applicable to the calculation of the home market credit expense, and deny Rautaruukki any home market credit expense adjustment for the final results.

Respondent argues that it submitted information on its home market interest rate and the Department verified Rautaruukki's total interest expenses. Respondent claims that due to time constraints during the sales verification, the Department chose to postpone the verification of Rautaruukki's home market interest rate until the cost verification. Rautaruukki states that during the cost verification the Department reviewed Rautaruukki's interest expense worksheet and verified Rautaruukki's total interest cost. Additionally, Rautaruukki claims that it provided the Department with detailed information regarding borrowings during the POR. Hence, in respondent's view, Rautaruukki's home market interest rate was reported to the Department and is readily verifiable.

Department Position: We agree with petitioners that we were unable to verify Rautaruukki's home market interest rate. The verification report states that, [w]e were unable to verify Rautaruukki's U.S. or HM interest rates during sales verification. See Sales Verification Report at 23. Respondent's claim that the Department chose to postpone the verification of Rautaruukki's home market interest rate until the cost verification is false. We were prepared to conduct this portion of the verification during the sales verification; however, as noted in the verification report, respondent simply referred us to prior submissions listing short-term borrowings. No original loan agreements or proof of payment relative to these loans were provided to the sales verification team. While the cost verification team examined information relating to respondent's overall interest expense, it was unable to verify the interest rate claimed by Rautaruukki in its home market credit calculation. As a result of the failure on the part of respondent to support a claimed adjustment, and thus our inability to verify that claim, we must use partial facts available pursuant to Section 776(a) of the Act. Thus, as facts available we are denying an adjustment for home market credit expenses for these final results.

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Comment 4: Petitioners claim that the Department should use facts available to calculate Rautaruukki's U.S. credit expense because Rautaruukki used Finnish interest rates rather than interest rates related to U.S. borrowing in its calculation of credit, and that the Finnish rate submitted by Rautaruukki could not be verified. Petitioners contend that the Department should use an interest rate of nine percent, the short-term interest rate in effect during the POR which the U.S. Customs Service charged on underpayment of antidumping duties.

Respondent claims that it had no U.S. borrowings during the POR. Rautaruukki states that in view of the Department's verification of Rautaruukki's total interest expense and in light of the fact that Rautaruukki had no U.S. borrowings, the Department should use the Finnish short-term borrowing rate submitted by Rautaruukki for the calculation of its U.S. credit expenses.

Department Position: We partially agree with petitioners. It is Department practice to use a U.S. interest rate in the calculation of U.S. credit expenses. If a respondent does not have such borrowing, the questionnaire instructs the party to use a U.S. published commercial bank prime short-term lending rate. Rautaruukki did not do so. Moreover, as noted in Comment 3 above, the Department was unable to verify respondent's home market interest rate. Therefore, pursuant to Section 776 of the Act, the Department must use facts available to calculate Rautaruukki's U.S. credit expense.

In Certain Cut-to-Length Carbon Steel Plate from Sweden; Final Results of Antidumping Duty Administrative Review, 61 FR 15772, 15780 (April 9, 1996) and Certain Corrosion-Resistant Carbon Steel Flat Products from Australia; Final Results of Antidumping Duty Administrative Reviews, 61 FR 14049, 14054 (March 29, 1996) the Department selected the average short-term lending rates calculated by the Federal Reserve as surrogate U.S. interest rates. These rates represent a reasonable surrogate for respondents' U.S. dollar borrowing rates because they are calculated based on a variety of actual dollar loans to actual U.S. customers. We have employed this methodology as facts available in calculating Rautaruukki's U.S. credit expense using the average short-term dollar lending rate effective during the POR. See Analysis Memorandum, dated December 15, 1997.

Comment 5: Petitioners argue that the Department should adjust Rautaruukki's movement expenses related to international freight charges. Petitioners note that Rautaruukki's movement expenses are based on affiliated party transactions with JIT-Trans. In this situation, petitioners note that the Department tests whether movement expenses based on affiliated party transactions reflect arm's-length transactions by comparing those expenses to movement expenses pertaining to non-affiliated party transactions. Petitioners reject Rautaruukki's claim that JIT-Trans's transfer prices reflect an arm's-length price merely because JIT-Trans is profitable overall. In petitioners' view, this claim is contradicted by a direct comparison of JIT-Trans' charge to Rautaruukki with its charge to an unaffiliated party. Petitioners claim that for the final results, the Department should revise this expense upwards by the percentage that the price to the unaffiliated party exceeded that charged to respondent.

Respondent alleges no additional adjustment is required by the Department to its reported movement expenses other than the adjustment already made for affiliated party mark-up charges. Respondent claims that at verification, Rautaruukki provided the Department with documentation to compare movement expenses from arm's length transactions between Rautaruukki and JIT-Trans and movement expenses from transactions between JIT-Trans and non-affiliated party Outokumpu Oy, a Finnish producer of stainless steel products. Rautaruukki cites the explanation for the higher prices charged Outokumpu in the sales verification report: "[t]he rate charged the unaffiliated party is somewhat higher * * * because in the winter it is more expensive to go farther north (due to the ice) and also because it is more expensive to make an additional stop." Respondent contends that the Department concluded that transactions between Rautaruukki and JIT-Trans are at arm's length and argues that no additional adjustment by the Department is required for movement expenses.

Department Position: We partially agree with petitioners. Respondent did not demonstrate that transactions between Rautaruukki and JIT-Trans are at arm's length. In fact the prices charged to an unaffiliated party are greater than those charged to respondent.

Respondent asserted at verification that "[t]he rate charged the unaffiliated party is somewhat higher * * * because in the winter it is more expensive to go farther north (due to the ice) and also because it is more expensive to make an additional stop." Given the geographic location of Rautaruukki and Outokumpu Oy, we find respondent's explanation that some price differential is attributable to the additional expense of going farther north in the winter to be reasonable. However the charges to the affiliated party are higher in summer as well as in winter. (See Sales Verification Exhibit 26). For these final results, therefore, we are increasing Rautaruukki's reported U.S. movement expenses for all shipments by the absolute value of the amount of the difference in price charged the unaffiliated party and Rautaruukki for the summer. See Analysis Memorandum dated December 15, 1997.

Comment 6: Respondent claims that the Department erred in its selection of a weight conversion factor. Respondent states that the Department chose to apply as facts available the lowest conversion factor submitted by Rautaruukki, or 0.9059, because the Department was unable to verify respondent's reported weight conversion factors. Rautaruukki alleges that this conversion factor is aberrational and the Department's use of this factor distorts the verified information submitted by Rautaruukki. Rautaruuki claims that only one product control number in its database had a conversion factor of 0.9059, and that this product control number contains only one observation, a sale of painted plate. Respondent argues that this sale is not an identical or similar match to its U.S. sales under the Department's mode match criteria. Respondent notes that under the Department's model match hierarchy, painted versus not painted is the first factor to be considered. The respondent explained that none of its U.S. sales are of painted plate and argues that in selecting a conversion factor of 0.9059, based solely on painted plate, the Department selected an aberrant non-representative factor. Respondent argues that its submitted data are the most accurate weight conversion factors. Respondent contends that its calculation of theoretical weight was explained in its submissions and at verification. In the event the Department continues to apply a facts available conversion factor, Rautaruukki urges the Department to apply an average of its reported factors, or 0.9870. Respondent argues that unlike the factor used in the preliminary results, at least this factor would be representative of Rautaruukki's submitted data.

Petitioners claim that the facts available weight conversion factor selected by the Department is appropriate. Petitioners disagree that the conversion factor used by the Department is aberrational. Further, petitioners argue that because Rautaruukki failed to provide sufficient support for any of its conversion factors at verification, the Department may make an adverse inference to ensure that the respondent does not benefit from its failure to provide the necessary information. See Certain Internal Combustion Industrial Forklift Trucks from Japan, 62 FR 5592, 5594–95 (Feb. 6, 1997). Petitioners note that the Department may use as facts available data that are reported by the respondent or any other data it deems appropriate. See Uruguay Round Agreements Act, Statement of Administrative Action, A.R. Doc. No. 103–316, 103d cong., 2d sess. at 869–870. Petitioners claim there is no requirement that the facts available selected by the Department reflect the actual data or be the most recent information. See *e.g., Rhone Poulenc, Inc.*, v. *United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990); *Mitsubishi Belting Limited and MBL (USA) Corp.* v. *United States*, Slip Op. No. 97–28, (CIT March 12, 1997) at 5. As the Department could not verify the conversion factors used by Rautaruukki, in petitioners' view, there is no reason to believe that an average of these unverified factors would be more accurate than the factor used by the Department. Petitioners add that using an average factor would essentially reward Rautaruukki for its failure to provide verifiable conversion factors. Petitioners conclude that the use of an average factor would not satisfy the Department's need to make an adverse inference in this instance and urge the Department to continue to use the factor employed in the preliminary results for the final results.

Department's Position: We agree with petitioners. By not providing verifiable weight conversion factors, when respondent could have done so, we have determined that respondent failed to cooperate by not acting to the best of its ability to comply with a request for information. See Certain Cut-to-Length Carbon Steel Plate From South Africa, 62 FR 61731 (November 19, 1997). The Department first learned that Rautaruukki had not reported sale-specific weight conversion factors at sales verification. Rather, we were told, weight conversion factors were calculated for each product control number. The verification outline clearly states: Provide worksheets showing any conversions from actual to theoretical weight. Rautaruukki did not prepare any such worksheets in advance of verification. When asked at verification to support the weight conversion calculation for a specific product control number, Rautaruukki was unable to do so in the time available at the verification. Consequently, pursuant to section 776(b) of the Act, an adverse inference is warranted in selecting facts available. Thus as facts available, we are continuing to use the weight conversion factor employed in the preliminary results of review. See Certain Cut-to-Length Carbon Steel Plate from Finland, 62 FR at 37,876.

Comment 7: Respondent alleges that the Department erred by failing to consider subject merchandise which is manufactured to shipbuilding specification "A" as identical merchandise. Respondent claims that its customers sometimes demand that identical merchandise, such as shipbuilding plate grade "A," be certified by the national classification society of the country in which the product will be used. Respondent states that the Department has treated all of the grade "A" shipbuilding plate, other than the grade used in the United States, as most similar to this grade, and that the Department assigned a unique weight to the U.S. specification and a different but uniform weight to all other grade "A" shipbuilding plate. Respondent claims that the Department is treating identical merchandise differently based on the identity of the classification society. Respondent contends that it demonstrated repeatedly during this administrative review that all grade "A" shipbuilding plate subject merchandise manufactured to the "A" specification of shipbuilding plate is the same product, regardless of the classification society which provides the certification. Respondent claims that irrespective of national classification society, all grade "A" shipbuilding steel has identical chemistry, delivery condition, elongation, yield strength and tensile strength. Respondent claims that it provided mill certificates, which show not only that the chemical and physical properties are the same for all shipbuilding grade "A" steel, but also demonstrate that steel from the same cast or heat was used to meet orders for grade "A" shipbuilding plate sold to different classification society certifications. Respondent states that it described the procedures that it underwent in order to qualify as a supplier of shipbuilding steels, and notes that in order to be qualified, the various national certification societies used common test pieces and test results. Respondent argues that this interchangeability of test pieces supports its claim that this material is identical and that the various societies apply the same standard for this material.

Petitioners did not comment on this issue.

Department Position: We disagree with respondent. Respondent's argument is based on an examination of the plate that was produced. As we have explained to respondent in this proceeding, the plate specification variable refers to the physical characteristics of the specification. See Analysis Memorandum for the preliminary results of the third administrative review of Certain Cut-to-Length Carbon Steel Plate From Finland (July 7, 1997). Thus, while it is possible to produce plate so that the same plate meets multiple national standards, this in no way demonstrates that the standards themselves are identical. As noted in the final results of the second review, prices can vary based on the specifications to which the product is sold, even though the product is physically identical. See Certain Cut-to-Length Carbon Steel Plate from Finland; Final Results of Antidumping Duty Administrative Review. 62 FR 18468 (April 15, 1997). See also analysis memo. We continue to find that there are certain differences between the various national specifications for grade A shipbuilding plate and are not changing the weights assigned to these products for these final results. We do note, however, that as there was no plate sold in the home market that was made to the same specification as the shipbuilding steel sold in the United States, maintaining the weights assigned to various products will not affect the home market models that are matched to U.S. sales.

Comment 8: Respondent argues that the Department erred by comparing normal cut-to-length carbon steel plate sold to the U.S. market with beveled plate sold in the home market. Respondent claims that beveled plate is a structural steel product which requires separate and additional manufacturing and handling on a different product line. Respondent notes that it has created a special field to identify beveled plate as well as other prefabricated plate products, which may have the same physical characteristics as basic cut-to-length plate, but are manufactured by different processes and have different end uses. Respondent also notes that it has provided information about the different and additional costs associated with the production of beveled plate. Respondent contends that the Department has verified that beveled plate requires additional processing and the different nature of the product is reflected in

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Rautaruukki's price list which established an (extra) for beveled plate.

Petitioners allege respondent has failed to demonstrate that beveled plate is not comparable to the plate sold in the U.S. market. Petitioners contend that the Department expressly rejected the arguments raised by respondent in both the first and second administrative reviews. See Certain Cut-to-Length Carbon Steel Plate from Finland, 61 FR 2792, 2795 (January 29, 1996) and Certain Cut-to-Length Carbon Steel Plate from Finland 62 FR 18468, 18471 (April 15, 1997). Petitioners argue that the Department correctly determined in those prior reviews that Rautaruukki failed to establish beveling as a product-matching criterion, and that the Department found that beveled plate does not possess physical characteristics which make it unique from non-beveled plate with regard to applications and uses. Petitioners claim that the Department noted that Rautaruukki had the opportunity to suggest beveling as a characteristic for use in product matching, but failed to do so. See Certain Cut-to-Length Carbon Steel Plate from Finland, 61 FR at 2795. Petitioners argue that nothing has changed with respect to this issue in this review. In petitioners' view, respondent has not established on the record that beveling is a product matching criterion considered by the Department. Petitioners claim that respondent is simply seeking to create its own matching hierarchy. Petitioners state that the support cited by Rautaruukki is the same information that Rautaruukki submitted in the second administrative review information which failed to convince the Department that beveled plate should not be compared to the products sold in the U.S. market.

Petitioners claim that the Department has correctly determined, and as Rautaruukki has conceded, beveled plate products do not possess any physical characteristics that set them apart from non-beveled plate products. Accordingly, petitioners argue that Rautaruukki's contentions regarding the treatment of beveled plate are without merit and should be rejected by the Department.

Department Position: We agree with the petitioners. The Department correctly determined in those prior reviews that Rautaruukki failed to establish beveling as a product-matching criterion, and that the Department found that beveled plate does not possess physical characteristics which make it unique from non-beveled plate with regard to applications and uses. See Certain Cut-to-Length Carbon Steel Plate from Finland, 61 FR 2792, 2795 and Certain Cut-to-Length Carbon Steel Plate from Finland, 62 FR 18468, 18471. The documentation submitted by Rautaruukki in the course of this review does not establish the relevance of beveling as a product matching criterion. We have not changed our treatment of beveled products for these final results.

Comment 9: Respondent contends that the Department failed to convert harbor expenses from Finnish markka to U.S. dollars in its calculation of margin expenses. The respondent suggests that we make an adjustment similar to the adjustment made for international freight charges for affiliated party charges.

Additionally, respondent claims that the Department did not convert direct selling expenses and credit expenses for U.S. sales from Finnish markka to U.S. dollars in the margin calculation program. Rautaruukki reported direct selling and credit expenses in Finnish markka, but the margin calculation program applies these figures in U.S. dollars, resulting in a skewed total for direct expenses for U.S. sales.

Petitioners did not comment on this issue.

Department's Position: We have converted harbor expenses, U.S. direct selling expenses, and U.S. credit expenses from Finnish markka to U.S. dollars. We note that the affiliated party charges were in U.S. dollars so no currency conversion was required for these expenses.

Comment 10: Rautaruukki claims that the Department erred in applying the theoretical weight conversion factor to its verified COP and CV amounts. Rautaruukki argues that the Department should have applied the weight conversion factor only to the sales quantities to insure that all sales were reported on the same (*i.e.*, theoretical weight) basis and not to reported costs which reflect actual costs incurred for delivered or shipped quantities of subject merchandise. Rautaruukki notes that its U.S. sales were all reported on a theoretical weight basis, while some of its home market sales were reported on a theoretical weight basis and some were reported on an actual weight basis. Consequently, for the sales made on a theoretical weight basis, Rautaruukki contends that the costs associated with these sales were reported on a theoretical weight basis, not on an actual weight basis. Therefore, Rautaruukki argues that if the Department decides to apply the conversion factor to costs, it should be applied only to those products sold on an actual weight basis. Rautarrukki suggests that the Department would need to recalculate costs for only two of the three products which were matched in the model match program because one product's costs was reported only on a theoretical weight basis. To recalculate the costs for the other two matched products, Rautaruukki recommends that the Department calculate the relative distribution or allocation of costs associated with each weight basis using the percentage of sales made on each basis. Then, the Department could adjust the costs associated with sales made on an actual weight basis by applying the conversion factor and add this figure to the costs reported on a theoretical weight to arrive at a figure for the cost for all sales on a theoretical weight basis.

Petitioners state that Rautaruukki's claim that cost data are calculated on both theoretical and actual weight basis constitutes new information that the Department has not verified. Petitioners cite the Department's cost verification report which states that to calculate the weighted-average cost for all extras, Rautaruukki used shipped quantities to determine the per ton cost amounts. Because Rautaruukki's case brief dated September 8, 1997, indicates that Rautaruukki calculated the average cost per ton using a combination of costs based on both theoretical weights and actual weights, petitioners argue that Rautaruukki's cost reporting methodology is flawed and the reported amounts are inaccurate and unreliable. Therefore, petitioners cite Final Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Sweden, 62 FR 18396, 18398–99 (April 15, 1997), and recommend that the Department reject Rautaruukki's reported per ton costs and apply total facts available.

Department Position: We agree with petitioners that Rautaruukki's cost calculation methodology is flawed in that it relied on production quantities based on both theoretical and actual weights. We disagree with petitioners, however, that Rautaruukki's cost reporting methodology warrants use of total facts available. Under its submission methodology, Rautaruukki first computed a weighted-average cost of manufacturing for the subject merchandise based on two broad product categories, plate and cut-to-length coil. At verification, we confirmed that each of these weighted-average cost categories was calculated by dividing actual costs by total production quantity on an actual weight basis (See Production Reports per February 27, 1997, Submission at Exhibit 3, calculation 3). Rautaruukki then computed an average cost for

extras by multiplying product-specific extra amounts by product-specific sales quantities (some of which were on an actual weight basis, others on a theoretical weight basis) and dividing by the same sales quantities. Because, in the normal course of business, Rautaruukki maintains product-specific sales reports but not product-specific production reports, it used shipped quantities of each product to compute the average cost for extras. Rautaruukki deducted this average cost for extras from the weighted-average cost of manufacturing for each broad product category in order to compute the average base cost for the category. To compute product-specific manufacturing costs, Rautaruukki added to the average base cost the same product-specific extra amounts used to derive the base cost.

By using actual production weights to compute the average costs for each of the broad product categories, and by relying on a mix of theoretical and actual production weights in determining the average cost of extras, Rautaruukki's submitted costs represent a mix of weight bases that do not accurately reflect the per-unit costs incurred to produce the subject merchandise. To correct this flaw, we increased Rautaruukki's reported COP and CV amounts by the theoretical-to-actual weight conversion factor. See Comment 6.

Comment 11: Petitioners argue that the Department should reject Rautaruukki's COP and CV data and use facts available because they contend that Rautaruukki's product-specific cost data are not based on actual costs incurred during the POR, are not supported by source documentation, cannot be reconciled to Rautaruukki's audited financial statements, and are not supported by tests performed by the Department. Petitioners cite Final Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Finland, 62 FR 18468, 18472–18473 (April 15, 1997), in which the Department rejected Rautaruukki's cost data in the second administrative review, to support its argument. Petitioners state that the problems identified in the second administrative review persist and that there is insufficient record evidence for the third administrative review to support the Department's reversal of its previous decision.

Petitioners argue that the submitted costs be rejected because the Department verified that product-specific costs are not based on the POR. Petitioners note that all documentation provided by Rautaruukki to substantiate its reported product-specific costs was from outside the POR. Therefore, petitioners maintain that the Department has no reliable basis or record evidence to determine whether the submitted data reflect actual costs for the POR. Petitioners further contend that the Department cannot rely on documentation provided during this review which relates to previous review periods to support Rautaruukki's historical production costs since the Department previously rejected this information.

Rautaruukki argues that the Department's decision regarding costs submitted in this third administrative review must be based on the facts of the current proceeding and not on alleged deficiencies or factual errors in previous administrative proceedings. Rautaruukki asserts that record evidence in the current review clearly states that the Department verified Rautaruukki's submitted product-specific information, reviewed its internal system which tracks quality and dimensional costs by product grade, and reconciled these costs with Rautaruukki's profit-and-loss accounts. Rautaruukki contends that the costs recorded in the quality cost tables dated July 31, 1995, were the costs in effect throughout the POR, and therefore, are a proper basis for calculating product-specific costs. Rautaruukki also states that the Department verified its dimensional extras costs and reconciled these figures with Rautaruukki's financial reports. Lastly, Rautaruukki argues that the Department tested and verified costs for specific products and reconciled these costs with Rautaruukki's financial statements. Therefore, Rautaruukki maintains that its product-specific cost data was verified by the Department to be accurate and reliable.

Department Position: We disagree with petitioners' contention that we must reject totally Rautaruukki's submitted COP and CV data for this review. First, as discussed in Comment 10 above, Rautaruukki relied on actual costs incurred and actual tonnages produced during the POR to calculate weighted-average costs for its broad categories of plates and cut-to-length products. In order to derive the total base cost for each category, Rautaruukki deducted from the weighted-average cost, an amount for the average cost of extras. The company then added back costs for product-specific extras. Contrary to petitioners' assertions, there is nothing inherently unreliable or theoretically unsound about Rautaruukki's underlying cost allocation methodology. Rather, much like other manufacturers that rely on standard costs as a means to distribute actual costs among specific products, Rautaruukki relies on a system of base and standard extra costs to allocate its actual production costs among the company's plate and cut-to-length products. We found this methodology reasonable.

Second, Rautaruukki's product-specific costs are supported by source documentation. In its February 27, 1997, Section D supplemental response, Rautaruukki provided documentation of the detailed calculations used to derive its quality and dimensional extras costs. Rautaruukki notes that these calculations are based on engineering standards and the company's production experience. Petitioners chose not to challenge the validity or accuracy of Rautaruukki's calculations. Instead, the petitioners argue that because Rautaruukki did not update these standards during the POR, the cost of extras as reported by the company are unreliable. For this review, however, we have no reason to believe that Rautaruukki's extra cost calculations, which were based on data used by the company during the POR, do not reasonably represent the cost differences incurred to produce individual products. It is unnecessary for Rautaruukki to update its standard extra costs every year so long as these amounts continue to accurately reflect costs incurred by the company during the year.

Third, the reported costs can be reconciled to Rautaruukki's audited financial statements. During the cost verification, we reconciled Rautaruukki's reported product-specific costs to its audited financial statements noting only a slight difference. See Comment 14 below for further discussion.

Fourth, Rautaruukki's product-specific costs are supported by tests performed by the Department during verification. We tested Rautaruukki's calculations of weighted-average costs, base costs, and extra costs (see cost verification report at pages 7 through 14). During our verification, we determined that the standard costs for extras used by Rautaruukki in the normal course of business during the POR were based on actual production and cost data, engineering standards, and company experience. As discussed above in this comment, we do not believe that it is necessary for Rautaruukki to update every year the tables containing these standard extra costs, where such standard costs continue to reflect the company's production cost experience with reasonable accuracy. In addition, in contrast to petitioners' argument, we

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found it reasonable that Rautaruukki reported identical cost of manufacturing amounts for a small number of CONNUMs even though these products had slightly different physical characteristics. We verified the fact that these products had the same cost for various reasons. For example, in some instances, differences in the costs of specific extras offset one another, making the costs of the two products the same in total. In other instances, products with differing plate specifications underwent the same processing and, as a result, incurred the same costs under Rautaruukki's accounting system. Thus, it was not unreasonable for certain of Rautaruukki's products to have identical costs.

Last, to support their argument that the cost data submitted in this review should be rejected, the petitioners cite Final Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Finland, 62 FR 18468, 18472–18473 (April 15, 1997), in which the Department rejected Rautaruukki's cost data in the second administrative review. We note that any decision in a specific review must be made on the facts of the record for that review. In this review, as explained above, we were able to verify Rautaruukki's cost extras and found their reporting methodology to be reasonable. As the Department has stated, we review each period independently and may determine that a change in analysis is appropriate. * * * Thus, the Department is not bound in a current administrative review to strictly adhere to the methodology or practice used in a previous review. See Certain Dried Heavy Salted Codfish from Canada, 54 FR 13211, 13213 (March 31, 1989).

Comment 12: Petitioners state that Rautaruukki's variable cost of manufacturing data reported for its home market and U.S. sales differs substantially from the amounts derived from the COP and CV datasets. Petitioners argue that the Department's calculation of variable costs as used for the preliminary determination, which were computed by subtracting the fixed overhead amount reported in the COP dataset from the total cost of manufacturing amount reported in the COP dataset, fails to accurately calculate product-specific costs. Petitioners reason that this methdology is unacceptable because Rautaruukki reported the same fixed overhead amount for every product produced, thereby disregarding fixed-cost differences between products.

As the Department cannot derive accurate product-specific variable costs from Rautaruukki's COP dataset, petitioners recommend that the Department use an adverse facts available percentage of 24.95 percent, the margin from the last administrative review, for calculating the difference in merchandise (difmer) adjustment. As alternative adverse facts available, petitioners suggest that the Department use Rautaruukki's lowest reported home market variable cost and its highest reported U.S. variable cost to calculate the difmer adjustment for all non-identical comparisons. Petitioners assert that use of adverse facts available is appropriate since Rautaruukki failed to submit revised data in response to several requests made by the Department that Rautaruukki ensure that its home market and U.S. sales files reflect the same variable cost of manufacturing amounts as reported in its COP and CV datasets. petitioners cite Final Results of Antidumping Duty Administrative Review: Porcelain-on-Steel Cookware from Mexico, 61 FR 54616, 54618 (October 21, 1996); Preliminary Determination of Sales at Less than Fair Value: Class 150 Stainless Steel Threaded Pipe Fittings from Taiwan, 59 FR 10784, 10785 (March 8, 1994); and Final Determination of Sales at Less than Fair Value: Class 150 Stainless Steel Threaded Pipe Fittings from Taiwan, 59 FR 28432 (July 28, 1994) to support the use of adverse facts available.

Petitioners further contend that if the Department does not use adverse facts available, the Department should at least apply neutral facts available for the difmer adjustment. As neutral facts available, petitioners suggest that the Department apply an amount equal to the twenty percent cap as the difmer adjustment. Petitioners cite Notice of Final Results and Partial Termination of Antidumping Duty Administrative Reviews: Tapered Rolled Bearings, Four Inches or Less in Diameter, and Components Thereof, from Japan, 59 FR 56035, 56048, which was upheld in *NTN Bearing Corp. of America* v. *United States*, 924 F. Supp. 200 (Ct. Int'l Trade 1996), to show that the Department's practice has been to apply an amount equal to the twenty percent cap in those instances where a respondent fails to provide variable cost data in the requisite form for the difmer test.

Rautaruukki disagrees with the petitioners' claim that the Department erred in calculating Rautaruukki's variable costs by subtracting fixed overhead costs from the total cost of manufacture reported in the COP and CV datasets. Rautaruukki maintains that the Department's calculation is acceptable because the Department verified that the cost data are in accordance with its practice and generally accepted accounting principles.

Department Position: We agree with petitioners that Rautaruukki incorrectly reported its fixed manufacturing costs by reporting only amounts related to producing base products (*i.e.*, all products were assigned the same amount of fixed manufacturing costs). As a result, the methodology used by the Department for the preliminary determination (determining product-specific variable cost of manufacturing by subtracting the reported product-specific fixed cost of manufacturing from the product-specific total cost of manufacturing) failed to account for fixed-cost differences arising from processing route differences. This flaw in methodology, however, has no impact on the similar product matches for Rautaruukki in this review. The only difference between home market sales and the U.S. sales to which they are matched is the specification of the steel. All other model match criteria, including width and thickness, and identical. With respect to specification, all U.S. sales and the home market sales that are matched to those U.S. sales are shipbuilding grade A material. As respondent has argued throughout this proceeding (See Comment 7), all shipbuilding grade A material is manufactured the same regardless of the national classification standard to which it is ultimately certified. Petitioners have not disputed these claims. Thus, with respect to these sales, there are essentially no differences in the total cost of manufacturing for the matched products, and no differences in the processing routes or machines used in production. Accordingly, we consider the methodology used by the Department for the preliminary results reasonable and non-distortive for purposes of this review. We are continuing to use this methodology for these final results.

Comment 13: Petitioners claim that Rautaruukki improperly reduced its costs associated with the production of subject merchandise by including revenue from sales of slab in the amount it reported for scrap and sales of by-products. Petitioners note that slabs are semi-finished, non-subject merchandise and that the income from sales of slab should not be deducted from costs. Petitioners recommend that the Department exclude Rautaruukki's reported scrap amount from the calculation of total costs because the Department has no way of knowing what percentage of Rautaruukki's scrap amount is from sales of slab.

Rautaruukki responds that it did not report slab as a by-product and offset its COP and CV data by revenues from the sale of slabs. Rautaruukki notes that the Department verified that by-products reported include burnt lime, coke, coal tar, sulfur, benzene, nut coke, and utilities. Rautaruukki maintains that slab is not included as a by-product offset in its submitted costs.

Department Position: We agree with Rautaruukki. Although Rautaruukki officials stated that in their management accounting monthly reports, they included sales of slabs with by-product turnovers (See Sales Verification Report at 5), we found no evidence to show that Rautaruukki had improperly offset reported production costs with revenue from the sale of slab. As discussed in our cost verification report at page 7, by-product revenues offset to the cost of subject merchandise included burnt lime, coke, coal tar, sulfur, benzene, nut coke, and utilities. Because we have no evidence that Rautaruukki included sales of slab in the by-product offset, we made no adjustment.

Comment 14: Petitioners argue that if the Department accepts Rautaruukki's product-specific cost data, the Department should make an adjustment to account for the difference between Rautaruukki's May 5, 1997 COP dataset, which was submitted after verification, and its audited financial statements. Petitioners note that the reconciliation reviewed by the Department was based on data submitted prior to verification and that the May 5, 1997 dataset no longer reconciles to Rautaruukki's financial statements. As Rautaruukki did not explain whether the discrepancy between its revised COP dataset and its financial statements relates to subject or non-subject merchandise, petitioners recommend that the Department adjust the submitted data by the amount of the discrepancy.

Rautaruukki replies that the slight discrepancy between its costs submitted on May 5, 1997, and its audited financial statements represents omitted costs of products sold to third countries that were outside the scope of this administrative review. Rautaruukki further contends that the Department verified the accuracy and validity of its cost reconciliation and its production costs for plate. Therefore, Rautaruukki concludes that an adjustment to its reported costs is unwarranted.

Department Position: We agree with practitioners. The reconciliation reviewed by the Department did not include the correction of errors identified at the beginning of verification (See Cost Verification Report at 3, 6, and 7). Based on our revised reconciliation, it appears that the COP and CV data submitted by Rautaruukki in its May 5, 1997, response did not capture all costs as recorded under the company's financial accounting system. As we have no evidence to support Rautaruukki's contention that the difference relates to third country sales that were outside the scope of this administrative review, we adjusted Rautaruukki's submitted costs for this small difference. See Analysis Memorandum dated December 15, 1997.

Final Results of Review

As a result of our review, we have determined that no margin exists for Rautaruukki Oy for the period of August 1, 1995 through July 31, 1996. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of plate from Finland entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed company will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise, and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will be 40.36 percent. This is the all others rate from the amended final determination in the LTFV investigation. See Amended Final Determination Pursuant To CIT Decision: Certain Cut-To-Length Carbon Steel Plate from Finland, 62 FR 55782 (October 28, 1997). These deposit requirements when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under Section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with Sections 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and this notice are in accordance with section 751 (a)(1) of the Act (19 U.S.C. 1675(a)(1)) and Sec. 351.213 and 351.221 of the Department's regulations.

Dated: January 12, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–1277 Filed 1–16–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–805]

Certain Cut-to-Length Carbon Steel Plate From Belgium; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On September 15, 1997, the Department of Commerce (the Department) published the preliminary results of its 1995–96 administrative review of the antidumping duty order on cut-to-length carbon steel plate from Belgium (62 FR 48213). This review covers one manufacturer/exporter of the subject merchandise, Fabrique de Fer de Charleroi, S.A. (FAFER), and its subsidiary, Charleroi (USA) for the period August 1, 1995 through July 31, 1996.

EFFECTIVE DATE: January 20, 1998.

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips or Linda Ludwig, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington,

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DC 20230; telephone (202) 482–0193 or 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 15, 1997, the Department published in the **Federal Register** (62 FR 48213), the preliminary results of the 1995–96 review of the antidumping duty order on certain cut-to-length carbon steel plate from Belgium (58 FR 44164). At the request of petitioners, we held a public hearing, which included a closed session for the discussion of proprietary information, on November 18, 1997. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR part 353 (April 1, 1997).

Scope of the Order

The products covered by this administrative review constitute one "class or kind" of merchandise: certain cut-to-length carbon steel plate. These products include hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results of review. The Department received briefs and rebuttal briefs from the petitioners, Bethlehem Steel Corporation, U.S. Steel Company, Inc., (a Unit of USX Corporation), Inland Steel Industries, Inc., Geneva Steel, Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, and Lukens Steel Company, and the sole respondent in this case, Fabrique de Fer de Charleroi. Based on our analysis of the issues discussed in these briefs, we have changed these final results of review from those published in our preliminary results.

General Comments

Comment 1: The petitioners argue that the Department must deduct actual antidumping and countervailing duties paid by respondents' affiliated importers from the price used to establish export price (EP) or constructed export price (CEP).

Department's Position: We disagree with petitioners. We continue to adhere to the statutory interpretation articulated in the final results of Certain Cold Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews (62 FR 18404), under which we do not make the deduction. The Department's decision in that case not to make the deduction was recently affirmed by the Court of International Trade (CIT), *See Ak Steel Corp. et al.* v. *United States*, Slip Op. 97–160 (CIT, December 1, 1997).

Comment 2: The petitioners contend that the Department's duty absorption determination in the preliminary results is generally flawed for two major reasons.

First, petitioners assert that by inviting the parties to submit new factual information after verification in order to rebut its presumption that "duties will be absorbed for those sales which were dumped," the Department undermines the statutory and regulatory requirement that it rely only on verified information in the *Final Results*. In petitioners' view, allowing respondents to place information on the record which cannot be verified places petitioners at a distinct disadvantage, and is inconsistent with a recent ruling by the Court of Appeals for the Federal Circuit. *See Creswell Trading Co.* v. *United States*, 15 F.3d 10543, 1060 (Fed. Cir. 1994). They urge the Department to abandon this poorly conceived method and to collect all relevant duty absorption evidence at the same time as it collects information necessary to complete its dumping analysis.

Second, petitioners believe the Department's methodology has the potential to understate the extent to which antidumping duties were absorbed. The Department's methodology, they affirm, can give the casual reader the mistaken impression that the total amount of duties absorbed was limited to the dumped sales included in the final antidumping duty calculated. As the overall dumping margin is weight averaged, petitioners contend, the true level of dumping, and thus of duty absorption, is significantly greater than the overall margin. To resolve this problem, petitioners argue that the Department should state its duty absorption finding as the percentage of sales dumped along with the average level of dumping *for those sales* (emphasis in the original). For example, if five percent of a respondent's sales were dumped, and the overall weighted-average dumping margin were forty percent, the Department should state that the respondent absorbed duties on five percent of sales at a margin of forty percent.

Department's Position: After careful consideration of petitioners' views, we have left our duty absorption methodology unchanged from the preliminary results.

Contrary to petitioners' contention that we violated the statute by inviting submission of new factual information after verification, our regulations allow us to invite submission of factual information from parties at any time during a proceeding. If a party submits information as a result of such an invitation, we afford all other interested parties an opportunity to comment in writing on such information (see, § 353.31(a)). *See* Comment 6 for the Department's position on the duty absorption issue as it relates specifically to FAFER. Moreover, the statute and regulations do not require that all information submitted to the Department be examined at verification.

See, Monsanto v. *United States*, 698 F. Supp. 275,281 (CIT 1988).

We believe the approach suggested by petitioners is inappropriate and unreasonable for the following reasons: (1) A transaction-specific determination on duty absorption is impractical because dumping margins on individual transactions are "business proprietary;" (2) Petitioners' approach would result in an artificially inflated duty absorption percentage which would cause unnecessary confusion. In a hypothetical case where, if only one sale were dumped out of one hundred U.S. sale transactions, but at a margin of twenty percent, petitioners apparently would have the Department determine that duty absorption had occurred at a rate of twenty percent on one percent of the sales. We find this approach inappropriate and not mandated by either statute or regulation. Our analysis focuses on the entire POR. We find that our methodology better represents absorption during the POR.

Accordingly, for purposes of these final results, we have left our duty absorption methodology unchanged.

Company-Specific Comments

Comment 1: The petitioners claim that total facts available is warranted in this case because the ultimate ownership of FAFER and the full extent of the company's affiliations remain largely unknown despite the Department's repeated requests for such information. The petitioners contend that party affiliation can affect every aspect of the Department's analysis, including the arm's-length test, model matching, and the sales-below-cost test. Therefore, the petitioners request that the Department employ total facts available for the final results.

The petitioners note that in the preliminary results the Department found that FAFER is affiliated to a steel service center to which it sold subject merchandise during the POR. According to petitioners, FAFER's refusal to report downstream sales of this reseller violated the Department's explicit instructions in its questionnaire *not* to report sales to affiliated resellers in the home market, but instead to report "downstream sales," *i.e.*, "the resales by the affiliates to unaffiliated customers." In addition, the petitioners claim that FAFER failed to contact the Department immediately, as instructed, if it would be unable to report downstream sales as requested.

The petitioners point out that in its response to the Department's supplemental questionnaire, FAFER once again failed to report the requested downstream sales data, but claimed that the service center "must * * * be considered as an unaffiliated customer" because FAFER is only a minor shareholder of (the service center) and as a result has no control on it." *See* FAFER's January 13, 1997 Letter to the Department of Commerce at 12–13. The petitioners argue that FAFER's persistent attempts to obscure the true nature of its corporate structure compelled the Department to make an adverse inference with regard to the level of the Boël family's equity holdings in FAFER and consequently, FAFER's sales to this customer were subjected to and failed the arm's-length test. Furthermore, the petitioners claim that the egregious nature of FAFER's refusal to provide the requested information is compounded by the fact that some of the information in question ultimately has proven to be publicly available from other sources.

The petitioners state that the Department has, in the past, determined that the application of facts available is warranted in certain instances in which a respondent fails to report downstream sales. For example, in Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 59 FR 37062, 37077 (July 9, 1993), the petitioners state that "when the respondents could not, or would not, report downstream sales, we applied margins based on BIA to any U.S. sale matched only to a sale to a related reseller in the home market that failed the arm's-length test." The petitioners believe that such an approach should be used in this case.

The petitioners acknowledge that the Department may exempt respondents from reporting downstream sales if they are "unable" to obtain this information, but contend that FAFER has not met this burden. In fact, according to the petitioners, FAFER should have been able to provide the requested data because FAFER and the service center are affiliated not only through equity holdings, but also through extensive overlapping membership of their boards of directors and through family groupings.

Consequently, the petitioners recommend that the Department make an adverse inference and employ total facts available, using a dumping margin of 42.64 percent, the highest margin alleged in the original petition; or, in the alternative, the margin of 13.31 percent from the less-than-fair-value (LTFV) investigation.

The respondent counters that there is no statutory provision requiring the Department to use the downstream sales of an affiliated reseller, and petitioner fails to cite any legal support for any requirement on the Department to do so, particularly where the finding of affiliation is one based on facts available in the first instance. Moreover, the respondent contends that the Department has already resorted to facts available in determining that the steel service center is an affiliated reseller in the home market, and has therefore already acted in a manner adverse to respondent's interests (since this allowed the Department to conduct the arm's-length test, which led to the elimination of all identical matching home market sales to that service center). In FAFER's opinion, the Department should dismiss the petitioners' request that we resort to total facts available because FAFER did, in fact, cooperate with the Department to the fullest extent possible, reporting downstream sales to at least one affiliated reseller. Finally, FAFER maintains that it did not have the authority to obtain downstream sales data from the service center in question.

Department's Position: We have determined that FAFER and the steel service center to which FAFER sold subject merchandise during the POR are affiliated by means of Boël family control, pursuant to section 771(33) (*see*, Certain Cut-to-Length Carbon Steel Plate from Belgium; Preliminary Results of Antidumping Duty Administrative Review (62 FR 48213)).

Section 776(b) of the Act requires that if an interested party fails to cooperate by not acting to the best of its ability to comply with the Department's request for information, the Department may use an adverse inference in selecting from the facts otherwise available. Thus, we may resort to adverse facts available in response to FAFER's failure to report downstream sales unless FAFER establishes that it could not compel its affiliate to report those downstream sales (*cf.*, Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review; Roller Chain, Other Than Bicycle, From Japan (62 FR 60472, 60476) (November 10, 1997)). Although FAFER claims that it could not compel its affiliated customer to provide downstream sales information, we cannot accept this claim based solely on the information FAFER has provided. Respondent has the burden of proof to show that it cannot compel the reporting of downstream sales. However, recognizing that the Department did not inform FAFER of certain deficiencies in its attempt to establish such a claim, we have elected not to use adverse facts available.

As the result of our conclusion that FAFER and the steel service center were indeed affiliated, we applied our arm's-length test and found that sales to the

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affiliated customer, the steel service center, were not made at arm's-length prices, *i.e.*, at prices comparable to prices at which the respondent sold identical merchandise to unaffiliated customers. In addition, based on the Department's previous determination to disregard sales made at below the cost of production (COP) in the original LTFV investigation, we had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below the COP, as provided by section 773(b)(2)(A)(i) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by FAFER in the home market. The results of the sales-below-cost test revealed that the remaining home market sales to unaffiliated parties which provided contemporaneous matches with the U.S. sales, failed the sales-below-cost test and could not be used for the calculation of normal value (*see*, Certain Cut-to-Length Carbon Steel Plate from Belgium: Preliminary Results of Antidumping Duty Administrative Review (62 FR 48213)). Therefore, in accordance with section 773(a)(4) of the Act, we have continued to disregard all home market sales and have used constructed value as the basis for normal value for these final results.

Comment 2: Although the petitioners do not dispute that the commission that FAFER paid to its agent in connection with U.S. sales represents a reasonable proxy for FAFER's unreported U.S. indirect selling expenses, they do object to the commission amount applied by the Department in its margin calculation.

The petitioners state that since FAFER did not provide any documents regarding its commission payments to Charleroi USA, the Department attempted to calculate the commission. However, the petitioners maintain that the commission amount calculated by the Department is plainly inconsistent with information on the record in this review.

In addition, the petitioners assert that the disparity between the U.S. commission amount and the home market commission amount underscores their assertion that the figure used by the Department is not an accurate measure of FAFER's U.S. commission expense.

The petitioners contend that the record provides sufficient information to calculate properly the commission amount to deduct from CEP. They note that in its response to the Department's questionnaire, FAFER states that it pays its affiliate, Charleroi USA, a commission calculated as a specific rate of "the minimum prices mentioned in FAFER's (sic) price guide." (*see*, Section A Response). They suggest that this evidence on the record provides sufficient information for the Department to calculate properly the commission amount to deduct from constructed export price. The petitioners urge the Department to use this commission rate applied to the price in the price guide as facts available for FAFER's U.S. commission expense.

In its brief, FAFER rejects the petitioners' claim that the Department used the incorrect amount when deducting from CEP the commission paid to its affiliate, Charleroi U.S.A. Moreover, FAFER maintains the petitioners' contention that the Department should use the rate mentioned in its Section A response reveals a misinterpretation of FAFER's commission policy on the part of petitioners. FAFER contends that its Section A statement was a general policy statement and, as indicated by the context of item 3.1 of the Section A response, is subject to the circumstances under which sales are actually negotiated, as well as to the resulting price. For the particular sale at issue, FAFER states that the general policy on commissions was superseded by the facts and circumstances of the sale, and the Department, based upon the records of the sale reviewed at verification, determined the commission actually paid per metric ton. In FAFER's opinion, in light of the availability of specific sales data, there is no need for application of a general policy which did not take effect in the case of the sale in question.

Furthermore, in its rebuttal brief, FAFER states that upon further investigation of the U.S. sales documentation, it has determined that it did not pay any commissions to its U.S. affiliate during the POR and no basis exists for imputing an amount to its one U.S. sale. FAFER cites to U.S. Sales Verification Report, Exhibit 10 as proof that no U.S. commission was paid. FAFER asserts that this evidence backs up its submissions to the Department in which it unambiguously stated that its affiliate, Charleroi U.S.A., received no commission on the subject sale.

FAFER also asserts that the amount the Department used as the U.S. commission expense in its preliminary results was probably, to the best recollection of FAFER's counsel who was present at verification, a service charge by transmitting banks. FAFER urges the Department not to increase the U.S. commission amount, as petitioners request, but reduce FAFER's commission amount to zero.

In rebuttal, the petitioners assert that FAFER is attempting to downplay its stated policy regarding its commission payments to affiliates and seeking to recast its commission policy to accommodate the amount used in the preliminary results. The petitioners maintain that, contrary to FAFER's contention, its section A response states that commissions may be paid either by permitting the affiliated agent to withhold a portion of the sales proceeds, or by issuance of a credit note after the transaction is completed (*see* Letter from Barnes Richardson & Colburn to the U.S. Department of Commerce, at 4 (October 21, 1996)). The petitioners maintain that this statement is evidence that although the method of payment may vary from sale to sale, there is no indication that the commission amount itself may vary. Therefore, the petitioners reiterate their contention that the Department should deduct the appropriate commission amount from CEP and not the inaccurate amount used in the preliminary results.

Moreover, the petitioners note that FAFER's failure to report indirect selling expenses incurred in the U.S. resulted in the Department's use of the commission amount that FAFER paid its agent as the facts otherwise available to fill this void in FAFER's data. While the petitioners fully support the Department's determination to make this adjustment to CEP as facts available for unreported U.S. indirect selling expenses, they assert that the Department should use the commissions that FAFER paid in connection with U.S. sales only if those commissions represent a reasonable proxy for FAFER's unreported U.S. indirect selling expenses. The petitioners point out that in order to give effect to the purpose of the facts available provision of the statute, the information selected as facts available must have probative value, and must be sufficient to induce respondents to respond fully to the Department's information requests in the future (*see, Rhone Poulenc, Inc.* v. *United States*, 899 F.2d 1185, 1190–91 (Fed. Cir. 1990)). Should the Department erroneously determine that the understated commission amount used in the preliminary results is accurate, the petitioners suggest a more accurate amount for indirect selling expenses derived from Charleroi USA's financial statements.

Department's Response: We agree with the respondent's contention that further examination of the U.S. sales documentation obtained at verification reveals that FAFER did not pay any commission on the U.S. sale in question. We also agree with petitioners that the U.S. commission amount calculated by the Department and used in the preliminary results as a proxy for FAFER's U.S. indirect selling expenses is inappropriate and does not reflect an adverse inference. Such an inference is justified by FAFER's refusal to comply with the Department's requests for information on its U.S. indirect selling expenses.

The commission amount used by the Department in the preliminary results was an unrealistically low commission rate and inconsistent with the commission rate reported by FAFER in its Section A response at 4 (*see* the Department's October 8, 1997, Internal Memorandum from Helen Kramer to the File). Moreover, FAFER acknowledges that the U.S. commission amount used in the preliminary results probably represented a service fee charged by transmitting banks (*see*, Respondent's Rebuttal Brief, October 22, 1997 at 4, Footnote 8), not a commission amount. Therefore, for these final results, while we have continued to use FAFER's U.S. commission expense as facts available for FAFER's failure to report U.S. indirect selling expenses (*see*, Analysis Memorandum from Analyst to the File, January 12, 1998), we are using a different estimate of this expense. We find that the commission rate FAFER typically pays its U.S. affiliate is the most reasonable estimate of U.S. indirect selling expenses (*see*, FAFER's Section A Response at 4).

Comment 3: The petitioners note that in its preliminary results, the Department subtracted home market commissions from CV as a circumstance-of-sale adjustment, but did *not* include the value of home market commissions in the calculation of the CV itself. The petitioners state that pursuant to statutory mandate, the Department's margin calculation program should include all direct selling expenses in the calculation of CV, including commissions. *See* 19 U.S.C. § 1677(e)(2)(A).

FAFER maintains that the filed designated general and administrative (G&A) expenses already includes amounts reported in its Section D response as home market commissions. According to the respondent, the Department verified FAFER's reported G&A amounts which included commissions, and to include them again in the calculation of CV would result in double-counting. FAFER cites generally to Cost Verification Report, March 24, 1997, at p. 26 and Cost Verification, Exhibit 7a in support of its position.

Department's Position: We agree with petitioners. In its original Section D submission of November 18, 1996, FARER noted that commissions were included in the variable field G&A. In its submission of January 21, 1997, FAFER, on instructions from the Department, reported home market commissions in a separate field in sections B and C. At the sales verification, we determined that the commission field was zero and the indirect selling expense field included only commissions paid to its affiliate. At the cost verification, the Department reviewed FAFER's G&A calculation and found it contained only general and administrative items. At verification FAFER did not indicate that any of the G&A expense categories included selling expenses. A review of the Cost Verification Report and Exhibit 7a of that report, cited by the respondent, supports the Department's conclusion that home market commission expenses were not included in G&A expenses.

The absence of any verified account which can be tied to home market commissions leaves us no choice but to conclude that home market commissions are not included in FAFER's reported G&A expenses. Therefore, we agree with petitioners that the Department erroneously understated CV in its preliminary results by not including home market commissions, pursuant to 19 U.S.C. § 1677b(e)(2)(a), in its calculation of CV. For these final results, we have added home market commissions in calculating CV (see, Analysis Memorandum from Analyst to the File, January 12, 1998).

Comment 4: The petitioners contend that in its calculation of CV profit in the preliminary results, the Department did not determine the total cost and the profit rate on the same basis. They maintain that home market commissions were included in the denominator of the ratio to determine that profit rate, but they were not included in the total costs multiplied by the profit rate to determine the per unit amount of CV profit. Therefore, they conclude that the Department should revise its margin calculation program to ensure that commissions are treated consistently throughout the Department's CV calculations.

FAFER counters that for the same reason it articulated in regard to commissions (*see* Comment 3), the Department should disregard the petitioner's request to recalculate CV profit.

Department's Position: We agree with petitioners. In order to calculate CV correctly, we must include commissions in the total costs multiplied by the profit rate in our calculation of CV profit. Accordingly, we have changed the computer program for these final results (*see* Comment 4 above).

Comment 5: The petitioners assert that certain of FAFER's claimed home market indirect selling expenses were, in fact, commissions, as indicated in the Department's Sales Verification Report at 11. In the petitioner's opinion, it seems incredible that a company would not incur any home market indirect selling expenses and, therefore, the Department should rely on the facts available and increase FAFER's reported SG&A expense, using the sales and cost of goods sold figures from FARER's unconsolidated statements.

FAFER maintains that no basis exists for increasing its calculated SG&A expense rate by the petitioner's randomly chosen percent because (1) the petitioners provide no mathematical explanation for this figure, and (2) any amounts that the Department would ordinarily deem indirect selling expenses were included in FAFER's SG&A rate, which reconciled with its financial statement at verification.

Department's Position: We agree with petitioners. As we stated in our response to Comment 3 above, home market indirect selling expenses are not included in the G&A filed or the indirect selling expense field. In addition, despite the Department's request in its original questionnaire and in its supplemental questionnaire of December 23, 1996, FARER failed to report any home market indirect selling expenses or the absence of any indirect selling expenses.

Therefore, pursuant to section 776(A)(2)(A) of the Act, we have employed the facts available for FAFER's home market indirect selling expenses. As a proxy for the unreported home market indirect selling expenses, we have added a percentage amount derived by deducting the G&A amounts reported by FAFER from the SG&A value stated on FAFER's unconsolidated financial statement, and then dividing the resulting difference by the cost of goods sold (*see*, Analysis Memorandum, January 12, 1998).

Comment 6: FAFER notes that the Department in its preliminary results found that the antidumping duties have been absorbed by FAFER because the record did not permit a conclusion that the unaffiliated purchaser in the United States will pay the ultimate assessed duty. The Department invited interested parties to submit evidence to the contrary within 15 days of the date of publication. FAFER states that Charleroi U.S.A. received a letter from the unaffiliated purchaser certifying that

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company's irrevocable commitment to pay the antidumping duty at issue. This letter was submitted (and served) in a timely manner, and should put the issue to rest in FAFER's view. FAFER also requests that the Department decrease the preliminary margin of 0.22% accordingly.

In rebuttal, the petitioners assert that the Department's invitation to FAFER to submit new factual information after verification is contrary to the Tariff Act of 1930, as amended, and the Department's regulations requiring that the Department rely only on verified information in its final results for this review. *See* 19 U.S.C. § 1677m(i).

The petitioners believe that FAFER's submission purporting to demonstrate that it did not absorb antidumping duties should be rejected for the following reasons: (1) The document from the customer to FAFER was dated September 29, 1997, only one day before it was filed with the Department and, therefore, not part of the original terms of sale; (2) the document is simply a one page letter, not notarized, containing no indication that it is a contractual obligation; and (3) the document cannot be relied upon because it has not been verified by the Department.

In conclusion, the petitioners assert that the Department should reject FAFER's submission for the reasons noted above, and reaffirm its determination that FAFER and its affiliated importer absorbed antidumping duties.

Department's Position: We agree with petitioners as to the results of this duty absorption inquiry, but not as to the rationale. In our preliminary results of review, at the request of petitioners, the Department undertook a duty absorption inquiry. The Act provides for a determination on duty absorption if the subject merchandise is sold in the United States through an affiliated importer. In this case, the reviewed firm sold through an "affiliated" importer within the meaning of section 751(a)(4) of the Act. We preliminarily determined that FAFER had absorbed the antidumping duties on one hundred percent of its U.S. sales because we could not conclude from the record that the unaffiliated purchasers in the United States had agreements to pay the ultimately assessed duty.

We invited interested parties to submit evidence that the unaffiliated purchasers in the United States have agreements to pay any ultimately assessed duties charged to the affiliated importer, Charleroi, USA. In a timely manner, FAFER submitted a statement from the customer that he "[would] irrevocably commit to make payments on any antidumping duty with respect to [the] purchase of the [subject merchandise], if such duty is assessed upon final determination by the U.S. Department of Commerce in this 1995–1996 administrative review." See Attachment, dated September 29, 1997, to the Letter from FAFER to the Secretary of Commerce, September 30, 1997.

Concerning the petitioners' objections to this response, as stated above, we note that the submission from the respondent was timely filed within the fifteen days following the publication of the preliminary. Our regulations at 19 C.F.R. § 351.31(b)(1) permit the Department to ask for (and receive) information pertaining to an administrative review at any time during a proceeding. Indeed, in an effort to obtain more detailed information and a clarification of the respondent's September 30, 1997 submission on duty absorption, we sent a supplemental questionnaire to FAFER on November 26, 1997. The petitioners had the opportunity to comment on the respondent's supplementary response (*see*, Letter from petitioners to the U.S. Department of Commerce, December 15, 1997).

After careful consideration of the evidence on the record, we have determined that the submission from the respondent does not establish that the unaffiliated customer will pay any ultimately assessed duty (*see*, Certain Cut-to-Length Carbon Steel Plate from Belgium: Preliminary Results of Antidumping Duty Administrative Review (62 FR 48213, 48217)) rendering the petitioners concerns about verification of the submission moot. In addition, the petitioners concerns about the timing of the alleged agreement between Charleroi U.S.A. and its customer do not enter into our refusal to rely on the submission. Petitioners have not stated any reasons why the timing of the alleged agreement has a bearing on its enforceability. As for the petitioners' objection to the fact that the "letter" was only one page and not notarized, the Department does not consider length a criterion for substance, and we note that the submission was properly certified pursuant to § 353.31(i) of the Department's regulations.

In the Preamble to 19 CFR part 351 *et al.*, Antidumping Duties; Countervailing Duties; Final Rule, we state that the Department did not adopt in its final rules suggestions that it establish substantive criteria regarding duty absorption because the Department "will need experience with absorption duty inquiries before it is able to promulgate such criteria." *Id.* at p. 27318. In this spirit, we have carefully considered the alleged agreement presented by Charleroi U.S.A.'s customer that purportedly indicates that he will be financially responsible for any duty assessed by the Department in this administrative review. We have concluded, in this case, that the evidence of record does not demonstrate the existence of an enforceable agreement to pay the full amount of the assessed duties. The fact that the customer has agreed "to make payments on" antidumping duties does not provide for an enforceable agreement to pay all antidumping duties. The alleged agreement does not state the exact number or amount of the "payments" the customer will make to the affiliated importer, nor that the amounts paid by the unaffiliated purchaser will be for the entire amount that is assessed by the Department. Finally, the agreement contains no provision as to when the customer will make such payments. Given these uncertainties, we cannot conclude that there is an enforceable agreement for the unaffiliated purchaser to pay the duties. Therefore, for these final results, we have continued to find that antidumping duties have been absorbed by FAFER on one hundred percent of its U.S. sales.

Results of Review

We determine that the following weighted-average margin exists:

Manufacturer/exporter	Period of review	Margin (percent)
Fab. de Fer de Charleroi	08/01/95–07/31/96	13.75

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and normal value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of certain cut-to-length carbon steel plate from Belgium within the scope of the order entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate of 13.31 percent, the "all others" rate, established in the LTFV investigation, shall remain in effect until publication of the final results of the next administrative review.

We will calculate importer-specific duty assessment rates on an *ad valorem* basis against the entered value of each entry of subject merchandise during the POR.

Notification of Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR § 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR § 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is sanctionable violation. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested.

This administrative review and notice are in accordance with Section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR § 353.22.

Dated: January 12, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–1278 Filed 1–16–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–823]

Professional Electric Cutting Tools From Japan: Extension of Time Limit for Final Results of Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of final results of antidumping duty review.

SUMMARY: The Department of Commerce ("the Department") is extending the final results for the antidumping duty review of professional electric cutting tools from Japan. This review covers the period July 1, 1995 through June 30, 1996.

EFFECTIVE DATE: January 20, 1998.

FOR FURTHER INFORMATION CONTACT: N. Gerard Zapiain or Steve Jacques at 202–482–1395 or 202–482–1391; Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On December 16, 1997, the Department published in the **Federal Register** its decision that it would extend the deadline for the final results of review by 32 days until January 7, 1998 (see 62 FR 65796). The Department has now determined that it is not practicable to issue its final results within that time limit (See Decision Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary, Enforcement Group III to Robert LaRussa, Assistant Secretary for Import Administration). The Department is extending the time limit for completion of the final results for the full 60 days available until February 4, 1998 in accordance with section 751(a)(3)(A) of the Act.

Dated: January 13, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary for Enforcement Group III.

[FR Doc. 98–1276 Filed 1–16–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 980114015–8015–01]

RIN 0625–ZA07

CFDA No.: 11.115; Cooperative Agreement Program for American Business Centers® in Russia

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The International Trade Administration (ITA) is soliciting competitive applications to establish and operate American Business Centers® (ABCs®) in Volgograd and Chelyabinsk, Russia for a two (2) year multi-year award period. ABCs® will encourage the export of U.S. goods and services and stimulate trade and investment in Russia's regions. Funds to support new ABC® Awards are not currently available. All awards resulting from this announcement are contingent upon the availability of appropriated funds.

ABCs® will provide, on a user fee basis, a broad range of business development and facilitation services to United States companies in Russia's regions. Services provided by the ABCs® will be designed to encourage more U.S. firms to explore opportunities for trade and investment in Russia's regions and to help them conduct business there more effectively. The core services to be provided by the ABCs® include: international telephone, fax, and data transmission; temporary office space; space for meetings, small seminars, and small product exhibitions or demonstrations; secretarial support (e.g. word processing, typing, message taking); translator/interpreters; photocopying; market research; counseling on local business conditions; and arranging appointments with Russian business contacts. The Centers also will work closely with Russian businesses to help them become more attractive trading partners; identify and report obstacles to trade and investment; and serve as a link between financial institutions, U.S. companies, and Russian enterprises.

In addition to these core services, ABCs® will support U.S. Government activities under the Regional Investment Initiative (RII). This will include providing, at cost, support for the activities of the RII coordinators. Such support may include office space, computers, telecommunications equipment and secretarial and translation services.

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DATES: ITA will accept only those applications which are received at the U.S. Department of Commerce, Room 1235, HCHB, no later than 3:00 pm E.S.T. February 19, 1998. Late applications will not be accepted and will not be considered. On January 20, 1998 competitive application kits are available from the Department of Commerce.

ADDRESSES: To obtain a copy of the application kit, please send a written request with a self-addressed mail label to: Russia-NIS Program Office, U.S. & Foreign Commercial Service, Room 1235, HCHB, U.S. Department of Commerce, Washington, D.C. 20230. Requests for application kits also may be faxed to 202–482–2456. Only one application kit will be provided to each organization requesting it, but the kit may be reproduced by the requester. All forms necessary to submit an application will be included in the application kit.

Completed applications should be returned to the same address. Applicants must submit a signed original and two copies of the application and supporting materials. It is anticipated that it will take ten weeks after the deadline for receipt of applications to process applications and make awards.

FOR FURTHER INFORMATION CONTACT: Applicants wishing further information should contact Ms. E. Vivian Spathopoulos, Deputy Director, Russia-NIS Program Office, U.S. & Foreign Commercial Service, U.S. Department of Commerce, room 1235, HCHB, Washington, D.C. 20230, telephone: (202) 482–2902, or Fax: (202) 482–2456.

SUPPLEMENTARY INFORMATION:

Program Authority

The American Business Center℠ program is authorized by Title III of the "Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992" or the "FREEDOM Support Act", Pub. L. 102–511. Funding for the program is provided by the Agency for International Development under Section 632(a) of the Foreign Assistance Act of 1961, as amended.

Eligible Applicants

United States for-profit firms, non-profit organizations, non-Federal government agencies, industry and trade associations, and educational institutions are eligible to apply. An enterprise which includes or intends to include participation of host country citizens or entities will be considered an eligible applicant only so long as the applicant is and will remain, throughout the award period, controlled and managed by citizens and entities of the United States.

Funding Guidelines

Since it is anticipated that ITA will be involved in the implementation of each project for which an award is made, the funding instrument for the program will be a cooperative agreement. Examples of ITA involvement include but are not limited to the following: supplemental marketing to promote the ABCs℠, guidance on eligibility of ABC® clients, and coordination with other U.S. government assistance programs.

ITA anticipates $400,000 will be available for the first year of funding for up to two (2) multi-year cooperative agreement awards during FY 1998. Applicants will be requested to submit a work-plan and budget which cover a one (1) year period for a total amount of not more than $200,000 in Federal funds. Applicants must supply at least fifty-percent (50%) of total project costs, with the Federal portion of total project costs to be no more than fifty-percent (50%). A minimum of one half (½) of the support supplied by the applicant must be in the form of cash. The remaining portion of the applicant's support may consist of cash or in-kind contributions (goods and services contributed by a third-party). Applicants will be requested to submit a work-plan and budget for a second year of operation based on the level of funding for the first year with the understanding that funding levels may or may not be the same as the first year.

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award, or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Applicant receipt of future funding is contingent upon the availability of appropriated funds, and satisfactory performance, and will be at the sole discretion of ITA. Publication of this notice does not constitute an obligation by the Department of Commerce to enter into a cooperative agreement with any responding applicant.

Eligible entities may propose the establishment of one or more ABCs℠. Applicants must submit a separate application for each proposed ABC℠. Each ABC℠ will be funded through a separate cooperative agreement. More than one cooperative agreement may be awarded to a single entity. No more than one ABC® will be funded in any given Russian city.

Evaluation Criteria

Consideration for financial assistance under the program will be based on the following evaluation criteria:

(1) *Quality of Work Plan:* core commercial activities, marketing strategy, management/staffing, cooperation with ITA and outreach programs to Russian firms;

(2) *Qualifications of Applicant:* financial history, personnel's experience in region and in delivering commercial products/services;

(3) *Market Knowledge of Locations:* applicant's demonstrated familiarity with the market conditions in the proposed city and/or region;

(4) *Project Timetable:* ability of applicant to complete major stages in the scope of work quickly, particularly bringing an ABC® into the fully-operational stage;

(5) *U.S. Small Business Utility:* accessibility of services to small firms and reasonableness of fees;

(6) *Cost-Effectiveness:* reasonableness, allowability and allocability of costs.

For purpose of evaluation of the applications, the above criteria will be weighted as follows: criterion (1) will be worth a maximum of 30 (thirty) percent; criterion (2) will be worth a maximum of 30 (thirty) percent; criterion (3) will be worth a maximum of 20 (twenty) percent; criterion (4) will be worth a maximum of 10 (ten) percent; criterions (5) and (6) will be worth a maximum of 5 (five) percent each.

Selection Procedure

Each application will be evaluated by a panel of at least three independent ITA reviewers qualified to evaluate applications submitted under the program. Applications will be evaluated on a competitive basis in accordance with the evaluation criteria set forth above. Awards will be based on highest total accumulated score and geographic location.

Notifications

All applicants are advised of the following:

(1) Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(2) If applicants incur any cost prior to an award being made, they do so solely at their own risk of not being reimbursed by the Federal Government. Notwithstanding any verbal assurance that they may receive, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

(3) If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

(4) No award of Federal funds shall be made to an applicant who has an outstanding debt until either:

a. The delinquent account is paid in full;

b. A negotiated repayment schedule is established and at least one payment is received; or

c. Other arrangements satisfactory to the Department of Commerce are made.

(5) All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying". Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies. Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F "Government wide Requirement for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on the use of appropriated funds to influence certain Federal contracting and financial transactions;" and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000 and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater". Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

(6) Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be submitted to the Department. Form LLL submitted by any tier recipient or sub-recipient should be submitted to the Department in accordance with instructions contained in the award document.

(7) A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(8) All recipients and sub-recipients are subject to all applicable Federal laws and Federal Department of Commerce policies, regulations, and procedures applicable to Federal assistance awards. For-profit organizations shall be subject to OMB Circular A–110 and 48 CFR part 31.

(9) All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

(10) Recipients are subject to the Fly America Act (49 U.S.C. sec. 1517 as implemented by 41 CFR sec. 301–3.6).

(11) Executive Order 12372 "Intergovernmental Review of Federal Programs" does not apply to this program.

(12) Paperwork Reduction Act does apply to this program. This document involves collections of information subject to the Paperwork Reduction Act, which have been approved by the Office of Management and Budget under OMB Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number.

Dated: January 14, 1998.

E. Vivian Spathopoulos,

Deputy Director, US&FCS/Russia-NIS Program Office.

[FR Doc. 98–1390 Filed 1–16–98; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Archival Tag Recovery; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 23, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Christopher Rogers, F/SF1, Station 14709, 1315 East-West Highway, Silver Spring, MD 20910–3282 (301–713–2347).

SUPPLEMENTARY INFORMATION:

I. Abstract

To investigate the migratory patterns of Atlantic bluefin tuna, a program has been undertaken to implant archival tags in selected tuna. In the event a fish with an archival tag is captured, applicable regulations could require its immediate release under certain conditions. In order to provide for maximum likelihood of data recovery, a regulation is being issued to exempt the harvest of fish with archival tags from other applicable requirements. Persons that harvest a tuna containing a tag must provide certain information about the tuna (size, weight, location, etc.). This collection was initially approved under emergency clearance procedures; this notice invites comments on plans to submit a regular clearance request to extend that approval for three years.

In addition to those approved requirements, NOAA also proposes a requirement that persons conducting research with archival tags register and report on their activities.

II. Method of Collection

Fishermen catching tagged bluefin tuna call a toll-free telephone number. They are then directed to remove the tag and to mail it to a specified address. A

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reward is given for tag recoveries. Archival tag researchers would submit registration and reporting information in accordance with regulatory requirements.

III. Data

OMB Number: 0648–0338.
Form Number: None.
Type of Review: Regular Submission.
Affected Public: Individuals, businesses or other for-profit organizations, not-for-profit institutions.
Estimated Number of Respondents: 23.
Estimated Time Per Response: 30 minutes.
Estimated Total Annual Burden Hours: 13.
Estimated Total Annual Cost to Public: None.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 2, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–1263 Filed 1–16–98; 8:45 a.m.]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011298B]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will convene a meeting of its Snapper Grouper Assessment Group.

DATES: The meeting will convene on February 4, 1998, at 1:30 p.m. and adjourn at 5:30 p.m.; reconvene on February 5, 1998, from 8:30 a.m. to 5:30 p.m. and, on February 6, 1998, reconvene at 8:30 a.m. and adjourn at 12:00 noon.

ADDRESSES: The meeting will be held at the Town and Country Inn, 2001 Savannah Highway, Charleston, SC 29407; telephone: 803-571-1000.

Council address: South Atlantic Fishery Management Council, 1 Southpark Circle, Southpark Building, Suite 306, Charleston, South Carolina 29407–4699.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, Public Information Officer; telephone: (803) 571-4366; fax: (803) 769-4520.

SUPPLEMENTARY INFORMATION: The meetings will be held to:

1. Review wreckfish landings and make recommendations to the Council for setting the 1998/99 wreckfish framework actions, including total allowable catch;

2. Review Special Management Zone requests received by the Council;

3. Refine appropriate criteria for developing marine fishery reserves based on the Plan Development Team report;

4. Review the revised Oculina research plan;

5. Determine the current status of the snapper grouper species, as well as project the change in this status that will result from regulations in Snapper Grouper Amendment 9; and,

6. Develop recommendations on information prepared by Council staff concerning new definitions for overfishing, optimum yield (OY) and maximum sustainable yield (MSY) levels or spawning potential ratio proxies for MSY and OY.

Although other issues not contained in this agenda may come before this Group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Group action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by January 28, 1998.

Dated: January 13, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–1243 Filed 1–16–98 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011298A]

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold public meetings.

DATES: The meetings will be held on February 9, 1998 through February 12, 1998. The Council will meet on Wednesday, February 11, 1998, from 9:00 a.m. to 5:00 p.m., and reconvene on Thursday, February 12, 1998, at 9:00 a.m., and adjourn at approximately noon. The Administrative Committee will meet on Monday, February 9, 1998, from 2:00 p.m. to 5:00 p.m.

ADDRESSES: The meetings will be held at the Marriott's Frenchman's Reef Beach Resort, St. Thomas, U.S. Virgin Islands; telephone: 809–776–8500.

Council address: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577; telephone: (787) 766–5926; fax: (787) 766–6239.

FOR FURTHER INFORMATION CONTACT: Miguel A. Rolon, Council Executive Director, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 93rd regular public meeting to discuss the draft Amendment 1 to the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the United States Virgin Islands that would establish a Marine Conservation District (MCD). The Council will consider establishment of a proposed "no-take" MCD in the EEZ due south of St. John, U.S. Virgin Islands. The Administrative Committee will discuss the results of the CY 96 audit; the CY 98 budget; Scientific and Statistical Committee/ Advisory Panel membership, and other administrative matters. Following adjournment of the Administrative Committee's public meeting, the Committee will convene a closed session to discuss personnel matters.

Although other issues not contained in this agenda may come before this Council and Administrative Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council/Committee action during this meeting. Council/Committee action will be restricted to those issues specifically identified in the agenda listed in this notice.

The meetings will be conducted in English. All interested persons are invited to attend and participate with oral and written statements regarding agenda issues.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or requests for sign language interpretation and other auxiliary aids, please contact the Council office (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: January 13, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–1244 Filed 1–16–98; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 62 F.R. 67847.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m., Wednesday, January 28, 1998.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission has cancelled the meeting to discuss enforcement objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–1411 Filed 1–15–98; 3:04 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m., Wednesday, January 28, 1998.

PLACE: 1155 21st., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–1412 Filed 1–15–98; 3:04 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 62 F.R. 67847.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m., Thursday, January 29, 1998.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission has canceled the meeting to discuss enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–1413 Filed 1–15–98; 3:04 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group of Electron Devices

AGENCY: Advisory Group on Electron Devices, Department of Defense.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0830, Tuesday and 0800, Wednesday February 3–4, 1998.

ADDRESSES: The meeting will be held at Air Force Phillips Laboratory, Science Center, Building 201 and Sandia National Laboratories, Microelectronics Development Laboratory (MDL), Building 858, Albuquerque, NM.

FOR FURTHER INFORMATION CONTACT: Timothy Doyle, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology; to the Director; Defense Research and Engineering (DDR&E); and through the DDR&E, to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended (5 U.S.C. App. § 10(d)(1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: January 13, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–1175 Filed 1–16–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Going to Space Panel Meeting in support of the HQ USAF Scientific Advisory Board will meet at the Beckman Center, Irvine, CA on February 5–6, 1998, from 8 a.m. to 5 p.m.

The purpose of the meeting is to gather information and receive briefings for the 1998 USAF Scientific Advisory Board Summer Study on Going to Space.

The meeting will be closed to the public in accordance with section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98–1236 Filed 1–16–98; 8:45 am]

BILLING CODE 3910–01–P

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DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Air and Space Command & Control Agency (ASC2A) Advisory Group Panel Meeting in support of the HQ USAF Scientific Advisory Board will meet at Langley Air Force Base, VA on March 4–5, 1998, from 8 a.m. to 5 p.m.

The purpose of the meeting is to gather information and receive briefings.

The meeting will be closed to the public in accordance with section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98–1237 Filed 1–16–98; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 23, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 13, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Technology Literacy Challenge Fund Performance Report.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden: Responses: 57 Burden Hours: 2,280.

Abstract: Information is necessary to manage the Technology Literacy Challenge Fund program, to consider the need for future authorizations, and to provide one set of data for evaluation and analysis.

[FR Doc. 98–1193 Filed 1–16–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 19, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: January 13, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: Application for Grants Under the Javits Gifted and Talented Students Education Program.

Frequency: Annually.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting Burden and Recordkeeping: Responses: 300. Burden Hours: 12,000.

Abstract: Applications are required to receive grants under the the Javits Gifted and Talented Students Education Program. Program participants include SEAs, LEAs, Institutions of Higher Education, other public and private agencies and organizations, including Indian tribes and organizations—as defined by the Indian Self-Determination and Education Assistance Act—and Native Hawaiian organizations.

[FR Doc. 98–1194 Filed 1–16–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.116R]

Fund for the Improvement of Postsecondary Education (FIPSE)—Special Focus Competition: Controlling the Cost of Postsecondary Education; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

Purpose of Program: To provide grants or enter into cooperative agreements to improve postsecondary education opportunities by focusing on problem areas or improvement approaches in postsecondary education.

Eligible Applicants: Institutions of higher education, other public and private nonprofit educational institutions and agencies, or combinations of those institutions or agencies.

Deadline for Transmittal of Applications: March 20, 1998.

Deadline for Intergovernmental Review: May 19, 1998.

Applications Available: January 20, 1998.

Available Funds: $1,300,000.

Estimated Range of Awards: $70,000–$200,000.

Estimated Average Size of Awards: $100,000.

Estimated Number of Awards: 5–15.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 82, 85 and 86.

Priority

Invitational Priority

The Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Invitational Priority

Projects that are designed to deliver postsecondary education at less cost than in previous years, while maintaining high quality.

Methods for Applying Selection Criteria

The Secretary gives equal weight to the listed criteria. Within each of the criterion, the Secretary gives equal weight to each of the factors.

Selection Criteria

In evaluating applications for grants under this program competition, the Secretary uses the following selection criteria chosen from those listed in 34 CFR 75.210:

(a) The significance of the proposed project, as determined by—

(1) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies; and

(2) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(b) The quality of the design of the proposed project, as determined by the extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(c) The quality of the evaluation to be conducted of the proposed project, as determined by the extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(d) The quality of the personnel who will carry out the proposed project, as determined by—

(1) The qualifications, including relevant training and experience, of key project personnel; and

(2) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(e) The adequacy of resources for the proposed project, as determined by—

(1) The extent to which the budget is adequate to support the proposed project;

(2) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project;

(3) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project;

(4) The adequacy of support, including facilities, equipment, supplies, and other resources from the applicant organization or the lead applicant organization; and

(5) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

For Applications or Information Contact: Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 600 Independence Avenue, S.W., Room 3100, ROB–3, Washington, D.C. 20202–5175. You may request applications by calling 202–358–3041 (voice mail) or 732–544–2872 (fax-on-demand) or by submitting the name of the competition and your name and postal address to FIPSE@ED.GOV (e-mail). Applications are also listed on the FIPSE Web Site <http://www.ed.gov/offices/OPE/FIPSE>. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. For additional program information call David Johnson at the FIPSE office (202–708–5750) between the hours of 9 a.m. and 5 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on

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request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 1135–1135a–3.

Dated: January 13, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 98–1208 Filed 1–16–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Directory Database Available for License

AGENCY: Office of General Counsel, Department of Energy.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy announces that the following Directory Database is available for license: "Commercial Environmental Cleanup. Products and Services Directory."

FOR FURTHER INFORMATION: Michael P. Hoffman, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC. 20585; Telephone (202) 586–2802.

SUPPLEMENTARY INFORMATION: The above-captioned Directory, which is in the nature of a database of companies working in the area of environmental cleanup, was prepared under Government contract. The Department of Energy (DOE) is currently paying for the continued maintenance and dissemination of the above-captioned Directory database, both to Government agencies and to the general public. DOE is attempting to secure a private entity which, in return for a possible exclusive royalty-free license in the Directory database, will maintain the Directory database as well as print and market it, both to the Government and the general public as a stand-alone entity or incorporated with other services on a for-profit basis, thereby relieving the Government of the labor and expense of doing so.

Issued in Washington, DC., on January 9, 1998.

Paul A. Gottlieb,

Assistant General Counsel for Technology Transfer and Intellectual Property.

[FR Doc. 98–1224 Filed 1–16–98; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–171–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

January 13, 1998.

Take notice that on January 7, 1998, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, TX 77251–1478, filed in Docket No. CP98–171–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon a leased compressor unit, under Koch Gateway's blanket certificate issued in Docket No. CP82–430, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway proposes to abandon, by returning to the lessor, a 1200 horsepower skid-mounted compressor unit located on its Index 201 low pressure pipeline system at its existing Hecker Compressor Station yard in Calcasieu Parish, Louisiana. Koch Gateway states that it installed this unit as part of its low pressure lateral system for the purpose of lifting additional gas supplies from its low pressure system to its higher pressure system and ultimate delivery to the Lake Charles market area. Koch Gateway states that it will no longer need the compressor unit once its transportation contract with Union Pacific Resource Company (UPRC) expires in May of 1998. Koch Gateway also states that the proposed abandonment will have no impact on any of its existing customers, since this compressor unit was placed in service for UPRC.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1218 Filed 1–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–11–000]

Long Island Lighting Company; Notice of Filing

January 13, 1998.

Take notice that on December 22, 1997, Long Island Lighting Company tendered for filing a Settlement Agreement Request for Establishment of Technical Conference.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 20, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1219 Filed 1–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1119–000]

Southern Company Services, Inc.; Notice of Filing

January 13, 1998.

Take notice that on December 10, 1997, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Operating Companies), tendered for Commission review information concerning the accrual of post-retirement benefits other than pensions as set forth in Statement of Financial Accounting Standard No. 106, by the Financial Accounting Standards Board in agreements and tariffs of the Operating Companies (jointly and individually).

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before January 26, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1220 Filed 1–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1082–000, et al.]

Louisville Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

January 12, 1998.

Take notice that the following filings have been made with the Commission:

1. Louisville Gas and Electric Company

[Docket No. ER98–1082–000]

Take notice that on December 15, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Morgan Stanley Capital Group, Inc., under LG&E's Open Access Transmission Tariff.

Comment date: January 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Louisville Gas and Electric Company

[Docket No. ER98–1083–000]

Take notice that on December 15, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Entergy Services, Inc., under LG&E's Open Access Transmission Tariff.

Comment date: January 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Louisville Gas and Electric Company

[Docket No. ER98–1084–000]

Take notice that on December 15, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and CNG Power Services Corp., under LG&E's Open Access Transmission Tariff.

Comment date: January 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Louisville Gas and Electric Company

[Docket No. ER98–1085–000]

Take notice that on December 15, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Citizens Power Sales under LG&E's Open Access Transmission Tariff.

Comment date: January 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Louisville Gas and Electric Company

[Docket No. ER98–1086–000]

Take notice that on December 15, 1997, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Engage Energy under Rate GSS.

Comment date: January 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Arizona Public Service Company

[Docket No. ER98–1087–000]

Take notice that on December 16, 1997, Arizona Public Service Company (APS), tendered for filing Notice of Cancellation of the Service Agreements with Delhi Energy Services, Inc. (Delhi), for umbrella firm and non-firm point-to-point transmission service under the Tariff.

APS requests that this cancellation become effective November 20, 1997.

Comment date: January 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Arizona Public Service Company

[Docket No. ER98–1088–000]

Take notice that on December 16, 1997, Arizona Public Service Company (APS), tendered for filing a Service Agreement under APS' FERC Electric Tariff, Original Volume No. 3, with the Arizona Districts.

A copy of this filing has been served on the Arizona Corporation Commission and the parties to this Service Agreement.

Comment date: January 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. New York State Electric & Gas Corporation

[Docket No. ER98–1089–000]

Take notice that on December 16, 1997, New York State Electric & Gas Corporation (NYSEG), filed Service Agreements between NYSEG and AIG Trading Corporation (Customer). These Service Agreements specify that the Customer has agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed and effective on June 11, 1997, in Docket No. OA97–571–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of November 24, 1997, for the Service Agreements. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer.

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Comment date: January 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Central Vermont Public Service Corporation

[Docket No. ER98–1092–000]

Take notice that on December 12, 1997, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with PacifiCorp Power Marketing, Inc., under its FERC Electric Tariff No. 5. The tariff provides for the sale by Central Vermont of power, energy, and/or resold transmission capacity at or below Central Vermont's fully allocated costs.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on December 12, 1997.

Comment date: January 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Central Vermont Public Service Corporation

[Docket No. ER98–1093–000]

Take notice that on December 12, 1997, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Engage Energy US, L.P., under its FERC Electric Tariff No. 5. The tariff provides for the sale by Central Vermont of power, energy, and/or resold transmission capacity at or below Central Vermont's fully allocated costs.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on December 12, 1997.

Comment date: January 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Central Hudson Gas & Electric Corporation

[Docket No. ER98–1094–000]

Take notice that on December 12, 1997, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and U.S. Generating Power Services, L.P. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No. 1 (Transmission Tariff), filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM94–7–001 and amended in compliance with Commission Order dated May 28, 1997. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: January 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Southern California Edison Company

[Docket No. ER98–1095–000]

Take notice that on December 12, 1997, Southern California Edison Company (Edison), tendered for filing Amendment No. 4 (Amendment No. 4), to the Power Contract dated October 11, 1979, with the Department of Water Resources of the State of California (CDWR), FERC Rate Schedule No. 112. Amendment No. 4 deletes Sections 5.10, 5.22, 5.23, 8, and 9 of the Power Contract in their entirety, and replaces Sections 7.2.3 and 13.7.1 in their entirety with new sections. The revisions to these sections reflect the intent of Edison and CDWR to no longer enter into voluntary transactions pursuant to the Power Contract.

The Amendment No. 4, shall become effective on the date when the Commission accepts the amendment for filing.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: January 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Kansas City Power & Light Company

[Docket No. ER98–1097–000]

Take notice that on December 12, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated December 10, 1997, between KCPL and Williams Energy Services Company. KCPL proposes an effective date of December 10, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for Non-Firm Power Sales Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are pursuant to KCPL's compliance filing in Docket No. ER94–1045.

Comment date: Janaury 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. PP&L, Inc.

[Docket No. ER98–1098–000]

Take notice that on December 16, 1997, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated December 2, 1997, with West Penn Power Company (WPPC) under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds WPPC as an eligible customer under the Tariff.

PP&L requests an effective date of February 14, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to WPPC and to the Pennsylvania Public Utility Commission.

Comment date: January 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. PP&L, Inc.

[Docket No. ER98–1099–000]

Take notice that on December 16, 1997, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated December 2, 1997, with Southern Energy Retail Trading and Marketing, Inc. (SERTM), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds SERTM as an eligible customer under the Tariff.

PP&L requests an effective date of February 14, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to SERTM and to the Pennsylvania Public Utility Commission.

Comment date: January 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. MidAmerican Energy Company

[Docket No. ER98–1100–000]

Take notice that on December 16, 1997, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission a Non-Firm Transmission Service Agreement with Avista Energy, Inc. (Avista), dated December 9, 1997, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of December 9, 1997, for the Agreement with Avista and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Avista, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: January 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. California Independent System Corporation

[Docket No. ER98–1311–000]

Take notice that on December 30, 1997, the California Independent System Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement executed by the ISO and Pacific Gas and Electric Company for approval by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in the above referenced dockets, including the California Public Service Commission.

Comment date: January 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. California Independent System Corporation

[Docket No. ER98–1313–000]

On December 30, 1997, the California Independent System Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement executed by the ISO and NorAm Energy Services, Inc., for approval by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in the above referenced dockets, including the California Public Service Commission.

Comment date: January 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1221 Filed 1–16–98; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5951–3]

Science Advisory Board; Notification of Public Meeting February 5–6, 1998

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notification is hereby given that the Science Advisory Board's (SAB) Environmental Engineering Committee, will meet Thursday and Friday, February 5–6, 1998, in Room 2103 of the Mall at the U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The meeting will begin at 8:30 am on February 5 and adjourn no later than 3:30 pm on February 6. All times noted are Eastern Time. This meeting is open to the public, however, due to limited space, seating will be on a first-come basis. For further information concerning this meeting, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are *not* available from the SAB Office.

At this meeting, the EEC will be briefed on the results of the Science Advisory Board's (SAB) Strategic Retreat, the SAB's Integrated Risk Project, and on relevant Agency activities. The EEC will discuss potential FY98 activities such as a Retrospective Analysis, preparation of discussion papers for Self-Initiated Studies, quality management, and brownfields. After selecting the activities, the EEC will attend to the practicalities of scheduling and completing the work.

Any member of the public wishing further information concerning the meeting or wishing to submit comments should contact Kathleen White Conway, Designated Federal Official for the Environmental Engineering Committee, Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington DC 20460; (202) 260–2558; FAX (202) 260–7118; or INTERNET at conway.kathleen@epamail.epa.gov. Copies of the agenda are available from Mrs. Dorothy Clark who can be reached at (202) 260–6555, FAX (202) 260–7118, or Internet at clark.dorothy@epamail.epa.gov.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For conference call meetings, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: January 12, 1998.

Donald G. Barnes, PhD,

Staff Director, Science Advisory Board.

[FR Doc. 98–1248 Filed 1–16–98; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

DATE AND TIME: Thursday, January 29, 1998, at 2:00 P.M. (Eastern Time).

PLACE: Conference Room on the Ninth FToor of the EEOC Office Building, 1801 "L" Street, N.W., Washington, D.C. 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

OPEN SESSION

1. Announcement of Notation Votes,

2. Presentation to former Chairman Casellas, and

3. Task Force Report on "Best" Equal Employment Opportunity Policies, Programs and Practices in the Private Sector.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.) Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTD) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: January 14, 1998.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 98–1341 Filed 1–15–98; 11:05 am]

BILLING CODE 6750–06–M

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FEDERAL COMMUNICATIONS COMMISSION

[DA 98–48; Report No. AUC–97–18–A (Auction No. 18)]

Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues for the Phase II 220 MHz Service

AGENCY: Federal Communications Commission.

ACTION: Notice; seeking comment.

SUMMARY: The Commission is seeking comment on a proposed formula for calculating minimum opening bids as well as other procedural issues in the auction of licenses for the Phase II 220 MHz Service, Auction No. 18.

DATES: Comments are due on or before January 29, 1998. Reply comments are due on or before February 5, 1998.

ADDRESSES: To file formally, parties must submit an original and four copies to the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street N.W., Washington, D.C. 20554. In addition, parties must submit one copy to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, Room 5202, 2025 M Street N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Lisa Hartigan, Bob Reagle or Frank Stilwell, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This public notice was released on January 13, 1998 and is available in its entirety, including attachments; for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, fax (202) 857–3805, 1231 20th Street, N.W., Washington, D.C. 20036.

SYNOPSIS OF THE PUBLIC NOTICE

Background

I. Reserve Price or Minimum Opening Bid

The Balanced Budget Act of 1997 calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum bid is not in the public interest. Section 3002(a), Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251 (1997) ("Budget Act"); 47 U.S.C. 309(j)(4)(F). The Commission's authority to establish a reserve price or minimum opening bid is set forth in 47 CFR 1.2104(c) and (d). Consistent with this mandate, the Commission has directed the Wireless Telecommunications Bureau ("Bureau") to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. See In the Matter of Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660–4685 MHz, WT Docket No. 97–82, ET Docket No. 94–32, FCC 97–413, *Third Report and Order and Second Further Notice of Proposed Rule Making* (rel. December 31, 1997) at ¶ 141 ("Part 1 Third Report and Order"). The Bureau was directed to seek comment on the methodology to be employed in establishing each of these mechanisms. Among other factors the Bureau should consider is the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could reasonably have an impact on valuation of the spectrum being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions. *Id.*

Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. Also, in a minimum opening bid scenario, the auctioneer generally has the discretion to lower the amount later in the auction.

The Bureau recently announced the auction of 908 licenses for the Phase II 220 MHz Service which is scheduled to begin May 19, 1998. See Public Notice, "FCC Announces Spectrum Auction Schedule for 1998," DA 97–2497 (rel. November 25, 1997), 62 FR 64833, 64833–64834 (December 9, 1997). These licenses encompass the United States, the Northern Mariana Islands, Guam, American Samoa, the United States Virgin Islands and Puerto Rico. Specifically, the licenses include: (1) Five licenses in each of 175 geographic areas known as Economic Areas (EAs); (2) five licenses in each of six Regional Economic Area Groupings (REAGs), which we will refer to as "Economic Area Groupings" (EAGs); and (3) three nationwide licenses which encompass the same territory as all of the EAGs, combined. We note that the geographic area encompassed within a 220 MHz REAG differs from the geographic area encompassed within REAGs in prior auctions. In order to avoid confusion, therefore, we will use EAGs in the 220 MHz auction. See 47 CFR 90.717(a) (nationwide channel assignments); 47 CFR 90.721(b) and 90.761 (Phase II EA and REAG channel assignments).

In anticipation of this auction and in light of the Balanced Budget Act, the Bureau proposes to establish minimum opening bids for the 220 MHz auction, and retain discretion to lower the minimum opening bids.

The Bureau believes a minimum opening bid, which has been utilized in other auctions, is an effective bidding tool, and we propose to use this approach in the 220 MHz Service auction. See In the Matter of Auction of 800 MHz SMR Upper 10 MHz Band, Minimum Opening Bids or Reserve Prices, DA 97–2147, *Order* (rel. October 6, 1997), 62 FR 55251 (October 23, 1997); In the Matter of Revision of Rules and Policies for the Direct Broadcast Satellite Service, IB Docket No. 95–168, PP Docket No. 93–253, *Report and Order*, 11 FCC Rcd 9712, 9787–9788, ¶ 186 (1995), 60 FR 65587, 65591 (December 20, 1995). A minimum opening bid will help to regulate the pace of the auction and provides flexibility.

Specifically, the Commission proposes the following formula for calculating minimum opening bids in Auction No. 18:

1. Nationwide Licenses: $0.02 MHz/POP
2. EAG Licenses: $0.015 MHz/POP
3. EA Licenses: $0.0175 MHz/POP

with a minimum of no less than $2500.00 per license.

Comment is sought on this proposal. We note that we have received a proposal from SEA, Inc. to establish a minimum opening bid for the 220 MHz auction. This document has been made a part of the record in this proceeding. If commenters believe that the formula proposed above for minimum opening bids will result in substantial numbers of unsold licenses, or is not a reasonable amount, or should instead operate as a reserve price, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. In establishing the formula for minimum opening bids, we particularly seek comment on such factors as, among other things, the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the Phase II 220 MHz spectrum. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

II. Other Auction Procedural Issues

The Balanced Budget Act of 1997 requires the Commission to "ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *." Budget Act, § 3002(a)(E)(i). Consistent with the provisions of the Balanced Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific provisions that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific issues prior to the start of each auction. Part 1 Third Report and Order at ¶ 124. The Commission directed the Bureau to seek comment on specific mechanisms related to day-to-day auction conduct including, for example, the structure of bidding rounds and stages, establishment of minimum opening bids or reserve prices, minimum accepted bids, initial maximum eligibility for each bidder, activity requirements for each stage of the auction, activity rule waivers, criteria for determining reductions in eligibility, information regarding bid withdrawal and bid removal, stopping rules, and information relating to auction delay, suspension or cancellation. *Id.* at 125. We therefore seek comment on the following issues.

a. License Groupings

In the 220 MHz Third Report and Order the Commission concluded that it would auction the 908 Phase II 220 MHz licenses in a single, simultaneous multiple-round auction. However, the Commission reserved the discretion, which it ultimately delegated to the Bureau, to auction each of the license types (*i.e.*, nationwide, EAG, EA) separately or in different combinations (*e.g.*, nationwide and EAG together). See In the Matter of Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PR Docket No. 89–552, RM 8506, GN Docket No. 93–252, PP Docket No. 93–253, *Third Report and Order and Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd 10943, 11046, ¶ 221 (1997) ("220 MHz Third Report and Order"), 62 FR 15978, 15979 (April 3, 1997). For reasons of administrative efficiency, we propose to award the 908 licenses in the Phase II 220 MHz Service in a single, simultaneous multiple-round auction. We seek comment on this proposal.

b. Structure of Bidding Rounds, Activity Requirements, and Criteria for Determining Reductions in Eligibility

We propose to divide the auction into three stages: Stage One, Stage Two and Stage Three. The auction will start in Stage One. We propose that the auction will advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when in each of three consecutive rounds of bidding, the high bid has increased on 10 percent or less of the licenses being auctioned (as measured in bidding units). However, we further propose that the Bureau retain the discretion to accelerate the auction by announcement. This determination will be based on a variety of measures of bidder activity including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. We seek comment on these proposals.

In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively on a percentage of their maximum eligibility during each round of the auction rather than waiting until the end to participate. A bidder that does not satisfy the activity rule will either lose bidding eligibility in the next round or use an activity rule waiver.

For the Phase II 220 MHz Service auction, we propose that, in each round of the first stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths (5/4). In each round of the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on at least 90 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by ten-ninths (10/9). In each round of the third stage, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty-fortyninths (50/49). We seek comment on these proposals.

c. Minimum Accepted Bids

Once there is a standing high bid on a license, a bid increment will be applied to that license to establish a minimum acceptable bid for the following round. For the Phase II 220 MHz Service auction, we propose, as described immediately below, to use an exponential smoothing methodology to calculate minimum bid increments. The Bureau retains the discretion to change the minimum bid increment if it determines that circumstances so dictate. The exponential smoothing methodology has been used in previous auctions, including the WCS auction and the 800 MHz SMR auction. We seek comment on this proposal.

Exponential Smoothing

The exponential smoothing formula calculates the bid increment based on a weighted average of the activity received on each license in the current and all previous rounds. This methodology will tailor the bid increment for each license based on activity, rather than setting a global increment for all licenses. For every license that receives a bid, the bid increment for the next round for that license will be established as the greater of $0.25 per bidding unit for each license or a percentage increment that is determined using the exponential smoothing formula.

Using exponential smoothing, the calculation of the percentage bid increment for each license will be based

on an activity index, which is calculated as the weighted average of the current activity and the activity index from the previous round. The activity index at the start of the auction (round 0) will be set at 0. The current activity index is equal to a weighting factor times the number of new bids received on the license in the current bidding period plus one minus the weighting factor times the activity index from the previous round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.05, and the maximum percentage increment at 0.15.

Equations

$A_i = (C * B_i) + ((1–C) * A_{i-1})$
I_i = smaller of ((1 + A_i) * N) and M
Where,
A_i = activity index for the current round (round i)
C = activity weight factor
B_i = number of bids in the current round (round i)
A_{i-1}=activity index from previous round (round i-1), A_0 is 0
I_i=percentage bid increment for the current round (round i)
N=minimum percentage increment
M=maximum percentage increment

Under the exponential smoothing methodology, once a bid has been received on a license, the minimum acceptable bid for that license in the following round will be the new high bid plus the greater of either the dollar amount associated with the percentage increment (variable I_i from above times the high bid) or the absolute increment (a fixed dollar amount per bidding unit for each license, *e.g.*, $0.25 per bidding unit).

Example

License 1 (800,000 bidding units)
C=0.5, N=0.05, M=0.15, Absolute bid increment=$0.25 per bidding unit
Round 1 (2 new bids, high bid=$1,000,000)

1. Calculation of percentage increment using exponential smoothing:
$A_1=(0.5 * 2)+(0.5 * 0)=1$
$I_1=(1+1) * 0.05=0.1$

2. Dollar increment using the percentage increment (I_1 from above)
0.1 * $1,000,000=$100,000

3. Dollar increment using the absolute increment
$0.25 * 800,000 bidding units=$200,000

4. Minimum bid increment: greater of percentage and absolute=$200,000
Round 2 (3 new bids, high bid=2,000,000)

1. Calculation of percentage increment using exponential smoothing:
$A_2=(0.5 * 3)+(0.5 * 1)=2$
$I_2=(1+2) * 0.05=0.15$

2. Dollar increment using the percentage increment (I_2 from above)
0.15 * $2,000,000=$300,000

3. Dollar increment using the absolute increment
$0.25×800,000 bidding units=$200,000

4. Minimum bid increment: greater of percentage and absolute=$300,000
Round 3 (1 new bid, high bid = 2,300,000)

1. Calculation of percentage increment using exponential smoothing:
$A_3 = (0.5 * 1) + (0.5 * 2) = 1.5$
$I_3 = (1 + 1.5) * 0.05 = 0.125$

2. Dollar increment using the percentage increment (I_3 from above)
0.125 * $2,300,000 = $287,500

3. Dollar increment using the absolute increment
$0.25 • 800,000 bidding units = $200,000

4. Minimum bid increment: greater of percentage and absolute = $287,500

d. Initial Maximum Eligibility for Each Bidder

In the *220 MHz Third Report and Order*, the Commission delegated to the Bureau the authority and discretion to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the population in each geographic license area, and the value of similar spectrum. The Commission noted that the Bureau should establish an upfront payment amount that would roughly equate with a five percent value for the license. *220 MHz Third Report and Order*, 12 FCC Rcd at 11055–11056, ¶255, 62 FR at 15981.

With these guidelines in mind, we propose, for the Phase II 220 MHz Service auction, an upfront payment of one cent per MHz-pop with no amount less than $2,500. Our proposal will utilize the data in Attachment A to this Public Notice. We seek comment on this proposal.

For the Phase II 220 MHz Service auction, we further propose that the amount of the upfront payment submitted by a bidder will determine the initial maximum eligibility (as measured in bidding units) for each bidder. Upfront payments are not attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility. The total upfront payment defines the maximum amount of bidding units on which the applicant will initially be permitted to bid. We seek comment on this proposal.

e. Activity Rule Waivers and Reducing Eligibility

Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity waivers are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any bidding period where a bidder's activity level is below the minimum required unless: (1) There are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility thereby meeting the minimum requirements.

A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the bidding period by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described above. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a bidding period in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids will not keep the auction open.

We propose that each bidder in the Phase II 220 MHz Service auction will be provided five activity rule waivers that may be used in any round during the course of the auction. We seek comment on this proposal.

f. Information Regarding Bid Withdrawal and Bid Removal

For the Phase II 220 MHz Service auction, we propose the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bids placed in that round. By using the remove bid function in the software, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments.

Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the withdraw bid function. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions. See 47 CFR 90.1007; 1.2104(g); 1.2109. We seek comment on these bid removal and bid withdrawal procedures.

In the *220 MHz Third Report and Order*, the Commission adopted the bid withdrawal provisions found in Part 1 of the Commission's Rules for the Phase II 220 MHz auction. *220 MHz Third Report and Order*, 12 FCC Rcd at 11057, ¶263, 62 FR at 15981. In the *Part 1 Third Report and Order*, the Commission recently explained that allowing bid withdrawals facilitates efficient aggregation of licenses and pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that in some instances bidders may seek to withdraw bids for improper reasons, including to delay the close of the auction for strategic purposes. The Bureau, therefore, has discretion, in managing the auction, to limit the number of withdrawals to prevent strategic delay of the close of the auction or other abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures. *Part 1 Third Report and Order* at ¶150. We note that the *Part 1 Third Report and Order* for the most part expressly does not apply to the auction of licenses for the 220 MHz Service. *Id.* at ¶7. However, as we previously stated, the *220 MHz Third Report and Order* invokes the Part 1 provisions in establishing its withdrawal rules. We therefore follow the reasoning of the Commission in the *Part 1 Third Report and Order* with respect to withdrawals in our analysis of this issue.

Applying this reasoning, we propose to limit each bidder in the Phase II 220 MHz Service auction to withdrawals in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds would likely encourage insincere bidding or the use of withdrawals for anti-competitive strategic purposes. The two rounds in which withdrawals are utilized will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's Rules. There is no limit on the number of bids that may be removed in either of the rounds in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's Rules. We seek comment on this proposal.

g. Stopping Rules

In the *220 MHz Third Report and Order*, the Commission adopted a simultaneous stopping rule for the Phase II 220 MHz Service auction. The Commission noted that experience in prior auctions demonstrated that the simultaneous stopping rule balanced the interests of administrative efficiency and maximum bidder participation. The Commission concluded that the substitutability between and among licenses in different geographic areas and the importance of preserving bidders' ability to pursue backup strategies support the use of a simultaneous stopping rule. See *220 MHz Third Report and Order*, 12 FCC Rcd at 11048, ¶228, 62 FR at 15980. The Bureau has discretion to "establish stopping rules before or during an auction in order to terminate the auction within a reasonable time." See 47 CFR 90.1005(d). We therefore have the discretion to adopt an alternative stopping rule to the simultaneous stopping rule if we deem appropriate. Thus, unless circumstances dictate otherwise, bidding would remain open on all licenses until bidding stops on every license. The auction would close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license, applies a proactive waiver, or withdraws a previous high bid.

We propose that the Bureau retain the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

Finally, we propose that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The Bureau proposes to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders would be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity. We seek comment on these proposals.

h. Information Relating to Auction Delay, Suspension or Cancellation

For the Phase II 220 MHz Service auction, we propose that, by public notice or by announcement during the auction, the Bureau may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. We seek comment on this proposal.

III. Conclusion

Comments are due on or before January 29, 1998, and reply comments are due on or before February 5, 1998.

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To file formally, parties must submit an original and four copies to the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street NW., Washington, DC 20554. In addition, parties must submit one copy to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, Room 5202, 2025 M Street NW., Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room 239, 1919 M Street NW., Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–1282 Filed 1–16–98; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Notice; Announcing an Open Meeting of the Board

TIME AND DATE: 10:00 a.m. Wednesday, January 21, 1998.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Policy Statement on Financial and Other Disclosures in the Combined Financial Report of the Federal Home Loan Bank System.
- Notice of Proposed Rulemaking on Financial Disclosures by Federal Home Loan Banks.
- Book-Entry Procedures for Federal Home Loan Bank Securities—Final Rule.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

William W. Ginsberg,

Managing Director.

[FR Doc. 98–1314 Filed 1–14–98; 4:55 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 3, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Bruce L. Trimble, Leroy, Kansas, Individually and as Trustee of the Ival L. Trimble December 9, 1997 Irrevocable Trust; to acquire voting shares of Flint Hills Bancshares, Inc., Gridley, Kansas, and thereby indirectly acquire voting shares of Citizens State Bank, Gridley, Kansas.

Board of Governors of the Federal Reserve System, January 13, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–1172 Filed 1–16–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied to the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 3, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Richard Owen Wikert, Fremont, Nebraska, and Clarence Wilson Persinger, as Trustee of the C. Wilson Persinger Trust, Sioux City, Iowa; to acquire voting shares of American Banc Corporation, Fremont, Nebraska, and thereby indirectly acquire voting shares of American National Bank of Fremont, Fremont, Nebraska.

Board of Governors of the Federal Reserve System, January 14, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–1269 Filed 1–16–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 13, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Peoples Heritage Financial Group, Inc., Portland, Maine; to acquire and thereby merge with CFX Corporation, Keene, New Hampshire, and thereby indirectly acquire Safety Fund National Bank, Fitchburg, Massachusetts; Orange Savings Bank, Orange, Massachusetts; and CFX Bank, Keene, New Hampshire.

B. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. FirstMerit Corporation, Akron, Ohio; to merge with CoBancorp, Inc., Elyria, Ohio, and thereby indirectly acquire PremierBank & Trust, Elyria, Ohio.

In connection with this application, Applicant also has applied to acquire Jefferson Savings Bank, West Jefferson, Ohio, and thereby engage in permissible savings association activities, pursuant to § 225.28(b)(4)(ii) of the Board's Regulation Y.

C. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. MainStreet BankGroup Incorporated, Martinsville, Virginia; to acquire 100 percent of the voting shares of Regency Financial Shares, Inc., Richmond, Virginia, and thereby indirectly acquire Regency Bank, Richmond, Virginia.

D. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Lincoln Interim Corporation, Lincolnton, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Lincoln Bancshares, Inc., Lincoln, Georgia.

2. The Peoples BancTrust Company, Inc., Selma, Alabama; to merge with Merchants & Planters Bancshares, Inc., Montevallo, Alabama, and thereby indirectly acquire Merchants & Planters Bank, Montevallo, Alabama.

E. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. F&M Bancorporation, Inc., Kaukauna, Wisconsin; to acquire 100 percent of the voting shares of Bancsecurity Corporation, Marshalltown, Iowa, and thereby indirectly acquire Security Bank, Marshalltown, Iowa; Security Bank Jasper-Poweshiek, Kellogg, Iowa; and Story County Bank & Trust, Story City, Iowa.

In connection with this application, Bancsecurity Acquisition Corp., Kaukauna, Wisconsin, has also applied to become a bank holding company.

Board of Governors of the Federal Reserve System, January 13, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–1174 Filed 1–16–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 13, 1998.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Community Banks, Inc., Millersburg, Pennsylvania; to acquire 100 percent of the voting shares of The Peoples State Bank, East Berlin, Pennsylvania.

B. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. National City Corporation, Cleveland, Ohio; to merge with Fort Wayne National Corporation, Fort Wayne, Indiana, and thereby indirectly acquire The Auburn State Bank, Auburn, Indiana; Churubusco State Bank, Churubusco, Indiana; First National Bank of Huntington, Huntington, Indiana; First National Bank of Warsaw, Warsaw, Indiana; Fort Wayne National Bank, Fort Wayne, Indiana; Old First National Bank in Bluffton, Bluffton, Indiana; and Valley American Bank and Trust Company, South Bend, Indiana.

C. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Centura Banks, Inc., Rocky Mount, North Carolina; to merge with Pee Dee Bankshares, Inc., Timmonsville, South Carolina, and thereby indirectly acquire Pee Dee State Bank, Timmonsville, South Carolina.

Board of Governors of the Federal Reserve System, January 14, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–1267 Filed 1–16–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 13, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Greater Community Bancorp, Totowa, New Jersey; to acquire 1st Bergen Bancorp, Wood-Ridge, New Jersey, and thereby indirectly acquire South Bergen Savings Bank, Wood-Ridge, New Jersey, and engage in operating a savings bank, pursuant to

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§ 225.28(b)(4)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 13, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–1173 Filed 1–16–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 3, 1998.

A. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. F.N.B. Corporation, Hermitage, Pennsylvania, and F.N.B. Corporation to acquire shares of Pennsylvania Sun Life Insurance Company, Phoenix, Arizona, and thereby engage in providing credit life and disability insurance exclusively to customers of Sun Bank, Sun Bancorp, Inc.'s bank subsidiary, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. First Commercial Corporation ("FCC"), Little Rock, Arkansas; to acquire First Commercial Investments, Inc. ("Company"), Little Rock, Arkansas, and thereby engage in underwriting and dealing in, to a limited extent, securities (*See Citicorp*, 73 Fed. Res. Bull. 473 (1987)); providing investment and financial advisory services, pursuant to § 225.28(b)(6) of the Board's Regulation Y; providing advice and acting as arranger in connection with merger, acquisitions, divestiture and financial transactions, including public and private financings, loan syndications, interest rate and currency swaps, interest rate caps and similar transactions and/or furnishing evaluation and fairness opinions in connection with merger, acquisition, and similar transactions, pursuant to §§ 225.28(b)(6) and (b)(7) of the Board's Regulation Y; providing securities brokerage services on either a stand-alone or full-service basis, pursuant to § 225.28(b)(7)(i) of the Board's Regulation Y; buying and selling all types of securities on the order of investors as riskless principal, pursuant to § 225.28(b)(7)(ii) of the Board's Regulation Y; acting as agent for issuers and holders in the private placement of securities, pursuant to § 225.28(b)(7)(iii) of the Board's Regulation Y; underwriting and dealing in bank eligible securities, pursuant to § 225.28(b)(8) of the Board's Regulation Y; and providing management consulting and counseling services, pursuant to § 225.28(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 14, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–1268 Filed 1–16–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–98–08]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC/ATSDR Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC/ATSDR Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Model Performance Evaluation Program for Retroviral and AIDS-Related Testing—(0920–0274)—Extension—Public Health Practice Program Office (PHPPO). The CDC Model Performance Evaluation Program (MPEP) currently assesses the performance of laboratories that test for human immunodeficiency virus type 1 (HIV–1) antibody, human T-lymphotropic virus types I and II (HTLV–I/II) antibody, perform CD4 T-cell testing or T-lymphocyte immunophenotyping (TLI) by flow cytometry or alternate methods, perform HIV–1 ribonucleic acid (RNA) determinations (viral load), and test for HIV–1 p24 antigen through the use of mailed sample panels. The CDC MPEP is proposing to use annual data collection documents to gain updated information on the characteristics of testing laboratories and their testing practices. Two data collection instruments, or survey questionnaires, will be used. The first data collection instrument will be concerned with laboratories that perform HIV–1 antibody (Ab) testing, HTLV–I/II Ab testing, HIV–1 viral RNA determinations, and HIV–1 p24 antigen (Ag) testing. Laboratories enrolled in the MPEP will be mailed a survey questionnaire and be asked to complete the sections pertinent to their laboratory's testing. The survey instrument will collect demographic information related to laboratory type, primary purpose for testing, types of specimens tested, minimum education requirements of testing personnel, laboratory director, and laboratory supervisor, and training required of testing personnel. The demographic section will be followed by more specific sections related directly to HIV–1 Ab testing, HTLV–I/II Ab testing, HIV–1 RNA, and HIV–1 p24 Ag testing. Included in the latter sections will be questions related to the types of tests performed, the algorithm of testing, how test results are interpreted, how results are reported, how specimens may be rejected for testing, if some testing is referred to other laboratories, and what quality control and quality assurance procedures are conducted by the laboratory. Similarly, the TLI survey questionnaire will also collect demographic information about each laboratory, as well as, the type(s) of flow cytometer used, educational and training requirements of testing personnel, the types of monoclonal antibodies used in testing, how specimens are received, prepared, and stored, how test results are recorded and reported to the test requestor, and what quality control and quality assurance procedures are practiced. Information collected through the use of these instruments will enable CDC to determine if laboratories are conforming to published recommendations and guidelines, whether education and training requirements of testing personnel are conforming to current legislative requirements, and whether problems in testing can be identified through the collection of information. Information collected through the survey instruments will then be compared statistically with the performance evaluation results reported by the enrolled laboratories to determine if characteristics of laboratories that perform well can be distinguished from laboratories not performing as well. Upon enrolling in the MPEP, participants are assigned an MPEP number used to report testing results and survey questionnaire responses allowing the individual responses of each laboratory participant to be treated in confidence. When participants respond to the surveys by sending CDC completed questionnaires, the collected information is developed into aggregate reports. A copy of the completed report is provided to each participating laboratory. Other than their time, there will be no cost to the respondents.

Respondents	Number of respondents	No. of respondents/response	Average burden/response (in hrs)	Total burden (in hrs)
MPEP Enrollment Form	100	1	0.1	10
Retroviral Survey	1,000	1	0.5	500
TLI Survey	350	1	0.5	175
Total				685

2. Prostate and Colorectal Cancer Screening in the Managed Care Environment—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP). Prostate and colorectal cancer are among the leading causes of cancer deaths in the U.S. Prostate cancer screening has increased rapidly during the past few years; however, little is known about actual rates of screening, or the proportion of men screened who present with symptoms or who are at high risk for prostate cancer. Evidence suggests that colorectal cancer screening can save lives and efforts are under way to increase participation in screening. However, little information is available to monitor screening rates. It is also unknown how well self-reported prostate and colorectal cancer screening rates, which are often used in population surveys, compare to actual screening rates. Therefore, the Centers for Disease Control and Prevention (CDC), National Center for Chronic Disease Prevention and Health Promotion, Division of Cancer Prevention and Control, intends to conduct a survey of prostate and colorectal cancer screening test utilization. As an increasing number of people are served by managed care organizations where they may receive cancer screening tests, the proposed study population are members of managed care organizations.

A sample of members (men aged 40 years and older and women 50 years and older) of 3 managed care organizations will be interviewed over the telephone, and the medical charts of the participants will be abstracted. The information collected will include demographic information, prostate and colorectal cancer screening tests received within the past 5 years, and the reasons and outcomes of the tests. The total cost estimate is: $400,000.

Respondents	No. of respondents	No. of responses/respondent	Average burden of response (in hrs)	Total burden (in hrs)
Members of Prepaid Health Plans	2200	1	0.25	550

3. Substance Specific Applied Research Program (AMHPS) (King/Drew Lead Study in-Person Interview, Lead and Hypertension Screening Questionnaire/Risk Factor Questionnaire]—(0923–0015)—EXTENSION—The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA), and its 1986 Amendments, The Superfund Amendments and Reauthorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from the exposure to hazardous substances into the environment. Disadvantaged minorities in large urban areas have higher than national blood lead levels. Some of these groups also suffer from disproportionately high rates of hypertension. Previous data shows a relationship between higher blood lead levels and higher blood pressure, even at the lowest lead exposure. To facilitate this effort, this study examines the relationship between lead exposure history in inner city minorities and blood pressure, using a group at special risk for elevated blood pressure, pregnant women. Elevated blood lead

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and elevated blood pressure are two problems that disproportionately affect minority groups. Establishing a link between blood pressure and lead exposure, especially utilizing two new biomarkers of lead exposure, bone lead and serum lead, can provide a new tool for dealing with elevated blood pressure nationwide.

This request is for a 3-year extension. Two previously approved questionnaires will continue to be used to collect socioeconomic data, and data pertaining to risk factors for elevated blood pressure and lead exposure. A new questionnaire assessing social stress (Scale of Chronic Social Role Stressors) and a 16 item, four response choice scale will be added to better control for social stress factors affecting blood pressure. There is no cost to respondents.

Type of respondent	No. of respondents per year	No. of responses/respondent	Avg. burden per response (in hrs)	Total burden (in hrs)
Screening Questionnaire	880	1	.5	440
Social Role Stressors	880	1	.08	70
Risk Questionnaire	330	2	.75	495
Total				1005

Dated: January 13, 1998.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–1206 Filed 1–16–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Community-Based Family Resource and Support Grants.

OMB No.: 0970–0155.

Description: Application information is required when a State wishes to receive a Community-Based Family Resource and Support (CBFRS) grant award. This Program Instruction contains information collection requirements found in Pub. L. 104–235 at Sections 202(1)(A); 202(b)(1)(B); 205; and 207. The information being collected is required by statute to be submitted pursuant to receiving a grant award. The information submitted will be used by the agency to ensure compliance with the statute, complete the calculation of the grant award entitlement, provide training and technical assistance to the grantee, and evaluate State efforts in the prevention of child abuse and neglect.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application	57	1	40	2,280
Annual Report	57	1	40	1,368

Estimated Total Annual Burden Hours: 3,648.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 13, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–1183 Filed 1–16–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Emergency TANF Data Report (ACF–198).

OMB No.: 0970–0164.

Description: This information is being collected to meet the statutory requirements of section 411 of the Social Security Act and section 116 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. It consists of disaggregated and aggregated demographic and program information that will be used to determine participation rates and other statutorily required indicators for the Temporary Assistance for Needy Families (TANF) program. OMB previously approved this data collection under emergency procedures through January 31, 1998. We are now requesting an extension through September 30, 1998, in order to maintain the continuity of data collection pending OMB approval of the data collection instruments published in the NPRM dated November 20, 1997.

Respondents: States and Territories.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Emergency TANF Data Report	54	4	451	97,416

Estimated Total Annual Burden Hours: 97,416.

Additional Information

Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Laura Oliven.

Dated: January 7, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–1251 Filed 1–16–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0497]

Request for Proposed Standards for Unrelated Allogeneic Peripheral and Placental/Umbilical Cord Blood Hematopoietic Stem/Progenitor Cell Products; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is requesting submission of comments proposing product standards intended to ensure the safety and effectiveness of minimally manipulated hematopoietic stem/progenitor cells derived from peripheral and cord blood for unrelated allogeneic use.[1] The comments should include supporting clinical and nonclinical laboratory data and other relevant information. This information will aid FDA in developing product standards for hematopoietic stem/progenitor cell products intended for allogeneic use in recipients unrelated to the donor (hereinafter referred to as unrelated allogeneic), including manufacturing controls and product specifications. FDA is also announcing its intention to phase-in implementation of investigational new drug application (IND) and license application requirements for minimally manipulated[2] unrelated allogeneic hematopoietic stem/progenitor cell products 3 years after the date of issuance of this notice to permit the development of licensing standards for those products where possible. This action is taken in response to the agency's "Proposed Approach to Regulation of Cellular and Tissue-based Products," which fullfills the objectives of the administration's "Reinventing the Regulation of Human Tissue" initiated to streamline regulatory requirements to ease the burden on regulated industry, while providing adequate protection to the public health.

[1] The term *unrelated allogeneic use* means the implantation, infusion, or transfer of a human cellular or tissue-based product from one person to another who is not a parent, sibling, or a child of the donor.

[2] The term *minimally manipulated* means processing of cells and nonstructural tissues that does not alter the biological characteristics and thus, potentially, the function or integrity of the cells or tissues.

DATES: Submit requested standards and supporting clinical and nonclinical laboratory data by January 20, 2000.

ADDRESSES: Submit proposed product standards and supporting data to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Paula S. McKeever, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

A. Use of Peripheral and Cord Blood Stem/Progenitor Cells for Hematopoietic Reconstitution

The field of hematologic transplantation has changed substantially during the last two decades. Improved understanding of the diverse aspects of human hematologic precursors has facilitated their experimental manipulation. Our knowledge of their localization in humans during both fetal and postnatal development, growth regulation, differentiation, homing, and of phenotypic and functional characteristics has facilitated the development of new methods of transplantation. Traditional bone marrow transplantation, involving the extraction of bone marrow by aspiration from bone cavities with further processing by density centrifugation, is increasingly being supplanted by novel approaches that include use of hematopoietic stem/progenitor cells and biotechnologic procedures to purify and expand hematopoietic stem/progenitor cells. Human cord blood, which is enriched with pluripotent hematopoietic stem/progenitor cells, and peripheral blood, which can be enriched in hematopoietic stem/progenitor cells by a variety of

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interventions, have emerged as sources of hematopoietic cells alternative to bone marrow aspirates for bone marrow reconstitution.

B. Stem/Progenitor Cell Workshops

FDA held a public workshop to discuss procedures for preparation and storage of cord blood stem/progenitor cells on December 13, 1995 (60 FR 58088, November 24, 1995). The workshop was jointly sponsored by FDA and the National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health. The purpose of the workshop was to identify and discuss steps for collection, processing, and storage of cord blood stem/progenitor cells for transplantation and to identify what additional post transplantation scientific data are needed in this area. A draft document, discussing an appropriate regulatory approach for placental/umbilical cord blood stem/progenitor cell products for transplantation, was made available at the workshop, and a notice of availability for comment was published in the **Federal Register** of February 26, 1996 (61 FR 7087). In response to requests to extend the comment period, a notice extending the comment period by 90 days was published in the **Federal Register** of May 28, 1996 (61 FR 26473).

In the **Federal Register** of February 8, 1996 (61 FR 4786), FDA announced a public workshop, jointly sponsored by FDA and NHLBI to be held on February 22 and 23, 1996, to discuss procedures for the preparation, processing, and characterization of human peripheral blood stem/progenitor cells. The purpose of the workshop was to identify and discuss the methods for the collection, processing, and storage of peripheral blood stem/progenitor cells for transplantation and to identify areas in need of further research. A draft document was made available at the workshop describing FDA's proposed regulatory approach for human peripheral blood stem/progenitor cell products for transplantation.

Based, in part, on information presented at these meetings, FDA recognized a need to reconsider whether the concepts and procedures used to regulate traditional biological products were appropriate for regulation of peripheral and cord blood hematopoietic stem/progenitor cells and other cellular and tissue-based products which are a result of new technologies. After consultation with representatives of the involved public, FDA proposed a new regulatory framework for cellular and tissue-based products, including hematopoietic stem/progenitor cells, in February 1997, entitled "Reinventing the Regulation of Human Tissue," and "Proposed Approach to Regulation of Cellular and Tissue-based Products." On March 4, 1997, the agency announced a public meeting, to be held on March 17, 1997, to solicit information and views from the interested public on the agency's proposed regulatory approach for such products, and the agency requested that written comments be submitted to the docket (62 FR 9721).

C. New Regulatory Approach for Human Cellular and Tissue-Based Products

The proposed framework provides a tiered approach to human cellular and tissue-based product[3] regulation. The regulation focuses on three general areas: (1) Preventing use of contaminated tissues with the potential for transmitting infectious diseases; (2) preventing improper handling or processing that might contaminate or damage tissues, or produce cellular or tissue-based products of inadequate quality; and (3) ensuring that clinical safety and effectiveness are demonstrated for most tissues that are highly processed, are used for other than their homologous use,[4] are combined with nontissue components, or have a systemic effect.

Under the tiered approach, FDA intends to impose Federal requirements only to the extent necessary to protect the public health, with minimal regulation for some products and with increasing degrees of oversight as the potential risk increases. For example, tissues transplanted from one person to another for their normal structural or reproductive functions and without undergoing extensive processing will be subject to requirements for infectious disease screening and testing, and to requirements for good processing and handling procedures, but will not need FDA marketing approval before distribution and use. Thus, FDA expects that most processors of reproductive tissue, tissue products currently regulated under 21 CFR part 1270, and other minimally manipulated products will not be required to seek FDA premarket approval of their products nor to submit detailed clinical information about their products to FDA. The agency intends to regulate as biological drugs or devices those tissues that are processed extensively, combined with nontissue components, promoted or labeled for use other than homologous use, or (with limited exceptions) that have systemic effect on the body. Minimally manipulated hematopoietic stem/progenitor cells derived from peripheral and cord blood, for unrelated allogeneic use, would therefore be regulated as biological drugs under the Public Health Service Act and the Federal Food, Drug, and Cosmetic Act. FDA does not intend to request clinical data to demonstrate safety and effectiveness for cellular and tissue-based products with systemic effect that are for autologous use[5] or family-related allogeneic use[6] or for reproductive tissues for reproductive use providing such products are minimally manipulated, for homologous use, and not combined with a nontissue component. FDA intends to require that establishments manufacturing such minimally manipulated hematopoietic stem/progenitor cell products for hematopoietic reconstitution register and list their products with FDA, comply with good tissue practice regulations, and ensure that all labeling and promotional materials are clear, accurate, balanced, and nonmisleading.

D. Application of the Proposed Regulatory Approach to Hematopoietic Stem/Progenitor Cell Products

For unrelated allogeneic hematopoietic stem/progenitor cells intended for hematopoietic reconstitution, provided they are not more than minimally manipulated (i.e., processing does not alter the biological characteristics of the cells), the agency believes that it may be possible to develop product standards and establishment and processing controls based on existing clinical trial data or data developed in the near future demonstrating the safety and efficacy of the cells. If adequate information can be developed, the agency intends to issue guidance for establishment controls, processing controls, and product standards in accordance with the agency's "Good Guidance Practices," issued in the **Federal Register** of February 27, 1997 (62 FR 8961). FDA intends to propose that, in lieu of individual applications containing clinical data, licensure may be granted

[3] The term *human cellular and tissue-based product* means a product containing human cells or tissues or any cell or tissue-based component of such a product.

[4] The term *homologous use* means the use of a cellular or tissue-based product for a normal function that is analogous to that of the cells or tissues being replaced or supplemented.

[5] The term *autologous use* means the implantation, transplantation, infusion, or transfer of a human cellular or tissue-based product back into the individual from whom the cells or tissue comprising such product were removed.

[6] The term *family-related allogeneic use* means the implantation, transplantation, infusion, or transfer of a human cellular or tissue-based product into a first-degree blood relative of the individual from whom cells or tissue comprising such product were removed.

for products certified as meeting issued standards. To allow sufficient time for data and standards to be developed, the agency will phase-in IND and license application requirements for minimally manipulated unrelated allogeneic hematopoietic stem/progenitor cell products for hematopoietic reconstitution 3 years following the date of issuance of this **Federal Register** notice. FDA is inviting product providers, professional groups, and other interested persons to submit to the agency proposed standards and supporting data designed to ensure the safety and effectiveness of minimally manipulated hematopoietic stem/progenitor cell products for hematopoietic reconstitution. Proposed standards should be supported by adequate data and other relevant information. In order to permit development of useful standards within the phase-in period for enforcement of premarket application requirements, FDA suggests that interested parties work together to achieve consensus on uniform standards before submission to FDA. FDA will evaluate the information submitted. If the agency determines that the submissions support the development of standards, FDA intends to issue such standards through the agency's guidance documents procedures. If FDA determines that adequate establishment and processing controls and product standards are not available, the agency intends to enforce IND and license application requirements at the close of the 3 year period. FDA reminds affected parties that cells that have been more than minimally manipulated (e.g., expanded, activated, genetically modified or otherwise have their biological characteristics altered) or combined with nontissue components continue to require IND's and licensing approval, and are not subject to a phase-in period for enforcement of these requirements.

II. Request for Product Standards with Supporting Clinical and Nonclinical Data

A. Purpose

FDA is inviting product providers, professional groups, and other interested persons to submit to the agency proposed product standards with supporting clinical and nonclinical laboratory data, and other relevant information, designed to ensure the safety and effectiveness of minimally manipulated hematopoietic stem/progenitor cells derived from peripheral and placental/umbilical cord blood for unrelated allogeneic hematopoietic reconstitution. Submitted data may be specific for a patient subset, e.g., pediatric patients, and should identify the patient subset, if applicable.

FDA is requesting that proposed establishment controls include standards for personnel, facilities, quality management, standard operating procedures, staff training and competence, and process validation. Establishment controls should also include standards for recordkeeping regarding donors, processing, quarantine, storage, labeling, distribution, tracking, handling of errors and accidents, deviations from standard operating procedures, suspected adverse reactions, and quality control processes.

FDA is requesting that proposed processing controls include standards for donor selection, informed consent, donor testing and screening, histocompatibility testing, collection procedures, product testing, volume reduction methods, cryopreservation, storage conditions in liquid and frozen state, storage monitoring, transportation within and between facilities, temperature limits, packaging, and thawing procedures. The processing controls should include standards for testing for product contamination, product viability, composition, and functionality, and include when and how such testing is to be performed.

FDA is requesting that proposed product standards include the criteria for acceptance of a unit of hematopoietic stem/progenitor cells derived from peripheral or placental/umbilical cord blood. Criteria should include volume of the product, viable cell number (specified as nucleated or mononuclear cells), storage temperature limits, microbial or other contamination limits, and any other appropriate characteristics of the product, e.g., CD34 positive cell enumeration. For peripheral blood hematopoietic stem/progenitor cell products, information regarding the treatment regimens of the donors with mobilizing agents should also be provided including the type of mobilizing agent, duration of mobilization, and the number of apheresis collections.

The agency is suggesting that evidence of hematopoietic stem/progenitor cell engraftment for these products be consistently expressed as the time, expressed as number of days from the day of hematopoietic stem/progenitor cell infusion to the day that a neutrophil count of equal to or greater than 500 cells/μL is obtained, and the time, expressed as number of days from the day of hematopoietic stem/progenitor cell infusion to the first of 3 consecutive days in which the transfusion-independent platelet count of equal to or greater than 20,000 platelets/μL is demonstrated in the recipient. Information relevant to sustained platelet engraftment, such as the number of days from the day of hematopoietic stem/progenitor cell infusion to the day in which a transfusion-independent platelet count of equal to or greater than 50,000 platelets/μL is observed, should also be provided. Data provided should include the extent of HLA (human leukocyte antigen) disparity, the nucleated cell dose/kg body weight of the recipient, the weight, age, and underlying disease of the recipient, the extent and severity of Graft-Versus-Host Disease, the criteria utilized for evidence for allogeneic cell engraftment, and any other important information regarding the safety and efficacy of the infused product, e.g., incidence of infection. In addition, a description of the methods used for data evaluation, including statistical techniques, should be included.

B. Review and Consolidation of Submitted Information by FDA

FDA will review and assess the information submitted, and evaluate it as to its application in issuing hematopoietic stem/progenitor cell product standards. FDA may find it necessary to present any or all of the aspects of the standards and/or data for public discussion. Any public meeting held by FDA will be announced to the public prior to the date of the meeting. Subsequent to receiving sufficient standards with supporting data, FDA intends to adopt appropriate standards as guidance and announce their availability in the **Federal Register**.

III. Submissions

Interested persons may, on or before January 20, 2000 submit to the Dockets Management Branch (address above) written proposed standards and supporting clinical and nonclinical laboratory data. Two copies of standards and data should be submitted, except that individuals may submit one copy. Standards and data should be identified with the docket number found in brackets in the heading of this document. All information submitted will be placed on public display and will be subject to public disclosure. Any information that is not intended to be made public must be deleted before submission to the Dockets Management Branch. Trade secrets and confidential commercial information, as well as information that could be used to identify individual patients or others whose privacy should be maintained, should be deleted before being submitted. All comments proposing

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standards with supporting data will be available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p..m., Monday through Friday.

Dated: January 8, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–1171 Filed 1–16–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Ophthalmic Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Ophthalmic Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on February 12 and 13, 1998, 8 a.m. to 5 p.m.

Location: Parklawn Bldg., conference rooms D and E, 5600 Fishers Lane, Rockville, MD.

Contact Person: Sara M. Thornton, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2053, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12396, or the world wide web at http://www.fda.gov. Please call the Information Line for up-to-date information on this meeting.

Agenda: On February 12, 1998, the committee will discuss specific questions related to the development of contact lens extended wear clinical testing guidance for 7-day extended wear, prolonged extended wear beyond 7 days, and overnight use of contact lenses for orthokeratology. On February 13, 1998, the committee will discuss, make recommendations, and vote on a premarket approval application (PMA) for a broad beam excimer laser for the correction of myopia with astigmatism using laser in-situ keratomileusis. The committee will also discuss, make recommendations, and vote on a PMA for a scanning excimer laser for the correction of myopia with astigmatism using photorefractive keratectomy.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 6, 1998. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9:30 a.m. on February 12 and 13, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 2, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 12, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–1170 Filed 1–16–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93N–0195]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Procedures for the Safe Processing and Importing of Fish and Fishery Products" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 31, 1997 (62 FR 58973), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0354. The approval expires on December 31, 2000.

Dated: January 8, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–1167 Filed 1–16–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0040]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Survey of Food Safety Practices of Food Processing Firms" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 7, 1997 (62 FR 42559), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0355. The approval expires on November 30, 2000.

Dated: January 9, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–1168 Filed 1–16–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

The Ryan White Comprehensive AIDS Resources Emergency Act of 1990 as Amended by Pub. L. 104–146; Notice of Pre-Application Technical Assistance Workshops

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Pre-Application Technical Assistance Workshops.

SUMMARY: The Health Resources and Services Administration will hold three pre-application technical assistance workshops for organizations that will compete for funds under Title IV, Grants for Coordinated HIV Services and Access to Research for Children, Youth, Women and Families, of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, Public Law 101–381, as amended by Public Law 104–146.

Grants may be awarded to public or nonprofit private entities that provide primary health care directly or through contracts. Eligible entities may include, but are not limited to, State or local health departments, university medical centers, public or nonprofit private hospitals, community health centers receiving support under section 330 of the Public Health Service Act, hemophilia treatment centers, drug abuse treatment agencies, tribal health programs, school based clinics and institutions of higher education.

PURPOSE: The purpose of the technical assistance workshops is to provide information about the Ryan White Title IV program and application procedures. Eligible entities will have an opportunity to review the program guidance and to receive technical assistance pertaining to all aspects of writing the grant application.

To receive an application kit prior to the meeting, please contact the HRSA Grants Application Center at 1–888–300–4772.

FOR FURTHER INFORMATION CONTACT: Anyone interested in attending the meetings should contact Mr. Bradley Rymph, Professional and Scientific Associates, Inc., 8180 Greensboro Drive, Suite 1050, McLean, VA 22102. His telephone number is 703–442–9824. Room reservations should be made directly with the hotels. Costs of attending the workshop are the sole responsibility of the attendee. For information about the Ryan White Title IV program, contact LaTasha Covington at 301–443–9051.

DATES, TIMES, LOCATIONS:

Friday, February 6, 1998, 12:30PM to 5:15PM, to Saturday, February 7, 1998, 9AM to 4PM. Las Vegas, Nevada.

Wednesday, February 18, 1998, 12:30PM to 5:15PM, to Thursday, February 19, 1998, 9AM to 4PM. Baton Rouge, Louisiana.

Thursday, February 26, 1998, 12:30PM to 5:15PM, to Friday, February 27, 1998, 9AM to 4PM. Washington, DC.

The OMB Catalog of Federal Domestic Assistance number for this program is 93.153.

Dated: January 14, 1998.

Jane M. Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 98–1279 Filed 1–16–98; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: December 1997

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of December 1997, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
Program-Related Convictions	
ABDALA, JUAN MIAMI, FL	01/20/1998
ABDULLAH, TARIQ H LAUREL HILL, FL	01/20/1998
ALSTON, CAROLYN E DECATUR, GA	01/20/1998
BASKETT, ROBERT S BRISTOL, TN	01/20/1998
BERLANGA, JOE EDDIE TACOMA, WA	01/20/1998
BRYANT, ANGELA MAE COLORADO SPNGS, CO	01/20/1998
CASA CARE SERVICES, LTD HAUPPAUGE, NY	01/20/1998
COLLINS, KEVIN SCOTT MT PLEASANT, TX	01/20/1998
DAVIDSON, MICHAEL E JESUP, GA	01/20/1998
DOUD-LACHER, ROBIN T TAMPA, FL	01/20/1998
EDGERTON, JAMES LAKE PARK, FL	01/20/1998
FANTONY, ALEJANDRINA M MIAMI, FL	01/20/1998
FITTON, PHYLLIS STATEN ISLAND, NY	01/20/1998
HOEYE, RICHARD RAPID CITY, SD	01/20/1998
HORVATH, ATTILA CHEVY CHASE, MD	01/20/1998
JAIME, JORGE G MIAMI, FL	01/20/1998
JOHN R MROZEK, MD, PC COLORADO SPNGS, CO	01/20/1998
JOHNSON, JERRY DOVER, DE	01/20/1998
JONES, DANIEL WAYNE OGLETHORPE, GA	01/20/1998
KNOX, JOHN W PALM BEACH, FL	01/20/1998
LAWRENCE, JULES BOCA RATON, FL	01/20/1998
LIMA, OFELIA CORAL GABLES, FL	01/20/1998
LLORENTE, JOSUE A MIRAMAR, FL	01/20/1998
LLORENTE, JUAN A MIAMI, FL	01/20/1998
LLORENTE, FIDELINA MIAMI, FL	01/20/1998
LORO, JORGE MIAMI, FL	01/20/1998
MARTINEZ, RAUL HIALEAH, FL	01/20/1998
MELE, HANSY W PALM BEACH, FL	01/20/1998
METRO AMBULANCE, INC DOVER, DE	01/20/1998
MILLIRON, JEFFREY SCOTT ORLANDO, FL	01/20/1998
MONZON, MARIA EMILIA HIALEAH, FL	01/20/1998
MURADO, NICHOLAS M MIAMI, FL	01/20/1998
NEWBERRY, LAWRENCE SIOUX CITY, MS	01/20/1998
OLIVIERI, JOSEPH RICHARD FEDERAL WAY, WA	01/20/1998
OMAR, MUGAHID O RICHMOND, VA	01/20/1998
PASCUAL, JULIO A	01/20/1998

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Subject, city, state	Effective date
MIAMI, FL	
PAZ, EDUARDO J	01/20/1998
MIAMI, FL	
PFLUMM, JANE	01/20/1998
DANBURY, CT	
RODRIGUEZ, CELIDA M	01/20/1998
MIAMI, FL	
ROGERS, WANDA D	01/20/1998
PANAMA CITY, FL	
ROWELL, MILDRED	01/20/1998
DIAMOND BAR, CA	
SHANKMAN, ANDREW S	01/20/1998
COLEMAN, FL	
SIEGEL, ANDREW R	01/20/1998
LARGO, FL	
SIMRING, JAMES J	01/20/1998
NEW YORK, NY	
SOLDATOS, CONSTANTINOS	01/20/1998
TARPON SPRINGS, FL	
STARKS, ANGELA F	01/20/1998
BRANDON, FL	
STEPHENS, PAULETTE	01/20/1998
MARIANNA, FL	
UNIVERSAL REHABILITATION SERV	01/20/1998
PHILADELPHIA, PA	
WHITE, WENDELL	01/20/1998
W PALM BEACH, FL	
WHITE, ALMA	01/20/1998
MARIANNA, FL	
YOUNG, DAVID W	01/20/1998
PENDLETON, OR	
Exclusion Based on Settlement Agreement	
EL-YOUSEF, MOHAMMED	01/20/1998
BELLEAIR, FL	
Felony Control Substance Conviction	
HANCOCK, MARLENIA G	01/20/1998
KENNETT, MO	
Patient Abuse/Neglect Convictions	
BALDWIN, GREGORY L	01/20/1998
MILWAUKEE, WI	
BLACK, ERIC	01/20/1998
BROOKHAVEN, MS	
BROWN, JACQUELINE DENISE	01/20/1998
LAMBERT, MS	
CANTAVE, ELDA	01/20/1998
MIAMI, FL	
CHADWICK, DARLENE	01/20/1998
CLUTE, TX	
COLLINS, NELL	01/20/1998
CALHOUN CITY, MS	
EDWARDS, SHERRY LYNN	01/20/1998
TULSA, OK	
HANDY, NEWTON ALFRED	01/20/1998
JACKSON, MS	
HARRY, EVELYN DENISE	01/20/1998
AUSTIN, TX	
HEPHILL, SAMUEL R	01/20/1998
BUFFALO, NY	
HENDERSON, PERRY ROY	01/20/1998
MIDWEST CITY, OK	
HOAG, LINDA	01/20/1998
PETAL, MS	
IVY, PAMELA	01/20/1998
CLARKSDALE, MS	
JACKSON, MELISSA	01/20/1998
LOUISVILLE, MS	
JOHNSON, DAVID GERALD	01/20/1998
PORTLAND, OR	
JOYNER, MARY AGNES	01/20/1998
PAULS VALLEY, OK	
MCDONALD, BENITA	01/20/1998
LAUREL, MS	
MOBERLY, TRACY LYNN	01/20/1998
CHICKASHA, OK	
MORSE, ANGELA E	01/20/1998
ENID, OK	
MURRAY, SHERITA SHANETTE	01/20/1998
NATCHEZ, MS	
NABU, HIRAM	01/20/1998
ENID, OK	
O'LEARY, ARTHUR F	01/20/1998
LEXINGTON, OK	
PETERSON, MELODY A	01/20/1998
MARRERO, LA	
PLEMMONS, PAUL E	01/20/1998
GREENEVILLE, TN	
SEAMON, KATHY R	01/20/1998
DUSTIN, OK	
SMITH, SHANNON Y	01/20/1998
BUFFALO, NY	
THOMAS, MARY SUE	01/20/1998
MANSURA, LA	
WILLIAMS, KATINA	01/20/1998
MENDENHALL, MS	
WILSON, BRENDA L	01/20/1998
WOODVILLE, MS	
Conviction for Health Care Fraud	
BROCCOLO, DENNIS	01/20/1998
NEW ROCHELLE, NY	
DANTON, JACK A	01/20/1998
HUNTINGDON VLY, PA	
DARE, BONNIE LYNN	01/20/1998
LONGMONT, CO	
EADES, THOMAS LEE	01/20/1998
LOUISVILLE, KY	
HOWARD-COATES, SHIRLEY	01/20/1998
GROSSE POINTE PARK, MI	
LINZY, EUGENE	01/20/1998
LAWRENCEBURG, KY	
MARCONI, VINCENT MICHAEL	01/20/1998
SEAL BEACH, CA	
MAY, GREGORY DALE	01/20/1998
YELM, WA	
NUNEZ, JULIAN	01/20/1998
OVERLAND PARK, KS	
NUNEZ, NEREYDA	01/20/1998
OVERLAND PARK, KS	
SAYEGH, JOHN A	01/20/1998
LEAWOOD, KS	
TONKINSON-FISHER, JEAN PATRICI	01/20/1998
NEVADA CITY, CA	
WALLACE, CYNTHIA M	01/20/1998
CHERAW, SC	
Controlled Substance Convictions	
EL-SHADDI, INC	01/20/1998
GROSSE POINTE PARK, MI	
License Revocation/Suspension	
BAIRD, RONALD LEE	01/20/1998
FAIRVIEW, TN	
BINDER, MARK ALBERT	01/20/1998
MOUNT VERNON, NY	
BLANCHARD, DEBRA M	01/20/1998
NORTHGLENN, CO	
BRIDGES, BERNARD JACKSON	01/20/1998
ATLANTA, GA	
BUISMAN, JUDITH A	01/20/1998
PRINCETON, MN	
CARMODY, NANCY LEE	01/20/1998
FORT COLLINS, CO	
CORBIT, KARIN	01/20/1998
EASTPOINTE, MI	
CUPP, LORI L	01/20/1998
WHEAT RIDGE, CO	
CURRY, EDWARD B	01/20/1998
BIRMINGHAM, AL	
DIAZ, CLARA	01/20/1998
HIALEAH, FL	
DIXON, SHIRLEY L	01/20/1998
NEW YORK, NY	
DOVE, JAMES L	01/20/1998
EVERGREEN, CO	
DRIVER, THOMAS W	01/20/1998
BUCKINGHAM, PA	
DURAN, RENATO FERNANDO	01/20/1998
SCHENECTADY, NY	
ESAREY, ROBERT A	01/20/1998
SEVEN HILLS, OH	
GODBY, PAUL J	01/20/1998
ALTA LOMA, CA	
GRESHAM, PHYLLIS	01/20/1998
RIDGELAND, SC	
GUPTA, SUSHILA	01/20/1998
BLAUVELT, NY	
HADLEY, NANCY E	01/20/1998
EDGEWATER, CO	
JANDAGHI, MEHDI	01/20/1998
AGURA HILLS, CA	
JONES, DAVID D	01/20/1998
COON RAPIDS, MN	
KOROMA, NYAMAKORO	01/20/1998
BLADENSBURG, MD	
KRAMER, ROSE ANN	01/20/1998
FARIBAULT, MN	
LANSING, KURT	01/20/1998
LEVITTOWN, PA	
MILLER, KIMBERLY F	01/20/1998
AURORA, CO	
MONSHAW, ROBERT ALLEN	01/20/1998
SCARSDALE, NY	
PROCACCINO, ANTHONY	01/20/1998
PELHAM MANOR, NY	
PURVIS, GENE HERBERT	01/20/1998
POWAY, CA	
ROBLES, BARBARA	01/20/1998
COLORADO SPNGS, CO	
SERRANO, JULIAN C	01/20/1998
MOBILE, AL	
SHULTZ, DARLENE ELIZABETH	01/20/1998
COVINA, CA	
SINGH, PRITPAUL	01/20/1998
VOORHEES, NJ	
SMITH, SOLOMON	01/20/1998
COLUMBIA, SC	
SMITH, CAMERON R C	01/20/1998
GLENDALE, AZ	
SPLITTER, SAMUEL R	01/20/1998
CAPE MAY, NJ	
ZEHNER, LUTHER ROLAND	01/20/1998

Subject, city, state	Effective date
MEADVILLE, PA	
Federal/State Exclusion/Suspension	
AT HOME HEALTH CARE SUPPLIES	01/20/1998
WESTBURY, NY	
DEFEO, DELORES A	01/20/1998
BARGAINTOWN, NJ	
LEONARD, PATRICIA	01/20/1998
PHOENIX, AZ	
PARATRANSIT ASSOCIATES, INC	01/20/1998
BETHPAGE, NY	
QUALITY ORTHOPEDICS	01/20/1998
NEW YORK, NY	
STODOLA, PATRICK	01/20/1998
CHICAGO, IL	
Owned/Controlled by Convicted Excluded	
ABC DIAGNOSTIC	01/20/1998
MIAMI, FL	
ADVANCED NEUROLOGICAL CARE	01/20/1998
MIAMI, FL	
AMERICAN HEALTH CENTER	01/20/1998
HIALEAH, FL	
ART DECO MEDICAL GROUP, INC	01/20/1998
MIAMI BEACH, FL	
AT HOME MEDICAL CARE; INC	01/20/1998
MIAMI, FL	
BAKEN PARK HEARING AID CENTER	01/20/1998
RAPID CITY, SD	
BELLEGLADES CLINIC & DIAG CTR	01/20/1998
MIAMI, FL	
BIO-MECHANICS CLINIC	01/20/1998
ABERDEEN, ID	
C & C FAMILY HEALTH GROUP, INC	01/20/1998
MIAMI, FL	
COMP-TECH, INC	01/20/1998
CORAL GABLES, FL	
DADE CARE HEALTH CENTER, INC	01/20/1998
MIAMI, FL	
DCH MEDICAL	01/20/1998
LOUISVILLE, KY	
DIRECT DATA MARKETING, INC	01/20/1998
CORAL GABLES, FL	
ESTEFAN MEDICAL CENTERS, INC	01/20/1998
MIAMI, FL	
FIFTEENTH STREET MEDICAL OFCS	01/20/1998
MIAMI BEACH, FL	
FLAGLER DME, INC	01/20/1998
MIAMI, FL	
FOMENTOS MEDICAL CARE CENTER	01/20/1998
MIAMI, FL	
GEORGIA MEDICAL AMB & CONV SVC	01/20/1998
LAWRENCEVILLE, GA	
HERNIA INSTITUTE OF LYON	01/20/1998
NEW YORK, NY	
HI-LIFE MEDICAL CENTER	01/20/1998
CORAL GABLES, FL	
K & S MEDICAL SUPPLIES	01/20/1998
MT PLEASANT, TX	
LEJEUNE HEALTH PROFESSIONALS	01/20/1998
MIAMI, FL	
MAX CLINIC SERVICES, INC	01/20/1998
MIAMI, FL	
MEDCLINIC, INC	01/20/1998
MIAMI, FL	
MEDICAL RESEARCH CENTER, INC	01/20/1998
MIAMI, FL	
MOBILE DENTAL HEALTH	01/20/1998
PEMBROKE PINES, FL	
NAZARET MEDICAL CENTER, INC	01/20/1998
MIAMI, FL	
NEUROMUSCULAR REHABILITATION	01/20/1998
MIAMI, FL	
NORTHWEST REGION SERVICE, INC	01/20/1998
HIALEAH, FL	
PEDIATRIC & FAMILY HEALTH	01/20/1998
MIAMI, FL	
PHYSICAL THERAPY & REHAB	01/20/1998
MIAMI, FL	
PREFERRED DIAGNOSTICS, INC	01/20/1998
WINTER PARK, FL	
PREFERRED TRANSPORTATION	01/20/1998
MARIANNA, FL	
SHANKMAN DAVIDSON PSYCH MGMT	01/20/1998
ST SIMON, GA	
TAMIAMI MEDICAL RENTAL CORP	01/20/1998
MIAMI, FL	
TECHNO/HEALTH SERVICES, INC	01/20/1998
MIAMI, FL	
TECHNOKURE, INC	01/20/1998
MIAMI, FL	
THIRD AVE MEDICAL INSTITUTE	01/20/1998
MIAMI, FL	
WEST KENDALL MEDICAL ASSOC	01/20/1998
MIAMI, FL	
Default on Heal Loan	
BARRON, ATHON	01/20/1998
ATLANTA, GA	
BURTON, GERI LYN	01/20/1998
MURRAY, UT	
CARTER, JAMES E IV	01/20/1998
DULUTH, GA	
EDMONDSON, DANIEL J	01/20/1998
FORT COLLINS, CO	
ELOI, EMMANUEL	01/20/1998
MIAMI BEACH, FL	
FICCO, DAVID S	01/20/1998
LAWRENCEVILLE, GA	
HAVERLY, DAVID E	01/20/1998
ROCKWOOD, TN	
LITTLE (TANNER), DIEDRE FELICI	01/20/1998
ATLANTA, GA	
SAUNDERS, CRYSTAL R	01/20/1998
NASHVILLE, TN	
SIERADZKI, REX A	01/20/1998
BARNSVILLE, GA	
SPATZ, ERIC D	01/20/1998
BOYNTON BEACH, FL	
WATHEN, GEORGE A	01/20/1998
ENGLEWOOD, CO	
WOODARD, DEBORAH AVON (WILLIAM)	01/20/1998
MCKENZIE, TN	
Peer Review Organization Cases	
BROOKS, JESSE M	12/10/1997
ATLANTA, TX	

Dated: January 12, 1998.

Joanne Lanahan,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 98–1246 Filed 1–16–98; 8:45 am]

BILLING CODE: 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 to provide the opportunity for public comment on proposed information collection activities, the Substance Abuse and Mental Health Services Administration publishes periodic summaries of proposed activities. To request more information on the proposed activities or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–0525.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. FY 1999–2001 Substance Abuse Prevention and Treatment Block Grant Application Format—Revision—The Public Health Service Act (42 U.S.C. 300x 21–35 & 51–64) authorizes

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block grants to States for the purpose of providing substance abuse prevention and treatment services. Under the provisions of the law, States may receive allotments only after an application is submitted and approved by the Secretary, DHHS. For the FY 1999 Substance Abuse Prevention and Treatment (SAPT) Block Grant cycle, SAMHSA plans to provide States with slightly modified application forms and instructions. These changes affect the portion of the application that asks for information related to section 1926 (sales of tobacco to minors). The application will no longer require a description of sampling methodologies and procedures for identifying and selecting tobacco outlets to be sampled throughout a State, unless a change to such methodologies or procedures has occurred in the previous year. The application will provide for more detailed information on the results and validity of the random unannounced inspections, and it will request greater detail on the number and results of actual enforcement activities that a State has undertaken. At the request of the Department, SAMHSA plans to include an additional tobacco-related question to Attachment 6 of the application. This question will require States to briefly describe collaboration between each State's Tobacco and Health Office (ASTHO representative) and Single State Authority for Substance Abuse (NASADAD representative). Because Federal funds for tobacco prevention and control efforts are, in most cases, awarded to different State-level agencies, it is necessary for the Department and SAMHSA to verify and understand interactions at the State level on youth tobacco prevention and enforcement. SAMHSA also plans to modify Attachment 2 to include an additional question regarding tobacco use among minors. Finally, SAMHSA will modify the race/ethnicity categories in Form 9 to comply with recent revisions to OMB Directive No. 15. These modifications are not expected to increase respondent burden. The annual burden estimate for the SAPT Block Grant Application Format is shown below:

Number of respondents	Responses per respondent	Hours per response	Total hours
1[1]	1	530	530
59	1	563	33,217
Total			33,747

[1] Red Lake Indian Tribe (exempt from Tobacco Regulation requirements).

Send comments to Deborah Trunzo, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 12, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–1202 Filed 1–16–98; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 1998 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of Funding Availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services announces the availability of FY 1998 funds for grants and cooperative agreements for the following activities. These activities are discussed in more detail under Section 4 of this notice. This notice is not a complete description of the activities; potential applicants must obtain a copy of the Guidance for Applicants (GFA) before preparing an application.

Activity	Application deadline	Estimated funds available (millions)	Estimated No. of awards	Project period
Circles of Care	04/03/98	$2.4	6–8	3 yrs.
Consumer-Operated Service Program	04/09/98	5.0	9	4 yrs.

Note: SAMHSA also published a notice of available funding opportunities in FY 1998 in the **Federal Register** (Vol. 63, No. 3) on Tuesday, January 6, 1998.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the volume and quality of applications. Awards are usually made for grant periods from one to three years in duration. FY 1998 funds for activities discussed in this announcement were appropriated by the Congress under Public Law No. 105–78. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 5/96; OMB No. 0937–0189). The application kit contains the GFA (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for each activity covered by this notice (see Section 4).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of each of the activities (i.e., the GFA) described in Section 4 are available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

Application Submission: Unless otherwise stated in the GFA, applications must be submitted to: SAMHSA Programs, Center for Scientific Review, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710.*

(* Applicants who wish to use express mail or courier service should change the zip code to 20817.)

Application Deadlines: The deadlines for receipt of applications are listed in the table above. Please note that the deadlines may differ for the individual activities.

Competing applications must be received by the indicated receipt dates to be accepted for review. An application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an address other than the address specified above will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for each activity covered by this notice (see Section 4).

Requests for information concerning business management issues should be directed to the grants management contact person identified for each activity covered by this notice (see Section 4).

SUPPLEMENTARY INFORMATION: To facilitate the use of this Notice of Funding Availability, information has been organized as outlined in the Table of Contents below. For each activity, the following information is provided:

- Application Deadline
- Purpose
- Priorities
- Eligible Applicants
- Grants/Cooperative Agreements/Amounts
- Catalog of Federal Domestic Assistance Number
- Contacts
- Application Kits

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1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

SAMHSA's FY 1998 Knowledge Development and Application (KD&A) agenda is the outcome of a process whereby providers, services researchers, consumers, National Advisory Council members and other interested persons participated in special meetings or responded to calls for suggestions and reactions. From this input, each SAMHSA Center developed a "menu" of suggested topics. The topics were discussed jointly and an agency agenda of critical topics was agreed to. The selection of topics depended heavily on policy importance and on the existence of adequate research and practitioner experience on which to base studies. While SAMHSA's FY 1998 KD&A programs will sometimes involve the evaluation of some delivery of services, they are services studies and application activities, not merely evaluation, since they are aimed at answering policy-relevant questions and putting that knowledge to use.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and in its question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, preparation of special materials will be used, in addition to normal communications means.

SAMHSA also continues to fund legislatively-mandated services programs for which funds are appropriated.

2. Special Concerns

SAMHSA's legislatively-mandated services programs do provide funds for mental health and/or substance abuse treatment and prevention services. However, SAMHSA's KD&A activities do not provide funds for mental health and/or substance abuse treatment and prevention services except sometimes for costs required by the particular activity's study design. Applicants are required to propose true knowledge application or knowledge development and application projects. Applications seeking funding for services projects under a KD&A activity will be considered nonresponsive.

Applications that are incomplete or nonresponsive to the GFA will be returned to the applicant without further consideration.

3. Criteria for Review and Funding

Consistent with the statutory mandate for SAMHSA to support activities that will improve the provision of treatment, prevention and related services, including the development of national mental health and substance abuse goals and model programs, competing applications requesting funding under the specific project activities in Section 4 will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures.

3.1 General Review Criteria

As published in the **Federal Register** on July 2, 1993 (Vol. 58, No. 126), SAMHSA's "Peer Review and Advisory Council Review of Grant and Cooperative Agreement Applications and Contract Proposals," peer review groups will take into account, among other factors as may be specified in the application guidance materials, the following general criteria:

- Potential significance of the proposed project;
- Appropriateness of the applicant's proposed objectives to the goals of the specific program;

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• Adequacy and appropriateness of the proposed approach and activities;
• Adequacy of available resources, such as facilities and equipment;
• Qualifications and experience of the applicant organization, the project director, and other key personnel; and
• Reasonableness of the proposed budget.

3.2 Funding Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council (if applicable) review process.

Other funding criteria will include:
• Availability of funds.

Additional funding criteria specific to the programmatic activity may be included in the application guidance materials.

4. Special FY 1998 Mental Health Activities

4.1 Grants

4.1.1 Circles of Care: Planning, Designing, and Assessing Mental Health Service System Models for Native American Indian and Alaska Native Children and Their Families

• Application Deadline: April 3, 1998
• Purpose: Six to eight grants will be awarded to plan, design, and assess the feasibility of implementing a culturally appropriate mental health service model for American Indian/Alaska Native children with serious emotional disturbances and their families. The purpose of this program is to support the development of mental health service delivery models that are designed by American Indian/Alaska Native communities to achieve outcomes for their children that they choose for themselves. Formulation and evaluation of programs based directly on the needs, values, and principles of the grantee organizations will provide an information base for other programs interested in structuring culturally relevant children's mental health service systems.

Grantees will engage in a strategic planning process, design a service model, and conduct a feasibility assessment of the model, including a cost and funding analysis. Actual services will not be funded but the intent of the program is to position tribal and urban Indian organizations advantageously for future service system implementation and development when opportunities for funding services are available.

• Priorities: None
• Eligible Applicants: Applications may be submitted by federally acknowledged tribes and tribal organizations. Urban Indian organizations are eligible to apply if they are a nonprofit corporate body situated in an urban center, governed by a board of directors of whom at least 51% are American Indian/Alaska Natives, and provide for the participation of all interested Indian groups and individuals. The applicant must be capable of legally cooperating with other public and private entities for the purposes of performing the activities of this program.

The primary intent of the "Circles of Care" program is to support the development of mental health service delivery models that are designed by American Indian/Alaska Native communities to achieve outcomes for their children that they chose for themselves. Models designed for American Indian/Alaska Native communities by people other than American Indian/Alaska Natives are already available. This program will enable community members to develop models to juxtapose with those not designed by Indians to find which are best for meeting their service needs. To be effective and have the cooperation and confidence of the community, the applicant must be representative of the community, in addition to demonstrating the ability to fulfill the technical requirements of the GFA.

• Grants/Amounts: It is estimated that approximately $2.4 million will be available to support approximately 6–8 awards in FY 1998. Actual funding levels for subsequent years will depend on availability of appropriated funds.
• Catalog of Federal Domestic Assistance Number: 93.230
• Program Contact: For programmatic or technical assistance contact: Gary De Carolis, M.ED., Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 18–49, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1333.
• Grants Management Contact: For business management assistance, contact: Stephen J. Hudak, Grants Management Specialist, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 15C–05, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4456.
• Application Kits: Application kits are available from: National Mental Health Services, Knowledge Exchange Network (KEN), P.O. Box 42490, Washington, D.C. 20015, Voice: (800) 789–2647, TTY: (301) 443–9006.
• CMHS intends to sponsor two technical assistance workshops for potential applicants to provide guidance on completing the grant application. One workshop will be held in the eastern part of the country; the other will be held in the western part of the country. Letters from CMHS will be mailed to all 550 federally recognized tribes and urban Indian organizations to inform them of the meeting(s). For more information, potential applicants may contact: Kathy McGregor, Project Coordinator, National Indian Child Welfare Association, 3611 SW Hood Street, Suite 201, Portland, OR 97201, (503–222–4044).

4.2 Cooperative Agreements

A major activity for a SAMHSA cooperative agreement program is discussed below. Substantive Federal programmatic involvement is required in cooperative agreement programs. Federal involvement will include planning, guidance, coordination, and participating in programmatic activities (e.g., participation in publication of findings and on steering committees). Periodic meetings, conferences and/or communications with the award recipients may be held to review mutually agreed-upon goals and objectives and to assess progress. Additional details on the degree of Federal programmatic involvement will be included in the application guidance materials.

4.2.1 Cooperative Agreements to Evaluate Consumer-Operated Human Service Programs for Persons With Serious Mental Illness (Consumer-Operated Service Program)

• Application Deadline: April 9, 1998.
• Purpose: This Guidance for Applicants (GFA) solicits applications for two types of cooperative agreements—Study Sites and a Coordinating Center. The purpose of this Program is to assess the extent to which consumer-operated services are effective in improving rehabilitation and recovery of individuals with serious mental illness. It also seeks to determine to what extent participation in such services affect costs.

Specific questions to be addressed are:

1. To what extent does participation in a consumer-operated service program affect selected consumer outcomes for consumers who use traditional service programs?

The selected outcomes are empowerment, housing, employment (such as transition from unemployment to employment), social inclusion, and satisfaction with services. This core question is to be addressed in both the individual Study Site evaluation and the multi-site evaluation to be coordinated by the Coordinating Center.

2. To what extent does participation in a consumer-operated service program affect costs for the following: inpatient hospitalization, crisis intervention, and emergency room utilization as well as offsetting costs in housing, criminal justice, vocational rehabilitation, physical health care, and income support?

Examination of patterns of service use of retrospective or prospective "claims" data on service utilization will be coordinated by the Coordinating Center.

While individual Study Sites will provide the necessary information for the cost-study, the Coordinating Center will be responsible for developing a design and method for collecting and analyzing all information for the cost-study.

A goal of the Program is to create strong and productive partnerships among consumers, service providers and services researchers that demonstrate to the field that these groups are capable of complementing each other's strengths and that their joint efforts will yield the most effective service delivery models possible.

Another goal is to disseminate the knowledge gained about the effectiveness of these projects and the specific components that contributed to their success.

• Priorities: None.
• Eligible Applicants: Applications to be a Study Site or a Coordinating Center may be submitted by public organizations, such as units of State or local governments and by domestic private nonprofit and for-profit organizations such as community-based organizations, universities, colleges, and hospitals, and family and/or consumer operated organizations. Since CMHS seeks to study established consumer-operated and traditional programs, both program entities must have been operational for a minimum of 2 years at the time of the submission of the study site application. Applicants may apply to be a Study Site or a Coordinating Center, but not both.
• Cooperative Agreements/Amounts: It is estimated that approximately $5 million will be available to support approximately eight (8) Study Site awards and one (1) Coordinating Center under this GFA in FY 1998. The average award to support each Study Site is expected to range from $400,000 to $600,000 in total costs (direct+indirect) per year. The award to support the Coordinating Center is expected to be in the range of $700,000 to $900,000 in total costs (direct+indirect) per year. Actual funding levels will depend upon the availability of appropriated funds.
• Catalog of Federal Domestic Assistance Number: 93.230.
• Program Contact: For programmatic or technical assistance contact: William R. McKinnon, Ph.D., Community Support Programs Branch, Division of Knowledge Development and Systems Change, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Room 11C–22, Rockville, MD 20857, (301) 443–3655, or Paolo del Vecchio, Office of External Liaison, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Room 13C–103, Rockville, MD 20857, (301) 443–2619.
• Grants Management Contact: For business management assistance, contact: Stephen J. Hudak, Grants Management Specialist, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Room 15C–05, Rockville, Maryland 20857, (301) 443–4456.
• Application Kits: Application kits are available from: National Mental Health Services, Knowledge Exchange Network (KEN), P.O. Box 42490, Washington, DC 20015, Voice: (800) 789–2647, TTY: (301) 443–9006, FAX: (301) 984–8796.

5. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 1998 activity described above is/is not subject to the Public Health System Reporting Requirements.

6. PHS Non-use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

7. Executive Order 12372

Applications submitted in response to all FY 1998 activities listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Office of Extramural Activities Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

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Dated: January 11, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–1217 Filed 1–16–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Notice of Intent to Prepare Comprehensive Conservation Plans

AGENCY: Fish and Wildlife Service.

ACTION: Notice of Intent to Prepare Comprehensive Conservation Plans.

SUMMARY: This notice advises that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare Comprehensive Conservation Plans (CCP) and associated environmental documents for the Tewaukon National Wildlife Refuge Complex in southeastern North Dakota and the Waubay National Wildlife Refuge Complex in northeastern South Dakota. The Service is furnishing this notice in compliance with Service CCP policy to advise other agencies and the public of its intentions and to obtain suggestions and information on the scope of issues to be considered in the planning process.

DATES: Written comments should be received by February 19, 1998.

ADDRESSES: Comments and requests for more information to Allison Banks, Planning Team Leader, Division of Realty, P.O. Box 25486, Denver, CO 80225.

FOR FURTHER INFORMATION CONTACT: Allison Banks, Planning Team Leader, Division of Realty, P.O. Box 25486, Denver, CO 80225.

SUPPLEMENTARY INFORMATION: The Service has initiated Comprehensive Conservation Planning for the Tewaukon National Wildlife Refuge Complex and the Waubay National Wildlife Refuge Complex.

The Tewaukon Complex includes the Tewaukon National Wildlife Refuge and the Tewaukon Wetland Management District (WMD). The Waubay Complex includes the Waubay National Wildlife Refuge and the Waubay Wetland Management District. Each National Wildlife Refuge has specific purposes for which it was established and for which legislation was enacted. Those purposes are used to develop and prioritize management goals and objectives within the National Wildlife Refuge System mission, and to guide which public uses occur on the refuge. The planning process is a way for the Service and the public to evaluate management goals and objectives for the best possible conservation efforts of this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with each national wildlife refuge's establishing purposes and the mission of the National Wildlife Refuge System.

The Tewaukon National Wildlife Refuge (approximately 8,500 acres) was established as "* * * a refuge and breeding ground for migratory birds and other wildlife * * *" and "* * * for use as an inviolate sanctuary or for any other management purpose, for migratory birds" (Migratory Bird Conservation Act), by Executive Order 6910, on November 26, 1934. The Tewaukon WMD consists of fee Waterfowl Production Areas (WPA's) (approximately 14,000 acres), and wetland easements (approximately 33,000 acres). The Complex is located in Richland, Ransom, and Sargent counties of North Dakota. The Tewaukon Complex also administers three easement refuges: Lake Elsie, Storm Lake, and Wild Rice. The WPA's are all open to hunting, fishing, and trapping in accordance with the Code of Federal Regulations.

The Tewaukon National Wildlife Refuge Complex lies within the prairie pothole and tallgrass/mixed grass prairie ecosystem in southeastern North Dakota. High densities of a variety of shallow, productive wetlands surrounded by grasslands produce high quality migration and nesting habitat for migratory birds. Tewaukon is a mixing point for migrating birds of both the Central and Mississippi Flyways. The name "Tewaukon" is derived from an ancient tribal name Te Wauk Kon, roughly translated as Son of Heaven. The main water source for Tewaukon, the Wild Rice River, is a tributary of the Red River which flows through Fargo, North Dakota. A portion of the refuge fee title land, several WPA's, and wetland easements are located within the Sisseton-Wahpeton Indian Reservation boundary.

Waubay National Wildlife Refuge, located northeastern South Dakota, was established as "* * * a refuge and breeding ground for migratory birds and other wildlife: * * *." by Executive Order 7245, dated December 10, 1935. The word "Waubary" is of Sioux Indian original meaning "a nesting place for birds." The refuge covers 4,740 acres of grasslands, wetlands, native forests, and croplands. Present public use includes wildlife viewing, environmental education, deer hunting, ice fishing, hiking, and picnicking.

The Waubay WMD manages 40,000 acres of fee WPA's, 100,000 acres of waterfowl management rights easements and 125,000 waterfowl habitat protection easements in Clark, Codington, Day, Grant, Roberts, and Marshall counties of northeastern South Dakota.

Three distinct physiographic regions dominate the Waubay WMD, each with unique habitat properties. The *Coteau des Prairies,* a series of north to south parallel terminal moraines rising 800 feet or more in elevation above adjacent lowlands, covers nearly 80 percent of the WMD. Numerous glacial lakes and smaller wetland basins dot the Coteau. To the east and west of the Coteau lies the Minnesota River and James River Lowlands, respectively. These lowland areas contain flat, fertile, agricultural land that is more intensively cropped that the hilly Coteau grassland region. All WPA's are open to hunting, fishing, and trapping in accordance with the Code of Federal Regulations.

The Service will conduct a comprehensive conservation planning process that will provide opportunity for Tribal, State and local governments, agencies, organizations, and the public to participate in issue scoping and public comment. The Service is requesting input for issues, concerns, ideas, and suggestions for the future management of the Tewaukon and Waubay Complexes. Anyone interested in providing input is invited to respond to the following three questions.

(1) What makes the Tewaukon/Waubay Complexes (or any specific unit) special or unique for you?

(2) What problems or issues do you want to see addressed in the Comprehensive Conservation Plans?

(3) What improvements would you recommend for the Tewaukon/Waubay Complexes (or any specific unit)?

The Service has provided the above questions for your optional use. There is no requirement to provide information to the Service. The Planning Team developed these questions to facilitate finding out more information about individual issues and ideas concerning the Tewaukon/Waubay Complexes. Comments received by the Planning Team will be used as part of the planning process, individual comments will not be referenced in our reports or directly respond to.

There will also be an opportunity to provide input at open houses to be scheduled for February and/or March 1998 to scope issues and concerns (schedule can be obtained from the Planning Team Leader at the above address). All information provided voluntarily by mail, phone, or at public meetings becomes part of the official public record (e.g., names, addresses,

letters of comment, input recorded during meetings). If requested under the Freedom of Information Act by a private citizen or organization, the Service may provide copies of such information.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, Executive Order 12996, the National Wildlife Refuge System Improvement Act of 1997, and Service policies and procedures for compliance with those regulations.

We estimate that the draft environmental documents will be available for review in March 1999.

Dated: January 9, 1998.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 98–1204 Filed 1–16–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Technical/Agency Draft Recovery Plan for the Spruce-Fir Moss Spider for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the technical/agency draft recovery plan for the spruce-fir moss spider (*Microhexura montivaga*). Historically, at least five different mountain peaks in the Southern Appalachian Mountains of western North Carolina and eastern Tennessee are known to have supported populations of the spruce-fir moss spider. Today, however, only two small relict populations of the spider are known to survive—one on Grandfather Mountain in North Carolina and one on Mount LeConte in Tennessee. The typical habitat of the spruce-fir moss spider is found in well-drained moss mats growing on rocks and boulders in well-shaded situations in mature high-elevation conifer forests dominated by Fraser fir (*Abier fraseri*) and scattered red spruce (*Picea rubens*). These factors are deteriorating rapidly, primarily due to infestation and the resulting mortality of the fir by the balsam woolly adelgid (an exotic insect pest) and possibly air population and other factors now yet fully understood. The spider requires situations of high and constant humidity, and the loss of forest canopy, leading to increased light and decreased moisture on the forest floor (resulting in desiccation of the moss mats), appears to be the major threat to its continued existence. Unless new populations are found or reestablished and existing population are maintained, this species will remain in jeopardy of extinction for the foreseeable future. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on this technical/agency draft recovery plan must be received on or before March 23, 1998 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the technical/agency draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801 (Telephone 704/258–3939). Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. John Fridell, Fish and Wildlife Biologist, at the address and telephone number shown in the **ADDRESSES** section (Ext. 225).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is the spruce-fir moss spider (*Microhexura montivaga*). The area of emphasis for recovery actions includes the Southern Appalachian Mountains of western North Carolina and eastern Tennessee. Habitat protection, reintroduction, and the preservation of genetic material are the major objectives of this recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the final plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: January 6, 1998.

Brian P. Cole,

State Supervisor.

[FR Doc. 98–1232 Filed 1–16–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Closure to Collection of Petrified Wood Order Established; Folsom Field Office, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of petrified wood collecting closure order within public lands managed by the Folsom Field Office, California.

SUMMARY: Certain described public lands administered by the Folsom Field Office in the vicinity of the communities of Dutch Flat and Gold Run are hereby closed to the collection of petrified wood. This closure will be in effect on all the below described public lands:

Mount Diablo Meridian, California

T. 15 N., R. 10 E.,
Section 3: Lots 4,5;
Section 4: Lot 19;
Section 9: SWSE; Lots 3,4,5,7,8,9; MS1483;
Section 16: N/2NE, SWNE.

Totalling 320.29 acres, more or less.

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The following persons are exempted from the closure: Any person who is in possession of a valid Paleontological Collecting Permit issued by BLM for the subject area, or who is acting as an authorized agent of an institution holding such a permit.

DATES: This order is in effect and will remain in effect until amended or canceled.

FOR FURTHER INFORMATION CONTACT: Deane Swickard, Manager, Folsom Field Office, Bureau of Land Management, 63 Natoma Street, Folsom, CA 95630; (916) 985–4474.

SUPPLEMENTARY INFORMATION: This order is necessary for protection of uncommon plant macrofossils having significant scientific value, a local resource that has been seriously depleted by unregulated collecting.

Authority for Closure orders is provided under 43 CFR 8364.1. Any person who fails to comply with this closure or restriction order shall be subject to the penalties provided in 43 CFR 8360.0–7. Violations of this closure or restriction order are punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months. Any petrified wood collected in violation of this order, shall be subject to seizure, forfeiture and disposal.

Dated: January 8, 1998.

D. K. Swickard,

Field Manager.

[FR Doc. 98–1188 Filed 1–16–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–060–08–1610–00]

Notice of Intent to Initiate Plan Amendments and Associated Environmental Assessment for the Grand Resource Management Plan (RMP) and the San Juan RMP

SUMMARY: Since the completion of the Grand and San Juan RMPs in southeastern Utah, changes in the scope of land uses, public expectations, and new data has resulted in the need to re-examine certain current decisions in the RMP that may no longer provide for appropriate resource use or protection in the Lockhart Basin area.

ADDRESSES: Moab Field Office, 82 East Dogwood, Moab, Utah 84532.

SUPPLEMENTARY INFORMATION: Since the completion of the Grand RMP in 1985 and the San Juan RMP in 1991, extensive changes have occurred in the Lockhart Basin. Increased public awareness, sensitivity and expectations regarding resource use and protection has been evolving. The scope of activities and interest in certain types of resource use, such as recreation uses, and oil and gas industry interest including exploration and possible production has exceeded considerations and projections that were made in the associated Environmental Impact Statements of the above mentioned RMPs. Therefore, in accordance with 43 CFR 1610.5–5-Amendments, the field offices would like to request public involvement in the possible amendment of the subject RMPs. Currently, three preliminary issues have been identified that are proposed to be addressed during the plan(s) amendment process.

Issue One is the need to review current oil and gas categories to determine if changes are necessary to protect sensitive resources. Issue Two includes the need to determine if current management decisions can continue to provide necessary protection to important wildlife populations also located in the Lockhart Basin. Issue Three includes the need to review current management decisions regarding the protection of sensitive visual resources in light of the increased potential land uses also in the Lockhart Basin Area.

No additional planning criteria beyond those previously stated in the Draft Environmental Impact Statement for the above RMPs are planned at this time.

A complete inter-disciplinary team will be utilized for the completion of the proposed amendments and associated environmental assessment.

The Field Offices would like to take this opportunity to invite the public to comment on the above preliminary issues or any others that may need to be addressed for the Lockhart Basin Area. Public comments should be submitted by February 19, 1998 in order that they may be appropriately considered in the plan amendment process. All comments or concerns should be sent to Daryl Trotter, Environmental Protection Specialist at the address listed below.

Additional opportunities to facilitate public input will be offered by holding open public meetings at the following locations:

Moab Field Office; Moab, Utah on February 4,1998 from 6:00 pm to 8:00 pm and;

Monticello Field Office, Monticello, Utah on February 5, 1998 to 6:00 pm to 8:00 pm.

FOR FURTHER INFORMATION CONTACT: Daryl Trotter, Environmental Protection Specialist for the Moab Field Office, 82 East Dogwood, Moab, Utah 84532 at the following telephone number: (435) 259–61111 or fax (435) 259–2100.

Dated: January 13, 1998.

G. William Lamb,

Utah State Director.

[FR Doc. 98–1200 Filed 1–16–98; 8:45 am]

BILLING CODE 4310–08–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–350–1020–00]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Northeast California Resource Advisory Council, Susanville, California.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and the Federal Land Policy and Management Act (Public Law 94–579), the U.S. Bureau of Land Management's Northeast California Resource Advisory Council will meet Friday, Feb. 20, beginning at 8 a.m. at the Bureau of Land Management's Eagle Lake Field Office, 2950 Riverside Dr., Susanville, CA.

SUPPLEMENTARY INFORMATION: Beginning at 8:30 a.m., members will participate in an interactive teleconference with officials from the Department of the Interior and the BLM. Members will then discuss projects upcoming for the BLM's Eagle Lake, Alturas and Surprise field offices and determine advisory council involvement. Public comments will be taken at 1 p.m.

FOR ADDITIONAL INFORMATION: Contact Jeff Fontana, public affairs officer, at (530) 257–5381.

John Bosworth,

Acting Field Manager.

[FR Doc. 98–1201 Filed 1–16–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1220–00]

Notice of Meeting

AGENCY: Bureau of Land Management (BLM), Montana, Miles City District, Interior.

ACTION: Notice of meeting.

SUMMARY: The Miles City District Resource Advisory Council will have a meeting Wednesday, February 11, 1998 at 9:00 a.m. in the Western Heritage Center located at 2822 Montana Avenue in Billings, Montana. The meeting is called primarily to discuss access to public lands. Updates to several other on-going BLM projects will be given. The meeting is expected to last until 4:00 p.m.

The meeting is open to the public and the public comment period is set for 1:00 p.m. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying during regular business hours.

FOR FURTHER INFORMATION CONTACT: Marilyn Krause, Public Affairs Specialist, Miles City District, 111 Garryowen Road, Miles City, Montana 59301, telephone (406) 233–2831.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management. The 15 member Council includes individuals who have expertise, education, training or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the Council.

Dated: January 6, 1998

Timothy M. Murphy,

District Manager.

[FR Doc. 98–1234 Filed 1–16–98; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–960–1990–00]

Resource Advisory Council Meeting, Butte, MT

AGENCY: Butte District Office, Bureau of Land Management, DOI.

ACTION: Notice of Butte District Resource Advisory Council Meeting, Butte, Montana.

SUMMARY: The Council will convene at 8:30 a.m., Friday, February 20, 1998. The meeting will be held in conjunction with an interactive video teleconference concerning RAC operations and which will be led by Secretary Babbitt and Director Shea. All Resource Advisory Councils will be included in the teleconference.

The teleconference and meeting will be held at the Butte District Office, 106 N. Parkmont, Butte, Montana. The teleconference will begin at 9:00 a.m. and last until 12:00 noon MST. The RAC meeting will begin at 1:00 p.m.

The only issue that will be discussed at the meeting is the Whitetail/Pipestone Off Road Vehicle alternatives.

The meeting is open to the public and written comments may be given to the Council. Oral comments may be presented to the Council at 3 p.m. The time allotted for oral comment may be limited, depending on the number of persons wishing to be heard. Individuals who plan to attend and need further information about the meeting, or need special assistance, such as sign language or other reasonable accommodations, should contact the Butte District, 106 North Parkmont (P.O. Box 3388), Butte, Montana 59702–3388, telephone 406–494–5059.

FOR FURTHER INFORMATION CONTACT: Jim Owings at the above address or telephone number.

Dated: January 9, 1998.

James R. Owings,

District Manager.

[FR Doc. 98–1235 Filed 1–16–98; 8:45 am]

BILLING CODE 4310–DN–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–016–1430–00; CACA 38224]

Notice of Realty Action, Direct Sale of Public Land, El Dorado County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described public land (surface and mineral) is being considered for direct sale pursuant to Sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713 and 1719):

Mount Diablo Meridian

T. 8 N., R. 9 E.,
Sec. 24, lot 12;
Sec. 25, lot 13.

The area described contains .65 acres in El Dorado County.

The above described parcel of land would be sold to Mr. Gene Harm, an adjacent landowner, by direct sale, at fair market value. The disposal of this land will resolve an inadvertent trespass.

The parcel would be transferred subject to a reservation to the United States for a right-of-way for ditches and canals. The conveyance would also be made subject to section 24 of the Federal Power Act of June 20, 1920, as amended (16 U.S.C. 791a). All necessary clearances including clearances for archeology and for rare plants and animals would be completed prior to any conveyance of title by the United States.

The land described is hereby segregated from settlement under the public land laws including location and entry under the mining laws, pending disposition of this action, or 270 days from the date of publication of this notice, whichever occurs first.

ADDRESS: Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Folsom Field Office, 63 Natoma Street, Folsom, CA 95630.

DATES: On or before March 6, 1998, interested persons may submit comments to the Field Manager, Folsom Field Office at the above address.

FOR FURTHER INFORMATION CONTACT: John Beck, Realty Specialist, at the above address or by phone at (916) 985–4474.

Dated: January 8, 1998.

D.K. Swickard,

Field Manager.

[FR Doc. 98–1189 Filed 1–16–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–067–1110–00]

Prohibition Against Target Shooting; El Centro Resource Area, CDD, CA

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Prohibition against target shooting to conserve raptor habitat inside of the Table Mountain Area of Environmental Concern.

SUMMARY: This notice affects public lands under administration of El Centro Resource Area, CDD. The area includes public lands in the San Bernardino Meridian.

San Bernardino Meridian, San Diego County, California

T. 17S., R. 8E., sec. 26, W½, sec. 27, E½

The above listed lands located within the Table Mountain Area of Environmental Concern (ACEC) are hereby closed to shooting, except for legitimate hunting. These shooting regulations do not prohibit legitimate hunting activities and therefore do not

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conflict with State Fish and Game Regulations.

This prohibition is designed to protect raptor habitat. The Table Mountain ACEC specifically noted the habitat of raptor species and they were noteworthy in the designating of the ACEC. The ACEC Plan's goals are to maintain suitability of raptor habitat throughout the ACEC. Additionally, the Eastern San Diego County Management Framework Plan provides for protecting habitat for sensitive wildlife species with emphasis on raptors.

Signs will be posted in the area restricted and a map showing the exact location of the restricted area will be available at the El Centro Resource Area office in El Centro, CA 92243.

Any person who knowingly and willfully violates these prohibitions may be subject to a $1,000.00 fine or imprisonment for not longer than 12 months, or both, under authority of 43 CFR 8365.1–6 Supplementary Rules.

FOR FURTHER INFORMATION CONTACT: Area Manager, Bureau of Land Management, 1661 South 4th Street, El Centro, CA 92243 760–337–4400.

Dated: January 8, 1998.

Terry A. Reed,

Area Manager.

[FR Doc. 98–1187 Filed 1–16–98; 8:45 am]

BILLING CODE 4310–47–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[7–00160–ILM]

Interlakes Special Recreation Management Area

AGENCY: U.S.D.I. Bureau of Land Management (BLM), Redding Field Office; National Park Service (NPS), Whiskeytown National Recreation Area; Bureau of Reclamation (BOR), Shasta Area Office, California.

ACTION: Record of decision.

SUMMARY: BLM, NPS and BOR have approved a management plan detailing land management strategies for the Interlakes Special Recreation Management Area. Preparation of the management plan was a joint effort between the BLM, NPS, BOR and the U.S.D.A. Forest Service. The Forest Service has determined that the management plan is entirely consistent with the Record of Decision for the Shasta-Trinity National Forest Land and Resource Management Plan (1995).

SUPPLEMENTARY INFORMATION: The Draft Interlakes Plan and Environmental Impact Statement was released on March 6, 1997. The Final Interlakes Plan and Environmental Impact Statement was released on October 31, 1997.

FOR FURTHER INFORMATION CONTACT: Charles M. Schultz, Field Office Manager, Bureau of Land Management, 355 Hemsted Drive, Redding, CA., 96002.

Dated: January 12, 1998.

Francis Berg,

Acting Field Office Manager.

[FR Doc. 98–1199 Filed 1–16–98; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1430–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. January 8, 1998.

The plat representing the department resurvey of portions of the west boundary and of the subdivisional lines, the subdivision of section 18, and a metes-and-bounds survey in section 18, T. 6S., R. 5E, Boise Meridian, Idaho, Group 994, was accepted January 8, 1998.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

Dated: January 8, 1998.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 98–1233 Filed 1–16–98; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–950–5700–77; AZA 30390]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona; Correction

AGENCY: Bureau of Land Management.

ACTION: Correction.

SUMMARY: The Bureau of Land Management published a document in the **Federal Register** of October 9, 1997, concerning a proposed U.S. Forest Service withdrawal. This notice corrects several legal descriptions which did not reflect current survey information.

FOR FURTHER INFORMATION CONTACT: Beverly Everson or Doug Franch, Prescott National Forest, (520) 445–7253.

In the **Federal Register** issue of October 9, 1997, Vol. 62, No. 196, page 52770, third column, correct the legal description for T. 12½ N., R. 2 W., secs. 26, 27, and 35 to read:

Sec. 26, lot 4, lots 8 to 17 inclusive, and MS 4051;
Sec. 27, lots 1 to 6 inclusive, W½NW¼, and MS 4051;
Sec. 35, lots 2, 3, and 9, and MS 2648.

Following the legal description in column 3, line 37, change the area described from 1,620 acres to 1,677.25 acres.

Dated: January 9, 1998.

Michael A. Ferguson,

Deputy State Director Resources Division.

[FR Doc. 98–1191 Filed 1–16–98; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Yosemite Valley Implementation Plan Supplemental Environmental Impact Statement; Yosemite National Park, California; Extension of Public Comment Period

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190 as amended), the National Park Service, Department of the Interior, has prepared a Draft Supplemental Environmental Impact Statement assessing alternatives for, and potential impacts of, a proposed Yosemite Valley Implementation Plan for Yosemite National Park, California. In deference to public interest expressed to date from local governmental agencies, organizations, and other interested parties, the original 75 day public comment period has been extended an additional 31 calendar days to February 23, 1998.

SUPPLEMENTARY INFORMATION: Written comments on the draft document must now be received or post-marked *not later than February 23, 1998*, and should be directed to the Superintendent, Attn: VIP Planning, Yosemite National Park, P.O. Box 577, Yosemite, CA 95389, (209) 372–0202. Comments may also be submitted through the National Park Service planning page: Yosemite Valley Implementation Plan/Supplemental Environmental Impact Statement. Also, open houses and public workshops have previously been conducted in several California cities; during the extended comment period, additional workshops are to be held in Yosemite gateway communities. Complete details may be obtained as noted above.

Dated: January 9, 1998.

John J. Reynolds,

Regional Director, Pacific West.

[FR Doc. 98–1196 Filed 1–16–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Subsistence Resource Commission Meeting

SUMMARY: The Superintendent of Lake Clark National Park and the Chairperson of the Subsistence Resource Commission for Lake Clark National Park announce a forthcoming meeting of the Lake Clark National Park Subsistence Resource Commission. The public is welcome to attend the meeting.

The following agenda items will be discussed:

(1) Chairman's welcome.
(1) Introduction of Commission members and guests.
(2) Review agenda.
(4) Approval of minutes of last meeting.
(5) Old business:
a. Roster regulation.
New Business:
a. Customary and traditional use of sheep by the villages of Iggiguk and Kokhanok.
b. Review proposal to change Federal Subsistence Management regulations.
c. Resource update.
d. Hunting plan format.
e. Subsistence Resource Commission appointments.
(7) Agency comments and public comments.
(8) Determine time and date of next meeting.
(9) Adjournment.

DATES: The meeting will be held Monday, February 9, 1998 and Tuesday, February 10, 1998. The meeting will begin on February 9, 1998 at 1:30 p.m. with an evening session at 7:00 p.m. The meeting will reconvene on February 10, 1998 at 9:00 a.m.

LOCATION: The meeting will be held at the Newhalen City Hall, Newhalen, Alaska.

FOR FURTHER INFORMATION CONTACT: Bill Pierce, Superintendent, Lake Clark National Park and Preserve, 4230 University Drive #311, Anchorage, Alaska 99508. Phone (907) 271–3751.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

Paul R. Anderson,

Regional Director, Alaska Region.

[FR Doc. 98–1197 Filed 1–16–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 10, 1998. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by February 4, 1998.

Carol D. Shull,

Keeper of the National Register.

Arizona

Maricopa County

Idylwilde Park Historic District, Roughly bounded by 11th and 12th Sts., Weldon, and Fairmont Aves., Phoenix, 98000054
Rittenhouse Elementary School, Ellsworth Rd., 1 mi. N of Rittenhouse Rd., Queen Creek, 98000053

Pima County

Greenway, John and Isabella, House, 1 Greenway House Dr., Ajo, 98000052

Florida

Hendry County

Executive House, 125 W. Del Monte Ave., Clewiston, 98000059
Hendry, Capt. Francis A., House, 512 Fraser St., LaBelle, 98000061

Manatee County

Austin House (Whitfield Estates Subdivision MPS), 227 Delmar Ave., Sarasota vicinity, 98000062

Sarasota County

House at 507 Jackson Drive, 507 Jackson Drive, Sarasota, 98000060

Volusia County

Dunlawton Avenue Historic District (Port Orange MPS), Roughly along Dunlawton Ave. to Lafayette Ave., and Orange Ave. and Wellman St., Port Orange, 98000055
Grace Episcopal Church and Guild Hall (Port Orange MPS), 4100 Ridgewood Ave., Port Orange, 98000058
Halifax Drive Historic District (Port Orange MPS), Roughly along Halifax Dr. from Dunlawton to Herbert St., Port Orange, 98000056
Port Orange Florida East Coast Railway Freight Depot (Port Orange MPS), 415C Herbert St., Port Orange, 98000057

Illinois

Cook County

Belmonte Flats, 4257–4259 S. Dr. Martin Luther King Jr. Dr., and 400–412 E. 43rd St., Chicago, 98000063
Church of the Epiphany, 201 S. Ashland Ave., Chicago, 98000067

Jersey County

Brainerd, Charles, House (Grafton MPS), 420 E. Main St., Grafton, 98000065

Lake County

Chicago, Milwaukee and St. Paul Railway Passenger Depot, 860 Deerfield Rd., Deerfield, 98000066
Proctor Building, 520–30 N. Milwaukee Ave., Libertyville, 98000064

Iowa

Johnson County

State Quarry, Old, 0.1 mi S of S end of Rice Ridge Ln. NE, Coralville Lake, North Liberty vicinity, 97001676

Missouri

DeKalb County

DeKalb County Courthouse, 109 W. Main St., Maysville, 98000068

Howard County

Fayette Courthouse Square Historic District, Roughly along S. Main and N. Main, W. Morrison, E. Morrison, N. Church, and W. Davis Sts., Fayette, 98000069

Nebraska

Douglas County

Franklin School, 4302 S. 39th Ave., Omaha, 98000070

New York

Suffolk County

USS San Diego (Shipwreck), Address Restricted, Fire Island vicinity, 98000071

Ohio

Cuyahoga County

Forest Hill Park, Roughly along Lee Blvd., Superior, Terrace, and Mayfield Rds., East Cleveland, 98000072

Oklahoma

Kay County

Tipton, J.P., Farmstead, 3.1 mi. E of Newkirk, Newkirk vicinity, 98000073

South Dakota

Hughes County

Pierre Hill Residential Historic District, Roughly bounded by Huron Ave., Elizabeth St., Euclid Ave. and Broadway, Pierre, 98000075

Lincoln County

Canton Asylum for American Indians Cemetery, N of jct. of US 18 and Chicago Milwaukee St. Paul and Pacific RR Tracks, Canton, 98000074

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Wisconsin

Waukesha County

Ten Chimneys, S42 W31610 Depot Rd., Genesee, 98000076

[FR Doc. 98–1195 Filed 1–16–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities; Existing Collection; Comments Request

ACTION: Notice of information collection under review; Extension of a currently approved collection: Regional Community Policing Institute Quarterly projection report.

Office of Management and Budget approval is being sought for the information collection listed below. This collection was previously published in the **Federal Register** on October 28, 1997, allowing for a 60 day public comment period. No comments were received by the Office of Community Oriented Policing Services.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 19, 1998. This process is conducted in accordance with 5 CFR 3120.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs: Attention: Ms. Victoria Wassmer, 202–395–5871, Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile on 202–395–7285.

Written comments and suggestions from the public and affected agencies concerning this collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments may also be submitted to the Department of Justice, Justice Management Division, Information Management and Security Staff, Attention Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile on 202–514–1590.

Overview of this collection

(1) *Type of Information Collection:* Extension of Currently Approved Collection.

(2) *Title of the Form/Collection:* Regional Community Policing Institute Quarterly Projection Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: COPS 22/02. Office of Community Oriented Policing Services, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Regional Community Policing Institutes funded through a one-year cooperative agreement from the COPS Office are required to respond.

The Regional Community Policing Institute Quarterly Projection Report will be completed by each Regional Community Policing Institute. The information collection provides a quarterly projection of plans for performing the training and technical assistance functions of this program, as well as information concerning any changes or modifications requested in the project or cooperative agreement budgets.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Estimated number of respondents: 35. Estimated time for average respondent to respond: 2 hours quarterly (including record-keeping).

(6) *An estimate of the total public burden (in hours) associated with the collection:* Approximately 280 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: January 7, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–1179 Filed 1–16–98; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 et seq.

Notice is hereby given that a proposed consent decree in *United States* v. *Armco Inc.*, Civil Action No. C2–95–698, was lodged on December 22, 1997, with the United States District Court for the Southern District of Ohio.

The proposed consent decree provides for the payment by defendant Armco Inc. for past costs incurred by the United States in connection with the Fultz Landfill Superfund Site (the "Site"), located near Cambridge, Ohio. Under the consent decree, the United States will provide Armco Inc. with a covenant not to sue or take administrative action pursuant to Sections 106 and 107 of CERCLA, in connection with the Site, subject to certain restrictions and limitations. The consent decree also restricts actions that Armco Inc. may take regarding litigation or settlement with others not party to the consent decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Armco Inc.*, DOJ Ref. #90–11–3–856A.

The proposed consent decree may be examined at the office of the United States Attorney, Southern District of Ohio, 280 N. High Street, 4th Floor, Columbus, Ohio, 43215; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $7.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–1240 Filed 1–16–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive, Environmental Response, Compensation and Liability Act ("CERCLA")

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Beaunit Corporation, et al.*, (W.D.N.C.), Civil Action No. 5:97CV198–MCK, was lodged on December 18, 1997, with the United States District Court for the Western District of North Carolina.

In this action the United States sought injunctive relief and recovery of response costs under Sections 106(a) and 107 of CERCLA, 42 U.S.C. 9606(a) and 9607, with respect to the FCX-Statesville Superfund Site, located in Iredell County, North Carolina ("the Site") the location of a textile plant owned and operated from 1927 to the present by a succession of several entities including El Paso Natural Gas Company, Beaunit Corporation and Burlington Industries, Inc., the current owner.

Under a proposed Consent Decree, El Paso Natural Gas Company has agreed to perform EPA's selected Site remedy for Operable Unit No. 3 which includes any contingency measures that EPA may determine to be necessary. If EPA determines that contingency measures are necessary, Burlington Industries Inc. will also be responsible for performing such response actions. Beaunit will be responsible for paying all of EPA's future response costs. El Paso Natural Gas Company and Burlington Industries, Inc., have previously reimbursed EPA of all of its past response costs pursuant to a June 1993 Administrative Order On Consent.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Beaunit Corporation, et al.*, DOJ Ref. #90–11–3–1698.

The proposed consent decree may be examined at the office of the United States Attorney, 324 West Market Street 4th Floor, Greensboro, North Carolina, 27402; the Region 4 Office of the Environmental Protection Agency, 61 Forsythe Street, Atlanta, Georgia 30303, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $54.75 (25 cents per page reproduction costs), payable to the Consent Decree Library. In requesting a copy exclusive of exhibits, please enclose a check for $26.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–1241 Filed 1–16–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Stipulation and Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Stipulation and Settlement Agreement in *In re HBSA Industries, Inc., et al.*, Case Nos. 91–12864/12866/12868/12869/12871/12872, was lodged on December 29, 1997 in the United States Bankruptcy Court for the Western District of New York.

The Stipulation and Settlement Agreement resolves the United States' claim, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607, for response costs incurred by EPA at the Chase Interiors, Inc., Superfund Site ("the Site") in Falconer, New York. Under the Stipulation and Settlement Agreement, the United States will receive $126,500 in reimbursement of response costs incurred by EPA at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Stipulation and Settlement Agreement. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *In re HBSA Industries, Inc., et al.*, DOJ Ref. #90–11–3–1432.

The proposed Stipulation and Settlement Agreement may be examined at the office of the United States Attorney, Federal Center, 138 Delaware Avenue, Buffalo, New York; the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy please refer to the referenced case and enclose a check made payable to the Consent Decree Library in the amount of $3.00 (25 cents per page reproduction costs).

Bruce S. Gelber,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–1239 Filed 1–16–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Storage Industry Consortium—Multiple Optical Recording Enhancements ("MORE") Project

Notice is hereby given that, on November 12, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Storage Industry Consortium ("NSIC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the project are NSIC, San Diego, CA; Calimetrics, Inc., Emeryville, CA; Energy Conversion Devices, Inc., Troy, MI; and Polaroid Corporation, Cambridge, MA.

The area of planned activity for the MORE Project is research in the area of

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write-once and rewritable optical disc storage media and devices.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–1238 Filed 1–16–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

DNA Advisory Board Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given that the DNA Advisory Board (DAB) will meet on February 19, 1998, from 10:00 am until 5:00 pm at The Washington Dulles Airport Hilton Hotel, 13869 Park Center Road, Herndon, Virginia 20171. All attendees will be admitted only after displaying personal identification which bears a photograph of the attendee.

The DAB's scope of authority is: To develop, and if appropriate, periodically revise, recommended standards for quality assurance to the Director of the FBI, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analysis of DNA: To recommend standards to the Director of the FBI which specify criteria for quality assurance and proficiency tests to be applied to the various types of DNA analysis used by forensic laboratories, including statistical and population genetics issues affecting the evaluation of the frequency of occurrence of DNA profiles calculated from pertinent population database(s); To recommend standards for acceptance of DNA profiles in the FBI's Combined DNA Index System (CODIS) which take account of relevant privacy, law enforcement and technical issues; and, To make recommendations for a system for grading proficiency testing performance to determine whether a laboratory is performing acceptably.

The topics to be discussed at this meeting include: a review of minutes from the September 23, 1997, meeting; discussion of comments on the Quality Assurance Standards for DNA Testing Laboratories, as approved at the February 22, 1997 meeting; and a discussion of topics for the next DNA Advisory Board meeting.

The meeting is open to the public on a first-come, first seated basis. Anyone wishing to address the DAB must notify the Designated Federal Employee (DFE) in writing at least twenty-four hours before the DAB meets. The notification must include the requestor's name, organizational affiliation, a short statement describing the topic to be addressed, and the amount of time requested. Oral statements to the DAB will be limited to five minutes and limited to subject matter directly related to the DAB's agenda, unless otherwise permitted by the Chairman.

Any member of the public may file a written statement for the record concerning the DAB and its work before or after the meeting. Written statements for the record will be furnished to each DAB member for their consideration and will be included in the official minutes of a DAB meeting. Written statements must be type-written on 8½" X 11" xerographic weight paper, one side only, and bound only by a paper clip (not stapled). All pages must be numbered. Statements should include the Name, Organizational Affiliation, Address, and Telephone number of the author(s). Written statements for the record will be included in minutes of the meeting immediately following the receipt of the written statement, unless the statement is received within three weeks of the meeting. Under this circumstance, the written statement will be included with the minutes of the following meeting. Written statements for the record should be submitted to the DFE.

Inquiries may be addressed to the DFE, Dr. Dwight E. Adams, Chief, Scientific Analysis Section, Laboratory Division—Room 3266, Federal Bureau of Investigation, 935 Pennsylvania Avenue, N.W., Washington, DC 20535–0001, (202) 324–4416, FAX (202) 324–1462

Dated: January 12, 1998.

Dwight E. Adams,

Chief, Scientific Analysis Section, Federal Bureau of Investigation.

[FR Doc. 98–1205 Filed 1–16–98; 8:45 am]

BILLING CODE 4410–02–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–004)]

Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: Thursday, February 12, 1998, 1:00 p.m. to 2:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW., Room 9H40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Norman B. Starkey, Code Q–1, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–4453.

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel will present its annual report to the NASA Administrator and Deputy Administrator. This is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The major subjects covered will be the National Space Transportation System, Space Station, and Aeronautical Operations. The Aerospace Safety Advisory Panel is currently chaired by Richard D. Blomberg, Deputy Chairman, and is composed of 8 members and 6 consultants. The meeting will be open to the public up to the capacity of the room (approximately 60 persons including members of the Panel).

Frederick D. Gregory,

Associate Administrator for Safety and Mission Assurance.

[FR Doc. 98–1272 Filed 1–16–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–005)]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee.

DATES: Wednesday, February 18, 1998, 8:30 a.m. to 5:30 p.m.; Thursday, February 19, 1998, 8:15 a.m. to 5:30 p.m.; Friday, February 20, 1998, 8 a.m. to 12 Noon.

ADDRESSES: Ballroom, Moffett Training and Conference Center, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey Rosendhal, Code S, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2470 .

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—NASA/OSS UPDATE/FY 1999 Budget Request/Response to Prior SScAC Recommendations
—Technology Planning, Funding, Selection, Support of Strategic Plan
—Research Program Update
—Grants Process Study
—AMES Research Center Overview

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 12, 1998.

Alan Ladwig,

Associate Administrator for Policy and Plans.

[FR Doc. 98–1273 Filed 1–16–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Scientific Computing; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Scientific Computing (#1185).

Date and Time: February 2, 1998, 8:30 a.m. to 5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 11250, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. John Van Rosendale, Program Director, New Technologies Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1962.

Purpose of Meeting: To provide recommendations and advice concerning proposals submitted to NSF for financial support.

Agenda: Panel review of the New Technologies Program proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 12, 1998.

M. Rebecca Winkler,

Committee Manager Officer.

[FR Doc. 98–1256 Filed 1–16–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: February 5 & 6, 1998, 8:00 am–5:00 pm each day.

Place: National Science Foundation, 4201 Wilson Boulevard, Rooms 370 & 390, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Elizabeth Lyons, Dr. Meredith Blackwell, Dr. Gus Shaver, Division of Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1481.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Doctoral Dissertation Improvement Grants research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: January 12, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–1253 Filed 1–16–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: February 4–6, 1998.

Place: National Science Foundations, 4201 Wilson Boulevard, Rooms 310 & 340, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Elizabeth Lyons & Dr. Charles O'Kelly, Division of Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1481.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Doctoral Dissertation Research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: January 12, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–1261 Filed 1–16–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Computer-Communications Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Computer-Communications Research (1192).

Date: February 9, 11, and 13, 1998.

Time: 8:00 a.m.–5:00 p.m.

Place: Rooms 1150 and 310, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Peter Scheuermann, Program Director/Computer Systems Software, C–CR, room 1145, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, 703/306–1912.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate Computer Systems Software proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 16, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–1254 Filed 1–16–98; 8:45 am]

BILLING CODE 7555–01–M

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NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Computer-Communications Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Computer-Communications Research (1192).
Date: February 5–6, 1998 and February 17–18, 1998.
Time: 8:00 a.m.–5:00 p.m.
Place: Rooms 365, 330, and 770, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Time of Meeting: Closed.
Contact Person: Dr. John H. Cozzens, Program Director/Signal Processing Systems, C–CR, room 1155, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, 703/306–1936.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.
Agenda: To review and evaluate Signal Processing Systems proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 12, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–1259 Filed 1–16–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Computer—Communications Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting. Special Emphasis Panel in Computer—Communications Research.

Name: Special Emphasis Panel in Computer—Communications Research (1192).
Date: February 3–5, 1998.
Time: 8:00 a.m. to 5:00 p.m.
Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, February 3–5, Room 1150, February 3–5, Room 1120.
Type of Meeting: Closed.
Contact Person(s): Frank D. Anger, Program Director, Software Engineering and Languages Program, CISE/C–CR, Room 1145, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.
Telephone: (703) 306–1911.
Purpose of Meeting: To provide advice and recommendations for the Software Engineering and Languages Program (SEL) by providing review of a group of approximately 100 proposals with special attention to changing emphases for that program.
Agenda: Review and evaluate proposals SEL proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 12, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–1262 Filed 1–16–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Division of Graduate Education, Notice of Meeting

This notice is being published in accord with the Federal Advisory Committee Act (Pub. L. 92–463, as amended). During the period February 7 through 19, 1998, the Special Emphasis Panel will be meeting to review and evaluate fellowship applications. The dates, contact person, and types of applications are as follows:

Special Emphasis Panel in Division of Graduate Education (57)

Date: February 7–14, 1998.
Contact: Susan Duby, Program Director, Division of Graduate Education, Room 907, 703–306–1694.
Type of Proposal: Graduate Fellowship applications.
Date: February 17–19, 1998.
Contact: Susan Duby, Program Director, Division of Graduate Education, Room 907, 703–306–1694.
Type of Proposal: Minority Graduate Fellowship applications.
Times: 8:00 a.m. to 5:00 p.m. each day.
Place: Washington Marriott Hotel, 1221 22nd Street, NW, Washington, DC.
Type of Meetings: Closed.
Purpose of Meeting: To provide advice and recommendations concerning applications submitted to NSF for financial support.
Agenda: To review and evaluate applications submitted to the Directorate as part of the selection process for awards.
Reason for Closing: The applications being reviewed include information of a proprietary or confidential nature, including technical information and personal information concerning individuals associated with the applications. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 12, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–1260 Filed 1–16–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Information and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information and Intelligent Systems (1200).
Date and Time: February 10–12, 1998, 8:30 am–5:00 pm.
Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Dr. Gary Strong, Acting Deputy Division Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1928.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate Information Data Management Program proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 22, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–1252 Filed 1–16–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Information and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information and Intelligent Systems (1200).
Date and Time: February 2–3, 1998, 8:30 am–5:00 pm.
Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of Meeting: Closed.

Contact Person: Dr. Gary Strong, Acting Deputy Division Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1928.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate Robotics and Human Augmentation Program, "Robotics Panel" proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matter are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: December 22, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–1258 Filed 1–16–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Research, Evaluation and Communication; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Research, Evaluation and Communication.

Date and Time: February 9–10, 1998, 8:00 am to 5:00 pm; February 12–13, 1998; 8:00 am to 5:00 pm.
Place: Rooms 365, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Dr. Nora Sabelli, Senior Program Director, 4201 Wilson Blvd., Room 855, Arlington, VA 22230. Telephone (703) 306–1651.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate proposals and provide advice and recommendations as part of the selection process for proposals submitted to the Research on Education, Policy and Practice (REPP) Program.
Reason for Closing: Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: January 16, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–1255 Filed 1–16–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Social, Behavioral, and Economic Sciences; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Social, Behavioral, and Economic Sciences will be holding panel meetings for the purpose of reviewing proposals submitted to the Division of International Programs for the Summer Programs in Japan and Korea. In order to review the large volume of proposals, panel meetings will be held on February 2–3, 1998. All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Blvd., Arlington, Va. from 8:30 to 5:00 each day.

Contact Person: Randall Soderquist, Program Manager, or Thomasina Edwards, Program Assistant, Division of International Programs, NSF, Room 935, 4201 Wilson Blvd., Arlington, VA 22230 (703) 306–1701.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 12, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–1257 Filed 1–16–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Regulatory Information Conference; Notice of Meeting

SUMMARY: The objectives of the conference are to give the licensees and the public insights into our approach to safety regulations and to provide a forum for feedback from those in attendance on their concerns about our overall approach, as well as, feedback on differences that may exist on technical issues. NRC staff will provide information regarding on-going programs and potential new initiatives as a basis for discussion.

Discussions will proceed from general (*i.e.*, the plenary sessions) to specific issues (*i.e.*, the breakout sessions), with emphasis on plant operations and the NRC view of these operations based on experience in carrying out its regulatory mission. Three plenary sessions are planned, two of which will be followed by breakout sessions that will include presentations by the NRC staff and industry representatives.

DATES: Conference will be held April 14 and 15, 1998.

ADDRESSES: The conference will be held at The Capital Hilton Hotel, 16th and K Street, N.W., Washington, DC 20036 TELEPHONE: (202) 393–1000 FAX (202) 639–5742 (Refer to NRC Meeting for special conference rate.)

FOR REGISTRATION INFORMATION CONTACT: ES, Inc., by facsimile on (202) 835–0118 or by phone on (202) 835–1585, *after January 20, 1998.*

Participation

This conference is open to the general public; however, advance registration is required by *March 23, 1998.* The following is the preliminary program for the conference:

Tuesday, April 14, 1998

Opening: 8:30 a.m.—8:45 a.m.
Welcome—Samuel J. Collins, Director, Office of Nuclear Reactor Regulation, NRC
Morning Speaker: Chairman Shirley Ann Jackson
8:45 a.m.–9:15 a.m.
Morning Plenary Session: 9:15 a.m.–10:00 a.m.
Regulatory Trends—Samuel J. Collins
Mid-Morning Speaker: Commissioner Nils J. Diaz
10:15 a.m.–11:00 a.m.
Mid-Morning Plenary Session: 11:00 a.m.–12:30 p.m.
Regional Administrators' Panel: Each Regional Administrator will make a presentation on a topic of current interest.
Post Luncheon Speaker: Commissioner Greta J. Dicus
1:15 p.m.–1:45 p.m.
Breakout Sessions 2:30 p.m.–3:30 p.m.
1. Restructuring and Deregulation
2. Architect/Engineer Inspections
3. Maintenance Rule
4. Public Communications Initiatives
Breakout Sessions 3:45 p.m.–5:00 p.m.
1. Allegations/Enforcement Issues
2. Probabilistic Risk Assessment Issues
3. The Role of Industry
4. Role of Potassium Iodide in

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Emergency Response
Afternoon Speaker: New Commissioner, if appointed
5:00 p.m.–5:30 p.m.

Wednesday, April 15, 1998

Morning Speaker: Commissioner Edward McGaffigan, Jr.
8:30 a.m.–9:00 a.m.
Breakout Sessions 9:05 a.m.–10:15 a.m.
1. Region I/Licensee Interface & Communications
2. Region II/Licensee Interface & Communications
3. Region III/Licensee Interface & Communications
4. Region IV/Licensee Interface & Communications

Breakout Sessions 10:30 a.m.–12:00 noon
1. 10 CFR 50.59
2. Strategic Planning/Operating Plan/ Budget
3. Generic Letter 96–06, "Assurance of Equipment Operability and Containment Integrity During Design Basis Accident Conditions"
4. Licensing Actions/ Technical Specification Conversions

Post-Luncheon Speaker: TBD
1:30 p.m.–2:00 p.m.
Breakout Sessions 2:45 p.m.–4:00 p.m.
1. Improvements to NRC's Performance Assessment Process
2. License Renewal
3. Spent Fuel Storage/Dry Cask Issues
4. Core Performance/Fuels Issues

Closing Plenary Session: 4:15 p.m.–4:45 p.m.
Summary/Closing—Samuel J. Collins

Note: There will be a question and answer period after each session each day.

Next year's conference is scheduled for April 6 and 7, 1999, at The Capital Hilton Hotel, Washington, DC.

Dated in Rockville, Maryland this 12th day of January 1998.

For The Nuclear Regulatory Commission.

Kathryn O. Greene,

Chief, Administration Branch, Division of Inspection and Support Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 98–1211 Filed 1–16–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–3013 (which should be mentioned in all correspondence concerning this draft guide), is titled "Nuclear Criticality Safety Standards for Fuels and Material Facilities." The guide is intended for Division 3, "Fuels and Materials Facilities." This draft guide is being developed to provide guidance on procedures for preventing nuclear criticality accidents in operations involving handling, processing, storing, and transporting special nuclear material at fuels and materials facilities. The guide will also endorse 13 standards on nuclear criticality safety that have been developed by the American National Standards Institute/ American Nuclear Society.

The draft guide has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on Draft Regulatory Guide DG–3013. Comments may be accompanied by additional relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by March 31, 1998.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Printing, Graphics and Distribution Branch; or by fax at (301) 415–5272. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 6th day of January 1998.

For the Nuclear Regulatory Commission.

Joseph A. Murphy,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 98–1213 Filed 1–16–98; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

[Order No. 1205; Docket No. A98–1]

In the Matter of Nassau, Minnesota 56272 (James Schneichel, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued January 14, 1998.

Docket Number: A98–1.

Name of Affected Post Office: Nassau, Minnesota 56272.

Name(s) of Petitioner(s): James Schneichel.

Type of Determination: Closing.

Date of Filing of Appeal Papers: December 22, 1997.

Categories of Issues Apparently Raised

1. Effect on the community (39 U.S.C. 404(b)(2)(A)).
2. Effect on postal services (39 U.S.C. 404(b)(2)(C)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by January 29, 1998.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Cyril J. Pittack,

Acting Secretary.

Nassau, Minnesota 56272

[Docket No. A98–1]

Appendix

December 22, 1997: Filing of Appeal letter.
January 14, 1998: Commission Notice and Order of Filing of Appeal.
February 3, 1998: Last day of filing of petitions to intervene (see 39 CFR 3001.111(b)).
February 13, 1998: Petitioner's Participant Statement or Initial Brief (see 39 CFR 3001.115 (a) and (b)).
March 2, 1998: Postal Service's Answering Brief (see 39 CFR 3001.115(c)).
March 17, 1998: Petitioner's Reply Brief should Petitioner choose to file one (see 39 CFR 3001.115(d)).
March 24, 1998: Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116).
April 21, 1998: Expiration of the Commission's 120-day decisional schedule (see 39 U.S.C. 404(b)(5)).

[FR Doc. 98–1275 Filed 1–16–98; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of January 19, 1998.

A closed meeting will be held on Wednesday, January 21, 1998, at 3:00 p.m. An open meeting will be held on Thursday, January 22, 1998, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, January 21, 1998, at 3:00 p.m., will be:

Institution and settlement of injunctive actions
Institution and settlement of administrative proceedings of an enforcement nature

The subject matter of the open meeting scheduled for Thursday, January 22, 1998, at 10:00 a.m., will be:

The Commission will consider adopting (1) a rule requiring plain English for the cover page, summary, and risk factor sections of prospectuses filed under the Securities Act of 1933; and (2) codifying earlier interpretive advice on how public companies can comply with the current rule that prospectuses be clear, concise and understandable. The purpose of the proposed change is to make prospectuses simpler, clearer, more useful, and more used. For further information, please contact David Maltz at (202) 942–1921.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: January 14, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–1296 Filed 1–14–98; 4:01 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39524; File No. SR–CBOE–97–57]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to an Extension of the Permissible Maturity Term of FLEX Equity Options

January 8, 1998.

I. Introduction

On October 23, 1997 the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit a FLEX equity option to have a term of five years in certain circumstances.

The proposed rule change was published for comment in the **Federal Register** on November 14, 1997.[3] No comments were received on the proposal. This order approves the proposal.

II. Description

The CBOE is proposing to allow FLEX equity options[4] traded on the Exchange to have a maturity beyond three years and up to five years when the longer term is requested by a submitting member and the FLEX Post Official[5] determines that sufficient liquidity exists among Equity FLEX Qualified Market Makers. Currently, FLEX equity options, by operation of Rule 24A.4(a)(4)(i), are limited to a maturity of three years.

When the Exchange filed for permission to list and trade FLEX equity options[6] it determined to limit the maturity of these options to three years because, unlike FLEX Index options which had been traded on the Exchange since February 1993 and which could have a maturity of up to five years, the Exchange was concerned that there would not be sufficient liquidity in many equity option classes to support series with a longer term to expiration. The CBOE represents, however, that since it has traded FLEX equity options, the Exchange has had numerous requests from broker-dealers to extend the maturity of FLEX equity options to five years. According to the Exchange, among the reasons the broker-dealer firms have been interested in seeking an extension in the allowable maturity is that such longer expiration FLEX equity options might be used to hedge a firm's issuance of long-term structured products linked to returns of an individual stock. The Rule would permit the longer term FLEX equity options (up to a maximum of five years) to be listed when requested by the submitting member if the FLEX Post

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 39305 (November 6, 1997), 62 FR 61156 (November 14, 1997).

[4] FLEX equity options are flexible exchange-traded options contracts which overlie equity securities. In addition, FLEX equity options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

[5] Under CBOE Rule 24A.1(g), a FLEX Post Official is the Exchange employee designated pursuant to Rule 24A.12 to perform the FLEX post functions set forth in that rule.

[6] SR–CBOE–95–43 approved in Exchange Act Release No. 36841 (February 14, 1996), 61 FR 6666 (February 21, 1996).

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Official determined that sufficient liquidity existed among Equity FLEX Qualified Market Makers. The CBOE believes that by allowing for the extension of the maturity of FLEX equity options to five years in situations where there is demand for a longer term expiration and where there is sufficient liquidity among Exchange qualified market-makers to support the request, the proposed rule change will better serve the needs of CBOE's customers and the Exchange members who make a market for such customers.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[7] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[8] requirement that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.[9]

The Commission believes it is appropriate to extend the maximum permissible maturity term of FLEX equity options to five years for several reasons. First, FLEX equity options with a maturity term of up to five years should benefit investors by allowing them to hedge positions on a longer term basis through investment in one options series, rather than having to roll shorter term expirations into new series to remain hedged on a longer basis. In this regard, the Commission notes that the FLEX equity options market is characterized by large, sophisticated institutional investors (or extremely high net worth individuals) who have the experience, ability and, in many cases, need to engage in negotiated, customized transactions.[10] The longer-term FLEX equity options will allow investors to customize their portfolios further over an extended period of time. Second, the extension of the permissible maturity term for FLEX equity options to five years potentially could expand the depth and liquidity of the FLEX equity market without significantly increasing concerns regarding intermarket manipulations or disruptions of the options or the underlying securities.[11] Third, under the rule, FLEX equity options with maturity terms between three and five years could only be issued if a FLEX Post Official determines that there is sufficient liquidity among Equity FLEX Qualified Market Makers. This will help to ensure that there is not a proliferation of longer term FLEX equity options series where no interest in trading such options exist. Finally, as with all exhange-traded options, the Options Clearing Corporation will act as the counter-party guarantor, thereby ensuring that obligations will be met over the long-term.[12]

For the foregoing reasons, the Commission finds that CBOE's proposal to extend the permissible maturity term of certain FLEX equity options, as described above, is consistent with the requirements of the Act and the rules and regulations thereunder.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–CBOE–97–57) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–1180 Filed 1–16–98; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] For example, with a required minimum size of 250 contracts to open a transaction in a new series, FLEX equity options are designed to appeal to institutional investors. *See* Exchange Act Release No. 36841 (February 14, 1996), 61 FR 6666, 6669 (February 21, 1996); *see also* Exchange Act Release No. 37336 (June 19, 1996), 61 FR 33558, 33560, (June 27, 1996).

[11] Position and exercise limits for FLEX equity options have recently been eliminated. *See* Exchange Act Release No. 39032 (Sept. 9, 1997), 62 FR 48683 (Sept. 16, 1997). In eliminating these limits, the Exchange adopted several important safeguards to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if necessary. These safeguards also continue to apply to large positions in FLEX equity options regardless of the term of the option.

[12] As to any future proposal to permit options instruments with terms longer than five years, the Commission would need to re-evaluate several issues including margin requirements, disclosure, sales practices, and other legal and regulatory issues.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39541; File No. SR–MSRB–98–1]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Interpretation of Rule G–38 on Consultants

January 12, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4, thereunder,[2] notice is hereby given that on January 9, 1998,[3] the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change, (File No. SR–MSRB–98–1), as described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith a notice of interpretation concerning Rule G–38 on consultants (hereafter referred to as "the proposed rule change"). The proposed rule change is as follows:

Rule G–38 Questions and Answer Bank Affiliates and Definition of Payment

Q: A bank and its employees communicate with an issuer on behalf of an affiliated dealer to obtain municipal securities business for that dealer. In return, the bank and its employees receive certain "credits" from the dealer. These credits, which do not involve any direct or indirect cash payments from the dealer to the bank or its employees, are used for internal purposes to identify the source of business referrals. Are the credits considered a "payment" under rule G–38 thereby requiring the dealer to designate the bank or its employees as consultant and comply with the requirements of rule G–38?

A: Rule G–38 defines a consultant as any person used by a dealer to obtain or retain municipal securities business through direct or indirect communication by such person with an issuer on behalf of the dealer where the communication is undertaken by the person in exchange for, or with the understanding of receiving, **payment** from the dealer or any other person.[4] The term payment, as used in rule G–38, means any gift, subscription, loan, advance, or deposit of money or **anything of value.** The absence of an immediate transfer of funds or anything of value to an affiliate or individual employed by the affiliate would not exclude the credits from the definition of payment if such credits eventually (*e.g.*, at the end of the fiscal year) result in compensation to the affiliate or individual employed by the affiliate for referring municipal securities business to the dealer. In this regard, the compensation may be in the form of cash (*e.g.*, a bonus) or non-cash. In either case, if the dealer or any other person[5] eventually gives anything of value (*i.e.*, makes a "payment") to the affiliate or individual based, even in part, on the referral, then the affiliate or individual is a consultant for purposes of rule G–38 and the dealer must comply with the various requirements of the rule. For additional guidance in this area, you may wish to review Q&A numbers 6 and 7 (dated February 28, 1996) in the MSRB Manual following Rule G–38, as well as Q&A number 4 (dated December 7, 1994) in the MSRB Manual following Rule G–37.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On January 17, 1996, the Commission approved Board Rule G–38 on consultants.[6] The Board adopted the rule because it was concerned about dealers' increasing use of consultants to obtain or retain municipal securities business, notwithstanding the requirements of Rule G–37[7] on political contributions and prohibitions on municipal securities business, Rule G–20[8] on gifts and gratuities, and Rule G–17[9] on fair dealing. Rule G–38 requires dealers to disclose information about their consultant arrangements to issuers and the public. Recently, the Board has received inquiries from market participants concerning the definition of payment, as used in Rule G–38, and whether bank affiliates and their employees may, under certain circumstances, be deemed consultants for purposes of the rule. In order to assist the municipal securities industry and, in particular, brokers, dealers and municipal securities dealers in understanding and complying with Rule G–38, the Board has determined to publish this third notice of interpretation which sets forth, in question-and-answer format, general guidance on Rule G–38.[10] The Board will continue to monitor the application of Rule G–38, and, from time to time, will publish additional notices of interpretations, as necessary.

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act.[11]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, because it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Commission received four comment letters from banking industry participants, opposing this interpretation of Rule G–38.[12] As a result of these comments, the Board resubmitted the proposed rule change pursuant to Section 19(b)(2).[13]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On November 13, 1997, the Board filed the same proposal under Section 19(b)(3)(A) of the Act, which renders the proposal effective upon receipt of filing by the Commission. *See* Securities Exchange Act Release No. 39391 (December 3, 1997), 62 FR 65114 (December 10, 1997). The Commission received four comment letters on the filing. *See infra* note 12. In order to provide additional time to fully air the concerns of commenters, the Board agreed to withdraw this filing and resubmit it, pursuant to Section 19(b)(2). *See* letter from Diane G. Klinke, General Counsel, Municipal Securities Rulemaking Board, to Katherine A. England, Assistant Director, Division of Market Regulation, dated January 9, 1998.

[4] Municipal finance professionals and any person whose sole basis of compensation is the actual provision of legal, accounting or engineering advice, services or assistance are excepted from the definition of consultant.

[5] The Securities Exchange Act of 1934 (the "Act") defines the term "person" as a "natural person, company, government, or political subdivision, agency, or instrumentality of a government." Board rule D–1 provides that unless the context otherwise specifically requires, the terms used in Board rules shall have the same meanings as set forth in the Act.

[6] Securities Exchange Act Release No. 36727 (Jan. 17, 1996); 61 FR 1955 (Jan. 24, 1996). The rule became effective on March 18, 1996. *See also MSRB Manual*, General Rules, Rule G–38 (CCH) ¶3686.

[7] *MSRB Manual*, General Rules, Rule G–37 (CCH) ¶3681.

[8] *MSRB Manual*, General Rules, Rule G–20 (CCH) ¶3596.

[9] *MSRB Manual*, General Rules, Rule G–17 (CCH) ¶3581.

[10] *See* Securities Exchange Act Release No. 36950 (March 11, 1996); 61 FR 10828 (March 15, 1996) and Securities Exchange Act Release No. 37997 (Nov. 29, 1996); 61 FR 64781 (Dec. 6, 1996). *See also* MSRB Reports Vol. 16, No. 2 (June 1996) at 3–5; and Vol. 17, No. 1 (Jan. 1997) at 15.

[11] Section 15B(b)(2)(C) states in pertinent part that the rules of the Board "shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest."

[12] *See* letter from Sarah A. Miller, Senior Government Relations Counsel, Trust and Securities, American Bankers Association, to Jonathan G. Katz, Secretary, SEC, dated December 30, 1997; letter from Alan R. Leach, Senior Vice President and Manager, Dealer Bank Department, Deposit Guaranty National Bank, to Jonathan G. Katz, Secretary, SEC, dated January 5, 1998; letter from Robert J. Nagy, Senior Counsel, NationsBank, to Jonathan G. Katz, Secretary, SEC, dated December 31, 1997; and letter from Victor M. DiBattista, Chief Regional Counsel, PNC Bank, N.A., to Jonathan G. Katz, Secretary, SEC, dated January 2, 1998.

[13] *See supra* note 3.

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the Board's principal offices. All submissions should refer to File No. SR–MSRB–98–1 and should be submitted by February 10, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret J. McFarland,

Deputy Secretary.

[FR Doc. 98–1181 Filed 1–16–98; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 02/72–0578]

Hudson Venture Partners, L.P.; Notice of Issuance of a Small Business Investment Company License

On June 4, 1997, an application was filed by Hudson Venture Partners, L.P., at 660 Madison Avenue, 14th Floor, New York, New York 10022, with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1996)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/72–0578 on December 31, 1997, to Hudson Venture Partners, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 9, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–1178 Filed 1–16–98; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; Computer Matching Program SSA/Office of Personnel Management (OPM)—SSA Consolidated Match Numbers 1005, 1019, 1020, 1021

AGENCY: Social Security Administration.

ACTION: Notice of Computer Matching Program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct with OPM.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 966–2935 or writing to the Associate Commissioner for Program Support, 4400 West High Rise Building, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program Support at the address shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by establishing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. Among other things, it requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the match agreement by the Data Integrity Boards (DIB) of the participating Federal Agencies;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: December 19, 1997.

Kenneth S. Apfel,

Commissioner of Social Security.

Notice of Computer Matching Program, Social Security Administration (SSA) With the Office of Personnel Management (OPM)

A. Participating Agencies

SSA and OPM.

B. Purpose of the Matching Program

This matching program will have four separate components. The purposes of each of these parts are as follows.

SSA Match 1021: SSA will match OPM's civil service benefit and payment data with SSA's records of beneficiaries receiving Social Security spouse's benefits which are subject to reduction under the Social Security Act when the beneficiary is also receiving a government pension based on employment not covered under that Act. SSA will match the OPM data to verify information provided (or identify information that should have been provided) by the SSA beneficiary at the time of initially applying for Social Security benefits and on a continuing basis to ensure that any reduction in Social Security benefits is based on the current pension amount.

SSA Match 1020: OPM records will be used in a matching program wherein SSA will match OPM's benefit data with SSA's records for disabled and retired annuitants. These annuitants may be subject to the use of a modified benefit computation formula used by SSA under the Social Security Act for certain persons who receive both a civil service benefit and a Social Security retirement or disability benefit. SSA will use the OPM data to verify the pension or annuity information provided (or to identify such information that should have been provided) directly to SSA by the retirees/annuitants.

SSA Match 1005: OPM records will be used in a matching program where SSA will match OPM's data with SSA's records to verify the accuracy of information furnished by applicants and recipients concerning eligibility factors for the SSI program as authorized by section 1631(e)(1)(B) and (f) of the Social Security Act (42 U.S.C. 1383(e)(1)(B) and (f)). The SSI program provides payments to individuals who have income and resources below levels established by law and regulations.

SSA Match 1019: SSA will match OPM's records of civil service disability benefit and payment data with SSA's records of Social Security disability insurance (DI) benefits to identify DI beneficiaries whose benefits should be reduced under the Act because the disabled worker is receiving a civil service disability annuity benefit. SSA will match the OPM data to verify information provided (or identify such information that should have been provided) by the disabled worker at the time of initially applying for Social Security benefits and on a continuous basis to ensure any reduction in Social Security disability benefits is based on the current civil service disability benefit amount.

C. Authority for Conducting the Matching Program

SSA Match 1021: Section 202(b)(4)(A), (c)(2)(A), (e)(7)(A), (f)(2)(A), and (g)(u)(A) of the Social Security Act (42 U.S.C. 402(b)(4)(A), (c)(2)(A), (e)(7)(A), (f)(2)(A) and (g)(4)(A)).

SSA Match 1020: Sections 215 (a)(7) and 215 (d)(3) of the Social Security Act ((42 U.S.C. 415 (a)(7) and 415 (d)(3)).

SSA Match 1005: Section 1631 (e)(1)(B) and (f) of the Social Security Act (42 U.S.C. 1383 (e)(1)(B) and (f)).

SSA Match 1019: Section 224 of the Social Security Act (42 U.S.C. 424).

D. Categories of Records and Individuals Covered by the Match

OPM will provide SSA with an electronic file extracted from OPM's Annuity and Survivor Masterfile. The extracted file will contain information about each new annuitant and annuitants whose pension amount has changed. Each record on the OPM file will be matched to SSA's Master Beneficiary Record (MBR) or Supplemental Security Income Record (SSR) for the purposes described above in Section B.

E. Inclusive Dates of the Match

The matching program shall become effective upon the signing of the agreement by both parties to the agreement and approval of the agreement by the Data Integrity Boards of the respective agencies, but no sooner than 40 days after notice of this matching program is sent to Congress and the Office of Management and Budget (OMB) or 30 days after publication of this notice in the **Federal Register**, whichever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 98–1176 Filed 1–16–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Industry Working Group Meeting on Operations Specifications

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of an industry working group meeting to discuss Operations Specifications.

DATES: The meeting will be held on January 27 at 1:00 p.m. until 5:00 p.m. and January 28, from 8:00 a.m. until noon.

ADDRESSES: The meeting will be held at the Air Transport Association of America, Suite 1100, 1301 Pennsylvania Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Connie Streeter, Federal Aviation Administration, Air Transportation Division, (AFS–260), 800 Independence Avenue, SW., Washington, DC 20591, e-mail at connie.streeter@faa.dot.gov, or Mike Dugan, Air Transport Association of America, (202) 626–4000.

SUPPLEMENTARY INFORMATION: Pursuant to sections 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of an industry working group to discuss operations specifications. This meeting will be held January 27, 1:00 p.m. to 5:00 p.m. and January 28, 8:00 a.m. until noon at the Airline Transportation Association, Suite 1100, 1301 Pennsylvania Avenue, NW., Washington, DC.

Attendance is open to the interested public but may be limited to the space available.

Issued in Washington, DC on January 14, 1998.

Quentin J. Smith,

Manager, Air Transportation Division, Flight Standards Service.

[FR Doc. 98–1367 Filed 1–15–98; 1:14 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Joint Special Committee 182; Minimum Operational Performance Standards (MOPS) for an Avionics Computer Resource

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–182 meeting to be held February 4–6, 1998, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Chairman's Introductory Remarks; (2) Review and Approval of the Agenda; (3) Review of Meeting Reports: a. RTCA SC–182 Meeting (10/22–24/97); b. EUROCAE Working Group 48 Meeting; (4) Adoption of Proposed Sections of Draft MOPS (Proposed MOPS material has been posted to the SC–182 web site, http://forums.americas.digital.com/avf/RTCA.SC–182/dispatch.cgi in the Discussion Document Forums. Discussion of these papers during the meeting will be limited to decisionmaking: Incorporate, refer to subgroup, or reject); (5) Working Group Sessions, Chapters 1–4; (6) Working Group Reports; (7) Other Business; (8) Date and Place of Next Meeting (Tentative Future Meetings: 05/12–14/98, Nice, France; 09/09–11/98, in Europe, colocated with SC–190/Working Group 52; 12/98, Washington, DC.)

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 13, 1998.

Janice L. Peters,

Designated Official.

[FR Doc. 98–1227 Filed 1–16–98; 8:45 am]

BILLING CODE 4910–13–M

[14] 17 CFR 200.30–3(a)(12).

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Privacy Act of 1974; System of Records

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of alteration of a system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Office of Thrift Supervision (OTS) is issuing notice of its intent to alter the system of records entitled, "Treasury/OTS.012—Payroll/Personnel System & Payroll Records," by adding a new routine use. We invite public comment on this publication.

DATES: Comments must be received no later than February 19, 1998 The proposed alteration will become effective without further notice on March 2, 1998, unless comments are received that result in a contrary determination. OTS will publish a new notice if changes are made based on review of comments received.

ADDRESSES: Interested individuals may comment on this publication by writing to the Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: Privacy Act. These submissions may be hand-delivered to 1700 G Street, NW., from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX number 202/906–7755, or they may be sent by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments will be available for inspection at 1700 G Street, NW. from 9 a.m. until 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Richard L. Abood, Planning, Budget, and Finance, (202) 906–6149, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Pursuant to Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the OTS will disclose data from its payroll records to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, for use in its Federal Parent Locator System (FPLS) and Federal Tax Offset System, (DHHS/OCSE No. 09–90–0074). Information on the above system was last published at 61 FR 38754 (July 25, 1996).

FPLS is a computerized network through which States may request location information from Federal and State agencies to find non-custodial parents and/or their employers for purposes of establishing paternity and securing support. Effective October 1, 1997, the FPLS was enlarged to include the National Directory of New Hires, a database containing information on unemployment compensation benefits. Effective October 1, 1998, the FPLS will be expanded to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, that State will be notified of the participant's current employer. State requests to the FPLS for location information will also continue to be processed after October 1, 1998. The data to be disclosed by the OTS to the FPLS include: name, address, social security number and name and address of the agency.

We are proposing this routine use in accordance with the Privacy Act (5 U.S.C. 552a(b)(3)). The Privacy Act permits the disclosure of information about individuals without their consent for a routine use where the information will be used for a purpose which is compatible with the purpose for which the information was originally collected. The Office of Management and Budget has indicated that a "compatible" use is a use which is necessary and proper. See OMB Guidelines, 51 FR 18982, 18985 (May 23, 1986). Since the proposed uses of the data are required by Pub. L. 104–193, they are clearly necessary and proper uses, and therefore "compatible" uses which meet Privacy Act requirements. We will disclose information under the proposed routine use only as required by Pub L. 104–193 and as permitted by the Privacy Act.

Accordingly, the Payroll/Personnel System & Payroll Records System notice originally published at 60 FR 13776 (March 14, 1995), is amended as set forth below:

Treasury/OTS .012

SYSTEM NAME:

Payroll/Personnel System & Payroll Records System

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(5) records from this system may be disclosed to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, and identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Law, Pub. L. 104–193).

* * * * *

Dated: January 12, 1998.

Alex Rodriguez,

Deputy Assistant Secretary(Administration)

[FR Doc. 98–1182 Filed 1–19–98; 8:45 am]

BILLING CODE:6720–01–F

UNITED STATES ENRICHMENT CORPORATION

Sunshine Act Meeting

AGENCY: United States Enrichment Corporation, Board of Directors.

TIME AND DATE: 11:00 a.m., Wednesday, January 14, 1998.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: The telephone conference meeting was closed to the public.

MATTERS CONSIDERED: Issues related to the privatization of the Corporation and other commercial, financial and operational issues of the Corporation.

CONTACT PERSON FOR MORE INFORMATION: Joseph Tomkowicz 301–564–3345.

Dated: January 15, 1998.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 98–1368 Filed 1–15–98; 12:11 pm]

BILLING CODE 8720–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Ancient Gold: The Wealth of the Thracians, Treasures from the Republic of Bulgaria" (See list [1]) imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the listed exhibit objects at Saint Louis Art Museum, Saint Louis, MO, from on or about February 5, 1998, to on or about April 5, 1998; Kimbell Art Museum, Fort Worth, TX, from on or about May 3, 1998, to on or about July 19, 1998; California Palace of the Legion of Honor, San Francisco, CA, from on or about July 31, 1998, to on or about October 25, 1998; New Orleans Museum of Art, New Orleans, LA, from on or about October 31, 1998, to on or about January 31, 1999; Memphis Brooks Museum of Art, Memphis, TN, from on or about January 17, 1999, to on or about March 28, 1999; Museum of Fine Arts, Boston, MA, from on or about April 2, 1999, to on or about June 7, 1999; The Detroit Institute of Arts, Detroit, MI, from on or about June 19, 1999, to on or about August 29, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register.**

Dated: January 14, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–1265 Filed 1–16–98; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. Paul Manning, Assistant General Counsel, at 202/619–5997, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547–0001

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects on the list specified below, to be included in the exhibit, "Pierre-Paul Prud'hon" (See list[1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York City, New York, from on or about March 2, 1998, to on or about June 7, 1998, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

Dated: January 14, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–1266 Filed 1–16–98; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. Paul Manning, Assistant General Counsel, at 202/619–5997, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547–0001.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

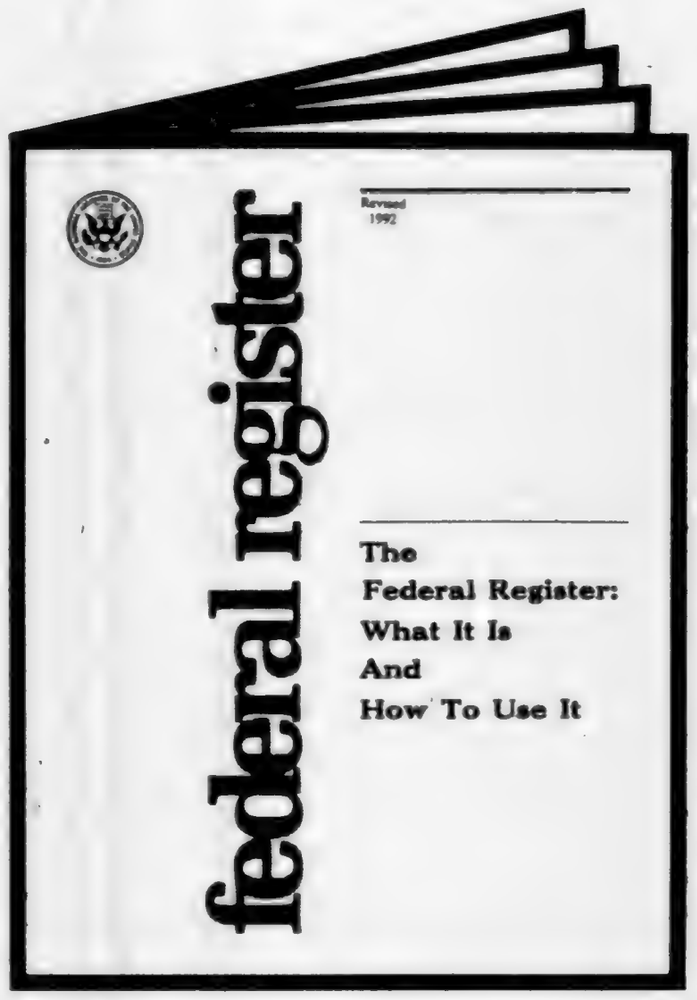
[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1, 2, and 3

[Docket No. 97–024–1]

RIN 0579–AA89

Animal Welfare; Regulation of Pocket Pets

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Policy statement.

SUMMARY: This document gives notice that we are now regulating under the Animal Welfare Act the handling, care, and treatment at retail pet stores of small mammals commonly referred to as "pocket pets" and requiring any retail pet store that sells pocket pets to be licensed as a dealer under the Animal Welfare Act. This action is necessary because the Animal Welfare Act regulations require regulation of all persons who sell exotic or wild animals for research, exhibition, or for use as a pet, and we consider pocket pets to be exotic or wild animals for this purpose.

FOR FURTHER INFORMATION CONTACT: Dr. Bettye K. Walters, Staff Veterinarian, Animal Care, APHIS, USDA, 4700 River Road Unit 84, Riverdale, MD 20737–1234, (301) 734–7833.

SUPPLEMENTARY INFORMATION: The Animal Welfare Act (AWA)(7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers and other regulated businesses. The Secretary of Agriculture has delegated the responsibility for enforcing the AWA to the Administrator of the Animal and Plant Health Inspection Service (APHIS). Regulations established under the AWA are contained in 9 CFR parts 1, 2, and 3. APHIS regulates animal dealers by issuing them annual licenses and conducting unannounced inspections of their premises to check for compliance with the AWA standards and regulations.

In recent years, several species of small, generally nondangerous mammals, including hedgehogs, degus, spiny mice, prairie dogs, flying squirrels, and jerboas, have increasingly been sold at retail pet stores in the United States. These and other small mammalian species are collectively and commonly referred to as "pocket pets." However, none of these species, some of which are native to the United States and others of which are native to foreign countries, have been domesticated as pets in the United States in the sense that dogs, cats, and other common pet-type animals have been domesticated. Therefore, APHIS considers pocket pets to be exotic or wild animals under the AWA regulations, and any retail pet store that sells a pocket pet is subject to AWA regulation.

Several years ago, some retail pet stores across the United States started selling limited numbers of pocket pets on a sporadic basis. In general, retail pet stores are exempt from AWA regulation unless they sell animals to a research facility, an exhibitor, or a dealer. Our policy was not to regulate the retail pet stores that were selling pocket pets because the effort needed to identify and regulate these stores did not appear to be a prudent use of our AWA enforcement resources. However, we continued to reevaluate this policy as the popularity of pocket pets grew among U.S. consumers. Because many retail pet stores are now selling pocket pets on a regular basis, we now believe that it is feasible and necessary to identify and regulate these stores.

Therefore, we are giving notice that, in order to ensure the humane care and treatment of pocket pets in the commercial pet trade, we are now regulating the handling, care, treatment, and transportation provided to such animals by retail pet stores and requiring that retail pet stores dealing in these animals be licensed under the AWA. The AWA licensing requirements for animal dealers are specified in 9 CFR part 2, subpart A, and the care standards for pocket pets are covered in 9 CFR part 3, subpart F. For information about becoming licensed as a dealer under the AWA, contact the person listed above under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 13th day of January 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–1312 Filed 1–20–98; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 3

[Docket No. 95–100–2]

RIN 0579–AA78

Humane Treatment of Dogs and Cats; Wire Flooring

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations under the Animal Welfare Act regarding suspended flooring of mesh or slatted construction in primary enclosures for dogs and cats. We are requiring that such flooring made of metal strands be constructed either of metal strands greater than ⅛ of an inch in diameter or of metal strands equal to or less than ⅛ of an inch in diameter coated with a material such as plastic or fiberglass. We are also requiring that any primary enclosure with a suspended floor for a dog or cat be constructed so that the floor does not bend or sag between the supports. It is our experience that suspended flooring made of wire (by which we mean any metal strand that has a diameter equal

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to or less than ⅛ of an inch) is uncomfortable on animals' feet and contributes to foot injuries and that suspended flooring made of coated wire or made of metal strands larger than wire causes fewer such problems. It is also our experience that suspended floors that bend and sag can cause psychological trauma for dogs who must try to balance on them. We believe that adding these requirements will improve comfort for dogs and cats housed in primary enclosures with suspended floors and will help eliminate foot injuries to these animals.

DATES: *Effective date:* February 20, 1998. *Compliance dates:* February 20, 1998 for primary enclosures constructed on or after that date and for floors installed or replaced on or after that date and January 21, 2000 for all other primary enclosures.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Smith, Staff Animal Health Technician, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234, (301) 734–4972.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (AWA) (7 U.S.C. 2131 et seq.), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers. The Secretary of Agriculture has delegated the responsibility for enforcing the AWA to the Animal and Plant Health Inspection Service (APHIS). Regulations established under the AWA are contained in 9 CFR parts 1, 2, and 3. Subpart A of 9 CFR part 3 (referred to below as the regulations) contains specific standards for the humane handling, care, treatment, and transportation of dogs and cats.

The standards for primary enclosures for dogs and cats are found in § 3.6. The regulations require that, among other things, all surfaces in contact with the animals must be able to be readily cleaned and sanitized or replaced when worn or soiled. Primary enclosures must also "(h)ave floors that are constructed in a manner that protects the dogs" and cats' feet and legs from injury, and that, if of mesh or slatted construction, do not allow the dogs' and cats' feet to pass through any openings in the floor. If the floor of the primary enclosure is constructed of wire, a solid resting surface or surfaces that, in the aggregate, are large enough to hold all the occupants of the primary enclosure at the same time comfortably must be provided."

On July 2, 1996, we published in the **Federal Register** (61 FR 34389–34391, Docket No. 95–100–1) a proposal to amend the regulations to require that, if the floor of a primary enclosure for a dog or cat is constructed of wire, the wire must be coated with a material, such as plastic or fiberglass, that can be cleaned and sanitized readily. We further proposed to require that the coated wire must have a well-rounded surface and must be of a large enough diameter so that it is comfortable on the animals' feet and protects the animals' feet from injury, and that it must be strong enough that the floor does not sag or bend between structural supports. We believed that these requirements would improve comfort for dogs and cats housed in wire-floored enclosures, would help eliminate foot injuries for such animals, and would ensure that wire flooring for dogs and cats is clean and sanitary.

We solicited comments concerning our proposal for 60 days ending September 3, 1996. We received 51 comments by that date. They were from dog breeders, humane organizations, veterinarians, trade associations, and a Federal government agency, among others. Thirty-seven comments opposed the proposal, seven favored the proposal, and seven did not explicitly favor or oppose the proposal but asked for some clarifications. The comments are discussed below by topic.

The proposed rule referenced three public meetings APHIS held in 1996 to gather information on the requirements in 9 CFR part 3, subpart A, that apply to the care of dogs and cats in the commercial pet trade. At those meetings, we met with members of affected industries, such as dealers, research facilities, and commercial animal transporters, and animal protection organizations. Each of the three meetings was divided into four workshops covering specific topic areas. One of the workshops covered sanitation, materials, flooring, and construction of primary enclosures. Several commenters on the proposal stated that, by issuing the proposed rule, APHIS had ignored input received from the public meetings because a common opinion expressed at those meetings was that APHIS should not issue new rules regarding primary enclosures for dogs and cats but instead concentrate on enforcing the current regulations. We have considered that recommendation and all of the others we received at the public meetings, and further rulemaking may result from our continued analysis of the input we obtained at those meetings. However, we believe that, with regard to suspended flooring made of mesh or slatted construction, a more specific standard is necessary to make it clear how such flooring should be constructed in order to protect the dogs and cats from injury. This specificity will make it easier for APHIS inspectors to ensure consistency in judging the soundness of such floors and for regulated individuals to comply with the regulations.

Many commenters requested a more specific definition of wire. They wanted to know if we consider expanded metal, welded rods, and other types of metal flooring of mesh or slatted construction to be wire; many commenters stated that galvanized expanded metal works well for flooring in primary enclosures for dogs and cats. Some commenters requested that the regulations specify a certain width of diameter (gauge) to differentiate between wire and other types of metal strands, such as rods.

We agree that we need to be more specific about what we consider wire, and we regret any confusion that was caused by this lack of specificity in the proposed rule. Moreover, we agree that certain types of suspended flooring made of metal strands in a mesh or slatted configuration are not harmful to dogs and cats and do not need to be coated with a material such as plastic or fiberglass to ensure the animals' comfort and safety. We do not want to place an unnecessary burden on the regulated industry by establishing a requirement that would cause AWA licensees and registrants to replace types of suspended floors that are not known to cause harm to dogs and cats.

We do not consider any flooring material that is inflexible, such as expanded metal, to be wire. Floors made of inflexible metal strands do not bend and sag and, therefore, provide an even resting surface for the animals. Moreover, floors made of inflexible metal strands cause fewer foot problems than floors made of flexible strands, such as wire, because, to be inflexible, the strands must be of a substantial diameter. We agree with the commenters who stated that we need to be more specific regarding acceptable diameters of metal strands used in flooring for dogs and cats. The diameter of the metal strands plays a significant role in regard to ensuring the comfort and safety for the animals because strands of a relatively large diameter are less likely to cause injuries and discomfort to the animals than strands with very narrow diameters. Animals housed on floors made of metal strands of a relatively large diameter are less likely to suffer from interdigital cysts

and lesions caused by the digits of the animals' paws passing around the individual strands.

In this final rule, we are requiring that metal strands used in flooring be coated if the metal strands have a diameter equal to or less than ⅛ of an inch (9 gauge). We chose ⅛ of an inch as the defining measurement, in part, because that measurement is used by the metalworking industry as the point of demarcation between welded wire and welded rods. In addition, many cage manufacturers currently use metal strands with diameters greater than ⅛ of an inch in cage production. Therefore, cages made with floors of such metal strands are easily available to consumers. Such cages are sturdy, and the floors are less likely to break easily from rust or from the weight of the animal than cages made of metal strands with a diameter of ⅛ of an inch or less (hereafter in this document referred to as wire).

We are making changes in other areas of the regulations to be consistent with this use of the word "wire." The word "wire" appears in reference to flooring in §§ 3.6(a)(2)(x), 3.11(a), and 3.14(a)(9) and refers to metal strands in general. We are amending these sections to remove the word "wire" from them.

Several commenters questioned APHIS' justification for the proposal and asked if APHIS has scientific evidence to show that wire flooring is harmful to dogs and cats.

We are not aware of any scientific research that has been done regarding the inadequacy of wire flooring in providing for the comfort and well-being of dogs and cats. As stated in the proposed rule, this belief is based on our own experience in AWA enforcement. Because APHIS has been enforcing the AWA for over 30 years, our field staff of Animal Care inspectors has extensive experience in monitoring the well-being of dogs and cats raised for breeding. The idea to prohibit bare wire flooring in primary enclosures for dogs and cats originated within the Animal Care staff. APHIS veterinarians have been concerned for some time that bare wire flooring often causes discomfort for dogs and cats, provides inadequate support for them, and has the potential to cause lesions and sores on the animals' feet. This perception was confirmed in a recent survey of Animal Care inspectors. The responses indicated that, in the year preceding the survey, the 39 inspectors who responded to the survey were aware of a total of 238 animals that were injured as the result of being housed on bare wire flooring. A majority of the survey respondents indicated that bare wire flooring often sags or bends, creating an uncomfortable resting place for animals, and causes lesions or sores to animals' feet; the majority of respondents further indicated that coated wire flooring does not cause these problems.

One commenter said that not enough information was provided in the proposal to explain why the current standards for flooring are ineffective for protecting the animals or how requiring coated wire will correct the inadequacy.

While the current regulations regarding primary enclosures for dogs and cats require that the floors be constructed in a manner that protects the dogs' and cats' feet and legs from injury, the regulations do not address the issue of basic comfort for the animals. In enforcing the AWA, APHIS is charged with, among other things, promulgating standards to govern the humane care and treatment of animals covered by the law. Therefore, in carrying out the AWA, we believe that we are responsible for establishing minimum levels of comfort for regulated animals. We have come to believe that, while wire flooring may not actually cause injury to all dogs and cats housed on it, such flooring is generally uncomfortable for these animals. Coated wire provides a stronger mesh and a more inflexible surface than bare wire. Because many dogs acquire foot lesions and suffer psychological trauma from trying to balance on wire floors, which often sag and bend, we believe that it is necessary to change the existing regulations concerning flooring for dogs and cats to prohibit bare wire flooring.

Some commenters stated that coated or bare wire of the same diameter and mesh size are likely to be equal in terms of comfort under foot. We disagree. Our inspectors have found that coated wire generally causes fewer lesions on animals' feet than bare wire.

Other commenters suggested that we require a certain width of the mesh at a size small enough to prevent foot and leg injuries. We do not believe that it is necessary to specify a mesh width for wire flooring. The regulations currently specify that, if the floor of the primary enclosure is of mesh or slatted construction, the floor may not allow the dogs' and cats' feet to pass through any openings in the floor. We believe that this requirement is specific enough to ensure that the mesh is of a sufficient size to prevent foot and leg injuries from passage through the floor.

Some commenters questioned the quality of wire coatings currently available on the commercial market. Others stated that, once cracks develop in the coating of coated wire, germs can accumulate in the cracks, and the wire under the coating can rust badly as such wire is often not galvanized.

We have found that high-quality coated wire is readily available to consumers through kennel magazines and building supply stores and can be purchased in bulk rolls. According to our inspectors, most licensees are already using coated wire or some other acceptable type of mesh or slatted flooring, such as galvanized expanded metal. Some commenters who currently use coated wire stated that they think coated wire makes an excellent floor for both comfort and cleanliness and that they have never experienced problems with flooring made of coated wire. In our experience, coated wire is generally easier to keep clean than bare wire because it provides a smoother surface. Bare wire is prone to rust, which creates a rough surface that is hard to clean. When a coated wire floor becomes cracked to the point that rust develops, the floor should be replaced.

Many commenters expressed concern about the length of time a plastic or fiberglass coating would remain on wire used for flooring for dogs and cats. Some commenters stated that dogs chew on coated wire, destroying the coating. The commenters wanted to know whether they would be in violation of the regulations if their dogs chewed off the coating and whether they would be required to replace the flooring as soon as it was damaged from being chewed. Other commenters expressed concern that dogs could become ill from ingesting the coating material.

Breeders who experience extensive problems with dogs chewing on coated wire are probably not providing enough physical or psychological stimulation for their dogs and should perhaps provide them with diversions such as pet chews or toys. While we recognize that the possibility exists for dogs to become ill from ingesting the coating material, we have not been made aware of such incidents from the many licensees who already use coated wire flooring. We believe that it is unlikely that the relatively small amounts of coating that an animal would ingest before human intervention occurred would seriously harm the animal. We will expect breeders whose dogs chew on the coating of coated wire floors to replace the flooring when an APHIS inspector determines that the flooring is too worn for further use. However, breeders who have chronic difficulties with dogs chewing on flooring made of coated wire have the option of using flooring made of metal strands that are of a diameter greater than ⅛ of an inch or any of the many other types of acceptable flooring.

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Two commenters recommended that APHIS prohibit the use of any type of flooring of mesh or slatted construction in primary enclosures for dogs and cats and instead require the use of solid flooring made of such materials as impervious concrete or stainless steel. We have found that, for animals raised in the commercial pet breeding industry, primary enclosures with flooring that allows the passage of excrement are generally kept cleaner than primary enclosures with solid flooring surfaces. We believe that the commercial pet breeding industry has demonstrated that animals can successfully be raised on suspended flooring of mesh or slatted construction. AWA licensees may certainly choose to use primary enclosures with floors made of solid surfaces, but we do not believe that it is necessary to require the use of such floors at this time.

One commenter requested that we allow uncoated wire to be used in the flooring of primary enclosures of dogs and cats in research projects in which fecal collection is required, to prevent any interference with the research as a result of the adherence of fecal material to coated wire flooring. Researchers in this situation may use flooring made of metal strands of a diameter greater than ⅛ of an inch. If a researcher can prove that, for the purposes of the research, the dog or cat needs to be housed on bare wire flooring, the researcher may request approval through the laboratory's Institutional Animal Care and Use Committee in accordance with 9 CFR part 2.38(k)(1) for an exemption to the flooring requirements.

Two commenters made comments and recommendations regarding AWA enforcement, the AWA regulations pertaining to veterinary care provided to regulated animals, and the breeding frequency for female animals in the commercial pet trade. In addition, one of the commenters had recommendations regarding reclassification of animal dealers, primary enclosures, exercise requirements, and air transit of animals. Although these comments are outside the scope of the proposed regulation, we are taking them into consideration. If we decide to make any changes to the AWA regulations in response to these comments, we will publish a proposed rule in the **Federal Register**.

One commenter indicated that we should extend the proposed regulation to cover dogs and cats in the care of show breeders, pounds, humane societies, groomers, and boarding kennels. While we agree that all dogs and cats should be treated in a humane manner, the AWA does not authorize us to promulgate standards for the care of animals in these circumstances.

As stated in the proposal, we will have two compliance dates for this final rule. We are requiring that any new primary enclosures constructed on or after 30 days from the date of publication of this final rule in the **Federal Register**, and any floors installed on or after that date, will have to comply with the final rule. Other existing enclosures must be brought into compliance within 2 years. Although several commenters stated that the 2-year compliance period was reasonable, some thought that this timeframe was too long, and one thought that it was too short. Several commenters thought that the rule change should include a "grandfather clause" to allow the use of existing flooring in primary enclosures until it wears out. One commenter proposed that the 2-year compliance period apply "also to those which are able to demonstrate that wire flooring was installed within 90 days of final publication in a manner consistent with current requirements" to prevent facilities that have new construction under way at the time of final rule publication from having to destroy partially completed facilities. We have considered these comments, but we are not making any change to the proposed phase-in of compliance dates. We believe that the two timeframes discussed above provide ample time for licensees and registrants who have primary enclosures with wire flooring to convert the flooring to any of the many acceptable types.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have prepared a Final Regulatory Flexibility Analysis, which is set out below, regarding the economic impact of this rule on small entities. The discussion also serves as our cost-benefit analysis under Executive Order 12866.

APHIS administers the Animal Welfare Act (AWA), which requires that minimum standards of care and treatment be established for certain animals bred for commercial sale, used in research, transported commercially, or exhibited to the public. Dogs and cats are covered under the AWA.

In the July 2, 1996, **Federal Register**, APHIS proposed (61 FR 34389–34391) that, if the floor of a primary enclosure for dogs or cats covered by the AWA is constructed of wire, the wire must be coated with a material such as plastic or fiberglass. APHIS further proposed that the coated wire: (1) have a well-rounded surface and be large enough in diameter so that it is comfortable on the animals' feet and protects the animals' feet from injury; and (2) be strong enough so that the floor does not sag or bend between the structural supports. The proposed rule suggested two effective dates: The first would have required that all new construction and replacements be in compliance 30 days after publication of the final rule; the second would have required that all regulated facilities be in compliance no later than 2 years after publication of the final rule.

The proposal was in response to concern that wire flooring is inadequate in providing for the comfort and well-being of dogs and cats. In developing the proposal, APHIS considered its own experience in enforcing the AWA, as well as the recommendations and opinions expressed by participants at three public meetings hosted by the agency in 1996 to gather information on the regulations that cover the care of cats and dogs in the commercial trade. The current AWA standards do not specifically preclude wire flooring for housing dogs and cats, and the proposal pointed out a number of problems with such flooring. Bare wire can be uncomfortable on the animals' feet because of its narrow diameter. Bare wire is prone to rust, which not only affects the structural integrity of the primary enclosure but can also cause foot injuries because rusty wire is abrasive. Bare wire is difficult to clean and sanitize thoroughly because rust makes the wire semiporous in places. Finally, bare wire flooring often sags or bends between structural supports, creating an uncomfortable resting surface. The proposed rule change was intended to eliminate or mitigate these problems.

APHIS received 51 comments on the proposal. Thirty-seven commenters opposed the proposal, seven favored it, and seven did not indicate a preference. Many of those opposed to the proposal argued that it was not adequately justified, both in terms of any hard evidence (e.g., inspection reports, documented cases) and in terms of the insufficiency of the current regulations. The U.S. Small Business Administration (SBA) commented that, prior to issuing a final rule, APHIS should better articulate the scope of the problem and should consider the possibility of viable alternatives.

The final rule is essentially a refined version of the proposed rule. The proposed rule did not define wire, and many commenters requested clarification as to what APHIS considers to be wire. Under the final rule, APHIS defines wire as flexible metal strands ⅛ of an inch or less in diameter. The rule change is needed because the current regulations do not specifically preclude wire flooring, a documented source of injuries and discomfort. The commenters' arguments that the rule is not needed are not persuasive. Many commenters argued that the rule was not justified with any scientific evidence. That argument is correct, to the extent that the published proposal did not include any hard evidence supporting the rule change. However, the absence of hard evidence does not mean that the rule is not needed or that it was initiated without adequate forethought. APHIS proposed the rule change only after carefully considering the views of persons within and outside the agency.

In early 1997 (following the receipt of public comment), APHIS conducted a survey of its field inspectors. The inspectors, many of whom are licensed veterinarians, have extensive experience in monitoring the well-being of dogs and cats raised for breeding. Of the 39 inspectors responding to the survey, over half had more than 21 percent of their facilities having dogs and cats; one-third of the respondents had more than 50 percent of their facilities having dogs and cats.

The survey results document the problems with wire flooring that were identified in the proposal. The survey revealed that, during the past year alone, the inspectors were aware of 238 animal injuries that resulted from wire flooring at facilities under their inspection. The number of reported injuries would no doubt have been even higher if inspections were conducted on a more frequent basis. (Inspectors visit each facility on an average of only 1.46 times per year.)

Of the five most common types of flooring used in suspended enclosures for dogs and cats (coated wire, molded plastic, expanded metal, metal rods, and bare metal wire), the inspectors ranked bare wire last in terms of what is best for the animals; coated wire was ranked second. Molded-plastic flooring was ranked first, but that type of flooring has been rejected as a viable alternative because of its cost. The advantages of molded-plastic flooring are not justified by its additional cost.

Some commenters agreed with the intent of the rule but disagreed with the proposed solution. They maintained that any type of mesh flooring is inadequate and that APHIS should instead require flooring made of impervious concrete, Teflon, stainless steel, or fiberglass. APHIS agrees that these materials can make excellent flooring surfaces for dogs and cats, if a concerted effort is made to keep them clean. However, APHIS inspectors have found that animals raised in primary enclosures with suspended flooring that allows the passage of fecal material are often kept in cleaner conditions than animals raised on flooring made of solid surfaces. Therefore, to protect the health of AWA-regulated animals by helping to ensure the cleanliness of their enclosures, APHIS will continue to allow dogs and cats to be raised in enclosures with suspended floors that allow the passage of fecal material.

Many commenters argued against the rule on the grounds that the current standards are already sufficient; they stated that those standards merely need to be enforced uniformly. However, enforcement activity, regardless of how diligent or aggressive, will never solve the injury and discomfort problems if the regulations continue to allow for the use of the material that causes the problems in the first place. Likewise, one commenter suggested that the injuries might be due more to neglect than to wire flooring and that an increase in the caretaker-to-animal ratio might be a better solution than requiring coated wire. However, the injuries and discomfort caused by wire flooring are not directly related to the level of supervision provided. Even if the caretaker-to-animal ratio were increased, the animals would still experience problems on floors made of bare wire.

Over half of the surveyed inspectors disagreed that the current regulations on wire flooring are sufficient. Furthermore, any corrective action taken as a result of enforcement activity is likely to produce the very same results that this rule change is intended to achieve, i.e., the replacement of bare metal strands that are ⅛ of an inch or less in diameter with an acceptable flooring material. From a regulatory standpoint, there seem to be only two solutions: Have regulated entities replace the unacceptable flooring in existing enclosures or have them purchase new or used enclosures with acceptable flooring already built in. The rule change allows regulated entities the option of choosing either solution, thereby minimizing the rule's economic impact.

Finally, many commenters were concerned about the proposed rule's lack of specificity. They pointed out that the term "wire" was not clearly defined, an important consideration as not all metal strands used in flooring are harmful to animals. That concern is a reasonable one and, for that reason, the final rule defines wire as flexible metal strands that are ⅛ of an inch or less in diameter. This modification was made to distinguish between metal strands that can be harmful to animals and inflexible metal strands, such as rods, that are not. This modification will allow APHIS inspectors to be consistent when judging the soundness of suspended floors of mesh or slatted construction. This modification will also make it easier for regulated individuals and organizations to comply with the new rule and significantly reduce the rule's impact.

Small Entity Impact

The Regulatory Flexibility Act requires that agencies consider the economic impact of rule changes on small entities. In its initial regulatory flexibility analysis, APHIS stated that the proposed rule change would affect all breeders, dealers, research facilities, and exhibitors of dogs and cats that are licensed or registered under the AWA and that house their animals in primary enclosures with wire floors. However, APHIS stated that it could not at that time make a definitive finding as to the proposed rule's impact because certain critical information was not available. For example, the total number of licensees and registrants was known, but the number who housed dogs and cats on wire flooring was not available. Nor was information available on the number of animals involved. For that reason, APHIS sought comments on the proposed rule's potential effects. APHIS specifically sought comment on the number of licensees and registrants who would have to replace wire flooring as a result of the proposed rule and the average number of animals these licensees house.

Unfortunately, the commenters furnished little or no new information on the rule's overall impact on small entities. Several commenters stated that it would be too costly to implement, but none provided details to support that statement. One commenter stated that it would cost $27,949 (labor and materials) to replace his galvanized expanded metal with coated wire (the commenter further stated the cost would be $42,949, or $15,000 more in additional labor costs, if the commenter

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could not "rent, borrow, or buy" two winches). However, galvanized expanded metal would not have to be replaced under the rule, so that cost estimate is not relevant. In any event, the commenter provided no details as to how the dollar amount was arrived at, including information on the square footage of the flooring to be replaced.

In fiscal year 1995, 10,108 facilities were licensed or registered under the AWA. Of that number, 4,325 were licensed dealers, 2,304 were licensed exhibitors, and 3,479 were registrants. The dealers are subdivided into two classes. Class A dealers (3,056) breed animals, and Class B dealers (1,269) serve as animal brokers. The registrants comprise research facilities (2,688), carriers and intermediate handlers (756), and exhibitors (35).

It is not known how many of the licensees and registrants are considered small entities under SBA standards, since information as to their size (in terms of gross receipts or number of employees) is not available. However, it is reasonable to assume that most are small, based on composite data for providers of the same and similar services in the United States. In 1992, the per-firm average gross receipts for all 6,804 firms in SIC 0752 (which includes breeders) was $115,290, well below the SBA's small-entity threshold of $5.0 million. Similarly, the 1992 per-establishment average employment for all 3,826 U.S. establishments in SIC 8731 (which includes research facilities) was 29, well below the SBA's small-entity threshold of 500 employees.

The economic impact of the rule change cannot be determined with certainty because critical information, such as the number of licensees and registrants who currently house dogs and cats on wire flooring is not available. However, based on information furnished by APHIS and the industry, discussed below, the economic impact is not expected to be significant.

For the overwhelming bulk of research facilities, the final rule will have virtually no economic impact because the use of wire flooring of any diameter size for dogs and cats in those facilities is rare.[1] Nor will the rule significantly affect regulated exhibitors because few use dogs and cats as exhibit animals. Registered carriers and intermediate handlers will also be largely unaffected because the enclosures they use to transport animals are not considered to be the animals' "primary" enclosures.

As a group, dealers (breeders and brokers) of dogs stand to be affected most by the rule change. However, even the impact on dog dealers should be minimal. (The impact on AWA-licensed cat dealers is likely to be negligible because most raise their animals on solid flooring surfaces in primary enclosures containing litter boxes, which are required by the regulations. Moreover, the percentage of licensed dealers who deal in cats is extremely small; the vast majority of licensed dealers deal in dogs.)

It is estimated that there are approximately 2,000 Class A dog breeders in the United States, who produce about 175,000 dogs annually—an average of 90 dogs per breeder.[2] To support the production of 90 dogs annually, each breeder would need about 16 separate enclosures—13 to accommodate the mothers and their newborns and 3 to accommodate the fathers. (This calculation assumes that: (1) newborns are housed with their mothers before being sold; (2) each mother produces about 7 newborns annually; (3) fathers are housed separately from the mothers and the newborns; and (4) the ratio of mothers to fathers at each facility is 4 to 1.) The 16 enclosures, in turn, would translate into a total of 156 square feet of needed floor space, assuming all mothers and fathers are medium-sized. (Floor space requirements for primary enclosures vary depending on the size of the animals; large dogs on average require 13 square feet of floor space, but small dogs require only 6.5 square feet. Medium-sized dogs are assumed to need 9.75 square feet, an average of the large and small dog requirements.)

Based on a recent quote, the material cost for a 200-square-foot roll of 14-gauge vinyl-coated galvanized wire is $148.60. The same roll without the vinyl coating costs $78.70.[3] The cost difference, therefore, is $69.90, or $0.35 per square foot. Based on the average floor space of 156 square feet, the maximum additional cost per breeder for the coated wire would be $55 (156 × $0.35). The maximum additional cost for all 2,000 dog breeders would be $110,000 (2,000 × $55). These cost figures represent a worst-case scenario because they assume that each breeder would have to replace all 156 square feet of floor space under the new rule. Such a scenario is unlikely because not all flooring used by dealers in housing for dogs is wire.

It is estimated that there are approximately 75 Class B dog brokers in the United States and that these brokers purchase/sell about 315,000 dogs annually—an average of 4,200 dogs per broker.[4] To support the purchase/sale of 4,200 dogs annually, each broker would need about 27 separate enclosures. (This calculation assumes that: (1) the brokers have custody of each dog for 1 week; and (2) the dogs are housed three to an enclosure.) The 27 enclosures, in turn, would translate into a total of 176 square feet of needed floor space, assuming that all dogs are small-sized. (Most dogs in the custody of brokers are puppies, and small dogs require only 6.5 square feet of floor space.) Based on the average floor space of 176 square feet, the maximum additional cost per broker for the coated wire would be $62 (176×$0.35). The maximum additional cost for all 75 dog brokers would be $4,650 (75×$62). Again, these cost figures represent a worst-case scenario because they assume that each broker would have to replace all 176 square feet of floor space under the new rule. Such a scenario is unlikely.

Small entities should not experience any additional labor costs as a result of the rule. Regulated entities have 2 years to bring existing flooring into compliance. By that time, it is likely that all bare wire flooring will have been replaced anyway, due to its limited useful life. The rule, therefore, should not force regulated entities into premature replacement of existing flooring. Because of that, and because the labor cost to replace wire flooring should be the same regardless of whether the wire is coated or uncoated, the rule should have no impact on small entities' labor costs.

On average, therefore, it would cost each breeder only about $55 to switch from bare wire to coated wire. This amount is relatively insignificant; it represents less than 1 percent of the per-firm average gross receipts for all firms in SIC 0752, which includes breeders. The average cost of $62 for each broker would also be relatively insignificant—less than 1 percent of the per-establishment average sales for all establishments in SIC 5199, which includes brokers. The rule would have a carryover cost effect because each subsequent replacement would require coated wire or some other acceptable material, such as galvanized expanded metal. However, the increased cost of coated wire would be made up, at least partially, over time because coated wire will provide longer use.

This rule contains no reporting or recordkeeping requirements.

[1] Members of the National Association for Biomedical Research (NABR) account for between 50 and 60 percent of all dogs used in research. Barbara Rich of NABR said that members' use of bare wire flooring is rare. Steve Smith (APHIS) indicated that use of bare wire flooring by non-NABR research facilities is also rare.

[2] Per N. Marshall Myers (Pet Industry Joint Advisory Council).

[3] These material quotes were obtained by Steve Smith (APHIS). In the initial analysis, APHIS stated that the market price of both bare and coated wire varies, depending on the quality and diameter width of the material. APHIS asserted that bare wire of the type most often used as flooring sells for approximately $1.50 per square foot and that coated wire (that meets the other standards) sells for between $2.25 and $5.00 per square foot.

[4] Per N. Marshall Myers (Pet Industry Joint Advisory Council).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 3

Animal welfare, Marine mammals, Pets, Reporting and recordkeeping requirements, Research, Transportation.

Accordingly, 9 CFR part 3 is amended as follows:

PART 3—STANDARDS

1. The authority citation for part 3 continues to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 3.6 is amended as follows:

a. In paragraph (a)(2)(x), the words "constructed of wire" are removed, and the words "of mesh or slatted construction" are added in their place, and the word "and" at the end of the paragraph is removed.

b. In paragraph (a)(2)(xi), the period at the end of the paragraph is removed, and "; and" is added in its place.

c. A new paragraph (a)(2)(xii) is added to read as follows:

§ 3.6 Primary enclosures.

* * * * *

(a) * * *

(2) * * *

(xii) Primary enclosures constructed on or after February 20, 1998 and floors replaced on or after that date, must comply with the requirements in this paragraph (a)(2). On or after January 21, 2000, all primary enclosures must be in compliance with the requirements in this paragraph (a)(2). If the suspended floor of a primary enclosure is constructed of metal strands, the strands must either be greater than ⅛ of an inch in diameter (9 gauge) or coated with a material such as plastic or fiberglass. The suspended floor of any primary enclosure must be strong enough so that the floor does not sag or bend between the structural supports.

* * * * *

§ 3.11 [Amended]

3. In § 3.11(a), the word "wire" is removed from the last sentence, and the word "mesh" is added in its place.

§ 3.14 [Amended]

4. In § 3.14(a)(9), the word "wire" is removed each time it appears.

Done in Washington, DC, this 13th day of January 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–1311 Filed 1–20–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–139, Special Conditions No. 25–ANM–135]

Special Conditions: Ilyushin Aviation Complex Model Il–96T Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Ilyushin Aviation Complex Model Il–96T airplane. This airplane will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards of part 25 of the Federal Aviation Regulations (FAR). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards of part 25.

EFFECTIVE DATE: February 20, 1998.

FOR FURTHER INFORMATION CONTACT: Norm Martenson, FAA, International Office, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2196.

SUPPLEMENTARY INFORMATION:

Background

Ilyushin Aviation Complex, 45 Leningradsky Prospect, Moscow, 125190, Russia, has applied for Russian type certification of their Model Il–96T airplane by the Aviation Register (AR) of the Interstate Aviation Committee in accordance with existing AR standards. The AR is authorized to perform airworthiness certification functions on behalf of the Commonwealth of Independent States, including the Russian government. In addition, Ilyushin applied for U.S. type certification of the Model Il–96T on February 16, 1993.

Section 21.29 of 14 CFR part 21 of the Federal Aviation Regulations (FAR) prescribes a reciprocal bilateral agreement between the U.S. and exporting country as a requirement for consideration of U.S. design or airworthiness approval of an imported aeronautical product. Such agreements are known as bilateral aviation safety agreements (BASA). Although the U.S. does not presently have a BASA with Russia providing reciprocal acceptance of transport category airplanes, the FAA is working with the AR and Russian government officials to conclude an agreement of this nature. FAA Advisory Circular (AC) 21–23, Airworthiness Certification of Civil Aircraft, Engines, Propellers, and Related Products Imported to the United States, provides further guidance in this regard.

A BASA with Russia may be concluded following successful completion of an assessment by the FAA and the AR of each other's technical competence and regulatory capability for performing airworthiness certification functions. The scope of the agreement is defined by each authority in Implementation Procedures. FAA type certification of the Model Il–96T transport airplane is therefore conditional upon successful implementation of a BASA with Russia, providing acceptance of transport category airplanes.

One of the key elements of any BASA assessment program is the shadow certification program. Under the Russian shadow certification program, FAA specialists are "shadowing" their AR counterpart specialists during AR certification of an example of the

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aeronautical product that the BASA is intended to cover. This program is intended to provide FAA assessment specialists with ample opportunity to evaluate the AR certification process and the AR specialists' technical competencies to support the airworthiness authority responsibilities inherent in a bilateral agreement. The Ilyushin Model Il–96T was selected as the product for this shadow certification which, if successful, would lead to a U.S.-Russian BASA. Conclusion of the BASA and related implementation procedures would, in turn, be followed by issuance of a U.S. type certificate for that model.

Under the anticipated provisions of the future BASA, the AR has elected to certify that the Model Il–96T complies with the AP–25 type certification standards, plus any additional requirements identified by the FAA to ensure an equivalent level of safety to that provided by the U.S. type certification standards. The AP–25 airworthiness standards, which were developed as the successor to the NLGS–3 standards of the former Soviet Union, were approved by the AR in November 1993 and implemented in Russia in July 1994. These standards have also been accepted by many of the other Commonwealth of Independent States for type certification of transport category airplanes. They were established after extensive harmonization with part 25 of the FAR and the European Joint Airworthiness Requirements (JAR)–25. The AP–25 standards are similar to part 25 of the FAR; however, there are certain specified differences in the requirements of the two documents.

Based on the application date of February 16, 1993, the U.S. type certification standards are part 25 of the FAR, as amended by Amendments 25–1 through 25–77, and these special conditions. In addition, the type certification basis includes the sections of part 25, as amended by Amendment 25–80, pertaining to lightning protection. Compliance with those sections is required under the provisions of § 21.17(a)(1)(ii).

Because the AR has elected to certify that the Model Il–96T complies with the Russian type certification standards, the FAA will make a comparison of the Russian type certification basis and the U.S. type certification standards described above. Based on this comparison, the FAA will prescribe any additional requirements that are necessary to ensure that the Model Il–96T meets a level of safety equivalent to that provided by the U.S. type certification standards. For U.S. certification of the Model Il–96T, the FAA will therefore accept the Russian type certification basis, plus any additional requirements, and these special conditions. As the program progresses, other features of the Model Il–96T may be determined to be novel or unusual. The equivalent certification basis may therefore include other special conditions or exemptions not pertinent to these special conditions.

Since noise certification and emission requirements are beyond the scope of the possible future bilateral agreement, the FAA will make findings of compliance with the applicable U.S. noise, fuel venting, and exhaust emission requirements. The U.S. noise certification basis for the Model Il–96T is 14 CFR part 36 of the FAR, as amended by Amendments 36–1 through 36–21, and any subsequent amendments that are applicable on the date on which the U.S. type certificate is issued. In addition to compliance with part 36, the statutory provisions of Public Law 92–574, "Noise Control Act of 1972," require that the FAA issue a finding of regulatory adequacy pursuant to Section 611 of that Act. The Model Il–96T must also comply with the fuel venting and exhaust emission requirements of 14 CFR part 34 of the FAR, as amended by Amendment 34–1, and any subsequent amendments that are applicable on the date the type certificate is issued.

Special conditions are prescribed under the provisions of § 21.16 of the FAR when the applicable regulations for type certification do not contain adequate or appropriate standards because of novel or unusual design features. As discussed below, the new Ilyushin Model Il–96T airplane incorporates a number of such design features.

Il–96T Design Features

General

The Model Il–96T airplane presented for U.S. type certification is a long range, four engine, transport category cargo airplane powered by four (4) Pratt & Whitney PW2337 engines with 37,500 lbs. thrust ratings and incorporating Rockwell/Collins avionics. It is designed to be flown by a two-man crew; however, it incorporates seats for 2 additional crewmembers. The airplane is intended for cargo operation only and is designed to carry cargo on main and lower decks. The aircraft cargo loading system includes a large main deck cargo door (15.91 feet × 9.43 feet) and two lower deck cargo doors (8.69 feet × 5.74 feet). The main cargo compartment on the upper deck has a volume of 20,480 cubic feet and can accommodate 25 P–6 pallets. The two cargo compartments on the lower deck have a total volume of 6,900 cubic feet, and can accommodate a total of 32 LD–3 containers or 9 P–6 pallets. The Il–96T has a maximum takeoff weight of 595,240 lbs. and a maximum landing weight of 485,000 lbs. The maximum cruise altitude is 43,000 feet.

The structure of the Il–96T is generally of conventional design and construction. The landing gear system employs a center landing gear for use during ground handling conditions with heavy airplane weights. The structural design also makes use of an electronic flight control system which provides the potential for a wide range of structural and system interactions.

The Model Il–96T flight control system is an electro-hydromechanical system utilizing both fly-by-wire (FBW) and conventional mechanical (cables and push-pull rods) linkages between pilot control column and control surface hydraulic actuators in two simultaneously operated and synchronized channels. The conventional mechanical channel, in normal operation, functions as a passive redundancy of the FBW channel and provides feedback to the pilots via the Automatic Feel Load System.

Hydraulic power to the flight control system is simultaneously provided by four independent hydraulic systems. Functions are shared among these systems in order to ensure airplane control in the event of loss of one, two, or three systems. The four systems are pressurized by variable displacement pumps driven by the engine accessory gearbox. In addition, the systems can be powered by electrically driven pumps. A ram air turbine (RAT)-driven pump is available as an emergency hydraulic power source.

Normal electrical power is supplied by four constant frequency generators, one on each engine. An auxiliary power unit (APU) providing electrical and hydraulic supply is available for ground use only and is not used in flight. Five batteries provide an alternative source of electrical power for loads required to continue safe flight and landing in the case of failure of four generators.

The engine control system consists of a dual-channel electronic engine control (EEC) mounted on the fan case of each engine. Each EEC interfaces with various airplane computer systems. The EEC provides gas generator control, engine limit protection, power management, thrust reverser control, and engine parameter inputs for the flight deck displays. The engine EEC and associated airplane related systems form the complete propulsion control system.

Pitch and roll control inputs are made through conventional flight deck central control columns. The flight instruments are displayed on six cathode ray tube (CRT) displays. Two CRT's are mounted directly in front of both the pilot and copilot and display primary flight instruments and navigational information. The other two CRT's are located in the center of the instrument panel and display engine parameters, warnings, and system diagnostics.

The type design of the Model Il–96T contains novel or unusual design features not envisioned by the applicable part 25 airworthiness standards and therefore special conditions are considered necessary in the following areas:

Airframe

1. Center Landing Gear

The Ilyushin Il–96T landing gear arrangement includes a center braking landing gear under the fuselage. The center main landing gear does not differ from that of the right or left main landing gear in construction and performs the same functions. The current landing gear design criteria are applicable to conventional landing gear arrangements. Special Condition No. 1 provides additional taxi, takeoff, and landing criteria for this arrangement.

2. Design Maneuver Requirements

In a conventional airplane with a hydro-mechanical flight control system, pilot inputs directly affect control surface movement (both rate and displacement) for a given flight condition. In the Il–96T, the pilot's controls and the flight control surfaces are connected through the electronic flight control system, which introduces additional surface movements based on its design control laws. The control surface movement during maneuvers differs from the pilot control displacements in terms of both rate and displacement. The additional effects of the electronic flight control system are not reflected in the current FAR; therefore, Special Condition No. 2 is provided.

3. Interaction of Systems and Structure

The Ilyushin Model Il–96T is equipped with an electrical flight control system and a load alleviation system that effects both gust and maneuver loads. These systems can directly, or as a result of failure or malfunction, affect structural performance. This degree of system and structures interaction was not envisioned in the structural design regulations of part 25 of the FAR for transport airplanes. Special Condition 3 provides comprehensive criteria in which the structural design safety margins are dependent on systems reliability.

Systems

4. Protection From Unwanted Effects of High Intensity Radiated Fields (HIRF)

The use of fly-by-wire designs to command and control engines and flight control surfaces increases the airplane's susceptibility to HIRF sources external to the airplane. The airworthiness regulations do not provide adequate requirements for protection from unwanted effects of HIRF.

High intensity radiated fields have the potential to cause adverse and potentially hazardous effects on fly-by-wire systems if design measures are not taken to ensure the immunity of such systems. This is particularly true with the trend toward increased power levels from ground based transmitters and the advent of space and satellite communications.

The Model Il–96T is being designed with electrical interfaces between crew inputs and (1) the flight control surfaces, and (2) the engines. These interfaces, and the interconnection among the electronic subsystems controlling these functions, can be susceptible to disruption of both command/response signals and the operational mode logic as a result of electrical and magnetic interference. Traditional airplane designs have utilized mechanical means to connect the primary flight controls and the engine to the flight deck. This traditional design results in control paths that are substantially immune to the effects of HIRF. A special condition is required to ensure that critical and essential systems be designed and installed to preclude component damage and system upset or malfunction due to the unwanted effects of HIRF. Therefore, Special Condition No. 4 is provided.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become part of the type certification basis in accordance with § 21.17(a)(2).

Discussion of Comments

Notice of proposed special conditions No. SC–97–2–NM was published in the **Federal Register** on April 9, 1997 (62 FR 17117). No comments were received, and the special conditions are adopted as proposed.

Applicability

These special conditions are applicable initially to the Ilyushin Model Il–96T airplane. Should Ilyushin Aviation Complex apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation Safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Ilyushin Aviation Complex Model Il–96T series airplanes.

1. *Center Landing Gear.* Notwithstanding § 25.477 of the FAR, the requirements of §§ 25.473 and 25.479 through § 25.485 apply, except as noted:

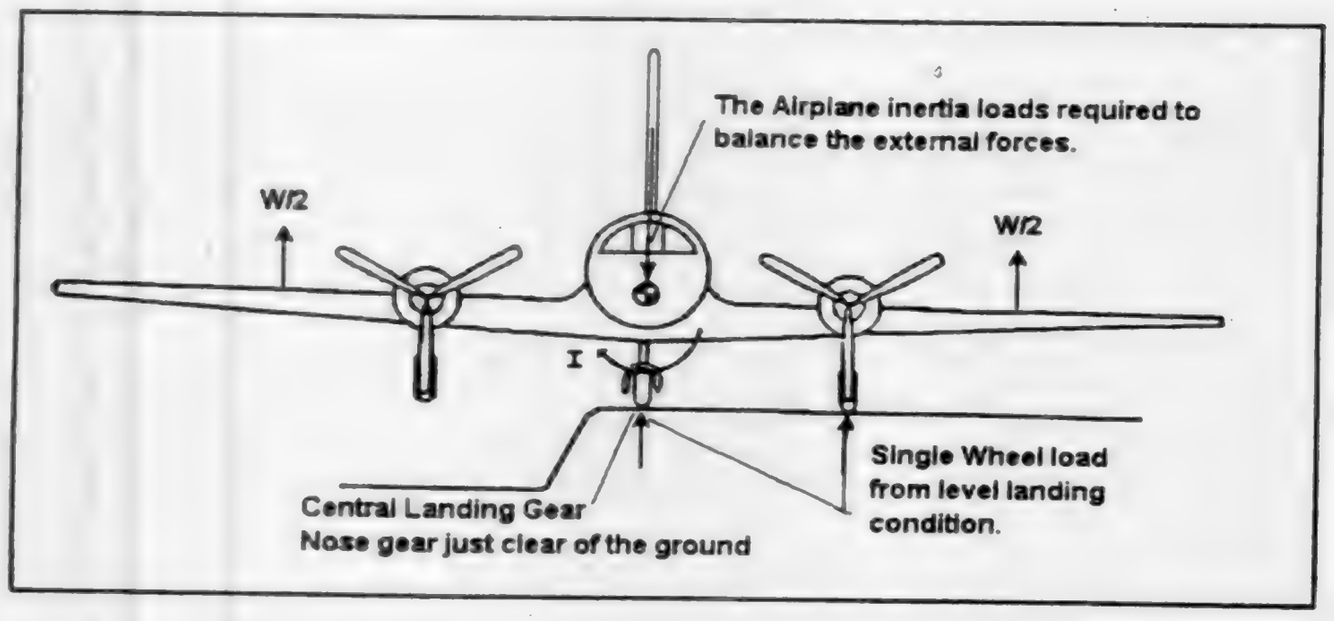
(a) In addition to the requirements of § 25.473, landing should be considered on a level runway and on a runway having a convex upward shape that may be approximated by a slope of 1.5 percent with the horizontal at main landing gear stations. The maximum loads determined from these two conditions must be applied to each main landing gear and to the center landing gear.

(b) The requirements of § 25.483 apply and, in addition, the condition represented by the following figure also applies:

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Figure 1. Center gear landing Condition



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(c) In lieu of the requirements of § 25.485, the following apply:

(1) The airplane is considered to be in the level attitude with only the main and central wheels contacting the ground.

(2) Vertical reactions of one-half of the maximum vertical reaction obtained at each main and center gear in the level landing conditions should be considered. The vertical loads must be combined with side loads that for the main gear are 0.8 of the vertical reaction (on one side) acting inward and 0.6 of the vertical reaction (on the other side) acting outward, and for the center gear are 0.7 of the vertical reaction acting in the same direction as main gear side loads. (Drag load=0)

(d) In addition to the requirements of § 25.489, "Ground handling conditions," the following applies: The airplane should be considered to be on a level runway and on a runway having a convex upward shape that may be approximated by a slope of 1.5 percent with the horizontal at main landing gear stations. The ground reactions must be distributed to the individual landing gear units in a rational or conservative manner (zero lift, shock struts in the static position).

(e) In lieu of the requirements of § 25.503, the following apply:

(1) The airplane is assumed to pivot about one of the outer main gears with the brakes locked on the selected gear. The limit vertical load factor must be 1.0 and the coefficient of friction must be 0.8.

(2) The airplane is assumed to be in static equilibrium, with the loads being applied at the ground contact points.

(3) All of the main gear units must be designed for the scrubbing or torsion loads, or both, induced by pivoting during ground maneuvers produced by:

(i) Towing at the nose gear, no brakes applied; and

(ii) Application of symmetrical or unsymmetrical forward thrust to aid pivoting and with or without braking on the outside main gear closest to the pivot center.

(f) The following applies to the center landing gear in lieu of § 25.723, "Shock absorption tests":

(1) The center landing gear should not fail in a test demonstrating its reserve energy absorption capacity at design landing weight, assuming airplane lift no greater than the airplane weight acting during an impact simulating:

(i) A center landing gear descent velocity of 120 percent of the maximum aircraft descent velocity at the time of center landing gear ground contact; or

(ii) A 12 fps airplane landing impact taking into account both the main and center landing gears acting during the impact, whichever is more critical.

2. *Design Maneuver Requirements.* (a) *Maximum elevator displacement at V_A.* In lieu of compliance with § 25.331(c)(1) of the FAR, the airplane is assumed to be flying in steady level flight (point A1 within the maneuvering envelope of § 25.333(b)) and, except as limited by pilot effort as specified in § 25.397 concerning pilot effort forces, the cockpit pitching control device is suddenly moved to obtain extreme positive pitching acceleration (nose up). In defining the tail load condition, the response of the airplane must be taken into account. Airplane loads which occur subsequent to the point at which the normal acceleration at the center of gravity exceeds the maximum positive limit maneuvering factor, n, need not be considered.

(b) *Pitch maneuvering loads induced by the system.* In addition to the requirements of § 25.331(c) of the FAR, it must be established that pitch maneuver loads induced by the system itself (e.g. abrupt changes in orders made possible by electrical rather than mechanical combination of different inputs) are acceptably accounted for.

(c) *Roll maneuver loads.* In lieu of compliance with § 25.349(a) of the FAR, the following conditions, speeds, spoiler and aileron deflections (except as the deflections may be limited by pilot effort) must be considered in combination with an airplane load factor of zero and of two-thirds of the positive maneuvering factor used in design. In determining the required aileron and spoiler deflections, the torsional flexibility of the wing must be considered in accordance with § 25.301(b).

(1) Conditions corresponding to steady rolling velocities must be investigated. In addition, conditions corresponding to maximum angular acceleration must be investigated. For the angular acceleration conditions, zero rolling velocity may be assumed in the absence of a rational time history investigation of the maneuver.

(2) At V_A, sudden deflection of the cockpit roll control up to the limit is assumed. The position of the cockpit roll control must be maintained until a steady roll rate is achieved and then must be returned suddenly to the neutral position.

(3) At V_C, the cockpit roll control must be moved suddenly and maintained so as to achieve a rate of roll not less than that obtained in paragraph (2).

(4) At V_D, the cockpit roll control must be moved suddenly and maintained so as to achieve a rate of roll not less than one third of that obtained in paragraph (2) of this paragraph.

(5) It must also be established that roll maneuver loads induced by the system itself (i.e., abrupt changes in orders made possible rather than mechanical combination of different inputs) are acceptably accounted for.

(d) *Yaw maneuver loads.* In lieu of compliance with § 25.351 of the FAR, the airplane must be designed for loads resulting from the conditions specified in subparagraphs (a) and (b) of this paragraph. Unbalanced aerodynamic moments about the center of gravity must be reacted in a rational or conservative manner, considering the principal masses furnishing the reacting inertia forces. Physical limitations of the airplane from the cockpit yaw control device to the control surface deflection, such as control stop position, maximum power and displacement rate of the servo controls, and control law limiters may be taken into account.

(1) Maneuvering. At speeds from V_{MC} to V_D, the following maneuvers must be considered. In computing the tail loads, the yawing velocity may be assumed to be zero:

(i) With the airplane in unaccelerated flight at zero yaw, it is assumed that the cockpit yaw control device (pedal) is suddenly displaced (with critical rate) to the maximum deflection, as limited by the stops.

(ii) With the cockpit yaw control device (pedal) deflected as specified in subparagraph (1) of this paragraph, it is assumed that the airplane yaws to the resulting sideslip angle (beyond the static sideslip angle).

(iii) With the airplane yawed to the static sideslip angle with the cockpit yaw control device deflected as specified in sub-paragraph (1) of this paragraph, it is assumed that the cockpit yaw control device is returned to neutral.

3. *Interaction of Systems and Structure.* (a) *General.* For an airplane equipped with flight control systems, load alleviation systems, or flutter control systems that directly, or as a result of a failure or malfunction, affect its structural performance, the influence of these systems and their failure conditions shall be taken into account in showing compliance with subparts C and D of part 25 of the FAR.

(b) *System fully operative.* With the system fully operative, the following apply:

(1) Limit loads must be derived in all normal operating configurations of the systems from all the deterministic limit conditions specified in subpart C, taking into account any special behavior of such systems or associated functions, or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant nonlinearity (rate of displacement of control surface, thresholds, or any other system nonlinearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

(2) The airplane must meet the strength requirements of part 25 (static strength, residual strength), using the specified factors to derive ultimate loads from the limit loads defined above. The effect of nonlinearities must be investigated beyond limit conditions to ensure the behavior of the systems presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered when it can be shown that the airplane has design features that make it impossible to exceed those limit conditions.

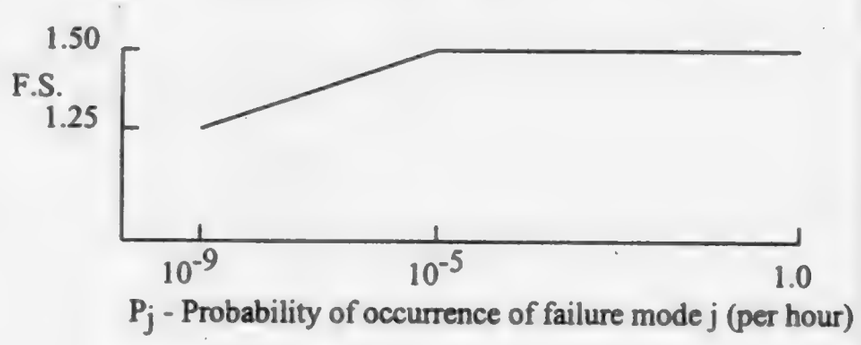
(3) The airplane must meet the aeroelastic stability requirements of § 25.629.

(c) *System in the failure condition.* For any system failure condition not shown to be extremely improbable, the following apply:

(1) *At the time of occurrence.* Starting from 1g level flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after failure. The airplane must be able to withstand these loads, multiplied by an appropriate factor of safety, related to the probability of occurrence of the failure. These loads should be considered as ultimate loads for this evaluation. The factor of safety is defined as follows:

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Factor of Safety at Time of Occurrence



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BILLING CODE 4910-13-C

(i) The loads must also be used in the damage tolerance evaluation required in § 25.571(b), if the failure condition is probable. The loads may be considered as ultimate loads for the damage tolerant evaluation.

(ii) Freedom from flutter and divergence must be shown at speeds up to V_D or 1.15 V_C, whichever is greater. However, at altitudes where the speed is limited by Mach number, compliance need be shown only up to M_D, as defined in § 25.335(d). For failure conditions that result in speed increases beyond V_C/M_C, freedom from flutter and divergence must be shown at increased speeds, so that the above margins are maintained.

(iii) Notwithstanding subparagraph (1) of this paragraph, failures of the system that result in forced structural vibrations (oscillatory failures) must not produce peak loads that could result in permanent deformation of primary structure.

(2) *For the continuation of the flight.* For the airplane, in the failed configuration and considering any appropriate flight limitations, the following apply:

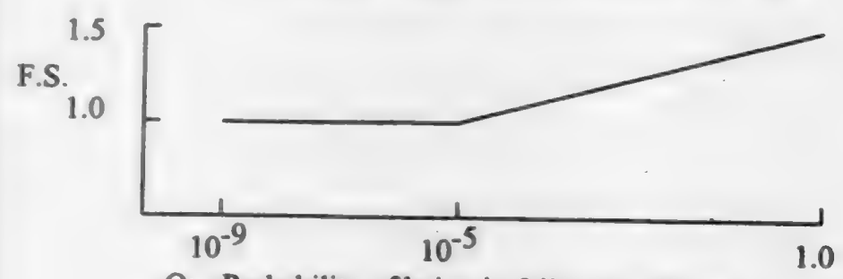
(i) Static and residual strength must be determined for loads induced by the failure condition, if the loads could continue to the end of the flight. These loads must be combined with the deterministic limit load conditions specified in subpart C.

(ii) For static strength substantiation, each part of the structure must be able to withstand the loads specified in subparagraph (2)(i) of this paragraph multiplied by a safety factor depending on the probability of being in this failure state.

The factor of safety is defined as follows:

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Factor of Safety for Continuation of Flight



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Qj=(Tj)(Pj) where:

Tj=Average time spent in failure condition j (in hours)

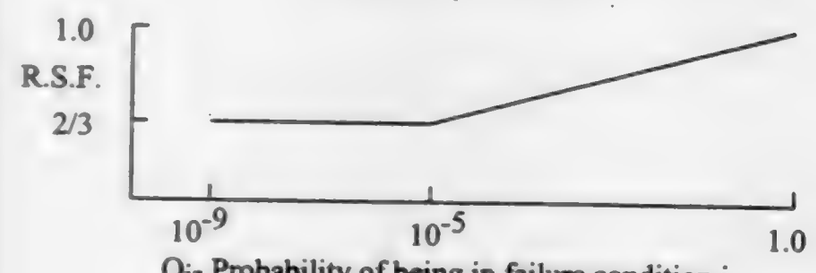
Pj=Probability of occurrence of failure mode j (per hour)

Note: If Pj is greater than 10^{-3} per flight hour, then a 1.5 factor of safety must be used.

(iii) For residual strength substantiation as defined in § 25.571(b), for structures also affected by failure of the system and with damage in combination with the system failure, a reduction factor may be applied to the residual strength loads of § 25.571(b). However, the residual strength level must not be less than the 1g flight load, combined with the loads introduced by the failure condition plus two-thirds of the load increments of the conditions specified in § 25.571(b) in both positive and negative directions (if appropriate). The reduction factor is defined as follows:

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Residual Strength Reduction Factor



BILLING CODE 4910-13-C

Qj=(Tj)(Pj) where:

Tj=Average time spent in failure condition j (in hours)

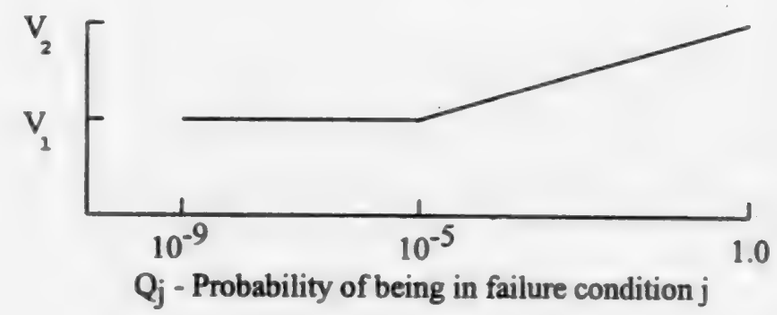
Pj=Probability of occurrence of failure mode j (per hour)

Note: If Pj is greater than 10^{-3} per flight hour, then a residual strength factor of 1.0 must be used.

(iv) Freedom from flutter and divergence must be shown up to a speed determined by the following figure:

BILLING 4910-13-P

Flutter Clearance Speed



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V_1=Clearance speed as defined in § 25.629(b)(2).

V_2=Clearance speed as defined in § 25.629(b)(1).

Qj=(Tj)(Pj) where:

Tj=Average time spent in failure condition j (in hours)

Pj=Probability of occurrence of failure mode j (per hour)

Note: If Pj is greater than 10^{-3} per flight hour, then the flutter clearance speed must not be less than V_2.

(v) Freedom from flutter and divergence must also be shown up to V_1 in the above figure for any probable system failure condition combined with any damage required or selected for investigation in § 25.571(b).

(vi) If the time likely to be spent in the failure condition is not small compared to the damage propagation period, or if the loads induced by the failure condition may have a significant influence on the damage propagation, then the effects of the particular failure condition must be addressed and the corresponding inspection intervals adjusted to adequately cover this situation.

(vii) If the mission analysis method is used to account for continuous turbulence, all the systems failure conditions associated with their probability must be accounted for in a rational or conservative manner in order to ensure that the probability of exceeding the limit load is not higher than the prescribed value of the current requirement.

(d) *Warning considerations.* For system failure detection and warning, the following apply:

(1) Before flight, the system must be checked for failure conditions, not shown to be extremely improbable, that degrade the structural capability of the airplane below the level intended in paragraph (b) of this special condition. The crew must be made aware of these failures, if they exist, before flight.

(2) An evaluation must be made of the necessity to signal, during the flight, the existence of any failure condition that could significantly affect the structural capability of the airplane and for which the associated reduction in airworthiness can be minimized by suitable flight limitations. The assessment of the need for such signals must be carried out in a manner consistent with the approved general warning philosophy for the airplane.

(3) During flight, any failure condition not shown to be extremely improbable, in which the safety factor existing between the airplane strength capability and loads induced by the deterministic limit conditions of subpart C of part 25 is reduced to 1.3 or less, must be signaled to the crew if appropriate procedures and limitations can be provided so that the crew can take action to minimize the associated reduction in airworthiness during the remainder of the flight.

(e) *Dispatch with failure conditions.* If the airplane is to be knowingly dispatched in a system failure condition that reduces the structural performance of the airplane, then operational limitations must be provided whose effects, combined with those of the failure condition, allow the airplane to meet the structural requirements described in paragraph (b) of this special condition. Subsequent system failures must also be considered.

Discussion: This special condition is intended to be applicable to flight controls, load alleviation systems, and flutter control systems. The criteria provided by the special condition only address the direct structural consequences of the systems responses and performances and therefore cannot be considered in isolation but should be included in the overall safety evaluation of the airplane. The presentation of these criteria may, in some instances, duplicate standards already established for this evaluation. The criteria are applicable to structure, the failure of which could prevent continued safe flight and landing. The following definitions are applicable to this special condition:

Structural performance: Capability of the airplane to meet the structural requirements of part 25.

Flight limitations: Limitations that can be applied to the airplane flight conditions following an inflight occurrence and which are included in the flight manual (e.g., speed limitations, avoidance of severe weather conditions, etc.).

Operational limitations: Limitations, including flight limitations, that can be applied to the airplane operating conditions before dispatch (e.g., payload limitations).

Probabilistic terms: The probabilistic terms (probable, improbable, extremely improbable) used in this special condition should be understood as defined in AC 25.1309–1.

Failure condition: The term failure condition is defined in AC 25.1309–1; however, this special condition applies only to system failure conditions that have a direct impact on the structural performance of the airplane (e.g., failure conditions that induce loads or change the response of the airplane to inputs such as gusts or pilot actions).

4. *Protection from Unwanted Effects of High Intensity Radiated Fields (HIRF).* In the absence of specific requirements for protection from the unwanted effects of HIRF, the following apply:

Each airplane system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

Discussion: The Ilyushin Model Il–96T will utilize electrical and electronic systems that perform critical functions. These systems include the electronic

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displays, integrated avionics computer, electronic engine controls, etc. The existing airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of HIRF which are external to the airplane.

Airplane designs that utilize metal skins and mechanical command and control means have traditionally been shown to be immune from the effects of HIRF energy from ground-based and airborne transmitters. With the trend toward increased power levels from these sources, plus the advent of space and satellite communications, the immunity of the airplane to HIRF energy must be established. No universally accepted guidance to define the maximum energy level in which civilian airplane system installations must be capable of operating safely has been established.

For the purposes of this special condition, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane. At this time the FAA and other airworthiness authorities are unable to precisely define or control the HIRF energy level to which the airplane will be exposed in service. Therefore, the FAA hereby defines two acceptable interim methods for complying with the requirement for protection of systems that perform critical functions.

(1) The applicant may demonstrate that the critical systems, as installed in the airplane, are protected from the external HIRF threat environment defined in the following table:

Frequency	Field peak (V/M)	Strength average V/M
10 KHz-500 KHz	60	60
500 KHz-2 MHz	80	80
2 MHz-30 MHz	200	200
30 MHz-100 MHz	33	33
100 MHz-200 MHz	150	33
200 MHz-400 MHz	56	33
400 MHz-1 GHz	4,020	935
1 GHz-2 GHz	7,850	1,750
2 GHz-4 GHz	6,000	1,150
4 GHz-6 GHz	6,800	310
6 GHz-8 GHz	3,600	666
8 GHz-12 GHz	5,100	1,270
12 GHz-18 GHz	3,500	551
18 GHz-40 GHz	2,400	750

or,

(2) The applicant may demonstrate by laboratory test that the critical systems elements and their associated wiring harnesses can withstand a peak electromagnetic field strength of 100 volts per meter, without the benefit of airplane structural shielding, in the frequency range of 10 KHz to 18 GHz.

Compliance Method: This paragraph describes an acceptable method of showing compliance with the HIRF energy protection requirements.

(1) *Compliance Plan:* The applicant should present a plan for Aviation Register approval, outlining how compliance with the HIRF energy protection requirements will be attained. This plan should also propose pass/fail criteria for the operation of critical systems in the HIRF environment.

(2) *System Criticality:* A hazard analysis should be performed by the applicant for approval by Aviation Register to identify electrical and/or electronic systems which perform critical functions. These systems are candidates for the application of HIRF energy protection requirements.

(3) *Compliance Verification:* Compliance with the HIRF energy protection requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or a combination thereof as acceptable to Aviation Register. Service experience alone is not acceptable since such experience in normal flight operations may not include an exposure to the HIRF environmental condition.

(4) *Pass/Fail Criteria:* Acceptable system performance is attained by demonstrating that the system under consideration continues to perform its intended function during and after exposure to the required electromagnetic fields. Deviations from system specification may be acceptable depending on an independent assessment of the deviations for each application.

(5) *Test Methods and Procedures:* RTCA document DO–160C, Section 20, provides information on acceptable test procedures. In addition, the following information on modulation is presented to supplement that found in DO–160C. Equipment and subsystem radiated susceptibility qualification tests should be conducted by slowly scanning the entire frequency spectrum with an unmodulated signal which produces the required average electric field strength as the equipment under test (EUT) and its wiring. A peak level detector should be used to monitor the peak values of the signal and these values should be recorded at each test point. The EUT should not be damaged by this test and should operate normally for frequencies under 400 MHz. Deviations from normal operation for test frequencies above 400 MHz should be recorded. The test should be repeated with an appropriate modulation applied to the test signal. At each test point, the amplitude of the RF test signal should be adjusted to the peak values recorded during the unmodulated test. The modulation should be selected as the signal most likely to disrupt operation of the equipment under test based on its design characteristics. For example, flight control systems might be susceptible to 3 Hz square wave modulation while the video signals for CRT displays may be susceptible to 400 Hz sinusoidal modulation. If the worst case modulation is unknown or cannot be determined, default modulations can be used. Suggested default values are 1 KHz sine wave with 80% depth of modulation in the frequency range from 10 KHz to 400 MHz and 1 KHz square wave with greater than 90% depth of modulation from 400 MHz to 18 GHz. For frequencies where the unmodulated signal caused deviations from normal operation of the EUT, several different modulating signals with various waveforms and frequencies should be applied. Modern laboratory equipment may not be able to continuously scan the spectrum in the manner of analog equipment. These units will only generate discrete frequencies. For such equipment, the number of test points and the dwell time at each test point must be specified. For each decade of the frequency test spectrum (a ten times increase in frequency (i.e., 10 Kz to 100 KHz) there should be at least 25 test points, and for the decades from 10 MHz to 100 MHz, and 100 MHz to 1 GHz there should be a minimum of 180 test points each. The dwell time at each test point should be at least 0.5 second.

(6) *Data Submittal:* An accomplishment report should be submitted to the Aviation Register showing fulfillment of the HIRF energy protection requirements. This report should contain test results, analysis and other pertinent data.

(7) *Maintenance Requirements:* The applicant (manufacturer) must provide maintenance requirements to assure the continued airworthiness of the installed system(s).

Issued in Renton, Washington, on December 16, 1997.

Gilbert L. Thompson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–101.

[FR Doc. 98–865 Filed 1–20–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–29–AD; Amendment 39–10286; AD 98–02–04]

RIN 2120–AA64

Airworthiness Directives; CFM International CFM56–5B/2P Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to CFM International (CFMI) CFM56–5B/2P series turbofan engines, that requires a reduction of the low cycle fatigue (LCF) retirement life for certain low pressure turbine (LPT) cases. This amendment is prompted by the results of a refined life analysis performed by the manufacturer which revealed minimum calculated LCF lives significantly lower than the published LCF retirement life. The actions specified by this AD are intended to prevent a LCF failure of the LPT case, which could result in damage to the aircraft.

DATES: Effective March 23, 1998.

ADDRESSES: This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7138; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to CFM International (CFMI) CFM56–5B/2P series turbofan engines was published in the **Federal Register** on September 19, 1997 (62 FR 49179). That action proposed to require a reduction of the low cycle fatigue (LCF) retirement life for certain low pressure turbine (LPT) cases.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

One commenter supports the rule as proposed.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 18 engines of the affected design in the worldwide fleet. The manufacturer has advised the FAA that there are no engines installed on U.S. registered aircraft that are affected by this AD. Therefore, there is no associated cost impact on U.S. operators as a result of this AD. However, should an affected engine be imported on an aircraft and placed on the U.S. registry in the future, and assuming that the parts cost is proportional to the reduction of the LCF retirement life, the required parts would cost approximately $40,423 per engine. Based on these figures, the total cost impact of the AD is estimated to be $40,423 per engine.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–02–04 CFM International: Amendment 39–10286. Docket 97–ANE–29–AD.

Applicability: CFM International (CFMI) CFM56–5B1/2P, –5B2/2P, –5B3/2P, and –5B4/2P turbofan engines, installed with low pressure turbine (LPT) case, Part Number (P/N) 338–117–004–0, installed on but not limited to Airbus A320 and A321 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a low cycle fatigue (LCF) failure of the LPT case, which could result in damage to the aircraft, accomplish the following:

(a) Remove from service LPT case, P/N 338–117–004–0, and replace with a serviceable part, as follows:

(1) For CFM56–5B2/2P and –5B3/2P engines, prior to accumulating 10,500 cycles.

(2) For CFM56–5B1/2P and –5B4/2P engines, prior to accumulating 15,500 cycles.

(b) This action establishes the new LCF retirement lives of 10,500 and 15,500 cycles for the engines stated in paragraphs (a)(1) and (a)(2) of this AD, which are published in Chapter 05 of CFM56–5B Engine Shop Manual, CFMI–TP.SM.9.

(c) For the purpose of this AD, a "serviceable part" is one that has not exceeded its respective new life limit as set out in this AD.

(d) Except as provided in paragraph (e) of this AD, no alternative replacement times may be approved for LPT case, P/N 338–117–004–0.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

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Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(g) This amendment becomes effective on March 23, 1998.

Issued in Burlington, Massachusetts, on January 7, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–1326 Filed 1–20–98; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33–7494, 34–39542, File No. S7–17–97]

RIN 3235–AH18

Covered Securities Pursuant to Section 18 of the Securities Act of 1933

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("SEC" or "Commission") is adopting Rule 146(b) under Section 18 the Securities Act of 1933, as amended ("Securities Act"). The purpose of the Rule is to designate securities listed on the Chicago Board Options Exchange, Tier I of the Pacific Exchange, and Tier I of the Philadelphia Stock Exchange as covered securities for the purposes of Section 18 of the Securities Act. Covered Securities under Section 18 are exempt from state law registration requirements.

EFFECTIVE DATE: This final rule is effective January 21, 1998.

FOR FURTHER INFORMATION CONTACT: Sharon M. Lawson, Senior Special Counsel, James T. McHale, Special Counsel, or David S. Sieradzki, Esq., at 202/942–0181, 202/942–0190, or 202/942–0135; Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission (Mail Stop 2–2), 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

On October 11, 1996, The National Securities Markets Improvement Act of 1996 ("NSMIA")[1] was signed into law. Among other changes made to the federal securities laws, NSMIA amends Section 18 of the Securities Act[2] to provide for exclusive federal registration of securities listed, or authorized for listing, on the New York Stock Exchange ("NYSE"), the American Stock Exchange ("Amex"), or listed on the National Market System of the Nasdaq Stock Market ("Nasdaq/NMS"), or any other national securities exchange designated by the Commission to have substantially similar listing standards to those markets. More specifically, Section 18(a) provides that "no law, rule, regulation, or order, or other administrative action of any State * * * requiring, or with respect to, registration or qualification of securities * * * shall directly or indirectly apply to a security that—(A) is a covered security." Covered securities are defined in Section 18(b)(1) to include those securities listed, or authorized for listing, on the NYSE, Amex, or listed on Nasdaq/NMS (collectively the "Named Markets"), or those securities listed, or authorized for listing, on a national securities exchange (or tier or segment thereof) that has listing standards that the Commission determines by rule are "substantially similar" to one of the Named Markets.

The Pacific Exchange, Incorporated ("PCX"), the Chicago Board Options Exchange, Incorporated ("CBOE"), the Chicago Stock Exchange, Incorporated ("CHX"), and the Philadelphia Stock Exchange, Incorporated ("Phlx") (collectively the "Petitioners") have petitioned the Commission to adopt a rule which finds their listing standards to be substantially similar to those of the NYSE, Amex, or Nasdaq/NMS and, therefore, entitling securities listed pursuant thereto to be deemed covered securities under Section 18 of the Securities Act.[3]

On June 10, 1997, the Commission issued a release proposing to adopt Rule 146(b) that would designate securities listed on the CBOE and Tier I of the PCX as designated securities for the purposes of Section 18(a) of the Securities Act, and soliciting comment on whether Tier I securities of the CHX and Phlx should be included in Rule 146(b).[4] The Commission received three comment letters in response to the proposal.[5]

As to the inclusion of securities listed on Tier I of the CHX and Tier I of the Phlx in Rule 146(b), the Commission stated that while most of their Tier I listing standards are substantially similar to one of the Named Markets, they differed in several important respects.[6] The Commission also indicated, however, that if the CHX and Phlx were to revise their Tier I listing standards in these areas to conform them to those of the NYSE, Amex, or Nasdaq/NMS prior to the adoption of the proposed Rule, the Commission likely would include securities listed on these markets in final Rule 146(b). Accordingly, in order to obtain the benefits of the exemption under the proposed Rule, the CHX and Phlx[7] both revised their Tier I listing standards to address the noted deficiencies. Although CHX has modified its listing and maintenance standards as suggested, the Commission has concerns regarding the CHX's listing and maintenance procedures and thus does not include CHX in the final Rule. The Commission will continue to review the CHX's listing program, including listing standards and operations, and may determine to include securities listed on CHX Tier I in the future.

After careful comparison, the Commission concludes that currently

[1] Pub. L. 104–290, 110 Stat. 3416 (1996).

[2] 15 U.S.C. 77r.

[3] *See* Letter from David P. Semak, Vice President, Regulation, Pacific Stock Exchange, Incorporated (n/k/a Pacific Exchange, Inc.), to Arthur Levitt, Jr., Chairman, Commission, dated November 15, 1996 ("PCX Petition"); letter from Alger B. Chapman, Chairman, CBOE, to Jonathan G. Katz, Secretary, Commission, dated November 18, 1996 ("CBOE Petition"); letter from J. Craig Long, Esq., Foley and Lardner, to Jonathan G. Katz, Secretary, Commission, dated February 4, 1997("CHX Petition"); and letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Phlx, to Jonathan G. Katz, Secretary, Commission, dated March 31, 1997 ("Phlx Petition") (collectively the "Petitions").

[4] Securities Act Release No. 7422, Securities Exchange Act Release No. 38728 (June 10, 1997) ("proposing release"), 62 FR 32705 (June 17, 1997).

[5] *See* Letter from J. Craig Long, Esq., Foley & Lardner, to Jonathan G. Katz, Secretary, Commission, dated June 26, 1997 (received June 30, 1997) ("Foley letter"); letter from Ira L. Kotel, Esq., Roberts, Sheridan & Kotel, to Jonathan G. Katz, Secretary, Commission, dated July 16, 1997 (received July 21, 1997) ("Kotel letter"); and letter from James C. Yong, First Vice President and General Counsel, The Options Clearing Corporation ("OCC"), to Jonathan G. Katz, Secretary, Commission, dated July 8, 1997 (received July 22, 1997) ("OCC letter").

[6] Specifically, the Commission noted that unlike the NYSE, Amex, or Nasdaq/NMS, the CHX did not have a minimum share price requirement for continued listing of common stock on Tier I. With regard to the Phlx, the Commission identified the Exchange's lack of a maintenance standard for bonds and debentures listed on Tier I of the Exchange as a deficiency in their listing standards. Moreover, with respect to stock index, currency and currency index warrants, the Phlx had no public distribution, aggregate market value, nor term to maturity requirements. Finally, the Commission noted that issuers of "other securities" listed on Tier I of the Phlx were required to have pre-tax income of only $100,000 in three of the four last fiscal years, versus the Amex requirement that issuers have $750,000 in pre-tax income in their last fiscal year, or in two of their last three fiscal years. *See* proposing release, *supra* note 4.

[7] *See* Phlx Listing Standards Order, *infra* note 18.

the listing standards of Tier I of the PCX, and Phlx, and the listing standards of the CBOE are substantially similar to the listing standards of the NYSE, Amex or Nasdaq/NMS. Accordingly, the Commission today is adopting Rule 146(b) which designates securities listed on such markets as covered securities under Section 18(b)(1) of the Securities Act. As adopted, Rule 146(b) will provide those covered securities with an exemption from state blue sky provisions as set forth under Section 18(a) of the Securities Act.

II. Background

The development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is of critical importance to financial markets and the investing public. Listing standards serve as a means for a self-regulatory organization ("SRO") to screen issuers and to provide listed status only to bona fide companies with sufficient float, investor base and trading interest to maintain fair and orderly markets. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity.

Many States have recognized the importance of listing standards by excepting from state registration requirements securities traded on the Named Markets.[8] In enacting Section 18, Congress intended to codify in the Securities Act an exemption from state registration requirements similar to these state law provisions.[9] In order to avoid competitive disparities, Congress provided the Commission with the discretionary authority to extend similar preemption treatment to other national securities exchanges (or tiers or segments thereof) that have substantially similar listing standards.[10]

As noted above, the PCX, CBOE, CHX, and Phlx all have petitioned the Commission to adopt a rule as contemplated by Section 18.[11] The Petitioners assert that their Tier I listing standards[12] are substantially similar to those of the Named Markets, and that until the Commission acts to provide them with the benefits of the Section 18 exemption, they will be at a competitive disadvantage to these markets. The Commission recognizes the competitive concerns raised by the Petitioners, but notes that the statute requires the Commission to make an independent finding that the Petitioners' listing standards are substantially similar to those of the NYSE, the Amex or Nasdaq/NMS.

III. Comment Letters

As noted above, the Commission received three comment letters in response to the proposal.[13] The Foley letter, filed on behalf of the CHX, noted that the CHX had submitted a proposed rule change with the Commission to amend its maintenance standards for common stock listed on Tier I of the Exchange to add a minimum share price. The Foley letter urged that once approved, the amendment should resolve the Commission's concerns relating to the CHX's Tier I standards and that the Commission should include securities listed on CHX's Tier I in Rule 146(b).

The Kotel letter did not address the desirability of adopting proposed Rule 146(b) generally, but urged the Commission to include securities listed on the Nasdaq SmallCap Market ("SmallCap") in the Rule. In support of this view, the Kotel letter noted that the National Association of Securities Dealers, Inc. ("NASD") recently proposed to amend the requirements for initial listing on SmallCap and that once the new SmallCap listing standards were approved, they would be substantially similar to those of the Amex.[14] Accordingly, the Kotel letter urged that securities listed on SmallCap should be deemed covered securities for purposes of Rule 146(b). In addition, the Kotel letter stated that extending the benefits of the Rule to securities listed on SmallCap would further the Commission's policy of simplifying securities regulation for small businesses and would lower the costs for small businesses in complying with federal and state regulations.

The third comment letter received by the Commission, the OCC letter, generally supported the proposed Rule. In addition, the OCC letter urged the Commission to designate standardized options traded on Tier I of the Phlx as covered securities under the Rule, in the event the Phlx did not file to amend its listing standards to address the concerns raised by the Commission in the proposing release.

IV. Discussion

The Commission has reviewed extensively the listing and maintenance standards for all securities listed and traded on the Petitioners' markets, including common stock, preferred stock, bonds and debentures, and options.[15] With regard to applying the "substantially similar" standard, the Commission notes that under Section 18(b)(1)(B) of the Securities Act the Commission has the authority to compare the listing standards of a petitioner with those of either the NYSE, Amex, or Nasdaq/NMS. The Commission attempted initially to compare a petitioner's listing standards for all securities with only one of these markets.[16] If a petitioner's listing standards in a particular category did not meet the standards of that market, however, the Commission compared the petitioner's standards to the other two markets. Additionally, the Commission interpreted the substantially similar standard to require listing standards at least as comprehensive as those of the markets named in Section 18(b)(1)(A). If a petitioner's standards were higher than such markets, then the Commission still determined that the petitioner's standards were substantially similar to these markets. Finally, the Commission reviewed the listing standards for each type of security in making the substantially similar determination. Differences in language or approach of the listing standards for a particular security did not necessarily lead to a determination that the listing standards of a petitioner were not substantially similar to those of the named exchange.

After careful comparison, using the approach outlined above, the Commission concludes that currently the listing standards of the CBOE and Tier I of the PCX, and Phlx are substantially similar to the listing standards of the NYSE, Amex or Nasdaq/NMS.[17] Therefore, the

[8] *See, e.g.*, Del. Code Ann. tit. 6 sec. 7309(a)(8) (1996).

[9] H.R. Rep. No. 622, 104th Cong., 2d Sess., pt. 1, at 30 (1996) ("Legislative History"). As a result of this federal preemption of the state registration process, SRO listing standards have become all the more important to preserving the integrity of U.S financial markets and protecting investors.

[10] *See* Legislative History, *supra* note 9.

[11] *See* Petitions, *supra* note 3.

[12] The Commission notes that presently the CBOE only has one tier, or segment, for listing purposes.

[13] *See supra* note 5.

[14] The changes to the SmallCap listing standards referred to in the Kotel letter were recently approved by the Commission. *See* Securities Exchange Act Release No. 38961 (August 22, 1997) ("Nasdaq Listing Standards Order").

[15] The Commission also has reviewed each exchange's listing and maintenance standards for warrants, currency and index warrants, other securities, contingent value rights, equity linked notes, and unit investment trusts. *See* proposing release, *supra* note 4.

[16] For purposes of comparing the listing standards of the CBOE and Tier I of the PCX, Phlx and CHX, the Commission used the listing standards applicable to securities listed on the Amex.

[17] The proposing release contains a more detailed description of the comparison of these exchanges to the Named Markets. *See* proposing release, *supra note 4.*

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Commission is adopting Rule 146(b), designating securities listed on these markets as "covered securities" for purposes of Section 18 of the Securities Act. With regard to the CHX, the Commission has determined not to include securities listed on Tier I of the Exchange at this time. Although the Exchange has modified its listing and maintenance standards as suggested, the Commission has concerns regarding the CHX's listing and maintenance procedures. The Commission will continue to review the CHX's listing program, including listing standards and operations, and may determine to include securities listed on CHX Tier I in the future.

With regard to the Phlx, the Commission concludes that the changes recently made by the Exchange to its Tier I listing standards [18] enable the Commission to make the substantially similar finding.[19] First, the Phlx amended Rule 803(e) to adopt additional listing standards for stock index warrants, currency warrants and currency index warrants (collectively "non-equity warrants"). New subsection (2) to Rule 803(e) requires that non-equity warrants have a term of between one and five years from the date of issuance. Rule 803(e)(3) imposes a minimum public distribution and market value requirement of 1,000,000 non-equity warrants with at least 400 public warrant holders and a minimum aggregate market value of $4,000,000. Finally, new subsection (9) to Rule 803(e) requires that non-equity warrants be cash-settled in U.S. dollars.[20]

Second, the Phlx increased the pre-tax income requirement for issuers of "other securities" in Rule 803(f)(2) from $100,000 in three of the four prior fiscal years to $750,000 in the issuer's last fiscal year or in two of its last three fiscal years.[21] Other securities are hybrid securities that have features common to both equity and debt securities, yet do not fit within the traditional definitions of either.

Third, the Phlx amended Rule 810(a), which contains the maintenance standards for Tier I securities, to add maintenance standards for bonds, notes and debentures. New subsection (5) to Rule 810(a) requires that debt securities maintain an aggregate market value or principal amount of bonds that are publicly held of $400,000 and that the issuer is able to meet its obligations in the listed debt securities. Also, for any debt security convertible into a listed equity security, the debt security will be reviewed when the underlying equity security is delisted and will be delisted when the underlying equity security is no longer subject to real-time trade reporting in the United States. In addition, if common stock is delisted for violation of any of the corporate governance criteria in Phlx Rules 812 through 899, the Exchange also will delist any listed debt security convertible into that common stock.[22]

In light of the above changes made by the Phlx to its Tier I listing standards, the Commission concludes that the Phlx's Tier I listing standards, when taken as a whole, are substantially similar to those of the Amex, and that securities listed on Tier I of the Phlx should be included in Rule 146(b) as covered securities. In addition, because Phlx Tier I securities include options, the Commission need not consider whether standardized options traded on the Phlx could be deemed covered securities separately from other Phlx Tier I securities, as suggested in the OCC letter.

With regard to the Kotel letter, while it does appear that the SmallCap initial listing standards for common stock are similar to those of the Amex, the Commission has determined not to include securities listed on SmallCap in Rule 146(b) at this time. First, the proposing release did not solicit comment on whether SmallCap listing standards are substantially similar to one of the Named Markets. Second, the Commission has identified several aspects of the SmallCap listing standards which appear to differ significantly from those of the Amex and the other primary markets.[23] Third, pursuant to the Nasdaq Listing Standards Order, the new maintenance standards do not become effective until six months after the Order was issued (February 22, 1998), and the existing maintenance standards for securities listed on SmallCap are considerably less stringent than those of any one of the Named Markets. Finally, the Commission notes that it has the authority to undertake a more extensive review of the SmallCap listing standards in the future and, if appropriate, propose an amendment to Rule 146(b) to include securities listed on SmallCap in the Rule.

With respect to a designated exchange maintaining its status under Rule 146(b), the Commission notes that Congress intended for the Commission to monitor the listing requirements of the regional exchanges, consistent with its supervisory authority under the Securities Exchange Act of 1934 ("Exchange Act"), to ensure the continued integrity of these markets and the protection of investors.[24] For example, if a regional exchange proposed to lower its listing standards for common stock, the Commission likely would consider this to be a substantive revision which may change the finding that the regional exchange's listing standards are substantially similar to those of the Named Markets.[25] Accordingly, in reviewing future proposed changes to SRO listing standards, the Commission will consider whether the proposed change(s) will require an amendment to Rule 146(b). In the event that the Commission determines that a proposed change in listing standards would require an amendment to Rule 146(b), and where the proposed rule change is subject to full notice and comment under Section 19(b) of the Exchange Act, the Commission may conclude that it is unnecessary to provide notice and comment for the corresponding amendment to this Rule.[26] Finally, the Commission notes that enforcement of an SRO's listing standards is subject to periodic inspections by Commission staff, as is enforcement of all SRO rules, and should the Commission find that an exchange designated in Rule 146(b) is not adequately enforcing its requirements for initial and continued listing, the Commission will take appropriate action to revoke that exchange's exemption.

[18] See Securities Exchange Act Release No. 39053 (September 11, 1997), 62 FR 49286 (September 19, 1997) ("Phlx Listing Standards Order").

[19] As noted above, the Commission stated in the proposing release that if the Phlx were to revise its Tier I listing standards in the areas where the Commission identified deficiencies prior to the adoption of the proposed Rule, the Commission likely would include securities listed on the Phlx in final Rule 146(b).

[20] Although the Commission did not identify the lack of a cash-settlement requirement as a deficiency in the Phlx's Tier I listing standards, the Phlx determined to codify its existing requirement that non-equity warrants be cash-settled in U.S. dollars. This requirement is identical to Section 106(d) of the Amex Company Guide.

[21] This provision is substantially similar to Section 107 and, by reference, Section 101(b) of the Amex Company Guide.

[22] These provisions are substantially similar to Section 1003(b)(iii) and (e) of the Amex Company Guide.

[23] Specifically, the minimum share price for preferred stock to be listed on SmallCap is $4 per share, while the minimum share price for initial inclusion of preferred shares on the Amex is $10. See Section 103(b) of the Amex Company Guide and NASD Rule 4310(c)(4). In addition, SmallCap does not have a minimum distribution requirement for preferred stock, while the Amex requires a minimum of 100,000 publicly held shares when the issuer of the preferred shares has common stock listed on the Amex or NYSE. See Amex Section 103(b). Lastly, warrants listed on SmallCap are required to have a minimum distribution of 100,000 warrants for initial inclusion, while Amex requires a minimum distribution of 1,000,000 warrants to 400 public holders or 500,000 warrants to 800 public holders. See Amex Section 105(b) and NASD Rule 4310(c)(9).

[24] See Legislative History, *supra* note 9.

[25] If, however, one of the Named Markets raised its listing standards with respect to a particular security, a conforming change by the exchanges designated in Rule 146(b) may not necessarily be required for two reasons. First, Section 18(b)(1)(B) requires that the regional exchanges' listing standards be substantially similar to only one of the Named Markets in order to qualify for the exemption. Second, a listing standard change made by one of the Named Markets should not force the exchanges designated in Rule 146(b) to conform their listing standards. Otherwise, a single Named Market would be, in effect, setting the listing standards for all the regional exchanges. If, however, all three Named Markets were to raise their listing standards, and the Commission believed that the change was significant enough so that failure to adopt the new standard rendered the exchanges designated in Rule 146(b) to have substantially inferior standards, then the Commission may require the latter exchanges to raise their standards in order to maintain their exemption under the Rule.

[26] Although the Administrative Procedure Act states that an agency must provide general notice of the proposed rulemaking and an opportunity for comment, these requirements do not apply if the agency for good cause, finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B).

V. Conclusion

For the reasons discussed above, as supplemented by the Commission's detailed discussion in the proposing release, the Commission concludes that the listing standards of the CBOE, and Tier I of the PCX, and Phlx are substantially similar to those of the NYSE, Amex or Nasdaq/NMS. Accordingly, securities listed on these Exchanges should be deemed covered securities and entitled to an exemption from state blue sky provisions as set forth in Section 18(a) of the Securities Act.

The Commission concludes that the Rule offers potential benefits for investors. The Rule should facilitate listings on qualifying exchanges, or tiers or segments thereof, which should increase competition and enhance the overall liquidity of the U.S. securities markets. The Commission does not anticipate that the Rule would result in any costs for U.S. investors or others. As noted above, through the review of SRO listing standards pursuant to Section 19(b) of the Exchange Act, the Commission will be able to continue to ensure such listing standards are sufficient to protect investors. The Commission also concludes that Rule 146(b) should serve to reduce the cost of raising capital because it will streamline the registration process for issuers listing on the Exchanges designated in the Rule. Thus, the Commission has considered the Rule's impact on efficiency, competition and capital formation and concludes that it would promote these three objectives.[27] At the same time, Rule 146(b) does not undercut the state securities review of offerings because the listing standards of the CBOE and Tier I of the PCX, and Phlx are substantially similar to the Named Markets, which are already exempt from state registration. Finally, Rule 146(b) imposes no recordkeeping or compliance burdens, and merely provides a limited purpose exemption under the federal securities laws.

VI. Administrative Requirements

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that Rule 146(b) should not have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release as Appendix A. The Paperwork Reduction Act does not apply because the proposed amendments do not impose recordkeeping or information collection requirements, or other collections of information which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et. seq.

VII. Statutory Basis

Rule 146(b) is being adopted pursuant to 15 U.S.C. 77r *et seq.*, particularly Section 18 of the Securities Act unless otherwise noted.

List of Subjects in 17 CFR Part 230

Securities.

Text of the Rule

For the reasons set forth in the preamble, Title 17, Chapter II of the *Code of Federal Regulations* is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 78t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Section 230.146 is amended by revising the section heading, redesignating the introductory text and paragraphs (a) and (b) as paragraph (a) introductory text and paragraphs (a)(1) and (a)(2), respectively, and adding paragraph (b) to read as follows:

§ 230.146 Rules under Section 18 of the Act.

* * * * *

[27] 15 U.S.C. 77b(b).

(b) *Covered securities for purposes of Section 18.* (1) For purposes of Section 18(b) of the Act (15 U.S.C. 77r), the Commission finds that the following national securities exchanges, or segments or tiers thereof, have listing standards that are substantially similar to those of the New York Stock Exchange ("NYSE"), the American Stock Exchange ("Amex"), or the National Market System of the Nasdaq Stock Market ("Nasdaq/NMS"), and that securities listed on such exchanges shall be deemed covered securities:

(i) Tier I of the Pacific Exchange, Incorporated;

(ii) Tier I of the Philadelphia Stock Exchange, Incorporated; and

(iii) The Chicago Board Options Exchange, Incorporated.

(2) The designation of securities in paragraphs (b)(1)(i) through (iii) of this section as covered securities is conditioned on such exchanges' listing standards (or segments or tiers thereof) continuing to be substantially similar to those of the NYSE, Amex, or Nasdaq/NMS.

By the Commission.

Dated: January 13, 1998.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendix A to the Preamble will not appear in the Code of Federal Regulations.

Appendix A—Regulatory Flexibility Act Certification

I, Arthur Levitt, Jr., Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that Rule 146(b) ("Rule") under the Securities Act of 1933 ("Securities Act"), which will designate securities listed on certain national securities exchanges, or tiers or segments thereof, as covered securities under Section 18 of the Securities Act, and therefore provide them with an exemption from state registration requirements, will not have a significant economic impact on a substantial number of small entities for the following reasons. Under the Securities Act, a small entity is defined as "an issuer whose total assets on the last day of its most recent fiscal year were $5,000,000 or less." Issuers of this size generally will not qualify for listing on the national securities exchanges, or tiers or segments thereof, designated in Rule 146(b). More specifically, both the Chicago Board Options Exchange, Incorporated and Tier I of the Pacific Exchange, Incorporated require issuers of common stock to have net worth of at least $4,000,000. To be listed on Tier I of the Philadelphia Stock Exchange, Incorporated issuers of common stock must have net tangible assets of at least $4,000,000. I do not believe that there are a substantial number of small entities which have total assets less than $5,000,000, yet a net worth or net tangible assets of at least $4,000,000. For example, none of the issuers of common stock listed exclusively on Tier I of the

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Pacific Exchange have total assets of $5,000,000 or less. In addition, the proposed rule imposes no record-keeping or compliance burden, but merely exempts certain qualifying securities from state law registration requirements.

Dated: January 2, 1998.

Arthur Levitt, Jr.,

Chairman.

[FR Doc. 98–1295 Filed 1–20–98; 8:45 am]

BILLING CODE 8015–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11–97–004]

RIN 2115–AE46

Special Local Regulation; Laughlin, Nevada

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: The Coast Guard amends the table of events in 33 CFR 100.1102 by adding the Laughlin Aquamoto Sports Challenge and Expo being conducted in the waters of the Colorado River from Davis Dam south to Harrah's Hotel and Casino on the following dates: annually, commencing on the last Thursday of May every year, and lasting a total of 4 days, ending on Sunday. These regulations are necessary to provide for the safety of life, property, and navigation on the navigable waters of the United States during scheduled events.

EFFECTIVE DATE: May 28, 1998.

FOR FURTHER INFORMATION CONTACT: Lieutenant Mike A. Arguelles, Coast Guard Marine Safety Office San Diego; telephone number (619) 683–6484.

SUPPLEMENTARY INFORMATION:

Regulatory History

On March 27, 1997, the Coast Guard published a notice of proposed rulemaking (NPRM) for this regulation in the **Federal Register** (62 FR 14379). The comment period ended May 10, 1997. The Coast Guard received one letter commenting on the proposal. A public hearing was not requested and no hearing was held. The only change the Coast Guard has made to the language of this regulation since the publication of the NPRM is to specify a more certain date and time schedule for the annual Laughlin Aquamoto Sports Challenge and Expo.

Background and Purpose

The Laughlin Aquamoto Sports Challenge and Expo will consist of five various styles of watercraft racing. The races will take place, annually, over a four day period beginning on the last Thursday of May, and ending on Sunday. These regulations are necessary to provide for the safety of life, property, and navigation on the navigable waters of the United States during scheduled events. The race zone encompasses the Colorado River from the Davis Dam south to Harrah's Hotel and Casino. The race courses will be marked by vessels with signs, and both north and south boundaries of the race zone will have major signs to alert non-participants using the river. On the following days and times, the race zone will be in use by vessels competing in the event: (1) the first day of the event, the last Thursday of each May each year, from 3:00 PM PDT to 5:00 PM PDT, (2) the second day of the event, Friday, from 8:00 AM PDT to 2:00 PM PDT, and from 3:30 PM PDT to 6:00 PM PDT, (3) the third day of the event, Saturday, from 8:00 AM PDT to 1:30 PM PDT, and from 4:00 PM PDT to 5:00 PM PDT; and, (4) the fourth and final day of the event, Sunday, from 9:00 AM PDT to 1:30 PM PDT, from 3:00 PM PDT to 4:00 PD PDT, and from 6:00 PM PDT to 7:00 PM PDT. During these times the Colorado River from Davis Dam south to Harrah's Hotel and Casino will be closed with the exception of emergency vessels. No vessels other than participants or official patrol vessels will be allowed to enter this zone unless specifically cleared by or through an official patrol vessel. Once the zone is established, authorization to remain within the zone is subject to termination at any time.

The Patrol Commander may impose other restrictions within the zone if circumstances dictate. Restrictions will be tailored to impose the least impact on maritime interests yet provide the level of security deemed necessary to safely conduct the Aquamoto and Expo.

Discussion of Comments

The only comment received was from a local business that sought notice of the exact date of the event. The comment also expressed concern that closure of the area of the Colorado River specified in the NPRM for an entire Saturday afternoon in May or June might prejudice business; suggested that the river be open for unrestricted use on Saturday afternoon from 1 p.m. PDT until Sunday morning. The language of this Final Rule provides the public with more specific notice of the date and time schedule for the annual Laughlin Aquamoto Sports Challenge and Expo. It also alleviates the concern that the river not be closed for an entire Saturday afternoon, because on Saturday, the river will be open from 1:30 P.M. PDT to 4 P.M. PDT, and from 5 P.M. PDT on.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require assessment of potential cost and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that Order.

It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" may include small businesses and not-for-profit organizations that are not dominant in their fields and (2) governmental jurisdictions with populations less than 50,000. Because it expects the impact of this proposal to be so minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this proposal, if adopted, will not have a substantial impact on a significant number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.).*

Federalism

The Coast Guard has analyzed this regulation under the principles and criteria in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact and concluded that under paragraph 2.B.2 of Commandant Instruction M16475.1B as revised in 59 CFR 38654, July 29 1994 and 61 FR 13563, March 27, 1996, it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and environmental analysis checklist will be available for inspection and copying in the docket to be maintained at the address listed in **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Regattas and Marine parades.

Regulation

For the reasons set out in the preamble the Coast Guard proposes to amend 33 CFR Part 100, section 100.1102, Table I, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. Section 100.1102, Table I is amended by adding an entry for the Laughlin Aquamoto Sports Challenge and Expo immediately following the entry for the Laughlin Classic to read as follows:

§ 100.102— Marine Events on the Colorado River, between Davis Dam (Bullhead City, Arizona) and Headgate Dam (Parker, Arizona).

* * * * *

Table 1

* * * * *

Laughlin Aquamoto Sports Challenge and Expo

Sponsor: Baja Promotions

Dates: The last Thursday of May every year, lasting a total of 4 days, ending on Sunday, per the following schedule: 1.) the first day of the event, the last Thursday of May each year, from 3 p.m PDT to 5 p.m. PDT, 2.) the second day of the event, Friday, from 8 a.m. PDT to 2 p.m. PDT, and from 3:30 p.m. PDT to 6 p.m. PDT, 3.) the third day of the event, Saturday, from 8 a.m. PDT to 1:30 p.m. PDT, and from 4 p.m. PDT to 5 p.m. PDT; and, 4.) the fourth and final day of the event, Sunday, from 9 a.m. PDT to 1:30 p.m. PDT, from 3 p.m. PDT to 4 p.m. PDT, and from 6 p.m. PDT to 7 p.m. PDT.

Where: That portion of the Colorado River near Laughlin, Nevada, from Davis Dam to Harrah's Hotel and Casino.

Dated: December 19, 1997.

J.C. Card,

Vice Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 98–1270 Filed 1–20–98; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 041–1041; FRL–5948–4]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving revisions to the Missouri State Implementation Plan (SIP) related to the regulation of emissions of particulate matter as fugitive dust. These revisions include the addition of a new fugitive dust rule which replaces four previous fugitive dust rules. The new fugitive dust rule provides a consistent and enforceable mechanism to help maintain compliance with the National Ambient Air Quality Standards (NAAQS) for particulate matter.

DATES: This rule is effective on February 20, 1998.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Aaron J. Worstell at (913) 551–7787.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

On August 15, 1997, the EPA proposed revisions to the Missouri SIP related to the regulation of fugitive particulate emissions (see 62 FR 43679). Today, the EPA is taking final action on those proposed SIP revisions and is responding to comments received during the public comment period.

Missouri originally adopted new rule 10 CSR 10–6.170 (the fugitive dust rule) on June 28, 1990. The new fugitive dust rule replaced four previous SIP-approved rules that were rescinded by the state on September 28, 1990 (effective date). The new fugitive dust rule was amended by Missouri and submitted to the EPA for SIP approval on November 20, 1996. The SIP revisions approved here, the incorporation of the new fugitive dust rule and rescission of the four previous rules, will reconcile the Missouri state regulations with the Federally approved SIP. In addition, the SIP revisions will strengthen the existing SIP by making the fugitive control requirements consistent throughout the state, by clarifying the actions which constitute prohibited emissions, and by clarifying the types of measures which must be implemented to minimize such emissions.

B. Response to Comments

On September 2, 1997, the EPA received comments from the Missouri AG Industry Council (MO–AG) on the proposed fugitive dust SIP revisions. Subsequently, the EPA received comments from the Missouri Limestone Producers Association (MLPA) on September 5, 1997, and additional comments from MO–AG on September 11, 1997. Many of the comments submitted from MO–AG and MLPA overlap and will be addressed together where appropriate.

Both commentors contend that the EPA has no authority to take final action on the fugitive dust SIP revisions in light of the pending appeal to the Missouri Air Conservation Commission (MACC). The appeal was requested on behalf of MLPA, the Missouri Concrete Association, and others, and is in regard to the Missouri Department of Natural Resources' (MDNR) request that the EPA approve 10 CSR 10–6.170 for incorporation into the SIP.

The EPA acknowledges that an appeal has been granted by the MACC in regard to inclusion of the fugitive dust rule in the Missouri SIP. However, this in no way stays the EPA's processing of the SIP revisions. The fugitive dust rule was submitted by the Director of the MDNR on February 24, 1997, pursuant to authority granted by the Missouri statutes and rule 10 CSR 10–1.010(2)(B)6. Moreover, Missouri has not withdrawn its request to include the fugitive dust rule in the SIP. Therefore, the EPA has determined that Missouri's submission meets the requirements of 40 CFR 51.103(a), relating to procedures for submission of plan revisions.

Additionally, the commentors dispute the EPA's statement that the fugitive dust rule will help maintain compliance with the PM_{10} NAAQS. The commentors assert that the EPA has failed to provide sufficient scientific evidence to support this claim, that it is contrary to assertions made by MDNR staff when the consolidated rule was originally adopted, that the fugitive dust rule is in fact a "nuisance rule," and that EPA entered into an "agreement" with the MDNR not to include the fugitive dust rule in the SIP. The EPA does not believe that any of the

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commentors' contentions are an adequate basis, nor are they fully accurate, to disapprove the Missouri submission, as discussed below.

In regard to the scientific evidence supporting the regulation of fugitive dust as a means of reducing PM_{10} emissions and thereby contributing to efforts to maintain the NAAQS, it is well established that particulate matter size distribution for fugitive dust emissions typically includes a significant subset of particles with aerodynamic diameters in the range of 0 to 10 microns (i.e., particles meeting the definition of PM_{10}). This is evidenced by the particle size distributions provided in Appendix B of the EPA's Compilation of Air Pollution Emission Factors (AP–42), 5th ed. (1995). For example, when considering uncontrolled process fugitive emissions from material handling and processing of aggregate and unprocessed ore, Appendix B, Table B.2.2 of AP–42 indicates that the cumulative percent of particles with a particle diameter less than 10 microns is 50 percent. In addition, in AP–42 the emission factors and estimation methods provided for certain fugitive sources reinforce that fugitive dust is a significant source of PM_{10}. For example, particle size multipliers provided in the estimation methods for calculating fugitive PM_{10} emissions from unpaved roads (section 13.2.1) and aggregate handling and storage (section 13.2.2) also indicate that PM_{10} accounts for approximately 50 percent of all fugitive particulate emitted. These estimation methods are based on tests performed by a sound methodology at many randomly chosen facilities with a source population sufficient to minimize variability, and are therefore considered capable of providing an excellent estimation of emissions.

In light of the available technical information, the EPA has determined that control of fugitive dust emissions will assist in the protection of the PM_{10} NAAQS, and is an appropriate emission control for meeting applicable requirements of the Act (section 110(a)(2)(A)). The EPA has also determined that the Missouri rule meets the other applicable requirements of section 110 of the Act. Although one commentor referenced an assertion by an MDNR official from a public hearing held in 1990 indicating that, at least at that time, MDNR did not believe that the then-existing fugitive dust rule had direct relevance to section 110, the commentor did not provide any technical information indicating the basis for this assertion, and the EPA is not aware of a technical basis for it. In fact, when Missouri adopted revisions to the rule in 1996, MDNR specifically concluded that the Missouri rule helps to protect public welfare (21 MoReg 2015, col. 2, September 16, 1996), which is also the basis for the EPA's secondary PM_{10}, as explained below. Whatever the position might have been in 1990, Missouri now believes that the rule should be included in the SIP, and the available technical information clearly supports the benefit of fugitive dust controls in protecting the NAAQS. Therefore, the EPA does not have a basis under the Act to disapprove the state's submission, and is taking final action to approve it.

The commentors also assert that the fugitive dust rule should be treated as a nuisance rule. In fact, MO–AG specifically states that "the fugitive dust rule is a "nuisance rule" and not a NAAQS compliance rule." The term "nuisance rule" is often associated with rules such as odor rules that may not be considered to directly protect public health. However, a nuisance rule may in fact have a beneficial impact on public welfare. For example, the reduction of fugitive particulate matter may help to protect vegetation and to prevent damage to and deterioration of property. In this respect, the fugitive dust rule will help to maintain secondary PM_{10} NAAQS which is associated with public welfare. (See, section 302(h), which defines welfare effects, which secondary NAAQS are set to protect, to include effects on "damage to and deterioration of property" and effects on "personal comfort and well-being.") Thus, the mere fact that an air pollution control requirement may be characterized as a "nuisance rule" does not mean that the requirement is unrelated to protection of the NAAQS. In addition to the role of the fugitive dust rule in maintaining the secondary PM_{10} NAAQS, it also serves to protect the primary PM_{10} NAAQS. See the EPA's response to the previous comment.

Also, one commentor takes issue with the EPA's statement that "the impetus for the development of 10 CSR 10–6.170 was the need for a consistent, statewide rule that serves to protect the particulate matter NAAQS by limiting fugitive dust emissions." However, the rule was developed to replace four existing SIP rules that served just that function. These fugitive dust rules have been part of the Federally enforceable SIP since originally submitted in 1972 and have been revised as part of the SIP on a number of occasions. To remove these rules from the SIP, without replacing them with equivalent fugitive dust rule(s), would be considered a relaxation of the SIP under section 110, the state would then be required to demonstrate that the rules are not needed for maintenance of the standard. The state has chosen to retain the fugitive dust controls in the SIP. The EPA has no basis under the Act for rejecting the state's choice. The EPA did receive a letter from the Director of MDNR requesting that the EPA rescind four old fugitive dust rules from the SIP, but suggesting that by "prior agreement" with the EPA the rescinded rules not be replaced by 10 CSR 10–6.170. This letter was dated September 6, 1990, and is acknowledged in Part II of the proposed rulemaking published in the August 15, 1997, **Federal Register**. However, any determination to include the fugitive dust rule in the SIP is appropriately made in consideration of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements, and not on any informal agreement that may have existed between the EPA and MDNR. The MDNR has determined that the consolidated fugitive dust rule should be submitted as part of the SIP, and the EPA has no basis to reject the state's determination. Moreover, the commentor has not provided any support for the assertion that the purported "breach" of some agreement between the EPA and MDNR is detrimental to the public. In fact, as has been substantiated here, the inclusion of the rule in the SIP is to the public benefit since it helps to maintain compliance with the PM_{10} NAAQS and thereby protects the public health and welfare.

Although not specifically a concern relating to the SIP, the EPA also notes that the state determined that inclusion of the consolidated rule in the SIP would simplify the permitting process under Title V of the Act. This is accomplished by ensuring that the regulations adopted by the state and those maintained as part of the SIP are consistent, since both types of regulations would be required to be included in state operating permits. The state has determined that consolidation of the various fugitive dust rules and inclusion of all of the rules in the SIP will reduce the regulatory burden on the permitting authority and on regulated sources.

II. Final Action

In this document, the EPA takes final action to approve revisions to the Missouri SIP as submitted on September 25, 1990, and November 20, 1996 (with supplemental information submitted February 24, 1997). These revisions include the addition of new rule 10 CSR 10–6.170, Restriction of Particulate Matter to the Ambient Air Beyond the Premises of Origin, and the rescission of rules 10 CSR 10–2.050, Preventing Particulate Matter From Becoming Airborne (Kansas City); 10 CSR 10–3.070 Restriction of Particulate Matter From Becoming Airborne (Outstate); 10 CSR 10–4.050, Preventing Particulate Matter From Becoming Airborne (Springfield); and CSR 10–5.100, Preventing Particulate Matter From Becoming Airborne (St. Louis).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 23, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 15, 1997.

Dennis Grams,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(102) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(102) Revised regulations for the control of fugitive particulate matter emissions were submitted by the Missouri Department of Natural Resources (MDNR) on September 25, 1990, and on November 20, 1996.

(i) Incorporation by reference.

(A) Regulation 10 CSR 10–6.170, entitled Restriction of Particulate Matter Beyond the Premises of Origin, effective November 30, 1990, as amended October 30, 1996.

(B) Rescission of regulation 10 CSR 10–2.050, entitled Preventing Particulate Matter From Becoming Airborne, effective September 28, 1990.

(C) Rescission of regulation 10 CSR 10–3.070, entitled Restriction of Particulate Matter From Becoming Airborne, effective September 28, 1990.

(D) Rescission of regulation 10 CSR 10–4.050, entitled Preventing Particulate Matter From Becoming Airborne, effective September 28, 1990.

(E) Rescission of regulation 10 CSR 10–5.100, entitled Preventing Particulate Matter From Becoming Airborne, effective on September 28, 1990.

(ii) Additional material.

(A) Letter from Missouri submitted on February 24, 1997, pertaining to the submission of supplemental documentation.

[FR Doc. 98–1354 Filed 1–20–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7245]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood

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elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements. Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Lauderdale.	City of Florence	Oct. 8, 1997, Oct. 15, 1997, *Times Daily.*	The Honorable Eddie Frost, Mayor of the City of Florence, P.O. Box 98, Florence, Alabama 35631.	Jan. 13, 1998 ...	010140 C
Connecticut: Litchfield.	Town of Watertown	Sept. 9, 1997, Sept. 16, 1997, *Waterbury Republican-American.*	Mr. Charles Frigon, Town of Watertown Interim Manager, Town Hall Annex, 424 Main Street, Watertown, Connecticut 06795.	Dec. 15, 1997 ...	090058 B
Georgia: Gwinnett	Unincorporated Areas.	July 29, 1997, Aug. 5, 1997, *Gwinnett Daily Post.*	Mr. Wayne Hill Chairman of the Board of Commissioners, Gwinnett County Justice and Administration Center, 75 Langley Drive, Lawrenceville, Georgia 30245–6900.	July 23, 1997	130322 C
Illinois: Cook	Village of Schaumburg.	Sept. 30, 1997, Oct. 7, 1997, *Daily Herald.*	The Honorable Al Larson, Mayor of the Village of Schaumburg, 101 Schaumburg Court, Schaumburg, Illinois 60193–1899.	Jan. 5, 1998	170158 D
Illinois: DuPage ...	Village of Bensenville.	Aug. 27, 1997, Sept. 3, 1997, *Bensenville Press.*	Mr. John C. Geils, President of the Village of Bensenville, Bensenville Village Hall, 700 West Irving Park Road, Bensenville, Illinois 60106.	Aug. 19, 1997 ...	170200 C

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Illinois: DuPage ...	Village of Winfield	May 7, 1997, May 14, 1997, *Winfield Estates.*	Mr. Bryon Vana, Village of Winfield Manager, 27 W. 465 Jewell Road, Winfield, Illinois 60190.	Apr. 29, 1997 ...	170223 B
Illinois: Lake	Unincorporated Areas.	Sept. 11, 1997, Sept. 18, 1997, *News-Sun.*	Mr. Robert L. Grever, Chairman of the Lake County Board, 18 North County Street, Room 901, Waukegan, Illinois 60085.	Dec. 17, 1997 ...	170357 F
Illinois: Lake	Village of Mundelein.	Sept. 11, 1997, Sept. 18, 1997, *Mundelein Review.*	The Honorable Marilyn Sindels, Mayor of the Village of Mundelein, Village Hall, 440 East Hawley Street, Mundelein, Illinois 60060.	Dec. 17, 1997 ...	170382 F
Maine: Aroostook	Town of Fort Fairfield.	Aug. 13, 1997, Aug. 20, 1997, *Fort Fairfield Review.*	Mr. Eugene Conlogue, Fort Fairfield Town Manager, P.O. Box 451, Fort Fairfield, Maine 04742.	Nov. 18, 1997 ...	230018 B
Maryland: Prince George's.	City of Laurel	Aug. 21, 1997, Aug. 28, 1997, *Laurel Leader.*	The Honorable Frank P. Casula, Mayor of the City of Laurel, 8103 Sandy Spring Road, Laurel, Maryland 20707.	Nov. 26, 1997 ...	240053 D
Maryland: Prince George's Unincorporated Areas.	Aug. 21, 1997, Aug. 28, 1997, *The Prince George's Journal.*	Mr. Wayne K. Curry, Prince George's County Executive Officer, 14741 Governor Oden Bowie Drive, Upper Marlboro, Maryland 20772.	Nov. 26, 1997	245208 C.	
Michigan: Macomb County.	Township of Chesterfield.	Sept. 15, 1997, Sept. 22, 1997, *The Chesterfield Review.*	Mr. Elbert J. Tharp, Chesterfield Township Supervisor, 47275 Sugarbush, Chesterfield, Michigan 48047.	Dec. 21, 1997 ...	260120 B
Virginia: Independent City.	City of Alexandria	Oct. 23, 1997, Oct. 30, 1997, *The Alexandria Journal and The Alexandria Gazette Packet.*	The Honorable Kerry J. Donley, Mayor of the City of Alexandria, 301 King Street, Suite 2300, Alexandria, Virginia 22314.	Oct. 10, 1997 ...	515519
Wisconsin: La-Crosse.	City of Onalaska ...	Oct. 9, 1997, Oct. 16, 1997, *Onalaska Community Life.*	The Honorable Clarence Stellner, Mayor of the City of Onalaska, 415 Main Street, Onalaska, Wisconsin 54650.	Jan. 14, 1998 ...	550221 B

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: January 13, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–1384 Filed 1–20–98; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any

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existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama:					
Calhoun (FEMA Docket No. 7225).	City of Jacksonville.	May 14, 1997, May 21, 1997, *Jacksonville News.*	The Honorable George Douthit, Mayor of the City of Jacksonville, 320 Church Avenue, S.E., Jacksonville, Alabama 36265.	May 8, 1997	010022 B
Jefferson (FEMA Docket No. 7221).	Unincorporated areas.	Mar. 5, 1997, Mar. 12, 1997, *Birmingham Post-Herald.*	Ms. Mary M. Buckelew, President of the Jefferson County Board of Commissioners, 716 North 21st Street, Birmingham, Alabama 35263.	Feb. 26, 1997	010217 B
Connecticut:					
New Haven (FEMA Docket No. 7217).	City of New Haven	Feb. 24, 1997, Mar. 3, 1997, *New Haven Register.*	The Honorable John DeStefano, Jr., Mayor of the City of New Haven, Office of the Mayor, 165 Church Street, New Haven, Connecticut 06510.	Feb. 18, 1997	090084 C
New Haven (FEMA Docket No. 7225).	City of New Haven	Apr. 8, 1997, Apr. 15, 1997, *New Haven Register.*	The Honorable John DeStefano, Jr., Mayor of the City of New Haven, 200 Orange Street, New Haven, Connecticut 06510.	June 30, 1997	090084 C
Florida:					
Charlotte (FEMA Docket No. 7225).	Unincorporated areas.	May 5, 1997, May 12, 1997, *Sarasota Herald-Charlotte AM Edition.*	Mr. Matthew D. DeBoer, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Room 536, Port Charlotte, Florida 33948–1094.	Apr. 21, 1997	120061 E
Illinois:					
Cook (FEMA Docket No. 7225).	City of Des Plaines.	May 21, 1997, May 28, 1997, *Journal and Topics Newspaper.*	The Honorable Ted Sherwood, Mayor of the City of Des Plaines, 1420 Miner Street, Des Plaines, Illinois 60016.	May 14, 1997	170081 C
Cook (FEMA Docket No. 7213).	City of Prospect Heights.	Feb. 7, 1997, Feb. 14, 1997, *Daily Herald.*	The Honorable Edward P. Rotchford, Mayor of the City of Prospect Heights, 1 North Elmhurst Road, Prospect Heights, Illinois 60070.	Jan. 30, 1997	170919 B
Cook (FEMA Docket No. 7221).	Village of Schaumburg.	Apr. 10, 1997, Apr. 17, 1997, *Daily Herald.*	The Honorable Al Larson, Mayor of the Village of Schaumburg, 101 Schaumburg Court, Schaumburg, Illinois 60193–1899.	Mar. 26, 1997	170158 C

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Cook (FEMA Docket No. 7225).	Unincorporated areas.	Apr. 1, 1997, Apr. 8, 1997, *Chicago Sun-Times.*	Mr. John H. Stroger, President of the Cook County Board of Commissioners, 118 North Clark Street, Room 537, Chicago, Illinois 60602.	Mar. 20, 1997	170054 B
Cook & DuPage (FEMA Docket No. 7225).	Village of Elk Grove Village.	May 15, 1997, May 22, 1997, *Daily Herald.*	Mr. Dennis Gallitano, Elk Grove Village President, 901 Wellington Avenue, Elk Grove, Illinois 60007.	Aug. 20, 1997	170088 C
Cook and DuPage (FEMA Docket No. 7221).	Village of Roselle	Apr. 11, 1997, Apr. 18, 1997, *Daily-Herald.*	The Honorable Gayle Smolinski, Mayor of the Village of Roselle, 31 South Prospect Street, Roselle, Illinois 60172.	July 17, 1997	170216 B
DuPage and Cook (FEMA Docket No. 7213).	Village of Burr Ridge.	Feb. 7, 1997, Feb. 14, 1997, *The Doings.*	Mr. Emil J. Coglianese, Jr., President of the Village of Burr Ridge, 7660 South County Line Road, Burr Ridge, Illinois 60521.	May 15, 1997	170071 C
McHenry (FEMA Docket No. 7221).	Village of Spring Grove.	Apr. 2, 1997, Apr. 9, 1997, *Northwest Herald.*	Mr. Robert Martens, Village of Spring Grove President, 7401 Meyer Road, Spring Grove, Illinois 60081.	Mar. 21, 1997	170485 B
Indiana: Hendricks (FEMA Docket No. 7225).	Unincorporated areas.	May 12, 1997, May 19, 1997, *Hendricks County Flyer.*	Mr. John D. Clampitt, President of the Hendricks County Board of Commissioners, P.O. Box 188, Danville, Indiana 46122.	Aug. 17, 1997	180415 B
Maryland:					
Washington (FEMA Docket No. 7217).	Town of Boonsboro.	Feb. 14, 1997, Feb. 21, 1997, *The Morning Herald* and *The Daily Mail.*	The Honorable Charles F. Kauffman, Jr., Mayor of the Town of Boonsboro, 21 North Main Street, Boonsboro, Maryland 21713.	May 22, 1997	240071 A
Washington (FEMA Docket No. 7217).	Unincorporated areas.	Feb. 14, 1997, Feb. 21, 1997, *The Morning Herald* and *The Daily Mail.*	Mr. Rodney Shoop, Washington County Administrator, 100 West Washington Street, Hagerstown, Maryland 21740.	May 22, 1997	240070 A
New Jersey: Passaic (FEMA Docket No. 7223).	Borough of West Paterson.	Mar. 5, 1997, Mar. 12, 1997, *North Jersey Herald and News.*	The Honorable Matthew T. Capano, Mayor of the Borough of West Paterson, 5 Brophy Lane, West Paterson, New Jersey 07424.	June 10, 1997	340412 B
Ohio:					
Fairfield and Franklin (FEMA Docket No. 7225).	City of Columbus	Mar. 28, 1997, Apr. 4, 1997, *The Columbus Dispatch.*	The Honorable Gregory S. Lashutka, Mayor of the City of Columbus, 90 West Broad Street, Columbus, Ohio 43215.	July 3, 1997	390170 G
Fairfield and Franklin (FEMA Docket No. 7221).	City of Columbus	May 23, 1997, May 30, 1997, *The Columbus Dispatch.*	The Honorable Gregory S. Lashutka, Mayor of the City of Columbus, 90 West Broad Street, Columbus, Ohio 43215.	Aug. 28, 1997	390170 G
Tuscarawas (FEMA Docket No. 7217).	City of Dover	Feb. 14, 1997, *The Times-Reporter.*	The Honorable Richard M. Homrighausen, Mayor of the City of Dover, 110 East Third Street, Dover, Ohio 44622.	Mar. 9, 1997	390543 B
Tennessee:					
Shelby (FEMA Docket No. 7221).	Unincorporated areas.	Mar. 3, 1997, Mar. 10, 1997, *The Daily News.*	Mr. Jim Kelly, Shelby County Chief Administrative Officer, 160 North Main Street, Memphis, Tennessee 38103.	Feb. 26, 1997	470214 E
Shelby (FEMA Docket No. 7225).	Unincorporated areas.	May 13, 1997, May 20, 1997, *Commercial Appeal.*	The Honorable James Rout, Mayor of Shelby County, 160 North Main Street, Suite 850, Memphis, Tennessee 38103.	May 7, 1997	470214 E
Virginia:					
Arlington (FEMA Docket No. 7213).	Unincorporated areas.	Feb. 7, 1997, Feb. 14, 1997, *Arlington Journal.*	Ms. Ellen M. Bosman, Chairman of the Arlington County Board of Commissioners, 2100 Clarendon Boulevard, Suite 300, Arlington, Virginia 22201.	May 15, 1997	515520 B
Culpeper (FEMA Docket No. 7225).	Unincorporated areas.	Mar. 11, 1997, Mar. 18, 1997, *Culpeper Star-Exponent.*	Mr. Steven Miner, Culpeper County Administrator, 135 West Cameron Street, Culpeper, Virginia 22701.	Sept. 3, 1997	510041 B
Loudoun (FEMA Docket No. 7221).	Town of Leesburg	Mar. 19, 1997, Mar. 26, 1997, *Loudoun Times-Mirror.*	The Honorable James Klem, Mayor of the Town of Leesburg, P.O. Box 88, 25 West Market Street, Leesburg, Virginia 20176.	June 24, 1997	510091 B
Wisconsin:					

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State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Dane (FEMA Docket No. 7217).	City of Madison	Feb. 18, 1997, Feb. 25, 1997, *Wisconsin State Journal.*	The Honorable Paul Soglin, Mayor of the City of Madison, City-County Building, Room 403, 210 Martin Luther King, Jr. Boulevard, Madison, Wisconsin 53710.	Feb. 12, 1997	550083 E
Dane (FEMA Docket No. 7217).	Unincorporated areas.	Feb. 18, 1997, Feb. 25, 1997, *Wisconsin State Journal.*	Mr. Richard Phelps, Dane County Executive, City-County Building, Room 421, 210 Martin Luther King, Jr. Boulevard, Madison, Wisconsin 53709.	Feb. 12, 1997	550077 B
Richland (FEMA Docket No. 7225).	City of Richland Center.	Apr. 3, 1997, Apr. 10, 1997, *The Richland Observer.*	The Honorable Thomas McCarthy, Mayor of the City of Richland Center, P.O. Box 230, Richland Center, Wisconsin 53581.	Mar. 25, 1997	555576 B

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: January 13, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–1383 Filed 1–20–98; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ALABAMA	
Owens Cross Roads (Town), Madison County (FEMA Docket No. 7199)	
Yellow Bank Creek:	
Approximately 3,500 feet downstream of New Hobbs Island Road	*580
Approximately 750 feet downstream of New Hobbs Island Road	*580
Maps available for inspection at the Owens Cross Roads Town Hall, 2965 Old Highway 431, Owens Cross Roads, Alabama.	
Triana (Town), Madison County (FEMA Docket No. 7199)	
Tennessee River: At Record Street	*569
Maps available for inspection at the Triana Town Hall, 640 Sixth Street, Madison, Alabama.	
CONNECTICUT	
New Britain (City), Hartford County (FEMA Docket No. 7219)	
Willow Brook:	
Approximately 250 feet downstream of Park Road	*62
Approximately 1,525 feet upstream of Steele Street	*200
Mason Pond Brook:	
At confluence with Willow Brook	*170
Approximately 75 feet upstream of Shuttle Meadow Avenue	*171
Schultz Pond Brook:	
At the confluence with Willow Brook	*176
Approximately 740 feet upstream of Reservoir Road	*343
Bass Brook:	
Approximately 1,600 feet downstream of East Street	*90
Approximately 825 feet upstream of upstream crossing of Lewis Road	*267
Batterson Park Pond Brook:	
Approximately 400 feet downstream of Stanley Park Road	*177
Approximately 115 feet upstream of Brittany Farms Road	*206
Gaffney Brook:	
At Francis Street	*176
Approximately 1,400 feet upstream of Francis Street	*181
Sandy Brook:	
At corporate limits	*90
Approximately 650 feet upstream of Ella Grasso Road	*131
Maps available for inspection at the New Britain City Hall, Engineering Department—Room 503, 27 West Main Street, New Britain, Connecticut.	
INDIANA	
Boone County (Unincorporated Areas) (FEMA Docket Nos. 7155 and 7223)	
New Reynolds Ditch:	
Approximately 500 feet downstream of Golf Course Road	*930
At downstream side of Elm Swamp Road	*939
Maps available for inspection at the Boone Area Planning Commission, Building Inspector's Office, Boone County Courthouse Square, Room B–3, Lebanon, Indiana.	
Ulen (Town), Boone County (FEMA Docket No. 7227)	
New Reynolds Ditch:	
Approximately 500 feet downstream of Golf Course Drive	*930
At Elm Swamp Road	*939
Maps available for inspection at the Ulen Town Office, c/o Steve Million, 141 Ulen Boulevard, Lebanon, Indiana.	
MAINE	
Alfred (Town), York County (FEMA Docket No. 7223)	
Mousam River:	
At downstream corporate limits	*154
At downstream side of Estes Lake Dam	*184
Tributary to Middle Branch Mousam River:	
Approximately 225 feet downstream of Middle Branch Drive	*349
Approximately 0.63 mile upstream of Middle Branch Drive	*379
Maps available for inspection at the Alfred Town Hall, 16 Saco Road, Alfred, Maine.	
MINNESOTA	
Isanti County (Unincorporated Areas) (FEMA Docket No. 7223)	
Rum River:	
Approximately 3.1 miles downstream of 2nd Avenue SW (most downstream corporate limit of the City of Cambridge)	*915
Approximately 1.6 miles upstream of 1st Avenue West	*918
Maps available for inspection at the Isanti County Zoning Office, 555 18th Avenue, SW, Cambridge, Minnesota.	
Lakeville (City), Dakota County (FEMA Docket No. 7195)	
North Creek:	
At downstream corporate limits	*914
At confluence of Unnamed Tributary No. 2 to North Creek	*939
Approximately 810 feet upstream of Icon Trail	*1,059
South Creek:	
At downstream corporate limits	*930
Approximately 0.9 mile upstream of State Route 50	*989
West Branch South Creek:	
At confluence with South Creek	*944
Approximately 1,100 feet upstream of Kenrick Avenue	*1,081
East Branch South Creek:	
At downstream corporate limits	*935
At upstream side of Hamburg Avenue	*1,032
Marion Branch South Creek:	
Approximately 100 feet upstream of Dodd Boulevard	*976
At upstream side of Icalee Path	*985
Maps available for inspection at the Lakeville City Engineer's Office, Lakeville City Hall, 20195 Holyoke Avenue, Lakeville, Minnesota.	
MISSISSIPPI	
Laurel (City), Jones County (FEMA Docket No. 7235)	
Daphne Park Tributary:	
Upstream side of Illinois Central Gulf Railroad	*230
Approximately 750 feet upstream of 8th Street	*270
Maps available for inspection at the City of Laurel Inspection Department, 401 North 5th Avenue, Room 304, Laurel, Mississippi.	
NEW HAMPSHIRE	
Bristol (Town), Grafton County (FEMA Docket No. 7199)	
Newfound Lake: Entire shoreline within community	*591
Maps available for inspection at the Bristol Town Hall, 71 Lake Street, Bristol, New Hampshire.	
Rindge (Town), Cheshire County (FEMA Docket No. 7199)	
Contoocook Lake: Entire shoreline within community	*1,013

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Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Pool Pond: Entire shoreline within community	*1,013
Maps available for inspection at the Rindge Town Office, 49 Payson Hill Road, Rindge, New Hampshire.	
Salem (Town), Rockingham County (FEMA Docket No. 7199)	
West Channel Policy Brook:	
At confluence with Policy Brook	*126
Approximately 250 feet upstream of Northeastern Boulevard	*168
Porcupine Brook:	
At I-93	*129
Approximately 1,100 feet upstream of Old Causeway	*133
Porcupine Brook Tributary:	
At confluence with Porcupine Brook	*132
Approximately 1,740 feet upstream of Stiles Road	*133
World End Pond: Entire shoreline within community	*117
World End Brook: Entire reach east of Lawrence Road	*117
Maps available for inspection at the Engineer's Office, Municipal Office Building, 33 Geremonty Drive, Salem, New Hampshire.	
NEW YORK	
Brookhaven (Town), Suffolk County (FEMA Docket No. 7190)	
Seatuck Creek: Approximately 0.7 mile south of Long Island Railroad crossing along Seatuck Creek	*10
Maps available for inspection at the Brookhaven Town Hall, 3233 Route 112, Medford, New York.	
Sag Harbor (Village), Suffolk County (FEMA Docket No. 7211)	
Sag Harbor Bay:	
Approximately 400 feet east of the intersection of Harding Terrace and Taft Place	*9
Approximately 350 feet north of the intersection of Harding Terrace and Taft Place	*11
Maps available for inspection at the Village Office, 55 Main Street, Sag Harbor, New York.	
South Bristol (Town), Ontario County (FEMA Docket No. 7227)	
Canandaigua Lake: Entire shoreline within community	*692
Maps available for inspection at the South Bristol Town Hall, 6500 Gannett Hill Road, Naples, New York.	
Southampton (Town), Suffolk County (FEMA Docket No. 7211)	
Seatuck Creek: North of Main Street	*9
Maps available for inspection at the Southampton Town Hall, Building and Zoning Department, 116 Hampton Road, Southampton, New York.	
NORTH CAROLINA	
High Point (City), Davidson, Guilford, and Randolph Counties (FEMA Docket No. 7231)	
Boulding Branch:	
Approximately 300 feet upstream of Deep River Road	*776
Approximately 100 feet downstream of Montlieu Avenue	*849
Payne Creek Tributary:	
At confluence with Payne Creek	*744
Approximately 1.1 miles upstream of Canterbury Road	*782
Payne Creek (formerly Stream 95 in High Point):	
Just upstream of corporate limits	*743
Approximately 1,470 feet upstream of Rockford Road	*826
Stream 97:	
Approximately 1.1 miles downstream of Chestnut Glen Way	*750
Approximately 115 feet upstream of Westchester Drive	*823
Sandy Ridge Tributary:	
Approximately 1,550 feet downstream of State Route 68	*797
Approximately 150 feet downstream of Gallimore Dairy Road	*832
Tributary to West Fork Deep River:	
At confluence with West Fork Deep River	*817
Approximately 1,700 feet upstream of confluence with West Fork Deep River	*817
Davis Lake Tributary No. 1:	
At the confluence with East Fork Deep River	*787
Just downstream of State Route 68	*805
Davis Lake Tributary No. 2:	
At confluence with Davis Lake Tributary No. 1	*797
Approximately 1,775 feet upstream of Highway 68	*819
Long Branch:	
Approximately 1,800 feet downstream of Jamesford Road	*770
Approximately 0.51 mile upstream of Jamesford Drive	*777
Stream No. 18:	
Approximately 0.46 mile upstream of confluence with West Fork Deep River	*777
Approximately 1,350 feet upstream of Hickswood Road	*820
Stream No. 92:	
Approximately 300 feet downstream of corporate limits	*779
Approximately 60 feet downstream of confluence of Stream No. 93	*791
Stream No. 93:	
Approximately 25 feet upstream of confluence with Stream No. 92	*792
Approximately 50 feet downstream of Westchester Drive (State Route 68)	*827
Stream 99:	
Approximately 1.4 miles downstream of Westchester Drive	*748
Approximately 20 feet downstream of Westchester Drive	*826
Richland Creek:	
Approximately 1,550 feet upstream of Kersey Valley Road	*705
Approximately 900 feet upstream of Brentwood Street	*784
Rich Fork:	
Approximately 1,450 feet downstream of Rock Bridge Road	*748
Approximately 250 feet upstream of upstream corporate limits	*754
Mile Branch:	
At confluence with Richland Creek	*705
Approximately 950 feet upstream of confluence with Richland Creek	*706
Maps available for inspection at the City of High Point Municipal Office Building, 211 South Hamilton Street, High Point, North Carolina.	
Indian Beach (Town), Carteret County (FEMA Docket No. 7227)	
Atlantic Ocean:	
Approximately 150 feet south of the intersection of Salter Path Road (State Route 58) and State Route 1192	*13
Approximately 700 feet south of the intersection of Salter Path Road (State Route 58) and State Route 1192	*19
Bogue Sound:	
Approximately 0.4 mile west/northwest of the intersection of Salter Path Road (State Route 58) and easternmost corporate limits	*6
Approximately 0.6 mile north of the intersection of Salter Path Road (State Route 58) and State Route 1192	*7
Maps available for inspection at the Indian Beach Town Hall, 1400 Salter path Road, Indian Beach, North Carolina.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
PENNSYLVANIA	
Amity (Township), Berks County (FEMA Docket Nos. 7172 and 7227)	
Schuylkill River:	
Approximately 1,300 feet downstream of Legislative Route 147 (Douglassville Road)	*150
Approximately 1,200 feet downstream of the confluence of Hay Creek	*161
Monocacy Creek:	
Upstream side of CONRAIL	*156
Approximately 300 feet upstream of Monocacy Hill Road	*156
Maps available for inspection at the Amity Township Municipal Office, 2004 Weavertown Road, Douglassville, Pennsylvania.	
Exeter (Township), Berks County (FEMA Docket No. 7172 and 7227)	
Tributary B to Antietam Creek:	
At Exeter Road	*390
Approximately 800 feet downstream of Five Point Road	*538
Hersters Creek:	
Upstream side of CONRAIL	*169
Approximately 0.5 mile downstream of U.S. Route 422	*169
Antietam Creek:	
At confluence with Schuylkill River	*172
At downstream side of Lorane Road	*172
Tributary No. 3 to Schuylkill River:	
At confluence with Schuylkill River	*168
Approximately 500 feet upstream of Lincoln Road	*170
Schuylkill River:	
Approximately 1,200 feet downstream of confluence of Hay Creek	*161
Approximately 1,500 feet upstream of U.S. Route 422	*181
Maps available for inspection at the Township of Exeter Engineering Office, 4975 DeMoss Road, Reading, Pennsylvania.	
Plains (Township), Luzerne County (FEMA Docket No. 7219)	
Mill Creek:	
Confluence with Susquehanna River	*549
Approximately 900 feet upstream from State Route 315	*694
Unnamed Tributary to Mill Creek:	
Confluence with Mill Creek	*680
Approximately 1,360 feet upstream of confluence with Mill Creek	*680
Susquehanna River:	
At downstream corporate limits	*549
Approximately 900 feet upstream of the upstream corporate limits	*553
Maps available for inspection at the Plains Town Hall Municipal Building, 126 North Main Street, Plains, Pennsylvania.	
TENNESSEE	
Chattanooga (City), Hamilton County (FEMA Docket Nos. 7199 and 7227)	
South Chickamauga Creek:	
Approximately 0.33 mile downstream of Amnicola Highway	*660
At state boundary	*689
Spring Creek:	
On the upstream side of Interstate 75	*679
On the downstream side of Spring Creek Road	*679
Mackey Branch:	
At its confluence with South Chickamauga Creek	*687
Approximately 550 feet upstream of East Berainerd Road (State Route 320)	*690
Friar Branch:	
At confluence with South Chickamauga Creek	*670
Approximately 132 feet upstream of Noah Reid Road	*678
Maps available for inspection at the Planning Commission, Chattanooga City Hall Annex, East 11th Street, Chattanooga, Tennessee.	
Cocke County (Unincorporated Areas) (FEMA Docket No. 7227)	
Pigeon River:	
Approximately 1.5 miles downstream of the confluence of Cosby Creek	*1,111
Approximately 0.35 mile upstream of Wilton Springs Road	*1,139
Cosby Creek:	
At confluence with Pigeon River	*1,129
Approximately 70 feet upstream of Ballpark Road	*1,327
Maps available for inspection at the Cocke County Courthouse, 111 Court Avenue, 360 East Main Street, Newport, Tennessee.	
La Vergne (City), Rutherford County (FEMA Docket No. 7182)	
Hurricane Creek:	
Approximately 0.9 mile downstream of U.S. Routes 41 and 705	*510
At confluence of East and West Branches Hurricane Creek	*575
West Branch Hurricane Creek:	
Approximately 820 feet downstream of Bridgestone Parkway	*575
Approximately 200 feet downstream of Heil Quaker Boulevard	*585
Rock Spring Branch:	
Approximately 900 feet downstream of Waldron Road	*654
At Waldron Road	*660
East Branch Hurricane Creek (after levee overtopping):	
Approximately 0.18 mile upstream of Bridgestone Parkway	*579
Approximately 0.16 mile upstream of Waldron Road	*582
J. Percy Priest Reservoir: Shoreline within community	*506
East Branch Hurricane Creek (before levee overtopping): Approximately 100 feet downstream of Industrial Boulevard	*587
Maps available for inspection at the La Vergne City Hall, 5093 Murfreesboro Road, La Vergne, Tennessee.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: January 13, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–1386 Filed 1–20–98; 8:45 am]

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Proposed Rules

Federal Register
Vol. 63, No. 13
Wednesday, January 21, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV97–930–6 PR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 1997–98 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on the establishment of final free and restricted percentages for the 1997–98 crop year. The percentages are 55 percent free and 45 percent restricted. These percentages would establish the proportion of cherries from the 1997 crop which may be handled in normal commercial outlets and are intended to stabilize supplies and prices, and strengthen market conditions. This proposed rule would also establish the date by which restricted percentage obligations must be satisfied and a 30-day grace period. This rule was recommended by the Cherry Industry Administrative Board (Board), which locally administers the marketing order. The free and restricted percentages in this proposal would not apply to handlers in the districts of Southwest Michigan, Oregon, Pennsylvania, Washington and Wisconsin.

DATES: Comments must be received by February 5, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This proposal is issued under marketing agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and restricted percentages may be established for tart cherries handled by handlers during the crop year. This rule establishes final free and restricted percentages for tart cherries for the 1997–98 crop year, July 1, 1997, through June 30, 1998. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The order prescribes procedures for computing an optimum supply and preliminary and final percentages that establish the amount of tart cherries that can be marketed throughout the season. Regulations setting free and restricted percentages apply to all handlers of tart cherries that are in the regulated districts. Tart cherries in the free percentage category may be marketed, while restricted percentage cherries must be held by handlers in a primary or secondary reserve, or be diverted in accordance with section 930.59. The regulated Districts for this season are: District one—Northern Michigan; District two—Central Michigan; District four—New York; and District seven—Utah. Districts three, five, six, eight and nine (Southwest Michigan, Oregon, Pennsylvania, Washington, and Wisconsin, respectively) would not be regulated for the 1997–98 season.

The order prescribes under section 930.52 that the districts to be regulated shall be those districts in which the average annual production of cherries over the prior three years has exceeded 15 million pounds. Districts not meeting the 15 million pound requirement would not be regulated. Therefore, for this season, handlers in the districts of Oregon, Pennsylvania, Washington, and Wisconsin would not be subject to volume regulation. In addition, Southwest Michigan handlers would not be subject to volume regulation this season because their estimated production fell below 50 percent of the average annual processed production in that district in the previous five years. Section 930.52(d) of the order provides that when this occurs that district would be exempt from any volume regulation if, in that year, a restricted percentage is established. Southwest Michigan's tart cherry production was subjected to a freeze during early bud development that reduced its crop yield for the 1997 season.

Section 930.50(a) describes procedures for computing an optimum

supply for each crop year. The Board must meet on or about July 1 to review sales data, inventory data, current crop forecasts and market conditions in order to establish an optimum supply level for the crop year. The optimum supply is calculated as 100 percent of the average sales of the prior three years to which shall be added a desirable carryout inventory not to exceed 20 million pounds or such other amount as the Board, with the approval of the Secretary may establish. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year. This optimum supply volume shall be announced by the Board in accordance with section 930.50(h).

The order also provides that on or about July 1 of each crop year, the Board should establish a preliminary free market tonnage percentage based on the optimum supply formula. To calculate such percentage the Board should deduct the carryin inventory to determine the tonnage requirements (adjusted to raw product equivalent—the actual weight of cherries handled to process into cherry products) for the current crop year which will be subtracted by the current year USDA crop forecast. If the resulting number is positive, this would represent the estimated over-production which would need to be the restricted percentage tonnage. This restricted percentage tonnage would then be divided by the sum of the USDA crop forecast for the regulated districts to obtain the percentages for the regulated districts. If the resulting quotient is 100 percent or more, the Board should establish a preliminary free market tonnage percentage of 100 percent. If the quotient is less than 100 percent, the Board should establish a preliminary restricted tonnage percentage equivalent to the quotient, rounded to the nearest whole number, with the compliment being the preliminary free tonnage percentage.

The Board met on June 26–27, 1997, and computed, for the 1997–98 crop year, an optimum supply of 247 million pounds. This number was calculated by using 270 million pounds for the average three year sales figure and subtracting 23 million pounds for exports that could have received diversion credit. The Board recommended that the carryout figure be zero pounds. The Board calculated preliminary free and restricted percentages as follows: The optimum supply was 247 million pounds; a 70 million pound carryin subtracted from that yielded a tonnage requirement for the current crop year of 177 million pounds. The tonnage requirement for the current crop year was subtracted from the USDA crop estimate of 242 million pounds, resulting in an estimated restricted percentage tonnage of 65 million pounds of tart cherries. The estimated restricted percentage tonnage was divided by the USDA crop estimate for the regulated districts of 192 million pounds which resulted in 66 percent free and 34 percent restricted for the 1997–98 season. The Board recommended these percentages by a 17 to 1 vote. No reason was provided for the one dissenting vote. The Board recommended the percentages and announced them to the industry as required by the order.

The preliminary percentages were based on the USDA production estimate and the following supply and demand information for the 1997–98 crop year:

	Millions of pounds
Optimum Supply Formula	
(1) Average sales of the prior three years	270
(2) Plus carryout	0
(3) Less amount for exports that would have received diversion credit	23
(4) Optimum Supply calculated by the Board at the June meeting	247
Preliminary Percentages	
(5) Less carryin as of July 1, 1997	70
(6) Tonnage requirement for current crop year	177
(7) USDA crop estimate	242
(8) Estimated restricted percentage tonnage (item 7 minus item 6)	65
(9) USDA crop estimate for regulated districts	192

Percentages	Free	Restricted
(10) Preliminary percentages (item 8 divided by item 9)×100	66	34

The Board may adjust the estimated crop production as the actual pack is realized and interim percentages may be announced between July 1 and September 15 of the crop year.

Section 930.50(d) of the order requires the Board to meet no later than September 15 to recommend final free and restricted percentages to the Secretary. The Board met on September 11–12, 1997, and recommended final free and restricted percentages of 55 and 45, respectively. At that time, the Board had available actual production amounts to review and made the necessary adjustments to the percentages. The Board used a revised optimum supply figure of 270 million pounds for its final percentage calculations because it was determined that exports of 23 million pounds should not have been deducted from the average sales figure.

A 70 million pound carryin was subtracted from the optimum supply, which yields a tonnage requirement for the current crop year of 200 million pounds. The actual production reported by the Board was 284 pounds, a 42 million pound increase from the USDA crop estimate. The increase in the crop was due to very favorable growing conditions in portions of the State of Michigan this season. Subtracted from the Board reported production is the tonnage required for the current crop year (200 million pounds) which results in an 84 million pound surplus. An adjustment for changed economic conditions of 23 million pounds was added to the surplus, pursuant to section 930.50(f). This adjustment is discussed later in this document. This yielded a total surplus of 107 million pounds of tart cherries. The free and restricted percentages would only apply to those handlers in regulated districts. Therefore, the percentages would be calculated by dividing the restricted tonnage volume by the regulated districts' production. The total surplus

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of 107 million pounds is divided by the 239 million pound volume of tart cherries produced in the regulated districts. This results in a 45 percent restricted percentage and a corresponding 55 percent free percentage for those districts that would be regulated.

Section 930.51(d) provides that the Board, with the approval of the Secretary, shall develop rules and regulations which shall provide guidelines for handlers in complying with any restricted tonnage requirements, including but not limited to, a grace period of at least 30 days to segregate and appropriately document any tonnage they wish to place in the inventory reserve and to assemble any applicable diversion certificates. A previous rulemaking action published in the **Federal Register** on January 6, 1998, [63 FR 399], provided such guidelines. However, that action did not establish a date by which restricted tonnage requirements must be satisfied or a 30-day grace period. This rule proposes to require that restricted tonnage obligations must be met when this proposed rule becomes final with a 30-day grace period added to that date.

The final percentages are based on the Board's reported production figures and the following supply and demand information for the 1997–98 crop year:

	Millions of pounds
Optimum Supply Formula	
(1) Average sales of the prior three years	270
(2) Plus carryout	0
(3) Optimum Supply calculated by the Board at the September meeting	270
Final Percentages	
(4) Less carryin as of July 1, 1997	70
(5) Tonnage required current crop year	200
(6) Board reported production	284
(7) Surplus (item 6 minus item 5)	84
Modification to Marketing Policy	
(8) Economic adjustment to surplus	23
(9) Adjusted surplus (item 7 plus item 8)	107
(10) Production in regulated districts	239

Percentages	Free	Restricted
(11) Final Percentages (item 9 divided by item 10)×100	55	45

As previously mentioned, the Board had made an earlier recommendation to modify the optimum supply formula by defining average sales to not include exports that were granted diversion credit. However, it was determined that exports should not have been subtracted from the average sales figure. The Board thus recommended at its September meeting that the marketing policy be modified by 23 million pounds due to changes in economic conditions as provided under section 930.50(e)(5) and (7) and (f).

By recommending the 23 million pound modification, the Board believes that it will provide stability to the marketplace and the industry will be in a better situation for future years since new markets will have been developed. Board members discussed at that meeting that, if this adjustment is not made, growers, due to an abundant supply of available tart cherries, could be paid less than their production costs, because handlers could suffer financial losses. Handlers might have to default or renegotiate contracts with buyers due to additional cherries being available on the domestic market, which could have a depressing impact on prices received for all tart cherries. These costs would likely be passed on to growers. In addition, the value of cherries already in inventory could be depressed by 20 to 50 percent due to a 23 million pound increase to an already abundant supply of available cherries, a result inconsistent with the intent of the order.

The changes in economic conditions that caused the Board to modify its marketing policy are as follows: (1) the determination that export sales could not be subtracted from the optimum supply formula calculation was made late in the season; (2) handlers had made marketing plans, sales and sales commitments (including exports) based on the Board's recommendations made in March and June; and (3) prices received for tart cherries and tart cherry products would be severely impacted by an additional large volume of cherries being made available to the market when there is already an abundant supply of cherries.

USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" provide that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal would be met by the establishment of a final percentage which releases 100 percent of the optimum supply and the additional release of tart cherries provided under section 930.50(g). This release of tonnage, equal to 10 percent of the average sales of the prior three years sales, is made available to handlers each season. The Board will make such cherries available to handlers for one or more weeks during the crop year. Handlers can decide how much of the 10 percent release they would like to receive during such releases. Once released, such cherries are released for free use by such handler. Approximately 27 million pounds should be made available to handlers this season in accordance with USDA Guidelines. This release would be made available to every handler and released to such handler in proportion to its percentage of the total regulated crop handled. If such handler does not take such handler's proportionate amount, such amount shall remain in the inventory reserve.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this initial regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) would allow AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities.

However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 1,220 producers of tart cherries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Marketing order board and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members and entities (including small business entities) and other interested persons—who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations usually represent the interests of both small and large business entities in the industry.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced and pureed. During the period 1993/94 through 1996/97, approximately 94 percent of the U.S. tart cherry crop, or 285.7 million pounds, was processed annually. Of the 285.7 million pounds of tart cherries processed, 63 percent was frozen, 32 percent canned and 3 percent utilized for juice. The remaining 2 percent was dried or assembled into juice packs.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward since the 1991/92 season. In the ten-year period, 1986/87 through 1996/97, tart cherry area decreased from 48,180 acres, to less than 42,000 acres. Approximately 78 percent of domestic tart cherry acreage is located in four States: Michigan, New York, Utah and Wisconsin. Michigan leads the nation in tart cherry acreage with 65 percent of the total. Michigan produces about 72 percent of the U.S. tart cherry crop each year. In 1996/97, tart cherry acreage in Michigan was down 2,700 acres, to 27,300.

In crop years 1986 through 1993, tart cherry production ranged from a high of 359 million pounds in 1987 to a low of 189.9 million pounds in 1991. The price per pound to tart cherry growers ranged from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991. These problems of wide supply and price fluctuation in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the average prices of 12 to 17 cents per pound which they received during this period did not come close to covering the costs of production for the vast majority of tart cherry growers. They also testified that production costs for most growers range between 20 and 22 cents per pound, which is well above average prices received.

As previously stated, this is the first year of operation for this marketing order. The industry demonstrated a need for such order during the order promulgation process based on the argument that large variations in annual tart cherry supplies and prices tend to lead to disorderly marketing. As a result of these fluctuations in supplies and prices, growers realize a smaller return for their crop. Therefore, the industry elected the establishment of a volume control marketing order to even out the wide variations in supply and thereby improve returns to growers. During the promulgation process, proponents testified that small growers and processors would have the most to gain from implementation of a marketing order because many such growers and handlers have been going out of business over most of the last eight years due to low tart cherry prices. They also testified that, since an order would help increase grower returns, this should increase the buffer between business success and failure because small growers and handlers tend to be less capitalized than larger growers and handlers.

In discussing the possibility of marketing percentages for the 1997–98 crop year, the Board considered: (1) The estimated and actual total production of tart cherries; (2) the estimated and actual size of the crop to be handled; (3) the expected and actual general quality of such cherry production; (4) the expected and actual carryover as of July 1 of canned and frozen cherries and other cherry products; (5) the expected demand conditions for cherries in different market segments; (6) supplies of competing commodities; (7) an analysis of economic factors having a bearing on the marketing of cherries; (8) the estimated tonnage held by handlers in primary or secondary inventory reserves; and (9) any estimated release of primary or secondary inventory reserve cherries during the crop year.

The Board's review of these factors resulted in the computation and announcement in July 1997 of preliminary free and restricted percentages, and subsequent recommendation of interim and final percentages at its September meeting. At its September 1997 meeting, the Board recommended that the interim percentages and final percentages (55 percent free and 45 percent restricted) be the same percentages.

The Board considered the fact that the demand for tart cherries is inelastic at high and low levels of production. At the extremes, various factors become operational. The promulgation record stated that when crops are very low there is limited but sufficient exclusive demand for cherries that can cause processor prices to double and grower prices to triple. In the event of large crops, there seems to be no price low enough to expand tart cherry sales in the marketplace sufficient to market the crops. This year the crop has been a large one.

The Board discussed alternatives to the volume recommendation including not having volume regulation this season. Board members stated that no volume regulation would be detrimental to the tart cherry industry. Returns to growers would not even cover their production costs for this season causing some to go out of business.

The Board also discussed not granting exemptions, and diversion credit for such exemptions, for exports to eligible countries (including juice and juice concentrate), other exempt uses, and charitable donations. However, the Board felt this would not be in the best interest of the industry or the public. The Board expressed that not allowing the export and other exemptions would have a detrimental effect on the market this season if free and restricted percentages are imposed. Without such exemptions and diversion credits for export sales, new market development and other specified uses, about 50

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million pounds of cherries would not be removed from the domestic market this season, depressing grower returns for all cherries. The marketing order was designed to increase grower returns by stabilizing supplies with demand as well as stabilizing prices and creating a more orderly and predictable marketing environment. Expanding markets and developing new products is key to meeting this marketing order's goals.

Not granting exemptions and diversion credit for exports to countries other than Canada, Mexico, and Japan was also discussed at Board meetings. However, the Board expressed that this recommendation is very important to creating stable conditions in the export marketplace this season and would encourage future market growth. The Board further stated that such action will improve returns to growers because of the tremendous growth in the export market this season. Exemptions and diversion credit have been addressed in other rulemaking actions.

As mentioned earlier, USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity available under this rule is 110 percent of the quantity shipped in the prior three years.

The free and restricted percentages proposed to be established by this rule release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed regulation.

While the level of benefits of this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Paperwork Reduction

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements have been previously approved by OMB and the assigned OMB Number 0581–0177.

There are some reporting, recordkeeping and other compliance requirements under the marketing order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms related to handler diversion and handlers meeting restricted percentage obligations (*i.e.*, Inventory Reserve Summary, Cherries Acquired From Producers, Handler Reserve Plan and Final Pack Report, and Inventory Location Report) have received approval by OMB. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. It was anticipated that as many as 45 handlers might be regulated if volume regulations are established. Many reports are submitted a single time each season, while some are submitted more frequently. In addition, the bulk of the information handlers must report is obtained during the normal course of their business operations. It would take handlers approximately 15 minutes per report to complete for a total of 60 minutes per handler and approximately 2,700 minutes annually for the estimated 45 handlers. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This proposed rule does not change those requirements.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule needs to be in place as soon as possible since handlers are currently marketing 1997–98 crop tart cherries and this action should be taken promptly to achieve the intended purpose of making the optimum supply quantity computed by the Board available to handlers. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new Subpart—Supplementary Regulations consisting of § 930.250 is added to read as follows:

Note: This subpart will consist of handling regulations which will not appear in the annual Code of Federal Regulations.

Subpart—Supplementary Regulations

§ 930.250 Final free and restricted percentages for the 1997–98 crop year.

The final percentages for tart cherries handled by handlers in volume regulated districts during the crop year beginning on July 1, 1997, which shall be free and restricted, respectively, are designated as follows: Free percentage, 55 percent and restricted percentage, 45 percent. Restricted percentage obligations must be satisfied on or before the effective date of this rule. A grace period of 30 days will be allowed for handlers to segregate and appropriately document any tonnage they wish to place in the inventory reserve and to assemble any applicable diversion certificates.

Dated: January 15, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–1429 Filed 1–20–98; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–63A]

Peter G. Crane; Receipt of an Amended Petition for Rulemaking, Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Amended petition for rulemaking: extension of comment period.

SUMMARY: On December 17, 1997 (62 FR 66038), the Nuclear Regulatory Commission published a notice of receipt of an amended petition for rulemaking filed by Peter G. Crane and requested public comment on the amended petition. In the amended petition for rulemaking, the petitioner seeks to amend NRC's emergency planning regulations to require consideration of sheltering, evacuation, and the prophylactic use of potassium iodide for the general public in developing a range of emergency planning protective actions. In addition, the petitioner has filed supplemental information in support of his amended petition which is available in the NRC Public Document Room. The comment period on the amended petition was to have expired on January 16, 1998. In response to several requests, the NRC has decided to extend the comment period for this action.

DATES: The comment period has been extended and now expires on February 17, 1998. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except to those comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, Attention: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, 301–415–5905; E-mail CAG@nrc.gov.

For a copy of the amended petition, write: Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001. A copy of the amended petition and other documentation filed by the petitioner are also available for public inspection, and copying for a fee, in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Michael Jamgochian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, telephone: 301–415–6534, E-mail: MTJ1@nrc.gov; or Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, telephone: 301–415–7163 or Toll Free: 1–800–368–5642, E-mail: MTL@nrc.gov.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 14th day of January, 1998.

Annette Vietti-Cook,

Acting Secretary of the Commission.

[FR Doc. 98–1379 Filed 1–20–98; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Efficiency Test Procedures for Distribution Transformers

[Docket Number EE–DET–97–550]

RIN 1904–AA85

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public workshop.

SUMMARY: The Department of Energy (DOE) will hold an informal public workshop to discuss issues and gather information related to test procedures for electric distribution transformers. All persons are hereby given notice of the opportunity to attend this public workshop and to submit written comments.

DATES: The public workshop will be held on Tuesday, February 10, 1998, from 9 a.m. to 4 p.m.

ADDRESSES: The workshop will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW, Washington, DC 20585.

Written comments are welcome, especially following the workshop. Please submit 10 copies (no faxes) to: Ms. Kathi Epping, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, "Energy Conservation Program for Consumer Products: Test Procedures for Distribution Transformers, Docket No. EE–DET–97–550," EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121. Telephone: (202) 586–7425; Telefax: (202) 586–4617.

Copies of the transcript of the public workshop, public comments received, and this notice may be read (or copied) at the Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–7574, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kathi Epping, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–7425, email: Kathi.Epping@hq.doe.gov, or Edward Levy, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9507, email: Edward.Levy@hq.doe.gov.

SUPPLEMENTARY INFORMATION: On October 22, 1997, the Secretary determined, based on the best information currently available, that energy conservation standards for electric distribution transformers are technologically feasible, economically justified, and would result in a significant energy savings. This determination initiated the process of establishing, by notice and comment rulemaking, test procedures and energy conservation standards for this product.

The Department of Energy is drafting a proposed rule to implement the provisions of the Energy Policy and Conservation Act, 42 U.S.C. 6317, for test procedures for distribution transformers. However, several issues have been raised. The purpose of the public workshop is to discuss the following issues for developing the notice of proposed rulemaking:

a. Adoption of national and international consensus standards in the test procedures for determining energy efficiency of distribution transformers;

b. Burden imposed on industry, especially on manufacturers, by additional testing and data processing;

c. The definition of "basic model" for distribution transformers;

d. Sampling plan for units to be tested;

e. Selection of a measure of energy consumption for distribution transformers;

f. Selecting reference temperatures—the reference temperatures in the consensus standards lack uniformity;

g. Requirement for applying corrections to measurement data of both liquid-immersed and dry-types of transformers; and

h. Requirement for quality assurance in testing.

The Department has prepared a paper entitled "Issues Paper for the Distribution Transformers Test Procedures Workshop on February 10, 1998" that explains and discusses these

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issues in greater detail. For many of the issues, the paper sets forth approaches that the Department is considering and may propose in the notice of proposed rulemaking (NOPR). In addition, the National Institute of Standards and Technology (NIST) has prepared a draft set of test procedures for transformers, and the Department is considering these as well in preparing the NOPR. Copies of the issues paper and the NIST draft are available upon request.

The Department is particularly interested in receiving at the workshop comments and views of interested parties concerning (1) the above-listed issues, (2) the approaches the Department is considering for addressing these issues, (3) the NIST draft of test procedures, and (4) possible alternatives to the approaches the Department is considering and to the provisions in NIST's draft test procedures. The Department encourages those who wish to participate in the workshop to obtain the issue paper and the NIST draft, and to make presentations that address their contents. Workshop participants need not limit their statements to those topics, however. The Department is interested in receiving views concerning other issues that participants believe would affect the content of distribution transformer test procedures.

The meeting will be conducted in an informal, conference style. A court reporter will be present to record the minutes of the meeting. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by antitrust law. After the meeting and a period for written statements, the Department will consider the views presented in formulating a Notice of Proposed Rulemaking regarding energy efficiency test procedures for distribution transformers.

If you would like to participate in the workshop, to receive workshop materials, or to be added to the DOE mailing list to receive future notices and information regarding distribution transformers, please contact Ms. Brenda Edwards-Jones at (202) 586–2945.

Issued in Washington, DC, on January 14, 1998.

Dan W. Reicher,

Assistant Secretary for Energy Efficiency and Renewable Energy.

[FR Doc. 98–1370 Filed 1–20–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–127–AD]

RIN 2120–AA64

Airworthiness Directives; Stemme GmbH & Co. KG Models S10 and S10–V Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Stemme GmbH & Co. KG (Stemme) Models S10 and S10–V sailplanes. The proposed AD would require replacing the horizontal stabilizer rear fittings with parts of improved design. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent structural failure of the horizontal stabilizer caused by cracked rear fittings, which could result in reduced sailplane controllability.

DATES: Comments must be received on or before February 23, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–127–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany; telephone: 49.33.41.31.11.70; facsimile: 49.33.41.31.11.73. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–127–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–127–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Stemme S10 and S10–V sailplanes. The LBA reports that operational loads are causing internal stress on the welds of the rear fitting of the horizontal stabilizer of the above-referenced sailplanes.

This condition, if not detected and corrected, could result in failure of the horizontal stabilizer with possible reduced sailplane controllability.

Relevant Service Information

Stemme has issued Service Bulletin No. A31–10–022, dated August 16, 1996, which specifies procedures for inspecting the horizontal stabilizer rear fittings for cracks and replacing any cracked fittings with parts of improved design obtained from Stemme; and also specifies revising the maintenance manual.

The LBA classified this service bulletin as mandatory and issued German AD 96–300, effective October 24, 1996, in order to assure the continued airworthiness of these sailplanes in Germany.

The FAA's Determination

This sailplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Stemme Model S10 and S10–V sailplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require replacing the horizontal stabilizer rear fittings with parts of improved design. Accomplishment of the proposed installation would be in accordance with the service information previously referenced.

Differences Between the Service Bulletin, German AD, and This Proposed AD

Stemme Service Bulletin No. A31–10–022, dated August 16, 1996, and German AD No. 96–300, effective October 24, 1996, both require inspecting the horizontal stabilizer fittings for cracks and replacing the fittings if found cracked. Stemme Service Bulletin No. A31–10–022 specifies changing the maintenance manual to include repetitive inspections of these fittings.

The FAA's policy is to provide corrective action that will eliminate the need for repetitive inspections. The FAA has determined that long-term operational safety will be better assured by design changes that remove the source of the problem, rather than by repetitive inspections or other special procedures.

Because replacing the horizontal stabilizer rear fittings with parts of improved design on the affected sailplanes eliminates the need for repetitive inspections, the proposed AD differs from the service bulletin and German AD in that it would mandate replacement of the horizontal stabilizer rear fittings.

Cost Impact

The FAA estimates that 9 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 3 workhours per sailplane to accomplish the proposed replacement, and that the average labor rate is approximately $60 an hour. Parts cost approximately $200 per sailplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,420.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Stemme GmbH & Co. KG: Docket No. 97–CE–127–AD.

Applicability: The following sailplane models and serial numbers, certificated in any category:

Models	Serial Nos.
S10	10–03 through 10–63.
S10V	14–002 through 14–026 and transformed S10V airplanes with serial numbers of 14–012M through 14–063M.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent structural failure of the horizontal stabilizer caused by cracked rear fittings, which could result in reduced sailplane controllability, accomplish the following:

(a) Replace the horizontal stabilizer rear fittings with improved design fittings in accordance with the instructions in Stemme Service Bulletin No. A31–10–022, dated August 16, 1996.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Stemme Service Bulletin No. A31–10–022 dated August 16, 1996, should be directed to Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany;

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telephone: 49.33.41.31.11.70; facsimile: 49.33.41.31.11.73. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in German AD 96–300, dated October 24, 1996.

Issued in Kansas City, Missouri, on January 12, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–1298 Filed 1–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–47–AD]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. Model TPE331 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to AlliedSignal Inc. Model TPE331 series turboprop engines. This proposal would require removal of suspect fuel manifold assemblies and replacement with serviceable assemblies. This proposal is prompted by an FAA investigation into Hoses Unlimited's repairs of TPE331 fuel manifolds, which were not approved by the FAA. The actions specified by the proposed AD are intended to prevent fuel leakage at the fuel manifold fittings, resulting in fuel spraying on hot turbine components, which could result in an engine fire.

DATES: Comments must be received by March 23, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–47–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments also may be submitted to the Rules Docket by using the following Internet address: "9-ad-engineprop@faa.dot.gov". All comments must contain the Docket No. in the subject line of the comment. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Federal Aviation Administration, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, CA 90712–4137; Telephone (562) 627–5246, Fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–ANE–47–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–28–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

This proposed airworthiness directive (AD) is applicable to AlliedSignal Inc. Model TPE331–8, –10, –11 and –12 series turboprop engines with fuel manifold, Part Number (P/N) 3102469–1 or –2, repaired by Hoses Unlimited, Inc. prior to November 11, 1995. Following an FAA investigation into Hoses Unlimited's repairs of TPE331 fuel manifolds, which was not approved by the agency, the FAA determined that the repair processes were not consistent and some manifolds were repaired using procedures not approved and substantiated by the FAA. The FAA discovered that Hoses Unlimited crimped fittings of unfamiliar configuration with unsubstantiated force causing excessive deformation of the fitting and Teflon tube. Excessive crimping of the tetraflourethelene hose onto the fitting's nipple causes reduced fatigue resistance of the internal Teflon tube. Reduced fatigue resistance may lead to premature and unexpected failure of the fuel hose. Although there have been no reported incidents of fuel leakage from fuel manifolds repaired by Hoses Unlimited, this condition, if not corrected, could result in fuel leakage of the fuel manifold, resulting in fuel spraying on hot turbine components, which could result in an engine fire.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require removal of suspect fuel manifold assemblies and replacement with serviceable assemblies.

There are approximately 70 engines of the affected design in the worldwide fleet. The FAA estimates that 50 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,800 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $105,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

AlliedSignal Inc.: Docket No. 97–ANE–47–AD.

Applicability: AlliedSignal Inc. (formerly Allied-Signal Aerospace Company, Garrett Engine Division and Garrett Turbine Engine Co.) Model TPE331–8, –10, –11 and –12 series turboprop engines with fuel manifold, Part Number (P/N) 3102469–1 or –2, repaired by Hoses Unlimited, Inc. prior to November 20, 1995. These engines are installed on but not limited to Ayres S2R–G10; Cessna Model 441; Construcciones Aeronauticas, S.A. (CASA) C–212 series; Dornier 228 series; Fairchild SA226 and SA227 series; Jetstream 3101 and 3201 series; Mitsubishi MU–2B series (MU–2 series); and Twin Commander Aircraft Corp. Models 695 and 695A aircraft.

Note 1: This airworthiness directive (AD) applies to each aircraft identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel leakage of the fuel manifold, resulting in fuel spraying on hot turbine components, which could result in an engine fire, accomplish the following:

(a) Check all fuel manifold identification bands for P/Ns 3102469–1 or –2 and the Hoses Unlimited, Inc. name, or review engine and aircraft maintenance records and purchase receipts to establish the origin and repairs on all fuel manifolds. If records indicate that fuel manifolds, P/Ns 3102469–1 or –2, are not installed in an engine or that Hoses Unlimited, Inc. has not been used as a repair facility, no further AD action is required.

(b) Remove from service all fuel manifolds with the Hoses Unlimited, Inc. name and P/Ns 3102469–1 or –2 and replace with a serviceable fuel manifold in accordance with the applicable AlliedSignal engine maintenance manual, at first access to the fuel manifold assembly, at the next engine hot section inspection, or 3 years after the effective date of this AD, whichever occurs first.

(c) For the purposes of this AD, first access to the fuel manifold is defined as any repair, modification, removal, or testing of the fuel manifold assembly or components of the fuel manifold assembly.'

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on January 7, 1998.

James C. Jones,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–1325 Filed 1–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–114000–97]

RIN 1545–AV41

Withholding on Interest in the Case of Sales of Obligations Between Interest Payment Dates; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations under section 1441 regarding the obligation to withhold on interest paid with respect to obligations in the case of the sale of obligations between interest payment dates.

DATES: The public hearing originally scheduled for Monday, January 26, 1998, beginning at 10:00 a.m. is canceled.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 1441 of the Internal Revenue Code. A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** on Tuesday, October 14, 1997 (62 FR 53503), announced that the public hearing on proposed regulations under section 1441 of the Internal Revenue Code would be held on Monday, January 26, 1998, beginning at 10:00 a.m., in the Commissioner's Conference Room, Room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

The public hearing scheduled for Monday, January 26, 1998, is canceled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 98–1403 Filed 1–20–98; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185, and 186

[OPP–300551; FRL–5743–8]

Revocation of Tolerances and Exemptions From the Requirement of a Tolerance for Canceled Pesticide Active Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke the tolerances and exemptions from the requirement of a tolerance listed in this document. EPA is proposing to revoke these tolerances and exemptions because there are no active registrations for the pesticide chemicals covered by these tolerances and exemptions.

DATES: Written comments should be submitted to EPA by March 23, 1998.

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ADDRESSES: By mail, submit written comments to the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, deliver comments to Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under Unit V. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Jeff Morris, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Special Review Branch, Crystal Station #1, 3rd floor, 2800 Crystal Drive, Arlington, VA, Telephone: (703) 308–8029; e-mail: morris.jeffrey@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Legal Authority

The Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, as amended by the Food Quality Protection Act of 1996 (FQPA), Pub. L. 104–170, authorizes the establishment of tolerances (maximum residue levels), exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods pursuant to section 408, 21 U.S.C. 346(a), as amended. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore "adulterated" under section 402(a) of the FFDCA, and hence may not legally be moved in interstate commerce (21 U.S.C. 331(a) and 342(a)). For a pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances or exemptions under the FFDCA, but also must be registered under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136a.

Under FFDCA section 408(f), if EPA determines that additional data are needed to support continuation of a tolerance, EPA may require that those data be submitted by registrants under FIFRA section 3(c)(2)(B), by producers under the Toxic Substances Control Act (TSCA) section 4, or by other persons by order after opportunity for hearing. EPA intends to use Data Call-In (DCI) procedures for pesticide registrants, and FFDCA section 408(f)(1)(C) orders for non-registrants as its primary means of obtaining data. In general, EPA does not intend to use the procedures under TSCA section 4, because such procedures generally will not be applicable to pesticides.

Section 408(f) of the FFDCA states that if EPA determines that additional data are needed to support the continuation of an existing tolerance or exemption, EPA shall issue a notice that: (1) Requests that any parties identify their interest in supporting the tolerance or exemption, (2) solicits the submission of data and information from interested parties, (3) describes the data and information needed to retain the tolerance or exemption, (4) outlines how EPA will respond to the submission of supporting data, and (5) provides time frames and deadlines for the submission of such data and information.

II. Regulatory Background

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients for which FIFRA registrations no longer exist. In accord with FFDCA section 408, however, EPA will not revoke any tolerance or exemption proposed for revocation if any person will commit to support its retention, and if retention of the tolerance will meet the tolerance standard established under FQPA. Generally, interested parties commit to support the retention of such tolerances in order to permit treated commodities to be legally imported into the United States, since raw or processed food or feed commodities containing pesticide residues not covered by a tolerance or exemption are considered to be adulterated.

Tolerances and exemptions established for pesticide chemicals with FIFRA registrations cover residues in or on both domestic and imported commodities. To retain these tolerances and exemptions for import purposes only, EPA must make a finding that the tolerances and exemptions are safe. To make this safety finding, EPA needs data and information indicating that there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide residues covered by the tolerances and exemptions.

EPA determines on a case-by-case basis the data required to determine that a tolerance or exemption is safe, and in general requires the same technical chemistry and toxicology data for tolerances without related U.S. registrations as are required to support U.S. food-use registrations and any resulting tolerances or exemptions. (See 40 CFR part 158 for EPA's data requirements to support domestic use of a pesticide and the establishment and maintenance of a tolerance. At a future date, EPA will issue its import tolerance policy.) In most cases, EPA also requires residue chemistry data (crop field trials) that are representative of growing conditions in exporting countries in the same manner that EPA requires representative residue chemistry data from different U.S. regions to support domestic use of a pesticide and any resulting tolerance(s) or exemption(s). Good Laboratory Practice (GLP) requirements for studies submitted in support of tolerances and exemptions for import purposes only are the same as for domestic purposes; i.e., the studies are required to either fully meet GLP standards, or have sufficient justification presented to show that deviations from GLP requirements do not significantly affect the results of the studies.

Monitoring and enforcement of pesticide tolerances and exemptions are carried out by the U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA). This includes monitoring for pesticide residues in or on commodities imported into the United States.

III. Proposed Actions

This document proposes to revoke the tolerances and exemptions from the requirement of a tolerance listed at the regulatory text of this document. EPA is proposing these revocations because EPA has cancelled the registrations for the pesticide chemicals associated with the tolerances and exemptions, and it is EPA's general practice to propose revocation of those tolerances and exemptions for residues of pesticide chemicals for which there are no active registrations.

IV. Effective Date

EPA proposes that these actions become effective 30 days following publication in the **Federal Register** of a final rule revoking the tolerances. EPA is proposing this effective date because EPA believes that all existing stocks of pesticide products labeled for the uses associated with the tolerances proposed for revocation were exhausted more than 1 year ago, giving ample time for any treated fresh produce to clear trade channels.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this proposal, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(l)(5), as established by FQPA. Under this section, any residue of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that: (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

V. Public Comment Procedures

EPA invites interested persons to submit written comments, information, or data in response to this proposed rule. After consideration of comments, EPA will issue a final rule. Such rule will be subject to objections. Failure to file an objection within the appointed period will constitute waiver of the right to raise in future proceedings issues resolved in the final rule.

Comments must be submitted by March 23, 1998. Comments must bear a notation indicating the docket number OPP–300551. Three copies of the comments should be submitted to either location listed under "ADDRESSES" at the beginning of this proposal.

This proposal provides 60 days for any interested person to request that a tolerance be retained. If EPA receives a comment to that effect, EPA will not revoke the tolerance, but will take steps to ensure the submission of supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f). The order would specify the data needed, the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. Thereafter, if the data are not submitted as required, EPA will take appropriate action under FIFRA or FFDCA.

Information submitted as a comment concerning this proposal may be claimed confidential by marking any or all of that information as CBI. EPA will not disclose information so marked, except in accordance with procedures set forth in 40 CFR part 2. A second copy of such comments, with the CBI deleted, also must be submitted for inclusion in the public record. EPA may publicly disclose without prior notice information not marked confidential. A record has been established for this proposal under docket number OPP–300551 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this proposal, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record, which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this proposal.

VI. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), E.O. 12866 defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in this Executive Order.

Pursuant to the terms of E.O. 12866, EPA has determined that this proposed rule is not a significant regulatory action and, since this action does not impose any information collection requirements subject to approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), it is not subject to review by OMB. In addition, this action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. EPA believes that revocation of a tolerance after use of the pesticide becomes illegal in this country will generally not have a significant impact on a substantial number of small entities.

In the case of domestically grown food, the tolerances proposed for revocation by this proposal will have no economic impact. The associated pesticide registered uses have already been canceled. Since U.S. growers may no longer use these pesticides on such crops, revoking the tolerances should have no effect on food grown in the U.S. after cancellation of registered uses. As for food legally treated under FIFRA before the cancellation occurred, it will not be considered adulterated if the residue level complies with the tolerance in effect at the time of treatment.

Revocation has a greater potential to affect foreign-grown food, since the uses of a pesticide prohibited in the U.S. may still be lawful in other countries. If foreign growers use a pesticide on crops for which there is no tolerance, the food they grow will be considered adulterated and subject to detention and regulatory action when offered for import or imported into the United States. However, while revocation may have an economic effect on foreign growers that export food to the U.S., the RFA is concerned only with the effect of U.S. regulations on domestic small entities.

Revocation may also have an effect on domestic importers of foreign-grown

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food to the extent their suppliers use pesticides in ways that result in residues no longer allowed in the U.S. Theoretically, U.S. importers could face higher food prices and transactions costs. However, EPA believes that the effect on U.S. importers will be minimal. The revocation of a particular tolerance is unlikely to have a significant impact on the price of a commodity on the international market. Transaction costs may occur as a result of having to find alternative suppliers of food untreated with pesticides for which tolerances were revoked. Affected importers, however, would have the options of finding other suppliers in the same country or in other countries, or inducing the same supplier to switch to alternative pest controls. Given the existence of these options, EPA expects any price increases or transaction costs resulting from revocations will be minor. As to the pesticide uses involved in this action, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with these pesticides, generally within the same countries from which the relevant commodities are currently imported.

Moreover, whatever the effect on U.S. importers of foreign-grown food, EPA believes that it would be inappropriate and inconsistent with the purpose of the RFA to ameliorate that effect. To the extent any adverse effect occurs, it will be the result of foreign growers using pesticides in ways or on crops not allowed in the U.S. Domestic growers have no choice but to refrain from using pesticides in ways or on crops prohibited by U.S. law. U.S. growers and those who follow them in the chain of commerce distributors and consumers will bear the cost of complying with U.S. law. For EPA to somehow address the economic effect of the revocation on U.S. distributors of foreign-grown food would potentially give those distributors a competitive advantage over distributors of U.S.-grown food, and that advantage could potentially translate to a competitive advantage for foreign growers over domestic growers. The RFA was enacted in part to preserve competition in the marketplace, and it would be perverse to implement it in a way that creates competitive inequities, particularly between U.S. and foreign products. Finally, EPA notes that potential increased costs to importers would not be cognizable as grounds for not revoking the tolerances.

Based on the above analysis, I certify that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 185

Environmental protection, Food additives, Pesticide and pests.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticide and pests.

Dated: January 12, 1998.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR parts 180, 185, and 186 be amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.2, by revising paragraph (a) to read as follows:

§ 180.2 Pesticide chemicals considered safe.

(a) As a general rule, pesticide chemicals other than benzaldehyde (when used as a bee repellant in the harvesting of honey), ferrous sulfate, lime, lime-sulfur, potassium sorbate, sodium carbonate, sodium chloride, sodium hypochlorite, sulfur, and when used as plant desiccants, sodium metasilicate (not to exceed 4 percent by weight in aqueous solution) and when used as postharvest fungicide, citric acid, fumaric acid, oil of lemon, and oil of orange are not for the purposes of section 408(a) of the Act generally recognized as safe.

* * * * *

§§ 180.115, 180.118, 180.144, 180.148, 180.158, 180.159, 180.162, 180.171, 180.219, 180.239, 180.263, 180.277, 180.305, and 180.306 [Removed]

c. By removing §§ 180.115, 180.118, 180.144, 180.148, 180.158, 180.159, 180.162, 180.171, 180.219, 180.239, 180.263, 180.277, 180.305, and 180.306.

§ 180.319 [Amended]

d. By removing from the table in § 180.319, the entire entry for Isopropyl carbanilate (IPC).

§§ 180.321, 180.325, 180.326, 180.347, 180.357, 180.374 [Removed]

e. By removing §§ 180.321, 180.325, 180.326, 180.347, 180.357, 180.374.

f. In § 180.1001, by revising paragraph (b)(1), removing paragraphs (b)(6) and (b)(9) and redesignating paragraphs (b)(7), (b)(8), and (b)(10) as (b)(6), (b)(7), and (b)(8), respectively and removing from the table in paragraph (d) the entry for Fumaric acid to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(b) * * *

(1) The following copper compounds: Bordeaux mixture, basic copper carbonate (malachite), copper hydroxide, copper-lime mixtures, copper oxychloride, copper octanoate, copper sulfate basic, copper sulfate pentahydrate, cupric oxide, cuprous oxide. These compounds are used primarily as fungicides.

* * * * *

§§ 180.1010, 180.1018, 180.1030, 180.1031, 180.1034, 180.1055, 180.1059, 180.1061, 180.1067, 180.1079, 180.1081, and 180.1085 [Removed]

g. By removing § 180.1010, 180.1018, 180.1030, 180.1031, 180.1034, 180.1055, 180.1059, 180.1061, 180.1067, 180.1079, 180.1081, and 180.1085.

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

§§ 185.1350, 185.1650, 185.3600, 185.4250, 185.4300, and 185.4800 [Removed]

b. By removing §§ 185.1350, 185.1650, 185.3600, 185.4250, 185.4300, and 185.4800.

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

§§ 186.450, 186.850, 186.1350, 186.1650, 186.2450, and 186.3000 [Removed]

b. By removing §§ 186.450, 186.850, 186.1350, 186.1650, 186.2450, and 186.3000.

[FR Doc. 98–1356 Filed 1–20–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5951–1]

40 CFR Part 300

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Berlin and Farro Liquid Incineration Site from the national priorities list; request for comments.

SUMMARY: The United States Environmental Protection Agency (U.S. EPA) Region V announces its intent to delete the Berlin and Farro Liquid Incineration Site (the Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which U.S. EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. This action is being taken by U.S. EPA, because it has been determined that responsible parties have implemented all appropriate response actions required under CERCLA. U.S. EPA, in consultation with the State of Michigan, has determined that no further response is appropriate. Moreover, U.S. EPA and the State have determined that remedial activities conducted at the Site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of the Site from the NPL may be submitted on or before February 20, 1998.

ADDRESSES: Comments may be mailed to Gladys Beard, Associate Remedial Project Manager, Superfund Division, U.S. EPA, Region V, 77 W. Jackson Blvd. (SR–6J), Chicago, IL 60604. Comprehensive information on the Site is available at U.S. EPA's Region V office and at the local information repository located at: Gaines Township Hall, 9255 W. Grand Blanc Rd., Gaines, Michigan 48436. Requests for comprehensive copies of documents should be directed formally to the Region V Docket Office. The address and phone number for the Regional Docket Officer is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

FOR FURTHER INFORMATION CONTACT: Robert Whippo at (312) 886–4759 (SR–6J), Remedial Project Manager or Gladys Beard (SR–6J), Associate Remedial Project Manager, Superfund Division, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–7253 or Don Deblasio, (P–19J), Office of Public Affairs, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–4360.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region V announces its intent to delete the Berlin and Farro Liquid Incineration Site from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on the proposed deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Potentially Responsible Parties or the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to section 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if the conditions at the Site warrant such action.

The U.S. EPA will accept comments on this proposal for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of this site and explains how the Site meets the deletion criteria.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter U.S. EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, U.S. EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) The Remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

III. Deletion Procedures

Upon determination that at least one of the criteria described in 300.425(e) has been met, U.S. EPA may formally begin deletion procedures once the State has concurred. This **Federal Register** notice, and a concurrent notice in the local newspaper in the vicinity of the Site, announce the initiation of a 30-day comment period. The public is asked to comment on U.S. EPA's intention to delete the Site from the NPL. All critical documents needed to evaluate U.S. EPA's decision are included in the information repository and the deletion docket.

Upon completion of the public comment period, if necessary, the U.S. EPA Regional Office will prepare a Responsiveness Summary to evaluate and address comments that were received. The public is welcome to contact the U.S. EPA Region V Office to obtain a copy of this responsiveness summary, if one is prepared. If U.S. EPA then determines the deletion from the NPL is appropriate, final notice of deletion will be published in the **Federal Register**.

IV. Basis for Intended Site Deletion

The Berlin and Farro facility is a 40-acre site situated in a primarily rural area approximately 3½ miles south of the town of Swartz Creek in Gaines Township, Genesee County, Michigan. The Site is located at 8322 South Morrish Road, Swartz Creek, Michigan. Primary land use in the area consists of agricultural row crops and small deciduous woodlands. Residences are located within about 500 feet of the northeast and southeast boundaries of the Site. Approximately 80 permanent residences are located within a ½ mile radius of the Site. There are no known endangered species or critical habitats within close proximity of the Site.

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Residents near the Site obtain groundwater from wells in glacial till aquifers and from the underlying bedrock. There are 115 residential wells within one mile of the Site. Approximately ⅓ of the residential wells draw water from the glacial till aquifers. At least one well in the area draws water from the shallow portion of the aquifer. The remaining residential wells draw water from the bedrock.

Berlin and Farro Liquid Incineration, Inc. began operations at the site in April 1971. The facility was permitted to accept industrial waste for incineration, to store waste prior to incineration, and to operate an on-site 1.1 acre landfill for disposal of crushed used drums. Numerous violations of permit requirements were cited during the period of operation, until September 1975 when Berlin and Farro lost its operating incinerator permit for the incinerator. Permit violations included failure to comply with air emission standards and on-site storage volume limits, and failure to meet permit standards prohibiting on-site disposal of wastes other than solid wastes. The facility also operated two unauthorized waste storage lagoons and two unlined storage lagoons, illegally buried five tanks of waste water, buried liquid wastes, operated underground storage tanks, poured liquid wastes into subsurface agricultural drains and dumped large volumes of gallons of barreled waste into two pits. These permit violations and unpermitted activities led to the revocation of Berlin and Farro's incinerator and landfill permits on September 16, 1975. From 1975 until 1978, while the permit revocations were under appeal, Berlin and Farro was permitted by the State of Michigan (the State) to transport industrial waste for other generators, but not to transport wastes to its own site. Michigan Department of Environmental Quality (MDEQ) investigations indicated that illegal dumping of industrial wastes into the lagoons apparently continued after 1975. In 1978, Berlin and Farro's appeal of its permit revocation failed.

Limited cleanup activities were conducted by Berlin and Farro under a plan submitted to MDEQ from 1978 until 1980, when Berlin and Farro filed for chapter 11 Bankruptcy.

In 1978 and 1981, ownership of the property was transferred to the State for nonpayment of property taxes. Ten acres of the site remained under the jurisdiction of the Genesee County Circuit Court as a result of a lawsuit filed by the State. The site was proposal for the National Priorities List (NPL) on July 16, 1992 and was placed on the NPL on September 8, 1983.

U.S. EPA identified more than 125 generators through review of site records. U.S. EPA, the State, and certain settling PRPs undertook surface cleanup actions intermittently from December 1981 through October 1984.

A Remedial Investigation (RI) was conducted from March 1986 through January 1989. A Remedial Investigation/ Feasibility Study (RI/FS) Report and a Proposed Plan were released to the public on July 20, 1990. A fact sheet summarizing this Proposed Plan and remedial alternatives were released to the public on August 2, 1990. The notice of availability for the RI/FS Report and the Proposed Plan was published in the Flint Journal on July 20, 1990. A sixty-day public comment period was held from July 20, 1990 through September 19, 1990. On September 7, 1990, U.S. EPA sent a letter to all persons on the site mailing list informing them about a change in its preference among the various alternatives under consideration, subject to review of public comments.

At the start of the 1990 public comment period, U.S. EPA proposed a remedial alternative which addressed both groundwater and soil contamination at the Berlin and Farro Liquid Incineration Site, Swartz Creek, Michigan. The alternative, as specified in the proposed plan, called for on-site incineration of contaminated soils and for the extraction of contaminated groundwater with treatment via air stripping. On-site incineration was projected to last for approximately 1 year and extraction and treatment of the groundwater was projected to last for at least 30 years. In addition, the Berlin and Farro proposed planned required groundwater monitoring and long-term maintenance of the air stripper.

Initial written comments received by the U.S. EPA and those voiced at the August 9, 1990 public meeting in Swartz Creek indicated that most concerned members of the public were strongly opposed to on-site incineration.

The strong opposition to the proposed plan expressed early in the comment period, especially those comments offered at the public meeting, led the U.S. EPA and the MDEQ to alter the preferred soil cleanup plan. This opposition was based on the short term risk presented by the estimated 380 days of operation of the on-site incinerator. In addition, information was provided indicating that much of the volume of soil proposed to be remediated was to be treated based only on metal, contamination. Incineration is not generally considered an effective treatment for metals, and in fact may produce treatment residuals that could require significant additional treatment. The new plan called for the removal of excavated soils to a licensed off-site facility for treatment and disposal. This plan retained the use of an air stripper for treatment of contaminated groundwater.

A second public meeting was held on September 12, 1990. At this meeting representatives from U.S. EPA and MDEQ discussed the changes that the Agencies were considering based on public comments. During this 1990 public comment period U.S. EPA continued negotiations with PRPs regarding cleanup options at Berlin and Farro as required under the terms of the RI/FS Consent Decree (Decree). U.S. EPA made it clear that at the end of the public comment period, following response to all comments, the terms of the Decree would be met and it intended to sign a ROD as early as the last week of September 1990. PRPs filed for and were granted an order which enjoined the U.S. EPA from issuing a ROD as planned. The Court ruled on September 27, 1990 that terms of the Decree would not be fulfilled and a ROD could not be issued, until an additional sixty-day period of negotiations had been held.

U.S. EPA and MDEQ determined, based on information developed and clarified during these extended negotiations that remedial action to address soil contamination other than the previously proposed options is most appropriate for Berlin and Farro.

A Proposed Plan for this remedial alternative was released July 11, 1991. The notice of availability for the Proposed Plan was published in the Flint Journal on July 8, 1991. A sixty-day public comment period was held from July 11, 1991 through September 9, 1991. In addition, a public meeting was held on August 8, 1991. At this meeting, representatives of the U.S. EPA and MDEQ answered questions about problems at the site and the remedial alternatives under consideration and accepted formal comments from the Public regarding the proposed alternative and other alternatives analyzed in the FS.

On September 30, 1991, U.S. EPA signed a Record of Decision (ROD) for the final remedy at the Site. The ROD required: (1) excavation of on-site soil and sediment and sediments from Slocum Drain where levels of contamination exceed ROD cleanup standards; (2) disposal of these materials in an on-site hazardous waste disposal cell; and (3) extraction and treatment by air stripping of ground water with

contaminant levels above the ROD cleanup standards. Following completion of these elements of the cleanup, permanent deed and land use restrictions were to be implemented to control land use, to restrict development of the Site and to prohibit installation of ground water wells.

U.S. EPA issued a Unilateral Administrative Order (UAO) to PRPs September 24, 1993. During an October 28, 1994 meeting attended by representatives of U.S. EPA, MDEQ and the PRP technical committee and by follow-up letter dated December 2, 1994 responsible party representatives requested U.S. EPA and MDEQ to consider an alternate cleanup option for remediation of contaminated soil and sediment and contaminated groundwater. In addition, the Predesign Report submitted in March 1995 included a contingency proposal for modification of the groundwater remedy, if necessary, following assessment of monitoring results.

Following public review of and comment upon the proposed changes to remedial action at the Site, the ROD was amended on October 24, 1995. The amended ROD specified a revised Remedial Action (RA) for the Site soils/ sediments and groundwater based on the RI and predesign data and reevaluation of the cleanup standards for soil and groundwater.

An Amended ROD was signed on October 24, 1995. The major components of this remedy include:

- Excavation of contaminated soil and sediment from the central site area and Slocum Drain and transportation to an off-site facility for appropriate treatment/disposal.
- Excavation of the water-bearing zones in the area of highest groundwater contamination and off-site disposal of the excavated materials.
- Implementation of a groundwater monitoring program and implementation of site deed restrictions on the installation of drinking water wells until all cleanup standards have been met and maintained.

Activities at the Site were consistent with the amended ROD and the RD/RA statement of work for design and construction. The RD Report, including a Quality Assurance Project Plan (QAPP), incorporated all necessary U.S. EPA and State quality assurance and quality control (QA/QC) procedures and protocol. U.S. EPA analytical methods were used for all validation and monitoring samples during RA activities. All procedures and protocol followed for soil, groundwater, and air sample during the RA are documented in the RD Report and were conducted through a participating Contract Laboratory Program (CLP) in accordance with the statement of work.

A Close Out Report was signed on September 18, 1996, which stated that the Site meets all site completion requirements as specified in OSWER Directive 9320.2–3c, *Procedures for Completion and Deletion of National Priorities Sites and Update*. Specifically, confirmatory sampling verifies that the Site has achieved the ROD cleanup objective, that all soil, sediment, and groundwater cleanup standards have been met and that all cleanup actions specified in the amended ROD have been implemented. Furthermore, U.SS. EPA has removed all other contamination detected to acceptable levels. Confirmatory groundwater sampling and backfilling and grading the Site with unaffected Site soils provide further assurance that the Site no longer poses unacceptable threats to human health or the environment. No further activity is planned at the Site.

A five-year review pursuant to OSWER Directive 9355.7–02 ("Structure and Components of Five-Year Reviews") will not be conducted at the Site. There are no hazardous Substances that remain at the Site above health-based levels, U.S. EPA will not conduct a five-year review.

EPA, with concurrence from the State of Michigan, has determined that responsible parties have implemented all appropriate responses under CERCLA at the Berlin and Farro Liquid Incineration Site, and no further CERCLA response actions are appropriate in order to provide protection of human health and environment. Therefore, EPA proposes to delete the Site from the NPL.

Dated: December 9, 1997.

David A. Ullrich,

Acting Regional Administrator, Region V.

[FR Doc. 98–1249 Filed 1–20–98; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7243]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

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Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Alabama	Huntsville (City), Madison County.	Tributary 1 to Dry Creek 2	At confluence with Dry Creek 2	None	*705
		Tributary 3 to Dry Creek 2	Backwater area surrounding intersection of Nick Fitcheard Road and Bob Wade Lane.	None	*764
		Tributary 4 to Dry Creek 2	At confluence with Dry Creek 2	None	*770
		Tributary to Knox Creek	Approximately 500 feet upstream of Wall Triana Highway.	None	*744
			At Capshaw Road	None	*752
		Piney Creek	At Roberts Road	None	*572
Maps available for inspection at Huntsville City Hall, 308 Fountain Circle, Huntsville, Alabama.					
Send comments to The Honorable Loretta Spencer, Mayor of the City of Huntsville, P.O. Box 308, Huntsville, Alabama 35804.					
Alabama	New Hope (City), Madison County.	Tributary to Yellow Bank Creek.	Approximately 600 feet upstream of confluence with Yellow Bank Creek.	None	*581
Maps available for inspection at the New Hope City Hall, 5496 Main Drive, New Hope, Alabama.					
Send comments to The Honorable Billy G. Jones, Mayor of the City of New Hope, P.O. Box 419, New Hope, Alabama 35760.					
Alabama	Madison (City), Madison County.	Bradford-Sullivan Ditch	At confluence with Bradford Creek	*615	*618
			Just upstream of Westchester Road	*618	*619
Maps available for inspection at the Madison City Hall, Community Development Department, 100 Hughes Road, Madison, Alabama.					
Send comments to The Honorable Charles Yancura, Mayor of the City of Madison, 100 Hughes Road, Madison, Alabama 35758.					
Alabama	Madison County (Unincorporated Areas).	Tributary 2 to Dry Creek 2	At confluence with Dry Creek	None	*726
			At Rideout Road	None	*732
		Unnamed Tributary to Brier Fork Flint River.	At upstream crossing of U.S. Route 431	None	*790
		Dry Creek 2	At confluence with Indian Creek	None	*672
			Approximately 300 feet downstream of Indian Creek Road.	None	*673
		Tributary 3 to Dry Creek 2	At confluence with Dry Creek 2	None	*759
			Downstream side of Bob Wade Lane	None	*764
		Tributary 4 to Dry Creek 2	At confluence with Dry Creek 2	None	*770
		Huntsville Spring Branch	Approximately 260 feet downstream of Martin Road.	None	*575
			Approximately 1,000 feet upstream of Martin Road.	None	*575
		Indian Creek	Upstream side of Old Moravia Road	None	*701
		Brier Fork Flint River	At confluence with Flint River	None	*672
		Flint River	Upstream side of Ryland Pike	None	*646
			Approximately 0.5 mile upstream of Ryland Pike.	None	*647
		Miller Branch	At Wall Triana Highway	None	*571

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Madison County Engineering Building, 814 Cook Avenue, Huntsville, Alabama.					
Send comments to Mr. Mike Gillespie, Chairman of the Madison County Commission, Madison County Courthouse, 100 Northside Square, Huntsville, Alabama 35801–4820.					
Alabama	Mobile (City), Madison County.	East Eslava Creek	Approximately 1,170 feet downstream of Pinehill Road.	*10	*11
			Approximately 3,320 feet upstream of Airport Boulevard.	None	*27
Maps available for inspection at the Mobile City Hall, 205 Government Street, 3rd Floor, Mobile, Alabama.					
Send comments to The Honorable Michael C. Dow, Mayor of the City of Mobile, P.O. Box 1827, Mobile, Alabama 36633–1827.					
Georgia	Charlton County (Unincorporated Areas).	St. Mary's River	Approximately 500 feet downstream of County boundary.	None	*9
			Approximately 1.0 mile upstream of upstream crossing of State Route 94.	None	*116
Maps available for inspection at the Charlton County Assessor's Office, 100 North 3rd Street, Folkston, Georgia.					
Send comments to Mr. C.L. Nazworth, Chairman of the Charlton County Board of Commissioners, 100 North 3rd Street, Folkston, Georgia 31537.					
Georgia	Tift County (Unincorporated Areas).	Channel A–1	At confluence with New River	*314	*316
			Approximately 275 feet upstream of Tift Avenue.	None	*357
		Channel A–2	Approximately 1,100 feet downstream of 40th Avenue.	None	*341
			Approximately 3,000 feet upstream of 40th Street.	None	*353
		Channel B	Approximately 2,000 feet upstream of confluence with Little River.	*260	*261
			Approximately 750 feet upstream of Hunt Road.	None	*305
		New River	Approximately 10 feet upstream of upstream side of Seaboard Coast.	*309	*310
			Ferry Lake Road	*326	*324
Maps available for inspection at the Tift County Zoning Department, 225 North Tift Avenue, Tifton, Georgia.					
Send comments to Mr. James Spurlin, Chairman of the Tift County Board of Commissioners, P.O. Box 826, Tifton, Georgia 31793–0826.					
Georgia	City of Tifton (Tift County).	Channel A–1	Approximately 50 feet downstream of Bill Bowen Road.	*317	*319
			Approximately 250 feet upstream side of Tift Avenue.	None	*357
		Channel A–2	At confluence with Channel A	*337	*338
			Approximately 450 feet upstream of 40th Street.	None	*351
		New River	Ferry Lake Road	*327	*324
			Approximately 1,200 feet upstream of 20th Street bridge.	None	*362
		Channel E	Approximately 100 feet upstream of 16th Street bridge.	*339	*340
			Approximately 1,100 feet upstream of 28th Street bridge.	*367	*371
		Channel E–1	Confluence with Channel E	None	*355
			Approximately 1,850 feet upstream of 28th Street.	None	*366
		Channel B	Approximately 900 feet upstream of McCormick Drive.	None	*294
			Approximately 350 feet upstream of Victory Drive bridge.	None	*333
		Channel G	Just upstream of Ferry Lake Road bridge	*328	*324
			Approximately 50 feet upstream of Goff Avenue.	*330	*329
Maps available for inspection at the Tift County Zoning Department, 225 North Tift Avenue, Tifton, Georgia.					
Send comments to Mr. Charles Howell, Tifton City Manager, P.O. Box 229, Tifton, Georgia 31794.					
Maryland	Caroline County (Unincorporated Areas).	Miles Branch	Downstream corporate limits	None	*12
			At Wright Road	None	*37

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State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			At intersection of 127th and Ocean Avenue.	*10	#1
			At intersection of Beach Avenue and Oceanview Drive.	*9	*8
			Approximately 400' east of intersection of Coast Avenue and Arts Lane.	*14	*13
		Barnegat Bay	Approximately 150' west of intersection of Bayview and Panorama Drives.	*6	*8
		Manahawkin Bay	At intersection of Roxie Avenue and Long Beach Boulevard.	*8	*7
		Little Egg Harbor	Entire shoreline of Shelter Island	*11	*10

Maps available for inspection at the Long Beach Township Zoning Office, James J. Mancini Administration Building, 6805 Long Beach Boulevard, Long Beach, New Jersey.

Send comments to Mr. Peter L. Murphy, Township of Long Beach Commissioner for Public Affairs and Safety, 6805 Long Beach Boulevard, Brant Beach, New Jersey 08008.

New Jersey	Ship Bottom (Borough), Ocean County.	Atlantic Ocean	Approximately 1,000' southeast of the intersection of Long Beach Avenue and 7th Street.	*14	*13
			Approximately 400' southeast of the intersection of Long Beach Avenue and 7th Street.	*9	#1

Maps available for inspection at the Borough Clerk's Office, Borough Hall, 1621 Long Beach Boulevard, Ship Bottom, New Jersey.

Send comments to The Honorable Robert W. Nissen, Mayor of the Borough of Ship Bottom, 1621 Long Beach Boulevard, Ship Bottom, New Jersey 08008.

New Jersey	Surf City (Borough), Ocean County.	Atlantic Ocean	Approximately 400' southeast of intersection of Ocean Terrace and 17th Street.	*14	*13
			West side of Ocean Terrace	*9	#1

Maps available for inspection at the Borough Municipal Clerk's Office, Borough Hall, 813 Long Beach Boulevard, Surf City, New Jersey.

Send comments to The Honorable Leonard T. Connors, Jr., Mayor of the Borough of Surf City, 813 Long Beach Boulevard, Surf City, New Jersey 08008.

New York	Camden (Town)	Cobb Brook	At confluence with West Branch Fish Creek.	None	*472
			Approximately 0.82 mile upstream of Shady Lane.	None	*574
		Mad River	At downstream corporate limits	None	*520
			Approximately 100 feet upstream of River Road.	None	*597
		West Branch Fish Creek	Approximately 0.4 mile downstream of Brewer Road.	None	*461
			Approximately 1.12 miles upstream of State Route 13.	None	*526

Maps available for inspection at the Camden Town Hall, Code Enforcement Office, Second Street, Camden, New York.

Send comments to Mr. Daniel Yerdon, Supervisor for the Town of Camden, Camden Town Hall, Camden, New York 13316.

New York	Camillus (Town) Onondaga County.	Geddes Brook	Approximately 40 feet downstream of Gerelock Road.	*383	*382
			Approximately 1,800 feet upstream of Whedon Road.	*516	*515
		Ninemile Creek	At northeastern corporate limits	*380	*371
			Approximately 50 feet upstream of State Route 174.	*461	*458
		Unnamed Stream near Garden Terrace.	At the confluence with Ninemile Creek	*386	*380
			Approximately 40 feet downstream of Pottery Road.	*386	*385

Maps available for inspection at the Town of Camillus Code Enforcement Office, 4600 West Genesee Street, Syracuse, New York.

Send comments to Mr. Donald D. Fittipaldi, Camillus Town Supervisor, 4600 West Genesee Street, Syracuse, New York 13219.

New York	Endicott (Village) Broome County.	Susquehanna River	Approximately 1,500 feet upstream of the confluence of Nanticoke Street.	*830	*829
			Approximately 600 feet upstream of the Vestal Avenue bridge.	*831	*830

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified

Maps available for inspection at the Caroline County Planning Office, 109 Market Street, Caroline County Courthouse, Second Floor, Denton, Maryland.

Send comments to Mr. Edwin G. Richards, Caroline County Administrator, 109 Market Street, Room 109, Denton, Maryland 21629.

Maryland	Federalsburg (Town) Caroline and Dorchester Counties.	Miles Branch	At Reliance Avenue	None	*22
			Approximately 0.8 mile upstream of Reliance Avenue.	None	*34

Maps available for inspection at the Federalsburg Town Hall, 118 North Main Street, Federalsburg, Maryland.

Send comments to The Honorable Dan A. Happersett, Mayor of the Town of Federalsburg, P.O. Box 471, Federalsburg, Maryland 21632.

Michigan	Meridian (Charter Township), Ingham County.	Herron Creek	At upstream side of CSX Transportation	*846	*847
			At Jolly Road	*855	*854
		Smith Drain	Approximately 1,650 feet upstream of confluence with Red Cedar River.	*848	*847
			Approximately 200 feet downstream of Jolly Road.	*873	*872

Maps available for inspection at the Charter Township of Meridian Municipal Building, 5151 Marsh Road, Okemos, Michigan.

Send comments to Mr. Gerald J. Richards, Meridian Charter Township Manager, 5151 Marsh Road, Okemos, Michigan 48864.

Minnesota	Cambridge (City), Isanti County.	Rum River	Approximately 2.74 miles downstream of 2nd Avenue SW.	None	*916
			Approximately 2.60 miles downstream of 2nd Avenue SW.	None	*916
			Approximately 1.09 miles upstream of 1st Avenue.	None	*918
			Approximately 1.62 miles upstream of 1st Avenue West.	None	*918

Maps available for inspection at the Cambridge Town Hall, 626 North Main Street, Cambridge, Minnesota.

Send comments to The Honorable Carsten Seecamp, Mayor of the City of Cambridge, 626 North Main Street, Cambridge, Minnesota 55008.

New Jersey	Barnegat Light (Borough), Ocean County.	Atlantic Ocean	Approximately 1,000' southeast of intersection of East 26th Street and Long Beach Boulevard.	*14	*10
			East side of Long Beach Boulevard	*9	#1

Maps available for inspection at the Borough Hall, 10 West 10th Street, Barnegat Light, New Jersey.

Send comments to The Honorable Kirk L. Larsen, Mayor of the Borough of Barnegat Light, P.O. Box 576, Barnegat Light, New Jersey 08006.

New Jersey	Beach Haven (Borough) Ocean County.	Atlantic Ocean	At intersection of Beach Avenue and 6th Street.	*9	*8
			Approximately 650' southeast of the intersection of Atlantic Avenue and Taylor Avenue.	*14	*13
			Approximately 50' east of intersection of 6th Street and Atlantic Avenue.	*10	#1
		Little Egg Harbor	Entire shoreline within community	*11	*10

Maps available for inspection at the Borough Zoning Office, Beach Haven Municipal Building, 300 Engleside Avenue, Beach Haven, New Jersey

Send comments to The Honorable Robert Bahner, Mayor of the Borough of Beach Haven, 300 Engleside Avenue, Beach Haven, New Jersey 08008.

New Jersey	Harvey Cedars (Borough), Ocean County.	Atlantic Ocean	Approximately 650' southeast of intersection of Long Beach Boulevard and 68th Street.	*14	*13
			Approximately 250' southeast of intersection of Long Beach Boulevard and 68th Street.	*9	#1
		Manahawkin Bay	Approximately 500' northwest of intersection of Suffolk Place and Buckingham Avenue.	*6	*8

Maps available for inspection at the Borough Municipal Building, 7606 Long Beach Boulevard, Harvey Cedars, New Jersey.

Send comments to The Honorable Jonathan S. Oldham, Mayor of the Borough of Harvey Cedars, P.O. Box 3185, Harvey Cedars, New Jersey 08008.

New Jersey	Long Beach (Town), Ocean County.	Atlantic Ocean	At intersection of Coast Avenue and Arts Lane.	*9	#1

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Endicott Municipal Building, 1009 East Main Street, Endicott, New York.					
Send comments to The Honorable David J. Archer, Mayor of the Village of Endicott, Municipal Building, 1009 East Main Street, Endicott, New York 13760.					
New York;	Lee (Town), Oneida County.	Canada Creek	At downstream corporate limits	None	*478
			Approximately 1,200 feet upstream of Point Rock Road.	None	*697
		Tributary to Canada Creek	At confluence with Canada Creek	None	*591
			Approximately 915 feet upstream of Lee Center Taberg Road.	None	*652
		Mohawk River	At corporate limits	None	*920
			Approximately 1,050 feet upstream of corporate limits.	None	*931
		West Branch Mohawk River.	At confluence with East Branch Mohawk River and Mohawk River.	None	*931
			Approximately 510 feet upstream of State Route 26.	None	*1,001
		Sash Factory Creek	At downstream corporate limits	None	*430
			On downstream side of Kiwanis Road	None	*557
		Tributary to Delta Lake	At confluence with Delta Lake	None	*542
			Approximately 0.39 mile upstream of Lee Center Taberg Road.	None	*678
Maps available for inspection at the Lee Town Hall, 5808 Stokes-Lee Center Road, Lee Center, New York.					
Send comments to Mr. John Urtz, Lee Town Supervisor, RR #2, Box 200, Cemetery Road, Lee Center, New York 13363.					
New York	Rome (City), Oneida County.	Wood Creek	Approximately 600 feet downstream of Erie Canal Triple Culvert.	None	*414
			Approximately 100 feet upstream of West Dominick Street.	*437	*438
Maps available for inspection at the City Engineer's Office, Rome City Hall, Liberty Plaza, Rome, New York.					
Send comments to The Honorable Joseph Griffo, Rome City Hall, Liberty Plaza, Rome, New York 13440.					
North Carolina	Watauga County (Unincorporated Areas).	Watauga River	Approximately 0.75 mile upstream of Breached Dam.	*2,904	*2,905
			Approximately 0.79 mile upstream of Aldridge Road (SR 1594).	*3,239	*3,240
Maps available for inspection at the Watauga County Planning and Inspections Department, County Courthouse, 842 West King Street, Suite 7, Boone, North Carolina.					
Send comments to Mr. Jack D. Lawrence, Sr., Chairman of the Watauga County Board of Commissioners, Watauga County Courthouse, 842 West King Street, Suite 1, Boone, North Carolina 28607.					
Tennessee	Murfreesboro (City), Rutherford County.	Middle Fork Stones River	At confluence with West Fork, Stones River.	*598	*597
			Approximately 0.6 mile upstream of confluence with West Fork, Stones River.	*598	*597
Maps available for inspection at the Murfreesboro City Hall, City Planning Department, 111 West Vine Street, Murfreesboro, Tennessee.					
Send comments to The Honorable Joe B. Jackson, Mayor of the City of Murfreesboro, P.O. Box 1139, Murfreesboro, Tennessee 37133–1139.					
Tennessee	Rutherford County (Unincorporated Areas).	Lees Spring Branch	At confluence with Lytle Creek	*620	*621
			Approximately 150 feet upstream of Dilton-Mankin Road.	None	*630
		Bradley Creek	At confluence with East Fork, Stones River.	*564	*559
			Approximately 264 feet upstream of Browns Mill Road.	*564	*563
		Middle Fork Stones River	At confluence with West Fork Stones River.	*598	*597
			Approximately 0.6 mile upstream of confluence with West Fork Stones River.	*598	*597
		West Fork Stones River	Approximately 800 feet upstream of U.S. Route 70.	None	*565
			Downstream side of I–24	None	*586

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Rutherford County Courthouse, County Engineering Department, #1 Public Square South, Room 101, Murfreesboro, Tennessee.					
Send comments to Ms. Nancy Allen, Rutherford County Executive, Rutherford County Courthouse, #1 Public Square South, Room 101, Murfreesboro, Tennessee 37130.					
Tennessee	Smyrna (Town), Rutherford County.	West Fork Stones River	Approximately 0.5 mile southeast of intersection of Enon Springs Road and Florence Road.	None	*509
			Northwest corner of intersection of Wade Herrod Road and Florence Road.	None	*520
Maps available for inspection at the Smyrna Town Hall, 315 South Lowry Street, Smyrna, Tennessee.					
Send comments to The Honorable Paul H. Johns, Mayor of the Town of Smyrna, 315 South Lowry Street, Smyrna, Tennessee 37167.					
Wisconsin	Avoca (Village), Iowa County.	Wisconsin River	At upstream corporate limits	*689	*688
			At downstream corporate limits	*687	*686
Maps available for inspection at the Avoca Village Hall, 407 Front Street, Avoca, Wisconsin.					
Send comments to Mr. Richard Olsen, President of the Village of Avoca, 407 Front Street, P.O. Box 188, Avoca, Wisconsin 53506.					
Wisconsin	Boscobel (City), Grant County.	Wisconsin River	Approximately 0.91 mile downstream of U.S. Route 61.	None	*655
			Approximately 0.56 mile upstream of U.S. Route 61.	*660	*657
		Sanders Creek	At U.S. Route 61	*659	*657
			Approximately 90 feet upstream of upstream corporate limits.	None	*678
Maps available for inspection at the Boscobel City Hall, 1006 Wisconsin Avenue, Boscobel, Wisconsin.					
Send comments to The Honorable Paul J. Bloyer, Mayor of the City of Boscobel, 1006 Wisconsin Avenue, Boscobel, Wisconsin 53805.					
Wisconsin	Manitowoc County, (Unincorporated Areas).	Sheboygan River	At county boundary	*848	*845
			At corporate limits of Kiel (State Routes 67 and 32).	*888	*882
Maps available for inspection at the Manitowoc County Planning & Park Commission, 4319 Expo Drive, Manitowoc, Wisconsin					
Send comments to Mr. Donald Markwardt, Chairman of the Manitowoc County Board of Supervisors, 1010 South 9th Street, Manitowoc, Wisconsin 54221–5374.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: January 13, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–1385 Filed 1–20–98; 8:45 am]

BILLING CODE 6718–04–P

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 15

[CGD 94–055]

RIN 2115–AF23

Licensing and Manning for Officers of Towing Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meetings; request for comments.

SUMMARY: The Coast Guard is holding four public meetings on its proposed rule to revise the requirements for licensing mariners who operate inspected as well as uninspected towing vessels. The proposed rule would ensure that all towing vessels are manned by officers holding licenses specifically authorizing their service. The Coast Guard is holding the public meetings to receive additional views on the licensing issues in the proposed rule.

DATES: The meeting in Memphis, Tennessee. will be held on February 11, 1998, from 9 a.m. to 5 p.m. The meeting in Houston, Texas, will be held on February 13, 1998, from 9 a.m. to 5 p.m. The meeting in Boston, Massachusetts, will be held on February 18, 1998, from 9 a.m. to 5 p.m. The meeting in Seattle, Washington, will be held on February 24, 1998, from 9 a.m. to 5 p.m. Written material must reach the Coast Guard not later than February 20, 1998. Comments on the supplemental notice of proposed rulemaking must be received on or before February 24, 1998.

ADDRESSES: The Memphis meeting will be held in the City Council Chambers, 125 North Main, Memphis, TN 38103. The Boston meeting will be held in the Coast Guard Marine Safety Office, 455 Commercial Street, Boston, MA 02109–1045. The Houston meeting will be held at Hollywood Marine Inc., 16402–1/2 Dezavala, Channelview, TX 77530. The Seattle meeting will be held in the South Auditorium, Federal Building, 915 Second Avenue, Seattle, WA 98174–1067. You may send written comments to the Executive Secretary, Marine Safety Council (G–LRA) [CGD 94–055], U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, or deliver them to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Don Darcy, Operating and Environmental Standards Division (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, telephone 202–267–0221.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD 94–055] and the specific section of the proposed rule to which each comment applies, and give the reasons for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comment should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

Public Meeting

Attendance is open to the public. Persons who are hearing-impaired may request sign translation by asking the person under **FOR FURTHER INFORMATION CONTACT** at least one week before the meeting. With advance notice, and as time permits members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify the person listed under **FOR FURTHER INFORMATION CONTACT** no later than the day before the meeting. Written material may be submitted before, during, or after the meeting. Persons unable to attend the public meetings should submit written comments as outlined in the interim rule by February 24, 1998.

Dated: January 13, 1998.

R. L. Skewes,

Captain, U.S. Coast Guard, Acting Director of Standards Marine Safety and Environmental Protection.

[FR Doc. 98–1399 Filed 1–20–98; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[MM Docket No. 95–176; FCC 98–3]

Closed Captioning of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Viewers with hearing disabilities may not always have access to the same televised emergency information that is currently available to other viewers. The Commission adopted this *Further Notice of Proposed Rulemaking ("Further Notice")* seeking information and comment regarding appropriate rules and policies to promote and to ensure the accessibility of televised emergency information to persons with hearing disabilities. Closed captioning rules for emergency information programs were not adopted in the *Report and Order* in MM Docket No. 95–176, *In the Matter of Closed Captioning and Video Description of Video Programming, Video Programming Accessibility ("Closed Captioning Order")* due to the limited comments submitted in that proceeding on the issue of captioning of such programs.

The *Further Notice* does not contain proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13.

DATES: Comments are due on or before February 25, 1998 and reply comments are due on or before March 27, 1998.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexis D. Johns, Cable Services Bureau, (202) 418–7038, TTY (202) 418–7172.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Further Notice of Proposed Rulemaking*, MM Docket 95–176, adopted January 9, 1998 and released January 14, 1998. The full text of this *Further Notice* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW, Washington, D.C. 20036.

Synopsis of the Further Notice of Proposed Rulemaking

1. The rules we adopted in the *Closed Captioning Order* require video program providers to increase gradually the amount of captioned new programming offered over time. The rules require minimum captioning benchmarks to be met at two year intervals, starting on January 1, 2000. Appendix B at § 79.1(b)(1) (62 FR 48487, September 16, 1997). New programming is defined as programs first published or exhibited after January 1, 1998. Appendix B at § 79.1(a)(5) (62 FR 48487, September 16, 1997). The rules allow video program providers to exercise discretion with respect to what types of programs to caption first, and permit video program providers to caption news programming using the electronic newsroom ("ENR") method. Para. 47 and Appendix B at § 79.1(e)(3) (62 FR 48487, September 16, 1997). ENR captions are created from the text in the station's news script computers. With ENR, only text transmitted from the scripting computers onto teleprompters is captioned; unscripted material, such as live reports from the field, reports of breaking news, and weather and sports reporting, is not captioned.

2. The emergency information which we address in this *Further Notice* falls under the *Closed Captioning Order's* definition of new programming. By "emergency information," we generally mean state, local and regional emergency announcements or reports, including interruptions of regularly-scheduled programming and late-breaking reports during live news programs. Pursuant to the rules adopted in the *Closed Captioning Order*, emergency information would be subject to the same closed captioning requirements as other new programming. Such programming would not be required to be offered with closed captioning before 2000 at the earliest, and each video program provider would have the discretion to determine whether to give emergency information priority for captioning relative to other new programming. In addition, under the rules, a video program provider could caption its live news programming using the ENR method, which could leave much emergency information inaccessible to persons with hearing disabilities since it is likely to be late-breaking news and unscripted.

3. Given the significant health and safety issues inherent in emergency information, in the *Closed Captioning Order* we concluded that closed captioning requirements for emergency information should be considered further. In this *Further Notice*, we seek comment on how our rules can best ensure that such programs are accessible to viewers with hearing disabilities. We request comment on whether separate transitional closed captioning requirements are needed for emergency information or whether there are other methods of providing accessibility for this type of programming.

4. As we stated in the *Closed Captioning Order*, providing all viewers with accurate information regarding emergencies is of great importance, and we are concerned that viewers with hearing disabilities may not always have access to the same information that is available to other viewers. As a threshold matter, we seek comment on the types of information and programs that should be considered "emergency information" for the purposes of our rules. We note that the Commission currently requires broadcast licensees to make the emergency information programming that they transmit accessible to persons who are deaf or hard of hearing. *See* 47 CFR 73.1250(h). The types of emergency information contemplated in the *Further Notice* are not those which must be transmitted by the Emergency Alert System ("EAS") under our existing rules. *See* 47 CFR 11.1 *et seq*. Use of the EAS is required only in the event of a national emergency, though state and local authorities may use the EAS to provide early warnings to communities about regional, state and local emergencies. The rules and policies proposed in this *Further Notice* are not intended to conflict with or supersede the EAS rules in any way. The broadcast rule enumerates the following examples of emergency situations as being subject to the rule: tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, and school closings and changes in school bus schedules resulting from such conditions. We tentatively conclude that for this purpose, we should broadly define emergency information to ensure that sufficient information regarding situations that affect the safety of viewers is available to persons with hearing disabilities with the same immediacy as it is for other viewers. To the types of situations cited in the existing broadcast rule, we believe that it would be appropriate to add warnings and watches of impending changes in weather affecting the safety of viewers, and seek comment on how to define such situations. We also seek comment on whether defining emergency information more broadly here than in the broadcast rule would cause any practical problems or other complications for entities subject to emergency closed captioning requirements.

5. We seek comment on whether it is feasible to require video program providers to supply closed captions for emergency information programs. By its nature, emergency information is not typically programming that can be pre-recorded and captioned in advance of airing. A requirement that such programs be captioned would therefore oblige providers to obtain real-time captioning services for such programs. As we described in the *Closed Captioning Order*, real-time captioning resources are somewhat limited at this time. We declined to require that all live news programming be captioned using real-time captioners in part due to concerns about the limited real-time resources in existence and the need to allow captioning companies sufficient time to recruit and train more captioners to meet the increased demands for their services that the rules will create.

6. We seek comment on the estimated costs, in both financial and human resource terms, that a captioning requirement for emergency information will impose on video providers. In particular, we seek updated information on the number of real-time captioners currently available as well as the number projected to be available in the near future. In the event a real-time captioning requirement is instituted for emergency information, we seek comment on the effect such a rule will have on the availability of live captioning resources for other types of live programming. Captioning companies and commenters who regularly use real-time captioning services should submit detailed information on the hourly costs charged for such services, and whether and under what conditions those costs vary. Is it feasible for video program providers to have real-time captioners "on call" for closed captioning when emergencies arise, or would providers have to hire full-time staff to produce live closed captions? What would it cost to hire an "on call" real-time captioner?

7. We request information on the availability and feasibility of providing live captions remotely in emergency situations. Where an emergency affects a large geographic region, all video providers in that region will need to access real-time captioning resources at the same time. Given the limited number of real-time captioning

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resources available at present, it may not be possible for each provider to obtain the necessary captioning assistance within its geographic region. For example, a major snowstorm such as that which occurred on the East Coast in early 1996 could place a significant strain on real-time resources throughout the northeast and mid-Atlantic states. Could video program providers use real-time captioners located in other areas (e.g., California) unaffected by the emergency to offer remote captioning under such circumstances? Would remote real-time captioning incur greater costs or be less costly than local live captioning under such circumstances?

8. We specifically seek comment on whether emergency programming should be given a higher priority for captioning than other types of new programs. Specifically, should we require that emergency information be provided with captions prior to the commencement of the captioning requirement for other new programs? If so, when should video program providers be required to begin captioning these programs? With respect to the minimum benchmarks for captioning of new programs, we ask whether video program providers should be required to supply closed captions for emergency information programs during the transition period, regardless of whether the provider has already met its captioning benchmark for new programs. Would such a requirement be feasible, or would it pose significant logistical problems or economic burdens on video program providers? We tentatively conclude that any textual presentation of emergency information programs should be required to incorporate substantially the entire text of the audio portion of the program. We seek comment on this tentative conclusion.

9. The closed captioning rules also include exemptions based on video program providers' gross revenues. Under the revenue exemption, video program providers with annual gross revenues of less than $3 million per channel are exempt from all captioning requirements, except for the obligation to pass through captions where programs are received from the program supplier with captions. Appendix B at § 79.1(d)(12) (62 FR 48487, September 16, 1997). Also, our rules provide that once a video program provider has spent an amount equal to 2% of its gross annual revenues on captioning, that provider need not spend any more money on captioning. Appendix B at § 79.1(d)(11) (62 FR 48487, September 16, 1997). We seek comment as to whether these exemptions should be suspended for the limited purpose of emergency information programming closed captioning. Should all video program providers be required to supply closed captions for emergency information, even where the provider is otherwise eligible for one of our revenue-based exemptions? How would such a rule affect small entities such as small or low power television stations and small cable operators? Commenters should submit proposals for reducing the burdens on small entities that such a mandatory closed captioning rule might impose.

10. Alternatively, we ask whether other methods of visually presenting emergency information would be acceptable in lieu of a closed captioning requirement. As noted above, the Commission currently requires broadcast licensees to make such programming accessible to persons who are deaf or hard of hearing. To the extent broadcast licensees transmit emergency information programming, they are required by our rules to transmit such programs both aurally and visually or only visually. The broadcast rules allow television stations to "use any method of visual presentation which results in a legible message conveying the essential emergency information," including, but not limited to, slides, electronic captioning, manual methods (e.g., hand printing), or mechanical printing processes. 47 CFR 73.1250(h). However, no equivalent obligation exists for emergency information transmitted by cable television operators or other multichannel video program distributors ("MVPDs"). We seek comment as to whether an extension of the existing broadcast rules to cover emergency information disseminated by MVPDs, in conjunction with our existing captioning rules, would be appropriate or sufficient to address the concerns raised in this *Further Notice*.

11. In addition, an emergency information program may consist of an audio report that is not displayed visually, or the audio portion of the report may be longer and offer more complete information than that displayed visually, leaving viewers with hearing disabilities without full details on the situation. We seek information on methods or requirements that could be adopted to ensure that all pertinent details are accessible. We also seek comment on a proposal submitted by Cal-TVA for cases where local stations are unable to provide an instant visual transcription of audio emergency messages. Cal-TVA recommends use of a second text channel that a viewer may switch to within ten minutes of the airing of an emergency message, to read a typed report of the audio message and any actions the viewer is being instructed to take. We seek comment regarding the feasibility of this proposal, and request information regarding other possible methods of ensuring the accessibility of this information to persons with hearing disabilities.

12. Finally, we seek comment on any other proposals to promote and to ensure the accessibility of emergency programming and other special reports that have not already been raised in this *Further Notice* or in the closed captioning proceeding. In particular, we ask commenters to address the legal, policy, and practical implications of any such proposals.

Initial Regulatory Flexibility Analysis

13. Pursuant to Section 603 of the Regulatory Flexibility Act ("RFA"), 5 U.S.C. 603, the Commission has prepared the following initial regulatory flexibility analysis ("IRFA") of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Further Notice*, but they must have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall cause a copy of this *Further Notice* to be sent to the Chief Counsel for Advocacy of the Small Business Administration ("SBA") in accordance with section 603(a) of the RFA, 5 U.S.C. 603(a).

14. *Reason for Action and Objectives of the Proposed Rule:* Section 713 of the 1996 Act required the Commission to adopt rules and timetables for the captioning of video programming by August 8, 1997. In the course of the closed captioning proceeding, a few commenters addressed the particular need for captioning of emergency programming and similar special reports, but the information submitted to the Commission regarding this issue was insufficient to support the adoption of specific captioning rules for emergency programming. Instead, the *Closed Captioning Order* directed that a separate proceeding be initiated to address this issue. In this *Further Notice*, we seek comment on appropriate requirements for promoting and ensuring the accessibility of emergency programming to viewers with hearing disabilities.

15. *Legal Basis:* This *Further Notice* is adopted pursuant to Sections 4(i), 303(r), and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 613.

16. *Description and Number of Small Entities Affected:* The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act. 5 U.S.C. 601(3). A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. 15 U.S.C. 632.

17. *Small MVPDs:* The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts. 13 CFR 121.201 (SIC 4841). This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Bureau of the Census, there were 1,758 total cable and other pay television services and 1,423 had less than $11 million in revenue. We address below each service individually to provide a more precise estimate of small entities. We seek comment on the tentative conclusions below.

18. *Cable Systems:* The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. 47 CFR 76.901(e). Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules proposed in this *Futher Notice*.

19. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." 47 U.S.C. § 543(m)(2). The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. 47 CFR 76.1403(b) (SIC 4833). Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000 we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

20. *Multipoint Multichannel Distribution Systems ("MMDS"):* The Commission refined the definition of "small entity" for the auction of MMDS as an entity that together with its affiliates has average gross annual revenues that are not more than $40 million for the preceding three calendar years. 47 CFR 21.961(b)(1). This definition of a small entity in the context of MMDS auctions has been approved by the SBA.

21. The Commission completed its MMDS auction in March 1996 for authorizations in 493 basic trading areas ("BTAs"). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MMDS is an especially competitive service, with approximately 1,573 previously authorized and proposed MMDS facilities. Information available to us indicates that no MMDS facility generates revenue in excess of $11 million annually. We tentatively conclude that, for purposes of this IRFA, there are approximately 1,634 small MMDS providers as defined by the SBA and the Commission's auction rules.

22. *ITFS:* There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. 5 U.S.C. § 601(5). However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

23. *Direct Broadcast Satellite ("DBS"):* Because DBS provides subscription services, DBS falls within the SBA definition of cable and other pay television services (SIC 4841). As of December 1996, there were eight DBS licensees. The Commission does not collect annual revenue data for DBS, and is unable to determine with certainty the number of small DBS licensees that could be affected by these proposed rules. However, estimates of 1996 revenues for various DBS operators are significantly greater than $11,000,000, and range from a low of $31,132,000 for Alphastar to a high of $1,100,000,000 for Primestar. Accordingly, we tentatively conclude that no DBS operator qualifies as a small entity.

24. *Home Satellite Dish ("HSD"):* The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming packager. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only nonsubscription programming; and (3) viewers who receive satellite programming services illegally without subscribing.

25. According to the most recently available information, there are approximately 30 program packagers nationwide offering packages of scrambled programming to retail consumers. These program packagers provide subscriptions to approximately 2,314,900 subscribers nationwide. This is an average of about 77,163 subscribers per program packager. This is substantially smaller than the 400,000 subscribers used in the Commission's definition of a small multiple system operator ("MSO"). Furthermore, because this is an average, it is likely that some program packagers may be substantially smaller. We seek comment on these tentative conclusions.

26. *Open Video Systems ("OVS"):* The Commission has certified nine OVS operators. Of these nine, only two are providing service. On October 17, 1996, Bell Atlantic received approval for its

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certification to convert its Dover, New Jersey Video Dialtone ("VDT") system to OVS. Bell Atlantic subsequently purchased the division of Futurevision which had been the only operating program package provider on the Dover system, and has begun offering programming on this system using these resources. Metropolitan Fiber Systems was granted certifications on December 9, 1996, for the operation of OVS systems in Boston and New York, both of which are being used to provide programming. Bell Atlantic and Metropolitan Fiber Systems have sufficient revenues to assure us that they do not qualify as small business entities. On October 10, 1996, Digital Broadcasting Open Video Systems received approval to offer OVS service in southern California. Digital Broadcasting Open Video Systems is a general partnership just beginning operations. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we tentatively conclude that at least some of the OVS operators qualify as small entities.

27. *Satellite Master Antenna Television ("SMATVs"):* Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators served approximately 1.05 million residential subscribers as of September 1996. The ten largest SMATV operators together pass 815,740 units. If we assume that these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we tentatively conclude that a substantial number of SMATV operators qualify as small entities.

28. *Local Multipoint Distribution System ("LMDS"):* Unlike the above pay television services, LMDS technology and spectrum allocation will allow licensees to provide wireless telephony, data, and/or video services. A LMDS provider is not limited in the number of potential applications that will be available for this service. Therefore, the definition of a small LMDS entity may be applicable to both cable and other pay television (SIC 4841) and/or radiotelephone communications companies (SIC 4812). The SBA definition for cable and other pay services is defined in paragraph 16 *supra*. A small radiotelephone entity is one with 1500 employees or less. 13 CFR 121.201. However, for the purposes of this *Further Notice*, we include only an estimate of LMDS video service providers.

29. LMDS is a service that was expected to be auctioned by the FCC in 1997. The vast majority of LMDS entities providing video distribution could be small businesses under the SBA's definition of cable and pay television (SIC 4841). However, in *In the Matter of Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, to Reallocate the 29.5–30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services and Suite 12 Group Petition for Pioneer's Preference*, CC Docket No. 92–297 (60 FR 43740 at ¶ 188, August 23, 1995), we proposed to define a small LMDS provider as an entity that, together with affiliates and attributable investors, has average gross revenues for the three preceding calendar years of less than $40 million. We have not yet received approval by the SBA for this definition.

30. There is only one company, CellularVision, that is currently providing LMDS video services. Although the Commission does not collect data on annual receipts, we assume that CellularVision is a small business under both the SBA definition and our proposed auction rules. No commenters addressed the tentative conclusions we reached in the Further Notice. We tentatively conclude that a majority of the potential LMDS licensees will be small entities, as that term is defined by the SBA.

31. *Small Broadcast Stations:* The SBA defines small television broadcasting stations as television broadcasting stations with $10.5 million or less in annual receipts. 13 CFR 121.201.

32. *Estimates Based on Census and BIA Data:* According to the Bureau of the Census, in 1992, 1,155 out of 1,478 operating television stations reported revenues of less than $10 million for 1992. This represents 78% of all television stations, including noncommercial stations. The Bureau of the Census does not separate the revenue data by commercial and noncommercial stations in this report. Neither does it allow us to determine the number of stations with a maximum of $10.5 million in annual receipts. Census data also indicate that 81% of operating firms (that owned at least one television station) had revenues of less than $10 million.

33. We also have performed a separate study based on the data contained in the BIA Publications, Inc. Master Access Television Analyzer Database, which lists a total of 1,141 full power commercial television stations. It should be noted that, using the SBA definition of small business concern, the percentage figures derived from the BIA database may be underinclusive because the database does not list revenue estimates for noncommercial educational stations, and these therefore are excluded from our calculations based on the database. The BIA data indicate that, based on 1995 revenue estimates, 440 full power commercial television stations had an estimated revenue of $10.5 million or less. That represents 54% of full power commercial television stations with revenue estimates listed in the BIA program. The database does not list estimated revenues for 331 stations. Using a worst case scenario, if those 331 stations for which no revenue is listed are counted as small stations, there would be a total of 771 stations with an estimated revenue of $10.5 million or less, representing approximately 68% of the 1,141 full power commercial television stations listed in the BIA data base.

34. Alternatively, if we look at owners of commercial television stations as listed in the BIA database, there are a total of 488 owners. The database lists estimated revenues for 60% of these owners, or 295. Of these 295 owners, 156 or 53% had annual revenues of less than $10.5 million. Using a worst case scenario, if the 193 owners for which revenue is not listed are assumed to be small, then small entities would constitute 72% of the total number of owners.

35. In summary, based on the foregoing worst case analysis using Bureau of the Census data, we estimate that our proposed rules will apply to as many as 1,150 commercial and noncommercial television stations (78% of all stations) that could be classified as small entities. Using a worst case analysis based on the data in the BIA data base, we estimate that as many as 771 commercial television stations (about 68% of all commercial television stations) could be classified as small entities. As we noted above, these estimates are based on a definition that we tentatively believe greatly overstates the number of television broadcasters that are small businesses. Further, it should be noted that, under the SBA's definitions, revenues of affiliates that are not television stations should be aggregated with the television station revenues in determining whether a concern is small. The estimates overstate the number of small entities since the revenue figures on which they are based do not include or aggregate such revenues from nontelevision affiliated companies.

36. *Reporting, Recordkeeping and Compliance Requirements:* The *Further Notice* seeks comment on whether we should require video programming providers (including broadcast licensees and MVPDs) to closed caption or otherwise visually display emergency programming and similar special reports to ensure the accessibility of these types of video programs to viewers with hearing disabilities. If this proposal is adopted, video programming providers may choose to maintain records of the closed captioned emergency programming carried in order to resolve any disputes which may arise regarding compliance.

37. *Federal Rules Which Overlap, Duplicate or Conflict With the Commission's Proposal:* None.

38. *Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent With the Stated Objectives:* The *Closed Captioning Order* directs us to initiate proceedings to establish captioning requirements for emergency programming. We seek comment on proposals to promote and ensure the accessibility of emergency programming and other special reports to persons with hearing disabilities. We also seek comment on methods of visually displaying emergency information to viewers other than closed captioning which may be less costly or burdensome than captioning.

Ex Parte

39. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. *See generally* 47 CFR 1.1202, 1.1203 and 1.1206(a).

Comment Dates

40. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before February 25, 1998 and reply comments on or before March 27, 1998. All relevant and timely comments will be considered before final action is taken in this proceeeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

41. Accordingly, *It is ordered* that pursuant to the authority contained in Sections 4(i), 303(r), and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 613, the *Further Notice of Proposed Rulemaking* IS ADOPTED.

42. *It is further ordered* that the Office of Public Affairs shall send a copy of this *Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. §§ 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 79

Closed Captioning of Video Programming.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–1394 Filed 1–20–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[ET Docket No. 95–183; PP Docket No. 93–253; FCC 97–391]

Use of the 38.6–40.0 GHz Band for Fixed Microwave Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission adopts a *Second Notice of Proposed Rule Making* regarding the use of the 38.6–40.0 GHz Band for fixed microwave services. Specifically, the Commission seeks comment on the appropriate unjust enrichment requirements for approving partitioning and disaggregation arrangements involving a complete or partial transfer of a license owned by a qualified small business to a non-small business or a small business eligible for a smaller bidding credit.

DATES: Comments are due on or before February 20, 1998, and reply comments are due on or before March 9, 1998.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Susan Magnotti, Public Safety and Private Wireless Division, (202) 418–0871, or Christina Eads Clearwater, Auctions Division, (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Second Notice of Proposed Rule Making* in the *Report and Order and Second Notice of Proposed Rule Making*, ET Docket No. 95–183, PP Docket No. 93–253, FCC 97–391, adopted October 24, 1997, and released November 3, 1997. The complete text of this *Report and Order and Second Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, N.W., Washington, DC 20036.

Synopsis of the Second Notice of Proposed Rule Making in the Report and Order and Second Notice of Proposed Rule Making

1. The Commission has concluded in the *Report and Order* that any 39 GHz licensee will be permitted to partition or disaggregate portions of its authorization. In the *Second Notice of Proposed Rule Making*, the Commission seeks comment regarding what restrictions to impose on partitioning and/or disaggregation by licensees that have received bidding credits when the buyer is a small business subject to less favorable bidding credits or a non-small business not eligible for bidding credits.

2. The Commission seeks comment on the type of unjust enrichment requirements that should be placed as a condition for approval of partitioning and disaggregation arrangements, *e.g.*, an application for a partial transfer of a license owned by a qualified small business to a non-small business. The Commission tentatively concludes that these unjust enrichment provisions would include payment of any bidding credit that it may adopt for small business and would be applied on a proportional basis. The Commission seeks comment on how such unjust enrichment amounts should be calculated, especially in light of the difficulty of devising a methodology or

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formula that will differentiate the relative market value of the opportunities to provide service to various partitioned areas within a geographic or market area. The Commission seeks comment on whether it should consider the price paid by the partitionee in determining the percentage of the outstanding principal balance to be repaid.

3. The Commission tentatively concludes that if it permits a small business licensee to disaggregate to another qualified small business that would not qualify for the same level of bidding credit as the disaggregating licensee, the disaggregating licensee will be required to repay a portion of the benefit it received. The Commission seeks comment on how that amount should be calculated. The Commission seeks comment on what provisions, if any, it should adopt to address the situation of a small business licensee's disaggregation followed by default in payment of a winning bid at auction.

Regulatory Flexibility Act/Initial Regulatory Flexibility Analysis

4. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in the *Second Notice of Proposed Rule Making*. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on this *Second Notice of Proposed Rule Making*, but they must have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this *Second Notice of Proposed Rule Making*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

5. *Need for and Objectives of the Action.* In the companion *Report and Order*, the Commission expanded the Commission's geographic partitioning provisions to all 39 GHz licensees and permitted spectrum disaggregation. The Commission seeks further comment on the use of partitioning and disaggregation by parties taking advantage of bidding credits under the Commission's competitive bidding licensing rules, and certain technical rules. The expansion of the partitioning and disaggregation rules in the *Report and Order* to include all 39 GHz licensees implements, in part, the requirements of section 257 of the Telecommunications Act of 1996, which requires that the Commission eliminate entry barriers into the telecommunications market for small businesses. In the *Second Notice of Proposed Rule Making*, the Commission tentatively concludes that unjust enrichment provisions should apply when a licensee has benefitted from the small business provisions (*i.e.*, installment plans and bidding credits) in the auction rules and then partitions a portion of the license area to another entity that would not qualify for such benefits or would not qualify for the same level of benefits. The Commission seeks comment on how such unjust enrichment should be calculated under each scenario. The Commission further seeks comments on what the respective obligations of the participants in partitioning transfer should be.

6. *Legal Basis.* The proposed action is authorized under sections 4(i), 257, 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 257, 303(r), and 309(j).

7. *Description and Number of Small Entities Involved.* The unjust enrichment proposals with respect to partitioning and disaggregation will affect all small businesses that avail themselves of partitioning and/or disaggregation, including small businesses currently holding 39 GHz licenses who choose to partition and/or disaggregate and small businesses who may acquire licenses through partitioning and/or disaggregation. The Commission is required to estimate in its Final Regulatory Flexibility Analysis the number of small entities to which a rule will apply, provide a description of such entities, and assess the impact of the rule on such entities.

8. To assist the Commission in this analysis, commenters are requested to provide information regarding how many total entities, existing and potential, would be affected by the proposed rules in the *Second Notice of Proposed Rule Making*. In particular, the Commission seeks estimates of how many such entities will be considered small businesses. As explained in the Final Regulatory Flexibility Analysis in the *Report and Order*, the Commission is utilizing the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing less than 1,500 persons. The Commission seeks comment on whether this definition is appropriate for 39 GHz licensees in this context. Additionally, the Commission requests each commenter to identify whether it is a "small business" under this definition. If a commenter is a subsidiary of another entity, this information should be provided for both the subsidiary and the parent corporation or entity.

9. *Reporting, Recordkeeping, and Other Compliance Requirements.* The proposals in the *Second Notice of Proposed Rule Making* include the possibility of imposing additional reporting and/or recordkeeping requirements in connection with businesses obtaining licenses through the partitioning and disaggregation rules. The information requirements placed on businesses seeking to obtain licenses through partitioning or disaggregation will be used to determine if the licensee is a qualifying entity to obtain a partitioned license or disaggregated spectrum. Those reporting requirements are stated in the companion Final Regulatory Flexibility Act. Those reporting requirements also will likely be used to ensure that a licensee is not unjustly enriched by a partitioning or disaggregation arrangement.

10. *Federal Rules that Overlap, Duplicate, or Conflict with These Proposals.* None.

11. *Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives.* In the *Second Notice of Proposed Rule Making*, the Commission tentatively concludes that unjust enrichment provisions should apply when a licensee has benefitted from the small business provisions in the auctions rules and partitions a portion of the license area to another entity that would not qualify for such benefits. The alternative to applying the unjust enrichment provisions would be to allow an entity who had benefitted from the special bidding provisions for small businesses to become unjustly enriched by partitioning a portion of their license area to parties that do not qualify for such benefits.

12. *Paperwork Reduction Act.* This *Second Notice of Proposed Rule Making* contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this *Second Notice of Proposed Rule Making*, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Public and agency comments are due at the same time as other comments on this *Second Notice of Proposed Rule Making;* OMB comments are due March 23, 1998. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

13. *Ex Parte Rules.* This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1201, 1.1203, 1.1206(a).

14. *Comment Filing Procedures.* Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before February 20, 1998, and reply comments on or before March 9, 1998. To file formally in this proceeding, interested parties must file an original plus four copies of all comments, reply comments, and supporting comments. If commenters want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Comments and reply comments should be sent to: the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554.

15. Authority for issuance of this *Report and Order and Second Notice of Proposed Rule Making*, is contained in §§ 4(i), 257, 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 257, 303(r), and 309(j).

List of Subjects in 47 CFR 101

Communications common carriers, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–1393 Filed 1–20–98; 8:45 am]

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Notices

Federal Register
Vol. 63, No. 13
Wednesday, January 21, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Routt Divide Blowdown Analysis, Medicine Bow-Routt National Forest, Hahns Peak/Bears Ears Ranger District, Routt County, CO

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an Environmental Impact Statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service, Medicine Bow-Routt National Forest will prepare an Environmental Impact Statement (EIS) to assess and disclose the environmental effects of proposed salvage logging of a portion of the Routt Divide Blowdown outside the Mount Zirkel Wilderness Area on the Hans Peak/Bears Ears Ranger District. The analysis area location is approximately 24 miles north of Steamboat Springs, Colorado, in portions of sections 3, 4, 5, 8, 9 and 10 of T9N, R83W; sections 1, 2, and 11 of T9N, R84W; sections 17, 20, 21, 27, 28, 29, 32, 33 and 34 of T10N, R83W; sections 1, 2, 3, 4, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35 and 36 of T10N, R84W; and sections 33, 34, 35, and 36 of T11N, R84W.

This Notice of Intent is being issued under the authority of the Routt National Forest Land and Resource Management Plan and Final EIS of November 1983, which is the current guidance for forest management of the area. It is anticipated that the final Revised Land and Resource Management Plan for the Routt National Forest will be issued before the project decision for the Routt Divide Blowdown Analysis is complete. Therefore, information from the draft Proposed Revised Land and Resource Management Plan, issued in January 1996, is also included so readers can evaluate how the project would fit within guidance provided by the revised plan. The project will tier to the plan that is in effect when the project decision is made.

The majority of lands affected by the blowdown event within the analysis area are currently allocated to Management Area 4B (wildlife habitat), as described in the current Forest Land and Resource Management Plan for the Routt National Forest, approved in 1983. There are also some inclusions of blowdown within Management Areas 2A (semiprimitive motorized recreation) and 6B (range management). The North Fork and Middle Fork of Elk River are identified as eligible for consideration by Congress for Scenic River designation. Forested lands within management areas 4B, 6B and 2A are designated as suitable for timber production by the forest plan and do contribute to the Allowable Sale Quantity (ASQ) calculation. Following is a summary of the general forest plan direction for the area.

Management Area 4B—Wildlife Habitat: Emphasizes wildlife habitat for one or more indicator species. Semiprivate motorized recreation opportunities will be provided, but vegetation manipulation and human activities are managed to provide optimum habitat for the selected species.

Management Area 2A—Semiprimitive motorized recreation: Emphasizes semiprimitive motorized recreation opportunities such as snowmobiling, four-wheel driving and motorcycling both on and off roads and trails in a naturally appearing environment. Management activities are visually subordinate. Timber harvest includes clearcutting and shelterwood and will enhance wildlife diversity.

Management area 6B—Rangeland Management: Emphasizes improving and/or maintaining rangeland. Improvements may include seeding, burning, spraying, crushing, or plowing as well as structural improvements.

The Forest Plan is being revised as required by the National Forest Management Act. The Draft Revised Land and Resource Management Plan for the Routt National Forest was issued in January 1996. The preferred alternative for the forest plan revision (Alternative C as described in the DEIS) allocates the majority of the project area to management area 5.11 (General Forest and Rangelands—Forest Vegetation Emphasis, which provides for a mix of forest products, forage, wildlife habitat and recreation), and management area 5.13 (Forest Products, which is managed to produce commercial wood products). These lands are included in the ASQ calculations as suitable lands. The analysis area also includes lands allocated to management area 1.32 (Backcountry Recreation with Limited Motorized Winter Use), which provides for backcountry recreation opportunities in a natural-appearing landscape and continues to consider the North Fork and Middle Fork of Elk River as eligible for Scenic River designation. These lands are not included in the ASQ calculations as suitable lands.

DATES: Written comments and suggestions should be postmarked or received by February 21, 1998. The estimated date for filing the draft EIS is March 1998, followed by the final decision in May 1998.

ADDRESSES: The Responsible Official is Jerry E. Schmidt, Forest Supervisor; Medicine Bow—Routt National Forest; 925 Weiss Drive; Steamboat Springs, CO 80487–9315. Written comments and suggestions concerning the scope of the analysis may be sent to him at that address.

FOR FURTHER INFORMATION CONTACT: Larry Lindner, Interdisciplinary Team Leader. Phone: 970–870–2220 (Steamboat Springs, CO) or 307–745–2424 (Laramie, WY).

SUPPLEMENTARY INFORMATION: On October 25, 1997, approximately 20,000 acres of Engelmann spruce and subalpine fir along the western boundary of the Mount Zirkel Wilderness Area were subjected to a windthrow event. The majority of trees were windthrown in about 40–50 patches ranging in size from about 50 to 4,000 acres. Approximately 12,000 acres of windthrow are within the Mount Zirkel Wilderness and approximately 8,000 acres are outside and to the west of the wilderness boundary. This Notice of Intent to prepare an Environmental Impact Statement concerns a portion of the blowdown that is within the North Fork and Middle Fork of Elk River watersheds outside the Mount Zirkel Wilderness Area. Additional analysis responsive to the National Environmental Policy Act (NEPA) will be completed for any activities that may be proposed for the remaining blowdown area.

Preliminary estimates indicate that as much as 80 million board feet of timber may be salvageable within the analysis area. Insects, rots and stains are expected to greatly reduce the economic value of the logs within a few years. Therefore, a timely decision is needed to maximize any economic benefit the people of the United States would achieve should the decision be made to salvage the blowdown sawtimber or any efforts to do so would be foregone.

Proposed Action

To restore recreation opportunities, to enhance regeneration of stands, and to use blowdown timber through salvage logging opportunities in response to the Routt Divide Blowdown event within one of the largest patches where road access already exists. The Forest Service intends to analyze: (a) The effects of the blowdown to the natural, social and economic resources; (b) the opportunities to mitigate the effects of the blowdown through salvage logging or other methods; and (c) the effects of salvage logging as well as any needed mitigation measures.

Most projects developed by the Forest Service are tailored to fit on-the-ground conditions and must meet numerous design constraints, such as size and shape of units, etc. The Routt Divide Blowdown was a natural disturbance rather than the result of a planned activity by the Forest Service. Since the blowdown was an act of nature rather than of Forest Service design, some aspects of projects developed in response to the blowdown may not look like projects that are regularly conceived, designed and implemented by the Forest Service.

Much of the analysis area has been inventoried as part of the analysis process for past and proposed sales, so there is already specific data and general information available. The Interdisciplinary Team will develop a site specific proposed action as part of its analysis for disclosure in the draft EIS. The design of any activities proposed for the area must be responsive to the effects of the event itself and will be guided by applicable Forest Plan Standards and Guidelines. Should circumstances warrant deviation from the Forest Plan Standards and Guidelines, an amendment(s) to the Plan subject to the NEPA process may be necessary. Some proposed activities may be innovative and non-traditional due to the nature of the blowdown itself.

This environmental analysis shall consider the environmental consequences of the proposed action, as well as alternatives reasonably implemented, while meeting the purpose and need of the action.

Decision To Be Made

The Medicine Bow-Routt Forest Supervisor will make a decision about the selection of one alternative among several concerning whether a portion of the Routt Divide Blowdown outside wilderness will be salvage logged and what mitigation measures will be required. The issues and alternatives developed from public comment and Interdisciplinary Team analysis will be clearly disclosed in the Environmental Impact Statement. From the project record alone, the Forest Supervisor and others who may review the decision, will be able to fully understand the consequences of implementing the selected alternative.

Preliminary Issues

—Effects to recreation
—Effects to Mount Zirkel Wilderness area
—Effects to Wild and Scenic River classification
—Effects to Roadless areas
—Effects to National Forest permittees
—Effects to local communities and Forest Users
—Effects to channel stability from increased water yield
—Effects to soil productivity from surface erosion
—Effects to wildlife and fish, including Threatened, Endangered and Sensitive species
—Social effects
—Safety
—Regeneration of new forests in the blowdown
—Effects of salvage logging
—Effects of road construction required to salvage logs
—Visual effects (including those resulting from the need to maintain roughness, shade and structure within a contiguous large area of blowdown)
—Potential that the blowdown material may lead to epidemic levels of insect populations and the effects of such an epidemic

Reviewers Obligations

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft Environmental Impact Statement stage but that are not raised until after completion of the final Environmental Impact Statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the draft Environmental Impact Statement 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final Environmental Impact Statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 10 days.

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Responsible Official

Jerry E. Schmidt, Forest Supervisor; Medicine Bow—Routt National Forest; 2468 Jackson Street, Laramie, WY 82070 is the Responsible Official. As the Responsible Official, I will decide which, if any of the alternatives to be described in the draft Environmental Impact Statement will be implemented. I will document the decision and the reasons for my selection of the decision in the Record of Decision.

Dated: January 14, 1998.

Jerry E. Schmidt,

Forest Supervisor.

[FR Doc. 98–1324 Filed 1–20–98; 8:45 am]

BILLING CODE 3410–GM–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request an extension of a currently approved information collection, the Agricultural Prices that expires May 31, 1998.

DATES: Comments on this notice must be received by March 27, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 4117 South Building, Washington, DC 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Agricultural Prices.

OMB Number: 0535–0003.

Expiration Date of Approval: May 31, 1998.

Type of Request: To extend a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue state and national estimates of crop and livestock production and prices. The Agricultural Prices surveys provide estimates of prices received by farmers and prices paid for production goods and services needed by the U.S. Department of Agriculture. These price estimates are used to compute Parity Prices in accordance with requirements of the Agricultural Adjustment Act of 1938 as amended (Title III, Subtitle A, Section 301a). In addition, price data are used to administer target price provisions (deficiency payments) of the Food, Agriculture, Conservation, and Trade Act of 1990. The Agricultural Prices Surveys has approval from OMB for a 3-year period. NASS intends to request that the survey be approved for another 3 years.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 11 minutes per response.

Respondents: Individual Job Applicants.

Estimated Number of Respondents: 81,800.

Estimated Total Annual Burden on Respondents: 15,000 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Ave., SW, Room 4162 South Building, Washington, DC, 20250–2000. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, January 14, 1998.

Rich Allen,

Acting Administrator, National Agricultural Statistics Service.

[FR Doc. 98–1301 Filed 1–20–98; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request an extension of a currently approved information collection, the Fruits, Nuts, and Specialty Crops that expires May 31, 1998.

DATES: Comments on this notice must be received by March 27, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 4117, South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Fruits, Nuts, and Specialty Crops.

OMB Number: 0535–0039.

Expiration Date of Approval: May 31, 1998.

Type of Request: To extend a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue state and national estimates of crop and livestock production. The Fruits, Nuts, and Specialty Crops survey program collects information on acreage, yield, production, and value of non-citrus fruits and nuts and other specialty crops in states with significant commercial production. The program provides data needed by the U.S. Department of Agriculture and other government agencies to administer programs and to set trade quotas and tariffs. State universities and agriculture departments also use data from this survey. The Fruits, Nuts, and Specialty Crops program has approval from OMB for a 3-year period. NASS intends to request that the survey be approved for another 3 years.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 17 minutes per response.

Respondents: Individual Job Applicants.

Estimated Number of Respondents: 53,000.

Estimated Total Annual Burden on Respondents: 15,000 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Ave. SW, Room 4162 South Building, Washington, DC 20250–2000. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, January 14, 1998.

Rich Allen,

Acting Administrator, National Agricultural Statistics Service.

[FR Doc. 98–1302 Filed 1–20–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

National Sheep Industry Improvement Center; Notice of Annual Board of Directors Meeting

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of annual board meeting.

SUMMARY: The Board of Directors of the National Sheep Industry Improvement Center announces that it will hold its annual Board of Directors meeting. The meeting will be held over 2 days in the Washington, DC area.

DATES: The meeting dates are:

1. Februrary 11, 1998, 7:00 p.m. to 10 p.m., Arlington, VA.

2. February 12, 1998, 8:30 a.m. to 2:00 pm, Washington, DC.

ADDRESSES: The meeting locations are:

1. Arlington, VA—Holiday Inn Westpark, 1900 N. Ft. Meyer Drive, Arlington, VA (Call hotel, 703/807–2000, for conference room number).

2. Washington, DC—USDA South Building, 1400 Independence Avenue, SW, Washington, DC, Room 3107.

FOR FURTHER INFORMATION CONTACT: Thomas Stafford, Director, Cooperative Marketing Division, Cooperative Services, RBS, USDA, Stop 3252, Room 4204, 1400 Independence Ave., SW., Washington, DC 20250–3252, telephone (202) 690–0368. (This is not a toll free number.) E-mail: thomas.stafford@usda.gov. The Federal Information Relay service on 1–800–877–8339 may be used by TDD users.

SUPPLEMENTARY INFORMATION: This board meeting will serve as the National Sheep Industry Improvement Center's annual meeting.

Background

In response to challenges facing the sheep and goat industries, the 1996 Farm Bill established the National Sheep Industry Improvement Center to assist and strengthen the U.S. sheep and goat industries through projects and assistance financed through the Center's revolving fund. The Center will manage a revolving fund of up to $50 million in Federal funds to facilitate the production and marketing of sheep and goats, and their products.

Treasury has deposited the initial $20 million into the Center's fund. This fund is capped at $50 million Federal funds—where authorization was provided for an additional $30 million in appropriated funds. After 10 years or upon receipt of $50 million in Federal funds to the revolving fund, the Center and its activities shall be privatized and no additional Federal funds shall be used to carry out the activities of the Center.

The Center is managed by a nine member (7 voting and 2 nonvoting members), non-compensated board. The seven voting members were chosen by the Secretary of Agriculture from the sheep and goat industries and the two non-voting members from the USDA are the Under Secretary for Rural Development and the Under Secretary for Research, Education and Economics. The Board of Directors may use the monies in the fund to make grants, and intermediate and long-term loans, contracts, cooperative repayable agreements, or cooperative agreements in accordance with an annual strategic plan submitted to the Secretary of Agriculture. Funds may be used to participate with Federal and State agencies, other public and private funding sources, and in regional efforts. Funding activities include providing security for, or making principal or interest payments on, revenue or general obligation bond issues, accruing interest, guaranteeing or purchasing insurance for local obligations, and selling acquired assets or loans.

Purposes of the Center

The purposes of the Center are to:

(1) Promote strategic development activities and collaborative efforts by private and State entities to maximize the impact of Federal assistance to strengthen and enhance production and marketing of sheep or goat products in the United States;

(2) Optimize the use of available human capital and resources within the sheep or goat industries;

(3) Provide assistance to meet the needs of the sheep or goat industry for infrastructure development, business development, production, resource development, and market and environmental research;

(4) Advance activities that empower and build the capacity of the United States sheep or goat industry to design unique responses to the special needs of the sheep or goat industries on both a regional and national basis; and

(5) Adopt flexible and innovative approaches to solving the long-term needs of the United States sheep and goat industries.

Board Meetings

The Board meetings are open to the public.

Authority: 7 U.S.C. 2008j, Pub.L. 104–130.

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Dated: January 9, 1998.
Dayton J. Watkins,
Administrator, Rural Business-Cooperative Service.
[FR Doc. 98–1310 Filed 1–20–98; 8:45 am]
BILLING CODE 3410–XY–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Written Assurances for Exports of Technical Data Under General License GTDR (to be Renamed, "Written Assurances for Exports of Technical Data Under License Exception TSR")

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 23, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, Department of Commerce, 14th and Constitution Avenue, NW., room 6877, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

U.S. exporters are required to receive letters of assurance from their foreign importers stating that they will not export or reexport technical data to destinations outlined in the E.A.R. unless they have received prior authorization from BXA.

II. Method of Collection

Submitted in written form.

III. Data

OMB Number: 0694–0023.
Form Number: n/a.
Type of Review: Regular submission.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 226.
Estimated Time Per Response: 30 minutes per response.
Estimated Total Annual Burden Hours: 117.
Estimated Total Annual Cost: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: January 13, 1998.
Linda Engelmeier,
Departmental Forms Clearance Officer, Office of Management and Organization.
[FR Doc. 98–1348 Filed 1–20–98; 8:45 am]
BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Report of Requests for Restrictive Trade Practice or Boycott—Single or Multiple Transactions

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 23, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information obtained from this collection authorization is used to carefully and accurately monitor requests for participation in foreign boycotts against countries friendly to the U.S. which are received by U.S. persons. The information is also used to identify trends in such boycott activity and to assist in carrying out U.S. policy of opposition to such boycotts.

II. Method of Collection

Submitted in writing on forms.

III. Data

OMB Number: 0694–0012.
Form Number: BXA 621–P or BXA 6051–P.
Type of Review: Regular submission.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 1,574.
Estimated Time Per Response: 1 to 1.5 hours per response.
Estimated Total Annual Burden Hours: 3,306.
Estimated Total Annual Cost: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: January 13, 1998.
Linda Engelmeier,
Departmental Forms Clearance Officer, Office of Management and Organization.
[FR Doc. 98–1349 Filed 1–20–98; 8:45 am]
BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Delivery Verification Procedure

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 23, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

Foreign governments sometimes require U.S. importers of strategic commodities to furnish their supplier with a U.S. Delivery Verification Certificate validating that the commodities shipped to the U.S. were in fact received. This procedure increases the effectiveness of controls over exports of strategic commodities.

II. Method of Collection

Submitted, as required, on form BXA–647P.

III. Data

OMB Number: 0694–0016.
Form Number: BXA 647–P.
Type of Review: Regular submission.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 500.
Estimated Time Per Response: 30 minutes per response.
Estimated Total Annual Burden Hours: 57.
Estimated Total Annual Cost: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: January 13, 1998.
Linda Engelmeier,
Departmental Forms Clearance Officer, Office of Management and Organization.
[FR Doc. 98–1350 Filed 1–20–98; 8:45 am]
BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Special Comprehensive License

ACTION: Proposed collection; comment request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 23, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, Department of Commerce, 14th and Constitution Avenue, NW, Room 6877, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The SCL Procedure authorizes multiple shipments of items from the U.S. or from approved consignees abroad who are approved in advance by BXA to conduct the following activities: servicing, support services, stocking spare parts, maintenance, capital expansion, manufacturing, support scientific data acquisition, reselling and reexporting in the form received, and other activities as approved on a case-by-case basis.

II. Method of Collection

Submitted on forms BXA–748P and BXA 752P.

III. Data

OMB Number: 0694–0089.
Form Number: None.
Type of Review: Regular submission for extension of a currently approved collection.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 150.
Estimated Time Per Response: 20 hours per response.
Estimated Total Annual Burden Hours: 3,036.
Estimated Total Annual Cost: $0 (no capital expenditure are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

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Dated: January 14, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–1351 Filed 1–20–98; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Technical Data Letter of Explanation

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 23, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, Department of Commerce, 14th & Constitution Avenue, NW, room 6877, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information contained in these letters will assure BXA that no unauthorized technical data will be exported for unauthorized end-uses or to unauthorized destinations and thus provide assurance that U.S. national security and foreign policy programs are followed. In addition, shipments to Poland, Hungary, and Czechoslovakia, need an Import Certificate issued by the appropriate national government.

II. Method of Collection

Submitted, as appropriate, with form BXA–748P.

III. Data

OMB Number: 0694–0047.
Form Number: BXA 748–P.
Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 570.
Estimated Time Per Response: 2–4 hours per response.
Estimated Total Annual Burden Hours: 935.
Estimated Total Annual Cost: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: January 14, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–1352 Filed 1–20–98; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 2–98]

Proposed Foreign-Trade Zone—Palm Springs, California; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the City of Palm Springs, California, to establish a general-purpose foreign-trade zone at sites in Palm Springs, California. The Palm Springs Regional Airport has been designated a Customs user fee airport facility by the U.S. Customs Service. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 12, 1998. The applicant is authorized to make the proposal under Section 6302 of the California Code.

The proposed zone would consist of 2 sites (918 acres) in Palm Springs: *Site 1* (904 acres)—Palm Springs Regional Airport complex, 3400 E. Tahquitz Canyon Way, Palm Springs; and, *Site 2* (14 acres)—an industrial development within the 18-acre Palm Springs Rail Station, 63950 Palm Springs Station Road, Palm Springs. The airport site includes aviation fuel facilities. Both sites are owned by the City of Palm Springs and operated by the City's Department of Transportation.

The application contains evidence of the need for zone services in the Palm Springs (Coachella Valley) area. Several firms have indicated an interest in using zone procedures for warehousing/distribution activity. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on February 19, 1998, 9:00 a.m., City of Palm Springs, City Council Chambers, 3200 E. Tahquitz Canyon Way, Palm Springs, California 92262.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 23, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 6, 1998).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

City of Palm Springs City Hall, City Clerk's Office, 3200 E. Tahquitz Canyon Way, Palm Springs, CA 92262

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: January 13, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–1396 Filed 1–20–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 3–98]

Foreign-Trade Zone 93—Raleigh/Durham, NC; Request for Manufacturing Authority Rike Industries, Inc. (In-Line Skates)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Triangle J Council of Governments, grantee of FTZ 93, pursuant to § 400.28(a)(2) of the Board's regulations (15 CFR part 400), requesting authority on behalf of Rike Industries, Inc. (Rike), to assemble in-line skates under FTZ procedures within FTZ 93. It was formally filed on January 13, 1998.

The Rike facility (41,000 sq. ft.) is located within Site 1 of FTZ 93 at 1000 Parliament Court in the Imperial Business Center, in Durham, North Carolina. The Rike facility (12 employees) is used to assemble in-line skates under contract for Fila Sports, Inc., for the U.S. market and export. The assembly process involves the attachment of domestically sourced in-line skate chassis to foreign-origin textile/leather boots (HTSUS 6402–6404, as sports footwear; duty rate: 20%). The finished in-line skates are classified under HTSUS 9506.70 (duty free). The application indicates that 15 percent of the facility's shipments will be exported.

FTZ procedures would exempt Rike from Customs duty payments on the foreign components used in export production. On its domestic sales, Rike would be able to elect the Customs duty rate during Customs entry procedures that applies to finished in-line skates (duty free) for the foreign boots/footwear noted above. The request indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 23, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 6, 1998).

A copy of the application and the accompanying exhibits will be available for public inspection at the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230–0002

Office of the Service Area Port Director, U.S. Customs Service—Raleigh/Durham, 120 South Center Court, Morrisville, NC 27560.

Dated: January 13, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–1397 Filed 1–20–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–832]

Pure Magnesium From the People's Republic of China: Final Results of Antidumping Duty New Shipper Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 23, 1997, the Department of Commerce published the preliminary results of the new shipper administrative review of the antidumping duty order on pure magnesium from the People's Republic of China (62 FR 55215). This review covers one manufacturer/exporter of the subject merchandise to the United States, Taiyuan Heavy Machinery Import and Export Corporation, and the period of review is May 1, 1996, through October 31, 1996. We gave interested parties an opportunity to comment on our preliminary results.

We have determined that U.S. sales have been made below the normal value, and we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between Export Price and Normal Value.

EFFECTIVE DATE: January 21, 1998.

FOR FURTHER INFORMATION CONTACT: Everett Kelly or Brian C. Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4194 or (202) 482–1766, respectively.

SUPPLEMENTARY INFORMATION: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to those codified at 19 CFR part 353 (April 1997). Where appropriate, references are made to the Department's final regulations, codified at 19 CFR part 351 (62 FR 27296), as a statement of current departmental practice.

Background

On October 23, 1997, the Department published in the **Federal Register** (62 FR 55215) the preliminary results of its new shipper administrative review of the antidumping duty order on pure magnesium from the PRC (62 FR 55215). On November 13, the petitioner [1] and Taiyuan Heavy Machinery Import and Export Corporation (Taiyuan) submitted publicly available information on surrogate values for factors of production for consideration in the final results. On November 18, the petitioner and Taiyuan each submitted case briefs. On November 20, both parties submitted comments on the other's publicly available information submitted on November 13. On November 26, the parties submitted rebuttal briefs. On December 2, 1997, the Department held a public hearing.

Scope of Order

The product covered by this order is pure primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this order. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure primary magnesium is used as an input in producing magnesium alloy.

Pure primary magnesium encompasses products (including, but not limited to, butt ends, stubs, crowns and crystals) [2] with the following primary magnesium contents:

(1) Products that contain at least 99.95% primary magnesium, by weight

[1] The petitioner includes the following entities: Magnesium Corporation of America, International Union of Operating Engineers, Local 564, and the United Steelworkers of America, Local 8319.

[2] Since the antidumping duty order was issued, we have clarified that the scope of the original order includes, but is not limited to, butt ends, stubs, crowns and crystals. *See* May 22, 1997, instructions in U.S. customs and November 14, 1997, *Final Scope Rule of Antidumping Duty Order on Pure Magnesium from the PRC.*

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(generally referred to as "ultra-pure" magnesium);

(2) Products that contain less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as "pure" magnesium); and

(3) Products (generally referred to as "off-specification pure" magnesium) that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium.

"Off-specification pure" magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: Aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of this order are alloy primary magnesium (that meets specifications for alloy magnesium), primary magnesium anodes, granular primary magnesium (including turnings, chips and powder), having a maximum physical dimension (i.e., length or diameter) of one inch or less, secondary magnesium (which has pure primary magnesium content of less than 50% by weight), and remelted magnesium whose pure primary magnesium content is less than 50% by weight.

Pure magnesium products covered by this order are currently classifiable under *Harmonized Tariff Schedule of the United States* (HTSUS) subheadings 8104.11.00, 8104.19.00, 8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19 and 9817.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Separate Rates

In proceedings involving non-market-economy ("NME") countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate. To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) and amplified in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, May 2, 1994) (*Silicon Carbide*). Under the separate rates criteria, the Department assigns separate rates in nonmarket economy cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. De Jure Control

Taiyuan has placed on the administrative record documents to demonstrate absence of *de jure* control: the "Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People," adopted on April 13, 1988; (the Industrial Enterprises Law), and the 1992 regulations that supplemented it, "Regulations for Transformation of Operational Mechanisms of State-Owned Industrial Enterprises" (Business Operation Provisions). We have analyzed these laws in previous cases and have found them sufficiently to establish an absence of *de jure* control of companies "owned by the whole people," such as Taiyuan. (*See, e.g., Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China* ("*Furfuryl Alcohol*") 60 FR 22544 (May 8, 1995)). The Industrial Enterprises Law provides that enterprises owned by "the whole people" shall make their own management decisions, be responsible for their own profits and losses, choose their own suppliers, and purchase their own goods and materials. The Business Operation Provisions confer upon state-owned enterprises the responsibility for making investment decisions, the right to dispose of retained capital and assets, and the authority to form joint ventures and to merge with other enterprises. Taiyuan also states that pure magnesium does not appear on any government lists regarding export provisions or export licensing, and that no quotas are imposed on pure magnesium. In sum, in prior cases, the Department examined both the Industrial Enterprises Law and the Business Operations Provisions, and found that they establish an absence of *de jure* control. We have no new information in this proceedings which would cause us to reconsider this determination with regard to Taiyuan.

2. De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide* and *Furfuryl Alcohol*.

Taiyuan asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts, without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs and has the authority to sell its assets and to obtain loans. During verification proceedings, Department officials viewed such evidence as sales documents that showed Taiyuan sales prices were negotiated solely by Taiyuan and its customer. In addition, the Department generally noted no significant indication of government involvement in Taiyuan's business operations. Taiyuan officials are appointed by a bureau of the provincial government, rather than the central government, and there are no other known exporters of the subject merchandise under the control of the provincial government. Sales documents reviewed indicated that Taiyuan sales prices were negotiated solely by Taiyuan and its customer. In addition, the Department reviewed sales payments, bank statements and accounting documentation that provided evidence that Taiyuan received payment in U.S. dollars, which was deposited into its bank account after being converted to renminbi (RMB). *See* Taiyuan Sales Verification Report. This information, taken in its entirety, supports a finding that there is *de facto* an absence of governmental control of export functions. Consequently, we have determined that Taiyuan has met the criteria for the application of separate rates. *See Notice of Final Determination at Less Than Fair Value: Persulfates from the Peoples Republic of China*, 62 FR 27222 (May 19, 1997).

Fair Value Comparisons

To determine whether sales of the subject merchandise by Taiyuan to the United States were made at less than fair value, we compared the export price (EP) to the normal value (NV), as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice, below.

Export Price

We calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold directly by the PRC exporter to unaffiliated parties in the United States prior to importation into the United States and the constructed export price methodology was not warranted based on the facts of record. We calculated EP based on the same methodology used in the preliminary results, with the following exception:

To value foreign inland freight, we used the average rate contained in the Indian periodical *The Times of India*. We have used this same rate in numerous NME cases where India has been selected as the primary surrogate. *See Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China (PRC)*, 62 FR 9160 (February 28, 1997) (*Brake Rotors*)).

Normal Value

We calculated NV in accordance with section 773(c) of the Act, which applies to non-market economy countries. In accordance with section 773(c)(4) of the Act, we must, to the extent possible, value the factors of production in one or more market economy countries that (1) are at a level of economic development comparable to that of the non-market economy country, and (2) are significant producers of comparable merchandise. We have determined that Indonesia and India are the countries most comparable to the PRC in terms of overall economic development and both are significant producers of comparable merchandise (aluminum). Further, India also produces magnesium. For these final results, we have continued to use India as a surrogate country because it meets the Department's criteria for surrogate country selection.

The selection of the surrogate values was based on the quality and contemporaneity of the data. Where possible, we attempted to value material inputs on the basis of tax-exclusive domestic prices (*see* Comment 17). Where we were not able to rely on domestic prices, we used import prices to value factors. As appropriate, we adjusted input prices to make them delivered prices. Where import values were used, we added an amount for surrogate freight attributable to the lesser of either the distance from the source to the factory or the nearest port to the factory (*see* Comment 18). For those values not contemporaneous with the POR, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics*. For a complete analysis of surrogate values, see the January 14, 1998, Calculation Memorandum (Calculation Memorandum). We note changes to surrogate valuation since the preliminary results as follows:

To value ferrosilicon, we used a simple average of prices applicable during the POR from *Metal Bulletin*, and the *Iron and Steel Newsletter* (*see* Comment 6).

To value calcinate dolomite and fluorite powder, we have used prices from *Monthly Statistics of the Foreign Trade of India* (*Monthly Statistics*) (*see* Comments 8 and 9, respectively).

To value barium chloride, we used prices from *United Nations Import Statistics* (*see* Comment 10).

To value electricity, we used the August 1996 rate in *Business World* (*see* Comment 12).

To value truck freight rates, we used the average rate contained in the Indian periodical *The Times of India*.

To value factory overhead, SG&A, and profit, we used the financial report of Southern Magnesium and Chemicals Ltd. (SMCL) because this company is a producer of the subject merchandise and the data from the report is contemporaneous to the POR (*see* Comment 2).

We have considered the line item labeled "stores and spares consumed" to include the reducing vessel and have treated the reducing vessel as part of factory overhead because the reducing vessel is not a direct material consumed in the production process. Although the SMCL financial report may have treated the reducing vessel as a direct material and included the reducing vessel as part of line item "raw materials consumed," we have, in calculating the surrogate overhead percentage, reduced SMCL's cost of materials consumed and increased overhead by the amount attributable to the reducing vessel costs (*see* Comment 1). We have not included in the surrogate overhead and SG&A calculations the excise duty amount listed in SMCL's financial report (*see Brake Rotors* at 9164). We based our factory overhead calculation on the cost of goods manufactured rather than on the cost of goods sold. We also included interest and/or financial expenses in the SG&A calculation. In addition, we only reduced interest and financial expenses by amounts for interest income if the Indian financial report noted that the income was short-term in nature. Where the financial report did not distinguish short-term interest income as a line item within total "other income," we used the relative ratio of interest income to total other income as reported for the Indian metals and chemicals industry in the *Reserve Bank of India Bulletin* (*RBI Bulletin*). For a further discussion of other adjustments made, see January 14, 1998, Calculation Memorandum).

Interested Party Comments

We gave interested parties an opportunity to comment on the preliminary results. We received comments and rebuttal comments from the petitioner and Taiyuan.

Comment 1: Treatment of the Reducing Vessel. The petitioner claims that evidence on the record demonstrates that the reducing vessel is not part of factory overhead and that the Department must treat and value the reducing vessel as a direct material regardless of which public information it uses to calculate a value for factory overhead. The petitioner also refers to a U.S. Bureau of Mines (BOM) study of the silicothermic process of magnesium production which treats the reducing vessel as a direct material cost and not part of factory overhead. If the Department decides to use the financial report of SMCL (an Indian producer) to value factory overhead, the petitioner argues, then it should also take into consideration the fact that the data in the financial report demonstrate that the vessel is treated as a direct material rather than as part of stores and spares. The petitioner points out that even though Indian accounting standards state that a material can be considered part of factory overhead if it assists the manufacturing process but does not enter physically into the composition of the finished product, this is not necessarily the case with reducing vessels. Alternatively, the petitioner argues that if the Department decides to use data from the *RBI Bulletin*, then it should take into consideration the fact that public information on the record demonstrates that the cost of the reducing vessel is not captured in a calculated factory overhead rate using data from the *RBI Bulletin*, because the cost of the vessel is neither indirect nor minor. The petitioner claims that if the Department uses the *RBI Bulletin* to calculate factory overhead, then the Department needs to make an adjustment to the factory overhead rate to account for the cost of the reducing vessel.

Taiyuan contends that the reducing vessel is not a raw material which is part of the direct cost of production. Rather, Taiyuan maintains that the reducing vessel is a reusable piece of equipment that does not physically enter into the finished product, and that

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Indian general accounting principles treat such items as part of overhead costs. Therefore, Taiyuan maintains that the Department should continue to consider the reducing vessel as part of factory overhead.

DOC Position: We agree with Taiyuan. The reducing vessel is not incorporated into the finished product. Rather, it is equipment necessary for producing the subject merchandise which eventually needs to be replaced after continuous use. Although we conclude that SMCL treated the reducing vessel as a direct material in its 1995–96 financial report, we do not find that the reducing vessel should be considered a direct material rather than an indirect material for purposes of antidumping law. To the extent possible, we have adjusted the direct material amount reflected in SMCL's financial report by removing from the cost of direct materials and adding to factory overhead an amount for the reducing vessel based on data contained in SMCL's 1994–95 financial report. We have treated the reducing vessel cost as part of factory overhead and have used the SMCL 1995–96 financial report to calculate a factory overhead percentage (*see* Comment 2 for further discussion).

Comment 2: Surrogate Values for Factory Overhead, SG&A and Profit. The petitioner claims that the Department must use the financial statement of SMCL rather than the *RBI Bulletin* to value factory overhead, SG&A and profit because the Indian producer uses the silicothermic process employed by Taiyuan's supplier and therefore consumes the reducing vessel in producing magnesium. In addition, the petitioner claims that the data contained in SMCL's financial statement are more specific to magnesium production and more contemporaneous to the period of review (POR) than the data in the *RBI Bulletin*.

Taiyuan argues that the Department should use the data on the chemicals and metals industry from the *RBI Bulletin* to value factory overhead, SG&A and profit because the Department has used these data in numerous NME cases and because it has a high degree of reliability given that it contains data compiled from many companies. Taiyuan argues that the Department should not rely on the SMCL financial report to calculate these surrogate percentages because that financial report is not publicly available published information. Taiyuan also alleges that the SMCL financial report is not in accordance with Indian generally accepted accounting principles (GAAP) because SMCL may have considered the reducing vessel as part of direct materials and Indian GAAP require that materials which assist in the manufacturing process, but which do not enter physically into the finished product, are not to be considered as direct materials. Finally, Taiyuan argues that the SMCL financial report is unusable because information in the report indicates that SMCL was unable to produce and sell product during periods of high demand, undertook major capital improvement projects and maintained an abnormally high level of raw material stocks, all of which may have distorted its factory overhead, SG&A and profit ratios.

DOS Position: We agree with the petitioner. In numerous NME cases, we have expressed a preference for using the "most product-specific information possible from the surrogate market" (*see, e.g., Brake Rotors* at 9168). We find that SMCL's 1996 financial report is for an Indian producer of the subject merchandise and more specific than the industry-wide data for metals production contained in the 1992–93 RBI Bulletin. Moreover, we find that the 1996 SMCL financial report contains data which is more contemporaneous to the POR than data contained in the 1992–93 RBI Bulletin. In addition, we find that the SMCL financial report is publicly available information within the meaning of 19 CFR 351.301. As for Taiyuan's argument that SMCL's financial report is not in accordance with Indian GAAP, we find that the financial report has been audited by an Indian accounting firm and that even though SMCL may have treated the reducing vessel as a direct material in its financial report, this designation does not necessarily indicate that the financial report is not in accordance with Indian GAAP. With regard to the argument that SMCL's financial report is not usable because of possible production, capital investment and inventory irregularities, we note that there is no evidence in the financial report which indicates that these factors were abnormal for Indian producers in general. In addition, we find that Taiyuan has not provided any evidence which indicates that the data contained in the 1996 SMCL financial report is not reasonably representative of the production and selling experience of other producers of the subject merchandise in India during the time period in question.

Comment 3: Calculation of SG&A. Taiyuan contends that the Department should deduct from SG&A certain selling expenses (*i.e.*, royalty, selling commission, and advertisement) normally deducted from EP and CEP and also an amount reflected in the *RBI Bulletin* for "other expenses" and then take the remainder and divide it by the sum of total SG&A and COM to derive the SG&A percentage. Taiyuan cites to the Department's *Antidumping Manual* which states that SG&A should be expressed as a percentage of the cost of goods sold.

The petitioner contends that the Department should not deduct the royalty, selling commissions, or advertisement expenses from SG&A because it has made no such deductions to EP and because it cannot make a circumstance-of-sale (COS) adjustment based on the data on the record. Moreover, the petitioner maintains that the Department should not deduct "other expenses" from SG&A because there is no evidence that this expense category includes expenses already reported separately in the response (*i.e.*, packing costs). Finally, the petitioner states it is the Department's established practice to include only the COM in the denominator of the SG&A ratio.

DOC Position: We agree in part with the petitioner. We have not made a COS adjustment to NV. In NME proceedings, the Department does not generally adjust NV for COS differences given (a) the imprecise information for distinguishing between direct and indirect selling expenses in the surrogate SG&A source (*i.e.*, SMCL's financial report); and (b) the absence of non-NME information about what direct selling expenses are included in EP (except where CEP is used) (*see Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026, 19031 (April 30, 1996) (*Bicycles*)). As for accounting for expenses already reported separately in the response (*i.e.*, packing expenses), we note that SMCL's financial report does not provide a separate line item for packing expenses. Since there is no information in the financial report which indicates that SMCL incurs packing expenses, we have not removed any packing expenses from the SG&A calculation. Regarding the calculation of the SG&A percentage, we have used the cost of goods manufactured, not the cost of goods sold, in the denominator of the SG&A ratio consistent with our current practice, which is not reflected in the *Antidumping Manual* (*see Brake Rotors* at 9164).

Comment 4: Material Consumption Figures. The petitioner argues that the Department should not have subtracted the monthly values reported as negative from the total amount of material consumed because it is impossible that Taiyuan's supplier consumed negative amounts of inputs in any months in which it produced magnesium ingots. Instead, the petitioner argues that the Department should require Taiyuan to provide additional information on its supplier's actual consumption figures for the inputs and months for which the supplier provided negative values. Alternatively, the petitioner argues that the Department should not reduce the quantities of the factors of production consumed by the amount of the reported negative consumption figures.

Taiyuan contends that if the Department recognizes adjustments to increase material usage, then the Department should also recognize adjustments which decrease material usage.

DOC Position: We agree with the respondent. The negative numbers do not reflect negative consumption amounts. Rather, the negative numbers noted in the inventory records are corrections to Taiyuan's supplier's records to reflect actual usage. The verification report specified all necessary corrections to reported data, and the correct information has been used for the final results.

Comment 5: Reseller SG&A Expenses and Profit. The petitioner argues that in calculating CV and/or EP, the Department failed to account for expenses Taiyuan incurred in reselling its product to the United States market. The petitioner contends that the Department should have included in CV both surrogate producer SG&A expenses and profit (noted in SMCL's financial statement) plus an amount of reseller SG&A expenses and profit (noted in the *RBI Bulletin*). Alternatively, the petitioner argues that the Department should reduce EP by the amount of reseller SG&A expenses and profit in accordance with 19 U.S.C. 1677a(c)(2)(A) and also adjust EP for reseller SG&A expenses and profit as a COS adjustment in accordance with 19 U.S.C. 1677b(a)(6)(C)(iii).

Taiyuan states that if the Department decides to include in CV an additional amount for the reseller's SG&A and profit, then the Department must make a corresponding level of trade adjustment to account for the different marketing level represented by such costs. However, Taiyuan states that the Department should not add these additional amounts to CV based on applicable costs to be included in the CV to establish NV.

DOC Position: We disagree with the petitioner. In cases involving NMEs, we do not use exporter expenses and profit in our analysis. Instead, we obtain ratios for expenses and profit from a surrogate country, which in this case is India, and include in NV amounts based on the surrogate ratios. We consider those selling expenses and profit to approximate the selling expenses incurred and profit realized by both Taiyuan and Taiyuan's supplier of the subject merchandise. Therefore, we have accounted for the expenses incurred and profit realized by Taiyuan in reselling the subject merchandise to the U.S. market. As for subtracting an amount for these expenses and profit from export price or making a COS adjustment we have no basis to conclude that such adjustments are warranted or feasible (*see* Comment 3 for further discussion).

Comment 6: Surrogate Value for Ferrosilicon. Taiyuan argues that the publication the Department used to value ferrosilicon in the preliminary results (*i.e., Metal Bulletin*) does not provide sufficient details on or reliable information for domestic values. Instead, Taiyuan claims that the Department should use a ferrosilicon import value submitted on November 13, 1997, from the publication *Iron and Steel Newsletter* (*Iron and Steel*). According to respondent, this information is more specific and reliable.

The petitioner contends that the Department should not derive an import value from data in *Iron and Steel* because the value (1) Is either based on imports from NME countries (*i.e.*, Russia) or from countries that are not ferrosilicon producers (*i.e.*, Germany, the Netherlands); and (2) does not most closely correspond to the actual input consumed by Taiyuan. In addition, the petitioner contends that the import data on ferrosilicon contained in *Iron and Steel* are not representative of the price paid by purchasers in India nor are these import values most contemporaneous with the POR. Furthermore, the petitioner argues that the Department should not use price data from a 1995–96 Indian producer financial statement submitted on November 20, 1997, because the price is aberrationally low when compared with the data from *Monthly Statistics* and *Metal Bulletin*. Therefore, the petitioner maintains that the Department should continue to use data from *Metal Bulletin* to value ferrosilicon.

DOC Position: We disagree in part with the petitioner. We have used a simple average POR value for all grades of ferrosilicon from two publications (*i.e., Metal Bulletin* and *Iron and Steel*). We find the July 1996 value of ferrosilicon in *Metal Bulletin* is no more representative or contemporaneous to the POR than is the July and August 1996 values of ferrosilicon in *Iron and Steel*. Therefore, we have used both values in the average price calculation. However, we have not removed an amount for excise or sales taxes from the domestic ferrosilicon value listed in *Metal Bulletin* because the publication does not indicate that the price is inclusive of these taxes. We have not included the values or quantities of ferrosilicon exported to India by countries listed in *Iron and Steel* which the Department has determined are NMEs (*i.e.*, Russia, Kazakhstan). We have included the values and quantities of ferrosilicon from countries listed in *Iron and Steel* that are market economies but which the petitioner claims are not known to be producers of ferrosilicon because these countries are the exporters of record and are market economies that are determining the price of ferrosilicon that they sell to the Indian market. We have no evidence on the record which indicates that the ferrosilicon exported from these countries originates in NMEs.

Comment 7: Surrogate Value for Dolomite. Taiyuan argues that the Department should not continue to use the April 1995–March 1996 value from a 1995–96 financial report of a single company (*i.e.*, Indian Ferroalloy) to value dolomite because that price is unreliable and because there is no information in the financial report which indicates the type of dolomite referenced in that report. Instead, Taiyuan contends that the Department should use an indexed and averaged import value for three grades of dolomite from the Indian government publication *1994 Index Numbers of Wholesale Prices in India* (*Index Numbers*). According to respondent, the data have been updated in this publication and are more contemporaneous to the POR than the data from a single company.

The petitioner contends that the Department should continue to use the 1995–96 dolomite value from Indian Ferroalloy's financial report because the report provides a more contemporaneous value that is specific to the grade of dolomite used in magnesium production.

DOC Position: We agree with the petitioner. We have used the April 1995–March 1996 value from Indian Ferroalloy's financial report because it is more representative and more contemporaneous to the POR than the data contained in *Index Numbers*. We also have not used the data in *Index Numbers* because, although the Indian government publication appears to provide POR values for dolomite, there is no explanation how the product-specific indices were determined or why 1994 prices were selected for

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indexation. We have not removed an amount for excise or sales taxes from the domestic dolomite value listed in Indian Ferroalloy's financial report because the financial report does not indicate that the price is inclusive of these taxes.

Comment 8: Surrogate Value for Calcinated Dolomite (i.e., Calcinate). Taiyuan argues that it is the Department's policy to use, to the extent possible, statistics from a single country when developing the values for the factors of production. According to respondent, the Department used import statistics from Indonesia to value calcinated dolomite in the preliminary results. Taiyuan claims that because India is the primary surrogate country in this case, the Department should use the April–July 1996 Indian import value for calcinated dolomite from *Monthly Statistics* which Taiyuan furnished in its November 13, 1997, submission.

DOC Position: We agree with Taiyuan. We have used the April–July 1996 import value from *Monthly Statistics* to value calcinated dolomite.

Comment 9: Surrogate Value for Fluorite Powder. Taiyuan argues that the April 1995–March 1996 value from *Monthly Statistics* the Department used in the preliminary results to value fluorite powder provides unreliable information during the POR. Taiyuan claims that the Department should use the April–July 1996 fluorite value import value from *Monthly Statistics* contained in its November 13, 1997, submission. The respondent argues that the data from this publication are more contemporaneous to the POR than the data used in the preliminary results.

DOC Position: We agree with Taiyuan. We have used the April-July 1996 import value from *Monthly Statistics* to value fluorite powder because it is more contemporaneous to the POI than is the April 1995-March 1996 import value.

Comment 10: Surrogate Value for Barium Chloride. The petitioner contends that the Department should use the January-December 1996 Indian import value from *United Nations Import Statistics* instead of the Indonesian import value used in the preliminary results. The petitioner maintains that even though the Indian import value includes imports from the United States while the U.S. export data does not show exports of barium chloride to India, the export data of one country may not correspond to the import data of another for any number of reasons, including shipment of goods through intermediate countries. The petitioner also argues that if the Department continues to use the Indonesian import data to value barium chloride, the Department should not derive a hypothetical volume and value of U.S. imports into Indonesia and remove those amounts from the Indonesian import data since the Indonesian import data is not separately broken out by country of origin and because there is no necessary correlation between two different countries' import and export data.

Taiyuan argues that the Department should use the Indonesian import data rather than the Indian import data to value barium chloride because the Indian import data contains imports from the United States while U.S. export data does not show exports of barium chloride to India. Taiyuan also maintains that the U.S. quantity and value data contained in the Indonesian import data is aberrational and that the Department should therefore remove the U.S. data from Indonesian import data by taking the volume and value of imports of barium chloride from all countries reported in the Indonesian import data and subtracting the volume and value of exports of barium chloride to Indonesia reflected in U.S. export data.

DOC Position: We agree with the petitioner. Since India is the primary surrogate country in this case, we have used the Indian import prices to value barium chloride. We have used the January-December 1996 Indian import price from *United Nations Import Statistics* to value barium chloride because the data in *United Nations Import Statistics* for this material is more contemporaneous to the POR than the Indian import prices contained in *Monthly Statistics*. We do not agree that the Indian import data are necessarily in error because they do not correlate with U.S. export data. The lack of correlation between two different countries' import and export data could result from various factors such as the reporting of intermediate destinations on export declarations. Therefore, we have no basis to conclude that the Indian data are erroneous.

Comment 11: Surrogate Value for Coal. Taiyuan argues that the April 1995-March 1996 import value from *Monthly Statistics* the Department used in the preliminary results is unreliable. Instead, Taiyuan claims that the Department should use an indexed and averaged import value for coal from the *Index Numbers*. As asserted by the respondent, the data are current to the POR and thus need no index calculation.

The petitioner maintains that the Department should not use the prices from *Index Numbers* because those prices are domestic prices for coal produced in India, which are subject to government control. In addition, the petitioner asserts that the prices from this publication predate the POR by more than two years and are for a range of coal grades, none of which are used by Taiyuan. If the Department decides to use a domestic Indian coal price, then the petitioner contends that the Department should calculate an average price from *Index Numbers* using only the "heat-intensive" grades of coal listed in the publication.

DOC Position: We disagree with Taiyuan. Taiyuan has offered no reason for finding that the April 1995-March 1996 coal import price from *Monthly Statistics* is unreliable. We have not used the coal prices from *Index Numbers* because, although that Indian government publication appears to provide POR values for coal, there is no explanation for how the product-specific indices were determined or why 1994 prices were selected for indexation.

Comment 12: Surrogate Value for Electricity. Taiyuan argues that the Department should not use the August 1996 price in *Business World* to value electricity because this publication is not one normally considered by the Department in previous NME cases. Taiyuan maintains that the Department should use instead a 1995 value from the publication *Confederation of India Industrial Handbook* ("*Industrial Handbook*"), which has been used in previous NME cases, because the publication provides electricity rates applicable for rural areas in India. Taiyuan argues that since its producer is located in a rural area in the PRC, the rural electricity rates contained in *Industrial Handbook* would more accurately reflect the electricity costs incurred by the PRC producer.

The petitioner contends that the Department should not use the rates in *Industrial Handbook* to value electricity because the rates it contains are not contemporaneous with the POR. In addition, the petitioner argues that in previous NME cases the Department has not adjusted a surrogate value to account for the fact that a production facility is located in a particular type of region within a country and should not do so in this case. Moreover, the petitioner contends that the data in *Industrial Handbook* identify different rates for rural and urban customers for only two Indian states, and that for the other states, the publication only provides one set of rates without making any distinction between urban and rural areas.

DOC Position: We agree with the petitioner. We have used the August 1996 industrial electricity rate contained in *Business World* because it is more contemporaneous to the POR than the 1995 industrial electricity rate contained in *Industrial Handbook*. We do not agree with Taiyuan that we should use the rural electricity rate in *Industrial Handbook* because Taiyuan's supplier is located in a rural area in the PRC. The *1995 Industrial Handbook* lists differentiated rural industrial rates for only one Indian state. This indicates that in general rural electricity rates are not different than urban electricity rates in India. Therefore, we find that the cited rural rates from *Industrial Handbook* would not be representative of rural rates for India as a whole.

Comment 13: Inclusion/Exclusion of Provident Fund and Employees' Welfare Expenses in COM. Taiyuan contends that the labor portion of the NV calculation already includes provident fund and employees' welfare expense contributions. Therefore, when calculating COM, Taiyuan maintains that including these expenses in the overhead would result in double-counting.

The petitioner maintains that the Department's new regression-based wage rate methodology uses wage rates from the *Yearbook of Labor Statistics* (*Labor Statistics*) published by the International Labor Office (ILO) and that these rates are based on cash payments received by employees. The petitioner contends that since provident fund payments and employee welfare expenses are not cash payments to employees, Taiyuan is incorrect that these costs are included in the surrogate value for labor. Therefore, the petitioner maintains that the Department should include these expenses in the factory overhead rate calculation.

DOC Position: We agree with Taiyuan. The regression-based wage rate we have used to value labor in this case is based on wage rates contained in *Labor Statistics*. Information contained in Labor Statistics states that the Indian wage rate is a comprehensive wage rate which also includes employers' social security expenditures and welfare services. Therefore, consistent with Department practice, we have not included provident fund payments and employee welfare expenses in the numerator of the factory overhead rate calculation. *See Final Determination for Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China* 61 FR 14057, 14061 (March 29, 1996) (Comment 5).

Comment 14: Adjustment of the Surrogate Value for No. 2 Flux. Taiyuan states that the Department made a clerical error in its preliminary results when it did not multiply the flux no. 2 surrogate value by the percentage purity of the input used by Taiyuan's suppliers as specified in the preliminary results calculation memorandum, in effect assuming the value to be for 100 percent pure flux.

The petitioner maintains that the value the Department calculated for no. 2 flux incorporates the percentage factor.

DOC Position: We agree with the petitioner. We have rechecked our calculation and find that our calculation is not in error.

Comment 15: Inclusion of Transportation Fee in Electricity Rate. Taiyuan claims that in the preliminary results the Department incorrectly included a transportation fee in its surrogate value calculation for electricity. Therefore, Taiyuan maintains that the Department should exclude the transportation fee from its electricity value calculation.

DOC Position: We agree with Taiyuan and have removed the transportation fee from the electrical surrogate value calculation.

Comment 16: Packing Cost Calculation. Taiyuan claims that in the preliminary results the Department incorrectly determined the packing labor cost by calculating a cost based on labor hours rather than on labor minutes as reported in the response. Therefore, Taiyuan maintains that the Department should recalculate the packing labor cost using the reported labor minute factor.

DOC Position: We agree with Taiyuan and have calculated a labor cost based on the labor minutes reported in Taiyuan's response.

Comment 17: Deduction of Taxes from Surrogate Values Assigned to Raw Materials. Taiyuan contends that in any case where the Department uses financial statements of Indian producers to establish surrogate values for raw material inputs, the Department should follow the normal practice used in *Brake Rotors* to calculate a tax-exclusive value (*see Brake Rotors* at 9163). To ensure that surrogate values are exclusive of all taxes, Taiyuan states that the excise duty amount between 15 and 20 percent plus a minimum of 4 percent for sales taxes should be deducted from any domestic purchase prices.

Petitioner contends that although in prior NME cases the Department has adjusted for taxes only where the quoted price was specifically identified as being inclusive of excise and/or sales taxes, in this review, Taiyuan has not identified a single surrogate value that is specifically identified as being inclusive of taxes.

DOC Position: We agree in part with Taiyuan. Consistent with Department practice, we have removed, where applicable, an amount for excise taxes (*i.e.*, 15 percent since 1995 based on information contained in the record) and an amount for sales taxes (*i.e.*, 4 percent) from the domestic Indian values we are using in our calculations. Only one of the Indian publications we used for domestic values (*i.e.*, sulfuric acid from *Chemical Weekly*) noted that the price was inclusive of excise and sales taxes. Therefore, we only removed tax amounts from prices we obtained from *Chemical Weekly*. Our decision in this case is consistent with the Department's decision in *Brake Rotors* where we removed taxes from prices for certain steel products obtained from an Indian government steel publication (*i.e., Statistics for Iron and Steel*) because data in the publication indicated that taxes were included in the prices.

Comment 18: Use of Import Surrogate Values Net of Any Additional Amount for Domestic Inland Freight. Taiyuan argues that if the Department uses Indian import statistics for surrogate values of raw material inputs, it cannot add a constructed freight charge. Taiyuan cites *Sigma Corp.* v. *United States* (*Sigma*), 117 F.3d 1401 (CAFC July 7, 1997) in which Taiyuan claims the Court held that using such a methodology was beyond the limits of permissible approximation. *Sigma* at 15.

Petitioner argues that the Department properly calculated inland freight for raw materials in the preliminary results. Petitioner contends that Taiyuan misread the *Sigma* ruling. Petitioner states that, in *Sigma*, the Court did not determine that no additional amount for inland freight could be included in CV. According to petitioner, *Sigma*'s ruling requires only that, when the surrogate value for an input is based on a CIF import value, any additional amount for freight for that input may not exceed the calculated freight costs of shipping the material from respondents' seaports in the PRC to their factories.

DOC Position: We agree in part with the petitioner. Although the holding in *Sigma* permits, rather than dictates, the methodology referenced by the petitioner, it also does not dictate the outcome urged by Taiyuan. Instead, it leaves to the discretion of the Department the determination of a freight component which is not excessive. We do not find that the import values contained in Indian publications include all of the freight cost associated with transporting the imported input to the factory. Therefore, in accordance with *Sigma* decision, we

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have included a freight amount equal to the lesser of: (1) The calculated freight cost of shipping material from the PRC port Taiyuan uses to export finished goods to its PRC factory or (2) the cost of shipping material from the domestic supplier to the factory. *See Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China*, 62 FR 51410,51413 (October 1, 1997).

Currency Conversion

We made currency conversions pursuant to section 773A(a) of the Act and 19 CFR 353.60 based on the rates certified by the Federal Reserve Bank.

Final Results of the Review

As a result of our comparison of EP and NV, we determine that the following weighted-average margin exists for the period May 1, 1996, through October 31, 1996:

Manufacturer/producer/exporter	Percent margin
Taiyuan Heavy Machinery Import and Export Corporation	69.53

The Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between export price and normal value may vary from the percentage stated above. We have calculated an importer-specific duty assessment rate based on the ratio of the total amount of AD duties calculated for the examined sales made during the POR to the total value of subject merchandise entered during the POR. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisement instructions concerning the respondent directly to the U.S. Customs Service.

Furthermore, the following deposit rates shall be required for merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for Taiyuan will be the rate indicated above; (2) for previously reviewed or investigated companies not listed above that have a separate rate, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) for all remaining PRC exporters, the cash deposit rate will be 108.26 percent, the PRC-wide rate established in the LTFV investigation; and (4) for non-PRC exporters, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as the final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to compiy with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of the APO is a sanctionable violation.

This new shipper administrative review and notice are in accordance with section 751(a)(2)(B) of the Act (19 U.S.C. 1675(a)(2)(B)) and 19 CFR 353.28(c).

Dated: January 14, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–1400 Filed 1–20–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011396C]

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings in Anchorage, AK.

DATES: The meetings will be held the week of February 2, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the meetings.

ADDRESSES: All meetings will be held at the Anchorage Hilton Hotel, 500 W. 3rd Avenue, Anchorage, AK. All meetings are open to the public with the exception of a Council executive session tentatively scheduled for noon on Thursday, February 5, to discuss personnel, international issues, or litigation, as necessary.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION:

1. The Scientific and Statistical Committee (SSC) will meet beginning at 8:00 a.m. on Monday, February 2, continuing through Wednesday, February 4.

2. The Advisory Panel (AP) will begin meeting at 8:00 a.m. on Monday, February 2, and continue through Thursday, February 5.

3. The Council will meet in joint session with the Alaska Board of Fisheries on Tuesday, February 3, 1998, beginning at 8:30 a.m.

4. NMFS will hold a workshop on preliminary essential fish habit reports to gather public comments on Thursday, February 5, at 7:00 p.m.

5. The Council's regular plenary session will begin at 8:00 a.m. on Wednesday, February 4, and continue through Sunday, February 8. If necessary to complete the agenda, the Council may continue meeting on Monday, February 9.

Other workgroup or committee meetings may be held during the week. Notices of these meetings will be posted at the hotel.

The agenda for the Council's joint meeting with the Alaska Board of Fisheries will include the following:

1. Under halibut management, the Council and Board will discuss the following subjects:

a. Status report on Alaska Department of Fish and Game charterboat logbook;

b. Status report on Council's halibut charterboat guideline harvest level and management measures used off Oregon and Washington for recreations fisheries; and

c. Review and approve draft protocol on development of local area fishery management plans;

2. Groundfish issues for discussion are:

a. State waters Pacific cod fisheries;

b. Approval of letter to industry encouraging resolution of gear conflicts within industry; and

c. Ways to improve exchange of proposals.

3. Crab issues to be discussed are:

a. Status report on development of crab stock assessment document and overfishing definitions; and

b. Extension of overfishing and rebuilding considerations to species outside fishery management plans.

4. Deferral of scallop management to State of Alaska and discussion of limited entry considerations for the scallop fishery.

5. Report on Steller sea lion research.

6. Reports on bycatch estimation.

7. Discuss need to continue requirement for salmon bycatch retention until counted by an observer.

The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. A report from NMFS on the current status of the fisheries off Alaska, and a report from the International Pacific Halibut Commission on 1998 halibut quotas.

2. Final action on a third-party arrangement (joint project agreement) for observer procurement services.

3. Preliminary review of analysis for the allocation of pollock between inshore and offshore fisheries; direct staff on further development of alternatives.

4. Preliminary review of an amendment to the fishery management plans to incorporate essential fish habitat information as required by the Magnuson Act; direction to staff.

5. Final action on research priorities.

6. Review the local area management plan for Sitka Sound halibut, and discuss area management plans in general; determine how to proceed; direction to staff.

7. Under the Council's license limitation program for groundfish and crab, the following items will be discussed:

a. Crab buyback program: status report and discussion;

b. Discussion and direction to staff on potential amendments to the program;

c. Discussion of multi-species community development quota regulations with regard to vessel exemptions; direction to staff; and

d. Discussion and direction to staff on extension of the current moratorium on entry to the groundfish and crab fisheries off Alaska.

8. Status report on Amendment 3 to the Scallop Fishery Management Plan, and discussion of future limited entry program; direction to staff.

9. Groundfish amendments scheduled for action are as follows:

a. Final action on a regulatory amendment to revise Gulf of Alaska (GOA) trimester pollock allocations;

b. Final action on an amendment for stand-down and/or preregistration requirements in the Western and Central GOA;

c. Initial review of options to streamline the setting of total allowable catches; directions to staff to release for public review and/or revise;

d. Final action on an amendment to allocate shortraker/rougheye quota to fixed gear in the Bering Sea/Aleutian Islands;

e. Initial review of an amendment to revise boundaries for Eastern GOA regulatory area; and

f. Discussion and direction to staff on possible bycatch amendments.

9. Other groundfish issues scheduled for discussion are: a. Trip limits in the Western and Central GOA; direction to staff;

b. Salmon bycatch retention issues; direction to staff;

c. Catch and bycatch measurement; direction to staff; and

d. Vessel bycatch accounts; direction to staff.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during the meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: January 14, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–1342 Filed 1-15-98; 1:31 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011398B]

Marine Mammals; Scientific Research Permit (PHF# 369–1440)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Bruce Mate, Hatfield Marine Science Center, Oregon State University, 2030 South Marine Science Drive, Newport, OR 97365–5296, has applied in due form for a permit to take humpback (Megaptera novaeangliae), blue, (Balaenoptera musculus), gray (Escrichtius robustus), northern right (Eubalaena glacialis), bowhead (Balaena mysticetus), fin (Balaenoptera physalus), and sperm whales (Physeter macrocephalus) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before February 20, 1998.

ADDRESSES: The application and related documents are available for review upon written request or by appointment.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13822, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by email or other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 et seq.), the regulations governing the taking and importing of marine mammals (50 CFR part 216) and the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 et seq.), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

The applicant seeks authorization to tag and collect a skin sample from 100 each of various large whale species in the North Pacific, North Atlantic, and Gulf of Mexico over a five-year period. Approximately 1,000 additional whales of each species may be harassed during these activities. In addition, the applicant wishes to conduct non-invasive, opportunistic research on various pinniped and cetacean species.

The application and related documents are available for review

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upon written request or by appointment in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700;

Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213;

Regional Administrator, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802–1668;

Regional Administrator, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930–2298; and

Regional Administrator, Southeast Region, National Marine Fisheries Service, NOAA, 9721 Executive Center Drive, North, St. Petersburg, FL 33702–2432.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: January 14, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–1343 Filed 1–20–98; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Quota and Visa Requirements for Discharge Printed Fabric Produced or Manufactured in Egypt

January 14, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending quota and visa requirements.

EFFECTIVE DATE: January 22, 1998.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1862, as amended.

In exchange of notes dated December 3, 1997 and December 29, 1997, the Governments of the United States and Egypt agreed that discharge printed fabric classified in Harmonized Tariff Schedule (HTS) numbers 5208.52.3035, 5208.52.4035, 5209.51.6032 (Category 313), 5209.51.6015 (Category 314), 5208.52.4055 (Category 315), 5208.59.2085 (Category 317), 5208.59.2015, 5209.59.0015 and 5211.59.0015 (Category 326) which is produced or manufactured in Egypt and imported on or after January 1, 1998 will no longer be subject to visa requirements and will not be subject to 1998 limits. The new designation for Categories 313, 314, 315, 317, 317 and 326 will be part-category 313–O, 314–O, 315–O, 317–O, and 326–O, respectively. The 1998 quota levels established for Categories 313, 314, 315, 317 and 326 remain the same for the newly established part-categories.

Also effective on January 22, 1998, products in Categories 313, 314, 315, 317 and 326, produced or manufactured in Egypt and exported from Egypt on or after January 1, 1998 must be accompanied by a 313–O, 314–O, 315–O, 317–O and 326–O part-category visa. There will be a grace period from January 1, 1998 through January 31, 1998 during which products exported from Egypt in Categories 313, 314, 315, 317 and 326 may be accompanied by the whole or new part-category visa. A visa will not be required for discharge printed fabric in Categories 313, 314, 315, 317 and 326 beginning on January 1, 1998, regardless of the date of export.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the export quota and visa requirements.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 52 FR 48857 published on December 28, 1987; 55 FR 49936, published on December 3, 1990; and 62 FR 67829, published on December 30, 1997.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 14, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 22, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Egypt and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on January 22, 1998, discharge printed fabric classified in Harmonized Tariff Schedule (HTS) numbers 5208.52.3035, 5208.52.4035, 5209.51.6032 (Category 313), 5209.51.6015 (Category 314), 5208.52.4055 (Category 315), 5208.59.2085 (Category 317), 5208.59.2015, 5209.59.0015 and 5211.59.0015 (Category 326) which is produced or manufactured in Egypt and imported on or after January 1, 1998 will no longer be subject to visa requirements and will not be subject to 1998 limits, pursuant to exchange of notes dated December 3, 1997 and December 29, 1997 between the governments of the United States and Egypt. The new designation for Categories 313, 314, 315, 317 and 326 will be Categories 313–O[1], 314–O[2], 315–O[3], 317–O[4] and 326–O[5], respectively.

The 1998 quota levels established for Categories 313, 314, 315, 317 and 326 remain the same for the newly established part-Categories 313–O, 314–O, 315–O, 317–O and 326–O.

Also effective on January 22, 1998, you are directed to amend further the directive dated December 21, 1987 to require a part-category visa for Categories 313–O, 314–O, 315–O, 317–O and 326–O, produced or manufactured in Egypt and exported on or after January 1, 1998. There will be a grace period from January 1, 1998 through January 31, 1998 during which products exported from Egypt in Categories 313, 314, 315, 317 and 326 may be accompanied by the whole or new part-category visa. A visa will not be required for discharge printed fabric in Categories 313, 314, 315, 317 and 326 beginning January 1, 1998, regardless of the date of export.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–1359 Filed 1–20–98; 8:45 am]

BILLING CODE 3510–DR–F

[1] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[2] Category 314–O: all HTS numbers except 5209.51.6015.

[3] Category 315–O: all HTS numbers except 5208.52.4055.

[4] Category 317–O: all HTS numbers except 5208.59.2085.

[5] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey; Correction

January 14, 1998.

On page 67840 of the document published in the **Federal Register** on December 30, 1997 (62 FR 67839), second column, correct the 1998 sublimit for Category 313 in the Fabric Group from 48,114,466 square meters to 49,114,466 square meters.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–1358 Filed 1–20–98; 8:45 am]

BILLING CODE 3510–DR–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Collection: Comment Request

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) , as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3508(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. Currently, the Corporation for National and Community Service is soliciting comments concerning its proposed revision of the National Service Senior Corps (NSSC) Project Progress Report (PPR).

Copies of the information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section on or before March 15, 1998.

The Corporation for National and Community Service is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Pat Kim, National Service Senior Corps, Program Officer, Corporation for National and Community Service, 1201 New York Ave., N.W., Washington, D.C., 20525.

FOR FURTHER INFORMATION CONTACT: Pat Kim, (202) 606–5000, ext. 245.

SUPPLEMENTARY INFORMATION:

I. Background

The Project Progress Report (PPR) was designed to assure that National Service Senior Corps (NSSC) grantees address and fulfill legislated program purposes, meet agency program management and grant requirements, and assess progress toward work plan objectives agreed-upon in the granting of the award. Information is used by agency project managers to determine that projects are achieving goals and objectives, identify technical assistance needed to correct deficiencies, manage budget variances and resource issues arising in grants, track trends requiring changes in program policies and procedures, and establish priorities for project monitoring activities. Established NSSC grantees submit PPRs twice annually to their agency project manager. First-year projects, new components, demonstrations, and projects experiencing problems or with substantial project revisions report quarterly, as identified in the Notice of Grant Award agreed to and signed by the sponsor/grantee.

II. Current Action

The Corporation for National and Community Service seeks to revise the current PPR in order to reflect or mirror changes made in the revised National Senior Service Corps Grant Application which received OMB approval in mid-December 1997. All NSSC grantees with a start date of July 1, 1998 will be required to use the new Grant Application. We anticipate making available to all NSSC grantees, an OMB approved revised PPR by July of 1998.

The revised PPR will be used by NSSC grantees to report progress toward accomplishing work plan goals and objectives, achieving Government Performance and Results Act (GPRA) goals, meeting challenges encountered, describing significant activities, and requesting technical assistance.

Information gathered from PPRs will allow agency project managers to determine that projects are achieving goals and objectives outlined in the Grant Application, compile GPRA data, assess and monitor programmatic challenges and significant activities, identify technical assistance needs, and assure compliance with legislative requirements, policies, procedures, and grant conditions.

Type of Review: 60-Days Review and Comment.

Agency: Corporation for National and Community Service.

Title: Project Progress Report.

OMB Number: 3045–0033.

Agency Number: CNCS Form 1020 (9/96).

Affected Public: Sponsors of National Senior Service Corps Grants.

Total Respondents: 1245.

Frequency: Semi-annual.

Average Time Per Response: 15.9 hours.

Estimated Total Burden Hours: 19,795 hours.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): 0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

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Dated: January 15, 1998.

Tom Endres,

Director, National Senior Service Corps.

[FR Doc. 98–1382 Filed 1–20–98; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated form, and OMB number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 230, Cost Accounting Standards, and DD Form 1861, Contract Facilities Capital Cost of Money; DD Form 1861; OMB Number 0704–0267.

Type of Request: Revision.

Number of Respondents: 25,609.

Responses Per Respondent: 1.6 (approximately).

Annual Responses: 42,058.

Average Burden Per Response: 10 hours.

Annual Burden Hours: 420,580.

Needs and Uses: It is Department of Defense policy to encourage contractor investment in facilities, which may lead, under DoD contracts, to increased productivity and reduced costs through the use of modern manufacturing technology. To motivate aggressive capital investment, DoD rewards contractors by recognizing contract facilities capital cost of money (CFCCM) and facilities capital employed in establishing the price of certain negotiated defense contracts, when such contracts are priced on the basis of cost analysis. DD Form 1861, Contract Facilities Capital Cost of Money, is used to compute these two elements of price. The contracting officer may require information from the contractor to complete this form. The CFCCM amount is used to help establish a price objective in negotiated contracts. The facilities capital employed amount is carried forward to DD Form 1547, Record of Weighted Guidelines Method Application, for the purpose of developing profit objectives on defense contracts when the Weighted Guidelines method is used. DFARS 230.7004–2, DD Form 1861, indicates that: (1) Completion of the DD Form 1861 requires information not included on the Form CASB–CMF; and (2) the contracting officer could request information through a solicitation provision.

Affected Public: Business or Other For-Profit; Not-For-Profit Institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: January 15, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–1407 Filed 1–20–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Historical Records Declassification Advisory Panel

AGENCY: Department of Defense, Historical Advisory Committee.

ACTION: Notice.

SUMMARY: Notice is hereby given of the upcoming meeting of the Historical Records Declassification Advisory Panel. The purpose of this meeting is to discuss recommendations to the Department of Defense on topical areas of interest that, from a historical perspective, would be of the greatest benefit if declassified. The OSD Historian will chair this meeting.

DATE: Friday, February 6, 1998.

TIME: The HRDAP morning session will be closed to the public from 9:00 a.m. until 12:00 p.m. due to the necessity to hear classified and sensitive reports in accordance with 5 U.S.C., Sec 552©(1) (1982). The afternoon session will be open to the public from 1:00 p.m. to 3:30 p.m.

ADDRESS: The National Archives Building, Room 105, 7th and Pennsylvania Avenue, NW., Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Cynthia Kloss, Room 3C281, Office of the Deputy Assistant Secretary of Defense (Intelligence and Security), Office of the Assistant Secretary of Defense (Command, Control, Communications and Intelligence), 6000 Defense Pentagon, Washington, DC 20301–6000, telephone (703) 695–2289/2686.

Dated: January 15, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–1408 Filed 1–20–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 20, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: January 15, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Fiscal Operations Report and Application to Participate in Federal Perkins Loan, Federal Supplemental Educational Opportunity Grant, and Federal Work-Study Program.

Frequency: Annually.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't; SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 4,800.

Burden Hours: 80,586.

Abstract: This application data will be used to compute the amount of funds needed by each institution during the 1999–2000 Award Year. The Fiscal Operations Report data will be used to assess program effectiveness, account for funds expended during the 1997–98 Award Year, and as part of the institutional funding process.

Office of Educational Research and Improvement

Type of Review: New.

Title: 1998 National Assessment of Educational Progress(NAEP), Writing Special Study.

Frequency: One Time.

Affected Public: Individuals or households.

Reporting Burden and Recordkeeping:

Responses: 6,200.

Burden Hours: 2,200.

Abstract: The 1998 NAEP writing special study is designed to bolster the understanding of study NAEP writing achievement with information on student's best writing assignments, and the writing process. In addition, the study will collect information about teachers' emphasis on writing curriculum and instructional approaches. The study will be conducted with a sample of 6000 (4th and 8th grade) students and 200 teachers. The study will use a structured protocol to obtain more detailed and valid information about classroom instructional practices than a standard background questionnaire. Students will be asked to select three examples of their best writing and to fill out a brief questionnaire describing the samples of writing that they submit.

[FR Doc. 98–1391 Filed 1–20–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement for the Production of Tritium in a Commercial Light Water Reactor

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The Department of Energy (DOE) announces its intent to prepare an Environmental Impact Statement (EIS) for the production of tritium using one or more commercial light water reactors (CLWR), pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 USC 4321 *et seq.*) and the DOE Regulations Implementing NEPA (10 CFR Part 1021). Under the CLWR Program, tritium production could occur in one of two manners: (1) purchase of CLWR irradiation services; or (2) purchase of a CLWR. Prior to preparation of the CLWR EIS, DOE initiated a procurement process to evaluate the feasibility of various CLWR alternatives, and the alternatives described in this notice have been derived from that procurement process. The CLWR EIS will evaluate the environmental impacts associated with tritium production for all reasonable alternatives identified through the procurement process.

DATES: Comments on the proposed scope of the CLWR EIS are invited from the public. To ensure consideration in the preparation of the EIS, comments must be postmarked by March 20, 1998. Late comments will be considered to the extent practicable. Public scoping meetings to discuss issues and receive oral comments on the scope of the EIS will be held in the vicinity of sites that may be affected by the proposed action. The public scoping meetings will provide the public with an opportunity to present comments, ask questions, and discuss concerns with DOE officials regarding CLWR activities. An interactive format will be used. The location, date, and time for these public scoping meetings is as follows:

Northeast Alabama Community College, 135 Alabama Highway 35 West, February 24, 1998, 7:00 p.m.-10:00 p.m., Rainsville, AL

Rhea County High School, February 26, 1998, 7:00 p.m.-10:00 p.m., Evensville, TN.

The Tennessee Valley Authority has been designated as a cooperating agency for this EIS. Any other agency that desires to be designated as a cooperating agency should contact the CLWR Program Office at the address listed below by March 20, 1998.

ADDRESSES: General questions concerning the CLWR Project can be asked by calling the toll-free telephone number at 1–800–332–0801, or by writing to: Stephen M. Sohinki, Director, CLWR Project Office, U.S. Department of Energy, P.O. Box 44539, Washington, DC 20026–4539.

As an alternative, comments can also be submitted by fax to: 1–800–631–0612; or electronically to the CLWR Web Site: http://www.dp.doe.gov/dp-62. Please mark envelopes, faxes, and E-mail: "CLWR EIS Comments."

FOR FURTHER INFORMATION CONTACT: For general information on the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, 202–586–4600; or telephone 800–472–2756 to leave a message.

SUPPLEMENTARY INFORMATION: All of the nuclear weapons currently in the United States' stockpile must contain tritium, a radioactive isotope of hydrogen, to function as designed. Tritium decays at a rate of 5.5 percent per year, giving it a half-life of 12.3 years. Because of this decay, the tritium contained in the nuclear weapons must be periodically replenished. Tritium is not a fissile material and cannot be used alone to construct a nuclear weapon. Tritium also has commercial uses such as watch dials, exit signs, and medical research.

Tritium is so rare in nature that useful quantities must be man-made. The United States stopped producing new tritium in 1988 when the last government-owned nuclear materials production reactor at the Savannah River Site (SRS) was shut down. Currently, there is no capability to

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produce the required amounts of tritium within the Nuclear Weapons Complex.

Previously, the Department evaluated the programmatic need for a new tritium source in a Programmatic Environmental Impact Statement (PEIS) for Tritium Supply and Recycling (DOE/EIS–0161, October 1995). Based on the findings in that PEIS and other technical, cost, and schedule evaluations, the Department issued a Record of Decision (ROD) on December 5, 1995 (60 FR 63877). In the ROD, the Department announced a decision to pursue a dual-track approach on the two most promising tritium supply alternatives: (1) To initiate purchase of an existing commercial reactor (operating or partially complete) or irradiation services with an option to purchase the reactor for conversion to a defense facility; and (2) to design, build, and test critical components of an accelerator system for tritium production (SRS was selected as the location for an accelerator, should one be built). The Department will select one of these approaches by the end of 1998 to serve as the primary source of tritium. The other alternative, if feasible, would continue to be developed as a backup tritium source.

In recent years, international arms control agreements have caused the nuclear weapons stockpile to be reduced in size. This, in turn, has allowed DOE to recycle the tritium removed from dismantled weapons for use in supporting the remaining stockpile. However, due to the decay of tritium, the current inventory of tritium will not meet the national security needs that are projected for the future. The most recent Presidential direction, which is contained in the 1996 Nuclear Weapons Stockpile Plan and an accompanying Presidential Decision Directive, mandates that new tritium be available by 2005 if a CLWR is the selected option for tritium production. If the accelerator is the selected option for tritium production, the Presidential direction mandates that new tritium be available by 2007.

The Department's strategy for compliance with NEPA has been to make decisions on programmatic alternatives in the ROD for the Tritium Supply and Recycling PEIS (now completed), followed by site-specific analyses to implement the programmatic decisions. The decisions made in the December 5, 1995, Tritium Supply and Recycling ROD have resulted in the Department's preparation of the following NEPA documents:

1. An EIS for the Selection of One or More Commercial Light Water Reactors for Tritium Production (the subject of this Notice of Intent);

2. An EIS for the Construction and Operation of an Accelerator for the Production of Tritium at the Savannah River Site (Draft EIS issued in December 1997);

3. An Environmental Assessment for the Consolidation of Tritium Recycling Facilities at the Savannah River Site (currently under preparation);

4. An EIS for the Construction and Operation of a Tritium Extraction Facility at the Savannah River Site (Notice of Intent issued September 5, 1996 (61 FR 46790);

5. An Environmental Assessment for the Lead Test Assembly Irradiation and Analysis (completed in July 1997).

CLWR Production of Tritium

The production of tritium in a CLWR is technically straightforward. As discussed in the Tritium Supply and Recycling PEIS, most existing pressurized water reactors utilize twelve-foot long rods containing an isotope of boron in ceramic form that is inserted in their fuel elements to absorb excess neutrons produced by the uranium fuel in the fission process. These rods are sometimes called burnable absorber rods. DOE's tritium program has developed another type of burnable absorber rod in which neutrons are absorbed by a lithium aluminate ceramic rather than the boron ceramic. These rods would be placed in the same locations in the reactor core as the standard burnable absorber rods. There is no fissile material (uranium or plutonium) in the DOE burnable absorber rods.

While the two types of rods function in a very similar manner to absorb excess neutrons in the reactor core, there is one notable difference: when neutrons strike the lithium aluminate ceramic material in the DOE burnable absorber rod, tritium is produced. This tritium is then captured almost instantaneously in a solid zirconium material in the rod, called a "getter." Thus, there is virtually no free tritium in the rod. In fact, the solid material that captures the tritium as it is produced in the rod is so effective that the rod will have to be heated to temperatures in excess of 1800 degrees Fahrenheit in the extraction process to recover the tritium for eventual use in the nuclear weapons stockpile. Depending upon tritium needs, as many as 1000–3000 tritium-producing burnable absorber rods could be placed in each of one or more CLWRs for irradiation.

Relationship of the CLWR EIS and the CLWR Procurement Process

Prior to preparation of the CLWR EIS, DOE initiated a procurement process to evaluate the feasibility of various CLWR alternatives. DOE anticipated that it would enter into a contract/agreement with the owner/operator of one or more commercial reactors for the purpose of producing tritium. Such a contract/agreement could result in DOE purchasing CLWR irradiation services and/or purchasing a CLWR. A partially completed reactor could be utilized for tritium production if the owner/operator were to first complete construction of the reactor.

In June 1997, DOE requested proposals for producing tritium using existing and partially completed reactors. The proposals received from the Tennessee Valley Authority (TVA) in September were the only proposals that were determined to be responsive to the requirements in the procurement request. Consequently, the TVA proposals were the only proposals that were determined to be in the competitive range. The alternatives listed below, which were identified through the procurement process, currently constitute the reasonable alternatives that will be evaluated in the CLWR EIS. Through the procurement process, DOE may enter into an agreement with the TVA, contingent upon completion of the NEPA process, for the production of tritium required to support the nuclear weapons stockpile. However, before completion of the EIS and its associated Record of Decision, the Department and TVA will take appropriate actions, e.g., studies and analyses, related to the potential submission of licensing documents to the Nuclear Regulatory Commission (NRC). Only those actions that are determined to be allowable interim actions would be permitted prior to the completion of the NEPA process. The NRC must issue regulatory approval for the use of tritium production rods in its licensed reactors.

Proposed Action and Alternatives

The CLWR EIS will evaluate the environmental impacts associated with producing tritium at one or more of the following reactor plants:

Bellefonte Nuclear Plant Units #1 and/or #2 (Hollywood, Alabama)
Watts Bar Nuclear Plant Unit #1 (Spring City, Tennessee)
Sequoyah Nuclear Plant Units #1 and/or #2 (Soddy-Daisy, Tennessee)

All of these plants are owned and operated by the Tennessee Valley Authority.

As required by the Council on Environmental Quality regulations, the CLWR EIS will also evaluate the No Action alternative. Under this alternative, the stockpile demand for tritium would have to be met by other means, such as constructing and operating an accelerator at the Savannah River Site.

Identification of Environmental and Other Issues

The Department has identified the following issues for analysis in the EIS. Additional issues may be identified as a result of the scoping process.

1. Public and Worker Safety, Health Risk Assessment: Radiological and nonradiological impacts, including projected effects on workers and the public from construction, operation and accident conditions associated with tritium production.

2. Impacts from releases to air, water, and soil associated with tritium production.

3. Impacts to plants, animals, and habitats, including threatened or endangered species and their habitats associated with tritium production.

4. The consumption of natural resources and energy associated with tritium production.

5. Socioeconomic impacts to affected communities from construction and operation associated with tritium production.

6. Environmental justice: Disproportionately high and adverse human health or environmental effects on minority and low-income populations associated with tritium production.

7. Impacts to cultural resources such as historic, archaeological, scientific, or culturally important sites associated with tritium production.

8. Impacts associated with transportation of nuclear materials.

9. Status of compliance with all applicable Federal, state, and local statutes and regulations; required Federal and state environmental consultations and notifications; and DOE Orders on waste management, waste minimization, and environmental protection.

10. Cumulative impacts from the proposed action and other past, present, and reasonably foreseeable actions at the alternative sites.

11. Potential irreversible and irretrievable commitments of resources associated with tritium production.

12. Pollution prevention and waste management practices, including characterization, storage, treatment and disposal of wastes associated with tritium production.

Public Scoping Process

To assist in defining the appropriate scope of the EIS and to identify significant environmental issues to be addressed, DOE will conduct public scoping meetings at the locations, dates, and times described above under DATES. DOE will begin each scoping meeting with an overview of the CLWR program. Following the initial presentation, DOE will answer questions and accept comments. Copies of handouts from the meetings will be available to those unable to attend, by contacting the DOE CLWR project described above under **ADDRESSES**.

Issued in Washington, D.C., this 15th day of January 1998.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 98–1398 Filed 1–20–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket Nos. 97–104–NG et al.]

TPC Corporation, et al.; Orders Granting and Transferring Blanket Authorizations To Import and/or Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued Orders granting and transferring various natural gas import and export authorizations. These Orders are summarized in the attached appendix.

These Orders are available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities, Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on January 14, 1998.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

APPENDIX—BLANKET IMPORT/EXPORT AUTHORIZATIONS GRANTED

[DOE/FE Authority]

Order No.	Date issued	Importer/Exporter FE Docket No.	Two-year maximum		Comments
			Import Volume Bcf	Export Volume Bcf	
1337	12/02/97	TPC Corporation, 97–104–NG	73		Import and export up to a combined total from and to Canada beginning January 1, 1998, through December 31, 1999.
1338	12/04/97	Phibro Inc., 97–106–NG	200	200	Import including LNG from Canada and, to export to Canada beginning on first delivery after December 31, 1997.
1339	12/04/97	Phibro Inc., 97–105–NG	200	200	Import including LNG from Canada and, to export to Canada beginning on first delivery after December 31, 1997.
1340	12/04/97	Puget Sound Energy, Inc., 97–103–NG	50		Import from Canada beginning on first delivery after December 5, 1997.
1341	12/12/97	Direct Energy Marketing Inc., 97–111–NG	200		Import from Canada beginning February 1, 1998, through January 31, 2000.
1342	12/12/97	UtiliCorp United Inc., 97–107–NG	400		Import and export up to a combined total from and to Canada beginning January 1, 1998, through December 31, 1999.

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APPENDIX—BLANKET IMPORT/EXPORT AUTHORIZATIONS GRANTED—Continued
[DOE/FE Authority]

Order No.	Date issued	Importer/Exporter FE Docket No.	Two-year maximum		Comments
			Import Volume Bcf	Export Volume Bcf	
1240–A	12/12/97	CXY Energy Marketing (U.S.A.) Inc. (Formerly CanadianOxy Marketing (U.S.A.) Inc.), 97–06–NG.	.....	.....	Name change.
1343	12/17/97	Bay State Gas Company, 97–112–NG	40	.....	Import from Canada beginning on January 6, 1998 through January 5, 2000.
1344	12/18/97	Tenaska Washington Partners, L.P., 97–102–NG.	400		Import and export up to a combined total from and to Canada and Mexico beginning December 31, 1997, through December 30, 1999.
1345	12/18/97	POCO Petroleum, Inc., 97–108–NG	250	.....	Import from Canada beginning January 21, 1998, through January 20, 2000.
1346	12/19/97	The Consumers' Gas Company Ltd., 97–110–NG.	.....	100	Export to Canada beginning January 1, 1998, through December 31, 1999.
1347	12/23/97	PanCanadian Petroleum Company, 97–114–NG.	250		Import and export up to a combined total from and to Canada beginning November 1, 1997, through October 31, 1999.

[FR Doc. 98–1369 Filed 1–20–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Information Collection Submitted for Review and Request for Comments (FERC–523)

January 14, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of September 15, 1997 (62 FR 48265) and made a notation in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received within 30 days of this notification.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 726 Jackson Place, NW., Washington, DC 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Division of Information to Federal Energy Regulatory Commission, Division of Information Services, Attention: Mr. Michael Miller, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at michael.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC–523 "Application for Authorization of the Issuance of Securities or the Assumption of Liabilities."

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* OMB No. 1902–0043. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. There is no change to the reporting burden. These are mandatory collection requirements.

4. *Necessity of Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the provisions of the Federal Power Act (FPA). The information reported under Commission identifier FERC–523 is filed in accordance with Sections 19, 20, and 204, (FPA). Under the FPA a public utility or licensee must obtain Commission authorization for the issuance of securities or the assumption of liabilities. The information is used by the Commission to make a determination as to whether to accept and/or reject for granting authorization to public utilities or licensees to issue securities or assume an obligation or liability.

5. *Respondent Description:* The respondent universe currently comprises on average, 60 applicants for an application for authorization of the issuance of securities or the assumption of liabilities.

6. *Estimated Burden:* 6,600 total burden hours, 60 respondents, 1 response annually, 110 hours per response (average).

7. *Estimated Cost Burden to Respondents:* 6,600 hours ÷ 2,088 hours per year × $110,000 per year = $378,928.

(Statutory Authority: Sections 19, 20, and 204 of the Federal Power Act (FPA), 16 U.S.C. Sections 812 *et seq.*)

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–1303 Filed 1–20–98; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–37–003]

Green Mountain Power Corporation; Notice of Filing

January 14, 1998.

Take notice that on September 2, 1997, Green Mountain Power Corporation tendered for filing its refund report in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 26, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–1307 Filed 1–20–98; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–12–000]

Millennium Power Partners, L.P.; Notice of Filing

January 14, 1998.

On January 8, 1998, Millennium Power Partners, L.P. (Millennium), a Delaware limited partnership with its principal place of business of 7500 Old Georgetown Road, Bethesda, Maryland 20814, filed with the Federal Energy Regulatory Commission an Amendment to the Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's regulations.

Millennium states that it will be engaged directly and exclusively in owning or operating, or both owning and operating a 360 MW natural gas-fired combined cycle power plant in the Town of Charlton, Massachusetts (the "Facility"), and sell electric energy exclusively at wholesale. All capacity and energy from the plant will be sold exclusively at wholesale.

Copies of the filing were served upon the Securities and Exchange Commission and the Massachusetts Department of Public Utilities.

Any person desiring to be heard concerning the Amendment to the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385,214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before January 23, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–1309 Filed 1–20–98; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–447–001]

Nevada Power Company; Notice of Filing

January 14, 1998.

Take notice that on December 29, 1997, Nevada Power Company (Nevada Power) tendered for filing, an amendment to its compliance filing in Docket No. ER96–447–001. Nevada Power inadvertently filed the incorrect rate schedule in that docket. The purpose of Nevada Power's compliance filing is to submit the correct rate schedule Nevada Power requests a waiver of the 60 day notice requirement and requests that the revised tariff sheets be effective as of the date of the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 27, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–1308 Filed 1–20–98; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3675–000]

Union Electric Company; Notice of Filing

January 14, 1998.

Take notice that on December 22, 1997, Union Electric Company (UE) submitted a request to withdraw the filing of the Sixth Amendment dated June 24, 1997 to the Interconnection Contract dated September 18, 1979 between the city of Columbia, Missouri and UE and terminate this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 27, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–1304 Filed 1–20–98; 8:45 am]
BILLING CODE 6717–01–M

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–677–000]

Western Resources, Inc.; Notice of Filing

January 14, 1998.

Take notice that on January 8, 1998, Western Resources, Inc., tendered for filing a Notice of Withdrawal in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 27, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–1306 Filed 1–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–174–000]

Williams Natural Gas Company; Notice of Request Under Blanket Authorization

January 14, 1998.

Take notice that on January 8, 1998, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP98–174–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for approval to replace the Kansas Gas & Electric Brock meter setting and to reinstall the existing Brock meter setting at the Catt regulator site, both in Bourbon County, Kansas, under Williams' blanket certificate issued in Docket No. CP82–479–000, pursuant to Section 7 of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williams states that the volumes of natural gas at the Catt site are currently measured by KG&E and that the installation of the Brock meter setting will eliminate Williams' dependence on KG&E for measurement at the site. Williams asserts that the projected volume of natural gas delivery at the new Brock setting is expected to increase over the next few years, but the delivery volumes at the Catt site will remain unchanged. Williams further asserts that this change is not prohibited by an existing tariff and that Williams has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to Williams' other customers. Williams indicates that the total project cost is estimated to be $124,125, which will be paid from available funds.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–1305 Filed 1–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DR98–24–000, et al.]

Florida Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

January 13, 1998.

Take notice that the following filings have been made with the Commission:

1. Florida Power & Light Company

[Docket No. DR98–24–000]

Take notice that on December 24, 1997, Florida Power & Light Company, filed a request for approval of changes in depreciation rates made on or after April 19, 1994 and prior to December 22, 1997, for accounting purposes only pursuant to Section 302 of the Federal Power Act. The proposed changes were approved for retail purposes by the Florida Public Service Commission.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Monongahela Power Company

[Docket No. DR98–38–000]

Take notice that on December 30, 1997, Allegheny Power, filed on behalf of Monongahela Power Company, an application for approval of depreciation rates pursuant to Section 302 of the Federal Power Act. The proposed depreciation rates are for accounting purposes only. Allegheny Power states that the proposed new depreciation rates of Monongahela Power Company were approved for retail purposes by the Public Service Commission of West Virginia effective as of November 1, 1994 and the Public Utility Commission of Ohio effective as of October 20, 1995. Allegheny Power requests that the Commission allow the proposed depreciation rates to become effective on the same dates also.

Comment date: February 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Mississippi Power Company

[Docket No. DR98–39–000]

Take notice that on December 31, 1997, Mississippi Power Company filed a request for approval of changes in depreciation rates, for accounting purposes only, pursuant to Section 302 of the Federal Power Act. The proposed changes were approved for retail purposes by the Mississippi Public Service Commission and became effective as of January 1, 1996. Mississippi Power Company requests that the Commission allow the proposed depreciation rates to become effective as of January 1, 1996 also.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Portland General Electric Company

[Docket No. DR98–40–000]

Take notice that on December 31, 1997, Portland General Electric Company filed a request for approval of changes in depreciation rates, for accounting purposes only, pursuant to Section 302 of the Federal Power Act. The proposed changes were approved for retail purposes by the Oregon Public Utilities Commission and became effective as of April 1, 1995. Portland General Electric Company requests that the Commission allow the proposed depreciation rates to become effective as of April 1, 1995 also.

Comment date: February 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Southern California Edison Company

[Docket No. DR98–41–000]

Take notice that on December 31, 1997, Southern California Edison filed a request for approval, for accounting purposes only, of changes in depreciation rates made on or after April 19, 1994 and prior to May 23, 1997, pursuant to Section 302 of the Federal Power Act. The proposed changes were approved for retail purposes by the California Public Utilities Commission.

Comment date: February 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Potomac Edison Company

[Docket No. DR98–42–000]

Take notice that on January 2, 1998 Allegheny Power, filed on behalf of Potomac Edison Company, an Application for approval of depreciation rates, for accounting purposes only, pursuant to Section 302 of the Federal Power Act. Allegheny Power states that the proposed Potomac Edison Company new depreciation rates were approved for retail purposes by the Maryland Public Service Commission as of June 1, 1995, the Virginia State Corporation Commission as of July 1, 1995 and the Public Service Commission of West Virginia as of November 1, 1994. Allegheny Power requests that the Commission allow the proposed depreciation rates to become effective on the same dates also.

Comment date: February 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Otter Tail Power Company

[Docket No. DR98–43–000]

Take notice that on January 2, 1998, Otter Tail Power Company, filed a request for approval of changes in depreciation rates made on or after April 19,1994 and prior to May 22, 1997, for accounting purposes only pursuant to Section 302 of the Federal Power Act. The proposed changes were approved for retail purposes by the Minnesota Public Utilities Commission, the North Dakota Public Service Commission and the South Dakota Public Service Commission.

Comment date: February 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Kansas City Power & Light Company

[Docket No. DR98–44–000]

Take notice that on January 6, 1998, Kansas City Power & Light Company, filed a request for approval of depreciation rates for accounting purposes only pursuant to Section 302 of the Federal Power Act. The proposed rates were approved for retail purposes by the Missouri Public Service Commission effective July 9, 1996. Kansas City Power & Light Company requests that the Commission allow the proposed depreciation rates to become effective as of July 9, 1996 also.

Comment date: February 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. PP&L, Inc.

[Docket No. ER98–1101–000]

Take Notice that on December 16, 1997, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) ("PP&L"), filed a Service Agreement dated December 2, 1997 with QST Energy Trading, Inc. (QST) under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds QST as an eligible customer under the Tariff.

PP&L requests an effective date of February 14, 1998 for the Service Agreement.

PP&L states that copies of this filing have been supplied to QST and to the Pennsylvania Public Utility Commission.

Comment date: January 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power & Light Company

[Docket No. ER98–1102–000]

On December 16, 1997, Florida Power & Light Company filed Service Agreements with Aquila Power Corporation, Constellation Power Source Inc., Entergy Power Marketing Corp., Illinois Power Company, NESI Power Marketing, Inc. and Williams Energy Services Company for service pursuant to Tariff No. 1 for Sales of Power and Energy by Florida Power & Light. FPL requests that the Service Agreement be made effective on November 24, 1997.

Comment date: January 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Illinois Power Company

[Docket No. ER98–1104–000]

Take notice that on December 16, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Griffin Energy Marketing, L.L.C. will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of December 10, 1997.

Comment date: January 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Indianapolis Power & Light Company

[Docket No. ER98–1105–000]

Take notice that on December 17, 1997, Indianapolis Power & Light Company (IPL), tendered for filing an amendment to the interconnection agreement between IPL and PSI Energy, a public utility subsidiary of Cinergy.

Copies of this filing were sent to the Indiana Utility Regulatory Commission and Cinergy.

Comment date: January 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. New England Power Company et al.

[Docket No. ER98–1106–000]

Take notice that on December 17, 1997, New England Power Company and the other New England electric utilities that are subject to the Commission's jurisdiction which are parties to the Agreement with Respect to Use of Quebec Interconnection dated as of December 1, 1981, as amended and restated as of September 1, 1985 (the Filing Parties) filed a Second Amended And Restated Agreement With Respect To Use Of Quebec Interconnection (Second Restated Use Agreement) and a related agreement entitled, Agreement With Respect To Second Amendment And Restatement Of Agreement With Respect To Use Of Quebec Interconnection (Second Amended Agreement), both dated as of November 19, 1997.

The Filing Parties request an effective date of December 12, 1997 for certain specified sections of the Second Restated Use Agreement and an effective date for the remaining sections of the Second Restated Use Agreement on the Second Effective Date, as defined in the Restated NEPOOL Agreement. The Filing Parties state that acceptance of the specified sections of the Second Restated Use Agreement as of December 12, 1997 will permit all participants and indirect participants in the Interconnection to immediately make greater and more flexible use of the Interconnection. Copies of this filing were sent to all participants and indirect participants in the Interconnection, the

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New England Public Utility Commissioners and the New England Governors.

Comment date: January 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Northern States Power Company (Minnesota Company)

[Docket No. ER98–1107–000]

Take notice that on December 17, 1997, Northern States Power Company (Minnesota) (NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Transmission Service Agreement between NSP and Griffin Energy Marketing, L.L.C.

NSP requests that the Commission accept both the agreements effective December 5, 1997, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: January 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Portland General Electric Company

[Docket No. ER98–1108–000]

Take notice that on December 17, 1997, Portland General Electric Company (PGE), tendered for filing a report on refunds issued to customers as ordered by the Commission in Docket No. ER96–333–000.

Copies of this filing were served upon entities noted in the filing letter.

Comment date: January 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. PP&L, Inc.

[Docket No. ER98–1110–000]

Take notice that on December 17, 1997, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated December 2, 1997, with Enron Power Marketing, Inc. (Enron), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds Enron as an eligible customer under the Tariff.

PP&L requests an effective date of December 17, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Enron and to the Pennsylvania Public Utility Commission.

Comment date: January 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. PP&L, Inc.

[Docket No. ER98–1111–000]

Take notice that on December 17, 1997, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated December 2, 1997, with Horizon Energy Company (HEC), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds HEC as an eligible customer under the Tariff.

PP&L requests an effective date of December 17, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to HEC and to the Pennsylvania Public Utility Commission.

Comment date: January 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Kansas City Power & Light Company

[Docket No. ER98–1112–000]

Take notice that on December 17, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated November 25, 1997, between KCPL and Western Resources, Inc. KCPL proposes an effective date of November 26, 1997, and requests a waiver of the Commission's notice requirement to allow the requested effective date. This Agreement provides for the rates and charges for Short-term Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636–000.

Comment date: January 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Kansas City Power & Light Co.

[Docket No. ER98–1113–000]

Take notice that on December 17, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated November 21, 1997, between KCPL and Williams Energy Services Company. KCPL proposes an effective date of December 5, 1997, and requests a waiver of the Commission's notice requirement to allow the requested effective date. This Agreement provides for the rates and charges for Short-term Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636–000.

Comment date: January 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. PP&L, Inc.

[Docket No. ER98–1114–000]

Take notice that on December 17, 1997, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated December 2, 1997, with AYP Energy, Inc. (AYP), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds AYP as an eligible customer under the Tariff.

PP&L requests an effective date of December 17, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to AYP and to the Pennsylvania Public Utility Commission.

Comment date: January 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. PP&L, Inc.

[Docket No. ER98–1115–000]

Take notice that on December 17, 1997, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated December 12, 1997 with Energis Resources (Energis), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds Energis as an eligible customer under the Tariff.

PP&L requests an effective date of December 17, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Energis and to the Pennsylvania Public Utility Commission.

Comment date: January 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Oklahoma Gas and Electric Company

[Docket No. ER98–1116–000]

Take notice that on December 17, 1997, Oklahoma Gas and Electric Company (OG&E), tendered for filing service agreements for parties to take service under its open access tariff.

Copies of this filing have been served on the affected parties, the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Comment date: January 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Tampa Electric Company

[Docket No. ER98–1118–000]

Take notice that on December 17, 1997, Tampa Electric Company (Tampa Electric), tendered for filing service agreements with Virginia Electric and Power Company (VEPCO), and Enron Power Marketing, Inc. (Enron), for firm and non-firm point-to-point transmission service, and a service agreement with Tampa Electric as wholesale power merchant for non-firm point-to-point transmission service, under Tampa Electric's open access transmission tariff.

Tampa Electric proposes an effective date of December 1, 1997, for the service agreements, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on VEPCO, Enron, Tampa Electric as wholesale power merchant, and the Florida Public Service Commission.

Comment date: January 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Energetix, Inc.

[Docket No. ER98–1120–000]

Take notice that on December 16, 1997, Energetix, Inc. (Energetix) filed a Notice of Succession with the Federal Energy Regulatory Commission (FERC or the Commission) indicating that the name of ROXDEL has been changed to Energetix effective December 8, 1997. In accordance with § 35.16 and 131.51 of the Commission's Regulations, 18 CFR 35.16 and 131.51, Energetix adopted and ratified all applicable rate schedules filed with the FERC by ROXDEL.

Copies of this filing were served upon all parties in Docket No. ER97–3556, ROXDEL's customers, and the New York State Public Service Commission.

Comment date: January 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. San Diego Gas & Electric Company

[Docket No. ER98–1122–000]

Take notice that on December 17, 1997, San Diego Gas & Electric Company (SDG&E), tendered for filing a Notice of Cancellation of Service Agreement. The Service Agreement is between SDG&E and SDG&E's Energy Trading for Firm Point-to-Point Transmission Service under SDG&E's Open Access Transmission Tariff (Tariff).

SDG&E requests that this cancellation become effective January 1, 1998.

Comment date: January 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Entergy Services, Inc.

[Docket No. ER98–1123–000]

Take notice that on December 17, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Engage Energy US, L.P.

Comment date: January 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Entergy Services, Inc.

[Docket No. ER98–1124–000]

Take notice that on December 17, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Engage Energy US, L.P.

Comment date: January 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Northern States Power Company (Minnesota Company)

[Docket No. ER98–1126–000]

Take notice that on December 17, 1997, Northern States Power Company (NSP), tendered Amendment No. 1, to the Municipal Interconnection and Interchange Agreement between NSP and the City of Sioux Falls, SD. NSP requests an effective date of January 1, 1998.

A copy of the filing was served upon each of the parties named in the Service List.

Comment date: January 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. El Segundo Power, LLC

[Docket No. ER98–1127–000]

Take notice that on December 17, 1997, El Segundo Power, LLC, tendered for filing pursuant to section 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1, to be effective January 1, 1998.

El Segundo Power, LLC intends to sell electric power at wholesale. In transactions where El Segundo Power, LLC sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Rate Schedule No. 1, provides for the sale of energy and capacity at agreed prices.

Comment date: January 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1339 Filed 1–20–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DR98–26–000, et al.]

Jersey Central Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

January 14, 1998.

Take notice that the following filings have been made with the Commission:

1. Jersey Central Power & Light Company

[Docket No. DR98–26–000]

Take notice that on December 29, 1997, Jersey Central Power & Light Company, filed a request for approval of changes in depreciation rates made on or after April 19, 1994 and prior to December 22, 1997, for accounting purposes only pursuant to Section 302 of the Federal Power Act. The proposed changes were approved for retail purposes by the New Jersey Board of Public Utilities.

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Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Metropolitan Edison Company

[Docket No. DR98–27–000]

Take notice that on December 29, 1997, Metropolitan Edison Company, filed a request for approval of changes in depreciation rates made on or after April 19, 1994 and prior to December 22, 1997, for accounting purposes only pursuant to Section 302 of the Federal Power Act. The proposed changes were approved for retail purposes by the Pennsylvania Public Utility Commission.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Pennsylvania Electric Company

[Docket No. DR98–29–000]

Take notice that on December 29, 1997, Pennsylvania Electric Company, filed a request for approval of changes in depreciation rates made on or after April 19, 1994 and prior to December 22, 1997, for accounting purposes only pursuant to Section 302 of the Federal Power Act. The proposed changes were approved for retail purposes by the Pennsylvania Public Utility Commission.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Power & Light Company

[Docket No. DR98–30–000]

Take notice that on December 29, 1997, Wisconsin Power & Light Company, filed a request for approval of changes in depreciation rates made on or after April 19, 1994 and prior to December 19, 1997, for accounting purposes only pursuant to Section 302 of the Federal Power Act. The proposed changes were approved for retail purposes by the Public Service Commission of Wisconsin.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. MidAmerican Energy Company

[Docket No. ER97–4466–001]

Take notice that on December 12, 1997, MidAmerican Energy Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: January 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Electric Power Company

[Docket No. ER98–1177–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on December 24, 1997, tendered for filing an electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2). Wisconsin Electric respectfully requests an effective date January 2, 1998. Wisconsin Electric is authorized to state that Tenaska Power Services Company joins in the requested effective date.

Copies of the filing have been served on Tenaska Power Services Company, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: January 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Company

[Docket No. ER98–1261–000]

Take notice that on December 31, 1997, Southern California Edison Company (Edison) tendered for filing a Surcharge to the Transmission Access Charges for retail customers.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: January 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. California Independent System Corporation

[Docket No. ER98–1309–000]

Take notice that on December 30, 1997, the California Independent System Corporation (ISO), tendered for filing a Participating Generator Agreement executed by the ISO and Texaco Exploration and Production Inc., for approval by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in the above referenced dockets, including the California Public Service Commission.

Comment date: January 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. California Independent System Corporation

[Docket No. ER98–1310–000]

On December 30, 1997, the California Independent System Corporation (ISO), tendered for filing a Participating Generator Agreement executed by the ISO and El Segundo Power, LLC for approval by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in the above referenced dockets, including the California Public Service Commission.

Comment date: January 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1338 Filed 1–20–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP97–168–000 and CP97–169–000]

Alliance Pipeline L.P.; Notice of Public Meetings on the Draft Environmental Impact Statement for the Proposed Alliance Pipeline Project

January 14, 1998.

The Office of Pipeline Regulation's environmental staff will conduct public meetings to receive comments on the Alliance Pipeline Project Draft Environmental Impact Statement (EIS). All of the meetings will begin promptly at 7:00 p.m. The dates and locations of the meetings are:

- Monday, February 2, 1998: Valley City High School Cafeteria, 460 Central Avenue West, Valley City, ND, (701) 845–0483.
- Tuesday, February 3, 1998: Kennedy School Auditorium, 824 Seventh Street, Willmar, MN, (320) 231–8490.
- Wednesday, February 4, 1998: New Hampton Community Center, 112 East Spring Street, New Hampton, IA, (515) 394–5464.
- Thursday, February 5, 1998: Mendota Civic Center, 1901 Tom Merwin Drive, Mendota, IL, (815) 539–3411.

Interested groups and individuals are encouraged to attend and present oral comments on the environmental impact described in the draft EIS. Transcripts of the meetings will be prepared. For further information, contact Paul McKee in the Commission's Office of External Affairs, at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–1337 Filed 1–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–131–000 and CP98–133–000]

Vector Pipeline L.P.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Vector Pipeline Project and Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings and Site Visit

January 14, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Vector Pipeline Project.[1] This EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Additionally, with this notice we are asking a number of Federal Agencies (see appendix 2) with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their agencies' responsibilities.[2]

Summary of the Proposed Project

Vector Pipeline L.P. (Vector) proposes to build new natural gas pipeline and compression facilities to transport 1.0 billion cubic feet per day of natural gas from Joliet, Illinois to St. Clair, Michigan. Accessing natural gas supplies from the Chicago area, the Vector Pipeline Project would deliver gas volumes within Michigan and to Vector Pipeline Limited Partnership (Vector Canada) at the U.S./Canada border facility.

Vector requests Commission authorization, in Docket No. CP98–133–000, to construct, lease, and operate the following facilities:

- Construct 265.9 miles of 42-inch diameter pipeline in Illinois, Indiana, and Michigan extending from Joliet, Illinois in Will County to Oakland County, Michigan (Segment 1). About 33 miles would be in Illinois, 67.7 miles would be in Indiana, and 165.2 miles would be in Michigan;
- Lease of 58.8 miles of an existing 36-inch-diameter pipeline in Michigan from Oakland County to St. Clair County (Segment 2);
- Construct 3.7 miles of 42-inch-diameter pipeline in St. Clair County, Michigan terminating at the border of the United States (U.S.) and Canada near St. Clair, Michigan (Segment 3);
- Construct five new meter/regulating stations including two in Will County, Illinois, one in Livingston County, Michigan, one in Oakland County, Michigan, and one in St. Clair County, Michigan;
- Construct two compressor stations each with 30,000 horsepower of compression in LaPorte County, Indiana, and Oakland County, Michigan; and
- Construct associated pipeline facilities, including 21 new mainline valves, 3 pig launchers, 2 pig receivers, and permanent access roads.

The general location of Vector's proposed project facilities is shown in appendix 1. If you are interested in obtaining procedural information, please write to the Secretary of the Commission.

In addition, Vector requests in Docket No. CP98–131–000 a Presidential Permit to construct, operate, and maintain facilities at the International Border between the U.S. and Canada near St. Clair, Michigan. Vector's pipeline would terminate at the point of interconnection with the Canadian facilities of Vector Canada.

Land Requirements for Construction

The Vector Pipeline Project would include 58.8 miles of leased existing pipeline. Vector would construct about 253.4 miles (94 percent) of the new pipeline parallel to various existing utility rights-of-way. Only 15.1 miles (6 percent) of the route would be constructed on newly created right-of-way that does not parallel existing rights-of-way. Where possible, Vector's right-of-way would overlap the existing rights-of-way as much as 50 feet during construction to minimize impacts. Vector's pipeline would deviate from the existing rights-of-way in selected locations to avoid impact on homes and existing utility structures (meter stations, etc.). The pipeline would also deviate from the existing rights-of-way in selected locations to improve waterbody crossings and for other environmental or engineering reasons.

Construction of the Vector Pipeline Project would affect a total of about 3,581.9 acres of land including extra workspace and aboveground facilities. Of this total, about 3,268.1 acres would be disturbed by the construction rights-of-way, 270.9 acres would be disturbed by extra workspace, and 42.9 acres would be disturbed by the aboveground facilities and access roads. All these acreage figures are subject to change.

Vector would generally use a right-of-way width of 100 feet for construction. The Vector Pipeline Project would also require extra temporary work areas for waterbody, highway, and railroad crossing; for additional topsoil storage; and for pipe storage and equipment yards. Following construction and restoration of the right-of-way and temporary work spaces, Vector would retain a 30- to 50-foot-wide permanent pipeline right-of-way depending on whether the pipeline is adjacent to other utilities or on new right-of-way. Total land requirements for the permanent right-of-way would be about 1,185.4 acres. The project would also require an additional 22.1 acres for the operation of the new aboveground facilities and 0.9 acres for the operation of permanent access roads. Vector would restore the remaining 2,373.5 acres of land affected by construction of the project and allow these areas to revert to their former use.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents

[1] Vector Pipeline L.P.'s applications in Docket Nos. CP98–131–000 and CP98–133–000 were filed with the Commission under Section 3 of the Natural Gas Act and part 153 of the Commission's regulations and under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations, respectively.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

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of this proposed action and encourage them to comment on their areas of concern.

Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified a number of issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Vector. These issues are listed below. This is a preliminary list of issues and may be changed based on your comments and our analysis.

- **Soils**

—Temporary and permanent impacts on prime farmland soils.
—Mixing of topsoil and subsoil during construction.
—Compaction of soil by heavy equipment.
—Impacts on drain tiles and irrigation systems.
—Erosion control and right-of-way restoration.

- **Water Resource**

—Effect of construction on areas with shallow groundwater.
—Effect of construction on crossings of 92 perennial waterbodies, including 13 coldwater fisheries.
—Crossing of eight rivers 100 feet wide or greater.
—Crossing three rivers on the Nationwide Rivers Inventory List, including an international waterbody.
—Effect of construction in waterbodies with contaminated sediments.
—Potential for erosion and sediment transport to the waterbodies.
—Effect of construction on groundwater and surface water supplies.
—Impact on wetland hydrology.

- **Biological Resources**

—Short- and long-term effects of right-of-way clearing and maintenance on wetlands, forests, riparian areas, and vegetation communities of special concern.
—Effect on wildlife and fisheries habitats.
—Impact on federally endangered species such as the Indiana bat and on federally threatened species such as the northern copperbelly watersnake.

- **Cultural Resources**

—Effect on historic and prehistoric sites.
—Native American concerns.

- **Socioeconomics**

—Effect of the construction workforce on demands for services in surrounding areas.
—Impact on property values.

- **Land Use**

—Impact on crop production.
—Impact on residential areas.
—Effect on public lands and special use areas including waterbodies on the Nationwide Rivers Inventory, a national scenic trail, a state game area, a state recreation area, a forest preserve district, a county park, city/township private parks, church property, a golf course, a county airport, campgrounds, and racetracks.
—Impact on future land uses and consistency with local land use plans and zoning.
—Visual effect of the aboveground facilities on surrounding areas.

- **Air Quality and Noise**

—Effect on local air quality and noise environment as a result of construction.
—Effect on local air quality and noise environment as a result of operation of the compressor stations.

- **Pipeline Reliability and Safety**
- **Cumulative Impact**

—Identify other projects which have been or may be proposed in the same region and similar time frames.
—Identify potential upstream and downstream facilities.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the Draft EIS which will be mailed to Federal, state, and local agencies, public interest groups, affected landowners and other interested individuals, newspapers, libraries, and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the Draft EIS. We will consider all comments on the Draft EIS and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our response to each comment received on the Draft EIS and will be used by the Commission in its decision-making process to determine whether to approve the project.

Public Participation and Scoping Meetings

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Send two copies to: David P. Boergers, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 1A, Washington, D.C. 20426.
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1;
- Reference Docket Nos. CP98–131–000 and CP98–133–000; and
- Mail your comments so that they will be received in Washington, D.C. on or before February 20, 1998.

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meetings the FERC will conduct in the project area. The locations and times for these meetings are listed below.

Schedule of Public Scoping Meetings for the Vector Pipeline Project Environmental Impact Statement

February 9, 1998
7:00 pm—Crown Point, Indiana, Marion Education Center, St. Anthony's Hospital, 1201 S. Main Street, (219) 757–6398
February 10, 1998
7:00 pm—Three Rivers, Michigan, Three Rivers Community Center, 103 S. Douglas Avenue, (616) 278–8193
February 11, 1998
7:00 pm—Leslie, Michigan, Leslie High School Auditorium, 4141 Hull Road, (517) 589–8277
February 12, 1998
7:00 pm—Port Huron, Michigan, St. Claire Community College, 323 Erie Street, (810) 984–3881

The public meetings are designed to provide you with more detailed information and another opportunity to offer your comments on the proposed project. Vector representatives will be present at the scoping meetings to describe their proposal. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues they believe should be addressed in the Draft EIS. A transcript of each meeting will be made so that your comments will be accurately recorded.

On the dates of the meetings, we will also be conducting limited site visits to the project area. Anyone interested in participating in the site visit may contact the Commission's Office of External Affairs identified at the end of this notice for more details and must provide their own transportation.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding or become an "intervenor." Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3).

The date for filing of timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. As details of the project become established, representatives of Vector may also separately contact landowners, communities, and public agencies concerning project matters, including acquisition of permits and rights-of-way.

All commentors will be retained on our mailing list. If you do not want to send comments at this time but still want to keep informed and receive copies of the Draft and Final EIS, you must return the Information Request (appendix 4). If you do not send comments or return the Information Request, you will be taken off the mailing list.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–1336 Filed 1–20–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–42203B; FRL–5766–7]

Enforceable Consent Agreement Development for Diethanolamine; Solicitation of Interested Parties and Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting interested parties who want to monitor or participate in negotiations on an enforceable consent agreement (ECA) concerning the use of pharmacokinetics (PK) studies and mechanistic data to help meet testing requirements for diethanolamine (CAS No. 111–42–2) in the proposed hazardous air pollutants (HAPs) test rule. In addition, EPA invites all interested parties to attend a public meeting to initiate negotiations on the ECA for diethanolamine.

DATES: EPA must receive written notification requesting designation as an interested party for diethanolamine on or before February 11, 1998. Those persons who identify themselves as interested parties for diethanolamine may submit written comments to EPA on the PK proposal for this chemical, on EPA's preliminary technical analysis, and on other materials in the docket for the proposed HAPs test rule, that relate to the ECA process for this chemical by February 11, 1998.

The public meeting is scheduled from 9:00 a.m. to 5:00 p.m. on February 24, 1998.

ADDRESSES: Each comment must bear the docket control number OPPTS–42203B. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G–099, East Tower, Washington, DC 20460.

EPA will address these comments at the public meeting.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. following the instructions under Unit VI. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this document. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will make the information available to the public without further notice to the submitter.

The public meeting will be held at EPA Headquarters, 401 M St., SW., Washington, DC in the EPA Conference Center, North Conference Area in Room 1.

FOR FURTHER INFORMATION CONTACT: *For additional information*: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. ET–543B, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epamail.epa.gov.

For technical information: Richard W. Leukroth, Jr., Project Manager, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–0321; fax: (202) 260–8850; e-mail address: leukroth.rich@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

Internet: Electronic copies of this document and various support documents are available from the EPA Home Page at the **Federal Register**—Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/EPA-TOX/1998/).

II. Background

EPA proposed health effects testing under section 4(a) of the Toxic Substances Control Act (TSCA) on June 26, 1996, for a number of HAPs chemicals (61 FR 33178) (FRL–4869–1). As indicated in the proposed HAPs test rule, EPA would use the data obtained from testing to implement several provisions of section 112 of the Clean Air Act (CAA), including the determination of residual risk, the estimation of the risks associated with accidental releases of chemicals, and determinations whether substances should be removed from the CAA section 112(b)(1) list of hazardous air pollutants (delisting). The data also would be used by other Federal agencies (e.g. Agency for Toxic Substances and Disease Registry (ATSDR), National

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Institute of Occupational Safety and Health (NIOSH), Occupational Safety and Health Administration (OSHA), and Consumer Product Safety Commission (CPSC)) in assessing chemical risks and in taking appropriate actions within their programs.

In the proposed HAPs test rule, EPA invited the submission of proposals for pharmacokinetics (PK) studies for the HAPs chemicals, which could provide the basis for negotiation of ECAs. These PK studies would be used to inform EPA about the use of route-to-route extrapolation of toxicity data from routes other than inhalation to predict the effects of inhalation exposure, as an alternative to testing proposed under the HAPs test rule. EPA received a PK proposal for diethanolamine from the Chemical Manufacturers Association, Alkanolamines Panel (CMA Alkanolamines Panel) on November 25, 1996. Based on the PK proposal received for diethanolamine, the Agency developed a preliminary technical analysis. A copy of this preliminary technical analysis was sent to the CMA Alkanolamines Panel on November 21, 1997. The CMA Alkanolamines Panel reviewed EPA's analysis and notified EPA on December 31, 1997, that it has a continued interest in pursuing the ECA process. A copy of the PK proposal, the EPA preliminary technical analysis and related references, and correspondence is contained in the public record for this ECA process. These materials will be used during discussions at the negotiating meeting. EPA has decided to proceed with the ECA process for diethanolamine and is providing public notice that the Agency is hereby initiating the procedures for ECA negotiations for the HAP chemical, diethanolamine. The procedures for ECA negotiations are described at 40 CFR 790.22(b).

EPA does not intend to publish additional **Federal Register** documents to solicit interested parties and announce public meetings to initiate ECA proceedings for other HAPs chemicals for which PK proposals were submitted in response to the June 26, 1996 EPA invitation to submit PK proposals. In a letter dated December 4, 1997, the Chlorobenzene Producers Association did not express a continued interest to enter into ECA proceedings for the HAPs chemical 1,2,4-trichlorobenzene. In the December 24, 1997 amendment to the HAPs rulemaking (62 FR 67466) (FRL–5742–2), EPA invited the submission of proposals for ECAs on all the HAPs chemicals for which ECA proposals have not been received (62 FR 67474). If the Agency receives such alternative testing proposals and decides to proceed with ECA proceedings for these proposals, it will publish, as appropriate, additional **Federal Register** documents soliciting persons to notify the Agency in writing of their interest in participating in or monitoring negotiations for the development of ECAs for the development of alternative testing to meet HAPs rule testing requirements.

With the publication of this document EPA has published a total of seven solicitations of interested parties and announcements of public meetings for ECAs on HAPs chemicals. EPA does not intend to publish additional **Federal Register** documents to solicit interested parties and announce public meetings to initiate ECA proceedings for other HAPs chemicals for which PK proposals were submitted in response to the EPA invitation to submit PK proposals that was contained in the original HAPs proposal, dated June 26, 1996 (61 FR 33178). In a letter to EPA dated December 4, 1997, the Chlorobenzene Producers Association did not express a continued interest in entering into ECA proceedings for the HAPs chemical 1,2,4-trichlorobenzene.

In the December 24, 1997, amendment to the proposed HAPs rule (62 FR 67466), EPA invited the submission of proposals for ECAs on all the HAPs chemicals for which ECA proposals have not been received. If the Agency receives such alternative testing proposals and decides to proceed with ECA proceedings for these proposals, it will publish, as appropriate, additional **Federal Register** documents soliciting persons to notify the Agency in writing of their interest in participating in or monitoring negotiations for the development of ECAs for the development of alternative testing to meet HAPs rule testing requirements.

Negotiations on developing an ECA for the HAP chemical, diethanolamine, will focus on the use of PK studies and mechanistic data to help meet testing requirements for diethanolamine. In addition, discussion will include the adequacy of the available data base to be used for extrapolation to obtain the data needs identified for diethanolamine in the proposed HAPs test rule, as amended. The objective of the ECA process is to conclude an ECA that will set in place an industry-sponsored testing program that will adequately address EPA's data needs for diethanolamine.

III. Identification of Interested Parties

EPA is soliciting interested parties to monitor or participate in testing negotiations on an ECA for diethanolamine. The CMA Alkanolamines Panel, the submitter of the PK proposal for diethanolamine, and the member companies of the CMA Alkanolamines Panel are already considered interested parties and do not need to respond to this document. Additionally, any persons who respond to this document on or before February 11, 1998 will be given the status of interested parties. Interested parties must respond in writing to the address specified in the "ADDRESSES" at the beginning of this document. These interested parties will not incur any obligations by being so designated. Negotiations will be conducted in one or more meetings open to the public. The negotiation time schedule for diethanolamine will be established at the first negotiation meeting and will not exceed a period of 4 months from the initial meeting. If an ECA is not established in principle within this timeframe and EPA does not choose to extend the negotiation time period, negotiations will be terminated and testing will be required under the final HAPs test rule. If the testing from the ECA does not meet the Agency's needs, EPA reserves the right to enter into rulemaking.

IV. Public Participation in Negotiations

Under EPA regulations, the Agency is required to provide the public with an opportunity to comment on and participate in the development of ECAs. The procedural rule for ECAs (40 CFR part 790) contains provisions to ensure that the views of interested parties are taken into account during the ECA process.

Individuals and groups who respond to this document will have the status of interested parties. All negotiating meetings for the development of this ECA for diethanolamine will be open to the public and minutes of each meeting will be prepared by EPA and placed in the public docket for this ECA process. The Agency will advise interested parties of meeting dates and make available meeting minutes, testing proposals, background documents, and other materials exchanged at or prepared for negotiating meetings. Where tentative agreement is reached on an acceptable testing program, a draft ECA will be made available for comment by interested parties and, if necessary, EPA will hold a public meeting to discuss any comments that have been received and determine whether revisions to the ECA are appropriate. EPA will not reimburse costs incurred by non-EPA participants in this ECA negotiation process.

ECAs will only be concluded where an agreement can be obtained which is satisfactory to the Agency, manufacturers or processors who are potential test sponsors, and other interested parties, concerning the need for and scope of testing. In the absence of an ECA, EPA reserves the right to proceed with rulemaking.

A. The Agency will not enter into an ECA if either:

1. EPA and affected manufacturers or processors cannot reach an agreement on the provisions of the ECA; or

2. The draft ECA is considered inadequate by other interested parties who have submitted timely written objections to the draft ECA.

B. EPA may reject these objections if the Agency concludes either that:

1. They are not made in good faith;

2. They are untimely;

3. They are not related to the adequacy of the proposed testing program or other features of the agreement that may affect EPA's ability to fulfill the goals and purposes of TSCA; or

4. They are not accompanied by a specific explanation of the grounds on which the draft agreement is considered objectionable.

EPA will prepare an explanation of the basis for each ECA. The explanatory document will summarize the agreement (including the required testing), explain the objectives of the testing, and outline the chemical's use and exposure characteristics. The document, which will also announce the availability of the ECA, will be published in the **Federal Register**.

V. Proposal of Export Notification Requirements for Diethanolamine

EPA intends to publish a proposed rule in an upcoming **Federal Register** document to require export notification by all persons who export or intend to export diethanolamine under TSCA section 12(b) upon the successful conclusion of an ECA for diethanolamine.

VI. Public Record and Electronic Submissions

As described above, diethanolamine is listed as a chemical that would be subject to testing requirements under the proposed HAPs test rule, as amended. This ECA negotiation process and the proposed rule, as amended, are separate and parallel activities. The official record for this ECA action, including the public version, has been established under docket control number OPPTS–42203B (including comments and data submitted electronically as described below). The official record for this document also includes all material and submissions filed under docket control number OPPTS–42187A, the record for the proposed HAPs test rule, as amended, and all materials and submissions filed under docket control number OPPTS–42187B, the record for the receipt of alternative testing proposals for developing ECAs for HAPs chemicals.

The official record for this document, including the public version, which does not include any information claimed as CBI, has been established for this document under docket control number OPPTS–42203B. The public version of this record is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE B–607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPPTS–42203B. Electronic comments on this document may be filed online at many Federal Depository Libraries.

The record contains the following information:

A. **Federal Register** notices/EPA documents pertaining to this notice consisting of:

1. "Proposed Test Rule for Hazardous Air Pollutants; Proposed Rule" (61 FR 33178, June 26, 1996).

2. "Amended Proposed Test Rule for Hazardous Air Pollutants; Extension of Comment Period" (62 FR 67476, December 24, 1997).

B. PK proposal materials consisting of:

1. Chemical Manufacturers Association, Alkanolamine Panel, 'Proposal for Pharmacokinetics Studies of Diethanolamine" (November 25, 1996).

2. U.S. EPA, "Preliminary EPA Technical Analysis of Proposed Industry Pharmacokinetics (PK) Strategy for Diethanolamine" and cover letter (November 21, 1997).

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: January 13, 1998.

Wardner G. Penberthy,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–1355 Filed 1–20–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–42202B; FRL–5766–6]

Enforceable Consent Agreement Development for Ethylene Glycol; Solicitation of Interested Parties and Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting interested parties who want to monitor or participate in negotiations on an enforceable consent agreement (ECA) concerning the use of pharmacokinetics (PK) studies and mechanistic data to help meet testing requirements for ethylene glycol (CAS No. 107–21–1) in the proposed hazardous air pollutants (HAPs) test rule. In addition, EPA invites all interested parties to attend a public meeting to initiate negotiations on the ECA for ethylene glycol.

DATES: EPA must receive written notification requesting designation as an interested party for ethylene glycol on or before February 11, 1998. Those persons who identify themselves as interested parties for ethylene glycol may submit written comments to EPA on the PK proposal for this chemical, on EPA's preliminary technical analysis, and on other materials in the docket for the proposed HAPs test rule, that relate to the ECA process for this chemical by February 11, 1998.

The public meeting is scheduled from 9:00 a.m. to 1:00 p.m. on February 23, 1998.

ADDRESSES: Each comment must bear the docket control number, OPPTS–42202B. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G–099, East Tower, Washington, DC 20460.

EPA will address these comments at the public meeting.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. following the instructions under Unit VI. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

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All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this document. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will make the information available to the public without further notice to the submitter.

The public meeting will be held at EPA Headquarters, 401 M St., SW., Washington, DC in the EPA Conference Center, North Conference Area in Room 1.

FOR FURTHER INFORMATION CONTACT: *For additional information*: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. ET–543B, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epamail.epa.gov.

For technical information: Richard W. Leukroth, Jr., Project Manager, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–0321; fax: (202) 260–8850; e-mail address: leukroth.rich@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

Internet: Electronic copies of this document and various support documents are available from the EPA Home Page at the **Federal Register**—Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/EPA-TOX/1998/).

II. Background

EPA proposed health effects testing under section 4(a) of the Toxic Substances Control Act (TSCA) on June 26, 1996, for a number of HAPs chemicals (61 FR 33178) (FRL–4869–1). As indicated in the proposed HAPs test rule, EPA would use the data obtained from testing to implement several provisions of section 112 of the Clean Air Act (CAA), including the determination of residual risk, the estimation of the risks associated with accidental releases of chemicals, and determinations whether substances should be removed from the CAA section 112(b)(1) list of hazardous air pollutants (delisting). The data also would be used by other Federal agencies (e.g. Agency for Toxic Substances and Disease Registry (ATSDR), National Institute of Occupational Safety and Health (NIOSH), Occupational Safety and Health Administration (OSHA), and Consumer Product Safety Commission (CPSC)) in assessing chemical risks and in taking appropriate actions within their programs.

In the proposed HAPs test rule, EPA invited the submission of proposals for pharmacokinetics (PK) studies for the HAPs chemicals, which could provide the basis for negotiation of ECAs. These PK studies would be used to inform EPA about the use of route-to-route extrapolation of toxicity data from routes other than inhalation to predict the effects of inhalation exposure, as an alternative to testing proposed under the HAPs test rule. EPA received a PK proposal for ethylene glycol from the Chemical Manufacturers Association, Ethylene Glycol Panel (CMA EG Panel) on November 5, 1996. Based on the PK proposal received for ethylene glycol, the Agency developed a preliminary technical analysis. A copy of this preliminary technical analysis was sent to the CMA EG Panel on August 26, 1997. The CMA EG Panel reviewed EPA's analysis and notified EPA on October 6, 1997 that it has a continued interest in pursuing the ECA process. A copy of the PK proposal, the EPA preliminary technical analysis and related references, and correspondence is contained in the public record for this ECA process. These materials will be used during discussions at the negotiating meeting. EPA has decided to proceed with the ECA process for ethylene glycol and is providing public notice that the Agency is hereby initiating the procedures for ECA negotiations for the HAP chemical, ethylene glycol. The procedures for ECA negotiations are described at 40 CFR 790.22(b). EPA intends to publish, as appropriate, additional **Federal Register** documents to solicit interested parties and announce public meetings for other HAPs chemicals for which PK proposals were submitted.

The proposed HAPs test rule, as amended on December 24, 1997 (62 FR 67466) (FRL-5742-2), and the ECA negotiations on chemicals included in the proposed rule are separate and parallel activities. While the Agency's objective of obtaining data could be accomplished by either activity, EPA recognizes that the final testing program performed by industry may differ depending on whether it is accomplished under the final HAPs test rule or via the ECA process. During the course of ECA negotiations, additional information may be brought forward that could cause the Agency to re-evaluate the nature of the testing requirements as stated in the proposed HAPs test rule, as amended. This could result in the development of an ECA that would fulfill the Agency's data needs in ways not stated in the proposed HAPs test rule, as amended. It is therefore essential for all interested parties to recognize these differences at the outset and respond accordingly within the framework of these two separate and parallel activities. Comments on the proposed HAPs test rule, as amended, must be submitted under docket control number, OPPTS–42187A, as described in the proposed HAPs test rule published on June 26, 1996, as amended on December 24, 1997, and will be addressed by EPA via the rulemaking process, which is separate and distinct from the ECA process. Participation in the ECA process is described in Units II. through IV. of this document.

Negotiations on developing an ECA for the HAP chemical, ethylene glycol, will focus on the use of PK studies and mechanistic data to help meet testing requirements for ethylene glycol. In addition, discussion will include the adequacy of the available data base to be used for extrapolation to obtain the data needs identified for ethylene glycol in the proposed HAPs test rule, as amended. The objective of the ECA process is to conclude an ECA that will set in place an industry-sponsored testing program that will adequately address EPA's data needs for ethylene glycol.

III. Identification of Interested Parties

EPA is soliciting interested parties to monitor or participate in testing negotiations on an ECA for ethylene glycol. The CMA EG Panel, the submitter of the PK proposal for ethylene glycol, and the member companies of the CMA EG Panel are already considered interested parties and do not need to respond to this document. Additionally, any persons who respond to this document on or before February 11, 1998 will be given the status of interested parties. Interested parties must respond in writing to the address specified in the "ADDRESSES" at the beginning of this document. These interested parties will not incur any obligations by being so designated. Negotiations will be conducted in one or more meetings

open to the public. The negotiation time schedule for ethylene glycol will be established at the first negotiation meeting and will not exceed a period of 4 months from the initial meeting. If an ECA is not established in principle within this timeframe and EPA does not choose to extend the negotiation time period, negotiations will be terminated and testing will be required under the final HAPs test rule. If the testing from the ECA does not meet the Agency's needs, EPA reserves the right to enter into rulemaking.

IV. Public Participation in Negotiations

Under EPA regulations, the Agency is required to provide the public with an opportunity to comment on and participate in the development of ECAs. The procedural rule for ECAs (40 CFR part 790) contains provisions to ensure that the views of interested parties are taken into account during the ECA process.

Individuals and groups who respond to this document will have the status of interested parties. All negotiating meetings for the development of this ECA for ethylene glycol will be open to the public and minutes of each meeting will be prepared by EPA and placed in the public docket for this ECA process. The Agency will advise interested parties of meeting dates and make available meeting minutes, testing proposals, background documents, and other materials exchanged at or prepared for negotiating meetings. Where tentative agreement is reached on an acceptable testing program, a draft ECA will be made available for comment by interested parties and, if necessary, EPA will hold a public meeting to discuss any comments that have been received and determine whether revisions to the ECA are appropriate. EPA will not reimburse costs incurred by non-EPA participants in this ECA negotiation process.

ECAs will only be concluded where an agreement can be obtained which is satisfactory to the Agency, manufacturers or processors who are potential test sponsors, and other interested parties, concerning the need for and scope of testing. In the absence of an ECA, EPA reserves the right to proceed with rulemaking.

A. The Agency will not enter into an ECA if either:

1. EPA and affected manufacturers or processors cannot reach an agreement on the provisions of the ECA; or

2. The draft ECA is considered inadequate by other interested parties who have submitted timely written objections to the draft ECA.

B. EPA may reject these objections if the Agency concludes either that:

1. They are not made in good faith;

2. They are untimely;

3. They are not related to the adequacy of the proposed testing program or other features of the agreement that may affect EPA's ability to fulfill the goals and purposes of TSCA; or

4. They are not accompanied by a specific explanation of the grounds on which the draft agreement is considered objectionable.

EPA will prepare an explanation of the basis for each ECA. The explanatory document will summarize the agreement (including the required testing), explain the objectives of the testing, and outline the chemical's use and exposure characteristics. The document, which will also announce the availability of the ECA, will be published in the **Federal Register**.

V. Proposal of Export Notification Requirements for Ethylene glycol

EPA intends to publish a proposed rule in an upcoming **Federal Register** document to require export notification by all persons who export or intend to export ethylene glycol under TSCA section 12(b) upon the successful conclusion of an ECA for ethylene glycol.

VI. Public Record and Electronic Submissions

As described above, ethylene glycol is listed as a chemical that would be subject to testing requirements under the proposed HAPs test rule, as amended. This ECA negotiation process and the proposed rule, as amended, are separate and parallel activities. The official record for this ECA action, including the public version, has been established under docket control number OPPTS–42202B (including comments and data submitted electronically as described below). The official record for this document also includes all material and submissions filed under docket control number OPPTS–42187A, the record for the proposed HAPs test rule, as amended, and all materials and submissions filed under docket control number OPPTS–42187B, the record for the receipt of alternative testing proposals for developing ECAs for HAPs chemicals.

The official record for this document, including the public version, which does not include any information claimed as CBI, has been established for this document under docket control number OPPTS–42202B. The public version of this record is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE B–607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPPTS–42202B. Electronic comments on this document may be filed online at many Federal Depository Libraries.

The record contains the following information:

A. **Federal Register** notices/EPA documents pertaining to this notice consisting of:

1. "Proposed Test Rule for Hazardous Air Pollutants; Proposed Rule" (61 FR 33178; June 26, 1996).

2. "Amended Proposed Test Rule for Hazardous Air Pollutants; Extension of Comment Period" (62 FR 67466; December 24, 1997).

B. PK proposal materials consisting of:

1. Chemical Manufacturers Association, Ethylene Glycol Panel, "Proposal for Pharmacokinetic Studies of Ethylene Glycol" (November 5, 1996).

2. U.S. EPA, "Preliminary EPA Technical Analysis of Proposed Industry Pharmacokinetics (PK) Strategy for Ethylene Glycol" and cover letter (August 26, 1997).

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: January 13, 1998.

Wardner G. Penberthy,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–1357 Filed 1–20–98; 8:45 am]
BILLING CODE 6065–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

January 13, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden

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invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 20, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., NW, Washington, DC 20554 or via internet to: jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at: jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0635.

Title: Amateur Vanity Call Sign Request.

Form No.: FCC 610–V.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households.

Number of Respondents: 80,000.

Estimated Time Per Response: .33 hour.

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: $4,000,000.

Total Annual Burden: 26,400 hours.

Needs and Uses: The FCC Form 610–V is used to apply for a vanity (special) call sign in lieu of a systematically issued call sign. This information collection has been revised to eliminate the need for attaching a photocopy of the applicant's current operator/primary station license document, and to add space on the form for the applicant to provide an Internet or e-mail address. The fee information, such as payment type code, quantity and fee due is being deleted from the application because a Fee Remittance Advice (FCC Form 159) is now required to be submitted along with any payment due to the FCC. The respondent costs have been modified due to an adjustment in the regulatory fee structure for Amateur vanity call signs. The Commission will not be collecting the Taxpayer Identification Number (TIN) on the form as previously indicated in the **Federal Register** notice. TIN is also collected on the FCC Form 159 which is required by any payment to the FCC.

The information collected in the application is used by FCC staff to determine eligibility for radio station authorization and to issue a radio station/operator license. Data is also used by Compliance personnel in conjunction with field engineers for enforcement and interference resolution purposes.

Federal Communications Commission

Magalie Roman Salas,

Secretary.

[FR Doc. 98–1281 Filed 1–20–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2247]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

January 13, 1998.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by February 5, 1998. See Section 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed by February 17, 1998.

Subject: Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, to Reallocate the 29.5–30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services (CC Docket No. 92–297).

Number of Petitions Filed: 3.

Subject: Amendment of Part 15 of the Commission's Rules to permit operation of biomedical telemetry devices on VHF TV channels 7–13 and on UHF TV channels 14–46 (ET Docket No. 95–177).

Number of Petitions Filed: 2

Subject: Access Charge Reform (CC Docket No. 96–262) Price Cap Performance Review for Local Exchange Carriers (CC Docket No. 94–1) Transport Rate Structure (CC Docket No. 91–213).

Number of Petitions Filed: 1.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Florence and Killen, Alabama and Lawrenceburg, Tennessee).

Number of Petitions Filed: 1.

Subject: Amendment of Section 73.202(b), Table of Assignments, FM Broadcast Stations, (Genoa, Mt. Morris, and Oregon, Illinois).

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–1392 Filed 1–20–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Determination of Insufficiency of Assets to Satisfy All Claims of Certain Financial Institution in Receivership

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC), as receiver for the financial institution specified in **SUPPLEMENTARY INFORMATION**, has determined that the proceeds which can be realized from the liquidation of the assets of the below listed receivership estate are insufficient to wholly satisfy the priority claims of depositors against the receivership estates. Therefore, upon satisfaction of secured claims, depositor claims and claims which have priority over depositors under applicable law, no amount will remain or will be recovered sufficient to allow a dividend, distribution or payment to any creditor of lessor priority, including but not limited to, claims of general creditors. Any such claims are hereby determined to be worthless.

FOR FURTHER INFORMATION CONTACT: Thomas Bolt, Counsel, Legal Division, FDIC, 550 17th Street, N.W., Room H–11048, Washington, D.C. 20429. Telephone: (202) 736–0168.

SUPPLEMENTARY INFORMATION:

Financial Institution in Receivership Determined to Have Insufficient Assets to Satisfy All Claims

Whitney Bank & Trust—4342 Hamden, Connecticut

Dated: January 14, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–1345 Filed 1–20–98; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 98–N–2]

Submission for OMB Review; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) hereby gives notice that it has submitted the information collection entitled "Personal Certification and Disclosure Forms" to the Office of Management and Budget (OMB) for review and approval of a three-year extension of the OMB control number, which is due to expire on January 31, 1998.

DATES: Interested persons may submit comments on or before February 20, 1998.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Housing Finance Board, Washington, D.C. 20503. Address requests for copies of the information collection and supporting documentation to Elaine L. Baker, Secretary to the Board, 202/408–2837, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Patricia L. Sweeney, Program Analyst, Compliance Assistance Division, Office of Policy, 202/408–2872, or Janice A. Kaye, Attorney-Advisor, Office of General Counsel, 202/408–2505, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of Information Collection

Section 7 of the Federal Home Loan Bank Act (Bank Act) and part 932 of the Finance Board's regulations establish eligibility and reporting requirements and the procedures for electing and appointing Federal Home Loan Bank (FHLBank) directors. *See* 12 U.S.C. 1427; 12 CFR part 932. The information collection contained in the elective and appointive FHLBank director personal certification and disclosure forms and §§ 932.18 and 932.21 of the Finance Board's regulations, is necessary to enable the Finance Board to determine whether prospective and incumbent elective and appointive FHLBank directors satisfy the statutory and regulatory eligibility and reporting requirements. *See* Finance Board forms E–1, E–2, A–1, and A–2; 12 CFR 932.18 (appointive directors), 932.21 (elective directors). Accordingly, Finance Board staff uses the information collection to determine whether respondents meet the statutory and regulatory eligibility requirements. The information collection requires each respondent to complete and submit to the Finance Board for review a personal certification and disclosure form prior to election or appointment and, once elected or appointed, annually during the term of service. Incumbent directors also have a continuing obligation promptly to notify the Finance Board of any known or suspected ineligibility. *See* 12 CFR 932.18(f)(2); 932.21(g)(2).

The OMB number for the information collection is 3069–0002. The OMB clearance for the information collection expires on January 31, 1998.

B. Burden Estimate

The Finance Board estimates the total annual average number of respondents at 286, with one response per respondent. The estimate for the average hours per response is 1.3 hours. The estimate for the total annual hour burden is 376 hours (286 respondents × 1 response/respondent × approximately 1.3 hours). The estimated annualized cost to respondents of the information collection is $35,175.00.

C. Comment Request

In accordance with the requirements of 5 CFR 1320.8(d), the Finance Board published a request for public comments regarding this information collection in the **Federal Register** on November 6, 1997. *See* 62 FR 60093 (Nov. 6, 1997). The 60-day comment period closed on January 5, 1998. The Finance Board received no public comments. Written comments are requested on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Finance Board, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments may be submitted to OMB in writing at the address listed above.

By the Federal Housing Finance Board.

Dated: January 12, 1998.

William W. Ginsberg,

Managing Director.

[FR Doc. 98–1315 Filed 1–20–98; 8:45 am]

BILLING CODE 6725–01–U

FEDERAL MARITIME COMMISSION

[Docket No. 97–18]

APL/MOL/OOCL/HMM Reciprocal Slot Exchange Agreement (Agreement No. 203/011588) and APL/MOL/HMM Reciprocal Slot Exchange Agreement, Agreement No. 203–011596; Order to Show Cause and Motion To Dismiss Denied

Introduction

The APL/MOL/OOCL/HMM Reciprocal Slot Exchange Agreement, Agreement No. 203–011588 ("the Four Party Agreement") is an agreement for the reciprocal chartering of space aboard vessels operated in the U.S. foreign trades by agreement members.[1] The Four Party Agreement became effective on October 17, 1997. Agreement No. 203–011596, the APL/MOL/HMM Reciprocal Slot Exchange Agreement ("the New Agreement"), is a space charter agreement which is intended to replace the Four Party Agreement.[2]

Under section 10(c)(6) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1709(c)(6), it is unlawful for any conference or group of two or more common carriers to:

[1] The Agreement members are Hyundai Merchant Marine, Ltd. ("Hyundai" or "HMM"), American President Lines, Ltd. ("APL"), Mitsui O.S.K. Line, Ltd. ("MOL"), and Orient Overseas Container Line, Inc. ("OOCL").

[2] The members of the agreement are Hyundai, APL and MOL. Although the New Agreement is intended to replace the Four Party Agreement, the latter will remain in effect until canceled by the parties according to its terms, to permit an orderly transition in the parties' operations.

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Allocate shippers among specific carriers that are parties to the agreement or prohibit a carrier that is a party to the agreement from soliciting cargo from a particular shipper, except as otherwise required by the law of the United States or the importing or exporting country * * *.

The New Agreement contains terms, also present in the Four Party Agreement, by which carriage of cargo subject to U.S. cargo preference laws is restricted to the U.S.-flag carrier participant, APL. In its Order to Show Cause served on October 17, 1997, Docket No. 97–18, 62 FR 55260 (October 23, 1997), 27 S.R.R. 1304 (1997) ("Show Cause Order"), the Commission stated that the Four Party Agreement appeared on its face to present a violation of section 10(c)(6). For reasons similar to those stated in the Show Cause Order, it appears that the New Agreement on its face also presents a violation of section 10(c)(6). Therefore, pursuant to section 11 of the 1984 Act, the parties to the New Agreement are ordered to show cause why the New Agreement should not be found to be in violation of the 1984 Act and should not be disapproved, canceled or modified accordingly.

APL filed a Motion to Dismiss Docket No. 97–18, on the grounds, *inter alia*, that "changed circumstances" have mooted this proceeding, and requested, in the event that the Commission determined not to dismiss the proceeding, that the time for filing Respondents' opening submissions, then due on December 2, 1997, be extended to 30 days after the Court of Appeals takes final action in *Sea-Land Service, Inc.* v. *FMC*, D.C. Circuit No. 97–1083.[3] Motion of APL to Dismiss the Proceeding ("Motion") at 1.[4] The Commission's Bureau of Enforcement ("BOE") filed a reply to the Motion. OOCL filed a Response to the Order to Show Cause. We address both the New Agreement and the Motion and Response in this Order.

Background

This proceeding was instituted pursuant to sections 10(c)(6) and 11, 46 U.S.C. app. 1710, to determine whether the Four Party Agreement should be found to be in violation of the 1984 Act, and be disapproved, canceled or modified accordingly. Citing the Commission's holding in *MSC*, the Commission ordered the parties to the Four Party Agreement to show cause why the Agreement should not be found to violate section 10(c)(6) inasmuch as Article 5.1 of the Four Party Agreement appears to effectively allocate U.S. government shippers of cargo via agreement members, subject to U.S. cargo preference laws, to APL, the sole U.S. carrier member of the Agreement.[5]

A. The New Agreement

The New Agreement was filed with the Commission on November 18, 1997, pursuant to section 5 of the 1984 Act, 46 U.S.C. app. section 1704,[6] and became effective on January 2, 1998.[7] The New Agreement authorizes the parties to charter space on each other's vessels on a reciprocal basis in the trades between ports and points in the U.S. served via U.S. Pacific Coast ports and ports and points in the Far East. The Agreement provides for the reciprocal sale, exchange or use of up to an annualized average of 6,000 TEUs of space per week by Hyundai on vessels operated by APL and MOL, and for use by APL and MOL of 7,000 TEUs of space per week on Hyundai vessels operating in the trade. The parties may also agree on feeder operations, sailing schedules, service frequency, port calls, addition or withdrawal of capacity, and the number, type and size of vessels they will use in the trade. No party may charter or sub-charter space aboard another party's vessel to a third-party carrier without the consent of the party operating the vessel.

Article 5.1 of the New Agreement, "Limited Grant," provides:

> Nor shall anything in this Agreement be construed as granting a right on the part of any party to carry aboard the vessel of any other party any cargoes subject to cargo preference laws of the country of registry of such other party's vessel or the country of citizenship of its owner.[8]

Article 5.1 further provides:

> If the (preceding) sentence * * * shall be determined to violate U.S. law with respect to U.S. preference cargoes by a court or agency of competent jurisdiction and any stay upon the order of such court or agency giving effect to such determination arising by reason of an appeal of such order shall have ceased to be effective, then the [preceding] sentence * * * shall be deemed severed with respect to U.S. preference cargoes,* * *.[9]

B. APL's Motion to Dismiss Docket No. 97–18

1. The Motion

APL repeatedly points out that the Show Cause Order "focused" on the second sentence of Article 5.1 of the Four Party Agreement, *i.e.*, the language quoted above at note 6. Motion at 2, 4. APL describes various "intervening events" which purportedly render the Order to Show Cause moot. APL states that, with respect to APL's participation, the Four Party Agreement has never been implemented and will never be implemented because APL intends to withdraw from that Agreement upon effectiveness of the New Agreement. APL also indicates that, in connection with the acquisition of APL by Neptune Orient Lines and the transfer of APL's ODS Agreements and Maritime Security Program ("MSP") contracts with MarAd to an independent vessel-operating company bareboat chartering the vessels, MarAd withdrew the letter of March 11, 1997 from the MarAd Secretary to APL Vice President Michael Murphy, granting APL a waiver under section 804(b) of the Merchant Marine Act, 1936 ("1936 Act"), 46 U.S.C. app. 1222(b), for APL's use of foreign-flag capacity.[10] Motion at 4–5. In addition, APL suggests that, as a consequence of the joint Department of Defense ("DOD")-MarAd Voluntary Intermodal Sealift Agreement ("VISA") program, "DOD *itself* now reserves its peacetime cargoes to U.S.-flag vessel operators that are participants in VISA, thus by regulation mandating the same result as the reservation provisions in the commercial agreements * * *." Motion at 5. Finally, APL submits that it would be appropriate to await the possibly "definitive guidance" of the D.C. Circuit on the issues raised in *MSC*, which "are relevant to the Show Cause order." *Id.* at 6.

APL's request that the proceeding be dismissed focuss on the parties' intention, stated by APL, that the agreement which was the subject of the Show Cause Order will be supplanted by the New Agreement and the narrow scope of the Commission's focus in that order, *i.e.*, the second sentence of Article 5.1, "which will then have no possible future significance." *Id.* at 7. APL recognizes, however, that the New Agreement retains the more general cargo reservation language, but contends that this provision was not identified as a basis of potential violation of section 10(c)(6) in the Show Cause Order. Thus, says APL,

> *if* the Commission should consider this provision to raise section 10(c)(6) issues that require Commission consideration, the appropriate context in which to evaluate those issues—which are necessarily broader than and different from those identified in the Commission's October 22, 1997 Order—would be with respect to an agreement in which that provision has continued effect.

Id. In the event the Commission elects not to dismiss the proceeding, or to institute a new proceeding relating to the New Agreements, APL requests that the time for filing of Respondents' opening submissions be extended to a date 30 days after final court action in *MSC*.

2. BOE's Reply to the Motion

BOE opposes the Motion on the ground that the issues in Docket No. 97–18 are not moot, and the proceeding should not be dismissed, until APL actually withdraws from the Four Party Agreement. BOE does not, however, oppose APL's request that the time for Respondents' initial filing be extended until 30 days after final action by the D.C. Circuit in *MSC*. Although BOE noted that the New Agreement was being considered by the staff, it did not further comment on the validity of the substantive representations of fact or law in the Motion.

C. OOCL's Response to Order to Show Cause

OOCL filed a Response to the Order to Show Cause, stating that it has given notice on December 1, 1997 of its intention to withdraw from the APAC Agreement and "hence will no longer be a party to (the Four Party) Agreement * * *." Response To Order To Show Cause ("Response") at 1. In its Response, OOCL moves that it be dismissed as a party to this proceeding. In the alternative, OOCL adopts the position of APL that the proceeding should be dismissed, or, in the alternative, if the proceeding is directed to a new agreement, that the time for Respondents' opening submissions be extended to 30 days after issuance of the D.C. Circuit's mandate in *MSC*.

OOCL suggests that the Commission take administrative notice of the filing of a successor agreement to the Four Party Agreement, of which OOCL is not a member. OOCL also joins in APL's representations that subsequent events have rendered the current proceeding moot.

D. The Maritime Administrator's Letter

It is not the FMC's role to decide on the validity of a MarAd order. *MSC*, 27 S.R.R. at 888. In initiating this proceeding, we noted that the Commission did not undertake to review the actions of the Maritime Administrator under his statutory authority, but to determine whether an agreement filed pursuant to the 1984 Act required action by MarAd under a statute which authorizes that agency to command carrier obedience to orders cognizable as "law of the United States," and whether it had so required the action specifically taken by the parties in this instance. We also directed the Commission's Secretary to invite the Acting Administrator to participate *amicus curiae* in this proceeding, which the Secretary did by letter of October 24, 1997.

The Acting Administrator advised the Commission on December 16, 1997, that APL ceased to be a party to an ODS contract as of November 12, 1997, and therefore is no longer subject to section 804 or the waiver and conditions imposed in MarAd's March 11, 1997 letter. The Acting Administrator further advised the Commission that, notwithstanding APL's request that MarAd impose a similar condition on APL's new charter arrangements, MarAd

> Did not * * * consider whether such a condition should be imposed under the various statutes MarAd administers as a result of an October 19, 1993 opinion by the Office of Legal Counsel (OLC) of the Department of Justice. That opinion * * * concluded that even though conditions contained in charter orders approved by MarAd impose legal obligations on the chartering parties, those obligations are not "otherwise required by law" for purposes of the second prong of section 10(c)(6), and that MarAd lacks authority to impose such conditions since, in OLC's view, they would violate the first prong of section 10(c)(6). The OLC opinion remains the unified position of the United States. Given this, MarAd does not believe that it should participate at this time as an *amicus* in the pending FMC proceeding.

Finally, the Acting Administrator, noting the filing of the New Agreement and APL's announced intention to withdraw from the Four Party Agreement, suggested that questions relating to the lawfulness of the Four Party Agreement are now moot and that, in the event the FMC decides nevertheless to continue the proceeding, the matter should be held in abeyance pending the decision of the D.C. Circuit on review of *MSC*.

Discussion

A. The New Agreement

The language of Article 5.1 of the New Agreement does not contain the language in the Four Party Agreement which was specifically cited by the Commission in its Show Cause Order. However, it does contain the following more general language which is also in the Four Party Agreement:

> Nor shall anything in this Agreement be construed as granting a right on the part of any party to carry aboard the vessel of any other party any cargoes subject to cargo preference laws of the country of registry of such other party's vessel or the country of citizenship of its owner.

While this language does not refer specifically to U.S.-government agency shippers, its general reference to "cargo preference laws" would certainly include those U.S. cargo preference laws which by their terms effectively allocate the Department of Defense, the Department of Agriculture, and other U.S. government departments and agencies to U.S.-flag vessels for all or a major portion of their shipments. Thus it would have the same effect as the more specific language of the Four Party

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[3] That case is consolidated with *Military Sealift Command and United States* v. *FMC*, No. 97–1084 and *American President Lines* v. *FMC*, No. 97–1085 which are, like No. 97–1083, petitions for review of the Commission's order in *Military Sealift Command* v. *Sea-Land Service, Inc.*, F.M.C. , 27 S.R.R. 874 (1996) ("*MSC*").

[4] The procedural schedule in Docket No. 97–18 was postponed by the Secretary on December 1, 1997 until further Commission notice or action on the Motion.

[5] In *MSC*, the Commission determined that a provision whose effect appears to be identical to that of Article 5.1 of the Four Party Agreement and Article 5.1 of the New Agreement constituted an allocation of shippers prohibited under section 10(c)(6). Upon complaint filed by the Military Sealift Command, Department of the Navy ("MSC"), a shipper of U.S. preference cargo, the Commission determined that the provision constituted an allocation of shippers prohibited by the first clause of section 10(c)(6). However, the Commission further determined that the provision was not unlawful because it was required by an order of the Maritime Administration, Department of Transportation ("MarAd") which constituted "law of the United States" within the meaning of the "except" clause of section 10(c)(6).

[6] Section 5 provides, in relevant part, that "(a) true copy of every agreement (with respect to activities subject to the Act as described in section 4) * * * shall be filed with the Commission * * *." Notice of the filing of the Agreement was published in the **Federal Register** on December 2, 1997, 62 FR 63716 (December 2, 1997).

[7] Section 6(c), 46 U.S.C. app. section 1705, provides, *inter alia*, that "(u)nless rejected by the Commission * * *, agreements . . . shall become effective * * * on the 45th day after filing, or on the 30th day after notice of the filing is published in the Federal Register, whichever day is later * * *."

[8] The language quoted above is also used in Article 5.1 of the Four Party Agreement, "Limited Grant," but it is preceded there by the provision that: (n)othing in this Agreement shall be construed as granting a right on the part of any other party to carry aboard the vessels of American President Lines, Ltd. cargoes shipped from or to the U.S. Department of Defense or Agriculture, or any subsidiary agencies thereof, or any other agency of the U.S. Government whose shipments are subject to cargo preference laws of the United States to the extent requiring and reserved for transportation aboard U.S.-flag vessels.

[9] The similar provision for severance of the cargo preference provision upon a final finding of unlawfulness in the Four Party Agreement is more limited.

[10] MarAd's waiver, for the remaining term of APL's ODS contract through December 1997 and for the full term of each of APL's nine operating agreements under the Maritime Security Program ("MSP"), included as "condition D" that:

> No space on APL's U.S.-flag vessels that are subject to space sharing agreements with any foreign operator shall be utilized for the carriage of cargo reserved for U.S.-flag vessels under any statute, resolution or regulation unless such cargo is carried pursuant to bills of lading or contracts of carriage issued to, or entered into with, the shipper of such cargo by or for a citizen of the United States.

Thus, MarAd was alleged to have required the provision of the Agreement allocating U.S. preference cargo to APL.

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Agreement: U.S. government entities which ship cargo via agreement members are allocated to APL.

As we noted in our Show Cause Order concerning the Four Party Agreement, the New Agreement presents issues similar to those decided by the Commission in *MSC*.[11] The VSAs involved in *MSC* required the approval of the Secretary of Transportation for the charter or transfer of a U.S.-flag vessel to a non-citizen under section 9 of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. 808, subject to the broad power to prescribe conditions—violations of which are crimes punishable by fines, imprisonment and vessel forfeiture—given the Secretary in section 41.[12] MarAd's approval of the charters of the U.S.-flag vessels and vessel space to foreign-flag carrier members of the VSAs were conditioned on the exclusion of the foreign-flag participants from use of the vessels to carry U.S. preference cargo.[13] The Commission specifically found that the conditional charter orders issued by MarAd pursuant to sections 9 and 41 of the 1916 Act had the force and effect of law because they were compulsory and the statute provided criminal penalties for noncompliance. *MSC*, 27 S.R.R. at 889.

The Commission's inquiry in *MSC* included the threshold conclusion that MarAd action under the 1916 Act was a prerequisite for the existence of the agreement at issue: the U.S.-flag vessels could not be chartered to the foreign carrier agreement parties without approval. *Id.* at 876. Here, as we noted in the Show Cause Order with respect to the Four Party Agreement, no similar nexus between the New Agreement and the statutory authority of the Maritime Administrator is evident. This case apparently does not involve the 1916 Act authority exercised by MarAd with respect to the space charter agreements at issue in MSC.

Until the November 12, 1997 consummation of its acquisition by Neptune Orient Line ("NOL"), APL operated U.S.-flag vessels under operating-differential subsidy contracts with MarAd pursuant to Title VI and sections 801 and 804 of the 1936 Act, 46 U.S.C. app. 1171 *et seq.* and 1211 and 1222.[14] MarAd's March 11, 1997 letter granted APL's request for a waiver under section 804(b) of 1936 Act for APL to own, operate or charter up to 18 foreign-flag vessels in line haul service between U.S. and foreign ports for the remaining term of APL's Operating Differential Subsidy Agreement ("ODSA"), Contract MA/MSB–417, through December 31, 1997 and for the full term of each of APL's nine operating agreements under the MSP, Contract Nos. MA/MSP–1 through MA/MSP–9, subject to the conditions imposed.[15] During FMC review of the Four Party Agreement, APL suggested that the March 11, 1997 MarAd letter should be considered "law of the United States" within the meaning of the "except clause" of section 10(c)(6). This argument was dealt with a length in the Show Cause Order. 62 FR 55262–55263, 27 S.R.R. 1306–1308.[16]

Moreover, as MarAd noted in promulgating its final regulations for the MSP, "[u]nlike the operating differential subsidy * * * program, the MSP has few restrictions on vessels operating in the U.S.-foreign commerce * * *." 62 FR 37733 (July 15, 1997). Under the provisions of the 1936 Act, as amended by the Maritime Security Act of 1996, no recourse to the Maritime Administration appears to be required for APL's participation in the Four Party Agreement or the New Agreement.[17]

MarAd's withdrawal of the March 11, 1997 section 804 waiver, which occurred after issuance of our Show Cause Order, would suggest that this argument no longer may be said to apply to APL's operations under the Four Party Agreement or the New Agreement. No colorable argument that the effective allocation of U.S. government shippers of cargo subject to the U.S. cargo preference laws by

[11] The vessel sharing agreements ("VSAs") involved in *MSC* provided for the use of twelve U.S.-flag vessels owned by a U.S. carrier to be operated on behalf of all of the parties to the agreements, and to replace all U.S.-flag and foreign-flag vessels previously operated by the parties in the covered trade. By chartering space on a U.S.-flag vessel, the foreign carriers gained eligibility to submit bids for military and other government preference cargoes reserved to U.S.-flag vessels. However, the foreign carriers agreed that they would not use any vessels or space chartered from the U.S. carrier for carriage of government preference cargo.

[12] Section 9(c) provides that, with certain exceptions not relevant here, "a person may not, without the approval of the Secretary of Transportation—

(1) sell, mortgage, lease, charter, deliver, or in any manner transfer, or agree to sell, mortgage, lease, charter, deliver, or in any manner transfer, to a person not a citizen of the United States, any interest in or control of a documented vessel * * * owned by a citizen of the United States * * *."

46 U.S.C. app. 808(c). The Secretary has delegated to the Maritime Administrator authority to carry out sections 9 and 41 of the 1916 Act. 49 CFR 166(a).

[13] MarAd acted under section 9 on each individual charter of a U.S.-flag vessel and incorporated conditions requiring restriction of U.S. preference cargo to the U.S.-flag carrier member of the agreements in each of the "charter orders" approving the arrangement, as required by section 41. MarAd has apparently dispensed with individualized approvals of charters of U.S.-flag vessels like those at issue in *MSC*. *See* 46 CFR 221.13(a)(1) (except as limited by provisions not relevant here, MarAd "hereby grants the approval required by [section 9(c) of the 1916 Act] for the * * * Charter * * * to a Noncitizen of an interest in or control of a Documented Vessel owned by a Citizen of the United States * * *.").

[14] Section 603, 46 U.S.C. app. 1173(a), provides that, upon approval of an application for ODS under section 601, the Secretary of Transportation may enter into a contract with the applicant "subject to such reasonable terms and conditions * * * as the Secretary * * * shall require to effectuate the purposes and policy * * *" of the Act. Section 804(a) provides that it is "unlawful for any contractor receiving an operating-differential subsidy under title VI * * * to own, charter, * * * or operate any foreign-flag vessel which competes with any American-flag service" on a route deemed essential by the Secretary, except as provided in section 804(b). Section 804(b), 46 U.S.C. app. 1222(b), authorizes the Secretary to waive the prohibition for a specific period of time "(u)nder special circumstances and for good cause shown * * *." The March 11, 1997 MarAd letter states that the Administrator has found "special circumstances" and "good cause" for granting the waiver and that the waiver granted "is subject to the * * * conditions and will terminate in the event any of the conditions are not fulfilled * * *."

[15] The Agreement parties do not represent that APL sought MarAd approval pursuant to section 9 for use of its U.S.-flag vessels in operations under the Agreement. The March 11, 1997 MarAd letter grants authority to APL only under section 804(b) of the 1936 Act, and does not refer to sections 9 and 41 of the 1916 Act of MarAd authority under those provisions.

[16] In any event, as we noted in the Show Cause Order, the Military Security Act of 1996, Pub. L. 104–239, 110 Stat. 3118, substantially amended the 1936 Act, creating the Military Security Fleet Program, 46 U.S.C. app. 1187, *et seq.* It is a condition for including any vessel in the Fleet that the owner or operator of the vessel enter into an operating agreement governed by the section's provisions with the Secretary of Transportation, which will be one-year, renewable contracts. Subsection (c) provides that "[a] contractor of a vessel included in an operating agreement under this part may operate the vessel in the foreign commerce of the United States without restriction, and shall not be subject to any requirement under" certain sections of the 1936 Act dealing with record keeping, equitable distribution of contracts among U.S. ports, and discrimination. 46 U.S.C. app. 1187a(c). Section 804 was substantially amended as well: a new subsection 804(f) provides that nothing in section 804(a) will preclude a contractor receiving ODS or MSP assistance from "entering into time or space charter or other cooperative agreements with respect to foreign-flag vessels * * *." 46 U.S.C. app. 1221(f)(5). The new section 804(f) was made effective as to carriers with existing ODS contracts on the date on which such a contractor entered into an MSP contract with MarAd. 46 U.S.C.A. app. 1222, Historical and Statutory Notes. APL entered into operating agreements with MarAd for nine vessels for January 21, 1997.

[17] It thus does not appear to be necessary for a U.S.-flag carrier with an MSP operating agreement to seek a waiver under section 804(b) in order to participate in a space charter or vessel sharing agreement. Nevertheless, on January 17, 1997, APL filed a request with MarAd for a waiver under section 804(b) of the 1936 Act for operation of up to 18 foreign-flag vessels. Notice of its filing was published January 29, 1997. 62 FR 4377 (January 29, 1997). The March 11, 1997 MarAd letter granted APL's request. The waiver provides that APL may "own, operate or charter" up to 18 foreign-flag vessels.

Article 5.1 of the New Agreement is "required by the law of the United States" as a result of the March 11, 1997 MarAd letter or other MarAd action under the 1936 Act appears to exist.

In discussion with the staff concerning Article 5.1 of the New Agreement, and in its Motion, however, APL advanced the view that the allocation issue was essentially moot as a result of various actions of MarAd and DOD, including significant policy changes by DOD relating particularly to the VISA program. Thus, in the Motion and in discussions concerning the New Agreement, APL has argued that the effect of the VISA program is to authorize or require the allocation provision of the New Agreement. As it noted in *MSC*, the Commission must, "[u]nder ordinary circumstances, * * * consider the text and any relevant analyses of the proffered law [said to create an exception to the prohibition of section 10(c)(6)], and render a conclusion as to whether the law commanded the actions that otherwise might fall within section 10(c)(6)'s prohibition clause." *MSC*, 27 S.R.R. at 888.

MarAd administers the VISA program under authority of section 708 of the Defense Production Act of 1950, as amended, 50 U.S.C. app. 2158. The VISA program provides for agreements entered into between MarAd and the operators of U.S.-flag vessels and establishes a "prioritized order for utilization of commercial sealift capacity to meet DOD peacetime and contingency requirements * * *." 62 FR 6840 (February 13, 1997). The program emphasizes use of U.S.-flag vessel capacity operated by VISA participants or available to VISA participants under VSAs for the carriage of DOD peacetime cargo and assures the availability of U.S.-flag capacity for DOD contingency use. Although the program establishes priorities under which DOD will call upon the operators of U.S-flag vessels to provide capacity, by awarding contracts and booking cargo, neither the MarAd rules for the VISA program itself nor any DOD policy or contract provision thus far called to our attention appears to reserve aggregate DOD peacetime cargo to VISA participants. No prohibition against the use of the vessel capacity of a VISA participant made available to a non-U.S. carrier member of a VSA for carriage of DOD cargo is contained in the regulations promulgated by MarAd. Moreover, those regulations and the VISA program itself relate only to cargo shipped by DOD. Other U.S. government departments and agencies, which are also subject to the U.S. cargo preference laws, are unaffected by the VISA program. These shippers would be allocated to APL by the terms of Article 5.1 of the New Agreement. No requirement for the exclusion of agreement parties other than APL from bidding on DOD or other government-shipped cargo arises from the VISA regulations or other U.S. law, or the DOD contracts under VISA.

The parties apparently recognize that the allocation issues raised by the New Agreement would most appropriately be addressed in a formal proceeding: both APL's Motion and OOCL's Response suggest such a course of action. In view of the possibility that Agreement No. 203–011596 may be merely an interim measure to see the parties through the restructuring of their various alliances, and may be replaced by yet another version of the parties' space sharing arrangement, we find it most appropriate to address these issues in the context of the existing proceeding, Docket No. 97–18, rather than to initiate a new proceeding.

Therefore, the parties to the New Agreement are ordered to show cause why it does not violate section 10(c)(6) for the same reasons which prompted us to institute a proceeding against the Four Party Agreement: A *prima facie* case appears to exist that the provision is unlawful and is not otherwise required by the law of the United States. The parties to the New Agreement are ordered to show cause why Article 5.1 of the New Agreement should not be disapproved, canceled or modified, as part of this proceeding.

B. The Motion and Response

We agree with BOE that dismissal of the Show Cause proceeding with respect to the Four Party Agreement is premature. Termination of this proceeding with respect to the Four Party Agreement may be proper when and if the Four Party Agreement itself is terminated. However, it does not appear at this time that either APL's or OOCL's cessation of operations under the Four Party Agreement will occur simultaneously with the effectiveness of the New Agreement. We may act to modify the proceeding at any time it appears appropriate, with or without further request of the parties.

APL's further suggestion that the Commission delay action on this issue until 30 days after the D.C. Circuit has acted in *MSC* is without merit. This would effectively stay the Commission's determination that the allocation of preference cargo in an agreement permitting the charter of space on U.S.-flag vessels by foreign lines constitutes a violation of section 10(c)(6). The Commission's determination of this legal issue remains in effect, no stay having been entered by the Commission or any court of competent jurisdiction.[18] As we noted in *MSC*, an order by an administrative agency is presumed to be valid until such time as it is overturned by a court of competent jurisdiction. *See, e.g., Citizens to Preserve Overton Park, Inc.* versus *Volpe*, 401 U.S. 402, 415–16 (1971); *Motor Vehicle Manufacturers Association of the United States, Inc.* versus *Ruckelshaus*, 719 F.2d 1159, 1164 (D.C. Cir. 1983).

Accordingly, the appeal of the *MSC* decision provides no basis to permit the effectiveness, without investigation, of allocation language based on U.S. cargo preference laws having the same or similar effects to that found in *MSC* to constitute a violation of section 10(c)(6). Therefore, the Motion is denied with respect to delay of the filing of initial submissions until 30 days after issuance of the decision in *MSC* by the D.C. Circuit. A new procedural schedule for the conduct of this proceeding is established below.

As a result of MarAd's withdrawal of the March 11, 1997 section 804 waiver, no question remains as to whether that letter constitutes "law of the United States," within the meaning of section 10(c)(6), requiring the cargo preference reservation in either of the Agreements. It would therefore appear that no basis exists as a matter of law or of fact at this time for dismissal of the existing proceeding with respect to the Four Party Agreement.

Now therefore, it is ordered, that pursuant to section 11 of the Shipping Act of 1984, American President Lines, Ltd., Mitsui O.S.K. Line, Ltd., and Hyundai Merchant Marine, Ltd. show cause why they should not be found to have violated section 10(c)(6) of the Shipping Act of 1984 by prohibiting specific carriers that are parties to the APL/MOL/HMM Reciprocal Slot Exchange Agreement, Agreement No. 203–011596, from soliciting cargo from a particular shipper or shippers;

It is further ordered, that American President Lines, Ltd., Mitsui O.S.K. Line, Ltd., and Hyundai Merchant Marine, Ltd. show cause why an order should not be issued disapproving, canceling or modifying the APL/MOL/HMM Reciprocal Slot Exchange Agreement, Agreement No. 203–011596;

It is further ordered, that the Motion to Dismiss Docket No. 97–18 of American President Lines, Ltd. is denied;

[18] No stay was requested or suggested as necessary by any party in the context of the *MSC* proceeding.

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It is further ordered, that the Motion of Orient Overseas Container Lines, Inc. to be dismissed as a party to Docket No. 97–18 is denied;

It is further ordered, that any person having an interest and desiring to intervene in this proceeding in connection with the APL/MOL/HMM Reciprocal Slot Exchange Agreement, Agreement No. 203–011596, shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's rules of practice and procedure, 46 CFR 502.72. Such petition shall be accompanied by the petitioner's memorandum of law and affidavits of fact, if any, and shall be filed no later than the day fixed below;

It is further ordered, that affidavits of fact and memoranda of law addressing issues with respect to both the Four Party Agreement and the New Agreement shall be filed by Respondents and any intervenors in support of Respondents no later than February 20, 1998;

It is further ordered, that reply affidavits and memoranda of law addressing issues with respect to both the Four Party Agreement and the New Agreement shall be filed by the Bureau of Enforcement and any intervenors in opposition to Respondent no later than March 20, 1998;

It is further ordered, that rebuttal affidavits and memoranda of law addressing issues with respect to both the Four Party Agreement and the New Agreement shall be filed by Respondents and intervenors in support no later than April 3, 1998;

It is further ordered, that, should any party believe that an oral argument is required, that party must submit a request specifying the reasons therefore and why argument by memorandum is inadequate to present the party's case. Any request for oral argument shall be filed no later than April 3, 1998;

It is further ordered, that notice of this Order to Show Cause be published in the **Federal Register**, and that a copy thereof be served upon Respondents;

It is further ordered, that all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's rules of practice and procedure, 46 CFR 502.118, as well as being mailed directly to all parties of record;

Finally, it is ordered, that pursuant to the terms of Rule 61 of the Commission's rules of practice and procedure, 46 CFR 502.61, the Order to Show Cause served October 17, 1997 in this proceeding is amended to require that the final decision of the Commission in this proceeding shall be issued by July 3, 1998.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–1291 Filed 1–20–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Submission to OMB Under Delegated Authority

Background

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Chief, Financial Reports Section--Mary M. McLaughlin--Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829).

OMB Desk Officer--Alexander T. Hunt--Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860).

Final approval under OMB delegated authority of the extension for three years, with revision, of the following report:

1. Report title: Government Securities Dealers Reports
Agency form number: FR 2004A, FR 2004B, FR 2004C, FR 2004SI, FR 2004WI
OMB Control number: 7100-0003
Frequency: weekly and on occasion
Reporters: primary dealers in U.S. government securities
Annual reporting hours: 11,817
Estimated average hours per response: 1.0 (FR 2004A, B, C, SI); 0.25 (FR 2004WI)
Number of respondents: 39
Small businesses are not affected.

General description of report: This information collection is voluntary (12. U.S.C. 248(a)(2), 353-359, and 461) and is given confidential treatment (5 U.S.C. 552 (b)(4)).

Abstract: This group of reports is used to collect data on positions, transactions, and financing activity in the government securities market from primary dealers in U.S. government securities. The Federal Reserve uses the data to monitor the condition of the U.S. government securities market in its surveillance of the market and to assist the U.S. Department of the Treasury.

The revisions are effective beginning with the January 28, 1998, report date. On the FR 2004A and FR 2004B a line has been added to report position and transaction volumes with respect to Treasury Inflation-Index Securities. On the FR 2004A and FR 2004B four lines have been added to provide greater detail regarding the dealers' federal agency securities positions and transaction volumes. On the FR 2004C, two columns of matched-book financing transactions have been deleted. The revisions, on a net basis, have no effect on the current annual reporting burden.

The Board of Governors received one comment, from The Bond Market Association, which strongly endorsed the revisions.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following reports:

1. Report title: Domestic Branch Notification
Agency form number: FR 4001
OMB control number: 7100-0097
Frequency: on occasion
Reporters: state member banks
Annual reporting hours: 201
Estimated average hours per response: 30 minutes for expedited notifications; 1 hour for nonexpedited notifications
Number of respondents: 316 expedited, 43 nonexpedited
Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 321) and is not given confidential treatment.

Abstract: The Federal Reserve System requires a state member bank to file a notification whenever it proposes to establish a domestic branch. There is no formal reporting form; banks notify the Federal Reserve by letter prior to making the proposed investment. The Federal Reserve uses the information to fulfill its statutory obligation to obtain public comment on such proposals before acting on them, and to otherwise supervise state member banks.

2. Report title: Investment in Bank Premises Notification
Agency form number: FR 4014
OMB control number: 7100-0139
Frequency: on occasion
Reporters: state member banks
Annual reporting hours: 8
Estimated average hours per response: 30 minutes

Number of respondents: 15
Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 371d) and is not given confidential treatment.

Abstract: The Federal Reserve System requires a state member bank to file a notification whenever it proposes to make an investment in bank premises that results in its total bank premises investment exceeding its capital stock and surplus or, if the bank is well capitalized and in good condition, exceeding 150 percent of its capital stock and surplus. There is no formal reporting form; banks notify the Federal Reserve by letter prior to making the proposed investment. The Federal Reserve uses the information to fulfill its statutory obligation to supervise state member banks.

3. Report title: Reports Related to Securities of State Member Banks as Required by Regulation H
Agency form number: N/A
OMB control number: 7100-0091
Frequency: on occasion
Reporters: state member banks
Annual reporting hours: 2,146
Estimated average hours per response: 5.11 hours
Number of respondents: 30
Small businesses are not affected.

General description of report: This information collection is mandatory (15 U.S.C. 78l(i)) and is not given confidential treatment.

Abstract: The Federal Reserve's Regulation H requires certain state member banks to submit information related to their securities to the Board of Governors of the Federal Reserve System on the same forms that bank holding companies and nonbank entities use to submit similar information to the Securities and Exchange Commission. The information is used primarily for public disclosure and is available to the public upon request.

Final approval under OMB delegated authority for the elimination of certain requested information, without extension, from the following reports:

1. Report title: Weekly Report of Assets and Liabilities for Large Banks
Agency form number: FR 2416
OMB control number: 7100-0075
Frequency: weekly
Reporters: U.S. commercial banks
Annual reporting hours: The change is estimated to reduce the annual reporting burden from 46,592 hours to 44,928 hours.
Estimated average hours per response: The change is estimated to reduce the burden per response from 7 hours to 6.75 hours.
Number of respondents: 128
Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. §§ 225(a) and 248(a)(2)) and is given confidential treatment (5 U.S.C. § 552(b)(4) and (8)).

Abstract: The Board has eliminated two items from the FR 2416, the large domestic bank series of the three voluntary weekly condition/bank credit reports. The FR 2416 is a detailed balance sheet report that is collected as of each Wednesday from a sample of about 128 large U.S.-chartered commercial banks. All three reports, together with data from other sources, are used to construct weekly estimates of bank credit, sources and uses of bank funds, and a balance sheet for the banking system as a whole. These estimates also are used in constructing the bank credit component of the domestic non-financial debt aggregate monitored by the Federal Open Market Committee.

The Board has eliminated two items, "Commercial paper outstanding issued by related institutions of the reporting bank, issued through commercial paper brokers and dealers" (Memorandum item 7.a) and "Commercial paper outstanding issued by related institutions of the reporting bank, issued directly" (Memorandum item 7.b). The information collected in these two items is now obtained by the Federal Reserve from another source, eliminating the need to maintain them on the FR 2416. The revisions are effective immediately.

2. Report title: Consolidated Financial Statements for Bank Holding Companies
Agency form numbers: FR Y-9C, FR Y-9LP, FR Y-9SP, FR Y-9CS
OMB control number: 7100-0128
Frequency: quarterly and semi-annual
Reporters: bank holding companies
Annual reporting hours: The change to the FR Y-9C is estimated to reduce the total annual reporting burden for these reports from 262,818 hours to 261,361.
Estimated average hours per response: ranges from 5 to 1,250 hours
Number of respondents: 7,430
Small businesses are affected.

General description of report: The information collection is mandatory (12 U.S.C. 1844(b) and (c) and 12 CFR 225.5(b)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form. Data reported on the FR Y-9C, Schedule HC-H, Column A, requiring information on "assets past due 30 through 89 days and still accruing" and memoranda item 2 are confidential pursuant to Section (b)(8) of the Freedom of Information Act 5 U.S.C. 552(b)(8).

Abstract: The Board eliminated the reporting requirements of Schedule HC-J on the Consolidated Financial Statements for Bank Holding Companies (FR Y-9C) effective for the fourth quarter of 1997. The FR Y-9C consists of standardized financial statements similar to the commercial bank Report of Condition and Income (FFIEC 031-034; OMB No. 7100-0036). The FR Y-9C consolidated financial statements are currently filed by top-tier bank holding companies with total consolidated assets of $150 million or more and by lower-tier bank holding companies that have total consolidated assets of $1 billion or more. In addition, all multibank bank holding companies with debt outstanding to the general public or engaged in certain nonbank activities, regardless of size, must file the FR Y-9C.

On August 27, 1997, the Board announced in the **Federal Register**[1] modifications to the prudential limits or firewalls that currently apply to bank holding companies engaged in securities underwriting and dealing activities through section 20 subsidiaries; the modifications are effective October 31, 1997. The Board announced that as one of its modifications to the firewalls, it was eliminating the required capital deductions that related to the section 20 subsidiary in determining capital adequacy. The Board stated that "the capital deductions (and resulting deconsolidation for regulatory capital purposes) are inconsistent with generally accepted accounting principles (GAAP) and have therefore created confusion and imposed costs by requiring bank holding companies to prepare financial statements on two bases." Therefore, the Board has granted prompt reporting relief to bank holding companies with section 20 subsidiaries by eliminating Schedule HC-J from the FR Y-9C effective with the December 31, 1997, reporting date.

Board of Governors of the Federal Reserve System, January 15, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98–1353 Filed 1–20–98; 8:45 am]

BILLING CODE 6210–01–F

[1] 62 FR 45295 (1997).

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FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 4, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Michael W. Lowe, Jasper, Georgia; to acquire additional voting shares of Crescent Banking Company, Jasper, Georgia, and thereby indirectly acquire voting shares of Crescent Bank & Trust Company, Jasper, Georgia.

Board of Governors of the Federal Reserve System, January 15, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–1389 Filed 1–20–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 13, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. First National Corporation, Orangeburg, South Carolina; to acquire 100 percent of the voting shares of Florence County National Bank (in organization), Florence, South Carolina.

2. Mercantile Bankshares Corporation, Baltimore, Maryland; to acquire 100 percent of the voting shares of Marshall National Bank and Trust Company, Marshall, Virginia.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Lincoln Interim Corporation, Lincolnton, Georgia; to become a bank holding company by acquiring 62 percent of the voting shares of Lincoln Bancshares, Inc., Lincolnton, Georgia, and thereby indirectly acquire Farmers State Bank, Lincolnton, Georgia.

Board of Governors of the Federal Reserve System, January 15, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–1388 Filed 1–20–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 4, 1998.

A. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. National City Corporation, Cleveland, Ohio; to acquire Fort Wayne National Life Insurance Company, Phoenix, Arizona, and thereby engage in credit life and disability insurance activities, pursuant to § 225.28(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 15, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–1387 Filed 1–20–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, January 26, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 16, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–1547 Filed 1–16–98; 3:24 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 12–8–97 AND 12–19–97

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
EFTC Corporation, AlliedSignal Inc., AlliedSignal Avionics Inc	98–0684	12/09/97
Chris-Craft Industries, Inc., Barry Diller, Silver King Broadcasting of Maryland, Inc., SKMD	98–0690	12/09/97
David Brown Group, PLC, Ordway Family Voting Trust, Union Pump Company	98–0702	12/09/97
Photronics, Inc., Motorola, Inc., Motorola, Inc	98–0525	12/10/97
ACMA Limited, Access Beyond, Inc., Access Beyond, Inc	98–0572	12/10/97
OMI Corp, Marine Transport Lines, Inc., Marine Transport Lines, Inc	98–0574	12/10/97
The Virginia Insurance Reciprocal, Healthcare Providers Group, Healthcare Providers Group	98–0611	12/10/97
Newcourt Credit Group Inc., Aldersgate Capital Limited, AT&T Capital Corporation	98–0641	12/10/97
ACE Limited, Xerox Corporation, Westchester Specialty Group, Inc	98–0673	12/10/97
Reliance Steel & Aluminum Co., Stephen E. Almond, Phoenix Corporation	98–0680	12/10/97
American United Life Insurance Company, Indianapolis Life Insurance Company, Indianapolis Life Insurance Company	98–0686	12/10/97
Sealaska Corporation, TriQuest Corporation, TriQuest Corporation	98–0782	12/10/97
Standard Motor Products, Inc., Cooper Industries, Inc., Moog Automatives, Inc	97–3447	12/11/97
Proffitt's Inc., Carson Pirie Scott & Co., Carson Pirie Scott & Co	98–0559	12/11/97
ING Groep N.V., Bank Brussels Lambert N.V., Bank Brussels Lambert N.V	98–0603	12/11/97
Central Garden & Pet Company, Herbert R. Axelrod and Evelyn Axelrod, T.F.H. Publications, Inc	98–0612	12/11/07
Tetra Tech, Inc., Halliburton Company, Brown & Root, Inc.; Halliburton NUS Corporation	98–0658	12/11/97
Providence Equity Partners, L.P., Jud L. Sedwick Grandchildrens Trust, FaciliCom International Holdings, L.L.C	98–0666	12/11/97
R.C. Loudermilk, Sr., Ford Motor Company, RentMart to Own, Inc	98–0677	12/11/97
PCD Inc., Siebe plc, Wells Electronics, Inc	98–0681	12/11/97
Schering-Plough Corporation, Zonagen, Inc., Zonagen, Inc	98–0707	12/11/97
MMI Products, LLC, The Burke Group, LLC, The Burke Group, LLC	98–0711	12/11/97
Cargill, Incorporated, Thomas R. Testwuide, Sr., Schreier Malting Company	98–0714	12/11/97
AAR Corp., Aerospatiale Societe Nationale Industrielle, AVSCO Aviation Service Corporation	98–0735	12/11/97
Nationwide Mutual Insurance Company, TIG Holdings, Inc., TIG Countrywide Insurance Company	98–0742	12/11/97
Lhoist S.A. (a French corporation), National Refractories Employee Stock Ownership Trust, National Refractories & Minerals Corporation	98–0744	12/11/97
Joseph Littlejohn & Levy Fund II, LP, George Hofmeister, American Commercial Industries, Inc	98–0746	12/11/97
MBIA Inc., CapMac Holdings, Inc., CapMac Holdings, Inc	98–0752	12/11/97
Warburg, Pincus Ventures, LP, Healthcare Capital Corp., Healthcare Capital Corp	98–0754	12/11/97
Henkel KGaA, John J. Kahl, Jr., Manco, Inc	98–0768	12/11/97
Cypress Merchant Banking Partners, LP, General Host Corporation, General Host Corporation	98–0775	12/11/97
Wingate Partners II, LP, National Spirit Group, Ltd., National Spirit Group, Ltd	98–0780	12/11/97
Nigel Doughty, International Paper Company, International Paper Company	98–0781	12/11/97
Starwood Lodging Trust, Westin Hotels & Resorts Worldwide, Inc., Westin Hotels & Resorts Worldwide, Inc	98–0794	12/11/97
Starwood Lodging Corporation, Westin Hotels & Resorts Worldwide, Inc., Westin Asia Management Company, et. al	98–0795	12/11/97
Marswood Investors, L.P., Starwood Lodging Trust, Starwood Lodging Trust	98–0796	12/11/97
WHWE L.L.C., Starwood Lodging Trust, Starwood Lodging Trust	98–0797	12/11/97
The Southern Company, Unicom Corporation, Commonwealth Edison Company of Indiana, Inc	98–0812	12/11/97
MC Equities, Inc., Consolidaire Enterprises, Inc., Consolidaire Enterprises, Inc	98–00110	12/12/97
Waste Management, Inc., Browning-Ferris Industries, Inc., BFI, Inc.; Browning-Ferris Industries of Illinois, Inc	98–0413	12/12/97
New England Business Service, Inc., CSS Industries, Inc., Rapidforms, Inc	98–0739	12/12/97
Browning-Ferris Industries, Inc., Waste Management, Inc., Waste Management, Inc	98–0415	12/15/97
Pediatric Services of America, Inc., ChoicePoint, Inc., ChoicePoint Services, Inc	98–0547	12/15/97
Central Garden & Pet Company, Mr. William D. Engler, Jr., Kaytee Products Incorporated	98–0654	12/15/97
FPA Medical Management, Inc., New York Life Insurance Company, Avanti Health Systems of Texas, Inc	98–0676	12/15/97
Texas Industries, Inc., Ssangyong Cement Industrial Co., Ltd., Riverside Cement Company	98–0733	12/15/97
Trustmark Insurance Company, Core Source, Inc., CoreSource, Inc	98–0803	12/15/97
Suez-Lyonnaise des Eaux, Northeast Energy Associates, Northeast Energy Associates	98–0823	12/15/97

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TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 12–8–97 AND 12–19–97—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
ConAgra, Inc., Hester Industries, Inc., Hester Industries, Inc	98–0825	12/15/97
Suez-Lyonnaise des Eaux, North Jersey Energy Associates, North Jersey Energy Associates	98–0841	12/15/97
FPL Group, Inc., North Jersey Energy Associates, North Jersey Energy Associates	98–0842	12/15/97
The Washington Post Company, Reed International P.L.C., Reed Elsevier p.l.c	98–0845	12/15/97
CUC International, HFS Incorporated, HFS Incorporated	97–2467	12/16/97
American Pacific Corporation, Kerr-McGee Corporation, Kerr-McGee Chemical Corporation	98–0295	12/16/97
Mannesmann AG, Philips Electronics N.V., Phillips Car Systems Holding Company	98–0753	12/16/97
Dean Foods Company, Maplehurst Farms, Inc., Maplehurst Farms, Inc	98–0773	12/16/97
Conmed Corporation, Bristol-Myers Squibb Company, Linvatec Corporation	98–0783	12/16/97
Giant Industries, Inc., PSG Limited Partnership, PSG Limited Partnership	98–0818	12/16/97
FPL Group, Inc., Northeast Energy Associates, Northeast Energy Associates	98–0824	12/16/97
PRIMEDIA Inc., Alexander C. Lange, Pictonal, Inc	98–0829	12/16/97
Bistol-Meyers Squibb Company, Thomas M. Redmond, Redmond Products, Inc.; Redmond Products International	98–0840	12/16/97
The Alpine Group, Inc., PARFINANCE, American Premier Holdings, Inc	98–0846	12/16/97
Antonia Axtson Johnson, NetEdge Systems, Inc., NetEdge Systems, Inc	98–0849	12/16/97
TCG-Prime Communications, Inc., SBC Communications, Inc., SBC Media Ventures, Inc	98–0851	12/16/97
The Trustees of Princeton University, KMC Telecom Holdings, Inc., KMC Telecom Holdings, Inc	98–0852	12/16/97
Willis Stein & Partners, LP, CUC International Inc., Interval Holdings, Inc.; CUC Vacation Exchange, Inc	98–0915	12/16/97
Latin Communications Group, Inc., American Radio Systems Corporation, American Radio Systems License Corp	97–2055	12/17/97
Newport News Shipbuilding, Inc., Continental Maritime Industries, Inc., Continental Maritime Industries, Inc	98–0600	12/17/97
Le Carbone Larraine S.A. (a French Company), Primus Capital Fund II Limited Partnership, AstroCosmos Metallurgical, Inc	98–0638	12/17/97
BEC Group, Inc., ILC Technology, Inc., ILC Technology, Inc	98–0656	12/17/97
Health Partners, Inc., HPI-Ramsey, Ramsey Clinic Associates	98–0669	12/17/97
Keystone Automotive Industries, Inc., Leon Schigiel, Inteuro Parts Distributors, Inc	98–0693	12/17/97
Leon Schigiel, Keystone Automotive Industries, Inc., Keystone Automotive Industries, Inc	98–0694	12/17/97
Lowell W. Paxson, George S. Flinn, Jr., Flinn Broadcasting Corporation	98–0696	12/17/97
Intrawest Corporation (a Canadian company), David & Roma McCoy, Mammoth Mountain Ski Area	98–0699	12/17/97
Jannock Limited, Code, Hennessy & Simmons II, L.P., Gulf States Manufacturers, L.P., Associated Building	98–0703	12/17/97
N.V. Koninklije Nederlandsche Petroleum Maatschappij, Dixie Pipeline Company, Dixie Pipeline Company	98–0709	12/17/97
R&B Falcon Corporation, Wiley J. Falgout, Falgout Marine, Inc., Falgout Brothers, Inc., Canbe	98–0712	12/17/97
Sheldon G. Adelson, Colorbus, Inc., Colorbus, Inc	98–0779	12/17/97
Bureau of National Affairs, Inc. (The), MBS Trust, The Institute of Management and Administration, Inc	98–0854	12/17/97
Legrand S.A., Stephen A. Orlando, Ortronics, Inc	98–0858	12/17/97
Comfort Systems USA, Inc., Salvatore Fichera, F&G Mechanical Corp	98–0863	12/17/97
International Wireless Communications Holdings, Inc., Radio Movil Digital Americas, Inc., Radio Movil Digital Americas, Inc	98–0870	12/17/97
Telecom Towers, Inc., Arch Communications Group, Inc., The Westlink Company, USA Mobile Communications, Inc. II	98–0871	12/17/97
Cortec Group Fund II, L.P., Raytheon Company, Switchcraft, Inc	98–0879	12/17/97
Leggett & Platt, Incorporated, Darrell C. Steagall, Cumulus Fibres, Inc	98–0899	12/17/97
Commercial Union plc, The Tokio Marine and Fire Insurance Company, Ltd., Houston General Insurance Company	98–0740	12/18/97
SmarTalk TeleServices, Inc., American Express Company, American Express Telecom, Inc	98–0766	12/18/97
Gordon & Morris Investment Partnership, L.P., Gordon S. Lang (a resident of Canada), CCL Industries Inc	98–0801	12/18/97
Great American Management and Investment, Inc., Androck Fund, L.P., FPM, L.P	98–0830	12/18/97
The Clayton & Dubilier Private Equity Fund IV LP, William C. Eacho, III, Atlantic Food Services, Inc	98–0705	12/19/97
Republic Industries, Inc., Ronald M. Salhany, Coastal Cadillac, Inc., and assets of S&D Real Estate	98–0761	12/19/97
Republic Industries, Inc., Richard Roth Dimmitt, Coastal Cadillac, Inc., and assets of S&D Real Estate	98–0762	12/19/97
HFS Incorporated, Jackson Hewill Inc., Jackson Hewitt Inc	98–0776	12/19/97
Micro Focus Group, plc, Dr. S. Bing Yao and Mrs. Lien C. Yao, XDB System, Inc	98–0778	12/19/97
Advanced Lighting Technologies, Inc., Alan J. Ruud, Ruud Lighting, Inc	98–0831	12/19/97
Neff Corp, Bruce E. Richbourg, Richbourg's Sales & Rentals, Inc	98–0838	12/19/97
KKR 1996 Fund, L.P., Phelps Dodge Corporation, Accuride Corporation	98–0855	12/19/97
GSPC Holdings, Inc., Fold-Pak Corporation, Fold-Pak Corporation	98–0860	12/19/97
Hicks, Muse, Tate & Furst Equity Fund III, L.P., Oscar I Corporation, Oscar I Corporation	98–0869	12/19/97
Budget Group, Inc., Cruise America, Inc., Cruise America, Inc	98–0873	12/19/97
Fortis AG S.A. (a Belgian company), The Liberty Corporation, Pierce National Life Insurance Company	98–0875	12/19/97
Fortis AMEV N.V. (a Netherlands company), The Liberty Corporation, Pierce National Life Insurance Company	98–0876	12/19/97
WPG Corporate Development Associates V, L.P., ATC Group Services, Inc., ATC Group Services, Inc	98–0883	12/19/97
Richard D. McCormick, U S West, Inc., U S West, Inc	98–0884	12/19/97
General Electnc Company, Richard B. Templer, Trailer Leasing Company, div. of Kellers Systems, Inc	98–0885	12/19/97
TAG Group, S.A., Aviation Methods, Inc., Aviation Methods, Inc	98–0886	12/19/97
Enhance Financial Services Group, Inc., Enhance Financial Services Group, Inc., Singer Asset Finance Company, LLC	98–0889	12/19/97
The Beacon Group III-Focus Value Fund, LP, Intek Information, Inc., Intek Information, Inc	98–0890	12/19/97
Sequa Corporation, AlliedSignal Inc., Bendix-Atlantic Inflator Company	98–0901	12/19/97
NOVA Corporation, MBNA Corporation, MBNA America Bank, NA	98–0904	12/19/97
John N. Irwin, III, James G. DeMello, Acushnet Rubber Company, Inc., Acushnet (Thailand) Ltd	98–0905	12/19/97

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 12–8–97 AND 12–19–97—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Iowa Farm Bureau Federation, American Equity Investment Life Holdings Company, American Equity Investment Life Holdings Company	98–0906	12/19/97
Sonat Inc., Selim K. Zilkha, Zilkha Energy Company	98–0909	12/19/97
Selim K. Zilkha, Sonat Inc., Sonat Inc	98–0910	12/19/97
J.W. Childs Equity Partners, LP, Universal Hospital Services, Inc., Universal Hospital Services, Inc	98–0911	12/19/97
Enova Corporation, Peter M. Way, WEHCO, Inc	98–0913	12/19/97
Pacific Enterprises, Peter M. Way, WEHCO, Inc	98–0914	12/19/97
AB Volvo (a Swedish company), AB Volvo, Volvo Penta Marine Products LP	98–0916	12/19/97
PNC Bank Corp., Friedman Billings Ramsey Group, Inc., Friedman Billings Ramsey Group, Inc	98–0917	12/19/97
Iowa Farm Bureau Federation, The Mutual Life Assurance Company of Canada, Continental Western Life Insurance Company	98–0919	12/19/97
Lowell W. Paxson, ValueVision International, Inc., VVI Seattle, Inc.; VVILPTV, Inc.; VVI Spokane, Inc	98–0933	12/19/97
Michael Zilkha, Sonat Inc., Sonat Inc	98–0943	12/19/97

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–1365 Filed 1–20–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of The Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 12–22–97 AND 12–31–97

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
LucasVarity plc, Varga Participacoes Ltda., Freios Varga, S.A	98–0687	12/22/97
John T. Kim Trust of December 31, 1987, Amkor Technology, Inc., Amkor Technology, Inc	98–0720	12/22/97
David D. Kim Trust of December 31, 1987, Amkor Technology, Inc., Amkor Technology, Inc	98–0721	12/22/97
Susan Y. Kim Trust of December 31, 1987, Amkor Technology, Inc., Amkor Technology, Inc	98–0722	12/22/97
US Airways Group, Inc., Citicorp, Shuttle, Inc. (d/b/a USAir Shuttle, Inc. or US Airways)	98–0757	12/22/97
Republic Industries, Inc., John H. Dobbs, Jr., Springhill Toyota, Inc., et. al	98–0758	12/22/97
Republic Industries, Inc., James K. Dobbs, III, Hoover Toyota, Inc., et. al	98–0759	12/22/97
Republic Industries, Inc., Dobbs Brothers Buick-Pontiac, Inc., Dobbs Brothers Buick-Pontiac, Inc	98–0760	12/22/97
United HealthCare Corporation, Medicode (Delaware), Inc., Medicode, Inc	98–0788	12/22/97
Dasault Systemes SA, Deneb Robotics, Inc., Deneb Robotics, Inc	98–0799	12/22/97
Resource Bancshares Mortgage Group, Inc., Resource Bancshares Corporation, Resource Bancshares Corporation	98–0813	12/22/97
Freedom Communications, Inc., Scholastic Corporation, Scholastic Inc	98–0877	12/22/97
William J. Curtis, Scholastic Corporation, Scholastic Inc	98–0878	12/22/97
Green Equity Investors II, LP, Hollinger, Inc. (a Canadian company), Hollinger International Inc	98–0880	12/22/97
Citizen Utilities Company, The Voting Trust D&E Communications, Inc., D&E Communications, Inc	98–0891	12/22/97
Ford Motor Company, Aldersgate Capital Limited (an English company), AT&T Automotive Services, Inc	98–0895	12/22/97
Citation Corporation, Dycast, Inc., Dycast, Inc	98–0896	12/22/97
RLC Industries Co., RLC Industries Co., R–H Timber Co., LLC	98–0935	12/22/97
John C. Hampton, RLC Industries Co., R–H Timber Co., LLC	98–0936	12/22/97
Foamex International Inc., Hicks, Muse, Tate and Furst Equity Fund II, L.P., Crain Holdings Corp	98–0605	12/23/97
TRW Inc., BDM International Inc., BDM International Inc	98–0710	12/23/97
The AES Corporation, Edison International, Southern California Edison Company	98–0804	12/23/97
NGC Corporation, Edison International, Southern California Edison Company	98–0809	12/23/97
Northern States Power Company, Edison International, Southern California Edison Company	98–0810	12/23/97
Huston Industries, Incorporated, Edison International, Southern California Edison Company	98–0811	12/23/97
University of Pittsburgh Medical Center System, McKeesport Area Health Care Systems, McKeesport Area Health Care Systems	98–0892	12/23/97
Nokia Corporation, Ipsilon Newtorks, Inc., Ipsilon Networks, Inc	98–0952	12/23/97
Worcester City Campus Corporation, Memorial Health Care, Inc., Memorial Health Care, Inc	98–0726	12/24/97
Orbital Sciences Corporation, Ashtech Inc., Ashtech Inc	98–0819	12/24/97

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TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 12–22–97 AND 12–31–97—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
ACME Televison Holdings, LLC, Koplar Communications, Inc., Koplar Communications, Inc	98–0821	12/24/97
Queensway Financial Holdings Limited, Davinder S. Sahni, Paradigm Insurance Company	98–0833	12/24/97
Stichting AdministratiekantoorABN AMRO Holding, Bankers Leasing Association, Inc., Bankers Leasing Association, Inc	98–0865	12/24/97
Fortune Brands, Inc., Michael G. Crisp, Crisp Publications, Inc	98–0868	12/24/97
Heilig-Meyers Company, Reliable Stores, Inc., Reliable Stores, Inc	98–0881	12/24/97
Lennar Corporation, North American Asset Development Corporation, North American Asset Development Corporation	98–0887	12/24/97
Ronald O. Perelman, Thomas Dan Friedkin and Debra L. Friedkin, Gulf States Acceptance Company, LP	98–0888	12/24/97
Bahrain International Bank, Thompson Paper Box Co., Inc., Thompson Paper Box Co., Inc	98–0893	12/24/97
Investec Holdings Limited, Ernst & Company, Ernst & Company	98–0894	12/24/97
Illinois Tool Works, Inc., Reddi-Pac, Inc., Reddi-Pac, Inc	98–0897	12/24/97
United States Filter Corporation, Estate of Ronald E. Janke, Castalloy Corporation and Unified Investments, LLP	98–0920	12/24/97
Genesis Direct, L.P., Lawrence A. Joseph, Select Service & Supply Co., Inc	98–0929	12/24/97
Mr. Roger J. Sippl, Borland International, Inc., Borland International, Inc	98–0931	12/24/97
CUC International Inc., Apollo Investment Fund III, L.P., NRT Incorporated	98–0938	12/24/97
Praxair, Inc., Richard K. Dillard, Whitmore Oxygen Company & Whitmore Chemical Company	98–0939	12/24/97
Thermo Electron Corporation, Edison International, Southern California Edison Company	98–0940	12/24/97
Ashland Inc., Frederick M. Franklin, L.F. Franklin and Sons, Inc.; Valley Asphalt Products	98–0953	12/24/97
CHS Electronics, Inc., Gilbert Dreyfus and Julia Dreyfus, Micro Informatica Corporation	98–0954	12/24/97
Precision Castparts Corp., Schlosser Forge Company, Schlosser Casting Company	98–0955	12/24/97
Country Mutual Insurance Company, Middlesex Mutual Assurance Company, Middlesex Mutual Assurance Company	98–0960	12/24/97
Affiliated Computer Services, Inc., William Blair Capital Partners V, LP, CARA Holdings, Inc	98–0961	12/24/97
DLJ Merchant Banking Partners II, L.P., Mark D. Bawden, The Bawden Corporation	98–0962	12/24/97
N.V. Koninklijke Nederlandsche Petroleum Maatschappij, Newco-Joint Venture, Newco-Joint Venture	98–0964	12/24/97
DLJ Merchant Banlong Partners II, L.P., Joyce Bawden, The Rawden Corporation	98–0965	12/24/97
Emerson Electronic Co., Lee A. Henningsen, Firetrol, Inc	98–0967	12/24/97
Bayerische Vereinsbank AG, Bayerishe Hypotheken-und Wechsel-Bank AG, Bayerishe Hypotheken-und Weschsel-Bank AG	98–0969	12/24/97
Snyder Communication, Inc., R.A.B. Advertising, Inc. Employee Stock Ownership Plan, Blau Marketing Technologies, Inc	98–0970	12/24/97
Melco, Inc., Michael A. Frost, TechWorks, Inc	98–0971	12/24/97
PRI Automation, Inc., Equipe Technologies, Inc., Equipe Technologies, Inc	98–0972	12/24/97
Retlaw Enterprises, Inc., John D. Pezold, Augusta Family Broadcasting Inc.; Columbus Family	98–0974	12/24/97
Warren A. Hood, Jr., Simpro Holding Corporation, Ltd., Simpro Films Corporation	98–0977	12/24/97
AlliedSignal Inc., Jeffrey J. Steiner, The Fairchild Corporation	98–0979	12/24/97
Kingsway Financial Services, Inc., UCC Corporation, UCC Corporation	98–0980	12/24/97
Frederick W. Smith, FDX Corporation, FDX Corporation	98–0981	12/24/97
Ladbroke Group PLC, Colorado Gaming & Entertainment Co., Colorado Gaming & Entertainment Co	98–0982	12/24/97
Colony Investors II, L.P., Virgin Entertainment Group Limited, Virgin Entertainment Group Limited	98–0991	12/24/97
PPG Industries, Inc., Chrysler Corporation, Chrysler Corporation	98–0992	12/24/97
GP Batteries International Limited, The Gillette Company, Duracell, Inc	98–0994	12/24/97
United States Surgical Corporation, Pfizer Inc., Valleylab, Inc.; Vesta Medical, Inc	98–0995	12/24/97
MBW Investors LLC, The Procter & Gamble Company, Procter & Gamble Company (Duncan Hines Business)	98–0999	12/24/97
Andrew A. Wiederhorn, R.J. Brandes, Belgravia Financial Services, LLC	98–1004	12/24/97
John H. Sykes, Michael M. Gray, McQueen International Limited (a Scottish corporation)	98–1005	12/24/97
Michael M. Gray (a Scottish national), John H. Sykes, Sykes Enterprises, Incorporated	98–1006	12/24/97
Madison Dearborn Capital Partners II, LP, National Wholesale Liquidators of 34th Street, Inc., National Wholesale Liquidators of 34th Street, Inc	98–1010	12/24/97
Applied Graphics Technologies, Inc., Flying Color Graphics, Inc., Flying Color Graphics, Inc	98–1011	12/24/97
Philips Electronics N.V., Credit Lyonnais S.A. (a French corporation), Alpha Library Company, Inc.; Beta Library Co., Inc	98–1014	12/24/97
Northern States Power Company, Mid-Continent Power Company, Inc. (debtor-in-possession), Mid-Continent Power Company, Inc. (debtor-in-possession	98–1020	12/24/97
Liz Claiborne, Inc., Donna Karan International Inc., Donna Karan Studio; The Donna Karan Company	98–1021	12/24/97
ACC Corp., US WATS, Inc., US WATS, Inc	98–0731	12/26/97
General Electric Company, Stewart & Stevenson Services, Inc., Stewart & Stevenson Limited Partnership	98–0148	12/29/97
Donald L. Sturm, SpectraNet International, SpectraNet International	98–0997	12/29/97
Enron Corp., SpectraNet International, SpectraNet International	98–1001	12/29/97
ITT Industries, Inc., Charles H. Kaman, Kaman Sciences Corporation	98–0672	12/30/97
General Electric Company, Industrial Risk Insurers, Industrial Risk Insurers	98–1026	12/30/97
Destriz Gestao e Servicos Sociedade Unipessoal, Mr. Michael Christopherson, GP Companies, Inc	98–0822	12/31/97
Allen E. Paulson, Mr. John C. Waterfall, Elsinore Corporation	98–0835	12/31/97
American International Group, Inc., Newco-Joint Venture, Newco-Joint Venture	98–0951	12/31/97
Jeffrey J. Steiner, AlliedSignal Inc., AlliedSignal Inc	98–0973	12/31/97
Becton, Dickinson and Company, MedPlus, Inc., MedPlus, Inc	98–1015	12/31/97
Enron Corp., Catalytica, Inc., Catalytica Combustion Systems, Inc	98–1019	12/31/97
StorMedia Incorporated, Kubota Corporation (a Japanese corporation), Akashic Memories Corporation	98–1027	12/31/97
Freudenberg & Co. (a German Corporation), Arthur P. Frigo, M. B. Walton, Inc	98–1028	12/31/97

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 12–22–97 AND 12–31–97—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
UNYS, Inc., Upstate Holding Company, Inc., Upstate Holding Company, Inc	98–1031	12/31/97
Central Grocers Cooperative, Inc., Strack and Van Til Super Market, Inc., Strack and Van Til Super Market, Inc	98–1034	12/31/97
Sanford N. Pensler, Gordon S. Lang, CCL Custom Manufacturing Corp	98–1035	12/31/97
WinStar Communications, Inc., Telesoft Corp., Telesoft Acquisition Corp. II	98–1036	12/31/97
The General Electric Company, p.l.c., Marsh Company, Marsh Company	98–1037	12/31/97
General Electric Company, R.G. Darby, R.G. Darby Company, Inc. and Total Trim, Inc	98–1039	12/31/97
Aurora Equity Partners LP, Sal Cannizzaro, Innovative Lithographers, Inc	98–1041	12/31/97
Patriot American Hospitality Operating Company, CHC International, Inc., CHC International, Inc	98–1043	12/31/97
Ekco Group, Inc., FCP Southeast Investors IV, LP, APP Holding Corporation	98–1051	12/31/97
Mail-Well, Inc., James E. Sowell, Poser Business Forms, Inc	98–1053	12/31/97
Linsalata Capital Partners Fund II, LP, Craig Manchen, Highland Group Industries, LP	98–1056	12/31/97

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–1366 Filed 1–20–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 942–3278]

Howard S. Berg; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 23, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580

FOR FURTHER INFORMATION CONTACT: C. Steven Baker or Russell W. Damtoft, Federal Trade Commission, Chicago Regional Office, 55 East Monroe St., Suite 1860, Chicago, IL. 60603. (312) 353–8156.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 13, 1998), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Howard S. Berg.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns an efficacy claim made regarding Howard Berg's Mega Reading promoted by respondent. The Commission's complaint charges that respondent, in concert with Tru-Vantage International, L.L.C. and Kevin Trudeau, made a false and unsubstantiated claim that Howard Berg's Mega Reading is successful in teaching anyone, including adults, children and disabled individuals, to significantly increase their reading speed while substantially comprehending and retaining the material.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent this respondent from engaging in similar acts and practices in the future. The proposed order extends to any product or program purported to significantly increase one's reading speed.

Part I of the proposed consent order prohibits the respondent from representing that Howard Berg's Mega Reading, or any substantially similar product, is successful in teaching anyone, including adults, children and disabled individuals, to increase their reading speed above 800 words per minute while substantially comprehending and retaining the material. Part II of the proposed order prohibits the respondent from representing the performance, benefits, or efficacy of any product or program purported to significantly increase one's reading speed, unless the representation is substantiated.

The remaining parts of the proposed consent order require the respondent to maintain promotional and substantiation materials related to the claims covered by the order, to notify the Commission of any changes in his employment, and to file one or more compliance reports.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and

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proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 98–1363 Filed 1–20–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 942–3278]

Roger J. Callahan; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 23, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: C. Steven Baker or Russell W. Damtoft, Federal Trade Commission, Chicago Regional Office, 55 East Monroe St., Suite 1860, Chicago, IL 60603, (312) 353–8156.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 13, 1998), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Roger J. Callahan.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns efficacy claims made regarding Dr. Callahan's Addiction Breaking System promoted by respondent. The Commission's complaint charges that respondent, in concert with Mega Systems, Inc., made false and unsubstantiated claims that Dr. Callahan's Addiction Breaking System (1) Reduces an individual's compulsive desire to eat, leading to significant weight loss, (2) reduces an individual's compulsive desire to eat, leading to significant weight loss without the need to diet or exercise, and (3) cures addictions and compulsions, including but not limited to, smoking, eating, and using alcohol or heroin.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future. The proposed order extends to any weight loss product or program or any product or program purported to treat addictions or compulsions.

Part I of the proposed consent order prohibits the respondent from representing that Dr. Callahan's Addiction Breaking System, or any substantially similar product or program purported to treat addictions or compulsions, (1) reduces an individual's compulsive desire to eat, leading to significant weight loss, (2) reduces an individual's compulsive desire to eat, leading to significant weight loss without the need to diet or exercise, or (3) cures addictions and compulsions, including but not limited to, smoking, eating, and using alcohol or heroin. Part II of the proposed order prohibits the respondent from representing the performance, benefits, or efficacy of any weight loss product or program or any product or program purported to treat addictions or compulsions, unless the representation is substantiated. Part III of the proposed order requires the respondent to pay fifty thousand dollars into a redress fund.

The remaining parts of the proposed consent order require the respondent to maintain promotional and substantiation materials related to the claims covered by the order, to notify the Commission of any changes in his employment, and to file one or more compliance reports.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 98–1361 Filed 1–20–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 942–3278]

Jeanie Eller; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 23, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: C. Steven Baker or Russell W. Damtoft, Federal Trade Commission, Chicago Regional Office, 55 East Monroe St., Suite 1860, Chicago, IL 60603. (312) 353–8156.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 13, 1998), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Jeanie Eller.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns success claims made regarding Jeanie Eller's Action Reading, a home-study phonetics program, promoted by respondent. The Commission's complaint charges that respondent, in concert with Mega Systems, Inc., made unsubstantiated claims that Jeanie Eller's Action Reading is successful in teaching reading 100% of the time. In fact, the complaint alleges, Jeanie Eller's Action Reading is not successful in teaching reading 100% of the time.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future. The proposed order extends to Jeanie Eller Action Reading or any other product or program that provides instruction in any aspect of reading.

Part I of the proposed consent order prohibits the respondent from representing the extent to which individuals who use such product will learn to read or the success rate of individuals who use such product, unless the representation is substantiated.

The remaining parts of the proposed consent order require the respondent to maintain promotional and substantiation materials related to the claims covered by the order, to notify the Commission of any changes in her employment, and to file one or more compliance reports.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 98–1362 Filed 1–20–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 942–3278]

Mega Systems International, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 23, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pennsylvania Avenue, N.W., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: C. Steven Baker or Russell W. Damtoft, Federal Trade Commission, Chicago Regional Office, 55 East Monroe St., Suite 1860, Chicago, IL. 60603. (312) 353–8156.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 13, 1998), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents Mega Systems International, Inc. and Jeffrey Salberg.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns advertisements, including but not limited to infomercials, for five Mega Systems International products: Eden's Secret Nature's Purifying Product, Sable Hair Farming System, Kevin Trudeau's Mega Memory System, Dr. Callahan's Addiction Breaking System, and Jeanie Eller's Action Reading. This matter also concerns the deceptive format of the infomercials.

The Commission's complaint charges that respondents made false and unsubstantiated claims that Eden's Secret Nature's Purifying Product (1) causes significant weight loss, (2) will prevent or cure illnesses, including but not limited to fatigue, headaches, depression, arthritis, insomnia, immune suppression, and premenstrual syndrome, (3) will cleanse the body of

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harmful toxins, and (4) will purify the body's blood supply.

The Commission's complaint also charges that respondents made false and unsubstantiated claims that Sable Hair Farming System (1) will stop, prevent, cure, relieve, reverse or reduce hair loss, (2) will promote the growth of hair where hair has already been lost, and (3) is superior to Rogaine and Minoxidil in stopping, preventing, curing, relieving, reversing or reducing hair loss. In addition, the Commission's complaint charges that respondents made the false claim that scientific studies demonstrate that Sable Hair Farming System is effective in stopping hair loss and promoting hair growth.

The Commission's complaint also charges that respondents made the false and unsubstantiated claim that Kevin Trudeau's Mega Memory System will enable users to achieve a photographic memory, and the unsubstantiated claim that Kevin Trudeau's Mega Memory System is effective in causing adults or children with learning disabilities or attention deficit disorder to substantially improve their memory. In addition, the Commission's complaint charges that respondents made false claims that (1) scientific studies of Kevin Trudeau's Mega Memory System on seventh-grade students demonstrate that Kevin Trudeau's Mega Memory System will substantially improve their academic performance and grades, (2) scientific studies of Kevin Trudeau's Mega Memory System on blind children demonstrate that Kevin Trudeau's Mega Memory System will improve their recall ability to a level of 95% to 98%, (3) scientific studies of Kevin Trudeau's Mega Memory System on children with IQ's of fifty to sixty demonstrate that Kevin Trudeau's Mega Memory System will improve their recall ability to a level of almost 100%, and (4) scientific studies of Kevin Trudeau's Mega Memory System on children with attention deficit disorder demonstrate that Kevin Trudeau's Mega Memory System will substantially improve their memory.

The Commission's complaint also charges that respondents made false and unsubstantiated claims that Dr. Callahan's Addiction Breaking System (1) reduces an individual's compulsive desire to eat, leading to significant weight loss, (2) reduces an individual's compulsive desire to eat, leading to significant weight loss without the need to diet or exercise, and (3) cures addictions and compulsions, including but not limited to, smoking, eating, and using alcohol or heroin. In addition, the Commission's complaint charges that respondents made the false claim that testimonials with regard to consumers' use of Dr. Callahan's Addiction Breaking System reflect the typical or ordinary experience of members of the public who use the product.

The Commission's complaint also charges that respondents made unsubstantiated claims that Jeanie Eller's Action Reading is successful in teaching reading 100% of the time. Finally, the Commission's complaint charges that respondents deceptively represented that their infomercials were independent television programs and not paid commercial advertising.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future. The proposed consent order prohibits the respondents from representing that Eden's Secret Nature's Purifying Product, or any substantially similar product, (1) causes significant weight loss, (2) prevents or cures illnesses, including but not limited to fatigue, headaches, depression, arthritis, insomnia, immune suppression, and premenstrual syndrome, (3) will cleanse the body of harmful toxins, or (4) will purify the body's blood supply.

The proposed consent order also prohibits the respondents from representing that Sable Hair Farming System, or any substantially similar product, (1) will stop, prevent, cure, relieve, reverse or reduce hair loss, (2) will promote the growth of hair where hair has already been lost, or (3) is superior to Rogaine and Minoxidil in stopping, preventing, curing, relieving, reversing or reducing hair loss. In addition, the proposed consent order prohibits respondents from advertising, packaging, labeling, promoting, offering for sale, selling, or distributing any product that is represented as promoting hair growth or preventing hair loss, unless the product is the subject of an approved new drug application for such purpose under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 *et seq.*

The proposed consent order also prohibits the respondents from representing that Kevin Trudeau's Mega Memory System, or any substantially similar product, will enable users to achieve a photographic memory. In addition, the proposed consent order prohibits the respondents from representing that Kevin Trudeau's Mega Memory System, or any substantially similar product, is effective in causing adults or children with learning disabilities or attention deficit disorder to substantially improve their memory, unless, at the time the representation is made, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

The proposed consent order also prohibits the respondents from representing that Dr. Callahan's Addiction Breaking System, or any substantially similar product or program, (1) reduces an individual's compulsive desire to eat, leading to significant weight loss, (2) reduces an individual's compulsive desire to eat, leading to significant weight loss without the need to diet or exercise, or (3) cures addictions and compulsions, including but not limited to, smoking, eating, and using alcohol or heroin.

The proposed consent order also prohibits the respondents from representing with respect to Jeanie Eller's Action Reading, or any other product or program that provides instruction in any aspect of reading, the extent to which individuals who use such product will learn to read or the success rate of individuals who use such product, unless the representation is substantiated.

The proposed consent order also prohibits the respondents from (1) misrepresenting the existence, contents, validity, results, conclusions or interpretations of any test, study or research, (2) representing the benefits, performance or efficacy of any product or program, unless the representation is substantiated, and (3) representing that the experience represented by any user testimonial or endorsement of any product or program represents the typical or ordinary experience of the members of the public, unless the representation is substantiated or clearly and prominently qualified.

In addition, the proposed consent order prohibits the respondents from creating, producing, selling or disseminating (1) any advertisement that misrepresents that it is not a paid advertisement, (2) any television commercial or other video advertisement fifteen minutes in length or longer that does not clearly and prominently disclose within the first thirty seconds and immediately before each presentation of ordering instructions that the program is a paid advertisement for the product or service, and (3) any radio commercial or other radio advertisement five minutes in length or longer that does not broadcast clearly an audibly within the first thirty seconds and immediately before each presentation of ordering instructions or periodically through the program, but no more than approximately ten minutes apart that the program is a paid advertisement for the product or service.

The proposed consent order also requires respondents to pay the Federal Trade Commission $500,000. The funds paid by the respondents shall, in the discretion of the Federal Trade Commission, be used to provide direct redress to consumers. If the Federal Trade Commission determines that consumer redress is impracticable or otherwise unwarranted, any funds not so used shall be paid to the United States Treasury.

The remaining parts of the proposed consent order require the respondents (1) to maintain promotional and substantiation materials related to the claims covered by the order, (2) to deliver a copy of the order to all current and future principals, officers, directors, and managers, and deliver a summary of the order to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, (3) to notify the Commission of any changes in the structure of the proposed corporate respondent, (4) to notify the Commission of any changes in employment of the individual respondent, and (5) to file one or more compliance reports.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 98–1360 Filed 1–20–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 942–3278]

Tru-Vantage International, L.L.C.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 23, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: C. Steven Baker or Russell W. Damtoft, Federal Trade Commission, Chicago Regional Office, 55 East Monroe St., Suite 1860, Chicago, IL 60603. (312) 353–8156.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 13, 1998), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Tru-Vantage International, L.L.C.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns an efficacy claim made regarding Howard Berg's Mega Reading promoted by respondent. The Commission's complaint charges that respondent, in concert with Howard S. Berg and Kevin Trudeau, made a false and unsubstantiated claim that Howard Berg's Mega Reading is successful in teaching anyone, including adults, children and disabled individuals, to significantly increase their reading speed while substantially comprehending and retaining the material.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future. The proposed order extends to any product or program purported to significantly increase one's reading speed.

Part I of the proposed consent order prohibits the respondent from representing that Howard Berg's Mega Reading, or any substantially similar product, is successful in teaching anyone, including adults, children and disabled individuals, to increase their reading speed above 800 words per minute while substantially comprehending and retaining the material. Part II of the proposed order prohibits the respondent from representing the performance, benefits, or efficacy of any product or program purported to significantly increase one's reading speed, unless the representation is substantiated.

The remaining parts of the proposed consent order require the respondent to maintain promotional and substantiation materials related to the claims covered by the order, to provide a copy of the order to designated parties having responsibilities with respect to the subject matter of this order, to notify the Commission of any changes in the company structure, and to file one or more compliance reports.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 98–1364 Filed 1–20–98; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Proposed Collection; Comment Request Entitled Nondiscrimination in Federal Financial Assistance Programs

AGENCY: Office of Equal Employment Opportunity, GSA.

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ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (3090–0228).

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), that it is requesting the Office of Management and Budget (OMB) to reinstate information collection, 3090–0228, "Nondiscrimination in Federal Financial Assistance Programs." This information is needed to ensure that recipients of Federal financial assistance distribute Federal surplus property in a nondiscriminatory manner. A request for public comments was published at 62 FR 59713 on November 4, 1997. No comments were received.

DATES: February 20, 1998.

ADDRESSES: Send comments to Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 18th & F Streets, NW, Washington, DC 20405.

Annual Reporting Burden

Respondents: 55;
Annual responses: 1;
Average hours per response: 16;
Burden hours: 16,200.

FOR FURTHER INFORMATION CONTACT: William Conley, Office of Equal Employment Opportunity, (202) 501–0767.

Copy of Proposal

A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 18th & F Streets NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: January 12, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 98–1401 Filed 1–20–98; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

Proposed Collection; Comment Request Entitled Preparation, Submission, and Negotiation of Subcontracting Plans

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (3090–0252).

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), that it is requesting the Office of Management and Budget (OMB) to reinstate information collection, 3090–0252, Preparation, Submission, and Negotiation of Subcontracting Plans. This information collection will ensure that small and small disadvantaged business concerns are afforded the maximum practical opportunity to participate as subcontractors in construction, repair, and alteration or less contracts. A request for public comments was published at 62 FR 55406 on October 24, 1997. No comments were received.

DATES: February 20, 1998.

ADDRESSES: Send comments to Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 18th & F Streets, NW, Washington, DC 20405.

Annual Reporting Burden

Respondents: 1350;
Annual responses: 1;
Average hours per response: 12;
Burden hours: 16,200.

FOR FURTHER INFORMATION CONTACT: Al Matera, Office of GSA Acquisition Policy (202) 501–1224.

Copy of Proposal

A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 18th & F Streets, NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: January 12, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 98–1402 Filed 1–20–98; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

Proposed Collection Application/ Permit for Use of Space in Public Buildings and Grounds

AGENCY: Public Buildings Service, GSA.

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (3090–0044).

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), that it is requesting the Office of Management and Budget (OMB) to reinstate information collection, 3090–0044, "Application/Permit for Use of Space in Public Buildings and Grounds." This GSA form is used by the general public to request the use of public space in Federal buildings for cultural, recreational or educational activities. A copy, sample, or description of any material or item proposed for distribution or display must also accompany the request. A request for public comments was published at 62 FR 59712 on November 4, 1997. No comments were received.

DATES: February 20, 1998.

ADDRESSES: Send comments to Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 18th & F Streets, NW, Washington, DC 20405.

Annual Reporting Burden

Respondents: 8000;
Annual responses: 1;
Average hours per response: 0.05;
Burden hours: 666.

FOR FURTHER INFORMATION CONTACT: Charlene Heeter, Public Buildings Service (202) 208–0214.

Copy of Proposal

A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 18th & F Streets NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: January 12, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 98–1404 Filed 1–20–98; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Meeting of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission will continue addressing (1) The protection of the rights and welfare of human subjects in research including research subjects with decisional impairments and (2) issues in tissue storage as they relate to genetic information. The meeting is open to the public and opportunities for statements by the public will be provided.

Dates/times	Location
February 5, 1998, 1:00 a.m.–5:00 p.m.; February 6, 1998, 8:00 a.m.–5:00 p.m.	OMNI Los Angeles Hotel & Center, 930 Wilshire Boulevard, Los Angeles, CA 90017.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1995 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research.

Public Participation

The meeting is open to the public with attendance limited by the availability of space.

Members of the public who wish to present oral statements should contact Ms. Patricia Norris by telephone, fax machine, or mail as shown below prior to the meeting as soon as possible. The Chair will reserve time for presentations by persons requesting to speak. The order of speakers will be assigned on a first come, first serve basis. Individuals unable to make oral presentations are encouraged to mail or fax their comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Norris, National Bioethics Advisory Commission, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Henrietta D. Hyatt-Knorr,

Deputy Executive Director, National Bioethics Advisory Commission.

[FR Doc. 98–1406 Filed 1–20–98; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–98–09]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC/ATSDR Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC/ATSDR Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. *Surveillance of Hazardous Substances Emergency Event*—(0923–0008)—Extension—The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA), and its 1986 Amendments, The Superfund Amendments and Reauthorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from the exposure to hazardous substances into the environment. The primary purpose of this activity, which ATSDR has supported since 1992, is to develop, implement, and maintain a state-based surveillance system for hazardous substances emergency events which can be used to: (1) Describe the distribution of the hazardous substance releases; (2) describe the public health consequences (morbidity, mortality, and evacuations) associated with the events; (3) identify risk factors associated with the public health consequences; and (4) propose strategies to reduce future public health consequences. The study population will consist of all hazardous substance nonpermitted acute releases within the 13 states (Alabama, Colorado, Iowa, Minnesota, Mississippi, Missouri, New York, North Carolina, Oregon, Rhode Island, Texas, Washington, Wisconsin) participating in the surveillance system.

Until this system was developed and implemented, there was no national public health-based surveillance system to coordinate the collation, analysis, and distribution of health data to public health practitioners. It was necessary to establish this national surveillance system which describes the impact of hazardous substances emergencies on the health of the population of the United States. The data collection form will be completed by the state health department HSEES coordinator using information provided by a variety of sources including environmental protection agencies, police, firefighters, emergency response personnel; or researched by the HSEES coordinator including census data, material safety data sheets, and chemical handbooks. There is no cost to respondents.

We are requesting a 3-year extension.

Respondents	Number of respondents	Number of responses/respondent	Avg burden/response (in hrs)	Total burden (in hrs)
State coordinator	13 states	332	1	4,316

2. *Long Term Health Effects of Methyl Parathion in Children*—a Follow-Up Study—New—The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA), and its 1986 Amendments, The Superfund

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Amendments and Reauthorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from the exposure to hazardous substances into the environment. Children were exposed to Methyl Parathion (MP) via illegal indoor residential spraying of MP for pest control in nine states. All of these sprayed areas have been designated as CERCLA sites and placed on the National Priorities List (NPL) for conducting remedial actions. The MP sites consist of contaminated residences and businesses spread over several counties and states, intermingled with other building structures that were never sprayed with MP, making targeted remedial actions more challenging.

This study of children exposed to MP and children not exposed, but matched on age, sex, and race will provide critical public health information for the gap in data regarding the effects of lower dose, sub-acute exposure on neurobehavioral and respiratory development. The study population will consist of children under 6 years of age at the time of exposure (exposed group), whose residences in Ohio and Mississippi were illegally sprayed with MP since 1994, and matched with unexposed children (unexposed group). No data exist regarding low dose, sub-acute exposure to MP in children. The goal of this study is to examine the association between lower dose, sub-acute MP exposure in children, specifically from indoor spraying, and the risk of adversely affecting normal neurobehavioral and respiratory development.

The questionnaire will be administered in person by trained interviewers to the mothers (fathers or other guardians, if the mother is not available) of the exposed and unexposed children. The Pediatric Environmental Neurobehavioral Test Battery (PENTB) will be administered by personnel trained in the neurobehavioral assessment of children at annual intervals for the three study years. Other than the time to participate, there will be no cost to respondents.

Respondent questionnaire	Number of respondents	Number of responses/respondent	Avg burden/response (in hrs)	Total annual burden (in hrs)
Parent/Child (general)	537	1	1	537
(PENTB)	537	1	1.25	671
Total				1,208

Dated: January 14, 1998.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–1323 Filed 1–20–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 817]

National Institute for Occupational Safety and Health; Childhood Agricultural Safety and Health Research; Notice of Availability of Funds for Fiscal Year 1998

Introduction

The Centers for Disease Control and Prevention (CDC) announces that applications are being accepted for research on childhood agricultural safety and health. Projects are sought to conduct research on risk factors for agricultural injuries associated with child development, social and economic consequences associated with youth workers, and the design and/or evaluation of strategies to prevent childhood agricultural injuries. Findings from these projects are intended to advance the scientific base of knowledge needed to maximize the safety and health of children exposed to agricultural production hazards.

CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of "Occupational Safety and Health" and "Unintentional Injuries." (For ordering a copy of "Healthy People 2000," see the section **Where to Obtain Additional Information.**)

Authority

This program is authorized under the Public Health Service Act, as amended, Section 301(a) (42 U.S.C. 241(a)), and the Occupational Safety and Health Act of 1970, Section 20(a) (29 U.S.C. 669(a)). The applicable program regulation is 42 CFR Part 52.

Eligible Applicants

Eligible applicants include non-profit and for-profit organizations, universities, colleges, research institutions, and other public and private organizations, including State and local governments, and small, minority and/or woman-owned businesses.

Note: Pub. L. 104–65, dated December 19, 1995, states that an organization described in section 501(c)(4) of the IRS Code of 1986, which engages in lobbying activities, shall not be eligible for the receipt of Federal funds constituting an award, a grant, contract, loan, or any other form.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Availability of Funds

About $1,000,000 is available in fiscal year (FY) 1998 to fund approximately 5–6 project grants in three priority research areas: (1) Risk factors for agricultural injuries associated with child development (1–2 awards); (2) social and economic consequences associated with youth workers (2–3 awards); and, (3) the design and/or evaluation of strategies to prevent childhood agricultural injuries (2–3 awards). Awards are anticipated to range from $150,000 to $200,000 in total costs (direct and indirect) per year.

The amount of funding available may vary and is subject to change. Awards are expected to begin on or about September 1, 1998. Awards will be made for a 12-month budget period within a project period not to exceed 3 years. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

Use of Funds

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the current HHS Appropriations Act expressly prohibits the use of 1998 appropriated funds for indirect or "grass roots" lobbying efforts that are designed to support or defeat legislation pending before State legislatures. Section 503 of the law provides as follows:

(a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, or any State legislature, except in presentation to the Congress or any State legislature itself.

(b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Background

Agricultural production, which consistently ranks among the industries with the highest rates of work-related injuries and deaths in the United States, is unique with respect to children and adolescents. Compared to nonagricultural industries, coverage and protections of Federal child labor laws are limited, work by youth under 14 years of age is common, and childhood exposures to work hazards are not confined to working youths. Research is needed to facilitate the appropriate prioritization of efforts to prevent childhood injuries and illnesses associated with agricultural production, and expand the knowledge base for the development and implementation of effective and appropriate intervention strategies.

Federal child labor laws are organized by agricultural and nonagricultural work. Whereas the minimum age for employment in nonagricultural industries is 14 years, there are provisions which allow for agricultural employment of children as young as 10 years of age. Although work declared hazardous by the Secretary of Labor is prohibited for youths less than 18 years of age in nonagricultural industries, in agriculture, it is prohibited for youths less than 16 years of age, and only then for youths formally employed off the family farm. Federal child labor regulations contain a statutory exemption which permits the children of farmers to perform any job at any age on a family farm.

Data on employment of youths less than 15 years of age are not routinely collected or reported. Children less than 15 years of age are known to work, especially in agriculture. In 1996, an estimated 261,000 youths 16–19 years of age were employed in agriculture, accounting for 4 percent of working youths in this age group. It is reported that 81 percent of these agricultural youth workers were wage and salary workers, 11 percent were self-employed, and 7 percent were unpaid family workers. The Bureau of Labor Statistics (BLS) reports 114 agricultural work-related deaths of youths 16–19 years of age for the years 1992–1996, accounting for a disproportionate 15 percent of work-related deaths among this age group during this period. Further, BLS reports 87 agricultural work-related deaths of youth less than 16 years of age during this period, a group for which employment data are not available.

An estimated 2,100 injuries serious enough to require time away from work occurred among working youth 14–19 years of age on farms with at least 11 employees in 1994. Estimates of serious injuries on farms with fewer than 11 employees are not available. A couple of studies have suggested that among youth, work-related injuries in agriculture tend to be more serious than injuries in other industries. Farm machinery, stored grain, power lines, manure pits, ponds, and livestock are among injury hazards in agricultural workplaces.

Children and adolescents may be exposed to agricultural production hazards not only through work activities, but by virtue of living on a farm or ranch, accompanying their parents to work, or visiting farms or ranches. In 1991, an estimated 1.3 million youth less than 20 years of age resided on farms or ranches. Another 800,000 children lived in households of hired farm workers. Data from 1991 through 1993 suggested that 100 children and adolescents die annually from farm injuries, with about 45 percent of the deaths occurring among youth less than 10 years of age. Recent data suggest that about 100,000 children suffer a nonfatal injury associated with agricultural production each year. The monetary and social costs of these injuries are unknown, but they are needed to form and evaluate prevention efforts.

In April 1996, the National Committee for Childhood Agricultural Injury Prevention (NCCAIP) published a National Action Plan toward maximizing the safety and health of all children and adolescents who may be exposed to agricultural hazards. This National Action Plan, which includes 13 objectives and 43 recommended action steps, was based on input from 42 members representing the public and private sector. The National Action Plan calls for funding of research and safety programs by the Federal government, foundations, agribusiness, and other private-sector groups.

Congress allocated FY 1997 and FY 1998 funds to NIOSH to facilitate the implementation of this National Action Plan. This announcement and expected awards are one component in the process of NIOSH implementation of the National Action Plan. This announcement extends, with slight modifications, the research areas in announcement (RFA #725) published in FY 1997.

Research studies which result from this announcement are intended to advance the following objectives in the proposed National Action Plan: establish guidelines for children's and adolescents' work in the industry of agriculture; conduct research on costs, risk factors, and consequences associated with children and adolescents who participate in agricultural work; use systematic evaluation to ensure that educational materials and methods targeted toward childhood agricultural safety and health have demonstrated positive results; influence adult behaviors which affect protection of children and adolescents through the use of incentives and adoption of voluntary safety guidelines; and, provide a protective and supportive environment for children exposed as bystanders to agricultural hazards.

Purpose

NIOSH seeks to maximize the safety and health of children and adolescents exposed to agricultural production

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hazards by expanding the knowledge base regarding risk factors for agricultural injuries associated with child development, social and economic consequences associated with youth workers, and the design and/or evaluation of strategies to prevent childhood agricultural injuries. Research may address children directly involved in work tasks and/or other children exposed to agricultural production hazards. The funded research projects should cover a variety of types of agricultural production in different geographical regions (e.g., tomato harvesting in California, blueberry picking in Maine, and cotton harvesting in the South).

Programmatic Interest

The focus of these grants should facilitate progress in maximizing the safety and health of children and adolescents exposed to agricultural hazards. The rationale for the significance of the research and application to the prioritization, development, or implementation of intervention efforts must be developed in the proposal. Proposals are being accepted which focus on one of three research areas: risk factors for agricultural injuries associated with child development, social and economic consequences associated with youth workers, and the design and/or evaluation of strategies to prevent childhood agricultural injuries. Proposals should identify the focus or foci of the research program: risk factors, consequences, and/or interventions; types and geographical distribution of agricultural production which will be addressed, and size and characteristics of child and adolescent populations which can potentially be impacted by research findings.

1. Risk Factors for Agricultural Injuries Associated with Child Development

The intended focus of this research is on non-modifiable risk factors for childhood agricultural injury which are associated with child development. This research is needed to guide the development of age- and developmentally-appropriate guidelines for work and protection of non-working children. Potential research areas follow for illustrative purposes only, and should not be considered boundaries for proposed research questions. Youths who are still maturing may not meet the anthropometric and strength requirements of various agricultural machines, tools, personal protective equipment, and work tasks. Physical maturation and growth may result in unique susceptibilities to physical and chemical work exposures. Cognitive requirements of tasks and safe negotiation of agricultural hazards may exceed cognitive capabilities of children and adolescents. Feelings of invulnerability, lack of perception of risk, and a desire to demonstrate competence and independence may contribute to childhood exposures to agricultural hazards. Fatigue resulting from balancing demands of school and work, the need for intensive work during harvest periods, and inadequate sleep may contribute to injury. Both laboratory- and field-based research are appropriate for this priority area of research.

2. Social and Economic Consequences Associated With Youth Workers

Data on social and economic consequences of injury and disease outcomes are needed to understand the magnitude and scope of the injury problem to allow the appropriate prioritization of prevention efforts. Data on positive as well as negative outcomes of youth's involvement in agriculture are needed to develop a balanced response to protecting children. Examples of research efforts which are appropriate under this priority area include, but are not limited to: studies to estimate the societal and economic costs and consequences associated with childhood agricultural injury; assessments of short-and long-term disability from injuries; assessment of short- and long-term psychosocial outcomes related to children's and adolescents' participation in different types of agricultural work; physical assessments of children and adolescents who have been exposed to agricultural hazards such as agricultural chemicals, organic dusts, toxic gases, nitrates, volatile organic compounds, oils and solvents; and, studies of the impact of noise, vibration, cumulative trauma, and other work-induced health hazards on children and adolescents participating in agricultural work.

3. Design and/or Evaluation of Strategies to Prevent Childhood Agricultural Injuries

Strategies for preventing childhood agricultural injuries include control technology to minimize or remove hazards, regulations which mandate safe working conditions or prohibit particularly dangerous activities by youth, and educational efforts to raise awareness of hazards and change behavior. There are numerous research and prevention activities aimed at increasing awareness of hazards and changing behavior among children and adolescents. The intent of this request for applications is to facilitate research to design and/or evaluate prevention programs which do not rely solely on educating children and adolescents about hazards. Examples of research efforts which are appropriate under this priority area include, but are not limited to: evaluation of mechanisms, such as monetary incentives, to influence positive safety behaviors of farm and ranch owners and operators, parents, caregivers, and manufacturers; planning, implementation, and evaluation of structural and machinery design options to provide a protective environment for children at the farm work site; design, implementation and evaluation of community-based programs, such as community-provided daycare during harvest periods, to enhance the safety and well-being of children who may be exposed as bystanders to agricultural hazards; and, studies to determine the relative effectiveness of education, engineering, voluntary incentives, and mandatory standards on childhood agricultural injury reduction.

The research needs identified in this announcement are consistent with the National Occupational Research Agenda (NORA) developed by NIOSH and partners in the public and private sectors to provide a framework to guide occupational safety and health research in the next decade towards topics which are most pressing and most likely to yield gains to the worker and the nation. The agenda identifies 21 research priorities. Research priorities with specific relevance to this announcement are: traumatic injuries; special populations at risk; control technology and personal protective equipment; intervention effectiveness research; and social and economic consequences of workplace illness and injury. The NORA document is available through the NIOSH Home Page; http://www.cdc.gov/niosh/nora.html.

Potential applicants with questions concerning the acceptability of their proposed work are strongly encouraged to contact the technical information contact listed in this announcement in the section **Where to Obtain Additional Information**.

Reporting Requirements

Progress reports are required annually as part of the continuation application (75 days prior to the start of the next budget period). The annual progress reports must contain information on accomplishments during the previous budget period and plans for each remaining year of the project. Financial status reports (FSR) are required no later than 90 days after the end of the budget period.

The final performance and financial status reports are required 90 days after the end of the project period. The final performance report should include, at a minimum, a statement of original objectives, a summary of research methodology, a summary of positive and negative findings, and a list of publications resulting from the project. Research papers, project reports, or theses are acceptable items to include in the final report. The final report should stand alone rather than citing the original application. Three copies of reprints of publications prepared under the grant should accompany the report.

Evaluation Criteria

Upon receipt, applications will be reviewed by CDC for completeness and responsiveness. Applications determined to be incomplete or unresponsive to this announcement will be returned to the applicant without further consideration. If the proposed project involves organizations or persons other than those affiliated with the applicant organization, letters of support and/or cooperation must be included.

Applications that are complete and responsive to the announcement will be reviewed by an initial review group and will be determined to be competitive or non-competitive, based on the review criteria relative to other applications received. Applications determined to be non-competitive will be withdrawn from further consideration and the principal investigator/program director and the official signing for the applicant organization will be promptly notified. Applications judged to be competitive will be discussed and assigned a priority score. Following initial review for scientific merit, the applications will receive a secondary review for programmatic importance.

Review criteria for scientific merit are as follows:

1. Technical significance and originality of proposed project.
2. Appropriateness and adequacy of the study design and methodology proposed to carry out the project.
3. Qualifications and research experience of the Principal Investigator and staff, particularly but not exclusively in the area of the proposed project.
4. Availability of resources necessary to perform the project.
5. Documentation of cooperation from collaborators in the project, where applicable.
6. Adequacy of plans to include both sexes and minorities and their subgroups as appropriate for the scientific goals of the project. (Plans for the recruitment and retention of subjects will also be evaluated.)
7. Appropriateness of budget and period of support.
8. Human Subjects—Procedures adequate for the protection of human subjects must be documented. Recommendations on the adequacy of protections include: (1) Protections appear adequate and there are no comments to make or concerns to raise, (2) protections appear adequate, but there are comments regarding the protocol, (3) protections appear inadequate and the Initial Review Group has concerns related to human subjects, or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable.

Review criteria for programmatic importance are as follows:

1. Magnitude of the problem in terms of numbers of youth workers affected.
2. Severity of the injury or disease in the youth population.
3. Usefulness to applied-technical knowledge in the identification, evaluation, or control of occupational safety and health hazards in agriculture on a national or regional basis.

The following will be considered in making funding decisions:

1. Merit of the proposed project as determined by the initial peer review.
2. Programmatic importance of the project as determined by secondary review.
3. Availability of funds.
4. Program balance among priority areas of this announcement.

Executive Order 12372 Review

Applications are not subject to the review requirements of Executive Order 12372.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.262.

Other Requirements

Human Subjects

The applicant must comply with the Department of Health and Human Services Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurances must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Women and Racial and Ethnic Minorities

It is the policy of the CDC to ensure that women and racial and ethnic groups will be included in CDC-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or other Pacific Islander, and Hispanic or Latino. Applicants shall ensure that women and racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is not feasible, this situation must be explained as part of the application. In conducting the review of applications for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and assigned score. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951.

Application Submission and Deadlines

A. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted to the Grants Management Officer (whose address is reflected in section B, "Applications"). It should be postmarked no later than March 3, 1998. The letter should identify the announcement number, name of principal investigator, and specify the priority area to be addressed by the proposed project. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

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B. Applications

Applicants should use Form PHS–398 (OMB Number 0925–0001) and adhere to the ERRATA Instruction Sheet for Form PHS–398 contained in the Grant Application Kit. Please submit an original and five copies on or before April 16, 1998 to: Ron Van Duyne, Grants Management Officer, ATTN: Joanne Wojcik, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, MS E–13, Atlanta, GA 30305.

C. Deadlines

1. Applications shall be considered as meeting a deadline if they are either:

a. Received at the above address on or before the deadline date, or

b. Sent on or before the deadline date to the above address, and received in time for the review process.

Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailings.

2. Applications which do not meet the criteria above are considered late applications and will be returned to the applicant.

Where to Obtain Additional Information

To receive additional written information call 1–888–GRANTS4. You will be asked your name, address, and telephone number and will need to refer to Announcement 817. You will receive a complete program description, information on application procedures, and application forms. In addition, this announcement is also available through the CDC Home Page on the Internet. The address for the CDC Home Page is (http://www.cdc.gov).

If you have questions after reviewing the contents of all the documents, business management information may be obtained from Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., MS E–13, Atlanta, GA 30305, telephone (404) 842–6535; fax: (404) 842–6513; Internet: jcw6@cdc.gov.

Programmatic technical assistance may be obtained from Roy M. Fleming, Sc.D., Director Research Grants Program, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Building 1, Room 3053, MS–D30, Atlanta, GA 30333, telephone 404–639–3343; fax 404–639–4616; internet: rmf2@cdc.gov.

Please refer to announcement number 817 when requesting information and submitting an application.

This and other CDC Announcements can be found on the CDC homepage (http://www.cdc.gov) under the "Funding" section, as well as on the NIOSH homepage (http://www.cdc.gov/niosh/homepage.html) under "Funding Opportunities/Extramural Programs." For your convenience, you may be able to retrieve a copy of the PHS Form 398 from (http://www.nih.gov/grants/funding/phs398/phs398.html). CDC will not send application kits by facsimile or express mail.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Useful References

The following documents may also provide useful information: National Committee for Childhood Agricultural Injury Prevention. Children and Agriculture: Opportunities for Safety and Health. Marshfield, WI: Marshfield Clinic, 1996.

National Institute for Occupational Safety and Health. National Occupational Research Agenda. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health. DHHS (NIOSH) Publication No. 96–115 (http://www.cdc.gov/niosh/nora.html).

Dated: January 14, 1998.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–1331 Filed 1–20–98; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 98019]

Fiscal Year 1998 Pfiesteria-Related Illness Surveillance and Prevention

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1998 funds for cooperative agreements for Pfiesteria-Related Illness Surveillance and Prevention. These cooperative agreements are intended to strengthen and provide interstate uniformity for surveillance programs, epidemiologic and laboratory investigations, prevention and control activities, and identification of exposed cohorts at the State and local levels.

CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see the section **Where to Obtain Additional Information**.)

Authority

This program is authorized under section 301(a) and 317 of the Public Health Service Act, (42 U.S.C. 241(a) and 247b), as amended.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds and in which education, library, day care, health care, and early childhood development services are provided to children.

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the current HHS Appropriations Act expressly prohibits the use of appropriated funds for indirect or grass roots lobbying efforts that are designed to support or defeat legislation pending before State legislatures.

Section 503 of the law provides as follows:

(a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislature itself.

(b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Eligible Applicant

Applicants will be limited to the official State public health departments of States having confirmed (i.e., cases meeting the CDC set of exposure criteria and clinical signs and symptoms for Pfiesteria) or suspected cases of Pfiesteria-related illness that are being investigated by State health departments, or those States with coastal waters that have been infected by Pfiesteria or Pfiesteria-like organisms.

The CDC set of exposure criteria and clinical signs and symptoms for Pfiesteria are defined as: Exposure to estuarine water characterized by one of the following: (1) Fish with lesions consistent with *Pfiesteria piscicida* or morphologically related organisms (MRO) toxicity (20 percent of at least 50 fish of one species having lesions); (2) a fish kill with fish having lesions consistent with Pfiesteria or MRO toxicity; or (3) a fish kill involving fish without lesions, in the presence of Pfiesteria or MRO, without an alternative reason for the fish kill. The clinical features include the following signs and symptoms: (1) Memory loss, (2) confusion, (3) acute skin burning (upon direct contact with water), or (4) three or more of the following: a. headaches; b. skin rash; c. eye irritation; d. upper respiratory irritation; e. muscle cramps; f. nausea/vomiting/diarrhea/abdominal cramps.

Availability of Funds

Up to $3.5 million will be available in FY 1998 to fund up to 8 awards. Awards for the initial budget period will be based upon the extent of the problem and are expected to range from approximately $150,000 to $450,000. The awards will be made on or about March 15, 1998, for a 12-month budget period and a project period of up to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of the Pfiesteria-related Surveillance and Prevention Program is to assist State/local public health departments with: (1) Surveillance activities for adverse human health outcomes and exposure to infected waters; (2) epidemiologic studies including objective review of human health outcomes; (3) laboratory investigations; and (4) prevention and control activities.

Program Requirements

Cooperative Activities

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A. (Recipient Activities), and CDC will be responsible for conducting activities under B. (CDC Activities).

A. Recipient Activities

The following activities should be planned and conducted in collaboration and coordination with CDC by State/local health departments, and, where appropriate, in consultation with:

—Appropriate State and local professional associations;
—Health care providers and institutions serving, diagnosing, or providing treatment and care for persons having Pfiesteria-related symptoms, including laboratories conducting testing;
—Community groups and organizations.
—Universities and health research agencies.

Specific surveillance and prevention activities should:

1. Identify individuals with high risk of exposure to Pfiesteria-infected waters.

2. Conduct investigation of all cases of Pfiesteria-related illnesses meeting the CDC set of exposure conditions and clinical signs and symptoms to determine risk factors for illness and to provide clinical materials for laboratory confirmation.

3. Develop and conduct surveillance activities to identify potential sources of exposure to Pfiesteria or Pfiesteria-like organisms, and provide samples to CDC for additional laboratory analysis.

4. Assess clinical data on persons with Pfiesteria-related illnesses to assist in guiding the development of treatment strategies.

5. Develop and implement appropriate prevention strategies and develop information materials for use by health professionals and the public to aid in prevention and control of Pfiesteria-related illness.

B. CDC Activities

1. Provide consultation and scientific and technical assistance and training, in planning, implementing, and evaluating Pfiesteria exposure cohort studies, surveillance, epidemiologic research, laboratory and prevention activities.

2. Assist in developing a format for reporting surveillance data including case report forms, database, and assistance in establishing and maintaining the reporting system.

3. Bank and conduct laboratory analysis of biological specimens.

4. Participate with States to finalize mutually agreed upon standardized study protocols and, where appropriate, data collection instruments for the projects/studies.

5. Coordinate clinical evaluations and studies to assure comparability of data and therapeutic protocols.

6. Provide or assist in preparing standard data collection forms, questionnaires, etc., as needed in surveillance activities and special epidemiologic investigations.

7. Assist in the evaluation of the overall effectiveness of program operations, including the impact of surveillance data on the development of public policy, and on targeting and evaluating prevention activities.

8. Participate in the analysis of information and data gathered from program activities and facilitate the transfer of information and technology among all States and communities.

Technical Reporting Requirements

An original and two copies of a semiannual progress report must be submitted 30 days after the end of each semiannual period. Final financial and performance reports are due no later than 90 days after the end of the project period. All reports will be submitted to the Grants Management Branch, Procurement and Grants Office, CDC.

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Application Content

Applications must be developed in accordance with PHS Form 5161–1 (OMB Number 0937–0189), information contained in the program announcement and the instructions and format provided below.

1. Abstract

A one-page, single spaced, typed abstract must be submitted with the application. The heading should include the title of the grant program, project title, organization name and address, project director and telephone number. The abstract should briefly summarize the program for which funds are requested, the activities to be undertaken, and the applicants's organization and composition. The abstract should follow application forms and precede the Program Narrative.

2. Program Narrative

The Program Narrative should specifically address all items in the **Program Requirements** section of this announcement. The applicant should provide a description of the planned first year activities, and briefly describe future year objectives and activities. The criteria listed in the **Evaluation Criteria** section will serve as the basis for evaluating the application; therefore, the narrative of the application should address the following.

a. Applicant's understanding of the problem.

b. Applicant's ability to carry out the project.

c. Technical and program personnel capability.

d. Women, Racial and Ethnic Minorities. A description of the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

e. Budget justification.

f. Human Subjects review: The project involves research on human subjects, and therefore, the applicant must describe and demonstrate that the project has been subject to initial review by an appropriate institutional review committee, and that continuing review will occur. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and Human Subjects Assurance form provided in the application kit.

The Program Narrative section should not exceed 40 double-spaced pages excluding attachments (e.g., resumes, appendices, etc.). Do not include a detailed budget or detailed budget justification as part of the Program Narrative.

An original application and two copies should be submitted. The original and each copy of the application must be submitted unstapled and unbound. All material must be typewritten, double-spaced, with un-reduced type on 8½" by 11" paper, with at least 1" margins, headers and footers, and printed on one side only.

All graphics, maps, overlays, etc., should be in black and white and meet the above criteria.

Omissions or incomplete information may affect the rating of the application.

Evaluation Criteria

Each application will be reviewed and evaluated individually according to the following criteria:

A. Understanding of the Problem—25 Points

Extent to which the applicant understands the purpose and requirements of the program. This includes the extent of the applicant's identification and description of the problem, the realistic presentation of objectives to establish effective surveillance system and prevention programs, and evaluation criteria established to assess surveillance, epidemiologic research, and prevention activities.

B. Ability to Carry Out the Project—25 Points

Degree to which the applicant provides evidence of ability to carry out the proposed project and the extent to which the applicant documents demonstrated capability to achieve the objectives of the proposed program. This may include plans, approaches, and methods to be used in conducting and evaluating surveillance, epidemiologic research, and prevention programs, and may include collaborating with universities or other health research agencies.

C. Technical Approach—20 Points

Degree to which proposed objectives are clearly stated, realistic, measurable, time-phased, and related to the stated purpose of this project. Also, the adequacy of the proposed surveillance, epidemiologic research, and prevention plans to achieve the objectives. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed project. This includes: (a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (b) The proposed justification when representation is limited or absent; (c) A statement as to whether the design of the study is adequate to measure differences when warranted; and (d) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits will be documented.

D. Personnel—20 Points

Extent to which professional personnel involved in this project are qualified, including evidence of experience similar to this project.

E. Plans for Administration—10 Points

Adequacy of plans for administering the project.

F. Funding Requirements—(Not Weighted)

Itemized budget for conducting the project, along with justification, is provided and is reasonable.

G. Human Subjects—(Not Weighted)

The extent to which the applicant complies with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects.

Executive Order 12372

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372.

E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the application and receive any necessary instructions on the State process. Since the proposed project will serve more than one State, the applicant is advised to contact the SPOC of each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on the application submitted to CDC, they should forward them to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, Mailstop E–13, Atlanta, Georgia 30305, no later than 60 days after the receipt date of the application.

The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number for this program is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

The applicant must comply with the Department of Health and Human Services Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurances must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and forms provided in the application kit.

Women, Racial and Ethnic Minorities

It is the policy of the CDC to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, and Native Hawaiian or other Pacific Islander. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exists that inclusion is inappropriate or not reasonable, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951 (a copy is included in the application kit).

Application Submission and Deadline

The original and two copies of the application, PHS Form 5161–1 (OMB Number 0937–0189), must be submitted to Ron Van Duyne, Grants Management Officer, Attention: Patrick A. Smith, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–13, Room 321, Atlanta, Georgia 30305, on or before February 23, 1998.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications shall not be considered in the current competition for funding and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call 1–888–GRANTS4. You will be asked to leave your name, address, and telephone number and will need to refer to NCEH Announcement 98019. You will receive a complete program description, information on application procedures, and application forms. CDC will not send application kits by facsimile or express mail.

Please refer to announcement number 98019 when requesting information and submitting an application.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Patrick Smith, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–13, Atlanta, Georgia 30305, telephone (404) 842–6803, Internet: phs3@cdc.gov.

Programmatic technical assistance may be obtained from Lawrence E. Posey, Health Studies Branch, Division of Environmental Health, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop F–46, Atlanta, Georgia 30333, telephone (770) 488–7350, Internet: lep1@cdc.gov.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report; Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report; Stock No. 017–001–00473–1) referenced in the INTRODUCTION may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

This and other CDC announcements are available through the CDC homepage on the Internet. The address for the CDC homepage is: http://www.cdc.gov.

Dated: January 14, 1998.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–1327 Filed 1–20–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0531]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by February 20, 1998.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed

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collection of information to OMB for review and clearance.

Exemptions and Variances from the Performance Standard for Electrode Lead Wires and Patient Cables

FDA regulations in part 898 (21 CFR part 898) mandate a performance standard for electrode lead wires and patient cables. The purpose of the performance standard is to prevent electrocution from the use of unprotected electrode lead wires and patient cables with medical devices. To provide maximum flexibility in situations where the electrical accidents can be prevented in other ways, § 898.14 provides that any person subject to the performance standard may submit a petition under 21 CFR 10.30 requesting an exemption or variance from the standard. The petition must demonstrate why compliance with the standard is unnecessary or unfeasible and what alternate means will be used to protect the public health. FDA will use this information to determine whether granting an exemption is in the best interests of the public health. Allowing for exemptions and variances will provide for flexibility while assuring public health protection. Section 898.14 is stayed pending OMB clearance. FDA will announce the effective date of § 898.14 in the **Federal Register**. Anticipated respondents to this collection of information are medical device manufacturers and distributors, and health care facilities.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
10.30	50	1	50	10	500

[1] There are no capital costs or operating maintenance costs associated with this collection of information.

Dated: January 8, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–1294 Filed 1–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0015]

Medical Devices; Exemptions From Premarket Notification; Class II Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of class II (special controls) devices, subject to certain limitations, that are now exempt from the premarket notification requirements under the Food and Drug Administration Modernization Act of 1997 (the FDAMA). FDA believes that these exemptions will relieve manufacturers from the need to submit premarket notification submissions for these devices and will enable FDA to redirect the resources that would be spent on reviewing such submissions to more significant public health issues. FDA is taking this action in order to meet a requirement of the FDAMA.

DATES: Effective January 21, 1998. Comments on this notice should be submitted within 90 days of publication. The agency will review any comments submitted within the 90-day comment period and will consider whether the list of class II devices that are exempt from the premarket notification requirements should be modified.

ADDRESSES: Submit written comments on this notice to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA must classify devices into one of three regulatory classes: Class I, class II, or class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the Medical Device Amendments of 1976 (the 1976 amendments (Pub. L. 94–295)), as amended by the the Safe Medical Devices Act of 1990 (the SMDA (Pub. L. 101–629)), devices are to be classified into class I (general controls) if there is information showing that the general controls of the act are sufficient to assure safety and effectiveness; into class II (special controls), if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into class III (premarket approval), if there is insufficient information to support classifying a device into class I or class II and the device is a life-sustaining or life-supporting device or is for a use which is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury.

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976 (generally referred to as postamendments devices) are classified through the premarket notification process under section 510(k) of the act (21 U.S.C. 360(k)). Section 510(k) of the act and the implementing regulations, 21 CFR part 807, require persons who intend to market a new device to submit a premarket notification report containing information that allows FDA to determine whether the new device is "substantially equivalent" within the meaning of section 513(I) of the act to a legally marketed device that does not require premarket approval. Unless exempted from premarket notification requirements, persons may not market a new device, under section 510(k), unless they receive a substantial equivalence order from FDA or an order reclassifying the device into class I or class II (section 513(I) of the act).

On November 21, 1997, the President signed into law the FDAMA. Section

206 of the FDAMA, in part, added a new section 510(m) to the act. Section 510(m)(1) of the act requires FDA, within 60 days after enactment of the FDAMA, to publish in the **Federal Register** a list of each type of class II device that does not require a report under section 510(k) of the act (generally referred to as a premarket notification or "510(k)") to provide reasonable assurance of safety and effectiveness. Section 510(m) of the act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**.

Section 510(m)(2) of the act provides that, 1 day after date of publication of the list under section 510(m)(1), FDA may exempt a device on its own initiative or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, or of the petition, and to provide a 30-day comment period. Within 120 days of publication of this document, FDA must publish in the **Federal Register** its final determination. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

II. Criteria for Exemption

In considering whether to exempt class II devices from premarket notification, FDA focused on whether premarket notification for the type of device is necessary to provide reasonable assurance of safety and effectiveness of the device. FDA considered the following factors: (1) The device does not have a significant history of false or misleading claims or of risks associated with inherent characteristics of the device, such as device design or materials (when making these determinations, FDA has considered the risks associated with false or misleading claims, and the frequency, persistence, cause or seriousness of the inherent risks of the device); (2) characteristics of the device necessary for its safe and effective performance are well established; (3) changes in the device that could affect safety and effectiveness will either: (a) Be readily detectable by users by visual examination or other means such as routine testing, before causing harm, e.g., testing of a clinical laboratory reagent with positive and negative controls; or (b) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment; and (4) any changes to the device would not be likely to result in a change in the device's classification.

FDA also considered that even when exempting devices, these devices would still be subject to the limitations on exemptions, as described in section III of this document.

III. Limitations on Exemptions

The exemption from the requirement of premarket notification for a generic type of device listed in this document applies only to those devices that have existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type, or, in the case of in vitro diagnostic devices, for which a misdiagnosis, as a result of using the device, would not be associated with high morbidity or mortality. Accordingly, a class II device listed in this document is not exempt if such device: (1) Has an intended use that is different from the intended use of a legally marketed device in that generic type; e.g., the device is intended for a different medical purpose, or the device is intended for lay use instead of use by health care professionals; or (2) operates using a different fundamental scientific technology than that used by a legally marketed device in that generic type; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization or amplification technology rather than culture or immunoassay technology; or (3) is an in-vitro device: That is intended for use in the diagnosis, monitoring or screening of neoplastic diseases with the exception of immunohistochemical devices; is intended for use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism; is intended for measuring an analyte which serves as a surrogate marker for screening, diagnosis, or monitoring life threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction, or to monitor therapy; is intended to assess the risk of cardiovascular diseases; is intended for use in diabetes management; is intended to identify or infer the identity of a microorganism directly from clinical material; is intended for detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma; uses noninvasive testing; is intended for near-patient testing (point of care).

Class II devices incorporating such changes or modifications are not exempt from premarket notification because FDA has determined that premarket notification is necessary to assure the safety and effectiveness of the device.

In addition to the general limitation on exemptions that applies to all class II devices that are described previously, FDA may limit the exemption from premarket notification requirements to certain devices within a generic class. For example, FDA, in section IV of this document, is listing the exemption of the biofeedback device, but limits the exemption to prescription battery powered devices that are indicated for relaxation training and muscle reeducation. All other biofeedback devices are still subject to premarket notification requirements because FDA determined that premarket notification was necessary to provide a reasonable assurance of safety and effectiveness for these devices.

FDA advises, additionally, that an exemption from the requirement of premarket notification does not mean that the device is exempt from any other statutory or regulatory requirements, unless such exemption is explicitly provided by order or regulation. Indeed, FDA's determination that premarket notification was unnecessary to provide a reasonable assurance of safety and effectiveness for devices listed in this document is based, in part, on the assurance of safety and effectiveness that other regulatory controls, such as current good manufacturing practice requirements, provide.

Persons with pending 510(k) submissions for devices that are exempted in this document, subject to the limitations on exemptions, should withdraw their submissions.

IV. List of Class II Devices Exempted

FDA is identifying the following devices as class II devices that, as of the date of publication of this document, are exempt from the requirement to submit a premarket notification under section 510(k) of the act, subject to limitations on exemptions in this document:

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TABLE 1.—EXEMPTED CLASS II DEVICES

21 CFR Sections	Name of Devices
862.1440	Lactate dehydrogenase test system
862.1635	Total protein test system
864.6100	Bleeding time device
864.6400	Hematocrit measuring device
864.9160	Blood group substances of nonhuman origin for in vitro diagnostic use
864.9550	Lectins and protectins
864.9575	Environmental chamber for storage of platelet concentrate
864.9600	Potentiating media for in vitro diagnostic use
864.9700	Blood storage refrigerator and blood storage freezer
866.3060	Blastomyces dermatitidis serological reagents
866.3085	Brucella spp. serological reagents
866.3135	Coccidioides immitis serological reagents
866.3165	Cryptococcus neoformans serological reagents
866.3220	Entamoeba histolytica serological reagents
866.3280	Francisella tularensis serological reagents
866.3300	Haemophilus spp. serological reagents
866.3320	Histoplasma capsulatum serological reagents
866.3350	Leptospira spp. serological reagents
866.3415	Pseudomonas spp. serological reagents
866.3460	Rabiesvirus immunofluorescent reagents
866.3550	Salmonella spp. serological reagents
866.3660	Shigella spp. serological reagents
866.3930	Vibrio cholerae serological reagents
866.5040	Albumin immunological test system
866.5210	Ceruloplasmin immunological test system
866.5320	Properdin factor B immunological test system
866.5380	Free secretory component immunological test system
866.5460	Haptoglobin immunological test system
866.5470	Hemoglobin immunological test system
866.5490	Hemopexin immunological test system
876.1620	Urodynamics measurement system
876.1800	Urinev flow or volume measuring system
876.2040	Enuresis alarm
876.4370	Gastroenterlogy-urology evacuator
876.4650	Water jet renal stone dislodger system
876.4680	Uretal stone dislodger
876.4890(b)(1)	Urological table and accessories
876.5250(b)(1)	Urine collector and accessories
880.2200	Liquid crystal forehead temperature strip
880.2920	Clinical mercury thermometer
880.5100	AC-powered adjustable hospital bed
880.5140	Pediatric hospital bed
880.5475	Jet lavage
880.5500	AC-powered patient lift
880.5550	Alternating pressure air flotation mattress
880.6740	Vacuum-powered body fluid suction apparatus
880.6775	Powered patient transfer device
880.6910	Wheeled stretcher
882.5050	Biofeedback device[1]
886.3100	Ophthalmic tantalum clip
886.3130	Ophthalmic conformer
886.3800	Scleral shell
890.1925	Isokinetic testing and evaluation system
890.3500	External assembled lower limb prosthesis
890.3710	Powered communication system
890.3725	Powered environmental control system
890.5160	Air-fluidized bed
890.5170	Powered flotation therapy bed
890.5225	Powered patient rotation bed
890.5720	Water circulating hot or cold pack
890.5740	Powered heating pad
892.1980	Radiologic table

[1] Exemption is limited to prescription battery powered devices that are indicated for relaxation training and muscle reeducation and prescription use.

V. Additional Exemptions

Under section 510(m)(2) of the act, as described previously, interested persons may request that FDA exempt any class II device from the premarket notification requirements. The request should identify the generic type of device by the CFR section number (e.g., 21 CFR 884.1234) and state clearly why the submitter believes the factors described in section II of this document apply, and that premarket notification requirements are not necessary to provide reasonable assurance of the safety and effectiveness of the device. By February 19, 1998, FDA will provide guidance on how to request such an exemption.

Dated: January 15, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–1485 Filed 1–16–98; 12:00 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Immunology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Immunology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on February 2, 1998, 9:30 a.m. to 6:30 p.m.

Location: Parklawn Bldg., conference rooms D & E, 5600 Fishers Lane, Rockville, MD.

Contact Person: Peter E. Maxim, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1293, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12516. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss proposed prescription home use labeling for a unitized bladder cancer tumor marker assay used to aid in the detection of bladder cancer recurrence. Also, the committee will discuss, make recommendations, and vote on a premarket approval application for a free PSA (prostate-specific antigen) assay. The assay is intended to be used in men over the age of 50 with a negative digital rectal examination and a total serum PSA measurement of 4.0 to 10.0 nanograms/milliliter. The free PSA/total PSA ratio aids in the differentiation between benign and malignant prostate disease.

Procedure: On February 2, 1998, from 10 a.m. to 6:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 29, 1998. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 29, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On February 2, 1998, from 9:30 a.m. to 10 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). FDA staff will present to the committee confidential information regarding present or future issues.

FDA regrets that it was unable to publish this notice 15 days prior to the February 2, 1998, Immunology Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Immunology Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 15, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–1418 Filed 1–15–98; 3:51 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0007]

Draft "Guidance for Industry: For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Plasma-Derived Biological Products or Animal Plasma or Serum-Derived Products;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance document entitled "Guidance for Industry: For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Plasma-Derived Biological Products or Animal Plasma or Serum-Derived Products." The draft guidance document is intended to assist applicants in the preparation of the content and format of the chemistry, manufacturing, and controls (CMC) section and the establishment description section of a biologics license application (BLA), revised Form FDA 356h for human plasma-derived biological products, animal plasma, or serum-derived products. This action is part of FDA's continuing effort to achieve the objectives of the President's "Reinventing Government" initiatives and FDA Modernization Act of 1997, and is intended to reduce unnecessary burdens for industry without diminishing public health protection.

DATES: Written comments may be submitted at any time, however, comments should be submitted by April 21, 1998, to ensure their adequate consideration in preparation of the final document.

ADDRESSES: Submit written requests for single copies of the draft guidance entitled "Guidance for Industry: For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Plasma-Derived Biological Products or Animal Plasma or Serum-Derived Products" to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests.

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The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by FAX by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. Submit written comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., fm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance document entitled "Guidance for Industry: For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Plasma-Derived Biological Products or Animal Plasma or Serum-Derived Products." The draft guidance provides general information for the CMC and establishment description section of the BLA, Form FDA 356h for human plasma-derived biological products, animal plasma, or serum-derived products.

In the **Federal Register** of July 8, 1997 (62 FR 36558), FDA announced the availability of a new harmonized Form FDA 356h entitled "Application to Market a New Drug, Biologic, or an Antibiotic for Human Use." The new harmonized form is intended to be used by applicants for all drug and biological products. The new harmonized form when fully implemented will allow biological product manufacturers to submit a single application, the BLA, instead of two separate license application submissions, a product license application (PLA) and an establishment license application (ELA).

The draft guidance document represents the agency's current thinking on content and format of the CMC, and establishment description information section of a license application for human plasma-derived biological products, animal plasma, or serum-derived products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

The draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit written comments to the Dockets Management Branch (address above) regarding the draft guidance document. Written comments may be submitted at any time, however, comments should be submitted by April 21, 1998, to ensure their adequate consideration in preparation of the final document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments and requests for copies should be identified with the docket number found in the brackets in the heading of this document. A copy of the draft guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance document by using the World Wide Web (WWW). For WWW access connect to CBER at "http://www.fda.gov/cber/guidelines.htm."

Received comments will be considered in determining whether further revision of the draft guidance document is warranted.

Dated: January 13, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–1293 Filed 1–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0261]

Frequently Asked Questions About the New FDA Tobacco Regulations: Draft Guidance; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is announcing the availability of a new section to the draft guidance entitled "Frequently Asked Questions About the New FDA Tobacco Regulations." The draft guidance addresses the questions most frequently asked by retailers, consumers and others about the age and photo identification requirements of the final rule restricting the sale of cigarettes and smokeless tobacco to protect children and adolescents. The new section on enforcement procedures addresses questions raised by retailers and others concerning the amount of penalties that FDA intends to seek for third and subsequent violations of the age and identification requirements.

DATES: Submit written comments on the draft guidance by April 21, 1998.

ADDRESSES: The draft guidance entitled "Frequently Asked Questions About the New FDA Tobacco Regulations," and the amendment are available on the Internet at http://www.fda.gov/, or a paper copy may be ordered free of charge by calling 1–888–FDA–4KIDS.

Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary M. Lyda, Office of Policy (HF–11), Food and Drug Administration, 5600 Fishers Lane, rm. 14–101, Rockville, MD 20857, 301–827–3360.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 28, 1996 (61 FR 44396), FDA issued a final rule to restrict the sale and distribution of cigarettes and smokeless tobacco in order to protect children and adolescents (21CFR part 897). The final rule covers three general classes of nicotine-containing tobacco products: Cigarettes, loose cigarette tobacco, and smokeless tobacco. The final rule applies to manufacturers, distributors, retailers and importers who make, distribute, sell, and import such products.

Since February 28, 1997, the final rule has prohibited retailers from selling cigarettes, loose cigarette tobacco or smokeless tobacco to persons under the age of 18, and has required retailers to verify the age of customers under the age of 27 by checking an identification (ID) card which contains the bearer's photograph and birth date.

The draft guidance answers questions most frequently asked by retailers, consumers, and others concerning these requirements and the agency's enforcement plans. To ensure that retailers are complying with the requirements, FDA has commissioned State officials to conduct compliance checks, during which adolescents, accompanied by State officials, attempt to purchase cigarettes or smokeless tobacco from retailers. The guidance states that for a first violation of the age and identification requirements, FDA will issue a letter notifying the retailer that it was out of compliance and informing the retailer that FDA will schedule a followup compliance check. The guidance explains that the second time a retailer is out of compliance FDA will seek civil money penalties in the amount of $250.00.

The new section that FDA is making available addresses questions concerning the amount of penalties that FDA intends to seek for third and subsequent violations of the age and photo ID provisions of the regulation. FDA intends to seek $1,500.00 for a third violation, $5,000.00 for a fourth violation, and $10,000.00 for a fifth violation. The new section provides more information concerning the civil money penalty process under which a retailer may pay the penalty or request a hearing to contest it. Because some of the answers contained in the new section represent FDA's current interpretation of new regulatory requirements, the additions constitute guidance. Therefore, FDA is publishing the new section in draft and is soliciting public comment. FDA will review received comments and, if appropriate, revise the document in response to comments.

The draft guidance does not create or confer any rights for or on any person and does not operate to bind FDA or the public.

Interested persons may, on or before April 21, 1998, submit written comments regarding this draft guidance to the Dockets Management Branch, address above. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 12, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–1344 Filed 1-20-98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review Small Business Innovation Research.
Name of SEP: Biological and Physiological Sciences.
Date: February 23, 1998.
Time: 2 p.m.
Place: NIH, Rockledge 2, Room 4212, Telephone Conference.
Contact Person: Dr. Nabeeh Mourad, Scientific Review Administrator, 6701 Rockledge Drive, Room 4212, Bethesda, MD 20892, (301) 435–1222.

Name of SEP: Biological and Physiological Sciences.
Date: March 2–3, 1993.
Time: 8 a.m.
Place: Bethesda Marriott Hotel, Bethesda, MD.
Contact Person: Dr. Nabeeh Mourad, Scientific Review Administrator, 6701 Rockledge Drive, Room 4212, Bethesda, MD 20892, (301) 435–1222.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 14, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–1317 Filed 1–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting of the National Advisory Council for Human Genome Research

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Council for Human Genome Research, National Human Genome Research Institute, February 12–13, 1998, Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD.

This meeting will be open to the public on Thursday, February 12, 8:30 a.m. to approximately 3 p.m., to discuss administrative details or other issues relating to committee activities. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 12, from 3 p.m. to recess, and on February 13, from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Elke Jordan, Deputy Director, National Human Genome Research Institute, National Institutes of Health, Building 31, Room 4B09, Bethesda, MD 20892, (301) 496–0844, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Jane Ades, (301) 594–0654, two weeks in advance of the meeting.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research)

Dated: January 14, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–1321 Filed 1–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Neurological Disorders and Stroke Council of the National Institute of Neurological Disorders and Stroke, February 12–13, 1998, Building 31, Conference Room 6, National Institutes of Health, which was published in the **Federal Register** on December 29, 1997, (62 FR 67645).

The information regarding the date and time for the closed session was incorrect. The Council meeting will be open to the public on February 12 from 8:30 a.m. to approximately 3 p.m. and will be closed on February 12, approximately 3 p.m. to recess and February 13, 8:30 a.m. to adjournment.

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Dated: January 13, 1998.
LaVerne Stringfield,
NIH Committee Management Officer.
[FR Doc. 98–1318 Filed 1–20–98; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Division of Extramural Activities; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.
Date: February 25, 1998.
Time: 8 a.m.
Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.
Contact Person: Dr. Paul Sheehy, Scientific Review Administrator, NINDS, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.
Purpose/Agenda: To review and evaluate one grant application.
The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)
Dated: January 13, 1998.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 98–1319 Filed 1–20–98; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meeting:

Name of SEP: SBIR Topics 59, 61 and 62 (Telephone Conference Call).
Date: February 4, 1998.
Time: 9 a.m.
Place: National Institute of Environmental Health Sciences, East Campus, Building 4401, Rm. 3446, Research Triangle Park, NC 27709.
Contact Person: Mr. David P. Brown, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.
Purpose/Agenda: To review and evaluate contract proposals.
The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Grant applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)
Dated: January 12, 1998.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 98–1320 Filed 1–20–98; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting of the National Advisory General Medical Sciences Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on January 29–30, 1998, Natcher Building 45, Conference Rooms E1 and E2, Bethesda, MD.
This meeting will be open to the public from 11 a.m. to 6 p.m. on January 29, for the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, and other business of Council. Attendance by the public will be limited to space available.
In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on January 29, from 8:30 a.m. to 11 a.m., and also closed on January 30 (8:30 a.m. to adjournment) for the review, discussion, and evaluation of individual grant applications. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AS–43H, Bethesda, MD 20892, telephone: 301–496–7301, FAX 301–402–0224, will provide a summary of the meeting, and a roster of Council members. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Dieffenbach in advance of the meeting. Dr. W. Sue Shafer, Executive Secretary, NAGMS Council, National Institutes of Health, Natcher Building, Room 2AN–32C, Bethesda, MD 20892, telephone: 301–594–4499 will provide substantive program information upon request.
This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.
(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS]; Special Programs, 93.960)
Dated: January 14, 1998.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 98–1322 Filed 1–20–98; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–71]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: February 20, 1998.
ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.
FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.
SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).
The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.
Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.
Dated: January 8, 1998.
David S. Cristy,
Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Conveyance (Acquisition) and Disposition Information Collections contained in Handbook 4310.5 entitled "Property Disposition Handbook, One-to-Four Family Properties".
Office: Housing.
OMB Approval Number: 2502–0306.
Description of the Need for the Information and Its Proposed Use: These information collections are needed to determine the condition of the property upon conveyance, to determine the results of the repair contracts, and to monitor the contractor's performance in maintaining the properties. The sales contracts will be used as binding contracts between the purchaser and HUD. Respondents are potential contractors, contractors who work for HUD, and potential and actual purchasers of HUD-owned properties.
Form Number: HUD–9516A, 9519, 9519A, 9544, 9548, 9548A, 9548B, 9548C, and 9733.
Respondents: Business or Other For-Profit, Individuals or Households, Not-For-Profit, Institutions, State, Local, or Tribal Government, and the Federal Government.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collections	46,550		Varies		.50		248,570

Total Estimated Burden Hours: 248,570.
Status: Revision.
Contact: Rose Donnelly/Art Orton, HUD, (202) 708–4767, Joseph F. Lackey, Jr., OMB, (202) 395–7316.
Dated: January 8, 1998.
[FR Doc. 98–1299 Filed 1–20–98; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Deadline for Submitting Completed Applications to Begin Participation in the Tribal Self-Governance Program in Fiscal Year 1999 or Calendar Year 1999

AGENCY: Office of Self-Governance, Office of the Secretary, Interior.
ACTION: Notice of application deadline.

SUMMARY: In this notice, the Office of Self-Governance (OSG) establishes a March 2, 1998, deadline for tribes/consortia to submit completed applications to begin participation in the tribal self-governance program in fiscal year 1999 or calendar year 1999.
DATES: Completed application packages must be received by the Director, Office of Self-Governance by March 2, 1998.
ADDRESSES: Application packages for inclusion in the applicant pool should be sent to the Director, Office of Self-Governance, U.S. Department of the Interior, Mail Stop 2542, 1849 C Street, NW., Washington, DC 20240.
FOR FURTHER INFORMATION CONTACT: Dr. Kenneth D. Reinfeld, U.S. Department of the Interior, Office of Self-Governance, 1849 C Street, NW., Mail Stop 2548, Washington, DC 20240, 202–219–0240.
SUPPLEMENTARY INFORMATION: Under the Tribal Self-Governance Act of 1994 (Pub. L. 103–413), as amended by the Fiscal Year 1997 Omnibus Appropriations Bill (Pub. L. 104–208) the Director, Office of Self-Governance may select up to 50 additional participating tribes/consortia per year for the tribal self-governance program, and negotiate and enter into an annual written funding agreement with each participating tribe. The Act mandates that the Secretary submit copies of the funding agreements at least 90 days before the proposed effective date to the appropriate committees of the Congress and to each tribe that is served by the Bureau of Indian Affairs (BIA) agency that is serving the tribe that is a party to the funding agreement. Initial negotiations with a tribe/consortium located in an area and/or agency which has not previously been involved with self-governance negotiations, will take approximately two months from start to finish. Agreements for an October 1 to September 30 fiscal year need to be signed and submitted by July 1. Agreements for a January 1 to December 31 fiscal year need to be signed and submitted by October 1.

Background

On February 15, 1995, an interim rule was published in the **Federal Register**

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announcing the criteria for tribes to be included in an applicant pool and the establishment of the selection process for tribes/consortia to negotiate agreements pursuant to the Tribal Self-Governance Act of 1994. This interim rule was added to Title 25 of the Code of Federal Regulations at Part 1001 of Chapter VI. While it may be changed by later rulemaking, the Act stipulates that the lack of promulgated regulations will not limit its effect. It should be noted that a proposed rulemaking has been negotiated between tribal and Federal members of a self-governance negotiated rulemaking committee and is currently in the process of being prepared for publication in the **Federal Register** for review and comment.

Purpose of Notice

The interim rules established at 25 CFR parts 1001.1 to 1001.5 will be used to govern the application and selection process for tribes/consortia to begin their participation in the tribal self-governance program in fiscal year 1999 and calendar year 1999. Applicants should be guided by the requirements in 25 CFR parts 1001.1 to 1001.5 in preparing their applications. Copies of the interim rules published in the **Federal Register** on February 15, 1995, may be obtained from the information contact person identified in this notice.

Tribes/consortia wishing to be considered for participation in the tribal self-governance program in fiscal year 1999 or calendar year 1999 must respond to this notice, except for those which are (1) currently involved with negotiations with the Department; (2) one of the 64 tribal entities with signed agreements; or (3) one of the tribal entities already included in the applicant pool as of the date of this notice.

The Director's decision on the actual number of tribes that will enter negotiations will be made at a later date. Tribes already in the applicant pool will retain their existing ranking with tribes entering the applicant pool under these rules receiving a lower ranking. Being in the applicant pool will not guarantee that a tribe will actually be provided the opportunity to negotiate in any given year. However, it does mean that a tribe will not be passed over by a tribe with a lower ranking in the applicant pool or by a tribe not in the applicant pool, with the exception of a tribe already in the negotiation process.

For example, if the Department determines that five tribes will be afforded the opportunity to negotiate self-governance agreements for fiscal year 1999 and calendar year 1999, the five tribes with highest rankings would be notified and negotiations would be scheduled. The tribe ranked sixth on the list would then have the highest ranking to negotiate a self-governance agreement for 2000 or might enter negotiations for 1999 if one of the first five tribes discontinued negotiations. In such a case, the tribe that discontinued negotiations would remain in the applicant pool with its original ranking and would be the first to be selected in 1999 for negotiating agreements commencing in 2000.

Dated: January 14, 1998.

William A. Sinclair,

Director, Office of Self-Governance.

[FR Doc. 98–1283 Filed 1–20–98; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Tribal Self-Governance Notice of Availability of Self-Governance Negotiation/Planning Grants

AGENCY: Office of Self-Governance, Office of the Secretary, Interior.

ACTION: Notice of grants availability.

SUMMARY: In this notice, the Office of Self-Governance (OSG) announces the availability of fiscal year 1998 negotiation grants (up to 15 grants of no more than $40,000 each) and advance planning grants (up to 5 grants of no more than $40,000 each). The timeframes for application and selection vary with the type of grant and are specified in this announcement.

DATES: Applications must be submitted in accordance with the table below:

Type of grant	Deadline for submitting application
Negotiation	Mar. 31, 1998.
Advance planning	May 1, 1998.

ADDRESSES: Completed applications for grants should be sent to the Director, Office of Self-Governance, U.S. Department of the Interior, Mail Stop 2542, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth D. Reinfeld, U.S. Department of the Interior, Office of Self-Governance, 1849 C Street, NW, Mail Stop 2542, Washington, DC 20240, 202–219–0240.

SUPPLEMENTARY INFORMATION: The tribal self-governance program is designed to promote self-determination by allowing tribes to assume more control through negotiated annual funding agreements of programs operated by the Department of the Interior. The Tribal Self-Governance Act of 1994 (Pub. L. 103–413) allows for negotiations to be conducted for programs operated by BIA and for programs operated by other bureaus and offices within the Department that are otherwise available to Indians or when there is a historical, cultural, or geographic connection to an Indian tribe.

The purpose of this notice is to announce the availability of planning and negotiation grants in accordance with the self-governance interim rule published in the **Federal Register** on April 23, 1996. The interim rules were established at 25 CFR 1001.7 to 1001.9 and will be used to govern the application and selection process for tribes/consortia to receive fiscal year 1998 negotiation and planning grants as specified in this notice. Applicants should be guided by the requirements in 25 CFR 1001.7 to 1001.9 in preparing their applications. Copies of the interim rules published in the **Federal Register** on April 23, 1996, may be obtained from the information contact person identified in this notice.

Subject to the discretion of the Director, Office of Self-Governance, the following types of grants are available to tribes/consortia in 1998 with the deadlines as stated below:

(1) *Negotiation Grants:* Up to 15 grants of no more than $40,000 may be made available. Grants to tribes/consortia already receiving advance planning grants shall be limited to $20,000. As announced in today's **Federal Register**, the closing date for submitting completed applications to begin participation in tribal self-governance in fiscal year 1999 or calendar year 1999 is March 2, 1998. Applications requesting to be included in the applicant pool to begin participation in tribal self-governance may be submitted at any time. Tribes/consortia selected from the applicant pool to begin participation in tribal self-governance in fiscal year 1999 or calendar year 1999, may be eligible to receive a negotiation grant. Each selected tribe/consortium will be notified by March 16, 1998, and must submit a written application for a negotiation grant, no later than March 31, 1998, indicating its intention to negotiate an annual funding agreement with any bureau within DOI for 1999.

(2) *Advance Planning Grants:* Up to five grants of no more than $40,000 may be made available. The closing date for submitting applications to receive a grant to plan for future participation in the tribal self-governance program is May 1, 1998. No later than June 1, 1998, each applicant will be notified by letter from the Director, Office of Self-Governance whether it has been selected to receive an advance planning grant.

In order to provide sufficient time for tribes/consortia to effectively use the planning and negotiation grants, the following target dates have been established for the awarding of grants.

(1) *Negotiation Grants:* Since agreements for the 1998 fiscal year need to be signed and submitted by July 1, 1998, to allow sufficient time to prepare for negotiations, new participating tribes will be selected and awarded negotiation grants by May 1, 1998.

(2) *Advance Planning Grants:* In order to avoid delays in planning activity and future participation in tribal self-governance, advance planning grants will be awarded to tribes/consortia by July 1, 1998.

Submitting Applications

(1) Applications must be submitted in accordance with the interim rule published in the **Federal Register** on April 23, 1996, and by the deadlines identified in this announcement.

(2) Applications may be mailed or hand-delivered.

(3) Applications which are mailed must be postmarked no later than the date given in this notice for the particular type of grant being applied for.

Dated: January 14, 1998.

William A. Sinclair,

Director, Office of Self-Governance.

[FR Doc. 98–1289 Filed 1–20–98; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Alaska Land Managers Forum

AGENCY: Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: This notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (1988) and 41 CFR 101–6.1015(b). The Department of the Interior hereby gives notice of a public meeting of the Alaska Land Managers Forum to be held from 8:30 a.m. to noon on Wednesday, January 28, 1998. The meeting will take place in Conference Room 114, 1689 C Street, Anchorage, Alaska. This meeting will be held to receive and discuss work group reports on recreation and tourism. The agenda will also include several briefing items.

FOR FURTHER INFORMATION CONTACT: Ronald B. McCoy at (907) 271–5485 or Sally Rue at (907) 465–4084.

Deborah L. Williams,

Special Assistant to the Secretary for Alaska.

[FR Doc. 98–1300 Filed 1–20–98; 8:45 am]

BILLING CODE 4310–RP–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment, Finding of No Significant Impact, and Receipt of an Application for an Incidental Take Permit by International Paper Company for Timber Management Practices on its Lands in Texas, Arkansas, Louisiana, Mississippi, Alabama, Georgia, South Carolina, and North Carolina

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: International Paper Company (Applicant) seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service) pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended (Act). The permit would apply to all of the applicant's land holdings in Texas, Arkansas, Louisiana, Mississippi, Alabama, Georgia, South Carolina, and North Carolina that contain the federally endangered red-cockaded woodpecker (RCW) (*Picoides borealis*). The applicant has a total of 18 known active clusters in Alabama (2), Georgia (2), South Carolina (9), and Louisiana (5). The applicant wants to eventually transfer its baseline responsibility of 18 RCW clusters to its Southlands Experimental Forest (SEF) in Bainbridge, Georgia where there are currently two active RCW clusters. This ITP would authorize take of the existing 16 RCW groups in Alabama, South Carolina, and Louisiana incidental to timber management activities, plus any clusters in excess of the baseline at SEF.

The Service also announces the availability of an environmental assessment (EA) and Habitat Conservation Plan/Application for Incidental Taking (HCP). Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6). The Service specifically requests comment on the appropriateness of the "No Surprises" assurances should the Service determine that an ITP will be granted and based upon the submitted HCP. Although not explicitly stated in the HCP, the Service has, since August 1994, announced its intention to honor a "No Surprises" Policy for applicants seeking ITPs. Copies of the Service's "No Surprises" Policy may be obtained by making a written request to the Regional Office (see **ADDRESSES**). The Service is soliciting public comments and review of the applicability of the "No Surprises" Policy to this application and HCP.

DATES: Written comments on the permit application, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before February 20, 1998.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, Brunswick Field Office, 4270 Norwich Street, Brunswick, Georgia 31520. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Requests for the documentation must be in writing to be processed. Comments must be submitted in writing to be processed. Please reference permit number PRT–833203 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. Rick G. Gooch, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7110; or Mr. Robert Brooks, Fish and Wildlife Biologist, Brunswick Field Office, (see **ADDRESSES** above), telephone: 912/265–9336.

SUPPLEMENTARY INFORMATION: *Picoides borealis* (or RCW) is a non-migratory species that once was common in the southern Coastal Plain from east Texas to Florida and north to Maryland,

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Missouri, and Kentucky. RCWs nest in cavities constructed in living mature (typically > 60 years old) pine trees. The RCW is a cooperative breeder living in groups of one to nine birds with each bird nesting in a cavity; the aggregate of cavity trees is called a cluster. RCWs prefer longleaf pine forests, but it will also utilize loblolly, pond, slash, shortleaf, and even Virginia pines. Without periodic fire to control hardwoods, RCWs will abandon cluster sites. The decline of the RCW has resulted primarily from loss of its mature southern pine habitat from logging and conversion to non-forest and from fire exclusion.

Recovery activities for the RCW are focused on public lands. However, private lands are also important for the RCW in the Service's recovery strategy by: (1) Providing supplement habitat where the federal land base is insufficient to support recovery; (2) establishing and maintaining connection between and within populations on public lands; and/or, (3) providing a supply of juvenile RCWs for translocation into defined recovery populations. Unfortunately, RCWs on private lands have fared poorly because landowners are not inclined to manage their lands for RCW habitat because the bird's presence might impose restrictions on timber harvesting and development. The Service believes the private land RCW clusters that are geographically isolated will eventually cease to exist if private landowners are not encouraged to manage their lands for these birds.

The applicant, International Paper Company, proposes to sustain RCWs on its lands through the creation of a migration bank on its SEF property in Bainbridge, Georgia. This proposed mitigation bank at SEF currently contains 5300 acres of contiguous forests and the applicant proposes to establish and keep 3000 acres of high quality RCW habitat at this site. This would be enough habitat to eventually support about 25–30 RCW groups. Currently there are about 1500 acres of high quality RCW habitat and two RCW groups at SEF. The applicant is proposing translocation, cavity augmentations, and intensive habitat management at the SEF site to increase the RCW population. The applicant currently has 18 known RCW groups on its lands in Louisiana, Alabama, Georgia, and South Carolina, and they will keep their baseline responsibility of 18 RCW groups at the proposed mitigation bank at SEF, with the Service and state concurrence. The Service believes the applicants' extant RCW population will ultimately benefit from this proposed mitigation bank in that a more stable RCW population will be created and the applicant will be better able to intensively manage the RCWs at SEF.

The EA considers the environmental consequences of three alternatives, in addition to the proposed action. The no action alternative may result in loss of habitat and individual groups of *Picoides borealis* due to fragmented habitat, geographic isolation of the groups, and lack of intensive management. The proposed action alternative is issuance of the ITP with mitigation on the applicant's property. To compensate for the proposed taking of RCW groups, the applicant proposes to establish RCW groups on SEF before any taking occurs. The applicant also proposes to sell mitigation credits to third parties seeking incidental take permits for RCW on other private lands should additional groups above baseline be created during the life of the mitigation bank. The third alternative is to issue the ITP and mitigate for the taking of RCW groups on federal, state, or other private lands. The fourth alternative is for the Service to provide financial incentives to the applicant to intensively manage the RCW clusters on their lands.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP. An appropriate excerpt from the FONSI reflecting the Service's finding on the application is provided below:

Based on the analysis conducted by the Service, it has been determined that:

1. Issuance of an ITP will not appreciably reduce the likelihood of survival and recovery of the affected species in the wild.
2. This HCP contains provisions which sufficiently minimize and mitigate the impacts to the extent practicable.
3. Issuance of an ITP would not have significant effects on the human environment in the project area.
4. The proposed take is incidental to an otherwise lawful activity.
5. Adequate funding will be provided to implement the measures proposed in the submitted HCP.

The Service will also evaluate whether the issuance of a Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: January 13, 1998.

H. Dale Hall,

Deputy Regional Director.

[FR Doc. 98–1332 Filed 1–20–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Endangered Species Act Incidental Take Permit for the U.S. Borax Project in Kern County, CA

AGENCY: Fish and Wildlife Service.

ACTION: Notice of availability.

SUMMARY: U.S. Borax, Incorporated has applied to the Fish and Wildlife Service for a 50-year incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). In the 1,940-acre project area near the town of Boron, Kern County, California, the Service proposes to issue an incidental take permit and provide assurances to the applicant for the threatened desert tortoise (*Gopherus agassizii*) and the following Federal species of concern: Mojave ground squirrel (*Spermophilus mohavensis*), American badger (*Taxidea taxus*), Le Conte's thrasher (*Toxostoma lecontei*), loggerhead shrike (*Lanius ludovicianus*), burrowing owl (*Athene cunicularia*), desert kit fox (*Vulpes acrotis arsipus*), greenest tiger beetle (*Cicindela tranquebarica viridissima*), Mojave spineflower (*Chorizanthe spinosa*), and sagebrush loeflingia (*Loeflingia squarrosa var. artemisiarum*). The proposed permit would be effective upon issuance for species currently listed under the Act. The permit would become effective for unlisted species included in the permit upon their listing under the Act. This notice opens the comment period on the Environmental Assessment and permit application package, which includes a Habitat Conservation Plan and Implementation Agreement. The Service specifically requests comment on the appropriateness of the "No Surprises" assurances contained in section V.C.1 of the Implementation Agreement. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public.

DATES: Written comments on the Habitat Conservation Plan, Environmental Assessment, and Implementation Agreement should be received on or before February 20, 1998.

ADDRESSES: Comments should be addressed to Diane K. Noda, Field Supervisor, Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. Written comments may also be sent by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Kirk Waln, Fish and Wildlife Biologist, at the above address; telephone (805) 644–1766.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the documents should immediately contact the Service's Ventura Fish and Wildlife Office at the above referenced address, or by telephone at (805) 644–1766. Documents will also be available for public inspection, by appointment, during normal business hours at the above address.

Background Information

U.S. Borax proposes to enlarge its open pit borate mining operation and expand its overburden disposal piles near the town of Boron in Kern County, California. This site is known to support a population of the threatened desert tortoise and may support populations of Mojave ground squirrel, American badger, Le Conte's thrasher, loggerhead shrike, burrowing owl, desert kit fox, greenest tiger beetle, Mojave spineflower, and sagebrush loeflingia, all Federal species of concern.

Federally listed, threatened, and endangered species are protected pursuant to section 9 of the Act against take; that is, no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect the species, or attempt to engage in such conduct (16 U.S.C. 1538). The Service, however, may issue permits to take listed animal species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32. Although no incidental take authorization is required for listed plant species, impacts to these species must be addressed in the intra-Service consultation required pursuant to section 7(a) of the Act.

The Environmental Assessment considers the environmental consequences of four alternatives: the proposed action, no action, use of existing overburden pile areas, and backfilling. The no action alternative was found to be economically infeasible because U.S. Borax would be required to cease operations before the existing borate ore body was fully removed. The use of existing overburden pile areas was found infeasible because it would result in overburden piles approximately 1,200 feet in elevation above the surrounding landscape and be wholly incompatible with the existing landscape. The backfilling alternative was found infeasible because mineable calcium borate ores underlie the sodium borate ores that are the current focus of mining operations. At this time it is not economically feasible to mine calcium borate ores; however, backfilling of the pit would prevent their later use should economic conditions change. The no action, use of existing overburden pile areas, and backfilling alternatives would result in the loss of significantly less habitat than the preferred alternative. However, none of the mitigation measures under the proposed alternative would occur, including protecting and providing a management endowment for approximately 2,274 acres of high quality creosote bush scrub habitat.

The proposed action would result in the loss of 1,525 acres of disturbed creosote bush scrub habitat and 415 acres of land heavily degraded by past mining activities. This action could directly and indirectly affect the species described above. The Service proposes to issue an incidental take permit to the applicant for the incidental take of desert tortoises, and for the incidental take of other covered species should such authorization be necessary (i.e., should unlisted covered species be listed as threatened or endangered in the future, or should take authorization for plants become necessary). In addition, the applicant seeks Federal assurances that no additional land restrictions or financial compensation would be required for species adequately covered by the Habitat Conservation Plan. To accomplish this, all species covered in the Plan would be included in the incidental take permit on the condition that all permit issuance criteria are met and that the provisions of the Plan and Implementation Agreement are executed.

The proposed Federal action would authorize the incidental take of all desert tortoises within the project area. The Service anticipates that all Mojave ground squirrels, American badgers, burrowing owls, Le Conte's thrashers, loggerhead shrikes, greenest tiger beetles, and all individual Mojave spineflowers and sagebrush loeflingias would be removed or displaced from the project area through implementation of this action. Because habitat loss associated with this action would occur in small increments over many years, individual Mojave ground squirrels, American badgers, burrowing owls, Le Conte's thrashers, and loggerhead shrikes may avoid injury or death by moving to appropriate habitats off-site.

To minimize the effects of the proposed project, the proponent would undertake the following measures: An education program would be presented to all personnel working in the project area; preconstruction surveys by qualified biologists would be conducted and listed species removed from harm's way; a berm would be built to prevent desert tortoises from re-entering the area; vehicular traffic would be restricted to designated routes and a 25-mile-per-hour speed limit enforced; trash would be contained; and no firearms or pets would be permitted on site.

To mitigate the effects of the proposed project, the applicant proposes habitat reclamation and compensation. Following completion of mining, the applicant would reclaim the overburden piles through appropriate grading and revegetation. To mitigate for remaining adverse effects, the proponent would protect approximately 2,274 acres of high quality creosote bush scrub habitat and provide a management endowment for that habitat.

This notice is provided pursuant to section 10(c) of the Endangered Species Act and the regulations of the National Environmental Policy Act of 1969 (40 CFR 1506.6). The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the National Environmental Policy Act and section 10(a)(1)(B) of the Endangered Species Act. If the Service determines that the requirements are met, a permit will be issued for the incidental take of the covered species. The final permit decision will be made no sooner than 30 days from the date of this notice, notwithstanding a temporary moratorium on issuing permits with "No Surprises" assurances.

Dated: January 9, 1998.

Michael J. Spear,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–1333 Filed 1–20–98; 8:45 am]

BILLING CODE 4310–55–P

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

AGENCY: Bureau of Indian Affairs.

ACTION: Notice.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(a), notice is hereby given that the Gabrielino/Tongva Indians of California Tribal Council, 5450 Slauson Avenue, Suite 151, Culver City, California 90230, has filed a letter of intent to petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on August 14, 1997, and was signed by members of the group's governing body.

This is a notice of receipt of a letter of intent to petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under Section 83.9(a) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, 1849 C Street, NW, Washington, D.C. 20240. Phone: (202) 208–3592.

Dated: January 12, 1998.

Hilda A. Manuel,

Deputy Commissioner of Indian Affairs.

[FR Doc. 98–1334 Filed 1–20–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

National Park Service

Maine Acadian Culture Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) that the Maine Acadian Culture Preservation Commission will meet on Friday, February 6, 1998. The meeting will convene at 7:00 p.m. in the Centre culturel du Mont-Carmet, Lille Village of Grand Isle, Aroostook County, Maine.

The Maine Acadian Culture Preservation Commission was appointed by the Secretary of the Interior pursuant to the Maine Acadian Culture Preservation Act (Pub. L. 101–543). The purpose of the Commission is to advise the National Park Service with respect to:

- The development and implementation of an interpretive program of Acadian culture in the state of Maine.
- The selection of sites for interpretation and preservation by means of cooperative agreements.

The Agenda for this meeting is as follows:

1. Review of October 17 and December 12 summary reports.
2. Speaker: Adrien Berube of the Université de Moncton, Edmundston, New Brunswick, Canada. "Ten Facts About The History of Madawaska Which Should Be Taken With A Grain Of Salt".
3. Report of the National Park Service Project Staff.
4. Opportunity for public comment.
5. Proposed agenda, place, and date of the next Commission Meeting.

The meeting is open to the public. Further information concerning Commission meetings may be obtained from the Superintendent, Acadia National Park. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made at least seven days prior to the meeting to: Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, ME 04609–0177; telephone (207) 288–5472.

Paul F. Haertel,

Superintendent, Acadia National Park.

[FR Doc. 98–1340 Filed 1–20–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

[EOIR 121; AG Order No. 2139–98]

Executive Office for Immigration Review; Motion To Reopen: Suspension of Deportation and Cancellation of Removal

AGENCY: Department of Justice, Executive Office for Immigration Review.

ACTION: Notice.

SUMMARY: Pursuant to section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), certain aliens who are nationals of Guatemala, El Salvador, and particular former Soviet bloc countries who have final orders of deportation or removal may file a motion to reopen their cases before the Immigration Court or the Board of Immigration Appeals to apply for suspension of deportation or cancellation of removal. NACARA specifies that the Attorney General shall designate a time period in which such motions to reopen may be filed without regard to the statutory and regulatory time and number restrictions on motions to reopen. This notice designates that the time period for filing such motions will be from January 16, 1998, to September 11, 1998.

FOR FURTHER INFORMATION CONTACT: Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone: (703) 305–0470.

SUPPLEMENTARY INFORMATION:

Background

Section 203 of the Nicaraguan Adjustment and Central American Relief Act (Pub. L. 105–100; 111 Stat. 2160, 2193) (NACARA), signed into law on November 19, 1997, amended section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Pub. L. 104–208; 110 Stat. 3009–625) (IIRIRA) to provide special rules regarding applications for suspensions of deportation and cancellation of removal by certain aliens. These aliens include Guatemalan, Salvadoran, and particular former Soviet bloc nationals described in section 309(c)(5)(C)(i) of IIRIRA, as amended by section 203 of NACARA.

In addition, NACARA amended section 309 of IIRIRA to allow aliens with final orders of deportation or removal who have become eligible for cancellation of removal or suspension of deportation as a result of the amendments made by section 203 of NACARA to file one motion to reopen removal or deportation proceedings to apply for such relief, without regard to the time and number limitations on motions to reopen.

NACARA also requires that the Attorney General designate a specific time period for filing motions to reopen for such relief beginning no later than 60 days after the date of enactment of NACARA and extending for a period not to exceed 240 days. *See* section 309(g) of IIRIRA, as amended by section 203(c) of NACARA.

Who Is Eligible To File a Motion To Reopen Under Section 203 of NACARA?

As set forth in section 309(c)(5)(i) of IIRIRA, as amended by section 203 of NACARA, the following people may be eligible to file a motion to reopen to apply for suspension of deportation or cancellation of removal under the special rules of section 203 of NACARA, if they have not been convicted at any time of an aggravated felony:

1. Nationals of El Salvador who:
   a. first entered the United States on or before September 19, 1990;
   b. registered for ABC benefits or Temporary Protected Status (TPS) on or before October 31, 1991; and
   c. were not apprehended after December 19, 1990, at time of entry.
2. Nationals of Guatemala who:
   a. first entered the United States on or before October 1, 1990;
   b. registered for ABC benefits on or before December 31, 1991; and
   c. were not apprehended after December 19, 1990 at time of entry.
3. Nationals of Guatemala or El Salvador who applied for asylum with INS on or before April 1, 1990.
4. Nationals of the Soviet Union, Russia, any republic of the former Soviet Union, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia, or any state of the former Yugoslavia who:
   a. entered the United States on or before December 31, 1990;
   b. applied for asylum on or before December 31, 1991; and
   c. at the time of filing were a national of any of the countries listed above.
5. Spouses and children of a person granted suspension of deportation or cancellation of removal who is described under classes 1–4 above.
6. Unmarried sons and daughters of a parent granted suspension of deportation or cancellation of removal who is defined under classes 1–4 above, if the unmarried son or daughter was 21 years or older at the time the parent was granted suspension of deportation or cancellation of removal. The unmarried sons and daughters must have entered the U.S. on or before October 1, 1990.

Procedures for Reopening

The Attorney General has designated the period from January 16, 1998, until September 11, 1998, for eligible aliens to file a motion to reopen pursuant to NACARA. Eligible aliens may file only one such motion. The front page of the motion and any envelope containing the motion should include the notation "Special NACARA Motion." The fee for motions to reopen (currently $110) will be waived for eligible aliens under section 203 of NACARA.

If an alien has previously filed an application for suspension of deportation or cancellation of removal with the Immigration Judge or the Board of Immigration Appeals, he or she must file a copy of that application or a new application with the motion to reopen. If the motion to reopen is granted and the alien has previously filed an application, the alien will not be required to pay a new filing fee for the suspension/cancellation application

If an alien has not previously filed an application for suspension of deportation or cancellation of removal, the alien must submit a new application with the motion to reopen. Nothing in this notice changes the requirements and procedures in 8 CFR 3.31(b), 103.7(b)(1), and 240.11(f) for paying the application fee for suspension/cancellation after a motion to reopen is granted if such an application was not previously filed. If an alien is required to submit a new application form, the alien should submit an Application for Suspension of Deportation (Form EOIR–40), whether he or she is in deportation or removal proceedings.

Grants of Suspension and Cancellation Under NACARA Not Conditional

Section 304(a)(3) of IIRIRA required that grants of suspension/cancellation be subject to a numerical limitation of 4,000 per fiscal year. Section 240A(e)(3) of the Immigration and Nationality Act, as amended by section 204(a) of NACARA, however, provides that applications for suspension of deportation and cancellation of removal granted pursuant to section 203 of NACARA are not subject to that annual limitation. Therefore, notwithstanding the provisions of 8 CFR 240.21, grants of suspension and cancellation pursuant to section 203 of NACARA shall be made without condition.

Dated: January 15, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–1520 Filed 1–16–98; 2:26 pm]

BILLING CODE 1531–26–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP(OJP)–1152]

Fiscal Year 1998 Program Plan for the Office of Justice Programs

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of availability of Program Plan.

SUMMARY: The Fiscal Year 1998 Program Plan for the Office of Justice Programs is now available on the Internet and in hard copy.

FOR FURTHER INFORMATION CONTACT: The Office of Congressional and Public Affairs, 810 7th St., N.W., Washington, D.C. 20531. Telephone (202) 307–0703. Facsimile (202) 514–5958.

SUPPLEMENTARY INFORMATION: The Assistant Attorney General for the Office of Justice Programs (OJP) is pleased to announce that the OJP Program Plan for Fiscal Year 1998 is now available both on the Internet and in hard copy. This Program Plan details the various programs that OJP funds and supports.

The Program Plan is available from the OJP website at http://www.ojp.usdoj.gov/Plan. Printed copies can be obtained from the address above.

Dated: January 14, 1998.

Laurie Robinson,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 98–1316 Filed 1–20–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket Number ICR 98–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Student Data Form

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an

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opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration is soliciting comments concerning the proposed reinstatement of the information collection request for the Student Data Form which is completed by students attending courses at OSHA's Training Institute. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before March 23, 1998. The Department of Labor is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR 98–1, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, telephone number (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Robert O'Brien, Division of Administration and Training Information, OSHA Office of Training and Education, 1555 Times Drive, Des Plaines, IL 60018, telephone (847) 297–4810 (this is not a toll-free number), e-mail to robert.obrien@oti.osha.gov, or send a facsimile message to (847) 297–4874. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Robert O'Brien or Barbara Bielaski at (202) 219–7177, x142. For electronic copies of the Information Collection Request for the Student Data Form, contact OSHA's WebPage on the Internet at http://www.osha.gov under Standards.

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Administration (OSHA) Training Institute provides basic, intermediate, and advanced training and education in occupational safety and health for Federal and State compliance officers, agency professional and technical support personnel, employers, employees, organizations representing employees and employers, educators who aid in developing curricula and teaching occupational safety and health courses, and representatives of professional safety and health groups.

Students attending OSHA's Training Institute courses complete the one-page form on the first day of class. The information is used in order to know who to contact in the event of an emergency and to obtain the correct student group information for record keeping and reporting needs. The student group information is also used to ensure that OSHA is collecting tuition from all private sector students as required by OMB Circular A–25 and Part 1949 of Title 29, Code of Federal Regulations.

II. Current Actions

OSHA is planning to reinstate this form. Its approval was inadvertently allowed to lapse.

Type of Review: Reinstatement.
Agency: Occupational Safety and Health Administration.
Title: Student Data Form.
OMB Number: Formerly 1218–0172.
Agency Number: OSHA 182.
Affected Public: Individuals.
Total Respondents: 5500.
Frequency: On occasion.
Total Responses: 5500.
Average Time per Response: 5 minutes.
Estimated Total Burden Hours: 463 hours.
Total Burden Cost (operating/maintaining): $7,662.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 14, 1998.

Zigmas Sadauskas,
Acting Director, Office of Training and Education.

[FR Doc. 98–1328 Filed 1–20–98; 8:45 am]
BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket Number ICR 98–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; Acrylonitrile

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Occupational Safety and Health Administration is soliciting comments concerning the proposed extension of the information collection request for the Acrylonitrile Standard 29 CFR 1910.1045. A copy of the proposed information collection request (ICR) can be obtained by contacting the employee listed below in the addressee section of this notice. The Department of labor is particularly interested in comments which:

- evaluate whether the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection technique or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted by March 23, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR 98–2, U.S. Department of labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210, telephone number (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Adrian Corsey, Directorate of Health Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3718, telephone (202) 219–7075. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed immediately to persons who request copies by telephoning Barbara Bielaski at (202) 219–8076 or Adrian Corsey at (202) 219–7075. For electronic copies of the Information Collection Request on Acrylonitrile, contact OSHA's WebPage on the Internet at http://www.osha.gov/ and click on standards.

SUPPLEMENTARY INFORMATION:

Background

The Acrylonitrile standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to Acrylonitrile. The Standard requires that employers must establish and maintain a training and compliance program, including exposure monitoring and medical surveillance records. These records are used by employees, physicians, employers and the OSHA to determine the effectiveness of the employers' compliance efforts. Also the standard requires that OSHA have access to various records to ensure that employers are complying with the disclosure provisions of the Acrylonitrile Standard.

Type of Review: Extension.
Agency: Occupational Safety and Health Administration.
Title: Acrylonitrile 29 CFR 1910.1045.
OMB Number: 1218–0126.
Affected Public: Business or other for-profit, Federal government, State and Local governments.
Total Respondents: 26.
Frequency: On occasion.
Total Responses: 25,602.
Average Time per Response: Ranges from 5 minutes to maintain records to 1.5 hours for an employee to have a medical exam.
Estimated Total Burden Hours: 6,621.
Total Annualized capital/startup costs: -0-.
Total initial annual costs (operating/maintaining systems or purchasing services): $311,360.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request. The comments will become a matter of public record.

Dated: January 13, 1998.

Ray Donnelly,
Acting Deputy Director, Directorate of Health Standards Program.

[FR Doc. 98–1329 Filed 1–20–98; 8:45 am]
BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Homeless Veterans' Reintegration Project Competitive Grants

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training, Labor.

ACTION: Notice of availability of funds and solicitation for grant applications for Homeless Veterans Reintegration Projects (SGA 98–01).

SUMMARY: This notice contains all of the necessary information and forms needed to apply for grant funding. All applicants for grant funds should read this notice in its entirety. The U.S. Department of Labor, Veterans' Employment and Training Service (VETS) announces a grant competition for Homeless Veterans Reintegration Projects (HVRP) authorized under the Stewart B. McKinney Homeless Assistance Act. Such projects will assist eligible veterans who are homeless by providing employment, training, supportive and transitional housing assistance. Under this solicitation, VETS expects to award up to twenty grants in FY 1998.

This notice describes the background, the application process, description of program activities, evaluation criteria, and reporting requirements for Solicitation of Grant Applications (SGA) 98–01. VETS anticipates that up to $2.25 million will be available for grant awards under this SGA.

The information and forms contained in the Supplementary Information Section of this announcement constitute the official application package for this Solicitation. In order to receive any amendments to this Solicitation which may be subsequently issued, *all applicants must register their name and address with the Procurement Services Center.* Please send this information as soon as possible, Attention: Grant Officer, to the following address: U.S. Department of Labor, Procurement Services Center. Room N–5416, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Please reference SGA 98–01.

DATES: One (1) ink-signed original, complete grant application (plus three (3) copies of the Technical Proposal and three (3) copies of the Cost Proposal shall be submitted to the U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, N.W., Washington, D.C. 20210, not later than 4:45 p.m., Eastern Standard Time, February 23, 1998, or be postmarked by the U.S. Postal Service on or before that date. Hand delivered applications must be received by the Procurement Services Center by that time.

ADDRESSES: Applications shall be mailed to the U.S. Department of Labor, Procurement Services Center, Attention: Lisa Harvey, Reference SGA 98–01, Room N–5416, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 219–6445 [not a toll free number].

SUPPLEMENTARY INFORMATION

Homeless Veterans Reintegration Project Solicitation

I. Purpose

The U.S. Department of Labor (DOL), Veterans' Employment and Training Service (VETS) is requesting grant applications for the provision of employment and training services in accordance with Title VII, Subtitle C, Section 738 of the Stewart B. McKinney Homeless Assistance Act (MHAA), 42 U.S.C. 11448. These instructions contain general program information, requirements and forms for application for funds to operate a Homeless Veterans Reintegration Project (HVRP).

II. Background

The Stewart B. McKinney Homeless Assistance Act of 1987, enacted on July 22, 1987, under Title VII, Subtitle C, Section 738 provides that "The Secretary shall conduct, directly or

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through grant or contract, such programs as the Secretary determines appropriate to *expedite the reintegration of homeless veterans into the labor force.*" This program was reauthorized under Section 621 of the McKinney Homeless Assistance Amendments Act of 1990 (Public Law 101–645) for an additional three years, i.e., through FY 1993. Under the Homeless Veterans Comprehensive Service Programs Act of 1992 (Public Law 102–590—enacted on November 10, 1992) the Homeless Veterans Reintegration Project was reauthorized through Fiscal Year 1995. However, the program was rescinded in FY 1995. Public Law 104–275, dated October 9, 1996, was amended to reauthorize the program through FY 1998. Public Laws 105–41 and 105–114, enacted in 1997, extend the program through FY 1999.

The Homeless Veterans Reintegration Project was the first nationwide Federal program that focused on placing homeless veterans into jobs. In accordance with the MHAA, the Assistant Secretary for Veterans' Employment and Training (ASVET) is making approximately $2.25 million of the funds available to award grants for HVRPs in selected cities in FY 1998 under this competition. A separate competition for a small number of demonstration grants to operate in rural areas will be announced separately within a short time. Both types of projects, urban and rural, have provided valuable information on approaches that work in the different environments.

III. Application Process

A. Potential Jurisdictions to be Served

Due to the demonstration nature of the Act, the amount of funds available, and the emphasis on establishing or strengthening existing linkage with other recipients of funds under the MHAA, the only potential jurisdictions which will be served through this competition for HVRPs in FY 1998 are the metropolitan areas of the 75 U.S. cities largest in population and the city of San Juan, Puerto Rico. All potential HVRP jurisdictions are listed in Appendix E.

B. Eligible Applicants

Applications for funds will be accepted from State and local public agencies, Private Industry Councils, and nonprofit organizations as follows:

1. Private Industry Councils (PICS) as defined in Title I, Section 102 of the Job Training Partnership Act (JTPA), Public Law 97–300, are eligible applicants, as well as State and local public agencies. "Local public agency" refers to any public agency of a general purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers. (This typically refers to cities and counties). A State agency may propose in its application to serve one or more of the potential jurisdictions located in its State. This does not preclude a city or county agency from submitting an application to serve its own jurisdiction.

Applicants are encouraged to utilize, through subgrants, experienced public agencies, private nonprofit organizations, and private businesses which have an understanding of the unemployment and homeless problems of veterans, a familiarity with the area to be served, and the capability to effectively provide the necessary services.

2. Also eligible to apply are nonprofit organizations who have operated an HVRP or similar employment and training program for the homeless or veterans; have proven capacity to manage Federal grants; and have or will provide the necessary linkages with other service providers. Nonprofit organizations will be required to submit with their application recent (within one year) financial audit statements that attest to the financial responsibility of the organization.

Entities described in Section 501(c)4 of the Internal Revenue Code that engage in lobbying activities are not eligible to receive funds under this announcement. The Lobbying Disclosure Act of 1995, Public Law No. 104–65, 109 Stat. 691, prohibits the award of federal funds to these entities if they engage in lobbying activities.

C. Funding Levels

The total amount of funds available for this solicitation is $2.25 million. It is anticipated that up to 20 awards will be made under this solicitation. Awards are expected to range from $100,000 to $125,000 with an average of $112,500. The Federal government reserves the right to negotiate the amounts to be awarded under this competition. *Please be advised that requests exceeding this range by 15% or more will be considered non-responsive.*

D. Period of Performance

The period of performance will be for one year from date of award. It is expected that successful applicants will commence program operations under this solicitation on or before March 31, 1998. Actual start dates will be negotiated with each successful applicant.

E. Second Year Option

As stated in Section II of this Part, the Homeless Veterans Reintegration Project was reauthorized by statute through FY 1998 only. Should there be action by Congress to reauthorize HVRP beyond that time and should funds be appropriated for this purpose, a second year option may be considered. The Government does not, however, guarantee an option year for any awardee.

The grantees' performance during the first period of operations will be taken into consideration as follows:

1. By the end of the third quarter, has the grantee achieved at least 60% of the first year total goals for Federal expenditures, enrollments, and placements?

2. Has the grantee met 85% of goals for Federal expenditures, enrollments and placements for the year if planned activity is NOT evenly distributed in each quarter?

All instructions for modifications and announcement of fund availability will be issued at a later date. Please note that the Government does reserve its right to compete any subsequent funds appropriated for this purpose in lieu of an option year.

F. Late Proposals

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at the Office of Procurement Services at 4:45 pm EST, February 23, 1998, will not be considered unless it is received before the award is made and:

1. it was sent by registered or certified mail not later than the fifth calendar day before February 23, 1998;

2. it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. it was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 pm at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to February 23, 1998.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office. Applications sent by telegram or facsimile (FAX) will *not* be accepted.

G. Submission of Proposal

A cover letter, and an original and three (3) copies of the proposal shall be submitted. The proposal shall consist of two (2) separate and distinct parts:

Part I—Technical Proposal shall consist of a narrative proposal that demonstrates the applicant's knowledge of the need for this particular grant program, its understanding of the services and activities proposed to alleviate the need and its capabilities to accomplish the expected outcomes of the proposed project design. The technical proposal shall consist of a narrative not to exceed fifteen (15) pages double-spaced, typewritten on one side of the paper only. Charts and exhibits are not counted against the page limit. Applicants should be responsive to the Rating Criteria contained in Section VI and address all of the rating factors noted as thoroughly as possible in the narrative. The following format is strongly recommended:

1. Need for the project: the applicant should identify the geographical area to be served and provide an estimate of the number of homeless veterans and their needs, poverty and unemployment rates in the area, and gaps in the local community infrastructure the project would fulfill in addressing the employment and other barriers of the targeted veterans. Include the outlook for job opportunities in the service area.

2. Approach or strategy to increase employment and job retention: The applicant should describe the specific supportive services and employment and training services to be provided under this grant and the sequence or flow of such services. Participant flow charts may be provided. Include a description of the relationship with other employment and training programs such as disabled Veterans' Outreach Program (DVOP) and the Local Veterans' Employment Representative (LVER) program, and programs under the Job Training Partnership Act. Please include a plan for followup of participants who entered employment at age 30 and 90 days and the capacity to assist the Department of Labor in one-year and/or multi-year followup efforts. (See discussion on results in Section V. D.) Please include the chart of proposed performance goals and planned expenditures listed in Appendix D. Although the form itself is not mandatory, the information called for in Appendix D must be provided by the applicant.

3. Linkages with other providers of employment and training services to the homeless and to veterans: Describe the linkages this program will have with other providers of services to veterans and to the homeless outside of the HVRP grant. List the types of services provided by each. Note the type of agreement in place if applicable.

Linkages with the workforce development system [inclusive of JTPA and State Employment Security Agencies (SESAs)] should be delineated. Describe any linkages with Department of Housing and Urban Development (HUD) and Department of Veterans Affairs resources and programs for the homeless. Indicate how the applicant will coordinate with any "continuum of care" efforts for the homeless among agencies in the community.

4. Organizational capability in providing required program activities: The applicant's relevant current or prior experience in operating employment and training programs should be delineated. Provide information denoting outcomes of past programs in terms of enrollments and placements. Applicants who have operated an HVRP program, or more recent Homeless Veterans Employment and Training (HVET) program should include final or most recent technical performance reports. (This information is subject to verification by the Veterans' Employment and Training Service.) Provide evidence of key staff capability. Non-profit organizations should submit evidence of satisfactory financial management capability including recent financial and/or audit statements.

5. Proposed housing strategy for homeless veterans: Describe how housing resources for homeless veterans may be obtained or accessed. These resources may be from linkages or sources other than the HVRP grant such as HUD, community housing resources, DVA leasing or other programs. The applicant should explain whether HVRP resources will be used and why this is necessary.

Part II—Cost Proposal shall contain the Standard Form (SF) 424, "Application for Federal Assistance," and the Budget Information Sheet in Appendix B. In addition the budget shall include—on a separate page(s)—a detailed cost break-out of each line item on the Budget Information Sheet. Please label this page or pages the "Budget Narrative." Also to be included in this Part is the Assurance and Certification Page, Appendix C. Copies of all required forms with instructions for completion are provided as appendices to this solicitation. The Catalog of Federal Domestic Assistance number for this program is 17.805, which should be entered on the SF 424, Block 10. Please show leveraged resources/matching funds and/or the value of in-kind contributions in Section B of the Budget Information sheet.

Budget Narrative Information. As an attachment to the Budget Information Sheet, the applicant must provide at a minimum, and on separate sheet(s), the following information:

(a) A breakout of all personnel costs by position, title, salary rates and percent of time of each position to be devoted to the proposed project (including subgrantees);

(b) An explanation and breakout of extraordinary fringe benefit rates and associated charges (i.e., rates exceeding 35% of salaries and wages);

(c) An explanation of the purpose and composition of, and method used to derive the costs of each of the following: travel, equipment, supplies, subgrants/contracts and any other costs. The applicant should include costs of any required travel described in this Solicitation. Mileage charges shall not exceed 31 cents per mile;

(d) Description/specification of and justification for equipment purchases, if any. Tangible, non-expendable, personal property having a useful life of more than one year and a unit acquisition cost of $5,000 or more per unit must be specifically identified: and

(e) Identification of all sources of leveraged or matching funds and an

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explanation of the derivation of the value of matching/in-kind Services.

IV. Participant Eligibility

To be eligible for participation under HVRP, an individual must be homeless and a veteran defined as follows:

A. The term "homeless or homeless individual" includes persons who lack a fixed, regular, and adequate nighttime residence. It also includes persons whose primary nighttime residence is either a supervised public or private shelter designed to provide temporary living accommodations; an institution that provides a temporary residence for individuals intended to be institutionalized; or a private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. [Reference 42 U.S.C. 11302].

B. The term "veteran" means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable. [Reference 38 USC 101(2)]

V. Project Summary

A. Program Concept and Emphasis

The HVRP grants under Section 738 of the Stewart B. McKinney Homeless Assistance Act are intended to address dual objectives:

Provide services to assist in reintegrating homeless veterans into the labor force; and stimulate the development of effective service delivery systems that will seek to address the complex problems facing homeless veterans. These programs are designed to be flexible in addressing the universal as well as local or regional problems barring homeless veterans from the workforce. The program in FY 1998 will continue to strengthen the provision of comprehensive services through a case management approach, the attainment of housing resources for veterans entering the labor force, and strategies for employment and retention.

B. Required Features

1. The HVRP has since its inception featured an outreach component consisting of veterans who have experienced homelessness. In recent years this requirement was modified to allow the projects to utilize formerly homeless veterans in other positions where there is direct client contact if outreach was not needed extensively, such as counseling, peer coaching, intake and follow up. This requirement applies to projects funded under this solicitation.

2. Projects will be required to show linkages with other programs and services which provide support to homeless veterans. Coordination with the Disabled Veterans' Outreach Program (DVOP) Specialists in the jurisdiction is particularly encouraged.

3. Projects will be "employment focused." That is, they will be directed towards: (a) increasing the employability of homeless veterans through providing for or arranging for the provision of services which will enable them to work; and (b) matching homeless veterans with potential employers.

C. Scope of Program Design

The HVRP project design should provide or arrange for the following services:

—Outreach, intake, assessment, counseling and employment services. Outreach should, to the degree practical, be provided at shelters, day centers, soup kitchens, and other programs for the homeless. Program staff providing outreach services are to be veterans who have experienced homelessness.

Coordination with veterans'; services programs and organizations such as:

—Disabled Veterans'; Outreach Program (DVOP) Specialists and Local Veterans' Employment Representatives (LVERs) in the State Employment Security/Job Service Agencies (SESAs) or in the newly instituted workforce development system's One-Stop Centers, JTPA Title IV, Part C (IV–C) Veterans' Employment Program
—Department of Veterans' Affairs (DVA) services, including its Health Care for Homeless Veterans, Domiciliary and other programs, including those offering transitional housing
—Veteran service organizations such as The American Legion, Disabled American Veterans, and the Veterans of Foreign Wars, Vietnam Veterans of America, and the American Veterans (AMVETS)

Referral to necessary treatment services, rehabilitative services, and counseling including, but not limited to:

—Alcohol and drug
—Medical
—Post Traumatic Stress Disorder
—Mental Health
—Coordinating with MHAA Title VI programs for health care for the homeless

Referral to housing assistance provided by:

—Local shelters
—Federal Emergency Management Administration (FEMA) food and shelter programs
—Transitional housing programs and single room occupancy housing programs funded under MHAA Title IV
—Permanent housing programs for the handicapped homeless funded under MHAA Title IV
—Department of Veterans' Affairs programs that provide for leasing or sale of acquired homes to homeless providers
—Transitional housing leased by HVRP funds (HVRP funds cannot be used to purchase housing)

Employment and training services such as:

—Basic skills instruction
—Basic literacy instruction
—Remedial education activities
—Job search activities
—Job counseling
—Job preparatory training, including résumé writing and interviewing skills
—Subsidized trial employment (Work Experience)
—On-the-Job Training
—Job placement in unsubsidized employment
—Placement followup services
—Services provided under JTPA Program Titles

D. Results-Oriented Model

Based on past experience of grantees working with this target group, a workable program model evolved which is presented for consideration by prospective applicants. No model is mandatory, and the applicant should design a program that is responsive to local needs, but will carry out the objectives of the HVRP to successfully reintegrate homeless veterans into the workforce.

With the advent of implementing the Government Performance and Results Act (GPRA), Congress and the public are looking for results rather than process. While entering employment is a viable out come, it will be necessary to measure results over a longer term to determine the success of programs. The following program discussion emphasizes that followup is an integral program component.

The first phase of activity consists of the level of outreach that is necessary in the community to reach veterans who are homeless. This may also include establishing contact with other agencies that encounter homeless veterans such as shelters, soup kitchens and other facilities. An assessment should be made of the supportive and social rehabilitation needs of the client and referral may take place to services such as drug or alcohol treatment or temporary shelter. When the individual is stabilized, the assessment should focus on the employability of the individual and they are enrolled into the program if they would benefit from pre-employment preparation such as résumé writing, job search workshops, related counseling and case management, and initial entry into the job market through temporary jobs, sheltered work environments, or entry into classroom or on-the-job training. Such services should also be noted in an Employability Development Plan so that successful completion of the plan may be monitored by the staff.

Entry into full-time employment or a specific job training program should follow in keeping with the objective of HVRP to bring the participant closer to self-sufficiency. Transitional housing may assist the participant at this stage or even earlier. Job development is a crucial part of the employability process. Wherever possible, DVOP and LVER staff should be utilized for job development and placement activities for veterans who are ready to enter employment *or* who are in need of intensive case management services. Many of these staff have received training in case management at the National Veterans' Training Institution and have as a priority of focus, assisting those most at a disadvantage in the labor market. VETS urges working hand-in-hand with DVOP/LVER staff to achieve economies of resources.

Followup to determine if the veteran is in the same or similar job at the 30 day period after entering employment is required and important in keeping contact with the veterans and so that assistance in keeping the job may be provided. The 90 day followup is fundamental to assessing the results of the program interventions. Grantees should be careful to budget for this activity so that followup can and will occur for those placed at or near the end of the grant period. Such results will be reported in the final technical performance report.

VETS emphasizes in its Strategic Plan to implement GPRA that suitable outcomes involve careers, not just jobs. Successful results are achieved when the veteran is in the same or similar job after one or more years. Towards that end, VETS solicits the cooperation of successful applicants in retaining participant information pertinent to a longitudinal followup survey, i.e., at least for one year after the grant period ends. Retention of records will be reflected in the Special Provisions at time of award.

E. Related HVRP Program Development Activities

1. Community Awareness Activities

In order to promote linkages between the HVRP program and local service providers (and thereby eliminate gaps or duplication in services and enhance provision of assistance to participants), the grantee must provide project orientation and/or service awareness activities that it determines are the most feasible for the types of providers listed below. Project orientation workshops conducted by HVRP grantees have been an effective means of sharing information and revealing the availability of other services; they are encouraged but not mandatory. Rather, the grantee will have the flexibility to attend service provider meetings, seminars, conferences, to outstation staff, to develop individual service contracts, and to involve other agencies in program planning. This list is not exhaustive. The grantee will be responsible for providing appropriate awareness, information sharing, and orientation activities to the following:

a. *Providers of hands-on services to the homeless,* such as shelter and soup-kitchen operators, to make them fully aware of services available to homeless veterans to make them job-ready and place them in jobs.

b. *Federal, State and local entitlement services* such as the Social Security Administration, Department of Veterans' Affairs (DVA), State Employment Security Agencies (SESAs) and their local Job Service offices, One-Stop Centers (which integrate JTPA, labor exchange and other employment and social services), detoxification facilities, etc., to familiarize them with the nature and needs of homeless veterans.

c. *Civic and private sector groups,* and especially veterans' service organizations, to describe homeless veterans and their needs.

2. Stand Down Support

A "Stand Down" as it relates to homeless veterans is an event held in a locality usually for three days where services are provided to homeless veterans along with shelter, meals, clothing and medical attention. For the most part this type of event is a volunteer effort which is organized within a community and brings service providers such as the DVA, Disabled Veterans Outreach Program Specialists, Local Veterans' Employment Representatives from the State Employment Service Agencies, veteran service organization, military personnel, civic leaders, and a variety of other interested persons and organizations. Many services are provided on site with referrals also made for continued assistance after the event. This can often be the catalyst that enables the homeless veterans to get back into mainstream society. The Department of Labor has supported replication of this event. Many such exercises have been held throughout the nation. In areas where an HVRP is operating, the grantees are encouraged to participate fully and offer their services for any planned Stand Down event. Towards this end, up to $5,000 of the currently requested HVRP MHAA grant funds may be used to supplement the Stand Down effort where funds are not otherwise available and should be reflected in the budget and budget narrative.

VI. Rating Criteria for Award

Applications will be reviewed by a DOL panel using the point scoring system specified below. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member. The ranking will be the primary basis to identify approximately 20 applicants as potential grantees. Although the Government reserves the right to award on the basis of the initial proposal submissions, the Government may establish a competitive range, based upon the proposal evaluation, for the purpose of selecting qualified applicants. The panel's conclusions are advisory in nature and not binding on the Grant Officer. The government reserves the right to ask for clarification or hold discussions, but is not obligated to do so. The Government further reserves the right to select applicants out of rank order if such a selection would, in its opinion, result in the most effective and appropriate combination of funding, demonstration models, and geographical service areas. The Grant Officer's determination for award under SGA 98–01 is the final agency action. The submission of the same proposal from any prior year HVRP or HVET competition does not guarantee an award under this Solicitation.

Panel Review Criteria

1. Need for the Project: 15 points. The applicant shall document the extent of need for this project, as demonstrated by: (1) The potential number or concentration of homeless individuals and homeless veterans in the proposed project area relative to other similar areas of jurisdiction; (2) the high rates of poverty and/or unemployment in the proposed project area as determined by the census or other surveys; and (3) the extent of gaps in the local infrastructure

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to effectively address the employment barriers which characterize the target population.

2. Overall Strategy to Increase Employment and Retention: 30 points. The application must include a description of the proposed approach to providing comprehensive employment and training services, including job training, job development, placement and post placement follow up services. The supportive services to be provided as part of the strategy of promoting job readiness and job retention should be indicated. The applicant should identify the local human resources and sources of training to be used for participants. A description of the relationship, if any, with other employment and training program such as SESAs (DVOP and LVER Programs), JTPA IV–C, other JTPA programs, and Workforce Development Boards or entities where in place, should be presented. It should be indicated how the activities will be tailored or responsive to the needs of homeless veterans. A participant flow chart may be used to show the sequence and mix of services. Note: The applicant MUST complete the chart of proposed program outcomes to include participants served, and job retention. (See Appendix D)

3. Quality and Extent of Linkages with Other Providers of Services to the Homeless and to Veterans: 20 points. The application should provide information on the quality and extent of the linkages this program will have with other providers of services to benefit the homeless or veterans in the local community outside of the HVRP grant. For each service, it should be specified who the provider is, the source of funding (if known), and the type of linkages/referral system established or proposed. Describe to the extent possible, how the project would fit into the community's "continuum of care" approach to respond to homelessness and any linkages to HUD or DVA programs or resources to benefit the proposed program.

4. Demonstrated Capability in Providing Required Program Services: 20 points. The applicant should describe its relevant prior experience in operating employment and training programs and providing services to participants similar to that which is proposed under this solicitation. Specific outcomes achieved by the applicant should be described in terms of clients placed in jobs, etc. The applicant must also delineate its staff capability and ability to manage the financial aspects of Federal grant programs. Relevant documentation such as financial and/or audit statements should be submitted (required for applicants who are non-profit agencies). Final or most recent technical reports for HVRP, HVET or other relevant programs should be submitted as applicable. The applicant should also address its capacity for timely startup of the program.

5. Quality of Overall Housing Strategy: 15 points. The application should demonstrate how the applicant proposes to obtain or access housing resources for veterans in the program and entering the labor force. This discussion should specify the provisions made to access temporary, transitional, and permanent housing for participants through community resources, HUD, lease, HVRP or other means. HVRP funds may not be used to purchase housing.

Applicants can expect that the cost proposal will be reviewed for allowability, allocability, and reasonableness of costs, but will not be scored.

VII. Post Award Conference

A post-award conference for those awarded FY 1998 HVRP funds is tentatively planned for April or May, 1998. Costs associated with attending this conference for up to three grantee representatives will be allowed as long as they were incurred in accordance with Federal travel regulations. Such costs shall be charged as administrative costs and reflected in the proposed budget. The site of the conference has not yet been determined but will likely be in Washington, DC. Please use Washington, DC for budget planning purposes. The conference will focus on providing information and assistance on reporting, record keeping, and grant requirements, and will also include best practices from past projects.

VIII. Reporting Requirements

The grantee shall submit the reports and documents listed below.

A. Financial Reports

The grantee shall report outlays, program income, and other financial information on a quarterly basis using SF 269A, *Financial Status Report, Short Form.* These forms shall cite the assigned grant number and be submitted to the appropriate State Director for Veterans' Employment and Training (DVET) no later than 30 days after the ending date of each Federal fiscal quarter during the grant period. In addition, a final SF 269 shall be submitted no later than 90 days after the end of the grant period.

B. Program Reports

Grantees shall submit a Quarterly Technical Performance Report 30 days after the end of each Federal fiscal quarter to the DVET which contains the following:

1. a comparison of actual accomplishments to established goals for the reporting period and any findings related to monitoring efforts;
2. reason for slippage if established goals are not met and identification of the corrective action which will be taken to meet the goals, and the timetable for accomplishment of the corrective action.

A final Technical Performance Report will also be required as part of the final report package due 90 days after grant expiration.

C. Summary of Final Report Package

The grantee shall submit 90 days after the grant expiration date the following final report package:

1. Final Financial Status Report.
2. Final Technical Performance Report.
3. Final Narrative Report—Grantees will be required to submit a final narrative report identifying major successes of the program as well as obstacles to success.

IX. Administrative Provisions

A. Limitation on Administrative and Indirect Costs

1. Direct Costs for administration, plus any indirect charges claimed, may not exceed 20 percent of the total amount of the grant.
2. Indirect costs claimed by the applicant shall be based on a federally approved rate. A copy of the negotiated, approved, and signed indirect cost negotiation agreement must be submitted with the application. (Do not submit the State cost allocation plan.)
3. Rates traceable and trackable through the SESA Cost Accounting System represent an acceptable means of allocating costs to DOL and, therefore, can be approved for use in MHAA grants to SESAS.
4. If the applicant does not presently have an approved indirect cost rate, a proposed rate with justification may be submitted. Successful applicants will be required to negotiate an acceptable and allowable rate with the appropriate DOL Regional Office of Cost Determination within 90 days of grant award.

B. Allowable Costs

Determinations of allowable costs shall be made in accordance with the following applicable Federal cost principles:

State and local government—OMB Circular A–87.

Nonprofit organizations—OMB Circular A–122.

C. Administrative Standards and Provisions

All grants shall be subject to the following administrative standards and provisions:

29 CFR Part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

29 CFR Part 95—Grants and Agreements with Institutes of Higher Education, Hospitals, and Other Non-Profit Organizations.

29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

29 CFR Part 30—Equal Employment Opportunity in Apprenticeship and Training.

29 CFR Part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964.

Signed at Washington, D.C., this 14th day of January 1998.

Lawrence J. Kuss,

Grant Officer.

Appendices

Appendix A: Application for Federal Assistance SF Form 424
Appendix B: Budget Information Sheet
Appendix C: Assurances and Certifications Signature Page
Appendix D: Technical Performance Goals Form
Appendix E: List of 75 largest U.S. Cities

BILLING CODE 4510–79–M

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APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: ☐ Application ☐ Construction ☐ Non-Construction / ☐ Preapplication ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier
5. APPLICANT INFORMATION			
Legal Name:		Organizational Unit:	
Address (give city, county, State and zip code):		Name and telephone number of the person to be contacted on matters involving this application (give area code):	
6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐-☐☐☐☐☐☐☐		7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐ A. State H. Independent School Dist. B. County I. State Controlled Institution of Higher Learning C. Municipal J. Private University D. Township K. Indian Tribe E. Interstate L. Individual F. Intermunicipal M. Profit Organization G. Special District N. Other (Specify):	
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision. If Revision, enter appropriate letter(s) in box(es): ☐ ☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify):		9. NAME OF FEDERAL AGENCY:	
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐ TITLE:		11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:	
12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):			
13. PROPOSED PROJECT: Start Date / Ending Date		14. CONGRESSIONAL DISTRICTS OF: a. Applicant / b. Project	
15. ESTIMATED FUNDING: a. Federal $ .00 / b. Applicant $ .00 / c. State $ .00 / d. Local $ .00 / e. Other $ .00 / f. Program Income $ .00 / g. TOTAL $ .00		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS? a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____ b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	
		17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No	
18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.			
a. Typed Name of Authorized Representative	b. Title		c. Telephone number
d. Signature of Authorized Representative			e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel	$		
2. Fringe Benefits(Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)	$		
9. Indirect Cost(Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)	$		

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution	$		
3. TOTAL Cost Sharing / Match (Rate %)	$		

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. **Personnel:** Show salaries to be paid for project personnel.
2. **Fringe Benefits:** Indicate the rate and amount of fringe benefits.
3. **Travel:** Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.
4. **Equipment:** Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.
5. **Supplies:** Include the cost of consumable supplies and materials to be used during the project period.
6. **Contractual:** Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.
7. **Other:** Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.
8. **Total, Direct Costs:** Add lines 1 through 7.
9. **Indirect Costs:** Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.
10. **Training /Stipend Cost:** (If allowable)
11. **Total Federal funds Requested:** Show total of lines 8 through 10.

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

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ASSURANCES AND CERTIFICATIONS - SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Assurances - Non-Construction Programs

B. Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters and Drug-Free/Tobacco-Free Workplace Requirements.

C. Certification of Release of Information

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instructions shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

RECOMMENDED FORMAT FOR PLANNED QUARTERLY TECHNICAL PERFORMANCE GOALS

(data entered cumulatively)

Performance Goals

	1ST QTR	2ND QTR	3RD QTR	4TH QTR
Assessments				
Participants Enrolled				
Placed Into Transitional Or Permanent Housing				
Direct Placements Into Unsubsidized Employment				
Assisted Placements Into Unsubsidized Employment				
Combined Placements Into Unsubsidized Employment (Direct & Assisted)				
Cost Per Placement				
Number Retaining Jobs For 30 Days				
Number Retaining Jobs For 90 Days				
Rate of Placement Into Unsubsidized Employment				
Average Hourly Wage At Placement				

Employability Development Services - (As Applicable)

Classroom Training				
On-The-Job Training				
Remedial Education				
Vocational Counseling				
Pre-employment Services				
Occupational Skills Training				
_____				
_____				
_____				
_____				

Planned Expenditures

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
Total Expenditures	$	$	$	$
Administrative Costs	$	$	$	$
Participant Services*	$	$	$	$

*Services may include training and/or supportive.

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HVRP PERFORMANCE GOAL DEFINITIONS

1. Assessments. This process includes addressing the supportive services and employability and training needs of individuals before enrolling them in an HVRP program. Generally, this includes an evaluation and/or measurement of vocational interests and aptitudes, present abilities, previous education and work experience, income requirements, addressing supportive service needs, substance abuse treatment needs, counseling needs, temporary or transitional housing needs, personal circumstances and other related services.

2. Participants Enrolled. A client should be recorded as having been enrolled when an intake form has been completed, and services, referral, or employment has been received through the HVRP program. This should be an unduplicated count over the year: i.e., each participant is recorded only once, regardless of the number of times she or he receives assistance.

3. Placed Into Transitional Or Permanent Housing. A placement into transitional or permanent housing should be recorded when a veteran served by the program upgrades his/her housing situation during the reporting period from shelter/streets to transitional housing or permanent housing or from transitional housing to permanent housing. Placements resulting from referrals by HVRP staff shall be counted. This item is however an unduplicated count over the year, except that a participant may be counted once upon entering transitional housing and again upon obtaining permanent housing.

4. Direct Placements Into Unsubsidized Employment. A direct placement into unsubsidized employment must be a placement made directly by HVRP-funded staff with an established employer who covers all employment costs for 20 or more hours per week at or above the minimum wage. Day labor and other very short-term placements should not be recorded as placements into unsubsidized employment.

5. Assisted Placements Into Unsubsidized Employment. Assisted placements into unsubsidized employment should be recorded where the definition for placement with unsubsidized employment above is met, but the placement was arranged by an agency to which the HVRP referred the homeless veteran, such as a Job Training Partnership Act (JTPA) program.

6. Cost Per Placement. The cost per placement into unsubsidized employment is obtained by dividing the total HVRP funds expended by the total of direct placements plus assisted placements.

7. Number Retaining Job For 30 Days. To be counted as retaining a job for 30 days, continuous employment with one or more employers for at least 30 days must be verified and the definition for either direct placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 30 days as long as the client has been steadily employed for that length of time.

8. Number Retaining Job For 90 Days. To be counted as retaining a job for 90 days, continuous employment with one or more employers for at least 90 days must be verified, and the definition for either placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 90 days as long as the client has been steadily employed for that length of time.

9. Rate of Placement Into Unsubsidized Employment. The rate of placement into unsubsidized employment is obtained by dividing the number placed into unsubsidized employment (HVRP), plus the number of assisted placements into unsubsidized employment by the number of clients enrolled.

10. Average Hourly Wage At Placement. The average hourly wage at placement is the average hourly wage rates at placement of all assisted placements plus direct placements.

11. Employability Development Services. This includes services and activities which will develop or increase the employability of the participant. Generally, this includes vocational counseling, classroom and on-the-job training, pre-employment services (such as job seeking skills and job search workshops), temporary or trial employment, sheltered work environments and other related services and activities. Planned services should assist the participant in addressing specific barriers to employment and finding a job. These activities may be provided by the applicant or by a subgrantee, contractor or another source such as the local Job Partnership Training Act program or the Disabled Veterans'Outreach Program (DVOP) personnel or Local Veterans' Employment Representatives (LVERs). Such services are not mandatory but entries should reflect the services described in the application and the expected number of participants receiving or enrolled in such services during each quarter. Participants may be recorded more than once if they receive more than one service.

12. Total Planned Expenditures. Total funds requested. Identify forecasted expenditures needed for each fiscal quarter.

13. Administrative Costs. Administrative costs shall consist of all direct and indirect costs associated with the supervision and management of the program. These costs shall include the administrative costs, both direct and indirect, of subrecipients and contractors.

14. Participant Services. This cost includes supportive, training, or social rehabilitation services which will assist in stabilizing the participant. This category should reflect all costs other than administrative.

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POTENTIAL HVRP JURISDICTIONS - FY 1998

ALABAMA
- Birmingham

ALASKA
- Anchorage

ARIZONA
- Mesa
- Phoenix
- Tucson

CALIFORNIA
- Anaheim
- Fresno
- Long Beach
- Los Angeles
- Oakland
- Riverside
- Sacramento
- San Diego
- San Francisco
- San Jose
- Santa Ana
- Stockton

COLORADO
- Aurora
- Colorado Springs
- Denver

DISTRICT OF COLUMBIA

FLORIDA
- Jacksonville
- Miami
- St. Petersburg
- Tampa

GEORGIA
- Atlanta

HAWAII
- Honolulu

ILLINOIS
- Chicago

INDIANA
- Indianapolis

KANSAS
- Wichita

KENTUCKY
- Lexington-Fayette
- Louisville

LOUISIANA
- Baton Rouge
- New Orleans

MARYLAND
- Baltimore

MASSACHUSETTS
- Boston

MICHIGAN
- Detroit

MINNESOTA
- Minneapolis
- St. Paul

MISSOURI
- Kansas City
- St. Louis

NEBRASKA
- Omaha

NEVADA
- Las Vegas

NEW JERSEY
- Jersey City
- Newark

NEW MEXICO
- Albuquerque

NEW YORK
- Buffalo
- New York

POTENTIAL HVRP JURISDICTIONS - FY 1998

- Rochester

NORTH CAROLINA
- Charlotte
- Raleigh

OHIO
- Akron
- Cincinnati
- Cleveland
- Columbus
- Toledo

OKLAHOMA
- Oklahoma City
- Tulsa

OREGON
- Portland

PENNSYLVANIA
- Philadelphia
- Pittsburgh

TENNESSEE
- Memphis
- Nashville/Davidson

TEXAS
- Arlington
- Austin
- Corpus Christi
- Dallas
- El Paso
- Fort Worth
- Houston
- San Antonio

VIRGINIA
- Norfolk
- Virginia Beach

WASHINGTON
- Seattle

WISCONSIN
- Milwaukee

PUERTO RICO
- San Juan

[FR Doc. 98–1330 Filed 1–20–98; 8:45 am]
BILLING CODE 4510–79–C

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NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Thursday, January 22, 1998.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Request from a Federal Credit Union to Convert to Non Credit Union Status.
2. Request from a Federal Credit Union to Convert to a de novo (new) Federal Mutual Savings Association.
3. Requests from Two (2) Federal Credit Unions to Convert to Community Charters.
4. Request from a Credit Union to Merge and Convert Insurance.
5. Request from a Corporate Federal Credit Union for a Field of Membership Amendment.
6. Amendments to IRPS 94–1. (Chartering Manual), Community Charter, Expansion, Conversion Requirements.
7. NCUA's Year 2000 (Y2K) Contingency Plan.
8. Final Rule: Amendments to Parts 791.5 and 791.6, NCUA's Rules and Regulations, Rules of Board Procedure.

RECESS: 11.15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, January 22, 1998.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. One (1) Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (7), and (10).
2. Four (4) Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–1431 Filed 1–15–98; 4:31 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–348 and 50–364]

Southern Nuclear Operating Company, Inc., et al.; Notice of Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has permitted the request of Southern Nuclear Operating Company, Inc. (SNC), to withdraw part 2 of its June 13, 1997, application for proposed amendments to Facility Operating License Nos. NPF–2 and NPF–8 for the Joseph M. Farley Nuclear Plant, Units 1 and 2, located in Houston County, Alabama.

The proposed amendments would have revised TS 3.9.13 by extending the completion time allowed for returning one out-of-service penetration room filtration system from 48 hours to 7 days.

The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on July 16, 1997 (62 FR 38138). However, by letter dated January 7, 1998, SNC withdrew part 2 of the proposed change.

For further details with respect to this action, see the application for amendments dated June 13, 1997, and SNC's letter dated January 7, 1997, which withdrew part 2 of the application for license amendments. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burdenshaw Street, Post Office Box 1369, Dothan, Alabama.

Dated at Rockville, Maryland, this 13th day of January 1998.

For the Nuclear Regulatory Commission.

Jacob I. Zimmerman,

Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–1378 Filed 1–20–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on February 5–7, 1998, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Thursday, November 20, 1997 (62 FR 62079).

Thursday, February 5, 1998

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–10:00 a.m.: Development of a Revised Fire Protection Rule (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff, Nuclear Energy Institute (NEI), National Fire Protection Association (NFPA), and the Union of Concerned Scientists (UCS) regarding staff actions related to the development of a revised Fire Protection Rule.

10:15 A.M.–12:00 Noon: AP600 Test and Analyses Program and Standard Safety Analysis Report (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Westinghouse regarding the AP600 Test and Analyses Program and the AP600 Standard Safety Analysis Report Chapters 1, 4, 5, 7, 8, 10, 11, 13, 17 and 18.

[Portions of this session may be closed to discuss Westinghouse Proprietary Information related to the Test and Analyses Program.]

1:00 P.M.–2:00 P.M.: Westinghouse Spent Fuel Rack Criticality Analysis Methodology (Open)—The Committee will hear presentations by and hold discussions with representatives of the ACRS staff and Westinghouse regarding Westinghouse's spent fuel rack criticality analysis methodology.

2:00 p.m.–3:00 p.m.: Meeting with Chairman Jackson (Open)—The Committee will meet with Chairman Jackson to discuss items of mutual interest, including NRC Research Program; Use of PRA in the Regulatory Decisionmaking Process (CDF as a Safety Goal, Policy Issues, etc.); Risk Informed, Performance Based Regulation; Proposed Revisions to 10 CFR 50.59; NRC Strategic and Performance Planning; Shutdown and Low Power Rulemaking and Maintenance Rule; and Timeliness and Utility of ACRS Advice (Comments on ACRS/ACNW Survey).

3:15 p.m.–5:15 p.m.: Improvements to the Senior Management Meeting Process (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed improvements to the Senior Management Meeting Process.

5:15 P.M.–7:00 P.M.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting, as well as the ACRS annual report to Congress regarding the NRC Safety Research Program.

Friday, February 6, 1998

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)-The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–9:30 a.m.: Proposed Rulemaking Related to 10 CFR 50.59 (Changes, Tests and Experiments) (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed changes to 10 CFR 50.59.

9:30 a.m.–10:15 a.m.: SECY–97–231, Performance Based Inspection Guidance (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding SECY–97–231, and related matters.

10:30 a.m.–11:30 a.m.: Human Performance and Reliability Implementation Plan (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the Human Performance and Reliability Implementation Plan and related activities.

11:30 a.m.–12:00 Noon: Future ACRS Activities (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

1:00 p.m.–3:00 p.m.: Draft NUREG–1555, "SRP For Environmental Reviews For Nuclear Power Plants" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding draft NUREG–1555 and related matters.

3:15 p.m.–7:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting, and may also discuss the ACRS annual report to Congress regarding the NRC Safety Research Program.

Saturday, February 7, 1998

8:30 a.m.–9:00 a.m.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, agenda for the planning meeting, and organizational and personnel matters relating to the ACRS.

[**Note:** A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

9:00 a.m.–9:15 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports, including the EDO response to the December 12, 1997 ACRS report related to proposed revisions to 10 CFR 50.59 (Changes, Tests and Experiments).

9:15 a.m.–4:00 p.m. (12:00 Noon–1:00 p.m. Lunch): Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting, and may also discuss the ACRS annual report to Congress regarding the NRC Safety Research Program.

4:00 p.m.–4:30 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 4, 1997 (62 FR 46782). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Dr. Gail H. Marcus, Acting Chief of the Nuclear Reactors Branch, at least five days before the meeting, if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Acting Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Acting Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) P.L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2), to discuss Westinghouse proprietary information per 5 U.S.C. 552b(c)(4), and to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting Dr. Gail H. Marcus, Acting Chief of the Nuclear Reactors Branch (telephone 301/415–7363), between 7:30 A.M. and 4:15 P.M. EST.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Date: January 14, 1998.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 98–1380 Filed 1–20–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22998; 812–10492]

Growth Stock Portfolio, et al.; Notice of Application

January 13, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the "Act") from section 15(a) of the Act and rule 18f–2 under the Act and from certain disclosure requirements under the Act.

SUMMARY OF APPLICATION: Applicants request an order that would (i) permit applicants to hire sub-advisers and materially amend sub-advisory agreements without shareholder approval and (ii) grant relief from

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certain disclosure requirements regarding advisory fees paid to the sub-advisers.

APPLICANTS: Growth Stock Portfolio (the "Portfolio"), R. Meeder & Associates, Inc. ("RMA"), and Sector Capital Management, L.L.C. ("Sector," together with RMA, the "Advisers").

FILING DATES: The application was filed on January 13, 1997. Applicant has agreed to file an amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 9, 1998 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants: Growth Stock Portfolio and R. Meeder & Associates, Inc., 6000 Memorial Drive, Dublin, OH 43017; Sector Capital Management, L.L.C., 5350 Poplar Avenue, Suite 490, Memphis, TN 38119.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 5th Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Flex-Funds and The Flex-Partners, Massachusetts business trusts, are open-end management investment companies registered under the Act (The Flex-Funds and The Flex-Partners are collectively referred to as the "Trusts"). The Highlands Growth Fund is a series of The Flex-Funds, and the Core Equity Fund is a series of The Flex-Partners (The Highlands Growth Fund and the Core Equity Fund are collectively referred to as the "Funds"). The Portfolio, a New York business trust, is an open-end management investment company registered under the Act. The Portfolio's securities are not registered under the Securities Act of 1933 and the Portfolio currently does not intend to offer its shares to the public. The Portfolio offers its shares to the Funds through the use of offering documents ("Offering Documents"). Neither the Trusts nor the Funds have an investment adviser because the assets of the Funds are invested in the Portfolio, which has the same investment objectives as the Funds.

2. RMA, an investment adviser registered under the Investment Advisers Act of 1940 (the "Advisers Act"), acts as investment adviser to the Portfolio. Under an investment advisory contract, RMA (i) provides an investment program within the limitations of the Portfolio's investment policies and restrictions; (ii) furnishes all executive, administrative and clerical services required for the transaction of Portfolio business, other than accounting services and services which are provided by the Portfolio's custodian, transfer agent, independent accountants, and legal counsel; and (iii) provides office space and other facilities and equipment for the management of the affairs of the Portfolio. In addition, RMA invests the Portfolio's cash and may invest the Portfolio's financial futures contracts and related options. For its services, RMA receives a fee from the Portfolio based on the net assets of the Portfolio.

3. Sector, an investment adviser registered under the Advisers Act, serves as investment co-adviser to the Portfolio under an investment co-advisory agreement among the Portfolio, RMA and Sector (the "Co-advisory Agreement"). RMA recommended to the Portfolio's board of directors (the "Board") that Sector be hired as the investment co-adviser to the Portfolio. RMA also has the right to terminate Sector as the investment co-adviser to the Portfolio. The Co-advisory Agreement permits Sector to enter into agreements with one or more sub-advisers ("Sub-advisory Agreements") to exercise investment discretion over the Portfolio's assets.[1]

4. Under the Co-Advisory Agreement, Sector (i) Reallocates the assets of the Portfolio among the sub-advisers when necessary; (ii) evaluates and selects sub-advisers; (iii) performs internal due diligence on prospective sub-advisers and monitors sub-advisers' performance through quantitative and qualitative analysis; (iv) supervises compliance with the investment objectives and policies of the Portfolio; (v) recommends to the Board whether Sub-advisory Agreements should be renewed, modified, or terminated; and (vi) recommends to the Board the addition of new sub-advisers. The Portfolio currently has seven sub-advisers (the "Sub-advisers"). The Sub-advisers are responsible for reviewing supervising, and administering the Portfolio's investment program with respect to the portion of the Portfolio's assets assigned to them. As compensation for providing its sub-adviser selection, monitoring and asset allocation services, Sector currently receives a fee from RMA computed as a percentage of RMA's investment advisory fee. Sector pays the Sub-advisers out of this fee.

5. Applicants believe that the allocation of responsibilities between the Advisers benefits the shareholders because of the specialization and efficiency it provides. Applicants request an exemption from section 15(a) of the Act and rule 18f–2 under the Act to permit them to hire Sub-advisers and materially amend Sub-advisory Agreements without shareholder approval. Applicants also request an exemption from various disclosure requirements described below that may require them to disclose the fees paid to each Sub-adviser.[2]

6. Applicants request an exemption to permit the Portfolio and the Trusts to disclose (as a dollar amount and as a percentage of their net assets: (i) aggregate fees paid to RMA and its Affiliated Sub-advisers (as defined below); (ii) aggregate fees paid to Sector and its Affiliated Sub-advisers (as defined below); and (iii) aggregate fees paid to Sub-Advisers other than Affiliated Sub-Advisers (these fees are referred to collectively as, "Aggregate Fees"). An Affiliated Sub-adviser is any sub-adviser that is an "affiliated person" (as defined in section 2(a)(3) of the Act) of the Portfolio, the Trusts, RMA, or Sector, other than by reason of serving as a sub-adviser of the Portfolio.

[1] Under the Co-advisory Agreement, Sector is authorized to make investment decisions concerning the purchase and sale of specific securities and other instruments.

[2] Applicants also request relief with respect to any other registered open-end management investment company advised by RMA and Sector, or a person controlling, controlled by, or under common control with RMA and a person controlling, controlled by or under common control with Sector (a "Future Company"), provided that the Future Company operates in substantially the same manner as the Portfolio and complies with the conditions of the requested order.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relative part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract which has been approved by the vote of a majority of the outstanding voting securities of such registered investment company. Rule 18f–2 provides that any investment advisory contract that is submitted to the shareholders of a series investment company under section 15(a) shall be deemed to be effectively acted upon with respect to any class or series of such company if a majority of the outstanding voting securities of such class or series vote for the approval of the contract.

2. Form N–1A is the registration statement used by open-end investment companies. Items 2, 5(b)(iii), and 16(a)(iii) of Form N–1A require disclosure of the method and amount of the investment adviser's compensation.

3. Form N–14 is the registration form for business combinations involving open-end investment companies. Item 3 of Form N–14 requires the inclusion of a "table showing the current fees for the registrant and the company being acquired and pro forma fees, if different, for the registrant after giving effect to the transaction."

4. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (the "1934 Act"). Item 22(a)(3)(iv) of Schedule 14A requires a proxy statement for a shareholder meeting at which a new fee will be established or an existing fee increased to include a table of the current and pro forma fees. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8), and 22(c)(9), taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fees," a description of "the terms of the contract to be acted upon," and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

5. Form N–SAR is the semi-annual report filed with the SEC by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Sub-advisers.

6. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the SEC. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

7. Section 6(c) authorizes the Commission to exempt persons or transactions from the provisions of the Act to the extent that such exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

8. Applicants believe that the requested relief meets the above standard. Applicants contend that shareholders expect Sector, under the overall authority of the Portfolio's Board, to take responsibility for overseeing Sub-advisers and recommending their hiring, termination, and replacement. Applicants note that the Portfolio's investment advisory agreement with RMA and the Co-advisory Agreement will continue to be subject to shareholder approval under section 15(a).

9. Applicants also believe that the requested relief will benefit shareholders by enabling the Portfolio and the Funds to operate in a less costly and more efficient manner. Applicants argue that the requested relief will reduce the Funds' expenses because the Funds will not have to prepare and solicit proxies each time a Sub-advisory Agreement is entered into or modified. Applicants also believe that the disclosure of fees that Sector pays to each Sub-adviser would not serve a meaningful purpose since investors will pay Sector to retain and compensate the Sub-advisers.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to following conditions:

1. Before the Portfolio may rely on the order requested in the application, the operation of the Portfolio in the manner described in the application will be approved by a majority of the Portfolio's outstanding voting securities, as defined in the Act, and by the Funds' shareholders in accordance with section 12(d)(1)(E)(iii)(aa) of the Act, or, in the case of a Future Company or Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole shareholder before the offering of the Future Company's or Funds' shares to the public.

2. The Funds' prospectuses, the Portfolio's Offering Documents, and, if applicable, the Portfolio's prospectus will disclose the existence, substance, and effect of any order granted pursuant to this application. In addition, the Portfolio and the Funds will hold themselves out to the public as employing the "manager of managers" approach described in the application. The Funds' prospectuses, the Portfolio's Offering Documents, and, if applicable, the Portfolio's Prospectus will prominently disclose that RMA and Sector have ultimate responsibility for the investment performance of the Portfolio due to RMA's responsibility to oversee Sector and Sector's responsibility to oversee Sub-advisers and recommend their hiring, termination, and replacement.

3. The Portfolio and the Funds will disclose the Aggregate Fees in their registration statements.

4. Within 90 days of the hiring of any new Sub-adviser, RMA and Sector will furnish to the holders of the beneficial interests of the Portfolio and the Funds' shareholders all information about the new Sub-adviser or Sub-advisory Agreement that would be included in a proxy statement, except as modified by the order with respect to the disclosure of Aggregate Fees. Such information will include disclosure of the Aggregate Fees and any change in such disclosure caused by the addition of a new Sub-adviser. To meet this obligation, RMA and Sector will provide the holders of the beneficial interests of the Portfolio and the Funds' shareholders, within 90 days of the hiring of a Sub-adviser, with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the 1934 Act. The information statement also will meet the requirements of Item 22 of Schedule 14A under the 1934 Act, except as modified by the order with respect to the disclosure of Aggregate Fees.

5. Sector and the Portfolio will not enter into a Sub-advisory Agreement with any Affiliated Sub-adviser without such agreement, including the compensation to be paid thereunder, being approved by the holders of the beneficial interests of the Portfolio and by the Funds' shareholders in accordance with section 12(d)(1)(E)(iii)(aa) of the Act.

6. At all times, a majority of the Portfolio's Board will not be "interested persons" within the meaning of section 2(a)(19) of the Act ("Independent Trustees") and the nomination of new or additional Independent Trustees will be placed within the discretion of the then existing Independent Trustees.

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7. When a Sub-adviser change is proposed when the Portfolio has an Affiliated Sub-adviser, the Portfolio's Board, including a majority of the Independent Trustees, will make a separate finding reflected in its minutes, that such change is in the best interest of the Portfolio and its investors and does not involve a conflict of interest from which RMA, Sector, or the Affiliated Sub-adviser derives an inappropriate advantage.

8. RMA will provide general management services to the Portfolio, subject to Portfolio Board review. Sector will, subject to Portfolio Board review and approval, (i) together with RMA, set the Portfolio's overall investment strategies, (ii) select Sub-advisers, (iii) allocate and, when appropriate, reallocate the Portfolio's assets among Sub-advisers, (iv) monitor and evaluate Sub-adviser performances, and (v) supervise Sub-adviser compliance with the Portfolio's investment objective, policies, and restrictions.

9. Independent counsel knowledgeable about the Act and the duties of Independent Trustees will be retained to represent the Independent Trustees. The selection of such counsel will be placed within the discretion of the Independent Trustees.

10. Sector will provide the Portfolio's Board no less frequently than quarterly with information about Sector's profitability for each series of the Portfolio relying on the relief requested in the application. Whenever a Sub-adviser is hired or terminated, Sector will provide the Portfolio's Board with information showing the expected impact on Sector's profitability, and quarterly reports will reflect the impact on profitability of the hiring or termination of Sub-advisers during the quarter.

11. No director, trustee, or officer of Sector, RMA, or the Portfolio will own directly or indirectly (other than through a pooled investment vehicle over which such person does not have control) any interest in a Sub-adviser except for: (a) Ownership of interests in RMA or Sector or any entity that controls, is controlled by, or is under common control with RMA or Sector; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Sub-adviser or an entity that controls, is controlled by, or is under common control with a Sub-adviser.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–1347 Filed 1–20–98; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–66]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Ch. I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 26, 1998.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. 29099, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Angela Anderson (202) 267–9681 or Tawana Matthews (202) 267–9783 Office of Rulemaking (ARM–1) Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on January 14, 1998.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29099.

Petitioner: Embry-Riddle Aeronautical University.

Sections of the FAR Affected: 14 CFR 61.55(b)(2), 61.56(c)(1), 61.57 (a) (b) (c) (d), 61.58(a) (1) and (2), and 61.195(e)

Description of Relief Sought: To permit the petitioner to use Level D flight simulators to meet certain flight experience and recency of experience requirements of section 61 for instructor pilots prior to certification of the petitioner's part 142 training center for each appropriate Level D flight simulator program.

[FR Doc. 98–1374 Filed 1–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–67]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Ch. I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket

number involved and must be received on or before February 10, 1998.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address; 9–NPRM–CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Angela Anderson (202) 267–9681 or Tawana Matthews (202) 267–9783 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on January 14, 1998.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 29042.

Petitioner: Schwartz Engineering Company.

Sections of the FAR Affected: 14 CFR 25.807(d)(7).

Description of Relief Sought/ Disposition: To permit a B757–200 interior arrangement that does not provide 60 feet or less between passenger emergency exits in the side of the fuselage. *Grant, December 18, 1997, Exemption No. 6710.*

Docket No.: 28951.

Petitioner: Imi-Tech Corporation.

Sections of the FAR Affected: 14 CFR 25.853(c).

Description of Relief Sought/ Disposition: To permit use of a seat cusion materials that do not comply with the weight loss portion of that requirement. *Grant, December 12, 1997, Exemption No. 6707.*

Docket No.: 28976.

Petitioner: Cessna Aircraft Company.

Sections of the FAR Affected: 14 CFR 25.677(b).

Description of Relief Sought/ Disposition: To permit the petitioner to provide a clearly visible means to indicate the position of the trim device with respect to its range of adjustment. *Grant, December 12, 1997, Exemption No. 6706.*

Docket No.: 28544.

Petitioner: Learjet Incorporated.

Sections of the FAR Affected: 14 CFR 25.783(h).

Description of Relief Sought/ Disposition: Exempts the petitioner from certain passenger entry door emergency exit requirements for the Learjet Model 45 airplane. *Grant, December 29, 1997, Exemption No. 6468A.*

Petition For Exemption

Docket No.: 29100.

Petitioner: Bombardier Inc.

Regulations Affected: 25.571(e)(1).

Description of Petition: To permit exemption for the BD–700–1A10 airplane, from the bird strike provisions of § 25.571(e)(1) to allow compliance with the requirement using bird impact velocity of Vc at sea level or 0.85 Vc at 8,000 feet, whichever is more critical.

Petition For Exemption

Docket No.: 27023.

Petitioner: The Boeing Company.

Regulations Affected: 25.1415(c) and 121.339(c).

Description of Petition: To exempt The Boeing Company from the requirements of 14 CFR 25.1415(c) and 121.339(c), to permit installation of survival equipment separate from slide/ rafts on Boeing 757–300 Aircraft.

[FR Doc. 98–1375 Filed 1–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 186, Automatic Dependent Surveillance—Broadcast (ADS–B); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 186 meeting to be held February 17–18, 1998, starting at 9 a.m. on Tuesday, February 17. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Chairman's Introductory Remarks/ Review of Meeting Agenda; (2) Review and Approval of Minutes of the Previous Meetings; (3) Report of Working Group Activities: a. Editorial Committee Report; b. Progress Update on the 1090 MHz MOPS; c. CDTI Working Group Report; d. Collision Avoidance Study Group; (4) Discuss Special Committee 186 Structure; (5) Other Business; (6) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 13, 1998.

Janice L. Peters,

Designated Official.

[FR Doc. 98–1371 Filed 1–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application to Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Bismarck Municipal Airport, Bismarck, North Dakota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Bismarck Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before February 20, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Gregory B. Haug, Airport Manager, of the Bismarck Municipal Airport at the following address: Bismarck Municipal Airport, P.O. Box 991, Bismarck, North Dakota 58502.

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Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Bismarck, North Dakota under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Irene R. Porter, Manager, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504, (701) 250–4358. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Bismarck Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 19, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Bismarck, North Dakota was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 21, 1998.

The following is a brief overview of the application.

PFC application number: 98–02–C–00–BIS.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 1, 1998.

Proposed charge expiration date: March 31, 2003.

Total estimated PFC revenue: $1,474,422.00.

Brief description of proposed projects:

Impose Only: Rehabilitate Baggage Claim Area.

Impose and Use: Rehabilitate General Aviation Ramp; Terminal Building, ADA Compliance; Relocation of Airway Avenue (Yegen Road); Reconstruct, Extend, and Widen Runway 3/21; PFC Application Preparation; Improve Airfield Service Road; Plans and Specifications for Runway 13/31 and Taxiway A; Rehabilitate Runway 13/31; Rehabilitate Runway 13/31 Lighting; Rehabilitate Taxiway A.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: All on demand air taxi/commercial operators, filing FAA Form 1800–31, that enplane fewer than 500 passengers per year and not having their base of operations at Bismarck Municipal Airport and all on demand air taxi/commercial operators, filing FAA Form 1800–31, having their base of operations at Bismarck Municipal Airport.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Bismarck Municipal Airport or City of Bismarck offices.

Issued in Des Plaines, Illinois on January 8, 1998.

Benito De Leon,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 98–1373 Filed 1–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent to Rule on Application to Impose and Use a Passenger Facility Charge (PFC) at Chicago O'Hare International Airport, Chicago, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Chicago O'Hare International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before February 20, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 201, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Mary Rose Loney, Commissioner, of the City of Chicago Department of Aviation at the following address: Chicago O'Hare International Airport, P.O. Box 66142, Chicago, Illinois 60666.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Chicago Department of Aviation under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip M. Smithmeyer, Manager, Chicago Airports District Office, 2300 East Devon Avenue, Room 201, Des Plaines, Illinois 60018, (847) 294–7335. The application may be revised in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Chicago O'Hare International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 23, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Chicago Department of Aviation was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 25, 1998.

The following is a brief overview of the application.

PFC application number: 98–07–C–00–ORD.

Level of the PFC: $3.00.

Original charge effective date: September 1, 1993.

Revised proposed charge expiration date: July 1, 2005.

Total estimated PFC revenue: $69,189,000.00.

Brief description of proposed projects:

a. Guard Post 2 Site Improvements.

b. Runway 4R/22L Rehabilitation.

c. Runway 4L/22R Rehabilitation.

d. ATS Improvement.

e. Acquisition of 1997 Equipment.

f. Security Enhancements at Former Military Base.

g. Additional School Soundproofing.

h. Upgrade of I/CAD to Windows NT Platform.

i. I/CAD GPS for OCC.

j. ID Badging System Upgrade.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Chicago Department of Aviation.

Issued in Des Plaines, Illinois on January 8, 1998.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 98–1372 Filed 1–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aircraft Portable Megaphones

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability for public comment.

SUMMARY: This notice announces the availability of and request comments on proposed technical standard order (TSO) pertaining to aircraft portable megaphones. The proposed TSO prescribes the minimum performance standards that aircraft portable megaphones must meet to be identified with the marking "TSO–C137."

EFFECTIVE DATE: Comments must be received on or before April 24, 1998.

ADDRESSES: Send all comments on the proposed technical standard order to: Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO–C137, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. Comments must identify the TSO file number.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Program and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, FAX No. (202) 267–5340.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

Proposed TSO–C137 establishes the basic requirements for the design and performance of aircraft portable megaphones.

This TSO was designed with the intent of being used predominately in transport category air carrier operations. However, the proposed TSO will be suitable for any aircraft application.

The proposed TSO references the SAE AS 4950 "Design and Performance Criteria for Transport Aircraft Portable megaphones." The TSO also references RTCA Document Number DO–160D which sets forth the environmental test standards for articles manufactured under this TSO. Compliance with this TSO is predicated, in part, on meeting the standards set forth in these documents, with the exception of certain requirements in SAE AS 4950. Specifically, this TSO substitutes different data requirements that the manufacturer must have available for FAA review for those that appear in SAE AS 4950.

In addition to marking requirements specified in 14 CFR 21.607(d), each separate component that is easily removable (without hand tools), an interchangeable element, or a separate sub-assembly of the article must be permanently and legibly marked with at least the name of the manufacturer, the manufacturer's part number, and the TSO number. This TSO also permits optional marking to denote aircraft-specific installation limitations on the article. These exceptions to SAE AS 4950 are detailed in Appendix 1 of this TSO.

How to Obtain Copies

A copy of the proposed TSO–C137, may be obtained via Internet (http:/www.faa.gov/avr/air/100home.htm) or on request from the office listed under **FOR FURTHER INFORMATION CONTACT.** Copies of Society of Automotive Engineers, Inc. (SAE) Aerospace Standard (AS) AS 4950 may be purchased from the SAE Inc., Department 331, 400 Commonwealth Drive, Warrendale, PA 15096–0001. Copies of RTCA, Inc. Document No. 160D, "Environmental Conditions and Test Procedures for Airborne Equipment," dated July 29, 1997 may be purchased from the RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

Issued in Washington, DC, on January 13, 1998.

Abbas A. Rizvi,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 98–1377 Filed 1–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Emergency Evacuation Slides, Ramps, and Slide/Raft Combinations

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability for public comment.

SUMMARY: This notice announces the availability of and request comments on proposed technical standard orders (TSO's) pertaining to emergency evacuation slides, ramps, and slide/raft combinations. The proposed TSO's prescribe the minimum performance standards that emergency evacuation slides, ramps, and slide/raft combinations must meet to be identified with the marking "TSO–C69c."

EFFECTIVE DATE: Comments must be received on or before April 24, 1998.

ADDRESSES: Send all comments on the proposed technical standard order to: Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO–C69c, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. Comments must identify the TSO file number.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Program and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, FAX No. (202) 267–5340.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed

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technical standard order may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

Proposed TSO–C69c sets forth the basic requirements for the design and performance of emergency slides, ramps, and slide/raft combinations. The changes to this TSO include the addition of specific revisions to the requirements and tests for beam strength, attachment means, evacuation rate conditions, dark of night usability rate, and hot and cold soak. This revision also adds requirements for testing to ensure particular wind loading directions are added for devices which do not deploy perpendicular to the aircraft center line. In addition, Appendices 2 through 4 were added to include standardized definitions used in the TSO, described data collection procedures, and provide a detailed summary of changes contained in this latest TSO revision, respectively. The TSO has been reformatted. In addition, this revision incorporates two NTSB safety recommendations A–88–106 and A–88–107 which calls for improvements to the construction and placarding of manual inflation handles and disconnect means.

In addition to the requirements of 14 CFR 21.607(d), each separate component that is easily removable (without hand tools), an interchangeable element, or a separate sub-assembly of the article must be permanently and legibly marked with at least the name of the manufacturer, manufacturer's part number, and the TSO number.

How to Obtain Copies

A copy of the proposed TSO–C69c, may be obtained via Internet (http://www.faa.gov/avr/air100home.htm) or on request from the office listed under FOR FURTHER INFORMATION CONTACT. Federal Aviation Administration Standards for Emergency Evacuation Slides, Ramps, and Slide/Raft Combinations may be obtained at the FAA Headquarters in the Aircraft Engineering Division (AIR–120), and all Aircraft Certification Offices (ACO's).

Issued in Washington, DC, on January 13, 1998.

Abbas A. Rizvi,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 98–1376 Filed 1–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Commission to Study Capital Budgeting

AGENCY: Advisory Commission to the President of the United States.

ACTION: Notice of meetings.

SUMMARY: The agenda for the next meetings of the Commission to Study Capital Budgeting includes briefings and the hearing of testimony on capital budgeting issues on Friday, January 30. On Saturday morning, January 31, the Commission will review draft materials related to capital budgeting prepared by its staff and then continue discussions on capital budgeting as time permits. Meetings are open to the public. Limited seating capacity is available.

Dates, Times and Places of the Next Commission Meetings

January 30, 1998, 9 a.m. to 5 p.m. Senate Budget Committee Hearing Room, Room 608, Dirksen Senate Office Building, First and C Streets, NE, Washington, DC 20510.

January 31, 1998, 9 a.m. to 1 p.m. White House Conference Center, Truman Room, 726 Jackson Place, NW, Washington, DC 20503.

The Commission is seeking all views on capital budgeting. Interested parties may submit their views to: Barry Anderson, Executive Director, President's Commission to Study Capital Budgeting, Old Executive Office Building (Room 258), Washington, DC 20503. Voice: (202) 395–4630; Fax: (202) 395–6170; E-Mail: capital_budget@oa.eop.gov; Website: To be announced.

FOR FURTHER INFORMATION CONTACT: E. William Dinkelacker, Room 4456, Main Treasury, Washington, DC 20220. Voice: (202) 622–1285; Fax: (202) 622–1294; E-Mail: william.dinkelacker@treas.sprint.com.

E. William Dinkelacker,

Senior Economist/DFO.

[FR Doc. 98–1290 Filed 1–20–98; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Office of Thrift Supervision

FEDERAL RESERVE SYSTEM

Federal Deposit Insurance Corporation

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The OCC, OTS, Board, and FDIC (Agencies) as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to take this opportunity to comment on proposed revisions to a continuing information collection, as required by the Paperwork Reduction Act of 1995. In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 35), the Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid Office of Management and Budget (OMB) control number. Currently, the Agencies are soliciting comments regarding an information collection concerning certain corporate changes. The information collection is titled: Interagency Bank Merger Act Application. In the case of the OCC, this collection is a part of the Comptroller's Corporate Manual. Additionally, the OCC is making other clarifying changes to the Comptroller's Corporate Manual.

DATES: Written comments should be submitted by March 23, 1998.

ADDRESSES: Direct written comments as follows:

OCC: Communications Division, Office of the Comptroller of the Currency, Third Floor, 250 E Street, SW, Washington, DC 20219; Attention: 1557–0014. Comments also may be sent by facsimile transmission to (202) 874–5274, or by electronic mail to: regs.comments@occ.treas.gov. Comments will be available for inspection and photocopying at the OCC's Public Reference Room, 250 E Street, SW, Washington, DC 20219, between 9 a.m. and 5 p.m., on business days. Appointments for inspection of comments can be made by calling (202) 874–5043.

OTS: Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, Attention 1550–0016. These submissions may be hand-delivered to 1700 G Street, NW, from 9 a.m. to 5 p.m., on business days. They may be sent by facsimile transmission to (202) 906–7755. Comments over 25 pages in length should be sent to Fax (202) 906–6956. Comments will be available for inspection at 1700 G Street, NW, from 9 a.m. until 4 p.m., on business days.

Board: William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551, or delivered to the Board's mail room, between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street NW. Comments received may be inspected in Room MP–500 of the Martin Building, between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

FDIC: Steven F. Hanft, FDIC Clearance Officer, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429, (202) 898–3907. Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street) on business days, between 7 a.m. and 5 p.m. (Fax number (202) 898–3838; Internet address: comments@fdic.gov).

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the collection may be obtained by contacting:

OCC: Jessie Gates, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

OTS: Scott Ciardi, Financial Analyst, Corporate Activities, (202)906–6960, or Frances C. Augello, Senior Counsel, Business Transactions Division, (202)906–6151, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552. Copies of the forms with instructions are available for inspection at 1700 G Street, NW, from 9 a.m. until 4 p.m. on business days or from PubliFax, OTS Fax-on-Demand system, at (202)906–5660.

Board: Mary M. McLaughlin, Chief, Financial Reports Section, (202)452–3829. Telecommunications Device for the Deaf (TDD), users may contact Diane Jenkins (202)452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

FDIC: Steven F. Hanft, FDIC Clearance Officer, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429, (202) 898–3907.

SUPPLEMENTARY INFORMATION: Proposal to extend for three years with major revision the following currently approved collections of information:

Title: Interagency Bank Merger Act Application.

OCC's Title: Comptroller's Corporate Manual. The specific portions of the Comptroller's Corporate Manual covered by this notice are those that pertain to the Business Combination Application, certain disclosures, and various portions to which the OCC is making clarifying changes.

OMB Number: OCC: 1557–0014.
OTS: 1550–0016.
Board: 7100–0171.
FDIC: 3064–0015.

Form Number: OCC: None.
OTS: 1639 (formerly 1588).
Board: FR 2070.
FDIC: 6220/01 and 6220/07.

Abstract: This submission covers a revision to make uniform among the Agencies the merger application forms for both affiliated and nonaffiliated institutions. The form name is the Interagency Bank Merger Act Application. The Agencies need the information collected to insure that the proposed transactions are permissible under law and regulation and are consistent with safe and sound banking practices. The Agencies are required, for example, under the Bank Merger Act, to consider financial and managerial resources, future prospects, convenience and needs of the community, community reinvestment, and competition..

Some agencies will collect limited supplemental information in certain cases. For example, the OCC and OTS will collect information regarding CRA commitments, the FDIC may require a legal certification of counsel to confirm that the merger agreement is legally sufficient, and all agencies will require additional information on the competitive impact of proposed mergers under separate instructions.

Further, the OCC is correcting its information collection inventory to cover certain disclosures required in the Manual. This is an administrative adjustment, and does not change, in any way, the requirements on national banks. Finally, the OCC is making technical and clarifying changes to various Manual booklets. These changes are not material. The changes are technical in nature and do not change, in any way, the requirements on national banks.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households; Businesses or other for-profit.

Number of Respondents: OCC: Nonaffiliate—120; Affiliate—260.
OTS: Nonaffiliate—60; Affiliate—5.
Board: Nonaffiliate—57; Affiliate—79.
FDIC: Nonaffiliate—240; Affiliate—290.

Total Annual Responses: OCC: Nonaffiliate—120; Affiliate—260.
OTS: Nonaffiliate—60; Affiliate—5.
Board: Nonaffiliate—57; Affiliate—79.
FDIC: Nonaffiliate—240; Affiliate—290.

Frequency of Response: On occasion.

Total Annual Burden Hours: OCC: Nonaffiliate—3,600; Affiliate—4,680. Total: 8,280 burden hours.
OTS: Nonaffiliate—1,800; Affiliate—90. Total: 1,890 burden hours.
Board: Nonaffiliate—1,710; Affiliate—1,422. Total: 3,132 burden hours.
FDIC: Nonaffiliate—7,200; Affiliate—5,220. Total: 12,420 burden hours.

General Description of Report: This information collection is mandatory. 12 U.S.C. 1828(c) (OCC, FDIC, and OTS); and 12 U.S.C. 321, 1828(c), and 4804 (Board).

Comments

Comments submitted in response to this notice will be summarized in each Agency's OMB submission. All comments will become a matter of public record. Written comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected, while minimizing burden;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection

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techniques or other forms of information technology;

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide the required information; and

(f) The agencies also request specific comment on the format of the application form. Which is preferable: (1) A narrative style form that describes a feature of the merger that may be answered "not applicable," if appropriate; or (2) a yes/no form with boxes to check "yes" and "no," followed by a requirement to describe the feature if appropriate?

Dated: January 9, 1998.

Karen Solomon,

Director, Legislative & Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, January 13, 1998.

William W. Wiles,

Secretary of the Board.

Dated at Washington, D.C., this 22d day of December 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: January 9, 1998.

By the Office of Thrift Supervision.

Catherine C. Teti,

Director, Records Management and Information Policy.

[FR Doc. 98–1292 Filed 1–20–98; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Federal Atlas Assurance Company of America

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Surety companies acceptable on Federal Atlas Assurance Company of America.

SUMMARY: (Dept. Circ. 570, 1997 Rev., Supp. No. 6.)

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch, (202) 874–7102.

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1997 Revision, on page 35553 to reflect this addition:

Atlas Assurance Company of America. Business address: 600 College Road East, Princeton, NJ 08540. Phone: (609) 275–2600. Underwriting limitation: [b] $34,535,000. Surety licenses: [c] AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. Incorporated in: New York.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet (http://www.fms.treas.gov/c570.html) or through our computerized public bulletin board system (FMS Inside Line) at (202) 874–6887. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00509–8.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6A11, Hyattsville, MD 20782.

Dated: January 7, 1998.

Charles F. Schwan, III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 98–1335 Filed 1–20–98; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 98–13

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 98–13, Election to Treat Certain Revocable Trusts as Part of an Estate.

DATES: Written comments should be received on or before March 23, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Election to Treat Certain Revocable Trusts as Part of an Estate.

OMB Number: 1545–1578.

Revenue Procedure Number: Revenue Procedure 98–13.

Abstract: Revenue Procedure 98–13 describes the procedures and requirements for making an election to have certain revocable trusts treated and taxed as part of an estate. The Taxpayer Relief Act of 1997 added section 646 to the Internal Revenue Code to permit the election.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 5,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 13, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–1284 Filed 1–20–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 98–15

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 98–15, Reduced Interest Election for Deferred Estate Tax.

DATES: Written comments should be received on or before March 23, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Reduced Interest Election for Deferred Estate Tax.

OMB Number: 1545–1585.

Revenue Procedure Number: Revenue Procedure 98–15.

Abstract: Revenue Procedure 98–15 provides procedures for making an election under section 503 of the Taxpayer Relief Act of 1997 to reduce the rate of interest on estate taxes deferred under section 6166 of the Internal Revenue Code and to eliminate the deduction for interest paid on the deferred estate taxes.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 6,600.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 3,300.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 13, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–1285 Filed 1–20–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

Summary of Precedent Opinions of the General Counsel; Correction

In a notice document published in the **Federal Register** on December 1, 1997 (62 FR 63603), the VA published a summary of precedent opinions of the General Counsel. The document of December 1, failed to include an effective date for VAOPGCPREC 28–97. In a correction document published in the **Federal Register** on December 9, 1997 (62 FR 64910), the effective date for VAOPGCPREC 28–97 was incorrectly stated to be July 24, 1993. The correct effective date is July 24, 1997.

Accordingly, in correction of notice document 97–31329 appearing on page 64910, in the issue of Tuesday, December 9, 1997, the effective date is corrected to read "Effective Date: July 24, 1997".

Approved: January 12, 1998.

Thomas O. Gessel,

Director, Office of Regulations Management.

[FR Doc. 98–1313 Filed 1–20–98; 8:45 am]

BILLING CODE 8320–01–M

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Corrections

Federal Register
Vol. 63, No. 13
Wednesday, January 21, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

ENVIRONMENTAL PROTECTION AGENCY

Coastal Nonpoint Pollution Control Program: Proposed Findings Document, Environmental Assessment, and Finding of No Significant Impact

Correction

In notice document 98–542 beginning on page 1443 in the issue of Friday, January 9, 1998 make the following corrections:

On page 1443, in the second column:

(a) In the second line, "Nonprofit" should read "Nonpoint".

(b) Under **SUMMARY**, in the seventh and fifteenth lines "nonprofit" should read "nonpoint".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8738]

RIN 1545-AV43

Tax Treatment of Cafeteria Plans

Correction

In rule document 98–29087, beginning on page 60165, in the issue of Friday, November 7, 1997, make the following corrections:

1. On page 60165, in the third column, in footnote 1, in the last line, "seciton" should read "section".

2. On page 60166, in the second column, in footnote 5, in the first line, "§ 1.125.3" should read "§ 1.125–3"

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG-100841-97]

RIN 1545-AU97

Agreements for Payment of Tax Liability in Installments

Correction

In proposed rule document 97–33790, beginning on page 68241, in the issue of Wednesday, December 31, 1997, in the **DATES** section, "March 2, 1998" should read "March 31, 1998".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[Reg-251502-96]

RIN 1545-AU68

Civil Cause of Action for Certain Unauthorized Collection Actions

Correction

In proposed rule document 97–33791, beginning on page 68242, in the issue of Wednesday, December 31, 1997, in the **DATES** section, "March 2, 1998" should read "March 31, 1998".

BILLING CODE 1505-01-D

federal register

Wednesday
January 21, 1998

Part II

Department of Health and Human Services

Health Resources and Services Administration

Health Education Assistance Loan (HEAL) Program: List of Defaulted Borrowers; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Health Education Assistance Loan (HEAL) Program: List of Defaulted Borrowers

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA), as required by section 709(c)(1) of the Public Health Service Act (the Act), is publishing this notice of Health Education Assistance Loan (HEAL) borrowers who have defaulted on the repayment of their HEAL loans and are excluded from the Medicare and State health care programs as of July 31, 1997. This listing also can be found on the Internet at http://www.defaulteddocs.dhhs.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Heningburg, Director, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857 (written requests only). All media inquiries should be directed to the HRSA Office of Communications at (301) 443–3376. Borrower-specific account information, beyond that included in the notice, will not be released to any person other than the borrower, without the written consent of the borrower.

SUPPLEMENTARY INFORMATION: Section 709(c)(1) of the Act (42 U.S.C. 292h(c)(1)) requires the Department of Health and Human Services (HHS) to compile and publish in the **Federal Register** a list of HEAL borrowers who have defaulted on the repayment of their HEAL loans. This list includes any borrower: (1) Whose HEAL loan has been assigned to HHS; and (2) who, as a result of HEAL default, was excluded from the Medicare and State health care programs as of July 31, 1997. The list does not include any defaulter excluded from the Medicare and State health care programs who, as of July 31, 1997, had provided HHS with satisfactory evidence that he or she had filed for bankruptcy and was making payments under a confirmed plan approved by the bankruptcy court. The list also does not include more than 1,000 defaulters who: (1) Have made satisfactory arrangements with HHS to resolve the default after being advised of their potential exclusion from the Medicare and State health care programs; or (2) as of September 19, 1997, had entered into a Settlement Agreement for repayment of the outstanding HEAL debt that had been approved by HRSA.

If extensive loan collection procedures fail to bring HEAL defaulters into repayment, HHS then is required to exclude these defaulters from receiving reimbursement under the Medicare program (42 U.S.C. 1395ccc). The Office of Inspector General imposes a parallel exclusion under section 1128(b)(14) of the Social Security Act, which requires States to exclude the defaulter from participation in all State health care programs (42 U.S.C. 1320a–7(b)(14)).

The total number of defaulters published in this list should not be compared to the number published in the **Federal Register** on March 15, 1995 (60 FR 14060) since the criteria used to compile the lists are different. This list does not include HEAL defaulters who are in the collection activities preceding the Medicare and State health care programs exclusion. If these defaulters do not enter into repayment, they will be added to the list.

The list that follows at the end of this document states: the defaulter's name, the latest known City and State of residence, the total amount of the HEAL debt, the school last attended for which a HEAL loan was received, the borrower's practice discipline, and the estimated school separation date. This information is listed by State of residence and by practice discipline.

Section 709(c)(2) of the Act directs that the information included in this notice be made available to relevant Federal agencies and to schools, school associations, professional and specialty associations, State licensing boards, hospitals with which listed borrowers may be associated, and other relevant organizations. In accordance with this section of the Act, HHS will provide to these entities, upon written request, the information included in the **Federal Register** notice along with Social Security Account Numbers and last known street addresses of the borrowers listed. Written requests should be submitted to the Director, Division of Student Assistance, at the address indicated above.

Dated: January 7, 1998.

Claude Earl Fox,

Acting Administrator.

LIST OF DEFAULTERS

Name	City	Debt	School	City and state	Sep date
ALABAMA					
CHIROPRACTIC					
Hembree, David W	Fairhope	$54,660	Life Univ	Marietta, GA	12/89
Hembree, Gloria N	Fairhope	43,404	Life Univ	Marietta, GA	03/90
Hopkins, Keith T	Birmingham	13,816	Logan Col of Chiropractic	Chesterfield, MO	09/82
McKenzie, Janell	Birmingham	134,763	Life Univ	Marietta, GA	03/86
Quinley, Timothy E	Bay Minette	25,509	Palmer Col of Chiropractic	Davenport, IA	12/88
DENTISTRY					
Campbell, Larry W	Muscle Shoals	51,025	Loma Linda Univ	Loma Linda, CA	06/85
Haslam Jr, Jeff D	Dothan	166,936	Marquette Univ	Milwaukee, WI	05/85
PODIATRY					
Truelove, Glenda G	Birmingham	66,796	Ohio Col of Podiatric Medicine	Cleveland, OH	05/81
ALASKA					
CHIROPRACTIC					
Horwitz, Robert B	Anchorage	94,756	Palmer Col of Chiropractic	Davenport, IA	06/86
Lavender, Anthony G	Tok	111,194	Logan Col of Chiropractic	Chesterfield, MO	08/86
Lorentzen, Peter E	Eagle River	19,779	Western States Chiropractic Col	Portland, OR	06/89
CLINICAL PSYCHOLOGY					
Valenzuela, Debbie L	Anchorage	81,071	California School of Prof Psych	Alhambra, CA	07/87

LIST OF DEFAULTERS—Continued

Name	City	Debt	School	City and state	Sep date
DENTISTRY					
Lien, Douglas D	Anchorage	206,465	New York Univ	New York, NY	06/85
ARIZONA					
ALLOPATHIC MEDICINE					
Pruitt, Chnstopher R	Phoenix	36,710	Medical Col of Ohio	Toledo, OH	06/91
CHIROPRACTIC					
Arkfield, Ted A	Phoenix	19,174	Northwestern Col of Chiropractic	Bloomington, MN	04/88
Beam, David E	Phoenix	113,928	Los Angeles Col of Chiropractic	Whittier, CA	06/85
Buchwald-Heilig, Bonnie I	Tucson	39,437	Life Univ	Marietta, GA	09/85
Budd, Carlinda L	Tucson	87,310	Logan Col of Chiropractic	Chesterfield, MO	04/86
Crider, Walter D	Scottsdale	98,809	Western States Chiropractic Col	Portland, OR	08/88
Davis-Wiese, Jacqueline S	Mesa	5,674	Palmer Col of Chiropractic	Davenport, IA	03/86
Derosa Jr, Arthur	Scottsdale	39,179	Life Chiropractic Col—West	San Lorenzo, CA	12/88
Faber, Robert H	Chino Valley	64,794	Parker Col of Chiropractic	Dallas, TX	04/87
Howe, James K	Tempe	51,083	Palmer Col of Chiropractic	Davenport, IA	12/85
Jones, Richard H	Camp Verde	77,666	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/85
Kaltenbach, Robert T	Glendale	106,606	Parker Col of Chiropractic	Dallas, TX	05/89
Keleher, James P	Tucson	104,776	Cleveland Chiropractic Col (MO)	Kansas City, MO	01/89
Kolb, Maryann	Tempe	133,641	Life Univ	Marietta, GA	09/86
Le Gate, Andrew	Winslow	16,259	Palmer Col of Chiropractic—West	San Jose, CA	09/89
Millar, Mark A	Phoenix	64,989	Parker Col of Chiropractic	Dallas, TX	12/87
Reed, Susan A	Phoenix	97,520	Los Angeles Col of Chiropractic	Whittier, CA	12/87
Rich, Kenneth C	Tucson	126,578	Los Angeles Col of Chiropractic	Whittier, CA	04/88
Smith, Sandra M	Phoenix	33,070	Palmer Col of Chiropractic	Davenport, IA	09/84
White, Howard D	Phoenix	62,833	Southern California Col of Chiropractic	Pico Rivera, CA	04/89
DENTISTRY					
Dobrota, Jerry G	Sedona	107,290	Loma Linda Univ	Loma Linda, CA	06/85
Keith, Rosalyn D	Tempe	39,013	Georgetown Univ	Washington, DC	05/87
Ransdell, Kerry L	Tempe	115,690	Washington Univ	St Louis, MO	05/85
Rifer, Lester E	Avondale	140,562	Loma Linda Univ	Loma Linda, CA	06/87
OSTEOPATHY					
Smith, Susan M	Scottsdale	92,442	Univ of Osteo Medicine & Health Sci	Des Moines, IA	06/85
Taylor, John S	Sierra Vista	213,838	Univ of Health Sci	Kansas City, MO	05/86
Van Patten Jr, Merrill D	Mesa	48,945	Univ of Osteo Medicine & Health Sci	Des Moines, IA	06/90
PODIATRY					
Scinta, Mark C	Phoenix	31,716	New York Col of Podiatric Medicine	New York, NY	06/
PUBLIC HEALTH					
Goudreault, Deborah A	Paradise Valley	7,588	Columbia Univ	New York, NY	05/82
ARKANSAS					
CHIROPRACTIC					
Kirklin, Kenton K	Rector	172,042	Life Univ	Marietta, GA	06/86
Maskell, Gary L	El Dorado	125,090	Life Univ	Marietta, GA	12/86
Mathews, Daniel G	North Little Rock	18,737	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/82
Youde, Rehea L	Elkins	76,605	Cleveland Chiropractic Col (MO)	Kansas City, MO	01/86
DENTISTRY					
Goodman, William D	Magnolia	16,077	Univ of Tennessee—Memphis	Memphis, TN	06/86
Layman, Kevin W	Fort Smith	127,995	Univ of Missouri—Kansas City	Kansas City, MO	04/85
OPTOMETRY					
Gunn, Nanette Q	Paragould	266,185	Southern Col of Optometry	Memphis, TN	06/86
PHARMACY					
Caldwell, Eric J	Lewisville	18,505	Texas Southern Univ	Houston, TX	05/90
CALIFORNIA					
ALLOPATHIC MEDICINE					
Anderson, Angela J	Torrance	56,068	Creighton Univ	Omaha, NE	12/85
Avelar, Susana	San Francisco	126,218	Medical Col of Wisconsin	Milwaukee, WI	05/90
Balyeat, Lisa E	San Diego	9,375	Univ of Texas Medical Branch—Galveston	Galveston, TX	06/88
Barbala, Patricia J	Fresno	246,502	George Washington Univ	Washington, DC	05/87
Braxton-Davis, Pamela M	San Gabriel	24,255	Howard Univ	Washington, DC	05/87
Coleman, James E	Westminster	26,012	Univ of California—Davis	Davis, CA	06/80
Duncan, Monique	Los Angeles	10,206	Case Western Reserve Univ	Cleveland, OH	08/85
Essey, Robert J	Los Angeles	79,530	Temple Univ	Philadelphia, PA	05/84
Fabrega, Cathye D	Monterey Park	130,274	Georgetown Univ	Washington, DC	05/90
Fletcher, Leonard G	Santa Ana	91,358	Univ of Texas Health Sci Ctr—San Antonio	San Antonio, TX	05/86
Franklin, Janet L	Beverly Hills	12,247	Georgetown Univ	Washington, DC	05/84
Green, Synthia E	Oakland	75,390	Loma Linda Univ	Loma Linda, CA	10/85
Hamilton, Clarence A	Alta Loma	153,902	Meharry Medical Col	Nashville, TN	05/84
Hemingway-Maffeo, Linda M	Larkspur	69,213	Boston Univ Medical Ctr	Boston, MA	05/86
Matalon, Ofer I	Santa Rosa	66,734	Univ of Illinois Medical Ctr	Chicago, IL	06/86
Miller, Bradley G	Beverly Hills	45,514	Univ of Southern California	Los Angeles, CA	06/88

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LIST OF DEFAULTERS—Continued

Name	City	Debt	School	City and state	Sep date
Morni, Kian	Fountain Valley	4,896	Baylor Col of Medicine	Houston, TX	05/88
Mouton, Marsha E	Oakland	50,401	Univ of Texas Health Sci Ctr	Houston, TX	06/86
Olson, Robert M	Sierra Madre	267,142	Univ of Southern California	Los Angeles, CA	06/84
Perrault, Mark D	Culver City	36,947	Michigan State Univ	East Lansing, MI	03/84
Pinson, Letitia A	San Pedro	8,042	Howard Univ	Washington, DC	06/91
Pote III, William H	Loma Linda	148,299	Loma Linda Univ	Loma Linda, CA	06/86
Ray, Douglas	Hawthorne	274,716	Meharry Medical Col	Nashville, TN	05/86
Schlater, Theodore L	San Francisco	14,910	Univ of California—Irvine	Irvine, CA	06/88
Scott, Barbara J	Northridge	111,581	Texas Tech Univ Health Sci Ctr	Lubbock, TX	06/89
Shaw, Michael G	Inglewood	47,234	Meharry Medical Col	Nashville, TN	05/85
Tolbert Jr, William	Los Feliz	45,521	Howard Univ	Washington, DC	05/86
Townsend, Leo W	Elk Grove	58,492	Meharry Medical Col	Nashville, TN	05/89
Weil, Mitchell A	San Clemente	18,506	Univ of California—Los Angeles	Los Angeles, CA	06/80
Worstell, Craig S	Sunnyvale	118,741	Loma Linda Univ	Loma Linda, CA	05/87
CHIROPRACTIC					
Ahmad, Haifa M	Campbell	90,070	Palmer Col of Chiropractic—West	San Jose, CA	09/88
Alegria, Albert J	South Pasadena	108,464	Southern California Col of Chiropractic—West.	Pico Rivera, CA	01/87
Anderson, Douglas W	Santa Ana	157,700	Los Angeles Col of Chiropractic	Whittier, CA	04/86
Archuleta, Philip A	San Marcos	121,459	Los Angeles Col of Chiropractic	Whittier, CA	12/88
Anshin, Michael W	Los Gatos	37,268	Palmer Col of Chiropractic—West	San Jose, CA	09/85
Arnold, Donenne M	Sacramento	15,729	Life Chiropractic Col—West	San Lorenzo, CA	12/86
Azgorov, Todor P	Los Angeles	57,186	Southern California Col of Chiropractic	Pico Rivera, CA	12/89
Azzopardi, Thomas J	Salinas	67,363	Logan Col of Chiropractic	Chesterfield, MO	08/85
Bai, Chung H	Glendale	6,868	Southern California Col of Chiropractic	Pico Rivera, CA	05/88
Bain, Lee R	Covina	140,188	Life Univ	Marietta, GA	12/87
Bardsley, Marijane	Fair Oaks	42,991	Los Angeles Col of Chiropractic	Whittier, CA	04/89
Becchetti, Sondra D	Belmont	69,927	Palmer Col of Chiropractic—West	San Jose, CA	03/87
Benedict, Susan E	Malibu	100,166	National Col of Chiropractic	Lombard, IL	06/89
Benkula, Jan K	Hayward	24,727	Life Chiropractic Col—West	San Lorenzo, CA	03/87
Berg, Troy L	Huntington Beach	44,553	Los Angeles Col of Chiropractic	Whittier, CA	12/86
Bochniak, Marie L	Thousand Oaks	48,460	Los Angeles Col of Chiropractic	Whittier, CA	04/88
Bono, John E	San Jose	79,736	Palmer Col of Chiropractic—West	San Jose, CA	06/89
Boron, Steven J	Guerneville	46,836	Palmer Col of Chiropractic—West	San Jose, CA	04/89
Bronk, Brian R	Santa Monica	35,360	Palmer Col of Chiropractic	Davenport, IA	06/84
Burch, Gregory D	Riverside	52,239	Western States Chiropractic Col	Portland, OR	06/84
Burkley, Anton Z	Oakland	100,504	Life Chiropractic Col—West	San Lorenzo, CA	06/88
Caballero, Jorge R	Los Angeles	101,509	Los Angeles Col of Chiropractic	Whittier, CA	04/87
Cappa, Claude L	Modesto	48,365	Palmer Col of Chiropractic	Davenport, IA	06/84
Carr, Wayne S	Healdsburg	98,385	Western States Chiropractic Col	Portland, OR	08/88
Cheney, Julian L	Reseda	2,874	Cleveland Chiropractic Col (CA)	Los Angeles, CA	08/83
Choe, Kevin K	Lakewood	10,895	Cleveland Chiropractic Col (CA)	Los Angeles, CA	12/91
Christensen, Casey D	Whittier	105,180	Los Angeles Col of Chiropractic	Whittier, CA	12/86
Clifford, Fred W	Riverside	98,346	Palmer Col of Chiropractic	Davenport, IA	12/85
Collier, William F	Santa Rosa	51,668	Life Chiropractic Col—West	San Lorenzo, CA	03/87
Cox, Stewart J	Pleasant Hill	60,040	Palmer Col of Chiropractic	Davenport, IA	12/83
Cresswell, Diane H	Whittier	53,298	Los Angeles Col of Chiropractic	Whittier, CA	04/90
Crocevera-Todd, Carolyn A	Pacific Grove	14,565	Cleveland Chiropractic Col (CA)	Los Angeles, CA	08/86
Curtin, Michael M	Fairfax	15,754	National Col of Chiropractic	Lombard, IL	08/88
Dankman, Mark I	Lafayette	90,855	Life Chiropractic Col—West	San Lorenzo, CA	09/88
Davis, Charles G	Glendora	74,117	Los Angeles Col of Chiropractic	Whittier, CA	12/85
DeSantis, Nicholas G	La Mesa	93,408	Southern California Col of Chiropractic	Pico Rivera, CA	12/87
Delsie, Carl	Santa Barbara	143,344	Southern California Col of Chiropractic	Pico Rivera, CA	12/86
Dhaliwal, Emaline K	Moreno Valley	16,970	Los Angeles Col of Chiropractic	Whittier, CA	12/90
Dieter, Lawrence A	Los Osos	121,851	Los Angeles Col of Chiropractic	Whittier, CA	04/89
Difiore Jr, William E	Santa Ana	34,638	Southern California Col of Chiropractic	Pico Rivera, CA	08/86
Dorman Jr, Patrick L	La Jolla	24,885	Texas Chiropractic Col Foundation	Pasadena, TX	12/85
Duff, Richard A	San Rafael	71,535	Palmer Col of Chiropractic	Davenport, IA	10/89
Dvorak, Rosalie J	Moreno Valley	92,533	Los Angeles Col of Chiropractic	Whittier, CA	12/85
Dykeman, Peter J	Torrance	60,501	Los Angeles Col of Chiropractic	Whittier, CA	12/86
Early, Lawrence	San Diego	94,414	Los Angeles Col of Chiropractic	Whittier, CA	04/87
Eckel, David E	Lancaster	87,366	Cleveland Chiropractic Col (CA)	Los Angeles, CA	08/86
Eli, Desiree D	Capitola	34,852	Life Chiropractic Col—West	San Lorenzo, CA	09/89
Ellis, Carl E	Escondido	125,283	Palmer Col of Chiropractic—West	San Jose, CA	12/89
Emmerson, Ronald E	Merced	59,996	Cleveland Chiropractic Col (CA)	Los Angeles, CA	04/89
Etcheverry, John C	San Jose	13,196	Los Angeles Col of Chiropractic	Whittier, CA	12/88
Fickel, Theodore E	Santa Barbara	70,394	Los Angeles Col of Chiropractic	Whittier, CA	12/82
Fishkin, William H	San Francisco	13,037	Life Chiropractic Col—West	San Lorenzo, CA	03/87
Fitzpatrick, Patrick J	Hesperia	80,619	Los Angeles Col of Chiropractic	Whittier, CA	12/87
Flores, Otto O	Santa Ana	50,495	Southern California Col of Chiropractic	Pico Rivera, CA	08/88
Florez, Stephan D	Bassett	41,116	Cleveland Chiropractic Col (CA)	Los Angeles, CA	04/89
Fridrick, Tim P	North Hollywood	50,086	Southern California Col of Chiropractic	Pico Rivera, CA	04/88
Gallagher, Tamara G	Chino	32,516	Los Angeles Col of Chiropractic	Whittier, CA	12/84
Garza, John J	Thousand Oaks	99,421	Los Angeles Col of Chiropractic	Whittier, CA	04/89
Garza, Rudolph P	San Jose	66,472	Life Chiropractic Col—West	San Lorenzo, CA	12/85
Gearhart, Cindy L	Lakewood	35,774	Los Angeles Col of Chiropractic	Whittier, CA	04/90
Gilberti, Benedict V	Carlsbad	14,782	Cleveland Chiropractic Col (MO)	Kansas City, MO	01/87
Given, Vaughn M	Mission Viejo	31,730	Southern California Col of Chiropractic	Pico Rivera, CA	10/85
Glum, Gary L	Los Angeles	127,255	Los Angeles Col of Chiropractic	Whittier, CA	04/84
Green, Sheldon S	Sherman Oaks	51,354	Cleveland Chiropractic Col (CA)	Los Angeles, CA	12/85
Gregory, Todd A	Santa Maria	23,448	Life Chiropractic Col—West	San Lorenzo, CA	09/89

LIST OF DEFAULTERS—Continued

Name	City	Debt	School	City and state	Sep date
Grubstein, Alan P	Rancho Cucamonga	115,645	Cleveland Chiropractic Col (MO)	Kansas City, MO	09/87
Hafner, Diane H	Atherton	25,913	Palmer Col of Chiropractic—West	San Jose, CA	12/86
Hahn, Peter S	Placentia	16,500	Los Angeles Col of Chiropractic	Whittier, CA	12/89
Haines, Donna J	Arcata	46,629	National Col of Chiropractic	Lombard, IL	08/88
Halle, Thomas C	Los Angeles	63,909	Cleveland Chiropractic Col (CA)	Los Angeles, CA	12/86
Hamilton, Aaron J	Huntington Beach	20,266	Cleveland Chiropractic Col (CA)	Los Angeles, CA	12/82
Hatfield, Brian L	Santa Monica	34,828	Life Chiropractic Col—West	San Lorenzo, CA	03/88
Hempsey, William C	Sherman Oaks	24,144	Cleveland Chiropractic Col (CA)	Los Angeles, CA	08/83
Hermosillo, Francisco J	Tarzana	116,591	Southern California Col of Chiropractic	Pico Rivera, CA	04/87
Hernandez, Orestes M	Los Angeles	47,362	Cleveland Chiropractic Col (CA)	Los Angeles, CA	12/88
Hileman, Kent A	Hollister	22,888	Cleveland Chiropractic Col (CA)	Los Angeles, CA	08/86
Holsinger, Matthew W	San Mateo	74,986	Life Chiropractic Col—West	San Lorenzo, CA	06/90
Holt, Kenneth G	Sun City	55,636	Southern California Col of Chiropractic	Pico Rivera, CA	12/88
Hopstock, Richard M	Hacienda Heights	86,261	Los Angeles Col of Chiropractic	Whittier, CA	12/85
Hosler, John R	Hollister	33,712	Palmer Col of Chiropractic—West	San Jose, CA	12/84
Howard, Marty B	Newark	19,409	Life Chiropractic Col—West	San Lorenzo, CA	12/86
Huerta, Debra	Oakland	36,651	Life Chiropractic Col—West	San Lorenzo, CA	12/88
Hughes Jr, Joseph R	San Diego	45,684	Southern California Col of Chiropractic	Pico Rivera, CA	12/90
Hungerford, Richard D	San Leandro	29,189	Life Chiropractic Col—West	San Lorenzo, CA	09/86
Inskeep, Norman D	San Jose	148,182	Palmer Col of Chiropractic—West	San Jose, CA	09/86
Jette, Steven A	Petaluma	9,477	Western States Chiropractic Col	Portland, OR	12/83
Johnson, Eric D	Victorville	106,826	Palmer Col of Chiropractic—West	San Jose, CA	03/90
Johnson, Randall G	Los Angeles	87,319	Cleveland Chiropractic Col (CA)	Los Angeles, CA	12/86
Johnson, Shelia A	Los Angeles	117,196	Cleveland Chiropractic Col (CA)	Los Angeles, CA	04/86
Kahan, Robert M	Mission Viejo	25,539	Los Angeles Col of Chiropractic	Whittier, CA	04/84
Kelly, Mark S	Chino	25,452	Cleveland Chiropractic Col (CA)	Los Angeles, CA	04/86
Kessler, Michael J	Vallejo	91,249	Palmer Col of Chiropractic—West	San Jose, CA	03/86
Koukeh-Sackett, F M	Redlands	56,627	Palmer Col of Chiropractic	Davenport, IA	06/86
Lacy, Sharon J	Guerneville	89,397	Logan Col of Chiropractic	Chesterfield, MO	04/88
Lamb, Robert D	Sebastopol	35,974	Los Angeles Col of Chiropractic	Whittier, CA	04/89
Lampman, Chuck D	Sylmar	114,859	Cleveland Chiropractic Col (CA)	Los Angeles, CA	08/86
Landemare, Henry M	Moss Beach	107,964	Life Chiropractic Col—West	San Lorenzo, CA	06/85
Laughter, James S	San Diego	42,483	Western States Chiropractic Col	Portland, OR	03/85
Leeds, Robert W	Redwood City	89,968	Los Angeles Col of Chiropractic	Whittier, CA	12/86
Lewis, Edward L	Auburn	118,723	Palmer Col of Chiropractic—West	San Jose, CA	06/89
Locke, Peggy J	Santa Barbara	107,350	Cleveland Chiropractic Col (CA)	Los Angeles, CA	04/89
Lodwig, Michael J	Walnut Creek	17,389	Palmer Col of Chiropractic—West	San Jose, CA	10/89
Lowry, Paulette M	Richmond	73,470	Life Chiropractic Col—West	San Lorenzo, CA	03/88
Lowy-Berry, Christie L	Glendora	40,259	Cleveland Chiropractic Col (CA)	Los Angeles, CA	12/88
Lunceford, Glenn W	Norco	16,375	Life Chiropractic Col—West	San Lorenzo, CA	06/86
Manire, Vincent S	North Hollywood	86,387	Cleveland Chiropractic Col (CA)	Los Angeles, CA	04/89
Mark, Jeffrey	Berkeley	103,137	Los Angeles Col of Chiropractic	Whittier, CA	04/87
Martin, Diana J	Los Gatos	26,686	Palmer Col of Chiropractic—West	San Jose, CA	03/86
Maynard, Jennifer E	Diamond Bar	69,211	Southern California Col of Chiropractic	Pico Rivera, CA	12/88
Mays-Good, Kathryn M	Tarzana	74,537	Parker Col of Chiropractic	Dallas, TX	05/88
McGee, Billie J	Simi Valley	35,730	Cleveland Chiropractic Col (CA)	Los Angeles, CA	04/84
McLaughlin, Robert M	Somerset	50,615	Palmer Col of Chiropractic—West	San Jose, CA	12/89
Melville, Carl J	Crestline	112,531	Los Angeles Col of Chiropractic	Whittier, CA	12/89
Miller, Brad T	Costa Mesa	20,662	Cleveland Chiropractic Col (CA)	Los Angeles, CA	08/90
Miller, David E	Clyde	31,729	Life Chiropractic Col—West	San Lorenzo, CA	12/89
Molina, Robert	West Covina	59,992	Cleveland Chiropractic Col (CA)	Los Angeles, CA	08/87
Monahan, Michael L	Carlsbad	46,406	Los Angeles Col of Chiropractic	Whittier, CA	12/86
Moore, Dennis J	Costa Mesa	145,268	Los Angeles Col of Chiropractic	Whittier, CA	04/86
Moore, Wesley B	San Jose	46,311	Life Chiropractic Col—West	San Lorenzo, CA	12/84
Mullins, Marilyn E	Placentia	58,346	Los Angeles Col of Chiropractic	Whittier, CA	04/84
Murphy, Marc A	Rancho Santa Marga	60,257	Cleveland Chiropractic Col (CA)	Los Angeles, CA	12/83
Navai, Mehdi N	Alhambra	72,415	Cleveland Chiropractic Col (CA)	Los Angeles, CA	08/88
Nelson, Robert A	Suisun City	85,572	Cleveland Chiropractic Col (CA)	Los Angeles, CA	04/88
Nicholls, Hilary J	Carmel Valley	33,302	Logan Col of Chiropractic	Chesterfield, MO	08/85
None, John B	Desert Hot Springs	95,301	Palmer Col of Chiropractic—West	San Jose, CA	06/87
Norville, Michael T	Costa Mesa	64,702	Southern California Col of Chiropractic	Pico Rivera, CA	12/90
Oberstein, Lawrence B	Santa Rosa	35,798	Life Chiropractic Col—West	San Lorenzo, CA	12/84
Pallas, James M	Temecula	79,612	Los Angeles Col of Chiropractic	Whittier, CA	04/86
Palmer, Becky A	Fallbrook	85,644	Life Univ	Manetta, GA	03/86
Pardo, Fernando A	Ontano	16,436	Logan Col of Chiropractic	Chesterfield, MO	12/90
Parker, Brian T	Sylmar	28,948	Cleveland Chiropractic Col (CA)	Los Angeles, CA	12/88
Pellenn, Stephen P	Oakhurst	70,624	Southern California Col of Chiropractic	Pico Rivera, CA	01/86
Perez, Jesus V	Pomona	92,132	Cleveland Chiropractic Col (CA)	Los Angeles, CA	07/84
Pfeiffer, Arlene H	Lakewood	6,672	Los Angeles Col of Chiropractic	Whittier, CA	04/83
Pham, Greg N	Fountain Valley	79,913	Southern California Col of Chiropractic	Pico Rivera, CA	12/89
Pham, Nghi D	Fountain Valley	64,415	Palmer Col of Chiropractic—West	San Jose, CA	08/89
Podry, Robert J	La Canada	71,450	Southern California Col of Chiropractic	Pico Rivera, CA	08/86
Radetic, Peter M	Pleasant Hill	41,648	Life Chiropractic Col—West	San Lorenzo, CA	06/86
Rahn, Roger S	Woodland Hills	96,560	Los Angeles Col of Chiropractic	Whittier, CA	04/88
Rayas-Felix, Magdalena	Los Angeles	20,723	Los Angeles Col of Chiropractic	Whittier, CA	04/88
Redd, Timothy J	San Dimas	150,583	Southern California Col of Chiropractic	Pico Rivera, CA	04/87
Reed, Robert W	Highland	64,380	Southern California Col of Chiropractic	Pico Rivera, CA	12/86
Reynolds, Bob R	Bakersfield	57,868	Cleveland Chiropractic Col (CA)	Los Angeles, CA	08/86
Richardson, Justin W	Northridge	12,700	Cleveland Chiropractic Col (CA)	Los Angeles, CA	12/83
Rios, Emanuel J	Pasadena	61,335	Southern California Col of Chiropractic	Pico Rivera, CA	08/88
Rockmael, Allan M	San Francisco	99,021	Life Chiropractic Col—West	San Lorenzo, CA	09/88

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LIST OF DEFAULTERS—Continued

Name	City	Debt	School	City and state	Sep date
Rodriguez, Consuelo A	Alhambra	41,863	Cleveland Chiropractic Col (CA)	Los Angeles, CA	09/84
Rodriguez, Humberto J	La Mirada	84,076	Los Angeles Col of Chiropractic	Whittier, CA	04/87
Rosenfeld, Jeffre B	Los Angeles	44,386	Cleveland Chiropractic Col (CA)	Los Angeles, CA	04/86
Royal, Don C	Corona Del Mar	34,214	National Col of Chiropractic	Lombard, IL	12/82
Ruiz, Henry S	Palmdale	172,194	Southern California Col of Chiropractic	Pico Rivera, CA	08/86
Sargent, John F	Lawndale	84,999	Southern California Col of Chiropractic	Pico Rivera, CA	08/86
Schleicher, Kyle S	Santa Monica	21,577	Cleveland Chiropractic Col (CA)	Los Angeles, CA	04/90
Schow, Kenneth M	Glendale	38,027	Los Angeles Col of Chiropractic	Whittier, CA	12/82
Serratos, Ernesto	Crestline	70,969	Los Angeles Col of Chiropractic	Whittier, CA	12/88
Shanesfelter III, Charles D	San Francisco	29,476	Southern California Col of Chiropractic	Pico Rivera, CA	12/89
Shapiro, Michael S	Newhall	64,865	Los Angeles Col of Chiropractic	Whittier, CA	04/85
Shouka, Mohammed N	Colton	25,946	Los Angeles Col of Chiropractic	Whittier, CA	12/88
Simon, Greg L	Murrieta	46,736	Southern California Col of Chiropractic	Pico Rivera, CA	09/86
Simon, Michelle R	Thousand Oaks	48,931	Cleveland Chiropractic Col (CA)	Los Angeles, CA	12/88
Smith, Carl A	Garden Grove	150,981	Los Angeles Col of Chiropractic	Whittier, CA	12/87
Smith, Jessica	Downey	95,459	Los Angeles Col of Chiropractic	Whittier, CA	12/83
Snavely, Danny H	San Juan Capistrano	73,500	Los Angeles Col of Chiropractic	Whittier, CA	04/86
Snodgrass, Clifton R	San Diego	34,180	Los Angeles Col of Chiropractic	Whittier, CA	12/83
Sohrab, Neda	Costa Mesa	54,215	Cleveland Chiropractic Col (CA)	Los Angeles, CA	12/89
Stalker, James W	Pleasanton	23,481	Logan Col of Chiropractic	Chesterfield, MO	05/83
Stasko, Edward G	Huntington Beach	36,597	Palmer Col of Chiropractic	Davenport, IA	06/84
Stewart, Jeannine L	Newport Beach	19,780	Los Angeles Col of Chiropractic	Whittier, CA	04/84
Stone, Steven D	San Leandro	15,402	Life Chiropractic Col—West	San Lorenzo, CA	12/90
Studer, Jonathan V	San Jose	48,553	Palmer Col of Chiropractic—West	San Jose, CA	12/86
Styler, Richard L	San Diego	12,099	Palmer Col of Chiropractic—West	San Jose, CA	09/89
Sullivan, Joseph C	Burbank	70,269	Los Angeles Col of Chiropractic	Whittier, CA	12/86
Sutton, Brian L	Mission Viejo	65,594	Southern California Col of Chiropractic	Pico Rivera, CA	04/86
Thompson, James D	Fair Oaks	138,622	Palmer Col of Chiropractic—West	San Jose, CA	03/87
Thornton, James G	Nevada City	4,529	Logan Col of Chiropractic	Chesterfield, MO	01/83
Van Gorder, Kurt F	Temecula	70,904	Los Angeles Col of Chiropractic	Whittier, CA	04/89
Vardanian, Michael A	Fullerton	56,720	Los Angeles Col of Chiropractic	Whittier, CA	04/85
Vassallo-Richmond, Deborah D	Pleasanton	113,507	Life Chiropractic Col—West	San Lorenzo, CA	06/88
Vessels, Steven L	Loma Linda	63,211	Los Angeles Col of Chiropractic	Whittier, CA	04/83
Walls-Fenwick, Jan D	San Bernardino	103,501	Southern California Col of Chiropractic	Pico Rivera, CA	04/88
Walsh, Richard J	Ventura	28,293	Life Chiropractic Col—West	San Lorenzo, CA	12/86
Wanke, Glenn P	Fullerton	118,036	Los Angeles Col of Chiropractic	Whittier, CA	04/87
Weiss, Gwenn M	Cupertino	30,936	Palmer Col of Chiropractic—West	San Jose, CA	09/86
Westing, Denise D	Alameda	36,071	Life Chiropractic Col—West	San Lorenzo, CA	12/87
White, Judith U	Costa Mesa	20,960	Southern California Col of Chiropractic	Pico Rivera, CA	01/85
Whittlesey, James B	Novato	30,218	Life Chiropractic Col—West	San Lorenzo, CA	09/86
Wies, David L	Westlake Village	87,101	Cleveland Chiropractic Col (CA)	Los Angeles, CA	08/86
Williams, Duane A	Livermore	56,998	Palmer Col of Chiropractic	Davenport, IA	09/84
Worth, Kelly G	Santa Ana	53,954	Los Angeles Col of Chiropractic	Whittier, CA	12/87
Zeitsoff-Maher, Deborah L	Aptos	18,082	Palmer Col of Chiropractic—West	San Jose, CA	06/84
CLINICAL PSYCHOLOGY					
Abendan, Marilou S	Berkeley	55,271	California School of Prof Psych	Alameda, CA	06/87
Armstrong, Phyllis M	Los Angeles	20,974	California School of Prof Psych	Alhambra, CA	05/90
Boulware, Susan L	Fairfax	71,882	California School of Prof Psych	Alameda, CA	07/86
Buckwalter, John G	Redondo Beach	90,877	Fuller Theological Seminary	Pasadena, CA	12/86
Cobrin, Bettina B	Venice	135,023	California School of Prof Psych	Alhambra, CA	07/87
Larson, Leslie A	Pasadena	55,594	California School of Prof Psych	Alhambra, CA	06/89
Lataille, Edward P	San Diego	123,396	California School of Prof Psych	San Diego, CA	05/87
Macgregorwhite, Charles W	San Jose	43,752	Pacific Graduate School of Psych	Palo Alto, CA	06/94
McGregor, Floyd A	Hawthorne	53,916	California School of Prof Psych	Alhambra, CA	07/87
McMahon, Kathleen E	El Monte	31,804	California School of Prof Psych	Alhambra, CA	05/90
Pust, Keith W	Lake Elsinore	44,275	Biola Univ	La Mirada, CA	06/86
Safir, Paula B	La Jolla	153,796	California School of Prof Psych	San Diego, CA	02/87
Smulder, Evie L	Los Angeles	23,150	California School of Prof Psych	Alhambra, CA	07/87
Stanford, Jeanne A	Santa Barbara	14,072	California School of Prof Psych	Alhambra, CA	07/87
Stevenson, Teresa M	Los Angeles	12,251	California School of Prof Psych	Alhambra, CA	07/87
DENTISTRY					
Brinker, Richard B	Port Hueneme	94,599	Univ of Pittsburgh	Pittsburgh, PA	06/84
Brodie, Douglas K	San Diego	193,170	Loma Linda Univ	Loma Linda, CA	10/87
Brunson, Gregory H	Del Mar	125,295	Univ of Texas Health Sci Ctr	Houston, TX	05/88
Calhoun, Michael W	Palm Springs	171,846	Univ of Southern California	Los Angeles, CA	05/86
Ching, Clayton V	Anaheim	46,698	Univ of Southern California	Los Angeles, CA	05/85
Christensen, Heidi L	Redlands	49,772	Univ of Detroit Mercy	Detroit, MI	06/83
Chung, John J	Rosemead	147,560	Univ of Southern California	Los Angeles, CA	05/93
Comer, Michael J	Sacramento	41,621	Washington Univ	St Louis, MO	05/89
Cutts, David P	Temecula	52,543	Loma Linda Univ	Loma Linda, CA	06/83
Dangerfield, Alan N	Santa Clara	163,006	Georgetown Univ	Washington, DC	05/83
Done, Byron H	Walnut Creek	155,402	Univ of Southern California	Los Angeles, CA	05/87
Drabinsky, Gerald S	Los Angeles	122,373	Indiana Univ—Indianapolis	Bloomington, IN	12/91
Estao, Caesar G	Carson	78,576	Univ of Southern California	Los Angeles, CA	05/90
Formaker, James W	West Hollywood	45,271	Univ of Southern California	Los Angeles, CA	05/86
Frier, James W	Jackson	24,914	Georgetown Univ	Washington, DC	05/83
Gabriel, Tony D	Glendale	49,673	Marquette Univ	Milwaukee, WI	05/84
Garcia, Gilberto G	Long Beach	143,653	Univ of The Pacific	San Francisco, CA	06/89
Gonzales, Edward J	Los Angeles	231,586	Boston Univ Medical Ctr	Boston, MA	05/88
Gray, Scott D	Hemet	75,458	Univ of The Pacific	San Francisco, CA	06/88

LIST OF DEFAULTERS—Continued

Name	City	Debt	School	City and state	Sep date
Hall, Barry S	Milpitas	201,728	Univ of Southern California	Los Angeles, CA	05/87
Hill, David L	San Jose	17,719	Tufts Univ	Boston, MA	06/86
Hoehn, James D	Thousand Oaks	99,387	Loma Linda Univ	Loma Linda, CA	06/85
Kelly, Andrew W	Los Angeles	54,614	Howard Univ	Washington, DC	05/83
Kent, Donald E	Oakland	183,003	Univ of Southern California	Los Angeles, CA	05/85
Kurts, Tedd R	Sunnyvale	40,721	Loma Linda Univ	Loma Linda, CA	06/86
Lim, Jhang H	Fresno	108,641	Univ of Southern California	Los Angeles, CA	05/84
Luckey, John M	Victorville	107,957	Loma Linda Univ	Loma Linda, CA	06/81
Marth-Hudson, Tedie L	San Marino	15,551	Univ of Southern California	Los Angeles, CA	06/82
Memmott, Dana B	Signal Hill	11,266	Univ of Southern California	Los Angeles, CA	05/84
Nelson, Dorothy S	San Diego	78,448	Georgetown Univ	Washington, DC	05/87
Price, Steven V	Los Angeles	4,377	Univ of California—Los Angeles	Los Angeles, CA	06/84
Ramirez, Ralph	El Monte	17,770	Univ of Southern California	Los Angeles, CA	05/85
Rocha, Mark W	Riverside	146,543	Loma Linda Univ	Loma Linda, CA	06/87
Santucci, Gerald M	Sacramento	35,928	Univ of Southern California	Los Angeles, CA	05/83
Shaw, Michael P	Pleasanton	136,915	Marquette Univ	Milwaukee, WI	05/83
Shepperd, Gordon L	Ceres	83,361	Univ of Southern California	Los Angeles, CA	05/88
Shin, Hui-Yong	Los Angeles	72,245	Univ of Southern California	Los Angeles, CA	05/89
Shoeleh, Hossien M	Costa Mesa	42,574	Univ of Oklahoma Health Sci Ctr	Oklahoma City, OK	06/91
Swen, John M	Orangevale	49,340	Loma Linda Univ	Loma Linda, CA	06/86
Taylor, Tamra R	San Clemente	48,949	Loma Linda Univ	Loma Linda, CA	06/84
Thompson, Florian	Los Angeles	250,482	Boston Univ Medical Ctr	Boston, MA	05/88
Tracy, James M	Campbell	57,154	Georgetown Univ	Washington, DC	05/79
Vazagov, Zachial A	Sierra Madre	236,663	Tufts Univ	Boston, MA	05/88
OPTOMETRY					
Glick, Stanley B	Pasadena	5,054	New England Col of Optometry	Boston, MA	11/81
Mast, Barry C	Camarillo	42,254	Southern Col of Optometry	Memphis, TN	06/84
McWhinnie Jr, Clarence E	Los Angeles	10,708	Southern California Col of Optometry	Fullerton, CA	06/83
OSTEOPATHY					
Breedlove, David L	Long Beach	12,110	Michigan State Univ	East Lansing, MI	06/83
Cline, Sherri L	Sylmar	7,299	Univ of North Texas Health Sci Ctr	Fort Worth, TX	05/88
Marshall, William E	Burbank	177,546	Western Univ of Health Sci	Pomona, CA	06/87
Mitchell, Ralph A	Alta Loma	111,850	Western Univ of Health Sci	Pomona, CA	06/91
PHARMACY					
Abe, Gregory N	Tujunga	30,606	Univ of Southern California	Los Angeles, CA	05/88
Degroot, Ruth I	Modesto	10,794	Univ of The Pacific	Stockton, CA	04/91
Dharma-Haynes, Geetha A	Beverly Hills	25,502	Univ of Southern California	Los Angeles, CA	05/90
Frick, Deborah M	Anaheim	27,190	Univ of Southern California	Los Angeles, CA	05/89
Iqal, Robert S	Claremont	13,652	Mercer Univ	Atlanta, GA	06/83
PODIATRY					
Barry, Patrick G	San Diego	3,293	New York Col of Podiatric Medicine	New York, NY	06/83
Berquist, Andrew O	Foster City	126,776	California Col of Podiatric Medicine	San Francisco, CA	05/86
Featherstone, John J	San Bruno	47,571	California Col of Podiatric Medicine	San Francisco, CA	05/93
Hitchcock, Philip R	Dunsmuir	137,320	California Col of Podiatric Medicine	San Francisco, CA	05/81
Landrum, Keith	Redondo Beach	85,027	Dr William School Col of Podiatric Medicine	Chicago, IL	05/81
Lentell, Brian M	Clovis	47,865	California Col of Podiatric Medicine	San Francisco, CA	05/84
London, Eliyahu	Irvine	256,772	California Col of Podiatric Medicine	San Francisco, CA	06/86
Palmer, Donna C	Garden Grove	68,398	California Col of Podiatric Medicine	San Francisco, CA	05/83
Pope, David K	Downey	178,368	California Col of Podiatric Medicine	San Francisco, CA	05/85
Scott, Thamos	Oakland	59,864	California Col of Podiatric Medicine	San Francisco, CA	05/87
Wilkes, Craig A	Corona	241,442	California Col of Podiatric Medicine	San Francisco, CA	06/86
Williams, David L	Pasadena	37,489	Dr William School Col of Podiatric Medicine	Chicago, IL	05/84
Zolfaghri, Behrooz	Danville	57,225	California Col of Podiatric Medicine	San Francisco, CA	05/86
PUBLIC HEALTH					
Williams, Pamela A	Buena Park	5,746	Loma Linda Univ	Loma Linda, CA	06/83
COLORADO					
ALLOPATHIC MEDICINE					
Roberts, Charles C	Denver	66,583	Univ of Colorado Health Sci Ctr	Denver, CO	05/85
Stirgus, Kent L	Colorado Springs	59,417	Univ of Colorado Health Sci Ctr	Denver, CO	05/88
CHIROPRACTIC					
Cunningham, Marvin D	Colorado Springs	25,024	Palmer Col of Chiropractic—West	San Jose, CA	06/86
Day, Donald M	Thornton	60,029	Cleveland Chiropractic Col (MO)	Kansas City, MO	12/83
Downs-Reason, Cynthia L	Woodland Park	42,501	Southern California Col of Chiropractic	Pico Rivera, CA	08/88
Langolf, Daniel L	Lakewood	56,909	Palmer Col of Chiropractic	Davenport, IA	06/86
Michals, Robert H	Aurora	57,050	Palmer Col of Chiropractic	Davenport, IA	09/84
Ohrdorf, Ronald T	Colorado Springs	135,045	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/88
Peterson, Gregory W	Littleton	27,219	Northwestern Col of Chiropractic	Bloomington, MN	04/85
Plaster, Michael A	Lakewood	46,318	Parker Col of Chiropractic	Dallas, TX	12/87
Schmidt, Jeffrey J	Silverthorne	43,292	Western States Chiropractic Col	Portland, OR	12/88
Stjernholm, Darwin L	Denver	82,442	Los Angeles Col of Chiropractic	Whittier, CA	12/88
Stokka, Wayne M	Littleton	24,528	Northwestern Col of Chiropractic	Bloomington, MN	04/89
Williams, Danny C	Broomfield	4,367	Palmer Col of Chiropractic	Davenport, IA	03/90
Young, Larry N	Florence	35,357	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/85
DENTISTRY					
Haviland, Philip F	Aurora	21,463	Oral Roberts Univ	Tulsa, OK	05/87

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LIST OF DEFAULTERS—Continued

Name	City	Debt	School	City and state	Sep date
Lack, Ray E	Arvada	61,125	Univ of Colorado Health Sci Ctr	Denver, CO	05/86
Thompson, Jerrold A	Lakewood	12,580	Univ of Colorado Health Sci Ctr	Denver, CO	05/83
OPTOMETRY					
Cooley, Stephen L	Denver	23,760	Pacific Univ	Forest Grove, OR	05/84
PHARMACY					
Espinosa, Sylvia L	Colorado Springs	12,223	Univ of Southern California	Los Angeles, CA	05/89
PODIATRY					
Otteman, Timothy J	Arvada	97,958	Dr William School Col of Podiatric Medicine	Chicago, IL	05/83
CONNECTICUT					
ALLOPATHIC MEDICINE					
Cooper, Charles	Stratford	20,615	Univ of Miami	Miami, FL	06/83
CHIROPRACTIC					
Anderson, Mark G	Sandy Hook	78,990	Life Univ	Marietta, GA	06/86
Davis, Patricia M	Stamford	56,941	New York Chiropractic Col	Seneca Falls, NY	04/88
Dellavolpe, Michael A	Wolcott	118,864	National Col of Chiropractic	Lombard, IL	08/86
Dunlop, Daniel W	New Hartford	103,947	New York Chiropractic Col	Seneca Falls, NY	04/87
Fiore, Dominick	Bridgeport	99,649	New York Chiropractic Col	Seneca Falls, NY	12/86
Spielmann, Michael A	Vernon Rockville	27,357	National Col of Chiropractic	Lombard, IL	12/89
DENTISTRY					
Urling, Wendell P	Cheshire	161,644	Temple Univ	Philadelphia, PA	05/83
DELAWARE					
PHARMACY					
Stanley, Carolyn	Wilmington	78,974	Temple Univ	Philadelphia, PA	06/86
DISTRICT OF COLUMBIA					
ALLOPATHIC MEDICINE					
McAllister, Amazair	Washington	4,344	Howard Univ	Washington, DC	05/83
Smith, Horatio L	Washington	11,800	Morehouse School of Medicine	Atlanta, GA	05/90
DENTISTRY					
Beck, Mark L	Washington	65,840	Howard Univ	Washington, DC	05/87
Bess-Blythe, Valene D	Washington	45,481	Howard Univ	Washington, DC	05/84
Caldwell, Robert J	Washington	13,131	Howard Univ	Washington, DC	05/86
Harris, Conrad W	Washington	88,352	Howard Univ	Washington, DC	05/85
Jones, Sherman P	Washington	98,090	Howard Univ	Washington, DC	05/89
King, James H	Washington	29,987	Howard Univ	Washington, DC	05/90
Leggett, Gilbert H	Washington	32,718	Howard Univ	Washington, DC	05/88
Pettaway, Reginald	Washington	41,051	Howard Univ	Washington, DC	05/89
Sims, Michael A	Washington	32,595	Georgetown Univ	Washington, DC	05/83
Smith, Daniel J	Washington	13,553	Howard Univ	Washington, DC	05/84
Smith, Vasco A	Washington	173,816	Meharry Medical Col	Nashville, TN	05/84
Whitaker, Aaron T	Washington	49,302	Howard Univ	Washington, DC	05/84
PODIATRY					
Stroman, Samuel D	Washington	20,035	Ohio Col of Podiatric Medicine	Cleveland, OH	05/91
FLORIDA					
ALLOPATHIC MEDICINE					
Birt, Carol M	Fort Myers	147,169	George Washington Univ	Washington, DC	05/86
D'Amico, James M	New Port Richey	128,598	Washington Univ	St Louis, MO	05/88
Lentol, Lawrence A	Boca Raton	211,751	Ponce School of Medicine	Ponce, PR	06/86
Rose, Stefan	Miami	70,708	Univ of Miami	Miami, FL	05/85
CHIROPRACTIC					
Adray, Allie A	Largo	157,334	Life Univ	Marietta, GA	03/87
Bahrs, John G	Gainesville	164,328	Life Univ	Marietta, GA	06/87
Baker III, James W	Jacksonville	79,903	Life Univ	Marietta, GA	12/86
Barner, Russell J	Tampa	187,510	Life Univ	Marietta, GA	12/86
Boshes, Pem D	Boca Raton	22,645	Life Univ	Marietta, GA	12/84
Brundell, Edmund D	Plant City	139,696	Life Univ	Marietta, GA	06/87
Buslork, Dayna E	Gainesville	64,207	Life Univ	Marietta, GA	03/87
Campanale, Paul R	Jacksonville	31,554	New York Chiropractic Col	Seneca Falls, NY	04/84
Carageorge, Dawn C	Tampa	39,424	Life Univ	Marietta, GA	06/89
Carrancejo, Monica	Tampa	101,298	Life Univ	Marietta, GA	12/86
Catallo, Christopher L	Orlando	29,102	Life Univ	Marietta, GA	09/90
Cowan, Robert F	Pensacola	34,265	Cleveland Chiropractic Col (MO)	Kansas City, MO	12/83
Diesen, James D	Jacksonville	79,555	Logan Col of Chiropractic	Chesterfield, MO	04/88
Etienne, Ivan J	Miami	18,253	National Col of Chiropractic	Lombard, IL	05/83
Fabricant, Michael J	Davie	73,317	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/84
Falowski, Frances	Fort Lauderdale	136,060	Life Univ	Marietta, GA	09/85
Fine, Mitchell L	Coral Springs	14,851	Life Univ	Marietta, GA	12/83
Fountain, Rodney E	Pensacola	164,436	Texas Chiropractic Col Foundation	Pasadena, TX	05/84

LIST OF DEFAULTERS—Continued

Name	City	Debt	School	City and state	Sep date
Gasso, Joaquin A	Miami	210,017	Life Univ	Marietta, GA	12/85
Ghigna-Bogdanffy, Mary L	Deland	64,323	New York Chiropractic Col	Seneca Falls, NY	04/84
Greene, Silas R	Panama City	22,742	Life Univ	Marietta, GA	06/84
Greenwald, Lewis A	Miami	8,439	Life Univ	Marietta, GA	06/90
Guy, Geoffrey C	Safety Harbor	23,517	Life Univ	Marietta, GA	06/83
Halley, James E	Port Richey	118,856	Cleveland Chiropractic Col (MO)	Kansas City, MO	08/87
Hardwick, James F	Maitland	124,840	Life Univ	Marietta, GA	12/86
Hoblit, John W	Saint Petersburg	73,834	Life Univ	Marietta, GA	09/83
Holzer, Richard M	Boca Raton	50,055	Life Univ	Marietta, GA	12/84
Jennings, Peggy J	Gainesville	49,122	Texas Chiropractic Col Foundation	Pasadena, TX	05/84
Kogut, Dennis W	Miami	37,562	Life Univ	Marietta, GA	03/84
Levin, Nancy E	Palm Beach Gardens	58,658	Life Univ	Marietta, GA	09/84
Levine, Jeffrey D	Orlando	51,620	Life Univ	Marietta, GA	09/85
Machara, Katherine L	Enterprise	158,888	Life Univ	Marietta, GA	12/86
Mane, Walter J	Miami	119,173	Logan Col of Chiropractic	Chesterfield, MO	04/85
McElhinney, Thomas E	Saint Augustine	100,526	Life Univ	Marietta, GA	03/89
Meunier, Edward J	Fort Lauderdale	189,492	Life Univ	Marietta, GA	08/85
Moyal, William R	Miami Beach	135,470	Life Univ	Marietta, GA	06/85
Renzulli, Michael J	Destin	32,800	Life Univ	Marietta, GA	06/90
Robinson, Bruce K	Jupiter	110,958	Life Univ	Marietta, GA	06/86
Rodriguez, Frank	Longwood	103,637	Los Angeles Col of Chiropractic	Whittier, CA	12/85
Siverling, Gerald D	Brandon	48,787	Texas Chiropractic Col Foundation	Pasadena, TX	05/83
Spivey, Douglas V	Cape Coral	72,263	Life Univ	Marietta, GA	12/86
Street, James F	Davie	68,051	Logan Col of Chiropractic	Chesterfield, MO	05/89
Taylor, Brett M	Royal Palm Beach	61,111	Southern California Col of Chiropractic	Pico Rivera, CA	09/86
Thiel, Margaret A	Cape Coral	74,110	Life Univ	Marietta, GA	09/88
Thomas, Bruce L	Saint Petersburg	107,673	Life Univ	Marietta, GA	03/89
Tsiotsias, Aftemios G	Hollywood	9,724	Life Univ	Marietta, GA	06/86
Walker, Duane T	Jacksonville	106,648	Life Univ	Marietta, GA	09/86
Walters, Clark C	Dunedin	68,287	Life Univ	Marietta, GA	06/85
Whipkey, Douglas G	Jensen Beach	51,357	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/89
Zulovitz, Mark J	Vero Beach	71,514	Life Univ	Marietta, GA	12/86
CLINICAL PSYCHOLOGY					
Hall, Pamela A	Fort Lauderdale	116,751	Florida Institute of Technology	Melbourne, FL	06/87
DENTISTRY					
Bruyning, Edwin F	Miami	157,528	Tufts Univ	Boston, MA	06/89
Coello-Chavarri, Carlos A	Boca Raton	239,149	Washington Univ	St Louis, MO	05/89
Garcia, Jose E	Lake Mary	46,755	Ohio State Univ	Columbus, OH	06/87
Gerlecz, Steven M	Lynn Haven	40,767	Univ of Missouri—Kansas City	Kansas City, MO	04/85
Ho, Tram B	Saint Petersburg	11,102	Virginia Commonwealth Univ	Richmond, VA	05/93
Jacome Jr, Robert A	Pinellas Park	237,562	Univ of Oklahoma Health Sci Ctr	Oklahoma City, OK	06/88
Kaiser-Coello, Karen K	Boca Raton	65,864	Washington Univ	St Louis, MO	05/86
Mandracchia, Philip A	Palm Beach Gardens	11,555	New York Univ	New York, NY	06/82
McClure, Brian C	Stuart	6,406	Univ of Florida	Gainesville, FL	05/89
Oppenheimer, Jahn H	Saint Petersburg	201,168	Marquette Univ	Milwaukee, WI	05/89
OSTEOPATHY					
Andronico, Kenneth C	Fort Myers	61,191	Univ of Osteo Medicine & Health Sc	Des Moines, IA	06/84
Austin, Jerry	Dania	84,148	Nova Southeastern Univ	North Miami Beach	06/89
Beers, Richard H	Winter Park	13,318	Univ of Health Sci	Kansas City, MO	05/85
PHARMACY					
Copeland, Kathryn K	Saint Petersburg	24,026	Univ of Florida	Gainesville, FL	03/80
Spogen III, Frederick C	Cocoa Beach	10,246	Massachusetts Col of Pharmacy	Boston, MA	06/82
PODIATRY					
Delgado, Jorge A	Miami	36,506	Barry Univ	Miami Shores, FL	12/90
Dyer, William D	Hollywood	136,850	Dr William School Col of Podiatric Medicine	Chicago, IL	05/85
Quirke, Clement	Venice	44,864	New York Col of Podiatric Medicine	New York, NY	06/85
PUBLIC HEALTH					
Paveza, Gregory J	Tampa	144,948	Univ of Illinois Medical Ctr	Chicago, IL	06/85
GEORGIA					
ALLOPATHIC MEDICINE					
Bowen-Hay, Winston B	Norcross	119,913	Morehouse School of Medicine	Atlanta, GA	05/91
Brown, Darren W	Doraville	4,345	Wright State Univ	Dayton, OH	06/86
Carroll, Otto S	Atlanta	193,398	Oral Roberts Univ	Tulsa, OK	05/86
Daniel, Felton J	Gainesville	30,093	Medical Col of Georgia	Augusta, GA	06/83
Grant, Patricia E	Decatur	20,626	Morehouse School of Medicine	Atlanta, GA	05/92
Harper, Jennifer M	Atlanta	271,758	Morehouse School of Medicine	Atlanta, GA	06/85
Isaacs, Rolin W	Atlanta	71,724	Morehouse School of Medicine	Atlanta, GA	06/85
Majeed, Ishaq H	Atlanta	108,003	Morehouse School of Medicine	Atlanta, GA	05/87
Millon, Jeffrey M	Lithonia	54,346	Meharry Medical Col	Nashville, TN	08/85
CHIROPRACTIC					
Ackermann, Anne E	Marietta	64,503	Life Univ	Marietta, GA	09/84
Ackermann, Brian J	Marietta	62,944	Life Univ	Marietta, GA	09/84
Ali, Abdirazak A	College Park	28,821	Life Univ	Marietta, GA	06/90
Bailey, Darrell E	Woodstock	25,906	Life Univ	Marietta, GA	03/89

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LIST OF DEFAULTERS—Continued

Name	City	Debt	School	City and state	Sep date
Barner Jr, Robert W	Manetta	63,602	Life Univ	Manetta, GA	12/83
Bell, Clayton E	Riverdale	139,859	Life Univ	Manetta, GA	09/87
Berman, David H	Manetta	149,800	Life Univ	Manetta, GA	03/87
Bernius, Gregory L	Peachtree City	84,671	Palmer Col of Chiropractic	Davenport, IA	06/88
Billstrom, Richard L	Manetta	108,276	Life Univ	Manetta, GA	12/86
Bishop Jr, William B	Cartersville	27,574	Life Univ	Manetta, GA	06/88
Bleyaert, Lamont J	Woodstock	67,989	Life Univ	Manetta, GA	09/85
Bohr, Connne E	Alpharetta	75,635	Life Univ	Manetta, GA	06/86
Breazeale, Michael E	Manetta	148,614	Life Univ	Manetta, GA	03/87
Brooks, William B	Chamblee	69,805	Life Univ	Manetta, GA	03/84
Brown, Wilbur E	Dunwoody	13,928	Palmer Col of Chiropractic	Davenport, IA	06/84
Budsock, Leonard A	Acworth	133,925	Life Univ	Manetta, GA	12/86
Byrd, Ricardau E	Atlanta	32,905	Life Univ	Manetta, GA	09/82
Cassan, Steven S	Canton	36,154	Life Univ	Manetta, GA	03/85
Catallo, Tim L	Alpharetta	96,523	Life Univ	Manetta, GA	09/88
Cavaliere, Frances C	Manetta	99,358	Life Univ	Manetta, GA	09/84
Ccala, Carmine J	Manetta	101,988	Life Univ	Manetta, GA	03/87
Clark, Richard E	Folkston	102,789	Life Univ	Manetta, GA	03/85
Clay, Cassius C	Acworth	36,706	Life Univ	Manetta, GA	06/83
Collins, William S	Atlanta	41,393	Life Univ	Manetta, GA	12/82
Crawford, Franklin R	Austell	70,423	Life Univ	Manetta, GA	12/84
Crosswhite, Larry K	Oakwood	164,152	Life Univ	Manetta, GA	09/86
Culver, Toni Y	College Park	72,782	Life Univ	Manetta, GA	06/85
Dannels, Douglas G	Douglasville	61,376	Life Univ	Manetta, GA	03/85
Darnell, John E	Monroe	11,662	Palmer Col of Chiropractic	Davenport, IA	06/86
Danker, Beth A	Atlanta	72,812	Northwestern Col of Chiropractic	Bloomington, MN	04/89
Decpp, William N	Lilburn	55,925	Life Univ	Manetta, GA	06/85
Downes, John W	Kennesaw	136,306	Life Univ	Manetta, GA	09/86
Earley, Kenneth S	Lawrenceville	70,833	Life Univ	Manetta, GA	12/87
Elkins, Richard E	Roswell	38,304	Life Univ	Manetta, GA	06/89
Fisher, Michael J	Smyrna	36,782	Life Univ	Manetta, GA	03/89
Fngard, Scott N	Manetta	59,562	Life Chiropractic Col—West	San Lorenzo, CA	10/86
Gardner, Lester	Jesup	38,007	Palmer Col of Chiropractic	Davenport, IA	06/87
Gay, Warner A	Manetta	38,767	Life Univ	Manetta, GA	03/83
Gill, Joseph C	Fayetteville	161,148	Life Univ	Manetta, GA	03/87
Haezebrouck, Joseph V	Acworth	16,743	Life Univ	Manetta, GA	12/82
Hall, John L	Cartersville	148,562	Life Univ	Manetta, GA	06/87
Herman, Patricia K	Atlanta	14,065	Palmer Col of Chiropractic	Davenport, IA	12/85
Hopfner-Kozel, Noreen V	Powder Springs	6,060	Life Univ	Manetta, GA	06/90
Horsley, Ronald G	Kennesaw	45,579	Life Univ	Manetta, GA	06/85
Hoyt, John A	Atlanta	4,551	Life Univ	Manetta, GA	03/88
Hughes, Charles E	Atlanta	176,861	Life Univ	Manetta, GA	03/87
Jackson, Jerry J	Manetta	54,937	Life Univ	Manetta, GA	12/88
Judd, Ronald K	Jasper	87,599	Life Univ	Manetta, GA	03/84
Justice, James L	Lawrenceville	171,489	Life Univ	Manetta, GA	06/85
Kay-Gelfond, Alicia E	Atlanta	52,656	Life Univ	Manetta, GA	06/84
Klejnot, Timothy A	Manetta	93,753	Life Univ	Manetta, GA	06/89
Klubenspiese John J	Grayson	102,790	Life Univ	Manetta, GA	09/86
Knight, Ronald G	Peachtree City	118,000	Life Univ	Manetta, GA	06/86
Knol-Vandenbil, Jennifer S	Kennesaw	55,572	Life Univ	Manetta, GA	06/86
Kolank, Thomas H	Snellville	71,422	Life Univ	Manetta, GA	09/84
Kyle, George G	Lawrenceville	65,901	Life Univ	Manetta, GA	03/83
Lancaster, Barry D	Manetta	75,764	Life Univ	Manetta, GA	12/86
Lee, Carole A	Acworth	27,660	Life Univ	Manetta, GA	12/83
Lister, Rufus G	Manetta	53,617	Life Univ	Manetta, GA	06/88
Lundquist, Glenn A	Douglasville	132,273	Life Univ	Manetta, GA	12/86
Marsh, Jeffrey C	Manetta	113,383	Life Univ	Manetta, GA	06/89
Martin Jr, John W	Canton	103,613	Life Univ	Manetta, GA	09/86
Massengale, Gregory L	Marietta	115,982	Life Univ	Manetta, GA	03/86
Mayles, Sandra M	Dalton	89,565	Life Univ	Manetta, GA	12/83
Mercks, James L	Manetta	161,118	Life Univ	Manetta, GA	03/86
Moeckel, Timothy	Sandy Springs	68,856	Life Univ	Manetta, GA	09/85
Mosley, James C	Columbus	47,361	Northwestern Col of Chiropractic	Bloomington, MN	08/85
Nadel, Glenn R	Marietta	73,476	Life Univ	Manetta, GA	04/89
Nicholson Jr, James E	Powder Springs	123,835	Life Univ	Manetta, GA	04/85
Owens, James R	Atlanta	19,657	Life Univ	Manetta, GA	03/92
Powell Jr, Thomas R	Manetta	126,917	Life Univ	Manetta, GA	12/86
Rawlins, Joel J	Douglas	127,958	Life Univ	Manetta, GA	09/86
Rowland, Jimmy H	Centerville	78,055	Life Univ	Manetta, GA	12/86
Rutkowski, Morris E	Manetta	111,521	Life Univ	Manetta, GA	12/85
Simnski, Larry T	Atlanta	145,459	Life Univ	Manetta, GA	06/88
Small, Tammie J	Smyrna	83,741	Life Univ	Manetta, GA	09/89
Spears, Roseann	Kennesaw	173,272	Life Univ	Manetta, GA	09/86
Thomas, Gordon A	Atlanta	81,718	Life Univ	Manetta, GA	09/85
Troutman Jr, William D	Atlanta	60,533	Life Univ	Manetta, GA	10/83
Troutman Sr, William D	Atlanta	33,935	Life Univ	Manetta, GA	01/83
Tucker, Ronald C	Atlanta	28,360	Life Chiropractic Col—West	San Lorenzo, CA	06/87
Tutt, Gwendolyn M	Roswell	76,124	Life Univ	Manetta, GA	06/83
Warrick, Wayne D	Kennesaw	78,658	Life Univ	Manetta, GA	03/87
Wooling, Leonard C	Manetta	157,986	Life Univ	Manetta, GA	03/85
DENTISTRY					
Brown, Geoffrey G	Decatur	11,590	Meharry Medical Col	Nashville, TN	05/85

LIST OF DEFAULTERS—Continued

Name	City	Debt	School	City and state	Sep date
Comer, Barry L	Decatur	123,169	Emory Univ	Atlanta, GA	05/84
Comer, Julia R	Stone Mountain	145,205	Emory Univ	Atlanta, GA	05/86
Hall, John E	Atlanta	92,678	Meharry Medical Col	Nashville, TN	05/82
Hammock, Mark A	Decatur	50,202	Howard Univ	Washington, DC	05/89
Hauptle-Reder, Mary E	Marietta	179,461	Loyola Univ of Chicago	Chicago, IL	05/84
McLeod, Herbert W	Lawrenceville	7,481	Medical Col of Georgia	Augusta, GA	06/90
Thomas Sr, Robert B	Macon	174,887	Meharry Medical Col	Nashville, TN	05/82
Woods, Daemon S	Albany	38,827	Fairleigh Dickinson Univ	Teaneck, NJ	05/90
OPTOMETRY					
Ptab, Mary	Atlanta	82,837	Southern Col of Optometry	Memphis, TN	06/85
PHARMACY					
Edeh, Onyemaechi A	Atlanta	68,778	Mercer Univ	Atlanta, GA	06/83
Lawrence, Doris J	Austell	30,493	Mercer Univ	Atlanta, GA	05/85
Perry, Audrey J	Atlanta	10,991	Mercer Univ	Atlanta, GA	06/88
PODIATRY					
McConner, Sadie B	Marietta	74,120	Ohio Col of Podiatric Medicine	Cleveland, OH	05/89
VETERINARY MEDICINE					
Friedlander, Michael A	Roswell	25,844	Tuskegee Univ	Tuskegee, AL	05/90
HAWAII					
ALLOPATHIC MEDICINE					
McKinney, Laurance T	Hilo	34,367	Allegheny Univ of The Health Sci	Philadelphia, PA	06/80
CHIROPRACTIC					
Johanning, Jeanine	Hana	23,982	Logan Col of Chiropractic	Chesterfield, MO	08/86
DENTISTRY					
Riter, Cecil F	Honolulu	163,896	Loma Linda Univ	Loma Linda, CA	06/85
OSTEOPATHY					
Majauskas, Rikantas P	Waimea	297,112	Univ of Health Sci	Kansas City, MO	05/85
IDAHO					
CHIROPRACTIC					
Buckles, Bobby R	Boise	78,897	Western States Chiropractic Col	Portland, OR	06/87
Butterfield-Richards, Cathy	Boise	38,358	Palmer Col of Chiropractic—West	San Jose, CA	06/87
Gott, George M	Boise	83,072	Palmer Col of Chiropractic	Davenport, IA	09/84
Herem, Larry A	Burley	89,360	Palmer Col of Chiropractic	Davenport, IA	06/85
Hollander, Roxanne	Sandpoint	44,082	Palmer Col of Chiropractic—West	San Jose, CA	03/90
Williams, Joseph F	Salmon	19,043	Palmer Col of Chiropractic—West	San Jose, CA	12/84
Young, Kerry V	Idaho Falls	67,335	Logan Col of Chiropractic	Chesterfield, MO	12/87
CLINICAL PSYCHOLOGY					
Furgason, Margaret A	St Maries	57,127	California School of Prof Psych	San Diego, CA	06/84
DENTISTRY					
Collier, George R	Sandpoint	117,876	Georgetown Univ	Washington, DC	05/83
ILLINOIS					
ALLOPATHIC MEDICINE					
Beckett, James E	Des Plaines	74,321	Allegheny Univ of The Health Sci	Philadelphia, PA	06/81
Bukingolts, Sol	Niles	42,737	Finch Univ of Health Sci	North Chicago, IL	06/88
Cezar, Mahdi	Morton Grove	22,475	Meharry Medical Col	Nashville, TN	05/90
Davis, Helen N	Chicago	173,475	Meharry Medical Col	Nashville, TN	05/86
Dickens, Charles L	Schaumburg	136,295	Meharry Medical Col	Nashville, TN	05/89
Kizaire, Danielle C	Chicago	15,671	Loyola Univ of Chicago	Maywood, IL	06/84
McDaniel, Ronnie L	Evanston	98,349	Univ of Pennsylvania	Philadelphia, PA	06/87
Moore, Lornold W	Chicago	62,599	Univ of Medicine & Dent of New Jersey	Newark, NJ	05/86
Munoz, Luis R	Chicago	304,093	Medical Col of Wisconsin	Milwaukee, WI	05/86
Pate, Michael D	Des Plaines	47,330	Indiana Univ—Purdue Univ Indianapo	Bloomington, IN	05/85
Reese, Elaine M	Blue Island	41,108	Univ of Illinois Medical Ctr	Chicago, IL	06/84
Sajna, Lynne	Evanston	97,451	Univ of Illinois Medical Ctr	Chicago, IL	06/85
Thompson, Anthony W	Chicago	48,394	Rush Univ	Chicago, IL	01/86
West, Clifton B	Chicago	283,734	Meharry Medical Col	Nashville, TN	05/85
Wilson, Evelyn	Chicago	92,598	Morehouse School of Medicine	Atlanta, GA	06/85
CHIROPRACTIC					
Abbett, Michael E	Granite City	62,447	Logan Col of Chiropractic	Chesterfield, MO	08/85
Cienkus, Regina M	Berwyn	17,645	National Col of Chiropractic	Lombard, IL	08/86
Cully Jr, Milton A	Cary	56,378	Palmer Col of Chiropractic	Davenport, IA	06/87
Davis, Keith A	Chicago	58,913	National Col of Chiropractic	Lombard, IL	04/87
Dehn, Donald C	Rockford	35,170	National Col of Chiropractic	Lombard, IL	05/83
Demetry, Donald J	Forest Park	22,812	National Col of Chiropractic	Lombard, IL	04/82
Gauthier III, George W	Wheaton	18,530	National Col of Chiropractic	Lombard, IL	08/89
Jordan, James R	Olympia Fields	65,346	National Col of Chiropractic	Lombard, IL	08/83
Kaminsky, Arthur L	Long Grove	76,269	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/90

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LIST OF DEFAULTERS—Continued

Name	City	Debt	School	City and state	Sep date
Keyes-Gross, Charles A	Calumet City	33,776	Cleveland Chiropractic Col (MO)	Kansas City, MO	08/82
Mash, Harold J	Chicago	167,666	Palmer Col of Chiropractic	Davenport, IA	10/87
Naddaf, Jamileh K	Newton	138,572	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/88
O'Neil-McKinney, Jeanette M	Chicago	41,474	National Col of Chiropractic	Lombard, IL	12/83
Patterson, Farris	Maywood	24,537	National Col of Chiropractic	Lombard, IL	04/84
Powell, Randy	Marion	63,977	Logan Col of Chiropractic	Chesterfield, MO	12/87
Sandburg, Donald D	Barrington	99,132	National Col of Chiropractic	Lombard, IL	04/87
Smith, Gary D	Libertyville	109,661	Logan Col of Chiropractic	Chesterfield, MO	08/85
Stratton, Mark W	Du Quoin	79,005	Logan Col of Chiropractic	Chesterfield, MO	12/85
Sutanto, Sugeng	Downers Grove	87,198	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/88
Swanson, Timothy D	Chicago	68,777	National Col of Chiropractic	Lombard, IL	05/91
Thurston, Gregory D	Algonquin	96,523	Texas Chiropractic Col Foundation	Pasadena, TX	12/84
Varnas, Paul G	Chicago	20,450	National Col of Chiropractic	Lombard, IL	09/83
Vernon, Earl M	Waukegan	8,450	Palmer Col of Chiropractic	Davenport, IA	06/91
DENTISTRY					
Azarpira, Mohammad H	Chicago	89,507	Loyola Univ of Chicago	Chicago, IL	05/87
Baldare, David R	Chicago	76,292	Loyola Univ of Chicago	Chicago, IL	05/88
Bock, Jerome V	Inverness	252,286	Marquette Univ	Milwaukee, WI	05/88
Bybee, William D	East Moline	15,384	Univ of Texas Health Sci Ctr	Houston, TX	05/88
Covek, Robert J	Grayslake	2,457	Loyola Univ of Chicago	Chicago, IL	05/86
Herron, Devere J	Chicago	87,284	Howard Univ	Washington, DC	05/85
Kashani, Mortaza	Hillside	44,557	Marquette Univ	Milwaukee, WI	05/91
McClellan, Manulita	Chicago	168,184	Marquette Univ	Milwaukee, WI	05/88
Ras, Russell T	Countryside	181,640	Marquette Univ	Milwaukee, WI	05/86
Resendiz, Mario G	Chicago	11,459	Univ of Illinois Medical Ctr	Chicago, IL	08/86
Salmon Jr, Thomas J	Downers Grove	148,813	Washington Univ	St Louis, MO	05/90
Salmon, Kevin M	Palos Heights	88,678	Loyola Univ of Chicago	Chicago, IL	05/91
Somlar, Steven C	Chicago	59,810	Loyola Univ of Chicago	Chicago, IL	04/90
Tucker, Darold B	South Holland	97,392	Howard Univ	Washington, DC	05/83
OPTOMETRY					
Bourboukas, Nick K	Chicago	7,529	Illinois Col of Optometry	Chicago, IL	05/87
PHARMACY					
Afrane, Benma A	Bolingbrook	11,528	Univ of Southern California	Los Angeles, CA	05/86
PODIATRY					
Amudoaghan, Walnette C	Oak Park	193,388	Ohio Col of Podiatric Medicine	Cleveland, OH	05/85
Beck III, Welby S	Chicago	209,626	Dr William School Col of Podiatric	Chicago, IL	05/86
Collins, Henry L	Chicago	115,025	Dr William School Col of Podiatric Medicine	Chicago, IL	05/87
Lawson, Margaret B	Winnetka	76,629	Dr William School Col of Podiatric Medicine	Chicago, IL	05/81
Leonas, Theodore S	Lockport	19,393	Dr William School Col of Podiatric Medicine	Chicago, IL	05/80
INDIANA					
CHIROPRACTIC					
Maxfield-Brown, Bobbi L	Evansville	114,494	Logan Col of Chiropractic	Chesterfield, MO	12/86
Peters, Ronald S	Fishers	12,016	Logan Col of Chiropractic	Chesterfield, MO	12/90
Valvo, Carl L	Kouts	121,137	National Col of Chiropractic	Lombard, IL	08/85
Valvo, Nila L	Kouts	5,732	National Col of Chiropractic	Lombard, IL	12/82
DENTISTRY					
Arch, Joseph A	Indianapolis	7,225	Indiana Univ—Indianapolis	Bloomington, IN	05/85
Burnett, Kevin M	South Bend	76,232	Univ of Detroit Mercy	Detroit, MI	05/83
Hampton, Duane E	Seymour	121,113	Univ of Louisville	Louisville, KY	05/86
Price, David G	Valparaiso	107,969	Loyola Univ of Chicago	Chicago, IL	05/90
IOWA					
CHIROPRACTIC					
Beeck, Allen A	Akron	37,682	Northwestern Col of Chiropractic	Bloomington, MN	08/89
Crawford, James B	Dubuque	56,990	Cleveland Chiropractic Col (CA)	Los Angeles, CA	08/87
Heese, Kit L	Carroll	50,042	Logan Col of Chiropractic	Chesterfield, MO	12/86
Worwood, David V	West Des Moines	89,849	Palmer Col of Chiropractic	Davenport, IA	06/85
DENTISTRY					
Dye, Ralph M	Des Moines	118,833	Loma Linda Univ	Loma Linda, CA	06/86
KANSAS					
ALLOPATHIC MEDICINE					
Harding, Phyllis D	Dodge City	80,026	Univ of Cincinnati	Cincinnati, OH	08/84
CHIROPRACTIC					
Brown, Dale A	Olathe	110,690	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/88
Cody, Ronald J	Wichita	155,538	Cleveland Chiropractic Col (MO)	Kansas City, MO	12/86
O'Leary, Molly M	Shawnee Mission	101,576	Cleveland Chiropractic Col (MO)	Kansas City, MO	12/87
Petty, Michael D	Olathe	120,465	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/88
Strozier, Mark C	Mission	111,395	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/89
Wheeler, Randy R	Haysville	116,809	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/86
White, Michael M	Overland Park	27,484	Cleveland Chiropractic Col (MO)	Kansas City, MO	04/82
Wilson, Eileen T	Prairie Village	62,268	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/86

LIST OF DEFAULTERS—Continued

Name	City	Debt	School	City and state	Sep date
Woody, Larry L	Olathe	15,913	Cleveland Chiropractic Col (MO)	Kansas City, MO	08/83
DENTISTRY					
Donigan, William T	Osage City	15,351	Univ of Illinois Medical Ctr	Chicago, IL	06/83
Fobbs-Pippens, Michel	Atchison	7,405	Howard Univ	Washington, DC	05/84
Hansen, Kenneth A	Abilene	149,934	Univ of Missouri—Kansas City	Kansas City, MO	04/86
OSTEOPATHY					
Neis-Whinery, Ramona	Kansas City	238,062	Univ of Health Sci	Kansas City, MO	05/86
KENTUCKY					
CHIROPRACTIC					
Dreweck, Daniel N	Bowling Green	40,975	Palmer Col of Chiropractic	Davenport, IA	06/86
Jewett, Charles D	Versailles	66,617	Palmer Col of Chiropractic	Davenport, IA	12/89
DENTISTRY					
Bentley, Bobetta	Louisville	2,428	Univ of Louisville	Louisville, KY	05/88
OPTOMETRY					
Watkins, Thomas W	Hickman	49,920	Southern Col of Optometry	Memphis, TN	05/90
LOUISIANA					
ALLOPATHIC MEDICINE					
Burt, Eric S	Monroe	6,041	Louisiana State Univ Medical Ctr—Shreveport.	Shreveport, LA	05/89
Chin, Richard J	Metairie	7,183	Louisiana State Univ Medical Ctr—New Orleans.	New Orleans, LA	08/93
Watford, Eric L	Gonzales	133,596	Meharry Medical Col	Nashville, TN	05/84
CHIROPRACTIC					
Carter, Karen L	Ponchatoula	40,152	Logan Col of Chiropractic	Chesterfield, MO	09/85
Miller, Kevin D	Eunice	96,872	Western States Chiropractic Col	Portland, OR	12/88
DENTISTRY					
Langford-Ramkelawan, Cynthia M	Rosepine	208,530	Marquette Univ	Milwaukee, WI	05/88
PODIATRY					
Jordan, Joyce M	New Orleans	234,225	Ohio Col of Podiatric Medicine	Cleveland, OH	05/83
PUBLIC HEALTH					
Roohani, Maurine F	New Orleans	43,094	Tulane Univ	New Orleans, LA	05/88
MAINE					
ALLOPATHIC MEDICINE					
Burke, Kenneth P	Augusta	98,095	Georgetown Univ	Washington, DC	05/85
PODIATRY					
Cormier, Pamela J	Bangor	202,010	Dr William School Col of Podiatric Medicine	Chicago, IL	05/85
MARYLAND					
ALLOPATHIC MEDICINE					
Crarey, Patrick E	Hyattsville	78,066	Georgetown Univ	Washington, DC	05/83
Hill, James	Baltimore	150,782	Meharry Medical Col	Nashville, TN	05/88
Hill, Leo D	Baltimore	70,316	Temple Univ	Philadelphia, PA	06/89
Lynch, Ray A	Columbia	28,108	Howard Univ	Washington, DC	05/89
Richardson, Gravney A	Upper Marlboro	104,952	Morehouse School of Medicine	Atlanta, GA	05/88
Young, Howard Y	Baltimore	111,692	Albany Medical Col	Albany, NY	05/89
CHIROPRACTIC					
Gordon, Robert K	Snow Hill	74,191	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/87
Jacobs, Virginia L	Silver Spring	150,786	Los Angeles Col of Chiropractic	Whittier, CA	04/86
Vogelmann, Christopher S	Kensington	95,455	Logan Col of Chiropractic	Chesterfield, MO	04/87
DENTISTRY					
Benson, Fred F	Silver Spring	28,245	Howard Univ	Washington, DC	05/86
Burke, Melanie	Baltimore	53,033	Univ of Medicine & Dent of New Jersey	Newark, NJ	05/91
Chorbajian, James P	Bowie	51,450	Georgetown Univ	Washington, DC	06/81
Day-Tall, Deborah A	Waldorf	24,367	Creighton Univ	Omaha, NE	05/85
De La Cruz, Maureen	Bethesda	116,924	Georgetown Univ	Washington, DC	05/84
Johnson, Mark A	Greenbelt	18,152	Howard Univ	Washington, DC	05/88
Kee, Vallerie B	Frederick	80,793	Howard Univ	Washington, DC	05/87
Lindsey, Glenda L	Baltimore	61,484	Howard Univ	Washington, DC	05/86
Press, Zachary D	Randallstown	77,695	Univ of Maryland—Baltimore	Baltimore, MD	05/85
Richardson, Joseph M	Silver Spring	210,464	Howard Univ	Washington, DC	05/87
Saffold, Michael D	Adelphi	14,383	Univ of Maryland—Baltimore	Baltimore, MD	05/87
Schott, Alan J	Baltimore	55,425	Temple Univ	Philadelphia, PA	12/87
Thomas, Lindwall A	Silver Spring	16,396	Howard Univ	Washington, DC	05/91
Weston, Danty P	Fort Washington	83,509	Howard Univ	Washington, DC	05/86

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LIST OF DEFAULTERS—Continued

Name	City	Debt	School	City and state	Sep date
OPTOMETRY					
Bell, Philip J	Lexington Park	7,591	Pennsylvania Col of Optometry	Philadelphia, PA	05/89
OSTEOPATHY					
Waltman, Bonnie J	Columbia	23,031	Philadelphia Col of Osteo Medicine	Philadelphia, PA	06/86
PHARMACY					
Burgess, Deborah M	Salisbury	10,784	Temple Univ	Philadelphia, PA	05/85
Clark, Jimothy	Baltimore	12,393	Ohio State Univ	Columbus, OH	06/87
Conerly, Rex A	Greenbelt	36,112	Howard Univ	Washington, DC	05/86
PODIATRY					
Rosenberg, Robert	Gaithersburg	165,277	Barry Univ	Miami Shores, FL	05/89
MASSACHUSETTS					
ALLOPATHIC MEDICINE					
Bledsoe, Ralph C	Northfield	23,963	Brown Univ	Providence, RI	05/88
Cyrus, Pamela A	Arlington	23,142	Marshall Univ	Huntington, WV	05/88
Daley, William L	Mattapan	92,777	Boston Univ Medical Ctr	Boston, MA	06/83
Gillard, Stephen C	Dedham	33,582	Georgetown Univ	Washington, DC	05/90
Karagounis, Vasilios A	Boston	30,517	Boston Univ Medical Ctr	Boston, MA	05/88
Rucks, Andrew C	Springfield	194,312	Meharry Medical Col	Nashville, TN	05/85
Saint-Louis, Josephus H	West Roxbury	108,743	Univ of Minnesota	Minneapolis, MN	06/87
CHIROPRACTIC					
Bruce, Ronald H	Byfield	11,654	Los Angeles Col of Chiropractic	Whittier, CA	08/87
Cotter, Paul B	Waltham	44,370	Palmer Col of Chiropractic	Davenport, IA	06/88
Crandell, Robyn G	Amherst	28,081	Northwestern Col of Chiropractic	Bloomington, MN	06/91
Hughes, Allan D	Worcester	122,946	Palmer Col of Chiropractic	Davenport, IA	03/89
LeConte, Isabelle	Cambridge	14,611	Los Angeles Col of Chiropractic	Whittier, CA	08/86
McLaughlin, Paul J	Andover	12,484	Texas Chiropractic Col Foundation	Pasadena, TX	05/83
Vilona-Else, Jenifer A	Marshfield	86,403	Southern California Col of Chiropractic	Pico Rivera, CA	08/87
Watson, Susan L	Chelmsford	114,111	Palmer Col of Chiropractic	Davenport, IA	06/86
DENTISTRY					
Blase, Richard M	West Boylston	134,493	Univ of Missouri—Kansas City	Kansas City, MO	05/87
Culbertson, William J	Quincy	33,572	Boston Univ Medical Ctr	Boston, MA	05/82
Dooley, Paul J	Canton	29,392	Boston Univ Medical Ctr	Boston, MA	05/90
Gallery, Melissa	Nahant	193,839	Tufts Univ	Boston, MA	05/87
Geann Jr, Timothy J	Chicopee	152,634	Tufts Univ	Boston, MA	02/88
Jones, Margaret K	Pembroke	259,294	Boston Univ Medical Ctr	Boston, MA	05/86
Solimini Jr, Anthony G	Boston	60,043	Boston Univ Medical Ctr	Boston, MA	06/88
PODIATRY					
Llewellyn, Allan	North Attleboro	43,781	New York Col of Podiatric Medicine	New York, NY	06/84
PUBLIC HEALTH					
Caraballo-Wesley, Elizabeth	Boston	16,261	Boston Univ Medical Ctr	Boston, MA	05/85
Cronin Jr, Denis P	Medford	28,024	Columbia Univ	New York, NY	05/86
Mikols, Ann M	Swampscott	39,235	Boston Univ Medical Ctr	Boston, MA	05/85
MICHIGAN					
ALLOPATHIC MEDICINE					
Anderson, Denise	Detroit	152,639	Meharry Medical Col	Nashville, TN	05/88
Braswell, James	Detroit	195,295	Meharry Medical Col	Nashville, TN	05/88
Buahin, Kwame G	Southfield	21,352	Columbia Univ	New York, NY	05/89
Caro, Joseph E	East Lansing	68,224	Medical Col of Wisconsin	Milwaukee, WI	09/84
Eichler, John A	Saline	129,112	Univ of Pittsburgh	Pittsburgh, PA	06/87
Eiland, Gazandra J	East Lansing	2,948	Univ of Michigan	Ann Arbor, MI	05/91
Gordon Jr, Sigismund W	Southfield	115,740	Meharry Medical Col	Nashville, TN	05/88
Johnson, Anthony	Detroit	29,125	Meharry Medical Col	Nashville, TN	05/89
Little, Carlton E	Detroit	103,407	Medical Col of Ohio	Toledo, OH	06/89
Lucas, Jo-Ann	Detroit	181,764	Meharry Medical Col	Nashville, TN	05/87
Novetsky, Jerry J	Southfield	42,699	Wayne State Univ	Detroit, MI	06/85
Segesta, Michael	Eastpointe	25,640	Mayo Medical School	Rochester, MN	05/88
Williams, Marvin L	Detroit	244,524	Meharry Medical Col	Nashville, TN	05/86
CHIROPRACTIC					
Aiello, Michael P	Waterford	47,678	Life Univ	Marietta, GA	09/88
Allen, David F	Madison Heights	51,108	National Col of Chiropractic	Lombard, IL	12/85
Carpenter, Richard P	Saginaw	98,103	Life Univ	Marietta, GA	03/86
Chapman, Michelle A	Clinton Township	32,237	Palmer Col of Chiropractic	Davenport, IA	10/87
Clark, Daniel S	Troy	45,438	Palmer Col of Chiropractic	Davenport, IA	06/85
Cordes, John C	Farmington Hills	59,245	Logan Col of Chiropractic	Chesterfield, MO	08/85
Dunn, Karen S	Ferndale	36,462	Palmer Col of Chiropractic	Davenport, IA	06/85
Faber, Dana A	Remus	47,208	Parker Col of Chiropractic	Dallas, TX	08/87
Flateau, Jacqueline	Romulus	16,795	Life Univ	Marietta, GA	06/89
Forte, Sandra L	Detroit	23,488	National Col of Chiropractic	Lombard, IL	08/85
Freeland, George D	Sparta	76,424	Palmer Col of Chiropractic	Davenport, IA	03/90
Gladden, Marc B	Ironwood	133,647	Palmer Col of Chiropractic	Davenport, IA	03/89
Gress, Raymond C	Sparta	16,065	Life Univ	Marietta, GA	09/83

LIST OF DEFAULTERS—Continued

Name	City	Debt	School	City and state	Sep date
Hassinger, Royann M	Ortonville	45,999	National Col of Chiropractic	Lombard, IL	12/85
Hudson, Donald L	Saint Johns	98,555	Palmer Col of Chiropractic	Davenport, IA	12/88
Hush, George G	Rose City	59,008	Life Univ	Marietta, GA	12/86
Kay, John F	Westland	96,869	Life Univ	Marietta, GA	06/86
Keen-Centofanti, Judith R	Clifford	59,359	New York Chiropractic Col	Seneca Falls, NY	12/88
Lavengood, Daniel J	Grand Rapids	137,016	Life Univ	Marietta, GA	03/87
Lee, Jeffrey K	Dearborn	46,042	National Col of Chiropractic	Lombard, IL	08/88
Migdalewicz, Alan L	Ferndale	32,828	Palmer Col of Chiropractic	Davenport, IA	12/87
Nelson, Roger W	Waterford	38,774	Palmer Col of Chiropractic	Davenport, IA	12/86
Pierce, Douglas E	Hopkins	11,895	Parker Col of Chiropractic	Dallas, TX	04/86
Richardson, Neil J	Cedar Springs	63,543	Palmer Col of Chiropractic	Davenport, IA	03/87
Roshy, Gary L	Ludington	160,444	Palmer Col of Chiropractic	Davenport, IA	10/86
Schwarz, Bernard C	Center Line	21,810	Palmer Col of Chiropractic	Davenport, IA	12/83
Williams, Ronald G	Wyoming	53,215	National Col of Chiropractic	Lombard, IL	12/87
Wilson, Soni Y	Detroit	60,206	Logan Col of Chiropractic	Chesterfield, MO	06/88
Zonder, Stuart R	Ann Arbor	95,024	Life Univ	Marietta, GA	12/85
DENTISTRY					
Bertin, Michael W	Birmingham	45,862	Univ of Detroit Mercy	Detroit, MI	05/89
Bonds, Frederick R	Mount Pleasant	152,347	Univ of Detroit Mercy	Detroit, MI	05/83
Fermin, Reydante G	West Bloomfield	143,659	Marquette Univ	Milwaukee, WI	05/91
Griggs, Deborah L	Saint Clair Shores	120,748	Univ of Detroit Mercy	Detroit, MI	05/85
Hearns, Ben J	Highland Park	47,789	Meharry Medical Col	Nashville, TN	05/85
Holyway, Craig T	Detroit	113,679	Washington Univ	St Louis, MO	05/91
Murphy, Kevin V	Fraser	51,719	Univ of Detroit Mercy	Detroit, MI	04/81
Okros, Michael J	Warren	294,555	Marquette Univ	Milwaukee, WI	05/85
Rashid, Paul L	Mason	159,035	Boston Univ Medical Ctr	Boston, MA	05/89
Russell, Bobby D	Saint Joseph	69,396	Loyola Univ of Chicago	Chicago, IL	05/88
Senior, Duane A	Detroit	205,476	Meharry Medical Col	Nashville, TN	05/85
OSTEOPATHY					
Brent, Gloria J	Detroit	50,659	Michigan State Univ	East Lansing, MI	06/86
Cohn, Mitchell A	Haslett	226,026	Univ of Osteo Medicine & Health Sci	Des Moines, IA	06/86
Johnson, Joseph R	Grosse Pointe	133,600	Univ of Health Sci	Kansas City, MO	05/94
Ross, Guy A	Ferndale	20,353	Michigan State Univ	East Lansing, MI	06/90
Wisk, Duane F	Grosse Pointe	46,609	Michigan State Univ	East Lansing, MI	06/82
York, Steven R	Whitmore Lake	126,243	Univ of Health Sci	Kansas City, MO	05/88
PHARMACY					
Lowe, Stephanie M	Detroit	34,542	Mercer Univ	Atlanta, GA	06/89
PODIATRY					
Baxendale, Robert C	Clinton Township	38,548	Pennsylvania Col of Podiatric Medicine	Philadelphia, PA	06/82
Dakis, Stephen N	Birmingham	28,575	Ohio Col of Podiatric Medicine	Cleveland, OH	05/87
Hofner, Mark L	Dearborn Heights	178,690	Univ of Osteo Medicine & Health Sci	Des Moines, IA	06/88
Thomas, Valerie E	Detroit	94,903	Ohio Col of Podiatric Medicine	Cleveland, OH	05/89
Villier, Carlton S	Bad Axe	260,832	Ohio Col of Podiatric Medicine	Cleveland, OH	05/84
MINNESOTA					
ALLOPATHIC MEDICINE					
Hoskins-Akale, Denise S	Cottage Grove	252,969	Medical Col of Wisconsin	Milwaukee, WI	02/85
Plater, Daniel H	Stillwater	122,301	Univ of Southern California	Los Angeles, CA	06/88
CHIROPRACTIC					
Keller, William D	White Bear Lake	112,549	Northwestern Col of Chiropractic	Bloomington, MN	12/88
Kronbeck, Gary M	Little Falls	8,311	Northwestern Col of Chiropractic	Bloomington, MN	04/89
Shelton, Robert J	Rosemount	13,847	Northwestern Col of Chiropractic	Bloomington, MN	04/87
Triden, Thomas A	Maple Grove	26,032	Northwestern Col of Chiropractic	Bloomington, MN	08/86
Wahl, David G	Montgomery	84,032	Northwestern Col of Chiropractic	Bloomington, MN	12/88
DENTISTRY					
Hulitt, Mary	Saint Paul	155,669	Univ of Missouri—Kansas City	Kansas City, MO	04/86
Wilbur, Raymond C	Northfield	223,929	Marquette Univ	Milwaukee, WI	05/87
MISSISSIPPI					
ALLOPATHIC MEDICINE					
Harper, Tracy E	Gulfport	33,108	Meharry Medical Col	Nashville, TN	05/92
Moore, Angela A	Holly Springs	122,699	Meharry Medical Col	Nashville, TN	05/88
CHIROPRACTIC					
Durdin, James M	Tupelo	169,395	Life Univ	Marietta, GA	06/86
Gratta, James A	Laurel	11,412	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/88
McCutcheon, Philip E	Pascagoula	73,315	National Col of Chiropractic	Lombard, IL	10/87
Twigg, Jonathan W	Bay Saint Louis	120,867	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/88
Veal, Paul E	Columbus	2,289	Life Univ	Marietta, GA	06/86
DENTISTRY					
Coleman, James T	New Albany	31,235	Univ of Mississippi Medical Ctr	Jackson, MS	05/84
Smith, Ellison B	Jackson	31,596	Howard Univ	Washington, DC	05/90

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LIST OF DEFAULTERS—Continued

Name	City	Debt	School	City and state	Sep date
MISSOURI					
ALLOPATHIC MEDICINE					
Sanders, Thomas	Kansas City	172,955	Meharry Medical Col	Nashville, TN	05/89
CHIROPRACTIC					
Barger, Paul L	Saint Louis	84,678	Logan Col of Chiropractic	Chesterfield, MO	04/88
Bement, Stephen A	Saint Louis	43,480	Logan Col of Chiropractic	Chesterfield, MO	08/87
Bottorff, Douglas J	Kansas City	136,398	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/87
Boyer, Arthur G	Saint Louis	54,246	Logan Col of Chiropractic	Chesterfield, MO	04/83
Bright, Gale D	Kansas City	78,795	Cleveland Chiropractic Col (MO)	Kansas City, MO	01/89
Brown, Harry E	Kansas City	51,009	Cleveland Chiropractic Col (MO)	Kansas City, MO	09/85
Colley, Rodney E	Kansas City	64,637	Cleveland Chiropractic Col (MO)	Kansas City, MO	01/87
Elliott, Joseph E	Macon	92,573	Logan Col of Chiropractic	Chesterfield, MO	04/84
Erwin, Herbert F	Belle	107,457	Logan Col of Chiropractic	Chesterfield, MO	04/86
Faris, Dana A	Independence	113,922	Cleveland Chiropractic Col (MO)	Kansas City, MO	09/89
Giarratano, David J	Jefferson City	75,086	Cleveland Chiropractic Col (MO)	Kansas City, MO	01/86
Gibson, Stephen L	Cape Girardeau	33,417	Logan Col of Chiropractic	Chesterfield, MO	09/84
Hotz, Michael K	Kansas City	163,212	Cleveland Chiropractic Col (MO)	Kansas City, MO	09/85
Johnston, John D	Belton	101,113	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/88
Jordan, Jeffrey E	Kearney	51,879	Cleveland Chiropractic Col (MO)	Kansas City, MO	01/90
Kessinger IV, Andrew J	Mansfield	41,956	Logan Col of Chiropractic	Chesterfield, MO	07/86
Lyon, Richard F	Kansas City	75,912	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/83
Marvin, Allen L	Kansas City	45,113	Cleveland Chiropractic Col (MO)	Kansas City, MO	01/89
Nean-Christy, Linda K	Liberty	97,085	Cleveland Chiropractic Col (MO)	Kansas City, MO	01/89
O'Dell, Mark K	Independence	71,049	Cleveland Chiropractic Col (MO)	Kansas City, MO	09/88
Owen, Gary L	Bloomfield	50,244	Logan Col of Chiropractic	Chesterfield, MO	12/86
Peterson, Michael S	Carthage	6,854	Logan Col of Chiropractic	Chesterfield, MO	04/86
Porter, Robert A	Saint Louis	48,222	Logan Col of Chiropractic	Chesterfield, MO	04/86
Price, Arthur R	Kansas City	164,133	Cleveland Chiropractic Col (MO)	Kansas City, MO	12/85
Rice, Sterling T	Kansas City	94,417	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/85
Robertson, Dana L	Columbia	4,299	Logan Col of Chiropractic	Chesterfield, MO	01/83
Smith, Charles A	Kansas City	65,235	Cleveland Chiropractic Col (MO)	Kansas City, MO	01/87
Smith, Rhonda L	Kansas City	116,056	Cleveland Chiropractic Col (MO)	Kansas City, MO	01/87
Swope, Karl A	Rolla	126,701	Los Angeles Col of Chiropractic	Whittier, CA	04/85
Talley, Michael S	Belton	39,500	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/83
Taylor, David G	Blue Springs	21,914	Cleveland Chiropractic Col (MO)	Kansas City, MO	09/87
Towers, Timothy J	Saint Louis	11,714	Logan Col of Chiropractic	Chesterfield, MO	09/85
Warner, Nathan G	Houston	47,220	Cleveland Chiropractic Col (MO)	Kansas City, MO	01/90
Wilbert, Leonard B	Saint Louis	89,632	Logan Col of Chiropractic	Chesterfield, MO	12/87
Wright, Lynnea S	Kansas City	59,372	Cleveland Chiropractic Col (MO)	Kansas City, MO	09/86
DENTISTRY					
Dugger, Lisa M	Kansas City	31,934	Washington Univ	St Louis, MO	05/88
Emers, Jerry L	Maryville	48,896	Univ of Missouri—Kansas City	Kansas City, MO	05/83
Fuller, Marilyn C	Saint Louis	32,250	Howard Univ	Washington, DC	05/85
Fulton, Alma R	Affton	102,667	Washington Univ	St Louis, MO	05/89
Nelson, Howard D	Kansas City	95,257	Univ of Missouri—Kansas City	Kansas City, MO	04/86
Nickell, Scott B	Fenton	183,501	Washington Univ	St Louis, MO	05/89
Vorbeck, Teresa M	Saint Louis	165,572	Washington Univ	St Louis, MO	05/88
HEALTH ADMINISTRATION					
White, Kevin G	Saint Louis	9,972	St Louis Univ	St Louis, MO	05/89
OSTEOPATHY					
Seedorff, Linda	Lawson	90,865	Univ of Health Sci	Kansas City, MO	05/88
MONTANA					
CHIROPRACTIC					
Landes, David A	Deer Lodge	83,758	Life Chiropractic Col—West	San Lorenzo, CA	09/87
NEVADA					
ALLOPATHIC MEDICINE					
Bradley, Bruce S	Las Vegas	24,528	Wright State Univ	Dayton, OH	06/87
Carter, Cathenne C	Las Vegas	135,924	Medical Col of Pennsylvania	Philadelphia, PA	05/89
CHIROPRACTIC					
Akin, Kathy L	Las Vegas	30,007	National Col of Chiropractic	Lombard, IL	08/86
Hults, Ivagene P	Las Vegas	78,504	Los Angeles Col of Chiropractic	Whittier, CA	12/86
Morgan, Glenn R	Las Vegas	74,579	Parker Col of Chiropractic	Dallas, TX	09/89
Murphy, Richard T	Boulder City	68,499	Palmer Col of Chiropractic	Davenport, IA	10/87
Nugent, Richard E	Las Vegas	139,025	Cleveland Chiropractic Col (MO)	Kansas City, MO	08/85
NEW HAMPSHIRE					
CHIROPRACTIC					
Prevost, George E	Nashua	9,361	New York Chiropractic Col	Seneca Falls, NY	12/88
PODIATRY					
Pachomski, Michael P	Nashua	189,261	Dr William School Col of Podiatric Medicine	Chicago, IL	05/87

LIST OF DEFAULTERS—Continued

Name	City	Debt	School	City and state	Sep date
NEW JERSEY					
ALLOPATHIC MEDICINE					
Brown, James E	East Orange	40,914	Univ of Medicine & Dent of New Jersey	Newark, NJ	05/89
Vargas-Bird, Irma M	Belleville	93,451	Universidad Central Del Caribe	Bayamon, PR	05/88
CHIROPRACTIC					
Alexander, Stephen K	Passaic	64,782	Cleveland Chiropractic Col (MO)	Kansas City, MO	09/83
Allen, Richard L	Morristown	107,985	Life Univ	Marietta, GA	03/86
Brodsky, Barbara L	River Edge	7,966	Life Chiropractic Col—West	San Lorenzo, CA	12/84
Bucher, Gilles R	Fort Lee	49,176	New York Chiropractic Col	Seneca Falls, NY	08/88
Capilli, Michael A	Oceanport	30,070	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/87
Cornely, Michael P	Merchantville	71,700	Palmer Col of Chiropractic	Davenport, IA	12/87
Edmunds, John D	Manahawkin	155,415	Life Univ	Marietta, GA	03/86
Elia, Harry R	Woodcliff Lake	15,836	New York Chiropractic Col	Seneca Falls, NY	04/83
Gearity, Katherine A	North Bergen	64,803	New York Chiropractic Col	Seneca Falls, NY	04/87
Gloshinski, Laura E	South Orange	62,785	Life Univ	Marietta, GA	03/86
Guerrero, Lu Ann M	Morganville	123,586	New York Chiropractic Col	Seneca Falls, NY	04/86
Hermida, Mario D	Bergenfield	20,282	Palmer Col of Chiropractic	Davenport, IA	03/90
Hetherington, Jane	Mountainside	63,325	Life Chiropractic Col—West	San Lorenzo, CA	09/87
Ittner, William F	Seaside Park	53,271	Life Univ	Marietta, GA	06/86
Kane, Richard A	Somerset	150,348	New York Chiropractic Col	Seneca Falls, NY	04/85
Luongo, Mary Ann	Bayonne	16,930	New York Chiropractic Col	Seneca Falls, NY	12/84
Miller, Harry M	Linwood	11,983	Life Univ	Marietta, GA	09/90
Morrow, Lu A	Marlton	46,153	New York Chiropractic Col	Seneca Falls, NY	04/88
Murphy, Richard N	North Bergen	122,326	New York Chiropractic Col	Seneca Falls, NY	12/86
Nahai, John M	Sayreville	144,099	Life Chiropractic Col—West	San Lorenzo, CA	12/85
Romanski, Michael M	Spring Lake	29,471	Life Univ	Marietta, GA	03/89
Ronan, Patrick	Bloomfield	67,349	Palmer Col of Chiropractic	Davenport, IA	06/86
Ruane, Joseph T	Little Silver	33,758	Life Univ	Marietta, GA	12/82
Russell, Robert J	Camden	7,748	Life Univ	Marietta, GA	03/89
Ruta, Eugenio	Livingston	35,822	Life Univ	Marietta, GA	06/88
Siegel, Roy F	Somerville	88,454	Logan Col of Chiropractic	Chesterfield, MO	08/86
Verbaro, Dennis S	Chester	104,275	New York Chiropractic Col	Seneca Falls, NY	04/87
Viggiano, Christopher M	Long Valley	73,426	Palmer Col of Chiropractic	Davenport, IA	09/88
Weimmer, Frederick J	Lakehurst	25,182	Palmer Col of Chiropractic	Davenport, IA	03/85
Werrell, Sandra M	Mount Laurel	39,571	National Col of Chiropractic	Lombard, IL	08/85
Woods, Dolores	Orange	16,345	Life Univ	Marietta, GA	06/91
DENTISTRY					
Castillo, Steven A	Jersey City	157,239	New York Univ	New York, NY	06/87
Ernst, David J	East Brunswick	18,612	New York Univ	New York, NY	06/83
Johnson, Kevin D	Hackensack	48,643	Howard Univ	Washington, DC	05/89
McDonough, Lawrence P	Rumson	238,762	New York Univ	New York, NY	06/86
Newsome, Dorita	Livingston	26,366	Univ of Medicine & Dent of New Jersey	Newark, NJ	06/83
Oakes, Craig	East Windsor	58,516	Tufts Univ	Boston, MA	05/90
Ramirez, Nydia	Dumont	135,191	Fairleigh Dickinson Univ	Teaneck, NJ	05/87
Rojowski, Ravenna F	Teaneck	80,136	Fairleigh Dickinson Univ	Teaneck, NJ	05/84
Spaights, Lauren R	Newark	146,120	Marquette Univ	Milwaukee, WI	05/89
Velu, Gita	Jersey City	84,704	Univ of Pennsylvania	Philadelphia, PA	05/92
Wilson, Orin M	Lakewood	17,019	Univ of Medicine & Dent of New Jer	Newark, NJ	06/84
OSTEOPATHY					
Claire, James F	Voorhees	212,144	Univ of Medicine & Dent of New Jer	Newark, NJ	05/86
Kelly, Robert B	Old Bridge	63,474	Univ of Medicine & Dent of New Jer	Newark, NJ	05/86
PHARMACY					
Ahmed, Azza A	Bloomfield	14,787	Long Island Univ	Brookville, NY	10/88
Akunne, Festus O	Dayton	19,514	Long Island Univ	Brookville, NY	06/89
Bennett, Elizabeth C	Teaneck	14,677	Mercer Univ	Atlanta, GA	06/86
Jenewari, Elsie N	Sewell	8,309	Creighton Univ	Omaha, NE	08/83
Onyekaba, Ebere N	Maplewood	23,041	Long Island Univ	Brookville, NY	06/86
PODIATRY					
Brooks, Michena	Jersey City	130,828	New York Col of Podiatric Medicine	New York, NY	06/86
Neumunz, Gregory D	Teaneck	47,090	New York Col of Podiatric Medicine	New York, NY	06/87
Oliver, John A	Linden	172,283	New York Col of Podiatric Medicine	New York, NY	06/88
Turner, Demi M	Newark	167,165	New York Col of Podiatric Medicine	New York, NY	06/85
Urbanek, Michelle M	Flemington	70,456	Pennsylvania Col of Podiatric Medicine	Philadelphia, PA	06/84
NEW MEXICO					
ALLOPATHIC MEDICINE					
Sanchez, Ishmael B	La Luz	48,419	Univ of New Mexico	Albuquerque, NM	05/84
Szalanski, David L	Hobbs	99,974	Allegheny Univ of The Health Sci	Philadelphia, PA	06/86
CHIROPRACTIC					
Nelson, Christopher G	Albuquerque	147,276	Life Univ	Marietta, GA	03/87
NEW YORK					
ALLOPATHIC MEDICINE					
Bryant Jr, Edward O	Yonkers	155,431	Meharry Medical Col	Nashville, TN	05/84

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LIST OF DEFAULTERS—Continued

Name	City	Debt	School	City and state	Sep date
Jacoby, Avi	Forest Hills	199,392	Allegheny Univ of The Health Sci	Philadelphia, PA	06/84
Pikons, Bernadette	Brooklyn	174,610	New York Medical Col	Valhalla, NY	06/90
Ponder III, Alvin F	Brooklyn	60,792	Howard Univ	Washington, DC	05/87
Powell, Craig	Bronx	99,756	Wright State Univ	Dayton, OH	11/85
Salazar, Maneiena	New York	171,409	Tufts Univ	Boston, MA	05/88
Soto, Lucy	Throggs Neck	152,073	Medical Col of Wisconsin	Milwaukee, WI	05/86
Williams, Karol	Brooklyn	164,167	Finch Univ of Health Sci	North Chicago, IL	06/81
CHIROPRACTIC					
Ambrosio, Joseph A	New York	7,986	New York Chiropractic Col	Seneca Falls, NY	04/84
Antcola, Margaret M	Depew	92,085	Life Univ	Marietta, GA	06/86
Bee, Christopher R	Lake Grove	37,874	New York Chiropractic Col	Seneca Falls, NY	04/87
Bitet, Scott M	Westbury	25,639	Life Univ	Manetta, GA	06/86
Brea, Anthony F	Roslyn	34,830	New York Chiropractic Col	Seneca Falls, NY	12/82
Burdett, Denis P	Riverdale	149,074	Life Univ	Marietta, GA	03/86
Casella, Angela	Bronx	14,803	New York Chiropractic Col	Seneca Falls, NY	12/89
Cozolino, Clifford J	Pelham	77,227	New York Chiropractic Col	Seneca Falls, NY	12/88
Dayanzadeh, Mehran	Flushing	102,200	New York Chiropractic Col	Seneca Falls, NY	12/87
Emerson, Edwin A	Selden	119,885	New York Chiropractic Col	Seneca Falls, NY	04/88
Failla, Robert J	Staten Island	27,738	New York Chiropractic Col	Seneca Falls, NY	12/83
Farewell, Howard C	Gamerville	17,292	New York Chiropractic Col	Seneca Falls, NY	04/84
Ganden, Richard S	Olean	5,584	Logan Col of Chiropractic	Chesterfield, MO	09/83
Gervasi, Cirina M	Long Beach	95,272	New York Chiropractic Col	Seneca Falls, NY	12/87
Gray, Albert L	Woodmere	11,311	New York Chiropractic Col	Seneca Falls, NY	12/90
Hassoth, Leone L	Middle Village	68,448	New York Chiropractic Col	Seneca Falls, NY	12/86
Holloway, Jill B	Elmont	9,268	Life Univ	Marietta, GA	03/83
Hughes, Jill A	Saint James	11,371	Logan Col of Chiropractic	Chesterfield, MO	08/88
Joergens Jr, Donald W	Staten Island	18,494	New York Chiropractic Col	Seneca Falls, NY	12/89
Johnson, Timothy H	Depew	22,642	Life Univ	Marietta, GA	09/83
Johnston, Mary M	Baldwin	93,775	New York Chiropractic Col	Seneca Falls, NY	04/88
Kiss, Kathleen M	Shirley	84,692	New York Chiropractic Col	Seneca Falls, NY	04/87
Kle, James P	Flushing	70,189	Life Univ	Marietta, GA	12/84
Leung, Leo S	Woodside	51,757	New York Chiropractic Col	Seneca Falls, NY	04/90
Linacre, William J	Poughkeepsie	62,000	New York Chiropractic Col	Seneca Falls, NY	12/87
Luca, Robert P	Brooklyn	58,199	Life Univ	Marietta, GA	12/86
McCabe, Peter T	Carmel	40,162	Life Univ	Marietta, GA	09/84
McCormack, Wayne C	Liberty	45,469	New York Chiropractic Col	Seneca Falls, NY	04/85
Medon, John	Garden City	35,060	New York Chiropractic Col	Seneca Falls, NY	12/86
Moretti, Jeffrey S	Poughkeepsie	114,203	New York Chiropractic Col	Seneca Falls, NY	04/89
Nebiosmi, Richard A	Port Jefferson	54,173	Palmer Col of Chiropractic	Davenport, IA	06/86
Obadia, Eric S	Greenlawn	59,036	New York Chiropractic Col	Seneca Falls, NY	04/86
Renz, Howard W	Long Island City	25,530	Cleveland Chiropractic Col (MO)	Kansas City, MO	01/83
Scampole, James J	Farmington	73,658	Life Univ	Marietta, GA	09/85
Schack, Richard N	Flushing	119,726	New York Chiropractic Col	Seneca Falls, NY	12/87
Seymour, Gary S	Newburgh	35,909	Life Univ	Marietta, GA	06/83
Shear, David S	Staten Island	66,001	New York Chiropractic Col	Seneca Falls, NY	04/85
Smith, Gertrude M	New York	90,039	Life Univ	Marietta, GA	12/84
Wheatley, William J	Washingtonville	53,123	New York Chiropractic Col	Seneca Falls, NY	12/88
Wilson, Anthony R	Newburgh	16,412	New York Chiropractic Col	Seneca Falls, NY	12/91
Yunck, Richard	Astoria	51,206	New York Chiropractic Col	Seneca Falls, NY	04/87
CLINICAL PSYCHOLOGY					
Bernard, Theresa J	Ossining	85,112	Univ of Denver	Denver, CO	06/87
Britt, Esther C	New York	152,041	Adelphi Univ	Garden City, NY	05/88
Knight, Patricia A	Sayville	54,703	Adelphi Univ	Garden City, NY	05/89
DENTISTRY					
Agata, Richard C	Brooklyn	137,413	Temple Univ	Philadelphia, PA	05/84
Barsch, Joan D	Smithtown	45,986	Washington Univ	St Louis, MO	05/86
Betelman, Genady	Brooklyn	128,562	Washington Univ	St Louis, MO	05/90
Bettis, Gail M	Rosedale	46,446	Fairleigh Dickinson Univ	Teaneck, NJ	05/87
Boldt, Harrison	Chappaqua	175,627	New York Univ	New York, NY	06/87
Gregory, Edward S	Roosevelt	83,714	Fairleigh Dickinson Univ	Teaneck, NJ	05/89
Guidan, Michael T	Chestertown	154,628	Marquette Univ	Milwaukee, WI	05/86
Han, Sok	Woodside	107,847	Univ of Southern California	Los Angeles, CA	05/86
Kim, Tae Joon	Flushing	50,212	New York Univ	New York, NY	06/92
Kupetz, Scott R	Hopewell Junction	133,678	Fairleigh Dickinson Univ	Teaneck, NJ	05/88
Lawrence, Herbert U	Huntington	27,017	Boston Univ Medical Ctr	Boston, MA	05/85
Massoud, Yehia A	New York	61,508	New York Univ	New York, NY	06/85
Nowroozi, Sohrab	New York	159,804	New York Univ	New York, NY	06/92
Perez, Hector L	Bronx	68,629	New York Univ	New York, NY	10/91
Perez, Nelson	Brooklyn	14,097	New York Univ	New York, NY	06/86
Popa, Dragos B	New York	169,130	New York Univ	New York, NY	06/85
Schroder, Anthony M	Middletown	35,154	New York Univ	New York, NY	06/84
Schwartz, Eric G	Long Beach	149,798	Boston Univ Medical Ctr	Boston, MA	06/89
Slavin, Timothy	Floral Park	106,518	Fairleigh Dickinson Univ	Teaneck, NJ	05/88
Solliday, Michael P	Brooklyn	23,798	Georgetown Univ	Washington, DC	05/87
Stone, Grace M	Brooklyn	230,471	Meharry Medical Col	Nashville, TN	05/85
Underwood Jr, Paul D	Yonkers	55,134	Temple Univ	Philadelphia, PA	05/87
Xiradakis, Maria	Brooklyn	50,001	New York Univ	New York, NY	06/90
Yeates, Terrance C	Brooklyn	55,777	Howard Univ	Washington, DC	05/85

LIST OF DEFAULTERS—Continued

Name	City	Debt	School	City and state	Sep date
HEALTH ADMINISTRATION					
Jansson, Susanne E	Westhampton Bch	31,924	Washington Univ	St Louis, MO	05/86
OSTEOPATHY					
Baltazar, Rodney	Jamaica	155,722	Univ of Osteo Medicine & Health Sci	Des Moines, IA	05/91
Bennett, Bonnie A	Point Lookout	250,574	Western Univ of Health Sci	Pomona, CA	06/86
Durojaye, Ojebode A	Brooklyn	32,944	New York Col of Osteo Medicine	Old Westbury, NY	06/93
Mihalakis, Georgia	Bronx	117,509	Univ of Osteo Medicine & Health Sci	Des Moines, IA	06/85
Steinke, Charles T	Richmond Hill	256,639	Univ of Health Sci	Kansas City, MO	05/86
PHARMACY					
Glover, Cheryl M	Brooklyn	53,527	Long Island Univ	Brookville, NY	06/87
Gonzalez, Nilda I	Brooklyn	4,701	Long Island Univ	Brookville, NY	06/90
Ibeh, Fidelis A	Brooklyn	16,884	Long Island Univ	Brookville, NY	01/89
PODIATRY					
Aiello-Bayer, Lisa A	Katonah	67,242	New York Col of Podiatric Medicine	New York, NY	06/89
Carthen, Michael	Brooklyn	148,948	New York Col of Podiatric Medicine	New York, NY	06/91
Dosunmu, Benzena V	Brooklyn	22,655	New York Col of Podiatric Medicine	New York, NY	06/84
Earle, John E	Jamaica	40,064	New York Col of Podiatric Medicine	New York, NY	06/92
Elbayar, Nader K	Port Washington	51,427	New York Col of Podiatric Medicine	New York, NY	06/91
Francis, Vincent J	East Meadow	69,414	Dr William School Col of Podiatric	Chicago, IL	05/88
Kirk, Marshall S	Staten Island	100,287	New York Col of Podiatric Medicine	New York, NY	06/89
Kustich, Susan K	New York	120,466	New York Col of Podiatric Medicine	New York, NY	06/89
Lee, George W	Brooklyn	103,769	New York Col of Podiatric Medicine	New York, NY	06/88
Markinson, Andrea B	Valley Stream	54,381	New York Col of Podiatric Medicine	New York, NY	06/85
Melendez, Angelina	Bronx	200,204	New York Col of Podiatric Medicine	New York, NY	06/89
Nelson, Mark J	Flushing	191,893	New York Col of Podiatric Medicine	New York, NY	06/85
Paul, Fitzpatrick	Brooklyn	96,397	New York Col of Podiatric Medicine	New York, NY	06/85
Perkins, Terence M	Bronx	119,961	New York Col of Podiatric Medicine	New York, NY	06/89
Porter, Jacqueline R	Brooklyn	40,444	New York Col of Podiatric Medicine	New York, NY	06/83
Sheahan, Michael D	Staten Island	52,950	New York Col of Podiatric Medicine	New York, NY	06/82
Soleye, Babatunde	Hartsdale	10,570	New York Col of Podiatric Medicine	New York, NY	06/80
Teusink, Scott H	Staten Island	220,664	New York Col of Podiatric Medicine	New York, NY	06/88
Zawada, Stanley J	Halesite	137,598	New York Col of Podiatric Medicine	New York, NY	06/84
NORTH CAROLINA					
ALLOPATHIC MEDICINE					
Manchester, Kevin E	Charlotte	26,243	Univ of Nevada—Reno	Reno, NV	05/89
Mebane, Karen E	Burlington	64,297	Meharry Medical Col	Nashville, TN	05/94
CHIROPRACTIC					
Ackley, Brainard L	Kitty Hawk	74,153	Life Univ	Marietta, GA	09/87
Brown, James R	Durham	24,523	National Col of Chiropractic	Lombard, IL	12/82
Coronado Jr, Rudolph K	Pembroke	62,697	Parker Col of Chiropractic	Dallas, TX	01/89
Cox, Harold D	Tryon	161,564	Palmer Col of Chiropractic—West	San Jose, CA	03/87
Cox, Janet L	Tryon	96,190	Los Angeles Col of Chiropractic	Whittier, CA	04/88
Hall, Scott W	Winston-Salem	119,958	Cleveland Chiropractic Col (MO)	Kansas City, MO	09/86
Kerr, Thomas H	Charlotte	41,150	Palmer Col of Chiropractic	Davenport, IA	12/84
Lyons, Kathryn R	Raleigh	81,758	National Col of Chiropractic	Lombard, IL	08/86
Mayle, Robert C	Chapel Hill	57,975	Northwestern Col of Chiropractic	Bloomington, MN	12/89
Meredith, David G	Wilmington	50,958	Palmer Col of Chiropractic	Davenport, IA	06/88
Monical, William J	Charlotte	60,355	Life Univ	Marietta, GA	09/88
Reischman, Grace A	Charlotte	22,351	Logan Col of Chiropractic	Chesterfield, MO	01/86
Reischman, Timothy J	Charlotte	10,071	Logan Col of Chiropractic	Chesterfield, MO	08/85
Willis, Adam C	Charlotte	8,739	Palmer Col of Chiropractic	Davenport, IA	02/92
CLINICAL PSYCHOLOGY					
Romeo, Allen J	Statesville	48,219	California School of Prof Psych	Alameda, CA	06/89
DENTISTRY					
Pearson, Haywood L	Gastonia	171,268	Meharry Medical Col	Nashville, TN	05/83
PHARMACY					
Williams, Kenneth	Durham	8,414	Long Island Univ	Brookville, NY	06/90
PODIATRY					
Bolduc, David G	Greensboro	151,714	New York Col of Podiatric Medicine	New York, NY	06/88
Todorov, Todor	Jacksonville	29,319	Dr William School Col of Podiatric	Chicago, IL	05/81
OHIO					
ALLOPATHIC MEDICINE					
Bates, Leo C	Xenia	19,450	Wright State Univ	Dayton, OH	10/86
Evans, Catharine L	Columbus	46,658	Medical Col of Ohio	Toledo, OH	06/89
Flood, Wanda G	Canton	41,159	Howard Univ	Washington, DC	05/86
Heintzelman, Kurt W	Canfield	115,143	Ohio State Univ	Columbus, OH	06/88
McKnight, Timothy J	Akron	90,293	Tufts Univ	Boston, MA	06/89
Pate, Valerie J	Cleveland	95,205	Wright State Univ	Dayton, OH	06/84
Rozier, Frederick N	Columbus	62,933	Medical Col of Wisconsin	Milwaukee, WI	06/82
Shook, Scott L	Columbus	82,452	Wright State Univ	Dayton, OH	06/88

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LIST OF DEFAULTERS—Continued

Name	City	Debt	School	City and state	Sep date
CHIROPRACTIC					
Bowers, Thomas E	Wilmot	93,747	National Col of Chiropractic	Lombard, IL	12/86
Campana, Thomas M	Cleveland	75,729	Palmer Col of Chiropractic	Davenport, IA	09/85
Drotar, Christopher J	Northwood	76,636	Palmer Col of Chiropractic	Davenport, IA	03/85
Hetzel, William A	Peebles	155,587	Cleveland Chiropractic Col (MO)	Kansas City, MO	01/86
Howard Jr, Daniel L	Milford	38,197	Cleveland Chiropractic Col (MO)	Kansas City, MO	01/90
McClain, Donald W	Cleveland	39,792	Logan Col of Chiropractic	Chesterfield, MO	12/88
Millns, Mark C	Toledo	37,900	Palmer Col of Chiropractic	Davenport, IA	09/84
Nagode, Dale A	Parma Heights	3,911	Life Chiropractic Col—West	San Lorenzo, CA	06/85
Oetzel, Stephen L	Wilmington	43,513	Palmer Col of Chiropractic	Davenport, IA	06/86
Schumacher, Douglas E	Dayton	99,502	Life Univ	Manetta, GA	12/86
CLINICAL PSYCHOLOGY					
Shields, Judith I	Canton	104,992	California School of Prof Psych	San Diego, CA	05/89
DENTISTRY					
Ball, John W	Cleveland	10,521	Case Western Reserve Univ	Cleveland, OH	05/85
Bohonek, Stanislav	Cleveland	78,154	Case Western Reserve Univ	Cleveland, OH	05/87
Brightman, Brenda B	Cleveland	90,894	Case Western Reserve Univ	Cleveland, OH	05/88
Costaras, Bill C	Parma	28,762	Case Western Reserve Univ	Cleveland, OH	05/87
Easley, Wayland A	Cleveland	106,249	Case Western Reserve Univ	Cleveland, OH	05/90
Gross-Johnson, Bonnie J	Columbus	42,223	Case Western Reserve Univ	Cleveland, OH	05/86
Jordan, Martin E	Cleveland	6,271	Howard Univ	Washington, DC	05/90
Lawson, Gerald M	Cincinnati	100,516	Meharry Medical Col	Nashville, TN	05/82
Mack Jr, William E	Brookfield	212,899	Case Western Reserve Univ	Cleveland, OH	05/87
Meade, Madeline M	Parma	24,643	Case Western Reserve Univ	Cleveland, OH	05/88
Obester, David A	Columbus	163,632	Ohio State Univ	Columbus, OH	06/86
Slack, Craig A	Columbus	19,727	Ohio State Univ	Columbus, OH	06/87
Stiggers, Donald	Cleveland	5,183	Case Western Reserve Univ	Cleveland, OH	05/90
Zaun, Timothy M	Lakewood	60,177	Case Western Reserve Univ	Cleveland, OH	12/86
PHARMACY					
Howard, Willard	Dayton	37,249	Howard Univ	Washington, DC	05/85
PODIATRY					
Chestang, Leo A	Cleveland	157,434	Ohio Col of Podiatric Medicine	Cleveland, OH	05/84
Day, Clara Ruth E	Cleveland	163,775	Ohio Col of Podiatric Medicine	Cleveland, OH	05/88
Erkard Jr, James T	Kent	40,106	Ohio Col of Podiatric Medicine	Cleveland, OH	05/82
Gonsse, Guy R	Richmond Heights	204,420	Ohio Col of Podiatric Medicine	Cleveland, OH	05/86
Graham, Dale A	Mineral Ridge	162,170	Ohio Col of Podiatric Medicine	Cleveland, OH	05/88
Minton, Wayne E	Cleveland	265,660	Ohio Col of Podiatric Medicine	Cleveland, OH	06/88
Otto, David E	Willoughby	258,042	Ohio Col of Podiatric Medicine	Cleveland, OH	05/85
Rodgers, Larry A	Cleveland	229,544	Ohio Col of Podiatric Medicine	Cleveland, OH	05/86
Salem, Atiyeh A	Lakewood	89,410	Ohio Col of Podiatric Medicine	Cleveland, OH	05/81
Siggers, Ralph A	Berea	218,900	Ohio Col of Podiatric Medicine	Cleveland, OH	06/87
OKLAHOMA					
CHIROPRACTIC					
Atwell, Sandra L	Shawnee	148,923	Life Univ	Marietta, GA	03/86
Bundrick, Doyle D	Edmond	20,964	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/89
Cleere, Carrol E	Tulsa	79,864	Palmer Col of Chiropractic	Davenport, IA	06/85
Gunn, Michael L	Ponca City	120,409	Cleveland Chiropractic Col (MO)	Kansas City, MO	01/86
Harms, Eugene G	Ada	61,044	Life Univ	Manetta, GA	10/82
Harvey, Robert L	Tulsa	101,752	Parker Col of Chiropractic	Dallas, TX	04/88
Headley, Patricia D	Tonkawa	56,681	Palmer Col of Chiropractic	Davenport, IA	10/86
Jackson, John D	Jenks	81,474	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/86
Maker, James A	Oklahoma City	20,788	Cleveland Chiropractic Col (MO)	Kansas City, MO	09/84
Owens, Gregory A	Claremore	76,213	Cleveland Chiropractic Col (MO)	Kansas City, MO	12/86
Schrag, Glenn P	Guthrie	133,318	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/86
Wallace, Owen	Oklahoma City	15,195	Life Univ	Manetta, GA	09/84
DENTISTRY					
Goodwin, Mark A	Tulsa	121,418	Oral Roberts Univ	Tulsa, OK	05/85
Shoeleh, Vicki P	Washington	113,664	Oral Roberts Univ	Tulsa, OK	06/89
Steffen, Michael R	Tulsa	84,979	Washington Univ	St Louis, MO	03/85
Streight, John A	Ponca City	85,454	Univ of Oklahoma Health Sci Ctr	Oklahoma City, OK	06/85
OSTEOPATHY					
Miller, Susan M	Tulsa	58,381	Oklahoma State Univ	Tulsa, OK	05/85
PUBLIC HEALTH					
Welden, Charles R	Tulsa	17,478	Univ of Oklahoma Health Sci Ctr	Oklahoma City, OK	05/86
OREGON					
CHIROPRACTIC					
Aver, Reva B	Portland	126,125	Western States Chiropractic Col	Portland, OR	12/86
Donavon, Gregory	Portland	31,206	Western States Chiropractic Col	Portland, OR	03/87
Hundagen, Joyce M	Portland	42,148	Western States Chiropractic Col	Portland, OR	06/87
Kendrick, John C	Hillsboro	59,078	Western States Chiropractic Col	Portland, OR	12/84
Marshall, David L	Portland	46,555	Western States Chiropractic Col	Portland, OR	06/86
Murakami, Robert M	Milwaukie	16,885	Northwestern Col of Chiropractic	Bloomington, MN	06/86

LIST OF DEFAULTERS—Continued

Name	City	Debt	School	City and state	Sep date
Riordan, Kenneth P	Grants Pass	116,882	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/88
Spatrisano, Bonnie L	Bend	98,093	Cleveland Chiropractic Col (CA)	Los Angeles, CA	08/85
Van Olphen, Anneka M	Ashland	95,453	Life Chiropractic Col—West	San Lorenzo, CA	06/86
Van Parys, Leslie R	Portland	9,649	Northwestern Col of Chiropractic	Bloomington, MN	04/87
Warner, Brent J	Portland	72,937	Western States Chiropractic Col	Portland, OR	06/85
West, Weldon C	Portland	85,497	Western States Chiropractic Col	Portland, OR	06/86
DENTISTRY					
Cooney, Carey E	Eugene	41,649	Oregon Health Sci Univ	Portland, OR	06/90
OPTOMETRY					
Clunes, Lindsay C	Corvallis	80,720	Pacific Univ	Forest Grove, OR	05/87
PENNSYLVANIA					
ALLOPATHIC MEDICINE					
Carazo, Andres R	Philadelphia	87,659	Tulane Univ	New Orleans, LA	06/87
Davenport, Lorenzo N	Philadelphia	93,191	Temple Univ	Philadelphia, PA	05/85
Guidotti, Janice L	Philadelphia	58,702	Allegheny Univ of The Health Sci	Philadelphia, PA	06/86
Harris, John D	Philadelphia	16,659	Allegheny Univ of The Health Sci	Philadelphia, PA	06/88
Howard-Jackson, Leslie A	Philadelphia	70,114	Temple Univ	Philadelphia, PA	06/88
Johnson, Howard D	Bridgeville	11,010	Penn State Univ	Hershey, PA	05/90
Mobley, Derrick K	Philadelphia	119,507	Medical Col of Pennsylvania	Philadelphia, PA	05/86
Monk, Melcher F	Philadelphia	7,109	Univ of Illinois Medical Ctr	Chicago, IL	06/89
Peterson, Kirby K	Philadelphia	57,936	Univ of Illinois Medical Ctr	Chicago, IL	06/89
CHIROPRACTIC					
Brown, Paul W	Philadelphia	108,629	New York Chiropractic Col	Seneca Falls, NY	12/85
Goldblatt, Aaron J	Danboro	44,925	Life Univ	Manetta, GA	12/86
Horgash, John S	Horsham	62,620	National Col of Chiropractic	Lombard, IL	04/87
Lees, Corey R	Harrisburg	106,168	Palmer Col of Chiropractic—West	San Jose, CA	03/89
Miller, John W	Pittsburgh	68,281	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/87
Mistretta, John P	Hermitage	53,024	Palmer Col of Chiropractic	Davenport, IA	03/88
Norpel, Joseph W	Havertown	90,888	Life Univ	Manetta, GA	12/85
Roebuck, James N	North Wales	74,304	Logan Col of Chiropractic	Chesterfield, MO	08/85
Ross, Roger A	Havertown	57,600	Logan Col of Chiropractic	Chesterfield, MO	08/85
Storer, John W	Camp Hill	50,967	Logan Col of Chiropractic	Chesterfield, MO	04/86
Trodden, Scott A	New Castle	29,579	Parker Col of Chiropractic	Dallas, TX	09/91
Wachter, John P	Ingomar	70,924	Palmer Col of Chiropractic	Davenport, IA	09/84
Waite, William C	Pittsburgh	31,120	Texas Chiropractic Col Foundation	Pasadena, TX	05/82
Wakefield, William C	Oakmont	2,734	Palmer Col of Chiropractic	Davenport, IA	06/85
Waldman, Andrew D	Pittsburgh	30,327	Palmer Col of Chiropractic	Davenport, IA	03/88
Wiegand, Paul J	Danville	32,045	Los Angeles Col of Chiropractic	Whittier, CA	04/84
CLINICAL PSYCHOLOGY					
Block, Robbyn K	Pittsburgh	86,882	California School of Prof Psych	Alhambra, CA	07/88
Morris, Russell D	Philadelphia	42,190	Adelphi Univ	Garden City, NY	05/88
Pepe, Patricia	Houston	58,586	California School of Prof Psych	Fresno, CA	06/88
DENTISTRY					
Alston-Davis, Diedra A	Pine Forge	88,481	Meharry Medical Col	Nashville, TN	05/83
Barksdale, Gregory A	Philadelphia	24,146	Howard Univ	Washington, DC	05/80
Barnhart, Jerome M	McClellandtown	75,748	Univ of Pittsburgh	Pittsburgh, PA	06/88
Berger, David L	Wampum	45,376	Univ of Pittsburgh	Pittsburgh, PA	06/88
Burne Jr, James P	Scranton	8,880	Georgetown Univ	Washington, DC	05/89
Chacker, Laurence G	Philadelphia	31,223	Univ of Pennsylvania	Philadelphia, PA	05/85
Ditroia, Frederick	Warrington	76,801	Temple Univ	Philadelphia, PA	06/87
Faucher, Dennis L	Bradford	83,260	Univ of Texas Health Sci Ctr	Houston, TX	06/84
Gordon, Wanda C	Philadelphia	47,728	Univ of Pennsylvania	Philadelphia, PA	05/86
Hannon, Dennis	Warren	60,826	Loyola Univ of Chicago	Chicago, IL	05/85
Hoppes-Goroshko, Elaine M	Tamaqua	82,135	Temple Univ	Philadelphia, PA	12/86
Jakavick, William L	Brookhaven	42,717	Temple Univ	Philadelphia, PA	05/84
Jerrett, David P	Pittsburgh	144,242	Univ of Pittsburgh	Pittsburgh, PA	05/84
Loughead, Thomas R	Pittsburgh	101,630	Univ of Pittsburgh	Pittsburgh, PA	07/89
Mancini, James D	Mckees Rocks	60,672	Univ of Pittsburgh	Pittsburgh, PA	08/86
Miller, Alan K	Monroeville	4,155	Temple Univ	Philadelphia, PA	05/82
Mitchell, Albert B	Philadelphia	67,439	Howard Univ	Washington, DC	05/87
Pikur, Mark M	Pittsburgh	156,874	Univ of Pittsburgh	Pittsburgh, PA	06/87
Powell, Carlton F	Elkins Park	45,641	Meharry Medical Col	Nashville, TN	05/88
Province, Susan L	Scottdale	9,437	Univ of Pittsburgh	Pittsburgh, PA	06/86
Scarpa Jr, Peter D	Philadelphia	8,631	Georgetown Univ	Washington, DC	05/88
Shaw, Linda J	Gladwyne	14,171	Temple Univ	Philadelphia, PA	05/87
Singh, Ravindra	Allentown	65,631	Tufts Univ	Boston, MA	06/94
Tanski-Yudichak, Connie A	Larksville	96,767	Temple Univ	Philadelphia, PA	06/89
Wasilko, Thomas J	Elizabeth	15,054	Georgetown Univ	Washington, DC	05/82
Yudichak, John M	Larksville	139,625	Temple Univ	Philadelphia, PA	12/87
OSTEOPATHY					
Brenneis, Gerard	Sharon	84,650	Kirksville Col of Osteo Medicine	Kirksville, MO	06/87
Brown, Sheila V	Pittsburgh	21,262	Philadelphia Col of Osteo Medicine	Philadelphia, PA	06/90
Johnson, Lucinda	Blue Bell	16,824	Philadelphia Col of Osteo Medicine	Philadelphia, PA	06/90
PHARMACY					
Abanzuikwe, Joy I	Philadelphia	22,450	Philadelphia Col of Pharmacy & Sci	Philadelphia, PA	09/87

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LIST OF DEFAULTERS—Continued

Name	City	Debt	School	City and state	Sep date
Angel, Marilyn W	Greensburg	13,587	Univ of Pittsburgh	Pittsburgh, PA	05/87
Vogel, Joseph M	Enon Valley	49,816	Duquesne Univ	Pittsburgh, PA	05/87
PODIATRY					
Anderson, Gwendolyn	Philadelphia	25,282	Pennsylvania Col of Podiatric Medicine	Philadelphia, PA	06/87
Bailey, Cynthia	Philadelphia	165,340	New York Col of Podiatric Medicine	New York, NY	06/89
Danczak, Michael E	Pottstown	36,548	Ohio Col of Podiatric Medicine	Cleveland, OH	05/84
Rosolowicz, Catherine A	Pottstown	9,748	Ohio Col of Podiatric Medicine	Cleveland, OH	05/84
Ward, William F	Norristown	12,537	Pennsylvania Col of Podiatric Medi	Philadelphia, PA	06/89
PUBLIC HEALTH					
Lamothe, Lissa	Philadelphia	19,688	Tulane Univ	New Orleans, LA	08/89
VETERINARY MEDICINE					
Giles, Beverly A	Philadelphia	10,513	Univ of Pennsylvania	Philadelphia, PA	05/88
PUERTO RICO					
OPTOMETRY					
Capo Fernandez, Yolanda C	San Juan	52,185	Inter American Univ of PR	San Juan, PR	05/85
Morales-Ruiz, Oscar	Bayamon	148,026	Inter American Univ of PR	San Juan, PR	05/87
Rivera, Axel E	San Juan	99,270	Inter American Univ of PR	San Juan, PR	05/89
RHODE ISLAND					
HEALTH ADMINISTRATION					
Tiemo, Vincent D	Providence	11,933	Xavier Univ (OH)	Cincinnati, OH	05/88
OSTEOPATHY					
Berry, Linda R	Johnston	219,380	Univ of New England	Biddeford, ME	06/86
SOUTH CAROLINA					
ALLOPATHIC MEDICINE					
O'Connor, Brian K	Charleston	103,702	Georgetown Univ	Washington, DC	05/85
CHIROPRACTIC					
Badia, Raymond	Gaffney	107,488	Life Univ	Marietta, GA	06/84
Cuddington, Timothy J	Orangeburg	39,259	Life Univ	Marietta, GA	12/85
Garrett, Alex C	Mauldin	74,389	Life Univ	Marietta, GA	03/87
Taber, Stuart M	Columbia	94,312	Life Univ	Marietta, GA	12/84
DENTISTRY					
Dixson, David R	Barnwell	249,635	Meharry Medical Col	Nashville, TN	05/86
Wilson, Debra D	Rock Hill	70,256	Univ of Maryland—Baltimore	Baltimore, MD	05/84
PODIATRY					
Salley Jr, Hezekiah	Smoaks	157,074	Ohio Col of Podiatric Medicine	Cleveland, OH	05/83
TENNESSEE					
ALLOPATHIC MEDICINE					
Baker, Donnie W	Nashville	119,373	Meharry Medical Col	Nashville, TN	05/88
Collins, James E	Nashville	162,578	Meharry Medical Col	Nashville, TN	05/87
Johnson, James E	Nashville	191,525	Meharry Medical Col	Nashville, TN	05/86
Smith, Larry W	Nashville	123,098	Meharry Medical Col	Nashville, TN	05/86
Wimbish, Ronald P	Nashville	203,389	Meharry Medical Col	Nashville, TN	05/87
CHIROPRACTIC					
Collins Jr, Cecil E	Bluff City	69,093	Life Univ	Marietta, GA	06/85
Pierce, Ronald D	Lebanon	92,538	Logan Col of Chiropractic	Chesterfield, MO	08/86
Reid, Henry L	Dayton	70,364	Life Univ	Marietta, GA	06/88
CLINICAL PSYCHOLOGY					
King, Wanda M	Bolivar	40,897	Wright State Univ	Dayton, OH	08/86
Mouzon, Laquetta O	Savannah	19,123	Allegheny Univ of The Health Sci	Philadelphia, PA	06/88
DENTISTRY					
Branch, Joerald D	Bartlett	221,993	Meharry Medical Col	Nashville, TN	05/89
Coggins, Cheryl R	Hixson	127,745	Meharry Medical Col	Nashville, TN	05/87
Davis, Edward L	Memphis	6,519	Meharry Medical Col	Nashville, TN	05/83
Lima, Ruth O	Nashville	131,234	Marquette Univ	Milwaukee, WI	05/92
Payne, Paul B	Antioch	119,747	Meharry Medical Col	Nashville, TN	05/85
Woodard, Yvette A	Nashville	50,591	Howard Univ	Washington, DC	05/90
PHARMACY					
Haile Selassie, Hapte	Madison	27,228	Mercer Univ	Atlanta, GA	06/87
TEXAS					
ALLOPATHIC MEDICINE					
Adkins, Margo M	Leander	111,704	Univ of Miami	Miami, FL	05/88
Barrera, Adnan V	Laredo	13,926	Univ of Texas Southwestern Medical	Dallas, TX	06/94

LIST OF DEFAULTERS—Continued

Name	City	Debt	School	City and state	Sep date
Berry, James E	Stafford	20,771	Univ of Texas Medical Branch—Galve	Galveston, TX	05/86
Brown, William C	Houston	8,295	Univ of Texas Southwestern Medical	Dallas, TX	06/87
Cooper, April D	Houston	84,407	Univ of Illinois Medical Ctr	Chicago, IL	06/89
Ellis, Cynthia E	Austin	140,433	Meharry Medical Col	Nashville, TN	05/85
Green Jr, Kenneth W	Hurst	71,354	Univ of Texas Medical Branch—Galve	Galveston, TX	05/86
Kerr, Bryant A	Corpus Christi	6,996	Univ of Louisville	Louisville, KY	05/86
Lewis, Michael L	Houston	48,214	Univ of Texas Medical Branch—Galve	Galveston, TX	05/89
Moseley, Clarence D	Houston	30,944	Univ of Texas Medical Branch—Galve	Galveston, TX	05/87
Roybal-Hazen, Maria E	Mcallen	35,428	Michigan State Univ	East Lansing, MI	06/89
Schulz, Eric H	Spring	6,050	Univ of Texas Health Sci Ctr	Houston, TX	06/88
Zavala, Alfonso G	Houston	235,390	Meharry Medical Col	Nashville, TN	05/87
CHIROPRACTIC					
Alshouse-Ellis, Luanne S	Terrell	63,412	Cleveland Chiropractic Col (MO)	Kansas City, MO	01/86
Bailey, John L	Channelview	87,260	Texas Chiropractic Col Foundation	Pasadena, TX	12/89
Baker Jr, Grisby	Houston	95,996	Texas Chiropractic Col Foundation	Pasadena, TX	12/84
Barnett, Brian D	Webster	106,984	Texas Chiropractic Col Foundation	Pasadena, TX	04/87
Blount, Steve A	De Soto	10,234	Palmer Col of Chiropractic	Davenport, IA	02/91
Bonner, Michael W	Houston	74,508	Texas Chiropractic Col Foundation	Pasadena, TX	04/91
Broadwell-Drew, Teri A	Carrollton	128,900	Parker Col of Chiropractic	Dallas, TX	05/89
Brown, Darla J	Highlands	57,353	Texas Chiropractic Col Foundation	Pasadena, TX	12/90
Broze, Rory A	Marble Falls	77,216	Texas Chiropractic Col Foundation	Pasadena, TX	05/84
Dean, J C	Dickinson	76,867	Texas Chiropractic Col Foundation	Pasadena, TX	12/86
Dickey, Jerry P	Richardson	99,360	Parker Col of Chiropractic	Dallas, TX	09/88
Dodd, Daniel J	Texas City	22,107	Texas Chiropractic Col Foundation	Pasadena, TX	05/82
Durham, Ricky L	Houston	133,881	Texas Chiropractic Col Foundation	Pasadena, TX	08/86
Dyess, Stephen J	Deer Park	143,890	Texas Chiropractic Col Foundation	Pasadena, TX	04/87
Eastman, Donald W	Mesquite	70,375	Texas Chiropractic Col Foundation	Pasadena, TX	04/88
Eaves, Donald G	Houston	113,778	Texas Chiropractic Col Foundation	Pasadena, TX	12/87
Ellis, Robert W	Terrell	66,261	Cleveland Chiropractic Col (MO)	Kansas City, MO	01/86
Glenn, Michael C	Austin	141,353	Texas Chiropractic Col Foundation	Pasadena, TX	04/88
Goebel, Michael L	Cleveland	78,978	Texas Chiropractic Col Foundation	Pasadena, TX	04/88
Hales, Joyce M	Richmond	41,337	Texas Chiropractic Col Foundation	Pasadena, TX	05/83
Harding III, James W	Austin	25,557	Western States Chiropractic Col	Portland, OR	03/89
Hendricks, Craig B	Tyler	37,074	Palmer Col of Chiropractic	Davenport, IA	03/85
Herrington, Tommy L	Pasadena	39,621	Texas Chiropractic Col Foundation	Pasadena, TX	04/88
Hill, Michael J	Houston	29,287	Texas Chiropractic Col Foundation	Pasadena, TX	04/84
Kennedy, Michael D	Conroe	132,013	Texas Chiropractic Col Foundation	Pasadena, TX	12/87
Kermani, Aspen D	Houston	116,024	Palmer Col of Chiropractic	Davenport, IA	12/85
Kratt, Thomas W	Nacogdoches	33,034	Texas Chiropractic Col Foundation	Pasadena, TX	12/87
Lawson, Mary E	Laredo	18,456	Northwestern Col of Chiropractic	Bloomington, MN	04/85
Manning-Pinotti, Katherine	Houston	142,691	Texas Chiropractic Col Foundation	Pasadena, TX	12/86
Martin, David Z	Floydada	121,782	Life Univ	Marietta, GA	12/86
Matthews, Paul E	Fort Worth	81,690	Cleveland Chiropractic Col (MO)	Kansas City, MO	08/83
McReynolds, Pamela J	Irving	32,598	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/84
Metcalf, Roy L	Arlington	146,044	Life Univ	Marietta, GA	12/87
Montanari, Arthur M	La Porte	101,478	Texas Chiropractic Col Foundation	Pasadena, TX	04/88
Moses, Michael J	Humble	56,285	Texas Chiropractic Col Foundation	Pasadena, TX	12/85
Munson, Herbert M	Houston	57,153	Texas Chiropractic Col Foundation	Pasadena, TX	12/86
Negash, Omer I	Houston	21,408	Texas Chiropractic Col Foundation	Pasadena, TX	05/89
Nicosia, Michael L	Portland	77,893	Texas Chiropractic Col Foundation	Pasadena, TX	04/90
Oliver, Monte B	Lindale	59,276	Parker Col of Chiropractic	Dallas, TX	08/87
Pearce, Clark H	Grand Prairie	132,483	Parker Col of Chiropractic	Dallas, TX	01/89
Pinotti, Jeffrey H	Houston	98,321	Texas Chiropractic Col Foundation	Pasadena, TX	08/86
Quadlander, Michael E	New Braunfels	71,167	Texas Chiropractic Col Foundation	Pasadena, TX	04/88
Real, Vernon D	Pasadena	135,836	Texas Chiropractic Col Foundation	Pasadena, TX	12/88
Reynolds-Beaver, Charlotte	Robstown	100,453	Texas Chiropractic Col Foundation	Pasadena, TX	04/86
Rhine, Cecil T	Longview	96,255	Texas Chiropractic Col Foundation	Pasadena, TX	04/88
Roberson, Harvey	Houston	44,914	Texas Chiropractic Col Foundation	Pasadena, TX	12/89
Robinson, Glenn R	Dallas	93,360	Cleveland Chiropractic Col (MO)	Kansas City, MO	09/88
Rodriguez, Jesus A	El Paso	163,956	Texas Chiropractic Col Foundation	Pasadena, TX	04/86
Romeieh, Barbara C	South Padre Island	113,642	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/85
Rowe, Roger L	Longview	112,599	Texas Chiropractic Col Foundation	Pasadena, TX	08/86
Sanchez, Gerald L	Houston	47,762	Texas Chiropractic Col Foundation	Pasadena, TX	04/88
Schalk, Ronald R	Corpus Christi	25,427	Texas Chiropractic Col Foundation	Pasadena, TX	05/82
Shaver, Dennis D	Kerrville	37,809	Texas Chiropractic Col Foundation	Pasadena, TX	12/85
Skidmore, Clyde E	Stafford	67,074	Life Univ	Marietta, GA	12/83
Smith, Cecil P	Garland	26,369	Parker Col of Chiropractic	Dallas, TX	04/86
Smith, Dennis M	Houston	68,849	Texas Chiropractic Col Foundation	Pasadena, TX	05/84
Sprecher, Kyle O	Webster	93,340	Texas Chiropractic Col Foundation	Pasadena, TX	12/86
Stewart, Mikel T	Dallas	48,527	Parker Col of Chiropractic	Dallas, TX	09/91
Stratso, Nicholas	Pilot Point	98,125	Palmer Col of Chiropractic	Davenport, IA	03/87
Truong, Thao V	Houston	15,072	Texas Chiropractic Col Foundation	Pasadena, TX	12/88
Tucker, James A	Arlington	12,181	Cleveland Chiropractic Col (MO)	Kansas City, MO	09/83
Unruh, Steve L	Baytown	96,289	Life Univ	Marietta, GA	12/87
Wellington, James G	Kingwood	37,926	Texas Chiropractic Col Foundation	Pasadena, TX	05/82
Wheeler, Wesley D	Houston	77,812	Texas Chiropractic Col Foundation	Pasadena, TX	12/88
Whitaker, Gary W	Houston	25,012	Texas Chiropractic Col Foundation	Pasadena, TX	05/82
Wilson, Robert D	Angleton	147,892	Texas Chiropractic Col Foundation	Pasadena, TX	06/87
DENTISTRY					
Bartley, Emily J	Houston	36,798	Meharry Medical Col	Nashville, TN	05/91

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LIST OF DEFAULTERS—Continued

Name	City	Debt	School	City and state	Sep date
Broadus, Reginald H	Fort Worth	75,723	Meharry Medical Col	Nashville, TN	05/85
Burns-Toole, Peggy L	San Antonio	104,265	Meharry Medical Col	Nashville, TN	05/86
Jones, Brady J	Dallas	225,392	Meharry Medical Col	Nashville, TN	05/85
Sadeh, Habib	Houston	35,810	Loyola Univ of Chicago	Chicago, IL	05/93
Wood Jr, Cecil N	Duncanville	134,524	Univ of Oklahoma Health Sci Ctr	Oklahoma City, OK	06/83
OPTOMETRY					
Harrison, Nancy A	Katy	91,164	New England Col of Optometry	Boston, MA	03/85
OSTEOPATHY					
Abdal-Alim, Khalid B	Houston	35,280	Univ of Osteo Medicine & Health Sci	Des Moines, IA	06/91
PHARMACY					
Boboye, Cyril O	Arlington	13,631	Creighton Univ	Omaha, NE	08/85
Dudley, Raynold R	Houston	35,677	Creighton Univ	Omaha, NE	08/84
PODIATRY					
Bethea-Owens, Carroll R	Dallas	67,976	Ohio Col of Podiatric Medicine	Cleveland, OH	05/85
Rose, Myrtle F	Dallas	157,893	Ohio Col of Podiatric Medicine	Cleveland, OH	06/87
Updyke, John G	Houston	126,917	California Col of Podiatric Medicine	San Francisco, CA	05/81
UTAH					
CHIROPRACTIC					
Applegate, Kirk A	Salt Lake City	103,336	Los Angeles Col of Chiropractic	Whittier, CA	12/85
Bowman, Jeffrey S	Salt Lake City	14,859	Palmer Col of Chiropractic	Davenport, IA	09/83
Hockersmith, Kevin W	Clearfield	121,930	Cleveland Chiropractic Col (MO)	Kansas City, MO	05/89
Schwontkowski, Donna L	Salt Lake City	16,659	National Col of Chiropractic	Lombard, IL	12/90
Turner, Nancy A	Salt Lake City	19,827	Life Chiropractic Col-West	San Lorenzo, CA	12/85
PODIATRY					
Tindall, Michael A	Magna	86,034	California Col of Podiatric Medicine	San Francisco, CA	05/88
VIRGINIA					
ALLOPATHIC MEDICINE					
Asamoah-Mensah, Nana Y	Herndon	14,476	George Washington Univ	Washington, DC	05/90
Dempster-Pierce, Alexandra	Alde	32,238	Univ of Miami	Miami, FL	05/87
Jones, Edward O	Roanoke	62,835	Meharry Medical Col	Nashville, TN	05/94
Scott, Rosemary C	Saluda	167,915	Meharry Medical Col	Nashville, TN	05/87
Tanwi, Lyndon B	Richmond	77,481	Univ of Texas Health Sci Ctr—San Antonio	San Antonio, TX	06/86
CHIROPRACTIC					
Boley, Glenn E	Richmond	68,134	National Col of Chiropractic	Lombard, IL	04/88
Doth, John T	Yorktown	109,602	Texas Chiropractic Col Foundation	Pasadena, TX	05/83
Ganther, Timothy G	Virginia Beach	68,381	Logan Col of Chiropractic	Chesterfield, MO	08/86
Hogan, Dennis P	Manassas	15,233	Logan Col of Chiropractic	Chesterfield, MO	08/89
Jackson, Zona G	Freeman	25,729	Logan Col of Chiropractic	Chesterfield, MO	08/88
Kessler, Edward	Virginia Beach	60,192	Life Univ	Marietta, GA	12/83
Kilmer, David R	Thaxton	51,098	Los Angeles Col of Chiropractic	Whittier, CA	12/85
Panza III, Ernest P	Williamsburg	18,446	Life Univ	Marietta, GA	03/91
Vosburgh, Stephen E	Sterling	145,822	Life Univ	Marietta, GA	01/85
DENTISTRY					
Bukowski, Todd M	Annandale	29,616	SUNY Buffalo	Buffalo, NY	06/89
Miles, Ethel M	Charlottesville	24,469	Virginia Commonwealth Univ	Richmond, VA	05/86
Miller, Jay P	Arlington	6,417	Georgetown Univ	Washington, DC	05/90
Nicholas, Robert K	Richmond	30,224	Virginia Commonwealth Univ	Richmond, VA	05/87
Patterson, Roosevelt	Emporia	127,455	Meharry Medical Col	Nashville, TN	12/88
OSTEOPATHY					
Jones, James M	Chesterfield	14,372	Philadelphia Col of Osteo Medicine	Philadelphia, PA	06/94
PHARMACY					
Bean, Rhonda L	Alexandria	6,135	Xavier Univ (LA)	New Orleans, LA	05/88
PODIATRY					
Dew, John L	Norfolk	92,024	Ohio Col of Podiatric Medicine	Cleveland, OH	06/90
McMillion, Doddjerry J	Richmond	52,731	Pennsylvania Col of Podiatric Medicine	Philadelphia, PA	05/92
WASHINGTON					
ALLOPATHIC MEDICINE					
Smalley, Katherine J	Seattle	27,562	Medical Col of Wisconsin	Milwaukee, WI	05/91
CHIROPRACTIC					
Botefuhr Jr, Carl R	Bainbridge Island	76,186	Cleveland Chiropractic Col (CA)	Los Angeles, CA	04/89
Chinn, Gregory W	Seattle	113,479	Life Univ	Marietta, GA	12/89
Dreyer, Frank J	Spokane	18,136	Palmer Col of Chiropractic	Davenport, IA	09/84
Fox, Richard T	Arlington	25,336	Cleveland Chiropractic Col (CA)	Los Angeles, CA	12/83
Legg, William C	Clarkston	81,410	Western States Chiropractic Col	Portland, OR	12/83
Marschall, Skye K	Seattle	114,326	Texas Chiropractic Col Foundation	Pasadena, TX	12/83
Reehl, Michelle D	Sumner	9,349	Palmer Col of Chiropractic	Davenport, IA	06/82

LIST OF DEFAULTERS—Continued

Name	City	Debt	School	City and state	Sep date
Scovel, Michael E	Everett	126,783	Palmer Col of Chiropractic—West	San Jose, CA	12/88
Scovel, Roshelle R	Sedro Woolley	18,749	Palmer Col of Chiropractic—West	San Jose, CA	12/90
Tyrrell, Michael D	Spokane	177,235	Life Univ	Marietta, GA	06/86
Walters, Jerome P	Olympia	43,668	Palmer Col of Chiropractic	Davenport, IA	12/83
Zipfel, Anthony R	Republic	45,070	Los Angeles Col of Chiropractic	Whittier, CA	04/88
PODIATRY					
Morrison, John T	Port Orchard	46,464	Ohio Col of Podiatric Medicine	Cleveland, OH	05/83
WEST VIRGINIA					
ALLOPATHIC MEDICINE					
Marshall, John T	Philippi	88,705	Marshall Univ	Huntington, WV	06/86
CHIROPRACTIC					
Henshaw, Clifford D	Huntington	70,612	Life Univ	Marietta, GA	03/88
WISCONSIN					
ALLOPATHIC MEDICINE					
Kushner, Brad D	Whitewater	149,877	Finch Univ of Health Sci	North Chicago, IL	10/87
CHIROPRACTIC					
Haines, Arthur A	River Falls	79,034	Northwestern Col of Chiropractic	Bloomington, MN	12/90
Hansen, Timothy J	Pewaukee	21,488	Parker Col of Chiropractic	Dallas, TX	12/86
Hultine, Lynn R	Milwaukee	63,285	Logan Col of Chiropractic	Chesterfield, MO	08/90
Radandt, Mark H	Franksville	99,796	Palmer Col of Chiropractic	Davenport, IA	06/84
DENTISTRY					
Jones, Harold A	Milwaukee	223,170	Marquette Univ	Milwaukee, WI	05/89
Moon, Craig W	Milwaukee	87,192	Marquette Univ	Milwaukee, WI	05/88
Sanderson, Scott F	Stoughton	186,673	Marquette Univ	Milwaukee, WI	05/89
WYOMING					
CHIROPRACTIC					
Kilgore, Charles C	Torrington	93,786	Cleveland Chiropractic Col (MO)	Kansas City, MO	09/85
FOREIGN COUNTRY					
CHIROPRACTIC					
Blewitt, Daniel A	England	80,620	Los Angeles Col of Chiropractic	Whittier, CA	04/89
Conway, John A	Hungary	90,734	Logan Col of Chiropractic	Chesterfield, MO	04/88
Dippie, John M	Australia	50,492	Palmer Col of Chiropractic	Davenport, IA	03/90
McRoberts, Lynne S	Canada	39,020	Los Angeles Col of Chiropractic	Whittier, CA	12/91
Morris, Clifford H	Netherlands	56,606	National Col of Chiropractic	Lombard, IL	12/88
Neira, Alejandro I	Spain	65,011	Palmer Col of Chiropractic	Davenport, IA	10/86
Rice, Greg W	Italy	30,823	Palmer Col of Chiropractic—West	San Jose, CA	03/84
Torkelsen, Scott S	Denmark	41,112	Palmer Col of Chiropractic	Davenport, IA	10/86
DENTISTRY					
Cummins, David F	Barbados	52,051	Howard Univ	Washington, DC	05/85
Nielsen, David D	Cameroun	156,632	Loma Linda Univ	Loma Linda, CA	06/89
Smith-Papademetriou, Catherine	Cyprus	133,761	Washington Univ	St Louis, MO	05/89
PHARMACY					
Zantout, Randa	Lebanon	72,374	Univ of Southern California	Los Angeles, CA	05/85

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Part III

Department of Housing and Urban Development

24 CFR Part 3500

Amendments to Real Estate Settlement Procedures Act Regulation (Regulation X)—Escrow Accounting Procedures; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3500

[Docket No. FR–4079–F–02]

RIN 2502–AG75

Amendments to Real Estate Settlement Procedures Act Regulation (Regulation X)—Escrow Accounting Procedures

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: In this final rule, the Department of Housing and Urban Development is revising Regulation X, which implements the Real Estate Settlement Procedures Act of 1974 (RESPA). This rule addresses problems that were raised in applying escrow accounting requirements under Regulation X. The first problem, designated as "Annual vs. Installment Disbursements," involves whether disbursements from mortgage escrow accounts must be made on an annual or installment basis when the payee offers a choice. To address this problem, this rule maintains the current requirements under Regulation X, but clarifies them.

The second problem, designated as "Payment Shock," involves the proper accounting method to calculate escrow payments where the servicer anticipates that disbursements for items such as property taxes will increase substantially in the second year of the escrow account and where "payment shock"—the consumer's experiencing of a substantial rise in escrow payments—will result. The Department has chosen to address this matter by recommending (but not mandating) a best practice for servicers: a voluntary agreement to accept overpayments. A consumer disclosure format has been provided to disclose this information. This rule contains a new provision covering procedures for voluntary overpayments.

The Department has determined not to adopt two other changes that were proposed. The Department will continue to require the single-item listing of escrow deposits on the HUD–1 or HUD–1A. Also, the Department is not revising the requirements for listing a lead-based paint inspection or risk assessment on the Good Faith Estimate (GFE) format and HUD–1 and HUD–1A, but is clarifying the instructions for these formats.

EFFECTIVE DATE: February 20, 1998.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Room 9146, or Rebecca J. Holtz, Director, RESPA/ILS Division, telephone (202) 708–4560; or, for legal questions, Kenneth A. Markison, Assistant General Counsel for GSE/RESPA, Room 9262, telephone (202) 708–1550, or Grant Mitchell, Senior Attorney for RESPA, telephone (202) 708–1552 (these are not toll-free telephone numbers). For hearing-and speech-impaired persons, these telephone numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at (800) 877–8339 (toll-free). The address for these persons is: Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

SUPPLEMENTARY INFORMATION:

I. Background

The Department's 1994–1995 escrow accounting rules [1] included significant new requirements for servicers maintaining an estimated 35 million mortgage escrow accounts for American homeowners. These rules, promulgated under the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2601–2617), as amendments to Regulation X (24 CFR part 3500), limited the amounts that servicers may hold in escrow accounts by establishing new uniform accounting and disbursement requirements and by requiring meaningful disclosure to each homeowner at the account's inception and annually thereafter.

The 1994–1995 escrow rules represented a notable achievement. As a result of the escrow rules, the amounts in homeowners' escrow accounts have been reduced substantially. At the time the rules were promulgated, the Department estimated that homeowners would save as much as $1.5 billion by virtue of the new rules. This savings is now being used by homeowners for down payments, to keep and maintain homes, or to fill other needs.

Because the 1994–1995 escrow rules implemented new accounting requirements, they required major changes by mortgage servicers. As the rule's requirements were applied to individual accounts, members of Congress, local government officials, industry representatives, and homeowners brought to the Department's attention certain problems concerning the 1994–1995 rules. In this final rule, the Department is clarifying the rules and identifying "best practices" [2] of mortgage servicers in an effort to resolve two of these problems.

As detailed below, the first problem, designated as "Annual vs. Installment Disbursements," is whether disbursements from mortgage escrow accounts should be made on an annual or installment basis if the payee offers a choice. In some cases, a switch from installment to annual disbursements, required under certain circumstances under the rule, resulted in servicers requiring greater payments to escrow accounts for some borrowers and adverse tax consequences for some borrowers. The second problem, designated as "Payment Shock," was asserted to occur when borrowers were required to make significantly increased payments into their escrow accounts when disbursements for items such as property taxes would increase substantially in the second year of the escrow account and the rule did not allow servicers to require escrowing for the next year's payments. The Department also became aware of two additional concerns involving the disclosure of amounts required for escrow using single-item accounting and involving the possible need for a new disclosure of lead-based paint inspection fees.

All of these matters led the Department to issue a proposed rule on September 3, 1996 (61 FR 46511) to seek public comment on these issues. In the proposed rule, the Department offered a variety of approaches to address these matters in the most economical and efficient way. The Department recognized that the rules were new and industry and consumer adjustments were underway. Consequently, the choices included keeping the requirements the same, but clarifying them, or doing nothing.

In the Department's proposal, the Secretary pointed out that any amendments to the rule must further the following three principles:

(1) Reduce the cost of homeownership by ensuring that funds are not held in escrow accounts in excess of the amounts that are necessary to pay expenses for the mortgaged property and allowed by law;

(2) Establish reasonable, uniform practices for escrow accounting; and

(3) Provide servicers with clear, specific guidance on the requirements of section 10 of the Real Estate Settlement Procedures Act of 1974 (RESPA), which governs escrow accounting procedures.

Following receipt of comments under the proposed rule, as detailed below, the Department determined that many of the initial problems in implementing the escrow rules were being resolved as the industry and the public adjusted to the new requirements. Specifically with respect to the choice of annual vs. installment disbursements, consumers' accounts that had been changed as a result of the implementation of the rule had stabilized and had not been changed again. However, there remains a need for the Department to clarify and elucidate current requirements in this final rule.

With regard to the "payment shock" problem, the Department determined, based on the comments, that extensive additional regulatory changes are not required and could prove detrimental to consumers. Instead, the Department determined that this problem would be better resolved by identifying and sharing best practices of servicers. In this context, servicers should, as a best practice, provide a simple notice to consumers to allow them voluntarily to increase their payments to their accounts. A new provision in 24 CFR 3500.17(f)(2)(iii) sets forth procedures if voluntary overpayment agreements are obtained.

The Department also determined not to adopt other changes to the Good Faith Estimate (GFE), HUD–1, and HUD–1A that were proposed to address the other matters raised in the proposed rule. Based on the comments received, the Department determined that new requirements on these subjects were not necessary. Current disclosure requirements are generally useful and sufficient; more significant changes at this time could serve to confuse matters while the market is still adjusting to the relatively new rules. Moreover, the Department has recently issued a new settlement booklet for consumers entitled "Buying Your Home, Settlement Costs and Helpful Information," published on June 11, 1997 (62 FR 31982), which includes guidance on lead inspections during the homebuying process. To complement these new materials, the Department is making one minor clarification to the instructions for the HUD–1 regarding lead-based paint disclosures.

In sum, the regulatory record, described in detail below, makes very clear that this subject involves complex matters that in many cases are better resolved by allowing time for accounting systems and consumers alike to adjust. In this final rule, the Department continues to protect homeowners by maintaining escrow accounting requirements and limits without change. At the same time, in the interest of reducing homeownership costs, establishing uniform practices, and providing clear specific guidance, the rule makes modest clarifications to ensure that servicers do not unnecessarily incur additional costs that would ultimately be passed on to American homeowners.

In applying the significant protections under RESPA—including the limits on the amounts in mortgage escrow accounts—the Department is mindful that it must carry out RESPA's important requirements in a manner that is true to RESPA's consumer protection purposes. These purposes include ensuring that consumers are protected from unnecessarily high costs that may come from abusive practices by servicers.

This preamble continues with a background discussion of the legal requirements under section 10 of RESPA and the Department's prior rulemakings. Following the background discussion, the preamble discusses the issues addressed in the proposed rule and details the many comments received on the proposed rule. These comments informed the Department and shaped today's rule. Finally, the preamble discusses this final rule.

II. Legal Context

Section 10 of RESPA (12 U.S.C. 2609) establishes the statutory limits on the amounts that mortgage servicers or lenders may require a borrower to deposit into an escrow account if the mortgage documents require one or the servicer chooses to establish one.[3] RESPA does not require the use of escrow accounts. Section 10(a)(1) of RESPA does prohibit a servicer, at the time the escrow account is created, from requiring the borrower to make a payment to the escrow account in excess of the maximum amounts calculated in accordance with the statute. These maximum amounts are calculated by analyzing how much money will be needed to cover expected disbursements, such as taxes and insurance, "beginning on the last date on which each such charge would have been paid under the normal lending practice of the lender and local custom, provided that the selection of each such date constitutes prudent lending practice, and ending on the due date of the first full installment payment under the mortgage" relating to the mortgaged property, plus a cushion no greater than one-sixth of the estimated total annual disbursements from the account (one-sixth cushion). Section 10(a)(2) prohibits the lender, over the rest of the life of the escrow account, from requiring the borrower to make payments to the escrow account that exceed one-twelfth of the total annual escrow disbursements that the lender reasonably anticipates paying from the escrow account during the year, plus the amount necessary to maintain a one-sixth cushion. Section 10 does not require that the servicer collect the maximums allowed under the statute; the servicer may always collect less and is not required to collect any cushion at all.

Section 10 and section 6(g) of RESPA (12 U.S.C. 2605(g)) govern the timing of disbursements from escrow accounts. In choosing a disbursement date, section 10 requires that the servicer follow "normal lending practices of the lender and local custom, provided that the selection of each such date constitutes prudent lending practice." Section 6(g) requires servicers to "make payments from the escrow account for such taxes, insurance premiums, and other charges in a timely manner as such payments become due."

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[1] The Department issued several escrow rules during 1994–1995. On October 26, 1994 (59 FR 53890), the Department published a final rule implementing sections 6(g) and 10 of RESPA and changes to RESPA made in section 942 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990). Because of the magnitude of the change brought about by this rule, soon after its publication it became evident that further clarification of the rule was needed. The Department issued a February 15, 1995 rule (60 FR 8812) that modified and clarified the October 1994 rule and delayed its effective date until May 24, 1995. The Department issued further rules to clarify and correct the October 1994 rule on December 19, 1994 (50 FR 65442); March 1, 1995 (60 FR 11194); and May 9, 1995 (60 FR 24734), and published a notice of software availability on April 4, 1995 (60 FR 16985). These rules are referred to in this preamble collectively as the 1994–1995 escrow rules.

The Department's RESPA regulations were streamlined on March 26, 1996 (61 FR 13232) to comply with the President's regulatory reform initiatives. On September 3, 1996 (61 FR 46510), the Department published a correction to 24 CFR 3500.17. The Department published further revisions to Regulation X on September 24, 1996 (61 FR 50208) and November 15, 1996 (61 FR 58472).

[2] Generally, the Department has characterized "best practices" in other programs as those practices that are in accordance with a law's purposes, that are widely replicable, that show creativity in addressing a problem or problems, and that have a significant positive impact on those whom they are intended to serve. The Department identifies best practices operating successfully in the marketplace that support the regulatory principles involved in order to encourage their use. For example, the Department has identified best practices in furtherance of its responsibilities under the Fair Housing Act (42 U.S.C. 3601 *et seq.*).

[3] As stated in footnote 1 to the preamble to the Department's September 3, 1996 proposed rule on escrow accounting (61 FR 46511, 46511 n.1), at times RESPA uses the term "lender" and at other times it uses the term "servicer." A lender creates a loan obligation, but may or may not service the loan. As in the proposed rule, within this final rule the Department uses the term "servicer" to include the lender when the lender performs the servicing function.

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III. Explanation of Problems Addressed in September 3, 1996 Proposed Rule and Proposed Solutions

On September 3, 1996 (61 FR 46511), the Department published a proposed rule, primarily to address three problems in implementing the 1994–1995 escrow rules. These problems, explained below, were designated as:

- Annual vs. Installment Disbursements;
- Payment Shock; and
- Single-item Analysis with Aggregate Adjustment.

In addition, the Department proposed revising the GFE format and HUD–1 and HUD–1A to refer specifically to a lead-based paint inspection or risk assessment.

A. Annual vs. Installment Disbursements Problem

1. Explanation of the Annual vs. Installment Disbursements Problem

The first problem that the proposed rule addressed involved the servicers' disbursements from mortgage escrow accounts if the payee (i.e., the entity to which escrow disbursements are paid, such as a taxing jurisdiction) offers a choice of disbursements on an annual or installment basis. Sometimes payees offer a discount to the borrower if disbursements are made on an annual basis. These discounts are commonly offered by taxing jurisdictions, which may offer a discount for annual payments of property taxes.

The Department's regulation at 24 CFR 3500.17(k)(1) has provided, "In calculating the disbursement date, the servicer shall use a date on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty." See also §§ 3500.17(b) (definition of "disbursement date"); 3500.17(c)(2) and (c)(3); and 3500.17(d)(1)(i)(A) and (2)(i)(A). The preamble to the October 1994 final rule explained, "Unless there is a discount to the borrower for early payments, the regulation does not allow servicers to pay installment payments on an annual or other prepayment basis." 59 FR 53893. The preamble explained that this approach is consistent with the Department's intention that the regulations generally favor installment disbursements, because in many cases they result in lower up-front payments (closing costs). The Department also sought for servicers to take advantage of discounts that would benefit borrowers.

In response to further questions on this issue, however, the Department indicated in its February 1995 final rule clarifying the escrow rules that the October 1994 rule's focus had been to address "a practice, previously engaged in by some servicers, of collecting and paying a full-year's taxes in advance, although they were billed on an installment basis." 59 FR 8813. In the preamble to a May 1995 further clarification to the rules, the Department stated that "servicers were permitted (but not required) to make disbursements on an annual basis if a discount were available." The preamble to the May 1995 rule explained:

> [T]he Department received a number of questions regarding circumstances in which the payee offered an option of either installment payments or a one-time payment with a discount. The preamble to the October 26, 1994, and February 15, 1995, rules indicated that when a choice was available, servicers should make disbursements on an installment basis, rather than an annual basis; however, servicers were permitted (but not required) to make disbursements on an annual basis if a discount were available. Once the choice of payment basis is made, the disbursement date chosen for that basis depends on discount and penalty dates. Section 3500.17(k) states that "[i]n calculating the disbursement date, the servicer shall use a date on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty." This provision is consistent with the rule, which is designed to avoid excessive upfront payments and balances in escrow accounts and, therefore, favors installment payments, unless there are penalties or discounts that make annual payments advantageous for the consumer. Also, after settlement a servicer and borrower are not prevented by this rule from mutually agreeing, on an individual case basis, to a different payment basis (installment or annual) or disbursement date.
>
> 60 FR 24734.

In the preamble to the September 3, 1996 proposed rule, the Department indicated that the rule text and the preamble language may have created confusion. As explained in the preamble to the proposed rule, some mortgage servicers have interpreted the rule to require that a servicer, when offered an option of making a disbursement from the escrow account in installments or in an annual disbursement with a discount, must choose the lump sum annual disbursement with a discount, no matter how small the discount is, even if the borrower and the servicer would otherwise agree to forego the discount and have the escrow account computed for disbursements on an installment basis. On the other hand, other servicers have interpreted the Department's rule, in light of preamble language, to require installments when available and allow, but not require, annual disbursement at the servicer's discretion when a discount is offered for annual disbursement.

As indicated in the preamble to the proposed rule, some borrowers were affected by the changes brought about by the 1994–1995 escrow rules. Concerns raised to the Department regarding the annual vs. installment disbursements problem came from borrowers and members of Congress who were concerned about the effect of the 1994–1995 escrow rules on their constituents.

As explained in the preamble to the proposed rule, the choice of disbursement methods has consequences for borrowers, including increasing or decreasing the amounts required to be deposited into the escrow account at closing. In general, disbursements from an escrow account in installments work to the borrower's benefit, because, on average, they result in lower up-front payments to establish the account (i.e., lower closing costs). Footnote 2 of the proposed rule (61 FR 46512) explained:

> The choice of installment, rather than annual, disbursements often results in substantial reductions in up-front cash requirements for the buyer. For example, if two equal installments could be paid 6 months apart instead of paying the entire bill on one of the installment dates, then homebuyers who close on their loans less than 6 months before the date on which the entire bill would otherwise have been due could come to settlement with 6 months less in tax deposits to the escrow account. This results from the accrued taxes being a half-year's taxes less for those homebuyers. Assuming closings are evenly distributed throughout the year, households with the option of two equal installment payments 6 months apart, will, on average, be able to reduce the average up-front cash required at settlement by 3-months' worth of taxes. In general, as the number of installments grows, so does the average up-front savings.

The disbursement method may also have income tax ramifications for the consumer, depending on the timing of disbursements for deductible items.

The preamble to the proposed rule explained that after publication of the 1994–1995 escrow rules, many servicers that had been disbursing in installments switched to annual disbursements if discounts were available. There were many consequences of the switch that have been described to the Department, mostly affecting borrowers, and other consequences that the Department speculates may have resulted. After the Department issued the escrow rule, some borrowers may have been required by their servicers to make up substantial shortages in their escrow accounts (generally in increased monthly payments over a year), which arose when taxes were switched from installment disbursements to one annual lump sum disbursement.

The preamble to the proposed rule also noted other adverse consequences that might have arisen from the 1994–1995 escrow rules. For example, some borrowers whose servicers switched from annual to installment disbursements may have lost a significant portion of their income tax deductions for property taxes in the year in which the switch was made and may have been unhappy with that consequence. Some taxing jurisdictions may have faced an unexpected temporary shortfall in receipts of property taxes as a result of servicers changing from annual to installment disbursements.

The preamble to the proposed rule also noted that although some borrowers may have been adversely affected by a change in disbursement method, many others likely benefited, perhaps unknowingly, from such a change. For example, a change from installment to annual disbursements to take advantage of a discount lowered the total tax burden for many homeowners. Similarly, a change from annual to installment disbursements resulted in lower escrow payments and, possibly, refunds or credits for many homeowners. Finally, for many borrowers, the Department's rules apparently have not resulted in any change to the disbursement method for their escrow accounts.

2. Alternatives Proposed to Address Annual vs. Installment Disbursements Problem

In response to the Annual vs. Installment Disbursements problem, the Department proposed alternative ways of revising the escrow rules, including requiring that disclosures be given to borrowers so that they could make informed choices as to how their accounts were to be set up and maintained and require servicers to follow those preferences. At the same time, the Department recognized that providing borrowers choices may impose additional burdens and costs on servicers, which are frequently passed on to borrowers. Thus, the proposed rule also highlighted approaches that had been proposed by industry representatives. The Department sought comments on all approaches and also asked a number of questions that were designed to help the Department make decisions among alternatives for the final rule.

a. Consumer Choice. The first alternative contained in the proposed rule, Consumer Choice, distinguished between new loans and existing loans. Under this alternative, for new loans (loans that settled on or after the effective date of a final rule), servicers would be required to give borrowers the choice of making disbursements of property taxes on an installment or on an annual basis, when those options are offered by the taxing jurisdiction. The Department's proposal did not address the choice between installments and annual disbursements for other escrow items, because the question has only been raised to the Department in the context of property taxes. The preamble indicated that the Department would consider addressing other escrow items, depending on comments received.[4]

This alternative would have required servicers, at some time before settlement, to provide a disclosure, in the format of Appendix F in the proposed rule, to borrowers whose property taxes will be paid from an escrow account and whose taxing jurisdictions offer the choice between disbursements on an installment or an annual basis. The proposed format indicated some of the advantages and disadvantages to the borrower of installment and annual disbursements and asked the borrower to make a choice between the methods. The preamble explained that if the borrower did not make a choice, the servicer would be required to make installment disbursements of property taxes. As discussed below, this alternative also would have provided that once the consumer had made a choice (or installments were required because the consumer did not make a choice), the servicer and subsequent servicers would be prohibited from changing the method of disbursement for property taxes without the borrower's prior written consent, as long as the taxing jurisdiction continued to offer a choice.

For existing loans (loans that were settled prior to the effective date of a final rule), this alternative would have prohibited the servicer and subsequent servicers from changing the method of disbursement for property taxes without the borrower's prior written consent where the taxing jurisdiction offers a choice between installments and annual disbursements. In addition, no later than the first escrow analysis for such escrow accounts performed after the effective date of a final rule, servicers would be required to offer borrowers, in writing, an opportunity to switch from one method of disbursement for property taxes to another.

b. Servicer Flexibility. Under the second alternative presented in the proposed rule, the Department would have revised the rule to provide that a servicer must make disbursements by a date that avoids a penalty, but the servicer is otherwise free to make disbursements on such date as complies with normal lending practice of the lender and local custom, provided that the selection of each such date constitutes prudent lending practice. As discussed below, under this alternative, once the servicer had made a choice of the disbursement method, the servicer and subsequent servicers would have been prohibited from changing the method of disbursement without the borrower's prior written consent, as long as the payee continued to offer a choice.

c. Keep, But Clarify, Current Requirements. The third alternative offered in the proposed rule was that the Department would revise the rule to keep, but clarify the current requirements. Under this alternative, the regulations would have been revised to provide that servicers must make disbursements from escrow accounts on an installment basis, if payees offer that option as an alternative to annual disbursements. If a payee offers the option of installment disbursements or a discount for annual disbursements, however, the servicer may, at the servicer's discretion (but is not required by RESPA to), make annual disbursements, in order to take advantage of the discount for the borrower; the Department encourages (but does not require) servicers to follow the preference of the borrower. If the payee offers the option of installment disbursements or annual disbursements with no discount, the servicer must make installment disbursements.

d. Prohibition Against Switching Disbursement Methods Without Borrower's Consent. Each of the alternatives proposed—Consumer Choice; Servicer Flexibility; and Keep, But Clarify, Current Requirements—provided that once a disbursement method has been selected in accordance with the requirements of the alternative, servicers would be prohibited from switching disbursement methods without the borrower's consent. This would mean that even if one servicer acquires servicing from another servicer, the second servicer would be required to apply the same disbursement method as the first servicer, as long as that

[4] The preamble to the proposed rule noted that if the servicer is given a choice between installment or annual disbursements for other escrow items (such as property or hazard insurance), the Department's rule would require the servicer to make disbursements by a date that avoids a penalty, but the servicer would otherwise be free to make disbursements on such date as complies with normal lending practice of the lender and local custom, provided that the selection of each such date constitutes prudent lending practice.

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option is offered by the payee, unless the borrower consents to changing disbursement methods.

The preamble to the proposed rule explained that the reason for this approach was that many loans shifted disbursement dates as a result of the 1994–1995 escrow rules. The Department was seeking to develop an approach with the minimum negative impact for borrowers, servicers, and third parties, such as taxing jurisdictions.

The preamble to the proposed rule explained the adverse consequences, discussed above, that can occur when borrowers' disbursement methods are switched. The preamble to the proposed rule explained that the approach of prohibiting a servicer from switching disbursement methods without the borrower's consent, including requiring a servicer to use the disbursement method used by the former servicer when there is a transfer of servicing, would not mean that the borrower would have to consent to a transfer of servicing or would have veto authority over such a transfer. However, this approach would mean that a borrower would have to consent to a change in the disbursement method, including a change proposed by a subsequent servicer. The Department sought comments on whether this policy would adversely affect the value, and the efficiency of the transfer, of servicing rights.

B. Payment Shock Problem

1. Explanation of Payment Shock Problem

The second problem that the proposed rule addressed involved cases in which the originator or servicer[5] anticipates that disbursements for escrow items such as property taxes will increase substantially in the second year of the escrow account. A substantial increase in property taxes in the second year often occurs in cases of new construction. In many jurisdictions, the taxes the locality charges for the first year are based on the assessed value of the unimproved property, while for the second year the taxes are based on the improved value. A substantial increase in payments may also occur when a tax disbursement that would normally appear on the projection for the coming year is paid prior to the borrower's first regular payment, i.e., these regularly occurring taxes do not appear in the projection. Reassessments after a property is sold may also cause a substantial second year increase.

The preamble to the proposed rule explained that, consistent with section 10 of RESPA, the Department's regulations have specified the maximum amount that a servicer may legally require borrowers to deposit in escrow accounts at the creation of the escrow account and during the life of the escrow account. The Department's regulations prescribe that in conducting an escrow account analysis, the servicer considers only the disbursements that are expected to come due during the next 12-month period. See §§ 3500.17(b) (definition of "escrow account computation year") and 3500.17(c) (limits on payments to escrow accounts). While the servicer can take into account expected changes to disbursements over the 12-month period,[6] even if the servicer knows that disbursements from an escrow account will substantially increase at a time more than 12 months in the future, the servicer cannot, when preparing the initial escrow account statement, calculate the borrower's payments to cover the expected increases beyond that 12-month period.

However, the Department's existing regulations (§ 3500.17(f)(1)(ii)) allow the servicer to conduct escrow account analyses at other times during the escrow computation year, which can result in changes to what the borrower must deposit in the escrow account. Some servicers conduct escrow account analyses when bills for escrow items increase.

Since the Department's current escrow rule provides for calculating escrow payments based on the projection of escrow disbursements for a 12-month period, when escrow items increase substantially after the initial 12-month period, the result is likely to be a substantial increase in a borrower's monthly payments for the second year and/or a lump sum payment, not only to reflect the higher disbursements, but to make up a shortage in the escrow account.[7] While the originator or servicer could alert the borrower at closing that an increase will occur, if that is not done, the borrower may be unpleasantly surprised by the increase. The preamble to the proposed rule explained that this situation could result in several problems. While disclosures received at closing show low payment amounts throughout the first year, the escrow payment will substantially increase for the second year, or even during the first year if a short-year statement is issued at the point when the higher disbursement shows up in the 12-month projection.[8] Some borrowers may be unable to meet the increased escrow payments and paying off the shortage will raise payments even more. A customer relations issue may be created for servicers who have to explain to borrowers why the payment is increased so much.

As indicated in the preamble to the proposed rule, the concerns raised to the Department regarding payment shock came largely from industry representatives who told the Department that they have had to respond to numerous borrower inquiries and complaints about increases in escrow payments to reflect higher disbursements and payments to make up shortages. Mortgage servicers had indicated that they wanted to avoid any payment change in subsequent years by collecting more money in the first year of servicing.

2. Alternatives Proposed to Address Payment Shock Problem

The proposed rule offered three rulemaking alternatives, some of which contained variations within the alternative, to address the payment shock problem. The purpose of the alternatives was to develop a consumer-friendly way to avoid the payment shock surprise for the borrower, who may not be prepared to make the higher payments to his or her escrow account that would result from a substantial increase in the amounts needed for disbursements from the account. At the same time, the proposals sought to minimize the burden on the industry.

a. Consumer Choice. The first alternative contained in the proposed rule, Consumer Choice, would have provided that when the servicer expected that the bills disbursed from the escrow account would increase substantially after the first year, the servicer would provide to the borrower, at some time prior to closing, a written disclosure. The proposed format for the disclosure was set forth in Appendix G to the proposed rule. The borrower would make a choice from several accounting options for his or her account on a format that would indicate, under each option: (1) the amount due at closing; (2) the monthly escrow payments in the first, second, and third years; and (3) the corresponding surpluses anticipated at the end of the first year.[9]

The proposed rule explained that the borrower would, therefore, have the opportunity to make a voluntary choice to limit payment changes in the second year of the escrow account. As would be explained on the disclosure format, if the borrower did not make a choice, the accounting method would "default" to the method prescribed under the current regulations (which may result in substantially increased payments in the second year). This alternative, as proposed, contained the additional restriction that once an escrow accounting method was selected by choice or default, that method could not be changed without the consent of the borrower, even if the servicing rights were transferred to another servicer.

The preamble to the proposed rule explained that, under this alternative, the following accounting methods (illustrated in "The Payment Shock Problem," Appendix H–1 to the proposed rule) would be presented to the borrower for his or her selection:

Method A. Analysis of the account using the accounting method required under the current rule, which results in a shortage at the end of the first year and higher payments in the second year.

Method B. Analysis of the account using an accounting method that:

—Requires an initial deposit of $0 into the escrow account at closing;
—Requires a monthly payment in the first year equal to one-twelfth of the estimated total annual disbursements from the escrow account for the second year; and
—Causes surpluses or smaller shortages at the end of the first year, which causes escrow payments to increase in the second year by an amount less than under Method A or not at all.

Method C. Analysis of the account using an alternative accounting method that:

—Requires an initial deposit into the escrow account at closing greater than the initial deposits required under Method B;
—Requires the same monthly payment during the first year as under Method B, which is greater than under Method A;
—Generates month-end balances such that the lowest month-end balance for the first year equals one-sixth of the estimated total annual disbursements for the second year (the initial deposit is not considered in finding the lowest month-end balance);
—Generates even larger balances at the end of the first year than under Method B, eliminating shortages and increasing surpluses that must be returned to the borrower; and
—Causes no increase in escrow payments in the second year.

The preamble to the proposed rule noted that if the consumer were to select Methods B or C, the amounts held in escrow could be greater than allowed under section 10 of RESPA. In order to permit these options, the Secretary would invoke his exemption authority under section 19(a) of RESPA (12 U.S.C. 2617).

b. Make No Change. The second alternative in the proposed rule was to continue the current requirements for escrow analysis, even when the servicer expected that the bills disbursed from the escrow account would increase substantially after the first year. This alternative would not prevent payment shock in all instances. However, under this alternative, servicers could continue to disclose voluntarily the problem to borrowers and borrowers could make voluntary overpayments to escrow accounts. Servicers could also calculate short-year statements. Thus, even if no change were made to the regulations, some methods would continue to be available, although not required, to alleviate the payment shock problem.

c. Mandate First Year Overpayment. Under the third alternative in the proposed rule, Mandate First Year Overpayment, the Department would have provided that when the servicer expected that the bills disbursed from the escrow account would increase substantially after the first year, the servicer would be required to establish the escrow account under a procedure that had the characteristics described under Consumer Choice, Method C, above (illustrated in "The Payment Shock Problem," Appendix H–2 to the proposed rule). The preamble to the proposed rule explained that this approach would result in requiring amounts held in escrow to be greater than allowed under section 10 of RESPA. The Secretary could, however, mandate the use of this escrow accounting method pursuant to his exemption authority under section 19(a) of RESPA (12 U.S.C. 2617).

C. Single-Item Analysis With Aggregate Adjustment Problem

1. Explanation of Single-Item Analysis With Aggregate Adjustment Problem

A third problem that the proposed rule addressed was the means of disclosure on the HUD–1 and HUD–1A settlement forms of amounts required for deposit at settlement in the escrow account. The 1994–1995 escrow rules established aggregate accounting (i.e., analyzing the escrow account as a whole) as the uniform nationwide standard escrow accounting method to be used to compute borrowers' escrow accounts. In establishing this standard, the rules supplanted single-item accounting, the accounting method that had been used at settlement up until that time to compute required escrow account balances. Historically, under single-item accounting, the reserve amount for each escrow account item on the HUD–1 or HUD–1A in the 1000 series was computed for the borrower and listed separately. Either zero, one, or two months worth of payments for

[5] Three originators/servicers criticized the Department's proposed rule because it identified the "servicer" as the person who would be in a position to determine whether the bills paid out of the escrow account will increase substantially after the first year. These commenters indicated that it is the originator (loan officer, processor, settlement agent) who communicates with borrowers prior to closing, not the servicer, and that it should be the originators who would be in the position of determining at closing whether payments will substantially increase, not the servicer. The Department intended to use the terms interchangeably and explained in footnote 1 of the proposed rule (61 FR 46511) that the term "servicer" included the lender when the lender performs the servicing functions. The Department intended that the term "servicer" also would include the originator in this context.

[6] The preamble to the proposed rule (61 FR 46511, 46516 n.7) explained that the Department's current regulations address the issue of estimating disbursement amounts for the 12-month computation year:

To conduct an escrow account analysis, the servicer shall estimate the amount of escrow account items to be disbursed. If the servicer knows the charge for an escrow item in the next computation year, then the servicer shall use that amount in estimating disbursement amounts. If the charge is unknown to the servicer, the servicer may base the estimate on the preceding year's charge as modified by an amount not exceeding the most recent year's change in the national Consumer Price Index for all urban consumers (CPI, all items). In cases of unassessed new construction, the servicer may base an estimate on the assessment of comparable residential property in the market area.

24 CFR 3500.17(c)(7).

[7] The preamble to the proposed rule explained that an increase in the monthly payment can be broken down into two components. Any time an escrow account disbursement increases, it will have the effect of raising the monthly borrower escrow payment by approximately one-twelfth of that increase. In addition, the projection for the coming year shows what the target balance (accruals plus the cushion) should be at the beginning of the coming year. To the extent that expected disbursements in the second year exceed what they were in the first, the beginning target balance for the second year may be in excess of the actual balance at the end of the first year. If so, then there is a shortage to be made up as well. If the 12-month approach is taken to eliminate the shortage, then monthly payments will also rise by approximately one-twelfth of the shortage. If a cushion is used, the payment increases will be slightly higher, until the cushion is built up.

[8] The Department's regulations at 24 CFR 3500.17(f)(1) (i) and (ii) provide that, aside from conducting an escrow account analysis when an escrow account is established and at completion of the escrow account computation year, a servicer may conduct an escrow account analysis at other times. The escrow account analyses conducted at other times result in short-year statements.

[9] The preamble to the proposed rule noted that whether disbursements from escrow accounts would be made on an annual or installment basis and whether there were a discount for annual disbursement would affect the numbers to be filled in and, potentially, the number of calculations on the Escrow Accounting Method Selection Format.

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each escrow item was set forth on the HUD–1 or HUD–1A in the 1000 series as necessary to establish the escrow account.

When the Department was developing the 1994–1995 escrow rules, Federal Reserve Board staff indicated that even if aggregate accounting were used it also needed a single-item amount for private mortgage insurance (PMI) reserves in order to make annual percentage rate (APR) calculations under the Truth in Lending Act (TILA). For this reason, and in an effort to avoid altering the basic format of the HUD–1 or HUD–1A in the 1994–1995 escrow rules, the Department required that an aggregate adjustment (either zero or a negative number) be made after all of the individual items were listed separately in the 1000 series, so that the total amount for escrow account items conformed to the aggregate accounting method. Before the 1994–1995 escrow rules, Section L of the HUD–1 and HUD–1A only showed positive numbers, that is, payments that were being allocated to various settlement costs. After publication of the 1994–1995 escrow rules, the Department received complaints that the itemization of the reserve amounts with an aggregate adjustment was confusing and the information was not useful to borrowers. Settlement agents and others indicated that individual itemization of reserves in the 1000 series imposed an additional paperwork and explanation burden, when the only relevant number for calculations is the total deposited.

2. Revision Proposed to Address Single-Item Analysis With Aggregate Adjustment Problem

In response to the Single-Item Analysis with Aggregate Adjustment problem the Department proposed to make more flexible the requirements for the provision of information to consumers. In the proposed rule, the Department proposed that to relieve confusion it would no longer require the single-item listing of escrow deposits or reserves on the HUD–1 or HUD–1A. The rule would create a new option in the instructions for the 1000 series of these forms to reflect the aggregate amounts to be deposited. As proposed, the settlement agent could also have continued to itemize the 1000-series reserves, at the settlement agent's discretion. If the charges were not itemized, an asterisk (*) would have had to be placed next to each item in the 1000 series for which a reserve was taken. The amount collected would have been described as "Aggregate Escrow Deposit for Items Marked (*) Above" on a line at the end of the 1000 series. In the discussion "Clarifications of Existing Rule" in Part VI of the preamble to the proposed rule, the Department had clarified that entries on the GFE may be based on single-item analysis, with a maximum 1-month cushion. The proposed rule also clarified that the use of the estimating method remained available after the end of the phase-in period (October 24, 1997).

D. Lead-Based Paint Disclosure Issue

1. Explanation of Lead-Based Paint Disclosure Issue

The proposed rule also addressed a concern that consumers should get information about their right to arrange for a timely paint inspection or risk assessment for the presence of lead-based paint or lead-based paint hazards before becoming obligated under a sales contract. The preamble to the proposed rule explained that a prospective purchaser generally has 10 days to conduct such a lead-based paint evaluation of the property. A prospective purchaser, however, may waive in writing the opportunity to conduct this evaluation. The proposed rule addressed ways that consumers could receive this information in addition to existing disclosure requirements.

2. Revision Proposed to Address Lead-Based Paint Disclosure Issue

In response to the Lead-based Paint Disclosure issue, the Department proposed to require additional information to be provided to the consumer on the GFE and the HUD–1 or HUD–1A. The Department proposed to add information to the GFE format to help make purchasers of pre-1978 residential dwellings aware that, pursuant to 42 U.S.C. 4852d (implemented by the Department in regulations published on March 6, 1996, 61 FR 9064), purchasers have the right to arrange for a paint inspection or risk assessment for the presence of lead-based paint or lead-based paint hazards before becoming obligated under a sales contract. The Department proposed to add language to the GFE format (Appendix C to part 3500) specifically to refer to a lead-based paint inspection or risk assessment and designate a separate line in the 1300 series of the HUD–1 and HUD–1A for lead-based paint inspections or assessments and to revise the instructions for completing the HUD–1 and HUD–1A accordingly. The preamble to the proposed rule indicated that the Department anticipated that a more detailed explanation of purchasers' rights in this regard would be contained in the next revision of the HUD Settlement Costs booklet. See section 5 of RESPA (12 U.S.C. 2604); 24 CFR 3500.6.

IV. Overview of Public Comments

A. Description of the Commenters

The Department received a total of 141 comments on the proposed rule. Of the 141 comments, some were duplicates. Thus, the Department places the number of different comments received at 134.[10] The Department analyzed all the comments in detail and gave them careful consideration.

One-hundred two of the comments came from originators/servicers.[11] Fourteen comments came from trade associations. Four came from individual consumers, three from tax service providers, two from members of Congress, four from financial software companies, one from a state lending agency, one from a mortgage insurer, one from a builder, and two from persons whose professional interest in the rule could not be determined.

B. What Commenters Commented On

The Annual vs. Installment Disbursements problem attracted the most comments. One-hundred twenty-eight commenters, including all but one of the trade associations and all but two of the originators/servicers, commented on this issue. The Payment Shock Problem received the second highest number of comments, with one-hundred

[10] Seven comments were identical letters submitted by various officials of the same mortgage corporation; they were counted as one comment. Two other comments were substantially similar letters submitted by different offices of the same bank and mortgage lending subsidiary; they also were counted as one comment, but minor variations between the two were considered.

Twenty-one comments were duplicate comments submitted by various originators and servicers, including the United States Department of Agriculture. One bank and trust submitted nearly identical comments as the Mortgage Bankers of America (MBA), while the Oregon Bankers Association submitted nearly identical comments as the American Bankers Association (ABA). The Mortgage Bankers Association of Minnesota adopted with one small addition the comments of Norwest. Since these comments were submitted by separate entities, they are all counted as separate comments.

One commenter simply summarized the proposed rule without taking a position on any of the proposals.

[11] In some cases, the precise nature of the business was not clear from the comment. Moreover, it did not appear that the comments differed markedly depending on the precise nature of the business. For example, it did not appear that the comments from retail lenders differed markedly from those from mortgage brokers, or that the comments from one type of retail lender differed from those or other types of retail lenders. Thus, all businesses that originate, service, and/or broker loans are designated as "originators/servicers" in this preamble.

sixteen commenters, including ninety-six originators/servicers and all but two of the trade associations. The Single-Item Analysis With Aggregate Adjustment problem also attracted a significant number of comments, seventy-eight in all, including sixty-five originators/servicers and ten trade associations. Only seventeen commenters, twelve originators/servicers and five trade associations, commented on the additional proposed change concerning lead-based paint.

C. Overview of Positions

The overwhelming majority of originators, servicers and mortgage brokers opposed those options for the first two issues that were designed to provide borrowers more choices, citing the costs and burdens of such an approach. Three commenters, including Norwest, criticized those options as being inconsistent with the principles the Department had articulated, asserting that the Consumer Choice options would increase the cost of homeownership. In contrast, the few consumers and members of Congress who commented on the first issue supported Consumer Choice approaches; these commenters did not comment on the Payment Shock problem.

On the Single-Item Analysis With Aggregate Adjustment problem, more commenters supported the proposed change than opposed it. Opinion was nearly evenly divided on the additional proposed change concerning lead-based paint.

Nine commenters, including the American Bankers Association (ABA), commented that no changes should be made at this time and instead, the Department should wait several years before considering further changes to Regulation X, at least until the changes made under the 1994–1995 escrow rules are fully implemented. (Those provisions took effect May 24, 1995 but provided for a three-year phase in for existing escrow accounts which expires October 27, 1997.)

The reasons given by the ABA, which were echoed by the Oregon Bankers Association, for not making any changes to the rule were that the rule would alter the escrow accounting systems at the very time the Department's new rules are bring fully implemented, causing major problems and an excessive burden for banks and other mortgage servicers. The New York Credit Union League agreed, emphasizing the costly changes that are already being made as a result of that earlier rule.

A bank holding company, in terms echoed by other originators and servicers, commented that there was no need to change the rules now as those borrowers with existing accounts have already benefited from or suffered the consequences of the 1994–1995 escrow rules and have subsequently adjusted to the changes and many of the problems created by that rule are over. Thus, it would be premature to make further changes, and doing so may only again create the same sort of initial problems that were created by the 1994–1995 escrow rules. GE Capital recommended waiting at least two years before revisiting the need for any changes. Another servicer and originator recommended waiting 24 to 36 months before making further changes. A bank compliance officer and a bank holding company also recommended against changes being made at this time.

Several other commenters recommended that the Department hold off action on specific portions of the rule. Those comments are analyzed separately under the portion of the preamble discussing that aspect of the rule.

In contrast, many commenters emphasized the importance of making changes to address their particular issues of concern, particularly the Payment Shock problem. These comments are summarized under the particular issues discussed later in this summary.

V. Annual vs. Installment Disbursements Problem—Comments Received, Approach Adopted in Today's Final Rule, Basis for Approach Adopted, Basis for Rejecting Alternative Approaches, Clarifications

A. Comments Received

Through the comments received on the proposed rule, the Department gained a better understanding of the Annual vs. Installment Disbursements problem. The Department learned more about how servicers have been addressing the problem of setting the appropriate disbursement date when given a choice of annual or installment disbursements. The comments received indicated that practices have not been uniform and that in some cases, originators/servicers have been using creative approaches to meeting consumer's needs. Five originators/servicers and two tax services indicated that they were disbursing in installments unless a discount was offered for annual disbursements that the servicer thought was a large enough discount to be in the borrower's interest, in which case the disbursements were made annually; one trade association indicated this was the approach of most of its members as well. One savings and loan indicated that its practice was to accommodate individual borrowers by switching people who complain to whichever method they prefer.

Other originators/servicers are using practices that do not provide as much flexibility for the consumer. In many cases, the originators/servicers indicated that they believed such practices were compelled by the existing RESPA regulations. For example, thirteen originators/servicers indicated that when such a choice is offered, they currently disburse in installments unless a discount is offered for annual disbursements, in which case they always disburse annually regardless of how insignificant the discount may be. Two originators/servicers and one tax service indicated that if no discount is offered for annual disbursements but a service fee is charged for installment disbursements, they disburse annually, no matter how insignificant the service fee may be.

A few commenters noted that in many jurisdictions, the installment option is only available for individuals, not servicers. Other commenters noted special rules that apply in particular States, such as Wisconsin, where the practice is to pay taxes in the year levied, even though they do not have to be paid until the following year, and Maryland, where a law provides that first time homebuyers may choose between annual and installment disbursements with a consumer disclosure highlighting differences between the two methods.

The Department also learned more about the discounts obtained by servicers for borrowers, e.g., how large the discounts are and when disbursements must be made in order to receive the discounts. Commenters estimated the size of the discounts to range from around 1–5 percent of the property tax bill, with only two commenters indicating that discounts ranged up to 10 percent, and only one commenter indicating they tended to be less than one percent. Several commenters—three consumers, two members of Congress, two originators/servicers, one trade association—expressed the view that discounts are small and not in the borrower's interest to disburse in order to collect them. Two originators/servicers expressed the opposite view that discounts tended to be large and in the borrower's interest to obtain. The Department notes that, under reasonable assumptions,[12] a

[12] The assumptions are that if, for example, the entire tax bill is paid on January 1, the discount

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discount of 1 percent of the annual tax bill converts to approximately a 4 percent annualized return; a 5 percent discount converts to approximately a 23 percent annualized return.

Several commenters commented on the extent of the problem. Two consumers from New York asserted that borrowers whose servicers switched from installments to annual disbursements were adversely impacted. One, a senior citizen, explained that she and her husband were required by their servicer either to make a lump sum payment of almost $1,500 with a monthly increase of over $150 or no lump sum payment but a monthly increase of over $200, to obtain a discount of only 1 percent. Another reported that his mortgage payment was increased over $100 for a mere $8 discount for annual tax payments.

Other commenters, however, challenged the Department's perspective that the issue of Annual vs. Installment Disbursements was a problem in need of fixing. Some questioned the Department's evidence that there was a problem. One bank expressed doubt about how many borrowers were actually affected, and to what extent, by the 1994–1995 escrow rules, indicating that the impact of the rule change had already been absorbed. Four originators/servicers, including Citicorp and First American Real Estate Tax Service, Inc., a large tax service, specifically asserted that there was no current problem. Citicorp asserted that there were few problems with the existing rule for borrowers or industry and that it was premature to change the 1994–1995 escrow rules until there was more experience operating under it. Citicorp recommended waiting until 1998 to make further changes. Ten commenters in the origination and servicing industry, including NationsBank and GE Capital, as well as the Mortgage Bankers Association (MBA), also asserted that the impact of the 1994–1995 escrow rules had already been absorbed, and any impacts on consumers with existing loans had already taken place.

Most of the commenters commented on one or more of the specific alternative proposals for addressing the problem.[13] The overwhelming majority of originators, servicers, and mortgage brokers opposed Consumer Choice; there was some division of opinion on what alternative approach to take. A modified version of the "Keep But Clarify Current Requirements" alternative garnered the most consistent support; the modification was that the restriction on servicers switching disbursement methods when servicing is transferred be eliminated. Opinion was fairly evenly divided on the merits of the "Servicer Flexibility" alternative.

1. Comments on Consumer Choice Alternative

Only seven commenters supported Consumer Choice. The California Association of Realtors (CAR) specifically supported applying the Consumer Choice option to new loans as well as existing loans. CAR commented that the benefits would outweigh the marginal costs and that it favored approaches that provide consumers with as much information as possible and the opportunity, when fully informed, to make choices about the servicing of their loans and the related impound/escrow accounting. The CAR added that if the consumer failed to make a choice, disbursements should be made on an installment basis.

Two comments from elected officials, one from Representative Peter King of New York and one joint letter from Senator Alphonse D'Amato, Representative King, and Representative Dan Frisa also endorsed the Consumer Choice approach, focusing on its application to existing loans. Both letters expressed deep concern for homeowners who were negatively impacted when servicers switched disbursement methods and urged the Department to allow homeowners to have the choice to return to their prior disbursement method. Representative King's letter stated that consumers, not financial institutions, will be able to determine which method of tax payment is best for them and that allowing such a choice would further the goals of RESPA. Senator D'Amato's letter stated that ideally homeowners should be given the option to return to their previous disbursement methods with the excess of any escrow accounts returned and, at a minimum, their servicers must inquire as to the homeowners' preference.

Four homeowners in New York advocated allowing homeowners to have the right to decide whether they wish to forego a discount for annual disbursements and instead have their taxes disbursed in installments. All focused on the benefits of applying Consumer Choice to existing loans, complaining that they were left with a shortage in their account and suffered severe financial hardship trying to make up the shortage when their servicers switched disbursement methods.

In addition, one federal credit union's comments gave tepid support to the Consumer Choice option if it were limited to new loans. The credit union indicated that offering the choice to new loans would only entail the burden of preparing and explaining the form. It indicated, however, that for existing loans Consumer Choice would be costly in terms of staff, time, and the mailing of the selection format, and would be confusing to borrowers. The credit union also indicated that since borrowers could refinance anyway, there was no apparent need to offer existing borrowers a choice.

In contrast, 107 commenters opposed the adoption of Consumer Choice (91 originators/servicers, 11 trade associations, 3 tax services, 2 financial software companies, and 1 person whose professional interest was not known). Only one commenter, a credit union, appeared to limit its opposition to the Consumer Choice alternative to its application to existing loans. All of the other commenters appeared to oppose the application of Consumer Choice regardless of whether it extended to both new and existing loans, or only to new loans.

Most commenters did not separate out their objections to Consumer Choice as it would apply to new loans as opposed to existing loans. Whether the commenters separated out their objections or not did not affect the objections raised. Accordingly, all objections are discussed together below, with an indication, as applicable, if an objection was raised specifically in one context as opposed to another.

The most common objections made by commenters were:

1. It would cause miscellaneous or general increases in costs and/or administrative burdens, such as costs and burdens relating to originating or servicing (64 commenters—60 originators/servicers, 3 trade associations, 1 tax service).

2. They were concerned about the specific costs and burdens of consumer disclosure, including producing and mailing disclosures, soliciting preferences, processing disclosures, tracking selection, and maintaining information on selection (50 commenters—45 originators/servicers, 4 trade associations, 1 financial software company) or opposed the addition of a new disclosure in general (8 commenters—6 originators/servicers, 1 financial software company, 1 person of unknown professional interest).

3. It would require more customer service to explain choices and answer questions for consumers, which would raise costs, workload, and require more staff (46 commenters—41 originators/servicers, 4 trade associations, 1 financial software company).

4. The cost would be passed on to consumers (44 commenters—35 originators/servicers, 6 trade associations, 2 tax services, 1 financial software company).

5. They did not want to make the system and programming changes, acquire the new software, or incur the expense of additional programming that would be needed (38 commenters—32 originators/servicers, 3 trade associations, 2 financial software companies, 1 tax service).

6. It would cause consumer confusion and consumers would not be able to make an educated choice (30 commenters—25 originators/servicers, 3 trade associations, 1 financial software company, 1 person of unknown professional interest).

7. They did not want to have to maintain two, or possibly many more, different disbursement systems for every taxing jurisdiction where they service loans (24 commenters—18 originators/servicers, 5 trade associations, 1 tax service).

8. It would lead to more errors and could result in missed payments and interest and penalties (24 commenters—21 originators/servicers, 1 trade association, 1 tax service, 1 financial software company).

9. It would create hardship for taxing authorities (18 commenters), such as increased administrative costs/burden and workload due to lack of uniformity and similar factors (12 originators/servicers), unexpected shortfalls in tax receipts (8 commenters—7 originators/servicers, 1 trade association), and unspecified or miscellaneous difficulties (2 originators/servicers).

10. It would require additional training of staff (8 commenters—7 originators/servicers, 1 trade association) or require additional staff and/or staff time for processing (13 commenters—12 originators/servicers, 1 trade association).

11. It would result in impossibilities and impracticalities (15 commenters) including that computer and other systems could not handle Consumer Choice (6 commenters—5 originators/servicers, 1 trade association).

12. It would increase the need for manual processing or interfere with technological advances (12 commenters—10 originators/servicers, 1 tax service, 1 financial software company).

13. It would be less efficient (11 commenters—10 originators/servicers, 1 trade association).

14. It would result in a loss of uniformity (10 commenters—9 originators/servicers, 1 trade association).

In addition, several commenters indicated that several aspects of the Consumer Choice alternative in the proposed rule were unclear and required further clarification. For example, eight originators/servicers and a trade association indicated that the proposed rule was not sufficiently clear about what would happen if the customer did not return the format or how a servicer should document that a borrower made no selection. Several commenters recommended that if the Department were to proceed with Consumer Choice, it should make variations of one type or another from the way in which it was proposed.

In its proposed rule, the Department asked Question 4, which was designed to learn more about the potential impact on servicers of requiring them to provide borrowers with a one-time choice at closing as opposed to allowing borrowers to switch disbursement methods during the life of the loan. The answers received to this question substantially overlapped with the comments discussed above regarding the benefits and disadvantages of Consumer Choice.

Twenty-eight commenters (24 originators/servicers, 3 trade associations, 1 tax service) explicitly indicated in their responses to this question that not even a one-time choice should be provided to consumers, but that if the Department chose the Consumer Choice alternative anyway, it should be limited to a one-time choice. This view was implicit in the comments of several others. Among the drawbacks cited for providing more than a one-time choice were the following:

1. It would increase the burden if servicers needed to make constant changes (nine commenters—eight originators/servicers, one trade association).

2. It would result in higher costs (eight commenters—seven originators/servicers, one tax service).

3. It would lead to more errors, confusion, uncertainty and/or noncompliance (seven commenters—five originators/servicers, one trade association).

4. It would be impossible, impractical, or unfair (five originators/servicers).

In its proposed rule, the Department also asked three related questions (Questions 2, 5, and 11) that were designed to elicit responses as to whether, in general, the approach in the final rule should make a distinction between loans that settle before the effective date of a final rule and loans that settle on or after the effective date. While the Department posed the questions so as to be applicable regardless of which alternative was selected, virtually all who answered the questions did so in the context of applying Consumer Choice. The answers received to these questions substantially overlapped each other, as well as overlapping with the comments received on Consumer Choice, and thus are discussed together here.

Fourteen commenters—twelve originators/servicers and two trade associations—emphasized the drawbacks to applying new rules to existing loans, as opposed to only applying it to new loans. The drawbacks to applying consumer choice to all loans included: (1) it would be more costly/burdensome to apply to all (eight commenters); (2) it may result in shortages (two commenters); and (3) it would cause more confusion, disruption, and/or chance for error (two commenters).

In contrast, 13 commenters—11 originators/servicers, 1 trade association, and 1 financial software company—emphasized the drawbacks to trying to apply new rules only to new loans, thereby requiring maintaining separate rules for a portion of their portfolio. These commenters either supported or leaned toward uniform treatment of all loans, some with mixed feelings about the significant burdens it would impose to apply a change to existing loans. The drawbacks cited

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applies to the entire bill. Otherwise, half of the bill is due on January 1 and half is due on July 1.

[13] In contrast, one commenter, a Wisconsin bank holding company, seemed to question the Department's legal authority to propose any solution to the problem. The commenter asserted that the Department can prohibit over-escrowing and pre-accrual or other servicer practices "that require borrowers to have more than the amount of the projected property tax plus the permissible cushion in the escrow account before the tax lien attaches, but it was not the purpose of Congress that RESPA limit a lender's right to keep mortgaged property free of liens, and the authority of the Department to interpret RESPA so as to do so is questionable." The commenter criticized any proposal that would establish detailed rules regarding when servicer may disburse funds to pay property taxes after the tax lien has attached to the property.

This objection seems to raise an issue that was settled in the May 1995 rule, which elevated cash flow over lien priority. The Department has clear legal authority to address the matter of disbursements, as part of the Secretary's rulemaking authority pursuant to section 19(a) of RESPA (12 U.S.C. 2617) to interpret RESPA, including section 10 and section 6(g). Section 10(a) requires that disbursements be made in accordance with prudent lending practice. Section 10(a)(2) prohibits lenders from requiring consumers to deposit in escrow accounts more than one-twelfth of the total amount of the estimated taxes, insurance premiums and other charges which are "reasonably anticipated" to be paid on dates during the ensuing twelve months plus a cushion. Section 6(g) requires that disbursements be made as payments become due. By promulgating a rule to address the Annual vs. Installments Disbursement problem, the Department would be acting appropriately under one or more of these statutory provisions.

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included: (1) the need for uniformity and consistency (five commenters); (2) it would be costly and burdensome to distinguish (four commenters); (3) it would result in more borrower confusion or dissatisfaction (three commenters); (4) taxing authorities could not gauge the number and amount of tax payments (two commenters); and (5) more errors would result.

Finally, in the proposed rule the Department asked Question 10, which was designed to elicit comments on whether the Department should apply a Consumer Choice approach to other escrow items for which a choice between installments and annual disbursements may be offered. No commenter gave a clear answer that supported applying a consumer's choice to other escrow items. In contrast, 27 commenters (23 originators/servicers and 3 trade associations) opposed extending a consumer's choice to other escrow items. The reasons given for opposing such an approach included the following:

1. Additional costs and burdens would result (e.g., insurance companies impose a service charge for installment payments and this would be passed on to consumer) (19 commenters—17 originators/servicers, 2 trade associations).

2. There would be no benefit to consumers (e.g., taxes are the largest item so the savings from installments will be negligible) (10 commenters—9 originators/servicers and 1 trade association).

3. More errors, customer dissatisfaction, and customer confusion would result (six commenters—five originators/servicers and one trade association).

2. Comments on Servicer Flexibility Alternative

Twenty-five commenters—18 originators/servicers, 5 trade associations, 1 tax service, and 1 financial software company—supported Servicer Flexibility. Eight of these commenters (seven originators/servicers and one financial software company) who otherwise supported Servicer Flexibility, however, did not support the aspect of Servicer Flexibility that would have included restrictions on changing disbursement methods when servicing rights were transferred. Indeed, two of these originators/servicers made a special point of indicating that they would not support Servicer Flexibility if it included that element.

The most common reasons for supporting Servicer Flexibility included:

1. It would be flexible (six commenters—three originators/servicers, three trade associations).

2. It would be easy to administer and cause little disruption (five commenters—two originators/servicers, two trade associations, one financial software company).

3. It would not be costly (four originators/servicers).

4. The lender/servicer is likely to do what is in the consumer's interest anyway; Servicer Flexibility would allow servicers to accommodate borrowers (four commenters—two originators/servicers, two trade associations).

In contrast, 19 commenters—14 originators/servicers, 4 trade associations, and 1 tax service—opposed Servicer Flexibility. The reasons for opposing Servicer Flexibility included:

1. It would not create a system that is uniform, standardized, consistent, or certain; there would still be no clarity (12 commenters—9 originators/servicers, 2 trade associations, 1 tax service).

2. The restriction on changing disbursement methods when there is a transfer of servicing or reasons related thereto was objectionable (five commenters—three originators/servicers, one trade association, one tax service).

3. Increased costs would result (five commenters—four originators/servicers, one trade association).

4. It might not result in the best method for consumers (two originators/servicers, one trade association) and litigation would result (two originators/servicers).

In addition, one federal credit union suggested that the Department adopt a variation on Servicer Flexibility under which the servicer should notify the borrower when the disbursement method is being changed, changing should be limited to when it benefits the borrower (such as taking advantage of a sufficient discount), and the annual statement could be used to inform the borrower of the method used.

3. Comments on Keep, But Clarify, Current Requirements Alternative

Sixty-five commenters—58 originators/servicers, 4 trade associations, 1 tax service, 1 financial software company, and 1 State lending agency—supported the Keep, But Clarify, Current Requirements alternative. Six other commenters (two originators/servicers, three trade associations, and one tax service) indicated it was their second choice. Forty-eight of the commenters who otherwise supported Keep, But Clarify, Current Requirements as either their first or second choice (46 originators/servicers, 1 trade association, and 1 State lending agency), did not support the aspect of this alternative that would include restrictions on changing disbursement methods when servicing rights were transferred. Indeed, 30 of these commenters specifically emphasized their objection to this aspect of this alternative in discussing the support they otherwise would give to it.

The reasons given by those who supported Keep, But Clarify, Current Requirements as their first choice were substantially the same as the reasons given by the three originators/servicers who indicated it was their second choice. The most common reasons of both groups of commenters included:

1. It would be good for consumers for miscellaneous or unspecified reasons (26 commenters—24 originators/servicers, 1 State lending agency, 1 financial software company) or because it would be flexible and allow accommodating customers (8 commenters—5 originators/servicers, 3 trade associations).

2. It would cause little disruption, would not be burdensome, would not require much change, and would be efficient (11 commenters—8 originators/servicers, 2 trade associations, 1 State lending agency).

3. It would not be costly and any costs associated with it would be within an acceptable range (eight commenters—six originators/servicers, two trade associations).

4. It would be a balanced, sensible, practical compromise (six commenters—five originators/servicers, one trade association)

5. It was favored but no specific reason was given (20 commenters—17 originators/servicers, 2 trade associations, 1 tax service).

In contrast, eight originators/servicers and two trade associations opposed Keep, But Clarify, Current Requirements. The most common reasons given for opposing it included the following:

1. It would not standardize the industry (two originators/servicers).

2. It would be unclear, vague, and not specific (two originators/servicers).

3. It would be bad for consumers (e.g., consumer dissatisfaction, confusion, disruption, loss of tax deduction) (two originators/servicers, one trade association).

4. It would be objectionable because of the restriction on switching disbursement methods when there is a transfer of servicing (two commenters—one originator/servicer, one trade association).

Several commenters recommended variations on Keep, But Clarify, Current Requirements such as requiring installments unless there is a discount for annual disbursements, in which case making annual disbursements mandatory to get the discount instead of optional for servicer. Other commenters encouraged the Department to consider other approaches, such as making no changes at all to address this problem.

4. Comments on Proposed Rule Provision Prohibiting Switching Disbursement Methods Without Borrower's Consent

Only seven commenters supported, in any context, prohibiting a servicer or transferor servicer from changing the disbursement method, as long as a choice exists, without the borrower's prior written consent. Two appeared to support it as a general proposition regardless of the alternative selected. One was Senator D'Amato, who asserted that changes without the borrower's approval "have been the primary culprit in the unfair treatment which mortgage lenders have imposed on the homeowners of Long Island, chiefly by requiring hundreds of dollars per month from homeowners in escrow payments in order to take advantage of minuscule discounts through the payment of local taxes on an annual basis." The other was a federal savings bank, which gave no specific reasons other than suggesting it would be less complicated to do so.

One servicer indicated that if Servicer Flexibility were adopted, it would be logical to prohibit subsequent servicers from changing the disbursement method without the borrower's written consent. This commenter stated that it understands the need to get the borrower's consent before changing the method of tax disbursements when servicing is transferred.

Were the Department to adopt the alternative of Keep, But Clarify, Current Requirements, three commenters supported the restriction. America's Community Bankers (ACB) supported the restriction, so long as the disbursement method continues to be offered by the taxing authority. A large bank with a mortgage lending subsidiary endorsed allowing servicers and subsequent servicers to change the disbursement method only to bring the escrow account into compliance with RESPA under a revised interpretation by the Department. One other servicer commented that requiring the same disbursement date when servicing is transferred is beneficial in that it protects against payment shock for borrowers.

In contrast, 71 commenters opposed the restriction. Fifty-seven of those who opposed it (including 21 originators/servicers submitting the same form letter) discussed their opposition as a general objection applicable to whichever of the three alternatives for addressing the Annual vs. Installment Disbursements problem might be adopted. These 57 included 51 originators/servicers, 4 trade associations, a State lending agency, and a financial software company. Fourteen expressed their opposition in connection with one or more of the specific alternative solutions proposed, but none of these commenters either stated or suggested that the proposal would be acceptable in the context of a different alternative being adopted. Since the objections were consistent regardless of whether expressed in connection with one or all alternatives, all the comments on this issue are discussed in this section. One servicer specifically said that it opposed all the alternatives presented in the proposed rule because of this common feature.

The arguments against including the restriction in the final rule primarily focused on the way in which such a restriction would impair the value of servicing rights and the costs and administrative burdens associated with the restriction. Many of the arguments against the restriction overlapped each other. The most common reasons given included that:

1. It would result in a variety of miscellaneous administrative burdens (35 commenters—34 originators/servicers and 1 trade association).

2. It would increase costs for servicers, such as system and processing changes including computer system changes and the burden on the due diligence process (14 commenters—12 originators/servicers and 2 trade associations) and would increase costs to consumers (6 commenters—4 originators/servicers and 2 trade associations).

3. The restriction would impair the value of servicing rights (13 commenters—10 originators/servicers, 2 trade associations, 1 State lending agency), such as by creating inefficiency and increased cost (3 originators/servicers, 1 trade association).

4. As the restriction applies to the Keep, But Clarify, Current Requirements alternative, it would be a new requirement, rather than a clarification of an existing requirement (seven commenters—six originators/servicers and one trade association).

5. It would result in a variety of practical difficulties or impossibilities (six commenters—five originators/servicers and one trade association).

6. It would reduce the number of sales and transfers of servicing rights (five commenters—four originators/servicers and one trade association).

7. No problem exists that needs to be fixed by such a restriction (five originators/servicers).

In addition, three commenters (two originators/servicers, one trade association) indicated their belief that the Department would lack legal authority to mandate such a restriction. Three originators/servicers requested that the Department clarify certain points pertaining to this restriction.

Six commenters proposed variations on the restriction. Three commenters supported limiting the ability of the acquiring servicer to change the disbursement method to particular types of situations. One federal credit union indicated that it supported restricting a servicer acquiring servicing rights from changing disbursement methods unless the change would benefit the borrower, but gave no details on how to apply such a standard. The Georgia Housing and Finance Administration favored limiting servicers from making changes to the disbursements method to situations involving transfers of servicing, borrower hardships, taxing authority changes, system conversion, and other major organizational changes. GE Capital asked the Department to allow a change in disbursement dates or methods after a transfer of servicing if the dates are incorrect or the methodology is not available to the new servicer. Three mortgage companies suggested that servicers should simply include in the letter notifying the consumer of a transfer of servicing what disbursement method will be used, prior to making the change.

B. Approach Adopted in Today's Final Rule

Having carefully analyzed the comments received, the Department has decided to adopt, with modifications, the Keep, But Clarify, Current Requirements alternative. The Department is revising the rule to provide that servicers must make timely payments, that is, on or before the deadline to avoid a penalty, and advance funds as necessary, so long as the borrower's payment is not more than 30 days overdue. The rule also provides special requirements for property taxes when the taxing jurisdiction offers the servicer a choice between annual disbursements with a discount and installment disbursements. In such

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cases, if the taxing jurisdiction neither offers a discount for disbursements on a lump sum annual basis nor imposes any additional charge or fee for installment disbursements, the servicer must make disbursements on an installment basis, unless the servicer and borrower agree otherwise. If, however, the taxing jurisdiction offers a discount for disbursements on a lump sum annual basis or imposes any additional charge or fee for installment disbursements, the servicer may, at the servicer's discretion (but is not required by RESPA to), make lump sum annual disbursements, as long as such method of disbursement complies with the requirements of § 3500.17 (k)(1) and (k)(2) of this rule. HUD encourages, but does not require, the servicer to follow the preference of the borrower, if such preference is known to the servicer.

This final rule also incorporates into the regulations a provision that the servicer and borrower may mutually agree, on an individual case basis, to a different disbursement basis (installment or annual) or disbursement dates, than the rule would otherwise require. This provision is consistent with, but more expansive than, the statement contained in the discussion in the preamble to the Department's May 9, 1995 rule (60 FR 24734), which indicated that such agreements were allowed after settlement only. At the time the preamble to the May 1995 rule was written, the Department felt that the concern for borrower coercion was so great as to make it necessary to limit agreements concerning disbursement dates to the period after settlement, when the likelihood of coercion was reduced. The Department understands, however, that allowing such agreements only after settlement discourages them, since it is more burdensome to change the disbursement basis or date after settlement than to set up the account from the start in a way that is mutually agreeable to the borrower and servicer.

This final rule emphasizes that these agreements must be completely voluntary and that neither loan approval nor any term of the loan may be conditioned on the borrower's agreeing to a different disbursement basis or disbursement date for property taxes. The rule does, however, allow such agreements to be made prior to settlement, thereby avoiding the need to make postsettlement changes in the disbursement basis or dates when such an agreement is reached before settlement. This rule also clarifies that whatever the borrower and servicer agree to must avoid a penalty, comply with normal lending practice of the lender and local custom, and constitute prudent lending practice. This new provision provides flexibility. It allows the parties to agree, for example, to annual disbursements of property taxes even if there is no discount where an installment option is offered.

This final rule departs from Keep, But Clarify, Current Requirements as articulated in the proposed rule in that, under this final rule, the only specific requirements for choosing between annual and installment disbursements pertain to property taxes, not other escrow items. The reason the Department distinguishes property taxes from other escrow items is that the concerns that have been raised to the Department on the Annual vs. Installment Disbursement issue have been limited to property taxes. For most consumers, property taxes are much larger than hazard insurance and other escrow items.

This final rule also departs from Keep, But Clarify, Current Requirements as articulated in the proposed rule in that, for the reasons discussed in Part V(D)(3) of this preamble below, it does not adopt the restriction in the proposed rule that a servicer and subsequent servicers would be prohibited from changing the method of disbursement without the borrower's prior written consent, as long as a choice continues to exist in the taxing jurisdiction.

Finally, the final rule adds a definition of "penalty" to the definitions in § 3500.17. This definition clarifies that a penalty means a late charge imposed for paying after the disbursement is due. It does not include any additional charge or fee associated with choosing installment disbursements as opposed to annual disbursements or for choosing one installment plan over another. In comments on the proposed rule, four originators/servicers and one tax service commented that the proposed rule had been unclear whether a service fee levied on installment disbursements is regarded as a penalty. These commenters took the position that the servicers may or must use annual disbursements to avoid a penalty (service charge, interest payment, or other fee) for paying in installments, not just to take advantage of a discount available for annual disbursements. One of these commenters questioned whether the existence of a service charge for installment disbursements makes an annual disbursement plan without such a service charge the equivalent of a discount.

Notwithstanding these comments, the Department believes the better approach is not to regard a service charge, interest payment, or other fee associated with choosing installment disbursements as opposed to annual disbursements as a penalty to be avoided. Rather, if a service charge, interest payment, or other fee is imposed for choosing installment disbursements as opposed to annual disbursements, the ability to avoid them by paying annually creates, in essence, a discount for annual disbursements. With respect to disbursements for property taxes, once the choice is viewed as between annual disbursements at a discount and installment disbursements, in accordance with this rule, the servicer may, but is not required by RESPA to,[14] pay annually. Thus, for property taxes, the servicer may choose to disburse the property taxes in installments and incur the service charge, interest payment, or other fee associated with choosing installment disbursements, or may avoid them by disbursing annually. The servicer is encouraged, but not required, to follow the preference of the borrower.[15]

Stated in other terms, for property taxes, the servicer should add up the total payments associated with disbursing annually and compare that amount to the total payments associated with disbursing in installments. In making those calculations, the servicer should take into account any applicable discounts or service charges. If the total amount associated with disbursing property taxes annually is greater than or equal to the total amount associated with disbursing in installments, the servicer must disburse the property taxes in installments, except when the servicer and borrower mutually agree otherwise. If, however, the total amount for disbursing the property taxes in installments is greater than the total amount for disbursing them annually, the servicer may, but is not required by RESPA to, disburse them annually. The servicer is encouraged, but not required, to follow the preference of the borrower.

C. Basis for Approach Adopted

The preamble to the proposed rule indicated that the Department believed the advantage of Keep, But Clarify, Current Requirements would be that, like Servicer Flexibility, it would provide flexibility to servicers. It would also allow servicers to accommodate borrowers with a particular preference.

[14] The caveat, "by RESPA," is designed to allow for the possibility that State law could require annual disbursements.

[15] For other escrow items, the servicer may disburse annually or in installments, so long as the method avoids a penalty and the disbursement basis and disbursement date complies with the normal lending practice of the lender and local custom, and constitutes prudent lending practice.

To the extent that the Department thought Keep, But Clarify, Current Requirements had a potential drawback, it was that it would not guarantee that servicers would accommodate the preferences of individual borrowers, providing less choice for borrowers.

The comments received served to confirm the Department's belief that Keep, But Clarify, Current Requirements, with some modifications, is a workable solution to this problem. Commenters noted many positive reasons for choosing this alternative. The Department is persuaded that, on balance, it is the best approach for meeting consumers' needs and balancing those against the valid concerns of the industry. Such an approach will cause the least disruption and burden and will be the least costly approach, yet it is sufficiently flexible to accommodate the preferences of individual consumers.

By clarifying the regulations in a way that allows more flexibility for servicers and consumers, the Department intends to encourage more servicers to adopt the types of best practices that some servicers are already using that ensure flexibility for consumers. These best practices to address the Annual vs. Installment Disbursements problem include:

- Disbursing property taxes in installments unless a discount is offered for annual disbursements that the servicer, based on its best business judgment, believes is a large enough discount to be in the borrower's interest, in which case the servicer makes disbursements annually.
- Accommodating individual borrowers by switching borrowers who complain to whichever method they prefer for the disbursement of property taxes.

These two practices are examples of the types of best practices that some originators/servicers in the industry are using today, even without a Government requirement. The Department would encourage servicers to adopt these practices so that they will become more widespread.

In contrast, the Department intends to discourage practices that do not provide as much flexibility for the consumer. These include:

- If a choice between annual disbursements with a discount or installment disbursements is offered, always disbursing annually regardless of how insignificant the discount may be and despite the consumer's stated preference for installment disbursements.
- If a choice between annual disbursements or installment disbursements with an additional charge or fee for installment disbursements is offered, always disbursing annually regardless of how insignificant the charge or fee for installment disbursements may be and despite the consumer's stated preference for installment disbursements.

The Department intends that the revisions made in this final rule clarify that these two inflexible practices were not, and are not, compelled by the Department; the Department does not in any way mandate such practices. The Department encourages servicers to use practices that are more consumer friendly.

D. Basis for Rejecting Alternative Approaches

1. Rejection of Consumer Choice Alternative

The preamble to the proposed rule indicated that this approach would provide the greatest flexibility to the borrower. However, the Department also noted that it could impose higher costs on servicers. The Department observed that servicers would likely need two different disbursement systems to reflect the disbursement preferences of borrowers.

While the Department believes that it would have legal authority to impose Consumer Choice as part of the Secretary's rulemaking authority, it has decided not to do so. The Department is persuaded that the types of costs and burdens associated with such an approach are unwarranted at this time. The cost of implementing Consumer Choice with respect to disbursing property taxes on an installment or annual basis would be substantial according to most of the comments received on this issue. New software and operating procedures would have to be developed for originators and all those involved in servicing. Some efficiencies would be lost as multiple processes were employed for making disbursements to taxing authorities, when only one process had been followed before.

Additionally, the Department gathered information from members of the servicing industry on the cost of the Consumer Choice alternative. The Department believes that the cost per account subject to Consumer Choice would be significant, even under a very simple system subject to the following assumptions: (1) a choice would only be permitted at origination with no provisions for the consumer to opt to change the disbursement method later and (2) little in terms of disclosure to the consumer would be provided other than notifying the consumer that a one-time choice at origination was permitted. To the extent that the disclosure required more information or the consumer could opt to change the disbursement method during the life of the loan, the costs would be greater.

The additional costs of consumer choice could be justified if there were commensurate benefits to consumers. But the vast majority of consumer complaints concerning the disbursement method arose out of the transition associated with the 1994–1995 escrow rules. These were one-time, as opposed to ongoing, problems. Complaints about this problem have recently become rare.

Given that the transition associated with the 1994–1995 escrow rules is almost complete and that this transition has been the source of essentially all the complaints concerning the Annual vs. Installment Disbursements problem, the Department believes that only a small percentage of consumers would benefit from the Consumer Choice alternative. It is not anticipated that the benefits to the few who would choose a basis other than what the servicer would choose under the rule would exceed the costs associated with that option. Since it is consumers who would probably bear the additional costs of providing choice, the Department does not believe it is in the consumers' overall best interest to require consumer choice.

The Department was also influenced by the lack of consensus among the commenters on the technical details of the Consumer Choice alternative. The Department asked several specific questions about how to implement such an option in the way least disruptive to the industry. The answers received further reflected the uncertainties and disruptions that would be created by imposing the Consumer Choice alternative and helped convince the Department that such an approach is not feasible. Since the Department is not adopting the Consumer Choice alternative in this final rule, the responses received to a number of the questions raised in the proposed rule do not merit detailed discussion, but a brief summary of the comments in response to these questions is provided below to convey the divergent opinions on this subject.

1. The Department asked Question 7, which was designed to elicit comments on when the appropriate time would be for the originator or servicer to provide the borrower the disclosure, if the Consumer Choice alternative were to be adopted. The commenters were fairly evenly divided on whether the disclosure should be provided and the

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selection made before closing but after underwriting or before underwriting. Thirteen commenters simply indicated sometime before closing, whereas 12 commenters indicated it would have to be before underwriting. Seven commenters specifically indicated that the selection would affect underwriting, whereas three commenters specifically indicated that the selection should not affect underwriting.

2. The Department asked Question 8, which was designed to elicit comments about whether the Department should prescribe a disclosure format if an approach were adopted in which the borrower's preference for installments or annual disbursements were controlling. There was general agreement that the Department should prescribe the format (20 commenters supporting prescribing it, with only 4 opposed). However, there was disagreement over what the disclosure should say. Six commenters supported the disclosure the Department had proposed, if one was to be mandated. Seven commenters, however, said it was too confusing and/or unclear. Four criticized it for containing too much information or being overwhelming whereas, two criticized it for not including enough information.

3. The Department asked Question 9, which inquired what period of time would be needed for servicers to be able to implement the Consumer Choice alternative. Four commenters said it could be implemented in less than 12 months, 9 commenters indicated 12 months or more, 2 commenters said 18 to 24 months, and 4 commenters estimated it would take 24 months.

2. Rejection of Servicer Flexibility Alternative

The preamble to the proposed rule explained that the Department perceived this alternative as being the least intrusive regulatory approach for the Department to take and providing the greatest flexibility to servicers, while leaving servicers free to accommodate borrowers with a particular preference, as long as the borrowers' preferences were in accordance with the normal lending practice of the lender and local custom and constituted prudent lending practice. The Department noted that the disadvantage of this alternative is that it would not guarantee that servicers would accommodate the preferences of individual borrowers and, therefore, it provided less choice for borrowers.

The Department has decided not to adopt the Servicer Flexibility alternative. Most commenters did not favor such an approach. The Department decided that there is no reason to adopt this approach and that it would not necessarily be best for the consumer.

3. Rejection of Prohibiting Switching Disbursement Methods Without Borrower's Consent

While the Department would have legal authority to impose a restriction against switching disbursement methods without the borrower's consent as part of the Secretary's rulemaking authority, it has decided not to do so. The types of costs and burdens associated with such a restriction are unwarranted. Therefore, this final rule does not contain this restriction as part of the approach adopted.

E. Clarifications

In issuing this final rule, the Department wishes to address several questions from commenters that will clarify the rule.

1. Selecting From Among Various Installment Plans Offered

Several commenters requested clarification of the servicer's obligations when a taxing authority offers several different installment plans. In such circumstances, the Department encourages the servicer to use the installment plan that results in the lowest closing costs for the consumer. However, the servicer is free to make disbursements according to any installment plan offered by the taxing jurisdiction so long as the selection complies with the normal lending practice of the lender and local custom, and the installment plan selected constitutes prudent lending practice. The servicer may also make disbursements according to any installment plan offered by the taxing jurisdiction to which the servicer and borrower may mutually agree, on an individual case basis.

2. The Size of the Discount Does Not Matter

One mortgage company commented that the Department should make the application of the Keep, But Clarify, Current Requirements approach more consistent by establishing a guideline on when to switch to annual disbursements to take advantage of a discount. One tax service indicated that when the payee offers a choice between installments and annual disbursements at a discount, the Department should either require maximum discounts be taken or set a threshold and require the servicer to disburse to obtain any maximum discount meeting or exceeding that minimum.

In its proposed rule, the Department asked Question 6, which specifically solicited comments on whether the size of an available discount should matter and, if so, how. Fifteen commenters—11 originators/servicers, 1 trade association, 2 tax services, and 1 financial software company—indicated that the size of the discount should make a difference under the rule in some fashion. Eight commenters indicated that the rule should provide that if the discount offered meets a Department-determined threshold, the servicer must disburse annually to obtain the discount. Three commenters indicated that the rule should provide that the servicer is free to decide if the discount is large enough to make it worthwhile to make disbursements in such a way as to collect the discount.

Among those who favored making the size of the discount matter under the rule, there was no agreement on the best approach to setting the discount threshold that would trigger application of one rule or another. Five commenters opposed tying the discount threshold to a market rate, while only one supported this approach. Five commenters favored, but two commenters opposed, a "reasonable servicer" standard. One large tax service commented that not just the size of the discount, but several other factors, affect the value of the discount to the consumer, such as the rate of interest (if any) paid on escrow accounts, market interest rates, and the borrower's income tax rate.

In contrast, 16 commenters—15 originators/servicers and 1 trade association—indicated that the size of the discount should not make a difference under the rule. These commenters indicated that such consideration would present an additional burden and cost to calculate the size of the discount and that discounts are beneficial to the consumer regardless of the size.

The Department has not adopted the approach of making the size of the discount a determinative factor in which disbursement method the servicer should use. There is no apparent way to arrive at a reasonable and acceptable guideline. Rather, the Department's approach in this rule allows latitude to the servicer, while encouraging the servicer to follow the preference of the borrower.

3. Application of Rule to Other Escrow Items

Two originators/servicers commented that this rule should clarify that the Department's policy of favoring installments only applies to taxes, not other escrow items such as hazard insurance. One of these commenters added that this rule should clarify: (1) that servicers should disburse mortgage insurance payments monthly or annually; and (2) that hazard insurance payments should be disbursed annually or as billed by the insurer, and if discounts are available for annual disbursements it should be disbursed annually.

Under this final rule, the only specific requirements for choosing between annual and installment disbursements pertain to property taxes, not other escrow items such as hazard insurance. For escrow items other than property taxes, if a payee offers a servicer a choice between installment or annual disbursements, the servicer is required to make disbursements by a date that avoids a penalty. The servicer, however, is otherwise free to make disbursements on such disbursement basis (annual or installments) and disbursement date as complies with the normal lending practice of the lender and local custom, provided that the selection of each such basis and date constitutes prudent lending practice. The reason for distinguishing property taxes from other escrow items is explained in Part V(B) of this preamble, above.

4. No Preemption of State Law on Installment Option

Two commenters requested clarification of whether RESPA preempts State law in such a way as to require that States offer an installment payments option to servicers, or if they currently only offer that option to individual borrowers. The answer to that question is that RESPA does not so preempt State law. Whether taxing jurisdictions should make an installment option available to servicers is a matter of State law, not RESPA.

5. Disbursing Annually Instead of in Installments When There is no Discount if a Choice is Offered

One commenter, a Wisconsin bank holding company, raised a concern regarding escrow accounts in Wisconsin, stating that servicers should be able to make tax disbursements in an annual disbursement rather than installments, if a choice is offered, even if there is no discount for annual disbursements. The commenter represented that this was partly to protect the servicer's lien, which becomes effective on the first of the year in which the taxes are billed, and partly to give the borrower the benefit of tax deductions for the current year. The commenter explained that in Wisconsin, taxes are billed in November and can be paid in two installments in the following January and July. In addition, State law requires the servicer to issue a joint check to the borrower and the taxing authority by December 20, or give the borrower three options: (1) Pay in full by December 31 if the tax bill is received by December 20, (2) pay the full tax when due (January and July installments), or (3) issue a joint check to the borrower and taxing authority by December 20. If the servicer offers the three options, the servicer is required to follow the borrower's preference.

The commenter asserted that for the Department effectively to prohibit the December payment would conflict with the Department's prior guidance set forth in the preamble to the February 15, 1995 rule (60 FR 8813, second column), which specifically allowed the practice. The commenter further argued that a substantial change in interpretation would undercut servicers who relied on the Department's prior advice, would force servicers to disregard State law, and would negatively impact on borrowers' tax deductions.

In response to this and other comments, this final rule adds a provision to the regulations (§ 3500.17(k)(4)) specifying that a servicer and borrower may mutually agree, on an individual case basis, to a different disbursement basis (installment or annual) or disbursement date than that which would otherwise be prescribed under the regulations. This addition should address the commenter's concern and allow the servicer to comply with Wisconsin law.

VI. Payment Shock—Comments Received, Approach Adopted in This Final Rule, Basis for Approach Adopted, Basis for Rejecting Alternatives

A. Comments Received

Through the comments received on the proposed rule, the Department gained a better understanding of the payment shock problem. A few commenters pointed out that there could be other causes of payment shock aside from those that the Department had described in the preamble to the proposed rule. Citicorp pointed out that payment shock can also be caused by rate adjustments to Adjustable Rate Mortgages (ARMs), special tax assessments, and additional insurance coverage selected by borrowers after closing.

The Department also learned more about how servicers have been addressing the problem of payment shock. Eight originators/servicers indicated that their practice is to notify borrowers ahead of time and provide an opportunity to make voluntary payments ahead of schedule to avoid payment shock. Seven originators/servicers indicated that they offer consumers extended repayment plans, even beyond those required under RESPA, to make up shortages that result from payment shock. Nine originators/servicers indicated that they use short-year statements to minimize payment shock, a practice that also is useful. Two originators/servicers indicated that they simply notify borrowers ahead of time that payment shock may occur but do not explain how to avoid it.

The Department solicited comments to gauge the extent of the payment shock problem. Four originators/servicers and one home builder specifically commented that they agreed with the Department's assessment that payment shock is a very significant problem that needs to be addressed. One commenter estimated that roughly 50 percent of its customers experience payment shock because 30 percent of its loans are for new construction on which taxes are initially assessed on unimproved property and then reassessed for the improvements; an additional 20 percent of its loans have prepaid taxes.

The view that payment shock was a problem was implicit in the comments of several others, such as a servicer who indicated that the current regulations do not work because of difficult situations with borrowers that arise when payment shock occurs. Every commenter who stated a reason for opposing the Make No Change alternative indicated that they opposed the alternative because it would not address the payment shock problem and/or ignored that a problem exists. There were 13 commenters who made such a statement—10 originators/servicers (including 1 of the 4 mentioned above), 1 trade association, 1 tax service, and the home builder mentioned above.

Countrywide commented that payment shock is the most serious problem caused by the existing escrow accounting regulations because it leads to delinquency, hurts borrowers' credit, and may result in people losing their homes. NationsBank commented that it results in an inability to make additional payments in the second year, increases the possibility of delinquent payments, and accelerated collection proceedings, and causes consumers to lose confidence in their lending institutions. Two other originators/servicers agreed with Countrywide's assessment that the situation leads to a significant number of defaults and foreclosures. Two commenters commented that when payment shock

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occurs, borrowers unfairly blame their lenders and/or their builders and closing agents. Two commenters commented that when it happens, lenders are left having to carry shortages, sometimes for 24 to 48 months, and that this puts the lenders at risk. Countrywide indicated that it is a particularly perilous situation when two or more risk factors are present in a transaction (a condition known as "layered risk"), such as when payment shock is combined with an upward adjustment in the ARM rate.

In contrast, seven originators/servicers questioned whether payment shock was really a problem in need of fixing. A bank with a mortgage lending subsidiary commented that while many consumers fail to plan for payment shock, they are not really surprised by it and feel that the problem has nothing to do with the servicer. A rural bank commented that it is really a consumer education problem, a problem that will happen regardless of whether there is an escrow account or not. A bank holding company commented that it is not a significant problem, while a federal credit union indicated it was a very infrequent problem. One servicer requested that the Department wait until the transition period expires on the 1994–1995 escrow rules before making any further changes. Citicorp also questioned whether it is a real and on-going problem and suggested waiting until 1998 to consider new requirements.

1. Comments on Consumer Choice

Only one commenter, the California Association of Realtors (CAR), supported Consumer Choice. As with the Annual vs. Installment Disbursements problem, the CAR commented that it favored approaches that provide consumers with as much information as possible and the opportunity, when fully informed, to make choices about the servicing of their loans and the related impound/escrow accounting.

In contrast, 81 commenters opposed the adoption of Consumer Choice—66 originators/servicers, 10 trade associations, 1 tax service, 2 financial software companies, 1 builder, and 1 person of unknown professional interest. The most common reasons given included:

1. It would result in miscellaneous costs and/or administrative burdens (e.g., would increase cost of servicing or be a burden on closing, would create operational problems, would be complicated) (53 commenters—46 originators/servicers, 5 trade associations, 1 financial software company, 1 builder).

2. It would be impractical (36 commenters), for reasons such as servicers will not have or would find it difficult to get or estimate the information needed to calculate the disclosure (30 commenters—28 originators/servicers, 2 financial software companies).

3. It would necessitate more customer service to explain choices and answer questions for consumers (28 commenters—26 originators/servicers, 2 trade associations).

4. Consumer Choice would require system and programming changes and new software or additional programming (23 commenters—19 originators/servicers, 4 trade associations). Two large lenders indicated that if Consumer Choice were selected they would need in excess of 18 to 24 months from the issuance of the final rule to reprogram their computers and develop new forms and procedures.

5. The specific costs and burdens of consumer disclosure, including producing and mailing disclosures, soliciting preferences, processing disclosures, tracking selections, and maintaining information on selection should be avoided (19 commenters—12 originators/servicers, 6 trade associations, 2 financial software companies) or objections to adding a new disclosure in general (5 commenters—4 originators/servicers, 1 builder).

6. The additional cost would be passed on to consumers (21 commenters—16 originators/servicers, 3 trade associations, 1 financial software company, 1 builder).

7. It would create consumer confusion, consumers would not be able to make an educated selection, and it would impose a burden on consumers to have to make such a choice (17 commenters—11 originators/servicers, 4 trade associations, 1 financial software company, 1 builder).

8. There is no need for it (14 commenters) for reasons such that no consumer benefit or no significant consumer benefit would result (10 commenters—6 originators/servicers, 4 trade associations).

9. It would necessitate multiple sets of closing documents to accommodate possible choices or otherwise interfere with the correct preparation of closing documents (eight commenters—five originators/servicers, one trade association, one financial software company, one builder).

10. Additional training of staff would be required (eight commenters—six originators/servicers, two trade associations).

Several commenters commented specifically about the proposed prohibition against servicers switching accounting methods without the borrower's consent, which was one element of the Consumer Choice alternative. Only one commenter, GE Capital, indicated that it supported restricting changes to accounting methods when there is a transfer of servicing. GE Capital's support, however, was conditioned on the selection of the accounting method being limited to a one-time choice at closing, the selection being limited to situations involving new construction, and the regulations being clarified to provide that payments (as opposed to methodology) could be changed in the event of unanticipated changes to escrow items.

In contrast, seven commenters, including six originators/servicers and one trade association, opposed the aspect of Consumer Choice prohibiting servicers from switching escrow accounting methods. The reasons given included the following: (1) It would chill or burden sales of servicing rights (three originators/servicers, one trade association); (2) it would pose an administrative burden (two originators/servicers); and (3) it would impair value of servicing rights (two originators/servicers).

In the proposed rule, the Department asked Question 2, which was designed to elicit commenters' views on how to define a substantial increase in disbursements from an escrow account, and how mortgage servicers could go about determining whether bills paid out of escrow accounts were expected to increase substantially after the first year. Virtually all of the commenters that responded to this question focused on whether a 50 percent increase was an appropriate threshold for defining a substantial increase, as proposed.

Four commenters—three originators/servicers and one trade association—supported using 50 percent as a threshold. One bank holding company indicated that 50 percent was an appropriate threshold but that the payment shock problem should only be addressed in situations involving new construction. Most gave no reason for why they believed 50 percent was an appropriate threshold, other than that it seemed to be a reasonable approach. The National Association of Federal Credit Unions (NAFCU) indicated that the approach would avoid confusion.

In contrast, 21 commenters—17 originators/servicers, 2 trade associations, 1 financial software company, and 1 builder—opposed using 50 percent as a threshold. Many of these commenters indicated that the Department should not set any threshold for when an increase would be considered substantial, yet no commenters favored offering alternatives to borrowers whose escrow payments were not expected to increase substantially after the first year, and 16 commenters (14 originators/servicers, 2 trade associations) specifically opposed such an idea. The reasons for opposing using 50 percent as a threshold and/or opposing any Department-established threshold were similar. They included:

1. Servicers would not be able to estimate if the expected increase was within the threshold (seven comments—six originators/servicers, one trade association).

2. Even less than a 50 percent increase could be a problem for borrowers (five commenters—three originators/servicers, one financial software company, one builder).

3. It would be burdensome and/or costly to calculate if the expected increase would meet the threshold (five commenters—four originators/servicers, one trade association).

4. Servicers should be given more flexibility (two originators/servicers).

The Department also asked Questions 2 and 7, which were designed to elicit responses as to whether, if the Consumer Choice alternative were adopted, the final rule should limit a borrower's opportunity to switch escrow accounting methods. Sixteen commenters (14 originators/servicers, 1 trade association, 1 financial software company) indicated that they opposed allowing even a one-time choice to be provided to consumers, but that if the Department chose the Consumer Choice alternative anyway, it should be limited to a one-time choice, for reasons such as the additional burdens and costs more opportunities to switch would create. Several other commenters that were less clear in their dislike of the Consumer Choice alternative, nonetheless took clear positions against offering more than a one-time choice.

In contrast, only three commenters advised against having different systems for different borrowers. One based its view on the additional confusion it would create over options and management of the options. Another based its opinion on the additional complications. A third stated it would add to the programming, personal, and postage costs and create more confusion.

2. Comments on Make No Change Alternative

A total of 46 commenters supported the Make No Change alternative. Forty-two commenters—35 originators/servicers, 5 trade associations, 1 financial software company, and 1 person of unknown professional interest—supported Make No Change as proposed. The MBA and a bank and trust indicated that Make No Change was their second choice next to Mandate First Year Overpayment; NAFCU also implied it was their second choice.

Four additional commenters indicated they would support Make No Change if Variation (A) were added to it. The proposed rule described Variation (A) as follows:

(A) Require servicers to disclose to borrowers that it is anticipated that they will have a substantial payment increase in the second year, so borrowers will be less surprised when such an increase occurs, but do not require servicers to indicate specifically to borrowers methods of avoiding the shortage.

61 FR 46517.

Three of the 42 who supported the Make No Change alternative as proposed also indicated they would support Make No Change with Variation (A). In addition, two originators/servicers that recommended alternatives instead of Make No Change also indicated that as part of those approaches that it should be disclosed to the borrower that a shortage is expected, but not the amount of the expected shortage.

One commenter who otherwise supported the Make No Change alternative indicated that it was opposed to mandating any type of notice, but indicated a notice similar to Variation (A) would be less problematic than the type of disclosure that would be part of the Consumer Choice alternative. The commenter observed that any disclosure should be generic (no calculations) and advise consumers that: (1) The amount of taxes for which escrow funds are being collected is based on information available at time of closing about anticipated property taxes for next year; (2) the amount could change especially for new construction; and (3) the consumer should monitor the situation and consult a tax advisor if the amount increases substantially.

Ten other commenters—eight originators/servicers, one financial software company, one builder—specifically commented that they opposed Variation (A). The primary reasons were that it would not be effective at eliminating payment shock, and giving borrowers advance notice that a payment increase may occur should be left to the originator/servicer. The reasons the commenters gave for supporting the Make No Change alternative as their second choice were similar to the reasons other commenters gave for supporting it as their first choice. The reasons of all the commenters who supported it as their first or second choice are summarized below:

1. This approach would encourage good, voluntary practices to help customers on an individual basis (25 commenters—22 originators/servicers, 3 trade associations).

2. No change is needed because the current rule is adequate (four commenters—three originators/servicers, one financial software company).

3. It would not be disruptive (three commenters—two originators/servicers, one trade association).

4. It would allow servicers to exercise good judgment (two trade associations).

5. It would be flexible (two originators/servicers).

6. Providing consumers with a simple disclosure would give consumers information to act in their own best interest (one trade association).

In contrast, 13 commenters—10 originators/servicers, 1 trade association, 1 tax service, and 1 builder—opposed the Make No Change alternative. Each of these commenters stated that they opposed the alternative because it would not address the problem and/or ignored a problem that exists.

Other commenters supported other variations on the Make No Change alternative. Two originators/servicers supported Variation (B). Variation (B) would have required servicers to disclose to borrowers that it is anticipated that they will have a substantial payment increase in the second year, and to inform borrowers of the amount of the expected shortage at the end of the first year and of the opportunity to make additional payments to escrow ahead of schedule to avoid payment shock. On the other hand, seven commenters—five originators/servicers and two financial software companies—opposed Variation (B) for reasons such as the burdens and difficulties associated with trying to estimate the amount of a shortage that is expected to result.

In the proposed rule the Department also solicited comments on the following alternative. For each new account for which it is anticipated that there will be a substantial payment increase in the second year for one or

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more escrow items, allow the servicer, with the consent of the borrower, the option of calculating the escrow payments on a 24-month basis. This would allow the servicer to look ahead to the second year and estimate the payment that would be due, thereby mitigating the deficiency or shortage after the first year, leaving a smaller deficiency or shortage after the second year. (Using an escrow account period of more than 1 year has precedent. See the treatment of flood insurance and water purification escrow funds in § 3500.17(c)(9).) Under this option, since the amounts held in escrow would be greater than allowed under section 10 of RESPA, it would be necessary for the Secretary to invoke his exemption authority under section 19(a) of RESPA (12 U.S.C. 2617).

Only eight commenters commented on this particular approach. Five commenters supported it while three opposed it. The Department does not believe it is a superior approach to that adopted in this final rule, as discussed below.

The proposed rule also invited commenters to submit other permissible approaches under RESPA that would better serve the interests of the public and the intent of the statute, inviting commenters to submit specific regulatory language to implement their proposals. Fourteen originators/servicers and two trade associations submitted a variety of additional alternatives, none of which appear to the Department to be a superior approach to that adopted in this final rule, as discussed below.

3. Comments on Mandate First Year Overpayment Alternative

Twenty-seven commenters—21 originators/servicers, 2 trade associations, 2 financial software companies, 1 tax service, and 1 State lending agency—supported the Mandate First Year Overpayment alternative. In addition, Citicorp indicated that the Mandate First Year Overpayment alternative was its second choice to the Make No Change alternative. Bank of America indicated it was its second choice next to an alternative of its own creation, but only for new construction and situations involving special tax discounts (e.g., reduced taxes for seniors, disabled, or veterans). GE Capital indicated it was its second choice to the Make No Change alternative, but should only apply if the increase will be due to taxes being based on the land value only for the first year. If the increase will be due to items paid prior to the first payment date, GE Capital favored a different approach.

The reasons given for supporting the Mandate First Year Overpayment alternative included the following:

1. This approach would avoid payment shock best and would result in the fewest shortages (14 commenters—11 originators/servicers, 2 trade associations, 1 financial software company).

2. It would be better for consumers (12 commenters—9 originators/servicers, 2 financial software companies, 1 State lending agency).

3. It would increase consistency, standardization, and uniformity (seven commenters—three originators/servicers, one trade association, two financial software companies, one State lending agency).

4. It would require only minimal changes (four commenters—two originators/servicers, two financial software companies).

5. It would be the least costly alternative to implement (one originator/servicer, one financial software company).

6. It would be the fairest alternative (one originator/servicer, one tax service).

In contrast, 36 commenters—32 originators/servicers, 3 trade associations, and 1 person of unknown professional interest—opposed the Mandate First Year Overpayment alternative. The reasons given for opposing this alternative included the following:

1. It would not be in the consumer's interest to overpay and then money get back; this would be unfair to the borrower (10 commenters—7 originators/servicers, 2 trade associations, 1 person of unknown professional interest).

2. This alternative would be administratively burdensome or costly (e.g., having to make constant refunds and explanations to consumer) (six commenters—four originators/servicers, two trade associations).

3. It would run contrary to the Secretary's stated objectives (21 originators/servicers).

In the proposed rule, the Department proposed that as a variation on Method C, the cushion could be calculated as one-sixth of the estimated annual disbursements for the first year, instead of 2 months of the escrow payments for the first year. Two originators/servicers and a financial software company indicated that they preferred Method C to the variation. One of these commenters, a bank holding company, indicated that the variation would be more complicated for borrowers and for the industry. No commenter indicated a preference for the variation.

Commenters also suggested several additional variations on the Mandate First Year Overpayment alternative as their preferred approach, such as limiting it only to situations involving new construction (five commenters—four originators/servicers, one trade association) or offering it even when less than a 50 percent increase in disbursements were expected (four commenters—two originators/servicers, one financial software company, one builder).

B. Approach Adopted in Today's Final Rule

Based on the comments received, the Secretary has determined that there would be little value in rulemaking on the payment shock "problem." The comments, in sum, do not indicate that the "problem" is uniformly accepted as such in the industry, there is little support for the Department's prescribing a particular accounting method that will result in overescrowing consumers' money, and there is no agreement on the nature of any form that the Department would prescribe for homebuyers to warn of the possibility of a substantial increase in payments to their accounts.

During the rulemaking, however, the Department identified that individual servicers do provide a written disclosure to borrowers when they anticipate increased payments. The Department favors this approach and believes that such a disclosure should be encouraged as a best practice, without the Department prescribing the particular form.

The Department has decided to adopt, with modifications, the Make No Change alternative. This final rule, therefore, continues the current requirements for escrow analysis, even when the servicer expects that the disbursements from the escrow account will increase substantially after the first year. This alternative will not prevent payment shock in all instances. Under the final rule, however, as in the past, servicers may disclose the problem to borrowers, and borrowers may make voluntary overpayments to escrow accounts. Servicers may also calculate short-year statements. Thus, some methods are available to alleviate the payment shock problem, although they are not required.

This final rule does depart, however, from the Make No Change alternative of the proposed rule in encouraging, on a voluntary basis, the use of a consumer disclosure format concerning payment shock to be given to consumers when the originator or servicer expects that a substantial increase in escrow payments will occur in the second year of the escrow account. The Department has determined not to define a "substantial increase." Instead, this rule leaves this determination to each originator or servicer to apply sound business judgment.

This disclosure format, which is published as an appendix to this final rule, will be available from the Department as a Public Guidance Document at the address indicated in 24 CFR 3500.3. The format is entitled "Consumer Disclosure for Voluntary Escrow Payments" to clarify that when the originator or servicer provides the disclosure, the consumer may choose whether to make higher payments during the first year to reduce or eliminate the monthly payment increase in the second year. The disclosure contains the following information:

> The bills paid out of your escrow account are expected to increase substantially after the first year[.] [because _____]. Under normal escrow practices, your monthly escrow payment in the second year could be much higher than in the first.
>
> You may voluntarily choose to make higher payments during the first year to reduce or eliminate the monthly payment increase in the second year. If you are interested in doing this, contact:
>
> _____
>
> The instructions to the preparer explain that the blank provided is to indicate whom to contact for further information on making voluntary overpayments during the first year, including the mailing address, fax number, e-mail address, and/or telephone number of the contact. The terms "reserve" or "impound" may be substituted for the terms "escrow account" or "escrow" to reflect local usage.

While use of the disclosure is not mandatory, providing the disclosure to consumers is a best practice that the Department encourages originators and servicers to follow. The Department is publishing this format at the end of this rule as an appendix for the convenience of the reader. It will not be codified in the Code of Federal Regulations.

The recommended format published with this final rule, in addition to providing notice that payment shock may occur, also indicates that payment shock can be avoided by making additional payments to the escrow account, and suggests that the consumer ask the appropriate originator or servicer for more information. While simply informing consumers of the potential of payment shock and providing information on how to avoid it may not lead the consumers to take actions to avoid it, the information will benefit some consumers and may lead them to request voluntary borrower and servicer agreements to make additional payments to avoid shortages.

To provide clarity to servicers, this rule adds a new provision (24 CFR 3500.17(f)(2)(iii)) regarding funds deposited as a result of such voluntary borrower and servicer agreements. The provision states that the voluntary agreement is for a 1-escrow-account-year period, although successive agreements are allowed. By receiving higher escrow payments into the account, the ending balance will be greater, thus lowering or eliminating the anticipated shortage at the time of the next analysis. At the time of the next escrow analysis, § 3500.17(f) regarding shortages, surpluses, and deficiencies will continue to apply, and may not be changed by any voluntary agreement.

C. Basis for Approach Adopted

The comments received served to confirm that the Make No Change alternative, with some modifications, is a workable solution to this problem. Based on its review of the comments, the costs and burdens associated with any other approach are simply too great compared to the benefits. There is no strong evidence that additional regulation is needed at this time to address the problem. Existing procedures are adequate to avoid payment shock. This rule encourages originators and servicers to inform consumers of the potential problem and allow them to use existing procedures to avoid the problem if they so desire.

This final rule is similar to Variation (A) of the Make No Change alternative in the proposed rule, which was recommended by several commenters. As recommended by commenters, use of the format is not mandatory, but the recommended format is similar to that which was suggested by several commenters. Heeding the objections of several commenters, the recommended format does not call for an estimate of the amount of a shortage that is expected to result. Several commenters urged that the final rule leave the decision of whether to give borrowers advance notice that a payment increase may occur to the originator/servicer. In response, this final rule leaves this determination to each originator or servicer to apply sound business judgment in deciding whether to provide the disclosure; it does not make the disclosure mandatory or define a "substantial increase."

The Department intends this final rule to encourage more originators and servicers to adopt practices that will ensure that consumers are informed of the payment shock problem and given the opportunity to avoid it. These practices include:

- Notifying borrowers in advance and providing an opportunity to make voluntary payments ahead of schedule to avoid payment shock. The Department encourages servicers to use the recommended format published today to notify borrowers of this potential problem when the originator or servicer, in applying sound business judgment, believes that payment shock is like to occur.
- Offering consumers extended repayment plans, even beyond those required under RESPA, to make up substantial shortages associated with payment shock.

These two practices are examples of the types of best practices that some originators/servicers in the industry are using today, even without a Government requirement. The Department encourages servicers to adopt these practices so that they will become more widespread.

D. Basis for Rejecting Alternative Approaches

1. Rejection of Consumer Choice Alternative

While the Department believes it would have legal authority to impose Consumer Choice, including the prohibition against the servicer changing escrow account methods, as part of the Secretary's rulemaking authority, it has decided not to do so. The types of costs and burdens associated with such an approach are prohibitive at this time.

The Department was also influenced by the obvious lack of consensus among the commenters as to how to work out the technical details associated with the Consumer Choice alternative. The Department asked several specific questions about how to go about implementing such an alternative in the way least disruptive to the industry. The answers reflected the uncertainties and disruptions that would be created by imposing the Consumer Choice alternative, and helped convince the Department that such an approach is not feasible. Since the Department is not adopting the Consumer Choice alternative in this final rule, the responses received to a number of the questions raised in the proposed rule concerning this issue do not merit detailed discussion, but a brief summary of the comments in response to these questions is provided below to give a

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sense of the divergent opinions received:

1. The Department asked Question 5, which was designed to elicit views on when the appropriate time would be for the originator or servicer to provide the borrower the disclosure, if the Consumer Choice alternative were to be adopted. The commenters were nearly evenly divided on whether the disclosure should be provided and the selection made before closing but after underwriting or before underwriting. Eight commenters simply indicated sometime before closing, whereas six commenters indicated that it would have to be before underwriting. Two originators/servicers and one tax service indicated that no matter what time was selected, problems would arise. Five commenters specifically indicated that the selection would affect underwriting because it could affect the funds needed to close, whereas one mortgage lending subsidiary of a bank stated emphatically that it "should have absolutely no bearing on the loan underwriting or approval process since the borrower must qualify based on a tax escrow payment calculated on fully assessed value."

2. The Department asked Question 6, which asked whether the Department should prescribe a disclosure format if an approach were adopted in which the borrower's preference for a particular escrow accounting method were controlling. Although there was general agreement that the Department should prescribe the format (15 commenters supporting prescribing it with only 2 opposed), there was disagreement over what the disclosure should say. One commenter supported the disclosure the Department had proposed, agreeing "with the simplicity of the proposed format." Seven commenters, however, said it was confusing and contained too much information, whereas two commenters criticized it for not including enough information.

2. Rejection of Mandate First Year Overpayment Alternative

While the Mandate First Year Overpayment alternative was extolled by some in the industry as the best solution, there was no consensus even within the industry for this approach. Thirty-two originators/servicers and 3 trade associations opposed it, while only 21 originators/servicers, 2 trade associations, 2 financial software companies, 1 tax service, and 1 State lending agency supported it. The Department is persuaded that it is simply not in the consumer's interest to mandate overpayment into escrow accounts, even if consumers ultimately get the money back. Mandating escrowing beyond the limitations of the statute would be unfair to borrowers. Consumers should not be forced to tie up money unnecessarily in their escrow accounts and may prefer to invest the money elsewhere or use it for other more pressing purposes. There is no compelling case for the Department to exercise its exemption authority for this purpose. Nor would such an approach be consistent with the Secretary's stated objectives for escrow accounting.

VII. Single-Item Analysis With Aggregate Adjustment Problem—Comments Received, Approach Adopted in This Final Rule, and Basis

A. Comments Received on Revision Proposed

The Department sought comments from the public on this proposal, as well as other approaches that would be permissible under RESPA and might better serve the interests of the public and the intent of the statute. The Department also invited commenters to submit specific regulatory language to implement their proposals.

A significant number of commenters, including servicers and trade associations, found the proposal to represent a functional or acceptable solution. The MBA, while favoring the proposal, indicated that some of its members were concerned about settlement agent confusion from the change. Those members opposing the change indicated that they make use of the 45-day period within which the initial analysis must be delivered, so they did not share the concern over presenting two different accounting methods. During the Department's development of the proposed rule, Federal Reserve Board staff had indicated that it had no objection to the approach in the proposed rule, inasmuch as the PMI number for APR calculations would otherwise be available.

On the other hand, a number of major lenders and/or servicers opposed the change. For example, Chase Mortgage stated that it was not beneficial for consumers or servicers, since consumers would lose the ease of a single statement from which amounts can be reconciled, and servicers would have no viable audit trail to indicate how the initial deposit was calculated to resolve later differences or discrepancies. Bank of America's comments were similar. A number of other commenters decried a retreat from uniformity (the original premise of the 1994–1995 escrow rules) that allowing options among servicers would produce, and indicated that options affected the ease of servicing transfers. On a tangential point, the American Escrow Association wanted continued clarity that the settlement agent action reflected instructions received, not independent activities of the settlement agent.

B. Approach Adopted in This Final Rule and Basis

The Department carefully reviewed the comments and considered them in view of the mandate issued to the Department and the Federal Reserve Board under legislation enacted September 30, 1996 to re-examine RESPA and TILA disclosure requirements. See sec. 2101 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Title II of the Omnibus Consolidated Appropriations Act, 1997, Pub. L. 104–208; approved September 30, 1996).

It would be inappropriate to undertake a piecemeal and unilateral revision of the HUD–1 and HUD–1A at this time. In addition, the elimination of the aggregate adjustment from the HUD–1 and HUD–1A would harm those who have already developed systems that rely on it for an audit trail. There simply was no consensus for the change. Therefore, this final rule does not contain any revision to the 1000 series disclosures; servicers should continue to follow existing requirements.

On a related matter, this rule adds information to the footnote instructions to Appendix C, in order to reaffirm a previous clarification that instead of using aggregate accounting with no more than a 2-month cushion, the reserves on the Good Faith Estimate may be estimated by using single item accounting with no more than a 1-month cushion (see 61 FR 46518, column 3, September 3, 1996).

VIII. Lead-Based Paint Disclosure Issue—Comments Received, Approach Adopted in This Final Rule, and Basis

A. Comments Received on Revision Proposed

Commenters were almost evenly divided regarding the desirability of adding the lead-based paint disclosures. Nine commenters—four originators/servicers and five trade associations—indicated that they supported or had no objection to the proposal. Most gave no reason. Among those who did, the National Association of Federal Credit Unions indicated that they supported the proposal because it would help educate borrowers of their rights.

In contrast, eight originators/servicers opposed the proposal. One lender indicated that by imposing the burden of disclosure on the lender, the Department would be blurring the responsibility of sellers to give lead-based paint disclosures required by the EPA/HUD rule (implementing section 1018 of the Housing and Community Development Act of 1992). The commenter noted that lenders have never been required to disclose matters of law between sellers and buyers. Six other originators/servicers presented similar or related arguments.

Four originators/servicers indicated that providing a disclosure on the GFE would be duplicative of other lead disclosures; one commented that the HUD booklet "Settlement Costs and You" was a more appropriate forum for this type of disclosure. Two originators/servicers expressed concern that lenders would become involved in lawsuits involving lead-based paint, and that the disclosure could be interpreted as implying a lender duty in some future consumer class action.

B. Approach Adopted in This Final Rule and Basis

Upon careful review of these comments, the Department agrees with the commenters who believe that the lead-based paint disclosure need not specifically be added to the GFE and the HUD–1 and HUD–1A as a separate line at this time. This final rule continues the existing requirement that the lead-based paint inspection fee be included on the HUD–1 or HUD–1A if a lead-based paint inspection is either: (1) required by the lender, whether paid outside of settlement (in which case "P.O.C." should be used) or at settlement; or (2) paid for at settlement. The only change made by this rule is a clarification to the instructions for the HUD–1. The current instructions indicate that Lines 1301 and 1302 of the HUD–1 may be used for "fees for survey, pest inspection, radon inspection, lead-based paint inspection, or other similar inspections." The instructions are being changed to indicate that Lines 1301–1302 or any other available blank line in the 1300 series may be used for these purposes.

In addition, the Department has recently implemented several programs to assist homebuyers in financing the cost of lead-based paint inspections, risk assessments, and repairs. These programs include special requirements for the disclosure of information pertaining to lead-based paint on the HUD–1 and HUD–1A, which were explained in Notice H 96–93 (HUD) issued by the Department's Office of Housing on November 5, 1996.

Most importantly, since the time the September 13, 1996 proposed rule was issued, the Department has replaced its out-of-date settlement costs booklet (see 62 FR 31891, June 11, 1997). This new booklet is also available on the RESPA Website: http://www.hud.gov/fha/res/respa_hm.html. This revised booklet discusses the legal provisions that allow the buyer the option of obtaining a lead-based paint inspection, and gives an earlier and more meaningful description of the lead-based paint inspection process to the consumer. The Department is also currently engaged in a process with the Federal Reserve Board, referred to in Part VII(B) above of this preamble, which involves an overall review of settlement disclosure forms and requirements.

IX. Rule Changes

The changes made in this final rule are summarized below:

1. This rule amends § 3500.17(a) to include a reference to the voluntary disclosure format. This reference clarifies that the Department encourages, but does not require, originators and servicers to provide the format to consumers when they anticipate a substantial increase in disbursements from the escrow account after the first year of the loan.

2. This rule revises the definition of "disbursement date" in § 3500.17(b) to eliminate a redundant sentence that had referred to § 3500.17(k).

3. This rule adds a definition of "penalty" to § 3500.17(b) to clarify that a penalty does not include any additional charge or fee associated with choosing installment payments as opposed to annual payments or for choosing one installment plan over another. As discussed in Part III(C)(1) of this preamble, this new definition is necessary to clarify, in response to comments on the proposed rule, that a service fee levied by the payee on installment payments is not regarded as a penalty.

4. This rule amends § 3500.17 (c)(1) and (c)(2) to eliminate redundant descriptions of the requirements of § 3500.17(k); the requirements of § 3500.17(k) are clarified by revisions to that paragraph. This rule also makes technical amendments to the citation of § 3500.17 (c)(1) and (c)(2).

5. This rule revises § 3500.17(i)(1) to conform the language more closely to the statutory language in section 10(c)(2)(A) of RESPA. While this clarification pertains to escrow accounting, it does not directly relate to the other matters addressed in this final rule. This is a technical clarification, not a departure from prior requirements. As such, the Department restates its position that because an escrow account statement clearly itemizes all amounts paid out of the escrow account during the period as required, the statement does not also have to provide, as an additional element of the statement, a separate sum of all of those amounts.

6. This rule revises § 3500.17 (k)(1) and (k)(2) to eliminate awkward and unnecessary cross-references to the definition of "disbursement date." The revisions to paragraph (k)(1) eliminate language that had indicated that in calculating the disbursement date, servicers were to use a date on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty. This language caused much public confusion. Instead, as explained in Part III(C)(1) of this preamble, under this final rule servicers are required to disburse in a timely manner, that is, on or before the deadline to avoid a penalty. For escrow items other than property taxes, the rule leaves it to the servicer to decide whether to disburse on a date early enough to take advantage of discounts, so long as the disbursement basis (annual or installments) and the disbursement date complies with the normal lending practice of the lender and local custom and constitutes prudent lending practice. For property taxes only, this rule contains special requirements in paragraph (k)(3).

7. This rule adds § 3500.17(k)(3) to specify the special additional requirements applicable to property taxes when the taxing jurisdiction offers the servicer a choice of disbursements on an installment or annual basis. Those requirements are explained in Part III(C)(1) of this preamble.

8. This rule adds § 3500.17(k)(4) to specify that a servicer and borrower may mutually agree, on an individual case basis, to a different disbursement basis (installment or annual) or disbursement date for property taxes, so long as their agreement avoids a penalty, complies with the normal lending practice of the lender and local custom, and constitutes prudent lending practice. This provision is discussed in Part III(C)(1) of this preamble.

9. This rule makes one minor clarification to the instructions to the HUD–1 as it relates to disclosure of "lead-based paint inspection" fees.

10. This rule includes as an appendix a voluntary disclosure format that is entitled "Consumer Disclosure for Voluntary Escrow Account Payments." This format is discussed in Part IV(C)(1) of this preamble.

11. This rule adds a footnote instruction to Appendix C to part 3500, the Sample Form of Good Faith

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Estimate, to clarify that single item analysis with a 1-month cushion can be used in developing the estimates for reserves relating to lines 1000–1005 of the Good Faith Estimate.

Findings and Certifications

Paperwork Reduction Act

The information collection requirements in this final rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2502–0517. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Environmental Impact

In accordance with 24 CFR 50.19(c)(1) of the Department's regulations, this rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate property acquisition, disposition, lease, rehabilitation, alteration, demolition, or new construction, or set out or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321).

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*, issued by the President on September 30, 1993. OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made in this rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection between 7:30 a.m. and 5:30 p.m. in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. This rule will maintain existing requirements, but clarify them. It also recommends voluntary use of certain practices that would benefit consumers, including voluntary use of a model disclosure format.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. The rule is directed toward clarifying existing requirements and encouraging voluntary use of certain practices that the Department believes would be beneficial to consumers.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4; approved March 22, 1995), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects in 24 CFR Part 3500

Consumer protection, Condominiums, Housing, Mortgages, Mortgage servicing, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, part 3500 of title 24 of the Code of Federal Regulations is amended as set forth below.

PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

1. The authority citation is revised to read as follows:

Authority: 12 U.S.C. 2601 *et seq.*; 42 U.S.C. 3535(d).

2. In § 3500.17:

a. Paragraph (a) is amended by adding a sentence at the end;

b. Paragraph (b) is amended by revising the definition of "*Disbursement date*", and by adding a new definition of "*Penalty*" in alphabetical order;

c. Paragraphs (c)(2) and (c)(3) are revised;

d. Paragraph (f) is amended by adding a new paragraph (f)(2)(iii);

e. Paragraph (i) is amended by revising the third sentence of the introductory text of paragraph (i)(1) and by revising paragraph (i)(1)(iv); and

f. Paragraph (k) is revised, to read as follows:

§ 3500.17 Escrow accounts.

(a) * * * A HUD Public Guidance Document entitled "Consumer Disclosure for Voluntary Escrow Account Payments" provides a model disclosure format that originators and servicers are encouraged, but not required, to provide to consumers when the originator or servicer anticipates a substantial increase in disbursements from the escrow account after the first year of the loan. The disclosures in that model format may be combined with or included in the Initial Escrow Account Statement required in § 3500.17(g).

(b) * * *

* * * * *

Disbursement date means the date on which the servicer actually pays an escrow item from the escrow account.

* * * * *

Penalty means a late charge imposed by the payee for paying after the disbursement is due. It does not include any additional charge or fee imposed by the payee associated with choosing installment payments as opposed to annual payments or for choosing one installment plan over another.

* * * * *

(c) * * *

(2) *Escrow analysis at creation of escrow account.* Before establishing an escrow account, the servicer must conduct an escrow account analysis to determine the amount the borrower must deposit into the escrow account (subject to the limitations of paragraph (c)(1)(i) of this section), and the amount of the borrower's periodic payments into the escrow account (subject to the limitations of paragraph (c)(1)(ii) of this section). In conducting the escrow account analysis, the servicer must estimate the disbursement amounts according to paragraph (c)(7) of this section. Pursuant to paragraph (k) of this section, the servicer must use a date on or before the deadline to avoid a penalty as the disbursement date for the escrow item and comply with any other requirements of paragraph (k) of this section. Upon completing the initial escrow account analysis, the servicer must prepare and deliver an initial escrow account statement to the borrower, as set forth in paragraph (g) of this section. The servicer must use the escrow account analysis to determine whether a surplus, shortage, or deficiency exists and must make any adjustments to the account pursuant to paragraph (f) of this section.

(3) *Subsequent escrow account analyses.* For each escrow account, the servicer must conduct an escrow account analysis at the completion of the escrow account computation year to determine the borrower's monthly escrow account payments for the next computation year, subject to the limitations of paragraph (c)(1)(ii) of this section. In conducting the escrow account analysis, the servicer must estimate the disbursement amounts according to paragraph (c)(7) of this section. Pursuant to paragraph (k) of this section, the servicer must use a date on or before the deadline to avoid a penalty as the disbursement date for the escrow item and comply with any other requirements of paragraph (k) of this section. The servicer must use the escrow account analysis to determine whether a surplus, shortage, or deficiency exists, and must make any adjustments to the account pursuant to paragraph (f) of this section. Upon completing an escrow account analysis, the servicer must prepare and submit an annual escrow account statement to the borrower, as set forth in paragraph (i) of this section.

* * * * *

(f) * * *

(2) * * *

(iii) After an initial or annual escrow analysis has been performed, the servicer and the borrower may enter into a voluntary agreement for the forthcoming escrow accounting year for the borrower to deposit funds into the escrow account for that year greater than the limits established under paragraph (c) of this section. Such an agreement shall cover only one escrow accounting year, but a new voluntary agreement may be entered into after the next escrow analysis is performed. The voluntary agreement may not alter how surpluses are to be treated when the next escrow analysis is performed at the end of the escrow accounting year covered by the voluntary agreement.

* * * * *

(i) * * *

(1) * * * The annual escrow account statement must include, at a minimum, the following (the items in paragraphs (i)(1)(i) through (i)(1)(iv) must be clearly itemized):

* * * * *

(iv) The total amount paid out of the escrow account during the same period for taxes, insurance premiums, and other charges (as separately identified);

* * * * *

(k) *Timely payments.* (1) If the terms of any federally related mortgage loan require the borrower to make payments to an escrow account, the servicer must pay the disbursements in a timely manner, that is, on or before the deadline to avoid a penalty, as long as the borrower's payment is not more than 30 days overdue.

(2) The servicer must advance funds to make disbursements in a timely manner as long as the borrower's payment is not more than 30 days overdue. Upon advancing funds to pay a disbursement, the servicer may seek repayment from the borrower for the deficiency pursuant to paragraph (f) of this section.

(3) For the payment of property taxes from the escrow account, if a taxing jurisdiction offers a servicer a choice between annual and installment disbursements, the servicer must also comply with this paragraph (k)(3). If the taxing jurisdiction neither offers a discount for disbursements on a lump sum annual basis nor imposes any additional charge or fee for installment disbursements, the servicer must make disbursements on an installment basis. If, however, the taxing jurisdiction offers a discount for disbursements on a lump sum annual basis or imposes any additional charge or fee for installment disbursements, the servicer may at the servicer's discretion (but is not required by RESPA to), make lump sum annual disbursements in order to take advantage of the discount for the borrower or avoid the additional charge or fee for installments, as long as such method of disbursement complies with paragraphs (k)(1) and (k)(2) of this section. HUD encourages, but does not require, the servicer to follow the preference of the borrower, if such preference is known to the servicer.

(4) Notwithstanding paragraph (k)(3) of this section, a servicer and borrower may mutually agree, on an individual case basis, to a different disbursement basis (installment or annual) or disbursement date for property taxes from that required under paragraph (k)(3) of this section, so long as the agreement meets the requirements of paragraphs (k)(1) and (k)(2) of this section. The borrower must voluntarily agree; neither loan approval nor any term of the loan may be conditioned on the borrower's agreeing to a different disbursement basis or disbursement date.

* * * * *

3. In Appendix A to part 3500, under the text heading "Line Item Instructions", and under the subheading "Section L. Settlement Charges", the paragraph beginning with the phrase "Lines 1301 and 1302" is revised to read as follows:

Appendix A to Part 3500—Instructions for Completing HUD–1 and HUD–1A Settlement Statements; Sample HUD–1 and HUD–1A Statements

* * * * *

Line Item Instructions

* * * * *

Section L. Settlement Charges

* * * * *

Lines 1301 and 1302, or any other available blank line in the 1300 series, are used for fees for survey, pest inspection, radon inspection, lead-based paint inspection, or other similar inspections.

* * * * *

4. Appendix C to part 3500 is amended by adding a new footnote 3 after the word "Reserves" in the first column of the table, and by adding the following text under the heading "FOOTNOTES" at the end after the text of footnote 2, to read as follows:

Appendix C to Part 3500—Sample Form of Good Faith Estimate

* * * * *

Footnotes

* * * * *

[3] As an alternative to using aggregate accounting with no more than a two-month cushion, the estimate may be obtained by using single-item accounting with no more than a one-month cushion.

Dated: January 13, 1998.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

The following Appendix, "Public Guidance Document, Consumer Disclosure for Voluntary Escrow Account Payments", will not be codified in title 24 of the Code of Federal Regulations.

Appendix

Public Guidance Document

Consumer Disclosure for Voluntary Escrow Account Payments

The bills paid out of your escrow account are expected to increase substantially after the first year[.] [because _____ .] Under normal escrow practices, your monthly escrow payment in the second year could be much higher than in the first.

You may voluntarily choose to make higher payments during the first year to reduce or eliminate the monthly payment increase in the second year. If you are interested in doing this, contact:

_____.

[INSTRUCTIONS TO PREPARER: You are encouraged to provide this document to borrowers when you anticipate a substantial increase in bills paid out of the escrow account after the first year of the loan. Explanation of the reason for the increase is

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recommended. The document may be delivered separately or combined with the Initial Escrow Account Statement. In the blank provided, insert the contact for further information, including the mailing address, fax number, e-mail address, and/or telephone number of the contact who will provide further information on making voluntary overpayments during the first year. The terms "reserve" or "impound" may be substituted for the terms "escrow account" or "escrow" to reflect local usage. These INSTRUCTIONS TO PREPARER should not appear on the form.]

[FR Doc. 98–1395 Filed 1–20–98; 8:45 am]
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federal register

Wednesday
January 21, 1998

Part IV

Department of Education

Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research: Applications, Invitation for New Traumatic Brain Injury (TBI) Model Systems Projects Under the Disability and Rehabilitation Research Projects and Centers Program (FY 1998); Notice

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.133A]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Traumatic Brain Injury (TBI); Model Systems Projects Under the Disability and Rehabilitation; Research Projects and Centers Program for Fiscal Year 1998

Purpose of Program: Authority for Disability and Rehabilitation Research Projects (DRRPs) is contained in section 202 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 761a). DRRPs carry out one or more of the following types of activities, as specified in 34 CFR 350.13–350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance. Disability and Rehabilitation Research Projects develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities.

This notice supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Deadline for Transmittal of Applications: March 23, 1998.

Application Available: January 20, 1998.

Maximum Award Amount per Year: $345,000.

Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

Estimated Number of Awards: 10.

Note: The estimates of funding level and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants.

Project Period: 48 months.

Eligible Applicants: Parties eligible to apply for grants under this program are States, public or private agencies, including for-profit agencies, public or private organizations, including for-profit organizations, institutions of higher education, and Indian tribes and tribal organizations.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86, and 34 CFR part 350.

Priority: This notice invites applications for TBI Model Systems Projects. On May 9, 1997 a notice of final priority was published in the **Federal Register** establishing the required activities for TBI Model System Projects in fiscal year 1997 and fiscal year 1998.

The conference agreement accompanying NIDRR's FY 1998 appropriation included $5 million to permit NIDRR to establish additional TBI Model System projects and a national data center.

This notice invites applications for additional TBI Model Systems Projects in FY 1998. In addition to establishing the TBI Model Systems Project in FY 1998, NIDRR plans to invite applications for collaborative research involving the TBI Model Systems.

On February 6, 1997 NIDRR published in the **Federal Register** regulations consolidating a number of regulations governing NIDRR's existing programs, including, but not limited to, Parts 350 (General Provisions) and 351 (Research and Demonstration Projects). These new regulations took effect on October 1, 1997 and apply to this competition. The new regulations include a new menu of selection criteria (34 CFR 350.54) for use in evaluating all applications. NIDRR has drawn from this menu of selection criteria to establish the specific selection criteria (contained in the application package) that will be used to evaluate applications for the TBI Model Systems Projects priority referenced in this notice inviting applications. The final priorities established for the TBI Model Systems R&D Projects in FY 1997 will be used for equivalent projects in FY 1998.

For Applications Contact: The Grants and Contracts Service Team (GCST), Department of Education, 600 Independence Avenue S.W., Switzer Building, 3317, Washington, D.C. 20202, or call (202) 205–8207. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9860. The preferred method for requesting information is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 600 Maryland Avenue, S.W., room 3418, Switzer Building, Washington, D.C. 20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–2742. Internet: Donna__Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 29 U.S.C. 760–762.

Dated: January 15, 1998.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–1405 Filed 1–20–98; 8:45 am]

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federal register

Wednesday
January 21, 1998

Part V

The President

Proclamation 7063—Religious Freedom Day, 1998

Proclamation 7064—Martin Luther King, Jr., Federal Holiday, 1998

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Federal Register
Vol. 63, No. 13
Wednesday, January 21, 1998

Presidential Documents

Title 3—

The President

Proclamation 7063 of January 15, 1998

Religious Freedom Day, 1998

By the President of the United States of America

A Proclamation

The right to worship according to one's own conscience is essential to our dignity as human beings. Whatever our religious beliefs, they represent the essence of our personal values and cannot be dictated to us. Recognizing this truth, our founders made religious liberty the first freedom guaranteed in the Bill of Rights. They wisely understood as well that in protecting the free exercise of religion, we must also prohibit the establishment of religion by the state.

Among the early European settlers who came to our shores were many seeking to escape the religious compulsion and persecution they had endured in the lands of their birth. William Penn, Roger Williams, and many others would strive to make their settlements havens for freedom of conscience, laying the foundation for the great tradition of religious liberty that would ultimately find expression in the First Amendment to the Constitution. Since those early days, our continuing aspiration has been to banish lingering prejudice and increase religious understanding and respect among our people.

Today, millions of people of different faiths call America home. The churches, synagogues, temples, mosques, and other houses of worship they have built have become centers of community life and service and a source of strength for our Nation. As our country becomes increasingly diverse, we must reaffirm our efforts to reach out to one another and to see past our differences to the values we hold in common.

My Administration is striving to enhance this climate of acceptance and respect, bringing people together across lines of faith. Two years ago, with the help of a broad coalition of religious and civic leaders, we created guidelines clarifying the nature of religious expression permitted in our public schools and reaffirming that America's young people do not have to leave their religious beliefs at the schoolhouse door. With the help of that same coalition, I issued additional guidelines last August to reinforce the right of religious expression in the Federal workplace. Building on America's long-standing commitment to freedom and fairness, these guidelines will ensure that Federal employees may engage in personal religious expression to the greatest extent possible, consistent with workplace efficiency and the requirements of law. The guidelines also clarify that Federal employers may not discriminate in employment on the basis of religion and that an agency must reasonably accommodate employees' religious practices.

On Religious Freedom Day this year, as we celebrate and cherish this precious right we enjoy as Americans, we must not forget others who are less fortunate. Throughout the world, in many lands, too many people still suffer and die for their beliefs, and lives, families, and communities are torn apart by old hatreds and prejudices. We must continue to proclaim the fundamental right of all peoples to believe and worship according to their own conscience, to affirm their beliefs openly and freely, and to practice their faith without fear or intimidation. The priceless gift we have inherited from past generations will only grow in value as we share it with others.

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NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 16, 1998, as Religious Freedom Day. I call upon the people of the United States to observe this day with appropriate ceremonies, activities, and programs, and I urge all Americans to reaffirm their devotion to the fundamental principles of religious freedom and religious tolerance.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of January, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 98–1609
Filed 1–20–98; 11:19 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7064 of January 16, 1998

Martin Luther King, Jr., Federal Holiday, 1998

By the President of the United States of America

A Proclamation

America has been blessed with heroes throughout our history, men and women of vision and courage who have set our feet firmly on the path of freedom and equality. Some became heroes by leading us in times of struggle; some by shaping our values and challenging us to greatness. And a few, like Dr. Martin Luther King, Jr., have done all this and more.

A thoughtful man and one of deep personal faith, his conscience called him into action for the soul of our Nation. He mobilized thousands of other brave and principled Americans—black and white, renowned and unknown—and began a crusade for justice that continues today. In sit-ins, marches, demonstrations, and boycotts, he and many others met violence with nonviolence and ignorance with determination. They awakened the conscience of our Nation and succeeded in winning passage of historic civil rights legislation: the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968. Pouring out his life in service, Dr. King made enormous and lasting contributions to improve the lives of millions of his fellow Americans.

Almost 35 years have passed since Dr. King challenged us from the steps of the Lincoln Memorial to live out the true meaning of our creed—that all men are created equal—and almost 30 years have passed since he was taken from us after an all-too-brief sojourn on this earth. A generation of young Americans has come of age without experiencing firsthand the power of his vision or the eloquence of his voice. Much has changed for the better in that time, but we still have much to do if we are to finish the work of Martin Luther King, Jr.

Following his example of service, we must build communities where everyone shares an equal opportunity for a good education and a good job, where our children can grow up without living in the shadow of guns, gangs, and drugs, and where we reject separation and isolation and instead celebrate together the blessing of our diversity. Last June, I established my initiative, "One America in the 21st Century," to encourage a national dialogue among Americans about race and to spur concerted action that will bring Americans together. We must put aside the bitter refrains of accusation and recrimination and instead discuss and implement new ideas for forging a single Nation in the 21st Century out of our ever-increasing racial and ethnic diversity. By learning to talk to one another, to trust one another, and to work together in hope, we can and will come to the time Dr. King foresaw when "justice rolls down like waters."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Monday, January 19, 1998, as the Martin Luther King, Jr., Federal Holiday. I call upon the people of the United States to observe this occasion with appropriate programs, ceremonies, and activities and to participate in the many community service activities taking place across the country on this day.

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IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of January, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 98–1610
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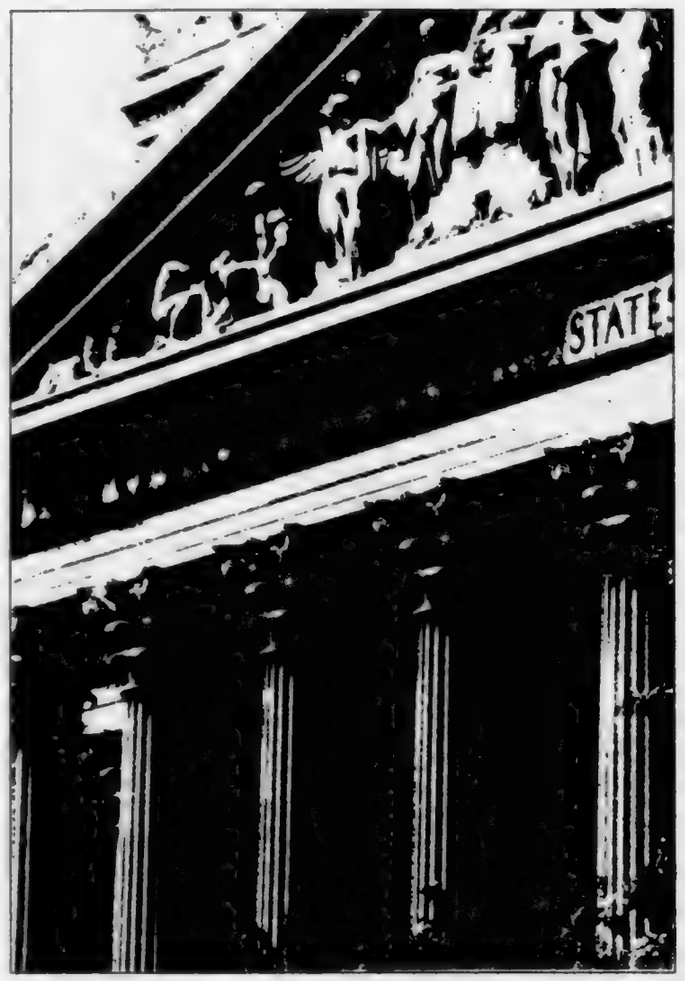
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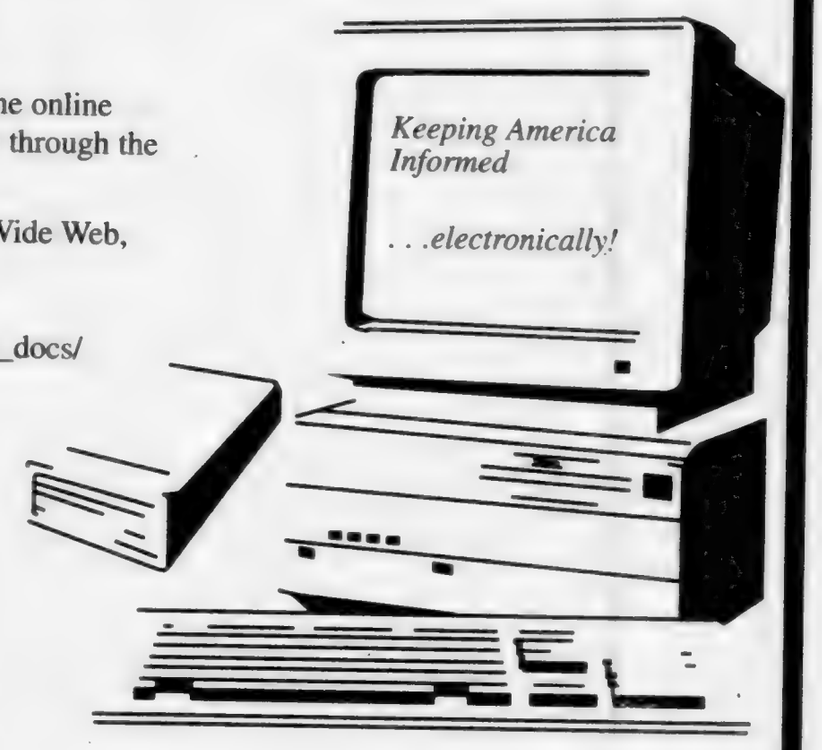
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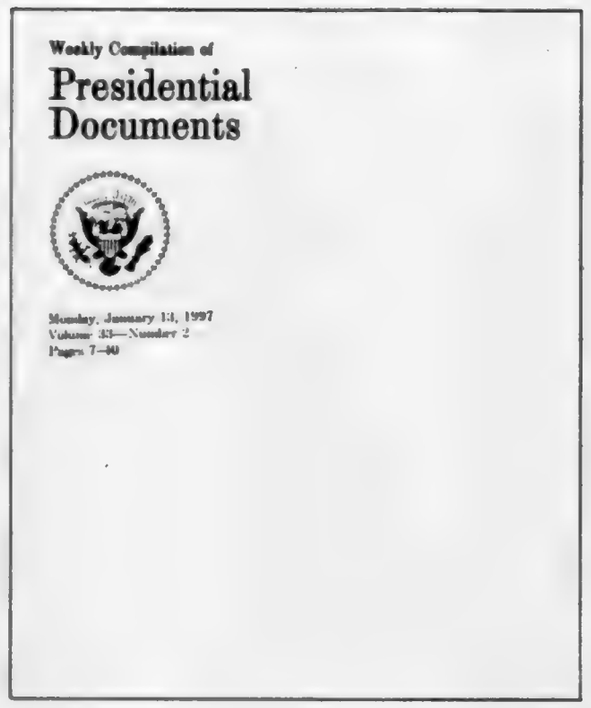
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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 63, No. 14
Thursday, January 22, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 944

[Docket No. FV98–905–2 IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida and Imported Grapefruit; Relaxation of the Minimum Size Requirement for Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule makes changes in the regulations under the Florida citrus marketing order and the grapefruit import regulations. This rule relaxes the minimum size requirement for red seedless grapefruit and for red seedless grapefruit imported into the United States from size 48 (3$^{9}/_{16}$ inches diameter) to size 56 (3$^{5}/_{16}$ inches diameter). The Citrus Administrative Committee (Committee), the agency that locally administers the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida, unanimously recommended this change. This change allows handlers and importers to ship size 56 red seedless grapefruit through November 8, 1998.

DATES: Effective January 23, 1998, through November 8, 1998; comments received by March 23, 1998 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, D.C. 20090–6456; Fax: (202) 205–6632. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (941) 299–4770, Fax: (941) 299–5169; or Anne M. Dec, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905 (7 CFR Part 905), as amended, regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the order. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule is also issued under section 8e of the Act, which provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

The order for Florida citrus provides for the establishment of minimum grade and size requirements with the concurrence of the Secretary. The grade and size requirements are designated to provide fresh markets with fruit of acceptable quality and size, thereby maintaining consumer confidence for fresh Florida citrus. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of growers, handlers, and consumers, and is designed to increase returns to Florida citrus growers. The current minimum grade standard for red seedless grapefruit is U.S. No. 1. The minimum size requirement for domestic shipments is size 56 (at least 3$^{5}/_{16}$ inches in diameter) through November 8, 1997, and size 48 (3$^{9}/_{16}$ inches in diameter) thereafter. The current minimum size for export shipments is size 56 throughout the year.

This interim final rule invites comments on a change to the order's rules and regulations relaxing the minimum size requirement for domestic shipments of red seedless grapefruit. This action allows for the continued shipment of size 56 grapefruit. This rule relaxes the minimum size from size 48 (3$^{9}/_{16}$ inches diameter) to size 56 (3 $^{5}/_{16}$ inches diameter) through November 8, 1998. Absent this change, the minimum size would be size 48 (3$^{9}/_{16}$ inches diameter). The Committee met on October 14 and December 16, 1997, and unanimously recommended this action.

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Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 (7 CFR 905.306) specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. Such requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b). This rule adjusts Table I to reflect the minimum size of 56 through November 8, 1998. Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 (7 CFR 944.106). Export requirements are not changed by this rule.

The Committee originally met to discuss this issue on October 14, 1997, and recommended releasing size 56 red grapefruit for a limited time period this season. They voted to allow handlers to ship size 56 red seedless grapefruit through January 11, 1998, to give the Committee time to determine the market effect of size 56.

The Committee met again on December 16, 1997, through an emergency telephone meeting. The meeting was called to determine whether the Committee wanted to release size 56 for the remainder of the season. The Committee voted unanimously to extend the release of size 56 through November 8, 1998.

While wanting to give handlers the opportunity to continue to market size 56, the Committee also wanted the opportunity to review the effect of size 56 on the domestic market after the percentage of size rule expired November 30, 1997 (62 FR 58633; October 30, 1997). The percentage of size rule controlled the volume of sizes 48 and 56 that was shipped in a given week, to both domestic and export markets. There is a limited market for small sizes. However, the largest part of this market is to export markets. The Committee is not sure to what extent there is domestic demand for size 56. This minimum size change pertains to the domestic market, and does not change the minimum size for export shipments which will continue at size 56 throughout the season.

To determine if there is a domestic market for size 56, and the effect of its presence on the market, the Committee recommended, on October 14, 1997, allowing shipments of size 56 red seedless grapefruit through January 11, 1998. The Committee agreed to revisit the issue to evaluate the impact of size 56 on the market after the expiration of volume regulation.

The Committee revisited the issue during the meeting December 16, 1997, and determined that size 56 should not be released until November 8, 1998. In making its recommendation, the Committee considered estimated supplies and current shipments. The Committee examined the size distribution information available for the current season. On December 12, 1997, the Florida Agricultural Statistics Service (FASS) reduced the marketable crop estimate for red seedless grapefruit by two million boxes, or approximately seven percent for the 1997–98 season. FASS also reported that red seedless grapefruit size as measured in November, was 30.6 percent size 56 and smaller as compared to 35.5 percent as measured in November last year. This in turn compares to only 16.8 percent measuring size 56 or smaller in November of 1995. So, even though red seedless grapefruit are running larger than last season, there are a fair number of small grapefruit.

The Committee also reviewed shipment data available through November 23 of this season. Thus far, size 56 red seedless grapefruit represents only 3.7 percent of total domestic shipments. Comparatively, through the same time period, 11 percent of all red seedless grapefruit shipments from Florida, domestic and export was size 56. Of the size 56 red seedless grapefruit shipped, 18 percent went to the domestic market, while 82 percent was shipped to the export market.

In its discussion, the Committee recognized that fruit was continuing to size. One member commented that fruit that had measured size 56 in October, had sized up one size. This was helping to match supplies of size 56 with demand. The Committee did have several concerns. One topic that was raised was the currency and economic problems currently facing the Pacific Rim countries. These countries traditionally have been good markets for size 56 grapefruit. The Committee was concerned that current conditions could reduce demand, and alternative outlets would need to be available. The Committee agreed that it would be advantageous to have the ability to ship size 56 red seedless grapefruit to the domestic market should problems materialize in the export market.

One Committee member asked whether Texas was planning to market size 56 grapefruit this season. The Committee was informed that Texas would be selling size 56 for the entire season. The Committee believes that some domestic markets may have been developed for size 56 and that handlers should continue to supply those markets.

Based on the available information, the Committee unanimously recommended that the minimum size for shipping red seedless grapefruit to the domestic market should be size 56 through November 8, 1998.

This rule will have a beneficial impact on producers and handlers since it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet anticipated market demand for the 1997–98 season. This will provide for the maximization of shipments to fresh market channels during this period. Additionally, importers will be favorably affected by this change since the relaxation of the minimum size regulation will also apply to imported grapefruit.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule relaxes the minimum size requirement under the domestic handling regulations, a corresponding change to the import regulations is necessary.

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 [7 CFR 944.106]. This rule relaxes the minimum size requirements for imported red seedless grapefruit to 3$^{5}/_{16}$ inches in diameter (size 56) for the remainder of the 1997–1998 season ending on November 8, 1998, to reflect the relaxation being made under the order for grapefruit grown in Florida.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 80 Florida citrus handlers subject to regulation under the marketing order, about 11,000 Florida citrus producers, and about 25 grapefruit importers. Small agricultural service firms, which include grapefruit handlers and importers, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000.

Based on the Florida Agricultural Statistics Service and Committee data for the 1995–96 season, the average annual f.o.b. price for fresh Florida red grapefruit during the 1995–96 season was $5.00 per $^{4}/_{5}$ bushel cartons for all grapefruit shipments, and the total shipments for the 1995–96 season were 23 million cartons of grapefruit. Approximately 20 percent of all handlers handled 60 percent of Florida grapefruit shipments. In addition, many of these handlers ship other citrus fruit and products which are not included in Committee data but would contribute further to handler receipts. Using the average f.o.b. price, about 80 percent of grapefruit handlers could be considered small businesses under the SBA definition and about 20 percent of the handlers could be considered large businesses. The majority of handlers, growers, and importers may be classified as small entities.

Florida shipped approximately 44,224,000 cartons of grapefruit to the fresh market during the 1996–97 season. Of these cartons, about 25,586,000 were exported. In the past three seasons, domestic shipments of Florida grapefruit averaged about 18,798,000 cartons. During the period 1991 through 1996, imports have averaged 734,800 cartons a season. Imports account for less than five percent of domestic shipments.

Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 (7 CFR 905.306) specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. This rule relaxes the minimum size requirement for domestic shipments of red seedless grapefruit from size 48 (3$^{9}/_{16}$ inches diameter) to size 56 (3$^{5}/_{16}$ inches diameter) through November 8, 1998. No change is being made in the minimum size requirement for export shipments of size 56. Absent this rule, the minimum size requirement for domestic shipments would be size 48. The motion to allow shipments of size 56 red seedless grapefruit through November 8, 1998, was passed by the Committee unanimously.

The Committee originally met to discuss this issue on October 14, 1997, and recommended releasing size 56 red grapefruit for a limited time period this season. They voted to allow handlers to ship size 56 red seedless grapefruit through January 11, 1998, to give the Committee time to determine the market effect of size 56.

The Committee met again on December 16, 1997, through an emergency telephone meeting. The meeting was called to determine whether the Committee wanted to release size 56 for the remainder of the season. The Committee voted unanimously to extend the release of size 56 through November 8, 1998.

In its discussion, the Committee recognized that fruit was continuing to size. One member commented that fruit that had measured size 56 in October, had sized up one size. This was helping to match supplies of size 56 with demand. The Committee did have several concerns. One topic that was raised was the currency and economic problems currently facing the Pacific Rim countries. These countries traditionally have been good markets for size 56 grapefruit. The Committee was concerned that current conditions could reduce demand, and alternative outlets would need to be available. The Committee agreed that it would be advantageous to have the ability to ship size 56 red seedless grapefruit to the domestic market should problems materialize in the export market.

One Committee member asked whether Texas was planning to market size 56 grapefruit this season. The Committee was informed that Texas would be selling size 56 for the entire season. The Committee believes that some domestic markets may have been developed for size 56 and that handlers should continue to supply those markets.

During the discussion of this rule, the Committee considered the costs and benefits of this action. Several members stated that with the volume of grapefruit available, the stagnant demand, and concerns regarding the Asian export markets, it was important to take advantage of any market available. There was also discussion that Texas was planning to ship size 56 this season. Some members stated that if they eliminated size 56, they would be losing markets. Members agreed that maximizing fresh shipments helps grower returns. The Committee has released size 56 for the past seven seasons. There should be no production adjustment costs associated with this rule.

This rule is expected to have a positive impact on growers and handlers, as it will permit the shipment of smaller sized red seedless grapefruit to the domestic market, allowing the industry to meet anticipated demand through November 8, 1998. This will provide for the maximization of shipments to fresh market channels during this period.

This regulation lowers the minimum size to size 56. This minimum applies to all handlers of red seedless grapefruit. The costs or benefits of this rule are not expected to be disproportionately more or less for small handlers or growers than for larger entities.

In 1996, imports of grapefruit totaled 15,000 tons (approximately 705,880 cartons). The Bahamas were the principal source, accounting for 95 percent of the total. Remaining imports were supplied by the Dominican Republic and Israel. Imported grapefruit enters the United States from October through May. Imports account for less than five percent of domestic shipments.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality and maturity requirements. Because this rule changes the minimum size for domestic red seedless grapefruit shipments, this change will also be applicable to imported grapefruit. This rule relaxes the minimum size to size 56. This regulation will benefit importers to the same extent that it benefits Florida grapefruit producers and handlers because it allows shipments of size 56 red seedless grapefruit into U.S. markets through November 8, 1998.

The Committee discussed alternatives to this action. One alternative discussed was the elimination of size 56 grapefruit all together. Several members expressed concern that a viable market has been developed for a portion of the size 56 grapefruit crop. Not allowing handlers to supply this market could result in throwing business and money away. Other members pointed out that it could be detrimental to supply this market for smaller sizes if that market is not profitable and the result is depressed prices for all sizes of grapefruit.

In addition, the Committee recognized that through November, regulation was in place to control the amount of size 56 red seedless grapefruit entering the market. Under the percentage of size rule, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a particular

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week is calculated using a recommended percentage. This percentage of size rule was in effect through November 30, 1997. The Committee agreed that, for the remainder of the 1997–1998 season, no further restriction on size 56 was necessary. A motion to eliminate size 56 was rejected.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large red seedless grapefruit handlers or importers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information collection requirements and duplication by industry and public sectors.

In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

Further, the Committee's October meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the October 14, 1997, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this interim final rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This rule relaxes the minimum size requirement currently in effect for red seedless grapefruit grown in Florida and red seedless grapefruit imported into the United States; (2) Florida grapefruit handlers are aware of this action which was unanimously recommended by the Committee, and they will need no additional time to comply with the relaxed size requirement; (3) shipments of the 1997–98 season Florida red seedless grapefruit crop are underway; and (4) this rule provides a 60-day comment period, and any comments received will be considered prior to any finalization of this interim final rule.

List of Subjects

7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth above, 7 CFR parts 905 and 944 are amended as follows:

1. The authority citation for 7 CFR parts 905 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

2. Section 905.306 is amended by adding entries in Table 1 of paragraph (a) for "seedless, red grapefruit" to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation.

(a) * * *

TABLE I

Variety (1)	Regulation period (2)	Minimum grade (3)	Minimum diameter (inches) (4)
GRAPEFRUIT			
. .	. .	. .	.
Seedless, red:			
	1/23/98–11/8/98	U.S. No. 1	3–5/16
	On and after 11/9/98	U.S. No. 1	3–9/16
. .	. .	. .	.

* * * * *

PART 944—FRUITS; IMPORT REGULATIONS

4. Section 944.106 is amended by adding entries in the table in paragraph (a) for "seedless red grapefruit" to read as follows:

§ 944.106 Grapefruit import regulation.

(a) * * *

Grapefruit classification (1)	Regulation period (2)	Minimum grade (3)	Minimum diameter (inches) (4)
. .	. .	. .	.
Seedless, red:			
	1/23/98–11/8/98	U.S. No. 1	3 5/16
	On and after 11/9/98	U.S. No. 1	3 9/16

Grapefruit classification (1)	Regulation period (2)	Minimum grade (3)	Minimum diameter (inches) (4)
. .	. .	. .	.

* * * * *

Dated: January 15, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–1430 Filed 1–21–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV98–982–1 IFR]

Hazelnuts Grown in Oregon and Washington; Establishment of Interim and Final Free and Restricted Percentages for the 1997–98 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes interim and final free and restricted percentages for domestic inshell hazelnuts for the 1997–98 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. The percentages allocate the quantity of domestically produced hazelnuts which may be marketed in the domestic inshell market. The percentages are intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts and provide reasonable returns to producers. This rule was recommended unanimously by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the order.

DATES: Effective January 23, 1998. Comments which are received by March 23, 1998, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440 or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 115 and Order No. 982 (7 CFR part 982), both as amended, regulating the handling of hazelnuts grown in Oregon and Washington, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is intended that this action apply to all merchantable hazelnuts handled during the 1997–98 marketing year (July 1, 1997, through June 30, 1998). This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule establishes marketing percentages which allocate the quantity of inshell hazelnuts that may be marketed in domestic markets. The Board is required to meet prior to September 20 of each marketing year to compute its marketing policy for that year and compute and announce an inshell trade demand if it determines that volume regulations would tend to effectuate the declared policy of the Act. The Board also computes and announces preliminary free and restricted percentages for that year.

The inshell trade demand is the amount of inshell hazelnuts that handlers may ship to the domestic market throughout the marketing season. The order specifies that the inshell trade demand be computed by averaging the preceding three "normal" years' trade acquisitions of inshell hazelnuts, rounded to the nearest whole number. The Board may increase the three-year average by up to 25 percent, if market conditions warrant an increase. The Board's authority to recommend volume regulations and the computations used to determine released percentages are specified in section 982.40 of the order.

The National Agricultural Statistics Service (NASS) estimated hazelnut production at 40,000 tons for the Oregon and Washington area.

The majority of domestic inshell hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

The quantity marketed is broken down into free and restricted percentages to make available hazelnuts which may be marketed in domestic inshell markets (free) and hazelnuts which must be exported, shelled or

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otherwise disposed of (restricted). The preliminary free percentage releases 80 percent of the adjusted inshell trade demand. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation (supply) and is based on the preliminary crop estimate.

At its August 28, 1997, meeting, the Board computed and announced preliminary free and restricted percentages of 8 percent and 92 percent, respectively. The Board used the NASS crop estimate of 40,000 tons. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage was to guard against an underestimate of crop size. The preliminary free percentage released 3,003 tons of hazelnuts from the 1997 supply for domestic inshell use. The preliminary restricted percentage of the 1997 supply for export and kernel markets totaled 34,296 tons.

Under the order, the Board must meet a second time, on or before November 15, to recommend interim final and final percentages. The Board uses current crop estimates to calculate the interim final and final percentages. The interim final percentages are calculated in the same way as the preliminary percentages and release the remaining 20 percent (to total 100 percent of the inshell trade demand) previously computed by the Board. Final free and restricted percentages may release up to an additional 15 percent of the average of the preceding three years' trade acquisitions to provide an adequate carryover into the following season. The final free and restricted percentages must be effective by June 1, at least 30 days prior to the end of the marketing year, June 30. The final free and restricted percentages can be made effective earlier, if recommended by the Board and approved by the Secretary. Revisions in the marketing policy can be made until February 15 of each marketing year, but the inshell trade demand can only be revised upward, consistent with section 982.40(e).

The Board met on November 13, 1997, and reviewed and approved an amended marketing policy. The Board recommended that the three-year average trade acquisition figure of 4,279 tons be increased by 214 tons for market expansion. The Board also recommended the establishment of interim final and final free and restricted percentages. Interim final percentages were recommended at 10 percent free and 90 percent restricted. The interim final percentage makes an additional 965 tons of inshell hazelnuts available for the domestic inshell market, including product for market expansion. The interim final marketing percentages are based on the Board's final production estimate (42,000 tons) and release 3,968 tons to the domestic inshell market from the 1997 supply subject to regulation. The interim final restricted percentage resulted in a restricted obligation of 35,173 tons.

The final free and restricted percentages were recommended at 12 percent and 88 percent, respectively. The Board also recommended that the final percentages be effective on April 30, 1997. The established final marketing percentages release for domestic inshell use an additional 642 tons from the supply subject to regulation. Thus, a total of 4,610 tons of inshell hazelnuts will be released from the 1997 supply for domestic inshell use.

The marketing percentages are based on the Board's production estimates and the following supply and demand information for the 1997–98 marketing year:

	Tons
Inshell Supply	
(1) Total production (Board's estimate)	42,000
(2) Less substandard, farm use (disappearance)	2,860
(3) Merchantable production (Board's adjusted crop estimate)	39,140
(4) Plus undeclared carryin as of July 1, 1997, subject to regulation	1
(5) Supply subject to regulation (Item 3 plus Item 4)	39,141
Inshell Trade Demand	
(6) Average trade acquisitions of inshell hazelnuts for three prior years	4,279
(7) Increase to encourage increased sales (5 percent of Item 6)	214
(8) Less declared carryin as of July 1, 1996, not subject to regulation	525
(9) Adjusted Inshell Trade Demand	3,968
(10) 15 percent of the average trade acquisitions of inshell hazelnuts for three prior years (Item 6)	642
(11) Adjusted Inshell Trade Demand plus 15 percent for carryout (Item 9 plus Item 10)	4,610

Percentages	Free	Restricted
(12) Interim final percentages (Item 9 divided by Item 5) × 100	10	90
(13) Final percentages (Item 11 divided by Item 5) × 100	12	88

In addition to complying with the provisions of the order, the Board also considered the Department's 1982 "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell hazelnuts available for sale in domestic markets. The Guidelines provide that the domestic inshell market has available a quantity equal to 110 percent of prior years' shipments before secondary market allocations are approved. This provides for plentiful supplies for consumers and for market expansion, while retaining the mechanism for dealing with oversupply situations. At its November 13, 1997, meeting, the Board recommended that an increase of 5 percent (214 tons) for market expansion be included in the inshell trade demand which was used to compute the interim percentages. The established final percentages are based on the final inshell trade demand, and will make available an additional 642 tons for desirable carryout. The total free supply for the 1997–98 marketing year is 5,135 tons of hazelnuts, which is the final trade demand of 4,610 tons plus the declared carryin of 525 tons. This amount is 120 percent of prior years' sales and exceeds the goal of the Guidelines.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,000 producers of hazelnuts in the production area and approximately 23 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. Using these criteria, virtually all of the producers are small agricultural producers and an estimated 20 of the 23 handlers are small agricultural service firms. Thus, the great majority of hazelnut producers and handlers may be classified as small entities.

Board meetings are widely publicized in advance of the meetings and are held in a location central to the production area. The meetings are open to all industry members and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

Many years of marketing experience led to the development of the current volume control procedures. These procedures have helped the industry solve its marketing problems by keeping inshell supplies in balance with domestic needs. The current volume control procedures fully supply the domestic inshell market, provide for market expansion, and help prevent oversupplies in that market.

Inshell hazelnuts sold to the domestic market provide higher returns to the industry than are obtained from shelling. The inshell market is inelastic and is characterized as having limited demand and being prone to oversupply.

Industry statistics show that total hazelnut production has varied widely over the last 10 years, from a low of 13,000 tons in 1989 to a high of 41,000 tons in 1993. Average production has been around 24,000 tons. While crop size has fluctuated, the volume regulations contribute toward orderly marketing and market stability, and help moderate the variation in returns for all growers and handlers, both large and small. For instance, production in the shortest crop year (1989) was 53 percent of the 10-year average (1987–1996). Production in the biggest crop year (1996) was 170 percent of the 10-year average. The percentage releases provide all handlers with the opportunity to benefit from the most profitable domestic inshell market. That market is available to all handlers, regardless of handler size.

NASS statistics show that the grower price per pound has increased steadily over the last 4 years, from $.28 in 1992 to $.43 in 1996.

The Board discussed the only alternative to this rule which was not to regulate. Without any regulations in effect, the Board believes that the industry would oversupply the inshell domestic market. With the 1997 hazelnut crop the largest in history, the release of 42,000 tons on the domestic inshell market would cause grower returns to decrease drastically, and completely disrupt the market.

While the level of benefits of this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain and expand markets even though hazelnut supplies fluctuate widely from season to season.

Hazelnuts produced under the order comprise virtually all of the hazelnuts produced in the U.S. This production represents, on average, approximately 3 percent of total U.S. tree nut production and approximately 3 percent of the world's hazelnut production.

This volume control regulation provides a method for the U.S. hazelnut industry to limit the supply of domestic inshell hazelnuts available for sale in the U.S. Section 982.40 of the order establishes a procedure and computations for the Board to follow in recommending to the Secretary release of preliminary, interim final, and final quantities of hazelnuts to be released to the free and restricted markets each marketing year. The program results in plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations.

Currently, U.S. hazelnut production can be successfully allocated between the inshell domestic and secondary markets. One of the best secondary markets for hazelnuts is the export market. Inshell hazelnuts produced under the marketing order compete well in export markets because of quality. Europe, and Germany in particular, is historically the primary world market for U.S. produced inshell hazelnuts, although China was the largest importer in 1996–97. A third market is for shelled hazelnuts sold domestically. Domestically produced kernels generally command a higher price in the domestic market than imported kernels. The industry is continuing its efforts to develop and expand secondary markets, especially the domestic kernel market. Small business entities, both producers and handlers, benefit from the expansion efforts resulting from this program.

There are some reporting, recordkeeping and other compliance requirements under the order. The reporting and recordkeeping burdens have been accepted by the handlers as necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This interim final rule does not change those requirements.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this regulation.

Written comments as to the effect of this action on small business entities timely received, will be considered before finalization of this rule.

After consideration of all relevant material presented, including the Board's recommendation and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The 1997–98 marketing year began July 1, 1997, and the percentages established herein apply to all merchantable hazelnuts handled from the beginning of the crop year; (2) handlers are aware of this rule, which was recommended at an open Board meeting, and need no additional time to comply with this rule; and (3) interested persons are provided a 60-day comment period in which to respond. All comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR Part 982 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 982.245 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

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§ 982.245 Free and restricted percentages—1997–98 marketing year.

(a) The interim final free and restricted percentages for merchantable hazelnuts for the 1997–98 marketing year shall be 10 and 90 percent, respectively.

(b) On April 30, 1998, the final free and restricted percentages for merchantable hazelnuts for the 1997–98 marketing year shall be 12 and 88 percent, respectively.

Dated: January 15, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–1433 Filed 1–21–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 997 and 998

[Docket No. FV97–998–3 FIR]

Domestically Produced Peanuts Handled by Persons Not Subject to Peanut Marketing Agreement No. 146; Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, an interim final rule which decreased the assessment rate for the Peanut Administrative Committee (Committee) under Marketing Agreement No. 146 (agreement) for the 1997–98 and subsequent crop years. Authorization to assess peanut handlers who have signed the agreement enables the Committee to incur expenses that are reasonable and necessary to administer the program. The Department is also required to impose an administrative assessment on farmers' stock peanuts received or acquired by handlers who are not signatory (non-signatory handlers) to the agreement. Therefore, the assessment rate established under the agreement also must be applied to all non-signatory handlers. The 1997–98 crop year began July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Tammie Bryant or Jim Wendland, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 720–2491, FAX (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 720–2491, FAX (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued pursuant to the requirements of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereafter referred to as the "Act"; and under Marketing Agreement No. 146 (7 CFR part 998) regulating the quality of domestically produced peanuts.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Farmers' stock peanuts received or acquired by non-signatory handlers and farmers' stock peanuts received or acquired by handlers signatory to the agreement, other than from those described in §§ 998.31(c) and (d), are subject to assessments. It is intended that the assessment rates issued herein will be applicable to all assessable peanuts beginning July 1, 1997, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

This rule adopts as a final rule, without change, the provisions of an interim final rule, which decreased the assessment rate established for the Committee for the 1997–98 and subsequent fiscal years from $0.70 to $0.35 per ton.

The agreement provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. Funds to administer the agreement program are derived from signatory handler assessments. The members of the Committee are handlers and producers of peanuts. They are familiar with the Committee's needs and with the costs of goods and services in their local areas and, thus, are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input. The handlers of peanuts who are directly affected have signed the marketing agreement authorizing the expenses that may be incurred and the imposition of assessments.

For the 1997–98 and subsequent crop years, the Committee recommended and the Department approved, an assessment rate that would continue in effect from crop year to crop year indefinitely unless modified, suspended, or terminated by the Secretary, upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on April 30, 1997, and unanimously recommended 1997–98 administrative expenditures of $525,000 and an administrative assessment rate of $0.35 per net ton of assessable farmers' stock peanuts received or acquired by handlers. The Committee also voted not to recommend an assessment rate for indemnification for handler losses due to aflatoxin contamination. Adequate funds are included in the Committee's indemnification reserve for such expenses during the 1997–98 crop year. In comparison, last year's budgeted administrative expenditures were $1,025,500. Major expenditures recommended by the Committee for the 1997–98 crop year compared with those budgeted for 1996–97 (in parentheses) include: $55,000 for executive salaries ($112,450), $50,000 for clerical salaries ($131,500), $125,000 for field representatives (3 compliance officers rather than 7 fieldmen) salaries ($296,700), $18,000 for payroll taxes ($42,000), $65,000 for employee benefits ($148,000), $40,000 for Committee members travel ($40,000), $5,000 for staff travel ($5,000), $60,000 for field representatives travel ($110,000), $9,800 for insurance and bonds ($9,800), $19,000 for office rent and parking ($46,200), $10,000 for office supplies and stationery ($14,000), $10,400 for postage and mailing ($13,200), $11,000 for telephone and telegraph ($15,000), $6,000 for repairs and maintenance agreements ($6,000), $10,400 for the audit fee ($10,400), and $15,800 for the contingency reserve ($10,250).

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected receipts and acquisitions of farmers' stock peanuts. Farmers' stock peanuts received or acquired by handlers signatory to the agreement, other than from those described in § 998.31(c) and (d), are subject to the assessments. Farmers stock peanuts received or acquired by non-signatory handlers by law are subject to the same assessment rate. Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired. Receipts for the year under the agreement are estimated at 1,500,000 tons, which should provide $525,000 in assessment income. Approximately 95 percent of the domestically produced peanut crop is marketed by handlers who are signatory to the agreement. The remaining 5 percent of the U.S. peanut crop is marketed by non-signer handlers.

The Act provides for mandatory assessment of farmers' stock peanuts acquired by non-signatory peanut handlers. Section 608b of the Act specifies that: (1) Any assessment (except indemnification assessments) imposed under the agreement on signatory handlers shall also apply to non-signatory handlers, and (2) such assessment shall be paid to the Secretary.

The assessment rates established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although these assessment rates are effective for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1997–98 budget was reviewed and approved by the Department on September 17, 1997, and those for subsequent crop years will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. There are approximately 80 peanut handlers who are subject to regulation under the agreement or the non-signer program and approximately 25,000 peanut producers in the 16-State production area. Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. Approximately 25 percent of the signatory handlers, virtually all of the non-signer handlers, and most of the producers may be classified as small entities.

This rule continues in effect the assessment rate established for the Committee and collected from handlers for the 1997–98 and subsequent crop years of $0.35 per net ton. The assessment rate is $0.35 less than the rate previously in effect.

The Committee discussed alternatives to this rule, including alternative expenditure levels. The Committee also discussed the alternative of not decreasing the assessment rate. However, it decided against this course of action. The peanut industry has been in a state of economic decline since 1991, with the Committee attempting to cut costs wherever possible. The Committee's budget for 1997–98 is $525,000; this is $500,500 less than the amount budgeted for 1996–97. Based on an estimated 1,500,000 net tons of assessable peanuts, income derived from handler assessments during 1997–98 will be adequate to cover budgeted expenses.

This rule continues in effect the assessment obligation imposed on handlers. While this action will impose some costs on handlers, the costs are minimal and in the form of uniform assessments on all handlers. Some of the costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the agreement. This administrative assessment is required to also be applied uniformly to all non-signatory handlers and should be of benefit to all. In addition, the Committee's meeting was widely publicized throughout the peanut industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the April 30, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action will not impose any additional reporting or recordkeeping requirements on either small or large peanut handlers. As with all Federal marketing agreement and order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on September 17, 1997 (62 FR 48749). A copy of the interim final rule was also made available on the Internet by the Office of the Federal Register. The comment period ended October 17, 1997, and no comments were received.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 997

Food grades and standards, Peanuts, Reporting and recordkeeping requirements.

7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

PART 997—PROVISIONS REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS HANDLED BY PERSONS NOT SUBJECT TO THE PEANUT MARKETING AGREEMENT

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

Accordingly, the interim final rule amending 7 CFR parts 997 and 998 which was published at 62 FR 48749 on September 17, 1997, is adopted as a final rule without change.

Dated: January 15, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–1432 Filed 1–21–98; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 2003

Functional Organization of the Rural Development Mission Area; Correction

AGENCIES: Rural Housing Service; Rural Business-Cooperative Service; Rural Utilities Service; Farm Service Agency; USDA.

ACTION: Final rule; correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published Wednesday, December 24, 1997 (62 FR 67258–65). The regulations provided the function statements for organizational units within the Rural Development mission area, the Rural Housing Service, Rural Business-Cooperative Service, and the Rural Utilities Service.

EFFECTIVE DATE: January 22, 1998.

FOR FURTHER INFORMATION CONTACT: Timothy J. Ryan, Assistant Administrator for Human Resources, Rural Development, STOP 0730, 1400 Independence Avenue, SW., Washington, D.C. 20250–0730; Telephone: (202) 690–9860.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections amend the issuing agencies regulations to reflect the reorganization of the Department of Agriculture. The Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354)(1994 Act), enacted on October 13, 1994, abolished the Farmers Home Administration (FmHA). The Office of the Assistant Administrator, Farm Loan Programs, and all of its subordinate organizational units have been transferred to the Farm Service Agency (FSA). The remainder of the FmHA organizational units have been transferred in accordance with the 1994 Act to one of the following newly created agencies which make up the Rural Development mission area (Rural Development): the Rural Housing Service, the Rural Business-Cooperative Service, and the Rural Utilities Service. The Rural Utilities Service also includes the organizational units of the former Rural Electrification Administration. The rule only covers the Rural Development agencies.

Need for Correction

As published, the final regulations contain errors which may cause inconvenience and confusion for the public.

List of Subjects in 7 CFR Part 2003

Organizations and functions (government agencies).

PART 2003—ORGANIZATION

Accordingly, 7 CFR part 2003 is corrected by making the following correcting amendments:

1. The authority citation for Part 2003 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 901 *et seq.*, 7 U.S.C. 1989, 7 U.S.C. 6941 *et seq.*, 42 U.S.C. 1480 *et seq.*

§ 2003.10 [Corrected]

2. In the table in § 2003.10(c) the location for the USDA Rural Development State Office in Texas is revised to read "Temple, TX".

3. In the table in § 2003.10(c) after the entry for Texas, an additional State entry is added to read "Utah", and an additional location entry is added to read "Salt Lake City, UT".

Dated: January 14, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 98–1512 Filed 1–21–98; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8757]

RIN 1545–AV46

Obligations of States and Political Subdivisions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that provide guidance to state and local governments that issue bonds for output facilities. This document also contains temporary regulations that provide guidance to certain nongovernmental persons that are engaged in the local furnishing of electric energy or gas using facilities financed with state or local government bonds. These temporary regulations reflect changes made by the Tax Reform Act of 1986 and the Small Business Job Protection Act of 1996. The temporary regulations will affect State and local government issuers of obligations and nongovernmental persons engaged in the local furnishing of electric energy or gas after the effective date of these regulations.

The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective January 22, 1998.

For dates of applicability, see §§ 1.141–15T, 1.142(f)(4)–1T(g), and 1.150–5T(b) of these regulations.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Allan Seller (202) 622–3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR part 1) under section 141 by providing special rules for state and local bonds issued for output facilities. This document also amends the Income Tax Regulations under section 142(f)(4) by providing rules for nongovernmental persons engaged in local furnishing of electric energy or gas using facilities financed with state or local bonds to make the election provided in that section. Proposed regulations §§ 1.141–7 and 1.141–8, published on December 30, 1994, (59 FR 67658) addressed the application of the private activity bond tests under section 141(b)(2) to output contracts for output facilities and the application of the $15 million limit under section 141(b)(4) to output facility financings. These sections (the 1994 proposed output regulations) are withdrawn. Public comments submitted on the 1994 proposed output regulations, however, have been taken into account in formulating these temporary regulations.

Explanation of Provisions

A. Section 1.141–7T Special Rules for Output Facilities

1. Basis for Special Rules for Output Facilities

The 1994 proposed output regulations contain special rules for applying the private business tests to output contracts. Among the reasons for special rules for output facilities are that governmentally-owned utilities are often under an open-ended obligation to assure service to their customers and that general public customers are ordinarily required to make continuing payments for service. Output facilities also require special rules because the economic benefit provided by these facilities is usually the use of fungible property, such as electric power or water. The temporary regulations continue the approach of the proposed regulations, but contain a number of new provisions, consistent with the general principles of the existing regulations under § 1.103–7(b)(5), that take into account changes in the electric industry.

2. The Benefits and Burdens Standard

The 1994 proposed output regulations provide that a contract to sell output of a financed facility to a nongovernmental person may cause the private business tests of section 141(b) to be met if it has the effect of transferring to that nongovernmental person the benefits of owning the facility and the burdens of paying debt service on the facility. The temporary regulations adopt this standard, but clarify its application.

For purposes of the standard, the temporary regulations generally provide that use of output on a basis different from the general public has the effect of transferring the benefits of ownership. Similarly, contracts that provide a substantial certainty that payments for output will be made under the terms of the contract, other than on a short-term basis, have the effect of transferring the burden of paying debt service on a facility. The standard does not require that the burdens of ownership for general tax purposes be transferred to a nongovernmental person.

3. Requirements Contracts

The 1994 proposed output regulations provide that take or pay contracts, take contracts, and certain requirements contracts meet the benefits and burdens standard. Many commentators, noting that § 1.103–7(b)(5) does not expressly refer to requirements contracts, suggested that requirements contracts should never meet the benefits and burdens standard.

The temporary regulations narrow the rule for requirements contracts, by providing that a requirements contract meets the benefits and burdens test only to the extent that the issuer reasonably expects that it is substantially certain that payments for output will be made under the contract. Such a requirements contract is in substance equivalent to a take contract. A retail requirements contract generally does not meet this standard, unless the contract requires substantial termination payments or contains other terms that establish substantial certainty of payment. Whether the payments under a wholesale requirements contract are substantially certain to be made is determined on the basis of all the facts and circumstances, taking into account such factors as whether the purchaser's customer base has significant indicators of stability, whether the contract covers historical requirements of the purchaser, and whether the purchaser has agreed not to construct or acquire other power resources.

4. Special Rule for Output Contracts With Specific Performance Rights

The 1994 proposed output regulations provide that a requirements contract meets the benefits and burdens standard if the purchaser has priority rights to the output (or rights to control the allocation of the available output).

The temporary regulations generally provide that any output contract that provides the purchaser with specific rights to control the output or with other specific performance rights to the use of output of a financed facility meets the benefits and burdens test, even if the issuer reasonably expects that it is not substantially certain that payments will be made under the contract. This different standard applies to output contracts that provide the purchaser with specific performance rights because those contracts closely resemble leases, and, thus, provide more substantial rights to the use of a financed facility.

5. Security Interest Test

The 1994 proposed output regulations do not address how the security interest test applies to output contracts.

The temporary regulations provide that payments made or to be made under an output contract pledged as security for an issue are taken into account under the private security or payment test even if payment under the contract is not substantially certain. This rule is appropriate because it is reasonable to presume that payments under a contract pledged as security for an issue are material to the payment of debt service on an issue.

6. Use of Nameplate Capacity to Determine Available Output

The 1994 proposed output regulations measure the available output of a facility by reference to nameplate capacity, but further provide that, if nameplate capacity or its equivalent is greater than 150 percent of the average expected output, average expected output is used instead of nameplate capacity. In addition, nameplate capacity is reduced by scheduled maintenance. Commentators suggested that reference to nameplate capacity to determine available output is a bright-line, administrable test, and that the reductions to nameplate capacity in the 1994 proposed output regulations should be deleted.

The temporary regulations generally provide that nameplate capacity may be used as a reference to determine available output of a generating facility. This rule acknowledges that, consistent with prudent utility practice, governmentally-owned utilities may be required to acquire or construct facilities with excess capacity for their current or future reserves. To prevent tax-exempt financings that are inconsistent with the purposes of section 141, however, the temporary regulations provide that this rule does not apply if the issuer reasonably expects on the issue date that nongovernmental persons that are treated as private business users will purchase 30 percent or more of the actual output of the facility. In such a case, the Commissioner may determine available output on another reasonable basis. In addition, the temporary regulations clarify that, if a limited source of supply constrains the output of a facility (for example, if seasonal differences in water flow constrain output of a hydroelectric facility), the available output must be determined by taking into account these constraints. The temporary regulations also delete the rule that nameplate capacity is reduced by scheduled maintenance.

7. Exception for Swapping and Pooling Arrangements

The 1994 proposed output regulations provide that certain arrangements to swap and pool power do not meet the private business tests.

The temporary regulations simplify this exception and expand it, so that it includes swapping arrangements entered into to enhance reliability of a system.

8. Exceptions for Short-term Sales of Output

The 1994 proposed output regulations provide that 30-day agreements for spot sales of excess capacity do not result in private business use.

The temporary regulations provide that the exceptions for short-term use that apply to other types of arrangements under the general private activity bond rules in § 1.141–3 also apply to output contracts. Thus, in general an output contract that is available to the general public may have a term up to 180 days; an output contract that is not treated as general public use, but that is offered on the basis of generally applicable or uniformly applied rates, may have a term of up to 90 days; and an output

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contract that is specially negotiated may have a term of up to 30 days.

9. Special Exceptions for Sales of Output Attributable to Excess Generating Capacity Which Mitigate Stranded Costs

The 1994 proposed output regulations provide that a single nonrenewable contract for a term of not greater than 1 year is not treated as private business use. Commentators suggested that longer term, renewable contracts to sell output attributable to excess generating capacity should be disregarded under the private business use test. Commentators noted that the excess generating capacity problem may be exacerbated by the development of open-access regulatory policies and other factors.

The temporary regulations respond to these special considerations by providing a more flexible exception for sales of output attributable to excess generating capacity that results from the offering of nondiscriminatory, open access tariffs. This exception is also consistent with the Federal Energy Regulatory Commission policy that utilities should take reasonable steps to mitigate the imposition of charges to recover legitimate, prudent, and verifiable stranded costs associated with providing open access. Under this exception, a contract to sell excess power is not treated as private business use if the term of the contract (including all renewal options) is not greater than 3 years, the issuer does not issue tax-exempt bonds to increase the capacity of its generation system during the term of the contract, the governmental owner offers non-discriminatory, open access transmission tariffs pursuant to the FERC rules (or comparable state law provisions pursuant to a plan approved by the FERC), all of the output sold under the contract is excess capacity resulting from participation in open access, the contract mitigates stranded costs of the owner that are attributable to entry into the open access system, and stranded costs recovered under the contract by that owner are used to redeem tax-exempt bonds as promptly as reasonably practical.

10. Special Exceptions for Transmission Facilities

The 1994 proposed output regulations provide special rules for transmission facilities, which are intended to respond to the development of regulatory policies that require or encourage open access to transmission systems. Under these special rules, in general, the use of transmission facilities is not private business use to the extent that it results from an order or actions taken in response to (or to prevent) an anticipated order by the United States that those facilities be used by a particular nongovernmental person, provided that the transmission facilities were sized based on the issuer's reasonable expectations about the amount of wheeling. The 1994 proposed output regulations contain a number of exceptions to this rule, which are designed to prevent the tax-exempt financing of facilities constructed for use by nongovernmental persons. The 1994 proposed output regulations also provide that an issuer must take remedial action if more than 20 percent of a transmission facility is so used by a nongovernmental person.

Commentators suggested that the exceptions for use of transmission systems should be made more flexible to accommodate the development of open access regulatory policies. Commentators noted that measurement of use of a transmission system raises a number of complex technical issues. For example, capacity or available output may be much more readily determined for a generating unit than for a transmission system. Some commentators suggested that all use of a transmission system pursuant to standard tariffs should be treated as general public use. Other commentators suggested that any rules addressing open access required by the FERC should also similarly address open access required by state public utility commissions.

The temporary regulations broaden the exceptions for use of transmission facilities, but do not treat all use of transmission facilities pursuant to standard tariffs as general public use. Under § 1.141–2(d), an action taken in response to a specific FERC order to wheel power under sections 211 and 212 of the Federal Power Act (16 U.S.C. 824j and 824k) would otherwise qualify for an exception from the deliberate action rule because it is taken in response to a regulatory directive made by the federal government. The temporary regulations additionally provide that an action taken in anticipation of such an order is not a deliberate action.

The temporary regulations also provide a special exception for transmission facilities pursuant to which an action is not treated as a deliberate action if it is taken to implement the offering of non-discriminatory, open access for the use of financed transmission facilities in a manner consistent with FERC rules, including reciprocity conditions of FERC Order No. 888 (61 FR 21540, May 10, 1996), pursuant to a plan approved by the FERC. The special exception also applies to orders and rules of state regulatory authorities pursuant to a plan approved by the FERC that are comparable to certain FERC orders and rules. This exception does not apply, however, to the sale, exchange, or other disposition of bond-financed transmission facilities to a nongovernmental person.

Section 1.141–2(d)(1) provides that an issue is an issue of private activity bonds if the issuer reasonably expects, as of the issue date, that the issue will meet either the private business tests or the private loan financing test or if the issuer takes a deliberate action, subsequent to the issue date, that causes the conditions of either the private business tests or the private loan financing test to be met. Thus, reasonable expectations about private business use of transmission facilities under non-discriminatory, open-access tariffs, must be taken into account on the issue date of bonds financing those facilities. A special transition rule applies to bonds (other than advance refunding bonds) that refund bonds issued prior to July 9, 1996 (the effective date of FERC Order No. 888). Because an issuer is in general not required to apply the temporary regulations to refunding bonds issued after the effective date that do not have a weighted average maturity longer than the remaining weighted average maturity of the refunded bonds, the special transition rule will apply only if the issuer chooses to apply the temporary regulations. Whether bonds issued after July 9, 1996, to finance output facilities met the reasonable expectations test of section 141 because of the possibility of actions taken to implement open access tariffs is appropriately determined on a facts and circumstances basis.

These special rules for transmission facilities are appropriate because of the unique statutory and regulatory regime that applies to transmission facilities.

B. Section 1.141–8T $15 Million Limitation for Output Facilities

1. Clarification of Computation of Nonqualified Amount

The 1994 proposed output regulations provide guidance on the special $15 million limitation on output facilities of section 141(b)(4). In general, this limitation is based on the "nonqualified amount" of an issue or issues that finance a single project.

The temporary regulations clarify that, in determining the total nonqualified amount for issues

financing a project, the nonqualified amount is first determined on an issue-by-issue basis, and that these amounts are then aggregated. The temporary regulations also provide a simpler method for determining how much the nonqualified amount of an issue is reduced when principal of the issue is paid. Under this method, the nonqualified amount of an issue is reduced by the ratio of adjusted issue price over issue price.

C. Section 1.142(f)(4)–1T Manner of Making Election to Terminate Tax-exempt Bond Financing

Section 142(f)(4) permits a person engaged in the local furnishing of electric energy or gas that uses facilities financed with exempt facility bonds under section 142(a)(8) and that expands its service area in a manner inconsistent with the requirements of sections 142(a)(8) and 142(f) to make an election to ensure that those bonds will continue to be treated as exempt facility bonds. In order to make the election the person engaged in local furnishing must, among other things, agree to redeem all outstanding bonds that financed the facilities not later than 6 months after the later of the earliest date on which the bonds may be redeemed or the date of the election. The temporary regulations set forth the required time and manner of making this election. In general, the election must be made on or before the 90th day after the later of (i) the date of the service area expansion or (ii) the effective date of the temporary regulations.

D. § 1.150–5T Filing Notices and Elections

The temporary regulations specify that notices and elections under section 142(f)(4)(B) and § 1.141–12(d)(3) must be filed with the Chief, Employee Plans and Exempt Organizations Division of the appropriate key district office.

E. Need for Temporary Regulations and Request for Public Comments

Congress passed the Federal Energy Act of 1992 to encourage deregulation of the electric power industry. Since that time, the Federal Energy Regulatory Commission and various states have adopted policies to open up access to transmission facilities. Treasury and the IRS are aware that these initiatives are causing rapid changes in the electric power industry, and have received many comments asking for immediate guidance under section 141 regarding the effect on the tax-exempt status of bonds of certain restructuring transactions necessary for utilities to participate in a deregulated electric utility environment. For example, several comments state that the restructuring initiatives in various states and regions may not proceed until Treasury and the IRS clarify the extent to which municipal utilities may transfer control of certain assets financed with tax-exempt bonds to an independent system operator. Based on these considerations, it has been determined that immediate regulatory guidance is necessary to ensure efficient administration of the tax laws.

The regulations are published in both temporary and proposed form to provide immediate guidance on which issuers can rely in evaluating their participation in open access regimes, while providing the opportunity for public comment. In addition, Treasury and the IRS believe that providing guidance on the effect of open access participation is more appropriately accomplished by regulation than by private letter ruling. Treasury and the IRS are also aware, however, that restructuring efforts are evolving and uncertain, and that new types of arrangements may be developed to implement restructuring. Many of the issues that will arise may need to be addressed legislatively. Accordingly, the regulations are published in temporary form with the expectation the Treasury and the IRS will reexamine them in light of new developments within the next three years.

Comments are invited on whether further guidance is needed to address the new types of contractual arrangements that are arising in the electric power industry. In particular, comments are invited on whether there are any instances in which an option of a nongovernmental purchaser to purchase output of a bond-financed facility should not be taken into account as private business use.

Effective Dates

Sections 1.141–7T and 1.141–8T are applicable to bonds issued on or after February 23, 1998.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that the provisions of these regulations that impose a collection of information requirement on small entities do not have a significant impact on a substantial number of small entities. This certification is based upon the fact that in the years 1987 through 1993 a total of only 61 different state or local government issuers of exempt facility bonds issued under section 142(f) for facilities for the local furnishing of electric energy or gas filed information returns with the Internal Revenue Service under section 149(e). Further, an election under section 142(f)(4) is in no event required to be filed with the Internal Revenue Service more than once. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Michael G. Bailey and Allan Seller, Office of Assistant Chief Counsel (Financial Institutions & Products), and Nancy M. Lashnits, formerly of that office. However, other personnel from IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.141–0 is amended by removing the entries for §§ 1.141–7 and 1.141–8 and adding entries to the table in numerical order to read as follows:

§ 1.141–0 Table of contents.

* * * * *

§ 1.141–7T Special rules for output facilities (temporary).

(a) Overview.
(b) Definitions.
(1) Available output.
(2) Measurement period.
(3) Sale at wholesale.
(4) Stranded costs.
(5) Take contract and take or pay contract.
(6) Transmission facilities.
(7) Nonqualified amount.
(c) Output contracts.

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(1) General rule.
(2) Benefits and burdens test.
(3) Take contract or take or pay contract.
(4) Requirements contracts.
(5) Contract with specific performance rights.
(d) Measurement of private business use.
(e) Measurement of private security or payment.
(f) Exceptions for certain contracts.
(1) Small purchases of output.
(2) Swapping and pooling arrangements.
(3) Short-term output contracts.
(4) Special 3-year exception for sales of output attributable to excess generating capacity resulting from participation in open access.
(5) Special exceptions for transmission facilities.
(6) Certain conduit parties disregarded.
(g) Allocations of output facilities and systems.
(1) Facts and circumstances analysis.
(2) Illustrations.
(3) Transmission contracts.
(4) Allocation of payments.
(h) Examples.

§ 1.141–8T $15 million limitation for output facilities (temporary).

(a) In general.
(1) General rule.
(2) Reduction in $15 million output limitation for outstanding issues.
(3) Benefits and burdens test applicable.
(b) Definition of project.
(1) General rule.
(2) Separate ownership.
(3) Generating property.
(4) Transmission.
(5) Subsequent improvements.
(6) Replacement property.
(c) Examples.
* * * * *

§ 1.141–15T Effective dates (temporary).

(a) through (e) [Reserved].
(f) Effective dates for certain regulations relating to output facilities.
(1) General rule.
(2) Transition rule for requirement contracts.
(g) Refunding bonds.
(h) Permissive retroactive application.
(i) Permissive retroactive application of certain regulations pertaining to output contracts.
* * * * *

Par. 3. Section 1.141–2 is amended by adding a sentence at the end of paragraph (d)(3)(ii)(B) to read as follows:

§ 1.141–2 Private activity bond tests.

* * * * *

(d) * * *
(3) * * *
(ii) * * *
(B) * * * See § 1.141–7T(f)(5).

* * * * *

§§ 1.141–7 and 1.141–8 [Removed]

Par. 3a. Sections 1.141–7 and 1.141–8 are removed.

Par. 4. Sections 1.141–7T and 1.141–8T are added to read as follows:

§ 1.141–7T Special rules for output facilities (temporary).

(a) *Overview.* This section provides special rules to determine whether arrangements for purchases of output from an output facility cause an issue of bonds to meet the private business tests. For this purpose, unless otherwise stated, water facilities are treated as output facilities. Section 1.141–3 generally applies to determine whether other types of arrangements for use of an output facility cause an issue to meet the private business tests.

(b) *Definitions.* For purposes of this section and § 1.141–8T, the following definitions and rules apply:

(1) *Available output.* The available output of a facility financed by an issue is determined by multiplying the number of units produced or to be produced by the facility in one year by the number of years in the measurement period of that facility for that issue.

(i) *Generating facilities.* The number of units produced or to be produced by a generating facility in one year is determined by reference to its nameplate capacity or the equivalent (or where there is no nameplate capacity or the equivalent, its maximum capacity), which is not reduced for reserves or other unutilized capacity.

(ii) *Transmission and other output facilities.* (A) *In general.* For transmission, cogeneration, and other output facilities, available output must be measured in a reasonable manner to reflect capacity.

(B) *Electric transmission facilities.* Measurement of the available output of all or a portion of electric transmission facilities may be determined in a manner consistent with the reporting rules and requirements for transmission networks promulgated by the Federal Energy Regulatory Commission (FERC). For example, for a transmission network, the use of aggregate load and load share ratios in a manner consistent with the requirements of the FERC may be reasonable. In addition, depending on the facts and circumstances, measurement of the available output of transmission facilities using thermal capacity or transfer capacity may be reasonable.

(iii) *Special rule for facilities acquired or constructed primarily for use by private business users.* If an issuer reasonably expects on the issue date that persons that are treated as private business users will purchase more than 30 percent of the actual output of the facility financed with the issue, the Commissioner may determine the number of units produced or to be produced by the facility in one year on a reasonable basis other than by reference to nameplate capacity, such as the average expected annual output of the facility. For example, the Commissioner may treat the reasonably expected annual output of a financed peaking electric generating unit as the available output of that unit if the issuer reasonably expects, on the issue date of bonds that finance the unit, that an investor-owned utility will purchase 30 percent of the actual output of the facility under a take or pay contract, even if the amount of output purchased is less than 10 percent of the available output determined by reference to nameplate capacity. The reasonably expected annual output of the generating facility must be consistent with the capacity reported for prudent reliability purposes.

(iv) *Special rule for facilities with a limited source of supply.* If a limited source of supply constrains the output of an output facility, the number of units produced or to be produced by the facility must be determined by reasonably taking into account those constraints. For example, the available output of a hydroelectric unit must be determined by reference to the reasonably expected annual flow of water through the unit.

(2) *Measurement period.* The measurement period of an output facility financed by an issue is determined under § 1.141–3(g).

(3) *Sale at wholesale.* For purposes of this section, a sale at wholesale means a sale of output to any person for resale.

(4) *Stranded costs.* For purposes of this section, *stranded costs* means stranded costs as defined in 18 CFR 35.26 and costs that an issuer incurred to provide service to a wholesale or retail customer that subsequently becomes, in whole or in part, an unbundled transmission customer and that an issuer is authorized to recover by the FERC or a state regulatory authority.

(5) *Take contract and take or pay contract.* A *take contract* is an output contract under which a purchaser agrees to pay for the output under the contract if the output facility is capable of providing the output. A take or pay contract is an output contract under which a purchaser agrees to pay for the output under the contract, whether or not the output facility is capable of providing the output.

(6) *Transmission facilities. Transmission facilities* are facilities for the transmission or distribution of output. Transmission facilities include facilities necessary to provide ancillary services required to be offered as part of open access transmission tariffs under rules promulgated by the FERC under sections 205 and 206 of the Federal Power Act (16 U.S.C. 824d and 824e). Thus, if a facility also serves another function (for example, a facility that provides for operating reserves for transmission and also provides generation) an allocable portion of the facility is treated as a transmission facility.

(7) *Nonqualified amount.* The nonqualified amount with respect to an issue is determined under section 141(b)(8).

(c) *Output contracts*—(1) *General rule.* The purchase by a nongovernmental person of the available output of an output facility (output contract) financed with the proceeds of an issue is taken into account under the private business tests if the purchase has the effect of transferring substantial benefits of owning the facility and substantial burdens of paying the debt service on bonds used (directly or indirectly) to finance the facility (the benefits and burdens test). See paragraph (c)(5) of this section for other output contract arrangements that are taken into account under the private business tests. See also § 1.141–8T for rules for when an issue that finances an output facility (other than a water facility) meets the private business tests because the nonqualified amount of the issue exceeds $15 million.

(2) *Benefits and burdens test*—(i) *Benefits of ownership.* An output contract transfers substantial benefits of owning a facility if the contract gives the purchaser (directly or indirectly) rights to capacity of the facility on a basis that is preferential to the rights of the general public.

(ii) *Burdens of paying debt service.* An output contract transfers substantial burdens of paying debt service on an issue to the extent that the issuer reasonably expects that it is substantially certain that payments will be made under the terms of the contract (disregarding default, insolvency, or other similar circumstances). For example, an output contract is treated as transferring burdens of paying debt service on an issue if payments must be made upon contract termination.

(iii) *Payments pursuant to pledged contract.* Payments made or to be made under the terms of an output contract that is pledged as security for an issue are taken into account under the private business tests even if the issuer reasonably expects that it is not substantially certain that payments will be made under the contract (disregarding default, insolvency, or other similar circumstances). For this purpose, an output contract is pledged as security only if the bond documents provide that the pledged contract cannot be substantially amended without the consent of bondholders or a trustee for the bondholders.

(3) *Take contract or take or pay contract*—(i) *In general.* The benefits and burdens test is met if a nongovernmental person agrees pursuant to a take contract or a take or pay contract to purchase the available output of a facility. See paragraphs (d) and (e) of this section for rules regarding measuring the use of, and payments on debt service for, an output facility for determining whether the private business tests are met.

(ii) *Transmission contracts.* In the case of a transmission facility, an agreement to provide firm or priority transmission services is generally treated as a take contract or a take or pay contract. The extent to which transmission services are interruptible is an important factor indicating that a contract for transmission services is not treated as a take contract or a take or pay contract.

(4) *Requirements contracts*—(i) *In general.* A requirements contract under which a nongovernmental person agrees to purchase all or part of its output requirements is taken into account under the private business tests only to the extent that, based on all the facts and circumstances, the contract meets the benefits and burdens test. See § 1.141–15T(f)(3) for special effective dates for the application of this paragraph (c)(4) to issues financing facilities subject to requirements contracts.

(ii) *Significant factors.* Significant factors that tend to establish that the benefits and burdens test is met under the rule set forth in paragraph (c)(4)(i) of this section include—

(A) The purchaser's customer base has significant indicators of stability, such as large size, diverse composition, and a substantial residential component;

(B) The contract covers historical requirements of the purchaser, rather than only projected requirements that are in addition to historical requirements; and

(C) The purchaser agrees not to construct or acquire other power resources to meet the requirements covered by the contract.

(iii) *Special rule for retail requirements contracts.* In general, a requirements contract that is not a sale at wholesale does not meet the benefits and burdens test because the obligation to make payments on the contract is contingent on the output requirements of a single user. Such a requirements contract in general meets the benefits and burdens test, however, to the extent that it contains contractual terms that obligate the purchaser to make payments that are not contingent on the output requirements of the purchaser (such as significant termination payments) or that obligate the purchaser to have output requirements. For example, a requirements contract with an industrial purchaser meets the benefits and burdens test if the purchaser enters into additional contractual obligations with the issuer or another governmental unit not to cease operations.

(5) *Contract with specific performance rights.* An output contract that provides the purchaser with specific rights to control the output of a facility or with other specific performance rights to the use of output of a facility is generally taken into account under the private business tests, even if the benefits and burdens test is not met. Payments made and to be made under such a contract are generally taken into account under the private payment test, even if the issuer does not reasonably expect that it is substantially certain that payments will be made under the contract (disregarding default, insolvency, or other similar circumstances). A customer's normal entitlement to receive utility service (for example, an entitlement to reasonable protection against blackouts in times of high demand through rotating the effects of blackouts) is not treated as a specific performance right for this purpose.

(d) *Measurement of private business use.* If an output contract results in private business use under this section, the amount of private business use generally is the capacity that must be reserved for the nongovernmental person under prudent reliability standards. For example, in the case of a take contract for a peaking electric generating unit, under which a nongovernmental person has priority rights to use capacity at any time for the entire term of the bonds, but under which the total energy purchases are limited in any one year to 10 percent of annual available output (determined by reference to nameplate capacity), the amount of private business use is the amount of capacity that must be reserved for that nongovernmental person under prudent reliability standards, which may be as much as 100 percent.

(e) *Measurement of private security or payment.* The measurement of payments made or to be made by nongovernmental persons under output contracts as a percent of the debt service of an issue is determined under the rules provided in § 1.141–4.

(f) *Exceptions for certain contracts*—(1) *Small purchases of output.* An

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output contract is not taken into account under the private business tests if the purchaser is not required under the contract to make a payment that is substantially certain to be made under paragraph (c)(2)(ii) of this section in any year greater than 0.5 percent of the average annual debt service on an issue that finances the output facility.

(2) *Swapping and pooling arrangements.* An agreement that provides for swapping or pooling of output by one or more governmental persons and one or more nongovernmental persons does not result in private business use of the output facility owned by the governmental person to the extent that—

(i) The swapped output is reasonably expected to be approximately equal in value (determined over periods of one year or less); and

(ii) The purpose of the agreement is to enable each of the parties to satisfy different peak load demands, to accommodate temporary outages, to diversify supply, or to enhance reliability in accordance with prudent reliability standards.

(3) *Short-term output contracts.* The exceptions for short-term arrangements provided in § 1.141–3 (c) and (d)(3) apply to output contracts. For example, a spot sale for use for a period of 90 days on the basis of rates that are generally applicable and uniformly applied generally does not result in private business use, and a spot sale for use for a period of 30 days on the basis of rates that are specially negotiated generally does not result in private business use.

(4) *Special 3-year exception for sales of output attributable to excess generating capacity resulting from participation in open access.* The purchase of output of an output facility (not including a water facility) by a nongovernmental person is not treated as private business use if all of the following requirements are met:

(i) The term of the contract is not longer than 3 years, including all renewal options.

(ii) The issuer does not make expenditures to increase the generating capacity of its system during the term of the contract that are, or will be, financed with proceeds of tax-exempt bonds.

(iii) The governmental owner offers non-discriminatory, open access transmission tariffs for use of its transmission system pursuant to rules promulgated by the FERC under sections 205 and 206 of the Federal Power Act (16 U.S.C. 824d and 824e) (or comparable provisions of state law pursuant to a plan approved by the FERC).

(iv) All of the output sold under the contract is attributable to excess capacity resulting from the offer of the non-discriminatory, open access transmission tariffs referred to in paragraph (f)(5)(ii) of this section.

(v) The contract mitigates stranded costs of the governmental owner that are attributable to the offer of the non-discriminatory, open access transmission tariffs referred to in paragraph (f)(5)(ii) of this section.

(vi) Any stranded costs recovered by the governmental owner (including amounts recovered under the contract) with respect to the output facility under rules promulgated by the FERC under the Federal Power Act (or comparable provisions of state law) are applied as promptly as is reasonably practical to redeem tax-exempt bonds that financed that facility in a manner consistent with § 1.141–12.

(5) *Special exceptions for transmission facilities*—(i) *Mandated wheeling.* Entering into a contract for the use of transmission facilities financed by an issue is not treated as a deliberate action under § 1.141–2(d) if—

(A) The contract is entered into in response to (or in anticipation of) an order by the United States under sections 211 and 212 of the Federal Power Act (16 U.S.C. 824j and 824k) (or a state regulatory authority under comparable provisions of state law pursuant to a plan approved by the FERC); and

(B) The terms of the contract are bona fide and arm's length, and the consideration paid is consistent with the provisions of section 212(a) of the Federal Power Act.

(ii) *Actions taken to implement non-discriminatory, open access.* An action is not treated as a deliberate action under § 1.141–2(d) if it is taken to implement the offering of non-discriminatory, open access tariffs for the use of transmission facilities financed by an issue in a manner consistent with rules promulgated by the FERC under sections 205 and 206 of the Federal Power Act (16 U.S.C. 824d and 824e) (or by a state regulatory authority under comparable provisions of state law pursuant to a plan approved by the FERC). This paragraph (f)(5)(ii) does not apply, however, to the sale, exchange, or other disposition of transmission facilities to a nongovernmental person.

(iii) *Application to reasonable expectations test to certain current refunding bonds.* An action taken or to be taken with respect to transmission facilities refinanced by an issue is not taken into account under the reasonable expectations test of § 1.141–2(d) if—

(A) The action is described in paragraph (f)(5) (i) or (ii) of this section;

(B) The bonds of the issue are current refunding bonds that, directly or indirectly, refund bonds issued before July 9, 1996; and

(C) The weighted average maturity of the refunding bonds is not greater than the remaining weighted average maturity of those prior bonds.

(6) *Certain conduit parties disregarded.* A nongovernmental person acting solely as a conduit for the exchange of output among governmentally owned and operated utilities is disregarded in determining whether the private business tests are met with respect to financed facilities owned by a governmental person. Use of property by a power marketer in the trade or business of purchasing and reselling power, however, is taken into account under the private business tests.

(g) *Allocations of output facilities and systems*—(1) *Facts and circumstances analysis.* Whether output sold under an output contract is allocated to a particular facility (for example, a generating unit), to the entire system of the seller of that output (net of any uses of that system output allocated to a particular facility), or to a portion of a facility is based on all the facts and circumstances. Significant factors to be considered in determining the allocation of an output contract to financed property are the following:

(i) The extent to which it is physically possible to deliver output to or from a particular facility or system.

(ii) The terms of a contract relating to the delivery of output (such as delivery limitations and options or obligations to deliver power from additional sources).

(iii) Whether a contract is entered into as part of a common plan of financing for a facility.

(iv) The method of pricing output under the contract, such as the use of market rates rather than rates designed to pay debt service of tax-exempt bonds used to finance a particular facility.

(2) *Illustrations.* The following illustrate the factors set forth in paragraph (g)(1) of this section:

(i) *Physical possibility.* Output from a generating unit that is fed directly into a low voltage distribution system of the owner of that unit and that cannot physically leave that distribution system generally must be allocated to those receiving electricity through that distribution system. Output may be allocated without regard to physical limitations, however, if exchange or similar agreements provide output to a purchaser where, but for the exchange agreements, it would not be possible for the seller to provide output to that purchaser.

(ii) *Contract terms relating to performance.* A contract to provide a specified amount of electricity from a system, but only when at least that amount of electricity is being generated by a particular unit, is allocated to that unit. For example, a contract to buy 20 MW of system power with a right to take up to 40 percent of the actual output of a specific 50 MW facility whenever total system output is insufficient to meet all of the seller's obligations generally is allocated to the specific facility rather than to the system.

(iii) *Common plan of financing.* A contract entered into as part of a common plan of financing for a facility generally is allocated to the facility if debt service for the issue of bonds is reasonably expected to be paid, directly or indirectly, from payments substantially certain to be made under the contract (disregarding default, insolvency, or other similar circumstances).

(iv) *Pricing method.* Pricing based on the capital and generating costs of a particular turbine tends to indicate that output under the contract is properly allocated to that turbine.

(3) *Transmission contracts.* Whether use under an output contract for transmission is allocated to a particular facility or to a transmission network is based on all the facts and circumstances, in a manner similar to paragraphs (g) (1) and (2) of this section. In general, the method used to determine payments under a contract is a more significant contract term for this purpose than nominal contract path. In general, if reasonable and consistently applied, the determination of use of transmission facilities under an output contract may be based on a method used by third parties, such as reliability councils.

(4) *Allocation of payments.* Payments for output provided by an output facility financed with two or more sources of funding are generally allocated under the rules in § 1.141–4(c).

(h) *Examples.* The following examples illustrate the application of this section:

Example 1. Joint ownership. Z, an investor-owned electric utility, and City H agree to construct an electric generating facility of a size sufficient to take advantage of the economies of scale. H will issue $50 million of its 25-year bonds, and Z will use $100 million of its funds for construction of a facility they will jointly own as tenants in common. Each of the participants will share in the ownership, output, and operating expenses of the facility in proportion to its contribution to the cost of the facility, that is, one-third by H and two-thirds by Z. H's bonds will be secured by H's ownership interest in the facility and by revenues to be derived from its share of the annual output of the facility. H will need only 50 percent of its share of the annual output of the facility during the first 20 years of operations. It agrees to sell 10 percent of its share of the annual output to Z for a period of 20 years pursuant to a contract under which Z agrees to take that power if available. The facility will begin operation, and Z will begin to receive power, 4 years after the H bonds are issued. The measurement period for the property financed by the issue is 21 years. H also will sell the remaining 40 percent of its share of the annual output to numerous other private utilities under contracts of 90 days or less entered into under a prevailing rate schedule, including demand charges. No contracts will be executed obligating any person other than Z to purchase any specified amount of the power for any specified period of time. No person (other than Z) will make payments substantially certain to be made (disregarding default, insolvency, or other similar circumstances) under paragraph (c)(2) of this section that will result in a transfer of substantial burdens of paying debt service on bonds used directly or indirectly to provide H's share of the facilities. The bonds are not private activity bonds, because H's one-third interest in the facility is not treated as used by the other owners of the facility. Although 10 percent of H's share of the annual output of the facility will be used in the trade or business of Z, a non-governmental person, under the rule in paragraph (c) of this section, that portion constitutes not more than 10 percent of the available output of H's ownership interest in the facility.

Example 2. Requirements contract treated as take contract. (i) City J issues 20-year bonds to acquire an electric generating facility having a reasonably expected economic life substantially greater than 20 years and a nameplate capacity of 100 MW. The available output of the facility under paragraphs (b)(1) of this section is approximately 17,520,000 MWh. On the issue date, J enters into a contract with T, an investor-owned utility, to provide T with all of its power requirements for a period of 10 years, commencing on the issue date. J reasonably expects that T will actually purchase an average of 20 MW over the 10-year period. Based on all of the facts and circumstances, including the size, diversity, and composition of T's customer base, J reasonably expects that it is substantially certain (disregarding default, insolvency, or other similar circumstances) that T will actually purchase only an average of 16 MW over the 10-year period. The contract is a requirements contract that must be taken into account under the private business tests pursuant to paragraph (c)(4) of this section because it provides T with substantial benefits of ownership (rights to capacity) and obligates T with substantial burdens of making payments that the issuer reasonably expects are substantially certain.

(ii) J is required to reserve for T's use 40 MW of capacity in accordance with prudent reliability standards. Under paragraph (d) of this section, the amount of private business use under this contract, therefore, is approximately 20 percent (40 MW × 24 hours × 365 days × 10 years, or 3,504,000 MWh) of the available output. Accordingly, the issue meets the private business use test. J reasonably expects that the amount to be paid for an average of 16 MW of power (less the operation and maintenance costs directly attributable to generating that 16 MW of power), will be more than 10 percent of debt service on the issue on a present-value basis. The payment for 16 MW of power is an amount that J reasonably expects is substantially certain to be made under paragraph (c)(2) of this section. Accordingly, the issue meets the private security or payment test because J reasonably expects that it is substantially certain that payment of more than 10 percent of the debt service will be indirectly derived from payments by T. The bonds are private activity bonds under paragraph (c) of this section. Further, if 20 percent of the sale proceeds of the issue is greater than $15 million and the issue meets the private security or payment test with respect to the $15 million output limitation, the bonds are also private activity bonds under section 141(b)(4). See § 1.141–8T.

Example 3. Allocation of existing contracts to new facilities. Power Authority K, a political subdivision created by the legislature in State X to own and operate certain power generating facilities, sells all of the power from its existing facilities to four private utility systems under contracts executed in 1999, under which the four systems are required to take or pay for specified portions of the total power output until the year 2029. Existing facilities supply all of the present needs of the four utility systems, but their future power requirements are expected to increase substantially beyond the capacity of K's current generating system. K issues 20-year bonds in 2004 to construct a large generating facility. As part of the financing plan for the bonds, a fifth private utility system contracts with K to take or pay for 15 percent of the available output of the new facility. The balance of the output of the new facility will be available for sale as required, but initially it is not anticipated that there will be any need for that power. The revenues from the contract with the fifth private utility system will be sufficient to pay less than 10 percent of the debt service on the bonds (determined on a present value basis). The balance, which will exceed 10 percent of the debt service on the bonds, will be paid from revenues derived from the contracts with the four systems initially from sale of power produced by the old facilities. The output contracts with all the private utilities are allocated to K's entire generating system. See paragraphs (g)(1) and (2) of this section. Thus, the bonds meet the private business use test because more than 10 percent of the proceeds will be used in the trade or business of a nongovernmental person. In addition, the bonds meet the private payment or security test because payment of more than 10 percent of the debt service, pursuant to underlying arrangements, will be derived from payments in respect of property used for a private business use.

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Example 4. Allocation to displaced resource. Municipal utility MU, a political subdivision, purchases all of the electricity required to meet the needs of its customers (1,000 MW) from B, an investor-owned utility that operates its own electric generating facilities, under a 50-year take or pay contract. MU does not anticipate that it will require additional electric resources, and any new resources would produce electricity at a higher cost to MU than its cost under its contract with B. Nevertheless, B encourages MU to construct a new generating plant sufficient to meet MU's requirements. MU issues obligations to construct facilities that will produce 1,000 MW of electricity. MU, B, and I, another investor-owned utility, enter into an agreement under which MU assigns to I its rights under MU's take or pay contract with B. Under this arrangement, I will pay MU, and MU will continue to pay B, for the 1,000 MW. I's payments to MU will at least equal the amounts required to pay debt service on MU's bonds. In addition, under paragraph (g)(1)(iii) of this section, the contract among MU, B, and I is entered into as part of a common plan of financing of the MU facilities. Under all the facts and circumstances, MU's assignment to I of its rights under the original take or pay contract is allocable to MU's new facilities under paragraph (g) of this section. Because I is a nongovernmental person, MU's bonds are private activity bonds.

Example 5. Transmission facilities transferred to independent system operator. (i) In 1998, the public utilities commission of State C adopts a plan for restructuring its electric power industry. The plan fosters competition by providing both wholesale and retail customers with non-discriminatory access to transmission facilities within the State. The plan provides that investor-owned utilities will transfer operating control over all of their transmission assets to an independent system operator (ISO), which is a nongovernmental person that will operate those combined assets as a single, state-wide system. Municipally-owned utilities are eligible for, but are not required to participate in, the open access system implemented by the ISO. The functions of the ISO include control of transmission access and pricing, scheduling transmission, control area operations, and settlements and billing. In addition, under certain circumstances the ISO may order the transmission owners to construct additional transmission facilities. The restructuring plan is approved by the FERC pursuant to sections 205 and 206 of the Federal Power Act.

(ii) In 1994 City D had issued bonds to finance improvements to its transmission system. In 1998, D transfers operating control of its transmission system to the ISO pursuant to the restructuring plan. At the same time, D chooses to apply the private activity bond regulations of §§ 1.141–0 through 1.141–15 to the 1994 bonds. The operation of the financed facilities by the ISO does not meet the exception for management contracts that do not give rise to private business use under § 1.141–3(b)(4)(iii)(C) because it is not a contract solely for the operation of a facility under that exception. Under the special exception in paragraph (f)(5) of this section, however, the transfer of control is not treated as a deliberate action. Accordingly, the transfer of control does not cause the 1994 bonds to meet the private activity bond tests.

Example 6. Current refunding. The facts are the same as in *Example 5* of this paragraph (h), and in addition D issues bonds in 1999 to currently refund the 1994 bonds. The weighted average maturity of the 1999 bonds is not greater than the remaining weighted average maturity of the 1994 bonds. D chooses to apply the private activity bond regulations of §§ 1.141–0 through 1.141-15 to the refunding bonds. In general, reasonable expectations must be separately tested on the date that refunding bonds are issued under § 1.141–2(d). Under the special exception in paragraph (f)(5) of this section, however, the transfer of the financed facilities to the ISO need not be taken into account in applying the reasonable expectations test to the refunding bonds.

§ 1.141–6T $15 million limitation for output facilities (temporary).

(a) *In general*—(1) *General rule.* Section 141(b)(4) provides a special private activity bond limitation (the $15 million output limitation) for issues 5 percent or more of the proceeds of which are to be used to finance output facilities (other than a facility for the furnishing of water). Under this rule, a bond is a private activity bond under the private business tests of section 141(b)(1) and (2) if the nonqualified amount with respect to output facilities financed by the proceeds of the issue exceeds $15 million. The $15 million output limitation applies in addition to the private business tests of section 141(b)(1) and (2). Under section 141(b)(4) and paragraph (a)(2) of this section, the $15 million output limitation is reduced in certain cases. Specifically, an issue meets the test in section 141(b)(4) if both of the following tests are met:

(i) More than $15 million of the proceeds of the issue to be used with respect to an output facility are to be used for a private business use. Investment proceeds are disregarded for this purpose if they are not allocated disproportionately to the private business use portion of the issue.

(ii) The payment of the principal of, or the interest on, more than $15 million of the sales proceeds of the portion of the issue used with respect to an output facility is (under the terms of the issue or any underlying arrangement) directly or indirectly—

(A) Secured by any interest in an output facility used or to be used for a private business use (or payments in respect of such an output facility); or

(B) To be derived from payments (whether or not to the issuer) in respect of an output facility used or to be used for a private business use.

(2) *Reduction in $15 million output limitation for outstanding issues*—(i) *General rule.* In determining whether an issue more than 5 percent of the proceeds of which are to be used with respect to an output facility consists of private activity bonds under the $15 million output limitation, the $15 million limitation on private business use and private security or payments is applied by taking into account the aggregate nonqualified amounts of any outstanding bonds of other issues 5 percent or more of the proceeds of which are or will be used with respect to that output facility or any other output facility that is part of the same project.

(ii) *Bonds taken into account.* For purposes of this paragraph (a)(2), in applying the $15 million output limitation to an issue (the later issue), a tax-exempt bond of another issue (the earlier issue) is taken into account if—

(A) That bond is outstanding on the issue date of the later issue;

(B) That bond will not be redeemed within 90 days of the issue date of the later issue in connection with the refunding of that bond by the later issue; and

(C) More than 5 percent of the sale proceeds of the earlier issue financed an output facility that is part of the same project as the output facility that is financed by more than 5 percent of the sale proceeds of the later issue.

(3) *Benefits and burdens test applicable*—(i) *In general.* In applying the $15 million output limitation, the benefits and burdens test of § 1.141–7T applies, except that "$15 million" is substituted for "10 percent", or "5 percent" as appropriate.

(ii) *Earlier issues for the project.* If bonds of an earlier issue are outstanding and must be taken into account under paragraph (a)(2) of this section, the nonqualified amount for that earlier issue is multiplied by a fraction, the numerator of which is the adjusted issue price of the earlier issue as of the issue date of the later issue, and the denominator of which is the issue price of the earlier issue. Pre-issuance accrued interest as defined in § 1.148–1(b) is disregarded for this purpose.

(b) *Definition of project*—(1) *General rule.* For purposes of paragraph (a)(2) of this section, *project* has the meaning provided in this paragraph. Facilities that are functionally related and subordinate to a project are treated as part of that same project. Facilities having different purposes or serving different customer bases are not ordinarily part of the same project. For example, the following are generally not part of the same project—

(i) Generation and transmission facilities;

(ii) Separate facilities designed to serve wholesale customers and retail customers; and

(iii) A peaking unit and a baseload unit.

(2) *Separate ownership.* Except as otherwise provided in this paragraph (b)(2), facilities that are not owned by the same person are not part of the same project. If different governmental persons act in concert to finance a project, however (for example as participants in a joint powers authority), their interests are aggregated with respect to that project to determine whether the $15 million output limitation is met. In the case of undivided ownership interests in a single output facility, property that is not owned by different persons is treated as separate projects only if the separate interests are financed—

(i) With bonds of different issuers; and

(ii) Without a principal purpose of avoiding the limitation in this section.

(3) *Generating property*—(i) *Property on same site.* In the case of generation and related facilities, *project* means property located at the same site.

(ii) *Special rule for generating units.* Separate generating units are not part of the same project, if one unit is reasonably expected, on the date of each issue that finances the project, to be placed in service more than 3 years before the other. Common facilities or property that will be functionally related to more than one generating unit must be allocated on a reasonable basis. If a generating unit already is constructed or is under construction (the first unit) and bonds are to be issued to finance an additional generating unit (the second unit), all costs for any common facilities paid or incurred before the earlier of the issue date of bonds to finance the second unit or the commencement of construction of the second unit are allocated to the first unit. At the time that bonds are issued to finance the second unit (or, if earlier, upon commencement of construction of that unit), any remaining costs of the common facilities may be allocated among the first and second units so that in the aggregate the allocation is reasonable.

(4) *Transmission.* In the case of transmission facilities, *project* means functionally related or contiguous property and property for ancillary services, such as property required to be included in open access transmission tariffs under rules of the FERC. Separate transmission facilities are not part of the same project if one facility is reasonably expected, on the issue date of each issue that finances the project, to be placed in service more than 2 years before the other.

(5) *Subsequent improvements*—(i) *In general.* An improvement to generating or transmission facilities that is not part of the original design of those facilities (the original project) is not part of the same project as the original project if the construction, reconstruction, or acquisition of that improvement commences more than 3 years after the original project was placed in service and the bonds issued to finance that improvement are issued more than 3 years after the original project was placed in service.

(ii) *Special rule for transmission facilities.* An improvement to transmission facilities that is not part of the original design of that property is not part of the same project as the original project if the issuer did not reasonably expect the need to make that improvement when it commenced construction of the original project and the construction, reconstruction, or acquisition of that improvement is mandated by the federal government or a state regulatory authority to accommodate requests for wheeling.

(6) *Replacement property.* For purposes of this section, property that replaces existing property of an output facility is treated as part of the same project as the replaced property unless—

(i) The need to replace the property was not reasonably expected on the issue date or the need to replace the property occurred more than 3 years before the issuer reasonably expected (determined on the issue date of the bonds financing the property) that it would need to replace the property; and

(ii) The bonds that finance (and refinance) the replaced property have a weighted average maturity that is not greater than 120 percent of the reasonably expected economic life of the replaced property.

(c) *Example.* The application of the provisions of this section is illustrated by the following example:

Example. (i) Power Authority K, a political subdivision, intends to issue a single issue of tax-exempt bonds at par with a stated principal amount and sales proceeds of $500 million to finance the acquisition of an electric generating facility. No portion of the facility will be used for a private business use, except that L, an investor-owned utility, will purchase 10 percent of the output of the facility under a take contract and will pay 10 percent of the debt service on the bonds. The nonqualified amount with respect to the bonds is $50 million.

(ii) The maximum amount of tax-exempt bonds that may be issued for the acquisition of an interest in the facility in paragraph (i) of this *Example* is $465 million (that is, $450 million for the 90 percent of the facility that is governmentally owned and used plus a nonqualified amount of $15 million).

Par. 5. Section 1.141–15 is revised to read as follows:

§ 1.141–15 Effective dates.

(a) *Scope.* The effective dates of this section apply for purposes of §§ 1.141–1 through 1.141–6(a), 1.141–9 through 1.141–14, 1.145–1 through 1.145–2, 1.150–1(a)(3) and the definition of bond documents contained in § 1.150–1(b).

(b) *Effective dates.* Except as otherwise provided in this section, §§ 1.141–1 through 1.141–6(a), 1.141–9 through 1.141–14, 1.145–1 through 1.145–2, 1.150–1(a)(3) and the definition of bond documents contained in § 1.150–1(b) apply to bonds issued on or after May 16, 1997, that are subject to section 1301 of the Tax Reform Act of 1986 (100 Stat. 2602).

(c) *Refunding bonds.* Sections 1.141–1 through 1.141–6(a), 1.141–9 through 1.141–14, 1.145–1 through 1.145–2, 1.150–1(a)(3) and the definition of bond documents contained in § 1.150–1(b) do not apply to any bonds issued on or after May 16, 1997, to refund a bond to which those sections do not apply unless—

(1) The weighted average maturity of the refunding bonds is longer than—

(i) The weighted average maturity of the refunded bonds; or

(ii) In the case of a short-term obligation that the issuer reasonably expects to refund with a long-term financing (such as a bond anticipation note), 120 percent of the weighted average reasonably expected economic life of the facilities financed; or

(2) A principal purpose for the issuance of the refunding bonds is to make one or more new conduit loans.

(d) *Permissive application of regulations.* Except as provided in paragraph (e) of this section, §§ 1.141–1 through 1.141–6(a), 1.141–9 through 1.141–14, 1.145–1 through 1.145–2, 1.150–1(a)(3) and the definition of bond documents contained in § 1.150–1(b) may be applied in whole, but not in part, to actions taken before February 23, 1998 with respect to—

(1) Bonds that are outstanding on May 16, 1997, and subject to section 141; or

(2) Refunding bonds issued on or after May 16, 1997.

(e) *Permissive retroactive application of certain sections.* The following sections may each be applied to any bonds issued before May 16, 1997—

(1) Section 1.141–3(b)(4);

(2) Section 1.141–3(b)(6); and

(3) Section 1.141–12.

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Par. 6. Section 1.141–15T is added to read as follows:

§ 1.141–15T Effective dates (temporary).

(a) through (e) [Reserved]. For guidance see § 1.141–15.

(f) *Effective dates for certain regulations relating to output facilities*—(1) *General rule.* Except as otherwise provided in this section, §§ 1.141–7T and 1.141–8T apply to bonds issued on or after February 23, 1998 that are subject to section 1301 of the Tax Reform Act of 1986 (100 Stat. 2602).

(2) *Transition rule for requirements contracts.* Section 1.141–7T(c)(4) applies to output contracts entered into on or after February 23, 1998. An output contract is treated as entered into on or after that date if its term is extended, the parties to the contract change, or other material terms are amended on or after that date.

(g) *Refunding bonds in general.* Except as otherwise provided in paragraph (h) or (i) of this section, §§ 1.141–7T and 1.141–8T do not apply to bonds issued on or after February 23, 1998, to refund a bond to which the §§ 1.141–7T and 1.141–8T do not apply unless—

(1) The weighted average maturity of the refunding bonds is longer than—

(i) The weighted average maturity of the refunded bonds; or

(ii) In the case of a short-term financings (such as a bond anticipation note), 120 percent of the weighted average reasonably expected economic life of the facilities financed; or

(2) A principal purpose of the issuance of the refunding bonds is to make one or more new conduit loans.

(h) *Permissive retroactive application.* Except as provided in § 1.141–15 (d) or (e) or paragraph (i) of this section, §1.141–1 through 1.141–6, 1.141–7T through 1.141–8T, 1.141–9 through 1.141–14, 1.145–1 through 1.145–2, 1.150–1(a)(3) and the definition of bond documents contained in § 1.150–1(b) may be applied in whole, but not in part to—

(1) Bonds that are outstanding on May 16, 1997, and subject to section 141; or

(2) Refunding bonds issued on or after May 16, 1997.

(i) *Permissive retroactive application of certain regulations pertaining to output contracts.* Section 1.141–7T(f) (4) and (5) may be applied to any bonds issued before February 23, 1998.

Par. 7. Section 1.142(f)(4)–1T is added to read as follows:

§ 1.142(f)(4)–1T Manner of making election to terminate tax-exempt bond financing (temporary).

(a) *Overview.* Section 142(f)(4) permits a person engaged in the local furnishing of electric energy or gas (a local furnisher) that uses facilities financed with exempt facility bonds under section 142(a)(8) and that expands its service area in a manner inconsistent with the requirements of sections 142(a)(8) and 142(f) to make an election to ensure that those bonds will continue to be treated as exempt facility bonds. The election must meet the requirements of paragraphs (b) and (c) of this section.

(b) *Time for making election*—(1) *In general.* An election under section 142(f)(4)(B) must be filed with the Internal Revenue Service on or before 90 days after the later of—

(i) The date of the service area expansion that causes bonds to cease to meet the requirements of sections 142(a)(8) and 142(f); or

(ii) February 23, 1998.

(2) *Date of service area expansion.* For the purposes of this section, the date of the service area expansion is the first date on which the local furnisher is authorized to collect revenue for the provision of service in the expanded area.

(c) *Manner of making election.* An election under section 142(f)(4)(B) must be captioned "ELECTION TO TERMINATE TAX-EXEMPT BOND FINANCING", must be signed under penalties of perjury by a person who has authority to sign on behalf of the local furnisher, and must contain the following information—

(1) The name of the local furnisher;

(2) The tax identification number of the local furnisher;

(3) The complete address of the local furnisher;

(4) The date of the service area expansion;

(5) Identification of each bond issue subject to the election, including the complete name of each issue, the tax identification number of each issuer, the issue date of each issue, the issue price of each issue, the adjusted issue price of each issue as of the date of the election, the earliest date on which the bonds of each issue may be redeemed, and the principal amount of bonds of each issue to be redeemed on the earliest redemption date;

(6) A statement that the local furnisher making the election agrees to the conditions stated in section 142(f)(4)(B); and

(7) A statement that each issuer of the bonds subject to the election has received written notice of the election.

(d) *Effect on section 150(b).* Except as provided in paragraph (e) of this section, if a local furnisher files an election within the period specified in paragraph (b) of this section, section 150(b) does not apply to bonds identified in the election during and after that period.

(e) *Effect of failure to meet agreements.* If a local furnisher fails to meet any of the conditions stated in an election pursuant to paragraph (c)(6) of this section, the election is invalid.

(f) *Corresponding provisions of the Internal Revenue Code of 1954.* Section 103(b)(4)(E) of the Internal Revenue Code of 1954 set forth corresponding requirements for the exclusion from gross income of the interest on bonds issued for facilities for the local furnishing of electric energy or gas. For the purposes of this section any reference to sections 142(a)(8) and (f) of the Internal Revenue Code of 1986 includes a reference to the corresponding portion of section 103(b)(4)(E) of the Internal Revenue Code of 1954.

(g) *Effective dates.* Section 1.142(f)(4)–1 applies to elections made on or after February 23, 1998.

Par. 8. Section 1.150–5T is added to read as follows:

§ 1.150–5T Filing notices and elections (temporary).

(a) *In general.* Notices and elections under the following sections must be filed with the Chief, Employee Plans and Exempt Organizations) of the appropriate key district office—

(1) Section 1.141–12(d)(3); and

(2) Section 1.142(f)(4)–1T.

(b) *Effective dates.* This section applies to notices and elections filed on or after February 23, 1998.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved: December 23, 1997.

Jonathan Talisman,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–716 Filed 1–21–98; 8:45 am]

BILLING CODE 4830–01–U

Proposed Rules

Federal Register
Vol. 63, No. 14
Thursday, January 22, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Part 1301

Notice of Meeting

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of meeting.

SUMMARY: The Compact Commission will hold its monthly meeting to consider whether to adopt as a Final Rule the Proposed Rule to exempt from the compact over-order price regulation fluid milk utilized for child nutrition programs and distributed by handlers during the 1998–1999 contract year. The Commission will also deliberate and make a final ruling on a handler petition for exemption from the price regulation. Certain matters relating to administration will also be considered and acted upon. This is a rescheduling of a previously noticed meeting (63 FR 1396, Jan. 9, 1998) for January 16, 1998, cancelled due to a winter storm in the Northeast.

DATES: The meeting is scheduled for January 26, 1998 commencing at 10:00 a.m. to adjournment.

ADDRESSES: The meeting will be held at the Holiday Inn, Capitol Room, 172 North Main Street, Concord, NH (exit 14 off Interstate 93).

FOR FURTHER INFORMATION CONTACT: Daniel Smith, Executive Director, Northeast Dairy Compact Commission, 43 State Street, PO Box 1058, Montpelier, VT 05601. Telephone (802) 229–1941.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Northeast Dairy Compact Commission will hold its regularly scheduled monthly meeting. The Compact Commission will deliberate and act upon whether to adopt as a Final Rule the Proposed Rule to exempt from the regulation fluid milk distributed by handlers during the 1998–1999 contract year under competitive bid contracts with School Food Authorities in New England for Child Nutrition Programs qualified for reimbursement under the National School Lunch Act of 1946 and the Child Nutrition Act. See 62 F.R. 65226. The Commission will also deliberate and make a final ruling on Horizon Organic Dairy's petition for exemption from the price regulation. Docket # HEP–97–009. Certain matters relating to administration, including final approval of the contract with participating universities to conduct the market impact study required by the price regulation, will also be considered and acted upon.

(Authority: (a) Article V, Section 11 of the Northeast Interstate Dairy Compact, and all other applicable Articles and Sections, as approved by Section 147, of the Federal Agriculture Improvement and Reform Act (FAIR ACT), Pub. L. 104–127, and as thereby set forth in S.J. Res. 28(1)(b) of the 104th Congress; Finding of Compelling Public Interest by United States Department of Agriculture Secretary Dan Glickman, August 8, 1996 and March 20, 1997. (b) Bylaws of the Northeast Dairy Compact Commission, adopted November 21, 1996.)

Daniel Smith,

Executive Director.

[FR Doc. 98–1601 Filed 1–21–98; 8:45 am]

BILLING CODE 1650–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–14–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –30, and –40 Series

Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, –30, and –40 series airplanes. This proposal would require replacement of certain taper-lok attachments and forward trunnion bolts with new components that attach the left and right main landing gear (MLG) to each wing. This proposal is prompted by a report indicating that, due to overstrength of the forward trunnion bolt, an MLG broke away and ruptured a wing fuel tank while an airplane was being operated off the runway. The actions specified by the proposed AD are intended to ensure that the MLG separates from the wing when it is subjected to unpredictable overloads during abnormal operations, and to prevent consequent primary structural damage to the airplane.

DATES: Comments must be received by March 9, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–14–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Ronald Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5224; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be

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considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–14–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–14–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that, while a McDonnell Douglas Model DC–10–10 series airplane was being operated off the runway, a main landing gear (MLG) broke away and ruptured the wing fuel tank. The results of analysis and testing conducted by the manufacturer revealed that certain fasteners (e.g., the forward trunnion bolt and the bolts for the attach fitting), which attach the MLG to the rear spar of the wing, are overstrength. Consequently, the MLG may not separate from the airplane, as designed, when unpredictable overloads are placed on the MLG during abnormal operations. This condition, if not corrected, could result in primary structural damage to the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas DC–10 Service Bulletin 57–78, Revision 1, dated August 26, 1986 (for Model DC–10–10 series airplanes), which describes procedures for replacing 24 TL taper-lok attachments that attach the left and right MLG attach fitting assemblies on each wing with heat-treat TLH taper-lok attachments. This service bulletin also describes procedures for replacing the forward trunnion bolts on the left and right MLG of each wing with "zero margin" trunnion bolts.

The FAA also has reviewed and approved McDonnell Douglas DC–10 Service Bulletin 57–79, Revision 1, dated September 21, 1979, as revised by McDonnell Douglas DC–10 Service Bulletin 57–79, Service Bulletin Change Notification, dated January 23, 1980 (for Model DC–10–10 series airplanes). This service bulletin describes procedures for replacing the 1½-inch-diameter bolts that attach the left and right MLG attach fitting and rear spar of each wing with 1¼-inch-diameter bolts and bushings, and installing bolt retainers.

In addition, the FAA has reviewed and approved McDonnell Douglas DC–10 Service Bulletin 57–82, dated February 19, 1980 (for Model DC–10–30 and –40 series airplanes). This service bulletin describes procedures for replacing the forward trunnion bolts of the left and right MLG of each wing with "zero margin" trunnion bolts. For certain groups of airplanes, the service bulletin also describes procedures for replacing the 1½-inch-diameter bolts that attach the left and right MLG attach fitting and rear spar of each wing with 1¼-inch-diameter bolts and bushings, and installing bolt retainers.

Accomplishment of the replacement of all of these fasteners will allow the MLG to separate from the wing. This separation is intended to minimize the possibility of primary structural damage to the airplane when the MLG is subjected to unpredictable overloads during abnormal operations.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type of design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously in accordance with the procedures specified in those service bulletins.

Cost Impact

For McDonnell Douglas Model DC–10–10 Series Airplanes

There are approximately 119 Model DC–10–10 series airplanes of the affected design in the worldwide fleet, and 108 airplanes of U.S. registry that would be affected by the proposed requirements for replacement of taper-lok attachments and forward trunnion bolts. The FAA estimates that it would take approximately 462 work hours per airplane to accomplish these proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $47,000 per airplane. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $8,069,760, or $74,720 per airplane.

There are approximately 111 Model DC–10–10 series airplanes of the affected design in the worldwide fleet, and 82 airplanes of U.S. registry that would be affected by the proposed requirements for replacement of larger attach bolts and installation of bolt retainers. The FAA estimates that it would take approximately 500 work hours per airplane to accomplish these proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $11,734 per airplane. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $3,422,188, or $41,734 per airplane.

For McDonnell Douglas Model DC–10–30 and DC–10–40 Series Airplanes

There are approximately 168 Model DC–10–30 and DC–10–40 series airplanes of the affected design in the worldwide fleet, and 82 airplanes of U.S. registry that are identified as Groups I and II airplanes in the relevant service bulletins and that would be affected by the proposed requirements for replacement of larger attach bolts, installation of bolt retainers, and replacement of forward trunnion bolts. The FAA estimates that it would take approximately 576 work hours per airplane to accomplish these proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $20,000 per airplane. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $4,473,920, or $54,560 per airplane.

There are approximately 20 Model DC–10–30 and DC–10–40 series airplanes of the affected design in the worldwide fleet, and 6 airplanes of U.S. registry that are identified as Group III airplanes in the relevant service bulletins and that would be affected by the proposed requirements for replacement of forward trunnion bolts. The FAA estimates that it would take approximately 76 work hours per airplane to accomplish this proposed action, and that the average labor rate is $60 per work hour. Required parts would cost approximately $15,800 per airplane. Based on these figures, the cost impact of this proposed action on U.S. operators is estimated to be $122,160, or $20,360 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished the proposed action, and that no operator would accomplish that action in the future if this AD were not adopted.

However, the FAA has been advised that the following actions have been accomplished on Model DC–10–10 series airplanes in accordance with the requirements of this proposed AD:

- Taper-lok attachments and forward trunnion bolts have been replaced on 77 U.S.-registered airplanes. Therefore, the future economic cost impact of those proposed actions on U.S. operators is now only $2,316,320.
- Larger attach bolts have been replaced and bolt retainers have been installed on 77 U.S.-registered airplanes. Therefore, the future economic cost impact of those proposed actions on U.S. operators is now only $208,670.
- The FAA also has been advised that the following actions have been accomplished on Model DC–10–30 and DC–10–40 series airplanes in accordance with the requirements of this proposed AD:
- Forward trunnion bolts and larger attach bolts have been replaced and bolt retainers have been installed on 40 U.S.-registered airplanes identified as Groups I and II airplanes in the relevant service bulletins. Therefore, the future economic cost impact of those proposed actions on U.S. operators is now only $2,291,520.
- Forward trunnion bolts have been replaced on 3 U.S.-registered airplanes identified as Group III airplanes in the relevant service bulletins. Therefore, the future economic cost impact of this proposed action on U.S. operators is now only $61,080.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 97–NM–14–AD.

Applicability: Model DC–10–10, DC–10–30, and DC–10–40 series airplanes; certificated in any category; as listed in the following McDonnell Douglas service bulletins:

- McDonnell Douglas DC–10 Service Bulletin 57–78, Revision 1, dated August 26, 1986;
- McDonnell Douglas DC–10 Service Bulletin 57–79, Revision 1, dated September 21, 1979, as revised by McDonnell Douglas DC–10 Service Bulletin Change Notification 57–79, dated January 23, 1980; and
- McDonnell Douglas DC–10 Service Bulletin 57–82, dated February 19, 1980.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the main landing gear (MLG) separates from the wing when it is subjected to unpredictable overloads during abnormal operations, and to prevent consequent primary structural damage to the airplane, accomplish the following:

(a) For Model DC–10–10 series airplanes, as listed in McDonnell Douglas DC–10 Service Bulletin 57–78, Revision 1, dated August 26, 1986: Within 5 years after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD, in accordance with the service bulletin.

(1) Replace 24 TL taper-lok attachments that attach the left and right MLG attach fitting assemblies on each wing with heat-treat TLH taper-lok attachments in accordance with the service bulletin. And

(2) Replace each forward trunnion bolt on the left and right MLG of each wing with a "zero margin" trunnion bolt in accordance with the service bulletin.

Note 2: Replacement of taper-lok attachments and forward trunnion bolts accomplished prior to the effective date of this AD in accordance with McDonnell Douglas DC–10 Service Bulletin 57–78, dated February 19, 1980, is considered acceptable for compliance with the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(b) For Model DC–10–10 series airplanes, as listed in McDonnell Douglas DC–10 Service Bulletin 57–79, Revision 1, dated September 21, 1979, as revised by McDonnell Douglas DC–10 Service Bulletin Change Notification 57–79, dated January 23, 1980: Within 5 years after the effective date of this AD, replace each 1½-inch-diameter bolt and bushing that attach the left and right MLG attach fitting and rear spar of each wing with a 1¼-inch-diameter bolt, and install bolt retainers, in accordance with the service bulletin and service bulletin change notification.

Note 3: Replacement of 1½-inch-diameter bolts and installation of bolt retainers prior to the effective date of this AD in accordance with McDonnell Douglas DC–10 Service Bulletin 57–79, dated June 5, 1979, are considered acceptable for compliance with the requirements of paragraph (b) of this AD.

(c) For Model DC–10–30 and DC–10–40 series airplanes: Except as provided by paragraph (d) of this AD, within 5 years after the effective date of this AD, accomplish the requirements of paragraph (c)(1) or (c)(2) of this AD, as applicable, in accordance with McDonnell Douglas DC–10 Service Bulletin 57–82, dated February 19, 1980.

(1) For airplanes identified as Groups I and II in the service bulletin: Replace each forward trunnion bolt on the left and right MLG of each wing with a "zero margin" forward trunnion bolt; replace each 1½-inch-diameter bolt and bushing that attach the left and right MLG attach fitting and rear spar of each wing with a 1¼-inch-diameter bolt, and install bolt retainers, in accordance with the service bulletin.

(2) For airplanes identified as Group III in the service bulletin: Replace each forward trunnion bolt on the left and right MLG of each wing with a "zero margin" trunnion bolt in accordance with the service bulletin.

(d) For Model DC–10–30 and DC–10–40 airplanes: Installation of a trunnion bolt having part number (P/N) ARG7558–501 or P/N ARG7558–507 on the MLG, in accordance with AD 96–03–05, amendment 39–9502, constitutes terminating action for the requirement to replace the trunnion bolts for that landing gear, as required in paragraph (c)(1) or (c)(2) of this AD.

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(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 14, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–1427 Filed 1–21–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–108–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require a one-time inspection for discrepancies of certain engine control cables, and replacement of the cables with new or serviceable control cables, if necessary. It also would require modification of the cable fairleads on the nose rib firewall. Additionally, this proposal would require modification of the mounting brackets of the control cable pulleys in the pulley box. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent chafing of engine control cables, which could cause the cables to break and result in loss of engine control and consequent reduced controllability of the airplane.

DATES: Comments must be received by February 23, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–108–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4556, telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–108–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–108–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that it received a report indicating that, during routine inspection, engine control cables were found to be chafed in the area of the cable fairleads on the nose rib firewall, and in the area of the cable fairleads in the fuselage. Such chafing, if not corrected, could cause the cables to break and result in loss of engine control and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328–76–152, dated May 6, 1996, which describes procedures for a one-time inspection for chafing or discrepancies of the engine control cables in the area of the cable fairleads on the nose rib firewall, and replacement of the cables with new or serviceable cables, if necessary. Additionally, that service bulletin describes procedures for modification of these cable fairleads, which entails removing the fairleads, enlarging the bolt holes, and reworking the firewall.

In addition, Dornier also has issued Service Bulletin SB–328–76–168, dated May 6, 1996, which describes procedures for a one-time inspection for chafing or discrepancies of the engine control cables in the area of the cable fairleads in the fuselage, and replacement of the cables with new or serviceable cables, if necessary. Additionally, that service bulletin describes procedures for modification of the mounting brackets of the control cable pulleys in the pulley box, in order to improve alignment of the control cables in the area of the cable fairleads in the fuselage.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The LBA classified these service bulletins as mandatory and issued German airworthiness directives 96–288 and 96–290, both dated October 10, 1996, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 59 Dornier Model 328–100 series airplanes of U.S. registry would be affected by this proposed AD.

The actions specified in Service Bulletin SB–328–76–152 would be required to be accomplished on 56 Dornier Model 328–100 series airplanes of U.S. registry. It would take approximately 4 work hours per airplane to accomplish that action, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of this action on the 56 affected U.S.-registered airplanes is estimated to be $13,440, or $240 per airplane.

The actions specified in Service Bulletin SB–328–76–168 would be required to be accomplished on 29 Dornier Model 328–100 series airplanes of U.S. registry. It would take approximately 12 work hours per airplane to accomplish that action, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of this action on the 29 affected U.S.-registered airplanes is estimated to be $20,880, or $720 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dornier: Docket 97–NM–108–AD.

Applicability: Model 328–100 series airplanes; as listed in Dornier Service Bulletins SB–328–76–152 and SB–328–76–168, both dated May 6, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of engine control cables, which could cause the control cables to break and result in loss of engine control and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform a one-time inspection to detect chafing or discrepancies of the engine control cables in the areas of the cable fairleads on the nose rib firewall, and the cable fairleads in the fuselage; in accordance with Dornier Service Bulletins SB–328–76–152 and SB–328–76–168, both dated May 6, 1996; respectively. If any discrepancy or chafing is found, prior to further flight, replace the damaged cables with new or serviceable cables in accordance with the applicable service bulletin.

(b) For airplanes listed in Dornier Service Bulletin SB–328–76–152, dated May 6, 1996: Prior to further flight following the inspection required in paragraph (a) of this AD, modify the cable fairleads on the nose rib firewall in accordance with the service bulletin.

(c) For airplanes listed in Dornier Service Bulletin SB–328–76–168, dated May 6, 1996: Prior to further flight following the inspection required in paragraph (a) of this AD, modify the mounting brackets of the control cable pulleys in the pulley box in accordance with the service bulletin.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in German airworthiness directives 96–288 and 96–290, both dated October 10, 1996.

Issued in Renton, Washington, on January 14, 1998.

Gilbert L. Thompson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–1426 Filed 1–21–98; 8:45 am]

BILLING CODE 4910–13–U

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–306–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes. This proposal would require replacement of the main landing gear (MLG) trunnion fittings with reinforced trunnion fittings. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent collapse of the MLG due to fatigue cracking of the MLG trunnion fittings.

DATES: Comments must be received by February 23, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–306–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–306–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97-NM–306-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 2000 series airplanes. The LFV advises that, during fatigue testing, fatigue cracks developed in the main landing gear (MLG) trunnion fitting. This fatigue cracking, if not detected and corrected in a timely manner, could result in the collapse of the MLG.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 2000–57–010, dated February 25, 1997, which describes procedures for replacement of the MLG trunnion fittings with reinforced fittings. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive SAD No. 1–108, dated February 27, 1997, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 3 Saab Model SAAB 2000 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 80 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $14,400 or $4,800 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

SAAB aircraft AB: Docket 97–NM–306–AD.

Applicability: Model SAAB 2000 series airplanes having serial numbers -003 through -040 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent collapse of the main landing gear (MLG) due to fatigue cracking of the MLG trunnion fittings, accomplish the following:

(a) Prior to the accumulation of 12,000 total flight cycles, or within 100 flight cycles after the effective date of this AD, whichever occurs later, replace the MLG trunnion fittings with reinforced trunnion fittings in accordance with Saab Service Bulletin 2000–57–010, dated February 25, 1997.

(b) As of the effective date of this AD, no person shall install any MLG trunnion fitting having part number 7357451–503 or –504 on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Swedish airworthiness directive SAD No. 1–108, dated February 27, 1997.

Issued in Renton, Washington, on January 14, 1998.

Gilbert L. Thompson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–1425 Filed 1–21–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–07–AD]

Airworthiness Directives; Eurocopter France Model SA 330F, G, and J Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Eurocopter France Model SA 330F, G, and J helicopters. This proposal would require visually inspecting the intermediate gearbox (IGB) fairing safety stop (safety stop) for cracks, crazing, or edge wear, and if cracks, crazing, or edge wear exceeds the established limits, replacing the safety stop; and, inspecting to ensure that the inclined drive shaft fairing hinge pin is properly locked. A terminating action is provided in the AD by installing an additional safety stop on the IGB fairing. This proposal is prompted by one report of an accident involving the loss of the inclined drive shaft fairing. The actions specified by the proposed AD are intended to prevent loss of the inclined drive shaft fairing and impact with the tail rotor, and subsequent loss of control of the helicopter.

DATES: Comments must be received by March 23, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–07–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice

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must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–SW–07–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–07–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC) which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter France SA 330F, G, and J helicopters. The DGAC advises that there was one reported accident that was caused by the loss of the inclined drive shaft fairing.

Eurocopter France has issued Eurocopter France SA 330 Service Bulletin No. 54.20, Revision 1, dated February 27, 1996, which specifies visually inspecting the safety stop for wear, cracks or crazing, and determining if the edge has ruptured locally, and replacing the safety stop. The DGAC classified this service bulletin as mandatory and issued DGAC AD 96–095–076(B), dated April 24, 1996, in order to assure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model SA 330F, G, and J helicopters of the same type design registered in the United States, the proposed AD would require visually inspecting the safety stop for cracks, crazing, or edge wear that exceeds the limits stated in Note II of the Accomplishment Instructions of Eurocopter France SA 330 Service Bulletin No. 54.20, Revision 1, dated February 27, 1996, and if cracks, crazing, or edge wear exceeds the established limits, replacing the safety stop; and, inspecting to ensure that the inclined drive shaft fairing hinge pin is properly locked. Both inspections are required within 7 calendar days after the effective date of the AD, and upon completion of the last flight of each day. Installing an additional safety stop (right-angle clip) on the IGB fairing within 60 calendar days after the effective date of the AD is terminating action for the requirements of this AD. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 1 helicopter of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour to perform the inspection, and two work hours to install the safety stop, and that the average labor rate is $60 per work hour. Required parts would cost approximately $50 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $230.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39 AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 97–SW–07–AD.

Applicability: Model SA 330 F, G, and J helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the inclined drive shaft fairing hinge pin (hinge pin), that could result in loss of the inclined drive shaft fairing, impact with the tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 7 calendar days after the effective date of this AD, and thereafter, upon the completion of the last flight of each day, visually inspect the intermediate gearbox (IGB) fairing safety stop (safety stop) and the hinge pin in accordance with the Accomplishment Instructions of Eurocopter France SA 330 Service Bulletin No. 54.20, Revision 1, dated February 27, 1996.

(1) Inspect the IGB fairing safety stop, part number (P/N) 330A24–2086–20, for cracks or crazing, and edge wear that exceeds the limits stated in Note II of the Accomplishment Instructions of Eurocopter France SA 330 Service Bulletin No. 54.20, Revision 1, dated February 27, 1996, and if cracks, crazing, or edge wear that exceeds the established limits is detected, remove the safety stop and replace it with an airworthy safety stop; and,

(2) Inspect the hinge pin to ensure it is properly locked.

(b) Within 60 calendar days after the effective date of this AD, install an additional safety stop, P/N 330A24–2119–21, to prevent the hinge pin from backing out of its hole in case of a locking arm failure, in accordance with Accomplishment Instructions of Eurocopter France SA 330 Service Bulletin No. 54.20, Revision 1, dated February 27, 1996.

(c) Installation of an airworthy additional safety stop, P/N 330A24–2119–21, constitutes terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 96–095–076(B), dated April 24, 1996.

Issued in Fort Worth, Texas, on January 14, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–1428 Filed 1–21–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–46–AD]

RIN 2120–AA64

Airworthiness Directives; CFM International CFM56–2, –2A, –2B, –3, –3B, and –3C Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to CFM International (CFMI) CFM56–2, –2A, –2B, –3, –3B, and –3C series turbofan engines. This proposal would require a one-time eddy current inspection (ECI) for cracks or gouges in certain high pressure turbine rotor (HPTR) disks. This proposal is prompted by a report of a HPTR disk found to have a crack in a rim bolt hole during a routine shop manual ECI. The actions specified by the proposed AD are intended to prevent the potential for an uncontained failure of the HPTR disk, which could result in an inflight engine shutdown, aborted takeoff, or damage to the aircraft.

DATES: Comments must be received by March 23, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–46–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2981, fax (513) 552–2816. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Glorianne Messemer, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7132; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–ANE–46–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–46–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

This proposed airworthiness directive (AD) is applicable to CFM International (CFMI) CFM56–2, –2A, –2B, –3, –3B, and –3C series turbofan engines. The Federal Aviation Administration (FAA) received a report of a high pressure turbine rotor (HPTR) disk found to have a crack in a rim bolt hole during a routine shop manual eddy current inspection (ECI). Investigation revealed that the crack initiated from a gouge in the bolt hole. The gouge is the result of a drill break that occurred when the rim bolt hole was being manufactured. A review of manufacturing records indicates that a total of 276 HPTR disks have documented drill breaks that occurred during manufacture of the HPTR disk. This condition, if not corrected, could result in an uncontained failure of the HPTR disk, which could result in an inflight engine shutdown, aborted takeoff, or damage to the aircraft.

The FAA has reviewed and approved the technical contents of CFM56–2 Service Bulletin (SB) No. 72–817, dated January 14, 1997, CFM56–2A SB No. 72–419, Revision 1, dated January 31, 1997, CFM56–2B SB No. 72–561, Revision 1, dated January 31, 1997, and CFM56–3/–3B/–3C SB No. 72–843, dated January 14, 1997, that describe procedures for ECI for cracks or gouges in HPTR disks.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time ECI for cracks or gouges in certain HPTR disks. The calendar end-dates listed in the compliance section of this AD were based upon risk analysis. The actions would be required to be accomplished in accordance with the SBs described previously.

There are approximately 276 engines of the affected design in the worldwide

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fleet. The FAA estimates that 100 engines on aircraft of U.S. registry would be affected by the proposed AD, that it would take approximately 300 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Replacement parts, if required, would cost approximately $86,000 per engine. Based on these figures, and assuming that 16 of the inspected HPTR disks will require replacement, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,176,000. The manufacturer has advised the FAA that certain costs incurred from the inspection and replacement of parts affected by this AD may be borne by the manufacturer, therefore, the total cost impact of this AD to U.S. operators may be less than estimated by the FAA.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

CFM International: Docket No. 97–ANE–46–AD.

Applicability: CFM International (CFMI) CFM56–2, –2A, –2B, –3, –3B, and –3C series turbofan engines installed on, but not limited to McDonnell Douglas DC–8 series, Boeing 737 series, as well as Boeing E–3, E–6, and KC–135 (military) series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the potential for an uncontained failure of the high pressure turbine rotor (HPTR) disk, which could result in an inflight engine shutdown, aborted takeoff, or damage to the aircraft, accomplish the following:

(a) Eddy current inspect for cracks or gouges in HPTR disks, Part Numbers 1475M29P01, 1475M29P02, 9514M69P01, 9514M69P04, 9514M69P05, 9514M69P06, and 9514M69P09, with Serial Numbers listed in Table 1 of the applicable Service Bulletin (SB), as follows:

(1) For CFM56–2 engines, in accordance with CFM56–2 SB No. 72–817, dated January 14, 1997, prior to June 30, 1998.

(2) For CFM56–2A engines, in accordance with CFM56–2A SB No. 72–419, Revision 1, dated January 31, 1997, within 500 cycles in service (CIS) after the effective date of this AD, or by December 31, 1999, whichever occurs first.

(3) For CFM56–2B engines, in accordance with CFM56–2B SB No. 72–561, Revision 1, dated January 31, 1997, within 500 CIS after the effective date of this AD, or by December 31, 1999, whichever occurs first.

(4) For CFM56–3, –3B, and –3C engines, in accordance with CFM56–3/–3B/–3C SB No. 72–843, dated January 14, 1997, prior to June 30, 1998.

(b) Remove from service HPTR disks found cracked or gouged, and replace with serviceable parts.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on January 8, 1998.

James C. Jones,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–1484 Filed 1–21–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–119–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. The proposed AD would require replacing certain propeller de-icing controllers with ones that are not susceptible to electromagnetic interference (EMI). The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by the proposed AD are intended to prevent improper operation of the propeller de-icing controller caused by EMI, which could result in ice build-up on the propeller with possible airplane controllability problems.

DATES: Comments must be received on or before February 27, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–119–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Pilatus Aircraft Ltd., Marketing Support Department, CH–6370 Stans, Switzerland; telephone: +41 41–6196 233; facsimile: +41 41–6103 351. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Roman T. Gabrys, Aerospace Engineer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–119–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–119–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, notified the FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA of Switzerland reports that part number (P/N) 968.29.13.223 (BFG 4E3163–1) propeller de-icing controllers are susceptible to electromagnetic interference (EMI). This condition was identified during component qualification testing at the factory.

This condition, if not corrected in a timely manner, could result in improper operation of the de-icing controller, leading to ice-buildup on the propeller with possible airplane controllability problems.

Relevant Service Information

Pilatus has issued Service Bulletin No. 30–002, dated August 19, 1996, which specifies procedures for identifying an affected propeller de-icing controller, P/N 968.29.13.223 (BFG 4E3163–1); serial number U999 or lower that does not have "SB30–1" marked on it, and replacing this controller with one that is not susceptible to EMI.

The FOCA of Switzerland classified this service bulletin as mandatory and issued Swiss AD HB 96–416, dated September 30, 1996, in order to assure the continued airworthiness of these airplanes in Switzerland.

The FAA's Determination

This airplane model is manufactured in Switzerland and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the FOCA of Switzerland has kept the FAA informed of the situation described above.

The FAA has examined the findings of the FOCA of Switzerland; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus Models PC–12 and PC–12/45 airplanes of the same type design registered in the United States, the proposed AD would require replacing certain propeller de-icing controllers with ones that are not susceptible to EMI. Accomplishment of the proposed installation would be in accordance with the service information previously referenced.

Cost Impact

The FAA estimates that 53 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the proposed replacement, and that the average labor rate is approximately $60 an hour. Parts will be provided by the manufacturer free of charge. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $6,360.

Compliance Time of the Proposed AD

While the condition described in this proposed AD is unsafe while the airplane is in operation, it is not a direct result of airplane operation. For example, the unsafe condition exists or could develop on an airplane with 500 hours time-in-service (TIS) the same as one with 10 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in the proposed AD in order to assure that the unsafe condition is addressed on all airplanes in a reasonable time period.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

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List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Pilatus Aircraft Ltd: Docket No. 97–CE–119–AD.

Applicability: Models PC–12 and PC–12/45 airplanes, serial numbers MSN 101 through MSN 153, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent improper operation of the propeller de-icing controller caused by electromagnetic interference (EMI), which could result in ice build-up on the propeller with possible airplane controllability problems, accomplish the following:

(a) Within the next 9 calendar months after the effective date of this AD, accomplish the following in accordance with the instructions in Pilatus Service Bulletin No. 30–002, dated August 19, 1996:

(1) Identify the serial number of the affected propeller de-icing controller, part number (P/N) 968.29.13.223 (BFG 4E3163–1) (or FAA-approved equivalent part number);

(2) For those airplanes with a propeller de-icing controller, P/N 968.29.13.223 (BFG 4E3163–1) (or FAA-approved equivalent part number), with a serial number of U999 or lower that does not have "SB30–1" marked on it, replace it with a P/N 500.50.1.109 (BFG SB4E3163–1–30–1) (or FAA-approved equivalent part number) propeller de-icing controller.

Note 2: The airplanes affected by this AD could have propeller de-icing controllers installed that have Parts Manufacturer Approval (PMA). For those airplanes having PMA parts that are equivalent (PMA by equivalency) to those referenced in this AD, the phrase "or FAA-approved equivalent part number" means that this AD applies to airplanes with PMA by equivalency propeller de-icing controllers installed.

(b) As of the effective date of this AD, no person may install, on any affected airplane, a propeller de-icing controller, P/N 968.29.13.223 (BFG 4E3163–1) (or FAA-approved equivalent part number), with a serial number of U999 or lower that does not have "SB30–1" marked on it.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to Pilatus Service Bulletin No. 30–002 dated August 19, 1996, should be directed to Pilatus Aircraft Ltd., Marketing Support Department, CH–6370 Stans, Switzerland; telephone: +41 41–6196 233; facsimile: +41 41–6103 351. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 4: The subject of this AD is addressed in Swiss AD HB–96–416, dated September 30, 1996.

Issued in Kansas City, Missouri, on January 14, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–1463 Filed 1–21–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–68–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 1900D Airplane (Formerly Known as Beech Aircraft Corporation Model 1900D Airplane)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Raytheon Aircraft Company (Raytheon) Models 1900D airplanes (formerly known as Beech Aircraft Corporation Models 1900D airplanes). The proposed action would require inspecting and repairing the radio switching panel relay printed circuit board (PCB) and the nose avionics wire harnesses, and replacing the existing A017 component PCB with a new A017 component PCB that has internal overcurrent protection fuses. Several reported incidents of lost pilot/co-pilot intercom ability, VHF communication ability, and public address system ability while in flight prompted the proposed action. The actions specified by the proposed AD are intended to prevent the loss of the pilot and co-pilot intercom, VHF communications, and passenger address system, which could result in loss of all communication during critical phases of flight.

DATES: Comments must be received on or before March 14, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–68–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Raytheon Aircraft Company, P. O. Box 85, Wichita, Kansas 67201–0085; telephone (800) 625–7043. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey Nero, Aerospace Engineer, Wichita Aircraft Certification Office, Room 100, 1801 Airport Rd., Wichita, Kansas 67209; telephone (316) 946–4137; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–68–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–68–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received several incident reports in which an in-flight overcurrent condition occurred in the avionics/communications equipment resulting in a loss of certain Raytheon Model 1900D airplanes' pilot and co-pilot intercom, VHF communication, and passenger address systems. Investigation of these incidents found that one of the avionics wire harnesses had become chafed by rubbing against the PCB rack in the forward avionics bay. Investigators also found overcurrent conditions opening PCB traces in Collins CTL–22 communication control heads.

These events are occurring because the manufacturer made a change in the configuration design and installation of the avionics/communication equipment and the wire harnesses on the Model 1900D airplanes. The new configuration reduced the space between the equipment and made the proper installation of the wire harnesses a more critical issue. Also, the communication control heads are not internally protected by fuses to prevent a short circuit on any of the distribution circuits from affecting the entire communication system. This design makes it possible for an electrical short in the radio switching panel relay PCB's or in the avionics harnesses to create an overcurrent condition in the CTL–22 communication control heads.

This condition could cause the pilot and co-pilot circuit breaker to open, resulting in the pilot and co-pilot intercom system, VHF communications, and the passenger address system not operating, resulting in the loss of communication during critical phases of flight.

Relevant Service Information

Raytheon has issued service bulletin (SB) No. 2643, dated August, 1996, which specifies procedures for:

- inspecting the electrical connectors, the radio switching panel, and this panel's relay PCB's for moisture and corrosion;
- if moisture is found, cleaning and drying the components;
- if corrosion is found, either cleaning or replacing the component, depending on the severity;
- if moisture or corrosion is found, locating and eliminating the source;
- inspecting the nose avionics wire harnesses for proper installation, and if any wire harness is not installed properly, securing it with cable ties; and
- removing the A017 component PCB, part number (P/N) 101–342536–1, and replacing it with a new A017 component PCB, P/N 101–342536–5 (or an approved FAA-equivalent part number).

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above including the referenced service information above, the FAA has determined that AD action should be taken to prevent the loss of the pilot and co-pilot intercom, VHF communications, and passenger address system during critical flight, which could result in loss of all communication during critical phases of flight.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Raytheon Model 1900D airplanes of the same type design, the proposed AD would require: (1) Inspecting the radio switching panel and nose avionics wire harnesses for moisture and corrosion; (2) removing the corrosion; (3) locating and correcting the source of the moisture that is causing the corrosion; (4) repairing or replacing the corroded part; and, (5) replacing the A017 component PCB with a new A017 component PCB that has internal overcurrent protection fuses. Accomplishment of the proposed AD would be in accordance with Raytheon Service Bulletin (SB) No. 2643, dated August, 1996.

Cost Impact

The FAA estimates that 160 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $370 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $97,600 or $610 per airplane.

Raytheon has informed the FAA that they have shipped approximately 127 A017 component PCB's to the owners/operators of the affected airplanes. With this information in mind, the FAA would presume that 127 of the airplanes have already accomplished the proposed action, thereby reducing the total cost impact of the proposed AD on U.S. operators by $77,470 from $97,600 to $20,130.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant

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economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Raytheon Aircraft Company: Docket No. 97–CE–68–AD.

Applicability: Model 1900D airplanes (serial numbers UE–1 through UE–160), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 1,000 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent the loss of the pilot and co-pilot intercom, VHF communications, and passenger address system, which could result in loss of all communication during critical phases of flight, accomplish the following:

(a) Inspect the electrical connectors, the radio switching panel and its relay printed circuit boards (PCB's) for moisture and corrosion in accordance with the Accomplishment Instructions in Raytheon Service Bulletin (SB) No. 2643, dated August, 1996.

(1) If moisture is found, prior to further flight, clean and dry the component in accordance with the Accomplishment Instructions in Raytheon Service Bulletin (SB) No. 2643, dated August, 1996.

(2) If corrosion is found, prior to further flight, either clean or replace the component, depending on the severity, in accordance with the Accomplishment Instructions in Raytheon Service Bulletin (SB) No. 2643, dated August, 1996.

(3) If moisture or corrosion is found, prior to further flight, locate and eliminate the source (i.e., crack, hole, leak) in accordance with the Accomplishment Instructions in Raytheon Service Bulletin (SB) No. 2643, dated August, 1996.

(b) Inspect the nose avionics wire harnesses for proper installation, and if any wire harness is not installed properly, prior to further flight, secure it with cable ties in accordance with the Accomplishment Instructions in Raytheon Service Bulletin (SB) No. 2643, dated August, 1996.

(c) Remove the A017 component PCB, part number (P/N) 101–342536–1, and replace the PCB with a new A017 component PCB (P/N 101–342536–5 or an FAA-approved equivalent part number) in accordance with the Accomplishment Instructions in Raytheon Service Bulletin (SB) No. 2643, dated August, 1996.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, Room 100, 1801 Airport Rd., Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(f) All persons affected by this directive may obtain copies of the document referred to herein upon request to Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; or may examine this document at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 14, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–1461 Filed 1–21–98; 8:45 am]

BILLING CODE 4910–13–U

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Chapter II

Bunk Beds; Advance Notice of Proposed Rulemaking; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission has reason to believe that unreasonable risks of injury and death may be associated with bunk beds constructed so that children can become entrapped in the beds' structure or become wedged between the bed and a wall.

This advance notice of proposed rulemaking ("ANPR") initiates a rulemaking proceeding that could result in a rule mandating bunk bed performance requirements to reduce this hazard. This rule could be issued under either the Federal Hazardous Substances Act ("FHSA") or the Consumer Product Safety Act ("CPSA"), or separate rules might be issued under the FHSA and CPSA addressing bunk beds intended for use by children or adults, respectively.

The Commission solicits written comments from interested persons concerning the risks of injury and death associated with bunk beds, the regulatory alternatives discussed in this ANPR, other possible ways to address these risks, and the economic impacts of the various regulatory alternatives. The Commission also invites interested persons to submit an existing standard, or a statement of intent to modify or develop a voluntary standard, to address the risks of injury and death described in this ANPR.

DATES: Written comments and submissions in response to this ANPR must be received by the Commission by April 7, 1998.

ADDRESSES: Comments should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland; telephone (301) 504–0800. Comments also may be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov. Comments should be captioned "ANPR for Bunk Beds." [1]

[1] This ANPR was approved by a 2–1 vote of the Commission. Chairman Ann Brown and Commissioner Thomas H. Moore voted to approve this ANPR; Commissioner Mary S. Gall voted not to publish the ANPR.

FOR FURTHER INFORMATION CONTACT: John Preston, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0494, ext. 1315.

SUPPLEMENTARY INFORMATION:

A. Background; History of Voluntary Standards Activities

Bunk beds have been long recognized as a potential source of serious injury to children. In 1978, an Inter-Industry Bunk Bed Safety Task Group developed a Bunk Bed Safety Guideline for voluntary use by manufacturers and retailers of bunk beds intended for home use. Members of this group included the National Association of Bedding Manufacturers, the National Association of Furniture Manufacturers, the Southern Furniture Manufacturers Association, and the National Home Furnishings Association. The guideline became effective on January 1, 1979.

In February 1981, an American National Standard for Bedding Products and Components (ANSI Z357.1) was published. For the most part, this standard contained dimensional requirements for mattresses and foundations for all beds. However, it also incorporated the requirements of the January 1, 1979, industry safety guideline for bunk beds. In May 1986, the American Furniture Manufacturer's Association ("AFMA") published Voluntary Bunk Bed Safety Guidelines developed by the Inter-Industry Bunk Bed Committee ("IIBBC").

On August 26, 1986, the Consumer Federation of America ("CFA") filed a petition with CPSC requesting the promulgation of a mandatory safety regulation for bunk beds. In its petition, CFA cited three different risks of injury posed by bunk beds: Inadequate mattress supports that can allow the mattress to fall to the bunk below or to the floor, entrapment in the space between the guardrails and the mattress, and entrapment between the bed and the wall. CFA alleged that the voluntary industry guidelines did not fully address the hazards posed to consumers.

In July 1988, AFMA published Revised Voluntary Bunk Bed Safety Guidelines, with an effective date of April 1989. A majority of the revisions were made as a result of CPSC staff comments on the May 1986 guidelines, which included comments that the requirements addressing entrapment in openings in guardrails were not adequate and that bunk beds should be required to be sold with two guardrails. To prevent entrapment, the 1989 revised guidelines did require two guardrails to accompany a bunk bed, and required that any opening in the structure of the upper bunk be less than 3½ inches.

On July 21, 1988, the Commission voted to deny the petition filed by the CFA, but directed its staff to prepare a letter to AFMA and IIBBC urging that AFMA reconsider the CPSC staff comments that had not been included in the Revised Voluntary Bunk Bed Safety Guidelines. That letter was sent in August 1988. It also requested (a) that AFMA consider additional staff recommendations, (b) that AFMA submit the revised guidelines to a voluntary standards organization such as ANSI or ASTM for development as a voluntary safety standard, and (c) that AFMA develop, and provide to the Commission, a plan and proposed implementation date for a certification program to ensure that bunk beds complied with the guidelines. AFMA responded that a certification program would be established upon publication of an ASTM bunk bed standard.

In October 1992, ASTM published the Standard Consumer Safety Specification for Bunk Beds, ASTM F1427–92, in response to the Commission's August 1988 request. The performance requirements in that standard primarily addressed falls from the upper bunk, entrapment in the upper bunk structure or between the upper bunk and a wall, and security of the foundation support system. The standard also had a requirement for a warning label and for instructions to accompany the bed. In June 1994, the ASTM bunk bed standard was republished with additional provisions (requested by CPSC staff) to address collapse of tubular metal bunk beds. The most current version of the ASTM bunk bed standard was published in September 1996 and contains additional revisions suggested by CPSC staff. These address entrapment in lower bunk end structures; mattress size information on the warning label and carton; and the name and address of the manufacturer, distributor, or seller on the bed.

Because of continued reports of deaths and other incidents associated with bunk beds, and because of indications that there is inadequate compliance with the voluntary ASTM standard, the CPSC staff prepared a briefing package that summarized the available information. Copies of this briefing package can be obtained from the Commission's Office of the Secretary. After considering the available information, the Commission decided to publish this advance notice of proposed rulemaking to begin a rulemaking proceeding that could result in performance or other standards to address the risk of entrapment associated with bunk beds.

B. Incident Data

From January 1990 through September 1997, CPSC received reports of 85 bunk-bed-related deaths of children under age 15. As shown below, 54 (64 percent) were caused by entrapment. An additional 23 children died when they were inadvertently hanged from the bed by such items as belts, ropes, clothing, and bedding. Eight children died in falls from bunk beds during this period. Almost all (96 percent) of the entrapment victims were ages 3 and younger, whereas hanging and fall victims tended to be older than 3 years. The Commission continues to receive reports of incidents and other information concerning bunk bed entrapment hazards.

Available data indicate that the number of bunk-bed-related deaths has not decreased in recent years and that the majority of fatal incidents continue to involve entrapment. To better evaluate the extent of the entrapment problem, the Commission's staff also developed national estimates of the total number of entrapment deaths that occurred each year, using statistical methodology that examined the extent of overlap between data-reporting sources. These estimates projected that about 10 bunk bed entrapment deaths have occurred each year in the United States since 1990.

FATAL BUNK BED INCIDENTS REPORTED TO CPSC, BY YEAR AND HAZARD PATTERN

	Hazard pattern			
Year	Total	Entrap.	Hanging	Falls
1990	7	5	2	
1991	15	10	2	3

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FATAL BUNK BED INCIDENTS REPORTED TO CPSC, BY YEAR AND HAZARD PATTERN—Continued

Year	Hazard pattern			
	Total	Entrap.	Hanging	Falls
1992	4	3	1	
1993	19	10	7	2
1994	10	6	3	1
1995	12	5	5	2
1996	11	10	1	
1997	7	5	2	
Total	85	54	23	8

Source: CPSC Data Files, January 1990–September 1997, U.S. Consumer Product Safety Commission/EHHA.

CPSC staff reviewed available information on entrapment-related incidents, which accounted for the majority of deaths, to obtain additional detail about the circumstances involved. In all, CPSC received reports of 103 entrapment incidents from January 1990 through September 1997, including 54 that involved deaths and 49 that involved "near-misses" (where a child was entrapped, but usually with no or minor injury, often because another person intervened). Most reported incidents involved wooden bunk beds, and entrapment occurred most often on the top bunk. Common areas of entrapment were under the guardrail, within the end structures of the bed, and between the bed and the wall.

With three exceptions, almost all of the incidents involving fatal entrapment in the structure of bunk beds occurred in areas of the beds that apparently did not conform to the entrapment provisions in the current voluntary standard. Two of the three exceptions involved entrapment on the upper bunk. These beds had guardrails that did not run the entire length of the bed and, in each of the two incidents, a child slipped through the space between the end of the guardrail and the bed's end structure and became wedged between the bed and a wall. (The current standard permits guardrails that terminate before reaching the bed's end structure, provided there is no more than 15 inches between either end of the guardrail and the bed's closest end structure.)

The third death involving a conforming bunk bed occurred when a 22-month-old child was playing with an older sibling on a bunk bed and placed his head into a tapered opening between the underside of the upper bunk foundation and a structural member. This child is believed to have been standing on the lower bunk mattress, and, when his feet slipped off the mattress, he was suspended by his head. (The current standard only addresses openings in lower bunk end structures that are within 9 inches above the sleeping surface of the mattress.)

C. Market Information

Industry sources estimate that about 500,000 bunk beds are sold each year for residential use (excluding institutional sales), and that sales have been relatively stable over time. The annual retail value of sales has been estimated by AFMA at about $150 million. Industry sources estimate the average retail price of bunk beds to be about $300, but prices range from about $100 to $700. Bunk beds are marketed in specialty stores, furniture stores, department stores, and by mail order. There is also a market for used bunk beds in thrift shops, garage sales, and classified advertising.

Trade sources estimate the expected useful life of bunk beds to be 13–17 years. Based on available information, there are about 7–9 million bunk beds available for use, including bunk beds that are not currently used for sleeping, and those that are now used as two separate beds.

CPSC staff is aware of at least 106 bunk bed manufacturers, which are believed to produce the bulk of annual sales. Of the 106 identified firms, 40 are either members of AFMA or are members of the ASTM subcommittee that developed the existing voluntary standard for bunk beds. According to AFMA, these 40 firms represent 75–80 percent of the total annual shipments of bunk beds. While there are likely many other small regional manufacturers or importers of bunk beds in addition to the 106 identified firms, these are not likely to account for a significant share of the U.S. market.

D. Compliance With the Existing Voluntary Standard

There has been a continuing pattern of nonconformance to the voluntary standard. From June through August 1994, the Commission's Office of Compliance (Compliance) identified and sent letters of inquiry to 85 bunk bed manufacturers/importers, as part of a voluntary standard conformance monitoring project. Responses to these letters revealed that 17 companies were marketing bunk bed designs that presented potential entrapment hazards. Based on these responses, as well as on retail inspections, consumer complaints, and reported incidents, 41 manufacturers have, since November 1994, recalled wooden and metal bunk beds that did not conform to the entrapment requirements in the ASTM standard. The recalls involve over one-half million bunk beds.

In February 1997, Compliance assigned 45 inspections of bunk bed retailers nationwide. Examination of 77 beds from 35 different manufacturers by staff from CPSC's regional offices revealed that 12 bunk bed designs, each from a different manufacturer, did not conform with the entrapment requirements of the ASTM voluntary standard. Problems identified through these inspections resulted both in voluntary recalls of already produced beds and in corrections of future production. The most recent recall, in September 1997, involved five companies and pertained to 16,500 beds. One of these beds was involved in a fatal entrapment incident.

As noted above, CPSC's staff identified 106 manufacturers and importers of wooden and metal bunk beds. The Commission believes that the actual number of manufacturers and importers could be much higher. Because of the relative ease of constructing bunk beds, many small companies are formed each year. These may quickly go in and out of the business of making bunk beds. These companies are normally not associated with industry organizations, and are often unaware of the voluntary standard or misinterpret its requirements. Accordingly, the Commission preliminarily concludes that it is very likely that there will continue to be serious conformance problems with the voluntary standard.

E. The Potential Need for a Mandatory Standard

Although the voluntary standard improves the safety of bunk beds, companies are not required to comply with it. Some manufacturers contacted by Compliance did not see an urgency to comply with a "voluntary" standard, and they did not recognize the hazards associated with noncompliance. As a result, entrapment hazards will continue to exist on beds in use and for sale. Currently, all 106 manufacturers identified by CPSC staff appear to be producing beds that conform to the entrapment requirements in the ASTM F1427 bunk bed standard. However, small regional manufacturers that periodically enter the marketplace may not be aware of the voluntary standard, or of the hazards that are associated with bunk beds.

The Commission believes that a mandatory entrapment standard may be needed for the following reasons:

1. The adoption of a mandatory standard could increase the awareness and sense of urgency of manufacturers regarding compliance with the entrapment provisions, thereby increasing the degree of conformance to those provisions.

2. A mandatory standard would allow the Commission to seek penalties for violations. Publicizing fines for noncompliance with a mandatory standard would deter other manufacturers from making noncomplying beds.

3. A mandatory standard would allow state and local officials to assist CPSC staff in identifying noncomplying bunk beds and take action to prevent the sale of these beds.

4. Under a mandatory standard, retailers, and distributors would violate the law if they sold noncomplying bunk beds. Retailers and retail associations would then insist that manufacturers and importers provide complying bunk beds.

5. The bunk bed industry is extremely competitive. Manufacturers who now conform with the ASTM standard have expressed concern about those firms that do not. Nonconforming beds can undercut the cost of conforming beds. A mandatory standard would establish a level playing field and take away any competitive cost advantage for unsafe beds.

6. A mandatory standard would help prevent noncomplying beds made by foreign manufacturers from entering the United States. CPSC could use the resources of U.S. Customs to assist in stopping hazardous beds at the docks.

7. The absence of manufacturer identification on many beds has resulted in extremely low recall effectiveness rates. A mandatory standard could require companies to include identification on the beds.

8. Although the Commission currently believes that the ASTM voluntary standard for bunk beds adequately addresses the most common entrapment hazards associated with these products, the Commission is aware of three entrapment fatalities that occurred in conforming beds. A mandatory standard could modify the provisions in the voluntary standard so as to address the deaths that can occur on beds that comply with the voluntary standard.

Therefore, the Commission decided to issue an ANPR to begin a rulemaking proceeding and to seek public comment on all aspects of this proceeding, including (a) the need for a mandatory standard and (b) any additional requirements that may be needed to address fatalities known to have occurred on bunk beds conforming to the current voluntary standard.

However, the available information does not support a conclusion that changes to currently produced bunk beds would significantly reduce the number of fatalities due to falls and hangings. Thus, although information on these hazards is welcome, the Commission does not at this time intend to propose performance requirements to address falls or hangings from bunk beds.

F. Cost/Benefit Considerations

To provide some preliminary information on additional costs to conform to the entrapment requirements of the existing voluntary standard, CPSC's Economics staff contacted four manufacturers who had modified their production for that reason. The most expensive modification was the addition of a second guardrail to the top bunk. Two firms estimated that the additional guardrail would add $15–20 to the retail price of these products. The other two manufacturers, who market beds in the "mid to upper" price range, estimated a $30–40 increase in the retail price of their products. This increased cost would be incurred only by those firms that do not now conform to the voluntary standard.

CPSC estimates that the costs to society of bunk bed entrapment deaths is about $174–346 per bed over its expected useful life. The costs of bringing bunk beds into conformance with entrapment requirements range from $15–40 per bed. If the measures taken to address bunk-bed-related entrapment deaths were only about 4 to 23 percent effective in reducing these deaths, the costs and the benefits of such an activity would be about equal. In fact, the Commission expects that a mandatory standard would be substantially more effective than this.

G. Statutory Authorities for This Proceeding

What statute is appropriate for regulating bunk beds? CPSA section 3(a)(1), 15 U.S.C. 2052(a)(1). The Federal Hazardous Substances Act ("FHSA") authorizes the regulation of unreasonable risks of injury associated with articles intended for use by children that present mechanical (or electrical or thermal) hazards. FHSA section 2(f)(D), 15 U.S.C. 1261(f)(D). The hazards associated with bunk beds that are described above are mechanical. See FHSA section 2(s), 15 U.S.C. 1261(s). The Consumer Product Safety Act ("CPSA") authorizes the regulation of unreasonable risks of injury associated with "consumer products," which include bunk beds—whether intended for the use of children or adults. CPSA section 3(a)(1), 15 U.S.C. 2052(a)(1). Thus, bunk beds intended for the use of adults can be regulated only under the CPSA, while bunk beds intended for the use of children potentially could be regulated under either the FHSA or the CPSA. Bunk beds probably would be considered as intended for use by children only if they have smaller than twin-size mattresses or incorporate styling or other features especially intended for use or enjoyment by children.

Section 30(d) of the CPSA, however, provides that a risk associated with a consumer product that can be reduced to a sufficient extent by action under the FHSA can be regulated under the CPSA only if the Commission, by rule, finds that it is in the public interest to do so. 15 U.S.C. 2079(d). Accordingly, children's bunk beds could be regulated only under the FHSA, unless the Commission finds that it is in the public interest to regulate them under the CPSA. Thus, assuming that "adult" and "children's" bunk beds each present an unreasonable risk of injury, the Commission could:

1. Issue a rule for children's bunk beds under the FHSA and a rule for adult bunk beds under the CPSA; or

2. Issue a rule under the CPSA for both adult and children's bunk beds, and issue a rule under CPSA § 30(d) that it is in the public interest to do so.

A possible reason for finding that it is in the public interest to regulate both adult and children's bunk beds under the CPSA would be to avoid confusion as to which act applied to a particular bunk bed. The Commission will make a decision on which act(s) should be used

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if and when it decides to issue a proposed rule addressing the hazards of bunk beds. As discussed below, the procedure and statutory findings required to issue a rule for bunk beds are essentially identical under either act. Accordingly, any final rule may be issued under the CPSA, the FHSA, or a combination of the two acts.

What effect will the existence of the voluntary standard have on the rulemaking? The Commission may not issue a standard under either the CPSA or the FHSA if industry has adopted and implemented a voluntary standard to address the risk, unless the Commission finds that "(i) compliance with such voluntary * * * standard is not likely to result in the elimination or adequate reduction of such risk of injury; or (ii) it is unlikely that there will be substantial compliance with such voluntary * * * standard." In this case, it appears that a high percentage of bunk beds comply with ASTM F1427–92. Accordingly, the Commission has addressed the issue of whether the relatively high degree of compliance with the ASTM standard (possibly 90 percent or more) constitutes "substantial compliance" that would prevent the Commission from issuing a mandatory standard for bunk beds.

Neither statute defines the term "substantial compliance." However, guidance is provided by the legislative history of the CPSA:

> In determining whether or not it is likely that there will be substantial compliance with such voluntary * * * standard, the Commission should determine whether or not there will be sufficient compliance to eliminate or adequately reduce an unreasonable risk of injury in a timely fashion. Therefore, compliance generally should be measured in terms of the number of complying products rather than in terms of complying manufacturers.

H.R. Conf. Rep. No. 208, 97th Cong., 1st Sess. 873 (1981): "Adequately reduce" means to reduce the risk "to a sufficient extent that there will no longer exist an unreasonable risk of injury." *Id.* This legislative history suggests that substantial compliance means that there will be sufficient compliance with the voluntary standard to reduce the product's risk to the point that the risk is no longer "unreasonable."

Factors that are relevant both to a determination of unreasonable risk and to whether there is substantial compliance are the severity of the remaining injuries and the vulnerability of the injured population. The CPSC staff's analysis shows that issuing a mandatory rule could save a significant number of children's lives. Thus, the injuries are severe, and the affected population is extremely vulnerable. The cost/benefit information discussed above indicates a likelihood that the benefits of a rule for bunk beds would bear a reasonable relationship to its costs, and the remaining risks from bunk beds are thus "unreasonable." *See* 15 U.S.C. 1262(i)(2)(B), 2058(f)(3)(E). Accordingly, the Commission preliminarily concludes that there currently is not substantial compliance with the ASTM standard.

Rulemaking procedure. Before adopting a CPSA standard or FHSA rule, the Commission first must issue an ANPR as provided in section 3(f) of the FHSA or section 9(a) of the CPSA. 15 U.S.C. 1262(f), 2058(a). If the Commission decides to continue the rulemaking proceeding after considering responses to the ANPR, the Commission must then publish the text of the proposed rule, along with a preliminary regulatory analysis, in accordance with section 3(h) of the FHSA or section 9(c) of the CPSA. 15 U.S.C. 1262(h), 2058(c). If the Commission then wishes to issue a final rule, it must publish the text of the final rule and a final regulatory analysis that includes the elements stated in 3(i)(1) of the FHSA or section 9(f)(2) of the CPSA. 15 U.S.C. 1262(i)(1), 2058(f)(2). And before issuing a final regulation, the Commission must make certain statutory findings concerning voluntary standards, the relationship of the costs and benefits of the rule, and the burden imposed by the regulation. FHSA section 3(i)(2), CPSC section 9(f)(3), 15 U.S.C. 2058(f)(3).

H. Regulatory Alternatives Under Consideration

The Commission is considering alternatives to reduce the number of injuries and deaths associated with bunk beds. In addition to possible performance standards similar to the current ASTM standard, additional performance standards may be developed to supplement the entrapment provisions of the ASTM standard. Further, the potential for labeling or instructions requirements and information and education campaigns to reduce the risk will be considered, either instead of or in addition to a mandatory standard.

It is also possible that a voluntary standard could be developed that would adequately reduce the risks of entrapment, falls, and hanging. The Commission is not aware of any voluntary standard in effect that applies to the identified risks of bunk beds other than ASTM F1427–96. As noted above, the Commission has preliminarily concluded that the degree of compliance with this ASTM standard may be insufficient and some fatalities have occurred that are not adequately addressed by that standard. However, if improved voluntary standards are developed and implemented, the Commission would take that into account in deciding whether a mandatory standard is necessary.

I. Solicitation of Information and Comments

This ANPR is the first step of a proceeding which could result in a mandatory performance, labeling, or instructions standard for bunk beds to address the risk of entrapment. All interested persons are invited to submit to the Commission their comments on any aspect of the alternatives discussed above. In particular, CPSC solicits the following additional information:

1. The models and numbers of bunk beds produced for sale in the U.S. each year from 1990 to the present;
2. The names and addresses of manufacturers and distributors of bunk beds;
3. The number of persons injured or killed by the hazards associated with bunk beds;
4. The circumstances under which these injuries and deaths occur, including the ages of the victims;
5. An explanation of designs that could be adapted to bunk beds to reduce the risk of entrapment;
6. Characteristics of the product that could or should not be used to define which products might be subject to the requested rule, and which products, if any, are intended for use by children, and which for adults;
7. Other information on the potential costs and benefits of potential rules;
8. Steps that have been taken by industry or others to reduce the risk of injuries from the product;
9. The likelihood and nature of any significant economic impact of a rule on small entities;
10. The costs and benefits of mandating a labeling or instructions requirement.

Also, in accordance with section 3(f) of the FHSA and section 9(a) of the CPSA, the Commission solicits:

1. Written comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk.
2. Any existing standard or portion of a standard which could be issued as a proposed regulation.
3. A statement of intention to modify or develop a voluntary standard to address the risk of injury discussed in this notice, along with a description of a plan (including a schedule) to do so.

Comments should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–0800. Comments also may be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov. Comments should be captioned "ANPR for Bunk Beds." All comments and submissions should be received no later than April 7, 1998.

Dated: January 15, 1998.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 98–1457 Filed 1–21–98; 8:45 am]

BILLING CODE 6355–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

Requests for Exemptive, No-Action and Interpretative Letters

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing new regulations to establish procedures for the filing of requests for the issuance of exemptive, no-action and interpretative letters from the Commission's staff.

DATES: Comments on the proposed rule must be received on or before March 23, 1998.

ADDRESSES: Comments on the proposed rule should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, N.W., Washington, D.C. 20581. Comments may be sent by facsimile transmission to (202) 418–5528, or by e-mail to secretary@cftc.gov. Reference should be made to "Rule Proposal Re: Requests for Exemptive, No-Action, and Interpretative Letters."

FOR FURTHER INFORMATION CONTACT: Christopher W. Cummings, Special Counsel, or Helene D. Schroeder, Attorney-Adviser, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C., 20581. Telephone: (202) 418–5450.

SUPPLEMENTARY INFORMATION:

I. Requests for Exemptive, No-Action and Interpretative Letters

A. Background

In the course of administering the Commodity Exchange Act ("Act")[1] and the rules, regulations and orders promulgated thereunder by the Commission,[2] Commission staff receive written requests for advice on or interpretation of particular provisions of the Act or Commission rules to proposed conduct or transactions. If appropriate, Commission staff provide the advice or guidance sought through the issuance of exemptive, no-action or interpretative letters ("Letters").[3] Currently, there are no Commission rules setting forth procedures for requests for Letters.[4]

The Commission is of the view that establishment of uniform procedural rules governing these requests will significantly assist the Commission and its staff by assuring a focused presentation of the guidance sought, the issues raised thereby, and relevant precedent. The Commission is therefore now proposing uniform procedures for the filing of requests for exemptive, no-action or interpretative letters. These procedures are intended to elicit from the outset the information that staff will need to evaluate a request, and to minimize staff resources expended in seeking additional information.

Letters generally should be requested from (and, if appropriate, issued by) Commission staff in instances where the need for guidance or clarification of a rule's applicability arises from relatively routine circumstances. The Commission believes that the best mechanism for handling novel or complex issues, significant gaps in regulatory coverage, relief from regulatory requirements or initiatives for regulatory reform generally is the notice and comment rulemaking process or, where appropriate, exemptive action by the Commission itself after notice and public comment. This is especially true where a perceived issue is likely to affect a large number of persons or entities. Accordingly, the Commission reminds registrants, counsel and the public that it is receptive to public and industry input (including, for example, petitions for rulemaking actions and petitions for Commission exemptive action or other orders) in the continuing process of adapting its regulatory framework to changing market circumstances. The Commission also notes that, notwithstanding the requirements for Letters set forth herein, registrants, other industry participants, counsel and members of the public should feel free to seek information from Commission staff in those situations where they do not require no-action relief, or a formal interpretation of statutory or regulatory provisions.

Although not required to do so (see II. Related Matters, below), the Commission invites public comment on this proposal.

B. The Proposed Rule

1. Definitions

Paragraph (a) of the proposed rule sets forth definitions for exemptive, no-action and interpretative letters. The term "exemptive" letter is defined as a written grant of relief to a specified person from the applicability of a specific provision of the Act or a Commission rule, regulation or order. Exemptive letters may be issued by Commission staff only in those situations where: (a) the Commission itself has exemptive authority; and (b) that authority has been delegated to staff.[5]

A "no-action" letter is defined as a written statement that staff of a specific division will not recommend enforcement action to the Commission if a proposed transaction is undertaken or a proposed activity is conducted. A no-action letter represents the position of only the division issuing it and is binding only upon that division and not

[1] 7 U.S.C. § 1 *et seq.* (1994).

[2] Commission regulations are found at 17 C.F.R. Ch. I *et seq.*

[3] These types of letters are proposed to be defined in Rule 140.99 (a)(1), (a)(2), and (a)(3), respectively, and each is discussed in Part b, below.

[4] By contrast, since 1971, the Securities and Exchange Commission ("SEC") has required conformity with certain procedures by persons submitting requests for no-action or interpretative letters. *See* Securities Act Release No. 5127, 36 FR 2600 (Jan. 25, 1971) (prescribed procedures for requests under the Securities Act of 1933, Securities Exchange Act of 1934, Public Utility Holding Company Act of 1935, Trust Indenture Act of 1939, Investment Company Act of 1940 and Investment Advisers Act of 1940). Some of these procedures have been modified or supplemented by SEC staff. *See, e.g.*, Securities Act Release No. 6253, 45 FR 72644 (Oct. 28, 1980) (institution of abbreviated response procedures by Division of Corporation Finance); and Securities Act Release No. 6269 (Dec. 5, 1980) (institution of seven-copy requirement for requests to Division of Corporation Finance).

[5] The proposed rule governs requests submitted to and processed by Commission staff. In certain circumstances, however, requests must be submitted to and processed by the Commission itself. For example, where exemptive authority has not been delegated to the staff, exemptive relief must be granted by Commission order (*e.g.*, under Section 4(c) of the Act, 7 U.S.C. § 6(c) (1994)). The Commission intends that persons making exemption requests of it should comply with the requirements of the applicable section of the Act or Commission rules, regulations or orders, although paragraphs (b), (c), (f) and (h) of the proposed rule provide some useful guidance for such requests.

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on the Commission or other divisions. Further, a no-action letter is only effective with respect to the person or persons to whom it was issued.

An "interpretative" letter refers to written advice or guidance with respect to the interpretation of a specific provision of the Act or a specific Commission rule, regulation or order, which advice or guidance is provided in the context of a proposed transaction or activity. These letters are usually issued by the staff of a particular division of the Commission or the Office of the General Counsel and, unless otherwise noted, reflect only the views of the division or the Office of the General Counsel.[6] Unlike no-action letters (or exemptive letters), an interpretative letter can be relied upon by persons other than those to whom the letter was issued, but it is binding only upon the Commission staff unit issuing it, and not upon the Commission itself.

Issuance of Letters is entirely within the discretion of Commission staff. A request may be denied, or staff may refuse to consider a request, without explanation. See paragraph (b)(1) of the proposed rule.

2. General Requirements

Paragraph (b) of the proposed rule sets forth the general requirements for requests for Letters. All requests must relate to a specific proposed activity or transaction and must set forth as completely as possible the particular facts and circumstances giving rise to the request.[7] The proposed rule codifies the policy adhered to by Commission staff of not providing responses to requests based on hypothetical situations. The request may be submitted by the person seeking a Letter or by that person's authorized representative. In any case, the person on whose behalf a Letter is sought must be identified. Consistent with current practice, Commission staff will not respond to requests submitted on behalf of unnamed persons.

If the Commission were to adopt the proposed rule, Commission staff would expect all requests for Letters to comply with the rule's requirements. A request that does not comply with the rule as adopted may be rejected by Commission staff without further analysis.[8]

3. Information Requirements

Requests for Letters should contain the information set forth in paragraph (c). Specifically, each request should identify the requester's name, main business address, telephone number, and if applicable, National Futures Association registration identification number as well as corresponding information concerning any other persons on whose behalf the Letter is being sought. The request must also provide the name, address and telephone number of a contact person from whom Commission staff may obtain additional information if necessary.

Paragraph (c)(2) of the proposed rule requires that the specific section number of the Act and/or Commission rule, regulation or order to which the request relates be set forth in the upper right-hand corner of the first page of the request. This requirement will facilitate the proper routing of the request within the Commission.

Paragraph (c)(3) requires that all requests for exemptive, no-action or interpretative letters be accompanied by a certification that the representations contained in the request are true and accurate, along with an undertaking to supplement the request in the event any material fact changes or ceases to be true. The requester must make a complete and reliable presentation of the facts relevant to a request. A certification requirement is intended to assure that requesters fully review the facts and keep Commission staff advised of changed circumstances, without the need for repeated requests by staff for supplemental information.

Paragraph (c)(4) of the proposed rule requires that each request specify the particular type of Letter being sought along with a discussion of the reasons why the requester needs a Letter. In this regard, the request should identify not only the specific concerns underlying the proposed transaction or activity giving rise to the request, but also the legal or public policy reasons for granting the request. Failure to frame an identifiable issue or problem and a reasonable justification for the relief or interpretation sought will be grounds for rejection of a request.

Paragraph (c)(5) of the proposed rule requires that requests make reference to all relevant authority, including the Act, Commission rules, regulations and orders, relevant case law, and any administrative decisions on the issue. In this regard, the request must identify and distinguish all adverse authority.

If Commission staff have previously issued a Letter in circumstances similar to those set forth in the request, paragraph (c)(6) requires that the request identify the prior Letter along with the conditions, if any, that were imposed by the division issuing the Letter. Requesters and their counsel must exercise due diligence in identifying and assembling the relevant authorities, including prior Letters of Commission staff.

Under paragraph (c)(7) of the proposed rule, it would be appropriate in a request Letter to ask for alternative relief if the primary relief requested is denied.

4. Filing Requirements

Paragraph (d) of the proposed rule establishes the procedures for filing requests for Letters. Specifically, paragraph (d)(1) requires that each request be made in writing and signed. "Draft" requests for Letters will not be considered.

Pursuant to paragraph (d)(2), the request must be filed with the Director of the Division of Trading and Markets, who will then forward the request to the appropriate division within the Commission. Under ordinary circumstances the Division of Trading and Markets and the Division of Economic Analysis will issue no-action letters, and the Office of the General Counsel will issue statutory interpretations. Interpretative letters concerning rules or regulations will be referred either to one of the Divisions or to the Office of the General Counsel depending upon the issue to be addressed.

The requirement that all requests be in writing codifies current agency practice. Oral requests for Letters will not be recognized.

Commenters specifically are requested to address whether the rule should permit requests to be filed electronically.

5. Form of Staff Response

Paragraph (e) of the proposed rule provides Commission staff with flexibility as to the level of detail necessary for a staff response to a request for a Letter. Paragraph (e) affords Commission staff the option of providing a responsive letter in an abbreviated or endorsement format that merely sets forth the staff's position and does not contain a detailed recitation of the facts. In such cases, the Letter would provide that it is based on the facts and representations set forth in the request and thus would incorporate by reference those facts and representations. Use of this abbreviated format, where appropriate, may lessen the burden on Commission staff in responding to requests for Letters.[9] The Commission requests public comment on whether and in what circumstances it should utilize this abbreviated procedure.

As set forth in paragraph (e), no grant of any request governed by the proposed rule shall be effective unless it is in writing signed by responsible Commission staff and has been transmitted in final form to the requester. Oral indications from staff are not binding and should not be relied on.[10] Likewise, it is highly inappropriate for a requester to state in a request letter that the requester will assume relief has been granted and will proceed with the proposed transaction if the requester does not receive a negative response from Commission staff by a certain date. Failure by staff to respond to a request for a Letter does not constitute staff approval of the request.[11]

6. Withdrawal of Requests

Paragraph (f) of the proposed rule makes clear that any withdrawal of a request for a Letter may be accomplished only if: (1) the requester certifies in writing that the person making the request or on whose behalf the request has been made has determined not to proceed with the contemplated transaction or that intervening events have rendered the request moot; [12] or (2) the requester has sought confidential treatment in accordance with Rule 140.98 and Commission staff has determined that confidential treatment should not be granted (in which case Rule 140.98 permits the requester to withdraw within 30 days of being so notified). The proposed rule is not intended to modify or affect the provisions of Rule 140.98.

In permitting withdrawal in limited circumstances only, the proposed rule is intended to eliminate the past practice of certain requesters of submitting requests (often in draft form) and then withdrawing them if it appeared likely that an adverse response would be received.[13]

Although the goal of the proposed rule is that initial requests will be as complete and thorough as possible, Commission staff from time to time will need to seek additional information from requesters in order to process a request. Where Commission staff asks for supplemental information or analysis, the requester should respond as quickly as practicable. Paragraph (g) of the proposed rule provides that an adverse response generally will be issued where the requester fails to provide additional information or analysis within 30 days of receiving a request for the same from Commission staff, unless an extension is granted by Commission staff considering the request.

7. Confidential Treatment

Paragraph (h) of the proposed rule makes clear that where confidential treatment is sought, it must be requested separately, in conformity with Rule 140.98 or Rule 145.9 as applicable. These sections pertain, respectively, to requests for confidential treatment of: (a) the request for a Letter as well as the Letter issued in response; and (b) information submitted to the Commission which may be sought under the Freedom of Information Act, 5 U.S.C. 552.

8. Applicability to Other Sections

Paragraph (i) of the proposed rule makes clear that the rule would not alter existing provisions of the Act or Commission rules, regulations or orders (such as Rules 4.5, 4.7 and 4.12(b)) under which specified exemptive relief is available upon the filing of a notice of claim of (or eligibility for) the particular exemption.

II. Related Matters

A. Administrative Procedure Act

The Administrative Procedure Act, 5 U.S.C. 553(b), sets forth an exemption from the generally applicable notice-and-comment requirement for informal rulemaking where the rules at issue concern agency organization, procedure or practice. Although the rule proposed herein pertains exclusively to agency procedures and practice, the Commission is interested in receiving comment from the public on the proposal and, accordingly, is publishing the proposal for notice and public comment.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires each federal agency to consider in the course of proposing substantive rules, the effect of those rules on small entities. The proposed rule makes clear that requests may be made by any person, including those that would constitute "small entities" within the meaning of the RFA. The uniformity mandated by the rule will provide greater certainty to requesters as to the procedures to follow in seeking relief or advice and, to this extent, the rule removes a burden on all requesters, regardless of their size.

Additionally, the Commission has built maximum flexibility into the operation of the rule by making it clear that Commission staff "may," but are not required to, decline to respond to a request that does not meet the requirements of the rule. See paragraph (b)(2). When a non-conforming request is submitted by a person who lacks adequate financial resources to retain counsel (or in other circumstances where strict application of the rule would be inequitable), Commission staff may accommodate the requester by accepting the non-conforming request, by providing guidance to the requester in the proper formulation and filing of the request, or by other means.

The Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. § 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

When publishing proposed rules, the Paperwork Reduction Act of 1995 (Pub. L. 104–13 (May 13, 1995)) imposes certain requirements on federal agencies (including the Commission) in connection with conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act, the Commission, through this rule proposal, solicits comments to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and

[6] Statutory interpretations are issued by staff of the Office of the General Counsel. Requests for interpretations of rule provisions will be assigned on a case-by-case basis to staff of the Division of Trading and Markets, the Division of Economic Analysis or the Office of the General Counsel.

[7] Where charts or diagrams are likely to facilitate the staff's understanding of the relevant facts, requesters are encouraged to submit such materials with their initial correspondence.

[8] In proposing to codify the authority of its staff to reject non-conforming requests, the Commission is not proposing to alter the staff's current practice of declining to respond to requests in other circumstances, such as when legal, policy or practical considerations make it inappropriate to respond to the merits of a request. See paragraph (b)(1).

[9] This procedure is followed by the SEC's Divisions of Corporation Finance and Investment Management. The abbreviated procedure as adopted by the Division of Corporation Finance is set forth in Securities Act Release No. 6253, *supra* note 4.

[10] Commission staff field numerous telephone inquiries from the public and provide information and guidance as appropriate. These proposed rules are not intended to alter this practice. However, while statements made during those conversations are intended to be helpful, they are not binding on the staff or the Commission.

[11] *See Precious Metals Associates, Inc. v. CFTC*, 620 F.2d 900 (1st Cir. 1980).

[12] For example, a request for relief under Rule 4.7(a) notwithstanding participation by a person who is not a qualified eligible participant ("QEP") may become moot if the proposed participation becomes able to meet the QEP criteria.

[13] It is hoped that the provision in paragraph (c)(7) allowing for requests for relief in the alternatives should eliminate any perceived need for this practice.

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assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) enhance the quality, utility and clarity of the information to be collected; and (4) minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

The Commission has submitted this proposed rule and its associated information collection requirements to the Office of Management and Budget.

The burden associated with this proposed rule, is as follows:

Average burden hours per response: 7.
Number of respondents: 215.
Frequency of response: 1.3.

Persons wishing to comment on the information that would be required by this proposed/amended rule should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503 (202) 395–7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581 (202) 418–5160.

List of Subjects in 7 CFR Part 140

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and in particular section 8(a) of the Act, as amended, 7 U.S.C. 12(a), the Commission hereby proposes to amend Chapter I of title 17 of the Code of Federal Regulations as follows:

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

1. The authority citation for part 140 continues to read as follows:

Authority: 7 U.S.C. 7a(j) and 12a.

2. Section 140.99 is proposed to be added to read as follows:

§ 140.99 Requests for Exemptive, No-Action and Interpretative Letters.

(a) *Definitions.* For the purpose of this section:

(1) *Exemptive letter* means a written grant of relief from the staff of a Division of the Commission from the applicability of a specific provision of the Act or of a rule, regulation or order issued thereunder by the Commission. An exemptive letter may only be issued by Commission staff when the Commission itself has exemptive authority and that authority has been delegated by the Commission to the Division in question.

(2) *No-action letter* means a written statement from the staff of a Division of the Commission that it will not recommend enforcement action to the Commission for failure to comply with a specific provision of the Act or of a Commission rule, regulation or order if a proposed transaction is completed or a proposed activity is conducted by the person or persons who requested such letter. A no-action letter represents the position of only the Division that issued it and is applicable only with respect to the particular circumstances and binding only with respect to parties addressed by the letter. A no-action letter does not bind the Commission itself or any other division thereof.

(3) *Interpretative letter* means written advice or guidance from Commission staff (binding only upon the staff unit providing the advice or guidance and not upon the Commission itself) and may take the form of:

(i) Written advice or guidance from the staff of a particular Division of the Commission or the staff of the Office of the General Counsel with respect to the interpretation of a specific provision of a Commission rule, regulation or order in the context of a proposed transaction or a proposed activity; or

(ii) Written advice or guidance from the staff of the Office of the General Counsel with respect to the interpretation of a specific provision of the Act.

(4) *Letter* means an exemptive, no-action or interpretative letter.

(5) *Division* as used in this section means the Division of Trading and Markets or the Division of Economic Analysis.

(b) *General requirements*—(1) Issuance of Letters is entirely within the discretion of Commission staff. A request may be denied, or staff may refuse to consider or respond to a request without explanation.

(2) Each request for a Letter must comply with the requirements of this section. Commission staff may reject or decline to respond to a request that does not comply with the requirements of this section.

(3) The request must relate to a proposed activity or a proposed transaction. Absent extraordinary circumstances, Commission staff will not issue a Letter based upon past transactions or activities.

(4) The request may be made by a person seeking a Letter or by an authorized representative of such person. Commission staff will not respond to a request for a Letter that is made by or on behalf of an unidentified person.

(5)(i) The request must set forth as completely as possible the particular facts and circumstances giving rise to the request.

(ii) Commission staff will not respond to a request based on a hypothetical situation.

(c) *Information requirements.* Each request for a Letter must comply with the following information requirements:

(1)(i) A request made by the person seeking a Letter must contain:

(A) The name, main business address, main telephone number and, as applicable, the National Futures Association registration identification number of such person; and

(B) The name and, as applicable, the National Futures Association registration identification number of each other person for whom the requester is seeking the Letter.

(ii) When made by an authorized representative of the person seeking a Letter, the request must contain:

(A) The name, main business address and main business telephone number of the representative;

(B) The name and, as applicable, the National Futures Association registration identification number of the person seeking a Letter; and

(C) The name, and as applicable, the National Futures Association registration identification number of each other person for whom the requester is seeking the Letter.

(iii) The request must provide the name, address and telephone number of a contact person from whom Commission staff may obtain additional information if necessary.

(2) The section numbers of the particular provisions of the Act and/or Commission rules, regulations in this chapter, or orders to which the request relates must be set forth in the upper right-hand corner of the first page of the request.

(3) The request must be accompanied by:

(i) A certification by a person with knowledge of the facts that the representations made in the request are accurate and complete. The following form of certification is sufficient for this purpose:

I hereby certify that the statements contained in the attached letter dated _____ are true and complete to the best of my knowledge.

_____
(Name and Title)

and

(ii) An undertaking by such person on behalf of the person seeking a Letter that at such time as any material representation made in the request ceases to be accurate and complete, the person who has made the request or received the Letter will promptly submit a written supplement reflecting all material changed circumstances.

(4) The request must identify the type of relief requested and Letter sought and must clearly state why a Letter is needed. The request must identify all relevant legal and factual issues and must discuss the legal and public policy bases supporting issuance of the Letter.

(5) The request must contain references to all relevant authorities, including the Act, Commission rules, regulations in this chapter, and orders, judicial decisions, administrative decisions, relevant statutory interpretations and policy statements. Adverse authority must be cited and discussed.

(6) The request must identify prior Letters issued by Commission staff in response to circumstances similar to those surrounding the request (including adverse Letters), and must identify any conditions imposed by prior Letters as prerequisites for the issuance of those Letters.

(7) Requests may ask that, if the primary relief is denied, alternative relief be granted.

(d) *Filing requirements.* Each request for a Letter must comply with the following filing requirements:

(1) The request must be made in writing and signed.

(2) The request must be filed with the Director, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. The Director will route the request to the appropriate division.

(e) *Form of staff response.* No grant of any request governed by this section is effective unless it is in writing signed by responsible Commission staff and has been transmitted in final form to the requester. Failure by Commission staff to respond to a request for a Letter does not constitute approval of the request. Nothing in this section shall preclude Commission staff from responding to a request for a Letter by way of endorsement or any other abbreviated, written form of response.

(f) *Withdrawal of requests.* Once filed, a request for a Letter may only be withdrawn if:

(1) A request for withdrawal is made in writing and makes the following representations, as applicable, together with a certification that such representations are true:

(i) The person on whose behalf the request was made has determined not to proceed with the proposed transaction or activity, or

(ii) Intervening events have rendered the request moot; or

(2) The request is the subject of a request for confidential treatment pursuant to § 140.98 and Commission staff has notified the requester that the request for confidential treat-ment will be denied, in which event the requester may withdraw the letter within 30 days after such notification, as provided in § 140.98.

(g) *Failure to pursue a request.* If a requester fails to respond within 30 calendar days of the date of a request from Commission staff for additional information or analysis, Commission staff generally will issue an adverse response, unless an extension of time has been granted.

(h) *Confidential treatment.* If a requester seeks confidential treatment of a request for a Letter that it has filed, such treatment must be separately requested in accordance with § 140.98 or § 145.9 of this chapter, as applicable.

(i) *Applicability to other sections.* The provisions of this section shall not affect the requirements of, or otherwise be applicable to, notice filings required to be made to claim relief from the Act or from a Commission rule, regulation or order including, without limitation, §§ 4.5, 4.7(a), 4.7(b), 4.12(b), 4.13(b) and 4.14(a)(8) of this chapter.

Issued in Washington, D.C. on January 13, 1998 by the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 98–1138 Filed 1–21–98; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 291

RIN 1076–AD87

Class III Gaming Procedures

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Department has concluded that it has the authority to prescribe procedures permitting Class III gaming when a State interposes its immunity from suit by an Indian Tribe. The proposed rule announces the Department's determination that the Secretary may promulgate Class III gaming procedures under certain specified circumstances. It also sets forth the process and standards pursuant to which any procedures would be adopted.

DATES: Written comments must be submitted on or before April 22, 1998 to be considered.

ADDRESSES: Mail comments to Paula L. Hart, Indian Gaming Management Staff, Bureau of Indian Affairs (BIA), Department of the Interior, MS 2070–MIB, 1849 C Street, NW, Washington, DC 20240. Comments may be hand-delivered to the same address from 9:00 a.m. to 4:00 p.m. Monday through Friday or sent by facsimile to (202) 273–3153. Comments will be made available for public inspection at this address from 9:00 a.m. to 4:00 p.m. Monday through Friday beginning approximately two weeks after publication of the proposed rule.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Indian Gaming Management Staff, Bureau of Indian Affairs, Department of the Interior, MS 2070–MIB, 1849 C Street, NW, Washington, DC 20240, Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION:

Introduction

Congress enacted the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. 2701–2721, to provide a statutory basis for the operation and regulation of Indian gaming and to protect Indian gaming as a means of generating revenue for tribal governments. Prior to the enactment of IGRA, states generally were precluded from any regulation of gaming on Indian reservations. *See California* v. *Cabazon Band of Mission Indians,* 480 U.S. 202 (1987). IGRA, by offering States an opportunity to participate with Indian Tribes in developing regulations for Indian gaming, "extends to States a power withheld from them by the Constitution." *Seminole Tribe of Florida* v. *State of Florida,* 116 S. Ct. 1114, 1124 (1996).

Since IGRA's passage in 1988, more than 150 compacts in more than 20 States have been successfully negotiated by Tribes and States, and approved by the Secretary. Today, Indian gaming generates significant revenue for Indian Tribes. As required by IGRA, gaming revenues are being devoted primarily to providing essential government services such as roads, schools, and hospitals, as well as economic development.

IGRA divides Indian gaming into three categories. This proposed rule addresses only the conduct of Class III

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gaming, which primarily includes slot machines, casino games, banking card games, dog racing, horse racing, and lotteries. 25 U.S.C. 2703(8); 25 CFR § 502.4. Under IGRA, the conduct of "Class III gaming activities" is lawful on Indian lands only if such activities (1) are authorized by an ordinance adopted by the governing body of the Tribe and approved by the Chairman of the National Indian Gaming Commission (NIGC), (2) are located in a State that permits such gaming for any purpose by any person, organization, or entity, and (3) are conducted in conformance with a Tribal-State compact. 25 U.S.C. 2710(d)(1)(B). The proposed regulations which follow relate primarily to this third requirement, i.e., the Tribal-State compact.

Under IGRA, a Tribe interested in operating Class III gaming initiates the compacting process by requesting the State to enter into negotiations. 25 U.S.C. 2710(d)(3)(A). Upon receiving such a request, the State is obliged "to negotiate with the Indian Tribe in good faith to enter into such a compact." *Id.* If the State fails to negotiate in good faith, the Tribe may initiate an action against the State in Federal district court. 25 U.S.C. 2710(d)(7)(A)(I). If the court finds that the State has failed to negotiate in good faith, it must order the State and the Tribe to conclude a compact within 60 days. 25 U.S.C. 2710(d)(7)(B)(iii). If the State and Tribe fail to conclude a compact within that period, each side must submit their last best offer to a court-appointed mediator, who selects one of the proposals. 25 U.S.C. 2710(d)(7)(B)(iv). If the State consents to that proposal, it is treated as a Tribal-State compact. 25 U.S.C. 2710(d)(7)(B)(vi). If the State does not consent, the Secretary of the Interior shall prescribe procedures (1) which are consistent with the proposed compact selected by the mediator, the provisions of IGRA, and the relevant provisions of State laws, and (2) under which Class III gaming may be conducted on the Indian lands over which the Indian Tribe has jurisdiction. 25 U.S.C. 2710(d)(7)(B)(vii).

In *Seminole Tribe of Florida* v. *Florida*, the Supreme Court held that a State may assert an Eleventh Amendment immunity defense to avoid a lawsuit brought by a Tribe alleging that the State did not negotiate in good faith. After the *Seminole* decision, some States have signaled their intention to assert immunity to suit in Federal court. Claiming immunity will, if no further action is taken, create an effective State veto over IGRA's dispute resolution system and therefore will stalemate the compacting process. The proposed rulemaking contemplates that the Secretary would prescribe Class III gaming procedures to end the stalemate.

Secretarial Authority to Prescribe Procedures

On May 10, 1996, the BIA published an "Advance Notice of Proposed Rulemaking" (hereafter, ANPR) in response to the United States Supreme Court's decision in *Seminole Tribe of Florida* v. *State of Florida*, 116 S. Ct. 1114 (1996). 61 FR 21394 (May 10, 1996). In that ANPR, the Department posed, among others, the question of "[w]hether and under what circumstances, the Secretary of the Interior is empowered to prescribe 'procedures' for the conduct of Class III gaming when a State interposes an Eleventh Amendment defense to an action pursuant to 25 U.S.C. 2710(d)(7)(B)." The Secretary of the Interior, in consultation with the Solicitor, has determined that he possesses legal authority to promulgate procedures setting out the terms under which Class III gaming may take place when a State asserts its immunity from suit.

The Secretary's authority arises from the statutory delegation of powers contained in 25 U.S.C. 2710 (d)(7)(B)(vii) of IGRA and 25 U.S.C. 2 and 9. As the Eleventh Circuit Court of Appeals explained, in the case where the Supreme Court ultimately found the States could assert Eleventh amendment immunity:

> We are left with the question as to what procedure is left for an Indian Tribe faced with a State that not only will not negotiate in good faith, but also will not consent to suit. The answer, gleaned from the statute, is simple. One hundred and eighty days after the Tribe first requests negotiations with the State, the Tribe may file suit in district court. If the State pleads an Eleventh Amendment defense, the suit is dismissed, and the Tribe pursuant to 25 U.S.C. § 2710(d)(7)(B)(vii), then may notify the Secretary of the Interior of the Tribe's failure to negotiate a compact with the State. The Secretary may then prescribe regulations governing Class III gaming on the Tribe's lands. This solution conforms with IGRA and serves to achieve Congress' goals, as delineated in §§ 2701–02.

Seminole Tribe of Florida v. *State of Florida*, 11 F.3d 1016, 1029 (11th Cir. 1994) (*dictum*), *aff'd on other grounds*, 116 S.Ct. 1114 (1996).

Although Congress likely did not foresee the States' refusal to participate in the court-ordered mediation process, it plainly authorized the Secretary to permit Class III gaming in the event that the court-supervised process failed to produce a joint compact. The power of an agency to administer a congressional mandate like this one is not restricted to circumstances explicitly described by Congress; the agency's power also extends to circumstances that Congress, for a variety of reasons, may not have anticipated or articulated in the statute. When Congress has not "directly spoken to the precise question at issue," courts "must sustain the Secretary's approach so long as it is based on a reasonable construction of the statute." *Auer* v. *Robbins*, 117 S.Ct. 905, 909 (1997), *quoting Chevron U.S.A., Inc.* v. *Natural Resources Defense Council*, 467 U.S. 837, 842–43 (1984); *Morton* v. *Ruiz*, 415 U.S. 199 (1974); Kenneth Culp Davis & Richard J. Pierce Jr., *Administrative Law Treatise* § 3.3 (3d ed. 1994). As explained in the proposed rule, the Secretary will provide procedures only when a State has successfully asserted its immunity from an Indian Tribe's good faith lawsuit. Moreover, the proposed rule generally mirrors the mediation scheme provided in IGRA to the maximum practicable extent.

Along with the specific authority under section 2701(d)(7)(B)(vii), Congress has delegated to the Executive under 25 U.S.C. 2 and 9 broad authority to issue regulations necessary to manage Indian affairs and carry into effect legislation relating to such affairs.[1] The courts on many occasions have upheld the exercise of this authority. In *Washington* v. *Washington State Commercial Passenger Fishing Vessel Association*, 443 U.S. 658, 691 (1979), for example, the Court noted with approval regulations protective of off-reservation Indian fishing rights. Although there was no explicit delegation of authority to adopt fishing regulations in the Treaty reserving the right, the Supreme Court recognized that the Secretary's "general Indian powers" embodied in 25 U.S.C. 2 and 9 gave him the authority to adopt regulations over Indian affairs. *See also United States* v. *Eberhardt*, 789 F.2d 1354, 1360–61 (9th Cir. 1986); *Parravano* v. *Masten*, 70 F.3d 539 (9th Cir. 1995), *cert. denied*, __ U.S. __, 116 S. Ct. 2546 (1996); *United States* v. *Michigan*, 623 F.2d 448, 450 (6th Cir. 1980); *James* v. *U.S. Dep't. of Health and Human Services*, 824 F.2d 1132, 1137 (D.C. Cir. 1987). Such cases fully support the exercise of Secretarial

[1] "The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian affairs and all matters arising out of Indian relations." 25 U.S.C. 2." The President may prescribe such regulations as he may think fit for carrying into effect the various provisions of any act relating to Indian affairs, and for the settlement of the accounts of Indian affairs." 25 U.S.C. 9; *see also* 43 U.S.C. 1457 (charging Secretary of Interior with administration of "public business" related to Indians).

authority to promulgate regulations governing and protecting Indian rights, such as the right to engage in gaming activities, that are rooted in Federal law.

In comments on the ANPR, some States have suggested that the Supreme Court's decision in *Organized Village of Kake* v. *Egan*, 369 U.S. 60 (1962), may preclude the Secretary's exercise of rule-making authority for gaming procedures. See Comments of Florida, et al., *supra*, at 9. In *Organized Village of Kake*, the Secretary purported to authorize off-reservation fisheries in Alaska pursuant to his general authority over Indian affairs and the White Act, 48 U.S.C. 221–228. However, no treaty, executive order, statute, or Federal common law established tribal fishing rights. Accordingly, the Court struck down the Secretary's regulations authorizing the use of fish traps in violation of State law because the Tribe had *no* "fishing rights derived from Federal laws." Id. at 76. *See McClanahan* v. *Arizona State Tax Com'n.*, 411 U.S. 164, 176 n.15 (1973) (distinguishing *Organized Village of Kake* as limited to situations involving non-reservation Indians without Federally-protected rights); see also Clinton, et al., *American Indian Law* at 593 (3d ed. 1991).

Here, in contrast, the Tribes' Federal common law right to engage in gaming activities free of most State regulation on Indian land was recognized in *California* v. *Cabazon Band of Mission Indians*, 480 U.S. 202 (1987) and pre-existed adoption of IGRA. Because tribal gaming rights are rooted in Federal law, 25 U.S.C. 2 and 9 give the Secretary the authority to adopt regulations to carry into effect those rights.

The Ninth Circuit, in a case vacated after the Supreme Court's decision in *Seminole*, expressed concern that the Secretary would undermine congressional intent if he imposed regulations for Class III gaming when a State asserted immunity. *Spokane Tribe of Indians* v. *Washington*, 28 F.3d. 991, 997 (9th Cir. 1994) (*dictum*), vacated and remanded, ____ U.S. ____, 116 S. Ct. 1410 (1996). The court relied on the provision in IGRA that the Secretary act only after a State is provided the opportunity to participate in negotiations and mediation.[2]

In our view, Congress had at least three purposes in enacting IGRA: to recognize and give a statutory structure for gaming as a means of promoting tribal economic development, self sufficiency and strong tribal government; to provide a basis for regulating Indian gaming to ensure that it is conducted fairly and that the Indian Tribe is the primary beneficiary of the activity; and finally, to afford an opportunity for States to participate in the establishment and conduct of Indian gaming through Tribal-State compacts, but also to make a Federal backstop available should a consensual Tribal-State compact not be reached. If the Secretary were unable to issue procedures to permit gaming when a State refused to submit to a Federal court the issue of whether it was bargaining in good faith, that State would effectively be awarded a veto over all Class III Indian gaming within its borders. Congress did not contemplate or authorize such a State veto in IGRA.

The proposed rules are faithful to Congress' intent that States be able to participate in the establishment and regulation of Class III gaming, through negotiation and mediation, and that Indian gaming will be protected from the influence of organized crime. Thus, contrary to the concern expressed by the Ninth Circuit, the approach of the proposed regulations is not to undermine congressional intent; instead, the regulations provide the tools necessary to fulfill congressional intent in the wake of *Seminole*.[3]

Faced with the "problem of defining the bounds of its regulatory authority, an agency may appropriately look to the * * * underlying policies of its statutory grants of authority." *United States* v. *Riverside Bayview Homes, Inc.*, 474 U.S. 121, 132 (1985). In this case, IGRA's underlying policies strongly support the issuance of the proposed rule. In addition, it is a well-settled principle of Indian law that Indian affairs statutes be construed where possible to benefit Tribes, not in a way that results in the backhanded deprivation of tribal rights. *Bryan* v. *Itasca County*, 426 U.S. 373, 379 (1976); C. Wilkinson, *American Indians, Time, and the Law* 46–52 (1987). For these reasons, the Secretary concludes that he has the authority to prescribe the following rule.

The Department invites comment on the legal analysis set forth above and in the other sections of this document.

Summary of the Proposed Rule

The proposed rule tracks IGRA's negotiation and mediation process, adjusted only to the extent necessary to reflect the unavailability of tribal access to Federal court where a State refuses to waive sovereign immunity. The proposed rule applies only where a Tribe asserts that a State is not negotiating in good faith, files suit against the State in Federal court in accordance with IGRA, but cannot proceed in Federal court because the State refuses to waive its sovereign immunity from suit. In cases in which a State chooses not to assert a sovereign immunity defense, these proposed rules would not apply. Instead, the negotiation and mediation process set forth in Section 2710(d)(7) of IGRA would continue under the supervision of the court.

In those cases in which a State interposes a sovereign immunity defense to a tribal lawsuit in Federal court, the proposed regulations establish a process for obtaining State participation in the compacting process, prior to the Secretary's identification of procedures. It is important to emphasize that, under the proposed rules, the Secretary will not adopt procedures in any specific situation unless he first determines that the State has failed to bargain in good faith. The Department expects that, in most cases, this will require addressing the applicable scope of gaming under State law and IGRA. Scope of gaming is discussed further below.

The steps set forth in the proposed rule include:

1. Following dismissal on grounds of sovereign immunity of a Tribe's suit brought pursuant to 25 U.S.C. 2710(d)(7) against a State, the Tribe would have the opportunity to submit a request to the Department to establish gaming procedures. The procedures submitted by the Tribe would be required to address all of the issues identified in the proposed rule, including the scope of the gaming activities being requested by the Tribe; the Tribe's position regarding whether the State has negotiated with the Tribe in good faith within the meaning of IGRA; and detailed mechanisms for regulation of the gaming, including assurances that games will be conducted fairly and that the financial integrity of the entire operation will be safeguarded. Because the good faith bargaining issue often turns on the question of the appropriate scope of gaming, the Tribe will be asked to provide a legal analysis

[2] The Supreme Court in *Seminole* did not resolve the Ninth and Eleventh Circuits' conflicting *dicta*, stating, "[w]e do not consider, and express no opinion upon, that portion of the position of the decision below that provides a substitute remedy for a Tribe bringing suit. *See* 11 F.3d 1016, 1029 (C.A. 11)(case below)." 116 S. Ct. at 1133 n.18.

[3] Twenty-two States filed joint comments on the ANPR indicating their "view that the Court in *Seminole* did not invalidate any portion of IGRA, but that it left the Act intact. The decision merely revitalized a jurisdictional defense of the States. If a State consents to suit in Federal court, then the complete remedial scheme envisioned by Congress can be played out." Comments of Florida, et al., at 8 (June 28, 1996). We agree that no part of the statute need be invalidated, or "severed" from the statute. We note that IGRA does, however, contain a severability provision, 25 U.S.C. 2721. *See generally Alaska Airlines* v. *Brock*, 480 U.S. 678, 686 (1987).

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supporting the proposed scope of gaming in view of State prohibitions and other policies on specific types of gaming.

2. The Department would notify the Tribe within 15 days that it has received the proposal and whether it is complete. Within 30 days the Department will notify the Tribe whether it is eligible for procedures. The Department will not make a determination of the "good faith" issue at this point.

3. Following issuance of a notice of completeness and eligibility, the Department will notify the State of the Tribe's request for the issuance of procedures, and solicit the State's comments on the Tribe's proposed procedures, including any comments on the proposed scope of gaming. The State also will be asked to comment on the Tribe's statements regarding whether the State has negotiated in good faith within the meaning of IGRA, particularly on the scope of gaming issue. The State will also be invited to submit alternative proposed procedures. The State will have 60 days to respond.

4. Based on its review of the submissions of the Tribe and the State, the Department shall make a determination whether the State is negotiating in good faith with the Tribe. If the Department determines that the State is not negotiating in good faith, and the State has not submitted an alternative proposal, the Department will advise the State and Indian Tribe of: (a) its approval of the Tribe's proposal; (b) its rejection of the Tribe's proposal because of its failure to meet the substantive standards in the regulation, § 291.8; or (c) its convening of an informal conference with the State and Tribe within 30 days for the purpose of resolving any areas of disagreement.

5. Alternatively, if the State submits objections to the Indian Tribe's proposal *and* offers alternative proposed procedures, the Tribe must file objections to the State's proposal within 60 days. If the Tribe does not submit objections to the proposed procedures, the Secretary will adopt the State's proposed procedures unless they do not meet the substantive standards in the regulations, § 291.8.

6. If the Indian Tribe objects to the State's proposed procedures, the Secretary will appoint a mediator who will receive "last best offers" from the State and Tribe. The mediator must then submit to the Secretary the proposed procedures that best comport with applicable Federal and State law. Within 60 days of receipt of the mediator's recommendation, the Secretary must notify the State and Tribe of his decision to approve or disapprove the procedures submitted by the mediator, or prescribe such procedures as he determines appropriate that are consistent with State law and the provisions of IGRA.

The Johnson Act and IGRA's Criminal Provision

The Secretary has also considered the application of criminal prohibitions found in IGRA and the Johnson Act and has concluded that those prohibitions would not apply upon the adoption of "procedures" pursuant to these proposed regulations. The Johnson Act and section 23 of IGRA make most Class III gaming in Indian country illegal unless conducted pursuant to an approved compact that is "in effect."[4] In comments on the ANPR, some States argue that these criminal statutes are applicable unless there is a compact that: (1) has been voluntarily entered into by a State and an Indian Tribe, 25 U.S.C. 2710(d)(8)(A); and (2) is "in effect" within the meaning of IGRA by virtue of having been approved by the Secretary and published in the **Federal Register**. 25 U.S.C. 2710(d)(3)(B). See Comments of Arizona at 18–20; Comments of Florida at 10.

That reading of IGRA is inconsistent with the statute when read as a whole, and must therefore be rejected. The Supreme Court has long recognized that: "[i]t is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Davis* v. *Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989); *see also King* v. *St. Vincent's Hospital*, 502 U.S. 215, 221 n.10 (1991) ("in construing statute (sic) court should adopt sense of words which best harmonizes with context and promotes policy and objectives of legislature," paraphrasing *United States* v. *Hartwell*, 73 U.S. (6 Wall.) 385, 398 (1868)). Most importantly, statutes must be read to give effect to every provision. *Rake* v. *Wade*, 508 U.S. 464, 471 (1994).

The States' construction would render the section of IGRA authorizing the Secretary to establish "procedures" for Class III gaming meaningless, because thus woodenly read, no compact can be "in effect" absent a State's agreement to it. See 25 U.S.C. 2710(d)(3)(B) (compact entered into by Tribe and State "shall take effect only when notice of approval of such compact has been published by the Secretary in the **Federal Register**"). Thus, even if the Supreme Court had not decided *Seminole* as it did, under Florida and Arizona's reading of the statute, Class III gaming would remain unlawful even if procedures were set in place by the Secretary after completion of the judicially-supervised mediation process.

Put another way, if the statute is read with such extreme literalness it has a technical flaw. It provides for Secretarial procedures in the event that States and Indian Tribes cannot agree to a compact. If they can agree, such a compact becomes "in effect" upon approval by Secretary. 25 U.S.C. 2710(d)(3)(B). Where a State does not assert immunity from suit and procedures ultimately are adopted by the Secretary without State consent, IGRA does not call this a compact "in effect." Compare 25 U.S.C. 2710(d)(7)(B)(vii), with 25 U.S.C. 2710(d)(3)(B). Yet there is nothing else in the statute or its legislative history that even hints that the Johnson Act or § 23 of IGRA would criminalize Class III Indian gaming in such circumstances. If Florida and Arizona's construction were accepted, it would negate the entire part of IGRA that calls for mediation and Secretarial procedures.

To avoid such an absurd result, the statute must be read to mean that all Secretarial-sanctioned gaming is exempt from the provisions of the Johnson Act and section 23 of IGRA. The "procedures" adopted by the Secretary—whether pursuant to the judicially-supervised mode prescribed by IGRA or pursuant to this rulemaking—are properly viewed as a full substitute for the compact that would be "in effect" if a voluntary agreement had been reached, and thus qualify for the exemption to the criminal prohibitions on gaming.

Scope of Gaming

The most frequently contested issue among Tribes and States relates to the "scope of gaming" permitted under State law, for this is important in determining whether particular games are properly the subject of negotiation between a Tribe and a State. In the context of this proposed rulemaking, the issue bears directly upon whether a State is bargaining in good faith with a Tribe and whether a Tribe's requested procedures include games lawful under IGRA. 25 U.S.C. 2710(d)(1)(B). In evaluating the permissible "scope of gaming" under the various States' laws, the Department will apply the interpretation set forth as the position of the United States on the scope of gaming issue in its *amicus curiae* brief in the Supreme Court in *Rumsey Indian Rancheria of Wintun Indians* v. *Wilson*, 64 F.3d 1250 (9th Cir. 1995), *as modified on denial of petition for rehearing*, 99 F.3d 321 (9th Cir. 1996), *cert. denied, sub nom. Sycuan Band of Mission Indians* v. *Wilson*, No. 96–1059, 65 U.S.L.W. 3855 (June 24, 1997). Copies of the brief are available to any reviewer upon request.

As a threshold matter, the Secretary would disapprove proposals when "contemplated gaming activities are not permitted in the State for any purpose by any person, organization, or entity." Proposed 25 CFR § 291.8(b)(3), *infra*. This conclusion is based on 25 U.S.C. 2710(d)(1)(B), which states that "Class III gaming activities shall be lawful on Indian lands only if such activities are * * * located in a State that permits such gaming for any purpose by any person, organization or entity." IGRA thus makes it unlawful for Tribes to operate particular Class III games that State law completely and affirmatively prohibits. Courts have determined that a State therefore has no duty to negotiate with respect to such games. *See Rumsey Indian Rancheria, supra*. In other words, if a State prohibits an entire class of traditional games, it need not negotiate over the particular games within that category. Consequently, such gaming would not be permitted under Secretarial procedures.

Our interpretation of the scope of gaming issues is adopted from the United States' amicus brief filed in the Supreme Court in *Rumsey Indian Rancheria, supra:*

> In some circumstances, a question may arise concerning whether a State law prohibits a distinct form of gaming or instead regulates the manner in which a permitted form of gaming may be played. Several hypothetical examples may illustrate the point. If State law prohibits five-card stud poker but permits seven-card draw poker (or prohibits parimutuel wagering on dog racing, but not on horse racing), a question could arise as to whether that State law prohibits a distinct form of gaming known as "five card stud poker" ("or dog racing"), or instead regulates the manner in which the permitted form of gaming known as "poker" ("or animal racing") may be conducted. If characterized in the former way, the State would have to negotiate concerning only seven-card draw poker (or horse racing); if characterized in the latter way, the State would have to negotiate over all poker games (or all animal racing). The relevant question in such a case would be whether, in light of traditional understandings and the text and legislative history of IGRA, the State has reasonably characterized the relevant State laws as completely prohibiting a distinct form of gaming. If the State has not reasonably so characterized its laws, it would have a duty to negotiate with respect to the gaming.
>
> United States' Brief at 15.

It is impractical for the Department to attempt to evaluate, in advance of a tribal request, the permissible scope of gaming in each State. For that reason the proposed rule requires a Tribe to submit its own analysis along with its request for Secretarial procedures, and goes on to invite the views and active participation of the affected State with respect to the applicable scope of gaming under any Secretarial procedures.

Monitoring

Many voluntarily negotiated compacts include a monitoring role for the affected State. In these compacts States often assist in background checks on key casino personnel, and/or monitor tribal financial statements. Tribes may make certain financial information available to States to ensure that applicable regulatory requirements have been satisfied. Because of the importance of this monitoring function, the proposed regulations invite State participation in the promulgation of Secretarial procedures, notwithstanding a State's assertion of immunity from suit. If a State declines to participate in such an activity, the Department believes steps ought to be taken to ensure that independent monitoring and enforcement exists. The proposed rule requires that the Tribe provide in its procedures for monitoring and enforcement by an independent and autonomous tribal regulatory commission. Further, the Department seeks comments on whether the NIGC or some other entity should perform monitoring and enforcement functions, and, if so, who should bear the cost of such functions.

Publication of this proposed rule by the Department provides the public an opportunity to participate in the rulemaking process. Interested persons may submit written comments to the location identified in the **ADDRESSES** section of this proposed rule.

Executive Order 12988

The Department has certified to the Office of Management and Budget (OMB) that these proposed regulations meet the applicable standards provided in Sections (3)(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866

This is a significant rule under Executive Order 12866 and has been reviewed by OMB.

Regulatory Flexibility Act

We do not believe that this proposed rule will have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*. The Regulatory Flexibility Act of 1980 requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. At this time, we do not know whether any Secretarial procedures, authorized by this proposed rule, will need to be adopted. We also do not know whether the adoption of procedures in a given case will have a significant impact on small entities as defined by the Act. If procedures are proposed pursuant to this rule, States (and through the States, local jurisdictions and small entities) will be permitted to comment on a given proposal, and any concerns may be taken into account in Secretarial procedures.

It is our preliminary view that Indian tribes are not small entities within the meaning of the Regulatory Flexibility Act. The statutory definition specifically enumerates several kinds of governmental entities, but does not include Indian tribes. 5 U.S.C. 601(5). This indicates that tribes should not be considered small entities. We invite comment on this issue.

Executive Order 12630

The Department has determined that this proposed rule does not have significant "takings" implications. The proposed rule does not pertain to "taking" of private property interests, nor does it impact private property.

Executive Order 12612

The Department has determined that this proposed rule does not have significant Federalism effects.

As explained above, the Secretary has determined that he has the statutory authority to adopt procedures to permit Indian gaming in appropriate circumstances. Secretarial authority was expressly provided in IGRA with respect to the judicially-supervised mediation scheme. It would be exercised under the proposed rules in a manner consistent with the statutory directive and congressional intent. The proposed rule provides the opportunity for States to voluntarily participate in a mediation process under the auspices of the Secretary of the Interior. As the Supreme Court noted in *Seminole*, Congress may, under the Constitution, choose to withhold from States any authority over Indian gaming. Because under the proposed rules the Secretary would be tracking the scheme set forth by Congress, and because the proposed rule would afford the States as much

[4] The Johnson Act makes it "unlawful to manufacture, recondition, repair, sell, transport, possess, or use any gambling device * * * within Indian country as defined in 1151 of Title 18[.]" 15 U.S.C. 1175. It does not apply when there is a Tribal-State compact "in effect." 25 U.S.C. 2710(d)(6). Section 23 of IGRA provides that:

> (a) Subject to subsection (c), for purposes of Federal law, all State laws pertaining to the licensing, regulation, or prohibition of gambling, including but not limited to criminal sanctions applicable thereto, shall apply in Indian country in the same manner and to the same extent as such laws apply elsewhere in the State.
>
> * * * * *
>
> For the purpose of this section, the term gambling does not include:
>
> * * * * *
>
> (2) Class III gaming conducted under a Tribal-State compact approved under 11(d)(8) of the IGRA *that is in effect codified* at 18 U.S.C. 1166 (emphasis added).

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opportunity to participate as where it does not claim immunity from suit, we believe the proposed rule has no significant Federalism effects.

NEPA Statement

The Department has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Paperwork Reduction Act of 1995

Sections 291.4, 291.10, 291.12, and 291.15 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: When a Tribe and State do not successfully negotiate a Tribal-State compact, the Tribe will be required to collect information to document the negotiation process, and prepare proposed procedures for submission to the Secretary. The information requested will be unique for each Tribe and may be changed when necessary to fit the needs of the Tribe.

All information is to be collected upon the submission of a request by a Tribe for Class III gaming procedures. The annual reporting and record keeping burden for the collection of information is estimated to average 1,000 hours for each response and we estimate there will be approximately 25 respondents. The collection will include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information. The total annual burden is estimated to be 25,000 hours.

Organizations and individuals desiring to submit comments on the information collection requirement should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10202, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer for the Department of the Interior.

The Department considers comments by the public on this proposed collection of information in:

Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;

Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhancing the quality, usefulness, and clarity of the information to be collected; and

Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

OMB is required to make a decision between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to the OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the BIA on the proposed regulations.

Unfunded Mandates Act of 1995

This regulation imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Drafting Information

The primary author of this proposed rule is George Skibine, Acting Deputy Associate Solicitor, Division of Indian Affairs, Office of the Solicitor.

List of Subjects in 25 CFR Part 291

Indians—Gaming.

For the reasons given in the preamble, the Department of the Interior proposes to establish a new Part 291 of Title 25, Chapter 1 of the Code of Federal Regulations as set forth below.

PART 291—CLASS III GAMING PROCEDURES

Sec.

291.1 Purpose and scope.
291.2 Definitions.
291.3 When may an Indian Tribe ask the Secretary to issue Class III gaming procedures?
291.4 What must a proposal requesting Class III gaming procedures contain?
291.5 Where must the proposal requesting Class III gaming procedures be filed?
291.6 What must the Secretary do upon receiving a proposal?
291.7 What must the Secretary do if it has been determined that the Indian Tribe is eligible to request Class III gaming procedures?
291.8 What must the Secretary do at the expiration of the 60-day comment period if the State has not submitted an alternative proposal?
291.9 What must the Secretary do at the end of the 60-day comment period if the State offers an alternative proposal for Class III gaming procedures?
291.10 What must the Indian Tribe do when it receives the State's alternative proposal Class III gaming procedures?
291.11 What must the Secretary do if the Indian Tribe files timely objections to the State's alternative proposal?
291.12 What is the role of the mediator appointed by the Secretary?
291.13 What must the Secretary do upon receiving the proposal selected by the mediator?
291.14 When do Class III gaming procedures for an Indian Tribe become effective?
291.15 How can Class III gaming procedures issued by the Secretary be amended?

Authority: 5 U.S.C. 301; 25 U.S.C. 2,9, 2710.

§ 291.1 Purpose and scope.

The regulations in this part establish procedures that the Secretary of the Interior will use to promulgate rules for the conduct of Class III Indian gaming when:

(a) A State and an Indian Tribe are unable voluntarily to agree to a compact; and

(b) The State has asserted its immunity from suit brought by an Indian Tribe under 25 U.S.C. 2710(d)(7)(B).

§ 291.2 Definitions.

All terms have the same meaning as set forth in the definitional section of IGRA, 25 U.S.C. 2703(1)–(10).

§ 291.3 When may an Indian Tribe ask the Secretary to issue Class III gaming procedures?

An Indian Tribe may ask the Secretary to issue Class III gaming procedures when the following steps have taken place:

(a) The Indian Tribe submitted a written request to the State to enter into negotiations to establish a Tribal-State compact governing the conduct of Class III gaming activities;

(b) The State and the Indian Tribe failed to negotiate a compact 180 days after the State received the Indian Tribe's request;

(c) The Indian Tribe initiated a cause of action in Federal district court against the State alleging that the State did not respond, or did not respond in good faith, to the request of the Indian Tribe to negotiate such a compact;

(d) The State raised an Eleventh Amendment defense to the tribal action; and

(e) The Federal district court dismissed the action because of lack of jurisdiction due to the State's sovereign immunity under the Eleventh Amendment.

§ 291.4 What must a proposal requesting Class III gaming procedures contain?

A proposal requesting Class III gaming procedures must include the following information:

(a) The full name, address, and telephone number of the Indian Tribe submitting the proposal;

(b) A copy of the authorizing resolution from the Indian Tribe submitting the proposal;

(c) A copy of the Indian Tribe's gaming ordinance or resolution approved by the NIGC in accordance with 25 U.S.C. 2710;

(d) A copy of the Indian Tribe's organic documents;

(e) A copy of the Indian Tribe's written request to the State to enter into compact negotiations, along with the Indian Tribe's proposed compact, if any;

(f) A copy of the State's response to the tribal request and/or proposed compact, if any;

(g) A copy of court proceedings in the litigation with the State in Federal district court on compact negotiations, including a copy of the order dismissing the lawsuit;

(h) The Indian Tribe's factual and legal authority for the scope of gaming specified in paragraph (j)(13) of this section;

(i) A regulatory scheme for Federal (or State, if any) oversight role in monitoring and enforcing compliance; and

(j) Proposed procedures under which the Indian Tribe will conduct Class III gaming activities, including:

(1) An accounting system maintained in accordance with American Institute of Certified Public Accountants (AICPA) Standards for Audits of Casinos, including maintenance of books and records in accordance with Generally Accepted Accounting Principles (GAAP), and any applicable NIGC regulations;

(2) A reporting system for the payment of taxes and fees in a timely manner and in compliance with Internal Revenue Code and Bank Secrecy Act requirements;

(3) Preparation of financial statements covering all financial activities of the Indian Tribe's gaming operations;

(4) Internal control standards designed to ensure fiscal integrity of gaming operations;

(5) Provisions for records retention, maintenance, and accessibility;

(6) Conduct of games, including patron requirements, posting of game rules, and hours of operation;

(7) Procedures to protect the integrity of the rules for playing games;

(8) Rules governing employees of the gaming operation, including code of conduct, age requirements, conflict of interest provisions, licensing requirements, and background investigations of all management officials and key employees, vendors, lessors, or suppliers of gaming materials, equipment or supplies of any kind in excess of $5,000 per year, that comply with IGRA requirements, NIGC regulations, and applicable tribal gaming laws;

(9) Policies and procedures that protect the health and safety of patrons and employees and that address insurance and liability issues, as well as safety systems for fire and emergency services at all gaming locations;

(10) Surveillance procedures and security personnel and systems capable of monitoring all gaming activities, including the conduct of games, cashiers' cages, change booths, count rooms, movement of cash and chips, entrances and exits of gaming facilities, and other critical areas of any gaming facility;

(11) An administrative process to resolve disputes between the gaming establishment and employees or patrons, including a process to protect the rights of individuals injured on gaming premises by reason of negligence in the operation of the facility;

(12) Hearing procedures for licensing purposes;

(13) A list of gaming activities proposed to be offered by the Indian Tribe at its gaming facilities;

(14) A description of the location of proposed gaming facilities;

(15) A copy of the Indian Tribe's liquor ordinance approved by the Secretary, if any;

(16) Provisions for an autonomous tribal regulatory gaming commission, independent of gaming management;

(17) Provisions for enforcement and investigatory mechanisms, including the imposition of sanctions, monetary penalties, closure, and an administrative appeal process relating to enforcement and investigatory actions; and

(18) Any other provisions deemed necessary by the Indian Tribe.

§ 291.5 Where must the proposal requesting Class III gaming procedures be filed?

Any proposal requesting Class III gaming procedures must be filed with the Director, Indian Gaming Management Staff, Bureau of Indian Affairs, U.S. Department of the Interior, MS 2070–MIB, 1849 C Street, NW, Washington, DC 20240.

§ 291.6 What must the Secretary do upon receiving a proposal?

Upon receipt of a proposal requesting Class III gaming procedures, the Secretary must:

(a) Within 15 days, notify the Indian Tribe in writing that the proposal has been received, and whether the proposal meets the requirements of § 291.4; and

(b) Within 30 days of receiving a complete proposal, notify the Indian Tribe in writing whether the Indian Tribe meets the eligibility requirements in § 291.3. The Secretary's eligibility determination is final for the Department.

§ 291.7 What must the Secretary do if it has been determined that the Indian Tribe is eligible to request Class III gaming procedures?

(a) If the Secretary determines that the Indian Tribe is eligible to request Class III gaming procedures and that the Indian Tribe's proposal is complete, the Secretary must submit the Indian Tribe's proposal to the Governor and the Attorney General of the State where the gaming is proposed.

(b) The Governor and Attorney General will have 60 days to comment on:

(1) Whether the State is in agreement with the Indian Tribe's proposal;

(2) Whether the State believes it has negotiated in good faith with the Indian Tribe under 25 U.S.C. 2710(d)(3)(A);

(3) Whether the proposal is consistent with relevant provisions of the laws of the State; and

(4) Whether contemplated gaming activities are permitted in the State for any purposes, by any person, organization, or entity.

(c) The Secretary will also invite the State's Governor and Attorney General to submit an alternative proposal to the Indian Tribe's proposed Class III gaming procedures.

§ 291.8 What must the Secretary do at the expiration of the 60-day comment period if the State has not submitted an alternative proposal?

(a) Upon expiration of the 60-day comment period specified in § 291.7, if the State has not submitted an alternative proposal, the Secretary must review the Indian Tribe's proposal to determine:

(1) Whether all requirements of § 291.4 are adequately addressed;

(2) Whether Class III gaming activities will be conducted on Indian lands over which the Indian Tribe has jurisdiction;

(3) Whether contemplated gaming activities are permitted in the State for any purposes by any person, organization, or entity;

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(4) Whether the proposal is consistent with relevant provisions of the laws of the State;

(5) Whether the proposal is consistent with the trust obligations of the United States to the Indian Tribe;

(6) Whether the proposal is consistent with all applicable provisions of the IGRA;

(7) Whether the proposal is consistent with provisions of other applicable Federal laws; and

(8) Whether the State has negotiated in good faith.

(b) Within 60 days of the expiration of the 60-day comment period in § 291.7, the Secretary must notify the Indian Tribe, the Governor, and the Attorney General of the State in writing that he/she has:

(1) Approved the proposal if the Secretary determines that there are no objections to the Indian Tribe's proposal;

(2) Disapproved the proposal if it does not meet the standards in paragraph (a) of this section; or

(3) Identified unresolved issues and areas of disagreements in the proposal, and that the Indian Tribe, the Governor, and the Attorney General are invited to participate in an informal conference to resolve identified unresolved issues and areas of disagreement.

(c) Within 30 days of the informal conference, the Secretary must prepare and mail to the Indian Tribe, the Governor, and the Attorney General:

(1) A written report that summarizes the results of the informal conference; and

(2) A final decision either setting forth the Secretary's proposed Class III gaming procedures for the Indian Tribe, or disapproving the proposal for any of the reasons in paragraph (a) of this section.

§ 291.9 What must the Secretary do at the end of the 60-day comment period if the State offers an alternative proposal for Class III gaming procedures?

Within 7 days of receiving the State's alternative proposal, the Secretary must submit the State's alternative proposal to the Indian Tribe for a 60-day comment period.

§ 291.10 What must the Indian Tribe do when it receives the State's alternative proposal for Class III gaming procedures?

(a) If the Indian Tribe objects to the State's alternative proposal, it may, within 60 days of receiving the alternative proposal, notify the Secretary in writing of its objections.

(b) If the Indian Tribe does not file written objections within 60 days of receiving of the State's alternative proposal, the Secretary must, within 60 days of the expiration of the Indian Tribe's comment period in § 291.9, notify the Indian Tribe, the Governor, and the Attorney General, in writing of his/her decision to either:

(1) Approve the State's alternative proposal for Class III gaming procedures; or

(2) Disapprove the State's alternative proposal for any of the reasons in § 291.13(b).

§ 291.11 What must the Secretary do if the Indian Tribe files timely objections to the State's alternative proposal?

If the Indian Tribe files timely objections to the State's alternative proposal, the Secretary must appoint a mediator who must convene a process to resolve differences between the two proposals.

§ 291.12 What is the role of the mediator appointed by the Secretary?

(a) The mediator must ask the Indian Tribe and the State to submit their last best proposal for Class III gaming procedures.

(b) After giving the Indian Tribe and the State an opportunity to be heard and present information supporting their respective positions, the mediator must select from the two proposals the one that best comports with the terms of the IGRA and any other applicable Federal law. The mediator must submit the proposal selected to the Indian Tribe, the State, and the Secretary.

§ 291.13 What must the Secretary do upon receiving the proposal selected by the mediator?

Within 60 days of receiving the proposal selected by the mediator, the Secretary must do one of the following:

(a) Notify the Indian Tribe, the Governor and the Attorney General in writing of his/her decision to approve the proposal for Class III gaming procedures selected by the mediator.

(b) Notify the Indian Tribe, the Governor and the Attorney General in writing of his/her decision to disapprove the proposal selected by the mediator for any of the following reasons:

(1) The requirements of § 291.4 are not adequately addressed;

(2) Gaming activities would not be conducted on Indian lands over which the Indian Tribe has jurisdiction;

(3) Contemplated gaming activities are not permitted in the State for any purpose by any person, organization, or entity;

(4) The proposal is not consistent with relevant provisions of the laws of the State;

(5) The proposal is not consistent with the trust obligations of the United States to the Indian Tribe;

(6) The proposal is not consistent with applicable provisions of the IGRA; or

(7) The proposal is not consistent with provisions of other applicable Federal laws.

(c) If the Secretary rejects the mediator's proposal under paragraph (b) of this section, he may prescribe appropriate procedures under which Class III gaming may take place consistent with the mediator's selected compact, the provisions of IGRA and the relevant provisions of the laws of the State.

§ 291.14 When do Class III gaming procedures for an Indian Tribe become effective?

Upon approval of Class III gaming procedures for the Indian Tribe under either § 291.8(b), § 291.8(c), § 291.10(b)(1), or § 291.13(a), the Indian Tribe shall have 90 days in which to approve and execute the Secretarial procedures and forward its approval and execution to the Secretary, who will publish notice of their approval in the **Federal Register**. The procedures take effect upon their publication in the **Federal Register**.

§ 291.15 How can Class III gaming procedures approved by the Secretary be amended?

An Indian Tribe may ask the Secretary to amend approved Class III gaming procedures by submitting an amendment proposal to the Secretary. The Secretary must review the proposal by following the approval process for initial tribal proposals, except that he/she may waive the requirements of § 291.4 to the extent they do not apply to the amendment request.

Dated: December 8, 1997.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–1409 Filed 1–22–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–110965–97]

RIN 1545–AV47

Obligations of States and Political Subdivisions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking; notice of proposed rulemaking by cross-reference to temporary regulations; and notice of public hearing.

SUMMARY: This document withdraws portions of the notice of proposed rulemaking published in the **Federal Register** (59 FR 67658) on December 30, 1994. In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance to state and local governments that issue bonds for output facilities and to certain nongovernmental persons that are engaged in the local furnishing of electric energy or gas using facilities financed with state or local bonds. These proposed regulations reflect changes made by the Tax Reform Act of 1986 and the Small Business Job Protection Act of 1996. The text of those temporary regulations also serves as the text of these proposed regulations. This document provides a notice of public hearing on these proposed regulations.

DATES: Written comments must be received by April 22, 1998. Outlines of topics to be discussed at the public hearing scheduled for April 28, 1998, at 10:00 a.m. must be received by April 7, 1998.

ADDRESSES: Send Submissions to: CC:DOM:CORP:R (REG–110965–97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–110965–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Allan B. Seller, 202–622–3980; concerning submissions and the hearing, Michael L. Slaughter, Jr., 202–622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Proposed regulations §§ 1.141–7 and 1.141–8, published on December 30, 1994 (59 FR 67658) addressed the application of the private activity bond tests of section 141(b)(2) to output contract for output facilities and the application of the $15 million limitation on output facility financings of section 141(b)(4). These proposed sections are withdrawn. These sections were issued as part of proposed regulations under §§ 1.141–0 through 1.141–16, Definition of Private Activity Bonds, which were finalized in part in TD 8712 published in the **Federal Register** on January 16, 1997.

Sections 1.141–7T, 1.141–8T, 1.141–15T, 1.142(f)(4)–1T, and 1.150–5T published in the Rules and Regulations portion of this issue of the **Federal Register** are issued to provide guidance on certain aspects of the private activity bond restrictions under section 141 of the Internal Revenue Code.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that these regulations do not have a significant impact on a substantial number of small entities. This certification is based upon the fact that in the years 1987 through 1993 a total of 61 different state or local government issuers of exempt facility bonds issued under section 142(f) for the local furnishing of electric energy or gas filed information returns with the Internal Revenue Service under section 149(e). Further, an election under section 142(f)(4) is in no event required to be filed with the Internal Revenue Service more than once by a person engaged in the local furnishing of electric energy or gas. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (a signed original and eight (8) copies) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 28, 1998, at 10:00 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by April 22, 1998 and submit an outline of the topics to be discussed and the time to be devoted to each topic by April 7, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Michael G. Bailey and Allan Seller, Office of the Assistant Chief Counsel (Financial Institutions and Products), and Nancy M. Lashnits, formerly of that office. However, other personnel from the IRS and Treasury Department participated in their development.

Partial Withdrawal of Notice of Proposed Rulemaking

Under the authority of 26 U.S.C. 7805, §§ 1.141–7 and 1.141–8 in the notice of proposed rulemaking that was published on December 30, 1994 (59 FR 67658) are withdrawn.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read as follows:

AUTHORITY: 26 U.S.C. 7805 * * *

Par. 2. Section 1.141–7 is added to read as follows:

§ 1.141–7 Special rules for output facilities.

[The text of this proposed section is the same as the text of §§ 1.141–7T

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published elsewhere in this issue of the **Federal Register**.]

Par. 3. Section 1.141–8 is amended by adding the text of the section to read as follows:

§ 1.141–8 $15 million limitation for output facilities.

[The text of this proposed section is the same as the text of § 1.141–8T published elsewhere in this issue of the **Federal Register**.]

Par. 4. Section 1.141–15 is amended by adding paragraphs (f) through (i) to read as follows:

§ 1.141–15 Effective dates.

* * * * *

(f) through (i) [The text of proposed paragraphs (f) through (i) are the same as the text of § 1.141–15T(f) through (i) published elsewhere in this issue of the **Federal Register**.]

Par. 5. Section 1.142(f)(4)–1 is added to read as follows:

§ 1.142(f)(4)–1 Manner of making election to terminate tax-exempt bond financing.

[The text of this proposed section is the same as the text of § 1.142(f)(4)–1T published elsewhere in this issue of the **Federal Register**.]

Par. 6. Section 1.150–5 is added to read as follows:

§ 1.150–5 Filing notices and elections.

[The text of this proposed section is the same as the text of § 1.150–5T published elsewhere in this issue of the **Federal Register**.]

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–717 Filed 1–21–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

RIN 1018–AE08

Importation, Exportation, and Transportation of Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the U.S. Fish and Wildlife Service (Service) regulations providing for user fee collections from commercial importers and exporters of wildlife and wildlife products. We, the Service, propose a licensing and fee scheme which will exempt certain commercial importers and exporters from our inspection fee, based upon specific criteria, including country of origin, numbers of items, and permitting requirements. We propose to modify our user fee regulations to grant relief to certain individuals and small businesses, meeting the outlined criteria, from the designated port inspection fee and nondesignated port administrative fee and hourly minimums only. This proposal, if implemented, will allow us to continue to collect data on fee collections in order to analyze the impact of user fees on small business for future decision making.

We will also update the authority citation for this part to delete an obsolete reference and to reflect the current United States Code citation regarding fees and charges for Government services.

DATES: Comments must be submitted on or before March 23, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Director, U.S. Fish and Wildlife Service, P.O. Box 3247, Arlington, Virginia 22203–3247. Comments and materials may be hand-delivered to the U.S. Fish and Wildlife Service, Division of Law Enforcement, 4401 N. Fairfax Drive, Room 500, Arlington, Virginia, between the hours of 8 a.m. and 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Kevin R. Adams, Chief, Division of Law Enforcement, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, Telephone Number (703) 358–1949.

SUPPLEMENTARY INFORMATION:

Background

On June 21, 1996, we published a final rule (61 FR 31850) which established a new requirement in Part 14 for all commercial importers and exporters of wildlife and wildlife products to obtain an Import/Export License (license) and also provided for our charging license holders increased inspection and overtime fees. The final rule eliminated the $25,000 annual dollar value exemption the Service had utilized since 1984 in determining whether a particular business or individual was required to have a license. The final rule raised the inspection fees charged to licensees to enable the Service to more fully recoup the costs of operating the wildlife inspection program. We published the June 21, 1996, final rule after several lengthy comment periods which began with the notice of intent to review published on November 14, 1991 (56 FR 57873). Of the 800 total comments received, 81 were on the new fee structure discussed in the notice of intent, the proposed rule published November 15, 1994 (59 FR 58811), and the supplemental proposed rule published March 23, 1995 (60 FR 15277). We received 64 favorable comments on the fee increase out of 81 total with 17 commenters opposed to a user fee increase. Several of the 17 commenters opposed to the fee increase requested that we maintain a dollar value exemption for small businesses. We acknowledged these commenters' concerns and expressed our own concern for the new fee structure being perceived as overly burdensome on small business, and replied, as restated in this proposed rule, that we are attempting to maintain the most efficient inspection program possible without being overly burdensome on smaller importers. We were attempting to implement the smallest fee increase possible which would allow us to recoup the cost of the wildlife inspection program. At the same time we were attempting to respond to several studies of the Service's inspection program that clearly indicate a need to raise inspection fees and overtime rates commensurate with costs incurred by the Service. In addition to the studies cited in the June 21, 1996, final rule, a 1994 General Accounting Office report states in its recommendations to the Secretary of the Interior, that the Service should "Proceed with plans to increase the user fees charged by the wildlife inspection program * * *."

Since the implementation of the new fee schedule on August 1, 1996, we have received comments, including eight Congressional inquiries, indicating that the burden on small business may be greater than the Service initially anticipated in the June 21, 1996, rulemaking. In the economic effects section of that document, we estimated the costs to newly licensed small businesses and individuals who are now subject to the inspection fee requirement. In the analysis we used estimated numbers extrapolated from 1994 data contained in the Law Enforcement Management Information System (LEMIS) which represented the best information available. Based upon comments received subsequent to publication of the final rule, we believe that we may have underestimated the cumulative effect that the increased licensing and inspection fees may impose on small business and certain individuals. We have determined that we may need better data upon which to rely in making a definitive analysis of the effect of user fee increases on small business. The proposed system will continue to provide that data.

The Regulatory Flexibility Act of 1980 establishes as a principle of regulatory issuance that "* * * agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." Therefore, in order to address the immediate concerns of small business and maintain consistency with the Regulatory Flexibility Act, we propose a new licensing and inspection fee system that will accomplish two objectives. First, the new system contained in this proposed rule would grant immediate relief from the economic burden of the increased inspection fees, and/or administrative fees and hourly minimums, to importers and exporters of wildlife and wildlife products at designated ports, border or special ports, and nondesignated ports that meet specific criteria.

Second, by continuing to require that all commercial importers and exporters be licensed, the new system would allow the Service to continue to monitor wildlife import/export activity in order to gather the data necessary to make future decisions on the true impact of our user fees on small businesses and certain individuals.

Inspection Fee Exemption Criteria

We propose to amend the inspection fee system to establish specific criteria that we will use to determine if the inspection fee applies at the time of import or export. The proposed revision uses distinctions that are already established in the regulation. The Service currently uses these distinctions to determine the applicability of various parts of the regulation to wildlife being imported or exported. We propose to use these same distinctions to establish if the inspection fee applies to wildlife shipments at the time of import to or export from the United States.

Shipments will have to meet several basic criteria in order to qualify for the inspection fee exemption. The basic exemption criteria are outlined as follows: First, the inspection fee exemption will only apply to shipments that do NOT require permits under 50 CFR parts 16 (Injurious wildlife), 17 (Endangered and threatened wildlife and plants), 18 (Marine mammals), 21 (Migratory bird permits), or 23 (Endangered species convention). Those shipments that contain wildlife that require permits will not be eligible for any inspection fee exemption. Second, the wildlife must have been lawfully taken from the wild in the United States, Canada, or Mexico, and imported or exported between the United States and Canada or Mexico. Shipments containing wildlife taken in any other country and imported or exported between any countries other than the United States, Canada, or Mexico will not be eligible for the inspection fee exemption. Third, the wildlife shipment must be imported or exported by the person who took the wildlife from the wild, or by a member of that person's immediate family, provided, that the importer or exporter of record is licensed in accordance with 50 CFR 14.91. Last, the shipment must consist of raw fur, raw, salted, or crusted hides or skins, or separate parts thereof, and the shipment cannot exceed 100 raw furs, raw, salted, crusted, hides or skins or separate parts thereof. The intent of this rulemaking is to provide financial relief from the burden of the inspection fees for small business and certain individuals who may be disproportionately affected. The Service believes that a cutoff point of 100 raw furs, raw, salted, or crusted hides or skins, or separate parts thereof will adequately distinguish between small shippers disproportionately affected and those commercial wildlife dealers less impacted by the user fee.

All of the primary criteria for the user fee exemption outlined above serve as a means of limiting the exemption application to certain individuals or small business, while at the same time maintaining the integrity and intent of the user fee rulemaking published on June 21, 1996. By using distinctions already drawn in the regulation, we believe that the proposed criteria represent a balance between maintaining user fee revenues and providing small business economic relief.

In addition to the primary criteria, the Service will use additional criteria, outlined below, to ensure that the user fee exemption is utilized by those intended and to allow for statistical tracking of the exemption's use. As stated, the importer or exporter of record who is shipping wildlife that otherwise meets the inspection fee exemption criteria will still have to obtain an Import/Export License from the Service at a cost of $50 annually (see 50 CFR part 14, subpart I). The raw fur, raw, salted or crusted hides or skins, or separate parts thereof cannot have been previously bought or sold if the inspection fee exemption is to apply. The fee exemption will not apply to manufactured products or live animals of any kind.

The reason for the latter two criteria is that the fee exemption is intended to apply to small, low volume businesses engaged in wildlife trade on a small scale where there is relatively low cash flow, or to individuals who take wildlife from the wild as a hobby or to supplement their income and who do not deal in manufactured products or live animals as a primary means of income. We believe that wildlife traders buying and selling imported wildlife in the United States and those dealing in manufactured products or live animals require a higher level of oversight and are less impacted by the inspection fee.

The importer or exporter whose wildlife shipments meet the user fee exemption criteria will still be required to pay overtime fees or designated port exception permit fees if applicable. If wildlife being shipped requires a Convention on International Trade in Endangered Species (CITES) permit, no exemption from the user fee will be granted due to the higher level of oversight required by the Service on these shipments.

Certification

In order for the Service to have some means of verifying that the raw furs, raw, salted or crusted hides or skins, or separate parts thereof are, in fact, taken from the wild by the licensee who is acting as importer/exporter of record, or taken from the wild by a member of his or her immediate family, the licensee must sign a certification statement supplied by the Service at the time clearance is requested. The certification statement will ask that the licensee certify, subject to the penalties provided for under 18 U.S.C. Section 1001 for false or fraudulent statements, that he or she took the raw furs, raw, salted, or crusted hides or skins, or separate parts thereof from the wild or that they were taken from the wild by a member of that person's immediate family. We will consider the term "immediate family" to mean a licensee's spouse, parents, siblings, and children. The Service believes that extending the meaning to include grandparents, cousins, aunts, or uncles would compromise the intent of this rule. This signed certification statement will have to be presented to a Service officer at the time clearance is requested.

The Service intends that this inspection fee exemption framework utilize existing regulatory language that grants various exemptions to 50 CFR part 14, including § 14.15 and § 14.62. In addition, 50 CFR part 14 already exempts certain "classes" of wildlife

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from various regulatory requirements, including farm-raised fish from the designated port requirement on export, aquatic invertebrates of the Class Pelecypoda from the designated port and declaration requirement, and captive-bred furbearers from the marking requirement. We believe that these distinctions are consistent with the intent of the regulation.

In summary, the Service will exempt commercial wildlife shipments from the designated port inspection fee and/or the nondesignated port administrative fee and hourly minimums, whichever applies, for shipments meeting the following criteria: no permits are required under 50 CFR parts 16, 17, 18, 21, or 23; imports or exports are between the United States and Canada or Mexico of raw furs, raw, salted, or crusted hides or skins, or separate parts thereof, lawfully taken from the wild in the United States, Canada, or Mexico; imported or exported by the person taking the wildlife from the wild, or taken from the wild by a member of the importer or exporters' immediate family; provided, the importer or exporter of record is licensed; the shipment or any part thereof has not been previously bought or sold; the shipment does not exceed 100 raw furs, raw, salted, or crusted, hides or skins, or separate parts thereof; the shipment does not contain any manufactured products or live animals; overtime fees, if applicable, have been paid; and the importer or exporter has attached a certification statement stating that the shipment contains items taken from the wild by the importer/exporter of record or by a member of that person's immediate family.

The following chart illustrates the commercial user fee charges at designated and nondesignated ports during normal working hours before the June 21, 1996, final rule, after the August 1, 1996, effective date of that final rule, and under this proposed rule, for comparison:

Fees	Prior to June 21, 1996 final rule	After August 1, 1996 effective date	Proposed
Designated Port	Under 25K/year No Charge. $125/year License Fee. $25/Shipment Inspection Fee.	$50/year License Fee. $55/Shipment Inspection Fee.	$50/year License Fee. $55/Shipment Inspection Fee if criteria not met. No Charge if criteria met.
Nondesignated Port	Under 25K/year No Charge. $125/Shipment Administrative Fee plus 2 hour minimum at $25/hr ($50).	$50/year License Fee. $55 Administrative Fee plus 2 hour minimum at $20/hr ($40).	$50/year License Fee. $55 Administrative Fee plus 2 hour minimum at $20/hr ($40) if criteria not met. No Charge if criteria met.

All interested parties are invited to submit comments on this proposal.

Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq.

This proposed rule affects only the requirement to pay an inspection fee for shipments and contains no information collections for which Office of Management and Budget approval is required under the Paperwork Reduction Act (44 U.S.C. 3501). Importers/exporters subject to this rule may be subject to the requirement to file a Declaration for Importation or Exportation of Fish or Wildlife (FWS form 3–177; OMB approval number 1018–0012; expiration date August 31, 2000). This rule does not change or affect the information collection requirements associated with the declaration form 3–177.

Required Determinations

The Service has determined that these proposed regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 et seq., that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

Economic Effects

The Service conducted an economic analysis of this proposed rule. The declared value of all wildlife shipments requiring Service clearance in Fiscal Year 1995 was approximately $860,000,000. In 1996, the total value of all wildlife shipments which may be eligible for the proposed exemption was $700,734. Fees payable to the Service on these shipments would be reduced between $22,935 and $39,615 under the proposed rule. No substantial indirect economic effects are anticipated so the effect of the rule is much less than $100 million annually. Shipment volume is not expected to rise to a level that would generate $100 million annual impact. This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

Accordingly, under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), this rulemaking will not have a significant economic effect on a substantial number of small entities, which include businesses, organizations, or governmental jurisdictions. The proposed rule exempts small shippers from the Fish and Wildlife Service inspection fee and so represents an adaptation of the current fee structure to provide relief for small shippers, therefore, this rule will have a beneficial effect on such entities.

List of Subjects in 50 CFR Part 14

Animal welfare, Exports, Fish, Imports, Labeling, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, the Service proposes to amend Title 50, Chapter I, subchapter B of the Code of Federal Regulations as set forth below:

PART 14—IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE

1. Revise the authority citation for Part 14 to read as follows:

Authority: 16 U.S.C. 668, 704, 712, 1382, 1538(d)–(f), 1540(f), 3371–3378, 4223–4244, and 4901–4916; 18 U.S.C. 42; 31 U.S.C. 9701.

2. Amend § 14.94 by revising paragraph (a) and adding paragraph (e) to read as follows:

§ 14.94 Fees.

(a) *License and inspection fees.* The Service will impose a yearly fee for a license pursuant to § 14.93. In addition, each licensee must pay an inspection fee for each wildlife shipment imported into or exported from the United States at a designated port. Licensees who import into or export from the United States wildlife shipments meeting the criteria outlined in paragraph (e) of this section are exempt from the designated port inspection fee, or nondesignated port administrative fee and hourly minimums, whichever apply, *provided*, that all overtime fees and permit fees still apply.

* * * * *

(e) *Exemption criteria.* Wildlife shipments meeting all of the following criteria are exempt from the designated port inspection fee or nondesignated port administrative fee and hourly minimums:

(1) No permits are required under parts 16, 17, 18, 21, 22, or 23 of this subchapter;

(2) The wildlife is imported or exported between the United States and Canada or Mexico;

(3) The wildlife shipment consists of raw fur, raw, salted, or crusted hides or skins, or separate parts thereof, lawfully taken from the wild in the United States, Canada, or Mexico;

(4) The wildlife was taken from the wild by the importer or exporter of record or a member of his immediate family;

(5) The importer or exporter of record is licensed in accordance with § 14.91;

(6) The wildlife or any part thereof has not been previously bought or sold;

(7) The shipment does not exceed 100 raw furs, raw, salted, or crusted hides or skins, or separate parts thereof;

(8) The shipment does not contain any manufactured products or live animals.

Donald J. Barry,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–1414 Filed 1–21–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE30

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Extension of Comment Period on Proposed Endangered Status for Rough Popcornflower

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening and extension of comment period.

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of a public hearing on the proposed endangered status for *Plagiobothrys hirtus* (rough popcornflower). In addition, the Service has reopened and extended the comment period to accommodate a public hearing that was requested by Mr. Danny Lang of Roseburg, Oregon. All parties are invited to submit comments on this proposal.

DATES: The comment period now closes on February 23, 1998. Any comments received by the closing date will be considered in the final decision on this proposal. The public hearing will be held on Tuesday, February 10, 1998, from 6:00 p.m. to 8:00 p.m.

ADDRESSES: The public hearing will be held at the Holiday Inn Express, 375 West Harvard Boulevard, Roseburg, Oregon. Comments and materials concerning this proposal should be sent to the State Supervisor, U.S. Fish and Wildlife Service, Oregon State Office, 2600 S.E. 98th Avenue, Suite 100, Portland, Oregon 97266. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Andrew F. Robinson Jr. of the Oregon State Office (see **ADDRESSES** section) at (503) 231–6179.

SUPPLEMENTARY INFORMATION:

Background

Plagiobothrys hirtus is an annual herb on drier sites, or perennial herb on wetter sites, that is known from only the interior valley of the Umpqua River in Douglas County, Oregon. The plant is threatened by destruction and/or alteration of habitat by development and hydrological change (e.g., wetland fills, draining, construction); spring and summer grazing by domestic cattle, horses, and sheep; roadside maintenance; and competition from native and non-native species (i.e., succession and encroachment). Comments from the public regarding the accuracy of this proposed rule are sought, especially regarding:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the species listed above;

(2) The location of any additional populations of the species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population sizes of the species; and

(4) Current or planned activities in the subject area and their possible impacts on the species.

On November 20, 1997, the Service published a rule proposing endangered status for *Plagiobothrys hirtus* in the **Federal Register** (62 FR 61953). The original comment period was to close on January 20, 1998. Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 et seq.) requires that a public hearing be held if it is requested within 45 days of the publication of the proposed rule. A public hearing request from Mr. Danny Lang of Roseburg, Oregon was received within the allotted time period. The Service has scheduled a public hearing on Tuesday, February 10, 1998, at the Holiday Inn Express in Roseburg, Oregon.

Parties wishing to make statements for the record should bring a copy of their statements to the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are no limits to the length of written comments or materials presented at the hearing or mailed to the Service. Written comments carry the same weight as oral comments. The comment period now closes on February 23, 1998. Written comments should be submitted to the Service Office listed in the **ADDRESSES** section.

Author

The primary author of this notice is Dr. Andrew F. Robinson Jr. (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

Dated: January 7, 1998.

Don Weathers,

Acting Regional Director, Region 1, Portland, Oregon, Fish and Wildlife Service.

[FR Doc. 98–857 Filed 1–21–98; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE54

Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Plant Lesquerella Thamnophila (Zapata Bladderpod) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list the plant *Lesquerella thamnophila* (Zapata bladderpod) as an endangered species under the Endangered Species Act of 1973, as amended (Act). *Lesquerella thamnophila* is known from four locations in Zapata and Starr Counties, Texas. This species is threatened by increased urban development, highway construction, increased oil and gas

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activities, alteration and conversion of native plant communities to improved pastures, overgrazing, and vulnerability from low population numbers. This proposal, if made final, will extend the Act's protection to *Lesquerella thamnophila*. Designation of critical habitat is not being proposed because the Service has determined such designation is not prudent.

DATES: Comments from all interested parties must be received by March 23, 1998. Public hearing requests must be received by March 9, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, c/o Texas A&M University-Corpus Christi, Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Field Supervisor of the Corpus Christi Ecological Services Field Office in Corpus Christi, Texas. (Telephone 512–994–9005; Facsimile 512–994–8262).

SUPPLEMENTARY INFORMATION:

Background

Lesquerella thamnophila, a member of the mustard family, was first collected in Zapata County, Texas by R.C. Rollins in 1959. The species was named *Lesquerella thamnophila* in 1973 by R.C. Rollins and E.A. Shaw in their work on the genus *Lesquerella* (Rollins and Shaw 1973). The few collected specimens of *Lesquerella thamnophila* have all come from Zapata and Starr Counties in southern Texas.

Lesquerella thamnophila is a pubescent, somewhat silvery-green herbaceous perennial plant with sprawling stems 43–85 centimeters (cm) (16–32 inches (in)) long. It has narrow basal leaves 4–12 cm (1.5–4.7 in) long and 7–15 millimeters (mm) (0.3–0.6 in) wide, with entire to wavy or slightly toothed margins. The stem leaves are 3–4 cm (1–1.5 in) long and 2–8 mm (0.1–0.3 in) wide, with margins similar to the basal leaves. The inflorescences, usually appearing in April but dependent upon the timing of spring rains, are loose racemes of yellow-petaled flowers. Fruits are round and 4.5–6.5 mm (0.2–0.8 in) in diameter on short downward curving pedicels (Poole 1989).

Lesquerella thamnophila occurs on level to sloping terrain in gravelly to sandy-loam upland terrace or Rio Grande floodplain soils. Known locations are associated with three Eocene-age geologic formations—the Jackson, Laredo, and Yegua—which have yielded fossiliferous and calcareous sandstones and clays. The Starr County sites for *Lesquerella thamnophila* occur within the Jimenez-Quemado soil association and on Catarina series soils. Jimenez-Quemado soils are well-drained, shallow, gravelly to sandy loams underlain by caliche. Catarina series soils are clayey, saline upland soils developed from calcareous, gypsiferous, or saline clays that usually contain many drainages and erosional features. The underlying material of these soils contains many calcareous concretions, gypsum crystals, and marine shell fragments (Thompson, *et al.* 1972).

The soils of Zapata County have not been mapped in detail, but the bladderpod sites in Zapata County occur within the Zapata-Maverick soil association, based upon the general soils map for the county. Zapata soils are shallow and well-drained, occurring over caliche. Maverick soils are upland clayey soils occurring over caliche with the underlying calcareous material also containing shale and gypsum crystals (Thompson, *et al.* 1972).

Lesquerella thamnophila occurs as a herbaceous component of an open *Leucophyllum frutescens* (cenizo) shrub community that grades into an *Acacia rigidula* (blackbrush) shrub community. Both plant communities dominate many upland habitats on shallow soils near the Rio Grande (Diamond 1990). Other common plant species in the cenizo and blackbrush communities include *Acacia berlandieri* (guajillo), *Prosopis glandulosa* (mesquite), *Celtis pallida* (granjeno), *Yucca treculeana* (Spanish dagger), *Zizyphus obtusifolia* (lotebush), and *Porlieria angustifolia* (guayacan). The aggressively invasive nonnative *Cenchrus ciliaris* (buffelgrass) is also commonly present. These shrublands are sparsely vegetated due to the shallow, fast-draining soils and semi-arid climate (Poole 1989).

These open brushland communities are used primarily as rangeland and, due to the semi-arid environment, are sensitive to soil erosion and vegetation changes brought about by long-term livestock overgrazing (Schlesinger, *et al.* 1990). As a result, root-plowing of shrubs and subsequent planting of buffelgrass are common regional practices for rangeland improvement. Cattle reportedly graze on *Lesquerella thamnophila* (Poole 1989).

Lesquerella thamnophila occurred historically in Zapata and Starr counties in the United States. It has never been collected in Mexico despite its potential occurrence there. Recent surveys of historical locations in Starr County failed to relocate those populations. Poole (1989) located three populations, two in Zapata County and one in Starr County. In April 1994, Bill Carr and Lee Elliott of the Texas Parks and Wildlife Department discovered another previously unknown Starr County location (Lee Elliott, pers. comm. 1994).

The number of plants in known populations appears to fluctuate dramatically in apparent response to precipitation (Poole 1989). In 1985, there were approximately 5,000 plants at one 4-hectare (ha) (10-acre (ac)) Zapata County site (Tigre Chiquita) and approximately 1,000 plants at the 15-acre type locality in Zapata County (Falcon Lake West). The year 1986 was dry; only 28 plants were counted at the Tigre Chiquita site, and none at Falcon Lake West. Plants were seen at both Zapata County sites again in 1988, but no specific population counts were recorded. No plants have been observed at the Falcon Lake West site since 1988.

The Texas Parks and Wildlife Department has established a management agreement with the Texas Department of Transportation for the Tigre Chiquita site. The agreement requires that the transportation agency avoid mowing within the highway right-of-way from February to May, while the plant is actively growing. The Texas Parks and Wildlife Department annually monitors the site for population size and has recorded these numbers: 10 reproductive plants and 3 non-reproductive ones in 1991; no plants in 1992; 7 non-reproductive plants in 1993; one reproductive plant in 1994; 3 non-reproductive plants in 1995; and no plants in 1996 (probably due to drought).

In 1986, Poole (1989) found 20 plants at a 2–ha (5–ac) site in Starr County (Santa Margarita Ranch). Plants were again observed at this site in 1994, but the number of individuals was not recorded that year (Gena Janssen, Texas Parks and Wildlife Department, Austin, Texas, pers. comm. 1994). Approximately 70 plants were seen in 1997. In 1994, the Texas Parks and Wildlife Department recorded about 50 plants at a new Starr County site (Cuellar Tract) located on a tract of the Lower Rio Grande National Wildlife Refuge. In 1996, a monitoring plot was established and a total of 131 plants were located, 84 of them non-reproductives. In 1997, an extremely wet year, the estimated number of individuals increased to several thousand, all within a 2–3 acre section of the tract.

Lesquerella thamnophila is a cryptic annual species and blooms within a set period of time following spring rainfall, creating a short period in which to survey. These factors may contribute to the occasional inability to locate these plants at known sites. Additional surveys carried out at the most favorable times to find specimens, and focusing on associated soil types, are warranted during the review of this species for listing as endangered.

Previous Federal Action

Federal action involving this species began with section 12 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) accepting the Smithsonian report as a petition within the context of section 4(c)(2) of the Act, now section 4(b)(3)(A), and announcing that it would initiate a review of the status of those plants. *Lesquerella thamnophila* was included as threatened in the Smithsonian report and in the Service notice.

On June 16, 1976 (41 FR 24523), the Service published a proposed rule to determine approximately 1,700 vascular plants as endangered. *Lesquerella thamnophila* was included in this proposal. However, the 1978 amendments to the Act required the withdrawal of all proposals over 2 years old (although a 1 year grace period was allowed for those proposals already over 2 years old). On December 10, 1979 (44 FR 70796), the Service published a notice withdrawing that portion of the June 16, 1976, proposal that had not been made final.

On December 15, 1980 (45 FR 82823), the Service published a list of plants under review for listing as threatened or endangered, in which *Lesquerella thamnophila* was included as a category 2 candidate. Category 2 candidates were those species for which available information indicated listing as threatened or endangered may have been appropriate, but for which substantial data were not available to support preparation of a proposed rule.

Section 4(b)(3)(B) of the Act requires that findings be made by the Secretary on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments to the Act required that all petitions pending as of October 13, 1982, be treated as having been submitted on that date. The 1975 Smithsonian report was accepted as a petition; therefore, all the plants noted within the report, including *Lesquerella thamnophila*, were treated as being newly petitioned on October 13, 1982. In each subsequent year, from 1983 to 1993, the Service determined that the petition to list *Lesquerella thamnophila* was warranted, but precluded by other listing actions of higher priority, and that additional data on vulnerability and threats were still being compiled.

A status report on *Lesquerella thamnophila* was completed August 8, 1989 (Poole 1989). That report provided sufficient information on biological vulnerability and threats to warrant reassigning the species as a category 1 candidate and supporting preparation of a proposed rule to list *Lesquerella thamnophila* as endangered. "Category 1 candidates" were those for which the Service had substantial information indicating that listing under the Act was warranted.

Notices revising the 1980 list of plants under review for listing as endangered or threatened were published in the **Federal Register** on September 27, 1985 (50 FR 39626), February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51171). *Lesquerella thamnophila* was included in the September 30, 1993 notice as a category 1 candidate.

The 1996 Notice of Review (55 FR 6184) included *Lesquerella thamnophila* as a candidate. Candidates are species for which the Service has sufficient information indicating that a listing proposal is appropriate. The 1997 Notice of Review (62 FR 49398) also included *Lesquerella thamnophila* as a candidate.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Lesquerella thamnophila* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Habitat destruction and modification are the primary threats to *Lesquerella thamnophila*. These threats include the introduction of non-native pasture grasses such as buffelgrass and conversion of native rangeland to improved pasture, overgrazing, urban development, construction or improvement of highways and utility transmission systems necessary to support urban infrastructures, and oil and gas exploration and production. These types of activities have destroyed or altered more than 95 percent of the native habitat in south Texas (Jahrsdoerfer and Leslie 1988).

It is a common practice in south Texas to improve rangeland for livestock production by removing the native shrubs through root-plowing or aerial herbicide application and then reseeding the area with non-native grasses, usually buffelgrass. This practice potentially destroys *Lesquerella thamnophila* habitat. Buffelgrass has spread beyond the improved pastures and is now present throughout south Texas. This invasive non-native grass out-competes and displaces native grasses, forbs, and small shrubs. Potential sites for native plant seedling establishment are lost due to light and moisture competition with buffelgrass, and possibly due to allelopathy.

Much of south Texas was severely overgrazed in the past, and overgrazing continues in many areas today. Vegetation of the semi-arid south Texas climate is less resilient to the impacts of long-term grazing than is the vegetation of wetter climates. This has led to severe erosion of the often highly erodible south Texas soils (Schlesinger, *et al.* 1990). It is impossible to calculate how much habitat suitable to *Lesquerella thamnophila* may have been lost in the past because of the destructive effects of overgrazing or the conversion of native rangeland to improved pasture.

Lesquerella thamnophila is threatened by potential urban development. The type locality for this species has been reduced to a small vacant lot in a resort subdivision on Falcon Reservoir in the City of Zapata. This area is undergoing rapid retirement home development. Another *Lesquerella thamnophila* population occurs in an abandoned trailer park adjacent to a major highway. Recent construction of convenience stores in the area could stimulate urbanization that might extirpate the population.

South Texas is undergoing a rapid increase in highway improvements and construction to handle increased traffic stimulated by the North American Free Trade Agreement. There are *Lesquerella thamnophila* populations adjacent to existing roads that could be proposed for widening. Additionally, existing unimproved roads adjacent to populations could be proposed for widening and paving.

There are *Lesquerella thamnophila* populations adjacent to maintained highway rights-of-way where herbicides are used to control vegetation around

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bridges, guard rails, signs, and reflector posts. Herbicides may also be used to kill woody species encroaching into the rights-of-way and along fence lines. Any plants within the rights-of-way are threatened by maintenance practices such as blading or disking and reseeding with erosion control seed mixtures, which contain primarily non-native invasive grasses.

South Texas is presently undergoing a significant increase in oil and gas exploration and production, especially in Zapata and Starr counties. All phases of exploration and production have the potential to harm *Lesquerella thamnophila* populations and habitat. The seismic vibration method of gas exploration results in extensive temporary rights-of-way being cleared to facilitate equipment traffic. The construction of well pads, access roads, electric lines, and oil gathering lines from wells, if not planned properly, can all destroy plants and habitat. The proximity of this species to existing oil and gas development poses a threat from an increase in number and capacity of gathering lines.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* No commercial trade is currently known to exist for the species. However, listed plant species can be threatened by both collection and vandalism, activities difficult to prevent and only regulated on lands under Federal jurisdiction or in knowing violation of a State law or regulation. Listing a plant species can precipitate commercial and scientific interest in the species. This interest can threaten the species through unauthorized and uncontrolled collection. Federally listing a species under the Act creates the potential for vandalism at known and potential habitat sites. In many areas, private landowner concern regarding endangered species is especially high and may result in the intentional destruction of endangered species habitat.

C. *Disease or predation.* The populations of *Lesquerella thamnophila* have shown no evidence of disease. However, Poole (1989) reports that cattle graze the species to the extent that numbers of plants in populations subjected to grazing are severely reduced compared to those in adjacent, ungrazed lands. Grazing and browsing are greater threats during drought conditions when range quality is reduced and other forage species have been reduced or removed. This portion of south Texas is sensitive to overgrazing during drought conditions due to the semi-arid environment and the large area needed per grazing animal, even under ideal range conditions.

D. *The inadequacy of existing regulatory mechanisms.* The species is not currently protected by any Federal or State laws or regulations.

E. *Other natural or man-made factors affecting its continued existence.* There are only four known small *Lesquerella thamnophila* populations with widely fluctuating numbers of plants from year to year. Low plant numbers during drought years could cause genetic drift. This has the effect of lowering genetic variability and may reduce the species' ability to cope with environmental perturbations. The reduced number of plants during drought years, with populations in some areas actually being reduced to zero above-ground vegetative individuals, also makes the species vulnerable to extinction from a prolonged drought. *Lesquerella thamnophila* occurs along the Rio Grande and the effect of past flooding on creating or maintaining habitat for the species is unknown. The extreme rarity of this species makes populations vulnerable to extirpation and the species vulnerable to extinction from a variety of random environmental events.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Lesquerella thamnophila* as endangered. The endangered status is appropriate because of the species' limited distribution, low population numbers, and imminent threats of habitat destruction. Threatened status would not accurately reflect the current status of this species.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(I) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)(1)), state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

As discussed under Factor B in the "Summary of Factors Affecting the Species" section of this rule, *Lesquerella thamnophila* is threatened by vandalism, an activity difficult to prevent and only regulated by the Act with respect to endangered plants in cases of (1) removal and reduction to possession from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law.

The limited protection for plants on private land renders them particularly vulnerable to vandalism or collection due to their lack of evasive ability. Simply listing a plant species can precipitate commercial and scientific interest, legal as well as illegal, which can threaten the species through unauthorized and uncontrolled collection for both commercial and scientific purposes. The designation of critical habitat involves publication of habitat descriptions and general mapped locations of the species, greatly increasing the likelihood of unwanted notice by potential collectors and of successful search and removal operations at specific sites.

Such information also greatly exacerbates the potential for vandalism of endangered or threatened plants at known and potential habitat sites. The designation of critical habitat affects only Federal projects or activities which they fund, authorize, or carry out. Its designation does not affect private land activities conducted by State and local government activities if the activity does not involve Federal funds or authorization. However, this is not always easily understood by private landowners whose property boundaries may be included within a general description of critical habitat for a specific species. Identification of proposed critical habitat for other species has resulted in widespread confusion and heightened concern by the general public. More importantly, such action has resulted in the unnecessary destruction of endangered species habitat by landowners in order to avoid the imagined attention of the Service and perceived prohibitions on private land.

In the case of *Lesquerella thamnophila*, the Service finds that designation of critical habitat is not prudent since it is likely to increase the degree of threat of take of the species. Publication of critical habitat descriptions and locations would make the species especially vulnerable to collection and vandalism.

The designation of critical habitat for *Lesquerella thamnophila* is also not prudent since it will provide no additional conservation benefit to the species. The most severe threats to the species include the overgrazing of native range, and conversion of native rangeland to improved pasture with nonnative grasses. Designation of critical habitat will not affect these threats, since impacts stem from private land activities. Further protection of habitat on private or State land will be addressed through the recovery process and will involve identifying measures that can mutually benefit both the species and landowner.

Section 7 of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or cause the destruction or adverse modification of its critical habitat. *Lesquerella thamnophila* is currently restricted to four sites ranging from 5 acres to 45 acres in size. Any adverse impact to sites that would result in destruction or adverse modification of critical habitat would likely also jeopardize the continued existence of *Lesquerella thamnophila*. Thus, in the case of this species, critical habitat would provide no additional benefit beyond that provided through listing as endangered.

In summary, the Service finds that *Lesquerella thamnophila* is vulnerable to collection and vandalism, and that identification of critical habitat would increase its vulnerability. Further, adequate protection from adverse Federal actions is provided through listing the species as endangered under the Act, and designation of critical habitat would provide little additional protection. Therefore, the Service finds that designation of critical habitat would, on balance, be detrimental to the species. Critical habitat designation is thus not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. For listed species, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions that may require conference and/or consultation as described in the preceding paragraph include brush clearing for flood control in arroyos within the jurisdiction of the International Boundary and Water Commission; technical assistance to landowners by the Natural Resources Conservation Service (formerly Soil Conservation Service) for activities funded by the Consolidated Farm Service Agency (formerly Agricultural Stabilization and Conservation Service); and rangeland herbicide registration by the Environmental Protection Agency. The Federal Highway Administration will need to consider the occurrence of the species in activities such as widening existing roadways or constructing new highways. The U.S. Department of Housing and Urban Development will need to consider these species when water, sewer, and power services are authorized following the development of unauthorized human settlements.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce any such plant species; or to remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the removal and malicious damage or destruction of such plants on areas under Federal jurisdiction; and the removal, cutting, digging up, or damaging or destroying of such plants in any other area, including non-Federal lands, in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. It is anticipated that few trade permits would ever be sought or issued because this species is not in cultivation nor common in the wild.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range.

One population of the *Lesquerella thamnophila* occurs on public land under the jurisdiction of the Service. Collection, damage or destruction of this species on Federal lands is prohibited, although in appropriate cases a Federal endangered species permit may be issued to allow collection. As noted above, such activities on non-Federal lands would constitute a violation of section 9 if conducted in knowing violation of State law or regulation, including State criminal trespass law.

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Normal residential lawn care and maintenance and the clearing of small areas surrounding a residence, which may be used as a fire break are not violations of section 9 and will not constitute take. The Service is not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by this listing and result in a violation of section 9.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Corpus Christi Office (see **ADDRESSES** section). Requests for copies of the regulations regarding listed plants and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103 (telephone 505/248–6920; facsimile 505/248–6922).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) Reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species;

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulations on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor (see **ADDRESSES** section).

Required Determinations

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

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Jahrsdoerfer, S.E. and D.M. Leslie, Jr. 1988. Tamaulipan Brushland of the Lower Rio Grande Valley of South Texas: Description, Human Impacts, and Management Options. U.S. Fish and Wildlife Service, Biological Report 88(36). 63 pp.

Poole, J. 1989. Status Report on *Lesquerella thamnophila*. U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

Rollins, R.C. and E.A. Shaw. 1973. The Genus *Lesquerella*. Harvard University Press, Cambridge, Massachusetts.

Schlesinger, W.H., J.F. Reynolds, G.L. Cunningham, L.F. Huenneke, W.M. Jarrell, R.A. Virginia and W.G. Whitford. 1990. Biological Feedbacks in Global Desertification. Science 247:1043–1047.

Thompson, C.M., R.R. Sanders, and D. Williams. 1972. Soil Survey of Starr County, Texas. U.S. Department of Agriculture, Soil Conservation Service, Temple, Texas.

Authors

The primary authors of this document are Angela Brooks and Kathy Nemec (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
.	.	.	.	.	.	.	.
Lesquerella thamnophila.	Zapata bladderpod ..	U.S.A. (TX)	Brassicaceae	E	.....	NA	NA
.	.	.	.	.	.	.	.

Dated: December 30, 1997.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–1518 Filed 1–21–98; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 63, No. 14

Thursday, January 22, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Commission on 21st Century Production Agriculture Meeting

AGENCY: Office of the Secretary.

ACTION: Notice of establishment and meeting.

SUMMARY: The U.S. Department of Agriculture (USDA) has established the Commission on 21st Century Production Agriculture. In accordance with Section 10(a)(2) of the Federal Advisory Committee Act, notice is hereby given of the first meeting of the Commission on 21st Century Production Agriculture. The purpose of this meeting is to consider organizational matters, operational procedures, and personnel matters. This meeting will be open to the public (limited only by space available) except when in executive session to consider personnel matters.

PLACE, DATE, AND TIME OF MEETING: The meeting will be held in Room 221–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 1400 Independence Avenue, S.W., Washington, D.C. 20250, from 9:00 am–5 pm on February 2, 1998, and 9:00 am–noon on February 3, 1998.

FOR FURTHER INFORMATION CONTACT:

Keith J. Collins (202–720–5955), Chief Economist, Room 112–A, Jamie L. Whitten Federal Building, 1400 Independence Avenue, S.W., Washington, D.C. 20250–3810.

Dated: January 16, 1998.

Keith J. Collins,

Chief Economist.

[FR Doc. 98–1561 Filed 1–21–98; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Co-Exclusive Licenses

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that a Federally owned invention U.S. Serial No. 08/876,800, filed June 16, 1997, entitled, "Apparatus and Procedure for Placement of Bale Ties" is available for licensing and the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Harrell Equipment Company, Inc., of Pelham, Georgia, and Leggett & Platt Packaging Group, of Carthage, Missouri, co-exclusive licenses to Serial No. 08/876,800.

DATES: Comments must be received by April 22, 1998.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as the Harrell Equipment Company, Inc., and the Leggett & Platt Packaging Group, have submitted complete and sufficient applications for licenses. The prospective co-exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective co-exclusive licenses may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the licenses would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 98–1508 Filed 1–21–98; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that a Federally owned invention U.S. Serial No. 08/890,890, filed July 10, 1997, entitled, "Device and Method for Reducing Bale Packaging Forces" is available for licensing and the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Leggett & Platt Packaging Group, of Carthage, Missouri, an exclusive license to Serial No. 08/890,890.

DATES: Comments must be received by April 22, 1998.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Leggett & Platt Packaging Group, has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 98–1507 Filed 1–21–98; 8:45 am]

BILLING CODE 3410–03–P

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DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Roxide International, Inc., of New Rochelle, New York, an exclusive license to Serial No. 08/779,066 filed on January 7, 1997, entitled "Whitefly Trap." Notice of Availability was published in the **Federal Register** on August 7, 1997.

DATES: Comments must be received by March 23, 1998.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Roxide International, Inc., has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 98–1509 Filed 1–21–98; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that a Federally owned invention U.S. Serial No. 08/909,310, filed August 14, 1997, entitled, "A Technique to Reduce Chemical Usage and Concomitant Drift From Aerial Sprays" is available for licensing and the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Spectrum Electrostatic Sprayers, Inc., of Houston, Texas, an exclusive license to Serial No. 08/909,310.

DATES: Comments must be recieved by April 22, 1998.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Spectrum Electrostatic Sprayers, Inc., has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 98–1510 Filed 1–21–98; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

California Coast Province Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The California Coast Province Advisory Committee (PAC) will meet on February 4 and 5, 1998, at Humboldt State University, Agate Room in the Jolly Giant Commons, in Arcata, CA. The meeting will be held from 8:00 a.m. to 5:00 p.m. each day. Humboldt State University is located in 1 Harpst Street in Arcata. Agenda items to be covered include: (1) Subcommittee meetings; (2) Work on the Ground Subcommittee report and recommendations; (3) Panel discussion and recommendations on old growth standards and guidelines in the Northwest Forest Plan; (4) Recreation/Tourism Subcommittee report; (5) Public/Private/Tribal Partnership Opportunities Subcommittee report and recommendations; (6) Presentation on air quality standards and impacts on fuels management; (7) Monitoring Subcommittee report and recommendations; (8) Presentation on Pacific Southwest Research fuels research proposal; (9) Report and recommendations from the PAC/SCERT coordinating committee; (10) Presentation on community based outreach; (11) PAC and agency updates; and (12) Open public forum. All California Coast Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Daniel Chisholm, USDA, Forest Supervisor, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA 95988, (530) 934–3316 or Phebe Brown, Province Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA 95988, (530) 934–3316.

Dated: January 15, 1998.

Arthur Quintana,

Acting Forest Supervisor.

[FR Doc. 98–1511 Filed 1–21–98; 8:45 am]

BILLING CODE 3410–FK–M

ARMS CONTROL AND DISARMAMENT AGENCY

Sunshine Act Meeting; Determination to Close Meetings of the Director's Advisory Committee

January 9, 1998.

The Director's Advisory Committee (DirAC) will hold meetings in Washington, D.C. on January 26–27 and April 6–7, 1998, and in Los Alamos, New Mexico on March 2, 1998.

The entire agenda of these meetings will be devoted to specific national security policy and arms control issues. In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, 86 Stat 770 (1972) (codified at 5 U.S.C. App. 2510(a)(1)(1996)), it has been determined that discussions during the meetings are likely to disclose matters covered under 5 U.S.C. 552b(c)(1).

Materials to be discussed at the meetings have been properly classified and are specifically authorized under criteria established by Executive Order 12958, 60 FR 19,825 (1995), to be kept secret in the interests of national defense and foreign policy.

Therefore, in accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, 86 Stat 770 (1972) (codified at 5 U.S.C. App. 2 510(a)(1)(1996)), I have determined that, because of the need to protect the secrecy of such national security matters, the meetings should be closed to the public.

This notice is being published less than 15 days before the first meeting day, in order to enable more Committee members to attend.

John D. Holum,

Acting Under Secretary of State for Arms Control and International Security Affairs and Director, U.S. Arms Control and Disarmament Agency.

[FR Doc. 98–1657 Filed 1–20–98; 3:38 pm]

BILLING CODE 8820–01–M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 971231318–7318–01]

Establishing New Research Data Centers (RDCs)

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of program and request for proposals.

SUMMARY: This notice informs the public about the process and selection criteria available for establishing a limited number of new Research Data Centers (RDCs) at nonprofit organizations around the United States. Such organizations could include universities, nongovernmental research centers, and certain government facilities. The Census Bureau's Center for Economic Studies has developed and put into practice the concept of RDCs. At RDCs, qualified researchers may have access to microdata from Census Bureau economic (business establishment and firm) and demographic (household and individual) surveys with appropriate safeguards to protect data confidentiality.

DATES: Proposals can be submitted for the National Science Foundation (NSF) winter 1998 proposal review cycle, with a proposal submission deadline of March 1, 1998. Thereafter, proposals will be accepted for the August 15 and January 15 review cycles until further notice.

ADDRESSES: Written proposals to establish new RDCs should be submitted formally to the Division of Social, Behavioral, and Economic Research (SBER) at the NSF. Detailed information on proposal guidelines and review procedures is available on the NSF web site <http://www.nsf.gov>.

FOR FURTHER INFORMATION CONTACT: Arnold Reznek at (301) 457–1856 (areznek@census.gov), John Haltiwanger at (301) 457–1848 (jhaltiwa@census.gov), Cheryl Eavey (ceavey@nsf.gov), or Daniel Newlon (dnewlon@nsf.gov). Also see the Census Bureau's World Wide Web site (http://www.census.gov/ces/ces.html).

SUPPLEMENTARY INFORMATION: The Bureau of the Census is prepared to enter into partnerships with universities, nongovernmental research centers, and certain government facilities to establish a limited number of new RDCs around the United States. Written proposals to establish new RDCs will be reviewed and evaluated jointly by the Census Bureau and the NSF.

The RDC program now operates pilot RDCs in Boston (in partnership with the National Bureau of Economic Research) and in Pittsburgh (in partnership with Carnegie Mellon University). The Census Bureau and the National Center for Health Statistics also plan to establish a narrowly-focused RDC concerned with research using health data.

The RDC program has two major goals: (1) To use the results of the research carried out at the RDCs, and the contact between the Census Bureau and RDC researchers, to improve Census Bureau data programs, including data collection methodology and the underlying research microdatabases (benefit to the Census Bureau is required by the law authorizing the Census Bureau to enter into RDC arrangements, Title 15, United States Code, Section 1525); and (2) to promote academic research using microdata collected by the Census Bureau as part of its ongoing survey and census operations.

The Census Bureau data available at the RDCs would include both economic (business establishment and firm) data and demographic (household and individual) data collected in the Census Bureau's surveys and censuses. In particular cases, it may be possible to supplement these data with similar data from other governmental agencies.

A successful proposal from a research organization or a consortium of such organizations would have to demonstrate (1) the ability to work along with the Census Bureau to provide fair and objective access to researchers while protecting the confidentiality of the underlying microdata, (2) the existence of a regional research community of sufficient size and quality to yield high-quality research output, and (3) a sound plan for long-term funding that provides access to data users on a low-cost basis. The NSF's evaluation of the potential research output of proposed RDCs will be a key element in selection decisions.

The Census Bureau will enter into joint project Memoranda of Understanding (MOUs) with those organizations chosen by the evaluation process. The authority for the Census Bureau to enter into these MOUs is found in Title 15, United States Code, Section 1525.

Any MOU entered into under the authority of Title 15, United States Code, Section 1525 will include information relating to the mutual interest of the Census Bureau and its MOU partner(s) in establishing an RDC; the equitable apportionment of costs by the Census Bureau and its partner(s); the nonprofit status of the partner(s); and the mutuality of the benefit to be derived from the joint project.

RDC operations will emphasize the following elements: (1) A secure research computer laboratory (as certified by the Census Bureau) in which to store and use the data, (2) a research project selection and approval process carried out jointly with the Census Bureau, (3) at least one Census Bureau employee on-site to provide support and to help instill the Census Bureau's "culture of confidentiality" into the researchers at the RDC, (4) an executive director (or senior "faculty advisor") to act as a liaison between the local research community and the Census Bureau, and (5) an RDC review and oversight board to ensure efficient operation of the RDC, as well as fair and objective choice of projects at the RDC.

An overriding consideration in providing researchers with access to these data will be the need to protect the confidentiality of the underlying data pursuant to Title 13, United States Code, Section 9. In particular, prospective researchers will be required to submit detailed project descriptions that must be approved by both the RDC board and the Census Bureau. It is important to remember that RDCs are reserved for projects that involve statistical or econometric modeling using economic and demographic microdata. RDCs are neither equipped nor designed to supplement the Census

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Bureau's existing data program operations by producing large-scale special tabulations from confidential Census Bureau microdata.

Once projects are approved, project researchers will be required to obtain Special Sworn Status from the Census Bureau. Obtaining this status requires researchers to undergo a security check, including fingerprinting. Researchers holding Special Sworn Status will be subject to the same criminal penalties as regular Census Bureau employees for disclosure of confidential information. (The penalties are a fine of up to $5,000, imprisonment for up to five years, or both.) Only persons with Special Sworn Status are allowed access to the RDC facility. Moreover, all research findings must be submitted to Census Bureau personnel for disclosure review prior to release to the public.

The estimate of the annual operating costs is $250,000 per year, with higher initial costs in the first year to equip the RDC. This estimate is based upon experience at the pilot RDCs and includes (1) costs at the RDC of equipment, software, space, and the salary of the Census Bureau employee stationed at the RDC, and (2) costs of supporting the RDC at Census Bureau headquarters.

RDCs must be self-financing, with funding coming from institutions, foundations, or state support. The NSF is prepared to provide seed money to assist in covering start-up costs associated with establishing RDCs. An organization proposing to establish an RDC can request from the NSF up to $100,000 per year for a three-year term to cover part of the start-up costs and annual operating costs associated with establishing the RDC. Determinations on these requests will be made by NSF.

RDCs may charge fees to researchers not supported by the NSF to help defray facilities costs. It is the goal of the NSF and the Census Bureau in establishing these centers that these fees will be kept low in order to promote widespread access to the data by the academic community, contingent on sufficient funding to cover annual operating costs. The NSF will continue to provide support through its regular grant competition for faculty time and graduate student assistance on individual research projects that use RDC facilities. NSF-funded individual research projects can be charged access fees once NSF institutional support has been phased out.

Proposals to establish RDCs must follow the standard NSF proposal format. They can be submitted for the NSF winter 1998 proposal review cycle, with a proposal submission deadline of March 1, 1998. Thereafter, proposals will be accepted for the August 15 and January 15 review cycles until further notice. The pace of expansion of RDCs will be limited by the capacity of the Census Bureau to provide adequate support and oversight. It is anticipated that up to four additional RDCs can be supported in the next two to three years.

Proposals should be formally submitted to the Division of Social, Behavioral, and Economic Research (SBER) at the NSF. Detailed information on proposal guidelines and review procedures is available on the NSF web site <http://www.nsf.gov>. Proposals will be reviewed jointly by relevant peer review panels, including Economics; Methodology, Measurement, and Statistics; and Sociology. Final decisions will be made jointly by the Census Bureau and the NSF.

A detailed prospectus is available on the Census Bureau World Wide Web site (http://www.census.gov/ces/ces.html). The prospectus gives more information on the expected contents of the proposal and the expected roles of both the Census Bureau and its partners in RDC operations, including costs. For more information, contact Arnold Reznek at (301) 457–1856 (areznek@census.gov), John Haltiwanger at (301) 457–1848 (jhaltiwa@census.gov), Cheryl Eavey (ceavey@nsf.gov), or Daniel Newlon (dnewlon@nsf.gov). Those who do not have web access may contact Kim Austin at (301) 457–1848 (kaustin@census.gov) to obtain a paper copy of the prospectus.

Notwithstanding any other provision of law, no person is required to respond, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. The collection of information contained in the Notice is cleared under OMB Control Number 3145–0058.

It has been determined that this notice is not significant under Executive Order 12866.

Dated: January 12, 1998.

Bradford R. Huther,

Deputy Director and Chief Operating Officer, Bureau of the Census.

[FR Doc. 98–1504 Filed 1–21–98; 8:45 am]

BILLING CODE 3510–07–P

CONSUMER PRODUCT SAFETY COMMISSION

Notice of Approval of Guidance Document on Lead in Consumer Products

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of approval of guidance document on lead in consumer products.

SUMMARY: The Commission announces that it has approved a statement that provides guidance for manufacturers, importers, distributors, and retailers of consumer products that may contain lead.

FOR FURTHER INFORMATION CONTACT: Laura Washburn, Office of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0400, ext. 1452.

SUPPLEMENTARY INFORMATION:

The text of the guidance document is as follows:

Guidance for Lead (Pb) in Consumer Products

Summary

The U.S. Consumer Product Safety Commission issues this guidance to manufacturers, importers, distributors, and retailers to protect children from hazardous exposure to lead in consumer products.[1] The Commission identifies the major factors that it considers when evaluating products that contain lead, and informs the public of its experience with products that have exposed children to potentially hazardous amounts of lead.

To reduce the risk of hazardous exposure to lead, the Commission requests manufacturers to eliminate the use of lead that may be accessible to children from products used in or around households, schools, or in recreation. The Commission also recommends that, before purchasing products for resale, importers, distributors, and retailers obtain assurances from manufacturers that those products do not contain lead that may be accessible to children.

Hazard

Young children are most commonly exposed to lead in consumer products from the direct mouthing of objects, or from handling such objects and subsequent hand-to-mouth activity. The specific type and frequency of behavior that a child exposed to a product will exhibit depends on the age of the child and the characteristics and pattern of use of the product. The adverse health effects of lead poisoning in children are well-documented and may have long-lasting or permanent consequences. These effects include neurological damage, delayed mental and physical development, attention and learning deficiencies, and hearing problems. Because lead accumulates in the body, even exposures to small amounts of lead can contribute to the overall level of lead in the blood and to the subsequent risk of adverse health effects. Therefore, any unnecessary exposure of children to lead should be avoided. The scientific community generally recognizes a level of 10 micrograms of lead per deciliter of blood as a threshold level of concern with respect to lead poisoning. To avoid exceeding that level, young children should not chronically ingest more than 15 micrograms of lead per day from consumer products.

Guidance

Under the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261(f)(1), household products that expose children to hazardous quantities of lead under reasonably foreseeable conditions of handling or use are "hazardous substances." A household product that is not intended for children but which creates such a risk of injury because it contains lead requires precautionary labeling under the Act. 15 U.S.C. 1261(p). A toy or other article intended for use by children which contains a hazardous amount of lead that is accessible for children to ingest is a banned hazardous substance. 15 U.S.C. 1261(q)(1)(B). In evaluating the potential hazard associated with products that contain lead, the Commission staff considers these major factors on a case-by-case basis: the total amount of lead contained in a product, the bioavailability of the lead, the accessibility of the lead to children, the age and foreseeable behavior of the children exposed to the product, the foreseeable duration of the exposure, and the marketing, patterns of use, and life cycle of the product.

Paint and similar surface coatings containing lead have historically been the most commonly-recognized sources of lead poisoning among the products within the Commission's jurisdiction. The Commission has, by regulation, banned (1) paint and other similar surface coatings that contain more than 0.06% lead ("lead-containing paint"), (2) toys and other articles intended for use by children that bear lead-containing paint, and (3) furniture articles for consumer use that bear lead-containing paint. 16 CFR part 1303. In recent years, however, the Commission staff has identified a number of disparate products—some intended for use by children and others simply used in or around the household or in recreation—that presented a risk of lead poisoning from sources other than paint. These products included vinyl miniblinds, crayons, figurines used as game pieces, and children's jewelry.

In several of these cases, the staff's determination that the products presented a risk of lead poisoning resulted in recalls or in the replacement of those products with substitutes, in addition to an agreement to discontinue the use of lead in future production. The Commission believes that, had the manufacturers of these lead-containing products acted with prudence and foresight before introducing the products into commerce, they would not have used lead at all. This in turn would have eliminated both the risk to young children and the costs and other consequences associated with the corrective actions.

The Commission urges manufacturers to eliminate lead in consumer products to avoid similar occurrences in the future. However, to avoid the possibility of a Commission enforcement action, a manufacturer who believes it necessary to use lead in a consumer product should perform the requisite analysis before distribution to determine whether the exposure to lead causes the product to be a "hazardous substance." If the product is a hazardous substance and is also a children's product, it is banned. If it is a hazardous household substance but is not intended for use by children, it requires precautionary labeling. This same type of analysis also should be performed on materials substituted for lead.

The Commission also notes that, under the FHSA, any firm that purchases a product for resale is responsible for determining whether that product contains lead and, if so, whether it is a "hazardous substance." The Commission, therefore, recommends that, prior to the acquisition or distribution of such products, importers, distributors, and retailers obtain information and data, such as analyses of chemical composition or accessibility, relevant to this determination from manufacturers, or have such evaluations conducted themselves.

[1] This guidance is not a rule. It is intended to highlight certain obligations under the Federal Hazardous Substances Act. Companies should read that Act and the accompanying regulations at 16 CFR part 1500 for more detailed information.

Dated: January 15, 1998.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 98–1456 Filed 1–21–98; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, January 28, 1998, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East-West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Bicycle Helmets

The Commission will consider options for a final safety standard for bicycle helmets.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East-West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: January 20, 1998.

Sadye E. Dunn,

Secretary.

[FR Doc. 98–1665 Filed 1–20–98; 2:25 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Public Notice of Availability of the Draft Supplemental Environmental Impact Statement for the Limited Reevaluation Study for the Deepening of the Arthur Kill-Howland Hook Marine Terminal Navigation Channels

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Correction.

SUMMARY: In previous **Federal Register** notice (Vol. 62, No. 196, pages 52698–52699) Thursday, October 9, 1997, make the following correction:

On page 52698, in column 3, line 34, the sentence "Comments will be accepted for forty-five (45) days after publishing of this notice." should be deleted. Unfortunately, the DSEIS, previously experienced publishing delays which resulted in the document not being readily available for public comment at the time when the previous

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notice was published in the **Federal Register**. The DSEIS however, is not available for public review and comment. The revised comment period will commence on the publication date of this notice for forty five (45) days and end on the date indicated below.

DATES: Comments must be received not later than March 9, 1998.

ADDRESSES: The DSEIS may be obtained from the Army Corps of Engineers, Planning Division, 26 Federal Plaza, New York, NY 10278–0090.

FOR FURTHER INFORMATION CONTACT: Ms. Jenine Gallo, Project Biologist, CENAN–PL–EA, Corps of Engineers, New York District, 26 Federal Plaza, NY, NY 10278–0090, Tel. 212–264–4549.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–1488 Filed 1–21–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Addendum to the Atlantic Coast of Long Island, From Fire Island Inlet to Montauk Point, New York (Reach 1-Fire Island Inlet to Moriches Inlet Interim Plan for Storm Damage Protection)

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: In previous **Federal Register** notice (Vol. 62, No. 228, pages 63134–63135) Wednesday, November 26, 1997, subject notice was published to provide an opportunity for public comment during the public scoping phase of the project. Based on comments received by this office, certain changes are required to the document and are provided in the **SUPPLEMENTARY INFORMATION** paragraph.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen A. Couch, Study Manager, (212) 264–9077; Mr. Peter M. Weppler, EIS Coordinator, (212) 264–4663; Planning Division, Corps of Engineers, New York District, 26 Federal Plaza, New York, New York 10278–0090.

SUPPLEMENTARY INFORMATION: On page 63134, in column 3, last paragraph, revise Section 1 to read:

1. Location of Proposed Action

The project area is located entirely in Suffolk County, Long Island, New York, along the Atlantic and bay-shore of the towns of Babylon, Islip, and Bookhaven. The study area includes Great South Bay, which is connected to the Atlantic Ocean through Fire Island Inlet, a federal navigation channel. Great South Bay is connected to Moriches Bay by a narrow channel behind the barrier island. The westernmost portion of the study area, Fire Island Inlet, is located approximately 52 miles by water east of the Battery, New York. The project area includes the Atlantic Ocean and Great South Bay, Fire Island, Moriches Inlet, barrier beaches, the mainland of Long Island fronted by Fire Island, as well as suitable offshore borrow areas that will supply material for beach construction and replenishment. The study area is approximately 30 miles long. The lands and waters within the proposed project area are owned by various interests and are subject to various uses. The Federal Government (Department of the Interior, National Park Service (NPS)) has jurisdiction over approximately 26 miles of the area included within the boundaries of the Fire Island National Seashore (FINS). The New York State government has jurisdiction over Robert Moses State Park (Office of Parks, Recreation and Historic Preservation), tidal waters (bays) (Department of Environmental Conservation) and submerged lands offshore to the three-mile limit (Department of State). The Suffolk County government (Department of Parks and Recreation) has jurisdiction over county parks located at Smith Point and Moriches Inlet. Most of the remaining land is held by private landowners located in Towns of Babylon, Brookhaven, and Islip and Villages of Ocean Beach and Saltaire. There are 17 "exempted" and 3 Seashore District (non-exempted) communities within the boundaries of FINS. An exempted community is one that is defined by the 1964 FINS Enabling Legislation (Pub. L. 88–587), and described by the Federal Zoning Regulations, 36 CFR part 28, as falling within the boundaries of the Community Development District. The Seashore District is comprised of all portions of the lands and waters within the boundary of FINS, which are not included in the Community Development District, comprising all private and public developments. The improved private properties in either district are exempted from the acquisition authority of the Secretary of the Interior, as long as the development conforms to all local and federal zoning requirements at the time of construction. There are five NPS facilities on Fire Island under the jurisdiction of FINS. They are: the Lighthouse Area, Sunken Forest/Sailors Haven, Talisman, Watch Hill, and Smith Point.

On page 63135, in column 1, first paragraph, revise Section 2 to read:

2. Description of Potential Interim Alternatives

No Federal Action

The No Federal Action alternative for this proposed project means that no interim measures would be taken by the Federal government to provide storm damage protection in the study area. Other entities (State and local agencies, private interests, etc.) could undertake measures intended to prevent or minimize further storm damage and the Federal Government could proceed with the Reformulation Study. For evaluation of the interim project, the No-Action alternative recognizes that the Breach Contingency Plan is in place, and that any breach of the barrier island that may occur within this area would be closed using the authority provided by the Breach Contingency Plan.

3. Non-Structural Alternatives

Buy-Out Plan/Land Use Regulations/ Flood-Proofing

A buyout plan would include the permanent evacuation of areas within the floodplain subject to erosion or inundation, including the mainland and barrier island. This would involve the acquisition of land and structures either by purchase or by exercising the power of eminent domain. Following this action, structures in the affected areas could be demolished or relocated. Other potential land use regulations may include a range of management techniques, including zoning, subdivision regulations, building codes, and setback ordinances. Other flood-proofing strategies include raising structures or providing walls or floodshields around structures, in addition to relocations.

4. Beach Nourishment Alternatives

Beach nourishment involves the placement of sand extracted from an offshore borrow source onto an eroding shoreline to restore its form and to provide an adequate protective beach. A beach fill plan typically includes a berm (that slopes to the sea floor) backed by a dune. Together, the dune and the berm combine to prevent erosion and inundation damages to leeward areas. Beach nourishment requires the periodic placement of sand to offset erosion of the beach fill in order to maintain the designed level of protection.

a. Modified Authorized Plan w/o Groins

This alternative would involve widening the beaches along the project area to a minimum of 100 ft with an elevation of +11 ft NGVD, and raising the dunes to an elevation of +20 ft NGVD, with a minimum dune crest width of 25 ft. Certain very low zones of the project area will have a berm elevation of +13 ft NGVD. The proposed dune slopes are 1V:5H, and the design berm slopes are to be 1V:15H to Mean Low Water (MLW), and 1V:30H below MLW.

b. Beach Nourishment (Option A)—Fill in Wilderness Area

This alternative consists of beachfill with a minimum berm width of 90 feet (ft) at elevation +9.5 ft NGVD, and a minimum 25-ft wide dune at elevation +15 ft NGVD. Proposed dune and berm slopes are 1V:5H to MLW, and 1V:30H below MLW. Different specifications would be required between Kismet and Point O'Woods and in the Federal Wilderness Area. The berm and dune elevations from Kismet to Point O'Woods would be increased to +11.5 ft. NGVD and +18 ft NGVD, respectively. These increased elevations would be required to provide a 44-year level of protection due to extremely low elevations north of the dune in these areas.

c. Beach Nourishment (Option B)—Feeder Beach w/Stockpile at Smith Point

This alternative would require the use of a feeder beach and stockpiling sand at Smith Point County Park. While offering some protection, these measures are not likely to provide a 44-year level of protection.

On page 63135, column 1, last paragraph, Section 4(b), revised the first two sentences to read:

A scoping meeting was held on December 4, 1997 at the Holiday Inn Macarthur Airport, Ronkonkoma. If more public meetings are found to be needed, public notices shall be issued at a later date containing the dates, times and places of the scoping meetings.

On page 63135, column 1, end of the last paragraph, Section 4(b), add the following sentence:

The scoping period has been extended to 30 days from the date of this notice's appearance in the **Federal Register**.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–1487 Filed 1–21–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Uniformed Services University of the Health Sciences

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Uniformed Services University of the Health Sciences.

TIME AND DATE: 8:30 a.m. to 2:30 p.m., February 9, 1998.

PLACE: Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

STATUS: Open-under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

8:30 a.m. Meeting—Board of Regents

(1) Approval of Minutes—November 3, 1998
(2) Faculty Matters
(3) Departmental Reports
(4) Financial Report
(5) Report—President, USUHS
(6) Report—Dean, School of Medicine
(7) Report—Dean, Graduate School of Nursing
(8) Comments—Chairman, Board of Regents
(9) New Business

CONTACT PERSON FOR MORE INFORMATION: Mr. Bobby D. Anderson, Executive Secretary of the Board of Regents, (301) 295–3116.

Dated: January 16, 1998.

Linda Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–1578 Filed 1–16–98; 4:43 pm]

BILLING CODE 5000–04–M

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, January 28, 1998. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1:00 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

A presentation on the Commission's retreat process will be held at 11:00 a.m. at the same location. In December 1995 the Commission conducted a retreat to examine the agency and its future. The process progressed through interviews with key constituents; an extensive constituent survey; a niche selection process and preparation of a vision and mission statement entitled "Charting the Future", adopted by the Commission on December 17, 1997. The results of the retreat process and next steps will be reviewed at this presentation. A "Summary of Delaware River Basin Commission Retreat Process" and "Charting the Future" are available upon request by contacting Susan M. Weisman at (609) 883–9500 ext. 203.

In addition to the subjects listed which are scheduled for public hearing at the 1:00 p.m. business meeting, the Commission will also address the following: Minutes of the December 17, 1997 business meeting; announcements; General Counsel's Report; report on Basin hydrologic conditions; a resolution to adopt the current expense and capital budgets for Fiscal Year 1999; a resolution to designate the Chair of the Flow Management Technical Advisory Committee as the Chair at meetings of the Parties to the 1954 U.S. Supreme Court Decree concerning drought-related resolutions; a resolution to amend the Ground Water Protected Area Regulations for Southeastern Pennsylvania by the establishment of numerical withdrawal limits for Protected Area subbasins; and public dialogue. A "Response Document on Proposed Amendments to the Southeastern Pennsylvania Ground Water Protected Area Regulations" is also available upon request by contacting Ms. Weisman at the number provided above.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. Portland Borough Authority D–97–29 CP

An application for approval of a ground water withdrawal project to supply up to 5.18 million gallons (mg)/30 days of water to the applicant's distribution system from new Well No. 3, and to increase the existing withdrawal limit from all wells to 5.7 mg/30 days. The project is located in Upper Mount Bethel Township, Northampton County, Pennsylvania.

2. Pennsylvania Power & Light Company D–97–37

A project to construct two 12-kilowatt aerial power line crossings: one on a reach of the Schuylkill River and one on a reach of the Little Schuylkill River near their confluence. Both crossings are on reaches of the rivers designated as Scenic Rivers by the Pennsylvania

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Department of Conservation and Natural Resources and included in the DRBC Comprehensive Plan. The proposed power line will provide service to an existing commercial enterprise in Port Clinton, Schuylkill County, Pennsylvania. The line will cross on poles located near two bridges; one just upstream of a railroad bridge over the Schuylkill River between Tilden Township, Berks County and Port Clinton Borough, Schuylkill County, and one at the Broad Street Bridge over the Little Schuylkill River in Port Clinton Borough.

3. Glen Mills Schools D–97–39

A surface water withdrawal project to provide a monthly average of 367,000 gallons per day (gpd) (11 mg/30 days) for irrigation of the proposed 18-hole Golf Course at Glen Mills located in Thornbury Township, Delaware County, Pennsylvania. The applicant proposes to withdraw water from Chester Creek and, if needed to supplement flow, from two existing on-site wells (averaging less than 100,000 gpd).

4. American Cyanamid Company D–97–41

A project to upgrade an existing 120,000 gpd average monthly capacity industrial wastewater treatment plant (IWTP) located at the applicant's Agricultural Research Division facilities at U.S. Route 1 and Quakerbridge Road in West Windsor Township, Mercer County, New Jersey. The IWTP will continue to provide secondary biological treatment utilizing an extended aeration activated sludge process. Tertiary filtration will be provided as well as ultraviolet disinfection prior to discharge via an aeration cascade to an unnamed tributary of the Assunpink Creek. The applicant's facilities are located on property that straddles the Delaware River Basin divide and a major portion of the applicant's water source is obtained from wells located outside the Delaware River Basin. However, the applicant proposes a high overall BOD removal rate (98 percent) that will offset the imported load.

5. City of Bethlehem Authority D–97–47 CP

A proposed temporary emergency surface water withdrawal project that entails installation of an intake structure in the Beltzville Reservoir, just downstream of the confluence of Pohopoco Creek with the Reservoir's backwater, in Towamensing Township, Carbon County, Pennsylvania. The withdrawal is planned to provide an average of 15 million gallons per day during a three-year period while the applicant's Penn Forest Dam is undergoing reconstruction and refilling. The applicant's distribution system serves the City of Bethlehem and 11 other municipalities in its vicinity, in both Lehigh and Northampton Counties. Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at (609) 883–9500 ext. 221 concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary at (609) 883–9500 ext. 203 prior to the hearing.

Dated: January 12, 1998.

Susan M. Weisman,

Secretary.

[FR Doc. 98–1416 Filed 1–21–98; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

National Awards Program for Model Professional Development; Notice of New Application Deadline for Certain Applicants for Fiscal Year (FY) 1998

SUMMARY: The Secretary establishes a new deadline for the submission of applications under the National Awards Program for Model Professional Development for FY 1998 by those schools and school districts in areas of Maine, New Hampshire, New York and Vermont that the President or the governors of those States have declared disaster areas because of the severe ice storms that occurred during the week of January 5, 1998, as well as to schools and the school district on the Island of Guam.

NEW DEADLINE FOR TRANSMITTAL OF APPLICATIONS: The new deadline for the Department's receipt of applications from these schools and school districts is January 26, 1998. In addition, the Secretary will consider, on a case-by-case basis, a written request received by January 26, 1998, for a further extension of the application deadline for any school or school district in these affected areas that confirm an inability to meet this new application deadline because of continued storm-related disruptions.

SUBMITTING APPLICATIONS OR EXTENSION REQUESTS: Application to the National Awards Program or written requests for an extension of the application deadline beyond January 26, 1998, must be sent to Sharon Horn, Office of Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 506E, Washington, DC 20208–5644. Telephone: 202–219–2203.

To obtain information on the program, call or write Sharon Horn at the address and telephone number identified above. Inquiries also may be sent by e-mail to sharon__horn@ed.gov or by FAX at (202) 219–2198. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, between 8 a.m. and 8 p.m.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

SUPPLEMENTARY INFORMATION: On October 30, 1997, the Secretary announced in the **Fedeal Register** (62 FR 58874) the National Awards Program For Model Professional Development for FY 1998. This program recognizes a variety of schools and school districts with model professional development activities in the pre-kindergarten through twelfth grade levels that have led to increases in student achievement. The notice inviting applications for the program (62 FR 58874), which accompanied the notice of eligibility and selection criteria for the program, identified the deadline for transmittal of applications as January 15, 1998. During the week of January 5, 1998, portions of the States of Maine, New Hampshire, New York and Vermont experienced extraordinarily severe ice storms that extinguished electric service and caused major disruptions to school communities in these areas. In addition, the Secretary has learned that the school community on the Island of Guam is only now reopening on a part-time basis as a result of a severe typhoon that struck, the island on December 16, 1997.

The Secretary is concerned that because of these circumstances schools and school districts in these affected areas that wish to apply for recognition under the National Awards Program may be prevented from doing so by the previously announced application deadline. For this reason, the Secretary extends the deadline for transmittal of applications under the National Awards Program until January 26, 1998, for those schools and school districts in the States of Maine, New Hampshire, New York and Vermont that the President or the governors of those States have declared to be disaster areas, as well as for schools and the school district on Guam. Since it is impossible to predict whether continued disruptions in utility service will preclude the submission of applications by January 26, 1998, the Secretary also will consider, on a case-by-case basis, a written request received by January 26, 1998, for a further extension of the application deadline for any school or school district in these affected areas that confirms its inability to meet the January 26 application deadline because of continued storm-related disruptions.

ELECTRONIC ACCESS TO THIS DOCUMENT: Anyone may view this document, as well as all other Department of Education documents published in the **Fedeal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register.**

Program Authority: 20 U.S.C. 8001.

Dated: January 16, 1998.

Ricky T. Takai,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 98–1549 Filed 1–16–98; 5:03 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Submission of Data by State Educational Agencies

AGENCY: Department of Education.

ACTION: Notice of dates of submission of State revenue and expenditure reports for fiscal year 1997 and of revisions to those reports.

SUMMARY: The Secretary of Education announces dates for the submission by State educational agencies (SEAs) of expenditure and revenue data and average daily attendance statistics on ED Form 2447 (the National Public Education Financial Survey) for fiscal year (FY) 1997. The Secretary sets these dates to ensure that data are available to serve as the basis for timely distribution of Federal funds. The U.S. Bureau of the Census is the data collection agent for the Department's National Center for Education Statistics (NCES). The data will be published by NCES and will be used by the Secretary in the calculation of allocations for FY 1999 appropriated funds.

DATES: The date on which submissions will first be accepted is March 15, 1998. The mandatory deadline for the final submission of all data, including any revisions to previously submitted data, is September 8, 1998.

ADDRESSES: SEAs may mail ED Form 2447 to: Bureau of the Census, ATTENTION: Governments Division, Washington, DC 20233–6800.

Alternatively, SEAs may hand deliver submissions to: Governments Division, Bureau of the Census, 8905 Presidential Parkway, Washington Plaza II, Room 508, Upper Marlboro, MD, by 4 p.m., Eastern time, Monday through Friday.

If an SEA's submission is received by the Bureau of the Census after September 8, in order for the submission to be accepted, the SEA must show one of the following as proof that the submission was mailed on or before the mandatory deadline date:

1. A legibly dated U.S. Postal Service postmark.
2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
3. A dated shipping label, invoice, or receipt from a commercial carrier.
4. Any other proof of mailing acceptable to the Secretary.

If the SEA mails ED Form 2447 through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

1. A private metered postmark.
2. A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an SEA should check with its local post office.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence R. MacDonald, Chief, Bureau of the Census, ATTENTION: Governments Division, Washington, DC 20233–6800. Telephone: (301) 457–1574. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to: Frank Johnson, National Center for Education Statistics, U.S. Department of Education, 555 New Jersey Avenue, N.W., Room 410E, Washington, DC 20208–5651.

SUPPLEMENTARY INFORMATION: Under the authority of section 404(a) of the National Education Statistics Act of 1994 (20 U.S.C. 9003(a)), which authorizes NCES to gather data on the financing of education, NCES collects data annually from SEAs through ED Form 2447. The report from SEAs includes attendance, revenue, and expenditure data from which NCES determines the average State per pupil expenditure (SPPE) for elementary and secondary education.

In addition to using the SPPE data as useful information on the financing of elementary and secondary education, the Secretary uses these data directly in calculating allocations for certain formula grant programs, including Title I of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Title I), Impact Aid, and Indian Education. Other programs such as the Goals 2000: Educate America Act, the Technology Literacy Challenge Fund, the Education for Homeless Children and Youth Program under Title VII of the Stewart B. McKinney Homeless Assistance Act, the Dwight D. Eisenhower Professional Development Program, and the Safe and Drug-Free Schools and Communities Program make use of SPPE data indirectly because their formulas are based, in whole or in part, on State Title I allocations.

In January 1998, the Bureau of the Census, acting as the data collection agent for NCES, will mail to SEAs ED Form 2447 with instructions and request that SEAs submit data to the Bureau of the Census on March 15, 1998, or as soon as possible thereafter. SEAs are urged to submit accurate and complete data on March 15, or as soon as possible thereafter, to facilitate timely processing. Submissions by SEAs to the Bureau of the Census will be checked for accuracy and returned to each SEA for verification.

Having accurate information, on time, is critical to an efficient and fair allocation process, as well as the NCES statistical process. To ensure timely distribution of Federal education funds based on the best, most accurate data available, NCES establishes, for allocation purposes, September 8, 1998,

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as the final date by which ED Form 2447 must be submitted. However, if an SEA submits revised data after the final deadline that results in a lower SPPE figure, its allocations may be adjusted downward or the Department may request the SEA to return funds. SEAs should be aware that all of these data are subject to audit and that, if any inaccuracies are discovered in the audit process, the Department may seek recovery of overpayments for the applicable programs. If an SEA submits revised data after September 8, the data may also be too late to be included in the final NCES published dataset.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Authority: 20 U.S.C. 9003(a).

Dated: January 15, 1998.

Ricky T. Takai,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 98–1505 Filed 1–21–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Idaho Operations Office; Notice of Intent to Solicit Applications for Financial Assistance Awards

AGENCY: Department of Energy.

ACTION: Notice of solicitation for financial assistance number DE–PS07–98ID13605—Advanced Drilling Systems Research.

SUMMARY: The U.S. Department of Energy's Office of Geothermal Technologies, Advanced Drilling Systems Research Program, via the Idaho Operations Office (DOE–ID), is seeking applications for cost-shared cooperative agreements for industry-government Research & Development projects to develop advanced drilling technologies and transfer the results to industry. These new developments can then be used by the U.S. geothermal industry to solve technical problems.

DATES: The anticipated issuance date of Solicitation No. DE–PS07–98ID13605 is January 26, 1998. A copy of the solicitation in its full text can be found at the following Internet address: *http://www.inel.gov/doeid/solicit.html* under ACurrent Solicitations.@ Also, application packages and instructions (including all required forms, certifications and assurances) are available at this website. The website is the agency preferred method for interested parties to obtain the solicitation and application information. Interested parties requiring hardcopies should request them in writing (preferably via e-mail) from the Contracting Officer below. The website will be the official notification medium for any possible changes in the solicitation. All interested parties should monitor the website during the application period.

ADDRESSES: Applications shall be submitted to: Mr. Michael K. Barrett, Contracting Officer, U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, Mail Stop 1221, Idaho Falls, ID 83401–1563, e-mail: *barretmk@inel.gov*, Tele: (208) 526–5743, Fax: (208) 526–5548.

FOR FURTHER INFORMATION CONTACT: Michael K. Barrett, Contracting Officer at (208) 526–5743 or Willetia Amos, Program Manager at (208) 526–4097; U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, Mail Stop 1221, Idaho Falls, ID 83401–1563.

SUPPLEMENTARY INFORMATION: The solicitation will be issued pursuant to 10 CFR 600.6(a) with no eligibility restrictions. The statutory authority for the issuance of this solicitation is Public Law 93–410, the Geothermal Energy Research, Development & Demonstration Act of 1974. The catalog of Federal Domestic Assistance Number for this program is 81.087.

This notice is also intended to promote the formation of industry partnerships, to stimulate interaction among potential participants, and to encourage organizations to investigate creative solutions. Funding for phase I will be available to support several awards for a period of approximately six to twelve months. Funding for phase II will be available to support one or more awards, for a period of 12–24 months. Applications may include Federally Funded Research and Development Centers, but only as lower tier participants with funding for their expected costs provided through their existing arrangements with the Government.

Issued in Idaho Falls, ID January 14, 1998.

Michael L. Adams,

Acting Director, Procurement Services Division.

[FR Doc. 98–1503 Filed 1–21–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR98–4–000]

AOG Gas Transmission Company, L.P.; Notice of Petition for Rate Approval

January 15, 1998.

Take notice that on January 6, 1998, AOG Gas Transmission Company, L.P. (AOGGT) filed pursuant to Section 284.123(b)(2) of the Commission's Regulations, a petition for rate approval requesting that the Commission approve its existing system-wide rates of $0.0019 per Mmbtu applicable to transportation service rendered from its system in the state of Oklahoma, and $0.1023 per Mmbtu applicable to transportation service rendered from its system in the state of New Mexico. These rates will be applicable to the transportation of natural gas under Section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before January 30, 1998. Copies of this petition are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–1449 Filed 1–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–5–23–000]

Eastern Shore Natural Gas Company, Notice of Proposed Changes in FERC Gas Tariff

January 15, 1998.

Take notice that on January 8, 1998, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheets in the above captioned docket with proposed effective dates of January 1, 1998 and February 1, 1998, respectively.

ESNG states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from Columbia Gas Transmission Corporation (Columbia) under its Rate Schedules SST and FSS the costs of which are included in the rates and charges payable under ESNG's Rate Schedule CFSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–1438 Filed 1–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–147–005]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

January 15, 1998.

Take notice that on January 13, 1998, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to become effective September 1, 1997:

Second Substitute Third Revised Sheet No. 220
Second Substitute Second Revised Sheet No. 220A
Second Substitute Second Revised Sheet No. 220B

Equitrans states that the proposed tariff sheets are submitted in compliance with the Order on Rehearing and Clarification issued by the Federal Energy Regulatory Commission (Commission) on December 29, 1997 in Docket No. RP96–147–002. Equitrans states that the Commission required Equitrans to file revised tariff sheets to impose late winter storage withdrawal limitations or "ratchets" on Equitrans' open-access base load storage Rate Schedule 115SS.

Equitrans states that it has included revisions to Section 9.3 of its General Terms and Conditions to provide that late season storage withdrawal ratchets will apply to all firm Part 284 storage services including Rate Schedule 115SS. Equitrans states that the inventory levels at which ratchets may be applied and the application of ratchets based on each individual Part 284 customer's percentage of TASQ which remains in storage under each individual Rate Schedule remains unchanged from the methodology previously approved by the Commission.

Any person desiring to protest the filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–1447 Filed 1–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–142–007]

K N Interstate Gas Transmission Co.; Notice of Filing

January 15, 1998.

Take notice that on January 9, 1998, K N Interstate Gas Transmission Co. (KNI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–B, the following revised tariff sheets, to be effective October 1, 1997:

Second Revised Sheet No. 36
Second Revised Sheet No. 89

On April 17, 1997, K N Interstate Gas Transmission Co. (KNI) submitted a compliance filing which was subsequently approved by the Commission in Docket No. RP97–142. Included within this compliance filing were First Revised Sheet Nos. 36 and 89. It has since been determined that pagination and language problems exist with the above referenced sheets. Therefore, KNI is submitting Second Revised Sheet No. 36 and Second Revised Sheet No. 89 to correct the pagination and language problems.

KNI states that copies of this filing were served upon KNI's jurisdictional customers, interested public, bodies, and all parties to the proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–1445 Filed 1–21–98; 8:45 am]

BILLING CODE 6717–01–M

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM97–3–25–003]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 15, 1998.

Take notice that on January 13, 1998, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed below to be effective February 12, 1998.

Twenty-Ninth Revised Sheet No. 5
Twenty-Ninth Revised Sheet No. 6
Twenty-Sixth Revised Sheet No. 7

MRT states that the purpose of the instant filing is to remove the Miscellaneous Revenue Flowthrough Adjustment credit from MRT's base tariff rates under Rate Schedules FTS, SCT, and ITS.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–1439 Filed 1–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP98–8–003; and RP96–199–010]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 15, 1998.

Take notice that on January 13, 1998, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed below.

Substitute Twenty-Sixth Revised Sheet No. 5
Substitute Twenty-Sixth Revised Sheet No. 6
Substitute Twenty-Seventh Revised Sheet No. 5
Substitute Twenty-Seventh Revised Sheet No. 6
Substitute Twenty-Eighth Revised Sheet No. 5
Substitute Twenty-Eighth Revised Sheet No. 6

MRT states that the purpose of the instant filing is to correct an administrative oversight in the Gas Supply Realignment Costs (GSRC) charge on Authorized Overrun Service (AOS) for Rate Schedules FTS and SCT.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–1442 Filed 1–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–005]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 15, 1998.

Take notice that on January 7, 1998, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet, proposed to become effective on January 8, 1998:

Third Revised Sheet No. 66

Northern states that the above sheet is being filed to implement a specific negotiated rate transaction in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–1446 Filed 1–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–12–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Refund Report

January 15, 1998.

Take notice that on January 9, 1998, PG&E Gas Transmission Northwest Corporation (PG&E GT–NW), formerly Pacific Gas Transmission Company, tendered for filing a Refund Report for interruptible transportation revenue credits on its Coyote Springs Extension.

PG&E GT–NW states that it refunded $1,718.35 to Portland General Electric Company, the sole eligible firm shipper on the Coyote Springs Extension, through a credit billing adjustment on December 11, 1997.

PG&E GT–NW further states that a copy of this filing has been served on all affected customers and interested state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before January 23, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are

available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–1450 Filed 1–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1252–000]

Southern California Edison Company; Notice of Filing

January 14, 1998.

Take notice that on December 30, 1997, Southern California Edison Company (Edison) tendered for filing the Edison-Southern California Water Company 1997 Restructuring Agreement) between Edison and the Southern California Water Company (SCWC), and a Notice of Cancellation of various rate schedules applicable to SCWC. Included in the Restructuring Agreement as Appendices A, B, C, and D are: Amendment No. 1 to the Agreement For Services, Amendment No. 1 to the Control Area Import Agreement, Amendment No. 1 to the Transmission Service Agreement, and the Wholesale Distribution Access Tariff Service Agreement.

The Restructuring Agreement, including all of its Appendices, are the result of negotiations between Edison and SCWC to modify existing agreements to accommodate the emerging Independent System Operator/Power Exchange market structure. The Restructuring Agreement simplifies the existing operational arrangements between Edison and SCWC.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 30, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–1437 Filed 1–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–112–022]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

January 15, 1998.

Take notice that on January 9, 1998, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, with an effective date of January 1, 1998:

Fifth Revised Volume No. 1
Tenth Revised Sheet No. 26
Tenth Revised Sheet No. 26A
Eighteenth Revised Sheet No. 26B
Original Volume No. 2
Thirty-Fourth Revised Sheet No. 5

Tennessee states that this filing is in compliance with the Stipulation and Agreement approved by the Commission in its October 30, 1996 Order on Contested Settlement in the above-referenced docket. Tennessee Gas Pipeline Company, 77 FERC ¶ 61,083 (1996), reh'g denied, 78 FERC ¶ 61,069 (1997). Tennessee requests waiver of the Commission's thirty-day notice requirement to allow an effective date of January 1, 1998 for the tariff sheets. Tennessee submits that good cause exists for the waiver because: (1) The proposed tariff sheets represent a reduction in customers' existing rates; (2) all of Tennessee's customers were informed of the rates since such rates were set forth in the Stipulation and Agreement; and (3) the Commission previously approved implementation of the rates, effective January 1, 1998, in its orders approving the Stipulation and Agreement.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in Determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–1448 Filed 1–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–344–006]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 15, 1998.

Take notice that on January 12, 1998, Texas Gas Transmission Corporation (Texas Gas) tendered for filing changes to its FERC Gas Tariff, First Revised Volume No. 1, with an effective date of November 1, 1997:

Substitute First Revised Sheet No. 50
Substitute First Revised Sheet No. 51

Texas Gas states that this instant filing is made in compliance with the Ordering Paragraph B of the Commission's Order issued December 29, 1997, in Docket No. RP97–344 at 81 FERC ¶ 61,398 (1997). As required by that Order, Texas Gas has revised the tariff sheets to provide that service under Rate Schedule NNS will be available to any Customer provided that there are operational and/or administrative arrangements in place to meet the requirements of such service.

Texas Gas further states that it has served copies of this filing upon the company's jurisdictional customers, interested state commissions, and all parties appearing on the official restricted service list in Docket No. RP97–344.

Any person desiring to protest said filing should file a Protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests may be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the

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Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–1443 Filed 1–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–58–002]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 15, 1998.

Take notice that on January 12, 1998, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 which tariff sheets are enumerated in Appendix A attached to the filing. The referenced tariff sheets are proposed to be effective December 21, 1997.

Transco states that the purpose of the instant filing is to comply with the Commission's order issued January 7, 1998 in Docket No. RP98–58–001. Such order required Transco to refile tariff sheets that were duplicatively numbered in Transco's December 23, 1997 filing in that docket. Transco tendered the sheets enumerated in Appendix A with the revised pagination.

Transco states that it is serving copies of the instant filing on parties to Docket No. RP98–58 and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–1440 Filed 1–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–159–009]

Transcontinental Gas Pipe Line Corporation; Notice of Request for Extension of Waiver

January 15, 1998.

Take notice that on November 26, 1997, Transcontinental Gas Pipe Line Corporation (Transco) filed in Docket No. RP97–159–009 a request pursuant to 18 CFR § 385.2008 for extension of waiver to permit Transco to continue to use non-standard GISB data elements and datasets for an additional six months until June 1, 1998.

Transco states that a May 15, 1997, Commission Order on Compliance Filing and rehearing (79 FERC ¶ 61,172 (1997), granted a waiver to permit Transco to use non-standard data elements and datasets until December 1, 1997, so that implementation of the Internet electronic communication standards can proceed while GISB is considering requests for modification of the datasets.

Transco states that its requests for modification are still pending before GISB, and that under the circumstances, good cause exists for the Commission to grant Transco an extension of the waiver granted in the May 15 order to allow GISB additional time for consideration of Transco's requests.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Section 385.211 of the commission's Rules and Regulations. All such protests must be filed on or before January 23, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this application are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–1444 Filed 1–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP98–13–000, CP98–14–000, and CP98–43–000]

Transwestern Pipeline Company, Northern Natural Gas Company, PG&E–Tex, L.P.; Notice of Technical Conference

January 15, 1998.

Take notice that on January 29, 1998, at 10:00 a.m., the Commission Staff will convene a technical conference in the above captioned dockets at the offices of the Federal Energy Regulatory Commission, 888 1st Street. NE, Washington, DC 20426. Any party, as defined in 18 CFR 385.102(c), any person seeking intervenor status pursuant to 18 CFR 385.214 and any participant, as defined in 18 CFR 385.102(b), is invited to attend.

The purpose of the conference is to discuss the resolution of issues as raised by the intervenors and protestors filed in these proceedings.

For further information, contact George Dornbusch (202) 208–0881, Room 81–31 or Sheila Hernandez (202) 208–0868, Room 81–37 in the Office of Pipeline Regulation.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–1451 Filed 1–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–12–001]

Williams Natural Gas Company; Notice of Compliance Filing

January 15, 1998.

Take notice that on January 9, 1998, Williams Natural Gas Company (WNG), filed the additional information provided to the Missouri Public Service Commission (MoPCS) in compliance with Commission order issued October 31, 1997.

WNG states that it provided additional information to the MoPCS in compliance with the October 31, 1997 order. By order issued December 30, 1997, WNG was directed to provide the Commission with a copy of the data provided to the MoPSC and any other pertinent information conveyed via discussions between the MoPSC and WNG's staff. WNG states that the instant filing is being made to comply with the December 30 order.

WNG states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in the docket referenced above.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–1441 Filed 1–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–177–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

January 15, 1998.

Take notice that on January 9, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed a request with the Commission in Docket No. CP98–177–000, pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to utilize existing taps for transportation of natural gas deliveries to Montana-Dakota Utilities Co. (Montana-Dakota) authorized in blanket certificate issued in Docket No. CP82–487–000, *et al.*, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williston Basin proposes to transport natural gas to Montana-Dakota at three existing transmission line taps, for ultimate use by additional end-use customers. The taps are located in Dawson County and Richland County, Montana, and Pennington County, South Dakota.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–1452 Filed 1–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–167–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed PG&E Gas Transmission, Northwest Corporation's 1998 Expansion Project and Request for Comments on Environmental Issues and Notice of Site Visit

January 15, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction, installation and operation of three new compressor units at three of its existing compressor stations proposed in the PG&E Gas Transmission, Northwest Corporation's 1998 Expansion Project.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of the Proposed Project

PG&E Gas Transmission, Northwest Corporation (PG&E), formerly Pacific Gas Transmission Company, proposes to expand the capacity of its facilities in Oregon, Washington, and Idaho. PG&E states that the proposed compression upgrades would allow PG&E to transport between Kingsgate, British Columbia and Stanfield, Oregon up to an additional 56,000 dekatherms per day on an annual basis. PG&E seeks to increase the total horsepower (hp) at three of its existing compressor stations:

- 3,100 hp increase at Station 4, located at milepost (MP) 46.7 on PG&E's existing mainline pipeline in Bonner County, Idaho; specifically, by exchanging an existing 13,000 hp unit with a new 15,000 hp unit and exchanging an existing 13,000 hp unit with a low-hour 14,100 hp refurbished unit;
- 4,700 hp increase at Station 7, located at MP 212.6 on PG&E's existing mainline pipeline in Walla Walla County, Washington; specifically, by upgrading its existing 35,000 hp unit to 39,700 hp through equipment modifications and control setpoint changes; and
- 1,500 hp increase at Station 9, located at MP 319.5 on PG&E's existing mainline pipeline in Morrow County, Oregon; specifically, by exchanging an existing 12,600 hp unit with a new 14,100 hp unit. PG&E would install a new, higher capacity oil cooler to be located immediately outside the compressor building and would adjust the temperature control setpoint to the turbine unit.

The general location map and plot plans for each of the proposed compressor station upgrades are shown in Appendix 1. If you are interested in obtaining procedural information, please write to the Secretary of the Commission.

Land Requirements for Construction

All construction activities would take place within the existing fencelines of all three compressor stations. No new land disturbance outside existing compressor station fencelines would be required.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents

[1] PG&E Gas Transmission, Northwest Corporation's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

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of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Air and noise quality
- Land use
- Geology and soils
- Public safety
- Endangered and threatened species
- Cultural resources

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

PG&E has proposed a system alternative, known as the Pipeline Looping Alternative, which would involve the looping of PG&E's existing mainline with a third, 42-inch-diameter pipeline located between Mainline valve (MV) 5–1 in Kootenai County, Idaho and MV 5–2 in Spokane County, Washington. The pipeline loop would be about 10.7 miles in length. See appendix 2 for an approximate location of this system alternative.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provide by PG&E. This preliminary list of issues may be changed based on your comments and our analysis.

- Four noise-sensitive areas (NSAs) have been identified in close proximity to Station 4.
- One NSA has been identified in close proximity to Station 7.
- One NSA has been identified in close proximity to Station 9.
- Possible consideration of the Pipeline Looping Alternative in lieu of expanding the three existing compressor stations.

No nonjurisdictional facilities have been identified for this project.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: Mr. David P. Boergers, Acting Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1;
- Reference Docket No. CP98–167–000; and
- Mail your comments so that they will be received in Washington, DC on or before February 17, 1998.

Notice of Site Visit

On January 22, 1998, the staff of the Office of Pipeline Regulation will be conducting an environmental site visit of PG&E's Pipeline Looping Alternative. All parties may attend. Those planning to attend must provide their own transportation.

For further information about where the site inspection will begin, please contact Paul McKee at (202) 208–1088.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must files a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3).

You do not need intervenor status to have your environmental comments considered.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–1453 Filed 1–21–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5951–8]

Agency Information Collection Activities: Cooperative Agreements and Superfund State Contracts for Superfund Response Actions; Submissions for OMB Review, Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Cooperative Agreements and State Contracts for Superfund Response Actions (OMB Control #2010–0020, εχπιρατιον δατε—02/28/98).

DATES: Comments must be submitted on or before February 23, 1998.

FOR FURTHER INFORMATION OR A COPY: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by e-mail at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 1487.06.

SUPPLEMENTARY INFORMATION:

Title: Cooperative Agreements and Superfund contracts for Superfund Response Actions (OMB Control No. 2010–0020; EPA–ICR No. 1487.06) expiring 02/28/98. This is a request for an extension of a currently approved Information Collection Request (ICR).

Abstract

This ICR authorizes the collection of information under EPA's Superfund Rule (40 CFR, part 35, subpart O) that establishes the administrative requirements for the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)—funded cooperative agreements for State, local and Federally recognized Indian tribal government response actions. The regulation also codifies the administrative requirements for Superfund State Contracts for non-State lead remedial responses. This regulation includes only those provisions as mandated by CERCLA, required by OMB Circulars, or added by EPA to ensure sound and effective financial assistance management. The information is collected from applicants/recipients of EPA assistance and used to make awards, pay recipients and collect information on how Federal funds are being spent. EPA needs the information to meet its Federal stewardship responsibilities. Recipient responses are required to obtain a benefit (federal funds) under 40 CFR part 31, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 49 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 07/02/97 (vol. 62, No. 127, pg. 35803; no comments were received).

Burden Statement

The annual reporting and record keeping burden for this collection of information is estimated to average [10] hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions, develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing information, processing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State, Local or Tribal Governments.

Estimated Number of Respondents: 500.

Frequency of Response: As required.

Estimated Total Annual Hour Burden: 5,000.

Estimated Total Annualized Cost Burden: 5,000$36/hr=$180,000.00.

Send Comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1487.06 and OMB Control No. 2010–0020—in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, S.W. Washington, D.C. 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, 727 17th Street, N.W., Washington, D.C. 20502

Dated: January 15, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–1530 Filed 1–21–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act of 1974: Systems of Records

AGENCY: Federal Communications Commission (FCC).

ACTION: Notice of a new system of records.

SUMMARY: This notice meets the requirements of the Privacy Act of 1974 regarding the publication of an agency's notice of systems of records. It documents a new FCC system of records.

DATES: Written comments on the proposed altered system should be received by February 23, 1998. Office of Management and Budget, which has oversight responsibility under the Privacy Act to review the system may submit comments on or before March 3, 1998. The proposed system shall be effective without further notice on March 3, 1998 unless the FCC receives comments that would require a contrary determination. As required by 5 U.S.C. 552a(o) of the Privacy Act, the FCC submitted reports on this new system to both Houses of Congress.

ADDRESSES: Comments should be mailed to Judy Boley, Privacy Act Officer, Performance Evaluation and Records Management, Room 234, FCC, 1919 M Street, NW., Washington, DC 20554. Written comments will be available for inspection at the above address between 9:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Judy Boley, Privacy Act Officer, Performance Evaluation and Records Management, Room 234, FCC, 1919 M Street, NW., Washington, DC 20554, (202) 418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), this document sets forth notice of the proposed system of records maintained by the FCC. This notice is a summary of more detailed information which may be viewed at the location and hours given in the **ADDRESSES** section above.

The proposed system of records is as follows:

FCC/Central-10, "FCC Access Control System." This system will be used by the FCC Security Officer and the Personnel Security Specialist of the Security Office to control and account for all persons entering the facility and by which the FCC may ascertain the times persons were in the facility.

FCC/Central-10

SYSTEM NAME:

FCC Access Control System.

SYSTEM LOCATION:

Federal Communications Commission (FCC), Office of Managing Director, Security Operations Staff, 1919 M Street, NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current FCC employees, current contractors, special visitors and visitors.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of a computer database, with all records containing the last and first name, filed alphabetically by last name, with a corresponding Badge Number. FCC employee database will include first and last name, telephone number, Bureau/Office, supervisor, room number, date of issuance, and parking permit number, if applicable. Contractor database will include first and last name, contractor company name, telephone number, FCC point of contact and telephone number, and date of issuance. Proof of identity required through photographic identification is necessary prior to issuance of contractor badge.

Special visitor's database will include first and last name, employer's name, address, telephone number, point of contact at the employer, and date of issuance. Proof of identity required through photographic identification is necessary prior to issuance of special visitor badge.

Visitor database will include first and last name, telephone number, destination, agency or firm name, photographic identification along with numerical identifier.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Presidential Directive based on Department of Justice Report entitled Vulnerability Assessment of Federal Facilities.

PURPOSE(S):

This system provides a method by which the FCC can control and account

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for all persons entering the facility and by which the FCC may ascertain the times persons were in the facility.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Where there is an indication of a violation or potential violation of a statute, regulation, rule or order, records from this system may be referred to the appropriate Federal, state, or local agency responsible for investigating or prosecuting a violation or for enforcing or implementing the statute, rule, regulation or order.

2. A record from this system may be disclosed to a request for information from a Federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information if necessary to obtain information relevant to a investigation.

3. A record on an individual in this system of records may be disclosed to a Congressional office in response to an inquiry the individual has made to the Congressional office.

4. A record from this system of records may be disclosed to GSA and NARA for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall not be used to make a determination about individuals.

In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose for which the records were collected.

5. Records from this system may be disclosed to FCC supervisors or management representatives to ascertain (either confirm or refute) the times employees were in the facility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in a password protected computer database.

RETRIEVABILITY:

Records are retrieved by the name of individuals on whom they are maintained, by a limited number of authorized individuals.

SAFEGUARDS:

The computer terminals are stored within a secured area.

RETENTION AND DISPOSAL:

When an employee/contractor leaves the agency the file in the database is deleted. Special visitor badges are given a 1 year valid period, after which the card will automatically deactivate. All returned visitor cards will be reused on a daily basis. Transaction data for all cards will be placed on backup discs and stored for six months.

SYSTEM MANAGER(S) AND ADDRESS:

FCC, Office of Managing Director, Security Operations Staff, 1919 M Street, N.W., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the system manager indicated above. Individuals must furnish the following information for their records to be located and identified:

Full name.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them should contact the system manager indicated above. Individuals must furnish the following information for their record to be located and identified:

Full name.

An individual requesting access must also follow FCC Privacy Act regulations regarding verification of identity and access to records (47 CFR 0.554 and 0.555).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the system manager indicated above. Individuals must furnish the following information for their record to be located and identified:

Full name.

An individual requesting amendment must also follow the FCC Privacy Act regulations regarding verification of identity and amendment of records (47 CFR 0.556 and 0.557).

RECORD SOURCE CATEGORIES:

The individual to whom the information applies.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–1533 Filed 1–21–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled "Community Reinvestment Act."

DATES: Comments must be submitted on or before March 23, 1998.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room 4022, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429. All comments should refer to "Community Reinvestment Act." Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of Information:

Title: Community Reinvestment Act.

OMB Number: 3064–0092.

Frequency of Response: Annually.

Affected Public: Any depository institution that serves the credit needs of the communities in which they are chartered to do business.

Estimated Number of Respondents: 6,169.

Estimated Time per Response: 12 hours.

Estimated Total Annual Burden: 74,028 hours.

General Description of Collection: The Community Reinvestment Act and regulation 12 CFR 345 require each appropriate Federal financial supervisory agency to use its authority when examining financial institutions, to encourage such institutions to help meet credit needs of the local communities in which they are chartered consistent with safe and sound operation of such institutions.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, D.C., this 14th day of January, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–1454 Filed 1–21–98; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Submission to OMB Under Delegated Authority

Background

Notice is hereby given of the final approval of a proposed revised information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Chief, Financial Reports Section—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829) OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860)

Final approval under OMB delegated authority of the extension for three years, with revision, of the following report:

1. Report title: Money Market Mutual Fund Assets Reports

Agency form number: FR 2051a, b, c, and d

OMB Control number: 7100-0012

Effective Date: February 23, 1998.

Frequency: weekly and monthly

Reporters: money market mutual funds

Annual reporting hours: 5,580

Estimated average hours per response: 3 minutes (FR 2051a), 12 minutes (FR 2051b)

Number of respondents: 1,500 (FR 2051a), 700 (FR 2051b)

Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C. 353 et seq.) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: These reports provide information on the assets of money market mutual funds which the Federal Reserve System uses in the construction of the monetary aggregates and for current analysis of money market conditions and banking developments.

The Federal Reserve has reduced and simplified this information collection. While the weekly FR 2051a is unchanged, the monthly FR 2051b report has been reduced by condensing six items into three. The weekly FR 2051c and d reports have been discontinued.

Board of Governors of the Federal Reserve System, January 15, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98-1436 Filed 1-21-98; 8:45AM]

Billing Code 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 17, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Hibernia Corporation, New Orleans, Louisiana; to merge with Firstshares of Texas, Inc., Marshall, Texas, and thereby indirectly acquire First National Bank, Marshall, Texas.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. CountryBanc Holding Company, Edmond, Oklahoma; to acquire 100 percent of the voting shares of First State Holding Company of Elkhart, Elkhart, Kansas, and thereby indirectly acquire First State Bank of Elkhart, Elkhart, Kansas.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. MainBancorp, Inc., Austin, Texas, and Maincorp Intermediate Holding Co., Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of, and thereby merge with First National Bancorporation, Inc., Ennis, Texas, and thereby indirectly acquire First National Bank of Ennis, Ennis, Texas.

Board of Governors of the Federal Reserve System, January 16, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–1514 Filed 1–21–98; 8:45 am]

BILLING CODE 6210–01–F

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FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 17, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Cornhusker Growth Corporation, Lincoln, Nebraska; to acquire Johnston Growth Corporation, Johnston, Iowa, and thereby indirectly acquire Johnston Charter Bank, Johnston, Iowa, a de novo organization, pursuant to § 225.28(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 16, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–1513 Filed 1–21–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Center for Infectious Diseases (NCID) of the Centers for Disease Control and Prevention (CDC) Announces the Following Workshop

Name: Addressing Emerging Infectious Diseases II: Entering the 21st Century.

Times and Dates: 10:30 a.m.–5:45 p.m., January 22, 1998; 8:30 a.m.–3 p.m., January 23, 1998.

Place: CDC, Auditorium A, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this workshop is to discuss the proposed update to the CDC Plan, "Addressing Emerging Infectious Diseases Threats: A Prevention Strategy for the United States."

Matters To Be Discussed: The Workshop will consist of a revision and up-dating of goals, directions, prevention, and control strategies of emerging and re-emerging infectious diseases of the 21st Century. The agenda will include an NCID update; an overview of CDC Emerging Infections Plan 1998–2003; discussion; charge to the workgroups on (a) surveillance and response, (b) applied research, (c) prevention and control, and (d) infrastructure; a review of the workgroup progress; and reports.

The working groups will consist of representatives from national and international organizations, and State and Federal representatives.

Agenda items are subject to change as priorities dictate.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Contact Person for More Information: Diane S. Holley, Office of the Director, NCID, CDC, M/S C–20, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–0078.

Dated: January 16, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–1598 Filed 1–20–98; 10:47 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Federal Allotments to States for Social Services Expenditures, Pursuant to Title XX, Block Grants to States for Social Services; Revised Promulgation for Fiscal Year 1998

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notification of allocation of title XX—social services block grant allotments for Fiscal Year 1998.

SUMMARY: This issuance sets forth the individual revised allotments to States for Fiscal Year 1998, pursuant to title XX of the Social Security Act, as amended (Act). The initial **Federal Register** notice was published on December 2, 1996 based on the authorization level of $2.380. The appropriation which was enacted on November 13, 1997 (Pub. L. 105–78) decreased the authorization amount for title XX from $2.380 billion to $2.299 billion which is a decrease of $81 million. Grant awards for Fiscal Year 1998 will be issued based on the appropriation amount.

FOR FURTHER INFORMATION CONTACT: Frank A. Burns, (202) 401–5536.

SUPPLEMENTARY INFORMATION: For Fiscal Year 1998, the allotments are based upon the Bureau of Census population statistics contained in its reports "Population of States by Broad Age Groups and Sex: 1990 and 1995 (CB96–88, Table 4) released May 31, 1996, and "1990 Census of Population and Housing" (CPH–6–AS and CPH–6–CNMI) published April 1992, which was the most recent data available from the Department of Commerce at the time of the Department's initial promulgation.

EFFECTIVE DATE: The allotments are effective October 1, 1997.

FISCAL YEAR 1998 FEDERAL ALLOTMENTS TO STATES FOR SOCIAL SERVICES—TITLE XX BLOCK GRANTS

	Initial FY 98 allotment	Revised FY 98 allotment
Total	$2,380,000,000	$2,299,000,000

FISCAL YEAR 1998 FEDERAL ALLOTMENTS TO STATES FOR SOCIAL SERVICES—TITLE XX BLOCK GRANTS—Continued

	Initial FY 98 allotment	Revised FY 98 allotment
Alabama	38,307,808	37,004,055
Alaska	5,440,375	5,255,219
American Samoa	88,560	85,546
Arizona	37,992,588	36,699,530
Arkansas	22,373,994	21,612,526
California	284,529,822	274,846,246
Colorado	33,750,142	32,601,503
Connecticut	29,498,723	28,494,775
Delaware	6,458,194	6,236,398
Dist. of Col.	4,990,013	4,820,185
Florida	127,596,615	123,254,041
Georgia	64,861,162	62,653,702
Guam	410,345	396,379
Hawaii	10,691,598	10,327,724
Idaho	10,475,425	10,118,909
Illinois	106,555,694	102,929,219
Indiana	52,269,036	50,490,132
Iowa	25,598,587	24,727,374
Kansas	23,103,580	22,317,282
Kentucky	34,767,961	33,584,682
Louisiana	39,109,452	37,778,416
Maine	11,177,990	10,797,562
Maryland	45,423,530	43,877,603
Massachusetts	54,709,999	52,848,020
Michigan	86,010,171	83,082,934
Minnesota	41,523,394	40,110,202
Mississippi	24,292,536	23,465,773
Missouri	47,954,566	46,322,499
Montana	7,836,302	7,569,604
Nebraska	14,744,858	14,243,037
Nevada	13,781,083	13,312,063
New Hampshire	10,340,316	9,988,397
New Jersey	71,562,552	69,127,020
New Mexico	15,177,206	14,660,671
New York	163,355,373	157,795,800
North Carolina	64,807,119	62,601,499
North Dakota	5,773,643	5,577,145
No. Mariana Islands	82,069	79,276
Ohio	100,439,775	97,021,447
Oklahoma	29,525,745	28,520,877
Oregon	28,291,753	27,328,883
Pennsylvania	108,735,447	105,034,787
Puerto Rico	12,310,345	11,891,379
Rhode Island	8,917,171	8,613,687
South Carolina	33,083,606	31,957,651
South Dakota	6,566,281	6,342,807
Tennessee	47,342,073	45,730,851
Texas	168,651,632	162,911,808
Utah	17,573,133	16,975,056
Vermont	5,269,238	5,089,907
Virgin Islands	410,345	396,379
Virginia	59,609,939	57,581,197
Washington	48,918,341	47,253,473
West Virginia	16,465,242	15,904,870
Wisconsin	46,144,110	44,573,659
Wyoming	4,323,477	4,176,334

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Dated: January 7, 1998.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 98–1526 Filed 1–21–98; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95N–0192]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Quality Mammography Standards" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 28, 1997 (62 FR 55851), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0309. The approval expires on December 31, 2000.

Dated: January 14, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–1419 Filed 1–21–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0016]

Draft Guidance on Professional Flexible Labeling of Antimicrobial Drugs; Availability; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft level 1 Guidance for Industry entitled "Professional Flexible Labeling of Antimicrobial Drugs (#66)." This draft guidance is intended to provide specific guidance on the development of Professional Flexible Labeling (PFL) for therapeutic veterinary prescription antimicrobial drugs. The agency is requesting comments on this draft guidance.

DATES: Submit written comments by April 22, 1998.

ADDRESSES: Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Comments should be identified with the full title of the draft guidance and the docket number found in brackets in the heading of this document.

Submit written requests for single copies of this draft guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send two self-addressed adhesive labels to assist that office in processing your requests.

Copies of this draft guidance document may also be obtained from the CVM Home Page (http://www.cvm.fda.gov) on the Internet.

FOR FURTHER INFORMATION CONTACT: John D. Baker, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0130. E-mail: jbaker@bangate.fda.gov.

SUPPLEMENTARY INFORMATION:

Background

For many years, CVM has approved veterinary prescription antimicrobial products labeled with single fixed dosages for a narrow range of specific diseases and organisms. The very narrow label indications often failed to address the fact that, while some specific bacteria produce repeatable, recognized disease, many organisms are either opportunistic or are known to produce a variety of clinical manifestations. In addition, with the approval of single fixed dosages, the efficacy of some products could become suboptimal as bacterial susceptibility patterns change with time.

The basic concept of Professional Flexible Labeling (PFL) is to provide prescription veterinary products that carry useful prescribing information for the range of clinical situations included within their approved conditions of use. Implementation of PFL is based on the recognition that, as a function of their medical training, veterinarians possess the knowledge, skills, and abilities to interpret medical diagnostic and prescribing information. Accordingly, they are able to develop these data into appropriate therapeutic regimens. In the course of their professional studies, veterinarians are trained in microbiology, the interpretation of bacterial culture and sensitivity determinative procedures, and pharmacokinetics. This knowledge gives them the ability to determine the appropriateness of a particular drug for use in a specific case.

Under section 502 (f)(1) of the Federal Food, Drug, and Cosmetic Act (the act), a drug is deemed to be misbranded unless its labeling bears adequate directions for use (21 U.S.C. 352(f)(1)). The regulations regarding veterinary drugs at 21 CFR 201.105 exempt a drug from this provision of the act if it is in the possession of a licensed veterinarian for use in the course of professional practice, is dispensed in accordance with section 503(f) of the act (21 U.S.C. 353(f)), and its label bears certain stipulated information. Section 504 of the act (21 U.S.C. 354) stipulates that a veterinary feed directive drug, a drug intended for use in or on animal feed which is limited to use under the supervision of a licensed veterinarian, is exempt from section 502(f) when labeled, distributed, held, and used in accordance with the conditions set forth in section 504.

Drugs labeled in accordance with the PFL concept require the training of licensed veterinarians to help ensure appropriate clinical usage. Such labels would not provide adequate directions for use by the lay person. Therefore, use of PFL on nonprescription or nonveterinary feed directive drugs would cause the drugs to be misbranded under section 502 (f)(1) of the act, PFL-labeled drugs must be classified as prescription animal drugs or veterinary feed directive drugs. Accordingly, the PFL concept discussed in this document may apply to either veterinary prescription or veterinary feed directive antimicrobial drugs.

The PFL concept has been a topic of discussion for many years. Recent workshops on PFL were held in April and December 1995 under the cosponsorship of the Center for Veterinary Medicine, the American Academy of Veterinary Pharmacology and Therapeutics, the Animal Health Institute, and the American Veterinary Medical Association.

A summary of the discussions and opinions expressed in the April, 1995 workshop were published in the *Journal of the American Veterinary Medical Association (JAVMA)*, October 1, 1995. At the conclusion of the December, 1995 workshop, a task force prepared a report on the PFL concept. The task force report, which included a model drug label, was published in the *JAVMA* on July 1, 1996.

This draft guidance is intended to describe how the PFL concept can be applied to prescription antimicrobial products to enable veterinary practitioners to apply their expertise to appropriately, effectively, and safely use antimicrobials for specific clinical cases. The draft document provides specific guidance for drug sponsors on the development of PFL labeling for therapeutic veterinary prescription antimicrobial drugs. Ultimately, the labeling of products such as described in this draft guidance will better accommodate the needs of veterinary practitioners in utilizing animal drugs to treat animals in the course of their professional practices.

Approaches to PFL may not be equally applicable to all classes of therapeutic prescription products (e.g., antimicrobials, antiparasitics, physiologics). Therefore, CVM intends to develop PFL guidances that are specific to the various classes of drugs. This draft guidance document specifically addresses the application of the PFL concept to prescription therapeutic antimicrobial products.

A sponsor may follow the guidance provided in this draft document, or a sponsor may choose to follow alternate procedures or practices. If a sponsor elects to use alternate procedures or practices, that sponsor may wish to discuss the matter *a priori* with the agency to prevent an expenditure of money and effort on activities that may later be determined to be unacceptable to FDA.

This draft document represents current FDA thinking on PFL for antimicrobial drugs. This draft guidance document does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate approach may be used if such an approach satisfies the requirements of the applicable statute, regulations, or both. FDA may amend this draft guidance document based upon comments submitted by interested persons.

Request for Comments

Interested persons may, on or before April 22, 1998, submit to the Dockets Management Branch (address above) written comments on the draft guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document, and with the full title of the guidance document.

The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guidance is available on the Internet at http://www.fda.gov. After review of these comments, FDA will finalize the guidance document with any appropriate changes. Thereafter, interested persons may submit written comment on the guidance document directly to the CVM Communications Staff (address above).

Dated: January 14, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–1417 Filed 1-15-98; 3:51 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–226]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; *Title of Information Collection:* Evaluation of Medicare Choices Demonstration; *Form No.:* HCFA–R–226; *Use:* The objective of the evaluation of the Medicare Choices Demonstration is to determine whether the newer types of managed care delivery systems in the demonstration are effective at attracting and retaining Medicare enrollees and providing a high quality, cost-effective care. The key research questions HCFA will ask Medicare enrollees include: (A) Beneficiary choice, knowledge, and biased selection. Why do beneficiaries enroll (or not enroll) in plans? What proportion of enrollees disenroll, and why? What is the nature and extent of biased selection in the demonstration, and does it vary across plans? How well do enrollees understand their plans and the rules and procedures for obtaining care? (B) Effects on service use. What are the effects of the plans on the use of Medicare-covered services? Are some plans more effective at controlling service use than others? (C) Effects on Medicare costs. What are the effects of the various payment methods being tested in the demonstration on Medicare costs? (D) Effects on satisfaction, access, and quality. What are the effects of the plans on enrollee satisfaction, access to care, and quality of care? How does this vary across plans? *Frequency:* one time; *Affected Public:* Individuals or Households; *Number of Respondents:* 10,000; *Total Annual Responses:* 10,000; *Total Annual Hours:* 3,880.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

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Dated: January 8, 1998

John P. Burke III,

HCFA Reports Clearance Officer, Division of HCFA Enterprise Standards, Health Care Financing Administration.

[FR Doc. 98–1516 Filed 1–21–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting and Correction of Meeting Notice

Pursuant to Public Law 92–463, notice is hereby given of a correction of a notice of meeting of the SAMHSA National Advisory Council and of the meeting of the Center for Substance Abuse Treatment (CSAT) National Advisory Council to be held in January 1998.

Public notice was given in the **Federal Register** on January 8, 1998 (Volume 63, Number 5, page 1120) that the SAMHSA National Advisory Council would be meeting on January 21, 1998, at the Parklawn Building, Room 17–89. The date of this meeting has subsequently changed to January 22, 1998. The agenda of the meeting and the contact for additional information remain as announced.

With regard to the CSAT National Advisory Council meeting, a portion of the meeting will be open and include discussion of the Center's policy issues and current administrative, legislative, and program developments. If anyone needs special accommodations for persons with disabilities please notify the Contact listed below.

The meeting will include the discussion of information about the Center for Substance Abuse Treatment's procurement plans. Therefore a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(3) and 5 U.S.C. App. 2, section 10(d).

A summary of the meeting and roster of council members may be obtained from: Mrs. Marjorie Cashion, CSAT, National Advisory Council, Rockwall II Building, Suite 619, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–8923.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Center for Substance Abuse Treatment, National Advisory Council.

Meeting Date: January 27, 1998—8:30 a.m.–5:00 p.m; January 28, 1998—9:00 a.m.–2:00 p.m.

Place: Omni Shoreham Hotel, Hampton Room, 2500 Calvert Street, N.W., Washington, D.C. 20008.

Type: Closed: January 27, 1998—8:30 a.m.–9:00 a.m. Open: January 27, 1998—9:00 a.m.–5:00 p.m.; January 28, 1998—9:00 a.m.–2:00 p.m.

Contact: Marjorie M. Cashion, Executive Secretary, Telephone: (301) 443–8923. and FAX: (301) 480–6077.

This notice is being published with less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: January 20, 1998.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–1611 Filed 1–20–98; 12:12 pm]

BILLING CODE 4162–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–72]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: February 23, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 15, 1998.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Survey Instructions and Certificate.

Office: Housing.

OMB Approval Number: 2502–0010.

Description of the Need for the Information and its Proposed Use: A land survey and related information are necessary to secure a marketable title and title insurance for the property that provides security for project mortgage insurance furnished under the FHA multifamily programs. Form HUD–2457 provides a uniform method for acceptably meeting program criteria to minimize risk to the insurance fund and the U.S. Treasury that might arise from inadequate project land surveys and related data.

Form Number: HUD–2457.

Respondents: Business or Other For-Profit and Not-For-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–2457	750		2		.5		750

Total Estimated Burden Hours: 750.

Status: Reinstatement, with changes.

Contact: Ben J. Jacinto, HUD, (202) 708–2866, x2533; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: January 15, 1998.

[FR Doc. 98–1435 Filed 1–21–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4315–N–01]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, (HUD).

ACTION: Notice of change in debenture interest rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the "Act"). The interest rate for debentures issued under Section 221(g)(4) of the Act during the six-month period beginning January 1, 1998, is 6¼ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the six-month period beginning January 1, 1998, is 6⅜ percent.

FOR FURTHER INFORMATION CONTACT: James B. Mitchell, Department of Housing and Urban Development, 451 7th Street, S.W., Room 6164, Washington, D.C. 20010. Telephone (202) 708–1220 ext. 2612, or TDD (202) 708–4594 for hearing- or speech-impaired callers. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of Section 224, that the statutory maximum interest rate for the period beginning January 1, 1998, is 6⅜ percent and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 6⅜ percent for the six-month period beginning January 1, 1998. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the first six months of 1998.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1, 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8⅛	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.

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Effective interest rate	On or after	Prior to
8	Jan. 1, 1992	July 1, 1992.
8	July 1, 1992	Jan. 1, 1993.
7¾	Jan. 1, 1993	July 1, 1993.
7	July 1, 1993	Jan. 1, 1994.
6⅝	Jan. 1, 1994	July 1, 1994.
7¾	July 1, 1994	Jan. 1, 1995.
8⅜	Jan. 1, 1995	July 1, 1995.
7¼	July 1, 1995	Jan. 1, 1996.
6½	Jan. 1, 1996	July 1, 1996.
7¼	July 1, 1996	Jan. 1, 1997.
6¾	Jan. 1, 1997	July 1, 1997.
7⅛	July 1, 1997	Jan. 1, 1998.
6⅜	Jan. 1, 1998	July 1, 1998.

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" of interest in effect at the time the debentures are issued. The term "going Federal rate" is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of eight- to twelve-year maturities, for the six-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to Section 221(g)(4) during the six-month period beginning January 1, 1998, is 6¼ percent.

HUD expects to publish its next notice to change in debenture interest rates in July 1998.

The subject matter of this notice falls within the categorical exclusion from HUD's environmental clearance procedures set forth in 24 CFR 50.20(1). For that reason, no environmental finding has been prepared for this notice.

(Secs. 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 17151, 1715o; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: January 15, 1998.

Sarah Rosen,

Associate General Deputy, Assistant Secretary for Housing.

[FR Doc. 98–1434 Filed 1–21–98; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent to Prepare Comprehensive Conservation Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent to Prepare Comprehensive Conservation Plan.

SUMMARY: This notice advises that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a Comprehensive Conservation Plan (CCP) and associated environmental documents for the Lacreek National Wildlife Refuge in Bennett County in southwestern South Dakota.

The Notice of Intent is in compliance with the Service's CCP policy to advise other agencies and the public of its intentions. The Service plans to obtain suggestions and information on the scope of issues to be considered in the planning process.

DATES: Written comments should be received by February 23, 1998.

ADDRESSES: Comments and requests for more information should be referred to Jon Kauffeld, Planning Team Leader, U.S. Fish and Wildlife Service, 203 W. 2nd, Federal Building, Grand Island, NE 68801.

SUPPLEMENTARY INFORMATION: The Service has initiated Comprehensive Conservation Planning for the Lacreek National Wildlife Refuge. Each National Wildlife Refuge has specific purposes for which it was established and for which legislation was enacted. Those purposes are used to develop and prioritize management goals and objectives within the National Wildlife Refuge System mission, and to guide which public uses occur on the Refuge. The planning process is a way for the Service and the public to evaluate management goals and objectives for the best possible conservation efforts of this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with each national wildlife refuge's establishing purposes and the mission of the National Wildlife Refuge System.

The Lacreek National Wildlife Refuge (16,410 acres) was established as "* * * a refuge and breeding ground for migratory birds and other wildlife * * *" by Executive Order No. 7160, on August 26, 1935. The Refuge is located in the Lake Creek Valley, southern Bennett County, on the northern edge of the Nebraska sandhills. The Refuge provides breeding and migration habitat for Central Flyway waterfowl, other migratory birds, and is home to a significant portion of the high plains trumpeter swan populations.

The Refuge administers the Little White River Recreation Area which was donated to and accepted by the Service on May 20, 1980, under authority of the Refuge Recreation Act (16 U.S.C. 460K–K4) for public recreation. Public use opportunities include wildlife observation and photography, environmental education, and hunting and fishing on the refuge, and on the Little White River Recreation Area boating, waterskiing, swimming, and camping are also permitted.

The Service will conduct a comprehensive conservation planning process that will provide opportunity for Tribal, State and local governments, agencies, organizations, and the public to participate in scoping issues and comment. The Service is requesting input for issues, concerns, ideas, and suggestions for future management of Lacreek National Wildlife Refuge. Anyone interested in providing input is invited to respond to the following three questions.

(1) What makes the Lacreek Refuge (or any specific unit) special or unique for you?

(2) What problems or issues do you want to see addressed in the Comprehensive Conservation Plan?

(3) What improvements would you recommend for the Lacreek Refuge (or any specific unit)?

The Service has provided the above questions for your optional use. There is no requirement to provide information to the Service. The Planning Team developed the above questions to facilitate gathering of information about individual issues and ideas concerning the Lacreek National Wildlife Refuge. Comments received by the Planning Team will be used as part of the planning process, individual comments will not be referenced in our reports or directly responded to.

There was an advertised open house on November 13, 1997, which provided the opportunity to scope issues and concerns. Comments may also be provided anytime during the planning process by writing to the above address. All information provided voluntarily by mail, phone, or at public meetings becomes part of the official public record (e.g., names, addresses, letters of comment, input recorded during meetings). If requested under the Freedom of Information Act by a private citizen or organization, the Service may provide copies of such information.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, Executive Order 12996 (Management and Public Use of the National Wildlife Refuge System), the National Wildlife Refuge System Improvement Act of 1997, and Service policies and procedures for compliance with those regulations.

We estimate that the draft environmental documents will be available for review in December 1998.

Dated: January 14, 1998.

Terry T. Terrell,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 98–1459 Filed 1–21–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Agency Information Collection Activities; Comment

AGENCY: Bureau of Indian Affairs—Office of Indian Education Programs.

ACTION: Notice.

SUMMARY: This notice announces the Information Collection Request for the Tribally Controlled Community College Grant Application Form, OMB #1076–018, and the Tribally Controlled Community College Annual Report Form, OMB #1076–0105, require reinstatement. The proposed information collection requirement, with no appreciable changes, described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 350(c)(2)(A). The Bureau is soliciting public comments on the subject proposal.

DATES: Written comments must be submitted on or before March 23, 1998.

ADDRESSES: Comments are to be mailed to Director, Office of Indian Education Programs, Department of the Interior, Bureau of Indian Affairs, 1849 C Street, NW, Mail Stop 3512–MIB, Washington D.C. 20240, or hand delivered to Room 3512 at the above address. All written comments will be available for public inspection in Room 3543 of the Main Interior Building, 1849 C Street, NW, Washington D.C., from 9:00 a.m. until 3:00 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Garry R. Martin, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW, Mail Stop 3512, Washington D.C. 20240. Telephone 202–208–3478.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is necessary to assess the need for financial assistance and annual performance in accordance with 25 CFR, part 41—Grants To Tribally Controlled Community Colleges And Navajo Community College.

II. Method of Collection

The Tribally Controlled Community Colleges and Navajo Community College regulations provided in 25 CFR part 41.9, subpart A and 25 CFR part 41.25, subpart B contain the program requirements which govern the program. Information collected from the institutions will be used for the continued operation and improvement of tribally controlled community colleges to ensure continued and expanded opportunities for Indian students.

III. Data

(1) *Titles of the Collection of Information* are (a) Tribally Controlled Community College Grant Application, OMB No. 1076–018. Expiration Date: 6–30–93; Type of Review: Reinstatement of an approved information collection form; and (b) Tribally Controlled Community College Annual Report, OMB No. 1076–0105. Expiration Date: 8–31–93; Type of Review: Reinstatement of an approved information collection form.

(2) *Summary of the Collection of Information:* The collection of information provides pertinent data concerning institutional need and annual performance of the Tribally Controlled Community Colleges.

(3) *Affected Entities:* Tribally Controlled Community Colleges

(4) *Description of the need for the information and proposed use of the information:* Submission of an annual grant application (OMB No. 1076–018), is required by statute. Submission of the annual report (OMB No. 1076–0105) is necessary to assess an annual performance for the expenditure of funds received under the authorizing Act. The information is needed to ensure continued support of the establishment, operation and improvement of tribally controlled community colleges. The information collected with the annual report will be used by the Bureau of Indian Affairs or tribal programs for fiscal accountability. The analysis of data will be utilized for administrative and program planning.

(5) *Description of likely respondents, including the estimated number of likely respondents, and proposed frequency of responses to the collection of information:* There are 25 tribal college institutions that respond annually. The number of likely respondents, currently estimated at four additional institutions, will depend on an institution's ability to complete the criteria for becoming an approved tribal college.

(6) *Estimate of total annual reporting and record keeping burden that will result from the collection of information:* 150 hours per annum. 75 hours is the estimated public reporting burden for the 25 tribal institutions to complete the tribally controlled community college grant application (OMB No. 1076–018). This form is estimated to average three hours per respondent that includes time for reviewing the instructions, gathering and maintaining data and completing the form. 75 hours is the estimated public reporting burden for the 25 tribal institutions to complete the tribally controlled community college annual report (OMB No. 1076–0105). This form is estimated to average three hours per respondent that includes time for reviewing the instructions, gathering and maintaining data and completing the form. Estimated Total Annual Burden Hours: 150 hours. Estimated

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Annual Costs: $2,700.00 (150 hours @$18.00/hour).

IV. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including the hours and cost) of the proposed collection of information, including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will become a matter of public record.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid Office of Management and Budget control number.

Dated: December 9, 1997.

Kevin Gover,

Assistant Secretary—Indian Affairs.

BILLING CODE 4310-02-P

BIA Form 62107

OMB No. 1076-018
Expires 8-31-93

TRIBALLY CONTROLLED COMMUNITY COLLEGE GRANT APPLICATION
25 CFR §41, Public Law 85-471 (as amended)

Information and General Instructions: This information is collected to meet the grant application requirements. The application is due on or before **July 1st** of each year. A response to this request is required by Public Law 95-471, as amended. The public reporting burden for this form is estimated to average three hours per response, including the time for reviewing the instructions, gathering and maintaining data, and completing and receiving the form. Send comments regarding the burden estimate, or any other aspect of this form to the Bureau ICCO, 1849 C Street, NW, MS-337-SIB, Washington, D.C. 20245, and the Office of Management and Budget, Paperwork Reduction Project (1076-018), Washington, D.C.

Name of College or University _____ IRS No. _____

Mailing Address _____

Accreditation By _____ Accreditation Type _____ Approving Organization _____

BOARD OF DIRECTORS

We, the Board of Directors, declare the Institution does not deny admission to any Indian student based upon the criteria and definition set forth in 25 CFR §41.11; or do we waive the requirements of 25 CFR Part 41.

CHAIRPERSON _____ MEMBER _____

VICE CHAIR _____ _____

_____ _____

_____ _____

_____ _____

Number of College governing board: Indian _____ Non-Indian _____

This Institution is sponsored by the _____ Tribe of _____.

Indian Student Count (ISC) for the past academic term:
Summer _____ Fall _____ Winter _____ Spring _____
ISC is determined by the sum of all full-time and part-time credit hours of all Indian students enrolled divided by 12 for any given academic term.

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BIA Form 62107

OMB No. 1076-018
Expires 8-31-93

ENROLLMENT INFORMATION: Degrees Granted

Master Arts/Master Science _____ Average Class Size _____

Bachelor Arts/Science _____ No. Of Instructors _____

Associate Arts/Science _____ Full Time _____

Two Year Certificate _____ Part Time _____

I hereby certify the information contained within this application is complete and accurate.

_____ _____
Chairman of the Board Date

_____ _____
Institution's President Date

I hereby certify that _____ has met all of the
Name of Institution
eligibility requirements for continued funding provided by Public Law 95-471, as amended.

_____ _____
Director, Office of Indian Education Programs Date

_____ _____
Chief, Division of Contracts & Grants Administration Date

REQUIRED ATTACHMENTS:

1. A proposed budget showing total expected operating expenses in the following education categories: Personnel, Instruction, Administration, Other and Total. The total expected revenues from all sources for the academic.
2. A copy of the institution's policy statement, Charter, By-Laws, Catalog which includes a copy of the current institution's curriculum, or other document wherein is found the goals, philosophy or plan of operation to meet the needs of Indian students.
3. A description of the accounting procedures used to account for grants received under the Public Law 95-471, as amended.

BIA Form 6259

OMB No. 1076-0105
Expires 8-31-93

TRIBALLY CONTROLLED COMMUNITY COLLEGES ANNUAL REPORT FORM
FISCAL YEAR _____
25 CFR 41, PUBLIC LAW 95-471, AS AMENDED
DUE ON OR BEFORE DECEMBER 31ST

Information and General Instructions: This information is collected to meet annual reporting requirements. Response to this request is required by Public Law 95-471, as amended. The information collected is subject to the Privacy Act. A response to this request is voluntary and no action may be taken against the institution in refusing to supply the information. The public reporting burden for this form is estimated to average three hours per response, including the time for reviewing the instructions, gathering and maintaining data, and completing and reviewing the form. Send comments regarding the burden estimate or any other aspect of this form to the Bureau ICCO, 1849 C Street, NW, MS 337-MIB, Washington, D.C. 20245, and the Office of Management and Budget, Paperwork Reduction Project (1076-0105), Washington, D.C.

_____ _____
Name of Institution Date

_____
Mailing Address

SECTION 1.0 Funding Sources (dollars)

Title III	State
Title IV	Local
Public Law 93-638	Other
Tribal	TOTAL

1.1 Institutional Accreditation: (Circle One)
Accredited Date _____
Candidate Date _____
3- Rule Date _____
(If the Institution was accepted under the three institutional rule, identify the three institutions accepting transfer credit)
A. _____
B _____
C _____

1.2 Does the Institution have a governing board? _____ _____
Y N

1.3 Is the Institution sanctioned by the tribe(s)? _____ _____
Y N

1.4 Does the Institution have the 'ability to benefit' as part of their admission requirements?
_____ _____
Y N

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OMB No. 1076-0105
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1.5 Provide a summary of the past year accomplishments and any foreseeable changes in the institution's goals, philosophy, curriculum, or accreditation for the next year.

SECTION 2.0 Degrees Conferred

Master of Arts/Master of Science	Indian	Non-Indian
Bachelor Arts/Bachelor Science	Indian	Non-Indian
Associate Arts/Associate Science	Indian	Non-Indian
Certificate	Indian	Non-Indian
TOTAL	INDIAN	NON-INDIAN

SECTION 3.0 Student Head Count (Identify number of male and female students enrolled in past academic year)

	INDIAN MALE	INDIAN FEMALE	NON-INDIAN MALE	NON-INDIAN FEMALE
SUMMER				
FALL				
WINTER				
SPRING				
TOTALS				

SECTION 4.0 Faculty Information

4.1 Number of Full-Time Enrollment faculty credit hours generated this school year. _____

4.2 Number of Part-Time Enrollment faculty credit hours generated this school year. _____

4.3 Describe formula used to derive the faculty hours generated.

BIA Form 6259

OMB No. 1076-0105
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SECTION 5.0 Financial Data - INCOME -ANNUAL REVENUE REPORT

SOURCE OF REVENUE	AMOUNT USED FOR YOUR COLLEGE	AMOUNT USED FOR YOUR STUDENTS	AMOUNT USED FOR OUTSIDE PROJECTS	TOTAL
P.L. 95-471				
TECH ASSIST-TCCC GRANT				
STUDENT TUITION & FEES				
INTEREST(ENDOWMENTS & OTHER BANK BALANCES				
TITLE III(AID FOR INSTITUTIONAL DEVELOP)				
CARL PERKINS				
P.L. 93-638				
SCHOOL TO WORK				
WORK STUDY				
FEDERAL PELL				
STUDENT AID/LOANS				
TRIBAL SUPPORT				
LOCAL SUPPORT(NO FED, STATE OR TRIBAL)				
ENDOWMENT(PRINCIPAL, NOT INTEREST)				
GIFTS				
OTHER, SPECIFY & ATTACH				

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BIA Form 6259

EXPENDITURES SECTION

ACTIVITY	COST							SUBTOTAL
INSTRUCTION								
ATHLETICS								
STUDENT SERVICES								
PHYSICAL PLANT OPERATION								
EXTENSION/SATELLITE PROG								
OTHER (SPECIFY & ATTACH)								
ADM COSTS - DIRECT LABOR-SALARIES								SUBTOTAL
SUPPORT STAFF								
INDIRECT(BURDEN)COSTS								SUBTOTAL
SUPPLIES								
LEASE/RENTALS								
UTILITIES								
FACILITIES								
TRAVEL								SUBTOTAL
PER DIEM/SUBSISTENCE								
CONSULTANTS								SUBTOTAL

BIA Form 6259

OMB No. 1076-0105
Expires 8-31-93

SECTION 6.0 Student Costs of Attendance Per Academic Year

TUITION	$
ROOM & BOARD	$
TRANSPORTATION	$
TEXT BOOKS	$
SUPPLIES	$
PERSONAL EXPENSES	$
MISCELLANEOUS EXPENSES	$
TOTAL	$

SECTION 7.0 Certificate of Authority

"I certify that the information contained in this annual report is complete and accurate and that the report has been filed with the governing body of the Indian tribe(s) charting this tribally controlled community college".

College/University President — Date

Printed or Typed Name

Authorized College/University Board Member — Date

Printed or Typed Name

[FR Doc. 98-1455 Filed 1-21-98; 8:45 am]
BILLING CODE 4310-02-C

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proclaiming Certain Lands as Reservation for the Cow Creek Band of Umpqua Tribe of Indians in Oregon

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of reservation proclamation.

SUMMARY: The Assistant Secretary—Indian Affairs proclaimed approximately 4.07 acres as an addition to the reservation of the Cow Creek Band of Umpqua Tribe of Indians on December 19, 1997. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

FOR FURTHER INFORMATION CONTACT: Larry E. Scrivner, Bureau of Indian Affairs, Division of Real Estate Services, MS–4510/MIB/–Code 220, 1849 C Street, N.W., Washington, D.C. 20240, telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION: A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), for the tract of land described below. The land was proclaimed to be an addition to and part of the reservation of the Cow Creek Band of Umpqua Tribe of Indians for the exclusive use of Indians on that reservation who are entitled to reside at the Cow Creek Reservation by enrollment or tribal membership.

Reservation of the Cow Creek Band of Umpqua Tribe of Indians

Douglas County, Oregon

The following described real property is located in the Northwest quarter of Section 27, Township 30 South, Range 5 West, W.M., Douglas County, Oregon.

Beginning at a 5/8" iron rod located on the easterly right of way of County Road Number 1 (also known as Old Pacific Highway Number 99), said 5/8" iron rod bears North 30°34'51" West 335.30 feet from the Southwest corner of the Long Subdivision to the City of Canyonville (See Volume 6, Page 63, Douglas County Surveyor's Office); thence along said Easterly right of way of said County Road Number 1, North 30°34'51" West 750.62 feet to a 5/8" iron rod; thence leaving said Easterly right of way and running North 87°50'25" East 275.35 feet to a 3/4" iron pipe; thence North 87°58'12" East 150.92 feet to a 5/8" iron rod; thence South 3°47'25" East 246.10 feet to a 5/8" iron rod; thence South 8°49'22" East 421.37 feet to a 5/8" iron rod; thence due West 125.00 feet to the point of beginning. Containing 4.07 acres, more or less.

Title to the land described above is conveyed subject to any valid existing easements for public roads and highways, for public utilities and for railroads and pipelines and any other right-of-way or reservation of record.

Dated: December 19, 1997.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–1420 Filed 1–21–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[WO–830–1030–2–241A]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCIES: Bureau of Land Management, Interior, and United States Forest Service, Agriculture.

ACTION: Notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) and the U.S. Forest Service are soliciting comments concerning the proposed three-year joint collection of information that would conduct surveys of the public in each of their users groups.

DATES: Written comments must be submitted on or before March 23, 1998 to be assured of consideration.

ADDRESSES: Send comments to John Kerwyn Keith, Management Systems Group, Business and Fiscal Resources Directorate, Bureau of Land Management, 1849 C Street, NW, Room LS1000, Washington, DC 20240 (fax: 202–452–5171, email: j55keith@wo.blm.gov).

FOR FURTHER INFORMATION CONTACT: John Kerwyn Keith at 202–452–5159.

NATURE OF COMMENTS: We specifically request your comments on the proposed collection in the following areas:

(1) Whether the collection of information is necessary for the proper functioning of BLM and the Forest Service;

(2) The accuracy of our estimates of the burden of collecting the information, including the validity of the methodology and assumptions used;

(3) The quality, utility, and clarity of the information collected; and

(4) How to minimize the burden of collecting the information on those who are to respond, including using the appropriate automated, electronic, mechanical or other forms of information technology.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Methodology
IV. Requests for Comments

I. Background

The Government Performance and Results Act of 1993 (Pub. L. No. 103–62) sets out to "improve Federal program effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction" (Section 2, b, 3). In order to fulfill this responsibility, the BLM and the Forest Service must collect data from their respective user groups to (1) better understand the needs and desires of the public and (2) respond to those needs and desires accordingly.

This course of action is fortified by Executive Order No. 12862, signed by the President on September 11, 1993, aimed at "ensuring the Federal government provides the highest quality service possible to the American people." The Order discusses surveys as a means for determining the kinds and qualities of services desired by the Federal Government's customers and for determining satisfaction levels for existing services. These voluntary customer surveys will be used to ascertain customer satisfaction with the BLM and Forest Service in terms of services and products. Respondents will be individuals and organizations that are the recipients of the BLM and Forest Service's services and products. Previous customer surveys have provided useful information to the BLM and Forest Service for assessing how well we deliver our services and products and for making improvements. The results are used internally and summaries are provided to the Office of Management and Budget on an annual basis and are used to satisfy the requirements and spirit of Executive Order No. 12862.

Continuing to work collectively on issues that pertain to the outside public, the BLM and Forest Service anticipate performing all of their customer surveys under one three-year clearance. Where applicable, similar questions will be asked in the surveys of the two agencies, thus allowing better bench marking between the agencies.

II. Current Actions

The request to OMB will be for a three-year clearance to conduct customer surveys in the BLM and the

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Forest Service. During the past clearance cycle the BLM conducted 17 customer surveys and the Forest Service conducted 9 surveys by telephone and mail. (Examples of previously conducted customer surveys are available upon request.) Our planned activities in the next three fiscal years reflect our increased emphasis on and expansion of these activities.

III. Methodology

The BLM and Forest Service survey customers in the following general categories: (1) Use requiring authorization; (2) state and private forestry; (3) timber sales; (4) wild horse and burro; (5) research; (6) law enforcement; (7) fire and aviation; (8) wildlife and fisheries; (9) recreation; (10) information [general, land, title, and technology-based]; (11) pilot programs; (12) stakeholders and partners; and (13) state and local governments.

A stratified sampling technique is employed for categories 1 through 8; categories 9 and 10 use intercept surveys; and a general sampling technique is employed for categories 11 through 13. The randomized sample pulled from the databases will include an estimated 1200 persons unless the population is less than 1200, at which point the entire user population will be surveyed. An 80% response rate goal has been set; for this reason, whenever possible telephone surveys are chosen over mail surveys.

Parallel to this effort, comment cards will be solicited from all of the above groups on an intercept basis—accompanying transaction performed with the agencies.

The questionnaires are developed with the help of focus groups from around the country. We ask questions in the following general areas: (1) Program specific (i.e., processing permits, recordation of mining claims, facilities and access to public land for recreation); (2) service delivery; (3) management practices; (4) resource protection; (5) rules, regulations, and policies; (6) communication with the public; (7) overall satisfaction; and (8) general demographics.

IV. Requests for Comments

Prospective respondents and other interested parties should comment on the actions discussed in items II & III. The following guidelines are provided to assist you in responding.

General Issues

A. Is the proposed collection of information necessary, taking into account its accuracy, adequacy, and reliability, and the agency's ability to process the information it collects in a useful and timely fashion?

B. What enhancements can the BLM and Forest Service make to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. The average public reporting burden for a customer survey is estimated to be .25 hours per response (13,000 respondents per year ×15 minutes per response =3250 hours annually). For comment cards, the average public reporting burden is estimated to be 3 minutes per response (30,000 respondents per year × 3 minutes per response =1500 hours annually). Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for purposes of collecting, validating, verifying, processing, maintaining, disclosing, and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting or otherwise disclosing the information.

Please comment on (1) the accuracy of our estimate and (2) how the agencies could minimize the burden of the collection information, including the use of automated collection techniques.

B. The BLM and Forest Service estimate that respondents will incur no additional costs for reporting other than the time required to complete the collection. What is the estimated (1) total dollar amount annualized for capital and start-up costs and (2) recurring annual dollar amount of operation and maintenance and purchase of services costs associated with this data collection? The estimates should take into account the costs associated with generating, maintaining, and disclosing or providing information.

C. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, collection element (s), and the methods of collection.

As a Potential User

Are there any alternative sources of data and do you use them? If so, what are their deficiencies and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the survey. They also will become a matter of public record.

Dated: January 15, 1998.

Carole Smith,

Bureau of Land Management, Information Collection Officer.

Dated: January 8, 1998.

William Delaney,

U.S. Forest Service, Management Improvement.

[FR Doc. 98–1458 Filed 1–21–98; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–010–1990–09]

Notice of Intent; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a supplemental Environmental Impact Statement for the Barrick Goldstrike Mines Inc. Betze Project in the Elko and Eureka Counties, Nevada.

SUMMARY: On August 31, 1994 pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, the Bureau of Land Management, Elko Field Office published a Notice of Intent to prepare a supplemental environmental impact statement (EIS) with respect to Barrick Goldstrike Mines Inc.'s (Barrick) Betze Project. At that time, the Bureau had determined the need to prepare the Supplemental EIS to assess the environmental impacts of the pumping and water management operations associated with Barrick's mining operations. Since the Notice of Intent was published, Barrick has begun discharging water produced by groundwater pumping operations to the Humboldt River under a permit from the Nevada Division of Environmental Protection. In addition, Barrick and Elko Land and Livestock Company (ELLCO) submitted an application to amend an existing water pipeline right-of-way from 40 feet to 80 feet in width to accommodate installation of approximately 4,000 linear feet of buried 48-inch steel pipeline. The additional pipeline would be used to increase the operational efficiency of discharging water to either the Humboldt River or to irrigation and infiltration. The Bureau of Land Management is publishing this supplemental Notice of Intent to advise the public of the application to amend the right-of-way and to seek any additional comments or concerns to be addressed in preparation of the Supplemental EIS.

EFFECTIVE DATES: This notice re-initiates public scoping for the supplemental Betze EIS. A scoping meeting will be held on February 5, 1998, at the Bureau of Land Management, Elko Field Office, 3900 E. Idaho, Elko, Nevada. The public is invited to attend the meeting scheduled from 4:30 pm until 6:30 pm to review the project and identify issues and concerns which need to be addressed in the Supplemental EIS. Representatives from the Bureau of Land Management and Barrick will be available during the meeting to answer questions. Written comments on the scope of the EIS will also be accepted until February 16, 1998. A draft supplemental environmental impact statement (DSEIS) is expected to be completed by the summer of 1998 and made available for public review and comment. At that time a Notice of Availability of the DSEIS will be published in the **Federal Register**. The comment period on the DSEIS will be 60 days from the date the Notice of Availability is published.

FOR FURTHER INFORMATION CONTACT: Scoping comments may be sent to: District Manager, Bureau of Land Management, 3900 E. Idaho St., Elko, NV 89801. ATTN: Supplemental Betze EIS Coordinator. For additional information, write to the above address or call Nick Rieger at (702) 753–0200.

SUPPLEMENTARY INFORMATION: In response to a Plan of Operations submitted in April 1989, the Bureau of Land Management, Elko Field Office prepared an environmental impact statement (EIS) with respect to Barrick's Betze Project. The Final EIS and Record of Decision for the Betze Project were issued on June 10, 1991. The Final EIS included a description of the environmental impacts projected to result from groundwater pumping conducted by Barrick to lower the local groundwater elevations below the proposed Betze mining operations. Since the Betze EIS was issued, Barrick's implementation of the pumping operations and its monitoring of groundwater elevations have provided new information regarding the pumping requirements and potential environmental impacts of pumping operations. This new information indicates that the highly transmissive area from which the groundwater is to be pumped is more extensive than projected at the time the Betze EIS was prepared. As a result, Barrick has been pumping groundwater at higher rates than projected in the Betze EIS, and a greater volume of water has been produced. In addition to delivering water to a local rancher for irrigation uses as described in the Betze EIS, Barrick has implemented reinjection and infiltration programs to return more water to the groundwater system, and has obtained approval to discharge water to the Humboldt River from the state of Nevada. Barrick and ELLCO are now proposing to install approximately 4,000 linear feet of buried 48-inch steel pipeline next to an existing pipeline they are using to discharge water to improve operational flexibility of the existing Boulder Valley water management system. The second pipeline would allow Barrick to by-pass a water treatment plant when the water is discharged for irrigation and infiltration.

In the Notice of Intent published on August 31, 1994, the Bureau proposed preparation of a supplement to the Betze EIS that would describe the new information gathered since the Betze EIS was prepared and would describe any changes in the projected environmental impacts as a result of the new information. In addition, the Bureau stated that the supplemental EIS would assess the cumulative impacts of groundwater pumping to lower elevations and for longer periods of time than is associated with mining of other deposits situated on lands within the area in which groundwater levels are being lowered. By this notice, the Bureau is proposing to expand the original scope to evaluate the environmental impacts of installing the proposed pipeline and to determine whether there may be any adverse environmental impacts that were not specifically identified in the Betze EIS that may be mitigated under the terms of the Betze Record of Decision.

In response to the initial Notice of Intent and a Dear Interested Party letter dated September 2, 1994, the Bureau received eleven written and nine oral comments. Based on these comments and the BLM's internal review, five issues of concern were identified and are currently the focus of the supplemental EIS:

Potential impacts to surface and ground water resources, including the Humboldt River;

Potential impacts to livestock operations;

Potential impacts to threatened and endangered species;

Potential impacts to riparian and wetland vegetation; and

Potential impacts to wildlife and fisheries resources.

Through this supplemental Notice, the Bureau is soliciting any additional comments on the scope of the supplemental EIS to assist the Bureau in identifying and considering additional issues and concerns to be analyzed in the supplemental EIS. Comments submitted in response to this supplemental Notice of Intent should be directed to the attention of Nick Rieger, Project Manager at the Bureau of Land Management, Elko Field Office, 3900 East Idaho Street, Elko, Nevada 89801. Comments must be received by the close of business on February 16, 1998.

Dated: January 7, 1998.

Helen Hankins,

District Manager.

[FR Doc. 98–1517 Filed 1–21–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–930–1060–04]

Notice of Public Hearing and Intent to Remove Wild Horses

AGENCY: Bureau of Land Management, Interior.

SUMMARY: A public meeting is scheduled for February 25, 1998 at the White Mountain Library, Rock Springs, Wyoming. A formal hearing will be conducted to receive statements from the public concerning the use of helicopters and motor vehicles in wild horse management operations within Wyoming for calendar year 1998. Prior to the hearing, planned removal operations for the year will be discussed. Periodic removals are necessary in order to maintain the populations within the AML (Appropriate Management Levels) established through the planning process as a result of monitoring and analysis of that data in accordance with the National Environmental Policy Act and BLM Policies. This document serves as a Notice of Intent to remove excess wild horses from the following Herd Management Areas (HMA):

Great Divide Resource Area

Cyclone Rim HMA—remove 260 horses from an estimated 330. AML is 70 and this action would reduce the population to AML. Begin approximately March 1, end April 10. Decision Record EA# WY–037–EA4–121/122 dated July 11, 1994.

Stewart Creek HMA—remove 100 horses from an estimated 250. AML is 150 and this action would reduce the population to AML. Begin approximately August 1. Decision

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Record EA WY–037-EA4–121/122 dated July 11, 1994.

I–80 North (Outside HMA)—remove 100 of 100 horses. This action would reduce the herd to 0. Begin March 1, finish April 10. Decision Record EA# WY–037–EA1–039 dated February 21, 1992.

I–80 South (Outside HMA)—remove 275 of 275 horses. This action would reduce the herd to 0. Begin approximately August 15, finish September 15. Decision Record EA# WY–037–EA1–039 dated February 21, 1992.

Lander Resource Area

Dishpan Butte HMA—remove 40 horses from an estimated 90. AML is 75 with a range of 50–100 and this action would reduce the population to the low end of the range. Fall gather date to be selected. Decision Record EA WY–036–EA3–013 dated February 25, 1993.

Conant Creek HMA—remove 40 horses from an estimated 100. AML is 80 with a range of 60–100 and this action would reduce the population to the low end of the range. Fall Gather date to be selected. Decision Record EA# WY–036–EA3–013 dated February 25, 1993.

Crooks Mountain HMA—remove 300 of 400 horses reducing the population to approximately 100. AML range is 75 with a range of 65–100 and herd will be reduced to within this range. Fertility control research may be initiated using immunocontraception on selected mares. Should this be instituted, an environmental assessment (EA) covering this action will be prepared. Begin approximately July 6, finish August 30. Decision Record EA#'s WY–037–EA4–121 and 122 dated July 11, 1994.

Rock Springs District

Divide Basin HMA—remove 200 of an estimated 640. AML is 500 with a range of 415–600. This action would reduce the population to the lower end of the range. Begin approximately July 6, finish August 15. Decision Record EA# WY–048–EA3–87 dated May 19, 1993.

Salt Wells Creek HMA—remove 415 from an estimated population of 780. AML is 365 and this action would reduce the herd to AML. Fall gather date to be selected. Decision Record EA# WY–048–EA3–87 dated May 19,1993.

Little Colorado HMA—remove 79 of an estimated population of 156. AML is 100 and this action would reduce the herd to 77 horses or 23 below AML. Fall gather date to be selected. Decision Record EA# WY–048–EA3–87 dated May 19, 1993.

Areas Outside HMAs—remove 190 of 190 horses. This action would reduce the horses outside HMA's to 0. Begin approximately July 6, finish August 15. Decision Record EA# WY–048–EA3–87 dated May 19, 1993.

Weather conditions and other logistical considerations may dictate changes in removal/completion dates. The dates indicated are approximate, and removal may take place in any of the HMAs listed above during anytime of the year with the exception that gathers will not take place between April 16 and July 7, since this is the estimated peak of foaling in Wyoming.

Numbers presented are approximate and will be finalized by aircraft census to be conducted during January/February 1998. All actions are in conformance with Bureau of Land Management Policy, documents listed above, and current monitoring data. Horse populations will not be reduced below the lower limit of the AML range. These actions represent no new decisions.

If you have comments on the plans, please contact the Wyoming State Director at P.O. Box 1828, Cheyenne, WY 82003–1828.

DATES: February 25, 1998.

ADDRESSES: White Mountain Library, 2935 Sweetwater Dr., Rock Springs, WY, 82901–4331.

FOR FURTHER INFORMATION CONTACT: Al Pierson, State Director, 5353 Yellowstone, P.O. Box 1828, Cheyenne, WY 82003–1828.

SUPPLEMENTARY INFORMATION:

Meeting Agenda:

—Introduction and Opening Remarks
—Review of the Wild Horse Management Plan
—Video presentation of roundup activity
—Public comment period on removal plans
—Formal Hearing on the Use of helicopters in the plan

The meeting will begin at 7 p.m. and is open to the public. Interested persons may make oral statements on the subject of helicopter use during the formal hearing. All statements will be recorded.

Dated: January 15, 1998.

Alan R. Pierson,

State Director.

[FR Doc. 98–1460 Filed 1–21–98; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–00] ES–48890, Group 26, Illinois

Notice of Filing of Plat of Survey; Illinois

The plat, in four sheets, of the dependent resurvey of a portion of U.S. Survey No. 580, a portion of the west boundary, a portion of the subdivisional lines, and the survey of the Locks and Dam No. 27 Acquisition Boundary, Township 4 North, Range 9 West, and the survey of the Locks and Dam No. 27 Acquisition Boundary, Township 4 North, Range 10 West, both of the Third Principal Meridian, Illinois, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on February 23, 1998.

The survey was requested by the U.S. Army Corps of Engineers.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., February 23, 1998.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: January 12, 1998.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 98–1415 Filed 1–21–98; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 148–98]

Privacy Act of 1974; Modified System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice, Justice Management Division, proposes to modify a system of records entitled "Department of Justice Payroll System, JMD–003."

The Department is modifying the system of records to show that, pursuant to an interagency agreement, the Department provides the U.S. Department of Agriculture, National Finance Center (NFC), relevant and necessary data to perform pay-related functions on the Department's behalf. In addition, the system description, in particular the routine use disclosure section, has been extensively edited. Four new routine uses have been italicized for public convenience.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on the new routine uses of a system of records. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires that it be given a 40-day period in which to review the modifications to the system.

Therefore, please submit any comments by February 23, 1998. The public, OMB, and the Congress are invited to send written comments on new or revised routine uses to Patricia E. Neely, Information Management and Security Staff, Justice Management Division, Department of Justice, Washington, D.C. 20530 (Room 850, WCTR Building).

A description of the system of records is provided below. In accordance with 5 U.S.C. 552a(r), DOJ has provided a report to OMB and the Congress on the modification of this system of records.

Dated: January 4, 1998.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/JMD–003

SYSTEM NAME:

Department of Justice Payroll System, Justice/JMD–003.

SYSTEM LOCATION:

Payroll records in electronic or paper format may be found in the following locations:

a. *Post Conversion Records.*[1] As of May 1993, payroll information in electronic format is located on a computer maintained by the NFC in New Orleans, Louisiana; and at backup facilities in Philadelphia. Relevant data may also be stored on Justice Data Center Computers at the Department of Justice for use in distributing accounting information to the individual Bureaus. Paper and electronic payroll information may be kept at various time and attendance recording and processing stations around the world. Paper records may be located in the Department's Personnel Staff, in servicing personnel offices throughout the Department, and in the offices of employee supervisors and managers.

b. *Pre-conversion Records.* Historical data is stored on magnetic tape at the Justice Data Center in Rockville, Maryland, and on microfiche by the Department's Finance Staff. Historical data in paper format may also be located in the Department's Finance and Personnel Staffs, in servicing personnel offices, and in the offices of employee supervisors and managers.

[1] The Department has contracted with the Department of Agriculture's National Finance Center (NFC) to maintain payroll information and conduct payroll-related activities for its employees. Conversion began in July of 1991 and was incrementally completed as of May of 1993.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former DOJ employees (excluding the FBI).

CATEGORIES OF RECORDS IN THE SYSTEM:

Any and all records essential to the conduct of payroll-related activities. Included may be:

—Personal Identifying/personnel data
—Time and attendance records
—Leave records
—Allotment or deduction information such as bonds, garnishments, health benefits, life insurance, Thrift Savings Plan and other savings, retirement, and union dues.
—Travel and Relocation information
—Court orders to initiate garnishments
—Check mailing information
—Tax, withholding, and exemption information
—Accounting and organization funding information
—Salary, severance pay, award, and bonus information; active retirement records
—Former employee pay records
—Employee death records
—Returned employee check records
—Indebtedness records, e.g., overpayment of pay or travel

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Budget and Accounting Act of 1950, as amended, 31 U.S.C. 66, 66a, and 20(a).

PURPOSE(S):

This system of records is maintained to enable the Department to administer the payroll and payroll-related functions, and any other related financial matters, in accordance with applicable laws and regulations and the requirements of the General Accounting Office (GAO) and the Office of Personnel Management (OPM). It enables the Department to prepare and document payment to all Department employees entitled to be paid and to effect all authorized deductions from gross pay; to coordinate pay, leave and allowance operations with personnel functions and other related activities; meet internal and external reporting requirements; support investigations of fraud, the collection of debts, and litigation activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Pursuant to Subsection (b)(3) of the Privacy Act, the Department of Justice (DOJ) may disclose relevant and necessary data as follows:

In accordance with an interagency agreement (as provided for in Office of Management and Budget (OMB) implementing regulations (40 FR 28948)), the DOJ may disclose to the U.S. Department of Agriculture (USDA), National Finance Center (NFC), in order to effect all financial transactions on behalf or the DOJ related to employee pay.

Specifically, the NFC may effect employee pay or deposit funds on behalf of DOJ employees, and/or it may withhold, collect or offset funds from employee salaries as required by law or as necessary to correct overpayment or amounts due. For example, the NFC will routinely make the necessary disclosures to Treasury for the issuance of checks; to Federal, State, and local authorities and the Social Security Administration for tax withholdings; and, according to employee directions, to the appropriate financial institutions, charitable organizations, unions, health carriers, or other appropriate entities to effect such pay distributions as savings bonds, charitable contributions, allotments, alimony, child support, union dues, and health and life insurance. In addition, the NFC will use the data to perform related administrative activities such as to certify payroll vouchers chargeable to DOJ funds; and either to perform or participate in routine audit/oversight operations of USDA/DOJ management and/or of GAO, OMB, and OPM; and to meet related reporting requirements.

In addition, based on such data as the DOJ has input to the NFC data base for these purposes, the DOJ may subsequently make a paper request, or an electronic request to the NFC data base, for information which will allow the DOJ to disclose relevant information as follows; or, where appropriate or necessary, DOJ may authorize the NFC to make the disclosure:

To Federal, State, or local housing authorities to enable these authorities to determine eligibility for low cost housing.

To heirs, executors and legal representatives of beneficiaries for estate settlement purposes.

To State and local courts of competent jurisdiction for the enforcement of child support, alimony, or both, pursuant to 41 U.S.C. 659.

To individuals, organizations, or agencies to enable such person,

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organization, or agency to determine the identity or location of a current or former Federal employee to collect debts owed, where collection of such debts are authorized (either by statute, implementing regulation, or order issued pursuant thereto) and the individual, organization, or agency, has provided sufficient evidence as will reasonably validate such claims, e.g., where a spouse or creditor seeking to obtain a garnishment of wages for such purposes as alimony and/or child support has provided a court order to substantiate the indebtedness. Information relevant to the request for such garnishment may include informing the individual, organization, or agency of the unavailability of funds where, for example, a currently active garnishment precludes the implementation of a further garnishment.

To the Office of Child Support Enforcement (OCSE), Administration for Children and Families, Department of Health and Human Services, any information specifically required by statute or implementing regulation or otherwise determined to be necessary and proper for OCSE's use (as outlined more specifically in relevant OCSE published systems of records) in locating individuals owing child support obligations, and in establishing and collecting child support obligations from such individuals, including enforcement action. Information disclosed may include: Name, address, date of birth, date of hire, duty station, and social security number of the employee; the wages paid to the employee during the previous quarter; and the appropriate address and Federal Employer Identification Number of the Department of Justice.

To the appropriate Federal, State, or local agencies, e.g., to State unemployment agencies and/or the Department of Labor, to assist these agencies in performing their lawful responsibilities in connection with administering unemployment, workers' compensation, or other benefit programs; and similarly, to such agencies to obtain information that may assist the Department of Justice in performing its lawful responsibilities as they relate to such benefit programs.

To labor organizations recognized under 5 U.S.C., Chapter 71, the home addresses or designated mailing addresses of bargaining unit members.

In the event that a record(s), either on its face or in conjunction with other information, indicates a violation or a potential violation of law, whether civil, criminal or regulatory in nature, to the agency charged with enforcing or implementing such law.

To the Internal Revenue Service (IRS) to obtain taxpayer mailing addresses for the purpose of locating such taxpayer to collect or compromise a Federal claim against the taxpayer.

To a person or organization with whom the head of the agency has contracted for collection services to recover indebtedness owed to the United States. Addresses of taxpayers obtained from the IRS will also be disclosed, but only where necessary to locate such taxpayer to collect or comprise a Federal claim.

To a Federal, State, local, or foreign agency or to an individual or organization if there is reason to believe that such agency, individual, or organization possesses information relating to the debt, the identity or location of the debtor, the debtor's ability to pay, or relating to any other matter which is relevant and necessary to the settlement, effective litigation and enforced collection of the debt, or relating to the civil action trial or hearing, and the disclosure is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an agency.

To employees to effect salary or administrative offsets to satisfy a debt owed the United States by that person; or when other collection efforts have failed, to the IRS to effect an offset against an income tax refund otherwise due.

To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

To the National Archives and Records Administration and the General Services Administration for use in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

In a proceeding before a court or adjudicative body before which the Department is authorized to appear when any of the following is a party to litigation or has an interest in the litigation and such records are determined by the Department to be arguably relevant to the litigation: The Department, or any of the Department's components or their subdivisions; any Department employee in his/her official capacity, or in his/her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the Department determines that the litigation is likely to affect it or any of the Department's components or their subdivisions.

Consistent with the foregoing routine use provisions, the Department may disclose records from this system of records for use in a computer matching program (as defined in the Privacy Act, 5 U.S.C. section 552a(8)). In accordance with the requirements of the Privacy Act, the public will be given advance notice in the **Federal Register** of the Department's participation in any such computer matching program(s).

In addition to the above routine use disclosures under subsection (b)(3) of the Privacy Act, the DOJ may retrieve from the NFC data base information which will enable the DOJ to make relevant and necessary disclosures pursuant to any of the other relevant and appropriate Privacy Act disclosure provisions.

Finally, 31 U.S.C. 3711 requires that the notice required by section 552a(e)(4) of title 5 must indicate that information in the system may be disclosed to a consumer reporting agency pursuant to subsection (b)(12). Such notice is provided as follows:

Notice of Disclosure to Consumer Reporting Agencies Under Subsection (b)(12) of the Privacy Act: Records relating to the identity of debtors and the history of claims may be disseminated to consumer reporting agencies to encourage payment of the past-due debt. Such disclosures will be made only when a claim is overdue and only after due process steps have been taken to notify the debtor and give him or her a chance to meet the terms of the debt.

(Any disclosures that may be made for debt collection purposes, whether made pursuant to subsection (b)(3) or (b)(12), would be made only when all the relevant due process or procedural steps established by the relevant statutes and implementing regulations have been taken.)

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on computer disks, magnetic tapes, microfiche and on paper.

RETRIEVABILITY:

Records are retrieved by name and social security number.

SAFEGUARDS:

Access to premises where records are stored is restricted via building passes and security guards. Access to all records is supervised and restricted to those employees with a need to know. In addition, access to computerized records is protected by encryption, password and appropriate user ID's.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with General Records Schedule No. 2 as promulgated by the General Services Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel Staff, Justice Management Division, Department of Justice, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Suite 5206, Washington, DC 20530.

NOTIFICATION PROCEDURE:

The individual may address inquiries to the servicing personnel office of the Department component(s) by which he/she is or was employed. Addresses of Department components may be found in Appendix I., to part 16 of the Code of Federal Regulations. The individual may also address his/her request to the system manager named above.

RECORD ACCESS PROCEDURE:

Same as above.

CONTESTING RECORD PROCEDURE:

Same as above.

RECORD SOURCE CATEGORIES:

Individuals covered by the system; personnel offices; time and attendance clerks; supervisors, administrative officers, other officials; financial institutions or employee organizations; previous Federal employers; consumer reporting agencies; debt collection agencies; and the courts.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 98–1524 Filed 1–21–98; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 145–97]

Privacy Act of 1974; Altered System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice proposes to modify a system of records maintained by the Immigration and Naturalization Service (INS). The system is entitled the "Employee Assistance Program (EAP) Treatment Referral Records, JUSTICE/INS–019," and was last published on October 10, 1995 (60 FR 52701).

The system notice, printed below, has been modified to reflect a reorganization of the EAP program. Clinical records will no longer be maintained on behalf of INS by Health and Human Services and Office of Personnel Management (pursuant to an interagency agreement), nor by a variety of private contractors. Nor will administrative records be maintained by EAP Coordinators in INS regional offices. The program has been consolidated to include only the EAP Manager at INS headquarters, a prime contractor, and subcontractors or "therapists" as necessary. The prime contractor and therapists are commonly referred to as "contract providers." The EAP manager and the contract providers may maintain both administrative and clinical records as appropriate.

The following captions of the notice have been redrafted to reflect the organizational changes: "System Locations," "Categories of Individuals Covered by the System," and "Categories of Records in the System." In addition, other sections of the notice have been appropriately edited, including the "Routine Use" disclosure section.

The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system modification. In addition, 5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment on new routine uses of a system of records. However, no "new" routine uses have been added; only minor edits have been made to the Routine use section of the notice. Nevertheless, the public, as well as OMB and the Congress, are invited to submit any comments to Patricia E. Neely, Program Analyst, Information Management and Security Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 850, WCTR Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: December 16, 1997.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/INS–019

SYSTEM NAME:

Employee Assistance Program (EAP) Treatment Referral Records.

SYSTEM LOCATIONS:

Records are maintained by the EAP Manager/therapist at the Immigration and Naturalization Service (INS) headquarters office and at facilities under contract with INS to provide treatment and other services related to the administrative and financial management of the EAP program, i.e., contract providers. INS headquarters address is 425 I Street, NW, Washington, DC 20536. Addresses of the contract providers may be obtained by contacting the EAP Manager at INS headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former INS employees who have sought counseling and/or have been referred to the INS EAP Manager, EAP Specialist, or directly to the INS EAP contract providers for counseling and/or treatment. To the limited degree that counseling and treatment may be provided to family members of these employees, these individuals, too, are covered by the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include any records which may assist in diagnosing, evaluating, counseling and/or treating the employee. Included are the therapist's intake/termination outcome forms, therapist case notes; pertinent psychosocial, medical and employment histories; medical tests or screenings, including drug and alcohol tests and information on confirmed unjustified positive drug tests generated by the staff of the Drug Free Workplace Program and the Medical Review Officer and provided by the EAP Manager or the employee's supervisor; treatment and rehabilitation plans as well as behavioral improvement plans; and records of treatment referrals. Referrals include those to community treatment resources when employees request legal, financial or other assistance not related to psychological or medical health. Where such referrals have been made, records may include relevant information related to such counseling, diagnosis, prognosis, treatment, and evaluation, together with follow-up data. Also included are written consent forms used to manage referrals and the flow of information. Finally, records include account information such as contract provider billings and INS payments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 290dd, et seq., and 290ee, et seq.; 42 CFR part 2; Executive Order 12564; 5 U.S.C. 3301 and 7901; 44

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U.S.C. 3101 and Pub. L. 100–71, sec. 503 (July 11, 1987).

PURPOSE:

The EAP is a voluntary program designed to assist the recovery of employees who are experiencing one or more of a variety of personal or behavioral problems (e.g., marital, financial, substance abuse). Records are maintained to document referral and participation in the EAP program; the nature and effects of the employee's personal or behavioral problem(s); efforts to counsel, treat, and rehabilitate the employee; and progress made in attaining his/her full recovery. Records may be used also to track compliance with agreements made to mitigate discipline based upon treatment (abeyance agreements).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures permitted by the Privacy Act itself,[1] 5 U.S.C. 552a(b), permissive disclosures without individual consent, are as follows:

1. Pursuant to subsection (m) of the Privacy Act, the contract providers maintain EAP records on behalf of INS. Therefore, in addition to those records which are given directly to the contract provider by the record subject, other records collected directly by INS may be disclosed by INS to the contract provider to the extent that it is appropriate, relevant, and necessary to enable the contract provider to perform his or her counseling, treatment, rehabilitation, and evaluation responsibilities. Similarly, records collected directly by the contract provider may be disclosed by the contract provider to the EAP Manager to the extent that it is appropriate, relevant and necessary to enable the EAP Manager to perform his or her counseling, program management and policy, and evaluation responsibilities.

2. Relevant information may also be disclosed from this system of records as follows:

a. To appropriate State or local authorities to report, under State law, incidents of suspected child abuse or neglect.

b. To any person or entity to the extent necessary to prevent an imminent and potential crime which directly threatens loss of life or serious bodily injury.

[1] To the extent that release of alcohol and drug abuse records is more restricted than other records subject to the Privacy Act, INS will follow such restrictions. See 42 U.S.C. 290dd and 290ee.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in locked file cabinets and a computerized environment.

RETRIEVABILITY:

Records are retrieved by a case number which is cross referenced to a name by the computer.

SAFEGUARDS:

In accordance with the requirements of 42 CFR 2.16, records are stored in a secure environment. *Paper records are stored in locked files and computerized records are password protected.* In addition, all paper records, e.g., case files, billings and payment vouchers, are identified by case number only and cannot be identified by a name until they are cross-referenced by the computer system to a name.

Records may be accessed within the EAP Program by designated EAP Program individuals based on their need-to-know to perform their duties. No records will be disclosed except with the written consent of the individual, or as indicated under the routine use disclosure outlined in this notice.

RETENTION AND DISPOSAL:

Records are retained for three years after the individual ceases contact with the counselor unless a longer retention period is necessary because of pending administrative or judicial proceedings. In such cases, the records are retained for six months after the case is closed. Records are destroyed by shredding or burning (General Records Schedules 26 and 36).

SYSTEM MANAGER(S) AND ADDRESSES:

EAP Manager, Immigration and Naturalization Service, 425 I Street, NW, Washington, DC 20536.

NOTIFICATION PROCEDURE:

Same as record access procedures.

RECORDS ACCESS PROCEDURES:

Address all requests for access to records to the system manager identified above. Address all requests for records maintained by the contract provider to that provider. Addresses of these offices may be obtained by contacting the EAP *Manager*. Clearly mark the envelope and letter "Privacy Act Request." Provide the full name and notarized signature of the individual who is the subject of the record, the dates during which the individual was in counseling, any other information which may assist in identifying and locating the record, and a return address.

CONTESTING RECORDS PROCEDURES:

Direct all requests to contest or amend information in accordance with procedures outlined under Record Access Procedures. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope "Privacy Act Amendment Request."

RECORD SOURCE CATEGORIES:

Records are generated by the employee who is the subject of the record; *EAP Manager, EAP Specialists, and EAP contract facilities/providers;* the personnel office; and the employee's supervisor. In the case of drug abuse counseling, records may also be generated by the staff of the Drug Free Workplace Program and the Medical Review Officer.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 98–1525 Filed 1–21–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP(OJJDP)–1155]

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP), Justice.

ACTION: Notice of meeting.

SUPPLEMENTARY INFORMATION: A meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention will take place in the District of Columbia, beginning at 2:00 p.m. on Tuesday, February 3, 1998 and ending at 4:00 p.m. on February 3, 1998. This advisory committee, chartered as the Coordinating Council on Juvenile Justice and Delinquency Prevention, will meet at the White House Conference Center, located at 726 Jackson Place, Truman Room, Washington, D.C. 20503. The Coordinating Council, established pursuant to Section 3(2)A of the Federal Advisory Committee Act (5 U.S.C., App. 2), will meet to carry out its advisory functions under Section 206 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. This meeting will be open to the public. For security reasons, members of the public who are attending the meeting must contact the Office of Juvenile Justice and Delinquency Prevention (OJJDP) by close of business January 29, 1998. Please note: Photo identification will be required to be admitted to the Conference Center. The point of contact at OJJDP is Lutricia Key who can be reached at (202) 307–5911.

Dated: January 15, 1998.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 98–1486 Filed 1–21–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of December, 1997 and January, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–33,954 & A; Color-Clings, Inc., Plymouth, MN and Bloomington, MN

TA–W–34,039; F.R. Gross Co., Inc., Warren, PA

TA–W–33,656; Garden Way, Inc., Port Washington, WI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–34,055; TRW/Auto Electronics Group of North America, Switch Product Line and Profit Center, Auburn, NY

The predominant cause of separations at the subject firm is the transfer of production of switch components abroad for assembly there. The subject firm is importing switches at a later stage of production, not the switch components produced at the subject plant.

TA–W–34,103; Jostens, Inc., Recognition Div., Princeton, IL

TA–W–33,900; Whirlpool Corp., Evansville, IN

TA–W–33,896 & A; Applied Materials, Inc., Austin, TX and Santa Clara, CA

TA–W–33,996; Brownsville Products, Brownsville, TX

TA–W–34,053; Frontier Corp., Rochester, NY

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–33,989; Allegheny Ludlum Corp., Leechburg, PA

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–34,053; Frontier Corp., Rochester, NY

TA–W–33,959; Electra-Sound, Inc., Parma, OH

TA–W–33,980; Lockheed Martin Corp., Ocean Radar & Sensor Systems Plant Protection Unit, Liverpool, NY

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–33,906; Sunbeam, Shubuta, MS

Sunbeam made a decision to transfer production from the subject plant to another domestic facility.

TA–W–33,796; Drummond Co., Inc., Birmingham, AL

U.S. imports of coal were negligible in 1996 and in January through June 1997.

TA–W–33,946; Chevron USA Production Co. A Div. of Chevron USA, Inc., ("CPDN"), Headquartered in Houston, TX & Operating at Various Locations in the Following States: A; AL, B; CA, C; CO, D; LA, E; MS, F; NM, G; OK, H; TX, I; UT, J; WY

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–34,047; John Wiley & Sons, Inc., Wiley Law Publications, Colorado Springs, CO

A change in corporate ownership of this division resulted in a transfer to other domestic locations of the publishing of legal texts and caused the separations of workers at the subject facility.

TA–W–33,974; Lightalarms Electronic Corp., Baldwin, NY

The decline in employment at the subject firm is attributed to a shift in production to another location in St. Matthews, S.C. The Operation is being consolidated with two other affiliated facilities in which domestic company employment will increase.

Affirmative Determinations for Worker Adjustment Assistance

The following certification have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–33,942; Woodgrain Millwork, Inc., Lakeview, OR: October 14, 1996.

TA–W–34,019; Signal Apparel, New Tazewell, TN: November 14, 1996.

TA–W–33,837; Russell Corp., Cummings, GA: August 15, 1996.

TA–W–33,951; Robinson Manufacturing Co., Linden, TN; October 15, 1996.

TA–W–34,045; ITT Automotive, Archbold, OH: March 17, 1996.

TA–W–33,964; International Flavors & Fragrances, Inc., North American Fragrance Div., Union Beach, NJ: October 21, 1996.

TA–W–33,961; Teledyne Fluid Systems, Efficient Die & Mold Div., Independence, OH: October 17, 1996.

TA–W–33,981; Shenandoah Knitting Mills, Edinburg, VA: October 29, 1996.

TA–W–33,973; A.O. Smith EPC, Upper Sandusky, OH: October 23, 1996.

TA–W–34,23 & A; Spencer's, Inc., Hillsville, VA and Stuart, VA: November 7, 1996.

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TA–W–33,911; Almark Mills, Inc., Dawson, GA: October 3, 1996.
TA–W–33,921; Tru-Stitch Footwear, Bombay, NY: October 6, 1996.
TA–W–34,088; Swansboro Garment Co., Inc., Swansboro, NC: November 24, 1996.
TA–W–34,061; Oxford of Alma, Oxford Women's Catalog & Special Markets Div., Alma, GA: November 19, 1996.
TA–W–33,901; Oregon Woodworking Co., Bend, OR: October 3, 1996.
TA–W–34,017; Marathon Electric Manufacturing Corp., York, PA: November 1, 1996.
TA–W–34,080; Thunderbird Moulding Co., Yreka, CA: November 24, 1996.
TA–W–33,995; Eaton Corp., Appliance & Specialty Controls Div., Athens, AL: October 21, 1996.
TA–W–33,795; Patrilda Sportswear, Montgomery, PA: August 25, 1996.
TA–W–33,987; Dublin Garment Co., Inc., Dublin, VA: October 27, 1996.
TA–W–33,976; Trade Apparel, Inc., El Paso, TX: October 17, 1996.
TA–W–33,977; Falcon Industries, Inc., Graham, TX: October 23, 1996.
TA–W–33,924; International Wire Insulated Wire Div., Bremen, IN: October 6, 1996.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchaper D, Chaper 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of December, 1997 and January, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof (including workers in any agricultural firm or appropriate subdivision thereof), have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–01894; Jostens, Inc., Recognition Div., Princeton, IL
NAFTA–TAA–01949; Almark Mills, Inc., Dawson, GA
NAFTA–TAA–01797; Garden Way, Inc., Port Washington, WI
NAFTA–TAA–02009; Dublin Garment Co., Inc., Dublin, VA
NAFTA–TAA–01958; Oregon Woodworking Co., Bend, OR
NAFTA–TAA–01970; Tru-Stitch Footwear, Bombay, NY
NAFTA–TAA–01664; AlliedSignal, Inc., Commercial Avionics Systems, Fort Lauderdale, FL
NAFTA–TAA–01996; Fonda Group, Three Rivers, MI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–02004; Electra-Sound, Inc., Parma, OH
NAFTA–TAA–02001; Lockheed Martin Corp., Ocean, Radar and Sensor Systems Plant Protection Unit, Liverpool, NY

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–01799; Boise Cascade Corp., Timber Div.—Elgin Stud Mill, Elgin, OR: May 22, 1996.
NAFTA–TAA–01904; Thomson Consumer Electronics, Television Operations, Americas, Bloomington, IN: October 6, 1997.
NAFTA–TAA–01918; Elkin Valley Apparel Co., Inc., Elkin, NC: September 15, 1996.
NAFTA–TAA–01898; Frolic Footwear Div. of Wolverine World Wide, Jonesboro, AR: August 21, 1996.
NAFTA–TAA–01992; Trade Apparel, Inc., El Paso, TX: October 17, 1996.
NAFTA–TAA–02048; Oxford of Alma, Oxford Women's Catalog and Special Markets Division, Oxford Industries, Inc., Alma, GA: November 24, 1996.
NAFTA–TAA–02007; Brownsville Products, Brownsville, TX: November 3, 1996.
NAFTA–TAA–02042; Swansboro Garment Co., Inc., Swansboro, NC: November 24, 1996.
NAFTA–TAA–02008; Shenandoah Knitting Mills, Edinburg, VA: October 31, 1996.
NAFTA–TAA–02069; Essilor Lenses, Essilor of America, St. Petersburg, FL: March 24, 1997.
NAFTA–TAA–02041; International Wire, Insulated Wire Division, Bremen, IN: November 7, 1996.
NAFTA–TAA–01980; Woodgrain Millwork, Inc., Lakeview, OR: October 14, 1996.
NAFTA–TAA–02028; ITT Automotive, Inc., Archbold, OH: November 17, 1996.
NAFTA–TAA–02037; TRW/Auto Electronics Group of North America, Switch Product Line and Profit Center Auburn, NY: November 10, 1996.
NAFTA–TAA–01989; A.O. Smith, EPC., Upper Sandusky, OH: October 23, 1996.
NAFTA–TAA–02016; Unbro North America, Unbro International, Fairbluff, NC: October 28, 1996.

I hereby certify that the aforementioned determinations were issued during the month of December 1997 and January 1998. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 9, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–1471 Filed 1–21–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,487; TA–W–33,487A; TA–W–33,487B; TA–W–33,487C; NAFTA 01649; NAFTA 01649A; NAFTA 01649B; NAFTA 01649C]

Medite Corporation; Corporate Office, Medford Oregon; MDF Plant, Medford, Oregon; Veneer Division, Rogue River, Oregon; Forestry Division, Medford, Oregon; and Corporate Office, Medford Oregon; MDF Plant, Medford Oregon; Veneer Division, Rogue River, Oregon; Forestry Division, Medford, Oregon; Notice of Negative Determination on Reconsideration

On September 22, 1997, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The petitioner presented new evidence that the collection of information regarding company sales and imports was incomplete for the time period relevant to the investigation. The notice was published in the **Federal Register** on September 30, 1997 (62 FR 51156).

The Department initially denied TAA to workers of Medite Corporation because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The workers at the subject firm were engaged in employment related to the production of lumber products.

On reconsideration, the Department requested that Medite Corporation provide additional customers for the various Medite facilities included in the petition. A survey of the major customers of Medite Corporation revealed that imports did not contribute importantly to the worker separations. All but one of the customers survey revealed that they are still purchasing domestic lumber products. The one customer that indicated some product was being produced outside the U.S. had declining imports during the relevant time period.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Medite Corporation in Medford and Rogue River, Oregon.

Signed at Washington, DC, this 24th day of December 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–1476 Filed 1–21–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,829 AND NAFTA–01932]

Trans World Airlines Kansas City Overhaul Base, Kansas City, Missouri; Notice of Negative Determination Regarding Application for Reconsideration

By application of December 5, 1997, the International Association of Machinists and Aerospace Workers (IAMAW) requested administrative reconsideration of the Department's negative determination regarding worker eligibility to apply for Trade Adjustment Assistance (TAA) and NAFTA-Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers and former workers of the subject firm.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA and NAFTA–TAA petitions, filed on behalf of workers who repaired and overhauled aircraft and aircraft parts, were denied on September 30, 1997, on the basis that the workers did not produce an "article" within the meaning of Section 222(3) and Section 250(a) of the Trade Act of 1974, as amended, but rather performed services.

In support of their application for reconsideration, the IAMAW contended that "[t]he overhauling process [performed by the petitioning workers on aircraft] takes what had become worthless parts and/or assemblies [and] remanufactures and transforms them into unique and marketable products," enabling aircraft or their parts to satisfy Federal Aviation Administration airworthiness requirements.

This contention is insufficient to support the granting of reconsideration. *Pemberton* v. *Marshall*, 639 F.2d 798 (D.C. Cir. 1981) found a similar contention insufficient to support certification. In that case, the workers alleged that their repair and overhaul of ships constituted a "remanufacturing" of an "article." The Court reasoned that "[e]ven if the repair necessitates the use of new materials, it cannot be said to be the creation of a new ship * * * the same item was also the end product." *Id.* at F.2d 800. Similarly here, although the petitioners contend that their employment conferred "new life" on aircraft and aircraft parts, no "new and different article" was created. *Nagy* v. *Donovan*, 571 F.Supp. 1261, 1265 (Ct. Int'l. Trade 1983). Rather, "[t]here was no transformation, but a mere refurbishing of what already existed" (*Pemberton*, at F.2d 800), permitting old aircraft and aircraft parts to meet airworthiness requirements.

Thus, the application for reconsideration does not alter the conclusion that the workers did not create new articles, but rather serviced existing ones by overhauling and repairing aircraft and aircraft parts. Accordingly, the petitioners' contention is insufficient to support reconsideration.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, D.C. this 5th day of January 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–1472 Filed 1–21–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance,

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Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date of which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address show below, not later than February 2, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 2, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 29th day of December, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 12/29/97]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,119	American Trouser, Inc (Comp)	Houston, MS	12/15/97	Men's Dress and Casual Slacks.
34,120	Alcoa Fujikura EMP (Wrks)	Owosso, MI	12/11/97	Windshield Wiper Components.
34,121	C.R. Bard, Inc (Comp)	Billerica, MA	12/12/97	Diagnostic Catheters.
34,122	Diversified Plastics, Inc (Wrks)	Elk Grove Vill., IL	12/10/97	Picture Frames.
34,123	General Electric Co (IUE)	Rome, GA	12/15/97	Transformers—Medium & Sub-Station.
34,124	Wilson Sporting Goods Co (Wrks)	Chicago, IL	12/07/97	Sport Shoes.

[FR Doc. 98–1481 Filed 1–21–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,966]

Cason Manufacturing Company Stephenville, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 24, 1997, applicable to all workers of Cason Manufacturing Company, Stephenville, Texas. The notice was published in the **Federal Register** on December 10, 1997 (62 FR 65100).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New findings show that the Department incorrectly limited the certification to "all workers engaged in employment related to the production of women's pants and skirts." The intent of the Department's certification is to include "all workers" of Cason Manufacturing Company, Stephenville, Texas adversely affected by increased imports.

The Department is amending the certification determination to correctly identify the worker group to read "all workers."

The amended notice applicable to TA–W–33,966 is hereby issued as follows:

All workers at Cason Manufacturing Company, Stephenville, Texas who became totally or partially separated from employment on or after October 24, 1996 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 11th day of January 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–1488 Filed 1–21–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,767; TA–W–33,767G; TA–W–33,767H]

Fruit of the Loom; Martin Mills, Inc. D/B/A St. Martinville Mills; Including Former Employees of Jeanerette Mills St. Martinville, Louisiana; Jackson Distribution Center; Division of Sherman Warehouse Corporation Jackson, Mississippi; Wadesboro Warehouse; Division of Martin Mills, Incorporated Wadesboro, North Carolina; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on August 29, 1997, applicable to workers of Fruit of the Loom, Martin Mills, Inc., located in St. Martinville, Louisiana. The notice was published in the **Federal Register** on September 30, 1997 (62 FR 51152). The certification was amended on September 14, 1997 and again on December 1, 1997, to include Martin Mills, Incorporated in St. Martinville, Louisiana is doing business as St. Martinville Mills, and to cover the workers of the subject firm whose wages were reported under the separate Unemployment Insurance tax account for Jeanerette Mills, Jeanerette, Louisiana.

The notices of amended certifications were published in the **Federal Register** on September 30, 1997 (62 FR 51155) and December 10, 1997 (62 FR 65099) respectively.

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that worker separations occurred at the Jackson Distribution Center, Jackson, Mississippi and the Wadesboro Warehouse, Wadesboro, North Carolina when they both closed in November 1997. The workers at both the Jackson Distribution Center and the Wadesboro Warehouse were involved in the warehouse, repacking and distribution of T-shirts, briefs, boxers and A-shirts manufactured by Fruit of the Loom.

The intent of the Department's certification is to include all workers of Fruit of the Loom adversely affected by increased imports of underwear.

The amended notice applicable to A–AW–33,767 is hereby issued as follows:

All workers of Fruit of the Loom, Martin Mills, Inc., doing business as St. Martinville Mills, including former employees of Jeanerette Mills, St. Martinville, Louisiana (TA–W–33,767) and Jackson Distribution Center, Division of Sherman Warehouse Corporation, Jackson, Mississippi (TA–W–33,767G) and Wadesboro Warehouse Warehouse, Division of Martin Mills, Incorporated, Wadesboro, North Carolina (TA–W–33,767H), who became totally or partially separated from employment on or after August 14, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, D.C. this 11th day of January 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–1466 Filed 1–21–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,065]

General Motors Corporation, Delphi Division, Albany, New York; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 8, 1997, in response to a worker petition which was filed on behalf of workers at Delphi Division of General Motors, Albany, Georgia.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–34, 060). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 21st day of December, 1997,

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–1475 Filed 1–21–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,007]

International Watchmakers Mission, Viejo, California; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 17, 1997, in response to a petition filed by a company official on behalf of workers at International Watchmakers Mission, Viejo, California.

Investigation revealed that all workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 23rd day of December, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–1477 Filed 1–21–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,068]

International Wire, Incorporated Wire Division, Bourbon, Indiana; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 8, 1997 in response to a worker petition which was filed on behalf of workers at International Wire Group, Incorporated, Bourbon, Indiana.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 9th day of January, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–1464 Filed 1–21–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,077]

Pikes Peak Greenhouses, Incorporated, Colorado Springs, Colorado; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 8, 1997 in response to a worker petition which was filed on behalf of workers at Pikes Peak Greenhouses, Incorporated, Colorado Springs, Colorado.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 8th day of January, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–1474 Filed 1–21–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance,

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Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 2, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 2, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 22nd day of December, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted On 12/22/97]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,102	Precision Textile, Inc (Wrks)	Hialeah, FL	12/11/97	Ladies & Childrens' Warm-up & Sweatsuits.
34,103	Jostens, Inc (Wrks)	Princeton, IL	09/26/97	Novelty Jewelry.
34,104	Sunbeam Corp (Wrks)	Murfreesboro, TN	12/08/97	Outdoor Patio Furniture.
34,105	Struble and Moffitt Co (Wrks)	Runnemede, NJ	12/09/07	Slippers & Food Tray Covers.
34,106	Farah Manufacturing USA (Wrks)	El Paso, TX	12/09/97	Men's, Ladies' & Boys' Apparel.
34,107	Fort James (AWPPW)	Portland, OR	11/25/97	Extruded Paper Products.
34,108	Breed Technologies, Inc (Wrks)	St. Clair Shore, MI	12/09/97	Seat Belt Assembly & Plastic Components.
34,109	Viti Fashion, Inc (Wrks)	Hialeah, FL	11/20/97	Children's Apparel.
34,110	Dal-Tile International (Wrks)	Mt. Gilead, NC	02/11/97	Ceramic Floor Tile.
34,111	Rhone-Poulenc, Inc (Comp)	Soda Springs, ID	12/04/97	Phosphate Mining.
34,112	American Athletic Apparel (Wrks)	Poxico, MO	12/10/97	Golf Shirts.
34,113	Morgan Products Ltd (UBC)	Oshkosh, WI	12/10/97	Door and Entrance Trim.
34,114	Burlington Industries (Wrks)	Smithfield, NC	12/03/97	Spinning Raw Materials into Yarn.
34,115	Hibbing Taconite Co (USWA)	Hibbing, MN	12/12/97	Iron Ore Pellets.
34,116	Tonkawa Gas Processing (Wrks)	Woodward, OK	12/10/97	Liquid Hydrocarbons.
34,117	Shape, Inc (Wrks)	Kennebunk, ME	12/11/97	Video Cassettes.
34,118	Tree Free Fiber L.L.C. (Comp)	Augusta, ME	12/16/97	Jumbo Rolls of Unfinished Tissue Paper.

[FR Doc. 98–1482 Filed 1–21–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,132]

Snap-Tite, Incorporated, Quick Disconnect Division, Union City, Pennsylvania; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of May 20, 1997, a company representative requested administrative reconsideration of the Department of Labor's Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance for workers of the subject firm. The certification was signed on March 25, 1997.

The company representative presents evidence that merits the Department's review of the certification.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C. this 11th day of January 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–1467 Filed 1–21–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,328; TA–W–33,328A; TA–W–33,328B]

Stride Rite Corporation, Hamilton, Missouri, Tipton, Missouri, and Lexington, Massachusetts; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 27, 1997, applicable to all workers of Stride Rite Corporation located in Hamilton and Tipton, Missouri. The notice was published in the **Federal Register** on May 2, 1997 (62 FR 24135).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of children's shoes. New information received by the company shows that worker separations have occurred at the Lexington, Massachusetts location of Stride Rite Corporation. The Lexington, Massachusetts facility is the corporate headquarters office and provides production planning services for children's shoes at Stride Rite Corporation.

The intent of the Department's certification is to include all workers of Stride Rite Corporation who were adversely affected by increased imports of children's shoes. Accordingly, the Department is amending the certification to cover the workers of Stride Rite Corporation, Lexington, Massachusetts.

The amended notice applicable to TA–W–33,328 is hereby issued as follows:

All workers of Stride Rite Corporation, Hamilton, Missouri (TA–W–33,328), Tipton, Missouri (TA–W–33,328A) and Lexington, Massachusetts (TA–W–33,328B) engaged in the production of children's shoes who became totally or partially separated from employment on or after February 24, 1996 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington D.C. this 14th day of January, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–1469 Filed 1–21–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,933]

University Technical Services, Incorporated, Canton, New York; Amended Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on November 17, 1997, applicable to all workers of University Technical Services, Incorporated, San Diego, California. The notice was published in the **Federal Register** on December 10, 1997 (62 FR 65100).

At the request of the State agency, the Department reviewed the negative determination for workers of the subject firm. New findings show that the Department incorrectly identified the subject firm location. The investigation conducted for the subject firm was conducted on behalf of workers engaged in providing operations and maintenance services for electricity generation located in Canton, New York. San Diego, California is the Administrative Services office of the subject firm and is not the subject of the investigation. The Department is amending the negative determination to correctly identify the city and state to read Canton, New York.

Conclusion

After careful review, I determine that all workers of University Technical Services, Incorporated, Canton, New York are denied eligibility to apply for adjustment assistance under Section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 23rd day of December 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–1478 Filed 1–21–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with the State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Acting Director of the Office Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment of after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Acting Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request is filed in writing with the Acting Director of OTAA not later than February 2, 1998.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Acting Director of OTAA at the address shown below not later than February 2, 1998.

Petitions filed with the Governors are available for inspection at the Office of the Acting Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 9th day of January, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at governor's office	Petition No.	Articles produced
Eastman Kodak (Co.)	Windsor, CO	12/08/97	NAFTA–2,058	Graphics film.
Northern Technologies (Wkrs)	Pocahontas, AL	12/08/97	NAFTA–2,059	Electrical connectors.
Honeywell Microswitch (Co.)	El Monte, CA	12/05/97	NAFTA–2,060	Temperature and humidity sensors.
Frankfort Plastics (Wkrs)	Frankfort, KY	12/04/97	NAFTA–2,061	Plastics.
Criterion Plastics, Inc (Wkrs)	Kingsville, TX	12/09/97	NAFTA–2,062	Plastic injection molded parts.
Burlington Industries, Inc. (Wkrs)	Smithfield, NC	12/09/97	NAFTA–2,063	Yarn spooling for jeans, mattress tickin.
Morgan Products Ltd. (UBC&J)	Oshkosh, WI	12/11/97	NAFTA–2,064	Doors and entrance trim.

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APPENDIX—Continued

Subject firm	Location	Date received at governor's office	Petition No.	Articles produced
Deralb Generics Corp (Wkrs)	Dedralb, IL	12/11/97	NAFTA–2,065	Corn seeds.
Precision Textile (Wkrs)	Hialeah, FL	12/11/97	NAFTA–2,066	Warmer suits, sweat suits, kids and women's.
New Ponce Shirt Co., Inc. (Wkrs)	Ponce De Leon, FL	12/11/97	NAFTA–2,067	
Aquarius Mfg. (Co)	El Paso, TX	12/11/97	NAFTA–2,068	Upholstered living room and den furniture.
Essilor Lenses (Co)	St. Petersburg, FL	12/01/97	NAFTA–2,069	Plastic lenses for eyeglasses.
Fort James (AWPPU)	Portland, OR	12/10/97	NAFTA–2,070	
Weyerhaeuser (Wkrs)	Coos Bay, OR	11/28/97	NAFTA–2,071	Lumber.
American Athletic Apparel (Wkrs)	Puxico, MO	12/15/97	NAFTA–2,072	Clothing.
Hunt Wesson (Wkrs)	Fullerton, CA	12/05/97	NAFTA–2,073	Tomato based products.
Dal-Tile International (Wkrs)	Mt. Gilead, NC	12/15/97	NAFTA–2,074	Ceramic floor tile.
Levi Strauss & Co. (Co)	Mountain City, TN	12/15/97	NAFTA–2,075	Men's, women's and youth slacks—Dockers.
Levi Strauss & Co. (Co)	Powell, TN	12/15/97	NAFTA–2,075	Men's, women's and youth slacks (Dockers).
Levi Strauss & Co. (Co)	Knoxville, TN	12/15/97	NAFTA–2,075	Men's, women's and youth slacks (Dockers).
Levi Strauss & Co. (Co)	Harlingen, TX	12/15/97	NAFTA–2,075	Men's, women's and youth slacks (Dockers).
Levi Strauss & Co. (Co)	Amarillo, TX	12/15/97	NAFTA–2,075	Men's, women's and youth slacks (Dockers).
Levi Strauss & Co. (Co)	San Antonio, TX	12/15/97	NAFTA–2,075	Men's, women's and youth Slacks (Dockers).
Dimetrics Inc. (Co)	Davidson, NC	12/15/97	NAFTA–2,076	
Corning Inc. (AFGWU)	Corning, NY	12/17/97	NAFTA–2,077	Laboratory glass.
Trelleborg (Wkrs)	South Haven, MI	12/17/97	NAFTA–2,078	Plastic boot seal.
Alcoa Fujikura LTD (Wkrs)	Owosso, MI	12/16/97	NAFTA–2,079	Brushguard.
Visy Paper (UPIU)	Menominee, MI	12/16/97	NAFTA–2,080	Recycled paper.
Breed Technologies, Inc. (Wkrs)	St. Clair Shores, MI	12/15/97	NAFTA–2,081	Seat belt assembly and plastic components.
C.R. Bard Inc. (Co)	Billerica, MA	12/18/97	NAFTA–2,082	Medical catheters.
Tree Free Fiber Limited Liability Co. (Co).	Augusta, ME	12/17/97	NAFTA–2,083	Tissue products in rolls (not finished).
EFBLCO (Co)	White City, OR	12/17/97	NAFTA–2,084	Lumber.
Delbar Products (Wkrs)	Perkasie, PA	01/05/98	NAFTA–2,085	Rear view mirrors for auto industry.
General Electric Company (IUE)	Rome, GA	12/16/97	NAFTA–2,086	Large and small transformers.
Diversified Plastics Inc. (Wkrs)	Elk Grove Village, IL	12/19/97	NAFTA–2,087	Picture frames.
Wilson Sporting Goods Company (Wkrs).	Chicago, IL	12/19/97	NAFTA–2,088	Shoes and sporting goods.
Newell (Wkrs)	Harrisburg, AR	12/29/97	NAFTA–2,089	Picture Frames.
Farah Manufactunng (Wrks)	El Paso, TX	12/15/97	NAFTA–2,090	Men's, Women's and Boys' Apparel.
Hibbing Taconite Co	Hibbing, MN	12/29/97	NAFTA–2,091	Taconite Pellets.
Country Elegance (Comp)	North Hollywood, CA	12/26/97	NAFTA–2,092	Bridal Gowns, Hats.
Brown Shoe Group (Wrks)	Fredericktown, MO	12/24/97	NAFTA–2,093	Dress Shoes, Tennis Shoes, Ankle Boots.
Crown Cork and Seal Co	Philadelphia, PA	12/23/97	NAFTA–2,094	Coating, Printing of Aerosol Cans.
National Electrical Carbon Products (Wrks).	East Stroudsburg, PA	12/23/97	NAFTA–2,095	Carbon Brushes, Carbon Slabs.
Romia Ventilator Co (Wrks)	Gardena, CA	12/23/97	NAFTA–2,096	Various Sheet Metal Products.
Healthtex, Inc (Comp)	Warrenton, GA	12/22/97	NAFTA–2,097	Children's Clothing.
Guess, Inc (Wrks)	Los Angeles, CA	08/15/97	NAFTA–2,098	Jeans, Casual Shirts, T-Shirts.
RMP—Holman Enterprises (Co.)	Pennsauken, NJ	01/02/98	NAFTA–2,099	Auto engines and small parts.
Globelle (Wkrs)	Berlin, NJ	12/22/97	NAFTA–2,100	Computer systems.
Westwood Lighting (Co.)	El Paso, TX	12/31/97	NAFTA–2,101	Lamps.
Spalding and Son (Wkrs)	Grants Pass, OR	12/30/97	NAFTA–2,102	Lumber and timber.
Unifi (Co.)	Graham, NC	12/29/97	NAFTA–2,103	Yarn.
Unifi (Co.)	Lincolnton, NC	12/29/97	NAFTA–2,104	Yarn.
Dixie (Wkrs)	York, SC	01/05/98	NAFTA–2,105	Clothing apparel.
United Steering Systems (UPIU)	Grabill, IN	12/12/97	NAFTA–2,106	Steering Wheels, backcover, airbag cover.
Rich Products (Co.)	Sadgatuck, MI	12/23/97	NAFTA–2,107	Pies productions.
Active Burgess Machine and Tool (Wkrs).	St. Claire, MI	12/23/97	NAFTA–2,108	Mold and design.
Century Products (Wkrs)	Cheboygan, MI	12/29/97	NAFTA–2,109	Stereo speaker boxes.
Pacific Lumber and Shipping (IBC)	Packwood, WA	01/06/98	NAFTA–2,110	Softwood dimension of lumber.
Zenith Electronics (Wkrs)	Glenview, IL	01/05/98	NAFTA–2,111	Televisions.

APPENDIX—Continued

Subject firm	Location	Date received at governor's office	Petition No.	Articles produced
Mascotech Industrial (UAW)	Duffield, VA	12/22/97	NAFTA–2,112	Gas and electric cook tops and range.

[FR Doc. 98–1473 Filed 1–21–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02040]

International Wire, Incorporated, Wire Division, Bourbon, Indiana; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on December 1, 1997 in response to a petition filed on behalf of workers at International Wire Group, Incorporated, Bourbon, Indiana.

This case is being terminated because the workers were separated from the subject firm more than one year prior to the date of the petition. The NAFTA Implementation Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 9th day of January, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–1470 Filed 1–21–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—01857]

Onan Corporation, Huntsville, Alabama; Including Leased Workers of ACT Personnel and Services, Incorporated; Snelling Temporary Services; Olsten Staffing Services; Team Source Personnel; Interim Health Care, Huntsville, Alabama; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on October 23, 1997, applicable to all workers of Onan Corporation, Huntsville, Alabama. The notice was published in the **Federal Register** on November 7, 1997 (62 FR 60280).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that some employees of Onan Corporation were leased from ACT Personnel and Services, Incorporated, Snelling Temporary Services, Olsten Staffing Services, Team Source Personnel, and Interim Health Care to produce gasoline engines at the Huntsville, Alabama facility. Worker separations occurred at these companies as a result of the permanent closing of Onan Corporation, Huntsville, Alabama.

Based on these findings, the Department is amending the certification to include workers of ACT Personnel and Services, Incorporated, Snelling Temporary Services, Olsen Staffing Services, Team Source Personnel, and Interim Health Care, Huntsville, Alabama leased to Onan Corporation, Huntsville, Alabama.

The intent of the Department's certification is to include all workers of Onan Corporation adversely affected by imports from Canada.

The amended notice applicable to NAFTA—01857 is hereby issued as follows:

All workers of Onan Corporation, Huntsville, Alabama and leased workers of ACT Personnel and Services, Incorporated, Snelling Temporary Services, Olsten Staffing Services, Team Source Personnel, and Interim Health Care, Huntsville, Alabama engaged in employment related to the production of gasoline engines for Onan Corporation, Huntsville, Alabama who became totally or partially separated from employment on or after July 28, 1996 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of December, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–1410 Filed 1–21–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01530, Stride Rite Corporation, Hamilton, Missouri; NAFTA–01530A, Tipton, Missouri; and NAFTA–01530B, Lexington, Massachusetts]

Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 as amended (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on March 27, 1997, applicable to all workers at Stride Rite Corporation located in Hamilton and Tipton, Missouri. The notice was published in the **Federal Register** on April 15, 1997 (62 FR 18362).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of children's shoes. New information received by the company shows that worker separations have occurred at the Lexington, Massachusetts location of Stride Rite Corporation. The Lexington, Massachusetts facility is the corporate headquarters office and provides production planning services for

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children's shoes at Stride Rite Corporation.

The intent of the Department's certification is to include all workers of Stride Rite Corporation who were adversely affected by increased imports of children's shoes from Mexico. Accordingly, the Department is amending the certification to cover the workers of Stride Rite Corporation, Lexington, Massachusetts.

The amended notice applicable to NAFTA–01530 is hereby issued as follows:

"All workers of Stride Rite Corporation, Hamilton, Missouri (NAFTA–01530), Tipton, Missouri (NAFTA–01530A), and Lexington, Massachusetts (NAFTA–01530B) who became totally or partially separated from employment on or after February 24, 1996, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed at Washington, D.C. this 11th day of January, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–1465 Filed 1–21–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01967]

University Technical Services, Incorporated, University Energy, Canton, New York; Amended Negative Determination Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on November 28, 1997, applicable to all workers of University Technical Services, Incorporated, San Diego, California. The notice was published in the **Federal Register** on June 13, 1997 (62 FR 32376).

At the request of the State agency, the Department reviewed the negative determination for workers of the subject firm. New findings show that the Department incorrectly identified the subject firm location. The investigation conducted for the subject firm was conducted on behalf of workers engaged in providing operations and maintenance services for electricity generation located in Canton, New York. San Diego, California is the Administrative Services office of the subject firm and is not the subject of the investigation. The Department is amending the negative determination to correctly identify the city and state to read Canton, New York.

Conclusion

After careful review, I determine that all workers at University Technical Services, Incorporated, Canton, New York are denied eligibility to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 23rd day of December, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–1479 Filed 1–21–98; 8:45 am]

BILLING CODE 4510–30–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

January 15, 1998.

TIME AND DATE: 10:00 a.m., Thursday, January 22, 1998.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission shall consider and act upon the following:

1. *Secretary of Labor* v. *Unique Electric*, Docket No. WEST 95–333–M (Issues include whether the judge abused his discretion in determining that, in assessing a penalty under section 110(i) of the Mine Act, an operator's cessation of business is a factor militating in favor of a reduction in the penalty under the "effect of the operator's ability to continue in business" criterion).

2. *Secretary of Labor on behalf of Calahan* v. *Hubb Corporation*, Docket No. KENT 97–13–D (Issues include whether the judge erred in dismissing in its entirety a discrimination case brought under section 105(c)(2) of the Mine Act when the complaining miner, but not the Secretary, settled with the operator).

TIME AND DATE: 10:00 a.m., Thursday, January 29, 1998.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission shall consider and act upon the following:

1. *Secretary of Labor* v. *Daanen & Janssen, Inc.*, Docket Nos. LAKE 95–180–RM, etc. (Issues include whether the judge properly found that the operator violated 30 CFR §§ 56.14101(a) and 56.9101 by failing to maintain in functional condition a component of the service braking system of a front-end loader, which traveled through and over a berm, fatally injuring the employee operating it).

TIME AND DATE: 10:00 a.m., Thursday, February 5, 1998.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission shall consider and act upon the following:

1. *Secretary of Labor* v. *Cannelton Industries, Inc., et al.*, Docket Nos. WEVA 94–381, etc. (Issues include whether the judge correctly determined that the operator violated 30 CFR § 75.400's prohibition against accumulations of combustible materials, whether the violation was the result of the operator's unwarrantable failure to comply with the standard, and whether two shift foremen are personally liable under section 110(c) of the Mine Act for knowingly authorizing the violation).

Any person attending oral argument or an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629 / (202) 708–9300 for TDD Relay / 1–800–877–8339 for toll free.

Sandra G. Farrow,

Acting Chief Docket Clerk.

[FR Doc. 98–1627 Filed 1–20–98; 12:03 pm]

BILLING CODE 6735–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the ACRS Subcommittee on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on January 30 and 31, 1998, at the Bolger Center, 9600 Newbridge Drive, Potomac, Maryland.

The entire meeting will be open to public attendance with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of ACRS, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Friday, January 30, 1998—8:30 a.m. until the conclusion of business.

Saturday, January 31, 1998—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss issues associated with the prioritization of ACRS activities for FY 1998—FY 2000, ACRS operational plan, self-assessment of ACRS performance, potential operational areas for improved effectiveness, interaction with ACNW, ACRS Fellow's activities, and other activities related to the conduct of ACRS business. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Dr. John T. Larkins (telephone 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: January 15, 1998.

Gail H. Marcus,

Acting Chief, Nuclear Reactors Branch.

[FR Doc. 98–1495 Filed 1–21–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of January 19, 26, February 2, and 9, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 19—Tentative

Wednesday, January 21

10:00 a.m.
Briefing on Operating Reactors and Fuel Facilities (Public Meeting)
(Contact: William Dean, 301–415–1726)

2:00 p.m.
Briefing on Material Control of Generally Licensed Devices (Public Meeting)
(Contact: Larry Camper, 301–415–7231)

4:00 p.m.
Affirmation Session (Public Meeting) (if needed)

Friday, January 23

9:30 a.m.
Discussion of Interagency Issues (Closed—Ex. 9)

Week of January 26—Tentative

Wednesday, January 28

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

Week of February 2—Tentative

Wednesday, February 4

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

Week of February 9—Tentative

There are no meetings the week of February 9.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 98–1496 Filed 1–16–98; 11:09 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443]

North Atlantic Energy Service Corporation, Seabrook Station; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated December 18, 1997, Ms. Jane Doughty (or Petitioner), representing The Seacoast Anti-Pollution League, has requested that the U.S. Nuclear Regulatory Commission take action with regard to Seabrook Station. Petitioner requests that the operating license for the Seabrook Station be suspended until such time as a thorough root cause analysis of the reasons underlying the development of leaks in piping in the "B" train of the residual heat removal (RHR) system is conducted. The leakage was reported by the Licensee on December 5, 1997.

As the basis for this request, Petitioner states that there have been past allegations of improper welding practices and substandard piping at Seabrook Station and further requests that the investigation of the RHR system pipe leakage include findings related to these past allegations.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by Section 2.206, appropriate action will be taken on this Petition within a reasonable time.

By letter dated January 15, 1998, the Director denied Petitioner's request to delay restart of the reactor at Seabrook Station, Unit 1, until all such actions requested by the Petition are taken.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555–0001 and at the local public document room located at Exeter Public Library, Founders Park, Exeter, NH 03833.

Dated at Rockville, Maryland, this 15th day of January 1998.

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For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–1494 Filed 1–21–98; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Sunshine Act Meeting

TIMES AND DATES: 1:00 p.m., Monday, February 2, 1998; 8:30 a.m., Tuesday, February 3, 1998.

PLACE: Ft. Lauderdale, Florida, at the Marriott Boca Raton, 5150 Town Center Circle, Boca Raton, in Parlors 1 and 2.

STATUS: February 2 (Closed): February 3 (Open).

MATTERS TO BE CONSIDERED:

Monday, February 2—1:00 p.m. (Closed)

1. Personnel Issues.
2. Compensation Issues.
3. Report on the Tray Management System.

Tuesday, February 3—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, January 5–6, 1998.
2. Remarks of the Postmaster General/Chief Executive Officer.
3. Consideration of Resolutions on Committees.
4. Appointment of Members to Board Committees.
5. Fiscal Year 1997 Comprehensive Statement on Postal Operations.
6. Government Performance and Results Act Annual Plan.
7. Quarterly Report on Financial Results.
8. Capital Investments.
   a. Informational Briefing on Corporate Call Management Prototype.
   b. Delivery Barcode Sorter Stacker Modules.
   c. Linerless Label Applicator for Letter Mail Labeling Machine.
   d. Kansas City, Missouri, Processing and Distribution Center Additional Funding.
   3. Northeast Metro/Royal Oak, Michigan, Processing and Distribution Center.
9. Report on the South Florida Performance Cluster.
10. Tentative Agenda for the March 2–3, 1998, meeting in Washington, D.C.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 98–1668 Filed 1–20–98; 3:03 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (CECO Filters, Inc., Common Stock, $.001 Par Value) File No. 1–10474

January 15, 1998.

CECO Filters, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Company has complied with the Exchange's rules regarding the voluntary delisting of securities. The Company has filed with the Exchange a copy of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of the Security from listing and registration on the Phlx, and by setting forth in detail to the Exchange the facts and reasons supporting the proposed withdrawal.

The Company is more than 80% owned by CECO Environmental Corp. ("Environmental"). Environmental's common stock is currently listed on the Nasdaq SmallCap Market. The Company constitutes Environmental's primary asset and is its only operating subsidiary. The common stock of Environmental has greater liquidity and a much larger public float than the Security. Because of the liquidity differences and varying levels of participation by market professionals, the prices of the Security and the common stock of Environmental have diverged and are no longer aligned. The Company also believes that maintaining both listings is expensive. Accordingly, the Company believes that the Security and common stock of Environmental should not both be listed.

Furthermore, the Company has approximately 224 shareholders. The Company has concluded that the public float is too small for the Security to have an active trading market.

In making the decision to withdraw its Security from listing and registration on the Phlx, the Company considered the costs and expenses associated with listing both the Security and the common stock of Environmental.

By letter dated December 8, 1997, the Phlx informed the Company that it had no objection to the withdrawal of the Company's Security from listing on the Phlx.

Any interested person may, on or before February 5, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–1489 Filed 1–21–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Hawaiian Electric Industries, Inc., Common Stock, Without Par Value) File No. 1–8503

January 15, 1998.

Hawaiian Electric Industries, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Pacific Exchange, Inc. ("PCX" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security of the Company currently is listed for trading on both the PCX and the New York Stock Exchange, Inc. ("NYSE"). The Company has complied with the rules of the PCX for delisting its Security by filing with the Exchange a request for delisting, together with a certified copy of the board resolution authorizing the delisting from the PCX, and by setting forth in detail to the Exchange the reasons and facts supporting the proposed withdrawal.

In making the decision to withdraw its Security from listing on the PCX, the Company considered the expense of maintaining the dual-listing of its Security on the PCX and the NYSE. The Company does not see any particular advantage in the dual-listing of its Security, since trading in the Security on the PCX has come to represent a very small portion of the Company's total trading volume.

By letter dated December 5, 1997, the PCX informed the Company that it had no objection to the withdrawal of the Company's Security from listing on the PCX.

By reason of Section 12(b) of the Act and the rules thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and the NYSE.

Any interested person may, on or before February 5, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–1490 Filed 1–20–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IA–1694/803–128]

Nikko Research Center (America), Inc.; Notice of Application

January 15, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Advisers Act of 1940 ("Advisers Act").

APPLICANT: Nikko Research Center (America), Inc.

RELEVANT ADVISERS ACT SECTIONS: Exemption requested under section 203A(c) from section 203A(a).

SUMMARY OF APPLICATION: Applicant requests an order to permit it to register with the SEC as an investment adviser.

FILING DATES: The application was filed on December 3, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 9, 1998, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, Nikko Research Center (America), Inc., One World Financial Center, Tower A, 200 Liberty Street, New York, New York 10281.

FOR FURTHER INFORMATION CONTACT: Kathy D. Ireland, Attorney, at (202) 942–0530, or Jennifer S. Choi, Special Counsel, at (202) 942–0716 (Division of Investment Management, Task Force on Investment Adviser Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a corporation organized under the laws of New York and a wholly-owned subsidiary of the Nikko Research Center, Ltd. ("NRC"), an unregistered investment adviser located in Japan, which is affiliated with the Nikko Securities Co., Ltd. ("NST"), an integrated financial services company also located in Japan.

2. Applicant maintains its principal place of business in New York and is currently registered as an investment adviser in New York. Applicant was registered with the SEC as an investment adviser until July 8, 1997.

3. Pursuant to separate service agreements between applicant and NRC, NST, and Nikko Securities Co. International, Inc. ("NSI"), a registered broker-dealer located in the United States and an indirect wholly-owned subsidiary of NST, applicant provides NRC, NST, and NSI with reports concerning national and international political, economic, financial, and investment matters to assist them with the services that they provide to their clients. Some of these reports may be distributed directly by NSI and NST to their institutional clients, and NST may distribute such reports to certain retail clients, all of whom are in Japan. NSI does not have retail clients.

4. Applicant's analysts, strategists, and economists speak at seminars for clients of NSI, all of which are U.S. affiliates of Japanese-based banking institutions. NSI mails seminar materials directly to other institutional clients.

5. Applicant's analysts and economists also periodically meet directly with certain institutional clients of NSI and NST, including U.S. subsidiaries of Japanese regional banks, insurance companies, and Japanese banks and trust companies.[1] The foregoing are the only direct contacts applicant has with clients of NSI and NST. Applicant does not and will not have any direct contacts with any clients of NRC.

6. Applicant receives compensation solely from NRC, NSI and NST in an amount equivalent to its total annual operational cost plus 3%.

Applicant's Legal Analysis

1. On October 11, 1996, the National Securities Markets Improvement Act of 1996 was enacted. Title III of the Act, the Investment Advisers Supervision Coordination Act, added new section 203A to the Advisers Act. Under section 203A(a)(1),[2] an investment adviser that is regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business is prohibited from registering with the SEC unless the investment adviser (i) has assets under management of not less than $25 million or (ii) is an adviser to an investment company registered under the Investment Company Act of 1940 ("Investment Company Act"). Section 203A(a)(2) defines the phrase "assets under management" as the "securities portfolios with respect to which an investment adviser provides continuous and regular supervisory or management services."[3]

2. Applicant submits that section 203A of the Advisers Act is intended to streamline the registration and oversight of investment advisers by reallocating responsibilities between the SEC and the states. Applicant notes that Congress determined that the states should be responsible for regulating investment advisers "whose activities are likely to

[1] Although NST has retail as well as institutional clients, applicant only has direct contact with certain of NST's institutional clients.

[2] 15 U.S.C. 80b–3a(a)(1).

[3] 15 U.S.C. 80b–3a(a)(2).

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be concentrated in their home state," but "[l]arger advisers, with national businesses," should be regulated by the SEC and be "subject to national rules."[4]

3. Section 203A(c) of the Advisers Act authorizes the SEC to permit an investment adviser to register with the SEC if prohibiting registration would be "unfair, a burden on interstate commerce, or otherwise inconsistent with the purpose of [section 203A]."[5]

4. Applicant states that it does not qualify for SEC registration under section 203A. Applicant submits that it does not have assets under management or act as an investment adviser to an investment company registered as such under the Investment Company Act. Applicant also states that it does not satisfy any of the exemptions from the prohibition on registration provided in rule 203A–2 under the Advisers Act.

5. Applicant asserts that it would be inconsistent with the purposes of section 203A if it were prohibited from registering with the SEC. Applicant submits that its activities, like those of the nationally recognized statistical rating organizations ("NRSROs") and pension consultants, affect the national and international securities markets.

6. Applicant states that its research reports focus primarily on issues of national and international scope and significance. Applicant states that its advisory services are provided to only three clients for compensation, and that those entities utilize applicant's services in connection with the delivery of services to their own clients, many of which are substantial institutional investors, such as banks, insurance companies, and trust companies located throughout the world, that collectively manage and/or invest billions of dollars in both foreign and domestic securities. Applicant asserts that, the significant resources of these institutional investors, which may utilize its research and analyses in connection with their own investment management activities, substantially affect both national and international securities markets.[6]

7. Applicant states that the SEC exempted NRSROs from the prohibition on SEC registration although they typically do not have assets under management or act as investment advisers to registered investment companies because their activities have a significant effect on the national securities markets and the operation of federal securities laws.[7]

8. Applicant also states that the SEC exempted certain pension consultants from the prohibition on SEC registration even though they may not have assets under management or act as investment advisers to registered investment companies because they have a direct effect on the management of billions of dollars of plan assets, which in turn affects the national markets.[8]

9. Applicant also submits that it would be inconsistent with the purposes of section 203A(b)(1)(A) if it were subject to state regulation. Applicant states that, pursuant to this section, Congress preserved the states' ability to regulate certain investment adviser representatives of investment advisers registered with the SEC if those representatives provide services to retail clients. Applicant submits that Congress determined that the primary interest of the states is to maintain oversight of representatives with retail, and not institutional, clientele because the activities of these representatives predominately affect local markets. Applicant states that in defining the term "investment adviser representative" for purposes of section 203A(b), the SEC noted its belief that it is consistent with the intent of Congress to distinguish between retail and other clients.[9]

10. Applicant states that it does not provide investment advisory services directly to retail clients. Applicant submits that its three clients are institutions whose activities are national and international in scope. Further, applicant states that the advisory services that it provides to its clients are primarily used by such clients in connection with the services that they provide to their own clients, which are almost exclusively institutional.[10] Applicant states that, because its services are provided primarily to institutions, it is not the sort of investment adviser that Congress intended to be subject to regulation by and registration with the states.

11. Applicant believes that Congress intended that national investment advisers remain subject to SEC oversight, in part to focus SEC supervision and examination resources on investment advisers involved in interstate commerce. Applicant contends that the national and international nature of its activities lends itself to supervision and examination by one regulatory body.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–1491 Filed 1–21–98; 8:45 am]

BILLING CODE 8010–01–M

[4] S. Rep. No. 293, 104th Cong., 2d Sess. 4 (1996).

[5] 15 U.S.C. 80b–3a(c).

[6] Applicant also notes that its services reach certain institutional investors even more directly. As described above, applicant gives seminar presentations for certain of NSI's clients, and holds individual meetings directly with certain clients of NSI and NST, all which are institutional investors with a national or international presence.

[7] Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1633 at Section II.D.1. (May 15, 1997) [62 FR 28112 (May 22, 1997)].

[8] *Id.* at Section II.D.2.

[9] *Id.* at Section II.F.1.

[10] Of applicant's three clients, only NST has retail clients, all of whom are outside the United States. Applicant has no direct contacts with any of NST's retail clients.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23000; 812–10876]

Saratoga Advantage Trust, et al.; Notice of Application

January 14, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, and from certain disclosure requirements under the Act.

SUMMARY OF APPLICATION: The order would permit the investment adviser to an open-end registered investment company to enter into subadvisory contracts with subadvisers without receiving shareholder approval, and grant relief from certain disclosure requirements regarding advisory fees paid to subadvisers.

APPLICANTS: Saratoga Capital Management (the "Manager"), and the Saratoga Advantage Trust (the "Trust").[1]

FILING DATES: The application was filed on November 24, 1997, and amended on December 31, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 9, 1998 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, DC 20549. Applicants: 1501 Franklin Avenue, Mineola, NY 11501.

FOR FURTHER INFORMATION CONTACT: Lisa McCrea, Attorney Adviser, at (202) 942–0562, or Nayda B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 5th Street, N.W., Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act. The Trust currently is comprised of seven separate investment portfolios (the "Portfolios"), each of which has its own investment objectives and policies.

2. The Manager is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). The Trust has entered into an investment management agreement ("Management Agreement") with the Manager under which the Manager serves as investment adviser to the Trust and its Portfolios. The Manager retains investment advisers registered under the Advisers Act to serve as investment advisers to the Portfolios ("Advisers"). Currently each Portfolio has a single Adviser although the Manager is authorized to select multiple Advisers for each Portfolio.

3. All Advisers currently must be approved by the Trust's board of trustees ("The Board") and by shareholders. In evaluating prospective Advisers, the Manager considers, among other factors, each Adviser's: level of expertise; relative performance and consistency of performance to investment discipline or philosophy; investment personnel and financial strength; and quality of service and client communication. The Manager recommends to the Board whether investment advisory agreements with Advisers ("Advisory Agreements") would be renewed, modified or terminated. In undertaking this evaluation, the Board recognizes that a portion of the fees charged by the Manager pursuant to the Management Agreement will be paid by the Manager to the Advisers, and the Board will be provided with, and will evaluate, information concerning the fees paid by the Manager to the Advisers pursuant to the Advisory Agreements.

4. Subject to the supervision and direction of the Manager and, ultimately, the Board, each Adviser's responsibilities are to manage the securities investments held by the Portfolio it serves in accordance with the Portfolio's stated investment objective and policies, and exercise discretionary authority to make investment decisions for the Portfolio and place orders to purchase and sell securities on behalf of the Portfolio.

5. The Trust's investment advisory arrangements differ from those of traditional investment companies. In the case of the Trust, the Manager does not make the day-to-day investment decisions for the Portfolios. Instead, the Manager establishes an investment program for each Portfolio and selects, supervises and evaluates the Advisers who make the day-to-day investment decisions for the respective Portfolios. In addition to selecting and monitoring Advisers, the Manager supervises the Portfolio's overall investment programs, including advising and consulting with the Trustees and the Advisers. The Manager monitors the performance of the Trust's outside service providers, including the Trust's administrator, transfer agent and custodian. The Manager also pays salaries, fees and expenses of the Trust's officers, trustees or employees that are directors, officers or employees of the Manager.

6. In return for providing the services described above, the Manager currently receives a fee from each Portfolio, computed as a percentage of net assets. The Manager pays each Adviser out of this fee.

7. Applicants request an order permitting the Manager to enter into and materially amend Advisory Agreements without obtaining shareholder approval. Applicants also request an exemption from the disclosure provisions described below regarding disclosure of fees paid to each Adviser. Each Portfolio will disclose the following (both as a dollar amount and as a percentage of a Portfolio's net assets): (a) Aggregate fees paid to the Manager and Affiliated Advisers (as defined below); and (b) aggregate fees paid to Advisers other than Affiliated Advisers (as defined below) ("Aggregate Fee Disclosure"). For purposes of this application, an Affiliated Adviser is an Adviser that is an "affiliated person", as defined in section 2(a)(3) of the Act, of the Portfolio or Manager, other than by reason of serving as an Adviser of a Portfolio.

Applicants' Legal Analysis

1. Section 15(a) of the Act makes it unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract which has been approved by the vote of a majority of the investment company's outstanding voting securities. Rule 18f–2 provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Certain items of Form N–1A, the registration statement used by open-end investment companies, when taken together, may require each Portfolio to disclose compensation paid to the investment company's investment adviser and the method of computing the fee.

3. Form N–14, the registration form for business combinations involving investment companies, requires the inclusion of a "table showing the current fees for the registrant and the company being acquired and pro forma fees, if different, for the registrant after giving effect to the transaction using the format prescribed" by Form N–1A.

4. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (the "1934 Act"). Certain items of Schedule 14A require the following: (a) A proxy statement for a shareholder meeting at which a new fee will be established or an existing fee increased to include a table of the current and pro forma fees using the format prescribed in item 2 of Form N–1A; and (b) a proxy statement for a shareholder meeting at which an advisory contract is to be voted upon shall include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fees," the "terms of the contract to be acted upon," and, if a change in fees is proposed, the existing and proposed rate schedule for advisory fees paid to the advisers.

5. Form N–SAR is the semi-annual report filed with the SEC by registered investment companies. Form N–SAR requires investment companies to disclose the rate schedule for fees paid to investment advisers.

[1] Applicants request that the relief apply to any open-end registered investment company for which the Manager or any entity controlling, controlled by, or under common control with the Manager acts as investment adviser. All existing investment companies that currently intend to rely on the order have been named as applicants, and any other existing or future investment companies that subsequently rely on the order will comply with the terms and conditions in the application.

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6. Regulation S–X specifies the requirements for financial statements required to be included as part of the registration statements and shareholder reports filed with the SEC under the Act and the Securities Act of 1933. Section 6–07.2 of Regulation S–X may require that the Trust's financial statements contain information concerning fees paid to the Advisers.

7. Applicants believe that investors choose to invest in the Portfolios because of the Manager's experience and expertise in evaluating, selecting and supervising Advisers. Applicants believe that investors expect the Manager and the Board to select the Advisers for each Portfolio based on an Adviser's experience and expertise. Applicants contend that it is consistent with the protection of investors to vest the selection and supervision of the Advisers in the Manager because shareholders expect that the Manager will use its expertise to select the most able advisers.

8. Applicants believe that permitting the Manager to perform those duties for which shareholders compensate the Manager—the selection, supervision and evaluation of Advisers—without incurring unnecessary delay or expense is appropriately in the interests of the Portfolios' shareholders and will allow each Portfolio to operate more efficiently. Applicants contend that, without the delay inherent in holding shareholder meetings, the Portfolios will be able to act more quickly and with less expense to replace Advisers when the Manager and the Trustees believe that a change would benefit a Portfolio. Applicants assert that, without exemptive relief, the Trust would be required to call meetings of shareholders whenever the Manager determined to employ new or additional Advisers, or to approve a new Advisory Agreement after an assignment or due to a material change in terms.

9. Applicants argue that the relief requested from disclosure requirements would provide the Manager with more flexibility in negotiating fees with new Advisers. Applicants state that some Advisers use a "posted" rate schedule to set their fees, and that some Advisers would be unwilling to negotiate fees lower than the "posted" rate schedule, unless the rates negotiated for the Portfolios are not publicly disclosed. Disclosure of Adviser's fees would therefore lessen the Manager's bargaining power, and would not benefit shareholders. Applicants state that investors will know the rate of investment advisory fees each Portfolio will bear. Applicants assert that investors would still be able to determine whether the cost of investment advisory services, including the selection and supervision of Advisers, is competitive with services and costs which the investor could obtain elsewhere.

10. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that the requested relief satisfies this standard.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Within 90 days of the hiring of any Adviser, the affected Portfolio will furnish its shareholders with all information about a new Adviser or Advisory Agreement that would be included in a proxy statement. The information will include any change in the disclosure caused by the addition of a new Adviser of a Portfolio. The Portfolio will meet this condition by providing shareholders, within 90 days of the hiring of an Adviser, with an information statement that meets the requirements of Regulation 14C and Schedule 14C under the 1934 Act, and Item 22 of Schedule 14A under the 1934 Act.

2. Before a Portfolio may rely on the order requested, the operation of the Portfolio as described in the application will be approved by a majority of each Portfolio's outstanding voting securities, as defined in the Act, or, in the case of a new Portfolio whose public shareholders purchase shares on the basis of a prospectus containing the disclosure addressed in condition 3 below, by the sole shareholder before offering of shares of the Portfolio to the public.

3. The Trust will disclose in its prospectus the existence, substance, and effect of the order. In addition, the Portfolios will hold themselves out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Manager has ultimate responsibility to oversee Advisers and to recommend their hiring, termination, and replacement.

4. The Manager will provide general management and administrative services to the Trust and its Portfolios, including overall supervisory responsibility for the general management and investment of each Portfolio's securities portfolio, and, subject to review and approval by the Board, will: (i) Set the Portfolios' overall investment strategies; (ii) recommend and select Advisers; (iii) allocate and reallocate the Portfolios' assets among multiple Advisers, if more than one exists; (iv) monitor and evaluate the performance of Advisers, and (v) implement procedures to ensure that the Advisers comply with the Portfolio's investment objectives, policies, and restrictions.

5. At all times, a majority of the Board will not be "interested persons" of the Trust within the meaning of the Act ("Independent Trustees"), and the nomination of new or additional Independent Trustees will be placed within the discretion of the then existing Independent Trustees.

6. When an Adviser change is proposed for a Portfolio with an Affiliated Adviser, the Trust's Trustees, including a majority of Independent Trustees, will make a separate finding, reflected in that Trust's Board minutes, that such change is in the best interests of the Portfolio and its shareholders and does not involve a conflict of interest from which the Manager or the Affiliated Adviser derives an inappropriate advantage.

7. The Manager will not enter into an Advisory Agreement with any Affiliated Adviser without that Advisory Agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Portfolio.

8. Each Portfolio will disclose in the Trust's registration statement the Aggregate Fee Disclosure.

9. The Manager will provide the Board, no less frequently than quarterly, information about the Manager's profitability for each Portfolio. The information will reflect the impact on profitability of the hiring or termination of any Advisers during the quarter.

10. Whenever an Adviser is hired or terminated, the Manager will provide the Board with information showing the expected impact on the Managers' profitability.

11. At all times, independent counsel knowledgeable about the Act and the duties of Independent Trustees will be engaged to represent the Independent Trustees of the Trust. The selection of such counsel will be placed within the discretion of the Independent Trustees.

12. No Trustee or officer of the Trust or partner or officer of the Manager will own directly or indirectly (other than through a pooled investment vehicle over which such person does not have control) any interest in an Adviser except for: (i) Ownership of interests in the Manager or any entity that controls, is controlled by, or is under common control with the Manager; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either an Adviser or any entity that controls, is controlled by, or is under common control with an Adviser.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–1493 Filed 1–21–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39546; File No. SR–MSRB–97–17]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Underwriting and Transaction Assessments

January 13, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 23, 1997, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–MSRB–97–17). The proposed rule change is described in Items, I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing herewith a proposed rule change to rule A–13 on Underwriting and Transaction Assessments. The proposed rule change to rule A–13 would clarify that the fee currently assessed for inter-dealer transactions reported to the Board will not automatically apply to customer transactions once they are reported under Board rule G–14. The text of the proposed rule change is below. Additions are in italics. Rule A–13 + Underwriting and Transaction Assessments for Brokers, Dealers and Municipal Securities Dealers.

(a)–(b) No change.

(c) Transaction Assessments. Each broker, dealer and municipal securities dealer shall pay to the Board a fee equal to .0005% ($.005 per $1,000) of the total par value of *inter-dealer* municipal securities sales that it reports to the Board under rule G–14(b). For those transactions reported to the Board by a broker, dealer or municipal securities dealer on behalf of another broker, dealer or municipal securities dealer, the transaction fee shall be paid by the broker, dealer or municipal securities dealer that reported the transaction to the Board. Such broker, dealer or municipal securities dealer may then collect the transaction fee from the broker, dealer or municipal securities dealer on whose behalf the transaction was reported.

(d)–(f) No change.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Board currently assesses dealers a fee equal to .0005% of par value of the dealers' inter-dealer sales transactions in municipal securities, as reported to the Board under rule G–14(b). As indicated in Board rule filings and notices concerning the fee, this fee was intended to apply exclusively to inter-dealer transactions.[1] Since the language of rule A–13 was written when inter-dealer transactions were the only transactions that were being reported to the Board, rule A–13(c) now simply states that the transaction assessment will apply to "municipal securities sales that [the dealer] reports to the Board under rule G–14." In its rule filings and notices on rule A–13(c), the Board stated its intent to add customer transactions to those reported under rule G–14(b). The Board also noted that, once customer transactions are reported to the Board under rule G–14, the Board would review the use of customer transaction activity as a means of assessing fees. The Board, however, did not intend that the fee set for inter-dealer transactions would apply automatically to customer transactions that are reported under rule G–14.

The Board is in the process of implementing the customer transaction phase of the Transaction Reporting Program. This will result in dealer-customer transactions, as well as inter-dealer transactions, being reported to the Board under rule G–14(b), beginning in March 1998. To clarify that the current language of rule A–13(c) applies only to inter-dealer transactions, the proposed rule change simply adds the word "inter-dealer" to modify "municipal securities sales." The Board continues to intend to review customer transaction activity, once it becomes available in the Transaction Reporting Program, as a means to more equitably assess fees.

2. Basis

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(J) of the Act, which provides that the Board's rules shall:

> provide that each municipal securities broker and municipal securities dealer shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board. Such rules shall specify the amount of such fees and charges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all brokers, dealers and municipal securities dealers and is simply a technical change in rule language not affecting the effect or application of the rule.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change is merely a technical correction of rule language, the Board has designated this proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing Board rule under Section

[1] *See, e.g.*, SR–MSRB–95–13 and Commission Order of Approval, Securities Exchange Act Release No. 37197 (May 10, 1996).

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19(b)(3)(A) of the Act, which renders the proposed rule change effective upon receipt of this filing by the Commission. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–97–17 and should be submitted by February 12, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–1423 Filed 1–21–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39545; File No. SR–MSRB–97–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Forms G–36(OS) and G–36(ARD) and Recordkeeping, Operative on January 1, 1998

January 13, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 26, 1997, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–MSRB–97–10). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board has filed with the Commission a proposed rule change consisting of revised Forms G–36(OS) and G–36(ARD) under rule G–36 and amendments to section (a)(xv) of rule G–8, on recordkeeping. The proposed rule change becomes operative on January 1, 1998.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule G–36 requires that a broker, dealer or municipal securities dealer acting as underwriter in a primary offering of municipal securities (with certain limited exceptions) send to the Board copies of the official statement and completed Form G–36(OS). If the securities advance refund an outstanding issue of municipal securities, rule G–36 requires that the underwriter also send to the Board copies of the advance refunding document and completed Form G–36(ARD). Forms G–36(OS) and G–36(ARD) are being revised to provide greater clarity to brokers, dealers and municipal securities dealers in the process of completing the forms as well as to provide additional information that would assist the enforcement agencies in their enforcement activities relating to rules G–36 and G–32.

The revisions to Form G–36(OS) add the following new data elements: the date materials are received from the issuer, the date materials are sent to the Board, whether materials submitted consist of more than one document, the actual or expected date of delivery of securities to underwriters, whether the securities advance refund another issue, the SEC registration number, information regarding CUSIP–6 number assignments and the fax number of the preparer. The revisions to Form G–36(ARD) add the following new data elements: the date materials are received from the issuer, the date materials are sent to the Board, whether materials submitted consist of more than one document, the date of delivery of securities to underwriters, the SEC registration number and the fax number of the preparer. In addition, the layout of both forms is reorganized.

Rule G–8(a)(xv) currently requires brokers, dealers and municipal securities dealers acting as underwriters in most primary offerings of municipal securities to maintain certain records relating to such primary offerings and the receipt and sending of materials as required under rule G–36. Rule G–8(a)(xv) is being amended to require such brokers, dealers and municipal securities dealers to record and maintain additional information regarding the date of delivery of the issue to the underwriters, as well as to retain a copy of the receipt of sending the required forms and documents to the Board and a copy of the forms and documents sent. The additional records required under the amended rule will assist the enforcement agencies in their enforcement activities relating to rule G–36.

2. Basis

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

As discussed above, the Board believes that the proposed rule change will provide greater clarity to brokers, dealers and municipal securities dealers in completing Forms G–36(OS) and G–36(ARD) and will provide additional information to the enforcement agencies that would assist them in their enforcement activities relating to rules G–36 and G–32.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

In May 1997, the Board published a notice ("Notice") that, among other things, urged brokers, dealers and municipal securities dealers to review their compliance procedures in connection with rules G–36 and G–32.[1] To assist the agencies charged with enforcing rules G–36 and G–32, the Board proposed in the Notice certain revisions to Forms G–36(OS) and G–36(ARD). These revisions would require underwriters to include information regarding the dates underwriters receive official statements and advance refunding documents from issuers, the date of delivery of the issue to the underwriters, whether a new issue is an advance refunding and the date the documents are sent to the Board. In addition, the Board proposed an amendment to rule G–8(a)(xv) to require underwriters to record the date of delivery of the issue to the underwriters and to retain a copy of the receipt of sending the required forms and documents to the Board, as well as a copy of the forms and documents sent.

In response to its request for comments, the Board received comment letters addressing the proposed revisions to Forms G–36(OS) and G–36(ARD) and the proposed amendments to rule G–8(a)(xv) from eight commentators.

Several commentators state that they supported[2] or did not oppose[3] the proposed changes to Forms G–36(OS) and G–36(ARD) and the related change to rule G–8. One commentator[4] supported the collection and retention of the additional information as a deterrent to issuers for the untimely provision of official statements to underwriters and as a source of information about the frequency and severity of any problem in the municipal market with the delivery of official statements and advance refunding documents. Another commentator[5] stated that the proposal would evidence any late delivery by the issuer of official statements to underwriters.

NASD Regulation, Inc. suggested additional changes to the forms. It suggested that the forms include a clarifying statement which indicates whether the "date of delivery" is synonymous with "settlement or closing date"; that a glossary or definition of terms be included as part of the forms, or alternatively, that the forms contain a reference to the appropriate rule or interpretation which provides appropriate definitions; that, in addition to the managing underwriter, the forms identify each syndicate member and percent participation, when applicable, to be used in compliance activities under rule G–37; and that when firms are identified by name on the forms they also be identified by their broker-dealer number or SEC–8 number. The Board has incorporated most of these suggestions in the revised forms. Information regarding syndicate members and participants was not included since this information would in several respects not be compatible with the type of information mandated by rule G–37 and would require that the forms be enlarged to three pages to add data elements that are entirely unrelated to rule G–36.

Although another commentator[6] did not specifically oppose the changes in the forms, it expressed some concern regarding the revisions by stating that the "undisguised purpose" of the proposed revisions to Forms G–36(OS) and G–36(ARD) was to require brokers, dealers and municipal securities dealers to advise the Board whenever a filing is late under rule G–36. The Board acknowledges that one of the stated purposes of the revisions to Forms G–36(OS) and G–36(ARD) is to assist the enforcement agencies in their enforcement activities.

One commentator[7] opposed the proposed amendments to rule G–8(a)(xv), stating that it would increase the burden on brokers, dealers and municipal securities dealers without solving the underlying problem. The Board believes that the proposed amendments to rule G–8(a)(xv) will at most constitute a negligible compliance burden while providing significant assistance to the enforcement agencies in their enforcement activities relating to rule G–36.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) was provided to the Commission for its review at least five business days prior to the filing date; and (iv) does not become operative for at least thirty (30) days from the date of its filing, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder and become operative on January 1, 1998. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–97–10 and should be submitted by February 12, 1998.

[1] "Board Review of Underwriting Process," *MSRB Reports*, Vol. 17, No. 2 (June 1997) at 3–16.

[2] Goldman, Sachs & Co., Government Finance Officers Association ("GFOA"), Newman & Associates, Inc. and Rauscher Pierce Refsnes, Inc. ("Rauscher Pierce").

[3] Lehman Brothers Inc.

[4] GFOA.

[5] Rauscher Pierce.

[6] Smith Barney Inc.

[7] Wachovia Bank, N.A.

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For the Commission by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–1424 Filed 1–21–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39551; File No. SR–NASD–97–84]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Extending the Pilot Program of the NASD's Short Sale Rule and the Amendment to the Definition of "Legal" Short Sale

January 14, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, notice is hereby given that on December 23, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to extend until April 15, 1998, the pilot program of the NASD's short sale rule ("Rule") and the recently-approved amendment to the definition of "legal" short sale.[3] Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

NASD Rule 3350

(1) This section shall be in effect until *April 15, 1998* [January 15, 1998].

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item V below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Background and Description of the NASD's Short Sale Rule

On June 29, 1994, the SEC approved the rule applicable to short sales[4] in Nasdaq National Market ("NNM") securities on an eighteen-month pilot basis through March 5, 1996.[5] The termination date for the pilot program for the Rule was subsequently extended until January 15, 1998.[6]

The Rule prohibits member firms from effecting short sales at or below the current inside bid as disseminated by Nasdaq whenever that bid is lower than the previous inside bid.[7] The Rule is in effect during normal domestic market hours (9:30 a.m. to 4:00 p.m., Eastern Time). To ensure that market maker activities that provide liquidity and continuity to the market are not adversely constrained when the Rule is invoked, the Rule provides an exemption to "qualified" Nasdaq market makers (*i.e.*, those market makers that meet the Primary Market Maker ("PMM") standards). Even if a market maker is able to avail itself of the qualified market maker exemption, it can only utilize the exemption from the Rule for transactions that are made in connection with bona fide market making activity. If a market maker does not satisfy the requirements to be a qualified market maker, it can remain a market maker in the Nasdaq system, although it can not take advantage of the exemption from the Rule.

Since the Rule has been in effect, there have been three methods used to determine whether a market maker is eligible for the market maker exemption. Specifically, from September 4, 1994 through February 1, 1996, Nasdaq market makers who maintained a quotation in a particular NNM security for 20 consecutive business days without interruption were exempt from the Rule for short sales in that security, provided that short sales were made in connection with bona fide market making activity (the "20-day" test). From February 1, 1996 until February 14, 1997, the "20-day" test was replaced with a four-part quantitative test known as the Nasdaq PMM Standards.[8] On February 14, 1997, the PMM standards were waived for all NNM securities due to the effects of the SEC's Order Handling Rules and corresponding NASD rule change and system modifications on the operation of the

[1] 15 U.S.C. § 78s(b)(1) (1994).

[2] 17 CFR 240.19b–4 (1997).

[3] The NASD has requested permanent approval of its short sale rule. Securities Exchange Act Release No. 38979 (Aug. 26, 1997), 62 FR 46537 (Sept. 3, 1997) [File No. SR–NASD–97–58]. In response to its solicitation of comments on the filing [SR–NASD–97–58], the Commission has received 352 comment letters to date, which will be considered in connection with the Commission's determination on SR–NASD–97–58.

[4] A short sale is a sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller. To determine whether a sale is a short sale, members must adhere to the definition of a "short sale" contained in Rule 3b–3 of the Act, which rule is incorporated into Nasdaq's Rule by NASD Rule 3350(k)(1).

[5] Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994) [File No. SR–NASD–92–12] ("Short Sale Rule Approval Order").

[6] The Rule was extended on several occasions. *See* Securities Exchange Act Release No. 39140 (Sept. 26, 1997), 62 FR 52170 (Oct. 6, 1997) [File No. SR–NASD–97–65]; Securities Exchange Act Release No. 37917 (Nov. 1, 1996), 61 FR 57934 (Nov. 8, 1996) [File No. SR–NASD–96–41]; Securities Exchange Act Release No. 36171 (Aug. 30, 1995), 60 FR 46651 (Sept. 7, 1995) [File No. SR–NASD–95–35]. The most recent extension of the pilot program through January 15, 1998, was to allow Nasdaq and the NASD to develop more meaningful primary market maker standards.

[7] Nasdaq calculates the inside bid or best bid from all market makers in the security (including bids on behalf of exchanges trading Nasdaq securities on an unlisted trading privileges basis) and disseminates symbols to denote whether the current inside bid is an "up bid" or a "down bid." Specifically, an "up bid" is denoted by a green "up" arrow and a "down bid" is denoted by a red "down" arrow. To effect a "legal" short sale on a down bid, the short sale must be executed at a price at least a 1/16th of a point above the current inside bid. Conversely, if the security's symbol has a green "up" arrow next to it, members can effect short sales in the security without any restrictions.

[8] Under the PMM Standards, a market maker was required to satisfy at least two of the following four criteria each month to be eligible for an exemption from the Rule: (1) the market maker must be at the best bid or best offer as shown on Nasdaq no less than 35 percent of the time; (2) the market maker must maintain a spread no greater than 102 percent of the average dealer spread; (3) no more than 50 percent of the market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading; or (4) the market maker executes 1½ times its "proportionate" volume in the stock. If a PMM did not satisfy the threshold standards after a particular review period, the market maker lost its designation as a PMM (*i.e.*, the "P" next to its market maker identification was removed). Market makers could requalify for designation as a PMM by satisfying the threshold standards in the next review period.

four quantitative standards.[9] For example, among other effects, the requirement that market makers display customer limit orders adversely affected the ability of market makers to satisfy the "102% Average Spread Standard."

Furthermore, in an effort to not constrain the legitimate hedging needs of options market makers, the Rule contains a limited exception for standardized options market makers. The Rule also contains an exemption for warrant market makers similar to the one available for options market makers. The Rule also incorporates seven exemptions contained in Rule 10a–1 under the Act ("Rule 10a-1") that are relevant to trading on Nasdaq.[10]

2. Proposal to Extend the Short Sale Rule

When the Commission approved the Rule on a temporary basis, it made specific findings that the Rule was consistent with Sections 11A, 15A(b)(6), 15A(b)(9), and 15A(b)(11) of the Act. Specifically, the Commission stated that, "recognizing the potential for problems associated with short selling, the changing expectations of Nasdaq market participants and the competitive disparity between the exchange markets and the OTC market, the Commission believes that regulation of short selling of NNM securities is consistent with the Act."[11] In addition, the Commission stated that it "believes that the NASD's short sale bid-test, including the market maker exemption, is a reasonable approach to short sale regulation of Nasdaq National Market securities and reflects the realities of its market structure."[12] However, in light of the Commission's concerns with adverse comments made about the Rule and the Commission's own concerns with the structure and impact of the Rule,[13] the Commission determined to approve the Rule on a temporary basis to afford the NASD and the SEC an opportunity study the effects of the Rule and its exemptions.[14] To address these concerns, in July 1996 and in August 1997, the NASD's Economic Research Department prepared two separate studies on the economic impact of the Rule, which concluded, among other things, that the Rule had no adverse impact on the market.[15] Accordingly, on August 8, 1997, the NASD submitted a proposed rule change that requested permanent approval of the Rule.[16] Additionally, on August 14, 1997, the NASD and Nasdaq submitted a proposed rule change to amend the definition of "legal" short sale in the Rule.[17]

On September 26, 1997, the Commission approved an extension of the Rule until January 15, 1998, to allow Nasdaq, to develop, and receive the required board approval for, more meaningful PMM standards.[18] On the same day, the Commission also approved on a temporary basis until January 15, 1998, the proposed amendment to the definition of "legal" short sale.[19] During its September 1997 meeting, the Nasdaq Board of Directors approved revised PMM standards, which were forwarded to, and approved by, the NASD Board of Governors at its October 9, 1997 meeting.

The NASD has had ongoing discussions with Commission staff regarding the PMM standards. In light of the foregoing, the NASD and Nasdaq are requesting an extension of the Rule until April 15, 1998. The extension of time also will allow the NASD and Nasdaq to provide Commission staff with additional information about the practical effects and the operation of the revised PMM standards, and to explore other options to PMM standards, such as a customer facilitation exemption for market makers. The NASD and Nasdaq also are requesting an extension to April 15, 1998, of the amendment to the definition of "legal" short sale, which previously was approved on a temporary basis until January 15, 1998.

The NASD believes the proposed rule change is consistent with Section 25A(b)(6) of the Act because the Rule is premised on the same anti-manipulation and investor protection concerns that underlie the SEC's own short sale rule, Rule 10a–1 under the Act. In particular, as with Rule 10a–1, the NASD believes its Rule promotes just and equitable principles of trade by permitting long sellers access to market prices at any time, while constraining the execution of potentially abusive and manipulative short sales at or below the bid in a declining market. In addition, as with Rule 10a–1, Nasdaq believes its Rule removes impediments to a free and open market for long sellers and helps to assure liquidity at bid prices that might otherwise be usurped by short sellers. Lastly, because the immediate beneficiaries of the Rule are shareholders of NNM companies, Nasdaq believes its Rule is designed to protect investors and the public interest. At the same time, given that the Rule does not constrain short sales in a raising market or prohibit the execution

[9] Securities Exchange Act Release No. 38294 (February 14, 1997), 62 FR 8289 (February 24, 1997) [File No. SR–NASD–97–07]. On October 3, 1997, the waiver of PMMs was extended until April 1, 1998. Securities Exchange Act Release No. 39198 (Oct. 3, 1997), 62 FR 53365 (Oct. 14, 1997) [SR–NASD–97–3].

[10] NASD Rule 3350(c)(2)–(8). The Rule also provides that a member not currently registered as a Nasdaq market maker in a security that has acquired the security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of the Rule notwithstanding that such member may not have a net long position in such security, if and to the extent that such member's short position in such security is subject to one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities.

[11] Short Sale Rule Approval Order, *supra* note 5, at 34891.

[12] *Id.* at 34892.

[13] When the NASD's Rule was first considered by the Commission, the SEC received 397 comment letters on the proposal, with 275 comments opposed to the Rule and 122 comments in favor of the Rule. Those commenters opposed to the Rule argued that: (1) the NASD had failed to provide sufficient evidence of the need for the Rule or demonstrate the appropriateness of the Rule based on a "bid" test instead of "tick" test; (2) the PMM standards will have negative effects on both market makers and the Nasdaq market; and (3) the Rule is inconsistent with the requirements of the Act.

[14] In particular, before considering any NASD proposal to extend, modify, permanently implement or terminate the Rule, the Commission requested that the NASD examine: (1) the effects of the Rule on the amount of short selling; (2) the length of time that the Rule is in effect (*i.e.*, the duration of down bid situations); (3) the amount of non-market maker short selling permitted under the Rule; (4) the extent of short selling by market makers exempt from the Rule; (5) whether there have been any incidents of perceived "abusive short selling"; (6) the effects of the Rule on spreads and volatility; (7) whether the behavior of bid prices has been significantly altered by the Rule; and (8) the effect of permitting short selling based on a minimum increment of ⅛th.

[15] In July 1996, the NASD's Economic Analysis Department completed a study on the economic impact of the Rule, which concluded that the Rule has had no adverse impact on the market. The Economic Impact of the Nasdaq Short Sale Rule, NASD Economic Research Department (July 23, 1996) ("July 1996 Short Sale Study"). In the same month, NASD submitted a proposal to adopt the Rule on a permanent basis. Securities Exchange Act Release No. 37942 (July 29, 1996), 61 FR 40693 (Aug. 5, 1996) [SR–NASD–96–30]. Because the NASD believed additional quantitative analysis was necessary to evaluate the effects of the Rule, the NASD withdrew this rule filing. In August 1997, the NASD's Economic Analysis Department completed a second study on the economic impact of the Rule, which further concluded that the Rule has had no adverse impact on the market. The Nasdaq Stock Market Short Sale Rule: Analysis of Market Quality Effects and The Market Maker Exemption, NASD Economic Research Department (August 7, 1997) ("August 1997 Short Sale Study").

[16] Securities Exchange Act Release No. 38979 (Aug. 26, 1997), 62 FR 46537 (Sept. 3, 1997) [File No. SR–NASD–97–58].

[17] Securities Exchange Act Release No. 38975 (Aug. 26, 1997), 62 FR 46535 (Sept. 3, 1997) [File No. SR–NASD–97–59].

[18] *See* Securities Exchange Act Release No. 39140 (Sept. 26, 1997), 62 FR 52170 (Oct. 6, 1997) [File No. SR–NASD–97–65].

[19] Securities Exchange Act Release No. 39139 (Sept. 26, 1997), 62 FR 52169 (Oct. 6, 1997) [File No. SR–NASD–97–59]. The amendment provides that a "legal" short sale can be effected on a down bid: at a price of ⅛th above the bid when the inside spread is ⅛th or greater; or at a price equal to or greater than the offer price when the inside spread is less than ⅛th.

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of short sales in a declining market above bid prices, Nasdaq believes the Rule does not diminish the important pricing efficiency and liquidity benefits that legitimate short selling activity provides.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that its proposal to extend the effectiveness of the Rule and the amendment to the definition of a "legal" short sale until April 15, 1998, be approved on an accelerated basis prior to January 15, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the NASD's proposed rule change seeking to extend the pilot of the Rule and the amendment to the definition of "legal" short sale through April 15, 1998, is consistent with the Act and the rules and regulations promulgated thereunder. Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act which requires that the NASD rules be designed, among other things, to facilitate securities transactions and to protect investors and the public interest. The Commission believes that the proposed rule change is consistent with the Act because extension of the pilot and the amendment to the definition of a "legal" short sale for a short period of time will allow the Commission and the NASD to consider the potential problems associated with short selling, the changing expectations of Nasdaq market participants and the potential for competitive disparity between the exchange markets and the over-the-counter market. This extension also will afford the NASD time to submit to the Commission revised PMM standards and will allow the Commission to review on a contemporaneous basis these two integrally related rules (*i.e.*, the short sale and PMM rules). Once the NASD develops reasonable PMM standards, the Commission will be in a better position to evaluate the need for a short sale rule as well as the appropriateness of an exemption for PMMs.

The Commission also finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof. The Commission believes that it is appropriate to approve on an accelerated basis the extension of the pilot program of the Rule and the amendment to the definition of "legal" short sale through April 15, 1998, because it will ensure the continuous operation of the Rule and the amendment to the definition of "legal" short sale, while the NASD addresses the Commission's questions and concerns, provides Commission staff with additional information about the practical effects and the operation of the revised PMM standards, and explores other options to PMM standards, such as a customer facilitation exemption for market makers.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. People making whiten submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the NASD's principal offices. All submissions should refer to File No. SR–NASD–97–94 and should be submitted by February 11, 1998.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, SR–NASD–97–94 be, and hereby is approved through April 15, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[20]

[20] 17 CFR 200.30–3(a)(12)(1997).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–1422 Filed 1–21–98; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Region VIII Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Regional VIII Advisory Council located in the geographical area of Salt Lake City, Utah, will hold a public meeting at 9:00 a.m. on Wednesday, February 18, 1998, at the Salt Lake Area Chamber of Commerce, Media Room, at 175 East 400 South, Suite 600, Salt Lake City, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Stan Nakano, District Director, U.S. Small Business, 125 South State Street, Salt Lake City, Utah 84138, (801) 524–5804.

Eugene Carlson,

Associate Administrator, Office of Communication & Public Liaision.

[FR Doc. 98–1410 Filed 1–21–98; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 30, 1997 [62 FR 58858].

DATES: Comments must be submitted on or before February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Judith Street, ABC–100; Federal Aviation Administration; 800 Independence Avenue, S.W.; Washington, DC 20591; Telephone number (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Special Federal Aviation Regulation No. 71.

OMB Control Number: 2120–0620.

Type of Request: Extension of currently approved collection.

Affected Public: Individuals, business or other for-profit organizations.

Abstract: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted these requirements to OMB. As a result, an emergency clearance of the information collection requirement (No. 2120–0620) has been approved through February 28, 1998.

SFAR 71, which became effective on October 26, 1994, applies to air tour operators in the state of Hawaii. Under the SFAR, both Part 91 and Part 135 operators are required to provide a passenger safety briefing on water ditching procedures, use of required flotation equipment, and emergency egress from the aircraft in event of a water landing.

Annual Estimated Burden Hours: 6,977 hours.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC on January 15, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–1421 Filed 1–21–98; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. This publication ensures that the agency is in compliance with statutory indexing requirements.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel for Litigation (AGC–400), Federal Aviation Administration, 400 7th Street, SW., Suite PL 200–A, Washington, DC 20590; telephone (202) 366–4118.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes containing identifying information regarding materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the decisions and orders issued by the Administrator under the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR Part 13, Subpart G.

The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a cumulative subject-matter index and digests organized by order number.

The indexes are published on a quarterly basis (i.e., January, April, July, and October). This publication represents the quarter ending on December 31, 1997.

The FAA first published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that only the subject-matter index would be published cumulatively and that the order number index would be non-cumulative. The FAA announced in a later notice that the order number indexes published in January would reflect all of the civil penalty decisions for the previous year. 58 FR 5044; 1/19/93.

The previous quarterly publications of the indexes of the Administrator's decisions and orders in civil penalty cases have appeared in the **Federal Register** as follows:

Dates of quarter	Federal Register publication
11/1/89–9/30/90	55 FR 45984; 10/31/90.
10/1/90–12/31/90 ..	56 FR 44886; 2/6/91.
1/1/91–3/31/91	56 FR 20250; 5/2/91.
4/1/91–6/30/91	56 FR 31984; 7/12/91.
7/1/91–9/30/91	56 FR 51735; 10/15/91.
10/1/91–12/31/91 ..	57 FR 2299; 1/21/92.
1/1/92–3/31/92	57 FR 12359; 4/9/92.
4/1/92–6/30/92	57 FR 32825; 7/23/92.
7/1/92–9/30/92	57 FR 48255; 10/22/92.
10/1/92–12/31/92 ..	58 FR 5044; 1/19/93.
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4/1/93–6/30/93	58 FR 42120; 8/6/93.
7/1/93–9/30/93	58 FR 58218; 10/29/93.
10/1/93–12/31/93 ..	59 FR 5466; 2/4/94.
1/1/94–3/31/94	59 FR 22196; 4/29/94.
4/1/94–6/30/94	59 FR 39618; 8/3/94.
7/1/94–12/31/94	60 FR 4454; 1/23/95.
1/1/95–3/31/95	60 FR 19318; 4/17/95.
4/1/95–6/30/95	60 FR 36854; 7/18/95.
7/1/95–9/30/95	60 FR 53228; 10/12/95.
10/1/95–12/31/95 ..	61 FR 1972; 1/24/96.
1/1/96–3/31/96	61 FR 16955; 4/18/96.
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10/1/96–12/31/96 ..	62 FR 2434; 1/16/97.
1/1/97–3/31/97	62 FR 24533; 5/2/97.
4/1/97–6/30/97	62 FR 38339; 7/17/97.
7/1/97–9/30/97	62 FR 53856; 10/16/97.

The civil penalty decisions and orders, and the indexes and digests are available in FAA offices. In addition, the Administrator's civil penalty decisions have been published by commerical publishers (Hawkins Publishing Company and Clark Boardman Callahan) and are available on computer on-line services (Westlaw, LEXIS, Compuserve and FedWorld). (The addresses of FAA offices where the civil penalty decisions may be reviewed and information regarding these commercial publications and computer databases is provided at the end of this notice.)

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Civil Penalty Actions—Orders Issued by The Administrator Digests

(Current as of December 31, 1997)

The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from October 1, 1997, to December 31, 1997. The FAA publishes noncumulative supplements to this compilation on a quarterly basis (e.g., April, July, October, and January of each year).

These digests do not constitute legal authority, and should not be cited or relied upon as such. The digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

In the Matter of Air St. Thomas

[Order No. 97–29 (10/1/97)]

Appeal Dismissed. Respondent has failed to show good cause for the lateness of its notice of appeal. As a result, its appeal is dismissed.

In the Matter of Emery Worldwide Airlines

[Order No. 97–30 (10/8/97)]

Aircraft Held Unairworthy. It was proven by the preponderance of the evidence that plexiglass light covers were missing in the cargo compartment of this DC–8–63 freighter during 21 flights. The Administrator affirmed the law judge's finding that the light covers had simply been removed while the light bulbs were being changed, were then reinstalled and were in place during the flights. The Administrator also affirmed the law judge's determination that the replacement of the missing plexiglass light covers could not be deferred under Respondent's Minimum Equipment List (MEL). The aircraft was unairworthy because, without the light covers, the aircraft deviated from its type design. The Administrator did not decide whether the aircraft was in a condition unsafe for flight due to the missing light covers. The Administrator affirms the $9,000 civil penalty assessed by the law judge.

In the Matter of Sanford Air

[Order No. 97–31 (10/8/97)]

Responsibility for repairs for which Respondent has billed the customer. If Respondent was unaware of its employee's activities, its own deficiencies in supervising the employee are the cause.

Repair Station Responsibility. Repair station is responsible for improper repairs performed by its employee, despite Respondent's argument that repairs were performed after hours and off company premises. Respondent may not evade.

Lateness of Initial Decision. Dismissal is not an appropriate remedy for law judge's failure to issue written initial decision within 30 days. If time was Respondent's real concern, its remedy was to initiate action to compel the law judge to issue his decision. Respondent did not do this, nor has it shown any prejudice resulting from the delay. The law judge's order assessing a civil penalty of $4,750 is affirmed.

In the Matter of Florida Propeller

[Order No. 97–32 (10/8/97)]

Evidence Insufficient. Complainant alleged that it was impossible for propeller blades to wear down so much in short time that passed since Respondent's overhaul of the propeller, and therefore, Respondent must have returned the propeller to service with undersized blades. It may be that it is impossible to wear down propeller blades in such a short time, but the evidence in this case is insufficient to prove this claim. Although Complainant argued it had unrebutted expert testimony that blades could not have worn down so much, the witness Complainant relied on admitted he had no expertise or training in propeller wear and tear. The law judge believed the propeller mechanic who testified that he measured the blades at the time of overhaul, and the blades were within limits. Complainant has provided insufficient reason to overturn the law judge's credibility determinations, which are entitled to deference. The law judge's dismissal of the complaint is affirmed.

Failure to Preserve Issue for Appeal. Complainant argues that the case should be remanded to permit it to introduce its rebuttal testimony, which the law judge excluded. By refusing to offer the substance of the rebuttal testimony for the record, Complainant failed to preserve this issue for appeal.

In the Matter of Daniel B. Rawlings

[Order No. 97–33 (10/21/97)]

Memo to Law Judge Construed as Notice of Appeal; Respondent Directed to File Appeal Brief. After Respondent failed to file an answer to the complaint, the law judge issued an order assessing a civil penalty. Five days later, Respondent sent the law judge a memorandum indicating that he had not received either the complaint or the law judge's initial order advising him of the need to file an answer. Respondent's memorandum can be construed as a notice of appeal from the law judge's order assessing a civil penalty. Although ordinarily a party must perfect its appeal by filing an appeal brief within 50 days of the initial decision, an exception will be made here because Respondent's memorandum was not construed as a notice of appeal until now. As a result, Respondent is given until November 25, 1997, to file an appeal brief. If Respondent fails, without good cause, to meet this deadline, the law judge's order assessing a $2,000 civil penalty will be affirmed. Respondent's appeal brief should address whether Respondent had good cause for failing to file a timely answer to the complaint. Complainant is granted 35 days from the service date of Respondent's appeal brief to file a reply brief.

In the Matter of Continental Airlines

[FAA Order No. 97–34 (10/23/97)]

Leave to File Additional Brief Denied. Complainant seeks leave to file a reply to Continental's reply brief. In Continental's reply brief, Continental attacked the validity of a security directive; Complainant had not addressed the issue of the validity of the security directive in its appeal brief.

Good cause does not exist to grant Complainant's petition for leave to file an additional brief. The Federal Courts of Appeals constitute a more appropriate forum to attack existing regulations as not consistent with the U.S. Constitution, the Administrative Procedure Act, and/or the agency's enabling act. In this case, Continental is arguing that the public should have been given notice and opportunity to comment before the security directive became effective. Whether notice and an opportunity to comment should have been afforded when the security directive was issued is a question that is better left for review by a Federal Court. Also, the question of whether the security directive is justified has nothing to do with the facts of this case, and is better directed to a Federal Court.

In the Matter of Gordon Air Services

[Order No. 97–35 (10/29/97)]

Appeal Dismissed. Respondent failed to perfect its appeal by filing an appeal brief. As a result, Respondent's appeal is dismissed.

In the Matter of Avcon Conversions, Inc.

[Order No. 97–36 (10/29/97)]

Appeal Dismissed. Respondent failed to perfect its appeal by filing an appeal brief. As a result, Respondent's appeal is dismissed.

In the Matter of David E. Roush

[Order No. 97–37 (10/29/97)]

Appeal Dismissed. Respondent failed to perfect its appeal by filing an appeal brief. As a result, Respondent's appeal is dismissed.

In the Matter of Air St. Thomas

[Order No. 97–38 (11/17/97)]

Further Briefing Ordered. In an earlier order (FAA Order No. 97–29), the Administrator dismissed Respondent's appeal due to the lateness of its notice of appeal. Respondent then filed a document captioned "Notice of Appeal to Reopen Case," which can be construed as a petition for reconsideration of the Administrator's order of dismissal.

The record of this case does not explain Respondent's reasons for failing to file a timely notice of appeal. As a result, it is unclear whether Respondent had good cause for the untimeliness. Respondent is granted until January 20, 1998, to file a brief detailing its reasons for failing to file a timely notice of appeal. As for Complainant, Complainant is granted 30 days from the service date of Respondent's brief to file a reply brief.

In the Matter of Delta Air Lines

[FAA Order No. 97–39 (12/1/97)]

Appeal Dismissed. Complainant withdrew its notice of appeal. Complainant's appeal is dismissed.

Commercial Reporting Services of the Administrator's Civil Penalty Decisions and Orders

1. *Commercial Publications:* The Administrator's decisions and orders in civil penalty cases are available in the following commercial publications:

Civil Penalty Cases Digest Service, published by Hawkins Publishing Company, Inc., P.O. Box 480, Mayo, MD 21106, (410) 798–1677;

Federal Aviation Decisions, Clark Boardman Callaghan, a subsidiary of West Information Publishing Company, 50 Broad Street East, Rochester, NY 14694, 1–800–221–9428.

2. *CD-ROM.* The Administrator's orders and decisions are available on CD-ROM through Aeroflight Publications, P.O. Box 854, 433 Main Street, Gruver, TX 79040, (806) 733–2483.

3. *On-Line Services.* The Administrator's decisions and orders in civil penalty cases are available through the following on-line services:

- Westlaw (the Database ID is FTRAN-FAA).
- LEXIS [Transportation (TRANS) Library, FAA file.].
- Compuserve.
- FedWorld.

FAA Offices

The Administrator's decisions and orders, indexes, and digests are available for public inspection and copying at the following location in FAA headquarters:

FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A, Washington, DC 20591; (202) 267–3641.

These materials are also available at all FAA regional and center legal offices at the following locations:

Office of the Assistant Chief Counsel for the Aeronautical Center (AMC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73125; (405) 954–3296.

Office of the Assistant Chief Counsel for the Alaskan Region (AAL–7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AL 99513; (907) 271–5269.

Office of the Assistant Chief Counsel for the Central Region (ACE–7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446.

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Office of the Assistant Chief Counsel for the Eastern Region (AEA–7), Eastern Region Headquarters, JFK International Airport, Federal Building, Jamaica, NY 11430; (718) 553–3285.

Office of the Assistant Chief Counsel for the Great Lakes Region (AGL–7), 2300 East Devon Avenue, Suite 419, Des Plaines, IL 60018; (708) 294–7108.

Office of the Assistant Chief Counsel for the New England Region (ANE–7), New England Region Headquarters, 12 New England Executive Park, Room 401, Burlington, MA 01803–5299; (617) 238–7050.

Office of the Assistant Chief Counsel for the Northwest Mountain Region (ANM–7), Northwest Mountain Region Headquarters, 1601 Lind Avenue, SW, Renton, WA 98055–4056; (206) 227–2007.

Office of the Assistant Chief Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 1701 Columbia Avenue, College Park, GA 30337; (404) 305–5200.

Office of the Assistant Chief Counsel for the Southwest Region (ASW–7), Southwest Region Headquarters, 2601 Meacham Blvd., Fort Worth, TX 76137–4298; (817) 222–5087.

Office of the Assistant Chief Counsel for the Technical Center (ACT–7), Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 485–7087.

Office of the Assistant Chief Counsel for the Western-Pacific Region (AWP–7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Lawndale, CA 90261; (310) 725–7100.

Issued in Washington, DC on January 12, 1998.

James S. Dillman,

Assistant Chief Counsel for Litigation.

[FR Doc. 98–1499 Filed 1–21–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on February 11, 1998, at 10 a.m.

ADDRESSES: The meeting will be held at the Aerospace Industries Association of America, 1250 Eye Street, NW., Goddard Room, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9683; fax (202) 267–5075; e-mail Jean.Casciano@faa.dot.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Executive Committee to be held on February 11, 1998, at the Aerospace Industries Association of America, 1250 Eye Street, NW., Goddard Room, Washington, DC, 10 a.m. The agenda will include:

- A vote on a proposed Use of Digital Systems for Direct Access and Interchange of Technical Data advisory circular.
- A brief update on the status of the proposed new Fuel Tank Harmonization Working Group.
- A brief update on the status of the Overflights of the National Parks effort.
- A brief update on the Rulemaking Business Process Reengineering effort.
- Administrative issues.

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by February 2, 1998, to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting.

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. A copy of the proposed advisory circular being put to a vote may also be obtained from that person.

Issued in Washington, DC, on January 15, 1998.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–1497 Filed 1–21–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at Fort Lauderdale-Hollywood International Airport, Fort Lauderdale, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Fort Lauderdale-Hollywood International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 23, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to William F. Sherry, Manager of Airports of the Broward County Aviation Department at the following address: 320 Terminal Drive, Fort Lauderdale, Florida 33315.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Broward County Aviation Department under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Sandra A. Holliday, Project Manager, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando Florida 32822, 407–812–6331. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Fort Lauderdale-Hollywood International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 13, 1998, the FAA determined that the application to impose and use a PFC submitted by the Broward County Aviation Department was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 30, 1998.

The following is a brief overview of PFC Application No. 98–02–C–00–FLL.

Level of the proposed PFC: $3.00.

Proposed charge effective date: September 1, 1998.

Proposed charge expiration date: February 1, 2009.

Total estimated PFC revenue: $224,761,000.

Brief description of proposed project(s): Dual Parallel Taxiway A (now called Taxiway C); Air Cargo Apron and Drainage; Noise Monitoring System; New Terminal Development; Muck Removal—New Terminal Development; Utility Corridor; Airport Facilities Maintenance Building; Terminal Roadway Improvements; Hardstand Support Facility; EVIDS and Life Safety Improvements; Modifications of ASR–9 Radar; ARFF Facility Improvements; Interior Service Road Development; Water and Sewer Improvements; Muck Removal—Future Phases; Future Phase—Terminal Design; Aviation Easements; West Side Apron Phase 2 and 3; Decommission VOR; ARFF Vehicle; Taxiway A (now called Taxiway C)—Center Section; Rebuild 4th Avenue and Noise Buffer Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators filing FAA Form 1800–31; Scheduled Foreign Flag Air Carriers filing RSPA Form T–100(f) operating scheduled intercontinental service from Fort Lauderdale-Hollywood International Airport.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Broward County Aviation Department.

Issued in Orlando, Florida on January 14, 1998.

Charles E. Blair,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 98–1498 Filed 1–21–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Docket No. 87–2, Notice. No. 6]

RIN 2130–AB20

Automatic Train Control and Advanced Civil Speed Enforcement System; Northeast Corridor Railroads

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of public hearing.

SUMMARY: The Federal Railroad Administration will hold a public hearing concerning issues raised in a November 20, 1997 proposed order of particular applicability that would require all trains operating on the north end of the Northeast Corridor (NEC) between Boston, Massachusetts and New York, New York, to be controlled by locomotives equipped to respond to a new advanced civil speed enforcement system (ACSES) in addition to the automatic train control (ATC) system that is currently required on the NEC. The proposed order contains performance standards for the cab signal/ATC and ACSES systems on the NEC and would also authorize increases in certain maximum authorized train speeds and safety requirements supporting improved rail service.

DATES: (1) The hearing will begin at 10:00 a.m. on Tuesday, February 17, 1998, Eastern Standard Time.

(2) Any party wishing to participate in the public hearing should notify the Docket Clerk by telephone or fax at the numbers provided below, or by mail at the address provided below, by February 12, 1998. The notification should include who the party represents, the particular subject(s) the party plans to address, the party's mailing address and three copies of any oral statement that he or she intends to make at the hearing. Parties who do not meet this deadline may be denied the opportunity to present oral testimony, although their written statements will be included in the record of this proceeding.

(3) Parties who do not wish to testify, but wish to submit written comments for inclusion in the hearing docket should submit them by February 24, 1998.

ADDRESSES: (1) Hearing location—9th Floor, 1120 Vermont Avenue, N.W., Washington, D.C. 20005.

(2) Ms. Renee Bridgers, Docket Clerk, FRA Docket No. 87–2, Office of the Chief Counsel, Federal Railroad Administration, Mail Stop 10, 400 7th Street, S.W., Washington, D.C. 20590 (telephone (202) 632–3198, fax (202) 632–3709).

FOR FURTHER INFORMATION CONTACT: W.E. Goodman, Staff Director, Signal and Train Control Division, Office of Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone (202) 632–3353), or Patricia V. Sun, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone (202) 632–3183).

Background

The notice of proposed order was published on November 20, 1997 (62 FR 62097). In response to the proposed order, two commenters, the American Public Transit Association, and the Providence and Worcester Railroad, requested a public hearing. FRA is holding this public hearing in lieu of a previously scheduled Northeast Corridor Safety Committee meeting, which will be rescheduled and announced in a separate **Federal Register** notice.

Issued in Washington, D.C., on January 9, 1998.

S. Mark Lindsey,

Chief Counsel.

[FR Doc. 98–1075 Filed 1–21–98; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub-No. 558X)]

CSX Transportation, Inc.—Abandonment Exemption—in Franklin County, TN

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon approximately 1.41 miles of its line of railroad between milepost OJC–0.30 and milepost OJC–1.71 at the end of track, in Decherd, Franklin County, TN. The line traverses United States Postal Service Zip Code 37324.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic moving over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7

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(environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment— Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 21, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by February 2, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 11, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Charles M. Rosenberger, Senior Counsel, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by January 27, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by January 22, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: January 12, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–1527 Filed 1–21–98; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. See 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 12, 1998.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request

In order to begin the survey described below in early February 1998, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by January 15, 1998. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.
Project Number: M:SP:V 98–001G.
Type of Review: Revision.
Title: Revenue Agent Competencies Structured Group Interviews.
Description: The objective of these structured group interviews is to gather feedback from Tax Practitioners to assist IRS in developing a complete list of the performance competencies required of Revenue Agents. Because Tax Practitioners work intimately with Revenue Agents on audits, their input is vital in developing a complete picture of the competencies required. Corporate Education will conduct a series of four structured groups which will be held in Philadelphia, Pa., Jacksonville, Fl., St. Louis, Mo. and Oakland, Ca.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 32.
Estimated Burden Hours Per Response: 3 hours.
Frequency of Response: Other (one-time only).
Estimated Total Reporting Burden: 51 hours.
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–1500 Filed 1–21–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

January 13, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: New.
Form Number: None.
Type of Review: New collection.
Title: 1988 Electronic Tax Administration Attitudinal Tracking Study.
Description: The survey is being conducted to establish a baseline measure of public knowledge and acceptance of Electronic Tax

Administration programs and to provide the IRS with quantitative data and analysis to assist with making policy decisions on how to expand the programs.
Respondents: Individuals or households.
Estimated Number of Respondents: 1,030.
Estimated Burden Hours Per Respondent: 20 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 379 hours.
OMB Number: 1545–0073.
Form Number: IRS Form 1310.
Type of Review: Extension.
Title: Statement of Person Claiming Refund Due a Deceased Taxpayer.
Description: Form 1310 is used by a claimant to secure payment of a refund on behalf of a deceased taxpayer. The information enables IRS to send the refund to the correct person.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 7,500.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—7 min.
Learning about the law or the form—3 min.
Preparing the form—16 min.
Copying, assembling, and sending the form to the IRS—17 min.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 5,325 hours.
OMB Number: 1545–0138.
Form Number: IRS Form 2063.
Type of Review: Revision.
Title: U.S. Departing Alien Income Tax Statement.
Description: Form 2063 is used by a departing resident alien against whom a termination assessment has not been made, or a departing nonresident alien who has no taxable income from United States sources, to certify that they have satisfied all U.S. income tax obligations. The data is used by IRS to certify that departing aliens have complied with U.S. income tax laws.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 20,540.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—7 min.
Learning about the law or the form—3 min.
Preparing the form—26 min.
Copying, assembling, and sending of the form to the IRS—14 min.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 17,048 hours.
OMB Number: 1545–0159.
Form Number: IRS Form 3520.
Type of Review: Extension.
Title: Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts.
Description: Form 3520 is filed by U.S. persons who create a foreign trust, transfer property to a foreign trust, receive a distribution from a foreign trust, or receive a large gift from a foreign source. IRS uses the form to identify the U.S. persons who may have transactions that may trigger a taxable event in the future.

	Form 8275	Form 8275–R
Recordkeeping	2 hr., 23 min	2 hr., 38 min.
Learning about the law or the form	47 min	35 min.
Preparing and sending the form to the IRS	52 min	40 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 3,970,000 hours.
OMB Number: 1545–1305.
Form Number: IRS Forms 9460 (cat# 14762P) and 9477 (cat# 14891T).
Type of Review: Extension.
Title: Tax Forms Inventory Report.
Description: These forms are designed to collect tax forms inventory information from banks, post offices, and libraries that distribute federal tax forms. Data is collected detailing the quantities and types of tax forms remaining at the end of the filing season. The data is combined with shipment data for each account and used to establish forms distribution guidelines for the following year. Source code data is collected to verify that the different entities received tax forms with the correct code.
Respondents: Business or other for-profit, Not-for-profit institutions, Federal Government.
Estimated Number of Respondents: 10,720.
Estimated Burden Hours Per Respondent:
Form 9460 (cat# 14762P)—10 min.
Form 9477 (cat# 14891T)—15 min.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 2,600 hours.
OMB Number: 1545–1455.
Regulation Project Number: PS–80–93 Final.
Type of Review: Extension.
Title: Rules for Certain Rental Real Estate Activities.
Description: The information required by these regulations will be used by the Internal Revenue Service to aid in the administration of the law and to determine whether a taxpayer that qualifies for treatment under section 469(c)(7) has made the election under section 469(c)(7)(A).
Respondents: Individuals and households, Business or other for-profit.
Estimated Number of Respondents: 20,100.
Estimated Burden Hours Per Respondent: 9 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 3,015 hours.
Respondents: Business or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 2,000.
Estimated Burden Hours Per Respondent/Recordkeeper.
Recordkeeping—50 hr., 28 min.
Learning about the law or the form—4 hr., 44 min.
Preparing the form—6 hr., 42 min.
Sending the form to the IRS—16 min.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 124,320 hours.
OMB Number: 1545–0889.
Form Number: IRS Forms 8275 and 8275–R.
Type of Review: Extension.
Title: Disclosure Statement and Regulation Disclosure Statement.
Description: Internal Revenue Code (IRC) section 6662 imposes accuracy related penalties for substantial understatement of tax liability or negligence or disregard of rules and regulations. Section 6694 imposes similar penalties on return preparers. Regulations sections 1.6662–4(e)&(f) provide for reduction of these penalties if adequate disclosure of the tax treatment is made on Form 8275 or if the position is contrary to a regulation, Form 8275–R.
Respondents: Individuals or households, Farms, Business or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 595,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

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OMB Number: 1545–1458.

Regulation Project Number: REG–209835–86 Final (formerly INTL–933–86).

Type of Review: Extension.

Title: Computation of Foreign Taxes Deemed Paid Under Section 902 Pursuant to a Pooling Mechanism for Undistributed Earnings and Foreign Taxes.

Description: These regulations provide rules for computing foreign taxes deemed paid under section 902. The regulations affect foreign corporations and their U.S. corporate shareholders.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 1.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 98–1501 Filed 1–21–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

January 14, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0145.

Form Number: IRS Form 2439.

Type of Review: Extension.

Title: Notice to Shareholder of Undistributed Long-Term Capital Gains.

Description: Form 2439 is sent by regulated investment companies and real estate investment trusts to report undistributed capital gains and the amount of tax paid on these gains designated under IRC section 852(b)(3)(D) or 857(b)(3)(D). The company, the trust, and the shareholder file copies of Form 2439 with IRS. IRS uses the information to check shareholder compliance.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 8,363.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—2 hr., 52 min.

Learning about the law or the form—35 min.

Preparing and sending the form to the IRS—40 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 34,539 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 98–1502 Filed 1–21–98; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday
January 22, 1998

Part II

Environmental Protection Agency

40 CFR Part 721

Significant New Uses of Certain Chemical Substances; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50628; FRL–5720–3]

RIN 2070–AB27

Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 163 chemical substances which were the subject of premanufacture notices (PMNs) and subject to TSCA section 5(e) consent orders issued by EPA. Today's action requires persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing of the substance for a use designated by this SNUR as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs. EPA is promulgating this SNUR using direct final procedures.

DATES: The effective date of this rule is March 23, 1998. This rule shall be promulgated for purposes of judicial review at 1 p.m. (e.s.t.) on February 5, 1998.

If EPA receives notice before February 23, 1998 that someone wishes to submit adverse or critical comments on EPA's action in establishing a SNUR for one or more of the chemical substances subject to this rule, EPA will withdraw the SNUR for the substance for which the notice of intent to comment is received and will issue a proposed SNUR providing a 30-day period for public comment.

ADDRESSES: Each comment or notice of intent to submit adverse or critical comment must bear the docket control number OPPTS–50628 and the name(s) of the chemical substance(s) subject to the comment. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M Street, SW., Room G–099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. Follow the instructions under Unit X of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this rulemaking. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each portion. This claim must be made at the time that the information is submitted to EPA . If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

This SNUR will require persons to notify EPA at least 90 days before commencing manufacturing or processing a substance for any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNURs published in the **Federal Register** of April 24, 1990 (55 FR 17376). Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.10.

II. Applicability of General Provisions

General provisions for SNURs appear under 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by section 5 (h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721, subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned and and the specific chemical identity is not claimed as CBI), basis for the action taken by EPA in the TSCA section 5(e) consent order or as a non-

section 5(e) SNUR for the substance (including the statutory citation and specific finding), toxicity concern, and the CFR citation assigned in the regulatory text section of this rule. The specific uses which are designated as significant new uses are cited in the regulatory text section of this document by reference to 40 CFR part 721, subpart B where the significant new uses are described in detail. Certain new uses, including production limits and other uses designated in the rule are claimed as CBI. The procedure for obtaining confidential information is set out in Unit VII. of this preamble.

Where the underlying TSCA section 5(e) order prohibits the PMN submitter from exceeding a specified production limit without performing specific tests to determine the health or environmental effects of a substance, the tests are described in this unit. As explained further in Unit VI. of this preamble, the SNUR for such substances contains the same production limit, and exceeding the production limit is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a significant new use notice (SNUN) at least 90 days in advance. In addition, this unit describes tests that are recommended by EPA to provide sufficient information to evaluate the substance, but for which no production limit has been established in the TSCA section 5(e) order. Descriptions of recommended tests are provided for informational purposes.

Data on potential exposures or releases of the substances, testing other than that specified in the TSCA section 5(e) order for the substances, or studies on analogous substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification. Persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs, as stated in 40 CFR 721.1(c), including submission of test data on health and environmental effects as described in 40 CFR 720.50.

EPA is not publishing SNURs for PMNs P–95–266, 95–615/616, P–95–941, P–95–973, P–95–1046, P–95–1115, P–95–1827, P–95–1854, P–95–2075, P–96–262, P–96–291, P–96–317, P–96–576 through P–96–581, P–96–726 through P–96–744, P–96–803/804, P–96–1277/78, P–96–1482/1483, P–96–1708, P–96–1509/1519, P–96–1548 through P–96–1551, P–97–205 through P–97–208, and P–97–276/277 which are subject to a final TSCA section 5(e) consent order. The TSCA section 5(e) consent orders for these substances are derived from an exposure finding based solely on substantial production volume and significant or substantial human exposure and/or release to the environment of substantial quantities. For these cases there were limited or no toxicity data available for the PMN substances. In such cases, EPA regulates the new chemical substances under TSCA section 5(e) by requiring certain toxicity tests. For instance, chemical substances with potentially substantial releases to surface waters would be subject to toxicity testing of aquatic organisms and chemicals with potentially substantial human exposures would be subject to health effects testing for mutagenicity, acute effects, and subchronic effects. However, for these substances, the short-term toxicity testing required by the TSCA section 5(e) order is usually completed within 1 to 2 years of notice of commencement (NOC). EPA's experience with exposure-based SNURs requiring short-term testing is that the SNUR is often revoked within 1 to 2 years when the test results are received. Rather than issue and revoke SNURs in such a short span of time, EPA will defer publication of exposure-based SNURs until either a NOC or data demonstrating risk are received unless the toxicity testing required is long-term. EPA is issuing this explanation and notification as required in 40 CFR 721.160(a)(2) as it has determined that SNURs are not needed at this time for these substances which are subject to a final TSCA section 5(e) consent order under TSCA.

PMN Number P–87–323

Chemical name: (generic) Poly(oxy-1,2-ethanediyl), alpha substituted-omega-hydroxy-, C_{16-20} alkyl ethers.
CAS number: Not available.
Basis for action: The PMN substance will be used as an intermediate. Based on submitted fish, daphnia, and algae tests on the PMN substance, EPA expects toxicity to aquatic organisms at surface water concentrations as low as 20 parts per billion (ppb). EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance did not exceed a concentration of 20 ppb when released to surface waters. EPA has determined that other uses may result in releases to surface waters above 20 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(i).
Recommended testing: EPA has determined that a chronic 60-day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600 or OPPTS 850.1400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) and a 21-day daphnid chronic toxicity test (40 CFR 797.1330 or OPPTS 850.1300 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.3488.

PMN Number P–88–1108

Chemical name: (generic) Alcohols, C_{6-12}, ethoxylated, reaction product with maleic anhydride.
CAS number: Not available.
Basis for action: The PMN substance will be used as a plastics additive. Based on analogy to anionic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 300 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters in significant quantities. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.524.

PMN Number P–90–581

Chemical name: (generic) Brominated phthalate ester.
CAS number: Not available.
Effective date of section 5(e) consent order: March 21, 1996.
Basis for section 5(e) consent order: The order was issued under section 5 (e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and the environment.
Toxicity concern: Similar chemicals have been shown to form dibenzodioxins and dibenzofurans when incinerated under combustion conditions of municipal incinerators.

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Recommended testing: An incineration simulation study is required to help characterize the potential for the formation of dibenzodioxins or dibenzofurans when plastics or resins containing the PMN substance are incinerated. The PMN submitter has agreed not to exceed the production volume limit without performing this study.
CFR citation: 40 CFR 721.3085.

PMN Numbers P–91–1131 and P–90–564

Chemical name: (generic) Imidazolethione.
CAS number: Not available.
Effective date of section 5(e) consent order: October 25, 1995.
Basis for section 5(e) consent order: The order was issued under section 5 (e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health.
Toxicity concern: Based on the submitted 90-day subchronic study, the PMN substance causes thyroid and other systemic effects in test animals. Based on the submitted developmental toxicity study, the PMN substance causes developmental toxicity in test animals. Based on analogy to structurally similar substances the PMN substance may cause thyroid cancer.
Recommended testing: A 2-year, two-species oral bioassay in rats (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5) is recommended to help characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.4469.

PMN Number P–92–314

Chemical name: (generic) Aryloxyarene.
CAS number: Not available.
Effective date of section 5(e) consent order: March 11, 1996.
Basis for section 5(e) consent order: The order was issued under section 5 (e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment.
Toxicity concern: Based on test data on this substance, there is concern for toxicity to aquatic organisms, particularly effects on daphnid reproduction, at concentrations as low as 1 ppb in surface waters.
Recommended testing: A 28-day chironomid sediment toxicity study (OPPTS 850.1790 test guideline (public draft; 61 FR 16486, April 15, 1996)) (FRL–5363–1) is recommended to help characterize the toxicity of the PMN substance to benthic organisms.
CFR citation: 40 CFR 721.977.

PMN Numbers P–93–204 and P–94–1870 through P–94–1874

Chemical name: (generic) Phenyl substituted triazolinones.
CAS numbers: Not available.
Effective date of section 5(e) consent order: July 23, 1996.
Basis for section 5(e) consent order: The order was issued under section 5 (e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that these substances may present an unreasonable risk of injury to human health and the environment.
Toxicity concern: Data on several of the PMN substances and a chemical similar to P–94–1870 have shown developmental and reproductive effects, blood and liver effects, and neurotoxicity in test animals.
Recommended testing: An oral developmental toxicity study in rats (40 CFR 799.9370) (62 FR 43832, August 15, 1997) (FRL–5719–5) and a 90-day subchronic oral study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)) would help characterize the human health effects. A semi-continuous activated sludge (SCAS) study (OPPTS 835.3210 test guideline (public draft; 61 FR 16486, April 15, 1996)) (FRL–5363–1), a ready biodegradability study (OPPTS 835.3110 test guideline (public draft; 61 FR 16486, April 15, 1996)) (FRL–5363–1), and a soil sediment adsorption isotherm (40 CFR 796.2750 or OPPTS 835.1220 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1) would help characterize the environmental effects of the substance.
CFR citation: 40 CFR 721.9825.

PMN Number P–93–568

Chemical name: (generic) Polysubstituted piperidine.
CAS number: Not available.
Basis for action: The PMN substance will be used as an intermediate. Based on submitted test data, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 30 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters above a level of 30 ppb. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(i).
Recommended testing: EPA has determined that a chronic 60-day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600 or OPPTS 850.1400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) and a 21-day daphnid chronic toxicity test (40 CFR 797.1330 or OPPTS 850.1300 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.6165.

PMN Number P–93–761

Chemical name: 2-Pyrrolidinone, 1,1'-(2-methyl-1,5-pentanediyl)bis-.
CAS number: 146453–62–5.
Effective date of section 5(e) consent order: September 6, 1995.
Basis for section 5(e) consent order: The order was issued under section 5 (e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health.
Toxicity concern: Test data on the PMN substance and similar chemicals have shown that these types of chemicals cause systemic toxicity and neurotoxicity in test animals.
Recommended testing: A 90-day oral subchronic study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)) with additional neurotoxicity endpoints following NTIS–PB91–154617 (functional observation battery, neurohistopathology and motor activity) would help to characterize the systemic and neurotoxicity effects. The PMN submitter has agreed not to exceed the production volume limit without performing this test.
CFR citation: 40 CFR 721.9005.

PMN Number P–93–1369

Chemical name: (generic) *N,N'*-di(alkyl heteromonocycle)amino chlorotriazine.
CAS number: Not available.
Effective date of section 5(e) consent order: June 13, 1995.
Basis for section 5(e) consent order: The order was issued under section 5 (e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and the environment.
Toxicity concern: Similar chemicals have been shown to cause systemic toxicity, developmental toxicity, and cancer in test animals. In addition, similar chemicals have been shown to be toxic to aquatic organisms.
Recommended testing: EPA has determined that a 90-day subchronic toxicity test in rats via gavage (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)), a two-species developmental study (rodent and non-rodent) (40 CFR 799.9370) (62 FR 43832, August 15, 1997) (FRL–5719–5) and a 2-year, one-species bioassay (rats) (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5) would help characterize the human health effects of the PMN substance. The 90-day subchronic toxicity test should include special emphasis on hematology; weight of the spleen and thymus; cellularity of the bone marrow, thymus, and spleen; and histopathology of the liver, kidney, heart, and all endocrine glands for which weight changes are observed. In addition natural killer cell activity should be evaluated on the same population of test animals, and IgM antibody plaque-forming cells should be enumerated in two satellite groups of animals (10 in the high-dose group and 10 in the control group). EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance. The consent order contains two production volume limits. The PMN submitter has agreed not to exceed the first production volume limit without performing the 90-day subchronic toxicity test. The PMN submitter has also agreed not to exceed the second higher production volume limit without performing the two-species developmental study and the 2-year, one-species bioassay if the results of the 90-day test indicate biological activity at low levels (i.e., activity levels comparable to those for triazines).
CFR citation: 40 CFR 721.2094.

PMN Number P–93–1631

Chemical name: (generic) Substituted naphtholazo-substituted naphthalenyl-substituted azonaphthol chromium complex.
CAS number: Not available.
Basis for action: The PMN substance will be used as a dye. Based on analogy to structurally similar substances, EPA is concerned that cancer will occur in exposed workers. Based on submitted test data, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. EPA determined that use of the substance did not present an unreasonable risk because significant worker or environmental exposure is not expected because the substance was used as a liquid and was not manufactured domestically. EPA has determined that domestic manufacture of the substance and use as a solid may result in significant worker or environmental exposure. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(4)(i) and (b)(1)(i)(D).
Recommended testing: EPA has determined that a 2-year, two-species oral bioassay (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5) would help characterize the health effects of the PMN substance and a chronic 60-day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600 or OPPTS 850.1400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) and a 21-day daphnid chronic toxicity test (40 CFR 797.1330 or OPPTS 850.1300 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.981.

PMN Number P–93–1654

Chemical name: (generic) Substituted polyoxyethylene.
CAS number: Not available.
Basis for action: The PMN substance will be used as an emulsifier for paint and adhesives. Based on submitted test data and analogy to nonionic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 9 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters. EPA has determined that other uses of the substance may result in releases to surface water at concentrations above 9 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(i).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substances.
CFR citation: 40 CFR 721.7378.

PMN Number P–94–209

Chemical name: Phenol, 2,4-dimethyl-6-(1-methylpentadecyl)-.
CAS number: 134701–20–5.
Basis for action: The PMN substance will be used as an antioxidant. Based on submitted test data, there is concern for liver toxicity, kidney toxicity, adrenal toxicity, and blood toxicity. Based on submitted test data and analogy to phenols, EPA is also concerned that toxicity to aquatic organisms will occur at concentrations as low as 1 ppb. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because workers would not be subject to significant dermal exposures and there were no significant environmental releases. EPA has determined that other uses of the substance may result in significant dermal exposures to workers and significant environmental releases. Based on this information the PMN substance meet the concern criteria at § 721.170 (b)(3)(i) and (b)(4)(i).
Recommended testing: EPA has determined that a dermal absorption study, a 90-day subchronic oral study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)), a chronic 60-day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600 or OPPTS 850.1400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and a 21-day daphnid chronic toxicity test (40 CFR 797.1330 or OPPTS 850.1300 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the health and environmental effects of the PMN substance.
CFR citation: 40 CFR 721.5725.

PMN Number P–94–921

Chemical name: Phenol, 4,4'-methylenebis[2,6-dimethyl-.
CAS number: 5384–21–4.
Effective date of section 5(e) consent order: July 5, 1995.
Basis for section 5(e) consent order: The order was issued under section 5 (e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and the environment.
Toxicity concern: Similar phenols have been shown to cause kidney and liver toxicity, and blood effects in test animals. In addition, chronic fish and daphnid tests and a high bioconcentration potential indicated a concern concentration of 6 ppb.
Recommended testing: EPA has determined that a 90-day subchronic

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oral toxicity test in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)) would help to characterize the human health effects of the PMN substance. EPA has also determined that a modified SCAS test (OPPTS 835.3210 test guideline (public draft; 61 FR 16486, April 15, 1996)) (FRL–5363–1), an aerobic aquatic biodegradation test (40 CFR 796.3100 or OPPTS 835.3100 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1), and an anaerobic biodegradability of organic chemicals (OPPTS 835.3400 test guideline (public draft; 61 FR 16486, April 15, 1996)) (FRL–5363–1) would help to charactarize the environmental effects. The PMN submitter has agreed not to exceed the production volume limit without performing the 90-day subchronic toxicity test.
CFR citation: 40 CFR 721.5730.

PMN Number P–94–1017

Chemical name: Urea, tetraethyl-.
CAS number: 1187–03–7.
Basis for action: The PMN substance will be used as an intermediate. Based on submitted test data EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppm of the PMN substance in surface waters. Based on analogy to similar ureas and submitted test data EPA is concerned that acute toxicity, mutagenicity, developmental effects, and reproductive effects could occur to exposed workers. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters and exposed workers would wear adequate protective equipment to prevent dermal exposure. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration or dermal exposure to workers. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(2), (b)(3)(ii), and (b)(4)(i).
Recommended testing: EPA has determined that a chronic 60-day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600 or OPPTS 850.1400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) and a 21-day daphnid chronic toxicity test (40 CFR 797.1330 or OPPTS 850.1300 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance. EPA has determined that a dermal developmental toxicity test in rabbits and rats (40 CFR 799.9370) (62 FR 43832, August 15, 1997) (FRL–5719–5) and a chromosome aberration assay in mice (40 CFR 798.9538) (62 FR 43850, August 15, 1997) (FRL–5719–5) or a micronucleus assay in mice (40 CFR 798.9539) (62 FR 43853, August 15, 1997) (FRL–5719–5) would help characterize the health effects of the PMN substance. The PMN submitter has agreed to conduct the health tests before reaching the production volume limit in the SNUR.
CFR citation: 40 CFR 721.9928.

PMN Number P–94–1018

Chemical name: Guanidine, pentaethyl-.
CAS number: 13439–89–9.
Basis for action: The PMN substance will be used as an intermediate. Based on submitted test data, EPA is concerned that acute toxicity, corrosivity, and neurotoxicity could occur to exposed workers. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because exposed workers would wear adequate protective equipment to prevent dermal exposure. EPA has determined that other uses of the substance may result in exposure to workers. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(2) and (b)(3)(i).
Recommended testing: None.
CFR citation: 40 CFR 721.4085.

PMN Number P–94–1019

Chemical name: Ethanaminium, N-[bis(diethylamino)-methylene]-*N*-ethyl-, bromide.
CAS number: 89610–32–2.
Basis for action: The PMN substance will be used as a catalyst. Based on submitted test data, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 10 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(i).
Recommended testing: EPA has determined that a chronic 60-day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600 or OPPTS 850.1400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) and a 21-day daphnid chronic toxicity test (40 CFR 797.1330 or OPPTS 850.1300 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.4090.

PMN Number P–94–1143

Chemical name: Butanoic acid, antimony (3+) salt.
CAS number: 53856–17–0.
Effective date of section 5(e) consent order: July 7, 1995.
Basis for section 5(e) consent order: The order was issued under section 5 (e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar chemicals have been shown to cause cancer, dermal and ocular irritation, cardiovascular effects, neurotoxic effects, reproductive toxicity, and developmental toxicity in test animals.
Recommended testing: A pharmacokinetic test (OPPTS 870.8223 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)) is recommended to help determine the bioavailability of the PMN substance after dermal administration. The PMN submitter has agreed not to exceed the production volume limit without performing this test.
CFR citation: 40 CFR 721.1930.

PMN Number P–94–1743

Chemical name: (generic) Isophorone diisocyanate neopentyl glycol adipate polyurethane prepolymer.
CAS number: Not available.
Effective date of section 5(e) consent order: December 8, 1995.
Basis for section 5(e) consent order: The order was issued under section 5 (e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health.
Toxicity concern: Test data on the substance and similar diisocyanates have shown them to cause skin sensitization and chronic lung toxicity in test animals.
Recommended testing: EPA has determined that the results of an acute inhalation study (OPPTS 870.1300 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)), a 28-day subchronic inhalation study in rats, (Organization for Economic Cooperation and Development (OECD) guideline no. 412), and a 90-day subchronic inhalation toxicity study in rats (40 CFR 798.2450 or OPPT 870.3465 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)) would help to characterize the health effects caused by the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.8079.

PMN Number P–94–2159

Chemical name: (generic) Anthraquinone dye.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on submitted test data and analogy to aliphatic amines EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 2 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(4)(i).
Recommended testing: EPA has determined that a fish acute toxicity study modified with humic acid (40 CFR 797.1400 or OPPTS 850.1085 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.723.

PMN Number P–95–168

Chemical name: Phosphonic acid, methylenebis-, tetrakis(1-methylethyl) ester.
CAS number: 1660–95–3.
Effective date of section 5(e) consent order: September 20, 1995.
Basis for section 5(e) consent order: The Order was issued under section 5 (e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health.
Toxicity concern: Similar dimethyl methyl phosphonate (DMMP) and diisopropyl methylphosphonate (DIMP) chemical substances have been shown to cause oncogenicity in test animals. In addition the PMN substance was demonstrated to be a chromosome mutagen in a mouse lymphoma study.
Recommended testing: The Agency has determined that the results of a 2-year bioassay (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5) would help to characterize possible human effects of the substance.
CFR citation: 40 CFR 721.6075.

PMN Number P–95–243

Chemical name: Phenol, 4-(1,1-dimethylethyl)-, homopolymer.
CAS number: 30813–81–1.
Effective date of section 5(e) consent order: October 5, 1995.
Basis for section 5(e) consent order: The order was issued under section 5 (e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the aquatic environment.
Toxicity concern: The PMN substance has been shown to be toxic to aquatic organisms. However, the substance also has the advantages of eliminating or reducing volatile organic solvents, and reducing exposures to residual monomers. EPA has evaluated two processor/use sites where releases sometimes exceed the concern level. In light of the benefits of the substance, EPA determined these releases did not constitute an unreasonable risk and will allow releases at these sites in the section 5(e) consent order and SNUR.
Recommended testing: EPA has determined that an activated sludge adsorption isotherm study (OPPTS 835.1110 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1), a chronic 60-day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600 or OPPTS 850.1400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a 21-day daphnid chronic toxicity test (40 CFR 797.1330 or OPPTS 850.1300 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), or a chironomid sediment toxicity test (OPPTS 850.1790 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize possible effects of the PMN substance in the aquatic environment. The consent order contains two production limits. The PMN submitter has agreed not to exceed the first production limit without performing the activated sludge adsorption isotherm test. The PMN submitter has also agreed not to exceed the second higher production limit without performing either the fish early life stage with rainbow trout and the daphnid chronic toxicity tests, or the chironomid sediment toxicity test, depending on the results of the activated sludge adsorption isotherm test.
CFR citation: 40 CFR 721.538.

PMN Number P–95–535

Chemical name: Reaction products of formalin (37%) with amine C_{12}.
CAS number: Not available.
Basis for action: The PMN substance will be used as an oilfield chemical. Based on analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 20 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.9285.

PMN Numbers P–95–605/606

Chemical name: (generic) Trifunctional ketoximino silane.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on analogy of the hydrolysis product of the PMN substances to similar compounds, EPA is concerned that cancer and blood effects could occur to exposed workers. EPA determined that use of the substances as described in the PMN did not present an unreasonable risk because exposed workers would wear adequate protective equipment to prevent dermal exposure. EPA has determined that other uses of the substance may result in dermal exposure to workers. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(D) and (b)(3)(iii).
Recommended testing: EPA has determined that a 90-day subchronic study in rats by the oral route (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)) and a 2-year, two-species bioassay (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.9497.

PMN Number P–95–633

Chemical name: (generic) Sodium salt of azo acid dye.
CAS number: Not available.
Basis for action: The PMN substance will be used in a non-dispersive use.

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Based on analogy of the azo reduction products to structurally similar substances, EPA is concerned that cancer and systemic toxicity will occur in exposed workers. EPA determined that use of the substance did not present an unreasonable risk because significant worker exposure is not expected because the substance was not manufactured, processed, or used as a powder. EPA has determined that manufacture, processing, and use of the substance as a powder may result in significant worker exposure. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(D) and (b)(3)(iii).
Recommended testing: EPA has determined that a 90-day subchronic study in rats by the oral route with special attention to the liver, kidney, spleen, and blood (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)) would help characterize the health effects of the substance.
CFR citation: 40 CFR 721.980.

PMN Number P–95–637

Chemical name: 2-Pentene, 1,1,1,2,3,4,4,5,5,5-decafluoro-.
CAS number: 72804–49–0.
Basis for action: The PMN substance will be used as an intermediate. Based on toxicity data submitted with the PMN, EPA identified health concerns for neurotoxicity. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because significant human exposure is not expected. EPA has determined that use of the substance other than as described in the PMN may result in significant human exposure. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(3)(i).
Recommended testing: None.
CFR citation: 40 CFR 721.5708.

PMN Number P–95–638

Chemical name: Pentane 1,1,1,2,2,3,4,5,5,5,-decafluoro.
CAS number: 138495–42–8.
Basis for action: The PMN substance will be used as described in the PMN. Based on toxicity data submitted with the PMN, EPA identified health concerns for neurotoxicity. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because significant human exposure is not expected. EPA has determined that use of the substance other than as described in the PMN may result in significant human exposure. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(i).
Recommended testing: None.
CFR citation: 40 CFR 721.5645.

PMN Number P–95–666

Chemical name: (generic) Polyether acrylate.
CAS number: Not available.
Basis for action: The PMN substance will be used in a radiation curing formulation. Based on analogy to acrylates, EPA identified concerns for toxicity to aquatic organisms. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because significant environmental exposure is not expected. EPA has determined that other uses may result in releases to water which are significant environmental exposures. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.405.

PMN Numbers P–95–677/724

Chemical name: (generic) Antimony double oxide.
CAS number: Not available.
Effective date of section 5(e) consent order: March 12, 1996.
Basis for section 5(e) consent order: The order was issued under section 5 (e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health and the environment.
Toxicity concern: Similar chemicals have been shown to cause cancer, lung toxicity and ocular effects in test animals. In addition to human health concerns, an aquatic toxicity concern has been identified if the substance is released to surface waters. A concern concentration of 5 ppb has been established.
Recommended testing: EPA has determined that a 2-year, one-species rat inhalation bioassay, which has an additional holding period, analyses of lung burdens, and determination of clearance rates of particles (as described at (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5) would help characterize the carcinogenicity, lung toxicity and ocular effects of the PMN substance. In addition, EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substances.
CFR citation: 40 CFR 721.5547.

PMN Numbers P–95–1103, P–95–1104, and P–96–1235

Chemical name: (generic) Substituted resorcinols.
CAS number: Not available.
Basis for action: The PMN substances will be used as components of a material for integrated circuit fabrication. Based on submitted toxicity data and analogy to phenols, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 9 ppb of P–95–1103/P–95–1104 and 1 ppb of P–96–1235 in surface waters. EPA determined that use of the substances as described in the PMNs did not present an unreasonable risk because the substances would not be released to surface waters in significant quantities. EPA has determined that other uses of the substances may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substances meet the concern criteria at § 721.170(b)(4)(i) and (b)(4)(ii).
Recommended testing: EPA has determined that a chronic 60-day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600 or OPPTS 850.1400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) and a 21-day daphnid chronic toxicity test (40 CFR 797.1330 or OPPTS 850.1300 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of P–95–1103 and P–95–1104. EPA has also determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of P–96–1235.
CFR citation: 40 CFR 721.9488.

PMN Number P–95–1128

Chemical name: (generic) Brominated aromatic ester.
CAS number: Not available.
Effective date of section 5(e) consent order: November 5, 1996.
Basis for section 5(e) consent order: The order was issued under section 5 (e)(1)(A)(i) and 5(e)(1)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health and the environment.
Toxicity concern: Similar chemicals have been shown to: (1) Degrade in the environment resulting in substances that may cause aquatic toxicity, and (2) form dibenzodioxins and dibenzofurans when incinerated under combustion conditions of municipal incinerators. EPA has determined that halogenated dioxins and furans are probable human carcinogens and may cause toxic effects in aquatic and terrestrial organisms.
Recommended testing: The consent order contains two production volume limits. The PMN submitter has agreed not to exceed the first production volume limit without performing an incineration simulation study (guidelines available from EPA) to help characterize the potential for the formation of dibenzodioxins or dibenzofurans when plastics or resins containing the substance are incinerated, and a porous pot test (OPPTS 835.3220 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1) to determine the extent of environmental degradation of the substance. The PMN submitter has also agreed not to exceed the second, higher production volume limit without performing a shake flask die-away test (OPPTS 835.3170 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1), a fish bioconcentration test (OPPTS 850.1730 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1))
CFR citation: 40 CFR 721.2925.

PMN Number P–95–1213

Chemical name: (generic) Hydroxy terminated polyester.
CAS number: Not available.
Basis for action: The PMN substance will be used as an intermediate. Based on analogy to esters, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 200 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters. EPA has determined that other uses of the substance may result in releases to surface water at concentrations above 200 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.6485.

PMN Number P–95–1235

Chemical name: 2-Naphthalenesulfonic acid, 3-[[4-[(2,4-dimethyl-6-sulfophenyl)azo]-2-methoxy-5-methylphenyl]azo]-4-hydroxy-7-(phenylamino)-, sodium salt, compd. With 2,2′,2″-nitrilotris [ethanol] (9CI).
CAS number: 94213–53–3.
Basis for action: The PMN substance will be used in an open non-dispersive use. Based on analogy of the azo reduction products to similar substances, EPA is concerned that cancer, systemic toxicity, developmental toxicity, methemoglobinemia, and skin sensitization will occur in exposed workers. EPA determined that use of the substance did not present an unreasonable risk because significant worker exposure is not expected because the substance was not manufactured, processed, or used as a powder or manufactured domestically. EPA has determined that manufacture, processing, and use of the substance as a powder or domestic manufacture may result in significant worker exposure. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(iii).
Recommended testing: EPA has determined that an Ames assay with the Prival modification with a concurrent positive control would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.5281.

PMN Number P–95–1282

Chemical name: (generic) Reaction product of dichlorobenzidine and substituted alkylamide.
CAS number: Not available.
Effective date of section 5(e) consent order: July 29, 1996.
Basis for section 5(e) consent order: The order was issued under section 5 (e)(1)(A)(i) and 5(e)(1)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: 3,3′-dichlorobenzidine (DCB) and possible reduction products have been shown to cause oncogenicity and mutagenicity in test animals.
Recommended testing: The following studies would help characterize the health effects of the PMN substance: Monitoring data to detect the presence of DCB under actual conditions of use in polymer coloration or sheet metal coating use (Az, R., Dewald B. and Scnaitmann, D. 1991. Pigment Decomposition in Polymers in Applications at Elevated Temperatures (*Dyes and Pigments* 15:1–14). Monitoring data would include the following elements: Extrusion or other process), monitoring data to detect airborne concentrations of DCB during high-temperature coloration or sheet metal coating use (see TSCA section 8(e) data e.g., section 8(e)-962 supp.), radio-labeled pharmacokinetic study (oral) in rats on the pigment (with the radio-label on the DCB) (OPPTS 870.7485 test guideline (public draft; 60 FR 45158, August 30, 1995) (FRL–4973–2)) plus radio-label), and a 2-year, two-species bioassay (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5).
CFR citation: 40 CFR 721.9265.

PMN Number P–95–1288

Chemical name: 2-Naphthalenol, mono and dioctyl derivs.
CAS number: Not available.
Basis for action: The PMN substance will be used as an intermediate. Based on analogy to phenols, EPA is concerned that toxicity to aquatic organisms may occur at a concentrations as low as 1 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance did not exceed a concentration of 1 ppb when released to surface waters. EPA has determined that increased production

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volume may result in releases to surface waters above 1 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.5255.

PMN Number P–95–1317

Chemical name: (generic) Hydrochlorofluorocarbon.
CAS number: Not available.
Basis for action: The PMN substance will be used as an intermediate. Based on toxicity data submitted with the PMN, EPA identified health concerns for neurotoxicity. Based on analogy to structurally similar chemicals, EPA identified health concerns for cardiac sensitization, liver toxicity, kidney toxicity, and skin irritation. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because significant human exposure is not expected. EPA has determined that use of the substance other than as described in the PMN may result in significant human exposure. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(3)(i) and (b)(3)(ii).
Recommended testing: None.
CFR citation: 40 CFR 721.4462.

PMN Number P–95–1326

Chemical name: 3,8-Dioxa-4,7-disiladecane, 4,4,7,7-tetraethoxy-.
CAS number: 16068–37–4.
Basis for action: The PMN substance will be used in treatment of laminates for printed circuit boards and sol-gel ceramics. Based on analogy to alkoxysilanes, EPA is concerned that a significant risk of lung toxicity and severe irritation to skin, eyes, and mucous membranes could occur. EPA determined that use of the substance did not present an unreasonable risk because the substance would not be manufactured, processed, or used in a manner that generated a vapor, mist, or aerosol and significant worker inhalation exposure is not expected. EPA has determined that manufacture, processing, or use of the substance in a manner that generated a vapor, mist, or aerosol may result in significant worker inhalation exposure. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a 90-day subchronic inhalation study in rats (40 CFR 798.2450 or OPPTS 870.3465 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.3155.

PMN Number P–95–1347

Chemical name: (generic) Aliphatic polyisocyanate.
CAS number: Not available.
Basis for action: The PMN substance will be used in an open non-dispersive use. Based on analogy to diisocyanates, there is concern for lung toxicity, pulmonary sensitization, and irritation to mucous membranes. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because workers would not be subject to significant inhalation exposures. EPA has determined that uses of the substance that generate a mist, aerosol, or vapor may result in significant inhalation exposures to workers. Based on this information the PMN substance meet the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has also determined that a 90-day subchronic inhalation study in rats (40 CFR 799.9346) (62 FR 43828, August 15, 1997) (FRL–5719–5) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.6495.

PMN Number P–95–1356

Chemical name: (generic) Silylated polyurethane.
CAS Number: Not available.
Basis for action: The PMN substance will be used as a moisture curable polymer. Based on analogy of the PMN substance to alkoxysilanes, EPA expects irritation to mucous membranes and lung toxicity. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because there were no significant inhalation exposures. EPA has determined that use of the substance generating an aerosol or a mist may result in significant inhalation exposures. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a 90-day subchronic inhalation study in rats (40 CFR 798.2450 or OPPTS 870.3465 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.8095.

PMN Number P–95–1386

Chemical name: Benzene, 1,1'-methylanebis[4-isocyanato-, homopolymer, Bu alc.-blocked.
CAS number: 186321–98–2.
Basis for action: The PMN substance will be used as described in the PMN. Based on analogy to diisocyanates, EPA is concerned that a significant risk of oncogenicity, respiratory sensitization, and chronic lung effects could occur. EPA determined that use of the substance did not present an unreasonable risk because the substance would not be manufactured, processed, or used in a manner that generated a vapor, mist, or aerosol and significant worker inhalation exposure is not expected. EPA has determined that manufacture, processing, or use of the substance in a manner that generated a vapor, mist, or aerosol may result in significant worker inhalation exposure. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(3)(ii).
Recommended testing: EPA has determined that a 90-day inhalation study in rats (40 CFR 799.9346) (62 FR 43828, August 15, 1997) (FRL–5719–5) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.2535.

PMN Number P–95–1411

Chemical name: Propanedioic acid, [(4-methoxyphenyl)methylene]-, bis(1,2,2,6,6-pentamethyl-4-piperidinyl) ester (9CI).
CAS number: 147783–69–5.
Effective date of section 5(e) consent order: November 22, 1995.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health.
Toxicity concern: Similar chemicals have been shown to cause toxicity to the immune system, liver, blood, the male reproductive system and the G.I. tract in test animals.
Recommended testing: A 90-day subchronic oral toxicity study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)) would help characterize the human health effects. The PMN submitter has agreed not to exceed the production volume limit without performing this test.

CFR citation: 40 CFR 721.4589.

PMN Number P–95–1466

Chemical name: (generic) Substituted aromatic aldehyde.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on analogy to phenols and aldehydes EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 3 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMNs did not present an unreasonable risk because the substance would not be released to surface waters. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.526.

PMN Number P–95–1467

Chemical name: Benzaldehyde, 2-hydroxy-5-nonyl-, oxime, branched.
CAS number: 174333–80–3.
Basis for action: The PMN substance will be used as described in the PMN. Based on analogy to phenols, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substances.
CFR citation: 40 CFR 721.4476.

PMN Numbers P–95–1575/1576/1577

Chemical name: Chromate(3-), bis[3-[[5-(aminosulfonyl)-2-hydroxyphenyl]azo]-4-hydroxy-7-[[2-oxo-1-[(phenylamino)carbonyl] propyl]azo]-2-naphthalenesulfonato(3-)]-, trisodium (9CI) (P–95–1575), Chromate(3-), bis[7-[(aminohydroxyphenyl)azo]-3-[[5-(aminosulfonyl)-2-hydroxyphenyl]azo]-4-hydroxy-2-naphthalene-sulfonato (3-)]-, trisodium (9CI) (P–95–1576), Chromate(3-), bis[7-[(aminohydroxyphenyl)azo]-3-[[5-(aminosulfonyl)-2-hydroxyphenyl] azo]-4-hydroxy-2-naphthalenesulfonato (3-)]-,[[5-(aminosulfonyl) -2-hydroxyphenyl]azo]-4-hydroxy-7-[[2-hydroxy-1-[(phenylamino) carbonyl]-1-propenyl]azo]-2-naphthalenesulfonato(3-)]-, trisodium (9CI) (P–95–1577).
CAS number: 119535–63–6 (P–95–1575), 118716–62–4 (P–95–1576), and 118716–61–3 (P–95–1577).
Basis for action: The PMN substances will be used as leather dyes. Based on analogy to similar substances, EPA is concerned that cancer, developmental, kidney, and liver toxicity will occur in exposed workers. EPA determined that use of the substances did not present an unreasonable risk because significant worker exposure is not expected because the substances were not manufactured, processed, or used as a powder. EPA has determined that manufacture, processing, and use of the substances as a powder may result in significant worker exposure. Based on this information the PMN substances meet the concern criteria at § 721.170 (b)(1)(i)(B), (b)(1)(i)(C), (b)(3)(i), and (b)(3)(ii).
Recommended testing: EPA has determined that a 2-year, two-species oral bioassay (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5), an oral 2-generation reproduction study in rats (40 CFR 799.9380) (62 FR 43834, August 15, 1997) (FRL–5719–5), and a 90-day subchronic inhalation study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)) would help characterize the health effects of the PMN substances.
CFR citation: 40 CFR 721.9575 (P–95–1575), 40 CFR 721.9576 (P–95–1576), and 40 CFR 721.9577 (P–95–1577).

PMN Number P–95–1578

Chemical name: (generic) Hydrofluorocarbon alkyl ether.
CAS number: Not available.
Basis for action: The PMN substance will be used as an intermediate. Based on analogy to similar substances, EPA identified concerns for cancer, cardiotoxicity, cardiosensitization, respiratory failure, neurotoxicity, and irritation to membranes. Based on submitted test data EPA identified concerns for acute toxicity. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because significant human exposure is not expected. EPA has determined that use of the substance without the worker protection cited in the PMN or if the substance is used other than as an intermediate may result in significant human exposure. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C), (b)(3)(i), and (b)(3)(ii).
Recommended testing: EPA has determined that a 2-year, two-species bioassay (40 CFR 799.9420) (62 FR

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43838, August 15, 1997) (FRL–5719–5) and a 90-day subchronic oral study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)) will address the potential health effects of the PMN substance.
CFR citation: 40 CFR 721.3485.

PMN Numbers P–95–1650/1651/1652/1653

Chemical name: (generic) Alkyl phenyl polyetheramines.
CAS number: Not available.
Basis for action: The PMN substances will be used as intermediates. Based on analogy to aliphatic amines EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 3 ppb of the PMN substances in surface waters. EPA determined that use of the substances as described in the PMNs did not present an unreasonable risk because the substances would not be released to surface waters. EPA has determined that other uses of the substances may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substances meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.6490.

PMN Number P–95–1750

Chemical name: (generic) Pentanediol light residues.
CAS number: Not available.
Basis for action: The PMN substance will be used as a solvent. Based on potential consumer exposures, EPA has determined that the PMN substance may cause significant or substantial human exposure. EPA determined that use of the substance as described in the PMN did not cause significant or substantial exposure from use as an industrial solvent. EPA has determined that exposures from consumer use may result in significant or substantial human exposures. Based on this information activities other than those described in the PMN may result in significant changes in human exposure.
Recommended testing: EPA has determined that a 28-day oral study in rats (OECD guideline no. 407), an acute rat oral study (OPPTS 870.1100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)), an ames assay (40 CFR 798.5265 or OPPTS 870.5265 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)), a mouse micronucleus assay by the intraperitoneal route (40 CFR 799.9539) (62 FR 43853, August 15, 1997) (FRL–5719–5), and a developmental toxicity study in one species by the oral route (40 CFR 799.9370) (62 FR 43832, August 15, 1997) (FRL–5719–5) would help characterize possible health effects of the substance. EPA will require any manufacturer importer, or processor who distributes this substance for use in a consumer product to perform this testing.
CFR citation: 40 CFR 721.5650.

PMN Number P–95–1772

Chemical name: (generic) Polyalkyl phosphate.
CAS number: Not available.
Basis for action: The PMN substance will be used as a specialty additive. Based on analogy to neutral organic substances, EPA expects toxicity to aquatic organisms at surface water concentrations as low as 1 ppb. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance did not exceed a concentration of 1 ppb when released to surface waters. EPA has determined that other uses may result in releases to surface waters above 1 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.5995.

PMN Number P–95–1806

Chemical name: (generic) Quaternary ammonium hydroxide.
CAS number: Not available.
Basis for action: The PMN substance will be used as an additive. Based on analogy to cationic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 4 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance was not released to surface waters. EPA has determined that other uses may result in releases to surface waters above the concern concentration. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.4467.

PMN Number P–95–1825

Chemical name: Thieno[3,4-b]-1,4-dioxin, 2,3-dihydro- (9CI).
CAS number: 126213–50–1.
Basis for action: The PMN substance will be used in an open non-dispersive use. Based on analogy to structurally similar substances, EPA identified concerns for cancer and based on submitted test data EPA identified concerns for liver toxicity and neurotoxicity. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because significant human exposure is not expected. EPA has determined that use of the substance without the worker protection cited in the PMN or if the substance is manufactured domestically may result in significant human exposure. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C) and (b)(3)(i).
Recommended testing: EPA has determined that a 2-year, two-species bioassay (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5) and a 90-day subchronic oral study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)) will address the potential health effects of the PMN substance.
CFR citation: 40 CFR 721.9662.

PMN Number P–95–1891

Chemical name: Siloxanes and silicones, Me hydrogen, reaction products with 2,2,6,6-tetramethyl-4-(2-propenyloxy)piperdine.
CAS number: 182635–99–0.
Basis for action: The PMN substance will be used as an ultraviolet light stabilizer for polymers. Based on analogy to hindered amines, there is concern for toxicity to the immune system and the G.I. tract, liver toxicity, blood toxicity, and toxicity to the male reproductive system. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because workers would not be exposed by inhalation. EPA determined that use as a powder may result in inhalation exposure to workers. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a 90-day subchronic inhalation study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)) would characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.6170.

PMN Number P–95–1950

Chemical name: (generic) Substituted ethoxyethylamine phosphonate.
CAS number: Not available.
Basis for action: The PMN substance will be used as a scale inhibitor. Based on analogy to polyanionic monomers, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 30 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance was not released to surface waters. EPA has determined that other uses may result in releases to surface waters above 30 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.6078.

PMN Number P–95–2101

Chemical name: Hydrazine, (2-fluorophenyl).
CAS Number: 2368–80–1.
Basis for action: The PMN substance will be used as an intermediate. Based on analogy of the PMN substance to hydrazines EPA is concerned that oncogenicity, liver and kidney effects, lung effects, and blood effects will occur to exposed workers and that toxicity will occur to aquatic organisms. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because there were no significant worker or environmental exposures. EPA has determined that domestic manufacture of the substance may result in significant worker and environmental exposures. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C), (b)(3)(ii), and (b)(4)(ii).
Recommended testing: EPA has determined that a 2-year, two-species oral bioassay (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5) and a 90-day subchronic oral study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)) would help characterize the health effects of the PMN substance. A fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.4257.

PMN Number P–96–19

Chemical name: Lithiated metal oxide ($LiNiO_2$).
CAS number: 12031–65–1.
Effective date of section 5(e) consent order: June 26, 1996.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health and the environment.
Toxicity concern: Similar chemicals have been shown to cause cancer and systemic toxicity in test animals. In addition, based on Structure Activity Relationship (SAR) analysis derived from test data on structurally similar compounds, EPA expects toxicity to aquatic organisms to occur at a concentration of 30 ppb PMN substance in surface waters.
Recommended testing: The results of a 90-day subchronic inhalation toxicity study in rats (40 CFR 799.9346) (62 FR 43828, August 15, 1997) (FRL–5719–5) and a 2-year, two-species bioassay via inhalation (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5) would help characterize the human health concerns. The results of a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) conducted using static method and nominal concentrations, would help to characterize the toxicity of the substance. The consent order contains two production volume limits. The PMN submitter has agreed not to exceed the first production volume limit without performing the 90-day subchronic toxicity test. The PMN submitter has also agreed not to exceed the second higher production volume limit without performing the bioassay.
CFR citation: 40 CFR 721.5549.

PMN Number P–96–33

Chemical name: Cyclopropanecarboxaldehyde.
CAS number: 1489–69–6.
Effective date of section 5(e) consent order: November 27, 1996.
Basis for section 5(e) consent order: The order was issued under section 5 (e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health.
Toxicity concern: Similar aldehydes have been shown to cause lung irritation, carcinogenicity, mutagenicity, and liver toxicity in test animals. Developmental effects are possible based on the acid.
Recommended testing: EPA has determined that an *in vitro* mouse lymphoma assay (40 CFR 799.9530) (62 FR 43846, August 15, 1997) (FRL–5719–5) and an *in vivo* mouse micronucleus assay (40 CFR 799.9539) (62 FR 43853, August 15, 1997) (FRL–5719–5), a 90-day inhalation test in rats (OECD guideline no. 413), a 2-year, one-species bioassay (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5) would help characterize the human health effects. The consent order contains two production volume limits.

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The PMN submitter has agreed not to exceed the first production volume limit without performing the *in vitro* mouse lymphoma, *in vivo* mouse micronucleus assays, and the 90-day inhalation test in rats. The PMN submitter has also agreed not to exceed the second production volume limit without performing a 2-year, one-species bioassay, which EPA may elect not to require depending on the results of the mutagenicity studies and the 90-day test.
CFR citation: 40 CFR 721.2280.

PMN Number P–96–92

Chemical name: (generic) 1,4-benzenediol, 2-(1,1,3,3-tetramethylbutyl) and Bis(dimethylamino substituted) carbomonocycle.
CAS number: Not available.
Basis for action: The PMN substance will be used in a consumer article. Based on analogy to hydroquinones, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters in significant quantities. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.1155.

PMN Number P–96–93

Chemical name: Benzenamine, 4,4'-methylenebis[2-methyl-6-(1-methylethyl)]-.
CAS number: 16298–38–7.
Basis for action: The PMN substance will be used in a non-dispersive use. Based on submitted test data EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 20 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a chronic 60-day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600 or OPPTS 850.1400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) and a 21-day daphnid chronic toxicity test (40 CFR 797.1330 or OPPTS 850.1300 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.1105.

PMN Number P–96–236

Chemical name: 1-Tridecyn-3-ol, 3-methyl.
CAS Number: 100912–15–0.
Basis for action: The PMN substance will be used as an intermediate. Based on analogy of the PMN substance to 1-hexyn-3-ol and other structurally similar substances, EPA is concerned that liver toxicity, kidney toxicity, neurotoxicity, reproductive toxicity, and cardiotoxicity will occur to exposed workers. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because significant worker exposures were not expected. EPA has determined that domestic manufacture of the substance or use of the substance without dermal protective equipment may result in significant worker exposures. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that an oral 2-generation reproduction study in rats (40 CFR 799.9380) (62 FR 43834, August 15, 1997) (FRL–5719–5) and a 90-day subchronic oral study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.9830.

PMN Number P–96–238

Chemical name: (generic) Azo monochloro triazine reactive dye.
CAS number: Not available.
Basis for action: The PMN substance will be used as a dye. Based on analogy to structurally similar substances and submitted test data, EPA is concerned that liver toxicity, blood toxicity, oncogenicity, neurotoxicity, and developmental toxicity will occur in exposed workers. EPA determined that use of the substance did not present an unreasonable risk because significant worker exposure is not expected because the substance was manufactured, processed, or used as liquids. EPA has determined that manufacture, processing, or use of the substance as a solid may result in significant worker exposure. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(3)(i), (b)(3)(ii), and (b)(3)(iii).
Recommended testing: EPA has determined that an oral two-species developmental toxicity test (40 CFR 799.9370) (62 FR 43832, August 15, 1997) (FRL–5719–5) and a 90-day subchronic oral study in rats (40 CFR 798.2650 or OPPT 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.9717.

PMN Number P–96–273

Chemical name: (generic) Chloroalkane.
CAS number: Not available.
Basis for action: The PMN substance will be used as an intermediate. Based on toxicity data submitted with the PMN and by analogy to chlorinated solvents, EPA identified health concerns for liver toxicity, kidney toxicity, neurotoxicity, and oncogenicity. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because significant human exposure is not expected. EPA has determined that use of the substance other than as described in the PMN may result in significant human exposure. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C), (b)(3)(i), and (b)(3)(ii).
Recommended testing: EPA has determined that a 2-year, two-species oral bioassay (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5) and a 90-day subchronic oral study in rats (40 CFR 798.2650 or OPPT 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.2091.

PMN Number P–96–346

Chemical name: (generic) Aminofunctional alkoxy alkyl siloxane.
CAS number: Not available.
Basis for action: The PMN substance will be used as an adhesion promoter. Based on analogy to aliphatic amines and ethoxysilanes, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 10 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance was not released to surface waters. EPA has determined that other uses may result in releases to surface waters above 10 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.9515.

PMN Numbers P–96–399/400/401/402/403/404

Chemical name: (generic) Alkyl polycarboxylic acids, esters with ethoxylated fatty alcohols, reaction products with maleic anhydride.
CAS number: Not available.
Basis for action: The PMN substances will be used as site-limited production intermediates. Based on analogy to nonionic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 9 ppb of the PMN substances in surface waters. EPA determined that use of the substances as described in the PMNs did not present an unreasonable risk because the substances were not released to surface waters. EPA has determined that other uses may result in releases to surface waters. Based on this information the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substances.
CFR citation: 40 CFR 721.2350.

PMN Numbers P–96–554/555/556/557/558/559/560/561/564/565

Chemical name: (generic) Alkyl polycarboxylic acids, esters with ethoxylated fatty alcohols.
CAS number: Not available.
Basis for action: The PMN substances will be used as intermediates. Based on analogy to nonionic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 20 ppb of the PMN substances in surface waters. EPA determined that use of the substances as described in the PMN did not present an unreasonable risk because the substances would not be released to surface waters. EPA has determined that other uses of the substances may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substances meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substances.
CFR citation: 40 CFR 721.6477.

PMN Numbers P–96–406/407/408

Chemical name: (generic) Alkyltri, tetra, and pentaamines.
CAS number: Not available.
Basis for action: The PMN substances will be used as industrial lubricants and fuel additives. Based on analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substances in surface waters. EPA determined that use of the substances as described in the PMNs did not present an unreasonable risk because the substances were not released to surface waters. EPA has determined that other uses may result in releases to surface waters. Based on this information the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substances.
CFR citation: 40 CFR 721.6475.

PMN Number P–96–573

Chemical name: (generic) Ethoxylated alkyl quaternary ammonium compound.
CAS Number: Not available.
Basis for action: The PMN substance will be used in an open dispersive use. Based on analogy of the PMN substance to cationic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because there were no significant environmental exposures. EPA has determined that any use of the substance other than for the specific use described in the PMN may result in significant environmental exposures. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substances.
CFR citation: 40 CFR 721.655.

PMN Number P–96–585

Chemical name: (generic) Salt of a substituted polyalkylenepolyamine.
CAS number: Not available.
Basis for action: The PMN substance will be used as a processing aid. Based on analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance was not released to surface waters. EPA has determined that other uses may result in

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releases to surface waters. Based on this information the PMN substance meet the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.6197.

PMN Number P–96–702

Chemical name: (generic) Substituted phenyl azo substituted sulfo carbopolycycle.
CAS number: Not available.
Basis for action: The PMN substance will be used in an open nondispersive use. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because it did not result in significant human or environmental exposure. EPA has determined that increased use of the substance may result in significant environmental and human exposure.
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an activated sludge adsorption isotherm (OPPTS 835.1110 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1) would help characterize the environmental effects of the PMN substance. A murine immune allergic response study (*Toxicology and Applied Pharmacology* 112:190–197 (1992)) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.2122.

PMN Numbers P–96–767/773

Chemical name: (generic) Substituted pyridine azo substituted phenyl.
CAS number: Not available.
Basis for action: The PMN substances will be used as textile dyes. Based on analogy to structurally similar substances, EPA is concerned that liver toxicity, kidney toxicity, oncogenicity, blood toxicity, neurotoxicity, and developmental toxicity will occur in exposed workers. EPA determined that use of the substances did not present an unreasonable risk because significant worker exposure is not expected because the substances were not manufactured domestically. EPA has determined that domestic manufacture of the substances may result in significant worker exposure. Based on this information the PMN substances meet the concern criteria at § 721.170 (b)(1)(i)(C) and (b)(3)(ii).
Recommended testing: EPA has determined that a 2-year, two-species oral bioassay (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5), a two-species oral developmental toxicity study (40 CFR 799.9370) (62 FR 43832, August 15, 1997) (FRL–5719–5), and a subchronic oral study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)) would help characterize the health effects of the PMN substances.
CFR citation: 40 CFR 721.8780.

PMN Number P–96–795

Chemical name: (generic) Mixed fatty alkylamines, salt.
CAS number: Not available.
Basis for action: The PMN substance will be used as a processing aid. Based on analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance was not released to surface waters. EPA has determined that other uses may result in releases to surface waters. Based on this information the PMN substance meet the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.567.

PMN Number P–96–813

Chemical name: (generic) Phenothiazine derivative.
CAS number: Not available.
Basis for action: The PMN substance will be used as a mediator in enzyme catalyzed reactions. Based on analogy to phenothiazines and submitted toxicity data, EPA is concerned that blood toxicity, liver toxicity, kidney effects, adrenal toxicity, spleen toxicity, reproductive toxicity, and neurotoxicity will occur in exposed workers. Based on submitted test data EPA is also concerned that toxicity to aquatic organisms will occur at concentrations as low as 7 ppb. EPA determined that use of the substance did not present an unreasonable risk because the use as described in the PMN would not result in significant worker exposure or environmental release. EPA has determined that domestic manufacture of the substance as a powder may result in significant worker exposure or environmental release. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(3)(i), (b)(3)(ii), and (b)(4)(i).
Recommended testing: EPA has determined that a 90-day subchronic inhalation study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)), a chronic 60-day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600 or OPPTS 850.1400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) and a 21-day daphnid chronic toxicity test (40 CFR 797.1330 or OPPTS 850.1300 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the health and environmental effects of the PMN substance.
CFR citation: 40 CFR 721.5913.

PMN Number P–96–824

Chemical name: (generic) Acrylate ester.
CAS number: Not available.
Basis for action: The PMN substance will be used as a monomer. Based on analogy to acrylates, EPA identified concerns for toxicity to aquatic organisms at concentrations as low as 6 ppb. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because significant environmental exposure is not expected. EPA has determined that other uses may result in releases to water which are significant environmental exposures. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.2805.

PMN Number P–96–866

Chemical name: (generic) Derivative of substituted carbomonocyclic carboxylic acid-amine distillation stream byproduct reaction product.
CAS number: Not available.
Basis for action: The PMN substance will be used as a processing aid. Based on analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance was not released to surface waters. EPA has determined that other uses may result in releases to surface waters. Based on this information the PMN substance meet the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.9635.

PMN Number P–96–941

Chemical name: (generic) Ceteareth-25 sorbate.
CAS number: Not available.
Basis for action: The PMN substance will be used as an intermediate. Based on analogy to nonionic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. EPA determined that use of the substance as an intermediate did not present an unreasonable risk because the substance would not be released to surface waters in significant amounts. EPA has determined that other uses of the substance may result in releases to surface waters which significantly exceed the concern concentration. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.2082.

PMN Number P–96–897

Chemical name: (generic) Terpene residue distillates.
CAS number: Not available.
Basis for action: The PMN substance will be used as an odor enhancer. Based on analogy to neutral organic substances, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 10 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters above a level of 10 ppb. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.2145.

PMN Number P–96–942

Chemical name: Methanone, [5-[[3-(2H-benzotriazol-2-yl)-2-hydroxy-5-(1,1,3,3-tetramethylbutyl)phenyl]methyl]-2-hydroxy-4-(octyloxy)phenyl]phenyl-.
CAS number: 162245–07–0.
Effective date of section 5(e) consent order: September 24, 1996.
Basis for section 5(e) consent order: The order was issued under section 5 (e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health. Toxicity concern: Section 8(e) data and data on analogous hindered phenol benzotriazoles have shown similiar substances to cause increased organ weight (liver and kidney, with associated histopathology at higher doses); hematological effects (decreased hemoglobin, packed cell volume, and erythrocytes); and immune systems effects(weight changes in thymus, spleen, lymph nodes; decreased leukocytes) in test animals.
Recommended testing: EPA has determined that a 90-day gavage study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)) with special attention to hematology would help characterize systemic toxicity and reproductive toxicity. The PMN submitter has agreed not to exceed the production volume limit without performing this test.
CFR citation: 40 CFR 721.4885.

PMN Numbers P–96–945/946/947/948

Chemical name: (generic) Mixture of hydrochlorofluoro alkanes and hydrochlorofluoro alkene.
CAS number: Not available.
Basis for action: The PMN substances will be used as intermediates. Based on analogy to similar substances, EPA is concerned that lung toxicity, neurotoxicity, irritation, oncogenicity, liver toxicity, kidney toxicity, and cardiac sensitization will occur in exposed workers. EPA determined that use of the substance as an intermediate did not present an unreasonable risk because it did not result in significant worker exposure. EPA has determined that use other than an intermediate may result in significant worker exposure. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a 90-day subchronic oral study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)) and a 2-year, two-species oral bioassay (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.4464.

PMN Numbers P–96–950/951

Chemical name: (generic) Polymers of $C_{13}C_{15}$ oxoalcohol ethoxolate, ammonia, and maleic anhydride.

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CAS number: Not available.
Basis for action: The PMN substances will be used as described in the PMN. Based on structure activity relationships to nonionic surfactants-alkylethoxylates, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 9 ppb of the PMN substances in surface waters. EPA determined that use of the substances as described in the PMNs did not present an unreasonable risk because the substances would not be released to surface waters. EPA has determined that other uses of the substances may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substances.
CFR citation: 40 CFR 721.6505.

PMN Number P–96–1176

Chemical name: Cyclohexanamine, *N,N*-dimethyl-, compd. with alpha-isotridecyl-omega-hydroxypoly(oxy-1,2-ethanediyl) phosphate.
CAS Number: 164383–18–0.
Basis for action: The PMN substance will be used as a pigment dispersant for color dispersion. Based on analogy to phosphate based anionic surfactants, EPA expects toxicity to aquatic organisms at surface water concentrations as low as 20 ppb. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because there were no significant environmental exposures. EPA has determined that any use of the substance other than for the specific use described in the PMN may result in significant exposures. Based on this information the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance
CFR citation: 40 CFR 721.2222.

PMN Number P–96–1177

Chemical name: Tungstate (W12(OH)2O386-) hexasodium (9CI).
CAS Number: 12141–67–2.
Basis for action: The PMN substance will be used in an open non-dispersive use. Based on submitted test data, EPA is concerned that hepatotoxicity, kidney toxicity, neurotoxicity, reproductive toxicity, eye and skin irritation, and toxicity to the GI tract, spleen, lungs, pancreas, urinary bladder, and the lymph system may occur. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because there were no significant inhalation exposures. EPA has determined that any use of the substance other than for the specific use described in the PMN may result in significant inhalation exposures. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(i).
Recommended testing: EPA has determined that a 2-year, two-species oral bioassay (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5) and a 90-day subchronic inhalation study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.9840.

PMN Number P–96–1216

Chemical name: Benzoic acid, 3-amino-, diazotized, coupled with 6-amino-4-hydroxy-2-naphthalenesulfonic acid, diazotized, (3-aminophenyl)phosphonic acid and diazotized 2,5-diethoxybenzenamine.
CAS number: 163879–69–4.
Basis for action: The PMN substance will be used as a coloring material. Based on submitted toxicity data on the PMN substance and analogy to the azo reduction products, EPA is concerned that eye irritation, skin sensitization, reproductive toxicity in males, blood toxicity, liver toxicity, kidney toxicity, reproductive toxicity, spleen effects, oncogenicity, neurotoxicity, and developmental toxicity will occur in workers exposed via inhalation. EPA determined that use of the substance as described in the PMN does not present an unreasonable risk. Significant worker inhalation exposure is not expected because the substance will not be manufactured, processed, or used as a powder. EPA has determined that manufacture, processing, and use of the substance as a powder may result in significant worker inhalation exposure. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(D), (b)(3)(i), and (b)(3)(iii).
Recommended testing: EPA has determined that a 2-year, two-species oral bioassay (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5) and a 2-generation reproductive toxicity study (40 CFR 799.9380) (62 FR 43834, August 15, 1997) (FRL–5719–5) would help characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.1705.

PMN Number P–96–1233

Chemical name: (generic) Reaction product of epoxy with anhydride and glycerol and glycol.
CAS number: Not available.
Basis for action: The PMN substance will be used as molding compound. Based on analogy to diepoxides and esters EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 30 ppb of the PMN substance in surface waters. Based on analogy to similar substances there is concern for oncogenicity, developmental toxicity, reproductive toxicity, and neurotoxicity to exposed workers. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters and workers would not be exposed by inhalation. EPA has determined that other uses or uses as a powder may result in releases to surface waters which exceed the concern concentration or inhalation exposure to workers. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(c), (b)(3)(ii), and (b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance. EPA has also determined that a 2-year, two-species oral bioassay (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5), a 90-day subchronic inhalation study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)), and a two-species oral developmental toxicity test (40 CFR 799.9370) (62 FR 43832, August 15, 1997) (FRL–5719–5) would characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.9270.

PMN Number P–96–1239

Chemical name: (generic) Aliphatic polyisocyanate homopolymer.
CAS number: Not available.
Basis for action: The PMN substance will be used as an intermediate. Based on analogy to structurally similar substances, EPA is concerned that pulmonary sensitization and irritation will occur in exposed workers. EPA determined that use of the substance did not present an unreasonable risk because significant worker exposure is not expected because the substance was used as an intermediate. EPA has determined that use other than an intermediate may result in significant worker exposure. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a 90-day inhalation study in rats (40 CFR 799.9346) (62 FR 43828, August 15, 1997) (FRL–5719–5) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.4259.

PMN Number P–96–1240

Chemical name: Poly(oxy-1,2-ethanediyl), α-sulfo-ω-[1-[(4-nonylphenoxy)methyl]-2-(2-propenyloxy)ethoxy]-, branched, ammonium salts.
CAS number: 184719–88–8.
Basis for action: The PMN substance will be used as an emulsifier. Based on analogy to structurally similar substances and submitted test data, EPA is concerned that kidney toxicity, reproductive toxicity, developmental toxicity, and oncogenicity will occur in exposed workers. EPA determined that use of the substance did not present an unreasonable risk because significant worker exposure is not expected because the substance was not manufactured domestically. EPA has determined that domestic manufacture of the substance may result in significant worker exposure. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C), (b)(3)(i), (b)(3)(ii), and (b)(3)(iii).
Recommended testing: EPA has determined that a 2-year, two-species oral bioassay (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5), a two-species oral developmental toxicity test (40 CFR 799.9370) (62 FR 43832, August 15, 1997) (FRL–5719–5), and a 90-day subchronic oral study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.539.

PMN Number P–96–1263

Chemical name: (generic) Substituted phenyl azo substituted sulfocarbopolycle, sodium salt.
CAS number: Not available.
Basis for action: The PMN substance will be used in a destructive use. Based on analogy to structurally similar substances, EPA is concerned that oncogenicity, blood effects, developmental toxicity, and neurotoxicity will occur in workers exposed via inhalation. EPA determined that use of the substance as described in the PMN does not present an unreasonable risk. Significant worker inhalation exposure is not expected because the substance will not be manufactured, processed, or used as a powder. EPA has determined that manufacture, processing, and use of the substance as a solid may result in significant worker inhalation exposure. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(iii).
Recommended testing: EPA has determined that a 2-year, two-species oral bioassay (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5), a 90-day subchronic inhalation study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)), and a two-species oral developmental toxicity test (40 CFR 799.9370) (62 FR 43832, August 15, 1997) (FRL–5719–5) would characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.9545.

PMN Numbers P–96–1280/1281/1504/1505/1506/1507/1508

Chemical name: (generic) Quaternary ammonium alkyletherpropyl trialkylamine halides.
CAS number: Not available.
Basis for action: The PMN substances will be used as industrial production aids. Based on analogy to aliphatic amines and cationic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 2 ppb of the PMN substances in surface waters. EPA determined that use of the substances as described in the PMN did not present an unreasonable risk because the substances would not be released to surface waters. EPA has determined that other uses of the substances may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.4095.

PMN Number P–96–1288

Chemical name: (generic) Hydrofluoroalkene.
CAS number: Not available.
Basis for action: The PMN substance will be used as an intermediate. Based on analogy to structurally similar substances, EPA is concerned that lung toxicity, neurotoxicity, irritation, oncogenicity, liver toxicity, kidney toxicity, and cardiac sensitization will occur in exposed workers. EPA determined that use of the substance as an intermediate did not present an unreasonable risk because it did not result in significant worker exposure. EPA has determined that use other than an intermediate may result in significant worker exposure. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a 90-day subchronic oral study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)) and a 2-year, two-species oral bioassay (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5) would help characterize the health and environmental effects of the PMN substance.
CFR citation: 40 CFR 721.4465.

PMN Number P–96–1315

Chemical name: 9H-Thioxanthen-9-one, 2,4-diethyl.
CAS number: 82799–44–8.

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Basis for action: The PMN substance will be used as a photopolymerization initiator. Based on analogy to neutral organic substances, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters in significant quantities. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a chronic 60-day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600 or OPPTS 850.1400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a 21-day daphnid chronic toxicity test (40 CFR 797.1330 or OPPTS 850.1300 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.9664.

PMN Number P–96–1319

Chemical name: (generic) Nitro methyl quinoline.
CAS number: Not available.
Basis for action: The PMN substance will be used in a destructive use. Based on analogy to structurally similar substances, there is concern for oncogenicity, mutagenicity, blood toxicity, and neurotoxicity. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters in significant amounts and workers would not be exposed by inhalation. EPA has determined that use without appropriate respiratory protection may result in significant inhalation exposure to workers and disposal other than by incineration may result in significant drinking water exposures to exposed populations. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C) and (b)(3)(ii).
Recommended testing: EPA has determined that a 2-year, two-species oral bioassay (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5) and a 90-day subchronic inhalation study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)) would characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.9080.

PMN Numbers P–96–1337/1338/1339

Chemical name: (generic) Amine substituted metal salts.
CAS number: Not available.
Basis for action: The PMN substances will be used as catalysts. Based on analogy to structurally similar compounds, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 4 ppb of the PMN substances in surface waters. EPA determined that use of the substances as described in the PMN did not present an unreasonable risk because the substances would not be released to surface waters in significant quantities. EPA has determined that other uses of the substances may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substances meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.640.

PMN Number P–96–1410

Chemical name: (generic) Substituted bisaniline.
CAS number: Not available.
Basis for action: The PMN substance will be used as paper dye intermediate. Based on analogy to neutral organics, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 4 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters in significant quantities. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a chronic 60-day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600 or OPPTS 850.1400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a 21-day daphnid chronic toxicity test (40 CFR 797.1330 or OPPTS 850.1300 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.1805.

PMN Number P–96–1427

Chemical name: (generic) Stilbene diglycidyl ether.
CAS number: Not available.
Effective date of section 5(e) consent order: March 14, 1997.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Diglycidyl ether of bisphenol A (DGEBA), other similar chemicals, and epoxides have been shown to cause mutagenicity, oncogenicity, male reproductive toxicity and mucous membrane irritation in test animals.
Recommended testing: EPA has determined that a 90-day subchronic oral toxicity study with attention to the male and female reproductive organs (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)) would help to characterize the reproductive toxicity. The PMN submitter has agreed not to exceed the production volume limit without performing this test. A 2-year bioassay on bisphenol A-diglycidyl ether (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5) would be required to evaluate the carcinogenicity effects which may be caused by the PMN substance. This study will serve as a surrogate for a carcinogenicity study on the PMN substance. The order does not require submission of the oncogenicity study at any specified time or production volume. However, the order's restrictions on manufacture, import, processing, distribution in commerce, use, and disposal of the PMN substance will remain in effect until the order is modified or revoked by EPA based on submission of that study or other relevant information.
CFR citation: 40 CFR 721.3465.

PMN Number P–96–1430

Chemical name: (generic) Alkylpoly(oxyalkylene)amine.
CAS number: Not available.
Basis for action: The PMN substance will be used as an intermediate. Based on analogy to aliphatic amines EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 10 ppb of the PMN substance in surface waters. EPA determined that use of the substance as an intermediate did not present an unreasonable risk because it did not result in significant environmental exposure. EPA has determined that use other than an intermediate may result in significant environmental exposure. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.641.

PMN Number P–96–1478

Chemical name: (generic) Ethoxylated alcohol, phosphated, amine salt.
CAS number: Not available.
Basis for action: The PMN substance will be used as a polymer suspension agent. Based on analogy to phosphate ester surfactants EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 8 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because significant releases of the substance is not expected to surface waters. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substances.
CFR citation: 40 CFR 721.643.

PMN Numbers P–96–1510/1511/1512/1513/1514

Chemical name: (generic) Alkyletherpropyl dialkylamine.
CAS number: Not available.
Basis for action: The PMN substances will be used as intermediates. Based on analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substances in surface waters. EPA determined that use of the substances as described in the PMN did not present an unreasonable risk because there was not significant releases of the substances to surface waters. EPA has determined that uses other than as an intermediate may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substances meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.2345.

PMN Number P–96–1536

Chemical name: 2-pyrrolidone, 1-ethenyl-3-ethylidene-, (E)-.
CAS number: 153954–47–3.
Basis for action: The PMN substance will be used as a crosslinker in a polymerization reaction. Based on analogy to structurally similar chemicals, EPA identified health concerns for oncogenicity, mutagenicity, neurotoxicity, and developmental toxicity. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because significant human exposure is not expected. EPA has determined that use of the substance without impervious gloves may result in significant human exposure. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C) and (b)(3)(ii).
Recommended testing: EPA has determined that a 2-year, two-species bioassay (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5) and a two-species oral developmental toxicity test (40 CFR 799.9370) (62 FR 43832, August 15, 1997) (FRL–5719–5) will address the potential health effects of the PMN substance as there is concern and potential from all routes of exposure.
CFR citation: 40 CFR 721.9010.

PMN Number P–96–1588

Chemical name: (generic) Hydrochloride salt of a mixed fatty amidoamine.
CAS number: Not available.
Basis for action: The PMN substance will be used as a processing aid. Based on analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 2 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance was not released to surface waters. EPA has determined that other uses may result in releases to surface waters. Based on this information the PMN substance meet the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.637.

PMN Number P–96–1649

Chemical name: (generic) Modified silicone resin.
CAS number: Not available.
Basis for action: The PMN substance will be used as a polymerization initiator. Based on analogy to neutral organic chemicals, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 5 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be

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released to surface waters in significant quantities. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a chronic 60-day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600 or OPPTS 850.1400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a 21-day daphnid chronic toxicity test (40 CFR 797.1330 or OPPTS 850.1300 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.9499.

PMN Number P–96–1652

Chemical name: Phosphinothioic acid, bis(2,4,4-trimethylpentyl)- (9Cl).

CAS number: 132767–86–3.

Basis for action: The PMN substance will be used as a solvent extraction reagent. Based on analogy to phosphate-based dialkyl anionic surfactants and neutral organics, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 10 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters in significant quantities. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a chronic 60-day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600 or OPPTS 850.1400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a 21-day daphnid chronic toxicity test (40 CFR 797.1330 or OPPTS 850.1300 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.6045.

PMN Numbers P–96–1661/95–1654

Chemical name: (generic) Alkoxysilane ester.

CAS number: Not available.

Basis for action: The PMN substance will be used in coatings and as a filler. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because it did not result in significant human exposure. EPA has determined that increased use of the substance may result in significant human exposure.

Recommended testing: EPA has determined that a 90-day subchronic inhalation toxicity study in rats (40 CFR 799.9346) (62 FR 43828, August 15, 1997) (FRL–5719–5) would help characterize the health effects of the PMN substance.

CFR citation: 40 CFR 721.537.

PMN Numbers P–97–57/58/59/60/61

Chemical name: (generic) Alkyl substituted quaternary ammonium chloride.

CAS number: Not available.

Basis for action: The PMN substances will be used as surface active agents. Based on submitted test data and analogy to monoalkyl quaternary surfactants EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 4 ppb of the PMN substances in surface waters. EPA determined that use of the substances as described in the PMNs did not present an unreasonable risk because the substances would not be released to surface waters during manufacturing and processing. EPA has determined that other uses of the substances may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substances meet the concern criteria at § 721.170 (b)(4)(i) and (b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substances.

CFR citation: 40 CFR 721.658.

PMN Number P–97–131

Chemical name: 2,7-Naphthalenedisulfonic acid, 4-amino-3-[[4′[[2-amino-4-[(3-butoxy-2-hydroxypropyl)amino]phenyl]azo]-3,3′-dimethyl[1,1′-biphenyl]-4-yl]azo]-5-hydroxy-6-(phenylazo)-, disodium salt.

CAS number: 103580–64–9.

Basis for action: The PMN substance will be used in ball point pen ink. Based on potential dimethylbenzidine, aniline, and triaminobenzene azo reduction products there is concern for oncogenicity, mutagenicity, developmental toxicity, liver toxicity, blood toxicity, and neurotoxicity. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters in significant amounts and workers would not be exposed by inhalation. EPA has determined that domestic manufacture, use as a powder, or additional releases to surface water may result in drinking water exposure or inhalation exposure to workers. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(D) and (b)(3)(iii).

Recommended testing: EPA has determined that a 2-year, two-species oral bioassay (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5), a 90-day subchronic inhalation study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)), and a two-species oral developmental toxicity test (40 CFR 799.9370) (62 FR 43832, August 15, 1997) (FRL–5719–5) would characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.5279.

PMN Number P–97–136

Chemical name: (generic) Alkoxylated fatty acid amide alkylsulfate salt.

CAS number: Not available.

Basis for action: The PMN substance will be used to soften cellulose. Based on analogy to dialkyl cationic surfactants EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 2 ppb of the PMN substance in surface waters. EPA determined that industrial uses of the substance did not present an unreasonable risk because it did not result in significant environmental exposure. EPA has determined that non-industrial uses may result in significant environmental exposure. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–

1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.720.

PMN Numbers P–97–143/144

Chemical name: (generic) Polymers of styrene, cyclohexyl methacrylate and substituted methacrylate.

CAS number: Not available.

Basis for action: The PMN substances will be used as coating resins. Based on analogy to structurally similar substances, there is concern for oncogenicity, mutagenicity, reproductive toxicity in males, developmental toxicity, lung and skin sensitization, and membrane irritation. EPA determined that use of the substances as described in the PMN did not present an unreasonable risk because significant worker exposure is not expected. EPA has determined that domestic manufacture may result in significant inhalation exposure to workers. Based on this information the PMN substances meets the concern criteria at § 721.170(b)(1)(i)(C) and (b)(3)(ii).

Recommended testing: EPA has determined that a 2-year, two-species oral bioassay (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5), a 90-day subchronic inhalation study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)), and a two-species oral developmental toxicity test (40 CFR 799.9370) (62 FR 43832, August 15, 1997) (FRL–5719–5) would characterize the human health effects of the PMN substances.

CFR citation: 40 CFR 721.9492.

PMN Number P–97–193

Chemical name: 2,7-Naphthalenedisulfonic acid, 4-amino-5-hydroxy-, coupled with diazotized 4-butylbenzenamine, diazotized 4,4′-cyclohexylidenebis[benzenamine] and m-phenylenediamine, sodium salt.

CAS number: 182238–09–1.

Basis for action: The PMN substance will be used in ink. Based on potential aniline and triaminobenzene azo reduction products and submitted test data, there is concern for oncogenicity, mutagenicity, and blood toxicity. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because workers would not be exposed by inhalation. EPA has determined that domestic manufacture and use as a powder, may result in inhalation exposure to workers. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(D) and (b)(3)(iii).

Recommended testing: EPA has determined that a 2-year, two-species oral bioassay (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5) and a 90-day subchronic inhalation study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)) would characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.5280.

PMN Number P–97–217

Chemical name: 1H-Imidazole, 2-ethyl-4,5-dihydro-4-methyl-.

CAS number: 931–35–1.

Basis for action: The PMN substance will be used as an epoxy catalyst. Based on analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 40 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters in significant quantities. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance. EPA has also determined that a 2-year, two-species oral bioassay (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5), a 90-day subchronic inhalation study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)), and an oral reproductive toxicity test in rats (40 CFR 799.9380) (62 FR 43834, August 15, 1997) (FRL–5719–5) would help characterize the health effects of the PMN substance.

CFR citation: 40 CFR 721.9503.

PMN Number P–97–264

Chemical name: Silane, (3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heptadecafluorodecyl)trimethoxy-.

CAS number: 83048–65–1.

Basis for action: The PMN substance will be used in coatings, plastics, and greases. Based on analogy to alkoxysilanes, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 10 ppb of the PMN substance in surface waters. Based on analogy to alkoxysilanes and perfluoro compounds, there is concern for lung toxicity, irritation to mucuous membranes, liver toxicity, blood toxicity, immunosuppression, and reproductive toxicity. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters and workers would not be exposed by inhalation. EPA has determined that other uses of the substance may result in inhalation exposures to workers and releases to surface waters which exceed the concern concentration. Based on this information the PMN substance meet the concern criteria at § 721.170 (b)(3)(ii) and (b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance. EPA has also determined that a 2-year, two-species oral bioassay (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5), a 90-day subchronic inhalation study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)), and an oral reproductive toxicity test in rats (40 CFR 799.9380) (62 FR 43834, August 15, 1997) (FRL–5719–5) would help characterize the health effects of the PMN substance.

CFR citation: 40 CFR 721.9503.

PMN Number P–97–302

Chemical name: Hexadecanoic acid, ethenyl ester.

CAS number: 693–38–9.

Basis for action: The PMN substance will be used as a component in adhesive formulations. Based on analogy to vinyl acetate and other similar substances, there is concern for neurotoxicity, mutagencity, oncogenicity, liver toxicity, developmental toxicity and reproductive toxicity. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because workers would not be subject to significant exposures. EPA has determined that other use of the substance may result in significant exposures to workers. Based on this information the PMN substance

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meets the concern criteria at § 721.170 (b)(1)(i)(C) and (b)(3)(ii).
Recommended testing: EPA has determined that a 2-year, two-species oral bioassay (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5), a 90-day subchronic oral study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)), an oral two-species developmental toxicity test (40 CFR 799.9370) (62 FR 43832, August 15, 1997) (FRL–5719–5), and an oral reproductive toxicity test in rats (40 CFR 799.9380) (62 FR 43834, August 15, 1997) (FRL–5719–5) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.4158.

PMN Number P–97–304

Chemical name: (generic) Disubstituted thiadiazolsulfone.
CAS number: Not available.
Basis for action: The PMN substance will be used in an enclosed use. Based on analogy to *N*-heterocycles there are concerns for developmental toxicity. Based on submitted toxicity data there are concerns for neurotoxicity, mutagenicity, and irritation to eyes, lungs, and mucous membranes . EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because workers would not be subject to significant exposures. EPA has determined that uses of the substance in a non-enclosed process and other than for the specific use designated in the PMN may result in significant exposures to workers. Based on this information the PMN substance meet the concern criteria at § 721.170 (b)(3)(i) and (b)(3)(ii).
Recommended testing: EPA has determined that a 90-day subchronic oral study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)) and a two-species oral developmental toxicity test (40 CFR 799.9370) (62 FR 43832, August 15, 1997) (FRL–5719–5) would characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.9659.

PMN Number P–97–314

Chemical name: (generic) Disubstituted thiadiazole.
CAS number: Not available.
Basis for action: The PMN substance will be used in an enclosed use. Based on analogy to *N*-heterocycles there are concerns for developmental toxicity. Based on submitted toxicity data there are concerns for neurotoxicity, mutagenicity, and irritation to eyes, lungs, and mucous membranes. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because workers would not be subject to significant exposures. EPA has determined that uses of the substance in a non-enclosed process and other than for the specific use designated in the PMN may result in significant exposures to workers. Based on this information the PMN substance meet the concern criteria at § 721.170 (b)(3)(i) and (b)(3)(ii).
Recommended testing: EPA has determined that a 90-day subchronic oral study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (public draft; 61 FR 31522, June 20, 1996) (FRL–5367–7)) and a two-species oral developmental toxicity test (40 CFR 799.9370) (62 FR 43832, August 15, 1997) (FRL–5719–5) would characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.9657.

PMN Number P–97–328

Chemical name: (generic) Ethylenediamine, substituted, sodium salt.
CAS number: Not available.
Basis for action: The PMN substance will be used as an intermediate. Based on analogy to polyanionic monomers and *n*-halo-nitro compounds, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 30 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because significant releases of the substance is not expected to surface waters. EPA has determined that uses other than as an intermediate may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.3565.

PMN Number P–97–417

Chemical name: (generic) Potassium salt of polyolefin acid.
CAS number: Not available.
Basis for action: The PMN substance will be used as a fuel additive. Based on analogy to fatty acid anionic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 800 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because significant releases of the substance is not expected to surface waters. EPA has determined that uses other than as a fuel additive may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.7375.

IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the chemical substances that are subject to this SNUR, EPA concluded that for 25 of the 163 substances, regulation was warranted under section 5(e) of TSCA, pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the substances. The basis for such findings is outlined in Unit III. of this preamble. Based on these findings, TSCA section 5(e) consent orders requiring the use of appropriate controls were negotiated with the PMN submitters; the SNUR provisions for these substances designated herein are consistent with the provisions of the TSCA section 5(e) orders.

In the other 138 cases for which the proposed uses are not regulated under a TSCA section 5(e) order, EPA determined that one or more of the criteria of concern established at 40 CFR 721.170 were met.

EPA is issuing this SNUR for specific chemical substances which have undergone premanufacture review to ensure that:

(1) EPA will receive notice of any company's intent to manufacture,

import, or process a listed chemical substance for a significant new use before that activity begins.

(2) EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use.

(3) When necessary to prevent unreasonable risks EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs.

(4) All manufacturers, importers, and processors of the same chemical substance which is subject to a TSCA section 5(e) order are subject to similar requirements. Issuance of a SNUR for a chemical substance does not signify that the substance is listed on the TSCA Inventory. Manufacturers, importers, and processors are responsible for ensuring that a new chemical substance subject to a final SNUR is listed on the TSCA Inventory.

V. Direct Final Procedures

EPA is issuing these SNURs as direct final rules, as described in 40 CFR 721.160(c)(3) and 721.170(d)(4). In accordance with 40 CFR 721.160(c)(3)(ii), this rule will be effective March 23, 1998, unless EPA receives a written notice by February 23, 1998 that someone wishes to make adverse or critical comments on EPA's action. If EPA receives such a notice, EPA will publish a notice to withdraw the direct final SNUR for the specific substance to which the adverse or critical comments apply. EPA will then propose a SNUR for the specific substance providing a 30-day comment period.

This action establishes SNURs for a number of chemical substances. Any person who submits a notice of intent to submit adverse or critical comments must identify the substance and the new use to which it applies. EPA will not withdraw a SNUR for a substance not identified in a notice.

VI. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require developing any particular test data before submission of a SNUN. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. In cases where a TSCA section 5(e) order requires or recommends certain testing, Unit III. of this preamble lists those recommended tests.

However, EPA has established production limits in the TSCA section 5(e) orders for several of the substances regulated under this rule, in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the substances. These production limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these substances. Under recent consent orders, each PMN submitter is required to submit each study at least 14 weeks (earlier orders required submissions at least 12 weeks) before reaching the specified production limit. Listings of the tests specified in the TSCA section 5(e) orders are included in Unit III. of this preamble. The SNURs contain the same production volume limits as the consent orders. Exceeding these production limits is defined as a significant new use.

The recommended studies may not be the only means of addressing the potential risks of the substance. However, SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on:

(1) Human exposure and environmental release that may result from the significant new use of the chemical substances.

(2) Potential benefits of the substances.

(3) Information on risks posed by the substances compared to risks posed by potential substitutes.

VII. Procedural Determinations

EPA is establishing through this rule some significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2. EPA is required to keep this information confidential to protect the CBI of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in 40 CFR 721.1725(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the substance subject to a SNUR is CBI. This procedure is cross-referenced in each of these SNURs.

A manufacturer or importer may request EPA to determine whether a proposed use would be a significant new use under this rule. Under the procedure incorporated from § 721.1725(b)(1), a manufacturer or importer must show that it has a *bona fide* intent to manufacture or import the substance and must identify the specific use for which it intends to manufacture or import the substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or import the substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If a manufacturer or importer is told that the production volume identified in the *bona fide* submission would not be a significant new use, i.e. it is below the level that would be a significant new use, that person can manufacture or import the substance as long as the aggregate amount does not exceed that identified in the *bona fide* submission to EPA. If the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use. EPA is considering whether to adopt a special procedure for use when CBI production volume is designated as a significant new use. Under such a procedure, a person showing a *bona fide* intent to manufacture or import the substance, under the procedure described in § 721.11, would automatically be informed of the production volume that would be a significant new use. Thus the person would not have to make multiple *bona fide* submissions to EPA for the same substance to remain in compliance with the SNUR, as could be the case under the procedures in § 721.1725(b)(1).

VIII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant "new" use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have recently undergone premanufacture review. TSCA section 5(e) orders have been issued for 24 substances and notice submitters are prohibited by the TSCA section 5(e) orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received a NOC and the substance has not been added to the TSCA Inventory, no other person may commence such activities without first submitting a PMN. For substances for which an NOC has not been submitted

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at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in this SNUR are added to the TSCA Inventory prior to the effective date of the rule, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, 123 of the 163 substances contained in this rule have CBI chemical identities, and since EPA has received a limited number of post-PMN *bona fide* submissions, the Agency believes that it is highly unlikely that any of the significant new uses described in the following regulatory text are ongoing.

As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376), EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of publication rather than as of the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance under § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance subject to this rule. EPA's complete economic analysis is available in the public record for this rule (OPPTS–50628).

X. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPPTS–50628 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPPTS–50628. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

The OPPTS harmonized test guidelines referenced in this document are available on EPA's World Wide Web site under "Researchers and Scientists," "Environmental Test Methods & Guidelines" (http://www.epa.gov/epahome/research.htm).

XI. Regulatory Assessment Requirements

Under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB). In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4), or require prior consultation with State officials as also specified in Executive Order 12875, entitled "Enhancing the Intergovernmental Partnership" (58 FR 58093, October 28, 1993). Nor does it involve special considerations of environmental justice related issues as required by Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994), or additional OMB review in accordance with Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997).

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval.

If an entity were to submit a significant new use notice to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review and submit the required significant new use notice.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (Mail Code 2137), 401 M Street, S.W., Washington, D.C. 20460, with a copy to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to these addresses.

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has previously certified, as a generic matter, that the promulgation of a SNUR does not have a significant adverse economic impact on a substantial number of small entities. The Agency's generic certification for promulgation of new SNURs appears on June 2, 1997 (62 FR 29684) (FRL–5597–1), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

XII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required

information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: January 6, 1998.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.405 to subpart E to read as follows:

§ 721.405 Polyether acrylate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a polyether acrylate (PMN P–95–666) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

3. By adding new § 721.524 to subpart E to read as follows:

§ 721.524 Alcohols, C_{6-12}, ethoxylated, reaction product with maleic anhydride.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alcohols, C_{6-12}, ethoxylated, reaction product with maleic anhydride (PMN P–88–1108) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modifind by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

4. By adding new § 721.526 to subpart E to read as follows:

§ 721.526 Substituted aromatic aldehyde.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted aromatic aldehyde (PMN P–95–1466) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modifind by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

5. By adding new § 721.528 to subpart E to read as follows:

§ 721.528 Benzaldehyde, 2-hydroxy-5-nonyl-, oxime, branched.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as benzaldehyde, 2-hydroxy-5-nonyl-, oxime, branched (PMN P–95–1467; CAS No. 174333–80–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

6. By adding new § 721.537 to subpart E to read as follows:

§ 721.537 Organosilane ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as an organosilane ester (PMN P–96–1661/P–95–1654) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(r) (370,000 kilogram (kg)) (90-day subchronic inhalation study in rats-(40 CFR 799.9346) [62 FR 43828, August 15, 1997) (FRL–5719–5). A person may not manufacture or import the substance beyond the aggregate production volume limit, unless that person conducts this study on the substance and submits all final reports and underlying data in accordance with the procedures and criteria specified in paragraphs (a)(2)(i)(A), (a)(2)(i)(B), (a)(2)(i)(C), and (a)(2)(i)(D) of this section.

(A) Each study required to be performed pursuant to this section must be scientifically valid. *Scientific valid* means that the study was conducted according to:

(*1*) The test guidelines specified in paragraph (a)(2)(i) of this section.

(*2*) An EPA-approved protocol.

(*3*) TSCA Good Laboratory Practice Standards at 40 CFR part 792.

(*4*) Using methodologies generally accepted at the time the study is initiated.

(*5*) Any deviation from these requirements must be approved in writing by EPA.

(B) Before starting to conduct any of the studies in paragraph (a)(2)(i) of this section, the person must obtain approval of test protocols from EPA by submitting written protocols. EPA will respond to the person within 4 weeks of receiving the written protocols. Published test guidelines specified in paragraph (a)(2)(i) of this section (e.g., 40 CFR part 797 or part 798) provide

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general guidance for development of test protocols, but are not themselves acceptable protocols.

(C) The person shall:

(*1*) Conduct each study in good faith with due care.

(*2*) Promptly furnish to EPA the results of any interim phase of each study.

(*3*) Submit, in triplicate (with an additional sanitized copy, if confidential business information is involved), the final report of each study and all underlying data ("the report and data") to EPA no later than 14 weeks prior to exceeding the applicable production volume limit. The final report shall contain the contents specified in 40 CFR 792.185.

(D)(*1*) Except as described in paragraph (a)(2)(i)(D)(*2*) of this section, if, within 6 weeks of EPA's receipt of a test report and data, the person receives written notice that EPA finds that the data generated by a study are scientifically invalid, the person is prohibited from further manufacture and import of the PMN substance beyond the applicable production volume limit.

(*2*) The person may continue to manufacture and import the PMN substance beyond the applicable production limit only if so notified, in writing, by EPA in response to the person's compliance with either of the following paragraphs (a)(2)(i)(D)(*2*)(*i*) or (a)(2)(i)(D)(*2*)(*ii*) of this section.

(*i*) The person may reconduct the study. If there is sufficient time to reconduct the study and submit the report and data to EPA at least 14 weeks before exceeding the production limit as required by paragraph (a)(2)(i)(C)(*3*) of this section, the person shall comply with paragraph (a)(2)(i)(C)(*3*) of this section. If there is insufficient time for the person to comply with paragraph (a)(2)(ii)(C)(*3*) of this section, the person may exceed the production limit and shall submit the report and data in triplicate to EPA within a reasonable period of time, all as specified by EPA in the notice described in paragraph (a)(2)(i)(D)(*1*) of this section. EPA will respond to the person in writing, within 6 weeks of receiving the person's report and data.

(*ii*) The person may, within 4 weeks of receiving from EPA the notice described in paragraph (a)(2)(i)(D)(*1*) of this section, submit to EPA a written report refuting EPA's finding. EPA will respond to the person in writing, within 4 weeks of receiving the person's report.

(E) The person is not required to conduct a study specified in paragraph (a)(2)(i) of this section if notified in writing by EPA that it is unnecessary to conduct that study.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c) and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

7. By adding new § 721.538 to subpart E to read as follows:

§ 721.538 Phenol, 4-(1,1-dimethylethyl)-, homopolymer.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as phenol, 4-(1,1-dimethylethyl)-, homopolymer (PMN P–95–243; CAS No. 30813–81–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(3) of this section.

(2) *High molecular weight exemption.* A batch of the chemical substance may be exempt from the provisions of this rule if the average number molecular weight of the substance is greater than 1,000 and the low molecular weight species below 1,000 and 500 are less than 25 percent and 10 percent, respectively. To be eligible for this exemption, the batch must be individually measured.

(3) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (d), (f), (g)(3)(i), (g)(4)(i), and (g)(5). The label and material safety data sheet (MSDS) as required by this paragraph shall also include the following statement: This substance is toxic to aquatic invertebrate.

(ii) *Industrial, commercial, and consumer activites.* Requirements as specified in § 721.80(q).

(iii) *Release to water.* Requirements as specified in § 721.90 (a)(4) and (b)(4) (N = 9). When calculating the surface water concentrations according to the instructions in § 721.91, the statement that the amount of the substance that will be released will be calculated before the substance enters control technology does not apply. Instead, if the waste stream containing the substance will be treated using primary and secondary wastewater treatment with control of suspended solids, before release, then the amount of the substance reasonably likely to be removed from the waste stream by such treatment may be subtracted in calculating the number of kilograms released. No more than 95 percent removal efficiency may be attributed to such treatment. These requirements do not apply to the sites specifically exempted in the TSCA section 5(e) consent order for this substance.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

8. By adding new § 721.539 to subpart E to read as follows:

§ 721.539 Poly(oxy-1,2-ethanediyl), α-sulfo-ω-[1-[(4-nonylphenoxy)methyl]-2-(2-propenyloxy)ethoxy]-, branched, ammonium salts.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as Poly(oxy-1,2-ethanediyl), α-sulfo-ω-[1-[(4-nonylphenoxy)methyl]-2-(2-propenyloxy)ethoxy]-, branched, ammonium salts (PMN P–96–1240; CAS No. 184719–88–8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a) and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

9. By adding new § 721.567 to subpart E to read as follows:

§ 721.567 Mixed fatty alkylamines, salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as mixed fatty alkylamines (PMN P–96–795) is subject to reporting under this

section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

10. By adding new § 721.637 to subpart E to read as follows:

§ 721.637 Hydrochloride salt of a mixed fatty amidoamine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a hydrochloride salt of a mixed fatty amidoamine (PMN P–96–1588) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

11. By adding new § 721.640 to subpart E to read as follows:

§ 721.640 Amine substituted metal salts.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as amine substituted metal salts (PMNs P–96–1337/1338/1339) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 4).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

12. By adding new § 721.641 to subpart E to read as follows:

§ 721.641 Alkylpoly(oxyalkylene)amine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a alkylpoly(oxyalkylene)amine (PMN P–96–1430) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c) and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

13. By adding new § 721.643 to subpart E to read as follows:

§ 721.643 Ethoxylated alcohol, phosphated, amine salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as an ethoxylated alcohol, phosphated, amine salt (PMN P–96–1478) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 8).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

14. By adding new § 721.655 to subpart E to read as follows:

§ 721.655 Ethoxylated alkyl quaternary ammonium compound.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as an ethoxylated alkyl quaternary ammonium compound (PMN P–96–573) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

15. By adding new § 721.658 to subpart E to read as follows:

§ 721.658 Alkyl substituted quaternary ammoniums.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as alkyl substituted quaternary ammoniums (PMNs P–97–57/58/59/60/61) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (b)(1) and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

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16. By adding new § 721.720 to subpart E to read as follows:

§ 721.720 Alkoxylated fatty acid amide, alkylsulfate salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as an alkoxylated fatty acid amide, alkylsulfate salt (PMN P–97–136) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c) and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

17. By adding new § 721.723 to subpart E to read as follows:

§ 721.723 Anthraquinone dye.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as an anthraquinone dye (PMN P–94–2159) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

18. By adding new § 721.977 to subpart E to read as follows:

§ 721.977 Aryloxyarene.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as aryloxyarene (PMN P–92–314) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(3)(ii), (g)(4)(iii), and (g)(5). The label and MSDS as required by this paragraph shall also include the following statement: This substance may be toxic to sediment organisms.

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

19. By adding new § 721.980 to subpart E to read as follows:

§ 721.980 Sodium salt of azo acid dye.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a sodium salt of azo acid dye (PMN P–95–633) is subject to eporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (v)(1), (w)(1), and (x)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

20. By adding new § 721.981 to subpart E to read as follows:

§ 721.981 Substituted naphtholoazo-substituted naphthalenyl-substituted azonaphthol chromium complex.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted naphtholoazo-substituted naphthalenyl-substituted azonaphthol chromium complex (PMN P–93–1631) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (f), (v)(2), (w)(2), and (x)(2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

21. By adding new § 721.1105 to subpart E to read as follows:

§ 721.1105 Benzenamine, 4,4'-methylenebis[2-methyl-6-(1-methylethyl)]-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as benzenamine, 4,4'-methylenebis[2-methyl-6-(1-methylethyl)]- (PMN P–96–93; CAS No. 16298–38–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

22. By adding new § 721.1155 to subpart E to read as follows:

§ 721.1155 1,4-benzenediol, 2-(1,1,3,3-tetramethylbutyl)-and Bis(dimethylamino substituted)carbomonocycle.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as 1,4-benzenediol, 2-(1,1,3,3-tetramethylbutyl)- and Bis (dimethylamino substituted)carbomonocycle (PMN P–96–92) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

23. By adding new § 721.1705 to subpart E to read as follows:

§ 721.1705 Benzoic acid, 3-amino-, diazotized, coupled with 6-amino-4-hydroxy-2-naphthalenesulfonic acid, diazotized, (3-aminophenyl)phosphonic acid and diazotized 2,5-diethoxybenzenamine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as benzoic acid, 3-amino-, diazotized, coupled with 6-amino-4-hydroxy-2-naphthalenesulfonic acid, diazotized, (3-aminophenyl)phosphonic acid and diazotized 2,5-diethoxybenzenamine (PMN P–96–1216; CAS No. 163879–69–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (v)(1), (w)(1), and (x)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

24. By adding new § 721.1805 to subpart E to read as follows:

§ 721.1805 Substituted bisaniline.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted bisaniline (PMN P–96–1410) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 4).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

25. By adding new § 721.1930 to subpart E to read as follows:

§ 721.1930 Butanoic acid, antimony (3+) salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as butanoic acid, antimony (3+) salt (PMN P–94–1143; CAS No. 53856–17–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (g)(1)(i), (g)(1)(vi), (g)(1)(vii), (g)(1)(ix), (g)(2)(i), (g)(2)(v), and (g)(5). The label and MSDS as required by this paragraph shall also include the following statement: This substance may cause neurologic effects. This substance may cause cardiovascular effects. This substance may cause ocular irritation.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (675,000 kg).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

26. By adding new § 721.2082 to subpart E to read as follows:

§ 721.2082 Derivative of substituted carbomonocyclic carboxylic acid-amine distillation stream byproduct reaction product.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a derivative of substituted carbomonocyclic carboxylic acid-amine distillation stream byproduct reaction product (PMN P–96–866) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

27. By adding new § 721.2091 to subpart E to read as follows:

§ 721.2091 Chloroalkane.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a chloroalkane (PMN P–96–273) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

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28. By adding new § 721.2094 to subpart E to read as follows:

§ 721.2094 N,N'-di(alkyl heteromonocycle)amino chlorotriazine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as *N,N'*-di(alkyl heteromonocycle)amino chlorotriazine (PMN P–93–1369) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(4), (a)(5)(i) (this respirator meets the minimum requirement for persons exposed via inhalation during manufacture), (a)(5)(ii), (a)(5)(iv), (a)(5)(v) (these three respirators meet the minimum requirements for persons exposed via inhalation during processing and use), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vii), (g)(1)(viii), (g)(1)(ix), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(3)(i), (g)(3)(ii), (g)(4)(iii), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

29. By adding new § 721.2122 to subpart E to read as follows:

§ 721.2122 Substituted phenyl azo substituted sulfo carbopolycycle.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted phenyl azo substituted sulfo carbopolycycle (PMN P–96–702) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(r) (204,000 kg) (activated sludge adsorption isotherm-OPPTS 835.1110 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1), daphnid acute toxicity-§ 797.1300, fish acute toxicity-§ 797.1400, murine immune allergic response study (*Toxicology and Applied Pharmacology* 112:190–197 (1992)). A person may not manufacture or import the substance beyond the following aggregate production volume limits, unless that person conducts the following corresponding studies on the substance and submits all final reports and underlying data in accordance with the procedures and criteria specified in paragraphs (a)(2)(i)(A), (a)(2)(i)(B), (a)(2)(i)(C), and (a)(2)(i)(D) of this section.

(A) Each study required to be performed pursuant to this section must be scientifically valid. *Scientifically valid* means that the study was conducted according to:

(*1*) The test guidelines specified in paragraph (a)(2)(i) of this section.

(*2*) An EPA-approved protocol.

(*3*) TSCA Good Laboratory Practice Standards at 40 CFR part 792.

(*4*) Using methodologies generally accepted at the time the study is initiated.

(*5*) Any deviation from these requirements must be approved in writing by EPA.

(B) Before starting to conduct any of the studies in paragraph (a)(2)(i) of this section, the person must obtain approval of test protocols from EPA by submitting written protocols. EPA will respond to the person within 4 weeks of receiving the written protocols. Published test guidelines specified in paragraph (a)(2)(i) of this section (e.g., 40 CFR part 797 or part 798) provide general guidance for development of test protocols, but are not themselves acceptable protocols.

(C) The person shall:

(*1*) Conduct each study in good faith with due care.

(*2*) Promptly furnish to EPA the results of any interim phase of each study.

(*3*) Submit, in triplicate (with an additional sanitized copy, if confidential business information is involved), the final report of each study and all underlying data ("the report and data") to EPA no later than 14 weeks prior to exceeding the applicable production volume limit. The final report shall contain the contents specified in 40 CFR 792.185.

(D)(*1*) Except as described in paragraph (a)(2)(i)(D)(*2*) of this section, if, within 6 weeks of EPA's receipt of a test report and data, the person receives written notice that EPA finds that the data generated by a study are scientifically invalid, the person is prohibited from further manufacture and import of the PMN substance beyond the applicable production volume limit.

(*2*) The person may continue to manufacture and import the PMN substance beyond the applicable production limit only if so notified, in writing, by EPA in response to the person's compliance with either of the following paragraph (a)(2)(i)(D)(*2*)(*i*) or (a)(2)(i)(D)(*2*)(*ii*) of this section.

(*i*) The person may reconduct the study. If there is sufficient time to reconduct the study and submit the report and data to EPA at least 14 weeks before exceeding the production limit as required by paragraph (a)(2)(i)(C)(*3*) of this section, the person shall comply with paragraph (a)(2)(i)(C)(*3*) of this section. If there is insufficient time for the person to comply with paragraph (a)(2)(i)(C)(*3*) of this section, the person may exceed the production limit and shall submit the report and data in triplicate to EPA within a reasonable period of time, all as specified by EPA in the notice described in paragraph (a)(2)(i)(D)(*1*) of this section. EPA will respond to the person in writing, within 6 weeks of receiving the person's report and data.

(*ii*) The person may, within 4 weeks of receiving from EPA the notice described in paragraph (a)(2)(i)(D)(*1*) of this section, submit to EPA a written report refuting EPA's finding. EPA will respond to the person in writing, within 4 weeks of receiving the person's report.

(E) The person is not required to conduct a study specified in paragraph (a)(2)(i) of this section if notified in writing by EPA that it is unnecessary to conduct that study.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

30. By adding new § 721.2145 to subpart E to read as follows:

§ 721.2145 Ceteareth-25 sorbate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as ceteareth-25 sorbate (PMN P–96–941) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) [Reserved]

(b) *Specific requirements.* The provision of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

31. By adding new § 721.2222 to subpart E to read as follows:

§ 721.2222 Cyclohexanamine, N,N-dimethyl-, compd. with alpha-isotridecyl-omega-hydroxypoly(oxy-1,2-ethanediyl) phosphate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as cyclohexanamine, *N,N*-dimethyl-, compd. with alpha-isotridecyl-omega-hydroxypoly(oxy-1,2-ethanediyl) phosphate (PMN P–96–1176; CAS No. 164383–18–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

32. By adding new § 721.2280 to subpart E to read as follows:

§ 721.2280 Cyclopropanecarboxaldehyde.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as cyclopropanecarboxaldehyde (PMN P–96–33) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(v), (b) (concentration set at 1.0 percent), and (c). Each person who is reasonsonably likely to be exposed by inhalation to the PMN substance in vapor form during loading of rail cars is provided with, and is required to wear, at a minimum, a National Institute for Occupational Safety and Health (NIOSH) approved category 19C Type C supplied-air respirator operated in pressure demand or other positive pressure mode and equipped with a full facepiece with an assigned protection factor (APF) of 200. As an alternative to the respiratory requirements in this section, manufacturers, importers, and processors may use the new chemical exposure limits provisions, including sampling and analytical methods which have previously been approved by EPA for this substance, found in the TSCA section 5(e) consent order for this substance.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(i), (g)(1)(ii), (g)(1)(iv), (g)(1)(ix), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), and (g)(5).

(iii) *Industrial, commercial, and consumer activites.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

33. By adding new § 721.2345 to subpart E to read as follows:

§ 721.2345 Alkyletherpropyl dialkylamines.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified as alkyletherpropyl dialkylamines (PMNs P–96–1510/1511/1512/1513/1514) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

34. By adding new § 721.2350 to subpart E to read as follows:

§ 721.2350 Alkyltri, tetra, and pentaamines.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as alkyltri, tetra, and pentaamines (PMNs P–96–406/407/408) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

35. By adding new § 721.2535 to subpart E to read as follows:

§ 721.2535 Benzene, 1,1'-methylenebis[4-isocyanato-, homopolymer, Bu alc.-blocked.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as benzene, 1,1'-methylenebis[4-isocyanato-, homopolymer, Bu alc.-blocked (PMN P–95–1386; CAS No. 186321–98–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

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(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(y)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

36. By adding new § 721.2805 to subpart E to read as follows:

§ 721.2805 Acrylate ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as an acrylate ester (PMN P–96–824) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

37. By adding new § 721.2925 to subpart E to read as follows:

§ 721.2925 Brominated aromatic ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a brominated aromatic ester (PMN P–95–1128) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(3)(1), (g)(3)(ii), (g)(4)(iii), and (g)(5).

(ii) [Reserved]

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

38. By adding new § 721.3085 to subpart E to read as follows:

§ 721.3085 Brominated phthalate ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as brominated phthalate ester (PMN P–90–581) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(ii) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of these substances without providing risk notification as follows.

(A) If as a result of the test data required under the TSCA section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health or the environment the employer must incorporate this new information, and any information on methods for protecting against such risk, into a MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substances are reintroduced into the workplace.

(B) The employer must ensure that persons who will receive, or who have received the substance from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

39. By adding new § 721.3155 to subpart E to read as follows:

§ 721.3155 3,8-Dioxa-4,7-disiladecane, 4,4,7,7-tetraethoxy-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 3,8-dioxa-4,7-disiladecane, 4,4,7,7-tetraethoxy- (PMN P–95–1326; CAS No. 16068–37–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(y)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

40. By adding new § 721.3465 to subpart E to read as follows:

§ 721.3465 Stilbene diglycidyl ether.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as stilbene diglycidyl ether (PMN P–96–1427) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(3), (a)(4), (a)(5)(ii), (a)(5)(iv), (a)(5)(v), (a)(6)(i), (b) (concentration set at 0.1 percent), and (c). As an alternative to the respiratory protection requirements of this section, manufacturers, importers, and processors of this substance may follow the terms of the new chemical exposure limits section in the TSCA section 5(e) consent order for this substance.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(ii), (g)(1)(vi), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), and (g)(5). The label and MSDS as required by this paragraph shall also include the following statement: When using this substance use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.5 milligram (mg)/meter (m^3).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

41. By adding new § 721.3485 to subpart E to read as follows:

§ 721.3485 Hydrofluorocarbon alkyl ether.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a hydrofluorocarbon alkyl ether (PMN P–95–1578) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. Non-spray uses are exempt from the provisions of this rule.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(4), (a)(5)(iii), and (a)(6)(v).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

42. By adding new § 721.3488 to subpart E to read as follows:

§ 721.3488 Poly(oxy-1,2-ethanediyl), alpha substituted-omega-hydroxy-, C_{16-20} alkyl ethers.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as poly(oxy-1,2-ethanediyl), alpha substituted-omega-hydroxy-, C_{16-20} alkyl ethers (PMN P–87–323) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 20).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

43. By adding new § 721.3565 to subpart E to read as follows:

§ 721.3565 Ethylenediamine, substituted, sodium salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as ethylenediamine, substituted, sodium salt (PMN P–97–328) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

44. By adding new § 721.4085 to subpart E to read as follows:

§ 721.4085 Guanidine, pentaethyl-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as guanidine, pentaethyl- (PMN P–94–1018; CAS No. 13439–89–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), and (a)(3).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), and (e) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

45. By adding new § 721.4090 to subpart E to read as follows:

§ 721.4090 Ethanaminium, N-[bis(diethylamino)-methylene]-N-ethyl-, bromide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as ethanaminium, *N*-[bis(diethylamino)-methylene]-*N*-ethyl-, bromide (PMN P–94–1019; CAS No. 89610–32–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

46. By adding new § 721.4095 to subpart E to read as follows:

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§ 721.4095 Quaternary ammonium alkyltherpropyl trialkylamine halides.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as quaternary ammonium alkyltherpropyl trialkylamine halides (PMNs P–96–1280/81/1504/1505/1506/1507/1508) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

47. By adding new § 721.4158 to subpart E to read as follows:

§ 721.4158 Hexadecanoic acid, ethenyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as hexadecanoic acid, ethenyl ester (PMN P–97–302; CAS No. 693–38–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(2)(i) and (a)(3).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (f) and (j).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

48. By adding new § 721.4257 to subpart E to read as follows:

§ 721.4257 Hydrazine, (2-fluorophenyl).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as hydrazine, (2-fluorophenyl) (PMN P–95–2101; CAS No. 2368–80–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a) and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

49. By adding new § 721.4259 to subpart E to read as follows:

§ 721.4259 Aliphatic polyisocyanate homopolymer.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as an aliphatic polyisocyanate homopolymer (PMN P–96–1239) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

50. By adding new § 721.4462 to subpart E to read as follows:

§ 721.4462 Hydrochlorofluorocarbon.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a hydrochlorofluorocarbon (PMN P–95–1317) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

51. By adding new § 721.4464 to subpart E to read as follows:

§ 721.4464 Mixture of hydrofluoro alkanes and hydrofluoro alkene.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as a mixture of hydrofluoro alkanes and hydrofluoro alkene (PMNs P–96–945/946/947/948) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements specified as in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

52. By adding new § 721.4465 to subpart E to read as follows:

§ 721.4465 Hydrofluoroalkane.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a hydrofluoroalkane (PMN P–96–1288) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(h).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a) and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

53. By adding new § 721.4467 to subpart E to read as follows:

§ 721.4467 Quaternary ammonium hydroxide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a quaternary ammonium hydroxide (PMN P–95–1806) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

54. By adding new § 721.4468 to subpart E to read as follows:

§ 721.4468 1H-Imidazole, 2-ethyl-4,5-dihydro-4-methyl-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1H-imidazole, 2-ethyl-4,5-dihydro-4-methyl- (PMN P–97–217; CAS No. 931–35–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 40).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

55. By adding new § 721.4469 to subpart E to read as follows:

§ 721.4469 Imidazolethione.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as an imidazolethione (PMNs P–91–1131 and P–90–564) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. Formulations or mixtures containing the PMN substance in concentrations at or below 10 percent by weight or volume are exempt from the provisions of this rule.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(ix), (g)(2)(i), (g)(2)(v), and (g)(5). The label and MSDS as required by this paragraph shall also include the following statements: This substance may cause thyroid cancer. This substance may cause thyroid effects.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), and (h) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

56. By adding new § 721.4476 to subpart E to read as follows:

§ 721.4476 Substituted imines.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as substituted imines (PMNs P–95–1557/1558) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

57. By adding new § 721.4589 to subpart E to read as follows:

§ 721.4589 Propanedioic acid, [(4-methoxyphenyl)methylene]-, bis(1,2,2,6,6-pentamethyl-4-piperidinyl) ester (9Cl).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as propanedioic acid, [(4-methoxyphenyl)methylene]-, bis(1,2,2,6,6-pentamethyl-4-piperidinyl) ester (9Cl) (PMN P–95–1411; CAS No. 147783–69–5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), (a)(6)(i), (b) (concentration set at 1.0 percent), and (c). As an alternative to the respiratory protection requirements of this section, manufacturers, importers, and processors of this substance may follow the terms of the new chemical exposure limits section in the TSCA section 5(e) consent order for this substance.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e), (f), (g)(1)(iv), (g)(1)(vi), (g)(1)(viii), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

58. By adding new § 721.4885 to subpart E to read as follows:

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§ 721.4885 Methanone, [5-[[3-(2H-benzotriazol-2-yl)-2-hydroxy-5-(1,1,3,3-tetramethylbutyl)phenyl]methyl]-2-hydroxy-4-(octyloxy) phenyl]phenyl-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as methanone, [5-[[3-(2H-benzotriazol-2-yl)-2-hydroxy-5-(1,1,3,3-tetramethylbutyl)phenyl]methyl]-2-hydroxy-4-(octyloxy)phenyl]phenyl- (PMN P–96–942; CAS No.162245–07–0) is subject to the reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(4), (a)(5)(ii), (a)(5)(iii), (a)(5)(iv), (a)(5)(v), (a)(6)(i), (b) (concentration set at 1.0 percent), and (c). As an alternative to the respiratory protection requirements of this section, manufacturers, importers, and processors of this substance may follow the terms of the new chemical exposure limits section in the TSCA section 5(e) consent order for this substance.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(i), (g)(1)(iv), (g)(1)(vi), (g)(1)(viii), (g)(2)(ii), (g)(2)(iv), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

59. By adding new § 721.5255 to subpart E to read as follows:

§ 721.5255 2-Naphthalenol, mono and dioctyl derivs.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-naphthalenol, mono and dioctyl derivs (PMN P–95–1288) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (where N = 1). When calculating the surface water concentrations according to the instructions in § 721.91, the statement that the amount of the substance that will be released will be calculated before the substance enters control technology does not apply. Instead, if the waste stream containing the substance will be treated before release, then the amount of the substance reasonably likely to be removed from the waste stream by such treatment may be subtracted in calculating the number of kilograms released. No more than 90 percent removal efficiency may be attributed to such treatment.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

60. By adding new § 721.5279 to subpart E to read as follows:

§ 721.5279 2,7-Naphthalenedisulfonic acid, 4-amino-3-[[4′2-amino-4-[(3-butoxy-2-hydroxypropyl)amino]phebyl]azo]-3,3′-dimethyl[1,1′-biphenyl]-4-yl]azo]-5-hydroxy-6-(phenylazo)-, disodium salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2,7-naphthalenedisulfonic acid, 4-amino-3-[[4′2-amino-4-[(3-butoxy-2-hydroxypropyl)amino]phebyl]azo]-3,3′-dimethyl[1,1′-biphenyl]-4-yl]azo]-5-hydroxy-6-(phenylazo)-, disodium salt (PMN P–97–131; CAS No. 103580–64–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (f), (v)(1), (w)(1), and (x)(1).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 40).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

61. By adding new § 721.5280 to subpart E to read as follows:

§ 721.5280 2,7-Naphthalenedisulfonic acid, 4-amino-5-hydroxy-, coupled with diazotized 4-butylbenzenamine, diazotized 4,4′-cyclohexylidenebis[benzenamine] and m-phenylenediamine, sodium salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2,7-naphthalenedisulfonic acid, 4-amino-5-hydroxy-, coupled with diazotized 4-butylbenzenamine, diazotized 4,4′-cyclohexylidenebis[benzenamine] and m-phenylenediamine, sodium salt (PMN P–97–193; CAS No. 182238–09–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (f), (v)(1), (w)(1), and (x)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

62. By adding new § 721.5281 to subpart E to read as follows:

§ 721.5281 2-Naphthalenesulfonic acid, 3-[[4-[(2,4-dimethyl-6-sulfophenyl)azo]-2-methoxy-5-methylphenyl]azo]-4-hydroxy-7-(phenylamino)-, sodium salt, compd. With 2,2′,2″-nitrilotris [ethanol] (9CI).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-Naphthalenesulfonic acid, 3-[[4-[(2,4-dimethyl-6-sulfophenyl)azo]-2-methoxy-5-methylphenyl]azo]-4-hydroxy-7-(phenylamino)-, sodium salt, compd. With 2,2′,2″-nitrilotris [ethanol] (9CI) (PMN P–95–1235; CAS No. 94213–53–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (f), (v)(1), (w)(1), and (x)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part

apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

63. By adding new § 721.5547 to subpart E to read as follows:

§ 721.5547 Antimony double oxide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as antimony double oxide (PMNs P–95–677 and P–95–724) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(ii), (g)(2)(iii), (g)(3)(ii), and (g)(5). The label and MSDS as required by this paragraph shall also include the following statements: These substances may cause lung toxicity. When using these substances avoid any applications of these substances which could cause inhalation exposures. When using these substances keep in liquid form only.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (f), (v)(1), (v)(2), (w)(1), (w)(2), (x)(1), (x)(2), (y)(1), and (y)(2). Manufacturing, processing or use in any form which could cause inhalation exposures.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements specified in § 721.125 (a), (b), (c), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

64. By adding new § 721.5549 to subpart E to read as follows:

§ 721.5549 Lithiated metal oxide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as lithiated metal oxide ($LiNiO_2$) (PMN P–96–19; CAS No. 12031–65–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(3), (a)(4), (a)(5)(i), (a)(6)(i), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c). As an alternative to the respiratory requirements listed here, a manufacturer, importer, or processor may choose to follow the new chemical exposure limit (NCEL) provisions listed in the TSCA section 5(e) consent order for this substance.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f) (g)(1)(iv), (g)(1)(vii), (g)(1)(viii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)4)(i), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 30).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

65. By adding new § 721.5645 to subpart E to read as follows:

§ 721.5645 Pentane 1,1,1,2,3,4,4,5,5,5,-decafluoro.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as pentane 1,1,1,2,3,4,4,5,5,5,-decafluoro (PMN P–95–638 and SNUN P–97–79; CAS No. 138495–42–8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) and uses other than as described in the significant new use notice.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

66. By adding new § 721.5650 to subpart E to read as follows:

§ 721.5650 Pentanediol light residues.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as pentanediol light residues (PMN P–95–1750) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial and consumer activities.* Requirements as specified in § 721.80(o).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

67. By adding new § 721.5708 to subpart E to read as follows:

§ 721.5708 2-Pentene, 1,1,1,2,3,4,4,5,5,5-decafluoro-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-Pentene, 1,1,1,2,3,4,4,5,5,5-decafluoro- (PMN P–95–637; CAS No.72804–49–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

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68. By adding new § 721.5725 to subpart E to read as follows:

§ 721.5725 Phenol, 2,4-dimethyl-6-(1-methylpentadecyl)-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as phenol, 2,4-dimethyl-6-(1-methylpentadecyl)-) (PMN P–94–209; CAS No. 134701–20–5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(2)(i) and (a)(3).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

69. By adding new § 721.5730 to subpart E to read as follows:

§ 721.5730 Phenol, 4,4′-methylenebis[2,6-dimethyl-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as phenol, 4,4′-methylenebis[2,6-dimethyl- (PMN P–94–921) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(3), (a)(4), (a)(5)(ii), (a)(5)(iv), (a)(5)(v), (a)(6)(i), (b) (concentration set at 1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1 percent), (f), (g)(1)(iv), (g)(2)(iv), (g)(2)(v), (g)(3)(ii), (g)(4)(iii), and (g)(5). The label and MSDS as required by this paragraph shall also include the following statements: This substance may cause blood effects. This substance may cause chronic effects.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (g), (l), and (q).

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

70. By adding new § 721.5913 to subpart E to read as follows:

§ 721.5913 Phenothiazine derivative.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a phenothiazine derivative (PMN P–96–813) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a) and (i) are applicable to manufacturers, and importers of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

71. By adding new § 721.5995 to subpart E to read as follows:

§ 721.5995 Polyalkyl phosphate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a polyalkyl phosphate (PMN P–95–1772) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Releases to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 1 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

72. By adding new § 721.6045 to subpart E to read as follows:

§ 721.6045 Phosphinothioic acid, bis(2,4,4-trimethylpentyl)- (9Cl).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as phosphinothioic acid, bis(2,4,4-trimethylpentyl)- (9Cl) (PMN P–96–1652; CAS No. 132767–86–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 10). When calculating the surface water concentrations according to the instructions in § 721.91, the statement that the amount of the substance that will be released will be calculated before the substance enters control technology does not apply. Instead, if the waste stream containing the substance will be treated using carbon adsorption treatment before release, then the amount of the substance reasonably likely to be removed from the waste stream by such treatment may be subtracted in calculating the number of kilograms released. No more than 99 percent removal efficiency may be attributed to such treatment.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

73. By adding new § 721.6075 to subpart E to read as follows:

§ 721.6075 Phosphonic acid, 1,1-methylenebis-tetrakis(1-methylethyl) ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as phosphonic acid, 1,1-methylenebis-tetrakis(1-methylethyl) ester (PMN P–95–168) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(2)(i), (g)(2)(v), and (g)(5). The label and MSDS required by this paragraph shall also include the following statement: This substance may cause mutagenicity.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a) through (h) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

74. By adding new § 721.6078 to subpart E to read as follows:

§ 721.6078 Substituted ethoxyethylamine phosphonate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted ethoxyethylamine phosphonate (PMN P–95–1950) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

75. By adding new § 721.6165 to subpart E to read as follows:

§ 721.6165 Polysubstituted piperidine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a polysubstituted piperdine (PMN P–93–568) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

76. By adding new § 721.6170 to subpart E to read as follows:

§ 721.6170 Siloxanes and silicones, Me hydrogen, reaction products with 2,2,6,6-tetramethyl-4-(2-propenyloxy)piperdine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as siloxanes and silicones, Me hydrogen, reaction products with 2,2,6,6-tetramethyl-4-(2-propenyloxy)piperdine (PMN P–95–1891; CAS No. 182635–99–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (v)(1), (w)(1), and (x)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

77. By adding new § 721.6197 to subpart E to read as follows:

§ 721.6197 Salt of a substituted polyalkylenepolyamine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a salt of a substituted polyalkylenepolyamine (PMN P–96–585) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

78. By adding new § 721.6475 to subpart E to read as follows:

§ 721.6475 Alkyl polycarboxylic acids, esters with ethoxylated fatty alcohols.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as alkyl polycarboxylic acids, esters with ethoxylated fatty alcohols (PMNs P–96–554/555/556/557/558/559) are subject to reporting under this section for the significant new uses described in paragraph (a)(1)(i) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial and consumer activities.* Requirements as specified in § 721.80(g).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Chemical substance and significant new uses subject to reporting.* The chemical substances identified generically as alkyl polycarboxylic acids, esters with ethoxylated fatty alcohols (PMN P–96–560/561/564/565) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(i) The significant new uses are:

(A) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(B) [Reserved]

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

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(A) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

79. By adding new § 721.6477 to subpart E to read as follows:

§ 721.6477 Alkyl polycarboxylic acids, esters with ethoxylated fatty alcohols, reaction products with maleic anhydride.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as alkyl polycarboxylic acids, esters with ethoxylated fatty alcohols, reaction products with maleic anhydride (PMNs P–96–399/400/401/402/403/404) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

80. By adding new § 721.6485 to subpart E to read as follows:

§ 721.6485 Hydroxy terminated polyester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a hydroxy terminated polyester (PMN P–95–1213) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

81. By adding new § 721.6490 to subpart E to read as follows:

§ 721.6490 Alkyl phenyl polyetheramines.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as alkyl phenyl polyetheramines (PMNs P–95–1650/1651/1652/1653) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

82. By adding new § 721.6495 to subpart E to read as follows:

§ 721.6495 Aliphatic polyisocyanate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as an aliphatic polyisocyanate (PMN P–95–1347) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(y)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

83. By adding new § 721.6505 to subpart E to read as follows:

§ 721.6505 Polymers of $C_{13}C_{15}$ oxoalcohol ethoxolates.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as polymers of $C_{13}C_{15}$ oxoalcohol ethoxolates (PMNs P–96–950/951) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

84. By adding new § 721.7375 to subpart E to read as follows:

§ 721.7375 Potassium salt of polyolefin acid.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a potassium salt of polyolefin acid (PMN P–97–417) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

85. By adding new § 721.7378 to subpart E to read as follows:

§ 721.7378 Substituted polyoxyethylene.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted polyoxyethylene (PMN P–93–1654) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (use as an emulsifier for paint and adhesives).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

86. By adding new § 721.8079 to subpart E to read as follows:

§ 721.8079 Isophorone diisocyanate neopentyl glycol adipate polyurethane prepolymer.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as isophorone diisocyanate neopentyl glycol adipate polyurethane prepolymer (PMN P–94–1743) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. Non-spray uses are exempt from the provisions of this rule.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), (a)(5)(viii), (a)(5)(ix), (a)(5)(x), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), and (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(i), (g)(1)(ii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), and (g)(5). Manufacturers, importers, and processors who implement the product stewardship provisions of the TSCA section 5(e) consent order for these substances are exempt from the requirements of § 721.63 and § 721.72.

(iii) *Industrial, commercial and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a) through (i) are applicable to manufacturers, importers, and processors of this substance. Manufacturers, importers, and processors who implement the product stewardship provisions and keep records as required by the TSCA section 5(e) consent order for these substances are exempt from the requirements of § 721.125.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

(4) *Applicability of § 721.5.* The provisions of § 721.5 do not apply to manufacturers, importers, and processors, implementing the product stewardship provisions in the TSCA section 5(e) consent order for this substance.

87. By adding new § 721.8095 to subpart E to read as follows:

§ 721.8095 Silylated polyurethane.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a silylated polyurethane (PMN P–95–1356) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(y)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

88. By adding new § 721.8780 to subpart E to read as follows:

§ 721.8780 Substituted pyridine azo substituted phenyl.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as substituted pyridine azo substituted phenyl (PMNs P–96–767 and P–96–773) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a) and (i) are applicable to manufacturers and importers of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

89. By adding new § 721.9005 to subpart E to read as follows:

§ 721.9005 2-Pyrrolidinone, 1,1′-(2-methyl-1,5-pentanediyl)bis-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-pyrrolidinone, 1,1′-(2-methyl-1,5-pentanediyl)bis- (PMN P–93–761; CAS No. 146453–62–5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i) (There must be no permeation of the PMN substance greater than 0.08 grams (g)/minutes (min) centimeter (cm^2) after 8 hours of testing in accordance with the most current version of the American Society for Testing and Materials (ASTM) F739 "Standard Test Method for Resistance of Protective Clothing Materials to Permeation by Liquids or Gases." The results of all glove permeation testing must be reported in accordance with the most current version of (ASTM) F1194 "Guide for Documenting the Results of Chemical Permeation Testing of Protective Clothing Materials." Manufacturers, importers, and processors must submit such glove test data to the Agency and must receive written Agency approval for each type of glove tested prior to use of such gloves. The following gloves have been tested in accordance with the ASTM F739 method and found to satisfy the requirements for use by EPA: Ansell Edmond/8–352/Neoprene rubber, 0.097 cm thick. Gloves may not be used for a time period longer than they are actually tested and must be replaced at the end of each work shift), (a)(2)(ii), (a)(2)(iii), (a)(3), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at

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1.0 percent), (f), (g)(l)(iii), (g)(l)(iv), (g)(2)(i), (g)(2)(iii), (g)(2)(v), and (g)(5). The label and MSDS as required by this paragraph shall also include the following statement: This substance is expected to enhance the absorption of other chemicals into skin or other materials.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (o), (q), and (k) (use other than as a heat transfer fluid).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

90. By adding new § 721.9010 to subpart E to read as follows:

§ 721.9010 2-pyrrolidone, 1-ethenyl-3-ethylidene-, (E)-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-pyrrolidone, 1-ethenyl-3-ethylidene-, (E)- (PMN P–96–1536; CAS No. 153954–47–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(2)(i) and (a)(3).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), and (e) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

91. By adding new § 721.9080 to subpart E to read as follows:

§ 721.9080 Nitro methyl quinoline.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as nitro methyl quinoline (PMN P–96–1319) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(4), (a)(5)(ii), (a)(5)(iv), (a)(5)(v), and (a)(6)(i).

(ii) *Disposal.* Requirements as specified in § 721.85 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), and (j) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

92. By adding new § 721.9265 to subpart E to read as follows:

§ 721.9265 Reaction product of dichlorobenzidine and substituted alkylamide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a reaction product of dichlorobenzidine and substituted alkylamide (PMN P–95–1282) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e), (f), and (g)(5). The label and MSDS as required by this paragraph shall also include the following statements: At temperatures above 200 °C, this substance decomposes to produce a suspect human carcinogen, 3',3' dichlorobenzidine. Do not heat above 200 °C or 392 °F.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and processing or use of the PMN substance at temperatures above 200 °C.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

93. By adding new § 721.9270 to subpart E to read as follows:

§ 721.9270 Reaction product of epoxy with anhydride and glycerol and glycol.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as reaction product of epoxy with anhydride and glycerol and glycol (PMN P–96–1233) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (v)(1), (w)(1), (x)(1) and (y)(2).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

94. By adding new § 721.9285 to subpart E to read as follows:

§ 721.9285 Reaction products of formalin (37%) with amine C_{12}.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as reaction products of formalin (37%) with amine C_{12} (PMN P–95–535) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

95. By adding new § 721.9488 to subpart E to read as follows:

§ 721.9488 Substituted resorcinols.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as substituted resorcinols (PMNs P–95–1103, P–95–1104, and P–96–1235) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 9).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The recordkeeping requirements specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

96. By adding new § 721.9492 to subpart E to read as follows:

§ 721.9492 Polymers of styrene, cyclohexyl methacrylate and substituted methacrylate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as polymers of styrene, cyclohexyl methacrylate and substituted methacrylate (PMNs P–97–143/144) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a) and (i) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

97. By adding new § 721.9497 to subpart E to read as follows:

§ 721.9497 Trifunctional ketoximino silane.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as trifunctional ketoximino silane (PMNs P–95–605 and P–95–606) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), and (a)(3).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), and (e) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

98. By adding new § 721.9499 to subpart E to read as follows:

§ 721.9499 Modified silicone resin.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a modified silicone resin (PMN P–96–1649) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 5).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

99. By adding new § 721.9503 to subpart E to read as follows:

§ 721.9503 Silane, (3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heptadecafluorodecyl)trimethoxy-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as silane, (3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heptadecafluorodecyl) trimethoxy- (PMN P–97–264; CAS No. 83048–65–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xv), (a)(6)(ii), and (a)(6)(v).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 10).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

100. By adding new § 721.9515 to subpart E to read as follows:

§ 721.9515 Aminofunctional alkoxy alkyl siloxane.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as an aminofunctional alkoxy alkyl siloxane (PMN P–96–346) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

101. By adding new § 721.9545 to subpart E to read as follows:

§ 721.9545 Substituted phenyl azo substituted sulfocarbopolycle, sodium salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted phenyl azo substituted sulfocarbopolycle, sodium salt (PMN P–96–1263) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as

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specified in § 721.80 (v)(1), (w)(1), and (x)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

103. By adding new § 721.9576 to subpart E to read as follows:

§ 721.9576 Chromate(3-), bis[7-[(aminohydroxyphenyl)azo]-3-[[5-(aminosulfonyl)-2-hydroxyphenyl]azo]-4-hydroxy-2-naphthalene-sulfonato (3-)]-, trisodium (9Cl).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as chromate(3-), bis[7-[(aminohydroxyphenyl)azo]-3-[[5-(aminosulfonyl)-2-hydroxyphenyl]azo]-4-hydroxy-2-naphthalene-sulfonato (3-)]-, trisodium (9Cl) (PMN P–95–1576; CAS No. 118716–62–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (v)(1), (w)(1), and (x)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

104. By adding new § 721.9577 to subpart E to read as follows:

§ 721.9577 Chromate(3-), bis[7-[(aminohydroxyphenyl)azo]-3-[[5-(aminosulfonyl)-2-hydroxyphenyl] azo]-4-hydroxy-2-naphthalene sulfonato (3-)]-,-[[5-(aminosulfonyl) -2-hydroxyphenyl]azo]-4-hydroxy-7-[[2-hydroxy-1-(phenylamino) carbonyl]-1-propenyl]azo]-2-naphthalenesulfonato(3-)]-, trisodium (9Cl).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as chromate(3-), bis[7-[(aminohydroxyphenyl)azo]-3-[[5-(aminosulfonyl)-2-hydroxy phenyl] azo]-4-hydroxy-2-naphthalenesulfonato (3-)]-,-[[5-(aminosulfonyl) -2-hydroxyphenyl]azo]-4-hydroxy-7-[[2-hydroxy-1-(phenylamino) carbonyl]-1-propenyl]azo]-2-naphthalene sulfonato(3-)]-, trisodium (9Cl) (PMN P–95–1577; CAS No. 118716–61–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (v)(1), (w)(1), and (x)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

105. By adding new § 721.9635 to subpart E to read as follows:

§ 721.9635 Terpene residue distillates.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as terpene residue distillates (PMN P–96–897) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 10).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

106. By adding new § 721.9657 to subpart E to read as follows:

§ 721.9657 Disubstituted thiadiazole.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a disubstituted thiadiazole (PMN P–97–314) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (a),(b), (c), and (j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

107. By adding new § 721.9659 to subpart E to read as follows:

§ 721.9659 Disubstituted thiadiazosulfone.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a disubstituted thiadiazosulfone (PMN P–97–304) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (a),(b), (c), and (j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

108. By adding new § 721.9662 to subpart E to read as follows:

§ 721.9662 Thieno[3,4-b]-1,4-dioxin, 2,3-dihydro- (9Cl).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as thieno[3,4-b]-1,4-dioxin, 2,3-dihydro-(9Cl) (PMN P–95–1825; CAS No. 126213–50–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(4), (a)(5)(xiii), (a)(5)(xiv), and (a)(6)(v).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

109. By adding new § 721.9664 to subpart E to read as follows:

§ 721.9664 9H-Thioxanthen-9-one,2,4-diethyl.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 9H-thioxanthen-9-one,2,4-diethyl (PMN P–96–1315; CAS No. 82799–44–8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

110. By adding new § 721.9717 to subpart E to read as follows:

§ 721.9717 Azo monochloro triazine reactive dye.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as an azo monochloro triazine reactive dye (PMN P–96–238) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (v)(2), (w)(2), and (x)(2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

111. By adding new § 721.9825 to subpart E to read as follows:

§ 721.9825 Phenyl substituted triazolinones.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as phenyl substituted triazolinones (PMNs P–93–204, P–94–1870, P–94–1871, P–94–1872, P–94–1873, and P–94–1874) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (a)(6)(i), (b) (concentration set at 1.0 percent), and (c). The imperviousness of the gloves selected pursuant to (a)(2)(i) of this section must be demonstrated by actual testing under (a)(3)(i) of this section and not by manufacturer specifications. In addition, there must be no permeation of the chemical substance greater than 15 μg/day-cm² as a daily cumulative total when tested in accordance with the most current version of the American Society for Testing and Materials (ASTM) F739 "Standard Test Method for Resistance of Protective Clothing Materials to Permeation by Liquids or Gases" or ASTM F1383 "Standard Test Method for Resistance of Protective Clothing Materials to Permeation by Liquids or Gases Under Conditions of Intermittent Contact."

(A) For conditions of exposure which are intermittent, gloves may be tested in accordance with the most current version of ASTM F1383 "Standard Test Method for Resistance of Protective Clothing Materials to Permeation by Liquids or Gases Under Conditions of Intermittent Contact," provided the contact time in testing is greater than or equal to the expected duration of dermal contact, and the purge time used in the testing is less than or equal to the expected duration of non-contact during the intermittent cycle of dermal exposure in the workplace. If ASTM F1383 is used for testing, the company must submit to the Agency a description of worker activities involving the chemical substance which includes daily frequencies and durations of potential worker exposures.

(B) The results of all glove permeation testing must be reported in accordance with the most current version of (ASTM) F1194 "Guide for Documenting the Results of Chemical Permeation Testing of Protective Clothing Materials." The company must submit all test data to the Agency and must receive written Agency approval for each type of glove tested prior to use of such gloves. Gloves must be discarded and replaced with such frequency as to ensure that they will reliably provide an impervious barrier to the chemical substances under normal and expected conditions of exposure within the work area. Gloves that have been damaged or are defective shall not be used. For PMNs P–94–1871 through P–94–1874, EPA has approved North Safety Butyl Rubber gloves (32 mils thick). For P–93–204 and P–94–1870, EPA has approved North Safety Butyl Rubber gloves (32 mils thick) only if used in combination with a chemical-resistant glove that has been demonstrated (EPA review not required) impermeable to the solvent,

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e.g., North Silvershield gloves and North 4H gloves.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(iv), (g)(1)(ix), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(iii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 5 for all the chemical substances subject to the provisions of this rule combined). However, contrary to the requirements specified in § 721.91, if the waste stream containing the chemical substances will be treated using activated carbon adsorption, then the amount of chemical substances reasonably likely to be removed from the waste stream by such treatment may be subtracted in calculating the number of kilograms released. No more than the following percent removal efficiencies may be attributed to such treatment for each PMN: P–93–204, 99 percent; P–94–1870, 98 percent; P–94–1871, 97 percent; P–94–1872, 92 percent; P–94–1873, 90 percent; P–94–1874, 73 percent.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

112. By adding new § 721.9830 to subpart E to read as follows:

§ 721.9830 1-Tridecyn-3-ol, 3-methyl.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1-tridecyn-3-ol, 3-methyl (PMN P–96–236; CAS No. 100912–15–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Worker protection.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), and (a)(3).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

113. By adding new § 721.9840 to subpart E to read as follows:

§ 721.9840 Tungstate (W12(OH)2O386-) hexasodium (9Cl).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as tungstate (W12(OH)2O386-) hexasodium (9Cl) (PMN P–96–1177; CAS No. 12141–67–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

114. By adding new § 721.9928 to subpart E to read as follows:

§ 721.9928 Urea, tetraethyl-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as urea, tetraethyl- (PMN P–94–1017; CAS No. 1187–03–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), and (a)(3).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(r) (445,000 kg) (a dermal developmental toxicity study in mice and rats and either a chromosome aberration assay in mice (40 CFR 798.5385) or a micronucleus assay in mice (40 CFR 798.5395)). A person may not manufacture or import the substance beyond the following aggregate production volume limits, unless that person conducts the following corresponding studies on the substance and submits all final reports and underlying data in accordance with the procedures and criteria specified in paragraphs (a)(2)(i)(A), (a)(2)(i)(B), (a)(2)(i)(C), and (a)(2)(i)(D) of this section.

(A) Each study required to be performed pursuant to this section must be scientifically valid. *Scientific valid* means that the study was conducted according to:

(*1*) The test guidelines specified in paragraph (a)(2)(i) of this section.

(*2*) An EPA-approved protocol.

(*3*) TSCA Good Laboratory Practice Standards at 40 CFR part 792.

(*4*) Using methodologies generally accepted at the time the study is initiated.

(*5*) Any deviation from these requirements must be approved in writing by EPA.

(B) Before starting to conduct any of the studies in paragraph (a)(2)(i) of this section, the person must obtain approval of test protocols from EPA by submitting written protocols. EPA will respond to the person within 4 weeks of receiving the written protocols. Published test guidelines specified in paragraph (a)(2)(i) of this section (e.g., 40 CFR part 797 or part 798) provide general guidance for development of test protocols, but are not themselves acceptable protocols.

(C) The person shall:

(*1*) Conduct each study in good faith with due care.

(*2*) Promptly furnish to EPA the results of any interim phase of each study.

(*3*) Submit, in triplicate (with an additional sanitized copy, if confidential business information is involved), the final report of each study and all underlying data ("the report and data") to EPA no later than 14 weeks prior to exceeding the applicable production volume limit. The final report shall contain the contents specified in 40 CFR 792.185.

(D)(*1*) Except as described in paragraph (a)(2)(ii)(D)(*2*) of this section, if, within 6 weeks of EPA's receipt of a test report and data, the person receives written notice that EPA finds that the data generated by a study are scientifically invalid, the person is prohibited from further manufacture and import of the PMN substance beyond the applicable production volume limit.

(*2*) The person may continue to manufacture and import the PMN substance beyond the applicable production limit only if so notified, in writing, by EPA in response to the person's compliance with either of the following paragraph (a)(2)(ii)(D)(*2*)(*i*) or (a)(2)(ii)(D)(*2*)(*ii*) of this section.

(*i*) The person may reconduct the study. If there is sufficient time to reconduct the study and submit the report and data to EPA at least 14 weeks before exceeding the production limit as required by paragraph (a)(2)(ii)(C)(*3*) of this section, the person shall comply with paragraph (a)(2)(ii)(C)(*3*) of this section. If there is insufficient time for the person to comply with paragraph (a)(2)(ii)(C)(*3*) of this section, the person may exceed the production limit and shall submit the report and data in triplicate to EPA within a reasonable period of time, all as specified by EPA in the notice described in paragraph (a)(2)(ii)(D)(*1*) of this section. EPA will respond to the person in writing, within 6 weeks of receiving the person's report and data.

(*ii*) The person may, within 4 weeks of receiving from EPA the notice described in paragraph (a)(2)(ii)(D)(*1*) of this section, submit to EPA a written report refuting EPA's finding. EPA will respond to the person in writing, within 4 weeks of receiving the person's report.

(E) The person is not required to conduct u study specified in paragraph (a)(2)(i) of this section if notified in writing by EPA that it is unnecessary to conduct that study.

(iii) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 98–1074 Filed 1–21–98; 8:45 am]
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Part III

The President

Notice of January 21, 1998—Continuation of Emergency Regarding Terrorists Who Threaten To Disrupt the Middle East Peace Process

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Presidential Documents

Title 3—

The President

Notice of January 21, 1998

Continuation of Emergency Regarding Terrorists Who Threaten To Disrupt the Middle East Peace Process

On January 23, 1995, by Executive Order 12947, I declared a national emergency to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by grave acts of violence committed by foreign terrorists that disrupt the Middle East peace process. By Executive Order 12947 of January 23, 1995, I blocked the assets in the United States, or in the control of United States persons, of foreign terrorists who threaten to disrupt the Middle East peace process. I also prohibited transactions or dealings by United States persons in such property. In 1996 and 1997, I transmitted notices of the continuation of this national emergency to the Congress and the **Federal Register**. Last year's notice of continuation was published in the **Federal Register** on January 22, 1997. Because terrorist activities continue to threaten the Middle East peace process and vital interests of the United States in the Middle East, the national emergency declared on January 23, 1995, and the measures that took effect on January 24, 1995, to deal with that emergency must continue in effect beyond January 23, 1998. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to foreign terrorists who threaten to disrupt the Middle East peace process.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
January 21, 1998.

[FR Doc. 98–1756
Filed 1–21–98; 11:51 am]
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The List of Public Laws for the 105th Congress, First Session, has been completed. It will resume when bills are enacted into Public Law during the second session of the 105th Congress, which convenes on January 27, 1998.

Note: A Cumulative List of Public Laws was published in the **Federal Register** on December 31, 1997.

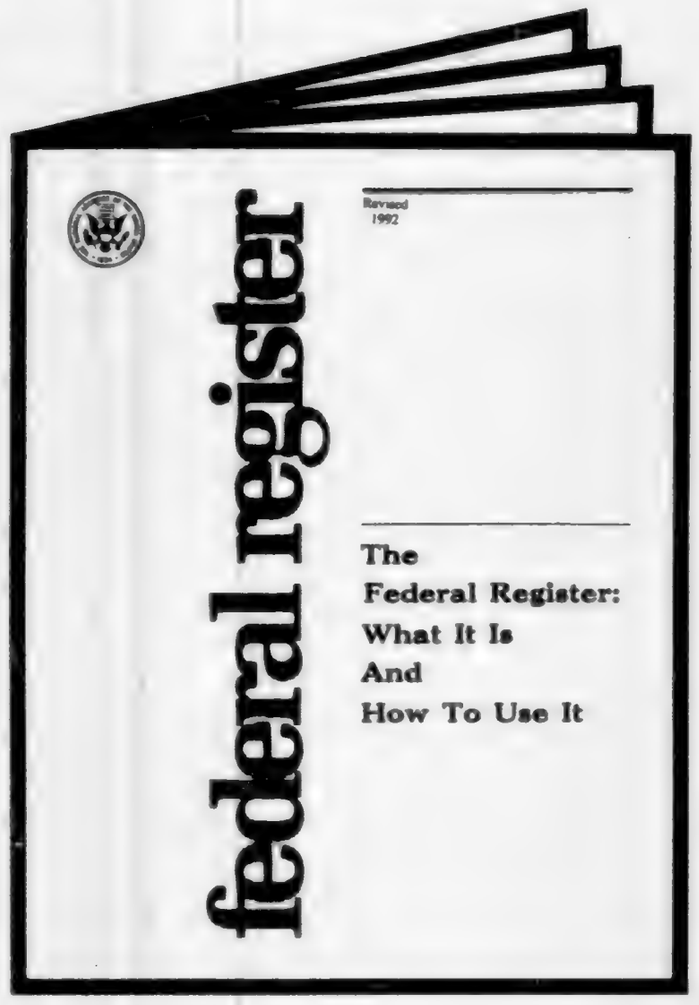
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Presidential Documents

Title 3—

The President

Presidential Determination No. 98–10 of January 12, 1998

Certification Pursuant to Section (b)(1) of Public Law 99–183 and to Section 902(a)(6)(B) of Public Law 101–246

Memorandum for the Secretary of State

Pursuant to section (b)(1) of Public Law 99–183 of December 16, 1985, relating to the approval and implementation of the Agreement for Cooperation Between the United States and the People's Republic of China, I hereby certify that:

(A) the reciprocal arrangements made pursuant to Article 8 of the Agreement have been designed to be effective in ensuring that any nuclear material, facilities, or components provided under the Agreement shall be utilized solely for intended peaceful purposes as set forth in the Agreement;

(B) the Government of the People's Republic of China has provided additional information concerning its nuclear nonproliferation policies and that, based on this and all other information available to the United States Government, the People's Republic of China is not in violation of paragraph (2) of section 129 of the Atomic Energy Act of 1954; and

(C) the obligation to consider favorably a request to carry out activities described in Article 5(2) of the Agreement shall not prejudice the decision of the United States to approve or disapprove such a request.

Pursuant to section 902(a)(6)(B)(i) of Public Law 101–246, I hereby certify that the People's Republic of China has provided clear and unequivocal assurances to the United States that it is not assisting and will not assist any nonnuclear-weapon state, either directly or indirectly, in acquiring nuclear explosive devices or the material and components for such devices.

You are authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, January 12, 1998.

[FR Doc. 98–1793
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Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1730

RIN 0572–AA74

Electric System Operations and Maintenance

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulations by adding a new part on electric system operations and maintenance. This action codifies and clarifies RUS policy relating to the operations and maintenance of electric systems by RUS electric borrowers. This rule also contains provisions relating to the review and evaluation of borrowers' electric systems and facilities operations and maintenance practices. These policies are presently contained in RUS Bulletin 161–5, which will be rescinded when the final rule becomes effective. This action clarifies the policies, procedures, and requirements, facilitates understanding and compliance, and improves program effectiveness with respect to electric system operations and maintenance.

EFFECTIVE DATE: This rule is effective February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Fred J. Gatchell, Deputy Director, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, Stop 1569, 1400 Independence Ave., SW., Washington, DC 20250–1569, telephone (202) 720–1398, e-mail fgatchel@rus.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that a rule relating to the RUS electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and, therefore, the Regulatory Flexibility Act does not apply to this rule.

National Environmental Policy Act Certification

The Administrator has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Final Rule-Related Notice entitled, "Department Programs and Activities Excluded from Executive Order 12372," (50 Fed. Reg. 47034) exempted RUS loans and loan guarantees from coverage under this order.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards in section 3 of the Executive Order.

National Performance Review

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

Information Collection and Recordkeeping Requirements

The recordkeeping and reporting burdens contained in this rule were approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under control number 0572–0025.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

Background

RUS has promulgated policies and procedures regarding the review and evaluation of the operations and maintenance practices of RUS financed electric systems. These policies and procedures are presently contained in RUS Bulletin 161–5, Electric System Review and Evaluation. The security instrument and loan contract between RUS and electric borrowers set certain standards for the operation and maintenance of each borrower's electric system. The purpose of this rule is to implement the operations and maintenance provisions of the security instrument and loan contract between RUS and electric borrowers and to consolidate and clarify RUS policies and procedures with respect to electric system operations and maintenance. Most of the provisions of this rule represent policies and requirements that have been in effect for some time. One new provision expands the requirement for electric system review and evaluation of borrower's electric systems to include power supply borrowers in addition to the distribution borrowers presently covered by Bulletin 161–5. Proper operation and maintenance practices are equally significant for power supply borrowers, so RUS believes that power supply borrowers' operation and maintenance practices should be covered under the review and evaluation requirements of this rule. RUS Form 300, Review Rating Summary, has also been updated and revised based on RUS' experience using this form.

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Comments

On April 16, 1997, RUS published a proposed rule at 62 Fed. Reg. 18544. Comments were received from ten parties, including two cooperative associations, a borrower engineering committee, two distribution borrowers, and five power supply borrowers. RUS considered all comments received. The significant and most commonly made comments are addressed herein.

Several commenters requested that RUS provide more guidance and supplemental information regarding these requirements, especially the ratings of the items on RUS Form 300, Review Rating Summary. RUS is currently preparing Bulletin 1730–1, "Electric System Operation and Maintenance (O&M)," which will provide guidelines related to O&M, including a rating guide for RUS Form 300.

Some commenters requested that RUS provide for an "alternative dispute resolution" procedure if a borrower disagrees with a rating or determination made by RUS. This type of disagreement has rarely occurred, and RUS believes that an adequate appeal avenue already exists. Any disagreements with the RUS staff's rating can always be appealed with the Regional Director or the Administrator.

One commenter requested that this rule address more operational concerns, such as momentary interruptions, voltage stability, job training and safety, and lightning protection. It was also suggested that RUS require that an O&M survey be completed prior to beginning a new construction work plan (CWP) or long-range engineering plan (LRP). RUS encourages borrowers to expand and elaborate on the O&M requirements prescribed by this rule to meet their specific needs; however, RUS has decided not to expand the requirements of this rule in these areas.

Some commenters recommended that the O&M reviews be limited to specific areas where a borrower has experienced problems, to borrowers with specific financial problems, or to certain specific types of facilities. RUS believes that all aspects of all borrowers' O&M should be reviewed periodically and these reviews should cover all facilities. These reviews can reveal potential problem areas that can be corrected before they manifest themselves as operational or financial difficulties. Therefore, RUS has not changed the scope of this rule.

Several commenters pointed out that the proposed rule does not adequately address borrowers who own but do not operate certain facilities. The rule has been changed to address this situation.

Several commenters requested that the frequency of inspection and test be determined giving due consideration to the manufacturer's recommendations, but that borrowers should not be specifically required to blindly follow such recommendations. RUS agrees and has revised the rule accordingly.

Some commenters requested that RUS clarify the requirement to evaluate compliance with the prior editions of the National Electrical Safety Code (NESC) and the National Electrical Code (NEC), when applicable. The rule has been clarified with respect to the NEC. Since the NESC itself specifically addresses facilities that comply with prior editions of the NESC, no change is needed in the rule with respect to the NESC.

Several commenters requested that RUS eliminate duplication of reviews made by other Federal agencies and State commissions, etc. The rule has been changed to indicate that RUS will not duplicate these reviews, but may review the reports of these other reviewers. Since some of these other reviews may target a specific area (e.g., safety), and the RUS' review covers a wider range of areas (e.g., safety, reliability, economy, etc.), the RUS review may partially overlap the reviews of others.

Several commenters requested that RUS eliminate the requirement for an explanation of the borrower's rating of acceptable items. It is not RUS' intent to require an extensive discussion of these items, but simply an explanation of how the borrower arrived at its rating. RUS believes that this should involve little extra effort and should improve the overall value of the review, so no change has been made to this requirement.

One commenter suggested that RUS require that the borrower's Board of Directors be appraised of the findings of the O&M review. Item 15 of RUS Form 300 calls for the date that the O&M review was reviewed by the Board of Directors. For purposes of clarifying the rule, a specific provision has been added to the rule requiring discussion of the O&M review with the Board of Directors.

One commenter suggested that RUS not require a corrective action plan (CAP) in all cases where there is an unsatisfactory (i.e., 0 or 1) rating. RUS considers any unsatisfactory rating to be a potentially serious problem, so a CAP should be prepared. However, if the correction of the deficiency is already underway or can be accomplished in a short time or simply, the CAP may be very short and simple, such as referring to an item in an approved CWP. The rule does not specify the format or amount of detail required for a CAP, so that borrowers have sufficient flexibility to tailor it to the seriousness and complexity of the problem. No change has been made to this requirement.

A number of commenters requested that RUS clarify or eliminate various items on the RUS Form 300. RUS has reviewed these items and has determined that requiring "Staff Hours" under part IV, Operations and Maintenance Budgets, is confusing, burdensome, and of limited benefit. This item has been deleted. RUS believes that Bulletin 1730–1, "Electric System Operation and Maintenance (O&M)," should provide additional guidance.

Some commenters are concerned that RUS requirements with respect to O&M may require excessive and unavailable funding. RUS recognizes that correcting operating and maintenance deficiencies may indeed be expensive, especially if the system has been allowed to deteriorate. Nevertheless, proper O&M of borrowers' systems is essential to the success of the rural electric program and to protecting the property that is the security for the Government's loans and guarantees. It is essential that each borrower budget sufficient resources to operate and maintain its system efficiently and properly.

One commenter stated that "this wasteful activity [the proposed rule] is unneeded, unnecessary and without common sense." RUS disagrees. As stated above, proper O&M of borrowers' systems is essential to the success of the rural electric program and to protecting the property that is the security for the Government's loans and guarantees. This rule is intended to clearly outline RUS policies and procedures and the borrowers' responsibilities with respect to O&M.

List of Subjects in 7 CFR Part 1730

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

In view of the above, RUS hereby amends 7 CFR chapter XVII by adding part 1730 to read as follows:

PART 1730—ELECTRIC SYSTEM OPERATIONS AND MAINTENANCE

Subpart A—General

Sec.

1730.1 Introduction.
1730.2 RUS policy.
1730.3 RUS addresses.
1730.4 Definitions.
1730.5–1730.19 [Reserved]

Subpart B—Operations and Maintenance Requirements

1730.20 General.
1730.21 Inspections and tests.
1730.22 Borrower analysis.
1730.23 Review rating summary, RUS Form 300.
1730.24 RUS review and evaluation.
1730.25 Corrective action.
1730.26 Engineer's certification.
1730.27–1730.99 [Reserved]
Appendix A to Subpart B of Part 1730—Review Rating Summary, RUS Form 300

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

Subpart A—General

§ 1730.1 Introduction.

(a) This part contains the policies and procedures of the Rural Utilities Service (RUS) related to electric borrowers' operation and maintenance practices and RUS' review and evaluation of such practices.

(b) The policies and procedures included in this part apply to all electric borrowers (both distribution borrowers and power supply borrowers) and are intended to clarify and implement certain provisions of the security instrument and loan contract between RUS and electric borrowers regarding operations and maintenance. This part is not intended to waive or supersede any provisions of the security instrument and loan contract between RUS and electric borrowers.

(c) The Administrator may waive, for good cause, on a case by case basis, certain requirements and procedures of this part.

§ 1730.2 RUS policy.

It is RUS policy to require that all property of a borrower be operated and maintained properly in accordance with the requirements of each borrower's loan documents. It is also RUS policy to provide financial assistance only to borrowers whose operations and maintenance practices and records are satisfactory or to those who are taking corrective actions expected to make their operations and maintenance practices and records satisfactory to RUS.

§ 1730.3 RUS addresses.

(a) Persons wishing to obtain forms referred to in this part should contact: Program Support and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522, telephone (202) 720–8674. Borrowers or others may reproduce any of these forms in any number required.

(b) Documents required to be submitted to RUS under this part are to be sent to the office of the borrower's assigned RUS General Field Representative (GFR) or such other office as designated by RUS.

§ 1730.4 Definitions.

Terms used in this part have the meanings set forth in 7 CFR Part 1710.2. References to specific RUS forms and other RUS documents, and to specific sections or lines of such forms and documents, shall include the corresponding forms, documents, sections and lines in any subsequent revisions of these forms and documents. In addition to the terms defined in 7 CFR Part 1710.2, the term *Prudent Utility Practice* has the meaning set forth in Article 1, Section 1.01 of Appendix A to Subpart B of 7 CFR Part 1718—Model Form of Mortgage for Electric Distribution Borrowers, for the purposes of this Part.

§§ 1730.5–1730.19 [Reserved]

Subpart B—Operations and Maintenance Requirements

§ 1730.20 General.

Each distribution borrower and power supply borrower shall operate and maintain its system in compliance with Prudent Utility Practice, in compliance with its loan documents, and in compliance with all applicable laws, regulations and orders, shall maintain its systems in good repair, working order and condition, and shall make all needed repairs, renewals, replacements, alterations, additions, betterments and improvements, in accordance with applicable provisions of the borrower's security instrument. Each borrower is responsible for on-going operations and maintenance programs, for maintaining records of the physical and electrical condition of its electric system and for the quality of services provided to its customers. The borrower is also responsible for all necessary inspections and tests of the component parts of its system, and for maintaining records of such inspections and tests. Each borrower shall budget sufficient resources to operate and maintain its system in accordance with the requirements of this part. For portions of the borrower's system that are not operated by the borrower, if any, the borrower is responsible for ensuring that the operator is operating and maintaining the system properly in accordance with the operating agreement.

§ 1730.21 Inspections and tests.

(a) Each borrower shall conduct all necessary inspections and tests of the component parts of its electric system, and maintain adequate records of such inspections and tests.

(b) The frequency of inspection and testing will be determined by the borrower in conformance with applicable laws, regulations, national standards, and Prudent Utility Practice. The frequency of inspection and testing will be determined giving due consideration to the type of facilities or equipment, manufacturer's recommendations, age, operating environment and hazards to which the facilities are exposed, consequences of failure, and results of previous inspections and tests. The records of such inspections and tests will be retained in accordance with applicable regulatory requirements and Prudent Utility Practice. The retention period should be of a sufficient time period to identify long-term trends. Records must be retained at least until the applicable inspections or tests are repeated.

(c) Inspections of facilities must include a determination of whether the facility complies with the National Electrical Safety Code, National Electrical Code (as applicable), and applicable State or local regulations. Any serious or life-threatening deficiencies shall be promptly repaired, disconnected, or isolated in accordance with applicable codes or regulations. Any other deficiencies found as a result of such inspections and tests are to be recorded and those records are to be maintained until such deficiencies are corrected or for the retention period required by paragraph (b) of this section, whichever is longer.

§ 1730.22 Borrower analysis.

(a) Each borrower shall periodically analyze in writing its operations and maintenance policies, practices, and procedures to determine if they are appropriate and if they are being followed. The records of inspections and tests are also to be reviewed and analyzed to identify any trends which could indicate deterioration in the physical condition or the operational effectiveness of the system or suggest a need for changes in operations or maintenance practices. For portions of the borrower's system that are not operated by the borrower, if any, the borrower's written analysis would also include a review of the operator's performance under the operating agreement.

(b) When a borrower's operations and maintenance policies, practices, and procedures are to be reviewed and evaluated by RUS, the borrower shall:

(1) Conduct the analysis required by paragraph (a) of this section not more

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than 90 days prior to the scheduled RUS review;

(2) Complete RUS Form 300, Review Rating Summary, and other related forms, prior to RUS' review and evaluation; and

(3) Make available to RUS the borrower's completed RUS Form 300 (including a written explanation of the basis for each rating) and records related to the operations and maintenance of the borrower's system.

(c) For those facilities not included on the RUS Form 300 (e.g., generating plants), the borrower shall prepare and complete an appropriate supplemental form for such facilities.

§ 1730.23 Review rating summary, RUS Form 300.

RUS Form 300 in Appendix A shall be used when required by this part.

§ 1730.24 RUS review and evaluation.

RUS will initiate and conduct a periodic review and evaluation of the operations and maintenance practices of each borrower for the purpose of assessing loan security and determining borrower compliance with RUS policy as outlined in this part. This review will normally be done at least once every three years. The borrower will make available to RUS the borrower's policies, procedures, and records related to the operations and maintenance of its complete system. Reports made by other inspectors (e.g., other Federal agencies, State inspectors, etc.) will also be made available, as applicable. RUS will not duplicate these other reviews but will use their reports to supplement its own review. RUS may inspect facilities, as well as records, and may also observe construction and maintenance work in the field. Key borrower personnel responsible for the facilities being inspected are to accompany RUS during such inspections, unless otherwise determined by RUS. RUS personnel may prepare an independent summary of the operations and maintenance practices of the borrower. The borrower's management will discuss this review and evaluation with its Board of Directors.

§ 1730.25 Corrective action.

(a) For any items on the RUS Form 300 rated unsatisfactory (i.e., 0 or 1) by the borrower or by RUS, the borrower shall prepare a corrective action plan (CAP) outlining the steps (both short term and long term) the borrower will take to improve existing conditions and to maintain an acceptable rating. The CAP must include a time schedule and cost estimate for corrective actions, and must be approved by the borrower's Board of Directors. The CAP must be submitted to RUS for approval within 90 days after the completion of RUS' evaluation noted in § 1730.24.

(b) The borrower must periodically report to RUS in writing progress under the CAP. This report must be submitted to RUS every six months until all unsatisfactory items are corrected unless RUS prescribes a different reporting schedule.

§ 1730.26 Engineer's certification.

Where provided for in the borrower's loan documents, RUS may require the borrower to provide an "Engineer's Certification" as to the condition of the borrower's system (including, but not limited to, all mortgaged property.) Such certification shall be in form and substance satisfactory to RUS and shall be prepared by a professional engineer satisfactory to RUS. If RUS determines that the Engineer's Certification discloses a need for improvements to the condition of its system or any other operations of the borrower, the borrower shall, upon notification by RUS, promptly undertake to accomplish such improvements.

§§ 1730.27–1730.99 [Reserved]

Appendix—A to Subpart B of Part 1730—Review Rating Summary, RUS Form 300

Borrower Designation _____
Date Prepared _____

Ratings on form are:

0: Unsatisfactory—no records
1: Unsatisfactory—corrective action needed
2: Acceptable, but should be improved—see attached recommendations
3: Satisfactory—no additional action required at this time
N/A: Not applicable

PART I—TRANSMISSION and DISTRIBUTION FACILITIES

1. Substations (Transmission and Distribution)
   a. Safety, Clearance, Code Compliance—Rating: _____
   b. Physical Condition: Structure, Major Equipment, Appearance—Rating: _____
   c. Inspection Records Each Substation—Rating: _____
   d. Oil Spill Prevention—Rating: _____
2. Transmission Lines
   a. Right-of-Way: Clearing, Erosion, Appearance, Intrusions—Rating: _____
   b. Physical Condition: Structure, Conductor, Guying—Rating: _____
   c. Inspection Program and Records—Rating: _____
3. Distribution Lines—Overhead
   a. Inspection Program and Records—Rating: _____
   b. Compliance with Safety Codes: Clearances—Rating: _____
   Compliance with Safety Codes: Foreign Structures—Rating: _____
   Compliance with Safety Codes: Attachments—Rating: _____
   c. Observed Physical Condition from Field Checking: Right-of-Way—Rating: _____
   Observed Physical Condition from Field Checking: Other—Rating: _____
4. Distribution—Underground Cable
   a. Grounding and Corrosion Control—Rating: _____
   b. Surface Grading, Appearance—Rating: _____
   c. Riser Poles: Hazards, Guying, Condition—Rating: _____
5. Distribution Line Equipment: Conditions and Records
   a. Voltage Regulators—Rating: _____
   b. Sectionalizing Equipment—Rating: _____
   c. Distribution Transformers—Rating: _____
   d. Pad Mounted Equipment—Safety: Locking, Dead Front, Barriers—Rating: _____
   Pad Mounted Equipment—Appearance: Settlement, Condition—Rating: _____
   e. Kilowatt-hour and Demand Meter Reading and Testing—Rating: _____

PART II—OPERATION AND MAINTENANCE

6. Line Maintenance and Work Order Procedures
   a. Work Planning and Scheduling—Rating: _____
   b. Work Backlogs: Right-of-Way Maintenance—Rating: _____
   Work Backlogs: Poles—Rating: _____
   Work Backlogs: Retirement of Idle Services—Rating: _____
   Work Backlogs: Other—Rating: _____
7. Service Interruptions
   a. Average Annual Hours/Consumer by Cause (Complete for each of the previous 5 years)
   1. Power Supplier _____
   2. Major Storm _____
   3. Scheduled _____
   4. All Other _____
   5. Total _____
   Rating: _____
   b. Emergency Restoration Plan—Rating: _____
8. Power Quality
   General Freedom from Complaints—Rating: _____
9. Loading and Load Balance
   a. Distribution Transformer Loading—Rating: _____
   b. Load Control Apparatus—Rating: _____
   c. Substation and Feeder Loading—Rating: _____
10. Maps and Plant Records
   a. Operating Maps: Accurate and Up-to-Date—Rating: _____
   b. Circuit Diagrams—Rating: _____
   c. Staking Sheets—Rating: _____

PART III—ENGINEERING

11. System Load Conditions and Losses
   a. Annual System Loses, _____%—Rating: _____
   b. Annual Load Factor, _____%—Rating: _____
   c. Power Factor at Monthly Peak, _____%—Rating: _____
   d. Ratio of Individual Substation Peak kW to kVA, _____—Rating: _____
12. Voltage Conditions
   a. Voltage Surveys—Rating: _____
   b. Substation Transformer Output Voltage Spread—Rating: _____
13. Load Studies and Planning
   a. Long Range Engineering Plan—Rating: _____
   b. Construction Work Plan—Rating: _____
   c. Sectionalizing Study—Rating: _____
   d. Load Data for Engineering Studies—Rating: _____
   e. Load Forecasting Data—Rating: _____

PART IV—OPERATION AND MAINTENANCE BUDGETS

For Previous 2 Years:
Normal Operation—Actual $_____
Normal Maintenance—Actual $_____
Total—Actual $_____

For Present Year:
Normal Operation—Budget $_____
Normal Maintenance—Budget $_____
Total—Budget $_____

For Future 3 Years:
Normal Operation—Budget $_____
Normal Maintenance—Budget $_____
Additional (Deferred) Maintenance—Budget $_____
Total—Budget $_____

14. Budgeting:
Adequacy of Budgets For Needed Work—Rating: _____
15. Date Discussed with Board of Directors _____
Remarks: _____

EXPLANATORY NOTES

Item No. _____ Comments _____
Rated by _____ _____ Title _____ Date _____
Reviewed by _____ Manager _____ Date _____
Reviewed by _____ RUS GFR _____ Date _____

Dated: January 14, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 98–1661 Filed 1–22–98; 8:45 am]

BILLING CODE 3510–15–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 900, 932 and 933

[No. 97–83]

RIN 3069–AA65

Membership Eligibility

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending the definition of the term "State" in its Membership Regulation to include the U.S. Territory of American Samoa (American Samoa) and the U.S. Commonwealth of the Northern Mariana Islands (the Northern Mariana Islands). Institutions organized under the laws of American Samoa and the Northern Mariana Islands, therefore, will be eligible to apply for Federal Home Loan Bank (Bank) membership. In accordance with these changes, the Finance Board also is clarifying in its regulations that the Seattle Bank District includes American Samoa and the Northern Mariana Islands. In addition, the Finance Board is designating Hawaii as the State in which members with a principal place of business in American Samoa, the Northern Mariana Islands, or Guam, shall be deemed to be located for purposes of election of Bank directors.

DATES: The final rule is effective on February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Sharon B. Like, Senior Attorney-Adviser, (202) 408–2930, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

A. Membership Eligibility Requirement—Definition of "State"

Under the Federal Home Loan Bank Act (Act), the Finance Board is responsible for the supervision and regulation of the 12 Banks, which provide advances and other financial services to their member institutions. *See* 12 U.S.C. 1422a(a). Institutions may become members of a Bank if they meet certain membership eligibility and minimum stock purchase criteria set forth in the Act and the Finance Board's implementing Membership Regulation. *See id.* sections 1424, 1426, 1430(e)(3); 12 CFR part 933.

Specifically, under the Act and the Membership Regulation, applicants for Bank membership must satisfy, among other requirements, the requirement that they are "duly organized under the laws of any State or of the United States." *See* 12 U.S.C. 1424(a)(1)(A); 12 CFR 933.6(a)(1), 933.7. Section 2(3) of the Act defines the term "State" as follows:

The term "State" includes the District of Columbia, Guam, Puerto Rico, and the Virgin Islands of the United States.

See 12 U.S.C. 1422(3). Guam and the U.S. Virgin Islands are U.S. Territories, while Puerto Rico is a U.S. Commonwealth.

Section 933.1(cc) of the Finance Board's Membership Regulation implements the statutory definition by defining the term "State" as follows:

State means a State, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands of the United States.

See 12 CFR 933.1(cc). The regulatory definition does not specifically include any other U.S. Territories, Commonwealths or Dependencies within the meaning of "State." Therefore, financial institutions organized under the laws of such other jurisdictions currently are not eligible for Bank membership under the regulation, unless other specific laws or agreements executed by the United States and these jurisdictions make the Act applicable to such jurisdictions.

On September 24, 1997, the Finance Board published a proposed rule to amend the definition of the term "State" in § 933.1(c) of the Membership Regulation to include American Samoa and the Northern Mariana Islands. *See* 62 FR 49943 (Sept. 24, 1997). The Finance Board received six comment letters on the proposed rule. Commenters included: one Bank; a representative of a Guamanian housing counseling/advocacy organization who serves on the Bank's Advisory Council; the Congressional representative for American Samoa; the Governor of American Samoa; an American Samoan commercial bank that is a member of the Federal Reserve System with deposits insured by the Federal Deposit Insurance Corporation; and a Northern Mariana Islands public housing corporation.

In the proposed rule, the Finance Board stated that it believes that the term "State" under the Membership Regulation should be defined comprehensively to include all other U.S. Territories, Commonwealths and Dependencies that share a political status similar to that of the specified entities in the statute, *i.e.*, Guam, the U.S. Virgin Islands, and Puerto Rico. In addition, if any specific laws or agreements executed by the United States and particular jurisdictions make the Act applicable to such jurisdictions, then the regulatory definition of the term "State" should be amended to include those jurisdictions, consistent with the laws or agreements.

Accordingly, as described in the proposed rule, the Finance Board undertook a broad analysis of existing and former U.S. Territories, Commonwealths and Dependencies to determine whether any of the jurisdictions satisfy the above requirements. The research revealed that only American Samoa and the Northern Mariana Islands meet the requirements, as further discussed below. In order to ensure that all eligible jurisdictions were included in the

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revised definition of "State" for membership purposes, the Finance Board requested commenters to identify any other jurisdictions not included in proposed § 933.1(cc) that have U.S. Territory, Commonwealth, or Dependency status, or that have laws or agreements with the United States that make the Act applicable to such jurisdictions. No other jurisdictions were identified by the commenters as meeting any of these criteria.

B. Designation of Member's State Location for Purposes of Election of Bank Directors

The Act sets forth specific procedures for the election of directors by the members to the boards of the Banks. *See* 12 U.S.C. 1427; 12 CFR 932. Each elective directorship is designated by the Finance Board as representing the members located in a particular State. *See* 12 U.S.C. 1427(b). If the principal place of business of a member is located in a "State" as defined in section 7(e) of the Act, the Finance Board must designate such State as the State in which the member is located for director election purposes. *See id.* section 1427(c). Section 7(e) defines "State," for purposes of section 7, as "the States of the Union, the District of Columbia, and the Commonwealth of Puerto Rico." *See id.* section 1427(e). For members whose principal place of business is not located in a "State" as defined in section 7(e), the Finance Board is required to designate a State in which such members shall be deemed to be located for director election purposes. *See id.* section 1427(c).

American Samoa and the Northern Mariana Islands are not included in the section 7(e) definition of "State." Accordingly, the Finance Board is required to designate a "State" where members with a principal place of business located in American Samoa or the Northern Mariana Islands shall be deemed to be located. The proposed rule amended § 932.11(b) of the Finance Board's regulations to designate Hawaii as that State.

II. Analysis of the Final Rule

A. American Samoa—Section 933.1(cc)

American Samoa is a Territory of the United States that is administered by the U.S. Department of Interior, and which has enacted its own banking laws. *See* 48 U.S.C. 1661; Executive Order No. 10264, 16 FR 6419 (June 29, 1951); Title 28, American Samoa Code Ann. (Book 1988). As a U.S. Territory, American Samoa has a political status similar to that of the U.S. Territories of Guam and the U.S. Virgin Islands, which are included as "States" under the Act and the current Membership Regulation. *See* 12 U.S.C. 1422(3); 12 CFR 933.1(cc).[1]

Five commenters specifically supported the proposed amendment of the term "State" in § 933.1(c) to include American Samoa. One commenter noted that the condition of much of the private housing in American Samoa is deplorable, household incomes are extremely low, and very little new construction or rehabilitation of housing is occurring. The commenter stated that there is a need for home loans at affordable interest rates in this remote, rural area, and that the Bank System was intended to address such problems. Another commenter stated that by becoming a member of the Seattle Bank, the commenter would gain access to a wide array of competitively priced wholesale funding, as well as community lending programs designed to help meet the low- and moderate-income housing and economic development needs of American Samoa.

For the reasons discussed above, the final rule adopts the proposed amendment without change.

B. The Northern Mariana Islands—Section 933.1(cc)

The Northern Mariana Islands is a former U.S.-administered Trust Territory that is now a Commonwealth of the United States. As a U.S. Commonwealth, the Northern Mariana Islands has a political status similar to that of the Commonwealth of Puerto Rico, which is included as a "State" under the Act and the current Membership Regulation. *See id.* Moreover, specific provisions of the Covenant Agreement executed by the United States and the Northern Mariana Islands make the Act applicable to the Northern Mariana Islands. *See* "Covenant To Establish A Commonwealth Of The Northern Mariana Islands In Political Union With The United States Of America," sections 502(a)(1), 502(a)(2) (1986); "The Second Interim Report of the Northern Mariana Islands Commission on Federal Laws to the Congress of the United States," at 278–79 (Aug. 1985); Presidential Proclamation No. 5207, 49 FR 24365 (June 7, 1984) (set forth at 48 U.S.C. 1681 note).

Four commenters specifically supported the proposed amendment of the term "State" in § 933.1(cc) to include the Northern Mariana Islands. One commenter noted that the Northern Mariana Islands Government and financial institutions operating in the Northern Mariana Islands have limited financial resources available for affordable housing and community development projects. The commenter stated that the proposed amendment would expand opportunities for access to funding assistance for such projects in the Northern Mariana Islands.

For the reasons discussed above, the final rule adopts the proposed amendment without change.

C. Other Pacific Islands

As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau were once U.S.-administered Trust Territories in the Pacific, but now have the status of independent, self-governing foreign nations. Nor do there appear to be any laws or contractual provisions in the Compacts of Free Association executed by the United States and these nations, respectively, that make the Act applicable to these nations. Other existing U.S. Pacific Island Territories generally are either uninhabited or contain tiny, nonpermanent military populations closed to the public. No other jurisdictions were identified by the commenters as having U.S. Territory, Commonwealth, or Dependency status, or having laws or agreements with the United States making the Act applicable to such jurisdictions. Accordingly, the Act would not be applicable to the nations and Territories discussed above, and these jurisdictions are not included in § 933.1(cc) of the final rule.

D. Inclusion of American Samoa and the Northern Mariana Islands in the Seattle Bank District—Appendix to Subpart A of Part 900

The Appendix to Subpart A of Part 900 of the Finance Board's regulations lists the States which comprise each of the 12 Bank Districts, with a reference to "Pacific Islands" included under Federal Home Loan Bank District 12 (the Seattle Bank District). *See* Appendix to Subpart A of Part 900—Federal Home Loan Banks. Consistent with the amendments discussed above, the final rule amends the Appendix by replacing the reference to the "Pacific Islands" under the Seattle Bank District with specific references to American Samoa and the Northern Mariana Islands.

[1] There do not appear to be any laws or contractual provisions in the cession agreements executed by the United States and American Samoa making the Act applicable to American Samoa.

E. Designation of State Location for Members With Principal Place of Business in American Samoa, the Northern Mariana Islands, or Guam—Section 932.11(b)

For the reasons discussed above, the proposed amendment of § 932.11(b) provided that members with a principal place of business located in American Samoa or the Northern Mariana Islands shall be deemed to be located in Hawaii for purposes of election of Bank directors. One commenter specifically supported this designation. The final rule adopts the proposed amendment without change. The final rule also adopts, without change, the proposed amendment codifying the Finance Board's existing designation of Hawaii as the State where members with a principal place of business in Guam are deemed to be located for director election purposes.

III. Regulatory Flexibility Act

The final rule implements statutory requirements binding on all Banks and on all applicants for Bank membership, regardless of their size. The Finance Board is not at liberty to make adjustments to those requirements to accommodate small entities. The final rule does not impose any additional regulatory requirements that will have a disproportionate impact on small entities. Therefore, in accordance with section 605(b) of the Regulatory Flexibility Act, *see* 5 U.S.C. 605(b), the Finance Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects

12 CFR Part 900

Organizations and functions (Government agencies).

12 CFR Part 932

Conflicts of interest, Federal home loan banks.

12 CFR Part 933

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby amends title 12, chapter IX, parts 900, 932 and 933, *Code of Federal Regulations*, as follows:

PART 900—DESCRIPTION OF ORGANIZATION AND FUNCTIONS

1. The authority citation for part 900 is revised to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 1422b(a), 1423.

2. The appendix to subpart A of part 900 is designated as appendix A to subpart A of part 900, the appendix heading is revised, and the parenthetical under Federal Home Loan Bank District 12 is revised to read as follows:

Appendix A to Subpart A of Part 900—Federal Home Loan Banks

* * * * *

FEDERAL HOME LOAN BANK DISTRICT 12

(Alaska, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Hawaii, Idaho, Montana, Oregon, Utah, Washington, Wyoming)

* * * * *

PART 932—ORGANIZATION OF THE BANKS

3. The authority citation for part 932 is revised to read as follows:

Authority: 12 U.S.C. 1422, 1422a, 1422b, 1423, 1426, 1427, 1432; 42 U.S.C. 8101 *et seq.*

4. Section 932.11 is amended by revising paragraph (b) to read as follows:

§ 932.11 Location of member.

* * * * *

(b) For purposes of this part, members with a principal place of business located in the Virgin Islands of the United States shall be deemed to be located in Puerto Rico, and members with a principal place of business located in American Samoa, the Commonwealth of the Northern Mariana Islands, or Guam, shall be deemed to be located in Hawaii.

PART 933—MEMBERS OF THE BANKS

5. The authority citation for part 933 is revised to read as follows:

Authority: 12 U.S.C. 1422, 1422a, 1422b, 1423, 1424, 1426, 1430, 1442.

6. Section 933.1 is amended by revising paragraph (cc) to read as follows:

§ 933.1 Definitions.

* * * * *

(cc) *State* includes a State of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, the District of Columbia, Guam, Puerto Rico, or the Virgin Islands of the United States.

* * * * *

By the Board of Directors of the Federal Housing Finance Board.

Dated: December 17, 1997.

Bruce A. Morrison,

Chairman.

[FR Doc. 98–1639 Filed 1–22–98; 8:45 am]

BILLING CODE 6725–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–150–AD; Amendment 39–10287; AD 98–01–01]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 172R and 182S Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98–01–01, which was sent previously to all known U.S. owners and operators of certain Cessna Aircraft Company (Cessna) Models 172R and 182S airplanes. This AD requires fabricating and installing placards to prohibit operation in instrument flight rules (IFR) conditions and use of the alternate static air source; inspecting the alternate static air source valve to assure that the alternate static air source port is not restricted by the identification placard and to assure that the valve body does not separate from the valve flange; and reworking or replacing as necessary. The AD was the result of reports of improper installation of the identification placard on the alternate static air source. The actions specified by this AD are intended to prevent erroneous indications from the altimeter, airspeed, and vertical speed indicators, which could cause the pilot to react to incorrect flight information and possibly result in loss of control of the airplane.

DATES: Effective February 2, 1998, to all persons except those to whom it was made immediately effective by priority letter AD 98–01–01, issued December 22, 1997, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

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of the Federal Register as of February 2, 1998.

Comments for inclusion in the Rules Docket must be received on or before March 16, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–150–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from the Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277. This information may also be examined at the Rules Docket at the address above, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Joel Ligon, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4138; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

On December 22, 1997, the FAA issued priority letter AD 98–01–01, which applies to Cessna Models 172R and 182S airplanes. That AD resulted from reports of improper installation of the identification placard on the alternate static air source. This placard was installed on the valve body in a location that covers the external orifice, which is the inlet for static air reference into the valve.

Cessna discovered the problem during a preflight static check on a Model 172R airplane. Further investigation and a purge of stock at the manufacturing facility revealed 21 valve assemblies having the identification placard installed over the static air reference orifice. Cessna has no way of verifying how many of these assemblies were manufactured and sent to the field with the identification placard installed over the static air reference orifice.

Several of these assemblies have been identified and corrected on the above-referenced airplanes. The FAA has no way of determining which airplanes have the remaining problem alternate static air source assemblies installed without having all of the affected airplanes inspected.

These assemblies are required for flight into instrument flight rules (IFR) conditions as defined in § 91.411 of the Federal Aviation Regulations (14 CFR 91.411). Use of these assemblies is optional in visual flight rules (VFR) conditions.

If these assemblies are not identified and reworked or replaced, selection of the alternate air source will cause the altimeter, airspeed, and vertical speed indicators to display erroneous indications. This could cause the pilot to react to incorrect flight information and possibly result in loss of control of the airplane.

Relevant Service Information

Cessna has issued Service Bulletin No. SB97–34–02, Revision 1, dated December 22, 1997, which includes:

—Procedures for inspecting the alternate static air source valve to assure that the alternate static air source port is not restricted by the identification placard and to assure that the valve body does not separate from the valve flange;

—Procedures for reworking the alternate static air source valve if the port is restricted; and

—Reference to replacing the alternate static air valve assembly if the valve body separates from the valve flange in accordance with the maintenance manual.

Cessna is providing warranty credit for both labor and parts for required inspections, reworks, and replacements.

The FAA's Determination and Explanation of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other Cessna Models 172R and 182S of the same type design, the FAA issued priority letter AD 98–01–01 to prevent erroneous indications from the altimeter, airspeed, and vertical speed indicators, which could cause the pilot to react to incorrect flight information and possibly result in loss of control of the airplane. The AD requires the following:

—Immediately fabricating placards that prohibit operation in IFR conditions and prohibit use of the alternate static air source, and installing these placards in the cockpit within the pilot's clear view;

—Eventually inspecting the alternate static air source valve to assure that the alternate static air source port is not restricted by the identification placard and to assure that the valve body does not separate from the valve flange;

—Reworking the alternate static air source assembly if the port is restricted; and

—Replacing the alternate static air source assembly if the valve body separates from the valve flange.

Accomplishment of the inspection and rework is required in accordance with the previously referenced service information. Accomplishment of the replacement is required in accordance with the applicable maintenance manual.

Determination of the Effective Date of the AD

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on December 22, 1997, to all known U.S. operators of certain Cessna Models 172R and 182S airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–150–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–01–01 Cessna Aircraft Company: Amendment 39–10287; Docket No. 97–CE–150–AD.

Applicability: The following airplane models and serial numbers, certificated in any category:

Model 172R Airplanes: serial numbers 17280003 through 17280171, 17280173 through 17280175, 17280177 through 17280179, 17280182 through 17280184, 17280186, 17280189, 17280190, 17280192 through 17280212, 17280214, 17280216 through 17280221, 17280223 through 17280236, 17280239 through 17280251, 17280253 through 17280263, 17280265, 17280268, 17280270 through 17280272, 17280283, 17280297, and 17280301; and

Model 182S Airplanes: serial numbers 18280001, 18280002, 18280004 through 18280045, 18280048 through 18280060, 18280062 through 18280064, 18280067, and 18280070.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished, except to those operators receiving this action by priority letter issued December 22, 1997, which made these actions effective immediately upon receipt.

To prevent erroneous indications from the altimeter, airspeed, and vertical speed indicators, which could cause the pilot to react to incorrect flight information and possibly result in loss of control of the airplane, accomplish the following:

(a) Prior to further flight after the effective date of this AD, fabricate placards with the following words, using letters at least ⅛-inch in height, and install these placards in the cockpit within the pilot's clear view:

(1) "IFR operation is prohibited."

(2) "Use of the alternate static air source is prohibited."

(b) Within the next 100 hours time-in-service (TIS) after the effective date of this AD or within the next 4 calendar months after the effective date of this AD, whichever occurs first, inspect the alternate static air source valve to assure that the alternate static air source valve is not restricted by the identification placard and to assure that the valve body does not separate from the valve flange in accordance with Cessna Service Bulletin No. SB97–34–02, Revision 1, dated December 22, 1997.

(1) If the alternate static air source valve is restricted, prior to further flight after the inspection required by paragraph (b) of this AD, rework the alternate static air source assembly in accordance with Cessna Service Bulletin No. SB97–34–02, Revision 1, dated December 22, 1997.

(2) If the valve body separates from the valve flange, replace the alternate static air source assembly in accordance with the maintenance manual at one of the compliance times presented below (paragraph (b)(2)(i) or (b)(2)(ii) of this AD):

(i) Prior to further flight to eliminate the operating limitations required by the placards in paragraphs (a), (a)(1), and (a)(2) of this AD; or

(ii) Within the next 25 hours TIS after the inspection provided the operating limitations required by the placards in paragraphs (a), (a)(1), and (a)(2) of this AD are adhered to.

(c) The placard requirements of paragraphs (a), (a)(1), and (a)(2) of this AD may be eliminated when the inspection, rework, and replacement requirements are accomplished as specified in paragraphs (b), (b)(1), and (b)(2) of this AD.

(d) The inspection, rework, and replacement requirements specified in paragraphs (b), (b)(1), and (b)(2) of this AD may be accomplished at any time prior to "within the next 100 hours TIS after the effective date of this AD or within the next 4 calendar months after the effective date of this AD, whichever occurs first."

(e) Within 10 days after the inspection required by paragraph (b) of this AD, send the results of the inspection in writing to the FAA at the address specified in paragraph (h) of this AD. Include the serial number of the airplane and state whether the alternate static air source assembly needed to be reworked or replaced. (Reporting approved by the Office of Management and Budget under OMB No. 2120–0056).

(f) Fabricating and installing the placards as required by paragraph (a) of this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(i) The inspection and rework required by this AD shall be done in accordance with Cessna Service Bulletin No. SB97–34–02, Revision 1, dated December 22, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

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(j) This amendment (39–10287) becomes effective on February 2, 1998, to all persons except those persons to whom it was made immediately effective by priority letter AD 98–01–01, issued December 22, 1997, which contained the requirements of this amendment.

Issued in Kansas City, Missouri, on January 12, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–1297 Filed 1–22–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–335–AD; Amendment 39–10288; AD 98–02–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 777–200 series airplanes. This action requires repetitive visual inspections to determine the presence and condition of the nut and cotter pin of the lock link mechanism on the side struts and drag struts on the main landing gear (MLG); and corrective action, if necessary. This amendment is prompted by reports of missing or damaged components on the lock link mechanism. The actions specified in this AD are intended to prevent failure of the lock link mechanism to lock the MLG in the down position, and consequent collapse of the MLG during ground operation.

DATES: Effective February 9, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 9, 1998.

Comments for inclusion in the Rules Docket must be received on or before March 24, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–335–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: Boeing has advised the FAA of the recent discovery of discrepancies of the lock link mechanism on the side struts and drag struts on the main landing gear (MLG) on several Model 777–200 series airplanes. The discrepancies included missing cotter pins, a missing cotter pin and nut with the bolt migrating out of the joint, and a cotter pin migrating from the bolt end through the nut. Such discrepancies, if not corrected, could result in failure of the lock link mechanism to lock the MLG in the down position, and consequent collapse of the MLG during ground operation.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 777–32A0015, dated September 4, 1997, which describes procedures for repetitive visual inspections to determine the presence and condition of the nut and cotter pin of the lock link mechanism on the side struts and drag struts on the left- and right-hand MLG. The alert service bulletin also describes procedures for corrective action for missing or damaged parts.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 777–200 series airplanes of the same type design, this AD requires accomplishment of the actions specified in the alert service bulletin described previously.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–335–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive

Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–02–06 Boeing: Amendment 39–10288. Docket 97–NM–335–AD.

Applicability: Model 777–200 series airplanes, line positions 1 through 40 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the lock link mechanism to lock the main landing gear (MLG) in the down position, and consequent collapse of the MLG during ground operation, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a visual inspection to determine the presence and condition of the cotter pin and nut of the lock link mechanism on the side struts and drag struts on the left- and right-hand MLG, in accordance with Boeing Alert Service Bulletin 777–32A0015, dated September 4, 1997. If any discrepancy is found, prior to further flight, correct the discrepancy in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 75 days or 400 flight cycles, whichever occurs first.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin 777–32A0015, dated September 4, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 9, 1998.

Issued in Renton, Washington, on January 15, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–1543 Filed 1–22–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 970918231–7231–01]

RIN 0691–AA29

Direct Investment Surveys: BE–12, Benchmark Survey of Foreign Direct Investment in the United States—1997

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: These final rules revise 15 CFR 806.17 to set forth reporting requirements for the BE–12, Benchmark Survey of Foreign Direct Investment in the United States—1997, and to delete the rules now in 15 CFR 806.17, which were for the last benchmark survey covering 1992.

The BE–12 benchmark survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under Section 3103(b) of the International Investment and Trade in Services Survey Act, which requires that a benchmark survey of foreign direct investment in the United States be conducted every five years. The last benchmark survey was conducted for 1992. The benchmark survey will obtain universe data on the financial and operating characteristics of, and on positions and transactions between, U.S. affiliates and their foreign parents. The data from the quinquennial survey will provide benchmarks for deriving current universe estimates of foreign direct investment from sample data collected in other BEA surveys in nonbenchmark years. The data are needed to measure the economic significance of foreign direct investment in the United States, measure changes in such investment, assess its impact on the U.S. economy, and based upon this assessment, make informed policy decisions regarding foreign direct investment in the United States. They are also required for compiling the U.S. international transactions, input-output, and national income and product accounts, and for preparing estimates of the international investment position of the United States.

Key changes from the previous benchmark survey include reducing respondent burden, particularly for small companies, by: increasing the exemption level for reporting on the survey to $3 million (measured by the company's total assets, sales, or net income) from $1 million in the 1992 survey; increasing the exemption level at which reporting on the long form version of the survey is required from $50 million to $100 million; and requiring reporting companies with assets, sales, or net income between $3 million and $30 million to report only selected data items on the short form version. In addition, the survey bases industry coding of reporting companies on the new North American Industry Classification System (NAICS) in place of the previous system which was based on the U.S. Standard Industrial Classification system; it collects new information on affiliated services transactions by type of service; and it modifies the detail collected on the

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composition of external financing of the reporting enterprise, on exports and imports of goods by product, and on the operations of foreign-owned businesses in individual States.

Forms for the 1997 benchmark survey are scheduled to be mailed out at the end of February 1998. Completed reports will be due to BEA on May 31, 1998.

EFFECTIVE DATE: These rules will be effective February 23, 1998.

FOR FURTHER INFORMATION CONTACT: R. David Belli, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: In the October 8, 1997 **Federal Register,** Volume 62, No 195, pages 52515–52518, the Bureau of Economic Analysis published a notice of proposed rulemaking to revise 15 CFR 806.17 to set forth reporting requirements for the BE–12, Benchmark Survey of Foreign Direct Investment in the United States—1997. No comments on the proposed rule were received. Thus, this final rule is the same as the proposed rule.

The benchmark survey is to be conducted by the Bureau of Economic Analysis, U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108, as amended by P.L. 98–573 and P.L. 101–533), hereinafter, "the Act." Section 3103(b) of the Act, as amended, requires that "With respect to foreign direct investment in the United States, the President shall conduct a benchmark survey covering year 1980, a benchmark survey covering year 1987, and benchmark surveys covering every fifth year thereafter * * *." In conducting surveys pursuant to this subsection, the President shall, among other things and to the extent he determines necessary and feasible—

(1) Identify the location, nature, and magnitude of, and changes in the total investment by any parent in each of its affiliates and the financial transactions between any parent and each of its affiliates;

(2) Obtain (A) information on the balance sheet of parents and affiliates and related financial data, (B) income statements, including the gross sales by primary line of business (with as much product line detail as necessary and feasible) of parents and affiliates in each country in which they have significant operations, and (C) related information regarding trade, including trade in both goods and services, between a parent and each of its affiliates and between each parent or affiliate and any other person;

(3) Collect employment data showing both the number of United States and foreign employees of each parent and affiliate and the levels of compensation, by country, industry, and skill level;

(4) Obtain information on tax payments by parents and affiliates by country; and

(5) Determine, by industry and country, the total dollar amount of research and development expenditures by each parent and affiliate, payments or other compensation for the transfer of technology between parents and their affiliates, and payments or other compensation received by parents or affiliates from the transfer of technology to other persons.

Reporting in the survey is mandatory. The responsibility for conducting benchmark surveys of foreign direct investment in the United States has been delegated to the Secretary of Commerce, who has redelegated it to BEA.

The benchmark surveys are BEA's censuses, intended to cover the universe of foreign direct investment in the United States in value terms. Foreign direct investment in the United States is defined as the ownership or control, directly or indirectly, by one foreign person of 10 percent or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.

The purpose of the benchmark survey is to obtain data on the amount, types, and financial and operating characteristics of foreign direct investment in the United States.

The data from the survey will be used to measure the economic significance of such investment and to analyze its effects on the U.S. economy. They will also be used in formulating, and assessing the impact of, U.S. policy on foreign direct investment.

They will provide benchmarks for deriving current universe estimates of direct investment from sample data collected in other BEA surveys. In particular, they will serve as benchmarks for the quarterly direct investment estimates included in the U.S. international transactions, input-output, and natural income and product accounts, and for preparing estimates of the international investment position of the United States.

The benchmark surveys are also the most comprehensive of BEA's surveys in terms of subject matter in order that they obtain the detailed information on foreign direct investment needed for policy purposes. As specified in the Act, policy areas of particular interest that should be addressed by the survey include, among other things, trade in both goods and services, employment and employee compensation, taxes, and technology.

The survey consists of an instruction booklet, a claim for not filing the BE–12, and the following report forms:

1. Form BE–12(LF) (Long Form) for reporting by nonbank U.S. affiliates with assets, sales, or net income of more than $100 million;

2. Form BE–12(SF) (Short Form) for reporting by nonbank U.S. affiliates with assets, sales, or net income of more than $3 million, but not more than $100 million;

3. Form BE–12 Bank for reporting by U.S. affiliates that are banks with assets, sales, or net income of more than $3 million.

Although the survey is intended to cover the universe of foreign direct investment in the United States, in order to minimize the reporting burden, U.S. affiliates with assets, sales, and net income each equal to or less than $3 million are exempt from reporting on Forms BE–12(LF), BE–12(SF), and BE–12 Bank, but are required to file, on Form BE–12(X), a claim for exemption from filing in the benchmark survey.

Key changes from the previous benchmark survey include reducing respondent burden, particularly for small companies, by: increasing the exemption level for reporting on the survey to $3 million (measured by the company's total assets, sales, or net income) from $1 million in the 1992 survey; increasing the exemption level at which reporting on Form BE–12(LF) (Long Form) is required from $50 million to $100 million; and requiring reporting companies with assets, sales, or net income between $3 million and $30 million to report only selected data items on Form BE–12(SF) (Short Form). In addition, industry coding of reporting companies will be based on the new North American Industry Classification System (NAICS) in place of the system which is based on the U.S. Standard Industrial Classification system; new information will be collected on affiliated services transactions by type of service; and the detail collected on the composition of external financing of the reporting enterprise will be modified, along with exports and imports of goods by product, and the operations of foreign-owned businesses in individual States.

Executive Order 12612

These rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Executive Order 12866

These rules have been determined to be not significant for purposes of E.O. 12866.

Paperwork Reduction Act

The collection of information required in these final rules has been approved by OMB (OMB No. 0608–0042).

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget Control Number; such a Control Number (0608–0042) has been displayed.

Public reporting burden for this collection of information is estimated to vary from 1 to 715 hours per response, with an average of 22 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0042, Washington, DC 20503.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that these rules will not have a significant economic impact on a substantial number of small entities. Most small businesses are not foreign owned, and many that are will not be required to report in the benchmark survey because their assets, sales, and net income are each equal to or less than the $3 million exemption level below which reporting is not required. Also, under these rules, companies with assets, sales, or net income above $3 million, but not above $100 million, will report on the abbreviated BE–12 short form, rather than on the BE–12 long form. In addition, companies with assets, sales, or net income between $3 million and $30 million will report only selected data items on the BE–12 short form. These provisions are intended to significantly reduce the reporting burden on smaller companies.

List of Subjects in 15 CFR Part 806

Balance of payments, Economic statistics, Foreign investments in the United States, Reporting and recordkeeping requirements.

Dated: December 22, 1997.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA amends 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR part 806 continues to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101–3108; and E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

2. Section 806.17 is revised to read as follows:

§ 806.17 Rules and regulations for BE–12, Benchmark Survey of Foreign Direct Investment in the United States—1997.

A BE–12, Benchmark Survey of Foreign Direct Investment in the United States will be conducted covering 1997. All legal authorities, provisions, definitions, and requirements contained in §§ 806.1 through 806.13 and § 806.15 (a) through (g) are applicable to this survey. Specific additional rules and regulations for the BE–12 survey are given in this section.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE–12, Benchmark Survey of Foreign Direct Investment in the United States—1997, contained in this section, whether or not they are contacted by BEA. Also, a person, or their agent, contacted by BEA concerning their being subject to reporting, either by sending them a report form or by written inquiry, must respond in writing pursuant to § 806.4. This may be accomplished by completing and returning either Form BE–12(X) within 30 days of its receipt if Form BE–12(LF), Form BE–12(SF), or Form BE–12 Bank do not apply, or by completing and returning Form BE–12(LF), Form BE–12(SF), or Form BE–12 Bank, whichever is applicable, by May 31, 1998.

(b) *Who must report.* A BE–12 report is required for each U.S. affiliate, i.e., for each U.S. business enterprise in which a foreign person owned or controlled, directly or indirectly, 10 percent or more of the voting securities if an incorporated U.S. business enterprise, or an equivalent interest if an unincorporated U.S. business enterprise, at the end of the business enterprise's 1997 fiscal year. A report is required even though the foreign person's ownership interest in the U.S. business enterprise may have been established or acquired during the reporting period. Beneficial, not record, ownership is the basis of the reporting criteria.

(c) *Forms to be filed.* (1) Form BE–12(LF)—Benchmark Survey of Foreign Direct Investment in the United States—1997 (Long Form) must be completed and filed by May 31, 1998, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1997 fiscal year, if:

(i) It is not a bank, and

(ii) On a fully consolidated, or, in the case of real estate investment, an aggregated basis, one or more of the following three items for the U.S. affiliate (not just the foreign parent's share) exceeded $100 million (positive or negative) at the end of, or for, its 1997 fiscal year:

(A) Total assets (do not net out liabilities);

(B) Sales or gross operating revenues, excluding sales taxes; or

(C) Net income after provision for U.S. income taxes.

(2) Form BE–12(SF)—Benchmark Survey of Foreign Direct Investment in the United States—1997 (Short Form) must be completed and filed by May 31, 1998, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1997 fiscal year; if:

(i) It is not a bank, and

(ii) On a fully consolidated, or, in the case of real estate investments, an aggregated basis, one or more of the following three items for the U.S. affiliate (not just the foreign parent's share) exceeded $3 million, but no one item exceeded $100 million (positive or negative) at the end of, or for, its 1997 fiscal year:

(A) Total assets (do not net out liabilities);

(B) Sales or gross operating revenues, excluding sales taxes; or

(C) Net income after provision for U.S. income taxes.

(3) Form BE–12 Bank—Benchmark Survey of Foreign Direct Investment in the United States—1997 BANK must be completed and filed by May 31, 1998, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1997 fiscal year, if:

(i) The U.S. affiliate is in "banking", which, for purposes of the BE–12

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survey, covers business enterprises engaged in deposit banking or closely related functions, including commercial banks, Edge Act corporations engaged in international or foreign banking, U.S. branches and agencies of foreign banks whether or not they accept domestic deposits, savings and loans, savings banks, and bank holding companies, i.e., holding companies for which over 50 percent of their total income is from banks which they hold, and

(ii) On a fully consolidated basis, one or more of the following three items for the U.S. affiliate (not the foreign parent's share) exceeded $3 million (positive or negative) at the end of, or for, its 1997 fiscal year:

(A) Total assets (do not net out liabilities);

(B) Sales or gross operating revenues, excluding sales taxes; or

(C) Net income after provision for U.S. income taxes.

(4) Form BE–12(X)—Benchmark Survey of Foreign Direct Investment in the United States—1997, Claim for Exemption from Filing BE–12(LF), BE–12(SF), and BE–12 Bank must be completed and filed within 30 days of the date it was received, or by May 31, 1998, whichever is sooner, by:

(i) Each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1997 fiscal year (whether or not the U.S. affiliate, or its agent, is contacted by BEA concerning its being subject to reporting in the 1997 benchmark survey), but is exempt from filing Form BE–12(LF), Form BE–12(SF), and Form BE–12 Bank; and

(ii) Each U.S. business enterprise, or its agent, that is contacted, in writing, by BEA concerning its being subject to reporting in the 1997 benchmark survey but that is not otherwise required to file the Form BE–12(LF), Form BE–12(SF), or Form BE–12 Bank.

(d) *Aggregation of real estate investments.* All real estate investments of a foreign person must be aggregated for the purpose of applying the reporting criteria. A single report form must be filed to report the aggregate holdings, unless written permission has been received from BEA to do otherwise. Those holdings not aggregated must be reported separately.

(e) *Exemption.* (1) A U.S. affiliate as consolidated, or aggregated in the case of real estate investments, is not required to file a Form BE–12(LF), BE–12(SF), or Form BE–12 Bank if each of the following three items for the U.S. affiliate (not just the foreign parent's share) did not exceed $3 million (positive or negative) at the end of, or for, its 1997 fiscal year:

(i) Total assets (do not net out liabilities);

(ii) Sales or gross operating revenues, excluding sales taxes; and

(iii) Net income after provision for U.S. income taxes.

(2) If a U.S. business enterprise was a U.S. affiliate at the end of its 1997 fiscal year but is exempt from filing a completed Form BE–12(LF), BE–12(SF), or Form BE–12 Bank, it must nevertheless file a completed and certified Form BE–12(X).

(f) *Due date.* A fully completed and certified Form BE–12(LF), Form BE–12(SF), or BE–12 Bank is due to be filed with BEA not later than May 31, 1998. A fully completed and certified Form BE–12(X) is due to be filed with BEA within 30 days of the date it was received, or by May 31, 1998, whichever is sooner.

[FR Doc. 98–1541 Filed 1–22–98; 8:45 am]
BILLING CODE 3510–06–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–7495; 34–39558; 35–25818; 39–2361; IC–23002]

RIN 3235–AG96

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting an updated edition of the EDGAR Filer Manual and is providing for its incorporation by reference into the Code of Federal Regulations.

DATES: Effective: The amendment to 17 CFR part 232 (Regulation S–T) will be effective on January 26, 1998.

Other dates: The new edition of the EDGAR Filer Manual (Release 5.40) will be effective on January 26, 1998. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of January 26, 1998.

FOR FURTHER INFORMATION CONTACT: In the Office of Information Technology, Michael E. Bartell at (202) 942–8800; for questions concerning investment company filings, Ruth Armfield Sanders, Senior Counsel, Division of Investment Management, at (202) 942–0633; and for questions concerning Corporation Finance company filings, Margaret R. Black at (202) 942–2933.

SUPPLEMENTARY INFORMATION: The Commission today announces the adoption of an updated EDGAR Filer Manual ("Filer Manual"), which sets forth the technical formatting requirements governing the preparation and submission of electronic filings through the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system.[1] Compliance with the provisions of the Filer Manual is required in order to assure the timely acceptance and processing of filings made in electronic format.[2] Filers should consult the Filer Manual in conjunction with the Commission's rules governing mandated electronic filing when preparing documents for electronic submission.[3]

In this edition of the EDGAR System and the Filer Manual (Release 5.40), filers will be able to specify either an Internet address or a CompuServe address or both to receive messages on the status of an electronic filing. Since messages sent through Internet may not be as secure as messages sent via CompuServe, certain company information will be omitted from Internet messages for suspended filings and test filings.

Release 5.40 adds two EDGAR submission types for filings submitted by investment companies and deletes or changes the header information of several existing submission types. These changes are being made to accommodate the recent rule and form amendments changing the method by which certain investment companies calculate and pay registration fees.[4] The following submission types have been added for the filing of initial registration statements and pre-effective amendments on Form N–14 by closed-end investment companies: N–14 8C and N–14 8C/A. In addition, the following investment company submission types will no longer be subject to fees and the fee-related tags have been removed: N–1, N–1/A, N–1A, N–1A/A, N–3, N–3/A, N–4, N–4/A, N–14, N–14/A, N–14AE, N–14AE/A, S–6, S–6/A, and 487. Finally, submission types 24F–2NT and 24F–3NT (and their amendments) must be filed within 90 days of the registrant's fiscal year end. This is a change from the 60-day requirement in effect prior to October 11, 1997.

The following investment company submission types will no longer be accepted by the EDGAR system: 24F–1, 24F–2EL, 24F–2EL/A, 24F–2TM, 24F–2TM/A, N–1A EL, N–1A EL/A, N–3 EL, N–3 EL/A, N–4 EL, N–4 EL/A, S–6EL24, S–6EL24/A, 485A24E, 485A24F, 485B24E, 485B24F, 485BXTE, 485BXTF, N14EL24, N14EL24/A, N14AE24, and N14AE24/A.

Rule 301 of Regulation S–T also is being amended to provide for the incorporation by reference of the Filer Manual into the Code of Federal Regulations, which incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. The revised Filer Manual and the amendment to Rule 301 will be effective on January 26, 1998.

Paper copies of the updated Filer Manual may be obtained at the following address: Public Reference Room, U.S. Securities and Exchange Commission, Mail Stop 1–2, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronic format copies will be available on the EDGAR electronic bulletin board and posted to the SEC's Web Site. The SEC's Web Site address for the Manual is http://www.sec.gov/asec/ofis/filerman.htm. Copies also may be obtained from Disclosure Incorporated, the paper and microfiche contractor for the Commission, at (800) 638–8241.

Since the Filer Manual relates solely to agency procedure or practice, publication for notice and comment is not required under the Administrative Procedure Act.[5] It follows that the requirements of the Regulatory Flexibility Act[6] do not apply.

The effective date for the updated Filer Manual and the rule amendments is January 26, 1998. In accordance with the Administrative Procedure Act 5 U.S.C. 553(d)(3), the Commission finds that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system is scheduled to be upgraded to Release 5.40 on January 24, 1998. The Commission believes that it is necessary to coordinate the effectiveness of the updated Filer Manual with the scheduled system upgrade in order to avoid confusion to EDGAR filers.

Statutory Basis

The amendment to Regulation S–T is being adopted under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[7] Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,[8] Section 20 of the Public Utility Holding Company Act of 1935,[9] Section 319 of the Trust Indenture Act of 1939,[10] and Sections 8, 30, 31, and 38 of the Investment Company Act.[11]

List of Subjects in 17 CFR Part 232

Incorporation by reference, Investment companies, Registration requirements, Reporting and recordkeeping requirements, Securities.

Text of the Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Electronic filings shall be prepared in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The January 1998 edition of the *EDGAR Filer Manual: Guide for Electronic Filing with the U.S. Securities and Exchange Commission (Release 5.40)* is incorporated into the Code of Federal Regulations by reference, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Compliance with the requirements found therein is essential to the timely receipt and acceptance of documents filed with or otherwise submitted to the Commission in electronic format. Paper copies of the EDGAR Filer Manual may be obtained at the following address: Public Reference Room, U.S. Securities and Exchange Commission, Mail Stop 1–2, 450 5th Street, N.W., Washington, D.C. 20549. They also may be obtained from Disclosure Incorporated by calling (800) 638–8241. Electronic format copies are available through the EDGAR electronic bulletin board and posted to the SEC's Web Site. The SEC's Web Site address for the Manual is http://www.sec.gov/asec/ofis/filerman.htm. Information on becoming an EDGAR E-mail/electronic bulletin board subscriber is available by contacting CompuServe Inc. at (800) 576–4247.

By the Commission.

Dated: January 20, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–1646 Filed 1–22–98; 8:45 am]
BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 175 and 178

[Docket No. 95F–0210]

Indirect Food Additives: Adhesives and Components of Coatings; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2,2′-(2,5-thiophenediyl)-bis(5-*tert*-butylbenzoxazole) as an optical brightener in pressure-sensitive adhesives and in all polymers used in contact with food. This action is in response to a petition filed by Ciba-Geigy Corp.

DATES: The regulation is effective January 23, 1998. Submit written objections and requests for a hearing by February 23, 1998.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

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[1] The Filer Manual originally was adopted on April 1, 1993, and became effective on April 26, 1993. Release No. 33–6986 (Apr. 1, 1993) [58 FR 18638]. The most recent update to the Filer Manual was implemented on August 23, 1997. *See* Release No. 33–7432 (July 29, 1997) [62 FR 41841].

[2] *See* Rule 301 of Regulation S–T (17 CFR 232.301).

[3] *See* Release Nos. 33–6977 (Feb. 23, 1993) [58 FR 14628], IC–19284 (Feb. 23, 1993) [58 FR 14848], 35–25746 (Feb. 23, 1993) [58 FR 14999], and 33–6980 (Feb. 23, 1993) [58 FR 15009] for a comprehensive treatment of the rules adopted by the Commission governing mandated electronic filing. *See also* Release No. 33–7122 (Dec. 19, 1994) [59 FR 67752], in which the Commission made the EDGAR rules final and applicable to all domestic registrants, Release No. 33–7427 (July 1, 1997) [62 FR 36450], adopting the most recent minor amendments to the EDGAR rules; and Release No. 33–7472 (Oct. 24, 1997) [62 FR 58647], in which the Commission announced that, as of January 1, 1998, it would not accept paper filings required to be filed electronically.

[4] *See* Release No. 33–7448 (Sep. 10, 1997) [62 FR 47934]. The rule amendments adopted in that release provided for automatic registration of an indefinite number of securities by all open-end management investment companies and unit investment trusts. As a result, election by these issuers of registration of an indefinite number of shares is no longer necessary or appropriate. Accordingly, all EDGAR submission types used for making that election are being eliminated.

[5] 5 U.S.C. 601–612.

[6] 5 U.S.C. 553(b).

[7] 15 U.S.C. 77f, 77g, 77h, 77j and 77s(a).

[8] 15 U.S.C. 78c, 78l, 78m, 78n, 78o, 78w and 78*ll*.

[9] 15 U.S.C. 79t.

[10] 15 U.S.C. 77sss.

[11] 15 U.S.C. 80a–8, 80a–29, 80a–30 and 80a–37.

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FOR FURTHER INFORMATION CONTACT: John R. Bryce, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3023.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 18, 1995 (60 FR 43157), FDA announced that a food additive petition (FAP 5B4471) had been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532–2188. The petition proposed to amend the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the safe use of 2,2′-(2,5-thiophenediyl)-bis(5-*tert*-butylbenzoxazole) in all polymers intended for use in food packaging and in adhesives complying with § 175.125 *Pressure-sensitive adhesives* (21 CFR 175.125).

In order to clarify the use of this additive as an optical brightener, the petition also proposed to list the use of the additive in adhesives complying with § 175.105 (21 CFR 175.105) in § 178.3297. Because the additive is currently listed in § 175.105 without limitation, use of the additive as an optical brightener in adhesives complying with § 175.105 is a currently permitted use that requires no further safety evaluation. Accordingly, this final rule lists the use of the additive in adhesives complying with § 175.105 in § 178.3297 *Colorants for polymers*.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive as an optical brightener in pressure-sensitive adhesives in § 175.125, and in all polymers intended for use in food packaging in § 178.3297, is safe; that the additive will have the intended technical effect; and that therefore, the regulations in §§ 175.125 and 178.3297 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before February 23, 1998, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 175

Adhesives, Food additives, Food packaging.

21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR parts 175 and 178 are amended to read as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 175.125 is amended by adding paragraph (a)(7) and by revising paragraph (b)(1) to read as follows:

§ 175.125 Pressure-sensitive adhesives.

* * * * *

(a) * * *

(7) 2,2′-(2,5-Thiophenediyl)-bis(5-*tert*-butylbenzoxazole) (CAS Reg. No. 7128–64–5) as an optical brightener at a level not to exceed 0.05 percent by weight of the finished pressure-sensitive adhesive.

* * * * *

(b) * * *

(1) Substances listed in paragraphs (a)(1), (a)(2), (a)(3), (a)(5), (a)(6), and (a)(7) of this section, and those substances prescribed by paragraph (a)(4) of this section that are not identified in paragraph (b)(2) of this section.

* * * * *

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

3. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

4. Section 178.3297 is amended in the table in paragraph (e) by revising the entry for "2,2′-(2,5-Thiophenediyl)-bis(5-*tert*-butylbenzoxazole)" under the headings "Substances" and "Limitations" to read as follows:

§ 178.3297 Colorants for polymers.

* * * * *

(e) * * *

Substances	Limitations
2,2′-(2,5-Thiophenediyl)-bis(5-*tert*-butylbenzoxazole) (CAS Reg. No. 7128–64–5).	For use as an optical brightener: 1. In all polymers at levels not to exceed 0.015 percent by weight of the polymer. The finished articles are to contact food only under conditions of use A through H described in Table 2 of § 176.170(c) of this chapter. 2. In all polymers at levels not to exceed 0.05 percent by weight of the polymer. The finished articles shall contact foods only of the types identified in Table 1 of § 176.170(c) of this chapter, under Categories I, II, IV–B, VI–A, VI–B, VI–C, VII–B, and VIII under conditions of use A through H described in Table 2 of § 176.170(c) of this chapter. 3. In adhesives complying with § 175.105 of this chapter and in pressure-sensitive adhesives complying with § 175.125 of this chapter.

Dated: January 5, 1998.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–1539 Filed 1–22–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 820

[Docket No. 90N–0172]

RIN 0910–AA09

Quality System Design Control; Open Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Announcement of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following meeting: Quality System Design Control open public meeting. The topic to be discussed is the midcourse review of the new design control requirements. This action is being taken in accordance with the current good manufacturing (CGMP) final rule that appeared in the **Federal Register** of October 7, 1996.

DATES: The meeting will be held on, February 2, 1998, from 8:30 a.m. to 4:30 p.m. Written requests for oral presentations by January 28, 1998.

ADDRESSES: The meeting will be held at the National Institutes of Health (NIH), Natcher Auditorium, 45 Center Dr., Bldg. 45, Bethesda, MD. Contact for any changes: (1) Via Internet at http://www.fda.gov/cdrh/gmp, or (2) telephone toll-free at 1–800–638–2041.

FOR FURTHER INFORMATION CONTACT:

For information regarding registration: Mary Ann Fitzgerald, or

For information regarding the meeting or requests for oral presentations: Kimberly A. Trautman, Center for Devices and Radiological Health (HFZ–341), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4648, FAX 301–594–4672.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 7, 1996 (61 FR 52602), FDA stated that it would hold an open public meeting in early 1998 to discuss, and to further explore any concerns industry might be having in implementing the new design control requirements. Specifically, the results of the first several months of design control inspections will be reviewed and any adjustments to the designated inspectional strategy of guidances will be addressed. Also, FDA will evaluate the information gathered at this point and determine if design control requirements, as written in the final rule, are appropriate to obtain the goals expressed in the preamble. Particular attention will be paid to clarity of information obtained, the appropriateness of the information collected with respect to the design control requirements, the manner in which the investigators are writing their observations, and any requirements that seem to be giving manufacturers a problem or where there might be misunderstandings as to what the regulation requires. It is important to note that only the requirements and issues surrounding design controls codified will be addressed.

Fax written requests for oral presentations, (including name, title, firm name, address, telephone, and fax number), and an outline of your presentation to the contact person listed above by January 28, 1998. No telephone requests will be accepted. You will be notified by facsimile whether or not the speaker's list is full. If you cannot be reached by facsimile, please note that in your request.

If you need special accommodations due to a disability, please contact Georgette Smith, NIH Conference Center, 301–496–9966, at least 7 days in advance.

Dated: January 20, 1998.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 98–1822 Filed 1-21-98; 3:22 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 104

[DoD Instruction 1205.12]

RIN 0790–AG52

Civilian Employment and Reemployment Rights of Applicants for, and Service Members and Former Service Members of the Uniformed Services

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This part identifies DoD guidelines for implementing policy, assigns responsibilities, and prescribes procedures for informing Service members of their reemployment protections. It updates, codifies, and strengthens the civilian employment rights and benefits of Service members and individuals who apply for uniformed service, and specifies the

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obligations of Service members and applicants for uniformed service.

DATES: This part is effective February 1, 1998. Comments must be received no later than March 24, 1998.

FOR FURTHER INFORMATION CONTACT: Colonel Rowan W. Bronson, OASD/RA (M&P), (703) 693–7490.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that 32 CFR part 104 does not pertain to a military or foreign affairs function of the United States. It is not a significant regulatory action. This final rule does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been determined that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it is related to a military or foreign affairs function of the United States. It would not, if promulgated, have a significant economic impact on a substantial number of small entities. The law provides employment and reemployment protections for Active and Reserve Component members, as well as individuals who apply to be members of the Uniformed Services.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that this part does not impose any reporting or recordkeeping requirements on the public under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 104

Government employees, Military personnel.

Accordingly, Title 32, Chapter 1, 32 CFR part 104, is added to read as follows:

PART 104—CIVILIAN EMPLOYMENT AND REEMPLOYMENT RIGHTS OF APPLICANTS FOR, AND SERVICE MEMBERS AND FORMER SERVICE MEMBERS OF THE UNIFORMED SERVICES

Sec.

104.1 Purpose.
104.2 Applicability.
104.3 Definitions.
104.4 Policy.
104.5 Responsibilities.
104.6 Procedures.
Appendix A to part 104—Civilian Employment And Reemployment Rights, Benefits And Obligations For Applicants For, And Service Members And Former Service Members Of The Uniformed Services
Appendix B to part 104—Sample Employer Notification Of Uniformed Service

Authority: 10 U.S.C. 1161.

§ 104.1 Purpose.

This part:

(a) Updates implementation policy, assigns responsibilities, and prescribes procedures for informing Service members who are covered by the provisions of 38 U.S.C chapter 43 and individuals who apply for uniformed service, of their civilian employment and reemployment rights, benefits and obligations.

(b) Implements 38 U.S.C. chapter 43, which updated, codified, and strengthened the civilian employment and reemployment rights and benefits of Service members and individuals who apply for uniformed service, and specifies the obligations of Service members and applicants for uniformed service.

§ 104.2 Applicability.

This part applies to the Office of the Secretary of Defense; the Military Departments, including the Coast Guard when it is not operating as a Military Service in the Department of the Navy by agreement with the Department of Transportation; the Chairman of the Joint Chiefs of Staff; and the Defense Agencies (referred to collectively in this part as "the DoD Components"). The term "Military Departments," as used in this part, refers to the Departments of the Army, Navy, and Air Force. The term "Secretary concerned" refers to the Secretaries of the Military Departments and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a Service in the Department of the Navy. The term "Military Services" refers to the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard.

§ 104.3 Definitions.

Critical mission. An operational mission that requires the skills or resources available in a Reserve component or components.

Critical requirement. A requirement in which the incumbent possesses unique knowledge, extensive experience, and specialty skill training to successfully fulfill the duties or responsibilities in support of the mission, operation or exercise. Also, a requirement in which the incumbent must gain the necessary experience to qualify for key senior leadership positions within his or her Reserve component.

Escalator position. This is established by the principle that the returning Service member is entitled to the position of civilian employment that he or she would have attained had he or she remained continuously employed by that civilian employer. This may be a position of greater or lesser responsibilities, to include a layoff status, when compared to the employees of the same seniority and status employed by the company.

Impossible or unreasonable. For the purpose of determining when providing advance notice of uniformed service to an employer is impossible or unreasonable, the unavailability of an employer or employer representative to whom notification can be given, an order by competent military authority to report for uniformed service within forty-eight hours of notification, or other circumstances that the Office of the Assistant Secretary of Defense for Reserve Affairs may determine are impossible or unreasonable are sufficient justification for not providing advance notice of pending uniformed service to an employer.

Military necessity. For the purpose of determining when providing advance notice of uniformed service is not required, a mission, operation, exercise or requirement that is classified, or a pending or ongoing mission, operation, exercise or requirement that may be compromised or otherwise adversely affected by public knowledge is sufficient justification for not providing advance notice to an employer.

Non-career service. The period of active uniformed service required to complete the initial uniformed service obligation: a period of active duty or full-time National Guard duty that is for a specified purpose and duration with no expressed or implied commitment for continued active duty; or participation in a Reserve component as a member of the Ready Reserve performing annual training, active duty for training or inactive duty training.

Continuous or repeated active uniformed service or full-time National Guard duty that results in eligibility for a regular retirement from the Armed Forces is not considered non-career service.

Officer. For determining those Service officials authorized to provide advance notice to a civilian employer of pending uniformed service by a Service member or an individual who has applied for uniformed service, an officer shall include all commissioned officers, warrant officers, and non-commissioned officers authorized by the Secretary concerned to act in this capacity.

Uniformed service. Performance of duty on a voluntary or involuntary basis in the Army, the Navy, the Air Force, the Marine Corps or the Coast Guard, including their Reserve components, when the Service member is engaged in active duty, active duty for special work, active duty for training, initial active duty for training, inactive duty training, annual training or full-time National Guard duty, and, for purposes of this part, a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform such duty.

§ 104.4 Policy.

It is DoD policy to support non-career service by taking appropriate actions to inform and assist uniformed Service members and former Service members who are covered by the provisions of 38 U.S.C. chapter 43, and individuals who apply for uniformed service of their rights, benefits, and obligations under 38 U.S.C. Chapter 43. Such actions include:

(a) Advising non-career Service members and individuals who apply for uniformed service of their employment and reemployment rights and benefits provided in 38 U.S.C. chapter 43, as implemented by this part, and the obligations they must meet to exercise those rights.

(b) Providing assistance to Service members, former Service members and individuals who apply for uniformed service in exercising employment and reemployment rights and benefits.

(c) Providing assistance to civilian employers of non-career Service members in addressing issues involving uniformed service as it relates to civilian employment or reemployment.

(d) Considering requests from civilian employers of members of the National Guard and Reserve to adjust a Service member's scheduled absence from civilian employment because of uniformed service or make other accommodations to such requests, when it is reasonable to do so.

(e) Documenting periods of uniformed service that are exempt from a Service member's cumulative 5-year absence from civilian employment to perform uniformed service as provided in 38 U.S.C. chapter 43 and implemented by this part.

(f) Providing, at the Service member's request, necessary documentation concerning a period or periods of service, or providing a written statement that such documentation is not available, that will assist the Service member in establishing civilian reemployment rights, benefits and obligations.

§ 104.5 Responsibilities.

(a) The Assistant Secretary of Defense for Reserve Affairs, under the Under Secretary of Defense for Personnel and Readiness, shall:

(1) In conjunction with the Departments of Labor (DoL) and Veterans Affairs, the Office of Personnel Management (OPM), and other appropriate Departments and activities of the executive branch, determine actions necessary to establish procedures and provide information concerning civilian employment and reemployment rights, benefits and obligations.

(2) Establish procedures and provide guidance to the Secretaries concerned about civilian employment and reemployment rights, benefits and obligations of Service members who are covered by the provisions of 38 U.S.C. chapter 43 and individuals who apply for uniformed service as provided in 38 U.S.C. chapter 43. This responsibility shall be carried out in coordination with DoL, OPM, and the Federal Retirement Thrift Investment Board.

(3) Monitor compliance with 38 U.S.C. chapter 43 and this part.

(4) Publish in the **Federal Register**, DoD policies and procedures established to implement 38 U.S.C. chapter 43.

(b) The Secretaries of the Military Departments and the Commandant of the Coast Guard shall establish procedures to:

(1) Ensure compliance with this part.

(2) Inform Service members who are covered by the provisions of 38 U.S.C. chapter 43 and individuals who apply for uniformed service of the provisions of 38 U.S.C. chapter 43 as implemented by this part.

(3) Provide available documentation, upon request from a Service member or former Service member, that can be used to establish reemployment rights of the individual.

(4) Specify, as required, and document those periods of active duty that are exempt from the 5-year cumulative service limitation that a Service member may be absent from a position of civilian employment while retaining reemployment rights.

(5) Provide assistance to Service members and former Service members who are covered by the provisions of 38 U.S.C. chapter 43, and individuals who apply for uniformed service in exercising employment and reemployment rights.

(6) Provide assistance, as appropriate, to civilian employers of Service members who are covered by the provisions of 38 U.S.C. chapter 43 and individuals who apply for uniformed service.

(7) Cooperate with the DoL in discharging its responsibilities to assist persons with employment and reemployment rights and benefits.

(8) Cooperate with OPM in carrying out its placement responsibilities under 38 U.S.C. chapter 43.

§ 104.6 Procedures.

The Secretaries of the Military Departments and the Commandant of the Coast Guard shall:

(a) Inform individuals who apply for uniformed service and members of a Reserve component who perform or participate on a voluntary or involuntary basis in active duty, active duty for special work, initial active duty for training, active duty for training, inactive duty training, annual training and full-time National Guard duty, of their employment and reemployment rights, benefits, and obligations as provided under 38 U.S.C. chapter 43 and described in Appendix A of this part. Other appropriate materials may be used to supplement the information contained in Appendix A of this part.

(1) Persons who apply for uniformed service shall be advised that DoD strongly encourages applicants to provide advance notice in writing to their civilian employers of pending uniformed service or any absence for the purpose of an examination to determine the person's fitness to perform uniformed service. Providing written advance notice is preferable to verbal advance notice since it is easier to establish that this basic prerequisite to retaining reemployment rights was fulfilled. Regardless of the means of providing advance notice, whether verbal or written, it should be provided as early as practicable.

(2) Annually and whenever called to duty for a contingency operation, advise Service members who are participating in a Reserve component of:

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(i) The requirement to provide advance written or verbal notice to their civilian employers for each period of military training, active and inactive duty, or full-time National Guard duty.

(A) Reserve component members shall be advised that DoD strongly encourages that they provide advance notice to their civilian employers in writing for each period of pending uniformed service. Providing written advance notice is preferable to verbal advance notice since it easily establishes that this prerequisite to retaining reemployment rights was fulfilled.

(B) Regardless of the means of providing advance notice, whether written or verbal, it should be provided as early as practicable. DoD strongly recommends that advance notice to civilian employers be provided at least 30 days prior to departure for uniformed service when it is feasible to do so.

(C) The advance notice requirement can be met by providing the employer with a copy of the unit annual training schedule or preparing a standardized letter. The sample employer notification letter in Appendix B of this part may be used for this purpose.

(ii) The 5-year cumulative limit on absences from their civilian employment due to uniformed service and exemptions to that limit.

(iii) The requirements for reporting or submitting application to return to their position of civilian employment.

(iv) Their general reemployment rights and benefits.

(v) The option for continuing employer provided health care, if the employer provides such a benefit.

(vi) The opportunity to use accrued leave in order to perform uniformed service.

(vii) Who they may contact to obtain assistance with employment and reemployment questions and problems.

(b) Inform Service members who are covered by the provisions of 38 U.S.C. Chapter 43, upon completion of an extended period of active duty and before separation from active duty of their employment and reemployment rights, benefits, and obligations as provided under 38 U.S.C. Chapter 43. This shall, as a minimum, include notification and reporting requirements for returning to employment with their civilian employer. While Appendix A of this part provides the necessary information to satisfy this requirement, other appropriate materials may be used to supplement this information.

(c) Issue orders that span the entire period of service when ordering a member of the National Guard or Reserve to active duty for a mission or requirement. Order modifications shall be initiated, as required, to ensure continuous active duty should the period required to complete the mission or requirement change.

(d) Document the length of a Service member's initial period of military service obligation performed on active duty.

(e) Determine and certify in writing those additional training requirements not already exempt for the 5-year cumulative service limit which are necessary for the professional development, or skill training or retraining for members of the National Guard or Reserve. Once the Secretary concerned certifies those training requirements, performance of uniformed service to complete a certified training requirement is exempt from the 5-year cumulative service limit.

(f) Determine those periods of active duty when a Service member is ordered to, or retained on, active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or Congress. If the purpose of the order to, or retention on, active duty is for the direct or indirect support of the war or national emergency, then the orders of the Service member should be so annotated, since that period of service is exempt from the 5-year cumulative service limit established in 38 U.S.C. Chapter 43.

(g) Determine those periods of active duty performed by a member of the National Guard or Reserve that are designated by the Secretary concerned as a critical mission or critical requirement, and for that reason are exempt form the 5-year cumulative service limit. The authority for determining what constitutes a critical mission or requirement shall not be delegated below the Assistant Secretary level or the Commandant of the Coast Guard. The designation of a critical requirement to gain the necessary experience to qualify for key senior leadership positions shall be used judiciously, and the necessary experience and projected key leadership positions fully documented. This authority shall not be used to grant exemptions to avoid the cumulative 5-year service limit established by 38 U.S.C. Chapter 43 or to extend individuals in repeated statutory tours. The Assistant Secretary of Defense for Reserve Affairs shall be notified in writing of all occasions in which a Service member is granted more than one exemption for a critical requirement when the additional exemption(s) extend the Service member beyond the 5-year cumulative service limit established in 38 U.S.C. Chapter 43.

(h) When appropriate, ensure that orders to active duty or orders retaining members on active duty specify the statutory or Secretarial authority for those orders when such authority meets one or more of the exemptions from the 5-year cumulative service limit provided in 38 U.S.C. Chapter 43. If circumstances arise that prevent placing this authority on the orders, the authority shall be included in a separation document and retained in the Service member's personnel file.

(i) Ensure that appropriate documents verifying any period of service exempt from the 5-year cumulative service limit are place in the Service member's personnel record or other appropriate record.

(j) Document those circumstances that prevent a Service member from providing advance notification of uniformed service to a civilian employer because of military necessity or when advance notification is otherwise impossible or unreasonable, as defined in § 104.3.

(k) Designate those officers, as defined in § 104.3, who are authorized by the Secretary concerned to provide advance notification of service to a civilian employer on behalf of a Service member or applicant for uniformed service.

(l) Provide documentation, upon request from a Service member or former Service member, that may be used to satisfy the Service member's entitlement to statutory reemployment rights and benefits. Appropriate documentation may include, as necessary:

(1) The inclusive dates of the initial period of military service obligation performed on active duty.

(2) Any period of service during which a Service member was required to serve because he or she was unable to obtain a release from active duty though no fault of the Service member.

(3) The cumulative length of all periods of active duty performed.

(4) The authority under which a Service member was ordered to active duty when such service was exempt from the 5-year cumulative service limit.

(5) The date the Service member was last released from active duty, active duty for special work, initial active duty for training, active duty for training, inactive duty training, annual training or full-time National Guard duty. This documentation establishes the timeliness of reporting to, or submitting application to return to, a position of civilian employment.

(6) Whether service requirements prevent providing a civilian employer with advance notification of pending service.

(7) That the Service member's entitlement to reemployment benefits has not been terminated because of the character of service as provided in 38 U.S.C. 4304.

(8) When appropriate, a statement that sufficient documentation does not exist.

(m) Establish a central point of contact at a headquarters or regional command who can render assistance to active duty Service members and applicants for uniformed service about employment and reemployment rights, benefits and obligations.

(n) Establish points of contact in each Reserve component headquarters or Reserve regional command, and each National Guard State headquarters who can render assistance to:

(1) Members of the National Guard or Reserve about employment and reemployment rights, benefits and obligations.

(2) Employers of National Guard and Reserve members about duty or training requirements arising from a member's uniformed service or service obligation.

(o) A designated Reserve component representative shall consider, and accommodate when it does not conflict with military requirements, a request from a civilian employer of a National Guard and Reserve member to adjust a Service member's absence from civilian employment due to uniformed service when such service has an adverse impact on the employer. The representative may make arrangements other than adjusting the period of absence to accommodate such a request when it serves the best interest of the military and is reasonable to do so.

Appendix A to Part 104—Civilian Employment and Reemployment Rights, Benefits and Obligations for Applicants for, and Service Members and Former Service Members of the Uniformed Services

A. Scope of Coverage

1. The Uniformed Services Employment and Reemployment Rights Act (USERRA) which is codified in 38 U.S.C. Chapter 43 provides protection to anyone absent from a position of civilian employment because of uniformed service if:

a. Advance written or verbal notice was given to the civilian employer.

(1) Advance notice is not required if precluded by military necessity, or is otherwise unreasonable or impossible.

(2) DoD strongly encourages Service members and or applicants for service to provide advance notice to their civilian employer in writing for each period of pending uniformed service. Providing written advance notice is preferable to verbal advance notice since it easily establishes that this prerequisite to retaining reemployment rights was fulfilled. Regardless of the means of providing advance notice, whether written or verbal, it should be provided as early as practicable. Also, DoD strongly recommends that Reserve component members provide advance notice to their civilian employers at least 30 days in advance when it is feasible to do so. The advance notice requirement can be met by providing the employer with a copy of the unit annual training schedule or preparing a standardized letter. The sample employer notification letter in Appendix B of this part may be used for this purpose;

b. The cumulative length of absences does not exceed 5 years;

c. The individual reports to, or submits an application for reemployment, within the specified period based on duration of services as described in section D of this Appendix; and,

d. The person's character of service was not disqualifying as described in paragraphs A.2.d. and e. of this appendix.

2. A civilian employer is not required to reemploy a person if:

a. The civilian employment was for a brief, non-recurrent period and there was no reasonable expectation that the employment would continue indefinitely or for a significant period.

b. The employer's circumstances have so changed as to make reemployment impossible or unreasonable.

c. The reemployment imposes an undue hardship on the employer in the case of an individual who:

(1) Has incurred a service connected disability; or,

(2) Is not qualified for the escalator position or the position last held, and cannot become qualified for any other position of lesser status and pay after a reasonable effort by the employer to qualify the person for such positions.

d. The Service member or former Service member was separated from a uniformed service with a dishonorable or bad conduct discharge, or separated from a uniformed service under other than honorable conditions.

e. An officer dismissed from any Armed Force or dropped from the rolls of any Armed Force as prescribed under 10 U.S.C. 1161.

f. The cumulative length of service exceeds five years and no portion of the cumulative five years of uniformed service falls within the exceptions described in section C. of this Appendix.

g. An employer asserting that he or she is not required to reemploy an individual because the employment was for a brief, non-recurrent period, or reemployment is impossible or unreasonable, or reemployment imposes an undue hardship on the employer, that employer has the burden of proving his or her assertion.

3. Entitlement to protection under 38 U.S.C. Chapter 43 does not depend on the timing, frequency, and duration of training or uniformed service.

B. Prohibition Against Discrimination and Acts of Reprisal

1. A person who is a member of, applies to be a member of, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any employment benefit by an employer on the basis of that membership, an application for membership, performance of service, or an obligation for service in the uniformed services.

2. A person, including a non-Service member, shall not be subject to employment discrimination or any adverse employment action because he or she has taken an action to enforce a protection afforded a Service member, has testified or made a statement in or in connection with any proceeding concerning employment and reemployment rights of a service member, has assisted or participated in an investigation, or has otherwise exercised any right provided by 38 U.S.C. Chapter 43.

3. An employer shall be considered to have engaged in an act of discrimination if an individual's membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such membership, application for membership, performance of service, application for service or obligation.

C. Exceptions to the Maximum Period of Service for Coverage

In order to retain reemployment rights and benefits provided by 38 U.S.C. Chapter 43, the cumulative length of absences from the same employer cannot exceed 5 years. Not counted toward this limit is:

1. Service beyond 5 years if required to complete an initial service obligation;

2. Service during which an individual was unable to obtain release orders before the expiration of the 5-year cumulative service limit through no fault of his or her own;

3. Inactive duty training; annual training; ordered to active duty for unsatisfactory participation; active duty by National Guardsmen for encampments, maneuvers, field operations or coastal defense; or to fulfill additional training requirements, as determined by the Secretary concerned, for professional skill development, or to complete skill training or retraining;

4. Involuntary order or call to active duty, or retention on active duty;

5. Ordered to or retained on active duty during a war or national emergency declared by the President or Congress;

6. Ordered to active duty in support of an operational mission for which personnel have been involuntarily called to active duty;

7. Performing service in support of a critical mission or requirement, as determined by the Secretary concerned;

8. Performing service in the National Guard when ordered to active duty by the President to suppress an insurrection or rebellion, repel an invasion, or execute laws of the United States; and,

9. Voluntary recall to active duty of retired regular Coast Guard officers or retired enlisted Coast Guard members.

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D. Applications for Reemployment

1. For service of 30 days or less, or for an absence for an examination to determine the individual's fitness to perform uniformed service, the Service member or applicant must report to work not later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of service or the examination, after allowing for an eight hour rest period following safe transportation to his or her residence.

2. For service of 31 days or more but less that 181 days, the Service member must submit an application for reemployment not later than 14 days after completion of service, or by the next full calendar day when submitting an application within the 14 day limit was impossible or unreasonable through no fault of the Service member.

3. For service of 181 days or more, the Service member must submit an application for reemployment not later than 90 days after the completion of service.

4. If hospitalized or convalescing from an illness or injury incurred or aggravated during service, the Service member must, at the end of the period necessary for recovery, follow the same procedures, based on length of service, as described in sections D.1. through D.3. of this appendix. The period of hospitalization or convalescence may not normally exceed 2 years.

5. Anyone who fails to report or apply for reemployment within the specified period shall not automatically forfeit entitlement to reemployment rights and benefits, but is subject to the rules of conduct, established policies, general practices of the employer pertaining to explanations and discipline because of an absence from scheduled work.

E. Documentation Upon Return

1. If service is for 31 days or more, a Service member must provide documentation, upon request from the employer, that establishes:

a. He or she made application to return to work within the prescribed time period;

b. He or she has not exceeded the 5-year cumulative service limit; and

c. His or her reemployment rights were not terminated because of character of service as described in paragraphs A.2.d. and e. of this appendix.

2. Failure to provide documentation cannot serve as a basis for denying reemployment to the Service member, former Service member, or applicant if documentation does not exist or is not readily available at the time of the employer's request. However, if after reemployment, documentation becomes available that establishes that the Service member or former Service member does not meet one or more of the requirements contained in section E.1. of this appendix, the employer may immediately terminate the employment.

F. Position To Which Entitled Upon Reemployment

1. Reemployment position for service of 90 days or less:

a. The position the person would have attained if continuously employed (the "escalator" position) and if qualified to perform the duties; or,

b. The position in which the person was employed in when he or she departed for uniformed service, but only if the person is not qualified to perform the duties of the escalator position, despite the employer's reasonable efforts to qualify the person for the escalator position.

2. Reemployment position for service of 91 days or more:

a. The escalator position, or a position of like seniority, status and pay, the duties of which the person is qualified to perform; or,

b. The position in which the person was employed in when he or she departed for uniformed service or a position of like seniority, status and pay, the duties of which the person is qualified to perform, but only if the person is not qualified to perform the duties of the escalator position after the employer has made a reasonable effort to qualify the person for the escalator position.

3. If a person cannot become qualified, after reasonable efforts by the employer to qualify the person, for either the escalator position or the position formerly occupied by the employee as provided in sections F.1. and F.2. of this appendix, for any reason (other than disability), the person must be employed in any other position of lesser status and pay that the person is qualified to perform, with full seniority.

G. Position To Which Entitled if Disabled

If a person who is disabled because of service cannot (after reasonable efforts by the employer to accommodate the disability) be employed in the escalator position, he or she must be reemployed:

1. In any other position that is equivalent to the escalator position in terms of seniority, status, and pay that the person is qualified or can become qualified to perform with reasonable efforts by the employer; or,

2. In a position, consistent with the person's disability, that is the nearest approximation to the position in terms of seniority, status, and pay to the escalator or equivalent position.

H. Reemployment by the Federal Government

1. A person who was employed by a Federal Executive Agency when he or she departed for uniformed service must be reemployed using the same order of priorities as prescribed in sections F. and G. of this appendix as appropriate. If the Director of OPM determines that the Federal Executive Agency that employed the person no longer exists and the functions have not been transferred to another Federal Executive Agency, or it is impossible or unreasonable for the agency to reemploy the person, the Director of OPM shall identify a position of like seniority, status, and pay at another Federal Executive Agency that satisfies the reemployment criteria established for private sector employers, sections F. and G. of this appendix, and for which the person is qualified and ensure that the person is offered such position.

2. If a person was employed by the Judicial Branch or the Legislative Branch of the Federal Government when he or she departed for uniformed service, and the employer determines that it is impossible or unreasonable to reemploy the person, the Director of OPM shall, upon application by the person, ensure that an offer of employment in a Federal Executive Agency is made.

3. If the Adjutant General of a State determines that it is impossible or unreasonable to reemploy a person who was employed as a National Guard technician, the Director of OPM shall, upon application by the person, ensure that an offer of employment in a Federal Executive Agency is made.

I. Reemployment by Certain Federal Agencies

1. The heads of the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Security Agency, and, as determined by the President, any Executive Agency or unit thereof, the principal function of which is to conduct foreign intelligence or counterintelligence activities, shall prescribe procedures for reemployment rights for their agency that are similar to those prescribed for private and other Federal agencies.

2. If an appropriate officer of an agency referred to in subsection I.1. of this appendix determines that reemployment of a person who was an employee of that agency when he or she departed for uniformed service is impossible or unreasonable, the agency shall notify the person and the Director of OPM. The Director of OPM shall, upon application by that person, ensure that the person is offered employment in a position in a Federal Executive Agency.

J. General Rights and Benefits

1. A person who is reemployed under 38 U.S.C. Chapter 43 is entitled to the seniority, and other rights and benefits determined by seniority that the person had upon commencing uniformed service, and any additional seniority, and rights and benefits he or she would have attained if continuously employed.

2. A person who is absent by reason of uniformed service shall be deemed to be on furlough or leave of absence from his or her civilian employer and is entitled to such other rights and benefits not determined by seniority as generally provided by the employer to employees on furlough or leave of absence having similar seniority, status and pay who are also on furlough or leave of absence, as provided under a contract, policy, agreement, practice or plan in effect during the Service member's absence because of uniformed service.

3. The individual may be required to pay the employee cost, if any, of any funded benefit continued to the same extent other employees on furlough or leave of absence are required to pay.

K. Loss of Rights and Benefits

If, after being advised by his or her employer of the specific rights and benefits to be lost, a Service member, former Service member or applicant of uniformed service knowingly provided written notice of intent not to seek reemployment after completion of uniformed service, he or she is no longer entitled to any non-seniority based rights and benefits. This includes all non-seniority based rights and benefits provided under any contract, plan, agreement, or policy in effect at the time of entry into uniformed service or established while performing such service, and are generally provided by the employer to employees having similar seniority, status and pay who are on furlough or leave of absence.

L. Retention Rights

A person who is reemployed following uniformed service cannot be discharged from employment, except for cause:

1. Within 1 year after the date of reemployment if that person's service was 181 days or more; or,

2. Within 180 days after the date of reemployment if such service was 31 days or more but less than 181 days.

M. Accrued Leave

During any period of uniformed service, a person may, upon request, use any vacation, annual leave, or similar leave with pay accrued before the commencement of that period of service.

N. Health Plans

An employer who provides employee health plan coverage, including group health plans, must allow the Service member to elect to continue personal coverage, and coverage for his or her dependents under the following circumstances:

1. The maximum period of coverage of a person and the person's dependents under such an election shall be the lesser of:

a. The 18 month period beginning on the date on which the person's absence begins; or

b. The day after the date on which the person was required to apply for or return to a position or employment as specified in section D. of this appendix, and fails to do so.

2. A person who elects to continue health plan coverage may be required to pay up to 102 percent of the full premium under the plan, except a person on active duty for 30 days or less cannot be required to pay more than the employee's share, if any, for the coverage.

3. An exclusion or waiting period may not be imposed in connection with the reinstatement of coverage upon reemployment if one would not have been imposed had coverage not been terminated because of service. However, an exclusion or waiting period may be imposed for coverage of any illness or injury determined by the Secretary of Veterans Affairs to have been incurred in, or aggravated during, the performance of uniformed service.

O. Employee Pension Benefit Plans

1. This section applies to individuals whose pension benefits are not provided by the Federal Employees' Retirement System (FERS) or the Civil Service Retirement System (CSRS), or a right provided under any Federal or State law governing pension benefits for governmental employees.

2. A person reemployed after uniformed service shall be treated as if no break in service occurred with the employer(s) maintaining the employee's pension benefit plan. Each period of uniformed service, upon reemployment, shall be deemed to constitute service with the employer(s) for the purpose of determining the nonforfeitability of accrued benefits and accrual of benefits.

3. An employer reemploying a Service member or former Service member under 38 U.S.C. Chapter 43 is liable to the plan for funding any obligation attributable to the employer of the employee's pension benefit plan that would have been paid to the plan on behalf of that employee but for his or her absence during a period of uniformed service.

4. Upon reemployment, a person has three times the period of military service, but not to exceed five years after reemployment, within which to contribute the amount he or she would have contributed to the pension benefit plan if he or she had not been absent for uniformed service. He or she is entitled to accrued benefits of the pension plan that are contingent on the making of, or are derived from, employee contributions or elective deferrals only to the extent the person makes payment to the plan.

P. Federal Employees' Retirement System (FERS)

1. Federal employees enrolled in FERS who are reemployed with the Government are allowed to make up contributions to the Thrift Savings Fund over a period specified by the employee. However, the makeup period may not be shorter than two times nor longer than four times the period of absence for uniformed service.

2. Employees covered by the FERS are entitled to have contributions made to the Thrift Savings Fund on their behalf by the employing agency for their period of absence in an amount equal to one percent of the employee's basic pay. If an employee covered by FERS makes contributions, the employing agency must make matching contributions on the employee's behalf.

3. The employee shall be credited with a period of civilian service equal to the period of uniformed service, and the employee may elect, for certain purposes, to have his or her separation treated as if it had never occurred.

4. This benefit applies to any employee whose release from uniformed service, discharge from hospitalization, or other similar event make him or her eligible to seek reemployment under 38 U.S.C. Chapter 43 on or after August 2, 1990.

5. Additional information about Thrift Saving Plan (TSP) benefits is available in TSP Bulletins 95–13 and 95–20. A fact sheet is included in TSP Bulletin 95–20 which describes benefits and procedures for eligible employees. Eligible employees should contact their personnel office for information and assistance.

Q. Civil Service Retirement System (CSRS)

1. Employees covered by CSRS may make up contributions to the TSP, as in section P.1. of this appendix. However, no employer contributions are made to the TSP account of CSRS employees.

2. This benefit applies to any employee whose release from uniformed service, discharge from hospitalization, or other similar event makes him or her eligible to seek reemployment under 38 U.S.C. Chapter 43 on or after August 2, 1990.

3. Additional information about TSP benefits is available in TSP Bulletins 95–13 and 95–20. A fact sheet is included in TSP Bulletin 95–20 which describes benefits and procedures for eligible employees. Eligible employees should contact their personnel office for information and assistance.

R. Information and Assistance

Information and informal assistance concerning civilian employment and reemployment is available through the National Committee for Employer Support of the Guard and Reserve (NCESGR). NCESGR representatives can be contacted by calling 1–800–336–4590.

S. Assistance in Asserting Claims

1. A person may file a complaint with the Secretary of Labor if an employer, including any Federal Executive Agency or OPM, has failed or refused, or is about to fail or refuse, to comply with employment or reemployment rights and benefits. The complaint must be in writing, and include the name and address of the employer, and a summary of the allegation(s).

2. The Secretary of Labor shall investigate each complaint and, if it is determined that the allegation(s) occurred, make reasonable efforts to ensure compliance. If these efforts are unsuccessful, the Secretary of Labor shall notify the complainant of the results and advise the complainant of his or her entitlement to pursue enforcement.

3. The Secretary of Labor shall, upon request, provide technical assistance to a claimant and, when appropriate, to the claimant's employer.

T. Enforcement

1. State or Private Employers.

a. A person may request that the Secretary of Labor refer a complaint to the Department of Justice. If the Department of Justice is reasonably satisfied that the person is entitled to the rights or benefits sought, the Department of Justice may appear on behalf of, and act as attorney for, the complainant, and commence an action for appropriate relief, or the individual may commence an action on his or her own behalf in the appropriate Federal district court.

b. The district court hearing the complaint can require the employer to:

(1) Comply with the law;

(2) Compensate the person for any loss of wages or benefits suffered; and

(3) If the court determines that the employer willfully failed to comply with the law, pay the person an amount equal to the amount of lost wages or benefits as liquidated damages.

c. A person may file a private suit against an employer without the Secretary of Labor's assistance if he or she:

(1) Has chosen not to seek the Secretary's assistance;

(2) Has chosen not to request that the Secretary refer the complaint to the Department of Justice; or

(3) Has refused the Department of Justice's representation of his or her complaint.

d. No fees or court costs shall be charged or taxed against any person filing a claim.

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The court may award the person who prevails reasonable attorney fees, expert witness fees, and other litigation expenses.

2. Federal Government as the Employer.

a. The same general enforcement procedures established for private employers are applied to Federal Executive Agencies as an employer; however, if unable to resolve the complaint, the Secretary of Labor shall refer the complaint to the Office of Special Counsel, which shall represent the individual in a hearing before the Merit Systems Protection Board if reasonably satisfied that the individual is entitled to the rights and benefits sought. The claimant also has the option of directly filing a complaint with the Merit Systems Protection Board on his or her own behalf.

b. A person who is adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board may petition the United States Court of Appeals for the Federal Circuit to review the final order or decision.

3. Federal Intelligence Agency as the Employer. An individual employed by a Federal Intelligence Agency listed in subparagraph I.1. of this appendix, may submit a claim to the inspector general of the agency.

Appendix B to Part 104—Sample Employer Notification of Uniformed Service

This is to inform you that (insert applicant or Service member's name) must report for military training or duty on (insert date). My last period of work will be on (insert date), which will allow me sufficient time to report for military duty. I will be absent from my position of civilian employment for approximately (enter expected duration of duty as specified on your orders, and include the applicable period you have to return or submit notification of your return to work) while performing military training or duty unless extended by competent military authority or delayed by circumstances beyond my control. I otherwise expect to return to work on (insert date).

Signature and date

Employer acknowledgment and date

Dated: January 16, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–1583 Filed 1–22–98; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 270

RIN 0790–AG43

Compensation of Certain Former Operatives Incarcerated by the Democratic Republic of Vietnam

AGENCY: Office of Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Final rule.

SUMMARY: This part implements section 657 of the National Defense Authorization Act for Fiscal Year 1997, which authorizes the Secretary of Defense to make payments to persons captured and incarcerated by the Democratic Republic of Vietnam. This part establishes policy and procedures concerning the payments to these persons.

EFFECTIVE DATE: This rule is effective May 15, 1997.

FOR FURTHER INFORMATION CONTACT: Alan Ridenour (703) 604–0821 or David Pronchick (703) 693–1066, Directorate of Compensation, Office of the Secretary of Defense, 4000 Defense Pentagon, Washington, D.C., 20301–4000.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that this is not a significant rule as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been determined that this rule will not have a significant economic impact on a substantial number of small entities because it affects only a limited number of Vietnamese Commandos who were incarcerated in North Vietnam, and as such, does not affect small entities.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that this rule does not impose reporting and recordkeeping requirements under the Paperwork Reduction Act of 1995. The reporting and recordkeeping requirements are exempt from this Act, as it directly involves active litigation in which the U.S. is a party. The specific exemption from the Paperwork Reduction Act is found in 5 CFR part 1320. The information collection in this final rule is exempt from OMB approval under Sec. 1320.4(a)(2), "Controlling Paperwork Burdens on the Public; Regulatory Changes Reflecting Recodification of the Paperwork Reduction Act".

Public Law 104–4, "Unfunded Mandates Report Act of 1995 (UMRA)"

It has been determined that this rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year.

List of Subjects in 32 CFR Part 270

Military personnel, Payments, Prisoners of war, Vietnam.

Accordingly, 32 CFR part 270 is revised to read as follows:

PART 270—COMPENSATION OF CERTAIN FORMER OPERATIVES INCARCERATED BY THE DEMOCRATIC REPUBLIC OF VIETNAM

Subpart A—General

Sec.
270.1 Purpose.
270.2 Definitions.
270.3 Effective date.

Subpart B—Commission

270.4 Membership.
270.5 Staff.

Subpart C—Standards and Verification of Eligibility

270.6 Standards of eligibility.
270.7 Verification of eligibility.

Subpart D—Payment

270.8 Authorization of payment.
270.9 Amount of payment.
270.10 Time limitations.
270.11 Limitation on disbursements.
270.12 Payment in full satisfaction of all claims against the United States.
270.13 No right to judicial review or legal cause of action.
270.14 Limitation on attorneys fees.
270.15 Waiver of notary requirement.

Subpart E—Appeal Procedures

270.16 Notice of the Commission's determinations.
270.17 Procedures for filing petitions for reconsideration.
270.18 Action on reconsideration.

Subpart F—Reports to Congress

270.19 Reports to Congress.

Appendix A to Part 270—Application for Compensation of Vietnamese Commandos

Authority: Sec. 657, Pub. L. 104–201, 110 Stat. 2422.

Subpart A—General

§ 270.1 Purpose.

The purpose of this part is to implement section 657 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104–201), which authorizes the Secretary of Defense to make payments to persons who demonstrate to the satisfaction of the Secretary of Defense that the persons were captured and incarcerated by the Democratic Republic of Vietnam as a result of the participation by the persons in certain operations conducted by the Republic of Vietnam.

§ 270.2 Definitions.

(a) *Applicant.* A person applying for payments under this part.

(b) *Child of an eligible person.* A recognized natural child, an adopted child, or a stepchild who lived with the eligible person in a regular parent-child relationship.

(c) *The Commission.* The Commission authorized to oversee payments to certain persons captured and incarcerated by the Democratic Republic of Vietnam, established under this part.

(d) *Eligible person.* A person determined by the Commission as eligible for payment under subpart C of this part.

(e) *OPLAN 34A.* The operation carried out under the auspices of the government of South Vietnam and the U.S. Military Assistance Command Vietnam, Studies and Observations Group (MACV/SOG), starting in 1964, which inserted commandos into North Vietnam for the purpose of conducing intelligence and other military activities. OPLAN 34A also refers to predecessor operations which were precursors to OPLAN 34A operations. OP 35 refers to the small military units which were sent to conduct sabotage, reconnaissance, exploitation and other intelligence missions on or around the borders of Vietnam and Laos.

(f) *North Vietnam.* The Democratic Republic of Vietnam.

(g) *OSD.* The Office of the Secretary of Defense.

(h) *The Secretary.* The Assistant Secretary of Defense (Force Management Policy).

(i) *South Vietnam.* The Republic of Vietnam.

(j) *Spouse of an eligible person.* Someone who was married to that eligible person for at least 1 year immediately before the death of the eligible person.

(k) *Required declaration.* The statements to be signed and notarized in Appendix A to this part. All applicants must sign Part C and either Part A or Part B of Appendix A to this part.

§ 270.3 Effective date.

This part is effective on May 15, 1997.

Subpart B—Commission

§ 270.4 Membership.

The Secretary shall establish within OSD a Commission that is composed of the following voting members: one representative from the Office of the Under Secretary of Defense for Personnel and Readiness, who shall be the chairman of the Commission, one representative from the Office of the Under Secretary of Defense for Policy, and one representative from each of the military departments. Members of the Commission may be either military or civilian and all members must possess, at a minimum, a Secret clearance.

§ 270.5 Staff.

(a) The Commission will have a support staff, which will include staff members sufficient to expeditiously and efficiently process the applications for payments under this part. All members of the staff will possess, as a minimum, a Top Secret clearance because of the sensitive nature of the information that may require review in determining eligibility of claimants.

(b) The Secretary will ensure that the Commission has all administrative support, including space, office and automated equipment and translation services, needed for the efficient and expeditious review and payment of claims. The Secretary may task appropriate Department of Defense elements to provide such support, either through assignment of personnel or the hiring of independent contractors.

Subpart C—Standards and Verification of Eligibility

§ 270.6 Standards of eligibility.

(a) A person is eligible for payments under this part if such person:

(1) Was captured and incarcerated by North Vietnam as a result of his participation in operations conducted under OPLAN 34A or its predecessor operation; or

(2) Served as a Vietnamese operative under OP 35, and was captured and incarcerated by North Vietnamese forces as a result of the participation by the person in operations in Laos or along the Lao-Vietnamese border pursuant to OP 35, and

(i) Was captured and incarcerated by the North Vietnamese, and remained in captivity after 1973 (or died in captivity) after participation in OP 35, and

(ii) Has not previously received payment for the United States Government after 1972 from the period spent in captivity.

(b) In the case of a decedent who would have been eligible for a payment under this part if alive, payment will be made to the survivors of the decedent in the following order:

(1) To the surviving spouse of an eligible person; or

(2) If there is no surviving spouse of an eligible person, to the surviving children of an eligible person, in equal shares.

(c) A payment may not be made under this part to, or with respect to, a person who the Commission determines, based on the available evidence, served in the People's Army of North Vietnam or provided active assistance to the Government of North Vietnam or forces opposed to the Government of South Vietnam or the United States during any period from 1958 through 1975.

(d) The Commission will make reasonable efforts to publicize the availability of payments involved in this procedure, using existing public affairs channels.

§ 270.7 Verification of eligibility.

(a) All persons applying for payment under this part shall first submit a properly completed, signed and notarized Application for Compensation of Vietnamese Commandos as set out in Appendix A to this part, along will all corroborating documents and information required, to the Commission on Compensation, Office of the Secretary of Defense, 4000 Defense Pentagon, Washington, D.C. 20301–4000. Submission of an Application for Compensation of Vietnamese Commandos without properly signed and notarized declarations will automatically render the application ineligible for consideration by the Commission for payment. All applicants must sign and have notarized the declarations in Part C of the Application for Compensation of Vietnamese Commandos. In addition, all applicants must sign and have notarized the declaration in either Part A or Part B of the Application for Compensation of Vietnamese Commandos. If portions of the Application for Compensation of Vietnamese Commandos are not completed, the Commission may draw adverse inferences from the portions left incomplete.

(b) Staff Functions in the Verification of Eligibility Process. The Staff Director shall:

(1) Establish a database for logging and tracking Applications for Compensation of Vietnamese Commandos throughout the claims process, including appellate actions and final payment or denial of claims.

(2) Maintain a liaison with on-site personnel at the National Archives Center, College Park, Maryland, to organize and translate finance records for review.

(3) Upon receipt of each Application for Compensation of Vietnamese Commandos, research cases to verify eligibility of claimant to include reviewing and analyzing existing records.

(4) Forward applications (including support documentation) to other U.S. Government agencies as required (e.g., CIA, INS) for review of their records, as needed to acquire documentation that may aid in determining the eligibility of claimants to receive payments.

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(5) Present any information or comments resulting from the research and review of cases, plus any reasonably available and probative information, to the Commission with a recommendation on the eligibility of applicants.

(6) If eligibility is favorably approved by the Commission, forward written requests to DFAS to effectuate payments.

(7) Prepare notification letters, on behalf of the Commission, for forwarding to claimants notifying them of the final determination concerning approval or disapproval of their applications.

(8) In coordination with the Army Budget Office and OSD, determine appropriate fund cite that will be used for payments.

(9) Assist in the preparation of required Reports to Congress.

(10) Determine administrative budgetary support requirements and submit funding request to OSD.

(11) Provide clerical and administrative support to the Commission.

(12) Create and maintain a system of records to manage all information generated by the processing of Applications for Compensation of Vietnamese Commandos under this part and to create an administrative record of actions by the Commission. All information received or originated from other Departments and agencies of the U.S. government will be retained, stored, and further disseminated only in accordance with pertinent law (e.g., 5 U.S.C. section 552(FOIA) and 5 U.S.C. section 552a (Privacy Act)) and conditions set by those originating Departments and agencies.

(c) Claims will be processed expeditiously. Within 18 months of actual receipt by the Commission of an Application for Compensation of Vietnamese Commandos, the Commission will determine the eligibility of the applicant. The standard for finding eligibility is whether the information reasonably available to the Commission indicates that the applicant is more likely than not to be eligible for a payment under this part. The burden of making a showing of eligibility shall be on the applicant. Upon determination of eligibility, the payment should be promptly accomplished.

(d) Applicants may request to appear in person before the Commission, which will retain discretion whether to grant such requests. The Commission may request the personal appearance or interview of any applicant as a condition of further consideration of his or her application if such appearance would significantly aid the Commission in its determination. All appearances shall be at the expense of the applicant.

Subpart D—Payment

§ 270.8 Authorization of payment.

Subject to the availability of appropriated funds, upon determination by the Commission of the eligibility of a person for payment, the Commission will authorize the Defense Finance and Accounting Service (DFAS) to make payments out of the funds appropriated for this purpose. Any payment authorized to a person under a legal disability, may, in the discretion of the Commission, be paid for the use of the person, to the natural or legal guardian, committee, conservator, or curator, or, if there is no such natural or legal guardian, committee, conservator, or curator, to any other person, including the spouse or children of such person, who the Commission determines is charged with the care of the person. The Commission will notify eligible persons of the process for disbursements.

§ 270.9 Amount of payment.

The amount payable to, or with respect to, an eligible person under this part is $40,000. If an eligible person can demonstrate to the satisfaction of the Commission that confinement or incarceration exceeded 20 years, the Commission may authorize payment of an additional $2,000 for each full year in excess of 20 (and a proportionate amount for a partial year), but the total amount paid to, or with respect to, an eligible person under this part may not exceed $50,000.

§ 270.10 Time limitations.

To be eligible for payments under this part, applicants must file Applications for Compensation of Vietnamese Commandos with the Commission within 18 months of the effective date of these regulations, May 15, 1997.

§ 270.11 Limitation on disbursements.

The Commission may, in its discretion, direct that the actual disbursement of a payment under this part be made only to the person who is authorized to receive the payment, and only upon the appearance of that person, in person, at any designated Defense Finance Accounting Service disbursement office in the United States. Upon approval of the Commission, payment may be made at such other location or in such other manner as the person authorized to receive payment may request in writing. In the case of an application authorized for payment but not disbursed as a result of the foregoing, the Secretary will hold the funds in trust for the person authorized to receive payment in an interest bearing account until such time as the person complies with the conditions for disbursement set out in this part.

§ 270.12 Payment in full satisfaction of all claims against the United States.

The acceptance of payment by, or with respect to, an eligible person under this part shall constitute full satisfaction of all claims by or on behalf of that person against the United States arising from the person's participation in operations under OPLAN 34A or OP35.

§ 270.13 No right to judicial review or legal cause of action.

Subject to subpart E of this part, all determinations by the Commission pursuant to this part are final and conclusive, notwithstanding any other regulation. Applicants under this part have no right to judicial review, and such review is specifically precluded. This part does not create or acknowledge any legal right or obligation whatsoever.

§ 270.14 Limitation on attorneys fees.

Notwithstanding any contract or agreement, the representative of a person authorized to receive payment under this part may not receive, for services rendered in connection with the claim of, or with respect to, a person under this part, more than 10 percent of a payment made under this part on such claim.

§ 270.15 Waiver of notary requirement.

In exceptional circumstances (e.g., overseas claimant) the requirement for notarizations may be waived at the discretion of the Commission.

Subpart E—Appeal Procedures

§ 270.16 Notice of the Commission's determinations.

Applicants whose claims for payment are denied in whole or in part by the Commission will be notified in writing of the determination. Applicants may petition the Assistant Secretary of Defense, Force Management Policy (or his designee) for a reconsideration of the Commission's determinations, and may submit any documentation in support of such petitions.

§ 270.17 Procedures for filing petitions for reconsideration.

A request for reconsideration must be made to the Secretary, care of the Staff Director of the Commission at the address of the Commission set out in § 270.7, within 45 days of receipt of the notice from the Commission of ineligibility. The Commission may waive that time limit for good cause shown.

§ 270.18 Action on reconsideration.

(a) The Assistant Secretary of Defense, Force Management Policy (or his designee) will:

(1) Review the Commission's administrative record of the original determination.

(2) Review additional information or documentation submitted by the applicant to support his or her petition for reconsideration.

(3) Determine whether the decision of the Commission should be affirmed, modified, or reversed.

(b) When there is a decision affirming the Commission's determinations, the Staff Director will notify the applicant in writing and include a statement of the reason for the affirmance.

(c) A decision of affirmance shall constitute the final action of the Department of Defense. The Secretary (or his designee) may decline to consider any subsequent petitions for reconsideration.

(d) When there is a decision modifying or reversing the Commission's determination, the notification should be immediately made to the Staff Director so as to implement the final action.

Subpart F—Reports to Congress

§ 270.19 Reports to Congress.

Not later than September 23, 1998, the Commission will prepare and the Secretary will submit to Congress a report on the payment of claims under this part. Subsequent to that initial report, the Commission will prepare and the Secretary will submit to Congress annual reports on the status of payment of claims.

Appendix A to Part 270—Application for Compensation of Vietnamese Commandos

All persons applying for payment shall submit a properly completed, signed and notarized Application for Compensation of Vietnamese Commandos, along with corroborating documents and information, to: Commission on Compensation, Office of the Secretary of Defense, 4000 Defense Pentagon, Washington, D.C. 20301–4000.

All applicants must sign and have notarized the declaration in Part C of the application. In addition, all applicants must sign and have notarized the declaration in either Part A or Part B of the application (as applicable).

Applicants must file applications within 18 months of the effective date of this part (15 May 1997): that is, *not later than 15 November 1998.*

Privacy Act Statement:

Authority: National Defense Authorization Act for Fiscal Year 1997, Public Law 104–201, Section 657.

Principal Purpose: To evaluate applications for cash payments for those individuals, or their surviving spouse or children, who were captured and incarcerated by North Vietnam as a result of participating in specified joint United States-South Vietnamese operations.

Routine Uses: To the Immigration and Naturalization Service and the Central Intelligence Agency for purposes of verifying information relating to the claimant's eligibility for payment. To the Department of Justice for purposes of representing the Department of Defense in *Au Dong Quy, et al./Lost Commandos* v. *The United States.*

Disclosure: Voluntary. However, if portions are not completed the Commission may draw adverse inferences from the incomplete portions.

Social Security Number: Providing a social security number is voluntary. If one is not provided, the application for payment will still be processed.

This application shall be executed by the person applying for eligibility, or his surviving spouse or children, or designated representatives of such persons.

Part A—Complete the following information on the person whose status as a former operative is the basis for applying for payment:

(1) Current legal name or legal name at death: _____

(a) Aliases: _____

(b) Former, or other legal names used: _____

(2) Current address or last address prior to death: _____

(3) Mailing address for compensation check in the event compensation is approved (may be different from commando's current/last address): _____

(4) Telephone Number(s): _____

(5) Identification Numbers:

(a) U.S. Social Security Number (optional): _____

(b) U.S. Immigration & Naturalization Service (INS) Number: _____

(c) Vietnamese Identification Card Number: _____

(6) Date of Birth: _____

(7) Place of Birth: _____

(8) Distinguishing marks (e.g., scars): _____

(9) Family Identification:

(a) Parents:

Father: _____

Mother: _____

(b) Spouse: _____

(c) Children: _____

(d) Brothers: _____

(e) Sisters: _____

(f) Others: _____

(10) Team name: _____

(11) Team role/duties (e.g., team leader, radioman): _____

(12) Place of insertion: _____

(13) Method of insertion (e.g., parachute, boat): _____

(14) Date of insertion: _____

(15) Date and place of capture: _____

(16) Detailed Record of confinement:

First Prison Name: _____

Date Arrived: _____

Next Prison Name: _____

Date Transferred: _____

Next Prison Name: _____

Date Transferred: _____

Next Prison Name: _____

Date Transferred: _____

Next Prison Name: _____

Date Transferred: _____

Next Prison Name: _____

Date Transferred: _____

Next Prison Name: _____

Date Transferred: _____

Date of Final Release from Confinement: _____

Name of Prison/Camp/Location of Final Release: _____

(17) Name, address, and telephone number of counsel or attorney (if any): _____

(18) Required Declaration only for commandos filing on their own behalf (complete the applicable declaration, 34A or 35—not both):

For OPLAN 34A or Predecessor Operations (Missions Into North Vietnam)

I served pursuant to OPLAN 34A or its predecessor operation and was captured and imprisoned by North Vietnam as a result of those activities. I did not serve in the People's Army of Vietnam or provide active assistance to the Government of the Democratic Republic of Vietnam (North Vietnam). I did not serve in or provide active assistance to forces opposed to the Government of the Republic of Vietnam (South Vietnam) or forces opposed to the United States during the period from 1958 through 1975. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Signature: _____

Date: _____

Sworn to and subscribed before me on _____ (Date)

Notary Public: _____

Date: _____

My commission expires on _____ (Date)

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For OP 35 Operations (Missions Into Laos or Along the Viet-Lao Border)

I served as a Vietnamese operative pursuant to OP 35, and was captured and imprisoned by North Vietnam as a result of my participation in operations in Laos or along the Lao-Vietnamese border under the direction of OP 35. I did not serve in the People's Army of Vietnam or provide active assistance to the Government of the Democratic Republic of Vietnam (North Vietnam). I did not serve in or provide active assistance to forces opposed to the Government of the Republic of Vietnam (South Vietnam) or forces opposed to the United States during the period from 1958 through 1975. I have not previously received payment from the United States Government as compensation for the period of captivity. I remained in captivity after 1973. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Signature: _____

Date: _____

Sworn to and subscribed before me on

_____

(Date)

Notary Public: _____

Date: _____

My commission expires on

_____

(Date)

Part B—In addition to PART A, above, any applicant who is a surviving spouse or child of a deceased commando must complete Part B, below, with information on themselves.

(1) Current Legal name:

_____

(a) Aliases: _____

(b) Former, or other names used:

_____

(2) Current Address: _____

_____

(3) Telephone Number(s): _____

(4) Identification Numbers:

(a) U.S. Social Security Number (optional):

_____

(b) U.S. Immigration and Naturalization Service (INS) Number:

_____

(c) Vietnamese Identification Card Number:

_____

(5) Date of birth: _____

(6) Place of birth: _____

(7) Relationship to deceased person: _____

(8) Date and place of marriage (if surviving spouse):

_____

_____

(9) If you are a surviving child and there is no surviving spouse, list the names and addresses of all other children of the deceased person, including all recognized natural children, step-children who lived with the deceased person, and adopted children. Provide the date of death for any who are deceased.

_____

_____

_____

_____

_____

(10) Name, address, and telephone number of counsel/attorney (if any):

_____

_____

(11) Required Declaration (Note: If Commando is deceased, applicant must sign one of the two following declarations here and Part C, below):

For Surviving Spouse or Child of Deceased Commando (OPLAN 34A or Predecessor Operations-Missions Into North Vietnam)

To the best of my information, knowledge, and belief, my deceased family member served pursuant to OPLAN 34A or its predecessor operation and was captured and imprisoned by North Vietnam as a result of his participation in those activities. He did not serve in the People's Army of Vietnam or provide active assistance to the Government of the Democratic Republic of Vietnam (North Vietnam). He did not serve in or provide active assistance to forces opposed to the Government of the Republic of Vietnam (South Vietnam) or forces opposed to the United States during the period from 1958 through 1975. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Signature: _____

Date: _____

Sworn to and subscribed before me on

_____

(Date)

Notary Public: _____

Date: _____

My commission expires on

_____

(Date)

For Surviving Spouse or Child of Deceased Commando (OP 35 Units-Missions Into Laos or Along the Viet-Lao Border)

To the best of my information, knowledge, and belief, my deceased family member served as a Vietnamese operative pursuant to OP 35, and was captured and imprisoned by North Vietnam as a result of his participation in operations in Laos or along the Lao-Vietnamese border under the direction of OP 35. He did not serve in the People's Army of Vietnam or provide active assistance to the Government of the Democratic Republic of Vietnam (North Vietnam). He did not serve in or provide active assistance to forces opposed to the Government of the Republic of Vietnam (South Vietnam) or forces opposed to the United States during the period from 1958 through 1975. He did not previously receive payment from the United States Government as compensation for the period of captivity. He remained in captivity after 1973. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Signature: _____

Date: _____

Sworn to and subscribed before me on

_____

(Date)

Notary Public: _____

Date: _____

My commission expires on

_____

(Date)

Part C—Required Documents:

All documents submitted in support of an application for payment should be originals when possible, or copies of the originals certified by the official custodian of the documents. If certified copies cannot be obtained, uncertified copies should be submitted. If uncertified copies cannot be obtained, submit sworn affidavits from two or more persons who have personal knowledge of the information sought.

For the Commando/Operative (Person Described in Part A, Above)

(1) Identification. A document with his current legal name and address (or legal name and address at death if deceased).

(2) Two or more sworn affidavits from individuals having personal knowledge of the person's identity (these should be submitted in addition to the document with current name and address).

(3) One document of date of birth. A birth certificate, or if unavailable, other proof of birth (e.g., passport).

(4) One document of name change, *if* the person's current legal name is not the same as when he was sent on the OPLAN 34A or OP 35 missions.

(5) One document of evidence of guardianship. This is only required if you are executing this document as the guardian of the person identified in PART A. If you are a legally-appointed guardian, submit a certificate executed by the proper official of the court appointment. If you are not such a legally-appointed guardian, submit an affidavit describing your relationship to the person and the extent to which you are responsible for the care of the person, or your position as an officer of the institution in which the person is institutionalized.

(6) One document of evidence of imprisonment. This should be a document issued by the government of North Vietnam showing the dates of the person's imprisonment.

(7) Any documents of evidence of participation in covered operations. These documents should be contracts, orders, or other operational documentation corroborating participation in clandestine operations under OPLAN 34A (or its predecessor) or OP 35.

For a Spouse or Surviving Child of a Deceased Person Described in Part A, Above

In addition to documents (1) through (7) above concerning the deceased person described in PART A, submit the following:

(8) One of the following documents as evidence of the Commando's death:

(a) A certified copy of extract from the public records of death, coroner's report of death, or verdict of a coroner's jury;

(b) A certificate by the custodian of the public record of death;

(c) A statement of the funeral director or attending physician or intern of the institution where death occurred;

(d) A certified copy, or extract from an official report or finding of death made by an agency or department of the United States government; or

(e) If death occurred outside the United States, an official report of death by a United States Consul or other employee of the State Department, or a copy of public record of death in the foreign country.

(f) If you cannot obtain any of the above evidence of the commando/operative's death, you must submit other convincing evidence, such as signed sworn statements of two or more persons with personal knowledge of the death, giving the place, date, and cause of death.

(g) If you are submitting an application as a surviving spouse, submit another document of the same type as evidence of the Commando's spouse's death.

For the Spouse of a Deceased Person Described in Part A Above

In addition to documents described in PART C items (1) through (8), above, each surviving spouse should submit the following:

(9) One of the following documents as evidence of your marriage to the deceased person:

(a) A copy of the public records of marriage, certified or attested, or an abstract of the public records, containing sufficient information to identify the parties, the date and place of marriage, and the number of prior marriages by either party if shown on the official record, issued by the officer having custody of the record or other public official authorized to certify the record, or a certified copy of the religious record of marriage;

(b) An official report from a public agency as to a marriage which occurred while the deceased person was employed by such agency;

(c) An affidavit of the clergyman or magistrate who officiated;

(d) The certified copy of a certificate of marriage attested to by the custodian of the records;

(e) The affidavits of two or more eyewitnesses to the ceremony; or

(f) In jurisdictions where "common law" marriages are recognized, an affidavit by the surviving spouse setting forth all of the facts and circumstances concerning the alleged marriage, such as the agreement between the parties at the beginning of their cohabitation, places and dates of residences, and whether children were born as the result of the relationship. This evidence should be supplemented by affidavits from two or more persons who know as the result of personal observation the reputed relationship which existed between the parties to the alleged marriage, including the period of cohabitation, places of residences, whether the parties held themselves out as husband and wife and whether they were generally accepted as such in the communities in which they lived.

(g) If you cannot obtain any of the above evidence of your marriage, you must submit any other evidence that would reasonably support a belief that a valid marriage actually existed.

(10) In addition, submit the following documents about ourself:

(a) Identification. A document with your current legal name and address plus two or more sworn affidavits from individuals having personal knowledge of your identity (these should be submitted in addition to the document with current name and address).

(b) One document of date of birth. A birth certificate, or if unavailable, other proof of birth (e.g. passport).

(c) One document of name change. If your current legal name is the same as that during the marriage, this section does not apply. Spouses whose current legal name is different than that used when married should submit a document or affidavits to corroborate the name change.

(d) One document of evidence of guardianship. If you are executing this document as the guardian of the spouse, you must submit evidence of your authority. If you are a legally-appointed guardian, submit a certificate executed by the proper official of the court appointment. If you are not such a legally-appointed guardian, submit an affidavit describing your relationship to the spouse and the extent to which you are responsible for the care of the spouse or your position as an officer of the institution in which the spouse is institutionalized.

For the Surviving Children

In addition to documents described in PART C items (1) through (8), above, each surviving child should submit the following:

(11) One document as evidence of your relationship to your parent (the deceased person described in PART A, above), as follows:

If A Natural Child:

(a) Birth certificate showing that the deceased person was your parent.

(b) If the birth certificate does not show the deceased person as your parent, a certified copy of:

(i) An acknowledgment in writing signed by the deceased person;

(ii) A judicial decree ordering the deceased person to contribute to your support;

(iii) The public record of birth or a religious record showing that the deceased person was named as your parent;

(iv) Affidavit of a person who knows that the deceased person accepted you as his child; or

(v) Public records, such as records of school or welfare agencies, which show that with the deceased person's knowledge, the deceased individual was named as your parent.

If An Adopted Child:

An adopted child must submit a certified copy of the decree of adoption.

If a Step-Child:

Submit all three of the following documents as evidence of the step-child relationship:

(a) One document as evidence of birth to the spouse of the deceased person, or other evidence that reasonably supports the existence of a parent-child relationship between you and the spouse of the deceased person;

(b) One document as evidence that you were either living with or in a parent-child relationship with the deceased person at the time of his death; and

(c) One document as evidence of the marriage of the deceased person and the spouse, such as a certified copy of the record of marriage, or an abstract of the public records containing sufficient information to identify the parties and the date and place of marriage issued by the officer having custody of the record, or a certified copy of a religious record of marriage.

(12) In addition, submit the following documents about yourself:

(a) Identification. A document with your current legal name and address plus two or more sworn affidavits from individuals having personal knowledge of your identify (these should be submitted in addition to the document with current name and address).

(b) One document of date of birth. A Birth certificate, or if unavailable, other proof of birth (e.g., passport).

(c) One document of name change. If your current legal name is the same as that shown on documents attesting to your birth, this section does not apply. Persons whose current legal name is different than that used on such documents should submit a document or affidavit to corroborate the name change.

(d) One document of evidence of guardianship. If you are executing this document as the guardian of the person identified as a surviving child of a deceased person, you must submit evidence of your authority. If you are a legally-appointed guardian, submit a certificate executed by the proper official of the court appointment. If you are not such a legally-appointed guardian, submit an affidavit describing your relationship to the child and the extent to which you are responsible for the care of the child, or your position as an officer of the institution in which the child is institutionalized.

Read the following statement carefully before signing this document. A false statement may be grounds for punishment by fine or imprisonment or both. This sworn declaration must accompany all documents submitted to the Commission, whether with or separate from the application.

For All Applicants

I declare under penalty of perjury under the laws of the United States of America that the foregoing documents provided in Part C are true and correct.

Signature: _____

Date: _____

Sowrn to and subscribed before me on

_____

(Date)

Notary Public: _____

Date: _____

My commission expires on

_____

(Date)

Dated: January 16, 1998.

Patricial L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–1534 Filed 1–22–98; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 971015246–7293–02; I.D. 010798C]

Fisheries of the Northeastern United States; Summer Flounder and Scup Fisheries; Adjustments to the 1998 Quotas; Commercial Summer Period Scup Quota Harvested for Massachusetts

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota adjustment, notice of commercial quota harvest.

SUMMARY: NMFS issues this notification announcing preliminary adjustments to the 1998 summer flounder commercial state quotas and the 1998 scup Summer period state quotas. This action complies with regulations that implement the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP), which require that landings in excess of a state's annual summer flounder commercial quota and Summer period scup commercial quota be deducted from a state's respective quota the following year. The public is advised that preliminary quota adjustments have been made and is informed of the revised quotas for the affected states.

DATES: January 16, 1998, through December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, 508–281–9221.

SUPPLEMENTARY INFORMATION:

Summer Flounder

Regulations implementing summer flounder management measures are found at 50 CFR part 648, subparts A and G. The regulations require annual specification of a commercial quota that is apportioned among the Atlantic coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100. The final specifications for the 1998 summer flounder fishery, adopted to ensure achievement of a fishing mortality rate (F) of 0.24 for 1998, set a commercial quota equal to 11,105,636 lb (5.0 million kg) (62 FR 66304, December 18, 1997).

Section 648.100(d)(2) provides that all landings for sale in a state shall be applied against that state's annual commercial quota. Any landings in excess of the state's quota must be deducted from that state's annual quota for the following year. NMFS published final specifications and noted that associated adjustments to states' 1998 quotas as a result of 1997 overages would be made. These data are presented as preliminary because some states remained open to 1997 summer flounder landings when these data were assembled by NMFS for the purposes of this notice. Since it is likely that additional data will be received from the states that would alter the figures, including late landings reported from either federally permitted dealers or state statistical agencies in a state that is currently closed to landings, an additional adjustment will be necessary.

The final quota figures reflect the approval of a commercial summer flounder quota transfer of 24,118 lb (10,940 kg) from New Jersey to Connecticut. The notification of approval of that transfer was filed with the **Federal Register** prior to the end of the 1997 quota year and was published on January 6, 1998 (63 FR 444).

Based on dealer reports and other available information, NMFS has determined that the States of Maine, Massachusetts, New York, Delaware, Maryland, and North Carolina exceeded their 1997 quotas. The remaining States of Rhode Island, Connecticut, New Jersey, and Virginia did not exceed their 1997 quotas. The final preliminary 1997 landings and resulting overages for all states are given in Table 1. The resulting adjusted 1998 commercial quota for each state is given in Table 2.

TABLE 1.—PRELIMINARY 1997 SUMMER FLOUNDER COMMERCIAL LANDINGS, AND RESULTING OVERAGES BY STATE, FOR LANDINGS REPORTED THROUGH DECEMBER 27, 1997

State	1997 Quota		Preliminary 1997 landings		1997 state overages	
	Lb	(Kg)[1]	Lb	(Kg)	Lb	(Kg)
ME	2,342	1,062	2,835	1,286	493	224
NH	51	23	.....	.....	.....	.....
MA	709,229	321,701	745,105	337,974	35,876	16,273
RI	1,596,443	724,134	1,584,641	718,781	.....	.....
CT	246,924	112,003	246,924	112,003	.....	.....
NY	754,343	342,164	814,027	369,236	59,684	27,072
NJ	1,323,474	600,318	1,316,837	597,307	.....	.....
DE	[2](5,662)	(2,568)	4,393	1,993	10,055	4,561
MD	188,254	85,391	203,961	92,515	15,707	7,125
VA	2,294,793	1,040,901	2,253,809	1,022,311	.....	.....
NC	1,273,605	577,695	1,455,212	660,073	181,607	82,376
Total[3]	8,383,796	3,802,826	8,627,744	3,913,479	303,422	137,630

[1] Kilograms, converted from pounds, may not necessarily add due to rounding.
[2] Parentheses indicate a negative number.
[3] The total 1997 state overages reflect the sum of the individual state overages, and not the overage of the entire year's quota.

TABLE 2.—PRELIMINARY ADJUSTED FINAL 1998 SUMMER FLOUNDER QUOTAS

State	Final 1998 quota[1]		Preliminary adjusted 1998 quota	
	Lb	(Kg)[2]	Lb	(Kg)[2]
ME	5,284	2,397	4,791	2,173
NH	51	23	51	23

TABLE 2.—PRELIMINARY ADJUSTED FINAL 1998 SUMMER FLOUNDER QUOTAS—Continued

State	Final 1998 quota[1]		Preliminary adjusted 1998 quota	
	Lb	(Kg)[2]	Lb	(Kg)[2]
MA	757,841	343,751	721,965	327,478
RI	1,742,583	790,422	1,742,583	790,422
CT	250,791	113,757	250,791	113,757
NY	849,680	385,408	789,996	358,336
NJ	1,858,363	842,939	1,858,363	842,939
DE	[3](3,685)	(1,671)	(13,740)	(6,232)
MD	226,570	102,770	210,863	95,646
VA	2,368,569	1,074,365	2,368,569	1,074,365
NC	3,049,589	1,383,270	2,867,982	1,300,895
Total	11,105,636	5,037,432	10,802,214	4,899,802

[1] As published on December 18, 1997 (62 FR 66304).
[2] Kilograms, converted from pounds, may not necessarily add due to rounding.
[3] Parentheses indicate a negative number.

Scup

Regulations implementing scup management measures are found at 50 CFR part 648, subparts A and H. The regulations require annual specification of a commercial quota that is allocated into three periods: Winter I, Summer, and Winter II. During Winter I and Winter II periods, the commercial quota is distributed to the coastal states from Maine through North Carolina on a coastwide basis. During the Summer period, the commercial quota is apportioned among the Atlantic coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state during the Summer period is described in § 648.120. The final specifications for the 1998 scup fishery, adopted to ensure achievement in 1998 of a target exploitation rate of 47 percent, the rate associate with F=0.72, set a commercial quota equal to 4,572,000 lb (2.07 million kg) and a Summer period allocation equal to 1,780,794 lb (0.81 million kg) (62 FR 66304, December 18, 1997).

Section 648.120(d)(4) provides that all landings for sale in a state shall be applied against that state's annual commercial quota. Section 648.120(d)(6) provides that any overages of the commercial quota landed in any state during the Summer period will be deducted from that state's Summer period quota for the following year. NMFS published final specifications and noted that associated adjustments to states' 1998 Summer period quotas as a result of 1997 overages would be made. If additional data are received from any state that would alter the figures, including late landings reported from either federally permitted dealers or state statistical agencies, an additional adjustment will be necessary.

Based on dealer reports and on other available information, NMFS has determined that the Commonwealth of Massachusetts and the State of North Carolina have exceeded their 1997 Summer period quotas for scup. The remaining States of Maine, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia did not exceed their 1997 Summer period quotas. The final preliminary 1997 landings and resulting state overages are given in Table 3. The resulting adjusted 1998 commercial Summer period quota for each state is given in Table 4.

TABLE 3.—PRELIMINARY 1997 SUMMER PERIOD COMMERCIAL LANDINGS AND RESULTING OVERAGES BY STATE FOR SCUP

State	1997 summer period quota		Preliminary 1997 summer landings		1997 summer overage	
	Lb	(Kg)[1]	Lb	(Kg)	Lb	(Kg)
ME	3,048	1,383	.....	.....	.....	.....
NH	.....	.....	.....	.....	.....	.....
MA	362,029	164,214	1,428,183	647,813	1,066,154	483,599
RI	1,415,425	642,026	398,880	180,929	.....	.....
CT	79,431	36,029	40,858	18,533	.....	.....
NY	398,527	180,769	221,320	100,389	.....	.....
NJ	73,453	33,318	2,056	933	.....	.....
DE	.....	.....	.....	.....	.....	.....
MD	301	137	162	73	.....	.....
VA	4,157	1,886	148	67	.....	.....
NC	628	285	888	403	260	118
Total[2]	2,336,999	1,060,045	2,092,495	949,140	1,066,414	483,717

[1] Kilograms, converted from pounds, may not necessarily add due to rounding.
[2] The total 1997 state overages reflect the sum of the individual state overages, and not the overage of the entire period's quota.

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TABLE 4.—PRELIMINARY ADJUSTED FINAL 1998 SUMMER PERIOD SCUP QUOTAS

State	Final 1998 summer quotas		Preliminary adjusted 1998 summer quotas	
	Lb	(Kg)[1]	Lb	(Kg)
ME	2,322	1,053	2,322	1,053
NH	1		1	
MA	275,866	125,131	[2](790,288)	(358,469)
RI	1,078,554	489,224	1,078,554	489,224
CT	60,526	27,454	60,526	27,454
NY	303,678	137,746	303,678	137,746
NJ	55,972	25,388	55,972	25,388
DE				
MD	229	104	229	104
VA	3,167	1,437	3,167	1,437
NC	479	217	219	99
Total	1,780,794	807,755	714,380	324,037

[1] Kilograms, converted from pounds, may not necessarily add due to rounding.
[2] Parentheses indicate a negative number.

Section 648.121(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor the Summer period state commercial quotas and determine the date when a state's commercial quota is harvested. NMFS is required to publish notification in the **Federal Register** advising a state and notifying vessel and dealer permit holders that, effective upon a specific date, a state's Summer period commercial quota has been harvested and that no Summer period commercial quota is available for landing scup for the remainder of the period.

Since this adjustment reduces the 1998 Massachusetts Summer period commercial quota allocation from 275,866 lb (125,131 kg) to −790,288 lb (−358,469 kg), this notification also serves to announce that the Summer period quota available to Massachusetts has been harvested and that no commercial quota is available for landings during the 1998 Summer period.

The regulations at § 648.4(b) provide that Federal scup commercial permit holders agree as a condition of the permit not to land scup in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours May 1, 1998, until 2400 hours October 31, 1998, landings of scup in Massachusetts by vessels holding Federal commercial scup fisheries permits are prohibited, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Federally permitted dealers are also advised that they may not purchase scup from federally permitted scup vessels that land in Massachusetts for the Summer period, or until additional quota becomes available through a transfer. If Massachusetts fails to obtain this quota transfer, it is probable that the scup fishery in the Commonwealth will remain closed for additional Summer periods beyond 1998. The fishery may remain closed until its allocated quota is sufficient to allow the fishery to reopen.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 15, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–1545 Filed 1–16–98; 3:41 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 63, No. 15
Friday, January 23, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management

7 CFR Part 3200

RIN 0500–AA00

Uniform Procedures for the Acquisition and Transfer of Excess Personal Property

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Notice of proposed rule making.

SUMMARY: The proposed rulemaking sets forth uniform procedures for the acquisition and transfer of excess personal property to the 1890 Land Grant Institutions (including Tuskegee University), the 1994 Land Grant Institutions and the Hispanic-Serving Institutions in support of research, educational, technical, and scientific activities or for related programs as authorized by section 923 of the Federal Agriculture Improvement and Reform Act (FAIR) of 1996 (Pub. L. No. 104–127), 7 U.S.C. 2206a.

DATES: Comments are due by February 23, 1998.

ADDRESSES: Send your comments to Linda W. Oliphant, U.S. Department of Agriculture, Office of Procurement and Property Management (OPPM), Property Management Division, (PMD), Room 1520 South Building, 1400 Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Denise R. Hayes or Linda W. Oliphant, U.S. Department of Agriculture, Office of Procurement and Property Management, Property Management Division, Room 1520 South Building, 1400 Independence Avenue, SW., Washington, DC 20250, (202) 720–3141.

SUPPLEMENTARY INFORMATION: Section 923 of the FAIR Act, 7 U.S.C. 2206a, authorizes the Secretary of Agriculture to convey title to excess personal property, with or without monetary compensation to the 1994 Institutions (as defined in section 532 of the Equity in Educational Land-Grant Status Act of 1994, 7 U.S.C. 301 note); to any Hispanic-Serving Institution (as defined in section 316(b)) of the Higher Education Act of 1965, 20 U.S.C. 1059c(b); and to any college or university eligible to receive funds under the Act of August 30, 1890, 7 U.S.C. 321 *et seq.*, including Tuskegee University. Pursuant to the authority provided in section 923 USDA proposes to add part 3200 to title 7 of Code of Federal Regulations to establish uniform procedures for the acquisition and transfer of excess personal property to the designated institutions. This document includes not only the Department of Agriculture (USDA) procedures to implement 7 U.S.C. 2206a, but draws upon the General Services Administration (GSA) regulations concerning the disposal of excess personal property.

Paperwork Reduction

The information collection and recordkeeping requirements to implement these procedures have been cleared by the Office of Management and Budget (OMB), under 0505–0019, in accordance with the Paperwork Reduction Act, 44 U.S.C. 3500 *et seq.*

Classification

This proposed rule was reviewed under Executive Order 12866, and it has been determined that it is not a significant regulatory action because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, Local, or Tribal governments or communities. This proposed rule will not create any serious inconsistencies or otherwise interfere with any actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

Regulatory Flexibility

The Department of Agriculture certifies that this proposed rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Executive Order 12988

The proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The proposed rule meets the applicable standards in section 3 of Executive Order 12988.

List of Subjects in 7 CFR Part 3200

Excess government property, Government property, Government property management.

For the reasons set forth in the preamble, the Department of Agriculture proposes to establish chapter XXXII in title 7 of the Code of Federal Regulations to read as follows:

CHAPTER 32—OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT, DEPARTMENT OF AGRICULTURE

Part 3200 Department of Agriculture guidelines for the acquisition and transfer of excess personal property

3201—3299 [Reserved]

PART 3200—DEPARTMENT OF AGRICULTURE GUIDELINES FOR THE ACQUISITION AND TRANSFER OF EXCESS PERSONAL PROPERTY

Sec.
3200.1 Purpose.
3200.2 Eligibility.
3200.3 Definitions.
3200.4 Procedures.
3200.5 Dollar limitation.
3200.6 Restrictions.
3200.7 Title.
3200.8 Costs.
3200.9 Accountability and recordkeeping.
3200.10 Disposal.
3200.11 Liabilities and losses.

Authority: 5 U.S.C. 301; 7 U.S.C. 2206a.

§ 3200.1 Purpose.

This part sets forth the procedures to be utilized by USDA, Office of Procurement and Property Management (OPPM) in the acquisition and transfer of excess property to the 1890 Land Grant Institutions (including Tuskegee University), 1994 Land Grant Institutions, and the Hispanic-Serving Institutions in support of research, educational, technical, and scientific activities or for related programs as authorized by 7 U.S.C. 2206a. Title to the personal property shall pass to the institution.

§ 3200.2 Eligibility.

Institutions that are eligible to receive Federal excess personal property

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pursuant to the provision of this part are the 1890 Land Grant Institutions (including Tuskegee University), 1994 Land Grant Institutions, and the Hispanic-Serving Institutions conducting research, educational, technical, and scientific activities or related programs.

§ 3200.3 Definitions.

(a) *1890 Land grant institutions*—any college or university eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321 et.seq.), including Tuskegee University.

(b) *1994 Land grant institutions*—any of the tribal colleges or universities as defined in Section 532 of the Equity in Educational Land-Grant Status Act of 1994.

(c) *Hispanic-serving institutions*—institutions of higher education as defined in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c (b)).

(d) *Property management officer*—is an authorized Department of Agriculture or institution official responsible for property management.

(e) *Screener*—is an individual designated by an eligible institution and authorized by the General Services Administration (GSA) to visit property sites for the purpose of inspecting personal property intended for use by the institution.

(f) *Excess personal property*—is any personal property under the control of a Federal agency that is no longer needed.

(g) *Cannibalization*—is the dismantling of equipment for parts to repair or enhance other equipment.

§ 3200.4 Procedures.

(a) To receive information concerning the availability of Federal excess personal property, an eligible institution's property management officer may contact their regional GSA, Accountable Utilization Officer. All property management officers of eligible institutions will be placed on the Department of Agriculture's mailing list for information on the availability of property. USDA excess property first will be screened by USDA agencies through the Departmental Excess Personal Property Coordinator (DEPPC) using the PMIS/PROP system.

(b) Excess property selected by screeners of eligible institutions should be inspected whenever possible, or the holding agency should be contacted to verify the condition of the items, because interpretation of condition codes varies among agencies.

(c) If the condition of the item is acceptable, the institution should "freeze" (reserve) items by calling the appropriate GSA office or USDA's Departmental Excess Personal Property Coordinator (DEPPC). Items are usually allocated on a "first come-first serve basis." Since GSA may have several "freezes" on a piece of equipment, it is critical that the paperwork be submitted as soon as possible.

(d) Property requests are submitted by mail or fax on a Standard Form 122, "Transfer Order Excess Personal Property," with a written justification statement explaining how the property will be used for research, educational, technical, or scientific activity or for related programs.

(e) The SF–122 should be forwarded to USDA, OPPM/PMD for approval. As confirmation of approval, the institution's Property Management Officer will receive a stamped copy of the SF–122. If the request is disapproved, it will be returned to the Property Management Officer with an appropriate explanation.

(f) Once the excess personal property is physically received, the institution is required to immediately return a copy of the SF–122, to OPPM/PMD, indicating receipt of requested items. Cancellations should also be reported to OPPM/PMD.

Note: OPPM/PMD shall send an informational copy of all USDA transactions to GSA.

§ 3200.5 Dollar limitation.

There is no dollar limitation on excess personal property obtained under these procedures.

§ 3200.6 Restrictions.

(a) The Department's authorized official will approve the transfer of excess personal property in the following groups for the 1890 Land Grant Institutions (including Tuskegee University), 1994 Land Grant Institutions and the Hispanic-Serving Institutions in support of research, educational, technical, and scientific activities or for related programs.

Eligible Federal supply code groups	Name
12	Fire Control Equipment.
19	Ships, Small Crafts, Pontoons, and Floating Docks.
22	Railway Equipment.
23	Vehicles, Motor Vehicles, Trailers and Cycles.
24	Tractors.
26	Tires and Tubes.
28	Engines, Turbines and Components.
29	Engine Accessories.
30	Mechanical Power Transmission Equipment.
31	Bearings.
32	Woodworking Machinery and Equipment.
34	Metal Working Machinery.
35	Service and Trade Equipment.
36	Special Industry Machinery.
37	Agricultural Machinery and Equipment.
38	Construction, Mining, Excavating, and Highway Maintenance Equipment.
39	Material Handling Equipment.
40	Rope, Cable, Chain, and Fittings.
41	Refrigeration, Air Conditioning and Air Circulating Equipment.
42	Fire Fighting, Rescue, and Safety Equipment.
43	Pumps, Compressors.
44	Furnace, Steam Plant, and Drying.
45	Plumbing, Heating, and Sanitation Equipment; and Nuclear Reactors.
46	Water Purification and Sewage Treatment Equipment.
47	Pipe, Tubing, Hose, and Fittings.
49	Maintenance and Repair Shop Equipment.
51	Hand Tools.
52	Measuring Tools.
53	Hardware and Abrasives.
54	Prefabricated Structures and Scaffolding.
55	Lumber, Millwork, Plywood, and Veneer.
56	Construction and Building Materials.
58	Communication, Detection, and Coherent Radiation Equipment.
59	Electrical and Electronic Equipment Components.
60	Fiber Optics Materials, Components, Assemblies, and Accessories.
61	Electric Wire, and Power and Distribution Equipment.
62	Lighting Fixtures and Lamps.
63	Alarm, Signal, and Security Detection Systems.
65	Medical, Dental, and Veterinary Equipment and Supplies.
66	Instruments and Laboratory Equipment.
67	Photographic Equipment.
69	Training Aids and Devices.
70	General Purpose Automatic Data Processing Equipment (Including Firmware), Software, and Support Equipment.
71	Furniture.
72	Household and Commercial Furnishings and Appliances.
73	Food Preparation and Serving Equipment.
74	Office Machines, Text Processing Systems and Visible Record Equipment.
75	Office Supplies and Devices.
76	Books, Maps, and Other Publications.
77	Musical Instruments, Phonographs, and Home-type Radios.
78	Recreational and Athletic Equipment.
79	Cleaning Equipment and Supplies.
80	Brushes, Paints, Sealers, and Adhesives.
81	Containers, Packaging and Packing Supplies.
83	Textiles, Leather, Furs, Apparel and Shoe Findings, Tents, and Flags.
84	Clothing, Individual Equipment and Insignia.
85	Toiletries.
87	Agricultural Supplies.
88	Live Animals.
91	Fuels, Lubricants, Oils and Waxes.
93	Nonmetallic Fabricated Materials.
94	Nonmetallic Crude Materials.
95	Metal Bars, Sheets, and Shapes.
96	Ores, Minerals and Their Primary Products.
99	Miscellaneous.

Note: Requests for items in FSC Groups other than the above shall be referred to the Director of OPPM for consideration and approval.

(b) Excess personal property may be transferred for the purpose of cannibalization, provided the institution submits a supporting statement which clearly indicates that cannibalizing the requested property for secondary use has greater benefit than utilization of the item in its existing form.

§ 3200.7 Title.

Title to excess personal property obtained under part 3200 will automatically pass to the 1890 Land Grant Institutions (including Tuskegee University), 1994 Land Grant Institutions, and the Hispanic-Serving Institutions once OPPM/PMD receives the SF–122 indicating that the institution has received the property.

§ 3200.8 Costs.

Excess personal property under this law is free of charge. However, the institution must pay all costs associated with packaging and transportation. The institution should specify the method of shipment on the SF–122.

§ 3200.9 Accountability and recordkeeping.

USDA requires that Federal excess personal property received by an eligible institution pursuant to this Part shall be placed into use for a research, educational, technical, or scientific activity or for related purpose within 1 year of receipt of the property and used for such purpose for at least 1 year thereafter. The institution's Property Management Officer must maintain accountable records identifying the property's location, description, utilization and value. The use of excess Federal personal property received under this part is subject to inspection by an authorized representative of USDA at all reasonable times.

§ 3200.10 Disposal.

When the property is no longer needed by the institution, it may be used in support of other Federal projects or sold and the proceeds used for research, educational technical, and scientific activities or for related programs of the recipient institution.

§ 3200.11 Liabilities and losses.

USDA assumes no liability with respect to accidents, bodily injury, illness, or any other damages or loss related to excess personal property transferred under this Part.

PARTS 3201–3299—[RESERVED]

W. R. Ashworth,

Director, Office of Procurement and Property Management.

[FR Doc. 98–1506 Filed 1–22–98; 8:45 am]

BILLING CODE 3410–XE–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–45–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Pratt & Whitney JT8D series turbofan engines. This proposal would require a one-time visual and eddy current inspection of certain stage 3–4 low pressure compressor (LPC) disks and stage 7–12 high pressure compressor (HPC) disks identified by part number and serial number, for arc burns in tie rod, shielding, and pressure balance holes, and, if necessary, repair of tie rod holes. This proposal is prompted by reports of improper fixturing during the electrolytic cleaning process of certain compressor disks at a certified repair station, Avial, currently Greenwich Air Services Inc., certificate number RA1R445K of Dallas, Texas, that can result in damage to the disks in the form of arc burns. The actions specified by the proposed AD are intended to prevent compressor disk cracking from arc burns in tie rod holes, shielding holes, or pressure balance holes, which could lead to a fracture of a compressor disk, resulting in uncontained release of engine fragments, inflight engine shutdown, and airframe damage.

DATES: Comments must be received by February 23, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–45–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9–ad–engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Greenwich Air Services, 9311 Reeves Street, Dallas TX 75235–2095; telephone (214) 956–5310, fax (214) 956–5523. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before

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the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–ANE–45–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–45–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) received a report of certain low pressure compressor (LPC) and high pressure compressor (HPC) disks, installed on Pratt & Whitney (PW) JT8D series turbofan engines, that were improperly fixtured during the electrolytic cleaning process at a certain repair station. This improper fixturing can lead to damage to compressor disks in the form of arc burns. Arc burns can degrade disk material properties and create a stress concentration that results in premature cracking of a disk and subsequent failure. This condition, if not corrected, could result in compressor disk cracking from arc burns in tie rod holes, shielding holes, or pressure balance holes, which could lead to a fracture of a compressor disk, resulting in uncontained release of engine fragments, inflight engine shutdown, and airframe damage.

A metallurgical laboratory procedure and a new highly sensitive eddy current inspection technique have been developed to identify arc-burn defects. Because the inspections and repair require familiarization with newly developed techniques and require facilities, equipment and personnel outside the scope of a typical repair facility, the FAA has determined that only the facility named in the AD are currently approved to perform the required inspections and repairs. Operators who desire to use another facility must apply for approval using the alternate method of compliance procedure provided in paragraph (d) of the AD.

The FAA has reviewed and approved the technical contents of Greenwich Air Services Technical Instruction (TI) 885 dated, October 20, 1997, that describes procedures for visual and eddy current inspections and repairs for compressor disks which have been exposed to the potential of arc burn.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require, at the next shop visit after the effective date of this AD, a one-time visual and eddy current inspection of compressor disks to detect arc burn damage and if appropriate, repair of damaged area. The actions would be required to be accomplished in accordance with the technical instruction described previously.

There are a total of 1,388 compressor disks exposed to improper fixturing during the electrolytic cleaning process. The FAA estimates that 1,054 of these disks currently remain in service in the worldwide fleet, which represents approximately 210 engines. The FAA also estimates that 840 of the disks affected by the proposed AD are installed in engines installed on aircraft of U.S. registry. It will take approximately 30 work hours to accomplish the proposed actions per disk, and that the average labor rate is $60 per work hour. Required parts would cost approximately $23 per disk. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,531,320.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Pratt & Whitney: Docket No. 97–ANE–45–AD.

Applicability: Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, –17AR, –209, –217, –217A, –217C, and –219 model turbofan engines which have a compressor disk installed identified by part number and serial number in Table 1 of this AD. These engines are installed on but not limited to Boeing 727 and 737 series, and McDonnell Douglas DC–9 and MD80 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent compressor disk cracking from arc burns in tie rod holes, shielding holes, or pressure balance holes, which could lead to a fracture of a compressor disk, resulting in uncontained release of engine fragments,

inflight engine shutdown, and airframe damage, accomplish the following:

(a) At the next shop visit after the effective date of this AD, remove, visually inspect, eddy current inspect, and repair or replace with a serviceable part disks identified by part number and serial number in Table 1 of this AD in accordance with Greenwich Air Services Technical Instruction (TI) 885, dated October 20, 1997.

TABLE 1

Stage	P/N	S/N
3	745803	H13469
3	745803	N48096
3	745803	N48361
3	745803	P77936
3	745803	P77942
3	745803	P78298
3	745803	P98041
3	745803	P98334
3	745803	R18766
3	745803	R18989
3	745803	R19227
3	745803	R73555
3	745803	R74156
4	745704	2A3332
4	745704	2A4258
4	745704	G51920
4	745704	H04195
4	745704	J46788
4	745704	J76639
4	745704	K11388
4	745704	K11483
4	745704	K12946
4	745704	K52509
4	745704	K53069
4	745704	L60864
4	745704	L61145
4	777704	B114AA0034
4	777704	B114AA0178
4	777704	B114AA0274
4	777704	BBDUA14597
4	777704	BBDUAH4675
4	777704	BBDUAH7390
4	777704	J77499
4	777704	J94590
4	777704	K43182
4	777704	L81216
4	777704	L81217
4	777704	L81218
4	777704	L81224
4	777704	L81688
4	777704	M40670
4	777704	M44376
4	777704	M44384
4	777704	M53723
4	777704	M53753
4	777704	M53810
4	777704	M53815
4	777704	N30898
4	777704	N30938
4	777704	N30943
4	777704	N30947
4	777704	N30956
4	777704	N53261
4	777704	N53280
4	777704	N53284
4	777704	N53290
4	777704	N53296
4	777704	N53299
4	777704	N53309
4	777704	N53317
4	777704	N53324
4	777704	N53337
4	777704	N53340
4	777704	N53347
4	777704	N53355
4	777704	N53356
4	777704	N53361
4	777704	N53364
4	777704	N53366
4	777704	N53373
4	777704	N53388
4	777704	N53390
4	777704	N53392
4	777704	N53397
4	777704	N53402
4	777704	N53405
4	777704	N53407
4	777704	N53409
4	777704	N53411
4	777704	N53413
4	777704	N53416
4	777704	N53419
4	777704	N53426
4	777704	N53434
4	777704	N53437
4	777704	N53438
4	777704	N53449
4	777704	N63635
4	777704	N63637
4	777704	N63646
4	777704	N63651
4	777704	N63696
4	777704	N63704
4	777704	N63718
4	777704	N63736
4	777704	N63740
4	777704	N63745
7	777704	N63803
7	777704	P50018
7	777704	P50025
7	777704	P50036
7	777704	P50050
7	777704	P50054
7	777704	P50083
7	777704	P63990
7	777704	R21906
7	777704	R21930
7	777704	R21985
7	777704	R21991
7	777704	R41366
7	777704	R42431
7	777704	R56904
7	777704	R56911
7	777704	R56932
7	777704	R56948
7	777704	R75603
7	777704	R75635
7	777704	R75644
7	777704	S28269
7	777704	S28335
7	777704	S28336
7	777704	S65405
7	777704	S65417
7	777704	S87903
7	777704	S91630
7	777704	T00466
7	777704	T48099
7	777704	T48101
7	777704	T48105
7	799504	K23796
7	799504	L61578
7	799504	L61597
7	799504	L89794
4	799504	M77214
4	799504	N06109
4	799504	N06248
4	799504	N06731
4	799504	N06908
4	799504	N06911
4	799504	N32484
4	799504	N32493
4	799504	N32514
4	799504	N33627
4	799504	N33880
4	799504	N34238
4	799504	N89280
4	799504	N89817
4	799504	N90599
4	799504	N90812
4	799504	N90849
4	799504	P45299
4	799504	P45435
4	799504	R23598
4	799504	R23753
4	799504	R24022
4	799504	R24310
4	799504	R24543
4	799504	S07095
4	799504	S07147
4	799504	S07164
4	799504	S07250
4	799504	S58162
4	799504	S58237
4	799504	T02774
4	799504	T02897
4	799504	T03020
4	799504	T03027
4	799504	T03038
4	799504	T03047
7	701407	7Z5379
7	766007	G11181
7	774407	B207AA0057
7	774407	B207AA0164
7	774407	B207AA0224
7	774407	B207AA0270
7	774407	B207AA0546
7	774407	B207AA0719
7	774407	B207AA0757
7	774407	B207AA0768
7	774407	B207AA0775
7	774407	B207AA0913
7	774407	BENCAH1914
7	774407	BENCAH4273
7	774407	BENCAJ5690
7	774407	BENCAK1601
7	774407	BENCAK5082
7	774407	BENCAK5701
7	774407	BENCAK6044
7	774407	BENCAK6586
7	774407	G78791
7	774407	H19147
7	774407	H75592
7	774407	J08985
7	774407	J17315
7	774407	J17370
7	774407	J72117
7	774407	J93428
7	774407	J93669
7	774407	K78068
7	774407	K78149
7	774407	K78378
7	774407	L23953
7	774407	L71885
7	774407	L71922
7	774407	L72170

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TABLE 1—Continued

Stage	P/N	S/N
7	774407	L72261
7	774407	M38646
7	774407	M44626
7	774407	M60192
7	774407	M78767
7	774407	M83783
7	774407	M93487
7	774407	M93549
7	774407	N24007
7	774407	N24131
7	774407	N58891
7	774407	N58905
7	774407	N59040
7	774407	N70414
7	774407	N88273
7	774407	N88281
7	774407	N88306
7	774407	N93477
7	774407	N95003
7	774407	P14688
7	774407	P14851
7	774407	P16547
7	774407	P35320
7	774407	P35374
7	774407	P35475
7	774407	P54474
7	774407	P54594
7	774407	P60383
7	774407	P60383
7	774407	P81375
7	774407	P81382
7	774407	P86353
7	774407	R19478
7	774407	R31305
7	774407	R37450
7	774407	R46879
7	774407	R46934
7	774407	R57593
7	774407	R57744
7	774407	R57769
7	774407	R72169
7	774407	R72236
7	774407	R81458
7	774407	R81507
7	774407	R81527
7	774407	R81612
7	774407	R90895
7	774407	S05652
7	774407	S13843
7	774407	S14099
7	774407	S14103
7	774407	S36805
7	774407	S36885
7	774407	S36896
7	774407	S36994
7	774407	S36995
7	774407	S37166
7	774407	S37554
7	774407	T04613
7	774407	T04687
7	774407	T04739
7	774407	T04806
7	774407	T04812
7	774407	T04814
7	774407	T04837
7	774407	T04843
7	774407	T04885
7	774407	T04903
7	774407	T04960
7	774407	T05000
7	774407	T05108
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7	5006007–02	BENCAL0760
7	5006007–02	BENCAL1937
7	5006007–02	BENCAL4577
7	5006007–02	BENCAL5766
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7	5006007–01	B207AA0069
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7	5006007–01	B207AA0155
7	5006007–01	B207AA0172
7	5006007–01	B207AA0177
7	5006007–01	B207AA0354
7	5006007–01	B207AA0355
7	5006007–01	B207AA0421
7	5006007–01	B207AA0493
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7	5006007–01	B207AA0571
7	5006007–01	B207AA0684
7	5006007–01	B207AA0756
7	5006007–01	B207AA0811
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7	5006007–01	BENCAH4797
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7	5006007–01	BENCAJ8585
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7	5006007–01	BENCAJ8626
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7	5006007–01	BENCAK9770
7	5006007–01	BENCAK9771
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7	5006007–01	BENCAL3622
7	5006007–01	BENCAL3931
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7	5006007–01	K20543
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7	5006007–01	P92551
7	5006007–01	P92580
7	5006007–01	R12660
7	5006007–01	R12670
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7	5006007–01	R35504
7	5006007–01	R35530
7	5006007–01	R36545
7	5006007–01	R43821
7	5006007–01	R54576
7	5006007–01	R54634
7	5006007–01	R79460
7	5006007–01	R79466
7	5006007–01	R92415
7	5006007–01	R92431
7	5006007–01	R92435
7	5006007–01	R92442
7	5006007–01	S11034
7	5006007–01	S11058
7	5006007–01	S11154
7	5006007–01	S11156
7	5006007–01	S11179
7	5006007–01	S11182
7	5006007–01	S11186
7	5006007–01	S11202
7	5006007–01	S11206
7	5006007–01	S56884
7	5006007–01	S56888
7	5006007–01	S56998
7	5006007–01	S57073
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7	5006007–01	S57117
7	5006007–01	S57120
7	5006007–01	S57156
7	5006007–01	S57157
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7	5006007–01	S57405
7	5006007–01	S57412
7	5006007–01	S57420
7	5006007–01	S57424
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7	5006007–01	S57470
7	5006007–01	S57589
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8	748608	H64605
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8	748608	M54652
8	748608	M54835
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8	748608	N84300
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8	748608	P26161
8	748608	P28493
8	748608	P28504
8	748608	P28505
8	748608	P28511
8	748608	P28542
8	748608	P28614
8	748608	P98885
8	748608	S01079
8	748608	S01090
8	748608	S50742
8	748608	S78049
8	748608	S78056
8	748608	S78100
8	787008	J76875
8	787008	K12869
8	787008	M77087
8	787008	N06806
8	787008	N32406
8	787008	N34151
8	787008	N89336
8	787008	N89554
8	787008	N90392
8	787008	N90682
8	787028	N89693
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8	787208	B07691
8	787208	B228AA0169
8	787208	B228AA0242

TABLE 1—Continued

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8	787208	B228AA0576
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8	787208	B228AA0641
8	787208	B228AA0746
8	787208	B228AA0859
8	787208	B228AA0866
8	787208	B228AA0878
8	787208	B228AA0905
8	787208	B228AA1070
8	787208	B228AA1117
8	787208	BENCAH0302
8	787208	BENCAH1584
8	787208	BENCAH3448
8	787208	BENCAJ5729
8	787208	BENCAJ8175
8	787208	BENCAJ8767
8	787208	BENCAJ8773
8	787208	BENCAJ8790
8	787208	BENCAJ9142
8	787208	BENCAK4678
8	787208	BENCAK4771
8	787208	BENCAK5470
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8	787208	BENCAK6162
8	787208	BENCAK6398
8	787208	BENCAK8259
8	787208	BENCAK9252
8	787208	BENCAK9261
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8	787208	BENCAL2642
8	787208	BENCAL4344
8	787208	BENCAL7699
8	787208	BENCAL9217
8	787208	J76954
8	787208	K11762
8	787208	K12737
8	787208	K12765
8	787208	L89874
8	787208	M41582
8	787208	M41586
8	787208	M41918
8	787208	M76995
8	787208	M77005
8	787208	M77119
8	787208	N06396
8	787208	N33501
8	787208	N33769
8	787208	N33774
8	787208	N33776
8	787208	N33784
8	787208	N34183
8	787208	N34207
8	787208	N89068
8	787208	N89079
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8	787208	N89702
8	787208	N89708
8	787208	N89895
8	787208	N89898
8	787208	N90251
8	787208	N90344
8	787208	N90990
8	787208	P43853
8	787208	P43872
8	787208	P43891
8	787208	P43956
8	787208	P43986
8	787208	P44338
8	787208	P45405
8	787208	R23233
8	787208	R23836
8	787208	R23873
8	787208	R24174
8	787208	R24227
8	787208	R24677
8	787208	R24739
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8	787208	R91870
8	787208	R91947
8	787208	R92114
8	787208	R92308
8	787208	S07578
8	787208	S07629
8	787208	S07758
8	787208	S07768
8	787208	S07775
8	787208	S39269
8	787208	S39468
8	787208	S39513
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8	787208	S39753
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8	787208	S39973
8	787208	S39995
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8	787208	S40079
8	787208	S40095
8	789608	H03942
8	789608	J21516
8	792038	B228AA0039
8	792038	BENCAJ8836
8	797938	B228AA0487
8	797938	B228AA1034
8	797938	BENCAJ8910
8	797938	BENCAL5921
8	797938	N06290
8	797938	N33267
8	797938	N90703
8	797938	N90970
8	797938	S70436
8	797938	T03512
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8	5005808–01	B228AA0405
8	5005808–01	B228AA0490
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8	5005808–01	N32395
8	5005808–01	N32524
8	5005808–01	N33073
8	5005808–01	N33304
8	5005808–01	N33466
8	5005808–01	N89447
8	5005808–01	N89464
8	5005808–01	P44800
8	5005808–01	P45226
8	5005808–01	R24458
8	5005808–01	R91359
8	5005808–01	R91787
8	5005808–01	S07967
8	5005808–01	S70327
8	5005808–01	S70429
8	5005808–01	S70463
8	5005808–01	S70494
8	5005808–01	S70520
8	5005808–01	T03317
8	5005808–01	T03452
8	5005808–01	T03476
8	5005808–01	T03506
8	5005808–01	T03549
8	5006008–01	R24001
9	701509	5A1936
9	701509	J89101
9	701509	L56782
9	701509	L85804
9	701509	M09404
9	701509	M73608
9	701509	M84236
9	701509	N02058
9	701509	N02998
9	701509	N209AA0242
9	701509	N209AA0246
9	701509	N209AA0323
9	701509	N209AA0418
9	701509	N209AA0634
9	701509	N22582
9	701509	N56942
9	701509	N56952
9	701509	N79878
9	701509	N97637
9	701509	N97707
9	701509	N98354
9	701509	N99323
9	701509	NENCAH0592
9	701509	NENCAH0697
9	701509	NENCAH0883
9	701509	NENCAH1173
9	701509	NENCAH1422
9	701509	NENCAH1432
9	701509	P11303
9	701509	P11463
9	701509	P12707
9	701509	P52176
9	701509	P52596
9	701509	P52608
9	701509	P97654
9	701509	P97704
9	701509	P98673
9	701509	R18109
9	701509	R18342
9	701509	R18385
9	701509	R45763
9	701509	R45850
9	701509	R46297
9	701509	R46394
9	701509	R46403
9	701509	R72835
9	701509	R72839
9	701509	R72846
9	701509	R73002
9	701509	R74484
9	701509	S00704
9	701509	S00765
9	701509	S00824

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TABLE 1—Continued

Stage	P/N	S/N
9	701509	S00886
9	701509	S00909
9	701509	S00910
9	701509	S18837
9	701509	S18941
9	701509	S19027
9	701509	S50340
9	701509	S70059
9	701509	S77627
9	701509	S77671
9	701509	S77784
9	701509	S77809
9	701509	T18893
9	701509	T18909
9	701509	T27458
9	701509	T27587
9	739509	H17622
9	772509	K23758
9	772509	K24989
9	772509	K86136
9	772509	L15428
9	772509	M40393
9	772509	M40397
9	772509	N42380
9	772509	N56529
9	772509	N79955
9	772509	N79970
9	772509	N80784
9	772509	N96815
9	772509	N96816
9	772509	N96904
9	772509	N96905
9	772509	N97800
9	772509	N97806
9	772509	N99352
9	772509	N99353
9	772509	N99362
9	772509	N99367
9	772509	N99368
9	772509	N99376
9	772509	P11398
9	772509	P11407
9	772509	P11411
9	772509	P11414
9	772509	P11419
9	772509	P12231
9	772509	P76976
9	772509	P76987
9	772509	P76990
9	772509	P76992
9	772509	P76994
9	772509	R17787
9	772509	S01222
9	772509	S02183
9	772509	S50825
9	798509	AA0579
9	798509	B209AA0068
9	798509	B209AA0086
9	798509	B209AA0100
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9	798509	B209AA0420
9	798509	B209AA0429
9	798509	B209AA0434
9	798509	B209AA0461
9	798509	B209AA0518
9	798509	B209AA0542
9	798509	B209AA0551

TABLE 1—Continued

Stage	P/N	S/N
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9	798509	BENCAJ9319
9	798509	BENCAJ9337
9	798509	BENCAJ9348
9	798509	BENCAJ9359
9	798509	BENCAJ9366
9	798509	BENCAK0166
9	798509	BENCAK4404
9	798509	BENCAK4409
9	798509	BENCAL0725
9	798509	BENCAL2575
9	798509	BENCAL4022
9	798509	BENCAL6238
9	798509	N03324
9	798509	N42399
9	798509	N42401
9	798509	N56700
9	798509	N97809
9	798509	N99501
9	798509	P53159
9	798509	P77576
9	798509	R72583
9	798509	R73591
9	798509	R74285
9	798509	S02121
9	798509	S02165
9	798509	S79341
9	798509	S79364
9	798509	S79409
9	798509	S79414
9	798509	S94376
9	798509	S94384
9	798509	S94391
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10	772510	B210AA0062
10	772510	B210AA0128
10	772510	B210AA0263
10	772510	B210AA0339
10	772510	B210AA0398
10	772510	B210AA0520
10	772510	B210AA0538
10	772510	B210AA0549
10	772510	B210AA0563
10	772510	B210AA0619
10	772510	B210AA0684
10	772510	B210AA0727
10	772510	B210AA0744
10	772510	B210AA0785
10	772510	B210AA0860
10	772510	B210AA0862
10	772510	B210AA0956
10	772510	B210AA0984
10	772510	B210AA1073
10	772510	B210AA1081
10	772510	B210AA1137
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10	772510	BENCAH2165
10	772510	BENCAH2280
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10	772510	BENCAJ9159
10	772510	BENCAJ9705
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10	772510	BENCAJ9805

TABLE 1—Continued

Stage	P/N	S/N
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10	772510	BENCAK5154
10	772510	BENCAK5350
10	772510	BENCAK5735
10	772510	BENCAK5773
10	772510	BENCAK6465
10	772510	BENCAK9082
10	772510	BENCAK9123
10	772510	BENCAK9429
10	772510	BENCAK9434
10	772510	BENCAL1600
10	772510	BENCAL1635
10	772510	BENCAL2434
10	772510	BENCAL3279
10	772510	BENCAL5558
10	772510	BENCAL6141
10	772510	BENCAL6373
10	772510	H17769
10	772510	H32904
10	772510	H34713
10	772510	H57950
10	772510	H76378
10	772510	K56398
10	772510	K66132
10	772510	K86040
10	772510	L15008
10	772510	L32061
10	772510	L55910
10	772510	L56859
10	772510	L86006
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10	772510	M10987
10	772510	M39587
10	772510	M39591
10	772510	M49011
10	772510	M49358
10	772510	M49359
10	772510	M73918
10	772510	M86490
10	772510	N02251
10	772510	N02274
10	772510	N11091
10	772510	N22833
10	772510	N42134
10	772510	N56280
10	772510	N57181
10	772510	N57382
10	772510	N57418
10	772510	N57437
10	772510	N80225
10	772510	N80703
10	772510	N80716
10	772510	N80718
10	772510	N81110
10	772510	N81114
10	772510	N81474
10	772510	N97025
10	772510	N97067
10	772510	N97527
10	772510	N97553
10	772510	N97574
10	772510	N97591
10	772510	N97832
10	772510	N98539
10	772510	N98750
10	772510	N98764
10	772510	N98768
10	772510	N98798
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10	772510	P11017
10	772510	P11029
10	772510	P11039

TABLE 1—Continued

Stage	P/N	S/N
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10	772510	P11834
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10	772510	P12645
10	772510	P12648
10	772510	P51452
10	772510	P51454
10	772510	P51833
10	772510	P51883
10	772510	P52238
10	772510	P53116
10	772510	P53207
10	772510	P53327
10	772510	P76886
10	772510	P76891
10	772510	P77070
10	772510	P77161
10	772510	P77180
10	772510	P77423
10	772510	P77618
10	772510	P77663
10	772510	P77668
10	772510	P77744
10	772510	P77752
10	772510	P97017
10	772510	P98117
10	772510	P98258
10	772510	P98840
10	772510	R18022
10	772510	R18124
10	772510	R18611
10	772510	R18665
10	772510	R19275
10	772510	R46329
10	772510	R46679
10	772510	R72606
10	772510	R72615
10	772510	R72617
10	772510	R72874
10	772510	R73345
10	772510	R74396
10	772510	S01267
10	772510	S01277
10	772510	S01369
10	772510	S01501
10	772510	S01631
10	772510	S01680
10	772510	S19280
10	772510	S19293
10	772510	S19294
10	772510	S19298
10	772510	S19328
10	772510	S19440
10	772510	S19447
10	772510	S19458
10	772510	S19467
10	772510	S19486
10	772510	S19512
10	772510	S51089
10	772510	S51144
10	772510	S51176
10	772510	S51210
10	772510	S78237
10	772510	S78294
10	772510	S78298
10	772510	S78318

TABLE 1—Continued

Stage	P/N	S/N
10	772510	S78439
10	772510	S78464
10	772510	S78511
10	772510	S78623
10	772510	S78642
10	772510	S78724
10	772510	T19014
10	772510	T19091
10	772510	T19152
10	772510	T19169
10	772510	T28070
10	772510	T28091
10	772510	T28136
10	772510	T28138
10	772510	T49026
10	772510	T49044
10	772510	T49055
10	772510	T49068
10	772510	T49089
11	701411	G29388
11	701411	G43952
11	769611	H16901
11	772511	AA0065
11	772511	B211AA0047
11	772511	B211AA0157
11	772511	B211AA0171
11	772511	B211AA0263
11	772511	B211AA0301
11	772511	B211AA0349
11	772511	B211AA0356
11	772511	B211AA0517
11	772511	B211AA0529
11	772511	B211AA0599
11	772511	B211AA0622
11	772511	B211AA0624
11	772511	B211AA0705
11	772511	B211AA0798
11	772511	B211AA0823
11	772511	B211AA0945
11	772511	B211AA1004
11	772511	B211AA1107
11	772511	B211AA1166
11	772511	B211AA1212
11	772511	B211AA1292
11	772511	B211AA1360
11	772511	BENCAH0264
11	772511	BENCAH2171
11	772511	BENCAH5424
11	772511	BENCAJ8130
11	772511	BENCAK0910
11	772511	BENCAK7121
11	772511	BENCAK7336
11	772511	BENCAK7407
11	772511	BENCAK7412
11	772511	BENCAK7417
11	772511	BENCAK7523
11	772511	BENCAL2881
11	772511	BENCAL2959
11	772511	BENCAL3030
11	772511	H58238
11	772511	H99450
11	772511	J24528
11	772511	J68900
11	772511	J88334
11	772511	K24665
11	772511	K35705
11	772511	K85911
11	772511	L15671
11	772511	L30512
11	772511	L84603
11	772511	L84967
11	772511	M11198

TABLE 1—Continued

Stage	P/N	S/N
11	772511	M11208
11	772511	M40116
11	772511	M49492
11	772511	M49540
11	772511	M49551
11	772511	M61349
11	772511	M61810
11	772511	M61821
11	772511	M61827
11	772511	M73414
11	772511	M8[illegible]423
11	772511	M86943
11	772511	M87075
11	772511	N02874
11	772511	N03522
11	772511	N21358
11	772511	N22738
11	772511	N41160
11	772511	N41282
11	772511	N41646
11	772511	N41748
11	772511	N42587
11	772511	N42774
11	772511	N56399
11	772511	N56596
11	772511	N57323
11	772511	N57878
11	772511	N57899
11	772511	N57939
11	772511	N57953
11	772511	N80541
11	772511	N80554
11	772511	N80580
11	772511	N81408
11	772511	N93700
11	772511	N96929
11	772511	N96947
11	772511	N96955
11	772511	N97354
11	772511	N97368
11	772511	N97956
11	772511	N97977
11	772511	N98242
11	772511	N98245
11	772511	N98573
11	772511	N98587
11	772511	N98612
11	772511	N98949
11	772511	N98963
11	772511	N98974
11	772511	N98976
11	772511	N98981
11	772511	N98985
11	772511	N99526
11	772511	N99535
11	772511	N99551
11	772511	N99553
11	772511	N99564
11	772511	N99590
11	772511	P03620
11	772511	P11615
11	772511	P11637
11	772511	P11959
11	772511	P11981
11	772511	P12385
11	772511	P12387
11	772511	P12399
11	772511	P12743
11	772511	P12777
11	772511	P12930
11	772511	P51979
11	772511	P52100

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TABLE 1—Continued

Stage	P/N	S/N
11	772511	P52732
11	772511	P52903
11	772511	P52910
11	772511	P76731
11	772511	P76820
11	772511	P76832
11	772511	P76857
11	772511	P77637
11	772511	P77642
11	772511	P97786
11	772511	R05382
11	772511	R05539
11	772511	R05747
11	772511	R29690
11	772511	R29884
11	772511	R30070
11	772511	R30119
11	772511	R30137
11	772511	R30157
11	772511	R30194
11	772511	R30226
11	772511	R30258
11	772511	R30313
11	772511	R30429
11	772511	R30504
11	772511	R30534
11	772511	R30617
11	772511	R30625
11	772511	R30808
11	772511	R30810
11	772511	R30906
11	772511	R30941
11	772511	R30993
11	772511	R31009
11	772511	R31035
11	772511	R31073
11	772511	R31118
11	772511	R46248
11	772511	R46361
11	772511	S03667
11	772511	S03741
11	772511	S03745
11	772511	S03805
11	772511	S04156
11	772511	S04451
11	772511	S04460
11	772511	S04473
11	772511	S04542
11	772511	S04543
11	772511	S04557
11	772511	S04564
11	772511	S04582
11	772511	S04649
11	772511	S80373
11	772511	S80389
11	772511	S80465
11	772511	S80547
11	772511	S80588
11	772511	S80617
11	772511	S80682
11	772511	S80740
11	772511	S80765
11	772511	T22044
11	772511	T22052
11	772511	T22099
11	772511	T22202
11	772511	T22236
11	772511	T22261
11	772511	T22353
11	772511	T22378
11	772511	T22395
11	772511	T22405

TABLE 1—Continued

Stage	P/N	S/N
11	772511	T22521
11	772511	T22533
11	772511	T22593
11	772511	T22608
11	772511	T22653
11	772511	T22797
11	772511	T22835
11	772511	T22873
11	772511	T22895
11	772511	T22949
11	772511	T23006
12	717312	2B1946
12	717312	3A7441
12	772512	B212AA0565
12	772512	B212AA0864
12	772512	H58261
12	772512	H58448
12	772512	J23046
12	772512	J68527
12	772512	J89283
12	772512	K04097
12	772512	K23952
12	772512	K23992
12	772512	K35819
12	772512	K55628
12	772512	K55951
12	772512	K56079
12	772512	K66470
12	772512	K66500
12	772512	K86442
12	772512	K86447
12	772512	L15502
12	772512	L30899
12	772512	L31589
12	772512	L32003
12	772512	L56276
12	772512	L56294
12	772512	L56303
12	772512	L56308
12	772512	L56886
12	772512	L85095
12	772512	L86236
12	772512	M10233
12	772512	M10966
12	772512	M40081
12	772512	M49574
12	772512	M49665
12	772512	M73392
12	772512	M84838
12	772512	N02466
12	772512	N03990
12	772512	N21261
12	772512	N22069
12	772512	N22894
12	772512	N41128
12	772512	N41249
12	772512	N41717
12	772512	N42236
12	772512	N42871
12	772512	N56325
12	772512	N57451
12	772512	N58072
12	772512	N58127
12	772512	N80601
12	772512	N81044
12	772512	N81173
12	772512	N81187
12	772512	N97079
12	772512	N97083
12	772512	N97109
12	772512	N97384
12	772512	N97438

TABLE 1—Continued

Stage	P/N	S/N
12	772512	N97455
12	772512	N97457
12	772512	N97893
12	772512	N97916
12	772512	N98152
12	772512	N98162
12	772512	N98654
12	772512	N98657
12	772512	N98680
12	772512	N98691
12	772512	N99016
12	772512	N99025
12	772512	N99049
12	772512	N99057
12	772512	N99094
12	772512	N99125
12	772512	P11154
12	772512	P11179
12	772512	P11183
12	772512	P11193
12	772512	P11252
12	772512	P11678
12	772512	P11699
12	772512	P11877
12	772512	P11879
12	772512	P11909
12	772512	P12244
12	772512	P12277
12	772512	P12493
12	772512	P12519
12	772512	P51414
12	772512	P52139
12	772512	P52409
12	772512	P52520
12	772512	P52871
12	772512	P53141
12	772512	P53351
12	772512	P53396
12	772512	P72298
12	772512	P76702
12	772512	P76921
12	772512	P76931
12	772512	P77096
12	772512	P77294
12	772512	P77338
12	772512	P77695
12	772512	P77796
12	772512	P78510
12	772512	P97315
12	772512	R17703
12	772512	R17746
12	772512	R18201
12	772512	R18319
12	772512	R18589
12	772512	R19042
12	772512	R45067
12	772512	R45829
12	772512	R46100
12	772512	R46108
12	772512	R46121
12	772512	R46707
12	772512	R52615
12	772512	R72811
12	772512	R73024
12	772512	R73783
12	772512	R74357
12	772512	S01858
12	772512	S01860
12	772512	S01914
12	772512	S01923
12	772512	S01949
12	772512	S01969

TABLE 1—Continued

Stage	P/N	S/N
12	772512	S01971
12	772512	S01980
12	772512	S01994
12	772512	S02002
12	772512	S02007
12	772512	S19593
12	772512	S19644
12	772512	S19843
12	772512	S51370
12	772512	S51437
12	772512	S51514
12	772512	S51519
12	772512	S51560
12	772512	S51571
12	772512	S78825
12	772512	S78841
12	798512	B212AA0009
12	798512	B212AA0045
12	798512	B212AA0051
12	798512	B212AA0060
12	798512	B212AA0073
12	798512	B212AA0077
12	798512	B212AA0082
12	798512	B212AA0142
12	798512	B212AA0155
12	798512	B212AA0290
12	798512	B212AA0293
12	798512	B212AA0361
12	798512	B212AA0428
12	798512	B212AA0586
12	798512	B212AA0618
12	798512	B212AA0647
12	798512	B212AA0735
12	798512	B212AA0747
12	798512	B212AA0942
12	798512	B212AA0974
12	798512	B212AA1031
12	798512	B212AA1062
12	798512	B212AA1098
12	798512	B212AA1173
12	798512	BENCAH1931
12	798512	BENCAH4104
12	798512	BENCAJ4925
12	798512	BENCAJ6158
12	798512	BENCAJ7821
12	798512	BENCAJ8115
12	798512	BENCAJ9478
12	798512	BENCAJ9497
12	798512	BENCAJ9503
12	798512	BENCAJ9530
12	798512	BENCAJ9617
12	798512	BENCAJ9673
12	798512	BENCAK0455
12	798512	BENCAK2377
12	798512	BENCAK4552
12	798512	BENCAK5787
12	798512	BENCAK8605
12	798512	BENCAK9227
12	798512	BENCAL1655
12	798512	BENCAL2487
12	798512	BENCAL4173
12	798512	BENCAL6328
12	798512	BENCAL6602
12	798512	M86993
12	798512	N42703
12	798512	N42708
12	798512	N57617
12	798512	N57629
12	798512	N80087
12	798512	N80088
12	798512	N98138
12	798512	N99136

TABLE 1—Continued

Stage	P/N	S/N
12	798512	N99144
12	798512	P53305
12	798512	P76909
12	798512	P76916
12	798512	P77722
12	798512	P78317
12	798512	R17334
12	798512	R46556
12	798512	R46562
12	798512	R73201
12	798512	R74214
12	798512	S02217
12	798512	S02254
12	798512	S51853
12	798512	S79575
12	798512	S94530
12	798512	S94534
12	798512	S94538
12	798512	S94539
12	798512	S94569
12	798512	S94579
12	798512	S94590
12	798512	S94615
12	798512	T19187
12	798512	T19213
12	798512	T19220
12	798512	T19242
12	798512	T19277
12	798512	T19292
12	798512	T19314
12	798512	T28638
12	798512	T43059

(b) For the purpose of this AD, a shop visit is defined as an engine removal, where engine maintenance entails separation of pairs of major mating engine flanges or the removal of a disk, hub, or spool regardless of other planned maintenance.

(c) The accomplishment of the inspections and repairs specified in this AD must be performed at Greenwich Air Services Inc., certificate number RA1R445K of Dallas, Texas. Operators wishing to use another facility to perform the required inspections and repairs must apply for an alternate method of compliance in accordance with paragraph (d) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on January 8, 1998.

James C. Jones,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–1483 Filed 1–22–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255

[Docket No. OST–97–2881]

RIN 2105–AC65

Computer Reservations System (CRS) Regulations (Part 255)

AGENCY: Office of the Secretary (DOT).

ACTION: Advanced notice of proposed rulemaking; notice extending reply comment period.

SUMMARY: The Department began a rulemaking to determine whether it should continue or modify its existing rules governing airline computer reservations systems (CRSs). On September 10, 1997, the Department published an advance notice of proposed rulemaking asking for comments on that matter. The Department is now extending the due date for reply comments on the advance notice to February 3, 1998, from the current due date, January 23. The Department is acting due to a party's request for an extension based on the complexity of the issues and the large number of comments.

DATES: Comments are due by February 3, 1998.

ADDRESSES: Reply comments must be filed in Room PL–401, Docket OST–97–2881, U.S. Department of Transportation, 400 7th St. SW., Washington , DC 20590. Late filed comments will be considered to the extent possible. To facilitate consideration of comments, each commenter should file six copies of its comments.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: The Department's rules governing CRS

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operations—14 CFR part 255—will expire on March 31, 1999, unless the Department readopts them or changes the rules' termination date to a later date. 62 FR 66272, December 18, 1997. We published an advance notice of proposed rulemaking to begin a proceeding for reexamining the rules and determining whether they should be readopted and, if so, whether they should be changed. 62 FR 47606, September 10, 1997. Under our modified schedule, the reply comments are due January 23 (the comments were due December 9). 62 FR 58700, October 30, 1997.

American Airlines, the principal owner of Sabre, the largest system and a major user of every system's services, has asked us to change the due date for reply comments to February 3, 1998 (as requested by our staff, American served its request on every commenter, so that all parties will be aware of its request). American notes that many comments were filed in response to our advance notice, that those comments raised a number of complex issues, and that some parties did not file their comments until well after the due date for comments. American contends that an extension of time for the reply comments is needed to ensure that all interested persons have a reasonable opportunity to review the initial comments and to prepare their reply comments. We intend to complete our rulemaking as soon as reasonably possible, given the impact of computer reservations system practices on airline competition, the public's ability to obtain accurate and complete information on airline services, and the airline and travel agency businesses. We have nonetheless decided to grant the short extension requested by American. Many parties filed comments, and those comments dealt with a number of difficult issues. We are likely to have a better record for preparing a notice of proposed rulemaking if we enable the parties to prepare reply comments that discuss in depth all of the issues. We will therefore extend the due date for reply comments to February 3.

Issued in Washington, D.C. on January 16, 1998.

Nancy E. McFadden,

General Counsel.

[FR Doc. 98–1595 Filed 1–22–98; 8:45 am]

BILLING CODE 4810–82–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Voting by Interested Members of Self-Regulatory Organization Governing Boards and Committees

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rulemaking.

SUMMARY: On May 3, 1996, the Commodity Futures Trading Commission ("Commission") published for comment in the **Federal Register** a proposed new Regulation 1.69 [1] that would implement the statutory directives of Section 5a(a)(17) of the Commodity Exchange Act ("CEA") as it was amended by Section 217 of the Futures Trading Practices Act of 1992 ("FTPA").[2] The Commission received eleven comment letters in response to the proposed rulemaking. Based upon those comments, the Commission has amended its proposed rulemaking and has determined to publish a revised proposed rulemaking for additional public comment.

Proposed Commission Regulation 1.69 would require self-regulatory organizations ("SRO") to adopt rules prohibiting governing board, disciplinary committee, and oversight panel members from deliberating or voting on certain matters where the member had either a relationship with the matter's named party in interest or a financial interest in the matter's outcome. The proposed rulemaking also would amend Commission Regulations 1.41 and 1.63 to make modifications made necessary by proposed Commission Regulation 1.69.

DATES: Comments on the proposed rule and rule amendments must be received by February 23, 1998.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; Telephone: (202) 418–5481.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 217 of the FTPA amended Section 5a(a)(17) of the CEA to require that contract markets "provide for the avoidance of conflict of interest in deliberations by [their] governing board[s] and any disciplinary and oversight committee[s]." [3] On May 3, 1996, the Commission published for public comment in the **Federal Register** a proposed new Regulation 1.69 which required SROs to adopt rules prohibiting governing board, disciplinary committee and oversight panel members from deliberating and voting on certain matters where the member had either a relationship with the matter's named party in interest or a financial interest in the matter's outcome.[4] The Commission also proposed to make related amendments to existing Commission Regulations 1.3, 1.41 and 1.63.

II. Comments Received

The Commission received eleven comment letters in response to its proposed rulemaking. The comment letters were submitted by six futures exchanges (the Chicago Board of Trade ("CBT"), the Chicago Mercantile Exchange ("CME"), the Coffee, Sugar & Cocoa Exchange, Inc. ("CSC"), the Kansas City Board of Trade ("KCBT"), the New York Cotton Exchange ("NYCE"), and the New York Mercantile Exchange ("NYMEX")); two futures clearing organizations (the Board of Trade Clearing Corporation ("BOTCC") and the Commodity Futures Clearing Corporation of New York ("CFCCNY")); two futures trade associations (the Equity Owners' Association of the CME ("EOA") and the Futures Industry Association ("FIA")); and a registered futures association ("RFA") (the National Futures Association ("NFA")).

The Commission has reviewed these comments carefully and has decided to issue for public comment re-proposed versions of Regulation 1.69 and amended Regulations 1.41 and 1.63 with modifications from the originally-proposed versions. The following section of this release analyzes the Commission's rulemaking. Each provision of the Commission's originally-proposed rulemaking is described along with a discussion of comments which were made on that particular provision, an indication of how the provision has been amended in

[1] 61 FR 19869 (May 3, 1996).

[2] Pub. L. No. 102–546, § 217, 106 Stat. 3590 (1992).

[3] For the purposes of this release, the term *committee* generally will be used to include governing boards, disciplinary committees and oversight panels unless otherwise specified. This proposed rulemaking's definitions of governing board, disciplinary committee, oversight panel and SRO are discussed below in Section III.A.

[4] 61 FR 19869 (May 3, 1996). In that same **Federal Register** release, the Commission also published for public comment a proposed new Regulation 156.4 which required contract markets to make more readily available to the public the identity of members of broker associations at their respective exchanges. The Commission adopted Regulation 156.4, with minor modifications, on August 2, 1996. 61 FR 41496 (August 9, 1996).

this proposed rulemaking, and an explanation of the Commission's rationale for amending the provision.[5]

A. Reason for Rulemaking

The Commission notes that in addition to comments on particular provisions, there also were several general comments on the originally-proposed rulemaking. The BOTCC, CBT and CFCCNY each commented that no provision of CEA Section 5a(a)(17) requires that the Commission adopt a conflict of interest regulation other than Section 5a(a)(17)(C)'s requirement that the Commission establish conditions under which committee members required to abstain from voting on significant actions in which they have a substantial financial interest may nevertheless participate in deliberations. The NYCE similarly commented that Regulation 1.69 should be confined to the areas specified by CEA Section 5a(a)(17) and that, instead of a Commission rulemaking, SRO committees should only have to follow the traditional "bad faith" standard when determining conflicts of interest.[6]

The commenters are correct in stating that paragraph (C) of Section 5a(a)(17) is the only provision that requires Commission rulemaking. The other provisions require SRO rules. Such rules, however, must be submitted for Commission review pursuant to either CEA Section 5a(a)(12)(A), in the case of contract markets, and CEA Section 17(j), in the case of registered futures associations. The Commission believes, therefore, that it is appropriate to establish by rulemaking the standards with which such SRO rules must conform.

While proposed Regulation 1.69 would implement the provisions of CEA Section 5a(a)(17), the proposed rulemaking also would give content to the "bad faith" standard traditionally applied to futures exchange governing boards.[7] By establishing specific factors to be considered with respect to barring persons with potential financial or personal interests from deliberating and voting on committee decisions, the Commission believes that proposed Regulation 1.69 would reduce the potential for collateral attack of such committee decisions on the grounds that they were made in "bad faith." The Commission has structured proposed Regulation 1.69 to provide guidance to SROs, consistent with the new provisions of the CEA, on what type of circumstances could be the basis for "bad faith" challenges.

The BOTCC commented that the SROs, not the Commission, should adopt procedures to address conflict of interest situations. The Commission notes that, while proposed Regulation 1.69 would establish minimum standards for conflict of interest restrictions, the SROs would have a large degree of discretion when they formulated their required implementing rules to adopt the procedures that were most compatible with their committees' structures and practices.

B. Enforcement of SRO Implementing Rules

The EOA commented that it believes that recently the SROs have often ignored their written and unwritten standards regarding participation in governance and committee matters. The Commission's proposed rulemaking would address this concern to the extent that it would require SROs to codify their conflict of interest standards consistent with Regulation 1.69. The Commission reminds the SROs that they would be required to enforce any such implementing rules pursuant to Section 5a(a)(8) of the CEA and that SRO enforcement of such rules would be monitored by the Commission as part of its ongoing rule enforcement review program.[8]

C. Other Related Regulatory Provisions

The CBT commented that Regulation 1.69, as originally proposed, was inconsistent with Regulations 1.41(f)[9] and 8.17(a)(1).[10] The CBT did not specify how these provisions were inconsistent with originally-proposed Regulation 1.69. While Regulation 1.69 pertains to some of the same subject matter areas covered by Regulations 1.41(f) and 8.17(a)(1), the Commission believes that proposed Regulation 1.69's requirements would not conflict with any aspect of these provisions. In fact, proposed Regulation 1.69(b)(2)(iii), which lists the types of positions that SROs must review when determining the existence of a conflict of interest, is based upon the position information which contract markets already are required to gather and to provide to the Commission upon the adoption of temporary emergency rules, pursuant to Regulation 1.41(f)(3)(ii). In the case of Regulation 8.17(a)(1), proposed Regulation 1.69 merely would clarify the requirements of that provision by enumerating what constituted a "financial, personal or other direct interest" in a disciplinary committee matter.

III. Proposed Rulemaking

A. Definitions

1. Self-Regulatory Organization

i. *Application to Clearing Organizations*

The Commission originally proposed to apply Regulation 1.69's conflict of interest restrictions to the governing board, disciplinary committees and oversight panels of each SRO. Originally-proposed Regulation 1.69(a)(6)'s definition of SRO included contract markets, clearing organizations and RFAs. While Section 217 of the FTPA specifies that "contract markets" must adopt conflict of interest provisions, the Commission indicated in its originally-proposed rulemaking that it believed that it would be appropriate for Regulation 1.69's conflict of interest restrictions to extend to clearing organizations and RFAs as well. The Commission particularly sought comment on the definition of SRO and whether it would be consistent with the principles endorsed by CEA Section 5a(a)(17) to extend the conflict of interest restrictions to clearing organizations and RFAs.

[5] For ease of reference, this release will henceforth refer to the rulemaking published on May 3, 1996, as the originally-proposed rulemaking. The release will refer to the currently-proposed rulemaking version as the proposed rulemaking.

[6] The governing boards of futures exchanges are legally bound not to act in "bad faith" when taking actions on behalf of an exchange. This "bad faith" standard was first articulated in *Daniel* v. *Board of Trade of the City of Chicago*, 164 F. 2d 815 (7th Cir. 1947), a case arising from CBT emergency actions raising the price limits on various grain futures contracts due to price volatility. The plaintiffs in that case lost money on their grain positions as a result of the CBT's actions and claimed that the CBT's Board members acted "willfully, maliciously, and for their own personal gain" in imposing emergency price limits. *Id.* at 818. In the *Daniel* case, the Court recognized that while exchange boards have a "duty" to address market emergencies, they also have a "relation to the public" which requires that they "act with the utmost objectivity, impartiality, honesty, and good faith." *Id.* at 819–20. In order to prevail in a suit challenging an emergency action, the Court determined that the plaintiff must show "bad faith amounting to fraud," since fraud would imply a board's breach of its public trust. *Id.* The "bad faith" standard governing exchange boards has been consistently followed and further refined by the Commission and the courts.

[7] *See* footnote 6 above.

[8] Should it ever become necessary, the Commission could enforce SRO rules implementing Regulation 1.69. For example, under CEA Section 8c(a)(1), the Commission can "suspend, expel, or otherwise discipline" an SRO committee member for violating an SRO Regulation 1.69-implementing rule should the subject SRO fail to take disciplinary action against such a committee member.

[9] Regulation 1.41(f) establishes procedures for SRO adoption of temporary emergency rules.

[10] Regulation 8.17(a)(1) prohibits a person from serving on a contract market disciplinary committee if "he or any person or firm with which he is affiliated has a financial, personal or other direct interest in the matter under consideration."

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The FIA commented that it did not object to Regulation 1.69's requirements being applied to clearing organizations. The BOTCC and CFCCNY commented that CEA Section 5a(a)(17) only applies to contract markets and that, accordingly, Congress was clearly only referring to futures exchanges, not clearing organizations. The BOTCC and CFCCNY also commented that applying conflict of interest restrictions to exchanges alone would be consistent with the different natures of exchange and clearing organization actions. They stated that exchanges can take actions that are specifically designed to have a market impact and, thus, possibly affect the positions of board members (*e.g.*, ordering liquidation trading, changing delivery dates, etc.). The BOTCC and CFCCNY contended that clearing organizations do not generally regulate trading but instead take actions to maintain the financial integrity of the clearing system and, thus, do not take actions that directly affect the positions of particular board members.

The Commission notes that, while CEA Section 5a(a)(17) applies to "contract markets," the provision also specifies that its conflict of interest restrictions shall apply to committees handling certain types of margin changes. Margin levels in the futures industry are established by both contract markets and clearing organizations. The Commission also notes that there have been previous occasions when CEA requirements for contract markets have been applied to clearing organizations. For example, Section 5a(a)(12)(A) of the CEA mandates Commission review of "contract market" rules, while Commission Regulation 1.41, which establishes procedures for Commission review of proposed rules, specifically includes clearing organizations within its definition of contract markets for these purposes. In addition, clearing organizations already are subject to regulatory requirements that are comparable to Regulation 1.69 such as Regulation 1.41(f)'s emergency action provisions and Regulation 1.63's prohibition on committee service by persons with disciplinary histories. Finally, some contract markets have in-house clearing organizations (*e.g.*, CME and NYMEX), while other contract markets are cleared by independent clearing organizations (*e.g.*, CBT and NYCE). Applying Regulation 1.69 to clearing organizations, as well as contract markets, would ensure that there would not be differing treatment of contract markets based on whether or not they had an in-house or independent clearing mechanism. For these reasons, the Commission has determined that it would be appropriate to treat clearing organizations as included in the definition of "contract markets" in CEA Section 5a(a)(17) and to make clearing organizations subject to proposed Regulation 1.69.

ii. *Application to RFAs*

The Commission also has decided to include RFAs within the definition of SRO in order to ensure that their committees would be subject to proposed Regulation 1.69. This would reduce the potential for committee member bias and self-interest in RFA proceedings as well.[11]

2. Governing Board

As originally proposed, Regulation 1.69's definition of governing board included any SRO "board of directors, board of governors, board of managers, or similar body" and any subcommittee thereof, such as an executive committee, that is authorized to take action on behalf of its SRO. The CBT commented that the Commission should confirm that a subcommittee of a governing board when not authorized to act on behalf of an SRO or when formulating recommendations to the board on a matter is neither a "governing board" nor an "oversight panel" under Regulation 1.69. The Commission believes that the recommendations of governing board subcommittees often are adopted in full by governing boards because the boards rely heavily on their subcommittees' recommendations. Accordingly, the Commission has revised the proposed rulemaking's definition of governing board to apply to SRO boards or board subcommittees that are authorized "to take action or to recommend the taking of action" on behalf of an SRO.

3. Disciplinary Committee

As originally proposed, Regulation 1.69 defined an SRO "disciplinary committee" to mean a body that was authorized by an SRO "to conduct disciplinary proceedings, to settle disciplinary charges, to impose sanctions, or to hear appeals thereof."

i. *Issuing Disciplinary Charges*

The CBT commented that the Commission should confirm that Regulation 1.69's disciplinary committee definition does not include committees that issue disciplinary charges. In fact, the Commission believes that disciplinary committee members with conflicts of interest can have a significant influence on the disciplinary process during the charging stage. Accordingly, the Commission has modified proposed Regulation 1.69 to include the issuance of disciplinary charges as one defining characteristic of a disciplinary committee.[12]

ii. *Minor Rule Violations*

The CBT, CME, FIA, NYCE and NYMEX each commented that Regulation 1.69's definition of disciplinary committee should exclude committees that deal with decorum and recordkeeping violations. The Commission agrees that the conflict of interest requirements need not apply to disciplinary committees that handle minor disciplinary matters but only to the extent that such matters are handled in a summary manner. Accordingly, the Commission has revised final Regulation 1.69(a)(1)'s definition of "disciplinary committee" to exclude committees that "summarily impose minor penalties for violating rules regarding decorum, attire, the timely submission of accurate records for clearing or verifying each day's transactions or other similar activities."[13] This revision, which incorporates elements of Commission Regulation 8.27's summary disciplinary provision, is only intended to create an exclusion for committees that handle minor disciplinary matters where it is important to impose sanctions in a prompt manner.

iii. *Committees Versus Committee Members*

In its originally-proposed rulemaking release, the Commission sought particular comment on the aspect of the definition of disciplinary committee under which the conflict of interest restrictions applied to members of disciplinary committees when they deliberated and voted on matters as a body, but did not apply to members of disciplinary committees when they exercised disciplinary powers individually. Thus, the originally-proposed definition did not include persons authorized to take disciplinary actions, such as floor committee members, who dispose of minor disciplinary violations by individually issuing fines or penalties, but did apply in instances when more than one committee member was required to endorse such an action. No commenter addressed this issue.

The Commission has decided to revise proposed Regulation 1.69's disciplinary committee definition so that there would be no distinction between disciplinary matters that were handled by full committees and those handled by individual committee members. Instead, as discussed above, the Commission has determined to incorporate into the definition a functional exclusion for committees that summarily impose minor penalties for decorum, attire and certain recordkeeping violations. Thus, the disciplinary committee definition would apply to any entity with disciplinary authority, whether a single person or a body of persons.

4. Oversight Panel

In the originally-proposed rulemaking, the Commission defined "oversight panel" as an SRO committee authorized to "review, recommend, or establish policies or procedures with respect to the [SRO's] surveillance, compliance, rule enforcement, or disciplinary responsibilities."[14] The CBT and NYCE commented that this definition was too broad and should not include committees which review or recommend policies as such a definition would deter people, inside and outside of the futures industry, from serving on task forces and planning committees that formulate ideas that are helpful to the SROs.

The Commission believes that SRO policies with respect to surveillance, compliance, rule enforcement and disciplinary responsibilities are an important part of the self-regulatory process and that persons who are entrusted with such responsibilities should be free from conflicts of interests.

The CBT and NYCE suggested that the definition of oversight panel be limited to panels that establish self-regulatory policies or procedures because they are the panels that adopt measures on behalf of their SROs. Presumably, the CBT and NYCE suggested excluding panels that review or recommend such policies or procedures because their actions may only be implemented upon adoption by some other authority, such as an SRO's governing board or membership. The Commission believes, however, that often the recommendation of an oversight panel with respect to self-regulatory policies or procedures can be tantamount to the establishment of such policies or procedures because the adopting authority relies on the panel's recommendation. Accordingly, the Commission has determined that the proposed rulemaking's definition of oversight panel should apply to SRO bodies that "recommend or establish" possible self-regulatory policies or procedures for an SRO, while excluding bodies that review such measures on behalf of their SRO.[15]

5. Family Relationship

As further discussed below, originally-proposed Regulation 1.69 prohibited committee members from deliberating and voting on committee matters in which any member of their immediate family was a named party in interest. For these purposes, originally-proposed Regulation 1.69 defined "immediate family" to mean a person's "spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, or in-law." Although no commenters addressed the originally-proposed definition, the Commission has decided to modify the definition in two respects for this proposed rulemaking.

First, consistent with the terminology used in CEA Section 5a(a)(17), the Commission proposes to use the defined term "family relationship" instead of the originally-proposed "immediate family." Second, the Commission has decided to amend the provision substantively by defining family relationship to mean a committee member's "spouse, former spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece or in-law." The Commission believes that these levels of familial relations are sufficiently close that they could unduly influence a committee member's decisionmaking. Accordingly, the proposed definition should help to assure that committee decisions would be the result of fair deliberations and would not be tainted by the real or perceived self-interest of committee members.

6. Significant Actions

In the originally-proposed rulemaking, Regulation 1.69's conflict of interest restrictions were applied to SRO committees whenever they considered any "significant action which would not be submitted to the Commission for its prior approval." The originally-proposed definition of that term included, at a minimum, two types of SRO actions: (1) SRO actions or rule changes that addressed emergencies as defined by Commission Regulation 1.41(a)(4) and (2) SRO margin changes that responded to extraordinary market conditions when such conditions were likely to have a substantial effect on prices in any contract traded or cleared at the SRO.

Proposed Regulation 1.69's definition of this term has been modified in several respects to accommodate suggestions made by commenters. In addition, for ease of reference, instead of "significant action which would not be submitted to the Commission for its prior approval," proposed Regulation 1.69 uses the defined term "significant action." The proposed "significant action" definition, though, continues to be limited to SRO actions which are not submitted to the Commission for prior approval.

i. *Scope of Definition*

Four commenters—the CBT, FIA, NYMEX and BOTCC—suggested that the significant action definition not be modified by the term "at a minimum," as originally proposed. The commenters believed that the use of this modifier deprived SROs of notice of what actions would be deemed significant and could potentially subject some committee actions to second-guessing. The Commission agrees that the inclusion of this phrase could lead to distracting collateral attacks on the actions of committees that are not subject to the conflict of interest restrictions. Accordingly, proposed Regulation 1.69(a)(8)'s definition of significant action does not include the "at a minimum" modifier.

ii. *Nonphysical Emergency Rules*

The BOTCC, CBT and FIA commented that CEA Section 5a(a)(17) requires that conflict of interest requirements apply to SRO committees when they consider "any nonphysical emergency rule," while proposed Regulation 1.69's definition included both physical and nonphysical emergency rules. These commenters urged the Commission to adhere to Congress' mandate and to limit the significant action definition to include only nonphysical emergencies. The Commission concurs with the commenters and has revised the proposed definition, which incorporates portions of Regulation 1.41(a)(4)'s definition of emergency, to include committee actions that respond to

[11] In its comment letter, NFA did not object to the inclusion of RFA's in the definition of an SRO. NFA did request, however, that the definition be clarified with respect to the handling of conflict of interests due to a committee member's financial interest in a significant action. As explained in Section III.B.2.i.d. below, the proposed rulemaking has been revised in this regard.

[12] The Commission also has proposed a conforming amendment to Regulation 1.63's definition of disciplinary committee. *See* Section III.E. below for a description of proposed amended Regulation 1.63.

[13] Insofar as such types of rule violations are not dealt with in a summary manner, they would not be excluded under the proposed definition.

[14] *See* originally-proposed Commission Regulation 1.3(tt).

[15] The oversight panel definition would be established by proposed Regulation 1.69(a)(4) and not by Regulation 1.3 as originally proposed.

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nonphysical emergencies (*see* Regulations 1.41(a)(4)(i) through (iv) and (vi) through (viii)) and to exclude committee actions that respond to physical emergencies (*see* Regulation 1.41(a)(4)(v)).

iii. *Types of Margin Changes*

The CME commented that Regulation 1.69's significant action definition should include margin changes that are used for regulatory purposes. In addition, the CBT, CME, FIA and NYMEX commented that, instead of margin changes that respond to market conditions that are likely to have a substantial effect on contract prices, the significant action definition should only include margin changes that are likely to have a substantial effect on contract prices. The commenters contended that their suggested approach would more closely conform with CEA Section 5a(a)(17).[16]

The Commission believes that the decisionmaking ability of committee members is most likely to be influenced by their personal interests when they consider actions which could impact them monetarily. Accordingly, the definition of significant action should focus on committee actions which have the most potential for affecting prices in particular contracts. Consistent with that rationale, the Commission has decided to include aspects of both of the above suggestions in its proposed rulemaking. Thus, proposed Regulation 1.69(a)(8)(ii)'s definition of an SRO significant action includes changes in margin levels that: (1) are designed to respond to extraordinary market conditions such as actual or attempted corners, squeezes, congestion, or undue concentrations of positions or (2) are likely to have a substantial effect on prices in any contract traded or cleared at the SRO.

The NYCE suggested that the Commission modify its significant action definition to pertain to margin changes that respond to price changes that are greater than some pre-established, one-day percentage market move. The Commission believes that such an approach could be an acceptable way of defining SRO committee significant actions that should be subject to Regulation 1.69's conflict of interest requirements. The Commission is not prepared, however, to establish a quantifiable industry-wide standard as part of this proposed rulemaking. The Commission believes that it would be difficult to establish such a standard at this time given the wide variety of types of SROs and futures contracts that exist. Instead, the Commission in its proposed rulemaking has adopted a "significant action" definition that would address the requirements explicitly set forth in CEA Section 5a(a)(17), but that, at the same time, would give each SRO the flexibility to adopt implementing measures that would be sensitive to the circumstances of its particular markets.

In its originally-proposed rulemaking, the Commission sought comment on whether there were any other types of SRO actions or rule changes that should be subject to Regulation 1.69's requirement. As examples, the Commission asked whether "changes to a price quote on a price change register, setting modified closing call ranges, or establishing settlement prices" should be included in Regulation 1.69's significant action definition.[17] The CBT, CME and NYMEX opposed classifying price change register revisions as significant actions, while the CBT and CME similarly opposed the inclusion of the establishment of modified closing call ranges and settlement prices. Generally, the commenters felt that subjecting such actions to conflict of interest requirements would be a cumbersome burden for SRO committees that carry out these functions. Accordingly, the Commission has decided not to revise proposed Regulation 1.69's significant action definition in this regard.

B. Self-Regulatory Organization Rules

1. Relationship With a Named Party in Interest

i. *Nature of Relationship*

Originally-proposed Regulation 1.69(b)(1) mandated that SROs implement rules requiring that committee members abstain from deliberating and voting on any matter in which they had a significant relationship with the matter's "named party in interest."[18] Originally-proposed Regulation 1.69(b)(1) listed the types of relationships between a committee member and named party in interest that required abstention, including family, employment, broker association and "significant, ongoing business" relationships. Several commenters suggested ways in which the Commission could clarify the types of relationships that would be the grounds for an abstention.

a. *Clearing Relationships.*—The CME, FIA and NFA commented that SRO committee members should not be required to abstain from committee matters if they use the same clearing member as a matter's named party in interest. The Commission agrees that sharing a clearing member should not, by itself, influence a committee member's decisionmaking. Accordingly, proposed Regulation 1.69(b)(1)(i)(D) explicitly provides that such a relationship shall not require a committee member to abstain from a matter.

The CBT commented that relationships between a clearing firm's employees or principals and the SRO members who are cleared by the firm should not be considered a "significant, ongoing business relationship" under Regulation 1.69(b)(1). The Commission believes that two parties to such a clearing relationship may not always be totally impartial if one party is involved in considering an SRO committee action that directly bears upon the other, especially in instances where a cleared member constitutes a significant portion of a firm's clearing activity. Accordingly, the Commission has decided not to exclude such relationships from proposed Regulation 1.69(b)(1)(i).

b. *Specificity of Relationship Standard.*—The Commission also received two general comments on originally-proposed Regulation 1.69(b)(1) from the CME and NYCE. The CME stated that the provision went too far in specifying the details as to what constituted a significant relationship that required abstention. By contrast, the NYCE suggested that originally-proposed Regulation 1.69(b)(1) was not sufficiently detailed and should include an objective standard to identify disqualifying relationships based upon: (1) the length of the relationship and (2) the amount of monies that are earned by the parties as a result of the relationship.

In formulating proposed Regulation 1.69(b)(1)(i), the Commission has attempted to establish a categorical listing of the types of personal and business relations that have the potential to influence committee members unduly. SROs always would have the discretion, of course, to include any additional disqualifying criteria in their own implementing rules.

[16] CEA Section 5a(a)(17) states that the term "significant action that would not be submitted to the Commission for its prior approval" shall include "any changes in margin levels designed to respond to extraordinary market conditions that are likely to have a substantial affect [sic] on prices in any contract traded on such contract market."

[17] *See* 61 FR 19869, 19872 n. 12.

[18] For these purposes, originally-proposed Commission Regulation 1.69 defined a *named party in interest* as a "party who is identified as the subject of any matter being considered" by an SRO committee. This same definition has been used in this proposed rulemaking as Regulation 1.69(a)(6).

c. *Confidentiality of Proceedings.*—Under originally-proposed Regulation 1.69(b)(1), SROs were required to adopt rules prohibiting committee members from engaging in any type of deliberations or voting on matters where they had a significant relationship with the matter's named party in interest. The CBT noted that CEA Section 5a(a)(17) limits this requirement to "confidential" deliberations and voting. For this proposed rulemaking, the Commission would require that committee members abstain from any type of deliberation and voting on matters where they had a relationship with the named party in interest, whether the deliberation was confidential or non-confidential.

Theoretically, non-confidential committee meetings would permit outsiders to monitor the fairness of a committee's decisionmaking processes. The Commission does not believe, however, that it is likely that there would be an effective outside presence at such committee meetings given the SROs' traditional practice of closing committee meetings to the public. In addition, even open committee meetings would not prevent a committee member's decisionmaking from being influenced by self-interest, especially since the particulars of a committee member's personal interest in a matter might not be known to any outsiders attending committee meetings.

CEA Section 5a(a)(17) states that "at a minimum" the named party in interest conflict of interest restrictions shall apply to the "confidential deliberations and voting" of contract market governing boards, disciplinary committees and oversight panels. Because CEA Section 5a(a)(17) merely sets a minimum baseline as to the application of conflict of interest requirements, the Commission has decided to propose the more prophylactic approach of applying Regulation 1.69(b)(1)'s requirements to all deliberations, whether confidential or not. The Commission notes that this approach also is consistent with the existing conflict of interest requirements of Regulation 8.17(a)(1) which do not distinguish between confidential and non-confidential disciplinary committee proceedings.[19]

d. *Time Frame of Relationship.*—In addition, the Commission wishes to clarify that conflict of interest determinations under proposed Regulation 1.69(b)(1)(i) should be based upon circumstances at the time of a committee's consideration of a matter. Accordingly, if a committee member had some significant business relationship with a matter's named party in interest prior to, but not concurrent with, his or her committee's consideration of the matter, proposed Regulation 1.69(b)(1) would not prohibit the committee member from participating.[20] The Commission believes that this approach is most appropriate for two reasons. First, current relationships clearly have a greater potential influence on committee members' decisionmaking than past relationships. Second, if proposed Regulation 1.69's restrictions were based on past relationships it would vastly expand the administrative burden for SRO compliance with Regulation 1.69 and, thus, potentially could compromise the ability of SRO committees to dispose of matters in an expeditious manner.

e. *Non-Disciplinary Matters.* While the Commission anticipates that proposed Regulation 1.69(b)(1)'s restrictions usually would be applied to disciplinary cases because they always would involve named respondents, the Commission notes that the provision would pertain to any matter handled by an SRO governing board, disciplinary committee or oversight panel in which there was a particular named party in interest. Accordingly, the proposed conflicts restrictions would apply, for example, to such committees whenever they reviewed a membership application or considered some regulatory action with respect to a particular individual, such as directing a person to reduce his or her position in a contract. The Commission invites comment on whether the proposed named party in interest provision should be clarified to pertain to any other type of SRO committee action. For example, should committees be subject to Regulation 1.69(b)(1) when they revise price change registers or certify the late submission of pit cards in response to requests by particular members?

ii. *Disclosure of Relationship*

Originally-proposed Regulation 1.69 did not explicitly require that committee members inform their SRO whether they had a relationship with a matter's named party in interest. In order to help ensure that SROs are able to enforce their Regulation 1.69-implementing rules, proposed Regulation 1.69(b)(1)(ii) would require that SRO committee members disclose to the appropriate SRO staff whether he or she has any one of the relationships listed in Regulation 1.69(b)(1)(i) with respect to a matter's named party in interest.

iii. *Procedure for Determination*

a. *Sources of Information.*—Originally-proposed Regulation 1.69 did not explicitly address how SROs must enforce any rule prohibiting committee members from participating in matters where they had a relationship with the named party in interest. The CSC commented that the relationships enumerated in Regulation 1.69(b)(1), as originally proposed, would not generally be known to SRO staff when they attempted to enforce this prohibition. Accordingly, the CSC requested that the Commission clarify that SROs have no responsibility to discern relationships between committee members and named parties in interest that are not readily available from SRO records.

The Commission recognizes that SROs often do not have knowledge of all possible aspects of the relationships that may exist between a committee's members and named parties in matters being considered by the committee. Accordingly, proposed Commission Regulation 1.69(b)(1)(iii) establishes the SROs' responsibilities in this regard. Under this provision, SROs would be required, at a minimum, to base their conflict of interest determinations upon: (1) information provided by the committee members themselves (proposed Regulation 1.69(b)(1)(iii)(A)), and (2) any other source of information that was "reasonably available" to the SRO (proposed Regulation 1.69(b)(1)(iii)(B)).

Consistent with proposed Regulation 1.69(b)(1)(ii)'s requirement that committee members disclose any relationship with a matter's named party in interest, proposed Regulation 1.69(b)(1)(iii)(A) would require that SROs ascertain from each committee member whether his or her relationship with a matter's named party in interest fell into one of the "conflict of interest" categories listed in proposed Regulation 1.69(b)(1)(i) (A) through (E). Proposed Regulation 1.69 does not prescribe the manner in which SROs must gather this information from committee members. The Commission would expect SROs to engage each committee member directly in this regard, whether through oral questioning, a written questionnaire or some sort of committee member pledge, to determine any possible relationship

[19] *See* footnote 10 above.

[20] In addition, the Commission would view it as an improper circumvention of proposed Regulation 1.69 if a committee member were to drop out of a broker association, as that term is defined by Commission Regulation 156.1, or end a significant, ongoing business relationship simply in order to avoid having to abstain from a committee matter.

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with a matter's named party in interest.[21]

Under proposed Regulation 1.69(b)(1)(ii)(B), SROs also would be required to consult any other source of information that was "reasonably available" to them before making a conflict of interest determination. The Commission believes that this standard appropriately accommodates the time and resource constraints that SROs often face when administering SRO committee matters.

b. *Responsibility for Determinations.*—The Commission notes that several commenters objected to originally-proposed Regulation 1.69's requirement that conflict of interest determinations be made by SRO staffs. The BOTCC and CBT commented that CEA Section 5a(a)(17) does not mandate who must make these decisions. The CSC and KCBT also contended that it may be difficult for SRO staff to direct committee members to abstain and that, accordingly, such determinations would be best made by the SRO committee involved.

Based upon these comments, the Commission has decided to revise proposed Regulation 1.69 so that it states only that SROs must make determinations as to the existence of conflicts of interest under Regulation 1.69, but does not identify any particular SRO personnel or committee that must make these determinations. This approach would enable each SRO to allocate the responsibility for these determinations as it saw fit, whether it be to SRO staff, the presiding committee, or some other party. The Commission would expect each SRO, however, to specify in its rules and procedures implementing Regulation 1.69 the person or group of persons who would have these responsibilities.

2. Financial Interest in a Significant Action

i. *Nature of Interest*

As originally proposed, Commission Regulation 1.69 required that SRO committee members abstain from committee deliberations and voting on certain matters in which they "knowingly [had] a direct and substantial financial interest." This restriction would have applied whenever a committee considered significant actions that would not be submitted to the Commission for its prior approval.[22]

In determining a committee member's financial interest in a possible committee action, originally-proposed Regulation 1.69 required SROs to review certain positions held by the member, the member's immediate family, the member's firm and the customers of the member's firm in any contract that could be affected by the committee action. With respect to a committee member's personal positions, originally-proposed Regulation 1.69 specifically required that SROs consider gross positions held in the member's personal accounts, the member's Regulation 1.3(j) controlled accounts, and any accounts in which the member had a significant financial interest. With respect to the positions of the member's immediate family, Regulation 1.69, as originally proposed, required that SROs consider gross positions held in the personal accounts or Regulation 1.3(j) controlled accounts of the member's immediate family. With respect to customer positions, the originally-proposed version of Regulation 1.69 required that SROs consider gross positions held in proprietary accounts at the committee member's firm, net positions held in customer accounts at the member's firm, and gross positions held by any customers who constituted a significant proportion of business for the member's firm.

The Commission received a wide range of comments on the originally-proposed rulemaking's provisions regarding conflicts of interest due to financial interest in a significant action. Subject to the limits mandated by CEA Section 5a(a)(17) with respect to conflict of interest requirements, the Commission has attempted to incorporate into proposed Regulation 1.69 many of the suggestions made by the commenters.

a. *Committee Member Expertise*—The KCBT commented that under the Commission's original proposal, committee members who were actively involved with a contract on a daily basis likely would be the very same committee members who would have to abstain from participating in committee deliberations and voting on significant actions concerning such contracts. Thus, according to the KCBT, these committee members would have no input in deciding whether a significant action was in the best interests of the contract, and consequently such decisions would be left to persons who were less familiar with the contract. The Commission recognizes that this tension is inherent in the conflict of interest requirements imposed by CEA Section 5a(a)(17) and Regulation 1.69. To the extent possible, the Commission has attempted to alleviate this concern in the proposed rulemaking by permitting otherwise conflicted committee members to deliberate on matters when they, among other things, have "unique or special expertise, knowledge or experience in the matter under consideration."[23]

b. *Small Exchanges.*—The KCBT also commented that nearly all committee members at small exchanges have a substantial financial interest in the exchange's primary products. Thus, under originally-proposed Regulation 1.69, a high percentage of committee members at such exchanges would be disqualified from participating in significant actions concerning such contracts. The Commission understands that the requirements of Regulation 1.69 may be difficult for small exchanges to adhere to in this regard. As discussed below, however, proposed Regulation 1.69 would provide each SRO with some flexibility in formulating its implementing rules. Moreover, the Commission believes that the potential for this problem would be greatly reduced if the exchanges ensured that their committees represented a wide diversity of membership interests, including representatives from various trading pits, consistent with the composition requirements of Regulation 1.64.

c. *Position Size.*—As noted, while Commission Regulation 1.69, as originally proposed, required that committee members abstain from deliberating and voting on significant actions when they had a "direct and substantial financial interest" in the outcome of the matter, it did not set any specific standards as to what financial interest or position size warranted a member's abstention. Instead, the Commission originally proposed that each SRO adopt its own standards in this regard as part of its implementing rules and procedures.

[21] The Commission believes that this approach would be consistent with some of the SRO practices already in place to enforce SRO conflict of interest requirements. In the context of disciplinary matters, for example, the CME has each of its disciplinary committee members sign a pledge each year which explains the CME's conflict of interest requirements and requires committee members to withdraw from considering any committee matter that raises a conflict of interest for them. At NYMEX, staff explains the exchange's conflict of interest restrictions before each disciplinary committee meeting and then asks whether there are any disciplinary committee members who believe they could have a conflict in any of the upcoming matters.

[22] The definition of such significant actions is set forth in proposed Regulation 1.69(a)(8) and is discussed above in Section III.A.6.

[23] *See* proposed Commission Regulation 1.69(b)(3)(i)(B). *See also* Section III.B.3. below for a discussion of the conditions under which otherwise conflicted committee members would be permitted to participate in committee matters.

The NYCE commented that Regulation 1.69 should establish some objective threshold in this area based upon the potential financial loss or gain which a committee member could incur as a result of his or her committee's possible significant action. The CBT commented that SROs should have the discretion to decide when a committee member's financial interest in a matter was direct and substantial. The CME contended that the wide disparity in sizes among the exchanges and their contracts would make it difficult for a regulation to specify a particular position size that would constitute a "direct and substantial financial interest."

At the present time, the Commission has decided not to incorporate into proposed Regulation 1.69 any numerical thresholds as to what constitutes a committee member's direct and substantial financial interest in a significant action. Instead, the SROs could include standards in their implementing rules that were appropriate to their markets. Any such criteria should be premised on, among other things, the extent to which a committee member was exposed to market risk, the size of the member's positions, whether or not the positions were market neutral and, with respect to a member's affiliated firm, the potential effect on the firm's capital. In addition, the Commission would expect each SRO to assess the magnitude and probable market impact of the underlying significant action being considered by the SRO committee.

d. *Application to RFAs.*—The NFA commented that RFAs do not consider "significant actions," as that term was defined by originally-proposed Regulation 1.69, and that, accordingly, RFAs should be excluded from Regulation 1.69's conflict of interest requirements with respect to SRO committees that handle significant actions. The Commission agrees that RFA committees do not take such significant actions and, accordingly, has revised proposed Regulation 1.69(a)(7)'s definition of SRO to exclude RFAs from the conflict of interest requirements in those instances.

ii. *Disclosure of Interest*

Under originally-proposed Commission Regulation 1.69, whenever an SRO committee considered a significant action, each member of the committee would have been required to disclose to the SRO's staff any position information that was known or should have been known by the member with respect to the positions listed in proposed Regulation 1.69(b)(2) (*i.e.*, positions held by the member, the member's family, the member's firm and certain customers of the member's firm). For the purposes of this provision, committee members were presumed to have knowledge with respect to certain of these positions.

a. *Presumption of Knowledge.*—The CBT, CME and FIA each commented that this presumption of knowledge provision would force a large number of committee members to abstain voluntarily from matters for fear that they would be presumed to have knowledge of position information. The CBT and CME contended that the provision should not be a part of any conflict of interest requirement because committee members who are not aware of their financial interest in a committee matter cannot be motivated by that interest. The CSC and FIA commented that the provision presumed committee member knowledge of position information that members might not know. Thus, the provision could have the consequence of creating conflicts of interest as it could force committee members to inquire about conflict-creating positions of which they otherwise would be ignorant. Each of these commenters recommended deleting the presumption of knowledge provision.

The Commission has revised proposed Regulation 1.69(b)(2)(ii) so that it does not presume committee member knowledge of any position information. Instead, a committee member would be required, under each SRO's Regulation 1.69-implementing rule, to disclose to the SRO relevant position information that was "known to him or her." A failure to disclose any such information should be considered a violation of the SRO implementing rule. This approach would be consistent with proposed Regulation 1.69(b)(2)(i), which would prohibit committee members from participating in committee decisions where they "knowingly [had] a direct and substantial financial interest in the result of the vote."

iii. *Procedure for Determination*

As originally proposed, Commission Regulation 1.69 mandated procedures for SROs when they determined whether an SRO committee member should abstain from deliberations and voting on a significant action due to a conflict of interest. In ascertaining information relevant to a committee member's possible interest in such an action, the original proposal permitted SRO staff to rely upon:

(1) the most recent large trader reports and clearing records available to the staff;
(2) position information provided to the staff by the committee member; and
(3) any other source of position information which was readily available to the staff.

a. *Review of Positions.*—The BOTCC commented that assembling all of the position information required by originally-proposed Regulation 1.69 would impose significant, time-consuming burdens on SRO staffs. The CME suggested that the information-gathering requirement be limited to information that was reasonably available to the SRO.

The BOTCC, CSC and NYMEX commented that committees which undertake significant actions must act in a swift and decisive manner. They contended that the number of categories of positions to be reviewed by SROs in applying Regulation 1.69 to committees considering significant actions would be so extensive that it would cause substantial delays and, thus, hinder an SRO's ability to respond to emergencies promptly. The CBT recommended that given that some significant actions under originally-proposed Regulation 1.69 also are temporary emergency actions under Regulation 1.41(f),[24] the list of positions to be reviewed under Regulation 1.69 should be modified to follow the position review criteria already required by Regulation 1.41(f)(3)(v) and, thus, avoid creating different position review burdens for

[24] There would be some overlap between the bases for Regulation 1.41 temporary emergency rules and the bases for proposed Regulation 1.69 significant actions. Proposed Regulation 1.69 significant actions would include temporary emergency rules which address: (1) manipulative activity (Regulation 1.41(a)(4)(i)); (2) corners, congestion or undue concentrations of positions (Regulation 1.41(a)(4)(ii)); (3) circumstances which could materially affect the performance of contracts (Regulation 1.41(a)(4)(iii)); (4) any sovereign or exchange action which could have a direct impact on trading at the contract market (Regulation 1.41(a)((4)(iv)); (5) the bankruptcy of a member or a legal action which could affect the ability of a member to perform on its contracts (Regulation 1.41(a)(4)(vi)); (6) any circumstance where a member's condition jeopardizes the safety of customer funds, the contract market or the contract market's members (Regulation 1.41(a)(4)(vii)); and (7) any other unusual, unforeseeable and adverse circumstance for which it is not practicable for a contract market to submit a rule to the Commission for prior review (Regulation 1.41(a)(4)(viii)). Proposed Regulation 1.69 significant actions would diverge from Regulation 1.41 temporary emergency rules, however, by: (1) not including temporary emergency rules which address physical emergencies (Regulation 1.41(a)(4)(v)) and (2) including margin level changes which either respond to extraordinary market conditions or which are likely to have a substantial effect on contract prices.

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significant actions and temporary emergency rules.[25]

Consistent with the CBT's suggestion, the Commission has modeled proposed Regulation 1.69(b)(2)(iii) list of positions to be reviewed for conflict of interest determinations after the list of positions that must be reviewed by exchanges when they adopt temporary emergency actions pursuant to Regulation 1.41(f)(3)(v). Accordingly, under proposed Regulation 1.69, whenever an SRO committee handled a significant action, the SRO would be required to consider the following types of positions in determining whether any of the committee's members had a direct and substantial financial interest in the matter:

(1) gross positions at that self-regulatory organization held in each committee member's personal accounts or Regulation 1.31(j) controlled accounts (proposed Regulation 1.69(b)(2)(iii)(A));
(2) gross positions at that self-regulatory organization held in Regulation 1.17(b)(3) proprietary accounts at each committee member's affiliated firm (proposed Regulation 1.69(b)(2)(iii)(B));
(3) gross positions at that self-regulatory organization held in accounts in which a committee member was a Regulation 3.1(a) principal (proposed Regulation 1.69(b)(2)(iii)(C)); and
(4) net positions at that self-regulatory organization held in Regulation 1.17(b)(2) customer accounts at each member's affiliated firm (proposed Regulation 1.69(b)(2)(iii)(D)).[26]

b. *Positions Outside of SRO.*—The CME commented that the list of positions to be reviewed under originally-proposed Regulation 1.69 could be interpreted to include positions at other exchanges, in over-the-counter derivatives and in the cash market. The CME believed that it was inappropriate to require an SRO to undertake the same level of review for positions acquired outside the SRO than for positions acquired at some other SRO. The Commission has revised proposed Regulation 1.69 to address conflicts of interest based upon positions held by an SRO committee member outside of his or her SRO. First, proposed Regulation 1.69(b)(2)(i) would explicitly require committee members to abstain from deliberations and voting on significant actions if the member had a "direct and substantial financial interest" in the matter based upon "exchange or non-exchange positions that reasonably could be expected to be affected by the action."

The Commission believes that any positions held by a committee member that can be impacted by a committee action, whether or not it is held at the member's home SRO, has the potential to influence the member's views on committee matters. Given that proposed Regulation 1.69 is intended to promote fairness and integrity in the SRO committee decisionmaking process, the Commission believes that it would be appropriate to include such positions as the possible basis for a conflict of interest determination.

The Commission also is aware that SROs may not have complete knowledge of their committee members' outside financial interests. To address this situation, proposed Regulation 1.69(b)(2)(iii)(E) states that in reviewing position information in the course of a conflict of interest determination, SROs should include a review of "any other types of positions, whether maintained at that self-regulatory organization or elsewhere, that the self-regulatory organization reasonably expects could be affected by the significant action." By requiring that the SRO itself determine what positions it "reasonably expects could be affected by the significant action," the Commission believes that this provision would provide SROs with the latitude necessary to decide what "outside" financial interests of an SRO committee member to consider when making conflict of interest determinations. Each SRO's responsibilities in this regard would be further circumscribed by only having to base conflict determinations on the limited sources of information specified in proposed Regulation 1.69(b)(2)(iv).[27]

iv. *Bases for Determination*

While the Commission in this proposed rulemaking has not modified the sources of information that SROs should consult when making conflict of interest determinations, proposed Regulation 1.69(b)(2)(iv) now provides that, when making such determinations, an SRO may take "into consideration the exigency of the significant action." The Commission believes that this modification would provide SROs with the flexibility to make conflict decisions in an expeditious manner that would not prevent SRO committees from promptly handling significant actions.[28]

3. Participation in Deliberations

CEA Section 5a(a)(17) recognizes that in some instances a committee member with a conflict in a particular committee matter also might have special knowledge or experience regarding that matter. Accordingly, in a limited number of circumstances, originally-proposed Commission Regulation 1.69 permitted SRO committees to allow a committee member who otherwise would be required to abstain from deliberations and voting on a matter because of a conflict to deliberate but not vote on the matter. This "deliberation exception" was only made applicable to matters in which a committee member had a "direct and substantial financial interest" in the result of a vote on a significant action. Consistent with CEA Section 5a(a)(17), originally-proposed Regulation 1.69's deliberation exception did not apply to matters in which a committee member had a conflict due to his or her relationship with a matter's named party in interest.

In determining whether to permit a "conflicted" committee member to deliberate on a matter, originally-proposed Regulation 1.69 required that the presiding committee consider a number of factors including: (1) Whether the member had special expertise in the matter involved that few or no other members of the committee had; (2) whether the committee's ability to meaningfully deliberate would be adversely affected by the member's non-participation; and (3) whether the member's participation in deliberations would be necessary for the committee to obtain a quorum.[29]

The Commission has decided to retain a "deliberation exception" provision in this proposed rulemaking, but it has modified Regulation 1.69 to simplify the factors that should be considered in making such a determination. The Commission believes that this proposed provision strikes a balance between ensuring that SRO committees make well-informed decisions and minimizing the influence of a committee member's potential bias or self-interest in a matter. In this respect, the Commission has incorporated some of the suggestions made by several of the commenters on Regulation 1.69 as originally proposed.

i. *Diversity of Membership Interests*

The CBT and CSC suggested that the diversity of membership interests represented on a committee should be included as a factor in deciding whether to allow an otherwise conflicted committee member to participate in deliberations. The Commission recognizes that promoting the diversity of SRO committees is an important regulatory goal, as exemplified by Regulation 1.64.[30] The Commission believes, however, that ensuring fair and objective committees, free of the influence of self-interest, is of paramount importance. Accordingly, the Commission does not believe that it would be beneficial to include committee diversity as a factor when making deliberation exception decisions. The Commission also does not believe that it is necessary to amend Regulation 1.64 to accommodate Regulation 1.69's conflict of interest requirements. While Regulation 1.64(b) establishes composition requirements for SRO governing boards, the provision pertains to the "regular voting members" of a board and not to the composition of a board each time that it meets. Thus, for instance, an SRO whose governing board consists of ten percent or more commercial interest directors will not be in violation of Regulation 1.64(b)(1) if, when considering any particular board matter, such directors comprise less than ten percent of the presiding directors because some or all of them are not present for any reason, including abstentions due to conflicts of interest.

ii. *Committee Member Expertise*

The CSC commented that two of the deliberation exception factors listed in originally-proposed Commission Regulation 1.69 seemed to overlap. The CSC commented that a committee with a member with special expertise in a particular subject[31] always would be affected adversely[32] if the member was required to abstain from deliberations on matters involving the subject. In response, the Commission has revised proposed Regulation 1.69(b)(3)(ii)(B) to require that committees in granting a deliberation exception must consider whether the conflicted committee member has "unique or special expertise, knowledge or experience" in the subject matter of the significant action.[33]

iii. *Disclosure of Positions*

The CBT, CSC and NYCE commented that under Regulation 1.69 as originally proposed a committee member with a conflict of interest could participate in deliberations on a matter without disclosing his or her positions, and concomitant biases, to the other committee members. The Commission agrees that the disclosure of a committee member's interest in a matter should help to mitigate any prejudicial influence such member's views could have on other committee members during the course of deliberations.

Proposed Commission Regulation 1.69(b)(3)(iii) would require that, whenever an SRO committee determined whether to grant a deliberation exception to a committee member, the committee must consider all of the position information which served as the basis for the member's conflict of interest in the matter.[34] This requirement would serve two purposes. First, it would ensure that the committee would be fully apprised of the nature of the committee member's conflict when it made its deliberation exception determination. Second, as suggested by the CBT, CSC and NYCE, the provision also would ensure that, should a committee member with a conflict of interest be allowed to deliberate, his or her fellow committee members should be aware of the member's interest in the matter and could appropriately evaluate the views expressed by such member during deliberations.

iv. *Public Member Approval*

In order to promote a "neutral" determination, originally-proposed Regulation 1.69 required that any deliberation exception must be approved by all "public" members of the presiding committee (*i.e.*, committee members who were not members of the SRO) who were present when the committee made such a determination.[35]

The CBT and CME commented that requiring that deliberation exceptions be approved by each public representative on an SRO committee would have the un-democratic effect of giving a single committee member the power to veto another committee member's participation in deliberations. The two exchanges urged the Commission to delete this requirement. Based on these comments, the Commission has decided to delete the provision from proposed Regulation 1.69.

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[25] Whenever a contract market implements a temporary emergency rule, Regulation 1.41(f)(3) requires that it submit various information to the Commission with respect to the action. Among other things, the exchange must provide the Commission "a summary of any disclosure by a [board member] of his or her positions in any subject contract market, including disclosure of positions held in any personal account, controlled account, other account in which [the member] has an interest, and customer and proprietary accounts at [the member's] affiliated firm."

[26] There would be one minor variation between the lists of positions that must be reviewed in conflict of interest and temporary emergency rule situations. Prior to the adoption of temporary emergency rules, Regulation 1.41(f)(3)(v) requires that exchanges review "gross positions held in any * * * other account [beside personal or controlled accounts] in which the governing board member has an interest." For the purposes of conflict of interest determinations, the Commission has determined, under proposed Regulation 1.69(b)(2)(iii)(C), to limit this aspect of position review to gross positions held in accounts in which a committee member is a Regulation 3.1(a) principal. Thus, the proposed provision includes positions in which committee members would probably have the greatest economic interest.

[27] In this connection, the Commission plans to have its staff determine whether it would be feasible to provide each SRO with access to position information maintained by the Commission with respect to positions held by an SRO's committee members at other SROs.

[28] SRO committees should not abuse this provision by delaying the consideration of significant actions in order to create exigent circumstances which would lessen the SRO's information-gathering responsibilities. The Commission would particularly evaluate the SROs' application of this provision in any rule enforcement review of Regulation 1.69-implementing rules.

[29] The Commission, in its originally-proposed rulemaking, indicated that it believed that, given the factors that must be considered, deliberation exception determinations should be made by the committee involved, rather than SRO staff. For any particular SRO committee matter, the committee members themselves would be in a better position than SRO staff to assess their individual levels of expertise in the matter and their need for input during deliberations from the committee member who otherwise would be required to abstain. The Commission continues to adhere to this view, although no commenters on the originally-proposed rulemaking addressed this issue. Accordingly, proposed Regulation 1.69 specifically confers the responsibility for deliberation exception determinations on the SRO committee involved.

[30] Commission Regulation 1.64 establishes composition standards for certain types of SRO committees, including governing boards. Regulation 1.64 requires that boards meaningfully represent the following general membership interest groups: (1) futures commission merchants; (2) floor traders; (3) floor brokers; (4) participants in a variety of trading pits; and (5) other market users and participants such as banks and pension funds. In addition, Regulation 1.64 requires that at least ten percent of the regular voting members of each SRO board must consist of directors representing commercial interests such as producers, consumers, processors, distributors and merchandisers of commodities underlying the SRO's futures products, and that at least twenty percent of the regular voting members of each board must consist of non-member representatives (*i.e.*, persons who are not members of the SRO and are knowledgeable about either the futures markets or financial regulation).

[31] *See* originally-proposed Commission Regulation 1.69(b)(4)(i)(A).

[32] *See* originally-proposed Commission Regulation 1.69(b)(4)(i)(B).

[33] In applying this proposed provision, a conflicted committee member should not be considered to have "unique or special expertise, knowledge or experience" in a particular subject matter if the member's expertise, knowledge or experience was similar to that of some other non-conflicted member of the same committee.

[34] This information would include not only the position information supplied to the SRO by the committee member (proposed Regulation 1.69(b)(2)(iv)(B)), but also position information garnered by the SRO from large trader reports and clearing records (proposed Regulation 1.69(b)(2)(iv)(A)) and any other sources reasonably available to the SRO (proposed Regulation 1.69(b)(2)(iv)(C)).

[35] This requirement did not apply to SRO governing boards, disciplinary committees or oversight committees which do not have public members. *See* Commission Regulations 1.64(b) and (c) which respectively require governing boards and disciplinary committees in certain circumstances to include non-SRO member representatives.

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v. *Abstention Procedures*

Two other commenters asked the Commission to clarify certain aspects of Regulation 1.69's deliberation exception provision. The CSC asked whether a person who was permitted to deliberate but not vote on a matter would be required to leave the committee meeting for any vote on the matter. As part of this proposed rulemaking, the Commission wishes to make clear that a committee member who was required to abstain from any committee matter due to a conflict of interest under proposed Regulation 1.69, whether it be deliberation or voting, must leave the committee meeting prior to such deliberation and/or voting. The Commission believes that even the silent presence of a committee member could influence a committee to the extent that it impeded free and open discourse among the other members of a committee.

vi. *Public Member Conflicts of Interest*

The CBT questioned whether a public representative to an SRO committee who has a possible conflict of interest could participate in determining whether he or she should receive a deliberation exception under Regulation 1.69. The Commission stresses that, under proposed Regulation 1.69, an SRO committee member, whether public or non-public, could not participate in any committee vote on whether he or she should abstain from voting and/or deliberating on a matter due to a conflict of interest.

vii. *Public Interest*

The Commission emphasizes that proposed Regulation 1.69(b)(3)(ii)'s list of circumstances would merely be the factors to be considered by SROs when making deliberation exception decisions and the presence or absence of any one factor should not be dispositive in making such decisions. Consistent with CEA Section 5a(a)(17)(c), SROs ultimately could only permit committee members with conflicts to participate in deliberations if it would be "consistent with the public interest."

4. Documentation of Determination

Whenever an SRO made a conflict of interest determination, originally-proposed Regulation 1.69 required the SRO committee considering the underlying substantive matter to include certain information regarding the determination in the minutes of its meeting. Such a record was required to indicate: (1) the committee members who attended the meeting, (2) the staff member(s) who reviewed the committee members' positions, (3) a listing of the position information reviewed for each committee member, (4) the names of any committee members directed to abstain and the reasons therefor, (5) a description of the procedures followed by the SRO in making an abstention decision, and (6) in those instances when a committee member was granted a deliberation exception, a full description of the views expressed by the member during the committee's deliberations.

i. *Documenting Position Information*

Several commenters responded to the original proposal's documentation requirements. The CBT and CME suggested that the provision be modified to make clear that confidential information, such as position information, need not be disclosed in a committee meeting's minutes. The Commission has revised proposed Regulation 1.69(b)(4) to require that SRO committees "reflect in their minutes or otherwise document" their conflict of interest determinations. With this approach, SRO committees would not be required to disclose position information in their minutes. However, they would have to document any position information and any other information relied upon in making a conflict of interest determination and would be required to retain such information in a manner consistent with Commission Regulation 1.31.

ii. *Views of Conflicted Members*

The CBT commented that the originally-proposed requirement that committee minutes reflect the views expressed by "conflicted" members who were granted deliberation exceptions was counterproductive and would inhibit such members from candidly expressing their opinions and sharing their expertise. The Commission disagrees. The recordation of such committee members' views should help to deter them from offering strictly self-interested opinions to their fellow committee members. The Commission notes, however, that it has attempted to reduce the burden of this provision in this proposed rulemaking by requiring that SROs record only "a *general* description of the views expressed by such member during deliberations." *See* proposed Commission Regulation 1.69(b)(4)(iv) (emphasis added).

iii. *Determination Procedures*

The CME commented that a description of the procedures used in making a conflict of interest determination should only have to be included in a committee's minutes when the procedures vary from the SRO's normal procedures. The Commission has decided to delete this provision in its entirety from proposed Regulation 1.69.

iv. *Relationship With Named Party in Interest*

The Commission stresses that, while many of proposed Regulation 1.69(b)(4)'s requirements would apply only to conflicts of interest where a committee member had a "direct and substantial financial interest" in a significant action, the provision also would pertain to conflicts due to a member's relationship with a matter's named party in interest. Accordingly, in named party in interest conflicts, the presiding committee would be required to record: (1) the names of committee members who participated in deliberation and voting on a matter in which a member abstained due to a conflict of interest (proposed Regulation 1.69(b)(4)(i)) and (2) the names of any committee members who recused themselves voluntarily or who were required to abstain due to a conflict of interest (proposed Regulation 1.69(b)(4)(ii)). The documentation requirements of proposed Regulation 1.69(b)(4) (i) and (ii) would only be appropriate for financial interest conflicts of interests and would not be applicable to named party in interest conflicts.

C. Violations of SRO Rules

Originally-proposed Commission Regulation 1.69(d) made it a violation of Regulation 1.69 for an SRO to permit a committee member to participate in deliberations or voting on a matter if such participation violated any SRO rule implementing the conflict of interest restrictions of Commission Regulation 1.69.

The CBT commented that this provision would not increase any SRO's incentive to comply with Regulation 1.69's standards and that, accordingly, the benefits of the provision did not justify the costs to the Commission of enforcing the provision. The FIA commented that the requirement was redundant and only gave the impression that SROs cannot be entrusted to regulate their own affairs. Both the CBT and FIA recommended that the provision be deleted.

The Commission has decided not to include this provision in proposed Regulation 1.69. The Commission reminds the SROs, however, that they would have the responsibility, under Section 5a(a)(8) of the CEA, to enforce any "bylaws, rules, regulations, and resolutions" implementing proposed Regulation 1.69. The Commission believes that it would be able to monitor adequately the SROs' enforcement of their implementing rules in the ordinary course of its rule enforcement review program.

D. Liability to Other Parties

As originally proposed, Commission Regulation 1.69(e) protected SROs, SRO officials and SRO staffs involved in reviewing committee member positions and making abstention decisions, pursuant to Regulation 1.69, from liability for such actions to any party other than the Commission. The CBT, CSC and FIA each suggested that the Commission revise the wording of this provision so that it more closely conformed with the wording of CEA Section 5a(a)(17). Rather than proposing a regulatory provision in addition to the statutory provision in this regard, the Commission has decided to delete this provision from this proposed rulemaking. The Commission believes that this approach would eliminate any confusion between Regulation 1.69 and CEA Section 5a(a)(17).

E. Amendments to Other Commission Regulations Made Necessary by Final Commission Regulation 1.69

Section 213 of the FTPA amended Section 5a(a)(12)(B) of the CEA to require that the Commission issue regulations establishing "terms and conditions" under which contract markets may take temporary emergency actions without prior Commission approval. Section 5a(a)(12)(B) and Regulation 1.41(f), the Commission's implementing regulation, require that any such temporary emergency action be adopted by a two-thirds vote of a contract market's governing board. In recognition of the fact that governing board members may be required to abstain from deliberations and voting on such actions under contract market rules implementing Regulation 1.69, the Commission, as part of its conflict of interest rulemaking, originally proposed to amend Regulation 1.41(f) to provide that such abstaining board members not be included in determining whether a temporary emergency action has been approved by a two-thirds majority of a governing board.

The CBT in its comment letter requested that the Commission confirm that SROs would be able to include governing board members who abstain from voting on temporary emergency rules, pursuant to a Regulation 1.69-implementing rule, in determining whether the board has a quorum of members necessary for it to conclude business. In this proposed rulemaking, the Commission would revise Regulation 1.41(f)(10) to provide that such abstaining members may be included for quorum purposes.

As indicated in Section III.A.3. above, the Commission also has proposed to revise Commission Regulation 1.63's definition of disciplinary committee so that, like proposed Regulation 1.69's definition of the same term, it would include the issuance of disciplinary charges as a defining characteristic.[36] Regulation 1.63's disciplinary committee definition would include all committees and persons with disciplinary authority and, unlike proposed Regulation 1.69, would not exclude persons who summarily impose penalties for minor rule violations.

F. Conclusion

The Commission believes that proposed Regulation 1.69 and the proposed amendments to Regulations 1.41 and 1.63 would meet the statutory directives of Section 5a(a)(17) of the CEA as it was amended by Section 217 of the FTPA. The proposed rulemaking would establish guidelines and factors to be considered in determining whether an SRO committee member was subject to a conflict of interest which could potentially restrict his or her ability to make fair and impartial decisions in a matter and, thus, warranted abstention from participation in committee deliberations and voting.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act. 47 FR 18618, 18619 (April 30, 1982). Furthermore, the then Chairman of the Commission previously has certified on behalf of the Commission that comparable rules affecting clearing organizations and registered futures associations did not have a significant economic impact on a substantial number of small entities. 51 FR 44866, 44868 (December 12, 1986).

This proposed rulemaking would affect individuals who served on SRO governing boards, disciplinary committees and oversight panels. The Commission believes that this proposed rulemaking would not have a significant economic impact on these SRO committee members. This proposed rulemaking would require these committee members to disclose to their SROs certain information which was known to them at the time that their committees considered certain types of matters. The Commission believes that this requirement would not have any significant economic impact on such members because the information which they would be required to provide should be readily available to them.

Accordingly, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to Section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the action proposed to be taken herein would not have a significant economic impact on a substantial number of small entities.

B. Agency Information Activities

When publishing proposed rules, the Paperwork Reduction Act of 1995 ("PRA") (Pub. L. 104–13 (May 13, 1995)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission, through this rule proposal, solicits comments to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses).

The Commission has submitted this proposed rule and its associated information collection requirements to the Office of Management and Budget ("OMB"). The burden associated with this entire collection (3038–0022), including this proposed rule, is as follows:

Average burden hours per response—3,547.01
Number of respondents—11,011.00
Frequency of response—On Occasion

[36] Regulation 1.63 requires that persons with certain disciplinary histories be disqualified from serving on, among other things, SRO disciplinary committees.

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The burden associated with this specific proposed rule is as follows:
Average burden hours per response—2.00
Number of respondents—20
Frequency of response—On Occasion

Persons wishing to comment on the information required by this proposed rule should contact the Desk Officer, Commodity Futures Trading Commission, OMB, Room 10201, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from the Commission Clearance Office, 1155 21st Street NW, Washington, DC 20581, (202) 418–5160.

List of Subjects in 17 CFR Part 1

Commodity futures, Contract markets, Clearing organizations, Members of contract market.

In consideration of the foregoing, and based on the authority contained in the Commodity Exchange Act and, in particular, Sections 3, 4b, 5, 5a, 6, 6b, 8, 8a, 9, 17, and 23(b) thereof, 7 U.S.C. 5, 6b, 7, 7a, 8, 13a, 12, 12a, 13, 21 and 26(b), the Commission is proposing to amend Title 17, Chapter I, Part 1 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 would continue to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 19, 21, 23, and 24, unless otherwise stated.

2. Section 1.41(f)(10) would be proposed to be added to read as follows:

§ 1.41 Contract market rules; submission of rules to the Commission; exemption of certain rules.

* * * * *

(f) * * *

(10) Governing board members who abstain from voting on a temporary emergency rule pursuant to § 1.69 shall not be counted in determining whether such a rule was approved by the two-thirds vote required by this section. Such members can be counted for the purpose of determining whether a quorum exists.

* * * * *

3. Section 1.63(a)(2) would be proposed to be revised to read as follows:

§ 1.63 Service on self-regulatory organization governing boards or committees by persons with disciplinary histories.

(a) * * *

(2) *Disciplinary committee* means any person or committee of persons, or any subcommittee thereof, that is authorized by a self-regulatory organization to issue disciplinary charges, to conduct disciplinary proceedings, to settle disciplinary charges, to impose disciplinary sanctions, or to hear appeals thereof.

* * * * *

4. Section 1.69 would be proposed to be added to read as follows:

§ 1.69 Voting by interested members of self-regulatory organization governing boards and various committees.

(a) *Definitions.* For purposes of this section:

(1) *Disciplinary committee* means any person or committee of persons, or any subcommittee thereof, that is authorized by a self-regulatory organization to issue disciplinary charges, to conduct disciplinary proceedings, to settle disciplinary charges, to impose disciplinary sanctions, or to hear appeals thereof in cases involving any violation of the rules of the self-regulatory organization except those cases where a single person is authorized to summarily impose minor penalties for violating rules regarding decorum, attire, the timely submission of accurate records for clearing or verifying each day's transactions or other similar activities.

(2) A person's *family relationship* means the person's spouse, former spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece or in-law.

(3) *Governing board* means a self-regulatory organization's board of directors, board of governors, board of managers, or similar body, or any subcommittee thereof, duly authorized, pursuant to a rule of the self-regulatory organization that has been approved by the Commission or has become effective pursuant to either Section 5a(a)(12)(A) or 17(j) of the Act, to take action or to recommend the taking of action on behalf of the self-regulatory organization.

(4) *Oversight panel* means any panel, or any subcommittee thereof, authorized by a self-regulatory organization to recommend or establish policies or procedures with respect to the self-regulatory organization's surveillance, compliance, rule enforcement, or disciplinary responsibilities.

(5) *Member's affiliated firm* is a firm in which the member is a "principal," as defined in § 3.1(a), or an employee.

(6) *Named party in interest* means a party who is the subject of any matter being considered by a governing board, disciplinary committee, or oversight panel.

(7) *Self-regulatory organization* means a "self-regulatory organization" as defined in § 1.3(ee) and includes a "clearing organization" as defined in § 1.3(d), but excludes registered futures associations for the purposes of paragraph (b)(2) of this section.

(8) *Significant action* includes any of the following types of self-regulatory organization actions or rule changes that can be implemented without the Commission's prior approval:

(i) Any actions or rule changes which address an "emergency" as defined in § 1.41(a)(4) (i) through (iv) and (vi) through (viii); and

(ii) Any changes in margin levels that are designed to respond to extraordinary market conditions such as an actual or attempted corner, squeeze, congestion or undue concentration of positions, or that otherwise are likely to have a substantial effect on prices in any contract traded or cleared at such self-regulatory organization; but does not include any rule not submitted for prior Commission approval because such rule is unrelated to the terms and conditions of any contract traded at such self-regulatory organization.

(b) *Self-regulatory organization rules.* Each self-regulatory organization shall maintain in effect rules that have been submitted to the Commission pursuant to Section 5a(a)(12)(A) of the Act and § 1.41 or, in the case of a registered futures association, pursuant to Section 17(j) of the Act, to address the avoidance of conflicts of interest in the execution of its self-regulatory functions. Such rules must provide for the following:

(1) *Relationship with named party in interest.*—(i) *Nature of relationship.* A member of a self-regulatory organization's governing board, disciplinary committee or oversight panel must abstain from such body's deliberations and voting on any matter involving a named party in interest where such member:

(A) Is the named party in interest;

(B) Is an employer, employee, or fellow employee of the named party in interest;

(C) Is associated with the named party in interest through a "broker association" as defined in § 156.1;

(D) Has any other significant, ongoing business relationship with the named party in interest, not including relationships limited to executing futures or option transactions opposite each other or to clearing futures or option transactions through the same clearing member; or

(E) Has a family relationship with the named party in interest.

(ii) *Disclosure of relationship.* Prior to the consideration of any matter involving a named party in interest, each member of a self-regulatory organization governing board, disciplinary committee or oversight panel must disclose to the appropriate self-regulatory organization staff whether he or she has one of the relationships listed in paragraph (b)(1)(i) of this section with the named party in interest.

(iii) *Procedure for determination.* Each self-regulatory organization must establish procedures for determining whether any member of its governing board, disciplinary committees or oversight committees is subject to a conflicts restriction in any matter involving a named party in interest. Such determinations shall be based upon:

(A) Information provided by the member pursuant to paragraph (b)(1)(ii) of this section; and

(B) Any other source of information that is reasonably available to the self-regulatory organization.

(2) *Financial interest in a significant action*—(i) *Nature of interest.* A member of a self-regulatory organization's governing board, disciplinary committee or oversight panel must abstain from such body's deliberations and voting on any significant action if the member knowingly has a direct and substantial financial interest in the result of the vote based upon either exchange or non-exchange positions that reasonably could be expected to be affected by the action.

(ii) *Disclosure of interest.* Prior to the consideration of any significant action, each member of a self-regulatory organization governing board, disciplinary committee or oversight panel must disclose to the appropriate self-regulatory organization staff the position information referred to in paragraph (b)(2)(iii) of this section that is known to him or her.

(iii) *Procedure for determination.* Each self regulatory organization must establish procedures for determining whether any member of its governing board, disciplinary committees or oversight committees is subject to a conflicts restriction under this section in any significant action. Such determination must include a review of:

(A) Gross positions held at that self-regulatory organization in the member's personal accounts or "controlled accounts," as defined in § 1.3(j);

(B) Gross positions held at that self-regulatory organization in proprietary accounts, as defined in § 1.17(b)(3), at the member's affiliated firm;

(C) Gross positions held at that self-regulatory organization in accounts in which the member is a principal, as defined in § 3.1(a);

(D) Net positions held at that self-regulatory organization in "customer" accounts, as defined in § 1.17(b)(2), at the member's affiliated firm; and

(E) Any other types of positions, whether maintained at that self-regulatory organization or elsewhere, that the self-regulatory organization reasonably expects could be affected by the significant action.

(iv) *Bases for determination.* Taking into consideration the exigency of the significant action, such determinations should be based upon:

(A) The most recent large trader reports and clearing records available to the self-regulatory organization;

(B) Position information provided by the member pursuant to paragraph (b)(2)(ii) of this section; and

(C) Any other source of information that is reasonably available to the self-regulatory organization.

(3) *Participation in deliberations.* (i) Under the rules required by this section, a self-regulatory organization governing board, disciplinary committee or oversight panel may permit a member to participate in deliberations prior to a vote on a significant action for which he or she otherwise would be required to abstain pursuant to paragraph (b)(2) of this section if such participation would be consistent with the public interest and the member recuses himself or herself from voting on such action.

(ii) In making a determination as to whether to permit a member to participate in deliberations on a significant action for which he or she otherwise would be required to abstain, the deliberating body should consider the following factors:

(A) Whether the member's participation in deliberations is necessary for the deliberating body to achieve a quorum in the matter; and

(B) Whether the member has unique or special expertise, knowledge or experience in the matter under consideration.

(iii) Prior to any determination pursuant to paragraph (b)(3)(i) of this section, the deliberating body must fully consider the position information which is the basis for the member's direct and financial interest in the result of a vote on a significant action pursuant to paragraph (b)(2) of this section.

(4) *Documentation of determination.* Self-regulatory organization governing boards, disciplinary committees, and oversight panels must reflect in their minutes or otherwise document that the conflicts determination procedures required by this section have been followed. Such records also must include:

(i) The names of all members who attended the meeting in person or who otherwise were present by electronic means;

(ii) The name of any member who voluntarily recused himself or herself or was required to abstain from deliberations and/or voting on a matter and the reason for the recusal or abstention, if stated;

(iii) Information on the position information that was reviewed for each member; and

(iv) In those instances when a committee member who otherwise would be required to abstain from deliberating and voting on a matter is permitted to deliberate on a significant action, a general description of the views expressed by such member during deliberations.

Issued in Washington, D.C. on January 16, 1998, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–1619 Filed 1–22–98; 8:45 am]
BILLING CODE 6351–01–P

INTERNATIONAL TRADE COMMISSION

19 CFR Parts 201 and 207

Proposed Amendments to Rules of Practice and Procedure; Hearing Regarding Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Proposed rule; notice of public hearing.

SUMMARY: On October 23, 1997, the Commission published proposed rules to establish procedures for the conduct of five-year reviews of antidumping and countervailing duty orders and suspension agreements (62 FR 55185). The notice of proposed rulemaking indicated that the Commission would hold a hearing concerning the procedural matters discussed in the notice of proposed rulemaking as well as methodological and analytical issues relating to five-year reviews. The hearing will include panel discussions on topics of significant interest. Interested persons with similar viewpoints are encouraged to consolidate testimony. After reviewing the requests, the Commission will notify participants of panel assignments and time allocations. The Commission will

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accommodate as many requests to participate as time permits. For further information concerning hearing procedures and rules of general application, consult Part 201 of the Commission's Rules of Practice and Procedure (19 CFR part 201).

DATES: The hearing will be held on February 26, 1998, beginning at 9:30 a.m. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission no later than ten (10) days after the date of publication of this document and should identify the specific topics the requestor wishes to discuss.

ADDRESSES: The hearing will be held at the U.S. International Trade Commission Building at 500 E Street, SW, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

Issued: January 20, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–1741 Filed 1–22–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 228

RIN 0412–AA37

Rules on Source, Origin and Nationality for Commodities and Services Financed by USAID: Miscellaneous Amendments

AGENCY: United States Agency for International Development (USAID), IDCA.

ACTION: Proposed rule.

SUMMARY: USAID proposes to amend its regulation on source, origin and nationality for commodities and services financed by USAID by revising two rules, one on system determinations for commodities and one on ocean transportation eligibility, and clarifying waiver provisions.

The proposal to amend the coverage on systems determinations would allow components of a commodity system to be shipped to a cooperating country without first being shipped to and assembled in an eligible country. This should reduce the cost of these transactions by reducing unnecessary shipments. The proposal to amend the rules on eligibility of transshipments would require that suppliers obtain a determination from USAID that direct service on a U.S. flag vessel is not available before transshipment from a U.S. flag to a non-U.S. flag vessel would be eligible for USAID financing. This will ensure compliance with Cargo Preference requirements that direct U.S. flag service be used when available.

DATES: Comments are due March 24, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen O'Hara, Office of Procurement, Policy Division (M/OP/P) USAID, Washington, DC 20523–1435. Telephone: (703) 875–1534, facsimile: (703) 875–1243, e-mail address: kohara@usaid.gov.

SUPPLEMENTARY INFORMATION: The regulation at 22 CFR part 228 was published as a final rule September 15, 1996 (61 FR 53615). After operating under the regulation for a year a few areas have been identified that need some additional coverage or clarification. In Section 228.11, USAID proposes to amend the current provision which allows some commodity transactions to be designated as systems and thus be considered a single commodity rather than a number of separate commodities (e.g., a computer system with CPU, monitor and keyboard). Under the current rule, a commodity must be produced in a country included in the authorized Geographic Code prior to shipment to the cooperating country in order to meet eligibility requirements, and the same rule currently applies to a system. It can add considerable expense to a transaction if some components of a system must be shipped to a country in the authorized Geographic Code to be assembled into a system prior to shipment to the cooperating country in order to meet USAID's origin requirement. In many cases where systems determinations are appropriate there is no practical need to assemble the system prior to final installation in the cooperating country. Thus, the proposed rule would allow a system to meet the origin requirement without prior assembly in a country included in the authorized Geographic Code provided the supplier is responsible for assembly in the cooperating country.

The ocean transportation rule in 228.21 is being amended to ensure compliance with cargo preference requirements by limiting the use of transshipments which begin on U.S. flag vessels and move to non-U.S. flag vessels to only those cases where direct carriage on U.S. flag vessels is not available. The proposed rule will require the supplier to obtain a determination from USAID that direct service on a U.S. flag vessel to destination is not available before a U.S.-foreign flag transshipment will be eligible for USAID financing. In addition, section 228.21 is revised to specify where USAID'S policies implementing cargo preference are located.

Editorial clarifications are being made to the waiver provisions in Sections 228.51 and 228.53.

List of Subjects in 22 CFR Part 228

Administrative practice and procedure, Commodity procurement, Grant programs—foreign relations.

Accordingly 22 CFR part 228 is proposed to be amended as follows:

PART 228—[AMENDED]

1. The authority citation continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

2. In § 228.11, paragraph (e) is revised as follows:

§ 228.11 Source and origin of commodities.

* * * * *

(e) Systems Determination. When a system consisting of more than one produced commodity is procured as a single, separately priced item, USAID may determine that the system itself shall be considered a produced commodity. When a determination is made to treat a system as a produced commodity, component commodities which originate from other than an authorized source country may be shipped directly to, and the system assembled in, the cooperating country, unless USAID specifically determines that assembly and shipment shall take place in an authorized source country. Transportation costs must still meet the requirements in subpart C of this part in order for them to be eligible for USAID financing. USAID, or the importer in the case of a Commodity Import Program, shall inform the supplier of any system determination.

* * * * *

3. Section 228.21 is amended by adding a sentence at the end of paragraph (a) and revising paragraph (c)(4) as follows:

§ 228.21 Ocean transportation.

(a) * * * USAID's policy on implementation of the Cargo Preference Act is in USAID's Automated Directives System, Chapter 315.

* * * * *

(c) * * *

(4) USAID will finance costs incurred on vessels under flag registry of any Geographic Code 935 country if the costs are part of the total cost on a through bill of lading that is paid to a carrier for initial carriage on a vessel which is eligible in accordance with paragraphs (c)(1), (2) or (3) of this section; *provided that* for shipments originating on a U.S. flag vessel with transshipment to a non-US. flag vessel, the supplier must obtain a determination that direct service on a U.S. flag vessel is not available from USAID's Office of Procurement, Transportation Division, 1300 Pennsylvania Avenue NW., Washington, DC 20523–7900.

4. Section 228.51, paragraph (a) is amended by revising the introductory paragraph and paragraph (a)(1) as follows:

§ 228.51 Commodities.

(a) *Waiver criteria.* Any waiver must be based upon one of the criteria listed in this section. Waivers to Geographic Code 899 or Code 935 which are justified under paragraph (a) (2) or (3) of this section may only be authorized on a case-by-case basis. A waiver may be authorized when:

(1) A commodity required for assistance is of a type that is not produced in or available for purchase in the United States; in addition, for waivers to any country or Geographic code beyond Code 941 and the cooperating country, the commodity is of a type that is not produced in or available for purchase in any country in Code 941 or the cooperating country.

* * * * *

5. Section 228.53 is amended by revising the introductory paragraph and paragraph (a) as follows:

§ 228.53 Suppliers of services—privately owned commercial suppliers and non-profit organizations.

Waiver criteria. Any waiver must be based upon one of the criteria listed in this section. Waivers to Geographic Code 899 or Code 935 which are justified under paragraph (b) or (c) of this section may only be authorized on a case-by-case basis. A waiver may be authorized when:

(a) Services required for assistance are of a type that are not available for purchase in the United States; in addition, for waivers to any country or Geographic Code beyond Code 941 and the cooperating country, the services are of a type that are not available for purchase in any country in Code 941 or the cooperating country.

* * * * *

Dated: January 5, 1998.

Marcus L. Stevenson,

Procurement Executive.

[FR Doc. 98–1572 Filed 1–22–98; 8:45 am]

BILLING CODE 6116–71–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–243–FOR]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Ohio regulatory program (hereinafter the "Ohio program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of the Ohio rules pertaining to permitting requirements, bond release, and performance standards. The amendment is intended to revise the Ohio program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., [E.D.T.], February 23, 1998. If requested, a public hearing on the proposed amendment will be held on February 17, 1998. Requests to speak at the hearing must be received by 4:00 p.m., [E.D.T.], on February 9, 1998.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to George Rieger, Field Branch Chief, at the address listed below.

Copies of the Ohio program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Appalachian Regional Coordinating Center.

George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2153.

Ohio Division of Mines and Reclamation, 1855 Fountain Square Court, Columbus, Ohio 43224, Telephone: (614) 265–1076.

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Telephone: (412) 937–2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the August 10, 1982, **Federal Register** (42 FR 34688). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Description of the Proposed Amendment

By letter dated December 30, 1997 (Administrative Record No. OH–2174–05), Ohio submitted a proposed amendment to its program pursuant to SMCRA and in accordance with 30 CFR 732.17(c). The provisions of the Ohio Administrative Code (OAC) that Ohio proposed to amend are: OAC 1501:13–4–05—Permit Application Requirements, OAC 1501:13–4–12—Special Categories of Mining, OAC 1501:13–4–14—Underground Permit Application Requirements, OAC 1501:13–7–05—Release of Performance Bond, and OAC 1501:13–9–04—Performance Standards.

Specifically, Ohio is proposing the following changes. At OAC 1501:13–4–05 and 13–4–14, Ohio is proposing to replace the term "sedimentation pond" with "siltation structure" and to reference the dam classification criteria found in the Natural Resources Conservation Service (NRCS) Technical Release No. 60. AT OAC 1501:13–4–12(E), Ohio is proposing to restrict approximate original contour restoration variances to only steep-slope mining and reclamation operations. At 13–4–12(F)(4)(E), Ohio is proposing to require

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that the aggregate total prime farmland acreage not be decreased from that which existed prior to mining. Any water bodies to be constructed during mining and reclamation operations are to be located within the post-reclamation non-prime farmland portions of the permit area. At OAC 1501:13–7–05(A)(2)(a)(iv), Ohio is proposing to require that a notarized statement by the permittee affirming completion of all applicable reclamation requirements be included in a request of approval of reclamation. At OAC 1501:13–9–4, Ohio is proposing to reference the dam and/or emergency spillway hydrologic criteria found in the NRCS Technical Release No. 60. Ohio is also proposing to delete the spillway requirements for impoundments at section (G)(3)(b) as they already appear at section (H)(1)(h).

Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Appalachian Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., [E.D.T.] on February 9, 1998. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3509 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 15, 1998.

Ronald C. Rector,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 98–1651 Filed 1–22–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX–039–FOR]

Texas Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; correction.

SUMMARY: OSM is correcting a proposed rule that appeared in the **Federal Register** of December 29, 1997 (62 FR 67592). This document announced receipt of a proposed amendment to the Texas abandoned mine land reclamation plan (hereinafter referred to as the "Texas program") under the Surface Mining Control and Reclamation Act of 1997 (SMCRA).

FOR FURTHER INFORMATION CONTACT:

Michael C. Wolfrom, Director, Tulsa Field Office, Telephone: (918) 581–6430.

In **Federal Register** document 97–33662 beginning on page 67592 in the issue of Monday, December 29, 1997, make the following corrections:

1. On page 67593 in the first column under the heading **SUMMARY**, "acquire" in line 24 should be "acquired."

2. On page 67593 in the first column under the heading **ADDRESSES**, "Texas" in line five of the third paragraph should be "Oklahoma."

3. On page 67593 in the second column under number 1.a. in line two, "Sec. 12,805" should be "Sec. 12.805."

4. On page 67594 in the first column, in line three, the "p" in "paragraph" should be capitalized.

5. On page 67594 in the first column, in line 17, the "i" in "it" should be capitalized.

6. On page 67594 in the third column under number 17 in line 5 of the paragraph, the "c" in "commission" should be capitalized.

7. On page 67595 in the first column in the heading of number 22, "Section 21.820" should be "Section 12.820."

8. On page 67595 in the first column in the paragraph under the heading "Public Hearing," the word "INFORMAITON" in line three should be "INFORMATION."

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 15, 1998.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 98–1652 Filed 1–22–98; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AD–FRL–5951–5]

Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On December 19, 1995, EPA adopted emission guidelines for existing municipal waste combustor (MWC) units. Section 129 of the Act requires States with existing MWC units subject to the guidelines to submit plans to EPA that implement and enforce the emission guidelines. The State plans were due on December 19, 1996. States without MWC units subject to the emission guidelines must submit a negative declaration letter. Following receipt of a State plan, EPA has up to 6 months to approve or disapprove the plan. If a State with existing MWC units does not submit an approvable plan within 2 years after promulgation of the guidelines (i.e., December 19, 1997), the Clean Air Act (ACT) requires EPA to develop, implement, and enforce a Federal plan for MWC units in that State. In this action EPA proposes a Federal plan to implement emission guidelines for MWC units located in States where State plans have not been approved. For most of these States, the Federal plan would be an interim action because when a State plan is approved, the Federal plan will no longer apply to MWC units covered by the State plan. This proposed MWC Federal plan includes the same required elements as a State plan as specified in 40 CFR part 60, subpart B. These elements are: identification of legal authority; identification of mechanisms for implementation; inventory of affected facilities; emission inventory; emission limits; compliance schedules; public hearing requirements; reporting and recordkeeping requirements; and public progress reports. Also discussed in this preamble is Federal plan implementation and delegation of authority.

DATES: *Comments.* Comments on this proposal must be received on or before March 24, 1998.

Public Hearing. A public hearing will be held in Washington, DC if individuals request to speak. In addition, a public hearing will be held in any State with an MWC unit that would be covered by the proposed MWC Federal plan, if individuals request to speak. Requests to speak must be received by February 23, 1998. If requests to speak are received, one or more public hearings will be held. A message regarding the date and location of the public hearing(s) may be accessed by calling (919) 541–5339 after February 23, 1998.

ADDRESSES: *Comments.* Comments on this proposal should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (MC–6102), Attention Docket No. A–97–45, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Comments and data may be filed electronically by following the instructions in section I of **SUPPLEMENTARY INFORMATION** of this preamble.

Public Hearing. If timely requests to speak at a public hearing are received, a public hearing will be held in Washington, DC or in any State with an MWC unit that would be covered by the proposed MWC Federal plan. Persons wishing to present oral testimony should notify Ms. Julie Andresen, Program Review Group, Information Transfer and Program Integration Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5339 at EPA. A message regarding the date and location of the public hearing(s) may be accessed by calling (919) 541–5339.

Docket. Docket numbers A–89–08, A–90–45, and A–97–45 contain the supporting information for this proposed rule and the supporting information for EPA's promulgation of emission guidelines for existing MWC units. These dockets are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center (Mail Code 6102), 401 M Street, SW, Washington, DC 20460, or by calling (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor, central mall). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information regarding this proposal, contact Ms. Julie Andresen at (919) 541–5339, Program Review Group, Information Transfer and Program Integration Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For technical information, contact Mr. Walt Stevenson at (919) 541–5264, Combustion Group, Emission Standards Division (MD–13), U.S.

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Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For information regarding the implementation of this Federal plan, contact the appropriate Regional Office (table 2) as shown in section I of Supplementary Information.

SUPPLEMENTARY INFORMATION:

I. Background of MWC Regulations and Affected Facilities

A. Background of MWC Regulations

On February 11, 1991 (56 FR 5488), EPA promulgated in the **Federal Register** emission guidelines for existing MWC units (40 CFR part 60, subpart Ca) under authority of section 111 of the Act as amended in 1977. On September 20, 1994, EPA proposed revised emission guidelines for MWC units (40 CFR part 60, subpart Cb) under sections 111 and 129 of the Act as amended in 1990. On December 19, 1995, EPA issued final emission guidelines applicable to small and large categories of MWC units.[1] *See* 60 FR 65387. On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated subpart Cb as it applies to MWC units with an individual capacity to combust less than or equal to 250 tons per day of municipal solid waste (MSW) (small MWC units), and all cement kilns combusting MSW, consistent with their opinion in *Davis County Solid Waste Management and Recovery District* v. *EPA*, 101 F.3d 1395 (D.C. Cir. 1996), amended, 108 F.3d 1454 (D.C. Cir. 1997). As a result, subpart Cb applies only to MWC units with an individual capacity to combust more than 250 tons per day of MSW per unit (large MWC units). On August 25, 1997 EPA published changes to the emission guidelines to address the court decision (62 FR 45116). Those changes went into effect on October 24, 1997.

States with existing large MWC units subject to the emission guidelines were required to submit to EPA a plan that implements and enforces the guidelines within 1 year after promulgation of the guidelines, or by December 19, 1996. The court's order that vacated the applicability of the guidelines to small MWC units and cement kilns did not affect the due date or the required content of State plans for large MWC units. The State plans due date remained December 19, 1996. Section 129(b)(3) of the Act requires EPA to develop, implement, and enforce a Federal plan for large units located in States that have not submitted an approvable plan within 2 years after promulgation of the guidelines, or by December 19, 1997. This action proposes a Federal plan for MWC units that are not covered by a State plan. The elements of the Federal plan are summarized in section II of this preamble.

[1] The small category comprised all MWC units located at facilities with total capacity to combust between 35 mg/day (40 tons per day), and 225 mg/day (250 tons per day) of MSW. The large category comprised all MWC units located at facilities with total capacity to combust greater than 250 tons per day of MSW.

B. MWC Federal Plan and Affected Facilities

This proposed MWC Federal plan would affect all MWC units with a combustion capacity greater than 250 tons per day of municipal solid waste (large MWC units) that commenced construction on or before September 20, 1994 that are located in: (1) Any State for which a State plan has not been approved; (2) any State whose State plan has been approved and subsequently vacated in whole or in part; or (3) any State with an approved State plan that subsequently revises any component of the plan (e.g., the underlying legal authority or enforceable mechanism) such that the State plan is no longer as protective as the emission guidelines. The specific applicability of this plan is described in §§ 62.14100 and 62.14102 of subpart FFF.

This proposed MWC Federal plan would not affect an MWC unit covered by an EPA approved State plan. If a State submits a State plan and that State plan is approved before promulgation of the Federal plan, the promulgated MWC Federal plan would not apply to MWC units covered by that State plan. Furthermore, promulgation of this MWC Federal plan does not preclude a State from submitting a State plan later. If a State submits a State plan after promulgation of the MWC Federal plan, EPA will review and approve or disapprove the plan. Upon approval of the State plan, the Federal plan would no longer apply. The EPA will periodically amend the exclusion table in § 62.14102 of subpart FFF to identify MWC units covered in the approved State plan that are excluded from Federal plan applicability. (See the discussion in *State Submits a State Plan After Large MWC Units Located in the State Are Subject to the Federal Plan—Full Transfer of Authority Through State Plan Approval* in section VI of this preamble.) States are, therefore, encouraged to continue their efforts to develop and submit State plans to EPA for approval.

To clarify which MWC units would and would not be covered, this proposed Federal plan lists in the exclusion table in § 62.14102 of subpart FFF those units, by State, to which the MWC Federal plan would not apply. Only the MWC units listed in that table are excluded from the proposed Federal plan. Large MWC units not listed in the exclusion table would be covered by the Federal plan. For example, if a large MWC is located in a State and the large unit is not either specifically listed in the applicability section of the State plan or covered by a general applicability clause in the State plan, the large MWC unit would be subject to the Federal plan. Also, large MWC units overlooked by a State that submitted a negative declaration letter would be subject to the Federal plan. As stated above, EPA expects additional State plans to be approved prior to promulgation of this rule. The promulgated Federal plan would list in the exclusion table, those additional units in States in which an approved State plan applies.

C. Status of State Plan Submittals

Many States are making significant progress on their State plans and EPA expects many State plans to be submitted in the next few months. Table 1 summarizes the status of State plans and negative declarations. The table is based on information from Regional Offices (A–97–45, II–I–5). The status of State plan submittals as of December 19, 1997 is as follows:

- The EPA has approved the State plans for Oregon and Florida and the MWC units covered in those State plans would not be covered by the proposed MWC Federal plan (The EPA has reviewed and approved the State plan for Illinois. However, the **Federal Register** notice approving the plan has not been published. Therefore, the approval of the Illinois State plan is not reflected elsewhere in this proposal.);
- The EPA has received a negative declaration letter from States listed in section I of table 1 stating that there are no large MWC units in these States; thus EPA is not expecting a State plan to be submitted from these States. However, in the unlikely event that large MWC units are subsequently identified in any of these States, this Federal plan would automatically apply to them;
- The EPA has received a State plan from States listed in section II of table 1 and the State plans currently are being reviewed by EPA. The proposed Federal plan would cover large MWC units in these States, but if these State plans are approved, the promulgated Federal plan would not cover units addressed in the approved State plans.
- The EPA has not received a State plan or a negative declaration letter from the States listed in section III of table 1. The large MWC units in these States would be subject to the proposed MWC Federal plan until a State plan applicable to large MWC units is approved by EPA.

TABLE 1.—STATUS OF STATES WITHOUT AN APPROVED STATE PLAN[a]

State	Status[b]
I. Negative declaration submitted to EPA	
Region I:	
Rhode Island	A
Vermont	A
Region II:	
Puerto Rico	A
Virgin Islands	A
Region III:	
Delaware	A
District of Columbia	A
West Virginia	A
Region IV:	
Kentucky	A
Mississippi	A
North Carolina	A
Region V:	
Wisconsin	A
Region VI:	
Arkansas	A
Louisiana	A
New Mexico	A
Texas	A
Region VII:	
Iowa	A
Kansas	A
Missouri	A
Nebraska	A
Region VIII:	
Colorado	A
Montana	A
North Dakota	A
South Dakota	A
Utah	A
Wyoming	A
Region IX:	
Arizona	A
Nevada	A
Region X:	
Alaska	A
Idaho	A
II. State plan submitted to EPA	
Region II:	
New York	B

TABLE 1.—STATUS OF STATES WITHOUT AN APPROVED STATE PLAN[a]—Continued

State	Status[b]
Region III:	
Maryland	B
Region IV:	
Georgia	B
Tennessee	B
Region V:	
Illinois	B
III. State plan or negative declaration not submitted to EPA	
Region I:	
Connecticut	C
New Hampshire	C
Maine	C
Massachusetts	C
Region II:	
New Jersey	C
Region III:	
Pennsylvania	C
Virginia	C
Region IV:	
Alabama	C
South Carolina	C
Region V:	
Indiana	C
Michigan	C
Minnesota	C
Ohio	C
Region VI:	
Oklahoma	C
Region VII:	
None.	
Region VIII:	
None.	
Region IX:	
American Samoa	C
California	C
Guam	C
Hawaii	C
Northern Mariana Islands	C
Region X:	
Washington	C

[a] Any large MWC units in these States are covered by the proposed Federal plan.

[b] Status codes.

A=Negative declaration submitted. No State plan is expected. However, in the unlikely event that large MWC units are subsequently identified in any of these States, this Federal plan would automatically apply to them.

B=State plan has been submitted and is being reviewed by EPA. If the plan is approved, MWC units in these States would not be subject to the promulgated Federal plan.

C=State plan or negative declaration submittal has not been received.

While section 129 of the Act specifies that the Federal plan would apply to units in any State that has not submitted an "approvable" plan by December 19, 1997, the proposed language in § 62.14100 refers to units in States for which a State plan has not been "approved." Because this Federal plan will be promulgated in 1998, EPA expects to have approved or disapproved State plans that are submitted by December 19, 1997. Thus, when this Federal plan is promulgated, any "approvable" State plans that were submitted by December 19, 1997, will likely have been "approved."

Regulated Entities. Entities regulated by this action are existing MWC units with capacities to combust greater than 250 tons per day of MSW unless the unit is subject to a section 111(d)/129 State plan that has been approved by EPA. The EPA projects that this proposed MWC Federal plan could initially affect up to 143 MWC units at 59 plants in 23 States. However, many State plans are expected to be approved by the time the Federal plan is promulgated. Based on current expectations, this Federal plan may affect 53 MWC units at 21 plants by June 1998 and 13 MWC units at 4 plants by June 1999. Regulated categories and entities include:

Category	Examples of regulated entities
Industry and Local Government Agencies	Waste-to-energy plants that generate electricity or steam from the combustion of garbage by feeding municipal waste into large furnaces. Incinerators that combust trash but do not recover energy from the waste.

The foregoing table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this MWC Federal plan. For specific applicability criteria, see §§ 62.14100 and 62.14102 of subpart FFF.

Electronic Submittal of Comments. Comments and data may be submitted electronically via electronic mail (E-mail) or on disk. Electronic comments on this proposed rule may be filed via E-mail at most Federal Depository Libraries. E-mail submittals should be sent to A-and-R-Docket@epamail.epa.gov. No confidential business information should be submitted through E-mail. Comments and data also will be accepted on disks in WordPerfect 5.1 or 6.1 file format or ASCII file format. Electronic comments must avoid the use of special characters and any form of encryption. All comments and data for this proposal, whether in paper form or electronic forms, must be identified by docket number A–97–45.

Regional Office Contacts. For information regarding the implementation of the MWC Federal plan, contact the appropriate EPA Regional Office as shown in table 2.

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TABLE 2.—EPA REGIONAL CONTACTS FOR MUNICIPAL WASTE COMBUSTORS

Regional contact	Phone No.	Fax No.
John Courcier, U.S. EPA, Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), John F. Kennedy Federal Bldg., Boston, MA 02203–0001	(617) 565–9462	(617) 565–4940
Christine DeRosa, U.S. EPA, Region II (New Jersey, New York, Puerto Rico, Virgin Islands), 290 Broadway, New York, NY 10007–1866	(212) 637–4022	(212) 637–3901
James B. Topsale, U.S. EPA/3AP22, Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia), 841 Chestnut Bldg., Philadelphia, PA 19107	(215) 556–2190	(215) 566–2134
Brian Beals, Scott Davis, U.S. EPA/APTMD, Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), 345 Courtland St., N.E., Atlanta, GA 30365	(404) 562–9098 (404) 562–9127	(404) 562–9095
Douglas Aburano (MN), Mark Palermo (IL, IN, OH), Rick Tonielli (MI), Charles Hatten (WI), U.S. EPA/AT18J, Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), 77 W. Jackson Blvd., Chicago, IL 60604	(312) 353–6960 (312) 886–6082 (312) 886–6068 (312) 886–6031	(312) 886–5824
Mick Cote, U.S. EPA, Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), 1445 Ross Ave., Suite 1200, Dallas, TX 75202–2733	(214) 665–7219	(214) 665–7263
Wayne Kaiser, U.S. EPA, Region VII (Iowa, Kansas, Missouri, Nebraska), 726 Minnesota Ave., Kansas City, KS 66101	(913) 551–7603	(913) 551–7065
Mike Owens, U.S. EPA, Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), 999 18th Street, Suite 500, Denver, CO 80202–2466	(303) 312–6440	(303) 312–6064
Patricia Bowlin, U.S. EPA/Air 4, Region IX (American Somoa, Arizona, California, Guam, Hawaii, Northern Mariana Islands, Nevada), 75 Hawthorne Street, San Francisco, CA 94105	(415) 744–1188	(415) 744–1076
Catherine Woo, U.S. EPA, Region X (Alaska, Idaho, Oregon, Washington), 1200 Sixth Ave., Seattle, WA 98101	(206) 553–1814	(206) 553–0404

II. Required Elements of the Proposed MWC Federal Plan

Sections 111(d) and 129 of the Act, as amended, 42 U.S.C. 7411(d) and 7429(b)(2), require States to develop and implement State plans for MWC units to implement and enforce the promulgated emission guidelines. Subparts B and Cb of 40 CFR part 60 require States to submit State plans that include specified elements. Because this Federal plan is being proposed in lieu of State plans, it includes the same essential elements: (1) identification of legal authority, (2) identification of mechanisms for implementation, (3) inventory of affected facilities, (4) emission inventory, (5) emission limits, (6) compliance schedules, (7) public hearing requirements, (8) reporting and recordkeeping requirements, and (9) public progress reports. Each State plan element is summarized below as it relates to this proposed MWC Federal plan.

A. Legal Authority and Mechanisms for Implementation

As a required element of a State plan, a State must demonstrate that it has the legal authority to adopt and implement the emission requirements and compliance schedules in the State plan. The State also must identify the enforceable State mechanism for implementing the emission guidelines (e.g., a State rule or other State enforcement mechanism). Section 129(b)(3) of the Act requires EPA to develop a Federal plan for States that do not submit an approvable State plan within 2 years after promulgation of the emission guidelines. By proposing this MWC Federal plan, EPA is fulfilling its obligation under the Act to establish emission limits and other requirements for MWC units in States that have not yet submitted approvable plans. The EPA is proposing a Federal regulation under the legal authority of the Act as the mechanism to implement the emission guidelines. However, as discussed in section VI of this preamble, implementation and enforcement of the Federal plan can be delegated to State and local agencies. Furthermore, when a State plan is approved, the Federal plan will no longer apply to MWC units covered by a State plan.

B. Inventory of Affected MWC Units

As a required element, a State plan must include a complete source inventory of MWC units affected by the emission guidelines. Consistent with the requirement for State plans to include an inventory of MWC units, docket A–97–45 contains an inventory of large MWC units covered by this proposed MWC Federal plan. The inventory is contained in a memorandum entitled "Inventory and Emission Estimates for Large Municipal Waste Combustor Units Covered by the Proposed Federal Section 111(d)/129 Plan" (A–97–45, II–B–1). Item II–B–1 serves both the MWC inventory requirement and the MWC emission inventory requirement, which will be discussed in the following section. The inventory is based on information available to EPA during development of the 1995 emission guidelines and recent information from EPA Regional Offices.

C. Inventory of Emissions

As a required element, a State plan must include an emission inventory for MWC units subject to the emission guidelines. The pollutants to be inventoried include dioxins/furans, cadmium (Cd), lead (Pb), mercury (Hg), particulate matter (PM), hydrogen chloride (HCl), nitrogen oxides (NO_X), carbon monoxide (CO), and sulfur dioxide (SO_2). For this proposal, EPA has estimated the emissions from each MWC unit that would be covered by the Federal plan for all pollutants regulated by the Federal plan. This emission inventory is item II–B–1 in docket A–97–45. Table 3 of this preamble summarizes the results of the inventory for those States that do not have an approved State plan. Pollutant emissions are expressed in megagrams per year (Mg/yr) for most pollutants and grams per year (g/yr) for dioxins. The emission inventory is based on information known about the combustor and uses emission factors contained in "Compilation of Air Pollutant Emission Factors" (AP–42). Refer to the emission estimates memorandum in docket A–97–45 for the complete emissions inventory and details on the calculations.

TABLE 3.—SUMMARY OF CURRENT EMISSIONS FROM LARGE MWC UNITS BY STATE

Region/state	Dioxins/furans (g/yr)	Cd (Mg/yr)	Pb (Mg/yr)	Hg (Mg/yr)	PM (Mg/yr)	HCl (Mg/yr)	SO_2 (Mg/yr)	NO_X (Mg/yr)
Region I:								
Connecticut	53	0.027	0.477	1.74	78	144	476	3684
Maine	56	0.006	0.296	0.06	32	24	145	1334
Massachusetts	673	0.103	1.86	4.13	126	543	1466	5866
New Hampshire	15	0.002	0.024	0.2	13	48	109	277
Rhode Island	0	0	0	0	0	0	0	0
Vermont	0	0	0	0	0	0	0	0
Region II:								
New Jersey	394	0.014	0.521	2.35	56	145	499	2737
New York	619	0.304	1.33	4.61	156	2492	1911	5293
Puerto Rico	0	0	0	0	0	0	0	0
Region III:								
Delaware	0	0	0	0	0	0	0	0
District of Columbia	0	0	0	0	0	0	0	0
Maryland	493	0.277	1.084	2.47	89	2241	1332	1964
Pennsylvania	178	0.092	0.506	3.23	93	714	918	3571
Virginia	46	0.034	0.712	1.34	58	144	464	3007
Virgin Islands	0	0	0	0	0	0	0	0
West Virginia	0	0	0	0	0	0	0	0
Region IV:								
Alabama	2	0.003	0.025	0.05	7	22	58	383
Georgia	108	0.06	0.226	0.52	16	485	263	277
Kentucky	0	0	0	0	0	0	0	0
Mississippi	0	0	0	0	0	0	0	0
South Carolina	69	0.001	0.81	0.36	7	15	59	333
Tennessee	227	0.125	0.475	1.09	33	1019	551	583
Region V:				—				
Illinois	4	0.001	0.3	0.02	14	9	4	283
Indiana	28	0.011	0.087	0.96	23	75	199	1311
Michigan	465	0.084	0.837	1.03	89	627	589	3085
Minnesota	268	0.039	0.807	0.8	168	983	676	2717
Ohio	18	0.01	0.264	0.44	5	25	87	206
Wisconsin	0	0	0	0	0	0	0	0
Region VI:								
Arkansas	0	0	0	0	0	0	0	0
Louisiana	0	0	0	0	0	0	0	0
New Mexico	0	0	0	0	0	0	0	0
Oklahoma	244	0.134	0.509	1.17	36	1092	590	624
Texas	0	0	0	0	0	0	0	0
Region VII:								
Kansas	0	0	0	0	0	0	0	0
Iowa	0	0	0	0	0	0	0	0
Missouri	0	0	0	0	0	0	0	0
Nebraska	0	0	0	0	0	0	0	0
Region VIII:								
Colorado	0	0	0	0	0	0	0	0
Montana	0	0	0	0	0	0	0	0
North Dakota	0	0	0	0	0	0	0	0
South Dakota	0	0	0	0	0	0	0	0
Utah	0	0	0	0	0	0	0	0
Wyoming	0	0	0	0	0	0	0	0
Region IX:								
American Samoa	0	0	0	0	0	0	0	0
Arizona	0	0	0	0	0	0	0	0
California	31	0.011	0.094	1.04	25	81	216	1017
Guam	0	0	0	0	0	0	0	0
Hawaii	35	0.026	0.387	0.14	32	58	523	1646
Nevada	0	0	0	0	0	0	0	0
Northern Mariana Islands	0	0	0	0	0	0	0	0
Region X:								
Alaska	0	0	0	0	0	0	0	0
Idaho	0	0	0	0	0	0	0	0
Washington	10	0.004	0.029	1.19	8	25	67	318

D. Emission Limits

Emission Limits. As a required element, a State plan must include emission limits. Section 129(b)(2) requires these emission limits to be "at least as protective as" those in the emission guidelines. The emission limits in this proposed MWC Federal plan are the same as those contained in

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the emission guidelines (40 CFR part 60, subpart Cb) as amended on August 25, 1997 (62 FR 45116). The emission limits and additional requirements are summarized in section V of this preamble. (See the discussion in *An Approved State Plan Is No Longer As Protective As The Emission Guidelines—Partial Transfer of Authority Through Delegation* in section VI of this preamble for a discussion of State plans that do not include the amended emission limits.)

The emission limits for all pollutants except NO_x can be achieved by the combination of good combustion practices (GCP), post-combustion control by a spray dryer with either an electrostatic precipitator (ESP) or a fabric filter, and supplemented with activated carbon injection. For MWC units requiring NO_x control, the limits can be achieved using selective noncatalytic reduction (SNCR). This combination of controls was determined to represent the Maximum Achievable Control Technology (MACT) under the section 129 guidelines. An MWC owner or operator is free to employ any techniques to comply with the proposed MWC Federal plan, as long as the numerical emission limits for all pollutants are met.

The emission guidelines, as amended on August 25, 1997, apply the emission limits for SO_2, HCl, Pb, and NO_x in two stages. The final guidelines require compliance with the emission limits in the 1995 guidelines by December 19, 2000 and compliance with the four amended emission limits by August 25, 2002. Specifically, the final emission guidelines require compliance with SO_2 and HCl limits of 31 parts per million by volume (ppmv) by December 19, 2000 and 29 ppmv by August 25, 2002. The lead limit is 0.49 milligrams per dry standard cubic meter (mg/dscm) by December 19, 2000, and 0.44 mg/dscm by August 25, 2002. The NO_x limit for one type of MWC, fluidized bed combustors, decreases. The four amended limits were added as a result of a court decision, as described in 62 FR 45116 (August 25, 1997).

This proposed Federal plan addresses the emission limits in 40 CFR part 60, subpart Cb, including the final amended limits for the four pollutants, and would require compliance with all limits by December 19, 2000. The same types of air pollution control technology served as the basis for both the 1995 and the amended limits: spray dryer/fabric filter or ESP, carbon injection, and SNCR for non-refractory combustor types. Large MWC units would need to install these controls by December 19, 2000 to meet the original limits, and as soon as the controls are installed, they will also meet the final, amended limits. Thus, for simplicity, this proposed Federal plan includes only the final, amended emission limits for these four pollutants.

Operator Training and Certification. The emission guidelines require American Society of Mechanical Engineers (ASME) or a comparable State program for operator certification for chief facility operators and shift supervisors, and an EPA or State MWC operator training course for chief facility operators. In States that have not yet submitted State plans or that do not have State operator training and certification programs, ASME certification and the EPA operator training course would be required. However, some States already have submitted to EPA either a partial or a complete State plan allowing State training courses and/or State certification programs. The EPA is reviewing these plans, but has not approved them yet, so the facilities in these States would be covered by this proposed MWC Federal plan until EPA approves the State plan. Because this Federal plan is an interim action until State plans are approved, the Federal plan includes State certification and State training courses if submitted in a State plan. Therefore, this proposed Federal plan would allow ASME or State certification in Connecticut and Maryland. This proposed Federal plan also would allow EPA or State operator training courses in Connecticut. The EPA requests information on whether other States that will be submitting plans in the near future have State certification programs and/or State operator training courses. If States submit this information to EPA before the end of the comment period for this proposal (March 24, 1998), EPA intends to allow State certification and State operator training courses in the promulgated Federal plan for those States.

NO_x Trading. The emission guidelines [§ 60.33b(d)] allow States to establish programs to allow owners or operators of existing MWC units to trade nitrogen oxide emission credits. At this time, no State has submitted such a program for approval as part of their State plan. However, a State could include such a program in a future State plan submittal for approval by the Administrator on a case-by-case basis prior to implementation. Trading programs are not included in the proposed MWC Federal plan for the following reasons: (1) No State has requested such a trading program; (2) these trading programs, if approved by the State, are to be proposed by the State for potential approval by EPA; and (3) at least one State has specifically excluded MWC units from their State trading program. States may still allow an owner or operator to use that State's NO_x trading program to meet the Federal plan emission limits. For example, if a State allows an owner or operator to use that State's NO_x trading program to meet the emission limits rather than retrofit control equipment, then the owner or operator would submit its trading approach to the State for case-by-case approval. Then, the State would follow that State's approved procedures for approving the owner or operator's approach and then the owner or operator would submit the State-approved, source-specific trading approach to EPA for case-by-case approval in time to commence the trading program by the date the final control plan is due for the specific MWC units. (See section II.E for additional discussion on determining the dates for achieving the increments of progress.) Please note that both the owner or operator and the State must act expeditiously in order to ensure that the public and EPA have sufficient time to review the specifics of the proposed trade. In general, EPA supports open market concepts, including trading, especially when they can be harnessed to achieve environmental limits, minimize costs, and EPA can ensure the technical validity and appropriate tracking of the parameters of the trade.

NO_x Emission Averaging. The emission guidelines allow States to allow the owner or operator of an affected facility to implement a NO_x emission averaging plan within an MWC plant with multiple MWC units. (*See* 40 CFR 60.33b(d), subpart Cb.) At this time, no State has submitted such plant-wide emission averaging for approval as part of their State plan, nor have any States approved such averaging as part of the initial compliance report as specified in 40 CFR 60.59b(f) or the annual compliance report specified in 40 CFR 60.59b(g), as applicable. Therefore, no source-specific averaging plans are included in this Federal plan. However, a State could propose a NO_x emission averaging plan in a future State plan submittal for potential approval by EPA prior to implementation. Furthermore, an owner or operator may propose to use plant-wide NO_x emission averaging to meet the Federal plan NO_x emission limits. The proposed NO_x emission averaging plan must be submitted in the initial compliance report specified in 40 CFR 60.59b(f) or annual compliance report specified in 40 CFR 60.39b(g), as applicable, prior to implementation.

E. Compliance Schedules and Increments of Progress

As a required element, a State plan must include compliance schedules for retrofitting controls to comply with the emission guidelines. Because this proposed MWC Federal plan is being implemented in lieu of State plans, its compliance schedule includes the same five increments of progress as required in a State plan. The Federal plan increments of progress are consistent with the State plan requirements in 40 CFR 60.24 of subpart B. These increments of progress are required for compliance schedules that are longer than 12 months. The increments of progress in the Federal plan (and any approved State plan) are the primary mechanism for ensuring progress toward final compliance. Each increment of progress has a specified date for achievement.

This proposed Federal plan includes the five increments of progress and provides three options to establish the increment dates. Under all three options the five increment dates are defined and are enforceable. The Federal plan could function with only one option, but in order to provide maximum flexibility, this proposal includes three options. The EPA requests comments on each of the options and on the desirability of including these multiple options in the final Federal plan. Based on comments received, the final Federal plan will include one, two, or three options. All three options are discussed in more detail following the definitions for the increments of progress as listed below.

1. Increments of Progress

The increments of progress to be measured are: (1) Submitting a final control plan, (2) awarding contracts for control systems or process modifications or orders for purchase of components, (3) beginning on-site construction or installation of the air pollution control device(s) or process changes, (4) completing on-site construction or installation of the air pollution control device(s) or process changes, and (5) final compliance.

The MWC owner or operator is responsible for meeting each of these five increments of progress for each MWC unit no later than the applicable compliance date. The owner or operator must notify EPA as each increment of progress is achieved (or missed). The notification must identify the increment and the date the achieved increment was met (or missed). For an increment achieved late, the notification must identify the increment and the date the increment was ultimately achieved.

The owner or operator must mail the (post-marked) notification to the applicable EPA Regional Office within 10 business days of the increment date defined in the Federal plan. (See table 2 under the "Supplementary Information" section of this document for a list of Regional Offices.) The definition of each increment of progress follows:

Submit a Final Control Plan. To meet this increment, the owner or operator of each MWC unit must submit a plan that describes the air pollution control devices or process changes that will be employed so that each MWC unit complies with the emission limits and other requirements. The plan must include a complete analysis of the applicable regulatory requirements and methods of compliance and selected control technology options available to meet these requirements. (The EPA intends to provide compliance assistance information to MWC owners and operators upon request.) The final control plan also must contain engineering specifications and drawings of all air pollution control equipment planned to be installed and/or descriptions of planned process changes. The owner or operator of an MWC unit will typically use the services of architectural and engineering (A/E) firms to obtain the design drawings and other operational characteristics of air pollution control devices to include in the final control plan. The final control plan must include information of sufficient detail to be used to solicit bids to install the air pollution control devices or initiate the process changes. If an MWC owner or operator plans to close a unit rather than retrofit controls to comply with the Federal plan by the applicable compliance date, a final control plan for that unit is not required. The owner or operator, however, must notify EPA of such a cease operation decision by the date the final control plan is due. The owner or operator must also submit a legally enforceable cease operation agreement documenting the date by which the unit will cease operation if operations cease later than 1 year after promulgation of the Federal plan. (See section IV of this preamble for additional discussion of closed and closing units.)

Award Contract. To award contract means the MWC owner or operator enters into legally binding agreements or contractual obligations that cannot be canceled or modified without substantial financial loss to the owner or operator. The EPA anticipates that the owner or operator may award a number of contracts to complete the retrofit. To meet this increment of progress, the MWC owner or operator must award a contract or contracts to initiate on-site construction, initiate on-site installation of air pollution control devices, and/or incorporate process changes. The owner or operator must mail a copy of the signed contract(s) to EPA within 10 business days of entering the contract(s).

Initiate On-site Construction. To initiate on-site construction, installation of air pollution control devices, or process change means to begin any of the following:

- Installation of an air pollution control device to be used to comply with the final emission limits as outlined in the final control plan;
- Physical preparation necessary for the installation of an air pollution control device to be used to comply with the final emission limits as outlined in the final control plan;
- Alteration of an existing air pollution control device to be used to comply with the final emission limits as outlined in the final control plan;
- Alteration of the municipal waste combustion process to accommodate installation of an air pollution control device to be used to comply with the final emission limits as outlined in the final control plan; or
- Process changes identified in the final control plan being made to meet the emission standards.

Complete On-site Construction. To complete on-site construction means that all necessary air pollution control devices or process changes identified in the final control plan are in place, on site, and ready for operation on the MWC unit. If the owner or operator of an MWC unit is unable to complete on-site construction prior to December 19, 2000 and, therefore ceases an MWC unit's operation and plans to restart it, the owner or operator must notify EPA and enter into a legally enforceable cease operation agreement by the date the final control plan is due. (See section IV of this preamble for additional discussion of closed and closing units.)

Final Compliance. To be in final compliance means to incorporate all process changes or complete retrofit construction as designed in the final control plan and to connect the air pollution control equipment or process changes with the affected facility identified in the final control plan such that if the affected facility is brought on line all necessary process changes or air pollution control equipment are operating as designed. Within 180 days after the date the facility is required to achieve final compliance, the initial performance test must be conducted. On

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or after the date the initial performance test is completed or is required to be completed, whichever is earlier, no pollutant may be discharged into the atmosphere from an affected facility in excess of the applicable emission limits.

2. Summary of Three Options for Determining Schedule Increment Dates

The proposed Federal plan includes three options for establishing the increment dates. The compliance schedule for facilities affected by this MWC Federal plan could be established by option 1 (generic compliance schedule proposed by EPA), option 2 (facility-specific schedule consistent with the State plan submitted to EPA by the State), or option 3 (facility-specific schedule submitted to EPA by the owner or operator of the MWC unit or the State). Under all three options the five increment dates would be defined and are enforceable.

In cases where option 2 or 3 has not been exercised, the owner or operator of an affected facility would be subject to option 1 (generic schedule). However, if the State or the MWC owner or operator submits a schedule that EPA approves (option 2 or 3), the owner or operator would be subject to that alternative schedule. Under option 2, States may submit increment schedules to EPA prior to the end of the comment period for this proposal March 24, 1998. Under option 3, an MWC owner or operator or the State may submit a schedule to EPA at the time the final control plan is due under the option 1 generic compliance schedule September 21, 1998. In options 2 and 3, EPA would review the schedules and incorporate them into the Federal plan. Each of the options is discussed in detail below.

Option 1. Generic Compliance Schedule. Option 1 is the generic default alternative. For MWC units covered by the Federal plan where State plans or compliance schedules have not been submitted, EPA is proposing generic compliance schedules and increments of progress. Alone, option 1 could be unnecessarily inflexible and reflects past approaches to regulatory compliance. However, option 1 is necessary to establish a baseline where neither option 2 nor 3 is exercised. Within option 1, the same generic schedule would apply to each MWC unit for all pollutants except dioxin and mercury. The compliance schedule for dioxin and mercury depends on the date of the MWC unit's construction, as described below.

The emission guidelines and section 129(b)(2) allow MWC units to complete retrofits or close no later than December 19, 2000. To be consistent with the emission guidelines, the final compliance date (for all pollutants except mercury and dioxin) in the proposed Federal plan is December 19, 2000. Because many MWC units are expected to retrofit combustion controls, as well as acid gas, PM, mercury, and/or NO_X controls to meet the emission limits (e.g., spray dryer/fabric filter or ESP, carbon injection, and/or SNCR), under this proposal they are given the maximum time (until December 19, 2000) to complete retrofits.

The emission guidelines require MWC units that commenced construction, reconstruction, or modification after June 26, 1987 to achieve compliance with the mercury and dioxin limits within 1 year after State plan approval (or 1 year after a revised construction permit or a revised operating permit is issued, if a permit modification is required, whichever is later). The EPA is, therefore, proposing to require compliance with the mercury and dioxin limits within 1 year after promulgation of the MWC Federal plan (or 1 year after a revised construction permit or a revised operating permit is issued, if a permit modification is required, whichever is later).

The EPA is proposing increments of progress as part of the generic compliance schedule. Tables in subpart FFF show the proposed increments of progress for pre-1987 units (December 19, 2000 schedule for all pollutants) and post-1987 units (1 year schedule for dioxin and mercury, December 19, 2000 schedule for all other pollutants).

While the generic compliance schedule is ambitious, EPA believes it is achievable because MWC owners and operators and States have known that they would need to install controls by December 19, 2000 as a result of the promulgation of the emission guidelines on December 19, 1995. Thus, MWC units already should have been developing their final control plans and should be ready to begin retrofits quickly. Furthermore, EPA believe that the generic compliance schedules are necessary to ensure final compliance by December 19, 2000.

The generic compliance schedule and increments of progress are based on case studies of four MWC plants that either completed or are in the process of completing retrofits of the controls needed to meet the subpart Cb emission limits. The EPA reviewed the retrofit schedules for MWC units at four MWC plants containing 12 MWC units. The retrofit case studies are documented in docket A–97–45 (II–A–1 through II–A–5).

The EPA compared the four retrofits to the increments of progress required by subpart B and determined appropriate time intervals for each increment. To provide maximum flexibility, the first three Federal plan increments are based on the maximum time required by any of the retrofits studied. The fourth increment was established to provide the maximum time to complete retrofits and still meet the final compliance date. The final increment (final compliance by December 19, 2000) is dictated by the Act.

The generic compliance schedule would apply to all MWC units subject to this MWC Federal plan, except those units that are subject to site-specific compliance schedules as submitted under option 2 or 3. If a large MWC unit will not complete construction and achieve final compliance by December 19, 2000, the guidelines allow and this proposed Federal plan would allow the unit to cease operation by December 19, 2000, complete the retrofit while not operating, and comply upon restarting. (See section IV of this preamble for a discussion of closed and closing units.)

Option 2. Site-specific Compliance Schedules Submitted by States. Under option 2, States would submit increment dates as negotiated with MWC owners or operators to EPA before the end of the comment period of this proposal. Following review and approval of these schedules, EPA would add them to the Federal plan. This assures the Federal plan is fully consistent with State plans that are approved after the Federal plan is promulgated. In some cases the State already has negotiated a retrofit schedule with the MWC owner or operator, determined what retrofit schedule is feasible, held public hearings, and considered public comments.

Several States have already submitted compliance schedules to EPA and these site-specific compliance schedules are included in this proposed Federal plan. The following States have submitted compliance schedules as of December 19, 1997: Georgia, New York, New Jersey, Maine, Maryland, Michigan, Minnesota, Pennsylvania, Tennessee, and Virginia. Some schedules have already been reviewed by EPA. Other schedules have not yet been reviewed because of their late arrival. The EPA will review these schedules concurrently with other compliance schedules submitted under this option. The site-specific compliance schedule table in subpart FFF contains the site-specific compliance schedules submitted to EPA. Some MWC units have already met some of their increments of progress.

Option 3. Site-specific Compliance Schedules Submitted by MWC Owners or Operators or the State. The third option for determining the compliance dates is for the MWC owner or operator or the State to submit a site-specific date for achieving increments 2, 3, and 4 to EPA for approval. The dates for increment 1 (submitting a final control plan) and increment 5 (achieving final compliance) would be the same as option 1. As documented in the retrofit studies (docket A–97–45), the date for achieving the first increment (September 21, 1998) reflects the maximum time required by any of the retrofits studied. The final increment compliance date (December 19, 2000) is dictated by the Act.

The EPA recognizes that flexibility may be needed for the award contract date, the start construction date, and the finish construction date given facility-specific retrofit considerations and constraints. Therefore, under option 3, EPA is requesting facility-specific compliance schedules from MWC owners or operators or the State.

The State or the MWC owner or operator (preferably after consulting with the State) would submit alternative dates for increments 2, 3, and 4 to EPA on September 21, 1998, at the time the final control plan is due. The MWC owner or operator would submit a copy of the compliance schedule to both EPA and the State. The EPA would review the schedule and coordinate with the owner or operator and the State. Following EPA approval, EPA would add the schedule to the site-specific compliance schedule table in subpart FFF as a technical amendment.

In summary, the proposed MWC Federal plan includes three options for defining the five increment dates. The EPA believes including all three options in the Federal plan maximizes flexibility and increases regulatory efficiency. The EPA specifically requests comments on each of the options provided in this proposal, as well as comments on the desirability of including only a subset of the options in the final Federal plan.

F. Record of Public Hearings

As a required element of a State plan, a State must include opportunity for public participation in developing, adopting, and implementing the State plan. For this MWC Federal plan, a public hearing will be held in Washington, DC, if individuals request to speak. In addition, a public hearing will be held in any State with an MWC unit covered by the proposed MWC Federal plan, if individuals request to speak. (See the Dates section of this preamble.) The hearing record will appear in docket A–97–45. A hearing would be held in Washington, DC because most of the MWC units affected by the Federal plan are located in the eastern United States and Washington, DC is easily accessible. Written public comments also are solicited. (See the Addresses section of this document.) The EPA will review and consider the oral and written comments in developing the final Federal plan.

G. Testing, Monitoring, Recordkeeping, and Reporting

As a required element, a State plan must include the test methods listed in 40 CFR 60.58b of subpart Eb and the recordkeeping and reporting requirements listed in 40 CFR 60.59b of subpart Eb. The proposed MWC Federal plan includes the same provisions.

H. Progress Reports

As a required element of a State plan, a State must submit to EPA annual reports on progress in the implementation of the emission guidelines. Emissions data would be reported to the Aerometric Emissions Information Retrieval System Facility Subsystem as specified in 40 CFR part 60, appendix D. If a State has been delegated authority to implement and enforce the proposed Federal plan, the State would submit annual progress reports to EPA, as required by 40 CFR 60.25(e) of subpart B. These reports can be combined with the State Implementation Plan report required by 40 CFR 51.32 of subpart Q, in order to avoid duplicative reporting. Each progress report should include compliance status, enforcement actions, increments of progress, identification of sources that have ceased operation or started operation, updated emission inventory and compliance information, and copies of technical reports on any performance testing and monitoring. For MWC units in States where authority has not been delegated, EPA intends to prepare annual progress reports.

III. Proposed Amendments to General Provisions of 40 CFR Part 62

The proposed Federal plan would be added as a new subpart to 40 CFR part 62. Part 62 currently contains approvals and promulgations of State plans developed under section 111(d) of the Act. The MWC Federal plan is developed under both sections 111(d) and 129 of the Act. This proposal would amend the general provisions (subpart A) of part 62 to specify that Federal plans are contained in part 62. It would also amend the introductory text in § 62.02 to refer to section 129, as applicable, in addition to section 111(d). This is necessary because MWC State plans that are approved and published in part 62, as well as the proposed Federal plan, are developed to meet the requirements of both sections 111(d) and 129 of the Act.

IV. Implications for Closed Units, Units That Plan To Close, and Units That Plan To De-Rate

The emission guidelines (40 CFR part 60, subpart Cb) require MWC units to comply with the emission limits or close within 3 years following approval of a State plan, but no later than December 19, 2000. Units subject to the Federal plan would also be required to comply or close by December 19, 2000. The Federal plan, consistent with the emission guidelines, would further require that if the owner or operator of a large MWC unit is planning to cease operation of the unit, the owner or operator must either cease operation of the unit within 1 year of promulgation of this Federal plan or submit a "closure agreement" (i.e., a cease operation agreement) that defines the date operation will cease. Cease operation agreements must be legally enforceable.

This section describes how this Federal plan addresses various categories of closed MWC units and de-rated MWC units, including:

- Dismantled MWC units;
- MWC units that have ceased operation;
- MWC units that will cease operation within 1 year of Federal plan promulgation;
- MWC units that will cease operation later than 1 year after Federal plan promulgation;
- MWC units that will cease operation and plan to restart after December 19, 2000; and
- MWC units that will de-rate (reduce capacity).

A. Dismantled Units

Units that are partially or fully dismantled are not required to be included in the MWC unit inventory that is an element of a State plan or this Federal plan. MWC units are partially or fully dismantled if they have been physically altered so they cannot operate. Dismantled units cannot be restarted without extensive work; and if they were restarted, they would be considered a new unit and would be subject to the subpart Eb new source performance standard (NSPS) rather than to the State or Federal plan for existing units.

B. Units That Have Ceased Operation

MWC units that are known to have ceased operation already (but are not known to be dismantled) are included in the inventory element of this proposed Federal plan. Such units must

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also be identified in any State plans submitted to EPA. If the owner or operator of these inactive MWC units plans to restart these units before December 19, 2000, the units would be required to achieve the same compliance schedule required for other MWC units and final compliance would be achieved for all pollutants no later than December 19, 2000. In order to assure compliance by the required date, the owner or operator of units that have ceased operation, but who plans to restart the units before December 19, 2000, must submit a final control plan and the units must comply with the five increments of progress on the same generic schedule as other MWC units subject to this Federal plan. (See section II.E for a discussion of compliance schedules and increments of progress.)

If inactive MWC units will not be restarted until after December 19, 2000, a control plan would not be needed. However, the proposed Federal plan specifies that any units that have ceased operation and are planned to be restarted after December 19, 2000, must complete retrofit and comply with the emission limits and operational requirements immediately upon restarting. Performance testing to demonstrate compliance would be required within 180 days after restarting. The dates for increments of progress that lead to final compliance (e.g., awarding contracts, initiating on-site construction, completing on-site construction) would not need to be specified for units that have ceased operation and plan to restart after December 19, 2000, because these activities would occur before restart while the units are closed and have no emissions. If a unit was operated after December 19, 2000 without complying, it would be a violation of the Federal plan.

C. Units That Will Cease Operation Within 1 Year of Federal Plan Promulgation

The owner or operator of currently operating MWC units subject to this Federal plan who will cease operation of the units rather than comply with the emission limits would be required to notify EPA at the time that final control plans are due. The owner operator would specify whether the MWC units will cease operation within 1 year or at a later date. If the owner or operator notifies EPA that the MWC units will cease operation within 1 year of promulgation of this Federal plan, the owner or operator would not be required to enter into a cease operation agreement. However, if the owner or operator does not cease operation of the units by the date 1 year after promulgation, it would be a violation of the Federal plan.

D. Units That Will Cease Operation Later Than 1 Year After Federal Plan Promulgation

The owner or operator of an MWC unit that will cease operations more than 1 year after promulgation of the Federal plan would be required to notify EPA at the time the final control plan is due that the owner or operator will cease operation of the unit. The owner or operator of such an MWC unit also would need to enter into a legally enforceable cease operation agreement with EPA by the date the final control plan is due. The cease operation agreement would include the date that operation will cease. The owner or operator of an affected MWC unit that is ceasing operation more than 1 year after promulgation of this Federal plan would also submit data for dioxin/furan emission tests by the date 1 year after promulgation of this Federal plan per § 62.14109 of the proposed Federal plan rule. This requirement is consistent with subpart Cb. The cease operation agreement ensures that the MWC unit will cease operation by an agreed-upon enforceable date. In all cases, this date would be no later than December 19, 2000.

E. Units That Will Cease Operation and Plan to Restart After December 19, 2000

MWC units covered by this Federal plan that will cease operation can be restarted after December 19, 2000 if the units achieve compliance upon restarting. The proposed Federal plan allows for MWC units that cease operation by December 19, 2000 and then restart as part of their retrofit schedule, because it may not be feasible for the owner or operator of every MWC unit at every MWC plant to complete every unit's retrofit by December 19, 2000. Some owners or operators will wish to stagger retrofit of their units to maintain service. For example, an MWC plant owner or operator may complete retrofits on two of three MWC units before December 19, 2000 and those two units could remain in operation. The owner or operator could cease operation of the third unit on December 19, 2000 and complete the unit's retrofit prior to restarting. (Performance testing on the third unit would be conducted within 180 days of restarting the retrofitted MWC unit.)

If the owner or operator of MWC units covered by this Federal plan wishes to include ceasing operations as part of the retrofit schedule, the owner or operator would be required to notify EPA at the time the final control plan is due. The owner or operator would also enter into a cease operation agreement if the unit ceases operation later than 1 year after Federal plan promulgation as described in section IV.D. The proposed Federal plan specifies that when an MWC unit restarts after December 19, 2000, it must comply with the Federal plan emission limits and operational requirements upon restarting. There would be no need to establish and meet specific dates for the remaining increments of progress (i.e., awarding contracts, initiating on-site construction, completing on-site construction, and final compliance) because these increments would be completed while the unit is closed and there are no emissions. The proposed Federal plan specifies that the unit must achieve final compliance with the Federal plan emission limits and operating requirements as soon as it is restarted. The performance test to demonstrate compliance would be required within 180 days after restarting.

F. Units That Plan To De-rate

The proposed Federal plan would allow the owner or operator of an MWC unit to de-rate the capacity of an MWC unit to below 250 tons per day. Therefore, the MWC unit would be no longer be subject to the MWC Federal plan. De-rating means a permanent change that physically reduces the capacity of the MWC unit to less than 250 tons per day of MSW. (De-rating cannot be a permit provision, but must be a permanent physical restriction). The owner or operator that plans to de-rate an MWC unit would de-rate the unit on the same schedule and increments that the MWC unit would have had to follow if it were to be retrofit to meet the emission limits. For example, the owner or operator of an MWC unit that commenced construction before June 1987 that is subject to the proposed generic compliance schedule would need to submit a plan describing the specific physical changes and schedule for accomplishing the de-rating on the date the final control plan is due. The owner or operator would need to award a contract for the physical changes to the units to accomplish the de-rating by the date MWC units are required to award contracts for retrofit of air pollution control equipment. The owner or operator would need to initiate on-site construction and complete on-site construction to accomplish the de-rating by the dates for these increments specified in the proposed generic compliance schedule. Once the MWC unit physically is unable to combust more than 250 tons per day, it would no longer subject to the MWC Federal plan.

V. Summary of Federal Plan Emission Limits and Requirements

The proposed MWC Federal plan (40 CFR part 62, subpart FFF), which will implement the emission guidelines, includes emission limits, operating practice requirements, operator training and certification requirements, and compliance and performance testing requirements. These emission limits and requirements are the same as those in the emission guidelines (40 CFR part 60, subpart Cb), as amended. Table 4 summarizes the requirements of the Federal plan rule (40 CFR part 62, subpart FFF).

TABLE 4.—SUMMARY OF FEDERAL PLAN REQUIREMENTS FOR EXISTING MWCs[a]

Applicability:
The Federal plan would apply to existing MWC units with capacities to combust greater than 250 tons per day of municipal solid waste unless the unit is subject to a section 111(d)/129 State plan that has been approved by EPA.

Unit size (MSW combustion capacity)	Requirement
> 250 tons per day (referred to as a large MWC unit)	Subject to provisions listed below.

Good Combustion Practices:
- A site-specific operator training manual would be required to be developed and made available for MWC personnel.
- The EPA or a State MWC operator training course would be required to be completed by the MWC chief facility operator, shift supervisors, and control room operators.
- The ASME (or State-equivalent) provisional and full operator certification would be required to be obtained by the MWC chief facility operator (mandatory), shift supervisors (mandatory), and control room operators (optional).
- The MWC load level would be required to be measured and not to exceed 110 percent of the maximum load level measured during the most recent dioxin/furan performance test.
- The maximum PM control device inlet flue gas temperature would be required to be measured and not to exceed the temperature 17°C above the maximum temperature measured during the most recent dioxin/furan performance test.
- The CO level would be required to be measured using a CEMS, and the concentration in the flue gas would be required not to exceed the following:

MWC type	CO level	Averaging time
Modular starved-air and excess-air	50 ppmv	4-hour.
Mass burn waterwall and refractory	100 ppmv	4-hour.
Mass burn rotary refractory	100 ppmv	24-hour.
Fluidized-bed combustion	100 ppmv	4-hour.
Pulverized coal/RDF mixed fuel-fired	150 ppmv	4-hour.
Spreader stoker coal/RDF mixed fuel-fired	200 ppmv	24-hour.
RDF stoker	200 ppmv	24-hour.
Mass burn rotary waterwall	250 ppmv	24-hour.

MWC Organic Emissions (measured as total mass dioxins/furans):
- Dioxins/furans (performance test by EPA Reference Method 23)

MWC units utilizing an ESP-based air pollution control system	60 ng/dscm total mass (mandatory) or 15 ng/dscm total mass (optional to qualify for less frequent testing).[b]
MWC units utilizing a nonESP-based air pollution control system	30 ng/dscm total mass (mandatory) or 15 ng/dscm total mass (optional to qualify for less frequent testing).[b]

- Basis for dioxin/furan limits GCP and SD/ESP or GCP and SD/FF, as specified above.

MWC Metal Emissions:
- PM (performance test by EPA Reference Method 5)
  27 mg/dscm (0.012 gr/dscf).
- Opacity (performance test by EPA Reference Method 9).
  10 percent (6-minute average).
- Cd (performance test by EPA Reference Method 29).
  0.040 mg/dscm (18 gr/million dscf).
- Pb (performance test by EPA Reference Method 29).
  0.44 mg/dscm (200 gr/million dscf).
- Hg (performance test by EPA Reference Method 29).
  0.080 mg/dscm (35 gr/million dscf) or 85-percent reduction in Hg emissions.
- Basis for PM, opacity, Cd, Pb, and Hg limits GCP and SD/ESP/CI or GCP and SD/FF/CI.

MWC Acid Gas Emissions:
- SO_2 (performance test by CEMS).
  29 ppmv or 80-percent reduction in SO_2 emissions.
- HCl (performance test by EPA Reference Method 26).
  29 ppmv or 95-percent reduction in HCl emissions.
- Basis for SO_2 and HCl limits.
  See basis for MWC metals.

Nitrogen Oxides Emissions:
- NO_X (performance test by CEMS):

Mass burn waterwall	205 ppmv.
Mass burn rotary waterwall	250 ppmv.
Refuse-derived fuel combustor	250 ppmv.
Fluidized bed combustor	180 ppmv.
Mass burn refractory	No NO_X control requirement.

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• Basis for NO_X limits:	
MWC units except refractory	SNCR.
Refractory MWC units	No NO_X control requirement.
Fugitive Ash Emissions:	
• Fugitive Emissions (performance test by EPA Reference Method 22). Visible emissions 5 percent of the time from ash transfer systems except for maintenance and repair activities.	
• Basis for fugitive emission limit	Wet ash handling or enclosed ash handling.
Performance Testing and Monitoring Requirements:	
• Reporting frequency	Annual (semiannual if violation).
• Load, flue gas temperature	Continuous monitoring, 4-hour block arithmetic average.
• CO	CEMS, 4-hour block or 24-hour daily arithmetic average, as applicable.
• Dioxins/furans, PM, Cd, Pb, HCl, and Hg	Annual stack test.
• Opacity	COMS (6-minute average) and annual stack test.
• SO_2	CEMS, 24-hour daily geometric mean.
Fugitive ash emissions	Annual test
• NO_X	CEMS, 24-hour daily arithmetic average.
Compliance Schedule: See Section II.E of this preamble.	

[a] All concentration levels in the table are converted to 7 percent O_2, dry basis.
[b] Although not part of the dioxin/furan limit, the dioxin/furan total mass limits of 30 ng/dscm and 60 ng/dscm are equal to about 0.3 to 0.8 ng/dscm TEQ and 0.7 to 1.4 ng/dscm TEQ, respectively. The optional reduced testing limit of 15 ng/dscm total mass is equal to about 0.1 to 0.3 ng/dscm TEQ.

VI. Implementation of Federal Plan and Delegation

The EPA is required to promulgate emission guidelines that are applicable to existing solid waste incineration sources under sections 111(d) and 129 of the Act. However, the emission guidelines are not enforceable until EPA approves a State plan or promulgates a Federal Plan. In cases where a State has not submitted an approvable plan, the EPA must promulgate a MWC Federal plan for sources in the State as a "stop-gap" measure to implement the emission guidelines.

Congress has determined that the primary responsibility for air pollution control rests with State and local agencies. *See* the Act 101(a)(3). Sections 111 and 129 of the Act also intend for the States to take the primary responsibility for ensuring that emission reduction targets are met. The daily administration of a comprehensive air pollution control initiative, such as this MWC Federal plan, cannot be easily accomplished by EPA. Unnecessary Federal intrusion would inevitably result if EPA were to assume the primary burden of enforcing the MWC Federal plan. Accordingly, the EPA has designed the MWC Federal plan to facilitate the transfer of authority from EPA to State and local agencies. For example, the EPA has encouraged States to help determine compliance schedules and to provide operator training and certification requirements for this MWC Federal plan. The EPA has encouraged States to participate in the development of the MWC Federal plan to facilitate the transfer of implementation responsibility.

There are four mechanisms for transferring implementation responsibility to State and local agencies: (1) If EPA approves a State plan submitted to EPA after the Federal plan is promulgated, the State would automatically have authority to enforce and implement the State plan upon EPA approval; (2) if a State does not submit a State plan and does not have a State rule, EPA can use general delegation authority to delegate to State agencies authority to perform certain implementation responsibilities for this Federal plan to the extent allowed by State law; (3) if a State does not submit a State plan but adopts a State rule that is identical to, or as protective as, this Federal plan, then EPA can delegate implementation responsibilities to the State, and (4) if a State plan is modified such that it is no longer as protective as the emission guidelines, then EPA may delegate a portion of the Federal plan. Each of these different options is described in more detail below.

A. State Submits a State Plan After Large MWC Units Located in the State Are Subject to the Federal Plan—Full Transfer of Authority Through State Plan Approval

Even after an MWC unit in a particular State becomes subject to the Federal plan, the State or a local agency may still adopt and submit to EPA for approval a State plan (i.e., a State plan containing a State rule or other enforceable mechanism, inventories, records of public hearings, and all other required elements of a State plan). The EPA will determine if the State plan is as protective as the emission guidelines. If EPA determines that the State plan is as protective as the emission guidelines, EPA will approve the State plan. Upon approval of the State plan, the Federal plan will no longer apply to MWC units covered by the State plan and the State will implement and enforce the State plan in lieu of the Federal plan. (The EPA will periodically amend the Federal plan to identify MWC units that are covered in the approved State plan and, therefore, are not subject to the Federal plan.) Making the State plan effective immediately upon approval expedites a State's assumption of responsibility for implementing the 1995 emission guidelines through the State plan mechanism as intended by Congress. However, if EPA determines that the State plan is not as protective as the guidelines, EPA cannot approve the State plan.

B. State Takes Delegation of the Federal Plan (No State Plan or State Rule)—Partial Transfer of Authority Through Delegation

The State may assume implementation responsibilities even if there is no State plan or State rule in effect. To the extent authorized by State law, the EPA believes it is advantageous for State agencies to agree to undertake, on the EPA's behalf, administrative and substantive roles in implementing the Federal plan. These roles could include: procedural and engineering review of certain permit applications, administration and oversight of compliance reporting and recordkeeping requirements, conduct of source inspections, and preparation of draft notices of violation. The EPA would retain responsibility for bringing enforcement actions against sources violating Federal plan provisions, as well as the authority to terminate, modify, or revoke permits. A Memorandum of Agreement between the appropriate EPA Regional Office and the air pollution control officer or executive officer of the responsible State agency would be used to transfer partial authority. The EPA would announce the terms of the partial delegation in a **Federal Register** notice, and would inform affected sources.

C. State Adopts a State Rule and Does Not Submit a State Plan—Full Transfer of Authority Through Delegation

A State may adopt a State rule that is identical to, or as protective as, the MWC Federal plan. The State can then be delegated authority to enforce the State rule, which serves to implement the Federal plan. Such a State can be delegated authority without submitting a full State plan (i.e., without a plan containing an inventory of emissions, public hearings, and all of the other State plan elements) because these elements would be included in the Federal plan that is being delegated to the State. The EPA would evaluate the State rule and, if it is identical to or as protective as the Federal plan, EPA will delegate authority to the State to implement the Federal plan by implementing and enforcing the approved State rule.

To assure timely transfer of implementation authority to States, it is desirable that each State (in which MWC units subject to the MWC Federal plan are located) quickly adopt a State rule that is identical to, or as protective as, the MWC Federal plan. If a State adopts an essentially indistinguishable rule, the EPA intends to delegate full implementation responsibilities to that State immediately following State adoption. The EPA would publish a notice of this delegation of the MWC Federal plan in the **Federal Register** and would, in conjunction with the State, make efforts to ensure that affected sources are aware that a State has assumed responsibility for implementing the MWC Federal plan.

In the event that the State fails to implement its own State rule or subsequently amends the State rule so that it is not as protective as the MWC Federal plan, the EPA will resume direct enforcement of the affected provisions of the MWC Federal plan and withdraw the delegation in whole or in part, as appropriate.

D. An Approved State Plan Is No Longer as Protective as the Emission Guidelines—Partial Transfer of Authority Through Delegation

The EPA could also delegate portions of the Federal Plan to a State under certain circumstances. An example would be a State with an approved State Plan that contains the 1995 emission limits. A State plan must incorporate the revised emission limits by 1 year after promulgation of the amendments. If a State plan does not incorporate the amended emission limits by August 25, 1998 (1 year after the promulgation of the amendments to the emission guidelines), then the State plan would no longer be as protective as the emission guidelines. Rather than withdrawing its approval of the entire State plan, the EPA could (to the extent authorized by State law) delegate that portion of the Federal Plan containing the revised emission limits (from the August 25, 1997 amendments) to the State. The State would retain responsibilities for all implementation and enforcement.

VII. Title V Operating Permits

All MWC sources subject to this MWC Federal plan must obtain a title V permit. Title V permits issued to sources subject to this MWC Federal plan must include all applicable requirements of this plan. Permitting authorities will enforce these requirements.

VIII. Units Subject to This Federal Plan and New Source Performance Standards

This section describes the relationship between the Federal plan and the three NSPS in terms of applicability and emission limits. The MWC emission guidelines apply and this proposed Federal plan would apply to MWC units larger than 250 tons per day in combustion capacity that commenced construction before September 20, 1994. There are also three new source performance standards (NSPS) that apply to MWC units.

The first NSPS for MWC units, 40 CFR part 60 subpart E, was promulgated in 1971. It applies to incinerators charging more than 45 Mg per day (50 tons per day) of MSW that were constructed or modified after August 17, 1971. Subpart E units that combust greater than 225 mg per day (250 tons per day) could also be subject to the Federal plan. The only pollutant regulated by subpart E is PM, and the PM limit is higher than the limit in the proposed Federal plan. Thus, MWC units complying with the Federal plan PM limit would also comply with the subpart E NSPS emission limit for PM.

The second NSPS, subpart Ea, was promulgated on February 11, 1991 and revised on December 19, 1995. This NSPS applies to MWC units with capacities to combust greater than 250 tons per day, that:

- Commenced construction after December 20, 1989 and on or before September 20, 1994; or
- Commenced modification or reconstruction after December 20, 1989 and on or before June 19, 1996. ("Modification" and "reconstruction" are defined in 40 CFR part 60, subpart A.)

MWC units that started construction between December 20, 1989 and September 20, 1994 could be subject to both this proposed Federal plan (or an approved State plan) and the subpart Ea NSPS. MWC units must comply with the more stringent emission limit. The emission limits in the subpart Ea NSPS are as stringent or more stringent than the Federal plan (limits for the same pollutants) except for the PM and SO_2 limits. The PM and SO_2 limits in this Federal plan are slightly more stringent, but could be met using the same controls. Also this Federal plan has limits for three metals and fugitive ash that are not regulated by subpart Ea. Units already complying with subpart Ea also should be meeting the Federal plan emission limits, but will need to verify that they are indeed in compliance with the slightly more stringent PM, SO_2, and metals limits contained in the Federal plan.

The third NSPS, subpart Eb, applies to MWC units that:

(1) Commence construction after September 20, 1994, or

(2) Commence modification or reconstruction after June 19,1996. There is no overlap between the proposed Federal plan and the subpart Eb NSPS sources would not be subject to both rules. The emission limits in subpart Eb are as stringent or more stringent than the proposed Federal plan.

IX. Administrative Requirements

This section addresses the following administrative requirements: Docket, Paperwork Reduction Act, Executive Order 12866, Unfunded Mandates Reform Act, and Regulatory Flexibility Act. Many of these administrative requirements were addressed in the preamble to the 1995 emission guidelines (60 FR 65404–65413). Since today's proposed rule merely would implement the emission guidelines promulgated on December 19, 1995 (40 CFR part 60, subpart Cb) as they apply to large MWC units and does not impose any new requirements, many of the

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following administrative requirements refer to the administrative requirements in the preamble to the 1995 rule.

A. Docket

As discussed above, a docket has been prepared for this action pursuant to the procedural requirements of section 307(d) of the Act, 42 U.S.C. 7607(d). Docket numbers A–89–08 and A–90–45 contain the supporting information for the December 19, 1995 promulgated emission guidelines. Because this proposed rule implements the emission guidelines, these same dockets also contain the supporting information for this proposed rule. Additional supporting information for this proposed rule is contained in docket number A–97–45.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1847.01) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137), 401 M St., S.W., Washington, DC 20460 or by calling (202) 260–2740.

The information required by the Federal plan would be used by the Agency to ensure that the MWC Federal plan requirements are implemented and are complied with on a continuous basis. Required records and reports are necessary for EPA to identify MWC units that may not be in compliance with the MWC Federal plan requirements. Based on reported information, EPA would decide which units should be inspected and what records or processes should be inspected. The records that owners and operators of units maintain would indicate to EPA whether MWC personnel are operating and maintaining control equipment properly.

Because the MWC Federal plan is an interim action, EPA is presenting a range of estimated burden. The maximum burden reflects a worst-case scenario in which no additional State plans are approved within 3 years of the Federal plan promulgation. The minimum estimate reflects a more likely scenario in which all remaining State plans are in place at some point within 3 years following promulgation of the MWC Federal plan.

Based on a 1995 MWC inventory and recent information from EPA Regional Offices, this Federal plan is projected to affect a maximum of 143 MWC units at 59 plants in 23 States. A number of additional State plans will be approved by the time the Federal plan is promulgated, or within the year following promulgation. When a State plan is approved, the Federal plan no longer applies to MWC units covered in that State plan. Thus, the rule will more likely affect about 53 units at 21 plants as of June 1998 and 13 units at 4 plants as of June 1999. The burden has been estimated under both scenarios and is presented as a range.

The maximum estimated average annual burden for industry for the first 3 years after the implementation of the Federal plan would be 40,132 hours annually at a cost of $15,463,317 (including $1,561,654 in labor costs) per year to meet the monitoring, recordkeeping, and reporting requirements. The maximum estimated average annual burden, over the first 3 years, for the Agency would be 7,254 hours at a cost of $327,844 (including travel expenses) per year.

The minimum estimated average annual burden for industry for the first 3 years after the implementation of the Federal plan would be 2,677 hours annually at a cost of $1,285,000 (including $104,185 in labor costs) per year to meet the monitoring, recordkeeping and reporting requirements. The minimum estimated average annual burden for the first 3 years for the Agency would be 827 hours at a cost of $36,000 (including travel expenses) per year. The minimum burden is calculated for affected facilities in 5 States for the first year. The minimum burden is reduced to affected facilities in two States for the second year and no states are affected in the third year.

Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR part 15.

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The EPA and OMB determined that this regulatory action is "not significant" under Executive Order 12866. The proposed Federal plan would simply implement the 1995 guidelines and does not result in any additional control requirements or impose any additional costs above those previously considered during promulgation of the 1995 emission guidelines. The EPA considered the 1995 emission guidelines and standards to be significant and the rules were reviewed by OMB in 1995 (*see* 60 FR 65405).

D. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a statement to accompany any rule where the estimated costs to State, local, or tribal governments, or to the private sector will be $100 million or more in any 1 year. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule. An unfunded mandates statement was prepared and published in the 1995 promulgation notice (*see* 60 FR 65405 to 65412).

The EPA has determined that the proposed Federal plan does not include any new Federal mandates or additional requirements above those previously considered during promulgation of the 1995 emission guidelines. Therefore, the requirements of the Unfunded Mandates Act do not apply to this proposed rule.

E. Regulatory Flexibility Act (RFA)

Section 605 of the RFA requires Federal agencies to give special consideration to the impacts of regulations on small entities, which are defined as small businesses, small organizations, and small governments. During the 1995 rulemaking, EPA estimated that few, if any, small entities would be affected by the promulgated guidelines and standards, and therefore, a regulatory flexibility analysis was not required (*see* 60 FR 65413). This proposed Federal plan would not establish any new requirements; therefore, pursuant to the provisions of 5 U.S.C. 605(b), EPA certifies that this Federal plan will not have a significant impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Reporting and recordkeeping requirements, Incorporation by reference.

Dated: January 14, 1997.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Amend § 62.02 by revising paragraph (a) and adding paragraph (g) to read as follows:

§ 62.02 Introduction.

(a) This part sets forth the Administrator's approval and disapproval of State plans for the control of pollutants and facilities under section 111(d), and section 129 as applicable, of the Act, and the Administrator's promulgation of such plans or portions of plans thereof. Approval of a plan or any portion of a plan is based on a determination by the Administrator that it meets the requirements of section 111(d), and section 129 as applicable, of the Act and provisions of part 60 of this chapter.

* * * * *

(g) Substitute plans promulgated by the Administrator for States that do not have approved plans are contained in separate subparts that appear after the subparts for States. These Federal plans include sections identifying the applicability of the plan, emission limits, compliance schedules, recordkeeping and reporting, performance testing, and monitoring requirements.

3. Amend subpart A by adding § 62.13.

§ 62.13 Federal plans.

The Federal plans apply to owners and operators of affected facilities that are not covered by an approved State plan, are located in any State for which a State plan has not been approved, or are located in any State whose State plan has been vacated in whole or in part. Affected facilities are defined in each Federal plan.

(a) The Federal plan for municipal waste combustors is contained in subpart FFF of this part.

(b) Landfills Federal plan. [Reserved]

(c) Medical waste incinerator Federal plan. [Reserved]

4. Amend part 62 by adding and by reserving subparts DDD and EEE as follows:

Subpart DDD—[Reserved]

Subpart EEE—[Reserved]

5. Amend part 62 by adding subpart FFF consisting of §§ 62.14100 through 62.14109 to read as follows:

Subpart FFF—Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994

Sec.

62.14100 Scope.
62.14101 Definitions.
62.14102 Affected facilities.
62.14103 Emission limits for municipal waste combustor metals, acid gases, organics, and nitrogen oxides.
62.14104 Requirements for municipal waste combustor operating practices.
62.14105 Requirements for municipal waste combustor operator training and certification.
62.14106 Emission limits for municipal waste combustor fugitive ash emissions.
62.14107 Emission limits for air curtain incinerators.
62.14108 Compliance schedules.
62.14109 Reporting and recordkeeping, and compliance and performance testing.
Table 1 of Subpart FFF—Units Excluded From Subpart FFF
Table 2 of Subpart FFF—Nitrogen Oxides Requirements for Affected Facilities
Table 3 of Subpart FFF—Municipal Waste Combustor Operating Requirements
Table 4 of Subpart FFF—Generic Compliance Schedules and Increments of Progress (Pre-1987)
Table 5 of Subpart FFF—Generic Compliance Schedules and Increments of Progress (Post-1987)
Table 6 of Subpart FFF—Site-specific Compliance Schedules and Increments of Progress

Subpart FFF—Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994

§ 62.14100 Scope.

This subpart contains emission requirements and compliance schedules for the control of pollutants from certain municipal waste combustors in accordance with section 111(d) and section 129 of the Clean Air Act and 40 CFR part 60, subpart B. This municipal waste combustor Federal plan applies to each affected facility as defined in § 62.14102 that is not covered by a currently approved State plan.

§ 62.14101 Definitions.

Terms used but not defined in this subpart have the meaning given to them in the Clean Air Act and 40 CFR part 60, subparts A, B, and Eb.

Contract means a legally binding agreement or obligation that cannot be canceled or modified without substantial financial loss.

De-rate means to make a permanent physical change to the municipal waste combustor unit that reduces the maximum combustion capacity of the unit to less than or equal to 250 tons per day of municipal solid waste. A permit restriction or a change in operation does not qualify as de-rating. (See the procedures specified in 40 CFR 60.58b(j) of subpart Eb for calculating municipal waste combustor unit capacity.)

Municipal waste combustor plant means one or more affected facilities (as defined in § 62.14102) at the same location.

Protectorate means American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Northern Mariana Islands, and the Virgin Islands.

State means any of the 50 United States and the protectorates of the United States.

State plan means a plan submitted pursuant to section 111(d) and section 129(b)(2) of the Clean Air Act and 40 CFR part 60, subpart B that implements and enforces 40 CFR part 60, subpart Cb.

§ 62.14102 Affected facilities.

(a) The affected facility to which this subpart applies is each municipal waste combustor unit with a capacity to combust greater than 250 tons per day of municipal solid waste for which construction was commenced on or before September 20, 1994, in all States and protectorates except for the affected facilities listed in table 1 of this subpart. Notwithstanding the exclusions in table 1 of this subpart applies to affected facilities in any State that does not have a State plan currently approved.

(b) A municipal waste combustor unit regulated by an EPA approved State plan is not regulated by this subpart.

(c) Any municipal waste combustor unit that has the capacity to combust more than 250 tons per day of municipal solid waste and is subject to a Federally enforceable permit limiting the maximum amount of municipal solid waste that may be combusted in the unit to less than or equal to 11 tons per day is not subject to this subpart if the owner or operator:

(1) Notifies the EPA Administrator of an exemption claim;

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(2) Provides a copy of the Federally enforceable permit that limits the firing of municipal solid waste to less than 11 tons per day; and

(3) Keeps records of the amount of municipal solid waste fired on a daily basis.

(d) Physical or operational changes made to an existing municipal waste combustor unit primarily for the purpose of complying with the emission requirements of this subpart are not considered in determining whether the unit is a modified or reconstructed facility under 40 CFR part 60, subpart Ea or subpart Eb.

(e) A qualifying small power production facility, as defined in section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)), that burns homogeneous waste (such as automotive tires or used oil, but not including refuse-derived fuel) for the production of electric energy is not subject to this subpart if the owner or operator of the facility notifies the EPA Administrator of this exemption and provides data documenting that the facility qualifies for this exemption.

(f) A qualifying cogeneration facility, as defined in section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)), that burns homogeneous waste (such as automotive tires or used oil, but not including refuse-derived fuel) for the production of electric energy and steam or forms of useful energy (such as heat) that are used for industrial, commercial, heating, or cooling purposes, is not subject to this subpart if the owner or operator of the facility notifies the EPA Administrator of this exemption and provides data documenting that the facility qualifies for this exemption.

(g) Any unit combusting a single-item waste stream of tires is not subject to this subpart if the owner or operator of the unit:

(1) Notifies the EPA Administrator of an exemption claim; and

(2) Provides data documenting that the unit qualifies for this exemption.

(h) Any unit required to have a permit under section 3005 of the Solid Waste Disposal Act is not subject to this subpart.

(i) Any materials recovery facility (including primary or secondary smelters) that combusts waste for the primary purpose of recovering metals is not subject to this subpart.

(j) Any cofired combustor, as defined under 40 CFR 60.51b of subpart Eb that meets the capacity specifications in paragraph (a) of this section is not subject to this subpart if the owner or operator of the cofired combustor:

(1) Notifies the EPA Administrator of an exemption claim;

(2) Provides a copy of the Federally enforceable permit (specified in the definition of cofired combustor in this section); and

(3) Keeps a record on a calendar quarter basis of the weight of municipal solid waste combusted at the cofired combustor and the weight of all other fuels combusted at the cofired combustor.

(k) Air curtain incinerators, as defined under 40 CFR 60.51b of subpart Eb, that meet the capacity specifications in paragraph (a) of this section, and that combust a fuel stream composed of 100 percent yard waste are exempt from all provisions of this subpart except the opacity standard under § 62.14107, and the testing procedures and the reporting and recordkeeping provisions under § 62.14109.

(l) Air curtain incinerators that meet the capacity specifications in paragraph (a) of this section and that combust municipal solid waste other than yard waste are subject to all provisions of this subpart.

(m) Pyrolysis/combustion units that are an integrated part of a plastics/rubber recycling unit (as defined in 40 CFR 60.51b of subpart Eb) are not subject to this subpart if the owner or operator of the plastics/rubber recycling unit keeps records of the weight of plastics, rubber, and/or rubber tires processed on a calendar quarter basis; the weight of chemical plant feedstocks and petroleum refinery feedstocks produced and marketed on a calendar quarter basis; and the name and address of the purchaser of the feedstocks. The combustion of gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquified petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feedstocks produced by plastics/rubber recycling units are not subject to this subpart.

(n) Cement kilns firing municipal solid waste are not subject to this subpart.

§ 62.14103 Emission limits for municipal waste combustor metals, acid gases, organics, and nitrogen oxides.

(a) The emission limits for municipal waste combustor metals are specified in paragraphs (a)(1) through (a)(3) of this section.

(1) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain: particulate matter in excess of 27 milligrams per dry standard cubic meter, corrected to 7 percent oxygen; and opacity in excess of 10 percent (6-minute average).

(2) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain: cadmium in excess of 0.040 milligrams per dry standard cubic meter, corrected to 7 percent oxygen; and lead in excess of 0.44 milligrams per dry standard cubic meter, corrected to 7 percent oxygen.

(3) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain mercury in excess of 0.080 milligrams per dry standard cubic meter or 15 percent of the potential mercury emission concentration (85-percent reduction by weight), corrected to 7 percent oxygen, whichever is less stringent.

(b) The emission limits for municipal waste combustor acid gases, expressed as sulfur dioxide and hydrogen chloride, are specified in paragraphs (b)(1) and (b)(2) of this section.

(1) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain sulfur dioxide in excess of 29 parts per million by volume or 25 percent of the potential sulfur dioxide emission concentration (75-percent reduction by weight or volume), corrected to 7 percent oxygen (dry basis), whichever is less stringent. Compliance with this emission limit is based on a 24-hour daily geometric mean.

(2) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain hydrogen chloride in excess of 29 parts per million by volume or 5 percent of the potential hydrogen chloride emission concentration (95-percent reduction by weight or volume), corrected to 7 percent oxygen (dry basis), whichever is less stringent.

(c) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain municipal waste combustor organics, expressed as total mass dioxins/furans, in excess of the emission limits specified in either paragraph (c)(1) or (c)(2) of this section, as applicable.

(1) The emission limit for affected facilities that employ an electrostatic precipitator-based emission control system is 60 nanograms per dry standard cubic meter (total mass), corrected to 7 percent oxygen.

(2) The emission limit for affected facilities that do not employ an electrostatic precipitator-based emission control system is 30 nanograms per dry standard cubic meter (total mass), corrected to 7 percent oxygen.

(d) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain nitrogen oxides in excess of the emission limits listed in table 2 of this subpart for affected facilities. Table 2 of this subpart provides emission limits for the nitrogen oxides concentration level for each type of affected facility.

§ 62.14104 Requirements for municipal waste combustor operating practices.

(a) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain carbon monoxide in excess of the emission limits listed in table 3 of this subpart. Table 3 provides emission limits for the carbon monoxide concentration level for each type of affected facility.

(b) The owner or operator of an affected facility must comply with the municipal waste combustor operating practice requirements listed in 40 CFR 60.53b (b) and (c).

§ 62.14105 Requirements for municipal waste combustor operator training and certification.

The owner or operator of an affected facility must comply with the municipal waste combustor operator training and certification requirements listed in paragraphs (a) through (g) of this section. For affected facilities, compliance with the municipal waste combustor operator training and certification requirements specified under paragraphs (a) through (d), and (g) of this section must be no later than 12 months after the effective date of this subpart.

(a) Each chief facility operator and shift supervisor must obtain and maintain a current provisional operator certification from either the American Society of Mechanical Engineers [QRO–1–1994 (incorporated by reference—see 40 CFR 60.17(h)(1) of subpart A)] or a State certification program in Connecticut and Maryland (if the affected facility is located in the respective State).

(b) Each chief facility operator and shift supervisor must have completed full certification or must have scheduled a full certification exam with either the American Society of Mechanical Engineers [QRO–1–1994 (incorporated by reference—see 40 CFR 60.17(h)(1) of subpart A)] or a State certification program in Connecticut and Maryland (if the affected facility is located in the respective State).

(c) The owner or operator of an affected facility must not allow the facility to be operated at any time unless one of the following persons is on duty at the affected facility: A fully certified chief facility operator; a provisionally certified chief facility operator who is scheduled to take the full certification exam no later than 12 months after the effective date of this subpart; a fully certified shift supervisor; or a provisionally certified shift supervisor who is scheduled to take the full certification exam no later than 12 months after the effective date of this subpart. If one of the persons listed in this paragraph must leave the affected facility during their operating shift, a provisionally certified control room operator who is onsite at the affected facility may fulfill the requirement in this paragraph.

(d)(1) Each chief facility operator, shift supervisor, and control room operator at an affected facility must complete the EPA municipal waste combustor operator training course or the State municipal waste combustor operator training course in Connecticut (if the affected facility is located in Connecticut).

(2) The requirement specified in this paragraph does not apply to chief facility operators, shift supervisors, and control room operators who have obtained full certification from the American Society of Mechanical Engineers on or before the effective date of this subpart. The owner or operator of an affected facility may request that the EPA Administrator waive the requirement specified in this paragraph for chief facility operators, shift supervisors, and control room operators who have obtained provisional certification from the American Society of Mechanical Engineers on or before the effective date of this subpart.

(e) The owner or operator of an affected facility must develop and update on a yearly basis a site-specific operating manual that must, at a minimum, address the elements of municipal waste combustor unit operation specified in paragraphs (e)(1) through (e)(11) of this section.

(1) A summary of the applicable standards under this subpart;

(2) A description of basic combustion theory applicable to a municipal waste combustor unit;

(3) Procedures for receiving, handling, and feeding municipal solid waste;

(4) Procedures for municipal waste combustor unit startup, shutdown, and malfunction;

(5) Procedures for maintaining proper combustion air supply levels;

(6) Procedures for operating the municipal waste combustor unit within the standards established under this subpart;

(7) Procedures for responding to periodic upset or off-specification conditions;

(8) Procedures for minimizing particulate matter carryover;

(9) Procedures for handling ash;

(10) Procedures for monitoring municipal waste combustor unit emissions; and

(11) Reporting and recordkeeping procedures.

(f) The owner or operator of an affected facility must establish a training program to review the operating manual according to the schedule specified in paragraphs (f)(1) and (f)(2) of this section with each person who has responsibilities affecting the operation of an affected facility including, but not limited to, chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane/load handlers.

(1) Each person specified in paragraph (f) of this section must undergo initial training no later than the date specified in paragraph (f)(1)(i) or (f)(1)(ii) of this section, whichever is later.

(i) The date prior to the day the person assumes responsibilities affecting municipal waste combustor unit operation; or

(ii) The date 12 months after the effective date of this subpart.

(2) Annually, following the initial review required by paragraph (f)(1) of this section.

(g) The operating manual required by paragraph (e) of this section must be kept in a readily accessible location for each person required to undergo training under paragraph (f) of this section. The operating manual and records of training must be available for inspection by the EPA or its delegated enforcement agency upon request.

§ 62.14106 Emission limits for municipal waste combustor fugitive ash emissions.

(a) The owner or operator of an affected facility must not cause to be discharged to the atmosphere from that affected facility visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) in excess of 5 percent of the observation period (*i.e.*, 9 minutes per 3-hour period), as determined by EPA Reference Method 22 observations as specified in 40 CFR 60.58b(k) of subpart

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Eb, except as provided in paragraphs (b) and (c) of this section.

(b) The emission limit specified in paragraph (a) of this section does not cover visible emissions discharged inside buildings or enclosures of ash conveying systems; however, the emission limit specified in paragraph (a) of this section does cover visible emissions discharged to the atmosphere from buildings or enclosures of ash conveying systems.

(c) The provisions specified in paragraph (a) of this section do not apply during maintenance and repair of ash conveying systems.

§ 62.14107 Emission limits for air curtain incinerators.

The owner or operator of an air curtain incinerator with the capacity to combust greater than 250 tons per day of municipal solid waste and that combusts a fuel feed stream composed of 100 percent yard waste and no other municipal solid waste materials must not (at any time) cause to be discharged into the atmosphere from that incinerator any gases that exhibit greater than 10-percent opacity (6-minute average), except that an opacity level of up to 35 percent (6-minute average) is permitted during startup periods during the first 30 minutes of operation of the unit.

§ 62.14108 Compliance schedules.

(a) The owner or operator of an affected facility must achieve the increments of progress specified in paragraphs (a)(1) through (a)(5) to retrofit air pollution control devices to meet the emission limits of this subpart. As specified in 40 CFR part 60, subpart B, the compliance schedules and increments of progress apply to each owner or operator of an affected facility who is taking longer than 1 year after [date of publication of the final rule] to comply with the emission limits specified in this subpart.

(1) Submit a final control plan according to the requirements of § 62.14109(g).

(2) Award contract(s): Award contract(s) to initiate on-site construction, initiate on-site installation of emission control equipment, or incorporate process changes. The owner or operator must submit a signed copy of the contract(s) awarded according to the requirements of § 62.14109(h).

(3) Initiate on-site construction: Initiate on-site construction, initiate on-site installation of emission control equipment, or initiate process changes needed to meet the emission limits as outlined in the final control plan.

(4) Complete on-site construction: Complete on-site construction and installation of emission control equipment or complete process changes.

(5) Achieve final compliance: Incorporate all process changes or complete retrofit construction as designed in the final control plan and connect the air pollution control equipment or process changes with the affected facility identified in the final control plan such that if the affected facility is brought on line, all necessary process changes or air pollution control equipment are operating fully. Within 180 days after the date the affected facility is required to achieve final compliance, the initial performance test must be conducted. On and after the date the initial performance test is completed or is required to be completed, whichever is earlier, no pollutant may be discharged into the atmosphere from the affected facility in excess of the emission limits of this subpart.

(b) The owner or operator of an affected facility must achieve the increments of progress specified in paragraphs (a)(1) through (a)(5) of this section according to the schedule specified in paragraphs (b)(1) through (b)(4) of this section, except as provided in paragraphs (c), (d), and (e) of this section.

(1) The owner or operator of an affected facility that commenced construction, modification, or reconstruction on or before June 26, 1987 and will take longer than 1 year after [date of publication of final rule] (or 1 year after a revised construction permit or a revised operating permit is issued, if a permit modification is required) to comply with the emission limits of this subpart must achieve the increments of progress according to the schedule in table 4 of this subpart, except for those affected facilities specified in paragraphs (b)(3) and (b)(4) of this section.

(2) The owner or operator of an affected facility that began construction, modification, or reconstruction after June 26, 1987 must achieve the increments of progress according to the schedule in table 5 of this subpart to comply with the emission limits of this subpart, except for those affected facilities specified in paragraphs (b)(3) and (b)(4) of this section.

(3) The owner or operator of each specified affected facility in table 6 of this subpart must achieve the increments of progress according to the schedule in table 6 of this subpart.

(4) For affected facilities that are subject to the schedule requirements of paragraph (b)(1) or (b)(2) of this section, the owner or operator (or the State air pollution control authority) may submit for approval alternative dates for achieving increments 2, 3, and 4. The owner or operator that is submitting these alternative dates must meet the reporting requirements of § 62.14109(l).

(c) The owner or operator of an affected facility that has ceased operation but will reopen prior to the applicable final compliance date specified in paragraphs (b)(1) through (b)(4) of this section must meet the same compliance dates and increments of progress specified in paragraphs (b)(1) through (b)(4) of this section.

(d) The owner or operator of an affected facility that has ceased or ceases operation of an affected facility and restarts the affected facility after the compliance dates specified in paragraphs (b)(1) through (b)(4) of this section must comply with the emission limits, requirements for combustor operating practices, and operator training and certification requirements of this subpart upon the date the affected facility restarts. The initial performance tests required by § 62.14109(c) must be conducted within 180 days after the date the unit restarts.

(e) The owner or operator of an affected facility that will be de-rated prior to the applicable final compliance date instead of complying with the emission limits of this subpart must meet the same increments of progress and achieve the de-rating by the final compliance date (specified in paragraphs (b)(1) through (b)(4) of this section) that would be applicable to the affected facility if it did not de-rate. The owner or operator of an affected facility that will be de-rated must meet the reporting requirements of § 62.14109(j). After de-rating is accomplished, the municipal waste combustor affected facility is no longer subject to this subpart.

§ 62.14109 Reporting and recordkeeping and compliance and performance testing.

(a) The owner or operator of an affected facility must comply with the reporting and recordkeeping provisions listed in 40 CFR 60.59b, except as provided in paragraphs (a)(1) through (a)(3) of this section.

(1) The siting requirements under 40 CFR 60.59b(a), (b)(5), and (d)(11) and the notification of construction requirements under 40 CFR 60.59b (b) and (c) do not apply.

(2) 40 CFR 60.54b and 60.56b of Subpart Eb do not apply to this subpart (see §§ 62.14105 and 62.14107 of this subpart).

(b) The owner or operator of an affected facility must comply with the compliance and performance testing methods and procedures listed in 40 CFR 60.58b of Subpart Eb, except as provided in paragraphs (c) and (d) of this section.

(c) The initial performance test must be completed within 180 days after the date of final compliance specified in § 62.14108, rather than the date for the initial performance test specified in 40 CFR 60.58b of Subpart Eb.

(d) The owner or operator of an affected facility may follow the alternative performance testing schedule for dioxin/furan emissions specified in 40 CFR 60.58b(g)(5)(iii) if all performance tests for all affected facilities at the MWC plant over a 2-year period indicate that dioxin/furan emissions are less than or equal to 15 nanograms per dry standard cubic meter total mass, corrected to 7 percent oxygen (instead of 7 nanograms specified in § 60.58b(g)(5)(iii) of Subpart Eb).

(e) The owner or operator of an affected facility that is taking longer than 1 year after [date of publication of the final rule] to comply with the emission limits of this subpart must submit notification to the EPA Regional Office within 10 business days of completing each increment. Each notification must indicate which increment of progress specified in § 62.14108 (a)(1) through (a)(5) has been achieved. The notification must be signed by the owner or operator of the affected facility.

(f) The owner or operator of an affected facility that is taking longer than 1 year after [date of publication of the final rule] to comply with the emission limits of this subpart who fails to meet any increment of progress specified in § 62.14108 (a)(1) through (a)(5) according to the applicable schedule in § 62.14108 must submit notification to the EPA Regional Office within 10 business days of the applicable date in § 62.14108 that the owner or operator failed to meet the increment.

(g) The owner or operator of an affected facility that is taking longer than 1 year after [date of publication of the final rule] to comply with the emission limits of this subpart must submit a final control plan by the date specified in § 62.14108(b) with the notification required by § 62.14109(e). The final control plan must, at a minimum, include the items in paragraphs (g)(1) through (g)(4) of this section.

(1) A complete analysis of the applicable regulatory requirements and methods of compliance and selected control technology options available to meet the requirements.

(2) A description of the air pollution control devices or process changes that will be employed for each unit to comply with the emission limits and other requirements of this subpart.

(3) Engineering specifications and drawings of the air pollution control equipment and/or process changes that will be employed to comply with the emission limits and other requirements of this subpart.

(4) The same information that will be used to solicit bids to install the air pollution control devices or initiate the process changes.

(h) The owner or operator of an affected facility that is taking longer than 1 year after [date of publication of the final rule] to comply with the emission limits of this subpart must submit a signed copy of the contract or contracts awarded according to the requirements of § 62.14108(a)(2) with the notification required by § 62.14109(e).

(i) The owner or operator of an affected facility that plans to cease operation of an affected facility on or before December 19, 2000 rather than comply with the emission limits of this subpart by the applicable compliance date specified in § 62.14108 must submit a notification by the date specified for the final control plan according to the schedule specified in paragraphs § 62.14108 (b)(1) through (b)(4), as applicable. (Affected facilities that cease operation on or before December 19, 2000 rather than comply with the emission limits of this subpart by the compliance date specified in § 62.14108 are not required to submit a final control plan.) The notification must state the date by which the affected facility will cease operation. If the cease operation date is later than 1 year after [date of publication of the final rule], the owner or operator must enter into a legally binding closure agreement with EPA by the date the final control plan is due. The agreement must specify the date by which operation will cease.

(j) The owner or operator of an affected facility that plans to de-rate the affected facility on or before December 19, 2000 rather than comply with the emission limits of this subpart by the compliance date specified in § 62.14108 must submit a final control plan as required by paragraph (g) of this section and submit notification of increments of progress as required by paragraphs (e) and (f) of this section and § 62.14108(e) of this subpart.

(1) The final control plan must contain the information in paragraphs (j)(1)(i) through (j)(1)(iv) of this section rather than the information in paragraph (g)(1) through (g)(4) of this section.

(i) A description of the physical changes that will be made to accomplish the de-rating.

(ii) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the de-rating. (See the procedures specified in 40 CFR 60.58b(j) of Subpart Eb for calculating municipal waste combustor unit capacity.)

(iii) Engineering specifications and drawings of the physical changes that will be made to accomplish the de-rating.

(iv) The same information that will be used to solicit bids to initiate the physical changes.

(2) The owner or operator must submit a signed copy of the contract or contracts awarded to initiate the de-rating with the notification required by paragraph (e) of this section.

(k) The owner or operator of an affected facility that is ceasing operation more than 1 year following [date of publication of the final rule] must submit performance test results by the date 1 year after the [date of publication of the final rule] for dioxin/furan emissions conducted during or after 1990 for each affected facility. The performance test shall be conducted according to the procedure in paragraph (b) of this section.

(l) The owner or operator (or the State air pollution control authority) that is submitting alternative dates for increments 2, 3, and 4 according to § 62.14108(b)(4) must submit the alternative dates by the date specified for the final control plan according to the schedule specified in paragraphs § 62.14108 (b)(1) and (b)(2), as applicable. The owner or operator must also submit the alternative dates to the State.

Tables to Subpart FFF

TABLE 1 OF SUBPART FFF—MUNICIPAL WASTE COMBUSTOR UNITS (MWC UNITS) EXCLUDED FROM SUBPART FFF

State	MWC units
Oregon	MWC units at the following MWC sites: (a) Ogden Martin Systems, Marion County Oregon. (b) Coos County, Coos Bay, Oregon.
Florida	All affected facilities, as defined in § 62.14102, located in Florida.

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TABLE 2 OF SUBPART FFF—NITROGEN OXIDES REQUIREMENTS FOR AFFECTED FACILITIES

Municipal waste combustor technology	Nitrogen oxides emission limit (parts per million by volume)[a]
Mass burn waterwall	205.
Mass burn rotary waterwall	250.
Refuse-derived fuel combustor	250.
Fluidized bed combustor	180.
Mass burn refractory combustors	No limit.

[a] Corrected to 7 percent oxygen, dry basis.

TABLE 3 OF SUBPART FFF—MUNICIPAL WASTE COMBUSTOR OPERATING REQUIREMENTS

Municipal waste combustor technology	Carbon monoxide emissions level (parts per million by volume)[a]	Averaging time (hrs)[b]
Mass burn waterwall	100	4
Mass burn refractory	100	4
Mass burn rotary refractory	100	24
Mass burn rotary waterwall	250	24
Modular starved air	50	4
Modular excess air	50	4
Refuse-derived fuel stoker	200	24
Bubbling fluidized bed combustor	100	4
Circulating fluidized bed combustor	100	4
Pulverized coal/refuse-derived fuel mixed fuel-fired combustor	150	4
Spreader stoker coal/refuse-derived fuel mixed fuel-fired combustor	200	24

[a] Measured at the combustor outlet in conjunction with a measurement of oxygen concentration, corrected to 7 percent oxygen, dry basis. Calculated as an arithmetic average.
[b] Averaging times are 4-hour or 24-hour block averages.

TABLE 4 OF SUBPART FFF—GENERIC COMPLIANCE SCHEDULE AND INCREMENTS OF PROGRESS (PRE-1987)[a, b]

Affected facilities	Submit final control plan Increment 1	Award contracts Increment 2	Begin on-site construction Increment 3	Complete on-site construction Increment 4	Final compliance Increment 5
Affected facilities that commenced construction, modification, or reconstruction on or before June 26, 1987 (All pollutants).	[Insert date 240 days after publication in the **Federal Register**].	[Insert date 480 days after publication in the **Federal Register**].	[Insert date 660 days after publication in the **Federal Register**].	11/19/00	12/19/00

[a] Table 4 or 5 of this subpart applies to MWC units subject to the Federal plan except those with site-specific compliance schedules shown in Table 6 of this subpart.
[b] As an alternative to this schedule, the owner or operator may close the affected facility by December 19, 2000, complete the retrofit while the affected facility is closed, and achieve final compliance upon restarting. See §§ 62.14108(c), 62.14108(d), and 62.14109(i) of this subpart.

TABLE 5 OF SUBPART FFF—GENERIC COMPLIANCE SCHEDULES AND INCREMENTS OF PROGRESS (POST-1987)[a, b]

Affected facilities	Submit final control plan Increment 1	Award contracts Increment 2	Begin on-site construction Increment 3	Complete on-site construction Increment 4	Final compliance Increment 5
Affected facilities that commenced construction modification, or reconstruction after June 26, 1987:					
1. Emission limits for Hg, dioxin/furan.	NA[c]	NA[c]	NA[c]	NA[c]	1 year after promulgation of this subpart or 1 year after permit issuance.[d]

TABLE 5 OF SUBPART FFF—GENERIC COMPLIANCE SCHEDULES AND INCREMENTS OF PROGRESS (POST-1987)[a, b]—Continued

Affected facilities	Submit final control plan Increment 1	Award contracts Increment 2	Begin on-site construction Increment 3	Complete on-site construction Increment 4	Final compliance Increment 5
2. Emission limits for SO_2, HCl, PM, Pb, Cd, opacity CO, NO_X.	[Insert date 240 days after publication in the FEDERAL REGISTER].	[Insert date 480 days after publication in the FEDERAL REGISTER].	[Insert date 660 days after publication in the FEDERAL REGISTER].	11/19/00	12/19/00.

[a] Table 4 or 5 of this subpart applies to MWC units subject to the Federal plan except those with site-specific compliance schedules shown in Table 6 of this subpart.
[b] As an alternative to this schedule, the unit may close by December 19, 2000, complete retrofit while closed, and achieve final compliance upon restarting. See §§ 62.14108(c), 62.14108(d), and 62.14109(i) of this subpart.
[c] Because final compliance is achieved in 1 year, no increments of progress are required.
[d] Permit issuance is issuance of a revised construction permit or revised operating permit, if a permit modification is required to retrofit controls.

TABLE 6 OF SUBPART FFF—SITE-SPECIFIC COMPLIANCE SCHEDULES AND INCREMENTS OF PROGRESS

Affected facilities at the following MWC sites	City, State	Submit final control plan Increment 1	Award contracts Increment 2	Begin construction Increment 3	Complete on-site compliance Increment 4	Final compliance Increment 5
Group A						
Savannah Energy Systems Co.	Savannah, Georgia.	NA	NA	NA	12/31/97	02/28/98.
Nashville Thermal Transfer Corp.	Nashville, Tennessee.	NA	NA	NA	05/01/99	07/01/99.
Group B[a]						
All large MWC units.	Maine	10/01/98	01/01/99	07/01/99	09/01/00	12/19/00.
Baltimore Resco	Baltimore, Maryland.	NA	NA	04/01/98	09/01/00	12/19/00.
Hennepin Energy Resource Corp.	Minneapolis, Minnesota.	NA	NA	NA	NA	04/30/98.
United Power Association.	Elk River, Minnesota.	NA	NA	12/30/99	06/30/99	12/19/00.
Northern States Power—Wilmarth.	Mankato, Minnesota.	10/30/98	03/01/99	09/01/99	11/19/00	12/19/00.
Northern States Power—Red Wing.	Red Wing, Minnesota.	01/30/99	07/30/99	04/30/00	11/19/00	12/19/00.
All large MWC units.	Michigan	03/01/99	09/01/99	12/01/99	11/19/00	12/19/00[b].
Any facility complying by use of NO_X trading[c].	New Jersey	12/15/99	01/15/00	03/15/00	07/15/00	12/19/00.
Westchester RESCO.	Westchester County, New York.	NA	NA	01/01/98	12/19/00	12/19/00.
Adirondack Resource Recovery Facility.	Hudson Falls, New York.	10/16/98	01/15/00	04/08/00	11/14/00	12/19/00.
Onandaga County Resource Recovery Facility.	Onandaga County, New York.	No date required[d]	No date required[d]	No date required[d]	No date required[d]	Within 1 year after State plan approval [or Federal plan promulgation].
Niagra Resource Recovery Facility.	Niagra Falls, New York.	No date required[d]	No date required[d]	No date required[d]	No date required[d]	Within 1 year after State plan approval [or Federal plan promulgation].
Huntington Resource Recovery Facility.	East Northport, New York.	10/01/99	10/15/99	03/15/00	07/15/00	08/01/00.
Babylon Resource Recovery Facility.	West Babylon, New York.	09/15/99	10/15/99	2/15/00	07/01/00	07/1[illegible]/00.

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TABLE 6 OF SUBPART FFF—SITE-SPECIFIC COMPLIANCE SCHEDULES AND INCREMENTS OF PROGRESS—Continued

Affected facilities at the following MWC sites	City, State	Submit final control plan Increment 1	Award contracts Increment 2	Begin construction Increment 3	Complete on-site compliance Increment 4	Final compliance Increment 5
Hempstead Resource Recovery Facility.	Westbury, New York.	05/09/98	TBD[e]	TBD[e]	TBD[e]	12/19/00.
Whellabrator Falls; Harrisburg Authority; American Ref-Fuel; Lancaster Resource Energy; Monteney Energy Resource of Montgomery County; York County Solid Waste and Refuse Authority.	Pennsylvania	3 months after issuance of FESOP[f] [or Federal plan promulgation].	3 months after issuance of FESOP[f] [or Federal plan promulgation].	18 months after issuance of FESOP[f] [or Federal plan promulgation].	30 months after issuance of FESOP[f] [or Federal plan promulgation].	12/19/00.[g]
I–95 Energy/Resource Recovery Facility.	Lorton, Virginia	06/01/98	08/01/98	12/01/98	10/01/99	11/01/99.
Alexandria/ Arlington Resource Recovery Facility.	Alexandria, Virginia.	06/01/98	08/01/98	12/01/98	10/01/99	11/01/99.

NA=not applicable; increment already met.
TBD=to be determined.

[a] The schedules from Group B have not been reviewed by EPA due to their recent arrival. They will be examined for acceptability at the same time as those received during the comment period of this proposal. All schedules contained in the final Federal plan will be reviewed and approved by EPA.

[b] For mercury and dioxins, combustors that commenced construction after June 26, 1987, must comply by 09/01/99 or within 12 months of issuance of permit to install, whichever is later.

[Note: 09/01/99 date may be modified to 1 year after Federal plan promulgation].

[c] Applies only to NO_x emission limits. Other pollutants would follow Federal plan generic schedule.

[d] Because final compliance is achieved in 1 year, no increments of progress are required.

[e] The facility will propose these increments in the control plan to be submitted on 05/09/98.

[f] Pennsylvania is implementing their State plan through Federally Enforceable State Operating Permits (FESOP).

[g] Pennsylvania proposes 08/26/02 final compliance date for supplemental emission limits in 40 CFR 60, subpart Cb promulgated August 25, 1997. For mercury and dioxins, 1 year after State plan approval [or Federal plan promulgation] or 1 year after issuance of a revised permit if a permit modification is required.

[FR Doc. 98–1521 Filed 1–22–98; 8:45 am]
BILLING CODE 6560–50–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

41 CFR Parts 51–5, 51–6, 51–8, 51–9, and 51–10

Miscellaneous Amendments to Committee Regulations

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed rule.

SUMMARY: The Committee is proposing to make changes to its regulations to clarify them and improve the efficiency of operation of the Committee's Javits-Wagner-O'Day (JWOD) Program. The Committee is also proposing to make changes in its regulations to correct its mailing address after a recent office move.

DATES: Submit comments on or before March 24, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: G. John Heyer (703) 603–0665. Copies of this notice will be made available on request in computer diskette format.

SUPPLEMENTARY INFORMATION: The Committee is proposing to amend 41 CFR 51–5.2 to add a new paragraph (e) to its mandatory source requirement. The new paragraph will require Government contracting activities which have bundled JWOD services into larger contract requirements to require their prime contractors to contract with the JWOD nonprofit agencies for performance of those services. The provision would place the same obligation on Government contracting activities and their prime contractors if the Committee added a bundled service to the Procurement List after the bundling occurred. A similar regulatory provision for JWOD commodities appears at 41 CFR 51–5.2(c).

The Committee is also proposing a set of regulatory revisions to create a provision (new 41 CFR 51–6.14) for addition of replacement services to the Procurement List, similar to the provision at 41 CFR 51–6.13 on replacement commodities. This new provision is a response to service relocations which are part of current Government downsizing initiatives.

Lastly, the Committee is proposing to amend those provisions of its regulations which state its mailing address, as the address changed in November 1997. The provisions appear in the Committee's Freedom of Information Act, Privacy Act, and nondiscrimination regulations at 41 CFR parts 51–8, 51–9, and 51–10 respectively.

Regulatory Flexibility Act

I certify that this proposed revision of the Committee regulations will not have a significant economic impact on a substantial number of small entities because the revision clarifies program policies and does not essentially change the impact of the regulations on small entities.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply to this proposed rule because it contains no new information collection or recordkeeping requirements as defined in that Act and its regulations.

Executive Order No. 12866

The Committee has been exempted from the regulatory review requirements of the Executive Order by the Office of Information and Regulatory Affairs. Additionally, the proposed rule is not a significant regulatory action as defined in the Executive Order.

List of Subjects

41 CFR Parts 51–5 and 51–6

Government procurement, Individuals with disabilities.

41 CFR Part 51–8

Freedom of information.

41 CFR Part 51–9

Privacy.

41 CFR Part 51–10

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

For the reasons set out in the preamble, parts 51–5, 51–6, 51–8, 51–9 and 51–10 of Title 41, Chapter 51 of the Code of Federal Regulations are proposed to be amended as follows:

1. The authority citation for parts 51–5 and 51–6 continues to read as follows:

Authority: 41 U.S.C. 46–48c.

PART 51–5—CONTRACTING REQUIREMENTS

2. Add new paragraph (e) to § 51–5.2 to read as follows:

§ 51–5.2 Mandatory source requirement.

* * * * *

(e) Contracting activities procuring services which have included within them services on the Procurement List shall require their contractors for the larger service requirement to procure the included Procurement List services from nonprofit agencies designated by the Committee.

3. Revise the first sentence of paragraph (b) of § 51–5.3 to read as follows:

§ 51–5.3 Scope of requirement.

* * * * *

(b) For services, where an agency and location or geographic area are listed on the Procurement List, only the service for the location or geographic area listed must be procured from the nonprofit agency, except as provided in § 51–6.14 of this chapter. * * *

* * * * *

PART 51–6—PROCUREMENT PROCEDURES

4. Redesignate § 51–6.14 as § 51–6.15.

5. Add new § 51–6.14 to read as follows:

§ 51–6.14 Replacement services.

If a service is on the Procurement List to meet the needs of a Government entity at a specific location and the entity moves to another location, the service at the new location is automatically considered to be on the Procurement List if a qualified nonprofit agency is available to provide the service at the new location, unless the service at that location is already being provided by another contractor. If the service at the new location is being provided by another contractor, the service will not be on the Procurement List unless the Committee adds it as prescribed in part 51–2 of this chapter. If another Government entity moves into the old location, the service at that location will remain on the Procurement List to meet the needs of the new Government entity.

PART 51–8—PUBLIC AVAILABILITY OF AGENCY MATERIALS

6. The authority citation for Part 51–8 continues to read as follows:

Authority: 5 U.S.C. 552.

§§ 51–8.4 and 51–8.5 [Amended]

7. Remove the words "Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461" and add, in their place, the words "Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302" in the following places:

a. Section 51–8.4; and

b. Section 51–8.5(a).

PART 51–9—PRIVACY ACT RULES

8. The authority citation for Part 51–9 continues to read as follows:

Authority: 5 U.S.C. 552a.

§§ 51–9.401 and 51–9.405 [Amended]

Remove the words "Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461" and add, in their place, the words "Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302" in the following places:

a. Section 51–9.401(a); and

b. Section 51–9.405(a).

PART 51–10—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

10. The authority citation for part 51–10 continues to read as follows:

Authority: 29 U.S.C. 794.

§ 51–10.170 [Amended]

11. In § 51–10.170, remove the words "Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461" and add, in their place, the words "Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302" in paragraph (c).

Dated: January 20, 1998.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–1625 Filed 1–22–98; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2360

RIN 1004–AC79

[WO–130–1820–00 24 1A]

National Petroleum Reserve, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Bureau of Land Management (BLM) is withdrawing a rule that proposed removing sections of 43 CFR part 2360. The proposal was published in the **Federal Register** on October 23, 1996, and would have removed all of part 2360 except for provisions dealing with use authorizations. BLM had proposed to remove the regulations because we thought they were repetitive of statutory language or obsolete.

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FOR FURTHER INFORMATION CONTACT: Frank Bruno, Regulatory Affairs Group (WO–630), Bureau of Land Management, Mail Stop 401LS, 1849 "C" Street, N.W., Washington, DC 20240; telephone (202) 452–0352 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: BLM published the proposed rule on October 23, 1996, at 61 FR 54977–54978. The comment period closed on November 22, 1996, and we received only one public comment letter. Because of the National Petroleum Reserve-Alaska Environmental Impact Statement planning project that is currently underway, BLM decided to withdraw the proposed rule, and will take no further action on the proposal.

Dated: January 15, 1998.

Sylvia V. Baca,

Deputy Assistant Secretary, Land and Minerals Management

[FR Doc. 98–1597 Filed 1–22–98; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 980113013–8013–01; I.D. 122397I]

RIN 0648–AK56

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Control Date

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; consideration of a control date.

SUMMARY: This notice announces that persons who, after November 13, 1997, enter the pelagic longline fishery in American Samoa will not necessarily be assured of eligibility for continuing participation in the fishery if, in the future, the Western Pacific Fishery Management Council (Council) prepares and NMFS approves a program limiting entry or effort. This notice also announces that vessels greater than 50 ft (15.2 m) in length that are registered for use with Federal general longline permits after November 13, 1997, would not be assured of being allowed to use longline gear to fish for pelagic management unit species within 100 nautical miles (nm) from the coast lines of American Samoa. This notice does not commit the Council to limit effort, nor does it prevent any other date from being selected for eligibility to participate in the fishery. The Council also may use other criteria to limit fishing effort associated with the proposed area closure around American Samoa.

DATES: Comments must be submitted by February 23, 1998.

ADDRESSES: Submit comments to the Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1400, Honolulu, HI 92813.

FOR FURTHER INFORMATION CONTACT: Ms. Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, (909) 522–8220, or Mr. Alvin Katekaru, Fishery Management Specialist, Pacific Islands Area Office, NMFS (808) 973–2985.

SUPPLEMENTARY INFORMATION: The pelagic fishery in American Samoa is undergoing rapid change. Prior to 1995 it was largely a troll-based fishery. In late 1995 four vessels known locally as "alia" catamarans (about 30 ft (9.1 m) long powered by small gas outboard engines) began to fish for albacore using monofilament longline gear. During 1995, this artisanal-scale fishing operation landed 54,902 lb (24.903 metric tons (mt)) of albacore, a 97–percent increase in landings over the previous year. In 1996, 13 alias participated in the fishery and landed 232,721 lb (105.56 mt) of albacore. The number of longline vessels registered for the fishery increased to 32 in 1997, including four vessels ranging in length from 65 to 109 ft (19.8 to 33.2 m). In 1996, a total of 99,990 hooks were set in the fishery. By the third quarter of 1997, a total of 175,081 hooks had been set in the fishery.

In June 1997, fishermen in American Samoa formed a small boat working group to discuss possible management approaches to prevent destabilization and overcapitalization in the fishery. At the 94th meeting held in November 1997, after consulting with the group, Council members from American Samoa presented the Council with two recommendations: (1) Establish a "control date" (potential cut-off date) for permit eligibility if the Council decides to develop a limited entry program and (2) prepare a regulatory amendment under the framework process of the Fishery Management Plan for Pelagic Species Fisheries in the Western Pacific Region to establish a 100–nm area around American Samoa closed to longline fishing by vessels longer than 50 ft (15.2 m) that were not already in the fishery. Vessels greater than 50 ft (15.2 m) in length registered with a general longline permit after the control date would not be allowed to continue to fish within the closed area. The Council approved the establishment of a control date (November 13, 1997) for a limited entry program and directed staff to prepare a regulatory amendment to establish a 100–nm area closed to longline fishing.

This decision by the Council rescinds the earlier control date for this fishery of January 1, 1991, published in the **Federal Register** on March 28, 1991 (56 FR 1289).

The Council believes that there is a risk of speculative entry into the fishery while the Council further evaluates the potential benefits and costs of limited entry alternatives and the proposed regulatory amendment for area closure, including enforcement concerns. The control date is designed to discourage speculative entry during this period of analysis. The control date does not commit the Council or NMFS to any particular management regime or criteria for entry into the American Samoa longline fishery. Fishermen are not guaranteed future participation in this fishery, regardless of their entry date or level of participation before or after the control date. The Council may choose a different control date or it may choose a management regime that does not involve a control date. Other criteria, such as documentation of commercial landings and sales, may be used to determine eligibility for participation in the fishery. At its 95th meeting in April 1998, the Council may also consider prohibiting other U.S. pelagic non-longline fishing vessels (purse-seiners, trollers, and pole-and-line bait boats) greater than 50 ft (15.2 m) from fishing within 100–nm of the land masses of American Samoa. The Council also may choose to take no further action to control entry or access to the fishery or to establish a closed longline fishing area.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 14, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–1546 Filed 1–22–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 63, No. 15

Friday, January 23, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License; Correction Notice

AGENCY: Agricultural Research Service, USDA.

ACTION: Correction to Notice of intent to grant exclusive license.

SUMMARY: In notice document published in the issue of Wednesday, December 31, 1997 (62 FR 68248), the location of the grantee (Integrated BioControl Systems, Inc.) was omitted. In addition, the publication date of the FR Notice of Availability was erroneous. This notice corrects the exclusive grant license information to Serial No. 08/863,261 as follows:

On page 68248, in the first column, first paragraph of the USDA notice, include the location of Aurora, Indiana, for Integrated BioControl Systems, Inc. The **Federal Register** publication date for the Notice of Availability for Serial No. 08/404,779 was specified as May 27, 1997. The date should be changed to May 27, 1995.

Dated: January 15, 1998.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 98–1623 Filed 1–22–98; 8:45 am]

BILLING CODE 3410–03–M

DEPARTMENT OF AGRICULTURE

Forest Service

Threemile Area Timber Sales and Other Projects, Colville National Forest, Pend Oreille County, Washington

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: On January 18, 1990, a Notice of Intent (NOI) to prepare an environmental impact statement (EIS) for the Threemile Area Timber Sales and Other Projects on the Sullivan Lake Ranger District of the Colville National Forest was published in the **Federal Register** (55 FR 1687). A Notice of Availability for the draft EIS was published in the **Federal Register** on August 14, 1992 (57 FR 36647). The comment period on the draft EIS ended October 1, 1992. Forest Service has decided to cancel the environmental analysis process. There will be no final EIS for this project at this time. The NOI is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Connie Smith, Environmental Coordinator, Colville National Forest, 765 South Main, Colville, Washington 99114 or telephone 509–684–7185.

Dated: January 8, 1998.

Robert L. Vaught,

Forest Supervisor.

[FR Doc. 98–1602 Filed 1–22–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID918–1610–00–UCRB]

Interior Columbia Basin Ecosystem Management Project, States of Oregon, Washington, Idaho, Montana, Wyoming, Utah, and Nevada and the Northern, Intermountain, and Pacific Northwest Regions

AGENCIES: Forest Service, USDA; Bureau of Land Management, USDI.

ACTION: Notice of extension of comment period for draft environmental impact statements (EISs).

SUMMARY: On June 12, 1997, the Forest Service and the Bureau of Land Management published a notice of availability of two draft EISs in the **Federal Register** (62 FR 32076). That notice stated that a 120-day comment period was provided for the Eastside Draft EIS and for the Upper Columbia River Basin Draft EIS. On September 5, 1997, a second notice (62 FR 46941) extended the comment period to February 6, 1998. This notice is to inform interested parties that the comment period has been extended again to provide for public review of, and comment on, an economic and social report prepared in response to a requirement of the Department of the Interior and Related Agencies Appropriations Act of 1998.

DATES: Comments on the two draft EISs and on the economic and social report must now be submitted or postmarked no later than April 6, 1998.

ADDRESSES: Copies of the economic and social report will be mailed in mid-February to everyone on the mailing list for the Eastside and Upper Columbia River Basin Draft EISs. Interested parties not on the mailing list can obtain a copy from ICBEMP, 112 E. Poplar Street, Walla Walla, WA 99362 or by calling (509) 522–4030 or from ICBEMP, 304 N. 8th Street, Room 250, Boise, ID 83702 or by calling (208) 334–1770, ext. 120. The economic and social report will also be available via the internet (http://www.icbemp.gov).

Comments on the Eastside draft EIS, including the economic and social report, should be submitted in writing to ICBEMP, 112 East Poplar Street, P.O. Box 2076, Walla Walla, WA 99362. Comments on the Upper Columbia River Basin draft EIS, including the economic and social report, should be submitted in writing to ICBEMP, 304 N. 8th Street, Room 250, Boise, ID 83702. If your comments are in regard to both draft EISs, they may be sent to either office. Comments may also be made electronically by accessing the Project home page (http://www.icbemp.gov), where a comment form is available. If you have already submitted your comments, you may now submit more comments on the draft EISs, including your comments regarding the economic and social report.

FOR FURTHER INFORMATION CONTACT: EIS Team Leader Jeff Walter, 304 N. 8th Street, Room 250, Boise, ID 83702, telephone (208) 334–1770 or EIS Deputy Team Leader Cathy Humphrey, 112 East Poplar Street, P.O. Box 2076, Walla Walla, WA 99362, telephone (509) 522–4030.

SUPPLEMENTARY INFORMATION: In Section 323 of the Department of the Interior and Related Agencies Appropriations Act of 1998 Pub. L. 105–83), the United States Congress directed the following: "Using all research information

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available from the area encompassed by the Project, the Secretaries [of Agriculture and the Interior], to the extent practicable, shall analyze the economic and social conditions, and culture and customs, of the communities at the sub-basin level within the Project area and the impacts the alternatives in the draft EISs will have on those communities. This analysis shall be published on a schedule that will allow a reasonable period of time for public comment thereon prior to the close of the comment periods on the draft EISs. The analysis, together with the response * * * to the public comment, shall be incorporated in the final EISs and * * * subsequent decisions related thereto."

The required analysis has been prepared. It is a report on the existing economic and social conditions at the community level within the Interior Columbia Basin Ecosystem Management Project area and, to the extent practicable, an analysis of the effects of the alternatives described in the draft EISs upon communities. This report will be distributed to the public by mid-February, providing approximately seven weeks for review and comment before the comment period closes April 6, 1998.

Dated: January 16, 1998.

Martha Hahn,

Director, Bureau of Land Management.

Dated: January 16, 1998.

Jack Blackwell,

Regional Forester, U.S. Forest Service.

[FR Doc. 98–1603 Filed 1–22–98; 8:45 am]

BILLING CODE 4310–11–M, 4310–GG–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: February 23, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 3 and November 28, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (62 FR 51827 and 63314) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Grounds/Garage Maintenance

Veterans Affairs Medical Center, 1601 Perdido Street, New Orleans, Louisiana

Janitorial/Custodial

Naval Command Control & Ocean Surveillance Center, East Coast Division Complex (trailers/laboratories), Charleston, South Carolina

Operation of Postal Service Center, Luke Air Force Base, Arizona.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–1621 Filed 1–22–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 23, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Pen, Executive, Twist Retractable

7520–01–451–2274
7520–01–451–2275
7520–01–451–2276
7520–01–451–2279
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin,

Infantry Kit, Cold Weather, Marine Corps, 8465–00–NSH–0029,
(Requirements for the U.S. Army Soldier Systems Command),
NPA: Pioneer Adult Rehabilitation Center Davis County School District, Clearfield, Utah.

Services

Grounds Maintenance, Credit Union, Building 2680, Edwards Air Force Base, California, NPA: Desert Haven Enterprises, Inc., Lancaster, California.

Janitorial/Custodial, C.W. Whittlesey U.S. Army Reserve Center, 200 Barker Road, Pittsfield, Massachusetts,
NPA: Berkshire County Arc, Inc., Pittsfield, Massachusetts.

Janitorial/Custodial, Buildings 1000, 1001, 1002, 20129, 20130, 20168, 20200, 20201, 20206, 20227, 20228, 20375, 20405, 20410, 20412, 20414, 20420, 20449, 20451, 20600, 20673, 20674, 20675, 20676, 20678–20683, 20687, 20707, 48025, 57001, 57011, 66001, 66006, 66014, 66017, 66029, 66041, 66047, 66049, 66071, 20202D, 20451A–J and 20602ABD, Kirtland Air Force Base, New Mexico, NPA: RCI, Inc., Albuquerque, New Mexico.

Janitorial/Custodial, Buildings 201, 381, 460, 467, 482, 585, 605, 617, 618, 619, 702, 760, 760–3, 762, 763, 765, 915, 926, 945, 996, 1010, 1013, 1015, 1025, 1032, 1037, 1048, 1049, 7906, 20216, 20219, 20220, 20226, 20234, 20360–20364, 20369, 20724, 20749, 20752, 20754, 22004, 27494, 30117, 30134 and 30136, Kirtland Air Force Base, New Mexico, NPA: Adelante Development Center, Inc., Albuquerque, New Mexico.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action does not appear to have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Cloth, Wiping

6532–LL–N83–0490
6532–LL–N83–0491
7920–LL–L03–6103
7920–LL–L03–6134
7920–LL–L01–0013
7920–LL–L01–0014
7930–00–NSH–0003
7930–00–NSH–0004
7930–00–NSH–0005
7930–LL–C00–3782
7930–LL–C00–2768
8305–LL–N01–7278

Napkin, Paper

8540–00–149–1601.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–1622 Filed 1–22–98; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:30 p.m. on Monday, February 9, 1998, at the Providence Public Library, North Meeting Room, 225 Washington Street, Providence, Rhode Island 02903. The purpose of the meeting is to hold a consultation to gather information for its project, "An Examination of the Impact of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 on Legal Immigrants in Rhode Island." The Committee has invited community representatives and immigrant rights organizations, State and local officials, and the State congressional delegation to brief the Committee on this topic.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Robert Lee, 401–863–1693, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 16, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–1666 Filed 1–21–98; 10:21 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Nishan Keval; In the Matter of: Nishan Keval, 2511 Sullivan Drive, Auburn, California 95603; Order Denying Permission To Apply for or Use Export Licenses

On September 25, 1995, Nishan Keval (Keval) was convicted in the United States District Court for the Southern District of California of violating the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991 & Supp. 1997)) (IEEPA). Keval was convicted of knowingly and willfully exporting and causing to be exported from the United States to The Netherlands, for transshipment to the People's Republic of Libya, petrochemical-related equipment.

Section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. § § 2401–2420 (1991 & Supp. 1997)) (the Act),[1] provides that, at the discretion of the Secretary of

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR 1996 Comp. 298 (1997)), and August 13, 1997 (62 FR 43629, August 15, 1997) continued the Export Administration Regulations in effect under IEEPA.

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Commerce,[2] no person convicted of violating IEEPA, or certain other provisions of the United States code, shall be eligible to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (1997)), (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating IEEPA, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Keval's conviction for violating IEEPA and following consultations with the Acting Director, Office of Export Enforcement, I have decided to deny Keval permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, for a period of eight years from the date of his conviction. The eight-year period ends on September 25, 2003. I have also decided to revoke all licenses issued pursuant to the Act in which Keval had an interest at the time of his conviction.

Accordingly, it is hereby ordered:

I. Until September 25, 2003, Nishan Keval, 2511 Sullivan Drive, Auburn, California 95603, may not, directly or indirectly, participate in any way, in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Keval by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations, where the only items involved that are subject to the Regulations are the foreign-producted direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until September 25, 2003.

VI. A copy of this Order shall be delivered to Keval. This Order shall be published in the **Federal Register**.

Dated: January 9, 1998.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 98–1574 Filed 1–22–98; 8:45 am]

BILLING CODE 3510–DT–M

[2] Pursuant to appropriate delegations of authority, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar from India: Preliminary Results of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of New Shipper Antidumping Duty Administrative Review: Stainless Steel Bar from India.

SUMMARY: In response to requests from M/s Panchmahal Steels, Ltd. and Ferro Alloys Corporation Limited, the Department of Commerce is conducting a new shipper administrative review of the antidumping duty order on stainless steel bar from India. This review covers M/s Panchmahal Steels, Limited's and Ferro Alloys Corporation Limited's sales of the subject merchandise to the United States during the period February 1, 1996 through January 31, 1997.

We have preliminarily determined that M/s Panchmahal Steels, Ltd.'s sales have been made below normal value and that Ferro Alloys Corporation Limited's sales have not been made below normal value. If these preliminary results are adopted in our final results of new shipper administrative review, we will instruct the U.S. Customs Service to assess antidumping duties equal to the difference between the export price and the normal value.

Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: January 23, 1998.

FOR FURTHER INFORMATION CONTACT: Craig Matney or Zak Smith, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–0588 or (202) 482–1279, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act.

SUPPLEMENTARY INFORMATION:

Background

On February 24 and February 27, 1997, the Department of Commerce ("the Department") received requests from respondents to conduct a new shipper administrative review of the antidumping duty order on stainless steel bar from India produced by M/s Panchmahal Steels, Ltd. ("Panchmahal") and Ferro Alloys Corporation Limited ("Facor"), respectively. The Department published in the **Federal Register**, on March 28, 1997, a notice of initiation of a new shipper administrative review of Panchmahal and Facor covering the period August 1, 1996, through January 31, 1997 (62 FR 14886). On September 17, 1997, the Department published in the **Federal Register** a notice of extension of time limit for this new shipper administrative review (62 FR 48811). This notice extended the time for completion of these preliminary results to no later than January 14, 1998.

Scope of Review

Imports covered by this review are shipments of stainless steel bar ("SSB"). SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to these orders is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Period of Review

This review covers two manufacturers/exporters, Panchmahal and Facor, and the period February 1, 1996 through January 31, 1997. The initiation notice incorrectly stated the period of review as August 1, 1996 through January 31, 1997.

Date of Sale

The Department's April 21, 1997, questionnaire instructed respondents to use the invoice date as date of sale. It further instructed respondent to contact the Department if the exporter believed that there was another situation present that would make using the date of invoice inappropriate. Facor made a written submission to the Department on June 9, 1997, claiming that the purchase order date was the appropriate date of sale, because that is the date on which the material terms of sale are set. On June 12, 1997, the Department agreed that Facor may report its sales to the United States based on purchase order date.

Petitioners objected to the Department's date of sale decision. Petitioners claimed that our decision in *Wire Rod from India* (62 FR 38976, July 21, 1997) allows only two exceptions (*i.e.*, sales made on the basis of long-term contracts and sales made with a long lag time) to the rule of using invoice date as date of sale, and that Facor did not meet either one. We conducted a further analysis of the information on the record and concluded that the purchase order date is the appropriate date of sale because the material terms of sale were set at this time and no material changes occurred between the purchase order date and the invoice date (*see*, Memorandum to Richard W. Moreland from Susan Kuhbach, November 14, 1997).

United States Price

In calculating the price to the United States, we used export price ("EP"), in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation into the United States and constructed export price was not otherwise indicated.

We calculated EP based on either the CIF or cost and freight ("CFR") price to the United States. In accordance with section 772(c)(2) of the Act, we made deductions for foreign inland freight and international freight.

Panchmahal claimed an upward adjustment to EP for a "duty drawback" program. In the preliminary results of the first administrative review of this order, we analyzed the functioning of this duty drawback program and found that it did not meet the Department's criteria for an upward adjustment to EP (*see*, 62 FR 10540 at 10541, March 7, 1997). We maintained our position in the final results (*see*, 62 FR 37030, July 10, 1997). We have reexamined the program in regard to Panchmahal, and have found no reason to deviate from our previous decision. As stated in *Certain Welded Carbon Standard Steel Pipes and Tubes from India* (62 FR 47632 at 47635, September 10, 1997), "we determine whether an adjustment to U.S. price for a respondent's claimed duty drawback is appropriate when the respondent can demonstrate that it meets both parts of our two-part test. There must be: (1) A sufficient link between the import duty and the rebate, and (2) a sufficient amount of raw materials imported and used in the production of the final exported product." Because Panchmahal did not demonstrate a sufficient link between the import duty and the rebate, we have not made an adjustment to EP.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a) of the Act. Because the aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the prices

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at which the foreign like product was first sold to unaffiliated customers for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value, that of the sales from which we derive selling, general and administrative expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See, Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we reviewed information from each respondent regarding the marketing stage involved in the reported home market and U.S. sales, including a description of the selling activities performed by the respondents for each channel of distribution. Pursuant to section 773(a)(1)(B)(i) of the Act and the SAA at 827, in identifying levels of trade for EP and home market sales we considered the selling functions reflected in the starting prices before any adjustments. We expect that, if claimed levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar.

Based on an analysis of the selling functions, class of customers, and level of selling expenses, we found that the marketing process in both the home market and the United States were not substantially dissimilar for either Panchmahal or Facor. Therefore, we have preliminarily found that sales in both markets are at the same LOT and consequently no LOT adjustment is warranted.

Cost of Production Analysis

Based on a cost allegation presented by petitioners, the Department found reasonable grounds to believe or suspect that sales by Facor in the home market were made at the prices below their respective costs of production ("COPs"). As a result, the Department initiated an investigation to determine whether Facor made home market sales during the POR at prices below its COP, within the meaning of section 773(b) of the Act.

We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, based on the sum of the cost of materials, fabrication, selling, general and administrative expenses, and packing costs.

B. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of a respondent's sales of a given product were made at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of Facor's sales of a given product were made at prices below the COP, we disregarded the below-cost sales because such sales were found to be made within an extended period of time in "substantial quantities" in accordance with sections 773(b)(2)(B) and (C) of the Act. Moreover, based on comparisons of price to weighted-average COPs for the POR, we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that Facor made home market sales at below COP prices within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit for the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis in accordance with section 773(b)(1) of the Act.

Preliminary Results of the Review

As a result of our comparison of EP and NV, we preliminarily determine the following weighted-average dumping margins:

Manufacturer/exporter	Period	Margin (percent)
Panchmahal	2/1/96–1/31/97	0.69
Facor	2/1/96–1/31/97	

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 90 days of issuance of these preliminary results.

Upon completion of this new shipper administrative review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between EP and NV may vary from the percentages stated above. We have calculated an importer-specific duty assessment rate based on the ratio of the total amount of AD duties calculated for the examined sales made during the POR to the total value of subject merchandise entered during the POR. In order to estimate the entered value, we subtracted international movement expenses (*e.g.*, international freight) from the gross sales value. This rate will be assessed uniformly on all entries made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

The following deposit requirement will be effective upon publication of the final results of this new shipper antidumping duty administrative review for all shipments of stainless steel bar from India entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates established in the final results of this review; (2) if the exporter is not a firm covered in this review, but was covered in a previous review or the original less-than-fair-value ("LTFV") investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers and/or exporters of this merchandise, shall be 12.45 percent, the "all others" rate established in the LTFV investigation (59 FR 66915, December 28, 1994).

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(h).

Dated: January 13, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–1537 Filed 1–22–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–805]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From France; Notice of Court Decision and Suspension of Liquidation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On December 18, 1997, in *Usinor Sacilor* v. *United States*, Consol. Court No. 93-04–00230, a lawsuit challenging the Department of Commerce's final affirmative countervailing duty determination of certain hot-rolled lead and bismuth carbon steel products from France, the Court of International Trade affirmed the Department of Commerce's remand determination and entered a judgment order. As a result, the final net subsidy rate for all programs for Usinor Sacilor has decreased from 23.11% to 12.51% *ad valorem*, and the "country-wide" rate has decreased from 23.11% to 12.51% *ad valorem*.

Consistent with the decision of the Court of Appeals for the Federal Circuit in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990), the Department of Commerce will direct the Customs Service to change the cash deposit rates being used in connection with the suspension of liquidation of the subject merchandise once there is a "conclusive" decision in this case.

EFFECTIVE DATE: January 23, 1998.

FOR FURTHER INFORMATION CONTACT: Cindee Thirumulai, Office 1, Group 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington D.C. 20230, telephone: (202) 482–4087.

SUPPLEMENTARY INFORMATION:

Background

On January 27, 1993, the Department of Commerce (the "Department" or "Commerce") published notice of its final affirmative countervailing duty determination of certain hot-rolled lead and bismuth carbon steel products from France. *Final Affirmative Countervailing Duty Determination; Certain Hot-rolled Lead and Bismuth Carbon Steel Products from France*, 58 FR 6221 (Jan. 27, 1993). In that determination, the Department set forth its finding of a final net subsidy rate of 23.14% *ad valorem* for Usinor Sacilor and 23.14% *ad valorem* for the "country-wide" rate. On March 22, 1993, the Department published a countervailing duty order correcting ministerial errors and instructing the Customs Service to collect cash deposits at the rate of 23.11% *ad valorem* for Usinor Sacilor and 23.11% *ad valorem* for the "country-wide" rate, on entries of the subject merchandise entered or withdrawn from warehouse for consumption on or after that date. 58 FR 15326.

Following publication of the Department's countervailing duty order, petitioners and respondents filed lawsuits with the Court of International Trade ("CIT") challenging the Department's final determination.

In its first decision in this case, *Usinor Sacilor v. United States*, 893 F. Supp. 1112 (CIT 1995), the CIT rejected the Department's reliance on IRS tables showing industry-specific average useful life of assets in determining an allocation period of 15 years. In a subsequent remand determination, the Department calculated a company-specific allocation period for Usinor Sacilor based on the average useful life of non-renewable physical assets, and the CIT affirmed it. *Usinor Sacilor* v. *United States*, 955 F. Supp. 1481 (1997).

In a later decision, *Usinor Sacilor* v. *United States*, 966 F. Supp. 1242 (1997), the CIT remanded the case to the Department on the issue of the appropriate sales denominator and instructed the Department to adjust its countervailing duty rates to reflect the fact that the subsidies at issue benefitted Usinor Sacilor's worldwide production rather than just Usinor Sacilor's domestic production. In its ensuing remand determination, dated July 28, 1997, the Department followed the CIT's instructions and adjusted the countervailing duty rates. On December 18, 1997, in *Usinor Sacilor* v. *United States*, Consol. Court No. 93–04–00230, Slip Op. 97–177, the CIT affirmed the Department's remand determination and entered a judgment order.

As a result of the remands in this case, the net subsidy rate for all programs for Usinor Sacilor has decreased from 23.11% to 12.51% *ad valorem*, and the "country-wide" rate has decreased from 23.11% to 12.51% *ad valorem*.

Suspension of Liquidation

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) ("*Timken*"), the Court of Appeals for the Federal Circuit ("CAFC") held that the Department must publish notice of a decision of the CIT or the CAFC which is not "in harmony" with the

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Department's determination. Publication of this notice fulfills that obligation. The CAFC also held that the Department must suspend liquidation of the subject merchandise until there is a "conclusive" decision in the case. Therefore, pursuant to *Timken*, Commerce must suspend liquidation pending the expiration of the period to appeal the CIT's December 18, 1997 ruling or, if that ruling is appealed, pending a final decision by the CAFC. However, because entries of the subject merchandise already are being suspended pursuant to the countervailing duty order in effect, the Department need not order the Customs Service to suspend liquidation. Further, consistent with *Timken*, the Department will order the Customs Service to change the relevant cash deposit rates in the event that the CIT's ruling is not appealed or the CAFC issues a final decision affirming the CIT's ruling.

Dated: January 13, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–1571 Filed 1–22–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 971202287–7287–01]

Special American Business Internship Training Program (SABIT)

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice announces availability of funds for the Special American Business Internship Training Program (SABIT), for training business executives (also referred to as "interns") from Russia. The Department of Commerce, International Trade Administration (ITA) established the SABIT program in September 1990 to assist the former Soviet Union's transition to a market economy. Since that time, SABIT has been matching business executives and scientists from the New Independent States of the former Soviet Union (NIS) with U.S. firms which provide them with three to six months of hands-on training in a U.S. market economy.

Under the SABIT program, qualified U.S. firms will receive funds through a cooperative agreement with ITA to help defray the cost of hosting interns. ITA will interview and recommend eligible interns to participating companies. *Interns must come from Russia and be citizens of the Russian Federation.* The U.S. firms will be expected to provide the interns with a hands-on, non-academic, executive training program designed to maximize their exposure to management or commercially-oriented scientific operations. At the end of the training program, interns must return to Russia. All interns will be selected from a pre-screened group of qualified mid-level managers; nominations from outside of this group will not be accepted.

DATES: The closing date for applications is March 31, 1998. An original and two copies of the application (Standard Form 424 (Rev. 4–92) and supplemental material) are to be sent to the address designated in the Application Kit and postmarked by the closing date. Applications will be considered on a "rolling" basis as they are received, subject to the availability of funds. If available funds are depleted prior to the closing date, a notice to that effect will be published in the **Federal Register**. Processing of complete applications takes approximately two to three months. Competitive Application kits will be available from ITA starting on January 23, 1998.

ADDRESSES: To obtain a copy of the Application Kit please E-mail: sabitapply@usita.gov (please state which format, *e.g.* WordPerfect® 6.1), telephone (202) 482–0073, facsimile (202) 482–2443 (these are not toll free numbers), or send a written request with two self-addressed mailing labels to "Application Request" The SABIT Program, HCHB Room 3319, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230.

FOR FURTHER INFORMATION CONTACT: Liesel Duhon, Director, SABIT Program, U.S. Department of Commerce, phone—(202) 482–0073, facsimile—(202) 482–2443. These are not toll free numbers. Only one copy of the Application Kit will be provided to each organization requesting it, but it may be reproduced by the requester.

SUPPLEMENTARY INFORMATION: SABIT exposes Russian business managers and scientific managers to a completely new way of thinking in which demand, consumer satisfaction, and profits drive production. Senior-level interns visiting the U.S. for internship programs with public or private sector companies will be exposed to an environment which will provide them with practical knowledge for transforming their countries' enterprises and economies to the free market. The program provides first-hand, eye-opening experience to managers and scientists which cannot be duplicated by American managers traveling to their territories.

Business Executives

SABIT assists economic restructuring in Russia by providing top-level business managers with practical training in American methods of innovation and management in such areas as strategic planning, financing, production, distribution, marketing, accounting, wholesaling, and labor relations. This first-hand experience in the U.S. economy enables interns to become leaders in establishing and operating a market economy in Russia, and creates a unique opportunity for U.S. firms to familiarize key executives from Russia with their products and services.

Scientist Managers

SABIT provides opportunities for gifted scientists to apply their skills to peaceful research and development in the civilian sector, in areas such as defense conversion, medical research, and the environment, and exposes them to the role of scientific research in a market economy where applicability of research relates to business success. Sponsoring firms in the U.S. scientific community also benefit from exchanging information and ideas, and different approaches to new technologies.

Funding Availability

Pursuant to section 632(a) of the Foreign Assistance Act of 1961, as amended (the "Act") funding for the program will be provided by the United States Agency for International Development (A.I.D). ITA will award financial assistance and administer the program pursuant to the authority contained in section 635(b) of the Act and other applicable grant rules. The estimated amount of financial assistance available for the program is $175,000. Additional funding is anticipated at a future date in 1998. Funding Instrument and Project Duration: Federal assistance will be awarded pursuant to a cooperative agreement between ITA and the recipient firm. All internships are three months; however, ITA reserves the right to allow an intern to stay for a shorter period of time (no less than one month) if the U.S. company agrees and the intern demonstrates a need for a shorter internship based on his or her management responsibilities. ITA will reimburse companies for the round trip international travel of each intern from the intern's home city in Russia to the U.S. internship site, upon submission to ITA of the paid travel invoice, payment receipt, or other evidence of payment

and the form SF–270, "Request for Advance or Reimbursement." Travel under the program is subject to the Fly America Act. ITA will reimburse companies for up to $500 per month housing subsidy. Recipient firms provide $30 per day directly to interns. ITA will reimburse recipient firms for this stipend of $30 per day per intern for up to three months as well as the actual price of the monthly housing, up to $500 per month, upon submission by company of an end-of-internship report and form SF–270. If the Russian Government pays for the international airline travel, recipients will not be eligible for reimbursement for airtravel. In general, each award will have a cap of $5,000 per intern for total cost of airline travel, housing subsidy and stipend. ITA reserves the right to allow an award to exceed this amount in cases of unusually high costs, such as airfare from remote regions of Russia. However, the total payment cannot exceed the award amount. There are no specific matching requirements for the awards. Host firms, however, are expected to bear the costs beyond those covered by the award, including: visa fees, additional housing costs beyond the $500 housing subsidy per month, insurance, any food and incidentals costs beyond $30 per day, any training-related travel within the U.S., and provision of the hands-on training for the interns.

U.S. firms wishing to utilize SABIT in order to be matched with an intern without applying for financial assistance may do so. Such firms will be responsible for all costs, including travel expenses, related to sponsoring the intern. However, prior to acceptance as a SABIT intern, work plans and candidates must be approved by the SABIT Program. Furthermore, program training will be monitored by SABIT staff and evaluated upon completion of training.

Eligibility

Eligible applicants for the SABIT program will include any for profit or non-profit U.S. corporation, association, organization or other public or private entity. Agencies or divisions of the federal government are not eligible.

Evaluation Criteria

Consideration for financial assistance will be given to those SABIT proposals which:

(1). Demonstrate a commitment to the intent and goals of the program to provide practical, on-the-job, non-academic, non-classroom, training: in the case of manager interns, an appropriate management training experience, or, in the case of scientific managers, a practical, commercially-oriented scientific training experience.

(2). Respond to the priority needs of senior business managers and scientists in Russia, as determined by ITA.

(3). Host firms must be solidly committed to interns' return to Russia upon completion of the internships.

(4). Present a realistic work plan describing in detail the training program to be provided to the SABIT intern(s). Work plans must include the following:

(a). Whether Applicant is applying to host managers or scientific managers, or both (and the number of each); (b). the duration of the internship. As noted above, ITA reserves the right to allow an intern with very senior management responsibilities to stay for a shorter period (minimum of one month) if the U.S. company agrees and the intern demonstrates a compelling need for a shorter internship based on his or her management responsibilities; (c). the location(s) of the internship; (d). the name, address, and telephone number of the designated internship coordinator; (e). name(s) of division(s) in which the intern(s) will be placed; (f). the individual(s) in the U.S. company under whose supervision the intern will train; (g). the proposed internship training activities. The components of the training activities must be described in as much detail as possible, preferably on a week-by-week basis. The description of the training activities should include an accounting of what the intern's(s') duties and responsibilities will be during the training; (h). the anticipated housing arrangements to be provided for the intern(s). Note that housing arrangements should be suitable for mid- and senior-level professionals, and that each intern must be provided with a private room.

(5). Include a brief objectives section indicating why the Applicant wishes to provide an internship to a manager(s) or scientist(s) from Russia, and how the proposed internship would further the purpose of the SABIT program as described above.

(6). Provide a general description of the profile of the intern(s) the Applicant would like to host, including: educational background; occupational/professional background (including number of years and areas of experience); size and nature of organization at which the intern(s) is/are presently employed; preference for the region of Russia where the intern(s) is/are employed; and whether Applicant is open to sponsoring interns from a variety of Russian regions.

(7). Indicate whether Applicant organization operates in one or more of the following business sectors: (a). Agribusiness (including food processing and distribution, and agricultural equipment), (b). Defense conversion, (c). Energy, (d). Environment (including environmental clean-up), (e). Financial services (including banking and accounting), (f). Housing, construction and infrastructure, (g). Medical equipment, supplies, pharmaceuticals, and health care management, (h). Product standards and quality control, (i). Telecommunications, and (j). Transportation. Applicant proposal must provide an explanation including description and extent of involvement in the sector(s). While Applicants involved in any industry sector may apply to the program, priority consideration is given to those operating in the above sectors.

Evaluation criteria 1–6 will be weighted equally. ITA does not guarantee that it will match Applicant with the profile provided to SABIT.

Selection Procedures

Each application will receive an independent, objective review by one or more three or four-member ITA review panels qualified to evaluate applications submitted under the program. Applications will be evaluated on a competitive, "rolling" basis as they are received in accordance with the selection evaluation set forth above. Awards will be made to those applications which successfully meet the selection criteria. If funds are not available for all those applications which successfully meet the criteria, awards will be made to the first applications received which successfully do so. ITA review panel(s) reserve(s) the right to reject any application; to limit the number of interns per applicant; to waive informalities and minor irregularities in applications received; and to consider other than competitive procedures to distribute assistance under this program and in accordance with the law. ITA review panel(s) reserve(s) the right to make awards based on diversity of U.S. geographic and organization size. Recipients may be eligible, pursuant to approval of an amendment of an active award, to host additional interns under the program. ITA reserves the right to evaluate applicants based on past performance. The Director of the SABIT Program is the final selecting official for each award.

Additional Information

Applicants must submit: (1) Evidence of adequate financial resources of Applicant organization to cover the costs involved in providing an

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internship(s). As evidence of such resources, Applicant should submit financial statements audited by an outside organization or an annual report including such statements. If these are not available, a letter should be provided from the Applicant's bank or outside accountant attesting to the financial capability of the firm to undertake the scope of work involved in training an intern under the SABIT program. (2) Evidence of a satisfactory record of performance in grants, contracts and/or cooperative agreements with the Federal Government, if applicable. (Applicants who are or have been deficient in current or recent performance in their grants, contracts, and/or cooperative agreements with the Federal Government shall be presumed to be unable to meet this requirement). (3) A statement that the Applicant will provide medical insurance coverage for interns during their internships. Recipients will be required to submit proof of the interns' medical insurance coverage to the Federal Program Officer, before the interns' arrivals. The insurance coverage must include an accident and comprehensive medical insurance program as well as coverage for accidental death, emergency medical evacuation, and repatriation.

Other Requirements

All applicants are advised of the following:

1. No award of Federal funds shall be made to an Applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce (DOC) are made.

2. A false statement on the application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

3. Recipients and subrecipients are subject to all Federal laws and Federal and Departmental regulations, policies and procedures applicable to financial assistance awards.

4. Participating companies will be required to comply with all relevant U.S. tax and export regulations. Export controls may relate not only to licensing of products for export, but also to technical data transfer.

5. Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

6. If applicants incur any costs prior to an award being made, they do solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs.

7. Past performance: Unsatisfactory performance by an applicant under prior Federal awards may result in an application not being considered for funding.

8. No obligation for future funding: If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

9. Primary Applicant Certifications: All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

(a) Nonprocurement Debarment and Suspension: Prospective participants (as defined at 15 CFR part 26, Section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

(b) Drug Free Workplace: Grantees (as defined at 15 CFR part 26, Section 605) are subject to 15 CFR part 26, Subpart F, "Government wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

(c) Anti-Lobbying: Funds provided under the SABIT program may not be used for lobbying activities. Persons (as defined at 15 CFR part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

(d) Anti-Lobbying Disclosures: Any applicant that has paid or will pay for lobbying in connection with this award using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

10. Lower Tier Certifications: Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11. Indirect Costs: Indirect costs are not allowed under the SABIT program.

12. Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible.

13. The following statutes apply to this program: Chapter 11 of Part I of the Foreign Assistance Act of 1961, as amended, including section 498A (b), regarding ineligibility for assistance; provisions in annual Foreign Operations, Export Financing, and Related Programs Appropriations Act, including the following provisions contained in Public Law 103–87: Use of American Resources (Section 559 of the Foreign Operation, Export Financing, and Related Programs Appropriations Act, 1995, Pub. L. 103–87); Impact on Jobs in the United States (Section 545 of the Foreign Operation, Export Financing, and Related Programs Appropriations Act, 1995, Pub. L. 103–87); Bumpers Amendment (Section 513(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994, Pub. L. 103–87); Lautenberg Amendment (Section 513(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994, Pub. L. 103–87); and Section 660(a) of the Foreign Assistance Act of 1961, as amended.

14. *Audit Requirements:* The DOC Office of Inspector General has authority under the Inspector General Act of 1978, as amended, to conduct an audit of any DOC award at any time.

15. *Payments.* As required by the Debt Collections Improvement Act of 1996, all Federal payments to award recipients pursuant to this announcement will be made by electronic funds transfer.

16. The collection of information is approved by the Office of Management and Budget, OMB Control Number 0625–0225. Public reporting for this collection of information is estimated to be three hours per response, including the time for reviewing instructions, and completing and reviewing the collection of information. All responses to this collection of information are voluntary, and will be provided confidentially to the extent allowed under the Freedom of Information Act. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Clearance Officer, International Trade Administration, Department of Commerce, Room 4001, 14th and Constitution Ave., N.W., Washington, D.C. 20230.

Dated: January 20, 1998.

Liesel C. Duhon,

Director, SABIT Program.

[FR Doc. 98–1618 Filed 1–22–98; 8:45 am]

BILLING CODE 3510–HE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010898A]

Notice of Workshop

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: Notice is hereby given that NMFS will sponsor a workshop for the members of its Individual Fishing Quota (IFQ) Advisory Panels and of the National Research Council (NRC) Committee to Study IFQs. The workshop will be held in New Orleans, Louisiana and will be open for public observation.

DATES: The workshop will begin at 9:30 a.m. on January 24, 1998 and will end at 5 p.m. on January 25, 1998.

ADDRESSES: The workshop will be held at Le Pavillon Hotel, 833 Poydras Street, New Orleans, Louisiana; telephone: 800–535–9095.

FOR FURTHER INFORMATION CONTACT: Amy Gautam, NMFS, Office of Science and Technology; telephone: (301)713–2328.

SUPPLEMENTARY INFORMATION: In the reauthorization of the Magnuson-Stevens Act (Act), Congress required the NRC to provide a report with recommendations on a national policy for implementing IFQs by October 1, 1998. The Act also required the formation of NMFS Advisory Panels to provide support to the NRC committee and to NMFS in their respective roles of preparing and evaluating the IFQ study. The workshop is intended to initiate a dialogue between IFQ Advisory Panel and NRC committee members related to key questions the NRC has developed. Issues discussed will include initial allocation criteria, restrictions on transferability of quota shares, enforcement and monitoring requirements, and long-term implications of implementing IFQs relative to other management regimes. Members of the public are invited to observe the proceedings, but will not be allowed to participate.

Dated: January 16, 1998.

Lamar Trott

Acting Director, Office of Science and Technology, National Marine Fisheries Service.

[FR Doc. 98–1544 Filed 1–16–98; 4:56 pm]

BILLING CODE: 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Applications of the Minneapolis Grain Exchange for Designation as a Contract Market in On-Peak Mid-Continent Area Power Pool (MAPP) Electricity Futures and Options and in Off-Peak MAPP Electricity Futures and Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract Market Rule Change.

SUMMARY: The Minneapolis Grain Exchange (MGE or Exchange) has applied for designation as a contract market in on-peak mid-continent area power pool (MAPP) electricity futures and option contracts and off-peak MAPP electricity futures and option contracts. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before February 23, 1998.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the MGE mid-continent area power pool (MAPP) electricity futures and options.

FOR FURTHER INFORMATION CONTACT: Please contact Joseph Storer of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, 20581, telephone (202) 418–5282. Facsimile number: (202) 418–5527. Electronic mail: jstorer@cftc.gov.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the MGE in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the MGE, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on January 15, 1998.

John R. Mielke,

Acting Director.

[FR Doc. 98–1620 Filed 1–22–98; 8:45 am]

BILLING CODE 6351–01–P

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CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of Opportunity To Administer the President's Student Service Awards

AGENCY: Corporation for National and Community Service.

ACTION: Notice of opportunity to administer the President's Student Service Awards.

SUMMARY: The Corporation for National Service (the Corporation) seeks an organization or collaboration of organizations that is capable of administering the President's Student Service Awards program. Public or private nonprofit organizations are eligible to apply. The non-monetary awards will recognize students and other school-aged youth who serve in their communities across the country. This recognition program will help make citizen service a common expectation among elementary, secondary, and college students throughout America.

Students and other school-aged youth who receive the President's Student Service Award may render service to their communities through a service-learning program sponsored by a school, college, or university, through a program sponsored by a community-based organization, or through their own initiative as individual community service volunteers. For students age 12 or older, a criterion will be performing service of 100 hours or more within a one-year period.

The President's Student Service Awards program does not involve Federal financial assistance to the organization or organizations selected to administer the program. The selected organization or collaboration of organizations is expected to raise or provide any up-front costs that are required, with future operation of the program conducted on a self-sustaining basis as described in this Notice.

The selected organization or organizations will furnish the necessary personnel, materials, services and facilities to administer the program, including purchase and/or production of all award materials; distribution of award materials; promotion; self-evaluation, quarterly and annual budget and demographic reports; and other administrative duties that will be determined in a Memorandum of Agreement and subsequent annual plans. The selected organization or organizations will be expected to provide input regarding program design, implementation, and promotion, and will also be expected to coordinate as necessary with other organizations or entities engaged in the promotion of service.

DATES: All proposals must be received by the Corporation at the address set out below by 3:30 p.m. (E.S.T.) February 20, 1998.

ADDRESSES: Proposals shall be submitted to the Corporation at the following address: Corporation for National Service, Attn: Dr. Marilyn Smith, 1201 New York Avenue NW, Washington, D.C. 20525.

FOR FURTHER INFORMATION CONTACT: For further information, contact the Corporation for National Service, Dr. Marilyn Smith at (202) 606–5000, ext. 209. This notice may be requested in an alternative format for the visually impaired. The Corporation's T.D.D. number is (202) 565–2799.

SUPPLEMENTARY INFORMATION:

Background

The Corporation is a Federal government corporation that encourages Americans of all ages and backgrounds to engage in service to the community. This service is to address the nation's educational, public safety, environmental and other human needs to achieve direct and demonstrable results. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service. This year, over one million students will participate in Corporation-supported Learn and Serve America service-learning programs, in which service projects are integrated into the curriculum of schools, institutions of higher education, and community youth programs.

The Corporation has authority, under the National and Community Service Act of 1990, as amended, 42 U.S.C. 12653(n), 12653b and under Executive Order 12819 (October 28, 1992), to make Presidential awards to young individuals who provide significant service to their communities. Under this authority, the Corporation implemented the President's Youth Service Awards program from 1992 through 1994. The President's Youth Service Awards, co-sponsored by the Points of Light Foundation and carried out by the American Institute for Public Service, provided non-monetary recognition awards to young people engaged in voluntary service to the community. Through this notice, the Corporation seeks an organization or collaboration of organizations to implement a successor program to the President's Youth Service Awards.

Purpose and Design of the President's Student Service Awards

The purpose of the President's Student Service Awards is to recognize outstanding service and service-learning performed by students and other school-aged youth across the country, from elementary school through higher education, and to assist in making service a common expectation of all young Americans.

Earlier this year, the conveners of the Presidents' Summit in Philadelphia, including President Clinton, former Presidents Bush, Carter, and Ford, and General Colin Powell, declared: "We have a special obligation to America's children to see that all young Americans have:

1. Caring adults in their lives, as parents, mentors, tutors, coaches;
2. Safe places with structured activities in which to learn and grow;
3. A healthy start and healthy future;
4. An effective education that equips them with marketable skills; and
5. An opportunity to give back to their communities through their own service."

The fifth goal has been specified to include, among other aims for the year 2000, two million additional young people engaging in at least 100 hours of service each year. In many instances, such service may be focused on providing the other four conditions for success to children and youth lacking them.

Appropriate recognition can be a critical factor in encouraging students and school-aged youth to render that measure of service. There are a number of existing programs that recognize outstanding service by young people, including: National Service Scholarships administered by the Corporation for National Service; the Yoshiyama Award for Exemplary Service to the Community administered by the Hitachi Foundation; the J.C. Penney Golden Rule Award; the Jefferson Awards administered by the American Institute for Public Service; the Prudential Spirit of Community Awards; and the Do Something Brick Awards.

The Corporation anticipates that the President's Student Service Awards will be based on principles and procedures for implementation in communities as agreed upon in a Memorandum of Agreement between the Corporation and the selected organization or organizations. Potential awarding organizations in each community may include: schools, state and local education agencies, colleges and universities, youth-serving organizations, faith-based organizations, state commissions on national and community service; public and nonprofit organizations, profit-making businesses, labor unions, civic or service clubs, or neighborhood associations. Awarding organizations will certify that an individual has served at least 100 hours, over a year's period, in efforts designed to have a significant impact on meeting the needs of local communities. Individuals under the age of 12 who perform outstanding service may be eligible for recognition even if they do not meet the minimum requirement of 100 hours.

The types of service recognized could include: activities connected with service-learning courses or programs or service requirements in a school district, school, class, or institution of higher education; volunteer work with community or youth organizations; service through churches, synagogues, or other faith-based organizations; involvement in service-oriented school organizations; individual efforts to help others and improve a local community; and programs in which older young people tutor, mentor, coach, or otherwise serve younger people. The broad-based nature of this program, similar to the President's Physical Fitness Award program, is intended to include the largest possible number of students who make a substantial commitment to service.

Each award winner will receive a token of recognition (for example, a pin and a certificate) from the President. The award will involve no monetary benefit to the awardee. Any nominal fee set to cover the costs of production and distribution of awards will be paid by the local awarding organization or other sources, not by the award winner. Any fees will be subject to the approval of the Corporation.

The award program may also include additional recognition for some awardees, such as attendance at recognition events sponsored by the Corporation, the selected organization or organizations, other organizations including the Points of Light Foundation and, potentially, the White House. Other levels of recognition for service that goes substantially beyond the 100-hour criterion may be developed. Local communities will also be encouraged to establish their own recognition events or processes. The Corporation will provide the names of award winners to Governors, Mayors, the media, and other individuals interested in recognizing these individuals.

Requirements of the Memorandum of Agreement

The Corporation anticipates entering into a Memorandum of Agreement with the selected organization or organizations by April 1, 1998, with an expected project period between April 1, 1998 and September 30, 1999. It is likely that the Memorandum of Agreement will include an option to renew on an annual basis for up to five years, after which the Corporation may conduct a new competition for an organization to administer the program.

The organization or organizations selected under this notice will: (1) complete a final program design and implementation plan for approval by the Corporation; (2) publicize the program to local communities, schools, colleges, universities, and other educational institutions, and to civic, non-profit, youth-serving, and other interested organizations throughout the country; (3) distribute the awards to recipients; (4) respond to inquiries from all parties related to these awards; (5) manage the program in a manner to assure it is self-financing and sustainable; (6) collaborate with other service-promoting organizations to encourage youth service throughout the country; and (6) comply with reporting and other requirements of the Memorandum of Agreement.

Finances

The primary intent of the President's Student Service Awards is to promote and improve citizen service by our Nation's youth. It is not intended to be a profit-making activity. The selected organization or collaboration of organizations assumes full financial responsibility for the program. This includes award inventory, staffing, and facilities.

The Memorandum of Agreement will specify the fees or charges that may be set in this program, including a Corporation-approved "charge for services" representing a fixed percentage of the net difference between the program's total revenue and total expenses. The amount of the "charge for services" approved by the Corporation will be determined based upon compliance with the terms of the Memorandum of Agreement and other relevant considerations. Unless otherwise approved by the Corporation, any annual revenues in excess of costs are to be used to support the next year's President's Student Service Award program.

The selected organization will account for all costs and revenues associated with the operation of the program according to the standards stated in the Memorandum of Agreement. The selected organization's performance under the Memorandum of Agreement will also be subject to oversight review and evaluation, including financial audit, by the Corporation's Chief Executive Officer, Inspector General, or their designees. The Corporation and its Inspector General will have access to any documents and records of the selected organization that are deemed necessary to carry out these oversight, evaluation, or audit activities.

Selection Criteria

All eligible interested parties must submit a proposal of no more than 30 pages, double-spaced. Selection will be based on the following criteria, in descending order of importance:

1. Experience of the organization or organizations, and demonstrated capacity, to administer a national awards program of this size and magnitude, including the ability to disseminate information widely and quickly. This includes the key individuals who will carry out the projects, and the facilities and resources, including computer-based telecommunication devices, available to the organization or organizations. This also includes the organization or organizations' capability to develop and administer an annual budget and to collect and manage funds.
2. Proposed plan for administering the President's Student Service Award program, including financial aspects such as defraying the costs of start-up, award materials, promotion, distribution, and program management.
3. Background concerning the organization or organizations' nonprofit or public status, history, mission, size in terms of budget and personnel, and familiarity with national and community service.

Dated: January 16, 1998.

Thomas L. Bryant,

Acting General Counsel, Corporation for National Service.

[FR Doc. 98–1519 Filed 1–22–98; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Long-Range Air Power Panel Meeting

AGENCY: Under Secretary of Defense, Acquisition and Technology.

ACTION: Notice.

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SUMMARY: This notice sets forth the schedule and summary agenda for the meeting of the Long-Range Air Power Panel on February 2 and 3, 1998. In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this Long-Range Air Power Panel meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public from 0800–1800, February 2 and 3, 1998 in order for the Panel to discuss classified material.

DATES: February 2 and 3, 1998.

ADDRESSES: The Tank, 1801 N. Beauregard Street, Alexandria, VA

SUPPLEMENTARY INFORMATION: The Long-Range Air Power Panel (LRAP) was established October 8, 1997 in accordance with section 8131 of the Defense Appropriations Act, 1998. The mission of the Long-Range Air Power Panel is to provide the President and Congress a report containing its conclusions and recommendations concerning the appropriate B–2 bomber force and specifically its recommendation on whether additional funds for the B–2 should be used for continued low-rate production of the B–2 or for upgrades to improve deployability, survivability, and maintainability.

PROPOSED SCHEDULE AND AGENDA: The Panel will meet in closed session from 0800–1800 on February 2 and 3, 1998 in the Tank at the Institute for Defense Analyses Bldg. 1801 Beauregard Street, Alexandria VA. During the closed session on both days, DoD staff and contractor personnel will present the panel with briefings and status updates of current U.S. long-range air power capabilities, employment strategies and force structure plans for the future.

The determination to close the meeting is based on the consideration that it is expected that discussion will involve classified matters of national security concern throughout.

FOR FURTHER INFORMATION CONTACT:

Please contact Colonel Vic Saltsman at (703) 695–3165.

Dated: January 16, 1998.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer Department of Defense.

[FR Doc. 98–1582 Filed 1–22–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Submarine of the Future

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Submarine of the Future will meet in closed session on February 3, 1998 at TRW, Fairfax, Virginia. In order for the Task Force to obtain time sensitive classified briefing, critical to the understanding of the issues, this meeting is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will assess the nation's need for attack submarines in the 21st century.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: January 16, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–1580 Filed 1–22–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Satellite Reconnaissance

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Open Systems will meet in closed session on February 23–24, 1998 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine the benefits of, criteria for, and obstacles to the application of an open systems approach to weapon systems, and make recommendations on revisions to DoD policy, practice, or investment strategies that are required to obtain maximum benefit from adopting open systems. The Task Force will examine application to new defense programs, to those that have already made substantial investments in a design, and to those that are already fielded, across the spectrum of weapon systems, not just those heavily dependent on advanced computers and electronics.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: January 16, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–1581 Filed 1–22–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records Notice

AGENCY: Department of the Navy, DoD.

ACTION: Notice to Amend a Record System.

SUMMARY: The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on February 23, 1998, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems report. The record system being amended is set forth below, as amended, published in its entirety.

Dated: January 16, 1998.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N05520–5

SYSTEM NAME:

Personnel Security Program Management Records System *(April 16, 1997, 62 FR 18590).*

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

In line four, after the word 'require' add 'or may in the future require' and in line 10, delete the words 'whose duties require a USCG security clearance'.

* * * * *

N05520–5

SYSTEM NAME:

Personnel Security Program Management Records System.

SYSTEM LOCATION:

Department of the Navy Central Adjudication Facility, Washington Navy Yard, Building 176, Room 308, Washington, DC 20388–5389.

System computer facility: Defense Investigative Service (DIS), Personnel Investigations Center, 911 Eldridge Landing Road, Linthicum, MD 21090–2902.

Record documentation: Naval Criminal Investigative Service (NCIS), Washington Navy Yard, Building 111, Records Management Division, 901 M Street, SE, Washington, DC 20388–5380.

Decentralized segments: The security office of command to which the individual is assigned; Headquarters, Naval Security Group Command, 9800 Savage Road, Fort George G. Meade, MD 20755–6585; Office of Naval Intelligence, National Maritime Intelligence Center, ATTN: ONI-OCB3, 4251 Suitland Road, Washington, DC 20395–5720; and, Headquarters, Naval Criminal Investigative Service, Washington Navy Yard, Building 111, 901 M Street, SE, Washington, DC 20388–5380.

Additionally, duplicate portions of records may be held by the Chief of Naval Personnel (Pers-81), Washington, DC 20370–5000, Office of Civilian Personnel Management, 800 N. Quincy Street, Arlington, VA 22203–1998; Naval Reserve Personnel Center, New Orleans, LA 70149–7800; Headquarters, U.S. Marine Corps (Code MIF), 2 Navy Annex, Washington, DC 20380–0001; and, the security office at the local activity to which the individual is assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Department of the Navy military personnel and civilian employees and certain 'affiliated employees' whose duties require or may in the future require a DON security clearance or assignment to sensitive positions and aliens being processed for access to National Security information. Also included are DON adjudicative actions for all U.S. Coast Guard (USCG) military personnel and those USCG civilian employees having access to sensitive compartmented information only. Individuals adjudicated as a result of interservice and interagency support agreements. 'Affiliated employees' include contractors, consultants, nonappropriated fund employees, USO personnel and Red-Cross volunteers and staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

Navy Joint Adjudicative and Clearance System (NJACS), the automated portion of this system, contains records that include an individual's name, Social Security Number, date and place of birth, citizenship status and the unit identification code (UIC) of the individual's assignment. Other data elements track the individual's status in the clearance adjudication process and records the final determination. Data files may also include duty-assignment designations and sensitivity levels, as well as specific access such as cryptographic information access or participation in the Personnel Reliability Program.

The documentation system includes information pertaining to the investigation, inquiry, or its adjudication by clearance authority to include: (1) Chronology of the investigation, inquiry, and/or adjudication; (2) all recommendations regarding future status of subject; (3) decisions of security/loyalty review boards and Defense Office of Hearings and Appeals (DOHA); (4) final actions/determinations made regarding subject; and (5) security clearance, access authorizations, or security determination; index tracings that contain aliases and names of subject as reflected in Defense Clearance and Investigations Index (DCII) under system notice V5-02; security termination; notification of denial, suspension, or revocation of clearance or access; classified nondisclosure agreements created from 1987 to early 1992 and managed by DON CAF; and other documentation related to the adjudication decision.

At local command security offices information includes tickler copies of requests for clearance and access; records of access, reports of disqualifying/derogatory information; records of clearance of individual personnel as well as accreditation of personnel for access to classified information requiring special access authorizations; nondisclosure agreements, associated briefings and debriefing statements; and other related records supporting the Personnel Security Program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 7311; 10 U.S.C. 5013; and E.O. 9397 (SSN); E.O. 10450, Security Requirements for Government Employees, in particular sections 2, 3, 4, 5, 6, 7, 8, 9, and 14; 12958, Classified National Security Information; 12968, Access to Classified Information; DoD Regulation 5200.2-R, Personnel Security Program Regulation; and OPNAV Instruction 5510.1H, Department of Navy Information and Personnel Security Program Regulation.

PURPOSE(S):

To provide a comprehensive system to manage information required to adjudicate and document the eligibility of DON military, civilian, and certain affiliated employees for access to classified information and assignment to sensitive positions. These records are also used to make determinations of suitability for promotion, employment, or assignments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the White House to obtain approval of the President of the United States regarding certain military personnel officer actions as provided for in DoD Instruction 1320.4.

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To the Immigration and Naturalization Service for use in alien admission and naturalization inquiries for purposes of determining access to National Security information.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper records in file folders, audio or audiovisual tapes, micro-imaging; CD-ROM; optical digital data disk; computers; magnetic tapes, disks, and drums; and computer output products.

RETRIEVABILITY:

By name, dossier number, Social Security Number, and date and place of birth.

SAFEGUARDS:

Buildings employ alarms, security guards, and/or rooms are security controlled areas accessible only to authorized persons. DON CAF primary system paper and microfilm records are maintained in General Service Administration approved security containers and/or are stored in security controlled areas accessible only to authorized persons. Locally generated paper security records and/or copies of investigative reports are stored in a vault, safe, or steel file cabinet having at least a lock bar and approved three-position, dial type combination padlock, or in similarly protected containers or area. Electronically and optically stored records are maintained in 'fail-safe' system software with password protected access. Records are accessible only to authorized persons with a need-to-know who are properly screened, cleared, and trained.

Files transferred to NCIS Records Management Division for storage are monitored and stored on open shelves and filing cabinets located in secure areas accessible to only authorized personnel.

RETENTION AND DISPOSAL:

Investigative/adjudicative records on non-DoD persons who are considered for affiliation with DoD are destroyed after 1 year if affiliation is not completed.

Investigative/DON CAF adjudicative records of a routine nature are retained in the active file until final adjudicative decision is made; then retired to NCIS Records Management Division and retained for 15 years after last action reflected in the file, except that files that contain significant derogatory information and/or resulted in adverse action(s) against the individual are destroyed after 25 years. Administrative papers not included in the case file are destroyed 1 year after closure or when no longer needed, whichever is later. Records determined to be of historical value, of wide spread value or Congressional interest are permanent. They will be retained for 25 years after the date of last action reflected in the file and then permanently transferred to the National Archives. Classified nondisclosure agreements if maintained separately from the individual's official personnel folder will be destroyed when 70 years old. If maintained in the individual's personnel folder, the disposition for the official personnel file applies. Locally stored case file paper or automated access records are destroyed when employee/service member is separated or departs the command, except for access determinations not recorded in official personnel folders. They are destroyed 2 years after the person departs the command. However, once affiliation is terminated, acquiring and adding material to the file is prohibited unless affiliation is renewed. The automated NJACS maintains records on persons as long as they continue to be employed by or affiliated with the DON. NJACS computer data records are purged two years after an individual terminates DON employment or affiliation. General and flag officer data records are maintained until the individual's death. Destruction of records will be by shredding, burning, or pulping for paper records; burning for microform records and magnetic erasing for computerized records. Optical digital data and CD-ROM records are destroyed as required by NAVSO P-5239-26, 'Remanence Security Guidebook' of September 1993.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Department of the Navy Central Adjudication Facility, Washington Navy Yard Building 111, 716 Sicard Street SE, Washington, DC 20388–5389.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Department of the Navy Central Adjudication Facility, Washington Navy Yard, Building 111, 716 Sicard Street SE, Washington, DC 20388–5389 or to the Commanding Officer/Director of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Individuals requesting personal records must properly establish their identity to the satisfaction of the Director, Navy Central Adjudication Facility or the Commanding Officer/ Director of the local command, as appropriate. This can be accomplished by providing an unsworn declaration subscribed to be true that states 'I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct'. Individual should also provide their full name, aliases, date and place of birth, Social Security Number, or other information verifiable from the records in the written request.

Individuals should mark the letter and envelope containing the request 'Privacy Act Request'.

Proposed amendments to the information must be directed to the agency which conducted the investigation.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Department of the Navy Central Adjudication Facility, Washington Navy Yard, Building 111, 716 Sicard Street SE, Washington, DC 20388–5389 or the Commanding Officer/Director of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Individuals requesting personal records must properly establish their identity to the satisfaction of the Director, Navy Central Adjudication Facility or the Commanding Officer/ Director of the local command, as appropriate. This can be accomplished by providing an unsworn declaration subscribed to be true that states 'I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct'. Individual should also provide their full name, aliases, date and place of birth, Social Security Number, or other information verifiable from the records in the written request.

Individuals should mark the letter and envelope containing the request 'Privacy Act Request'.

Proposed amendments to the information must be directed to the agency which conducted the investigation.

Attorneys or other persons acting on behalf of an individual must provide a written authorization from that individual for their representative to act on their behalf.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the cognizant security manager or other official sponsoring the security clearance/ determination for the subject and from information provided by other sources, e,g., personnel security investigations, personal financial records, military service records and the subject.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1-R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2) and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information, contact the system manager.

[FR Doc. 98–1579 Filed 1–23–98; 8:45 am]

BILLING CODE 5000–04–F

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Privacy Act; Systems of Records

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Annual Notice of Systems of Records.

SUMMARY: The Board is publishing a description of the six systems of records it maintains under the Privacy Act of 1974, 5 U.S.C. 552a, as amended. Minor changes and corrections have been made in the description of each system of records.

FOR FURTHER INFORMATION CONTACT: General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901, (202) 208–6387.

SUPPLEMENTARY INFORMATION: The Board currently maintains six systems of records under the Privacy Act. Each system is described below.

DNFSB–1

SYSTEM NAME:

Personnel Security Files.

SECURITY CLASSIFICATION:

Unclassified materials.

SYSTEM LOCATION:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment with DNFSB and DNFSB contractors; consultants; other individuals requiring access to classified materials and facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel security folders and requests for security clearances, Forms SF 86, 86A, 87, 312, and DOE Forms 5631.18, 5631.29, 5631.20, and 5631.21. In addition, records containing the following information:

(1) Security clearance request information;

(2) Records of security education and foreign travel;

(3) Records of any security infractions;

(4) Names of individuals visiting DNFSB; and

(5) Employee identification files (including photographs) maintained for access purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Defense Authorization Act, Fiscal Year 1989 (amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

DNFSB—to determine which individuals should have access to classified material and to be able to transfer clearances to other facilities for visitor control purposes.

DOE—to determine eligibility for security clearances.

Other Federal and State agencies—to determine eligibility for security clearances.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, magnetic disk, and computer printouts.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Access is limited to employees having a need to know. Records are stored in locked file cabinets in a controlled access area in accordance with Board directives and Federal guidelines.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the "General Records Schedules" published by National Archives and Records Administration, Washington, DC. Records within DNFSB are destroyed by shredding or burning, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901. Attention: Facilities and Security Management Specialist.

NOTIFICATION PROCEDURE:

Requests by an individual to determine if DNFSB–1 contains information about him/her should be directed to the Privacy Act Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901. Required identifying information: Complete name, social security number, and date of birth.

RECORD ACCESS PROCEDURE:

Same as Notification procedure above, except individual must show official photo identification, such as driver's license, passport, or government identification before viewing records.

CONTESTING RECORD PROCEDURE:

Same as Record Access procedure.

RECORD SOURCE CATEGORIES:

Subject individuals, Questionnaire for Sensitive Positions (SF–86), agency files, official visitor logs, OPM Investigators, and DOE Personnel Security Branch.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DNFSB–2

SYSTEM NAME:

Administrative and Travel Files.

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SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment with DNFSB, including DNFSB contractors and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing the following information:

(1) Time and attendance;

(2) Payroll actions, financial transactions, and deduction information requests;

(3) Authorizations for overtime and night differential;

(4) Credit cards and telephone calling cards issued to individuals and information pertaining to the use of such cards;

(5) Destination, itinerary, mode and purpose of travel;

(6) Date(s) of travel and all expenses;

(7) Passport number;

(8) Requests for advance of funds and vouchers, both TDY and local, with receipts;

(9) Travel authorizations;

(10) Employee relocation records;

(11) Name, home address, home telephone number, social security number and birth date;

(12) Employee parking permits;

(13) Employee public transit subsidy applications and vouchers; and

(14) Traveler profiles.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Defense Authorization Act, Fiscal Year 1989 (Amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Treasury Department—To collect withheld taxes, print payroll checks, and issue savings bonds:

Internal Revenue Service—To process Federal income tax.

State and Local Governments—To process state and local income tax.

Office of Personnel Management—Retirement records and benefits.

Social Security Administration—Social Security records and benefits.

Department of Labor—To process Workmen's Compensation claims.

Department of Defense—Military Retired Pay Offices—To adjust Military retirement.

Financial Institutions—To credit accounts for deposits and/or allotments made through payroll deductions.

Health Insurance Carriers—To process insurance claims.

General Accounting Office—Audit—To verify accuracy and legality of disbursement.

Veterans Administration—To evaluate veteran's benefits to which the individual may be entitled.

States' Departments of Employment Security—To determine entitlement to unemployment compensation or other state benefits.

Travel Agencies—To process travel itineraries.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OR RECORDS IN THE SYSTEM:

STORAGE:

Paper records, magnetic disk, and computer printouts.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Access is limited to employees having a need to know. Records are stored in locked file cabinets in a controlled access area in accordance with Board directives and Federal guidelines.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the "General Records Schedules" published by National Archives and Records Administration, Washington, DC. Records within DNFSB are destroyed by shredding or burning, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901, Attention: Director of Finance and Administration.

NOTIFICATION PROCEDURE:

Requests by an individual to determine if DNFSB–2 contains information about him/her should be directed to the Privacy Act Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901. Required identifying information: Complete name, social security number, and date of birth.

RECORDS ACCESS PROCEDURE:

Same as Notification procedures above, except individual must show official photo identification, such as driver's license, passport, or government identification before viewing records.

CONTESTING RECORD PROCEDURE:

Same as Record Access procedure.

RECORD SOURCE CATEGORIES:

Subject individuals, timekeepers, official personnel records, GSA for accounting and payroll, OPM for official personnel records, IRS and State officials for withholding and tax information, and travel agency contract.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DNFSB–3

SYSTEM NAME:

Drug Testing Program Records—DNFSB.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary System: Division of Human Resources, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901. Duplicate Systems: Duplicate systems may exist, in whole or in part, at contractor testing laboratories and collection/evaluation facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DNFSB employees and applicants for employment with the DNFSB.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information regarding results of the drug testing program; requests for and results of initial, confirmatory and follow-up testing, if appropriate; additional information supplied by DNFSB employees or employment applicants in challenge to positive test results; information supplied by individuals concerning alleged drug abuse by Board employees; and written statements or medical evaluations of attending physicians and/or information regarding prescription of nonprescription drugs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) Executive Order 12564; September 15, 1986.

(2) Section 503 of the Supplemental Appropriations Act of 1987, Pub. L. 100–71, 101 Stat. 391, 468–471, codified at 5 U.S.C. 7301 note (1987).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information in these records may be used by the DNFSB management:

(1) To identify substance abusers within the agency;

(2) To initiate counseling and rehabilitation program;

(3) To take personnel actions;

(4) To taken personnel security actions; and

(5) For statistical purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders. Additionally, records used for initiating a random drug test are maintained on the Random Employee Selection Automation System. This is a stand-alone system resident on a desktop computer and is password-protected.

RETRIEVABILITY:

Records maintained in file folders are indexed and accessed by name and social security number. Records maintained for random drug testing are accessed by using a computer data base which contains employees' names, social security numbers, and job titles. Employees are then selected from the available pool by the computer, and a list is given to the Drug Program Coordinator of employees and alternates selected for drug testing.

SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access, with records maintained and used with the highest regard for personal privacy. Records in the Division of Human Resources are stored in an approved security container under the immediate control of the Director, Division of Human Resources, or designee. Records in laboratory/collection/evaluation facilities will be stored under appropriate security measures so that access is limited and controlled.

RETENTION AND DISPOSAL:

(1) Test results, whether negative or positive, and other drug screening records filed in the Division of Human Resources will be retained and retrieved as indicated under the Retrievability category. When an individual terminates employment with the DNFSB, negative test results will be destroyed by shredding, or by other approved disposal methods. Positive test results will be maintained through the conclusion of any administrative or judicial proceedings, at which time they will be destroyed by shredding, or by other approved disposal methods.

(2) Test results, whether negative or positive, on file in contractor testing laboratories, ordinarily will be maintained for a minimum of two years in the laboratories. Upon instructions provided by the Division of Human Resources, the results will be transferred to the Division of Human Resources when the contract is terminated or whenever an individual, previously subjected to urinalysis by the laboratory, terminates employment with the DNFSB. Records received from the laboratories by the Division of Human Resources will be incorporated into other records in the system, or if the individual has terminated, those records reflecting negative test results will be destroyed by shredding, or by other approved disposal methods. Positive test results will be maintained through the conclusion of any administrative or judicial proceedings, at which time they will be destroyed by shredding, or by other approval disposal methods.

(3) Negative specimens will be destroyed according to laboratory/contractor procedures.

(4) Positive specimens will be maintained through the conclusion of administrative or judicial proceedings, at which time they will be destroyed according to laboratory/contractor procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901, Attention: Director of Human Resources.

NOTIFICATION PROCEDURE:

Requests by an individual to determine if DNFSB–3 contains information about him/her should be directed to Director of Human Resources, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901. Required identifying information: Complete name, social security number, and date of birth.

RECORD ACCESS PROCEDURE:

Same as Notification procedures above, except individual must show official photo identification, such as driver's license, passport, or government identification before viewing records.

CONTESTING RECORD PROCEDURE:

Same as Notification procedure above.

RECORD SOURCE CATEGORIES:

DNFSB employees and employment applicants who have been identified for drug testing, who have been tested, or who have admitted abusing drugs prior to being tested; physicians making statements regarding medical evaluations and/or authorized prescriptions for drugs; individuals providing information concerning alleged drug abuse by Board employees; DNFSB contractors for processing, including but not limited to, specimen collection, laboratories for analysis, and medical evaluations; and DNFSB staff administering the drug testing program to ensure the achievement of a drug-free workplace.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(5), the Board has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(C), (H), (I), and (f). The exemption is invoked for information in the system of records which would disclose the identity of a person who has supplied information on drug abuse by a Board employee.

DNFSB–4

SYSTEM NAME:

Personnel Files.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Defense Nuclear Facilities Safety Board, 635 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment with the DNFSB, including DNFSB consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing the following information:

(1) Name, social security number, sex, date of birth, home address, home telephone number, grade level, and occupational code;

(2) Official Personnel Folders (SF–66), Service Record Cards (SF–7), SF–171s, and resumes;

(3) Records on suggestions, awards, and bonuses;

(4) Training requests, authorization data, and training course evaluations;

(5) Employee appraisals, appeals, grievances, and complaints;

(6) Employee disciplinary actions;

(7) Employee retirement records;

(8) Records on employment transfer; and

(9) Applications for employment with the DNFSB.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Defense Authorization Act, Fiscal Year 1989 (amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

GSA—Maintains official personnel records for DNFSB.

Office of Personnel Management—Transfer and retirement records and benefits, and collection of anonymous statistical reports.

Social Security Administration—Social Security records and benefits.

Federal, State, or Local government agencies—For the purpose of investigating individuals in connection with security clearances, and administrative or judicial proceedings.

Private Organizations—For the purpose of verifying employees' employment status with the DNFSB.

POLICIES AND PRACTICES FOR STRORG, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, magnetic disk, and computer printouts.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Access is limited to employees having a need to know. Records are stored in locked file cabinets in a controlled access area in accordance with Board directives and Federal guidelines.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the "General Records Schedules" published by National Archives and Records Administration, Washington, DC. Records within DNFSB are destroyed by shredding or burning, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901, Attention: Director of Human Resources.

NOTIFICATION PROCEDURE:

Requests by an individual to determine if DNFSB–4 contains information about him/her should be directed to Director of Human Resources, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901. Required identifying information: Complete name, social security number, and date of birth.

RECORD ACCESS PROCEDURE:

Same as Notification procedures above, except individual must show official photo identification, such as driver's license, passport, or government identification before viewing records.

CONTESTING RECORD PROCEDURE:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Subject individuals, official personnel records, GSA, OPM for official personnel records, State employment agencies, educational institutions, and supervisors.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT

None.

DNFSB–5

SYSTEM NAME:

Personnel Radiation Exposure Files.

SECURITY CLASSIFICATION:

Unclassified materials.

SYSTEM LOCATION:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DNFSB employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel folders containing radiation exposure and whole body count.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Defense Authorization Act, Fiscal Year 1989 (amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

DNFSB—to monitor radiation exposure of its employees.

DOE—to monitor radiation exposure of visitors to the various DOE facilities in the United States.

Other Federal and State Health Institutions—To monitor radiation exposure of DNFSB personnel.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, magnetic disk, and computer printouts.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Access is limited to employees having a need to know. Records are stored in locked file cabinets in a controlled access area, in accordance with Board directives and Federal guidelines.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the "General Records Schedules" published by National Archives and Records Administration, Washington, DC. Records within DNFSB are destroyed by shredding or burning, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901. Attention: Facilities and Security Management Specialist.

NOTIFICATION PROCEDURE:

Requests by an individual to determine if DNFSB–5 contains information about him/her should be directed to the Privacy Act Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901. Required identifying information: Complete name, social security number, and date of birth.

RECORD ACCESS PROCEDURES:

Same as Notification procedure above, except individual must show official photo identification, such as driver's license, passport, or government identification before viewing records.

CONTESTING RECORD PROCEDURES:

Same as Record Access procedure.

RECORD SOURCE CATEGORIES:

Subject individuals, previous employee records, and DOE.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

DNFSB–6

SYSTEM NAME:

DNFSB Staff Resume book.

SECURITY CLASSIFICATION:

Unclassified materials.

SYSTEM LOCATION:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the Board's technical and legal staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

A summary of each employee's educational background and work experience, with emphasis on areas relevant to the individual's work at the Board.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Defense Authorization Act, Fiscal Year 1989 (amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Resume Book may be distributed to representatives of the press, Congressional staffs, representatives of State and local governments, and to any member of the public or any organization having a legitimate interest in understanding the technical and legal qualifications of the Board's staff.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and computer files.

RETRIEVABILITY:

By employee name.

SAFEGUARDS:

Copies of the Resume Book will be sequentially numbered and all copies will be stored under the control of a Board employee. A record will be kept of each disclosure of the book by name of the receiving party and purpose for which the information is provided. The Resume Book will not be available via Internet nor will it be placed in the Board's Public Reading Room.

RETENTION AND DISPOSAL:

The Resume Book will be periodically updated, and out-of-date copies will be destroyed by shredding or burning, as appropriate, when updated copies are printed.

SYSTEM MANAGERS AND ADDRESS:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901. Attention: Privacy Act Officer.

NOTIFICATION PROCEDURE:

Board employees included in the Resume Book may examine it at any time. They may also examine the list of disclosures maintained by the System Manager.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure.

CONTESTING RECORD PROCEDURE:

Any Board employee included in the Resume Book may request that corrections be made in his/her resume at any time.

RECORD SOURCE CATEGORIES:

Subject individuals.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: January 16, 1998.

John T. Conway,

Chairman.

[FR Doc. 98–1604 Filed 1–22–98; 8:45 am]

BILLING CODE 3670–01

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 24, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 16, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Income Contingent Repayment Plan Consent to Disclosure of Tax Information.

Frequency: Once every five years.

Affected Public: Individuals or households.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 300,000.

Burden Hours: 75,000.

Abstract: This form is the means by which a defaulted student loan borrower (and, if married, the borrower's spouse), choosing to repay under the Income Contingent Repayment Plan, provides written consent to the disclosure of certain tax return information by the Internal Revenue Service to the Department of Education and its agents for the purpose of calculating the borrower's monthly repayment amount.

[FR Doc. 98–1596 Filed 1–22–98; 8:45 am]

BILLING CODE 4000–01–P

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–421–000]

Cinergy Services, Inc.; Notice of Issuance of Order

January 16, 1998.

Cinergy Services, Inc. (Cinergy Services) is the service company for Cinergy Corporation (Cinergy). Cinergy Services, on behalf of Cinergy's special purpose trading venture, CinCap IV, LLC (CinCap), filed an application for authorization to engage in the wholesale sale of electric power at market-based rates, and for certain waivers and authorizations. In particular, CinCap requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by CinCap. On January 15, 1998, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's January 15, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (F):

(C) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by CinCap should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, CinCap is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of CinCap, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of CinCap's issuances of securities or assumptions of liabilities * * * .

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 17, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1592 Filed 1–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–178–000]

K N Interstate Gas Transmission Company; Notice of Application

January 16, 1998.

Take notice that on January 9, 1998, K N Interstate Gas Transmission Company (K N Interstate), P.O. Box 281304, Lakewood, Colorado 80228–8304, filed an application pursuant to Section 7(c) of the Natural Gas Act and part 157 of the Commission's Regulations for a certificate of public convenience and necessity to operate certain natural gas pipeline facilities under Section 7(c) of the Natural Gas Act that were constructed under Section 311 of the Natural Gas Policy Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, K N Interstate seeks authority to operate 34.4 miles of pipeline in Johnson and Miami Counties, Kansas and Jackson and Cass Counties, Missouri under section 7(c) of the Natural Gas Act. These facilities had been constructed and operated solely for the purpose of providing transportation services under Section 311 of the Natural Gas Policy Act. K N Interstate states that the authority it requests will allow it to provide open access transportation pursuant to its Part 284, Subpart G blanket certificate which will maximize the use of the subject facilities.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before February 6, 1998, file with the Federal Energy Regulatory Commission, 888 1st Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for K N Interstate to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1590 Filed 1–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–373–000]

Koch Gateway Pipeline Company; Notice of Informal Settlement Conference

January 16, 1998.

Take notice that an informal settlement conference will be convened in this proceeding on January 21, 1998, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., for the purpose of exploring the possible settlement of the above-referencnd docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Edith A. Gilmore at (202) 208–2158 or Sandra J. Delude at (202) 208–0583.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1594 Filed 1–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–830–000]

Millennium Power Partners, L.P.; Notice of Issuance of Order

January 16, 1998.

Millennium Power Partners, L.P. (Millennium) filed an application for authorization to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, Millennium requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Millennium. On January 15, 1998, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's January 15, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (F):

(C) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Millennium should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, Millennium is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Millennium, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Millennium's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 17, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1593 Filed 1–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–179–000]

Mississippi River Transmission Corporation; Notice of Request Under Blanket Authorization

January 16, 1998.

Take notice that on January 12, 1998, Mississippi River Transmission Corporation (MRT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP98–179–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate facilities in Jefferson County, Arkansas under MRT's blanket certificate issued in Docket No. CP82–489–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

MRT proposes to construct and operate a 2-inch delivery tap and rural extension meter station to serve Arkla's rural distribution system. MRT states that the total estimated volumes to be delivered to these facilities are 14,600 MMBtu annually and 40MMBtu on a peak day. The total estimated cost of the facilities is $5,503, and Arkla will reimburse MRT all of the actual construction costs.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1591 Filed 1–22–98; 8:45 am]

BILLING CODE 6717–01–M

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–237–000]

Panhandle Eastern Pipe Line Company and Southwest Gas Storage Company; Notice of Technical Conference

January 16, 1998.

A technical conference will be held to discuss issues raised in the above-captioned proceeding on Thursday, February 19, 1998, at 10:00 a.m. in Room 3M3, at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

All interested persons and Staff are permitted to attend. However, attendance does not confer party status.

For additional information, contact Timothy W. Gordon at (202) 208–2265.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1587 Filed 1–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER97–4829–000; and ER97–4830–000]

PP&L, Inc.; Notice of Filing

Janaury 16, 1998.

Take notice that on December 22, 1997, PP&L, Inc., tendered for filing its response to requests by the Commission for additional information in the above proceedings. PP&L, Inc., also states that it proposes to make certain changes to the tariff sheets for which PP&L sought approval in Docket No. ER97–4830–000, and that it requests that the Commission approve and accept for filing those changed tariff sheets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 27, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1584 Filed 1–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–175–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

January 16, 1998.

Take notice that on January 8, 1998, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP98–175–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon certain farm tap measurement facilities in Mississippi, Louisiana and Alabama, under Southern's blanket certificate issued in Docket No. CP82–406–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern states that it constructed farm tap facilities to sell and deliver natural gas at the King's Gin Farm Tap on its Vicksburg Lines in Warren County, Mississippi under a May 27, 1952 agreement with King's Gin Company, Incorporated. Southern constructed farm tap facilities at the Miller Farm Tap on its Vicksburg Lines in Warren County, Mississippi under a June 14, 1963 agreement with the City of Vicksburg. Southern constructed farm tap facilities at the Priddy Farm Tap to serve Joe Priddy and Sons on its North Main Lines in Sharkey County, Mississippi under a May 14, 1962 agreement and assigned to Travelers Insurance Companies on August 29, 1985. Southern constructed farm tap facilities at the Black Belt-Dairymen Farm Tap on its South Main Line in Hale County, Alabama under a December 1, 1952 agreement with Black Belt Dairies, Incorporated. Southern constructed farm tap facilities at the Leon Farm Tap to serve Ruth Robinson Leon at its Toca Compressor Station in St. Bernard Parish, Louisiana under a sales agreement dated June 20, 1952. Southern constructed farm tap facilities at the Gaddis Farm Tap on its South Meridian Line in Lauderdale County, Mississippi under a February 23, 1968 agreement with Mississippi Valley Gas Company. Southern constructed farm tap facilities at the Witman Farm Tap to serve M.J. Witman on its South Main Lines in Bibb County, Alabama under a February 6, 1951 agreement and assigned to Asa M. Marshall on November 22, 1982. Southern constructed farm tap facilities at the J.D. Behrens Farm Tap on its Montgomery-Columbus Line in Elmore County, Alabama under a March 24, 1951 agreement with John Skinner and assigned to John D. Behrens, Jr. on November 6, 1977.

Southern has not provided natural gas service at any of these locations for over five years. Accordingly, Southern requests authorization to abandon the King's Gin, Miller, Priddy, Black Belt-Dairymen, Leon, Gaddis, Witman, and J.D. Behrens Farm Taps. Abandonment of these farm tap facilities will decrease maintenance costs for Southern.

Southern states that the abandonment of facilities will not result in any termination of currently provided service. Southern states that its existing tariff does not prohibit this activity and that there is sufficient capacity to accommodate the proposed changes without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1589 Filed 1–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DR98–25–000, et al.]

Pennsylvania Electric Company, et al.; Electric Rate and Corporate Regulation Filings

January 15, 1998.

Take notice that the following filings have been made with the Commission:

1. Pennsylvania Electric Company

[Docket No. DR98–25–000]

Take notice that on December 29, 1997, Pennsylvania Electric Company filed a request for approval of changes in depreciation rates for accounting purposes pursuant to Section 302 of the Federal Power Act. These changes will be implemented by the Company on January 1, 1998.

Comment date: February 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Metropolitan Edison Company

[Docket No. DR98–28–000]

Take notice that on December 29, 1997, Metropolitan Edison Company filed a request for approval of changes in depreciation rates for accounting purposes pursuant to Section 302 of the Federal Power Act. These changes will be implemented by the Company on January 1, 1998.

Comment date: February 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Central Power and Light Company

[Docket No. DR98–32–000]

Take notice that on December 30, 1997, Central Power and Light Company filed an application for approval of depreciation rates pursuant to Section 302 of the Federal Power Act. The proposed depreciation rates are for accounting purposes only. Central Power and Light Company states that the proposed depreciation rates were approved for retail purposes by the Public Utility Commission of Texas as of May 1996. Central Power and Light Company requests that the Commission allow the proposed depreciation rates to become effective retroactively to May 1996.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Company of Oklahoma

[Docket No. DR98–33–000]

Take notice that on December 30, 1997, the Public Service Company of Oklahoma filed an application for approval of depreciation rates pursuant to Section 302 of the Federal Power Act. The proposed depreciation rates are for accounting purposes only. The Public Service Company of Oklahoma states that the proposed new depreciation rates were approved for retail purposes by the Oklahoma Corporation Commission on October 15, 1997. The Public Service Company of Oklahoma requests that the Commission allow the proposed depreciation rates to become effective June 1997.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Western Resources, Inc.

[Docket No. DR98–34–000]

Take notice that on December 30, 1997, Western Resources, Inc., an affiliate of Kansas Gas & Electric Company filed an application for approval of depreciation rates pursuant to Section 302 of the Federal Power Act. The proposed depreciation rates are for accounting purposes only. Western Resources, Inc., requests that the Commission allow the proposed depreciation rates to become effective February 1997.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Canal Electric Company

[Docket No. DR98–35–000]

Take notice that on December 30, 1997, the Canal Electric Company filed an application for approval of depreciation rates pursuant to Section 302 of the Federal Power Act. The proposed depreciation rates are for accounting purposes only. The Canal Electric Company requests that the Commission allow the proposed depreciation rates to become effective January 1, 1995.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Connecticut Light and Power Company

[Docket No. DR98–36–000]

Take notice that on December 30, 1997, Connecticut Light and Power Company, filed an application for approval of depreciation rates pursuant to Section 302 of the Federal Power Act. The proposed depreciation rates are for accounting purposes only. Connecticut Light and Power Company states that the proposed depreciation rates were approved for retail purposes by the Connecticut Department of Public Utility Control on July 1, 1996. Connecticut Light and Power Company requests that the Commission allow the proposed depreciation rates to become effective July 1, 1996.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Oklahoma Gas and Electric Company

[Docket No. DR98–37–000]

Take notice that on December 30, 1997, Oklahoma Gas and Electric Company, filed an application for approval of depreciation rates pursuant to Section 302 of the Federal Power Act. The proposed depreciation rates are for accounting purposes only. Oklahoma Gas and Electric Company requests that the Commission allow the proposed depreciation rates to become effective on January 1, 1997.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Central Illinois Public Service Company

[Docket No. EL98–1–001]

Take notice that on November 3, 1997, Central Illinois Public Service Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Boston Edison Company

[Docket No. ER98–522–001]

Take notice that on December 30, 1997, Boston Edison Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Arizona Public Service Company

[Docket No. ER98–1128–000]

Take notice that on December 18, 1997, Arizona Public Service Company (APS), tendered for filing an Amendment No. 1 (Amendment) to Service Schedule A (Schedule) of the Power Service Agreement between APS and Citizens Utilities Company (Citizens).

Copies of this filing have been served upon Citizens and the Arizona Corporation Commission.

Comment date: January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Orange and Rockland Utilities, Inc.

[Docket No. ER98–1129–000]

Take notice that on December 18, 1997, Orange and Rockland Utilities,

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Inc. (Orange and Rockland), filed a Service Agreement between Orange and Rockland and US Gen Power Services, L.P. (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of December 2, 1997, for the Service Agreement. Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. PacifiCorp

[Docket No. ER98–1130–000]

Take notice that on December 18, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Notice of Termination of Service Agreements for transmission service under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to Delhi Energy Services, Inc., the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Southwestern Public Service

[Docket No. ER98–1131–000 Company]

Take notice that on December 18, 1997, Southwestern Public Service Company, tendered for filing an amendment to Exhibit D of the Agreement for Wholesale Full Requirements Electric Power Service for Farmers' Electric Cooperative, Inc. (FEC), Central Valley Electric Cooperative, Inc. (CVEC), Roosevelt County Electric Cooperative, Inc. (RCEC), and Lea County Electric Cooperative, Inc., (LCEC).

Comment date: Janaury 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Duquesne Light Company

[Docket No. ER98–1132–000]

Take notice that December 18, 1997, Duquesne Light Company (DLC), filed a Service Agreement dated December 8, 1997, with DTE Energy Trading under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds DTE Energy Trading as a customer under the Tariff. DLC requests an effective date of December 8, 1997, for the Service Agreement.

Comment date: Janaury 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. The Dayton Power and Light Company

[Docket No. ER98–1133–000]

Take notice that on December 18, 1997, The Dayton Power and Light Company (Dayton), submitted service agreements establishing DTE Energy Trading, Inc., ProLiance Energy L.L.C., as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of the filing were served upon DTE Energy Trading, Inc., ProLiance Energy L.L.C., and the Public Utilities Commission of Ohio.

Comment date: January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Louisville Gas and Electric Company

[Docket No. ER98–1134–000]

Take notice that on December 18, 1997, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and CMS Marketing, Services & Trading under Rate GSS.

Comment date: Janaury 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Idaho Power Company

[Docket No. ER98–1135–000]

Take notice that on December 18, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Service Agreements under Idaho Power Company FERC Electric Tariff No. 5, Open Access Transmission Tariff, between Idaho Power Company and SCANA Energy Marketing.

Comment date: January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Public Service Electric and Gas Company

[Docket No. ER98–1136–000]

Take notice that on December 18, 1997, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Constellation Power Source, Inc. (Constellation), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of November 19, 1997.

Copies of the filing have been served upon Constellation and the New Jersey Board of Public Utilities.

Comment date: January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Public Service Electric and Gas Company

[Docket No. ER98–1137–000]

Take notice that on December 18, 1997, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Southern Energy Trading and Marketing, Inc. (SETM), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of November 19, 1997.

Copies of the filing have been served upon SETM and the New Jersey Board of Public Utilities.

Comment date: January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Deseret Generation & Transmission Co-Operative

[Docket No. ER98–1138–000]

Take notice that on December 17, 1997, Deseret Generation and Transmission Co-operative (Deseret), tendered for filing Revised Sheet Nos. 65–66, 150, 157, and 167 of its FERC Electric Tariff, Original Volume No. 2, which reflect Deseret's change of address. Deseret asks the Commission to set an effective date for the filing of December 22, 1997. Copies of the filing were served upon Deseret's FERC Electric Tariff, Original Volume No. 2 customers.

Comment date: January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Deseret Generation & Transmission Co-Operative

[Docket No. ER98–1139–000]

Take notice that on December 17, 1997, Deseret Generation & Transmission Co-operative, tendered for filing an executed umbrella non-firm point-to-point service agreement with Williams Energy Services Company under its open access transmission tariff. Deseret requests a waiver of the Commission's notice requirements for an effective date of December 17, 1997. Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000. Williams Energy Services Company has been provided a copy of this filing.

Comment date: January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. New England Power Pool

[Docket No. ER98–1140–000]

Take notice that on December 18, 1997, the New England Power Pool (NEPOOL or Pool), Executive Committee filed a request for termination of membership in NEPOOL, with an effective date of January 1, 1998, of Wheeled Electric Power Company (Wheeled Electric). Such termination is pursuant to the terms of the NEPOOL Agreement dated September 1, 1971, as amended, and previously signed by Wheeled Electric. The New England Power Pool Agreement, as amended (the NEPOOL Agreement), has been designated NEPOOL FPC No. 2.

The Executive Committee states that termination of Wheeled Electric with an effective date of January 1, 1998, would relieve Wheeled Electric, at its request, of the obligations and responsibilities of Pool membership and would not change the NEPOOL Agreement in any manner, other than to remove Wheeled Electric from membership in the Pool. Wheeled Electric owns no generation or transmission facilities in the New England Control Area.

Comment date: January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Washington Water Power

[Docket No. ER98–1141–000]

Take notice that on December 19, 1997, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, an executed Service Agreement under WWP's FERC Electric Tariff First Revised Volume No. 9, with Engage Energy US, L.P. (Superseding an Unexecuted Service Agreement previously assigned as Service Agreement No. 65 under FERC Docket No. ER97–1252–000 for Coastal Electric Services Company, now doing business as Engage Energy US, L.P.). WWP requests waiver of the prior notice requirement and requests an effective date of December 1, 1997.

Comment date: January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–1203–000]

Take notice that on December 24, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 2, a facilities agreement with Central Hudson Gas and Electric Corporation (CH). The Supplement provides for a decrease in the monthly carrying charges. Con Edison has requested that this decrease take effect as of October 1, 1997.

Con Edison states that a copy of this filing has been served by mail upon CH.

Comment date: January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Consolidated Edison Company Of New York, Inc.

[Docket No. ER98–1212–000]

Take Notice that on December 24, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule FERC 117, an agreement to provide transmission and interconnection service to Long Island Lighting Company (LILCO). The Supplement provides for an increase in the annual fixed rate carrying charges. Con Edison has requested that this increase take effect as of November 1, 1997.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. New York State Electric & Gas Corporation

[Docket No. ER98–1267–000]

Take notice that on December 31, 1997, New York State Electric & Gas Corporation (NYSEG), tendered for filing a Clarification with the transmission services provided under Niagara Mohawk Power Corporations FERC Rate Schedule No. 165 and New York State Electric & Gas Corporation's FERC Rate Schedule No. 115.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of November 27, 1997, for the Clarification. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customers.

Comment date: January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Public Service Company of New Mexico

[Docket No. ER98–1285–000]

Take notice that, on December 18, 1997, Public Service Company of New Mexico (PNM), submitted tariff sheets under its open access transmission service tariff (tariff), incorporating provisions for rights of first refusal for tariff and pre-tariff transmission service and bundled service customers. Copies of PNM's filing have been posted and are available for inspection in PNM's office in Albuquerque, New Mexico. This filing is also available in the Open Access Tariff Filings directory of the FERC Electric Power Data Bulletin Board.

Comment date: Janaury 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[ER Doc. 98–1586 Filed 1–22–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2612–005]

Central Maine Power Company; Notice of Extension of Time

January 16, 1998.

The Commission issued a Notice of Availability of a Draft Environmental Assessment (DEA) for the above-docketed project on December 17, 1997

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(62 FR 67070, December 23, 1997), with a comment period ending on January 16, 1998. On January 13, 1998, Central Maine Power Company (CMP) filed a motion requesting a 30-day extension of the review period because of unexpected emergency conditions CMP is presently experiencing due to unusually harsh weather.

Upon consideration, notice is hereby given that an extension of time for CMP and all interested parties to review the DEA is granted. Comments on the DEA shall be filed on or before February 17, 1998.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1585 Filed 1–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–100–000]

Algonquin Gas Transmission Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed ANP Bellingham Lateral Project and Request for Comments on Environmental Issues

January 16, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities, about 1.1 miles of 14-inch-diameter pipeline, a new meter station and appurtenant facilities, proposed in the ANP Bellingham Lateral Project.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of the Proposed Project

Algonquin Gas Transmission Company (Algonquin) proposes to expand the capacity of its facilities in Massachusetts to transport an additional 110,000 dekatherms per day of natural gas to the planned American National Power Bellingham Power Company (ANP) plant. Algonquin seeks authority to construct and operate:

- 1.1 miles of 14-inch-diameter pipeline in the town of Bellingham, Massachusetts;
- A new meter station at the planned ANP power plant in Bellingham; and
- A tap and valving in Bellingham.

ANP would construct a 580 megawatt power plant in the town of Bellingham. ANP would construct about 200 feet of nonjurisdictional pipeline to connect the meter station with the power plant and appurtenant facilities.

The location of the project facilities is shown in appendix 1.[2] If you are interested in obtaining procedural information, please write to the Secretary of the Commission.

Land Requirements for Construction

Construction of the proposed facilities would require about 9.43 acres of land. Following construction, about 4.12 acres would be maintained as permanent pipeline right-of-way. The remaining 5.31 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Water resources, fisheries, and wetlands;
- Vegetation and wildlife;
- Land use;
- Cultural resources;
- Air quality and noise;
- Endangered and threatened species;
- Public safety; and
- Hazardous waste.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Algonquin. This preliminary list of issues may be changed based on your comments and our analysis.

- Potential effect on the Charles River during crossing by directional drilling.
- Potential effect on two water supply wells close to the proposed lateral.
- Potential effect on two archeological sites.

Also, we have made a preliminary decision to not address the impacts of the nonjurisdictional facilities. We will briefly describe their location and status in the EA.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Send *two* copies of your letter to: Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label *one* copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2;
- Reference Docket No. CP98–100–000; and
- Mail your comments so that they will be received in Washington, DC on or before February 17, 1998.

If you are interested in obtaining procedural information please write to the Secretary of the Commission.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor." Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention.

You do not need intervenor status to have your comments considered.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1588 Filed 1–22–98; 8:45 am]

BILLING CODE 6717–01–M

[1] Algonquin Gas Transmission Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5952–2]

Agency Information Collection Activities Up for Renewal; Identification, Listing and Rulemaking Petitions Information Collection Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Identification, Listing and Rulemaking Petitions ICR Number 1189.05. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before March 24, 1998.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–98–ILIP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address below. Comments may also be submitted electronically through the Internet to: rcradocket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–98–ILIP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically.

The ICR is available on the Internet. Follow these instructions to access the information electronically:

WWW: http://www.epa.gov/epaoswer/osw/hazwaste.htm#id
FTP: ftp.epa.gov
Login: anonymous
Password: your Internet address
Files are located in /pub/epaoswer

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the "Federal Register." EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

For more detailed information on specific aspects of this rulemaking, contact Jim Kent, Office of Solid Waste 5304W, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, 703–308–0461, Kent.Jim@EPAMail.EPA.Gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are rulemaking petitioners under 40 CFR 260.20(b), 260.21 and 260.22; owners or operators of enclosed flame combustion devices requesting a variance under 40 CFR 260.30–33; generating facilities seeking a hazardous waste exclusion for certain types of wastes under 40 CFR 261.3 and 261.4; and generators and treatment, storage and disposal facilities requesting exemptions from listing as F037 and F038 wastes under 40 CFR 261.31(b)(2)(ii).

Title: Identification, Listing, and Rulemaking Petitions ICR Number 1189.05, expires June 30, 1998.

Abstract: Under 40 CFR 260.20(b), all rulemaking petitioners must submit basic information with their demonstrations, including name, address, and statement of interest in the proposed action. Under section 260.21, all petitioners for equivalent testing or analytical methods must include specific information in their petitions and demonstrate to the satisfaction of the Administrator that the proposed method is equal to or superior to the corresponding method in terms of its sensitivity, accuracy, and reproducibility. Under section 260.22, petitions to amend part 261 to exclude a waste produced at a particular facility (more simply, to delist a waste) must meet extensive informational requirements. When a petition is submitted, the Agency reviews materials, deliberates, publishes its tentative decision in the **Federal Register**, and requests public comment. EPA also may hold informal public hearings (if requested by an interested person or at the discretion of the Administrator) to hear oral comments on its tentative decision. After evaluating all comments, EPA publishes its final decision in the **Federal Register**.

40 CFR 260.30, 260.31, and 260.33 comprise the standards, criteria, and procedures for variances from

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classification as a solid waste for three types of materials, materials that are collected speculatively without sufficient amounts being recycled; materials that are reclaimed and then reused within the original primary production process in which they were generated; and materials which have been reclaimed, but must be reclaimed further before the materials are completely recovered. This variance is available to owners or operators of enclosed flame combustion devices.

40 CFR 261.33 and 261.4 contain provisions that allow generators to obtain a hazardous waste exclusion for certain types of wastes. Facilities applying for these exclusions must either submit supporting information or keep detailed records. Under section 261.3(a)(2)(iv), generators may obtain a hazardous waste exclusion for wastewater mixtures subject to Clean Water Act regulation. Under section 261.3(c)(2)(ii)(C), generators may obtain an exclusion for certain non-wastewater residues resulting from high metals recovery processing (HTMR) or K061, K062 and F006 waste. In addition, under section 261.4(b)(6), generators of chromium-containing waste may obtain a hazardous waste exclusion under certain conditions.

Also addressed under this section is the shipment of samples between generators and laboratories for the purpose of testing to determine its characteristics or composition. Sample handlers who are not subject to DOT or USPS shipping requirements must comply with the information requirements of section 261.4(d)(2).

When intended for treatability studies, hazardous waste otherwise subject to regulation under Subtitle C of RCRA is exempted from these regulations, provided that the requirements in section 261.4(e)-(f) are met, including the following information requests: initial notification, recordkeeping, reporting, and final notification. In addition, generators and collectors of treatability study samples also may request quantity limit increases and time extensions, as specified in section 261.4(e)(3).

40 CFR 261.31(b)(2)(ii) governs procedures and informational requirements for generators and treatment, storage and disposal facilities to obtain exemptions from listing as F037 and F038 wastes. Also under this section are regulations promulgated in 1990 under section 261.35(b) and (c) governing procedures and information requirements for the cleaning or replacement of all process equipment that may have come into contact with chlorophenolic formulations or constituents thereof, including, but not limited to, treatment cylinders, sumps, tanks, piping systems, drip pads, fork lifts, and trams.

EPA anticipates that some data provided by respondents will be claimed as Confidential Business Information (CBI). Respondents may make a business confidentiality claim by marking the appropriate data as CBI. Respondents may not withhold information from the Agency because they believe it is confidential. Information so designated will be disclosed by EPA only to the extent set forth in 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9, and in 48 CFR Chapter 15.

EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The average annual burden imposed is approximately 57 hours per respondent. The average number of responses for each respondent is 1. The estimated number of likely respondents is 330.

Dated: January 14, 1998

David Bussard,

Director, Hazardous Waste Identification Division.

[FR Doc. 98–1642 Filed 1–22–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5488–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 5, 1998 through January 9, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 1997 (62 FR 16154).

Draft EISs

ERP No. D–FHW–B59000–RI Rating EC2, Newport Marine Facilities Project, To Develop the Marine Mode of the Intermodal Gateway Transportation Center, Selected siting in various locations within the City of Newport, Towns of Middletown and Portsmouth, Funding, COE Section 404 Permit and US Coast Guard Permit, Aquidreck Island, RI.

Summary: EPA requested that additional information be provided with respect to water quality, contaminated sediments and eelgrass to fully disclose the environmental impacts of the proposed project.

ERP No. D–NOA–B39035–MA Rating LO, New Bedford Harbor Environment Restoration Plan, Implementation, Acushnet River, Buzzards Bay, MA.

Summary: EPA endorsed the 12 alternatives selected for near term implementation toward restoration of the New Bedford Harbor. EPA also explained that it does not support activities that would increase or alter the spacial extent of PCB contamination as a result of resuspension and that the agency will continue to work to ensure that none of the restoration work will interfere with or delay the ongoing Superfund work in the harbor.

Final EISs

ERP No. F–AFS–L65286–OR, Summit Fire Recovery Forest Restoration Project, Implementation, Malheur National Forest, Long Creek Ranger District, Grant County, OR.

Summary: Review of the final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–FAA–B51025–NH, Manchester (New Hampshire) Airport Master Plan Update, Improvements to Airside and Landside Facilities, Airport Layout Plan, Permits and Approvals, Manchester, NH.

Summary: EPA continues to have concerns regarding wetlands, air quality, and alternative modes of transportation.

ERP No. F–FHW–C40136–NY, Stutson Street BIN–3317120 Over Genesee River (PIN 4751.05.121), from the Interchange of the Lake Ontario State Parkway and Latta Road to Lake Shore Boulevard, COE Section 10 and 404 Permit, and Coast Guard Bridge Permits, in the City of Rochester, Town of Greece and Irondequoit, Monroe County, NY.

Summary: EPA had no objection to the action as proposed.

ERP No. FS–FHW–B40029–VT, Burlington Southern Connector, I–189 to Battery Street, Additional Information, Funding, Burlington, Chittenden County, VA.

Summary: EPA continues to express concerns regarding wetland, water and air quality and superfund issues. EPA requested that these issues be clarified in the Record of Decision.

Dated: January 20, 1998.

B. Katherine Biggs,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–1655 Filed 1–22–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5488–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed January 12, 1998 Through January 16, 1998 Pursuant to 40 CFR 1506.9.

EIS No. 980006, Draft Supplement, EPA, CA, International Wastewater Treatment Plant and Outfall Facilities, Construction, Operation and Maintenance, Construction Grants, CA and Mexico, Due: March 09, 1998, Contact: Elizabeth Borowiec (415) 744–1165.

EIS No. 980007, Draft EIS, FHW, AZ, Red Mountain Freeway (Loop 202) Construction and Operation, between AR 87 (County Club Drive) and US–60 (Superstition Freeway), Funding, NPDES Permit and COE Section 404 Permit, City of Mesa, Maricopa County, AZ, Due: March 09, 1998, Contact: Ken Davis (602) 379–3646.

EIS No. 980008, Draft Supplement, AFS, AK, Control Lake Timber Sales, Implementation, Updated Information, Prince of Wales Island, Tongass National Forest, AK, Due: March 16, 1998, Contact: Dave Arrasmith (907) 228–6304.

EIS No. 980009, Draft EIS, AFS, ID, Frank Church—River of No Return Wilderness (FC–RONRW), Implementation for the Future Management of Land and Water Resource, Bitterroot, Boise, Nez Perce, Payette and Salmon-Challis National Forests, ID, Due: April 24, 1998, Contact: Ken Wotring (208) 756–5131.

EIS No. 980010, Draft EIS, NOA, SC, Marine Environmental Health Research Laboratory (MEHRL), Construction and Operation of Premiere, High Technology and Marine Research Center, Approval of Permits, Charleston County, SC, Due: March 09, 1998, Contact: Donna Howard (803) 762–8604.

EIS No. 980011, Draft Supplement, BLM, CO, NM, TransColorado Gas Pipeline Transmission Project, Updated Resource Information, Construction, Operation and Maintenance, COE Section 404 and 10 Permits, Right-of-Way Grants and Special Use Permit, La Plata, Delta, Dolores, Garfield, Mesa, Montezuma, Montrose, Rio Blanco, San Miguel Counties, CO and San Juan County, NM, Due: March 25, 1998, Contact: Bill Bottomly (970) 240–5337.

Amended Notices

EIS No. 970425, Draft EIS, SFW, MO, Big Muddy National Fish and Wildlife Refuge (Big Muddy Refuge) Expansion and Land Acquisition, Missouri River Basin, Several Counties, MO, Due: February 17, 1998, Contact: Ms. Judy McClendon (800) 686–8339.

Published FR 01–07–98—Review period extended.

Dated: January 20, 1998.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–1656 Filed 1–22–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00230; FRL–5766–1]

Notice of Availability of FY 1998 Multimedia Environmental Justice Through Pollution Prevention Grant Funds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is soliciting grant proposals under the Environmental Justice Through Pollution Prevention (EJP2) grant program. EPA anticipates that as much as $4 million will be available in Fiscal Year (FY) 1998. The purpose of this program is to support pollution prevention approaches that address environmental justice concerns in affected communities. The grant funds will support: (1) Local environmental, environmental justice, and community grassroots organizations, including religious and civic organizations, as well as tribal governments that promote environmental justice using pollution prevention as the preferred approach; (2) national and regional organizations working in partnership with local organizations, or tribal governments to promote environmental justice using pollution prevention approaches; (3) state and local governments; and (4) academic institutions.

DATES: All applications must be received by EPA's contractor, Eastern Research Group (ERG), located in Arlington, VA, by April 20, 1998. No applications will be accepted after this date.

FOR FURTHER INFORMATION CONTACT: To obtain copies of the EJP2 grant program guidance and application package, or to obtain more information regarding the EJP2 grant program, please contact Louise Little at (703) 841–0483. A complete electronic copy of the EJP2 grant program guidance and application package is also available on the EPA Home Page on the Internet. The Internet address is: http:/www.epa.gov/opptintr/ejp2.

SUPPLEMENTARY INFORMATION:

I. Scope and Purpose of the EJP2 Grant Program

The purpose of the FY 1998 EJP2 grant program is to support the use of pollution prevention approaches to address the environmental problems of minority communities and/or low-income communities and Federally recognized tribes. This grant program is designed to fund projects that have a

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direct impact on affected communities. Funds awarded must be used to support pollution prevention programs in minority and/or low-income communities. The Agency strongly encourages cooperative efforts between communities, businesses, industry, and government to address common pollution prevention goals. Projects funded under this grant may involve public education, training, demonstration projects, collaborative public-private partnerships, or innovative approaches to develop, evaluate, and demonstrate non-regulatory strategies and technologies. Grants will be awarded to national organizations for projects to assess the results of previous and ongoing EJP2 grants and related information and to develop tools for bringing pollution prevention approaches to bear on the problems of environmental justice communities.

II. Definition of Environmental Justice and Pollution Prevention

Environmental justice is defined by EPA as the fair treatment of people of all races, cultures, and incomes with respect to the development, implementation, and enforcement of environmental laws, regulations, programs, and policies. Fair treatment means that no racial, ethnic, or socio-economic group should bear a disproportionate share of the negative environmental consequences resulting from the operation of industrial, municipal, and commercial enterprises, and from the execution of Federal, state, local, and tribal programs and policies.

The Pollution Prevention Act of 1990 establishes a hierarchy of environmental preferences. These practices include, in order of preference:

- Pollution prevention/source reduction
- Recycling
- Treatment
- Disposal

Pollution prevention means source reduction; it includes any practice that reduces or eliminates any pollutant at the source of generation prior to recycling, treatment, or disposal. Pollution prevention also includes practices that reduce or eliminate the creation of pollutants through:

- Increased efficiency in the use of raw materials, energy, water, or other resources
- Protection of natural resources by conservation

This grant program is focused on implementing practices at the top of the hierarchy—pollution prevention/source reduction—to bring about better environmental protection.

III. Eligibility

Any affected, nonprofit community organizations with section 501(c)(3) or section 501(c)(4)[1] Internal Revenue Service tax status or Federally recognized tribal organizations may submit an application upon the publication of this solicitation. A nonprofit organization is defined as any corporation, trust, association, cooperative, or other organizations that:

(1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest.

(2) Is not organized primarily for profit.

(3) Uses its net proceeds to maintain, improve, and/or expand its operations.

State and local governments and academic institutions are also eligible. Organizations must be incorporated by April 20, 1998, to be eligible to receive funds. Private businesses, Federal agencies, and individuals are ineligible for this grant. Organizations excluded from applying directly, as well as those inexperienced in grant writing, are encouraged to develop partnerships and prepare joint proposals with eligible national, regional, or local organizations.

No applicant can receive two grants for the same project at one time. EPA will consider only one proposal for a given project. Applicants may submit more than one application; however, applications must be for separate and distinct projects.

Organizations seeking funds from the EJP2 grant program can request up to $100,000 for local projects, and up to $250,000 for projects that involve multiple communities located in more than one of the 10 EPA Regions, or projects that are national in scope. In accordance with 40 CFR parts 23 and 30, EPA no longer requires cost sharing or matching under this grant program.

Dated: January 15, 1998.

William H. Sanders,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 98–1643 Filed 1–23–98; 8:45 am]

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[1] As a result of the Lobbying Disclosure Act of 1995, EPA (and other Federal agencies) may not award grants to nonprofit, section 501(c)(4) organizations that engage in lobbying activities. This restriction applies to any lobbying activities of a secton 501(c)(4) organization without distinguishing between lobbying funded by Federal money and lobbying funded by other sources.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5951–9]

Clean Air Act Advisory Committee: Accident Prevention Subcommittee Conference Call Meeting—February 3, 1998, 2–4 p.m.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Clean Air Act section 112(r) required EPA to publish regulations to prevent accidental releases of chemicals and to reduce the severity of those releases that do occur. On June 20, 1996, EPA published the final rule for risk management programs to address prevention of accidental releases.

The Accident Prevention Subcommittee was created in September 1996 to advise EPA's Chemical Emergency Preparedness and Prevention Office (CEPPO) on these chemical accident prevention issues.

DATES: The Accident Prevention Subcommittee of the Clean Air Act Advisory Committee will hold a public meeting on February 3, 1998 from 2 p.m. to 4 p.m. Eastern Standard Time.

ADDRESSES: The meeting will be held in the Washington Information Center #12 South, in EPA Headquarters, 401 M St., NW, Washington DC 20460. Members of the public are welcome to attend in person. The Accident Prevention Subcommittee will call into the meeting by teleconference. Due to the limited teleconference lines, there will not be additional lines for the public to call in.

FOR FURTHER INFORMATION CONTACT: Members of the public desiring additional information about this meeting, should contact Karen Shanahan, Designated Federal Official, US EPA (5101), 401 M. St., SW, Washington DC 20460, via the Internet at: shanahan.karen@epamail.epa.gov., by telephone at (202) 260–2711 or FAX at (202) 260–1686.

SUPPLEMENTARY INFORMATION:

Agenda

I. Opening Remarks—Jim Makris
II. Discussion of options for making RMP data available through RMP*Info™ (Security Study)
III. Comments from the public

Members of the public who wish to make a brief oral presentation in person in Washington DC to the Subcommittee at the February 3 meeting, must contact Karen Shanahan in writing (by letter, fax, or email—see previously stated information) no later than 12 noon, January 27, 1998, in order to be included on the agenda. Written comments may be submitted to the Accident Prevention Subcommittee up through the date of the meeting. Please address such material to Karen Shanahan at the above address.

The Accident Prevention Subcommittee expects that public statements presented at its meetings will not be repetitive or previously submitted oral or written statements. In general, for teleconference call meetings, opportunities for oral comment will be limited to no more than three minutes per speaker and no more than fifteen minutes total. Written comments (twelve copies) received sufficiently prior to a meeting date (one week prior to a meeting or teleconference), may be mailed to the Subcommittee prior to its meeting.

Additional information on the Accident Prevention Subcommittee is available on the Internet at: http://www.epa.gov/swercepp/rmp-wg.html

If you would like to automatically receive future information on the Accident Prevention Subcommittee by email, please send an email to Karen Shanahan at: shanahan.karen@epamail.epa.gov requesting to be put on the email list for these groups. Please include your name, address and phone number.

Dated: January 20, 1998.

Karen Shanahan,

Designated Federal Official.

[FR Doc. 98–1640 Filed 1–22–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–42191B; FRL–5768–2]

Endocrine Disruptors; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: EPA is announcing the seventh meeting the Endocrine Disruptors Screening and Testing Advisory Committee (EDSTAC), a committee established under the provisions of the Federal Advisory Committee Act (FACA) to advise EPA on a strategy for screening chemicals and pesticides for their potential to disrupt endocrine function in humans and wildlife.

DATES: The EDSTAC Plenary meeting will begin on Tuesday, February 3, 1998 at 9 a.m. and end at 4 p.m. The meeting on Wednesday, February 4, 1998, will begin at 8:30 a.m. and end at 4 p.m.

ADDRESSES: The meeting will be held at The Madison Hotel located at 11777 15th Street, NW., Washington, D.C. The telephone number is (202) 862–1600.

FOR FURTHER INFORMATION CONTACT: For technical information about the EDSTAC contact Dr. Anthony Maciorowski (telephone: (202) 260–3048; e-mail: maciorowski.tony@epamail.epa.gov) or Mr. Gary Timm (telephone (202) 260–1859; e-mail: timm.gary@epamail.epa.gov) at EPA. To obtain additional information please contact the contractor assisting EPA with meeting facilitation and logistics: Ms. Tutti Otteson, The Keystone Center, P.O. Box 8606, Keystone, CO 80435; telephone: (970) 468–5822; fax (970) 262–0152; e-mail totteson@keystone.org.

SUPPLEMENTARY INFORMATION: The tentative agenda for the February 3–4, 1998 plenary meeting includes status reports from the Screening and Testing and Priority Setting workgroups. This plenary will not include a public comment session.

List of Subjects

Environmental Protection.

Dated: January 20, 1998.

Susan H. Wayland,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 98–1768 Filed 1–22–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00461A; FRL–5732–8]

Self-Certification of Product Chemistry Data; Notice of Availability of PR Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is announcing the availability of PR Notice 98–1, entitled "Self-Certification of Product Chemistry Data." This PR Notice describes the Agency's policy on self-certification of certain product chemistry data of manufacturing-use products and end-use products produced by a non-integrated formulation system. Products eligible for self-certification are formulated from registered sources. This program is voluntary and is intended to streamline, simplify, and accelerate the registration of pesticides while protecting public health and the environment.

ADDRESSES: The PR Notice is available from, by mail: Sami Malak, Technical Review Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. The public record, including all public comments, as well as a summary of the Agency review of comments are filed in OPP's Docket Office under docket control number "OPP–00461," located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C). The OPP's Docket Office is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Sami Malak; at the address given above. Office location and telephone number: Room 256, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 308–9365; by FAX (703) 308–9382; by e-mail: malak.sami@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability:

Internet

Electronic copies of this document and the various support documents are available from the EPA Home Page at the **Federal Register**--Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

Fax on Demand

Using a faxphone call 202–401–0527 and select item 6106 for a copy of the PR Notice.

Under the self-certification program, applicants will submit a one-page summary of the product's physical/chemical properties, a self-certification statement, and a Good Laboratory Practice Standards statement (GLP), but will no longer be required to submit the supporting data for those studies. However, registrants must retain in their possession studies conducted in substantial conformity with Agency regulations and must submit such studies if requested by EPA. The requirements pertaining to the physical/chemical properties for chemical (conventional) pesticides are outlined in the table in 40 CFR 158.190, OPPTS Test Guidelines Series 830, Product Properties (EPA publication 712–C–96–310, 8/96), Series 880, Biochemical Test Guidelines, and Series 885, Microbial Pesticides Test Guidelines. It should be noted that OPPTS Test Guidelines, Series 830 supersedes the Pesticide

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Assessment Guidelines, Subdivision-D, Product Chemistry for chemical pesticides, and Series 880 and 885 superseded Pesticide Assessment Guidelines, Subdivision M.

The PR Notice was revised to reflect public comments received by the Agency on the draft PR Notice. 62 FR 5228, February 4, 1997 (FRL–5575–3). Generally, revisions included:

(a) Some modifications to the summary form and instructions.

(b) Conversion to the new OPPTS Test Guidelines, Series 830 guideline reference numbers.

(c) Clarification of the GLP requirements.

(d) Revisions to the self-certification statement.

List of Subjects

Environmental protection.

Dated: January 12, 1998.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

[FR Doc. 98–1528 Filed 1–22–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–400056; FRL–5762–2]

Phosphoric Acid; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of petition.

SUMMARY: EPA is denying a petition to delete phosphoric acid from the reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). This action is based on EPA's conclusion that phosphoric acid does not meet the deletion criteria of EPCRA section 313(d)(3). Specifically, EPA is denying this petition because EPA's review of the petition and available information resulted in the conclusion that phosphoric acid meets the listing criterion in EPCRA section 313(d)(2)(C) in that the phosphates that result from the neutralization of phosphoric acid may cause algal blooms. Algal blooms result in deoxygenation of the water and other effects that may ultimately lead to a number of serious adverse effects on ecosystems, including fish kills and changes in the composition of animal and plant life.

FOR FURTHER INFORMATION CONTACT: Daniel R. Bushman, Petitions Coordinator, 202-260-3882, e-mail: bushman.daniel@epamail.epa.gov, for specific information on this document, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1-800-535-0202, in Virginia and Alaska: 703-412-9877 or Toll free TDD: 1-800-553-7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This action is taken under sections 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499).

B. Background

Section 313 of EPCRA requires certain facilities that manufacture, process, or otherwise use listed toxic chemicals in amounts above reporting threshold levels, to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (42 U.S.C. 13106). Section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Phosphoric acid (PA) was included in the initial list of chemicals and chemical categories. Section 313(d) authorizes EPA to add chemicals to or delete chemicals from the list, and sets forth criteria for these actions. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has added and deleted chemicals from the original statutory list. Pursuant to EPCRA section 313(e)(1), EPA must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition has been denied.

EPCRA section 313(d)(2) states that a chemical may be listed if any of the listing criteria are met. Therefore, in order to add a chemical, EPA must demonstrate that at least one criterion is met, but does not need to examine whether all other criteria are also met. Conversely, in order to remove a chemical from the list, EPA must demonstrate that none of the criteria are met.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA issued a statement of policy and guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories. EPA has issued a statement clarifying its interpretation of the section 313(d)(2) and (3) criteria for adding and deleting chemicals from the section 313 toxic chemical list (59 FR 61432; November 30, 1994) (FRL-4922-2).

II. Description of Petition

On November 9, 1990, The Fertilizer Institute (TFI) petitioned the Agency to delist PA from the list of toxic chemicals subject to reporting under section 313 of EPCRA (Ref. 1). The TFI petition was very similar to a petition that Ecolab, Inc. submitted on December 14, 1989, requesting EPA to delete PA from the EPCRA section 313 list of toxic chemicals (Ref. 2). During the final days of the review on this first petition, Ecolab, Inc. withdrew the petition. Nevertheless, EPA issued a notice in the **Federal Register** of June 25, 1990 (55 FR 25876), describing its technical review and evaluation of the petition. As part of the notice, the Agency stated that it would have denied the petition and noted that its concern for PA is due to PA's contribution to eutrophication, which results from phosphate loading in the environment. In that notice, the Agency also requested public comment on the creation of an EPCRA section 313 phosphates category that would include PA. Although EPA is not proposing to add a phosphates category at this time, it intends to propose such a category in a separate rulemaking at a later date. Because it believes that the comments received in response to the earlier notice and EPA's responses to those comments provide information relevant to the listing of PA under EPCRA section 313, it addresses those comments in Unit V. of this document.

The petition submitted by TFI was reviewed to identify the issues that differed from the Ecolab petition. The assertions that TFI addressed in its subsequent petition were: (1) PA does not meet the statutory criteria of section 313 of EPCRA; (2) the vast majority of PA releases are by sources not covered by the requirements of EPCRA section 313 at that time and therefore, the environmental effects attributed to phosphate loading caused by PA are not

effects for which the manufacturers subject to section 313 reporting should be held accountable; and (3) EPA in its exposure assessment used "flawed assumptions" and "inaccurate data" in the course of the review.

These issues are addressed in Units IV., V., and VI. of this document. EPA's technical assessment remains basically unchanged since the original review of the Ecolab petition; the previous review is summarized in the following unit.

III. EPA's Technical Review of Phosphoric Acid

A. Toxicity Evaluation

1. *Human health.* In the physiological pH range of 6 to 9, PA dissociates to phosphate ions which predominately exist as a combination of $H_2PO_4^-$ and HPO_4^{-2}. Phosphate is readily absorbed from the gastrointestinal tract. Phosphate levels in the blood of higher animals are regulated by the parathyroid gland and are strongly tied to calcium ion regulation in the body. No information was found in the available literature regarding the absorption of PA from the lungs or skin (Ref. 3).

EPA's hazard assessment resulted in the following conclusions:

a. *Acute effects.* PA may cause irritation and corrosive effects as do many other acids. PA is weaker than the other strong mineral acids. The Poison Index states that "[PA] causes irritation of eyes, skin, and the respiratory tract. When ingested it can produce nausea, vomiting, abdominal pain, bloody diarrhea, acidosis, shock and irritation or burns of the oropharyngeal mucosa, esophagus and stomach." As with other corrosive or caustic materials, the extent of damage is generally determined by the acidity of the solution and duration of contact. PA, however, is not expected to exist beyond facility site boundaries at a pH that will cause these effects (Ref. 3).

b. *Chronic effects.* PA has been shown to cause nephrocalcinosis in rats when administered at relatively high concentrations in the diet (Ref. 3). PA cannot be reasonably anticipated to cause heritable genetic effects in humans (Ref. 4). No information was found in the available literature with which to evaluate the potential of PA to cause carcinogenic effects. PA cannot be reasonably anticipated to cause developmental or reproductive toxicity in humans. No information was found in the available literature with which to evaluate the potential of PA to cause neurotoxic effects (Ref. 3).

2. *Environmental toxicity.* PA, which is a source of phosphates, can reasonably be anticipated to cause significant adverse effects on the environment. PA, as well as other phosphates have the potential to cause increased algal growth leading to eutrophication in the aquatic environment (Ref. 5). Eutrophication may result when nutrients, especially phosphates, enter into an aquatic ecosystem in the presence of sunlight and nitrogen. The phosphate ion is a plant nutrient and it can be a major limiting factor for plant growth in freshwater environments. In excess, PA can cause extreme algal blooms. Toxic effects result from oxygen depletion as the algae die and decay. Toxic effects have also been related to the release of decay products or direct excretion of toxic substances from sources such as blue-green algae. In addition, phosphates in aquatic environments may encourage the growth of introduced plants to the detriment of native plants and thereby change plant distribution.

Laboratory studies indicate that eutrophication may occur at phosphate concentrations as low as 50 parts per billion (ppb) in lakes. The resulting oxygen depletion and toxic decay products (e.g., hydrogen sulfide) kill many invertebrates and fish (Ref. 5).

Although green algae are more sensitive to growth stimulation by phosphates in fresh water, blue-green algal blooms are also stimulated by phosphates and may cause greater damage. At least three species of blue-green algae are known to excrete toxins. Secretions by cyanobacteria of dialyzable metabolites have inhibited the growth of other species of algae and may result in algal monoculture. When algal blooms of these toxic species occur in a reservoir, lake, slough, or pond, the cells and toxins can become sufficiently concentrated to cause illness or death in invertebrates and vertebrates. Major losses have been reported for cattle, sheep, hogs, birds (domestic and wild) and fishes, minor losses for dogs, horses, small wild animals, amphibians, and invertebrates (Ref. 5).

In addition to eutrophication effects, PA exhibits low toxicity to freshwater organisms where typical toxicity values are greater than 100 milligrams per liter (mg/L) (Ref. 5). Due to the existing pH restrictions under the Clean Water Act (CWA), releases of PA to surface waters are not anticipated to lead to problematic pH excursions. Under the CWA, parameters such as pH may be subject to both technology-based and water quality-based limitations. The technology-based limitations are either derived from nationally applicable effluent guidelines or pretreatment standards (many of which limit pH to a range of 6.0 to 9.0) or are based on: (1) The permit writer's "Best Professional Judgement" if there is no applicable guideline for a direct discharger, or (2) local pretreatment requirements. Water quality-based limitations generally would be established to ensure that applicable water quality standards are attained and maintained. Dischargers are typically subject to monitoring provisions under which permittees are to report discharges of controlled parameters.

B. Release and Exposure

EPA does not believe that consideration of release or exposure information is necessary in determining whether to keep PA on the list of EPCRA section 313 toxic chemicals. In 1994, EPA clarified its policy on the use of exposure assessments in listing decisions under EPCRA section 313(d)(2) and (3) (November 30, 1994, 59 FR 61432). As part of this clarification, EPA stated that, under the criterion of section 313(d)(2)(C), exposure considerations are not appropriate

> . . . for chemicals that are highly ecotoxic or induce well-established adverse environmental effects. For chemicals which induce well-established serious adverse effects, e.g., chlorofluorocarbons, which cause stratospheric ozone depletion, EPA believes that an exposure assessment is unnecessary. EPA believes that these chemicals typically do not affect solely one or two species but rather cause changes across a whole ecosystem. EPA believes that these effects are sufficiently serious because of the scope of their impact and the well-documented evidence supporting the adverse effects. (November 30, 1994, 59 FR 61432).

Eutrophication due to phosphate loading is a well-established serious adverse effect that induces a number of changes to ecosystems, including fish kills and changes in the composition of animal and plant life. Therefore, an exposure assessment is not necessary in order to determine that phosphates, including PA, meet the listing criterion of EPCRA section 313(d)(2)(C). During its review of Ecolab's earlier petition, however, EPA conducted an exposure assessment for PA. Thus, for informational purposes only, the Agency is setting forth the results of this exposure assessment below.

PA will dissociate in water to hydrogen and phosphate ions (Refs. 6 and 7). Further reactions by abiotic processes are not expected to reduce the amount of PA released to the environment (Ref. 7). PA can be expected to enter the phosphorus cycle and become available as a nutrient in both aquatic and terrestrial settings. In aquatic settings, algae are able to .

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bioconcentrate low levels of phosphorus. The phosphorus cycle tends to lose phosphorus to soil and bottom sediments. Phosphorus binds to soil so its movement through soil is very slow. Ultimately, phosphorus moves from land to the sea and is deposited in bottom sediments (Ref. 7).

The exposure assessment conducted for EPA's original review of PA was based upon information from the 1987 TRI data base, which listed 1,173 facilities that discharged some amount of PA (Ref. 7). From this EPA identified 150 facilities from which PA is released to the environment in significant quantities. Of these, 46 facilities reported releases to surface waters and 52 facilities reported releases to the atmosphere. The exposure assessment concentrated on releases to water to address environmental toxicity concerns. It is important to note that this assessment only analyzed PA releases, the phosphates that are released as a result of neutralization of PA at a facility are not currently reported to the TRI. Although the currently reported PA releases do indicate which facilities are releasing phosphates, they do not reflect the full magnitude of the actual phosphate loading from facility releases. Therefore, the exposure assessment did not provide a complete picture of the significance of phosphate loading as a result of releases of phosphoric acid and phosphates from facilities that report under EPCRA section 313.

Aquatic exposure to PA was calculated by determining the stream flow at each facility. Surface water concentrations, under low flow conditions, from discharges during manufacture of PA ranged from 8.76 to 72,123 ppb. Surface water concentrations from discharges during processing and use ranged, under low flow conditions, from 0.62 to 337,262 ppb.

Facilities that routinely discharge PA to surface waters must comply with the CWA requirements. Under EPCRA section 313, by neutralizing their releases, facilities are technically releasing phosphates rather than PA to water and thus can report a release of zero. Even with neutralization of the PA, for the 1995 reporting year, TRI facilities still reported over 20 million pounds of releases of PA to surface waters from the more than 2,200 Form R reports filed. As stated above, these facilities are releasing additional phosphates to surface waters from the neutralization of PA, which are not currently captured under EPCRA section 313, but are the basis for concern for facilities that release PA.

C. Summary of Technical Review

PA is acutely toxic to human tissue with effects ranging from irritation to acidosis and burns. The extent of the damage is dependant on the acidity of the PA solution and duration of exposure. There, however, are no acute human health effects expected to result from exposure to PA at an acidity that can reasonably be anticipated to exist in the environment under normal release conditions. Therefore, PA cannot reasonably be anticipated to cause ". . . significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases."

In terms of chronic health effects, the available data indicate that PA cannot reasonably be anticipated to cause cancer, heritable genetic effects, neurotoxicity, developmental or reproductive toxicity, or other chronic health effects with the exception of nephrocalcinosis when PA is administered at relatively high concentrations in the diet.

PA can reasonably be anticipated to cause significant adverse effects on the environment. PA has been demonstrated to cause environmental toxicity by its contribution to phosphate loading in the environment, which can lead to eutrophication. Eutrophication takes place in oceans, rivers, lakes, and estuaries and results when nutrients, such as phosphates, enter into an aquatic ecosystem, well supplied with sunlight and nitrogen, and stimulate excessive algal growth. EPA believes that eutrophication due to phosphate loading is a well-established serious adverse effect that induces a number of changes to ecosystems including fish kills and changes in the composition of animal and plant life.

IV. Technical Issues Addressed by The Fertilizer Institute

TFI's petition to delist PA focused, among other things, on environmental exposure to PA from EPCRA section 313 covered facilities. Specifically, TFI argued that industrial releases of PA have no significant link to eutrophication of the nation's surface waters. EPA believes that the adverse effects associated with phosphates, including phosphoric acid, are well-established effects that cause changes across a whole ecosystem. Further, as stated in Unit III.B. of this document, EPA believes that the effects induced by phosphates are of such sufficient seriousness that factoring exposure considerations into the listing decision is not warranted because of the scope of their impact and the well-documented evidence supporting the adverse effects. Although information on exposure is not being used in today's action to support the determination that phosphoric acid and phosphates meet the section 313(d)(2)(C) criteria, TFI's comments do pertain to information presented by EPA in the June 25, 1990 (55 FR 25876) **Federal Register** notice and, thus, will be addressed.

TFI claims that the exposure assessment portion of the technical review of Ecolab's petition was flawed. TFI's main claims are: (1) EPA's exposure modeling of releases of PA to surface waters did not sufficiently account for the fate of much of the phosphate which TFI claims would be consumed by plant and/or animal life or would be bound and thus not contribute to the concentration; (2) the modeling incorrectly calculated phosphate concentration rather than phosphorus concentration; and (3) improper receiving streams were used in the models. EPA believes that there is not expected to be any significant abiotic removal of PA after discharge into streams. PA will dissociate to hydrogen and phosphate ions when released to water. In this state there are four possible removal mechanisms: volatilization, photolysis, hydrolysis, and adsorption to sludge and sediments. Phosphate is non-volatile, therefore there will be no removal via this mechanism. Phosphate ions also will not undergo hydrolysis or photolysis. Inorganic phosphate will not adsorb to stream sediments. The only way for a phosphate ion to be able to sorb is for it first to be transformed by other processes. These transformations, however, do not limit the availability of phosphate ions to algae for several reasons. Inorganic phosphate ion is most rapidly taken up by algae, but organic and complexed phosphate can also be readily utilized by most species, particularly those with alkaline phosphatase activity. The transformed phosphate complex that is sorbed to sediments can be released back to the epilimnion by biota in the sediments, and by anaerobic conditions in the water. Lastly, algae are able to effectively utilize phosphorus from the sediments. In conclusion, phosphate ions are capable of several chemical reactions in the environment, but very few of these reactions limit its biological availability (Refs. 3, 6, and 7).

While TFI is correct that phosphate ions will be removed from surface water by organisms, this is precisely the basis for the concern over surface water releases. Uptake of and utilization of phosphate by algae is the primary concern, since it can lead to eutrophication. While removal of phosphate ions by heterotrophic organisms could theoretically be significant, in reality it accounts for only a minor amount of removal because there is a far larger biomass of algae, and bacteria are poor competitors under carbon limiting conditions.

TFI claims that the background levels of phosphorus are above the level of concern at each of the receiving streams examined by EPA. TFI did not provide data to support this blanket statement nor did TFI describe the type of phosphorous measurement it was examining.

EPA agrees that the exposure evaluation report details the phosphate concentrations in analyzed receiving streams, whereas the concern concentration is expressed in terms of total phosphorous. Phosphate amounts are 3.07 times the phosphorous atom in the ion. Therefore, the concern concentration could be expressed as 153.5 ppb of phosphate (converted from concentration of concern of 50 ppb total phosphorous). Comparing this value to the exposure concentrations shows that 27 of the 46 surface water dischargers analyzed exceeded the concern concentration, rather than the 30 referred to in the exposure assessment. This does not alter the significance of the releases.

TFI claims that EPA used incorrect flow data for one facility in its exposure modeling. A reexamination of the river flow data, which is contained in EPA's Industrial Facilities Discharge file, showed that the original flow values used by EPA were correct. This file, which uses U.S. Geological Survey data, is maintained by EPA's Office of Water.

For a second facility, TFI claims that EPA identified and used an incorrect receiving stream. A reexamination of the information available to EPA at the time of the initial assessment confirmed the original estimated discharge site. Further inquiry substantiated the claim that surface water discharges go to the receiving waters identified by TFI. Nevertheless, the discrepancy in the flow data of the streams is of a magnitude that would not substantially affect the estimated concentrations of phosphate. Thus, the reexamination of the exposure data based on the comments by TFI has had little effect on the final concentration numbers generated in the review conducted in response to the Ecolab petition.

V. Public Comment

In the notice issuing the results of EPA's technical review and evaluation of the Ecolab petition to delete PA (June 25, 1990, 55 FR 25876), the Agency requested public comment on the creation of a phosphates category. In 1990, EPA received 12 comments on the creation of this category, 2 of which were in favor of the creation and 10 of which were opposed to it. Although EPA is not proposing to add a phosphates category at this time, because PA is a source of phosphates, EPA believes that the comments received and EPA's responses to those comments provide information relevant to the listing of PA under EPCRA section 313. Therefore, EPA is including the comments and responses to the issue of the addition of a phosphates category in this document. EPA intends to propose the creation of a phosphates category at a later date.

The majority of the commenters contended that eutrophication is an indirect toxic effect and that a phosphates category should not be listed under section 313 because phosphates do not exhibit direct toxicity. They asserted that Congress intended that the section 313 list of toxic chemicals include only chemicals that induce direct toxicity, and that Congress did not intend the list to include chemicals which are only indirectly toxic.

EPA disagrees with these commenters. The EPCRA section 313(d)(2) listing criteria each state that EPA may list a chemical that it determines "is known to cause or can reasonably be anticipated to cause" the relevant adverse human health or environmental effect. It further provides that "[a] determination under this paragraph shall be based on generally accepted scientific principles." Ultimately, the crux of the issue commenters raise lies in interpreting the phrase "cause or can reasonably be anticipated to cause," which Congress chose not to define. In arguing that EPA lacks the statutory authority to base its listing decisions on "indirect toxicity," the commenters would have the Agency adopt an artificially narrow view of causation that would require a single-step path between exposure to the toxic chemical and the effect. Such a mechanistic approach confuses the mode or mechanism of the chemical's action (i.e., the chain of causation) with the fundamental question of whether, regardless of the number of intervening steps, there is a natural and continuous line, unbroken by any intervening causes, between exposure to the chemical and the toxic effect. By contrast, EPA believes that Congress granted the Agency broad discretion in making listing decisions and directed EPA to rely on generally accepted scientific principles in making determinations to implement this section of EPCRA.

It is a generally accepted scientific principle that causality need not be linear, i.e., a one-step process. e.g., Proposed Guidelines for Ecological Risk Assessment, 61 FR 47552, September 9, 1996; Proposed Guidelines for Carcinogen Risk Assessment, 61 FR 17960, April 23, 1996. For purposes of EPCRA section 313, the distinction between direct and indirect effects is technically an artificial one. Whether the toxic effect is caused directly by a chemical through a one-step process, or indirectly by a degradatjon product of the chemical, a second chemical that is created through chemical reactions involving the first chemical, or some other mechanism, the toxic effect still occurs as a result of exposure to the chemical. It makes no difference to the affected organism whether the toxic agent was a result of chemical degradation or chemical reactions. Fundamentally, EPCRA section 313 is concerned with adverse effects on humans and the environment, not the chain of causation by which such effects occur. In fact, this type of "indirect" toxicity is not unlike the effects of certain nonlinear carcinogens. Some carcinogens induce cancer through a two step mechanism in which the chemical causes an intervening pathological change, and this pathological change is the direct cause of the cancer, but this does not mean that the chemical is not known or reasonably anticipated to cause cancer. It is therefore reasonable for EPA to consider such effects in light of the broad statutory purpose to inform the public about releases to the environment. Were EPA to exclude indirect effects from consideration, it would dilute the purpose of the statute by precluding public access to information about chemicals that cause a wide range of adverse health and environmental effects.

In prior petition decisions, EPA has considered other types of significant adverse effects on the environment that result from the releases of chemicals. For example, the addition of seven chlorofluorocarbons (CFCs) and halons (August 3, 1990, 55 FR 31594) and the denial of petitions on volatile organic compounds (VOCs), specifically, the ethylene and propylene petition (January 27, 1989, 54 FR 4072) and the cyclohexane petition (March 15, 1989, 54 FR 10668) all concerned adverse effects on the environment.

Some commenters do not believe that it is probable that eutrophication will

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occur and believe that if it does occur it is not necessarily tied to phosphate releases.

Although a number of nutrients in addition to phosphorus (as phosphates) are required for eutrophication to occur, in many cases phosphorus levels are the limiting factor. Phosphorus (as phosphate) is the most critical nutrient in controlling the growth of blue-green algal species. There is no indication in the literature that the connection between phosphates and algal blooms and fish kills is tenuous.

A number of communities have experienced problems with eutrophication that is a result of phosphate loading. For example, in the Chowan River in North Carolina significant algal blooms have occurred in 1987, 1989, and 1990 (Ref. 8).

Many commenters believe that a phosphates category should not be added because releases of phosphates from industrial facilities subject to section 313 reporting requirements are an insignificant part of total phosphates released to the environment.

Nationwide, approximately two to three percent of all releases of phosphates to the environment are from industrial facilities that are required to report under EPCRA section 313. However, discharges from industrial facilities can contribute significantly to the levels of phosphates in a receiving stream. There are cases in which the major contributor of phosphates to a stream or river is an industrial facility that is covered by EPCRA section 313. Whether EPCRA section 313 covered facilities are a significant source of a toxic chemical in the environment compared to other sources does not change the fact that a toxic chemical that meets the listing criteria of EPCRA section 313 is being released to the environment and adding to the overall amount of the chemical in the environment.

Many commenters believe that a phosphates category should not be added to the section 313 list because information on phosphate releases are captured by the National Pollutant Discharge Elimination System (NPDES).

Not all industries required to report under EPCRA section 313 are required to have NPDES permits. Moreover, even if an individual discharger is regulated and has monitoring data related to its releases of PA, this information is not readily available to the public, as it would be if the discharger were required to comply with EPCRA section 313. Rather, the public would have to resort to the more cumbersome Freedom of Information Act process to obtain the information. Thus, contrary to commenters suggestions, listing phosphates on TRI would provide useful, easily accessible information to the public.

VI. Explanation of Denial of Petition

EPA believes that the types of deleterious changes that PA effects in aquatic ecosystems meet the listing criteria under EPCRA section 313(d)(2). As stated in the Conference Report accompanying EPCRA, 99-962, October 3, 1986, Joint Explanatory Statement of the Committee of Conference (p. 295):

> In determining what constitutes a significant adverse effect on the environment...the Administrator should consider the extent to which the toxic chemical causes or can reasonably be anticipated to cause any of the following adverse reactions, even if restricted to the immediate vicinity adjacent to the site:
>
> (1) Gradual or sudden changes in the composition of animal life or plant life, including fungal or microbial organisms in an area.
>
> (2) Abnormal number of deaths of organisms (e.g., fish kills).
>
> (3) Reduction of the reproductive success or the vigor of a species.
>
> (4) Reduction in agricultural productivity, whether crops or livestock.
>
> (5) Alterations in the behavior or distribution of a species.
>
> (6) Long lasting or irreversible contamination of components of the physical environment, especially in the case of ground water, and surface water and soil resources that have limited self-cleansing capability.

The effect of phosphates, including PA, on the environment is to induce a number of changes to the environment specified above, particularly fish kills and changes in the composition of animal and plant life in an area.

EPA has serious concerns for the contribution of PA to phosphate loading in the environment and its potential eutrophic effects. EPA believes that the adverse effects associated with phosphates, including phosphoric acid, are well-established effects that cause changes across a whole ecosystem. Further, EPA believes that the effects induced by phosphates, including PA, are of such sufficient seriousness that additional exposure considerations are not warranted because of the scope of the impact of the effects and the well-documented evidence supporting the adverse effects. This determination is consistent with EPA's stated policy on the use of exposure assessments in EPCRA section 313 listing and delisting decisions (59 FR 61432, November 30, 1994). Therefore, EPA is denying TFI's petition to delete PA from the EPCRA section 313 list of toxic chemicals because EPA has determined that PA meets the listing criteria of EPCRA section 313(d)(2)(C).

The Agency believes that the most efficient manner to address its concerns for phosphates is by the formation of a phosphates category. However, at this time, EPA is not proposing to create a phosphates category under EPCRA section 313. EPA intends to propose the creation of such a category as a separate rulemaking at a later date.

VII. References

1. TFI. Petition to Delete Phosphoric Acid from the List of Toxic Chemicals Subject to the Requirements of Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1996 (SARA). The Fertilizer Institute. (November 9, 1990).

2. ECOLAB. Letter from John R. Keenan to EPA Administrator William K. Reilly, Subject: Phosphoric Acid (CAS 7664-38-2) Petition for Deletion from SARA 313. Ecolab Inc. (December 8, 1989).

3. USEPA, OPPT. Memorandum from Janette Houk, Ph.D., Hazard Integrator, Chemical Review and Evaluation Branch, Health and Environmental Review Division. Re: Petition to Delist Phosphoric Acid. (February 14, 1990).

4. USEPA, OPPT. Memorandum from Michael C. Cimino, Ph.D., Biologist, Toxic Effects Section, Toxic Effects Branch, Health and Environmental Review Division. Re: Mutagenicity Review of Delist Petition for Phosphoric Acid. (February 9, 1990).

5. USEPA, OPPT. Memorandum from Ossi Meyn, D.Env., Environmental Effects Branch, Health and Environmental Review Division. Re: Petition to Delist Phosphoric Acid - Ecological Hazard. (February 27, 1990).

6. USEPA, OPPT. DeVito, Stephen C., "Phosphoric Acid Chemistry Report." (January 11, 1990).

7. USEPA, OPPT. LaVeck, Gerald, "Exposure Assessment for a Petition to Delist Phosphoric Acid." (1990).

8. NCDNRCD. "Chowan River Water Quality Management Plan 1990 Update." North Carolina Department of Natural Resources and Community Development. (September 28, 1990).

VIII. Administrative Record

The record supporting this decision is contained in docket control number OPPTS-400056. Comments on EPA's previous phosphoric acid petition response are contained in docket number OPPTS-400048. All documents, including the references listed in Unit VII. of this document and an index of the docket, are available to the public in the TSCA Nonconfidential Information Center (NCIC), also known as the Public Docket Office, from noon to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA NCIC is located at EPA Headquarters, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

List of Subjects

Environmental protection, Chemicals, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: January 12, 1998.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 98–1644 Filed 1–22–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5952–1]

Proposed Cost Recovery Settlement Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as Amended, 42 U.S.C. 9622(h)(1), Hadley Street Drum Site, St. Louis, Missouri

AGENCY: Environmental Protection Agency (EAP).

ACTION: Notice of proposed cost recovery settlement under section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9662(h)(1), Hadley Street Drum Site, St. Louis, Missouri.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to enter into a cost recovery administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9622(h)(1). This settlement is intended to resolve the liability of Hadley Street Real Estate Company, Inc. ("Hadley Street Real Estate") for the response costs incurred by the EPA in overseeing a removal action conducted by Hadley Street Real Estate at the Hadley Street Drum Superfund Site, St. Louis, Missouri. The proposed settlement was signed by the Environmental Protection Agency (EPA) on October 8, 1997. Because EPA's total response costs did not exceed $500,000, the Attorney General's concurrence is not required for this settlement.

DATES: Written comments must be provided on or before February 23, 1998.

ADDRESSES: Comments should be addressed to Daniel J. Shiel, Office of Regional Counsel, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 and should refer to: *In the matter of Hadley Street, Real Estate Company, Inc.*, EPA Docket NO. VII–98–F–0001.

The proposed administrative settlement may be examined in person at the United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. To request a copy by mail please refer to the matter name and docket number set forth above and enclose a check in the amount of $3.75 (25 cents per page for reproduction costs), payable to the United States Environmental Protection Agency.

SUPPLEMENTARY INFORMATION: The proposed administrative settlement concerns the Hadley Street Drum Superfund Site in St. Louis, Missouri. On July 24, 1992, EPA issued a CERCLA 106(a) Unilateral Administrative Order ("the Order") to Respondent requiring it to conduct removal actions at the Site. This administrative action was captioned *In the matter of Hadley Street Drum Site*, EPA Docket NO. VII–92–F–0024. The Hadley Street Drum Site included properties located at 1515 and 1531–1541 Hadley Street, St. Louis, Missouri. Hadley Street Real Estate owned a portion of the Site at the time EPA issued the UAO. Hadley Street Real Estate conducted the removal actions ordered by EPA on its property and EPA conducted the necessary removal actions on the other portion of the Site.

Hadley Street Real Estate did not agree to reimburse EPA's costs of overseeing the removal action. By letter dated October 12, 1995, EPA mailed Respondent an Itemized Cost Summary with a demand that Respondent pay EPA $31,806.21 in response costs. This led to submittal of information on behalf of Hadley Street Real Estate supporting its claim of inability to pay the full amount of EPA's costs. Hadley Street Real Estate ultimately offered to pay $5,000 of EPA's costs. EPA Region VII reviewed the information submitted by Hadley Street Real Estate and concluded that it could not pay more than the $5,000 offered in settlement.

Dated: December 15, 1997.

Dennis Grams,

Regional Administrator.

[FR Doc. 98–1641 Filed 1–22–98; 8:45 am]

BILLING CODE 6560–50–M

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the March 12, 1998 regular meeting of the Farm Credit Administration Board (Board) will not be held.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: January 22, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–1773 Filed 1–21–98; 2:17 pm]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Farm Credit Administration Board; Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 27, 1998, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes
B. New Business
  Regulation
  General Financing Agreements [12 CFR Part 614] (Final)

** Closed Session*

C. Report
  OGC Litigation Report
  * Session closed-exempt pursuant to 5 U.S.C. 552b(c)(10).

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Dated: January 22, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–1774 Filed 1–21–98; 2:17 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 98–37]

Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction

Released: January 9, 1998.

Over the past weeks, the Wireless Telecommunications Bureau ("Bureau") has received numerous inquiries concerning the auction rules and eligibility requirements for the Local Multipoint Distribution Service ("LMDS") auction scheduled to commence on February 18, 1998. In this Public Notice, the staff provides guidance on a range of issues involving the rules for the LMDS auction.

The service and auction rules pertaining to LMDS are found in parts 1 and 101 of the Commission's rules (Title 47 of the Code of Federal Regulations). The Commission's rules governing eligibility for bidding credits were established to ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and/or women (collectively referred to as "designated entities" or "DEs") are provided meaningful opportunities to compete in the provision of LMDS. These rules are primarily addressed in the *LMDS Second Report and Order*, the *LMDS Order on Reconsideration*, and the *LMDS Second Order on Reconsideration*. Additional auction information is provided to potential bidders in a comprehensive Bidder Information Package. This package contains guidelines regarding pre-auction procedures, the auction event, and post-auction procedures. (Interested parties can order an LMDS Bidder Information Package by calling (888) 225–5322, Option #2. Applicants are entitled to one free LMDS Bidder Information Package; additional copies cost $16 each.) The Bureau will release a public notice setting forth minimum opening bids for the LMDS auction prior to the FCC Form 175 short form filing deadline.

Many of the inquiries the Bureau has received are based on the inquiring parties' specific circumstances. The Bureau has recast the most frequently asked questions in more general terms in order to provide guidance to a larger group of interested parties. Potential applicants should understand that the advice and rule interpretations provided in this Public Notice constitute informal staff opinion, not official Commission decisions or rulings.

I. General Ownership Issues

Q: When disclosing ownership information on the FCC Form 175, should applicants report all entities that hold a five percent or greater voting (control) interest or other economic interest?

A: In previous services (*e.g.*, broadband PCS), the Commission specifically required that applicants report all entities that held interests in the applicant of five percent or more that also held or were applying for CMRS or PMRS licenses. For LMDS, applicants must comply with the general reporting rule set forth in Part 1 of the Commission's rules, which is less specific about which entities must be identified. By identifying on Attachment A to their FCC Forms 175 all entities holding five percent or greater interests in the applicant that also hold or are applying for CMRS or PMRS licenses, applicants will assist themselves in identifying entities with which they must avoid contact pursuant to the anti-collusion rule. Applicants should be aware that at the long-form application stage, they will be subject to the reporting requirements contained in the newly adopted Part 1 ownership disclosure rule.

Q: Can new non-controlling investors be added after the FCC Form 175 is filed and throughout the auction?

A: New non-controlling investors can be added after the FCC Form 175 is filed and throughout the duration of the auction, provided their addition does not result in a change of control of the applicant. An applicant should amend its FCC Form 175 within 10 business days of any change, and should provide notice of the change by letter addressed to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 2025 M Street, N.W., Suite 5202, Washington, D.C. 20554, with a copy filed with the Office of the Secretary, 1919 M Street, N.W., Washington, D.C. 20554.

Q: When an applicant is a consortium, can only one member of the consortium conduct bidding during the auction? What if a member of a consortium decides to withdraw during the auction?

A: A consortium is defined as "a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a very small business, small business or entrepreneur." Where an applicant is a consortium, the gross revenues of its members are not aggregated. The definition of consortium does not prohibit one member from placing the bids for the consortium as a whole.

Because each member of a consortium must individually satisfy the definition of a very small business, small business, or entrepreneur at the FCC Form 175 filing deadline, members may withdraw during the course of the auction, or afterward, without endangering the treatment of the consortium. The withdrawal of a member would merely change the composition of the consortium, and should be reflected in a filing with the Commission. On the other hand, adding a new member to a consortium after the FCC Form 175 filing deadline will not be permitted because the filing deadline is the cut-off date for determinations of whether applicants meet the definitions of very small business, small business, or entrepreneur.

II. Foreign Ownership Issues

Q: How much foreign ownership of a licensee is permissible? Can LMDS applicants seek more than 25 percent indirect foreign ownership?

A: Section 310(a) of the Communications Act of 1934, as amended ("Communications Act"), prohibits granting any wireless license to a foreign government or a representative thereof. Section 310(b) of the Communications Act imposes restrictions on the foreign ownership of common carrier, broadcast, and aeronautical licensees. Under this section, the Commission may not grant a common carrier wireless license to an alien, the representative of an alien, any corporation organized under the laws of any foreign government, or any corporation of which more than 20 percent is owned by foreign entities. Section 310(b)(4) imposes additional restrictions on the foreign ownership of the parent corporation of a common carrier licensee, specifically that no common carrier license shall be granted to or held by "any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens * * * or by any corporation organized under the laws of a foreign country . . . if the Commission finds that the public interest will be served by the refusal or revocation of such license." Under the *Foreign Participation Order*, the Commission recently liberalized its rules for determining when refusal or revocation would serve the public interest. The final rules set forth in the *Foreign Participation Order* will not become effective before February 9, 1998. Any applicant that is controlled by a corporation with more than 25 percent foreign ownership, or which seeks to exceed that limit, must inform the Commission in a separate petition for declaratory ruling. The Commission will accept petitions for declaratory ruling immediately, but will not necessarily rule on them prior to the auction start date. Because applicants must certify on their short form applications that they are in compliance with the foreign ownership provisions of Section 310 of the Communications Act, applicants filing petitions for declaratory rulings must reference their pending petitions in their short form applications. Applicants seeking foreign investment should familiarize themselves with the *Foreign Participation Order*, particularly Section III.D. That order is available from the Commission's web site at <http://www.fcc.gov/ib/wto.html>.

III. Bidding Credits and Eligibility Issues

Q: What constitutes gross revenues as described in 47 CFR 101.1112?

A: Gross revenues include all income received by an entity, whether earned or passive, before any deductions are made for the costs of doing business, as evidenced by audited financial statements for the preceding three years. If an entity was not in existence for the entire preceding three years, gross revenues shall be evidenced by audited financial statements of the entity's predecessor-in-interest, or if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate. The Commission will evaluate applicants' gross revenues as they are reflected in financial statements prepared in accordance with generally accepted accounting principles.

Q: Now that the auction has been rescheduled for February 18, 1998, will the Commission require applicants to provide audited financial statements for 1997?

A: Applicants must furnish evidence of their gross revenues based upon their most recently-completed audited financial statements. Thus, if audited financial statements for calendar year 1997 have not been fully prepared by the FCC Form 175 filing deadline of January 20, 1998, audited statements for the years 1994, 1995, and 1996 will suffice.

Q: Are the gross revenues of an applicant's affiliates counted in determining that applicant's eligibility for a bidding credit?

A: Yes. An applicant must aggregate the gross revenues of all affiliates, as defined in 47 CFR 101.1112(h), in order to determine its bidding credit eligibility.

Q: When determining eligibility for bidding credits, will the gross revenues of individuals who are affiliates be included in determining the bidder's gross revenues? Is there a conceivable instance when an individual's gross revenues will affect an applicant's eligibility for a bidding credit?

A: This issue has been raised on reconsideration in another proceeding and the Bureau refrains from directly addressing it at this point. However, the Bureau notes that for LMDS, the Commission did not adopt a rule that attributes personal net worth for purposes of determining eligibility. Personal net worth has been defined as "the market value of all assets (real and personal, tangible and intangible) owned by an individual, less all liabilities (including personal guarantees) owed by the individual in his individual capacity or as a joint obligor." In other services (*i.e.*, broadband PCS), the Commission eliminated a personal net worth test, concluding that "the affiliation rules make the personal net worth rules largely unnecessary since most wealthy individuals are likely to have their wealth closely tied to ownership of another business."

Q: Is there a minimum equity requirement for controlling small business principals?

A: No. However, the Bureau cautions that the absence of equity in the hands of controlling small business principals could raise questions about whether the applicant itself qualifies as a *bona fide* small business. For instance, if a single party holds *de jure* control, as evidenced by ownership of 50.1 percent of the voting stock, this party must also hold *de facto* control in order to be considered a controlling principal. If no single party has *de jure* control of the applicant, *de facto* control factors will determine who controls the applicant. By way of comparison, in broadband PCS, controlling principals were required to hold at least 15 percent of the applicant's total equity under one particular business structure.

Q: Does the bidding credit schedule adopted in the Commission's Part 1 Proceeding apply to LMDS?

A: No. LMDS has a specific bidding credit rule that is not affected by the Part 1 rule changes.

IV. Anti-Collusion Rule Issues

Q: What conduct constitutes a violation of the Commission's anti-collusion rule?

A: After the deadline for submission of the FCC Form 175, applicants may not discuss the substance of their bids or bidding strategies with other bidders that have applied to bid in the same geographic license areas, with the exception of those with which they have entered into agreements identified on the FCC Form 175. The term "applicant" includes the entity that submits an application for auction participation, owners of five percent or more of that entity, and all officers and directors of that entity. (*But see* part 1 at ¶ 164 (which changes the attribution level of the anti-collusion rule to 10 percent; however, this rule does not apply to the LMDS auction. The new part 1 rules, with the exception of rules pertaining to post-auction payment and long-form application obligations, will apply only to auctions commencing after the new rules' effective date)). The rule also prohibits the transfer of indirect information which affects, or could affect, bids or bidding strategy. All bidding arrangements must be disclosed on an applicant's short form application. Auction applicants who have applied for licenses in the same geographic areas, and who are also licensees or applicants for licenses in the same or competing services, must affirmatively avoid all communications with each other that affect, or have the potential to affect, their bids or bidding strategy. This does not mean that all business negotiations between bidders for the same markets are prohibited; however, the Bureau recommends that bidders for the same markets exercise caution when engaging in such discussions.

Q: Do public statements such as "we want to win 10 million pops" or "we want to win top markets" or "we have $5 million to spend" constitute disclosures of bids or bidding strategy?

A: Public statements can give rise to collusion concerns. This has occurred in the antitrust context, where certain public statements can support other evidence which tends to indicate the existence of a conspiracy. The Bureau therefore urges bidders for common markets to exercise caution when making public statements about their bids or bidding strategies.

Q: If an applicant files an FCC Form 175 prior to the filing deadline of January 20, 1998, may this applicant speak with other potential applicants during the time between its filing and the deadline? In other words, at what

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point are two parties considered to be competing for the same market?

A: An FCC Form 175 is considered officially filed upon the filing deadline, regardless of whether it was actually filed one day or one month prior to the deadline. Changes to electronically filed applications can be made any time prior to the filing deadline on January 20, 1998, and applicants cannot view each others' electronically filed applications prior to that deadline. Thus, parties are not considered to be competing for the same market until the window for submitting applications closes at 5:30 p.m., ET, on January 20, 1998.

Q: Can an individual act as the authorized bidder and place bids for two or more applicants who are competing for one or more of the same markets? What if different individuals who are employed by the same organization place bids for applicants in competing markets?

A: A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he/she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization, a violation could similarly occur. In such instances, the Bureau strongly encourages applicants to certify on their application that precautionary steps (*e.g.*, establishing a "Chinese wall") have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

V. Technical Issues

Q: In bands where Mobile Satellite Service ("MSS") feeder links are permitted, is uplink transmission (subscriber end) allowed if there is no MSS licensee operating?

A: No. The interference analyses conducted indicated that subscribers' transceivers potentially are major interferers to MSS feeder link earth station satellite receivers because of the elevation angles many will be employing. The satellites to be deployed in these MSS systems will be orbiting in different planes over the United States. Therefore, there is the potential for them to become aligned with the beam of a subscriber transceiver at any location in the United States. To review those analyses, see the Report of the LMDS/FSS 28 GHz Band Negotiated Rulemaking Committee, CC Docket No. 92–297 (September 23, 1994).

Q: What are the deadlines for 31 GHz incumbents to vacate the 31 GHz middle band?

A: Incumbent 31 GHz licensees were provided 75 days after the effective date of the LMDS service rules to request modification of their licenses to relocate to the outer two 75 megahertz blocks of the 31 GHz band. Failure to do so means that such incumbent operations become secondary to LMDS operations in the middle band. This means that LMDS operators are not required to protect these incumbent operations from interference, nor are the incumbent operations permitted to cause interference to LMDS systems. Of course, these incumbents can relocate to other bands or other transmission media at any time.

VI. Miscellaneous

Q: Will the Commission inform applicants of the minimum opening bid for each BTA license prior to the FCC Form 175 filing deadline of January 20, 1998?

A: Yes. The Bureau released a Public Notice on October 17, 1997, seeking comment on minimum opening bid proposals. Comments were due on November 5, 1997, with reply comments due on November 10, 1997. A subsequent Public Notice extended the reply comment deadline to December 1, 1997. Prior to January 20, 1998, the Bureau will release a public notice setting forth a minimum opening bid for each license.

Q: What is the Commission's calculation to convert ILEC access lines to pops for purposes of the 10 percent in-region calculation?

A: The Commission has not developed a calculation to convert access lines to pops. The ILEC should determine the geographic area that it serves and then use census data for determining the population of that area.

Q: What are the consequences if an applicant fails to complete properly the FCC Form 175?

A: An applicant is solely responsible for the true, accurate, and complete submission of its FCC Form 175, and incomplete or inaccurate FCC Forms 175 may be rejected or required to be refiled. The Commission checks FCC Forms 175 for deficiencies that would affect their initial acceptability, and will act to apprise applicants of deficiencies after initial review. Applicants are then given an opportunity to cure such deficiencies. Once a corrected application is resubmitted, however, no major amendments can occur. This would include, for example, changes to bidding credits.

Q: Does the must-carry rule apply to LMDS for license holders who wish to provide television service?

A: No. According to the Communications Act, the must-carry rule applies only to cable operators. Cable operators are defined as persons who provide cable service to subscribers, and cable service is defined as one-way transmission of video or other programming by means of a set of closed transmission paths. As a two-way wireless service, LMDS is not subject to must-carry requirements.

Q: Will the bidding software be supported by Windows 95?

A: While the auction software has been known to work with Windows 95, Microsoft has not yet affirmed supportability. Until Microsoft makes that determination, use of the auction software with Windows 95 is solely at the bidder's own risk.

Q: Will the Commission provide applicants a list of proposed and licensed MSS feeder link earth station sites?

A: Yes. The list is attached to this Public Notice as Attachment A.

Q: Is the Commission considering the authorization of any other two-way video services in the near future?

A: Yes. Bidders should be aware that the Commission's Mass Media Bureau is conducting a proceeding in which additional spectrum for the Multipoint Distribution Service ("MDS") is being discussed. Comments in that proceeding were due December 9, 1997, and reply comments are due January 8, 1998.

Bidders should also be aware that the 39 GHz band has the potential for point-to-multipoint service.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–1608 Filed 1–22–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Approved by Office of Management and Budget

January 16, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection(s) pursuant to the Paperwork Reduction Act of 1995, Pub. L. 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Judy Boley, Federal Communications Commission, (202) 418–0214.

Federal Communications Commission

OMB Control No.: 3060–0812.

Expiration Date: 06/30/1998.

Title: Assessment and Collection of Regulatory Fees for Fiscal Year 1997—MD Docket No. 96–186.

Form No.: N/A.

Estimated Annual Burden: 635,738 responses; 317,869 total annual hours; 0.5 hours per respondent.

Description: This information is required to: (1) facilitate the statutory provisions that non-profit entities be exempt from payment of regulatory fees, and (2) facilitate the FCC's ability to audit regulatory fee payment compliance in the Commercial Mobile Radio Services (CMRS) industry.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–1658 Filed 1–22–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Shipco International, Inc., 12270 W. Colonial Dr. #109, Winter Garden, FL 34787, Officers: M. Wael Shrourou, President; Mona Z. Shrourou, Secretary

B.R.A.L. Miami Inc., 6120 N.W. 74 Avenue, Miami, FL 33166, Officers: Alvaro Cruz, President, Humberto Briceno, Vice President

Service Shipping, Inc., 38104 Academy Drive, Lake Villa, IL 60046, Officers: William James Marston, President, Patricia A. Taylor, Secretary

Interline Corporation, 2205 East Carson Street, Unit B–4, Long Beach, CA 90810, Officers: Junichi Jim Shioda, President, Kenichi Shioda, Vice President

Forwarding Services International, Inc., One Water Ridge Plaza, 2201 Water, Ridge Parkway, Suite 500, Charlotte, NC 28217, Officers: James D. McClaskey, Director, Paul L. Carter, Director

Premier Freight Forwarders, Inc., 9423 Tradeport Drive, Orlando, FL 32827, Officers: David G. Smith, President, William C. O'Fallon.

Dated: January 20, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–1636 Filed 1–22–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 17, 1998.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Dakota Bancshares, Inc., Mendota Heights, Minnesota; to acquire 81 percent of the voting shares of Olivia Bancorporation, Inc., Olivia, Minnesota, and thereby indirectly acquire American State Bank of Olivia, Olivia, Minnesota.

Board of Governors of the Federal Reserve System, January 20, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98–1647 Filed 1–22–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, January 28, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 21, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–1730 Filed 1–21–98; 12:22 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Cigarette Testing; Extension of Deadline for Submission of Public Comments

AGENCY: Federal Trade Commission.

ACTION: Extension of deadline for submission of comments on proposed

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revisions to the Federal Trade Commission methodology for determining tar, nicotine, and carbon monoxide yields of cigarettes, and on a proposed format for disclosing the resulting ratings in advertising.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") is extending until February 4, 1998 the deadline for filing comments on its proposed revisions to the testing method used to determine the tar, nicotine, and carbon monoxide ratings of cigarettes, and on two possible formats for disclosure of those test results.

FOR FURTHER INFORMATION CONTACT: Shira D. Modell, Division of Advertising Practices, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 326–3116.

SUPPLEMENTARY INFORMATION: On September 9, 1997, the Commission issued a notice proposing changes to the methodology currently used to determine cigarette ratings for tar, nicotine, and carbon monoxide. *See* 62 FR 48,158 (Sept. 12, 1997). The proposed methodology would produce tar, nicotine, and carbon monoxide yields using both the current testing parameters and more intensive smoking conditions, thus producing a range of potential yields for each cigarette. The Commission requested comment on those proposed changes to the testing methodology, and on the feasibility of generating the upper tier of tar, nicotine, and carbon monoxide ratings through mathematical formulas, rather than actual testing on a smoking machine. The Commission also placed on the public record two different legends that could be used in advertising to disclose the ratings and sought comment on the usefulness and feasibility of these potential disclosure formats. Finally, comment was requested on alternative approaches that were considered but not proposed by the Commission. The deadline for submission of the requested comments was November 17, 1997.

On October 29, 1997, the Commission announced that, pursuant to requests submitted by, among others, the Food and Drug Administration and the four largest cigarette manufacturers, it had decided to extend the filing deadline until January 20, 1998. *See* 62 FR 58,972 (Oct. 31, 1997).

The Commission has now received a request for further extension of the filing deadline from Prospect Associates, which serves as the Coordinating Center for the National Cancer Institute's Project ASSIST (American Stop Smoking Intervention Study). The Coordinating Center and the 17 states that ASSIST funds seek this extension so they can incorporate into their comment newly available data relevant to the issues raised by the Commission's proposal, including new data from smoking machine tests conducted pursuant to a methodology promulgated by Massachusetts.

In light of the significance of the issues addressed by the Commission's September 1997 proposal, the deadline for submitting comments on that proposal is hereby extended until February 4, 1998.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–1650 Filed 1–22–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Revised Jurisdictional Thresholds for Section 8 of the Clayton Act

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission announces the revised thresholds for interlocking directorates required by the 1900 amendment of section 8 of the Clayton Act. Section 8 prohibits, with certain exceptions, one person from serving as a director or officer of two competing corporations if two thresholds are met. Competitor corporations are covered by section 8 if each one has capital, surplus, and undivided profits aggregating more than $10,000,000, with the exception that no corporation is covered if the competitive sales of either corporation are less than $1,000,000. Section 8(a)(5) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product. The new thresholds, which take effect immediately, are $14,730,000 for section 8(a)(1), and $1,473,000 for section 8(a)(2)(A).

EFFECTIVE DATE: January 23, 1998.

FOR FURTHER INFORMATION CONTACT: James Mongoven, Bureau of Competition, Office of Policy and Evaluation, (202) 326–2879.

(Authority: 15 U.S.C. 19(a)(5))

By direction of the Commission, Commissioner Azcuenaga not participating.

Donald S. Clark,

Secretary.

[FR Doc. 98–1648 Filed 1–22–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Report of the Tar, Nicotine, and Carbon Monoxide of the Smoke of 1249 Varieties of Domestic Cigarettes For the Year 1995

ACTION: Notice.

SUMMARY: The Federal Trade Commission publishes the Report of the Tar, Nicotine, and Carbon Monoxide of the Smoke of 1249 Varieties of Domestic Cigarettes.

DATES: January 23, 1998.

ADDRESSES: Copies of the report are available from the FTC's World Wide Web site at: *http:www.ftc.gov* and from the FTC's Public Reference Branch, Room 130, 6th St. and Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–3222.

FOR FURTHER INFORMATION CONTACT: Tonya Esposito, Legal Assistant, Federal Trade Commission, Bureau of Consumer Protection, 6th St. and Pennsylvania Ave., NW., Washington, DC 20580. Telephone (202) 326–3247.

SUPPLEMENTARY INFORMATION: These are the most recent test results of the tar, nicotine, and carbon monoxide yields of the smoke of domestic cigarettes reported by the FTC. This Report contains data on 1249 varieties of cigarettes manufactured and sold in the United States in 1995. The Tobacco Institute Testing Laboratory (TITL), a private laboratory operated by the cigarette industry, conducted the tar, nicotine, and carbon monoxide testing for the widely-available domestic cigarette varieties. This testing was conducted under the review of a representative of the FTC through periodic unannounced inspections. TITL provided the results to the respective cigarette companies. The companies provided the data generated by TITL regarding their own brands to the FTC in response to compulsory process issued by the Commission. Cigarette smoke from generic, private label, and not-widely-available cigarettes was not tested by TITL, but was tested by the cigarette companies and the test results were provided to the FTC in response to compulsory process.

On September 9, 1997, the Commission issued a notice requesting public comment on proposed revisions to the testing method currently used to determine the tar, nicotine and carbon monoxide ratings of cigarettes. The proposed methodology would require that each cigarette variety be tested under two different sets of smoking conditions, rather than the single set used under the current system. The revised test method would produce tar, nicotine and carbon monoxide yields using both the current testing parameters and more intensive smoking conditions, thus producing a range of potential yields for each cigarette. The Commission also requested comment on: (1) the feasibility of generating the upper tier of ratings through mathematical formulas, rather than actual testing on a smoking machine; and (2) the usefulness and feasibility of two different legends that could be used in advertising to disclose the ratings. Comments are due by February 4, 1998.

By direction of the Commission, Commissioner Thompson and Commissioner Swindle not participating.

Donald S. Clark,

Secretary.

[FR Doc. 98–1649 Filed 1–22–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Consumer Affairs; Statement of Organization, Functions, and Delegations of Authority

Introduction. Part A, Chapter AW, U.S. Office of Consumer Affairs (USOCA), of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services, as last amended at 62 FR 29349, May 30, 1997 is being amended to reflect the elimination of the USOCA. This is a Notice of the abolishment of the U.S. Office of Consumer Affairs. The change is as follows:

Part A, Chapter AW, "U.S. Office of Consumers Affairs" is deleted in its entirety.

This reorganization is effective January 9, 1998.

Dated: January 2, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–1577 Filed 1–22–98; 8:45 am]

BILLING CODE 4160–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0385]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Premarket Approval of Medical Devices" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 30, 1997 (62 FR 51112), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0231. The approval expires on September 30, 1998.

Dated: January 14, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–1540 Filed 1–22–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of February 1998.

Name: National Advisory Council on the National Health Service Corps.

Date and Time: February 5–8, 1998.

Place: Arkansas Excelsior Hotel, 3 State House Plaza, Little Rock, Arkansas 72201, Telephone: (501) 375–5000.

The meeting is open to the public.

Agenda: Agenda items include updates on the NHSC program; reports from the State Primary Care Organization, State Primary Care Association, and the Area Health Education Center programs and meetings of NHSC workgroups on scholarship taxation issues pertaining to the NHSC of the 21st century.

The opening meeting will be held on Thursday, February 5 from 6:00 p.m. to 9:00 p.m. On Friday and Saturday, meetings will begin at 8:00 a.m. and conclude around 5:30 p.m. Site visits will be made on Friday.

Anyone requiring information regarding the subject Council should contact Ms. Eve Morrow, National Advisory Council on the National Health Service Corps, Health Resources and Services Administration, 8th floor, 4350 East-West Highway, Bethesda, Maryland 20814, Telephone (301) 594–4144.

Agenda Items are subject to change as priorities dictate.

Dated: January 16, 1998.

Jane M. Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 98–1538 Filed 1–22–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Case-Control Study of Cancer and Related Disorders Among Benzene-Exposed Workers in China

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 24, 1997, page 3705, and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed collection

Title: Case-Control study of Cancer and Related Disorders Among Benzene-Exposed Workers in China. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* A case-control study will examine the relationship between exposure to benzene and the risk of

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lymphohematopoietic malignancies and related disorders and lung cancer in Chinese workers. Cases and controls will be selected from participants in a recent cohort study of benzene-exposed workers in China. The data will be used by the NCI to examine risk among workers exposed to low levels of benzene, and to characterize the dose and time-specific relationship between benzene exposure and disease risk. *Frequency of Response:* One-time study. *Affected Public:* Individuals or households. *Type of Respondents:* Workers. The annual reporting burden is as follows: *Estimated Number of Respondents:* 515; *Estimated Number of Responses per Respondent:* One; *Average Burden Hours per Response:* 0.425; and *Estimated Total Annual Burden Hours Request:* 219.

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection or information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriated automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Richard Hayes, Project Officer, National Cancer Institute, Executive Plaza North, Room 418, Rockville, Maryland 20892–7364, or call non-toll-free number (301) 496–9093, or FAX your request to (301) 402–1819, or E-mail your request, including your address to HayesR@epndce.nci.nih.gov.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received on or before February 23, 1998.

Dated: December 13, 1998.

Reesa L. Nichols,

OMB Project Clearance Liaison.

[FR Doc. 98–1554 Filed 1–22–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental Research; Notice of a Meeting of the National Advisory Dental Research Council

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Advisory Dental Research Council, National Institute of Dental Research, on January 20–21, 1998, Conference Rooms E1–E2, Building 45, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 8:30 a.m. until adjournment on January 21, 1998, for general discussion and program presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting of the Council will be closed to the public on January 20, 1:00 p.m. to recess for the review, discussion and evaluation of individual grant applications. These applications and information concerning individuals associated with the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal applications and reports, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dr. Dushanka V. Kleinman, Executive Secretary, National Advisory Dental Research Council, and Deputy Director, National Institute of Dental Research, National Institutes of Health, Building 31, Room 2C39, Bethesda, Maryland 20891 (telephone (301) 496–9469) will furnish a roster of committee members, a summary of the meeting, and other information pertaining to the meeting upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary listed above in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: January 15, 1998.

LaVerne Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–1555 Filed 1–22–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the Merit Review Ad Hoc Subcommittee of the National Advisory Council on Alcohol Abuse and Alcoholism.

Purpose/Agenda: To review and evaluate grant applications.

Name of Committee: Merit Review Ad Hoc Subcommittee of the National Advisory Council on Alcohol Abuse and Alcoholism.

Date of Meeting: February 11, 1998.

Time: 7:00 p.m. to adjournment.

Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Mark Green, Ph.D., 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, 301–443–2860.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; National Institutes of Health)

Dated: January 8, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–1556 Filed 1–22–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Amended Notice of Meeting

Notice is hereby given of a change in the notice of the February 6 meeting of the National Institute on Deafness and Other Communication Disorders Communication Disorders Review Committee which was published on January 14, 1998, 63 FR 2252.

The meeting was announced as a meeting of the Communication Disorders Review Committee. The meeting is actually a meeting of the National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: January 15, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–1557 Filed 1–22–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following meetings:

Purpose/Agenda: To review and evaluate grant applications.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: February 11, 1998.

Time: 1 pm to adjournment.

Place: 6120 Executive Blvd., Rockville MD 20892, (telephone conference call)/

Contact Person: Melissa J. Stick, Ph.D., M.P.H., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda MD 20892–7180, 301–496–8683.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: March 3, 1998.

Time: 4 pm to adjournment.

Place: 6120 Executive Blvd., Rockville MD 20892 (telephone conference call).

Contact Person: Richard S. Fisher, Ph.D., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda MD 20892–7180, 301–496–8683.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code. The applications and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: January 15, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–1558 Filed 1–22–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Purusant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code, Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders, Communication Disorders Review Committee.

Date: March 4–6, 1998.

Time: 8:00 a.m.–5:00 p.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Melissa Stick, Ph.D., M.P.H., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda MD 20892–7180, 301–496–8683.

Purpose/Agenda: To review and evaluate grant applications. The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code. The applications and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: January 15, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–1559 Filed 1–22–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–73]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: March 24, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Shelia E. Jones, Department of Housing & Urban Development, 451–7th Street, S.W., Room 7230, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: James Selvaggi at (202) 708–3773 x4647 for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35 as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

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This Notice also lists the following information:

Title of Proposal: Empowerment Zone/Enterprise Community Application Form.

OMB Control Number, if applicable: 2506–0148.

Description of the need for the information and proposed use: The application information collected is reviewed by HUD and USDA to recommend applicants for 1998 designation of either an urban or a rural Empowerment Zone. Twenty (20) Empowerment Zones will be designated in 1998 (15 urban and 5 rural). The annual progress reports will be used as required by the statute to determine the success of each designee in meeting its established benchmarks and in evaluating the program as a whole.

Agency form numbers, if applicable: HUD–40003.

Members of affected public: Units of local government and states, applying jointly.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response: *Nomination*—number of responses—300; hours of response—50; *Annual report*—15 (one annual progress report per grantee); 15 hours of response per grantee.

Status of the proposed information collection: Current approval will expire 2/15/98.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 15, 1998.

Saul N. Ramirez, Jr.,

Assistant Secretary for Community Planning and Development.

[FR Doc. 98–1616 Filed 1–22–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4263–N–74]

Notice of Proposed Information; Collection for Public Comments

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: March 24, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to Mildred M. Hamman, Report Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4328, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms not other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g. permitting electronic submission of responses.

This notice also lists the following information.

Title of Proposal: Application Requirements, Public and Indian Housing (PIH) Youth Sports Program.

OMB Control Number: 2577–0140.

Description of the need for the information and proposed use: The Youth Sports Program requires eligible applicants to submit information to HUD for review and evaluation against the selection criteria contained in the Notice of Funding Announcement (NOFA) which is published in the **Federal Register**, for possible funding. Approved applicants are rated and ranked by HUD, approved/disapproved for funding, and notified of their selection/rejection.

Agency form numbers, if applicable: Forms HUD–2880, HUD–50070, HUD–50071 (SF–24, SF–LLL).

Members of the affected public: State or Local Governments, Non-profit institutions.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of responses: 500 respondents, each Fiscal Year if funds are appropriated by Congress, 24 average hours per response, 12,000 hours for a total reporting burden.

Status of the proposed information collection: Reinstatement.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 20, 1998.

Kevin Emanuel Marchman,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 98–1617 Filed 1–22–98; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–39]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *COE:* Mr. Bob Swieconek, Army Corps of Engineers, Management & Disposal Division, Pulaski Building, Room 4224, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000; (202) 761–1749; *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–2059; *NAVY:* Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–7342; (These are not toll-free numbers).

Dated: January 15, 1998.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 01/23/98

Suitable/Available Properties

Buildings (by State)

Hawaii

Bldg. 79E
Ford Island, Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779810016
Status: Excess
Comment: 54,720 sq. ft., 2 floors, possible lead paint/PCB, most recent use—storage, off-site use only

Bldg. 79W
Ford Island, Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779810017
Status: Excess
Comment: 47,385 sq. ft., needs rehab, possible lead paint/PCB, most recent use—storage, off-site use only

Pennsylvania

Dwelling #1
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Landholding Agency: COE
Property Number: 319740002
Status: Excess
Comment: 2030 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Landholding Agency: COE
Property Number: 319740003
Status: Excess
Comment: 3045 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #3
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Landholding Agency: COE
Property Number: 319740004
Status: Excess
Comment: 1847 sq. ft., most recent use—office, good condition, off-site use only

Govt Dwelling
East Branch Lake
Wilcox Co: Elk PA 15870–9709
Landholding Agency: COE
Property Number: 319740005
Status: Underutilized
Comment: approx. 5299 sq. ft., 1-story, most recent use—residence, off-site use only

Dwelling #1
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Landholding Agency: COE
Property Number: 319740006
Status: Excess
Comment: 1996 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Landholding Agency: COE
Property Number: 319740007
Status: Excess
Comment: 1996 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #1
Woodcock Creek Lake
Saegertown Co: Crawford PA 16433–0629
Landholding Agency: COE
Property Number: 319740008
Status: Excess
Comment: 2106 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Lock & Dam 6, 1260 River Road
Freeport Co: Armstrong, PA 16229–2023
Landholding Agency: COE
Property Number: 319740009
Status: Excess
Comment: 2652 sq. ft., most recent use—residential, good condition, off-site use only

Virginia

Bldg. X18
Naval Station, Norfolk
Norfolk, VA 23511–
Landholding Agency: Navy
Property Number: 779810036
Status: Underutilized
Comment: 31,600 sq. ft., 2 floors, most recent use—office, poor condition, presence of asbestos, off-site use only

Land (by State)

New Hampshire

Land—7.97

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Army Reserve Center, Industrial Park
Belmont Co: Belnap, NH
Landholding Agency: GSA
Property Number: 219710118
Status: Excess
Comment: 7.97 acres, severe sloping
GSA Number: 1–D–NH–0489

Unsuitable Properties

Buildings (by State)

Michigan

Harbor Beach Coast Guard
Harbor Beach Co: Huron, MI 48441–
Landholding Agency: GSA
Property Number: 549810004
Status: Excess
Reason: Within 2,000 ft. of flammable or explosive material Extensive deterioration
GSA Number: 1–U–MI–492C

Nevada

Bldg. 62
Naval Air Station, Fallon
Fallon Co: Churchill, NV 89496–5000
Landholding Agency: Navy
Property Number: 779810018
Status: Excess
Reason: Secured Area

Bldg. 67
Naval Air Station, Fallon
Fallon Co: Churchill, NV 89496–5000
Landholding Agency: Navy
Property Number: 779810019
Status: Excess
Reason: Secured Area

Bldg. 68
Naval Air Station, Fallon
Fallon Co: Churchill, NV 89496–5000
Landholding Agency: Navy
Property Number: 779810020
Status: Excess
Reason: Secured Area

Bldg. 89
Naval Air Station, Fallon
Fallon Co: Churchill NV 89496–5000
Landholding Agency: Navy
Property Number: 779810021
Status: Excess
Reason: Secured Area

Bldg. 90
Naval Air Station, Fallon
Fallon Co: Churchill NV 89496–5000
Landholding Agency: Navy
Property Number: 779810022
Status: Excess
Reason: Secured Area

Bldg. 224
Naval Air Station, Fallon
Fallon Co: Churchill NV 89496–5000
Landholding Agency: Navy
Property Number: 779810023
Status: Excess
Reason: Secured Area

Bldg. 225
Naval Air Station, Fallon
Fallon Co: Churchill NV 89496–5000
Landholding Agency: Navy
Property Number: 779810024
Status: Excess
Reason: Secured Area

Bldg. 225A
Naval Air Station, Fallon
Fallon Co: Churchill NV 89496–5000
Landholding Agency: Navy
Property Number: 779810025
Status: Excess
Reason: Secured Area

Bldg. 373
Naval Air Station, Fallon
Fallon Co: Churchill NV 89496–5000
Landholding Agency: Navy
Property Number: 779810026
Status: Excess
Reason: Secured Area

Bldg. 401
Naval Air Station, Fallon
Fallon Co: Churchill NV 89496–5000
Landholding Agency: Navy
Property Number: 779810027
Status: Excess
Reason: Secured Area

Bldg. 402
Naval Air Station, Fallon
Fallon Co: Churchill NV 89496–5000
Landholding Agency: Navy
Property Number: 779810028
Status: Excess
Reason: Secured Area

Bldg. 405
Naval Air Station, Fallon
Fallon Co: Churchill NV 89496–5000
Landholding Agency: Navy
Property Number: 779810029
Status: Excess
Reason: Secured Area

Bldg. 407
Naval Air Station, Fallon
Fallon Co: Churchill NV 89496–5000
Landholding Agency: Navy
Property Number: 779810030
Status: Excess
Reason: Secured Area

Bldg. 410
Naval Air Station, Fallon
Fallon Co: Churchill NV 89496–5000
Landholding Agency: Navy
Property Number: 779810031
Status: Excess
Reason: Secured Area

Bldg. 411
Naval Air Station, Fallon
Fallon Co: Churchill NV 89496–5000
Landholding Agency: Navy
Property Number: 779810032
Status: Excess
Reason: Secured Area

Bldg. 412
Naval Air Station, Fallon
Fallon Co: Churchill NV 89496–5000
Landholding Agency: Navy
Property Number: 779810033
Status: Excess
Reason: Secured Area

Bldg. 430
Naval Air Station, Fallon
Fallon Co: Churchill NV 89496–5000
Landholding Agency: Navy
Property Number: 779810034
Status: Excess
Reason: Secured Area

Bldg. 802
Naval Air Station, Fallon
Fallon Co: Churchill NV 89496–5000
Landholding Agency: Navy
Property Number: 779810035
Status: Excess
Reason: Secured Area

Virginia

Bldg. 11A
Norfolk Naval Shipyard
Portsmouth VA 23709–5000
Landholding Agency: Navy
Property Number: 779810037
Status: Excess
Reason: Extensive deterioration

Bldg. 167
Norfolk Naval Shipyard
Portsmouth VA 23709–5000
Landholding Agency: Navy
Property Number: 779810038
Status: Excess
Reason: Extensive deterioration

Bldg. 378
Norfolk Naval Shipyard
Portsmouth VA 23709–5000
Landholding Agency: Navy
Property Number: 779810039
Status: Excess
Reason: Extensive deterioration

Bldg. 400
Norfolk Naval Shipyard
Portsmouth VA 23709–5000
Landholding Agency: Navy
Property Number: 779810040
Status: Excess
Reason: Extensive deterioration

Bldg. 504
Norfolk Naval Shipyard
Portsmouth VA 23709–5000
Landholding Agency: Navy
Property Number: 779810041
Status: Excess
Reason: Extensive deterioration

Bldg. 543
Norfolk Naval Shipyard
Portsmouth VA 23709–5000
Landholding Agency: Navy
Property Number: 779810042
Status: Excess
Reason: Extensive deterioration

Bldg. 558
Norfolk Naval Shipyard
Portsmouth VA 23709–5000
Landholding Agency: Navy
Property Number: 779810043
Status: Excess
Reason: Extensive deterioration

Bldg. 1326
Norfolk Naval Shipyard
Portsmouth VA 23709–5000
Landholding Agency: Navy
Property Number: 779810044
Status: Excess
Reason: Extensive deterioration

Bldg. 1440
Norfolk Naval Shipyard
Portsmouth VA 23709–5000
Landholding Agency: Navy
Property Number: 779810045
Status: Excess
Reason: Extensive deterioration

Land (by State)

Pennsylvania

Grays Landing
Tract B, 101–07
Co: Fayette PA
Landholding Agency: GSA
Property Number: 549810005
Status: Excess
Reason: Other

Comment: landlocked
GSA Number: 4–D–PA–784

[FR Doc. 98–1522 Filed 1–22–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[WO–220–1060–00–24 1A]

Notice of Reestablishment of the Wild Horse and Burro Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Reestablishment of the Wild Horse and Burro Advisory Board.

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972 (5 U.S.C. App.). Pursuant to Section 7 of the Wild Free-Roaming Horse and Burro Act (Pub. L. 92–195), notice is hereby given that the Secretary of the Interior and the Secretary of Agriculture are reestablishing the Wild Horse and Burro Advisory Board to provide advice concerning management, protection, and control of wild free-roaming horses and burros on the public lands administered by the Department of the Interior, through the Bureau of Land Management, and the Department of Agriculture, through the Forest Service.

FOR FURTHER INFORMATION CONTACT: Bud C. Cribley, Wild Horse and Burro Program Specialist, Department of the Interior, Bureau of Land Management, Room 314, 1620 L Street, N.W., Washington, D.C. 20006, (202) 452–5073.

Certification

I hereby certify that the reestablishment of the Wild Horse and Burro Advisory Board is necessary and in the public interest in connection with the Secretary of the Interior's statutory responsibilities to manage the lands and resources administered by the Bureau of Land Management.

Dated: December 23, 1997.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 98–1550 Filed 1–22–98; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Revise the U.S. Fish and Wildlife Service Manual and Establish Regulations as They Relate to the National Wildlife Refuge System Improvement Act of 1997 (Pub. L. 105–57)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The National Wildlife Refuge System Improvement Act of 1997 (Refuge Improvement Act) was signed by President Clinton on October 9, 1997. The Refuge Improvement Act amends and builds upon the National Wildlife Refuge System Administration Act of 1966 (NWRSAA), (16 U.S.C. 668dd *et seq.*). This notice advises the public that the U.S. Fish and Wildlife Service (Service) will be developing new or revised policies pursuant to the Refuge Improvement Act. The key policy areas to be addressed are listed later in **SUPPLEMENTARY INFORMATION**. This notice also identifies opportunities for public review and comment.

Interested persons contacting the Service as described in **ADDRESSES** below, will be provided draft Service Manual chapters as they are prepared and will be notified of due dates for written comments. Final chapters will be issued following review of public comments. Proposed regulations will be developed through the rule making process.

ADDRESSES: Requests to receive copies of the specific draft Service Manual chapters as they are prepared should be sent via mail to: Refuge Improvement Act Project, U.S. Fish and Wildlife Service, Division of Refuges, 4401 N. Fairfax Dr., Rm. 670, Arlington, VA 22203, Fax (703) 358–2248, or email to: Refuge_Improvement_Act@FWS.gov.

Each request should include a complete mailing address to which the draft chapters will be sent.

SUPPLEMENTARY INFORMATION: The nearly 93 million acre National Wildlife Refuge System (Refuge System) has been administered, since its inception, under a collection of Presidential proclamations, Executive Orders, administrative orders, and laws. Until 1966, and enactment of the National Wildlife Refuge System Administration Act (NWRSAA), there was no single Federal law that governed administration of the Refuge System. The NWRSAA provided guidance for refuge management; but in the 32 years since its passage, Refuge System acreage has grown more than threefold, wildlife management issues have increased in complexity and controversy, and the demands for recreational and economic uses of refuges have increased substantially.

The Refuge Improvement Act amends and builds upon the NWRSAA in a manner that provides an "Organic Act" for the Refuge System similar to those laws which exist for other Federal Lands. The Refuge Improvement Act will serve to ensure that the Refuge System is effectively managed as a national system of lands, waters, and interests for the protection and conservation of our nation's wildlife resources.

The Refuge Improvement Act's principal focus is to establish clearly the wildlife conservation mission of the Refuge System, provide guidance to the Secretary of the Interior for management of the Refuge System, provide a mechanism for unit-specific planning, and give managers clear direction and procedures for making determinations regarding wildlife conservation and public uses of units of the Refuge System.

The Service will be implementing the Refuge Improvement Act by developing new or revised Service Manual chapters for the Refuge System. All units within the Refuge System will be managed with regard to these chapters which will guide management strategies for achieving individual unit purposes and the Refuge System mission.

Key issues to be addressed in specific Service Manual chapters include:

- Biological integrity of the Refuge System;
- Appropriate general public uses for the System;
- Implementation of the compatibility test; and
- Comprehensive conservation planning.

Public input into the development of these key Service Manual chapters is essential. The Service will provide these draft chapters to interested agencies and individuals as described above in **ADDRESSES**. These draft chapters will also be available on the National Wildlife Refuge System web site: (http://refuges.fws.gov) during the pre-rulemaking public review and comment period. Any resulting proposed regulations will be available for public review and comment through the rule making process.

Due to the varying levels of complexity of issues, some chapters will require more time for development than others. Therefore, specific draft chapters will be made available to the public as they are prepared. The Refuge

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Improvement Act requires the Service to establish new compatibility policy and regulations within two years of enactment. There are no other directives in the Refuge Improvement Act for specific policy updates; however, the Service desires to move forward expeditiously on the specific policies listed in this notice to incorporate the most important provisions of the Refuge Improvement Act into all management functions. The Service estimates that draft Service Manual chapters for these issues will be available for public review and comment beginning in May 1998.

This notice and the public participation in this implementation process is being conducted in accordance with the policy and rulemaking requirements of the Administrative Procedures Act (5 U.S.C. 553), other appropriate Federal laws and regulations, including the National Wildlife Refuge System Improvement Act of 1997 (Pub. L. 105–57), Executive Order 12996, and associated Service policies and procedures.

Dated: January 16, 1998.

Donald Barry,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–1607 Filed 1–22–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CO–030–5101–00–YCKD; COC–51280]

Notice of Availability of the Draft Supplement to the Final Environmental Impact Statement for a TransColorado Gas Transmission Project; Colorado and New Mexico

AGENCY: Bureau of Land Management, Department of the Interior, and Forest Service, Department of Agriculture.

ACTION: Notice of Availability of a Supplement to The Final Environmental Impact Statement TransColorado Gas Transmission Project; Colorado and New Mexico.

SUMMARY: In accordance with the National Environmental Policy Act, the Bureau of Land Management (BLM), as lead agency, and in cooperation with the U.S. Forest Service (USFS) has prepared a Draft Supplement (Supplement) to the Final Environmental Impact Statement (FEIS) for the TransColorado Gas Transmission (TransColorado) project on federal lands in Colorado and New Mexico. TransColorado is the proponent. Lands managed by the BLM in the Montrose, Craig, and Grand Junction Districts in Colorado, and the Farmington District in New Mexico, and the USFS in the Uncompahgre and San Juan National Forests, Colorado, are crossed by the TransColorado pipeline project. The Supplement addresses the environmental impacts of the construction, operation, maintenance, and ultimate abandonment of known proposed route changes and minor realignments (less than 100 ft.) of the approved pipeline and right-of-way (ROW) grant COC–51280, and the impacts of the proposed construction and use of known additional temporary work areas adjacent to the approved ROW or, proposed ROW route changes or minor realignments. This Supplement will also address the impacts of the construction and use minor realignments and alternative temporary work areas in unspecified locations. These unspecified temporary work areas and minor realignments will be addressed to accommodate conditions that might be encountered during construction. Also addressed in the Supplement are proposed modifications to several environmental protection measures contained in the original right-of-way (ROW) grant and Record of Decision (ROD).

Please focus comments on the proposed actions and alternatives in the Supplement to the FEIS.

DATES: The 60-day public comment period for the Draft Supplement runs from January 23, 1998 until March 9, 1998.

Written comments on the Draft Supplement must be submitted or postmarked no later than March 9, 1998. Written comments may also be presented at the public meetings to be held on February 17, 1998, at 7:00 p.m. in the Double Tree Inn, 501 Camino del Rio in Durango, Colorado; on February 18, 1998 at 7:00 p.m. at the Ponderosa Restaurant, 108 South 8th in Dolores, Colorado; and on February 19, 1998 at 7:00 pm at the Holiday Inn, 755 Horizon Drive in Grand Junction, Colorado.

ADDRESSES: Any comments on this document should be sent to Bill Bottomly, TransColorado Project Manager, Bureau of Land Management, Montrose District Office, 2465 South Townsend Avenue, Montrose, CO 81401. The Draft Supplement to the FEIS and the FEIS are available for public review at the above address, and at the following offices of the BLM and USFS: the Grand Junction District Office, the Montrose District Office, the Grand Mesa/Uncompahgre/Gunnison National Forest Office, the San Juan National Forest/San Juan Resource Area office, and the Farmington District Office.

Public reading copies are available at the federal depository libraries in Colorado and New Mexico and public libraries within San Juan County, New Mexico, and La Plata, Montezuma, Dolores, San Miguel, Montrose, Delta, Mesa, Garfield and Rio Blanco Counties, Colorado.

FOR FURTHER INFORMATION CONTACT: Bill Bottomly (970) 240–5337, Ilyse Auringer (970) 385–1341, or Steve Hemphill (970) 874–6633.

SUPPLEMENTARY INFORMATION: After preparing a Draft and Final Environmental Impact Statement in 1992, the BLM and the USFS signed Records of Decision on December 1, 1992 and issued a ROW grant and adjacent Temporary Use Permit (TUP) for subsequent construction, operation and maintenance of the 292 mile-long TransColorado Gas Transmission pipeline from Meeker, Colorado to Bloomfield, New Mexico. Under the authority of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (37 Stat. 567), BLM issued a 50 foot-wide ROW grant on December 4, 1997, accompanied by a 25 foot-wide TUP, excepting 1.7 miles near Grand Junction, Colorado. The FERC issued TransColorado a Certificate of Public Convenience and Necessity on June 3, 1994. TransColorado completed the 22.5 mile Phase I of the project in December, 1996. The proponent is now prepared to construct the remainder of the pipeline during 1998.

Public participation has occurred throughout the Supplement to the FEIS process. The Notice of Intent (NOI) to prepare this Supplement to the FEIS was published in the **Federal Register** on November 21, 1997. "Open House" forums were held from October 21 through December 10, 1997 at Norwood, Durango, Delta, Rangely, Dolores, and Grand Junction, Colorado. Field trips to locations on the San Juan National Forest were offered on November 15 and 22, 1997.

Signed: January 14, 1998.

Jamie E. Connell,

Associate District Manager, Montrose District, BLM.

Robert L. Storch,

Forest Supervisor, Grand Mesa/Uncompahgre/Gunnison National Forests.

[FR Doc. 98–1542 Filed 1–22–98; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–08–1020–00]

New Mexico Resource Advisory Council Meeting.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix 1, The Department of the Interior, Bureau of Land Management (BLM), announces a meeting of the New Mexico Resource Advisory Council (RAC). The meeting will be held on March 5 and 6, 1998 at the Western Sizzlin Restaurant, 1010 South White Sands, Alamogordo, NM. The agenda for the RAC meeting will include agreement on the meeting agenda, any RAC comments on the draft summary minutes of the last two RAC meetings, of November 20–21, 1997 in Albuquerque, MN., and February 20, 1998 in Santa Fe, NM., briefings and discussions on the status of the NEPA process for the RAC Standards for Public Land Health and Guidelines for Livestock Grazing Management and other NEPA concerns, on establishment of RAC Subgroups for the BLM Field Offices, on the Lesser Prairie Chicken, on the McGregor Range Withdrawal, on implementation of the Standards for Public Land Health and Guidelines for Livestock Grazing Management and on other items as appropriate. An optional field tour will be available for RAC members to McGregor Range on the morning of Saturday, March 7, 1998. The tour will take most of the morning. Time and location to meet for the tour will be established after discussion with RAC members during the March 5 and 6, 1998 meeting

The meeting will begin on March 5, 1998 at 8:30 a.m. The meeting is open to the public. The time for the public to address the RAC is on Thursday, March 5, 1998, from 3:00 p.m. to 5:00 p.m. The RAC may reduce or extend the end time of 5:00 p.m. depending on the number of people wishing to address the RAC. The length of time available for each person to address the RAC will be established at the start of the public comment period and will depend on how many people there are that wish to address the RAC. At the completion of the public comments the RAC may continue discussion on its Agenda items. The meeting on March 6, 1998, will be from 8:00 a.m. to 3:00 p.m. The end time of 3:00 p.m. for the meeting may be changed depending on the work remaining for the RAC.

FOR FURTHER INFORMATION CONTACT: Bob Armstrong, New Mexico State Office, Planning and Policy Team, Bureau of Land Management, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, telephone (505) 438–7436.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning, establishing resource management priorities and assisting the BLM to identify State and regional standards for rangeland health and guidelines for grazing management.

Dated: January 16, 1998.

Richard A. Whitley,

Deputy State Director.

[FR Doc. 98–1599 Filed 1–16–98; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–010–07–1020–00–241A]

Northwest Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting and Televideo Conference.

SUMMARY: The next meeting of the Northwest Colorado Resource Advisory Council will be held on Friday, February 20, 1998, in Grand Junction, Colorado, following a televideo broadcast from the BLM National Training Center in Phoenix, Arizona.

DATES: Friday, February 20, 1998.

ADDRESSES: For further information, contact Joann Graham, Bureau of Land Management (BLM), Grand Junction District Office, 2815 H Road, Grand Junction, Colorado 81506; Telephone (970) 244–3037.

SUPPLEMENTARY INFORMATION: The meeting will follow a BLM National Resource Advisory Council televideo broadcast. The broadcast will air from 9:30 a.m. to 12:00 noon in the BLM Grand Junction District Office, 2850 H Road, Grand Junction, Colorado. The Northwest RAC meeting will be from 12:45 p.m. to 4:45 p.m. Agenda items include an update of the roadless inventory review and subcommittee reports on fire, land exchanges, and recreation.

The televideo conference and the resource advisory council meeting are open to the public. Interested persons may make oral statements at the meetings or submit written statements following the meeting. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of council meetings are maintained in both the Grand Junction and Craig District Offices. They are available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: January 13, 1998.

Mark T. Morse,

District Manager, Craig and Grand Junction Districts.

[FR Doc. 98–1630 Filed 1–22–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–1020–001]

Mojave-Southern Great Basin Resource Advisory Council—Notice of Meeting Locations and Times

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council Meeting Locations and Times.

DATES: Date is February 26, 1998, from 1:00 p.m.. to approximately 4 p.m. and will reconvene on February 27, 1998 and meet from 8 a.m. to 4:40 p.m. The public comment period will begin at 8:30 a.m. on February 27, 1998.

ADDRESSES: The council will meet at the Las Vegas District Office, 4765 West Vegas Drive, Las Vegas, NV 89108–2135.

FOR FURTHER INFORMATION CONTACT: Phillip L. Guerrero, Las Vegas Field Office, Public Affairs Officer, telephone: (702) 647–5046.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), council meeting of the Mojave-Southern Great Basin Resource Advisory Council (RAC) will be held as indicated above. The agenda includes a public comment period, and discussion of public land issues.

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The Resource Advisory Council develops recommendations for BLM regarding the preparation, amendment, and implementation of land use plans for the public lands and resources within the jurisdiction of the council. For the Mojave-Great Basin RAC this jurisdiction is Clark, Esmeralda, Lincoln and Nye counties in Nevada. Except for the purposes of long-range planning and the establishment of resource management priorities, the RAC shall not provide advice on the allocation and expenditure of Federal funds, or on personnel issues.

The RAC may develop recommendation for implementation of ecosystem management concepts, principles and programs, and assist the BLM to establish landscape goals and objectives.

All meetings are open to the public. The public may present written comments to the council. Public comments should be limited to issues for which the RAC may make recommendations within its area of jurisdiction. Depending on the number of persons wishing to comment, and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Phillip L. Guerrero at the Las Vegas District Office, 4765 Vegas Dr., Las Vegas, NV 89108, telephone, (702) 647–5000.

Dated: January 15, 1998.

Phillip L. Guerrero,

Public Affairs Officer.

[FR Doc. 98–1633 Filed 1–22–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1430–01; N–62221]

Notice of Realty Action for Proposed Occupancy Lease of Public Lands for Commercial Photography Camp, and Continued Use as a Base Camp in Conjunction With Livestock Management Activities, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: The proposed leasing of public land for a year round camp for conducting commercial photography instruction, as well as for continued use as a base camp in conjunction with existing livestock management activities.

The site proposed for leasing under provisions of section 302 of the Federal Land Policy and Management Act (FLPMA) of 1976 and 43 CFR Part 2920 is described as follows:

Mount Diablo Meridian, Nevada

T. 46 N., R. 32 E.,

Sec. 32: SW¼NW¼NW¼SW¼.

The proposal would include approximately 1 acre.

The parcel affected by the proposed lease is located near Gartiez Spring in the Bilk Creek Mountain Range. No additional development/construction, or surface disturbance of the area, would occur as a result of this lease.

No other proposals will be accepted. The proposed parcel is encumbered by a cabin and ancillary facilities, owned by the applicant and permitted under Section 4 of the Taylor Grazing Act. The proposal is to expand the existing authorized uses of the parcel to include a commercial photography camp. Therefore, no other proposals would be acceptable.

The proposal would be authorized by a lease for a term of 10 years. The lease could be renewed at the discretion of the authorized officer.

The proposed parcel has not been appraised at this time, so no estimate of rent is available. However, rent will not be less than the appraised fair market value.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Winnemucca Field Office, 5100 E. Winnemucca Boulevard, Winnemucca, Nevada 89445. In the absence of adverse comments, an application for the proposed use will be processed in accordance with proper application procedures.

FOR FURTHER INFORMATION CONTACT: Mary Figarelle, Realty Specialist, Winnemucca Field Office, 5100 E. Winnemucca Boulevard, Winnemucca, Nevada, 89445, or call (702) 623–1500.

Dated: January 9, 1998.

Ron Wenker,

District Manager, Winnemucca, Nevada.

[FR Doc. 98–1562 Filed 1–22–98; 8:45 am]

BILLING CODE 4310–HC–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT080–08–1020 00 241A]

Book Cliffs Resource Management Plan

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of intent to amend plan.

SUMMARY: This notice is to advise the public that the Bureau of Land Management (BLM) is proposing to do a plan amendment for the Book Cliffs Resource Management Plan (RMP) located in Uintah County, Utah.

DATES: The comment period for the proposed plan amendment will commence with publication of this notice. Comments must be submitted on or before February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Duane De Paepe, Planning and Environmental Coordinator, Vernal Field Office, Bureau of Land Management, 170 South 500 East, Vernal, Utah 84078. Existing planning documents and information are available at the above address or telephone (435) 781–4403. Comments on the proposed plan amendment should be sent to the above address.

SUPPLEMENTARY INFORMATION: The BLM is proposing to amend the Book Cliffs RMP, which includes public and Ute Indian tribal lands in Uintah County, Utah. The proposed amendment would authorize oil and gas leasing and development in the Hill Creek Federal Oil and Gas Unit located approximately 35 miles south of Vernal, Utah, encompassing approximately eight square miles (or 5,350 acres) within Sections 27 through 34 of Township 10 South, Range 20 East. Approximately 78 percent (4,150 acres) of the project area is located on lands belonging to the Uintah and Ouray Indian Reservation. Approximately 18 percent (960 acres) is located on public lands administered by the BLM, and the remaining approximately 4 percent (240 acres) is located on private lands. An environmental assessment is being prepared to analyze the impacts of this proposal and alternatives.

Dated: January 9, 1998.

G. William Lamb,

Utah State Director.

[FR Doc. 98–1629 Filed 1–22–98; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1220–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. January 15, 1998.

The plat representing the dependent resurvey of portions of Mineral Survey No. 2153, and a survey of lot 22 in section 14, T. 24 N., R. 1 E., Boise Meridian, Idaho, Group 1003, was accepted January 15, 1998. This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

Dated: January 15, 1998.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 98–1632 Filed 1–22–98; 8:45 am]

BILLING CODE 4310–86–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–00: G8–0074]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, on or before February 23, 1998.

Willamette Meridian

Oregon

T. 16 S., R. 5 E., accepted November 25, 1997
T. 41 S., R. 43 E., accepted November 25, 1997
T. 39 S., R. 4 W., accepted November 21, 1997
T. 20 S., R. 6 W., accepted December 30, 1997
T. 35 S., R. 6 W., accepted December 24, 1997
T. 28 S., R. 6 W., accepted November 12, 1997
T. 31 S., R. 10 W., accepted November 21, 1997

Washington

T. 6 N., R. 19 E., accepted November 21, 1997
T. 30 N., R. 7 W., accepted December 15, 1997

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision. **FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, (1515 S.W. 5th Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: January 9, 1998.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 98–1634 Filed 1–22–98; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on a proposal to extend the currently approved collection of information discussed below. The Paperwork Reduction Act of 1995 (PRA) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

DATES: Submit written comments by March 24, 1998.

ADDRESSES: Direct all written comments to the Rules Processing Team, Minerals Management Service, Mail Stop 4020, 381 Elden Street, Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of this collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart P, Sulphur Operations.

OMB Control Number: 1010–0086.

Abstract: The Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331 *et seq.*), as amended, requires the Secretary of the Interior to preserve, protect, and develop oil and gas resources in the OCS; make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of the human, marine, and coastal environment; ensure the public a fair and equitable return on the resources offshore; and preserve and maintain free enterprise competition. To carry out these responsibilities, MMS has issued regulations at 30 CFR Part 250. Subpart P, Sulphur Operations, of that part contains requirements and procedures for sulphur drilling, well-completion, and well-workover operations and production in the OCS.

The MMS uses the information collected under subpart P to ensure that sulphur operations and production in the OCS are carried out in a manner that is safe and pollution free. If respondents submit proprietary information, it will be protected under 30 CFR 250.18, Data and information to be made available to the public. No items of a sensitive nature are collected. The requirement to respond is mandatory.

Estimated Number and Description of Respondents: Currently there is only one active Federal OCS sulphur lease operator.

Frequency: On occasion, varies by section.

Estimated Annual Reporting and Recordkeeping Hour Burden: There are 447 burden hours currently approved for this collection.

Comments: The MMS will summarize written responses to this notice and address them in its submission for OMB approval. All comments will become a matter of public record. We will also consult with the respondent on the accuracy of the burden estimate. As a result of the consultation and comments we receive, we will make any necessary adjustments for our submission to OMB. In calculating the burden, MMS may have assumed that respondents perform some of the requirements and maintain records in the normal course of their activities. The MMS considers these to be usual and customary. Commenters are invited to provide information if they disagree with this assumption and they should tell us what the burden hours and costs imposed by this collection of information are.

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(1) The MMS specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for the proper performance of MMS's functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

(2) In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping cost burden for the collection of this information. The MMS needs your comments on this item. Your response should split the cost estimate into two components: (a) total capital and startup cost component; and (b) annual operation, maintenance, and purchase of services component. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: before October 1, 1995; to comply with requirements not associated with the information collection; for reasons other than to provide information or keep records for the Government; or as part of customary and usual business or private practices.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: January 12, 1998.

E. P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 98–1628 Filed 1–22–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Umatilla Basin Project, Umatilla, OR

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) proposes to prepare an environmental impact statement (EIS) on implementing Phase III of the Umatilla Basin Project. The Phase III study will evaluate the potential for modifying and expanding Reclamation's existing Umatilla Basin Project (Project) to provide additional flows in the Umatilla River for anadromous fish. In addition, the study will evaluate potential measures to improve municipal and industrial water supplies in the study area. Alternatives, including no action, will be evaluated in the EIS.

ADDRESSES:

Bureau of Reclamation, Pacific Northwest Regional Office, 1150 N Curtis Road, Suite 100, Boise, ID 83706–1234.

Bureau of Reclamation, Upper Columbia Area Office, P.O. Box 1749, Yakima, WA 98907–1749.

FOR FURTHER INFORMATION CONTACT: For information on the study, contact Robert Hamilton, Activity Manager, at (208) 378–5087 or at the above regional office address. For information regarding the NEPA process, contact John Tiedeman, Environmental Specialist, at (509) 575–5848 ext. 238 or at the above area office address.

SUPPLEMENTARY INFORMATION: Authorization for this study is contained in the Feasibility Studies Act of 1966, Public Law 89–561. The study will build upon prior activities authorized as part of the Project. These activities meet some but not all of the fishery needs of the basin. Recent data collected from monitoring of instream flows indicate that the restoration of flows resulting from Project activities to date will be less than originally estimated.

This study will evaluate the potential of providing water from the Columbia River to the Westland Irrigation District in exchange for water normally diverted from the Umatilla River. This would leave additional flows for resident and anadromous fish species in the river downstream of the Westland Irrigation District diversion. Restoration of the fishery would be of major cultural and economic importance to the Confederated Tribes of the Umatilla Reservation for whom anadromous fisheries are Indian Trust Assets. Other opportunities for instream enhancement and opportunities for enhancement of municipal and industrial water supplies will also be evaluated.

Reclamation plans to conduct public scoping meetings to identify issues and concerns will be used in the development of alternatives. The dates, times, and locations of public scoping meetings will be noted in newspapers of general circulation in the Pendleton and Hermiston, Oregon, areas and surrounding communities.

Dated: January 15, 1998.

John W. Keys, III,

Regional Director, Pacific Northwest Region.

[FR Doc. 98–1600 Filed 1–22–98; 8:45 am]

BILLING CODE 4310–94–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Renew Collections: Comment Request.

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following continuing information collections, as required by the Paperwork Reduction Act of 1995. Comments are requested concerning: (1) Whether the continuing collections of information is necessary for the proper performance of the functions of the agency, including whether information shall have practical utility; (2) the accuracy of the burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected, and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Comments regarding this information collection are best assured of having their full effect if received within 60 days of this notification.

ADDRESSES INFORMATION TO: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Washington, D.C. 20523, 202–712–1365 or via e-mail bjohnson@usaid.gov.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0550.

Form Numbers: AID 1570–13 and 1570–14.

Title: Narrative/Time-Line and Report on Commodities (Quarterly Reports).

Type of Submission: Renew.

Purpose: The purpose of this information collection is to properly respond to the annual competition among applicants who apply on behalf of their sponsored overseas institutions, independent reviewers and ASHA need to assess the strength and capability of the U.S. organizations, the overseas institutions and the merits of their proposed projects. Easily accessible historical records on past accomplishments and performance by repeat USOs, would speed the grant making process and provide documented reasons for both successful and unsuccessful applications.

Annual Reporting Burden:

Respondents: 70.

Total annual responses: 1,470.

Total annual hours requested: 735.

Dated: January 14, 1998.

Willette L. Smith,

Chief, Information and Records Division Bureau for Management, Office of Administrative Services.

[FR Doc. 98–1576 Filed 1–22–98; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development Board for International Food and Agricultural Development Interim Advisory Committee on Food Security; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the Board for International Food and Agricultural Development (BIFAD) Interim Advisory Committee Meeting. The meeting will be held from 9:00 a.m. to 5:00 p.m. on February 11, 1998, at the Pan-American Health Organization, located at 525 23rd Street N.W., Washington DC, 20523, in Conference Room B.

The Interim Advisory Committee will provide input to the U.S. Government on the Development of a long-term action plan in support of commitments made in the U.S. Country Paper and at the World Food Summit.

The meeting is open to the public. Any interested person may attend the meeting, may file written statements with the Committee before or after the meeting, or present any oral statements in accordance with procedures established by the Committee, to the extent that time available for the meeting permits.

Those wishing to attend the meeting should contact Mr. George Like at the Agency for International Development, Ronald Reagan Building, Office of Agriculture and Food Security, 1300 Pennsylvania Avenue, N.W., Room 2.11–072, Washington DC, 20523–2110, telephone (202) 712–1436, fax (202) 216–3010 or internet [glike@usaid.gov] with your full name.

Anyone wishing to obtain additional information about BIFAD should contact Mr. Tracy Atwood the Designated Federal Officer for BIFAD. Write him in care of the Agency for International Development, Ronald Reagan Building, Office of Agriculture and Food Security, 1300 Pennsylvania Avenue, N.W., Room 2.11–005, Washington DC, 20523–2110, telephone him at (202) 712–5571 or fax (202) 216–3010.

Tracy, Atwood,

AID Designated Federal Officer, (Chief, Food Policy Division, Office of Agriculture and Food Security, Economic Growth Center, Bureau for Global Programs).

[FR Doc. 98–1575 Filed 1–22–98; 8:45 am]

BILLING CODE 8116–01–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

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Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

None.

Volume II:

None.

Volume III:

None.

Volume IV:

None.

Volume V:

None.

Volume VI:

None.

Volume VII:

None.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 16th day of January 1998.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–1462 Filed 1–22–98; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Maritime Advisory Committee for Safety and Health; Change of Location for Committee Meeting

This notice is to advise the public that the January 28 and 29, 1998 advisory committee meeting will be held at a new address. This two-day meeting, previously announced in the **Federal Register** of December 29, 1997 (62 FR 67666), has been relocated to the Holiday Inn Hotel & Suites, 625 First Street, Alexandria, Virginia 22314, telephone (703) 548–6300. The meeting will be held from 9:00 a.m. to approximately 5:00 p.m. each day. This relocated address is two blocks away from the original location.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Liberatore, Office of Maritime Standards, tel. (202) 219–7234, ext. 141.

Signed at Washington, DC this 20th day of January, 1998.

Larry Liberatore,

Director, Office of Maritime Standards, Occupational Safety and Health Administration.

[FR Doc. 98–1626 Filed 1–22–98; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–006)]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Commercial Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Commercial Advisory Subcommittee.

DATES: Wednesday, February 4, 1998, 8:30 a.m. to 5:00 p.m.

ADDRESSES: NASA Headquarters, Room MIC 6, 300 E Street SW, Washington DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Candace Livingston, Code UX, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0697.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Advance notice of attendance to the Executive Secretary is requested. The agenda for the meeting will include the following topics:

—Stewardship Accounting Standard
—Access to Space
—Commercialization Team Activities and Findings
—Selection/Transition Criteria
—Overview of three Commercial Space Centers

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 13, 1998.

Alan M. Ladwig,

Associate Administrator for Policy and Plans, National Aeronautics and Space Administration.

[FR Doc. 98–1536 Filed 1–22–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that propose the destruction of records not previously authorized for disposal, or reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before March 9, 1998. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Civilian Appraisal Staff (NWRC), National Archives and Records Administration, 8601 Adelphi Road College Park, MD 20740–6001. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

FOR FURTHER INFORMATION CONTACT: Michael L. Miller, Director, Records Management Programs, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, telephone (301) 713–7110.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. General Accounting Office (N1–411–97–1). Updated comprehensive records schedule.

2. Department of Justice (N1–060–98–1). Facilitative records and training material accumulated by the International Criminal Investigation Training Program.

3. Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms (N1–436–97–2). Special Occupational Tax System and Federal Excise Tax System.

4. Environmental Protection Agency (N1–412–97–2). Waste Isolation Pilot Plants certification records (official docket copy will be preserved).

5. Federal Mine Safety and Health Review Commission (N1-470–98–1). Working files of case-related records of the Chief Administrative Law Judge, Administrative Law Judges, and law clerk of the Chief Judge.

6. U.S. Office of Government Ethics (N1–522–98–2). Office of General Counsel and Legal Policy trust files.

7. Panama Canal Commission (N1–185–98–2). Expenditure accounting records.

Dated: January 16, 1998.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 98–1535 Filed 1–22–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Alan T. Waterman Award Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Alan T. Waterman Award Committee (#1172).

Date and Time: Monday, February 9, 1998; 8 a.m.–3 p.m.

Place: Room 370, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Mrs. Susan E. Fannoney, Executive Secretary, Room 1220, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703/306–1096.

Purpose of Meeting: To provide advice and recommendations in the selection of the Alan T. Waterman Award recipient.

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: January 20, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–1566 Filed 1–22–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (No. 1189).

Date and Time: February 11–12, 1998; 8:00 a.m.–6:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 390, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: H. Frederick Bowman, Program Director, Biomedical Engineering and Research to Aid Persons with Disabilities, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSE for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 20, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–1569 Filed 1–22–98; 8:45 am]

BILLING CODE 7555–01–M

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NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science and Engineering; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Computer and Information Science and Engineering; Committee of Visitors, Networking Research Program (1115).

Date and Time: February 2–3, 1998; 8:30 am–5:00 pm each day.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1150, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Tatsuya Suda, Program Director, Division of Advanced Networking Infrastructure & Research, 4201 Wilson Boulevard, Arlington, VA 22230. Phone: (703) 306–1950.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Networking Research Program.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Reason for Late Notice: Meeting Notice was inadvertently misplaced.

Dated: January 16, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–1563 Filed 1–22–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act, Pub.L 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (#1173).

Date and Time: February 9–10, 1998; 8:30 a.m. to 5:00 p.m. and 8:45 a.m. to 5:00 p.m.

Place: Room 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Open.

Contact Person: Sue Kemnitzer, Executive Secretary, Room 585, NSF, 4201 Wilson Blvd., Arlington, Va. 22230. Phone: (703) 306–1382.

Minutes: May be obtained from the contact person at the above address.

Purpose of Meeting: To advise NSF on policies and activities of the Foundation to encourage full participation of women, minorities, and persons with disabilities currently underrepresented in scientific, engineering, professional, and technical fields and to advise NSF concerning implementation of the provisions of the Science and Engineering Equal Opportunities Act.

Agenda

1. Briefing on congressional activities related to science and engineering, including briefing on FY 1999 congressional budget;
2. NSF's GPRA Strategic Plan review;
3. Follow up on development of a Strategic Plan for the Committee and other items from previous meetings; and
4. Briefings and discussions on capacity building, disability issues, and education partnerships.

Dated: January 15, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–1567 Filed 1–22–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geoscience

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geoscience.

Date and Time: February 3, 1998, 9:00 a.m.

Place: Room 730, NSF, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Richard W. West, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1579.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Shipboard Scientific Support Equipment proposals as part of the selection process for awards.

Reason for Closing: The proposal being reviewed include information of a proprietary or confidential nature, including technical information; financial data and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Meeting Notice was inadvertently misplaced.

Dated: January 16, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–1565 Filed 1–22–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Materials Research (DMR) #1203.

Date and Time: February 10, 1998 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 370, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. LaVerne D. Hess, Program Director Division of Materials Research, Room 1065 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone (703) 306–1837.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Faculty Early Career Development (CAREER) Program.

Reason for Closing: The proposals being reviewed may include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 20, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–1568 Filed 1–22–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences, Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Mathematical and Physical Sciences (66).

Date and Time: February 2–4, 1998–8:30 a.m.–5:00 p.m.

Place: Rm. 375, NSF, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Bernard R. McDonald, Executive Officer for Mathematical Sciences Division, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1872.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including program evaluation, GPRA assessments, and access to privileged materials.

Agenda: To provide oversight review of the Mathematical Sciences Programs.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Reason for Late Notice: Meeting Announcement was inadvertently misplaced.

Dated: January 16, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–1564 Filed 1–22–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Mathematical Sciences (1204).

Date and Time: February 12–14, 1998.

Place: Room 1020, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: John Strikwerda, Computational Mathematics Program, Program Officer, Room 1025, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1870.

Purpose of Meeting: To provide advice and recommendations concerning applications submitted to NSF for financial support.

Agenda: To review and evaluate proposals in the mathematics of fluids as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 16, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–1570 Filed 1–22–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Oconee Nuclear Station, Units 1, 2, and 3; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–38, DPR–47, and DPR–55 issued to Duke Energy Corporation (the licensee) for operation of the Oconee Nuclear Station, Units 1, 2, and 3, located Oconee County, South Carolina.

The proposed amendments would revise Technical Specification (TS) Table 4.1–1 and Specification 4.5.2.1.2 to allow a one-time extension for specified Unit 2 refueling outage surveillances during operating cycle 16.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This proposed change has been evaluated against the standards in 10 CFR 50.92 and has been determined to involve no significant hazards, in that operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

No. A review of the previous two instrument channel tests and calibrations for the instruments discussed in the amendment request concluded that no adverse affects should occur as a result of the one-time extension. The ICCM [Inadequate Core Cooling Monitor] should be available to perform its intended function during the requested extension period. Thus, the probability and consequences of an accident previously evaluated will not be significant[ly] increased.

In addition, a review of the previous ES channel 5 and 6 manual trip test and Reactor Building Cooling system test that are discussed in the amendment request concluded that no adverse affects should occur as a result of the one-time extension. ES channels 5 and 6 and the Reactor Building Cooling system should be available to perform their intended function during the requested extension period. Thus, the probability and consequences of an accident previously evaluated will not be significantly increased.

2. Create the possibility of a new or different kind of accident from the accidents previously evaluated?

No. Since the one-time extension should not cause any adverse effects on the ICCM, ES channels 5 and 6, or Reactor Building Spray system, a new or different kind of accident from the accidents which were previously evaluated will not occur. The ICCM, ES channels 5 and 6, and Reactor Building Cooling system, should be available to perform their intended function during the requested extension period.

3. Involve a significant reduction in a margin of safety?

No. The margin of safety will not be significantly reduced by this amendment request because the ICCM, ES channels 5 and 6, and Reactor Building Cooling system, should be available to perform their intended function during the requested extension period. In addition, the review of the previous tests and calibrations which are discussed in the amendment request concluded that no adverse affects should occur as a result of the one-time extension.

Duke has concluded based on the above information that there are no significant hazards involved in this amendment request.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would

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result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 23, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated January 15, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Dated at Rockville, Maryland, this 20th day of January 1998.

For the Nuclear Regulatory Commission.

David E. LaBarge,

Senior Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–1752 Filed 1–22–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of January 26, 1998.

A closed meeting will be held on Thursday, January 29, 1998, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, January 29, 1998, at 10:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: January 21, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–1852 Filed 1–21–98; 3:40 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39555; File No. SR–NASD–97–98]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to SelectNet Fees

January 15, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 31, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Rule 19b–4 under the Act Nasdaq is herewith filing a proposed extension of the temporary 50% fee reduction currently charged under NASD Rule 7010(1) for the execution of a transaction in SelectNet.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Nasdaq is proposing to extend the temporary 50% fee abatement currently charged under NASD Rule 7010(1) for the execution of a transaction in SelectNet. This proposed extension continues the current SelectNet fee reduction from $2.50 per side to $1.25 per side and is effective January 1, 1998, through March 31, 1998. The proposed extension constitutes only a temporary abatement in the fee Nasdaq collects and, if no further action is taken, SelectNet fees will revert to the $2.50 per side level on April, 1998.

The reasons justifying a SelectNet fee reduction are contained in Nasdaq's original rule filing in October of 1997 seeking a 50% abatement for the period of October 1, 1997, through December 31, 1997.[2] SelectNet usage has continued to grow with more than 107,000 transactions in October of 1997 and over 79,000 transactions in November of 1997. Nasdaq believes that while the level of SelectNet activity supports a continuation of lower SelectNet fees, the volatility of current SelectNet usage levels militates in favor of the maintenance of the fee reduction on a temporary basis.

Nasdaq believes that the proposed extension of the fee reduction is consistent with Section 15A(b)(5) of the Act, which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other changes among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This filing applies to the assessment of SelectNet fees to NASD members, and thus the proposed rule change is effective immediately upon filing pursuant to Section 19(b)(3)(A)(ii)[3] of the Act and subparagraph (e)(2) of Rule 19b–4 under the Act[4] because the proposal is establishing or changing a due, fee or other charge.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[1] 15 U.S.C. 78s(b)(1).

[2] See Securities Exchange Act Release No. 39248 (October 16, 1997), 62 FR 55296 (October 23, 1997).

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(e)(2).

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IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–98 and should be submitted by February 13, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–1645 Filed 1–22–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39548; File No. SR–Phlx–97–23]

Self-Regulatory Organizations: Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Relating to the Treatment of PACE Orders in Double-up/Double-down Tick Situations

January 13, 1998.

I. Introduction

On May 2, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to double-up/double-down automatic price improvement and manual price protection. On August 4, 1997, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 39000 (September 2, 1997), 62 FR 47865 (September 11, 1997). No comments were received on the proposal. On October 20, 1997, the Exchange submitted to the Commission Amendment No. 2 to the proposed rule change.[4] This order approves the proposal, including Amendment No. 2 on an accelerated basis.

II. Description

A. Background

The Exchange, pursuant to Rule 19b–4 of the Act, proposes to adopt Supplementary Material .07(c) to Phlx Rule 229, Philadelphia Stock Exchange Automatic Communication and Execution ("PACE") System, relating to automatic double-up/double-down price improvement and manual double-up/double-down price protection. The PACE System accepts orders for automatic or manual execution in accordance with the provisions of Phlx Rule 229, which governs the operation of the PACE System and defines its objectives and parameters. Agency orders received through PACE are subject to certain minimum execution parameters and non-agency orders are subject to the provisions of Supplementary Material .02 of Rule 229. In addition, Rule 229 establishes execution parameters for orders depending on type (market or limit), size, and the guarantees offered by specialists.[5]

B. Automatic Double-up/Double-down Price Improvement

The Exchange proposes to adopt Rule 2929.07(c)(i), Automatic Double-up/Double-down Price Improvement, which would state that where the specialist voluntarily agrees to provide automatic double-up/double-down price improvement to all customers and all eligible orders in a security, in any instance where the bid/ask spread of the PACE Quote[6] is a ¼ point or greater, market and marketable limit orders[7] in NYSE-listed or Amex-listed securities for 599 shares or less that are received through PACE in double-up/double-down situations shall be provided with automatic price improvement of ⅛ of a point, beginning at 9:45 a.m.

Under the proposal, a "double-up/double-down situation" is defined as a trade that would be at least: (i) ¼ point (up or down) from the last regular way sale on the primary market; or (ii) ¼ point from the regular way sale that was the previous intra-day change on the primary market. The term "double" originated with two ⅛ point ticks, meaning ¼ of a point. Under the proposal, a down tick of 1/16 of a point followed by a down tick of 3/16 of a point would be a double-down situation, because it equals ¼ of a point.

As an example of the part (i) of the definition of a double up/double-down situation, assuming that the specialist has agreed to participate in this feature, where the PACE Quote is 22½–22¾, if the last sales on the primary market were 22¾ followed by a down tick at 22⅝, a double-up/double-down situation would not occur for a market order to buy, because buying at 22¾ is a single up tick of ⅛ of a point and, thus, does not meet the ¼ point requirement. Under the proposal, because no double-up/double-down situation occurred, no automatic price improvement would be afforded. However, applying part (ii) of the definition, a double-up/double-down situation would occur for a sell order, because a sale at 22½ is a ¼ point away from the next-to-last intra-day change, executed at 22¾. Under the proposal, the market order to sell would be automatically executed at 22⅝, providing an ⅛ point price improvement over the otherwise-automatic execution at 22½.

Where the PACE Quote is 22¼–22¾, with the last sale at 22½, part (i) of the definition would apply to a market order to buy or sell, because buying at 22¾ creates a double-up tick (¼ of a point away from 22½) and selling at 22¼ creates a double-down tick (also ¼ of a point away from 22½).

If the last sale was at 22¾ and the next-to-last sale was at 22½, part (i) of the definition would apply to a market order to sell, because selling at 22¼ creates a double-down tick ½ of a point away from 22¾, and part (ii) of the definition would apply to a buy order, because buying at 22¾, although not an up or down tick from the last sale of 22¾, is ¼ of a point away from the next to last change, executed at 22½.

If the last sale was at 22⅝ and the next-to-last sale was at 22½, part (ii) of the definition would apply to a market order to buy, because buying at 22¾ creates a double-up tick (¼ of a point away) from 22½, as well as to a market order to sell, because selling at 22¼ creates a double-down tick (¼ of a point away) from 22½.

Pursuant to part (ii) of the definition of a double-up/double-down situation, this term includes qualifying changes from the last change, not just the two previous last sales. For example, where the last sales on the primary market were: 22½; 22⅜; and 22⅜, with the PACE Quote at 22¼–22½, a market order to sell that would otherwise be executable at 22¼ should be price-improved to 22⅜, because it is a double-down tick (¼ of a point away) from the last "change" or sale that was the previous change (meaning the change from 22½ to 22⅜).[8] Under part (i) of the definition, this order would not qualify as a double-up/double-down situation, because an execution at 22¼ would be only ⅛ of a point away from the last sale of 22⅜.

To explain the interaction between the POES window and the automatic double-up/double-down price improvement feature, assuming that the PACE Quote is 15½–¾ and the last sale was at 15½, an order to buy 500 shares would be subject to automatic price improvement, because buying at 15¾ creates a double up tick (¼ of a point away) from the last sale at 15½. The order would be automatically executed under the proposal at 15⅝ (giving ⅛ of a point price improvement over the PACE Quote of 15¾) and no POES window would occur. The proposed automatic double-up/double-down price improvement feature results in an automatic execution, with no window, timer or delay. If, on the other hand, the order was to sell 500 shares, a double-up/double-down situation would not occur, because selling at 15½ is not a double-up/double-down situation (not ¼ of a point away from the last sale); this order would be POES-eligible such that the POES window would apply. At the expiration of the POES window, absent manual specialist intervention, this order would be manually executed at 15½, its Stop Price.

Automatic double-up/double-down price improvement also would be available for marketable limit orders. As an example, assuming that the specialist has agreed to participate in this feature, where the PACE Quote is 15½–15¾, and the last sale was at 15½, an order to buy 500 shares at 15¾ would be subject to automatic price improvement, because buying at 15¾ creates a double up tick (¼ of a point away) from the last sale at 15½. The order to buy 500 shares at 15¾ is a marketable limit order, because it is immediately executable on the offer. Under this proposal, this order would be automatically executed at 15⅝, receiving price improvement of ⅛ of a point.

The Exchange notes that the execution resulting from the automatic price improvement feature can *create* a double-up/double-down situation; for instance, where the PACE Quote is 32–32¼ and the last sale was at 32⅜, a sell order that would be executable at 32 would be improved to 32⅛, which is a double-down tick (¼ point from 32⅜ to 32⅛).

Automatic double-up/double-down price improvement will not occur where the execution price would be outside the primary market high/low range for the day, if out-of-range protection was elected by the member organization entering the order pursuant to Rule 229.07(a). The following example illustrates how the execution price before automatic price improvement can be out-of-range. Where the primary market high and low for the day are 22½ and 22¼, the last sale was at 22⅜ and the PACE Quote is 22⅝–22⅞, an incoming market order to sell would revert to manual status since an execution at 22⅝ (or 22¾, if automatic price improvement would have been applied) would constitute an out-of-range execution (*i.e.*, an execution at 22⅝ would have been at a price about the 22½ high for the day). The next example illustrates how the execution price could be out-of-range as a result of automatic price improvement. Where the primary market high and low for the day are 22⅝ and 22¼, the last sale was at 22⅜ and the PACE Quote is 22⅝–22⅞, an incoming sell order executable at 22⅝ would *not* be improved to 22¾, because such price would be out-of-range (*i.e.*, an execution at 22¾ would have been at a price above the 22⅝ high for the day). Instead, the order would revert to manual status, and the specialist would either stop the order or execute if at 22⅝. Absent out-of-range protection, the 22⅝ execution would have been a double-up situation (¼ of a point away from the last sale of 22⅜).

The Exchange represented that it is proposing to extend its price improvement initiative to double-up/double-down situations, because these are particularly suitable for price improvement. Instead of affording an automatic execution at the PACE Quote, the proposal results in an automatic execution that improves on that price by an ⅛ of a point.

The Exchange has determined that, as with many PACE features and participation in the PACE System itself, automatic double-up/double-down price improvement should be made available on a voluntary, symbol-by-symbol basis, so that specialists can determine which securities are suitable for the program. Moreover, the Exchange has asserted that the availability of a price improvement feature benefits the specialist function, especially in high-volume securities, where stopping orders and effecting manual intervention are time-consuming, can delay execution, and do not necessarily result in price improvement.

C. Manual Double-up/Double-down Price Protection

The Exchange also proposes to adopt a manual double up/double-down price protection provision as Rule 229.07(c)(ii). Currently, a form of manual double-up/double-down price protection is a feature of the PACE System, but is neither mandatory, nor

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[5] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Philip H. Becker, Senior Vice President and Chief Regulatory Officer, Phlx, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, SEC, dated August 1, 1997 ("Amendment No. 1").

[4] *See* Letter from Philip H. Becker, Senior Vice President, Phlx, to Michael Walinskas, Senior Special Counsel, SEC, dated October 17, 1997 ("Amendment No. 2"). Amendment No. 2 revises the proposal to provide that relief from the requirements concerning double-up/down guarantee sizes may be granted pursuant to the extraordinary circumstances language contained in the text of proposed Rule 229.07(c)(iii), rather than that of existing Rule 229.13. Moreover, the text of Rule 229.07(c)(iii) is proposed to be amended to state that extraordinary circumstances also include situations where the Exchange is unable to receive market quotations in a timely and accurate manner. In addition, while the Form 19b–4 filing containing the proposed rule change stated that member organizations may decline to participate in both double-up/down automatic price improvement and manual price protection, the text of proposed Rule 229.07(c)(i)(D) did not reflect this option. Amendment No. 2 adds such language to the text.

[5] Rule 229.05 provides that round-lot market orders up to 500 shares and partial round-lot ("PRL") market orders of up to 599 shares, which combine a round-lot with an odd-lot, are stopped at the PACE Quote at the time of their entry into PACE ("Stop Price") for a 30 second delay to provide the Phlx specialist with the opportunity to effect price improvement when the spread between the PACE Quote exceeds ⅛ of a point. This feature is known as the Public Order Exposure System ("POES") "window." Rule 229.05 further provides that market orders for more than 599 shares that a specialist voluntarily has agreed to execute automatically also are entitled to participation in POES. If orders eligible for POES are not executed within the POES 30 second window, the order is automatically executed at the Stop Price.

[6] The PACE Quote consists of the best bid/offer among the American Stock Exchange ("Amex"); New York Stock Exchange ("NYSE"); Pacific Exchange; Phlx, Boston Stock Exchange, Cincinnati Stock Exchange, and Chicago Stock Exchange, as well as the Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES"). *See* Rule 229.

[7] A market order is an order to buy or sell a stated amount of a security at the best price obtainable when the order is received. A marketable limit order is an order to buy or sell a stated amount of a security at a specified price, which is received at a time when the market is trading at or better than such specified price.

[8] The first down tick was from 32½ to 32⅜, and the second down tick would have been from 32⅜ to 32¼ had the order been executed. The intervening sale at 32⅜ does not change this result.

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available in all securities.[9] Nor has it been incorporated into Exchange rules. Thus, the Exchange is proposing to replace the existing voluntary feature with the proposed mandatory feature. This aspect of the proposal is intended to impose a double-up/double-down price protection requirement upon specialists that choose not to participate in the automatic price improvement feature. Manual price protection would apply in ⅛ point-wide markets or greater in double-up/double-down situations; thus, unlike automatic price improvement, which is triggered only by ¼ point-wide or greater markets, a 3/16 point-wide market would trigger manual price protection. Further, the Exchange has represented that in situations where both manual double-up/double-down price protection and POES would otherwise apply, an order will receive manual price protection, but will not be eligible for POES.[10]

The proposed manual double-up/double-down price protection provision would stop eligible orders (*i.e.*, automatically executable market and marketable limit orders of 599 shares or less in NYSE- or Amex-listed securities received through PACE in double-up/double down situations, beginning at 9:45 a.m.) to give such orders the possibility of receiving manual price improvement from the specialist. Under this proposal, an eligible order would be "stopped" by the specialist at the PACE Quote at the time of its entry into PACE, meaning that the order is guaranteed to receive at least the price by the end of the trading day. Consistent with Phlx Equity Floor Procedure Advice A–2 ("Advice A–2") specialists are required to display stopped orders at an improved price and any contra-side orders received by the specialist will be taken into account for purposes of determining when to execute a stopped order and at what price.

The Exchange has represented that the purpose of a manual price protection provision is to provide an alternative double-up/double-down feature, which allows for price improvement, albeit not automatic, for securities which the specialist has determined are not appropriate for the automatic feature, due to, for example, liquidity, trading patterns, and volatility. In this regard, the Exchange has stated that less liquid stocks may trade in sizes that render it unfair to specialists to afford automatic price improvement to such orders and manage the resulting positions.[11]

D. Both Features

For both automatic price improvement and manual price protection, specialists may establish higher sizes than the 599 share minimum (but less than or equal to the specialist's automatic execution guarantee), which may be changed effective the next day. Member organizations entering PACE orders ("PACE Users") will be notified of any such changes.

Specialists choosing to activate the automatic feature would also be subject to the procedure described above (*i.e.*, it would become effective the next day). In addition, switching between the automatic and manual features triggers this procedure. Signing up for the manual price protection feature is not required, because all specialists will be required to participate.

PACE Users entering orders may decline to participate in the automatic and manual double-up/double-down features; however, they may not choose to participate in only one of the two features. Moreover, odd-lot orders are not eligible for either proposed feature. Further, the proposed features are available only for orders that are eligible for automatic execution. For instance, non-marketable limit orders and orders exceeding a specialist's automatic execution guarantee size are not eligible for either proposed feature, because the features depend upon either stopping or automatically improving orders guaranteed a certain automatic execution price.

Finally, the proposed rule change provides that both proposed features may be disengaged in a security or floor-wide in extraordinary circumstances. In addition to fast market conditions, extraordinary circumstances also include systems malfunctions and other circumstances that limit the Exchange's ability to receive, disseminate, or update market quotations in a timely and accurate manner.

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[12] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[13]

Over the years, the Commission has recognized that the increased competition for order flow that results from permitting regional specialists to attract orders from other markets by providing price improvement opportunities and superior quotations enhances market making ability and the quality of customer order execution. The Commission has approved proposals by national securities exchanges to integrate price improvement opportunities, on both an automatic and manual basis, into their automatic execution systems. Accordingly, the Commission believes that the Exchange's present proposal, which would adopt both automatic price improvement and manual price protection features in double-up/double-down situations, may enhance both intermarket competition and order execution quality on the Exchange. In addition, the Commission believes that both features should contribute to the maintenance of orderly markets by Phlx specialists because they help to reduce the price variations occurring from trade to trade on low volume.

A. Automatic Double-up/Double-down Price Improvement

Under the proposal, specialists voluntarily may agree to provide automatic price improvement of ⅛ of a point from the PACE Quote to all customers and all market and marketable limit orders of up to 599 (or higher, if elected by the specialist)

[9] The Exchange has represented that the current double-up/down price protection feature has been in use since 1991. If elected by the entering member organization in a security selected by the specialist as eligible for this feature, orders within the specialist's automatic execution guarantee size are stopped in double/up/down situations.

[10] Telephone conversation between Philip Becker, Senior Vice President and Chief Regulatory Officer, Phlx, and Jon Kroeper, Special Counsel, Division of market Regulation, SEC, dated November 7, 1997. The Phlx proposal also states that the POES window is not applicable where the automatic double up/down price improvement feature is applicable.

[11] Specifically, the Exchange has stated that its reference to trading patterns may cover stocks where the spread between the bid and offer is very narrow, with little trading occurring between such bid/offer spread, or very wide, with most trading on the bid/offer. Moreover, the Exchange has stated its belief that low volatility stocks may not be appropriate for automatic price improvement, because little movement in the stock may also indicate that little trading is occurring between the bid and offer price.

[12] 15 U.S.C. § 78f(b).

[13] In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

shares in a particular security on a stock-by-stock basis, in any instance where the bid/ask spread of the PACE Quote is ¼ point or greater and an automatic execution at the PACE Quote would create a double-up/double-down situation from the last primary market sale. The Commission believes that the adoption of this proposed feature by the Exchange is appropriate in that its use by Phlx specialists should increase the likelihood that eligible customer orders, particularly marketable limit orders, will be executed at an improved price over the PACE Quote. As stated above, certain market orders already are stopped in the POES window for 30 seconds to give the specialist the opportunity to provide price improvement to such orders.[14] The Commission's Division of Market Regulation previously has noted that price improvement windows, such as POES, by themselves rarely provide an execution that betters the quoted market.[15] The Exchange's proposal should enhance the price improvement opportunities available for such orders as it will provide automatic price improvement to eligible orders in double-up/double-down situations.

The Commission's recent Report on the Practice of Preferencing found that the frequency of price improvement for marketable limit orders was significantly lower than that for market orders when measured across exchanges, spreads, and order size ranges.[16] As marketable limit orders currently are not eligible for the POES window, the Commission finds that the proposed automatic price improvement feature should have a beneficial impact, in that it should increase significantly the price improvement opportunities available to marketable limit orders, as such orders otherwise would be executed automatically at the PACE Quote upon their entry into PACE.

B. Manual Double-up/Double-down Price Protection

The Exchange also has proposed to adopt a mandatory manual double-up/double-down price protection feature.[17] In situations where a specialist has not agreed to provide automatic double-up/double-down price improvement, this feature would stop all market and marketable limit orders of up to 599 shares (or higher, if elected by the specialist) to all customers in all stocks in instances where the bid/ask spread of the PACE Quote is ⅛ or greater in double-up/double-down situations, making it possible for the specialist to provide price improvement to such orders.

The Commission historically has been concerned that the practice of stopping stock may compromise the specialist's fiduciary duties to unexecuted limit orders on the specialist's limit order book.[18] The Commission, however, has approved the practice in instances where the harm to existing orders on the specialist's limit order book was believed to be offset by the resulting reduced spread and possibility of price improvement for the stopped order. The Commission believes that the instances in which the Exchange's proposal is intended to apply are appropriate for the use of stopping stock procedures.

Further, the Commission notes that the proposal and existing Phlx procedures provide for the display of stopped orders by Phlx specialists. Specifically, Advice A–2, which governs the handling of stopped orders on the Phlx equity floor, requires a Phlx specialist who stops an order pursuant to the feature to display such an order in his or her quote at an improved price.[19]

Moreover, as was stated above in connection with double-up/double-down price improvement, the proposed manual double-up/double-down price protection feature gives the specialist the opportunity to provide price improvement to orders that would otherwise be subject to immediate automatic execution at the PACE Quote. Additionally, a specialist voluntarily may extend automatic price improvement or manual price protection in double-up/double-down situations to orders for more than 599 shares, provided the level is at or below the specialist's automatic execution guarantee. This aspect of the proposal should have a beneficial impact as it appears to be specifically targeted to provide the possibility of price improvement by the specialist to orders currently lacking such opportunities.

The Commission also believes that the proposal, taken together with Advice A–2, the proposal provides adequate guidelines for a specialist's handling of orders that are stopped in double-up/double-down situations in a manner consistent with his or her obligation to maintain fair and orderly markets.[20] In particular, proposed Rule 229.07(c)(ii) provides that orders that are stopped for manual double-up/double-down price protection are guaranteed to receive at least the Stop Price by the end of the trading day. While the specialist's provision of this guarantee is implicit in the concept of stopping stock, it is not stated explicitly in Advice A–2.[21]

[14] *See supra* note 5.

[15] *See*, Division of Market Regulation, SEC, *Market 2000: An Examination of Current Equity Market Developments* (January 1994), at Study V, n.19.

[16] *See* SEC, *Report on the Practice of Preferencing* (April 11, 1997) at Tables V–8A to V–8C.

[17] As stated above, the Exchange has represented that its existing manual double-up/double-down price improvement feature has been in use since 1991. *See supra* note 9 and accompanying text.

The Commission notes that Section 19(b) of the Act provides that each self-regulatory organization is required to file any proposed rule change with the Commission and that no proposed rule change shall take effect unless approved by the Commission or otherwise permitted in accordance with its provisions.

[18] *See* SEC, Report of Special Study of Securities Markets, 88th Cong., 1st Sess., H.R. Doc. No. 95, pt. 2, at 150–154; Preferencing Report, *supra* note 16, at Part II.B.4. For example, in a market quoted 20–20⅛ (with a minimum variation of 1/16 of a point), 1000 shares bid and offered, the offer representing a customer limit order, the specialist receives a market order to buy 500 shares. If the specialist decides to stop the market order, the specialist will change his or her quote to 20 1/16–20⅛, 500 shares bid and 1000 shares offered, the bid representing the stopped market order. If the specialist subsequently receives a market order to sell 500 shares, the specialist will execute the sell order against the stopped order at 20 1/16, improving the price for the stopped order. However, the sell limit order at 20⅛ with priority on the book is bypassed and does not receive the execution it would have had if the stop had not been granted. In addition, if the market turns away from the limit price (*i.e.*, moves to 20–20 1/16 or lower), the limit order may never be executed.

The Commission notes, however, that because manual double-up/double-down price protection only is available in ⅛ point markets and greater, and the minimum trading variation on the Phlx currently is 1/16, the proposal does not implicate the Commission's particular and continuing concerns with the practice of stopping stock in minimum variation markets that were set forth in the Preferencing Report. *See* Preferencing Report, *supra* note 16, at Part II.B.4.

[19] The Commission notes that the Exchange has represented that in situations where both manual double-up/double-down price protection and POES would otherwise apply, an order will receive manual price protection, but will not be eligible for POES. *See supra* note 9. The Commission believes that this aspect of the proposal should increase order exposure on the Exchange, as orders stopped for manual price protection will be required to be displayed in the specialist's quote, whereas orders eligible for POES are displayed only to the specialist. *See supra* note 5.

[20] *See* Phlx Rule 203.

[21] In approving the Phlx's adoption of Advice A–2 in 1994, the Commission stated its belief that "further action could be taken [by the Exchange] to ensure proper handling of stopped stock." *See* Securities Exchange Act Release No. 34614 (August 30, 1994), 59 FR 46280 (September 7, 1994) (File No. SR–Phlx–93–41). Specifically, the Commission stated that it expected the Phlx to submit a proposed rule change to complement its floor procedure advice. The Commission set forth a number of elements that the Exchange should consider including in such a rule, namely: a definition of the agreement to "stop" stock and the obligations of the member who agrees to grant the stop; the market conditions under which a stop should be granted; a policy for the execution of stopped stock and, in particular, for determining the price at which the order should be executed; and pilot procedures for minimum variation

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C. Provisions Common to Both Proposed Features

Under Rule 229.07(a), PACE Users may elect that if an automatic execution of their orders at the PACE Quote would result in an execution price that is outside the primary market high-low range for that trading day, such orders would be routed to the specialist for manual execution at or within the high-low range of the day. The proposal provides that PACE Users may elect that neither automatic double-up/double-down price improvement nor manual double-up/double-down price protection will occur where the execution price (before or after the application of automatic price improvement) or Stop Price, respectively, would be outside the high-low range for the day. In such instances, orders would be handled manually by the specialist and be subject to an execution at or within the primary market high-low range of the day. The Commission believes that this aspect of the proposal is appropriate in that it provides PACE Users with greater flexibility as to the disposition of their orders. Moreover, providing such flexibility could enhance the Exchange's competitive position among firms seeking an appropriate venue for the execution of their order flow.

In addition, under proposed Rule 229.07(c)(i)(D), PACE Users may decline to participate in the automatic and manual double-up/double-down features; however, they may not choose to participate in only one of the two features.[22] The Commission believes that such a provision is appropriate in that it should offer a preferred alternative to PACE Users for whom a prompt execution at a definitive price is most important. As described above, when the manual double up/double down price protection feature is applicable, a significant time delay may occur when an order is stopped and price improvement is attempted. In addition, as with offering PACE Users the alternative between double-up/double-down features and out-of-range services, offering PACE Users the option to decline both features may enhance its competitive position among order execution venues. The Commission further believes that the Exchange's decision to require that PACE Users only may decline to participate in both features, not a particular one, is a decision that appropriately falls within the business judgment of the Exchange.

Further, proposed Rule 229.07(c)(i) and (c)(ii) set forth procedures through which specialists may activate automatic double-up/double-down price improvement in a particular stock, switch between the automatic and manual features, and change the size of the orders that will be eligible for either feature. In each instance, the change will be effective the next trading day, and PACE Users will be notified of any such changes. The Commission believes the proposal provides satisfactory procedures in this regard. In particular, the Commission believes that making these changes effective on the next trading day is appropriate in that it grants specialists the necessary flexibility to manage the proposed features in light of changing market conditions. At the same time, it alleviates concerns that specialists potentially may take advantage of their unique knowledge with respect to incoming PACE order flow to make intra-day modifications to the double-up/double-down features that would be to the detriment of other market participants.

Finally, proposed PACE Rule 229.07(c)(iii) provides that both double-up/double-down features may be disengaged in one or more securities, upon the presence of extraordinary circumstances, as determined by two Phlx Floor Officials. Extraordinary circumstances are defined to include fast market conditions, systems malfunctions and other circumstances that limit the Exchange's ability to receive, disseminate, or update market quotations in a timely manner. The Commission believes that this aspect of the proposal is appropriate in that it provides sufficient guidance to the Phlx membership by clearly delineating the circumstances under which the double-up/double down features may be disengaged and the procedure to be followed in seeking such disengagement. The Commission further believes that the provision requiring two Floor Officials to approve the disengagement of both double-up/double-down features is important. Specifically, while the particular categories of events covered in the proposed paragraph generally are appropriate grounds for the disengagement of the double-up/double-down features, the Commission believes that requiring Floor Officials to confirm that such conditions exists is a necessary safeguard to ensure the appropriate treatment of PACE orders eligible for these features.[23]

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 2 revises the proposals to provide that relief from the requirements concerning double-up/double-down guarantee sizes may be granted pursuant to the extraordinary circumstances language contained in the text of proposed Rule 229.07(c)(iii) to the PACE Rule, rather than that of existing PACE Rule 229.13. The Commission believes that amending the proposal to utilize Rule 229.07(c)(iii) for this purpose is a reasonable approach, as this provision has been formulated specifically for use in double-up/double-down situations, whereas Rule 229.13 was developed to apply in the context of specialist performance obligations. In addition, Amendment No. 2 revises the text of proposed Rule 229.07(c)(iii) to state that extraordinary circumstances also include situations where the Exchange is unable to receive market quotations in a timely and accurate manner, as well as where it is unable to disseminate or update such quotations. The Commission finds that the addition of this provision is appropriate in that such instances may interfere with the ability of PACE to determine whether a double-up/double-down situation actually has occurred, and the ability of specialists to handle orders stopped pursuant to the manual feature. Further, Amendment No. 2 adds language to the text of proposed Rule 229.07(c)(i)(D) to state specifically that member organizations may decline to participate in both double-up/double-down features. While this alternative was set forth in the Form 19b–4 filing containing the proposed rule change, it was not reflected in the text of proposed Rule 229.07(c)(i)(D). The Commission finds that this aspect of the change is appropriate in that it will serve as a reminder to member organizations of the availability of this alternative. Finally, the Commission notes that the proposed rule change was noticed previously in the **Federal Register** for the full statutory period and the Commission did not receive any comments on it. Therefore, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 2 to the proposed rule change on an accelerated basis.

markets that are consistent with the rules of priority, parity, and precedence. The Commission continues to believe strongly that the Exchange should submit a proposed rule change pursuant to Section 19(b) of the Act and Rule 19b-4 thereunder to adopt such a stopping stock rule.

[22] A firm's election to not participate in the double up/double down features will apply to trading in all Phlx stocks; the firm will not be able to make separate elections on a security by security basis. Phone conversation between Michael Walinskas, SEC and Edith Hallahan, Phlx, January 13, 1998.

[23] In addition, the Commission expects the Exchange to monitor the performance of Floor Officials in granting any requests by specialists to disengage the double-up/double-down features.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules changes that are filed with the Commission, and all written communications relating to Amendment No. 2 between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–97–23 and should be submitted by February 13, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–Phlx–97–23), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–1551 Filed 1–22–98; 8:45 am]

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[24] 15 U.S.C. § 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39549; File No. SR–Phlx–96–38]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2, 4 and 5 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing of Flexible Exchange Traded Equity and Index Options

January 14, 1998.

I. Introduction

On August 21, 1996, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] to provide for the listing and trading of Flexible Exchange Options ("FLEX options") on specified indexes ("FLEX index options") and equity securities ("FLEX equity options").

Notice of the proposal was published for comment and appeared in the **Federal Register** on September 24, 1996.[3] The Phlx submitted to the Commission Amendment No. 1 to its proposal on March 6, 1997.[4] Notice of Amendment No. 1 was published for comment and appeared in the **Federal Register** on April 24, 1997.[5] The Phlx submitted to the Commission Amendment No. 2 to its proposal on July 1, 1997.[6] The Phlx submitted Amendment No. 3, on August 27, 1997,[7] which was subsequently replaced in its entirety by Amendment No. 4, which the Phlx submitted to the Commission on November 7, 1997.[8]

The Phlx submitted Amendment No. 5 to the Commission on January 6, 1998.[9]

No comment letters were received on the proposed rule change or on Amendment No. 1 to the proposed rule change. This order approves the Exchange's proposal, as amended by Amendment Nos. 1 through 5.

II. Background

The purpose of the Exchange's proposal is to provide a framework for the Exchange to list and trade equity and index options that give investors the ability, within specified limits, to designate certain of the terms of the options. In recent years, an over-the-counter ("OTC") market in customized options has developed which permits participants to designate the basic terms of the options, including size, term to expiration, exercise style, exercise price, and exercise settlement value, in order to meet their individual investment needs. Participants in this OTC market are typically institutional investors, who buy and sell options in large-size transactions through a relatively small number of securities dealers. To compete with this growing OTC market in customized options, the Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 37691 (September 17, 1996), 61 FR 50060.

[4] In Amendment No. 1 to its proposed rule change, the Phlx restated the original proposal and proposed several changes as set forth in detail in Section III of this release.

[5] *See* Securities Exchange Act Release No. 38519 (April 17, 1997), 62 FR 20048.

[6] In Amendment No. 2, the Exchange amended the Request for Quote process to require a Requesting Member to indicate the size of an order and the intention to cross, if applicable. In addition, the Phlx proposes specific position limits of 22,000 contracts for Super Cap Index options. *See* Letter from Edith Hallahan, Director and Special Counsel, Regulatory Services, Phlx, to Sharon Lawson, Senior Special Counsel, Office of Market Supervision ("OMS"), Division of Market Regulation ("Market Regulation"), Commission, dated June 25, 1997 ("Amendment No. 2").

[7] *See* Letter from Theresa McCloskey, Vice President, Phlx, to Sharon Lawson, Senior Special Counsel, OMS, Market Regulation, Commission, dated August 26, 1997 ("Amendment No. 3").

[8] The Phlx replaces Amendment No. 3, in its entirety, with Amendment No. 4, and proposes to: (1) eliminate the application of position and exercise limits to FLEX equity options; (2) reduce the minimum size applicable to a Request-for-Quote for a closing transaction in already-opened FLEX equity options from 100 to 25 contracts; (3) clarify the parity and priority principles for FLEX options transactions; (4) amend the proposed rule change to refer consistently to "FLEX index and equity options" (as opposed to index FLEX options); (5) correct the text of proposed Rule 1079(b)(6) regarding the crossing procedure to reflect that the crossing intention has already been announced as part of the RFQ, as amended by Amendment No. 2; and (6) amend proposed Rule 1079(a)(1) to clearly state that any options-eligible security pursuant to Rule 1009 is eligible to underlie FLEX equity options trading and any index underlying Non-FLEX options trading is also eligible for FLEX index options trading. These proposed changes are described more fully herein. *See* Letter from Philip H. Becker, Senior Vice President, General Counsel and Chief Regulatory Officer, Phlx, to Sharon Lawson, Senior Special Counsel, OMS, Market Regulation, Commission, dated November 3, 1997.

[9] The Phlx proposes in Amendment No. 5 to replace section 3 of Amendment No. 4 and withdraw the examples provided in Amendment 4. In Amendment No. 5, the Phlx clarifies: (1) the parity and priority principles for FLEX options transactions; and (2) that each assigned ROT or assigned Specialist is not required to respond with a quote in every instance, unless requested by a Floor Official. *See* Letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Phlx, to Sharon Lawson, Senior Special Counsel, OMS, Market Regulation, Commission, dated December 9, 1997 ("Amendment No. 5").

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proposes to adopt rules [10] to permit the introduction of trading in FLEX options in an exchange auction market environment, with The Options Clearing Corporation ("OCC") as issuer and guarantor.[11] Thus, FLEX options are structured with a minimum size reflecting the larger-sized trades of these institutional users. The Exchange's proposal will allow FLEX option market participants to designate the following contract terms: (1) exercise price (except for certain limitations for FLEX equity call options); [12] (2) exercise style (*i.e.*, American [13] or European,[14]; (3) expiration date; [15] (4) option type (put, call, or hedge order); and (5) form of settlement (for index options—A.M., P.M. or average).

The proposed rule, Rule 1079, is based upon the Exchange's Rule 1069, Customized Foreign Currency Options, and Exchange experience with trading this product since November, 1994.[16] Generally, FLEX options shall be traded in accordance with many existing option and index option rules; however, Rule 1079 contains certain new trading procedures unique to FLEX options. In addition, the Exchange believes that the proposal is similar to the rules and proposals of other exchanges respecting flexible options.[17]

OCC will be the issuer and guarantor of all FLEX index and equity options. Similarly, the Commission has previously, designated FLEX index and equity options as standardized options for purposes of the options disclosure framework established under Rule 9b–1 of the Act.[18]

III. Description of the Proposal[19]

The Phlx proposes to adopt Rule 1079, FLEX™ index and equity[20] options, which would govern the trading of FLEX index and equity options on the Exchange. The Exchange proposes to designate all Phlx index options as eligible for FLEX options trading.[21] Thus, the Phlx is proposing to trade FLEX options on industry (narrow-based) index options pursuant to the proposed rule, in addition to market (broad-based) index options. Further, the Phlx is proposing to trade FLEX equity options on securities which are options-eligible pursuant to Rule 1009.

Proposed Rule 1079 contains the characteristics, trading procedure and other provisions applicable to trading FLEX options. All FLEX options must be quoted and traded in the trading crowd of the corresponding non-FLEX option. The Exchange notes that the Automated Options Market ("AUTOM") system will not be available for FLEX options. Proposed Rule 1079 also states that although FLEX options are generally subject to the rules in the options section,[22] to the extent that the provisions of Rule 1079 are inconsistent with other applicable Exchange rules, Rule 1079 takes precedence with respect to FLEX options.

Because FLEX options would not be continuously quoted, nor are series pre-established, the variable terms of FLEX options shall be established by the following process. In order to initiate a transaction, a Requesting Member must submit an RFQ to the appropriate trading crowd, announcing the terms of the quote sought. The characteristics, including which terms and to what degree customization will be available, are outlined in Rule 1079(a).[23] For example, the exercise strike price respecting FLEX index options can be specified at the time the quote is requested in terms of a specific index value number (*e.g.*, 553.5), a method for fixing such number (*e.g.*, 10 basis points over the index value at a certain time, or with the future trading at a certain price), or a percentage of index value calculated as of the open or close of trading on the Exchange on the trade date (*e.g.*, 5% above the close).[24] Similarly, respecting FLEX equity options, the exercise strike price can be specified in terms of a specific dollar amount rounded to the nearest one-eighth of a dollar, or a percentage of the underlying security rounded to the nearest tick. However, the Exchange proposes to amend its original proposal to state that customization of FLEX equity option strike prices for calls will not be permitted; only strikes that may be listed pursuant to Rule 1012 are eligible, such that the strike price must be consistent with strike price intervals permissible for standardized non-FLEX equity options.[25]

The exercise style can be either American or European,[26] regardless of the exercise style of the listed option.[27] The expiration date can also be customized, specifying any business day (non-holiday)—any month, day and year within five years for Flex index options and three years for FLEX equity options.

[10] *See* Phlx Rule 1079.

[11] For a discussion of clearance and settlement procedure for FLEX options, *see* Securities Exchange Act Release No. 37318 (June 18, 1996) (SR–OCC–96–03). For example, OCC may depart from regular expiration date procedures and deadlines in the case of equity FLEX options, pursuant to OCC Rule 805, Interpretation and Policy .03.

[12] The Exchange believes that the flexible exercise price feature could result in an available call option that would not be eligible to be a qualified covered call ("QCC") under Section 1092(c)(4) of the Internal Revenue Code, thus jeopardizing a modest tax benefit currently enjoyed by writers of standardized non-FLEX equity call options. Accordingly, the Phlx's rules will restrict exercise prices for FLEX equity call options. *See also* Securities Exchange Act Release No. 37726 (September 25, 1996) (File No. SR–Amex–96–29; SR–CBOE–96–56; and SR–PSE–96–31).

[13] An American-style equity option is one that may be exercised at any time on or before the expiration date.

[14] A European-style equity option is one that may be exercised only during a limited period of time prior to expiration of the option.

[15] The proposal, however, requires that the expiration date of a FLEX equity option may not fall on a day that is on, or within two business days of the expiration date of a Non-FLEX equity option. In addition, FLEX index options must have an expiration date within 5 years of issuance, and FLEX equity options within 3 years of issuance.

[16] Securities Exchange Act Release No. 34925 (November 1, 1994) (SR–Phlx–94–18).

[17] *See, e.g.*, CBOE Rules 24A.1–24A.17; Amex Rules 900G, et. seq., and PSE Rules 8.100–8.115.

[18] FLEX index options and FLEX equity options have been deemed "standardized options" for purposes of the Rule 9b–1 options disclosure framework. *See e.g.*, Securities Exchange Act Release Nos. 31920 (February 24, 1993) (Order approving FLEX options based on the S&P 100 and 500 Indexes); 31910 (February 23, 1993) (FLEX index option 9b–1 order); and 36841 (February 14, 1996) (Order approving FLEX equity options for CBOE and PCX, and designating FLEX equity options, and FLEX index options traded and settled in certain designated foreign currencies, as "standardized options"). *See also* Securities Exchange Act Release No. 37824 (October 15, 1996) (FLEX equity option 9b–1 order).

[19] The original proposal was published for comment in Securities Exchange Act Release No. 37691 (September 17, 1996) (File No. SR–Phlx–96–38).

[20] The term "FLEX" is a trademark of the Chicago Board Options Exchange, Inc. ("CBOE").

[21] The following are the current Phlx market index options: Value Line Composite Index ("VLE"), National Over-the-Counter Index ("XOC"), and U.S. Top 100 Index ("TPX"). The following are the current Phlx industry index options: OTC Industrial Average Index ("OTZ"), Bank Index ("BKX"), Gold/Silver Index ("XAU"), Semiconductor Index ("SOX") and Utility Index ("UTY"), Forest and Paper ("FPP"), Plane ("PLN"), Phone ("PNX"), and Oil Service ("OSX"). Because the Super Cap Index ("HFX") is neither a market or an industry index, the Exchange applies a position limit of 5,500 contracts for the non-FLEX overlying option. This position limit is lower than the position limit tiers for standardized non-FLEX industry index options. In addition, the Exchange proposes to delete the provision that requires approval by the Options Committee prior to listing an otherwise eligible FLEX product. *See* Amendment No. 4, *supra* note 8.

[22] *See* Phlx Rules 1000, et. seq.

[23] The Exchange represents that Rule 1079 generally parallels the provisions of Rule 1069 governing customized foreign currency options.

[24] Initially, the exercise strike price will not be available for customization as a percentage, pending systems enhancements.

[25] *See* Rule 1012, Commentary .05.

[26] An American style option may be exercised at any time up to its expiration, while a European style option can only be exercised on its expiration day. *See* Phlx Rule 1000(b)(35).

[27] In certain circumstances, European style FLEX equity options may be adjusted to require the delivery upon exercise of a fixed amount of cash. *See* OCC By-Law, Article VI, Section 11, Interpretation and Policy .08.

However, FLEX options may not expire on any day that falls on or within two business days of (prior or subsequent to) a mid-month expiration day for a non-FLEX option on the same underlying index or security (other than a quarterly expiring index option). [28] In addition, a FLEX option cannot expire on the same day that series is established at OCC.[29]

With respect to the minimum size of FLEX *market index* option quotes, if there is no open interest in the particular series when an RFQ is submitted, the minimum value size of an RFQ is $10 million underlying equivalent value; if there is open interest, the minimum value size of an RFQ for an opening or closing transaction is $1 million underlying equivalent value, or the remaining underlying equivalent value on a closing transaction, whichever is less. The underlying equivalent value is defined as the aggregate underlying value of a FLEX index option (index multiplier times the current index value) multiplied by the number of FLEX index options. The minimum value size for a responsive quote in FLEX market index options is $1 million underlying equivalent value, or the remaining underlying equivalent value on a closing transaction, whichever is less.

With respect to the minimum size of FLEX *industry* index option quotes, if there is no open interest in the particular series when an RFQ is submitted, the minimum value size of an RFQ is $5 million underlying equivalent value; this amount is one-half of the minimum size proposed by the Phlx and currently in place on other options exchanges for flexible broad-based index options. Where there is open interest, the minimum value size of an RFQ for an opening or closing transaction is $1 million underlying equivalent value, or the remaining underlying equivalent value on a closing transaction, whichever is less. The minimum value size for a responsive quote is $1 million underlying equivalent value, or the remaining underlying equivalent value on a closing transaction, whichever is less.

With respect to the minimum size of FLEX *equity* option quotes, if there is no open interest in the particular series when an RFQ is submitted, the minimum value size of an RFQ is 250 contracts; if there is open interest, the minimum value size of an RFQ is 100 contracts in the case of an opening transaction; and 25 contracts, or the remaining size on a closing transaction, whichever is less. The minimum value size for a responsive quote in FLEX equity options is 25 contracts, or the remaining size on a closing transaction, whichever is less.[30] The Phlx also proposes that the minimum size for FLEX equity options exercises is reduced from the originally proposed 100 contracts to 25 contracts.

The Exchange proposes to lower the minimum size from 100 to 25 contracts under such circumstances, in part, to conform to the rules of other options exchanges.[31] Further, the Exchange believes that the ability to close positions in increments smaller than 100 contracts should attract additional FLEX trading interest. The Exchange notes that market participants wanting to execute an opening transaction in a particular series of FLEX equity options will continue to be required to meet the 250 or 100 minimum contract requirement.

Assigned ROTs and assigned Specialists, who respond to an RFQ, are required to respond to each RFQ with a certain minimum size. Respecting FLEX market index options, assigned ROTs and assigned Specialist, who respond to an RFQ, are required to respond with at least $10 million underlying equivalent value or the dollar amount requested in the RFQ, whichever is less. Respecting FLEX industry index options, assigned ROTs and assigned Specialists, who respond to an RFQ, are each required to respond with at least $5 million underlying equivalent value or the dollar amount requested in the RFQ, whichever is less. Respecting FLEX equity options, assigned ROTs and assigned Specialist, who respond to an RFQ, are required to respond with a market of at least 250 contracts or the size amount requested in the RFQ, whichever is less.

The settlement value for FLEX index options may be specified as the value reported on the Exchange at the: (i) close of trading (P.M.-settled), (ii) opening of trading (A.M.-settled), or (iii) as an average over a specified period of time, within parameters established by the Exchange.[32] For example, the third category includes the average of the index's opening and closing settlement values on the expiration date, the average of the index's high and low values on the expiration date, or the average of the index's opening, closing, high and low values on the expiration date. However, American style FLEX index options exercised prior to the expiration date can only settle based on the closing value on the exercise date.[33] FLEX index options maybe designated for settlement in U.S. dollars, British pounds, Canadian dollars, Deutsche marks, European Currency Units, French francs, Japanese yen or Swiss francs. With respect to the settlement process applicable to FLEX equity options, exercise settlement shall be by physical delivery of the underlying security pursuant to Rule 1044. Also, FLEX equity options will be subject to the exercise-by-exception procedures of OCC.[34]

With respect to the quote format of FLEX options, a bid and/or offer in the form of a specific dollar amount reflected as a fractional price (*e.g.*, 1/8, 1/4), or a percentage of the underlying security or underlying equivalent value, rounded to the nearest minimum tick shall be acceptable. The option type may be a put, call or hedge order.[35]

The quoting and trading procedure for FLEX options, beginning with the RFQ, is enumerated in Rule 1079(b). Submitting an RFQ is the first step in quoting FLEX options. The Requesting Member must first announced the RFQ to the trading crowd of the non-FLEX option and then submit an RFQ ticket, containing the following: (1) Underlying index or security, (2) type, (3) exercise style, (4) expiration date, (5) exercise price, and, respecting FLEX index options, (6) settlement value (*e.g.*, A.M. or P.M.), and (7) the designated settlement currency. Thereafter, on receipt of an RFQ in proper form, the assigned Specialist or the Requesting

[28] Quarterly expiring index options expire on the first business day of the month following the end of the calendar quarter.

[29] This provision replaces language in Rule 1079(a)(6)(C) of the original proposal stating that a new series cannot be opened on the day of exercise.

[30] The Exchange originally proposed minimum closing (if there is open interest) and responsive transaction sizes of 100 contracts. *See* Amendment No. 4, *supra* note 8.

[31] *See, e.g.*, Securities Exchange Act Release No. 38839 (July 15, 1997), 62 FR 39040 (July 21, 1997) (order approving File No. SR–CBOE–97–10).

[32] The Exchange proposes to retain its existing securities information vendor as the reporting authority for FLEX index options, respecting any additional index value calculations required due to the type of customization offered by FLEX options. The Exchange is not proposing, at this time, to utilize its own Index Calculation Engine ("ICE") System as the reporting authority for FLEX options. *See* Securities Exchange Act Release No. 38292 at n.4 (February 15, 1997) (SR–Phlx–96–36).

[33] This limitation is currently in place on other exchanges trading FLEX options and with respect to other American style A.M.-settled index options. *See* Characteristics and Risks of Standardized Options Trading, February 1994, at page 48.

[34] OCC Rule 805 provides for automatic exercise of in-the-money options at expiration without the submission of an exercise notice to OCC if the price of the security underlying the option is at or above a certain price (for calls) or at or below a certain price (for puts); and the non-exercise of an option at expiration if the price of the security underlying the option does not satisfy such price levels.

[35] *See* Rules 1000(b)(7) and 1066(f).

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Member shall cause the terms of the RFQ to be disseminated as an administrative text message through the Options Price Reporting Authority ("OPRA").[36] RFQs, responsive quotes, booked orders and completed trades will be promptly reported to OPRA and disseminated as an administrative text message. The Exchange notes that although certain information is not required to be part of the RFQ (such as account type, crossing intention, response time and size), this information will be reflected on the final order ticket. Further, the size and crossing intention must be voiced as part of voicing the RFQ.[37]

Following the RFQ announcement, a preset response time will begin, during which members may provide responsive quotes. As stated in paragraph (b)(2), the response time, between two and 15 minutes, will be determined by the Options Committee.[38] During the response time, qualified members may provide responsive quotes to the RFQ, which may be entered, modified or withdrawn during such response time. At the end of the response time, the assigned Specialist, or if none, the Requesting Member shall determine the best bid and offer ("BBO"), based on price, disseminating such market with reference to the corresponding RFQ. However, where two or more bids/offers are at parity, proposed Phlx Rule 1079(b)(3) states that bids/offers submitted by an assigned Specialist, assigned ROT or customer will have priority over the bids/offers submitted by non-assigned ROTs and by controlled accounts as defined in Phlx Rule 1014(g)(i).[39] The Exchange has also explicitly set forth in the text of the proposed rule and Advice F–28 stating that all transactions must be in compliance with Section 11 of the Act and the rules promulgated thereunder.

Following the determination of the BBO, a BBO Improvement Interval may be invoked if the Requesting Member rejects the BBO or the BBO is for less than the entire size requested. The BBO Improvement Interval is a two minute time period during which the BBO may be matched or improved. As a result of the Improvement Interval, a new BBO is established, which is disseminated with reference to the corresponding RFQ. An assigned ROT and the assigned Specialist who responded with a market during the response time may immediately join the new BBO.

A trade in FLEX options cannot be executed until the end of the response time or BBO Improvement Interval. Once the response time or BBO Improvement Interval ends, the Requesting Member is given the first opportunity to trade on the market by voicing a bid/offer in the trading crowd.[40] The Requesting Member has no obligation to accept any bid or offer for a FLEX option. If the Requesting Member rejects the BBO or the BBO size exceeds the entire size requested, another member may accept such BBO or the unfilled balance of the BBO. Acceptance of a bid/offer creates a binding contract under Exchange rules.

Once the BBO is established, the RFQ remains open that trading day, unless a trade occurs, and a member may re-quote the market with respect to the open RFQ without submitting an additional RFQ. If a trade occurs, a new RFQ is required. Only an assigned ROT or assigned Specialist who responded to the open RFQ during the response time or BBO Improvement Interval may immediately join the re-quoted market, thus matching for parity purposes. Neither the Requesting Member, nor the re-quoting member, is given the first opportunity to trade on the re-quoted market.

Further, there will be a limit order book for FLEX options. The Specialist in the listed non-FLEX equity or index option, whether or not assigned in FLEX options, must accept FLEX orders on the FLEX book after completion of the RFQ process. Only customer day limit orders may be placed on the FLEX index or FLEX equity option book. Booked orders expire at the end of each trading day. The limit price and size must be written on the RFQ ticket and disseminated as an administrative text message through OPRA. In order to trade with the book, an executing member must quote the market and announce the trade. The Exchange proposes to delete the provision that the executing member has priority over other members, including assigned ROTs and the assigned Specialist, seeking to trade with the booked order. The purpose of this change is to trade FLEX options off the book similarly to non-FLEX options, noting that this consistency should prevent confusion.

Generally, on the Phlx options floor, a cross may take place in accordance with Rule 1064. The Requesting Member must voice the crossing intention as part of voicing the RFQ. With respect to FLEX options, after the BBO has determined, the Requesting Member intending to cross must bid (or offer) at or better than the BBO. If the Requesting Member's bid/offer is at the BBO, the Requesting Member may execute 25% or a fair split, whichever is greater, of the contra-side of the order that is the subject of the RFQ. For instance, if there are two members on parity at the BBO, the Requesting Member and an assigned ROT, the Requesting Member is entitled to receive 50% of the contra-side contracts, which is a fair split, not just the 25% guaranteed minimum right of participation. The remainder of the contra-side is split in accordance with the parity/priority provision applicable to determining the BBO, such that assigned ROTs/Specialists may be afforded priority.

If the Requesting Member's bid/offer improves the existing BBO, an assigned ROT or assigned Specialist who responded with a market during the response time or BBO Improvement Interval, may immediately join the Requesting Member's improved bid or offer, thus matching for parity purposes. However, the Requesting Member may execute 25% or a fair split, whichever is greater, of the contra-side of the order that is the subject of the RFQ. The remainder of the contra-side is split in accordance with the parity/priority provision applicable to determining the BBO, such that assigned ROTs/Specialists may be afforded priority. However, broker-dealer crosses and solicited orders, as defined in Rule 1064, are not eligible for the split afforded by these crossing provisions. Broker-dealer crosses and solicited orders must be announced and bid/offered, under the FLEX crossing provision. No 25% minimum guaranteed right of participation applies to solicited orders or broker-dealer/broker-dealer crosses. In addition, crossing transactions may not be subject to a minimum right of participation, because a customer-to-customer cross would not be required to yield the

[36] Operationally, the Requesting Member provides this information to data entry personnel, who enter it into Exchange systems.

[37] *See* Amendment No. 2, *supra* note 6, and Amendment No. 4, *supra* note 8.

[38] Initially, the Options Committee has established a response time of ten minutes. Although this Committee will be authorized to change the response time within the permissible range, any such change will be preceded by notice to the Exchange membership. *See also* CBOE Rule 24A.4(a)(3)(iii).

[39] In Amendment No. 5, the Phlx states that assigned Specialist and Assigned ROTs generally should not receive priority over customer orders in FLEX options transactions, because of their duty under the Act and Exchange rules to assist in the maintenance of a fair and orderly market by responding to temporary disparities between supply and demand, a lack of price continuity or a temporary distortion in pricing relationships. *See* Amendment No. 5, *supra* note 9.

[40] Thus, when a Requesting Member seeks to trade on the established BBO, an assigned ROT/Specialist cannot participate. For example, where the BBO is 6–7, if the Requesting Members seek to sell 500 contracts at 6, the Requesting Member has priority for that purpose.

remainder (75%) to assigned ROTs/Specialists.

The Exchange notes that an ROT and Specialist may trade FLEX options as an assigned ROT/Specialist or as a non-assigned ROT/Specialist. However, the FLEX assigned Specialist must be the specialist in the non-FLEX option. ROTs and Specialists must apply on the appropriate Exchange form to be assigned in FLEX options. An assigned ROT or assigned Specialist may choose to be assigned in a particular FLEX option, but must respond with a market respecting any FLEX option upon request by a Floor Official.

Assigned ROTs and the assigned Specialist will be subject to certain obligations respecting the trading of FLEX options. For example, the affirmative and negative market making obligations of Rule 1014(c) apply. Further, as noted above, assigned ROTs and the assigned Specialist, who respond to an RFQ, are required to respond with a market of the minimum size.[41] At least two Exchange members (ROTs and/or a Specialist) shall be assigned to each FLEX option. If there is an assigned Specialist and an assigned ROT, the FLEX option will trade pursuant to the specialist system, just as non-FLEX options currently do on the Exchange. If, however, there is no assigned Specialist in a FLEX option, two assigned ROTs are required for that FLEX option to trade.

Assigned ROTs and the assigned Specialist who responded with a market during the response time may join a new bid/offer voiced during the Improvement Interval and prior to a cross, provided they do so immediately and subject to preserving the priority of customer orders. Enabling assigned ROTS and the assigned Specialist to join such new bid/offer affords them parity at that new BBO.

Generally, FLEX option positions are not taken into account when calculating position limits for non-FLEX index options on the same index.[42] Accordingly, FLEX market index options currently approved for non-FLEX options trading will be subject to a separate position limit of 200,000 contracts on the same side of the market.[43] FLEX industry index options will be subject to a position limit of four times the current position limit—36,000, 48,000 or 60,000 contracts on the same side of the market.[44]

The Exchange notes that FLEX market index option limits are the same as the provisions of other exchanges.[45] The Exchange also believes that four times the non-FLEX limit is an appropriate limit for FLEX industry index options.[46]

Respecting FLEX equity options, the Exchange proposes to eliminate the application of position and exercise limits under a two-year pilot program.[47] Rule 1079(d)(2) would continue to state that position limits for non-FLEX equity options shall not be taken into account when calculating position limits for non-FLEX equity options, or FLEX or non-FLEX index options.

The Exchange is proposing to add that each member or member organization (other than a Specialist or Registered Options Trader) that maintains a position on the same side of the market in excess of three times the level established pursuant to Rule 1001 for non-FLEX equity options of the same class on behalf of its own account of a customer shall report information on the FLEX equity option position, positions in any related instrument, the purpose or strategy for the position and the collateral used by the account. This report shall be in the form and manner prescribed by the Exchange. In addition, whenever the Exchange determines that a higher margin requirement is necessary in light of the risks associated with a FLEX equity option position in excess of three times the level established for non-FLEX equity options of the same class, the Exchange may impose such higher margin requirement and/or may assess capital charges upon the member organization carrying the account to the extent of any margin deficiency resulting from the higher margin requirement.

The Exchange notes that the purpose of the amendment is to compete with the other option exchanges' that have been approved for identical position limit treatment for FLEX equity options,[48] and to attract additional investor interest, and to structure FLEX equity options in a more flexible fashion. There will still, however, be position and exercise limits for FLEX index options, as described above.

The Exchange believes that the elimination of position/exercise limits for FLEX equity options is appropriate in light of the institutional nature of the product. Phlx states that one particular potential institutional use of FLEX options is for stock repurchase programs, which can be utilized by stock issuers in the form of put sales. The Exchange believes that eliminating position limits may attract this business, and thus, bring significant options volume into the realm of exchange trading.[49]

The Exchange believes that attracting additional market participation to FLEX equity options should improve liquidity and the quality of FLEX markets for all participants. The amendment would require member organizations to report positions exceeding three times the non-FLEX position limit in that option. Whenever a member files such a report with the Exchange, the Exchange may request a higher margin requirement in light of the risks associated with such a FLEX equity options position. Thus, the Exchange believes that the amendment is reasonable and consistent with the market protection and anti-manipulation purposes of position/exercise limits. Enhanced reporting is

[41] However, assigned ROTs and assigned Specialists are not required to provide continuous quotes or markets at a certain minimum bid-ask differential (quote spread parameter).

[42] However, positions in P.M.-settled customized index options shall be aggregated with positions in quarterly expiring options ("QIXs") on the same index, *if* the customized option expires at the close of trading on or within two business days of the last trading day in a quarter. The Exchange is authorized to trade QIXs on certain index options pursuant to Rule 1101A(b)(iv), although none currently trade.

[43] The following are the current Phlx market (broad-based) index options: Value Line Composite Index ("VLE"), National Over-the-Counter Index ("XOC"), and U.S. Top 100 Index ("TPX"). If the Exchange wants to list and trade FLEX options on a broad-based index subsequently approved for non-FLEX options trading, the Exchange must submit a Rule 19b–4 filing with the Commission proposing appropriate FLEX market index options position limits.

[44] The following are the current Phlx industry (narrow-based) index options: OTC Industrial Average Index ("OTZ"), Bank Index ("BKX"), Gold/Silver Index ("XAU"), Semiconductor Index ("SOX"), Utility Index ("UTY"), Forester and Paper ("FPP"), Plane ("PLN"), Phone ("PNX"), and Oil Service ("OSX"). Because the Super Cap Index ("HFX") is neither a market or an industry index, the Exchange applies a position limit (5,500 contracts) that is lower than the position limit tiers for standardized non-FLEX industry index options. Accordingly, the position limit for FLEX options overlying the Super Cap Index will be 22,000 contracts (4 times 5,500 contracts—the existing non-FLEX position limit). *See* Amendment No. 2, *supra* note 6.

[45] *See e.g.*, CBOE Rule 24A.7(b).

[46] *See* Phlx rule 1001A(b). In 1996, these limits were raised from 6,000, 9,000 or 12,000 contracts to 9,000, 12,000 or 15,000 contracts. Securities Exchange Act Release No. 37863 (October 24, 1996) (File No. SR–Phlx–96–33). Thus, the proposed change in the corresponding FLEX limits is a change from the original proposal reflecting four times the previous limits.

[47] *See* Amendment No. 4., *supra* note 8. The Exchange originally proposed position limits of three times the position limit applicable to non-FLEX equity options, pursuant to Rule 1001. The Phlx will provide the Commission with status report after one-and-a-half years of the pilot for the Commission to assess the effects on the markets of the elimination of position and exercise limits on FLEX equity options.

[48] *See* Securities Exchange Act Release No. 39032 (September 9, 1997) (File Nos. SR–Amex–96–19; SR–CBOE–96–79; SR–PCX–97–09) ("FLEX Equity Option Position Limit Approval Order").

[49] The Commission notes that issuers would, of course, need to comply with all applicable provisions of the federal securities laws in conducting their share repurchase programs.

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intended to facilitate the Exchange's surveillance function respecting larger FLEX positions.

The exercise limit for FLEX index options would apply, equivalent to the applicable FLEX index option position limit. The minimum exercise size, however, would be the lesser of $1 million or the remaining size of the position respecting index options, and the lesser of 25 contracts or the remaining size of the position respecting equity options.

The proposal requires any ROT and Specialist to submit a Letter of Guarantee [50] issued by a clearing member organization, specifically accepting financial responsibility for all FLEX option transactions made by such person. Moreover, an assigned Specialist in FLEX index options shall be required to maintain a minimum of $1,000,000 in net capital. An assigned ROT in FLEX index options will be required to maintain a minimum of $100,000 in net liquid assets. Floor Brokers must maintain a minimum of $50,000 in net capital to qualify to trade FLEX options. Assigned ROTs, the assigned Specialist and Floor Brokers must immediately notify the Exchange's Examinations Department upon failure to be in compliance with these requirements. The Exchange may waive the financial requirements of this Rule in unusual circumstances. Assigned Specialists/ROTs in FLEX equity options, as well as non-assigned ROTs/Specialists in FLEX options, are required to comply with Exchange financial requirements.[51]

The Exchange also proposes to adopt Floor Procedure Advice F–28, Trading FLEX Index and Equity Options, to parallel most of the provisions of Rule 1079(b), including those pertaining to requesting quotations, responses, determining the BBO, the BBO Improvement Interval, executing a trade and crossing. Advice F–28 is not proposed to contain a fine schedule, such that it does not require inclusion in the Exchange's minor rule violation enforcement and reporting plan.

There will be no trading rotations in FLEX options, either at the opening or at the close of trading. The Exchange has determined that, initially, FLEX options will begin trading at 10:00 a.m., one half hour after the normal opening of trading non-FLEX options on the Exchange, in order to limit the burden on the trading crowd. FLEX industry index and equity options will trade until 4:02 p.m., to correspond to the non-FLEX options similar to FLEX market index options, which would trade until 4:15 p.m. The Exchange may establish other trading times for FLEX options within the regular trading hours for the non-FLEX options, including coordination with FLEX trading hours on other exchanges and reflecting new trading hours for non-FLEX options.[52]

In addition, the RFQ process, which allows a set period of time for bids and offers to be determined, is also designed to create an orderly trading environment, recognizing that greater variation in option terms requires sufficient time to respond with a quote. The Phlx believes, therefore, that the response time and the BBO Improvement Interval should thus promote depth and liquidity.

In order to provide adequate liquidity in FLEX options, two assigned members, whether ROTs or Specialists, are required for each FLEX option, and must be present for a trade to occur.[53] In addition, the minimum size requirements are intended to attract depth and liquidity to FLEX options.

Other FLEX provisions are intended to minimize the market impact of this product. For one, the expiration date may not fall on or within two business days before or after the normal mid-month Friday expiration for options. Because the expiration date of FLEX options may not correspond to a non-FLEX expiration, FLEX options should not affect the market for the underlying securities at the same time. This, in turn, minimizes the impact of FLEX options on the marketplace.

Second, position and exercise limits will apply to FLEX index options, although separate from those applicable to non-FLEX index options. The Exchange believes that separate, higher limits and non-aggregation are appropriate for FLEX index options, which are intended to compete with OTC options that are not subject to such limits. The higher limits reflect the institutional nature and resulting larger size of FLEX index options.

Although FLEX options are characterized by variable terms, not all FLEX option terms can be customized. As stated above, the expiration date cannot fall on certain days. Customization of FLEX equity option strike prices for calls will not be permitted, due to tax issues arising out of the definition of a qualified covered call. Thus, only equity option call strikes that may be listed pursuant to Rule 1012 are eligible, such that the strike price must be consistent with strike price intervals permissible for equity options. In addition, American-style FLEX index options exercised prior to the expiration date can only settle based on the closing value on the exercise date. Despite these restrictions on customization, the Phlx believes FLEX options should nevertheless address a market need for variation in contract terms.

The Exchange believes that FLEX options not only combine variable terms with an auction marketplace and OCC guarantee, but FLEX options will also offer transparency of quotes and trades, because the proposal requires prompt and complete quotation and transaction reporting. Although flexible options will not be continuously quoted, once an RFQ is received, its terms, as well as the responding quotes, will be disseminated by Exchange systems. The terms of any resulting trade will also be disseminated. Specifically, the assigned Specialist, or if none, the Requesting Member will ensure immediate dissemination to OPRA in the form of an administrative text message, which will, in turn, disseminate the information to subscribing vendors.

The Exchange expects to implement a separate computer system to handle FLEX index and equity options, similar to the system utilized for customized foreign currency options. The Exchange expects that initially FLEX options will be entered into this system at a limited number of locations on the trading floor, which will be described in detail by notice to the options trading floor.

The Exchange proposes to utilize a limit order book for FLEX option orders resulting from the RFQ process. The purpose of the book is to accommodate customers who have specified a limit price for a FLEX option order that is away from the market established during the RFQ process. The limit order book will be limited to customer day limit orders, which much be accepted by the Specialist, whether or not that Specialist is assigned in FLEX options. As such, the Specialist must monitor FLEX markets for any booked orders. The Exchange is requiring all Specialists, whether acting as an assigned FLEX Specialist or not, to maintain a FLEX book for consistency with the procedures for non-FLEX options and to prevent investor confusion. The Exchange believes that the FLEX order book should serve as a useful tool for customers, as does the current limit order book respecting non-FLEX options. With respect to booked orders for the same FLEX option (identical terms), Rule 1014 will apply to determine priority and parity among such orders.[54] When trading with a booked order, a member must re-quote the market and announce the trade.

The Exchange proposes to delete the provision in the original proposal that the executing member has priority over other members, including assigned ROTs and the assigned Specialist, seeking to trade with the booked order. The purpose of this change is to trade booked FLEX options similarly to non-FLEX options, noting that this consistency should prevent confusion.

The Exchange also proposes that an RFQ remain open that trading day, as opposed to expiring immediately, as long as a trade has not occurred. The market must be re-quoted before a member attempts to trade on an existing RFQ. The advantage of an RFQ remaining open is that a re-quote does not require the submission of a new RFQ, thereby avoiding the delay of a new response time where such time may not be needed due to a recent quote. Because an option quoted earlier in the trading day should be easier to price, such that a new response time is not required, the Exchange believes that it may be burdensome to repeat the RFQ process. Thus, RFQs remaining open streamlines FLEX trading and eliminates unnecessary delays. Any time a market is re-quoted that day, the new BBO and any resulting trade are disseminated with reference to the original RFQ. However, once a trade occurs, a new RFQ is required.[55]

Certain aspects of proposed Rule 1079 differ from FLEX provisions of other exchanges. For instance, discretionary transactions would not be permitted in FLEX index and equity options.[56] Thus, the existing provisions of Rule 1065 will apply to prohibit such transactions.

Second, the Exchange also notes that there may not be a Specialist in FLEX options. Where there is an assigned FLEX Specialist, that FLEX option will trade pursuant to the Phlx's specialist system. Where there is no assigned FLEX Specialist, two assigned ROTs are required. Only the assigned Specialist in the non-FLEX (listed) option may apply to be an assigned Specialist in the FLEX option.[57] but is not required to do so in order to participate. Instead, the non-FLEX Specialist may be an assigned ROT in the FLEX option, or not assigned at all. The current responsibilities of a Specialist to determine a market based on the bids and offers voiced as well as to disseminate bids/offers and trades may be handled by the Requesting Member, where there is no assigned Specialist in that FLEX option. If a trade occurs where the Requesting Member is not a participant and there is no assigned Specialist, the responsibility to submit the trade falls upon the seller or largest participant, in accordance with existing trading procure.[58]

Third, the Exchange has also determined that FLEX options will trade in the crowd of the non-FLEX option in order to facilitate participation by assigned ROTs who will most likely be located in that crowd. The Exchange believes that encouraging market making activity, whether or not assigned, should foster liquidity in FLEX options.

IV. Discussion

The Commission finds that the proposals are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Sections 6(b)(5) [59] and 11A [60] of the Act. Specifically, the Commission finds that the Exchange's proposal is designed to provide investors with a tailored or customized product for eligible index and equity options that may be more suitable to their investment needs. Moreover, consistent with Section 11A of the Act, the proposal should encourage fair competition among brokers and dealers and exchange markets, by allowing the Exchange to compete with the growing OTC market in customized index and equity options.

The Commission believes the Exchange's proposal reasonably addresses its desire to meet the demands of sophisticated portfolio managers and other institutional investors who are increasingly using the OTC market in order to satisfy their hedging needs. Additionally, the Commission believes that the Exchange's proposal will help promote the maintenance of a fair and orderly market, consistent with Sections 6(b)(5) and 11A of the Act, because the purpose of the proposal is to extend the benefits of a listed, exchange market to index and equity options that are more flexible than current listed options and that currently trade OTC. The benefits of the Exchange's options market include, but are not limited to, a centralized market center, an auction market with posted transparent market, quotations and transaction reporting, parameters and procedures for clearance and settlement, and the guarantee of OCC for all contracts traded on the Exchange.[61]

The Commission believes the Exchange's trading procedures for FLEX index and equity options are reasonably designed to provide some of the benefits of an Exchange auction market along with features of a negotiated transaction between investors. In approving the proposal, the Commission recognizes that the Exchange's proposed FLEX option trading program will allow the trading of option contracts of substantial value, for which continuous quotations may be difficult to sustain. The Commission believes that the Exchange has adequately addressed these concerns by establishing procedures for quotes upon request, which must be firm for a designated period of time and which will be disseminated through OPRA.

The Commission also believes that it is reasonable that an RFQ remain open for that particular trading day once a BBO is established. Specifically, the Commission believes that if the Requesting Member does not accept the BBO, it is reasonable for the Exchange to allow the RFQ to remain open so that the trading crowd may re-quote the market in response to the same contract set forth in the existing RFQ without submitting another RFQ.

The Commission notes that this provision only allows a member to re-quote the market later in the day with respect to the open RFQ from which a trade has not been executed.

The Commission also believes that it is reasonable for the Exchange to allow for FLEX orders to be accepted onto a FLEX limit order book. As noted above, the Specialist in the listed non-FLEX equity or index option, whether or not

[50] *See* Phlx Rule 703.

[51] *See* Phlx Rule 703.

[52] Under this proposal, expanding and narrowing FLEX trading hours within the regular trading hours of the particular product would not require a proposed rule change pursuant to Section 19(b) of the Act. The Exchange, however, will notify its members, in advance, prior to making any such change. Any proposal to expand trading hours outside of established regular trading hours would have to be submitted as a proposed rule change to the Commission pursuant to Section 19(b) of the Act.

[53] *See* Floor Procedure Advices A–10, Specialist Trading with Book, and C–1, Ascertaining the Presence of ROTs in a Trading Crowd, which require that, in addition to the Specialist, a ROT be present during a transaction.

[54] The Exchange notes that although the principles of price/time priority and simultaneous bids/offers at parity of Rule 1014 apply, the enhanced specialist participation of sub-paragraphs (g) (ii) and (iii) are not applicable to FLEX options.

[55] The Exchange notes that the Options Committee may determine to established an abbreviated response time for a new RFQ, because the full ten minutes may not be required for pricing determinations.

[56] *See e.g.*, CBOE Rule 24A.6, which states that a Floor Broker may be given discretion with respect to the number of FLEX contracts to be purchased or sold.

[57] If the option is not listed on the Exchange, specialist functions may be allocated by the Exchange pursuant to Phlx Rules 500 et seq.

[58] *See* Floor Procedure Advice F–2, Time Stamping, Matching and Access to Matched Trades.

[59] 15 U.S.C. 78f(b)(5).

[60] 15 U.S.C. 78k–1.

[61] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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assigned in FLEX options, will maintain a FLEX limit order book. The Commission believes that a FLEX limit order book, maintained by a Specialist, should help to accommodate FLEX options trading.

The Commission notes that the Phlx is the first exchange to create a limit order book for FLEX options. The Commission believes that by establishing both a FLEX and non-FLEX limit order book for the same option classes, the Exchange should monitor the use of the FLEX limit order book to ensure that members are not using the limit order book to trade ahead of non-FLEX limit orders for the same options class. The Commission believes that this concern is minimized because FLEX options should generally have an expiration date at least two days before or after the expiration date for the corresponding non-FLEX option, thus FLEX and non-FLEX option contracts are not fungible.

Additionally, the Commission believes that the Exchange's proposal to provide a minimum right of participation of at least 25% of the trade to Exchange members who initiate Requests for Quotes in respect of FLEX options and indicate an intention to cross or act as principal on the trade, is consistent with the Act. In addition, under Phlx rules, all FLEX options transactions must be in compliance with the priority, parity, and precedence requirements of Section 11 of the Act,[62] and Rules 11a1–1(T)[63] and 11b–1,[64] promulgated thereunder. These provisions set forth, among other things, the conditions in which members must yield priority to public customers' bids and offers at the same price.

The Commission also believes that the Exchange's proposal to require at least two assigned ROTs, or an assigned specialist and an assigned ROT for each FLEX option class, is consistent with the Act. The Commission notes that the Exchange's rules currently provide a framework that encourages assigned ROTs and specialists, to actively make responsive quotes to provide liquidity in FLEX options. In fact, assigned ROTs and specialists, who respond to an RFQ, must do so with a market of the minimum size in response to the RFQ. Further, assigned ROTs and specialists must provide a market in any FLEX option when requested by a Floor Official. Accordingly, the Commission believes that this requirement should be sufficient to provide quotations in response to an RFQ and generally accommodate FLEX options trading.

The Commission also believes that the Exchange's proposal to permit FLEX equity options trading on any options-eligible security regardless of whether Non-FLEX equity options overlie that security and trade on the Exchange is reasonable, in that it promotes fair competition among exchanges, consistent with Section 11A of the Act, and will perfect the mechanism of a free and open market and serve to protect investors and the public interest in accordance with Section 6(b)(5) of the Act. The Commission notes that Phlx FLEX equity options must still meet the eligibility requirements and criteria set forth in Phlx Rule 1009.

In addition, the Commission believes that the Exchange's proposal to designate all currently approved Phlx index options as eligible for FLEX index options trading is consistent with the Act. The Commission notes, however, that when submitting a Section 19(b) proposal to list and trade a new non-FLEX index options product, the Exchange must, in the same filing, specifically propose to list and trade the FLEX index options in the same proposed rule change. If the Exchange is not prepared at that time to seek approval for the listing of FLEX options overlying the proposed index, then the Exchange should submit a rule filing pursuant to Section 19(b) of the Act proposing to list FLEX options on that index at an appropriate time in the future.

The Commission believes it is consistent with Section 6(b)(5) of the Act for the Phlx to establish trading hours for FLEX options that begin thirty minutes after the non-FLEX market trading hours, and end at the same time as normal non-FLEX market trading hours. The Commission also believes that because of the nature of the FLEX market, in contrast to the Non-FLEX market, it is reasonable to permit the Exchange, in its discretion, to restrict or expand trading hours for FLEX options, so long as such trading hours occur within the normal options trading hours of the Exchange.[65]

The Commission believes that the Exchange's proposal to restrict exercise prices for calls on FLEX equity options, as described above, reasonably balances the desire of sophisticated portfolio managers and other institutional investors to trade flexible equity options products, with the need to eliminate the potential that the trading of such options could inadvertently impact a tax benefit currently provided to writers of standardized call options that qualify as QCCs.[66] In approving this provision, the Commission recognizes that the Exchange will restrict the flexibility of investors in determining an essential term of FLEX equity call options contracts (*i.e.*, the exercise price). Nevertheless, investors will still be able to designate contract terms for exercise style (*i.e.*, American or European) and expiration date.[67] Based on this and the current tax framework for QCCs, the Commission believes the limitations imposed by the proposal is appropriate and should still provide investors with a more flexible product than one with standardized option terms while protecting investors in the standardized equity call options market.[68]

The Commission also believes that it is reasonable for the Exchange to propose to eliminate position and exercise limits for FLEX equity options on a two-year pilot basis. While the Commission has generally taken a gradual, evolutionary approach toward expansion of position and exercise limits, the Commission is willing to approve the two-year pilot program for FLEX equity options for several reasons. First, the FLEX equity options market is characterized by large, sophisticated institutional investors (or extremely high net worth individuals), who have both the experience and ability to engage in negotiated, customized transactions. For example, with a required minimum size of 250 contracts to open a transaction in a new series, FLEX equity options are designed to appeal to institutional investors, and it is unlikely that many retail investors would be able to engage in options transactions at that size. Second, the Exchange's other rules and provisions governing FLEX equity options will remain applicable. Third, the OCC will serve as the counter-party guarantor in every exchange-traded transaction. Fourth, the proposed elimination of position and exercise limits for FLEX equity options could potentially expand the depth and liquidity of the FLEX equity market without significantly increasing concerns regarding intermarket manipulations or

[62] 15 U.S.C. 78k.

[63] 17 CFR 240.11a1–1(T).

[64] 17 CFR 240.11b–1.

[65] *See supra* note 52.

[66] The Commission notes that the Exchange must file a proposed rule change with the Commission, pursuant to Section 19(b) of the Act, to withdraw or modify this exercise price policy regarding FLEX equity call options.

[67] Of course, investors will also be able to designate exercise price for FLEX equity put options and FLEX index call and put options.

[68] The Commission notes, that OCC, in the approved FLEX equity option 9b–1 ODD supplement, informs investors of the limitation of exercise price intervals when writing FLEX equity call options. *See* FLEX equity options 9b–1 order, *supra* note 18.

disruptions of the options or the underlying securities. Finally, the Exchange's surveillance programs will be applicable to the trading of FLEX equity options and should detect and deter trading abuses arising from the elimination of position and exercise limits.

As described above, the Exchange have adopted important safeguards that will allow them to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if necessary. By monitoring accounts in excess of three times the Non-FLEX equity option position limit in this manner, the Exchange should be provided with the information necessary to determine whether to impose additional margin and/or whether to assess capital charges upon a member organization carrying the account. In addition, this information should allow the Exchange to determine whether a large position could have an undue effect on the underlying market and to take the appropriate action.

Given the size and sophisticated nature of the FLEX equity options market, along with the new reporting and margin requirements, the Commission believes that eliminating position and exercise limits for FLEX equity options for a two-year pilot period should not substantially increase manipulative concerns. Nevertheless, the Commission will be able to assess the effects on the markets of the Exchange's proposals during the two-year pilot period. If problems were to arise during such pilot period, the Commission believes that the enhanced market surveillance of large positions should help the Exchange to take the appropriate action in order to avoid any manipulation or market risk concerns.

Nevertheless, because the Commission has only recently agreed to eliminate position and exercise limits for a derivative product, the Commission cannot rule out the potential for adverse effects on the securities markets for the component securities underlying FLEX equity options. To address this concern, the Commission has approved the proposal for a two-year pilot period. The Exchange will undertake to monitor, among other things, open interest and potential adverse market effects and to report to the Commission on the status of the program no later than eighteen months after the order's date of effectiveness. The reporting of the Exchange's experiences should include, among other things, such information as:

(i) The type of strategies used by FLEX equity options market participants and whither FLEX equity options are being used in lieu of existing standardized equity options;

(ii) the type of market participants using FLEX equity options during the pilot program;

(iii) the average size of the FLEX equity option contract during the pilot program, the size of the largest FLEX equity option contract on any given day during the pilot program, and the size of the largest FLEX equity option held by a single customer/member during the pilot program; and

(iv) any impact on the prices of underlying stocks during the establishment or unwinding of FLEX positions that are greater than three times the standard non-FLEX equity option position limits.[69]

The Commission also believes that it is reasonable for the Exchange to conform its rules to the rules of other options exchanges to reduce from 100 contracts to 25 contracts the minimum value size of closing transactions in and exercises of FLEX equity options. The Commission notes that market participants wanting to execute an opening transaction in a particular series of FLEX equity options will continue to be required to meet the 250 (if no open interest in a particular FLEX series) or 100 (if open interest in a particular FLEX series) minimum contract requirement. The Commission believes that this should help to ensure that transactions in FLEX equity options remain of substantial size and, therefore, the product is geared to an institutional, rather than a retail market.

The Commission also believes that the Phlx's proposal to include certain designated foreign currencies in the list of variable FLEX index option contract terms is a reasonable response by the Exchange to meet the demands of sophisticated portfolio managers and other institutional investors. Additionally, the Commission believes that the Phlx's proposal will help to promote the maintenance of a fair and orderly market because it extends the benefits of a listed exchange market to FLEX index options that trade and settle in certain designated foreign currencies.

The Commission believes that investors should benefit from the additional flexibility by permitting them to designate quotation and settlement terms in various foreign currencies while continuing to ensure adequate investor protection in the trading of these products. The potential risk of settling FLEX options in foreign currencies rather than U.S. dollars is also disclosed in the ODD pursuant to Rule 9b–1 of the Act.[70]

The Commission also notes that FLEX index options can be constructed with expiration exercise settlement based on the closing values of the component securities, which could potentially result in adverse effects for the markets in these securities.[71] Although the Commission continues to believe that basing the settlement of index products on opening as opposed to closing prices on Expiration Friday helps alleviate stock market volatility,[72] these market impact concerns are reduced in the case of FLEX options because expiration of these options will not correspond to the normal expiration of Non-FLEX options, stock index futures, and options on stock index futures. In particular, FLEX options, will never expire on any "Expiration Friday." More specifically, the expiration date of a FLEX option may not occur on a day that is on, or within, two business days of the expiration date of a Non-FLEX option. The Commission believes that this should reduce the possibility that the exercise of FLEX options at expiration will cause any additional pressure on the market for underlying securities at the same time that Non-FLEX options expire.

In addition, the proposal would limit the effect on securities markets by addressing the relationship between FLEX index options and QIXs. As proposed, Phlx Rule 1079(d)(1) requires P.M.-settled FLEX options to be aggregated with QIXs that are based on the same index and have the same expiration date. In such a case, the FLEX options would be aggregated two days prior to expiration subject to the position limits for the QIX options on the applicable index. The Commission believes that these rules should help prevent an investor from using FLEX options for the purpose of avoiding the position limits applicable to QIXs.

Nevertheless, because the position limits for both FLEX index options are much higher than those currently existing for outstanding exchange-traded index options (and FLEX equity options have no position limit requirements) and open interest in one or more FLEX option series could grow to significant levels, it is possible that FLEX options might have an impact on the securities markets for the securities underlying FLEX options. The Commission expects the Exchange to

[69] For a more complete discussion of the Commission's findings regarding the elimination of FLEX equity options position limits, *see* FLEX Equity Option Position Limit Approval Order, *supra* note 50.

[70] *See* Securities Exchange Act Release No. 33582 (February, 1994).

[71] *See, e.g.*, Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

[72] *Id.*

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monitor the actual effect of FLEX options once trading commences and take prompt action (including timely communication with the self-regulatory organizations responsible for oversight of trading in the underlying securities) should any unusual market effects develop.

The Exchange represents that FLEX options will allow them to compete with OTC markets and help meet the demand for customized options products by institutional investors. The minimum value sizes for opening transactions in FLEX options are designed to appeal to institutional investors, and it is unlikely that most retail investors would be able to engage in options transactions at that size. Nevertheless, the FLEX equity option minimum size for opening transactions [73] is much smaller than that for FLEX index options. The Commission also notes that, in approving the proposal to establish 25 contracts as the minimum contract requirement for closing transactions in, and exercises of, FLEX equity options, adequate surveillance guidelines should be in place to ensure that only sophisticated investors with the necessary financial resources to sustain the possible losses arising from transactions in the requisite FLEX options class size are utilizing this product. The Commission's staff has reviewed Phlx's surveillance program and believes it provides a reasonable framework in which to monitor such investor open interest.

Because of these established minimum contract requirements for both opening and closing transactions in FLEX equity options, the Commission requests that the Exchange monitor its respective comparative levels of institutional and retail investor open interest in FLEX equity options for one year from the commencement of its FLEX equity option trading program. In particular, the Commission requests that the Exchange provide a report to the Commission's Division of Market Regulation describing the nature of investor participation (*i.e.*, retail vs. institutional) in FLEX equity options no later than two months following the one-year anniversary of FLEX equity options trading on the Exchange. If the Exchange determines in the interim that the proposed rule change has resulted in a pattern of retail investor participation in FLEX equity options, it should notify the Commission's Division of Market Regulation to determine if (1) the minimum contract requirements for opening transactions should be increased from 250 contracts, and/or (2) the minimum contract requirements for closing truncations should be restored to the originally proposed level.

The Commission also notes that effective surveillance guidelines are essential to ensure that the Exchange has the capacity to adequately monitor trading in FLEX options for potential trading abuses. The Commission's staff has reviewed Phlx's surveillance program and believes it provides a reasonable framework in which to monitor the trading of FLEX options on its trading floor and detect as well as deter manipulation activity and other trading abuses.

In order to ensure adequate systems processing capacity to accommodate the additional options listed in accordance with the FLEX options program, OPRA has concluded that the additional traffic generated by FLEX index and equity options traded on the Phlx is within OPRA's capacity.[74]

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, this amendment proposes that (1) the RFQ include the size and intention to cross, consistent with the existing procedures of other exchanges; and (2) a specific position limit of 22,000 contracts for the Super Cap Index option be adopted. The Commission believes that the proposed amendment further clarifies the proposal and does not raise any new or unique regulatory issues.

Accordingly, the Commission believes, consistent with Section 6(b)(5) of the Act, that good cause exists, to approve Amendment No. 2 to the proposal on an accelerated basis.

The Commission finds good cause for approving Amendment No. 4 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** [75] Specifically, as noted above, the Exchange's proposal to (1) eliminate the application of position and exercise limits to FLEX equity options for a two-year pilot period; and (2) reduce the minimum size applicable to a Request-for-Quote for a closing transaction in already-opened FLEX equity options from 100 to 25 contracts, are identical to proposals by other options exchanges that were recently approved by the Commission. Therefore, the Commission believes that the proposal raises no new regulatory issues.

Further, the Commission believes that other changes incorporated into Amendment No. 4, including, proposals to: (1) amend the proposal rule change to refer consistently to "FLEX index and equity options" (as opposed to index FLEX options); (2) correct the text of proposed Rule 1079(b)(6) regarding the crossing procedure to reflect that the crossing intention has already been announced as part of the RFQ, as amended by Amendment No. 2; and (3) amend proposed Rule 1079(a)(1) to clearly state that any options-eligible security pursuant to Rule 1009 to eligible to underlie FLEX equity options trading. The Commission also believes that these amendments do not raise any new regulatory issues.

Accordingly, the Commission believes, consistent with Section 6(b)(5) of the Act, that good cause exists, to approve Amendment No. 4 to the proposal on an accelerated basis.

The Commission finds good cause for approving Amendment No. 5 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, as noted above, the Exchange's proposed amendment clarifies: (1) the parity and priority principles for FLEX options transactions; and (2) that each assigned ROT or assigned Specialist is not required to respond with a quote in every instance, unless requested by a Floor Official. These provisions are substantially similar to those of other options exchanges that were recently approved by the Commission. Therefore, the Commission believes that the proposal raises no new regulatory issues.

Accordingly, the Commission believes, consistent with Section 6(b)(5) of the Act, that good cause exists, to approve Amendment No. 5 to the proposal on an accelerated basis.

Interested persons are invited to submit written date, views and arguments concerning Amendment Nos. 2, 4 and 5 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of this submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to SR–Phlx–96–38 and should be submitted by February 13, 1998.

[73] The minimum size for an opening transaction in FLEX equity options is 250 contracts for any FLEX series in which there is no open interest, and 100 contracts in any currently opened FLEX series.

[74] *See* Letter from Joseph P. Corrigan, Executive Director, OPRA, to Sharon Lawson, Senior Special Counsel, OMS, Market Regulation, Commission, dated October 20, 1997. ("OPRA Capacity Letter").

[75] As noted *supra* in note 8, Amendment No. 4 supersedes Amendment No. 3, in its entirety.

V. Conclusion

For the reasons discussed above; the Commission finds that the proposal is consistent with the Act and Sections 6 and 11A of the Act, in particular. In addition, the Commission has previously concluded pursuant to Rule 9b–1 under the Act, that FLEX options, including FLEX equity options and FLEX index options, and FLEX index options traded and settled in certain designated foreign currencies, are standardized options for purposes of the options disclosure framework established under Rule 9b–1 of the Act.[76] Apart from the flexibility with respect to strike prices, expiration dates, exercise styles, and settlement (for FLEX index options), all of the other terms of FLEX options are standardized pursuant to OCC and Phlx rules.

Standardized terms include matters such as exercise procedures, contract adjustments, time of issuance, effect of closing transactions, restrictions on exercise under OCC rules, margin requirements, and other matters pertaining to the rights and obligations of holders and writers.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[77] that the proposal (File No. SR–Phlx–96–38), as amended, including Amendment Nos. 2, 4 and 5 on an accelerated basis, is approved. In addition, the portion of the proposal eliminating FLEX equity options position and exercise limits is approved on a pilot basis until January 14, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[78]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–1552 Filed 1–22–98; 8:45 am]

BILLING CODE 8010–01–M

[76] 17 CFR 240.9b–1 *See supra* note 9.

[77] 15 U.S.C. 78s(b)(2).

[78] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39552; File No. SR–Phlx–97–65]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Establishing an Enhanced Parity Split Pilot Program for Specialists in Foreign Currency Options Effective Until December 31, 1998

January 14, 1998.

Purusant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 1, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to revise Exchange Rule 1014(h) to establish an enhanced parity split pilot program ("Pilot Program") for its foreign currency option ("FCO") specialists effective until December 31, 1998.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange previously provided and enhanced parity split to the specialist dealing in dollar denominated delivery German Mark ("3D German Mark") options.[2] The enhanced parity split gave the specialist 50% of the first 500 contracts of any trade in 3D German Mark options. The Exchange eliminated the enhanced parity split earlier this year because the specialist in 3D German Mark options and other traders of the product found it to be of little benefit.[3] At the time the enhanced parity split was eliminated, the Exchange informed the Commission that it would continue to study the potential use of an enhanced parity split for all FCO specialists on a broader basis. This proposed rule change sets forth the Exchange's plan for the expanded use of the enhanced parity split in FCOs.

The Exchange seeks to implement an enhanced parity split procedure similar to the one currently applied to transactions in equity and index options at the Exchange.[4] Under the Pilot Program, however, the application of the proposed FCO enhanced parity split would be more widespread, and the enhanced parity split would be available to all FCO specialists assigned to FCO products.[5] The Pilot Program would be in effect until December 31, 1998.

The enhanced parity split would apply to the first 500 contracts in a FCO transaction in a FCO transaction. When the enhanced parity split is applied, the

[1] 15 U.S.C. 78s(b)(1).

[2] The enhanced parity split for the specialist in 3D German Mark options was first approved on December 29, 1994. *See* Securities Exchange Act Release No. 35177 (Dec. 29, 1994), 60 FR 2419 (Jan. 9, 1995). 3D German Mark options are cash-settled, European-style, cash/spot foreign currency option contracts on the German Mark that trade in one-week and two-week expirations.

[3] The enhanced parity split was eliminated as of September 8, 1997. *See* Securities Exchange Act Release No. 39030 (Sept. 8, 1997), 62 FR 48332 (Sept. 15, 1997). The sole specialist firm trading 3D German Mark options indicated that the enhanced parity split was not particularly useful and that it did not generally take advantage of it. Furthermore, the Exchange represented that the order size in 3D German Mark options generally was not large enough to trigger the application of the enhanced parity split (*i.e.*, such orders represented less than 100 contracts).

[4] The Exchange recently amended its enhanced parity split pilot program for equity and index option specialists to expand its application. As a result of the amendment, all index options and all newly listed equity options receive the enhanced parity split. However, only 50% of those equity options not considered "newly listed" are eligible to receive the enhanced parity split. In addition, specialists are now permitted to revise the list of eligible equity options on a quarterly basis, rather than an annual basis. *See* Securities Exchange Act Release No. 39401 (Dec. 4, 1997), 62 FR 65300 (Dec. 11, 1997).

[5] It should be noted that because FCOs on the Italian Lira and the Spanish Peseta are traded as customized options, there are no specialists assigned to those products. For simplicity and clarity, all further references to FCOs shall not include these two products.

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FCO specialist will be counted as two crowd participants when determining the allocation of the FCO contracts among the trading crowd participants on parity, except in the following circumstances: (i) when there is one other trading crowd participant on parity, the FCO specialist will receive 60% of the FCO contracts making up the order; or (ii) when there are two other trading crowd participants on parity, the FCO specialist will receive 40% of the FCO contracts making up the order.

Because a customer bid/offer for under 100 FCO contracts is deemed to have time priority over all other bids/offers, such an order will not be subject to the enhanced parity split.[6] This provision will help ensure that small customer orders are not disadvantaged by the application of the enhanced parity split. If a FCO transaction involves more than 500 contracts, those contracts exceeding the 500 contract threshold will be allocated on a pro rata basis among the crowd participants on parity.

It should be noted that the application of this enhanced parity split will be mandatory. Therefore, with respect to any FCO transaction that implicates the enhanced parity split, the FCO specialist will be required to accept the preferential allocation and may not decline the enhancement.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[8] in general, and with Section 6(b)(5),[9] in particular, in that it is designed to promote just and equitable principles of trade; to prevent fraudulent and manipulative acts and practices; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and to protect investors and the public interest. The Exchange further believes that the proposed rule change balances the competing interests of specialists and market makers while assisting specialists in making tight and liquid markets and protecting customer interests.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–97–55 and should be submitted by February 13, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–1553 Filed 1–22–98; 8:45 am]

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[6] Exchange Rule 1014(h), "Options on Foreign Currencies," Section (i), states that "all bids/offers of customer accounts for under 100 contracts have time priority over all other bids/offers" on the FCO floor. In that instance, the FCO specialist cannot be on parity with such customer so the enhanced parity split will not apply. However, because Exchange Rule 1014(h)(i) does not confer time priority on customer orders for 100 or more contracts, FCO specialists may avail themselves of the enhanced parity split when interacting with customer orders involving 100 or more FCO contracts.

[7] Telephone conversation between Michele R. Weisbaum, Vice President and Associate General Counsel, Exchange, and Michael L. Loftus, Attorney, Division of Market Regulations, Commission (December 15, 1997).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3047]

State of California

Orange County and the contiguous Counties of Los Angeles, Riverside, San Bernardino, and San Diego in the State of California constitute a disaster area as a result of damages caused by flooding and mudslides which occurred on December 6, 1997. Applications for loans for physical damages may be filed until the close of business on March 13, 1998 and for economic injury until the close of business on October 12, 1998 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	7.625
Homeowners without credit available elsewhere	3.812
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 304706 and for economic injury the number is 971400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 12, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–1614 Filed 1–22–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3045]

State of Florida

As a result of the President's major disaster declaration on January 6, 1998, I find that Hernando, Hillsborough, Osceola, and Polk Counties in the State of Florida constitute a disaster area due to damages caused by severe storms, high winds, tornadoes, and flooding beginning on December 25, 1997 and continuing. Applications for loans for physical damages may be filed until the close of business on March 7, 1998, and for loans for economic injury until the close of business on October 6, 1998 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Brevard, Citrus, Hardee, Highlands, Indian River, Lake, Manatee, Okeechobee, Orange, Pasco, Pinellas, and Sumter in the State of Florida may be filed until the specified date at the above location.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	7.625
Homeowners without credit available elsewhere	3.812
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 304506 and for economic injury the number is 970500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 9, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–1613 Filed 1–22–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3048]

State of Florida

Broward County and the contiguous Counties of Collier, Dade, Hendry, and Palm Beach in the State of Florida constitute a disaster area as a result of damages caused by a fire that occurred on December 18, 1997 in the Kings Court Condominium Development in Oakland Park. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on March 16, 1998 and for economic injury until the close of business on October 14, 1998 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	7.625
Homeowners without credit available elsewhere	3.812
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 304805 and for economic injury the number is 971500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 14, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–1615 Filed 1–22–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3041]

Northern Mariana Islands; Amendment #1

In accordance with a notice from the Federal Emergency Management Agency dated January 2, 1998, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on December 16, 1997 and continuing through December 17, 1997.

All other information remains the same, i.e., the deadline for filing applications for physical damage is February 26, 1998 and for economic injury the termination date is September 24, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 9, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–1612 Filed 1–22–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 2714]

International Telecommunications Advisory Committee (ITAC) U.S. Study Group A of the Telecommunications Standardization Sector (ITAC–T); Meeting Notice

The Department of State announces a meeting, under the International Telecommunications Advisory Committee (ITAC), of Study Group A of the Telecommunications Standardization Sector (ITAC–T). The meeting will be held Wednesday, February 18, 1998, beginning at 9:30 a.m. and scheduled for all day, in Room 1207 of the Department of State, 22nd and C Street, NW, Washington, D.C.

The purpose of ITAC is to advise the Department on policy, technical and operational matters and to provide strategic planning recommendations, with respect to international telecommunications and information issues. The purpose of this meeting is to develop United States positions for upcoming ITU–T meetings dealing with standards activities of the International Telecommunication Union (ITU). In particular, the meeting agenda will include preparation for planned ITU–T meetings of (1) Study Group 3 (Tariff and Accounting Principles including related telecommunications economic and policy issues) scheduled for June 3–12, 1998; and (2) Study Group 2 (Numbering and Routing) to be held March 3–13, 1998. Questions regarding the agenda or ITAC–T Sector activities in general may be directed to William Kirsch, Department of State (202 647–0197), fax number (202 647–7407).

All participants may join in discussions, subject to instructions of the chair. In this regard, entry to the building is controlled. If you wish to attend, please send a fax to (202) 647–7407 at least 24 hours before the

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meeting, providing name, affiliation, date of birth and social security number, to arrange for pre-clearance. One of the following valid photo ID's is required for admittance: U.S. driver's license with picture, passport, government ID (company ID's are not accepted). Enter from the "C" Street Main Lobby.

Dated: January 12, 1998.

William J. Kirsch,

Chairman, ITAC–T Sector.

[FR Doc. 98–1573 Filed 1–22–98; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF STATE

[Public Notice No. 2669]

Proposed Unidroit Convention and Its Aircraft Protocol Meeting Notice

AGENCY: Department of State.

ACTION: Notice is hereby given of an Advisory Committee meeting to be held on Thursday, February 26 starting at 9:00 a.m. in the Civil Aeromedical Institute auditorium, Room 254, located at 6500 S. MacArthur Blvd, Oklahoma City, Oklahoma. The meeting will end at or before 1:00 p.m. on February 26. There may be an afternoon session from 2:00 p.m. to 5:00 p.m. for further discussion.

Attendance: The meeting is open to the public, free of charge, and is limited to available seating. It may be of interest to persons associated with the selling, leasing, and financing of aircraft and aircraft engines, including persons who search title, give title opinions, submit conveyances for recordation to the FAA Aircraft Registry, or otherwise participate in aircraft financing.

Nature: The meeting is intended only to provide information. No formal record will be made. No written comments will be accepted from the audience.

Agenda:

(1) Introductory remarks
(2) Purpose of UNIDROIT Convention
(3) Status of actions taken (UNIDROIT Convention and Aircraft Protocol)
(4) Summary of UNIDROIT Convention with emphasis on registration of international interests
(5) Summary of Aircraft Protocol
(6) Relationship of UNIDROIT Convention to existing laws and treaties
(7) Question and Answer Period

Background: The United States Government, through the United States Department of State, has been participating with other nations in studying a proposed multilateral convention (UNIDROIT Convention) to protect international secured interests in mobile equipment, including aircraft.

A preliminary draft of the UNIDROIT Convention will be submitted to the UNIDROIT Governing Council in early 1998. Thereafter, it is expected that the draft will be circulated to States to determine whether to proceed to intergovernmental negotiations to conclude the Convention.

As proposed, the UNIDROIT Convention would not take effect unless a protocol has been adopted for a specific category of mobile objects. In that regard, UNIDROIT's Aircraft Equipment Protocol Group has completed a preliminary draft protocol which would pertain to certain large airframes and large helicopters, and jet and turbine engines.

The UNIDROIT Convention and Aircraft Equipment Protocol together, when and if adopted and enacted into law by contracting states would provide a comprehensive international system to protect leasing and financing interests. Significant features might include default remedies, priorities, and establishment of an international registration system to register (record) international consensual interests, non-consensual interests, assignments, prospective assignments, and subordinations.

It is anticipated that the international registration system would be primarily an electronic notice system. As proposed, the international registration system is not intended to interfere with countries' existing national registration and recordation systems (e.g., Parts 47 and 49 of the Federal Aviation Regulations).

FOR FURTHER INFORMATION CONTACT: Joseph R. Standell, Aeronautical Center Counsel, Federal Aviation Administration, P.O. Box 25082, Oklahoma City, OK 73125, telephone number (405) 954–3296; fax number (405) 954–4676.

Dated: December 17, 1997.

Harold S. Burman,

Executive Director, Secretary of State's Advisory Committee on Private International Law, United States Department of State.

[FR Doc. 98–1631 Filed 1–22–98; 8:45 am]

BILLING CODE 4701–06–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of a new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of a new task assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARC.

FOR FURTHER INFORMATION CONTACT: Joseph A. Hawkins, Director, Office of Rulemaking, ARM–1, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9677 or fax (202) 267–5075.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulation (FAR) and practices with its trading partners in Europe and Canada.

The Task

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendation on the following harmonization task:

Prevention of Fuel Tank Explosions

Prepare a report to the FAA/JAA that provides specific recommendations and proposed regulatory text that will eliminate or significantly reduce the hazards associated with explosive vapors in transport category airplane fuel tanks. Proposed regulatory text should ensure that new type designs, in-production airplanes and the existing fleet of transport airplanes are designed and operated so that during normal operation (up to maximum certified operating temperatures) the presence of explosive fuel air vapors in all fuel tanks is eliminated, significantly reduced or controlled to the extent that there could not be a catastrophic event. (This task addresses means of reducing explosion hazards by eliminating or controlling explosive fuel vapors. The FAA is also engaged in a separate activity to evaluate whether additional actions should be taken to ensure that ignition sources are not present within fuel tanks. Therefore, control of ignition sources is not within the scope of this task.) In developing recommendations to the authorities, a report should be generated that includes the following:

(1) An analysis of the threat of fuel tank explosion due to internal and external tank ignition sources for the major fuel system designs making up the transport fleet, including transport airplanes with heat sources adjacent to or within the fuel tanks. The SAFER data presented to the FAA in 1978, which includes evaluation of fuel tank safety in both operational and post crash conditions, should be used as a starting point for determining the level of safety.

(2) An analysis of various means of reducing or eliminating exposure to operation of transport airplane fuel tanks with explosive fuel air mixtures (e.g. inerting, cooling of lower center tank surfaces, combination of cooling and modified fuel properties, etc.) or eliminating the resultant hazard if ignition does occur (installation of selective/voided/full tank reticulating foam, explosion suppression systems). Technical discussion of the feasibility, including cost/benefit analysis, of implementing each of the options on a fleet retrofit, current production, and new type design airplanes should also be provided.

(3) An analysis of the cost/benefit of modified fuel properties that reduce exposure to explosive vapors within fuel tanks. The FAA has asked industry through the American Petroleum Institute to provide pertinent information on fuel properties. The degree of modification to fuel properties necessary to eliminate or significantly reduce exposure to explosive fuel tank ullage spaces in fleet operation must be determined by the group. Factors that may enhance the benefits of modified fuels, such as cooling provisions incorporated to reduce fuel tank temperatures, should be considered. Cost information for the various options should be developed. Information regarding the effects of modified fuel properties on airplane operations, such as engine air/ground starting at low temperatures, maintenance impact, emissions and fuel freeze point, should be analyzed by the group and be provided.

(4) Review comments to the April 3, 1997, **Federal register** notice (62 FR 16014) and any additional information such that validated cost benefit data of a certifiable system is provided for the various options proposed by commenters. This information will be used in preparing regulatory action.

Note: In many cases specific cost data provided in the comments to the notice was competition sensitive; therefore the ARAC group should contact commenters directly and request participation in the group.

(5) Recommended objective regulatory actions that will eliminate, significantly reduce or control the hazards associated with explosive fuel air mixtures in all transport airplane fuel tanks to the extent that there could not be a catastrophic event.

In addition to the above task, the working group should support the FAA in evaluation of application of the proposed regulation to the various types of transport airplanes (turbopropeller, business jets, large transports, and other turbine-powered aircraft types which may be affected by a change in fuel properties/availability) and any impact on small businesses.

This activity will be tasked for a 6-month time limit to complete the task defined above. The FAA will consider the recommendations produced by ARAC and initiate future FAA regulatory action. However, if the group is unable to provide the FAA with proposed regulatory language within this time period, the FAA will initiate rulemaking independently. Participants of the ARAC should be prepared to participate on a full-time basis for a 6-month period if necessary.

ARAC Acceptance of Task

ARAC has accepted this task and has chosen to assign it to a new Fuel Tank Harmonization Working Group. The new working group will serve as staff to the ARAC Executive Committee to assist ARAC in the analysis of the assigned task. Working group recommendations must be reviewed and approved by ARAC. If ARAC accepts the working group's recommendations, it will forward them to the FAA as ARAC recommendations.

The Fuel Tank Harmonization Working Group should coordinate with other harmonization working groups, organizations, and specialists as appropriate. The working group will identify to ARAC the need for additional new working groups when existing groups do not have the appropriate expertise to address certain tasks.

Working Group Activity

The Fuel Tank Harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan, for consideration at the ARAC Executive Committee meeting held following publication of this notice.

2. Give a detailed conceptual presentation of the proposed recommendations, prior to proceeding with the work stated in item 3 below.

3. Draft a report and/or any other collateral documents the working group determines to be appropriate.

4. Provide a status report at each meeting of the ARAC Executive Committee.

Participation in the Working Group

The Fuel Tank Harmonization Working Group will be composed of experts having an interest in the assigned task. A working group member need not be a representative of a member of the full committee.

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the tasks, and stating the expertise he or she would bring to the working group. All requests to participate must be received no later than February 2, 1998. The requests will be reviewed by the ARAC chair, the executive director, and the working group chair, and the individuals will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of the ARAC Executive Committee will be open to the public. Meetings of the Fuel Tank Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on January 20, 1998.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–1743 Filed 1–21–98; 1:48 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33540]

Blue Mountain Railroad, Inc.—Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP) will agree to grant local trackage rights to Blue Mountain Railroad, Inc. (BMR) between: (1) UP milepost 210.0 at

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Juniper, OR, and UP milepost 218.0 at Wallula Heights, WA; and (2) UP milepost 0.0 at Wallula, WA, and UP milepost 2.0 near Attilia, WA, a total distance of 10 miles. BMR will be permitted to provide local switching service only to Boise Cascade Corporation, Ponderosa Fibers, and WATCO, Inc., at Wallula, WA.

The transaction is expected to be consummated on or shortly after January 15, 1998, the effective date of the exemption.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C.10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33540, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Karl Morell, Ball Janik LLP, Suite 225, 1455 F Street, N.W., Washington, DC 20005.

Decided: January 15, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–1638 Filed 1–22–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33474]

Iowa Interstate Railroad, Ltd.—Lease and Operation Exemption—Union Pacific Railroad Company

AGENCY: Surface Transportation Board.

ACTION: Notice of Exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board exempts from the requirements of 49 U.S.C. 10902 the lease by Iowa Interstate Railroad, Ltd. (IAIS) and operation of 6.4 miles of railroad owned by Union Pacific Railroad Company between milepost 358.568 at Des Moines, IA, and milepost 365.0 at West Des Moines, IA, in Polk County, IA, subject to labor protective conditions.

DATES: The exemption will be effective 60 days after IAIS certifies to the Board that it has posted at the workplace of the employees on the affected line, and served on the national offices of the labor unions with employees on the affected line, a notice of the transaction, setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the line that is to be leased. Petitions to stay must be filed by February 23, 1998. Petitions to reopen must be filed by March 16, 1998.[1]

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 33474 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; in addition, a copy of all pleadings must be served on petitioner's representative: T. Scott Bannister, 1300 Des Moines Building, 405–6th Avenue, Des Moines, IA 50309.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600. [TDD for the hearing impaired (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call or pick up in person from: DC NEWS & DATA, INC., 1925 K Street, N.W., Suite 210, Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

Decided: January 12, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–1637 Filed 1–22–98; 8:45 am]

BILLING CODE 4915–00–P

UNITED STATES INFORMATION AGENCY

Submission for OMB Review; Comment Request

AGENCY: United States Information Agency.

ACTION: Submission for OMB Review; comment request.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that the following information collection activity has been forwarded to the Office of Management and Budget (OMB) for review and comment. USIA is requesting approval of an information collection entitled "Applications for Administrative and Teaching Exchanges/Seminars Abroad" under OMB control number 3116–0181 which is scheduled to expire on February 28, 1998. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)).

The information collection activity involved with the program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual and Educational and Cultural Exchange Act of 1961, P.L. 87–256.

DATES: Comments are due on or before February 23, 1998.

COPIES: Copies of the Request for Clearance (OMB 83–I), supporting statement, and other documents that have been submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/AOL, 301 Fourth Street, S.W., Washington, D.C. 20547, telephone (202) 619–4408, internet address JGiovett@USIA. GOV; and OMB review: Ms. Victoria Wassmer, Officer of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 1002, NEOB, Washington, D.C. 20503, Telephone (202) 395–5871.

SUPPLEMENTARY INFORMATION: An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on November 25, 1997 (vol. 62, no. 227). Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116–0181) is estimated to average two (2) hours per response. Responses are voluntary and respondents are required to respond only one time, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the date needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the United States Information Agency, M/AOL, 301 Fourth Street, S.W., Washington, D.C. 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, D.C. 20503.

[1] The due dates for petitions for stay and reopening presuppose that IAIS will promptly certify that the required notice to employees has been given, and that the employees therefore have a reasonable period of time in which to file any petition. Should IAIS be delayed for a significant period of time in making that certification, we will entertain requests to extend the period of time for filing petitions to stay or reopen.

Current Actions

This information collection has been submitted to OMB for the purpose of requesting reinstatement for a three-year period and approval of revisions regarding the total annual burden hours.

Title: "Applications for Administrative and Teaching Exchanges/Seminars Abroad".

Form Number: IAP–92.

Abstract: To be used by applicants under the Fulbright Teacher Exchange Program which provides opportunities for U.S. Teachers to exchange positions for designated periods with foreign counterparts, or to attend one of a number of short-term seminars abroad on a variety of topics.

Proposed Frequency of Responses:

No. of Respondents—940
Recordkeeping House—2.0
Total Annual Burden—1880

Dated: January 16, 1998.

Rose Royal,

Federal Register Liaison.

[FR Doc. 98–1606 Filed 1–22–98; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Augustin Pajou, Royal Sculptor" (see list),[1] imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about February 23, 1998, to on or about May 24, 1998, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

Dated: January 20, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–1605 Filed 1–22–98; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Lorie Nierenberg, Assistant General Counsel, at 202/619–6084, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547–0001.

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Corrections

Federal Register
Vol. 63, No. 15
Friday, January 23, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC06

Amendments to Transportation Allowance Regulations for Federal and Indian Leases to Specify Allowable Costs and Related Amendments to Gas Valuation Regulations

Correction

In rule document 97–32802, beginning on page 65753, in the issue of Tuesday, December 16, 1997, make the following corrections:

1. On page 657E2, in the first column, amendatory instruction 5 should read as follows:

"3. Section 206.152, paragraph (i) is revised to read as follows:"

§ 206.173 [Corrected]

2. On page 65763, in the second column, in § 206.173(b)(1)(i), in the last line, "* * *" should be added immediately following the end of the paragraph.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97-ACE-30]

Amendment to Class E Airspace; Audubon, IA

Correction

In rule document 98–1105 beginning on page 2598, in the issue of Friday, January 16, 1998, make the following correction:

§ 71.1 [Corrected]

On page 2599, in the third column, in § 71.1, in the second line, under **ACE IA E5 Audubon, IA [Revised]**, "95°55′14″W" should read "94°55′14″W".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97-ACE-24]

Amendment to Class E Airspace; Lincoln, NE

Correction

In rule document 98–1104 beginning on page 2600, in the issue of Friday, January 16, 1998, make the following correction:

§ 71.1 [Corrected]

On page 2601, in the first column, in § 71.1, under **ACE NE E5, Lincoln, NE [Revised]**, in the seventh line, "each" should read "east".

BILLING CODE 1505-01-D

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Part II

Department of Education

Strengthening Institutions Programs; Notice Inviting Applications for New Awards for Fiscal Year 1998; Notice

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DEPARTMENT OF EDUCATION

[CFDA No. 84.031]

Strengthening Institutions Programs; Notice Inviting Applications for New Awards for Fiscal Year 1998

Purpose of Program: Provide grants to eligible institutions of higher education to improve their academic quality, institutional management, and fiscal stability in order to increase their self-sufficiency.

This grant program should be seen as an opportunity for applicants to support those elements of the National Education Goals that are relevant to their unique missions.

Deadline for Transmittal of Applications: March 17, 1998.

Deadline for Intergovernmental Review: April 9, 1998.

Applications Available: Applications will be mailed by January 26, 1998 to the office of the president of all institutions that will receive an application to be designated as an eligible institution under the Strengthening Institutions Program.

Available Funds: $17,000,000.

Estimated Range of Awards: $327,000 to $350,000 per year for five-year development grants; $30,000 to $35,000 for one-year planning grants.

Estimated Average Size of Awards: $338,500 per year for five-year development grants; $32,500 for one year planning grants.

Estimated Number of Awards: 48 development grants; 14 planning grants.

Project Period: 60 months for development grants; 12 months for planning grants.

Note: The Department is not bound by any estimates in this notice.

Special Funding Considerations: In tie-breaking situations described in 34 CFR 607.23 of the Strengthening Institutions program regulations, the Secretary awards one additional point under § 607.23 to an application from an institution that has an endowment fund for which the current market value, per full-time equivalent (FTE) student, *is less than the average, per FTE student,* at similar type institutions; and one additional point to an application from an institution that has expenditures for library materials, per FTE student, that are less than the average, per FTE student, at similar type institutions.

For the purposes of these funding considerations, an applicant must be able to demonstrate that the current market value of its endowment fund, per FTE student, or expenditures for library materials, per FTE student, is less than the following national average for base year 1995–96:

	Average market value of endowment fund, per FTE	Average library expenditures for materials, per FTE
Two-year Public Institutions	$1,332	$45
Two-year Non-profit, Private Institutions	11,567	121
Four-year Public Institutions	2,829	165
Four-year Non-profit Private Institutions	42,579	254

If a tie still remains after applying the above, the Secretary determines that institutions will receive an award according to a combined ranking of two year-and four-year institutions. The ranking is established by awarding points for combined FTE averages of library expenditures and endowment values by similar type institutions. Institutions whose combined FTE averages of library expenditures and endowment values are the lowest are ranked higher in strict numerical order.

Applicable Regulations: (a) The Department of Education General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 82, 85, and 86; and (b) the regulations for this program in 34 CFR Part 607.

SUPPLEMENTARY INFORMATION: Please note that 34 CFR 607.9(b)(2), (3) and (4) have been superseded by § 313(a) of the Higher Education Act of 1965, as amended (HEA). Accordingly, please disregard those sections, which are found in appendix VI of the application.

In making awards for fiscal year 1998, the Secretary will give priority for grants to the highest ranked applicants who are not or were not recipients of an *individual* Strengthening Institutions Program development grant on or after October 1, 1997. While institutions that *are or were* recipients of individual Strengthening Institutions Program development grants on or after October 1, 1997 may submit applications if they wish, those applications will be reviewed only if funds are available after all priority applications are funded. The Secretary *does not* anticipate having any funds available after all priority applications are funded.

In § 312 of the FY 1998 appropriation bill, Congress authorized the use of up to 20% of grant funds awarded to an institution under the Part A-Strengthening Program for endowment building. Any institution seeking to use Part A funds for endowment building purposes *shall indicate that intention* in its application and shall abide by the departmental regulations in 34 CFR Part 628 governing the Endowment Challenge Grant program. Only institutions requesting and competing successfully for new individual development grants in Fiscal Year 1998 may use up to 20% of the funds for endowment building; non-competing continuation grantees are not eligible for endowment building.

FOR FURTHER INFORMATION CONTACT: Blanca Westgate, U.S. Department of Education, 600 Independence Avenue, SW, Portals Building, Suite CY–80, Washington, D.C. 20202–5335. Telephone: (202) 708–8839. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audio tape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://gcs.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone (202)219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G-Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 1057.

Dated: January 16, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 98–1560 Filed 1–22–98; 8:45 am]

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Part III

Department of Energy

Record of Decision for the Department of Energy's Waste Isolation Pilot Plant Disposal Phase; Notice

Record of Decision for the Department of Energy's Waste Management Program: Treatment and Storage of Transuranic Waste; Notice

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DEPARTMENT OF ENERGY

Record of Decision for the Department of Energy's Waste Isolation Pilot Plant Disposal Phase

AGENCY: U.S. Department of Energy.

ACTION: Record of decision.

SUMMARY: The Department of Energy (DOE or Department) is issuing this record of its decision to dispose of transuranic (TRU) waste at the Waste Isolation Pilot Plant (WIPP), a mined repository located 2,100 feet below the surface in an ancient salt deposit near Carlsbad, New Mexico. Under this decision, DOE will dispose of up to 175,600 cubic meters (6.2 million cubic feet) of TRU waste generated by defense activities at WIPP after preparation (i.e., treatment, as necessary, including packaging) to meet WIPP's waste acceptance criteria. This waste includes TRU waste accumulated in aboveground storage since 1970 and TRU waste to be generated over approximately the next 35 years. This waste does not include TRU waste commingled with polychlorinated biphenyls in concentrations greater than or equal to 50 parts per million. Transportation of waste to WIPP will initially be by truck, although the Department reserves the option to use commercial rail transportation in the future. DOE will comply with the requirements and waste limits in the WIPP Land Withdrawal Act, as amended, and the Consultation and Cooperation Agreement between New Mexico and the Department of Energy. DOE has applied for a permit from the New Mexico Environment Department under the Resource Conservation and Recovery Act concerning mixed TRU waste (TRU waste containing radioactive and hazardous constituents); such a permit is not needed for disposal of other TRU waste at WIPP.

Implementation of this decision is contingent upon obtaining a Compliance Certification from the United States Environmental Protection Agency (EPA). EPA recently proposed to certify that WIPP complies with applicable EPA requirements for TRU waste disposal (62 FR 58792, October 30, 1997).

This Record of Decision documents the Department's decision to implement the Preferred Alternative, as analyzed in the "Waste Isolation Pilot Plant Disposal Phase Final Supplemental Environmental Impact Statement" (DOE/EIS–0026–FS2, September 1997) (SEIS–II). This Record of Decision is being issued in coordination with the preparation of the Record of Decision on the treatment and storage of TRU waste, which is based on the "Waste Management Programmatic Environmental Impact Statement" (DOE/EIS–0200, May 1997) (WM PEIS). The WM PEIS Record of Decision will specify the DOE sites at which TRU waste will be prepared and stored before disposal.

FOR FURTHER INFORMATION CONTACT:

For further information regarding WIPP SEIS–II and transuranic waste contact: Harold Johnson, SEIS–II Document Manager, Mail Stop 535, U.S. Department of Energy, Carlsbad Area Office, Post Office Box 3090, Carlsbad, NM 88221, Telephone (505) 234–7349, E–Mail: Johnsoh@WIPP.carlsbad.NM.US.

For further information on the DOE National Environmental Policy Act (NEPA) process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telephone: 202–586–4600 or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

Since the mid-1940s, DOE's research and development, nuclear weapons production, and nuclear fuel reprocessing activities have produced transuranic (TRU) waste. TRU waste is waste that contains alpha particle-emitting radionuclides with atomic numbers greater than that of uranium (92) and half-lives greater than 20 years in concentrations greater than 100 nanocuries per gram of waste.

TRU waste is classified according to the radiation dose rate at a package surface. Contact-handled (CH) TRU waste has a radiation dose rate at a package surface of 200 millirem per hour or less; this waste can safely be handled directly by personnel. Remote-handled (RH) TRU waste has a radiation dose rate at a package surface greater than 200 millirem per hour, and must be handled remotely (e.g., with machinery designed to shield workers from radiation).

TRU waste that has both radioactive and hazardous constituents is known as mixed TRU waste. The hazardous component of mixed TRU waste is regulated under the Resource Conservation and Recovery Act (RCRA). DOE estimates that approximately 60 percent of TRU waste is mixed TRU waste. In addition, some TRU waste is commingled with polychlorinated biphenyls (PCBs) in concentrations greater than or equal to 50 parts per million and is known as PCB commingled TRU waste. Disposal of PCBs is regulated under the Toxic Substances Control Act.

Before 1970, TRU waste was disposed of in shallow land burial sites. Since 1970, TRU waste has been retrievably stored in aboveground facilities at DOE sites. Plutonium stabilization and management activities, environmental restoration (which could include remediation of sites where TRU waste was buried before 1970), decontamination and decommissioning, waste management, and defense testing and research are expected to generate additional TRU waste.

The Department began examining the environmental impacts of TRU waste disposal under the National Environmental Policy Act (NEPA) in the late 1970s. After issuing the "Final Environmental Impact Statement for the Waste Isolation Pilot Plant" (DOE/EIS–0026, October 1980), the Department decided in a 1981 Record of Decision to begin phased development of WIPP to demonstrate the safe disposal of TRU waste in bedded salt. Consequently, the Department has, since 1981, been preparing to dispose of and isolate TRU waste by emplacing it in the Waste Isolation Pilot Plant (WIPP), a mined repository located 2,100 feet below the surface in an ancient salt deposit near Carlsbad, New Mexico. The major construction activities at WIPP have been completed. WIPP consists of the Waste Handling Building where waste would be received and inspected, an underground disposal area, and a waste handling shaft for transfer of waste from the surface to the disposal area. WIPP was designed for a total capacity of 175,600 cubic meters (6.2 million cubic feet) of TRU waste.

In 1990, after issuing the "Final Supplement Environmental Impact Statement for the Waste Isolation Pilot Plant" (DOE/EIS–0026–FS, January 1990), DOE issued a Record of Decision that continued the phased development of WIPP by instituting an experimental program to further examine WIPP's suitability as a TRU waste repository. In September 1997, DOE issued the "Waste Isolation Pilot Plant Disposal Phase Final Supplemental Environmental Impact Statement" (DOE/EIS–0026–FS2) (SEIS–II), which analyzes the environmental impacts of proposed disposal operations at WIPP. The Department has prepared this Record of Decision pursuant to the Council on Environmental Quality Regulations for implementing the provisions of NEPA (40 CFR parts 1500–1508) and the Department of Energy regulations implementing NEPA (10 CFR part 1021).

While SEIS–II was prepared to inform DOE's decision on whether to open WIPP for the disposal of TRU waste, the "Waste Management Programmatic Environmental Impact Statement" (DOE/EIS–0200, May 1997) (WM PEIS) was prepared to inform DOE's decision on where to treat (which includes packaging) and store TRU waste prior to disposal. In the WM PEIS, DOE examined several TRU waste treatment and storage site consolidation strategies (i.e., whether to treat and store TRU waste at the DOE sites where it is generated, at a few regional DOE sites, or at a centralized DOE site). In coordination with this WIPP Record of Decision, DOE is separately preparing a Record of Decision, supported by the WM PEIS, that specifies whether, and if so, where, to consolidate TRU waste for preparation and storage pending disposal.

Purpose and Need for Agency Action

The Department needs to safely dispose of the TRU waste that has accumulated at DOE sites and to provide for the disposal of additional TRU waste to be generated over approximately the next 35 years (through approximately 2033) in a manner that protects public health and the environment. DOE prepared SEIS-II in order to help DOE make the following decisions:

- Whether to open and operate WIPP for the disposal of TRU waste, and, if so,
- Which portions of the TRU waste inventory would be disposed of,
- To what minimum level TRU waste must be treated for disposal, and
- What mode of transportation would be used to transport TRU waste to WIPP.

WIPP Operation

With respect to the decision on whether to open WIPP, SEIS-II examines the environmental impacts of four alternatives that involve operating the facility (the Proposed Action and other Action Alternatives) and the impacts of two alternatives that involve dismantling and closing WIPP and continuing storage of TRU waste at the generating sites (the No Action Alternatives).

Waste Inventories

SEIS–II uses the most recent inventory data available for its analysis, including data from "The National Transuranic Waste Management Plan," (DOE/NTP–96–1204, Revision 0, September 1996)(TRU Waste Management Plan). Using these data, SEIS–II examines the environmental impacts of disposing of different inventories of TRU waste. For purposes of analysis in SEIS–II, the DOE TRU waste inventory is divided into a Basic Inventory and an Additional Inventory. The Basic Inventory consists of (1) TRU waste generated by defense activities (defense waste) that has been placed in retrievable storage since 1970 and (2) defense TRU waste that would continue to be generated over approximately the next 35 years as a result of plutonium stabilization and management activities, environmental restoration (including remediation of some sites where defense TRU waste was buried before 1970), decontamination and decommissioning, waste management, and defense testing and research. The Basic Inventory volume (per recent estimates analyzed in SEIS–II) is approximately 170,000 cubic meters (6 million cubic feet). The Additional Inventory consists of commercial and non-defense waste (waste for which DOE has responsibility and which was generated by activities other than defense activities), PCB commingled TRU waste, and waste that was buried before 1970 that is not included in the Basic Inventory (because, for example, DOE does not expect remediation activities to occur within approximately the next 35 years, or because the extent of remediation has not been determined). The Additional Inventory also includes non-defense and commercial waste that DOE believes could be generated over approximately the next 35 years. The Additional Inventory volume (per recent estimates analyzed in SEIS–II) is approximately 142,500 cubic meters (5 million cubic feet).

The WIPP Land Withdrawal Act, as amended in 1996, limits the capacity of WIPP to 175,600 cubic meters (6.2 million cubic feet). The Act also specifies that only defense TRU waste may be disposed of at WIPP. In addition, the Consultation and Cooperation (C&C) Agreement between DOE and the State of New Mexico limits the volume of RH–TRU waste to 7,080 cubic meters (250,000 cubic feet). Using the volume estimates analyzed in SEIS–II, disposal of the Basic Inventory would be within these limits, and disposal of the Basic Inventory and all of the Additional Inventory would exceed these limits.

Waste Treatment Levels

SEIS–II examines treatment of TRU waste to three different levels before disposal: treatment to meet the planning basis WIPP waste acceptance criteria (WIPP WAC), thermal treatment to meet RCRA land disposal restriction (LDR) levels, and treatment by shred and grout. The planning basis WIPP WAC is that level of treatment and packaging in WIPP WAC Revision 5, with anticipated revisions as analyzed in SEIS–II. Treatment to planning basis WIPP WAC would require repackaging of TRU waste to meet transportation and disposal regulations and DOE policies. Treatment to LDR levels would use a thermal process that would substantially condense the waste and yield a vitrified or metal ingot waste form. Such treatment would also remove any organic hazardous constituents and immobilize any hazardous metals in mixed TRU waste and PCB commingled TRU waste. Treatment by shredding the waste and sealing it in grout would reduce gas generation, but would create a much larger waste volume. As set forth in this WIPP Record of Decision, DOE has concluded that waste destined for WIPP should at a minimum be prepared (i.e., treated as needed, and packaged) according to the planning basis WIPP WAC. As noted previously, in coordination with this WIPP Record of Decision, DOE is preparing a Record of Decision, based on the WM PEIS, that will specify whether, where, and to what extent to consolidate TRU waste for preparation and storage pending disposal.

Transportation Modes

SEIS–II analyzes the transport of TRU waste by truck, by regular rail and truck (truck transportation from those sites that do not have rail access), and by dedicated rail and truck. Regular rail refers to use of commercial rail lines, with TRU waste being included on trains that are also carrying other types of freight. Dedicated rail would also use commercial rail lines, with trains composed exclusively of rail cars carrying TRU waste.

The Department has investigated and continues to investigate the possibility of using rail transportation, but considers it less reasonable than truck transportation at this time. The primary factors that make rail transportation less reasonable are (1) limited interest of rail carriers in handling shipments of TRU waste, (2) the higher cost of dedicated rail transportation as compared to truck transportation, (3) the initial cost of acquiring additional transport containers needed for rail transportation (because three times as many containers are needed for each shipment), and (4) DOE's inability to obtain rail carrier assurance that TRU waste container transit will enable DOE to unseal the containers within 60 days of loading, as required by Nuclear Regulatory Commission regulations. Regular rail transportation, because of its lower public health impacts and cost, is still

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considered a desirable option for some waste transportation in the future, provided that the factors that make it currently less reasonable can be mitigated.

Alternatives Considered

SEIS–II examines the environmental impacts of the Proposed Action, three other reasonable Action Alternatives, and two No Action Alternatives that involve the waste inventories and treatment levels described above.

1. Proposed Action (Preferred Alternative)

Under the Proposed Action, DOE would open WIPP and dispose of 175,600 cubic meters (6.2 million cubic feet) of post-1970 defense TRU waste (except PCB commingled TRU waste), which is the Basic Inventory of TRU waste adjusted up to the capacity limits specified in the WIPP Land Withdrawal Act and the C&C Agreement. The waste would be treated as necessary to meet the planning basis WIPP WAC. Based on the inventory volume and the anticipated emplacement rate, TRU waste would be disposed of at WIPP over a 35-year period. Transportation would be by truck.

The Department identified the Proposed Action as its Preferred Alternative in the final SEIS–II. Under the Preferred Alternative, TRU waste transportation would initially be by truck; however, the Department reserves the option to use commercial rail transportation of TRU waste in the future.

The Proposed Action (and Preferred Alternative) would isolate TRU waste for more than 10,000 years and would comply with the WIPP Land Withdrawal Act and the C&C Agreement. However, this alternative would not dispose of the Additional Inventory.

2. Action Alternative 1

Under Action Alternative 1, the Department would dispose of the Basic and Additional Inventories of TRU waste (except PCB commingled TRU waste) at WIPP, after treating the waste to meet the planning basis WIPP WAC. SEIS–II analyzes the disposal of TRU waste over the 160-year period needed for emplacement of this amount of waste at the anticipated emplacement rate. SEIS–II also analyzes the environmental impacts associated with the modifications to WIPP facilities and operations that would be needed to increase the emplacement rate and reduce the disposal time (for this alternative, to 60 years). SEIS–II analyzes transportation by truck and transportation by rail (regular commercial and dedicated trains).

Action Alternative 1 would isolate TRU waste for more than 10,000 years, and would dispose of defense, non-defense, and commercial TRU waste and TRU waste that was buried before 1970. DOE could not implement Action Alternative 1 unless the WIPP Land Withdrawal Act and the C&C Agreement were modified accordingly. In addition, under Action Alternative 1, DOE would not dispose of PCB commingled TRU waste at WIPP.

3. Action Alternative 2

Under Action Alternative 2, the Department would dispose of the Basic and Additional Inventories of TRU waste (including PCB commingled TRU waste) at WIPP after treating the waste thermally to LDR levels. SEIS–II analyzes the disposal of waste over the 150-year period needed for emplacement of this volume given thermal loading constraints and anticipated emplacement rate. SEIS–II also analyzes the environmental impacts associated with the modifications to WIPP facilities and operations that would be needed to increase the emplacement rate and reduce the disposal time (for this alternative, to 70 years). SEIS–II analyzes three subalternatives (Alternatives 2A, 2B, and 2C) that examine consolidated thermal treatment at DOE sites.

Action Alternative 2 would isolate TRU waste for more than 10,000 years, and would dispose of defense, non-defense, and commercial TRU waste, PCB commingled TRU waste, and TRU waste that was buried before 1970. DOE could not implement this alternative unless the WIPP Land Withdrawal Act and the C&C Agreement were modified accordingly.

4. Action Alternative 3

Under Action Alternative 3, DOE would dispose of the Basic and Additional Inventories of TRU waste (except PCB commingled TRU waste) at WIPP after treatment by a shred and grout process. SEIS–II analyzes the disposal of waste over the 190-year period needed for emplacement of this volume at the anticipated emplacement rate. SEIS–II also analyzes the environmental impacts associated with the modifications to WIPP facilities and operations that would be needed to increase the emplacement rate and reduce the disposal time (for this alternative, to 75 years). The impacts of both truck and rail transportation are analyzed.

Action Alternative 3 would isolate TRU waste for more than 10,000 years, and would dispose of defense, non-defense, and commercial TRU wastes and TRU waste that was buried before 1970. DOE could not implement Action Alternative 3 unless the WIPP Land Withdrawal Act and the C&C Agreement were modified accordingly. The treatment method under this alternative would increase the volume of the waste to be disposed of, thus increasing transportation. In addition, under Action Alternative 3, DOE would not dispose of PCB commingled TRU waste at WIPP.

5. No Action Alternative 1

Under No Action Alternative 1, the Department would thermally treat the Basic and Additional Inventories of TRU waste and store the waste indefinitely in newly constructed monitored retrievable storage facilities. SEIS–II analyzes two subalternatives that examine the impacts of thermal treatment. The impacts of transporting TRU waste to treatment sites by both truck and rail transportation are analyzed. WIPP would be dismantled and closed under this alternative.

No Action Alternative 1 would treat TRU waste to RCRA LDR levels and indefinitely store the treated waste. Treatment to LDR levels would reduce human health impacts in the event of a release of the stored waste. This alternative would not offer the isolation afforded by deep geologic disposal, would require periodic maintenance of storage facilities and waste repackaging, and could not be implemented without modification of agreements that DOE has reached with several states regarding the offsite disposition of TRU waste. No Action Alternative 1 would require the use of effective institutional controls for the indefinite future.

6. No Action Alternative 2

Under No Action Alternative 2, DOE would continue to store newly generated TRU waste at generator sites in existing or planned storage facilities. The newly generated waste would be treated to meet the planning basis WIPP WAC to facilitate safe storage; however, the waste form would not protect human health if the waste were released. No transportation is analyzed for this alternative, because the waste is assumed to remain indefinitely where it was generated. WIPP would be dismantled and closed under this alternative.

This alternative would not involve impacts to workers and the public associated with thermal or shred and grout treatment or with transportation. However, this alternative would not offer the isolation afforded by deep geologic disposal, would require periodic maintenance of storage facilities and waste repackaging for the indefinite future, and could not be implemented without modification of agreements that DOE has reached with several states regarding the offsite disposition of TRU waste.

Environmentally Preferable Alternative

In identifying its environmental preference among alternatives for the long-term management of TRU waste, DOE considered both near-term and long-term (through and beyond 10,000 years) human health and environmental impacts. There are alternatives that would result in low near-term impacts but relatively high long-term impacts, and identifying the environmentally preferable alternative(s) requires judgment concerning these impacts and sensitivity concerning the uncertainties of some of the near-term and long-term impacts.

SEIS–II estimates that some potential near-term fatalities, mainly among workers as a result of industrial accidents from waste treatment operations, would occur under all alternatives. The largest number of potential fatalities would occur as a result of thermal treatment under Action Alternative 2 (up to approximately 14 fatalities) and No Action Alternative 1 (up to approximately 13 fatalities), and the smallest under No Action Alternative 2 (approximately 1 fatality), under which only newly generated waste would be treated. Thermal treatment may result in air quality exceedances for radionuclides, offsite treatment impacts (including fatalities), and, for thermal treatment at WIPP (Action Alternative 2C), potentially disproportionately high and adverse impacts to minority and low income populations near WIPP.

Some potential near-term fatalities also could occur from storage operations under all of the alternatives; a larger number of fatalities could occur as a result of a natural disaster, such as an earthquake with a small annual probability of occurring damaging an aboveground TRU waste storage facility. For the No Action Alternatives, however, the associated risks would continue for the indefinite future. Long-term storage risks would also occur for the Additional Inventory that would not be disposed of under the Proposed Action and for PCB commingled TRU waste that would not be disposed of under Action Alternatives 1 and 3.

Transportation for treatment and for disposal are estimated to cause more fatalities (mainly involving the general public) than other near-term waste management operations. The largest number of fatalities are estimated to occur under the three Action Alternatives, in which the most waste would be sent to WIPP. The analysis shows, however, that regular commercial rail service would have lower potential fatalities than transportation by either dedicated rail service or by truck. The consequences of low probability accidents would be similar for all transportation options. In contrast, the No Action Alternatives would pose little to no transportation risk, depending on the alternative, but would not dispose of the waste.

Thus, SEIS–II analyses show that, in the near term, No Action Alternative 2 would be environmentally preferable. For the long term, however, disposal of as much of DOE's TRU waste as possible at WIPP is environmentally preferable to indefinite storage, because disposal isolates the waste and avoids the long-term need to protect the public and workers from exposure to stored waste, a protection than cannot be assured over the long periods of time that TRU waste poses a health hazard to the public. The long-term impacts of indefinite storage of TRU waste under No Action Alternative 2 and, to a lesser extent, No Action Alternative 1, would result primarily from future exposures to stored waste should DOE lose institutional control of the storage facilities in the future. Over the long term, there would also be an increasing probability of adverse impacts from a natural disaster. Such impacts could be exacerbated by future population growth near DOE sites. SEIS–II analyses show that there is virtually no benefit to long-term repository performance from thermal or shred and grout treatment of waste as compared to treatment to meet the planning basis WIPP WAC.

Considering both near-term and long-term impacts, therefore, Action Alternative 1 is the environmentally preferable alternative, with transportation of waste by regular commercial rail service to the maximum extent possible to lessen near-term impacts. Action Alternative 1 would dispose of defense, non-defense, and commercial TRU waste (with the exception of PCB commingled TRU waste) and TRU waste that was buried prior to 1970, after treatment as necessary to meet the planning basis WIPP WAC. This alternative would dispose of a greater amount of TRU waste than the Proposed Action.

Comments on SEIS–II and Agency Responses

SEIS–II was initiated by a notice of intent published in the **Federal Register** on August 18, 1995. A draft SEIS–II was issued in November 1996, and public hearings were held in January 1997. Approximately 4,000 comments were received from individuals, organizations, states, tribes, and Federal agencies during the 90-day comment period. Many of the comments received on the draft SEIS–II expressed strong opinions in favor of or against disposal at WIPP, or suggested revisions to SEIS–II. The final SEIS–II, issued in September 1997, incorporated many changes in response to public comments and internal review, including updating of waste volumes, TRU waste locations, and the long-term performance assessment.

The Department received four letters on the final SEIS–II. The Environmental Protection Agency (EPA) Region 6 letter stated that the agency had completed its review and had no further comments on the final SEIS–II. The State of Tennessee's Department of Environment and Conservation, the State of Idaho Oversight Program, and the Southwest Research and Information Center submitted comments which the Department has considered.

In its comments, the DOE Oversight Division of the Tennessee Department of Environment and Conservation requested clarification of responses provided in SEIS–II regarding: (1) Consolidation of TRU waste at sites prior to being shipped to WIPP, (2) management of "special case" waste, (3) management of the excess inventory of RH–TRU waste if WIPP's capacity is reached, and (4) plans and schedules for transporting TRU waste to WIPP. In addition, the State asked DOE to provide assurance in the Record of Decision that RH–TRU waste will be removed from DOE's Oak Ridge site in accordance with the Oak Ridge Reservation Site Treatment Plan.

Decisions regarding consolidation of TRU waste for preparation and storage pending disposal will be made in the Record of Decision for the WM PEIS. With regard to what the commenter referred to as "special case" waste, such waste that is classified as post-1970 defense TRU waste is included in the SEIS–II analysis as CH–TRU waste as part of the Basic Inventory, and under this Record of Decision upon preparation to meet the planning basis WIPP WAC would be disposed of at WIPP. Materials cited by the commenter that are not classified as TRU waste could not be disposed of at WIPP and are beyond the scope of SEIS–II and this Record of Decision. Regarding the comment about the excess inventory of RH–TRU waste, DOE expects that there will be sufficient capacity at WIPP to

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dispose of all RH–TRU waste currently in storage and to be generated over approximately the next 35 years, based on the most recent estimates contained in the TRU Waste Management Plan. DOE's proposed plans and schedule for transporting waste from particular sites to WIPP are contained in the TRU Waste Management Plan. Finally, as stated in SEIS–II, DOE intends to meet its obligations with regard to the disposition of TRU waste as set forth in the agreements (including Site Treatment Plans) that it has reached with states and in related court orders.

The State of Idaho Oversight Program requested that the ROD be consistent with the agreements made with the State with regard to transuranic waste that will be disposed of at WIPP. As noted above, the Department intends to fulfill its obligations with regard to the disposition of TRU waste as set forth in its agreements with states and in related court orders.

In its comments on the final SEIS–II, the Southwest Research and Information Center stated that disposal of TRU waste in a high-level waste repository is a reasonable alternative that was not examined in SEIS–II or the WM PEIS. This commenter also stated that, because all of the estimated TRU waste inventory would not be disposed of at WIPP, DOE will be required to consider additional disposal sites, and that such other sites were not considered in SEIS–II or the WM PEIS. Further, the commenter stated that DOE should prepare a comprehensive NEPA analysis of storage and disposal options for all of DOE's nuclear waste, including all TRU waste, before issuing a Record of Decision on TRU waste disposal at WIPP. Finally, the commenter asked for clarification of DOE's position regarding the opening of WIPP without a RCRA permit from the New Mexico Environment Department.

The Department has examined all reasonable TRU waste disposal alternatives in SEIS–II and the preceding environmental impact statements, including disposal in a high-level waste repository and disposal at sites other than WIPP. DOE decided in 1981 to develop WIPP for the disposal of TRU waste, and SEIS–II confirms that WIPP is an effective disposal facility for TRU waste. The most recent waste volume estimates contained in the TRU Waste Management Plan indicate that DOE would be able to dispose of all of the TRU waste currently in storage, and waste to be generated by DOE over approximately the next 35 years. In SEIS–II, DOE analyzes the disposal at WIPP of all defense, non-defense, and commercial TRU waste and TRU waste that was buried prior to 1970. The WM PEIS comprehensively analyzes the management of all of DOE's radioactive and hazardous waste types. With regard to the RCRA permit issue, DOE has applied for a RCRA permit from the New Mexico Environment Department for mixed TRU waste. Such a permit is not needed for disposal of other TRU waste at WIPP.

Decision

The Department will dispose of up to 175,600 cubic meters (6.2 million cubic feet) of defense TRU waste (except PCB commingled TRU waste) at WIPP. Transportation of waste to WIPP will initially be by truck, although the Department reserves the option to use commercial rail transportation in the future. DOE will prepare (including treatment, as necessary, and packaging) the wastes to be disposed of to meet the WIPP WAC (WIPP WAC Revision 5, including any future revisions as analyzed in SEIS–II, such as pipe overpacks used in waste packaging). This decision establishes only the minimum waste acceptance requirements that must be met for disposal of waste at WIPP. DOE has treated in the past (and based on site-specific circumstances, may decide to treat in the future) TRU waste at some sites more extensively than is required under the WIPP WAC. WIPP may accept for disposal grouted TRU waste, thermally treated TRU waste, or TRU waste treated by any other process that meets the WIPP WAC.

Under this decision, the wastes to be disposed of include both CH and RH defense TRU waste (except PCB commingled TRU waste) placed in retrievable storage after 1970, and TRU waste generated for approximately the next 35 years by plutonium stabilization and management activities, environmental restoration (including defense TRU waste from future remediation of sites where TRU waste was buried before 1970), decontamination and decommissioning, waste management, and defense testing and research. The amount of TRU waste that will be disposed of at WIPP will not exceed limits established by the WIPP Land Withdrawal Act and the C&C Agreement. Impacts of disposal at WIPP of this volume of defense TRU waste are analyzed in the SEIS–II under the Proposed Action (Preferred Alternative).

TRU waste will be transported to WIPP in containers certified by the Nuclear Regulatory Commission, as required by the WIPP Land Withdrawal Act. DOE will initially use trucks to transport waste. However, DOE reserves the option to use commercial rail service for TRU waste transportation in the future, because SEIS–II analyses show that, under normal operations, regular rail transportation would cause fewer fatalities and would cost less than truck transportation (although consequences of a low probability accident would be similar for all transportation options). In contrast, SEIS-II analyses show that dedicated rail shipments would cause the largest number of fatalities and would be the most costly transportation mode.

Basis for Decision

The decision described above minimizes, to the extent possible under current statutory restrictions contained in the WIPP Land Withdrawal Act, the impacts and costs of continued TRU waste management activities at DOE sites. Disposal of TRU waste at WIPP would effectively isolate the waste from human contact for more than 10,000 years if the repository remains undisturbed, and, under the Preferred Alternative, is not expected to adversely impact human health even if the repository were to be breached by drilling. For example, based on analyses in the WIPP SEIS–II, the probability that a member of a drilling crew that breached the repository would die of cancer from exposure to the waste is 4 in 10,000. If an intrusion occurred, radionuclides and heavy metals could reach the Culebra Dolomite (the principal water-bearing unit overlying WIPP). However, impacts would be negligible.

The Department has taken into consideration irreversible and irretrievable commitments of resources, impacts from retrieval of waste from the repository, and cumulative impacts in making this decision. There would be irreversible and irretrievable commitment of resources associated with the use of the WIPP site resulting from residual salt that remains after remediation of the salt storage pile. Although DOE has no plans to retrieve waste from WIPP, if the waste were retrieved prior to repository closure, the impacts would be the same as from emplacing the waste. If the waste were required to be recovered after repository closure, there could be several worker fatalities from recovering waste and any contaminated salt. The impacts from transporting waste back to the treatment sites would be higher than from transporting it to WIPP because of the additional volume of contaminated salt. In considering cumulative impacts, DOE recognizes that for all alternatives involving transportation of TRU waste, there would be cumulative impacts from past, present and reasonable foreseeable future activities involving transportation of other waste types (hazardous, low-level, low-level mixed, and high level waste). There would also be cumulative impacts at some of the treatment sites as a result of past, present, and reasonably foreseeable future activities.

DOE did not select the No Action Alternatives because they would not isolate TRU waste from humans and the environment, and could cause public harm if long-term institutional control were to be lost. (Although no deaths would be expected based on current population densities and distributions under No Action Alternative 1, intruders could receive doses that greatly exceed current regulatory limits; up to 800 deaths could occur over 10,000 years under No Action Alternative 2). Maintaining such controls indefinitely would require future generations to incur risks and costs that can be avoided by disposing of the waste in WIPP now. In addition, the No Action Alternatives could not be implemented without modification of agreements that DOE has reached with several states regarding the offsite disposition of TRU waste.

DOE did not select the Action Alternatives because disposal of the volumes and waste types involved in these alternatives would require modification of the WIPP Land Withdrawal Act and the C&C Agreement. DOE did not select either thermal or shred and grout treatment because the SEIS–II analyses show that these treatments do not materially improve the repository's performance, and also have greater costs and near-term impacts across the DOE complex.

This decision is consistent with the intent of Congress, as expressed in the WIPP Land Withdrawal Act, that DOE commence disposal operations at WIPP once all applicable health and safety standards and laws have been met. The decision will enable the Department to comply with the agreements that DOE has entered into with several states, particularly those agreements that set a schedule for removal of TRU waste from DOE sites.

Implementation of the decision to dispose of TRU waste at WIPP is contingent on obtaining a Compliance Certification from EPA. EPA recently proposed to certify compliance, subject to certain conditions (62 FR 58792, October 30, 1997). DOE has applied for a RCRA permit from the New Mexico Environment Department for disposal of mixed TRU waste; such a permit is not needed for disposal of other TRU waste at WIPP.

Mitigation Measures

DOE has a Mitigation Action Plan in effect for WIPP to reduce possible adverse environmental effects. DOE will continue to implement those actions and provide information on their status in its annual mitigation action reports.

DOE will comply with applicable Department of Transportation and Nuclear Regulatory Commission regulations governing the shipment of TRU waste. As described in SEIS–II, DOE will transport TRU waste to WIPP in such a manner as to alleviate, to the maximum extent possible, potential impacts from transportation of TRU waste over the highways. These measures include tracking shipments with the TRANSCOM satellite tracking system and maintaining constant communication with the driver to provide notice of adverse weather or road conditions along the route. Equipment will be inspected at the beginning of each shipment and periodically every 100 miles or every two hours while on route. If shipments are delayed on route, drivers will park at designated DOE or Department of Defense sites, or State designated parking areas if possible. If no such sites are available, drivers will park in areas away from population concentrations and notify the State Police of the shipment's location.

In addition to maintaining its own emergency response capabilities, DOE offers emergency response training to police, fire, and medical personnel located along the WIPP transportation routes. In the event of an accident involving a WIPP shipment, the driver would notify emergency responders by cellular phone and also the WIPP Central Monitoring Room using the TRANSCOM system. A DOE official would be dispatched to assist at the accident site. DOE resources would be available to support mitigation of the accident, including but not limited to package recovery and site cleanup.

The United States Department of the Interior suggested in comments on the draft SEIS–II that DOE should develop a spill contingency plan to address the potential impacts of a diesel fuel spill on fish and wildlife and their habitats. DOE already has plans in place to address the potential impacts of a truck accident; these plans address potential releases of TRU waste and other materials. Remediation efforts may include excavation and disposal of contaminated environmental media as appropriate.

A copy of SEIS–II and this Record of Decision are available from the Center for Environmental Management Information, telephone: 1–800–7EM–DATA (1–800–736–3282) (in Washington, D.C., call 202–863–5084).

Issued in Washington, D.C., this 16th day of January, 1998.

Elizabeth A. Moler,

Deputy Secretary of Energy.

[FR Doc. 98–1653 Filed 1–22–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Record of Decision for the Department of Energy's Waste Management Program: Treatment and Storage of Transuranic Waste

AGENCY: Department of Energy.

ACTION: Record of decision.

SUMMARY: The Department of Energy (DOE) is issuing this Record of Decision on where, i.e., at which DOE sites, the Department will prepare and store its transuranic (TRU) waste prior to disposal. Each of the Department's sites that currently has or will generate TRU waste will prepare and store its TRU waste on site, except that the Sandia National Laboratory in New Mexico (SNL–NM) will transfer its TRU waste to the Los Alamos National Laboratory (LANL) in New Mexico. LANL will have facilities, not available or anticipated at SNL–NM, to prepare and store this waste prior to disposal.

DOE made this decision based on analyses in the Department of Energy Final Programmatic Waste Management Environmental Impact Statement (WM PEIS) (May 1997) and other information. This decision differs slightly from the Preferred Alternative in the WM PEIS. The Appendix to this Record of Decision lists the sites for which DOE analyzed the potential impacts of treating (which includes packaging) and storing TRU waste in the WM PEIS. The potential health and environmental impacts of this decision were identified and evaluated in the Decentralized Alternative of the WM PEIS.

In the future, the Department may decide to ship TRU wastes from sites where it may be impractical to prepare them for disposal to sites where DOE has or will have the necessary capability. The sites that could receive such shipments of TRU waste are the Idaho National Engineering and Environmental Laboratory (INEEL), the Oak Ridge Reservation (ORR), the Savannah River Site (SRS) and the Hanford Site. However, any future decisions regarding transfers of TRU wastes would be subject to appropriate review under the National Environmental Policy Act (NEPA), and

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to agreements DOE has entered into, such as those with States, relating to the treatment and storage of TRU waste. Future NEPA review could include, but would not necessarily be limited to, analysis of the need to supplement existing environmental reviews. DOE would conduct all such TRU waste shipments between sites in accordance with applicable transportation requirements and would coordinate these shipments with appropriate State, Tribal and local authorities.

This Record of Decision was prepared in coordination with the Record of Decision issued on January 16, 1998, on disposal of DOE's TRU waste, which is based on the Waste Isolation Pilot Plant Disposal Phase Final Supplemental Environmental Impact Statement (WIPP SEIS–II), issued in September 1997. On the basis of the analyses in the WIPP SEIS–II, DOE decided to dispose of TRU waste generated by defense activities at the WIPP near Carlsbad, New Mexico, after preparation (i.e., treatment, as necessary, and packaging) to meet WIPP's waste acceptance criteria.

FOR FURTHER INFORMATION CONTACT: Copies of the WM PEIS and this Record of Decision are available in DOE public reading rooms and selected libraries located across the United States. A list of the public reading rooms at which the WM PEIS and this Record of Decision are available can also be accessed on the DOE Office of Environmental Management's World Wide Web site at http://www.em.doe.gov/em30/. To request copies of the WM PEIS, this Record of Decision, or a list of the reading rooms and public libraries, please write or call: The Center for Environmental Management Information, P.O. Box 23769, Washington, DC 20026–3769, Telephone: 1–800–736–3282 (in Washington, DC: 202–863–5084).

For further information on DOE's national Waste Management Program, the WM PEIS, or this Record of Decision, please write or call: Ms. Patrice Bubar, Director, Office of Planning and Analysis (EM–35), United States Department of Energy, Office of Environmental Management, 19901 Germantown Road, Germantown, MD 20874, Telephone: (301) 903–7204.

For general information on the U.S. Department of Energy National Environmental Policy Act process, please write or call: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), United States Department of Energy, Office of Environment, Safety, and Health, 1000 Independence Avenue, SW., Washington, DC 20585–0119, Telephone: (202) 586–4600, or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

DOE prepared this Record of Decision pursuant to the Council on Environmental Quality's regulations for implementing NEPA (40 CFR parts 1500–1580) and DOE's NEPA Implementing Procedures (10 CFR part 1021). This Record of Decision is based on analyses contained in the Department of Energy's Final Waste Management Programmatic Environmental Impact Statement (DOE/EIS–0200–F). DOE published a notice of its intent to prepare the WM PEIS in the **Federal Register** on October 25, 1990. DOE issued a Draft WM PEIS on September 22, 1995, and hearings were held during the public comment period, which closed on February 19, 1996. All public comments were addressed in the Final WM PEIS, which DOE issued on May 30, 1997.

Purpose and Need for Agency Action

DOE needs facilities to manage its radioactive and hazardous wastes in order to maintain safe, efficient, and cost-effective control of these wastes; to comply with applicable Federal and state laws; and to protect public health, safety and the environment. The WM PEIS is a Department-wide study of the environmental impacts of managing five types of waste generated by defense and research activities at a variety of DOE sites around the United States. The five waste types are: low-level mixed waste, low-level waste, TRU waste, high-level waste, and hazardous waste. The WM PEIS examines, in an integrated fashion, the potential impacts of managing these waste types and the cumulative impacts of waste management, transportation and other ongoing and reasonably foreseeable activities.

The WM PEIS provides information on the potential impacts of alternatives for nationwide waste management that DOE will use to decide, on a programmatic basis, where, i.e., at which DOE sites, to locate particular waste management facilities. However, DOE will not decide the specific location of new facilities at sites selected to manage a particular type of waste, or a facility's capacity and design, until DOE completes appropriate site-wide or project-specific NEPA reviews, such as an environmental assessment or environmental impact statement. These subsequent analyses would rely, to the extent appropriate, on the analyses in the WM PEIS.

This Record of Decision applies only to the treatment (including packaging) and storage of TRU waste as analyzed in the WM PEIS. Records of Decision for the four other waste types analyzed in the WM PEIS will be issued in due course. An Appendix to this Record of Decision identifies the major sites evaluated in the WM PEIS as potential locations for waste management operations, and the sites analyzed that have TRU waste.

TRU Waste Treatment and Storage

TRU waste is waste containing more than 100 nanocuries of alpha-emitting transuranic isotopes per gram of waste, with half-lives greater than 20 years (a few exceptions to this definition are identified in the WM PEIS). Over 99% of the total volume of existing and anticipated TRU waste is located at the DOE sites listed in the Appendix. TRU waste is categorized as either contact-handled (CH) or remote-handled (RH), based on the radiation level at the surface of the waste container. CH–TRU waste constitutes more than 85% of the total existing and anticipated volume of TRU waste considered in the WM PEIS. CH containers can be safely handled by direct contact, with appropriate health and safety measures. RH–TRU waste contains a greater proportion of radionuclides that produce highly penetrating radiation, and thus RH containers require special handling and shielding during waste management operations.

Alternatives Considered

In the WM PEIS, the term "alternative" refers to a nationwide configuration of sites for treating, storing, or disposing of a waste type. The alternatives analyzed for each waste type fall within the four broad categories described below.

No Action Alternatives

These alternatives involve the use of currently existing or planned waste management facilities at DOE sites. In the NEPA process, a no action alternative or "status quo" alternative may not comply with applicable laws and regulations; however, analysis of such an alternative is required and provides an environmental baseline against which the impacts of other alternatives can be compared.

Decentralized Alternatives

These alternatives involve managing waste where it is or will be generated. Unlike the no action alternatives, the decentralized alternatives may require the siting, construction, and operation of new facilities or the modification of existing facilities. Under the decentralized alternatives, waste management facilities would be located at a larger number of sites than under regionalized or centralized alternatives.

Regionalized Alternatives

These alternatives involve consolidating waste management activities by transporting wastes to a limited number of sites (fewer than the number of sites considered for the decentralized alternatives but greater than the number of sites considered for the centralized alternatives). In general, sites with the largest volumes of a particular waste type were evaluated as potential regional sites for consolidating waste management activities.

Centralized Alternatives

These alternatives involve consolidating management of wastes at fewer locations than the regionalized alternatives (typically one to three locations). As was the case for the regionalized alternatives, generally those sites with the largest volumes of a particular waste type were evaluated as potential sites for centralized waste management.

There are many possible combinations of the number and locations of DOE sites for waste management facilities. To limit these combinations to a reasonable number for meaningful analysis, DOE selected alternatives that cover the full spectrum of reasonable alternatives under each category for each waste type. Table 1 summarizes the alternatives for TRU waste treatment storage that are analyzed in the WM PEIS, and the preferred alternative that DOE developed based on the analysis and other relevant criteria identified in the WM PEIS.

TABLE 1.—SUMMARY OF TRU WASTE ALTERNATIVES ANALYZED IN THE WM PEIS

Alternative Category	Description
No Action	Eleven sites* that anticipate generating TRU waste in the future would prepare TRU waste to meet planning-basis WIPP waste acceptance criteria**; existing TRU waste at 16 sites would be stored indefinitely; assumes TRU waste would not be transported among sites.
Decentralized	Either fixed or mobile characterization facilities would be operated at sites that would need to retrieve existing TRU waste, treat, repackage, and ship the waste. TRU waste would be shipped from the 6 sites with the smallest amounts to the nearest site of the 10 sites (ANL–E, NTS, Hanford, INEEL, LANL, LLNL, Mound, ORR, RFETS, SRS) with the largest amounts of TRU waste for storage prior to disposal; assumes for purposes of analysis that the waste would be prepared to meet waste acceptance criteria for WIPP and that disposal would occur at WIPP.
Regionalized (3 Subalternatives)	Three subalternatives differ in the level of treatment assumed for the purpose of impact analysis and the number of sites at which treatment would occur; RH–TRU waste would be treated and stored at Hanford and ORR; CH–TRU waste would be treated and stored at all sites considered in each alternative except ORR; all three subalternatives assume for purposes of analysis that disposal would occur at WIPP. Subalternatives: 1. TRU waste would be shipped from the 10 sites with the smallest amounts to the 6 sites with the largest amounts (together having 95% of current and anticipated TRU inventories) for treatment to reduce gas generation and storage prior to disposal. 2. TRU waste would be shipped as described for Regionalized Alternative 1; the waste would be treated to meet Land Disposal Restrictions (LDRs). 3. TRU waste would be consolidated at the 4 sites with approximately 80% of the current and anticipated inventories; treatment to meet LDRs would occur at these 4 sites.
Centralized	All CH–TRU waste would be treated at WIPP to meet LDRs; all RH–TRU waste would be treated at Hanford or ORR to meet LDRs and stored there until disposal; assumes for purposes of analysis that disposal would occur at WIPP.
Preferred	Combination of the Decentralized Alternative, under which most TRU waste would be treated and stored where it is located, and parts of the Regionalized Alternative, under which some TRU waste could be shipped to INEEL, LANL, ORR, and SRS for treatment and storage, pending disposal, with the level of treatment and whether to dispose of TRU wastes at WIPP to be decided on the basis of analyses in the WIPP SEIS–II.

* The Appendix to this Record of Decision lists the sites' names and their abbreviations.
** WIPP waste acceptance criteria Revision 5 as defined in the WIPP SEIS–II.

Environmentally Preferable Alternative

The WM PEIS analyzed a number of potential impacts, including those on human health, air and water resources, ecological resources, land use, and site infrastructures for each of the major sites at which waste management facilities might be located. Differences in impacts among all of the action alternatives were small. Nonetheless, all potential impacts identified in the WM PEIS were considered in DOE's selection of the preferred alternative, its identification of the environmentally preferable alternative, and its decision regarding treatment and storage of TRU waste.

For the 20-year period of waste management operations analyzed in the WM PEIS, the potential impacts under the No Action alternative for TRU waste management are smaller than those identified under the action alternatives, and on this basis, the No Action alternative could be considered to be the environmentally preferable alternative. However, the No Action alternative assumes indefinite storage, and therefore does not include preparing and shipping the waste for disposal, i.e., permanent isolation from the human environment. Although the No Action alternative could pose less risk to workers and communities surrounding DOE's sites for the first 20 years, the longer-term risks are likely to exceed those for the first 20 years, not only as a result of continuing routine storage operations, but also as a result of degradation of storage facilities and containers.

Taking these circumstances into account, the Department considers the environmentally preferable alternative to be the Decentralized Alternative under which DOE will prepare the TRU waste for disposal with minimal transportation. Transportation of TRU waste would occur only in situations where the sites at which the waste is

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located lack the capability to prepare it for disposal.

Decision: DOE National Programmatic Configuration for Treatment and Storage of TRU Waste Prior to Disposal

The Department will develop and operate mobile and fixed facilities to characterize and prepare TRU waste for disposal at WIPP. Each of the DOE's sites that has, or will generate, TRU waste will, as needed, prepare and store its TRU waste on site, except that the SNL–NM will transfer its TRU waste to LANL in New Mexico. LANL will have facilities, not available or anticipated at SNL–NM, to prepare and store this waste prior to disposal.

Basis for the Decision

Although the No Action Alternative resulted in the lowest impacts among the alternatives analyzed in the WM PEIS over the next 20 years, DOE did not select this alternative because it does not meet the Department's needs for the continued, safe management of TRU waste. Under the No Action Alternative, health and environmental impacts would continue to occur beyond the 20-year period of analysis in the WM PEIS. In the WIPP SEIS–II Record of Decision (discussed further below), DOE decided to dispose of TRU waste at WIPP, after treatment to meet the planning basis waste acceptance criteria. The No Action alternative evaluates treatment to meet the WIPP waste acceptance criteria only for TRU waste to be generated in the future; i.e., existing retrievably stored TRU waste would not be prepared to meet WIPP waste acceptance criteria. Eventually, the stored waste as well as the newly generated and treated waste would have to be repackaged to maintain safe storage conditions.

Among the action alternatives, health and environmental impacts are generally similar over the 20-year period of analysis. DOE's decision seeks to limit environmental impacts and costs, while providing for the safe management of DOE's TRU waste. Among the action alternatives, the life cycle costs estimated in the WM PEIS are lowest for the Decentralized Alternative.

The level of treatment analyzed under the Decentralized Alternative in the WM PEIS corresponds to the level of treatment selected in the Record of Decision for the WIPP SEIS–II for preparing the TRU waste for disposal. Thus the potential health and environmental impacts of treating TRU waste in accordance with the WIPP waste acceptance criteria are identified and evaluated in the analysis of the Decentralized Alternative, which also identifies the potential impacts of treating and storing waste from SNL–NM at LANL.

Future Decisions

The Department may, in the future, decide to transfer TRU wastes from sites where it may be impractical to prepare them for disposal to sites where DOE has or will have the necessary capability. The sites that could receive such shipments of TRU waste are INEEL, ORR, SRS and Hanford. However, any future decisions regarding transfers of TRU waste would be subject to appropriate NEPA review, and to agreements, such as those between DOE and States, relating to the treatment and storage of TRU waste. Future NEPA review could include, but would not necessarily be limited to, analysis of the need to supplement existing environmental reviews.

DOE would conduct all such TRU waste shipments between sites in accordance with applicable transportation requirements and would coordinate these shipments with appropriate State, Tribal and local authorities.

As provided by 10 CFR § 1021.315, the DOE may revise this Record of Decision in the future as long as the revised decision is adequately supported by existing environmental impact statements. Revision of this Record of Decision could occur, for example, as new technology or information from ongoing studies becomes available, or as DOE identifies situations in which it would be appropriate to transfer TRU waste to INEEL, ORR, SRS or Hanford. Implementation of the Record of Decision is subject to compliance with all applicable Federal, State, and local requirements.

Differences From the Preferred Alternative in the WM PEIS

This decision differs from the preferred alternative identified in the WM PEIS in three respects. First, the preferred alternative in the WM PEIS included treatment and storage of ORR's RH–TRU waste on site, and treatment and storage of ORR's CH–TRU waste at SRS. Since publication of the WM PEIS, the Department has been considering treatment, as needed, of both ORR's CH–TRU and RH–TRU waste at ORR, because the radiation levels of ORR's CH–TRU waste are close to the levels of ORR's RH–TRU waste, and because the two waste forms share other physical characteristics. By including treatment of ORR's CH–TRU waste with its RH–TRU waste, DOE would reduce the need to transport CH–TRU waste and achieve economies of scale. The proposed action for a TRU waste facility at ORR that could treat, as needed, both its CH–TRU and RH–TRU wastes is subject to appropriate site-specific review under NEPA.

The second difference between this decision and the preferred alternative in the WM PEIS concerns RH–TRU waste at SRS. The preferred alternative called for transferring this waste to ORR for treatment and storage. The Department has now decided that it should defer any determination whether to transfer RH–TRU waste from SRS to ORR until DOE has the results of the NEPA review for the proposed ORR facility and additional information regarding its capability to meet transportation requirements for shipping the RH–TRU waste to ORR.

The third difference between this decision and the preferred alternative in the WM PEIS concerns the transfer of a portion of the TRU waste at the Rocky Flats Environmental Technology Site (RFETS) to INEEL. Since publication of the WM PEIS, additional information about the characteristics of the TRU waste at RFETS has become available indicating that existing or anticipated facilities at RFETS may be able to prepare this waste for disposal. If, in the future, RFETS needs to use another site's capability to prepare some of its TRU waste for disposal, DOE will complete any further review under NEPA that may be necessary, and will notify the appropriate State, Tribal and local authorities prior to making a final decision.

Coordinated Decision on Level of Treatment and Disposal of TRU Waste

This Record of Decision has been prepared in coordination with the WIPP SEIS–II Record of Decision (January 16, 1998), which specifies the level of treatment for, and the disposal location of, TRU waste generated by defense activities. The decisions on the level of treatment of TRU waste and where to dispose of it are based on analyses in the WIPP SEIS–II. In the WIPP SEIS–II Record of Decision, DOE has decided that TRU waste destined for disposal at WIPP will be treated to meet the planning basis waste acceptance criteria (Revision 5 of the waste acceptance criteria as defined in the WIPP SEIS–II), which establish the minimum requirements for preparing TRU waste for disposal at WIPP. DOE has treated in the past and based on site-specific circumstances, may decide in the future to treat TRU waste at some sites more extensively than is required under the WIPP waste acceptance criteria.

Mitigation

Chapter 12 of the WM PEIS describes measures that DOE takes in order to minimize the impacts of its waste management activities. Mitigation measures are an integral part of the Department's operations, so as to avoid, reduce, or eliminate potentially adverse environmental impacts. Some of the more important mitigation measures that DOE will continue during the treatment and storage of TRU waste are:

- Use of pollution prevention plans;
- Assistance to States, Tribes, local governments, and other public entities concerning human health, environmental, and economic impacts, including transportation planning and emergency response assistance;
- Use of "cleaner" waste treatment and storage technologies as they become available;
- Rigorous quality assurance programs for the characterization of TRU waste;
- Reuse of existing facilities wherever feasible rather than construction of new facilities;
- Occupational safety and health training to ensure that workers understand operational safety procedures.

Site-specific, non-routine mitigation measures may also be identified and implemented in the course of further decision making under site-specific NEPA reviews based on the WM PEIS.

Issued in Washington, D.C. this 20th day of January, 1998.

James M. Owendoff,

Acting Principal Deputy Assistant Secretary for Environmental Management.

APPENDIX—SITES EVALUATED IN THE WM PEIS AND SITES WITH TRU WASTE

Abbreviation	Full name	State	Major site [1]	TRU waste
ANL–E	Argonne National Laboratory—East	IL	Yes	Yes.
BNL	Brookhaven National Laboratory	NY	Yes	No.
ETEC	Energy Technology Engineering Center	CA	No	Yes.
FEMP	Fernald Environmental Management Project	OH	Yes	No.
Hanford	Hanford Site	WA	Yes	Yes.
INEEL	Idaho National Engineering and Environmental Laboratory	ID	Yes	Yes.
LBL	Lawrence Berkeley Laboratory	CA	No	Yes.
LLNL	Lawrence Livermore National Laboratory	CA	Yes	Yes.
LANL	Los Alamos National Laboratory	NM	Yes	Yes.
Mound	Mound Plant	OH	No	Yes.
NTS	Nevada Test Site	NV	Yes	Yes.
ORR	Oak Ridge Reservation	TN	Yes	Yes.
PGDP	Paducah Gaseous Diffusion Plant	KY	Yes	Yes.
Pantex	Pantex Plant	TX	Yes	No.
PORTS	Portsmouth Gaseous Diffusion Plant	OH	Yes	No.
RFETS	Rocky Flats Environmental Technology Site	CO	Yes	Yes.
SNL/NM	Sandia National Laboratories–New Mexico	NM	Yes	Yes.
SRS	Savannah River Site	SC	Yes	Yes.
UofMO	University of Missouri	MO	No	Yes.
WIPP	Waste Isolation Pilot Plant	NM	Yes	No.
WVDP	West Valley Demonstration Project	NY	Yes	Yes.

(1) Sites analyzed in the WM PEIS as potential locations for waste management facilities for one or more types of waste.

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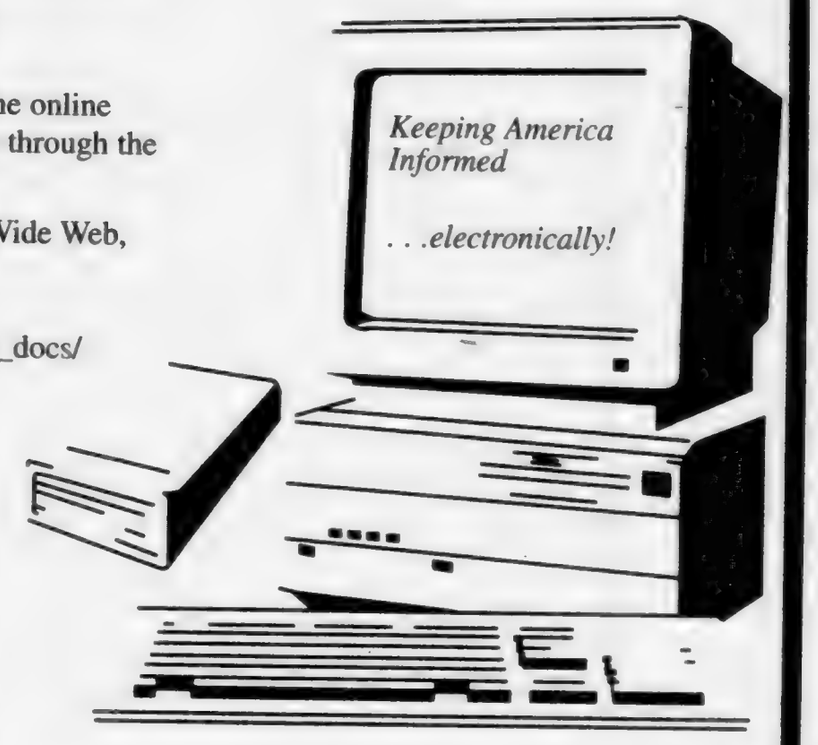
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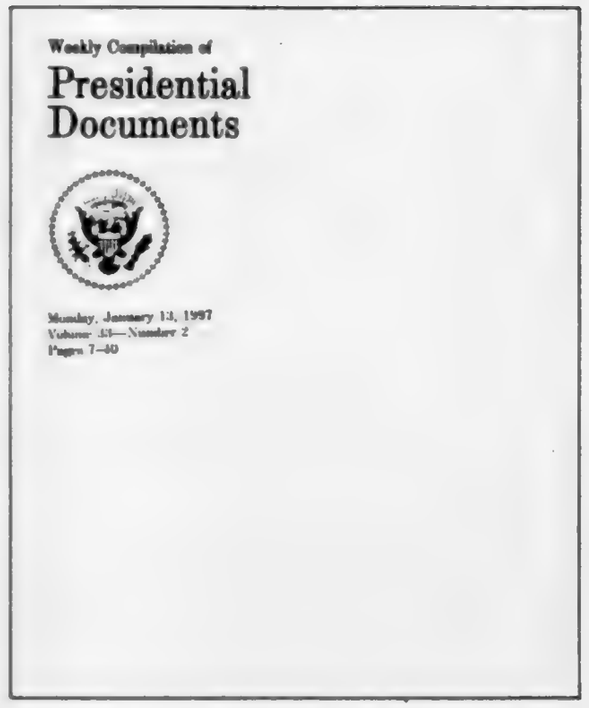
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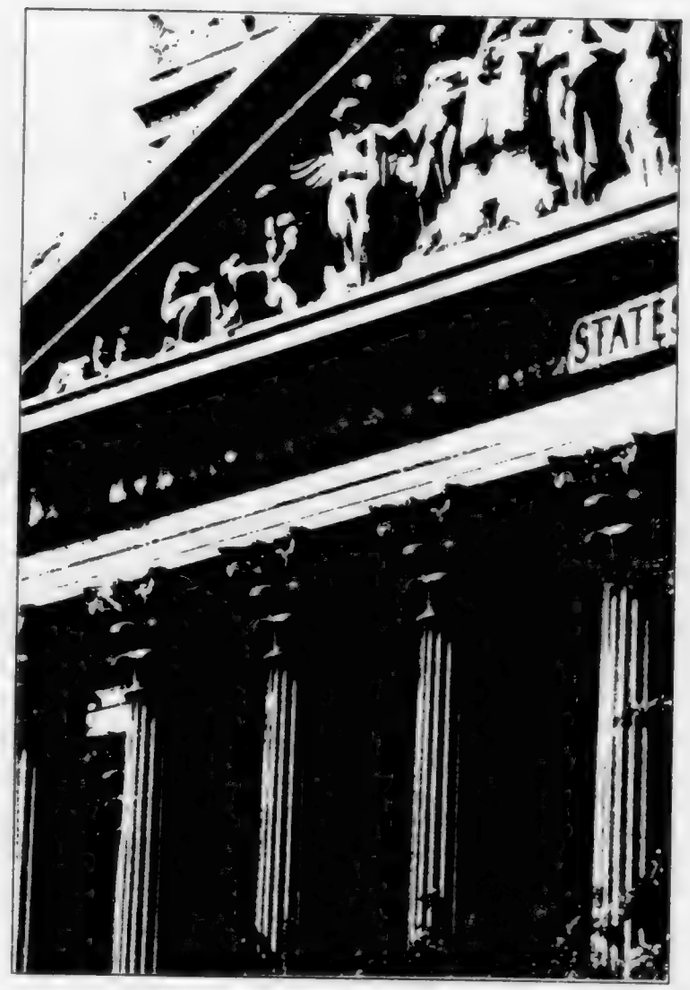
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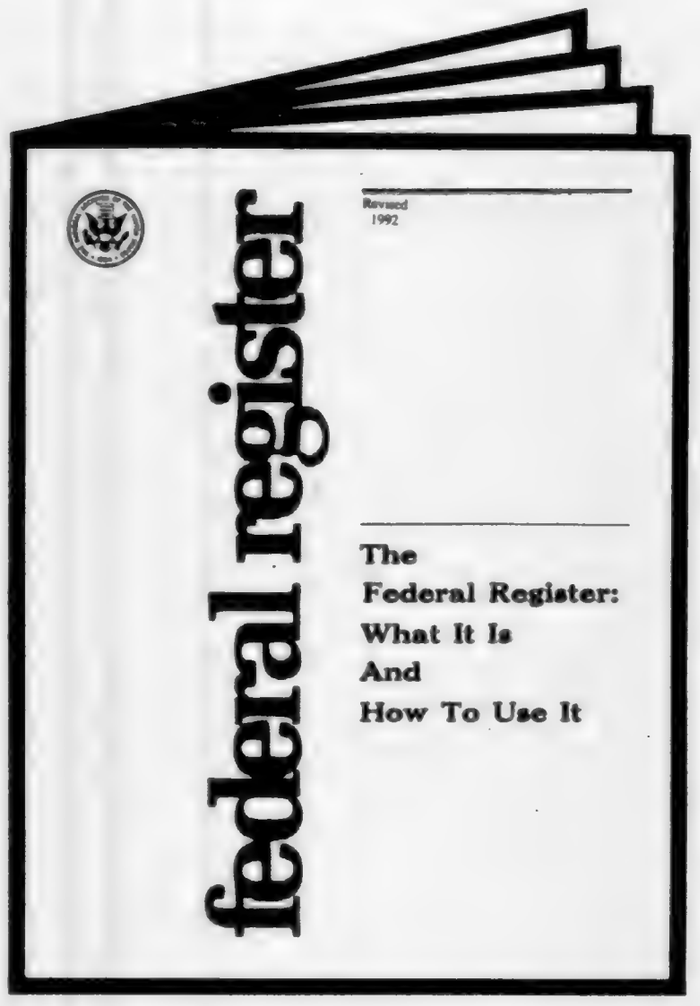
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Presidential Documents

Title 3—

The President

Presidential Determination No. 98–9 of January 6, 1998

Designation of Argentina as a Major Non-NATO Ally

Memorandum for the Secretary of State

I hereby designate the Republic of Argentina a major non-NATO ally of the United States pursuant to section 517 of the Foreign Assistance Act of 1961, as amended, for the purposes of the Foreign Assistance Act of 1961, as amended, and the Arms Export Control Act.

You are authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, January 6, 1998.

[FR Doc. 98–1945
Filed 1–23–98; 8:45 am]
Billing code 4710–10–P

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1703

Distance Learning and Telemedicine Loan and Grant Program; Correction

AGENCY: Rural Utilities Service, USDA.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published Friday, June 13, 1997 (62 FR 32434). The regulations related to RUS' policy and requirements for submitting an application for financial assistance, and the method of selecting projects to receive loans and grants and allocating the available funds for the Distance Learning and Telemedicine Loan and Grant Program.

EFFECTIVE DATE: January 26, 1998.

FOR FURTHER INFORMATION CONTACT: Ken B. Chandler, Acting Assistant Administrator-Telecommunications Program, Rural Utilities Service, STOP 1590, Room 4056, South Building, 1400 Independence Avenue, SW., Washington, DC 20250–1590. Telephone (202) 720–9554, Facsimile (202) 720–0810.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections affect persons applying for loans or grants under 7 CFR Part 1703, Subpart D.

Need for correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

List of Subjects in 7 CFR Part 1703

Community development, Grant programs—education, Grant programs—health care, Grant programs—housing and community development, Loan programs—education, Loan programs—health care, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas.

Accordingly, 7 CFR part 1703, subpart D, is corrected by making the following correcting amendments:

PART 1703—RURAL DEVELOPMENT

1. The authority citation for Part 1703 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.* and 950aaa *et seq.*; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

2. In § 1703.102, the definition of *Comprehensive rural telecommunications plan* is removed and the definition for *Telecommunications Systems Plan* is added in alphabetical order to read as follows:

§ 1703.102 Definitions.

* * * * *

Telecommunications Systems Plan means the plan submitted by an applicant in accordance with § 1703.109(f).

* * * * *

§ 1703.103 [Amended]

3. In § 1703.103, paragraph (a)(3) is amended by adding the words "or loan" after the word "grant".

4. In § 1703.107, paragraph (a)(5) is revised to read as follows:

§ 1703.107 Ineligible loan and grant purposes.

* * * * *

(5) To purchase equipment that will be owned by the local exchange carrier or another telecommunications service provider, unless such carrier or provider is the recipient of the financial assistance being provided under this subpart;

* * * * *

§ 1703.109 [Amended]

5. In § 1703.109, paragraph (h) introductory text is amended by removing the word "statues" in the first sentence and adding in its place the word "statutes".

6. In § 1703.113, the third sentence in paragraph (b), and the entire paragraph (c) are revised to read as follows:

§ 1703.113 Application filing dates, location, processing, and public notification.

* * * * *

(b) * * * To be considered for loan funds during the fiscal year (FY) that the application is submitted, any information needed to complete the application must be postmarked no later than August 14. * * *

(c) Applications requesting grant funds must be submitted to RUS and postmarked not later than June 1 if the applications are to be considered during the fiscal year the application is submitted. It is suggested that applications be submitted prior to the above deadline to ensure they can be reviewed and considered complete by the deadline. RUS will review each application for completeness in accordance with § 1703.109, and notify the applicant, within 15 working days of the results of this review, citing any information which is incomplete. To be considered for grant funds, the applicant must submit the information to complete the application by June 1. If the applicant fails to submit such information by the appropriate deadline, the application will be considered during the next fiscal year.

* * * * *

§ 1703.122 [Amended]

7. In § 1703.122, in paragraph (e) introductory text the word "that" is added after the phrase "if any,".

Dated: January 16, 1998.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 98–1737 Filed 1–23–98; 8:45 am]
BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 97–082–2]

Brucellosis in Cattle; State and Area Classifications; California

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule-

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that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of California from Class A to Class Free. We have determined that California meets the standards for Class Free status. The interim rule was necessary to relieve certain restrictions on the interstate movement of cattle from California.

EFFECTIVE DATE: The interim rule was effective on October 15, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. R. T. Rollo, Jr., Staff Veterinarian, National Animal Health Programs, VS, APHIS, Suite 3B08, 4700 River Road Unit 36, Riverdale, MD 20737–1231, (301) 734–7709; or e-mail: rrollo@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on October 15, 1997 (62 FR 53531–53532, Docket No. 97–082–1), we amended the brucellosis regulations in 9 CFR part 78 by removing California from the list of Class A States in § 78.41(b) and adding it to the list of Class Free States in § 78.41(a).

Comments on the interim rule were required to be received on or before December 15, 1997. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 78 and that was published at 62 FR 53531–53532 on October 15, 1997.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 20th day of January 1998.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–1777 Filed 1–23–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 96–052–3]

Horses from Mexico; Quarantine Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations regarding the importation of horses from Mexico to remove the requirement that such horses be quarantined for not less than 7 days in vector-proof quarantine facilities before being imported into the United States. This action is warranted because Mexico has reported no cases of Venezuelan equine encephalomyelitis (VEE) in more than a year, and we have determined that horses imported into the United States from Mexico without a 7-day quarantine will not pose a risk of transmitting VEE to horses in the United States.

EFFECTIVE DATE: February 10, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737–1231, (301) 734–3276.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 (referred to below as "the regulations") govern the importation into the United States of specified animals and animal products, including horses from Mexico, to prevent the introduction into the United States of various animal diseases.

On August 8, 1997, we published in the **Federal Register** (62 FR 42705–42707, Docket No. 96–052–2) a proposal to amend the regulations to remove the requirement that horses imported into the United States from Mexico be quarantined for not less than 7 days in a vector-free facility. With this change, horses imported into the United States from Mexico would only need to be quarantined for an average of 3 to 4 days.

We also proposed to remove the requirement that horses from Mexico intended for importation into the United States through land border ports be quarantined in Mexico at a facility approved by the Administrator of the Animal and Plant Health Inspection Service (APHIS) and constructed so as to prevent the entry of mosquitoes and other hematophagous insects.

At the time that we published our proposal, the requirements for horses imported into the United States from Mexico were in regulations designated as 9 CFR part 92. As a result of a final rule published in the **Federal Register** on October 28, 1997 (62 FR 56000–56026, Docket No. 94–106–9), and effective on November 28, 1997, the regulations for importing animals have been redesignated as 9 CFR part 93.

We solicited comments concerning the proposed rule for 60 days ending October 7, 1997. We received 4 comments by that date. They were from representatives of industry. Two of the commenters supported the proposed rule. The remaining commenters had concerns about the proposed rule. Those concerns are discussed below.

One commenter felt that a year of disease-free status is not long enough to ensure that Mexico is free from VEE. Accordingly, the commenter suggested that we retain the 7-day quarantine for horses entering the United States from Mexico.

The standing policy of Veterinary Services, APHIS, is to propose to reduce the quarantine required for horses from a region when that region's last confirmed case of VEE occurred at least 1 year ago. This policy was implemented during the last outbreak of VEE in the State of Chiapas, Mexico, in 1993. One year of disease free status provides us with confidence that the outbreak is under control, that the disease is not spreading, and that the region has implemented effective measures to contain the disease. At this time, the last confirmed case of VEE in Mexico was reported almost 18 months ago, and there appears to be no reason to continue requiring the 7-day quarantine for horses entering the United States from Mexico. Therefore, we are making no changes to the proposed rule in response to this comment.

Both commenters expressing concerns maintained that Mexico has less stringent criteria than the United States regarding the movement of horses into and out of the country and noted that, because the United States is expected to abide by the European Union's strict

criteria regarding the transportation of horses, removing the 7-day quarantine for horses from Mexico may negatively affect the disease-free status of the United States. Accordingly, both commenters asked that before the removal of the 7-day quarantine, the Government of Mexico establish specific guidelines for identifying, isolating, and tracking the location and progress of infectious diseases such as VEE.

As with U.S. regulations, Mexico's VEE requirements for horses moving into Mexico depend on the horses' region of origin. For example, Mexico has no restrictions concerning testing for VEE of horses from Europe because the disease does not occur, and never has been reported, in Europe. For horses from regions where VEE has occurred, but where the disease may not be routinely reported, Mexico requires certification that VEE has not been reported within a radius of 200 kilometers of the horses' premises of origin, and that the horses to be imported into Mexico test negative for VEE. In addition, Mexico prohibits the importation of horses from regions, such as the country of Venezuela, where cases of VEE are frequently reported. The 1996 VEE outbreak in Mexico resulted from a local strain of VEE, not a VEE strain that was inadvertently imported into the country.

Regarding Mexico's restrictions on horses moving from Mexico to another country, Mexico's handling of horses for export is dependent on the requirements imposed by the country of destination. Mexico does not determine these requirements. If Mexico wants to export its horses to a certain country, Mexico must comply with that country's requirements.

Further, Mexico responded to the 1996 outbreak, which occurred in the southern State of Oaxaca, by (1) Immediately restricting the movement of all horses from that State, (2) intensively vaccinating all horses in the area of the outbreak, (3) vaccinating horses in the neighboring States of Chiapas, Veracruz, and Guerrero, and (4) in collaboration with the Department of Public Health, fumigating against mosquitos, which are vectors for VEE. These actions prevented any further spread of the disease, as evidenced by no further detections of VEE cases in Mexico for the past 18 months.

In light of Mexico's import and export procedures, and the country's active control and eradication activities when outbreaks of VEE have occurred, we do not believe that reducing the minimum quarantine period for horses from Mexico will negatively affect the disease status of the United States, and we do not believe that it is necessary to establish specific guidelines on Mexico for identifying, isolating, or tracking VEE. Therefore, we are making no changes to the proposed rule in response to these comments.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule without change.

Although a 7-day quarantine will no longer be required, horses from Mexico intended for importation into the United States, except those imported for immediate slaughter, must continue to be quarantined at a designated port until they (1) test negative to an official test for dourine, glanders, equine pirplasmosis, and equine infectious anemia; and (2) test negative to any other tests that may be required by APHIS. Additionally, all horses intended for importation from Mexico must continue to be quarantined until they are inspected and found free from communicable disease and fever-tick infestation. On average, these tests and inspections take 3 to 4 days.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

This rule removes the requirement that horses imported from Mexico be quarantined for 7 days at vector-proof quarantine facilities. This requirement is no longer necessary, due to the elimination of VEE in Mexico. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective 15 days after the date of publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are amending the regulations regarding the importation of horses from Mexico to remove the requirement that such horses be quarantined for not less than 7 days in vector-proof quarantine facilities before being imported into the United States. This action is warranted because Mexico has reported no cases of VEE in the past year, and horses imported into the United States from Mexico without a 7-day quarantine will not pose a risk of transmitting VEE to horses in the United States. Horses imported from Mexico will still be required to be held in quarantine until it has been determined that the animals are free of exotic pests and diseases.

Horses enter the United States from Mexico for a variety of reasons, including for breeding, competition, racing, research, and slaughter. During fiscal year 1996, about 7,359 horses were imported into the United States from Mexico. In fiscal year 1995, there were about 15,317 horses imported from Mexico.

Under the restrictions placed on imported Mexican horses due to an outbreak of VEE in that country in 1996, horses intended for importation into the United States from Mexico were held in a vector-proof quarantine facility for 7 days prior to entering the United States. Because Mexico has been determined to be free of VEE, this rule eliminates the requirement for a 7-day quarantine at a facility approved by the Administrator of APHIS and constructed so as to prevent the entry of mosquitoes and other hematophagous insects. Horses imported from Mexico will continue to be required to be held in quarantine until it has been determined that the animal is free of exotic pests and diseases. This quarantine period generally lasts 3 or 4 days, based on the turnaround time at the laboratory where blood tests are performed.

Horses intended for importation into the United States from Mexico are quarantined in Mexican facilities operated by the Mexican Cattleman's Association. Different fees are assessed by the six State chapters which operate facilities along the United States/Mexico border. We estimate that the quarantine charge at vector-proof facilities is between $5.00 and $35.00 per head per day for the 7-day quarantine, or $35 to $250 per animal imported. Quarantine charges at the other facilities, which are not vector-proof, that will again be eligible to quarantine horses intended for importation into the United States average $3.00 per head per day. A 4-day quarantine will cost importers $12.00 per animal imported. Therefore, importers could potentially save between $23 and $238 per animal imported in quarantine charges. Of course, there are other amenities at some of the vector-proof facilities that may still draw some importers to those facilities. At fiscal year 1996 import levels, the elimination of the VEE quarantine will decrease the quarantine costs of domestic importers by between $169,257 and $1.75 million annually.

In addition, the removal of the VEE restriction will eliminate the need for daily visits during the quarantine period to the quarantine facility by APHIS'

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veterinary medical officers (VMOs) and animal health technicians (AHTs) to conduct temperature checks of the animals to be imported. APHIS charges hourly user fees for inspection services conducted outside the United States. The published hourly fee for VMOs and AHTs is $56.00. The agency estimates that it takes 3 hours for APHIS personnel to travel to Mexican quarantine facilities and complete the temperature checks. The elimination of these checks will save the importer about $1,176 per shipment. Since slaughter horse imports from Mexico average about 40 head per shipment, this is a savings of about $29.40 per head. Other types of imported horses from Mexico average about two head per shipment, for a savings of $588 per head. At fiscal year 1996 import levels, the elimination of the user fees for horse inspection for VEE in Mexico will decrease the cost of importation by about $2.5 million annually.

The Regulatory Flexibility Act requires that the Agency specifically consider the economic impact associated with rule changes on small entities. The Small Business Administration (SBA) has set forth size criteria by Standard Industrial Classification (SIC) which can be used as a guide in determining which economic entities meet the definition of a small business. The SBA's definition of a small business engaged in the wholesale trading of livestock is one that employs no more than 100 persons. Currently, there are 1,992 domestic entities that trade livestock wholesale. About 1,965 of these entities are classified as small by the SBA. The exact number of domestic wholesale livestock traders currently importing Mexican horses cannot be determined. However, entities, whether large or small, engaged in importing Mexican horses will be positively impacted by this rule change.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 93

Animal disease, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 93 is amended as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

§ 93.308 [Amended]

2. In § 93.308, paragraph (a)(1) is amended by removing the reference to "§ 93.317" and adding in its place the reference to "§§ 93.317 and 93.324".

§ 93.324 [Amended]

3. Section 93.324 is amended by removing the words ", for not less than 7 days and" and by removing the words "approved by the Administrator and constructed so as to prevent the entry of mosquitoes and other hematophagous insects".

§ 93.326 [Amended]

4. In § 93.326, the first sentence is amended by removing the words "93.323, and 93.324" and adding in their place the words "and 93.323".

Done in Washington, DC, this 20th day of January 1998.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–1775 Filed 1–23–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Conditional Exceptions to Bank Secrecy Act Regulations Relating to Orders for Transmittals of Funds by Financial Institutions

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Grant of conditional exceptions.

SUMMARY: This document contains two conditional exceptions to a provision of the Bank Secrecy Act regulations. The exceptions permit financial institutions to comply more efficiently with requirements for inclusion of certain information in transmittal orders for transmissions of funds.

EFFECTIVE DATE: January 26, 1998.

FOR FURTHER INFORMATION CONTACT: Peter Djinis, Associate Director, FinCEN, (703) 905–3920; Charles Klingman, Financial Institutions Policy Specialist, Office of Program Development, FinCEN, (703) 905–3920; Stephen R. Kroll, Legal Counsel, FinCEN, and Cynthia L. Clark, Acting Deputy Legal Counsel, Office of Legal Counsel, FinCEN, (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Introduction

The statute generally referred to as the "Bank Secrecy Act," Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia*, require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, and to implement counter-money laundering programs and compliance procedures. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330) appear at 31 CFR part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.[1]

II. FinCEN Issuance 98–1

This document, FinCEN Issuance 98–1, grants two conditional exceptions to the operation of the rules contained at 31 CFR 103.33(g). The background, purpose, and terms of the two exceptions are explained below.

Background

On January 3, 1995, the Financial Crimes Enforcement Network ("FinCEN") of the Department of the Treasury issued a rule, 31 CFR 103.33(g) (the "Travel Rule"), requiring financial institutions to include certain information in transmittal orders relating to transmittals of funds of $3,000 or more. The Travel Rule complements the rules jointly issued by the Board of Governors of the Federal Reserve System and FinCEN (the "Joint Rule") requiring the maintenance of

[1] Information relating to the Paperwork Reduction Act appears at the end of this Issuance.

records by insured depository institutions and other financial institutions with respect to domestic and international transmittal of funds transactions.[2] The Joint Rule defines the terms used in both that Rule and the Travel Rule.

Both the Joint Rule and the Travel Rule were amended on April 1, 1996, in response to a request for regulatory relief by affected financial institutions. The changes to the Travel Rule made at that time included addition of a "safe harbor" for Travel Rule compliance prior to the date of an institution's conversion to the expanded message format of the Fedwire funds transfer system of the Federal Reserve Banks.[3] The "safe harbor" permits an institution—prior to the completion of its Fedwire conversion—to omit from a transmittal order some of the information otherwise required by the Travel Rule, so long as the missing information is retrieved and supplied in a reasonable amount of time in response to a law enforcement request or a judicial order, or to a request by another financial institution that would otherwise have received the information to assist the latter institution in its own Bank Secrecy Act compliance efforts.

Use of Customer Information File Information

A group of banks and brokers and dealers in securities (the "Working Group")[4], has sought relief from the strict operation of the Travel Rule's requirement that each transmittor's financial institution and intermediary financial institution include in a transmittal order the transmittor's name and street address. *See* 31 CFR 103.33(g)(1) (i)–(ii) and (g)(2) (i)–(ii). Absent an exception or special rule of some kind, satisfaction of the terms of the Travel Rule require the use of true name and street address information. The Bank Secrecy Act rules for the maintenance of customer and transaction records (one of which is the Joint Rule), and for the reporting of various transactions or circumstances, require the use of true name and street address information, and prior guidance issued by FinCEN stated plainly that "[t]he use of a code name, or pseudonym is prohibited" under the Travel Rule. Question and Answer 19, Guidance for Financial Institutions on the Transmittal of Funds "Travel Regulations" (January 1997).[5]

The Working Group has represented that the present ability of many covered institutions to satisfy the Travel Rule at all depends upon the ability of those institutions to make use electronically of information contained in the institutions' automated customer information files, or "CIFs." CIFs, the Working Group has told FinCEN, will always contain each customer's actual account number. However, CIFs will often contain a post office box mailing address rather than the customer's street address, or (somewhat less frequently) a nominee or "special" or coded name rather than the customer's true name; in other cases CIFs may contain both true and nominee, "special" or coded name or Post Office Box address information, but will be programmed to use the latter for communications purposes outside the institution itself. The result is that, although the originating institution will know a customer's street address and true name, reliance on CIFs as presently programmed could produce "traveling information" other than actual names and street addresses. The banks and broker-dealers involved have further represented that reprogramming CIFs so that those files can produce true name and address information when necessary to satisfy the Travel Rule (if for some reason the files contain post office box addresses or nominee, "special," or coded names) will require significant resources and would likely involve diverting programming time away from more urgent programming needs, especially correction of the world-wide "Year 2000" problem.

Full Travel Rule Compliance Following Conversion to Expanded Fedwire Message Format

The "safe harbor" contained in 31 CFR 103.33(g) only applies prior to the date that an institution completes its conversion to the expanded message format of the Fedwire funds transfer system. Generally, that transformation is required to be completed by the end of 1997.

A number of financial institutions have represented to FinCEN that they have found it impossible to begin full compliance with the Travel Rule immediately upon conversion to the expanded Fedwire message format. The inability to meet the date for full compliance set out in the safe harbor arises because of delays in completing related programming tasks, for example the linking of inbound and outbound message systems.

Need for Flexibility in Administration of Travel Rule

Although the Travel Rule complements the Joint Rule, FinCEN has made clear in the past that the purposes of the Travel Rule are not incompatible with flexibility in applying the Rule's literal terms. The need for administrative flexibility is increased because Treasury intends, within the next 18 months, to review and consider making appropriate modifications to the Travel Rule. *See* 61 FR 14383, 14387–14388. Modifications are appropriate to meet particular operating problems, so long as complete information is available, at some point, in the domestic funds transfer chain and investigators are given adequate notice that the funds transmittal order itself must be supplemented by other information to provide a complete picture of the transmittal involved. *See* 31 CFR 103.33(g)(3).

Grant of Exceptions

By virtue of the authority contained in 31 CFR 103.45(a) and (b), which has been delegated to the Director of FinCEN, the following exceptions to the operation of the rules in 31 CFR 103.33(g) are approved:

1. A transmittor's financial institution that is otherwise subject to the terms of 31 CFR 103.33(g) with respect to transmittal of funds may satisfy (i) the requirement of 31 CFR 103.33(g)(1)(i) that the name of the transmittor be included in a transmittal order, and (ii) the requirement of 31 CFR 103.33(g)(1)(ii) that the transmittor's address be included in a transmittal order, with respect to a particular transmittal order, by including in the transmittal order the name and address information with respect to the transmittor contained in the financial institution's general automated CIFs, so long as:

[2] The provisions of 12 U.S.C. 1829b(b), amended the Bank Secrecy Act (i) to require the Secretary of the Treasury and the Federal Reserve Board jointly to promulgate recordkeeping requirements for international funds transfers by depository institutions and nonbank depository institutions, and (ii) to authorize the Secretary and the Board jointly to promulgate regulations for domestic funds transfers by depository institutions. The Secretary is authorized by 31 U.S.C. 5318(g) to require financial institutions to carry out anti-money laundering programs. Both 31 U.S.C. 5318(h) and 12 U.S.C. 1829b(b) were added to the Bank Secrecy Act by the Annunzio-Wylie Anti-Money Laundering Act of 1992 (Title XV of Pub. L. 102–550).

[3] The expanded Fedwire format was announced by the Federal Reserve Board on the same day as the Joint Rule and the Travel Rule. *See* 60 FR 220 and 60 FR 234 (January 3, 1995).

[4] The members of the Working Group are Bank of America, N.A.; The Bank of New York; Bankers Trust Company; The Chase Manhattan Bank; Citibank, N.A.; J.P. Morgan, Inc.; Marine Midland Bank; Merrill Lynch, Pierce, Fenner & Smith; MTB Bank; NationsBank, N.A.; Prudential Securities, Inc.; and Republic National Bank of New York.

[5] The January 1997 Guidance document was distributed to banks, thrift institutions, and credit unions by their respective federal regulators and was the subject of NASD–R Notice to Members 97–13, sent to members of the National Association of Securities Dealers.

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(a) The CIFs are not specifically altered for the particular transmittal of funds in question.

(b) The CIFs are generally programmed and used by the institution for customer communications, not simply for transmittal of funds transactions, and as so programmed generate other than true name and street address information;

(c) The institution itself knows and can associate the CIF information used in the funds transmittal order with the true name and street address of the transmittor of the order;

(d) The transmittal order includes a question mark symbol ("?") immediately following any designation of the transmittor other than by a true name on the order; and

(e) Any report required to be made under 31 CFR 103.21 or 31 CFR 103.22 by the institution with respect to the funds transmittal to which the transmittal order relates contains true name and street address information for the transmittor and plainly associates the report with the particular funds transmittal in question.

This exception has no application to any funds transmittals for whose processing an institution does not automatically rely on preprogrammed and prespecified CIF name and address information. Moreover, institutions are reminded that the use of nominee, "special," or coded names is barred by the Travel Rule, in the absence of the foregoing exception with respect to CIFs only. Any new customer request for use of a nominee, or "special" or coded name in a CIF after the date of this Issuance should be carefully evaluated by depository institutions as a potentially suspicious transaction requiring reporting under 31 CFR 103.21, and reported unless an examination reveals that the request is made for an independent lawful business purpose and is the sort in which the customer involved would be expected to engage.

2. A financial institution will have complied with the terms of 31 CFR 103.33(g) for a transmittal order sent prior to April 1, 1998 and on or after the date of the conversion to the expanded Fedwire message format of the bank sending the transmittal order, if

(a) The transmittal order was an order to which the terms of 31 CFR 103.33(g)(3) would have applied if the order had been sent prior to the date of such conversion, and

(b) The terms of 31 CFR 103.33(g)(3) are satisfied with respect to such order as if such paragraph continued to apply by its terms to such transmittal order.

The foregoing exceptions do not in any way modify the obligations of financial institutions under any other provisions of 31 CFR part 103, including, without limitation, the obligation to maintain and retrieve information about transmittals of funds or the contents of orders for the transmittals of funds. Terms used in the foregoing exceptions and not defined in this document have the meaning given to such terms in 31 CFR part 103. The foregoing exceptions may be modified or revoked at any time in the sole discretion of the Department of the Treasury, by document published in the **Federal Register**. Exception 1, above, will expire on May 31, 1999, for transmittals of funds initiated after that date, if not revoked or modified with respect to such expiration date prior to that time.

III. Paperwork Reduction Act

The collection of information contained in this issuance has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1506–0008. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The collection of information in this issuance is in the *Grant of Exceptions* section of this issuance, paragraph 1.(d). This information is required to comply with the Bank Secrecy Act. This information will be used to assure that a code or "special" name (*i.e.*, a name other than the transmittor's true name) on accounts at banks and with brokers and dealers in securities are not used to launder money or hide assets derived from illegal activities. The collection of information is mandatory. All information collected pursuant to the Bank Secrecy Act, including this information collection, is confidential pursuant to 31 U.S.C. 5316(c) and may be shared with regulatory and law enforcement authorities but its availability is strictly limited. All records required to be retained by 31 CFR part 103 must be retained for five years.

The likely respondents are banks and brokers and dealers in securities.

Frequency: Each time a transmittal order contains a code or special name, *i.e.*, a name other than the transmittor's true name.

Estimated Number of Such Transmittal Orders: 5,000.

Estimate of Total Annual Burden:

Reporting burden estimate = approximately 250 hours for reporting.

Recordkeeping burden estimate = approximately 1,250 hours for recordkeeping.

Estimate of Total Annual Cost for Hour Burdens: Based on $20 per hour, the total cost of compliance is estimated to be approximately $33,000.

Estimate of Total Other Annual Costs to Respondents: None.

FinCEN specifically invites comments on the following subjects: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the collection of information. These comments on costs should be divided into two parts: (1) Any additional costs associated with reporting; and (2) any additional costs associated with recordkeeping.

Comments concerning the accuracy of the burden estimate and suggestions for reducing the burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Treasury Department, Office of Information and Regulatory Affairs, Washington, D.C., 20503.

Signed this 16th day of January 1998.

William F. Baity,

Acting Director—FinCEN, Department of the Treasury.

[FR Doc. 98–1671 Filed 1–23–98; 8:45 am]

BILLING CODE 4820–03–P

POSTAL SERVICE

39 CFR Part 20

International Surface Airlift

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service published for comment a proposed rule amending International Surface Air Lift Service in the **Federal Register** on September 9, 1997 (62 FR 47394). The Postal Service hereby gives notice that it is adopting the proposal with minor revision.

EFFECTIVE DATE: February 28, 1998.

FOR FURTHER INFORMATION CONTACT: [Robert Michelson], (202) 268–5731.

SUPPLEMENTARY INFORMATION: On September 9, 1997, the Postal Service published in the **Federal Register** (62 FR 47394) a notice of proposed changes in rates and conditions of service for International Surface Air Lift (ISAL) Service. ISAL is a bulk mailing service for international shipment of publications, advertising mail, catalogs, directories, books, other printed matter, and small packets. The service is available to approximately 125 countries. To use ISAL, a mailer must send at least 50 pounds of these items at one time, presorted by country of destination. Identical piece mailings are not required to qualify. Postage for ISAL is calculated according to a rate structure including both per-piece and per-pound elements with destination countries separated into four rate groups. A discount is given to ISAL mail tendered at the Dropship ISAL Service Centers (Dropship ISCs) (formerly, gateway airport mail facilities) at New York (JFK), San Francisco, Chicago, and Miami, or when direct shipment (750 pounds or more to a single destination) can be arranged from one of the acceptance cities. An additional discount is available for M-bags (printed matter to a single addressee).

The Postal Service reviewed the current ISAL service and is making changes to ISAL preparation requirements that will reduce operating costs. The Postal Service also proposed rate discounts based on the place of mailing, the availability of transportation, and the volume of mail. The Postal Service believes that these changes make the service available to more users at more convenient locations and still will cover the cost of providing the service with a reasonable contribution to institutional costs. The Postal Service proposed the change to ISAL as described below.

The Postal Service requested comments by October 9, 1997, and by that date received seven comments: five from international mail consolidators, one from a printing/mailing company, and one from an international mail order consulting firm.

Minimum Weight

Currently there is no required minimum amount of mail per sack prepared by the mailer. The mailer merely places the mail for a particular country in a mail sack and labels the sack to that country. This has resulted in an unacceptable number of sacks containing small amounts of mail. In some cases, the sack itself weighed more than the mail in the sack. This resulted in an excessive number of sacks, higher transportation costs, and complaints from other postal administrations. Therefore, the Postal Service proposed a minimum weight of 11 pounds for direct country sacks prepared by mailers. When there is less than 11 pounds, but 10 or more pieces (a package), the mailer will prepare this mail in a mixed country package rate group sack. This mail will be entitled to the ISAL rate as if it had been placed in the direct country sack. When there are fewer than 10 pieces to a country, this mail will be prepared in "residual" sacks by rate group. Residual mail cannot exceed 10 percent, by weight, of the rest of the mailing.

One commenter agreed with the need to establish a minimum weight for direct country sacks since it "would keep cost in line and increase the availability of equipment." Another commenter agreed with the need for change, but recommended that the 11 pound requirement be lowered and that smaller sacks be used.

The Postal Service does not believe that it is practical to procure and use smaller sacks for ISAL. The same sacks are used by the Postal Service for other types of mail. The expense of acquiring, stocking, and distributing another type of sack that would be used only for mailer-prepared ISAL is not economical or feasible. Therefore, the Postal Service will adopt the 11-pound minimum sack weight for direct country sacks.

One commenter thought the 10 percent residual mail rule was too restrictive and suggested a special rate for residual mail without a limit on the amount contained in the mailing. The Postal Service reviewed this suggestion and has decided to retain the 10 percent residual at the ISAL rate. Mailers can use the single piece rates, either air or surface, or make use of other international business products.

One commenter questioned the definition of a package and suggested that a package be considered either 10 or more pieces or 1 pound. This would allow mailers to place more mail in mixed country package sacks instead of in residual sacks. The Postal Service reviewed this and has decided to amend the definition of a package to be 10 or more pieces to the same country or separation or 1 pound or more regardless of the number of pieces. Accordingly, International Mail Manual (IMM) 246.2, 246.941a, 946.941b, and 246.942c are amended.

Acceptance Cities

Since the inception of ISAL, the Postal Service has limited the number of cities where ISAL mailings could be deposited. This was intended to reduce the cost of maintaining an extensive transportation network. Many customers not located near an acceptance point could not use ISAL. The Postal Service proposed a Full Service rate that will be available from all post offices where bulk mail is accepted and will make ISAL accessible to all customers. Mailers may still mail at the lower Dropship ISC rate by tendering their mail to a Dropship ISC.

One commenter opposed deposit of ISAL at all post offices because it would "overload the transportation system, adversely affect service, and create problems of recognizing the product and possible improper return." The Postal Service disagrees. The majority of ISAL volume is currently deposited at ISC facilities. The amounts mailed at post offices is so small compared with total mail volume that it could not possibly overload the Postal Service's transportation system. In addition, since all ISAL will be labeled to the ISC for handling, there is no reason to believe that this mail will be mishandled in the domestic network or that there will be any overall impact on service.

Volume Discount

The Postal Service proposed to institute volume discounts for large users of ISAL. The size of the discount would be based on the amount of postage paid during the previous postal fiscal year. Mailers would receive a discount of five percent if they paid $2 million in ISAL postage in a year, a discount of 10 percent if they paid $5 million in ISAL postage, and a discount of 15 percent if they paid $10 million or more in ISAL postage. Three comments expressed complete support for the discounts. One comment criticized the larger discounts as excessive, and suggested that the maximum discount be seven percent. One comment criticized the discounts because they were based on ISAL postage alone. This comment suggested that ISAL, International Priority Airmail (IPA), and Valuepost Canada services were alternative services that met similar, although different service needs and that postage paid for both should be

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considered in qualifying for ISAL discounts. One comment criticized the discounts as violating the rate setting provisions of the Postal Reorganization Act. This comment argued that the discounts were rate reductions for large mailers which, in the case of consolidators, would make it difficult for smaller companies to compete. This comment also argued that there is no reason to give discounts on the basis of the previous year's volume. There was no reason to reward customers on the basis of how much ISAL postage was paid last fiscal year when the terms and conditions for mailing were different. There is no clear relationship between the amount of postage paid and the amount of contribution to institutional costs. That there is no reason to reward large customers who use both ISAL and remail, and that the rate differential between customers which qualify for no discounts and which choose not to take advantage of the International Service Center drop shipment rates is appropriate.

After considering all of the comments, the Postal Service has concluded that the discounts should be adopted as proposed considering ISAL and IPA mail to be included in the qualifying volume mail for ISAL discounts. International mail delivery is a competitive market. The Private Express Statutes, which generally limit competition with the Postal Service for the carriage of letters, have been suspended to allow international remail (39 CFR 320.8). The Postal Service, the postal administrations of other countries (*e.g.* the Netherlands and the United Kingdom), and private sector concerns all compete for the carriage of letters and other mailable matter. The international mail market is also one in which consolidators, which take international mail from many smaller mailers and merge it so as to take advantage of lower rates, are a significant factor in which delivery agent will handle the mail. Competitors of the Postal Service offer discounts to consolidators and large mailers; if the Postal Service does not act competitively, it will lose business to them.

The Postal Service is required to charge rates that apportion costs on a fair and equitable basis (39 U.S.C. § 101(d)), that are fair and reasonable, 39 U.S.C. § 403(a), and that do not make any undue or unreasonable discrimination or grant any undue or unreasonable preference, 39 U.S.C. § 403(c). What is fair, reasonable, and not unduly discriminatory or preferential is largely a question of fact in which all circumstances must be taken into account, including the reality of a competitive marketplace. At a minimum, similarly situated mailers must receive the same or comparable treatment and pay the same rates. However, as stated by the Court of Appeals in upholding the Postal Service's authority to negotiate rates and services with large mailers, "the reasons that may compel a uniform rate of postage in the United States no longer apply to large-volume international mailers" *(UPS Worldwide Forwarding, Inc.* v. *U.S. Postal Service*, 66 F.3d 621, 637–38 (3d Cir. 1995). Published volume discounts are another way to compete for large-volume international mailers, and a way to compete that involves greater certainty and less administrative effort than negotiating rates and services with them. Moreover, published volume discounts ensure that similarly situated mailers (*i.e.*, mailers of like quantities of similar mail) pay the same rates.

Increasing discounts based on increased usage does not make rates unfair, unreasonable, unduly discriminatory, or preferential. In general, the more a mailer mails the greater the number of full direct sacks that will be prepared, thereby reducing Postal Service handling costs. Moreover, the larger a mailer, the more aggressively competitors such as the postal services of the Netherlands and the United Kingdom will bid for their business. Although the Postal Service does not have definite knowledge of what rates these competitors offer at any given time since they are under no legal obligation to disclose rates or the customers to which those rates are offered, it is known that they offer significant discounts to large mailers. Unless the Postal Service prices its services competitively by offering discounts, it will lose the business of large mailers.

Basing discounts on the amount of postage paid in the previous year is not unfair, unreasonable, unduly discriminatory, or preferential. Experience shows that while mail volumes may fluctuate from year to year, past usage is generally a good indicator of present and future usage. Moreover, mailers need certainty to plan their budgets, set their prices, and otherwise conduct their businesses. Basing rates on past usage gives mailers that certainty, since they know how much they are mailing and can reasonably foresee which level of discount they will qualify for the next year. It is fair, reasonable, and not unduly discriminatory to base discounts on volumes that are highly likely to predict usage and which also make sense to customers in conducting their own businesses.

Differences in rates between what a smaller mailer pays to mail ISAL at any bulk mail acceptance unit and what a large mailer pays to mail at an International Service Center (ISC) with the maximum discounts are not unduly discriminatory because the large and small mailers are not situated similarly. The mail posted by the smaller mailer requires more handling and domestic transportation than the mail posted by the larger mailer, thereby increasing the Postal Service's cost. Moreover, there is more intense competition for the larger mailer's business. This is a competitive market, if the smaller mailers believe that rates are too high, then they have the option of using another service provider or a consolidator who can qualify for rate discounts. Ultimately, the market will determine which rates both the large and the small mailer will pay, whether it is to the Postal Service or to a competitor.

The Postal Service does not believe that volume discounts will affect competition between large and small consolidators. This is a competitive market in which significant discounts are already being offered to large consolidators by other providers. They already have, or can have, an advantage in the rates they pay for the mail they send. Whether discounts are offered, or not offered, by the Postal Service will not change that.

The Postal Service has concluded that the size of the discounts should not be reduced. As stated above, the Postal Service does not have definite knowledge of the rates being offered by the competitors. It appears, however, that the proposed discounts as proposed are necessary to hold the business it now has.

Several commenters requested clarification for the basis of the discount or requested that revenue for other products be included for determining the discounts. The Postal Service will count ISAL and IPA revenue to qualify for the volume discounts. If a permit holder has more than one account and/or in several cities, these revenues may be combined. Agents who prepare mail for the owner of the mail and tender it under the owner's permit during postal fiscal year 1997 will only be counted for a discount during postal fiscal year 1998. Agents must be prepared to submit postage statements that reflect their representation of the owners of the mail between September 14, 1996 through and September 12, 1997 to be included for discounts in postal fiscal year 1998 (September 13, 1997 through September 11, 1998). Each year after, the level of discount will be determined only by the postage paid by the permit holder.

To qualify for volume discounts, mailers must apply to the Manager, Mail-order, International Business Unit, 475 L'Enfant Plaza, SW, Room 370–IBU, Washington, DC 20260–6500. The Manager will evaluate all requests and inform the mailer and the post office(s) of mailing whether discounts are approved and the level of discount. The Manager, Mail-order will inform all applicants of the total qualifying revenue and the size of their discount within 30 days of receiving the application. Mailers may appeal this determination of the Manager of Mail-order by providing the necessary documentation supporting the discount for the initial postal fiscal year 1998. The Manager of Mail-order will make a final determination on the appeal of the discount level within 5 business days from receipt of the appeal letter. IMM 246.715, is added to describe how mailers can qualify for volume discounts.

Direct Shipment Rates

The Postal Service proposed that direct shipment rates continue to be available for mailers tendering 750 pounds or more to one country at any office from which the Postal Service can obtain direct transportation to the destination country. A new rate schedule has been developed for this service to reflect current costs.

One commenter agreed with having separate direct shipment but stated that the $0.25 per pound rate difference might be too low. Another commenter favored the current rate structure of having the same rates for Gateway (Dropship ISC) and Direct Shipment, at least in major markets, arguing that by having to pay a higher rate, the value of drop shipment option would be greatly decreased.

The cost of providing Direct Shipment service is higher than the cost of providing service from ISCs. The mailer also avoids having to transport mail to an ISC. The price difference of $0.25 per pound reflects the Postal Service's additional cost for providing Direct Shipment service.

Price Adjustments

Five commenters noted the general size of the rate increase. Depending on the method of analysis, the destination rate group, and the origin of the mail, commenters found that the rates applicable to these mailings might increase substantially (anywhere from 10 to 50 percent). One of the commenters stated that the Dropship ISC and volume rates were very good, but that the increase for the Western Hemisphere was excessive and suggested a separate rate group for Mexico. Several commenters suggested that some of the proposed rates would not be competitive with other alternatives.

The Postal Service has carefully reviewed the proposed rate structure to ensure that the proposed not only meets the requirements of postal rate making, but also offers the most competitive and economical rates possible. Changes in the rates reflect the need to cover costs, make a contribution to the institutional costs of the Postal Service, and exhibit the effects of customer worksharing and competitiveness. Based on these comments and criteria, the Postal Service has decided to reduce the proposed rates of Rate Group 2, South America, by 10 cents a pound. IMM 246.71 is revised to reflect this change. The comment suggesting a specific country rate to Mexico raises an interesting idea. However, the Postal Service needs sufficient time to evaluate the impact of this concept on ISAL mailers. It also needs sufficient time to conduct such a review without delaying implementation of the new ISAL rates in which all ISAL mailers benefit. The Postal Service will continue to study this concept. The analysis period will be at least 6 months.

Labeling Requirements

One commenter questioned the need for the mailer to use two sack labels (one label and Tag 155). The commenter stated that such preparation is cost prohibitive and suggested using palletized mail preparation. The commenter also suggested that mail for rate groups 1 and 4 be combined because both groups are labeled to the same dispatch point.

One of the main benefits of ISAL is that it allows the mailer to prepare mail to the finest point possible and avoid the cost of the Postal Service handling the mail. It is therefore necessary for the mailer to prepare sack labels and tags. In addition, under certain circumstances, the Postal Service accepts ISAL on pallets. This significantly reduces preparing large mailings to a single country destination.

Corrections

There were several errors in the original text of IMM part 246, published in 62 FR 47394–47399.

1. Exhibit 246.71, Footnote 3, is corrected to show the delivery zones for Osaka, Japan as 52–93.

2. In IMM 246.941, the maximum weight of a package is changed from 20 pounds to 11 pounds.

3. In section 246.943.a.1, Exhibit A is changed to Exhibit 246.71 and the information for Osaka is corrected to read: Osaka OSA (for postal codes 52–93).

4. Section 246.2 is changed to reflect that residual mail cannot exceed 10 percent of the combined weight of qualifying mail (consisting of Direct Country Sacks, M-Bags, Direct Country Package Sacks).

Conclusion

Accordingly, the Postal Service adopts the following amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, Incorporation by reference, International postal services.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 407, 408.

2. The IMM is amended to incorporate part 246, International Surface Air Lift Service, as follows:

246 International Surface Air Lift (ISAL) Service 246.1 Definition

International Surface Air Lift (ISAL) is a bulk mailing system that provides fast, economical international delivery of publications, advertising mail, catalogs, directories, books, other printed matter, and small packets. The cost is lower than airmail and the service is much faster than surface mail. ISAL shipments are flown to the foreign destinations and entered into that country's surface or non-priority mail system for delivery.

246.2 Qualifying Mail and Minimum Quantity Requirements

Only printed matter as defined in 241 and small packets as defined in 260 that meet all applicable mailing standards may be sent in this service. There is a minimum volume requirement of 50 pounds per mailing except for the Direct Shipment option, which requires a minimum 750 pounds to a single country destination. Small packets may not be enclosed in M-bags and do not qualify for the Full Service, Direct Shipment, or Dropship ISC M-bag rates. Mail is prepared as (1) direct country sacks when there are 11 pounds or more to a single country or required country separation; (2) mixed country package sacks when there are 10 or more pieces

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or at least 1 pound of mail to a single country, but less than 11 pounds; and (3) residual mail when there are fewer than 10 pieces or less than 1 pound of mail to a single country. Residual mail may not exceed 10 percent, by weight, of the mail presented in direct country sacks, M-Bags, and mixed country package sacks. Qualifying residual mail is subject to the appropriate ISAL rate (Full Service, Direct Shipment, M-Bag, or Dropship ISC).

Note: A package is defined as 10 or more pieces of mail to the same country separation or 1 pound or more regardless of the number of pieces. Packages of letter-size pieces of mail should be no thicker than approximately a handful of mail (4 to 6 inches). Packages of flat size mail may be thicker than 6 inches but must not weigh more than 11 pounds.

246.3 Service Options 246.31 Availability

ISAL service is available to the foreign countries listed in exhibit 246.71 from all post offices where bulk mail is accepted and from the Dropship ISCs listed in 246.32.

246.32 Dropship ISAL International Service Centers

ISAL deposited at the following Dropship ISAL ISCs qualify for the Dropship ISC rates shown in 246.71:

AMC JFK BLDG 250, JFK International Airport, Jamaica, NY 11430–9998
San Francisco P&DC, 1300 Evans Ave, San Francisco, CA 94188
AMC San Francisco,* BLDG 660 Rd 6, San Francisco CA 94158–9998
Miami P&DC, 2200 NW 72 Ave, Miami FL 33152
AMC Miami,* Miami International Airport, Miami FL 33159–9998
Chicago O'Hare Dropship ISAL Service Center, International Processing Center Annex, 3333 N. Mount Prospect RD, Franklin Park IL 60131

246.4 Special Services

The special services described in Chapter 3 are not available for items sent by ISAL.

246.5 Customs Documentation

See 244.6 and 264.5 for the requirements for customs forms.

246.6 Permits

Mailers depositing mail at a Dropship ISC must maintain an advance deposit account at that city if postage is paid by advance deposit account.

246.7 Postage

246.71 Rates

Rate group	Per piece	Full service per lb.		Direct shipment per lb.		Dropship ISC per lb.	
		Regular	M-bag*	Regular	M-bag*	Regular	M-bag*
1	$.25	$3.10	$2.50	$2.35	$1.75	$2.10	$1.50
2	.10	4.00	2.60	3.25	1.85	3.00	1.60
3	.10	3.95	3.00	3.20	2.25	2.95	2.00
4	.10	6.25	4.25	5.50	3.50	5.25	3.25

See exhibit 246.71 for network countries and individual rates.
* Small packets may not be mailed at these rates.

246.711 Full Service Rates

ISAL mailings presented at any post office that accepts bulk mail, other than a Dropship ISC listed in 246.32, and not eligible for the direct shipment rate and are paid at the full-service rates. Postage for regular ISAL is paid on a per-piece and a per-pound basis. M-bags are subject to the M-bag pound rate only. Small packets are not eligible for the M-bag rates and may not be included in M-bags.

246.712 Direct Shipment Rates

Mailers are eligible for the direct shipment rates from the acceptance post office (except Dropship ISCs) when the Postal Service is able to arrange direct transportation from the origin office to the destination country. To qualify, mailers must present a minimum of 750 pounds to each destination country. Mailers must contact the post office of mailing at least 14 days before the first desired mailing date. A postal employee must complete PS Form 3655, International Surface Airlift (ISAL) Direct Shipment Option Advisement and Confirmation of Transactions, and fax it to the distribution network office (DNO) to obtain a contract for transportation. If the DNO cannot arrange direct transportation, the direct shipment rate does not apply. The Postal Service may cancel direct shipment rates and service when direct transportation is no longer available.

*Plant verified mail is transported to these facilities by the mailer.

246.713 Dropship ISC Rates

ISAL mailings transported by the mailer to the Dropship ISCs listed in 246.32 are eligible for the Dropship ISC rate.

246.714 Volume Discount

Mailers who spend $2 million or more combined on ISAL and IPA in the preceding postal fiscal year may receive discounts off the rates shown in 246.71:

a. over $2 million to $5 million: 5 percent discount

b. over $5 million to $10 million: 10 percent discount

c. over $10 million: 15 percent discount

Mailers entitled to these discounts must place the full per-piece rate on each piece of mail if payment is by postage meter or mailer-precanceled stamps. The discount is calculated on the postage statement.

246.715 Qualifying for Volume Discounts

To qualify for volume discounts, mailers must apply in writing to the Manager, Mail-order, International Business Unit, 475 L'Enfant Plaza, SW, Room 370–IBU, Washington, DC 20260–6500. The Manager evaluates all requests and informs the mailer and the post office(s) of mailing whether discounts are approved and the level of discount. Mailers must supply the following information:

The postal fiscal year for the qualifying mail.

The permit number(s) and post office(s) where the permits are held.

The total revenue for the postal fiscal year.

The post office(s) where the discount is to be claimed.

The combined ISAL and IPA revenue is counted toward the discounts. The Postal Service will count as revenue to qualify for the volume discounts postage paid by only a permit holder. If a permit holder has more than one account, or accounts in several cities, then these revenues may be combined to qualify for discounts. Agents who prepare mail for the owner of the mail and mail paid by the owner's permit may not include

in the revenue to qualify for the discounts, except for the initial year (Postal Fiscal Year 1997, which is September 14, 1996 through September 12, 1997).

Customers may be required to substantiate their request by providing copies of all mailing statements for the appropriate postal fiscal year. All decisions of the Manager, Mail-order are final. A new section (246.715) is added to describe how mailers can qualify for volume discounts.

246.72 Payment Methods

246.721 Postage Meter, Permit Imprint, or Precanceled Stamps

Postage must be paid by postage meter, permit imprint, or mailer-precanceled stamps. Postage is computed on Form 3650, Postage Statement—International Surface Air Lift. Form 3650 is required for all ISAL mailings.

246.722 Piece Rate

The applicable per piece postage must be affixed to each piece (except M-bags. See 246.723) by meter or mailer-precanceled stamps, unless postage is paid by permit imprint. Mailers may use a permit imprint only with identical weight pieces unless authorized under the postage mailing systems in DMM P710, P720, or P730. All of the permit imprints for printed matter shown in exhibit 152.3 are acceptable.

246.723 Pound Rate

Postage for the pound rate portion must be paid either by meter stamp(s) attached to the finance copy of the postage statement or from the mailer's advance deposit account.

246.8 Weight and Size Limits

Any item sent by ISAL must conform to the weight and size limits for the types of printed matter described in 243 or for small packets in 263.

246.9 Preparation Requirements

246.91 Addressing

See 122.

246.92 Marking

Items must be endorsed with the appropriate markings as shown in 244.2 for printed matter and in 264.2 for small packets. For publishers' periodicals (Periodicals Mail), the imprint authorized under 244.211c(2) or 244.211c(3) may be used in place of the "PRINTED MATTER—PERIODICALS" endorsement. Individual items paid by meter postage or mailer-precanceled stamps must be endorsed "International Surface Air Lift" or "ISAL."

246.93 Sealing and Packaging

Printed matter must be prepared to protect the contents and permit easy inspection. If not contained in envelopes or wrappers, folded items must have the open edges secured by tape, tabs, or wafer seals of sufficient quantity and strength to keep the items from opening during postal handling.

246.94 Makeup Requirements for ISAL

246.941 Packaging the Following Guidelines Apply

a. General: All ISAL mail must be prepared in packages within sacks as appropriate. A package is defined as 10 or more pieces of mail to the same country or separation or 1 pound or more regardless of the number of pieces. Packages of letter-size mail pieces should be no thicker than approximately a handful of mail (4–6 inches). Packages of flat size mail may be thicker than 6 inches but must not weigh more than 11 pounds. Packages and sacks must be prepared and labeled as described below. All mail pieces in a package must be "faced" in the same direction (*i.e.*, arranged so that the addresses read in the same direction, with an address visible on the top piece). Pieces that cannot be bundled because of their physical characteristics may be placed loose in the sack.

b. Thickness Packages of letter-size mail should be no thicker than approximately a handful of mail (4 to 6 inches). Packages of flat-size mail may be thicker than 6 inches but must not weigh more than 11 pounds. Each package must be securely tied. Placing rubber bands around the length and then the girth is the preferred method of securing packages of letter-size mail. Plastic strapping placed around the length and then the girth is the preferred method of securing packages of flat-size mail.

a. Direct Country Packages. When there are 10 or more pieces or 1 pound or more to the same country, then such pieces must be prepared as a direct country package. If there is less than 11 pounds of mail to the same country, then the direct country package must be labeled with a facing slip showing the destination country or country separation. The facing slip must be placed on the address side of the top piece of each package in such a manner that it will not become separated from the package. The pressure-sensitive labels and optional endorsement lines used domestically for presort mail are prohibited for International Surface Airlift Mail.

b. Residual Packages. If there is not enough mail to prepare a direct country package (fewer than 10 pieces or less than 1 pound), the mail is considered residual mail. When there are fewer than 10 pieces to the same country, then such pieces should be combined in packages with other mail for countries within the same rate group that similarly have fewer than 10 pieces. Such mixed country packages must be labeled with a facing slip marked "Residual, Rate Group ____. The designated rate group (#1, #2, #3, or #4) must be inserted as appropriate. The facing slip must be placed on the address side of the top piece of each package in such a manner that it will not become separated from the package. The pressure-sensitive labels and optional endorsement lines used domestically for presort mail are prohibited for International Surface Airlift Mail.

(Exception: The 10 piece criterion is when there are fewer than 10 pieces to the same country which weigh more than 11 pounds. Such mail pieces should be packaged together as a direct country package and placed in a direct country sack. Pieces that cannot be packaged because of their physical characteristics may be placed loose in the sack.)

946.942 Sacking

Once packages of ISAL mail are prepared, the packages are then placed into one of three types of designated sacks:

a. Direct Country Sack. Prepare a direct country sack if there are at least 11 pounds of mail to the same country. The mail must be packaged and enclosed in a gray plastic ISAL sack and labeled to the country with Tag 155, Surface Airlift Mail. The maximum weight of a direct country sack must not exceed 66 pounds.

b. Mixed Country Package Sack. Prepare a mixed country package sack for those direct country packages where there is less than 11 pounds of mail to the same country. The mail must be packaged as direct country packages, identified with a facing slip showing the destination country or country separation, and enclosed in a green pouch labeled to the dropship ISAL service center. Tag 155, also must be attached to the sack. Prepare a mixed country package sack for each of the respective rate groups for which there is a direct country package and label as follows:

Rate group 1—AMC Kennedy—JFK 003
Rate group 2—AMC Miami 33159
Rate group 3—AMC San Francisco 941

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Rate group 4—AMC Kennedy—JFK 003

c. Residual Sack. Prepare a residual sack for those packages of mail that contain fewer than 10 pieces or less than 1 pound of mail to any one country (residual packages). The mail must be packaged as residual packages, appropriately identified with a facing slip, and enclosed in a green pouch labeled to the dropship ISAL service center. Tag 155 also must be attached to the sack. The mailer must prepare a residual sack for each of the respective rate groups for which there is a residual package and label it as follows:

Rate group 1—AMC Kennedy—JFK 003
Rate group 2—AMC Miami 33159
Rate group 3—AMC San Francisco 941
Rate group 4—AMC Kennedy—JFK 003

246.943 Sack Labeling

Depending on the type of sack, labels are prepared as follows:

a. Direct Country Sack. For a direct country sack, use a gray plastic ISAL sack. Use Tag 155 to label each sack with the destination country's name. Mailers must complete four blocks on Tag 155:

1. To (Pour) Block: enter the name of the ISAL country foreign exchange office, its three-letter exchange office code, and the country's name. See Exhibit 246.71 for the name of the foreign exchange office and its three-letter exchange office code. As an example, for Ireland, this block will be as follows:

Dublin DUB Ireland

2. Customer Permit No. Block: Enter permit number.

3. Kg. Block: Enter the combined weight of the sack and its contents in kilograms (1 pound = 0.4536 kilogram).

4. Date Block: Enter date as shown on PS Form 3650, Postage Statement—International Surface Air Lift.

After completing the above items on Tag 155, attach it to the neck of the sack.

b. Mixed Country Package Sack. For a mixed country package sack, use a domestic green nylon pouch and label it to the appropriate dropship ISAL service center as follows:

Rate group 1—AMC Kennedy—JFK 003

Rate group 2—AMC Miami 33159

Rate group 3—AMC San Francisco 941

Rate group 4—AMC Kennedy—JFK 003

Labels are prepared as follows:

Content:

Line 1: Dropship ISAL Service Center
Line 2: ISAL DRX
Line 3: Mailer, Mailer Location

Example:

AMC KENNEDY—JFK
003
ISAL DRX
ABC COMPANY, NEW YORK, NY

For the mixed country package sack label, use Content Identification Number (CIN) 753.

In addition, use Tag 155 to label each sack with the appropriate drop ship ISAL service center. Mailers must complete four blocks on Tag 155:

1. To (Pour) Block: enter the name of the dropship ISAL service center and rate group:

AMC Kennedy—JFK 003
Rate Group 1

AMC Miami 33159
Rate Group 2

AMC San Francisco 941
Rate Group 3

AMC Kennedy—JFK 003
Rate Group 4

2. Customer Permit No. Block: Enter your permit.

3. Kg. Block: Enter the combined weight of the sack and its contents in kilograms. (1 pound = 0.4536 kilogram).

4. Date Block: Enter date as shown on Form 3650.

After completing the above items on Tag 155, attach it to the sack.

c. Residual Sack. For a residual sack, use a domestic green nylon pouch and label it to the appropriate dropship ISAL service center as follows:

Rate group 1—AMC Kennedy—JFK 003
Rate group 2—AMC Miami 33159
Rate group 3—AMC San Francisco 941
Rate group 4—AMC Kennedy—JFK 003

Labels are prepared as follows:

Content:

Line 1: Drop ship ISAL Service Center
Line 2: ISAL WKG
Line 3: Mailer, Mailer Location

Example:

AMC KENNEDY—JFK
003
ISAL WKG
ABC COMPANY, NEW YORK, NY

For the residual sack label, use CIN 754.

In addition, use Tag 155 to label each sack with the appropriate dropship ISAL service center. Mailers must complete three blocks on Tag 155:

1. To (Pour) Block: Enter the name of the drop ship ISAL service center and rate group:

AMC Kennedy—JFK 003
Rate Group 1

AMC Miami 33159
Rate Group 2

AMC San Francisco 941
Rate Group 3

AMC Kennedy—JFK 003
Rate Group 4

2. Customer Permit No. Block: Enter your 10-digit ISAL permit or customer identification number.

3. Kg. Block: Enter the combined weight of the sack and its contents in kilograms. (1 pound = 0.4536 kilogram).

4. Date Block: Enter date as shown on Form 3650.

After completing the above items on Tag 155, attach it to the sack.

246.944 Sack Separation

When presenting an ISAL shipment to the Postal Service, the mailer must physically separate the sacks of mail by type (direct, mixed, residual) and rate group (1, 2, 3, 4) at time of mailing.

246.945 Direct Sacks to One Addressee (M-bags) for ISAL

M-bags may be sent in the ISAL service to all ISAL destination countries. Weight, makeup, sacking, and sorting requirements must conform to part 245. Tag 158 must show the complete address of the addressee and the sender. Tags 155 and 158 must be attached securely to the neck of each sack. M-bags may not contain small packets.

246.95 Mailer Notification

Mailers who wish to mail shipments that weigh over 750 pounds but who are not eligible for direct shipment rates must notify the ISAL coordinator at the office of mailing at least 14 days before the planned date of mailing. Specific country information and weight per country must be provided. No prior notification is required for mailers with 750 pounds or less.

EXHIBIT 246.71.—INTERNATIONAL SURFACE AIR LIFT SERVICE NETWORK COUNTRIES AND RATES

Country	City	Code	Rate group
Albania	Tirana	TIA	1
Algeria	Algiers	ALG	4
Angola	Luanda	LAD	4

EXHIBIT 246.71.—INTERNATIONAL SURFACE AIR LIFT SERVICE NETWORK COUNTRIES AND RATES—Continued

Country	City	Code	Rate group
Argentina	Buenos Aires	BUE	2
Aruba	Oranjestad	AUA	2
Australia	Sydney	SYD	3
Austria	Vienna	VIE	1
Bahrain	Bahrain	BAH	4
Bangladesh	Dhaka	DAC	4
Belgium	Brussels	BRU	1
Belize	Belize City	BZE	2
Benin	Cotonou	COO	4
Bolivia	La Paz	LPB	2
Brazil	Rio de Janeiro	RIO	2
Bulgaria	Sofia	SOF	1
Burkina Faso	Ouagadougou	OUA	4
Cameroon	Douala	DLA	4
Central African Republic	Bangui	BGF	4
Chile	Santiago	SCL	2
China	Beijing (Peking)	PEK	3
Colombia	Bogota	BOG	2
Congo, Dem. Rep. of (Zaire)	Kinshasa	FIH	4
Costa Rica	San Jose	SJO	2
Côte d'Ivoire (Ivory Coast)	Abidjan	ABJ	4
Cuba	Havana	HAV	2
Czech Republic	Prague	PRG	1
Denmark	Copenhagen	CPH	1
Dominican Republic	Santo Domingo	SDQ	2
Ecuador	Guayaquil	GYE	2
Egypt	Cairo	CAI	4
El Salvador	San Salvador	SAL	2
Ethiopia	Addis Ababa	ADD	4
Fiji	Nadi	NAN	3
Finland	Helsinki	HEL	1
France	Paris	PAR	1
French Guiana	Cayenne	CAY	2
Gabon	Libreville	LBV	4
Germany	Frankfurt	FRA	1
Ghana	Accra	ACC	4
Great Britain	London	LON	1
Greece	Athens	ATH	1
Guatemala	Guatemala City	GUA	2
Guyana	Georgetown	GEO	2
Haiti	Port-au-Prince	PAP	2
Honduras	Tegucigalpa	TGU	2
Hong Kong	Hong Kong	HKG	3
Hungary	Budapest	BUD	1
Iceland	Reykjavik	REK	1
India	Mumbai	BOM	4
Indonesia	Jakarta	JKT	3
Iran	Tehran	THR	4
Ireland	Dublin	DUB	1
Israel	Tel Aviv	TLV	4
Italy	Rome	ROM	1
Jamaica	Kingston	KIN	2
Japan [1]	Tokyo	TYO	3
Japan [1]	Osaka	OSA	3
Jordan	Amman	AMM	4
Kenya	Nairobi	NBO	4
Korea, Rep. of (South)	Seoul	SEL	3
Kuwait	Kuwait City	KWI	4
Lebanon	Beirut	BEY	4
Liechtenstein	Basel	BSL	1
Luxembourg	Luxembourg	LUX	1
Madagascar	Antananariva	TNR	4
Malaysia	Kuala Lumpur	KUL	3
Mali	Bamako	BKO	4
Mauritania	Nouakchott	NKC	4
Mauritius	Port Louis	MRU	4
Mexico	Mexico City	MEX	2
Morocco	Casablanca	CAS	4
Mozambique	Maputo	MPM	4
Netherlands	Amsterdam	AMS	1
Netherlands Antilles	Curacao	CUR	2
New Zealand	Auckland	AKL	3

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EXHIBIT 246.71.—INTERNATIONAL SURFACE AIR LIFT SERVICE NETWORK COUNTRIES AND RATES—Continued

Country	City	Code	Rate group
Nicaragua	Managua	MGA	2
Niger	Niamey	NIM	4
Nigeria	Lagos	LOS	4
Norway	Oslo	OSL	1
Oman	Muscat	MCT	4
Pakistan	Karachi	KHI	4
Panama	Panama City	PTY	2
Papua New Guinea	Port Moresby	POM	3
Paraguay	Asuncion	ASU	2
Peru	Lima	LIM	2
Philippines	Manila	MNL	3
Poland	Warsaw	WAW	1
Portugal	Lisbon	LIS	1
Qatar	Doha	DOH	4
Reunion Island	St Denis	RUN	4
Romania	Bucharest	BUH	1
Russia	Moscow	MOW	1
San Marino	Rome	ROM	1
Saudi Arabia	Dhahran	DHA	4
Senegal	Dakar	DKR	4
Singapore	Singapore	SIN	3
South Africa	Johannesburg	JNB	4
Spain [3]	Madrid	MAD	1
Sn Lanka	Colombo	CMB	4
Sudan	Khartoum	KRT	4
Sunname	Paramaribo	PBM	2
Sweden	Stockholm	STO	1
Switzerland	Basel	BSL	1
Syria	Damascus	DAM	4
Taiwan	Taipei	TPE	3
Tanzania	Dar es Salaam	DAR	4
Thailand	Bangkok	BKK	3
Togo	Lome	LFW	4
Trinidad and Tobago	Port of Spain	POS	2
Tunisia	Tunis	TUN	4
Turkey	Istanbul	IST	1
Uganda	Kampala	KLA	4
United Arab Emirates	Dubai	DXB	4
Uruguay	Montevideo	MVD	2
Venezuela	Caracas	CCS	2
Yemen	Sanaa	SAH	4
Zambia	Ndola	NLA	4
Zimbabwe	Harare	HRE	4

Footnotes:
[1] To expedite service, Japan Post has requested that ISAL shipments to Japan be separated by two destinations delivery zones as follows: Osaka (OSA) for postal codes 52–79, 91, and Tokyo (TYO) for all other postal codes.
[2] Including the Canary Islands.

Stanley F. Mires,
Chief Counsel, Legislative.
[FR Doc. 98–1670 Filed 1–23–98; 8:45 am]
BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL150–1a; FRL–5951–6]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Direct Final Rule.

SUMMARY: On August 20, 1997, Illinois submitted a variance to allow Marathon Oil to emit particulate matter in increased quantities from June 14, 1996, to September 5, 1996, to allow the company to defer repairs of its control equipment until a scheduled system shutdown. The submittal included modeling to indicate that the temporary emissions increase would not be expected to cause a violation of air quality standards. USEPA is approving this variance because air quality standards continue to be protected.

DATES: This action is effective on March 27, 1998 unless USEPA receives written adverse or critical comments by February 25, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal are available for inspection at the following address: (It is recommended that you telephone John Summerhays at (312) 886–6067, before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6067.

SUPPLEMENTARY INFORMATION:

I. Background

The State's submittal addresses emissions at the Fluid bed Catalytic Cracking Unit (FCCU) at Marathon Oil Company's refinery in Robinson, in Crawford County, Illinois. The FCCU uses catalyst in particle form to convert heavier petroleum materials into lighter, more valuable products. At issue are the quantity of particles that may be emitted from this unit. The normal emission limit for this unit, according to an equation based on the weight of material input to the process under normal capacity operation, is about 84 pounds per hour. The variance requested by the company and granted by the State authorizes emissions of 450 pounds per hour for the relevant 3-month period.

The circumstances leading to the company's variance request involved discovery of evidence that emissions from the FCCU were exceeding the unit's limit and suggesting problems with the cyclones at the unit. Repair of the cyclones requires a month-long shutdown of the FCCU, which would dramatically reduce production of gasoline. The company argued that allowance to defer remedying the problems was needed to avoid undue hardship on the company, because immediate repair would be less efficient (due to difficulties of working on hot equipment in hot weather and due to reduced preparation for repairs) and would eliminate gasoline production for much of the peak driving season. The company sought the variance until the maintenance shutdown that was already scheduled for October 1996 (subsequently rescheduled to commence September 5, 1996).

II. Review of Submittal

Crawford County is designated unclassifiable for PM_{10}. Consequently, given that the variance would be a temporary relaxation of the State Implementation Plan (SIP), the principal review criterion is whether the variance has been demonstrated not to threaten continued attainment of the national ambient air quality standards (NAAQS).

The company provided limited modeling to demonstrate the impact of the variance. This modeling used the Industrial Source Complex Model to simulate potential impacts of the FCCU, using relevant plume release characteristics and using meteorological data from Terre Haute, Indiana. This modeling estimated the impact of 450 pounds per hour of emissions of total suspended particulate matter, which was assumed to include 13.5 percent or 60.75 pounds per hour of PM_{10} emissions. The estimate impact of these emissions was a peak 24-hour average PM_{10} impact of 1.8 micrograms per cubic meter ($\mu g/m^3$) and a peak annual average PM_{10} impact of 0.13 $\mu g/m^3$. These impacts are well below the 24-hour PM_{10} standard of 150 $\mu g/m^3$ and the annual PM_{10} standard of 50 $\mu g/m^3$.

An important issue not adequately addressed by the company was whether the addition of the FCCU impact to the impacts of other relevant sources would cause concentrations above the NAAQS. The State addressed this issue in part by examining PM_{10} air quality data at its nearest monitoring site, approximately 50 miles northwest, in Charleston, Coles County, Illinois. No exceedances had been recorded at this site. The State indicated that no other facilities with significant emissions were present near the facility, but the State did not address the impacts of other emission points within the Marathon refinery. Also, unfortunately, neither the company nor the State provided a copy of the inputs or outputs of the modeling or otherwise provided full details of the analysis, most notably with respect to switches used (e.g. for stack tip downwash). Nevertheless, it is reasonable to presume that any deviations from recommended approaches to these unaddressed issues would not change the general magnitude of FCCU's estimated impact.

USEPA in its review considered other readily available information. USEPA examined the concentrations observed at the Coles County monitoring site from 1994 to 1996, which included a peak 24-hour average of 47 $\mu g/m^3$ and a 3-year average of 18 $\mu g/m^3$. USEPA also examined concentrations in Vigo County, Indiana, approximately 45 miles to the north-northeast, where the highest 24-hour average concentration in 1994 to 1996 among several sites was 75 $\mu g/m^3$, and the highest 3-year average was 29 $\mu g/m^3$. USEPA further examined emissions data submitted by Illinois to the national emissions data base. This data base shows estimated plant total emissions of particulate matter of about 700 tons per year, or about 160 pounds per hour. Much of these emissions are from combustion sources (e.g. heaters); thus, a high fraction of the total particulate matter emissions will be PM_{10}. Also, plumes for these other units are likely to be hotter and higher than the FCCU plume. Therefore, it is reasonable to assume that complete modeling of the emissions of this facility would show impacts in the same order of magnitude as those found for the FCCU. Since the addition of even ten times the modeled FCCU impact to concentrations monitored at available monitoring sites is well below the air quality standards, it is reasonable to conclude that the emissions allowed under the variance requested by Marathon would not cause violations of the NAAQS.

Ordinarily, USEPA would expect the source or the State to provide a more thorough analysis of whether a requested variance might cause a violation of the NAAQS. However, special circumstances in this case give USEPA adequate assurances that the NAAQS will not be violated. First, and most importantly, a substantial attainment margin exists, such that attainment would likely be shown even if a more complete analysis of various aspects of this issue were to show substantially greater concentrations. Second, although the nearest monitors are relatively distant, the various locations are expected to encounter similar air quality as would be found near the Marathon facility. Third, the temporary nature of the variance means that emissions are potentially elevated for a much shorter period than the five years modeled, such that the likelihood of violations is reduced, which in a qualitative way supports a conclusion that the variance will not threaten attainment.

III. Today's Action

USEPA is approving the variance adopted by the Illinois Pollution Control Board on November 21, 1996, for the Marathon Oil Company refinery near Robinson, Illinois. This variance provides a temporary emissions limit of 450 pounds per hour for the FCCU at this facility.

A noteworthy characteristic of this variance is that the period for which the variance applies is wholly in the past. Therefore, aside from judging whether the variance is approvable, USEPA must also judge whether the variance warrants inclusion as a codified element of the Illinois SIP. USEPA is undertaking an effort to revise its presentation of SIPs in a manner that more clearly identifies the enforceable elements of each SIP. Part of this effort is to eliminate referencing of variances that have expired long ago and thus are no longer of interest. The variance for Marathon alters the limitation to be enforced for approximately three months in 1996 but has no effect on the current regulations governing emissions at this facility. Consequently, USEPA is not codifying the variance for Marathon as part of the Illinois SIP. Nevertheless, for USEPA enforcement purposes, the emissions limitation that applies to

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Marathon's FCCU for the June 14 to September 5, 1996, period is the limitation given in the State's variance rather than the otherwise applicable limitation in the State's regulations.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. This action affects a only one source and therefore does not affect a substantial number of small entities.

Under section 202 of the Unfunded Mandates Reform Act of 1995, USEPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 27, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 8, 1998.

Michelle D. Jordan,

Acting Regional Administrator, Region V.

[FR Doc. 98–1763 Filed 1–23–98; 8:45 am]

BILLING CODE 6560–50–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1842

Miscellaneous Revisions to the NASA FAR Supplement Coverage on Contract Administration

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule amending the NASA FAR Supplement (NFS) contract administration policy to update references to OMB Circulars and NASA internal guidance documents and to provide revised guidance on audit followup procedures.

EFFECTIVE DATE: January 26, 1998.

FOR FURTHER INFORMATION CONTACT:

Jack Horvath, NASA, Office of Procurement, Analysis Division (Code HC), (202) 358–0456.

SUPPLEMENTARY INFORMATION:

Background

NFS sections 1842.101 and 1842.7301 reference OMB Circulars A–88 and A–128. Both of these have been cancelled and replaced by OMB Circular A–133, and the NFS references are updated accordingly. Section 1842.102–70(b) provides guidance for NASA Centers on advising NASA Headquarters of changes in contract administration activity. This section is further clarified to indicate that NASA Center reports to Headquarters are required semiannually. Finally, changes are made to section 1842.7301 to include references to new NASA guidance documents and to clarify audit followup activities.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This final rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Part 1842

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR part 1842 is amended as follows:

1. The authority citation for 48 CFR part 1842 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1842—CONTRACT ADMINISTRATION

1842.101 [Amended]

2. In paragraph (a)(i) to section 1842.101, the phrase "OMB Circular No. 88" is revised to read "OMB Circular No. A–133".

3. In paragraph (a)(ii) to section 1842.101, "(Code HS)" is revised to read "(Code HK)".

1842.102–70 [Amended]

4. In section 1842.102–70, paragraph (b) introductory text is revised to read as follows:

1842.102–70 Review of administration and audit services.

* * * * *

(b) A summary, including a negative summary, of the Center's assessment shall be submitted by the procurement officer to the Headquarters Office of Procurement (Code HK) by not later than January 15 and June 15 of the fiscal year. The summary shall include—

* * * * *

1842.7301 [Amended]

5. Section 1842.7301 is revised to read as follows:

1842.7301 NASA external audit follow-up system.

(a) This section implements OMB Circular No. A–50, NASA Policy Directive (NPD) 1200.1, and NASA Procedures and Guidelines (NPG) 1200.1, "Management Accountability and Control, Audit Liaison, and Audit Follow-up", which provide more detailed guidance. Recommendations for external audits (OMB Circular No. A–133, Audits of States, Local Governments, and Non-Profit Institutions) shall be resolved by formal review and approval procedures analogous to those at 1815.406–171.

(b) The external audit followup system tracks up contract and OMB Circular No. A–133 audits where NASA has resolution and disposition authority. The objective of the tracking system is to ensure that audit recommendations are resolved as expeditiously as possible, but at a

maximum, within 6 months of the date of the audit report.

(c)(1) The identification and tracking of contract audit reports under NASA cognizance are accomplished in cooperation with the DCAA.

(2) Identification and tracking of OMB Circular No. A–133 audit reports are accomplished in cooperation with the NASA Office of the Inspector General (OIG) by means of a transmittal memorandum. A transmittal memorandum is sent by the OIG to the procurement officer of each NASA Center having an award (contract, grant, or other agreement) covered by the audit report. The transmittal memorandum will identify any significant audit findings.

(d)(1) All reportable contract audit reports are defined by Part 15, Section 6, of the DCAA Contract Audit Manual (CAM) shall be reported quarterly to the Headquarters Office of Procurement (Code HC); and

(2) Only OMB Circular No. A–133 audit reports involving the following shall be reported quarterly to Code HC:

(i) A significant management control issue; or

(ii) Questioned costs of $10,000 or more due to an audit finding (see Subpart E-Auditor, paragraph 510 of OMB Circular No. A–133).

(3) NASA contracting officers will maintain a dialogue with DOD Administrative Contracting Officers (ACO) who have been delegated activities on NASA contracts. A review will be conducted no less frequently than semiannually, and the status and disposition of significant audit findings will be documented in the contract file.

(e)(1) The terms "resolution" and "disposition" are defined in Appendix A of NPG 1200.1.

(2) The resolution and disposition of OMB Circular No. A–133 audits are handled as follows:

(i) Audit findings pertaining to an individual NASA award are the responsibility of the procurement officer administering that award.

(ii) Audit findings having a Governmentwide impact are the responsibility of the cognizant Federal agency responsible for oversight. For organizations subject to OMB Circular No. A–133, there is either a cognizant agency or an oversight agency. The cognizant agency is the Federal agency that provides the predominant amount of direct funding to the recipient organization unless OMB makes a specific cognizant agency for audit assignment. To provide for the continuity of cognizance, the determination of the predominant amount of direct funding will be based on the direct Federal awards expended in the recipient's fiscal years ending in 1995, 2000, 2005, and every fifth year thereafter. When there is no direct funding, the Federal agency with the predominant indirect funding is to assume the oversight responsibilities. In cases where NASA is the cognizant or oversight Federal agency, audit resolution and disposition is the responsibility of the procurement officer for the Center having the largest amount of direct funding, or, if there is no direct funding, the largest amount of indirect funding for the audited period. A copy of the memorandum dispositioning the findings shall be provided by each Center having resolution responsibility for the particular report to the Headquarters OIG office and Code HC.

[FR Doc. 98–1753 Filed 1–23–98; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS–121; Notice–3]

RIN 2137–AD 05

Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Confirmation of effective date of Direct Final rule.

SUMMARY: This document confirms the effective date of the amendments of the direct final rule which extends the time for compliance with the requirements for pressure testing of older hazardous liquid and carbon dioxide pipelines.

EFFECTIVE DATES: This document confirms January 20, 1998 as the effective date of the direct final rule, published on October 21, 1997, at 62 FR 54591.

FOR FURTHER INFORMATION CONTACT: Mike Israni, (202) 366–4571, e-mail: mike.israni@rspa.dot.gov, regarding the subject matter of this document, or the Dockets Unit (202) 366–4453, for copies of this document or other information in the docket.

SUPPLEMENTARY INFORMATION:

Background

On October 21, 1997, RSPA published a direct final rule (62 FR 54591) titled "Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines." In that rule, RSPA stated that if no adverse comments were received by December 22, 1997, it would publish a confirmation notice in the **Federal Register** by January 5, 1998, and if an adverse comment was received, RSPA would issue a notice to confirm that fact and would withdraw the direct final rule in whole or in part. The rule also stated that RSPA might then incorporate the adverse comment(s) into a subsequent direct final rule or might publish a notice of proposed rulemaking.

The Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) met on November 18, 1997, in Houston, TX, to consider the extension of the time for compliance discussed in the October direct final rule. (The THLPSSC was established by statute to evaluate the technical feasibility, reasonableness, and practicability of proposed regulations.) The consensus of the THLPSSC was to support the direct final rule.

RSPA received one industry comment supporting RSPA's action on extension of time for compliance. Therefore, this document confirms new compliance dates for pressure testing older hazardous liquid and carbon dioxide pipelines as amended in the direct final rule effective January 20, 1998.

The new compliance dates are as follows:

—Before December 7, 1998, plan and schedule testing; or establish the pipeline's maximum operating pressure under § 195.406 (a)(5).

—Before December 7, 2000, pressure test each pipeline containing more than 50 percent by mileage of electric resistance welded pipe manufactured before 1970; and at least 50 percent of the mileage of all other pipelines; and

—Before December 7, 2003, pressure test the remainder of the pipeline mileage.

Issued in Washington, D.C. on January 21, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 98–1747 Filed 1–23–98; 8:45 am]

BILLING CODE 4910–60–P

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket NHTSA–98–3342, Notice 1]

RIN 2127–AA43

Federal Motor Vehicle Safety Standards Rear Impact Guards; Rear Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule; response to petitions for reconsideration; technical amendment; denial of petition to extend the effective date.

SUMMARY: On January 24, 1996, NHTSA published a final rule establishing an equipment standard for underride guards and a vehicle standard which requires the installation of guards meeting the equipment standard on the rear end of heavy trailers and semitrailers. In response to petitions for reconsideration, NHTSA is amending that final rule to: clarify the 100 mm (4 inch) height requirement for the horizontal member of an underride guard, explicitly exclude from having to meet the energy absorption requirements all cargo tank motor vehicles manufactured with rear end protection complying with the high strength requirements of 49 CFR part 178 (to protect hazardous material) that occupies the area specified for NHTSA's underride guard, and increase the acceptable range of force application rates during testing. The agency is also excluding pulpwood trailers from the application of the vehicle standard and denying a petition from the Truck Trailer Manufacturer's Association (TTMA) for an extension of the effective date of the final rule.

DATES: The amendments made by this rule will become effective on January 26, 1998. Petitions for reconsideration of this rule must be received no later than March 12, 1998.

ADDRESSES: Any petitions for reconsideration should refer to the docket number and number of this notice and be submitted in writing to: Administrator, National Highway Traffic Safety Administration, Room 5220, 400 Seventh Street, SW, Washington DC, 20590.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC, 20590:

For non-legal issues:
Dr. George Mouchahoir (Telephone: 202–366–4919) or Mr. Michael Huntley (202–366–0029), Office of Crashworthiness Standards

For legal issues:
Mr. Paul Atelsek, Office of the Chief Counsel (202–366–2992), e-mail: patelsek@nhtsa.dot.gov

SUPPLEMENTARY INFORMATION:

I. Background

On January 24, 1996, the National Highway Traffic Safety Administration (NHTSA) published a final rule promulgating two new Federal Motor Vehicle Safety Standards (FMVSS) to require upgraded rear impact guards (underride guards) on trailers and semitrailers (61 FR 2004).[1] The first standard (No. 223, *Rear impact guards*) specifies performance requirements for strength and energy absorption for the underride guards themselves. This standard also contains a configuration requirement that the horizontal cross member of the guard be at least 100 mm (4 inches) high at any point across the guard width.

As issued in January 1996, the standard requires testing the guards for strength by pushing with a 203 mm by 203 mm (8 inch by 8 inch) force plate at specified points along the horizontal member of the guard. The test continues displacing the force plate at a constant rate of between 1.0 and 1.5 mm/sec (0.04 and 0.06 inches/sec) in a forward direction, as the guard is oriented on the trailer, until the guard resists a specified force, or until 125 mm (5 inches) of displacement occurs. To pass, the guard has to resist the specified force within the first 125 mm (5 inches) of displacement.

The standard's test for energy absorption is conducted by applying a force in the same way as in the test for strength, but only at one specified test point. The force is recorded at least ten times per 25 mm (1 inch) of displacement until the 125 mm (5 inch) displacement is reached and the force plate is completely withdrawn from the guard. The guard energy absorption is calculated from a force vs. deflection diagram plotted using the recorded measurements. Only plastic deformation (permanent deformation) is counted toward meeting the required amount of energy absorption—elastic rebound of the guard does not count.

The second standard (No. 224, *Rear impact protection*) requires most new trailers and semitrailers with a Gross Vehicle Weight Rating of at least 4,536 kg (10,000 pounds) to be equipped with a rear impact guard meeting the requirements of the equipment standard. This standard also specifies requirements for the location of the horizontal member of the guard relative to the rear end of the trailer or semitrailer, including a requirement that the rearmost surface of the member be located no more than 305 mm (12 inches) forward of the trailer's rear extremity. Certain types of trailers, including pole trailers and "wheels-back" vehicles, are excluded from the application of this rule.

The January 1996 final rule on truck underride protection specified an effective date of January 26, 1998 and a March 11, 1996 deadline for receiving petitions for reconsideration on this rule.

II. Petitions for Reconsideration

NHTSA received five petitions for reconsideration of the final rule from companies in the trailer and semitrailer equipment and manufacturing industries. In addition, one letter was received from an insurance group.

The Insurance Institute for Highway Safety (IIHS) did not request any change to the rule. IIHS's letter sought to clarify what IIHS considered a misunderstanding (i.e., undercounting) on NHTSA's part regarding the potential number of lives saved as a result of the final rule. IIHS stated that this clarification was needed if the agency is to decide on future rulemaking actions on rear underride for single-unit trucks or side underride for large trucks. NHTSA has met with IIHS staff to discuss their views on how best to estimate potential lives saved, and made adjustments in its data collection efforts to improve the quality of its data on underride crashes. The letter was not labeled as a petition and will not be addressed further.

One of the petitioners was Rite-Hite Corporation which manufactures "dock locks," safety restraint equipment that is mounted on loading docks to secure trailers to the docks during loading and unloading. Rite-Hite requested that the agency modify the configuration and strength specifications of the guard to be compatible with its dock locks. It stated that the requirements of the final rule directly affect the ability of its dock locks to safely engage and hold trailers to the loading docks. The Rite-Hite loading dock device uses a hook that wraps around and over the rear protection guard to help prevent guards from riding up and over the restraining barriers, and to help prevent incidents that can result from trailer tip-over and landing gear collapse. Rite-Hite estimates that 100,000 of these dock locks currently exist.

Rite-Hite asked NHTSA to comment on the role of its final rule with regard to limiting civil tort liability. Rite-Hite states that some vehicle manufacturers and others in the industry consider the final rule to be the sole factor to be considered in designing underride guards. It requested that the agency clarify that compliance with the final rule does not by itself insulate any manufacturer of rear impact guards from all civil tort liability. It also urged NHTSA to state that guard and trailer manufacturers must also take into account other safety issues, such as loading dock uses of rear impact guards, in making appropriate and reasonable design choices that are consistent with the final rule.

Rite-Hite also petitioned for several changes to specific provisions of the final rule. It requested NHTSA to change the minimum cross sectional vertical height requirement in S5.1 of Standard No. 223, which currently specifies that "[t]he horizontal member of each guard shall have a cross sectional vertical height of *at least* 100 mm [4 inches] at any point across the guard width" (emphasis added). Some manufacturers are manufacturing guards with horizontal members that are 100 mm (4 inches) high on *both* the front and back sides of the horizontal member. Rite-Hite is concerned because the vehicle restraint may not engage properly in certain circumstances (e.g., abnormally high horizontal member, guard located forward of the rear extremity, poor alignment of the vehicle with the dock, and bumpers affixed to the horizontal member). It is also concerned that the restraint's warning light may not indicate the failure to engage without being modified.

To address this potential problem, Rite-Hite petitioned NHTSA to either: (1) Specify 4 inches as the maximum height, (2) change the regulatory language to restrict the height specification to the rear-facing side of the horizontal member, or (3) insert an interpretation that the existing language applies only to the rear-facing side of the horizontal member and an advisory that some vehicle restraint manufacturers recommend forward-facing surfaces be about 1.25 inches high.

Rite-Hite also requested NHTSA to modify S5.2.1 of Standard No. 223 to increase the minimum guard strength at location P2 (in the center of the guard, where Rite-Hite's dock locks attach). It stated that, because many vehicle restraints will provide 2–3 times more holding power than the guard strength requirement of the rule (50,000 N, or 11,240 lb), guard strength is not sufficient to withstand the forces encountered during premature trailer pull-out from loading docks. Therefore, Rite-Hite petitioned the agency to increase the minimum force at test point P2 (where dock locks typically attach) to approximately 150,000 N (33,370 lb).

Rite-Hite requested that the test procedures of S6.6 of Standard No. 223 be amended so the guard would have to meet similar strength requirements when pushed in a rearward direction (i.e., in the opposite direction from the striking vehicle) as it has to meet when it is pushed forward.

Rite-Hite requested that NHTSA delete the exclusion from Standard No. 224 for "wheels-back vehicles." These are vehicles on which the rear tires are fixed at a position within 305 mm (12 inches) of the rear extremity of the trailer. Rite-Hite suggested that there will be an increase of loading dock incidents without an underride guard to secure the rear of the trailer to the dock. It also argued that wheels-back vehicles with wide-spaced single tires and no underride guard would increase the chance of passenger compartment intrusion, presumably by allowing the striking vehicle to penetrate between the tires.

Rite-Hite also requested that the horizontal member of the guard, and of hydraulic guards in particular, not be permitted, as it currently is, to extend rearward of the rear extremity of the vehicle. The company is concerned about damage to the dock locks, the dock walls, the underride guard itself, and with the dock lock not properly engaging. It is also concerned that rear-extending guards will prevent the trailer from backing up flush with the dock, creating a gap between the trailer bed and the loading dock, even with a dock lock engaged. Rite-Hite states that this gap could cause loss of "lip purchase" of loading dock levelers on the bed of the trailer, and personal injury to loading dock employees. Rite-Hite also asked that NHTSA clarify that hydraulic guards must meet the dimensional and guard strength requirements for non-hydraulic guards.

To ensure adequate engagement with dock locks, Rite-Hite also requested that the horizontal member be restricted to a position no more than 2 inches forward of the trailer rear extremity, rather than the currently permitted 305 mm (12 inches).

Rite Hite wants the agency to specify a minimum horizontal guard member height of 457 (18 inches) above the ground. It is concerned that lower heights might not adequately engage the dock locks and might increase the chances of the guards being damaged by road surfaces and falling off.

Finally, Rite Hite requested NHTSA to prohibit a sloped surface on the forward side of the rear impact guard and require a vertical surface there instead. Rite Hite states that the sloping surface will depress all kinds of vehicle restraints designed to hold on to the underride guard, thus causing disengagement.

TTMA petitioned the agency to define "cargo tank motor vehicle" and make it clear that any vehicle so constructed would not have to meet the energy absorption requirements of the rule. It stated that the "present definition of a special purpose vehicle defines a cargo tank motor vehicle excluded by Standard No. 224 by its operational characteristics, namely, hazardous material held in transit, instead of by its construction characteristics." It noted that cargo tank motor vehicles are required by 49 CFR 178.345–8(d)[2] to have very strong rear end protection to protect the cargo tank and its piping in the event that another vehicle impacts it from the rear. TTMA argued that a manufacturer cannot design a guard to meet both the extreme rigidity requirements of 49 CFR 178.345–8(d) and the energy absorption (yielding) requirements of S5.2.2 of Standard No. 223.

Great Dane Trailers, Inc. (Great Dane) petitioned the agency to increase the permissible range of force application during the strength and energy absorption tests. It stated that the current requirement to maintain a constant rate of between 1 mm and 1.5 mm per second (60 mm and 90 mm per minute) "may require expensive and sophisticated equipment" and that the rate of displacement is not a significant indicator of the performance of the guard. Great Dane suggested changing the requirement to specify a rate that "averages not less than 1 mm and not more than 25 mm per second over each 25 mm of displacement."

Great Dane also requested that the minimum energy absorption test be amended to double the displacement of the horizontal member of the guard. Great Dane stated that its current guards do not respond by plastic deformation until 75 mm (3 inches) of displacement has been achieved, and that stopping the test at 125 mm (5 inches) of displacement, as currently specified,

[1] Although both trailers and semitrailers are equally affected by the rule, they will sometimes be referred to simply as "trailers" in the remainder of this document.

[2] These rules are administered by the Department of Transportation's Research and Special Programs Administration (RSPA).

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will require it to weaken the guards to meet the requirements. Great Dane petitioned to displace the guard to 250 mm (10 inches), thus ensuring more plastic deformation of the guards and increasing the energy absorption to 2–3 times the desired minimum. Great Dane subsequently forwarded test data that it believed supported its request.

STRICK Corporation (STRICK), a trailer manufacturer, also expressed concern over the need to purchase expensive precision testing equipment to replace their current devices. In its testing, STRICK found it "impossible to determine the exact displacement for each and every second over the time of the test." STRICK petitioned to change the requirement from maintaining a constant rate of displacement between 1 mm and 1.5 mm per second band to a requirement of "displacement rate of the force is approximately constant over a time of 1 to 5 minutes". STRICK is basically requesting a slower force application (i.e., more time, which would be required with a slower pump) to reach the 125 mm (5 inch) required displacement. STRICK also argued that the "displacement requirement" in the final rule was inserted without adequate notice and represents a major change from the proposal.

Finally, James King & Co. (King) petitioned the agency to amend the rule to require that rear truck underride guards protect from damage the reflective conspicuity markings required by Standard No. 108, *Lamps, reflective devices, and associated equipment.* King has observed that few manufacturers have provided the protective measures that NHTSA had suggested that manufacturers could take (e.g., mounting the reflective material in a steel channel or placing small metal beads above and below the reflective stripe). As a result, King believes that, contrary to the agency's assumptions, the majority of markings are damaged after a short time in use. King did not suggest a particular solution.

III. Response to Petitions

NHTSA agrees with Rite Hite that mere compliance with NHTSA's vehicle safety standards does not insulate any guard or trailer manufacturer from civil liability. 49 U.S.C. 30103(e) explicitly states "[c]ompliance with a motor vehicle safety standard * * * does not exempt a person from liability at common law." NHTSA's standards are minimum standards that specify a floor, not a ceiling, for performance. They are intended to allow manufacturers flexibility in the selection of means of compliance. Designers of underride guards and trailer manufacturers that install them are free to consider the non-highway safety implications of their designs, including the functioning of the guards with existing dock locks.

The agency also agrees with Rite Hite that the standard currently does not specify where, within its longitudinal cross section, the horizontal member of the guard must have a vertical height of 100 mm (4 inches). Some guard manufacturers are apparently misinterpreting that provision as requiring a 100 mm (4 inch) height across the entire longitudinal cross section, from front to back.

However, this reading is more design restrictive than the agency intended, and is not necessary for safety purposes. The 100 mm (4 inch) minimum height is intended to assure adequate engagement with and crushing of the frontal vehicle structure by preventing "knife-edging" by a guard that is too thin. In the final rule, the agency concluded that this objective would be achieved by any guard with a 100 mm (4 inch) cross sectional height that is forward of the rear extremity by not more than 305 mm (12 inches). The requirement in S5.1 of Standard No. 223 for a cross sectional vertical height of 100 mm (4 inches) does not need to be met in any specific transverse vertical plane. The important relationship is the distance between the trailer rear extremity and the forwardmost point at which at least 100 mm (4 inches) of guard height would be engaged by a colliding vehicle.

Given the preceding statement, Rite Hite's proposed changes to the regulation would unnecessarily restrict guard configuration. For example, it would be too design restrictive to require that the 100 mm (4 inch) cross section be measured at the rearmost point on the horizontal member, as Rite Hite suggests. This would be equivalent to saying that the guard must have a 100 mm (4 inch) vertical face at the rear. Although this design is common and probably the best at assuring immediate engagement, some manufacturers might prefer to use tubular designs for the horizontal member. Tubular designs would not comply with Rite Hite's suggested amendment, because the rearmost surface would be a line rather than a 100 mm (4 inch) high plane. Nevertheless, a tubular horizontal member would assure adequate engagement. It would also be too design restrictive to require that the cross section be vertical. Some shapes without vertical transverse cross sections of the required height might provide superior engagement or crash dynamics. For example, some guards might be shaped with sloped rear surfaces to account for the guard pivoting during a crash. As long as the horizontal projection of the horizontal member on a vertical plane presents a 4-inch high profile, then the desired objective will generally be achieved.

The agency is concerned about the development of certain untested guard shapes, however. As previously stated, most current guard designs have a vertical face with a 100 mm (4 inch) minimum height at the first point of contact for an underriding vehicle. This configuration provided good protection for passenger vehicle occupants in the NHTSA's tests. The non-design-restrictive requirements should not imply encouragement of the development of horizontal members with convex cross sections at the rear. For example, some manufacturers might want to design guards with angular, or lens-shaped, cross sections to achieve better aerodynamic properties. The quality of engagement of such guard shapes with the underriding vehicle has not been evaluated.

The agency is also concerned that portions of the horizontal member necessary for adequate engagement might be located more than 305 mm (12 inches) forward of the vehicle's rear extremity. For example, on a guard with a 100 mm (4 inch) high tubular horizontal cross member whose rearmost surface is located the full 305 mm (12 inches) forward of the trailer rear extremity, a full engagement of the guard's horizontal member will not occur until it has advanced 305 mm (12 inches), *plus* the 25 mm (2-inch) radius of the tube. In some cases, engagement might come too late to prevent passenger compartment intrusion. The purpose of the requirement in S5.1.3 of Standard No. 224 regarding the location of the guard's rearmost surface is to assure that full engagement is achieved as early in the crash event as possible, but in any case before the passenger vehicle has penetrated more than 305 mm (12 inches) under the trailer. Therefore, NHTSA is amending S5.1 to require that the vertical height requirement be met by the horizontally projected height of the horizontal member of the guard on a transverse vertical plane, and that the guard manufacturer's installation instructions or procedures specify that the forwardmost part of the horizontal member necessary to meet this requirement must be located no more than 305 mm (12 inches) forward of the rear extremity of the vehicle.

The agency denies Rite-Hite's request to eliminate the wheels back vehicle exclusion in S3 of Standard No. 224, as it applies to the single-tire wheels back

trailers, because the agency does not have enough information on these vehicles at this time. However, NHTSA is concerned with the possibility that some smaller passenger vehicles could fit between the tires of these trailers. In this case, the passenger vehicle might advance past the rear extremity of the trailer by 305 mm (12 inches) before reaching the rearmost point on the rear tires, and then advance an additional distance approximately equivalent to the radius of these large tires, before contacting the axle. This distance, combined with the subsequent crush of the front end of the passenger vehicle, might allow passenger compartment intrusion. The agency appreciates Rite-Hite's concern about the lack of guards leading to an inability to engage dock locks. NHTSA notes that the rule does not prohibit "partial" guards in between the wheels of wheels back trailers. Manufacturers of excluded vehicles may install partial or full underride guards if they consider it essential to engage loading dock restraint devices.

NHTSA requested data from TTMA on trailers and semitrailers with single rear tires. TTMA was able to confirm that these vehicles exist and provided a picture of one, but had no further information on hand. The agency also has little information on these vehicles, their tire-to-tire spacing, or their uses. Therefore, NHTSA currently has insufficient information to determine whether the wheels back exclusion should continue to apply to these vehicles or whether partial guards might be appropriate. The agency is planning to begin collecting data within the National Automotive Sampling System starting in the summer of 1998 to define the scope of this potential problem. When NHTSA has gathered the appropriate information, it will consider whether a rulemaking is warranted to address the issue of single-tire wheels back vehicles.

NHTSA denies the remainder of Rite-Hite's requests. These requests appear to be intended to ensure that guards are required to be compatible withRite-Hite's particular dock lock design. Although NHTSA is also interested in ensuring the safety of loading dock workers, the requested changes all tend to restrict underride guard design and reduce manufacturer flexibility that NHTSA considers essential to the practicability of the rule. Not all trailers and semitrailers use loading docks. Further, NHTSA understands that there are dock lock designs that do not require underride guard design restrictions. If trucking companies want maximum compatibility with all types of dock locks, including Rite-Hite's, there is nothing in NHTSA's rule to prevent them from ordering, or to prevent manufacturers from designing, underride guards exactly as Rite-Hite suggests.

For the same reason that NHTSA is granting Rite-Hite's request to clarify that the cross-sectional vertical height requirement need not be met at the forward-facing surface of the horizontal member of the guard, the agency denies Rite-Hite's request to prohibit sloping surfaces or to require a maximum height of 1.25 inches on that surface. Because there are no vehicle safety benefits related to the shape and size of the forward-facing surface, it would be unnecessarily design restrictive to impose certain geometries or height requirements on that surface. Regardless of the geometry, Rite-Hite's petition indicates that manufacturers can adapt the forward-facing surface to be compatible with dock locks by attaching a ¾ inch metal bar to the bottom of the forward-facing surface. Standard No. 223 does not prohibit this approach.

The agency also denies Rite-Hite's request to modify S5.2.1 of Standard No. 223 to require the guard's strength at location P2 be increased to approximately 150,000 N (33,370 lb). A guard strong enough to withstand the forces encountered when drivers attempt to pull out while still locked to the dock is not necessary for crashworthiness. This request pertains to the strength of the guard in the opposite direction (i.e., rearward) from the one specified in the final rule. The rule specifies a minimum strength to withstand forces in the forward direction, such as would result from an underriding vehicle. The rule does not regulate the requested aspect of performance, and regulating it would not serve the purpose of the rule. For the same reasons, the agency denies Rite-Hite's request that S6.6 of Standard No. 223 be amended so there is a rearward direction force application test in addition to the specified forward direction test. NHTSA again notes that there is nothing in the rule to prevent guard manufacturers from designing guards as Rite-Hite suggests, with 150,000 N (33,370 lb) strength in the rearward direction.

The agency denies Rite-Hite's request to amend the language of S5.1.3 of Standard No. 224 to prohibit the horizontal member of the guard from extending rearward of the transverse vertical plane tangent to the rear extremity of the vehicle. NHTSA expects that manufacturers will not design, and trucking companies will not order, underride guards for uses that will damage loading docks, dock locks, loading dock levelers, and the guards themselves. NHTSA is aware of some trailer and semitrailer applications for which a guard extending rearward of the trailer rear extremity is useful. These applications do not use loading docks. In addition, rearward mounting is useful in preventing underride and passenger compartment intrusion by the rear of the passenger vehicle. The agency does not want to prohibit these benefits for the sake of regulating the unlikely occurrence of excessively rearward guard location. For the same reasons, Rite-Hite's request that "hydraulic guards not hinge rearward of the transverse vertical plane tangent to the rear extremity of the vehicle" is denied. NHTSA notes that hydraulic guards are already required to meet the same dimensional and strength requirements as non-hydraulic guards.

NHTSA denies Rite-Hite's request to prohibit positioning the guard more than 2 inches forward of the trailer rear extremity. This would eliminate nearly all of the fore-aft flexibility that the agency believes that manufacturers need in positioning their guards, merely because a distance more than 50 mm (2 inches) will not be compatible with Rite-Hite's restraint. NHTSA emphasizes that the final rule specified mounting the guard within a range of 305 mm (12 inches) or less, and as close to the rear extremity as practical. This requirement is probably sufficient to ensure that the vast majority of trailers and semitrailers are compatible with Rite-Hite's needs. Nearly all guards are currently being mounted flush with the trailer rear extremity. NHTSA does not believe that the final rule will change that practice. If a certain kind of guard is needed for safely docking with dock locks, trucking companies will presumably specify such guards in their orders for new vehicles. This would be an additional factor making change unlikely.

NHTSA denies Rite-Hite's request that S5.1.2 of Standard No. 224 be amended to prohibit mounting guards with the horizontal member lower than 457 mm (18 inches) from the ground. The possibility of guard damage, along with the extensive comments received from the public on ground clearance, were discussed at length in the preamble of the January 1996 final rule. The comments indicated that it would be impractical to mount the guards much lower than the maximum clearance of 560 mm (22 inches) anyway. The agency does not expect vehicle manufacturers to mount guards at heights at which the guards or the vehicles would be damaged due to operational restrictions (e.g., railroad crossings). In addition,

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higher costs of lower guards and the difficulty of meeting the strength requirements at lower heights are additional factors that will keep most manufacturers from producing guards that are lower than the maximum height. Therefore, setting a minimum clearance requirement is unnecessary. Assuming manufacturers did want to produce them for uses with fewer operational restrictions, lower guards would be safer in a crash. NHTSA has no evidence that loose guards are falling off and creating a highway hazard. Regulation is not necessary in this area.

The agency agrees with TTMA that the current language of Standard No. 224's definition of "special purpose vehicle" might be interpreted to exclude cargo tank motor vehicles due to their operational use, rather than their construction characteristics. The rule defines special purpose vehicles as having "work-performing equipment (including any pipe equipment that would hold hazardous materials in transit * * *) that, while the vehicle is in transit, resides in or moves through the area that could be occupied by the horizontal member of the rear impact guard * * *" The phrase "that would hold hazardous materials" might, in the case of a cargo tank motor vehicle, imply that the exclusion depends on the intentions or subsequent actions of the purchaser of the cargo tank motor vehicle. Although manufacturers generally know that trailer owners willing to pay for a trailer certified to RSPA's standards are planning to transport hazardous materials, the manufacturer of a cargo tank motor vehicle should not be charged with the responsibility for determining what its use will be after it is out of the manufacturer's control.

Therefore, as the TTMA requested, the agency is deleting the phrase in the definition of special purpose vehicle that explicitly recognized pipe equipment that would carry hazardous material as work performing equipment. Piping that carries hazardous materials would still be considered work-performing equipment, as would any other piping that needs to occupy the area of the guard while the vehicle is in transit. However, piping carrying hazardous materials would probably not be located in such an exposed location, because RSPA's regulations (e.g., 178.345–8, 178.338–10) generally require that such piping be protected by RSPA's vehicle rear end protection device or rear bumper.[3]

The standard still needs to be revised to prevent conflict with RSPA's rule. The high strength requirements for cargo tank motor vehicle rear end protection devices or rear bumpers in RSPA's regulations are incompatible with NHTSA's energy absorption requirement. NHTSA intended to apply only the configuration and strength requirements, but not the energy absorption requirements, to vehicles meeting RSPA's requirements with rear-end protection device or rear bumpers in the area specified by NHTSA for the underride guard. NHTSA's strength requirements are far lower than RSPA's, so meeting NHTSA's strength requirements will not be a problem for hazardous materials cargo tank motor vehicles. The agency stated in the final rule (at 61 FR 2023) that:

> RSPA's rule for underride guards on hazardous materials tankers (49 CFR Part 178.345–8) is generally compatible with this rule, and this rule applies to hazardous materials tankers. However, to prevent any confusion as to the relationship between RSPA's rule and NHTSA's rule, this rule explicitly recognizes that piping that carries hazardous materials while in transit needs the special protection that is provided by RSPA's rule.

Explicitly recognizing vehicles with the pipe equipment in the area of the guard as special purpose vehicles did not capture within the exclusion all the vehicles that must be excluded. Any tanker built to conform to RSPA's regulations with a rear-end protection device or rear bumper in the area specified for NHTSA's underride guard cannot practically comply with NHTSA's energy absorption requirement, regardless of whether it has pipe equipment in the area of the guard or whether the pipe equipment passes through the area where the guard could be located.

Therefore, NHTSA is adding a paragraph to the Application section of Standard No. 224 explicitly excluding all cargo tank motor vehicles built to RSPA's standards, including insulated cargo tanks and tanks that carry compressed gases, from the requirement to meet the energy absorption requirements of S5.2.2 of Standard No. 223, if the rear-end protection device or rear bumper is in the area specified for NHTSA's underride guard.

The agency is stating the exclusion more broadly than the TTMA suggested. The TTMA petitioned to add a definition for a cargo tank motor vehicle, which referenced some (but not all) of RSPA's tanker specifications. In NHTSA's view, the benefits of energy absorption for the striking vehicle are outweighed by the additional danger to that and other vehicles from spillage of hazardous cargo, so that all tankers that might be carrying hazardous materials should be excluded from the energy absorption requirement. RSPA occasionally adds cargo tank motor vehicle specifications and may also add vehicle rear end protection device or rear bumper specifications to its regulations. If the rule referenced RSPA's regulations for every specific tanker and guard type, every change to the RSPA regulations would necessitate a corresponding change to Standard No. 224's application section. Due to the difficulty of coordinating interagency rulemakings and effective dates, the rule simply references the part of RSPA's regulations that specifies cargo tank motor vehicles and rear end protection devices or rear bumper requirements, and excludes from the energy absorption requirements of this rule all cargo tank motor vehicles that comply with that part and have a rear end protection device or rear bumper in the area specified for the underride guard. Any future changes by RSPA to its tanker guard requirements will likely be made to this part, and would be automatically incorporated by reference in Standard No 224.

The agency notes that this exclusion from the energy absorption requirements for RSPA guards on cargo tank motor vehicles applies only when the RSPA rear end protection device or rear bumper occupies the space specified for the horizontal member of the NHTSA guard and meets the configuration and strength requirements specified for the NHTSA guard. For example, many cargo tank motor vehicles have a rear end protection device or rear bumper located several feet off the ground. The guards on these trailers are not excluded from NHTSA's energy absorption requirement of Standard No. 223.

The requests of Great Dane Trailers and STRICK Corporation regarding the rate of force application in the tests for strength and energy absorption can be treated together. NHTSA agrees that changing the displacement rate requirements in S6.6(a) of Standard No. 223 to accommodate concerns about the practicability of the test procedure would not affect the intent of the rule or the determination of the guard's strength. The objective of the requirement is to assure that the guard is being tested quasi-statically because the specified test procedure is not a dynamic test.

The specified rate of displacement during force application (1.0 to 1.5 mm/s) may be narrow and too restrictive to accommodate slow-pumping force application equipment. NHTSA accepts Great Dane's and STRICK's assertions that new and expensive equipment would be required for those companies to achieve this rate. More powerful hydraulic pumps are required to achieve higher rates of displacement during the test, especially with stronger guards. The agency has no information on how powerful STRICK's pumps are, but NHTSA chose the quasi-static test procedure at least in part to accommodate small trailer manufacturers that presumably have less sophisticated equipment. For steel, the most common guard material, the rate of force application, within reasonable bounds, should not make a significant difference in the test results.

For reasons that seem inconsistent with the basis for their requests, both companies asked for an increase in the permitted displacement rate. The agency denies these requests. Great Dane requested an increase in the upper limit of the specified range from 1.5 mm/sec to 25 mm/sec, and STRICK requested an increase to 2.08 mm/sec. At a displacement rate of 25 mm/sec, a 125 mm (5-inch) test displacement would be completed in a very short duration of about 5 seconds. This is a very fast force application and conflicts with the intent of the rule to specify a quasi-static, not a dynamic, test procedure. Moreover, Great Dane's proposed rate of 25 mm/s would require high precision and sophisticated computer-controlled test equipment as well as powerful and efficient pumps—potentially representing upgraded equipment that both companies state they want to avoid. The agency notes that NHTSA's Vehicle Research and Test Center (VRTC) successfully performed its testing program for the subject final rule using manually-controlled test equipment with no special instrumentation. Less sophisticated equipment with lower pump capacity requires more, not less, test duration. The current upper limit on the rate of displacement during force application of 1.5 mm/sec is being retained. This should not present a problem for Great Dane or STRICK, because lower displacement rates can also be selected on more capable equipment.

Regarding the lower bound for displacement rate, the agency believes that 6.3 minutes is adequate time to achieve the required displacement without the need for sophisticated control equipment and powerful pumps. No petitioner has requested a longer period and, unless the agency is presented with evidence of a problem with this rate, it will consider longer periods as unnecessarily prolonging certification and compliance testing. As explained earlier, reasonably slower displacement rates will probably not make a significant difference in test results anyway. Therefore, NHTSA is granting part of STRICK's request and widening the specified displacement rate range to allow displacement rates as low as 0.33 mm/sec. Testing at this rate will allow a 125 mm (5 inch) test displacement to be achieved in a period of about six minutes.

The range of force displacement rate will now be specified in centimeters and minutes rather than in millimeters and seconds, i.e., as 2.0 cm/minute to 9.0 cm/minute. This range replaces the currently specified range of 1.0 to 1.5 mm/sec (6.0 to 9.0 cm/minute). The larger distance per time period is easier for most people to visualize. It is NHTSA's understanding that the displacement rate on most modern test equipment (and on all the equipment NHTSA would use for compliance testing) is controlled by a computer with a feedback system capable of quickly and automatically adjusting the displacement rate. However, for purposes of certification testing on non-computer controlled equipment, precise adjustment is impractical. Specifying the distance on a per-minute time scale will allow for practical adjustments of the rate of displacement within each minute. This change would result in a more practical test procedure and should not compromise the performance requirements of the rule. The language of section 6.6(a) of Standard No. 223 is changed accordingly.

The word "constant" has been eliminated from the test procedure as a modifier of the displacement rate. As Great Dane pointed out, the term "constant" is confusing because it is so absolute. The concept of tolerance, for purposes of compliance testing, has been introduced as explained below.

Normally, when NHTSA specifies a range in the test conditions of its standards, the equipment being tested is expected to meet the specified performance requirements when testing at any point within the range. In this case, the agency is allowing a broader range of displacement rates (with a significantly slower rate of displacement at the lower end of the range) than was allowed originally, to accommodate the manufacturers' desire to conduct certification testing with their existing equipment. Applying the usual procedure, NHTSA could test and expect compliance at any rate within the wider displacement rate range. However, this would have the effect of making it more, not less, difficult for manufacturers to certify compliance, because the same requirements would have to be met under a wider range of conditions. The agency notes again that tests within the new range of displacement rates should yield similar results to tests within the old range because the performance of most current guard materials is not rate sensitive even over this broader range of load application rates.

Because merely granting the petitioner's request would not achieve the petitioner's objective of making certification testing easier, NHTSA will allow the guard manufacturer to designate the displacement rate, within the range of 2.0 to 9.0 cm/minute, on which it based its certification. If compliance tests are conducted by the agency, the manufacturer's designated rate, plus or minus 10 percent, will be used. The practical effect of this is that the guard must comply at the designated rate as well as any rate within 10 percent above or below that rate. As noted above, having to maintain a "constant" designated displacement rate would make it practically impossible for the agency to conduct compliance testing. For the same reason, NHTSA will not attempt to duplicate during compliance testing the deflection/time curve that the manufacturer experienced during certification testing. As long as the agency stays within the 10 percent tolerance during the entire test, the compliance test will be valid. If the manufacturer, for whatever reason, does not designate a displacement rate, NHTSA may pick any rate within the specified range.

NHTSA denies Great Dane's request to amend the energy requirement to require twice as much displacement for the purpose of the energy absorption test. The petitioner stated that the "current limit of 125 mm will require guards which are weaker (less stiffness) be installed merely to meet the energy absorption level of 5650 J." This amendment would have the effect of allowing stiffer guards by displacing the guard 250 mm (10 inches) instead of 125 mm (5 inches) before measuring to determine whether the guard absorbed the minimum 5,650 joules (4,170 ft-lbs) of energy. The greater displacement would make it easier for the required plastic deformation of the guard to occur. However, the point of the energy absorption requirement is to *prevent*

[3] Both terms are used to refer to underride guard-type devices in RSPA's regulation. "Rear-end protection device" is used in 49 CFR 178.345, while "rear bumper" is used in 49 CFR 178.337 and 178.338. These terms are used below when discussing cargo tank motor vehicles, both to avoid confusion and to emphasize the different primary purpose they serve—protecting hazardous material in the tank, rather than protecting colliding vehicle occupants with crash protection.

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overly stiff guards. It would enhance crash safety if manufacturers weaken guards that are too stiff, because this will allow a softer "crash pulse" for the colliding passenger vehicle by "riding down" the speed over a short distance during the crash.

Moreover, NHTSA notes that the data that Great Dane submitted in support of this request does not indicate that any change is needed in the standard. The test data provided by Great Dane show that the guards they tested displayed more than twice the required energy absorption when tested according to the current requirement of 125 mm (5 inches) of displacement.

Finally, the agency denies King's request to amend the final rule to include requirements that rear underride guards protect conspicuity markings from damage. The Federal Highway Administration (FHWA) has jurisdiction over trailers after the first sale for purposes other than resale and regulates the maintenance of required safety equipment. Section 393.11 of the Federal Motor Carrier Safety Regulations (FMCSRs) requires that commercial motor vehicles meet the requirements of Standard No. 108 in effect at the time the vehicle was manufactured (49 CFR 393.11). Since December 1, 1993, Standard No. 108 has required new trailers to meet conspicuity requirements. Accordingly, motor carriers are currently required under FHWA regulations to maintain the conspicuity treatments on these trailers. This includes maintaining the conspicuity treatment on the horizontal member of the underride guard.

On April 14, 1997, FHWA issued an NPRM (62 FR 18170) that would amend the FMCSRs at 49 CFR 393.11, *Lighting Devices and Reflectors*, to make certain that all motor carriers operating trailers subject to the FMCSRs are aware of their responsibility to maintain the conspicuity treatments in all locations required by Standard No. 108. However, FHWA requested comment on whether an exemption from the maintenance requirement for the tape on the underride guard should be provided due to practicability problems.[4] NHTSA has forwarded King's comment to FHWA for consideration. Irrespective of whether FHWA continues to require motor carriers to maintain the conspicuity treatment on the guards, NHTSA encourages manufacturers to design the treatment to be as durable as practicable to ensure that the safety benefits of applying the treatment to that location are realized.

If FHWA requires the conspicuity treatment on the horizontal member of the guard to be maintained, and sufficiently durable conspicuity treatments are not available, NHTSA assumes that manufacturers would design guards with channels or other protective features for the conspicuity treatment. There is nothing in Standard No. 223 that would prevent such designs. NHTSA will consult with FHWA on whether NHTSA rulemaking to mandate physical protection for conspicuity treatment is needed after FHWA completes its rulemaking.

IV. Response to TTMA Petition on Extension of Effective Date

In an April 18, 1997 letter, TTMA petitioned NHTSA to commence rulemaking to extend the effective date from January 26, 1998 to a date at least nine months after this response to the petitions for reconsideration is issued. It stated only that trailer manufacturers were reluctant to complete the designs of their guards and test these guards until the petitions were answered.

TTMA's petition for an extension of the effective date is denied. NHTSA does not see any reason why manufacturers can not complete and test their guard designs in the allotted time. Except for a few of Rite Hite's requests, all the petitions dealt with relatively minor issues of testing and clarification. Manufacturers should have been planning to comply with the rule as it was published in January of 1996.

The guards that will be required on January 26, 1998 are very similar to guards currently being produced. NHTSA made no amendments requiring configuration changes in its responses to the petitions. The change to the regulatory text relating to vertical cross-sectional height is basically a clarification of the current requirements. There were only two minor changes to the test procedures (allowing a more flexible force application rate and allowing the manufacturer to designate the force application rate on which it based its certification). These changes will make it easier for manufacturers to test the guards and to comply with the requirements. The guards that manufacturers will be required to produce after this rule is issued will be essentially the same guards that NHTSA required in the January 1996 final rule. NHTSA notes that the TTMA's Recommended Practice, "Rear Impact Guard and Protection" is virtually identical to the NPRM, except for the energy absorption requirement of Standard No. 223. This Recommended Practice is designated RP No. 92–94, and was originally issued in April of 1994 and revised in November of 1994. Apparently it has been adopted as an industry standard, so little reengineering should be necessary to meet Standard No. 223. Therefore, NHTSA believes that the manufacturers have had sufficient time to complete their designs prior to the January 26, 1998 effective date. A general extension is not warranted.

However, the agency will consider petitions for temporary exemption from Standard No. 224. The agency has received a number of these petitions from small-volume trailer manufacturers within the past few months. Under 49 CFR 555.6(a), a manufacturer whose yearly production is not more than 10,000 units may ask for a temporary exemption from a Federal motor vehicle safety standard for up to three years on the basis that compliance would cause it substantial economic hardship and that it has attempted in good faith to comply with the standard from which it has asked to be excused. Part 555 requires the agency to publish a notice in the **Federal Register** seeking public comment on each exemption petition before a decision can be made on such a request, and then publish a second notice either granting or denying the petition. NHTSA expects to issue final decisions on these petitions approximately three to four months after the date of submission of the petition.

V. Technical Amendment on Logging Trailers

The Application section (S3) of Standard No. 224 currently excludes "pole trailers" from the application of the rule. Pole trailers are trailers with a single, longitudinal telescoping pole, rather than a normal trailer chassis, connecting the front wheels to the back wheels. Pole trailers are predominantly used by the logging industry to transport logs. They spend a great deal of their time off-road at logging sites and on rough logging roads. NHTSA proposed to exclude these vehicles in the January 8, 1981 NPRM (46 FR 2139), stating:

> the proposed rule does not apply to pole trailers. The agency believes that requiring underride guards on such vehicles would provide little benefit to car occupants. Since the poles carried by these trailers normally overhang the back end of the vehicles for a considerable distance, the danger of underride is due not to the structure of the trailer but to the structure of the cargo.

This was not a controversial exclusion and it was retained in the 1992 Supplemental Notice of Proposed Rulemaking (SNPRM) and the 1996 final rule without comment.

Changes in the trailer design and in the logging industry since 1981 have led to a decline in the popularity of pole trailers and the emergence of "pulpwood trailers" to take their place. Pulpwood trailers are similar in use and structure to pole trailers, but they have more structure (often two poles or beams) connecting the front wheels to the back wheels. NHTSA has recently become aware, through an April 25, 1997 letter from Mr. Buck Ford, that some manufacturers of pulpwood trailers are deciding how to install underride guards to comply with the January 1996 final rule, but that other manufacturers are completely unaware of the rule. Pulpwood trailers are not currently excluded because they are not technically pole trailers. According to Mr. Ford, there may be a shortage of pulpwood trailers in 1998 due to few manufacturers being able to meet the requirements.

NHTSA intended to exclude all trailers that, like pole trailers, lack structure for attaching guards and that would carry loads likely to overhang the rear of the trailer substantially when it published the January 1996 final rule. Pulpwood trailers do not differ significantly from pole trailers in their construction or use. They also carry overhanging logs that would negate the value of the underride guard and operate on rough logging roads on which an underride guard would be a serious impediment. Due to the lack of controversy regarding the exclusion of pole trailers, and due to the lack of comment from pulpwood trailer manufacturers, the agency assumed that the language of the exclusion covered all trailers of this type.

Because this appears to have been an incorrect assumption, NHTSA is adding pulpwood trailers to the list of excluded vehicle types. This is being done by technical amendment because the agency's intent to exclude vehicles that carry this kind of load was clear from the 1981 NPRM's rationale for the exclusion. This technical amendment will also avoid a shortage of pulpwood trailers needed by the logging industry in 1998. NHTSA is adopting the pertinent part of the language contained in Standard No. 121, *Air Brake Systems*, which defines "pulpwood trailer" as "a trailer that is designed exclusively for harvesting logs or pulpwood and constructed with a skeletal frame with no means for attachment of a solid bed, body, or container * * *".

VI. Effective Date

The agency finds that there is good cause to make this rule effective immediately. These amendments do not impose any new requirements. Instead, they relieve some of the testing burden imposed on the manufacturers by the January 24, 1996 final rule. It will be slightly easier for manufacturers to test using the new load application rates specified in these amendments. These amendments also make it clear that pulpwood trailers are an excluded category of vehicle, and that cargo tank motor vehicles built to RSPA's standards with a rear-end protection device or rear bumper in the area specified for NHTSA's underride guard do not have to meet the energy absorption requirements of Standard No. 223. A delayed effective date would impose a needless compliance burden on the trailer industry, including many small businesses that manufacture trailers.

VII. Rulemaking Analyses and Notices

A. Executive Order 12866 (Federal Regulation) and Regulatory Policies and Procedures

This rulemaking action was reviewed under Executive Order 12866. The action has been determined to be "not significant" under Executive Order 12866 and under the Department of Transportation regulatory policies and procedures. The Final Regulatory Evaluation (FRE) for the January 1996 final rule describes the economic and other effects of that rule in detail.

The responses to these petitions for reconsideration and this technical amendment do not alter the costs or benefits of that rule significantly. They merely clarify the intended application of the rule and provide more flexibility in the test procedures. They do not change the requirements enough to significantly alter the performance or the price of rear underride guards. Therefore, a regulatory analysis is not warranted.

B. Regulatory Flexibility Act

NHTSA analyzed the potential impacts of the January 1996 final rule on small entities under the Regulatory Flexibility Act and certified that it would have a significant economic impact on a substantial number of small entities. NHTSA has described those possible impacts in the FRE to the January 1996 final rule, which was, in part, a regulatory flexibility analysis.

The responses to these petitions for reconsideration and this technical amendment slightly increase manufacturer flexibility in testing, but NHTSA certifies that the changes made by today's rule do not have a significant economic impact on a substantial number of small entities. Most of the changes are interpretations and clarifications of the existing language, not changes in requirements that impose new burdens. The changes in requirements are designed to make the guards easier for manufacturers, especially small businesses, to test their guards, not to change the guard performance. As a result, some businesses that otherwise would have had to buy sophisticated testing equipment or change their guard designs unnecessarily will not need to do so. Therefore, there will be no new significant impact on small businesses.

C. Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This rule makes only minor changes to the January 1996 final rule which had only minimal federalism implications. Nearly all States require underride protection guards for heavy trailers and semitrailers. Further, most states require that the guards meet certain configuration requirements, or that they be positioned in a certain location relative to the rear and sides of the vehicle. The January 1996 final rule will preempt State requirements for rear impact protection. However, the agency believes that federalism implications will be minor because the guards required by that final rule are not fundamentally different from those required by State law. Several States, including Michigan, North Carolina, New York, and New Jersey, already require trailers longer than 15 m (50 ft) to have guards with the configuration required by that rule. For practical purposes, the only effect that that rule will have in these States is to require the guards to be tested and certified for strength and energy absorption.

NHTSA believes that effective rear impact protection measures can be implemented only at the national level. Only vehicle manufacturers can produce trailers and semitrailers with improved rear impact protection. The improvements required by the January 1996 final rule will cause vehicle manufacturers and operators to incur costs that could affect their competitive

[4] "The [FHWA Notice of Proposed Rulemaking] does not, however, include an exemption to the requirement that motor carriers maintain the conspicuity material on the rear underride device. The agency requests comments from motor carriers on the durability of the conspicuity material located on the horizontal member of the rear underride protection devices. Commenters are asked to identify the specific types of trailers and operating conditions that they believe are associated with the durability problems cited in addition to providing color photographs of the damaged conspicuity materials." 62 FR 18172–73.

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position if compliance were voluntary and attempted by some, but not all manufacturers. That rule applies uniformly to all manufacturers and will ensure that the competitive position of the manufacturers will not be significantly affected by the required safety improvements.

D. Preemptive Effect and Judicial Review

Under 49 U.S.C. § 30103(b), whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. 49 U.S.C. § 30161 sets forth a procedure for judicial review of final rulemaking establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceeding before parties may file suit in court. This final rule does not have any retroactive effect.

E. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), there are no new requirements for information collection associated with this response to petitions for reconsideration and technical amendment.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50

2. Sections S5.1 and S6.6(a) of 49 CFR 571.223 are revised to read as follows:

§ 571.223 Standard No. 223; rear impact guards

* * * * *

S5.1 *Projected Vertical Height.* The horizontal member of each guard, when viewed from the rear as it would be installed on a trailer pursuant to the installation instructions or procedures required by S5.5 of this standard, shall have a vertical height of at least 100 mm at each point across the guard width, when projected horizontally on a transverse vertical plane. Those installation instructions or procedures shall specify that the guard is to be mounted so that all portions of the horizontal member necessary to achieve a 100 mm high projected vertical height are located not more than 305 mm forward of the vehicle's rear extremity, as defined in S4 of 49 CFR 571.224, Rear Impact Protection. See Figure 1 of this section.

* * * * *

S6.6 *Force Application.*

* * * * *

(a) Using the force application device, apply force to the guard in a forward direction such that the displacement rate of the force application device is the rate, plus or minus 10 percent, designated by the guard manufacturer within the range of 2.0 cm per minute to 9.0 cm per minute. If the guard manufacturer does not designate a rate, any rate within that range may be chosen.

* * * * *

3. In § 571.224 section S3 is revised and section S4 is amended by adding a definition of *pulpwood trailer* and revising the definition of *Special purpose vehicle* to read as follows:

§ 571.224 Standard No. 224; rear impact protection

* * * * *

S3. *Application.* This standard applies to trailers and semitrailers with a GVWR of 4,536 kg or more. The standard does not apply to pole trailers, pulpwood trailers, special purpose vehicles, wheels back vehicles, or temporary living quarters as defined in 49 CFR 529.2.

If a cargo tank motor vehicle, as defined in 49 CFR 171.8, is certified to carry hazardous materials and has a rear bumper or rear end protection device conforming with 49 CFR part 178 located in the area of the horizontal member of the rear underride guard required by this standard, the guard need not comply with the energy absorption requirement (S5.2.2) of 49 CFR 571.223.

S4. *Definitions.*

* * * * *

Pulpwood trailer means a trailer that is designed exclusively for harvesting logs or pulpwood and constructed with a skeletal frame with no means for attachment of a solid bed, body, or container.

* * * * *

Special purpose vehicle means a trailer or semitrailer having work-performing equipment that, while the vehicle is in transit, resides in or moves through the area that could be occupied by the horizontal member of the rear underride guard, as defined by S5.1.1 through S5.1.3.

* * * * *

Issued on: January 20, 1998.

Ricardo Martinez,

Administrator.

[FR Doc. 98–1783 Filed 1–21–98; 2:18 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–97–3191; Notice 2]

RIN 2127–AF66

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document amends the requirements for seat belts at forward-facing rear outboard seating positions of police cars and other law enforcement vehicles to facilitate the transporting of prisoners. It does so by permitting those belts to be equipped with manual adjustment devices instead of emergency locking retractors, and excluding them from requirements for the accessibility of belt latch plates, the simultaneous release of the lap and shoulder belt portions of a lap and shoulder belt, and the release of the latch mechanism at a single point. This action was initiated in response to a petition for rulemaking submitted by Laguna Manufacturing, Inc.

DATES: Effective Date: The amendments made in this rule are effective February 25, 1998.

Any petitions for reconsideration must be received by NHTSA no later than March 12, 1998.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical information: Mr. John Lee, Light Duty Vehicle Division, Office of Crashworthiness Standards, NPS–11, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4924. FAX number (202) 366–4329, Mr. Lee's e-mail address is: jlee@nhtsa.dot.gov, For legal information: Mr. Otto Matheke, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–5263. FAX number (202) 366–3820, Mr. Matheke's e-mail address is: omatheke@nhtsa.dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Standard No. 208

Standard No. 208, Occupant Crash Protection, requires an integral Type 2 (lap and shoulder) safety belt assembly to be installed at all forward-facing rear outboard seating positions in passenger cars and other light vehicles. The standard also requires that each of these safety belt assemblies be equipped with an emergency locking retractor (ELR). The ELR allows the belt webbing to unwind from the spool when the belt user leans forward or to the side and rewinds it when the user leans back against the seat. However, in the event of a sudden stop or crash, the retractor locks up to prevent the spooling out of any more webbing.

This type of retractor serves several purposes. By providing a comfortable belt fit and allowing the belt user some freedom of movement, this type of retractor makes it more likely that the typical vehicle occupant will use safety belts. This is important because although almost all states require the use of seat belts, the decision to use a belt still depends on each person's willingness to buckle up. The ELR also reduces the likelihood of excessive slack in safety belts during use.

Standard No. 208 also requires that a seat belt must have a latch that is accessible in two different circumstances: (1) When the seat belt is not being worn and is stowed, and (2) when it is being worn. The latch must also release the lap belt and shoulder belt at a single point by a pushbutton action.

Law enforcement agencies in the United States typically use modified versions of conventional passenger cars and light trucks for patrol and other duties. These vehicles are certified by their original manufacturers as meeting the requirements of all applicable Federal motor vehicle safety standards. Although these vehicles are modified to meet the general needs of use in law enforcement, they are often subject to further modifications after they are purchased and before they are put into service. Typical modifications include the installation of a partition or barrier between the front and rear seats and replacement of the original rear seats with seats specifically designed for prisoner transport. Seats for prisoner transport must be resistant to damage by the occupant and should be designed so that they may be easily cleaned and disinfected if they become soiled with bodily fluids or other human effluents. As a result, standard rear seats in police vehicles may be removed and replaced with seats made from hard, damage resistant materials such as molded plastic or fiberglass. These seats are not only more damage resistant and easily disinfected, they also use less space inside the vehicle. Since the installation of a barrier between the front and rear seats may reduce space in the rear seat, the installation of specialized prisoner seating may provide greater room for rear seat occupants.

The installation of barriers and specialized seating systems may also require replacement of the safety belts originally supplied with the vehicle. The safety belts originally installed may be incompatible with the design of the prisoner transport seats. This may be because the prisoner transport seat places the occupant in a different position relative to the belts and belt anchorages installed during manufacture. The prisoner transport seat itself may, because of its geometry and design, change occupant dynamics in the event of a crash. In addition, barriers, which place an unyielding surface between the front and rear seats, may place a rear seat occupant in close proximity to a structure not in place when the original restraint system was designed. Under these circumstances, modification or replacement of the original belt system may be both necessary and desirable.

B. Petition for Rulemaking

Believing that the considerations governing the design of safety belts for use by prisoners being transported in police cars and other law enforcement vehicles are different from those applicable to safety belts for use by the general public, Laguna Manufacturing, Inc. submitted to NHTSA a petition for rulemaking requesting that Standard No. 208 be amended. Laguna sought an amendment that would provide greater flexibility to design safety belt systems that are better suited to limiting the movement of prisoners being transported in forward-facing rear outboard seating positions in these vehicles. That company argued that the requirement for an ELR is inappropriate for safety belt systems used by prisoners, since it allows too much slack, and thus too much freedom of movement, in non-emergency situations. This is because these retractors freely spool out webbing in those situations. Laguna stated that concerns about ELRs have led some police departments to refrain altogether from safety belting a prisoner and instead use a "hog tie restraint" and lay the prisoner down on the rear seat. As a result, the prisoner does not have any safety belt protection.

More specifically, Laguna requested that Standard No. 208 be amended to permit the use of a manual tightening system, instead of an ELR, for safety belts intended for use by prisoners. That company stated that such an amendment would afford the prisoner all of the crash protection provided by the standard for other occupants and only eliminate the necessity for providing a feature intended to provide comfort and convenience. Laguna argued that a prisoner who is handcuffed behind his/her back would be unable to fasten the safety belts. Therefore, in such a situation, a feature intended to provide comfort and convenience would not make the occupant more likely to fasten the safety belt. Laguna also noted that existing requirements in Standard No. 208 make the use of belts which fasten adjacent to the side of the vehicle, rather than near the center, difficult. Laguna argued that such belts would be desirable for police use. The company indicated that belts that fasten on the outside may be connected by an officer without requiring that the officer lean over or across a prisoner, thereby reducing the risk of injury to that officer by a violent prisoner.

In support of its petition, Laguna provided information about a special rear seat and safety belt system it has designed for police cars. The design includes two outboard integral lap and shoulder belt systems which use the same anchor point locations as conventional belt systems in the forward-facing rear outboard seats in current cars.

However, there are several significant differences between the Laguna belt system and a conventional safety belt system. First, the Laguna system includes a manual belt tightening system instead of an ELR. Second, the Laguna system uses two buckles instead of one. Third, the Laguna system reverses the permanent attachment points and the buckling points. The Laguna system is permanently attached at the anchorage where a conventional system is buckled and is buckled at the anchorages where the conventional system is permanently attached. The ends of the lap and shoulder belt portions of the conventional safety belt system are permanently attached to the outboard anchorages. The end of the lap

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belt portion is permanently attached to the lower outboard anchorage and the end of shoulder belt portion is permanently attached to the upper outboard anchorage. The buckle is mounted at the anchorage near the center of the vehicle. As noted above, the permanent attachment points and buckling points are reversed for the Laguna system. The middle of the Laguna belt is permanently anchored at the anchorage near the center of the vehicle. The end of the lap belt portion buckles at the lower outboard anchorage and the end of the shoulder belt buckles at the upper outboard anchorage. When the belt is not in use, magnets attached to the lap and the shoulder belt portions of the Laguna belt are used to attach them to the steel safety cage used to separate the front and rear seats in police vehicles.

C. Notice of Proposed Rulemaking

After considering the issues raised by Laguna, NHTSA published a Notice of Proposed Rulemaking (NPRM) on June 13, 1995 (60 FR 31132) proposing that Standard No. 208 be amended to provide more flexibility with respect to the design and performance of safety belts installed at forward-facing rear outboard seating positions of law enforcement vehicles. The agency proposed two amendments: (1) That a manual tightening system, instead of an ELR, be permitted for those belts in law enforcement vehicles and (2) that safety belts installed at forward-facing rear outboard seating positions of these vehicles be excluded from a requirement that lap and shoulder belts must release at a single point. The agency also requested comments on requiring a warning label advising users of the rear seats that the belts must be tightened manually to provide a proper fit.

D. Public Comments

Comments were received in response to the June 13, 1995 NPRM from one prisoner seating manufacturer (AEDEC), fourteen law enforcement organizations, the Wisconsin Department of Transportation, the Chrysler Corporation and the Automotive Occupant Restraints Council (AORC). All but one of these commenters agreed with the agency's proposal to modify safety belt requirements for forward-facing rear outboard seating positions in law enforcement vehicles. In response to the agency's request for comments on labels, six commenters recommended that some type of label should be visible to non-prisoner occupants in the rear seating positions to remind them to manually tighten safety belts that are not equipped with retractors. The remaining commenters either opposed labeling or offered no comment.

The affirmative commenters generally agreed with the modifications presented in the NPRM. Three law enforcement organizations indicated that they transport prisoners in the front seat. One of these organizations recommended extending the applicability of the amendments to the front outboard passenger seating position. The Wisconsin Department of Transportation stated that the law enforcement agency should assume control of requiring re-installation of the original belts when a used law enforcement vehicle is sold to the general public. However, the Tennessee Department of Safety disagrees with requiring re-installation of the original belts. That Department claimed that re-installation could create a tremendous expense.

One commenter, AEDEC International Inc. (a prisoner safety seat manufacturer) strongly opposed the NPRM. AEDEC stated its concern that proposed changes in the requirements would inadvertently and unnecessarily diminish existing protection for prisoners found in Standard No. 208. AEDEC argued that the idea of the restraint belt originating from the center of the seat and extending to the outboard side of the seating position is old technology and had been long discarded for more workable arrangements similar to its own system, which uses a shoulder belt, but not a lap belt. As is the case with the system described by Laguna in its petition, the AEDEC system does not meet Standard No. 208. AEDEC also indicated that the proposals in the NPRM were narrow in scope and could be construed to be product specific, exclude competitive products and endorse outdated technology. AEDEC also stated that the proposed changes overlooked hazards to handcuffed prisoners seated in a conventional fashion. The company noted that seated prisoner restrained in the manner proposed by the amendments would have the handcuff of the prisoner's rearwardly cuffed hands exposed to the hard fiberglass seat. Prisoners seated in this fashion have, according to AEDEC, regularly sustained damage to the wrist. AEDEC recommended a two-year innovation period that would grant greater latitude to the law enforcement community in their use of rear seat prisoner restraints as well as an in-depth study of prisoner seating and restraints. If such a study is not undertaken, AEDEC urged that amendments be adopted allowing use of a retractor or a manual adjusting device or a combination of the two. In addition, AEDEC advocated allowance of a belt assembly consisting of a shoulder belt only and stated that consideration be given to measures to retard lateral movement of prisoners and provide relief for the pressure of the handcuff against the wrist.

II. Analysis of Public Comments

As noted above, AEDEC offered several comments voicing concern about the proposal contained in the NPRM. The company argued that the proposed amendments both endorsed outdated technology and were design specific. While AEDEC did not provide specific information on how adoption of the proposed rule embraced the use of outdated technology, NHTSA has concluded that the benefits of allowing greater design flexibility for prisoner safety belts outweigh any disadvantages. Elimination of the requirement that safety belts have retractors and allowing the use of manual adjusters could be said to be a technological step backward in the context of ordinary passenger cars. However, in the case of prisoner transport, a handcuffed occupant is unable to fasten a belt and would have to have a safety belt fastened and adjusted by another person. The handcuffed occupant is not going to be deterred from using a safety belt because it must be manually adjusted or must be fastened in two places. Similarly, accessibility of the latch mechanism is of lesser concern than is the case in other vehicles because the latch location is not as critical to the occupant's use of the safety belt. AEDEC also contended that the proposed rule was unduly design specific and would limit competing products and systems. NHTSA notes that the proposal and the final rule both allow the use of either manual adjustment or retractors on safety belts for police vehicles. In addition, the final rule also allows different latch designs to be used. NHTSA has concluded that this provides manufacturers with greater flexibility, not less, and is certainly less design specific than previous requirements.

AEDEC also contends that the proposed amendments, which retain existing requirements for Type 2 belts rather than allowing the use of a shoulder belt without a lap belt (a design used in AEDEC's product), are also design specific, favor the Laguna design, and increase the risk of handcuff induced injuries to seated prisoners. NHTSA has concluded that employment of a shoulder belt alone, rather than a lap and shoulder belt, might very well increase the risk of injury to seated

prisoners in the event of a crash. Prisoner transport seats are generally hard and unyielding. In comparison to upholstered seats, these seats increase the chance that an occupant may move both laterally and forward (i.e., submarining) in the event of a crash. Given the fact that an occupant moving forward is likely to contact the hard and stiff barrier between the front and rear seats, NHTSA concludes that elimination of the lap belt requirement would result in an increased risk of injury. While retention of the lap belt requirement may favor designs employing such belts, the agency concludes that such designs decrease the risk of injuries in the event of crash.

AEDEC also raised concerns regarding an injury mechanism known as handcuff neuropathy. Handcuff neuropathy apparently occurs when handcuffs are tightened to an extent that the peripheral nerves of the wrist are damaged. AEDEC argued that safety belts that hold a prisoner tightly against a rigid seatback when the prisoner's hands are secured behind his back by handcuffs may result in an increased risk of handcuff neuropathy. The agency has concluded, however, that the risk of handcuff neuropathy may not be properly addressed by safety belt design. Review of medical literature submitted by AEDEC indicates that handcuff neuropathy results from over-tightening of handcuffs rather than the use of safety belts to restrain a handcuffed prisoner in a vehicle. The agency also concludes that countermeasures for any such risk may be employed without requiring or allowing loose fitting safety belts. AEDEC itself has attempted to address this concern by molding the hard plastic seat of its prisoner transport system with recesses for the prisoner's arms.

AEDEC also urged the agency to conduct a two year study of prisoner restraints and transport and consider the adoption of a separate safety standard for prisoner restraints. NHTSA notes that such a study and the promulgation of an entirely new safety standard, are well beyond the scope of the proposal contained in the NPRM. The agency does, however, agree with AEDEC's suggestion that in lieu of conducting a study of prisoner transport restraint systems that manufacturers be given an opportunity to evaluate new designs. The amendments NHTSA is adopting in this final rule will provide manufacturers with an opportunity to innovate.

Six commenters, (Rhode Island State Police, Missouri State Highway Patrol, Pennsylvania State Police, Washington State Patrol, Tennessee Department of Safety, and the Illinois State Police), advocated that the agency require a warning label advising users of a rear outboard seat equipped with a manually adjusted belt that the belts must be tightened after they are fastened. The agency concurs with any reasonable measure that will promote belt use. NHTSA has concluded in this instance, however, that such warning labels would be superfluous. Prisoners being transported are regularly restrained for their own protection and the protection of the officers transporting them. In the case of non-prisoners who use the seating systems, NHTSA observes that one commenter indicated that such labels would not be necessary since proper operation of the belt systems could be addressed through internal policies and training. NHTSA has concluded that in those cases where belts used for prisoner transport are not equipped with retractors, the characteristics of these belts, which will differ markedly from standard safety belts, will be obvious to non-prisoner occupants. In view of these circumstances, the agency concludes that requiring a warning label for rear seat passengers, advising them to manually tighten belts equipped with manual adjusters, is unnecessary.

Two commenters, the Wisconsin Department of Transportation (DOT) and the Tennessee Department of Safety, took differing positions on whether law enforcement agencies should be required to re-install the original equipment belts prior to sale of a law enforcement vehicle. Wisconsin DOT argued that such re-installation should be required, while the Tennessee Department of Safety disagrees with requiring re-installation of the original belts. NHTSA strongly believes that any law enforcement vehicle should have its original restraint system re-installed prior to sale for civilian use. However, the agency does not have the authority to require law enforcement agencies to re-install the original restraint system.

III. Final Rule

As noted above, with the adoption of this final rule, NHTSA is amending Standard No. 208 as it applies to law enforcement vehicles to permit safety belts in such vehicles to be equipped with manual adjustment devices instead of emergency locking retractors, and excluding them from requirements for the accessibility of belt latch plates, the simultaneous release of the lap and shoulder belt portions of a lap and shoulder belt, and the release of the latch mechanism at a single point. The amendments will enhance safety for both law enforcement officers and prisoners. NHTSA believes that a restrained prisoner should be afforded the same or similar crash protection as non-prisoners. Modified seating and belt systems can increase law enforcement officer safety by reducing the need to reach across the prisoner to fasten the safety belt. These seating and belt systems will increase belt usage for prisoners.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be "non-significant" under the Department of Transportation's regulatory policies and procedures. The amendments will not impose any new requirements but simply remove a restriction. There would be slight cost savings, on the order of $5.00 or less per belt system, associated with not being required to provide an emergency locking retractor. For the Laguna system, these cost savings would be offset by the costs associated with some of the special features of its belt system, i.e., the extra buckle and the magnets. NHTSA notes, however, that these special features would not be required by the standard. Therefore, the impacts of the amendments will be so minor that a full regulatory evaluation is not required.

B. Regulatory Flexibility Act

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. The final rule primarily affects motor vehicle manufacturers, since the majority of NHTSA Federal Motor Vehicle Safety Standards apply to motor vehicles rather than to motor vehicle equipment. Almost all motor vehicle manufacturers do not qualify as small businesses.

The Small Business Administration's regulations define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)) SBA's size standards are organized according to Standard Industrial Classification Codes (SIC). SIC Code 3714 "Motor Vehicle Parts and Accessories" has a small business size standard of 750 employees or fewer.

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The agency notes that there are several manufacturers of equipment for police and emergency vehicles with fewer than 750 employees. The principal impact of the amendments contained in this final rule is to allow the installation of specialized prisoner restraint systems in emergency vehicles prior to the sale of the vehicle to the first purchaser for purposes other than resale. This provides the opportunity for the manufacturers to sell these systems to vehicle manufacturers or dealers rather than directly to end users. As the rule does not impose any new burdens on manufacturers of prisoner restraint systems and allows greater opportunities, the economic effect for these small businesses would be beneficial.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this rule.

D. National Environmental Policy Act

NHTSA has also analyzed this rule under the National Environmental Policy Act and determined that it does not have a significant impact on the human environment.

E. Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that the rule does not have significant federalism implications to warrant the preparation of a Federalism Assessment.

F. Civil Justice Reform

This rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 of title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.208 is amended by revising sections S7, S7.1.1.2, S7.1.1.3 and S7.2 to read as follows:

§ 571.208 Standard No. 208, Occupant Crash Protection.

* * * * *

S7. Seat belt assembly requirements. As used in this section, a law enforcement vehicle means any vehicle manufactured primarily for use by the United States or by a State or local government for police or other law enforcement purposes.

* * * * *

S7.1.1.2 (a) A seat belt assembly installed in a motor vehicle other than a forward control vehicle at any designated seating position other than the outboard positions of the front and second seats shall adjust either by a retractor as specified in S7.1.1 or by a manual adjusting device that conforms to § 571.209.

(b) A seat belt assembly installed in a forward control vehicle at any designated seating position other than the front outboard seating positions shall adjust either by a retractor as specified in S7.1.1 or by a manual adjusting device that conforms to § 571.209.

(c) A seat belt assembly installed in a forward-facing rear outboard seating position in a law enforcement vehicle shall adjust either by a retractor as specified in S7.1.1 or by a manual adjusting device that conforms to § 571.209.

S7.1.1.3 A Type 1 lap belt or the lap belt portion of any Type 2 seat belt assembly installed at any forward-facing outboard designated seating position of a vehicle with a gross vehicle weight rating of 10,000 pounds or less to comply with a requirement of this standard, except walk-in van-type vehicles and school buses, and except in rear seating positions in law enforcement vehicles, shall meet the requirements of S7.1 by means of an emergency locking retractor that conforms to Standard No. 209 (49 CFR 571.209).

* * * * *

S7.2 Latch mechanism. Except as provided in S7.2(e), each seat belt assembly installed in any vehicle shall have a latch mechanism that complies with the requirements specified in S7.2(a) through (d).

(a) The components of the latch mechanism shall be accessible to a seated occupant in both the stowed and operational positions;

(b) The latch mechanism shall release both the upper torso restraint and the lap belt simultaneously, if the assembly has a lap belt and an upper torso restraint that require unlatching for release of the occupant;

(c) The latch mechanism shall release at a single point; and;

(d) The latch mechanism shall release by a pushbutton action.

(e) The requirements of S7.2 do not apply to any automatic belt assembly. The requirements specified in S7.2(a) through (c) do not apply to any safety belt assembly installed at a forward-facing rear outboard seating position in a law enforcement vehicle.

* * * * *

Issued on: January 20, 1998.

Ricardo Martinez,

Administrator.

[FR Doc. 98–1785 Filed 1–23–98; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register

Vol. 63, No. 16

Monday, January 26, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part(s) 1001, 1002, 1004, 1005, 1006, 1007, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1106, 1124, 1126, 1131, 1134, 1135, 1137, 1138, and 1139.

[Docket No. AO–14–A68, et al.; DA–98–01]

Milk in the New England and Other Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR part	Marketing area	AO Nos.
1001	New England	AO–14–A68
1002	New York-New Jersey	AO–71–A83
1004	Middle Atlantic	AO–160–A72
1005	Carolina	AO–388–A10
1006	Upper Florida	AO–356–A33
1007	Southeast	AO–366–A39
1012	Tampa Bay	AO–347–A36
1013	Southeastern Florida	AO–286–A43
1030	Chicago Regional	AO–361–A33
1032	Southern Illinois-Eastern Missouri	AO–313–A42
1033	Ohio Valley	AO–166–A66
1036	Eastern Ohio-Western Pennsylvania	AO–179–A60
1040	Southern Michigan	AO–225–A47
1044	Michigan Upper Peninsula	AO–299–A30
1046	Louisville-Lexington-Evansville	AO–123–A68
1049	Indiana	AO–319–A43
1050	Central Illinois	AO–355–A30
1064	Greater Kansas City	AO–23–A63
1065	Nebraska-Western Iowa	AO–86–A52
1068	Upper Midwest	AO–178–A50
1076	Eastern South Dakota	AO–260–A34
1079	Iowa	AO–295–A46
1106	Southwest Plains	AO–210–A56
1124	Pacific Northwest	AO–368–A26
1126	Texas	AO–231–A64
1131	Central Arizona	AO–271–A34
1134	Western Colorado	AO–301–A25
1135	Southwestern Idaho-Eastern Oregon	AO–380–A16
1137	Eastern Colorado	AO–326–A29
1138	New Mexico-West Texas	AO–335–A40
1139	Great Basin	AO–309–A34

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: A public hearing is being held in response to industry requests to consider flooring the level of the basic formula price for the purpose of determining Class I and Class II prices through December 1998. Mid-America Dairymen, Inc., the proponent of the proposed amendment, has requested

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that this issue be handled on an emergency basis.

DATES: The hearing will convene at 9:30 a.m. on February 17, 1998.

ADDRESSES: The hearing will be held at the Jefferson Auditorium, South Agriculture Building, 1400 Independence Avenue, S.W., Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Division, Room 2971, South Building, P.O. Box 96456, Washington, D.C. 20090–6456, (202) 720–2357, e-mail address Connie_M_Brenner@usda.gov.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Jefferson Auditorium, South Agriculture Building, 1400 Independence Avenue S.W., Washington, D.C. 20250, beginning at 9:30 a.m., on Tuesday, February 17, 1998, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the New England and other marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed flooring of the basic formula price, with the proposed amendments set forth hereinafter, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders. In addition to considering the specific proposal submitted by Mid-America Dairymen, Inc. (now part of Dairy Farmers of America), testimony should be addressed as to whether the $13.50 level proposed or some alternative level would be more appropriate.

The proposed amendment, if adopted through December 1998, should be considered an interim action because the entire pricing structure of the Federal milk order program is under consideration as part of the Federal order reform process required by the 1996 Farm Bill.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to the proposal. Since this proposal will be heard on an urgent basis, it is necessary to provide interested parties with less than 15 days notice of the public hearing to ensure that the proposed amendments, if found to be appropriate, will be effective as soon as possible.

Initial Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of the proposed amendment on small entities and has prepared this initial regulatory flexibility analysis. The RFA provides that when preparing such analysis an agency shall address: the reasons, objectives, and legal basis for the anticipated proposed rule; the kind and number of small entities which would be affected; the projected recordkeeping, reporting, and other requirements; and federal rules which may duplicate, overlap, or conflict with the proposed rule. Finally, any significant alternatives to the proposal should be addressed. This initial regulatory flexibility analysis considers these points and the impact of this proposed regulation on small entities.

The cooperative association requesting the hearing observes that per capita milk production is declining in many states with the greatest declines in areas with high Class I utilization, that the number of dairy farms continues to decline at a rapid rate, and the milk-feed price relationships have dropped dramatically. The cooperative states that the price floor is needed to maintain productive capacity sufficient to meet current and anticipated future needs of milk for Class I and Class II uses.

After receiving a hearing request and determining that the proposed amendment would not violate the provisions of the Act and that the issues raised for consideration warrant a public hearing, AMS is authorized to hold a public hearing to consider adoption of the proposed amendment.

This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

USDA has identified as small businesses approximately 80,000 of the 83,000 dairy producers (farmers) that have their milk pooled under a Federal order. Thus, small businesses represent approximately 96 percent of the dairy farmers in the United States. On the processing side, there are over 1,200 plants associated with Federal orders, and of these plants, approximately 700 qualify as "small businesses," representing about 55 percent of the total.

During August 1997, there were 524 fully regulated handlers, 134 partially regulated handlers and 111 producer-handlers submitting reports under the Federal milk marketing order program. This volume of milk pooled under Federal orders represents 69 percent of all milk marketed in the U.S. and 72 percent of the milk of bottling quality (Grade A) sold in the country. Producer deliveries of milk used in Class I products (mainly fluid milk products) totaled 45.5 billion pounds—43.5 percent of total Federal order producer deliveries. More than 200 million Americans reside in Federal order marketing areas—77 percent of the total U.S. population.

In order to accomplish the goal of imposing no additional regulatory burdens on the industry, a review of the current reporting requirements was completed pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). In light of this review, it was determined that this proposed amendment would have little or no impact on reporting, recordkeeping, or other compliance requirements because these would remain identical to the current Federal order program. No new forms have been proposed, and no additional reporting would be necessary.

This notice does not require additional information collection that requires clearance by the OMB beyond the currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than industry average.

No other burdens are expected to fall upon the dairy industry as a result of overlapping Federal rules. This proposed rulemaking does not duplicate, overlap or conflict with any existing Federal rules.

To ensure that small businesses are not unduly or disproportionately burdened based on this proposed amendment, consideration was given to mitigating negative impacts. Flooring the BFP should not have any special impact on small handler entities. Handlers similarly located would be subject to the same minimum Class I prices, regardless of the size of their operations, and all handlers would be subject to the same minimum prices for Class II milk. Such handlers would also be subject to the same minimum prices to be paid to producers. These features of minimum pricing should not raise barriers to the ability of small handlers to compete in the marketplace. It is similarly expected that small producers would not experience any particular disadvantage to larger producers as a result of this proposed amendment.

Interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

Preliminary Cost-Benefit Analysis

To help fulfill the objectives of a Regulatory Impact Analysis, a preliminary cost-benefit analysis follows:

The BFP is used as the basis for establishing class prices paid by handlers for milk in all Federal order markets and varies month-to-month depending on market conditions for milk and milk products. The BFP is the average price paid for manufacturing grade (Grade B) milk in Minnesota and Wisconsin in the base month updated to the current month with a cheese-butter-nonfat dry milk product price formula. The Class I price is the BFP plus a Class I price differential that reflects the added value needed to attract milk to fluid milk processing plants, as well as the additional costs of producing and marketing milk for fluid use. As a result, Class I prices vary among markets, being generally higher in southern markets and lower in midwestern markets. The Class II price, like the Class I price, is based on the BFP with a differential of only thirty cents in all orders. The result of establishing a floor under the BFP for purposes of computing the Class I and II prices would be to maintain these prices at a level they otherwise might not reach.

Dairy producers are expected to fare about the same in 1998 as they did in 1997, according to recent estimates of the Dairy Interagency Commodity Estimates Committee (ICEC). The 1998 all-milk price was projected in November 1997 to be slightly lower than the 1997 all-milk price; $13.10 per hundredweight in 1998 compared with $13.35 in 1997. This preliminary analysis was based on the $13.10 estimate. However, the 1998 estimate was updated in January 1998 to $13.35. As a result, the actual impact of a floor under the BFP could be expected to be less than shown in this preliminary analysis. Further analysis will be based on more recent price estimates.

A BFP floor for computing Class I and II prices would apply only to the 70 percent of the milk marketed in the United States that is marketed under Federal milk orders. USDA's preliminary analysis indicated that flooring Class I and Class II prices with a $13.50 minimum BFP would increase the U.S. all-milk price by $0.40 to $0.50 per hundredweight. Prices to producers delivering to Federal order markets could increase by an average of $0.60 to $0.75 per hundredweight.

Producers delivering to markets with higher Class I use, such as the three Florida markets and the Southeast market, would benefit more (as much as $1.10–$1.30 per hundredweight) than those delivering to markets with lower Class I utilization. The attached table provides estimates of change in the all-milk prices for all Federal order markets, assuming BFP floors of $13.50 and $12.83 per hundredweight (the October 1997 BFP).

CHANGE IN THE ALL-MILK PRICE.—ALTERNATIVES FLOORING BFP AT $13.50 OR $12.83 FOR CLASS I AND CLASS II PRICING CALENDAR YEAR 1998

Marketing area	Change in all-milk price per hundredweight	
	$13.50 Floor	$12.83 Floor
New England	$0.20	$0.11
New York-New Jersey	.74	.40
Middle Atlantic	.81	.45
Carolina	1.28	.70
Louis.-Lex.-Evans	1.22	.67
Southeast	1.21	.66
Upper Florida	1.18	.64
Tampa Bay	1.28	.70
Southeastern Florida	1.30	.71
Michigan Upper Peninsula	1.13	.62
Southern Michigan	.90	.49
E. Ohio—W. Pennsylvania	.88	.48
Ohio Valley	1.14	.63
Indiana	1.20	.66
Chicago Regional	.29	.16
Upper Midwest	.26	.14
Iowa	.50	.27
Nebraska-Western Iowa	.64	.35
Eastern South Dakota	.93	.51
Central Illinois	1.09	.60
S. Illinois-E. Missouri	1.05	.57

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CHANGE IN THE ALL-MILK PRICE.—ALTERNATIVES FLOORING BFP AT $13.50 OR $12.83 FOR CLASS I AND CLASS II PRICING CALENDAR YEAR 1998—Continued

Marketing area	Change in all-milk price per hundredweight	
	$13.50 Floor	$12.83 Floor
Southwest Plains	.75	.41
Eastern Colorado	.72	.39
Greater Kansas City	1.10	.60
Texas	.89	.48
New Mexico-West Texas	.42	.23
Southwestern Idaho-E. Oregon	.11	.06
Great Basin	.60	.33
Western Colorado	1.23	.67
Central Arizona	.65	.35
Pacific Northwest	.42	.23
Federal Order Average	.65–.75	.35–.45

In addition to increasing income to dairy producers, adoption of a BFP floor would also result in increased prices of fluid milk products to consumers. Increased Class I milk prices would be reflected in retail prices for fluid milk, which may result in reduced per capita consumption and an increase in total consumer expenditures for dairy products.

Legislative and Background Requirements

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Request for Public Input

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with 6 copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Parts 1001 through 1139

Milk marketing orders.

The authority citation for 7 CFR Parts 1001 through 1139 continues to read as follows:

Authority: 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Mid-America Dairymen, Inc.:

Proposal No. 1: Through December 1998, amend the introductory text of § ____.51 of 7 CFR Parts 1001 through 1139 to read as follows:

§ ____.51 Basic formula price.

* * * For the purpose of computing the Class I and Class II prices, the resulting price shall be not less than $13.50.

* * * * *

Proposed by Dairy Programs, Agricultural Marketing Service:

Proposal No. 2: Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto, that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of each of the aforesaid marketing areas, or from the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, D.C. 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisionmaking process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture

Office of the Administrator, Agricultural Marketing Service

Office of the General Counsel

Dairy Programs, Agricultural Marketing Service (Washington office) and the Offices of all Market Administrators.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: January 21, 1998.

Enrique E. Figueroa,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 98–1813 Filed 1–23–98; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 54 and 79

[Docket No. 97–093–1]

RIN 0579–AA90

Interstate Movement of Sheep and Goats From States That Do Not Quarantine Scrapie Infected and Source Flocks

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We are soliciting public comment to help us develop options for potential changes to our regulations for the interstate movement of sheep and goats. We believe changes may be necessary to improve control and limit the spread of scrapie, a serious disease of sheep and goats. After evaluating public comment on the issues presented in this notice, we will determine whether proposing changes to our regulations is necessary.

DATES: Consideration will be given only to comments received on or before March 27, 1998.

ADDRESSES: Comments may be submitted as paper copies or through the World Wide Web. If you submit paper copies, please send an original and three copies of your comments to Docket No. 97–093–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–093–1. We encourage the submission of copies through the World Wide Web, since this both facilitates our analysis of the comments and allows us to make the text of comments available to the public via the Internet. The Web page address for comments on this proposed rule is http://www.aphis.usda.gov/ppd/scrapie. This Web page also contains copies of the proposed rule in several formats and links to related information. Please be sure to include your full name and organization in any comments you submit via the Web. If your Web comment is a duplicate of a paper copy you have submitted, please state this in the first line of your Web message. Both paper and Web comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph VanTiem, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737–1231, (301) 734–7716.

SUPPLEMENTARY INFORMATION:

Background

Scrapie is a degenerative and eventually fatal disease affecting the central nervous systems of sheep and goats. Its control is complicated because the disease often has an extremely long incubation period without clinical signs of disease, and because there is no validated live-animal test for the disease.

Scrapie is the prototype of the group of diseases known as the transmissible spongiform encephalopathies (TSEs). These diseases are caused by a transmissible agent which is yet to be fully characterized. TSEs share the following common characteristics:

- A prolonged incubation period of months or years;
- A progressive debilitating neurological illness that is always fatal;
- When examined by electron microscopy, detergent treated extracts of brain tissue from animals or humans affected by these diseases reveal the presence of scrapie associated fibrils;
- Pathological changes are confined to the central nervous system and include vacuolation, astrocytosis, and glyosis. Amyloid plaques may be seen, especially in mice and hamsters; and
- The transmissible agent elicits no detectable specific immune response in the host.

Several recent scientific findings are relevant to the understanding and control of scrapie. While there is still no validated live animal test for scrapie, a recent study conducted in The Netherlands (Schreuder *et al.*, 1996) indicates that immunohistochemical analysis of tonsil samples may be useful in detecting scrapie in sheep prior to the onset of clinical signs. The Animal and Plant Health Inspection Service (APHIS) is currently completing a pilot study to harvest various tissues (tonsil, head lymph nodes, and brain) from mature sheep at slaughter and then test them using immunohistochemistry to ascertain if the partially protease-resistant form of the prion protein (PrPsc—the protein associated with scrapie) may be routinely detected in the preclinical animal. If this proves to be an effective method of surveillance, it may prove useful as a screening tool and facilitate tracebacks to infected flocks.

In addition to the possibility that a validated live-animal test for scrapie may be developed, genetic studies have yielded a greater understanding of the role of specific genes in determining the incubation period of scrapie in sheep. However, there is still much to be determined about the role of genetics in scrapie susceptibility. A key question is whether certain genotypes fully prevent scrapie infection, or merely protect against clinical manifestation in an animal while possibly allowing the animal to serve as a carrier of scrapie.

While these advances may come to significantly affect the control of scrapie, current control programs rely largely on postmortem diagnosis of scrapie, traceback of animal movements, and certification of flocks' scrapie status based on monitoring the flock for scrapie over a period of years.

Current APHIS initiatives concerning scrapie include interstate movement regulations in 9 CFR part 79, which restrict the interstate movement of certain sheep and goats in order to help control the spread of scrapie, and the Voluntary Scrapie Flock Certification Program (the Voluntary Program), described in regulations in 9 CFR part 54 and in a program standards document entitled "Uniform Methods and Rules—Voluntary Scrapie Flock Certification" (UM&R), which is available at http://www.aphis.usda.gov/vs/scrapie/umr. A hard-copy of the UM&R may be obtained by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT.**

APHIS worked with industry to develop the Voluntary Program, under which participating flocks follow strict identification, recordkeeping and other requirements and may eventually be certified free from scrapie. If a flock that is participating in the Voluntary Program is identified as an infected flock or source flock, it is removed from the program until the flock completes a flock plan. The flock plan calls for an epidemiologic investigation to remove high-risk animals from the flock and includes other conditions, such as cleaning and disinfection of flock premises, educating flock personnel in techniques to recognize clinical signs of scrapie and control its spread, and maintaining records of animals in the flock.

The regulations in part 79 also restrict the interstate movement of scrapie-positive sheep and goats, and sheep and goats from scrapie infected and source flocks. The regulations impose minimal restrictions on the interstate movement

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of animals [1] under 1 year of age destined for slaughter and animals marked on the jaw with a 1-inch letter "S." Other animals from scrapie infected and source flocks may be moved interstate under requirements that limit the further spread of scrapie and make it feasible to trace back the movements of animals that are later diagnosed with scrapie. These requirements include:

- The owner of the flock or his or her agent has signed an agreement with the Administrator in which the owner of the flock or his or her agent agrees to comply with the requirements of 9 CFR 79.2 until the time the flock is no longer an infected flock or source flock.
- The owner of the flock or his or her agent shall immediately report to a State representative, APHIS representative, or an accredited veterinarian any animals in the flock exhibiting the following: weight loss despite retention of appetite; behavioral abnormalities; pruritus (itching); wool pulling; biting at legs or side; lip smacking; motor abnormalities such as incoordination, high stepping gait of forelimbs, bunny hop movement of rear legs, swaying of back end; increased sensitivity to noise and sudden movement; tremor, "star gazing," head pressing, recumbency, or other signs of neurological disease or chronic wasting illness. Such animals must not be removed from the flock without written permission of an APHIS representative or State representative.
- The owner of the flock or his or her agent shall identify all animals 1 year of age or over within the flock. All animals less than 1 year of age will be identified when a change of ownership occurs, with the exception of those moving within slaughter channels. The form of identification shall be an electronic implant, flank tattoo, or ear tattoo, providing a unique identification number that may be applied by the owner of the flock or his or her agent in accordance with instructions by an APHIS representative, State representative, or an accredited veterinarian.
- The owner of the flock or his or her agent shall maintain, and keep for a minimum of 5 years after an animal dies or is otherwise removed from a flock, the following records for each animal in the flock: The animal's individual identification number from its electronic implant, flank tattoo, or ear tattoo, and any secondary form of identification the owner of the flock may choose to maintain; sex; breed; date of acquisition and source (previous flock), if the animal was not born in the flock; and disposition, including the date and cause of death, if known, or date of removal from the flock.
- The owner of the flock or his or her agent shall allow breed associations and registries, livestock markets, and packers to disclose records to APHIS representatives or State representatives, to be used to trace source flocks and expose animals.
- The owner of the flock or his or her agent shall make animals in the flock and records required to be kept under paragraph (a)(2)(iv) of 9 CFR 79.2 available for inspection by APHIS representatives and State representatives, given reasonable prior notice.
- Upon request of an APHIS representative, the owner of the flock or his or her agent will have an accredited veterinarian collect and submit tissues from animals reported in accordance with paragraph (a)(2)(ii) of 9 CFR 79.2 to a laboratory designated by an APHIS representative.

However, part 79 applies only when flock owners wish to move sheep interstate. Part 79 does not restrict the *intrastate* movement of animals from infected and source flocks, and such movement may spread scrapie to other animals in a State. If these other animals, which are not subject to the restrictions in part 79, then move interstate, scrapie could be spread interstate.

Therefore, there is a risk that scrapie infection that originated in an infected or source flock could spread interstate despite part 79. This risk is very low where State authorities have imposed quarantines on infected and source flocks that keep animals in these flocks from contact with other animals. The risk is higher in States that do not quarantine scrapie infected and source flocks.

APHIS does not have statutory authority to require intrastate movement restrictions for sheep and goats (unless the Secretary has declared an extraordinary emergency). However, APHIS does have statutory authority to restrict the interstate movement of animals from a State if intrastate movement practices result in a threat of spreading disease interstate. We are seeking public input on whether and how APHIS should restrict the interstate movement of animals from States that do not quarantine infected and source flocks.

We are examining current interstate movement restrictions both to ensure effective domestic control of scrapie and to ensure that our domestic interstate restrictions are consistent with our requirements for importing sheep and goats. The World Trade Organization principles of "national treatment" and "transparency" state that regulations shall be applied without discrimination between domestic and imported consignments, and that countries shall make available to trading partners the rationale of their requirements. Our current regulations for importing sheep and goats use equivalency with the Voluntary Program to qualify certain animals for import (see 9 CFR 93.435), and we wish to ensure consistency between our import requirements and our interstate movement requirements.

We believe the interstate movement restrictions and the definition of "flock plan" in part 79 provide a good model for how an infected or source flock may be effectively quarantined and managed until release from quarantine is justified. One possible approach to controlling the intrastate contact risks described above would be to amend part 79 to prohibit or restrict movement of animals from a State unless the State quarantines infected and source flocks in a manner that is equivalent to the methods employed by part 79. However, commenters may well suggest other approaches to revising part 79 to address the risks of intrastate movements from infected and source flocks.

In particular, we ask commenters to address the following areas that apply to possible State quarantine standards, the alignment of Federal interstate movement restrictions with State standards, and Voluntary Program standards:

- Should APHIS further restrict interstate movement of animals from States that do not consider scrapie a reportable disease or do not quarantine infected flocks or source flocks? If so, should restrictions focus on high-risk animals or on broader classes of animals? (A high-risk animal is defined in 9 CFR 79.1. In short, a high-risk animal is: (1) An animal that is the progeny of a scrapie-positive dam; (2) an animal born in the same flock during the same lambing season as progeny of a scrapie-positive dam, with certain exceptions outlined in the definition; or (3) an animal born during the same lambing season as a scrapie-positive ewe or ram in a source flock or trace flock.)
- Currently, part 79 does not restrict interstate movement of high-risk animals from flocks that are not infected flocks or are not source flocks. Should APHIS restrict such movements, and if so, how?
- Should APHIS define how a State must conduct a quarantine in order to avoid further restrictions on interstate movement of animals from that State? If so, how should APHIS describe the necessary quarantine conditions (e.g., imposition of the quarantine; movement of animals into and from quarantined flocks; duration of the quarantine; identification requirements for quarantined animals, development and use of a flock plan; procedures for release from quarantine and follow-up monitoring)?
- Should any of the definitions in the interstate movement regulations in part 79 or the Voluntary Program in part 54 be revised to better address this problem (e.g., the definitions of source flock, trace flock, and high-risk animal)?
- Should there be additional permit or official identification requirements for the interstate movement of any classes of sheep and goats to allow for a more effective national program for surveillance for scrapie and traceback of scrapie-positive animals?
- Currently APHIS makes the following information available on its World Wide Web site: The identity of scrapie infected flocks and source flocks designated under part 79, and the identity and certification status of flocks participating in the Voluntary Program. Should APHIS continue to provide this information on the Web?
- To assess the impacts of options regarding the interstate movement of sheep and goats, baseline estimates of costs and benefits are needed. What are the costs and benefits of the current system of part 79, State quarantine standards, and the Voluntary Program? For example, what costs are involved in complying with State quarantine programs and how large are these costs? Similarly, what are the costs to a flock owner who participates in the Voluntary Program?

We invite comments on these topics. We also welcome ideas as to different approaches we might take to improve our scrapie programs. In responding to the questions posed in this notice, commenters are urged to include economic reasons and data supporting their positions.

Whenever possible, please refer to specific terms, definitions, or procedures contained in the current regulations in 9 CFR parts 54 and 79, and in the program standards UM&R (available at http://www.aphis.usda.gov/vs/scrapie/umr). A hard-copy of the program standards UM&R may be obtained by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**. These resources should provide a common context for discussing suggested changes. You may also wish to refer to the Scrapie Flock Status Report on the APHIS Web, which lists the certification status of flocks in the Voluntary Program and identifies known infected and source flocks nationwide. This report is at http://www.aphis.usda.gov/vs/scrapie/status.html.

Authority: 21 U.S.C. 111–114, 114a, 115, 117, 120, 121, 123–126, 134a–134h; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 21st day of January 1998.

Thomas E. Walton,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–1810 Filed 1–21–98; 4:40 pm]

BILLING CODE 3410–34–M

[1] Throughout this document, when the term "animals" is used, it refers only to sheep and goats.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AE26

Industry Codes and Standards: Amended Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Extension of public comment period on proposed rule.

SUMMARY: On December 3, 1997, (62 FR 63892) the NRC published for public comment a proposed rule to amend its regulations to incorporate by reference later editions and addenda of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code. The comment period for this proposed rule was to have expired on March 3, 1998. The Nuclear Energy Institute (NEI), on behalf of the nuclear energy industry, requested an extension of the comment period for the proposed revision. NEI stated that the comprehensive nature of this proposed rule will require a significant effort to collect and review comments from members of the industry. The NRC agrees that the proposed rule constitutes a significant revision to 10 CFR 50.55a. In order to ensure that the NRC receives comments from the parties most likely to be affected by the revision, the NRC has decided to extend the public comment period for an additional 30 days. The extended comment period now expires on April 3, 1998.

DATES: The comment period has been extended and now expires April 3, 1998. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. ATTN: Rulemaking and Adjudications Staff. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland, 20852, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Single copies of this proposed rulemaking may be obtained by written request or telefax to 301–415–2260 or from Frank C. Cherny, Division of Engineering Technology, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–6786, or Wallace E. Norris, Division of Engineering Technology, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–6796.

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents may also be viewed and downloaded via the interactive rulemaking website as established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Frank C. Cherny, 301–415–6786.

Dated at Rockville, Maryland, this 14th day of January, 1998.

For the Nuclear Regulatory Commission.

L. Joseph Callan,

Executive Director for Operations.

[FR Doc. 98–1750 Filed 1–23–98; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASO–31]

Proposed Amendment to Class E Airspace; Daytona Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E airspace at Daytona beach, FL. A Global Positioning System (GPS) Runway (RWY) 6 (Special) Standard Instrument Approach Procedure (SIAP) has been developed for Spruce Creek Airport. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Spruce Creek Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

DATES: Comments must be received on or before February 25, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 97–ASO–31, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337; telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Airspace Branch, Air

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Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–ASO–31." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to amend Class E airspace at Daytona Beach, FL. A GPS RWY 6 (Special) SIAP has been developed for Spruce Creek Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Spruce Creek Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with the publication of the SIAP. This amendment would also reflect the current name of the Daytona Beach Airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS, AIRWAYS, ROUTES, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO FL E5 Daytona Beach, FL [Revised]

Daytona Beach International Airport, FL
(Lat. 29°10′52″ N, long. 81°03′21″ W)
Spruce Creek Airport, FL
(Lat. 29°04′49″ N, long. 81°02′48″ W)
Ormond Beach Municipal Airport, FL
(Lat. 29°18′04″ N, long. 81°06′50″ W)
Ormond Beach VORTAC
(Lat. 29°18′12″ N, long. 81°06′46″ W)

That airspace extending upward from 700 feet or more above the surface of the earth within a 10-mile radius of Daytona Beach International Airport, and within a 6.4-mile radius of Spruce Creek Airport, and within a 6.4-mile radius of Ormond Beach Municipal Airport, and within 3.2 miles each side of the Ormond Beach VORTAC 256° radial extending from the 6.4-mile radius to 7 miles west of the VORTAC.

* * * * *

Issued in College Park, Georgia, on December 18, 1997.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–1746 Filed 1–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–16]

Proposed Amendment to Class E Airspace; McCall, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the McCall, ID, Class E airspace. If amended, the proposal would provide the additional airspace necessary to fully encompass two new Standard Instrument Approach Procedures (SIAP) at McCall Airport, McCall, ID.

DATES: Comments must be received on or before March 12, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 97–ANM–16, 1601 Lind Avenue S.W., Renton, Washington 98055–4056.

The official docket may be examined in the Office of the Regional Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 97–ANM–16, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–ANM–16." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue S.W., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) to amend Class E airspace at McCall, ID. This amendment is necessary in order to fully contain a Global Positioning System (GPS) and a Non-directional Radio Beacon (NDB) SIAP within controlled airspace. The existing Class E airspace requires modification to fully incorporate the holding procedures for the new SIAP's. The modifications will add Class E airspace of approximately a 45 mile extension to the west, a 17 mile extension to the south, and smaller extensions to the north and east.

The area would be depicted on aeronautical charts for pilot reference The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified small entities under the criteria of the Regulatory Flexibility Act, that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM ID E5 McCall, ID [Revised]

McCall Airport, ID
(Lat. 44°53′20″ N, long. 116°06′05″ W)
McCall NDB
(Lat. 44°48′20″ N, long. 116°06′08″ W)

That airspace extending upward from 700 feet above the surface within 4 miles west and 8 miles east of the 169° and 349° bearings from the McCall NDB extending from 16 miles south to 11 miles north of the NDB; that airspace extending upward from 1,200 feet above the surface within a line from lat. 44°12′00″ N, long. 116°06′00″ W; to lat. 45°05′00″ N, long. 117°28′00″ W; to lat. 45°15′00″ N, long. 117°19′00″ W; to lat. 45°05′30″ N, long. 115°52′00″ W; to lat. 44°16′00″ N, long. 115°40′00″ W; thence to the point of beginning, excluding Federal airways, La Grande and Baker City, OR, and Boise, ID, Class E airspace areas.

* * * * *

Issued in Seattle, Washington, on December 17, 1997.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–1745 Filed 1–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–15]

Proposed Revocation of Class E Airspace; Blue Mesa, CO; and Establishment of Class E Airspace; Gunnison, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

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ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revoke the Class E airspace area at Blue Mesa, CO, and to establish a larger Class E airspace area in its place which would be designated the Gunnison, CO, Class E airspace area. A recent airspace review disclosed that the Blue Mesa Class E airspace area is incorrectly named for a navigational aid rather than for the airport served by the airspace. This is contrary to FAA policy. This proposal would, in effect, rename the Class E airspace area. This proposal, if adopted, would also increase the size of the Class E airspace area. The additional controlled airspace is necessary to accommodate a new Global Positioning System (GPS) standard instrument approach procedure (SIAP) serving the Gunnison County Airport, Gunnison, CO.

DATES: Comments must be received on or before March 12, 1998.

ADDRESSES: Send comments on the proposal to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 97–ANM–15, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 97–ANM–15, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–ANM–15." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) to establish Class E airspace at Gunnison, CO. This amendment proposes to remove the existing Blue Mesa, CO, Class E airspace while establishing a larger and correctly named Gunnison, CO, Class E airspace. The establishment of the Gunnison, CO, airspace would add a 2 nautical mile 700-foot Class E area extension to the northeast, and modify 1200-foot Class E airspace to the south and the east of the existing Blue Mesa, CO, airspace. The extensions are necessary to meet the airspace criteria for aircraft transitioning between the terminal and en route environments, and to fully encompass a new GPS–B SIAP to the Gunnison County Airport. The FAA establishes Class E airspace extending upward from 700 feet above ground level (AGL) where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is to provide safe and efficient use of the navigable airspace and to promote safe flight operations under IFR at the Gunnison County Airport, and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS, AIRWAYS, ROUTES, AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Blue Mesa, CO [Removed]

* * * * *

ANM CO E5 Gunnison, CO [New]

Gunnison County Airport, CO
(Lat. 38°32'02" N, long. 106°55'59" W)

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 38°11'25" N, long. 107°12'30" W; to lat. 38°21'25" N, long. 107°25'00" W; to lat. 38°24'30" N, long. 107°21'00" W; to lat. 38°33'30" N, long. 107°20'00" W; to lat. 38°31'25" N, long. 107°12'30" W; to lat. 38°42'00" N, long. 106°59'00" W; to lat. 38°32'10" N, long. 106°46'00" W; thence to point of beginning; that airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at lat. 37°59'30" N, long. 107°16'00" W; to lat. 38°17'45" N, long. 107°39'00" W; to lat. 38°45'40" N, long. 106°54'00" W; to lat. 38°16'40" N, long. 106°08'00" W; to lat. 38°09'00" N, long. 106°16'00" W; to lat. 38°18'30" N, long. 106°47'00" W; thence to point of beginning.

* * * * *

Issued in Seattle, Washington, on November 24, 1997.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–1744 Filed 1–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209322–82]

RIN 1545–AU99

Return of Partnership Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking; notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document withdraws the notice of proposed rulemaking relating to partnership returns. The proposed regulations were published in the **Federal Register** on January 23, 1986. These regulations revise the partnership filing requirement to reflect changes to the law made by the Taxpayer Relief Act of 1997 (TRA). All partnerships required to file partnership returns, including certain foreign partnerships, are affected by these regulations. This document also contains a notice of a public hearing on the proposed regulations.

DATES: Written comments must be received by April 27, 1998. Requests to speak and outlines of oral comments to be discussed at the public hearing scheduled for May 19, 1998, at 10 a.m. must be received by April 28, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–209322–82), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–209322–82), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at: http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in the IRS Auditorium, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Martin Schaffer or Christopher Kelley, 202–622–3080; concerning foreign partnerships, Ronald Gootzeit, 202–622–3860; concerning submissions and the hearing, Michael Slaughter, 202–622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC, 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information must be received by March 27, 1998. Comments are specifically requested on:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of the capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 1.6031(a)–1. This information is required to enable the IRS to verify that a taxpayer is reporting the correct amount of income or gain or claiming the correct amount of losses, deductions, or credits from that taxpayer's interest in the partnership. The collection of information is mandatory. The likely respondents are businesses and other for-profit institutions.

The burden is reflected in the burden of Form 1065.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 6031 and 6063 of the Internal Revenue Code of 1986 (Code). These amendments are designed, in part, to reflect changes made to section 6031 by section 1141 of TRA, Public Law 105–34, 111 Stat. 788 (1997). Section 6031 contains rules regarding the filing of returns of partnership income (partnership returns).

On January 23, 1986, the IRS published in the **Federal Register** (51 FR 3075) proposed regulations under section 6031 of the Internal Revenue Code (existing proposed regulations). Section 1.6031–1 of the existing proposed regulations provides rules that, if finalized, would implement the partnership filing requirements of section 404 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Public Law 97–248, 96 Stat. 669 (1982). Because section 1141 of TRA supersedes the partnership filing requirements of

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section 404 of TEFRA, the IRS and Treasury consider it appropriate to reissue proposed regulations reflecting recent changes to the law, while giving taxpayers another opportunity to comment. Accordingly, this document withdraws § 1.6031–1 of the existing proposed regulations published in the **Federal Register** on January 23, 1986 (51 FR 3075). A partnership that has followed the rules contained in § 1.6031–1 of the existing final regulations for all taxable years prior to the taxable year for which these new regulations will become effective will be treated as fully complying with the partnership filing requirements with respect to such taxable years.

Section 6063 provides that a partnership return shall be signed by any one of the partners. The proposed regulations clarify who must sign a partnership return filed solely for the purpose of making certain partnership-level elections.

Explanation of Provisions

Filing Requirement

Section 6031(a) requires every partnership to file a partnership return. New section 6031(e), as added by section 1141 of TRA, exempts certain foreign partnerships from the filing requirement of section 6031(a). Section 6031(e) provides that a foreign partnership is not required to file a return for a tax year unless during that year it derives gross income from sources within the United States or has gross income that is effectively connected with the conduct of a trade or business within the United States. Further exceptions to the filing requirement for foreign partnerships may be provided by regulation.

The proposed regulations separately describe the filing requirements for domestic and foreign partnerships. In accordance with section 6031(a), the proposed regulations provide that, except in certain limited circumstances, every domestic partnership must file a partnership return.

Under section 6031 and the proposed regulations, a foreign partnership generally must file a partnership return only if it has either United States source income or income effectively connected (or treated as effectively connected) with the conduct of a trade or business within the United States. However, under the proposed regulations, a foreign partnership that has no gross income that is effectively connected with the conduct of a trade or business within the United States, and that would be required to file a partnership return only because it has gross income derived from sources within the United States, will be exempt from the requirement to file a partnership return if (i) no United States person has a direct or indirect interest in the partnership; (ii) the gross income derived from sources within the United States is either fixed or determinable annual or periodical income described in § 1.1441–2(b) or other amounts subject to withholding described in § 1.1441–2(c); (iii) Forms 1042 and 1042–S are filed with respect to all such gross income in accordance with § 1.1461–1 (b) and (c); and (iv) the tax liability of the partners with respect to such gross income has been fully satisfied by the withholding of tax at the source, if applicable, under chapter 3. The foreign partnership's obligation to file Forms 1042 and 1042–S is generally eliminated by the regulations under section 1461 published in the **Federal Register** on October 14, 1997 (62 FR 53387) if those returns are filed by the withholding agent (or agents) making the payments of United States source income to the partnership and the partners' tax liability with respect to United States source income has been fully satisfied by withholding. See § 1.1461–1 (b)(2) and (c)(4). The IRS and Treasury invite comments addressing other ways to reduce duplicative information filing.

Any domestic or foreign partnership that elects to be excluded from subchapter K of Chapter 1 of the Code under section 761(a) will not be required to file a partnership return, except that where a partnership makes an election under § 1.761–2(b)(2)(i), the partnership must timely file a partnership return that contains the information required by § 1.761–2(b)(2)(i) for the taxable year for which the election is made.

Failure to Meet Filing Requirement

If a partnership that is not a small partnership under section 6231(a)(1)(B) is required to file a partnership return under section 6031 but fails to do so, the period of limitations on assessment of tax attributable to items of that partnership remains open indefinitely under section 6229(a). The failure of a partnership to file a return required by section 6031 might also result in disallowance under section 6231(f) of the deductions, losses, and credits flowing through to the partners and could subject the partnership to penalties under section 6698 and/or section 7203.

Information To Be Furnished to Partners

Under section 6031(b), every partnership that is required by section 6031(a) to file a partnership return must furnish information to its partners as required by regulations. The rules governing partnership statements to partners and nominees are in § 1.6031(b)–1T.

Partnership Elections

A foreign partnership otherwise exempt from the filing requirement that wants to make a partnership-level election under section 703(b) must file a partnership return for the year of the election. The proposed regulations provide rules similar to those contained in § 1.7701–3(c)(2) of the entity classification regulations with respect to who has the authority to file such returns. Generally, the return must be signed by all partners or by an authorized partner.

Proposed Effective Dates

These regulations are proposed to be applicable to partnership tax years ending on or after the 90th day after final regulations on this subject are published in the **Federal Register**. However, the exceptions for certain foreign partnerships contained in § 1.6031(a)–1(b)(2) will not be applicable to any partnership taxable years beginning before January 1, 1999.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these proposed regulations. It is hereby certified that the collection of information contained in these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations would reduce (rather than increase) the number of small entities that are required to file a partnership return. Specifically, the proposed regulations would eliminate the filing requirements for certain foreign partnerships that are fully subject to withholding in order to prevent duplicative filing requirements. In addition to eliminating the filing requirements in these circumstances, for ease of reference the proposed regulations update and restate the general requirements to file a partnership return as set forth in existing regulations. Because the proposed regulations would not impose any new reporting requirements that are not imposed by the existing regulations, and the only significant modification of the existing regulations is to eliminate the filing requirement for certain foreign partnerships, the regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Tuesday, May 19, 998, at 10 a.m., in the IRS Auditorium, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by April 27, 1998 and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 28, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Martin Schäffer and Christopher Kelley, Office of Assistant Chief Counsel (Passthroughs and Special Industries), and Ronald Gootzeit, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Proposed Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking that was published in the **Federal Register** on January 23, 1986 (51 FR 3075) is withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805. * * *

Section 1.6031(a)–1 also issued under 26 U.S.C. 6031. * * *

§ 1.6031–1 [Removed]

Par. 1a. Section 1.6031–1 is removed.

Par. 2. Section 1.6031(a)–1 is added to read as follows:

§ 1.6031(a)–1 Return of partnership income.

(a) *Domestic partnerships*—(1) *Return required.* Except as provided in paragraphs (a)(3) and (c) of this section, every domestic organization that is a partnership must file a return of partnership income under section 6031 (partnership return) for each taxable year on the form prescribed for the partnership return. The partnership return must be filed for the taxable year of the partnership regardless of the taxable years of the partners. For taxable years of a partnership and of a partner, see section 706 and § 1.706–1. For the rules governing partnership statements to partners and nominees, see § 1.6031(b)–1T.

(2) *Content of return.* The partnership return must contain the information required by the prescribed form and the accompanying instructions.

(3) *Special rule.* A partnership that has no income, deductions, or credits for federal income tax purposes for a taxable year is not required to file a partnership return for that year.

(4) *Failure to file.* For the consequences of a failure to comply with the requirements of section 6031(a) and this paragraph (a), see sections 6229(a), 6231(f), 6698, and 7203.

(b) *Foreign partnerships*—(1) *Return required.* A foreign partnership must file a partnership return for a partnership taxable year only if it has gross income derived from sources within the United States or it has gross income that is (or is treated as) effectively connected with the conduct of a trade or business within the United States for the taxable year. Certain exceptions to this requirement are provided in paragraphs (b)(2) and (c) of this section. A foreign partnership that is required to file a partnership return must file the partnership return in accordance with the rules provided for domestic partnerships in paragraph (a) of this section.

(2) *Exception to partnership return requirement for certain foreign partnerships investing in the United States.* A foreign partnership that has no gross income that is effectively connected with the conduct of a trade or business within the United States, and that would be required to file a partnership return only because it has gross income derived from sources within the United States, is not required to file a partnership return under section 6031 if—

(i) No United States person has a direct or indirect interest in the partnership;

(ii) The gross income derived from sources within the United States is either fixed or determinable annual or periodical income described in § 1.1441–2(b) or other amounts subject to withholding described in § 1.1441–2(c);

(iii) Forms 1042 and 1042–S are filed with respect to all such gross income in accordance with § 1.1461–1 (b) and (c). In order to satisfy this requirement, Forms 1042 and 1042–S must be filed by the partnership unless the partnership is not required to file such returns under § 1.1461–1 (b)(2) and (c)(4), in which case, Forms 1042 and 1042–S must be filed by another withholding agent (or agents); and

(iv) The tax liability of the partners with respect to such gross income has been fully satisfied by the withholding of tax at the source, if applicable, under chapter 3 of the Internal Revenue Code.

(3) *Partnership information or returns required of partners who are United States persons*—(i) *In general.* If a United States person is a partner in a partnership that is not required to file a partnership return, the district director or director of the service center may require that person to render the statements or provide the information necessary to verify the accuracy of the reporting by that person of any items of partnership income, gain, loss, deduction, or credit.

(ii) *Certain partnership elections.* For a partnership that is not otherwise required to file a partnership return, if an election that can only be made by the partnership under section 703 (affecting the computation of taxable income derived from a partnership) is to be made by or for the partnership, a return

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on the form prescribed for the partnership return must be filed for the partnership. The return must be signed by—

(A) Each partner that is a partner in the partnership at the time the election is made; or

(B) Any partner of the partnership who is authorized (under local law or the partnership's organizational documents) to make the election and who represents to having such authorization under penalties of perjury.

(iii) *Controlled foreign partnerships.* Certain United States persons who are partners in a foreign partnership controlled (within the meaning of section 6038(e)(1)) by United States persons may be required to provide information with respect to the partnership under section 6038.

(4) *Exclusion for certain organizations.* The return requirement of section 6031 and this section does not apply to the International Telecommunications Satellite Organization, the International Maritime Satellite Organization, or any organization that is a successor of either.

(c) *Partnerships excluded from the application of subchapter K—(1) Wholly excluded*—(i) *Year of election.* An eligible partnership as described in § 1.761–2(a) that elects to be excluded from all the provisions of subchapter K of chapter 1 of the Internal Revenue Code in the manner specified by § 1.761–2(b)(2)(i) must timely file the form prescribed for the partnership return for the taxable year for which the election is made. In lieu of the information otherwise required, the return must contain or be accompanied by the information required by § 1.761–2(b)(2)(i).

(ii) *Subsequent years.* Except as otherwise provided in paragraph (c)(1)(i) of this section, an eligible partnership that elects to be wholly excluded from the application of subchapter K is not required to file a partnership return.

(2) *Deemed excluded.* An eligible partnership that is deemed to have elected exclusion from the application of subchapter K beginning with its first taxable year, as specified in § 1.761–2(b)(2)(ii), is not required to file a partnership return.

(d) *Definitions*—(1) *Partnership.* For the meaning of the term *partnership*, see § 1.761–1(a).

(2) *United States person.* In applying this section, *United States person* means a person described in section 7701(a)(30); the government of the United States, a State, or the District of Columbia (including an agency or instrumentality thereof); or a corporation created or organized in Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and American Samoa, if the requirements of sections 881(b)(1)(A), (B), and (C) are met for such corporation. The term does not include an alien individual who is a resident of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa, as determined under § 301.7701(b)–1(d) of this chapter.

(e) *Procedural requirements*—(1) *Place for filing*—(i) *Domestic partnerships.* The return of a domestic partnership that is required to file under paragraph (a) of this section must be filed with the service center for the internal revenue district in which the partnership has its principal office or principal place of business in the United States.

(ii) *Foreign partnerships with United States business or income.* The return of a foreign partnership that is required to file under paragraph (b)(1) of this section must be filed—

(A) With the service center for the internal revenue district in which the partnership has its principal office or principal place of business in the United States; or

(B) With the Internal Revenue Service Center, Philadelphia, PA 19255–0011 if the partnership has no office or place of business in the United States.

(iii) *Foreign partnerships without United States business or income.* The return of a foreign partnership filed under paragraph (b)(3)(ii) of this section (regarding partnerships for which an election under section 703 is made) must be filed with the Internal Revenue Service Center, Philadelphia, PA 19255–0011. A statement must be attached to the partnership return indicating that the return is being filed pursuant to paragraph (b)(3)(ii) of this section solely to make one or more elections under section 703.

(2) *Time for filing.* The return of a partnership must be filed on or before the fifteenth day of the fourth month following the close of the taxable year of the partnership.

(3) *Magnetic media filing.* For magnetic media filing requirements with respect to partnerships, see section 6011(e)(2) and the regulations thereunder.

(f) *Effective date.* This section applies to taxable years of a partnership ending on or after the 90th day after the date final regulations on this subject are published in the **Federal Register.** However, in no event will paragraph (b)(2) of this section apply to taxable years of a partnership that begin before January 1, 1999.

Par. 3. Section 1.6063–1 is amended by adding paragraph (c) to read as follows:

§ 1.6063–1 Signing of returns, statements, and other documents made by partnerships.

* * * * *

(c) *Certain partnership elections*—(1) *In general.* For rules regarding the authority of a partner to sign a partnership return filed solely for the purpose of making certain partnership-level elections, see § 1.6031(a)–1(b)(3)(ii).

(2) *Effective date.* The provisions of paragraph (c) of this section apply to taxable years of a partnership ending on or after the 90th day after the date final regulations on this subject are published in the **Federal Register.**

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–1529 Filed 1–23–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG–104691–97]

RIN 1545–AV28

Electronic Tip Reports

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the regulations dealing with the requirement that tipped employees report their tips to their employer. The proposed regulations permit employers to establish electronic systems for use by their tipped employees in reporting tips to the employer. The proposed regulations also address substantiation requirements for employees using the electronic system.

DATES: Written comments and requests for a public hearing must be received by April 27, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–104691–97), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–104691–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Karin Loverud, 202–622–6060; concerning submissions, Evangelista Lee, 202–622–8452 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by March 27, 1998. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in this proposed regulation are in § 31.6053–1 and § 31.6053–4. This information is required to conform with the statute and to assist employers and employees in fulfilling their responsibilities. This information will be used by employers to establish the amount of income and FICA (or RRTA) taxes to withhold from the employee reporting the tips. This information will be used by employees in meeting the substantiation requirements. The collections of information are mandatory. The likely respondents are individuals.

Estimated total annual reporting burden: 600,000 hours.

Estimated average annual burden hours per respondent: 2 hours.

Estimated number of respondents: 300,000.

Estimated annual frequency of responses: varies.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to the Employment Tax Regulations (26 CFR part 31) under section 6053(a) of the Internal Revenue Code (Code). The proposed regulations provide rules permitting employers to establish electronic systems for use by their tipped employees in reporting tips to the employer.

In general, under section 6053(a) of the Code, every employee who receives tips must report the tips to the employer. The tips that must be reported are those that are wages for purposes of federal income tax withholding and the Federal Insurance Contributions Act (FICA) and compensation for purposes of the Railroad Retirement Tax Act (RRTA). The tips must be reported in a written statement or statements furnished to the employer on or before the 10th day following the month in which the tips are received. The Secretary is authorized to prescribe rules necessary to implement this provision, including the form and manner of furnishing the statements.

Generally, all cash tips (which include tips that are charged) are wages (or compensation), with one exception. If the amount of cash tips received in a calendar month by an employee in the course of any one employment is less than $20, the cash tips received in that employment during that month are not wages subject to income tax withholding, FICA taxes, or RRTA taxes.

For example, A is a full-time tipped employee of X and a part-time tipped employee of Y. During the month, A received $1,000 in tips in A's employment with X and $10 in tips in A's employment with Y. The $1,000 in tips received in the course of employment with X are wages for income tax withholding and FICA (or RRTA) tax purposes. A must report the $1,000 in tips to X no later than the 10th day of the following month. The $10 in tips received in the course of employment with Y are not wages for those purposes. The $10 are, however, subject to federal income tax and must be reported as wages by the employee on Form 4137, *Social Security and Medicare Tax on Unreported Tip Income*, which the employee must file with Form 1040, *U.S. Individual Income Tax Return.*

Section 31.6053–1(b)(1) prescribes rules for tip statements. The statement furnished by the employee to the employer must be in writing and must be signed by the employee. The statement must disclose (1) the employee's name, address, and social security number; (2) the employer's name and address; (3) the period for which and the date on which the statement is furnished; and (4) the total amount of tips received by the employee during the period that are required to be reported to the employer.

Under § 31.6053–1(b)(2), no particular form is prescribed for use in furnishing the tip statement. If the employer does not provide a form for use by the employee in reporting tips received by the employee, the employee may use Form 4070, *Employee's Report of Tips to Employer.* Twelve blank Forms 4070 and 12 blank Forms 4070A, *Employee's Daily Record of Tips* are reproduced in Publication 1244, *Employee's Daily Record of Tips and Report to Employer.* (Daily completion of Form 4070A constitutes sufficient evidence of tip income under the substantiation requirements of § 31.6053–4.) Pub. 1244 is a convenient pocket-sized document that also includes the basic rules for reporting tips. Copies of Pub. 1244 are available from the IRS by calling 1–800–829–3676.

The regulations specifically permit employers to design their own forms for use by employees in reporting tips. A form used solely to report tips must include (1) The employee's name, address, and social security number; (2) the employer's name and address; (3) the period for which and the date on which the statement is furnished; and (4) the total amount of tips received by the employee during the period that are required to be reported to the employer.

In lieu of a special tip reporting form that is used solely for the purpose of reporting tips, employers may provide for reporting of tips on regularly used

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forms, such as time cards. The regularly used forms need not include the employer information, but they must accurately identify the employee, identify the reporting period, and specify the amount of tips received. If a regularly used form is used to report tips, the employer must furnish the employee a statement showing the amount of tips reported by the employee for the period. This statement must be furnished no later than shortly after the first wage payment following the employee's tip report. A payroll check stub or other similar payroll document may be used for this purpose.

The period covered by a tip statement may not exceed one calendar month. An employer may require tip statements more frequently, such as daily, weekly or every pay period, but not less frequently than monthly. In no event, however, may an employer permit tips received in one month to be reported after the 10th of the following month. See section 6053(a). For example, X has a weekly payroll period, beginning on Sunday and ending on Saturday. X requires that all tip statements be submitted to X no later than the Monday following each payroll period. For the payroll period beginning on Sunday, March 30, and ending on Saturday, April 5, the statements must be furnished on or before Monday, April 7. If this occurs, the 10th-of-the-month requirement for March is met. If X's payroll period were biweekly and began on March 30 and ended on April 16 and if X required that all tip statements be submitted to X no later than the Monday following each payroll period, the 10th-of-the-month requirement for March would not be met.

A tip statement furnished after this deadline does not meet the requirements of section 6053(a). The employer is not required to withhold income, FICA, or RRTA taxes on tips reported after the 10th of the following month and is not responsible for reporting those tips to the IRS. The responsibility for reporting and paying the employee portion of the FICA tax shifts to the employee. The employee must complete and attach Form 4137, *Social Security and Medicare Tax on Unreported Tip Income*, to the employee's federal income tax return. Moreover, an employee who fails to report tips as required by section 6053(a) is subject to an addition to the FICA tax or the RRTA tax, whichever is applicable, equal to 50 percent of the employee portion of the FICA or RRTA tax on those tips.

Section 31.6053–4(a)(1) provides that an employee must maintain sufficient evidence to establish the amount of tip income received during a taxable year. Sufficient evidence consists of either a daily record or, if the employee does not maintain a daily record, other evidence (such as documentary evidence) that is as credible and as reliable as a daily record. Nevertheless, if the facts or circumstances indicate that the employee received a larger amount of tip income, a daily record or other evidence may not be sufficient evidence.

Section 31.6053–4(a)(2) describes the requirements for a daily record. In general, the daily record must show the amount of cash and charge tips received directly from customers or other employees and the amount of tips, if any, that the employee paid out to other employees through tip sharing, tip pooling, or other arrangements and the names of the employees. The daily record must show the date on which each entry is made. Each entry must be made on or near the date the tip income is received. An entry made when the employee has full present knowledge of those receipts and payments satisfies this requirement.

Section 31.6053–4(a)(3) describes documentary evidence. Documentary evidence consists of copies of any documents that contain amounts added as a tip to a check by a customer or amounts paid by a customer for food or beverages with respect to which tips generally would be received. Examples of documentary evidence are copies of restaurant bills, credit card charges, or charges under any other arrangement containing amounts added by the customer as a tip.

Explanation of Provisions

Electronic Tip Statements

No provision currently exists for employees to furnish tip statements to employers in a form other than on paper. The proposed regulations would permit an employer to adopt a system under which some or all of the tipped employees of the employer would furnish their tip statements electronically. Therefore, the employer could include in its electronic system any tipped employee or employees working in any location or locations.

The proposed regulations set forth requirements for employers who wish to establish electronic systems for employees to use to furnish tip statements to their employers. The proposed regulations apply only to tip statements required by section 6053(a) and not with respect to any other Code sections.

An employer that chooses to establish an electronic tip reporting system may select the type or types of electronic systems (such as telephone or computer) to be used by its employees. The system must, however, ensure that the information received is the information transmitted by the employee and must document all occasions of access that result in the transmission of a tip statement. The design and operation of the electronic system, including access procedures, must make it reasonably certain that the person accessing the system and transmitting the tip statement is the employee identified in the transmission. In the event of an examination, the employer must supply a hard copy of the electronic statement to the IRS upon request.

The electronic tip statement must contain exactly the same information that is required to be reported on a paper tip statement and must contain the employee's electronic signature. The electronic signature must identify the employee furnishing the electronic tip statement and authenticate and verify the transmission. An electronic signature can be in any form that satisfies the foregoing requirements. An electronic signature has the same effect as a signature written on a paper tip statement. See sections 6061, 6064, and 6065 of the Code.

Pursuant to Rev. Rul. 71–20 (1971–1 C.B. 392), all machine-sensible data media used for recording, consolidating, and summarizing accounting transactions and records within a taxpayer's ADP system are records within the meaning of section 6001 and § 1.6001–1. The record retention requirements contained in Rev. Proc. 91–59 (1991–2 C.B. 841) (or any revenue procedure updating Rev. Proc. 91–59), dealing with automatic data processing systems, apply to electronic tip reporting systems.

The proposed regulations provide that an employee maintains sufficient evidence to establish the amount of tip income received by the employee during a calendar month through a daily record (as described in § 31.6053–4(a)(2)) if the employee both reports tips on a daily basis through an electronic system that otherwise meets the substantiation requirements of the regulations and receives from the employer a hard copy of a daily record based on those entries for the period.

Employee Substantiation Requirements

Because the proposed regulations expand the permissible array of employer-designed reporting systems to include electronic methods, employers will be providing a statement to employees of the tips reported consistent with the existing requirements of § 31.6053–1(b). The Treasury and the IRS recognize that many of these systems may capture tip reporting on a very current basis (e.g., point-of-sale or end-of-shift). Thus, the information in these systems offers a reasonable substitute for a daily record maintained by the employee if the employer's system provides the employee with a printout that would satisfy the current substantiation requirements of § 31.6053–4.

Thus, these proposed regulations provide that, if the employer, at its option, provides employees with a copy of the daily record based on entries made by the employee in the system and otherwise satisfying the substantiation requirement of § 31.6053–4, the entry in the electronic system on a daily (or more frequent) basis by the employee, together with the daily record based on these entries provided by the employer, will satisfy the substantiation requirements of § 31.6053–4. For example, assume an employee enters tips in the employer's electronic system at the end of each shift, but does not provide the employer with a signed paper record of these tips. After the end of each weekly payroll period, the employer provides the employee with a paper record that includes all the information specified in § 31.6053–4(a)(2) and that shows the total amount of tips reported for each day during the period based on the employee's entries. If the employee maintains this employer generated paper record, the substantiation requirements of § 31.6053–4 are satisfied.

The Treasury and the IRS particularly invite comment on whether the proposed regulations should be modified to reflect ways in which these systems may permit further reduction in paper reporting for either the employer or employee while retaining provisions for appropriate and timely substantiation of income.

Railroad Retirement Tax Act Provisions

The tip reporting provisions of section 6053(a) apply to tips that are either wages for income tax withholding and Federal Insurance Contributions Act (FICA) purposes or compensation for Railroad Retirement Tax Act (RRTA) purposes. The proposed regulations would clarify that the regulations under section 6053(a) apply to tips that are compensation as well as to tips that are wages.

Proposed Effective Date

The revisions and additions in the proposed regulations apply to tips required to be reported to the employer after these regulations are published as final regulations in the **Federal Register**. However, taxpayers may rely on the guidance in these proposed regulations for prior periods.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that the collections of information in these regulations will not have a significant economic impact on a substantial number of small entities. The collection of information in § 31.6053–1 is imposed solely on individuals, not on any small entities, and the regulations provide flexibility to employees who must provide the information required by statute, thereby reducing burden. With respect to the collection of information in § 31.6053–4, the certification is based on the expectation of the IRS that most businesses that choose to implement the electronic tip reporting provisions will be larger businesses with many employees and sophisticated computer systems. Moreover, because the provision is wholly elective, any small business that would be adversely impacted may choose not to use electronic tip reporting. Finally, the Service expects that for those small entities that choose to implement the provision, the use of electronic tip reporting will reduce overall burden by reducing paper collections. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight copies) that are submitted timely (in the manner described in the **ADDRESSES** portion of this preamble) to the IRS. All comments will be available for public inspection and copying.

A public hearing may be scheduled if requested in writing by any person that timely submits written comments. The IRS will also consider requests for remote teleconference sites as part of the public hearing. If a public hearing is scheduled, notice of the date, time, and place (including teleconference, if any) for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Karin Loverud, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 31.6053–1 is amended as follows:

1. Paragraph (a) is revised.
2. The introductory text of paragraph (b)(1) is revised.
3. The last sentence of paragraph (b)(1)(iii) is revised.
4. Paragraph (b)(2) is revised.
5. Paragraph (c) is revised.
6. Paragraph (d) is added.

The revisions and additions read as follows:

§ 31.6053–1 Report of tips by employee to employer.

(a) *Requirement that tips be reported*—(1) *In general.* An employee who receives, in the course of employment by an employer, tips that constitute wages as defined in section 3121(a) or section 3401, or compensation as defined in section 3231(e), must furnish to the employer a statement, or statements, disclosing the total amount of the tips received by the employee in the course of employment by the employer. Tips received by an employee in a calendar month in the course of employment by an employer that are required to be reported to the employer must be reported on or before the 10th day of the following month.

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Thus, for example, tips received by an employee in January 1998 are required to be reported by the employee to the employer on or before February 10, 1998.

(2) *Cross references.* For provisions relating to the treatment of tips as wages for purposes of the Federal Insurance Contributions Act (FICA) tax under sections 3101 and 3111, see sections 3102(c), 3121(a)(12), and 3121(q) and §§ 31.3102–3 and 31.3121(a)(12)–1. For provisions relating to the treatment of tips as wages for purposes of the tax under section 3402 (income tax withholding), see sections 3401(a)(16), 3401(f), and 3402(k) and §§ 31.3401(a)(16)–1, 31.3401(f)–1, and 31.3402(k)–1. For provisions relating to the treatment of tips as compensation for purposes of the Railroad Retirement Tax Act (RRTA) tax under sections 3201 and 3221, see section 3231(e) and § 31.3231(e)–1(a).

(b) * * * (1) *In general.* The statement described in paragraph (a) of this section can be provided on paper or transmitted electronically. The statement must be signed by the employee and must disclose:

* * * * *

(iii) * * * If the statement is for a period of less than 1 calendar month, the beginning and ending dates of the period must be included (for example, January 1 through January 8, 1998).

* * * * *

(2) *Form of statement*—(i) *In general.* No particular form is prescribed for use in furnishing the statement required by this section. The statement may be furnished on paper or transmitted electronically. An electronic system and all tip statements generated by that system must meet the requirements of paragraph (d) of this section. If the employer does not provide any other means for the employee to report tips, the employee may use Form 4070, *Employee's Report of Tips to Employer.*

(ii) *Single-purpose forms.* A statement may be furnished on an employer-provided form. The form may be on paper or in electronic form. An employer that provides a paper form must make blank copies of the form readily available to all tipped employees. Any form, whether paper or electronic, provided by an employer for use by its tipped employees solely to report tips must meet all the requirements of paragraph (b)(1) of this section.

(iii) *Regularly used forms.* Instead of requiring that tips be reported as described in paragraph (b)(2)(ii) of this section on a special form used solely for tip reporting, an employer may prescribe regularly used forms for use by employees in reporting tips. A regularly used form may be on paper (such as a time card or report) or in electronic form, must meet the requirements of paragraph (b)(1)(iii) and (iv) of this section, must contain identifying information that will ensure accurate identification of the employee by the employer, and is permitted to be used only if the employer furnishes the employee a statement suitable for retention showing the amount of tips reported by the employee for the period. The employer statement may be furnished when the employee reports the tips, when wages are first paid following the reporting of tips by the employee, or within a short time after the wages are paid. The employer may meet this requirement, for example, through the use of a payroll check stub or other payroll document regularly furnished by the employer to the employee showing gross pay and deductions. In the case of electronic tip reports, the employer statement may be furnished on a daily, weekly, monthly or on a regular payroll basis (if not less frequent than monthly).

(c) *Period covered by, and due date of, tip statement*—(1) *In general.* A tip statement furnished by an employee to an employer may not cover a period greater than 1 calendar month. An employer may, however, require the submission of a statement in respect of a specified period of time, for example, on a weekly or biweekly basis, regular payroll period, etc. An employer may specify, subject to the limitation in paragraph (a) of this section, the time within which, or the date on which, the statement for a specified period of time should be submitted by the employee. For example, a statement covering a payroll period may be required to be submitted on the first (or second) day following the close of the payroll period. A statement submitted by an employee after the date specified by the employer for its submission nevertheless will be considered as a statement furnished pursuant to section 6053(a) and this section if it is submitted to the employer on or before the 10th day following the month in which the tips were received.

(2) *Termination of employment.* If an employee's employment is terminating, the employee must furnish a tip statement to the employer when the employee ceases to perform services for the employer. A statement submitted by an employee after the date on which the employee ceases to perform services for the employer will be considered as a statement furnished pursuant to section 6053(a) and this section if the statement is submitted to the employer on or before the earlier of the day on which the final wage payment is made by the employer to the employee or the 10th day following the month in which the tips were received.

(d) *Requirements for electronic systems*—(1) *In general.* The electronic system must ensure that the information received is the information transmitted by the employee and must document all occasions of access that result in the transmission of a tip statement. In addition, the design and operation of the electronic system, including access procedures, must make it reasonably certain that the person accessing the system and transmitting the statement is the employee identified in the statement transmitted.

(2) *Same information as on paper statement.* The electronic tip statement must provide the employer with all the information required by paragraph (b)(1) of this section.

(3) *Signature.* The electronic tip statement must be signed by the employee. The electronic signature must identify the employee transmitting the electronic tip statement and must authenticate and verify the transmission. For this purpose, the terms "authenticate" and "verify" have the same meanings as they do when applied to a written signature on a paper tip statement. An electronic signature can be in any form that satisfies the foregoing requirements.

(4) *Copies of electronic tip statements.* Upon request by the Internal Revenue Service (IRS), the employer must supply the IRS with a hard copy of the electronic tip statement and a statement that, to the best of the employer's knowledge, the electronic tip statement was filed by the named employee. The hard copy of the electronic tip statement must provide the information required by paragraph (b)(1) of this section, but need not be a facsimile of Form 4070 or any employer-designed form.

(5) *Record retention.* The record retention requirements dealing with automatic data processing systems apply to electronic tip reporting systems.

Par. 3. Section 31.6053–4 is amended as follows:

1. A sentence is added to paragraph (a)(1) after the third sentence.

2. A sentence is added to paragraph (a)(2) after the fourth sentence. The additions read as follows:

§ 31.6053–4 Substantiation requirements for tipped employees.

(a) * * *

(1) * * * The Commissioner may by revenue ruling, procedure or other guidance of general applicability provide for other methods of demonstrating evidence of tip income.

* * *

(2) * * * In addition, an electronic system maintained by the employer that collects substantially similar information as Form 4070A may be used to maintain such daily record, provided the employee receives and maintains a paper copy of the daily record. * * *

* * * * *

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–1548 Filed 1–23–98; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 96–1]

Satellite Carrier Compulsory License; Definition of Unserved Household

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The Copyright Office of the Library of Congress is opening a rulemaking proceeding to determine the permissibility, under the satellite compulsory license, of satellite carriers retransmitting over-the-air broadcast network stations to subscribers who reside within the local markets of those stations.

DATES: Initial comments should be received no later than February 25, 1998. Reply comments are due March 27, 1998.

ADDRESSES: If sent by mail, an original and ten copies of comments and reply comments should be addressed to: David O. Carson, General Counsel, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and ten copies of comments and reply comments should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William Roberts, Senior Attorney, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Fax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: On December 23, 1997, the Copyright Office received a petition for rulemaking from EchoStar Communications Corporation ("EchoStar") requesting that the Office confirm that a satellite carrier's local retransmission of network stations to subscribers who reside in those station's local markets is permissible under the compulsory license granted by 17 U.S.C. 119. Three organizations, the Association of Local Television Stations ("ALTV"), Network Affiliated Stations Alliance ("NASA"), and the National Association of Broadcasters ("NAB"), filed oppositions to EchoStar's request for a rulemaking. The petition and oppositions are available for inspection and copying at the Copyright Office in Room LM 458, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC.

Opening of This Proceeding

EchoStar's petition is not the first time that the Copyright Office has been called upon to decide whether it is permissible under section 119 for satellite carriers to retransmit network stations to subscribers who reside within the local markets of those stations. In the summer of 1996, the Office received a letter from American Sky Broadcasting ("ASkyB") requesting the Office issue a declaratory ruling that such local-into-local retransmissions were permissible under section 119. By letter dated August 15, 1996, the Office informed ASkyB that it would not issue a declaratory ruling or formally resolve the matter. The Office did state that if ASkyB filed a Statement of Account and royalty fee for local-into-local retransmissions of network signals, the Office would not question the sufficiency of the filing or return it. See Letter of the Acting General Counsel to William Reyner, August 15, 1996. ASkyB did not petition the Office for a rulemaking proceeding.

One year later, the issue of local-into-local retransmissions of network signals arose again in the context of the adjustment of the section 119 royalty rates. In Docket No. 96–3 CARP SRA, ASkyB argued to the Copyright Arbitration Royalty Panel (CARP) charged with the task of adjusting the section 119 rates that local-into-local retransmissions were permissible under the terms of the statute, and that the royalty rate for such retransmissions should be zero. The CARP declined to adopt ASkyB's zero royalty request because it determined that it lacked subject matter jurisdiction to do so. Report of the CARP at 48 (August 29, 1997). The CARP considered section 119(a)(2)(B), which provides that the satellite compulsory license is "limited to secondary transmissions to persons who reside in unserved households," and examined the section 119(d)(10) definition of an "unserved household." The CARP concluded that:

> [N]etwork signals generally may not be retransmitted to the local coverage area of local network signals. The separate rate request of ASkyB is explicitly intended to apply to retransmission of network signals to served households. Section 119 does not provide a compulsory license for those retransmissions. Hence, we lack subject matter jurisdiction to set a rate for local retransmissions of local network signals.

CARP Report at 48. The CARP did acknowledge, however, that there could be subscribers who resided within a network station's local market that fell within the CARP's interpretation of an "unserved household," but the CARP identified these as being "rare instances." *Id.*

The Librarian of Congress, reviewing the CARP's decision under an arbitrary or contrary to the Copyright Act standard, accepted the CARP's determination stating that he could not "unequivocally say that the Panel's decision is arbitrary or contrary to law." 62 FR 55742, 55753 (October 28, 1997). The Librarian reached this decision because he found the statute to be silent on the issue of local-into-local retransmissions. *Id.* The Librarian did state, however, that although the statute was silent, the Copyright Office "retain[ed] the authority to conduct a rulemaking proceeding to determine the permissibility of local retransmission of network signals to served households, regardless of the Panel's determination in this proceeding." *Id.*[1]

Authority for a Rulemaking Proceeding

As stated in the Librarian's review of the CARP decision, the Copyright Office believes that it has the authority to gather information and conduct a rulemaking to resolve whether local-into-local retransmission of network signals is permissible under section 119. The Office has determined in the past, in the context of the section 111 cable compulsory license, whether certain retransmissions were subject to statutory licensing. See 57 FR 3284 (January 29, 1992) (determining that retransmissions of broadcast signals by satellite carriers and Multichannel Multipoint Distribution Services were not eligible for the section 111 license); 62 FR 18705 (April 17, 1997) (determining that retransmissions of

[1] The Librarian did adopt a zero rate for retransmission of network signals to unserved households located within the local markets of network stations. *Id.*

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broadcast signals by Satellite Master Antenna Television systems were eligible for section 111 licensing). The authority to issue a determination in this proceeding is derived from the Office's rulemaking authority under 17 U.S.C. 702.

The objections to EchoStar's petition filed by ALTV, NASA and NAB all counsel against the Copyright Office opening a rulemaking proceeding at this time, preferring instead to resolve the matter through legislation. There is no question that legislative resolution of the issue of local-into-local retransmissions of network stations under section 119 is the best solution. The Office has recommended to Congress that section 119 be clarified to allow local-into-local retransmission. Library of Congress, U.S. Copyright Office, A Review of the Copyright Licensing Regimes Covering Retransmission of Broadcast Signals 119–120 (August 1, 1997). In the meantime, however, the Office believes that it should exercise its duties and responsibilities under section 702 of the Copyright Act and open this rulemaking.

Issues for Public Comment

As presented by Echostar's petition, the question of whether local-into-local retransmissions of network signals is permissible turns on the interpretation to be afforded the definition of an "unserved household." Section 119(a)(2)(B) provides that the satellite compulsory license for retransmission of network signals is "limited to secondary transmissions to persons who reside in unserved households." Section 119(d)(10) defines an "unserved household" as:

> a household that—
>
> (A) cannot receive through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network, and
>
> (B) has not, within 90 days before the date on which that household subscribes, either initially or on renewal, to receive secondary transmissions by a satellite carrier of a network station affiliated with that network, subscribed to a cable system that provides the signal of a primary network station affiliated with that network.
>
> 17 U.S.C. 119(d)(10).

In interpreting the "unserved household" definition, the primary question is: Was it the intention of Congress to prevent all satellite retransmissions of a network station when a subscriber can receive an off-the-air grade B intensity signal of the local network station, or was Congress attempting to exclude only distant network stations of the same network that might be imported by a satellite carrier into the local affiliate's market? Is there anything in the legislative history that offers guidance on this question? If not, does subsection (B)'s prevention of satellite retransmission when a subscriber is receiving the local network station via cable have any bearing on this issue?

If local-into-local retransmissions of network stations are permissible under section 119, how should a network station's local market be defined? Is the local market definition in section 119(d)(11) appropriate, or should some other measure be used?

In addition, the Copyright office is interested in receiving comment as to what impact, if any, local-into-local retransmissions of network stations by satellite would have on retransmission consent and other provisions and requirements of the Communications Act, 47 U.S.C. ch. 5.

The Copyright Office welcomes and encourages comments as to these questions, and well as any other matters that commenting parties may deem relevant.

Dated: January 21, 1998.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 98–1795 Filed 1–23–98; 8:45 am]

BILLING CODE 1410–31–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[OPP–00473C; FRL–5767–3]

Antimicrobial Rule Development; Stakeholder Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Meetings.

SUMMARY: The Antimicrobials Division (AD) of the Office of Pesticide Programs of EPA is continuing its series of stakeholder meetings to obtain views about the antimicrobial rule that is being developed. The rule is being revised in accordance with principles set forth in the Food Quality Protection Act of 1996 (Pub. L. 104–170). To ensure that all interested parties can obtain information about activities related to developing this rule, EPA, in its discretion, has opened a docket in advance of the rule's proposal. This docket includes, but is not limited to, a summary of major discussions at stakeholder meetings, as well as copies of any documents distributed at these meetings.

DATES: The next stakeholder meetings will take place on Tuesday, February 3, 1998, from 2 p.m. to 5 p.m.; and Thursday, March 26, 1998, from 2 p.m. to 5 p.m.

ADDRESSES: The meetings will be held at 1921 Jefferson Davis Highway (Crystal Mall #2) in Room 1126 ("Fishbowl"), Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Barbara Mandula (7510W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Crystal Drive, Arlington, VA, (703) 308–7378, fax: (703) 308–8481; e-mail: mandula.barbara@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This notice announces a series of public meetings to ensure that all parties interested in policies, issues, and regulatory actions affecting antimicrobial pesticides can obtain information about ongoing activities. Additionally, a public record has been established for these meetings under docket number "OPP–00473." The docket is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Copies of EPA documents may be obtained by contacting: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460.

List of Subjects

Environmental protection, Antimicrobial pesticides.

Dated: January 15, 1998.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 98–1767 Filed 1–23–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ–005–ROP FRL–5953–4]

Approval and Promulgation of Implementation Plans; Phoenix, Arizona Ozone Nonattainment Area, 15 Percent Rate of Progress Plan and 1990 Base Year Emission Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to determine that the Phoenix, Arizona ozone nonattainment area has in place sufficient control measures to meet the 15 percent rate of progress (ROP) requirement in Clean Air Act section 182(b)(2). This proposal is based on EPA's reanalysis of Arizona's 15 percent plan submitted for the Phoenix area. This reanalysis takes into account current information on the implementation of the State's vehicle inspection and maintenance program, additional controls recently adopted by the State, and national rules either proposed or promulgated by EPA that affect emissions in the Phoenix area. EPA is also proposing to approve the area's 1990 base year emissions inventory.

DATES: Comments on this proposal must be received in writing by March 27, 1998. Commenters may also request the opportunity to submit oral comments pursuant to Clean Air Act section 307(d)(5). Requests for a public hearing must be received by February 5, 1998.

ADDRESSES: Written comments should be addressed to Frances Wicher at the Region 9 address.

Copies of the State's submittals, EPA's draft technical support document (TSD) for this rulemaking, EPA's policies governing 15 percent plan approvals and emission inventories, and other supporting documentation are contained in the docket for this rulemaking. Copies of this document and the TSD are also available in the air programs section of EPA Region 9's website, http://www.epa.gov/region09. The docket is available for inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 9, Office of Air Planning, Air Division, 17th Floor, 75 Hawthorne Street, San Francisco, California 94105. (415) 744–1248.

Arizona Department of Environmental Quality, Library, 3033 N. Central Avenue, Phoenix, Arizona 85012. (602) 207–2217.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105. (415) 744–1248.

SUPPLEMENTARY INFORMATION:

I. Background

A. Clean Air Act Requirements

1. Base Year Emission Inventories

The Phoenix metropolitan area was originally classified as a moderate ozone nonattainment on November 6, 1991.[1] Section 182(b) of the Clean Air Act (CAA or Act) requires that each state in which all or part of a moderate ozone nonattainment area is located submit, by November 15, 1992, an inventory of actual emissions from all sources, as described in sections 172(c)(3) and 182(a)(1), in accordance with guidance provided by the Administrator. EPA provided preliminary guidance on this base year inventory in the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, April 16, 1992, 57 FR 13498, 13502, indicating that the inventory should be for calendar year 1990 and should include both anthropogenic and biogenic sources of volatile organic compounds (VOCs), nitrogen oxides (NOX), and carbon monoxide (CO). The inventory should address actual emissions of these pollutants during the peak ozone season in the nonattainment area as well as emissions from sources emitting greater than 100 tons per year in a 25-mile buffer zone around the nonattainment area. The inventory should include all point and area sources, as well as all highway and non-highway (non-road) mobile sources.

2. 15 Percent ROP Plans

Section 182(b)(1)(A) of the CAA requires State's with ozone nonattainment areas classified as moderate and above to develop plans to reduce VOC emissions by 15 percent, net of growth, from the 1990 baseline. The 15 percent rate of progress (ROP) plans were to be submitted by November 15, 1993, and the reductions were required to be achieved by November 15, 1996.

For the 15 percent ROP plans, the CAA sets limitations on the creditability of certain types of reductions. Specifically, a state cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures promulgated prior to 1990, or for reductions resulting from requirements to lower the volatility (Reid Vapor Pressure (RVP)) of gasoline promulgated prior to 1990 or required under section 211(h) of the CAA, which restricts gasoline RVP. Furthermore, the CAA does not allow credit for corrections to vehicle inspection and maintenance (I/M) programs or corrections to Reasonably Available Control Technology (RACT) rules as these programs were required prior to 1990.

Although the November 15, 1996 deadline has now passed, the 15 percent ROP requirement remains. Once a statutory deadline has passed and has not been replaced by a later one, the deadline then becomes as soon as possible. *Delaney* v. *EPA*, 898 F.2d 687, 691 (9th Cir. 1990). EPA has interpreted this requirement to be "as soon as practicable" (55 FR 36458, 36505 (September 9, 1990)); therefore, to demonstrate that the Phoenix area has met the CAA section 182(b)(1) requirement, it must be demonstrated that the 15 percent reduction will be achieved as soon as practicable by showing that the applicable implementation plan contains all VOC control measures that are practicable for the Phoenix area and that meaningfully accelerate the date by which the 15 percent level is achieved.

EPA has developed guidance that specifically addresses the crediting of post-1996 emission reductions in 15 percent ROP demonstrations. Under EPA policy, reliance on post-1996 emission reductions in the 15 percent plan necessitates that the 1996 target level of emission reductions be revised to remove the additional emission reductions from the FMVCP and federal RVP regulations between 1996 and the year 15 percent is actually to be demonstrated. References 2, 3 and 4.

EPA's policy regarding 15 percent ROP plans can be found in the General Preamble (57 FR 13498, 13507) and other EPA guidance documents referenced in this document and found in the docket for this rulemaking.

B. Phoenix's 15 Percent ROP Plan

The State of Arizona submitted the initial 15 percent rate of progress plan for the metropolitan Phoenix area (The Maricopa Association of Governments 1993 Ozone Plan for the Maricopa County Area, November 1993 (1993 MAG Plan)) on November 15, 1993 and an Addendum (March 1994) to that plan on April 8, 1994. On April 13, 1994 EPA found the initial plan incomplete because it failed to include, in fully

[1] The Phoenix metropolitan area was recently reclassified from moderate to serious for ozone. 62 FR 60001 (November 6, 1997). This reclassification does not affect the requirement for a 1990 base year inventory or a 15 percent ROP demonstration.

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adopted and enforceable form, all of the measures relied upon in the 15 percent demonstration. This incompleteness finding started the 18-month sanction "clock" in CAA section 179 and the two-year clock under section 110(c) for EPA to promulgate a federal implementation plan (FIP) covering the 15 percent ROP requirement. Subsequently in November 1994 and April 1995, Arizona submitted an attainment plan for the Phoenix area which updated the 15 percent ROP demonstrations.[2] On May 12, 1995, EPA found the revised 15 percent plan and the attainment plan complete, turning off the sanctions clock; however, under section 110(c), the FIP clock continues until EPA approves the 15 percent plan. Since 1995, EPA has acted to approve many of the control measures contained in these plans but has not yet acted on the overall 15 percent plan.

The 15 percent ROP demonstration in the MAG 1993 Plan relied primarily on improvements to the State's vehicle emissions inspection and maintenance program (I/M), a summertime gasoline volatility (RVP) limitation of 7.00 pounds per square inch (psi), numerous stationary and area source control measures, and a number of transportation control measures.

Improvements to the State's I/M program (known as the Vehicle Emissions Inspection Program (VEIP)) included biennial IM240 transient testing for model year 1981 and newer vehicles, more stringent testing cut points (the tailpipe emissions levels at which cars are failed), pressure and purge testing, increased waiver limits, improvements to the anti-tampering program, and a remote sensing program. These I/M improvements accounted for 50 percent of the emission reductions necessary to show the required ROP. See 1993 Ozone Plan Addendum, page 3–6. In designing its enhanced VEIP, Arizona relied in good faith on the technical specifications and associated emission reductions in EPA's enhanced I/M regulations, 40 CFR part 51, subpart S as promulgated on November 5, 1992 (57 FR 52950).

Arizona began to implement the improvements to its I/M program in early 1995 and quickly determined that EPA's pressure and purge test could not be implemented in practice in I/M testing lanes, and consequently suspended the tests. The State subsequently redesigned the pressure test and began implementing it in 1996. No effective purge test, however, is currently available. EPA continues to work to develop such a test and Arizona remains committed to implementing a test when it becomes available.

Early testing of the final cut points assumed in the State's 15 percent plan also indicated that they would not work in practice because of unacceptably high false failure rates (i.e., failing cars that should have passed) of up to 50 percent. Arizona is currently working to develop alternatives to the final cut points and intends to begin implementing those alternatives as early as 1999.

The purge test and the final cut points accounted for roughly 60 percent of the total emission reductions expected from the VEIP and 30 percent of the emission reductions necessary to show 15 percent ROP. In part to replace these lost emission reductions and in part to ensure continued progress toward attainment of the ozone standard in the Phoenix area, the State opted into EPA's federal reformulated gasoline program in 1997 (60 FR 30260 (June 3, 1997)) and has recently adopted its own, more stringent Cleaner Burning Gasoline (CBG) program as well as other control measures. EPA proposed to approve the State's CBG program on November 20, 1997. 62 FR 61942.

C. EPA's 15 Percent ROP Plan Obligation

In August 1996, EPA was sued by the American Lung Association of Arizona, *ALAA* v. *Browner*, No. CIV 96–1856 PHX ROS (D.Ariz.). This case sought to enforce EPA's obligation under CAA section 110(c) to promulgate a federal plan for the 15 percent ROP requirement. On July 8, 1997 a consent decree was filed with the U.S. District Court for the District of Arizona establishing a schedule of January 20, 1998 for proposing and May 18, 1998 for promulgating a 15 percent ROP plan. Under the consent decree, EPA's obligation to promulgate a plan is relieved to the extent that it has approved State measures.

The State's 15 percent plan as revised and submitted in 1993 through 1995 does not reflect the changes to the control strategy necessitated by the problems with enhanced I/M and the implementation of the federal RFG program. In addition, EPA guidance requires a recalculation of the 15 percent target emission level if post-1996 emissions reductions (such as those from the RFG program) are to be credited to the 15 percent plan. As a result, EPA does not have in front of it a complete state submittal containing a revised 15 percent ROP demonstration that it could act on without additional analysis, public hearing and adoption by the State. Consequently in this document, EPA is proposing to find, based on its own analysis of the available emission reductions, that the State has sufficient measures to provide for the 15 percent reduction.

II. EPA's Evaluation

A. 1990 Base Year Emission Inventory

EPA is proposing to approve the State's 1990 base year emissions inventory for the Phoenix metropolitan area and to use it, with minor modifications, as the basis for the 15 percent ROP demonstration.

As specified in EPA guidance (Reference 1, p. 13502), the 1990 base year inventory is composed of annual and seasonal inventories of actual (as opposed to permitted or potential) VOC, NO_x, and CO emissions in the Phoenix ozone nonattainment area as well as actual emissions from all large point sources within a 25-mile buffer zone around the nonattainment area.

EPA proposes to approve the base year inventory because it is (1) accurate in that it uses established estimation and measurement methods approved by EPA; (2) comprehensive in that it estimates emissions from all categories of sources for the three ozone precursors; and (3) current in that it provides estimates of actual emissions for the 1990 base year as required.

Table 1 provides a summary of the baseline emissions inventory.

TABLE 1.—METROPOLITAN PHOENIX 1990 BASELINE EMISSIONS INVENTORY

(Metric tons per day)

Source type	VOC	NO_x	CO
Point Sources	25.6	70.9	13.8
Area Sources	111.8	7.4	3.9
On-Road Mobile	136.2	130.1	911.5
Non-Road Mobile	57.9	85.2	521.1
Biogenic	37.3	.....	.....
Total	368.8	293.6	1450.3

Source: 1993 Ozone Plan, Appendix B, Exhibit 1.

For use in its 15 percent ROP analysis, EPA has slightly modified the State's 1990 base year inventory to reflect the Agency's delisting of perchloroethylene (used primarily as a drycleaning solvent) as a VOC (61 FR 4588 (February 7, 1996)), a revised version of EPA's MOBILE5a on-road motor vehicle emission estimation model, and slightly revised inputs to that model to be consistent with base year and future year analyses.[3] These modifications decreased the submitted base year area source inventory by 1.2 metric tons per day and the on-road mobile source inventory by 0.6 metric tons per day for a total decrease of 1.8 metric tons per day.

B. Calculation of the 15 Percent ROP Target

A number of steps are necessary to calculate the 15 percent ROP VOC target emission level. First, the 1990 base year inventory must be revised to exclude sources outside the nonattainment area, biogenic emissions, and any VOC emission reductions that will accrue from the FMVCP and federal RVP standards during the 1990–1996 period. The resulting inventory is referred to as the "adjusted base year inventory." For 15 percent ROP plans that rely on post-1996 emissions reductions, the adjusted base year inventory must also exclude any VOC emission reductions resulting from the FMVCP and federal RVP standards from 1996 until the projected date by which the 15 percent ROP will be demonstrated (henceforth referred to as the demonstration year). See Reference 4. Procedures for calculating emission reductions from the FMVCP and federal RVP standards are discussed in Reference 1 (page 13507) and Reference 6. Table 2 presents the adjusted base year inventory.

TABLE 2.—ADJUSTED BASE YEAR INVENTORIES

	Adjustment (mt VOC/d)	Adjusted base year inventory (mt VOC/d)
1990 Base year inventory	.....	367.0
Stationary sources outside of the nonattainment area	−1.8	.....
Biogenic emissions	−37.3	.....
1990 nonattainment area base year anthropogenic inventory	.....	327.9
FMVCP/RVP 1990–1996	−47.4	.....
Adjusted base year inventory (1996)	.....	280.5

The target level of VOC emissions for demonstrating 15 percent ROP is then calculated by multiplying the adjusted base year inventory by 0.15, adding the VOC reductions from any RACT and/or I/M corrections and from the FMVCP and federal RVP regulations, then subtracting this total from the 1990 nonattainment area base year anthropogenic inventory.

TABLE 3.—15 Percent Rate of Progress Target Levels

(Metric tons of VOC/day)

July 1, year	(A) 1990 ROP base year EI	(B) Red. from FMVCP/ RVP (90–96)	(C) 1990 adj. base year EI (A–B)	(D) 15% target (0.15 x C)	(E) Red. from FMVCP/ RVP (96–99)	(F) RACT & I/M corrections	(G) Needed Red (B + D + E + F)	(H) 1996 target emission level (A–G)
1996	327.9	47.4	280.5	42.1	.....	2.3	91.8	236.1
1998	327.9	47.4	280.5	42.1	3.4	2.3	95.2	232.7
1/1/1999	327.9	47.4	280.5	42.1	4.2	2.3	96.0	231.9
4/1/1999	327.9	47.2	280.5	42.1	4.6	2.3	96.4	231.5
1999	327.9	47.4	280.5	42.1	5.0	2.3	96.8	231.1

NOTE: January 1, 1999 and April 1, 1999 values are interpolated between 1998 and 1999 values.

To demonstrate a 15 percent rate of progress, projected 1996 emissions, accounting for growth after 1990 and including any adjustments for FMVCP/RVP emission reduction occurring after 1996, must be at or below the target emission level.

C. 15 Percent Demonstration

EPA proposes to determine that the Phoenix area will have sufficient controls in place by no later than April 1, 1999 to meet the 15 percent rate of progress requirement and that this date is the most expeditious date practicable for achieving the 15 percent target based on the set of controls EPA has proposed for crediting in the 15 percent demonstration and the unavailability of any other practicable controls that could advance the date.

Table 4 presents the projected controlled 1996 inventory and Table 5 lists the control measures that make up the 15 percent demonstration. EPA notes that the State included a number of adopted and implemented control measures in its 15 percent plan and Voluntary Early Ozone Plan that have not been credited in this 15 percent demonstration because they are not yet in the SIP. These measures remain creditable in future ROP demonstrations to the extent they are SIP approvable.

TABLE 4.—1996 PROJECTED INVENTORY FOR APRIL 1, 1999 DEMONSTRATION

Source Category	Emissions (mt VOC/ day)
On-Road	76.7
Non-Road	43.0
Point	18.2
Area	93.3
Total	231.2
Target Level	231.5
Surplus emission reductions	0.3

[2] The State also submitted its Voluntary Early Ozone Plan for the Metropolitan Phoenix Area (VEOP) on April 21, 1997. This plan contains several additional VOC control measures but does not include any revisions to the demonstration in the previously submitted 15 percent plan.

[3] The modifications that EPA used in its analysis do not affect the approvability of the State's 1990 base year emissions inventory. The delisting of perchloroethylene occurred after the statutory due date for the inventory. In addition, states were not required to upgrade to the later version of MOBILE5a for their base year inventories. Reference 5. Finally, the principle MOBILE5a modification was to use minimum and maximum daily temperatures to calculate temperature corrections to VOC exhaust emissions, hot soak evaporative emissions, and resting loss and running loss emissions instead of a single ambient temperature as was done by Arizona. Although EPA does not recommend the use of a single ambient temperature to calculate these emissions, the impact on the base year inventory in this case is so slight (less than 0.6 metric tons per day out of an inventory of 136 metric tons per day or less than 0.5 percent) as to not constitute grounds for disapproval.

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TABLE 5.—CONTROL MEASURES MAKING UP THE 15 PERCENT DEMONSTRATION

Category	Approval status	Adjusted 1996 reduction (mt VOC/d)
Arizona Vehicle Emissions Inspection Program	Approved 60 FR 22518 (May 8, 1995)	3.3
Arizona Summertime Gasoline Volatility Limitation (7.00 psi RVP) (on-road and nonroad).	Approved 62 FR 31734 (June 11, 1997)	13.0
Federal RFG—Phase I (on-road and nonroad)	Approved June 3, 1997 (62 FR 30260)	6.0
National Phase I Non-Road Engines Standards	Promulgated July 3, 1995 (60 FR 34582)	9.1
MCESD Rules 331, 336, 337, 342, 346, and 351	Approval signed 1/20/97	11.3
Stage II vapor recovery	Approved 11/1/94 (59 FR 54521)	9.8
MCESD Rule 335 architectural coatings	Approved 1/6/92 (57 FR 354)	2.9
Autobody refinishing (national rule)	National rule proposed April 30, 1996 (61 FR 19005) and December 30, 1997 (62 FR 67784).	1.4
Consumer products (national rule)	National rule proposed April 2, 1996 (61 FR 14531).	2.4
Architectural and industrial coatings (national rule)	National rule proposed June 25, 1996 (61 FR 32729).	0.6
Total		59.8

Arizona Vehicle Emissions Inspection Program

Enhancements to Arizona's vehicle emission inspection program were approved by EPA in 1995 and included IM240 testing for 1981 and newer vehicles, pressure and purge testing, and tighter cut points. Enhancements to the program were implemented beginning in January, 1995. Emission reductions credited in the 15 percent demonstration reflect the program as actually implemented in 1996 (that is, without the final cut points or the purge test) and assume no further improvements.

Arizona's enhanced I/M program also includes a remote sensing program (RSP). The EPA's proposed 15 percent ROP demonstration, however, does not currently include any reductions from this program. The State has estimated reductions from the RSP of 3.7 metric tons of VOC per day in 1996 based on the analysis in the 1993 MAG plan[4] (Reference 7); however, EPA does not currently have sufficient information to determine an appropriate credit for use in its own analysis. EPA proposes to credit the non-enhanced RSP with up to 3.7 metric tons per day if it obtains sufficient information to determine the appropriate credit.

Summertime Gasoline Volatility Limit (7 psi RVP)

The State's 7 psi summertime gasoline volatility limit was fully implemented in 1996. Emission reduction credit proposed for the 15 percent plan assumes a decrease in the RVP limit from the federally-required 7.8 psi to 7 psi and is calculated for both on-road motor vehicles and non-road gasoline-powered vehicles.

Federal Reformulated Gasoline Program—Phase I

The Federal reformulated gasoline program became effective in the Phoenix area at the retail level on August 4, 1997. 62 FR 30260 (June 3, 1997). As with RVP, the program affects both on-road motor vehicle emissions and non-road gasoline-powered engine emissions. The proposed emission reduction credit for RFG includes emission reductions from both categories.

Arizona has adopted its own Clean Burning Gasoline (CBG) Program to replace the federal RFG program beginning in June, 1998. EPA has recently proposed to approve that program and Arizona has requested to opt-out of the Federal RFG program should EPA grant final approval to its CBG program. Since the State's program has been designed to achieve more emission reductions than available under EPA's RFG regulations, there will be no loss of emission reductions as the Phoenix area transitions from the federal to the state program; therefore, for the purposes of this 15 percent demonstration, EPA proposes to grant emission reductions equivalent to those proposed above for the federal RFG program. If EPA approves the CBG program, the Agency will give it the same credit as federal RFG for the purposes of the 15 percent demonstration. Emissions reductions from the CBG program, if approved by EPA, that are in excess of those proposed for credit above may be used by the State in any future rate-of-progress demonstrations.

Phase I Non-road Engine Standards

On July 3, 1995, EPA promulgated Phase I emission standards for new spark-ignition (gasoline) engines of 25 horsepower or less. These engines include those typically used in lawnmowers and other residential gardening equipment, commercial lawn and garden equipment, and small pumps and compressors, and some other industrial/construction equipment. The Phase I standards were effective with model year 1997 engines and are expected to reduce VOC emissions from the impacted equipment types by 22.9 percent in 1999. See Reference 8.

Stage II Vapor Recovery

EPA approved Arizona's Stage II Vapor Recovery rules (Arizona Revised Statutes §§ 41–2131 through 2133 and Arizona Administrative Code R4–31–901 through R4–31–910) in 1994. This program required the installation of California Air Resources Board (CARB) certified stage II vapor recovery equipment at service stations by November 15, 1994.[5]

[4] Since EPA's approval of the State's VEIP, the State has enhanced the implementation of the RSP. This measure is not currently in the SIP. The State's reduction estimate is for the non-enhanced program.

[5] In its 15 percent plan, the State did not explicitly identify several measures that had been implemented after 1990 but prior to the development of the plan even though these measures are fully creditable in 15 percent plans. These measures include the Stage II vapor recovery program and the final limits in Maricopa County's architectural coating rule. The State, however, did incorporate reductions from these measures into the projected 1996 inventory. For the purposes of EPA's analysis, these measures and their associated reductions (which are identical to the ones calculated by the State) have been explicitly identified.

MCESD Rules

Concurrently with this proposal, EPA has approved MCESD Rules 331, 336, 337, 342, 346, and 351 into the SIP. Rule 331 limits the emissions of VOCs from surface cleaning and degreasing operations. Rule 336 limits emissions from surface coating operations. Rule 337 limits emissions of VOCs from screen, gravure, letterpress, flexographic and lithographic printing processes, including related coating and laminating processes. Rule 342 controls the emissions of VOCs emanating from applying coatings of finishing materials to furniture or fixtures made of wood or wood derived materials. Rule 346 limits VOC emissions from the surface preparation and coating of wood millwork such as shutters, doors, windows and their associated woodwork, and Rule 351 controls emissions of VOCs from organic liquid loading operations at bulk plants and bulk terminals. These rules, which affect emissions from both point and area sources, result in a total reduction of 9.2 metric tons per day from point sources and 2.1 metric ton per day from area sources.

Architectural Coatings

EPA approved MCESD's Rule 335 Architectural Coatings in 1992. This rule had a number of compliance deadlines in 1991 and reductions from these final deadlines are fully creditable to the 15 percent plan. See also Footnote 5.

Consumer Products

On April 2, 1996, EPA proposed national VOC emission standards for 24 categories of consumer products requiring compliance with the standards by 1997. Under EPA policy, 15 percent demonstrations may credit an overall 20 percent reduction in emissions from the consumer products categories covered by this rule. Reference 9. For Maricopa County, this rule will reduce VOC emissions from consumer products by an estimated 2.4 metric tons per day.

This measure, as well as the national autobody refinishing rule and the national architectural and industrial maintenance coating rule discussed in the following sections are statutorily required. See CAA section 183(e) and "Consumer and Commercial Products: Schedule for Regulation," 60 FR 15264 (March 23, 1995). The Agency anticipates at this time that rules will be finalized by mid-1998. EPA has recently been sued to enforce the requirement to promulgate these rules and is currently discussing a schedule for their promulgation. *Sierra Club* v. *Browner*, CIV No. 97–984 PLF (D.D.C.).

The fact that these rules are required federal rules, and will likely soon have court-ordered deadlines, creates circumstances that allow EPA to consider them as part of 15 percent plans. Taking credit for reductions from proposed required federal measures is consistent with the overall scheme of the Clean Air Act ozone nonattainment provisions, as well as the relevant provisions by their terms. Congress anticipated that these federal measures would contribute to both progress toward attainment and attainment of the ozone standard and thus these measures are an integral part of Congress' blueprint for ozone attainment. Therefore, EPA concludes that implementation plans should be allowed to account for those reductions in both attainment and rate-of-progress plans. See Reference 10 and 61 FR 10920, 10936 (March 18, 1996).

Among the categories covered by the national rule for consumer products is windshield wiper fluids. MCESD has also adopted Rule 344 to control emissions from windshield wiper fluids. EPA is currently discussing the enforceability of the rule with the County and has not approved the measure into the SIP, hence the emission reductions from this category are based on the national rule and not Rule 344.

Autobody Refinishing

On April 30, 1996 and December 30, 1997, EPA proposed a national rule governing emissions from autobody refinishing coatings. Under EPA policy (Reference 11), a 37 percent reduction in emissions from autobody refinishing may be credited to this national rule. For Maricopa County, this rule will reduce VOC emissions from autobody refinishing by an estimated 1.4 metric tons per day.

MCESD has also adopted Rule 345 to control emissions from autobody refinishing. EPA is currently discussing the enforceability of this rule with the County and has not approved the measures into the SIP, hence the emission reductions from this category are based on the national rule and not Rule 345.

Architectural and Industrial Maintenance Coatings

On June 25, 1996 EPA proposed a national rule limiting the VOC content of numerous categories of architectural and industrial maintenance (AIM) coatings. Under EPA policy (Reference 12), a 20 percent reduction in emissions from the AIM coatings rule may be credited to this national rule for areas without architectural coating rules. As discussed above, Maricopa County already has in place Rule 335 that limits VOC content of architectural coatings. The national rule, as proposed, includes new or tighter limits than are currently in Rule 335 for a number of coating categories (e.g., traffic marking); therefore, the Phoenix area will realize additional emission reductions from the national rule of 0.6 metric tons per day by mid-1999.

D. "As Soon As Practicable" Demonstration

As discussed above, CAA section 182(b)(1) requires that all moderate and above ozone nonattainment areas prepare plans that provide for a 15 percent VOC emission reduction by November 15, 1996. Since this deadline has passed, in order to demonstrate that the Phoenix area has met the CAA section 182(b)(1) requirement, it must be demonstrated that the 15 percent reduction will be achieved as soon as practicable by showing that the applicable implementation plan contains all VOC control measures that are practicable for the Phoenix area and that meaningfully accelerate the date by which the 15 percent level is achieved. Measures that provide only an insignificant additional amount of reductions or could not be implemented soon enough to meaningfully advance the date by which the 15 percent is demonstrated are not required to be implemented to meet this test.

For the purposes of this 15 percent demonstration only, EPA is proposing to interpret "significant emission reduction" to be equal to or more than one-half of one percent (0.5 percent) of the total emission reduction needed to meet the 15 percent ROP requirement in 1999 for the Phoenix nonattainment area. One-half of one percent is 0.5 metric tons per day.

For the purposes of this 15 percent demonstration only, EPA is also proposing to interpret "to meaningfully accelerate the date by which the 15 percent is demonstrated" to mean three or more months. Because April 1 is before the June 1 start of the Phoenix ozone season, the ambient air quality benefit that would be gained by advancing the demonstration date by less than three months in advance of April 1 would not justify the implementation of additional federal measures in the Phoenix area for the purposes of demonstrating 15 percent. On the other hand, to advance the benchmark demonstration date for the "as soon as practicable" test much more than three months (that is, before

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January 1, 1999) would leave so little time between the projected effective date of this action (July 1, 1998) and the benchmark demonstration date that no measure could be reasonably implemented in that short time period. Based on this reasoning, EPA believes that three months is an appropriate benchmark for this "as soon as practicable" test in this case.

Based on its analysis and the set of SIP-approved and federal measures proposed for credit above, EPA is projecting that the Phoenix area will meet the required 15 percent reduction no later than April 1, 1999. An additional emission reduction totaling at least 0.6 metric tons per day would be needed by January 1, 1999 to advance the demonstration date to January 1, 1999. See TSD, Section III.D. Therefore, to show that April 1, 1999 is the "as soon as practicable date" to demonstrate a 15 percent ROP for the Phoenix area, it must be shown that there are no measures that achieve a 0.6 metric tons per day reduction by January 1, 1999.

EPA analyzed a number of control measures that could potentially advance the date by which the 15 percent reduction is demonstrated in the Phoenix area and has found that there are no measures or combination of measures that would advance the date by more than a de minimis amount. These measures included ones recommended by EPA (see "Sample City Analysis Comparison of Enhanced I/M Reductions Versus Other 15 Percent ROP Plan Measures," which is an attachment to Reference 2), by the State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials (see "Meeting the 15-Percent Rate-of-Progress Requirement Under the Clean Air Act: A Menu of Options," STAPPA/ALAPCO, September 1993), and in the Report of the Governor's Air Quality Strategies Task Force (December 2, 1996), and the "Reanalysis of the Metropolitan Voluntary Early Ozone Plan," ADEQ *et al.* October 1997.

Most of the measures EPA analyzed generated very small additional emission reductions by January 1, 1999 (e.g., a complete ban on open burning) or could not be implemented to achieve emission reduction before January 1, 1999 (e.g., I/M improvements). In many cases, the State is already developing (e.g., industrial cleaning solvents) or had already adopted a similar measure (e.g., graphic arts) so that little, if any, additional reductions would be achieved by a federal measure. The complete analysis of potential measures is contained in the TSD for this proposal.

Based on this analysis, EPA has concluded that there are no reasonable measures or combination of reasonable measures that could meaningfully advance the demonstration date; therefore, the Agency proposes to find that April 1, 1999 is the most expeditious date practicable to demonstrate the 15 percent reduction.

III. Conclusion

Pursuant to its authority under CAA section 110(c) and for the reasons discussed above, EPA is proposing to determine that the Phoenix metropolitan area has in place or will have in place sufficient control measures to meet the 15 percent ROP requirement for VOCs in CAA section 182(b)(1)(A) as soon as practicable. This proposed determination is predicated on EPA's reanalysis of the State's 15 percent ROP plan to reflect the realities of the VEIP, reductions from additional controls adopted by the State, and additional federal regulations.

EPA is also proposing to approve the State's 1990 base year inventory under CAA sections 110(k)(2) and 182(a)(1).

IV. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget has exempted this action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This proposal simply presents the analysis of the emission impacts on the Phoenix metropolitan area of already adopted or proposed State and federal rules. This action neither proposes the promulgation of additional measures nor requires Arizona or its local jurisdictions to adopt or implement additional measures beyond those that they currently have adopted and implemented or have been proposed or implemented at the federal level. As such, it does not propose to regulate any entities. Therefore, pursuant to 5 U.S.C. 605(b), EPA certifies that today's proposed action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, when EPA promulgates "any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more" in any one year. A "Federal mandate" is defined, under section 101 of UMRA, as a provision that "would impose an enforceable duty" upon the private sector or State, local, or tribal governments", with certain exceptions not here relevant. Under section 203 of UMRA, EPA must develop a small government agency plan before EPA "establish[es] any regulatory requirements that might significantly or uniquely affect small governments". Under section 204 of UMRA, EPA is required to develop a process to facilitate input by elected officers of State, local, and tribal governments for EPA's "regulatory proposals" that contain significant Federal intergovernmental mandates. Under section 205 of UMRA, before EPA promulgates "any rule for which a written statement is required under [UMRA section] 202", EPA must identify and consider a reasonable number of regulatory alternatives and either adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, or explain why a different alternative was selected.

As explained above, sections 202, 203, 204, and 205 of UMRA do not apply to today's action because it does not impose an enforceable duty on or otherwise affect any entity. Therefore, EPA is not required and has not taken any actions under UMRA.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone.

Dated: January 20, 1998.

Carol M. Browner,

Administrator.

References

1. General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, April 16, 1992, 57 FR 13498.

2. *Memorandum*, John S. Seitz, Director of the Office of Air Quality Planning and Standards, and Richard B. Ossias, Deputy Associate General Counsel to Regional Air Division Directors; "15 Percent VOC SIP Approvals and the 'As Soon As Practicable' Test;" February 12, 1997 including the attachment "Sample City Analysis Comparison of Enhanced I/M Reductions Versus Other 15 Percent ROP Plan Measures," E.H. Pechan and Associates, December 12, 1996.

3. *Note*, Margo Oge, Director Office of Mobile Sources and John Seitz, Director of OAPQS to Regional Division Directors; re: Date by which States Need to Achieve all the Reductions Needed for the 15% Plan from I/M and Guidance for Recalculation, August 13, 1996.

4. *Memorandum*, Gay MacGregor, Director Regional and State Programs Division, OMS and Sally Shaver, Director, Air Quality Strategies and Standards Division, OAQPS to Regional Air Division Directors; "Modeling 15% VOC Reduction(s) from I/M in 1999—Supplemental Guidance;" December 23, 1996.

5. *Memorandum*, Philip A. Lorang, Director, Emission Planning and Strategies Division, OMS to Regional Air Division Directors; "Release of MOBILE5a Emission Factor Model," March 29, 1993.

6. OAQPS, U.S. EPA. Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for the 15 Percent Rate of Progress Plans. EPA–452/R–92–005. October 1992.

7. Letter, Nancy Wrona, Director, Air Quality Division, ADEQ; to David Howekamp, Director, Air and Toxics Division, EPA-Region 9; "Submittal of Additional Information in Support of Approval of 15% Rate of Progress Ozone Plan for Maricopa County;" September 11, 1997.

8. *Memorandum*, Philip A. Lorang, Director, Emission Planning and Strategies Division, OMS to Regional Air Division Directors; "Future Nonroad Emission Reduction Credits for Court-Ordered Nonroad Standards;" November 29, 1994.

9. *Memorandum*, John S. Seitz, Director, OAQPS to Regional Air Division Directors; "Regulatory Schedule for Consumer and Commercial Products under Section 182(e) of the Clean Air Act;" June 22, 1995.

10. *Memoranda*, Mary Nichols, Assistant Administrator for Air and Radiation, U.S. EPA to Regional Administrators, Regions 1–10; "SIP Credits for Federal Nonroad Engine Emissions Standards and Certain Other Mobile Source Programs;" November 23, 1994 and January 30, 1996.

11. *Memorandum*, John S. Seitz, Director, OAQPS to Regional Air Division Directors; "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance Coating Rule and the Autobody Refinishing Rule;" November 29, 1994.

12. *Memorandum*, John S. Seitz, Director, OAQPS to Regional Air Division Directors; "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule;" March 22, 1995.

[FR Doc. 98–1765 Filed 1–23–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL160–1b; AD–FRL–5951–7]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA proposes to approve a variance allowing a temporary increase in particulate matter emissions from the Marathon Oil refinery in Robinson, Illinois, to allow deferral of repairs of control equipment until the time of a scheduled maintenance period. In the Final Rules section of this **Federal Register**, USEPA is fully approving the State Implementation Plan revision as a direct final rule without prior proposal, because the USEPA views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse written comments are received in response to these actions, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse written comments, the direct final rule will be withdrawn and all public comments will be addressed in a subsequent final rule based on this proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before February 25, 1998.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the State submittal is available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, at (312) 886–6067.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401 et seq.

Dated: January 8, 1998.

Michelle D. Jordan,

Acting Regional Administrator, Region V.

[FR Doc. 98–1764 Filed 1–23–98; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 980113012–8012–01; 121197B]

RIN 0648–AK57

Pacific Halibut Fisheries; Catch Sharing Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed changes to catch sharing plan and sport fishing management; availability of draft environmental assessment and regulatory impact review.

SUMMARY: NMFS proposes to approve and implement changes to the Area 2A Pacific halibut Catch Sharing Plan (Plan): (1) To adjust the Washington sport allocation; (2) to provide for an incidental catch of halibut in the commercial sablefish fishery off Washington under certain circumstances; and (3) to adjust management of the sport fisheries off Oregon and Washington under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). NMFS also proposes

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sport fishery regulations to implement the Plan in 1998. A draft environmental assessment and regulatory impact review (EA/RIR) on this action also is available for public comment.

DATES: Comments must be received by February 17, 1998.

ADDRESSES: Send comments or requests for a copy of the Plan to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Joe Scordino, 206–526–6143.

SUPPLEMENTARY INFORMATION: The Halibut Act of 1982 at 16 U.S.C. 773c provides that the Secretary of Commerce (Secretary) shall have general responsibility to carry out the Halibut Convention between the United States and Canada and that the Secretary shall adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. Section 773c(c) also authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in U.S. Convention waters that are in addition to, but not in conflict with, regulations of the International Pacific Halibut Commission (IPHC). Accordingly, catch sharing plans to allocate the total allowable catch (TAC) of Pacific halibut between treaty Indian and non-Indian harvesters, and among non-Indian commercial and sport fisheries in IPHC statistical Area 2A (off Washington, Oregon, and California) have been developed each year since 1988 by the Pacific Fishery Management Council (Council) in accordance with the Halibut Act. In 1995, NMFS implemented a Council-recommended long-term Plan (60 FR 14651, March 20, 1995) which was revised in 1996 (61 FR 11337, March 20, 1996) and 1997 (62 FR 12759, March 16, 1997). The Plan allocates 35 percent of the Area 2A TAC to Washington treaty Indian tribes in Subarea 2A–1 and 65 percent to non-Indian fisheries in Area 2A. The allocation to non-Indian fisheries is divided into three shares, with the Washington sport fishery (north of the Columbia River) receiving 36.6 percent, the Oregon/California sport fishery receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. The commercial fishery is further divided into two sectors; a directed commercial fishery that is allocated 85 percent, and an incidental catch in the salmon troll fishery that is allocated 15 percent of the commercial allocation. The directed commercial fishery in Area 2A is confined to southern Washington (south of 46°53'18" N. lat.), Oregon and California. The Plan also divides the sport fisheries into seven geographic areas each with separate allocations, seasons, and bag limits.

Council Recommended Changes to the Plan

At its September 1997 public meeting, the Council adopted proposing for public comment, the following changes to the Plan: (1) Modifying the Washington sport subarea allocations and seasons at TACs in excess of recent years TACs and providing an allocation to an incidental catch commercial fishery off Washington at TACs greater than 900,000 lb (408.2 mt); and, (2) re-structuring the Oregon sport fisheries to framework the opening dates for the May and August all-depth seasons, and modifying the management of the south coast subarea to provide a fixed season or to combine the central and south coast subareas into one subarea.

At its November 1997 public meeting, the Council considered the results of State sponsored workshops on the proposed changes to the Plan and public comment, and made final recommendations for eight modifications to the Plan as follows:

(1) Revise the distribution of the Washington sport allocation among the Washington sport fishery subareas when the Area 2A TAC is above 550,000 lb (249.5 mt) to facilitate expanded season lengths. When the Washington sport allocation is between 130,845 lb (59.4 mt) and 224,110 lb (101.7 mt), 32 percent of the amount between 130,845 lb (59.4 mt) and 224,110 lb (101.7 mt) is distributed each to the Washington Inside Waters (Puget Sound) subarea, the Washington North Coast subarea, and the Washington South Coast subarea. The Columbia River subarea receives the remaining 4 percent of the Washington sport allocation between 130,845 lb (59.4 mt) and 224,110 lb (101.7 mt). When the Washington sport allocation is above 224,110 lb (101.7 mt), 32 percent of the amount between 130,845 lb (59.4 mt) and 214,110 lb (97.1 mt) is distributed to each of the 3 Washington sport subareas described above and the remaining 4 percent is allocated to the Columbia River subarea.

(2) Revise the distribution of the Washington sport allocation when the Area 2A TAC is above 942,040 lb (427.3 mt) to provide for retention of incidentally caught halibut in the primary directed sablefish fishery north of Point Chehalis, WA. When the Washington sport allocation is above 224,110 lb (101.7 mt), any amount of that allocation above 214,110 lb (97.1 mt) is allocated to this fishery. The area north of Point Chehalis has been closed to the directed commercial fishery in recent years and this revision allows commercial sablefish fishers operating in this area an opportunity to retain incidentally caught halibut in years when the Area 2A TAC is high.

(3) Revise the sport season structure priorities for the Washington north coast subarea to extend the season for 5 days per week through June after achieving priorities for a 5 day per week season in May and a July 1–4 opening.

(4) Revise the sport season structure for the Washington south coast subarea to have a 5 day per week season with closures on Friday and Saturday to extend the season and increase fishing opportunity.

(5) Establish a framework opening date for the May and August sport fisheries in Oregon south of Cape Falcon, OR to allow fishers to know in advance what day the fishery will open each year and allow fishers to better plan and schedule fishing trips.

(6) Establish a fixed season for the Oregon south coast subarea sport fishery in May (similar to the fixed season in the Oregon central coast sport fishery) to allow fishers to better plan and schedule fishing trips. Fixed season open dates would be established preseason based on projected catch per day and number of days to achievement of each subarea season subquota for the May and August fisheries in Oregon south of Cape Falcon.

(7) Revise the structuring of the August sport fishery off Oregon (Cape Falcon, OR to the Oregon/California border) to provide for a restricted fishery inside 30 fathoms if the remaining quota is insufficient to allow for one day of an all-depth fishery.

(8) Revise the inseason management measures to allow the transfer of allocations between sport fishery subareas north of Cape Falcon, OR that are projected to be unused as of September 30 of each year. This would allow unused allocations to be utilized by Washington sport subareas with short seasons.

NMFS is proposing to implement the eight changes to the Plan recommended by the Council as well as one addition to the Plan to better implement the Council's intent and several minor corrections to the Plan. The implementation provisions for the incidental catch of halibut in the salmon troll fishery would be clarified, as proposed below, to stipulate that the August season is closed unless notice of an opening is provided on the NMFS hotline. The term "Regional Director" would be changed to "Regional Administrator" in several places in the Plan. The word "approximately" would be added to references to the percentages of the Area 2A TAC in the Plan where the percentage is rounded to the nearest tenth.

In addition, NMFS is proposing several changes to the Plan to eliminate reference to IPHC charterboat licenses because the IPHC is proposing to eliminate its license requirements for charterboats. The proposed changes to the Plan on charterboat licenses would not change the effect of the Plan of preventing commercial fishers from accessing the sport allocation (i.e., operating in the sport fisheries) and conversely preventing sport fishers from participating in the commercial fishery because the remaining commercial license requirements provide an adequate regulatory mechanism.

Proposed Changes to the Catch Sharing Plan

Accordingly, NMFS is proposing to approve the Council recommendations and proposes the following changes to the Plan:

Section (b) of the Plan would be modified to read as follows:

This Plan allocates 35 percent of the Area 2A TAC to U.S. treaty Indian tribes in the State of Washington in subarea 2A–1, and 65 percent to non-Indian fisheries in Area 2A. The allocation to non-Indian fisheries is divided into three shares, with the Washington sport fishery (north of the Columbia River) receiving 36.6 percent, the Oregon/California sport fishery receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. Allocations within the non-Indian commercial and sport fisheries are described in sections (e) and (f) of this Plan. These allocations may be changed if new information becomes available that indicates a change is necessary and/or the Pacific Fishery Management Council takes action to reconsider its allocation recommendations. Such changes will be made after appropriate rulemaking is completed and published in the **Federal Register**.

In section (e) Non-Indian Commercial Fisheries, the first paragraph would be revised to read as follows:

The non-Indian commercial fishery is allocated 31.7 percent of the non-Indian allocation for a directed halibut fishery and an incidental catch fishery during the salmon troll fishery. The non-Indian commercial allocation is approximately 20.6 percent of the Area 2A TAC. Incidental catch of halibut in the primary directed sablefish fishery north of Point Chehalis, WA will be authorized if the Washington sport allocation exceeds 224,110 lb (101.7 mt) as described in section (e)(3) of this Plan. The structuring and management of these three fisheries is as follows."

In section (e) Non-Indian Commercial Fisheries, paragraph (3) would be renumbered (4), and would be revised to read as follows:

Commercial license restrictions/ declarations. Commercial fishers must choose either (1) to operate in the directed halibut commercial fishery in Area 2A and/or retain halibut caught incidentally in the primary directed sablefish fishery north of Point Chehalis, WA or (2) to retain halibut caught incidentally during the salmon troll fishery. Commercial fishers operating in the directed halibut fishery and/or retaining halibut incidentally caught in the primary directed sablefish fishery must send their license application to the IPHC postmarked no later than April 30, or the first weekday in May, if April 30 falls on a weekend, in order to obtain a license to fish for halibut in Area 2A. Commercial fishers operating in the salmon troll fishery who seek to retain incidentally caught halibut must send their application for a license to the IPHC for the incidental catch of halibut in Area 2A postmarked no later than March 31, or the first weekday in April, if March 31 falls on a weekend. Fishing vessels licensed by IPHC to fish commercially in Area 2A are prohibited from operating in the sport fisheries in Area 2A.

In section (e) Non-Indian Commercial Fisheries, a new paragraph (3) would be added to read as follows:

Incidental catch in the sablefish fishery north of Point Chehalis. If the Area 2A TAC is greater than 900,000 lb (408.2 mt), the primary directed sablefish fishery north of Point Chehalis will be allocated the Washington sport allocation that is in excess of 214,110 lb (97.1 mt), provided a minimum of 10,000 lb (4.5 mt) is available (i.e., the Washington sport allocation is 224,110 lb (101.7 mt) or greater). If the amount above 214,110 lb (97.1 mt) is less than 10,000 lb (4.5 mt), then the excess will be allocated to the Washington sport subareas according to section (f) of this Plan. The Council will recommend landing restrictions at its spring public meeting each year to control the amount of halibut caught incidentally in this fishery. The landing restrictions will be based on the amount of the allocation and other pertinent factors, and may include catch or landing ratios, landing limits, or other means to control the rate of halibut landings. NMFS will publish the landing restrictions annually in the **Federal Register**.

In section (f) Sport Fisheries, the first paragraph would be revised to read as follows:

The non-Indian sport fisheries are allocated 68.3 percent of the non-Indian share, which is approximately 44.4 percent of the Area 2A TAC. The allocation is further divided as subquotas among seven geographic subareas.

In section (f) Sport Fisheries, paragraphs (1)(i) through (vi) for each sport fishery subarea would be revised as follows:

The first sentence of paragraph (i) would be revised to read as follows:

Washington inside waters (Puget Sound) subarea. This sport fishery subarea is allocated 28.0 percent of the first 130,845 lb (59.4 mt) allocated to the Washington sport fishery, and 32 percent of the Washington sport allocation between 130,845 lb (59.4 mt) and 224,110 lb (101.7 mt) (except as provided in section (e)(3) of this Plan).

The first sentence of paragraph (ii) would be revised to read as follows:

Washington north coast subarea. This sport fishery subarea is allocated 57.7 percent of the first 130,845 lb (59.4 mt) allocated to the Washington sport fishery, and 32 percent of the Washington sport allocation between 130,845 lb (59.4 mt) and 224,110 lb (101.7 mt) (except as provided in section (e)(3) of this Plan)." Also, the third priority for the structuring of the season would be revised to read as follows:

If the preseason prediction indicates that these two goals can be met without utilizing the quota for this subarea, then the next priority is to extend the fishery into June and continue for 5 days per week (Tuesday through Saturday) for as long a period as possible.

The first sentence of paragraph (iii) would be revised to read as follows:

Washington south coast subarea. This sport fishery is allocated 12.3 percent of the first 130,845 lb (59.4 mt) allocated to the Washington sport fishery, and 32 percent of the Washington sport allocation between 130,845 lb (59.4 mt) and 224,110 lb (101.7 mt) (except as provided in section (e)(3) of this Plan)." Also, the opening of the fishery would be revised to read as follows: "The fishery will open on May 1 and continue five days per week (Sunday through Thursday) until 1,000 lb (0.45 mt) are projected to remain in the subarea quota. If May 1 falls on a Friday or Saturday, the fishery will open on the following Sunday.

The first sentence of paragraph (iv) would be revised to read as follows:

Columbia River subarea. This sport fishery subarea is allocated 2.0 percent

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of the first 130,845 lb (59.4 mt) allocated to the Washington sport fishery, and 4 percent of the Washington sport allocation between 130,845 lb (59.4 mt) and 224,110 lb (101.7 mt) (except as provided in section (e)(3) of this Plan). This subarea also is allocated 2.0 percent of the Oregon/California sport allocation.

Paragraphs (v), (v)(A), (v)(B) and (v)(C) of the Plan for the Oregon central coast subarea are revised to read as follows:

Oregon central coast subarea. If the Area 2A TAC is 388,350 lb (176.2 mt) and above, this subarea extends from Cape Falcon to the Siuslaw River at the Florence north jetty (44°01'08" N. lat.) and is allocated 88.4 percent of the Oregon/California sport allocation, which is approximately 18.21 percent of the Area 2A TAC. If the Area 2A TAC is less than 388,350 lb (176.2 mt), this subarea extends from Cape Falcon to the California border and is allocated 95.4 percent of the Oregon/California sport allocation. The structuring objectives for this subarea are to provide two periods of fishing opportunity in May and in August in productive deeper water areas along the coast, principally for charterboat and larger private boat anglers, and provide a period of fishing opportunity in the summer for nearshore waters for small boat anglers. Fixed season dates will be established preseason for the May and August openings and will not be modified inseason except that the August openings may be modified inseason if the combined Oregon subarea quota is estimated to be achieved. Recent year catch rates will be used as a guideline for estimating the catch rate for the May and August fishery each year. The number of fixed season days established will be based on the projected catch per day with the intent of not exceeding the subarea season subquotas. ODFW will monitor landings and provide a post-season estimate of catch within 2 weeks of the end of the fixed season. If sufficient catch remains for an additional day of fishing after the May season or the August season, openings will be provided if possible in May and August respectively. Potential additional open dates for both the May and August seasons will be announced preseason. If a decision is made inseason to allow fishing on one or more of these additional dates, notice of the opening will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825. No all-depth halibut fishing will be allowed on the additional dates unless the opening date has been announced on the NMFS hotline. Any poundage remaining unharvested in the subquotas from earlier seasons will be added to the next season. The daily bag limit for all seasons is two halibut per person, one with a minimum 32–inch (81.3–cm) size limit and the second with a minimum 50–inch (127.0 cm) size limit. ODFW will sponsor a public workshop shortly after the IPHC annual meeting to develop recommendations to NMFS on the open dates for each season each year. The three seasons for this subarea are as follows.

(A) The first season is an all-depth fishery that begins on the second Thursday in May and is allocated 68 percent of the subarea quota. Fixed season dates will be established preseason based on projected catch per day and number of days to achievement of the subquota for this first season. No inseason adjustments will be made, except that additional opening days (established preseason) may be allowed if any quota for this season remains unharvested. The fishery will be structured for 2 days per week (Friday and Saturday) if the season is for 4 or fewer fishing days. The fishery will be structured for 3 days per week (Thursday through Saturday) if the season is for 5 or more fishing days.

(B) The second season opens the day following closure of the first season, only in waters inside the 30–fathom (55 m) curve, and continues daily until 7 percent of the subarea quota is taken, or until the day before the first Friday in August, whichever is earlier.

(C) The last season is a coastwide (Cape Falcon, OR to Oregon/California border) all-depth fishery that begins on the first Friday in August and is allocated 25 percent of the subarea quota. Fixed season dates will be established preseason based on projected catch per day and number of days to achievement of the combined Oregon subarea quotas south of Cape Falcon, OR. The all-depth fishery will be structured for 2 days per week (Friday and Saturday). No inseason adjustments will be made unless the combined Oregon subarea quota is estimated to be achieved. Additional openings of the all-depth fishery (established preseason) may be allowed if quota remains unharvested. If quota remains unharvested, but is insufficient for one day of an all-depth fishery, the sport fishery from Cape Falcon, OR to the Oregon/California border will be reopened in the area inside the 30–fathom (55 m) curve and will continue each day until the combined Oregon subarea quotas (south of Cape Falcon) are estimated to have been taken, or September 30, whichever is earlier.

Paragraphs (vi), (vi)(A), (vi)(B) and (vi)(C) of the Plan for the Oregon south coast subarea would be revised to read as follows:

Oregon south coast subarea. If the Area 2A TAC is 388,350 lb (176.2 mt) and greater, this subarea extends from the Siuslaw River at the Florence north jetty (44°01'08" N. lat.) to the California border (42°00'00" N. lat.) and is allocated 7.0 percent of the Oregon/California sport allocation, which is approximately 1.44 percent of the Area 2A TAC. If the Area 2A TAC is less than 388,350 lb (176.2 mt), this subarea will be included in the Oregon central coast subarea. The structuring objective for this subarea is to create a south coast management zone that has the same objectives as the Oregon central coast subarea and is designed to accommodate the needs of both charterboat and private boat anglers in the south coast subarea where weather and bar crossing conditions very often do not allow scheduled fishing trips. Fixed season dates will be established preseason for the May and August openings and will not be modified inseason except that the August openings may be modified inseason if the combined Oregon subarea quota is estimated to be achieved. Recent year catch rates will be used as a guideline for estimating the catch rate for the May and August fishery each year. The number of fixed season days established will be based on the projected catch per day with the intent of not exceeding the subarea season subquotas. ODFW will monitor landings and provide a post-season estimate of catch within 2 weeks of the end of the fixed season. If sufficient quota remains for an additional day of fishing after the May season or the August season, openings will be provided in May and August respectively. Potential additional open dates for both the May and August seasons will be announced preseason. If a decision is made inseason to allow fishing on one or more of these additional dates, notice of the opening will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825. No all-depth halibut fishing will be allowed on the additional dates unless the opening date has been announced on the NMFS hotline. Any poundage remaining unharvested in the subquotas from earlier seasons will be added to the next season. The daily bag limit for all seasons is two halibut per person, one with a minimum 32–inch (81.3–cm) size limit and the second with a minimum 50–inch (127.0 cm) size limit. ODFW will sponsor a public workshop shortly after the IPHC annual meeting to develop recommendations to NMFS on the open dates for each season each

year. The three seasons for this subarea are as follows.

(A) The first season is an all-depth fishery that begins on the second Thursday in May and is allocated 80 percent of the subarea quota. Fixed season dates will be established preseason based on projected catch per day and number of days to achievement of the subquota for this first season. No inseason adjustments will be made, except that additional opening days (established preseason) may be allowed if any quota for this season remains unharvested. The fishery will be structured for 2 days per week (Friday and Saturday) if the season is for 4 or fewer fishing days. The fishery will be structured for 3 days per week (Thursday through Saturday) if the season is for 5 or more fishing days.

(B) The second season is a restricted area fishery that is allocated 20 percent of the subarea quota. The restricted season opens the day following closure of the first season, only in waters inside the 30–fathom (55 m) curve, and continues daily until the subarea quota is estimated to have been taken, or until the day before the first Friday in August, whichever is earlier.

(C) The last season is a coastwide (Cape Falcon, OR to Oregon/California border) all-depth fishery that begins on the first Friday in August. Fixed season dates will be established preseason based on projected catch per day and number of days to achievement of the combined Oregon subarea quotas south of Cape Falcon, OR. The all-depth fishery will be structured for 2 days per week (Friday and Saturday). No inseason adjustments will be made unless the combined Oregon subarea quota is estimated to be achieved. Additional openings of the all-depth fishery (established preseason) may be allowed if quota remains unharvested. If quota remains unharvested, but is insufficient for one day of an all-depth fishery, the sport fishery from Cape Falcon, OR to the Oregon/California border will be reopened in the area inside the 30–fathom (55 m) curve and will continue each day until the combined Oregon subarea quotas is estimated to have been taken, or September 30, whichever is earlier.

Paragraph (f)(5)(i) on flexible inseason management provisions would be revised to read as follows:

The Regional Administrator, NMFS Northwest Region, after consultation with the Chairman of the Pacific Fishery Management Council, the IPHC Executive Director, and the Fisheries Director(s) of the affected state(s), is authorized to modify regulations during the season after making the following determinations: (A) The action is necessary to allow allocation objectives to be met. (B) The action will not result in exceeding the catch limit for the area. (C) If any of the sport fishery subareas north of Cape Falcon, OR are not projected to utilize their respective quotas by September 30, NMFS may take inseason action to transfer any projected unused quota to a Washington sport subarea projected to have the fewest number of sport fishing days in the calendar year.

In section (f)(5)(ii) on flexible inseason management, a new paragraph (E) is added to read as follows:

Modification of subarea quotas north of Cape Falcon, OR consistent with the standards in section (f)(5)(i)(C) of this Plan.

Proposed 1998 Sport Fishery Management Measures

NMFS also proposes sport fishery management measures necessary to implement the Plan in 1998. It is unknown at this time what the 1998 TAC will be, but information available from the IPHC indicates the TAC may be similar to 1997. The final TAC will be determined by the IPHC at its annual meeting in January 1998. The proposed 1998 sport fishery regulations based on the 1997 Area 2A TAC of 700,000 lb (317.5 mt) are as follows:

Washington Inside Waters Subarea (Puget Sound and Straits)

This subarea would be allocated 48,056 lb (21.8 mt) at an Area 2A TAC of 700,000 lb (317.5 mt) in accordance with the revised Plan. Although the allocation is 3 percent greater than 1997, the season length would be reduced from 59 days open in 1997 because of increased catch per day open (1,470 lb (0.7 mt) per day in 1997 compared to 844 lb (0.4 mt) per day in 1996). In accordance with the procedure developed with IPHC to project the catch in this subarea based on past catch per "fishing day equivalent" (FED), where a weekday is equal to 1 FED and a weekend/holiday is equal to 2.5 FEDs, a total of 76 FEDs were calculated (for a subarea quota of 48,056 lb (21.8 mt)) based on an average catch of 626 lb (0.3 mt) per FED in the past 3 years. The proposed number of open days for 1998 was then based on setting a season that opens in May and continues at least through July 4 in accordance with the Plan. If the season structuring is similar to 1997, then there would be a 47 day season that would open on May 21 (Thursday) and continue for 5 days per week (Thursday through Monday) through July 24 (Friday) when the season would close. The final determination of the season dates that will be open would be based on the allowable harvest level, projected 1998 catch rates, and recommendations developed in a public workshop sponsored by Washington Department of Fish and Wildlife after the 1998 TAC is set by the IPHC. The daily bag limit would be one halibut of any size per day per person.

Washington North Coast Subarea (north of the Queets River)

This subarea would be allocated 86,917 lb (39.4 mt) at an Area 2A TAC of 700,000 lb (317.5 mt) in accordance with the revised Plan. The season would open on May 1 and continue for 5 days per week (Tuesday through Saturday) until the quota is taken. Based on the 1997 catch of 1,468 lb (0.7 mt) per day, it is anticipated that the season would extend past July 4 thereby achieving the three priorities for this subarea in the Plan. The daily bag limit would be one halibut of any size per day per person. A portion of this subarea located about 19 nm (35 km) southwest of Cape Flattery would be closed to sport fishing for halibut. The size of this closed area is described in the Plan, but may be modified preseason by NMFS to maximize the season length.

Washington South Coast Subarea

This subarea would be allocated 27,513 lb (12.5 mt) at an Area 2A TAC of 700,000 lb (317.5 mt) in accordance with the revised Plan. The fishery would open on May 3 (Sunday) and continue 5 days per week (Sunday through Thursday) until 1,000 lb (0.45 mt) remain in the quota, and then would reopen as a nearshore fishery for 7 days per week until the remaining subarea quota is taken, or September 30, whichever occurs first. The daily bag limit would be one halibut of any size per day per person. The northern offshore portion of this area west of 124°40'00" W. long. and north of 47°10'00" N. lat. would be closed to sport fishing for halibut.

Columbia River Subarea

This subarea would be allocated 6,929 lb (3.1 mt) at an Area 2A TAC of 700,000 lb (317.5 mt) in accordance with the revised Plan. The fishery would open on May 1 and continue 7-days per week until the quota is reached or September 30, whichever occurs first. The daily bag limit would be one halibut with a minimum overall size limit of 32 inches (81.3 cm).

Oregon Central Coast Subarea

This subarea would be allocated 127,504 lb (57.8 mt) at an Area 2A TAC

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of 700,000 lb (317.5 mt) in accordance with the revised Plan. The May all-depth season would be allocated 86,703 lb (39.3 mt) and based on an observed increasing catch per day trend in this fishery, an estimated 15,600 lb to 18,400 lb (7.1 - 8.3 mt) would be caught per day in 1998 resulting in a 5 day fixed season. In accordance with the Plan, the season dates would be May 14, 15, 16, 21, and 22. Additional fishing days, if the quota is not taken, would be scheduled for early June. The restricted depth fishery inside 30–fathoms would be allocated 8,925 lb (4.1 mt) and would open on May 23 and continue until August 6 or attainment of quota for this season. The August coastwide all-depth fishery (Cape Falcon to Oregon/California border) would be allocated 31,876 lb (14.5 mt) which is only sufficient for a 1-day opening on August 7 based on past catch rates observed in this fishery. If sufficient quota remains after this season for additional days fishing, the dates for an all-depth fishery would be mid-August. The restricted depth fishery inside 30–fathoms would then re-open on August 8 and continue until September 30 or attainment of the quota. The final determination of the season dates will be based on the allowable harvest level, projected catch rates, and recommendations developed in a public workshop sponsored by ODFW after the 1998 TAC is set by the IPHC. The daily bag limit would be two halibut, one with a minimum overall size limit of 32 inches (81.3 cm) and the second with a minimum overall size limit of 50 inches (127.0 cm).

Oregon South Coast Subarea

This subarea would be allocated 10,096 lb (4.6 mt) at an Area 2A TAC of 700,000 lb (317.5 mt) in accordance with the revised Plan. The May all-depth season would be allocated 8,077 lb (3.7 mt) and based on an observed increasing catch per day trend in this fishery, an estimated 1,630 lb (0.7 mt) would be caught per day in 1998 resulting in a 5 day fixed season. In accordance with the Plan, the season dates would be May 14, 15, 16, 21, and 22. Additional fishing days, if the quota is not taken, would be scheduled for early June. The restricted depth fishery inside 30–fathoms would be allocated 2,019 lb (0.9 mt) and would open on May 23 and continue until August 6 or attainment of quota for this season. The August coastwide all-depth fishery (Cape Falcon to Oregon/California border) would be open for 1-day on August 7. If sufficient quota remains after this season for additional days fishing, the dates for an all-depth fishery would be mid-August. The restricted depth fishery inside 30–fathoms would open on August 8 and continue until September 30 or attainment of the quota. The final determination of the season dates would be based on the allowable harvest level, projected catch rates, and recommendations developed in a public workshop sponsored by ODFW after the 1998 TAC is set by the IPHC. The daily bag limit would be two halibut, one with a minimum overall size limit of 32 inches (81.3 cm) and the second with a minimum overall size limit of 50 inches (127.0 cm).

California Subarea

The proposed sport regulations for this subarea are the same as 1997 with a May 1 opening and continuing 7 days per week until September 30. The daily bag limit would be one halibut with a minimum overall size limit of 32 inches (81.3 cm).

NMFS requests public comments on the Council's recommended modifications to the Plan and the proposed sport fishing regulations. The Area 2A TAC will be set by the IPHC at its annual meeting on January 26–29, 1998 in Anchorage, AK. Comments are requested by February 17, 1998, after the IPHC annual meeting, so that the public will have the opportunity to consider the final Area 2A TAC before submitting comments on the proposed sport fishing regulations. The States of Washington and Oregon will conduct public workshops shortly after the IPHC meeting to obtain input on the sport season dates. After the Area 2A TAC is known, and after NMFS reviews public comments and comments from the States, NMFS will issue final rules for the Area 2A Pacific halibut sport fishery concurrent with the IPHC regulations for the 1998 Pacific halibut fisheries.

NMFS and the Council have prepared a draft environmental assessment and regulatory impact review on the proposed changes to the Plan. Copies of the "Draft Environmental Assessment and Regulatory Impact Review of Changes to the Catch Sharing Plan for Pacific Halibut in Area 2A" are available from NMFS (see **ADDRESSES**). Comments on the EA/RIR are requested by February 17, 1998.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the changes to the Plan would not have a significant economic impact on a substantial number of small entities.

In accordance with the Regulatory Flexibility Act, an assessment of the economic impacts of proposed changes to the Plan on small entities is presented in the EA/RIR. The Regulatory Flexibility Act (RFA), 5 U.S.C. 603 *et seq.*, requires agencies to assess impacts of proposed regulatory actions on small entities and determine whether there will be a significant economic impact on a substantial number of small entities. There are various criteria used to determine whether a proposed action would have a significant economic impact on a substantial number of small entities, the only one that may be relevant here is whether the proposed action would result in a reduction in annual gross revenues of more than 5 percent, for 20 percent or more of the affected small entities. For the purposes of the RFA, NMFS has adopted a standard that a "substantial number" of small entities is more than 20 percent of those small entities affected by the proposed action. In determining the scope or universe of the entities to be considered in making the significance determination, the general approach used is to consider only those entities that can reasonably be expected to be directly or indirectly impacted by the proposed action. For the fishing industry, a small entity is a small business with receipts of up to $3 million annually. Charterboats operating in Washington sport fisheries are viewed as small entities affected by the proposed changes to the Plan.

The proposed action involves three changes to the Plan that affect small businesses:

(1) establishment of fixed opening dates and fixed seasons for Oregon sport fisheries;

(2) a provision that at Area 2A TACs above 942,040 lbs (427.3 mt), the Washington sport fishery is capped at an allocation of 214,110 lb (97.1 mt) with the excess allocated to Washington commercial sablefish fishers to retain and sell incidentally caught halibut; and

(3) a revision of the distribution of the Washington sport allocation among the Washington sport fishery subareas when the Area 2A TAC is above 550,000 lb (249.5 mt) to facilitate expanded season lengths. At TACs below 550,000 lb (249.5 mt), the proposed Plan does not differ from the Plan currently in place.

The first two changes yield, if anything, only positive economic impacts; and therefore, they are not a source of significant economic impacts on small entities. The establishment of fixed opening dates and fixed seasons in the Oregon sport fisheries will allow anglers and businesses to better plan for halibut fishery seasons with resulting benefits from more orderly fisheries, but otherwise does not change the allocations or conduct of the sport fishery. The reallocation of Washington sport allocation at high Area 2A TAC levels to commercial fishers in the Washington sablefish fishery provides direct benefits in allowing incidentally caught halibut, which otherwise must be discarded, to be retained and sold by commercial fishers. This measure will also have the effect of limiting future growth in the sports fishery. However, this impact is not considered significant because it will not result in losses as compared to the status quo (i.e., sport fishers will not suffer any reduction in their annual gross revenue as a result of this measure).

The third change to the Plan, revising the distribution of sport allocation among subareas when TAC reaches a certain level, may yield negative impacts upon some small entities. The proposed changes to the Plan on the distribution by subarea of the Washington sport allocation at Area 2A TACs at or above 550,000 lb (249.5 mt) will directly affect charterboats that operate in Washington and indirectly affect small businesses, such as motels, restaurants, and tackle shops in the ports and nearby areas utilized by halibut anglers. In regard to direct effects of the proposed action, a total of 177 charterboats have been licensed by the International Pacific Halibut Commission over the past 3 years for halibut fishing, and only 13 to 15 of them (less than 9 percent) have operated out of ports affected by the proposed reduced allocation at higher Area 2A TAC levels.

Data on the actual number and type of small businesses utilized by halibut anglers (thereby indirectly affected by the proposed action) is not available. However, there are about 15 ports/access sites that are used by halibut anglers to access the halibut sport fishery subareas in Washington and most, if not all, of the affected small businesses are located in the ports from which halibut anglers depart for sport fishing trips. Therefore any reduction in halibut fishing opportunity in a given "halibut access" port, would be expected to affect small businesses that provide services to halibut anglers in those ports. NMFS considers the effects on ports used by halibut anglers as a proxy for determining whether the proposed action will have significant economic impacts on a substantial number of small entities. Of the 15 ports used by halibut anglers, 13 (87 percent) will have an increase or no changes in halibut sport fishing opportunity as a result of the proposed action. Only 2 ports (13 percent of affected ports and small entities supporting sport angling) would have a reduced allocation at higher Area 2A TACs. At a TAC of 700,000 lb (317.5 mt), the proposed change would result in a reduction of halibut fishing opportunity of 6 days (9 percent reduction in halibut fishing days), but would not affect sport fishing opportunity for bottomfish, salmon and other species that account for a much greater proportion of the sport fishing opportunity in Washington (for example, bottomfish sport fishing opportunity is available year-round from most ports). The proposed action has no effect on subarea sport allocations when the Area 2A TAC is 550,000 lb (249.5 mt) or less - the average TAC in recent past years (i.e., no effect on the status quo through 1996).

Overall, the net change in the reallocation of halibut quotas among the subareas at greater Area 2A TACs results in a small net increase in the number of sport halibut fishing days in Washington ports. At an Area 2A TAC of 700,000 lb (317.5 mt), which is the assumed TAC for 1998, the net increase based on 1997 catches would be 3 days overall (0.5 percent increase in all Washington subareas) with the WA Inside Waters and WA South Coast subareas increasing by 3 days (5 percent increase) and 6 days (26 percent increase) respectively, and the WA North Coast subarea decreasing by 6 days (9 percent decrease); the number of fishing days in the other subareas is not affected. In summary, the proposed changes to the Washington sport halibut fishery will provide positive benefits to most charterboat operators in Washington and the sport fishery support businesses in most of the Washington ports used to access the halibut sport fishery, and should not cause a reduction in revenues for 20 percent or more of the small entities affected directly (charterboats) or indirectly (sport fishery support services in halibut access ports) by this action.

The proposed changes to the Plan will not have a significant economic impact on a substantial number of small entities because they will not result in a reduction in annual gross revenues of more than 5 percent, for 20 percent or more of the affected small entities. The proposed sport management measures for 1998 merely implement the Plan at the appropriate level of TAC; their impacts are within the scope of the impacts analyzed for the Plan. Therefore, a regulatory flexibility analysis was not prepared.

This action has been determined to be not significant for purposes of E.O. 12866.

Dated: January 20, 1998.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–1803 Filed 1–23–98; 8:45 am]

BILLING CODE 3510–22–F

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Notices

Federal Register
Vol. 63, No. 16
Monday, January 26, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Distance Learning and Telemedicine Loan and Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of application filing deadline.

SUMMARY: The Rural Utilities Service (RUS) announces the deadline for submitting applications for the Distance Learning and Telemedicine Loan and Grant program for fiscal year (FY) 1998 funding.

DATES: Applications for loans to be considered for FY 1998 funding must be postmarked no later than August 14, 1998, and applications for grants and combination loans and grants to be considered for FY 1998 funding must be postmarked no later than June 1, 1998.

ADDRESSES: Applications are to be submitted to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1590, Washington, DC 20250–1590. Applications should be marked "Attention: Assistant Administrator, Telecommunications Program".

FOR FURTHER INFORMATION CONTACT: Ken B. Chandler, Acting Assistant Administrator-Telecommunications Program, Rural Utilities Service, STOP 1590, Room 4056, South Building, 1400 Independence Avenue, SW., Washington, DC 20250–1590. Telephone (202) 720–9554, Facsimile (202) 720–0810.

SUPPLEMENTARY INFORMATION: For FY 1998, $12.5 million in grants and $150 million in loans will be made available for distance learning and telemedicine projects. Notice is hereby given that under 7 CFR 1703.108, RUS has determined the maximum amount of an application for a grant that will be considered for funding in FY 1998 as $350,000, and the maximum amount for a loan that will be considered for funding in FY 1998 as $6,000,000.

Further, in accordance with 7 CFR 1703.113, RUS has determined that for FY 1998 the minimum number of points required for a loan application to be immediately processed is 94 points. Only completed loan applications meeting the minimum points requirement and determined by RUS to be feasible will be immediately processed.

Applications for financial assistance must be submitted in accordance with 7 CFR 1703, Subpart D, which establishes the policies and procedures for submitting an application for financial assistance. This document is available on the Internet at the following address: http://www.usda.gov/rus/dlt/dlml.htm.

In addition, a new Application Guide to assist applicants in the preparation of applications for financing will be available shortly, at the same Internet address as above. Application guides may also be requested from RUS by contacting one of the following Area Offices:

Northeast Area, USDA–RUS, Phone: (202) 720–0715
Southeast Area, USDA–RUS, Phone: (202) 690–4673
Northwest Area, USDA–RUS, Phone: (202) 720–1025
Southwest Area, USDA–RUS, Phone: (202) 720–0800

Applications for loans to be considered for FY 1998 funding must be postmarked no later than August 14, 1998, and applications for grants and combination loans and grants to be considered for FY 1998 funding must be postmarked no later than June 1, 1998. RUS will review each application for completeness in accordance with 7 CFR 1703.109, and notify the applicant, within 15 working days of the results of this review, citing any information which is incomplete. It is suggested that applications be submitted prior to the above deadline to ensure they can be reviewed and considered complete by the deadline.

Authority: 7 U.S.C. et seq. and 950aaa *et seq.*; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

Wally Beyer,
Administrator, Rural Utilities Service.

[FR Doc. 98–1659 Filed 1–23–98; 8:45 am]
BILLING CODE 3410–15–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Oklahoma Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Oklahoma Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m. on Thursday, February 19, 1998, at the Clarion Hotel/Comfort Inn Conference Center, 4345 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105. The purpose of the meeting is to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 16, 1998.

Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.

[FR Doc. 98–1667 Filed 1–23–98; 8:45 am]
BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

National Employers Survey (NES)—Follow-up

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 27, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Michael Hartz, U.S. Bureau of the Census, Room 2538, FB 3, EPCD, Washington, DC 20233–6100; (301–457–2633).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducted three National Employers Surveys (1994, 1995, and 1997) for the National Center on the Educational Quality of the Workforce, a nonprofit research group. This group's focus is discovering relationships among employment, hiring, training, education, and business success. This information collection seeks to build upon the results of the previous surveys.

This information collection seeks to gather information specifically on employers' school-to-work programs. The collection will relate these findings to similar information collected from employers in the 1997 National Employers Survey (NES–3). The purpose is to measure change, or lack of it, in the scope and prevalence of these programs. We will use the follow-up data to assess changes from the 1997 NES on three major measures: the number of businesses participating in school-to-work that offer work-based learning slots; the number of school-to-work businesses that provide remedial education; and recruitment costs of school-to-work businesses.

This new survey will be a telephone survey of approximately 1,000 establishments that participated in the NES–3.

II. Method of Collection

The Bureau of the Census will conduct the NES Follow-up survey via telephone. The information will be recorded on paper and later coded into a computer database. The interview will include about 40 questions, most of which will not require the respondent to refer to any records, and will require about 10 minutes to complete.

The survey will be conducted of approximately 1,000 establishments with more than 20 employees, chosen through a stratified, random-sampling method. Confidentiality of the survey data is guaranteed by Title 13, United States Code. After the Census Bureau performs data keying and consistency editing, the data set will be provided to sworn Census agents representing the survey sponsor.

A high participation rate for employers is usually crucial for statistically reliable data in this type of survey. The survey sponsor has discussed the survey issues with selected respondents from the NES–3. It is the sponsor's opinion that the business establishments they contacted were quite interested in the survey issues and that most will strongly consider participating in the survey. The businesses indicated that their decision to participate in a survey was primarily based on their perception of the usefulness of the requested information and the businesses are very interested in the issues of the survey. Several respondents (employers) told the sponsor that they wanted the results of the survey. Based on these factors (and especially the employers concerns about these workplace issues), we expect a high rate of the employers from the NES–3 to participate in the Follow-up.

III. Data

OMB Number: 0607–0787.
Form Number: NES Follow-up telephone interview.
Type of Review: Regular.
Affected Public: Business establishments with 20 or more employees.
Estimated Number of Respondents: 1,000.
Estimated Time Per Response: 10 minutes.
Estimated Total Annual Burden Hours: 167.
Estimated Total Annual Cost: There is no cost to the respondent other than the time required to complete the interview.
Respondent's Obligation: Voluntary.
Legal Authority: United States Code, Title 13, sections 8 and 9.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 20, 1998.

Linda Engelmeier,
Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–1748 Filed 1–23–98; 8:45 am]
BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 949]

Grant of Authority for Subzone Status Sargento Foods, Inc., (Cheese Processing), Plymouth, Wisconsin

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from Brown County, Wisconsin, grantee of Foreign-Trade Zone 167, for authority to establish special-purpose subzone status for export activity at the cheese processing plant of Sargento Foods, Inc., in Plymouth, Wisconsin, was filed by the Board on June 10, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 48–97, 62 FR 33830, 6–23–97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application for export processing is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for export activity at the Sargento Foods, Inc., plant in Plymouth, Wisconsin (Subzone 167C), at the location

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described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the further requirement that all foreign origin cheese products admitted to the subzone shall be reexported.

Signed at Washington, DC, this 16th day of January 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–1804 Filed 1–23–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

BUREAU: International Trade Administration, U.S. and Foreign Commercial Service.

TITLE: The President's "E" Award and The President's "E" Certificate of Service.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before March 27, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230. Phone number (202) 482–3272.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Evelyn Scott, Room 3810, Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; phone (202) 482–1289, fax (202) 482–0729.

SUPPLEMENTARY INFORMATION:

I. Abstract

The President's "E" Award for Excellence in Exporting is our nation's highest award to honor American exporters. "E" Awards recognize firms and organizations for their competitive achievements in world markets, as well as the benefits of their success to the U.S. economy. The President's "E Star" Award recognizes the sustained superior international marketing performance of "E" Award winners.

II. Method of Collection

An application form is the vehicle designed to determine eligibility for the award within established criteria. The completed application is submitted to the appropriate U.S. Department of Commerce Export Assistance Center for review and endorsement, and then forwarded to the Office of Domestic Operations in the U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, Washington, D.C., for processing.

III. Data

OMB Number: 0625–0065.

Form Number: ITA 725P.

Type of Review: Regular submission.

Affected Public: U.S. firms and organizations and American subsidiaries of foreign-owned or controlled corporations.

Estimated Number of Respondents: 60.

Estimated Time per Response: 27.4 hours.

Estimated Total Annual Burden Hours: 1,644.

Estimated Total Annual Cost: $68,000.

IV. Requested for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 20, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–1749 Filed 1–23–98; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates. In accordance with our regulations, we are initiating those administrative reviews. The Department of Commerce also received a request to revoke one antidumping duty order in part.

EFFECTIVE DATE: January 26, 1998.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) has received timely requests, in accordance with 19 CFR 351.213(b) (1997), for administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order on welded ASTM A–312 stainless steel pipe from Taiwan.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than December 31, 1998.

	Period to be reviewed
Antidumping Duty Proceedings	
Canada: Elemental Sulphur, A–122–047	12/1/96–11/30/97
Husky Oil Limited	
India: Certain Stainless Steel Wire Rod, A–533–808	12/1/96–11/30/97
Mukand	
Mexico: Circular Welded Non-Alloy Steel Pipe,[1] A–201–805	11/1/96–10/31/97
Hylsa, S.A. de C.V.	
Mexico: Porcelain-On-Steel Cooking Ware, A–201–504	12/1/96–11/30/97
Cinsa, S.A. de C.V.	
Esmaltactiones de Norte America, S.A. de C.V.	
Taiwan: Welded ASTM A–312 Stainless Steel Pipes, A–583–815	12/1/96–11/30/97
Ta Chen Stainless Steel Pipe	
The People's Republic of China: Cased Pencils,[2] A–570–827	12/1/96–11/30/97
Anhui Stationary Company, Ltd., China First Pencil Company, Ltd., Shanghai Three Star Stationary Company Ltd., Beijing Pencil Factory, Dalian Pencil Factory, Donghua Pencil Factory, Harbin Pencil Factory, Jiangsu Pencil Factory, Jinan Pencil Factory, Juihai Pencil Factory, Julong Pencil Factory, Qingdao Pencil Factory, Shenyiang Pencil Factory, Songnan Pencil Factory, Tianjin Pencil Factory, Xinbang Joint Venture Pencil Factory, Anhui Import/Export Group Corporation, Anhui Light Industrial Products Import/Export Corp., Anhui Provincial Imports & Exports Corporation, Beijing Light Industrial Products Import/Export Corp., Changzhou Foreign Economic Technical & Trading Company, Changzhou Foreign Trade Group, Chiangshu Foreign Trading, China Fujian Foreign Trade Center, China National Light Industrial Products Import & Export Corporation (all branches), Dalian Light Industrial Products Import/Export Corporation, Giangdong Provincial Stationary & Sporting Goods Import & Export Corporation, Jiangsu Light Industrial Products Import/Export Group Corporation, Jilin Provincial Machinery & Equipment Import & Export Corporation, Liaoning Light Industrial Products Import/Export Corporation, Qingdao Light Industrial Products Import/Export Corporation, Shandong Light Industrial Products Import/Export Corporation, Shantou Light Industrial Products Import/Export Corporation, Shantou Stationery & Sporting Goods Import & Export Corporation, Shanxi Light Industrial Products Import/Export Corporation, Shenyiang Light Industrial Products Import/Export Corporation, Shum Yip (Shenzen) Industry & Trade Development Corporation, Sichuan Light Industrial Products Import/Export Corporation, Tianjin Stationery and Sporting Goods Import/Export Corporation, Yangjiang Light Industrial Products Import/Export Corporation, Zhenjiang Foreign Trade Corporation	
The People's Republic of China: Porcelein-on-Steel Cooking Ware,[3] A–570–506	12/1/96–11/30/97
Clover Enamelware Enterprises Ltd./Lucky Enamelware Factory Limited	
Countervailing Duty Proceedings	
None.	

[1] Inadvertently omitted from previous notice.

[2] If one of the above named companies does not qualify for a separate rate, all other exporters of cased pencils from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[3] If one of the above named companies does not qualify for a separate rate, all other exporters of porcelain-on-steel cooking ware from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under § 351.211 or a determination under § 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1996 or 1998 (19 CFR 351.213(j)(1–2)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: January 16, 1998.

Richard W. Moreland,

Acting Deputy Assistant Secretary, Group II, Import Administration.

[FR Doc. 98–1807 Filed 1–23–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film, Sheet and Strip From the Republic of Korea, Final Results of Changed Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review.

SUMMARY: On November 19, 1997, the Department of Commerce (the Department) published the notice of initiation and preliminary results of its changed circumstances administrative review concerning whether Saehan Industries, Inc. (Saehan) is the successor

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firm to Cheil Synthetics Inc., (Cheil) and whether the revocation issued or Cheil should apply to Saehan. We have now completed that review. We have determined that Saehan is the successor firm to Cheil. As such, the revocation issued for Cheil applies to Saehan.

EFFECTIVE DATE: January 26, 1998.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney at (202) 482–4475 or Linda Ludwig at (202) 482–3833, AD/CVD Enforcement Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

THE APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreement Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (62 FR 27296).

SUPPLEMENTARY INFORMATION:

Background

On September 29, 1997, Saehan requested that the Department conduct a changed circumstances administrative review pursuant to section 751(b) of the Tariff Act to determine whether Saehan should properly be considered the successor firm to Cheil and if, as such, the revocation issued for Cheil should apply to Saehan. Saehan also requested the Department to publish the preliminary results concurrently with the notice of initiation, pursuant to 19 CFR 351.221(c)(3)(ii). In its request, Saehan notified the Department that on February 28, 1997, Cheil officially changed its corporate name to Saehan, and despite this change in corporate name, the management, production facilities, supplier relationships, and customer base of Saehan are virtually identical to those of the former Cheil. In support of its claim, Saehan submitted documentary evidence demonstrating that Saehan maintained essentially the same management, production facilities, supplier, and customer relationships as Cheil. Citing the Department's determinations in *Sugars and Syrups from Canada; Initiation and Preliminary Results of Changed Circumstances Review*, 61 FR 48885 (Sept. 17, 1996) and *Industrial Phosphoric Acid from Israel; Preliminary Results of Antidumping Duty Changed Circumstances Review*, 58 FR 59010 (Nov. 5, 1993), Saehan claimed that the Department should determine that it is the successor-in-interest to Cheil.

On November 19, 1997, the Department published in the **Federal Register** (62 FR 61801) the notice of initiation and preliminary results of its antidumping duty administrative review of the antidumping duty order of polyethylene terephthalate film, sheet, and strip from the Republic of Korea. We have now completed this changed circumstances review in accordance with section 751(b) of the Tariff Act, as amended (the Act).

Scope of the Review

The merchandise subject to this antidumping duty order are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate, film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films, and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule of the United States subheading 3920.62.00.00. The HTS subheading is provided for convenience and customs purposes. The written description of the scope of this order is dispositive.

This changed circumstances administrative review covers Saehan.

Successorship

In considering questions involving successorship, the Department examines several factors including, but not limited to, changes in (1) management, (2) production facilities, (3) supplier relationships, and (4) customer base. See e.g., Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review, 57 FR 20460 (May 13, 1992). While no one or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is essentially the same as its predecessor. See e.g., Industrial Phosphoric Acid from Israel, Final Results of Changed Circumstances Review, 59 FR 6944 (February 14, 1994). Thus, if evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same entity as the former company, the Department will treat the successor company the same as the predecessor for purposes of antidumping liability, e.g., assign the same cash deposit rate, revocation, etc.

We have examined the information provided by Saehan in its September 29, 1997 letter and determined that Saehan is the successor-in-interest to Cheil. The management and organizational structure of the former Cheil has remained intact under Saehan, and there have been no changes in the production facilities, supplier relationships, or customer base. Therefore, we determine that Saehan has maintained the same management, production facilities, supplier relationships, and customer bases as did Cheil. Based upon the foregoing, we determine that the July 5, 1996 revocation issued for Cheil applies to Saehan.

Comments

Although we gave interested parties an opportunity to comment on the preliminary results, none were submitted.

Final Results of Changed Circumstances Review

We determine that Saehan is the successor-in-interest Cheil, and accordingly, the revocation issued for Cheil applies to Saehan. We will notify the U.S. Customs Service of our decision and instruct Customs to liquidate without regard to antidumping duties, merchandise produced by Saehan on or after February 28, 1997, the date on which the corporate name change was legally effected.

This changed circumstances review and notice are in accordance with section 751(b) of the Act, as amended (19 U.S.C. 1675(b)), and 19 CFR 351.216.

Dated: January 16, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–1805 Filed 1–23–98; 8:45 am]

BILLING CODE 3510–PS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–811]

Certain Stainless Steel Wire Rods From France: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by Imphy S.A. and Ugine-Savoie (respondents), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain stainless steel wire rods from France. This review covers the above manufacturers/exporters of the subject merchandise to the United States. The period of review (POR) is January 1, 1996 through December 31, 1996.

We preliminarily determine that respondents sold subject merchandise at less than normal value (NV) during the POR. If these preliminary results are adopted in our final results of this administrative review, we will instruct U.S. Customs to assess antidumping duties based on the difference between the export price ("EP") or constructed export price ("CEP") and the NV.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this proceeding should also submit with the argument (1) A statement of the issue, and (2) a brief (no longer than five pages, including footnotes) summary of the argument.

EFFECTIVE DATE: January 26, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Stephen Jacques, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3434 or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 353 (1997).

Background

On December 29, 1993, the Department published in the **Federal Register** (58 FR 68865) the final affirmative antidumping duty determination on certain stainless steel wire rods from France, and published an amended final determination and antidumping duty order on January 28, 1994. On January 14, 1997, the Department published the Opportunity to Request an Administrative Review of this order for the period January 1, 1996–December 31, 1996 (62 FR 1874). The Department received a request for an administrative review from Imphy, S.A. ("Imphy") and Ugine-Savoie ("Ugine"), affiliated producers/exporters of the subject merchandise, on January 29, 1997. We published a notice of initiation of the review on March 3, 1997 (62 FR 9413).

The Department is now conducting this review in accordance with section 751 of the Act. The review covers sales of certain stainless steel wire rods by Imphy, Ugine, and their affiliated companies, Metalimphy Alloys Corp. ("MAC"), and Techalloy Company, Inc. ("Techalloy").

Scope of the Review

The products covered by this administrative review are certain stainless steel wire rod (SSWR) products which are hot-rolled or hot-rolled annealed, and/or pickled rounds, squares, octagons, hexagons, or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling, are normally sold in coiled form, and are of solid cross section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed, and pickled. The most common size is 5.5 millimeters in diameter.

The SSWR subject to this review is currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, and 7221.00.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of the order is dispositive.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents, covered by the description in the Scope of the Review section, above, and sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in Appendix III of the Department's March 24, 1997 antidumping questionnaire. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents.

Fair Value Comparisons

To determine whether sales of subject merchandise to the United States were made at less than fair value, we compared the EP or CEP to the NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2), we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Export Price and Constructed Export Price

We used EP, in accordance with subsections 772 (a) and (c) of the Act, where the subject merchandise was sold directly or indirectly to the first unaffiliated purchaser in the United States prior to importation because CEP was not otherwise warranted based on the facts of record. In addition, we used CEP in accordance with subsections 772 (b), (c) and (d) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States.

We made adjustments as follows:

We calculated EP based on packed prices to unaffiliated customers in the United States. Where appropriate, we made deductions from the starting price for discounts, foreign inland freight, foreign brokerage and handling, international freight, U.S. inland freight, U.S. brokerage and handling, marine insurance and U.S. Customs duties. We also adjusted the starting price for billing adjustments to the invoice price.

We calculated CEP based on packed prices to unaffiliated customers. Where appropriate, we made deductions for early payment discounts, credit expenses, warranty expenses, other direct selling expenses and commissions. We deducted those indirect selling expenses, including inventory carrying costs and product liability premiums, that related to commercial activity in the United States. We also made deductions for foreign brokerage and handling, foreign inland freight, international freight, U.S. inland freight, U.S. brokerage and handling, marine insurance, U.S. repacking expenses and U.S. Customs duties. We also adjusted the starting price for billing adjustments to the invoice price and for interest revenue. Finally, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act.

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The Department has recalculated credit expenses for those sales with missing payment dates. For sales with missing payment dates, the Department set the date of payment to the projected final results date.

Further Manufacturing

For products that were further manufactured after importation, we adjusted for all costs of further manufacturing in the United States, and the proportional amount of profit allocated to such costs. In accordance with section 772(f) of the Act, we computed profit based on total revenues realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity (including further manufacturing costs), based on the ratio of total U.S. expenses to total expenses for both the U.S. and home market.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared respondents' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Act. Since respondents' aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. Therefore, we have based NV on home market sales.

Where appropriate, we deducted discounts, credit expenses, warranty expenses, inland freight and inland insurance. We also adjusted the starting price for billing adjustments to the invoice price and interest revenue. We did not adjust the starting price for commissions in the home market (please see the Concurrence Memorandum for a discussion of this issue).

For reasons discussed below in the "Level of Trade" section, we allowed a CEP offset for comparisons made at different levels of trade. To calculate the CEP offset, we deducted the home market indirect selling expenses from normal value, on home market sales which were compared to U.S. CEP sales. We limited the home market indirect selling expense deduction by the amount of the indirect selling expenses deducted in calculating the CEP under section 772(d)(1)(D) of the Act.

We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. In addition, in accordance with section 773(a)(6) (A) and (B), we deducted home market packing costs and added U.S. packing costs.

We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in EP and CEP comparisons.

The Department has recalculated credit expenses for those home market sales with missing payment and shipment dates. For sales with missing payment dates, the Department calculated payment date based on the average time period between invoice date and shipment date for those sales where both invoice date and shipment date appeared in the database. For sales with missing shipment dates, the Department calculated shipment date based on the average time period between invoice date and shipment date for those sales where both invoice date and shipment date appeared in the database.

Price to CV Comparisons

When we based NV on CV, we calculated CV in the manner described below. *See* "Cost of Production Analysis" section. Where we compared CV to EP, we deducted from CV the weighted-average home market direct selling expenses and added the U.S. direct selling expenses.

Cost of Production Analysis

We had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below the COP because the Department disregarded sales below the cost of production (COP) in the second administrative review (see *Final Results of Antidumping Duty Administrative Review: Certain Stainless Steel Wire Rods from France*, 62 FR 7206 (February 18, 1997)). Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by respondents in the home market.

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product plus selling, general and administrative (SG&A) expenses and all costs and expenses incidental to placing the foreign like product in condition packed ready for shipment. In our COP analysis, we used the home market sales and COP information provided by respondents in their questionnaire responses.

After calculating COP, we tested whether home market sales of SSWR were made at prices below COP within an extended period of time in substantial quantities and whether such prices permit recovery of all costs within a reasonable period of time. We compared model-specific COPs to the reported home market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of respondents' sales of a given product were at prices less than COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. Where 20 percent or more of respondents' sales of a given product during the POR were at prices less than the COP, we disregarded the below-cost sales because they (1) were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on comparisons of prices to weighted-average COPs for the POR, were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. Based on this test, we disregarded certain below-cost sales in these preliminary results.

In accordance with section 773(a)(4) of the Act, we used CV as the basis for NV when there were no usable sales of the foreign like product in the comparison market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A expenses, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average home market selling expenses.

Arm's-Length Sales

Sales to affiliated customers in the home market not made at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and packing. Where prices to the related party were on average 99.5 percent or more of the price to the unrelated party, we determined that sales made to the related party were at arm's-length. Where no related customer ratio could be constructed because identical merchandise was not sold to unrelated customers, we were unable to determine that these sales were made at arm's length and, therefore, excluded them from our analysis. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, (58 FR 37062, 37077 (July 9, 1993)). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made comparison to the next most similar model.

Currency Conversion

For purposes of the preliminary results, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." For these preliminary results of review, we have determined that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. Therefore, when we determine a fluctuation exists, we substitute the benchmark for the daily rate. (For a detailed explanation, see Policy Bulletin 96–1: Currency Conversions, 61 FR 9434, March 8, 1996).

Level of Trade ("LOT")

In accordance with section 773(a)(1)(b) of the Act, to extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on constructed value ("CV"), that of the sales from which we derive selling, general and administrative expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we obtained information about the selling activities of the producers/exporters associated with each phase of marketing or the equivalent. We asked respondents to identify the specific differences and similarities in selling functions and/or support services between all phases of marketing in the home market and the United States.

In reviewing the selling functions reported by the respondents, we examined all types of selling functions and activities reported in respondents' questionnaire response on LOT. In analyzing whether separate LOT existed in this review, we found that no single selling function was sufficient to warrant a separate LOT in the home market (see *Antidumping Duties; Countervailing Duties; Proposed Rule, (Proposed Regulations)*, 61 FR 7308, 7348).

In determining whether separate levels of trade existed in or between the U.S. and home market, the Department considered the LOT claims of respondents. To test the claimed LOT, we analyzed, *inter alia*, the selling activities associated with the phases of marketing respondents reported. For the home market, respondents reported one LOT, sales to end-users. Also, respondents stated that they make their home market sales through two channels of distribution: (1) Indirect sales through Ugine-Service and its local field offices; and (2) direct sales made through the commercial departments of Imphy and Ugine-Savoie. We examined record evidence from this review and have determined that there is only one LOT in the home market, regardless of channel of distribution.

For the U.S. market, respondents reported two LOTs: (1) Sales to end-users through MAC (EP sales); and (2) sales to distributors, *e.g.*, MAC, Techalloy (CEP sales). The Department examined the selling functions performed for both LOT. We found that the selling functions were sufficiently different in customer sales contacts (*i.e.*, visiting customers/potential customers, receiving orders, promotion of new products and following-up on unpaid invoices), technical services, computer systems and administrative functions to warrant two levels of trade in the United States.

In order to determine whether separate LOT actually existed between the U.S. and home markets, we reviewed the selling activities associated with each channel of distribution. When we compared EP sales to home market sales, we determined that sales were made at the same LOT (*i.e.*, to end-users) in both markets. However, for CEP sales, we determined that fewer and different selling functions were performed for CEP sales to MAC and Techalloy than for home market sales to end-users. We also found that the selling functions were sufficiently different in customer sales contacts, technical services, inventory maintenance, computer systems and administrative functions to warrant treating CEP sales and home market sales to end-users as different LOT. In addition, we found that the home market sales involved a more advanced stage of distribution (to end-users) as compared to respondents' CEP sales in the United States (distributor).

To the extent practicable, we compared normal value at the same LOT as the U.S. sale. In this review, there were no sales of the foreign like product in the home market at the same LOT as that of the CEP sales. Because we compared CEP sales to home market sales at a different LOT, we examined whether a level of trade adjustment may be appropriate. In this case, respondents only sold at one LOT in the home market; therefore, there is no basis upon which respondents can demonstrate a pattern of consistent price differences between LOTs with respect to the foreign like product. Further, we do not have information which would allow us to examine pricing patterns based on respondents' sales of other products and there are no other respondents or other record information on which such an analysis could be based.

Because the data available do not provide an appropriate basis for making a LOT adjustment, but the LOT in the home market is at a more advanced stage of distribution than the LOT of the CEP sale, a CEP offset is appropriate. Respondents claimed a CEP offset for

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those U.S. CEP and CEP/Further Manufactured (CEP/FM) sales compared to sales in France through Ugine Service. We included a CEP offset for all sales in France which are compared with CEP and CEP/FM sales in the United States since the comparison of home market sales to CEP sales is at a different level of trade. We applied the CEP offset to normal value or constructed value, as appropriate.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margins (in percent) for the period January 1, 1996, through December 31, 1996, to be as follows:

Manufacturer/exporter	Margin (percent)
Imphy/Ugine-Savoie	10.51

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or other written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of this administrative review, including its analysis of issues raised in any written comments or at a hearing, not later than 120 days after the date of publication of this notice.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated importer-specific ad valorem duty assessment rates based on the ratio of the total amount of dumping margins calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. These rates will be assessed uniformly on all entries of each particular importer made during the POR. (This is equivalent to dividing the total amount of antidumping duties, which are calculated by taking the difference between statutory NV and statutory EP or CEP, by the total statutory EP or CEP value of the sales compared, and adjusting the result by the average difference between EP or CEP and customs value for all merchandise examined during the POR).

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rate established in the final results of this review (except that no deposit will be required for firms with zero or *de minimis* margins, *i.e.*, margins less than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 24.51 percent, the "All Others" rate made effective by the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5).

Dated: January 16, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–1806 Filed 1–23–98; 8:45 am]

BILLING CODE 3510–DS–P

COMMODITY FUTURES TRADING COMMISSION

Regulation of Noncompetitive Transactions Executed on or Subject to the Rules of a Contract Market

AGENCY: Commodity Futures Trading Commission.

ACTION: Concept release.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is reevaluating its approach to the regulation of noncompetitive transactions executed on or subject to the rules of a contract market. Accordingly, the Commission is soliciting comments on a broad range of questions concerning the oversight of transactions involving (i) the exchange of futures contracts for, or in connection with, cash commodities, (ii) other noncompetitive transactions, and (iii) the use of execution facilities for noncompetitive transactions. Following the receipt of public comments, the Commission will determine whether rulemaking is appropriate.

DATES: Comments must be received on or before March 27, 1998.

ADDRESSES: Interested persons should submit their written data, views, and opinions to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street N.W., Washington, D.C. 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5221 or by electronic mail to secretary@cftc.gov. Reference should be made to "Regulation of Noncompetitive Transactions Executed on or Subject to the Rules of a Contract Market." Certain related materials described herein are available for inspection at the Office of the Secretariat at the above address. Copies of these materials also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 418–5100.

FOR FURTHER INFORMATION CONTACT: Rebecca Creed, Attorney, at (202) 418–5493, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street N.W., Washington, D.C. 20581.

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I. Introduction

A. Statutory and Regulatory Provisions

Section 4(a) of the Commodity Exchange Act ("Act") makes it unlawful for any person to enter into a contract for the purchase or sale of a commodity for future delivery "unless such transaction is conducted on or subject to the rules of a board of trade which has been designated by the Commission as a 'contract market' for such commodity." [1] Although Congress has indicated that trading on contract markets be conducted generally in an open and competitive manner, it also has recognized the need for certain, limited exceptions to that requirement. Section 4c(a) of the Act prohibits various types of noncompetitively executed transactions but provides an exception for transfer trades, office trades, and exchanges of futures for physicals ("EFPs") that are executed in accordance with contract market rules that have been approved by the Commission. [2] With reference to these statutory provisions, the Senate Committee on Agriculture and Forestry stated:

> Both the Commodity Exchange Act and the rules and regulations of the commodity exchanges require that futures transactions be executed openly in a competitive manner.
>
> * * * * *
>
> Certain carefully prescribed exceptions to competitive trading are allowed, but they do not nullify the general requirement of open and competitive trading.
>
> The purpose of this requirement is to ensure that all trades are executed at competitive prices and that all trades are focused into the centralized marketplace to participate in the competitive determination of the price of futures contracts. This system also provides ready access to the market for all orders and results in a continuous flow of price information. [3]

Consistent with this policy, Commission Regulation 1.38(a) requires that contract market rules providing for the execution of noncompetitive transactions must be submitted to the Commission for approval. Commission Regulation 1.38(b) requires all noncompetitive transactions as well as all related orders, records, and memoranda to be identified and marked. Regulation 1.38 was adopted pursuant to Sections 4b and 8a(5) of the Act. [4] Section 8a(5) authorizes the Commission to "make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of this Act."

B. Purpose of This Release

The purpose of this release is to solicit comments on whether the regulatory structure governing noncompetitive transactions executed on or subject to the rules of a contract market should be modified in light of recent developments in the marketplace. The impetus for this action comes from several sources, including the following.

First, ten years have passed since the Division of Trading and Markets ("Division") conducted a comprehensive study of EFPs. [5] During this time, the use of EFPs has continued to grow and evolve.

Second, several organizations have developed computerized systems for basis trading of U.S. Treasury securities. Essentially, a basis trade involves the simultaneous acquisition of positions in actual Treasury securities and in offsetting futures contracts. Venues for basis trading simplify the trading process by enabling traders to obtain both cash and futures positions in a single transaction which is reported to a contract market as an EFP.

Third, the New York Mercantile Exchange ("NYMEX") has sought Commission approval for a proposed rule that would permit the exchange of futures contracts for, or in connection with, swap agreements ("EFS transactions"). [6] This proposal would establish provisions for EFS transactions that are parallel to, but separate from, those governing EFP transactions. Thus, an EFS transaction would follow the form of an EFP except that a swap agreement would be substituted for the physical component.

Fourth, the Chicago Board of Trade ("CBT"), through counsel, requested the Division of Economic Analysis to agree not to recommend that the Commission take any enforcement action against the CBT, its members or market participants in connection with the CBT's proposed implementation of a one-year pilot program facilitating the off-exchange transfer of futures contracts in agricultural products in exchange for related over-the-counter agricultural options. [7]

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[1] 7 U.S.C. 6(a). As discussed below, Section 4(c) of the Act, 7 U.S.C. 6(c), vests the Commission with certain exemptive authority subject to specified qualifying criteria.

[2] 7 U.S.C. 6c(a).

[3] *Report of the Senate Committee on Agriculture and Forestry*, S. Rep. No. 1131, 93rd Cong., 2d Sess. 16 (1974).

[4] 7 U.S.C. 6b and 12a(5).

[5] *Report of the Division of Trading and Markets: Exchanges of Futures for Physicals* (October 1987) ("EFP Report"). This document provides a detailed discussion on the history, use and regulation of EFPs. Interested parties may obtain a copy of the EFP Report by contacting the Commission's Office of the Secretariat at the address noted above.

[6] Interested parties may obtain a copy of the NYMEX proposal permitting EFS transactions by contacting the Commission's Office of the Secretariat at the address noted above.

[7] The Division of Economic Analysis staff advised counsel that, in light of the Commission's ongoing consideration of agricultural trade options in connection with its advance notice of proposed rulemaking, 62 FR 31375 (June 9, 1997), it was not currently appropriate to consider this request. The Commission has subsequently proposed removing

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Finally, recent legislative proposals contemplate the establishment of separate, professional markets.[8] The Commission wishes to explore whether it is possible to achieve some of the objectives of these proposals by expanding the boundaries of permissible noncompetitive trading on existing contract markets. In contrast to the legislative proposals, a revised structure governing noncompetitive transactions could act as an adjunct rather than as an alternative to existing regulated markets. Such an approach might improve the usefulness and efficiency of existing markets for institutional or professional users but with a reduced risk of market fragmentation. Thus, carefully designed revisions to the regulatory structure governing noncompetitive transactions could have a procompetitive effect.

C. Overview

For the foregoing reasons, the Commission has determined to seek comments on whether the existing regulatory structure should be revised to provide additional guidance concerning standards governing noncompetitive transactions executed on or subject to the rules of a contract market. In scope, the Commission's request includes transactions that currently are permitted, such as EFPs, as well as transactions that are not currently permitted, such as EFS transactions or block trades. Of course, if the Commission were to revise its regulatory structure relating to noncompetitive transactions, the choice of whether to permit these types of transactions on a particular contract market would remain, in the first instance, with that contract market.

In general, the Commission is soliciting comments on the following questions:

(1) Should the standards articulated in the EFP Report be codified in the Commission's regulations and/or refined in any way?

(2) Should other types of noncompetitive transactions, such as EFS transactions or block trades, be permitted to be executed on or subject to the rules of a contract market and, if so, what standards should apply to these transactions?

(3) What standards should be applicable to execution facilities for noncompetitive transactions executed on or subject to the rules of a contract market?

More specific questions addressing particular aspects of these topics are posed in the relevant sections of this release. A consolidated list of questions is set forth at the conclusion. The Commission recognizes, however, that its identification of the issues may not be exhaustive and therefore invites comments on other aspects of these topics even if not expressly set out below.

The Commission is asking these questions for the dual purpose of giving notice of its consideration of these issues and of obtaining input before proceeding with any specific initiatives. Commenters should set forth with particularity the bases for their views. After receiving input, the Commission will endeavor to strike an appropriate balance among the relevant concerns.

II. Standards Governing EFP Transactions

A. Background

1. Historic Uses of EFPs

An EFP involves simultaneous transactions in the futures and cash commodity markets. The futures market transaction consists of a noncompetitive transfer of a futures position between the parties to the EFP. Thus, one party buys the physical commodity and simultaneously sells (or gives up long) futures contracts while the other party sells the physical commodity and simultaneously buys (or receives long) futures contracts. Subject to applicable contract market rules, the quantity and price of the futures and cash commodity to be exchanged as well as other terms are negotiated privately by the parties rather than being executed openly and competitively on a contract market. Depending on the pre-existing market positions of EFP counterparties, an EFP transaction can create, transfer, or extinguish futures positions.

The EFP exception currently contained in Section 4c(a) of the Act first appeared in H.R. 12287, which was introduced in 1932. The report of the House Committee on Agriculture accompanying that bill indicates that this exception was intended to permit the continuation of what was described as an accepted commercial practice:

> Transactions involving the exchange of cash commodities for futures in accordance with exchange rules applying to such exchanges are exempted, even though they take the form of office trades, it being understood that the exchange of cash commodities for futures is a common and necessary practice.[9]

The EFP exception was ultimately adopted with the enactment of the Commodity Exchange Act in 1936. None of the amendments to Section 4c(a) since that time provides further guidance as to the scope of permissible EFP transactions.[10]

As discussed in detail in the EFP Report, the use of EFPs has evolved to include practices not contemplated at the time Section 4c(a) originally was enacted. Indeed, financial futures contracts, which now dominate futures trading at some exchanges, did not exist at the time the EFP exception was adopted. In the EFP Report, the Division concluded that it appeared appropriate to interpret Section 4c(a) to accommodate some of these practices, many of which arise out of trading practices in various cash markets and which accomplish a variety of commercial purposes.[11] However, the Division also stated that the historical context in which the EFP exception first was enacted and the statutory language of Section 4c(a) itself necessarily imply certain limits on the permissible scope of EFP transactions as an exception to the general requirement of competitive execution.[12]

2. Current EFP Volume

A comparison of statistical data regarding the level of EFP activity between the late 1980s (when the EFP Report was published) and recent years shows that EFP activity, in many major markets, has continued to grow. The following table summarizes such data for selected contracts between 1986 and 1996.

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the prohibition against off-exchange trade options on the enumerated agricultural commodities pursuant to a three-year pilot program. *Trade Options on the Enumerated Agricultural Commodities*, 62 FR 59624 (Nov. 4, 1997).

[8] *See, e.g.*, S. 257, 105th Cong., 1st Sess. § 6 (1997).

Part 36 of the Commission's regulations adopts certain exemptions under a pilot program for separate, professional markets. Included among the exemptions is a provision exempting certain noncompetitive trading subject to the rules of a professional market. However, no contract market has filed a proposal with the Commission pursuant to Part 36.

[9] *Commodity Short Selling*, H.R. Rep. No. 1551, 72d Cong., 1st Sess. 3 (1932).

[10] *See* Commodity Futures Trading Commission Act of 1974, Pub. L. No. 93–463, 88 Stat. 1389 (substituted the Commission for the Secretary of Agriculture and deleted state law preservation clause); Futures Trading Act of 1978, Pub. L. No. 95–405, 92 Stat. 865 (required contract market rules permitting EFPs to be approved by the Commission); Futures Trading Act of 1982, Pub. L. No. 97–444, 96 Stat. 2294 (exempted transactions in foreign currency options traded on a national securities exchange from coverage of the Commodity Exchange Act).

[11] EFP Report at 144–145.

[12] *Id.* at 26. For example, the Division has expressed its opinion that the EFP "exemption was not designed to create an avenue for traders to use EFP transactions to accomplish what they could not otherwise legitimately do, that is, wash trades, accommodation trades, fictitious sales, or illegal off-exchange transactions." *Report of the Division of Trading and Markets: Volume Investors Corporation* 59 n. 54 (July 1985).

TABLE 1.—EFPs AS A PERCENT OF TRADING VOLUME IN SELECTED CONTRACTS 1986—1996[13]

Contract Market	1986	1996
CBT Wheat	2.32	2.35
KCBT Wheat	15.61	10.87
MGE Wheat	24.72	15.31
CBT Corn	8.14	6.81
CBT Soybeans	5.42	4.57
CBT Soybean Oil	6.52	4.89
CBT Soybean Meal	7.89	7.95
CME Live Cattle	0.06	0.04
CSC Coffee "C"	1.48	4.10
CSC Sugar #11	3.86	4.69
CSC Cocoa	6.24	3.17
CBT Treasury Bonds	0.75	5.00
CBT Treasury Notes	1.23	4.59
CME Japanese Yen	7.32	16.11
CME British Pound	7.76	21.53
CME Deutsche Mark	6.12	16.81
CME Swiss Franc	5.96	13.79
COMEX Gold	7.46	9.05
COMEX Silver	3.46	5.04
NYMEX Crude Oil	3.60	2.67
NYMEX Heating Oil #2	1.90	6.66

[13] The data shown in Table 1 is for calendar year 1986 and 1996.

As the table shows, EFP activity as a share of trading volume has been relatively stable in traditional agricultural markets and has declined in some cases. The trend for financial futures contracts has been just the opposite, with EFP activity continuing to increase, in some cases dramatically.

3. Current Oversight of EFPs

EFP transactions are currently subject to oversight through a variety of sources, including: (i) the Commission's review of contract market rules governing such transactions; (ii) the Commission's reporting and recordkeeping requirements; (iii) contract markets' enforcement of their own rules; (iv) the Commission's rule enforcement review program; and (v) the Commission's own enforcement program.

B. Elements of a Bona Fide EFP

The EFP Report described EFP practices in selected markets, analyzed the legislative and regulatory framework surrounding EFPs, and reviewed the contract market rules and interpretations that govern them. The EFP Report suggested possible criteria to be examined by contract markets in evaluating whether a particular EFP transaction is eligible for the Section 4c(a) exception. In particular, the Division enumerated three essential elements of a bona fide EFP as follows: (i) a futures transaction and a cash transaction which are integrally related; (ii) an "exchange" of futures contracts for cash commodity, where the cash commodity contract provides for the transfer of ownership of the cash commodity to the cash buyer upon performance of the terms of the contract, with delivery to take place within a reasonable time thereafter in accordance with prevailing cash market practice; and (iii) separate parties to the EFP, where the accounts involved have different beneficial ownership or are under separate control.[14]

In addition, the Division developed a non-exclusive list of other indicia to assist contract markets in determining whether the essential elements of a bona fide EFP have been satisfied. These include: (i) the degree of price correlation between the futures and cash legs of the EFP; (ii) the prices of the futures and cash legs of the EFP and their relationship to the prevailing prices in their respective markets; (iii) whether the cash seller has possession, the right to possession, or the right to future possession of the cash commodity prior to the execution of the EFP; (iv) the cash seller's ability to perform on his delivery obligation in the absence of prior possession of the cash commodity, *i.e.*, the cash seller's access to the cash market; and (v) whether the cash buyer acquires title to the cash commodity.[15]

These elements can be analyzed in terms of four categories: (i) the relationship of the instruments; (ii) the relationship of the parties; (iii) the nature of the transaction; and (iv) the price of the transaction. The following discussion summarizes the elements and indicia of a bona fide EFP as set forth by the Division in the EFP Report. As noted above, the Commission is soliciting comments on whether these standards should be codified in the Commission's regulations and/or refined in any way.

1. Relationship of the Instruments

(a) Qualitative Correlation. In the EFP Report, the Division determined that the futures and cash legs of a bona fide EFP should be correlated with each other, both qualitatively and quantitatively.[16] Qualitative correlation clearly exists when the cash commodity satisfies the delivery specifications of the associated futures contract. However, when the cash commodity is not deliverable against the relevant futures contract, questions arise as to its acceptability as the cash leg. While some contract markets focus on whether the cash commodity is the economic equivalent of, or is derived from, the particular commodity specified in the futures contract, others also consider the price relationship between the cash and futures legs of the transaction.

In the EFP Report, the Division concluded that the cash commodity should have a reliable and demonstrable price relationship with the futures contract involved in the EFP.[17] The cash leg should exhibit price movement that historically has paralleled the price movement of the futures contract, with the cash and futures prices typically moving in the same direction and at consistent relative rates of change. Although perfect price correlation is not required, a "strong correlation" should exist. Otherwise, the parties are at risk that the basis or price differential between the cash and futures legs will change significantly prior to the conclusion of the EFP, thus adversely affecting the utility of the transaction itself. The lack of a strong correlation may indicate that the parties' motive for the EFP was to circumvent the regulatory requirements of the Act or the Commission's regulations, such as the requirement of open and competitive execution, rather than to conduct a commercially appropriate transaction. The Division also concluded that hedgeable commodities are appropriate cash legs for EFPs.[18]

In the EFP Report, the Division noted that statistical correlation coefficients[19] have been used to justify specific EFPs involving stock index futures contracts either before or after the transaction was consummated.[20] The Division also recommended that contract markets publicize their determinations regarding the acceptability of particular commodities as the cash leg of an EFP in order to provide more guidance to the market users of these transactions.[21]

(b) Quantitative Correlation.

For quantitative correlation to exist, the Division determined that the cash commodity position should be approximately equal in quantity or dollar value to the futures position and that appropriate hedge ratios may be

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[14] EFP Report at 146–150.

[15] *Id.* at 150–151.

[16] *Id.* at 152–160.

[17] *Id.* at 155.

[18] *Id.* at 157.

The Division referred to Administrative Determination 239, issued by the Commodity Exchange Authority on December 16, 1974, which advised that, "[i]f a commodity, product or by-product is hedgeable under the Act, it may be exchanged for futures. If it is not hedgeable, it may not be exchanged." *See generally* 17 CFR 1.3(z) (defines bona fide hedging transactions and positions); *Clarification of Certain Aspects of the Hedging Definition*, 52 FR 27195 (July 20, 1987).

[19] A correlation coefficient measures the degree to which the movements of two variables are related. Here the variables consist of the price of the futures contracts and the price of the cash commodity.

[20] EFP Report at 158.

[21] *Id.* at 159.

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used to create such dollar equivalency.[22] Again, the absence of such equivalency may indicate a motive to circumvent some requirement of the Act or the Commission's regulations rather than to conduct a commercially appropriate transaction.

(c) Request for Comments. The Commission is soliciting comments on the following questions:

(4) How should the "strong price correlation" standard articulated in the EFP Report be implemented?

(5) Should the Commission require contract markets to adopt a minimum statistical correlation coefficient to be used in assessing the acceptability of a particular cash commodity for use as the cash leg of an EFP?

(6) If a minimum correlation coefficient is required, should this coefficient apply to all EFPs, or should it be adjusted to account for the different commodities involved in EFPs?

(7) What is the appropriate type and scope of guidance contract markets should be required to provide to the general public concerning the acceptability of particular commodities as the cash leg of an EFP?

2. Relationship of the Parties

(a) Separate Parties. In the EFP Report, the Division concluded that a bona fide EFP must be executed between separate parties.[23] Determining if separate parties are involved in a particular transaction in turn depends upon whether the accounts have different beneficial owners or are under separate control. This standard permits separate profit centers of a futures commission merchant ("FCM") to engage in EFPs with each other in order to accomplish their trading strategies and to fulfill their business needs.

(b) String Trades. In the EFP Report, the Division discussed a method of effecting an EFP transaction in the grain markets called a "pass-through" or "string trade."[24] Under this method, the two parties to the EFP each have cash commodity contracts with a different party or parties which require them to buy/sell the cash commodity and sell/buy the corresponding futures contract in order to set the price for the cash transaction. All of the parties in the string have complementary cash commitments and corresponding obligations to buy or sell futures contracts to the next party in the string. Instead of executing a series of EFP transactions in which the intermediate futures positions transferred among the parties would net out for the common parties, the first and last parties in the string execute a single EFP and the other mutually exclusive futures obligations are canceled.[25]

(c) Request for Comments. The Commission is soliciting comments on the following questions:

(8) What is the appropriate scope of the separate parties requirement?

(9) Should the Commission address string trades as that practice is described in the EFP Report and, if so, how?

3. Nature of the Transaction

(a) Exchanges of Futures Contracts for Cash Commodities. As discussed previously, Section 4c(a) of the Act excepts EFPs from the prohibition against various types of noncompetitively executed transactions. A bona fide EFP must involve an "exchange" of futures contracts for cash commodity in which both legs of the transaction entail actual economic risk.

(b) Futures Leg Requirements. The futures leg of the EFP must be reported to and cleared by a contract market clearing organization. Therefore, it is subject to the same margin obligations, both original and variation, as any other exchange-traded futures transaction. If the futures leg were netted off-exchange, this conduct might constitute bucketing in violation of Section 4b(a) of the Act.[26]

(c) Cash Leg Requirements. In the EFP Report, the Division concluded that the cash commodity contract must impose a real obligation to transfer ownership of the cash commodity from the cash seller to the cash buyer upon performance of the terms of the contract, with delivery taking place within a reasonable time thereafter in accordance with prevailing cash market practice.[27] The Division further asserted that, although the cash commodity contract must contemplate the making and taking of delivery of the cash commodity, the parties may, subject to the terms of the contract and the principles of contract law, individually transfer their contractual rights or obligations with respect to the cash commodity to a third party or may offset these positions or obligations prior to delivery.[28]

In the EFP Report, the Division discussed several factors to be considered in analyzing the parties' intent with respect to the transfer of cash commodity, including: (i) the ability of the cash seller to make delivery and of the cash buyer to take delivery of the cash commodity; (ii) the level of creditworthiness required of the cash seller and buyer; (iii) the form and terms of the cash commodity contract; (iv) the documentation underlying the transfer of cash commodity from the cash seller to the cash buyer; and (v) whether the cash buyer acquires an enforceable claim on the title to the cash commodity.[29]

The Division expressed the view that the cash seller is not required to have possession, or the right to possession, of the cash commodity in order to undertake a contractual obligation to deliver it in the future by way of an EFP.[30] Nevertheless, the lack of: (i) possession, (ii) the right to possession, or (iii) access to the cash market may indicate that the parties lacked the requisite intent to execute a cash transaction in the first place. This would raise doubts about the legitimacy of the EFP. Similarly, evidence that the cash buyer was unable to accept delivery of the cash commodity may indicate that the parties never intended to execute the cash leg of the EFP. An examination of the documents underlying the cash transaction, including the form and the terms of the cash commodity contract, confirmation statements, and documents evidencing title, in light of the state law governing transfers of ownership is especially useful in determining the parties' intent.

In determining whether there has been, or will be, an actual transfer of ownership of the cash commodity, the critical inquiry is whether the buyer of the cash commodity has acquired or will acquire, upon completion of performance under the contract, title to the cash commodity associated with the EFP.[31] In this regard, the Division stated that the cash commodity contract may contemplate an immediate transfer of title or a transfer of title at some subsequent time.[32] Regardless of when title passes, however, delivery of the cash commodity should occur within a reasonable period of time in accordance with normal industry practice involving comparable cash market transactions. If delivery did not occur, the transaction would need to be scrutinized, the reasons for failure identified, and a determination made as to whether the EFP is bona fide.

(d) Transitory EFPs. In the EFP Report, the Division expressed concern about a practice, then occurring frequently in the gold and foreign currency markets, involving both an EFP and an offsetting cash commodity transfer.[33] For example, party A purchases the cash commodity from party B and then engages in an EFP whereby A sells the cash commodity back to B and receives a long futures position. As a result of this integrated transaction, the parties acquire futures positions but end up with the same cash market position as they had before the transaction. These transactions are sometimes referred to as transitory EFPs. In such cases, questions arise as to whether there has been a bona fide "exchange" of the cash commodity as is required by Section 4c(a) of the Act.

The Division concluded that, in reviewing transitory EFPs, the EFP and the cash commodity transfer should be examined both separately and as an integrated transaction.[34] The parties must incur actual economic risk in both legs of the EFP and in the cash commodity transfer, and the EFP itself must otherwise be bona fide.

The predominant consideration is whether the cash commodity transfer can stand on its own as a commercially appropriate transaction, with no obligation on either party to carry out the EFP.[35] One indication is whether the terms and structure of the cash commodity transfer are substantially the same in all material respects as other cash transactions in that market or more specifically for those particular participants. For example, if the price of the cash commodity is determined differently or if a lower level of capitalization is required of the buyer than would otherwise be the case, then the cash commodity transfer may not be genuine. Another indication is whether the buyer acquires title to the cash commodity in accordance with customary cash market practices.

Additional issues to be considered in evaluating whether the integrated transaction is bona fide include: (i) The timing of the cash commodity transfer and the EFP; (ii) whether the same parties have executed a number of integrated transactions in which the cash commodity transfer never occurs independently of the EFP; (iii) whether there have been a series of transactions in which the same cash commodity is transferred repeatedly between the same parties, resulting in the liquidation of a futures position much larger than the exchanged cash commodity which ultimately remains with the original owner; and (iv) the relationship between the parties and their patterns of dealings, including evidence of money passes between them.[36]

(e) Contingent EFPs. Contingent EFPs are an impermissible subset of transitory EFPs. The existence of conditions tying the cash commodity transfer and the EFP together may indicate that the transactions are not severable but are contingent upon each other.[37] A cash commodity transfer which cannot stand on its own may indicate that there was no actual economic risk in the initial cash transfer and may raise concerns about whether the EFP involved an "exchange" of futures contracts for cash commodity as is required by Section 4c(a) of the Act.

(f) Request for Comments. The Commission is soliciting comments on the following questions:

(10) What criteria are appropriate for judging whether the futures leg of an EFP is bona fide?

(11) What criteria are appropriate for judging whether the cash leg of an EFP is bona fide?

(12) What criteria are appropriate for determining whether a transitory EFP is bona fide?

(13) What criteria are appropriate for determining whether an EFP is contingent?

4. Price of the Transaction

(a) Current Requirements. As discussed previously, because EFPs are executed noncompetitively off-exchange, the prices of both the futures and cash legs are determined by mutual agreement of the parties. In the EFP Report, the Division concluded that the price differential between the futures and cash legs should reflect commercial realities and that at least one leg of the transaction should be priced at the prevailing market.[38] Although pricing one leg of the EFP significantly away from the market may be justified by commercial necessity,[39] the Division expressed its concern that such aberrant pricing can be used to shift substantial sums of cash from one party to another or to allocate gains and losses between the futures and cash sides of the EFP.[40] Moreover, when both legs of an EFP are priced away from the market, the transaction may not be commercially appropriate, particularly when one party could obtain better prices for the futures and cash legs in another available market. In the EFP Report, the Division urged contract markets to determine whether the pricing of a particular EFP is supported by a business purpose.[41]

(b) Request for Comments. The Commission is soliciting comments on the following questions:

(14) Should the Commission require both the futures and cash legs of an EFP to be priced within the daily range of their current respective markets, should it require only one leg of an EFP to be priced within its daily range, or should it impose no restrictions on the price of either leg of an EFP?

(15) Should the Commission require contract markets to obtain documentation regarding the business purpose underlying the pricing of an EFP?

C. Other Regulatory Requirements Governing EFPs

1. Reporting and Recordkeeping

(a) Current Requirements Under the Commission's current regulations EFPs are subject to broad reporting and recordkeeping requirements. Commission Regulation 1.35(a) generally requires every FCM, introducing broker ("IB"), and contract market member to keep full, complete and systematic records of all transactions relating to its business of dealing in commodity futures, commodity options, and cash commodities, to retain such records for a period of five years, and to produce them upon request of the Commission or the Department of Justice. Commission Regulation 1.38(b) requires every person handling, executing, clearing, or carrying EFPs to identify all related documents by appropriate symbol or designation. Similarly, under Commission Regulation 1.35(e), each

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[22] *Id.* at 159–160.

For example, if the futures position established by the EFP transaction represents 50,000 bushels of corn, then the associated cash leg should also equal approximately 50,000 bushels of corn. With respect to the use of appropriate hedge ratios to create dollar equivalency, traders might cross-hedge a 182-day T-bill by using more than one 91-day T-bill futures contract since the risk exposure on the principal amount of the T-bill increases the higher the duration of the security. Other instruments with differing maturities and yields would require different ratios.

[23] *Id.* at 147, 149–150.

[24] *Id.* at 47, 148 n. 173.

[25] For example, party A has agreed to sell grain to and buy futures contracts from party B. Meanwhile, party B has agreed to sell grain to and buy futures contracts from party C. When C is ready to sell futures contracts to B in order to fix the price of their cash transaction, B directs C to execute the futures trade with A instead, thus satisfying B's obligation to sell futures contracts to A. Thus, A and C execute an EFP in which C sells futures contracts to A, but there is no corresponding cash transaction between A and C. In the absence of this string trade, parties A and B and parties B and C must execute separate EFP transactions consistent with their contractual obligations. Thus, the string trade serves to match the mutually exclusive futures obligations so that only one EFP is reported to the contract market.

[26] 7 U.S.C. 6b.

[27] EFP Report at 146.

[28] *Id.* at 149. For example, under this approach, a third party could assume the seller's obligation to deliver the cash commodity, or the cash seller could contract to purchase the cash commodity from the third party and direct that delivery be made to the cash buyer in the EFP.

[29] *Id.* at 179–192, 196.

[30] *Id.* at 181.

[31] *Id.* at 185–186.

[32] *Id.* at 186.

[33] *Id.* at 192–193.

[34] *Id.* at 195.

[35] *Id.* Evidence that the cash commodity transfer is severable from the EFP is necessary, but not sufficient, to establish the legitimacy of the integrated transaction. As noted above, the EFP itself must be bona fide.

[36] *Id.* at 200–201.

[37] *Id.* at 198.

[38] *Id.* at 174–175.

[39] The Division identified several such examples in the EFP Report including meeting a margin call, taking advantage of expected foreign exchange fluctuations, and complying with internal inventory policies. *Id.* at 169–173.

[40] *Id.* at 169.

[41] *Id.* at 175.

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contract market must maintain a record showing, by appropriate and uniform symbols, any transaction which is made noncompetitively in accordance with written rules of the contract market. Commission Regulation 1.35(a–2) requires FCMs, IBs, and other contract market members to ask their customers for documentation of the cash leg of an EFP upon request of the contract market, the Commission, or the Department of Justice and upon receipt to provide the documentation to the requesting body; requires customers to create, retain, and produce such documentation directly to the requesting body; and requires that all contract markets adopt, as necessary, corresponding rules requiring its members to provide the documentation to the contract market.

Under Part 16 of the Commission's regulations, each contract market must report the total quantity of futures contracts bought or sold in connection with EFPs to the Commission by clearing member and must publish the total quantity of EFPs executed on any given business day. Part 17 of the Commission's regulations requires FCMs, members of contract markets, and foreign brokers to report to the Commission the quantity of EFPs executed in each special account on the day it has a reportable futures position as well as on the first day the account is no longer reportable. Commission Regulation 18.05 requires each trader holding or controlling a reportable futures position ("large trader") to keep records of all futures and cash commodity positions and transactions. Finally, the Commission may issue a special call under Regulation 21.03(e)(1)(iii) to FCMs, IBs, or customers that requires information about EFPs to be submitted for the particular commodity, contract market, and delivery months named in the call.

(b) Request for Comments. The Commission is soliciting comments on the following question:

(16) Are the current reporting and recordkeeping requirements relating to EFPs adequate?

2. Disclosure

(a) Current Requirements. Commission Regulation 1.55(a)(1) prohibits an FCM or IB from opening a commodity futures account for any customer unless the FCM or IB first provides the customer with a written risk disclosure statement prepared by or approved by the Commission and receives a signed acknowledgment from the customer that he or she has received and understood this statement.[42] This risk disclosure statement, as set forth in Commission Regulation 1.55(b), does not specifically address EFPs. However, Commission Regulation 1.55(f) makes clear that compliance with the specific disclosure requirements of Regulation 1.55 does not relieve an FCM or IB from any other disclosure obligation it may have under applicable law. These disclosure obligations arise under Section 4b of the Act as well as under state and common law and require an FCM or IB to provide its customers with all material information relating to a transaction, including information relating to the risks involved in entering a particular transaction.[43]

The Commission seeks to ensure full and fair disclosure of the requirements of and risks inherent in EFPs. Only when customers have complete information regarding EFPs can they effectively evaluate whether such transactions are consistent with their financial goals. The Commission believes that some guidance as to the form and content of disclosure concerning EFPs may be appropriate.

(b) Request for Comments. The Commission is soliciting comments on the following questions:

(17) What should be the form and content of disclosure concerning EFPs?

(18) Should the form and content of disclosure vary according to the commercial sophistication of the EFP participant similar to the Commission's proposed amendment to Regulation 1.55?

(19) Should the Commission explicitly require that customers must be informed that an EFP is executed noncompetitively, that it involves a cash transaction, and that their FCM might take the opposite side of the EFP?

(20) Should the Commission explicitly require Commission registrants to obtain customer consent before executing an EFP on the customer's behalf?

[42] The Commission is currently proposing to amend Regulation 1.55 so that FCMs and IBs would no longer be required to furnish the specified written risk disclosure statement to certain categories of financially accredited customers or to obtain written acknowledgments of receipt of the risk disclosure statement before opening a commodity futures account for these customers. In addition, the Commission is currently proposing amendments to relieve FCMs and IBs from requirements to furnish disclosure statements to these financially accredited customers pertaining to foreign futures or foreign options (Regulation 30.6(a)), domestic exchange-traded commodity options (Regulation 33.7(a)), customers whose accounts are transferred to another FCM or IB other than at the customer's request (Regulation 1.65(a)(3)), and the treatment in bankruptcy of non-cash margin held by an FCM (Regulation 190.10(c)). *Distribution of Risk Disclosure Statements by Futures Commission Merchants and Introducing Brokers*, 62 FR 47612 (Sept. 10, 1997).

[43] *Id.* at 47614.

3. Internal Controls

(a) Current Requirements. Commission Regulation 166.3 generally requires all Commission registrants, except associated persons who have no supervisory duties, to "diligently supervise the handling by its partners, officers, employees and agents * * * of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities * * * relating to its business as a Commission registrant." One basic purpose of the rule is to protect customers by ensuring that their dealings with employees of Commission registrants will be reviewed and overseen by other officials in the firm.[44] Although Commission Regulation 166.3 currently applies to EFPs, the Commission believes that some guidance as to the types of internal controls that Commission registrants should be required to maintain may be appropriate.

(b) Request for Comments. The Commission is soliciting comments on the following question:

(21) What internal controls are appropriate for Commission registrants to ensure compliance with regulatory requirements concerning the essential elements of bona fide EFPs, reporting and recordkeeping, and disclosure?

4. Transparency

(a) Current Requirements. The current reporting requirements for EFPs are outlined above. Exchanges do not require, and generally do not have a mechanism for providing, timely information about EFP bids, offers, and transactions.

(b) Request for Comments. The Commission is soliciting comments on the following questions:

(22) Do existing price reporting standards provide adequate transparency concerning EFPs to the marketplace and, if not, are there alternative methods of achieving improved price transparency?

(23) Should the Commission require contract markets to publicize information about bids and offers, as well as consummated EFP transactions?

III. Other Noncompetitive Transactions Executed on or Subject to the Rules of a Contract Market

A. Types of Eligible Transactions

Although EFPs have raised many issues and concerns, they have proven to be useful commercial tools. As noted above, the Commission seeks to explore whether there are other types of noncompetitive transactions that also could enhance the usefulness of

[44] *Adoption of Customer Protection Rules*, 43 FR 31886, 31889 (July 24, 1978).

designated contract markets without compromising necessary regulatory safeguards. The Commission has identified three potential candidates: (i) EFS transactions; (ii) exchanges of options for physicals ("EOPs"); and (iii) block trades. The Commission welcomes the identification by commenters of any other potential types of transactions.

1. Exchanges of Futures for Swaps

(a) The New York Mercantile Exchange Proposal. As noted, the NYMEX has applied to the Commission for approval of a rule that would permit the execution of EFS transactions. As proposed by the NYMEX, EFS transactions would involve the noncompetitive exchange of futures contracts for separately negotiated swap agreements. In this respect, the proposal would establish for EFS transactions provisions that are parallel to, but separate from, those governing EFP transactions.[45] Thus, an EFS transaction would follow the structural form of an EFP transaction except that a swap agreement would be substituted for the physical component of the transaction.[46]

Under the NYMEX proposal, the swap component of the EFS transaction must comply with the requirements of Part 35 of the Commission's regulations or with the Commission's 1989 Policy Statement concerning cash-settled swap transactions or must otherwise qualify for or fall within other exemptions or jurisdictional exclusions under the Act or Commission regulations. This initiative represents the first proposal the Commission has received for approval of EFS transactions.

The NYMEX states that the rule proposal in part responds to the substantial growth that has occurred in the swaps market during recent years. In this respect, the NYMEX asserts that swap transactions, though not "physical" in the traditional sense, subject market participants to the same type of price risk. Thus, the NYMEX claims that the proposal could aid in linking the on-exchange futures and off-exchange swap markets.

The NYMEX believes that allowing EFS transactions would increase market efficiency and enhance the use of the exchange as a risk transfer medium. Specifically, the NYMEX believes that both traditional market users and swap dealers (banks, trading companies, and energy companies) would benefit from the availability of EFS transactions. By a similar line of reasoning, the NYMEX notes that commodity swap instruments continue to play an increasingly important role in providing a risk management function in crude oil and other markets, in part because they can be individually tailored to a user's commercial needs and thereby reduce substantially the presence of basis risk. Because of this, the NYMEX concludes that permitting EFS transactions would reduce basis risk for NYMEX market participants, enhance competition among exchange and over-the-counter markets, and facilitate greater usage of NYMEX as a centralized market.

The NYMEX affirms that it has not identified any evidence suggesting that adoption of the proposal would harm existing liquidity in NYMEX markets. Moreover, the NYMEX concludes that the rule proposal would make the liquidity present in NYMEX energy markets accessible to swap market participants via the EFS process. Additionally, the NYMEX identifies the ability of swap participants to close out futures positions more readily, as the underlying futures contracts approach expiration, and thus utilize the exchange in managing price risk associated with swap market transactions as a potential benefit of the proposal.

The NYMEX also views the financial safeguards of the on-exchange trading environment as potentially beneficial, and attractive to, swap market participants. The NYMEX concludes that access to these financial safeguards, including those associated with the position limit and margining systems, either for purposes of creating or extinguishing swap agreements, would enable swap market participants to enhance the credit quality of swap positions. Thus, in summary, the NYMEX concludes that several benefits would accrue to market participants from adoption of the proposed rule, including improvements in liquidity and price transparency, and reductions in basis and credit risk.

(b) Request for Comments. The Commission is soliciting comments on the following questions:

(24) What are the economic reasons firms might have for engaging in EFS transactions and what benefits might accrue thereunder, including the potential benefits to domestic futures markets, to over-the-counter markets, and to financial markets generally?

(25) What are the potential costs or risks of permitting EFS transactions, particularly with respect to the effect on price discovery, risk transfer, and the competitive character of "on-exchange" transactions?

(26) Should the Commission approve the NYMEX rule proposal permitting EFS transactions?

(27) Should EFS transactions be limited to particular markets, participants or types of transactions?

(28) Should special provisions be established to ameliorate any competitive costs or otherwise safeguard the competitive conditions of the on-exchange market?

2. Exchanges of Options for Physicals

(a) Background. The EFP Report included an examination of EOPs.[47] The Division noted that the statutory sections governing options trading, Sections 4c(b) and 4c(c) of the Act,[48] do not provide for the extension of the Section 4c(a) exception for EFPs to options. The Division acknowledged that Regulation 1.38 provides for the execution of noncompetitive transactions pursuant to Commission-approved contract market rules and, on that basis, concluded that EOP transactions could potentially fall within the noncompetitive trade exception found in that regulation.

The EFP Report's investigation of contract market rules found that most were silent on the question of whether EOP transactions were acceptable, with only the Chicago Mercantile Exchange ("CME") rules expressly prohibiting EOP transactions.[49] Although the Amex Commodities Corporation ("ACC") adopted a rule permitting EOPs,[50] it subsequently withdrew that rule, apparently prior to the execution of any EOP transactions.

The Division staff that prepared the EFP Report were unable to discover any instances in which an option on a futures contract was exchanged for a cash commodity, and the Commission is not aware that any of these transactions have occurred since the publication of the report. The Division observed that the absence of these transactions could be due to the fact that market participants had not yet been able to design a plan to execute EOPs, perhaps

[45] As noted above, pursuant to Section 4c(a) of the Act, EFPs are explicitly permitted as an exception to the usual open and competitive execution requirements established by the Act, but only to the extent provided for by contract market rules approved by the Commission. Also as noted, Commission Regulation 1.38(a) authorizes noncompetitive transactions if executed in accordance with contract market rules that have received Commission approval. All domestic commodity exchanges permit the execution of EFP transactions, although there is some variation among exchange rules.

[46] In general, a simplified swap agreement may be characterized as an agreement between two parties to exchange a series of cash flows measured by different interest rates, exchange rates, or prices, with payments calculated by reference to a principal base (or notional amount). *See Policy Statement Concerning Swap Transactions*, 54 FR 30695 (July 21, 1989). Part 35 of the Commission's Regulations defines swap agreements by reference to the Bankruptcy Code. *See* 17 CFR 35.1(b)(1).

[47] EFP Report at 235–240.

[48] 7 USC 6c(b) and 6c(c).

[49] CME Rule 538.

[50] ACC Rule 908.

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because of difficulty in establishing an appropriate basis relationship between the option and the cash commodity.

The EFP Report indicated that commentary from contract market officials and market participants on the EOP issue was divided. Some commenters objected on the basis that an option does not involve a delivery commitment. However, others indicated that EOPs could be appropriate in some circumstances. These commenters indicated that an EOP might be appropriate for the grantor of an option, who has a delivery commitment upon exercise, or in the case of a deep-in-the-money option, which as a practical matter appears to be the equivalent of a futures position. One commenter stated that EOPs were conceptually viable but that the instability associated with option deltas (and therefore option value) could create great risk for a person accepting an option in exchange for a cash commodity. This commenter also indicated that, assuming this risk was reflected in the price, EOP transactions could be very expensive.

(b) Request for Comments. The Commission is soliciting comments on the following questions:

(29) Are EOPs viable and do these transactions offer genuine risk management benefits?

(30) If so, should EOPs be permitted, and should there be limitations on EOPs that reflect the particular risk characteristics of options?

3. Alternative Execution Procedures

(a) Current Procedures. (1) Contract Market Large Order Procedures. The Commission has approved several contract market rules that establish alternative execution procedures for certain transactions. These procedures generally preserve the competitive forces available on a centralized market and thereby comply with the "open and competitive" requirement of Commission Regulation 1.38(a).

The CME, the New York Cotton Exchange ("NYCE") and the New York Futures Exchange ("NYFE") have adopted similar procedures providing for the execution of large orders.[51] These procedures may be used only upon customer request or if the large order bid or offer is the best price available to satisfy the terms of the order. A member makes a request for a large order bid and/or offer in the appropriate trading area. Responding members may make bids and/or offers at, above or below the current prevailing bid or offer in the underlying market for regular size orders. Only the best bid and/or offer shall prevail, and the large order must be filled on an all-or-none basis. The large order execution price does not trigger conditional orders in the underlying market, such as stop or limit orders.

The NYCE and NYFE expressly prohibit an initiating floor broker from bundling customer orders to meet the minimum contract size required for eligibility under the large order execution procedures, but allow a responding broker to bundle customer limit orders and to add orders from his or her own account to match the quantity of futures or options in the large order request. Under the CME all-or-none procedures, both the initiating floor broker and the responding floor broker may bundle customer orders to meet the minimum contract size as long as the customers specifically request execution under these procedures or the all-or-none bid or offer is the best price available to satisfy the terms of the orders. Although cross trades are not permitted at the NYCE and NYFE under these procedures, they are permitted at the CME. Large order transactions executed at all three exchanges must be reported to a designated Exchange official who records and publishes the quantity and prices separately from reports of transactions in the regular market.

The CME also has adopted separate large order execution ("LOX") procedures for transactions involving 300 or more futures contracts in the Standard & Poor's 500 Stock Price Index or the Nikkei Stock Average.[52] These procedures, which include the pre-execution solicitation of interest and discussion of price, have only been used once in the several years they have been available.

The CME also has adopted request for size ("RFS") quotations for the GLOBEX system. These procedures supplement the GLOBEX request for quote ("RFQ") procedures. As originally configured, RFQ messages were distributed without any contract quantity indication. Thus, the adoption of RFS procedures permits requests for large size transactions for all contracts traded through GLOBEX, subject to a minimum threshold quantity for RFS quotations of 100 contracts.[53]

(2) Section 4(c) Contract Market Transactions. As noted previously, Section 4(c) of the Act vests the Commission with certain exemptive authority from the general requirement that all futures transactions must be executed on designated contract markets, subject to specified qualifying criteria. Part 36 of the Commission's regulations adopts certain exemptions under a pilot program for the establishment of separate professional markets which would have less restrictive requirements governing trading, reporting, and risk disclosure for eligible transactions than are applicable to current contract markets. Subject to certain recordkeeping and audit trail requirements, Part 36 procedures provide for the execution of noncompetitive transactions, regardless of size. In addition, these transactions are limited to certain Commission registrants and sophisticated and/or institutional traders which meet certain minimum asset requirements, including banks, trust companies, savings associations, credit unions, investment companies, commodity pools, certain business associations, employee benefit plans, government entities, broker-dealers, FCMs, floor brokers, floor traders, and certain other natural persons. A contract market may adopt trading rules permitting the execution of Part 36 transactions using any combination of noncompetitive execution procedures and competitive on-floor trading procedures.

No contract market has filed a proposal with the Commission pursuant to Section 4(c) and Part 36. Significantly, Part 36 only permits noncompetitive executions in specially-designated, stand-alone, professional markets. In contrast, the other noncompetitive trading methods discussed in this release are adjuncts to regular trading on or subject to the rules of a contract market.

(3) Securities Market Block Trading Procedures. Block trading in securities markets differs substantially from that on Commission designated contract markets. Blocks may be traded on securities exchanges, in over-the-counter securities markets, or through "principal-to-principal" trade execution venues. In the securities industry, a block trade is commonly defined as a transaction involving 10,000 or more shares or a quantity of stock having a market value greater than or equal to $200,000. In recent years, block trading in securities markets has increased as a percentage of reported trading volume.[54]

The New York Stock Exchange ("NYSE") and the Chicago Board Options Exchange ("CBOE") have rules providing for block trading.[55] A customer desiring to trade a block of NYSE-listed stocks contacts a block trader. Depending on the block trader's assessment of market demand and supply, the block trader may notify the Specialist of the pending block trade.[56] If notified, the Specialist may indicate an interest in participating in the block. The block trader then must decide whether to "position" the entire block by serving as the counterparty or "shop the block" by seeking customers to take the other side of the trade. The block trader may also combine these strategies by positioning part of the block and seeking customers for the remaining shares. Upon agreement of a price for the block,[57] the block order is transmitted to the NYSE floor for crossing against the block trader's house account or against other customer orders as arranged in "shopping the block."

Block orders crossed on the NYSE floor must comply with NYSE rules, including the following. Block orders within the current market quotation must first be offered publicly at a price higher than the member's bid by the minimum variation applicable to that stock so that the trading crowd may participate in the block at that publicly offered price, before the member may proceed with the cross transaction.[58] Block orders crossed outside the current market quotation must be disclosed to the Specialist.[59] Where the member is holding agency orders on both sides of the market, he or she must probe the market to determine whether more stock would be lost than is reasonable under the circumstances to orders in the crowd.[60] Where the member is serving as the counterparty of the block and where all or any portion of the block establishes or increases his or her position, the member must fill all limit orders at the post for the clean-up price or better at the clean-up price, before any amount may be retained for the member's account.[61] As an anti-manipulation safeguard, when a member holds any part of a long position in a stock in its trading account as a result of a block trade it completed with a customer, the member is precluded from effecting certain transactions in this stock on the same trading day in which the block trade was executed.[62]

At the CBOE, a member or member organization may solicit another member, member organization, non-member customer or broker-dealer ("solicited person") to take the opposite side of a large-sized order ("original order").[63] The member representing the original order must disclose the terms and conditions of that order to the trading crowd before it can be executed.[64]

In order to promote disclosure at the inception of the solicitation period and to encourage solicited persons to bid or offer at prices that improve the current market, the CBOE rule establishes a series of priority principles for these solicited transactions. Priority depends upon whether the original order is disclosed throughout the solicitation period, whether the solicited order improves the best bid or offer in the crowd and whether the solicited order matches the original order's limit.

If the terms and conditions of the original order are disclosed to the trading crowd prior to any solicitation and the order is continuously represented in the crowd throughout the solicitation process, then the following rules apply. If the solicited order matches the original order's limit and improves the best bid or offer in the trading crowd, then the solicited order has priority over the crowd and may trade with the original order at the improved bid or offered price subject to the customer limit order book priorities set forth in CBOE Rule 6.45.[65] If the solicited order does not match the original order's limit, but improves the best bid or offer in the crowd and the original order is subsequently modified to match the solicited order's bid or offer, then the terms of the original order, as modified, must be disclosed to the trading crowd. The crowd has priority to trade with the modified original order before this order may be crossed with the solicited order.[66] If the solicited order does not match the original order's limit and meets but does not improve the best bid or offer in the trading crowd and the original order is subsequently modified to match the solicited order's bid or offer, then the trading crowd has priority to trade with

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[51] CME Rule 521 ("All-Or-None Transactions"); NYCE Rule 1.10-B ("Block Order Execution"); NYFE Rule 312 ("Block Order Execution").

The CME all-or-none procedures apply to a variety of products, including currency futures, South African Rand options, 28-day Mexican TIIE futures, 91-day Mexican CETES futures, Brady Bond futures, IPC futures, Three-month Eurodollar futures bundle combinations, 13-week U.S. Treasury Bill futures, British Pound/Deutsche Mark and Deutsche Mark/Japanese Yen futures, and Argentine Par Bond futures. The minimum contract size eligible for execution under these procedures ranges from 20 contracts to 100 contracts. The NYCE limits its block order execution procedures to transactions involving 50 or more FINEX futures or futures spreads, options spreads or futures/options combinations in the same contract. The NYFE limits its block order execution procedures to transactions involving 15 or more NYSE Large Composites, 30 or more NYSE Composite Index or 50 or more CRB futures or options, futures spreads, options spreads or futures/options combinations in the same contract.

[52] CME Rule 549.

[53] The CME recently lowered the minimum threshold quantity for RFS quotations for currency futures traded through GLOBEX to 50 contracts.

[54] In 1996, block trading on the New York Stock Exchange comprised 55.9% of the exchange's reported volume, or 2,348,457 transactions accounting for 58.5 billion shares. *New York Stock Exchange Fact Book 1996*, at 16 (May 1997).

[55] NYSE Rule 127; CBOE Rule 6.9.

[56] NYSE Rule 127(a).

[57] When positioning a block, the block trader quotes a tentative price for the stock to the block customer, and the customer may tentatively accept this price. Barring an extreme and unexpected movement in the price of the stock, the customer may be reasonably assured of execution at the quoted price.

When a block trader "shops a block," the trader contacts one or more potential customers to take the opposite side of the block at a specified price. The block trader might be willing to negotiate this price depending on how interested other investors are in participating in the block. The block trader continues to "shop the block" until he or she has a sufficient quantity of orders for the opposite side at a single price. At this point, the block trader returns to the block customer and confirms the customer's interest in the block transaction at the negotiated price, also known as the "clean-up" price.

[58] NYSE Rule 76.

[59] NYSE Rule 127(b).

[60] NYSE Rule 127(c). If the member representing the block orders decides that the amount of stock that would be lost is not excessive, then he or she announces the clean-up price to the crowd and fills at such price all agency limit orders at the post for the clean-up price or better. The member then crosses the remaining block orders at the clean-up price.

If the member decides that the amount of stock that would be lost is excessive, then he or she either may return to the block customers to negotiate a new clean-up price or may limit participation in the block by members at the post. The member limits participation merely by informing the crowd that they cannot participate freely in the block. After such an announcement, the member follows the crossing procedures set forth in NYSE Rule 76 and makes a bid and offer for the full amount of the block. A "reasonable" time must elapse before the cross is completed in order to provide the crowd, including the Specialist, the opportunity to execute superior priced bids or offers to provide price improvement. Thereafter, the member crosses the orders for the remaining shares at the clean-up price. The member is not required to fill at the clean-up price orders limited to the clean-up price or better. The block is entitled to priority at the proposed clean-up price.

[61] NYSE Rule 127(d)(1).

[62] NYSE Rule 97.

[63] CBOE Rule 6.9. CBOE Rule 6.9 specifically allows solicited transactions by "a member or member organization representing an order respecting an option traded on the Exchange * * * including a spread, combination, or straddle order as defined in Rule 6.53 and a stock-option order as defined in Rule 1.1(ii)."

[64] CBOE Rule 6.9(d). However, the member is not required to announce to the trading crowd that another person has been solicited to participate in the order. The initiating member simply must disclose all the terms and conditions of the original order and any modifications to the trading crowd.

[65] CBOE Rule 6.9(a).

Under CBOE Rule 6.45, the highest bid or lowest offer has priority. Where two or more bids (offers) for the same option contract represent the highest (lowest) price, the bid (offer) that is displayed in the customer limit order book shall have priority over any other bid at the post. If two or more bids (offers) represent the highest (lowest) price and the customer limit order book is not involved, then priority is determined according to the sequence in which the bids (offers) were made.

The procedures set forth in CBOE Rule 6.74 govern the crossing of original orders with solicited orders, except when the solicited party has priority as is the case under CBOE Rule 6.9(a).

[66] CBOE Rule 6.9(b).

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the modified original order at the best bid or offered price subject to the customer limit order book priorities.[67] Finally, where the terms and conditions of the original order have not been disclosed in advance of the solicitation, the trading crowd has priority to trade with the original order at the best bid or offered price subject to the customer limit order book priorities before the original order may be crossed with the solicited order.[68]

CBOE members and their associated persons who have knowledge of all the material terms and conditions of an imminent, undisclosed solicited transaction are prohibited from certain trading in an option of the same class that is the subject of the solicited transaction, the underlying security or any related instrument. That prohibition is in effect until the original order and any modifications are disclosed to the trading crowd or until the solicited transaction can no longer reasonably be considered imminent in view of the passage of time since the solicitation.[69]

Block trading also is carried out on regional securities exchanges and in over-the-counter securities markets. The procedures governing block trades in these markets are generally less complex than those applicable at the NYSE. Block trades for stocks listed on regional exchanges are negotiated off-floor and in most cases must be crossed on the floor of the exchange. Moreover, traders generally do not have to accommodate limit orders. Over-the-counter block trades are arranged by a block trader who then crosses the resulting orders.

Another venue for securities block trading involves "principal-to-principal" systems. Generally, block customers directly enter trade quantities and bid/ask prices into a computerized system, which matches the orders according to the availability of bids and offers at matching prices. In addition, block customers may execute block trades themselves, off-exchange, without the assistance of a broker or block trader.

(b) Potential Procedures. Certain participants in the futures markets have suggested that the competitive execution requirements under the Commission's regulations be relaxed to permit block trading procedures similar to those in the securities exchange and over-the-counter markets. As noted previously, the proviso to Commission Regulation 1.38(a) permits noncompetitive transactions if executed pursuant to contract market rules that have been approved by the Commission.

One of the purposes of this release is to investigate whether there are alternative, noncompetitive execution procedures that would further the policies and purposes of the Act. If so, the Commission seeks to determine the extent to which these procedures could be structured to serve the purposes of market participants while not sacrificing customer protection. The procedures might be limited according to order size, class of participant, contract, or some other category. In addition, the Commission seeks to determine the extent to which the procedures would be, and should be, similar to securities market procedures.

The following examples, while not exhaustive, illustrate the range of possibilities. The least significant modification of current open and competitive procedures would expressly permit market participants to alert potential counterparties of their interest in trading in a particular market at a particular time. Actual execution would occur pursuant to existing competitive procedures.

A more significant departure from current procedures would permit market participants to divulge not only a general interest in trading but also specific information about quantity and price to potential counterparties. Again, actual execution would occur competitively. This might be analogous to the practice of "shopping the block" in securities markets.

A further variation would permit negotiation between market participants. This would permit some degree of prearrangement although the execution price would to some extent remain subject to prices in the competitive market.

Yet another variation would adjust execution procedures to confer a degree of priority on particular orders that they might not attain in the open and competitive process. Such priority could be conferred, for example, on certain retail orders or on certain marketmaker orders.

Finally, market participants could be permitted to execute certain transactions bilaterally, away from the centralized marketplace, and simply report them to the exchange and clearing house. This would be similar to the way EFPs are handled currently.

Each of these alternatives potentially raises concerns, including, among others:

the impact on price discovery;
the impact on liquidity;
the potential for manipulation; and
the potential for mispricing, frontrunning, or other customer fraud.

Any proposed procedure would have to address such concerns. The need for safeguards is discussed further below.

(c) Request for Comments. The Commission is soliciting comments on the following questions:

(31) Should alternative, noncompetitive execution procedures be permitted on or subject to the rules of a contract market?

(32) If so, how should these procedures be structured to address regulatory concerns?

(33) Should these procedures be limited by order size, participant class, contract, or some other criteria?

(34) Can adequate safeguards be devised in connection with these procedures to prevent manipulation?

(35) Can adequate safeguards be devised in connection with these procedures to prevent fraud?

B. Qualifying Standards

1. The Need for Standards

The preceding discussion identifies particular types of transactions that might be appropriate for noncompetitive execution, such as EFS transactions or block trades. The common thread connecting these types of transactions with one another and with EFPs is their potential ability to fulfill some particularized need of market participants that the traditional open and competitive execution methods cannot fulfill as well. Congress has implicitly found with respect to EFPs that, at least under some circumstances, they provide certain benefits although their pricing and execution occurs outside of the centralized, open and competitive marketplace. To permit other types of noncompetitive transactions, the Commission would have to make a similar finding. For example, a contract market seeking approval of new procedures could address the effect of the proposal on the contract market's usefulness as a vehicle for price discovery and risk transfer. If the proposal had the potential to affect those functions adversely, the contract market could try to demonstrate countervailing benefits. The contract market also could address, pursuant to Section 15 of the Act,[70] whether its proposal was the least anticompetitive means of achieving its objective. Moreover, a contract market might show that these transactions are structured in such a way as to complement the competitive market, not to supplant it.

[67] CBOE Rule 6.9(c).

[68] CBOE Rule 6.9(d).

[69] CBOE Rule 6.9(s). This trading restriction applies to the solicited party as well as to any other member or associated person who has knowledge of all the material terms and conditions of both the original and solicited orders, including the price.

[70] 7 U.S.C. 19.

2. Request for Comments

The Commission seeks input on the general qualifying standards that should govern a proposal's eligibility for approval and how compliance with such standards would be demonstrated. The Commission is soliciting comments on the following questions:

(36) What are the appropriate qualifying standards for noncompetitive transactions concerning:

(a) the effect on the usefulness of a designated futures contract as a hedging mechanism?

(b) the effect on the price discovery function of a designated futures contract?

(c) the effect on the level of financial integrity in a designated contract market?

(d) the effect on the level of customer protection in a designated contract market?

(37) Should access to noncompetitive transactions be limited to commercials or sophisticated investors?

(38) Should noncompetitive transactions be subject to contract market rules?

(39) Are there other appropriate qualifying standards?

C. Continuing Regulatory Requirements

1. The Need for Requirements

As discussed above, in addition to determining whether an EFP is bona fide, there is a need for appropriate regulatory oversight in areas such as reporting and recordkeeping, disclosure, and internal controls. Similar considerations apply to other types of noncompetitive transactions.

2. Request for Comments

The Commission seeks input on any additional requirements that should apply to a potential noncompetitive transaction, once it is determined that the transaction meets basic eligibility standards. To that end, the Commission has identified the following areas where it appears that additional qualifying requirements would be required in order to maintain systemic integrity and to provide guidance to self-regulatory entities. The Commission seeks input both as to whether the prospective requirement is necessary and, if so, how the requirement could be structured to provide a meaningful test. The Commission is soliciting comments on the following questions:

(40) What are the appropriate standards to ensure that noncompetitive transactions are bona fide and meet basic qualifying requirements on an ongoing basis?

(41) What are the appropriate reporting and recordkeeping requirements applicable to these transactions?

(42) What are the appropriate disclosure requirements applicable to these transactions?

(43) What are the appropriate internal controls applicable to these transactions?

(44) What are the appropriate safeguards to maintain an adequate level of transparency?

(45) What are the appropriate safeguards to prevent manipulation?

(46) What are the appropriate safeguards to prevent fraud?

IV. Execution Facilities for Noncompetitive Transactions Executed on or Subject to the Rules of a Contract Market

A. Current, Proposed and Potential Facilities

As noted in the Introduction, several organizations have developed execution facilities for transactions that are executed off-exchange and reported to contract markets as EFPs. As with the procedures discussed in the previous section, these facilities expand the opportunity for market participants to engage in the negotiation of transactions off the floor of the exchange. It appears, however, that there are significant structural differences between these facilities and traditional methods for the execution of EFPs. The latter generally appear to take a bilateral, over-the-counter approach to the negotiation of trades.

Unlike traditional approaches, these execution facilities provide a formal market environment for the negotiation and arrangement of transactions, are typically operated by third parties, and may be beyond the operational and regulatory purview of contract markets to some extent. In this respect, however, the Commission also recognizes that these facilities perhaps should be characterized as noncompetitive only in the sense that the transactions executed thereon are completed outside of designated contract markets. Thus, unlike the execution procedures on a contract market, the execution procedures on one of these facilities have not been formally reviewed and approved by the Commission for compliance with the open and competitive requirements of the Act and other statutory requirements. The Commission acknowledges that an execution facility's centralized structure may provide a market environment that facilitates the competitive execution of transactions and also may provide competitive benefits for the underlying contract markets.

This section includes a discussion of existing facilities, proposed facilities, and potential facilities and presumes that the futures leg of the transaction is reported to and cleared by an existing contract market clearing organization. Generally, the request for comments relative to this section seeks input as to whether the regulatory environment applicable to such transactions continues to be appropriate in light of the growth and evolution of activity on such facilities or whether some form of additional oversight is needed. As more fully set out below, the Commission's request for comments also seeks input on the appropriate form of any prospective regulatory actions applicable to these facilities.

1. Interdealer Brokers

There are six major interdealer brokers in the cash U.S. Treasury securities market.[71] All or most offer basis trading facilities. As noted above, a basis trade involves the simultaneous acquisition of positions in actual Treasury securities and in offsetting futures contracts. Transactions through these facilities must meet minimum trade sizes as well as other qualifying requirements.

It appears that at least a minimal level of transparency is maintained for basis trading on these facilities, although it is not clear whether that level is completely adequate. Information on these basis trades is obtained through reports published over screen-based news reporting services, such as Govpx or Bloomberg. The screens are anonymous, except that firms may be identified for basis trade quotations.

It also appears that these firms restrict their activities to dealing only with primary dealers and other large institutional entities. The interdealer brokers do not reveal counterparty names, and anonymity is thereby maintained. Trades generally are cleared through the Government Securities Clearing Corporation ("GSCC"), and anonymity is maintained even after a trade is consummated. GSCC nets the cash market legs of the basis trades.

2. The Chicago Board Brokerage

The CBT is developing a computerized system for, among other things, basis trading of U.S. Treasury securities. The system will be operated by the Chicago Board Brokerage ("CBB"), a subsidiary of the CBT, which is registered with the Securities and Exchange Commission ("SEC") as a broker/dealer.

Pricing of basis trades on the CBB system will be carried out according to a standardized formula. The futures leg will be assigned a price equal to the last sale price for the futures contract. The cash Treasury leg will be assigned a price according to the basis spread relative to the price of the futures leg. The price of the cash Treasury leg also will be adjusted to account for

[71] The six are Cantor Fitzgerald, Liberty, RMJ, Tullet & Tokyo, Garban, and Hilliard & Farber.

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differences between the coupon rate of the actual Treasury security and the standardized 8 percent coupon rate of the futures contract. The cash leg will be cleared through the Clearing Corporation for Options and Securities ("CCOS"), a subsidiary of the Board of Trade Clearing Corporation ("BOTCC") which is registered as a clearing agency with the SEC. The futures leg will be cleared through the CBT and BOTCC pursuant to rules governing EFP transactions.

3. Potential Facilities for Transactions Other Than EFPs

The interdealer brokers and the CBB are facilities for the execution of EFPs. If the Commission were to permit other types of noncompetitive trading, such as block trading, facilities might be established for the execution of those types of transactions. For example, a computerized, bulletin board system might be established in connection with the execution of blocks. The Commission, of course, before approving relevant contract market rules, would have the opportunity to review procedures relating to these trades. Nonetheless, as discussed below, the Commission is requesting comments as to the appropriate form of regulatory oversight for these facilities.

B. Qualifying Standards

1. Current Requirements

Basis trades executed through these facilities currently are subject to the same regulatory requirements as any other EFP transaction. The Commission's oversight of these facilities does not differ in any way from its oversight of the EFP markets generally. The Commission is concerned that the nature of the transactions executed on these facilities and the environment in which they are executed may differ enough from the nature of traditional EFPs as to warrant differing regulatory treatment. Indeed, it could be argued that some of these facilities have evolved to the extent that they are functionally the equivalent of designated contract markets.

2. Request for Comments

The Commission seeks input on the regulatory structure appropriate for these execution facilities. At a threshold level, this area of inquiry seeks comments on whether the existing regulatory structure appears adequate as currently organized and administered. To the extent that a commenter believes the current approach is adequate, a supporting rationale should be set forth. To the extent that a commenter believes the current approach is deficient, the Commission seeks comments identifying the nature of the deficiency and whether new guidelines or standards are required. Where a commenter believes that new regulatory initiatives are required, the Commission seeks comments on the form and nature of any such initiatives. Any such comments should include a supporting rationale.

Specifically, the Commission is soliciting comments on the following questions:

(47) What characteristics distinguish execution facilities for EFPs from contract markets?

(48) Is the current regulatory approach concerning these facilities adequate?

(49) If not, what modifications are appropriate?

(50) If execution facilities were established for noncompetitive transactions other than EFPs, how, if at all, should the regulatory approach that would apply to those facilities vary from that currently applicable to contract markets?

(51) Should execution facilities for EFPs and other noncompetitive transactions that are operated by non-contract markets be subject to oversight by the relevant contract market?

(52) Should these facilities limit access to commercials or sophisticated investors?

(53) Should these facilities be subject to procedures to prevent manipulation?

(54) Should these facilities be subject to procedures to prevent fraud?

(55) Should these facilities be subject to procedures to ensure that transactions executed thereon are bona fide?

(56) Should these facilities be subject to procedures to provide for market transparency?

(57) Should these facilities be subject to procedures related to reporting and recordkeeping?

V. Summary of Request for Comments

After reviewing the comments, the Commission will determine whether rulemaking or other action is appropriate. Commenters are invited to discuss the broad range of concepts and approaches described in this release. The Commission specifically invites commenters to compare the advantages and disadvantages of the possible changes discussed above with those of the existing regulatory framework. In addition to responding to the specific questions presented, the Commission encourages commenters to submit any other relevant information. In sum, the Commission is soliciting comments on the following questions:

Overview

(1) Should the standards articulated in the EFP Report be codified in the Commission's regulations and/or refined in any way?

(2) Should other types of noncompetitive transactions, such as EFS transactions or block trades, be permitted to be executed on or subject to the rules of a contract market and, if so, what standards should apply to these transactions?

(3) What standards should be applicable to execution facilities for noncompetitive transactions executed on or subject to the rules of a contract market?

Elements of a Bona Fide EFP: Relationship of the Instruments

(4) How should the "strong price correlation" standard articulated in the EFP Report be implemented?

(5) Should the Commission require contract markets to adopt a minimum statistical correlation coefficient to be used in assessing the acceptability of a particular cash commodity for use as the cash leg of an EFP?

(6) If a minimum correlation coefficient is required, should this coefficient apply to all EFPs, or should it be adjusted to account for the different commodities involved in EFPs?

(7) What is the appropriate type and scope of guidance contract markets should be required to provide to the general public concerning the acceptability of particular commodities as the cash leg of an EFP?

Elements of a Bona Fide EFP: Relationship of the Parties

(8) What is the appropriate scope of the separate parties requirement?

(9) Should the Commission address string trades as that practice is described in the EFP Report and, if so, how?

Elements of a Bona Fide EFP: Nature of the Transaction

(10) What criteria are appropriate for judging whether the futures leg of an EFP is bona fide?

(11) What criteria are appropriate for judging whether the cash leg of an EFP is bona fide?

(12) What criteria are appropriate for determining whether a transitory EFP is bona fide?

(13) What criteria are appropriate for determining whether an EFP is contingent?

Elements of a Bona Fide EFP: Price of the Transaction

(14) Should the Commission require both the futures and cash legs of an EFP to be priced within the daily range of their current respective markets, should it require only one leg of an EFP to be priced within its daily range, or should it impose no restrictions on the price of either leg of an EFP?

(15) Should the Commission require contract markets to obtain documentation regarding the business purpose underlying the pricing of an EFP?

Other Regulatory Requirements Governing EFPs: Reporting and Recordkeeping

(16) Are the current reporting and recordkeeping requirements relating to EFPs adequate?

Other Regulatory Requirements Governing EFPs: Disclosure

(17) What should be the form and content of disclosure concerning EFPs?

(18) Should the form and content of disclosure vary according to the commercial sophistication of the EFP participant similar to the Commission's proposed amendment to Regulation 1.55?

(19) Should the Commission explicitly require that customers must be informed that an EFP is executed noncompetitively, that it involves a cash transaction, and that their FCM might take the opposite side of the EFP?

(20) Should the Commission explicitly require Commission registrants to obtain customer consent before executing an EFP on the customer's behalf?

Other Regulatory Requirements Governing EFPs: Internal Controls

(21) What internal controls are appropriate for Commission registrants to ensure compliance with regulatory requirements concerning the essential elements of bona fide EFPs, reporting and recordkeeping, and disclosure?

Other Regulatory Requirements Governing EFPs: Transparency

(22) Do existing price reporting standards provide adequate transparency concerning EFPs to the marketplace and, if not, are there alternative methods of achieving improved price transparency?

(23) Should the Commission require contract markets to publicize information about bids and offers, as well as consummated EFP transactions?

Types of Eligible Transactions: Exchanges of Futures for Swaps

(24) What are the economic reasons firms might have for engaging in EFS transactions and what benefits might accrue thereunder, including the potential benefits to domestic futures markets, to over-the-counter markets, and to financial markets generally?

(25) What are the potential costs or risks of permitting EFS transactions, particularly with respect to the effect on price discovery, risk transfer, and the competitive character of "on-exchange" transactions?

(26) Should the Commission approve the NYMEX rule proposal permitting EFS transactions?

(27) Should EFS transactions be limited to particular markets, participants or types of transactions?

(28) Should special provisions be established to ameliorate any competitive costs or otherwise safeguard the competitive conditions of the on-exchange market?

Types of Eligible Transactions: Exchanges of Options for Physicals

(29) Are EOPs viable and do these transactions offer genuine risk management benefits?

(30) If so, should EOPs be permitted, and should there be limitations on EOPs that reflect the particular risk characteristics of options?

Types of Eligible Transactions: Alternative Execution Procedures

(31) Should alternative, noncompetitive execution procedures be permitted on or subject to the rules of a contract market?

(32) If so, how should these procedures be structured to address regulatory concerns?

(33) Should these procedures be limited by order size, participant class, contract, or some other criteria?

(34) Can adequate safeguards be devised in connection with these procedures to prevent manipulation?

(35) Can adequate safeguards be devised in connection with these procedures to prevent fraud?

Qualifying Standards

(36) What are the appropriate qualifying standards for noncompetitive transactions concerning:

(a) the effect on the usefulness of a designated futures contract as a hedging mechanism?

(b) the effect on the price discovery function of a designated futures contract?

(c) the effect on the level of financial integrity in a designated contract market?

(d) the effect on the level of customer protection in a designated contract market?

(37) Should access to noncompetitive transactions be limited to commercials or sophisticated investors?

(38) Should noncompetitive transactions be subject to contract market rules?

(39) Are there other appropriate qualifying standards?

Continuing Regulatory Requirements

(40) What are the appropriate standards to ensure that noncompetitive transactions are bona fide and meet basic qualifying requirements on an ongoing basis?

(41) What are the appropriate reporting and recordkeeping requirements applicable to these transactions?

(42) What are the appropriate disclosure requirements applicable to these transactions?

(43) What are the appropriate internal controls applicable to these transactions?

(44) What are the appropriate safeguards to maintain an adequate level of transparency?

(45) What are the appropriate safeguards to prevent manipulation?

(46) What are the appropriate safeguards to prevent fraud?

Execution Facilities for Noncompetitive Transactions Executed on or Subject to the Rules of a Contract Market: Qualifying Standards

(47) What characteristics distinguish execution facilities for EFPs from contract markets?

(48) Is the current regulatory approach concerning these facilities adequate?

(49) If not, what modifications are appropriate?

(50) If execution facilities were established for noncompetitive transactions other than EFPs, how, if at all, should the regulatory approach that would apply to those facilities vary from that currently applicable to contract markets?

(51) Should execution facilities for EFPs and other noncompetitive transactions that are operated by non-contract markets be subject to oversight by the relevant contract market?

(52) Should these facilities limit access to commercials or sophisticated investors?

(53) Should these facilities be subject to procedures to prevent manipulation?

(54) Should these facilities be subject to procedures to prevent fraud?

(55) Should these facilities be subject to procedures to ensure that transactions executed thereon are bona fide?

(56) Should these facilities be subject to procedures to provide for market transparency?

(57) Should these facilities be subject to procedures related to reporting and recordkeeping?

Issued in Washington, DC, on January 16, 1998.

Jean A. Webb,

Secretary.

[FR Doc. 98–1672 Filed 1–23–98; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Customer Comments; AF Form 3211; OMB Number 0701–(to be determined).

Type of Request: New Collection.

Number of Respondents: 200.

Responses Per Respondent: 1.

Annual Responses: 200.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 17.

Needs and Uses: Each guest of Air Force lodging and its contract lodging operations are provided access to AF Form 3211. AF Form 3211 gives each guest the opportunity to comment on facilities and service received. Completion of the form is optional. The information collection requirement is necessary for Wing leadership to access the effectiveness of their lodging program. AF Form 3211 is useful as background documentation and supporting material for various management decisions. The information is reviewed by higher headquarters during lodging assistance and Innkeeper Award competitions.

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Affected Public: Individuals or Households; Business or Other For-Profit.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: January 21, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–1738 Filed 1–23–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0090]

Submission for OMB Review; Comment Request Entitled Rights in Data and Copyrights

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0090).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Rights in Data and Copyrights. A request for public comments was published at 62 FR 62001, November 20, 1997. No comments were received.

DATES: Comments may be submitted on or before February 25, 1998.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill, Federal Acquisition Policy Division, GSA (202) 501–3856.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0090, Rights in Data and Copyrights, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

Rights in Data is a regulation which concerns the rights of the Government, and organizations with which the Government contracts, to information developed under such contracts. The delineation of such rights is necessary in order to protect the contractor's rights to not disclose proprietary data and to insure that data developed with public funds is available to the public.

The information collection burdens and recordkeeping requirements included in this regulation fall into the following four categories.

(a) A provision which is to be included in solicitations where the proposer would identify any proprietary data he would use during contract performance in order that the contracting officer might ascertain if such proprietary data should be delivered.

(b) Contract provisions which, in unusual circumstances, would be included in a contract and require a contractor to deliver proprietary data to the Government for use in evaluation of work results, or is software to be used in a Government computer. These situations would arise only when the very nature of the contractor's work is comprised of limited rights data or restricted computer software and if the Government would need to see that data in order to determine the extent of the work.

(c) A technical data certification for major systems, which requires the contractor to certify that the data delivered under the contract is complete, accurate and compliant with the requirements of the contract. As this provision is for major systems only, and few civilian agencies have such major systems, only about 30 contracts will involve this certification.

(d) The Additional Data Requirements clause, which is to be included in all contracts for experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be $500,000 or less). The clause requires that the contractor keep all data first produced in the performance of the contract for a period of three years from the final acceptance of all items delivered under the contract. Much of this data will be in the form of the deliverables provided to the Government under the contract (final report, drawings, specifications, etc.). Some data, however, will be in the form of computations, preliminary data, records of experiments, etc., and these will be the data that will be required to be kept over and above the deliverables. The purpose of such recordkeeping requirements is to insure that the Government can fully evaluate the research in order to ascertain future activities and to insure that the research was completed and fully reported, as well as to give the public an opportunity to assess the research results and secure any additional information. All data covered by this clause is unlimited rights data paid for by the Government.

Paragraph (d) of the Rights in Data-General clause outlines a procedure whereby a contracting officer can challenge restrictive markings on data delivered. Under civilian agency contracts, limited rights data or restricted computer software is rarely, if ever, delivered to the Government. Therefore, there will rarely be any challenges. Thus, there is no burden on the public.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *1,100;* responses per respondent, *1;* total annual responses, *1,100;* preparation hours per response, *2.7;* and total response burden hours, *29,970.*

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, *9,000;* hours per recordkeeper, *3;* and total recordkeeping burden hours, *27,000.*

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (VRS), Room 4037, 1800 F Street, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0090, Rights in Data and Copyrights, in all correspondence.

Dated: January 21, 1998.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 98–1781 Filed 1–23–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Department of the Army

Records of Decision on the Final Environmental Impact Statement (FEIS) on the Disposal and Reuse of the Savanna Army Depot Activity, Savanna, Illinois

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announced its Record of Decision (ROD) on the FEIS for the disposal and reuse of the 13,062 acres comprising the Savanna Army Depot Activity, Savanna, Illinois, in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended.

Under the Act, the Secretary of the Army has been delegated the authority to dispose of excess real property and facilities located at a military installation being closed or realigned. The National Environmental Policy Act requires the Army to prepare its analysis of the environmental impacts of disposal. The EIS also analyzes the secondary environmental impacts of disposal—the reuse of the property. The ROD and the FEIS satisfy the requirements of NEPA.

The Army has selected the encumbered disposal alternative. Encumbered disposal requires the transfer of the property to others with use restrictions imposed by the Army. The ROD concludes that surplus property will be conveyed subject to restrictions, identified in the FEIS, that pertain to the following: unexploded ordnance, wetlands, historical resources, threatened and endangered species, utilities easements, easements and rights-of-way, access easements, reversionary interests, overflow easements, remedial activities, and lead-based paint. The Army will impose deed restrictions or other requirements to ensure safety and protection of human health and the environment.

The Army has taken all practicable measures to avoid or minimize adverse environmental impacts associated with its preferred alternative of encumbered property disposal. The Army will continue to work with individual future owners to avoid, reduce, or compensate for adverse impacts that might occur as a result of disposal. Mitigation measures for reuse activities are identified in the FEIS.

ADDRESSES: A copy of the ROD may be obtained by writing to Ms. Shirley Barnett, at the U.S. Army Materiel Command, ATTN: AMCSO, 5001 Eisenhower Avenue, Alexandria, VA 22333–0001 or by calling (703) 617–8172. Copies of the Final EIS may be obtained by writing to Mr. Glen Coffee at the Corps of Engineers, Mobile District, ATTN: CESAM–PD–E, 109 St. Joseph Street, Mobile, AL 36628–0001, or by facsimile at (334) 690–2721.

Dated: January 20, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA, (I,L&E).

[FR Doc. 98–1726 Filed 1–23–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

New York and New Jersey Harbor Navigation Feasibility Study

AGENCY: Corps of Engineers, Army, DOD.

ACTION: Notice and request for comments.

SUMMARY: The U.S. Army Corps of Engineers, New York District, seeks comments from interested individuals, groups, and businesses about the need for, and alternatives to, Federal participation in the deepening of navigation channels within the Port of New York and New Jersey. It will consider all comments in its formulation and selection of alternatives.

DATES: Comments must reach the New York District on or before 30 March 1998.

ADDRESSES: You may mail comments to the Study Manager, Flood Control & Navigation Section, Planning Division, New York District, U.S. Army Corps of Engineers, 26 Federal Plaza, New York, NY 10278–0090, or deliver them to Room 2151 at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal Holidays, or e-mail to thomas.shea@usace.army.mil. The telephone number is (212) 264–1060.

FOR FURTHER INFORMATION CONTACT: Thomas J. Shea III, Study Manager, Flood Control & Navigation Section, Planning Division, New York District, U.S. Army Corps of Engineers, (212) 264–1060. E-mail: thomas.shea@usace.army.mil.

SUPPLEMENTARY INFORMATION: This announces the initiation of a cost shared feasibility level study for determining whether Federal participation in navigation improvements in the Port of New York and New Jersey is justified. The study is being conducted in partnership among the State of New York acting through the New York State Urban Development Corporation d/b/a Empire State Development Corporation, the State of New Jersey Department of Commerce and Economic Development (Maritime Resources), The Port Authority of New York and New Jersey and the U.S. Army Corps of Engineers, New York District. The study is authorized by Section 435 of the Water Resources Development Act of 1996 (WRDA 96).

Planning studies of water resource problems are conducted in two phases by the U.S. Army Corps of Engineers in its Civil Works role. The first phase is the reconnaissance study, accomplished entirely at Federal expense. The second phase is the feasibility study, which is cost shared equally between the Federal Government and one or more non-Federal sponsors.

The Section 905b, WRDA 86 Analysis Fact Sheet was completed in April, 1997. The purpose of this analysis is three-fold: (1) determine whether the Federal Government should participate in further studies of the water resource problems; (2) determine the scope, duration and cost of any further studies; (3) identify one or more non-Federal sponsors willing to cost-share the studies. The analysis found that there should be sufficient economic benefits to justify deepening selected channels within the Port to 50 feet or more below mean low water and identified the non-Federal sponsors mentioned above for the feasibility study.

The feasibility phase will perform, in more detail, the engineering, economic and environmental evaluations necessary to identify the optimum channel depths to meet the existing and future needs of the Port of New York and New Jersey, with an emphasis on container and crude petroleum traffic. At its completion, a "Feasibility Report" containing a recommendation for construction, if justified and supported by a non-Federal sponsor, will be released. The report, including the necessary environmental documentation, will be submitted to the United States Congress for project authorization.

The Port of New York and New Jersey is the largest port on the East Coast, providing more than 166,000 port-related jobs, $20 billion in economic activity, and serving more than 17 million consumers in the states of New York and New Jersey. Through its intermodal links, the Port provides second day access to another 80 million consumers in the northeast and mid-western states. In 1995, the Port

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received and shipped more than 44.8 million long tons of waterborne general cargo to all parts of the United States and throughout the world and received petroleum and related products from ports on the Atlantic and Gulf Coasts, the Caribbean, Africa and the Persian Gulf.

The Corps' New York District requests any pertinent information about the project area from any Federal, state, or local agencies, and the private sector. In particular, we request information on the type, amount, and location of waterborne commerce and ships calling on the Port and any projections of future commerce and size of ships. This information will be used to define the status of the Port, forecast the benefits of channel improvements, and determine potential Federal involvement in providing deeper, wider and/or realigned channels. The Corps also welcomes any assistance and suggestions concerning the conduct of this study.

John Sassi,

Chief, Planning Division.

[FR Doc. 98–1721 Filed 1–23–98; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1955.

DATES: Interested persons are invited to submit comments on or before February 25, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: January 20, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.
Title: Goals 2000 Comprehensive Local Reform Assistance.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 400.
Burden Hours: 12,000.
Abstract: Section 304(e) of the Goals 2000: Educate America Act authorizes the Secretary to award direct grants to LEAs in States that were not participating in Goals 2000 as of October 20, 1995, if the applicable SEA approves the LEAs' participation in Goals 2000 as of that date. Both the Oklahoma and Montana SEAs have approved LEA participation in this direct grant program. The Goals 2000 Act is designed to help States and communities develop and implement their own education reforms focused on challenging academic standards in order to increase student academic achievement.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (OMB Control No. 1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

[FR Doc. 98–1720 Filed 1–23–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Environmental Management; Environmental Management Advisory Board Renewal

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act (Public Law 92–463), and in accordance with Title 41 of the Code of Federal Regulations, section 101–6.1015(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Environmental Management Advisory Board has been renewed for a two-year period beginning on January 17, 1998. The Board will provide advice to the Assistant Secretary for Environmental Management.

The purpose of the Board is to provide the Assistant Secretary for Environmental Management with advice and recommendations on Environmental Management projects and issues, such as program budget, strategic planning, risk, technology development, the National Environmental Policy Act, long-term nuclear stewardship, science initiatives, worker health and safety, and program cost effectiveness, from the perspective of affected groups and State Tribal, and local governments. Consensus recommendations to the Department of Energy from the Board on programmatic nationwide resolution of numerous difficult issues will help achieve the Department's objective of an integrated environmental restoration program.

Additionally, the renewal of the Environmental Management Advisory Board has been determined to be essential to the conduct of Department of Energy business and to be in the public interest in connection with the performance of duties imposed on the Department of Energy by law. The Board will operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Public Law 95–91), and rules and regulations issued in implementation of those Acts.

Further information regarding this Advisory Board may be obtained from Rachel Samuel at (202) 586–3279.

Issued in Washington, D.C. on January 16, 1998.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 98–1809 Filed 1–23–98; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1168–000]

Central Louisiana Electric Company, Inc.; Notice of Filing

January 20, 1998.

Take notice that on December 22, 1997, Central Louisiana Electric Company, Inc., (CLECO), tendered for filing a service agreement under which CLECO will provide non-firm point-to-point transmission service to NESI Power Marketing, Inc., under its point-to-point transmission tariff.

CLECO states that a copy of the filing has been served on NESI Power Marketing, Inc.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 2, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1687 Filed 1–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1179–000]

Cinergy Services, Inc., Notice of Filing

January 20, 1998.

Take notice that on December 22, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Commonwealth Edison Company (Commonwealth).

Cinergy and Commonwealth are requesting an effective date of December 3, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 2, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1697 Filed 1–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1170–000]

CLECO Energy, L.L.C.; Notice of Filing

January 20, 1998.

Take notice that on December 22, 1997, CLECO Energy, L.L.C. (CLECO Energy), petitioned the Commission for acceptance of CLECO Energy Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

CLECO Energy intends to engage in wholesale electric power and energy purchases and sales as a marketer. CLECO Energy is not in the business of generating or transmitting electric power. CLECO Energy is an affiliate of Central Louisiana Electric Company, Inc., a public utility subject to the Commission's jurisdiction under the Federal Power Act, 16 U.S.C. 791a, *et seq.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before February 2, 1998. Protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of CLECO Energy's filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1688 Filed 1–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1181–000]

Consumers Energy Company; Notice of Filing

January 20, 1998.

Take notice that on December 23, 1997, Consumers Energy Company (Consumers), tendered for filing service agreements for unbundled wholesale power service pursuant to the Consumers' Power Sales Tariff filed on December 31, 1996 and accepted for filing on September 12, 1997 in Docket No. ER97–964–000 with the following customers:

1. Commonwealth Edison Company
2. Electric Clearing House, Inc.
3. Williams Energy Services Company

Copies of the filed agreements were served upon the Michigan Public Service Commission and the respective customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or

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protests should be filed on or before February 2, 1998. Protests will be considered by the Commission in determintng the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1699 Filed 1–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1182–000]

Consumers Energy Company; Notice of Filing

January 20, 1998.

Take notice that on December 23, 1997, Consumers Energy Company (Consumers), tendered for filing executed service agreements for Non-Firm Point-to-Point Transmission Service pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996, by Consumers and The Detroit Edison Company (Detroit Edison) with the following transmission customers:

CMS Marketing, Services and Trading
Commonwealth Edison Company
Detroit Edison Merchant Operation
Duke Energy Trading & Marketing, LLC
Electric Clearinghouse, Inc.
Enron Power Marketing
Illinois Power Company
Louisville Gas & Electric Company
Minnesota Power & Light Company
Northern Indiana Public Service Company
NP Energy Inc.
PECO Energy Co.
Pennsylvania Power & Light Company
Public Service Electric and Gas Company
Virginia Electric and Power Company
Wabash Valley Power Association, Inc.

Copies of the filed agreements were served upon the Michigan Public Service Commission, Detroit Edison and the respective transmission customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1700 Filed 1–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–40–000]

East Tennessee Natural Gas Company; Notice of Site Visit

January 20, 1998.

On January 27, 1998, the Office of Pipeline Regulation staff will conduct a site visit of the proposed East Tennessee Natural Gas Company Virginia Expansion project in Washington, Smyth, and Wythe Counties, Virginia. All parties may attend. Those planning to attend must provide their own transportation.

For information about where the site inspection will begin, please contact Paul McKee at (202) 208–1088.

Robert J. Cupina,

Deputy Director, Office of Pipeline Regulation.

[FR Doc. 98–1678 Filed 1–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1184–000]

Entergy Services, Inc.; Notice of Filing

January 20, 1998.

Take notice that on December 23, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Mississippi, Inc., an operating company subsidiary of Entergy Corporation, tendered for filing an Agreement between Entergy Mississippi, Inc., and South Mississippi Electric Power Association (SMEPA). Entergy Services states that the Agreement sets out an additional delivery point between Entergy Mississippi, Inc., and SMEPA.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 2, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1702 Filed 1–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1185–000]

Entergy Services, Inc.; Notice of Filing

January 20, 1998.

Take notice that on December 23, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., submitted for filing the Sixth Amendment (Amendment) to the Power Coordination, Interchange and Transmission Agreement (PCITA), between Entergy Arkansas, Inc., and the City of Conway, Arkansas and a Notice of Cancellation of the Electric Peaking Power Service Agreement between Conway and Entergy Arkansas, dated August 28, 1985 (PPA). Entergy Services states that the Amendment adds terms and conditions governing the service provided under the PPA.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 2, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1703 Filed 1–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–366–007]

Florida Gas Transmission Company; Notice of Report of Refunds

January 20, 1998.

Take notice that on January 14, 1998, Florida Gas Transmission Company (FGT) tendered for filing a refund report reflecting amounts refunded to its transportation customers on December 15, 1997 in compliance with a Commission Order dated September 24, 1997 under the referenced dockets.

FGT states that in accordance with the terms of the Commission's Order, FGT has refunded to each of its customers an amount, including interest, equal to the difference between: (1) the total payments actually made by each customer for services rendered to it during the period March 1, 1997 through October 31, 1997; and (2) the total payments that each customer would have made for such services if the rates paid by the customer during this period had equaled the refund rates. The refund rates are contained in 1) Appendix A, page 1 of the August 5, 1997 Settlement in the referenced dockets as approved by the Commission Order dated September 24, 1997, and 2) the tariff sheets set forth in FGT's November 12, 1997 "Compliance Filing to Place Settlement Rates Into Effect," as approved by Commission Order dated January 12, 1998.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 first Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before January 27, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1679 Filed 1–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1180–000]

Florida Power & Light Company; Notice of Filing

January 20, 1998.

Take notice that on December 22, 1997, Florida Power & Light Company (FPL), tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP), indicating that FPL had completed all the steps for pool membership. FPL requests that the Commission amend the WSPP Agreement to include it as a member. FPL requests an effective date of December 23, 1997, for the proposed amendment.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 2, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1698 Filed 1–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–8–008]

Granite State Gas Transmission, Inc.; Notice of Refund Report

January 20, 1998.

Take notice that on December 23, 1997, Granite State Gas Transmission, Inc., (Granite State) tendered for filing a report of refunds to its transportation service customers, pursuant to the Stipulation and Agreement approved by the Commission on October 20, 1997.

Granite State's report indicates that the refund period extends from April 1, 1997 when the motion rates became effective to November 1, 1997, when the Phase I settlement rates became effective. The report also indicates that on December 11, 1997, Granite State made refunds of $561,643.55 including interest calculated to that date.

Granite State notes that copies of its filing have been served on its firm and interruptible customers, and on the regulatory agencies of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before January 27, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1680 Filed 1–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1166–000]

Idaho Power Company; Notice of Filing

January 20, 1998.

Take notice that on December 22, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Idaho Revision No. 1, Exhibit C, Service Agreement 96MS–96108 between Idaho Power Company and Bonneville Power Administration.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All motions or

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protests should be filed on or before February 2, 1998. Protests will be considered by the Commission determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1684 Filed 1–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1176–000]

Long Island Lighting Company; Notice of Filing

January 20, 1998.

Take notice that on December 22, 1997, Long Island Lighting Company (LILCO), filed an Electric Power Service Agreement between LILCO and North American Energy Conservation, Inc., entered into on December 9, 1997.

The Electric Power Service Agreement listed above was entered into under LILCO's Power Sales Umbrella Tariff. On November 3, 1997, LILCO proposed modifications to the Power Sales Umbrella Tariff in Docket No. OA98–5–000. Upon the Commission's approval of LILCO's proposed modifications, North American Energy Conservation, Inc., will take service subject to the Modified Power Sales Umbrella Tariff.

LILCO requests waiver of the Commission's sixty (60) day notice requirements and an effective date of December 9, 1997, for the Electric Power Service Agreement listed above because in accordance with the policy announced in Prior Notice and Filing Requirements Under Part II of the Federal Power Act, 64 FERC § 61,139, clarified and reh'g granted in part and denied in part, 65 FERC § 61,081 (1993), service will be provided under an umbrella tariff and the Electric Power Service Agreement is being filed either prior to or within thirty (30) days of the commencement of service. LILCO has served copies of this filing on the customer which is a party to the Electric Power Service Agreement and on the New York State Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 8888 First Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before February 2, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1694 Filed 1–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1183–000]

New Century Services, Inc.; Notice of Filing

January 20, 1998.

Take notice that on December 23, 1997, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively companies), tendered for filing an Umbrella Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and Minnesota Power & Light Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Practice (18 CFR 385.211 and 18 CFR 385.214.) All such motions or protests should be filed on or before February 2, 1998. Protests will be considered to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1701 Filed 1–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1178–000]

Niagara Mohawk Power Corporation; Notice of filing

January 20, 1998.

Take notice that on December 22, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and DTE Energy Trading, Inc. This Transmission Service Agreement specifies that DTE Energy Trading, Inc., has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and DTE Energy Trading, Inc., to enter into separately scheduled transactions under which NMPC will provide transmission service for DTE Energy Trading, Inc., as the parties may mutually agree.

NMPC requests an effective date of December 4, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and DTE Energy Trading, Inc.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before February 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1696 Filed 1–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1175–000]

Rochester Gas and Electric Corporation; Notice of Filing

January 20, 1998.

Take notice that on December 22, 1997, Rochester Gas and Electric Corporation (RG&E) filed a Service Agreement between RG&E and The Power Company of America, L.P. (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the RG&E open access transmission tariff filed on July 9, 1996 in Docket No. OA96–141–000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of December 12, 1997, for The Power Company of America, L.P., Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before February 2, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1693 Filed 1–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1171–000]

Union Electric Company; Notice of Filing

January 20, 1998.

Take notice that on December 22, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Market Based Rate Power Sales between UE and the City of Columbia, Missouri and Tennessee Valley Authority. UE asserts that the purpose of the Agreements is to permit UE to make sales of capacity and energy at market based rates to the parties pursuant to UE's Market Based Rate Power Sales Tariff filed in Docket No. ER97–3664–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 2, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1689 Filed 1–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1172–000]

Union Electric Company; Notice of Filing

January 20, 1998.

Take notice that on December 22, 1997, Union Electric Company (UE), the transmission provider, tendered for filing a Service Agreement with UE, the transmission customer, for Firm Point-to-Point Transmission Service. UE asserts that the purpose of the Agreement is for UE when it takes transmission service for itself in accordance with FERC Regulations, and pursuant to its Open Access Transmission Tariff filed in Docket No. OA96–50.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 2, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1690 Filed 1–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1173–000]

Union Electric Company; Notice of Filing

January 20, 1998.

Take notice that on December 22, 1997, Union Electric Company (UE), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between UE and Engage Energy US, L.P. (EEU). UE asserts that the purpose of the Agreement is to permit UE to provide transmission service to EEU pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 2, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1691 Filed 1–23–98; 8:45 am]

BILLING CODE 6717–01–M

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1167–000]

UtiliCorp United Inc.; Notice of Filing

January 20, 1998.

Take notice that on December 22, 1997, UtiliCorp United Inc. (UtiliCorp) filed service agreements with Continental Energy Services for service under its Non-Firm Point-to-Point open access service tariff for its operating divisions, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 2, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1685 Filed 1–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1168–000]

UtiliCorp United Inc.; Notice of Filing

January 20, 1998.

Take notice that on December 22, 1997, UtiliCorp United Inc. (UtiliCorp) filed service agreements with Continental Energy Services for service under its Short-Term Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 2, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1686 Filed 1–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1164–000]

Virginia Electric and Power Company; Notice of Filing

January 20, 1998.

Take notice that on December 22, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing Service Agreements for Firm Point-to-Point Transmission Service with Potomac Electric Power Company, Williams Energy Services Company, and Koch Energy Trading, Inc., under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon Potomac Electric Power Company, Williams Energy Services Company, and Koch Energy Trading, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 2, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1682 Filed 1–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1165–000]

Virginia Electric and Power Company; Notice of Filing

January 20, 1998.

Take notice that on December 22, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing Service Agreements between Virginia Electric and Power Company and Wisconsin Power and Light Company and Horizon Energy Company under the FERC Electric Tariff (Original Volume No. 4), which was accepted by order of the Commission dated November 6, 1997 in Docket No. ER97–3561–001. Under the tendered Service Agreements, Virginia Power will provide services to Wisconsin Power and Light Company and Horizon Energy Company under the rates, terms and conditions of the applicable Service Schedules included in the Tariff. Virginia Power requests effective dates of the Service Agreements to be November 24, 1997, for Wisconsin Power and Light Company and December 22, 1997, for Horizon Energy Company.

Copies of the filing were served upon Wisconsin Power and Light Company and Horizon Energy Company, the Wisconsin Public Service Commission, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 2, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1683 Filed 1–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1174–000]

West Texas Utilities Company; Notice of Filing

January 20, 1998.

Take notice that on December 19, 1997, West Texas Utilities Company (WTU), submitted for filing a Control Area Services Agreement Among West Texas Utilities Company and Rayburn Country Electric Cooperative, Inc., and LG&E Power Marketing (the Agreement) pursuant to which WTU will sell a package of control area services to Rayburn Country Electric Cooperative, Inc. (Rayburn), and LG&WE Energy Marketing Inc. (formerly known as LG&E Power Marketing Inc.) (LPM).

WTU seeks an effective date of May 22, 1998. Accordingly, WTU seeks waiver of the Commission's notice requirements to permit WTU to file the Agreement more than 120 days in advance of the requested effective date. WTU has served copies of the filing on Rayburn, LPM and the Public Utility Commission of Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 2, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1692 Filed 1–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1177–000]

Wisconsin Electric Power Company; Notice of Filing

January 20, 1998.

Take notice that on December 22, 1997, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2). Wisconsin Electric respectfully requests an effective date January 2, 1998. Wisconsin Electric is authorized to state that Tenaska Power Services Company joins in the requested effective date.

Copies of the filing have been served on Tenaska Power Services Company, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 2, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1695 Filed 1–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DR98–31–000, et al.]

Arizona Public Service Company, et al.; Electric Rate and Corporate Regulation Filings

January 16, 1998.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Company

[Docket No. DR98–31–000]

Take notice that on December 30, 1997, Arizona Public Service Company, filed an application for approval of depreciation rates pursuant to Section 302 of the Federal Power Act. The proposed depreciation rates are for accounting purposes only. Arizona Public Service Company requests that the Commission allow the proposed depreciation rates to become effective January 1, 1995.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Tucson Electric Power Company

[Docket No. ER98–1142–000]

Take notice that on December 19, 1997, Tucson Electric Power Company (TEP), tendered for filing the following service agreements for firm point-to-point transmission service under Part II of its Open Access Transmission Tariff filed in Docket No. OA96–140–000. TEP requests waiver of notice to permit the service agreements to become effective as of the earliest date service commenced under the agreements. The details of the service agreement are as follows:

1. Service Agreement for Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc., dated November 19, 1997. Service under this agreement commenced on November 19, 1997.

2. Service Agreement for Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc., dated November 28, 1997. Service under this agreement commenced on November 28, 1997.

3. Service Agreement for Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc., dated November 28, 1997. Service under this agreement commenced on November 30, 1997.

4. Service Agreement for Firm Point-to-Point Transmission Service with Electric Clearinghouse, Inc., dated December 1, 1997. Service under this agreement commenced on December 1, 1997.

5. Service Agreement for Firm Point-to-Point Transmission Service with Tucson Electric Power Company, Contracts & Wholesale Marketing dated December 1, 1997. Service under this agreement commenced on December 1, 1997.

6. Service Agreement for Firm Point-to-Point Transmission Service with Tucson Electric Power Company, Contracts & Wholesale Marketing dated December 10, 1997. Service under this

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agreement commenced on December 10, 1997.

Comment date: January 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. FirstEnergy System

[Docket No. ER98–1143–000]

Take notice that on December 19, 1997, FirstEnergy System filed Service Agreements to provide Non-Firm Point-to-Point Transmission Service for Delmarva Power & Light Company and Illinois Power Company, the Transmission Customers. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000. The proposed effective date under the Service Agreements is December 01, 1997.

Comment date: January 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Company of New Mexico

[Docket No. ER98–1144–000]

Take notice that on December 19, 1997, Public Service Company of New Mexico (PNM), submitted for filing an executed service agreement, dated December 3, 1997, for firm point-to-point transmission service and ancillary service, between PNM Transmission Development and Contracts (Transmission Provider) and PNM Wholesale Power Marketing (Transmission Customer), under the terms of PNM's Open Access Transmission Service Tariff. Under this Service Agreement, Transmission Provider provides to Transmission Customer reserved capacity from the Coronado Generating Station 500kV Switchyard (point of receipt) to the Palo Verde Generating Station 500kV Switchyard (point of Delivery) for the period beginning December 1, 1997 and ending April 30, 2001.

Comment date: January 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of New Mexico

[Docket No. ER98–1145–000]

Take notice that on December 19, 1997, Public Service Company of New Mexico (PNM), filed its Certificate of Concurrence in association with the filing by Tucson Electric Power Company (TEP), in the above-captioned docket, of the Amended Interconnection Agreement between PNM and TEP. This certificate of concurrence is being filed in lieu of the separate filing of the Amended Interconnection Agreement. The Amended Interconnection Agreement between PNM and TEP provides for the interconnected operation of the transmission systems of PNM and TEP and allows for the sharing of contingency reserves for emergencies between TEP and PNM.

The parties have requested a waiver of notice pursuant to 18 CFR 35.11 to permit the Amended Interconnection Agreement to become effective as of December 20, 1997.

Copies of this notice have been mailed to TEP and the New Mexico Public Utility Commission.

Comment date: January 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Company of New Mexico

[Docket No. ER98–1146–000]

Take notice that on December 19, 1997, Public Service Company of New Mexico (PNM), submitted for filing an executed service agreement, dated December 3, 1997, for firm point-to-point transmission service and ancillary service, between PNM Transmission Development and Contracts (Transmission Provider) and PNM Wholesale Power Marketing (Transmission Customer), under the terms of PNM's Open Access Transmission Service Tariff. Under this Service Agreement, Transmission Provider provides to Transmission Customer various amounts of reserved capacity from the Palo Verde Generating Station 500kV Switchyard (point of receipt) to the Westwing 345kV Switching Station (point of Delivery) for the period beginning December 1, 1997 and ending May 30, 2002.

Comment date: January 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Washington Water Power

[Docket No. ER98–1147–000]

Take notice that on December 19, 1997, The Washington Water Power Company (WWP), tendered for filing a letter terminating Service Agreement No. 69, previously filed by Washington Water Power, under the Commission's Docket No. ER97–1252–000 with Delhi Energy Services Inc., which is to be canceled by request of the power marketer due to its decision to exit the power marketing business.

Notice of the cancellation has been served upon the following: Mr. Brad Helton, Delhi Energy Services, Inc., Marketing Administrator 1700 Pacific Avenue, Dallas, Texas 75201.

WWP requests that this cancellation become effective December 1, 1997.

Comment date: January 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Kamps Propane, Inc.

[Docket No. ER98–1148–000]

Take notice that on December 19, 1997, Kamps Propane, Inc. (Kamps), petitioned the Commission for acceptance of Kamps Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Kamps intends to engage in wholesale electric poser and energy purchases and sales as a marketer. Kamps is not in the business of generating or transmitting electric power.

Comment date: January 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Southern Indiana Gas and Electric Company

[Docket No. ER98–1151–000]

Take notice that on December 19, 1997, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing the following agreements concerning the provision of electric service to the City of Tell City, Indiana:

1. Agreement for the Supply of Electric Energy Between the City of Tell City, Indiana and Southern Indiana Gas and Electric Company.

2. Service Agreement for Network Integration Transmission Service.

3. Transmission Service Specifications For Network Integration.

4. Network Operating Agreement.

Comment date: January 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Kentucky Utilities Company

[Docket No. ER98–1152–000]

Take notice that on December 19, 1997, Kentucky Utilities Company (KU), tendered for filing an executed Contract for Electric Service with the Borough of Pitcairn (Pitcairn), and an executed service agreement with Pitcairn under KU's Power Services Tariff (Rate PS). KU requests effective dates of December 3, 1997.

Comment date: January 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Kentucky Utilities Company

[Docket No. ER98–1153–000]

Take notice that on December 19, 1997, Kentucky Utilities Company (KU), tendered for filing service agreements between KU and SCANA Energy Marketing, Inc., and Ohio Valley Electric Corporation under its Transmission Services Tariff (TS) and with SCANA Energy Marketing, Inc., under its Power Services (PS) Tariff.

Comment date: January 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Carolina Power & Light Company

[Docket No. ER98–1154–000]

Take notice that on December 19, 1997, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service executed between CP&L and the following Eligible Transmission Customer, Tenaska Power Services and a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with Tenaska Power Services. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: January 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Company of New Mexico

[Docket No. ER98–1155–000]

Take notice that on December 19, 1997, Public Service Company of New Mexico (PNM), submitted for filing an executed service agreement, dated December 3, 1997, for firm point-to-point transmission service and ancillary service, between PNM Transmission Development and Contracts (Transmission Provider) and PNM Wholesale Power Marketing (Transmission Customer), under the terms of PNM's Open Access Transmission Service Tariff. Under this Service Agreement, Transmission Provider provides to Transmission Customer reserved capacity from the San Juan Generating Station 345kV Switchyard (point of receipt) to the Greenlee Switching Station 500kV Switchyard (point of Delivery) for the period beginning December 1, 1997 and ending December 31, 2008.

Comment date: January 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Duke Energy Corporation

[Docket No. ER98–1156–000]

Take notice that on December 19, 1997, Duke Power division of Duke Energy Corporation (Duke), tendered for filing a Notice of Cancellation of the Market-Based Service Agreement between Duke and Delhi Energy Services, Inc., Service Agreement No. 56 under Rate Schedule MR of Duke Energy Corporation, FERC Electric Tariff Original Volume No. 3.

Comment date: January 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. The Detroit Edison Company

[Docket No. ER98–1157–000]

Take notice that on December 19, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing a Notice of Cancellation of optional Deviation Band Extension Service offered under Schedule 4 of the Open Access Transmission Tariff of The Detroit Edison Company, FERC Electric Tariff Original Volume No. 2, and the Joint Open Access Transmission Tariff of Consumers Energy Corporation and The Detroit Edison Company, FERC Electric Tariff Original Volume No. 1.

Comment date: January 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. The Detroit Edison Company

[Docket No. ER98–1158–000]

Take notice that on December 19, 1997, The Detroit Edison Company (Detroit Edison), filed an amendment to its Wholesale Power Sales Tariff (WPS–2) Tariff, FERC Electric Tariff Original Volume No. 3 (the WPS–2 Tariff). Detroit Edison proposes to amend the WPS–2 Tariff to permit Detroit Edison to sell, assign, or transfer transmission rights held by Detroit Edison to customers taking service under the WPS–2 Tariff. Detroit Edison requests that the revisions to the WPS–2 Tariff be accepted for filing effective as of a date 60 days after the date of filing or on the date on which the Commission issues an order accepting the revisions for filing, whichever is earlier.

Comment date: January 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. The Detroit Edison Company

[Docket No. ER98–1159–000]

Take notice that on December 19, 1997, The Detroit Edison Company (Detroit Edison), filed amendments to its Wholesale Power Sales Tariff (WPS–1) Tariff, FERC Electric Tariff Original Volume No. 4 (the WPS–1 Tariff). Detroit Edison proposes to amend the WPS–1 Tariff to permit Detroit Edison to sell, assign, or transfer transmission rights held by Detroit Edison to customers taking service under the WPS–1 Tariff. Detroit Edison also proposes to amend the WPS–1 Tariff's Form of Service Agreement to add a Form of Certificate of Concurrence to be executed by customers in the event they intend to engage in exchange transactions under the WPS–1 Tariff. Detroit Edison requests that the revisions to the WPS–1 Tariff be accepted for filing effective as of a date 60 days after the date of filing or on the date on which the Commission issues an order accepting the revisions for filing, whichever is earlier.

Comment date: January 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. The Detroit Edison Company

[Docket No. ER98–1160–000]

Take notice that on December 19, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements for wholesale power sales transactions (the Service Agreements) under Detroit Edison's Wholesale Power Sales Tariff (WPS–1), FERC Electric Tariff No. 4 (the WPS–1 Tariff), between Detroit Edison and the following Customers:

Customer	Date of serv. agreement
NIPSCO Energy Services, Inc.	June 26, 1997.
Southern Energy Trading and Marketing, Inc.	Aug. 19, 1996.

Detroit Edison requests that the Service Agreements be made effective as of February 17, 1998, a date sixty (60) days from the date of this filing.

Comment date: January 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Public Service Company of New Mexico

[Docket No. ER98–1161–000]

Take notice that on December 19, 1997, Public Service Company of New Mexico (PNM), submitted for filing an executed service agreement, dated December 3, 1997, for firm point-to-point transmission service and ancillary service, between PNM Transmission Development and Contracts (Transmission Provider), and PNM Wholesale Power Marketing (Transmission Customer), under the terms of PNM's Open Access Transmission Service Tariff. Under this Service Agreement, Transmission Provider provides to Transmission

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Customer reserved capacity from the San Juan Generating Station 345 kV Switchyard (point of receipt) to the Coronado Generating Station 500 kV Switchyard (point of Delivery) for the period beginning December 1, 1997 and ending April 30, 2001.

Comment date: January 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Duke Energy Corporation

[Docket No. ER98–1162–000]

Take notice that on December 19, 1997, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Market Rate Service Agreement (the MRSA) between Duke and NP Energy, Inc., dated as of December 1, 1997. Duke requests that the MRSA be made effective as of December 1, 1997.

Comment date: January 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Southwest Power Pool

[Docket No. ER98–1163–000]

Take notice that on December 19, 1997, Southwest Power Pool (SPP), as agent for its participating member public utilities,[1] (Transmission Providers), and on behalf of all of its members, tendered for filing a Regional Open Access Transmission Tariff (Tariff), to be effective on April 1, 1998.

SPP states that the Tariff will supplant, in part, the Transmission Providers' currently filed tariffs by providing one-stop shopping for regional point-to-point short-term firm and non-firm transmission service at non-pancaked rates. Each individual Transmission Provider will continue to provide long-term firm and network transmission services under its individual open access tariff. SPP further states that the Tariff provides for rates designed on a MW-mile basis, using a methodology closely patterned after the MW-mile methodology that the Commission has approved for the Mid-Continent Area Power Pool.

Comment date: January 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1681 Filed 1–23–98; 8:45 am]

BILLING CODE 6717–01–P

[1] SPS states that it submitted the filing pursuant to agency agreements executed with each of the following entities: Central & South West Services; Central Louisiana Electric Co.; Cit Utilities of Springfield; Empire District Electric Co.; Grand River Dam Authority; Kansas City Power & Light; OG&E Electric Services; Southwestern Power Administration; UtiliCorp United and Western Resources.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License

January 20, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Amendment of license allowing the licensee: To convey 13.7 acres of project lands for the construction and operation of a water pumping station on Bouldin Reservoir, a raw water pipeline, and a water treatment plant; and to permit the withdrawal of up to 14 million gallons per day from Bouldin Reservoir for municipal water supply.

b. Project No: 2146–079.

c. Date Filed: November 19, 1997.

d. Applicant: Alabama Power Company.

e. Name of Project: Coosa River Project.

f. Location: Elmore County, Alabama.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Jim Crew, Alabama Power Company-Hydro, Licensing, P.O. Box 2641, Birmingham, AL 35291–8180, (205) 257–4265.

i. FERC Contact: Jim Haimes, (202) 219–2780.

j. Comment Date: February 21, 1998.

k. Description of Project: The licensee proposes: (1) To grant an easement to the Five Star Water Supply District (District) for the construction of a raw water pumping station on Bouldin Reservoir and a 20-inch-diameter, 2,000-foot-long pipeline; (2) to convey fee title to a 12.7-acre parcel of project lands to the District for the construction and operation of a water treatment plant at the site; and (3) to implement an agreement allowing the District to withdraw up to 14 million gallons per day from Bouldin Reservoir for municipal water supply beginning in the year 2000.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1754 Filed 1–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

January 21, 1998.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: January 28, 1998, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* Note—items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Acting Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

CONSENT AGENDA—HYDRO, 691ST MEETING—JANUARY 28, 1998, REGULAR MEETING (10:00 A.M.)

CAH–1.
DOCKET # P–2744, 028, N.E.W. HYDRO, INC.

CAH–2.
DOCKET # P–5984, 004, NIAGARA MOHAWK POWER CORPORATION

CAH–3.
OMITTED

CAH–4.
DOCKET # P–5, 036, THE MONTANA POWER COMPANY AND CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION

CAH–5.
DOCKET # P–3195, 067, SAYLES HYDRO ASSOCIATES
OTHER #S P–3195, 068, SAYLES HYDRO ASSOCIATES

CAH–6.
DOCKET # P–2113, 080, WISCONSIN VALLEY IMPROVEMENT COMPANY

CONSENT AGENDA—ELECTRIC

CAE–1.
DOCKET # ER98–895, 000, ENSERCH ENERGY SERVICES, INC.

CAE–2.
DOCKET # ER98–855, 000, WISCONSIN ELECTRIC POWER COMPANY

CAE–3.
DOCKET # ER96–1090, 000, MONTAUP ELECTRIC COMPANY

CAE–4.
DOCKET # ER97–707, 000, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
OTHER #S ER97–705, 000, PROMARK ENERGY, INC.

CAE–5.
DOCKET # ER97–4143, 002, AMERICAN ELECTRIC POWER SERVICE CORPORATION

CAE–6.
DOCKET # EL97–41, 001, MADISON GAS & ELECTRIC COMPANY V. WISCONSIN POWER & LIGHT COMPANY

CAE–7.
DOCKET # EC96–13, 002, IES UTILITIES, INC., INTERSTATE POWER COMPANY, WISCONSIN POWER & LIGHT COMPANY AND SOUTH BELOIT WATER, GAS & ELECTRIC COMPANY, ET AL.
OTHER #S ER96–1236, 002, IES UTILITIES, INC., INTERSTATE POWER COMPANY, WISCONSIN POWER & LIGHT COMPANY AND SOUTH BELOIT WATER, GAS & ELECTRIC COMPANY, ET AL.
ER96–2560, 002, IES UTILITIES, INC., INTERSTATE POWER COMPANY, WISCONSIN POWER & LIGHT COMPANY AND SOUTH BELOIT WATER, GAS & ELECTRIC COMPANY, ET AL.

CAE–8.
DOCKET # EL94–13, 002, ENTERGY SERVICES, INC. AND GULF STATES UTILITIES COMPANY

CAE–9.
DOCKET # OA97–261, 000, PENNSYLVANIA-NEW JERSEY-MARYLAND INTER-CONNECTION
OTHER #S EC96–28, 002, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC COMPANY AND DELMARVA POWER & LIGHT COMPANY, ET AL.
EC96–29, 002, PECO ENERGY COMPANY
EC97–38, 000, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC COMPANY AND DELMARVA POWER & LIGHT COMPANY, ET AL.
EL96–69, 002, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC COMPANY AND DELMARVA POWER & LIGHT COMPANY, ET AL.
EL97–44, 000, PENNSYLVANIA-NEW JERSEY-MARYLAND INTER-CONNECTION RESTRUCTURING
ER96–2516, 002, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC COMPANY AND DELMARVA POWER & LIGHT COMPANY, ET AL.
ER96–2668, 002, PECO ENERGY COMPANY
ER97–1082, 000, PENNSYLVANIA-NEW JERSEY-MARYLAND INTER-CONNECTION
ER97–1082, 001, PENNSYLVANIA-NEW JERSEY-MARYLAND INTER-CONNECTION
ER97–3189, 000, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC COMPANY AND DELMARVA POWER & LIGHT COMPANY, ET AL.
ER97–3273, 000, PENNSYLVANIA-NEW JERSEY-MARYLAND INTER-CONNECTION RESTRUCTURING
OA97–261, 001, PENNSYLVANIA-NEW JERSEY-MARYLAND INTER-CONNECTION
OA97–678, 000, PJM INTERCONNECTION, L.L.C.

CAE–10.
DOCKET # OA96–67, 001, MONTAUP ELECTRIC COMPANY
OTHER #S OA96–20, 001, WISCONSIN POWER AND LIGHT COMPANY

CAE–11.
DOCKET # NJ97–4, 000, NEW YORK POWER AUTHORITY

CAE–12.
OMITTED

CAE–13.
DOCKET # OA97–456, 000, BALTIMORE GAS AND ELECTRIC COMPANY
OTHER #S OA97–154, 000, FIRSTENERGY CORP., CENTERIOR ENERGY CORPORATION AND CLEVELAND ELECTRIC ILLUMINATING COMPANY, ET AL.
OA97–276, 000, PORTLAND GENERAL ELECTRIC COMPANY
OA97–292, 000, FIRSTENERGY CORP., CENTERIOR ENERGY CORPORATION AND CLEVELAND ELECTRIC ILLUMINATING COMPANY, ET AL.
OA97–308, 000, SOUTHERN INDIANA GAS AND ELECTRIC COMPANY
OA97–398, 000, SOUTHERN COMPANY SERVICES, ALABAMA POWER COMPANY, GEORGIA POWER COMPANY AND GULF POWER COMPANY, ET AL.
OA97–416, 000, SOUTH CAROLINA ELECTRIC AND GAS COMPANY
OA97–427, 000, LONG ISLAND LIGHTING COMPANY
OA97–436, 000, TUCSON ELECTRIC POWER COMPANY
OA97–450, 000, DUKE POWER COMPANY AND NANTAHALA POWER AND LIGHT COMPANY
OA97–461, 000, TAMPA ELECTRIC COMPANY
OA97–510, 000, CENTRAL ILLINOIS PUBLIC SERVICE COMPANY
OA97–592, 000, BALTIMORE GAS AND ELECTRIC COMPANY
OA97–595, 000, FIRSTENERGY CORP., CENTERIOR ENERGY CORPORATION AND CLEVELAND ELECTRIC ILLUMINATING COMPANY, ET AL.
OA97–673, 000, FIRST ENERGY CORP., CENTERIOR ENERGY CORPORATION AND CLEVELAND ELECTRIC ILLUMINATING COMPANY, ET AL.
OA98–6, 000, FIRSTENERGY CORP., CENTERIOR ENERGY CORPORATION AND CLEVELAND ELECTRIC ILLUMINATING COMPANY, ET AL.

CONSENT AGENDA—MISCELLANEOUS

CAM–1.
DOCKET # RM97–8, 000, INFORMATION AND REQUESTS

CONSENT AGENDA—GAS AND OIL

CAG–1.

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DOCKET # RP97–406, 004, CNG TRANSMISSION CORPORATION
OTHER #S RP97–406, 000, CNG TRANSMISSION CORPORATION
RP97–406, 006, CNG TRANSMISSION CORPORATION
RP97–406, 007, CNG TRANSMISSION CORPORATION
RP98–65, 001, CNG TRANSMISSION CORPORATION
CAG–2.
DOCKET # RP98–84, 000, TENNESSEE GAS PIPELINE COMPANY
CAG–3.
DOCKET # RP98–92, 000, ANR PIPELINE COMPANY
CAG–4.
DOCKET # RP98–96, 000, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
CAG–5.
OMITTED
CAG–6.
DOCKET # RP98–103, 000, CNG TRANSMISSION CORPORATION
CAG–7.
OMITTED
CAG–8.
DOCKET # RP98–104, 000, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
CAG–9.
DOCKET # RP98–105, 000, WILLIAMS NATURAL GAS COMPANY
OTHER #S RP89–183, 076, WILLIAMS NATURAL GAS COMPANY
CAG–10.
OMITTED
CAG–11.
OMITTED
CAG–12.
OMITTED
CAG–13.
DOCKET # PR98–2, 000, MAGNOLIA PIPELINE CORPORATION
CAG–14.
DOCKET # RP96–272, 004, NORTHERN NATURAL GAS COMPANY
CAG–15.
DOCKET # RP98–8, 001, MISSISSIPPI RIVER TRANSMISSION CORPORATION
OTHER #S RP96–199, 007, MISSISSIPPI RIVER TRANSMISSION CORPORATION
RP96–199, 008, MISSISSIPPI RIVER TRANSMISSION CORPORATION
RP98–8, 002, MISSISSIPPI RIVER TRANSMISSION CORPORATION
CAG–16.
DOCKET # RP98–49, 000, KOCH GATEWAY PIPELINE COMPANY
CAG–17.
DOCKET # RP98–31, 002, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
OTHER #S RP98–31, 001, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
CAG–18.
DOCKET # RP97–406, 003, CNG TRANSMISSION CORPORATION
OTHER #S RP96–144, 002 CNG, TRANSMISSION CORPORATION
CAG–19.
DOCKET # RP97–373, 008, KOCH GATEWAY PIPELINE COMPANY
CAG–20.
DOCKET # RP96–348, 004, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–21.
DOCKET # RP97–1, 014, NATIONAL FUEL GAS SUPPLY CORPORATION
OTHER #S RP97–201, 009, NATIONAL FUEL GAS SUPPLY CORPORATION
CAG–22.
DOCKET # RP96–387, 003, WILLIAMS NATURAL GAS COMPANY
CAG–23.
DOCKET # IS97–9, 001, PLATTE PIPE LINE COMPANY
CAG–24.
DOCKET # RP94–120, 016, KOCH GATEWAY PIPELINE COMPANY
CAG–25.
DOCKET # RM97–6, 000, RECORDKEEPING FOR UNITS OF PROPERTY ACCOUNTING REGULATIONS FOR PUBLIC UTILITIES & LICENSEES, NATURAL GAS & OIL PIPELINE COMPANIES
CAG–26.
DOCKET # CP96–152, 006, KANSAS PIPELINE COMPANY AND RIVERSIDE PIPELINE COMPANY, L.P.
OTHER #S CP97–738, 003, TRANSOK, INC.
PR94–3, 007, KANSOK PARTNERSHIP
RP95–212, 006, KANSOK PARTNERSHIP, KANSAS PIPELINE PARTNERSHIP AND RIVERSIDE PIPELINE COMPANY, L.P.
RP95–395, 006, WILLIAMS NATURAL GAS COMPANY V. KANSAS PIPELINE OPERATING COMPANY, KANSAS PIPELINE PARTNERSHIP AND KANSOK PARTNERSHIP, ET AL.
CAG–27.
DOCKET # CP96–687, 001, IROQUOIS GAS TRANSMISSION SYSTEM, L.P.
CAG–28.
DOCKET # CP97–92, 002, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
OTHER #S CP97–92, 000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CP97–92, 001, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–29.
OMITTED
CAG–30.
DOCKET # CP98–62, 000, VIKING VOYAGEUR GAS TRANSMISSION COMPANY, L.L.C.
CAG–31.
DOCKET # CP96–492, 006, CNG TRANSMISSION CORPORATION
OTHER #S CP96–492, 007, CNG TRANSMISSION CORPORATION
CAG–32.
DOCKET # CP98–131, 000, VECTOR PIPELINE L.P.
CAG–33.
DOCKET # CP90–1512, 001, MOUNTAIN FUEL SUPPLY COMPANY
CAG–34.
DOCKET # CP97–636, 000, WESTERN GAS RESOURCES, INC.
OTHER #S CP97–620, 000, WILLIAMS NATURAL GAS COMPANY

HYDRO AGENDA

H–1.
OMITTED

ELECTRIC AGENDA

E–1.
RESERVED

OIL AND GAS AGENDA

I.
PIPELINE RATE MATTERS
PR–1.
DOCKET # RP97–369, 001, PUBLIC SERVICE COMPANY OF COLORADO AND CHEYENNE LIGHT FUEL AND POWER COMPANY
OTHER #S GP97–3, 001, AMOCO PRODUCTION COMPANY, ANADARKO PETROLEUM CORPORATION, MOBIL OIL CORPORATION, OXY USA, INC. AND UNION PACIFIC RESOURCES COMPANY
GP97–4, 001, KANSAS SMALL PRODUCER GROUP
GP97–5, 001, MESA OPERATING COMPANY
ORDER ON REHEARING.
PR–2A.
DOCKET # RP98–39, 001, NORTHERN NATURAL GAS COMPANY
OTHER #S RP98–38, 000, NATURAL GAS PIPELINE COMPANY OF AMERICA
RP98–40, 001, PANHANDLE EASTERN PIPE LINE COMPANY
RP98–42, 000, ANR PIPELINE COMPANY
RP98–43, 000, ANADARKO GATHERING COMPANY
RP98–44, 000, EL PASO NATURAL GAS COMPANY
RP98–52, 001, WILLIAMS NATURAL GAS COMPANY
RP98–53, 001, K N INTERSTATE GAS TRANSMISSION COMPANY
RP98–54, 001, COLORADO INTERSTATE GAS COMPANY
ORDER ON PROCEDURES.
PR–2B.
DOCKET # RP98–44, 000, EL PASO NATURAL GAS COMPANY
ORDER ON STATEMENT OF REFUNDS DUE.
PR–2C.
DOCKET # RP98–38, 000, NATURAL GAS PIPELINE COMPANY OF AMERICA
ORDER ON REQUEST FOR WAIVER.
II.
PIPELINE CERTIFICATE MATTERS
PC–1.
RESERVED

David P. Boergers,
Acting Secretary.

[FR Doc. 98–1905 Filed 1–22–98; 10:58 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed; Week of November 17 through November 21, 1997

During the Week of November 17 through November 21, 1997, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

Dated: January 15, 1998.

George B. Breznay,
Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS
[Week of November 17 through November 21, 1997]

Date	Name and location of applicant	Case No.	Type of submission
11/17/97	Tod Rockefeller Carlsbad, New Mexico.	VFA–0351	Appeal of an Information Request Denial. IF GRANTED: The October 14, 1997 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and Tod Rockefeller would receive access to certain DOE information.
11/18/97	INEEL Research Bureau, Troy, Idaho	VFA–0352	Appeal of an Information Request Denial. IF GRANTED: The October 24, 1997 Freedom of Information Request Denial issued by the Richland Operations Office would be rescinded, and INEEL Research Bureau would receive access to certain DOE information.
11/18/97	Personnel Security Hearing	VSO–0184	Request for Hearing under 10 CFR Part 710. IF GRANTED: An individual employed by a contractor of the Department of Energy would receive a hearing under 10 CFR Part 710.
11/18/97	Thomas T. Tiller, Oak Ridge, Tennessee.	VWA–0018	Request for Hearing under DOE Contractor Employee Protection Program. IF GRANTED: A hearing under 10 CFR Part 708 would be held on the complaint of an individual that reprisals were taken against him by management officials of Wackenhut Services, Inc. as a consequence of having disclosed safety/health concerns.
11/20/97	Information Focus on Energy, Gaithersburg, Maryland.	VFA–0353	Appeal of an Information Request Denial. IF GRANTED: The November 3, 1997 Freedom of Information Request Denial issued by the Office of the Inspector General would be rescinded, and Information Focus on Energy, Inc. would receive access to certain DOE information.
11/20/97	Personnel Security Hearing	VSO–0185	Request for Hearing under 10 CFR Part 710. IF GRANTED: An individual employed by a contractor of the Department of Energy would receive a hearing under 10 CFR Part 710.
11/20/97	William H. Payne, Albuquerque, New Mexico.	VFA–0354	Appeal of an Information Request Denial. IF GRANTED: The Albuquerque Operations Office would be required to issue a determination under the Freedom of Information Act and William H. Payne would receive access to certain DOE information.
11/21/97	Homesteaders ASC/Pajarito Plat, Los Alamos, New Mexico.	VFA–0355	Appeal of an Information Request Denial. IF GRANTED: The October 20, 1997 Freedom of Information Request Denial issued by Albuquerque Operations Office would be rescinded, and Homesteaders Association of the Pajarito Plateau would receive access to certain DOE information.

[FR Doc. 98–1796 Filed 1–23–98; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5953–9]

Agency Information Collection Activities up for Renewal: Facility Ground-Water Monitoring Requirements; Proposed Collection; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Facility Ground-Water Monitoring Requirements, EPA ICR #959.09; OMB Control Number 2050–0033; expiration 5/31/98. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before March 27, 1998.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–98–GWIP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address below. Comments may also be submitted electronically through the Internet to: rcradocket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–98–GWIP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically.

The ICR is available on the Internet. Follow these instructions to access the information electronically:

WWW: http://www.epa.gov/epaoswer/hazwaste/corrective action
FTP: ftp.epa.gov

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Login: anonymous
Password: your Internet address
Files are located in /pub/epaoswer

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register**. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800 424–9346 or TDD 800 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703 412–9810 or TDD 703 412–3323.

For more detailed information on specific aspects of this rulemaking, contact Hugh Davis, Office of Solid Waste 5303W, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (703) 308–8633, or davis.hugh@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which own or operate surface impoundments, waste piles, land treatment units, and landfills which manage hazardous waste regulated under the Resource Conversation and Recovery Act.

Title: Facility Ground-Water Monitoring Requirements, EPA ICR #959.09; OMB Control Number 2050–0033; expiration date 5/31/98.

Abstract: Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA) creates a comprehensive program for the safe management of hazardous waste. Section 3004 of RCRA requires owners and operators of facilities that treat, store, or dispose of hazardous waste to comply with standards established by EPA that are "necessary to protect human health and the environment." Section 3005 provides for implementation of these standards under permits issued to owners and operators by EPA or authorized States. Section 3005 also allows owners and operators of facilities in existence when the regulations came into effect to comply with applicable notice requirements to operate until a permit is issued or denied. This statutory authorization to operate prior to permit determination is commonly known as "interim status." Owners and operators of interim status facilities also must comply with standards set under Section 3004.

EPA promulgated ground-water monitoring standards for interim status facilities in 1980 (45 FR 33154 May 19, 1980), codified in 40 CFR Part 265, Subpart F, and for permitted facilities in 1982 (47 FR 32274 July 26, 1982), codified in 40 CFR Part 264, Subpart F. Both sets of standards establish programs for protecting ground water from releases of hazardous wastes from land disposal facilities with regulated units (these include surface impoundments, waste piles, land treatment units, and landfills).

The ground-water monitoring requirements for regulated units follow a tiered approach whereby releases of hazardous contaminants are first detected, then confirmed, and, if necessary, are required to be cleaned up. Each of these tiers requires collection and analysis of groundwater samples. Owners or operators that conduct groundwater monitoring are required to report information to the oversight agencies on releases of contaminants and to maintain records of ground-water monitoring data at their facilities. The goal of the ground-water monitoring program is to prevent and quickly detect releases of hazardous contaminants to groundwater, and to establish a program whereby any contamination is expeditiously cleaned up.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: For both permitted and interim status land disposal facilities, the estimated total annual hour burden for this information collection is 196,363 hours. The estimated total annual cost burden for this information collection is $67,303,862, which includes labor, capital, operations and maintenance, and purchased service costs. For 623 permitted land disposal facilities, the annual reporting hour burden is estimated to average 112.4 hours per response, and the annual record keeping hour burden is estimated to average 26.0 hours per response, regardless of whether the facility is performing detection monitoring, compliance monitoring or corrective action. For 1,024 interim status land disposal facilities, the annual reporting hour burden is estimated to average 74.7 hours per response, and the annual record keeping hour burden is estimated to average 32.8 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: January 20, 1998.

Matthew Hale,

Acting Director, Office of Solid Waste.

[FR Doc. 98–1759 Filed 1–23–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5953–6]

Notice of Information Collection Activities; Detailed Industry Questionnaire: Phase II Cooling Water Intake Structures

AGENCY: Environmental Protection Agency.

ACTION: Notice of information collection activities.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the United States Environmental Protection Agency (EPA) is planning to seek approval from the Office of Management and Budget (OMB) to administer an information collection request (ICR) entitled "Detailed Industry Questionnaire: Phase II Cooling Water Intake Structures," EPA ICR 1838.01. Before the Agency submits the proposed ICR to OMB for review and approval, EPA is soliciting comments from the public, as described below, on the specific aspects of the Detailed Industry Questionnaire (Phase II) for facilities potentially subject to section 316(b) of the Clean Water Act, 33 U.S.C. 1326(b).

DATES: Comments and requests for information must be received by EPA no later than March 27, 1998.

ADDRESSES: Address comments on the draft Detailed questionnaire to Ms. Deborah G. Nagle, U.S. EPA, Engineering and Analysis Division, Mail Code (4303), Office of Science and Technology, 401 M Street S.W., Washington, DC 20460. EPA will also accept comments electronically. The E-mail address for comments is "nagle.deborah@epamail.epa.gov." Electronic comments must include the sender's name, address, and telephone number. There are five versions of the detailed questionnaire, which primarily reflect the diversity of industries from an economic viewpoint. They are: (1) Publicly Owned Utilities; (2) Major Privately Owned Electric Utilities; (3) Rural Electric Cooperatives; (4) Nonutility Power Producers; and (5) Manufacturers. A copy of each proposed detailed questionnaire can be obtained from the Internet at "http://www.epa.gov/owm/new.htm." You must use ADOBE ACROBAT READER to read the document; the document is a PDF file. If you do not have Internet access, you may obtain a copy of the detailed questionnaire by sending a FAX to Deborah Nagle at (202) 260–7185 (be sure to identify the specific questionnaire of interest). The draft questionnaire that is being made available includes all pertinent instructions, information request questions, and definitions.

SUPPLEMENTARY INFORMATION:

Affected Entities: Entities potentially affected by this action are those which are subject to section 316(b) of the Clean Water Act. These entities include, among others, facilities in the following industry sectors: Utility Steam Electric Generation; Nonutility Steam Power Producers; Paper and Allied Products; Chemical and Allied Products; Petroleum and Coal Products; and Primary Metals. EPA also intends to collect information related to the regulatory burden of implementing final section 316(b) regulation on state governmental authorities that are responsible for issuing National Pollutant Discharge Elimination System permits. Impacts on these state government entities could include either increased costs as a result of additional efforts needed to implement a final section 316(b) rule or cost savings realized from using final section 316(b) regulations instead of facility-specific best professional judgment to establish permit requirements.

Title: Detailed Industry Questionnaire: Phase II Cooling Water Intake Structures.

Abstract: The U.S. Environmental Protection Agency (EPA) is currently developing regulations under section 316(b) of the Clean Water Act, 33 U.S.C. 1326(b). Section 316(b) provides that any standard established pursuant to section 301 or 306 of the Clean Water Act (CWA) and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures shall reflect the best technology available (BTA) for minimizing adverse environmental impact.

Such impacts occur as a result of impingement (where fish and other aquatic life are trapped in cooling water intake screens) and entrainment (where aquatic organisms, eggs and larvae are sucked into the cooling system, through the heat exchanger, and then pumped back out). As the result of a lawsuit by a coalition of environmental groups headed by the Hudson Riverkeeper (*Cronin, et al.* v. *Reilly*, 93 Civ. 0314 (AGS)), the United States District Court, Southern District of New York entered a Consent Decree on October 10, 1995. The Consent Decree established a seven-year schedule for EPA to take final action with respect to regulations addressing impacts from cooling water intake structures.

To ensure that the regulations are based upon accurate information, EPA is conducting a variety of data-gathering activities. The detailed questionnaire represents one mechanism through which EPA is gathering background technical and cost data on cooling water intake structures. The proposed survey instrument will provide EPA with preliminary technical and economic data needed to help quantify the adverse environmental impacts from cooling water structures, evaluate the efficacy of control technologies, and determine the economic reasonableness of the final rule.

EPA has designed the detailed questionnaire to collect information on such topics as cooling water use within industry groups; cooling water intake structure location, design configurations, construction, and capacity; and other cooling water intake structure impingement and entrainment control technologies. These data will enable EPA to characterize cooling water intake structure operations across industry. The Agency is also collecting data on the types of intake water sources and environmental assessment data associated with cooling water intake structures. The Agency does not intend to rely completely on the environmental data collected through the proposed questionnaire to assess adverse environmental impacts (impingement and entrainment) or BTA efficacy. The Agency's intent is to use the environmental assessment data and BTA data from the questionnaire, in part, to identify potential facilities for on site sampling and analysis in order to collect more in depth data on adverse environmental impacts and BTA efficacy. Lastly, EPA is requesting facility and firm level economic data. These economic data will enable EPA to consider cooling water use across a broad variety of facility and firm sizes. The economic data will also enable EPA to carry out required economic analyses, including a Regulatory Impact Analysis (RIA), and requirements of the Small Business Regulatory Enforcement Fairness Act (SBREFA). EPA will consider both technical and economic factors when developing the final regulations.

The Agency has divided the potentially affected entities into five groups: (1) Publicly Owned Utilities; (2) Major Privately Owned Electric Utilities; (3) Rural Electric Cooperatives; (4) Nonutility Power Producers; and (5) Manufacturers. The first three groups (Publicly Owned Utilities, Major Privately Owned Electric Utilities, and Rural Electric Cooperatives) are collectively categorized as Electric Utilities. To help determine which questionnaire a facility may be required to complete, the two tables below describe, for the purposes of this questionnaire, the major distinguishing characteristics of each group. Table 1 differentiates between Electric Utilities, Nonutility Power Producers, and Manufacturers. If a facility is classified as an Electric Utility, table 2 is used to further classify the facility as a Publicly Owned Utility, Major Privately Owned Electric Utility, or Rural Electric Cooperative.

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TABLE 1.—ELECTRIC UTILITY, NONUTILITY POWER PRODUCER, AND MANUFACTURER CHARACTERISTICS

Primary category	Major characteristics
(1) Electric Utility	• A corporation, person, agency, authority, or other legal entity or instrumentality that owns and/or operates facilities for the generation, transmission, distribution, or sale of electric energy primarily for use by the public. • Files forms listed in the Code of Federal Regulations, Title 18, Part 141.
(2) Nonutility Power Producers	• A corporation, person, agency, authority, or other legal entity or instrumentality that owns electric generating capacity and is not an electric utility. • Includes FERC (Federal Energy Regulatory Commission) Qualifying Cogenerators, FERC Qualifying Small Power Producers, and Other Nonutility Generators (including Independent Power Producers) without a designated franchised service area. • Does not file forms listed in the *Code of Federal Regulations*, Title 18, Part 141.
(3) Manufacturers	• All other industrial facilities which do not qualify as an Electric Utility or Nonutility Power Producer as defined above.

TABLE 2.—UTILITY SUBCATEGORY CHARACTERISTICS

Utility subcategory	Major characteristics
(1) Major Privately Owned Electric Utility	• Earns a return for investors; either distribute their profits to stock holders as dividends or reinvest the profits. • Is granted service monopoly in certain geographic areas. • Is regulated by State and sometimes Federal governments, which in turn approve rates that allow a fair rate of return on investment. • Most are operating companies that provide basic services for generation, transmission, and distribution.
(2) Publicly Owned Electric Utility	• Ownership is Federal, State, or local agencies (e.g., Federal Authorities, Municipals, Public Power Districts, State Authorities, Irrigation Districts). • Power not generated for profit. • Serves at cost; return excess funds to the consumers in the form of community contributions, economic and efficient facilities, and reduced rates.
(3) Rural Electric Cooperatives	• Owned by members (small rural farms and communities). • Provides service mostly to members only. • Incorporated under State law and directed by an elected board of directors which, in turn, selects a manager.

The detailed questionnaire will be administered under authority of section 308 of the Clean Water Act, 33 U.S.C. 1318; therefore, all recipients of the detailed questionnaire are required to complete and return the questionnaire to EPA. The survey instrument will be mailed after OMB approves the ICR. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The ICR that EPA intends to submit to OMB will include a discussion of the comments on the proposed detailed questionnaire that EPA has received to date and the comments received as the result of today's announcement. EPA solicits comment on all aspects of the detailed questionnaire, and specifically solicits comment on the following information collection functional areas:

(i) whether the proposed detailed questionnaire is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) the accuracy of the Agency's estimate of the burden of the proposed detailed questionnaire, including the validity of the methodology and assumptions used;

(iii) the detailed questionnaire's quality, utility, and clarity; and

(iv) minimization of the burden of the detailed questionnaire on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technology collection techniques or other forms of information technology collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The total national burden estimate for all parts of this detailed questionnaire is 272,800 hours. The burden estimates are based on EPA administering 1,705 detailed questionnaires. The Agency intends to conduct a census of the facilities within the Electric Utility category (this group did not receive a screener questionnaire), and to select a statistically valid sample of the nonutility power producers and manufacturers that received the screener questionnaire. The Agency anticipates administering the detailed questionnaire to 905 electric utility facilities, 500 nonutility power producer facilities, and 300 manufacturers. EPA estimates that each facility will require, on the average, 160 hours to complete the detailed questionnaire. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information and transmit or otherwise disclose the information.

In developing the detailed questionnaire, EPA conducted a program of outreach to industry and other government entities with the objective of minimizing reporting burdens. The outreach program included distribution of the draft detailed questionnaire to industry associations and environmental groups plus a meeting to discuss comments. EPA also made presentations at many professional and industry association meetings. The following are the industry associations that participated in the EPA outreach program: Utility Water Act Group, American Forest and Paper Association, American Iron and Steel Institute, American Petroleum Institute, Chemical Manufacturers Association, and Edison Electric Institute. EPA also requested comments on the detailed questionnaire from the Electric Power Research Institute. Environmental group outreach included the Hudson Riverkeeper, the New York and New Jersey Baykeeper and other interested environmental group representatives. Based on comments received from these early outreach activities, EPA decided to first administer a screener questionnaire (except to electric utilities) followed by a detailed questionnaire. The screener is designed to assist EPA in selecting an appropriate sample of facilities that employ cooling water intake structures to receive the detailed technical questionnaire. Electric utilities will not receive a screener questionnaire because of the large volume of publicly available data.

The Agency has coordinated extensively with the Energy Information Association (EIA) to determine what pertinent information is publicly available. EPA does not intend to request, in the detailed questionnaire, information that is publicly available. For that reason, the Agency has greatly reduced the financial and economic information burden on the electric utilities. The majority of the information EIA collects from nonutility power producers is confidential business information not available to EPA.

EPA significantly lowered the burden to industry by systematically reducing the number of industrial facilities to receive the detailed questionnaire from a possible 412,000 facilities to about 1,700 facilities. Based on water intake and cooling water use from the 1982 Census of Manufacturers, EPA identified six industrial sectors to receive the screener or the detailed questionnaire or both. These six industrial sectors are: Electric Utilities, Nonutility Power Producers, Chemicals & Allied Products, Primary Metals Industry, Petroleum & Coal Products, and Paper & Allied Products. Together, EPA estimates that these six sectors account for more than 99 percent of all cooling water withdrawals and include about 50,000 facilities. EPA limited the sample frame for electric utilities and nonutility power producers to only those facilities that have a prime mover which utilizes a steam cycle operation (a steam cycle operation requires cooling water). EPA also limited data collection to industrial subcategories which documented significant cooling water use, thereby further reducing the potential number of facilities to be surveyed to about 7,515. To help further refine the sample frame for the detailed questionnaire, EPA decided to administer a screener survey to five of the six industrial sectors (excluding electric utility). The Agency anticipates administering the screener to approximately 6,700 facilities. As stated earlier, EPA expects to administer the detailed survey to approximately 1,705 facilities. Limiting the survey sample frame as described above is not intended to limit the scope or applicability of the section 316(b) regulation.

Finally, EPA will maintain a temporary, no-charge telephone number that survey recipients may call to obtain assistance in completing the data collection surveys. EPA believes that the no-charge telephone number will greatly reduce burden by helping recipients to answer specific questions within the context of their individual operations.

Dated: January 19, 1998.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 98–1760 Filed 1–23–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5953–7]

EPA's National Drinking Water Contaminant Occurrence Data Base

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of a stakeholder meeting on the National Drinking Water Contaminant Occurrence Data Base.

SUMMARY: The Environmental Protection Agency (EPA) has scheduled a two-day public meeting on EPA's National Drinking Water Contaminant Occurrence Data Base. At the upcoming meeting, EPA is seeking input from stakeholders, including national and state representatives, environmental organizations, industry, the public, and other interested parties. The purpose of the meeting is to seek input from stakeholders on the design of the national drinking water contaminant occurrence data base to include such issues as data elements, data element standardization, reporting, storage, retrieval, use and access. EPA encourages the full participation of stakeholders throughout this process.

DATES: The stakeholder meeting on the National Drinking Water Contaminant Occurrence Data Base will be held on February 12, 1998 from 9:00–5:00 p.m. EST and on February 13 from 9:00–3:00 p.m. EST.

ADDRESSES: Resolve, Inc. (an EPA contractor) will provide logistical support for the stakeholders meeting. The meeting will be held at Resolve, Inc., 1255 23rd Street, NW, Suite 275, Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: For general information about the meeting logistics, please contact Mr. Jeff Citrin at Resolve, Inc., 1255 23rd Street, NW, Suite 275, Washington, D.C. 20037; *phone:* (202) 944–2300; *fax:* (202) 338–1264, or *e-mail* at jcitrin@resolv.org.

Members of the public wishing to attend the meeting may register by phone by contacting Mr. Jeff Citrin by February 2, 1998. Those registered for the meeting will receive background materials prior to the meeting.

For other information on the National Drinking Water Contaminant Occurrence Data Base, please contact Charles Job at the U.S. Environmental Protection Agency, Phone: 202–260–7084, Fax: 202–260–3762, or e-mail at job.charles@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

A. Background on the National Drinking Water Contaminant Occurrence Data Base

The Safe Drinking Water Act, SDWA, as amended in 1996, states that: Not later than three years after the date of enactment of the Safe Drinking Water Act Amendments of 1996, the Administrator shall assemble and maintain a national drinking water contaminant occurrence data base using information on the occurrence of both regulated and unregulated contaminants in public water systems obtained under section 1445(a)(1)(A) or section 1445(a)(2) and reliable information from other public and private sources. The National Drinking Water Contaminant Occurrence Data Base is required to be developed by August 6, 1999.

B. Request for Stakeholder Involvement

EPA has convened this public meeting to hear the views of stakeholders on the next stage (i.e., design) of the National Drinking Water Contaminant Occurrence Data Base development. The EPA National Contaminant Occurrence Data Base (NCOD) project Team will soon be making final recommendations on the

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data elements that will be the foundation for future regulated and unregulated contaminant occurrence data reporting. The data submitted using these data elements will provide the basis for the Administrator to determine whether or not to regulate contaminants in the future. For chemical contaminants, a series of meetings have been held with a diverse group of EPA, state, public water system, public health, consumer, and environmental groups, which identified a number of data elements that should be considered for reporting. The majority of the data elements are already in the structure of the EPA Safe Drinking Water Information System (SDWIS). A preliminary categorization of the remaining data elements indicates that some could be dropped because of potential duplication with other data elements, others could be derived from other data elements in the SDWIS structure, and the rest are new data elements. The new data elements are principally focused on: quality assurance, representativeness of the sample, laboratory information, sample location, and well information.

Additionally, the meeting will address such issues as:

1. What specific data element standards should be used?

2. How will electronic reporting by States, public water systems and/or laboratories best be accomplished?

3. What electronic platform(s) should be used to support the NCOD, recognizing public access as a major consideration in data base design?

4. What options for data retrieval should be considered?

5. In what ways will EPA use the data?

6. How should the data be analyzed?

7. What information should be available to the public?

The public is invited to provide comments on the issues listed above or other issues related to the National Drinking Water Contaminant Occurrence Data Base during the February 12–13, 1998 meeting.

Dated: January 21, 1998.

Cynthia Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 98–1762 Filed 1–23–98; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5953–5]

Meeting of the Small Community Advisory Subcommittee of the Local Government Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This meeting is the first for the Small Community Advisory Subcommittee of the Local Government Advisory Committee. Orientation, organization and agenda setting will be the focus of this gathering. The group takes up the work of an earlier advisory group known as the Small Towns Task Force. At this meeting, the subcommittee will hear presentations about the history and recommendations of the Small Towns Task Force. Part of the meeting will also be devoted to presentations about Federal Advisory committee operations, rules and regulations. The group will also develop a strategy to guide subsequent meetings. Responsibility for the Small Community Advisory Subcommittee of the Local Government Advisory Committee rests with the Office of Administrator, Office of Congressional and Intergovernmental Relations (OCIR) under the leadership of Joseph Crapa, Associate Administrator for Congressional and Intergovernmental Relations and Michael O'Connor, Deputy Associate Administrator for State and Local Relations. OCIR serves as the Agency's principal liaison with State and local government officials and the organizations which represent them.

From 3:00–3:30 p.m. on February 18, the Committee will hear comments from the public. Each individual or organization wishing to address the Committee will be allowed three minutes. Please contact the Designated Federal Officer (DFO) at the number listed below to schedule agenda time. Time will be allotted on a first come, first serve basis.

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available after the meeting and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the number listed below if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible. However, seating will be on a first come, first serve basis.

DATES: The meeting will begin at 8:30 a.m. on Tuesday, February 17 and conclude at 4:00 p.m. on February 18.

ADDRESSES: The meeting will be held at the Kansas City Marriott Downtown located at 200 West 12th Street in Kansas City, Missouri.

Requests for Minutes and other information can be obtained by writing to 401 M Street, S.W. (1502), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The DFO for this subcommittee is Steven Wilson. He is the point of contact for information concerning any Committee matters and can be reached by calling (202) 260–2294.

Steven Wilson,

Designated Federal Officer, Small Community Advisory Subcommittee of the Local Government Advisory Committee.

[FR Doc. 98–1761 Filed 1–23–98; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00521; FRL–5767–4]

Liquid Chemical Sterilant Products; Notice of Availability of PR Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is announcing the availability of Pesticide Regulation (PR) Notice 98–2, entitled "Liquid Chemical Sterilant Products." The PR Notice advises applicants and registrants of new FIFRA provisions related to liquid chemical sterilants intended for use on critical or semi-critical medical devices. Interested parties may request a copy of this PR Notice and obtain further information as set forth in the Addresses unit of this notice.

ADDRESSES: The PR Notice is available from, by mail: Barbara Mandula, Antimicrobials Division (7510W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. The public record is filed in OPP's Docket Office under docket control number "OPP–00521", located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Barbara Mandula (7510W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Crystal Drive, Arlington, VA, (703) 308–7378, fax: (703) 308–8481; e-mail: mandula.barbara@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability:

Internet

Electronic copies of this document and the PR Notice are available from the EPA Home Page at the Federal Register - Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

Fax on Demand

Using a faxphone call 202–401–0527 and select item (6107) for a copy of the PR Notice.

I. Purpose

The purpose of the PR Notice is to announce that liquid chemical sterilant products intended for use on critical or semi-critical medical devices are no longer regulated as "pesticides" by the Environmental Protection Agency (EPA), but as "medical devices" under the regulatory authority of the Food and Drug Administration (FDA). For the affected liquid chemical sterilants, EPA will no longer follow the procedures described in the Memorandum of Understanding (MOU) between EPA and FDA signed on June 4, 1993 and amended on June 20, 1994. The goal of this notice is to clarify the authorities of FDA and EPA as they apply to liquid chemical sterilants, thereby increasing the efficiency of regulatory processes affecting these products.

II. Applicability

The PR Notice applies to all manufacturers, formulators, producers, and registrants of liquid chemical sterilant products intended for use on critical or semi-critical medical devices, and to products with subordinate disinfectant claims, such as tuberculocidal or virucidal claims, which support a high level disinfectant use pattern for critical or semi-critical devices.

III. Contents of the PR Notice

This notice informs registrants of liquid chemical sterilant products how to ensure that their products remain in compliance with FIFRA requirements where FIFRA still applies, and how products no longer regulated under FIFRA will be treated by EPA. In particular, the affected products will no longer be permitted to bear both FDA- and EPA-regulated claims. This notice supersedes all provisions of PR Notice 94–4 with respect to liquid chemical sterilants, but retains the provisions of PR Notice 94–4 that apply solely to general purpose disinfectants.

List of Subjects

Environmental protection, Antimicrobials, Liquid chemical sterilants.

Dated: January 15, 1998.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 98–1766 Filed 1–23–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2249]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

January 20, 1998.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by February 10, 1998. See Section 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed by February 20, 1998.

Subject: Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Service. Implementation of Section 601(d) of the Telecommunications Act of 1996 (WT Docket No.96–162)

Number of Petitions Filed: 3.

Subject: Rules and Policies on Foreign Participation in the U. S. Telecommunications Market (IB Docket No. 97–142). Market Entry and Regulation of Foreign-Affiliated Entities (IB Docket No. 95–22)

Number of Petitions Filed: 7.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–1662 Filed 1–23–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

Type of Review: New collection.

Title: Occasional Qualitative Surveys.

OMB Number: New collection, number not yet assigned.

Annual Burden:

Estimated annual number of respondents: 5,000.

Estimated time per response: 1 hour.

Average annual burden hours: 5,000 hours.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Office of the Executive Secretary, Room F–4022, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before [insert date 30 days after date of publication in the Federal Register] to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The collection involves the occasional use of qualitative surveys to gather anecdotal information about regulatory burden, problems or successes in the bank supervisory process (including both safety-and-soundness and consumer-related exams), and similar concerns.

Dated: January 20, 1998.

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Federal Deposit Insurance Corporation.
Robert E. Feldman,
Executive Secretary.
[FR Doc. 98–1674 Filed 1–23–98; 8:45 am]
BILLING CODE 6714–01–M

FEDERAL TRADE COMMISSION

[Dkt. C–3723]

Boeing Co.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.
ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order involves the Boeing Company's acquisition of Rockwell International Corporation's aerospace and defense business and the competition in the markets for high altitude endurance unmanned air vehicles ("UAVs") and space launch vehicles. The consent order, among other things, gives Teledyne Ryan, the prime contractor of one team, the opportunity to replace Boeing on that team, thereby protecting competition in the UAVs market. The consent order also establishes a "firewall" to prevent the flow of competitively sensitive information between Boeing's team and a division of Rockwell International Corporation's aerospace and defense business that is currently providing wings to the other teams, establishes a firewall that prevents Boeing from making any space launch vehicle manufacturer's non-public information available to its launch vehicle division, and allows Boeing to use such information only in its capacity as a propulsion system provider.

DATES: Complaint and Order issued March 5, 1997.[1]

FOR FURTHER INFORMATION CONTACT: George Cary, FTC/H–374, Washington, DC 20580. (202) 326–3741.

SUPPLEMENTARY INFORMATION: On Monday, December 16, 1996, there was published in the **Federal Register**, 61 FR 66038, a proposed consent agreement with analysis In the Matter of The Boeing Company, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, modified as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,
Secretary.
[FR Doc. 98–1797 Filed 1–23–98; 8:45 am]
BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File Nos. 972–3190; 972–3191; and 972–3192]

Grey Advertising, Inc.; Rubin Postaer and Associates, Inc.; and Foote, Cone & Belding Advertising, Inc.—Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.
ACTION: Proposed consent agreements.

SUMMARY: The consent agreements in these matters settle alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaints that accompany the consent agreements and the terms of the consent orders—embodied in the consent agreements—that would settle these allegations.

DATES: Comments must be received on or before March 27, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: David Medine, FTC/S–4429, Washington, DC 20580. (202) 326–3224.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreements, and the allegations in the complaints. An electronic copy of the full text of the consent agreement packages can be obtained from the FTC Home Page (for January 20, 1998), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Orders to Aid Public Comment

The Federal Trade Commission has accepted separate agreements, subject to final approval, to proposed consent orders from three advertising agencies—Grey Advertising, Inc. ("Grey"), Rubin Postaer and Associates, Inc. ("Rubin Postaer"), and Foote, Cone & Belding, Inc., ("FCB") (collectively referred to as "respondents").

The proposed consent orders have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

These matters concern automobile lease and/or credit advertisements at issue in the Federal Trade Commission's enforcement actions against Mitsubishi Motor Sales of America, Inc. ("Mitsubishi"), Dkt. No. C–3713, American Honda Motor Corporation, Inc. ("Honda"), Dkt. No. C–3711, and Mazda Motor of America, Inc. ("Mazda"), Dkt. No. C–3714. The complaints allege that Grey, Rubin Postaer, and FCB, the advertising agencies for Mitsubishi, Honda, and Mazda, respectively, created and disseminated automobile lease advertisements that violate the Federal Trade Commission Act ("FTC Act"), the Consumer Leasing Act ("CLA"), and Regulation M. The complaint against Grey also alleges that respondent Grey's automobile credit advertisements violated the FTC Act, the Truth in Lending Act ("TILA"), and Regulation Z.

Section 5 of the FTC Act prohibits false, misleading, or deceptive representations or omissions of material information in advertisements. In addition, Congress established statutory disclosure requirements for lease and credit advertising under the CLA and TILA, respectively, and directed the Federal Reserve Board ("Board") to promulgate regulations implementing such statutes—Regulations M and Z. *See* 15 U.S.C. 1667–1667e; 12 CFR part 213; 12 CFR part 226. On September 30, 1996, Congress passed revisions to the CLA that became optionally effective immediately and that have been implemented through the Board's recent revisions to Regulation M. *See* Title II, Section 2605 of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997, Pub. L. No. 104–208, 110 Stat. 3009, 3009–473 (Sept. 30, 1996) ("revised CLA"); 61 FR 52,246 (October 7, 1996), 62 FR 15,364 (April 1, 1997), and 62 FR 16,053 (April 4, 1997) (together "revised Regulation M") (to be codified at 12 CFR part 213), as amended.

The complaints allege that each of the respondent's automobile lease advertisements represented that a particular amount stated as "down" is the total amount consumers must pay at the initiation of a lease agreement to lease the advertised vehicles. This representation is false, according to the complaints, because consumers must pay additional fees beyond the amount stated as "down," such as a security deposit, first month's payment and/or an acquisition fee, to lease the advertised vehicles. The complaints allege that respondents knew or should have known that this representation was false or misleading. The complaints also allege that respondents knew or should have known that the failure to disclose adequately lease inception fees in their advertisements was deceptive. These practices, according to the complaints, constitute deceptive acts or practices in violation of section 5(a) of the FTC Act.

The complaints further allege that respondents' lease advertisements failed to disclose the terms of the offered lease in a clear and conspicuous manner, as required by the CLA and Regulation M. According to the complaints, respondents' television lease disclosures were not clear and conspicuous because they appeared on the screen in small type, against a background of similar shade, for a very short duration, and/or over a moving background. The Grey and Rubin Postaer complaints also allege that these respondents' fine print disclosures of lease terms in print advertisements were not clear and conspicuous. The complaints, therefore, allege that respondents' failure to disclose lease terms in a clear and conspicuous manner violates the CLA and Regulation M. These alleged practices would also violate the advertising disclosure requirements of the revised CLA and the revised Regulation M.

The Grey complaint also alleges that respondent Grey's credit advertisements represented that consumers can purchase the advertised vehicles at the terms prominently stated in the ad, such as a low monthly payment and/or a low amount "down." This representation is false, according to the complaint, because consumers must also pay a final balloon payment of several thousand dollars, in addition to the low monthly payment and/or amount down, to purchase the advertised vehicles. The Grey complaint alleges that Grey knew or should have known that this representation was false or misleading. The Grey complaint also alleges that Grey knew or should have known that the failure to disclose adequately in its credit advertisements additional terms pertaining to the credit offer, including the existence of a final balloon payment of several thousand dollars and the annual percentage rate, was deceptive. These practices, according to the complaint, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The Grey complaint further alleges that respondent Grey's credit advertisements failed to disclose required credit terms in a clear and conspicuous manner, as required by the TILA and Regulation Z. According to the complaint, respondent's television advertisements contained credit disclosures that were not clear and conspicuous because they appeared on the screen in small type, against a background of similar shade, for a very short duration, and/or over a moving background. The complaint also alleges that this respondent's fine print disclosures of credit terms in print advertisements were not clear and conspicuous. The complaint, therefore, alleges that Grey's failure to disclose credit terms in a clear and conspicuous manner violates the TILA and Regulation Z.

The proposed consent orders contain provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future. Specifically, subparagraph I.A. of the proposed orders prohibits respondents, in any motor vehicle lease advertisement, from misrepresenting the total amount due at lease signing or delivery, the amount down, and/or the downpayment, capitalized cost reduction, or other amount that reduces the capitalized cost of the vehicle (or that no such amount is required). Subparagraph I.B. of the proposed orders also prohibits respondents, in any motor vehicle lease advertisement, from stating the amount of any payment or that any or no initial payment is required at consummation of the lease, unless the ad also states: (1) That the transaction advertised is a lease; (2) the total amount due at lease signing or delivery; (3) whether or not a security deposit is required; (4) the number, amount, and timing of scheduled payments; and (5) that an extra charge maybe imposed at the end of the lease term where the liability of the consumer at lease end is based on the anticipated residual value of the vehicle. The information enumerated above must be displayed in the motor vehicle lease advertisement in a clear and conspicuous manner. This approach is consistent with the lease advertising disclosure requirements of the revised CLA and the revised Regulation M.

Moreover, subparagraph I.C. of the proposed orders prohibits respondents, in any motor vehicle lease advertisement, from stating the amount of any payment or that any or no initial payment is required at consummation of the lease, unless the ad also states: (1) That the transaction advertised is a lease; (2) the total amount due at lease signing or delivery; (3) whether or not a security deposit is required; (4) the number, amount, and timing of scheduled payments; and (5) that an extra charge maybe imposed at the end of the lease term where the liability of the consumer at lease end is based on the anticipated residual value of the vehicle. The information enumerated above must be displayed in the motor vehicle lease advertisement in a clear and conspicuous manner. This approach is consistent with the lease advertising disclosure requirements of the revised CLA and the revised Regulation M.

Paragraph II of the proposed orders provides that lease advertisements that comply with the disclosure requirements of subparagraph I.C. of the orders shall be deemed to comply with section 184(a) of the CLA, as amended, or § 213.7(d)(2) of the revised Regulation M, as amended.

Paragraph III of the proposed orders provides that certain future changes to the CLA or Regulation M will be incorporated into the orders. Specifically, subparagraphs I.B. and I.C. will be amended to incorporate future CLA or Regulation M required advertising disclosures that differ from those required by the above order paragraphs. In addition, the definition of "total amount due at lease signing or delivery," as it applies to subparagraph I.B. and I.C. only, will be amended in the same manner. The orders provide that all other order requirements, including the definition of "clearly and conspicuously," will survive any such revisions.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

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Subparagraph IV.A of the proposed Grey order prohibits respondent Grey, in any closed-end credit advertisement involving motor vehicles, from misrepresenting the existence and amount of any balloon payment or the annual percentage rate; subparagraph IV.B also prohibits respondent Grey from stating the amount of any payment, including but not limited to any monthly payment, in any motor vehicle closed-end credit advertisement unless the amount of any balloon payment is disclosed prominently and in close proximity to the most prominent of the above statements.

Subparagraphs IV.C of the proposed Grey order also enjoins respondent from disseminating motor vehicle closed-end credit advertisements that state the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any periodic payment, including but not limited to the monthly payment, or the amount of any finance charge without disclosing, clearly and conspicuously, all of the terms required by Regulation Z, as follows: (1) The amount or percentage of the downpayment; (2) the terms of repayment, including but not limited to the amount of any balloon payment; and (3) the correct annual percentage rate, using that term or the abbreviation "APR," as defined as Regulation Z and the Official Staff Commentary to Regulation Z. If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be clearly and conspicuously disclosed.

The information required by subparagraph I.C. (lease advertisements) and IV.C of the Grey order (credit advertisements) must be disclosed "clearly and conspicuously" as defined in the proposed orders. The "clear and conspicuous" definition requires that respondents present such lease or credit information within the advertisement in a manner that is readable (or audible) and understandable to a reasonable consumer. This definition is consistent with the "clear and conspicuous" requirements for advertising disclosures in the revised Regulation M and Regulation Z that require disclosures that consumers can see and read (or hear) and comprehend. Similar to prior Commission orders and statements interpreting Section 5's prohibition or deceptive acts and practices, these orders require respondents to include certain disclosures in advertising that are readable (or audible) and understandable to reasonable consumers.

The purpose of this analysis is to facilitate public comment on the proposed orders, and it is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 98–1801 Filed 1–23–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[Dkt. C–3724]

Progressive Mortgage Corp., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, the Ohio-based mortgage corporation and its president from misrepresenting any terms or conditions of financing, such as, the annual percentage rate and finance charges of consumer loans; the number, amount and timing of mortgage payments; and the total number of payments to repay consumer loans.

DATES: Complaint and Order issued March 10, 1997.[1]

FOR FURTHER INFORMATION CONTACT: John Mendenhall, FTC Cleveland Regional Office, Eaton Center, Suite 200, 1111 Superior Ave., Cleveland, Ohio 44114. (216) 522–4210.

SUPPLEMENTARY INFORMATION: On Tuesday, December 10, 1996, there was published in the **Federal Register**, 61 FR 65061, a proposed consent agreement with analysis In the Matter of Progressive Mortgage Corporation, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 98–1798 Filed 1–23–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[Dkt. C–3584]

Schwegmann Giant Super Markets, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens a 1995 consent order—that required the Louisiana-based corporation to divest several supermarkets in the New Orleans area—and this order modifies the consent order by replacing a provision requiring Schwegmann to obtain prior Commission approval for certain transactions, with a prior notice provision for any acquisition of retail supermarkets in the New Orleans area that Schwegmann makes through June 6, 2005. The Commission determined that the changed provisions are warranted and consistent with the Statement of FTC Policy Concerning Prior Approval and Prior Notice Provisions and therefore justified reopening the proceeding and modifying the order.

DATES: Consent order issued June 2, 1995. Modifying order issued February 24, 1997.[1]

FOR FURTHER INFORMATION CONTACT: Daniel Ducore, FTC/S–2115, Washington, DC 20580. (202) 326–2526.

SUPPLEMENTARY INFORMATION: In the Matter of Schwegmann Giant Super Markets, Inc. The prohibited trade practices and/or corrective actions as set forth at 60 FR 35032, are changed, in part, as indicated in the summary.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 98–1799 Filed 1–23–98; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

[1] Copies of the Modifying Order are available from the Commission's Public Reference Branch, H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FEDERAL TRADE COMMISSION

[File No. 951–0083]

Sensormatic Electronics Corporation; and Checkpoint Systems, Inc.—Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreements.

SUMMARY: The consent agreements in these matters settle alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaints that accompany the consent agreements and the terms of the consent orders—embodied in the consent agreements—that would settle these allegations.

DATES: Comments must be received on or before March 27, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: William Baer or Michael Antalics, FTC/H–374, Washington, D.C. 20580. (202) 326–2932 or 326–2821.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreements, and the allegations in the complaints. An electronic copy of the full text of the consent agreement packages can be obtained from the FTC Home Page (for January 21, 1998), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Orders To Aid Public Comment

The Federal Trade Commission has accepted agreements to proposed consent orders from Sensormatic Electronics Corporation ("Sensormatic") and Checkpoint Systems, Inc. ("Checkpoint"). Sensormatic's principal place of business is located at 951 Yamato Road, Boca Raton, Florida. Checkpoint's principal place of business is located at 101 Wolf Drive, Thorofare, New Jersey.

The proposed consent orders have been placed on the public record for 60 days for reception of comments by interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreements and the comments received, and will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

Sensormatic and Checkpoint are the two largest manufacturers and sellers of electronic article surveillance ("EAS") systems in the United States and the world. Their combined worldwide sales exceed 70 percent of total EAS industry sales.

EAS systems are used primarily by retailers to deter and detect shoplifting and employee theft. Bits of reactive metal or electronic transmitters called "tags" are attached to products sold in retail stores. When a product is purchased, the tag is removed or deactivated by the cashier. If a tag passes through an EAS system's sensors at a store exit without being deactivated, it sets off an alarm. EAS systems are also commonly found in libraries and video stores.

The complaint alleges that Sensormatic and Checkpoint entered a written agreement on June 27, 1993 to refrain from "negative advertising or other negative selling, promotional activities or other communications with respect to the other party or the other party's products and services," including "statements that the other party's products or services cause or may cause harm to customers, consumers or merchandise." The complaint further alleges that the respondents have construed the June 27, 1993 agreement to restrict comparative advertising relating to the performance and effectiveness of the proposed respondents' EAS systems.

The complaint alleges that the June 27, 1993 agreement deprives retailers, other customers who purchase EAS systems, and consumers of comparative information about the characteristics of EAS systems that they would find helpful. In particular, the complaint alleges that retailers and other EAS customers have an interest in obtaining comparative information relevant to their purchasing decisions. The complaint further alleges that certain information about EAS systems, such as the potential harm to retail products and information about possible interactions between certain medical devices and EAS equipment, is relevant to consumers. Finally, the complaint alleges that the June 27, 1993 agreement is an agreement among competitors to refrain from making truthful, non-deceptive claims, including comparisons, criticisms, or disparaging statements in advertising, and that this agreement constitutes an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act.

On many occasions, the Commission has prohibited groups of horizontal competitors from agreeing to refrain from making truthful, non-deceptive claims, including comparisons, criticisms, or disparaging statements in advertising. The Commission has recognized that one of the benefits of competition is that competitors may be driven to provide consumers with information that makes for better educated, effective consumers.[1] The alleged conduct engaged in by Sensormatic and Checkpoint and the terms of the proposed orders are similar to the conduct alleged and the relief obtained in *Personal Protective Armor Association, Inc.*, 117 F.T.C. 104 (1994).

Sensormatic and Checkpoint have signed consent agreements containing the proposed consent orders. The proposed consent orders require Sensormatic and Checkpoint to declare null and void the negative advertising provision of the June 27, 1993 agreement. The proposed consent orders also prohibit Sensormatic and Checkpoint from entering into any agreement that prohibits, restricts, impedes, interferes with, restrains, places limitations on, or advises against engaging in truthful, non-deceptive advertising, comparative advertising, promotional and sales activities for twenty years after the date the order becomes final. In addition, the proposed consent orders require that Sensormatic and Checkpoint provide copies of the orders to their respective executives, and that Sensormatic and Checkpoint file annual compliance reports with the Federal Trade Commission.

[1] *See generally* Commission Policy Statement in Regard to Comparative Advertising, 16 CFR 14.15 (1997) (comparative advertising assists consumers in making rational purchase decisions, encourages product improvement or innovation, and can lead to lower market prices).

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The purpose of this analysis is to facilitate public comment on the proposed orders, and it is not intended to constitute an official interpretation of the agreement and proposed orders or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 98–1802 Filed 1–23–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[Dkt. C–3743]

Tenet Healthcare Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order, among other things, requires Tenet Healthcare Corporation ("Tenet"), a California acute care hospital chain, to divest OrNda's French Hospital Medical Center and related assets and facilities by August 1, 1997. The consent order also requires Tenet to maintain the marketability and viability of French Hospital, pending the divestiture of French, and to notify the Commission before combining its acute care hospitals in San Luis Obispo County with any other acute care hospital in the area and before acquiring any Monarch stock.

DATES: Complaint and Order issued May 20, 1997.[1]

FOR FURTHER INFORMATION CONTACT: Robert Leibenluft, FTC/S–3115, Washington, DC 20580. (202) 326–3688.

SUPPLEMENTARY INFORMATION: On Wednesday, February 5, 1997, there was published in the **Federal Register**, 62 FR 5418, a proposed consent agreement with analysis In the Matter of Tenet Healthcare Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 98–1800 Filed 1–23–98; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0093]

Proposed Collection; Comment Request Entitled Transportation Discrepancy Report, SF 361

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of request for public comments regarding reinstatement to a previously approved OMB clearance (3090–0093).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning Transportation Discrepancy Report, SF–361.

DATES: Comment Due Date: March 27, 1998.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Roger Sullins, Federal Supply Service (816) 926–2932.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to reinstate information collection, 3090–0093 concerning Transportation Discrepancy Report, SF–361. This form is prepared by Government shippers or receivers to document loss, damage, or other discrepancy resulting from the movement of freight by commercial transportation companies.

B. Annual Reporting Burden

Respondents: 160; *annual responses:* 1; *average hours per response:* 1; *burden hours:* 160.

Copy of Proposal: A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW., Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: January 20, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 98–1770 Filed 1–23–98; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0058]

Proposed Collection; Comment Request Entitled Deposit Bond—Annual Sale of Government Personal Property

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of request for public comments regarding reinstatement to a previously approved OMB clearance (3090–0058).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning Deposit Bond—Annual Sale of Government Personal Property.

DATES: Comment Due Date: March 27, 1998.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Andrea Dingle, Federal Supply Service, (703) 305–6190.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to reinstate information collection, 3090–0058, concerning Deposit Bond—Annual Sale of Government Personal Property. This form is used by a bidder participating in sales of Government personal property whenever the sales invitation permits an annual type of deposit bond in lieu of cash or other form of bid deposit.

B. Annual Reporting Burden

Respondents: 1,000; *annual responses:* 1; *average hours per response:* .25; *burden hours:* 250.

Copy of Proposal: A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street, NW., Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: January 20, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 98–1771 Filed 1–23–98; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0057]

Proposed Collection; Comment Request Deposit Bond Individual-Sale of Government Personal Property

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of request for public comments regarding reinstatement to a previously approved OMB clearance (3090–0057).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning Deposit Bond Individual-Sale of Government Personal Property.

DATES: Comment Due Date: March 27, 1998.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Andrea Dingle, Federal Supply Service (703) 305–6190.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to reinstate information collection, 3090–0057 concerning Deposit Bond Individual-Sale of Government Personal Property. This form is used by a bidder participating in sales of Government personal property whenever the sales invitation permits an individual type of deposit bond in lieu of cash or other form of bid deposit.

B. Annual Reporting Burden

Respondents: 500; *annual responses:* 1; *average hours per response:* .25; *burden hours:* 125.

Copy of Proposal: A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405 or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: January 20, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 98–1772 Filed 1–23–98; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Institute for Occupational Safety and Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH).

Time and Date: 9 a.m.–4:30 p.m., February 11, 1998.

Place: The Washington Court, Montpelier Room, 525 New Jersey Avenue, NW, Washington, DC 20001–1527.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The BSC, NIOSH is charged with providing advice to the Director, NIOSH on NIOSH research programs. Specifically, the Board shall provide guidance on the Institute's research activities related to developing and evaluating hypotheses, systematically documenting findings, and disseminating results.

Matters to be Discussed: Agenda items include a report from the Director of NIOSH, research program planning, state surveillance activities, Workers' Family Protection Task Force, the NIOSH energy-related research program, NIOSH Metal Working Fluids Criteria Document, and future activities of the Board.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Bryan D. Hardin, Ph.D., Executive Secretary, BSC, NIOSH, Room 715–H, Hubert H. Humphrey Building, 200 Constitution Avenue SW, Washington, DC, 20201, telephone 202/205–8556, fax 202/260–4464, e-mail bdh1@cdc.gov.

Dated: January 20, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–1722 Filed 1–23–98; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0014]

Bio-Cide International, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Bio-Cide International, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of acidified sodium chlorite solutions in processing water and ice intended for use in contact with seafood.

DATES: Written comments on the petitioner's environmental assessment by February 25, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3074.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8A4568) has been filed by Bio-Cide International, Inc., c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in 21 CFR part 173 to provide for the safe use of acidified sodium chlorite solutions in processing water and ice intended for use in contact with seafood.

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The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before February 25, 1998, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 7, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–1663 Filed 1–23–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0528]

Draft "Guidance for Industry: Efficacy Studies to Support Marketing of Fibrin Sealant Products Manufactured for Commercial Use"

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled "Guidance for Industry: Efficacy Studies to Support Marketing of Fibrin Sealant Products Manufactured for Commercial Use." After reviewing recent experience with fibrin sealant products in clinical studies conducted under Investigational New Drug (IND) regulations, the agency is proposing to accept applications for licensure of fibrin sealant products based on evidence from pivotal studies in which the primary endpoint is hemostasis effectiveness. As in the past, other endpoints such as wound healing or tissue sealing may serve as primary endpoints for pivotal studies, depending on the nature of the indications sought. This draft document will provide guidance to manufacturers of fibrin sealant products for the design of clinical trials intended to support licensure.

DATES: Written comments may be submitted at any time, however, comments should be submitted by April 27, 1998, to ensure their adequate consideration in preparation of the final document.

ADDRESSES: Submit written requests for single copies of the draft guidance document "Guidance for Industry: Efficacy Studies to Support Marketing of Fibrin Sealant Products Manufactured for Commercial Use" to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The draft guidance document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. Submit written comments on the draft guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Paula S. McKeever, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled "Efficacy Studies to Support Marketing of Fibrin Sealant Products Manufactured for Commercial Use." This draft guidance document represents the agency's current thinking with regard to information on the efficacy studies to support marketing of licensure of fibrin sealant products manufactured for commercial use. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this draft document to be all-inclusive and cautions that not all information may be applicable to all situations. The draft guidance document is intended to provide information and does not set forth requirements.

II. Comments

This draft document is being distributed for comment purposes only, and is not intended for implementation as general guidance at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance document. Written comments may be submitted at any time, however, comments should be submitted by April 27, 1998, to ensure adequate consideration in preparation of the final document. Two copies of any comment are to be submitted, except individuals may submit one copy. Comments and request for copies should be identified with the docket number found in the brackets in the heading of this document. A copy of the draft guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the internet may obtain the draft document using the World Wide Web (WWW). For WWW access connect to CBER at "http://www.fda.gov/cber/guidelines.htm".

Dated: January 13, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

The text of the draft guidance is set forth below:

BILLING CODE 4160–01–F

Guidance for Industry

Efficacy Studies to Support Marketing of Fibrin Sealant Products Manufactured for Commercial Use

DRAFT - NOT FOR IMPLEMENTATION

This guidance document is being distributed for comment purposes only.

Draft released for comment on January 1998

Comments and suggestions regarding this draft document should be submitted by April 1998 to Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857. All comments should be identified with the docket number 97D-0528. For questions regarding this draft document, contact Paula McKeever (CBER), 301-827-6210.

U.S. Department of Health and Human Services
Food and Drug Administration
Center for Biologics Evaluation and Research (CBER)
January 1998

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Draft-Not for Implementation

Guidance for Industry [1]: Efficacy Studies to Support Marketing of Fibrin Sealant Products Manufactured for Commercial Use

I. Introduction

This document pertains to commercially-produced fibrin sealants composed of purified, virus-inactivated/removed human fibrinogen and human or bovine thrombin, with or without added components such as virus-inactivated/removed human factor XIII and/or aprotinin. Such products are currently available in Europe and Canada as hemostasis agents. Although manufacturers and clinicians in the United States have been actively engaged in the development and testing of fibrin sealants, no fibrin sealant product has been licensed in this country. This document outlines the agency's current position with regard to clinical data used to support licensure of safe and effective commercially-produced fibrin sealants in the United States.

II. Background

As early as 1909, surgeons were reporting the hemostatic properties of fibrin powder used in the operative field. In the 1940s, combinations of fibrinogen and thrombin were first utilized. The development of Cohn fractionation in the 1940s, and a method for cryoprecipitation of fibrinogen in the 1960s, led to the development of fibrin sealants in the 1970s. However, fibrinogen concentrates were found to transmit hepatitis and thus all U.S. licenses for Fibrinogen (Human) were revoked on December 7, 1977. Since that time, a number of manufacturers have been evaluating a new generation of virus-inactivated/removed fibrin sealants.

In 1994, the FDA co-sponsored a conference on the characteristics and clinical uses of fibrin sealants, held at the Uniformed Services University of the Health Sciences, Bethesda, Maryland (summarized in Transfusion 35:783–790, 1995). A number of academic investigators presented data from clinical trials in which fibrin sealants either reduced blood loss or reduced the time to achieve hemostasis. However, based on the available data, FDA representatives were of the opinion that a direct clinical benefit to patients treated with fibrin sealant should be demonstrated in a well-controlled clinical trial to support product licensure for a narrow indication.

Despite FDA's requests for well-controlled trials with patient outcomes as endpoints, many clinicians have been reluctant to conduct placebo-controlled trials in settings where they view the standard of care to be the use of fibrin sealant prepared on site from commercial bovine thrombin and various sources of fibrinogen. These clinicians consider the use of locally-prepared fibrin sealant to be of such benefit in controlling bleeding in confined or nearly inaccessible areas that a placebo-controlled trial would put the control patients at significant and unnecessary risk. However, locally-prepared fibrin sealants are not standardized or consistent, and the available sources of fibrinogen are not treated to inactivate or remove viruses.

III. Guidance

Based on clinical trial experience since 1994, FDA's Center for Biologics Evaluation and Research (CBER) proposes to consider, for licensure of commercially-produced fibrin sealants, data from pivotal studies in which the primary endpoint is hemostasis effectiveness. This review standard is similar to that used by the Center for Devices and Radiological Health, in clearing a number of commercial medical devices on the basis of clinical studies in which the primary endpoint was control of hemostasis within a specific time in a variety of clinical settings. CBER proposes that time to hemostasis could also serve as a primary endpoint for pivotal studies of fibrin sealants.

As in the past, CBER also encourages manufacturers to conduct well-controlled clinical trials using a variety of other endpoints, including blood loss, transfusion requirements, tissue sealing, and wound healing. Endpoints for such trials will be reviewed on a case-by-case basis. Manufacturers who demonstrate the safety and efficacy of their fibrin sealant preparations for specific indications may, upon FDA licensure, label and promote their products for these indications. FDA licensure for a given indication will denote that the specific formulation of fibrin sealant is safe and effective for that specific indication.

For fibrin sealant products containing multiple biologic components, the contribution of each component may be demonstrated in a non-clinical setting appropriate to the indication(s) sought, although the overall efficacy of multiple-component fibrin sealant products should be demonstrated in clinical trials. Proposals to utilize in vitro and/or animal studies to support the inclusion of multiple biologic components into a fibrin sealant product should be discussed with CBER.

The following points are proposed for review of pivotal clinical trials of fibrin sealant products:

1) Fibrin sealant products should be tested in settings and under conditions where they would normally be expected to be used in clinical practice.

2) Fibrin sealant products may be tested against a placebo, a cleared hemostatic device, or other control, as appropriate.

3) Efficacy of fibrin sealant products may be tested by using either hemostasis endpoints or other measures of clinical benefit, depending on the indications sought.

IV. Comments

The agency will review all submitted comments and consider them in the preparation of any final guidance document. Two copies of any comment should be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

[FR Doc. 98–1664 Filed 1–23–98; 8:45 am]

BILLING CODE 4160–01–F

[1] This draft guidance document represents the FDA's current thinking on efficacy studies to support marketing of fibrin sealant products manufactured for commercial use. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements fo the applicable statute, regulations, or both. For additional copies of this guidance, contact the Office of Communication, Training and Manufacturers Assistance, HFM–40, Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448. Send one self-addressed adhesive label to assist that office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. Persons with access to the INTERNET may obtain the document using the World Wide Web (WWW) by connecting to CBER at "http//www.fda.gov/cber/guidelines.htm".

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

HCFA–2005-NC

RIN 0938–AI39

Medicaid Program; State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals: Federal Fiscal Year 1998

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with Comment Period.

SUMMARY: Section 4732 of the Balanced Budget Act of 1997 (Public Law 105–33) amended the Social Security Act to provide for two additional eligibility groups of low-income Medicare beneficiaries for whom Medicaid payment can be made for Medicare Part B premiums during the period beginning January 1998 and ending December 2002. This notice announces the Federal fiscal year 1998 State allotments that are available to pay Medicare Part B premiums for these two new eligibility groups and describes the methodology used to determine each State's allotment.

DATES: *Effective Date:* This is a major rule under 5 U.S.C. section 804(2). As indicated in the preamble of this notice, pursuant to section 5 U.S.C. section 553(b)(B), for good cause we find that prior notice and comment procedures are unnecessary and impracticable. Pursuant to 5 U.S.C. section 808(2), this notice is effective January 1, 1998, for allotments for payment of Medicare Part B premiums for individuals in calendar year 1998 from the allocation for fiscal year 1998.

Comment Date: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on March 27, 1998.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–2005–NC, P.O. Box 7517, Baltimore, MD 21207–0517, or

If you prefer, you may deliver your written comments (one original and three copies to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–2005–NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after the publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW, Washington DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 37194, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http:/ /www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest (no password required). Dial-in users should use communications software and modem to call (202) 512-1661; type swais, then login as guest (no password required).

FOR FURTHER INFORMATION CONTACT: Miles McDermott, (410) 786–3722

SUPPLEMENTARY INFORMATION:

I. Background

Section 1902 of the Social Security Act (the Act) sets forth the requirements for State plans for medical assistance. Prior to August 5, 1997, section 1902(a)(10)(E) of the Act specified that the State Medicaid plan must provide for Medicare cost-sharing for three eligibility groups of low-income Medicare beneficiaries. These three groups included qualified Medicare beneficiaries (QMBs), specified low-income Medicare beneficiaries (SLMBs), and qualified disabled and working individuals (QDWIs).

A QMB is an individual entitled to Medicare Part A with income at or below the Federal poverty line and resources below $4,000 for an individual and $6,000 for a couple. A SLMB is an individual who meets the QMB criteria, except that his or her income is between a State established level (at or below the Federal poverty line) and 120 percent of the Federal poverty line. A QDWI is an individual who is entitled to enroll in Medicare Part A, whose income does not exceed 200 percent of the Federal poverty line for a family of the size involved, whose resources do not exceed twice the amount allowed under the Supplementary Security Income (SSI) program, and who is not otherwise eligible for Medicaid. The definition of Medicare cost-sharing at section 1905(p)(3) of the Act includes payment for premiums for Medicare Part B.

Section 4732 of the Balanced Budget Act of 1997 (BBA), enacted on August 5, 1997, amended section 1902(a)(10)(E) of the Act to require States to provide for Medicaid payment of the Medicare Part B premiums for two additional eligibility groups of low-income Medicare beneficiaries, referred to as qualifying individuals (QIs). Specifically, a new section 1902(a)(10)(E)(iv)(I) of the Act is added, under which States must pay the full amount of the Medicare Part B premium for selected qualifying individuals who would be QMBs but for the fact that their income level is at least 120 percent but less than 135 percent of the Federal poverty line for a family of the size involved. These individuals cannot otherwise be eligible for medical assistance under the approved State Medicaid plan.

The second group of QIs, added under section 1902(a)(10)(E)(iv)(II) of the Act, includes Medicare beneficiaries who would be QMBs except that their income is between 135 percent and 175 percent of the Federal poverty line for a family of the size involved, who are not otherwise eligible for Medicaid under the approved State plan. These QIs are eligible for a portion of Medicare cost-sharing consisting only of a percentage of the increase in the Medicare Part B premium attributable to the shift of Medicare home health coverage from Part A to Part B (as provided in section 4611 of the BBA).

The BBA also added a new section 1933 to the Act to provide for Medicaid payment of Medicare Part B premiums for QIs. (The previous section 1933 is redesignated as section 1934.) Section 1933(a) specifies that a State plan must provide, through a State plan amendment, for medical assistance to pay for the cost of Medicare cost-sharing on behalf of qualifying individuals who are selected to receive assistance.

Section 1933(b) of the Act sets forth the rules that States must follow in selecting QIs and providing payment for Medicare Part B premiums. Specifically, the State must permit all qualifying individuals to apply for assistance and must select individuals on a first-come, first-served basis (that is, the State must select QIs in the order in which they apply). Under section 1933(b)(2)(B) of the Act, in selecting persons who will receive assistance in years after 1998, States must give preference to those individuals who received assistance as QIs, QMBs, SLMBs, or QDWIs in the last month of the previous year and who continue to be (or become) QIs. Under section 1933(b)(4), persons selected to receive assistance in a calendar year are entitled to receive assistance for the remainder of the year, but not beyond, as long as they continue to qualify. The fact that an individual is selected to receive assistance at any time during the year does not entitle the individual to continued assistance for any succeeding year. Because the State's allotment is limited by law, section 1933(b)(3) of the Act provides that the State must limit the number of QIs so that the amount of assistance provided during the year is approximately equal to the State's allotment for that year.

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Section 1933(c) of the Act limits the total amount of Federal funds available for payment of Part B premiums each fiscal year and specifies the formula that is to be used to determine an allotment for each State from this total amount. For States that execute a State plan amendment in accordance with section 1933(a) of the Act, a total of $1.5 billion is allocated over 5 years as follows: $200 million in FY 1998; $250 million in FY 1999; $300 million in FY 2000; $350 million in FY 2001; and $400 million in FY 2002.

The Federal matching rate for Medicaid payment of Medicare Part B premiums for qualifying individuals is 100 percent for expenditures up to the amount of the State's allotment. No Federal matching funds are available for expenditures in excess of the State allotment amount. Administrative expenses associated with the payment of Medicare Part B premiums for QIs remain at the 50 percent matching level and are not part of the State's allotment.

The amount appropriated for each fiscal year is to be allocated among States according to the formula set forth in section 1933(c)(2) of the Act. The formula provides for an amount to each State that is to be based on each State's share of the Secretary's estimate of the ratio of: (1) an amount equal to the sum of (a) twice the total number of individuals who meet all but the income requirements for QMBs, whose incomes are at least 120 percent but less than 135 percent of the Federal poverty line, and who are not otherwise eligible for Medicaid, and (b) the total number of individuals in the State who meet all but the income requirements for QMBs, whose incomes are at least 135 percent but less than 175 percent of the Federal poverty line, and who are not otherwise eligible for Medicaid, to (2) the sum of all of these individuals under item (1) for all eligible States.

II. Provisions of this Notice

This notice announces the availability of individual State allotments for Federal fiscal year 1998 for the Medicaid payment of Medicare Part B premiums for qualifying individuals identified under sections 1902(a)(10)(E)(iv) (I) and (II) of the Act.

In this notice, we are not applying precisely the statutory formula to determine the individual State allotments. A precise application of the allocation formula in the statute would require us to determine State-specific estimates of the number of individuals who:

- Are entitled to Medicare Part A;
- Have incomes in the poverty level ranges specified;
- Have assets not exceeding twice the amount allowed under the SSI program; and
- Would not be eligible for Medicaid but for the provisions of section 1902(a)(10)(E) of the Act regarding QIs.

Section 4732(c)(2) of the BBA allows HCFA to take an estimate of the ration of the relevant numbers. We have not been able to locate any available current data that would permit us to directly produce the estimates specified in the statute. As an alternative to direct measurement, we believe that estimates might be derived from models of income, assets, and State Medicaid eligibility. Estimates could be constructed using available data sources; however such an approach would be very time-consuming and resource-intensive and may still not produce credible State-level estimates. Consequently, we are approximating the required estimates by using data from the U.S. Census Bureau on the number of individuals who, according to its March Current Population Survey (CPS), are Medicare beneficiaries, have incomes in the appropriate ranges, and are not enrolled in Medicaid.

In order to reduce the variability of State-level estimates derived from CPS data, we have used a moving average of the most recent 3 years of available data. For the FY 1998 allotments shown in the table below, we have averaged CPS data for the years 1994 through 1996. Specifically, the Federal fiscal year 1998 allotments have been calculated as follows:

A_T=Total amount to be allocated

$M1_i$=3-year average of the number of Medicare beneficiaries in state i who are not enrolled in Medicaid and whose incomes are at least 120 percent but less than 135 percent of Federal poverty line

$M2_i$=3-year average of the number of Medicare beneficiaries in State i who are not enrolled in Medicaid and whose incomes are at least 135 percent but less than 175 percent of Federal poverty line.

Then, the allotment reserved for State *i* is determined by the following formula:

$$A_i = \left[\frac{2 \cdot M1_i + M2_i}{\sum_j \left(2 \cdot M1_j + M2_j\right)}\right] \cdot A_T.$$

The resulting allotments are shown by State in the table below.

ESTIMATED STATE ALLOTMENTS FOR MEDICAID PAYMENTS OF MEDICARE PART B PREMIUMS

State	(a) M1[1]	(b) M2[2]	(c) [2×(a)]+(b)	State share of (c) (percent)	State FY 98 allocation (in thousands)
AK	0	2	2	0.03	$63
AL	36	65	137	2.14	4,283
AR	21	37	79	1.23	2,470
AZ	18	50	86	1.34	2,688
CA	99	311	509	7.96	15,911
CO	13	33	59	0.92	1,844
CT	13	65	91	1.42	2,845
DC	2	3	7	0.11	219
DE	4	9	17	0.27	531
FL	89	270	448	7.00	14,004
GA	42	102	186	2.91	5,814
HI	4	9	17	0.27	531
IA	15	49	79	1.23	2,470
ID	4	15	23	0.36	719
IL	75	167	317	4.95	9,909
IN	25	92	142	2.22	4,439
KS	13	41	67	1.05	2,094
KY	18	91	127	1.98	3,970
LA	27	56	110	1.72	3,439
MA	37	83	157	2.45	4,908

ESTIMATED STATE ALLOTMENTS FOR MEDICAID PAYMENTS OF MEDICARE PART B PREMIUMS—Continued

State	(a) M1[1]	(b) M2[2]	(c) [2×(a)]+(b)	State share of (c) (percent)	State FY 98 allocation (in thousands)
MD	25	72	122	1.91	3,814
ME	7	27	41	0.64	1,282
MI	44	122	210	3.28	6,565
MN	18	55	91	1.42	2,845
MO	30	81	141	2.20	4,408
MS	26	42	94	1.47	2,938
MT	8	16	32	0.50	1,000
NC	58	110	226	3.53	7,065
ND	5	11	21	0.33	656
NE	10	26	46	0.72	1,438
NH	7	17	31	0.48	969
NJ	51	118	220	3.44	6,877
NM	10	29	49	0.77	1,532
NV	7	19	33	0.52	1,032
NY	92	271	455	7.11	14,223
OH	56	167	279	4.36	8,721
OK	26	47	99	1.55	3,095
OR	22	53	97	1.52	3,032
PA	82	213	377	5.89	11,785
RI	7	18	32	0.50	1,000
SC	27	52	106	1.66	3,314
SD	5	9	19	0.30	594
TN	39	56	134	2.09	4,189
TX	78	221	377	5.89	11,785
UT	4	18	26	0.41	813
VA	19	81	119	1.86	3,720
VT	4	7	15	0.23	469
WA	9	67	85	1.33	2,657
WI	10	56	76	1.19	2,376
WV	19	39	77	1.20	2,407
WY	2	4	8	0.13	250
Total	1362	3674	6398	100.00	200,000

[1] Three-year average of number (000) of Medical beneficiaries in State who are not enrolled in Medicaid but whose incomes are at least 120 but less than 135 of Federal Poverty Line.
[2] Three-year average of number (000) of Medicare beneficiaries in State who are not enrolled in Medicaid but whose incomes are at least 135 but less than 175 of Federal Poverty Line.

III. Waiver of Advance Public Comment and 30-Day Delay in Effective Date

We ordinarily publish an advance notice in the **Federal Register** for a notice containing substantive rules to provide a period for public comment. However, we may waive that procedure if we find good cause that notice and comment are impractical, unnecessary, or contrary to the public interest. In addition, we also normally provide a delay of 30 days in the effective date. However, if adherence to this procedure would be impractical, unnecessary, or contrary to public interest, we may waive the delay in the effective date.

We are adopting this notice as a final with comment period without publication of a proposed notice because of the need to notify individual States in advance of the limitations with Federal matching funds in their Medicaid expenditures for payment of Medicare Part B premiums for qualifying individuals. Publication of a proposed notice with a 60-day comment period prior to publication of a final notice would, we believe, be contrary to the public interest. The law is specific regarding the total amount available for Medicare Part B premiums for qualifying individuals and the formula that is to be used to determine individual State allotments. Therefore, we find good cause to waive issuance of a proposed notice and to issue the notice as final.

Also, because States can begin making payments for Medicare Part B premiums for qualifying individuals as early as January 1, 1998, we are not making the effective date of the notice the usual 30 days after publication. For the reasons discussed above, we find good cause to waive the usual 30-day delay.

Although we are publishing this as a final notice, we are providing a 60-day period for public comment. Because of the large number of items of correspondence we normally receive, we are not able to acknowledge or respond to the comments individually. However, if we decide that changes are necessary as a result of our consideration of timely comments, we will issue an additional notice and respond to the comments in that notice.

IV. Effect of the Contract with America Advancement Act

Normally, under 5 U.S.C. section 801, as added by section 251 of Public Law 104–121, the effective date of a major rule is delayed 60 days for Congressional review. This has been determined to be a major rule under 5 U.S.C. section 804(2). However, as indicated in section III of this notice with comment period, we have found that good cause exists to dispense with prior notice and comment procedures since they are unnecessary and impracticable under the circumstances. Pursuant to 5 U.S.C. section 808(2), a rule shall take effect at such time as the Federal agency promulgating the rule determines if it finds, for good cause, that prior notice and comment procedures are unnecessary or impracticable. Accordingly, under the exemption provided in 5 U.S.C. section

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808(2), this notice with comment period is effective January 1, 1998, for allotments for payments of Medicare Part B premiums for individuals in calendar year 1998 from the allotment for fiscal year 1998.

V. Regulatory Impact Statement

We have examined the impact of this notice with comment period as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered to be small entities.

This notice with comment period implements provisions of the Balanced Budget Act of 1997 to allocate, among the States, Federal funds to provide Medicaid payment for Medicare Part B premiums for two additional groups of low-income Medicare beneficiaries. The total amount of Federal funds available during a Federal fiscal year and the formula for determining individual State allotments are specified in the law. We have applied the statutory formula for the State allotments except for the use of specified data. Because the data specified in the law were not currently available, we have used comparable data from the U.S. Census Bureau on the number of possible qualifying individuals in the States.

We believe that the statutory provisions implemented in this notice with comment period will have a positive effect on States and individuals. Federal funding at the 100 percent matching rate is available for Medicare cost-sharing for Medicare Part B premium payments for qualifying individuals and a greater number of low-income Medicare beneficiaries will be eligible to have their Medicare Part B premiums paid under Medicaid.

Section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined and certify that this notice with comment period will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice with comment period was reviewed by the Office of Management and Budget.

Authority: Sections 1902(a)(10), 1933 of the Social Security Act (42 U.S.C. 1396a), and Public Law 105–33.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: December 12, 1997.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: January 13, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–1675 Filed 1–23–98; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute on Drug Abuse (NIDA) Initial Review Group and Special Emphasis Panel meetings.

Purpose/Agenda: To review and evaluate grant applications.

Name of Committee: Neurophysiology and Neuroanatomy Research Subcommittee.
Date: February 9–11, 1998.
Time: 8:30 a.m.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Gamil Debbas, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Name of Committee: Human Development Research Subcommittee.
Date: February 10, 1998.
Time: 9:00 a.m.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Kesinee Nimit, M.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: Basic Behavioral Science Research Subcommittee.
Date: February 10–12, 1998.
Time: 8:30 a.m.
Place: Key Bridge Marriott Hotel, 1401 Lee Highway, Arlington, VA 22209.
Contact Person: Mark Swieter, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Telephone (301) 443–2620.

Name of Committee: Epidemiology and Prevention Research Subcommittee.
Date: February 10–12, 1998.
Time: 8:30 a.m.
Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Raquel Crider, Ph.D., Scientific Review Administrator, Office Of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: Molecular, Cellular and Chemical Neurobiology Research Subcommittee.
Date: February 10–12, 1998.
Time: 8:30 a.m.
Place: Ritz-Carlton Hotel at Pentagon City, 250 South Hayes Street, Arlington, VA 22202.
Contact Person: Rita Liu, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: NIDA Special Emphasis Panel (Molecular, Cellular and Chemical Neurobiology).
Date: February 12, 1998.
Time: 9:00 a.m.
Place: Ritz-Carlton Hotel at Pentagon City, 250 South Hayes Street, Arlington, VA 22202.
Contact Person: Mary C. Custer, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Name of Committee: Neuropharmacology Research Subcommittee.
Date: February 17–19, 1998.
Time: 8:30 a.m.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Syed Husain, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Name of Committee: Treatment Research Subcommittee.
Date: March 2–4, 1998.
Time: 8:30 a.m.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Kesinee Nimit, M.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: NIDA Special Emphasis Panel (Training and Career Development).
Date: March 2–4, 1998.
Time: 8:30 a.m.

Place: Residence Inn by Marriott, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Mark Swieter, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Telephone (301) 443–2620.

Name of Committee: Health Service Research Subcommittee.
Date: March 3–4, 1998.
Time: 8:30 a.m.
Place: Key Bridge Marriott Hotel, 1401 Lee Highway, Arlington, VA 22209.
Contact Person: Raquel Crider, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: AIDS Biomedical and Clinical Research Subcommittee.
Date: March 10–11, 1998.
Time: 8:30 a.m.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Gamil Debbas, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Name of Committee: NIDA Special Emphasis Panel (Centers).
Date: March 17, 1998.
Time: 8:30 a.m.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Mary C. Custer, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Name of Committee: AIDS Behavioral Research Subcommittee.
Date: March 17–18, 1998.
Time: 8:30 a.m.
Place: Sheraton-National Hotel, 900 South Orme Street, Arlington, VA 22204.
Contact Person: Khursheed Asghar, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Telephone (301) 443–2620.

The meetings will be closed in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs.)

Dated: January 16, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–1711 Filed 1–23–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: February 12, 1998.
Time: 8:30 a.m.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: W. Gregory Zimmerman, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–1340.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: February 13, 1998.
Time: 8:30 a.m.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: W. Gregory Zimmerman, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–1340.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: January 16, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–1712 Filed 1–22–98; 11:41 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Initial Review Group:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: Services Research Review Committee.
Date: February 10–February 11, 1998.
Time: 8:30 a.m.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Gavin T. Wilkom, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–1340.

Committee Name: Clinical Neuroscience and Biological Psychopathology Review Committee.
Date: February 11–February 13, 1998.
Time: 9 a.m.
Place: One Washington Circle, One Washington Circle, NW., Washington, DC 20037.
Contact Person: Maureen L. Eister, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–3936.

Committee Name: Neuropharmacology and Neurochemistry Review Committee.
Date: February 12–February 13, 1998.
Time: 8:30 a.m.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–3936.

Committee Name: Violence and Traumatic Stress Review Committee.
Date: February 12–February 13, 1998.
Time: 8:30 a.m.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Sheri L. Schwartzback, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–6470.

Committee Name: Social and Group Processes Review Committee.
Date: February 12–February 13, 1998.
Time: 8:30 a.m.
Place: The Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: Tarsha Johnson, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–6470.

Committee Name: Health Behavior and Prevention Review Committee.
Date: February 18, 1998.
Time: 8:30 a.m.
Place: One Washington Circle, One Washington Circle, NW., Washington, DC 20037.
Contact Person: Monica F. Woodfork, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–6470.

Committee Name: Psychobiology, Behavior, and Neuroscience Review Committee.
Date: February 19–February 20, 1998.
Time: 8:30 a.m.
Place: Bethesda Hyatt Regency, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Deborah A. DeMasse, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–3936.

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Committee Name: Child/Adolescent Development, Risk, and Prevention Review Committee.
Date: February 19–February 20, 1998.
Time: 9 a.m.
Place: Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015.
Contact Person: Phyllis D. Artis, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–6470.

Committee Name: Cognitive Functional Neuroscience Review Committee.
Date: February 19–February 20, 1998.
Time: 8 a.m.
Place: One Washington Circle, One Washington Circle, N.W., Washington, DC 20037.
Contact Person: Regina Davis, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–3936.

Committee Name: Child Psychopathology and Treatment Review Committee.
Date: February 19–February 20, 1998.
Time: 8:30 a.m.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Richard Johnson, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–1340.

Committee Name: Molecular, Cellular, and Developmental Neurobiology Review Committee.
Date: February 23–February 24, 1998.
Time: 8:30 a.m.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–3936.

Committee Name: Clinical Centers and Special Projects Review Committee.
Date: February 25–February 27, 1998.
Time: 8:30 a.m.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: W. Gregory Zimmerman, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–4868.

Committee Name: Perception and Cognition Review Committee.
Date: February 26–February 27, 1998.
Time: 9 a.m.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Regina M. Thomas, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–6470.

Committee Name: Mental Health Small Business Research Review Committee.
Date: March 2–March 3, 1998.
Time: 8:30 a.m.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Yolanda M. White, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–1340.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: January 16, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–1713 Filed 1–23–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code, Appendix 2), notice is hereby given of the following National Institute of General Medical Sciences Initial Review Group (IRG) meeting:

Name of IRG: Biomedical Research and Research Training.
Date: March 12–13, 1998.
Time: March 12—8:00 a.m.–6:00 p.m., March 13—8:00 a.m.–adjournment.
Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.
Contact Person: Drs. Carole Latker and Irene Glowinski, Scientific Review Administrators, NIGMS, Natcher Building—Room 1AS–13, Bethesda, Maryland 20892, Telephone: 301–594–3663.
Purpose/Agenda: To evaluate and review research training grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers (MARC); and 93.375, Minority Biomedical Research Support (MBRS)], National Institutes of Health)

Dated: January 16, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–1716 Filed 1–23–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following National Institute of General Medical Sciences Initial Review Group (IRG) meeting:

Name of IRG: MARC Review Subcommittee Meeting.
Date: February 19–20, 1998.
Time: February 19—8:30 a.m.–5:00 p.m. February 20—8:30 a.m.—adjournment.
Place: National Institutes of Health, Natcher Conference Center, Conf. Room A, Bethesda, Maryland 20892.
Contact Person: Dr. Richard Martinez, Scientific Review Administrator, NIGMS, Natcher Building—Room 1AS–19G, Bethesda, Maryland 20892, Telephone: 301–594–2849.
Purpose/Agenda: To evaluate and review research training grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers (MARC); and 93.375, Minority Biomedical Research Support (MBRS)], National Institutes of Health)

Dated: January 16, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–1717 Filed 1–23–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Division of Extramural Activities; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel (Telephone Conference Call).
Date: February 10, 1998.
Time: 2:00 p.m.
Place: National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892.
Contact Person: Dr. Katherine Woodbury-Harris/Mr. Phillip Wiethorn, Scientific Review Administrators, NINDS, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.
Purpose/Agenda: To review and evaluate Phase I SBIR Contract Proposal(s).

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.
Date: March 13, 1998.
Time: 10:00 a.m.
Place: Holiday Inn, Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Phone: (202) 338–4600.
Contact Person: Dr. Lillian Pubols, Chief, Scientific Review Branch, NINDS, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.
Purpose/Agenda: To review and evaluate a grant application.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: January 16, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–1718 Filed 1–22–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting of the Biomedical Library Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biomedical Library Review Committee on March 4–5, 1998, convening at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on March 4 will be open to the public from 8:30 a.m. to approximately 11 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Sharee Pepper at 301–496–4253 two weeks before the meeting.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., and sec. 10(d) of Pub. L. 92–463, the meeting on March 4, will be closed to the public for the review, discussion, and evaluation of individual grant applications from 11 a.m. to approximately 5 p.m., and on March 5 from 8:30 a.m. to adjournment. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of person privacy.

Dr. Sharee Pepper, Health Scientist Administrator, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–4253, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance, National Institutes of Health.)

Dated: January 16, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–1714 Filed 1–23–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings that are being held to review grant applications:

NEUROLOGICAL SCIENCES INITIAL REVIEW GROUP

Study section/contact person	February–March 1998 meetings	Time	Location
Neurology A, Dr. Joe Marwah, 301–435–1253	Mar. 4–6	8:30 a.m	Regency Plaza at Hotel Circle, San Diego, CA.
Neurology B–2, Dr. Herman Teitelbaum, 301–435–1254.	Mar. 4–6	8:30 a.m	Regency Plaza at Hotel Circle, San Diego, CA.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: January 16, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–1715 Filed 1–23–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C.

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Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–0525.

(1) Substance Abuse Prevention and Treatment Block Grant—45 CFR Part 96; Extension With No Change

This interim final rule provides guidance to States regarding the Substance Abuse Prevention and Treatment Block Grant legislation. The rule implements the reporting and recordkeeping requirements of 42 U.S.C. 300x 21–35 & 51–64 by specifying the content of the States' annual report on and application for block grant funds. The reporting burden hours will be counted towards the total burden for the FY 1999 SAPT Block Grant Application Format for which separate OMB approval will be requested. The total annual reporting and recordkeeping burden estimate is shown below:

	No. of respondents	Responses/respondent	Hours/response	Total hour burden
Reporting Burden—45 CFR 96				
Annual Report:				
96.122(f)	60	1	152	9120
96.134(d)	60	1	16	960
State Plan:				
96.122(g)	60	1	162	9720
96.124(c)(1)	60	1	40	2400
96.127(b)	60	1	8	480
96.131(f)	60	1	8	480
96.133(a)	60	1	80	4800
Waivers [1]:				
96.132(d)	60	1	16	960
96.134(b)	60	1	40	2400
96.135(d)	60	1	8	480
Total Reporting Burden	60	1	530	31,800
Recordkeeping Burden—45 CFR 96				
96.129(a)(13)	60	1	16	960

[1] For the purpose of burden calculation, it is assumed that all States would apply for each waiver. In reality it expected that only a small number will apply.

(2) Tobacco Regulation for Substance Abuse Prevention and Treatment—45 CFR 96; Extension With No Change

This final rule provides guidance to States regarding compliance with section 1926 of the Public Health Service Act related to sale and distribution of tobacco to minors. The final rule implements section 1926 by specifying the content of the State's annual report on the provisions of the rule and application for block grant funds. The reporting burden shown below represents the average total hours to assemble, format, and produce the block grant provision on minors' access to tobacco, in accordance with the requirements of 45 CFR 96. These burden hours will be counted towards the total burden for the FY 1999 SAPT Block Grant Application Format for which separate approval will be requested.

	No. of respondents	Responses/respondent	Hours/response	Total hour burden
Annual Report:				
96.122(f)	59	1	0	[1]0
96.130(e)(1–3)	59	1	15	885
State Plan:				
96.122(g)(21)	0	0	0	[2]0
96.130(e)(4, 5)	59	1	14	826
96.130(g)	59	1	5	295
Total			34	2,006

[1] This section describes requirements for the first applicable year which has passed for all States. Therefore, no burden is associated with this section.
[2] This section duplicates the information collection language in section 96.130(e). The burden is shown for 96.130(e).

Written comments and recommendations concerning the proposed information collection should be sent on or before February 25, 1998 to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 19, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–1723 Filed 1–23–98; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration, Agency Information Collection Activities Under Emergency Review by the Office of Management and Budget (OMB)

The Substance Abuse and Mental Health Services Administration has submitted the following request (see below) for emergency OMB review under the Paperwork Reduction Act (44 U.S.C. Chapter 35). OMB approval has been requested by February 1, 1998. A copy of the information collection plans may be obtained by calling the SAMHSA Reports Clearance Officer on (301) 443–0525.

Title: Questions for Callers to NCADI in Response to ONDCP Media Campaign.

OMB Number: 0930–new.

Frequency: On occasion.

Affected public: Individuals.

Number of respondents: 36,750.

Estimated time per respondent: 40 seconds.

Total burden hours: 404.

In order to monitor the volume of calls to the National Clearing House on Drug and Alcohol Information (NCADI) generated by Phase I of ONDCP's National Youth Anti-Drug Media Campaign, SAMHSA will ask callers to NCADI several questions to determine how the caller got the NCADI number, the age of the caller and whether the caller plans to use requested materials with a child. The information collected will help NCADI prepare for the nationwide phase of the ONDCP campaign.

Written comments and recommendations concerning the proposed information collection should be sent within one week of this notice to: Daniel Chenok, Office of Information and Regulatory Affairs, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 19, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–1724 Filed 1–23–98; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. 4281–N–01]

Delegation of Authority

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: This notice delegates to the Assistant Secretary for Community Planning and Development the Secretary's authority to designate two additional urban Empowerment Zones, pursuant to 26 U.S.C. § 1391, as amended by Title IX, Subtitle F, Chapter 1, Section 951 (Additional Empowerment Zones) of the Taxpayer Relief Act of 1997, Public Law 105–34, 111 Stat. 885, approved August 5, 1997.

EFFECTIVE DATE: January 7, 1998.

FOR FURTHER INFORMATION CONTACT: Michael T. Savage, Deputy Director, Office of Economic Development, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 7136, Washington, D.C. 20410–0400, Telephone Number (202) 708–2290. Persons with hearing or speech impairments may also utilize HUD's TTY Number at (202) 708–1455 or the Federal Information Relay Service's TTY Number at (800) 877–8339. Aside from the "800" number, the telephone and TTY numbers listed are not toll-free.

SUPPLEMENTARY INFORMATION: Title XIII, Subchapter C, Part I, Section 1391 (Empowerment Zones, Enterprise Communities and Rural Development Investment Areas) of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, 107 Stat. 543, approved August 10, 1993, codified as 26 U.S.C. § 1391, *et seq.*, authorized the designation of an aggregate of nine Empowerment Zones and 95 Enterprise Communities. Under this Act, the Secretary of Housing and Urban Development was authorized to designate up to six urban Empowerment Zones and up to 65 urban Enterprise Communities, and the Secretary of Agriculture was authorized to designate up to three rural Empowerment Zones and up to 30 rural Enterprise Communities.

On December 21, 1994, President Clinton announced the urban areas that were designated by the department of Housing and Urban Development as Empowerment Zones and Enterprise Communities, and the rural areas that were designated by the Department of Agriculture as Empowerment Zones and Enterprise Communities. On that date, President Clinton also announced the designation of two Supplemental Empowerment Zones and four Enhanced Enterprise Communities. In a notice published in the **Federal Register** on February 23, 1995 at 60 FR 10018, the Department of Housing and Urban Development announced the jurisdictions designated as urban Empowerment Zones, urban Supplemental Empowerment Zones, urban Enhanced Enterprise Communities, and urban Enterprise Communities.

Title IX, Subtitle F, Chapter 1, Section 951 (Additional Empowerment Zones) of the Taxpayer Relief Act of 1997, Public Law 105–34, 111 Stat. 885, approved August 5, 1997, amended 26 U.S.C. § 1391 to allow the Secretary of Housing and Urban Development to designate two additional urban Empowerment Zones. This Act also increased from 750,000 to one million the maximum aggregate population of all urban Empowerment Zones. The designation of the two additional urban Empowerment Zones is to be made within 180 days of the August 5, 1997 enactment of the Act, and will not take effect before January 1, 2000.

Accordingly, the Secretary delegates authority as follows:

Section A. Authority Delegated

The Secretary of the Department of Housing and Urban Development delegates to the Assistant Secretary for Community Planning and Development the authority to designate two additional urban Empowerment Zones, pursuant to 26 U.S.C. § 1391, as amended by Title IX, Subtitle F, Chapter 1, Section 951 (Additional Empowerment Zones) of the Taxpayer Relief Act of 1997, Public Law 105–34, 111 Stat. 885, approved August 5, 1997.

Section B. Authority Excepted

The authority delegated under Section A does not include the power to sue or be sued.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. § 353(d).

Dated: January 7, 1998.

Andrew Cuomo,

Secretary of Housing and Urban Development.

[FR Doc. 98–1676 Filed 1–23–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–1060–00–24 1A]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of meeting.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The advisory board will meet on February 9, 1998, from 7:30 a.m. to 5:30 p.m. local time. On February 10, 1998,

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the advisory board will participate in a field trip from 5:00 a.m. to 4:30 p.m. local time.

Submit written comments no later than close of business February 13, 1998.

ADDRESSES: The advisory board will meet in the Reno Hilton, Reno, Nevada.

Send written comments to Bureau of Land Management, WO–610, Mail Stop 406 LS, 1849 C Street, NW, Washington, DC 20240. See **SUPPLEMENTARY INFORMATION** section for electronic access and filing address.

FOR FURTHER INFORMATION CONTACT: Mary Knapp, Wild Horse and Burro Public Affairs Specialist, (202) 452–5176. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8:00 a.m. and 4:00 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief, Forest Service, on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the meeting is:

Monday, February 9, 1998

—Welcome by BLM Nevada State Director Bob Abbey and BLM Director Pat Shea;
—Fact-finders reports on specific issues related to the wild horse and burro program;
—Discussion of science issues;
—Updates on several reports reviewing the wild horse and burro program;
—Report on the adoption program; and
—Presentation of comments by members of the public.

Tuesday, February 10, 1998

—Field trip to the Kama Mountain Herd Management Area to observe a gather and the immuno-contraception process.

The meeting is open to the public. The advisory board will make detailed minutes of the meeting. BLM will make the minutes available to interested parties who contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Under the Federal advisory committee management regulations (41 CFR 101–6.1015(b)(2)), in exceptional circumstances an agency may give less than 15 days notice of a committee meeting if the reasons for doing so are included in the committee meeting notice published in the **Federal Register**. In this case, BLM made commitments with regard to scheduling the first meeting of the advisory committee based on the approval of the charter within a time frame. Delays in obtaining approval of the charter, which required the signature of two Cabinet secretaries, will result in publication of the meeting notice 14 days prior to the committee meeting.

II. Public Comment Procedures

Members of the public may make oral statements to the advisory board on February 9, 1998 at the appropriate point in the agenda, which is anticipated to occur at 3:30 p.m. local time. Persons wishing to make statements should register with BLM by noon on February 9, 1998, at the meeting location. Depending on the number of speakers, the advisory board may limit the length of presentations. Speakers should address specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section or bring a written copy to the meeting.

Participation in the advisory board meeting is not a prerequisite for submittal of written comments. BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, commenters should submit two copies of their written comments where feasible. BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, we intend to make them available in their entirety, including your name and address (or your e-mail address if you file electronically). However, if you do not want us to release your name and address (or e-mail address) in response to a FOIA request, you must state this prominently at the beginning of your comment. We will honor your wish to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organization or businesses, will be released in their entirety, including names and addresses (or e-mail addresses).

Electronic Access and Filing Address

Commenters may transmit comments electronically via the Internet to: mknapp@wo.blm.gov. Please submit comments as an ASCII file and void the use of special characters or encryption. Please include the identifier "WH&B" in the subject of your message and your name and address in the body of your message.

Dated: January 22, 1998.

Pat Shea,

Director, Bureau of Land Management.

[FR Doc. 98–1832 Filed 1–23–98; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–020–05–1430–01: G–0078]

Realty Action; Oregon

AGENCY: Bureau of Land Management (BLM), DOI.

ACTION: Notice of Realty Action, Lease of Public Land in Harney County, Oregon.

SUMMARY: The following described public land is being considered for lease under Section 302 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1732), at not less than fair market value.

Willamette Meridian

T.20S., R.29E.,
Sec. 34, S½NE¼SE¼SE¼SW¼, SE¼SE¼SE¼SW¼.

The area described aggregates 3.75 acres, more or less, in Harney County, Oregon.

The purpose of the lease would be to authorize a longstanding occupancy use. The term of the proposed lease would be for the lifetime of the proponents, Alan and Ethel Bossuot, who own improvements on the property. The improvements include a cabin, outbuildings, a bridge and corrals, which have existed on the property for at least 40 years. The improvements were originally placed on public land inadvertently by the Bossuots and their predecessors. For these reasons, the land would not be offered for lease on a competitive basis.

The lease would be subject to Federal, State, and local ordinances applicable to the premises in addition to other conditions deemed necessary to protect the public interest.

The proposal conforms with the Three Rivers Resource Management Plan. Based on a review of this plan and other factors, the land has been determined suitable for lease under the above cited authority.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register** interested persons may submit comments regarding the proposed lease to the Three Rivers Resource Area Manager at the address described below. Comments will be considered in the NEPA analysis to be prepared for this proposal.

ADDRESSES: Comments should be submitted to the Three Rivers Resource Area Manager, HC 74–12533, Hwy 20 West, Hines, Oregon 97738.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this proposal is available from Craig M. Hansen, Area Manager or Skip Renchler, Realty Specialist, Three Rivers Resource Area at the above address, phone (541) 573–4400.

Dated: January 14, 1998.

Craig M. Hansen,

Area Manager.

[FR Doc. 98–1706 Filed 1–23–98; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

National Park Service

Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area; Operation of Marina Services

SUMMARY: The National Park Service will shortly be releasing a concession Prospectus to continue the operation of marina services at the Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area located in northern California. The existing business includes related services such as food, merchandise, and camping and is located in two separate sections of the Whiskeytown Unit. Most services are provided seasonally from approximately the last week in May to the first week in September. The annual gross receipts average about $500,000. The new contract will be for 10 years and will require an improvement program estimated to cost about $178,800. There is an existing concessioner that has operated satisfactorily under the existing contract and has a right of preference in renewal.

SUPPLEMENTARY INFORMATION: The cost for purchasing a Prospectus is $30.00. Parties interested in obtaining a copy should send a check or money order, NO CASH, payable to "National Park Service" to the following address: National Park Service, Pacific Great Basin Support Office, Office of Concession Program Management, 600 Harrison Street, Suite 600, San Francisco, California 94107–1372, "Mail Room Do Not Open".

Please include a mailing address indicating where to send the prospectus. Inquiries may be directed to Ms. Teresa Jackson, Office of Concession Program Management at (415) 427–1369.

Dated: January 12, 1998.

John J. Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 98–1733 Filed 1–23–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Impact Statement; Backcountry and Wilderness Plan for Joshua Tree National Park, California; Extension of Public Comment Period

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190 as amended), the National Park Service, Department of the Interior, has prepared a Draft Environmental Impact Statement assessing alternatives for, and potential impacts of, a proposed Backcountry and Wilderness Management Plan for Joshua Tree National Park, California. In deference to public interest expressed to date from local governmental agencies, organizations, and other interested parties, the original 90 day public comment period has been extended for one month. Written comments on the draft document must now be received or post-marked not later than February 28, 1998, and should be directed to the Superintendent, Joshua Tree National Park, 74485 National Park Drive, Twentynine Palms, California, 92277.

Dated: January 15, 1998.

Patricia L. Neubacher,

Acting Regional Director, Pacific West.

[FR Doc. 98–1734 Filed 1–23–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Denali National Park and the Chairperson of the Denali Subsistence Resource Commission announce a forthcoming meeting of the Denali National Park Subsistence Resource Commission.

The following agenda items will be discussed:

(1) Call to order by the Chair.
(2) Roll call and confirmation of quorum.
(3) Superintendent's welcome and introductions.
(4) Approval of minutes of last meeting.
(5) Additions and corrections to the agenda.
(6) New Business:
  a. Review federal subsistence programs.
  b. Individual customary and traditional determination process.
  c. Natural and cultural resource studies.
  d. Agency reports.
(7) Old Business:
  a. Draft Subsistence Management Plan.
  b. ATC access.
  c. Harvest reports.
(8) Public and other agency comments.
(9) Set time and place of next SRC meeting.
(10) Adjournment.

DATES: The meeting will be held Friday, February 13, 1998. The meeting will begin at 9 a.m. and end at 6 p.m.

LOCATION: The meeting will be held at North Star Inn, Conference Room, Healy, Alaska.

FOR FURTHER INFORMATION CONTACT: Steve Martin, Superintendent or Hollis Twitchell, Subsistence Coordinator, Denali National Park, PO Box 9, Denali Park, Alaska 99755. Phone (907) 683–2294.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

Paul R. Anderson,

Regional Director.

[FR Doc. 98–1736 Filed 1–23–98; 8:45 am]

BILLING CODE 4310–70–P

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DEPARTMENT OF THE INTERIOR

National Park Service

Mississippi River Coordinating Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Mississippi River Coordinating Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE, TIME, AND ADDRESS: Wednesday, February 18, 1998; 6:30 p.m. to 9 p.m.; Council Chambers, Metropolitan Council, 230 East Fifth Street, St. Paul, Minnesota.

An agenda for the meeting will be available by January 30, 1998. Contact the Superintendent of the Mississippi National River and Recreation Area (MNRRA) at the address listed below. Public statements about matters related to the MNRRA will be taken.

FOR FURTHER INFORMATION CONTACT: Superintendent JoAnn Kyral, Mississippi National River and Recreation Area, 175 East Fifth Street, Suite 418, St. Paul, Minnesota 55101 (612–290–4160).

SUPPLEMENTARY INFORMATION: The Mississippi River Coordinating Commission was established by Pub. L. 100–696, dated November 18, 1988.

Dated: January 14, 1998.

David N. Given,

Deputy Regional Director, Midwest Region.

[FR Doc. 98–1732 Filed 1–23–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 17, 1998. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by February 6, 1998.

Carol D. Shull,

Keeper of the National Register.

Alaska

Valdez-Cordova Borough-Census Area

Valdez Trail--Copper Bluff Segment (Valdez Trail MPS)
Milepost 106.5, Richardson Hwy,
Copper City vicinity, 98000077

Arizona

Pima County

Barrio El Hoyo,
Roughly bounded by Cushing St., Sixth Ave., Twenty-Second St., and US–10,
Tucson, 98000079

Yavapai County

Cottage Hotel,
Jct. of First St. and Shoeny Ave.,
Seligman, 98000080

Colorado

Denver County

Nordlund House,
330 Birch St.,
Denver, 98000081

Florida

Escambia County

Barrancas National Cemetery (Civil War Era Cemeteries MPS)
80 Hovey Rd.,
Pensacola, 98000083

Leon County

Three Stars,
1111 Paul Russell Rd.,
Tallahassee, 98000082

Kansas

Harvey County

Mennonite Settler Statue, The,
Athletic Park Dr.,
Newton, 98000084

Kentucky

Bath County

Ramey Mound,
Address Restricted,
Sharpsburg vicinity, 98000089

Boyle County

Clifton Baptist Church Complex,
Clifton Rd., 1 mi. NE of KY 52,
Clifton vicinity, 98000085

Forkland School and Gymnasium,
Jct. of KY 37 and Curtis Rd.,
Gravel Switch vicinity, 98000086

Penn's Store,
0.1 mi. W of KY 243, on Boyle-Casey County line,
Gravel Switch vicinity, 98000094

Fayette County

Mt. Horeb Archeological District,
Address Restricted,
Lexington vicinity, 98000088

Rockefeller Mound,
Address Restricted,
Lexington vicinity, 98000087

Madison County

Cornelison Mound,
Address Restricted,
Ruthton vicinity, 98000090

Coy Site Complex,
Address Restricted,
Richmond vicinity, 98000091

Robbins Mound,
Address Restricted,
Ruthton vicinity, 98000092

Montgomery County

Wright—Greene Mound Complex,
Address Restricted,
Mount Sterling vicinity, 98000093

Massachusetts

Bristol County

Fisher—Richardson House,
354 Willow St.,
Mansfield, 98000096

Middlesex County

James, Joseph K., House
(Somerville MPS)
83 Belmont St.,
Somerville, 98000095

New Jersey

Cape May County

Beesley, Thomas, Jr., House,
605 NJ 9 N,
Middle Township, 98000098

Hunterdon County

New Market—Linvale-Snydertown Historic District,
Roughly along NJ 31, Linvale, Snydertown, and Woodsville Rds.,
East and West Amwell Townships, 98000097

Morris County

Smith, Bridget, House,
124 Randolph Ave.,
Mine Hill Township, 98000099

Ohio

Preble County

Camden City Hall and Opera House,
54 W. Central Ave.,
Camden, 98000100

Ross County

Mace, Henry, House,
17380 OH 104 N,
Chillicothe vicinity, 98000101

Texas

Bexar County

St. Mark's Episcopal Church,
315 E. Pecan St.,
San Antonio, 98000103

Tarrant County

Fort Worth Club Building—1916,
608-610 Main St.,
Fort Worth, 98000102

[FR Doc. 98–1757 Filed 1–23–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of a Plan of Operations and Environmental Assessment for a Plan of Operations, Texas Energy and Environmental, Inc. Plan of Operations for the Dunn-McCampbell "A" Lease, Padre Island National Seashore, Kleberg County, Texas

The National Park Service has received from Texas Energy and Environmental, Inc., a Plan of Operations for the existing wells and production facilities on the Dunn-McCampbell "A" Lease at Padre Island National Seashore, Kleberg County, Texas.

Pursuant to § 9.52(b) of Title 36 of the Code of Federal Regulations, part 9, subpart B (36 CFR 9B); the Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Padre Island National Seashore, 9405 South Padre Island Drive, Corpus Christi, Texas. Copies of the documents are available from the Superintendent, Padre Island National Seashore, 9405 South Padre Island Drive, Corpus Christi, Texas 78418, and will be sent upon request.

John E. Miller,

Superintendent, Padre Island National Seashore.

[FR Doc. 98–1735 Filed 1–23–98; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–74]

Certain Rotatable Photograph and Card Display Units, and Components Therefor; Notice of Rescission of Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has rescinded the exclusion order previously issued in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: T. Spence Chubb, Supervisory Attorney, Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2575.

AUTHORITY: The authority for rescinding the exclusion order in this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in § 210.76 of the Commission's rules of practice and procedure, 19 CFR 210.76 (1997).

SUPPLEMENTARY INFORMATION: The Commission issued its exclusion order in this investigation on November 21, 1980, based upon a finding that section 337 had been violated by several entities. The order directed the exclusion from entry into the United States of products that infringed two U.S. patents, a registered trademark, and a common law trademark. The two patents at issue have since expired. The Commission has recently obtained information that the complainants are no longer in business and have no interest in maintaining the two trademarks that are covered by the exclusion order. Accordingly, the Commission determined under section 337(k)(1), 19 U.S.C. 1337(k)(1), that the conditions that led to the issuance of the exclusion order no longer exist. The Commission has also determined to waive the procedural provisions of 19 CFR 210.76 for rescission of Commission orders.

Copies of the Commission's order and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

Issued: January 16, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–1740 Filed 1–23–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *A. Steiert & Sons, Inc.*, Civ. A. No. 98–0104, was lodged on January 9, 1998, with the United States District Court for the Eastern District of Pennsylvania. The consent decree resolves the claims of the United States under Sections 106(a), 107(a), and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), for reimbursement of response costs incurred at the North Penn Area 2 Superfund Site located in Hatfield Township, Montgomery County, Pennsylvania and for declaratory judgment as to liability that will be binding in actions to recover further response costs related to the Site. The consent decree obligates A. Steiert & Sons, Inc. to pay $58,000 in reimbursement of response costs incurred and to be incurred by EPA in responding to contamination at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C., 20530, and should refer to *United States* v. *A. Steiert & Sons, Inc.*, DOJ Ref. # 90–11–3–805A.

The consent decree may be examined at the office of the United States Attorney, 616 Chestnut Street, Philadelphia, Pennsylvania 19106; the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA; and at the Consent Decree Library, 1120 G Street, NW 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $7.00 (25 cents per page reproduction cost), payable to the Consent Decree library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–1707 Filed 1–23–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Consent Decree Under The Clean Water Act

Notice is hereby given that a consent decree in *United States* v. *Atlantic Pipeline Co. And Sun Pipeline Co.* Civil

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Action No. 96–583 (W.D. Pa.), was lodged with the United States District Court for the Western District of Pennsylvania on December 30, 1997.

In this action the United States sought civil penalties under Section 311(b)(3) of the Clean Water Act, 33 U.S.C. § 1321(b)(3) for a discharge of gasoline from a pipeline into a pond and unnamed tributary of the West Branch of Richard Run near the Village of Robinson, Pennsylvania in May 1994. The consent decree provides that the defendants will pay a civil penalty of $40,000 to the United States. The defendants have already paid a civil penalty of $40,000 to the Commonwealth of Pennsylvania regarding the subject discharge.

The Department of Justice will accept written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *United States* v. *Atlantic Pipeline Co. And Sun Pipeline Co.*, DJ Ref. #90–5–1–1–4317.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Pennsylvania, 633 U.S. Post Office and Courthouse, Pittsburgh, PA 15219; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the Consent Decree may also be obtained in person or by mail at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202–624–0892). When requesting a copy by mail, please enclose a check in the amount of $3.75 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice.

[FR Doc. 98–1709 Filed 1–23–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that a proposed Settlement Order in *United States* v. *City and County of San Francisco, CA, et al.*, No. 97–10030–ST (D. Oregon), was lodged on September 30, 1997, with the United States District Court for the District of Oregon. With regard to the Defendants, the Consent Decree resolves a claim filed by the United States on behalf of the United States Environmental Protection Agency ("EPA") pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, *as amended*, 42 U.S.C. §§ 9601, *et seq.*

The United States entered into the Settlement Order in connection with the Environmental Pacific Corporation Site located in Amity, Yamill County, Oregon, approximately 42 miles southwest of Portland. The Settlement Order provides that the Settling Defendant will reimburse the United States a total of $815.89 for past costs incurred by the United States at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Settlement Order. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City and County of San Francisco, CA, et al.*, DOJ Ref. #90–11–2–1080B.

The proposed Settlement Order may be examined at the office of the United States Attorney, 888 SW. 5th Avenue, Portland, Oregon 97204; the Region 10 office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy refer to the referenced case and enclose a check in the amount of $5.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section.

[FR Doc. 98–1708 Filed 1–23–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Privatized Corrections Contracting Mandate

AGENCY: Federal Bureau of Prisons, Department of Justice.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

Proposed Action: The U.S. Department of Justice, Federal Bureau of Prisons (Bureau) has been given the responsibility for accommodating within the Federal Prison system inmates currently housed by the District of Columbia's Department of Corrections (DCDC). In doing so, the Bureau has been mandated by Congress in the D.C. Revitalization Act to seek private contractors to accommodate a portion of the DCDC's inmate population. Over the next several months, the Bureau will prepare Request for Proposals to be sent to prospective contractors requesting proposals to house in private contract facilities approximately 2,200 DCDC sentenced felons by December 31, 1999 and at least 50 percent of all DCDC sentenced felons by September 30, 2003.

To ensure compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau is undertaking preparation of a Program Draft Environmental Impact Statement (DEIS). Topics to be studied as part of the DEIS include, but are not limited to: services, cultural resources, land uses, social and economic factors, hazardous materials, air and noise quality, among others. In furtherance of NEPA, the Bureau will host a Scoping Meeting which all interested persons are invited to attend. The purpose of this Scoping Meeting is to afford the public, regulatory agency representatives, and elected officials an opportunity to learn about and voice their interests and environmental concerns regarding the Bureau's implementation of the required privatization action.

The Scoping Meeting is being held to provide for timely public comments and understanding of Federal plans and programs with possible environmental consequences required by NEPA. The Scoping Meeting will be held 7:00 P.M., Wednesday, January 28, 1998 at St. Luke's Church (church hall meeting room), 4925 East Capitol Street, SE., Washington, DC.

Alteratives: In developing the DEIS, the options of "no action" and "alternative sites" for the proposed facility will be fully and thoroughly examined.

Scoping Process: During the preparation of the DEIS, there will be numerous other opportunities for public involvement.

DEIS Preparation: Public notice will be given concerning the availability of the DEIS for public review and comment.

Address: Questions concerning the proposed action and the DEIS can be answered by: David J. Dorworth, Chief, Site Selection & Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, N.W., Washington, D.C. 20534, Telephone: (202) 514–6470, Telefacsimile: (202) 616–6024, ddorworth@BOP.gov.

Dated: January 21, 1998.

Jeff B. Ratliff,

Acting Chief, Site Selection and Environmental Review Branch.

[FR Doc. 98–1794 Filed 1–23–98; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF LABOR

Employment and Training Administration

Revised Schedule of Remuneration for the UCX Program

Under Section 8521(a)(2) of title 5 of the United States Code, the Secretary of Labor is required to issue from time to time a Schedule of Remuneration specifying the pay and allowances for each pay grade of members of the military services. The schedules are used to calculate the base period wages and benefits payable under the program of Unemployment Compensation for Ex-servicemembers (UCX Program).

The revised schedule published with this Notice reflects increases in military pay and allowances which were effective in January 1998.

Accordingly, the following new Schedule of Remuneration, issued pursuant to 20 CFR 614.12, applies to "First Claims" for UCX which are effective beginning with the first day of the first week which begins after April 4, 1998.

Pay grade	Monthly rate
(1) Commissioned Officers:	
0–10	$11,402
0–9	11,364
0–8	10,462
0–7	9,457
0–6	8,082
0–5	6,773
0–4	5,556
0–3	4,491
0–2	3,586
0–1	2,713
(2) Commissioned Officers With Over 4 Years Active Duty As An Enlisted Member Or Warrant Officer:	
0–3E	5,146
0–2E	4,282
0–1E	3,549
(3) Warrant Officers:	
W–5	6,035
W–4	5,154
W–3	4,309
W–2	3,666
W–1	3,176
(4) Enlisted Personnel:	
E–9	4,672
E–8	3,958
E–7	3,457
E–6	3,026
E–5	2,588
E–4	2,156
E–3	1,897
E–2	1,791
E–1	1,571

The publication of this new Schedule of Remuneration does not revoke any prior schedule or change the period of time any prior schedule was in effect.

Signed at Washington, DC., on January 15, 1998.

Raymond J. Uhalde,

Acting Assistant Secretary of Labor.

[FR Doc. 98–1787 Filed 1–23–98; 8:45 am]

BILLING CODE 4510–30–M

PENSION AND WELFARE BENEFITS ADMINISTRATION

[Application No. D–10429]

Notice of Proposed Individual Exemption to Amend and Replace Prohibited Transaction Exemption (PTE) 96–14 Involving Morgan Stanley & Co. Incorporated (MS&Co) and Morgan Stanley Trust Company (MSTC), Located in New York, NY

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Notice of proposed individual exemption to modify and replace PTE 96–14.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed individual exemption which, if granted, would amend and replace PTE 96–14 (61 FR 10032, March 12, 1996). PTE 96–14, as clarified by a Notice of Technical Correction dated June 4, 1996 (61 FR 28243), permits the lending of securities to MS&Co and to any other U.S. registered broker-dealers affiliated with MSTC (the Affiliated Broker-Dealers; collectively, the MS Broker-Dealers) by employee benefit plans with respect to which the MS Broker-Dealer who is borrowing such securities is a party in interest or for which MSTC acts as directed trustee or custodian and securities lending agent. In addition, PTE 96–14 permits MSTC to receive compensation in connection with securities lending transactions. These transactions are described in a notice of pendency that was published in the **Federal Register** on August 11, 1995 at 60 FR 41118. PTE 96–14 is effective as of March 12, 1996.

If granted, the proposed exemption would replace PTE 96–14 but would incorporate by reference the facts, representations and virtually all of the conditions that are contained in the notice, the final exemption and the technical correction. However, Condition (9) of PTE 96–14, which has been redesignated herein as Condition (12), would be amended. Condition (9) of PTE 96–14 provides that—

> Only plans whose total assets have a market value of at least $50 million will be permitted to lend securities to the MS Broker-Dealers. In the case of 2 or more plans maintained by a single employer or controlled group of employers, the $50 million requirement may be met by aggregating the assets of such plans if the assets are commingled for investment purposes in a single master trust;

The applicants have requested that this condition be modified to allow two or more plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Plans) as well as two or more plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Plans), whose assets are invested in a single, commingled investment vehicle that is managed by a fiduciary which is independent of the MS Broker-Dealers, to aggregate their assets within the pooled investment vehicle in order to satisfy the $50 million investment threshold for lending securities to MS Broker-Dealers. However, the fiduciary exercising investment discretion over the pooled vehicle, particularly if the fiduciary is an outside manager, must possess some minimum level of investor sophistication by satisfying an "outside business" test.

In addition, the Department has decided to revise certain of the conditions contained in PTE 96–14. In this regard, the Department has added several new conditions to the pendency notice relating to such matters as disclosures, compensation, outside

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borrowers and recordkeeping. The Department has also modified certain of the existing conditions and provided definitions of the terms "affiliate" and "control."

The proposed exemption would affect participants and beneficiaries of, and fiduciaries with respect to plans engaging in securities lending transactions with the MS Broker-Dealers.

EFFECTIVE DATE: If granted, the proposed exemption would be effective as of March 12, 1996.

DATES: Written comments and requests for a public hearing should be received by the Department on or before March 27, 1998.

ADDRESSES: All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Application No. D–10429. The application pertaining to the proposed exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 219–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption that would amend and replace PTE 96–14. PTE 96–14 provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code. The proposed exemption was requested in an application filed on behalf of MS&Co and MSTC (collectively, the Applicants) pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this proposed exemption is being issued solely by the Department.

Specifically, PTE 96–14 provides exemptive relief from sections 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, with respect to the lending of securities to MS&Co and to any other MS Broker-Dealers by employee benefit plans with respect to which the MS Broker-Dealer who is borrowing such securities is a party in interest or for which MSTC acts as a directed trustee or custodian and securities lending agent and to the receipt of compensation by MSTC in connection with these transactions, provided certain enumerated conditions are met.

Subsequent to the granting of PTE 96–14, the Applicants informed the Department that the specific wording of Condition (9) of the exemption would preclude master trusts, group trusts, bank collective investment funds, insurance company pooled separate accounts and other commingled investment vehicles from lending securities to the MS Broker-Dealers unless each plan participating therein had assets with an aggregate fair market value of at least $50 million. However, the Applicants note that Representation 25 of the Summary of Facts and Representations of the proposed exemption states that the intent of the $50 million restriction is to ensure that any lending to the MS Broker-Dealers will be monitored by an independent fiduciary of above average experience and sophistication in matters relating to securities lending. To the extent that the purpose of this restriction is to ensure the sophistication of the fiduciary who is making the lending decision on behalf of plans, the Applicants believe that the commingled investment vehicles whose total assets have an aggregate market value of at least $50 million and which are managed by a fiduciary who is independent of the MS Broker-Dealers should also be permitted to lend securities to such broker-dealers, provided that such commingled entities have not been formed for the sole purpose of making loans of securities. Although the Department agrees with the Applicant, it has proposed certain additional requirements for pooled arrangements involving the assets of either Related Plans or Unrelated Plans. These additional requirements are as follows:

A. Related Plans

With respect to two or more plans, which are maintained by the same employer, controlled group of corporations or employee organization, whose assets are invested in a master trust or any other form of plan asset look-through entity, which entity is engaged in securities lending arrangements with the MS Broker-Dealers, the Department notes that the $50 million threshold may be satisfied by aggregating the assets of the investing plans within the pooled vehicle. In this regard, the Department also notes that an employer may retain an independent investment manager to manage all or a portion of plan assets invested in a master trust. Under these circumstances, the fiduciary must have total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

B. Unrelated Plans

For two or more plans which are not maintained by the same employer, controlled group of corporations or employee organization, whose assets are invested in a group trust or other plan asset look-through entity, which entity is engaged in securities lending arrangements with the MS Broker-Dealers, the $50 million threshold will apply to the aggregate assets of such entity so long as the fiduciary responsible for making the investment decision on behalf of the group trust or other plan assets look-through entity is not the sponsoring employer, a member of the controlled group of corporations, the employee organization, or an affiliate, and has full investment responsibility [1] with respect to the plan assets invested therein. Also, the fiduciary must have total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

Accordingly, Condition (9) of PTE 96–14, which has been redesignated herein as Condition (12), has been revised to read as follows:

(12) Only plans with total assets having an aggregate market value of at least $50 million will be permitted to lend securities to the MS Broker-Dealers; provided however that—

(a) In the case of two or more plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with the MS Broker-Dealers, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million, or

(b) In the case of two or more plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the MS Broker-Dealers, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Is neither the sponsoring employer, a member of the controlled group of corporations, the employee organization, nor an affiliate,

(ii) Has full investment responsibility with respect to plan assets invested therein, and

(iii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million;

(In addition, none of the entities described above must be formed for the sole purpose of making loans of securities.)

As previously noted, in addition to the foregoing modifications, the Department has determined to revise certain of the conditions contained in PTE 96–14. In this regard, the Department has revised or added new conditions in Section I of the proposal pertaining to (a) The arm's length nature of each loan of securities by a client-plan to an MS Broker-Dealer (Condition 2); (b) approval of the general terms of the securities loan agreement by an independent fiduciary (Condition 3); (c) disclosures concerning the financial condition of the MS Broker-Dealer (Condition 7); (d) the compensation paid to a client-plan for lending securities (Condition 8); (e) indemnification and holding harmless of the client-plan by the MS Broker-Dealer against all losses, damages, liabilities, costs and expenses (Condition 10); (f) a requirement that MSTC will not make a securities loan to any MS Broker-Dealer on any day on which the market value of the securities proposed to be loaned, when added to the market value of all client-plan securities subject to outstanding loans to MS Broker-Dealers, exceeds 50 percent of the market value of all client-plan securities that are subject to securities loans, including the market value of securities proposed to be loaned to the MS Broker-Dealer (Condition 13); (g) the receipt of monthly reports by a client-plan's independent fiduciary relating to securities lending transactions engaged in by the client-plan (Condition 16); and (h) a general recordkeeping requirement that is to be complied with by MS&Co and its affiliates (Section II). In addition, the Department has defined the terms "affiliate" and "control" in Section III.

The new or revised language, which has been incorporated herein, appears in the Summary of Facts and Representations underlying PTE 96–14 as well as in the original exemption application. For language that did not appear in these documents, the Department consulted with the Applicants before making the revisions. This new or modified language is set forth as follows:

Section I. Covered Transactions

(New or Revised Conditions)

(2) The terms of each loan of securities by a client-plan to the MS Broker-Dealer will be at least as favorable to such plan as those of a comparable arm's length transaction between unrelated parties;

(3) Any arrangement for MSTC to lend plan securities to the MS Broker-Dealers will be approved in advance by a plan fiduciary who is independent of MSTC and the MS Broker-Dealers; (In this regard, the independent fiduciary also will approve the general terms of the securities loan agreement between the client-plan and the MS Broker-Dealer, the specific terms of which are negotiated and entered into by MSTC which will act as a liaison between the lender and the borrower to facilitate the lending transaction.)

(7) Prior to entering into a loan agreement, the MS Broker-Dealer will furnish its most recent publicly-available audited and unaudited financial statements to MSTC, which, in turn, will provide the statements to the client-plan before the plan is asked to approve the terms of the loan agreement. The loan agreement will contain a requirement that the MS Broker-Dealer must promptly notify lenders at the time of a loan of any material adverse changes in its financial condition since the date of the most recently furnished financial statements. If any such changes have taken place, MSTC will not make any further loans to the MS Broker-Dealer unless an independent fiduciary of the client-plan approves the loan in view of the changed financial condition;

(8) In return for lending securities, the client-plan either will —

(a) Receive a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan, or

(b) Have the opportunity to derive compensation through the investment of cash collateral; (Under such circumstances, the client-plan may pay a loan rebate or similar fee to the borrowing MS Broker-Dealer, if such fee is not greater than the fee the client-plan would pay in a comparable arm's length transaction with an unrelated party.)

(10) The MS Broker-Dealer will indemnify and hold harmless each lending client-plan against any and all losses, damages, liabilities, costs and expenses (including attorney's fees) incurred by such plan in connection with the lending of securities to the MS Broker-Dealers;

(13) No loan of securities will be made by MSTC as securities lending agent to any MS Broker-Dealer on any day on which the market value of the securities proposed to be loaned, when added to the market value of all client-plan securities subject to outstanding loans to MS Broker-Dealers, exceeds 50 percent of the market value of all client-plan securities subject to securities loans, including the market value of securities proposed to be loaned to the MS Broker-Dealer. (For purposes of this paragraph, market value shall be determined in U.S. dollars, based on the last preceding business day's closing prices of the securities and the last preceding business day's closing foreign exchange rates, if applicable.);

(16) Each client-plan will receive monthly reports with respect to securities lending transactions so that an independent fiduciary of a client-plan may monitor such transactions with the MS Broker-Dealer;

Section II. General Conditions

(1) The MS Broker-Dealers will maintain, or cause to be maintained, for a period of six years from the date of such transactions, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (2) to determine whether the conditions of the exemption have been met, except that—

(a) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the MS Broker-Dealers, the records are lost or destroyed prior to the end of the six year period, and

(b) No party in interest other than the MS Broker-Dealers shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (2);

(2) Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (1) are unconditionally available at their customary location during normal business hours by—

(a) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission (the SEC),

[1] For purposes of this exemption, the term "full investment responsibility" means that the fiduciary responsible for making the investment decision has and exercises discretionary management authority over all of the assets of the group trust or other plan assets look-through entity.

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(b) Any fiduciary of a participating client-plan or any duly authorized representative of such fiduciary, and

(c) Any contributing employer to any participating client-plan or any duly authorized employee representative of such employer;

(3) None of the persons described above in paragraphs (b)-(c) of paragraph (2) are authorized to examine the trade secrets of MS&Co or its affiliates or commercial or financial information which is privileged or confidential.

Section III. Definitions.

For purposes of this proposed exemption,

(1) An "affiliate" of a person includes—

(a) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) Any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and

(c) Any corporation or partnership of which such other person is an officer, director or partner.

(2) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Notice To Interested Persons

Notice of the proposed exemption will be mailed by first class mail to each plan participating in securities lending arrangements with the MS Broker-Dealers within 30 days of the publication of the notice of pendency in the **Federal Register**. The notice will contain a copy of the notice of proposed exemption as published in the **Federal Register** and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 60 days of the publication of the proposed exemption the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) This proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This proposed exemption, if granted, is subject to the express condition that the Summary of Facts and Representations set forth in the notice of proposed exemption relating to PTE 96–14, as amended by this notice, accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within 30 days after the publication of this proposed exemption in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the referenced applications at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990).

Section I. Covered Transactions

If the exemption is granted, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective March 12, 1996, to the lending of securities to Morgan Stanley & Co. Incorporated (MS&Co) and to any other U.S. registered broker-dealers affiliated with Morgan Stanley Trust Company (the Affiliated Broker-Dealer; collectively, the MS Broker-Dealers) by employee benefit plans with respect to which the MS Broker-Dealer who is borrowing such securities is a party in interest or for which Morgan Stanley Trust Company (MSTC) acts as directed trustee or custodian and securities lending agent and to the receipt of compensation by MSTC in connection with these transactions, provided that the following conditions are met:

(1) Neither MS&Co nor MSTC will have any discretionary authority or control over a client-plan's assets involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(2) The terms of each loan of securities by a client-plan to the MS Broker-Dealer will be at least as favorable to such plan as those of a comparable arm's length transaction between unrelated parties;

(3) Any arrangement for MSTC to lend plan securities to the MS Broker-Dealers will be approved in advance by a plan fiduciary who is independent of MSTC and the MS Broker-Dealers;[2] (In this regard, the independent fiduciary also will approve the general terms of the securities loan agreement between the client-plan and the MS Broker-Dealer, the specific terms of which will be negotiated and entered into by MSTC which will act as a liaison between the lender and the borrower to facilitate the lending transaction.)

(4) A client-plan may terminate the arrangement at any time without penalty on five business days notice;

(5) The client-plans will receive collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, bank letters of credit or other collateral permitted under PTE 81–6 (46 FR 7527, January 23, 1981) or any successor, from the MS Broker-Dealers by physical delivery, book entry in a securities depository, wire transfer or similar means by the close of business on or before the day the loaned securities are delivered to the MS Broker-Dealers;

(6) The market value of the collateral will initially equal at least 102 percent of the market value of the loaned securities and, if the market value of the collateral falls below 100 percent, the MS Broker-Dealers will deliver additional collateral on the following day such that the market value of the collateral will again equal 102 percent;

(7) Prior to entering into a loan agreement, the MS Broker-Dealer will furnish its most recent publicly-available audited and unaudited financial statements to MSTC, which, in turn, will provide the statements to the client-plan before the plan is asked to approve the terms of the loan agreement. The loan agreement will contain a requirement that the MS Broker-Dealer must promptly notify lenders at the time of a loan of any material adverse changes in its financial condition since the date of the most recently furnished financial statements. If any such changes have taken place, MSTC will not make any further loans to the MS Broker-Dealer unless an independent fiduciary of the client-plan approves the loan in view of the changed financial condition;

(8) In return for lending securities, the client-plan either will—

(a) Receive a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan, or

(b) Have the opportunity to derive compensation through the investment of cash collateral. (Under such circumstances, the client-plan may pay a loan rebate or similar fee to the borrowing MS Broker-Dealer, if such fee is not greater than the fee the Client Plan would pay in a comparable arm's length transaction with an unrelated party.)

(9) All procedures regarding the securities lending activities will, at a minimum, conform to the applicable provisions of Prohibited Transaction Exemption (PTE) 81–6 and PTE 82–63 (47 FR 14804, April 6, 1992);

(10) The MS Broker-Dealer will indemnify and hold harmless each lending client-plan against any and all losses, damages, liabilities, costs and expenses (including attorney's fees) incurred by such plan in connection with the lending of securities to the MS Broker-Dealers;

(11) The client-plan will receive the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities, or other distributions;

(12) Only plans with total assets having an aggregate market value of at least $50 million will be permitted to lend securities to the MS Broker-Dealers; provided, however that—

(a) In the case of two or more plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with the MS Broker-Dealers, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million, or

(b) In the case of two or more plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the MS Broker-Dealers, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Is neither the sponsoring employer, a member of the controlled group of corporations, the employee organization, nor an affiliate,

(ii) Has full investment responsibility with respect to plan assets invested therein, and

(iii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million; (In addition, none of the entities described above must be formed for the sole purpose of making loans of securities.)

(13) No loan of securities will be made by MSTC as securities lending agent to any MS Broker-Dealer on any day on which the market value of the securities proposed to be loaned, when added to the market value of all client-plan securities subject to outstanding loans to MS Broker-Dealers, exceeds 50 percent of the market value of all client-plan securities subject to securities loans, including the market value of securities proposed to be loaned to the MS Broker-Dealer. (For purposes of this paragraph, market value shall be determined in U.S. dollars, based on the last preceding business day's closing prices of the securities and the last preceding business day's closing foreign exchange rates, if applicable.);

(14) With regard to the "exclusive borrowing" agreement, the MS Broker-Dealer will directly negotiate the agreement with a plan fiduciary who is independent of the MS Broker-Dealers and MSTC, and such agreement may be terminated by either party to the agreement at any time;

(15) Prior to any plan's approval of the lending of its securities to an MS Broker-Dealer, a copy of this exemption (and the notice of pendency) will be provided to the client-plan;

(16) Each client-plan will receive monthly reports with respect to securities lending transactions so that an independent fiduciary of a client-plan may monitor such transactions with the MS Broker-Dealer;

Section II. General Conditions

(1) MS Broker-Dealers will maintain, or cause to be maintained, for a period of six years from the date of such transactions, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (2) to determine whether the conditions of this exemption have been met, except that —

(a) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the MS Broker-Dealers, the records are lost or destroyed prior to the end of the six year period, and

(b) No party in interest other than the MS Broker-Dealers shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for

[2] The Department, herein, is not providing exemptive relief for securities lending transactions engaged in by primary lending agents, other than MSTC, beyond that provided pursuant to Prohibited Transaction Exemption (PTE) 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) and PTE 82–63 (47 FR 14804, April 6, 1982).

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examination as required below by paragraph (2);

(2) Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (1) are unconditionally available at their customary location during normal business hours by —

(a) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission (the SEC),

(b) Any fiduciary of a participating client-plan or any duly authorized representative of such fiduciary, and

(c) Any contributing employer to any participating client-plan or any duly authorized employee representative of such employer;

(3) None of the persons described above in paragraphs (b)-(c) of paragraph (2) are authorized to examine the trade secrets of MS&Co or its affiliates or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this proposed exemption,

(1) An "affiliate" of a person includes—

(a) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) Any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and

(c) Any corporation or partnership of which such other person is an officer, director or partner.

(2) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of March 12, 1996.

The availability of this proposed exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 96–14, refer to the proposed exemption, grant notice and technical correction notice which are cited above.

Signed at Washington, D.C., this 21st day of January, 1998.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 98–1789 Filed 1–23–98; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 98–04; Exemption Application No. D–10472, et al.]

Grant of Individual Exemptions; Pentair Retirement Savings and Stock Incentive Plan (the Plan), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Pentair Retirement Savings and Stock Incentive Plan (the Plan) Located in St. Paul, MN

[Prohibited Transaction Exemption No. 98–04; Application No. D–10472]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the past sale by the Plan (the Sale) of the Plan's remaining interest (the Interest) in two guaranteed investment contracts (the GICs) of Confederation Life Insurance Company (CL) to Pentair, Inc. (Pentair), the sponsoring employer and a party in interest with respect to the Plan; provided the following conditions were met:

(1) the Sale was a one-time transaction for cash;

(2) the Plan received no less than the fair market value of the Interests at the time of the Sale;

(3) the Plan and its participants and beneficiaries have not incurred any expenses or any losses from the Sale; and

(4) any future distributions from the GICs that exceed the consideration paid by Pentair to the Plan for the Interests shall be paid to the Plan and allocated to the respective accounts of the affected Plan participants.

EFFECTIVE DATE: This proposed exemption will be effective on June 13, 1997.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on November 24, 1997, at 62 FR 62639.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Robert H. Herzog Profit Sharing Plan (the Plan) Located in Santa Barbara, California

[Prohibited Transaction Exemption 98–05; Exemption Application No. D–10494]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale (the Sale) of a certain residential condominium (the Property) by the Plan [1] to Robert H. Herzog (Mr. Herzog), a disqualified person with respect to the Plan, provided that the following conditions are met:

(a) The Sale is a one-time transaction for cash;

(b) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(c) The Plan receives the fair market value of the Property at time of the Sale; and

(d) The Plan is not required to pay any commissions, costs or other expenses in connection with the Sale. For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 24, 1997 at 62 FR 62641.

FOR FURTHER INFORMATION CONTACT: Mr. James Scott Frazier of the Department, telephone (202) 219–7222. (This is not a toll-free number.)

CoreStates GIC and BIC Fund (the Fund) Located in Philadelphia, Pennsylvania

[Prohibited Transaction Exemption No. 98–06; Application No. D–10522]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) by the Fund of the Fund's remaining interest in two Guaranteed Investment Contracts (the GICs) of Confederation Life Insurance Company (CL) to CoreStates Bank, N.A. (the Bank), a party in interest with respect to the Fund; provided (1) the Sale was a one-time transaction for cash, (2) the Fund received no less than the fair market value of the GICs at the time of the Sale, (3) the Fund and its participants and beneficiaries did not incur any costs or expenses with respect to the Sale, and (4) any future distributions from the GICs that exceed the consideration paid to the Fund by the Bank in the Sale shall be paid to the Fund and allocated to the respective accounts of the affected employee benefit plans.

EFFECTIVE DATE: This exemption will be effective as of December 31, 1997.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on November 24, 1997, at 62 FR 62641.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 21st day of January, 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 98–1791 Filed 1–23–98; 8:45 am]

BILLING CODE 4510–29–P

[1] Because Mr. Herzog is the only participant in the Plan, there is no jurisdiction under 29 CFR § 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting; Notice of Previously Held Emergency Meeting

TIME AND DATE: 2:24 p.m., Wednesday, January 21, 1998.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Closed.

MATTER CONSIDERED:

1. The ERB Report and Possible Personnel Actions Resulting From That Report. Closed pursuant to exemptions (2) and (6).

The Board voted unanimously that Agency business required that a meeting be held with less than the usual seven days advance notice, that it be closed to the public, and that earlier announcement of this was not possible.

The Board voted unanimously to close the meeting under the exemptions stated above. Acting General Counsel James Engel certified that the meeting could be closed under those exemptions.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304,

Becky Baker,

Secretary of the Board.

[FR Doc. 98–1959 Filed 1–22–98; 3:01 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

Cancellation of Proposed Generic Communication Control Rod Insertion Problems

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of cancellation.

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SUMMARY: The Nuclear Regulatory Commission (NRC) is canceling a bulletin supplement that requests addressees to take actions to ensure the continued operability of the control rods. The proposed bulletin supplement was endorsed by the Committee to Review Generic Requirements (CRGR) and subsequently published in the **Federal Register** for public comment (62 FR 27629, May 20, 1997). The NRC considered comments received from interested parties in the final evaluation of the proposed bulletin supplement. Furthermore, the staff has received substantial additional data and data analysis from fuel manufacturers and owner's groups regarding the incomplete rod insertion (IRI) issue. Licensees, as well as fuel manufacturers and owner's groups, have informed the NRC of efforts to eliminate the IRI problem, including redesign of the fuel assemblies and improved core management. The staff expects these efforts to be successful, and the staff will follow this issue by monitoring plant operations through normal inspections and reporting activities.

FOR FURTHER INFORMATION CONTACT: Margaret S. Chatterton, (301) 415–2889.

Dated at Rockville, MD, this 13th day of January 1998.

David B. Matthews,

Acting Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–1751 Filed 1–23–98; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service.

ACTION: Notice of modifications to an existing system of records and the addition of new routine uses to that and another existing system of records.

SUMMARY: The purpose of this document is to publish notice of modifications to existing system of records USPS 050.040, Finance Records—Uniform Allowance Program and the addition of new routine uses to that system and to system of records USPS 050.020, Finance Records—Payroll System. The modifications to USPS 050.040 are prompted by changes in the Postal Service's procedures for providing monetary allowances to postal employees purchasing authorized uniforms. The modifications to USPS 050.020 are prompted by requirements of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193). That Act requires agencies to report new-hire and wage data to the Department of Health and Human Services which will use the data to locate individuals to establish paternity and enforce child support obligations.

DATES: Any interested party may submit written comments on the proposed amendments and additions. This proposal will become effective without further notice on March 27, 1998, unless comments received on or before that date result in a contrary determination.

ADDRESSES: Written comments on this proposal should be mailed or delivered to: PAYROLL ACCOUNTING/RECORDS, UNITED STATES POSTAL SERVICE, 475 L'ENFANT PLAZA SW RM 8831, WASHINGTON DC 20260–5243.

Copies of all written comments will be available at the above address for public inspection and photocopying between 8:00 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Betty E. Sheriff, (202) 268–2608.

SUPPLEMENTARY INFORMATION: Pursuant to recent changes in the Postal Service uniform program, the Postal Service will disclose data from its system USPS 050.040, Finance Records—Uniform Allowance Program to contractors who provide uniform distribution and postal payment card services.

The Postal Service uniform program requires certain employees to wear prescribed uniforms in performing their duties. These employees are entitled to a uniform allowance to purchase authorized uniform items which meet Postal Service specifications. As a result of recent changes in the uniform allowance program, employees will purchase uniform items from a centralized distribution firm using a purchasing card issued by a financial institution. The proposed system modifications support those changes by expanding the "system location" to include contractor facilities and by adding a routine use permitting disclosure to contract distribution firms and financial institutions to provide uniform items and purchasing card services, respectively.

Pursuant to Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Postal Service will disclose data from its system USPS 050.020, Finance Records—Payroll System to the Office of Child Support Enforcement (OCSE), Administration for Children and Families, Department of Health and Human Services (DHHS) for use in its Federal Parent Locator System (FPLS) and Federal Tax Offset System, DHHS/OCSE No. 09–90–0074. Information on this system was last published at 61 FR 38754, July 25, 1996.

FPLS is a computerized network through which states may request location information from federal and state agencies to find non-custodial parents and/or their employers for purposes of establishing paternity and securing support. Effective October 1, 1997, the FPLS will be enlarged to include the Directory of New Hires, a database containing information on employees commencing employment, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. Effective October 1, 1998, the FPLS will be expanded to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a state child support case, that state will be notified of the participant's current employer. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

The data to be disclosed by the Postal Service to the FPLS include employee name, social security number, address, date of birth, and employment information such as date of hire and work location.

In addition, names and social security numbers submitted by the Postal Service to the FPLS will be disclosed by the OCSE to the Social Security Administration for verification to ensure that the social security number provided is correct. The data disclosed by the Postal Service to the FPLS also will be disclosed by the OCSE to the Secretary of the Treasury for verifying claims for the advance payment of earned income tax credit or to verify an employment claim on a tax return.

Addition of the routine uses to USPS 050.020 and USPS 050.040 is proposed in accordance with the Privacy Act (5 U.S.C. 552a(b)(3)). The Privacy Act permits the disclosure of information about individuals without their consent for a routine use when the information's use will be compatible with the purpose for which the information was originally collected. Data within USPS 050.040 is kept for the purpose of funding the procurement of uniforms. Disclosure of this information to financial institutions and uniform distribution firms, each providing services related to purchasing uniform items, is consistent and compatible with that purpose. Similarly, since the proposed uses of the data within USPS 050.020 are required by Public Law 104–193, they are necessary and proper uses and therefore compatible uses which meet Privacy Act requirements.

The system modifications and additions are not expected to have any undue effect on individual privacy rights. The modifications to USPS 050.040 do not alter the scope or character of information collected by the system. The contract financial institutions and uniform distribution firms have been made subject to the Privacy Act in accordance with subsection (m) and are required to apply appropriate protections subject to the audit and inspection of the Postal Inspection Service. Records within USPS 050.040 and 050.020 continue to be kept in a secured environment, with automated data processing physical and administrative security and technical software applied to data on computer media. Paper records are kept in a secured area of post offices and are made available internally on an official need-to-know basis.

Postal Service records disclosed to the OCSE will be accomplished by Connect:Direct, hardcopy medium, or other means ensuring the security of the data. The FPLS will ensure the data's integrity to the greatest extent practicable by validating names and social security numbers with Social Security Administration records and the Postal Service will be notified of any invalid, incomplete, and corrected social security numbers.

USPS Privacy Act system 050.020 was last published in its entirety in the **Federal Register** on December 4, 1992 (57 FR 57515–57519) and was amended on November 22, 1993 (58 FR 61718–61719) and June 12, 1996 (61 FR 29774). USPS Privacy Act system 050.040 was last published in its entirety in the **Federal Register** on October 26, 1989 (54 FR 43669–43670). The Postal Service proposes amending these systems as shown below.

USPS 050.020

SYSTEM NAME:

Finance Records—Payroll System, 050.020.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

[Change to read:]

General routine use statements a, b, c, d, e, f, g, h, j, k, l, and m listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:

* * * * *

[Add the following:]

33. Disclosure of information about current or former postal employees may be made to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator System (FPLS) and Federal Tax Offset System for locating individuals and identifying their income sources to establish paternity, establish and modify orders of support, and for enforcement action.

34. Disclosure of information about current or former postal employees may be made to the Social Security Administration for verifying social security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement.

35. Disclosure of information about current or former postal employees may be made to the Department of the Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

USPS 050.040

SYSTEM NAME:

Finance Records—Uniform Allowance Program, 050.040.

SYSTEM LOCATION:

[Change to read:]

Postal facilities employing personnel entitled to uniform allowances and the Information Service Center, St. Louis, MO, and contractor facilities where necessary to perform uniform supply and postal purchasing card services.

* * * * *

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

[Change to read:]

Name, Social Security number, home address; uniform code, designation code, and pay location; account balance and invoices and other information relating to the uniform item(s) purchase.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

[Change to read:]

General routine use statements a, b, c, d, e, f, g, h, j, k, l, and m listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:

* * * * *

[Add the following:]

3. Disclosure of information about current or former employees may be made to a financial institution under contract with the Postal Service to provide purchasing card services with respect to the purchase of uniform items.

4. Disclosure of information about current or former employees may be made to a distribution firm under contract with the Postal Service to provide fulfillment services with respect to the purchase of uniform items.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–1669 Filed 1–23–98; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26815]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

January 16, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public References.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 9, 1998, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

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National Fuel Gas Company et al. (70–9153)

National Fuel Gas Company ("NFG"), a gas registered holding company, and each of its wholly owned subsidiaries, National Fuel Gas Distribution Corporation ("Distribution"), a gas utility company, and NFG's nonutility subsidiaries, National Fuel Gas Supply Corporation ("Supply"), Utility Constructors, Inc. ("UCI"), Highland Land & Minerals, Inc. ("Highland"), Leidy Hub, Inc. ("Leidy"), Horizon Energy Development, Inc. ("Horizon"), Data-Track Account Services, Inc. ("Data-Track") and Seneca Independence Pipeline Company ("Seneca Independence"), each of 10 Lafayette Square, Buffalo, New York 14203, Seneca Resources Corporation ("Seneca Resources"), Niagara Independence Marketing Company ("Niagara Marketing") and Niagara Energy Trading Inc. ("Niagara Energy"), each of 1201 Louisiana Street, Suite 400, Houston, Texas 77002, and National Fuel Resources, Inc. ("NFR") of 165 Lawrence Bell Drive, Suite 120, Williamsville, New York 14221 (collectively, "Applicants"), have filed an application-declaration ("Application") under sections 6(a), 7, 9(a), 10, 12(b), 12(f), 32 and 33 of the Act, and rule 53 under the Act requesting authorization to engage in various financing and related transactions for the period from the effective date of an order in this matter through December 31, 2002 ("Authorization Period"). The Applicants, other than NFG, are sometimes referred to collectively as "Subsidiaries."

The authorization would be subject to the following conditions: (1) with respect to long-term debt financing activities (a) NFG's long-term debt must be rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in Rule 15c3–1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 and (b) NFG's common equity, as reflected in its most recent Form 10–K or Form 10–Q, does not fall below 30% of its consolidated capitalization; (2) the effective cost of money for debt may not exceed 300 basis points over the interest rate on U.S. Treasury securities of a comparable term; (3) the effective cost of money for preferred stock and other fixed income securities may not exceed 500 basis points over the interest rate on 30-year U.S. Treasury securities; (4) the maturity of debt may not be more than 50 years; (5) issuance expenses in connection with an offering of securities, including any underwriting fees, commissions or other similar compensation, may not exceed 5% of the principal or total amount of the securities being issued; and (6) the aggregate amount of external debt and equity financing to be issued by NFG during the Authorization Period will not exceed (a) $750 million of short-term borrowings outstanding at any one time and (b) $2 billion of long-term debt and equity outstanding at any one time, excluding any common stock issued under the NFG Rights Plan.[1] The value of debt securities will equal the aggregate principal amount of the debt securities while the value of equity securities will equal the consideration received by NFG at the time the equity securities are issued. In addition, proceeds from the sale of securities by NFG in external financing transactions will be used by NFG for general corporate purposes including (i) the financing of capital expenditures of NFG and its Subsidiaries, (ii) the financing of inventories and other working capital requirements, (iii) the acquisition, retirement or redemption of securities issued by NFG that qualifies for the exemption in rule 42 or a successor rule and/or (iv) investments in exempt wholesale generators ("EWGs"), as defined in section 32 of the Act, foreign utility companies ("FUCOs"), as defined in section 33 of the Act, and energy-related companies and gas related companies, each as defined in rule 58. Any deviation from these conditions would require further Commission approval.

The proposed transactions and the proposed participation of the various Applicants are described below.

1. External Financing by NFG

NFG proposes to issue and sell short-term securities, with a term not to exceed 270 days, aggregating not more than $750 million outstanding at any one time during the Authorization Period. NFG also proposes to issue and sell long-term securities aggregating not more than $2 billion outstanding at any one time through the Authorization Period. Securities may be issued through underwriters or dealers, directly to a limited number of purchasers or a single purchaser,[2] through agents, in exchange for securities of other companies, the acquisition of which is separately authorized by the Commission or exempt under section 32, 33 or 34 or rule 58, as applicable, and/or through compensation, benefits and incentive plans, customer stock purchase plans and dividend reinvestment plans (collectively, "Stock Issuance Plans"). NFG also proposes to engage in interest rate swaps and similar hedging instruments.

a. Short-term Debt

NFG proposes to issue short-term debt, consisting of borrowings under its credit facilities and the issuance of commercial paper and/or other forms of short-term financing. NFG represents that in no case will the outstanding balance of all short-term borrowings exceed $750 million during the Authorization Period. With respect to its short-term borrowings, NFG proposes that the authorizations requested in this proceeding supersede the short-term borrowing authorization contained in Commission order, dated December 28, 1995 ("December 1995 Order").[3]

Commercial paper will be sold by NFG in domestic or foreign commercial paper markets directly or through dealers and placement agents at prevailing discount rates or prevailing coupon rates at the date of issuance for commercial paper of comparable quality and terms. NFG anticipates that the commercial paper will then be resold at a discount to corporate and institutional investors, which may include commercial banks, insurance companies, pension funds, investment trusts, mutual funds, foundations, colleges and universities, finance companies and nonfinancial corporations. Foreign commercial paper may also be sold to individual investors.

Back-up lines of credit for 100% of the outstanding amount of commercial paper are generally required by credit rating agencies. NFG currently has a committed credit facility which provides support for its commercial paper program.

NFG proposes to establish credit facilities with banks and/or other financial institutions and to issue and sell, from time to time, short-term notes. These notes will bear interest at rates comparable to, or lower than, those available through other forms of short-term borrowing with similar terms requested in this proceeding, and will have a term of not more than 270 days. NFG requests authority to incur, as necessary, commitment or similar fees not to exceed one-half of one percent (.50%) of the average daily credit facility available, and/or compensating balances not to exceed twenty percent (20%) of the credit facility established.

NFG further requests authorization to amend its commercial paper program or credit facilities without further Commission authorization, provided that the term of any borrowing under the program or facility does not extend beyond 270 days from its date of issuance or borrowing.

NFG states that it may engage in other types of short-term financing, which would include bank borrowings and other short-term securities issued under a mortgage or indenture, as it deems appropriate at the time of issuance. The term of these short-term borrowings will not exceed 270 days.

b. Long-term Securities

NFG proposes to issue and sell long-term securities which would consist of any combination of long-term debt, debt having terms in excess of 270 days, common stock, preferred stock or other equity securities. The aggregate principal amount of long-term debt securities and the value of the consideration received from the issuances of equity securities under the Application during the Authorization Period will not exceed $2 billion at any one time outstanding.

Long-term debt securities would include, but not be limited to, debentures, convertible debt, subordinated debt, medium-term notes, bank borrowings and securities with call or put options. Long-term debt securities would have the designation, aggregate principal amount, maturity, interest rate(s) or methods of determining the same, interest payment terms, redemption provisions, non-refunding provisions, sinking fund terms, conversion or put terms, U.S. dollar or foreign currency denominations, security and subordination provisions, and other terms and conditions as NFG may determine at the time of issuance. Medium-term notes would be issued under the Indenture, dated as of October 15, 1994, between NFG and The Bank of New York, Trustee, as amended ("Indenture"). Debentures and other long-term securities may be issued under the Indenture or under a mortgage or other indenture.

Equity securities would include common stock (including the rights with respect to such common stock), including common stock issued by Stock Issuance Plans under prior Commission orders[4] during the Authorization Period and future Stock Issuance Plans authorized by the Commission, preferred stock, other preferred securities, options and/or warrants convertible into common or preferred stock and common and/or preferred stock issued upon the exercise of convertible debt, rights, options, warrants and/or similar securities.

From time to time during the Authorization Period, NFG may adopt other similar Stock Issuance Plans. For instance, a direct stock purchase plan with a dividend reinvestment feature that allows sales to persons not already shareholders may be implemented. NFG proposes to issue shares of common stock under existing plans and similar plans or plan funding arrangements it may adopt and to engage in other sales of is shares of common stock for reasonable business purposes without the requirement of prior Commission authorization during the Authorization Period. With respect to issuances of long-term securities, NFG proposes that the authorizations requested in this proceeding supersede the authorizations contained in the Existing Common Stock Authorizations, except that the grants of common stock and rights to purchase common stock under the 1997 Award and Option Plan may be issued through December 12, 2006.[5]

c. Hedging Transactions

NFG proposes to enter into hedging transactions ("Hedge Program") related to all or a portion of existing or anticipated financing, including floating rate debt or fixed rate debt, using interest rate swaps, caps, floors, collars, ceilings, options and forwards (collectively, "Derivative Transactions") with counterparties during the Authorization Period, in notional (i.e., principal) amounts aggregating not in excess of the amount of debt outstanding at any one time.

NFG proposes to use two different swap strategies. Under one swap strategy, NFG would agree to make payments of interest to a counterparty, payable periodically. The interest would be payable at a variable or floating rate index and would be calculated on a notional amount. In return, the counterparty would agree to make payments to NFG based upon the same notional amount and at an agreed upon fixed interest rate. This would be a "floating-to-fixed swap" on NFG's part. Under another swap strategy, NFG would pay a fixed interest rate and receive a variable interest rate on a notional amount. This would be a "fixed-to-floating swap" on NFG's part.

NFG also proposes to enter into an anticipatory interest rate hedging program ("Anticipatory Hedge Program") using Derivative Transactions within a limited time prior to the issuance of short- or long-term debt securities. The Hedge Program will be used to fix and/or limit the interest rate risk exposure of any new issuance through: (1) a forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury securities and/or a forward swap (each a "Forward Sale"); (2) the purchase of put options on U.S. Treasury securities ("Put Options Purchase"); (3) a Put Options Purchase in combination with the sale of call options on U.S. Treasury securities ("Zero Cost Collar"); or (4) some combination of a Forward Sale, Put Options Purchase and/or Zero Cost Collar.

The program may be executed on-exchange ("On-Exchange Trades") with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade, the opening of over-the-counter positions with one or more counterparties ("Off-Exchange Trades") or a combination of On-Exchange-Trades and Off-Exchange-Trades") or a combination of On-Exchange-Trades and Off-Exchange-Trades. NFG will determine the optimal

[1] The terms and conditions of this authorization are contained in Holding Co. Act Release No. 26532 (June 12, 1996).

[2] If underwriters are used in the sale of the securities, these securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. The securities may be offered to the public either through underwriting syndicates (which may be represented by managing underwriters) or directly by one or more underwriters acting alone. The securities may be sold directly by NFG or through agents designated by NFG from time to time. If dealers are used in the sale of any securities, these securities will be sold to the dealers and any dealer may then resell the securities to the public at fixed prices or varying prices to be determined by the dealer at the time of resale. NFG may also sell securities to agents acting as principal. These agents may sell the securities to the public at fixed prices or varying prices to be determined by the agent at the time of resale. If equity securities are being sold in an underwritten offering, NFG may grant the underwriters an over-allotment option permitting the purchase from NFG of additional equity securities (an additional 15% under present guidelines), at the same price as the equity securities then being offered, for the sole purpose of covering over-allotments.

Securities issued by NFG may be sold under "delayed delivery contracts" which permit the underwriters or agents to locate buyers who will agree to buy the securities at an agreed price on the trade date but accept delivery at a later date. Debt securities may also be sold through the use of medium-term notes and similar programs or in transactions under which securities are sold to initial purchasers and then resold by the initial purchasers (typically, investment banks or similar institutions) in transactions covered by rule 144A or another exemption under the Securities Act of 1933 ("Securities Act") or under Regulation S under the Securities Act.

[3] *See* Holding Co. Act Release No. 26443.

[4] *See* Holding Co. Act Release Nos. 26670 (Feb. 18, 1997) ("February 1997 ORder"), 26655 (Jan. 24, 1997), 26394 (Oct. 19, 1995), 26261 (Mar. 30, 1995), 26176 (Nov. 30, 1994), 25753 (Mar. 5, 1993) and 24793 (Dec. 28, 1988) (collectively, "Existing Common Stock Authorizations").

[5] The 1997 Award and Option Plan under the February 1997 Order authorizes awards granting the right to purchase up to 1,900,000 shares of common stock through December 12, 2006.

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structure of the Anticipatory Hedge Program at the time of execution. NFG may decide to lock in interest rates and/or limit its exposure to interest rate increases. All open positions under the Anticipatory Hedge Program will be closed on or prior to the date of the new issuance and NFG will not, at any time, take possession of the underlying U.S. Treasury securities.

All transactions entered into under the Hedge Program will be bona fide hedges and will meet the criteria established by the Financial Accounting Standards Board in order to qualify for hedge accounting treatment, and NFG will comply with the financial disclosure requirements associated with hedging transactions.

NFG proposes that the authorizations requested in this proceeding with respect to hedging transactions, including the Hedge Program and the Anticipatory Hedge Program, supersede the authorizations to engage in hedging transactions contained in the December 1995 Order.

d. Other Securities

In addition to the specific securities for which NFG seeks authorization in this proceeding, NFG also proposes to issue other types of securities ("Other Securities") that it deems appropriate during the Authorization Period. NFG requests that the Commission reserve jurisdiction over the issuance of Other Securities. NFG also undertakes that it will file a post-effective amendment in this proceeding describing the general terms of the proposed Other Securities and obtain a supplemental order of the Commission authorizing the issuances of Other Securities.

2. Intrasystem Financing by Subsidiaries

The Subsidiaries propose various financing transactions between NFG and the Subsidiaries and among the Subsidiaries.

a. Money Pool

Under the December 1995 Order, NFG, Distribution, Supply, Seneca Resources, Highland, Leidy, Horizon, Data-Track, NFR and UCI ("Current Money Pool Participants") were authorized to engage in a money pool arrangement ("Money Pool") through December 31, 2000. The Current Money Pool Participants now propose to continue to participate in, and incur short-term borrowings from, the Money Pool through the Authorization Period. NFG proposes to add Seneca Independence, Niagara Marketing and Niagara Energy as new participants to the Money Pool. NFG further proposes that the authorizations requested in this proceeding with respect to the Money Pool supersede the authorizations for the current Money Pool contained in the December 1995 Order.

At certain times during the year, NFG and certain Subsidiaries generate surplus funds. Each Subsidiary may contribute excess funds to the Money Pool from time to time. The Applicants propose that the Subsidiaries borrow short-term funds from the Money Pool and that the maximum amount of Money Pool borrowings outstanding for each Subsidiary will be determined by NFG and the Subsidiaries in accordance with business needs. Subsidiary borrowings from the Money Pool would be used to provide financing for general corporate purposes, including the temporary financing of inventories and other working capital requirements and construction spending.

NFG will administer the Money Pool and coordinate the system's short-term borrowings but cannot borrow surplus funds generated by the Subsidiaries. NFG will match, to the extent possible, the short-term cash surpluses and borrowing requirements of the Subsidiaries.

The sources of funding for the Money Pool may consist of surplus funds of NFG and/or of its Subsidiaries, proceeds from NFG's sale of commercial paper, borrowings under credit facilities, borrowings by NFG from banks or other financial institutions and/or issuances of other securities. Amounts borrowed by NFG under the $750 million short-term borrowing authorization requested in this proceeding would be included in the Money Pool.

Subsidiary requests for short-term loans will be met first from available surplus funds of the other Subsidiaries, and then from NFG corporate funds, if available. In the event these sources of funds are insufficient, borrowings outside the system will be made by NFG through the issuance and sale of commercial paper, borrowings under credit facilities, other borrowing facilities with banks or other financial institutions and/or issuances of other securities. These borrowings will not exceed $750 million during the Authorization Period.

The interest rate on Subsidiary borrowings consisting solely of internal funds from the Money Pool will be the same rate charged on high-grade unsecured 30-day commercial paper sold through dealers by major corporate issuers. Borrowings consisting wholly or in part of funds obtained through the sale of commercial paper or borrowings from banks or other financial institutions will pay interest at a rate equal to NFG's net cost for these borrowings.

The Applicants state that none of the internal subsidiary funds (surplus funds of the Subsidiaries available in the Money Pool) will be used for the acquisition of an interest in an EWG or a FUCO except (a) investment by Horizon of up to $150 million and (b) investment by NFR or through a subsidiary, if formed, of up to $25 million.

b. Internal Nonutility Securities

National requests on behalf of the Subsidiaries, other than Distribution ("Nonutility Subsidiaries"), authorization to issue and sell securities of any type that are not otherwise exempt or authorized by Commission order ("Internal Nonutility Securities") to NFG and other Nonutility Subsidiaries during the Authorization Period. NFG requests that the Commission reserve jurisdiction over the issuances of Internal Nonutility Securities. NFG also undertakes that it will file a post-effective amendment in this proceeding describing the general terms of the proposed Internal Nonutility Securities and obtain a supplemental order of the Commission authorizing the issuances of Internal Nonutility Securities.

3. External Financing by Subsidiaries

NFG also requests authorization for the Nonutility Subsidiaries to issue and sell securities of any type that are not otherwise exempt or authorized by Commission order, including guarantees (collectively, "External Nonutility Securities"), to persons other than NFG, including banks, insurance companies and other financial institutions during the Authorization Period. NFG requests that the Commission reserve jurisdiction over the issuance of External Nonutility Securities. NFG also undertakes that it will file a post-effective amendment in this proceeding describing the general terms of the proposed External Nonutility Securities and obtain a supplemental order of the Commission authorizing the issuances of External Nonutility Securities.

Distribution also proposes to issue and sell debt securities of any type that are not otherwise exempt or authorized by Commission order to persons other than NFG, including banks, insurance companies and other financial institutions, in an aggregate principal amount which will not exceed $250 million during the Authorization Period.

4. Financing Entities

NFG and the Nonutility Subsidiaries propose to organize new corporations, trusts, partnerships or other entities created for the purpose of facilitating financings. These entities will issue to third parties interests in such entities or other securities authorized or issued under an exemption. Additionally, request is made for: (a) The issuance of debentures or other evidences of indebtedness by NFG or Nonutility Subsidiaries to a financing entity in return for the proceeds of the financing, and (b) the acquisition by NFG and Nonutility Subsidiaries of voting interests or equity securities issued by the financing entity to establish such Applicant's ownership of the financing entity. NFG and the Nonutility Subsidiaries also propose to enter into guarantees and expense agreements with the corresponding financing entities, under which they would agree to pay all amounts payable relating to the securities issued by the financing entity. The amount of any guarantees provided to financing entities will not exceed $250 million in the aggregate at any one time during the Authorization Period.

5. Guarantees by National

NFG is currently authorized to guarantee up to $500 million of obligations under Commission order dated November 12, 1993 (HCAR No. 25922) ("November 1993 Order"). NFG now proposes to guarantee securities of, and provide other forms of credit support with respect to obligations of, its Subsidiaries in an aggregate amount not to exceed $2 billion at any time during the Authorization Period. The $2 billion of guarantees is in addition to any financing requested in the Application. The terms and conditions of any guarantee will be negotiated on a case by case basis as the need arises. NFG proposes that the guarantee authorization requested in this proceeding supersede and replace the guarantee authorization granted in the November 1993 Order.

Guarantees and other forms of credit support provided by NFG on behalf of any EWG, FUCO or rule 58 company will be subject to the limitations of rule 53 or rule 58, as applicable.

6. Acquisition of EWGs, FUCOs and Rule 58 Companies

NFG proposes to use some or all of the proceeds of the financings for which authorization is requested in this proceeding to invest in EWGs and FUCOs in an aggregate amount which, when added to NFG's aggregate investment, as defined in rule 53(a)(1), would not exceed 50% of NFG's consolidated retained earnings, as defined in rule 53(a)(1). NFG proposes that the authorization to invest in EWGs and FUCOs requested in this Application supersede the authorization applicable to EWG and FUCO investments contained in Commission order dated August 29, 1995 (HCAR No. 26364).

NFG also proposes to use some or all of the proceeds of the financings for which authorization is requested in this proceeding to make investments in energy-related companies and gas-related companies under rule 58.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–1677 Filed 1–23–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22999; 812–10676]

SSgA Funds and State Street Bank and Trust Company, Notice of Application

January 14, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 13(a)(2), 13(a)(3), 18(f)(1), 22(f), and 22(g) of the Act and rule 2a–7 thereunder; under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act; and pursuant to section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants SSgA Funds and State Street Bank and Trust Company ("State Street") request an order that would permit SSgA Funds to enter into deferred compensation arrangements with certain of their directors.

FILING DATES: The application was filed on May 22, 1997 and amended on November 26, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 9, 1998 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. SSgA Funds, Two International Place, 35th Floor, Boston, Massachusetts 02110; State Street, 225 Franklin Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: David W. Grim, Staff Attorney, at (202) 942–0571, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch (tel. 202–942–8090).

Applicants' Representations

1. SSgA Funds is an open-end management investment company registered under the Act and comprised of several investment portfolios. State Street serves as investment adviser to each portfolio of SSgA Funds. Applicants request that the relief also apply to all registered investment companies or series of these companies now or in the future advised by State Street or any entity under common control with or controlled by State Street (these registered investment companies, together with SSgA Funds, the "Funds").[1]

2. Each member of the board of trustees of SSgA Funds (collectively, the "Trustees") who is not an employee of State Street or Frank Russell Investment Management Company[2] or any of their affiliates (each, an "Eligible Trustee") receives annual fees from SSgA Funds which collectively are, and are expected to continue to be, insignificant in comparison to the total net assets of SSgA Funds. No Trustee who is an employee of State Street or Frank Russell Investment Management

[1] Each Fund that currently intends to rely on the requested relief has been named as an applicant. Any other existing or future Fund that relies on the order will comply with the terms and conditions of the application.

[2] Frank Russell Investment Management Company is the administrator of SSgA Funds.

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Company or any of their affiliates receives any remuneration from SSgA Funds.

3. SSgA Funds proposes to adopt a formal Deferred Compensation Plan (the "Plan"). The Plan permits individual Eligible Trustees to elect to defer receipt of all or a portion of their fees, thereby also enabling them to defer payment of income taxes on such fees. The Plan may be amended from time to time by the Trustees, as long as such amendments are not inconsistent with the relief granted to applicants pursuant to the application.

4. An Eligible Trustee will be able to defer fees, but must so elect with respect to all of the Funds for which he or she serves as a Trustee. The election is to be made by execution of a notice of election to defer compensation ("Notice of Election"). Such election generally must be made prior to January 1 of each calendar year for which compensation is to be deferred.

5. Under the Plan, the deferred fees will be credited to a book entry account established by each Fund (the "Deferred Fee Account") as of the date such fees would have been paid to the Trustee. SSgA Funds proposes to use returns on shares ("Underlying Securities") of certain designated Funds and of other investment companies that are not affiliated with State Street designated from time to time by the Trustees (the "Eligible Funds") to determine the amount of earnings and gains or losses allocated to a Trustee's Deferred Fee Account. The value of the Deferred Fee Account as of any date would be periodically adjusted by treating the Deferred Fee Account as though an equivalent dollar amount had been invested and reinvested in the Underlying Securities. The Underlying Securities for a Deferred Fee Account will be shares of any of the Eligible Funds as the participating Trustee designates in his or her Notice of Election. The Trustee may change his or her designation quarterly. Each Deferred Fee Account will be credited or charged with book adjustments representing all interest, dividends, and other earnings and all gains and losses that would have been realized had the account been invested in the Underlying Securities.

6. The Plan provides that a participating Fund's obligation to make payments from a Deferred Fee Account will be a general obligation of the Fund and payments made pursuant to the Plan will be made from the Fund's general assets and property. With respect to the obligations created under the Plan, the relationship of the Trustee to the participating Fund will be that of a general unsecured creditor.

7. The Plan also provides that the participating Fund will be under no obligation to the Trustee to purchase, hold, or dispose of any Underlying Securities. If the Fund chooses to purchase investments in order to cover its obligations under the Plan, any and all Underlying Securities will continue to be part of the general assets and property of the Fund.

8. Each Fund intends generally, and with respect to any Fund that is a money market fund and that values its assets using either the amortized cost or penny rounding method (a "Money Market Fund") hereby undertakes, to purchase and maintain Underlying Securities in an amount equal to the deemed investments of the Deferred Fee Accounts of its Trustees.[3] All purchases and sales of Underlying Securities will be within the limitations imposed by section 12(d)(1) of the Act.

9. Under the Plan, the Trustee's deferred fees generally will be distributed in whole or in part on a date specified in the Trustee's Notice of Election, which date may not be sooner than the earlier of the first business day of January following the termination of the Trustee's service as a trustee or one year following the deferral election. Payments will be made in a lump sum or in installments as elected by the Trustee at the time of executing the Notice of Election. In the event of the Trustee's death, amounts payable to him or her under the Plan thereafter will be payable to his or her designated beneficiary; in other circumstances, the Trustee's right to receive payments generally will be nontransferable.

10. The Plan will not obligate any Fund to retain the services of a Trustee, nor will it obligate any Fund to pay any (or any particular level of) Trustee's fees to any Trustee. Rather, it will merely permit a Trustee to elect to defer receipt of all or part of the Trustee's fees that he or she would otherwise receive.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) for an exemption from sections 13(a)(2), 13(a)(3), 18(f)(1), 22(f), and 22(g) and rule 2a–7 to the extent necessary to permit the Funds to offer deferred fee arrangements to the Eligible Trustees; under sections 6(c) and 17(b) for an exemption from sections 17(a) (1) and (2) to permit each Fund to sell its shares to and redeem its shares from other Funds as part of the deferred fee arrangements; and pursuant to section 17(d) and rule 17d–1 to permit the Funds to effect joint transactions incident to the deferred fee arrangements.

2. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Section 18(f)(1) generally prohibits a registered open-end investment company from issuing senior securities. Section 13(a)(2) requires that a registered investment company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Applicants assert that the Plan raises none of the concerns underlying section 18(f). Applicants state that, in all cases, the liabilities for deferred fees are expected to be *de minimis* in relation to Fund net assets. Applicants submit that the Plan would not induce speculative investments by any Fund or provide opportunity for manipulative allocation of a Fund's expenses and profits; that control of each Fund would not be affected; and that the Plan would not confuse investors or convey a false impression of safety.

4. Section 22(f) prohibits undisclosed restrictions on the transferability or negotiability of redeemable securities issued by open-end investment companies. Applicants state that the restriction on transferability of a Trustee's benefits under the Plan would be clearly set forth in the Plan, would be included primarily to benefit the participating Trustee, and would not adversely affect the interests of the Trustee, the Fund, or any shareholder of any Fund.

5. Section 22(g) prohibits registered open-end investment companies from issuing any of their securities for services or for property other than cash or securities. Applicants believe that the Plan would provide for deferral of payment of Trustee fees and thus should be viewed as being issued not in return for services but in return for a Fund's not being required to pay such fees on a current basis.

6. Section 13(a)(3) provides that no registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities, deviate from any investment policy that is changeable only if authorized by shareholder vote. Applicants request relief from section 13(a)(3) only with respect to Funds that have a fundamental investment restriction prohibiting investments in securities of investment companies (the "Restriction Funds"). Applicants submit that it is appropriate to enable the Restriction Funds to invest in Underlying Securities without a shareholder vote. Applicants note that the value of the Underlying Securities is expected to be *de minimis* in relation to the total net assets of each Restriction Fund. Furthermore, applicants state that the value of the Underlying Securities held by each Restriction Fund will at all times equal the value of each Restriction Fund's obligations to pay deferred fees. Accordingly, applicants submit that changes in the value of the Underlying Securities will not affect the value of shareholders' investments in the Restriction Fund. Applicants also represent that appropriate disclosure regarding the Plan will be included in the statement of additional information of each Fund.

7. Rule 2a–7 imposes certain restrictions on the investments of money market funds that use the amortized cost method or penny-rounding method of computing their per share price. Applicants state that the requested exemption would permit each Money Market Fund in question to achieve an exact matching of Underlying Securities with the deemed investments of the Deferred Fee Accounts, thereby ensuring that the deferred fee arrangements will not affect net asset value. Applicants assert that the amounts involved in all cases will be *de minimis* in relation to total net assets of each Money Market Fund and will have no effect on the per share net asset value of the Money Market Fund.

8. Sections 17(a) (1) and (2) generally prohibit an affiliated person of a registered investment company from selling any security to, or purchasing any security from, such company. Section 2(a)(3)(C) provides that an affiliated person of another person includes any person directly or indirectly controlling, controlled by, or under common control with, such other person. Applicants submit that because the Funds share the same or an affiliated investment manager, generally the same Trustees, and many of the same officers, each Fund might be deemed to be under common control with all other Funds, and therefore each Fund might be deemed to be an affiliated person of every other Fund. Applicants believe that the sale of securities issued by the Funds pursuant to the Plan does not implicate Congress's concerns in enacting section 17(a). Applicants assert that such sales of securities merely would facilitate the matching of a Fund's liability for deferred Trustees' fees with the Underlying securities that would determine the amount of such Fund's liability.

9. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that: (1) the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the transaction is consistent with the policy of each registered investment company concerned; and (c) the transaction is consistent with the general purposes of the Act. Because section 17(b) may apply only to a specific proposed transaction, applicants also request an order under section 6 (c) to permit a series of transactions between Funds contemplated by the Plan. Applicants represent that their application meets the standards of section 6(c) and 17(b).

10. Applicants state that because purchases of shares of any open-end Fund pursuant to the Plan are made at net asset value, the terms of the deferred fee arrangements are reasonable and fair and do not involve overreaching on the part of any person concerned. Applicants also submit that, because the purchase of shares of another Fund would not be made for investment purposes, but solely to match the Fund's liability for deferred fees, the purchase of the shares would not be inconsistent with the policies of each of the Funds. Applicants assert that in addition, because the number of shares pursuant to the deferred fee arrangements will be *de minimis* in relation to the size of each Fund, none of the Act's concerns with affiliated sales and purchases of Fund shares would be implicated.

11. Section 17(d) of the Act prohibits affiliated persons of registered investment companies, acting as principal, from effecting any transaction in which such registered investment company is a joint or joint and several participant with such person in contravention of rules and regulations prescribed by the SEC. Rule 17d–1 under the Act provides that the SEC may approve a transaction subject to section 17(d) after considering whether the participation of such registered investment company is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Because the Plan may be deemed to be a joint arrangement within the meaning of rule 17d–1, applicants request relief under section 17(d) and rule 17d–1 to the extent that these provisions may be applicable to the Plan. Applicants submit that the participating Trustee would neither directly nor indirectly receive a benefit that would otherwise inure to the Funds or any of their shareholders. Applicants submit that the effect of the Plan merely would be to defer the payment of fees that the Funds otherwise would be obligated to pay on a current basis.

Applicants' Condition

Applicants agree that the order granting the requested relief shall be subject to the following condition:

1. With respect to the requested relief from rule 2a–7, any Money Market Fund will buy and hold Underlying Securities (other than its own shares) that determine the performance of Deferred Fee Accounts to achieve an exact match between such Fund's liability to pay deferred fees and the assets that offset that liability.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–1792 Filed 1–23–98; 8:45 am]

BILLING CODE 8010–01–M

[3] Although a Fund's shares may serve as an Underlying Security with respect to deferred fees earned by a Trustee, it is not anticipated that a Fund will purchase its own shares. Rather, monies equal to the amount credited to the Deferred Fee Account with respect to the Fund's own shares will be invested as part of the general investment operations of that Fund.

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1500).

TIME AND DATE: 9 a.m. (CST), January 28, 1998.

PLACE: Centerville City Hall, 102 East Swan, Centerville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on December 9, 1997.

New Business

C—Energy

C1. Contract with Foster Wheeler Energy Corporation for pendant reheater replacements for Cumberland Fossil Plant, Units 1 and 2 boilers.

E—Real Property Transactions

E1. Abandonment of easement rights affecting 2.76 acres of the Hohenwald-Mt. Pleasant 46–kV Transmission Line easement in Lewis County, Tennessee (Tract No. HMP–30).

E2. Abandonment of easement rights affecting 5.03 acres of the Bull Run-Solway and Bull Run-Solway No. 2 Transmission Line easements in Knox County, Tennessee (Tract Nos. BRSW–

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36, –37, –38, and –39 and BAST–27, –28, –29, and –30).

E3. Sale of noncommercial, nonexclusive permanent easement to Lea Anne Law for construction and maintenance of recreational water-use facilities affecting 0.30 acre of Tellico Lake shoreline in Monroe County, Tennessee (Tract No. XTELR–200RE).

E4. Grants of permanent easements to the City of Decatur for highway improvement projects affecting approximately 4.26 acres of land on Wheeler Lake in Morgan County, Alabama (Tract Nos. XTWR–104H and XTWR–105H).

E5. Sale of a nonexclusive permanent easement to the Waterworks Board of the Town of Section, Alabama, for a road affecting approximately 0.51 acre of land on Guntersville Lake in Jackson County, Alabama (Tract No. XGR–747H).

E6. Sale of a permanent easement to Brooks Fiber Communications of Tennessee, Inc., for installation and maintenance of a fiber optic cable affecting approximately 3 acres of land on Melton Hill Lake in Anderson County, Tennessee (Tract No. XMHR–58E).

E7. Modification of a release and grant of easement affecting approximately 0.03 acre of former TVA land on Norris Lake in Union County, Tennessee (Tract No. XNR–236:S–12).

E8. Grant of a permanent easement to the State of Tennessee for State Route 1 (U.S. 70) highway improvement project affecting approximately 0.36 acre of land on Kentucky Lake in Humphreys County, Tennessee (Tract No. XTGIR–147H).

Unclassified

F1. Approval to file condemnation cases in connection with permanent easements and rights-of-way for the following power transmission lines: Pickwick Dam-Memphis, Fayette County, Tennessee; and Portland-Westmoreland, Sumner County, Tennessee; and Booneville-Plumrose, Prentiss County, Mississippi.

Information Items

1. Amendments to the provisions of the TVA Savings and Deferral Retirement Plan and New Trust Agreement between the TVA Retirement System Board and Fidelity Management Trust Company.

2. Approval of pricing arrangements for the Real Time Pricing program.

3. Approval to file condemnation cases for the following transmission lines: Carriage House-Madison West Section, Jackson, Tennessee; Freeport-Miller, DeSoto County, Mississippi; Freeport-Miller Tap to Mitchell, DeSoto County, Mississippi; and Maury-Radnor Tap to Rally Hill, Maury County, Tennessee.

4. Approval for TVA Nuclear to enter into a contract in which Westinghouse Electric Corporation would purchase from TVA a space reactor coolant pump internals package located at the Watts Bar Nuclear Plant Unit 2.

5. Approval to award a fixed-price contract with Foster Wheeler Energy Corporation for intermediate waterwalls for the Cumberland Fossil Plant Units 1 and 2 boilers.

6. Approval of the Chief Financial Officer's proposed retention of new power proceeds and nonpower proceeds and payments to the U.S. Treasury in March 1998, pursuant to Section 26 of the TVA Act.

7. Approval of New Labor Relations Agreements Between TVA and Local 544, Service Employees' International Union, AFL–CIO.

8. Approval of the Chief Financial Officer's proposed financial statements for Fiscal Year 1997.

9. Approval of new Labor Relations agreements between TVA and the Engineering Association, Incorporated.

10. Approval of TVA contributions to the cost of TVA-sponsored medical coverage for TVA retirees—additional interim payment for retirees over 65, and delegation of authority to the Senior Vice President, Human Resources, or a designated representative, to take all actions necessary to implement the program.

11. Approval of revisions to the Competitive Indexed Rate program.

12. Approval of revisions to the Competitive Indexed Rate program at Powell Valley Electric Cooperative.

13. Delegation of authority to publish proposed and final regulations for TVA to implement Title IX of the Education Amendments of 1972.

14. Approval of revisions to the Competitive Indexed Rate program and of a contract for such arrangements with a customer that has been served by the City of Bristol, Virginia.

15. Approval for attainment of Fiscal 1997 Performance Incentive Plan Goals and proposed Fiscal 1997 Performance Incentive Plan awards for eligible represented and excluded employees and manager and specialist employees in pay groups 1–11.

16. Approval of amendment to Supplemental Executive Retirement Plan.

17. Approval for the sale of TVA Power Bonds and TVA subordinated debt.

18. Approval of recommendations resulting from the 62nd Annual Wage Conference, 1997—Construction Project Agreement Wage Rates.

19. Approval of amendment to the Performance Incentive Plan.

20. Approval to purchase subbituminous coal for various TVA fossil plants and rail transportation services.

For more information: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: January 21, 1998.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 98–1885 Filed 1–22–98; 10:18 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 30, 1997, [62 FR 51175].

DATES: Comments must be submitted on or before February 25, 1998.

FOR FURTHER INFORMATION CONTACT: Judith Street, ABC–100; Federal Aviation Administration; 800 Independence Avenue, SW.; Washington, DC 20591; Telephone number (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Certification: Pilots and Flight Instructors.

OMB Control Number: 2120–0021.

Type of Request: Extension of currently approved collection.

Affected Public: Individuals.

Form(s): 8710–1.

Abstract: The FAA is empowered to issue airmen certificates to properly qualified persons. This clearance request covers the burden imposed on airmen directly responsible for the control of aircraft. 14 CFR part 61 prescribes requirements for pilot and flight instructor certificates. 14 CFR part 143 prescribes requirements for ground instructors. Information collected is used to determine compliance and applicant eligibility.

Annual Estimated Burden Hours: The current burden for this collection is estimated to be 252,140 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC on January 20, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–1719 Filed 1–23–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week of January 16, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–3326.

Date Filed: January 13, 1998.

Parties: Members of the International Air Transport Association.

Subject:

PTC3 0151 dated December 19, 1997 r1–8
PTC3 0154 dated December 19, 1997 r9–16
PTC3 0156 dated December 19, 1997 r17–22
PTC3 0158 dated December 19, 1997 r23–29
PTC3 0161 dated December 19, 1997 r30–34

PTC3 0165 dated December 19, 1997 r35–51
PTC3 0167 dated December 19, 1997 r52–55
PTC3 Resolutions (US Territories)
Minutes—PTC3 0171 dated January 9, 1998
Tables—PTC3 Fares 0014 dated January 9, 1997
PTC3 Fares 0015 dated January 9, 1997
PTC3 Fares 0016 dated January 9, 1997
PTC3 Fares 0018 dated January 9, 1997
PTC3 Fares 0021 dated January 9, 1997
PTC3 Fares 0022 dated January 9, 1997
Intended effective date: April 1, 1998

Docket Number: OST–98–3327.

Date Filed: January 13, 1998.

Parties: Members of the International Air Transport Association.

Subject:

PTC3 dated December 19, 1997 r1–8
PTC3 0152 dated December 19, 1997 r9–17
PTC3 0153 dated December 19, 1997 r18–26
PTC3 0155 dated December 19, 1997 r27–32
PTC3 0157 dated December 19, 1997 r33–40
PTC3 0159 dated December 19, 1997 r41–48
PTC3 0160 dated December 19, 1997 r49–54
PTC3 0162 dated December 19, 1997 r55–67
PTC3 0163 dated December 19, 1997 r68–82
PTC3 0164 dated December 19, 1997 r83–106
PTC3 0166 dated December 19, 1997 r107–145
PTC3 0168 dated December 19, 1997 r146–157
PTC3 0169 dated December 19, 1997 r158–166
PTC3 Resolutions (Excluding the US Territories)
Tables—PTC3 Fares 0013 dated January 9, 1997
PTC3 Fares 0017 dated January 9, 1997
PTC3 Fares 0019 dated January 9, 1997
PTC3 Fares 0020 dated January 9, 1997
(Minutes, contained in PTC3 0171, are filed this date with the U.S.-related portion of the Agreement.)
Intended effective date: April 1, 1998

Paulette V. Twine,

U.S. D.O.T. Dockets.

[FR Doc. 98–1739 Filed 1–23–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Draft Environmental Impact Statement; Letcher County, Kentucky

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Withdrawal of Draft Environmental Impact Statement (DEIS).

SUMMARY: The FHWA is issuing this notice to advise the public that a final environmental impact statement (FEIS) will not be prepared for the proposed highway project in Letcher County, Kentucky. This is a formal withdrawal of the draft environmental document from the public record.

FOR FURTHER INFORMATION CONTACT: Jesse A. Story, Division Administrator, Federal Highway Administration, 330 W. Broadway, John C. Watt Federal Building, Frankfort, Kentucky 40602, Telephone: (502) 223–6720.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Kentucky Transportation Cabinet (KYTC) will not prepare a Final Environmental Impact Statement (FEIS) on the proposal to improve U.S. 119 in Letcher County, Kentucky. The original DEIS for the improvements (SSP 067 0119 009–018 018 D) was approved for pubic circulation on August 4, 1994. The scope of this project was identified as a 12-mile long major reconstruction and relocation of US 119 from Partridge, Kentucky to Whitesburg, Kentucky. Several new alternates were evaluated in this DEIS.

Based on an evaluation of the potentially significant environmental consequences and coupled with public and resource agency comments, the KYTC has reevaluated the proposed project and has determined that a reduced scope of work to provide a basic replacement of the two-lane facility with safety upgrades would substantially meet the purpose and need for the project. Since the reduced scope of work for the proposed project essentially negates the information contained in the DEIS, the FHWA is withdrawing the August 4, 1994 DEIS. The FHWA anticipates that no significant impacts will result from the proposed actions and that a FONSI will be issued.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: January 16, 1998.

Jesse A. Story,

Division Administrator, Frankfort, Kentucky.

[FR Doc. 98–1725 Filed 1–23–98; 8:45 am]

BILLING CODE 4910–12–M

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–98–3330]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and Request for Comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before March 27, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia Ann Thomas, Office of Maritime Labor, Training and Safety, MAR–250, Room 7302, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone number 202–366–2646 or fax number 202–493–2288. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Merchant Marine Medals and Awards.

Type of Request: Extension of a currently approved information collection.

OMB Control Number: 2133–0506.

Form Number: No form is required for this collection.

Expiration Date of Approval: September 30, 1998.

Summary of Collection of Information: This information collection provides the Maritime Administration with a method for documenting and processing requests for merchant marine medals and decorations to masters, officers, and crew members of U.S. ships in recognition of their service in areas of danger during World War II, Korean War, Vietnam War and Operation DESERT STORM and the replacement of previously issued awards.

Need and Use of the Information: The information collection is used by MARAD personnel to process and verify requests for service awards. The issuance of awards is based upon requests from the public.

Description of Respondents: Eligible merchant seamen.

Annual Responses: 2500 responses.

Annual Burden: 2500 hours.

Comments: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, S.W., Washington, D.C. 20590–0001. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http:/dms.dot.gov.

Dated: January 20, 1998.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 98–1710 Filed 1–23–98; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–97–3122; Notice 2]

Dan Hill & Associates, Inc.; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224

This document grants the application by Dan Hill & Associates, Inc., of Norman, Oklahoma, for a one-year temporary exemption from Motor Vehicle Safety Standard No. 224 *Rear Impact Protection*. The basis of the application was that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

Notice of receipt of the application was published on November 21, 1997, and an opportunity afforded for comment (62 FR 62398).

The applicant manufactures and sells a horizontal discharge trailer ("Flow Boy") that is used in the road construction industry to deliver asphalt and other road building materials to the construction site. The Flow Boy is designed to connect with and latch onto various paving machines ("pavers"). The Flow Boy, with its hydraulically controlled horizontal discharge system, discharges hot mix asphalt at a controlled rate into a paver which overlays the road surface with asphalt material.

Standard No. 224 requires, effective January 26, 1998, that all trailers with a GVWR of 4536 Kg or more, including Flow Boy trailers, be fitted with a rear impact guard that conforms to Standard No. 223 *Rear impact guards*. Installation of the rear impact guard will prevent the Flow Boy from connecting to the paver. Thus, Flow Boy trailers will no longer be functional and contractors will be forced to use standard dump body trucks or trailers with their inherent limitations.

The applicant, which manufactured 81 Flow Boy trailers in 1996 (plus 21 other trailers), asked for a one-year exemption in order to explore the feasibility of a rear impact guard that will allow the Flow Boy trailer to connect to a conventional paver. In the absence of an exemption, it believes that approximately 60 percent of its work force would have to be laid off. Its gross revenues would decrease by $6,000,000 (these have averaged $13,885,000 over its 1994, 1995, and 1996 fiscal years). Present studies show that the placement of the retractable rear impact guard would likely catch excess asphalt as it was discharged into the pavement hopper. Further, the increased cost of the Flow Body would likely cause contractors to choose the cheaper alternative of dump trucks. Finally, the applicant asserted that the increased weight of the retractable rear impact guard would significantly decrease the payload of the Flow Boy.

Applicant sent its Product Specialist to Germany in 1994 to view underride protection guards installed by a German customer on Flow Boy trailers but the technology proved inapplicable because of differences between German and American pavers. Manufacturers of paving machines are not interested in redesigning their equipment to accommodate a Flow Boy with a rear impact guard. The applicant has contacted a British manufacturer of a retractable rear impact guard but the information received to date does not look encouraging. If an exemption is granted, the applicant will continue to explore the feasibility of a retractable rear guard that allows connection with a paver.

The applicant believes that an exemption would be in the public interest and consistent with traffic safety objectives because the Flow Boy aids in the construction of the national road system. It spends very little of its operating life on the highway and the likelihood of its being involved in a rear-end collision is minimal. In addition, the design of the Flow Boy is such that the rear tires act as a buffer and reduce the likelihood of impact with the trailer.

No comments were received in response to the **Federal Register** notice.

The applicant differs from the usual hardship petitioner in that it is a corporation whose net revenues are positive and healthy. The hardship to be borne in this instance is the effect of a denial upon the company. The applicant's production is limited in number; it produced 102 trailers in 1996, of which 86 are of the type for which exemption is sought. This is approximately 85 percent of its production. Although the remaining trailer types appear to contribute a proportionally greater part of the company's gross revenues, these revenues would decline by a significant percentage. There is also the economic cost, not discussed by the company, of maintaining unused manufacturing facilities and settling accounts with suppliers for goods ordered and canceled.

The company's efforts to comply appear to have been stymied by the unacceptability of a redesign of the Flow Boy to its consumers. Its application indicates that, for the past three years, it has looked at home and abroad in search of a solution that meets both safety and market needs. It will continue to do so if granted an exemption.

The applicant has argued that an exemption is in the public interest because the Flow Boy aids in construction of the national highway system. While the company did not quantify its work force, it estimated that approximately 60 percent of it would have to be laid off in the wake of a denial. Thus, the company could have argued that continued full employment of its work force is also in the public interest.

Finally, the company believes that an exemption is consistent with objectives of motor vehicle safety because the Flow Boy spends very little of its operating life on the highway and the likelihood of it being involved in a rear-end collision is minimal. NHTSA understands this to mean that proportion of time spent in transit on the roads from one job site to another will be small in comparison with the time spent at rest at construction sites amidst other road equipment. This indicates that the exposure of a Flow Boy without a rear underride guard to a potential crash situation will be reduced. The small number of trailers that may be produced under the exemption, less than 100, further reduces the crash potential.

In consideration of the foregoing, it is hereby found that requiring compliance with Standard No. 224 as of its effective date would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. It is also found that an exemption would be in the public interest and consistent with the objectives of motor vehicle safety. Accordingly, the company of Dan Hill & Associates is hereby granted NHTSA Temporary Exemption No. 98–1 from 49 CFR 571.224 Motor Vehicle Safety Standard No. 224 *Rear Underride Protection*, expiring February 1, 1999.

Authority: 49 U.S.C. 30113, 49 CFR part 555; delegation of authority at 49 CFR 1.50.

Issued on January 20, 1998.

Ricardo Martinez,

Administrator.

[FR Doc. 98–1784 Filed 1–23–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33542]

CSX Transportation, Inc.—Trackage Rights Exemption—Consolidated Rail Corporation and Indiana Harbor Belt Railroad

Consolidated Rail Corporation (Conrail), as owner, and Indiana Harbor Belt Railroad Company (IHB), as operator,[1] have agreed to grant overhead trackage rights to CSX Transportation, Inc. (CSXT), to operate its trains, locomotives, cars, and equipment with CSXT's own crews over Conrail's Kankakee Line between Michigan Avenue, Indiana Harbor, IN, milepost 0.0±, and Osborn, IN, milepost 4.8±, at the connection between Conrail's Kankakee Line and the Norfolk and Western Railway Company, a total distance of approximately 4.8 miles. The trackage rights are restricted to bridge traffic only between the termini of the trackage rights for trainload movements of finished automobiles and associated empty equipment to and from the Ford Mixing Center in the Calumet Yard area.

The transaction is expected to be consummated on January 19, 1998, the effective date of the exemption.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33542, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001 and served on: Charles M. Rosenberger, Senior Counsel, CSX Transportation, Inc., 500 Water Street, J-150, Jacksonville, FL 32202.

Decided: January 16, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–1755 Filed 1–23–98; 8:45 am]

BILLING CODE 4915–00–P

[1] Pursuant to a trackage rights agreement, dated April 9, 1906, Conrail granted trackage rights to IHB to operate over portions of its railroad, including that portion of the Kankakee Line which CSXT will acquire upon the effective date of this exemption. Since IHB acts as agent on behalf of Conrail in the performance of supervision, control and maintenance of this line of railroad, IHB is included as a party to the trackage rights agreement.

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Regulations Governing United States Savings Bonds Series E/EE and H/HH.

DATES: Written comments should be received on or before March 30, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

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SUPPLEMENTARY INFORMATION:

Title: Regulations Governing United States Savings Bonds Series E/EE and H/HH.

OMB Number: 1535–0095.

Abstract: The regulations mandate the payment of H/HH interest by Direct Deposit (ACH Method).

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals, Businesses or other for-profit, and state or local governments.

Estimated Total Annual Burden Hours: 1.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 20, 1998.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 98–1727 Filed 1–23–98; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the transaction request for U.S. Treasury Securities State and Local Government Series and Early Redemption Request for U.S. Treasury Securities State and Local Government Series.

DATES: Written comments should be received on or before March 30, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Transaction Request for U.S. Treasury Securities State and Local Government Series and Early Redemption Request for U.S. Treasury Securities State and Local Government Series.

OMB Number: 1535–0121.

Form Numbers: PD F 5376 and PD F 5377.

Abstract: The information is requested to process accounts for the owners of securities of State and Local Government Series.

Current Actions: None.

Type of Review: Extension.

Affected Public: State or Local Government.

Estimated Number of Respondents: 3,350.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 1,675.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 20, 1998.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 98–1728 Filed 1–23–98; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the U.S. Savings Bonds EasySaver Plan Enrollment Application Series EE.

DATES: Written comments should be received on or before March 30, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: U.S. Savings Bonds EasySaver Plan Enrollment Application Series EE.

Form Number: PD F 5391.

Abstract: The information is requested from the purchaser to issue Series EE Savings Bonds.

Current Actions: None.

Type of Review: New.

Affected Public: Individuals or households.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 17,000.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 20, 1998.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 98–1729 Filed 1–23–98; 8:45 am]

BILLING CODE 4810–39–P

UNITED STATES ENRICHMENT CORPORATION

Sunshine Act Meeting

AGENCY: United States Enrichment Corporation Board of Directors.

TIME AND DATE: 8:00 a.m., Wednesday, January 28, 1998.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: The Board meeting will be closed to the public.

MATTER TO BE CONSIDERED:

- Review of commercial, operational and financial issues of the Corporation.

CONTACT PERSON FOR MORE INFORMATION: Joseph Tomkowicz 301–564–3345.

January 21, 1998.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 98–1886 Filed 1–22–98; 10:18 am]

BILLING CODE 8720–01–M

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Federal Register

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Part II

Department of Education

Office of Postsecondary Education; Availability of the Federal Perkins Loan and National Direct Student Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits for the 1997–98 School Year; Notice

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DEPARTMENT OF EDUCATION

[CFDA No. 84.037]

Office of Postsecondary Education; Availability of the Federal Perkins Loan and National Direct Student Loan Programs Directory of Designated Low-Income Schools For Teacher Cancellation Benefits For the 1997–98 School Year

ACTION: Notice of availability of the Federal Perkins Loan and National Direct Student Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits for the 1997–98 School Year.

SUMMARY: The Secretary announces that the 1997–98 Federal Perkins Loan and National Direct Student Loan Programs Directory of Designated Low-Income Schools (Directory) is now available. Under the Federal Perkins Loan and National Direct Student Loan programs, a borrower may have repayment of his or her loan deferred and a portion of his or her loan canceled if the borrower teaches full-time for a complete academic year in a designated elementary or secondary school having a high concentration of students from low-income families. In the 1997–98 Directory, the Secretary lists, on a State-by-State and Territory-by-Territory basis, the schools in which a borrower may teach during the 1997–98 school year to qualify for deferment and cancellation benefits.

DATES: The Directory is currently available.

ADDRESSES: Information concerning specific schools listed in the Directory may be obtained from Sherraine Green, Systems Administration Branch, Campus-Based Programs Systems Division, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, SW., (Regional Office Building 3, Room 4621), Washington, DC 20202–5447, Telephone (202) 708–5182. Information concerning deferment and cancellation of a National Direct or Federal Perkins loan may be obtained from Sylvia Ross or Gail McLarnon, Program Specialists, Campus-Based Loan Programs Section, Loans Branch, Policy Development Division, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, SW., (Regional Office Building 3, Room 3045), Washington, DC 20202–5447, Telephone (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) to the contact person listed in the preceding paragraph.

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FOR FURTHER INFORMATION CONTACT: Directories are available at (1) each institution of higher education participating in the Federal Perkins Loan Program, (2) each of the fifty-seven (57) State and Territory Departments of Education, (3) each of the major Federal Perkins Loan billing services, and (4) the U.S. Department of Education, including its regional offices.

SUPPLEMENTARY INFORMATION: The Secretary selects the schools that qualify the borrower for deferment and cancellation benefits under the procedures contained in the Federal Perkins Loan program regulation in 34 CFR 674.53, 674.54 and 674.55.

The Secretary has determined that, for the 1997–98 academic year, full-time teaching in the schools set forth in the 1997–98 Directory qualifies a borrower for deferment and cancellation benefits.

The Secretary is providing the Directory to each institution participating in the Federal Perkins Loan Program. Borrowers and other interested parties may check with their lending institutions, the appropriate State or Territory Department of Education, regional offices of the Department of Education, or the Office of Postsecondary Education of the Department of Education concerning the identity of qualifying schools for the 1997–98 academic year. The Office of Postsecondary Education retains, on a permanent basis, copies of past Directories.

Dated: January 14, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 98–1811 Filed 1–23–98; 8:45 am]

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LIST OF PUBLIC LAWS

The List of Public Laws for the 105th Congress, First Session, has been completed. It will resume when bills are enacted into Public Law during the second session of the 105th Congress, which convenes on January 27, 1998.

Note: A Cumulative List of Public Laws was published in the **Federal Register** on December 31, 1997.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

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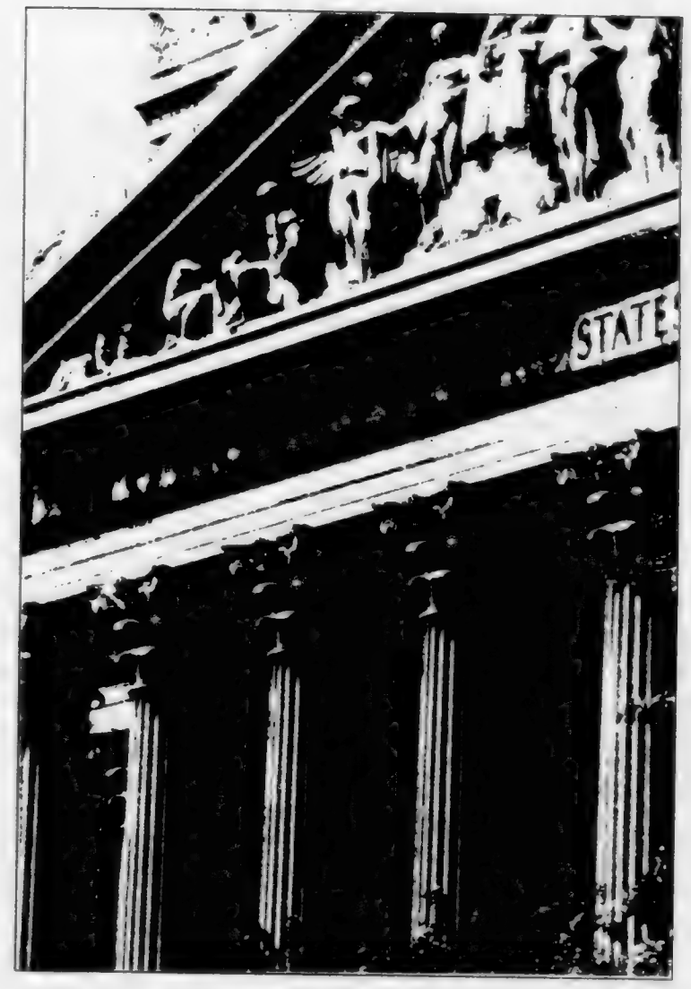
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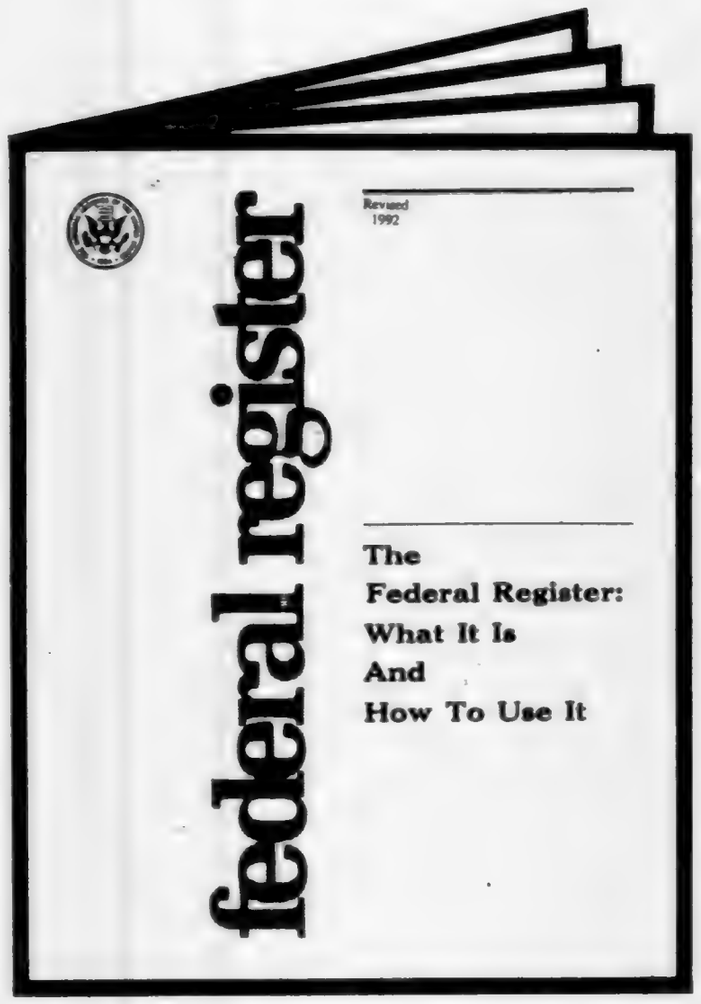
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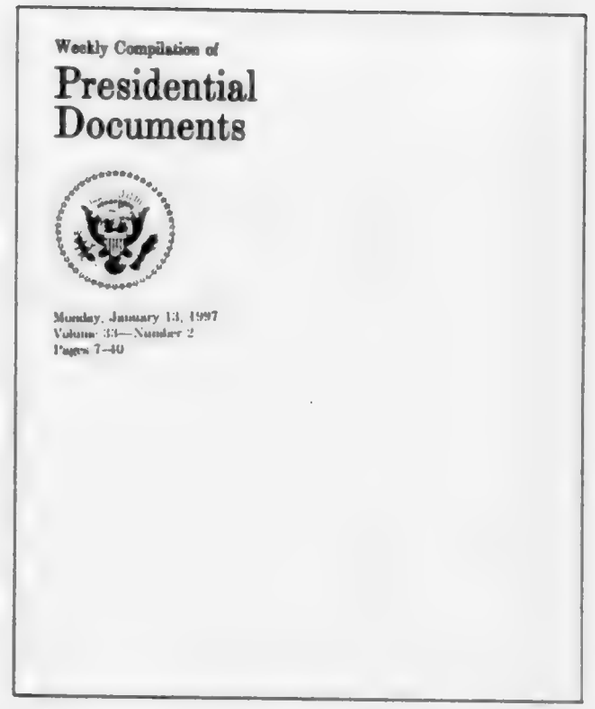
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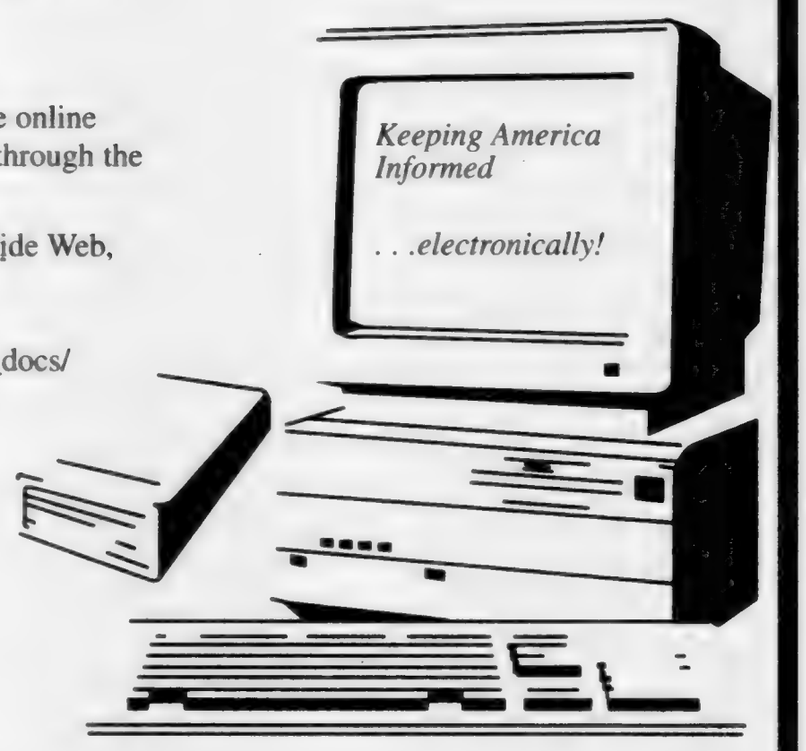
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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 783

Commodity Credit Corporation

7 CFR Part 1478

RIN 0560–AF17

Tree Assistance Program

AGENCIES: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to adopt as final, with change, the interim rule published in the **Federal Register** on September 29, 1997 (62 FR 50850). This final rule sets forth the regulations necessary for implementing the 1997 Tree Assistance Program (TAP). The Act Making Emergency Supplemental Appropriations for Recovery from Natural Disasters for the fiscal year ending September 30, 1997 (the Act), authorized TAP assistance to small orchardists to replace or rehabilitate trees and vineyards damaged by natural disasters. Due to limited funds appropriated for this program, the losses for which reimbursement is sought are limited to natural disasters that occurred between October 1, 1996, and September 30, 1997. Cost-share assistance may not exceed 100 percent of the eligible replacement or rehabilitation costs and may be based on average costs or the actual costs for the replanting practices, as determined by the Deputy Administrator for Farm Programs.

EFFECTIVE DATE: Final rule effective January 26, 1998.

FOR FURTHER INFORMATION CONTACT: David M. Nix, Production, Emergencies, and Compliance Division (PECD), Farm Service Agency (FSA), USDA, 1400 Independence Avenue, SW., STOP 0517, Washington, DC 20012–0517, telephone (202) 690–4091, e-mail address: dnix@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because the Farm Service Agency (FSA) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

An Environmental Evaluation with respect to the Tree Assistance Program has been completed. It has been determined that this action is not expected to have a significant impact on the quality of the human environment. In addition, it has been determined that this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State law to the extent that such laws are inconsistent with the provisions of this rule. The provisions of this rule are retroactive to October 1, 1996. Before any judicial action may be brought regarding the provisions of this rule, the administrative remedies must be exhausted.

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA regulations.

Discussion of Changes

No comments were received in response to the interim rule issued on September 29, 1997. However, during the administration of this program, FSA discovered a need for clarification regarding duplication of benefits which will be set forth in this final rule.

Clarification provides if an owner is eligible to receive payments under this part, catastrophic risk protection crop insurance program (7 CFR part 402), and non-insured crop disaster assistance program (7 CFR part 1437) for the same tree or vine loss, the eligible owner must choose whether to receive the other program benefits or payments under this part.

List of Subjects in 7 CFR Parts 783 and 1478

Disaster assistance, Grant programs—agriculture.

Accordingly, the interim rule set forth at 7 CFR part 783 which was published September 29, 1997, is adopted as a final rule with the following change:

PART 783—1997 TREE ASSISTANCE PROGRAM

1. The authority citation for part 783 continues to read as follows:

Authority: Pub. L. 105–18, 111 Stat. 158.

2. Section 783.8 paragraph (c) is revised to read as follows:

§ 783.8 Application process.

* * * * *

(c) If an owner is eligible to receive payments under this part and the catastrophic risk protection crop insurance program (7 CFR part 402), or

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the noninsured crop disaster assistance program (7 CFR part 1437) for the same tree or vine loss, the eligible owner must choose whether to receive the other program benefits or payments under this part. The eligible owner cannot receive both. However, if the other program benefits are not available until after the eligible owner has received benefits under this part, the eligible owner may obtain the other program benefits if the eligible owner refunds the total amount of the payment received prior to receiving the other program benefits. If the eligible owner purchased additional coverage insurance, as defined in 7 CFR 400.651, or is eligible for emergency loans, the eligible owner will be eligible for assistance under such program, and this part as long as the amount received for the loss under the additional coverage or the emergency loan together with the amount received from the other programs does not exceed the amount of the actual loss of the eligible owner.

Signed at Washington, D.C., on January 20, 1998.

Bruce R. Weber,

Acting Administrator, Farm Service Agency and Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 98–1916 Filed 1–26–98; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 207, 208, and 299

[INS No. 1639–93]

RIN 1115–AD59

Procedures for Filing a Derivative Petition (Form I–730) for a Spouse and Unmarried Children of a Refugee/Asylee

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the Immigration and Naturalization Service (Service) regulations by providing specific guidelines on the procedures which must be followed by a refugee or asylee to bring his/her spouse and unmarried, minor child(ren) (derivatives) into the United States. This rule responds to the family reunification needs of refugees by establishing an equitable and consistent derivative policy for refugees which parallels the current derivative procedures for asylees. This rule also amends asylum regulations by removing from the definition of qualifying relationship child(ren) born to, or legally adopted by, the principal alien and spouse after approval of the principal alien's asylum application.

DATES: This rule is effective February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Suzy Nguyen or Ramonia Law-Hill, Senior Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: On July 9, 1996, the Service published a proposed rule in the **Federal Register** at 61 FR 35984, providing procedures that must be followed by a refugee or asylee to bring his or her spouse and unmarried, minor child(ren) (derivatives) into the United States.

The proposed rule was designed to respond more fully to the family reunification needs of refugees, while establishing specific guidelines on the derivative policy for both refugees and asylees. First, the proposed rule allowed the Service to use the refugee's date of admission into the United States to determine accompanying or following-to-join eligibility for his/her spouse and unmarried, minor child(ren). A refugee would be able to file a Form I–730, Refugee/Asylee Relative Petition, for his/her spouse and/or each individual child if the relationship predates the refugee's date of admission to the United States, rather than the date of interview or tentative approval date of the application. This eligibility would extend to a child who is *in utero* on the date of the refugee's admission to the United States but is born after the refugee's admission as a refugee.

Second, the proposed rule imposed a 1-year time limit from the date of the principal refugee's admission to the United States within which he or she must file a Form I–730 for his/her spouse and/or each individual child, unless the Service determined that the filing period should be extended for humanitarian reasons. Similarly, the principal asylee would be required to file a Form I–730 for each qualifying family member within 1 year of the date on which he or she was granted asylum status, unless the Service determines that the filing period should be extended for humanitarian reasons.

Third, the proposed rule required that only an alien who was admitted to the United States as a principal refugee would be eligible to file the Form I–730 for accompanying or following-to-join benefits for his/her spouse and/or unmarried, minor child(ren). Those individuals who derived their refugee status from the principal refugee would not be eligible to file a Form I–730.

Fourth, the proposed rule would amend the asylum regulations by requiring that, for purposes of filing a Form I–730, the asylee's relationship to a child must have existed at the time of approval of the asylum application.

Finally, the proposed rule added certain documentary and evidentiary requirements for filing a Form I–730, such as requiring that a separate Form I–730 be filed for each individual qualifying family member and that a photograph of the derivative be included. These proposed regulations served to clarify the Service's accompanying and following-to-join policy for Service officers and the general public by standardizing refugee and asylee derivative procedures.

The Immigration and Naturalization Service allowed a 60-day public comment period which ended on September 9, 1996. The Service received 19 comments on the proposed rule. The following is a discussion of those comments and the Service's response.

Discussion of Comments

Using the Principal Refugee's Date of Admission To Determine Derivative Eligibility

The Service proposed that the principal refugee's date of admission into the United States be used to determine accompanying or following-to-join eligibility for his/her derivatives. Current regulations require that the refugee's relationship to the spouse or child exist prior to the tentative approval date of the principal's application for refugee status. Furthermore, according to the proposed rule, if the refugee proves that he/she is the parent of a child who was born after the refugee's admission to the United States, but who was *in utero* on the date of refugee's admission as a refugee, the child shall be eligible to accompany or follow-to-join the refugee.

Fourteen commenters praised and supported the Service's decision to use the principal refugee's date of admission rather than date of tentative approval. In addition, three commenters supported the Service's proposed rule pertaining to children *in utero*. Only one commenter was in opposition, claiming that the change would invite exploitation and fraud.

The Service has carefully considered the one commenter's concern regarding the possibility of fraud. The Service feels that the proposed rule contains certain evidentiary and documentary requirements (such as requiring a recent photograph of the spouse or child and

requiring evidence of the claimed relationship as set forth in 8 CFR part 204) which may reduce the risk of fraud and exploitation. Furthermore, the current interpretation of derivative eligibility for refugees has created confusion for Service officers, attorneys and representatives, refugees, and the general public. The Service believes that this rule will alleviate inconsistencies in determining eligibility that has been encountered due to the difficulty in determining the date of tentative approval of the principal refugee's application. In addition, the current interpretation is too restrictive because it requires a refugee to meet a heavier burden for establishing a relationship with his/her spouse and/or child(ren) than is required by regulation for a citizen or lawful permanent resident of the United States. Moreover, the Service believes that this rule reflects the intent of Congress by enhancing family reunification for refugees.

One Year Filing Requirement

The proposed rule required that a separate Form I–730 must be filed for each qualifying derivative within 1 year of the principal refugee's admission to the United States, unless the Service determines that the filing period should be extended for humanitarian reasons. Similarly, the proposed rule required that a separate Form I–730 for each qualifying derivative must be filed within 1 year of the date on which the principal asylee was granted asylum status, unless the Service determines that the filing period should be extended for humanitarian reasons.

Twelve commenters opposed the 1-year time limit. Ten of those claimed that 1 year is too short or unrealistic. Two commenters suggested a minimum of 3 years, and one suggested that a more reasonable time limit would be when the refugee/asylee becomes eligible for U.S. Citizenship. Seven commenters argued that there is no time restriction imposed in the Immigration and Nationality Act ("the Act") and that, therefore, the Service should not set a time limit. Others noted that, since this is a newly imposed time limit, the Service should ensure that refugees and asylees are well informed of this filing requirement. Only one commenter agreed that the 1-year time limit was reasonable.

Derivative benefits for refugees and asylees are intended to expediently reunite families in order for them to make the difficult transition to a new life with the support of their immediate family members by avoiding lengthy delays due to visa quotas. The timely filing of Form I–730 will expedite the reunification of refugee families. At the moment, Service regulations on derivative benefits for refugee and asylees contain no time limitation. As a result, there are individuals who had entered the United States in the late 1970s or early 1980s as refugees who did not file Form I–730 petitions for their derivatives until ten or more years after their admission. Such filings no longer serve the purpose for which they were originally intended and, instead, only serve to deplete limited refugee admission numbers and refugee resettlement monies needed for currently emerging refugee populations. In determining the filing time limitation for Form I–730, the Service acknowledges that it must be responsive to the needs of the applicant base.

After careful consideration of the comments received, the Service is modifying the proposed rule with regard to the 1-year time limit. Accordingly, the final rule requires that the Form I–730 must be filed within *2 years* of the date of admission to the United States for a refugee, or within 2 years of the grant of asylum for an asylee. Although the Service believes that 1 year is a reasonable time limit for refugees and asylees to file the Form I–730, the Service would like to acknowledge and address the commenters' concerns by adopting this change. Therefore, the filing of the Form I–730 within 2 years of admission as a refugee or grant of asylum will serve to notify the Service of a refugee's or asylee's intent to have his/her derivative(s) join him/her in the United States. The Service has also carefully reviewed the provisions of section 207(c)(2) of the Act and has determined that the establishment of a filing period does not violate the language or intent of that section of the Act.

Five commenters argued that, since the proposed rule did not define which "humanitarian reasons" warranted an extension of the filing deadline, this would lead to arbitrary and conflicting decisions by Service officers, or create a large category of applicants under this exception. On the contrary, the Service believes that defining the specific qualifying "humanitarian reasons" would only act to restrict severely the category and shut the door on applicants who need this exception most. As with other immigration benefits, applications should be decided on a case-by-case basis. Likewise, although humanitarian exceptions are used throughout other Service regulations, the term is not defined so that individuals with exceptional cases are not shut out. The Service will make continual assessments of the processing of the I–730 petitions, particularly in the early stages of the promulgation of this rule, and provide guidance to Service officers, if necessary, in order to ensure uniformity in the decision process.

Ten commenters noted that the Service should have some type of grandfather clause to allow petitioners whose Forms I–730 were denied under the old regulations to refile or reopen their cases. Five commenters pointed out that, although the introductory comment to the proposed rule had indicated that refugees and asylees in the United States for more than 1 year when the regulation becomes effective would be given 1 year to file, this provision was not put in the proposed regulation itself. Furthermore, the proposed rule failed to address refugees and asylees who have been in the United States for less than 1 year at the time the regulation becomes effective.

The Service agrees with the commenters who expressed the need for some type of grandfather clause. The Service is also grateful to those commenters who spotted the inadvertent omission. In response to these comments, the Service is including a grandfather clause in the final rule which allows all persons admitted as refugees or granted asylum prior to the effective date of the final rule to file the Form I–730 within 2 years of that effective date regardless of when they were admitted as a refugee or granted asylum. This will allow refugees and asylees an equal opportunity to apply for derivative benefits for their spouse and/or child(ren). A principal refugee who had previously submitted the Form I–730 but was denied because of current regulations requiring the relationship with his/her derivative(s) to have existed prior to the tentative approval date of his/her application for refugees status should reapply by submitting Form I–730 for each individual derivative within 2 years of the effective date of the final rule. It is noted that petitioners must reapply in these situations since the Service will not *sua sponte* reopen previously denied files. In order to better inform the general public, the Service is including the grandfather clause in the instructions part of the revised Form I–730 to inform all potential refugee and asylee petitioners that they have either 2 years from the date on which the final rule becomes effective or 2 years after the date of admission (for refugees) or grant of asylum (for asylees), whichever is later, to file the Form I–730.

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Only the Principal Refugee May File a Form I–730

Similar to current regulations, the proposed rule required that the Form I–730 be filed by the principal refugee. Individuals who have derived their refugee status from the principal refugee are not eligible to file a Form I–730.

Ten commenters opposed the Service's requirement that only the principal refugee may file the Form I–730. Four commenters claimed that, because of the refugee registration systems used overseas, certain refugees may be inadvertently labeled as a derivative when he/she does not fit the definition of a derivative spouse or child and, in fact, should be considered a principal for the purposes of filing the Form I–730. Two commenters argued that any refugee who does not meet the statutory definition of a "derivative" should be allowed to file the Form I–730. Several commenters stated that if the purpose of the principal applicant rule is to deter fraud, then it is overbroad and, as such, violates the intent and language of the Act. One commenter expressed the need for a humanitarian exception in the case where the principal refugee is deceased or incapacitated, becomes abusive, or abandons his/her family after the derivative spouse has reached the United States, in order to allow the derivative spouse to petition for their mutual child(ren). Another commenter stated that the regulation should allow for the child of an unmarried parent to accompany or follow-to-join him/her even if the parent had obtained his/her refugee status on a derivative basis.

The Service has carefully considered their comments and has reviewed the language of the Act at sections 207 (c)(1) and (c)(2). The requirement that only the principal refugee may file for accompanying of following-to-join benefits for his/her spouse and/or child(ren) may be ascertained from the language of sections 207 (c)(1) and (c)(2) of the Act. Section 207(c)(2) provides for the admission of spouses and children (as defined in section 101(b)(1) (A), (B), (C), (D), or (E) of the Act) of a refugee qualifying for admission under section 207(c)(1) of the Act. Accordingly, only a principal refugee, admitted under section 207(c)(1) of the Act, may file a Form I–730 on behalf of his or her spouse or child(ren). The Service already regards persons admitted under section 207 who do not meet the statutory definition of a spouse or child to be principals for the purpose of filing an I–730 petition.

Eight commenters stated that the proposed rule was confusing in its use of the terms "principal refugee," "principal applicant," and "principal alien." The Service agrees with these comments and has removed the term "principal applicant" from the final rule in order to avoid any confusion.

Eligible and Ineligible Relatives of a Refugee/Asylee

The Service listed in proposed § 207.7(b) relatives of refugees who are ineligible for accompanying or following-to-join benefits, which included: a spouse or child who has previously been granted asylee or refugee status; an adopted child, if the adoption took place after the child became 16 years old, or if the child has not been in the legal custody and living with the parent(s) for at least 2 years; a stepchild, if the marriage that created this relationship took place after the child became 18 years old; a husband or wife if each/both were not physically present at the marriage ceremony and the marriage was not consummated, or if the U.S. Attorney General has determined that such alien has attempted or conspired to enter into a marriage for the purpose of evading immigration laws; and a parent, sister, brother, grandparent, grandchild, nephew, niece, uncle, aunt, cousin or in-law.

Six commenters put forth various arguments for the inclusion of certain relatives as eligible accompanying or following-to-join derivatives of a refugee or asylee. Four commenters stated that some type of exclusion should be made for a child of a derivative child. Two commenters claimed that relatives listed in proposed § 207.7(b)(6) (i.e., parent, sibling, grandparent/child, nephew/niece, uncle/aunt, cousin, and in-law) should be included as derivative refugees when they are dependent on the principal refugee and reside in his/her household. One commenter argued that barring the mother of the principal alien's child because the principal was not married to the child's mother is harsh and irrelevant. Another claimed that eligible "accompanying derivative" should include relatives of the principal petitioner's spouse, or the principal petitioner's child. One commenter pointed out that many children in agrarian or less-developed societies are customarily adopted without legal formalities; therefore, people should be allowed to present proof that they were the actual custodial guardian of the child for the requisite minimum of 2 years, to petition for the child as a derivative refugee, and then complete the legal adoption formalities in the United States.

The Service has carefully considered these comments. However, section 207(c)(2) of the Act clearly specifies that only a "spouse or child (as defined in section 101(b)(1) (A), (B), (C), (D), or (E))" of a refugee shall be eligible for accompanying or following-to-join benefits. Accordingly, the Service has deemed ineligible those relatives who do not fit the statutory definition of a spouse and child as defined in sections 101(a)(35) and 101(b)(1) (A), (B), (C), (D), or (E), respectively, of the Act.

Evidentiary and Documentary Requirements

The proposed rule required that a separate Form I–730 must be filed for each qualifying family member, which must also include a recent photograph of this family member. The petitioning refugee or asylee has the burden to establish by a preponderance of the evidence that the person for whom he/she is petitioning is an eligible spouse or child. The evidence to establish the claimed relationship for a spouse or unmarried, minor child as set forth in 8 CFR part 204 must be submitted with the Form I–730; where possible, this will consist of the documents specified in § 204.2(a)(1)(i)(B), (a)(1)(iii)(B), (a)(2), (d)(2), and (d)(5). No fee is charged for filing a Form I–730 petition.

Three commenters opposed the proposed requirement that a separate Form I–730 must be filed for each family member. Four commenters claimed that the photograph requirement is too restrictive and unrealistic. Six commenters argued that the heightened evidence needed to prove spousal relationship should only apply in situations where Congress has expressed the fear of marriage fraud, which would not include refugees cases. In addition, five commenters stated that the "where possible" language of the proposed rule is vague and, therefore, may result in arbitrary decisions by Service officers.

The Service has carefully considered the comments. However, the Service believes that the evidentiary and documentary requirements are reasonable. First, having a separate Form I–730 for each family member will enhance efficiency and facilitate Service processing of the petition, especially in cases where there are many derivatives and/or they are residing in different geographic locations. Since each derivative has a separate I–730, each petition may be processed on its own without having to wait for the rest of the family members. Second, the photograph required of each derivative need not meet Alien Documentation Identification and Telecommunication System (ADIT) specifications. The Service believes that it is not overly burdensome to require a non-ADIT photograph. Third, the Service believes that adopting the standard of evidence set forth in 8 CFR part 204 to establish a claimed relationship for a spouse or minor, unmarried child is a reasonable requirement in light of the risk of fraudulent petitions.

Finally, petitioners should note that although there is no appeal from the denial of a petition filed on Form I–730, the denial shall be without prejudice to the consideration of a new petition or motion to reopen the refugee or asylee relative petition proceeding, if the petitioner establishes eligibility for accompanying or following-to-join benefits. This is consistent with other types of applications for immigration benefits where no administrative appeal is available, but the applicant may submit a new application or a motion to reopen in the case of a denial (e.g., 8 CFR 204.2(a)(1)(iii)(D)).

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is administrative in nature and merely imposes specific regulatory restraints, which parallel procedures currently found in asylum regulations. This rule will not result in an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, or cause major increases in costs or prices for consumers, or have other adverse effects on the economy in terms of productivity, competition jobs, the environment, public health, or safety. Furthermore, the affected parties are not small entities, and the impact of the regulation is not an economic one.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to and, approved by, the Office of Management and Budget.

Executive Order 12612

The regulations proposed herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Form I–730

The revised Form I–730 has been included at the end of this final rule to allow the public to duplicate the form from the **Federal Register** until the form is printed and distributed worldwide.

Paperwork Reduction Act

The information collection requirement (Form I–730) contained in this rule has been submitted to and approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The clearance number for this collection is contained in 8 CFR 299.5

List of Subjects

8 CFR Part 207

Immigration, Refugees, Reporting and recordkeeping requirements.

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 207—ADMISSION OF REFUGEES

1. The authority citation for part 207 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1157, 1159, 1182, 8 CFR part 2.

§§ 207.7 and 207.8 [Redesignated as § 207.8 and § 207.9]

2. Sections 207.7 and 207.8 are redesignated as § 207.8 and § 207.9 respectively.

3. A new § 207.7 is added to read as follows:

§ 207.7 Derivatives of refugees.

(a) *Eligibility.* A spouse, as defined in section 101(a)(35) of the Act, and/or child(ren), as defined in section 101(b)(1)(A), (B), (C), (D), or (E) of the Act, shall be granted refugee status if accompanying or following-to-join the principal alien. An accompanying derivative is a spouse or child of a refugee who is in the physical company of the principal refugee when he or she is admitted to the United States, or a spouse or child of a refugee who is admitted within 4 months following the principal refugee's admission. A following-to-join derivative, on the other hand, is a spouse or child of a refugee who seeks admission more than 4 months after the principal refugee's admission to the United States.

(b) *Ineligibility.* The following relatives of refugees are ineligible for accompanying or following-to-join benefits:

(1) A spouse or child who has previously been granted asylee or refugee status;

(2) An adopted child, if the adoption took place after the child became 16 years old, or if the child has not been in the legal custody and living with the parent(s) for at least 2 years;

(3) A stepchild, if the marriage that created this relationship took place after the child became 18 years old;

(4) A husband or wife if each/both were not physically present at the marriage ceremony, and the marriage was not consummated (section 101(a)(35) of the Act);

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(5) A husband or wife if the U.S. Attorney General has determined that such alien has attempted or conspired to enter into a marriage for the purpose of evading immigration laws; and

(6) A parent, sister, brother, grandparent, grandchild, nephew, niece, uncle, aunt, cousin or in-law.

(c) *Relationship.* The relationship of a spouse and child as defined in sections 101(a)(35) and 101(b) (1)(A), (B), (C), (D), or (E), respectively, of the Act, must have existed prior to the refugee's admission to the United States and must continue to exist at the time of filing for accompanying or following-to-join benefits and at the time of the spouse or child's subsequent admission to the United States. If the refugee proves that the refugee is the parent of a child who was born after the refugee's admission as a refugee, but who was *in utero* on the date of the refugee's admission as a refugee, the child shall be eligible to accompany or follow-to-join the refugee. The child's mother, if not the principal refugee, shall not be eligible to accompany or follow-to-join the principal refugee unless the child's mother was the principal refugee's spouse on the date of the principal refugee's admission as a refugee.

(d) *Filing.* A refugee may request accompanying or following-to-join benefits for his/her spouse and unmarried, minor child(ren) (whether the spouse and children are in or outside the United States) by filing a separate Form I–730 Refugee/Asylee Relative Petition, for each qualifying family member with the designated Service office. The Form I–730 may only be filed by the principal refugee. Family members who derived their refugee status are not eligible to file the Form I–730 on behalf of their spouse and child(ren). A separate Form I–730 must be filed for each qualifying family member before February 28, 2000 or within 2 years of the refugee's admission to the United States, whichever is later, unless the Service determines that the filing period should be extended for humanitarian reasons. There is no time limit imposed on a family member's travel to the United States once the Form I–730 has been approved, provided that the relationship of spouse or child continues to exist and approval of the Form I–730 petition has not been subsequently revoked. There is no fee for filing this petition.

(e) *Evidence.* Documentary evidence consists of those documents which establish that the petitioner is a refugee, and evidence of the claimed relationship of the petitioner to the beneficiary. The burden of proof is on the petitioner to establish by a preponderance of the evidence that any person on whose behalf he/she is making a request under this section is an eligible spouse or unmarried, minor child. Evidence to establish the claimed relationship for a spouse or unmarried, minor child as set forth in 8 CFR part 204 must be submitted with the request for accompanying or following-to-join benefits. Where possible this will consist of the documents specified in § 204.2(a (1)(i)(B), (a)(1)(iii)(B), (a)(2), (d)(2), and (d)(5) of this chapter. In addition, a recent photograph of each derivative must accompany the Form I–730. The photograph must clearly identify the derivative, and will be made part of the derivative's immigration record for identification purposes.

(f) *Approvals.* (1) *Spouse or child in the United States.* When a spouse or child of a refugee is in the United States and the Form I–730 is approved, the Service will notify the refugee of such approval on Form I–797, Notice of Action. Employment will be authorized incident to status.

(2) *Spouse or child outside the United States.* When a spouse or child of a refugee is outside the United States and the Form I–730 is approved, the Service will notify the refugee of such approval on Form I–797. The approved Form I–730 will be sent by the Service to the Department of State for forwarding to the American Embassy or Consulate having jurisdiction over the area in which the refugee's spouse or child is located.

(3) *Benefits.* The approval of the Form I–730 shall remain valid for the duration of the relationship to the refugee and, in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal's status has not been revoked. However, the approved Form I–730 will cease to confer immigration benefits after it has been used by the beneficiary for admission to the United States as a derivative of a refugee. To demonstrate employment authorization, the Service will issue a Form I–94, Arrival-Departure Record, which also reflects the derivative's current status as a refugee, or the derivative may apply under § 274a.12(a) of this chapter, using Form I–765, Application for Employment Authorization, and a copy of the Form I–797.

(g) *Denials.* If the spouse or child of a refugee is found to be ineligible for derivative status, a written notice explaining the basis for denial shall be forwarded to the principal refugee. There shall be no appeal from this decision. However, the denial shall be without prejudice to the consideration of a new petition or motion to reopen the refugee or asylee relative petition proceeding, if the refugee establishes eligibility for the accompanying or following-to-join benefits contained in this part.

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

4. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 8 CFR part 2.

5. In § 208.19, paragraphs (b), (c), (d), and (f) are revised to read as follows:

§ 208.19 Admission of asylee's spouse and children.

* * * * *

(b) *Relationship.* The relationship of spouse and child as defined in sections 101(a)(35) and 101(b)(1) of the Act must have existed at the time the principal alien's asylum application was approved and must continue to exist at the time of filing for accompanying or following-to-join benefits and at the time of the spouse or child's subsequent admission to the United States. If the asylee proves that the asylee is the parent of a child who was born after asylum was granted, but who was *in utero* on the date of the asylum grant, the child shall be eligible to accompany or follow-to-join the asylee. The child's mother, if not the principal asylee, shall not be eligible to accompany or follow-to-join the principal asylee unless the child's mother was the principal asylee's spouse on the date the principal asylee was granted asylum.

(c) *Spouse or child in the United States.* When a spouse or child of an alien granted asylum is in the United States, but was not included in the asylee's application, the asylee may request accompanying or following-to-join benefits for his/her spouse or child by filing for each qualifying family member a separate Form I–730, Refugee/Asylee Relative Petition, and supporting evidence, with the designated Service office, regardless of the status of that spouse or child in the United States. A recent photograph of each derivative must accompany the Form I–730. The photograph must clearly identify the derivative, and will be made part of the derivative's immigration record for identification purposes. Additionally, a separate Form I–730 must be filed by the asylee for each qualifying family member before February 28, 2000, or within 2 years of the date in which he/she was granted asylum status, whichever is later, unless it is determined by the Service that this

period should be extended for humanitarian reasons. Upon approval of the Form I–730, the Service will notify the asylee of such approval on Form I–797, Notice of Action. Employment will be authorized incident to status. To demonstrate employment authorization, the Service will issue a Form I–94, Arrival-Departure Record, which also reflects the derivative's current status as an asylee, or the derivative may apply under § 274a.12(a) of this chapter, using Form I–765, Application for Employment Authorization, and a copy of the Form I–797. The approval of the Form I–730 shall remain valid for the duration of the relationship to the asylee and, in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal's status has not been revoked. However, the approved Form I–730 will cease to confer immigration benefits after it has been used by the beneficiary for admission to the United States as a derivative of an asylee.

(d) *Spouse or child outside the United States.* When a spouse or child of an alien granted asylum is outside the United States, the asylee may request accompanying or following-to-join benefits for his/her spouse or child(ren) by filing a separate Form I–730 for each qualifying family member with the designated Service office, setting forth the full name, relationship, date and place of birth, and current location of each such person. A recent photograph of each derivative must accompany the Form I–730. The photograph must clearly identify the derivative, and will be made part of the derivative's immigration record for identification purposes. A separate Form I–730 for each qualifying family member must be filed before February 28, 2000, or within 2 years of the date in which the asylee was granted asylum status, whichever is later, unless the Service determines that the filing period should be extended for humanitarian reasons. When the Form I–730 is approved, the Service will notify the asylee of such approval on Form I–797. The approved Form I–730 shall be forwarded by the Service to the Department of State for delivery to the American Embassy or Consulate having jurisdiction over the area in which the asylee's spouse or child is located. The approval of the Form I–730 shall remain valid for the duration of the relationship to the asylee and, in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal's status has not been revoked. However, the approved Form I–730 will cease to confer immigration benefits after it has been used by the beneficiary for admission to the United States as a derivative of an asylee.

(f) *Burden of proof.* To establish the claimed relationship of spouse or child as defined in sections 101(a)(35) and 101(b)(1) of the Act, evidence must be submitted with the request as set forth in part 204 of this chapter. Where possible this will consist of the documents specified in § 204.2 (a)(1)(i)(B), (a)(1)(iii)(B), (a)(2), (d)(2), and (d)(5) of this chapter. The burden of proof is on the principal alien to establish by a preponderance of the evidence that any person on whose behalf he or she is making a request under this section is an eligible spouse or child.

* * * * *

PART 299—IMMIGRATION FORMS

6. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

7. Section 299.1 is amended by revising the entry for Form "I–730" to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
I–730	01–07–98	Refugee/Asylee Relative Petition.

8. Section 299.5 is amended by revising the entry for Form "I–730" to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
I–730	Refugee/Asylee Relative Petition	1115–0121

Dated: July 30, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

Note: The Form I–730, Refugee/Asylee Relative Petition, will not appear in the Code of Federal Regulations.

BILLING CODE 4410–01–M

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U.S. Department of Justice
Immigration and Naturalization Service

OMB No. 1115-0121

Refugee/Asylee Relative Petition

INSTRUCTIONS

Read these instructions carefully. If you do not follow the instructions, the Immigration and Naturalization Service (INS) may have to return your petition, which may delay final action. If more space is needed to complete an answer, continue on a separate sheet of paper.

1. Who Can File This Petition?

If you have been admitted to the United States as a refugee or if you have been granted status in the United States as an asylee, **within the previous two years and as the principal applicant**, you may file this petition. A separate Form I-730 must be filed for each family member.

You are **not** eligible to file this petition if:

1) You were granted status in the United States as a derivative beneficiary or as an accompanying or following-to-join family member; or
2) You were admitted to the United States as a refugee more than two years ago (see *NOTE); or
3) You were granted status in the United States as an asylee more than two years ago (see *NOTE).

***NOTE**: The requirement that the Refugee/Asylee Relative Petition must be filed within two years of your admission as a refugee or grant of asylum does not go into effect until two years after the effective date of the final rule entitled *Procedures for Filing a Derivative Petition (Form I-730) for a Spouse and Unmarried Children of a Refugee/Asylee*.

2. Who Is Eligible For Accompanying Or Following-To-Join Benefits?

Your **spouse** and/or your **unmarried children under twenty-one (21) years of age**, whether in or outside of the United States, are eligible for accompanying or following-to-join benefits based on this petition **provided** that the family member(s) qualify under the conditions described below.

- If you are a refugee: The relationship between you and your relative must have existed on the date you were admitted to the United States as a refugee and must continue to exist. If the person you are filing for is a child who was conceived but not yet born on the date you were admitted to the United States, the relationship will be considered to exist as of the date you were admitted to the United States. (The mother of such child is not an eligible relative unless the mother was married to the principal refugee when the refugee was admitted to the United States.)

- If you are an asylee: The relationship between you and your relative must have existed on the date you were granted asylum in the United States and must continue to exist. If the person you are filing for is a child who was conceived but not yet born on the date you were granted asylum in the United States, the relationship will be considered to exist as of the date you were granted asylum in the United States. (The mother of such child is not an eligible relative unless the mother was married to the principal asylee when the asylee was granted asylum in the United States.)

- In all cases, if the family member you are filing for is your child, the child must continue to be unmarried and under 21 years of age.

- A spouse or child must be otherwise admissible as an immigrant (for refugee relatives) or not subject to the mandatory bars of 8 CFR 208.19 (for asylee relatives).

A petition may not be approved for the following people:

- A spouse or child who has previously been granted refugee or asylee status.

- An adopted child, if the adoption took place after the child became 16 years old, or if the child has not been in the legal custody and living with the adoptive parent(s) for at least two years.

- A stepchild, if the marriage that created this relationship took place after the child became 18 years old.

- A husband or wife, if each was not physically present at the marriage ceremony and the marriage was not consummated.

- A husband or wife, if it is determined that such alien has attempted or conspired to enter into a marriage for the purpose of evading immigration laws.

- A parent, sister, brother, grandparent, grandchild, nephew, niece, uncle, aunt, cousin, or in-law.

3. What Documents Need To Be Submitted?

Certain documents are required to be submitted with this petition to show that you are eligible to file this petition and to show that a relationship exists between you and your relative. (If the documents described below are not available, see Sections 4 and 5 of these instructions.)

- In all cases, submit **evidence of your status as a refugee or asylee** in the United States.

- In all cases, submit a recent, clear **photograph** of the family member you are filing for.

- If you are petitioning for your **husband** or **wife**, submit your marriage certificate. If you and/or your spouse were ever previously married to other people, submit evidence of the legal termination of the previous marriage(s). Evidence of any legal name change must also be submitted, if applicable.

- If you are petitioning for your **child** and you are the **natural mother**, whether the child was born in or out of wedlock, submit the child's birth certificate showing both the child's name and your name. Evidence of any legal name change must also be submitted if the names on the birth certificate do not match the names on the petition.

- If you are petitioning for your **child** and you are the **natural father**, submit the child's birth certificate showing both the child's name and your name. If you were married to the child's mother, submit your marriage certificate. If you and/or the child's mother were ever previously married to other people, submit evidence of the legal termination of the previous marriage(s). If you were not married to the child's mother, submit evidence that the child was legitimated by the civil authorities. If the child was not legitimated by the civil authorities, submit evidence that a bona fide parent/child relationship exists or existed between you and the child. Evidence of a bona fide parent/child relationship should prove that you have emotional and financial ties to the child, and that you have shown genuine concern and interest in the child's support, instruction, and general welfare. Such evidence may include (but is not limited to) the following:
  1) Money order receipts;
  2) Canceled checks showing financial support of the child;
  3) Income tax returns in which you claim the child as a dependent and member of your household;
  4) Medical or insurance records which include the child as a dependent;
  5) School records for the child;
  6) Correspondence between you and the child; and
  7) Notarized affidavits of reliable persons who are knowledgeable about the relationship.

  Evidence of any legal name change must also be submitted, if applicable.

- If you are petitioning for your **stepchild**, whether the child was born in or out of wedlock, submit the child's birth certificate and the marriage certificate between you and the child's natural parent. If you and/or the child's natural parent were ever previously married to other people, submit evidence of the legal termination of the previous marriage(s). Evidence of any legal name changes must also be submitted, if applicable.

- If you are petitioning for your **adopted child**, submit a certified copy of the adoption decree and evidence that you resided together with the child for at least two years. If you were granted legal custody of the child prior to the adoption, submit a certified copy of the court order granting custody. Evidence of any legal name changes must also be submitted, if applicable.

IMPORTANT NOTE: In all cases, you should submit one legible photocopy of each required document to the INS. Where a copy of a document is submitted, the INS may at any time require that the original document be submitted for review. Documents in a foreign language must be accompanied by a complete English translation. The translator must certify that the translation is accurate and that he or she is competent to translate. Original documents submitted when not required will remain a part of the record.

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4. What If A Document Is Not Available?

If the documents described above are not available from the civil authorities, you can submit the following, as **secondary evidence**, along with a statement from the appropriate civil authority certifying that the required document(s) is(are) not available.

- **Church record**: A certificate under the seal of the church where the baptism, dedication, or comparable rite occurred within two months after birth, showing the date and place of the child's birth, the date of the religious ceremony, and the names of the child's parents.
- **School record**: A letter from the authorities of the school(s) attended, showing the date of admission to the school, the child's date and place of birth, and the names of both parents, if shown in the school records.
- **Census record**: State or federal census record showing name, place of birth, and date of birth or the age of the person(s) listed.

5. What If Secondary Evidence Is Not Available?

If the secondary evidence described above is not available, you can submit affidavits. If you submit affidavits, they must overcome the absence of primary and secondary evidence.

- **Affidavits**: Submit written statements sworn to or affirmed by two persons who were living at the time and who have personal knowledge of the event you are trying to prove: for example, the date and place of birth, marriage or death. The persons making the affidavits need not be citizens of the United States. Each affidavit should contain the following information regarding the person making the affidavit: his or her full name, address, date and place of birth and his or her relationship to you (if any); full information concerning the event; and complete details concerning how the person acquired the knowledge of the event.

6. How To Prepare This Form?

- Type or print clearly in black or blue ink.
- Answer all questions completely and accurately. If any item does not apply, please write "N/A".
- If you need extra space to complete any item, attach a separate continuation sheet. Indicate the item number, and date and sign each sheet.

7. Where To File This Form?

Send this form along with the required supporting evidence to the following address:

INS
Nebraska Service Center
P. O. Box 87730
Lincoln, NE 68501-7730

8. What Are The Penalties For Committing Marriage Fraud Or Submitting False Information Or Both?

- Title 8, United States Code, Section 1325, states that any individual who knowingly enters into a marriage contract for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than five years, or fined not more than $250,000, or both.
- Title 18, United States Code, Section 1001, states that whoever willfully and knowingly falsifies a material fact, makes a false statement or makes use of a false document will be fined up to $10,000 or imprisoned up to five years, or both.

9. The INS Authority For Collecting This Information:

The INS requests the information on the form to carry out the immigration laws contained in Title 8, United States Code, Sections 1157(c)(2) and 1158(b)(3). The INS needs this information to determine whether a person is eligible for immigration benefits. The information you provide may also be disclosed to other federal, state, local, and foreign law enforcement and regulatory agencies during the course of the investigation required by the INS. You do not have to give this information. However, if you refuse to give some or all of it, your petition may be denied.

10. Paperwork Reduction Act Notice.

A person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated to average 35 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Department of Justice, Immigration and Naturalization Service, Policy Directives and Instructions Branch (Room 5307), Washington, DC 20536.

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U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-0121

Refugee/Asylee Relative Petition

START HERE - Please Type or Print

FOR INS USE ONLY

Returned | Receipt

Submitted

Reloc Sent

Reloc Rec'd

☐ Petitioner Interviewed

☐ Beneficiary Interviewed

Consulate

Sections of Law
☐ 207 (c) (2) Spouse
☐ 207 (c) (2) Child
☐ 208 (b) (3) Spouse
☐ 208 (b) (3) Child

Remarks

Action Block

To Be Completed by Attorney or Representative, If any
☐ Fill in box if G-28 is attached to represent the applicant

Volag #

Atty State License #

Part 1. Information about you.

Family Name | Given Name | Middle Name

Address - C/O

Street Number and Name | Apt. #

City | State or Province

Country | ZIP/Postal Code | Sex: a. ☐ Male b. ☐ Female

Date of Birth (Month/Day/Year) | Country of Birth

A# | Social Security #

Other names used (including maiden name)

Present Status: (check one)
a. ☐ Refugee c. ☐ Lawful Permanent Resident based on previous Refugee status
b. ☐ Asylee d. ☐ Lawful Permanent Resident based on previous Asylee status

Date (Month/Day/Year) and Place Refugee or Asylee status was granted:

If granted Refugee status, Date (Month/Day/Year) and Place Admitted to the United States:

If Married, Date (Month/Day/Year) and Place of Present Marriage:

If Previously Married, Name(s) of Prior Spouse(s):

Date(s) Previous Marriage(s) Ended: (Month/Day/Year)

Part 2. Information about the relationship.

The alien relative is my: a. ☐ Spouse
b. ☐ Unmarried child under 21 years of age

Number of relatives I am filing for: _____ (_____ of _____)

Part 3. Information about your alien relative. (If you are petitioning for more than one family member you must complete and file a separate Form I-730 for each additional family member.)

Family Name | Given Name | Middle Name

Address - C/O

Street Number and Name | Apt. #

Continued on back.

Part 3. Information about your alien relative. Continued

City | State or Providence

Country | ZIP/Postal Code | Sex: a. ☐ Male b. ☐ Female

Date of Birth (Month/Day/Year) | Country of Birth

Alien # (If any) | Social Security # (If Any)

Other name(s) used (including maiden name)

If Married, Date (Month/Day/Year) and Place of Present Marriage:

If Previously Married, Name(s) of Prior Spouse(s):

Date(s) Previous Marriage(s) Ended: (Month/Day/Year)

Part 4. Processing Information.

A. Check One: a. ☐ The person named in Part 3 is now in the United States.
b. ☐ The person named in Part 3 is now outside the United States. (Please indicate the location of the American Consulate or Embassy where your relative will apply for a visa.)

American Consulate/Embassy at: _____
City and Country

B. Is the person named in Part 3 in exclusion, deportation, or removal proceedings in the United States?
a. ☐ No
b. ☐ Yes (Please explain on a separate paper.)

Part 5. Signature.

Read the information on penalties in the instructions before completing this section and sign below. If someone helped you to prepare this petition, he or she must complete Part 6.

I certify or, if outside the United States, I swear or affirm, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it, is all true and correct. I authorize the release of any information from my record which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking.

Signature | Print Name | Date | Daytime Telephone # ( )

Please Note: If you do not completely fill out this form, or fail to submit the required documents listed in the instructions, your relative may not be found eligible for the requested benefit and this petition may be denied.

Part 6. Signature of person preparing form if other than Petitioner above. (Sign Below)

I declare that I prepared this petition at the request of the above person and it is based on all of the information of which I have knowledge.

Signature | Print Name | Date | Daytime Telephone # ( )

Firm Name
and Address

[FR Doc. 98–1879 Filed 1–26–98; 8:45 am]
BILLING CODE 4410–01–C

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FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

[Regulations G, T, U and X]

Securities Credit Transactions; List of Marginable OTC Stocks; List of Foreign Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks (OTC List) is composed of stocks traded over-the-counter (OTC) in the United States that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List of Foreign Margin Stocks (Foreign List) is composed of foreign equity securities that have met the Board's eligibility criteria under Regulation T. The OTC List and the Foreign List are published four times a year by the Board. This document sets forth additions to and deletions from the previous OTC List and the previous Foreign List.

EFFECTIVE DATES: *Regulations G and U (12 CFR parts 207 and 221):* February 9, 1998–March 31, 1998; *Regulations T and X (12 CFR parts 220 and 224):* February 9, 1998–January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452–2781, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. For the hearing impaired *only*, contact Diane Jenkins, Telecommunications Device for the Deaf (TDD) at (202) 452–3544.

SUPPLEMENTARY INFORMATION: Listed below are the deletions from and additions to the Board's OTC List, which was last published on October 27, 1997 (62 FR 55495), and became effective November 10, 1997. A copy of the complete OTC List is available from the Federal Reserve Banks.

The OTC List includes those stocks traded over-the-counter in the United States that meet the criteria in Regulations G, T and U (12 CFR Parts 207, 220 and 221, respectively). This determination also affects the applicability of Regulation X (12 CFR Part 224). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The OTC List also includes any OTC stock designated for trading in the national market system (NMS security) under rules approved by the Securities and Exchange Commission (SEC). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable upon the effective date of their NMS designation. The names of these stocks are available at the SEC and at the National Association of Securities Dealers, Inc.

In order to determine the loan value of stock and other collateral under Regulations G and U, lenders must be able to determine whether a particular stock is a *margin stock*,[1] a term which is currently defined to include *OTC margin stock*. The definition of *OTC margin stock* in Regulations G and U states that "[a]n OTC stock is not considered to be an *OTC margin stock* unless it appears on the Board's periodically published list of OTC margin stocks." The OTC List provides the names of these stocks.

Pursuant to amendments recently adopted by the Board (see 63 FR 2805, January 16, 1998) lenders subject to Regulation G will become subject to Regulation U on April 1, 1998 and Regulation G will be removed from the Code of Federal Regulations. Also on April 1, 1998, the definition of *margin stock* in the revised Regulation U will no longer include *OTC margin stock* and the definition of *OTC margin stock* will be removed from the revised Regulation U.

With the extension of Regulation U on April 1, 1998 to cover lenders currently subject to Regulation G, and the elimination of the concept and accompanying definition of *OTC margin stock* in the revised Regulation U, lenders subject to Regulation U will no longer be bound by the OTC List published today. Instead, as of April 1, 1998, lenders subject to the revised Regulation U will be bound by the revised definition of *margin stock*, which continues to include "[a]ny OTC security designated as qualified for trading in the National Market System under a designation plan approved by the Securities and Exchange Commission (NMS security)." In other words, on April 1, 1998, all lenders subject to the revised Regulation U will no longer use the OTC List to determine whether an OTC stock is subject to the 50 percent loan value limitation when used as collateral for a purpose loan. To determine whether an OTC stock is subject to this limitation, a Regulation U lender will need to determine whether the stock trades in the National Market tier of the Nasdaq Stock Market. The names of these stocks are available at the SEC and at the National Association of Securities Dealers, Inc. and can also be determined by consulting the internet at *http://www.nasdaq.com*.

Lenders subject to Regulation T and borrowers subject to Regulation X who are required under § 224.3(a) to conform credit they obtain to Regulation T will continue to use the OTC List until publication of the next OTC List, anticipated for May 1998. The definition of *OTC margin stock* will be retained in Regulation T until January 1, 1999. The Board will cease publication of the OTC List at that time.

Also listed below are the deletions from and additions to the Foreign List, which was last published on October 27, 1997 (62 FR 55495), and became effective November 10, 1997. The Foreign List is used solely by lenders subject to Regulation T. A copy of the complete Foreign List is available from the Federal Reserve Banks.

Public Comment and Deferred Effective Date

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Lists specified in 12 CFR 207.6(a) and (b), 220.17(a), (b), (c) and (d), and 221.7(a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of these Lists as soon as possible. The Board has responded to a request by the public and allowed approximately a two-week delay before the Lists are effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Margin, Margin requirements,

[1] The equivalent term in Regulation T is *margin security*. Regulation X incorporates Regulations G, T, and U in section 224.3 and therefore also incorporates the definitions in Regulations G, T, and U.

Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6 (Regulation G), 12 CFR 220.2 and 220.17 (Regulation T), and 12 CFR 221.2(j) and 221.7 (Regulation U), there is set forth below a listing of deletions from and additions to the OTC List and the Foreign List.

Deletions From the List of Marginable OTC Stocks

Stocks Removed for Failing Continued Listing Requirements

ALLERGAN LIGAND RETINOID THERAPEUTICS, INC.
$.001 par common
ALLIANCE IMAGING, INC.
$.01 par common
AMERICA FIRST FINANCIAL FUND 1987
Beneficial unit certificates
AMERICAN TELECASTING, INC.
$.01 par common
AMSCAN HOLDINGS, INC.
$.10 par common
BATTERY TECHNOLOGIES, INC.
No par common
CAI WIRELESS SYSTEMS, INC.
No par common
CATALYTICA, INC.
Warrants (expire 10–31–1997)
CENTURA SOFTWARE CORPORATION
$.01 par common
CHEMTRAK INCORPORATED
$.001 par common
CINERGI PICTURES ENTERTAINMENT INC.
$.01 par common
CYPROS PHARMACEUTICAL CORPORATION
Class B, warrants (expire 11–03–1997)
EGEORGE FINANCIAL CORPORATION
$.10 par common
ECOGEN INC.
Warrants (expire 01–31–1998)
ELEK-TEK, INC.
$.01 par common
FAULDING INC.
$.01 par common
FFBS BANCORP, INC. (Mississippi)
$.01 par common
FIRST BANKS, INC. (Missouri)
Class C, 9% increasing rate
GARNET RESOURCES CORPORATION
$.01 par common
GATEWAY DATA SCIENCES CORPORATION
$.01 par common
GEOGRAPHICS, INC.
No par common. Warrants (expire 06–01–1999)
GLASGAL COMMUNICATIONS, INC.
Warrants (expire 09–21–1999)
GRAND UNION COMPANY, THE
$1.00 par common
HOUSECALL MEDICAL RESOURCES, INC.
$.01 par common
HYBRIDON, INC.
$.001 par common
IITC HOLDINGS, LTD.
Class A, no par common
INTERNATIONAL VERIFACT, INC.
Redeemable Warrants (expire 01–05–1998)
INTERSTATE NATIONAL DEALER SERVICES, INC.
Warrants (expire 07–22–1999)
KINETIC CONCEPTS, INC.
$.001 par common
KS BANCORP, INC. (North Carolina)
No par common
LTX CORPORATION
13½% convertible debentures
MACHEEZMO MOUSE RESTAURANTS, INC.
No par common
MAXCOR FINANCIAL GROUP, INC.
Series A, warrants (expire 11–30–2001)
Series B, warrants (expire 11–30–2001)
McMORAN OIL & GAS COMPANY
Rights (expire 11–13–1997)
MERIDIAN POINT REALTY TRUST 83
No par shares of beneficial
MICRO-INTEGRATION CORPORATION
$.01 par common
MIDCOM COMMUNICATIONS, INC.
$.0001 par common
MVSI, INC.
Warrants (expire 08–15–2000)
NAL FINANCIAL GROUP, INC.
$.15 par common
NEUROBIOLOGICAL TECHNOLOGIES, INC.
$.001 par common
NIAGARA CORPORATION
Warrants (expire 08–13–2000)
NUKO INFORMATION SYSTEMS, INC.
$.001 par common
ON-GARD SYSTEMS, INC.
$.001 par common
PENNICHUCK CORPORATION
$1.00 par common
PREMIER LASER SYSTEMS, INC.
Class A, warrants (expire 11–30–1999)
Q-ENTERTAINMENT, INC.
No par common
REDWOOD TRUST, INC.
Warrants (expire 12–31–1997)
REGENT BANCSHARES CORP. (Pennsylvania)
Series A, $.10 par convertible
TRANSWORLD HEALTHCARE, INC.
Warrants (expire 12–07–1997)
U.S. BANCORP (Minnesota)
Series A, preferred stock
VENTURE SEISMIC, LTD.
Warrants (expire 11–06–2000)
VIDEOLAN TECHNOLOGIES, INC.
Warrants (expire 08–10–2000)
VIROGROUP, INC.
$.01 par common
VISION-SCIENCES, INC.
$.01 par common
WASHINGTON MUTUAL, INC.
Series C, $1.00 par non-cumulative Depositary shares
WELCOME HOME, INC.
$.01 par common
WELLCARE MANAGEMENT GROUP, INC., THE
$.01 par common
WESTERN PACIFIC AIRLINES, INC.
$.001 par common

Stocks Removed for Listing on a National Securities Exchange or Being Involved in an Acquisition

1ST UNITED BANCORP (Florida)
$.01 par common
ACC CONSUMER FINANCE CORPORATION
$.001 par common
ACCESS BEYOND, INC.
$.01 par common
ADCO TECHNOLOGIES, INC.
$.01 par common
AIRWAYS CORPORATION
$.01 par common
ALL AMERICAN COMMUNICATIONS, INC.
$.0001 par common
Class B, non-voting, $.0001 par common
ALLIED CAPITAL ADVISERS, INC.
$.001 par common
ALLIED CAPITAL COMMERCIAL CORPORATION
$.0001 par common
ALLIED CAPITAL CORPORATION
$1.00 par common
ALLIED CAPITAL CORPORATION II
$1.00 par common
ALLTRISTA CORPORATION
No par common
ALPINE LACE BRANDS, INC.
$.01 par common
AMERICAN NATIONAL BANCORP, INC.
$1.00 par common
AMERICAN RECREATION COMPANY HOLDINGS
$.01 par common
ANDYNE COMPUTING LTD.
No par common
ARBOR HEALTH CARE COMPANY
$.03 par common
ARV ASSISTED LIVING, INC.
No par common
ATCHISON CASTING CORPORATION
$.01 par common
ATLAS AIR, INC.
$.01 par common
BANK CORPORATION OF GEORGIA
$1.00 par common
BDM INTERNATIONAL, INC.
$.01 par common
BELMONT HOMES, INC.
$.10 par common
BOWLIN OUTDOOR ADVERTISING & TRAVEL
$.001 par common
BOX WORLDWIDE, INC., THE
$.001 par common
BRANFORD SAVINGS BANK (Connecticut)
No par common
CAIRN ENERGY USA, INC.
$.01 par common
CALNETICS CORPORATION
No par common
CAPITAL BANCORP (Florida)
$1.00 par common
CB COMMERCIAL REAL ESTATE SERVICES

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$.01 par common
CENTRAL FIDELITY BANKS, INC.
$5.00 par common
COMMUNITY BANK SYSTEM, INC. (New York)
$1.25 par common
COMMUNITY CARE OF AMERICA, INC.
$.01 par common
COMPUTATIONAL SYSTEMS, INC.
No par common
COMPUTER DATA SYSTEMS, INC.
$.10 par common
CYRIX CORPORATION
$.004 par common
DATA DOCUMENTS INCORPORATED
$.01 par common
DELCHAMPS, INC.
$.01 par common
DOUBLETREE CORPORATION
$.01 par common
ELEXSYS INTERNATIONAL, INC.
$1.00 par common
ENDOVASCULAR TECHNOLOGIES, INC.
$.00001 par common
EXIDE ELECTRONICS GROUP, INC.
$.01 par common
FINANCIAL INSTITUTIONS INSURANCE
$1.00 par common
FIRST FINANCIAL CORPORATION
$1.00 par common
FIRST SOUTHEAST FINANCIAL CORPORATION
$.01 par common
FIRSTPLUS FINANCIAL GROUP, INC.
$.01 par common
FOREST OIL CORPORATION
$.10 par common
GAME FINANCIAL CORPORATION
$.01 par common
GATEWAY BANCORP, INC. (Kentucky)
$.01 par common
GLASTONBURY BANK & TRUST COMPANY
$2.50 par common
GREEN, A.P. INDUSTRIES, INC.
$1.00 par common
GREENFIELD INDUSTRIES, INC.
$.01 par common
GROUND ROUND RESTAURANTS, INC.
$.1667 par common
GYNECARE INC.
$.01 par common
HA-LO INDUSTRIES, INC.
No par common
HAYES WHEELS INTERNATIONAL,
$.01 par common
HEALTHDYNE, INC.
$.01 par common
HOLLYWOOD PARK, INC.
$.01 par common
HOMEGATE HOSPITALITY, INC.
$.01 par common
HPR, INC.
$.01 par common
INACOM CORP.
$.10 par common
INFINITY FINANCIAL TECHNOLOGY, INC.
No par common
INTERNATIONAL DAIRY QUEEN, INC.
Class A, $.01 par common
Class B, $.01 par common
INTERNATIONAL IMAGING MATERIALS, INC.
$.01 par common
JACKSON HEWITT INC.
$.02 par common
JEFFERSON BANKSHARES, INC. (Virginia)
$2.50 par common
LB FINANCIAL, INC.
$.01 par common
LEASING SOLUTIONS, INC.
No par common
LINDSAY MANUFACTURING CO.
$1.00 par common
MAGNA BANCORP, INC. (Mississippi)
$.01 par common
MAGNETIC TECHNOLOGIES CORPORATION
$.15 par common
MAIL BOXES ETC.
No par common
MEDIC COMPUTER SYSTEMS, INC.
$.01 par common
MELAMINE CHEMICALS, INC.
$.01 par common
MODTECH, INC.
$.01 par common
MOSINEE PAPER CORPORATION
$2.50 par common
MUSTANG SOFTWARE, INC.
No par common
NATIONAL HEALTH ENHANCEMENT SYSTEMS
$.001 par common
NATIONAL PICTURE & FRAME COMPANY
$.01 par common
NETWORK GENERAL CORPORATION
$.01 par common
NFO WORLDWIDE, INC.
$.01 par common
OFFSHORE ENERGY DEVELOPMENT
$.01 par common
ORTHODONTIC CENTERS OF AMERICA INC.
$.01 par common
PHONETEL TECHNOLOGIES, INC.
$0.01 par common
PHYSICIAN SUPPORT SYSTEMS, INC.
$.001 par common
PHYSICIANS HEALTH SERVICES, INC.
Class A, $.01 par common
PITTENCRIEFF COMMUNICATIONS, INC.
$.01 par common
POE & BROWN, INC.
$.10 par common
PREMENOS TECHNOLOGY CORPORATION
$.01 par common
PREMIER PARKS, INC.
$.05 par common
PRIMARY BANK (New Hampshire)
$.01 par common
PRONET, INC.
$.01 par common
REXWORKS, INC.
$.12 par common
ROBBINS & MYERS, INC.
No par common
ROTECH MEDICAL CORPORATION
$.0002 par common
SEAMAN FURNITURE COMPANY, INC.
$.01 par common
SEQUANA THERAPEUTICS, INC.
$.001 par common
SHO-ME FINANCIAL CORPORATION
$.01 par common
SIRROM CAPITAL CORPORATION
No par common
$.01 par common
Class A, $.01 par common
SULLIVAN DENTAL PRODUCTS, INC.
$.01 par common
TECHNOLOGY SERVICE GROUP, INC.
$.01 par common
Warrants (expire 05–09–1999)
TECNOL MEDICAL PRODUCTS, INC.
$.001 par common
THOMPSON PBE, INC.
$.01 par common
TODHUNTER INTERNATIONAL, INC.
$.01 par common
TRANSTEXAS GAS CORPORATION
$.01 par common
TRIANGLE BANCORP, INC. (North
No par common
TUESDAY MORNING CORP.
$.01 par common
TYSON FOODS, INC.
Class A, $.10 par common
USLD COMMUNICATIONS CORPORATION
$.01 par common
VACATION BREAK U.S.A., INC.
$.01 par common
VECTRA BANKING CORPORATION
$.01 par common
VBC Capital I Cumulative capital
VIEWLOGIC SYSTEMS, INC.
$.01 par common
VIRGINIA FIRST FINANCIAL CORPORATION
$1.00 par common
WALTER INDUSTRIES, INC.
$.01 par common
ZYTEC CORP.
No par common

Additions to the List of Marginable OTC Stocks

ACT TELECONFERENCING, INC.
No par common
ADVANTICA RESTAURANT GROUP, INC.
$.01 par common
Warrants (expire 01–07–2005)
ALYDAAR SOFTWARE CORPORATION
$.001 par common
AMERICAN BINGO & GAMING CORPORATION
$.001 par common
AMERICAN EDUCATIONAL PRODUCTS, INC.
$.05 par common
AMERICAN PHYSICIAN PARTNERS, INC.
$.001 par common
AMERIPATH, INC.
$.01 par common
AMSURG, INC.
Class A, no par common
Class B, no par common
AMVESTORS FINANCIAL CORPORATION
Warrants (expire 04–03–2002)
APPLIED FILMS CORPORATION
No par common
APPLIED MICRO CIRCUITS CORPORATION
$.01 par common
ATLANTIC GULF COMMUNITIES CORPORATION
A Warrants (expire 06–23–2004)
B Warrants (expire 06–23–2004)
C Warrants (expire 06–23–2004)
AVTEAM, INC.
$.01 par common
BANK OF THE OZARKS, INC.
$.01 par common
BARBEQUES GALORE LIMITED
American Depositary Receipts
BAY BANCSHARES, INC. (Texas)
$1.00 par common
BERINGER WINE ESTATES HOLDINGS, INC.
Class B, no par common
BIGMAR, INC.

$.001 par common
BIOANALYTICAL SYSTEMS, INC.
No par common
BOREL BANK & TRUST COMPANY (California)
$.01 par common
BRASS EAGLE, INC.
$.01 par common
BRIGHT HORIZONS, INC.
$.01 par common
BROUGHTON FOODS COMPANY
$1.00 par common
C.H. ROBINSON WORLDWIDE, INC.
$.10 par common
C3, INC.
No par common
CANADA SOUTHERN PETROLEUM LTD.
$1.00 par limited voting shares
CAPITOL BANCORP, LTD.
$10.00 par trust preferred
CAPTEC NET LEASE REALTY, INC.
$.01 par common
CASELLA WASTE SYSTEMS, INC.
Class A, $.01 par common
CELLEGY PHARMACEUTICALS, INC.
Warrants (expire 08–10–2000)
CFI MORTGAGE, INC.
$.01 par common
COLORADO MEDTECH, INC.
No par common
COLT TELECOM GROUP, PLC
American Depositary Shares
COMMUNITY FIRST BANKSHARES, INC.
Cumulative Capital Securities of CFB Capital II
COMPU-DAWN, INC.
$.01 par common
CONCORD COMMUNICATIONS, INC.
$.01 par common
CONNING CORPORATION
$.01 par common
CONSOLIDATED CAPITAL CORPORATION
$.001 par common
CRAGAR INDUSTRIES, INC.
$.01 par common
CROSSKEYS SYSTEMS CORPORATION
No par common
DENALI, INC.
$.01 par common
DENTAL CARE ALLIANCE, INC.
$.01 par common
DENTAL/MEDICAL DIAGNOSTIC SYSTEMS, INC.
$.01 par common
EAST TELECOM GROUP PLC
American Depositary Receipts
ECHOSTAR COMMUNICATIONS CORPORATION
Series C, $.01 par cumulative convertible preferred
EDISON BROTHERS STORES, INCORPORATED
$.01 par common
ELECTRIC LIGHTWAVE, INC.
Class A, $.01 par common
ELECTRONIC PROCESSING, INC.
$.01 par common
ENERGIS, PLC
American Depositary Shares
ESG RE LIMITED
$1.00 par common
EXCEL SWITCHING CORPORATION
$.01 par common
FALLBROOK NATIONAL BANK
$.625 par common
FAROUDJA, INC.
$.001 par common
FINET HOLDINGS CORPORATION
$.01 par common
FIRST ROBINSON FINANCIAL CORPORATION
$.01 par common
FIRST SECURITYFED FINANCIAL, INC.
$.01 par common
FLEXIINTERNATIONAL SOFTWARE, INC.
$.01 par common
FOCAL, INC.
$.01 par common
FORMULA SYSTEMS (1985), LTD.
American Depositary Receipts
FRANKLIN BANK, NATIONAL ASSOCIATION
Series A, noncumulative exchangeable preferred
FRANCHISE MORTGAGE ACCEPTANCE COMPANY
$.001 par common
FRIENDLY ICE CREAM CORPORATION
$.01 par common
GAMETECH INTERNATIONAL, INC.
$.001 par common
GART SPORTS COMPANY
$.01 par common
GENE LOGIC, INC.
$.001 par common
GILAT COMMUNICATIONS, LTD.
Ordinary Shares (NIS .01)
GOLD BANC CORPORATION, INC.
$25 par preferred securities
GREAT PEE DEE BANCORP, INC.
$.01 par common
HAYES CORPORATION
$.01 par common
HEALTHWORLD CORPORATION
$.01 par common
HERBALIFE INTERNATIONAL, INC.
Class B, $.01 par common
HERITAGE FINANCIAL CORPORATION
$.01 par common
HERLEY INDUSTRIES, INC.
Warrants (expire 01–11–1999)
HOLT'S CIGAR HOLDINGS, INC.
$.001 par common
HOMECAPITAL INVESTMENT CORPORATION
$.01 par common
HURRICANEHYDROCARBONS, LTD.
Class A, no par common
HYBRID NETWORKS, INC.
$.001 par common
I.C. ISAACS & COMPANY, INC.
$.0001 par common
ICOS VISION SYSTEMS CORPORATION
No par common
IMAGEMAX, INC.
No par common
IMAGING TECHNOLOGIES CORPORATION
$.005 par common
IMPERIAL CREDIT COMMERCIAL MORTGAGE INVESTORS
$.001 par common
INDIANA UNITED BANCORP, INC.
Cumulative trust preferred securities
INFORMATION ADVANTAGE, INC.
$.01 par common
INMARK ENTERPRISES, INC.
$.001 par common
INNOVATIVE VALVE TECHNOLOGIES, INC.
$.001 par common
INTERNATIONAL AIRCRAFT INVESTORS
$.01 par common
INTERNATIONAL BRIGUETTES HOLDING
$.01 par ordinary shares
INTERNATIONAL MANUFACTURING SERVICES, INC.
Class A, $.001 par common
INTERNATIONAL SPORTS WAGERING, INC.
$.001 par common
INTERVU, INC.
$.001 par common
ITC DELTACOM, INC.
$.01 par common
JAVELIN SYSTEMS, INC.
$.01 par common
KSB BANCORP, INC.
$.01 par common
LAMINATING TECHNOLOGIES, INC.
$.01 par common
LANDMARK SYSTEMS CORPORATION
$.01 par common
LET'S TALK CELLULAR & WIRELESS, INC.
$.01 par common
LINC CAPITAL, INC.
$.001 par common
LONG ISLAND COMMERCIAL BANK
$3.00 par common
LYNX THERAPEUTICS, INC.
$.001 par common
MADE2MANAGE SYSTEMS, INC.
No par common
MAHONING NATIONAL BANCORP, INC.
No par common, $1.00 stated value
MEDIWARE INFORMATION SYSTEMS, INC.
$.10 par common
METROMEDIA FIBER NETWORK, INC.
Class A, $.01 par common
METRONET COMMUNICATIONS CORPORATION
Class B, non-voting no par common
MIDWAY AIRLINES CORPORATION
$.01 par common
MMC NETWORKS, INC.
$.001 par common
MONTGOMERY FINANCIAL CORPORATION
$.01 par common
MOTOR CARGO INDUSTRIES, INC.
No par common
MPW INDUSTRIAL SERVICES GROUP, INC.
No par common
MYSTIC FINANCIAL, INC.
$.01 par common
N2K, INC.
$.001 par common
NAM TAI ELECTRONICS, INC.
Warrants (expire 11–01–2000)
NANOPHASE TECHNOLOGIES CORPORATION
$.01 par common
NEUTRAL POSTURE ERGONOMICS, INC.
$.01 par common
NOVACARE EMPLOYEES SERVICES, INC.
$.01 par common
NOVAMERICAN STEEL, INC.
No par common
NRG GENERATING (U.S.), INC.
$.01 par common
NYMOX PHARMACEUTICAL CORPORATION
$2.00 par common
OAO TECHNOLOGY SOLUTIONS, INC.
$.01 par common
OMNI ENERGY SERVICES CORPORATION
$.01 par common
OUTSOURCE INTERNATIONAL, INC.
$.001 par common
OYO GEOSPACE CORPORATION

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$.01 par common
PAPER WAREHOUSE, INC.
$.01 par common
PAULA FINANCIAL
$.01 par common
PEMBRIDGE, INC.
No par common
PENNFED FINANCIAL SERVICES, INC.
$25.00 par cumulative trust preferred stock
PENNFIRST BANCORP, INC.
Cumulative trust preferred securities
PERICOM SEMICONDUCTOR CORPORATION
No par common
PETROGLYPH ENERGY, INC.
$.01 par common
POWER INTEGRATION, INC.
$.001 par common
PRECISION AUTO CARE, INC.
$.01 par common
PREVIEW TRAVEL, INC.
$.001 par common
PRINCETON VIDEO IMAGE, INC.
No par common
PRIORITY HEALTHCARE CORPORATION
Class B, $.01 par common
PROGENICS PHARMACEUTICALS, INC.
$.0013 par common
PRT GROUP
$.001 par common
QUESTA OIL & GAS COMPANY
$.01 par common
QUIGLEY CORPORATION
$.0005 par common
REALNETWORKS, INC.
$.001 par common
ROCK OF AGES CORPORATION
Class A, $.01 par common
SIX RIVERS NATIONAL BANK (California)
$5.00 par common
SKY NETWORK TELEVISION LIMITED
American Depositary Shares
SNB BANCSHARES, INC. (Georgia)
$1.00 par common
SOMNUS MEDICAL TECHNOLOGIES, INC.
$.001 par common
SOUTHERN COMMUNITY BANCSHARES, INC.
$.01 par common
SPECTRA-PHYSICS LASERS, INC.
$.01 par common
SPIROS DEVELOPMENT CORPORATION II, INC.
Units (expire 12–31–1999)
SPORTSLINE USA, INC.
$.01 par common
STIRLING COOKE BROWN HOLDINGS LIMITED
$.25 par ordinary shares
SUCCESS BANCSHARES, INC. (Illinois)
$.001 par common
SUN BANCORP, INC. (New Jersey)
$1.00 par common
T & W FINANCIAL CORPORATION
$.01 par common
TEKGRAF, INC.
$.001 par common
Warrants (expire 11–20–2002)
TELIGENT, INC.
Class A, $.01 par common
TELSCAPE INTERNATIONAL, INC.
$.001 par common
TERA COMPUTER COMPANY
$.01 par common
TIER TECHNOLOGIES, INC.
Class B, no par common
TIMBERLAND BANCORP, INC.
$.01 par common
TODAY'S MAN, INC.
Warrants (expire 12–31–1999)
TOPRO, INC.
$.0001 par common
TOYMAX INTERNATIONAL, INC.
$.01 par common
TRANSCOASTAL MARINE SERVICES, INC.
$.001 par common
TRANSIT GROUP, INC.
$.01 par common
TRI-COUNTY BANCORP, INC.
$.10 par common
TROPICAL SPORTSWEAR INTERNATIONAL CORPORATION
$.01 par common
U.S. TIMBERLANDS COMPANY, LP
No par common
U.S. VISION, INC.
$.01 par common
UBICS, INC.
$.01 par common
UNIDYNE CORPORATION
$.001 par common
UNION COMMUNITY BANCORP.
No par common
USWEB CORPORATION
$.0001 par common
VARI-LITE INTERNATIONAL, INC.
$.01 par common
VIRGIN EXPRESS HOLDINGS, PLC
American Depositary Shares
VRB BANCORP (Oregon)
No par common
WARWICK COMMUNITY BANCORP, INC.
$.01 par common
WASHINGTON SCIENTIFIC INDUSTRIES, INC.
$.10 par common
WHG BANCSHARES CORPORATION
$.10 par common
WHITE CAP INDUSTRIES, INC.
$.01 par common
WMF GROUP, LTD.
$.01 par common
YOUNG INNOVATIONS, INC.
$.01 par common
ZYMETX, INC.
$.001 par common

Deletions From the Foreign Margin List

Australia
ARNOTTS LIMITED
Ordinary shares, par A$0.50
BANK OF MELBOURNE LIMITED
Ordinary shares, par A$1.00

Austria
CREDITANSTALT-BANKVEREIN AG
Preferred shares, par 100 Austrian
CREDITANSTALT-BANKVEREIN AG
Ordinary shares, par 1000 Austrian
CREDITANSTALT-BANKVEREIN AG
Participation Certificates, par 500

Belgium
BBL (BANQUE BRUX LAMB)
Ordinary shares, no par
POWERFIN SA
No par participating certificates

Canada
LONDON INSURANCE GROUP INC.
No par common

France
USINOR SACILOR
Common shares par 40 French francs
WORMS ET COMPAGNIE SCA
Registered shares, par 12 French

Germany
PWA PAPIERWERKE WALDHOF-ASCHAFFENBURG
Bearer shares, par DM 50

Hong Kong
CHINA LIGHT & POWER COMPANY, LIMITED
HK$5.00 par ordinary shares
KOWLOON MOTOR BUS COMPANY (1933) LTD
HK$1.00 par ordinary shares

Ireland
WOODCHESTER INVESTMENTS PLC
A Ordinary shares, par .20 Irish

Italy
BANCO AMBROSIANO VENETO SPA
Non-convertible savings shares, par
BANCO AMBROSIANO VENETO SPA
Ordinary shares, par 1000 lira

Japan
HOKKAIDO TAKUSHOKU BANK, LIMITED
Y 50 par common
JAPAN SYNTHETIC RUBBER CO., LTD.
Y 50 par common
SANYO SECURITIES CO., LTD.
Y 50 par common
TOSHOKU LTD.
Y 50 par common
YAMAICHI SECURITIES CO., LTD.
Y 50 par common

Mexico
CIFRA, S.A. DE C.V.
Series A Common, par .30 Mexican
CIFRA, S.A. DE C.V.
Series B Common, par .30 Mexican

Norway
STOREBRAND AS
Convertible preferred A shares, par

Philippines
AYALA CORPORATION
Class B common shares, par 1
AYALA LAND INC.
Class B Common Shares, par 1

Singapore
HAW PAR BROTHERS INTERNATIONAL LTD.
Ordinary shares, par S$1.00
INCHCAPE BERHAD
Ordinary shares, par S$0.50

Sweden
NORDBANKEN AB
Restricted shares, par 12.50
SPARBANKEN SVERIGE AB (Swedbank)
Series A, par 10 Swedish krona

Switzerland
ELEKTROWATT AG
Bearer shares, par 50 Swiss francs

United Kingdom
COWIE GROUP PLC
Ordinary shares, par 5 p
GRAND METROPOLITAN PLC
Ordinary shares, par 25 p
GUINNESS PLC
Ordinary shares, par 25 p
HARRISONS & CROSFIELD PLC
Ordinary shares, par 25 p
MERCURY ASSET MANAGEMENT GROUP PLC
Ordinary shares, par 5 p
REDLAND PLC
Ordinary shares, par 25 p
TR CITY OF LONDON TRUST PLC
Ordinary shares, par 25 p

Additions to the Foreign Margin List

Australia
TELSTRA CORPORATION
Ordinary shares, par A$1.00

Austria
AUSTRIAN TABAK
Ordinary shares, par 1000 Austrian

Belgium
UCB SA
Ordinary shares, no par

France
FRANCE TELECOM SA
Ordinary shares, par 25 French
USINOR SA
Common, par 40 French francs

Germany
HOECHST AG
Bearer shares, par DM 50

Hong Kong
CLP HOLDINGS, LIMITED
HK$5.00 par ordinary shares
KMB HOLDINGS, LIMITED
HK$1.00 par ordinary shares

Italy
BANCA INTESA SPA
Ordinary shares, par 1000 lira
BANCA INTESA SPA
Non-convertible savings shares, par

Japan
JSR CORPORATION
Y 50 par common
RINNAI CORPORATION
Y 50 par common

Mexico
CIFRA, S.A. DE C.V.
Series V, no par common

Norway
STOREBRAND AS
A Common Shares, par 5 Norwegian

Philippines
AYALA CORPORATION
Common, par 1 Philippine peso
AYALO LAND, INC.
Common, par 1 Philippine peso

Singapore
HAW PAR CORPORATION
Ordinary shares, par S$1.00
INCHOAPE MOTORS, LTD.
Ordinary shares, par S$.50

Sweden
FORENINGS SPARBANKEN AB
Series A, par 10 Swedish krona
NORDBANKEN HOLDING AB
Registered shares, par 12.50

United Kingdom
ARRIVA PLC
Ordinary shares, par 5 p
CITY OF LONDON PLC
Ordinary shares, par 25 p
DIAGEO PLC
Ordinary shares, par 25 p
ELEMENTIS PLC
Ordinary shares, par 25 p

By order of the Board of Governors of the Federal Reserve System, acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.7(f)(10)), January 21, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–1863 Filed 1–26–98; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–151–AD; Amendment 39–10292; AD 98–01–14]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Model 182S Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98–01–14, which was sent previously to all known U.S. owners and operators of Cessna Aircraft Company (Cessna) Model 182S airplanes. This AD requires replacing the left and right Aeroquip engine exhaust mufflers (P/N 71379–1254017–8) with an FAA-approved equivalent part. Reports of carbon monoxide gas entering the cabin heating system and the cabin of the Cessna Model 182S airplanes prompted this action. This condition, if not corrected, could result in passenger and pilot injury with consequent loss of control of the airplane.

DATES: Effective February 23, 1998, to all persons except those to whom it was made immediately effective by priority letter AD 98–01–14, issued December 30, 1997, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before March 27, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 97–CE–151–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from The Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277, telephone (316) 941–7550, facsimile (316) 942–9008.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Pendleton, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Rm. 100, Mid-Continent Airport, Wichita, Kansas 67209, telephone (316) 946–4128; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

On December 30, 1997, the FAA issued priority letter AD 98–01–14, which applies to Cessna 182S airplanes. Cessna Aircraft Company has recently reported that a quality control problem exists with Aeroquip engine exhaust mufflers installed on certain Cessna Model 182S airplanes. Nineteen Cessna Model 182S airplanes are equipped with these mufflers.

The problem was discovered during a delivery flight from the manufacturing facility. Following this incident, three operators have reported cracked mufflers during use, and two similar failures occurred at Cessna's facility during production acceptance flight tests. Cessna subsequently pressure-tested the Aeroquip muffler assemblies, which revealed that 7 out of 10 mufflers showed gas leak paths through defective weldments.

These inadequate or failed weldments will permit exhaust gas (including carbon monoxide) leakage from the muffler, and consequently into the airplane's cabin and cockpit area.

Cessna reports that 19 of these Model 182S airplanes are directly affected. The serial numbers for these models are 18280050 through 18280060, 18280062, 18280063, 18280066, 18280067 through 18280070, and 18280083. All other Cessna Model 182S airplanes were manufactured with Cessna mufflers, part number (P/N) 1254017–8. After examining the circumstances and reviewing all information related to the situation described above, the FAA has determined that AD action should be taken to prevent carbon monoxide gas from entering the airplane's cabin heating system and cabin, which, if not corrected, could result in passenger and pilot injury with consequent loss of control of the airplane.

Relevant Service Information

Cessna Aircraft Company Service Bulletin No. SB97–78–01, dated

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December 23, 1997, titled "Engine Exhaust Muffler Inspection" pertains to the subject of this priority letter AD.

The FAA's Determination and Explanation of the AD

Since an unsafe condition (carbon monoxide leakage into the cabin area) has been identified that is likely to exist or develop in other Cessna Model 182S airplanes of the same type design, the FAA issued priority letter AD 98–01–14 to prevent carbon monoxide gas from entering the airplane's cabin heating system and cabin, which, if not corrected, could result in passenger and pilot injury with consequent loss of control of the airplane. The AD requires replacing the left and right Aeroquip engine exhaust mufflers (P/N 71379–1254017–8) with an FAA-approved equivalent part.

Determination of the Effective Date of the AD

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on December 30, 1997, to all known U.S. operators of Cessna Model 182S airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–151–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–01–14 Cessna Aircraft Company. Amendment 39–10292; Docket No. 97–CE–151–AD.

Applicability: Model 182S airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished, except to those operators receiving this action by priority letter issued December 30, 1997, which made these actions effective immediately upon receipt.

To prevent carbon monoxide gas from entering the airplane's cabin heating system and cabin, which, if not corrected, could result in passenger and pilot injury with consequent loss of control of the airplane, accomplish the following:

(a) For Cessna Model 182S airplanes with serial numbers 18280050 through 18280060, 18280062, 18280063, 18280066, 18280067 through 18280070, and 18280083: Prior to further flight after the effective date of this AD, replace the left and right engine exhaust mufflers with an FAA-approved equivalent part in accordance with the appropriate Cessna maintenance manual.

(b) For all Cessna Model 182S airplanes: After the effective date of this AD, no person may install any Aeroquip engine exhaust muffler, part number 71379–1254017–8, on any airplane.

Note 2: Cessna Aircraft Company Service Bulletin No. SB97–78–01, dated December 23, 1997, titled "Engine Exhaust Muffler Inspection" pertains to the subject of this AD.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Rm. 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(e) Copies of the relative service information may be obtained from The Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277. Copies of this document also may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment (39–10292) becomes effective on February 23, 1998, to all persons except those persons to whom it was made immediately effective by priority letter AD 98–01–14, issued December 30, 1997, which contained the requirements of this amendment.

Issued in Kansas City, Missouri, on January 20, 1998.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–1860 Filed 1–26–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Highway Traffic Safety Administration

23 CFR Part 1260

[NHTSA–97–3196]

RIN 2125–AE17

Certification of Speed Limit Enforcement

AGENCY: Federal Highway Administration (FHWA) and National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: Section 205(d) of the National Highway System Designation Act of 1995 repealed the National Maximum Speed Limit (NMSL) Compliance Program. It made the repeal effective on December 8, 1995, but provided that the Governors of certain States could delay the effective date of the repeal. All possible delay periods have now passed. This Final Rule provides that 23 CFR part 1260, which contains the procedures for implementing the NMSL, is now rescinded.

EFFECTIVE DATE: January 27, 1998.

FOR FURTHER INFORMATION CONTACT: In FHWA, Janet Coleman, Office of Highway Safety, 202–366–4668; or Raymond W. Cuprill, Office of the Chief Counsel, 202–366–1377. In NHTSA, Garrett Morford, Police Traffic Services Division, 202–366–9790; or Heidi L. Coleman, Office of the Chief Counsel, 202–366–1834.

SUPPLEMENTARY INFORMATION:

Background

The 55 mph National Maximum Speed Limit (NMSL) was first instituted in 1974 as a temporary conservation measure in response to the oil embargo imposed by certain oil-producing nations. Because of the reduction in traffic fatalities that accompanied the institution of the speed limit, it was made permanent in 1975.

In 1978, Congress amended the law to require that, in addition to posting and enforcing the speed limit, States would have to achieve specific levels of compliance. In April 1987, Congress passed legislation that allowed States to post 65 mph maximum speed limits on rural Interstate highways. In December 1987, the President approved legislation enacting a limited demonstration program, that allowed the posting of speed limits as high as 65 mph on certain rural non-Interstate highways through the end of FY 1991.

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) made the demonstration program permanent, and allowed other rural non-Interstate highways that were not a part of the demonstration program to be posted at the 65 mph speed limit, provided they met certain criteria.

ISTEA also required the Secretary of Transportation to publish a rule to establish speed limit compliance requirements on 65 mph roads, in addition to 55 mph roads, and to include a formula for determining compliance by the States.

FHWA and NHTSA had shared responsibility for the implementation of the NMSL compliance program since 1980. To implement this program and the requirements of ISTEA, the agencies promulgated a joint regulation, 23 CFR part 1260.

On November 28, 1995, the President signed into law the National Highway System Designation Act of 1995 (NHS Act). Section 205(d) of the NHS Act repealed the NMSL compliance program, as set forth in 23 U.S.C. §§ 141(a) and 154.

The NHS Act made the repeal effective on December 8, 1995, but provided some States with an option to delay this effective date. In any State in which the legislature was not in session on November 28, 1995, the Governor could declare, before December 8, 1995, that the legislature was not in session and that the State preferred to delay the effective date until after the State's legislature next convenes. In accordance with the NHS Act, such a declaration would delay the effective date of the repeal of the NMSL until the 60th day following the date on which the legislature next convenes. Five States decided to exercise the option: Kansas, Louisiana, Mississippi, Missouri and Ohio.

Accordingly, as provided in the NHS, on December 8, 1995, the NMSL was repealed for all States other than these five States. In those five States, it remained in effect until the 60th day following the date on which the legislature of that State next convened.

The agencies published a final rule in the **Federal Register** on March 20, 1996, 61 FR 11305, which rescinded the regulation for all States except the five which had delayed the effective date until after their legislatures next convened. That final rule added an applicability section to Part 1260 (section 1260.4), making the regulation applicable only to those five States. In addition, sections of the regulation that pertained to speed monitoring, certification requirements and compliance standards were deleted from the regulation because they were no longer applicable to any State. This removed the information collection requirement for all States at that time.

The expiration of the 60-day period has now occurred for all States. Since Part 1260 no longer applies to any State, the regulation is being rescinded in its entirety.

Regulatory Analyses and Notices

Civil Justice Reform

This final rule will not have any preemptive or retroactive effect. It imposes no requirements on the States, but rather removes regulatory obligations that are no longer authorized by statute.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The agencies have analyzed the effect of this action and determined that it is not significant within the meaning of Executive Order 12866 or of Department of Transportation regulatory policies and procedures. This final rule imposes no additional burden on the public. Regulatory obligations have been removed since they are no longer authorized by statute. Therefore, a regulatory evaluation is not required and was not prepared.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, the agencies have evaluated the effects of this action on

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small entities. Based on the evaluation, we certify that this action will not have a significant economic impact on a substantial number of small entities. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

Paperwork Reduction Act

The Office of Management and Budget (OMB) had approved the information collection requirements associated with 23 CFR part 1260 (OMB Clearance No. 2125–0027). By rescinding all of part 1260, the information collection requirement, as that term is defined by OMB in 5 CFR part 1320, remains at zero.

National Environmental Policy Act

The agencies have analyzed this action for the purpose of compliance with the National Environmental Policy Act and have determined that it will not have a significant effect on the human environment.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. There are no federalism implications pursuant to Executive Order 12612 since regulatory obligations are being rescinded because they are no longer authorized under current law. Under these circumstances, the preparation of a Federalism Assessment is not warranted.

Notice and Comment

The agencies find that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B) because the agencies are not exercising discretion in a way that could be meaningfully affected by public comment. Instead, this rescission of the agencies' speed limit compliance regulations is mandated by Section 205(d) of the NHS Act. Therefore, notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation.

In addition, good cause exists to dispense with the 30-day delayed effective date requirement of 5 U.S.C. 553(d) because this final rule "grants or recognizes an exemption or relieves a restriction" in accordance with 5 U.S.C. 553(d)(1). In repealing the NMSL regulation for all States, all Federal speed limit provisions are terminated. Consequently, the agencies are proceeding directly to a final rule which is effective upon its date of publication.

List of Subjects in 23 CFR Part 1260

Grant programs—transportation, Highway and roads, Motor vehicles, Traffic regulations.

In consideration of the foregoing, Part 1260 of Title 23, Code of Federal Regulations, is removed.

Issued on: January 12, 1998.

Kenneth R. Wykle,

Administrator, Federal Highway Administration.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 98–1888 Filed 1–26–98; 8:45 am]

BILLING CODE 4910–88–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8759]

RIN 1545–AP35

Filing Requirements for Returns Claiming the Foreign Tax Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulation.

SUMMARY: This document contains a final regulation relating to the substantiation requirements for taxpayers claiming foreign tax credits. The regulation is necessary to provide guidance to U.S. taxpayers who claim foreign tax credits.

DATES: *Effective date:* This regulation is effective January 27, 1998.

Applicability date: These regulations are applicable for tax returns whose original due date falls on or after January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Joan Thomsen, (202) 622–3850 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On January 13, 1997, the IRS published in the **Federal Register** a notice of proposed rulemaking (REG–208288–90), 62 FR 1700, relating to the filing requirements for returns claiming the foreign tax credit (the "proposed regulation").

Written comments responding to the proposed regulation were received. A public hearing was requested and scheduled but was later canceled when the one requester withdrew the request to testify. After consideration of all of the written comments, the proposed regulation under section 905(b) is adopted as revised by this Treasury Decision.

Summary of Comments and Final Regulations

The commenters argued that the "interim credit" notion incorporated in the proposed regulations from *Continental Illinois*, T.C. Memo 1991–66, 61 T.C.M. (CCH) 1916 (1991), *aff'd in part and rev'd in part*, 998 F.2d 513, 516–17 (7th Cir. 1993), was misapplied and that the proposed amendment to § 1.905–2(b)(3) denied district directors the flexibility to find compliance with section 905(b) unless the taxpayer produces receipts (or other direct evidence of payment) in order to prove that the taxes actually were paid to the foreign government. They argued that, even if the district director should be able to require such proof in cases such as *Continental Illinois*, district directors must have the flexibility to accept lesser proof. They argued that a portfolio holder of publicly-traded foreign securities, for example, will not be able to obtain proof in the form of receipts evidencing that the issuer of the securities actually paid the withheld taxes to the foreign government.

The comment letters are correct that the regulations historically have allowed the district director flexibility to determine that section 905(b) is satisfied without the production of tax receipts evidencing that the tax has been paid to the foreign government. Treasury and the IRS did not intend that the amendment to § 1.905–2(b)(3), as proposed, deny the district director the flexibility to accept secondary evidence of the foreign tax payment where it has been established to the satisfaction of the district director that it is impossible to furnish a receipt for such foreign tax payment. The amendment was merely intended to clarify that proof of the act of withholding through secondary evidence is not, per se, equivalent to proof of payment of the foreign tax. Treasury and the IRS have now concluded, however, that such clarification is not necessary. *Continental Illinois* v. *Commissioner*, *supra*.

Therefore, in response to comments, the proposed regulation is finalized without its proposed amendment to § 1.905–2(b)(3). Thus, the final regulations are identical to the final regulations currently in effect, except § 1.905–2(a)(2) no longer requires a foreign receipt or return to be attached to a Form 1116 or Form 1118.

Treasury and the IRS will continue to review the foreign tax credit substantiation rules to assure that they are functioning adequately. For

example, Treasury and the IRS are concerned that U.S. holders of foreign securities, including American Depositary Receipts ("ADRs"), may be claiming foreign tax credits in situations where an intermediary in the chain of ownership between the holder of a foreign security or an ADR and the issuer of the security (or the security underlying the ADR) has taken actions inconsistent with the ownership of the underlying security by the person claiming the credit, such as a disposition of such security. One approach to address this issue would involve modifying the substantiation, documentation and reporting rules with respect to payments on such securities and taxes withheld therefrom. For example, in order for a U.S. owner to be entitled to a credit for foreign taxes imposed on income with respect to a security, financial intermediaries (including custodians) could be required to substantiate that they have not taken any action inconsistent with beneficial ownership of the relevant security by such U.S. owner.

It should be noted that portfolio investors are not necessarily entitled to foreign tax credits for the full amount indicated on the Form 1099 as foreign taxes paid. Portfolio investors are only entitled to a foreign tax credit for the amount of tax that is legally owed, which may not be the same as the amount withheld. If, for example, a portfolio investor is entitled to a refund of foreign tax withheld because of a reduced treaty withholding rate, the investor is only entitled to a foreign tax credit for the reduced amount, whether or not the investor files a refund claim with the foreign tax authorities. The IRS has made changes to the Form 1116 Instructions and Publication 514 to clarify this point and intends to make similar changes to the Form 1118 Instructions.

Explanation of Provisions

Section 1.905–2(a)(1), 1.905–2(b)(1), (2), and (3), and 1.905–2(c)

Sections 1.905–2(a)(1), 1.905–2(b)(1), (2) and (3), and 1.905–2(c) are unchanged from the current final regulations.

Section 1.905–2(a)(2)

Under former § 1.905–2(a)(2), taxpayers generally were required to attach to their income tax returns either (1) the receipt for the foreign tax payment or (2) a foreign tax return for accrued foreign taxes. Section 1.905–2(a)(2) removes the requirement that the documentation be attached to the income tax return. The regulation now provides that such evidence of payment of foreign taxes must be presented to the district director upon request.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to this regulation, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of this regulation is Joan Thomsen of the Office of the Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for 26 CFR part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.905–2 is amended by revising the second through fourth sentences in paragraph (a)(2) to read as follows:

§ 1.905–2 Conditions of allowance of credit.

(a) * * *

(2) * * * Except where it is established to the satisfaction of the district director that it is impossible for the taxpayer to furnish such evidence, the taxpayer must provide upon request the receipt for each such tax payment if credit is sought for taxes already paid or the return on which each such accrued tax was based if credit is sought for taxes accrued. The receipt or return must be either the original, a duplicate original, or a duly certified or authenticated copy. The preceding two sentences are applicable for returns whose original due date falls on or after January 1, 1988. * * *

* * * * *

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved: January 13, 1998.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 98–1816 Filed 1–26–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–205]

RIN 1218–AA40

Safety Standards for Scaffolds Used in the Construction Industry (Aerial Lifts); Effective Date and Office of Management and Budget Control Numbers Under Paperwork Reduction Act

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule; amendment; announcement of effective date and OMB approval of information collection requirements.

SUMMARY: This document announces the effective date of a provision in the Occupational Safety and Health Administration's construction standard for scaffolds that addresses manufacturer certification of "field modified" aerial lifts. The document also adds an entry to display that the collection of information has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

EFFECTIVE DATE: The amendment in this final rule and § 1926.453(a)(2), published at 61 FR 46026, are effective January 27, 1998.

FOR FURTHER INFORMATION CONTACT: Laurence Davey, Directorate of Construction, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3621, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 219–7198.

SUPPLEMENTARY INFORMATION: In the August 30, 1996, **Federal Register** at 61 FR 46026, *et seq.*, OSHA revised the standards for scaffolds in construction; codified as subpart L of 29 CFR part 1926. The effective date for the revised subpart was November 29, 1996. However, in that same document, at 61

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FR 46026 and 46103–46104, the Agency announced its intent to request Office of Management and Budget (OMB) approval for a provision addressing aerial lifts in § 1926.453(a)(2). OSHA stated that the effective date for § 1926.453(a)(2) would be announced in the **Federal Register** at a later date, once OSHA received approval for the information collection requirements in that provision from OMB. The aerial lift provisions contain a requirement for manufacturer certification of "field modified" aerial lifts, which was previously codified in § 1926.556, and which was redesignated at § 1926.453(a)(2) in the final rule.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB has approved the information collection and assigned OMB control number 1218–0216, which expires on October 31, 2000. Under 5 CFR 1320.5(b), an Agency may not conduct or sponsor a collection of information unless: (1) The collection displays a valid control number, and (2) the agency informs potential persons who may respond to the collections of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Accordingly, now that OMB has approved the collections in § 1926.453(a)(2), OSHA is codifying the current OMB control number into § 1926.5, which is the central section in which OSHA displays its approved collections under the Paperwork Reduction Act. The effective date of § 1926.453(a)(2) is January 27, 1998.

Authority and Signature

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210.

List of Subjects in 29 CFR Part 1926

Construction; Occupational safety and health; Reporting and recordkeeping requirements.

Signed at Washington, D.C., this 15th day of January, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

Accordingly, the Occupational Safety and Health Administration amends 29 CFR part 1926 as set forth below.

PART 1926—[AMENDED]

1. The authority citation for subpart A of part 1926 continues to read as follows:

Authority: Section 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 1–90 (55 FR 9033), as applicable; 29 CFR part 1911.

§ 1926.5 [Amended]

2. In § 1926.5, the table is amended by adding the entry "§ 1926.453(a)(2).....1218–0216" in numerical order.

[FR Doc. 98–1788 Filed 1–26–98; 8:45 am]

BILLING CODE 4510–26–M

POSTAL SERVICE

39 CFR Part 20

Expansion of Global Priority Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: On March 29, 1996, the Postal Service published in the **Federal Register**, 61 FR 14025, an interim rule with a request for comments which expanded Global Priority Mail service by increasing the number of acceptance points, increasing the number of destination countries, and adding weight variable rates for items weighing up to 4 pounds. The Postal Service now adopts the interim regulations, with amendments, as final.

EFFECTIVE DATE: January 27, 1998.

FOR FURTHER INFORMATION CONTACT: R. Jay Thabet, (202) 268–2269.

SUPPLEMENTARY INFORMATION: On March 29, 1996, the Postal Service published an interim rule expanding Global Priority Mail and requesting comments, 61 FR 14025. Global Priority Mail is an expedited airmail letter service providing fast, reliable, and economical delivery of all items mailable as letters or merchandise up to 4 pounds. Global Priority Mail items receive priority handling in the United States and destination countries. Service is limited to the 34 destination countries identified in the International Mail Manual 226.2. Service is available from designated post offices identified in the International Mail Manual 226.32.

The weight limit for Global Priority Mail items is 4 pounds. The Postal Service offers two sizes of preprinted flat-rate envelopes. The rates for these envelopes are based on a geographic rate zone regardless of the actual weight. Although these envelopes are valid for weights of up to 4 pounds, the practical limitations of the envelopes limit the weight to less than 4 pounds.

The interim rule increased the number of post offices where Global Priority Mail would be available, increased the number of destination countries, and added variable weight-based rates to increase customer convenience.

The Postal Service received one letter containing nine comments on the interim rule.

Comment one suggests that, for those states where all post offices within the state are on the list of acceptance sites, just the state should be listed without showing the different facilities. This suggestion does not take into account that there may arise a case where a post office within a state may not be able to accept Global Priority Mail at some time in the future. The present system of listing the acceptance facilities allows the Postal Service to delete post offices when appropriate.

Comment two suggests that ZIP Codes be listed in numerical order rather than in alphabetical order of the acceptance facility. While both numerical and alphabetical listings are valid, neither is more valid than the other. The Postal Service elects to retain the alphabetical listing.

Comment three states that, in New York State, Postal Codes 117/118 are no longer listed as acceptance sites, whereas they were listed as acceptance sites for the original test. This was a typographical error; ZIP Codes 117/118 are acceptance sites.

Comment four asks for an explanation of certain abnormalities in the rate structure for variable weights and the volume rates. The differences between weight steps does not have to be equal or linear or based totally on cost changes. The competitions' rates for similar products are a factor. The size and weight of the volume the USPS most wants to attract is another factor in the determination of weight level increases.

Comment five asks for an explanation for the relationship between rates for Canadian and European destinations. The expected traffic to each country group, the competition that we face going to that country group, and the cost to get into each country group were factors used to determine rates. In the example cited, competitors' rates and delivery costs in the country were the most influential.

Comment six states that the relationship between the flat rate envelopes and the variable weight rate should be clarified and the relationship between the flat rate envelope and the volume rate should be clarified. The flat rate developed for envelopes that the Postal Service provides is independent

of the variable weight rate and the volume rate. The Postal Service developed the flat rates as a convenience for the customer. To receive either the variable weight or volume rate options, the customer must provide the appropriate packaging. The envelopes the Postal Service provides are for the convenience of the customer and are not eligible for either the variable weight or volume rate options.

Comment seven suggests a change in wording to Chapter 2 of the International Mail Manual, part 226.62, to read * * * * sticker rate must have the DEC–10 sticker affixed to the address side of the package, for clarification purposes. The Postal Service accepts this comment and revises Chapter 2 of the International Mail Manual, part 226.62.

Comment eight notes that section 226.82 of the International Mail Manual does not state where the single piece rate packages can be mailed. In light of this comment the Postal Service revises Chapter 2 of the International Mail Manual, part 226.82, to state that single piece variable weight option may be deposited in the normal manner of deposit for Global Priority Mail.

Comment nine questions the legality of not providing Global Priority Mail service from every post office under the jurisdiction of the United States Postal Service. The United States Postal Service provides service throughout the entire United States as mandated by 39 USC 3623(d). There are some products and services that are not available at all postal retail units. Acceptance of passport applications is an example. In the case of Global Priority Mail, the service is offered at all post offices from which transportation is available which allows the mailpiece to reach the appropriate airmail facility in time to make the scheduled airline departure on the day after the mailpiece is deposited. If the transportation network at a given post office does not allow for the mailpiece to leave the United States on the day after deposit, that post office does not accept Global Priority Mail. This restriction is in place to preserve the integrity of a premium service for which the customer pays a premium fee.

A transmittal letter making the changes in the pages of the International Mail Manual will be published and transmitted automatically to subscribers. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 20.3.

The Postal Service amends part 226 of the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, Incorporation by reference, International postal services.

PART 20—[AMENDED]

The authority citation for 39 CFR Part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 407, 408.

2. The International Mail Manual is amended to incorporate part 226, Global Priority Mail, as follows:

226 Global Priority Mail

226.1 General

226.11 Definition

Global Priority Mail is an expedited airmail letter service providing fast, reliable, and economical delivery of all items mailable as letters or merchandise up to 4 pounds. Global Priority Mail items receive priority handling in the United States and in destination countries. Service is available only to destination countries identified in 226.2, from post offices identified in 226.3.

226.12 Permissible Items

All items sent as letter class mail (see 221.1) are accepted in Global Priority Mail provided that the contents are mailable and fit securely in the envelope. Global Priority Mail items may contain dutiable merchandise unless the country of destination specifically prohibits dutiable merchandise in letters (see 224.51). Any item that is prohibited in international mail is prohibited in Global Priority Mail. Refer to the "Country Conditions of Mailing" in the Individual Country Listings for individual country prohibitions.

226.13 Packaging

Items must fit comfortably within the flat-rate envelope without distorting or bursting the container. Do not use excessive tape to keep the envelopes from bursting. Use only one piece of tape to secure the flap.

226.2 Availability

Global Priority Mail is available to the following countries. Countries specifically identified will have service only to specific cities within those countries, as noted below:

COUNTRIES OF DESTINATION

Western Europe	Pacific Rim	North America	South America	Middle East
Austria	Australia	Canada	Brazil [4]	Israel.[6]
Belgium	China [2]	Mexico [3]	Chile [5]	Saudi Arabia.[7]
Denmark	Hong Kong			
Finland	Japan			
France (including Monaco)	Korea, Republic of			
Germany	New Zealand			
Great Britain and Northern Ireland [1]	Philippines			
Iceland	Singapore			
Ireland	Taiwan			
Liechtenstein	Thailand			
Luxembourg	Vietnam			
Netherlands, The				
Norway				
Portugal				
Spain				
Sweden				
Switzerland				

[1] Includes England, Northern Ireland, Scotland, Wales, Guernsey, Jersey, and the Isle of Man.
[2] Destinations in China are limited to Beijing, Dalian, Guangzhou, Qingdao, Shanghai, Shenzhen, Suzhou, Tianjin, Wuxi, Xiamen, and Zhuhai ONLY.

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[3] Destinations in Mexico are limited to Mexico City, Guadalajara, and Monterrey ONLY.
[4] Destinations in Brazil are limited to Sao Paulo and Rio de Janeiro ONLY.
[5] Destinations in Chile are limited to Santiago, Valparaiso, and Viña del Mar ONLY.
[6] Destinations in Israel are limited to Jerusalem, Tel Aviv, and Haifa ONLY.
[7] Destinations in Saudi Arabia are limited to Riyadh, Jeddah, and Dammam ONLY.

226.3 Mailing Locations

226.31 Acceptance Offices and Pickup Service Locations

Global Priority Mail service is available only through the designated post offices and the additional post offices listed in 226.32. Pickup Service is available for an additional fee. (See 226.83.)

226.32 Service Areas

Service is available only from the metropolitan areas as defined by the ZIP Code ranges shown in Exhibit 226.32. If Global Priority Mail is presented at a non-participating retail unit, advise the customer that the item cannot be accepted as Global Priority Mail. Refer customer to the nearest Global Priority Mail retail acceptance unit. Within these service areas, prepaid items may be given to carriers, deposited in Express Mail collection boxes, or mailed at post offices, stations, and branches.

Exhibit 226.32 Global Priority Mail Acceptance Cities and Three-Digit ZIP Codes

ALABAMA
Anniston: 362
Birmingham: 352
Huntsville: 356, 357, 358
Mobile: 366
Montgomery: 361, 368

ARIZONA
Phoenix: 850, 852, 853
Tucson: 857

ARKANSAS
Little Rock: 722
West Memphis: 723

CALIFORNIA
Industry: 917, 918
Inglewood: 902, 903, 904, 905
Long Beach: 906, 907, 908
Los Angeles: 900, 901
North Bay: 949
Oakland: 945, 946, 947, 948,
Pasadena: 910, 911, 912
Salinas: 939
San Diego: 919, 920, 921
San Francisco: 940, 941, 943, 944
San Jose: 950, 951
Santa Ana: 926, 927, 928
Van Nuys: 913, 914, 915, 916

COLORADO
Brighton: 806
Colorado Springs: 808, 809
Denver: 800, 801, 802, 803
Longmont: 805
Pueblo: 810

CONNECTICUT
Hartford: 060, 061, 062
New Haven: 063, 064, 065, 066
Stamford: 068, 069
Waterbury: 067

DELAWARE
Wilmington: 197, 198, 199

DISTRICT OF COLUMBIA (Washington, DC)
Washington: 200, 202, 203, 204, 205

FLORIDA
Daytona Beach: 321
Fort Myers: 339
Ft. Lauderdale: 333
Gainesville: 326, 344
Jacksonville: 320, 322
Lakeland: 338
Manasota: 342
Miami: 331, 332
Mid-Florida: 327
Orlando: 328, 329, 347
South Florida: 330
St. Petersburg: 337
Tallahassee: 323
Tampa: 335, 336, 346
West Palm Beach: 334, 349

GEORGIA
Albany: 317
Athens: 306
Atlanta: 303, 311
Augusta: 298, 308, 309
Columbus: 318, 319
Macon: 310, 312
North Metro: 300, 301, 302, 305
Savannah: 299, 313, 314
Swainsboro: 304
Valdosta: 316
Waycross: 315

INDIANA
Bloomington: 474
Columbus: 472
Evansville: 424, 476, 477
Fort Wayne: 467, 468
Gary: 463, 464
Indianapolis: 460, 461, 462
Kokomo: 469
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Muncie: 473
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Carol Stream: 601, 603
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Galesburg: 614
Kankakee: 609
La Salle: 613
Palatine: 600, 602
Peoria: 615, 616
Quincy: 623, 634, 635
Rockford: 610, 611
Rock Island: 612
Springfield: 625, 626, 627
South Suburban: 604

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Des Moines: 500, 501, 502, 503, 509
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Mason City: 504
Ottumwa: 525
Sioux City: 510, 511
Waterloo: 506, 507

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Fort Scott: 667
Kansas City: 660, 661, 662
Hays: 676
Salina: 674
Topeka: 664, 665, 666, 668
Wichita: 672

KENTUCKY
Ashland: 411, 412
Bowling Green: 421, 422
Campton: 413, 414
Elizabeth: 427
Louisville: 400, 401, 402, 471
Lexington: 403, 404, 405, 406
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Baton Rouge: 707, 708
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Boston: 021, 022
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226.4 Postage

226.41 Flat-Rate Envelopes Postage

Each Global Priority Mail flat-rate envelope is charged at a flat rate. The rate is based on the geographic rate zone regardless of its actual weight. Postage is required for each piece. (See Exhibit 226.41.)

Exhibit 226.41

FLAT-RATE ENVELOPE POSTAGE RATES

Destination	Small	Large
Western Europe and Middle East	$3.75	$5.95
Canada and Mexico	3.75	5.95
Pacific Rim and South America	4.95	5.95
Weight Limit 4 Lbs.		

226.42 Variable Weight Option Postage—Single Piece Rates

Global Priority Mail variable weight rates are calculated in half (or fraction thereof) increments based on the weight of each piece the destination geographic rate zone up to four pounds. (See Exhibit 226.42.)

Exhibit 226.42

VARIABLE WEIGHT STICKER OPTION—SINGLE PIECE RATES

Weight level	Western Europe and Middle East	Pacific Rim and South America	Canada and Mexico
½ lb	$7.00	$8.00	$5.95
1.0 lb	10.50	12.50	10.00
1.5 lbs	12.50	16.95	13.50
2.0 lbs	15.00	21.00	16.50
2.5 lbs	17.50	23.95	18.00
3.0 lbs	19.95	27.25	19.50
3.5 lbs	22.00	31.50	21.00
4.0 lbs	24.75	34.50	22.50
Weight Limit 4 Lbs.			

226.43 Global Priority Mail Sticker—Volume Rates

226.431 Minimum Quantity Requirement

The mailer must have a minimum of five or more pieces to one or more Global Priority Mail countries. The minimum does not apply to each geographic zone rate. (See Exhibit 226.43.)

226.432 Mailing Statement

Postage for volume rate mail and permit imprint must be computed on PS Form 3653, Global Priority Mail Statement of Mailings.

Exhibit 226.43

VARIABLE WEIGHT STICKER OPTION—VOLUME RATES

Weight level	Western Europe and Middle East	Pacific Rim and South America	Canada and Mexico
½ lb	$5.95	$6.95	$5.00
1.0 lb	8.50	10.00	7.50
1.5 lbs	10.00	13.50	10.00
2.0 lbs	12.00	16.95	12.50
2.5 lbs	14.00	19.25	13.50
3.0 lbs	16.95	21.95	14.50
3.5 lbs	19.95	25.50	15.50
4.0 lbs	22.50	27.75	16.50
Weight Limit 4 Lbs.			

226.5 Payment Methods

226.51 Postage Payment Methods

Nonidentical weight piece mailings must have the applicable postage affixed by adhesive stamps, meter stamps or if presented at a post office, postal validation imprinter (PVI labels). Identical weight piece mailings may be paid by meter stamps, adhesive stamps, PVI labels or permit imprint subject to certain standards. To use permit imprint, the mailing must consist of 200 or more pieces and be of identical weight. The 200-piece criterion for permit imprint applies to both volume rate and flat-rate mail. Mailers may use permit imprint with nonidentical weight items only if authorized by the USPS under a Manifest Mailing System (MMS), in DMM P710.

226.52 Postal Marking Related to Volume Rate Postage

When pieces are paid at the volume rate and paid by stamps or meter impression, each piece must be legibly marked with the words "Volume Rate Global Priority Mail." If stamps are used the endorsement must appear on the address side of each piece and must be applied by a printing press, hand stamp or other similar printing device. If meter impression is used the endorsement must be in the ad plate or the slug area. If part of the slug, the abbreviation GPM Vol. Rate may be used. See DMM P030.4.14 for specification of size requirements.

226.53 Permit Imprint Content and Format

All permit imprints on Global Priority Mail must show city and state, "Global Priority Mail," U.S. Postage Paid, and permit number. They may show the mailing date, amount of postage paid or the number of ounces for each postage.

226.54 Meter Stamps Content

At a minimum, a meter stamp must show the month, day, and year in the postmark, city and state designation of the licensing post office, the number, and the amount of postage. See DMM P030.4.6.

226.6 Preparation Requirements

226.61 Addressing

All items must bear the complete delivery address of the addressee and the full name (no abbreviations) of the destination country. See 122.

226.62 Marking

Global Priority Mail items must be mailed in special envelopes (EP–15A, EP–15B) or with the Global Priority Mail sticker (DEC–10) provided by the Postal Service. (These supplies may be obtained by calling 800–222–1811.) Unmarked pieces are subject to the applicable LC/AO airmail regular rates and treatment. Pieces paid at the Global Priority Mail sticker rate must have the DEC–10 sticker affixed to the address side of the package.

226.63 Customs

A green customs label must be affixed if the package is 16 ounces or more, regardless of its contents. Only documents and correspondence under 16 ounces do not require a customs form.

226.7 Size and Weight Limits

226.71 Size Limits

226.711 Flat-Rate Envelope Sizes

a. Small Size—6 x 10 inches.
b. Large Size—9½ x 12½ inches.

226.712 Package Sizes for Variable Weight Option

a. Minimum length and height: 5½ x 3½ inches.
b. Minimum depth (thickness): .007 inches.
c. Maximum length: 24 inches.
d. Maximum length, height, depth (thickness) combined: 36 inches.

226.713 Rolls

a. Minimum length: 4 inches.
b. Minimum length plus twice the diameter combined: 6¾ inches.
c. Maximum length: 36 inches.
d. Maximum length plus twice the diameter combined: 42 inches.

226.72 Weight Limit

Items sent as Global Priority Mail in envelopes and the variable weight option must not exceed 4 pounds.

226.73 Special Services

Mailers may obtain certificates of mailing (see NO TAG). No other special services such as registry, insurance, restricted delivery, return receipt, or recorded delivery are available.

226.8 Mailer Preparation

226.81 Mailer Requirement

Global Priority Mail claimed at the volume rate must be separated by geographic rate zone (Western Europe, Pacific Rim, and Canada) when presented to the business mail entry unit unless otherwise authorized by the USPS. All pieces in a permit imprint mailing and metered mail must be facing the same direction.

226.82 Deposit of Mail

Global Priority Mail pieces paid by permit imprint and pieces claimed at the Global Priority Mail volume rates must be deposited at a business mail acceptance unit as authorized by the postmaster in the designated Global Priority Mail sites for weighing. Single piece variable weight option may be deposited in the normal manner of deposit for Global Priority Mail. Flat-rate envelopes with postage affixed may be deposited in any Express Mail Street collection box or other such place where Express Mail is accepted. Metered mail must be deposited in locations under the jurisdiction of the licensing post office except as permitted under DMM P030.

226.83 Pickup Service

On call and scheduled pickup service are available for Global Priority Mail from the designated Global Priority Mail acceptance cities. There is a charge of $4.95 for each pickup stop, regardless of the number of pieces picked up. (See DMM D010 for standards of pickup service.) Pickup is not available for Global Priority Mail pieces if paid by permit imprint or claimed at the volume rate.

Stanley F. Mires,
Chief Counsel, Legislative.
[FR Doc. 98–1935 Filed 1–26–98; 8:45 am]
BILLING CODE 7710–12–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 382

[Docket No. R–158]

RIN 2133–AB19

Determination of Fair and Reasonable Guideline Rates for the Carriage of Bulk and Packaged Preference Cargoes on U.S.-Flag Commercial Vessels

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The regulations at 46 CFR part 382 prescribe the administrative procedures and methodology for determining fair and reasonable rates for the carriage of dry and liquid bulk and packaged preference cargoes on United States commercial cargo vessels. MARAD is issuing this rule to prescribe cost averaging as the methodology used for determining rates and to implement conforming procedural changes. MARAD is also reducing information collection under these regulations.

DATES: This final rule is effective January 29, 1998.

FOR FURTHER INFORMATION CONTACT: Michael P. Ferris, Director, Office of Costs and Rates, Maritime Administration, Washington, DC 20590, Tel. (202) 366–2324.

SUPPLEMENTARY INFORMATION: Section 901(b)(1) of the Merchant Marine Act of 1936 (the Act), as amended (46 App. U.S.C. 1241(b)), cited as the Cargo Preference Act of 1954, requires that at least 50 percent of any equipment, materials or commodities purchased by the United States or for the account of any foreign nation without provision for reimbursement, or acquired as the result of funds or credits from the United States, shall be transported on privately owned U.S.-flag commercial vessels, to the extent that such vessels are available at fair and reasonable rates. In 1985, section 901 was amended to exclude certain programs from the application of cargo preference and to raise the U.S.-flag share to 75 percent on certain others. Upon request, MARAD provides fair and reasonable rates (also referred to as guideline rates) to U.S. shipper agencies. Section 901(b)(2) of the Act provides the authority for MARAD (by delegation from the Secretary of Transportation) to issue regulations governing the administration of section 901(b)(1). In 1989, MARAD issued regulations at 46 CFR part 382 ("Rule"), that initially became effective on January 1, 1990.

Under the 1990 Rule, MARAD established fair and reasonable rates, so-called guideline rates, based on each individual vessel's costs which applied to the ocean borne portion of cargo transportation. The guideline rate consisted of four components: (1) Operating costs; (2) capital costs; (3) port and cargo handling costs; and (4) brokerage and overhead. The operating cost component of the guideline rate for each participating vessel reflected actual historical vessel operating costs escalated to the current period by utilizing factors for wage and non-wage costs. All eligible annual operating costs are added together for each vessel and divided by the total number of operating days for that vessel to yield a daily operating cost.

Each vessel's actual reported fuel consumption at sea and in port forms the basis of the guideline rate's fuel cost segment. The actual fuel consumption of each vessel is multiplied by the corresponding projected number of voyage days at sea and in port to calculate total units of fuel consumed.

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Current fuel prices are applied to fuel consumed to produce the fuel segment of the operating cost component. MARAD then adds the totals of the fuel and non-fuel operating cost segments to produce the operating cost component for the voyage.

The capital cost component is presently calculated individually for each participating bulk vessel and consists of an allowance for depreciation and interest, plus a reasonable return on investment. Depreciation is calculated by the straight-line method, based on a 20-year vessel economic life and utilizing a residual value of 2.5 percent. However, if the owner acquired an existing vessel, the vessel is depreciated by the straight-line method over the remaining period of its 20-year economic life, but not fewer than 10 years. Capitalized improvements are depreciated straight-line over the remainder of the 20-year period, but not fewer than 10 years.

For the purpose of calculating interest expense, MARAD assumes that original vessel indebtedness is 75 percent of the owner's capitalized vessel cost and that principal payments are made in equal annual installments over a 20-year period. To compute the interest cost, the owner's actual interest rate is applied to the constructed outstanding debt on the vessel. Where the owner has a variable interest rate, MARAD uses the owner's rate prevailing at the time of calculation, and if there is no interest rate available, MARAD selects an appropriate interest rate.

MARAD allows a return on capital cost (investment), with two components, return on equity and return on working capital. The rate of return is based upon a five-year average of the most recent rates of return for a cross section of transportation industry companies, including maritime companies. Equity in the vessel is assumed to be the vessel's constructed net book value less constructed indebtedness. Working capital is the dollar amount necessary to cover operating and voyage expenses. The annual depreciation, interest, return on equity and return on working capital are divided by 300 operating days to determine a daily amount. The total of these elements is multiplied by estimated voyage days to determine the capital cost component used in the fair and reasonable rate calculation.

The port and cargo handling cost component of the guideline rate is determined for each voyage on the basis of the actual cargo tender terms for the commodity, load and discharge ports, and lot size. Costs used to determine the port and cargo cost component are based on the most current data from all available sources and verified from data received on completed cargo preference voyages. The brokerage and overhead component of the guideline rate is the aggregate of the cost components for operating, capital and port and cargo handling, multiplied by an 8.5 percent allowance for broker's commissions and overhead. The total of these four components is then divided by cargo tons (which cannot be less than 70 percent of the vessel's cargo deadweight) to determine the guideline rate.

Under the 1990 rule, whenever a vessel carries preference cargo and subsequently transports additional cargo prior to its return to the United States, MARAD reexamines the guideline rate that it calculated for the preference voyage. This reexamination may result in the recalculation of the original guideline rate, incorporating the additional voyage itinerary, costs and revenues which occurred as a result of the carriage of the additional cargo. If a vessel is scrapped or sold after discharging a preference cargo, MARAD adjusts the guideline rate to reflect the termination of the voyage after discharge. If the rate received by the operator for the preference cargo exceeds the adjusted guideline rate for the one-way voyage, MARAD informs the shipper agency who may then require the operator to repay the difference in the ocean freight.

Advance Notice of Proposed Rulemaking

MARAD decided that revising the Rule could encourage development of a modern and efficient merchant marine and reduce government-wide cargo preference shipping costs. As a result, on April 19, 1995, MARAD issued an Advance Notice of Proposed Rulemaking (ANPRM) (60 FR 19559), soliciting comments from the public. In the ANPRM, MARAD identified three alternative methodologies, in addition to the existing rate methodology, that it was considering. The three alternatives were: Foreign Market, Cost Averaging, and Market Based.

Seven sets of comments were received in response to the ANPRM. Commenters represented U.S. shipper agencies, vessel operators and industry associations. Comments were offered in support of, and in opposition to all four alternatives, with no clear consensus. Commenters generally supported the need for guideline rate reform and were unanimous that any methodology must encourage investment in efficient vessels.

Public Meetings

After an initial review of the comments received on the ANPRM, MARAD believed it would be beneficial to meet with interested parties. MARAD held two meetings. On July 12, 1995, members of the shipping community and other interested parties met with MARAD. On July 14, 1995, MARAD met on the same subject with representatives of the United States Department of Agriculture (USDA) and the United States Agency for International Development (AID), the major government shipper agencies.

As a result of MARAD's experience in determining guideline rates and the information received from the ANPRM and meetings with interested parties, on February 28, 1997, MARAD published a Notice of Proposed Rulemaking (NPRM) to amend the Rule in order to improve the fair and reasonable rate-making process. The following is a discussion of proposed changes to 46 CFR part 382 and the comments that were received during the comment period.

Comments

Eight groups submitted comments in response to the NPRM of February 28, 1997. The respondents were the American Institute of Certified Public Accountants (AICPA), four U.S.-flag operators that frequently carry preference cargoes, a U.S. liner operator, the U.S. Agency for International Development (AID), and United States Department of Agriculture's Foreign Agricultural Service (USDA). To facilitate discussion of the comments, they will be discussed by subject matter.

General

General comments ran the gamut from supporting most of the proposals in the NPRM to urging MARAD not to adopt the rule. Some questioned the need for guideline rates or changes to the current procedures and their legality. One operator contended that when at least three bids are received for a preference cargo the lowest should be assumed to be fair and reasonable. Another operator conjectured that averaging will introduce arbitrary biases and that it is unfair for operators to be expected to accept low rates when the market is poor but still be held to ceiling rates if the market improves. The same operator postulated that some operators would not be able to recover costs at the averaging rate. In addition, several operators were concerned that their knowledge of their competitors' cost structure was insufficient for them to know how the averaging system would affect their rates.

The averaging methodology for calculating fair and reasonable guideline rates is supported by the legislative history of Section 901(b)(1) of the Act (Pub. L. 83–664 or the Cargo Preference Act of 1954).

The Cargo Preference Act of 1954 requires government agencies to take such steps as may be necessary and practicable to assure that at least 50 percent (75 percent for specified bulk agricultural products) of the gross tonnage of certain government-sponsored cargoes, "which may be transported on ocean vessels shall be transported on privately-owned United States-flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels."

House Report No. 80, 84th Cong., 1st Sess. 3 (1955) sets out the reasons for passage of the Cargo Preference Act of 1954, as follows:

> Without some form of assurance of participation by United States-flag vessels in the transportation of relief and aid cargoes, it became clear that the shipping of the recipient and other maritime nations with lower operating costs would be able to underbid American-flag vessels and eventually transport much, if not all, of these cargoes to the irreparable detriment of the American merchant marine.

H.R. Rep. No. 80 also addressed administration of the Cargo Preference Act of 1954 and, as relevant here, discussed the meaning of "fair and reasonable rates." The question of how "fair and reasonable rates for United States-flag commercial vessels" should be calculated was referred to the Comptroller General of the United States by the House Merchant Marine and Fisheries Committee. The Comptroller General advised the Committee in a letter dated February 17, 1955, (B–95832), that—

> "fair and reasonable rates" as used in Pub. L. 664 * * * would appear to call for reasonable compensation to the operator, including a fair profit. However, it seems apparent that the statute contemplates *average* "fair and reasonable rates," which may or may not be profitable, or even compensatory, to a high-cost operator.

Quoted in H. Rep. No. 80, *supra*, p. 18 (Emphasis in original).

The Committee agreed with the Comptroller General's construction of the law and added,

> * * * it should be understood that at any one particular time market rates may be considerably less than [the fair and reasonable rate ceiling], in which event the chartering agency should feel free to exercise sound business judgment to secure the lowest rates possible for the Government.

H. Rep. No. 80, *Supra* p. 18.

MARAD has sought to develop a cost-based system which rewards efficiency while holding rates in check during peak periods. Guideline rate procedures have never guaranteed profitability and the Agency believes that the Comptroller's opinion means that full cost (plus profit) recovery in the guideline rate is not required for all vessels. MARAD also believes that the averaging methodology is fully consistent with the Act and that it will be rare that an operator does not recover its costs after efficiently executing a preference voyage at the full guideline rate.

MARAD's goal in revising the Rule is to encourage a modern and efficient merchant marine while reducing government-wide cargo preference costs. A United States General Accounting Office (GAO) report entitled *CARGO PREFERENCE REQUIREMENTS—Objectives Not Significantly Advanced When Used in the U.S. Food Aid Programs*, published in September 1994, concluded that food aid programs were paying higher shipping rates because guideline rate procedures allowed less efficient operators to charge higher rates. The report hypothesized that using average operating costs for similar sized ships instead of an individual ship's operating costs "should reduce food aid transportation costs." MARAD believes that changing the Rule to use average costs will be effective in encouraging efficient operation. In addition, administrative and technical changes made to the rule will help reduce time spent on the program by all parties in a period of scarce resources.

Finally, comments were received that relate to how the averaging system will affect each individual operator. One operator requested that MARAD consider providing operators with hypothetical rates based on recent cost information and also allow an additional comment period. Another requested that MARAD undertake a thorough effort to educate operators on the averaging process and its likely impact on guideline rates.

MARAD does not believe that an additional comment period will provide any significant benefit. However, before the final rule becomes effective, MARAD will contact each operator with current costs on file to explain the cost averaging system and discuss how it might affect rates. MARAD will also provide additional instructions and explanations in a brochure explaining guideline rate procedures to the general shipping community. In addition, MARAD will also provide the average category costs to operators and updates on an ongoing basis.

Averaging

MARAD proposed that the operating costs (including fuel consumption, capital costs and vessel speed) used in the construction of the guideline rate be averaged for all vessels within specific size categories. The averages would be computed twice a year, or more frequently, if necessary. The impact of the change to averaging would be a reduction in the guideline rate levels calculated for less efficient vessels and an increase in the guideline rate levels of the more efficient vessels. Although commenters generally supported the principle of averaging, it was unclear to one commenter whether capital costs would be averaged. Another believed that the rule should specify how MARAD will decide which vessels' costs will be averaged and develop a method to prevent use of irrelevant cost data. A third opposed averaging stating that it would be unpredictable and inefficient, penalizing newer vessels, capital improvements and steam-turbine driven vessels.

Under the averaging system, both vessel operating and capital costs will be averaged as will fuel consumption rates and vessel speed. Some wording changes have been made in the capital cost sections of the final rule to clarify that capital costs are averaged. In regard to steam-turbine vessels, it is true that any cost that is greater than the average creates a disadvantage to the operator of the higher cost vessel. MARAD shared the commenter's concern about impact on newer vessels that might enter the fleet and has provided a separate new vessel allowance. Because capital improvements are generally undertaken to create efficiencies in other cost areas, effective capital improvements should yield a long-term advantage to the operator.

Regarding the use of inappropriate data that could cause the average to be somehow distorted, MARAD will pay close attention to data provided to assure that it yields a meaningful average. Clearly, if a vessel carried preference cargo in this program during the prior year, it will be included in the average. For other vessels, an operator's program participation will be a factor in determining inclusion in the average. However, other factors such as the individual vessel's program participation and cost structure will also be considered.

Vessel Categories

MARAD proposed a four-category system based on cargo deadweight

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capacity (CDWT) with the cargo capacity determining which category of costs were to be used. Six commenters raised issues concerning categories. The comments concerning categories fall into three basic areas: Mixing vessel types within a category, how and why the categories were selected, and alternative category suggestions.

Two commenters opposed assigning vessels to categories without regard to vessel type. One commenter stated that the cost structure of a LASH liner operation bears no resemblance to the cost structure of bulk operators. The other commenter argued that tug and barges are inappropriate for transoceanic voyages and should therefor not be included with vessels which are fully capable.

It is true that LASH liner operations have cost structures which are not comparable to bulk operations. However, from time to time LASH vessels have competed for and carried bulk and bagged commodities outside of liner operations. To the extent that LASH vessels are used outside of liner operations and subject to this rule, MARAD finds no reason to exclude this vessel type from the cost discipline that averaging by categories provides.

In regard to the appropriateness of transoceanic tug and barge movements, tugs and barges have regularly competed for transoceanic cargoes during the last several years. MARAD sees no reason why two vessel types competing for the same cargoes should not be subject to the same guideline rate methodology.

With respect to how size categories were selected, MARAD examined the sizes and costs of vessels that have carried preference cargo, the number of vessels of similar size, and the cargo amounts carried on individual voyages in the preference trade.

MARAD also considered the difference between vessel types (i.e., bulk carriers, tankers, tug/barges, and general cargo), and trading patterns in arriving at the proposed vessel categories. The analysis placed vessels in size categories where they compete primarily with each other and have similar aggregate cost structures.

MARAD's proposal to use cargo capacity rather than vessel size to determine which category of costs to use was not generally well received. Two commenters argued that the approach was less efficient and could result in inequities for cargoes just above and below the category break. After reviewing the comments and doing further analysis, MARAD has reconsidered this approach and now believes that categories based on vessel size would be the most effective and fair to all concerned because costs are more closely related to vessel deadweight than cargo deadweight.

One set of comments from industry and one from government proposed vessel category sizes different from MARAD's. Both proposed five different category sizes and one proposed categories broken down by vessel deadweight (DWT) in lieu of CDWT. MARAD's original proposal and the two alternatives are:

Category	MARAD (CDWT)	(CDWT) Alternative #1	(DWT) Alternative #2
I	<8,000 CDWT	<12,000 CDWT	<10,000 DWT.
II	8,000–19,999	12,000–24,999	10,000–19,999.
III	20,000–34,999	25,000–37,999	20,000–29,999.
IV	>35,000	38,000–50,000	30,000–49,999.
V	None	>50,000	=>50,000.

In response to the proposals, MARAD constructed guideline rates using the averaging method with all three different category size methods. The analysis showed a more even progression of rates from one cargo size to another using the MARAD categories and that there is little difference resulting from using CDWT instead of DWT to establish the MARAD categories. However, the review resulted in a modest shift in the break point between Category I and Category II from 8,000 CDWT to 10,000 DWT. Also, costs for vessels in the greater than 35,000 DWT category did not display major variations due to vessel size. Consequently, the final rule will have four categories based on vessel size.

Voyage Parameters

The parameters of the pro forma voyage used in the construction of the fair and reasonable guideline rate were addressed by five commenters. Three comments were received concerning MARAD's proposal for constructing voyages based upon MARAD selecting the most appropriate port range for the return leg of the preference voyage, rather than a return to the load port in all instances. Although one commenter objected to the change without stating a specific reason, two generally supported the change, as being in keeping with commercial practices. One suggested that the return leg always terminate in the U.S. Gulf, as that is where most cargo originates. The other suggested that the language in the rule be expanded to include specific reference to the practices of the owner and the prospects for subsequent employment.

MARAD believes that the method of voyage construction published in the NPRM can adequately address these concerns. Regarding always terminating in the U.S. Gulf, in certain circumstances, e.g., consecutive voyages from the U.S. West Coast, the U.S. Gulf would not be the appropriate termination area. The rule already authorizes MARAD to select "the most appropriate" port range, so expanding the language is not necessary.

Since speed would be averaged across vessel types, MARAD proposed that the separate weather delay factors in § 382.3(e)(6) be eliminated. However, one commenter pointed out that tug/barge units will still encounter greater weather delays than self propelled ships. As a result of comments received, MARAD reconsidered this item and the 10% delay factor for computing average speed for tugs has been retained in the final rule.

One commenter asserted that a critical problem with the transportation of bulk preference cargo is that the risk shifted to carriers by the use of "full berth terms" and other land-based transportation requirements in preference charter parties. In the NPRM, MARAD noted the differences in risk between load and discharge terms and indicated its intention to use delay factors which reflect the inherent risks, therefore no change has been made to the final rule.

Finally, a government commenter requested that MARAD continue to calculate one-way rates at the time of booking for vessels sold or scrapped prior to their return to the United States. The final rule continues to provide for a one-way rate, but with a more precise definition of the circumstances when it applies. The one-way rate will continue to be calculated at the same time as the full round-trip guideline rate.

Guideline Rate Adjustments

MARAD's proposal to eliminate backhaul adjustments elicited comments from three operators and two government shippers. The comments from the operators strongly favor MARAD's proposal, while the government shippers opposed it. MARAD believes the proposal to eliminate the backhaul adjustment provides the operator with a greater ability to increase its commercial carriage and U.S.-flag participation in the U.S. foreign trade. Further, MARAD believes that increased commercial carriage could help lower overall program costs, and therefore the proposal is unchanged in the final rule.

As a result of substitutions, voyage variations, add-on cargoes, and similar recalculations, MARAD averages two guideline rate calculations for each cargo actually fixed. MARAD intends to substantially reduce these recalculations and generally determine only one guideline rate for each preference cargo. The guideline rate based on the initially requested vessel and cargo will also be applicable to all other vessels in the same tonnage category that might actually carry the cargo and for cargo amounts plus or minus five percent of the original request. An exception would be made when a vessel eligible to receive the "new vessel allowance" is substituted for an older vessel, or vice versa.

Two government commenters and one operator also raised the issue of whether rates would be recalculated when an outbound commercial cargo is added on to a preference cargo. The government commenters argued that additional revenue sources should always trigger a recalculation. The other commenter noted that add-on commercial cargo is similar to the backhaul adjustment and its elimination from the guideline process would provide an incentive to bid on commercial cargo. MARAD will recalculate rates, if requested, for any add-on cargo which increases cargo size by more than five percent.

Cargo Size (Seventy Percent Limitation)

Three commenters provided views regarding MARAD's proposal to eliminate the seventy percent limitation in the current rule. This provision currently provides that, for the purposes of calculating guideline rates, calculated cargo tonnage shall not be less than 70 percent of the vessel's cargo capacity. All commenters agreed with MARAD's proposal noting that the seventy percent rule has limited competition. Therefore, § 382.3(f) of the final rule will provide that the determination of cargo tonnage in the guideline rate shall be based on the actual cargo tonnage booked or considered for booking on the voyage.

Capital Costs

Five changes designed to simplify or clarify rate calculations were proposed within this cost category. Comments pertaining to these changes and other issues related to capital cost were received from six of the eight commenters.

The first change adds a clarifying cross reference in § 382.3(b)(2)(ii). In the final rule the paragraph explicitly references paragraph (b)(2)(i) for the periods of depreciation to be used in determining interest expense in the guideline rate.

Three commenters expressed views on MARAD's second proposal, elimination of the 2.5 percent residual value in the calculation of depreciation. Although two commenters supported elimination, the third had a conceptional problem with the elimination of residual value in the depreciation calculation. Because MARAD believes that eliminating residual value simplifies the guideline rate process while conforming to industry practice, residual value is eliminated from the depreciation calculation in § 382.3(b)(2)(i) of the final rule.

The third proposed change to the capital cost calculation concerns situations where interest rates are not available for certain capitalized items. MARAD proposed the ten-year Treasury-bill (T-bill) rate plus one percent as an appropriate and readily available substitute. One commenter supported the change while a second contended that a change would probably result in a reduction for some operators. This concern is unfounded; the rate will not be substituted when the operator provides an interest rate. Accordingly, § 382.3(b)(2)(ii) is amended in the final rule to specify the ten-year T-bill rate plus one percent as the rate used in the fair and reasonable rate calculation when no interest rate is available or for vessels without mortgage debt.

The fourth proposed change, which was supported by the commenters who voiced a view, related to the interest rate used to calculate capital costs when an owner has a variable interest rate. In the final rule § 382.3(b)(2)(ii) has been amended to specify January 1 and July 1 as the dates on which the interest rates in effect would be used for the calculation of fair and reasonable rates.

The final proposed change to capital costs was the addition of a statement in the new § 382.3(b)(3) noting that the return on working capital is a voyage related capital cost element and thus not part of the averaged costs. This proposed change elicited comments from two persons. One agreed with the change. The second commenter appeared to misunderstand the proposal. The final rule includes the proposed change in new § 382.3(b)(3).

The rate of return used in the calculation of capital costs also elicited extensive responses from four commenters, even though no change was proposed. A government commenter objected to the "policy of guaranteeing" a return on investment, suggesting that if the "guarantee" cannot be eliminated, it be based on a rate of return for maritime companies only. The first part of this comment misinterprets the function of the fair and reasonable guideline rates in the preference market. Guideline rates provide a ceiling on market rates charged for the carriage of preference cargoes on U.S.-flag vessels. Far from "guaranteeing" a rate of return, a guideline rate limits the shipowner's profitability. In addition, the Comptroller's opinion specifically states that a reasonable profit should be included in the rate. Regarding the suggestion to base the rate of return on maritime companies only, MARAD believes that a maritime profitability index would be too narrow to assure a reasonable return during all periods.

In general, the three operator commenters expressed the opposite point of view from the above. They generally expressed the belief that a higher rate of return is necessary to compensate for a high risk investment in ocean shipping. One commenter suggested that the rate of return for working capital should be based on short term business loan rates such as prime plus a spread.

Although these comments have an element of truth, they also illustrate the dilemma of choosing an appropriate rate of return. MARAD believes that the suggestion to use a short term loan rate for the return on working capital is a reasonable suggestion. However, short-term loan rates are volatile and the suggestion ignores the question of a specific spread to use. In the end, the Agency believes the current procedures have worked well in the past and should continue to do so in the future. The final rule stipulates a rate of return on working capital and equity based on the five-year average of return on stockholders' equity for a cross section of transportation companies.

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New Vessel Allowance

One goal of revising Part 382 has been to encourage newer and more efficient vessels to enter the cargo preference market. To this end, MARAD proposed including an allowance for acquisition capital in the guideline rates for both newly constructed vessels and vessels acquired prior to the fifth anniversary of their construction. The proposal provided that the allowance be included for a period of five years after acquisition by the owner. Comments were received from four persons on this provision. Commenters believed that the provision was insufficient and that a strong market would be necessary for the operator to benefit from the allowance. One commenter asserted that the allowance would only be received if MARAD paid it directly, while another supported the concept but only for newly constructed vessels. As a result of the comments, MARAD modified the new vessel allowance to provide a longer allowance period for newer vessel owners. In the final rule, the annual new vessel allowance will equal ten percent of the vessel's capitalized costs during the first year following construction or acquisition, and will decline by one percentage point each of the subsequent years until the vessel is ten years old. No allowance will be included for vessels more than ten years of age.

Information Collection Requirements

MARAD proposed reducing reporting and auditing requirements while continuing to recognize the agency's need for accurate cost and financial information. Two favorable comments were received on MARAD's proposals to reduce the amount and frequency of data reporting. To implement these two concepts, the final rule amends § 382.2(b)(8) to authorize aggregate schedule filings, and § 382.2(c) to change post-voyage filing to a semiannual requirement.

Two changes in reporting requirements were proposed to reduce the audit burden on operators, the Department of Transportation's Office of the Inspector General (OIG), and MARAD. The first change, intended to alleviate the need for auditing by the OIG, allowed an operator to have its submissions certified by an independent certified public accountant (CPA). One operator and the AICPA pointed out a problem with the specific phrase used by MARAD. The AICPA recommended replacement language specifying a report based on the independent CPA's performing an engagement consistent with professional standards, i.e., an attestation engagement. In addition, there was strong sentiment from three commenters for MARAD retaining the right to audit. It was never MARAD's intent to relinquish the right to request audits, but to alleviate some of the need for audit. However, it is MARAD's intention in deciding which operator's data to audit in any given year to factor the level of CPA review into its considerations. In consideration of the comments, the wording in § 382.2 of the final rule has been changed to include the language suggested by the AICPA.

The second proposed change in reporting requirements was to require the operator to use the accounting treatment it already uses for its own records and audited financial statements for its cost submissions to MARAD. One commenter believed that drydocking accruals should still be allowed even if a company expenses its drydocking costs. Another remarked that reporting consistency is critical when using averaging and MARAD should review the reported data and provide guidance to ensure consistent cost data. While it would be advantageous if all operators reported in the same manner and all operators accrued for drydocking costs, the Agency believes that the averaging process itself will even out the drydocking costs in much the same way as the accrual process.

MARAD also proposed three minor reporting changes. First, reporting the Official Coast Guard Identification Number (official number) would be required; second, the DWT requirement would be amended to require only summer DWT in metric tons and eliminate the requirement for Suez and Panama Canal net register tons; and, finally, the definition of "operating day" would be clarified. Only positive comments were received on these proposed changes and the proposals are included in the final rule.

Brokerage and Overhead

Part 382.3(b)(5)(d) specifies that "allowance for broker's commission and overhead of 8.5 percent shall be added to the sum of the operating cost component, the capital cost component, and the port and cargo handling cost component." Two comments were received on this component of the rate. The first questioned whether 8.5% is an appropriate allowance. The second was whether brokerage and overhead could be allowed on pass through items. MARAD believes that the 6% allowance for overhead costs that is added to the 2.5% brokerage included in guideline rates is still appropriate. Regarding brokerage and overhead on pass through items, fair and reasonable guideline rates are for ocean transportation only and an allowance in the guideline rate for inland transportation items is outside the scope of this rulemaking.

Total Revenue Rates

When more than one cargo has been booked on a vessel subject to the guideline rate regulations or when there are multiple load and/or discharge ports, calculating individual rates for particular parcels and/or destinations, as currently required by § 382.3(f) and (g), is impossible. Accordingly, MARAD proposed calculating a "Total Revenue Rate" when this occurs. The guideline rate would be calculated normally, but the final rate would be expressed as gross revenue for the total voyage, rather than as a rate per ton. If the revenue from the sum of the individual parcels does not exceed the total revenue calculated in the guideline, the individual rates would be considered fair and reasonable.

A shipper agency expressed concern that total revenue rates could result in inequities to recipients or shipper agencies if a high fixture and a low fixture combine to result in an acceptable total revenue. One operator expressed the belief that using a total revenue rate for combined parcels penalizes the operator for initiative in combining parcels and another asked that the calculation method be specified and shown by example. Responses to these concerns are drawn from experience with the total revenue concept, which has been used under waiver authority.

Experience to date has not shown operators frequently blending a high fixture rate with a low one. Typically, combining cargoes allows an operator to spread fixed costs more widely and bid a highly competitive rate for each cargo. Using the total revenue approach allows MARAD to combine the fixed costs for the whole voyage with the variable costs for the individual parcels. But because the voyage's fixed costs and the parcels' variable costs are not derived from the same tonnage, a rate per ton is not meaningful.

MARAD does not believe that total revenue rates penalize operators for combining cargoes. Total revenue rates actually reflect the practices of the operators when they combine cargoes. Using a total revenue approach simply requires comparing all the costs for all parcels to be carried on the voyage to the total revenue proposed in the operator's bids, thereby obviating the need to artificially allocate fixed costs to one cargo or the other.

As requested, an example of a total revenue rate follows:

CARGO

Cargo	Amount metric tons	Type	Terms	Load port	Discharge port
Rice	10,000	Bagged	FBT	Galveston, TX	Durban, South Africa.
Wheat	10,000	Bulk	VLFO (4000/1000) SHEX	New Orleans, LA	Beira, Mozambique.
Corn	10,000	Bulk	FBT	New Orleans, LA	Mombassa, Kenya.

VOYAGE

Port	Activity	Port time	Distance	Sea time	Port costs	Cargo costs
New Orleans, LA	Load wheat and corn	8.38			$35,000	$25,000
	Bunker	1.00				
Galveston, TX	Load rice	8.49	390	1.25	35,000	180,000
Durban, South Africa	Discharge rice	10.18	8234	28.32	25,000	100,000
Beira, Mozambique	Discharge wheat	12.73	702	2.24	25,000	0
Mombassa, Kenya	Discharge corn	8.49	1149	3.67	25,000	60,000
	Bunker	1.00		0.00		
U.S. Gulf	Return	0.00	9986	31.92	0	0
Total Days		48.25		85.40	145,000	385,000

FAIR AND REASONABLE RATE CALCULATION

Fuel Costs	$415,000
Vessel Operating Costs	$1,500,000
Port Costs	$145,000
Cargo Costs	$365,000
Other Cargo Costs	$20,000
Capital Costs	$740,000
Brokerage & Overhead	$270,725
Total	$3,455,725,000
Total Revenue Rate	$3,455,725
Average Rate per ton	$115.19

FIXTURE AND FAIR AND REASONABLE RATE COMPARISON

Cargo	Rate bid	Amount	Revenue	Fair and reasonable rate
Rice	$125.00	10,000	$1,250,000	
Wheat	90.00	10,000	900,000	
Corn	95.00	10,000	950,000	
Total		30,000	3,100,000	[1] $3,455,725
Average	103.33			

[1] Since voyage revenue is less than total revenue from the fair and reasonable rate, the individual bids are considered fair and reasonable.

The preceding example details the areas where costs vary and overlap. In order to provide individual rates, both direct and overall voyage costs must be allocated to each cargo. This is very difficult to accomplish fairly. Also, as this example illustrates, individual fixture rates can be higher or lower than the average rate, and yet the operator's total effort yields revenue that is fair and reasonable. The only unique aspect of the total revenue rate is the elimination of the step which divides the total allowable costs by the cargo tons to derive a rate per ton.

MARAD believes that the total revenue approach represents the best method for protecting the interests of all parties when cargoes are combined. Furthermore, combining cargoes has become increasingly common in the past two years. Consequently, in the final rule, § 382.3 (f) and (g) will allow the use of either a cost per ton or other measure that MARAD determines appropriate.

Revised Rate Methodology

The guideline or fair and reasonable rate established by MARAD, which applies only to the ocean borne portion of cargo transportation, consists of four components: (1) Operating costs; (2) capital costs; (3) port and cargo handling costs; and (4) brokerage and overhead. The operating cost component of the fair and reasonable rate will reflect average vessel operating costs for vessels within the specified size categories based on the historical data submitted in accordance with § 382.2 of this rule. MARAD will update the operating costs to the current period, utilizing escalation factors for wage and non-wage costs. The averages for each category of vessels will be calculated at least twice per year. To the extent vessels are time chartered or leased,

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operators will submit both operating and capital costs, including all capitalized costs and interest rates for vessels subject to capital leases.

Vessel costs will be placed in categories based on the vessel's summer deadweight tons (DWT). The categories will be as follows:

Category I—Less than 10,000 DWT
Category II—10,000—19,999 DWT
Category III—20,000—34,999 DWT
Category IV—Greater than 35,000 DWT

All eligible annual operating costs for vessels within a category will be added together and divided by the total number of operating days for those vessels to yield a daily operating cost. The cost will be indexed to the current year and multiplied by estimated total voyage days to yield the operating cost segment for the voyage.

Fuel consumption will be determined on the basis of actual reported fuel consumption at sea and in port for vessels within the same category. The average fuel consumptions of vessels in the category will be multiplied by the projected number of voyage days at sea and in port to yield total fuel consumed. MARAD will obtain current spot market fuel prices from published sources at bunkering ports, consistent with sound commercial practice, and apply them to fuel consumed to produce the fuel segment of the operating cost component. The total of the fuel and non-fuel operating cost segments will be added together to yield the operating cost component for the voyage.

The capital cost component will be an average based on vessels in the applicable size category. It will consist of an allowance for depreciation and interest and a reasonable return on investment. Depreciation for vessels in a category will be straight-line based on a 20-year economic life. However, if the owner acquired an existing vessel, the vessel will be depreciated on a straight-line basis over the remaining period of its 20-year economic life, but not fewer than 10 years. Capitalized improvements will be depreciated straight-line over the remainder of the 20-year period, but not fewer than 10 years, commencing with the capitalization date for those improvements.

For the purpose of calculating interest expense, MARAD will assume that original vessel indebtedness is 75 percent of the owner's capitalized vessel costs and that principal payments are made in equal annual installments over the economic life of the vessel. To compute the interest cost, the owner's actual interest rates will be applied to the vessel's outstanding constructed debt, using the depreciation schedule in § 382.3(b)(2)(ii). Where the owner has a variable interest rate, the owner's rate prevailing when the average capital cost component is calculated will be used. In cases where there is no interest rate available, and for operators without vessel debt, MARAD will use the ten-year T-bill rate plus one percent.

Return on investment will have two components, return on equity and return on working capital. The rate of return will be based upon a five-year average of the most recent rates of return for a cross section of transportation industry companies, including maritime companies. Equity used will be the vessels' constructed net book values less constructed principal amounts. Working capital will be voyage based and be the dollar amount necessary to cover operating and voyage expenses.

A new vessel allowance will be included in the capital component of newly built vessels and vessels acquired when five years of age or less. This allowance, which will be paid until the vessel is ten years old, will equal ten percent of the vessel's capitalized costs during the first year following construction or acquisition, and will decline by one percentage point each of the subsequent years. The voyage allowance will be the annual amount divided by 300 operating days and multiplied by estimated voyage days.

The average annual depreciation, interest, and return on equity for vessels in the category will be divided by 300 operating days to determine a daily amount. The total of these elements will be multiplied by estimated voyage days and added to the return on working capital and the new vessel allowance to determine the capital cost component used in the fair and reasonable rate calculation.

The port and cargo handling cost component will be determined for each voyage on the basis of vessels in the category and the actual cargo tender terms for the commodity, load and discharge ports, and lot size. The costs will include applicable fees for wharfage and dockage of the vessel, canal tolls, cargo loading and discharging, and all other voyage costs associated with the transportation of preference cargo. Costs used to determine the port and cargo cost component will be based on the most current data from all available sources and verified from data received on completed cargo preference or commercial voyages.

To determine the brokerage and overhead component of the fair and reasonable rate, MARAD will add the cost components for operating, capital, and port and cargo handling and multiply that sum by an 8.5 percent allowance for broker's commissions and overhead. The total of these four components, expressed as total revenue or as a rate per ton, whichever is most applicable, will be the fair and reasonable rate.

If a vessel is scrapped or sold after discharging a preference cargo, and the vessel does not return to the United States as a U.S.-flag vessel, the guideline rate will be adjusted to reflect the termination of the voyage after cargo discharge. If the rate received by the operator for the preference cargo exceeds the adjusted guideline rate for the one-way voyage, the operator may be required to repay the difference in ocean freight to the shipper agency.

In special circumstances, certain procedures prescribed in this rule may be waived, provided the procedures adopted are consistent with the Act and with the intent of these regulations.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review); DOT Regulatory Policies and Procedures; Pub. L. 104–121

This rulemaking is not considered an economically significant regulatory action under section 3(f) of E.O. 12866. It is not considered to be a major rule for purposes of Congressional review under Pub. L. 104–121. It is anticipated that savings to the Government of less than $1 million per year will result. Accordingly, the program will not have an annual effect on the economy of $100 million or more. While this rule does not involve any change in important Departmental policies, it is considered significant under DOT Regulatory Policies and Procedures and E.O. 12866 because it addresses a matter of considerable importance to the maritime industry and may be expected to generate significant public interest. Accordingly, the Office of Management and Budget has reviewed this rule.

When the NPRM was published, MARAD estimated the potential savings to the Government from this rulemaking by recalculating 167 rates for the years 1992 through 1995 using the revised methodology. This sample reflected the operators and countries in the complete data base. Extrapolating from the sample showed that averaging could have saved three million dollars in ocean freight for preference cargoes during the period. The comments received on the NPRM expressed concern that this analysis was flawed because it contained vessels which have since been either scrapped or withdrawn from the preference trade.

In response, MARAD recomputed the average costs for 1993 and 1994 using only vessels that are currently available for the preference trade. Table I shows the costs derived for each category from the reduced sample which were then used to calculate guideline rates using the averaging method. Table II summarizes the results of these calculations and shows the percentage savings that would have been realized using averaging.

TABLE I.—DAILY COSTS USED IN GUIDELINE RATE AVERAGES FOR CY 1993 AND 1994

Categories	Year	Operating costs	Capital costs	Fuel (at sea)*	Fuel (import)*	Speed (knots)	Sample size
Category I (<10,000 vdwt)	1993	$4,087	$1,224	$1,600	$222	6.25	8
	1994	3,321	1,294	1,600	195	6.25	8
Category II (10–19,999 vdwt)	1993	6,077	3,337	3,468	275	8.25	15
	1994	6,207	3,543	3,137	260	8.37	15
Category III (20–35,000 vdwt)	1993	11,447	5,435	3,270	443	12.66	4
	1994	10,686	4,604	4,366	674	13.79	6
Category IV (>35,000 vdwt)	1993	11,943	6,355	4,963	526	13.54	13
	1994	12,757	6,138	4,492	680	13.36	14

Extrapolating the estimated 1.05% savings based on actual fixtures during 1993 and 1994 to the period 1993 to August 1997, yields a savings of nearly one million dollars as a result of averaging. This savings estimate is approximately one-third the savings estimated with the ship mix used in the initial analysis. The reason for this is that declining levels of cargoes since 1994 have forced operators to bid very low rates to obtain cargoes, thus forcing many inefficient vessels out of the trade. Nevertheless, a million dollar savings is significant.

TABLE II.—SAVINGS IN SAMPLE RATES FROM USING AVERAGING SYSTEM FOR RATE CALCULATION

	Sample size	Fixture revenue	Averaging savings	Averaging vs guideline	Metric tons
Category I	18	6,098,662	($96,481)	($692,251)	91,956
Category II	22	20,953,285	0	($1,017,582)	296,068
Category III	10	20,155,736	($611,594)	($835,651)	224,247
Category IV	26	59,655,091	($416,255)	($429,445)	1,003,997
Sample total	76	106,862,774	($1,124,330)	($2,974,929)	1,616,268
			−1.05%	−2.32%	

Federalism

The Maritime Administration has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that it would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Maritime Administration certifies that this regulation would not have a significant economic impact on a substantial number of small entities. There are approximately twenty-five vessel operators that participate in this program, none of which are small entities.

Environmental Assessment

This final rule has no environmental impact and an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking reduces the current requirement for the collection of information. The Office of Management and Budget (OMB) has reviewed and approved the information collection and record keeping requirements (approval number 2133–0514) in the current rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Public comments were requested in the NPRM at 62 FR 9150, published February 28, 1997. Closing date for comments was April 29, 1997. No comments were received regarding this information collection. A subsequent 30-day notice was published July 21, 1997 by the Office of the Secretary of Transportation at 62 FR 39046. Comments were due on or before August 20, 1997. No comments were received as a result of this notice.

In accordance with the Paperwork Reduction Act of 1995, MARAD received an extension from OMB of approval for three years for this information collection.

Unfunded Mandates

Under the Unfunded Mandate Reform Act (Pub.L. 104–4) the Maritime Administration must consider whether this rule will result in an annual expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation). The Act also requires that the Maritime Administration identify and consider a reasonable number of regulatory alternatives and, from those alternatives, select the least costly, most cost-effective, or least burdensome alternative that will achieve the objectives of the rule. As stated above, by this rule the Maritime Administration is reducing regulatory burden, i.e., collection of information, on the public. This final rule does not result in an annual expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and is the least burdensome alternative that will achieve the objective of the rule.

List of Subjects in 46 CFR Part 382

Agricultural commodities, Government procurement, Loan programs—foreign relations, Maritime carriers, Reporting and record keeping requirements.

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Accordingly, 46 CFR Chapter II is hereby amended by revising part 382, to read as follows:

PART 382—DETERMINATION OF FAIR AND REASONABLE RATES FOR THE CARRIAGE OF BULK AND PACKAGED PREFERENCE CARGOES ON U.S.-FLAG COMMERCIAL VESSELS.

Sec.
382.1 Scope.
382.2 Data submission.
382.3 Determination of fair and reasonable rates.
382.4 Waivers.

Authority: 46 App. U.S.C. 1114, 1241(b); 49 CFR 1.66.

§ 382.1 Scope.

The regulations in this part prescribe the type of information that shall be submitted to the Maritime Administration (MARAD) by operators interested in carrying bulk and packaged preference cargoes, and the method for calculating fair and reasonable rates for the carriage of dry (including packaged) and liquid bulk preference cargoes on U.S.-flag commercial vessels, except vessels engaged in liner trades, which is defined as service provided on an advertised schedule, giving relatively frequent sailings between specific U.S. ports or ranges and designated foreign ports or ranges.

§ 382.2 Data submission.

(a) *General.* The operators shall submit information, described in paragraphs (b) and (c) of this section, to the Director, Office of Costs and Rates, Maritime Administration, Washington, D.C. 20590. To the extent a vessel is time chartered, the operator shall also submit operating expenses for that vessel. All submissions shall be certified by the operators. A further review based on the independent CPA performing an engagement consistent with professional standards, i.e., an attestation engagement, is recommended. Submissions are subject to verification, at MARAD's discretion, by the Office of the Inspector General, Department of Transportation. MARAD's calculations of the fair and reasonable rates for U.S.-flag vessels shall be performed on the basis of cost data provided by the U.S.-flag vessel operator, as specified herein. If a vessel operator fails to submit the required cost data, MARAD will not construct the guideline rate for the affected vessel, which may result in such vessel not being approved by the sponsoring Federal agency.

(b) *Required vessel information.* The following information shall be submitted not later than April 30, 1998, for calendar year 1997 and shall be updated not later than April 30 for each subsequent calendar year. In instances where a vessel has not previously participated in the carriage of cargoes described in § 382.1, the information shall be submitted not later than the same date as the offer for carriage of such cargoes is submitted to the sponsoring Federal agency, and/or its program participant, and/or its agent and/or program's agent, or freight forwarder.

(1) Vessel name and official number.

(2) Vessel DWT (summer) in metric tons.

(3) Date built, rebuilt and/or purchased.

(4) Normal operating speed.

(5) Daily fuel consumption at normal operating speed, in metric tons (U.S. gallons for tugs) and by type of fuel.

(6) Daily fuel consumption in port while pumping and standing, in metric tons (U.S. gallons for tugs) and by type of fuel.

(7) Total capitalized vessel costs (list and date capitalized improvements separately), and applicable interest rates for indebtedness (where capital leases are involved, the operator shall report the imputed capitalized cost and imputed interest rate).

(8) Operating cost information, to be submitted in the format stipulated in 46 CFR 232.1, on Form MA–172, Schedule 310. Operators are encouraged to provide operating cost information for similar vessels that the operator considers substitutable within a category, as defined in § 382.3(a)(1), in the aggregate on a single schedule. Information shall be applicable to the most recently completed calendar year.

(9) Number of vessel operating days pertaining to data reported in paragraph (b)(8) of this section for the year ending December 31. For purposes of this part, an operating day means any day on which a vessel or tug/barge unit is in a seaworthy condition, fully manned, and either in operation or standing ready to begin pending operations.

(c) *Required port and cargo handling information.* The port and cargo handling costs listed in this paragraph shall be provided semiannually for each cargo preference voyage terminated during the period. The report shall identify the vessel, cargo and tonnage, and round-trip voyage itinerary including dates of arrival and departure at port or ports of loading and discharge. The semiannual periods and the information to be submitted are as follows:

Period	Due date
April 1–September 30	January 1.
October 1–March 31	July 1.

(1) *Port expenses.* Total expenses or fees, by port, for pilots, tugs, line handlers, wharfage, port charges, fresh water, lighthouse dues, quarantine service, customs charges, shifting expenses, and any other appropriate port expense.

(2) *Cargo expense.* Separately list expenses or fees for stevedores, elevators, equipment, and any other appropriate expenses.

(3) *Extra cargo expenses.* Separately list expenses or fees for vacuvators and/or cranes, lightering (indicate tons moved and cost per ton), grain-to-grain cleaning of holds or tanks, and any other appropriate expenses.

(4) *Canal expenses.* Total expenses or fees for agents, tolls (light or loaded), tugs, pilots, lock tenders and boats, and any other appropriate expenses. Indicate waiting time and time of passage.

(d) *Other requirements.* Unless otherwise provided, operators shall use generally accepted accounting principles and MARAD's regulations at 46 CFR part 232, Uniform Financial Reporting Requirements, for guidance in submitting cost data. Notwithstanding the general provisions in 46 CFR 232.2(c) for MARAD program participants, each operator shall submit cost data in the format that conforms with the accounting practices reflected in the operator's trial balance and, if audited statements are prepared, the audited financial statements. Data requirements stipulated in paragraph (b) of this section that are not included under those reporting instructions shall be submitted in a similar format. If the operator has already submitted to MARAD, for other purposes, any data required under paragraph (b) of this section, its submission need not be duplicated to satisfy the requirements of this part.

(e) *Presumption of confidentiality.* MARAD will initially presume that the material submitted in accordance with the requirements of this part is privileged or confidential within the meaning of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4). In the event of a subsequent request for any portion of that data under the FOIA, MARAD will inform the submitter of such request and allow the submitter the opportunity to comment. The submitter shall claim or reiterate its claim of confidentiality at that time by memorandum or letter, stating the basis for such assertions of exemption from disclosure. The Freedom of Information Act Officer, or the Chief Counsel of MARAD, will inform the submitter of the intention to disclose any information claimed to be confidential, after the initial FOIA request, or after any appeal of MARAD's initial decision, respectively.

(Approved by the Office of Management and Budget under control number 2133–0514)

§ 382.3 Determination of fair and reasonable rate.

Fair and reasonable rates for the carriage of preference cargoes on U.S.-flag commercial vessels shall be determined as follows:

(a) *Operating cost component*—(1) *General.* An operating cost component for each category, based on average operating costs of participating vessels within a vessel size category, shall be determined, at least twice yearly, on the basis of operating cost data for the calendar year immediately preceding the current year that has been submitted in accordance with § 382.2. The operating cost component shall include all operating cost categories, as specified in 46 CFR 232.5, Form MA–172, Schedule 310, Operating Expenses. For purposes of these regulations, charter hire expenses are not considered operating costs. MARAD shall index such data yearly to the current period, utilizing the escalation factors for wage and non-wage costs used in escalating operating subsidy costs for the same period.

(2) *Fuel.* Fuel costs within each category shall be determined based on the average actual fuel consumptions, at sea and in port, and current fuel prices in effect at the time of the preference cargo voyage(s).

(3) *Vessel categories.* Vessels shall be placed in categories by deadweight capacities (DWT), as follows:

Group I—under 10,000 DWT
Group II—10,000—19,999 DWT
Group III—20,000—34,999 DWT
Group IV—35,000 DWT and over.

(b) *Capital Component*—(1) *General.* An average capital cost component for each category shall be constructed, at least twice yearly, consisting of vessel depreciation, interest, and return on equity.

(2) *Items included.* The capital cost component shall include:

(i) *Depreciation.* The owners' capitalized vessel costs, including capitalized improvements, shall be depreciated on a straight-line basis over a 20-year economic life, except vessels purchased or reconstructed when their age was greater than 10 years old. To the extent vessels are chartered or leased, the operator shall submit the capitalized cost of the vessel owner and imputed interest rate. If these items are not furnished, MARAD will construct these amounts. When vessels more than 10 years old are acquired, a depreciation period of 10 years shall be used. Capitalized improvements made to vessels more than 10 years old shall be depreciated over a 10-year period. When vessels more than 10 years old are reconstructed, MARAD will determine the depreciation period.

(ii) *Interest.* The cost of debt shall be determined by applying each vessel owner's actual interest rates to the outstanding vessel indebtedness. MARAD shall assume that original vessel indebtedness is 75 percent of the owners' capitalized vessel costs, including capitalized improvements, and that annual principal payments are made in equal installments over the economic life of the vessels as determined in accordance with paragraph (b)(2)(i) of this section. Where an operator uses a variable interest rate, the operator's actual interest rate at the time of calculation of the average capital cost component shall be used. The ten-year Treasury bill (T-bill) rate plus one percent on the first business day of the year or the first business day on or after July 1 shall be used for operators without vessel debt and when the actual rate is unavailable.

(iii) *Return on equity.* The rate of return on equity shall be computed in the same manner as described in paragraph (b)(3) of this section. For the purpose of determining equity, it shall be assumed that the vessel's constructed net book value, less outstanding constructed principal, is equity. The constructed net book values shall equal the owners' capitalized cost minus accumulated straight-line depreciation.

(3) *Return on working capital.* For each voyage a return on working capital shall be included as a voyage related capital cost element, and thus not part of the averaged costs. Working capital shall equal the dollar amount necessary to cover 100 percent of the averaged operating costs and estimated voyage costs for the voyage. The rate of return shall be based on an average of the most recent return of stockholders' equity for a cross section of transportation companies, including maritime companies.

(4) *New vessel allowance.* Newly constructed vessels and vessels acquired during or before their fifth year of age will receive an additional allowance for acquisition capital as part of the capital cost element. For the first year following construction or acquisition by the operator, a daily amount equal to ten percent of capitalized acquisition costs, divided by 300 operating days, shall be included. This amount shall be reduced by one percent of capitalized acquisition costs each subsequent year. No allowance shall be included after the tenth year following construction.

(5) *Voyage component.* The annual average depreciation, interest, and return on equity for vessels in each category shall be divided by 300 vessel operating days to yield the daily cost factors. Total voyage days shall be applied to the daily cost factors and totaled with the return on working capital and new vessel allowance for the voyage to determine the daily capital cost component.

(c) *Port and cargo handling cost component.* MARAD shall calculate an estimate of all port and cargo handling costs on the basis of the reported cargo tender terms. The port and cargo handling cost component shall be based on vessels in the category and the most current information available verified by information submitted in accordance with § 382.2(c), or as otherwise determinad by MARAD, such as by analysis of independent data obtained from chartering agencies.

(d) *Brokerage and overhead component.* An allowance for broker's commission and overhead expenses of 8.5 percent shall be added to the sum of the operating cost component, the capital cost component, and the port and cargo handling cost component.

(e) *Determination of voyage days.* The following assumptions shall be made in determining the number of preference cargo voyage days:

(1) The voyage shall be round-trip with the return in ballast to a port or port range selected by MARAD as the most appropriate, unless the vessel is scrapped or sold after discharge of the preference cargo and does not return to the United States as a U.S.-flag vessel. In this event, only voyage days from the load port to the discharge port, including time allowed to discharge, shall be included.

(2) Cargo is loaded and discharged as per cargo tender terms interpreted in accordance with the "International Rules For the Interpretation of Trade Terms" (INCOTERMS) published by the International Chamber of Commerce.

(3) Total loading and discharge time includes the addition of a factor to account for delays and days not worked.

(4) One extra port day is included at each anticipated bunkering port.

(5) An allowance shall be included for canal transits, when appropriate.

(6) Transit time shall be based on the average speed of vessels in the category. When calculating the vessels' average speed, individual vessel speeds will be

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reduced by five percent for self-propelled vessels and ten percent for tugs/barges to account for weather conditions.

(f) *Determination of cargo carried.* The amount of cargo tonnage used to calculate the rate shall be based on the tender offer or charter party terms. In instances when separate parcels of preference cargo are booked or considered for booking on the same vessel, whether under a single program or different programs, a guideline rate shall be provided based on the combined voyage.

(g) *Total rate.* The guideline rate shall be the total of the operating cost component, the capital cost component, the port and cargo handling cost component, and the broker's commission and overhead component. The fair and reasonable rate can be expressed as total voyage revenue or be divided by the amount of cargo to be carried, as prescribed in paragraph (f) of this section, and expressed as cost per ton, whichever MARAD deems most appropriate.

§ 382.4 Waivers.

In special circumstances and for good cause shown, the procedures prescribed in this part may be waived in keeping with the circumstances of the present, so long as the procedures adopted are consistent with the Act and with the intent of this part.

By order of the Maritime Administrator.

Dated: January 21, 1998.

Joel C. Richard,

Secretary.

[FR Doc. 98–1786 Filed 1–26–98; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 97–411]

Universal Service Support Mechanisms

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission authorized the Administrator of the universal service support mechanisms to require payment of quarterly contributions to universal service in equal monthly installments. This action was intended to ease contributor's cash flow problems.

EFFECTIVE DATE: February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Diane Law, (202) 418–7400.

SUPPLEMENTARY INFORMATION:

I. Introduction

In this Third Order on Reconsideration (Order), we reconsider, on our own motion, the Commission's decisions governing the amount of money that may be collected during the first six months of 1998 for the federal universal service support mechanisms for schools and libraries and rural health care providers. We direct the administrator to collect only as much as required by demand, but in no event more than $25 million per quarter for the first and second quarters of 1998 to support the rural health care universal service support mechanism. We direct the administrator to collect only as much as required by demand, but in no event more than $625 million for the first six months of 1998, to support the schools and libraries universal service support mechanism. These actions will reduce the financial burdens on universal service contributors without jeopardizing the sufficiency of the support mechanisms. The Commission may revise the collection caps if we receive evidence of additional demand for services. The rules adopted in this Order will become effective February 26, 1998.

II. Background

1. In the *NECA Report and Order* (62 FR 41294 (Aug. 1, 1997)), the Commission established the administrative structure of the federal universal service support mechanisms. The Commission directed the National Exchange Carrier Association (NECA) to create an independent subsidiary, the Universal Service Administrative Company (USAC), to administer temporarily portions of the support mechanisms. The Commission also directed NECA to create two independent corporations, Schools and Libraries Corporation and Rural Health Care Corporation, to administer portions of the schools and libraries and rural health support mechanisms. USAC, Schools and Libraries Corporation, and Rural Health Care Corporation are required to submit to the Commission quarterly projections of demand and administrative expenses for their respective support mechanisms.

2. The schools and libraries and rural health care support mechanisms are newly created and have no historical data upon which to estimate accurately the demand for services in the initial months of the support mechanisms. The Commission specified that the administrator should collect $100 million per month for the first three months of 1998 for the schools and libraries support mechanism and "adjust future contribution assessments quarterly based on its evaluation of schools and library demand for funds, within the limits of the spending caps. . . ." The Commission further held that, between January 1, 1998 and June 30, 1998, the administrator "will only collect as much as required by demand, but in no case more than $1 billion." For the rural health care support mechanism, the Commission directed the administrator to collect $100 million for the first three months of 1998. In addition, the Commission instituted annual caps on both support mechanisms, $2.25 billion for the schools and libraries support mechanism and $400 million for the rural health care support mechanism. In setting forth a collection schedule, the Commission sought to ensure that "funds will be available as needed while avoiding the potential problems arising from the accumulation of large amounts of funds in a federal universal service fund."

III. Discussion

3. We conclude that we should adjust downward the rate of collections for the schools and libraries and rural health care support mechanisms during the first six months of 1998. We anticipate that this action will not jeopardize the sufficiency of the support mechanisms. The annual caps were designed to estimate the maximum, rather than the actual, amount of demand for the schools and libraries and rural health care universal service support mechanisms. Based on what we have learned about the status of preparatory arrangements being made by schools, libraries, and rural health care providers to obtain the benefit of the universal service support mechanisms, we have no reason to believe that demand will reach the maximum projection levels in the initial implementation stages of these new support mechanisms. We do not want to impose unnecessary financial burdens on service provider contributors to universal service by requiring the administrator to collect funds that exceed demand. We also wish to ensure the successful implementation of the schools and libraries and rural health care support mechanisms. Accordingly, we find that it better serves the public interest to reduce the collection amounts specified in the Order (62 FR 32862 (June 17, 1997)) for the first six months of 1998, as described below.

4. *Rural Health Care.* The rural health care support mechanism supports the difference, if any, between the urban and the rural rates for a telecommunications service of a bandwidth up to and including 1.544 Mbps. The rural health care support mechanism also provides limited support to health care providers that do not have toll-free access to the Internet. In the initial stages of implementing the rural health care support mechanism, we anticipate that demand will not exceed $25 million per quarter during the first six months of 1998. We therefore amend our previous decision, and direct the administrator to collect only as much as required by demand, but in no event more than $25 million per quarter for the first and second quarters of 1998 for the rural health care universal service support mechanism.

5. *Schools and Libraries.* The schools and libraries support mechanism provides discounts to eligible schools and libraries for commercially available telecommunications services, internal connections, and access to the Internet. Because many schools and libraries will not begin the installation of internal connections until the summer when students are not present in instructional buildings, we anticipate that initial demand for the schools and libraries support mechanism will not reach projected maximums. We therefore conclude that demand from schools and libraries in the second quarter of 1998 is unlikely to exceed substantially demand in the first quarter. Accordingly, we direct the administrator to collect only as much as required by demand, but in no event more than $625 million for the first six months of 1998.

IV. Procedural Matters

6. According to the Administrative Procedure Act, substantive rules shall not become effective until 30 days after their publication in the **Federal Register** unless there is good cause to waive that requirement. We find that good cause exists to waive the 30-day requirement because the rules adopted herein are critical to the expeditious and efficient implementation of the new federal universal service support mechanisms. The Commission's regulations implementing section 254 will take effect January 1, 1998. The rules adopted herein are necessary to calculate the first quarter 1998 universal service contribution factors and primarily affect the administrator of the support mechanisms. In order to collect contributions in February 1998, the administrator must know what the contribution factors will be before beginning the billing process in January 1998. The rules, therefore, do not place additional burdens on the administrator. They enable the administrator to carry out its existing responsibilities. In addition, certain carriers must file tariffs in December 1997 that reflect the contribution factors. Moreover, the rules adopted herein reduce the financial burdens imposed on universal service contributors by minimizing the amounts collected in the first six months of 1998. Thus, we find that good cause exists to make the rules adopted herein effective upon their publication in the **Federal Register.**

V. Supplemental Final Regulatory Flexibility Analysis

7. As required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking and Order Establishing Joint Board (NPRM). In addition, the Commission prepared an IRFA in connection with the Recommended Decision, seeking written public comment on the proposals in the NPRM and Recommended Decision. (See 61 FR 63778, 63796). A Final Regulatory Flexibility Analysis (FRFA) was included in the *Order.* The Commission's Supplemental Final Regulatory Flexibility Analysis (SFRFA) in this Order conforms to the RFA, as amended.

A. Need for and Objectives of This Report and Order and the Rules Adopted Herein

8. The Commission is required by section 254 of the Act, as amended by the 1996 Act, to promulgate rules to implement promptly the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules whose principle goal is to reform our system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. In this Order, we reconsider one aspect of those rules. In order to reduce financial burdens on all contributors to universal service, we reconsider, on our own motion, the amounts that will be collected during the first six months of 1998 for the schools, libraries, and rural health care support mechanisms.

B. Summary and Analysis of the Significant Issues Raised by Public Comments in Response to the IRFA

9. Other than those described in the *Order,* no additional comments were filed in response to the IRFAs described above.

C. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in This Report and Order will Apply

10. Because the rules adopted herein apply to the administrator of the support mechanisms, the rules will not directly affect small entities. It is possible, however, that small entities will indirectly be affected by these rules. In the FRFA at paragraphs 890–922 of the *Order,* we described and estimated the number of small entities that would be affected by the new universal service rules. The rules adopted herein may apply to the same telecommunications carriers and entities affected by the universal service rules. We therefore incorporate by reference paragraphs 890–922 of the Order.

D. Summary Analysis of the Projected Reporting, Recordkeeping, and Other Compliance Requirements and Significant Alternatives and Steps Taken to Minimize the Significant Economic Impact on a Substantial Number of Small Entities Consistent With Stated Objectives

11. In the FRFA to the *Order,* we described the projected reporting, recordkeeping, and other compliance requirements and significant alternatives and steps taken to minimize significant economic impact on a substantial number of small entities consistent with stated objectives associated with the Administration section of the *Order.* Because the rules adopted herein may only marginally affect those requirements, we incorporate by reference paragraphs 980–981 of the *Order,* which describe those requirements and provide the following analysis of the new requirements adopted herein. Under the rules adopted herein, the administrator is instructed to collect during the first six months of 1998 no more than $625 million for the schools and libraries support mechanism and $50 million for the rural health care support mechanism.

VI. Ordering Clauses

12. Accordingly, *It is ordered* that, pursuant to the authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 218–220, 254, 303(r), 403, and 405, section 1.108 of the Commission's rules, 47 CFR 1.108, and section 553 of the Administrative Procedure Act, 5 U.S.C. 553, part 54 of the Commission's rules, 47 CFR part 54, is amended as set forth

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in the rule changes, effective February 26, 1998.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons set forth in the preamble, part 54 of title 47 of the Code of Federal Regulations is amended as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 USC Secs. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

§ 54.507 Cap.

2. Section 54.507 is amended by revising the second sentence of paragraph (a) to read as follows:

(a) * * * First, no more than $625 million shall be collected or spent for the funding period from January 1, 1998 through June 30, 1998. * * *

* * * * *

§ 54.623 Cap.

3. Section 54.623 is amended by adding a new sentence at the end of paragraph (a) to read as follows:

(a) * * * No more than $50 million shall be collected or spent for the funding period from January 1, 1998 through June 30, 1998.

* * * * *

[FR Doc. 98–1833 Filed 1–26–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–17; RM–8170]

Radio Broadcasting Services; Rosendale, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document dismisses a Petition for Reconsideration filed by the State University of New York directed to the *Memorandum Opinion and Order* in this proceeding. 61 FR 14981 (April 4, 1996). With this action, the proceeding is terminated.

EFFECTIVE DATE: January 27, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Memorandum Opinion and Order* in MM Docket No. 93–17, adopted January 5, 1998, and released January 9, 1998. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3805, 1231 M Street, NW., Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–1841 Filed 1–26–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–210; RM–9165]

Radio Broadcasting Services; Soldiers Grove, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 290A to Soldiers Grove, Wisconsin, as that community's first local FM broadcast service in response to a petition filed by Lyle Robert Evans d/b/a Rural Radio Company. *See* 62 FR 54006, October 17, 1997. The coordinates for Channel 290A at Soldiers Grove are 43–28–16 and 90–40–21. There is a site restriction 11.8 kilometeres (7.3 miles) northeast of the communtiy. With this action, this proceeding is terminated. A filing window for Channel 290A at Soldiers Grove, Wisconsin, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97–210, adopted December 17, 1997, and released January 9, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Soldiers Grove, Channel 290A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–1840 Filed 1–26–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket Nos. 96–232; 97–35; RM–8868; RM–8900; RM–9055; RM–9056]

Radio Broadcasting Services; Calhan, Canon City, Pueblo and Pueblo West, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants allotment proposals in the above-referenced, interrelated proceedings regarding the communities of Pueblo, Pueblo West, Canon City and Calhan, Colorado, in response to petitions for rule making filed on behalf of Pueblo Broadcasters, Inc. (MM Docket No. 96–232; RM–8868) and Calhan Radio, Inc. (MM Docket No. 97–35; RM–8900), as well as counter-proposals filed in each proceeding by Pueblo Broadcasters, Inc. (RM–9055 and RM–9056 respectively), as set forth *infra* (see Supplementary Information). *See* 61 FR 65008, December 10, 1996, and 62 FR 4224, January 29, 1997. With this action the proceeding is terminated.

DATES: Effective March 2, 1998. A filing window for Channel 284A at Calhan, Colorado, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a separate Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the application filing process should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order involving two consolidated, interrelated proceedings consisting of MM Docket No. 96–232 and MM Docket No. 97–35, adopted December 31, 1997, and released January 16, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

The Commission, at the request of Pueblo Broadcasters, Inc., reallots Channel 283C2 from Pueblo to Pueblo West, Colorado, as a Class C1 channel, and modifies the authorization for Station KYZX(FM), to specify operation on Channel 280C1 at Pueblo West, pursuant to the provisions of § 1.420 (g) and (i) of the Commission's Rules (MM Docket No. 96–232; RM–8868; RM–9055). The allotment of Channel 280C1 to Pueblo West will provide that community with its first local aural transmission service without depriving Pueblo of local FM service. Additionally, to accommodate the reallotment and upgrade at Pueblo West, Channel 283A is substituted for Channel 280A at Canon City, Colorado, and the license for Station KSTY(FM) is modified accordingly. The latter substitution will enable Station KSTY(FM) to increase its effective radiated power to six kilowatts and expand its coverage area. Further, in response to the counterproposal request of Pueblo Broadcasters, Inc., Channel 284A is allotted to Calhan, Colorado, rather than Channel 280A as requested by Calhan Radio, Inc., to provide a first local aural transmission service to that community, and to accommodate the allotment of Channel 280C1 to Pueblo West (MM Docket No. 97–35; RM–8900; RM–9056). Coordinates used for Channel 280C1 at Pueblo West are 38–34–52 and 104–31–52; coordinates used for Channel 283A at Canon City are 38–23–35 and 105–21–07; coordinates used for Channel 284A at Calhan are 39–01–42 and 104–15–44.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Calhan, Channel 284A.

3. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 280A and adding Channel 283A at Canon City.

4. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 283C2 at Pueblo.

5. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Pueblo West, Channel 280C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–1838 Filed 1–26–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–45; RM–8961]

Radio Broadcasting Services; Tylertown, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of TRL Broadcasting Company, allots Channel 297A at Tylertown, Mississippi, as the community's second local FM service. *See* 62 FR 06929, February 14, 1997. Channel 297A can be allotted to Tylertown in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.3 kilometers (3.3 miles) southeast in order to avoid short-spacing conflicts with the licensed operation of Station WBBU(FM), Channel 297A, Baker, Louisiana, and Station WKXI(FM), Channel 298C1, Magee, Mississippi. The coordinates for Channel 297A at Tylertown are 31–05–27 NL and 90–05–47 WL. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 2, 1998. A filing window for Channel 297A at Tylertown, Mississippi, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–45, adopted January 7, 1998, and released January 16, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding Channel 297A at Tylertown.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–1837 Filed 1–26–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–466; RM–7327, RM–7987, RM–7988, RM–8705]

Radio Broadcasting Services; Hondo, Hollywood Park, Dilley, Bandera, Pleasanton, Karnes City, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

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SUMMARY: This document denies the petition for reconsideration filed by Reding Broadcasting Company of the Report and Order, 57 FR 56515 (November 30, 1992), in which the Commission dismissed Reding's counterproposal proposal requesting the substitution of 253C2 for Channel 252A at Pleasanton, Texas and the modification of Station KBUC-FM's (formerly KBOP-FM) license accordingly, the substitution of Channel 276A for Channel 252A at Bandera, Texas; the allotment of Channel 276C2 to Karnes City, Texas; and the substitution of Channel 290A for Channel 253A at Hondo, Texas. This document affirms the Report and Order's determination that Reding's counterproposal was unacceptable for filing because under the Commission's Rules and the FM Agreement between the United States and Mexico in effect at the time of filing, Reding's proposals for Channel 276A at Bandera, and Channel 290A at Hondo were short-spaced to Mexican FM allotments. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 27, 1998.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2130.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No 90–466, adopted December 30, 1997, and released January 9, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Suite 140, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–1839 Filed 1–26–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–52; RM–8987 and RM–9098]

Radio Broadcasting Services; Kellnersville and Two Rivers, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 246A to Two Rivers, Wisconsin, as that community's second local FM broadcast service in response to a petition filed by First Congregational Services. *See* 62 FR 6929, February 14, 1997. The coordinates for Channel 246A at Two Rivers are 44–09–06 and 87–34–06. The counterproposal filed by Value Radio Corporation proposing the allotment of Channel 246A at Kellnersville, Wisconsin, has been dismissed. With this action, this proceeding is terminated. A filing window for Channel 246A at Two Rivers will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: March 2, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97–52, adopted January 7, 1998, and released January 16, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Channel 246A at Two Rivers.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–1893 Filed 1–26–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–221; RM–9181]

Radio Broadcasting Services; Satellite Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document allots Channel 253A to Satellite Beach, Florida, as that community's first local service in response to a petition filed by Satellite Beach Community Broadcasters. *See* 62 FR 58937, October 31, 1997. The coordinates for Channel 253A at Satellite Beach are 28–10–24 and 80–36–12. With this action, this proceeding is terminated. A filing window for Channel 253A at Satellite Beach, Florida, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: March 2, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97–221, adopted January 7, 1998, and released January 16, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Satellite Beach and Channel 253A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–1891 Filed 1–26–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE59

Endangered and Threatened Wildlife and Plants; Emergency Rule To List the San Bernardino Kangaroo Rat as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) exercises its emergency authority to determine the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) to be an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). This subspecies occurs primarily in alluvial scrub habitats with appropriate vegetative cover and substrate composition. The historic range of the San Bernardino kangaroo rat has been reduced by approximately 96 percent due to agricultural and urban development. All of the remaining populations of the San Bernardino kangaroo rat are threatened by habitat loss, degradation, and fragmentation due to sand and gravel mining operations, flood control projects, urban development, and vandalism. In addition, the three largest remaining populations of the San Bernardino kangaroo rat are threatened by habitat loss resulting from a change in the natural stream flow regime including seasonal flooding and associated modification of plant succession patterns. The threat of vandalism to large portions of the remaining habitat may be imminent. Threats have been made indicating that habitat would be destroyed if the Service attempted to list the San Bernardino kangaroo rat. Because of the need to make protective measures afforded by the Act immediately available to this subspecies and its habitat, the Service finds that an emergency rule action is justified. This emergency rule provides Federal protection pursuant to the Act for this subspecies for a period of 240 days. A proposed rule to list the San Bernardino kangaroo rat, requesting data and comment from the public, is being published concurrently in this same **Federal Register** issue under the proposed rule section.

DATES: This emergency rule is effective on January 27, 1998, and expires on September 24, 1998.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, at the above address (telephone 760/431–9440).

SUPPLEMENTARY INFORMATION:

Background

The San Bernardino kangaroo rat (*Dipodomys merriami parvus*) is one of 19 recognized subspecies of Merriam's kangaroo rat (*D. merriami*), a widespread species distributed throughout arid regions of the western United States and northwestern Mexico (Hall 1981, Williams *et al.* 1993). In coastal southern California, *D. merriami* is the only species of kangaroo rat with four toes on each of its hind feet. The San Bernardino kangaroo rat has a body length of about 95 millimeters (mm) (3.7 inches (in)) and a total length of 230 to 235 mm (9 to 9.3 in). The hind foot measures less than 36 mm (1.4 in) in length. The body color is weakly ochraceous (yellow) with a heavy overwash of dusky brown. The tail stripes are medium to dark brown and the foot pads and tail hairs are dark brown. The animal's flanks and cheeks are dusky (Lidicker 1960). The San Bernardino kangaroo rat is considerably darker and much smaller than either of the other two subspecies of Merriam's kangaroo rat in southern California, *D. merriami merriami* and *D. merriami collinus*. Lidicker (1960) noted that the San Bernardino kangaroo rat is one of the most highly differentiated subspecies of *D. merriami* and that "it seems likely that it has achieved nearly species rank." This differentiation is likely due to its apparent isolation from other members of *D. merriami*.

The San Bernardino kangaroo rat, a member of the family Heteromyidae, was first described by Rhoades in 1894 under the name *Dipodomys parvus* from specimens collected by R.B. Herron in Reche Canyon, San Bernardino County, California (Hall 1981). Elliot reduced *D. parvus* to a subspecies of *D. merriami* (*D. merriami parvus*) in 1901. The San Bernardino kangaroo rat appears to be separated from Merriam's kangaroo rat (*D. merriami merriami*) at the northernmost extent of its range near Cajon Pass by a 8 to 13 kilometer (km) (5 to 8 mile (mi)) gap of unsuitable habitat. The San Bernardino kangaroo rat may have in the distant past also intergraded with *D. merriami collinus* to the south in the vicinity of Menifee (Lidicker 1960, Hall 1981).

The historical range of this subspecies extends from the San Bernardino Valley in San Bernardino County to the Menifee Valley in Riverside County (Lidicker 1960, Hall 1981). Within this range, the San Bernardino kangaroo rat was known from over 25 localities (McKernan 1993). From the early 1880's to the early 1930's, the San Bernardino kangaroo rat was a common resident of the San Bernardino and San Jacinto valleys of southern California (Lidicker 1960).

In most heteromyids, soil texture is a primary factor in determining species' distributions (Brown and Harney 1993). San Bernardino kangaroo rats are found primarily on sandy loam substrates, characteristic of alluvial fans and flood plains, where they are able to dig simple, shallow, burrows (McKernan 1997). Based on the distribution of suitable (i.e., sandy) soils and the historical collections of this subspecies, the historical range is thought to have encompassed an area of approximately 128,000 hectares (ha) (320,000 acres (ac)) (Service, unpub. GIS maps, 1997). Although the entire area of the historical range would not have been occupied due to variability in vegetation and soils, the San Bernardino kangaroo rat was widely distributed across this area. By the 1930's, the habitat had been reduced to approximately 11,200 ha (28,000 ac)(McKernan 1997).

Currently, the San Bernardino kangaroo rat occupies approximately 1,299 ha (3,247 ac) of suitable habitat divided unequally among seven locations, which are widely separated from one another (McKernan 1997). Four of these locations (City Creek (8 ha (20 ac)), Etiwanda (2 ha (5 ac)), Reche Canyon (2 ha (5 ac)), and South Bloomington (.8 ha (2 ac)) support only small, remnant, populations. The

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remaining three locations (the Santa Ana River (690 ha (1,725 ac)), Lytle and Cajon washes (456 ha (1,140 ac)), and San Jacinto River (140 ha (350 ac)) contain the largest extant concentrations of kangaroo rats and blocks of suitable habitat.

The three largest remaining blocks of occupied habitat (i.e., Santa Ana River, Lytle/Cajon creeks, and San Jacinto River) (1,286 ha (3,215 ac)) are distributed across a mosaic of approximately 5,479 ha (13,697 ac) of typically suitable, alluvial soils, which are dominated by sage scrub and chaparral. Virtually all remaining vegetative associations (except about 1,286 ha (3,215 ac)) are more mature than the open, early successional habitat structure required by the San Bernardino kangaroo rat. Existing and proposed hydrological modifications eliminate habitat renewal and obstruct population recovery over these highly fragmented wash habitats (Hanes *et al.* 1989, McKernan 1997). Thus, the residual 4 percent of historical habitat (5,479 ha (13,697 ac)), supports only about 1,286 ha (3,215 ac), that are ever likely to provide habitat, absent habitat renewal through large-scale flood or intensive management intervention. It is estimated that 400 ha (1,000 ac) are likely to support suitable habitat in the future, considering that 54 percent of remaining flood plain habitats are proposed for development in the foreseeable future.

Currently, the San Bernardino kangaroo rat is found primarily associated with a variety of sage scrub vegetation, where the common element is the presence of sandy soils (McKernan 1997). Where the San Bernardino kangaroo rat occurs in alluvial scrub, the subspecies reaches its highest densities in early and intermediate seral stages (McKernan 1997). Alluvial scrub includes elements from chaparral, coastal sage, and desert communities. Three successional phases of alluvial scrub have been described: pioneer, intermediate, and mature alluvial scrub, depending on elevation and distance from the main channels, and the time since previous flooding (Smith 1980, Hanes *et al.* 1989). Vegetative cover generally increases with distance from the active stream channel. The pioneer, or youngest phase, is subject to frequent disturbance, and vegetation is usually disturbed by annual floods (Smith 1980, Hanes *et al.* 1989). The intermediate phase, defined as the area between the active channel and mature terraces, is subject to periodic flooding at longer intervals. The vegetation on intermediate terraces is relatively open, and supports the highest densities of the San Bernardino kangaroo rat. The mature phase is rarely affected by flooding and supports the highest plant cover (Smith 1980). These flood events break out of the main river channel randomly, resulting in a braided appearance to the floodplain. This dynamic nature to the habitat leads to a situation where not all the alluvial scrub habitat is suitable for the kangaroo rat at any point in time. The San Bernardino kangaroo rat, like other subspecies of Merriam's kangaroo rat, prefers open habitats characterized by low shrub canopy cover (mostly 7 to 22 percent) and rarely occurs in dense vegetation (McKernan 1997). The older seral stages of the floodplain often are not suitable for this subspecies.

The range of the San Bernardino kangaroo rat is partially overlapped by the distribution of the Stephens' kangaroo rat (*Dipodomys stephensi*) and is entirely overlapped by the range of the Pacific kangaroo rat (*D. simulans*). Where these species occur in proximity, they are usually concentrated in different areas. The Stephens' kangaroo rat typically is associated with open, arid, grassland associations (Lackey 1967, O'Farrell *et al.* 1986, O'Farrell and Uptain 1987, O'Farrell 1990), and occurs on a variety of soil types. The Pacific kangaroo rat typically inhabits denser shrub cover on a variety of soil types. All three of these species can be identified from one another based on morphological characters.

Home ranges for the Merriam's kangaroo rat average 0.33 hectares (ha) (0.8 ac) for males and 0.31 ha (0.8 ac) for females (Behrends *et al.* 1986). Long sallies (bursting movements) of 100 meters (m) (328 feet (ft)) or more beyond these ranges are not uncommon. Although outlying areas of their home ranges may overlap, adults actively defend small core areas near their burrows (Jones 1993). Home range overlap between males and between males and females is extensive, but female-female overlap is slight (Jones 1993).

McKernan (1993) has found pregnant San Bernardino kangaroo rat females from February through October, and immatures from April through September. Some females may produce more than one litter per year. Litter size averages between 2 and 3 young (Eisenberg 1993).

Similar to other kangaroo rats, the San Bernardino kangaroo rat is primarily granivorous and often stores large quantities of seeds in surface caches (Reichman and Price 1993). Green vegetation and insects are also important seasonal food sources. Insects, when available, have been documented to constitute as much as 50 percent of a kangaroo rat's diet (Reichman and Price 1993). Females are known to increase ingestion of foods with higher water content during lactation, presumably to compensate for the increased water loss associated with milk production (Reichman and Price 1993). *Dipodomys merriami* is known for its ability to live indefinitely without water on a diet consisting entirely of dry seeds (Reichman and Price 1993).

Previous Federal Action

The San Bernardino kangaroo rat was designated by the Service as a category 2 candidate species for Federal listing as endangered or threatened in 1991 (56 FR 58804). Category 2 comprised taxa for which information in the possession of the Service indicated that proposing to list as endangered or threatened was possibly appropriate, but for which conclusive data on biological vulnerability and threat(s) were not available to support a proposed rule. Based on a review of status and distribution of the San Bernardino kangaroo rat, the subspecies was upgraded to a category 1 candidate for listing in 1994 (59 FR 58982). Category 1 candidate species were those where the Service had sufficient information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species. Upon publication of the February 28, 1996, notice of review (61 FR 7596), the Service ceased using category designations and included the San Bernardino kangaroo rat as a candidate species. The San Bernardino kangaroo rat was retained as a candidate species in the September 19, 1997, notice of review (62 FR 49401).

The processing of this proposed rule conforms with the Service's final listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475) and extended on October 23, 1997 (62 FR 55268). The guidance clarifies the order in which the Service will process rulemakings. The guidance calls for giving highest priority to handling emergency situations (Tier 1), second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings, third priority (Tier 3) to new proposals to add species to the list of threatened and endangered plants and animals and fourth priority (Tier 4) to designating critical habitat and processing delistings and reclassifications. This emergency rule constitutes a Tier 1 action.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1) of the Act. These factors and their application to the San Bernardino kangaroo rat *(Dipodomys merriami parvus)* are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

All occupied habitat of the subspecies, which encompasses approximately 1,300 ha (3,250 ac), is threatened by the direct and indirect effects of sand and gravel mining, highway construction, flood control operations, urban and industrial development, water conservation activities, and vandalism (McKernan 1997, Service unpub. GIS maps 1997).

Loss and fragmentation of San Bernardino kangaroo rat habitat is expected to continue as southern California's human population expands. In the 1950's, the population of Riverside and San Bernardino counties combined was about 400,000. Over 2.5 million people reside in this region, and by the year 2000, the human population of San Bernardino and Riverside counties is expected to increase to nearly 4 million (California Department of Finance 1993). Further habitat losses resulting from development or alteration of the landscape will likely have a significant adverse effect on the viability of remaining San Bernardino kangaroo rat populations. Additionally, habitat loss from intentional destruction of San Bernardino kangaroo rat habitat has been threatened if the species were to be listed.

Santa Ana River

The largest remaining population of the San Bernardino kangaroo rat occurs along the Santa Ana River. The flood plain terrace habitat encompasses about 1,637 ha (4,092 ac), of which approximately 690 ha (1,725 ac) are occupied by the San Bernardino kangaroo rat (McKernan 1997). The occupied habitat extends more or less continuously from the vicinity of Norton Air Force Base to the Greenspot Road Bridge north of Mentone (Service unpub. GIS maps 1997, McKernan 1997). Approximately 66 percent of flood plain terrace habitat is directly at risk due to the combined activities of the Army Corps of Engineers, United States Bureau of Land Management (BLM), San Bernardino Valley Water Conservation District, San Bernardino County Flood Control District, and two private sand mining operations (Service unpub. GIS maps 1997).

At least 80 percent of the remaining occupied habitat along the Santa Ana River is indirectly at risk because of the projected changes in hydrology due to Seven Oaks Dam (Service unpub. GIS maps 1997) being constructed by the Army Corps of Engineers (U.S. Army Corps of Engineers 1988). An indirect effect of operation of the Seven Oaks Dam will be the long-term succession of various stages of alluvial scrub, including much of a 775-acre mitigation area, into even aged stands of habitat scrub through time due to a reduction in scouring and deposition of fresh sands by floods. Curtailed hydrologic disturbance, where soil moisture is adequate, will allow shrub densities that exceed the low to moderate densities tolerated by the subspecies to develop (Hanes *et al.* 1989, McKernan 1997).

Past and ongoing activities of the San Bernardino County Flood Control District pose a threat to approximately 400 ha (1,000 ac) of alluvial scrub habitat in this area. Based on the distribution of soils and vegetative cover, approximately 176 ha (440 ac) of this area is occupied by the San Bernardino kangaroo rat (Service unpub. GIS maps 1997). Activities that impact this subspecies and its habitat include the construction of levees and sediment removal. The area at risk due to these activities supports approximately 25 percent of the population along the Santa Ana River (Service unpub. GIS maps 1997, McKernan 1997).

The BLM and San Bernardino Valley Water Conservation District lands are managed, in part, for the development or operation of water spreading basins for groundwater recharge. Although the San Bernardino kangaroo rat can occupy portions of areas modified by spreading basins, the flooded area is essentially lost to this animal due to the periodic presence of standing water and the degradation of habitat. Based on the distribution of soils and vegetative cover, approximately 140 ha (350 ac) of this area is occupied by the San Bernardino kangaroo rat (Service unpub. GIS maps 1997). The area affected by spreading basins represents approximately 20 percent of the population along the Santa Ana River (Service unpub. GIS maps 1997, McKernan 1997). The San Bernardino Valley Water Conservation District and BLM are coordinating with the Service and others to develop a regional conservation plan that attempts to reconcile conflicts among competing land uses, including the conservation of the San Bernardino kangaroo rat. However, this conservation plan has not been finalized and is not currently in effect. Though 371 ha (927 ac) of BLM land potentially are available for water percolation ponds, no ponds have been constructed recently.

Sand and gravel mining poses a significant and imminent threat to the San Bernardino kangaroo rat. Two sand mining operations collectively threaten approximately 552 ha (1,381 ac) of alluvial scrub habitat in this area (Lilburn 1997a and 1997b, P&D Technologies 1988, Service unpub. GIS maps 1997). Based on the distribution of soils and vegetative cover, a minimum of 150 ha (375 ac) of approved and proposed project areas is occupied by the San Bernardino kangaroo rat (Service unpub. GIS maps 1997). The area affected by sand mining represents approximately 22 percent of the population along the Santa Ana River (Service unpub. GIS maps 1997, McKernan 1997).

One proposed sand and gravel mining expansion is expected to receive certification under the California Environmental Quality Act (CEQA) in the next 2–4 months. A grading permit would be issued shortly thereafter. This project would further fragment habitat. In addition, this operator has repeatedly and publicly threatened to destroy habitat if the Service proposes to list the kangaroo rat.

Additional impacts will occur due to a large pipeline project (P&D Technologies 1992). Approximately 60 ha (150 ac) of alluvial scrub in the Santa Ana River will be impacted by this project. Based on the distribution of soils and vegetative cover, a minimum of 24 ha (60 ac) of this project area is occupied by the San Bernardino kangaroo rat (Service unpub. GIS maps 1997). This project has been reviewed and certified under the CEQA and, therefore, poses an imminent threat. The area directly threatened by this pipeline project represents 3 percent of the Santa Ana River population. The indirect effects of this project include further fragmentation of kangaroo rat habitat.

Other activities that threaten the San Bernardino kangaroo rat in this region include the closure of Norton Air Force Base (San Bernardino County) and the proposed development of this site into the San Bernardino International Airport (U.S. Department of the Air Force 1993). Habitat for the San Bernardino kangaroo rat on Norton Air Force Base will be reduced by

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approximately 2 to 5 percent (Conservation Management Plan 1997).

Lytle and Cajon Creeks

The second largest remaining population of the San Bernardino kangaroo rat occurs along Lytle and Cajon creeks, from near Interstate 15 downstream on both drainages for approximately 8 km (5 mi) (McKernan 1997). This area contains approximately 2,688 ha (6,722 ac) of alluvial scrub habitat, of which approximately 456 ha (1,140 ac) are occupied. Of the alluvial scrub habitat, approximately 47 percent is directly threatened by the combined activities associated with sand mining operations, State Route 30, San Bernardino County Flood Control District, and urban development (e.g., The Villages at Lytle Creek) (Service unpub. GIS maps 1997). Based on an evaluation of soils and vegetative cover, a minimum of 34 percent of the occupied habitat in this area is threatened due to the combined effects of these activities (Service unpub. GIS maps 1997).

The joint draft environmental impact report for The Villages at Lytle Creek and a sand mining operation (T&B Planning Consultants 1996) describe some of the threats facing the San Bernardino kangaroo rat in this area. The proposed urban community, The Villages at Lytle Creek, will remove approximately 728 ha (1,821 ac) of alluvial scrub habitat (Michael Brandman Associates 1994, T&B Planning Consultants 1996). Based on the distribution of soils and vegetative cover, at least 132 ha (330 ac) of this project area is occupied by the San Bernardino kangaroo rat (Service unpub. GIS maps 1997). In addition to the upland development, the document discloses the proposed channelization of a portion of Lytle Creek. The area affected by The Villages at Lytle Creek represents approximately 29 percent of the remaining occupied habitat of the Lytle/Cajon population.

Proposed improvements to State Route 30 also threaten the San Bernardino kangaroo rat in the Lytle and Cajon Creek area. Approximately 2.8 ha (7 ac) of habitat will be directly removed due to this project (San Bernardino Association of Governments 1996). Based on the distribution of soils and vegetative cover, all of the project area in this area (i.e., 2.8 ha (7 ac)) is occupied by the San Bernardino kangaroo rat (Service unpub. GIS maps 1997). The area affected by State Route 30 represents approximately 0.1 percent of the occupied habitat in this area.

San Bernardino County Flood Control District (District) constructed a levee and parking lot for Glen Helen Regional Park. The construction of the levee continues to impact approximately 22 ha (55 ac) of habitat by precluding scouring events and the reestablishment of alluvial scrub vegetation. Given the attributes of the area, the entire site was likely occupied by the San Bernardino kangaroo rat prior to construction of the levee. The levee also threatens habitat occupied by the San Bernardino kangaroo rat on the opposite side of the Cajon Creek due to the alteration in the hydrological system. The levee likely will divert flood flows into the opposite bank and cause erosion of the Calmat conservation bank, which was established to help conserve listed and sensitive species in the area. The total amount of occupied habitat anticipated to be lost is, at a minimum, approximately 44 ha (110 ac) (Service unpub. GIS maps 1997). The area affected by flood control activities equates to approximately 10 percent of the occupied habitat in this area.

San Jacinto River

The third largest remaining population of San Bernardino kangaroo rat occurs in Riverside County. Here, the vast majority of alluvial floodplain has been impacted by flood control activities, agricultural and urban development, and sand and gravel mining in this area. Approximately 295 ha (737 ac) of alluvial scrub remains in this area and approximately 140 ha (350 ac) is occupied along the San Jacinto River.

Flood control activities that impact this species include grading of occupied habitat. Evidence of extensive grading exists throughout the remaining alluvial scrub vegetation within the flood control berms along the San Jacinto River in the vicinity of the City of San Jacinto (Arthur Davenport, Service, pers. obs. 1995). Flood control structures that impact this species include concrete channels and flood confining berms. The construction of a concrete channel appears to have isolated a small population of San Bernardino kangaroo rat located along Bautista Creek from the rest of the population along the San Jacinto River. The construction of berms too far into the flood plain is detrimental to the San Bernardino kangaroo rat in that the construction of the berms causes a loss of habitat by increasing the severity of scouring and land erosion.

Continuing, intermittent, agricultural activities, such as dry-land farming along the edges of the San Jacinto River in the vicinity of Hemet and the City of San Jacinto, also impact the San Bernardino kangaroo rat. Patches of suitable and occupied habitat occurring outside the flood control berms are occasionally disced due to agricultural activities (Arthur Davenport, pers. obs. 1995). Discing adversely affects the subspecies by destroying its burrows and habitat.

Urban and commercial development into the flood plain of the San Jacinto River continues to threaten the San Bernardino kangaroo rat. Although flood control berms have been in place for years, suitable and occupied habitat occurs outside the berms. Though degraded due to agricultural activities, occupied habitat outside the berms is critical to the maintenance of the species along the San Jacinto River because it provides a source population for recolonization of habitat within the berms following flood events.

The San Bernardino kangaroo rat is also impacted by the maintenance and expansion of spreading basins within its habitat. Maintenance of spreading basins results in the destruction of habitat and San Bernardino kangaroo rats that occur along the margins (Arthur Davenport, pers. obs. 1995). Similarly, the expansion of spreading basins results in a direct loss of suitable and occupied habitat. Eastern Municipal Water District has proposed "reconstructing" previously authorized groundwater recharge facilities in the San Jacinto River (U.S. Army Corps of Engineers 1997), including a new location for the recharge area. This project encompasses approximately 2.6 ha (6.5 ac) of alluvial scrub, and impacts approximately 2 percent of occupied habitat in the area (140 ha (350 ac)).

Both sand and gravel mining threaten the San Bernardino kangaroo rat in the San Jacinto River area. The operations of sand mining continue to impact occupied habitat. One mine site consists of 100 ha (250 ac) and occurs entirely in the flood plain of the San Jacinto River (Army Corps of Engineers 1996, Pre-discharge Notification 96–00397–RRS). Based on the distribution of soils and vegetative cover, a minimum of 40 ha (100 ac) of the project site is occupied by the San Bernardino kangaroo rat. Sand mining affects approximately 28 percent of the occupied habitat in the San Jacinto River area.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.

This factor is not known to be applicable.

C. Disease or Predation.

Disease is not known to be affecting the San Bernardino kangaroo rat at this time. However, fragmentation of habitat is likely to promote higher levels of predation by urban-associated animals (e.g., domestic cats) as the interface between natural habitat and urban areas is increased (Churcher and Lawton 1987). Domestic cats are known to be predators of native rodents (Hubbs 1951, George 1974), and predation by cats has been documented for the San Bernardino kangaroo rat (McKernan, pers. comm., 1994).

D. The Inadequacy of Existing Regulatory Mechanisms

The decline of the San Bernardino kangaroo rat is partially due to the inherent weakness of the existing laws and regulations that could serve to protect the animal and its habitat. Existing regulatory mechanisms that may provide some protection for the San Bernardino kangaroo rat include: (1) The CEQA and National Environmental Policy Act (NEPA); (2) the California Natural Community Conservation Planning Program; (3) the Surface Mining and Reclamation Act (SMCRA); (4) the Act in those cases where the San Bernardino kangaroo rat occurs in habitat occupied by other listed species; (5) the California Endangered Species Act (CESA); (6) conservation provisions under the Federal Clean Water Act; (7) land acquisition and management by Federal, State, or local agencies or by private groups and organizations; and (8) local laws and regulations. Many of these have limited protection authority since the San Bernardino kangaroo rat is not federally listed.

The majority of the known populations of the San Bernardino kangaroo rat occur on privately owned land. Local lead agencies responsible under CEQA and NEPA have made determinations that have, or would, adversely affect this taxon and its habitat. Examples of projects that have been completed or are currently undergoing the review process under CEQA and/or NEPA and will impact this species include Seven Oaks Dam, State Route 30 Improvement Project, Metropolitan Water District Inland Feeder Pipeline, Calmat Company, Sunwest Materials, Robertson's Ready Mix, San Jacinto Aggregates, and The Villages at Lytle Creek. Past, present, and proposed mitigation for impacts to this species and its habitat have been inadequate to stop or reverse its decline. CEQA decisions are also subject to over-riding social and economic considerations.

In 1991, the State of California established a Natural Community Conservation Planning Program (NCCP) to address conservation needs throughout the State. The initial focus of the program is the coastal sage scrub community. Within this program, the California Department of Fish and Game (CDFG) included the long-term conservation of alluvial scrub, which is in part occupied by the San Bernardino kangaroo rat. However, participation in NCCP is voluntary. San Bernardino and Riverside counties have signed planning agreements (Memoranda of Understanding (MOUs)) to develop multispecies plans that meet NCCP criteria, but have not enrolled in the NCCP program during the interim. The MOUs do not provide protection to candidate species during the planning process.

Reclamation of mined areas in the State of California is required under the Surface Mining and Reclamation Act (SMCRA). The County of San Bernardino also requires that mining companies submit a reclamation plan for County approval. The primary purpose of these ordinances is to provide for erosion control measures and to restore slopes to a moderate slope. However, reclamation is not likely to resolve the problem of maintaining or mitigating for the loss of species or ecosystem functions in a biologically meaningful way because of change in topography and altered hydrology. The feasibility of artificially creating a viable alluvial scrub plant community suitable for the San Bernardino kangaroo rat has not yet been demonstrated.

The BLM designated an Area of Critical Environmental Concern (ACEC) in the Santa Ana River in 1994. The ACEC is composed of three parcels of land that total 304 hectares (760 acres). The purpose of the ACEC is to protect and enhance the habitat of federally listed plant species occurring in the area, such as Santa Ana River wooly-star (*Eriastrum densifolium* ssp. *sanctorum*), and sensitive species such as the San Bernardino kangaroo rat, while providing for the administration of existing valid rights (BLM 1996). Although the establishment of the ACEC is important in regard to conservation of sensitive habitats and species in this area, the administration of valid existing rights conflicts with BLM's conservation abilities in this area. Existing rights include a withdrawal of Federal lands in this area for water conservation through an act of Congress, February 20, 1909 (Public, No. 248). The entire ACEC is included in this withdrawn land and may be available for water conservation measures such as the construction of percolation basins, subject to compliance with the Act.

The San Bernardino kangaroo rat is not protected under the CESA. The Federal and State Acts together can afford some measure of protection to the San Bernardino kangaroo rat in those areas where the species coexists with other species already listed as threatened or endangered. *Eriastrum densifolium* ssp. *sanctorum* (Santa Ana River woolly star) and *Dodecahema leptoceras* (slender-horned spineflower) are listed as endangered under the Act and the CESA, and the coastal California gnatcatcher (*Polioptila californica californica*) is listed as threatened under the Act. All three species can occur in habitats similar to those preferred by the San Bernardino kangaroo rat. However, the distribution of *D. leptoceras* and *E. densifolium* ssp. *sanctorum* is spotty and discontinuous, and only overlaps with a small portion of the habitat occupied by the San Bernardino kangaroo rat. The coastal California gnatcatcher, although known to occur within alluvial scrub habitat, has largely been extirpated from San Bernardino County within the range of the San Bernardino kangaroo rat and, therefore, occurrence with the listed species provides little ancillary protection. In Riverside County, coastal California gnatcatchers are not currently known to occur at any sites occupied by the San Bernardino kangaroo rat.

The San Bernardino kangaroo rat could potentially be affected by projects requiring a permit from the Army Corps of Engineers (Corps) under section 404 of the Clean Water Act. Although the objective of the Clean Water Act is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (Pub. L. 92–500), no specific provisions exist that adequately address the need to conserve candidate species. A majority of the remaining populations occur outside areas delineated as waters of the United States and, therefore, are not regulated. Moreover, numerous activities for which the Corps potentially has jurisdiction, including sand and gravel mining and flood control projects, have proceeded without their overview (see Factor A).

As a result of Fish and Wildlife Coordination Act activities, the Corps, in 1988, initiated a section 7 consultation on *Eriastrum densifolium* ssp. *sanctorum* for the proposed Seven Oaks Dam project on the Santa Ana River. About 310 ha (775 ac) of alluvial scrub habitat has been designated for preservation as mitigation for impacts to *Eriastrum densifolium* ssp. *sanctorum* resulting from the construction of the dam. Approximately 80 ha (200 ac) of this appears to be currently suitable for

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the San Bernardino kangaroo rat (Service unpub. GIS maps 1997). However, the preserved area represents less than 7 percent of the alluvial scrub found in the entire Santa Ana River basin and approximately 12 percent of the basin habitat occupied by the San Bernardino kangaroo rat. Thus, the mitigation preserve, while providing some benefit, is likely not adequate to conserve the subspecies.

Local and county zoning designations are subject to change and do not specifically address the conservation and management needs of the San Bernardino kangaroo rat. However, numerous jurisdictions in western Riverside and San Bernardino counties are beginning a multi-species habitat conservation planning process, including coastal sage scrub-associated species and benefit to the kangaroo rat may result. Commitments for funding and implementation of the strategy and appropriate changes in land-use regulations to protect potential preserves during the planning process have not been made.

The Riverside County Habitat Conservation Agency is implementing an approved habitat conservation plan for the federally endangered Stephens' kangaroo rat that involves the establishment of permanent preserves in western Riverside County (Riverside County Habitat Conservation Agency 1996). Because the San Bernardino kangaroo rat occupies a largely different habitat type than that of the Stephens' kangaroo rat, the conservation plan for the Stephens' kangaroo rat will not benefit the San Bernardino kangaroo rat. Despite extensive surveys, no current records of San Bernardino kangaroo rats occur within any of the reserves established for Stephens' kangaroo rat (A. Davenport, pers. comm. 1997).

E. Other Natural or Manmade Factors Affecting Its Continued Existence.

Habitat for the San Bernardino kangaroo rat has been severely reduced and fragmented by development and related activities in the San Bernardino and San Jacinto Valleys. Habitat fragmentation results in loss of habitat, reduced habitat patch size, and an increasing distance between patches of habitat. As discussed by Andren (1994) regarding highly fragmented landscapes, reduced habitat patch size and isolation will exacerbate the effect of habitat loss on a species' persistence. That is, the loss of species, or decline in population size, will be greater than expected from habitat loss alone. The loss of native vertebrates, including rodents, due to habitat fragmentation is well documented (Soulé *et al.* 1992, Andren 1994, Bolger *et al.* 1997).

Isolated populations are subject to extirpation by manmade or natural events, such as floods and drought. Furthermore, small populations may experience a loss of genetic variability and experience inbreeding depression (Lacy 1997). Contributing to the fragmentation of San Bernardino kangaroo rat habitat are railroad tracks, roads, and flood control channels. These structures appear to function as movement barriers to the San Bernardino kangaroo rat, preventing movement between areas of suitable habitat.

All remaining population segments are at risk due to their small size and isolation. This is especially true for the four smallest populations (i.e., City Creek, Reche Canyon, Etiwanda, and South Bloomington). Urbanization exists throughout most of the San Bernardino kangaroo rat's range and the remaining larger blocks of occupied habitat (i.e., Santa Ana River, Lytle/Cajon, and San Jacinto River) now function independently of each other. This isolation of occupied patches places the entire population of San Bernardino kangaroo rat at risk because recolonization of suitable habitat following local extirpation has been precluded. The extirpation of populations from local catastrophes, such as flooding, is becoming more probable as urban development further constricts the remaining populations to the active portion of the flood plain. The largest remaining populations are now restricted entirely to flood plain habitats and vulnerable to extirpation by naturally occurring events.

Flood control structures alter both the magnitude and distribution of flooding. In the absence of flood scouring, sediments and organic matter accumulate over time, contributing to senescence of the alluvial scrub community and its conversion to coastal sage scrub or chaparral (Smith 1980, Wheeler 1991, Jigour and McKernan 1992). The dense canopy of these communities does not provide the open environment required by San Bernardino kangaroo rat, thereby reducing the habitat suitability for the species (Beatley 1976, McKernan 1997). Within the active channels, the confined flood events scour too frequently to maintain suitable San Bernardino kangaroo rat habitat.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this subspecies in developing this rule. Based on this evaluation, the Service finds that the emergency action is to list the San Bernardino kangaroo rat as endangered. This taxon is endangered by one or more of the following factors: Habitat destruction, degradation, and fragmentation resulting from sand and gravel mining, flood control projects, urban development, vandalism, and inadequate regulatory mechanisms. Because of these factors, the San Bernardino kangaroo rat is in imminent danger of extinction throughout all or a significant portion of its range. Threatened status does not appear appropriate considering the extent of decline of the populations of this taxon and the vulnerability of those populations remaining.

Reasons for Emergency Determination

Under section 4(b)(7) of the Act and 50 CFR 424.20, the Secretary may determine a species to be endangered or threatened by an emergency rule that shall cease 240 days following publication in the **Federal Register**. The reasons why this rule is necessary are discussed below. If at any time after this rule has been published the Secretary determines that substantial evidence does not exist to warrant such a rule, it shall be withdrawn.

As discussed under Factor A, of the seven remaining populations, only three are of relatively large (viable) size. Much of the remaining habitat for the San Bernardino kangaroo rat is potentially threatened by vandalism as well as construction of approved projects. Threats of vandalism to San Bernardino kangaroo rat habitat have been made. Intentional herbicide application and grading were mentioned as possible ways to eliminate suitable habitat. Along the Santa Ana River, at least 80 percent of the remaining occupied habitat is indirectly at risk because of the projected changes in hydrology due to Seven Oaks Dam. Approximately 25 percent of the population along the Santa Ana River is further threatened by levee construction and maintenance and sediment removal activities of the San Bernardino County Flood Control District. About 20 percent of the habitat is managed, in part, for operation of water spreading basins. Finally, two proposed sand mining operations collectively threaten approximately 22 percent of the population along the Santa Ana River. These proposed sand and gravel mining expansions are expected to receive certification under the CEQA in 2–4 months. A grading permit would be issued shortly thereafter. The projects and sand and gravel mining operations also have the effect of fragmenting the habitat, further reducing the security of this species.

Along Lytle Creek and Cajon Wash, a minimum of 34 percent of the occupied habitat in this area is threatened due to the combined effects of sand and gravel mining, flood control activities, and the proposed development of The Villages at Lytle Creek. At least 28 percent of the occupied habitat in the San Jacinto River area is threatened by urban development, flood control activities, agricultural activities or sand and gravel mining.

Attempts to work with stakeholders have met with little success. When advised of the sensitivity of alluvial scrub habitats in the San Bernardino region in 1992, one local official threatened to destroy existing habitat areas by aerial herbicide application (Edna Rey, Service, pers. comm., 1997). Finally, the Service has been informed that an area of approximately 1,440 ha (3,560 ac) (approximately 26 percent) of the total remaining alluvial scrub habitat may be at risk of vandalism. Statements have been made advising the Service repeatedly that an attempt to list the San Bernardino kangaroo rat would elicit preemptive grading to protect corporate assets (Pete Sorensen, Service, pers. comm. 1996).

An emergency posing a significant risk to the well-being and continued survival of the San Bernardino kangaroo rat exists as the result of the immediate threat of destruction of a significant portion of the subspecies' remaining habitat by sand and gravel mining activities. For these reasons, the Service finds that the San Bernardino kangaroo rat is in imminent danger of extinction throughout all or a significant portion of its range and warrants immediate protection under the Act.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is designated to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the San Bernardino kangaroo rat. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Critical habitat designation for the San Bernardino kangaroo rat is not prudent because an increase in the degree of threat to the species is expected. This subspecies is found in fragmented habitat composed of various sage scrub shrub vegetation in the presence of sandy soils. The designation of critical habitat, including the required publication of maps providing precise locations, would bring unnecessary attention to those areas of the range that are occupied by this kangaroo rat and encourage acts of vandalism or intentional destruction of habitat. This attention would likely lead to an increase in activities (such as discing or blading) by landowners who do not want listed species on their property (see Factor A, above). Therefore, given the limited/habitat specific distribution of the San Bernardino kangaroo rat, and the possibility that a significant portion of the species' remaining habitat could be rapidly vandalized and destroyed, the Service concludes that it is not prudent to designate critical habitat for that reason alone.

The designation of critical habitat is also not prudent due to an expected lack of benefit to the species. Although a majority of San Bernardino kangaroo rat habitat occurs on privately owned lands, many activities that pose threats to the continued existence of this subspecies are funded, permitted, or carried out by Federal agencies (e.g., section 404 of the Clean Water Act, flood control, impoundment, and other stream and wetland modification projects). Section 7 of the Act requires that Federal agencies refrain from contributing to the destruction or adverse modification of critical habitat in any action authorized, funded or carried out by such agency. This requirement is in addition to the section 7 prohibition against jeopardizing the continued existence of a listed species, and it is the only mandatory legal consequence of a critical habitat designation. Any action that would adversely modify San Bernardino kangaroo rat critical habitat would likely jeopardize the continued existence of the subspecies because the biological threshold for either determination would be the same. Thus, if the San Bernardino kangaroo rat is listed, activities occurring on all lands under Federal jurisdiction or ownership that may adversely affect the San Bernardino kangaroo rat would prompt the requirement for consultation pursuant to section 7(a)(2) of the Act and the implementing regulations pertaining thereto, regardless of whether critical habitat has been designated. Furthermore, the designation of critical habitat would have no regulatory effect on activities that are not subject to a Federal nexus.

The Service acknowledges that critical habitat designation, in some situations, may provide some value to the species by identifying areas important for species conservation and calling attention to those areas in special need of protection. Critical habitat designation of unoccupied habitat may also benefit this subspecies by alerting Federal action agencies to potential sites for reintroduction and allow them to evaluate proposals that may affect these areas. However, in this the case, any benefit provided by designation of critical habitat for the San Bernardino kangaroo rat would be accomplished more effectively through the recovery process and the jeopardy prohibition of section 7. Designating critical habitat for this kangaroo rat would not address vegetation seral stage management or control urban development, all of which need to be addressed in the recovery of this subspecies.

Accordingly, the Service concludes that designation of critical habitat would not be beneficial to the species and could increase the degree of threat from taking. Therefore, designation of critical habitat for the San Bernardino kangaroo rat is not prudent at this time.

The Service will continue in its efforts to obtain more information on the San Bernardino kangaroo rat biology and ecology, including essential habitat characteristics particularly in regard to stream flow regimes, current and historical distribution, and existing and potential sites that can contribute to conservation of the species. The information resulting from this effort will be used to identify measures needed to achieve conservation of the species, as defined under the Act. Such measures could include, but are not

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limited to, development of conservation agreements with the State, other Federal agencies, local governments, private landowners and organizations.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants and animals are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agencies expected to have involvement with the San Bernardino kangaroo rat or its habitat include the Corps and the Environmental Protection Agency due to their permit authority under section 404 of the Clean Water Act. The Federal Aviation Administration has jurisdiction over areas with potentially suitable San Bernardino kangaroo rat habitat in the vicinity of Redlands Municipal Airport and Norton Air Force Base in San Bernardino County. The Federal Highway Administration will likely be involved through potential funding of highway construction projects near Devore, Rancho Cucamonga, Rialto, and San Bernardino (San Bernardino County). Because the San Bernardino kangaroo rat occurs on Norton Air Force Base (San Bernardino County), the base will likely be involved through the transfer of Federal lands to a non-Federal entity and the conversion of this area to a civilian airport. The BLM has jurisdiction over a portion of the habitat occupied by the San Bernardino kangaroo rat along the Santa Ana River. The Forest Service will likely be involved because populations of the San Bernardino kangaroo rat occur within or near the boundaries of the Cleveland National Forest and San Bernardino National Forest. The Bureau of Reclamation may be involved through the potential funding of water reclamation and flood control projects. The Bureau of Indian Affairs may be involved with this taxon at Soboba Indian Reservation (Riverside County). The Federal Housing Administration could potentially be involved through loans for housing projects in the region. The Federal Energy Regulatory Commission could be involved in projects affecting existing or proposed transmission lines in the Santa Ana River or Etiwanda Creek areas.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general trade prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23 and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, or for incidental take in connection with otherwise lawful activities.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practical at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of listing on proposed and ongoing activities within a species' range, and to assist the public in identifying measures needed to protect the species. The Service believes that, based on the best available information, the following actions would not be likely to result in a violation of section 9:

(1) Possession, delivery, or movement, including interstate transport and import into or export from the United States, involving no commercial activity, dead specimens of this taxa that were collected prior to the date of publication in the **Federal Register** of the final regulation adding this taxa to the list of endangered species;

(2) Road kills or injuries by vehicles on designated public roads.

Potential activities involving the San Bernardino kangaroo rat that the Service believes likely would be considered a violation of section 9 include, but are not limited to, the following:

(1) Take of San Bernardino kangaroo rat without a permit, which includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions, except in accordance with applicable State fish and wildlife conservation laws and regulations;

(2) Possess, sell, deliver, carry, transport, or ship illegally taken San Bernardino kangaroo rats;

(3) Interstate and foreign commerce (commerce across State and international boundaries) and import/export (as discussed earlier in this section) without appropriate permits;

(4) Destruction or alteration of San Bernardino kangaroo rat habitat by discing, grading, sand or gravel mining, flooding, vehicle operation, or other activities that result in the destruction or significant degradation of vegetative composition, substrate composition, or other activity that impacts breeding, feeding, or availability of cover;

(5) Alteration of hydrology that results in adverse modification of San Bernardino kangaroo rat habitat (e.g., establishment of inappropriate stages of vegetation).

Questions regarding whether specific activities will constitute a violation of section 9 or to obtain approved guidelines for actions within the kangaroo rat habitat should be directed to the Service's Carlsbad Field Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed animals and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–6241; facsimile 503/231–6243).

National Environmental Policy Act

The Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section (4)(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

References Cited

A complete list of references cited in this rule is available upon request from the Carlsbad Field Office of the U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Arthur Davenport of the Carlsbad Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, the Service amends part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under Mammals, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
Kangaroo rat, San Bernardino.	*Dipodomys merriami parvus.*	U.S.A. (CA)	NA	E	631	NA	NA

Dated: January 20, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–2011 Filed 1–26–98; 8:45 am]

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Proposed Rules

Federal Register
Vol. 63, No. 17
Tuesday, January 27, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 97–060–1]

RIN 0579–AA88

Karnal Bunt Status of the Mexicali Valley of Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the wheat diseases regulations by recognizing a wheat-growing area within the Mexicali Valley of Mexico as being free from the wheat disease Karnal bunt. Surveys conducted by Mexican plant health authorities in that area of the Mexicali Valley since 1990 have shown the area to be free from Karnal bunt, and Mexican authorities are enforcing restrictions designed to protect the area from the introduction of Karnal bunt. This proposed change would have the effect of removing certain restrictions on the importation into the United States of wheat seed, straw, and other wheat products from the Karnal bunt free area of the Mexicali Valley.

DATES: Consideration will be given only to comments received on or before March 30, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–060–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–060–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. James A: Petit de Mange, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, USDA, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799; fax (301) 734–5786; e-mail: jpdmange@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Wheat Diseases" (7 CFR 319.59 through 319.59–2, referred to below as the regulations), restrict the importation into the United States of certain seeds, plants, and plant products from certain countries or localities in order to prevent the introduction of foreign strains of flag smut and Karnal bunt, two fungal diseases of wheat (*Triticum* spp.). Specific provisions relating to foreign strains of flag smut are located in paragraph (a) of § 319.59–2 of the regulations, and specific provisions concerning Karnal bunt are found in paragraph (b) of that section.

Under § 319.59–2(b) of the regulations, wheat seeds, plants, straw (except straw without heads that has been processed or manufactured into articles such as decorative wall hangings, clothing, or toys), chaff, and products of the milling process other than flour (i.e., bran, thistle sharps, and pollards) are designated as prohibited articles if they are from Afghanistan, India, Iraq, Mexico, or Pakistan, which are countries in which Karnal bunt is considered to exist. Prohibited articles may be imported into the United States only by the U.S. Department of Agriculture for experimental or scientific purposes in accordance with § 319.59–2(c).

The Government of Mexico has requested that the Animal and Plant Health Inspection Service (APHIS) recognize the Mexicali Valley area of Mexico as free from Karnal bunt. In support of its request, the Mexican Government submitted the results of annual surveys conducted in the wheat-producing areas of the Mexicali Valley since 1990 by Mexico's national plant protection organization, Sanidad Vegetal.

APHIS has reviewed the documentation submitted by the Government of Mexico in support of its request and conducted an on-site evaluation of Mexico's plant health programs in the Mexicali Valley with regard to Karnal bunt. The evaluation consisted of a review of Mexico's Karnal bunt survey activities, laboratory and testing procedures for the examination of samples collected during the surveys, and the administration of laws and regulations intended to prevent the introduction of Karnal bunt into the Mexicali Valley's wheat-growing areas from the rest of Mexico and from outside the country. After reviewing the documentation provided by Mexico and the data gathered during the on-site visit, we believe that Mexico has demonstrated, in accordance with the standards established by the North American Plant Protection Organization for pest-free areas, that the wheat-growing areas of the Mexicali Valley are free from Karnal bunt. We believe, therefore, that there is no longer any biological justification for that area of Mexico to be listed with the countries and localities considered to be affected with Karnal bunt.

Therefore, we are proposing to amend § 319.59–2(b) of the regulations by adding an exception for the Karnal bunt free area of the Mexicali Valley to the entry for Mexico on the list of countries and localities affected with Karnal bunt. This proposed action would mean that wheat seed, straw, and the other wheat products described in § 319.59–2(b)(1) of the regulations from the Karnal bunt free area of the Mexicali Valley would no longer be considered prohibited articles under the wheat diseases regulations. However, the importation of wheat plants into the United States from the Karnal bunt free area of the Mexicali Valley would continue to be prohibited under the regulations in "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" (7 CFR 319.37 through 319.37–14). Specifically, § 319.37–2(a) lists Poaceae (vegetative parts of all grains and grasses) from all foreign places except Canada as prohibited articles due to a wide diversity of plant diseases.

For the purposes of the regulations, we would define the Karnal bunt free area of the Mexicali Valley as those portions of the municipality of Mexicali, in the State of Baja California, and the municipality of San Luis Rio Colorado, in the State of Sonora, that constitute the Distrito de Desarrollo Rural 002, Rio Colorado (Rural Development District 002, Colorado River). The area described in that definition encompasses the wheat-growing area of the Mexicali Valley that has been the subject of the ongoing Karnal bunt surveys described above and falls completely within the area into which the movement of potential Karnal bunt host material is prohibited by Mexican plant health regulations to prevent the introduction of Karnal bunt.

Because the remainder of Mexico has not been recognized as being free from Karnal bunt, we would include two additional conditions on the importation into the United States of wheat seed, straw, and other wheat products from the Mexicali Valley.

First, we would require that the articles be offered for entry at the port of Calexico, CA, which is staffed by APHIS inspectors and lies across the border from the northern boundary of the Karnal bunt free area of the Mexicali Valley. That port of entry is served by both a main road and a rail line that pass through the Karnal bunt free area, so any wheat or other articles from the Karnal bunt free area would remain within that area during their movement to the United States for entry. Once the articles arrive at the port of Calexico, CA, the shipment would have to be made available to an APHIS inspector for examination and would remain at the port of entry until an inspector released the shipment or authorized its further movement pending release.

Second, we would require that wheat or other articles offered for entry be accompanied by a phytosanitary certificate issued by Mexico's national plant protection organization. That certificate would have to include a statement confirming that the wheat or other articles were grown in the designated Karnal bunt free area of the Mexicali Valley and remained in that area prior to and during their movement to the United States. The phytosanitary certificate would be reviewed by an APHIS inspector at the port of entry to ensure that the wheat or other articles offered for entry into the United States were indeed grown and harvested in the area of Mexico that has been shown to be free of Karnal bunt and did not leave that area while in transit to the port of entry.

Other Changes

As part of this proposed rule, we would make several other changes to update the regulations. First, we would remove the authority citation that appears at the beginning of "Subpart—Wheat Diseases." The authority that applies to all of part 319, including the subpart, is cited at the beginning of the part.

We are proposing to amend § 319.59(a) to correct three erroneous references within that paragraph to other paragraphs in the subpart. Specifically, there are two references to provisions in § 319.59–2(b) that provide for the importation of otherwise prohibited articles; those provisions are actually located in paragraph § 319.59–2(c). The third erroneous reference is to articles designated in § 319.59–2(a) as prohibited articles. Although that paragraph does contain a list of prohibited articles, there is also a list of prohibited articles in § 319.59–2(b). We would, therefore, change that reference so that it refers to prohibited articles designated in § 319.59–2 (a) and (b).

We are also proposing to amend paragraph (b) of § 319.59, which provides for the disposition of articles that have been refused importation in accordance with the requirements of the regulations. That paragraph currently states that such articles shall be promptly removed from the United States or abandoned by the importer for destruction. Although the phrase "abandoned by the importer for destruction" could be construed as indicating that the importer would be relieved of any further responsibility for the articles after abandoning them, the importer is actually responsible for the costs of destruction. We are, therefore, proposing to amend the paragraph to make it clear that when an article is to be destroyed rather than reexported, the costs of destroying the article are the responsibility of the importer.

We are proposing to update the list of countries in § 319.59–2(a)(2) by removing a reference to the "Union of Soviet Socialist Republics" and adding the 15 successor States to the former Soviet Union in its place. We would also update several country names that are currently included on the list of countries.

Finally, we are proposing to make minor changes for the sake of consistency in two other subparts in part 319, namely "Subpart—Foreign Cotton and Covers" (§§ 319.8 through 319.8–27) and "Subpart—Packing Materials" (§§ 319.69 through 319.69–5). Each of those subparts contains a list of countries that is intended to agree with the list of countries found in § 319.59–2 of the regulations. However, after the lists in those two subparts were established, they were not updated to reflect subsequent amendments to "Subpart—Wheat Diseases." Therefore, we would amend § 319.8–10(d) and § 319.69(b)(1) to remove the inaccurate lists of countries and replace them with a reference to § 319.59–2 of the regulations, where the updated lists of countries and localities considered affected with foreign strains of flag smut and Karnal bunt are located.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This proposed rule would amend the wheat diseases regulations by recognizing a wheat-growing area within the Mexicali Valley of Mexico as being free from the wheat disease Karnal bunt. This proposed change is based on surveys conducted by Mexican plant health authorities in that area of the Mexicali Valley since 1990 that have shown the area to be free from Karnal bunt, and on the enforcement by Mexican authorities of restrictions designed to protect the area from the introduction of Karnal bunt. This proposed change would have the effect of removing certain restrictions on the importation into the United States of wheat seed, straw, and other wheat products from the Karnal bunt free area of the Mexicali Valley.

This proposed rule would primarily affect wheat growers in the United States. There were 292,464 farms growing wheat in the United States in 1992, and 96 percent of those farms would be considered small entities. (According to the standard set by the Small Business Administration for agricultural producers, a producer with less than $0.5 million annually in sales qualifies as a small entity.) We have, therefore, examined the potential economic impact of the proposed action on small entities, as required by the Regulatory Flexibility Act, and in doing so, have assessed the anticipated costs and benefits of the proposed action, as required by Executive Order 12866.

The United States produced an average of 2,330 million bushels of wheat per year between 1992 and 1996. Of this amount, hard red winter wheat (grown primarily in Kansas, Oklahoma, and Texas) accounted for about 39 percent of production; hard red spring wheat (grown primarily in North Dakota, Minnesota, and Montana) accounted for about 24 percent of production; soft red winter wheat (grown primarily in Missouri, Illinois, and Ohio) accounted for about 19 percent of production; white wheat (grown primarily in Washington and Oregon) accounted for about 14 percent

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of production; and durum wheat (grown primarily in North Dakota, Arizona, California, and Montana) accounted for about 4 percent of production.

The United States is a net exporter of wheat, accounting for about 11.4 percent of world wheat production and approximately 32 percent of world wheat exports. Of the average 2,330 million bushels of wheat produced per year between 1992 and 1996, an average of 51 percent of that wheat was exported from the United States, while wheat imports have accounted for less than 1 percent of the total U.S. wheat supply in recent years.

Mexico produced an average of about 137 million bushels of wheat per year between 1994 and 1996, most of which was grown in the States of Baja California, Guanajuato, Sinaloa, and Sonora. Mexico is a net importer of wheat, having imported in 1996 an amount of wheat equal to about 53 percent of production while exporting less than 4 percent of production; imports made up about 35 percent of Mexico's total wheat supply in 1996.

The Mexicali Valley, from which wheat could be exported to the United States under this proposed rule, is located in two of Mexico's leading wheat-producing States, Baja California and Sonora. The Mexicali Valley produced 445,967 metric tons of wheat in 1995; about 53 percent (236,171 metric tons) of that wheat was shipped to markets elsewhere in Mexico. Nearly all of the Mexicali Valley's wheat is sown in October and November and harvested from late May to early July. Table 1 below shows the classes of wheat grown in the Mexicali Valley between 1994 and 1996 and the average production share and use distribution of each class.

TABLE 1.—WHEAT CLASS, PRODUCTION SHARE, AND USE DISTRIBUTION OF MEXICALI VALLEY WHEAT; 1994–1996 AVERAGES

Wheat class	Production share (percent)	Use distribution (percent)			
		Food	Feed	Seed	Other
Hard Red Winter	51.3	65.0	25.0	3.2	6.8
White	36.2	61.5	24.6	2.6	11.3
Durum	2.2	38.5	2.1	58.8	0.6
Soft Red Winter	0.3	33.2	13.9	36.0	16.9

Between 1994 and 1997, producers in the Mexicali Valley shipped an average of 9 million bushels each year to other markets in Mexico; we have used that amount in Table 2, below, as an estimate of the total amount of wheat potentially available for export to U.S. markets. Table 2 summarizes the estimated economic impacts in the United States, based on a price elasticity of −0.63, of different levels of wheat exports from the Mexicali Valley and from the estimated producer losses and consumer gains that would result. For example, a 20 percent diversion of Mexicali Valley wheat production from markets in other countries or the domestic Mexican market to the United States would be expected to result in a price decrease of 0.09 percent in the United States. U.S. producers would lose about $5.92 million (which, when distributed among the 292,464 wheat farms noted above, amounts to about $20.25 per farm), while consumers would gain about the same amount, for a net benefit in this scenario of about $3,000. At the other end of the spectrum, a 100 percent diversion of Mexicali Valley wheat production from other markets to the United States would be expected to result in a price decrease of 0.45 percent in the United States. U.S. wheat producers would lose about $29.56 million (or about $101.00 per farm), while consumers would gain about $29.64 million, for a net benefit in this scenario of about $74,500. In all cases, consumer gains slightly outweigh producer losses.

TABLE 2.—POTENTIAL IMPACT IN THE UNITED STATES OF THE REDIRECTION OF MEXICALI VALLEY WHEAT TO U.S. MARKETS (PRICE ELASTICITY IS −0.63)

	Percentage of Mexicali Valley-origin wheat shipments diverted from other (domestic or export) markets to the U.S. market:				
	20	40	60	80	100
Imports (millions of bushels)	1.8	3.6	5.4	7.2	9.0
Percent change in price	(0.09)	(0.17)	(0.27)	(0.36)	(0.45)
Percent change in quantity	(0.04)	(0.08)	(0.13)	(0.17)	(0.22)
Decrease in producer surplus (millions of dollars)	(5.92)	(11.83)	(17.75)	(23.66)	(29.56)
Increase in consumer surplus (millions of dollars)	5.92	11.84	17.77	23.70	29.64
Total surplus (millions of dollars)	0.003	0.0119	0.0268	0.0477	0.0745

How likely even a 20 percent diversion of Mexicali Valley wheat to the U.S. market would be, however, is unclear. The production area of the Mexicali Valley is closer to markets in the United States than it is to markets in central Mexico, which means that lower transportation costs may encourage Mexicali Valley producers to ship their wheat to the United States. However, the Mexican government is considering a transportation subsidy for growers in northwestern Mexico to offset the transportation advantage that growers in central Mexico have in marketing their crops in Mexico City. Such a subsidy may encourage Mexicali Valley producers to sell their wheat in Mexico.

Prices for Mexicali Valley wheat may well prove to be a determining factor with regard to the level of potential exports, as the costs of production in the Mexicali Valley are much higher than U.S. production costs. The cost of Mexicali Valley wheat averaged between $2.47 and $3.54 per bushel, with total economic costs (which include fertilizers, irrigation, harvest costs, interest on credit, etc.) ranging between $227.60 to $247.50 per acre. The cost of wheat grown in the United States, on the other hand, averaged $2.47 per bushel, with total economic costs averaging $155 per acre. With its higher production costs and the added cost of transportation across the border into the United States, it may prove difficult for Mexicali Valley wheat to compete in the U.S. market.

The actual extent of any decrease in wheat prices in the United States resulting from action proposed in this document would depend to a great degree upon the size of the price elasticity of demand, the magnitude of the change in supply, and the size of the baseline price. For lower price elasticities, both losses and gains would be higher. We expect that the amount of wheat exported from the Mexicali Valley would not be large and would not, therefore, change wheat production and consumption patterns in the United States. Further, the increase in wheat supplies in the United States from an increase in imports from Mexico would likely be offset to some extent by an increase in exports of wheat from the United States to Mexico. Nevertheless, allowing the importation of wheat from the Mexicali Valley would likely have a net positive impact on the overall economy, since consumer benefits at any level of imports would be slightly higher than producer losses.

The only significant alternative to this proposed rule would be to make no changes in the wheat diseases regulations, i.e., to continue to prohibit the importation of wheat and wheat products from Mexico. We have rejected that alternative because we believe that Mexico has demonstrated that the wheat-growing areas of the Mexicali Valley are free from Karnal bunt, which means that there is no longer any biological justification for that area of Mexico to be listed with the countries and localities considered to be affected with Karnal bunt. Maintaining a prohibition on the importation of wheat and wheat products from the Mexicali Valley in light of that area's demonstrated freedom from Karnal bunt would run counter to the United States' obligations under international trade agreements and would likely be challenged through the World Trade Organization. Conversely, our proposal to declare the wheat-growing areas of the Mexicali Valley free from Karnal bunt would likely have a beneficial effect on international trade in general, and trade between the United States and Mexico in particular, by reaffirming the United States' continuing commitment to using scientifically valid principles as the basis for regulation.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 97–060–1. Please send a copy of your comments to: (1) Docket No. 97–060–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would amend the wheat diseases regulations by recognizing a wheat-growing area within the Mexicali Valley of Mexico as being free from the wheat disease Karnal bunt. This proposed change would have the effect of removing certain restrictions on the importation into the United States of wheat seed, straw, and other wheat products from the Karnal bunt free area of the Mexicali Valley.

Because the remainder of Mexico is still considered to be affected with Karnal bunt, we would require that a phytosanitary certificate accompany wheat and other wheat-related articles offered for entry from the Karnal bunt free area of the Mexicali Valley. That certificate would have to be issued by Mexican plant health authorities, and would have to state that the wheat or other articles had been grown in the designated Karnal bunt free area of the Mexicali Valley.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. We need this outside input to help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.)

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1.2 hours per response.

Respondents: Mexican plant health authorities, growers/exporters of wheat products in the Mexicali Valley.

Estimated number of respondents: 20.

Estimated number of responses per respondent: 5.

Estimated annual number of responses: 100.

Estimated total annual burden on respondents: 120 hours.

Copies of this information collection can be obtained from Clearance Officer, OIRM, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 is proposed to be amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

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§ 319.8–10 [Amended]

2. In Subpart—Foreign Cotton and Covers, § 319.8–10(d) would be amended by removing the words "§ 319.59 (notice of quarantine No. 59 relating to the flag smut disease)" and adding the words "§ 319.59–2(a)(2)" in their place, and footnote 5 and its reference in the text would be removed.

§ 319.8–11 [Amended]

3. In Subpart—Foreign Cotton and Covers, § 319.8–11(a) introductory text, footnote 6 and its reference in the text would be redesignated as footnote 5.

§ 319.8–17 [Amended]

4. In Subpart—Foreign Cotton and Covers, § 319.8–17(d), footnote 7 and its reference in the text would be redesignated as footnote 6.

5. The authority citation for "Subpart—Wheat Diseases" would be removed.

§ 319.59 [Amended]

6. In Subpart—Wheat Diseases, § 319.59 would be amended as follows:

a. In paragraph (a), in the first sentence, the reference "§ 319.59–2(b)" would be removed and the reference "§ 319.59–2(c)" would be added in its place.

b. In paragraph (a), in the last sentence, the reference "§ 319.59–2(a)" would be removed and the reference "§ 319.59–2(a) and (b)" added in its place, and the reference "§ 319.59–2(b)" would be removed and the reference "§ 319.59–2(c)" added in its place.

c. In paragraph (b), in the first sentence, the words "abandoned by the importer for destruction" would be removed and the words "destroyed as deemed necessary by an inspector at the expense of the importer" would be added in their place.

d. In paragraph (b), in the last sentence, the words "abandoned for destruction by" would be removed and the words "destroyed as deemed necessary by an inspector at the expense of" would be added in their place.

7. In Subpart—Wheat Diseases, § 319.59–2 would be amended as follows:

a. In the introductory text of paragraph (a), the words "in paragraph (b)" would be removed and the words "in paragraph (c)" added in their place.

b. In paragraph (a)(1)(i), the word "*Triticums*" would be removed and the word "*Triticum*" added in its place.

c. Paragraph (a)(2) would be revised to read as set forth below.

d. In paragraph (b)(2), the words "(except for that portion of the Mexicali Valley described in paragraph (b)(3) of this section)," would be added after the word "Mexico".

e. A new paragraph (b)(3) would be added to read as set forth below.

f. In paragraph (c)(2), the reference "7 CFR 319.37–14(b)" would be removed and the reference "§ 319.37–14(b)" added in its place.

§ 319.59–2 Prohibited articles.

(a) * * *

(2) Afghanistan, Algeria, Armenia, Australia, Azerbaijan, Bangladesh, Belarus, Bulgaria, Chile, China, Cyprus, Egypt, Estonia, Falkland Islands, Georgia, Greece, Guatemala, Hungary, India, Iran, Iraq, Israel, Italy, Japan, Kazakstan, Kyrgyzstan, Latvia, Libya, Lithuania, Moldova, Morocco, Nepal, North Korea, Oman, Pakistan, Portugal, Romania, Russia, Spain, Tajikistan, Tanzania, Tunisia, Turkey, Turkmenistan, South Africa, South Korea, Ukraine, Uzbekistan, and Venezuela.

(b) * * *

(3) The following area of the Mexicali Valley in Mexico has been determined to be free from Karnal Bunt: Those portions of the municipality of Mexicali, in the State of Baja California, and the municipality of San Luis Rio Colorado, in the State of Sonora, that are included in the Distrito de Desarrollo Rural (Rural Development District) 002 Rio Colorado. Except for wheat (*Triticum* spp.) plants, which are prohibited importation under § 319.37–2(a), any articles described in paragraph (b)(1) of this section that are from that designated area may be imported into the United States subject to the following conditions:

(i) The articles are offered for entry at the port of Calexico, CA; and

(ii) The articles offered for entry are made available for examination by an inspector and remain at the port until released, or authorized further movement pending release, by an inspector; and

(iii) The articles are accompanied by a phytosanitary certificate issued by the Mexican national plant protection organization that certifies that the articles are from the area of the Mexicali Valley described in this paragraph and remained within that area prior to and during their movement to the United States.

* * * * *

8. In Subpart—Packing Materials, § 319.69(b)(1) would be revised to read as follows:

§ 319.69 Notice of quarantine.

* * * * *

(b) * * *

(1) Cereal straw, hulls, and chaff (such as oats, barley, and rye) from all countries, except rice straw, hulls, and chaff, which are prohibited importation from all countries by paragraph (a)(1) of this section, and except wheat straw, hulls, and chaff, which are restricted importation by § 319.59 from any country or locality listed in § 319.59–2.

* * * * *

Done in Washington, DC, this 21st day of January 1998.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–1808 Filed 1–26–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1209

[FV–97–705RO]

Mushroom Promotion, Research, and Consumer Information Order; Referendum Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This action gives notice that a referendum will be conducted to determine whether mushroom producers and importers favor continuance of the Mushroom Promotion, Research, and Consumer Information Order (Order). In order to continue, the Order must be approved by a majority of producers and importers voting in the referendum and that majority must represent more than 50 percent of the mushrooms produced and imported by those voting in the referendum. This action announces the voting period, representative period, and agents.

DATES: The referendum will be conducted by mail ballot from February 24 through March 13, 1998. Faxed ballots will be accepted. The representative period for establishing voter eligibility shall be the period from July 1, 1996, through June 30, 1997.

ADDRESSES: Copies of the Mushroom Promotion, Research, and Consumer Information Order may be obtained from: Referendum Agent, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, Room 2535-S, Stop Code 0244, Washington, DC 20090–6456, telephone number (888) 720–9917, fax (202) 205–2800.

FOR FURTHER INFORMATION CONTACT: Stacey L. Bryson, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, Room 2535-S, Stop Code 0244, Washington, DC 20090–6456, telephone (202) 720–6930 or (888) 720–9917.

SUPPLEMENTARY INFORMATION: A referendum will be conducted among mushroom producers and importers to determine whether the continuance of the Mushroom Promotion, Research, and Consumer Information Order (Order) [7 CFR 1209] is favored by persons voting in the referendum. The Order is authorized under the Mushroom Promotion, Research, and Consumer Information Act (Act) [7 U.S.C. 6101–6112].

The representative period for establishing voter eligibility for the referendum shall be the period from July 1, 1996, through June 30, 1997. Paragraph (b)(2) of § 1926 of the Act requires that the Order be approved by a majority of producers and importers voting in the referendum which majority, on average, annually produces and imports into the United States more than 50 percent of mushrooms annually produced and imported by all those persons voting in the referendum. Only mushroom producers and importers who either produced or imported, on average, over 500,000 pounds of mushrooms annually during the representative period will be eligible to vote in the referendum. Persons who have received an exemption from assessment for the entire representative period are ineligible to vote. The referendum shall be conducted by mail ballot from February 24 through March 13, 1998. Faxed ballots will be accepted.

Section 1926 of the Act provides that the Secretary of Agriculture (Secretary) shall conduct a referendum effective 5 years after the date on which the Order became effective. The Order became effective on January 8, 1993. The referendum must be conducted among mushroom producers and importers to ascertain whether they favor continuation, termination, or suspension of the Order. Persons voting in the referendum will certify their eligibility to vote and will designate their status either as a mushroom producer or importer. Producers and importers will be required to certify the pounds of mushrooms they either produced or imported during the representative period.

The Order shall continue in effect if it is approved by a simple majority of producers and importers voting in the referendum and that majority represents more than 50 percent of the mushrooms produced and imported by those voting in the referendum. If the Secretary determines that suspension or termination of the Order is favored by a majority of the producers and importers voting in the referendum, which majority, on average, annually produces and imports into the United States more than 50 percent of the mushrooms annually produced and imported by all those voting in the referendum, the Secretary shall terminate or suspend the collection of assessments under the Order and suspend or terminate activities under the Order as soon as practicable.

In accordance with the Paperwork Reduction Act of 1995 [Pub. L. 104–13], the referendum ballot has been approved by the Office of Management and Budget (OMB) and has been assigned OMB number 0581–0093. There are approximately 138 eligible voters. It will take an average of 15 minutes for each voter to read the voting instructions and complete the referendum ballot. The total burden on the total number of voters will be 34.5 hours.

Referendum Order

It is hereby directed that a referendum be conducted among mushroom producers and importers to determine whether they favor the continuance of the Order. The representative period for establishing voter eligibility for the referendum shall be the period from July 1, 1996, through June 30, 1997. A referendum shall be conducted by mail ballot from February 24 through March 13, 1998. Faxed ballots will be accepted.

By interim final rule, referendum procedures were published in the **Federal Register** on December 23, 1997 [62 FR 66973]. Comments concerning the provisions of the rule must be received by January 22, 1998. The Procedure for the Conduct of Referenda in Connection with the Mushroom Promotion, Research, and Consumer Information Order [7 CFR 1209.300–1209.307] shall be used to conduct the referendum. Ballots will be mailed to all known mushroom producers and importers on or before February 17, 1998. Eligible voters who do not receive a ballot by mail may call the following toll-free telephone number to receive a ballot: 1 (888) 720–9917. All ballots will be subject to verification. Ballots must be received by the referendum agents by mail or fax no later than March 13, 1998, to be counted.

Stacey L. Bryson and Martha B. Ransom, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2535–S, Stop Code 0244, P.O. Box 96456, Washington, D.C. 20090–6456, are designated as the referendum agents of the Secretary of Agriculture to conduct the referendum.

Ballots to be cast in the referendum, and any related material relevant to the referendum, will be mailed by the referendum agents to all known mushroom producers and importers. Only mushroom producers and importers who either produced or imported, on average, over 500,000 pounds of mushrooms annually during the representative period will be eligible to vote in the referendum. Persons who have received an exemption from assessment for the entire representative period are ineligible to vote.

List of Subjects in 7 CFR Part 1209

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Mushrooms, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 6101–6112.

Dated: January 21, 1998.

Enrique E. Figueroa,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 98–1908 Filed 1–26–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 71

[Docket No. 97–099–1]

EIA; Handling Reactors at Livestock Markets

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations pertaining to livestock facilities under State or Federal veterinary supervision to require that any livestock facility accepting equines classified as reactors to equine infectious anemia must quarantine these animals at all times at least 200 yards from all equines that are not reactors to this disease. Currently, livestock facilities accepting reactors to equine infectious anemia are required to quarantine the reactors that will remain at the facility for longer than 24 hours at least 200 yards away from all other animals. This proposed amendment would help to prevent the interstate spread of equine infectious anemia, a contagious, vector-borne disease affecting equines.

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DATES: Consideration will be given only to comments received on or before March 30, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–099–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–099–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. James P. Davis, Senior Staff Veterinarian, National Animal Health Programs Staff, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1231, (301) 734–5970; or E-mail: jdavis@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in subchapter C, "Interstate Transportation of Animals (Including Poultry) and Animal Products," of chapter I, title 9, of the Code of Federal Regulations contain provisions designed by the Animal and Plant Health Inspection Service (APHIS) to prevent the dissemination of animal diseases in the United States. Part 71 of subchapter C includes general provisions. Section 71.20 pertains to APHIS approval of livestock facilities, which include stockyards, livestock markets, buying stations, concentration points, or any other premises under State or Federal veterinary supervision where livestock are assembled. Section 71.20(a) includes an agreement that livestock facilities must execute to obtain APHIS approval, and subparagraph (16) of the agreement pertains to livestock facilities that accept horses. (According to the definitions in § 71.1, "horses" includes "horses, asses, mules, ponies, and zebras." Throughout this document, the same definition applies.) According to § 71.20(a)(16), approved livestock facilities may elect either to accept or not accept horses that are reactors to equine infectious anemia (EIA).

EIA is a contagious, potentially fatal disease affecting horses that is spread by infected blood coming into contact with the blood in a healthy animal. Therefore, humans can spread EIA from horse to horse through unsafe vaccination or blood-testing practices; naturally, the disease is spread by insect vectors. Although, theoretically, EIA could be spread by any type of blood-consuming insect, such as mosquitoes and deer flies, the disease is generally spread by large horse flies. EIA spreads when a blood-consuming insect is interrupted during a feeding on an infected animal and then resumes feeding on an uninfected animal while the infected blood is still on the insect's mouthparts. While mosquitoes have finely structured mouthparts that directly penetrate small blood vessels, the mouthparts of horse flies and deer flies include scissorlike blades that cut and slash the horse's skin leaving relatively large amounts of blood on the mouthparts. Research has shown that deer flies and smaller species of horse flies are not as easily disrupted from their bloodmeals on horses as are large horse flies. The large flies cause painful bites that trigger a physiological response from the horse. If disrupted by the horse while feeding, the horse fly may then move to another horse to complete the bloodmeal.[1]

Regulations pertaining to the interstate movement of animals affected with EIA are located in 9 CFR part 75. According to these regulations, EIA reactors may be moved interstate only for immediate slaughter, to a diagnostic or research facility, to the animal's home farm, or to an approved stockyard for sale for immediate slaughter. Approximately 1,600 horses in the United States test positive for EIA each year. Currently, 40 percent of these animals move through livestock markets on their way to slaughter.

Section 71.20(a)(16)(ii) currently specifies that approved livestock facilities must place any EIA reactor in a quarantined pen at least 200 yards from all non-EIA-reactor horses and other animals, unless the EIA reactor will be moving out of the facility within 24 hours of arrival. The purpose of quarantining the EIA reactors is to prevent EIA transmission: Because the types of flies that transmit EIA generally remain in the immediate vicinity of the horses with which they are associated, quarantining EIA reactors at least 200 yards away from healthy horses is effective in preventing EIA spread. However, as described above, the regulations currently allow an EIA reactor to be mixed in with healthy horses if the EIA reactor will be at the livestock facility for less than 24 hours. While in the past such short-term mixing of healthy and infected horses was not believed to contribute significantly to EIA spread, we now believe that allowing healthy horses to come into close contact with EIA reactors for any length of time could allow for infection of the healthy horses. Therefore, to help prevent the interstate spread of EIA, we are proposing to prohibit the mixing of healthy and infected horses at approved livestock facilities for any period of time. Thus, we are proposing to amend the quarantine requirement in § 71.20(a)(16)(ii) to remove the quarantine exception for EIA reactors that will be in the approved livestock facility for less than 24 hours. EIA reactors would need to be quarantined at least 200 yards away from non-EIA-reactor horses at all times.

Currently, § 71.20(a)(16)(ii) also requires that EIA reactors be quarantined at least 200 yards away from all other animals in the approved livestock facility. This requirement exists because it was formerly believed that insect vectors could spread EIA to healthy horses as far as 200 yards away from reactors if other animals were located between the reactors and the healthy horses. We previously believed that a fly could move from a reactor to feed on a nonequine animal or animals located nearby and then move on to a healthy horse, infecting it. However, as stated previously, we now know that EIA transmission by insect vector occurs only when an insect is feeding on an infected horse, is interrupted during the feeding, and then moves on to feed on a healthy horse while the infected blood is still on the insect's mouthparts. Horse flies are not known to feed on nonequine animals when horses are available because these flies prefer the relatively supple skin of horses. Moreover, the likelihood that blood from an infected horse would still be on the insect's mouthparts after the insect had fed on another animal is slight. For these reasons, we now believe that the possibility of disease transmission occurring under these circumstances is extremely unlikely. We are proposing to amend § 71.20(a)(16)(ii) to remove the words "or other animals." We believe that, in the interest of preventing EIA spread, it is only necessary to require EIA reactors to be quarantined at least 200 yards away from all equines that are not reactors.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The regulations in 9 CFR part 71 require that any horses classified as EIA reactors and accepted by a facility for sale are to be placed in quarantined pens at least 200 yards from all non-EIA-reactor horses or other animals, unless moving out of the facility within 24 hours of arrival. The proposed rule would remove the "less-than-24-hours" exemption: Quarantine would be required regardless of the length of time between an EIA reactor's arrival and departure from a facility. The proposed rule would also amend the regulations by requiring that EIA reactors be quarantined at least 200 yards away from all equines that are not reactors, rather than at least 200 yards away from all other animals.

Facilities that buy and sell horses are included in the Small Business Administration's SIC (Standard Industrial Classification) category "Livestock Services, Except Veterinary." Firms in this category with annual receipts of less than $5 million are considered small entities. It is likely that most, if not all, of the approximately 200 facilities that buy and sell horses are "small" under this definition.

Most facilities that buy and sell horses already have quarantine pens, in accordance with current regulations. The estimated 20 percent that do not have quarantine pens could build or modify existing pens for quarantine use at a relatively minor cost: APHIS estimates that, at most, construction of a quarantine pen would cost about $1,000.

However, costs of quarantine pen construction are not attributable to this proposed rule because quarantine, per se, is not a new requirement. Only those facilities that accept EIA reactors and that always move all EIA reactors within 24 hours of arrival would need to construct or modify pens for quarantine purposes as a consequence of this proposed rule. As no facility can always be certain of movement of EIA reactors within 24 hours, no costs should be incurred strictly because of this proposed rule. Moreover, by requiring all EIA reactors at approved livestock facilities to be quarantined, the horse industry in general would benefit from a further reduction in the risk of EIA transmission.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 9 CFR Part 71

Animal diseases, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 71 is proposed to be amended as follows:

PART 71—GENERAL PROVISIONS

1. The authority citation for part 71 would continue to read as follows:

Authority: 21 U.S.C. 111–113, 114a, 114a–1, 115–117, 120–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

§ 71.20 [AMENDED]

2. In § 71.20, paragraph (a) would be amended in paragraph (16)(ii) of the sample agreement by removing the words "or other animals, unless moving out of the facility within 24 hours of arrival".

Done in Washington, DC, this 20th day of January 1998.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–1778 Filed 1–26–98; 8:45 am]

BILLING CODE 3410–34–P

[1] Information regarding research on EIA transmission may be obtained by contacting Dr. Tim Cordes, Senior Staff Veterinarian, Equine Programs, VS, APHIS, USDA, 4700 River Road Unit 36, Riverdale, MD 20737–1231; (301) 734–3279; or e-mail: tcordes@aphis.usda.gov.

FEDERAL ELECTION COMMISSION

11 CFR Part 114

[Notice 1998–3]

Definition of "Member" of a Membership Association

AGENCY: Federal Election Commission.

ACTION: Notice of Proposed Rulemaking; technical correction.

SUMMARY: On December 22, 1997, the Commission published a Notice of Proposed Rulemaking ("NPRM") setting out proposed revisions to its rules defining who qualifies as a "member" of a membership association. The term is defined twice in the Commission's rules, and the definitions are identical. The NPRM sought comment on three alternative definitions, but inadvertently omitted one portion of one alternative from one of the parallel definitions. This technical revision to the NPRM corrects that oversight.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street, N.W., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On December 22, 1997, the Commission published a Notice of Proposed Rulemaking seeking comment on three alternative revisions (Alternatives A, B and C) to its rules defining who qualifies as a "member" of a membership association. 62 FR 66832. Each Alternative describes a range of financial and organizational attachments that would be sufficient to confer membership status.

A membership association can solicit contributions from its members to a separate segregated fund established by the association, and can include express electoral advocacy in communications to its members. 2 U.S.C. 441b(b)(2)(A), 441b(b)(4)(C). The Commission's rules for both activities are identical. Those governing solicitations are found at 11 CFR 114.1(e), and those governing communications are found at 11 CFR 100.8(b)(4)(iv).

In keeping with the statutory and regulatory scheme, the Commission intended that all three alternatives would apply to both 11 CFR 100.8(b)(4)(iv) and 114.1(e). However, the NPRM as published inadvertently omitted Alternative C for paragraph 114.1(e)(2)(ii), although it included it for parallel paragraph 100.8(b)(4)(iv)(B)(2). *See* 62 FR 66837, 66838 (Dec. 22, 1997). Under Alternative C, a person would be considered a "member" of a

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membership association if the person was required to pay on a regular basis a specific amount of annual dues that are predetermined by the association.

Accordingly, the Commission is publishing this technical correction to the NPRM.

§ 114.1 [Corrected]

On page 66838 of the December 22, 1997 **Federal Register**, at the bottom of the first column, following proposed *Alternative* B for paragraphs (e)(2)(ii)–(iv), insert the following:

Alternative C for paragraph (e)(2)(ii).

(2) Are required to pay on a regular basis a specific amount of annual dues that are predetermined by the association.

Dated: January 22, 1998.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 98–1690 Filed 1–26–98; 8:45 am]

BILLING CODE 6715–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–99–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–31 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–31 series airplanes.

This proposal would require a one-time visual inspection to determine if all corners of the forward service door doorjamb have been modified previously, various follow-on repetitive inspections, and modification, if necessary. This proposal is prompted by reports of fatigue cracks found in the fuselage skin and doubler at the corners of the forward service door doorjamb. The actions specified by the proposed AD are intended to detect and correct such fatigue cracking, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

DATES: Comments must be received by March 13, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–99–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1-L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–99–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–99–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of fatigue cracks in the fuselage skin and doubler at the corners of the forward service door doorjamb on Model DC–9–31 series airplanes. These cracks were discovered during inspections conducted as part of the Supplemental Structural Inspection Document (SSID) program, required by AD 96–13–03, amendment 39–9671 (61 FR 31009, June 19, 1996). Investigation revealed that such cracking was caused by fatigue-related stress. Fatigue cracking in the fuselage skin or doubler at the corners of the forward service door doorjamb, if not detected and corrected in a timely manner, could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997. The service bulletin describes the following procedures:

1. Performing a one-time visual inspection to determine if the corners of the forward service door doorjamb have been modified;

2. For airplanes on which the modification specified in Service Bulletin DC9–53–288 has not been accomplished: Performing a low frequency eddy current (LFEC) or x-ray inspection to detect cracks of the fuselage skin and doubler at all corners of the forward service door doorjamb;

3. Conducting repetitive inspections, or modifying the corner skin of the doorjamb of the forward service door and performing follow-on action high frequency eddy current (HFEC) inspections, if no cracking is detected;

4. Performing repetitive HFEC inspections to detect cracks on the skin adjacent to any corner that has been modified; and

5. Modifying any crack that is found to be 2 inches or less in length at all corners that have not been modified and performing follow-on repetitive HFEC inspections.

Accomplishment of the modification will minimize the possibility of cracks in the fuselage skin and doubler.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time visual inspection to determine if all corners of the forward service door doorjamb have been modified previously, various follow-on repetitive inspections, and modification, if necessary. The one-time visual inspection, follow-on repetitive inspections, and modification would be required to be accomplished in accordance with the service bulletin described previously.

Differences Between the Proposed Rule and the Relevant Service Information

Operators should note that, although the service bulletin specifies that the manufacturer must be contacted for disposition of certain conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 64 McDonnell Douglas Model DC–9–31 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 51 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed one-time visual inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the one-time visual inspection of the proposed AD on U.S. operators is estimated to be $3,060, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator be required to accomplish the LFEC or x-ray inspection, it would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of any necessary LFEC or x-ray inspection is estimated to be $60 per airplane, per inspection cycle.

Should an operator be required to accomplish the HFEC inspection, it would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of any necessary HFEC inspection is estimated to be $60 per airplane, per inspection cycle.

Should an operator be required to accomplish the modification, it would take approximately 30 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $4,800 per airplane. Based on these figures, the cost impact of any necessary modification is estimated to be $6,600 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 97–NM–99–AD. *Applicability:* Model DC–9–31 series airplanes, as listed in McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the fuselage skin or doubler at the corners of the forward service door doorjamb, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

Note 2: Where there are differences between the service bulletin and the AD, the AD prevails.

Note 3: The words "repair" and "modify/modification" in this AD and the referenced service bulletin are used interchangeably.

Note 4: This AD will affect Principal Structural Element (PSE) 53.09.033 of the DC–9 Supplemental Inspection Document (SID).

(a) Prior to the accumulation of 50,000 total landings, or within 3,225 landings after the effective date of this AD, whichever occurs later, perform a one-time visual inspection to determine if the corners of the forward service door doorjamb have been modified. Perform the inspection in accordance with McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997.

(b) For airplanes identified as Group 1 in McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997: If the visual inspection required by paragraph (a) of this AD reveals that the corners of the forward service door doorjamb *have not been modified,* prior to further flight, perform a low frequency eddy current (LFEC) or x-ray inspection to detect cracks of the fuselage skin and doubler at all corners of the forward service door doorjamb, in accordance with McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997.

(1) Group 1, Condition 1. If no crack is detected during any LFEC or x-ray inspection required by paragraph (b) of this AD, accomplish the requirements of either paragraph (b)(1)(i) or (b)(1)(ii) of this AD, in accordance with the service bulletin.

(i) *Option 1.* Repeat the LFEC inspection required by this paragraph thereafter at intervals not to exceed 3,225 landings, or the x-ray inspection required by this paragraph thereafter at intervals not to exceed 3,075 landings; or

(ii) *Option 2.* Prior to further flight, modify the corner skin of the forward service door

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doorjamb in accordance with the service bulletin. Prior to the accumulation of 28,000 landings after accomplishment of the modification, perform a high frequency eddy current (HFEC) inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(A) If no crack is detected on the skin adjacent to the modification during the HFEC required by this paragraph, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(B) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) Group 1, Condition 2. If any crack is found during any LFEC or x-ray inspection required by paragraph (b) of this AD, and the crack is 2 inches or less in length: Prior to further flight, modify/repair the corners of the doorjamb of the forward service door in accordance with the service bulletin. Prior to the accumulation of 28,000 landings after accomplishment of the modification, perform a HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected during the HFEC inspection required by this paragraph, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(ii) If any crack is detected during any HFEC inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(3) Group 1, Condition 3. If any crack is found during any LFEC or x-ray inspection required by paragraph (b) of this AD, and the crack is greater than 2 inches in length: Prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(c) Group 2, Condition 1. For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997: If the visual inspection required by paragraph (a) of this AD reveals that the corners of the forward service door doorjamb *have been modified* previously in accordance with the McDonnell Douglas DC–9 Structural Repair Manual, using a steel doubler, accomplish either paragraph (c)(1) or (c)(2) of this AD in accordance with McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997.

(1) *Option 1.* Prior to the accumulation of 6,000 landings after accomplishment of that modification, or within 3,225 landings after the effective date of this AD, whichever occurs later, perform an HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected during the HFEC inspection required by paragraph (c)(1) of this AD, repeat the HFEC inspection thereafter at intervals not to exceed 3,000 landings.

(ii) If any crack is detected during any HFEC inspection required by paragraph (c)(1) of this AD, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(2) *Option 2.* Prior to further flight, modify the corner skin of the forward service door doorjamb in accordance with the service bulletin. Prior to the accumulation of 28,000 landings after accomplishment of the modification, perform an HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected on the skin adjacent to the modification during the HFEC required by this paragraph, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(ii) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(d) Group 2, Condition 2. For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997: If the visual inspection required by paragraph (a) of this AD reveals that the corners of the forward service door doorjamb *have been modified* previously in accordance with McDonnell Douglas DC–9 Structural Repair Manual, using an aluminum doubler, prior to the accumulation of 28,000 landings after accomplishment of that modification, or within 3,225 landings after the effective date of this AD, whichever occurs later, perform an HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997.

(1) If no crack is detected on the skin adjacent to the modification during the HFEC required by this paragraph, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(2) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(e) Group 2, Condition 3. For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997: If the visual inspection required by paragraph (a) of this AD reveals that the corners of the forward service door doorjamb *have been modified* previously, but not in accordance with McDonnell Douglas Structural Repair Manual, prior to further flight, repair the corners in accordance with a method approved by the Manager, Los Angeles ACO.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 20, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–1858 Filed 1–26–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–45]

Proposed Amendment to Class E Airspace; Blacksburg, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Blacksburg, VA. The development of a new Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Virginia Tech Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before February 26, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 97–AEA–45, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AEA–45." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR Part 71 to amend the Class E airspace area at Blacksburg, VA. A GPS RWY 12 SIAP has been developed for the Virginia Tech Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommdate the SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9E, dated Spetember 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporated by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporated by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Powers, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA VA E5 Blacksburg, VA [Revised]

Virginia Tech Airport, Blacksburg, VA
(Lat. 37°12'28"N., long 80°24'29"W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Virginia Tech Airport and within 4 miles each side of the 297° bearing from the airport extending from the 10-mile radius to 17 miles northwest of the airport, excluding the portions that coincide with the Roanoke, VA, and Dublin, VA, Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on December 9, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–1925 Filed 1–26–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–46]

Proposed Amendment to Class E Airspace; Danville, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Danville, VA. The amendment of the Instrument Landing System (ILS) and the Very High Frequency Omnidirectional Range (VOR) Standard Instrument Approach Procedures (SIAP) at Danville Regional Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AG) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before February 26, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 97–AEA–46, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace

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Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430; telephone (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AEA–46." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR Part 71 to amend the Class E airspace area at Danville, VA. The ILS RWY 2 SIAP and the VOR RWY 20 SIAP for Danville Regional Airport have been amended. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the amended SIAPs and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA VA E5 Danville, VA [Revised]

Danville Regional Airport, Danville, VA
(Lat. 36°34'24"N., long. 79°20'07"W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Danville Regional Airport.

* * * * *

Issued in Jamaica, New York, on December 9, 1997

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–1926 Filed 1–26–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–47]

Proposed Revocation of Class E Airspace; Pennington Gap, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to remove the Class E airspace area at Lee County Airport, Pennington Gap, VA. The Nondirectional Radio Beacon (NDB) or Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) was canceled on September 11, 1997. This was the only SIAP to Lee County, Airport. Consequently, the need for Class E airspace no longer exists for Instrument Flight Rules (IFR) operations at the airport. Adoption of this proposal would result in the affected area reverting to Class G airspace.

DATES: Comments must be received on or before February 26, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 97–AEA–47, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordon, Jr., Airspace Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AEA–47." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA proposes to amend 14 CFR part 71 to remove the Class E airspace extending upward from 700 feet above the surface at Lee County Airport, Pennington Gap, VA. The NDB or GPS A SIAP has been canceled, negating the need for airspace to accommodate IFR operations. The area will be removed from appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be removed subsequently from the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA VA E5 Pennington Gap, VA [Removed]

* * * * *

Issued in Jamaica, New York, on December 29, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–1927 Filed 1–26–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–48]

Proposed Amendment to Class E Airspace; Galax, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Galax, VA. The development of a new Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Twin County Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before February 26, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 97–AEA–48, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone (718) 553–4521.

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SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AEA–48." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to amend the Class E airspace area at Galax, VA. A GPS RWY 18 SIAP has been developed for the Twin County Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designation and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA VA E5 Galax, VA [Revised]

Twin County Airport, VA
(lat. 36°45′58″N., long. 80°49′25″W.)

That airspace extending upward from 700 feet above the surface within a 13-mile radius of Twin County Airport, excluding the portion that coincides with the Stuart, VA, Dublin, VA, and Marion, VA, Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on December 29, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–1928 Filed 1–26–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–49]

Proposed Amendment to Class E Airspace; Wilmington, DE

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Wilmington, DE. The development of a new Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at New Castle County Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before February 26, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 97–AEA–49, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, New York 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AEA–49." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to amend the Class E airspace area at Wilmington, DE. A GPS RWY 9 SIAP has been developed for the New Castle County Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA DE E5 Wilmington, DE [Revised]

New Castle County Airport, DE
(lat. 39°40′43″N., long. 75°36′24″W.)
Summit Airpark, DE
(lat. 39°31′13″N., long. 75°43′14″W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of New Castle County Airport and within 4 miles each side of the 258° bearing from the airport extending from the 6.7-mile radius to 10 miles west of the airport and within a 6.6-mile radius of Summit Airpark and within 2.2 miles each side of a line bearing 345° from a point a lat. 39°23′36″N., long. 75°40′35″W., extending from said point to the 6.6-mile radius of Summit Airpark, excluding the portion that coincides with the Toughkenamon, PA, Class E airspace area.

* * * * *

Issued in Jamaica, New York, on December 29, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–1929 Filed 1–26–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–50]

Proposed Amendment to Class E Airspace; Andover, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Andover, NJ. The development of a new Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Aeroflex-Andover Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before February 26, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 97–AEA–50, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

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FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AEA–50." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to amend the Class E airspace area at Andover, NJ. A GPS RWY 3 SIAP has been developed for the Aeroflex-Andover Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NJ E5 Andover, NJ [Revised]

Aeroflex-Andover Airport, NJ
(lat. 41°00'31"N., long. 74°44'17"W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Aeroflex-Andover Airport, excluding the portion that coincides with the Sussex, NJ, Blairstown, NJ, and New York, NY, Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on December 29, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–1930 Filed 1–26–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Parts 721 and 722

Removal of Rules on Standards of Conduct and Reporting Procedures on Defense Related Employment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule; removal.

SUMMARY: The Department of the Navy (DON) is removing rules for employee standards of conduct and reporting procedures for defense-related employment (32 CFR Parts 721 and 722). Both rules have been superseded, and in that they no longer have any effect, are removed immediately. Providing for a comment period before final action in this case would be unnecessary, impracticable, and contrary to public interest. However, DON will accept and consider comments from interested persons in evaluating the effect of this action.

DATES: *Effective Date of Removal:* January 27, 1998.

Comment date: Comments on this removal action should be submitted in writing to the address shown below on or before March 30, 1998.

ADDRESSES: Interested parties should submit written comments to Department of the Navy, Office of the Judge Advocate General, Administrative Law Division (Code 13), 200 Stovall Street, Alexandria, Virginia, 22332–2400.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Mike Quinn, (703) 604–8200.

SUPPLEMENTARY INFORMATION:

A. Background

On April 12, 1989, President Bush issued Executive Order (E.O.) 12674, "Principles of Ethical Conduct for Government Officers and Employees." Section 201(a) of E.O. 12674 made the Office of Government Ethics (OGE) responsible for promulgating "a single, comprehensive, and clear set of executive-branch standards of conduct that shall be objective, reasonable, and enforceable."

The OGE issued uniform standards of ethical conduct for all employees of the executive branch, codified at 5 CFR Part 2635, on August 7, 1992 (57 FR 35006). These regulations became effective on February 3, 1993.

Section 301(a) of E.O. 12674 allows agency heads to supplement, where necessary and appropriate, the OGE standards of conduct. The Secretary of Defense, in consultation and conjunction with the OGE, issued supplemental ethical rules applicable to all Department of Defense (DOD) Components in August 1993. These supplemental rules, codified in 32 CFR Parts 83 and 84, state that the DOD "shall have a single source of standards of ethical conduct and ethics guidance, including direction in the areas of financial and employment disclosure systems, post-employment rules, enforcement, and training." See, 32 CFR 83.4(a) and 84.1(a).

With promulgation of the OGE regulations and the DOD "Joint Ethics Regulation," the DON's standards of conduct contained in 32 CFR part 721 have been completely superseded. The Secretary of the Navy formally cancelled the DON's standards of conduct instruction on April 11, 1997. For these reasons, the Navy is now removing and reserving 32 CFR part 721.

Similarly, the rule contained in 32 CFR part 722 no longer has any meaning or effect. Part 722 contains requirements and procedures for the filing of form DD 1787 by certain present, former or retired DON personnel in reporting employment with DOD prime contractors. Authority for this rule was formerly found in 10 U.S.C. 2397. The National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104–106, Sec. 4304) repealed this statutory provision. The reporting requirement that this Part implements no longer exists.

B. Determination to Remove Without Prior Public Comment

This removal action is being issued as a final rule, without a public comment period, as an exception to the DON's standard practice of soliciting comments during the rulemaking process. Providing a period of public comment in this case would be unnecessary, impracticable, and contrary to the public interest. This determination is based on several factors. First, removal of these Parts is entirely administrative and corrective in nature, not requiring the exercise of agency discretion. Second, this action has already been substantially delayed, and further delay is unwarranted. Finally, to allow these Parts to remain in the Code of Federal Regulations any longer may mislead and confuse the public and past or present DON employees regarding applicable ethics rules and post-government employment reporting requirements.

C. Matters of Regulatory Procedure

Executive Order 12866, Regulatory Planning and Review

Removal of these Parts does not meet the definition of "significant regulatory action" for purposes of E.O. 12866.

Regulatory Flexibility Act

Removal of these Parts will not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Paperwork Reduction Act

Removal of these rules will not impose collection of information requirements for purposes of the Paperwork Reduction Act (44 U.S.C. chapter 35, 5 CFR Part 1320).

List of Subjects

32 CFR Part 721

Conflict of interests, Government employees, Military personnel, Reporting and recordkeeping requirements.

32 CFR Part 722

Conflict of interests, Government contracts, Government employees, Military personnel, Reporting and recordkeeping requirements.

PARTS 721 AND 722—[REMOVED AND RESERVED]

Under the authority of Sec. 4304, Public Law 104–106, 110 Stat. 186, and E.O. 12674, and for the reasons set forth in the preamble, remove and reserve parts 721 and 722 of title 32 of the Code of Federal Regulations.

Dated: January 13, 1998.

Michael I. Quinn,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–1922 Filed 1–26–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 154 and 155

[USCG–98–3350]

Review of Cap Increases; Response Plans for Marine Transportation-related (MTR) Facilities and Tank Vessels

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: Current Coast Guard response plan regulations for MTR facilities and tank vessels contain requirements for on-water oil removal capacity (referred to as caps) that plan-holders transporting or transferring groups I through IV petroleum oil are required to meet in planning for a worst case discharge. The original caps were set in 1993 and were scheduled to increase by 25% on February 18, 1998, provided the Coast Guard completed a review of the cap increases and determined the cap increases were practicable. The Coast Guard's review of the cap increases is on-going. Therefore, the Coast Guard will not implement the cap increases as originally scheduled, and the 1993 caps will remain in effect pending the results of the review. The Coast Guard requests comments on the practicability of the cap increases.

DATES: Comments must be received on or before April 27, 1998.

ADDRESSES: You may mail comments to the Docket Management Facility, [USCG–98–3350], U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this request for information. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the above address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access the public docket on the internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: LCDR John Caplis, Project Manager, Office of Response (G–MOR), at 202–267–6922; e-mail:

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jcaplis@comdt.uscg.mil. Note: Comments to the docket may only be accepted by mail to the address under **ADDRESSES.** This telephone is equipped to record messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION:

Regulatory History

The regulatory history for these regulations are recounted in the preambles of the final rules entitled "Vessel Response Plans" (61 FR 1052, January 12, 1996) and "Response Plans for Marine Transportation-Related Facilities" (61 FR 7890, February 29, 1996).

Background and Purpose

One important goal of the Oil Pollution Act of 1990 (OPA 90) is to increase the overall oil spill response capability in the United States. To achieve this goal, minimum on-water oil removal capacities were developed through two rulemakings and public meetings, including Negotiated Rulemaking Committee meetings. As a result, 33 CFR 154.1045(m) and 33 CFR 155.1050(o) set out caps which an owner or operator must ensure available, through contract or other approved means, in planning for a worst case discharge. These caps were established taking into account 1993 technology and availability of response resources.

In 1993, the Coast Guard set the caps at the present levels based on the following reasons. First, in many geographic areas of the U.S., on-water recovery capability and containment and protection resources simply did not exist for responding to a large spill—especially from a very large or ultra large crude carrier. Second, the Coast Guard believed Congress intended to encourage the development and enlargement of the response community, but not to cause significant, adverse economic impacts. To support this, the Coast Guard set a nationwide criteria as opposed to geographic-specific criteria as an incentive to improve the overall response capability in the United States. Third, the caps acknowledged a reasonable and practical limit to the amount of 1993 technology resources that could be constructively used during the first stages of a spill response. Lastly, the Coast Guard intended that the caps would ensure a baseline recovery capability, and would not limit the resources brought to bear during an actual oil discharge. Owners or operators were and still are expected to activate the response resources necessary for the particular circumstances of any spill, regardless of what has been contracted for the advance.

The 1998 cap, a 25% increase from the 1993 levels, was proposed as a planning target for increasing response capabilities. This increase was discussed by the Vessel Response Plan Negotiated Rulemaking Committee as an incentive to expand response capabilities within the United States to an obtainable and desirable level by 1998. The Coast Guard concurred with the recommendation from the Committee to evaluate the proposed cap increase before the increase would be implemented to determine if it remains practicable.

The Coast Guard believes that in certain geographic areas existing response capabilities already exceed the 1998 proposed cap. Several states have enacted state requirements that meet or exceed the 1998 caps. However, the Coast Guard understands that in other regions plan-holders may have great difficulty in meeting the 1998 increase. Additionally, the Coast Guard believes, since 1993, significant advances have occurred in the use and availability of high rate response techniques and technology within the United States. The Coast Guard intends to take into account these factors when reassessing the 1998 cap.

Reason for Equipment Caps Review

In accordance with the regulations 33 CFR 154.1045(n) and 33 CFR 155.1050(p), the Coast Guard is required to conduct a review of the 25% cap increase. During the review, which is ongoing, the Coast Guard will determine if the increase is practicable; if not, the Coast Guard will propose an alternative cap which may be higher or lower. The review is to include, but not be limited to, the following topics:

a. Increases in skimming efficiencies and improvements in design technologies;

b. Advances in oil tracking technology;

c. Improvements in high rate response techniques;

d. Other applicable technologies;

e. Increases in the availability of private response resources.

The regulations also state that the scheduled cap increase would occur on February 18, 1998, unless the review is not completed by the Coast Guard. The Coast Guard can not complete the review by February 18, 1998, and will not implement the cap increase as scheduled. Any changes or additional requirements will occur through the public notice and comment process and will not become effective until 90 days after publication of a **Federal Register** notice reporting the results of the review.

Request for Comments

The Coast Guard encourages interested persons to submit specific comments with regard to the requirements of 33 CFR 154.1045(m) and 33 CFR 155.1050(o). The Coast Guard is seeking comments to determine if the proposed increase to the cap remains practicable. Responses to the following questions regarding the proposed cap increase will be helpful in determining the practicality of these requirements:

(1) Is a 25% cap increase practicable? Nationally? Regionally?

(2) Have there been advances or improvements in the efficiency of mechanical recovery designs that should be considered in determining a new cap?

(3) Have there been improvements in oil tracking technologies that should be considered in determining a new cap?

(4) Have there been improvements in high rate response technologies such as dispersants, in situ burning, etc., that should be considered in determining a new cap?

(5) Have there been large increases in the availability of private resources within specific regions of the country?

Persons submitting comments should include their name and address, identify this request for information (USCG 98–XXX), and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing, to the DOT Docket Management Facility at the address under **ADDRESSES.** If you want acknowledgment of receipt of your comments, enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period, and may propose a new cap based on the comments.

Dated: January 21, 1998.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–1887 Filed 1–26–98; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–5954–7]

RIN 2060–AE30

Opportunity to Comment on EPA's Analysis of Air Drilling as it Relates to EPA's Proposed Rule: "40 CFR Part 194, Criteria for the Certification and Re-certification of the Waste Isolation Pilot Plant's (WIPP) Compliance with the 40 CFR Part 191 Disposal Regulations: Certification Decision"

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of EPA's analysis of the practice of air drilling during petroleum exploration and its impact on the ability of the Waste Isolation Pilot Plant to contain radioactive waste within federal environmental and public health limits. EPA's analysis of air drilling is now available for review in the public dockets listed in **ADDRESSES**.

DATES: EPA is requesting public comment on EPA's review of air drilling. Comments must be received by EPA's official docket on or before February 27, 1998.

ADDRESSES: EPA's official docket for all rulemaking activities under the Waste Isolation Pilot Plant Land Withdrawal Act, as amended, is located in Washington, DC, in the Air Docket, Room M1500, Mailcode 6102, U.S. EPA, 401 M Street, SW, Washington, DC 20460. Information on EPA's radioactive waste disposal standards (40 CFR part 191), the compliance criteria (40 CFR part 194), and EPA's proposed decision to certify WIPP is filed in the official EPA Air Docket, Dockets No. R–89–01, A–92–56, and A–93–02, respectively, and is available for review at the following three EPA WIPP docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Mon–Thu, 10–9, Fri–Sat, 10–6, and Sun 1–5; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: Mon–Thu, 8–9, Fri, 8–5, Sat–Sun, 1–5; and in Santa Fe at the Fogelson Library, College of Santa Fe, Hours: Mon–Thu, 8–12 Midnight, Fri, 8–5, Sat, 9–5, and Sun, 1–9.

Note: The dockets in New Mexico contain only major items from the official Air docket in Washington, DC, plus all those documents added to the official docket since the October 1992 enactment of the WIPP Land Withdrawal Act, Pub. L. No. 102–579 (LWA). As provided in EPA's regulations at 40 CFR Part 2, and in accordance with normal Air docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Tom Peake, Office of Radiation and Indoor Air, (202) 564–9310 or call EPA's 24-hour toll-free WIPP Information Line, 1–800–331–WIPP.

SUPPLEMENTARY INFORMATION:

Background

The Department of Energy (DOE) is developing the Waste Isolation Pilot Plant (WIPP) near Carlsbad in southeastern New Mexico as a potential deep geologic repository for disposal of transuranic (TRU) radioactive waste. As defined by the WIPP LWA, as amended, TRU waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Most TRU waste consists of items contaminated during the production of nuclear weapons, e.g., rags, equipment, tools, and organic and inorganic sludges.

On October 23, 1997, the Environmental Protection Agency (EPA) announced its proposed decision to issue to the Secretary of the Department of Energy (DOE) a "certification of compliance" that the WIPP will comply with EPA's radioactive waste disposal standards at 40 CFR part 191, subject to several conditions related to: (1) Waste characterization (to determine the radionuclides and other contents of waste disposal containers); (2) quality assurance programs at DOE waste generator sites; (3) implementation of passive institutional controls (PICs) (intended to warn future generations about the hazards of the radioactive waste buried in the WIPP); and (4) panel seals (used to contain the waste within compartments in the facility). In addition, DOE is required to report to EPA any change in the activities or conditions at the WIPP that differ from those described in the Compliance Certification Application (CCA), and to immediately inform EPA of any activities or conditions at the WIPP that might cause the WIPP to exceed the containment requirements of the disposal regulations. This proposal, entitled "Criteria for the Certification and Recertification of the Waste Isolation Pilot Plant's Compliance with the 40 CFR Part 191 Disposal Regulations: Certification Decision; Proposed Rule," was published in the **Federal Register** at 62 FR 58791–58838 on October 30, 1997, which marked the start of a 120-day public comment period. EPA's proposed decision to certify WIPP is based on an extensive independent technical review and evaluation (including confirmatory audits and inspections) of the DOE's CCA and supplemental materials based on the requirements specified in the WIPP Compliance Criteria at 40 CFR part 194.

The public has raised air drilling for petroleum exploration as a potential scenario that should have been considered by the DOE in its submission of the Certification Compliance Application CCA. In the CCA, DOE assumes that mud is the fluid used in conjunction with drilling for resources. EPA has received comments indicating that the use of air (instead of mud) is a drilling technique that should be considered in the performance of the WIPP. EPA has analyzed the potential for air drilling, and the potential impacts that air drilling could have on the performance of the WIPP. This analysis is now available for public review in EPA's dockets.

The Agency concludes from its analysis of the impacts of air drilling that no adverse consequences would result on the ability of the WIPP site to meet the Agency radioactive waste disposal standards at 40 CFR 191. Therefore, the Agency's proposed decision of October 23, 1997, to issue the DOE a certification of compliance remains unchanged.

Dated: January 21, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 98–1913 Filed 1–26–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE53

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Erigeron decumbens var. decumbens (Willamette Daisy) and Fender's Blue Butterfly (Icaricia icarioides fenderi) and Proposed Threatened Status for Lupinus sulphureus ssp. kincaidii (Kincaid's lupine)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

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SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act (Act) of 1973, as amended, for a plant and a butterfly, *Erigeron decumbens* var. *decumbens* (Willamette daisy) and Fender's blue butterfly (*Icaricia icarioides fenderi*), and proposes threatened status for a plant, *Lupinus sulphureus* ssp. *kincaidii* (Kincaid's lupine). These species are restricted to native prairie in the Willamette Valley of Oregon and are currently known from a few small remnants of a formerly widespread distribution. In addition to its Oregon occurrences, *L. sulphureus* ssp. *kincaidii* is also known from one small site in southern Washington. The three taxa are threatened by one or more of the following—commercial and/or residential development, agriculture, silviculture, road improvement, over-collection, herbicide use, and naturally occurring demographic and random environmental events. This proposal, if made final, would invoke the Federal protection and recovery provisions of the Act for these plant and butterfly species.

DATES: Comments from all interested parties must be received by March 30, 1998. Public hearing requests must be received by March 13, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the State Supervisor, U.S. Fish and Wildlife Service, Oregon State Office, 2600 SE 98th Ave., Suite 100, Portland, Oregon 97266. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Andrew F. Robinson, Jr., Botanist; or Diana Hwang, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service (see **ADDRESSES** section above or telephone 503–231–6179, FAX 503–231–6195).

SUPPLEMENTARY INFORMATION:

Background

Fender's blue butterfly (*Icaricia icarioides fenderi*), *Lupinus sulphureus* ssp. *kincaidii* (Kincaid's lupine), and *Erigeron decumbens* var. *decumbens* (Willamette daisy) are restricted to the Willamette Valley of Oregon. The valley is a 209 kilometer (km) long (130 miles (mi)) and 32–64 km (20–40 mi) wide alluvial flood plain with an overall northward gradient (Orr *et al.* 1992). The valley is narrow and flat at its southern end, widening and becoming hilly near its northern end at the confluence of the Willamette and Columbia Rivers. In addition to its Oregon occurrences, *L. sulphureus* ssp. *kincaidii* is also known from one small site in southern Washington.

The alluvial soils of the Willamette Valley and southern Washington host a mosaic of grassland, woodland, and forest communities. Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* occupy native grassland habitats within the Willamette Valley. Based on the limited available evidence, Franklin and Dyrness (1973) asserted that most Willamette Valley grasslands are seral (one stage in a sequential progression), requiring natural or human-induced disturbance for their maintenance. Johannessen *et al.* (1971) indicated that the vast majority of Willamette Valley grasslands would be forested if left undisturbed. Important exceptions to this successional pattern are grass balds on valley hillsides, which may be climax grasslands due to the presence of deep, fine-textured, self-mulching soils or xeric (very dry) lithosoils (Franklin and Dyrness 1973).

Two native prairie types occur in the Willamette Valley, wet prairie and upland prairie. Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii* are typically found in native upland prairie with the dominant species being *Festuca rubra* (red fescue) and/or *Festuca idahoensis* (Idaho fescue) and *Calochortus tolmiei* (Tolmie's mariposa), *Silene hookeri* (Hooker's catchfly), *Fragaria virginiana* (broadpetal strawberry), *Sidalcea virgata* (rose checker-mallow), and *Lomatium* spp. (common lomatium) serving as herbaceous indicator species (Hammond and Wilson 1993). These dry, fescue prairies make up the majority of habitat for Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii*. Although Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* are occasionally found on steep, south-facing slopes and barren rocky cliffs, neither of these species appear capable of occupying the most xeric oatgrass communities on these south facing slopes.

The primary habitat for *Erigeron decumbens* var. *decumbens* is native wetland prairie. This habitat is characterized by the seasonally-wet *Deschampsia caespitosa* (tufted hairgrass) community that occurs in low, flat regions of the Willamette Valley where flooding creates anaerobic and strongly reducing soil conditions. This wet prairie community includes *Juncus* spp. (rush) and *Danthonia californica* (California oatgrass) as co-dominant native species, as well as the introduced species *Festuca arundinaceae* (tall fescue), *Bromus japonicus* (Japanese brome) and *Anthoxanthum odoratum* (sweet vernal grass) (USFWS 1993). Another endangered species, *Lomatium bradshawii* (Bradshaw's lomatium) also grows in wet prairie habitat. Atypically, one population of *E. decumbens* var. *decumbens* occurs on top of a dry, stony butte in an upland prairie.

The impact of humans on the botanical communities of the Willamette Valley date back several centuries to the Kalapooya Indians, who cleared and burned lands used for hunting and food gathering. Early accounts by David Douglas in 1826 indicate extensive burning of the valley floor, from its northern end at the falls of the Willamette River to its southern extremities near Eugene. Burned areas were documented by Douglas as being so complete as to limit the forage available for his horse and to reduce game availability (Douglas 1972). Accounts by other early explorers support Douglas' observations and suggest a pattern of annual burning by the Kalapooya (Johannessen *et al.* 1971). The Kalapooya land practices resulted in the maintenance of extensive wet and dry prairie grasslands, which may have facilitated their hunting efforts and limited the potential for sneak attacks by enemies (Clarke 1905, Douglas 1972, Minto 1900, Smith 1949). Although much of the woody vegetation was prevented from becoming established on the grasslands by this treatment, the random survival of young fire-resistant species such as *Quercus garryana* (Oregon white oak) accounted for the widely spaced trees on the margins of the valley (Habeck 1961). After 1848, burning decreased sharply through the efforts of settlers to suppress large-scale fires. Consequently, the open, park-like nature of the valley floor was lost, replaced by agricultural fields, dense oak and fir forests, and scrub lands following logging.

The Willamette basin covers approximately 2,600,000 hectares (ha) (6,400,000 acres (ac)), which was estimated in the mid-1880's to consist of one-sixth prairie and five-sixths forest (Lang 1885). The extent of the prairie component can be analyzed through historical information from land survey records. Natural grasslands described by Federal land surveyors in the 1850's were broken down into three distinct types—oak savannah, upland prairie, and wet prairie (Habeck 1961). Of the estimated 409,000 ha (1,010,000 ac) of historic native grasslands extant prior to 1850, approximately 277,000 ha (685,000 ac) appears to have consisted of upland prairie and 132,000 ha (325,000 ac) of wet prairie (E. Alverson, The Nature Conservancy, Eugene, pers. comm., 1994).

This extensive resource was rapidly depleted through the conversion of native prairie to agricultural use during settlement. Within 30 years of passage of the Donation Land Act of 1850, most prairie lands were occupied by European-American settlers who quickly subdivided their original land grants to accommodate the rapid increase in population (Lang 1885). The level, open tracts of prairie were the first to go under the plow (Lang 1885) and only boggy, flood-prone areas prevented complete conversion of the native grassland community to cropped monoculture. Limitations on development imposed by seasonal flooding and a high water table were, however, overcome after 1936, when the U.S. Army Corps of Engineers (Corps) initiated water projects to provide flood control and security for expanded agricultural activity.

Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* likely once occurred over a large distribution throughout the historic native prairie, and have been eliminated from these areas as native prairie habitat has been converted to agriculture or otherwise developed. Native prairie vegetation in the Willamette Valley was decimated by the rapid expansion of agriculture during the 140-year period from the 1850's to the present. With extensive changes in the fire regime, disturbance forces that maintained native prairies were substantially altered. Fire suppression allowed shrub and tree species to overtake grasslands, while agricultural practices hastened the decline of native prairie species through habitat loss and increased grazing (Johannessen, *et al.* 1971; Franklin and Dyrness 1973). Refugia from these forces of change were limited to fence rows and intervening strips of land along agricultural fields and roadsides.

Although large prairie expanses dominated by native species had been lost by the early 1900's, many remnant grasslands with a large native species component have been recently identified. These remnants, even though dominated by exotic species, support the only remaining occurrences of native prairie species in the Willamette Valley. Current estimates of the remaining native upland prairie in the Willamette Valley total less than 400 ha (1,000 ac) (Alverson, pers. comm. 1994). This estimate represents only one-tenth of one percent of the original upland prairie once available to Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and less than one half of this habitat (84 sites) is currently occupied by Fender's blue butterfly and/or *L. sulphureus* ssp. *kincaidii* and/or *Erigeron decumbens* var. *decumbens*. Within this available habitat, *E. decumbens* var. *decumbens* occupies 28 sites across 116 ha (286 ac), *L. sulphureus* ssp. *kincaidii* occupies 51 sites across 145 ha (357 ac), while Fender's blue butterfly occupies 31 sites across 165 ha (408 ac). Similar losses have occurred for wet prairie habitats, but estimates of current acreage are not available.

Fender's Blue Butterfly

Fender's blue butterfly is one of about a dozen subspecies of Boisduval's blue butterfly (*Icaricia icarioides*). *Icaricia icarioides* is found in western North America; subspecies *fenderi* is restricted to the Willamette Valley (Dornfeld 1980; R. H. T. Mattoni, University of California, pers. comm. to C. Nagano 1997; J. Emmel, Hemet, California, pers. comm. to C. Nagano 1997). Fender's blue butterfly was described by Ralph W. Macey (1931) as *Plebejus maricopa fenderi* based on specimens he had collected in Yamhill County, Oregon. The species *maricopa* is currently considered to be a synonym of the species *icarioides* (Miller and Brown 1981). The species *icaricia* has been determined to be a member of the genus *Icaricia*, rather than the genus *Plebejus* (Miller and Brown 1981; R. H. T. Mattoni, pers. comm. to C. D. Nagano 1997). Subspecies *fenderi* was considered to be a synonym of the pardalis blue butterfly (*Icaricia icarioides pardalis*), an inhabitant of the central California Coast Range near San Francisco (Downey 1975; Miller and Brown 1981); however Fender's blue butterfly is a distinct taxon based on adult characters and geographic distribution (Dornfeld 1980; Hammond and Wilson 1993; R. H. T. Mattoni and J. Emmel, pers. comm. to C. D. Nagano 1997).

Fender's blue butterfly is a small sized butterfly with a wingspan of approximately 2.5 centimeter (cm) (1 inch (in)). The upper wings of the males are brilliant blue in color and the borders and basal areas are black. The upper wings of the females are completely brown colored. The undersides of the wings of both sexes are creamish tan with black spots surrounded with a fine white border or halo. The dark spots on the underwings of the males are small on Fender's blue butterfly; surrounded with wide white haloes on the pembina blue butterfly (*Icaricia icarioides pembina*); the underside is very pale whitish gray with broad haloes around the black spots on the hindwings of Boisduval's blue butterfly.

The historic distribution of Fender's blue butterfly is not precisely known due to the limited information collected on this species prior to its description in 1931. Although the type specimens for this butterfly were collected in 1929 by Ralph W. Macy, only a limited number of collections were made between the time of the subspecies' discovery and Macy's last observation on May 23, 1937, in Benton County, Oregon (Hammond and Wilson 1992a). A lack of information on the identity of the butterfly's host plant caused researchers to focus their survey efforts on common lupine species known to occur in the vicinity of Macy's collections. As a result, no Fender's blue butterflies were observed during 20 years of widespread investigation. Finally, Fender's blue butterfly was rediscovered in 1989 by Dr. Paul Hammond at McDonald Forest, Benton County, Oregon on an uncommon species of lupine, *Lupinus sulphureus* ssp. *kincaidii*. Based on this additional information, recent surveys have determined that the animal is confined to the Willamette Valley and currently occupies 31 sites in Yamhill, Polk, Benton, and Lane Counties (Hammond and Wilson 1993; Schultz 1996). One population at Willow Creek is found in wet, *Deschampsia*-type prairie, while the remaining sites are found on drier upland prairies characterized by *Festuca* spp. Sites occupied by Fender's blue butterfly are located almost exclusively on the western side of the valley, within 33 km (21 mi) of the Willamette River.

Although only limited observations have been made of the early life stages of Fender's blue butterfly, the life cycle of the species likely is similar to other subspecies of *Icaricia icarioides* (R. H. T. Mattoni, pers. comm. to C. Nagano 1997; G. Pratt, Riverside, California, pers. comm. to C. Nagano 1997; Hammond and Wilson 1993). Adult butterflies lay their eggs on perennial *Lupinus* sp. (Ballmer and Pratt 1988), the foodplant of the caterpillar during May and June. Newly hatched larvae feed for a short time, reaching their second instar in the early summer, at which point they enter an extended diapause (maintaining a state of suspended activity). Diapausing larvae remain in the leaf litter at or near the base of the host plant through the fall and winter and some individuals likely become active again in March or April of the following year. Some larvae may be able to extend diapause for more than one season depending upon the

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individual and environmental conditions (R. H. T. Mattoni pers. comm. to C. Nagano 1997). Once diapause is broken, the larvae feed and grow through three to four additional instars, enter their pupal stage, and then emerge as adult butterflies in April and May. Behavioral observations of Fender's blue butterfly indicate the larvae are alert to potential predators, with individuals dropping from their feeding position on lupine leaves to the base of the plant at the slightest sign of disturbance (C. Schultz, University of Washington, pers. comm. 1994). The life cycle of Fender's blue butterfly may be completed in one year.

The larvae of many species of lycaenid butterflies, including *Icaricia icarioides*, possess specialized glands that secrete a sweet solution sought by some ant species who may actively "tend" and protect them from predators and parasites (Ballmer and Pratt 1988; G. Pratt pers. comm. to C. Nagano 1997). Although other subspecies of Boisduval's blue butterfly are tended by ants during their larval stage (Downey 1962, 1975; Thomas Reid Associates 1982; R. H. T. Mattoni and G. Pratt, pers. comm. to C. Nagano 1997), limited observations of Fender's blue butterfly larvae in the field have failed to document such a mutualistic association (Hammond 1994). However, this may be due to the nocturnal activity patterns of the larvae of *Icaricia icarioides* as it appears that this species has an obligate relationship with ants (G. Pratt pers. comm. to C. Nagano 1997). Non-native Argentine ants (*Iridomyrmex humilis*) have been observed tending Fender's blue butterfly larvae during indoor rearing trials (Schultz, pers. comm. 1994).

The near absence of Fender's blue butterfly at sites without *Lupinus sulphureus* ssp. *kincaidii* suggest that *L. laxiflorus* (spurred lupine) and *L. albicaulis* (sickle keeled lupine) are secondary foodplants used by the animal (Hammond and Wilson 1993k). Fender's blue butterfly inhabits two sites that contain only *L. laxiflorus*, where it is the primary foodplant (Schultz 1996) and *L. laxiflorus* co-occurs with *L. sulphureus* ssp. *kincaidii* at two additional sites (Hammond and Wilson 1993). Fender's blue butterfly occupies six sites containing only *L. albicaulis*, where it is the primary foodplant. However, the butterfly is declining at two of these sites. *Lupinus albicaulis* and *L. laxiflorus* may possess physical or biochemical properties that render them less suitable for Fender's blue butterfly than *L. sulphureus* ssp. *kincaidii*. This phenomenon in foodplants has been documented in other species of butterflies and moths (Longcore *et al.* 1997).

Lupinus Sulphureus ssp. Kincaidii

Lupinus sulphureus ssp. *kincaidii* was first described in 1924 by C.P. Smith as *L. oreganus* var. *kincaidii* from a collection made in Corvallis, Oregon (Kuykendall and Kaye 1993a). Phillips (1955) transferred the taxon to a subspecies status as *L. sulphureus* ssp. *kincaidii*. Hitchcock et al. (1961) retained the position noted by Phillips (1955), but preferred the combination as a varietal rank, *L. sulphureus* var. *kincaidii*.

Lupinus sulphureus ssp. *kincaidii* occupies 51 sites throughout the Willamette Valley and one site in southern Washington. The northern limit of *L. sulphureus* ssp. *kincaidii* is Lewis County, Washington, while it ranges south to Douglas County, Oregon, a latitudinal span of over 400 km (250 mi). This distribution implies a close association with native upland prairie sites that are characterized by heavier soils and mesic to slightly xeric soil moisture levels. At the southern limit of its range, the subspecies occurs on well-developed soils adjacent to serpentine outcrops where the plant is often found under scattered oaks (Kuykendall and Kaye 1993a).

With its low-growing habit and unbranched inflorescence, *Lupinus sulphureus* ssp. *kincaidii* is easily distinguished from other sympatric members of the genus *Lupinus*. Its aromatic flowers have a slightly reflexed, distinctly ruffled banner and are yellowish-cream colored, often showing shades of blue on the keel. The upper calyx lip is short, yet unobscured by the reflexed banner when viewed from above. The leaflets tend to be a deep green with an upper surface that is often glabrous. The plants are 4–8 decimeters (dm) (16–32 in) tall, with single to multiple unbranched flowering stems and basal leaves that remain after flowering (Kuykendall and Kaye 1993).

Lupinus sulphureus ssp. *kincaidii* is a long-lived perennial species, with a maximum reported age of 25 years (M. Wilson, Oregon State University, *in litt.*, 1993). Individual plants are capable of spreading by rhizomes producing clumps of plants exceeding 20 meters (m) (65.62 feet (ft)) in diameter (P. Hammond, independent consultant, pers. comm. 1994). The long rhizomes do not produce adventitious roots, apparently do not separate from the parent clump, and the clumps may be short-lived, regularly dying back to the crown (Kuykendall and Kaye 1993a). Self-incompatible, *L. sulphureus* ssp. *kincaidii* is pollinated by solitary bees and flies (P. Hammond, pers. comm. 1994). Seed set and seed production are low, with few (but variable) numbers of flowers producing fruit from year to year and each fruit containing an average of 0.3–1.8 seeds (Liston *et al.* 1994). Seeds are dispersed from fruits that open explosively upon drying.

Erigeron Decumbens var. Decumbens

Thomas Nuttall (1840) based his description of *Erigeron decumbens* on a specimen he collected in the summer of 1835. The autonym *E. decumbens* var. *decumbens* was automatically established by Cronquist (1947) when he described *E. decumbens* var. *robustior*. Recent revisions of the *Erigeron* genus (Strother and Ferlatte 1988, Nesom 1989) treat the plant as a variety, *E. decumbens* var. *decumbens*.

According to Strother and Ferlatte (1988), *Erigeron decumbens* var. *decumbens* is geographically limited to the Willamette Valley. They also restrict the morphologically similar *E. decumbens* var. *robustior* to Humboldt and western Trinity Counties, California. Intermediate specimens of *Erigeron* from southern Oregon are considered by Strother and Ferlatte (1988) to be robust specimens of *E. eatonii* var. *plantagineus*.

A review of herbarium specimens by Clark *et al.* (1993) shows a historical distribution of *Erigeron decumbens* var. *decumbens* throughout the Willamette Valley. Collections were frequent between 1881 and 1934, yet from 1934 to 1980 no collections or observations were made (Clark *et al.* 1993). The species was rediscovered in 1980 in Lane County, Oregon, and has since been identified at 28 sites in Polk, Marion, Linn, Benton, and Lane counties, Oregon. With 28 occurrences and 115 ha (284 ac) of occupied habitat, *E. decumbens* var. *decumbens* has the most restricted range of the species proposed for listing herein.

Erigeron decumbens var. *decumbens* is a perennial herb, 15–60 mm (0.6–2.4 in.) tall, with erect to sometimes prostrate stems at the base. The basal leaves often wither prior to flowering and are mostly linear, 5–12 cm (2–5 in.) long and 3–4 mm (0.1–0.2 in.) wide. Flowering stems produce 2–5 heads, each of which is daisy-like, with pinkish to pale blue ray flowers and yellow disk flowers. Ray flowers often fade to white with age (Siddall and Chambers 1978). The morphologically similar *E. eatonii* occurs east of the Cascade Mountains, while the sympatric species *Aster hallii* flowers later in the summer. *Erigeron decumbens* var. *decumbens* can be confused with *A. hallii* in their vegetative state, but close examination reveals the reddish stems of *A. hallii* in contrast to the green stems of *E. decumbens* var. *decumbens* (Clark *et al.* 1993).

As with many species in the family Asteraceae, *Erigeron decumbens* var. *decumbens* produces large quantities of wind-dispersed seed. Flowering typically occurs in June and July with pollination carried out by syphrid flies and solitary bees. Seeds are released in July and August. Although the seeds are wind-dispersed, the short stature of this species likely precludes the long-distance travel of many of these seeds. *Erigeron decumbens* var. *decumbens* is capable of vegetative spreading and is commonly found in large clumps scattered throughout a site (Clark *et al.* 1993).

Previous Federal Action

Erigeron decumbens var. *decumbens* was initially included as a category 2 candidate in a Notice of Review published by the Service on December 15, 1980 (45 FR 82506). Category 2 candidates were those species for which the Service had information in its possession indicating that listing may be appropriate, but for which additional information was needed to support the preparation of a proposed rule. On November 28, 1983, the Service published a Notice of Review upgrading this species to category 1 status (48 FR 53649). Category 1 taxa were taxa for which the Service had sufficient data in its possession to support preparation of listing proposals. Subsequently, *E. decumbens* var. *decumbens* was reassigned category 2 candidacy by a Notice of Review published on September 27, 1985 (50 FR 39527). On February 21, 1990 the Service published a Notice of Review (55 FR 6202) that reinstated *E. decumbens* var. *decumbens* as a category 1 candidate and also designated *Lupinus sulphureus* ssp. *kincaidii* as a category 2 candidate (55 FR 6121). The Service published a Notice of Review on February 28, 1996 (61 FR 7596), updating the candidate species list and changing the policy on candidates to discontinue the use of candidate categories. *Erigeron decumbens* var. *decumbens* was retained as a candidate species; however, *Lupinus sulphureus* ssp. *kincaidii* and other former category 2 candidates were not. The 1997 Notice of Review retained *Erigeron decumbens* var. *decumbens* as a candidate species; *Lupinus sulphureus* ssp. *kincaidii* was not included as a candidate. Since this Notice of Review was published, the Service has reevaluated the available information and determined that listing is warranted for both *Erigeron decumbens* var. *decumbens* and *Lupinus sulphureus* ssp. *kincaidii*.

Fender's blue butterfly was initially assigned to category 3A taxa in the Notice of Review published by the Service on January 6, 1989 (54 FR 572). The best available information at that time indicated that this butterfly was likely extinct because the subspecies was last observed in 1937. Category 3A taxa were taxa for which the Service had pervasive evidence of extinction, however if rediscovered, such taxa might be reconsidered for listing. The rediscovery of this butterfly in May 1989 prompted the Service to change the status of the subspecies to a category 2 candidate in the Notice of Review published on November 21, 1991 (56 FR 58830). In the Notice of Review published on February 28, 1996 (61 FR 7596), the Service retained Fender's blue butterfly as a candidate for listing. The 1997 Notice of Review also retained Fender's blue butterfly as a candidate for listing.

The processing of this proposed listing rule conforms with the Service's final listing priority guidance for fiscal year (FY) 1997 that was published in the **Federal Register** on December 5, 1996 (61 FR 64475–64481), and the Service's extension of the FY 1997 guidance published in the **Federal Register** on October 23, 1997 (62 FR 55268). The guidance clarifies the order in which the Service will process rulemakings following two related events—(1) the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6), and (2) the restoration of significant funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. Tier 3 includes the processing of new proposed listings for species facing high magnitude threats. This proposed rule for Fender's blue butterfly (*Icaricia icarioides fenderi*), *Lupinus sulphureus* ssp. *kincaidii* (Kincaid's lupine), and *Erigeron decumbens* var. *decumbens* (Willamette daisy) falls under Tier 3. According to the Listing Priority Guidance, the Service is operating under a more balanced listing program and may process Tier 3 actions. Processing of this proposed rule is in accordance with the current Listing Priority Guidance.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to Fender's blue butterfly (*Icaricia icarioides fenderi*), *Lupinus sulphureus* Dougl. ssp. *kincaidii* (Smith) Phillips (Kincaid's lupine), and *Erigeron decumbens* Nutt. var. *decumbens* (Willamette daisy) are as follows.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The primary loss of habitat for Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* has resulted from the extensive alteration of native prairie in the Willamette Valley that has occurred over the last 140 years, described in the "Background" section above. As a result, over 99 percent of the native prairie in the Willamette Valley, the only known habitat area of Fender's blue butterfly, *L. sulphureus* ssp. *kincaidii*, and *E. decumbens* var. *decumbens*, has been lost (E. Alverson, pers. comm. 1994).

Within the 84 remnants of native prairie occupied by these species in the Willamette Valley, Fender's blue butterfly occurs at 31 sites (Hammond and Wilson 1993, Schultz 1996), *Lupinus sulphureus* ssp. *kincaidii* occurs at 51 sites (Kuykendall and Kaye 1993a), and *Erigeron decumbens* var. *decumbens* occurs at 28 sites (Clark *et al.* 1993). In this collection of sites, Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* are found in close association, occurring together at a total of 24 sites. *Erigeron decumbens* var. *decumbens* co-occurs with *L. sulphureus* ssp. *kincaidii* at only one site and with Fender's blue butterfly at only this same site, Baskett Butte. Typically these sites are small, with extirpation likely in the near future. Activities that destroy, modify or curtail the habitat of *L. sulphureus* ssp. *kincaidii*, *E. decumbens* var. *decumbens*, and Fender's blue butterfly are discussed below.

The immediacy of the threat of habitat loss in the last remaining 84 remnants of native prairie occupied by these species has been well documented. Habitat at 80 percent of the sites (e.g., 68 sites) is rapidly disappearing due to

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agriculture practices, development activities, forestry practices, grazing, roadside maintenance, and commercial Christmas tree farms.

At least eleven prairie remnants are likely to be impacted by agricultural activities. Five of these are wetland prairies occupied by *Erigeron decumbens* var. *decumbens* and the remaining six are upland prairies occupied by *Lupinus sulphureus* ssp. *kincaidii* and Fender's blue butterfly. The types of impacts include examples such as a wheat field boundary adjustment near Buell in Polk County (Mill Creek-Hwy 22 at Buell) that is likely to lead to loss of a population of Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* (Hammond 1994). By 1996, this boundary adjustment was implemented with a diminished population of *L. sulphureus* ssp. *kincaidii* and Fender's blue butterfly still present; however, no Fender's blue butterflies were observed at this site in 1997 (Hammond, pers. comm. 1997). The majority of the habitat supporting populations of each of these species are habitat remnants, e.g., small habitat patches remaining after other habitat loss has occurred. Small habitat patches that occur along State and County roadsides face greater threats from agriculture than those occurring along non-roadside areas. While in past decades many roadside habitats were less disturbed, today roadside stretches of habitats adjoining grass seed farms are now being disked and/or sprayed with herbicides to kill all roadside vegetation (A. Robinson, U.S. Fish and Wildlife Service, pers. comm. 1997). Grass seed farms use herbicide spraying to create bare soil as a common practice to prevent the spread of weeds from roadsides into the grass seed fields. Many of these areas are inhabited by populations of *E. decumbens* var. *decumbens*.

Urban development has caused additional loss of prairie habitat (Clark *et al.* 1993; Hammond 1992, 1994, 1996; Kuykendall and Kaye 1993; Liston *et al.* 1994; Schultz, 1996; Sidall and Chambers 1978). Destruction of upland prairie habitat occupied by Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii* at several sites since 1992 has caused the butterflies at these sites to either completely die out or to be reduced to low, non-viable numbers (Hammond 1994, 1996). Future losses for 48 prairie remnants are projected as a result of urban development. This is the largest single factor currently threatening the survival of these prairie species. Nineteen of these remnants are wetland prairies supporting *Erigeron decumbens* var. *decumbens* and the other 29 are upland prairie remnants supporting populations of Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii*.

Examples of this type of threat are the Dallas-Oakdale Avenue sites 1 and 2 covering about 2 ha (5 ac) occupied by Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* near the town of Dallas in Polk County that is expected to be lost due to housing development planned at that site (Hammond 1996). The loss of native prairie habitat is further exemplified by the destruction of a site supporting 6,000 plants in Lane County, formerly the largest occurrence of *E. decumbens* var. *decumbens*, plowed under in 1986 prior to the development of an industrial and residential site (Kagan and Yamamoto 1987). Construction of a single driveway resulted in the loss of one site occupied by Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* in Kings Valley (Hammond 1994). Future highway construction potentially threatens the Nielson Road site of *L. sulphureus* ssp. *kincaidii* located in a highway expansion corridor in Lane County (Oregon Natural Heritage Program 1996). The population of Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* at Wren in Benton County occurs at two sites and covers about 9 ha (22 ac, however, only a portion of the population (7.4 ha) occurs on land owned by The Nature Conservancy (TNC). Heavy clearing and mowing activities on private lands adjacent to the TNC property has caused the decline of the lupine and is reducing the butterfly population at the Wren site to a non-viable state (Hammond and Wilson 1993). At the Willow Creek Main site, Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* occur together. This site is actively managed for the benefit of the species and the lands are considered relatively secure from development threats. Although this TNC site is considered a secure habitat area, extensive damage to habitat occupied by Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* occurred in 1996 during pipeline repair work conducted on a utility corridor easement. Two other moderately sized habitat patches occupied by *E. decumbens* var. *decumbens* face habitat loss from trash dumping (at the Grande Ronde site) and urbanization (at the west Eugene site) (Clark *et al.* 1993).

Silvicultural activities for timber production have threatened 6 percent (5 sites) of the remaining 84 prairie occurrences. The Coburg Ridge area-2 site in Lane County is the largest site occupied by Fender's blue butterfly and is among the best examples of remnant upland native prairie in the Willamette Valley (Hammond 1994). Native species were severely damaged, however, by the application of grass-specific herbicide that eliminated grasses and severely damaged other herbaceous species prior to tree planting activities. Approximately 1 ha (2.5 ac) was sprayed with herbicide. The saddle section of Coburg Ridge (area-2) that received aerial application of the herbicide is used by Fender's blue butterfly due to the presence of *Lupinus laxiflorus*, an alternate host plant, but this site does not contain *L. sulphureus* ssp. *kincaidii* (Schultz 1996). Loss of such alternate host plant sites further limits the habitat that is available to support Fender's blue butterfly. Additional tree-planting efforts by an adjacent Coburg Ridge landowner threatens to alter a different portion of the grassland in area-2, which has displayed the highest levels of butterfly activity in previous years (Schultz 1996). This site received spot herbicide application during the planting efforts, rather than the aerial broadcast method of the first case; therefore, the immediate effects to the habitat were not as severe. However, tree saplings were planted and as the trees grow they will eventually shade out the native prairie species, resulting in the loss of butterfly habitat. Herbicide spraying associated with reforestation after logging has also altered habitat and caused a decline of a *L. sulphureus* ssp. *kincaidii* population on Bureau of Land Management (BLM) properties. The other large sized occurrence of the butterfly and *L. sulphureus* ssp. *kincaidii* is in Benton County on McDonald State Forest and adjacent private lands that could be similarly affected by surrounding silvicultural operations.

Grazing is currently impacting 12 of the occupied habitat patches, with five of these being wetlands occupied by *Erigeron decumbens* var. *decumbens*. Most of the habitat occupied by Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii* at the Oak Ridge south site in Yamhill County has been lost due to heavy grazing (Hammond 1996). Another site of *L. sulphureus* ssp. *kincaidii*, covering about 4.6 ha (11 ac) at Crabtree Hill in Lane County, is being damaged by extensive livestock grazing. The Crabtree Hill population of 6,000 plants is the largest known *L. sulphureus* ssp. *kincaidii* population.

The next most common threat to these species is roadside maintenance activities. At least 30 sites occur along roadsides and are impacted by maintenance activities. Examples include the populations of Fender's blue butterfly and *Lupinus sulpheureus* ssp. *kincaidii* at the Oak Ridge north site that were recently lost due to road maintenance activities. When planned developments are completed on the Oak Ridge south site, the butterfly and lupine will essentially be extirpated from the Oak Ridge area (Hammond 1996). Two sites on Oregon Department of Transportation (ODOT) property and one site on land owned by the City of Corvallis receive only limited protection and could potentially be impacted by future development and highway maintenance activities. Publicly-owned roadside sites receive varying degrees of protection on a district by district basis. Although some roadside sites have been marked as no-spray zones by the Native Plant Society of Oregon, this protective measure is not always effective. The roadside portion of a *L. sulphureus* ssp. *kincaidii* population in Kings Valley continues to receive herbicide application during roadside weed control activities, despite efforts to restrict spraying. Other roadside sites receive only sporadic protection during herbicide application. Privately managed roadside occurrences do not fare much better; extensive mowing at the Wren sites in Benton County and Fir Butte Road roadside sites in Lane County have caused declines in Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* populations (Hammond 1994). With frequent weed control efforts ongoing, as well as highway and driveway construction, small roadside occurrences of Fender's blue butterfly, *L. sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* are unlikely to persist. Between 1994 and 1996, Fender's blue butterfly populations disappeared from (or are considered no longer viable) at least seven small roadside sites (Liberty Road, Monmouth Falls City Road, Fern Corner, Grant Creek, and McTimmonds Valley in Polk County, and two sites at Wren) and populations at many of the remaining roadside sites continue to decline.

Between 1990 and 1992, three sites occupied by both Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii* were lost in the McTimmond's Valley to the expansion of Christmas tree farming operations (Hammond 1994). Conversion of these three sites destroyed approximately 3 ha (7 ac) of habitat along roadside and private land that comprised the nucleus of two Fender's blue butterfly populations and a substantial number of *L. sulphureus* ssp. *kincaidii* plants. The two roadside occurrences of the butterfly that remain nearby are no longer considered viable due to the loss of the source butterfly populations and considerable numbers of *L. sulphureus* ssp. *kincaidii* plants. Hammond (1994) stated that these two roadside occurrences are not expected to persist for more than a few additional years. The Service does not know if the two roadside occurrences still exist.

In summary, habitat loss from a wide variety of causes (urbanization, agriculture, silvicultural practices, and roadside maintenance) is a severe problem faced by Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* at a majority of their occurrences. Development and land alteration in the Willamette Valley has been so extensive that all the occurrences of the three species on the valley floor have essentially been relegated to small patches of habitat, except for three hilltop areas (Baskett Slough National Wildlife Refuge, Coburg Ridge, and McDonald State Forest) that, because of their topography, have not been subjected to agricultural and urban development activities occurring on the valley floor. Only 16 out the 84 remnant prairie sites that are occupied by one or more of these species are currently not threatened with destruction of habitat. However, herbivory, exotic weed species competition, and/or succession threaten all of these 16 sites (see Factor E below for more information). As habitat loss continues on these prairie remnants, populations of the three species in these 64 areas are likely to be extirpated. At least 12 of 31 sites occupied by Fender's blue butterfly, 47 of 51 sites occupied by *L. sulphureus* ssp. *kincaidii*, and 24 of 28 sites occupied by *E. decumbens* var. *decumbens* occur on private lands and, without further action, are expected to be lost in the near future. The threat of extinction for these species is high, given the expected continuing extirpation of small populations, the continued habitat loss on moderate sites and large sites, and the continuing degradation of habitat, even on secure sites (see Factor E below for more information about continuing degradation of habitat).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Rare butterflies, such as Fender's blue butterfly are highly prized by insect collectors. Although there are no studies on the impact of the removal of individuals from natural populations of this animal, based on studies of another lycaenid butterfly (Duffey 1968), and an endangered nymphalid butterfly (Gall, 1984a and 1984b), it is likely that Fender's blue butterfly could be adversely affected due to its isolated, possibly small populations. There is an international commercial trade for butterfly species proposed for listing, as well as other imperiled or rare butterflies (C.D. Nagano, J. Mendoza, and C. Schroeder, USFWS, pers. obs., 1992–1997) and specimens of Fender's blue butterfly are known to have recently been offered for trade (C. Nagano pers. obs.). Some collectors and dealers closely monitor listing activities by the Service and they are known to have stockpiled rare butterflies in anticipation of their becoming designated as endangered or threatened species (C.D. Nagano and J. Mendoza, pers. obs., 1992). Collecting from small colonies or repeated handling and marking (particularly of females and in years of low abundance) could seriously damage the populations through loss of individuals and genetic variability (Gall 1984b; Murphy 1988; Singer and Wedlake 1981). Collection of females dispersing from a colony also can reduce the probability that new colonies will be founded. Collectors pose a threat because they may be unable to recognize when they are depleting butterfly colonies below the thresholds of survival or recovery, especially when they lack appropriate biological training or the area is visited for a short period of time (Collins and Morris 1985).

There likely is high interest by collectors in Fender's blue butterfly due to its unique history of assumed extinction. The rediscovery in 1989 of this animal generated a great deal of publicity and interest, which in turn increases demand by collectors. Collectors often highly prize rare butterflies (Morris *et al.* 1991) and at times take all wild specimens obtainable for use in trade (U. S. Department of Justice, *in litt.* 1993). The populations of Fender's blue butterfly that remain face strong pressure from some members of the collecting community. Since many of the Fender's blue butterfly populations occur along public roadsides, the species is easily acquired and the extremely limited numbers and distribution of many of the remaining populations make this species vulnerable to collectors.

Due to their unattractive weedy like appearance, the threat to *Erigeron decumbens* var. *decumbens* and/or *Lupinus sulphureus* ssp. *kincaidii* from collection for horticultural purposes may be less than the threat from collectors faced by Fender's blue butterfly. Although no current evidence exists of such horticultural collection or

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other overutilization for scientific purposes for either *E. decumbens* var. *decumbens* or *L. sulphureus* ssp. *kincaidii*, the threat posed by collecting for personal herbarium specimens is significant due to their rarity and the relative accessability of roadside populations.

C. Disease or Predation

Although most lepidopteran larvae suffer significant mortality from parasitoid attack, no instances of parasitism (Hammond 1993) or disease (R. H. T. Mattoni, pers. comm. to C. D. Nagano 1997) have been documented for Fender's blue butterfly.

Lupinus sulphureus ssp. *kincaidii* evidently hosts a number of herbivore and parasite species. Gall-forming insects attack unopened flowers and the bases of woody stems. Weevils lay eggs in the developing floral embryos and their offspring stimulate the fruit to produce callous tissue as a food source. Misdirection of the developing fruit by weevil larvae effectively prevents viable seed formation in the parasitized fruits (Kuykendall and Kaye 1993b). Weevil damage at some sites (e.g., Willow Creek) can be high, with some plants suffering 90 percent loss of mature fruits (E. Alverson, pers. comm. 1994). Herbivory has been documented at all three Fern Ridge Reservoir sites. Loss of floral parts through herbivory can also significantly reduce reproduction. Larvae of the silvery blue butterfly (*Glaucopsyche lygdamus*) graze flowers for pollen and in doing so effectively destroy them. Silvery blue larvae can reach high population densities at some of the sites and may reduce the fecundity of *L. sulphureus* ssp. *kincaidii*, but do not appear to cause the death of mature individual plants (C. Schultz, pers. comm. 1994).

Evidence of insect herbivory on *Erigeron decumbens* var. *decumbens* is limited. Insect species collected on *E. decumbens* var. *decumbens* in 1993 included sap-sucking insects (Hemiptera), a bruchid beetle, thrips, and mites (Clark *et al.* 1993). Other threats from herbivory include consumption of *E. decumbens* var. *decumbens* by cattle; no plants were found in areas currently or recently grazed during surveys conducted in 1986 (Kagan and Yamamoto 1987) and only one site was observed to support *E. decumbens* var. *decumbens* in the presence of cattle in 1993 (Clark *et al.* 1993).

D. The Inadequacy of Existing Regulatory Mechanisms

In 1963, the protection of natural botanical resources by the State of Oregon was initiated with the passage of the Oregon Wildflower Law (ORS 564.010–564.040). This law was designed to protect specific showy botanical groups including lilies, shooting stars, orchids, and rhododendrons from collection and trade by horticulturists interested in the cultivation of these species. It also prohibits the collection of wildflowers from "within 500 feet of the centerline of any public highway" (ORS 564.020 (2)). Although protective in spirit, the Oregon Wildflower Law carries minimal penalties and is rarely enforced. As a means of protecting *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* populations, the effectiveness of the law is doubtful.

In 1987, Oregon Senate Bill 533 was passed to augment the legislative actions available for the protection of the State's threatened and endangered species, both plant and animal. This bill, known as the Oregon Endangered Species Act, mandates responsibility for threatened and endangered species in Oregon to two State agencies—the Oregon Department of Agriculture (ODOA) for plant species (ORS 564.105) and the Oregon Department of Fish and Wildlife (ODFW) for "wildlife" species (ORS 496.172).

As reauthorized in 1995 (HB 2120), the Oregon Endangered Species Act does not include invertebrate animals in the definition of "wildlife." Therefore, Fender's blue butterfly receives no protection under the Oregon Endangered Species Act. The Oregon Natural Heritage Program is the only State agency "which tracks locations of and works to protect the rare, threatened and endangered invertebrates of Oregon" (Oregon Natural Heritage Program 1993). The Heritage program has created a Sensitive Species invertebrate list, which includes Fender's blue butterfly as a "priority 1 species." Priority 1 species are "taxa threatened or endangered throughout range" (Oregon Natural Heritage Program 1993). The program can assist planning agencies in managing lands for the benefit of rare invertebrate taxa, but it has no regulatory authority over rare invertebrates (Jimmy Kagan, Oregon Natural Heritage Program, pers. comm. 1997).

For plant species, the Oregon Endangered Species Act directs the ODOA to maintain a strong program to conserve and protect native plant species classified by the State as threatened or endangered. *Erigeron decumbens* var. *decumbens*, as a State-listed endangered species and *Lupinus sulphureus* ssp. *kincaidii* as a State-listed threatened species receive protection on State-managed lands under the Oregon Endangered Species Act. The ODOA is able to regulate the import, export, or trafficking of State-listed plant species when they are in transit (under ORS 564.1200). The ODOA's ability to protect plant populations, such as restricting take under the Oregon Endangered Species Act, is limited to "land owned or leased by the State, or for which the State holds a recorded easement" (ORS 564.115). "Nothing in ORS 564.100 to 564.130 is intended * * * to require the owner of any commercial forest land or other private land to take action to protect a threatened species or endangered species" on his lands (ORS 564.135(1)). As a result, populations of *L. sulphureus* ssp. *kincaidii* and *E. decumbens* var. *decumbens* on private lands receive minimal protection from their State status as endangered or threatened.

ODOT owns and manages roadside habitat where *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* are present. The Oregon Endangered Species Act requires the protection of these State-listed species. ODOT has responded, in conjunction with Oregon State University researchers and the Native Plant Society of Oregon, by providing road crews with maps of these areas and instruction to avoid herbicide use.

Lupinus sulphureus ssp. *kincaidii*, *Erigeron decumbens* var. *decumbens*, and Fender's blue butterfly occurrences within the Service's National Wildlife Refuges receive protection within the boundaries of the refuge. All three species occur together only at Baskett Slough National Wildlife Refuge, which actively manages habitat for the benefit of the species.

Under section 7 of the Endangered Species Act, Federal agencies are required to consult with the Service if any action they regulate, fund or carry out may jeopardize the continued existence of an endangered or threatened species. Species that are candidates for listing receive no formal regulatory protection under the Act. The BLM and the Forest Service (FS) manage lands occupied by *Lupinus sulphureus* ssp. *kincaidii*. This species on BLM properties is given some protection through a general conservation agreement that applies to all Federal candidate species. The population of *L. sulphureus* ssp. *kincaidii* that occurs in the Umpqua National Forest is not covered under any conservation agreement and receives no official protection under the Act.

On Corps lands, discretion for the protection and management of State-listed and Federal candidate species lies at the local level. Funds may be available in some years to proactively manage these species. *Lupinus sulphureus* ssp. *kincaidii*, *Erigeron decumbens* var. *decumbens*, and Fender's blue butterfly have received habitat protection, as well as support for research activity from the Corps through allocation of personnel and supplies to these projects. This protection and cooperation is voluntary for candidate species and is dependent on continuation of sufficient funding.

Populations of *Erigeron decumbens* var. *decumbens* occur in seasonally flooded wet prairies with hydric soils (Clark *et al.* 1993). Under section 404 of the Clean Water Act, the Corps regulates the discharge of fill into waters of the United States, including navigable waters, wetlands (e.g., wet prairies), and other waters (33 CFR parts 320–330). The Clean Water Act requires project proponents to obtain a permit from the Corps prior to undertaking many activities (e.g., grading, discharge of soil or other fill material, etc.) that would result in the filling of wetlands subject to the Corps' jurisdiction. The Corps promulgated nationwide permit number 26 (NWP 26) to address fill of isolated or headwater wetlands. Under the 1996 reauthorized NWP 26 (61 FR 65873), project proposals that involve the fill of wetlands less than one third of an acre are considered authorized. Fill areas between 0.33 acre and 1 acre require only notification to the Corps. When placement of fill would adversely modify between 1 to 3 acres of wetland, the Corps circulates a predischarge notification to the Service and other interested parties for comment to determine whether or not an individual permit should be required for the proposed fill activity and associated impacts.

Individual Corps permits are required for discharge of material that would fill or adversely modify greater than 3 acres of wetlands. The review process for individual permits is more rigorous than for nationwide permits. Unlike nationwide permits, an analysis of cumulative wetland impacts is required for individual permit applications. Resulting permits may include special conditions that require potential avoidance or mitigation for environmental impacts. On nationwide permits, the Corps has discretionary authority to instead require an individual permit if the Corps believes that resources are sufficiently important, regardless of the wetland's size. In practice, however, the Corps generally does not require an individual permit when a project qualifies for a nationwide permit, unless a threatened or endangered species or other significant resources would be adversely affected by the proposed activity. In such cases, conferencing and consultation requirements of section 7 of the Act do pertain to the Corps' regulatory process.

Disking and some other farming, ranching and silviculture practices can degrade or destroy wetland habitat without a permit from the Corps because these activities are exempt from regulation under the Clean Water Act (33 CFR 323.4 (a)). The discontinuous configuration of the existing wet prairies further obscures these wetland losses. Occurrences of *Lupinus sulphureus* ssp. *kincaidii*, and Fender's blue butterfly in upland (non-wetland) areas receive no protection under section 404 of the Clean Water Act.

The primary inadequacies in existing regulations pertain to populations of Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* that occur on private lands that currently have no connection to Federal authority or funding. Privately owned lands where populations of these species occur constitute a significant portion of the range of these species and play a substantial role in their continued existence.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Larger sites (greater than 10 ha (25 ac)) currently support relatively stable populations of Fender's blue butterflies, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* and provide the greatest potential for long-term persistence of the species if their current condition can be sustained or improved. However, few of these larger sites are secure from threats due to habitat loss. The only large site occupied by each of the species that is considered relatively secure from habitat loss is Baskett Slough National Wildlife Refuge in Polk County, although the habitat condition is declining from invasion by alien plants (Hammond 1996, Hammond 1994, Hammond and Wilson 1993). The two remaining large butterfly sites (Coburg Ridge area—1 and 2, and McDonald State Forest 1) and the one remaining large lupine site (McDonald State Forest 1) are not considered secure because these sites face loss or degradation of habitat through adjacent silviculture operations, ecological succession to shrub and forest, and competition from alien species (Hammond 1994, Kuykendall and Kaye 1993a).

Erigeron decumbens var. *decumbens* occupies three large sites. Two of those sites, one occurring on Corps property and the other on land owned by TNC, are being managed to benefit native prairie species and are relatively secure. The third site on private land is not managed for native prairie species and is not protected from habitat loss.

The small occurrences of the three taxa in this proposed rule, predominantly roadside and fence line/boundary sites, face an immediate threat of destruction from a variety of activities including development, agriculture, silvicultural practices, roadside maintenance, and herbicide application. The degree to which habitat loss threatens Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* becomes evident when the size of the populations is examined. Of the 51 sites occupied by *L. sulphureus* ssp. *kincaidii*, 40 consist of small area occurrences, less than 3.4 ha (8.3 ac) in size. The Fender's blue butterfly, occupying a subset of the lupine sites, shows a similar pattern with 23 of its 31 populations found on parcels of 3.4 ha (8.3 ac) or less. All of the small site occurrences of the Fender's blue butterfly are likely to be extirpated within the next five years because habitat may not be large enough to support viable populations. Of the 28 sites occupied by *E. decumbens* var. *decumbens*, 17 are less than 3.4 ha (8.3 ac) in size. These small occurrences account for a majority of the known populations for all three species.

Given the impact of such habitat losses on these small habitat patches, the extirpation of most of the small Fender's blue butterfly populations is anticipated within five years. *Lupinus sulphureus* ssp. *kincaidii* may survive for a time in these small sites; nonetheless, extirpation of *L. sulphureus* ssp. *kincaidii* at most, if not all, of their 40 small sites is also anticipated in the future. Similarly, these habitat losses are expected to also cause extirpation of the 17 small populations of *Erigeron decumbens* var. *decumbens*. Should these smaller populations disappear, only 8 habitat areas of Fender's blue butterfly (a 75 percent reduction in number of sites), 11 habitat areas of *L. sulphureus* ssp. *kincaidii* (a 78 percent reduction in number of sites), and 11 habitat areas of *E. decumbens* var. *decumbens* (a 61 percent reduction of sites) will remain.

The importance of these sites, particularly for the Fender's blue butterfly, lies in their potential to serve as corridors among larger, neighboring populations. The loss of these sites and

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the loss of accompanying potential habitat, severely compromises the ability of any of the species to disperse from larger sites (Hammond and Wilson 1993, Schultz 1996). Larger populations will remain isolated, with no opportunities for migration and/or recolonization if local conditions become unfavorable. Thus, the status of the species as a whole declines.

A less visible threat to the smaller occurrences is the decrease in vigor and viability experienced by populations of few individuals. For the Fender's blue butterfly, small numbers and localized populations increase the risk of loss through random genetic or demographic factors. (Gilpin and Soule' 1986, Kuykendall and Kaye 1993b, Lacy 1992). Eighteen of the 31 Fender's blue butterfly sites contain 50 or fewer individuals. The threat of extinction due to naturally occurring genetic or demographic events can play a significant role in the instability of the species as a whole. The isolation of these small populations due to habitat fragmentation precludes recolonization from larger populations and could result in the permanent loss of occurrences once populations fall below a critical level.

This pattern of extinction and recolonization of connected colonies of butterflies has been disrupted by the extensive fragmentation of remaining habitat and the disruption of the disturbance regimes that have maintained them. The remnant populations, now small in numbers, are either unconnected or exchange individuals to a very limited degree. With their limited dispersal abilities, low numbers and dwindling habitat, a majority of the remaining populations of Fender's blue butterfly likely face permanent extirpation. The small population sizes at several sites pose their own threat to the survival of Fender's blue butterfly as demographic and genetic problems can push a population to extinction (Hammond and Wilson 1993).

Random human and environmental events may also affect the small populations of these species and cause future extirpations. The impact of such events are magnified by the size of the populations. It is much easier to cause the extirpation of a population occupying a small area than one occupying a larger area. Due to the small area occupied by many of the remaining populations, randomly occurring natural events can play a role in extirpation. One small population of *Erigeron decumbens* var. *decumbens* previously found on Finley National Wildlife Refuge was recently lost due to erosion (Meincke 1980). A natural change in a waterway course was apparently responsible. Shultz (1996) stated that large fluctuations in populations evident in her 3-year study from 1993 to 1995 indicate that Fender's blue butterfly populations are strongly influenced by random variation in weather conditions from year to year; these large fluctuations make Fender's blue butterfly extremely susceptible to loss of habitat and host plants due to human-caused events or invasive alien plants.

A serious long-term threat to all Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* occurrences is the change in community structure due to succession. Currently, succession has been documented for 70 of the 84 relic prairie sites occupied by one or more of these species proposed for listing. Invasion by alien plant species has been documented at 36 of these 84 prairie sites. The natural transition of grassland to forest in the absence of disturbance means that prairie sites left unmanaged likely will eventually be lost (Clark *et al.* 1993; Franklin and Dyrness 1973; Hammond and Wilson 1993; Johannsesen *et al.* 1971; Kuykendall and Kaye 1993). In addition, the presence of tall, fast-growing alien species speeds the conversion of open upland prairie to dense, rank grasslands and shrublands. Invasive woody species of concern include the alien plants *Rubus discolor* (Himalayan blackberry) and *Cytisus scoparius* (Scotch broom), and the native *Toxicodendron diversiloba* (poison oak). Non-native grass species aggressive enough to suppress *L. sulphureus* ssp. *kincaidii* and *E. decumbens* var. *decumbens* include *Holcus lanatus* (velvet grass), *Dactylis glomerata* (orchard grass), *Brachypodium sylvaticum* (false-brome), and *Arrhenatherum elatius* (tall oat-grass) (Hammond 1996).

The degree of the threat of succession at roadside sites varies considerably depending on the vegetation control employed by each County at each site. Fender's blue butterfly populations at small roadside sites are weak (low numbers) and are close to extinction either through degradation of habitat from invasion of alien grasses, succession by shrubs and trees, or through development activities (Hammond 1996). One roadside site at Oak Ridge that was previously considered stable has declined since 1992, and is being invaded by large thickets of *Rubus* ssp. (blackberry) and *Cytisus scoparius* (Hammond 1996).

Non-roadside sites in general face the greatest threat from succession/weed expansion and invasion due to a lack of disturbance that disrupts successional progress. Otherwise secure habitat on Corps lands is being heavily invaded by the alien plant *Arrhenatherum elatius*, and the butterfly population is alarmingly small (Schultz 1996). Prime habitat occupied by *Erigerón decumbens* var. *decumbens* at Baskett Butte is rapidly being overgrown with alien grass and trees (Hammond 1996). About 25 percent of the large Coburg Ridge site occupied by Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii* is threatened by the profuse shrub growth of *Cytisus scoparius* (Hammond 1996). Regardless of the size of the site, invasion by non-native plants is a threat at all of the sites occupied by any of the three species proposed for listing in this rule.

The application of pesticides and biological control agents to control insect pests, such as gypsy moths, is also a threat to Fender's blue butterfly. Although the sensitivity of Fender's blue butterfly larvae to specific insecticides is not known, the potential result from use of gypsy moth control agents on habitats occupied by the Fender's blue butterfly should not be dismissed (Hammond 1994). The use of microbial insecticides, such as *Bacillus thuringiensis* (Bt) has been shown to have significant residual toxic impacts on native butterflies under field conditions even with heavy rain and ultraviolet light exposure (Schriber and Gage 1995).

Taken together as a category, other natural and manmade factors have a profound effect on the remaining populations of Fender's blue butterflies, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens*. Nearly all of the populations are threatened by either alien species, successional transition of habitat, or demographic and genetic factors as a result of small population size. Populations of Fender's blue butterfly at all of the 31 sites are currently threatened by one of these factors. The same holds true for all 28 sites of *E. decumbens* var. *decumbens* and for all 51 sites of *L. sulphureus* ssp. *kincaidii*. Although progressing on a slower time scale, the encroachment of alien plants, the successional advance of tree and shrub species and other naturally occurring random events will, if unchecked, lead to reductions in population size, reductions in population viability and, ultimately, the extinction of these native prairie species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Threats to Fender's blue butterfly are more imminent than threats to *Lupinus sulphureus kincaidii* since the butterfly, with its biology and shorter life span, will exhibit more rapid declines in numbers and in the face of threats will be extirpated more quickly at any one location. Because of its longer life span, small numbers of *L. sulphureus* ssp. *kincaidii* plants are likely to persist longer in any given habitat area than are small numbers of butterflies. Threats to *Erigeron decumbens* var. *decumbens* are also more imminent than threats to *L. sulphureus* ssp. *kincaidii* because of the fewer populations of *E. decumbens* var. *decumbens*. Secondly, many of the populations of *E. decumbens* var. *decumbens* grow along roadsides adjacent to agricultural activities (especially grass seed farms) where herbicide spraying to create bare soil is common practice. Based on this evaluation, Fender's blue butterfly and *E. decumbens* var. *decumbens* are in danger of extinction throughout all or a significant portion of their respective ranges, while *L. sulphureus* ssp. *kincaidii* is likely to become endangered within the foreseeable future. Therefore, the Service proposes to list Fender's blue butterfly (*Icaricia icarioides fenderi*) and *E. decumbens* var. *decumbens* (Willamette daisy) as endangered and to list *L. sulphureus* ssp. *kincaidii* (Kincaid's lupine) as threatened.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (i) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. The term "conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time a species is determined to be threatened or endangered. The Service finds that designation of critical habitat is not prudent for *Erigeron decumbens* var. *decumbens*, *Lupinus sulphureus* ssp. *kincaidii*, or Fender's blue butterfly at this time. Service regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species.

The listing of *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* in and of itself contributes to a certain level of risk from over-collection. This is because listing acknowledges the rarity of a species, which then creates a certain level of demand by collectors. Easily accessible roadside populations with few individuals would be particularly susceptible to indiscriminate collection by persons interested in rare plants and/or butterflies if not for the fact that location information is not readily available.

Designation of critical habitat for *Lupinus sulphureus* ssp. *kincaidii*, *Erigeron decumbens* var. *decumbens*, and Fender's blue butterfly is not considered prudent, because the disclosure of precise maps and descriptions of critical habitat in the **Federal Register** would likely subject these populations to loss of individuals and over-collection, resulting in the further decline of the species. The Fender's blue butterfly is also vulnerable to acts of vandalism, which may damage or eliminate populations of this animal.

In the case of Fender's blue butterfly, both criteria apply. As discussed under "Summary of Factors Affecting the Species," this animal and its habitat are vulnerable to several activities, especially the removal of specimens for scientific or personal collections. The Service is concerned about the impacts of the illicit commercial trade on Fender's blue butterfly. Specimens of this species are known to have recently been offered for trade by a butterfly collector. Unauthorized collecting is an activity that can be difficult to control because it can be done in an inconspicuous and discreet manner. The international trade of butterflies, including listed species, is an established practice and the value of a specimen is commensurate with the quality of the specimen and its rarity. High prices for prized specimens can provide an incentive for illegal take and trade. Listing in itself increases the publicity and interest in a species' rarity, and thus may directly increase the value and demand for specimens. Trade of illegally captured or held butterflies and other invertebrates has lead to several arrests and convictions for violations of the Lacey Act (Claiborne 1997; Hoekwater 1997; Mendoza 1995; U. S. Department of Justice 1993, 1994, 1995a, 1995b; Williams 1996). However, with the designation of critical habitat, precise pinpointing of localities would result from publication of critical habitat descriptions and maps in the **Federal Register**. Since the access to many sites is not actively protected, managed or monitored closely enough to prevent trespass or restrict access, the disclosure of critical location information on rare species increases collection activities on the animal, even for butterflies that have been designated as endangered or threatened species.

Since many of the extant populations of Fender's blue butterfly are comprised of a small number of individuals (less than a few hundred individuals, and at seven sites only five individuals), one person seeking to augment a private or scientific collection could extirpate a population with the removal of a few individuals. Several populations are along roadsides, which make them particularly accessible. Therefore, designation of critical habitat would increase the vulnerability of smaller sites, thereby increasing the risk of extinction at these smaller sites from collection.

In addition to the threat of over-collection, critical habitat designation may also make Fender's blue butterfly and its habitat prone to visitation and impact by non-collectors curious about any of the three species discussed in this proposed rule. Curiosity seekers may inadvertently trample host plants and crush eggs, larvae or adult butterflies. Fender's blue butterfly co-occurs with *Lupinus sulphureus* ssp. *kincaidii* at 14 sites and also occurs with *Erigeron decumbens* var. *decumbens* at 1 site. Publication of critical habitat descriptions and maps for *L. sulphureus* ssp. *kincaidii*, *E. decumbens* var. *decumbens*, or Fender's blue butterfly would place all three species at an increased risk of harm from trampling or habitat destruction. For example, in the spring of 1997, naturalists intent on observing the endangered Palos Verdes blue butterfly (*Glaucopsyche lygdamus palosverdesensis*) trampled and damaged its habitat in their quest to obtain photographs of the animal (C. Nagano, pers. obs. 1997).

Designation of critical habitat could also increase the vulnerability of Fender's blue butterfly habitat to intentional destruction by landowners

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who do not want a protected species on their property. In the mid-1980's, a landowner disked the habitat of the now endangered Quino checkerspot butterfly (*Euphydryas editha quino*) and eliminated the species from the site after being informed about its presence (C. Nagano, pers. obs.).

Furthermore, the designation of critical habitat provides limited benefit in addition to the protection and awareness that these three taxa will receive by virtue of their listing. Section 7(a)(2) of the Act requires Federal agencies in consultation with the Service, to ensure that any action authorized, funded, or carried out by such agency, does not jeopardize the continued existence of a federally listed species, or does not destroy or adversely modify designated critical habitat. The occurrences of these three species are so closely associated to their habitat year-round that any designated critical habitat areas would overlap areas of species' presence and occurrence. Therefore, when a species is listed, an analysis to determine jeopardy under section 7(a)(2) would consider take associated with habitat impacts. Such an analysis would closely parallel any analysis of habitat impacts conducted to determine adverse modification of critical habitat. As a result, a determination of adverse modification of critical habitat for Fender's blue butterfly or *Lupinus sulfureus* ssp. *kincaidii* or *Erigeron decumbens* ssp. *decumbens* is highly likely to be accompanied with a determination of jeopardy. Listing of these species will ensure that section 7 consultation occurs and potential impacts to the species and its habitat are considered for any Federal action that may affect these species. In the case of Fender's blue butterfly, the listing of *L. sulfureus* ssp. *kincaidii* will also ensure that Federal agencies consult even when Federal actions may affect unoccupied potentially suitable habitat for the butterfly.

It is the intent of critical habitat designation to provide additional benefits to the species through increased awareness and management activities. Benefits resulting from designation of critical habitat are anticipated to be limited because Federal, State, and conservation group land managers with moderate and larger extant populations of Fender's blue butterfly and *Erigeron decumbens* ssp. *decumbens* have known of the occurrence of these species and have initiated management activities in several cases. The largest populations of the Fender's blue butterfly occur at Baskett Slough National Wildlife Refuge (1,400 individuals on 50 ha) and the second largest is at Willow Creek Main managed by TNC (764 individuals on 3.8 ha). The largest population of *Erigeron decumbens* ssp. *decumbens* occurs at Willow Creek Preserve managed by TNC (2,080 individual plants on 20.3 ha) and the second and third occur on Corps land (Fisher Butte has 1,500 plants on 20.3 ha and Fisher Butte Dike has 1,000 plants on 4.1 ha). All of the large populations of *Lupinus sulphureus* ssp. *kincaidii* occur on private lands and designating critical habitat for *L. sulphureus* ssp. *kincaidii* would reveal locations of the Fender's blue butterfly.

The BLM, FS, Corps, and the Service are aware of the presence and locations of the three species on their properties. The Corps and Service are managing the lands that are under their jurisdiction to restore habitat for the three species and are monitoring the existing populations.

Extant populations of Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii* occur on State lands managed by ODOT and Oregon State University (OSU) College of Forestry. The ODOT is aware of locations of Fender's blue butterfly, *L. sulfureus* ssp. *kincaidii*, and *Erigeron decumbens* ssp. *decumbens* sites, and are currently managing these sites to avoid impacts from State road maintenance activities. The ODOT is a non-Federal representative of the Federal Highway Administration (FHA) for the purposes of section 7 consultation. Therefore, any ODOT activities funded by the FHA that may affect listed species would require section 7 consultation. The OSU Department of Botany and Plant Pathology has been working cooperatively with OSU College of Forestry to conserve habitats at McDonald State Forest where *L. sulphureus* ssp. *kincaidii* and Fender's blue butterfly occur in butterfly meadows on OSU lands (Mark Wilson, pers. comm. 1997).

Other Federal agencies will be notified with this proposed rule. Therefore, agencies such as the Department of Housing and Urban Development (HUD) would be subject to section 7 consultation under the Act. Agencies, such as HUD, with any actions that may impact listed species whether occurring on Federal, State, or private lands, would be subject to section 7 consultation under the Act. Since activities on Federal lands and federally funded activities would be subject to section 7 consultation and recovery planning with listing, protection of habitat will be addressed through the consultation and recovery processes.

Aside from consideration under section 7, the Act does not provide any additional protection to lands designated as critical habitat. Designating critical habitat does not create a management plan for the areas where the listed species occurs; does not establish numerical population goals or prescribe specific management actions (inside or outside of critical habitat); and does not have a direct effect on areas not designated as critical habitat.

Critical habitat designation would provide limited benefit on private lands. The primary reasons are that critical habitat designation provides protection only on Federal lands or on private lands if there is Federal involvement through authorization or funding of, or participation in, a project or activity. In other words, a designation of critical habitat on private lands does not compel or require private landowners to undertake recovery or active management for the species. Also, Federal actions on private lands are likely to be limited, but nevertheless would require section 7 consultation if such actions may affect listed species. In addition, private landowners with sizeable or significant populations of the Fender's blue butterfly, *Lupinus sulfureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* are aware of the populations of the species on their lands. Landowners and managers of smaller sites will be notified with publication of the proposed rule. In the case of The Nature Conservancy, management and conservation activities have been implemented.

Smaller roadside sites may benefit from critical habitat designation by increasing awareness of locations to County road maintenance crews. However, the benefit of critical habitat designation of these smaller sites would be small to negligible when compared to the increased risks and vulnerability these smaller sites may face from collection or vandalism with disclosure of their locations.

In summary, the Service believes that any benefit potentially provided by designation of critical habitat for Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, or *Erigeron decumbens* var. *decumbens* would be outweighed by the increase in threats to the species and their habitat from illegal collecting and vandalism caused by such designation. Therefore, the Service has determined that designation of critical habitat for Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, or *Erigeron decumbens* var. *decumbens* is not prudent. Protection of Fender's blue butterfly habitat, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* will be addressed through the section 7 consultation process and through recovery actions.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm of animals and certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action is likely to adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

As a result of the occupation of roadside habitat by *Erigeron decumbens* var. *decumbens*, *Lupinus sulphureus* ssp. *kincaidii*, and Fender's blue butterfly, the FHA would become involved with these species in the event of full or partial funding of state highway maintenance by the Federal government. Such maintenance activities would be subject to review under the Act. Additionally, sites supporting occurrences of *E. decumbens* var. *decumbens*, *L. sulphureus* ssp. *kincaidii*, and Fender's blue butterfly on private holdings would be subject to review under section 7 of the Act if HUD is involved in the issuance of housing loans. The BLM, FS, and Corps manage lands known to contain extant populations of the three species in this proposed rule. In all of these cases, the consultation and conservation requirements placed upon Federal agencies by the Act would be initiated. Furthermore, opportunities for land acquisition, conservation agreements and other recovery strategies would be bolstered by listing these species as endangered or threatened.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants and 50 CFR 17.71 for threatened plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction of areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law (see 16 U.S.C. § 1538 (a)(2)(B). Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to *Lupinus sulphureus* ssp. *kincaidii* in the future if a special regulation is promulgated after opportunity for public notice and comment. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked "Of Cultivated Origin." Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

• The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits also are available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. It is anticipated that few trade permits would ever be sought or issued because *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* are not common in cultivation or in the wild.

The Act and implementing regulations also set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

It is the policy of the Service, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within the range of a species. *Erigeron decumbens* var. *decumbens*, and *Lupinus sulphureus* ssp. *kincaidii* are known to occur on Federal lands under the jurisdiction of the Service, Corps, BLM, or FS. In the event of listing, occurrences of these species on Federal lands would be protected from collection, damage or destruction under section 9 of the Act. State law provides some protection to populations on State-owned lands as discussed previously. In appropriate cases, collection of these species could be allowed through the issuance of a Federal endangered species permit. The Service is not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by this listing and result in a violation of Section 9.

As a listed wildlife species, Fender's blue butterfly would receive more extensive protection under the Act than described for the plant species above.

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Section 9 prohibits the take of any listed wildlife species by any person subject to the jurisdiction of the United States. The Service believes that, based on the best available information, the following actions would not be violations of section 9:

(1) Possession, delivery, or movement, including interstate transport and import or export from the United States, involving no commercial activity, of dead specimens of Fender's blue butterfly that were collected prior to the date of publication in the **Federal Register** of a final regulation adding this taxon to the list of endangered species;

(2) Actions that may affect Fender's blue butterfly and are authorized, funded, or carried out by a Federal agency when the action is conducted in accordance with section 7 of the Act;

(3) Land actions or management carried out under a habitat conservation plan approved by the Service pursuant to section 10(a)(1)(B) of the Act, or an approved conservation agreement; and,

(4) Scientific research carried out under a recovery permit issued by the Service pursuant to section 10(a)(1)(A) of the Act.

Potential activities involving Fender's blue butterfly that the Service will likely consider a violation of section 9 include, but are not limited to, the following:

(1) Take of Fender's blue butterfly without a recovery permit pursuant to section 10(a)(1)A) or an incidental take permit pursuant to section 10(a)(1)(B) of the Act (this includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions);

(2) Possess, sell, deliver, carry, transport, or ship illegally taken specimens of Fender's blue butterfly, except for properly documented antique specimens of this taxon at least 100 years old, as defined by section 10(h)(1) of the Act;

(3) The unauthorized release of biological control agents that attack, damage, or kill any stage of this taxa;

(4) The removal or destruction of the foodplants being utilized by Fender's blue butterfly, defined as *Lupinus sulphureus* ssp. *kincaidii, L. albicaulis,* and *L. laxiflorus;* and,

(5) Destruction or alteration of Fender's blue butterfly habitat by grading, leveling, plowing, mowing, burning, herbicide or pesticide spraying, intensively grazing, or otherwise disturbing grasslands that result in the death or injury of adult butterflies and/or their larvae or eggs, or that impair the species' essential breeding, foraging, or sheltering.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the State Supervisor of the Service's Oregon State Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed plant and animal species and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503–231–2063; FAX 503–231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on *Erigeron decumbens* var. *decumbens, Lupinus sulphureus* ssp. *kincaidii,* and Fender's blue butterfly.

Final promulgation of the regulation on these species will take into consideration the comments and any additional information received by the Service. Such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to State Supervisor, U.S. Fish and Wildlife Service, Oregon State Office (see **ADDRESSES** above).

Required Determinations

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Oregon State Office (see **ADDRESSES** above).

Author. The primary author of this proposed rule is Richard VanBuskirk, Fish and Wildlife Biologist (see **ADDRESSEES** section). Assistance with the portions of this proposed rule dealing with Fender's blue butterfly were completed by Chris Nagano, staff entomologist, U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.11(h) by adding the following, in alphabetical order, under INSECTS, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
INSECTS							
Fender's blue butterfly.	*Icaricia icarioides fenderi.*	U.S.A. (OR)	NA	E		NA	NA

3. Amend section 17.12(h) by adding the following, in alphabetical order, under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
Erigeron decumbens var. *decumbens.*	Willamette daisy	U.S.A. (OR)	Asteraceae	E		NA	NA
Lupinus sulphureus ssp. *kincaidii.*	Kincaid's lupine	U.S.A. (OR, WA)	Fabaceae	T		NA	NA

Dated: December 30, 1997.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–1851 Filed 1–26–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE59

Endangered and Threatened Wildlife and Plants; Proposed Rule to List the San Bernardino Kangaroo Rat as Endangered; and Notice of Public Hearing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to make the provisions of the emergency rule listing the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) as an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act), permanent. The historic range of the San Bernardino kangaroo rat has been reduced by approximately 96 percent due to agricultural and urban development. Of the remaining occupied habitat, a minimum of 90 percent is threatened by habitat loss, degradation, and fragmentation due to sand and gravel mining operations, flood control projects, and urban development. In addition, all of the remaining populations of San Bernardino kangaroo rat are threatened by seasonal flood events due to current restriction of the subspecies to these active flood plain habitats. Additional data and information on the status of this animal, which may assist the Service in making a final decision on this proposed action, is solicited.

DATES: Comments from all interested parties must be received by March 30, 1998. A public hearing has been scheduled for Tuesday, March 3, 1998, from 2–4 P.M. and 6–8 P.M.

ADDRESSES: Comments and materials concerning this proposal should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address. The public hearing will be held at the San Bernardino Hilton, 285 E. Hospitality Lane, San Bernardino, California.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Carlsbad Field Office, at the address listed above (telephone 760/431–9440).

SUPPLEMENTARY INFORMATION:

Background

For a thorough discussion of biological information, previous Federal action, a summary of the factors affecting the species, the reasons why critical habitat is not being proposed, and conservation measures available to listed and proposed species, consult the emergency rule on the San Bernardino kangaroo rat published in this same **Federal Register**, separate part.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited.

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Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this subspecies;

(2) The location of any additional populations of this subspecies;

(3) Additional information concerning the range, distribution, and population size of this subspecies; and

(4) Current or planned activities in the subject area and their possible impacts on this subspecies.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. In anticipation of public interest, the Service has scheduled a public hearing on Tuesday, March 3, 1998, at the San Bernardino Hilton. Parties wishing to make statements for the record should bring a copy of their statement to the hearing. Oral statements may be limited in length if the number of parties present at the hearing necessitates such a limitation. There are no limits to the lengths of written comments or materials presented at the hearing or mailed to the Service. Written comments carry the same weight as oral comments. The comment period closes on March 30, 1998. Written comments should be submitted to the Service Office listed in the **ADDRESSES** section.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section (4)(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Author

The primary author of this proposed rule is Arthur Davenport of the Carlsbad Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under Mammals, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
.	.	.	.	.	.	.	.
Kangaroo rat, San Bernardino.	*Dipodomys merriami parvus.*	U.S.A. (CA)	Entire	E	631,___	NA	NA
.	.	.	.	.	.	.	.

Dated: January 20, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–2010 Filed 1–26–98; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 63, No. 17

Tuesday, January 27, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Intergovernmental Advisory Committee Subcommittee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee will meet on February 5, 1998, at the Double Tree Hotel, Columbia River, Portland, Oregon. The purpose of the meeting is to continue discussions on the implementation of the Northwest Forest Plan. The meeting will begin at 9:15 a.m. and continue until 3:00 p.m. Agenda items to be discussed include, but are not limited to: review ongoing and potential activities for the coming year, and progress reports on the scoping phase of the review of Northwest Forest Plan and the strategic research plan. The IAC meeting will be open to the public and is fully accessible for people with disabilities. Interpreters are available upon request in advance. Written comments may be submitted for the record at the meeting. Time will also be scheduled for oral public comments. Interested person are encouraged to attend.

FOR FURTHER INFORMATION CONTACT:

Questions regarding this meeting may be directed to Don Knowles, Executive Director, Regional Ecosystem Office, 333 SW 1st Avenue, P.O. Box 3623, Portland, OR 97208 (Phone: 503–808–2180).

Dated: January 21, 1998.

Donald R. Knowles,

Designated Federal Official.

[FR Doc. 98–1880 Filed 1–26–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Evaluation of Coastal Zone Management Program and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Commonwealth of the Northern Marianas Islands, Puerto Rico, Virgin Islands, and New York's Coastal Zone Management Programs and the Jobos Bay National Estuarine Research Reserve in Puerto Rico.

These evaluations will be conducted pursuant to sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended. The CZMA requires a continuing review of the performance of states with respect to coastal program or estuarine research reserve program implementation. Evaluation of Coastal Zone Management and Estuarine Research Reserve Programs require findings concerning the extent to which a state has met the national objectives, adhered to its coastal program document or final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA. The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. Public meetings are held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of public meetings during the site visits.

The Commonwealth of the Northern Marianas Islands Coastal Zone Management Program site visit will be from February 18–27, 1998. One public meeting will be held during the week. This meeting is scheduled for 6:30 p.m., on Wednesday, February 25, 1998, at the Public Library Conference Room, Saipan.

The Puerto Rico Coastal Zone Management Program site visit will be from February 23–27, 1998. One public meeting will be held during the week. This meeting is scheduled for 7 p.m., on Monday, February 23, 1998, at the Department of Environmental Resources Auditorium, Tropical Medicine Building, San Juan, Puerto Rico.

The Jobos Bay National Estuarine Research Reserve in Puerto Rico site visit will be from March 23–27, 1998. One public meeting will be held during the week. This meeting is scheduled for 1:30 p.m., on Wednesday, March 25, 1998, at the Reserve's Visitor's Center, Road 705, Kilometer 2.3, Main Street, Aguirre, Puerto Rico.

The Virgin Islands Coastal Zone Management Program site visit will be from March 30–April 3, 1998. One public meeting will be held during the week. This meeting is scheduled for 7 p.m., on Monday, March 30, 1998, at the Department of Planning and Natural Resources, Lower Level Conference Room, St. Thomas, Virgin Islands.

The New York Coastal Zone Management Program site visit will be from March 30–April 3, 1998. A public meeting will be held on Tuesday, March 31, 1998, from 7–9 p.m. at the Tonawanda City Hall in the City Council Chambers, 200 Niagara Street, Tonawanda, NY.

The States will issue notice of the public meeting(s) in a local newspaper(s) at least 45 days prior to the public meeting(s), and will issue other timely notices as appropriate.

Copies of the State's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the States, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Vickie A. Allin, Chief, Policy Coordination Division (PCD), Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT:

Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, (301) 713–3090, ext. 126.

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Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration.

Dated: January 21, 1998.

Nancy Foster,

Assistant Administrator for Ocean Services and Coastal Zone.

[FR Doc. 98–1937 Filed 1–26–98; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012198A]

Notice of Public Hearings on Individual Fishing Quotas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: Notice is hereby given that NMFS will hold three public meetings on Individual Fishing Quotas (IFQs) in compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) as amended by the Sustainable Fisheries Act of 1996. The meetings will be held in the Caribbean, South Atlantic and Western Pacific Council regions. These meetings supplement those held by the National Research Council (NRC) in the other five Council regions. Hearings have been scheduled for the Caribbean and South Atlantic Council regions; the schedule for the Western Pacific Council region will be announced at a later date.

DATES: The public hearing on IFQs for the Caribbean Council region will be on February 12, 1998, beginning at 1 p.m.; for the South Atlantic Council region, the hearing will be held on March 3, 1998, beginning at 7 p.m.

ADDRESSES: Public hearings on IFQs for the Caribbean and South Atlantic Council regions will be held at the following locations, respectively: the Marriott's Frenchman's Reef Beach Resort, St. Thomas, U.S. Virgin Islands, telephone: 809–776–8500; Jekyll Island Club, 371 Riverview Drive, Jekyll Island, Georgia, telephone: 912–635–2600.

FOR FURTHER INFORMATION CONTACT: Amy Gautam, NMFS, Office of Science and Technology; telephone: (301)713–2328.

SUPPLEMENTARY INFORMATION: Participants will be given five minutes each to provide a statement regarding any aspect of IFQ implementation identified in the study requirements of the Magnuson-Stevens Act. All input will be provided to the NRC for use in preparation of its study of a national policy with respect to IFQs. The date and location of the public hearing in the Western Pacific Council region will be announced.

Dated: January 22, 1998.

William W. Fox, Jr.

Director, Office of Science and Technology, National Marine Fisheries Service.

[FR Doc. 98–1933 Filed 1–26–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011698B]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a meeting which is open to the public.

DATES: The meeting will begin on Monday, February 9, 1998, at 1 p.m. and will continue through 4 p.m. Thursday, February 12, 1998. The Tuesday and Wednesday sessions will begin at 8 a.m. and may go into the evening until business for the day is completed. An opportunity for public comment will be provided at 4 p.m. each day of the meeting and 3 p.m. on Thursday.

ADDRESSES: The meeting will be held in the conference room at the Council office, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to develop a work plan for 1998 and to prepare technical advice and reports to support Council decisions throughout the year. Specific issues the GMT will address include: (1) discuss proposed revisions to the stock assessment process and appoint representatives to track the various assessments; (2) prepare a work plan for 1998 GMT activities; (3) prepare and review sections of the draft groundfish fishery management plan amendment; (4) review methodology for developing inseason catch projections; (5) prepare recommendations related to groundfish research and data needs; (6) evaluate data and analysis requirements related to lingcod and rockfish allocation and management, and begin preparation of the analysis; (7) discuss issues related to a groundfish vessel/permit buy-back program; (8) evaluate Pacific grenadier and rockfish landings trends; and (9) prepare a groundfish economic data plan. The GMT plans to address topics in the order listed but will consider developing daily schedules as the meeting progresses. Due to the large number of agenda items, the GMT economic subgroup may meet separately and concurrently on Wednesday; it is not practical to establish daily agendas or schedules in advance of the meeting.

Although other issues not contained in this agenda may come before the GMT for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues will not be the subject of formal GMT action during this meeting. GMT action will be restricted to those issues specifically identified in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Eric Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: January 20, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–1831 Filed 1–26–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011698A]

Marine Mammals; Scientific Research Permit (PHF# 881–1443)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that the Alaska SeaLife Center, P.O. Box 1239, Seward, AK 99664, has applied in due form for a permit to take Steller sea lions (*Eumetopias jubatus*) and harbor seals (*Phoca vitulina*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before February 26, 1998.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by email or other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

For the purposes of scientific research, the applicant seeks authorization to import from Canada, three juvenile Steller sea lions (*Eumetopias jubatus*) currently housed at the Vancouver Aquarium, and two juvenile harbor seals (*Phoca vitulina*) presently residing at University of British Columbia. Over a five-year period the applicant requests to conduct studies on the nutritional physiology, metabolic development, and clinical health of Steller sea lions and harbor seals under captive conditions. Incidental to this scientific research, the public will be able to view the animals as part of an education program.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: January 21, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–1932 Filed 1–26–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012098A]

Marine Mammals; Scientific Research Permits (559–1442 and P524B)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications.

SUMMARY: Notice is hereby given that applications have been received from the following individuals to take marine mammals for purposes of scientific research:

(559–1442) Mr. Salvatore Cerchio, Museum of Zoology, University of Michigan, 1109 Geddes Ave., Ann Arbor, MI 48109–1079, has applied in due form for a permit to import humpback whale samples from Mexico; and

(P524B) Dr. Shannon Atkinson, Hawaii Institute of Marine Biology, Univ. of HI, 1000 Pope Road MSB #213, Honolulu, HI 96822, has applied in due form for an amendment to Permit No. 969.

DATES: Written or telefaxed comments must be received on or before February 26, 1998.

ADDRESSES: The applications and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250); and

Southwest Region, NMFS, 501 West Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4001).

Written comments or requests for a public hearing on these applications should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on a particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by email or other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

Mr. Salvatore Cerchio requests a permit to import 1000 humpback whale (*Megaptera novaeangliae*) biopsy tissue samples from Mexico. Samples have already been collected or will be collected under permits issued by the Mexican Government. The goals of the project are to assess paternity and test whether there is a large variance in reproductive success among males, typical of polygynous systems, or if paternities are distributed randomly.

Dr. Shannon Atkinson requests an amendment to Permit No. 969 to import the reproductive tract tissues, blood, plasma and serum of Mediterranean monk seals (*Monachus monachus*) taken from the subpopulation that inhabits the coast of Mauritania in North Africa and was involved in the 1997 die-off. Samples will be imported from Spain, where they are currently in storage. The applicant also requests authority to collect and/or import the same samples from all species of pinnipeds (except walrus) involved in beachings, strandings, die-offs, and taken during normal veterinary procedures on rehabilitated animals. The objective is to evaluate reproductive

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hormone concentrations, obtained from blood samples, with respect to reproductive status of male and female monk seals, and other pinnipeds.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: January 21, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–1934 Filed 1–26–98; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 98–C0004]

In the Matter of COA, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional Acceptance of a Settlement Agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which if provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR § 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with COA, Inc., a corporation, d/b/a Coaster Co. of America "containing a civil penalty of $300,000.".

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by February 11, 1998.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 98–C0004, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Howard N. Tarnoff, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: January 20, 1998.

Sadye E. Dunn,

Secretary.

In the Matter of COA, INC., a Corporation d/b/a Coaster Co. of America

Settlement Agreement and Order

1. This Settlement Agreement and Order, entered into between COA, Inc., d/b/a Coaster Co. of America, a corporation (hereinafter, "COA"), and the staff of the Consumer Product Safety Commission (hereinafter, "staff"), pursuant to the procedures set forth in 16 CFR § 1118.20, is a compromised resolution of the matter described herein, without a hearing or determination of issues of law and fact,

The Parties

2. The staff is the staff of the Consumer Product Safety Commission (hereinafter, "Commission"), an independent federal regulatory agency of the United States government, established by Congress pursuant to section 4 of the Consumer Product Safety Act (hereinafter, "CPSA"), as amended, 15 USC § 2053.

3. Respondent COA is a corporation organized and existing under the laws of the State of California with its principal corporate offices located at 1298 Sandoval St., Santa Fe Springs, CA 90670. COA is an importer and wholesaler of all types of home furnishings and furniture, including baby cribs.

Staff Allegations

4. Section 4(a) of the Federal Hazardous Substances Act (hereinafter, "FHSA"), 15 U.S.C. § 1263(a), prohibits the introduction into interstate commerce of any banned hazardous substance.

5. Section 15(b) of the CPSA, 15 U.S.C. § 2064(b), requires a manufacturer of a consumer product who, *inter alia*, obtains information that reasonably supports the conclusion that the product contains a defect which could create a substantial product hazard or creates an unreasonable risk of serious injury or death, to immediately inform the Commission of the defect or risk.

6. From approximately January 1993 through December 1996, COA imported and introducted into interstate commerce approximately 940 full-size baby cribs, identified as model 2368.

7. From approximately June 1996 through April 1997, COA imported and introduced into interstate commerce approximately 900 full-size baby cribs, identified as model 2364.

8. The staff inspected and evaluated these 2 cribs and identified multiple violations of the FHSA and its regulations, Requirements for Full-Size Baby Cribs, 16 CFR Part 1508 (crib regulations). Any one of the FHSA violations is sufficient to render each crib to be a "banned hazardous substance" under the FHSA and the applicable crib regulation.

9. Specifically, model 2368 violated the FHSA and its crib regulations at 16 CFR §§ 1508.4 (a) and (b) (spacing of crib components); 16 CFR § 1508.6(b) (requirements for hardware), and; 16 CFR §§ 1508.9(b)(2) and (d) (identifying marks, warning statement, and compliance declaration).

10. Specifically, model 2364 violated the FHSA and its crib regulations at 16 CFR § 1508.4(a); 16 CFR § 1508.7(c) (requirements for construction and finishing), and; 16 CFR §§ 1508.9(b) (1) and (2) and (c).

11. In addition, on or about August 21, 1996, COA received a test report on a sample of model #2364 crib performed by the Detroit Testing Laboratory, Inc. (DTL) on August 20, 1996. DTL had identified and listed substantially all of the violations which the Commission's evaluations subsequently identified. DTL also noted that the decorative "S" on the side rails may present a potential for entrapment and strangulation. COA knew or should have known of these violations of the FHSA on or about August 21, 1996, yet it failed to report this to the Commission, as required by section 15(b) of the CPSA. Further, it continued to sell these cribs until at least March 18, 1997.

12. Because these two cribs failed to meet the Requirements for Full-Size Baby Cribs, each of them is a "banned hazardous substance" within the meaning of section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261 (q)(1)(A). The introduction into interstate commerce of these banned hazardous substances by COA was a prohibited act pursuant to section 4(a) of the FHSA and was committed "knowingly", as that term is defined in section 5(c)(5) of the FHSA, 15 U.S.C. 1264(c)(5).

13. Although COA had obtained sufficient information to reasonably support the conclusion that these cribs contained a defect which could create a substantial product hazard, or created an unreasonable risk of serious injury or death, it failed to report such information to the Commission in a timely manner, as required by section 15(b) of the CPSA. This is a violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

14. Respondent's failure to report to the Commission, as required by section 15(b) of the CPSA, was committed "knowingly", as that term is defined in Section 20(d) of the CPSA, 15 U.S.C. § 2069(d) and COA is subject to civil penalties under Section 20 of the CPSA.

Response of COA

15. COA denies each and all of the staff allegations with respect to these cribs.

Agreement of the Parties

16. The Commission had jurisdiction in this matter.

17. Upon final acceptance of the Settlement Agreement, COA, Inc. shall pay to the Order of the U.S. Treasury a civil penalty in the amount of three hundred thousand and 00/100 dollars ($300,000.00) to be paid in three installments of $100,000. The first $100,000 payment will be due within twenty (20) days after service upon Respondent of the Final Order of the Commission accepting this Settlement Agreement. Thereafter, COA, Inc. agrees to pay $100,000 within one hundred and ten (110) days of the date of service of the Final Order, and $100,000 within two hundred (200) days of the first payment. Payment of the total $300,000 civil penalty shall settle fully the staff's allegations set forth in paragraphs 4 through 14 of the Settlement Agreement and Order. Upon the failure by COA, Inc. to make a payment or upon the making of a late payment (as determined by the postmark on the envelope) by CSA (a) the entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. §§ 1961 (a) and (b).

18. COA knowingly, voluntarily and completely waives any rights it may have (1) to an administrative or judicial hearing with respect to the Commission's claim for a civil penalty, (2) to judicial review or other challenge or contest of the validity of the Commission's action with regard to its claim for a civil penalty, (3) to a determination by the Commission as to whether a violation of the FHSA or section 15(b) of the CPSA, has occurred, (4) to a statement of findings of fact and conclusions of law with regard to the Commission's claim for a civil penalty, and (5) to any claims under the Equal Access to Justice Act.

19. This Settlement Agreement and Order settles any allegations of violations of the FHSA or of section 15(b) of the CPSA regarding the products described above.

20. Nothing in this Settlement Agreement and Order shall be construed to preclude the CPSC from pursuing a corrective action or other relief not described above.

21. This Settlement Agreement and Order becomes effective only upon its final acceptance by the Commission and service of the incorporated Order upon Respondent.

22. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, the Commission shall place this Agreement and Order on the public record and shall publish it in the **Federal Register** in accordance with the procedure set forth in 16 CFR § 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Agreement and Order shall be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR § 1118.20(f).

23. Upon final acceptance of this Settlement Agreement and Order, the Commission shall issue the attached Order, incorporated herein by reference.

24. The provisions of this Settlement Agreement and Order shall apply to COA and its successors and assigns.

25. For purposes of section 6(b) of the CPSA, 15 U.S.C. § 2055(b), this matter shall be treated as if a complaint had issued, and the Commission may publicize the terms of the Settlement Agreement and Order.

26. COA agrees to immediately inform the Commission if it learns of any incidents involving the products and alleged defects identified above.

27. This Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or to contradict its terms.

COA, Inc.

Dated: December 11, 1997.

Michael Yeh,

President of COA, Inc.

The Consumer Product Safety Commission.

Alan H. Scheom,

Assistant Executive Director, Office of Compliance.

Eric L. Stone,

Director, Division of Administrative Litigation, Office of Compliance.

Dated: December 17, 1997.

Melvin I. Kramer,

Trial Attorney, Division of Administrative Litigation, Office of Compliance.

In the Matter of COA, Inc., a Corporation d/b/a Coaster Company of America

Order

Upon consideration of the Settlement Agreement between Respondent COA, Inc., a corporation, d/b/a Coaster Company of America and the staff of the Consumer Product Safety Commission, and the Commission having jurisdiction over the subject matter and over COA, Inc., and it appearing the Settlement Agreement is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted, and it is

Further ordered, that upon final acceptance of the Settlement Agreement, COA, Inc. shall pay to the Order of the U.S. Treasury a civil penalty in the amount of three hundred thousand and 00/100 dollars ($300,000.00) to be paid in three installments of $100,000. The first $100,000 payment will be due within twenty (20) days after service upon Respondent of the Final Order of the Commission accepting this Settlement Agreement. Thereafter, COA, Inc. shall pay $100,000 within one hundred and ten (110) days of the date of service of the Final Order, and $100,000 within two hundred (200) days of the first payment. Payment of the total $300,000 civil penalty shall settle fully the staff's allegations set forth in paragraphs 4 through 14 of the Settlement Agreement and Order. Upon the failure by COA, Inc. to make a payment or upon the making of a late payment (as determined by the postmark on the envelope) by CSA: (a) The entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. §§ 1961 (a) and (b).

Further ordered, COA, Inc. shall immediately inform the Commission if it learns of any incidents involving the products and alleged defects identified herein.

Provisionally accepted and Provisional Order issued on the 20th day of January, 1998.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 98–1821 Filed 1–26–98; 8:45 am]

BILLING CODE 6355–01–M

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0066]

Submission for OMB Review; Comment Request Entitled Professional Employee Compensation Plan

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0066).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Professional Employee Compensation Plan. A request for public comments was published at 62 FR 62001, November 20, 1997. No comments were received.

DATES: Comments may be submitted on or before February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill, Federal Acquisition Policy Division, GSA (202) 501–3856.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0066, Professional Employee Compensation Plan, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

OFPP Policy Letter No. 78–2, March 29, 1978, requires that all professional employees shall be compensated fairly and properly. Implementation of this requires a total compensation plan setting forth proposed salaries and fringe benefits for professional employees with supporting data be submitted to the contracting officer for evaluation.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The annual reporting burden is estimated as follows: Respondents, 5,340; responses per respondent, 1; total annual responses, 5,340; preparation hours per response, .5; and total response burden hours, 2,670.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (VRS), Room 4037, 1800 F Street, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0066, Professional Compensation Plan, in all correspondence.

Dated: January 21, 1998.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 98–1782 Filed 1–26–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy

AGENCY: United States Military Academy.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following meeting:

Name of Committee: Board of Visitors, United States Military Academy.

Date of Meeting: 10 February 1998.

Place of Meeting: Room 418, Russell Senate Office Building, The Capitol, Washington, DC.

Start time of Meeting: Approximately 10:00 a.m.

FOR FURTHER INFORMATION CONTACT: For further information, contact Lieutenant Colonel Joseph A. Dubyel, United States Military Academy, West Point, NY 10996–5000, phone: (914) 938–5078.

SUPPLEMENTARY INFORMATION:

Proposed Agenda: Election of officers; selection of Executive Committee; scheduling of meetings for remainder of year; and identification of areas of interest for 1998.

All proceedings are open.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–2003 Filed 1–26–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability for the Record of Decision for the San Gabriel Canyon Sediment Management Plan, Los Angeles County, California

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers, Regulatory Branch, in coordination with the County of Los Angeles—Department of Public Works, has completed the Record of Decision associated with the Joint Environmental Impact Statement/Environmental Impact Report for the San Gabriel Canyon Sediment Management Plan.

FOR FURTHER INFORMATION CONTACT: Questions regarding the Record of Decision or requests for the document may be directed to Mr. Aaron Allen, Project Manager, Regulatory Branch, U.S. Army Corps of Engineers, P.O. Box 532711, Los Angeles, California, 90053–2325, (213) 452–3413.

SUPPLEMENTARY INFORMATION: None.

Robert L. Davis,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 98–1830 Filed 1–26–98; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Correction.

SUMMARY: In notice document 98–676 beginning on page 1837 in the issue of Monday, January 12, 1998, make the following correction:

On page 1837 in the second column, **SUMMARY** section, second paragraph, fifth line beginning with the words "transfer of" the sentence should read "32,288 kilograms of natural uranium in hexaflouride form".

Dated: January 16, 1998.

Cherie P. Fitzgerald,

Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 98–1829 Filed 1–26–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Correction.

SUMMARY: In notice document 98–677 beginning on page 1837 in the issue of Monday, January 12, 1998, make the following corrections:

On page 1837, in the third column, **SUMMARY** section, second paragraph, fifth line, beginning with the words "transfer of", the number should read "76,929.3 kilograms.

Dated: January 16, 1998.

Cherie P. Fitzgerald,

Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 98–1827 Filed 1–26–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–573–000]

Aurora Power Resources, Inc.; Notice of Issuance of Order

January 21, 1998.

Aurora Power Resources, Inc. (Aurora) submitted for filing a rate schedule under which Aurora will engage in wholesale electric power and energy transactions as a marketer. Aurora also requested waiver of various Commission regulations. In particular, Aurora requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Aurora.

On January 20, 1998, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Aurora should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Aurora is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Aurora's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 19, 1998. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1867 Filed 1–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–406–007 and RP98–65–001]

CNG Transmission Corporation; Notice of Tariff Motion Filing

January 21, 1998.

Take notice that on January 14, 1998, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Sub. Sixteenth Revised Sheet No. 35, with an effective date of January 1, 1998.

CNG states that the purpose of this filing is to remove references to an "Excess Injection Charge" in compliance with the Suspension Order, which CNG had not removed from Sub. Sixteenth Revised Sheet No. 35 filed on December 31, 1997. CNG requests waiver of Section 154.206(b) of the Commission's regulations, so that its tariff sheet may become effective as proposed.

CNG also notes that its December 31, 1997 Motion Tariff Filing incorporated the small-customer transportation rates proposed in Docket No. RP98–65; CNG has thereby compiled with the filing requirement established by the Commission's December 31, 1997 Letter Order in the above-referenced proceedings.

CNG states that copies of its letter of transmittal and enclosures are being mailed to its customers and interested state commissions.

Any person desiring to protest said filing should file a motion with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1876 Filed 1–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES97–7–001]

Consumers Energy Company; Notice of Amendment of Application

January 21, 1998.

Take notice that on January 15, 1998, Consumers Energy Company filed an amendment to its original application in this proceeding. The amendment seeks authorization to issue up to $475 million of first mortgage bonds for the sole purpose of serving as security for long-term refunding notes authorized in this docket. The first mortgage bonds would not themselves be a source of funds for Consumers, nor would they increase Consumers' total indebtedness. Consumers also requested waivers of the Commission's competitive bid and negotiated placement requirements for certain securities to be issued pursuant to authorization granted in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211

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and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 29, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1868 Filed 1–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–111–000]

East Tennessee Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 21, 1998.

Take notice that on January 16, 1997, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fourth Revised Sheet No. 111. East Tennessee requests that this revised tariff sheet be deemed effective February 15, 1998.

East Tennessee states that Fourth Revised Sheet No. 111 corrects an inadvertent error, namely the mistaken insertion of language previously approved for deletion by the Commission. See November 13, 1996 Letter Order in Docket No. RP97–31. The language approved for deletion involved the restriction in the General Terms and Conditions of East Tennessee's FERC Gas Tariff, that a request for service from East Tennessee could be made no earlier than 90 days prior to the proposed commencement date of service.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1878 Filed 1–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RB98–110–000]

Garden Banks Gas Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

January 21, 1998.

Take notice that on January 15, 1998, Garden Banks Gas Pipeline, L.L.C. (GBGP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet Nos. 100 and 101 proposed to become effective January 1, 1998.

GBGP states that the purpose of this filing is to comply with Order 636–C issued on February 27, 1997, whereby the matching term on the right-of-first-refusal to retain existing capacity was shortened from twenty years to five years.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions and protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1877 Filed 1–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–153–000]

Granite State Gas Transmission, Inc.; Notice of FERC Tariff Filing

January 21, 1998.

Take notice that on January 15, 1998, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fifth Revised Sheet No. 289, with an effective date of January 15, 1998.

According to Granite State, the purpose of the foregoing tariff sheet is to incorporate GISB Standard 4.3.6 by reference in the tariff, thus implementing Granite State Internet accessible web page.

Granite State further states that copies of its filing are being served by first-class mail on its firm and interruptible shippers and on the regulatory commissions of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1875 Filed 1–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–180–000]

Great Lakes Gas Transmission Company; Notice of Request Under Blanket Authorization

January 21, 1998.

Take notice that on January 13, 1998, Great Lakes Gas Transmission Company (Great Lakes), One Woodward Avenue, Suite 1600, Detroit, Michigan 48226, filed in Docket No. CP98–180–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to construct and operate a new delivery point (the Duck Creek delivery point) located in Gogebic County, Michigan to provide natural gas transportation service for Wisconsin Electric Power Company (WEPCO) and Wisconsin Public Service Corporation (WPS), under Great Lake's blanket certificates issued in Docket No. CP90–2053–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Great Lakes states that it has executed 10–year firm service agreements with WEPCO and WPS, two new shippers on Great Lakes' system. Great Lakes states further that the shippers would utilize Great Lakes' transportation to expand their retail natural gas distribution services within Wisconsin.

Great Lakes indicates that the estimated cost of constructing the facilities is approximately $250,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1871 Filed 1–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91–143–044]

Great Lakes Gas Transmission Limited Partnership; Notice of Revenue Sharing Report; November 1996—Octover 1997

January 21, 1998.

Take notice that on January 15, 1998, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed its Interruptible/Overrun (I/O) Revenue Sharing Report with the Commission in accordance with the Stipulation and Agreement (Settlement) filed on September 24, 1992, and approved by the Commission's February 3, 1993 order issued in Docket No. RP91–143–000, *et al.*

Great Lakes states that this report reflects application of the revenue sharing mechanism and remittances made to firm shippers for I/O revenue collected for the November 1, 1996 through October 31, 1997 period, in accordance with Article IV of the Settlement. Great Lakes states that such remittances, totaling $21,147, were made to Great Lakes' firm shippers on December 16, 1997.

Great Lakes further states the amounts remitted are based on implementation of the Commission's orders in Docket Nos. RP91–143, RS92–63 and RP95–422, *et al.* The amounts remitted may be adjusted at a future date in accordance with the provisions of Articles III and V of the Settlement, as certain of the Commission's orders referenced above are under Petitions for Review in the United States Court of Appeals for the D.C. Circuit in Southeastern Michigan Gas Company and Michigan Gas Company, *et al.* v. FERC, Nos. 96–1200, *et al.* Great Lakes states it will adjust the amounts remitted to comply with any further Commission action or judicial review resulting from disposition of the aforementioned court proceeding.

Great Lakes states that copies of the report were sent to its firms customers, parties to this proceeding and the Public Service Commissions of Minnesota, Wisconsin and Michigan.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before January 28, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Commission's Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1874 Filed 1–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–174–000]

Millennium Energy Corporation; Notice of Issuance of Order

January 21, 1998.

Millennium Energy Corporation (Millennium) submitted for filing a rate schedule under which Millennium will engage in wholesale electric power and energy transactions as a marketer. Millennium also requested waiver of various Commission regulations. In particular, Millennium requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Millennium.

On January 20, 1998, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Millennium should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Millennium is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Millennium's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protest, as set forth above, is February 19, 1998. Copies of the full text of the order are available from the Commission's Public Reference Branch,

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888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1866 Filed 1–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–185–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

January 21, 1998.

Take notice that on January 14, 1998, NorAm Gas Transmission Company (NorAm), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP98–185–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) under NorAm's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 for authorization to operate certain facilities in Arkansas, Louisiana, Oklahoma and Texas, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

NorAm specifically requests authority at the request of ARKLA, a distribution division of NorAm Energy Corporation (ARKLA), to operate existing taps for delivery of natural gas to ARKLA for resale to consumers other than the right-of-way grantors from whom the taps were originally installed. NorAm states that the volumes through these taps range from 1 MMBtu to 200 MMBtu per day. The location and size of each tap for certification is shown in Exhibit Z of the application. NorAm further states that there will be no new construction.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1872 Filed 1–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–172–000]

South Georgia Natural Gas Company; Notice of Request Under Blanket Authorization

January 21, 1998.

Take notice that on January 7, 1998, as supplemented on January 15, 1998, South Georgia Natural Gas Company, Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP98–172–000, a request, pursuant to Sections 157.205, 157.212, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, and 157.216), for authorization to construct and operate modifications to an existing delivery point in Suwannee County, Florida for transportation service to its existing customer, Florida Power Corporation (Florida Power), under South Georgia's blanket certificate authorization issued in Docket No. CP82–548–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

South Georgia is proposing to add one 6-inch turbine meter and to replace the existing 3-inch regulators and monitors with 4-inch regulators and monitors at the existing meter station, known as Florida Power #2, located at or near Mile Post 100.324 on South Georgia's 10-inch Main Line in Suwannee County, Florida.

South Georgia estimates the total cost of the modifications to be $196,550, to be reimbursed to it by Florida Power. South Georgia estimates the annual volumes for deliveries will increase from 350,000 Mcf to 1,050,000 Mcf, and the maximum daily delivery volumes will increase from 9720 Mcf to 29,160 Mcf per day.

South Georgia states that it will transport gas on behalf of Florida Power under its Rate Schedule IT. South Georgia states that the installation of the proposed facilities will have no adverse effect on its ability to provide its firm deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1869 Filed 1–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–173–000]

Texas Gas Transmission Corporation Southern Natural Gas Company; Notice of Application

January 21, 1998.

Take notice that on January 8, 1998, Texas Gas Transmission Corporation (Texas Gas) P.O. Box 20008, Owensboro, Kentucky 42304 and Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35202 (jointly referred to as Applicants) filed in Docket No. CP98–173–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a natural gas exchange service between Texas Gas and Southern which was authorized in Docket No. G–11138, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicants propose to abandon the exchange service between Texas Gas and Southern provided under Texas Gas' Rate Schedule X–7 and Southern's Rate Schedule 11. The Applicants state that this exchange service is no longer required and has been terminated by Texas Gas giving notice to Southern by letter dated April 19, 1996, of its intent to terminate the Exchange Agreement effective July 19, 1996.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 11, 1998, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulation Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1870 Filed 1–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Preliminary Permit

January 21, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11609–000.

c. *Date filed:* November 3, 1997.

d. *Applicant:* South Fork Irrigation District and Hot Springs Valley Irrigation District.

e. *Name of Project:* West Valley Project.

f. *Location:* On the Cedar Creek, in Lassen and Modoc Counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C., 791(a)–825(r).

h. *Applicant Contact:* Mr. Don R. Pope, 9709 W. Fairview Avenue, Littleton, CO 80127–3955, (303) 973–9610.

i. *FERC Contact:* Mr. Robert Bell, (202) 219–2806.

j. *Comment Date:* April 7, 1998.

k. *Description of Project:* The proposed pumped storage project would consist of: (1) the existing 16-foot-high, 1,100-foot-long earthen Moon Lake Dam; (2) the Moon Lake Reservoir, having a surface area of 3,000 acres, a storage capacity of 35,000 acre-feet, and normal water surface elevation of 5,500 feet msl (this will serve as the upper reservoir); (3) a new 90-foot-high, 650-foot-long concrete dam; (4) a new reservoir having a surface area of 184 acres, a storage capacity of 8,280 acre-feet, and normal water surface elevation of 4,950 feet msl (this would serve as the lower reservoir); (5) a new 18,000-foot long tunnel connecting the reservoirs; (6) a new powerhouse within the tunnel, containing four generating units with a total installed capacity of 264 MW; (7) a new 5-mile-long, 230–KV transmission line; and (8) appurtenant facilities.

This project would have an annual generation of 542,880 MWh and would be sold to a local utility.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the project number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application

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or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1873 Filed 1–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed During the Week of November 10 Through November 14, 1997

During the Week of November 10 through November 14, 1997, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

Dated: January 15, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Nov. 10 through Nov. 14, 1997]

Date	Name and location of applicant	Case No.	Type of submission
11/12/97	Dykema Gossett, Washington, DC.	VFA–0349	Appeal of an Information Request Denial. If Granted: The October 20, 1997 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and Dykema Gossett would receive access to certain DOE information.
11/13/97	Personnel Security Review.	VSA–0146	Request for Review of Opinion under 10 CFR Part 710. If Granted: The July 31, 1997 Opinion of the Office of Hearings and Appeals, Case No. VSO–0146, would be reviewed at the request of an individual employed by the Department of Energy.
11/14/97	Convergence Research, Portland, Oregon.	VFA–0350	Appeal of an Information Request Denial. If Granted: The October 16, 1997 Freedom of Information Request Denial issued by the Bonneville Power Administration would be rescinded, and Convergence Research would receive access to certain DOE information.
11/14/97	Personnel Security Review.	VSA–0161	Request for Review of Opinion under 10 CFR. If Granted: The October 14, 1997 Opinion of the Office of Hearings and Appeals, Case No. VSO–0161, would be reviewed at the request of an individual employed by the Department of Energy.

[FR Doc. 98–1828 Filed 1–26–98; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5954–2]

Continuing Planning Process for the Commonwealth of Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability for public review and comment of the continuing planning process (CPP) for the Commonwealth of Pennsylvania.

SUMMARY: The Clean Water Act (the Act) at section 303(e), and EPA's implementing regulation at 40 CFR 130.5, requires that each State shall establish and maintain a continuing planning process (CPP) consistent with the Act. Each State is responsible for managing its water quality program to implement the processes specified in the CPP, and EPA is responsible for periodically reviewing the adequacy of the State's CPP.

Pennsylvania developed and submitted a CPP in 1977. EPA subsequently approved that CPP. This notice is being published in accordance with Paragraph 18 of the consent decree in the matter of *American Littoral Society and Public Interest Research Group of Pennsylvania* v. *EPA*, Civil Docket No. 96–489. Consistent with the consent decree, EPA is publishing this notice of availability of the CPP to interested parties. By June 1, 1998, EPA will prepare and make available to interested parties for their review and comment its preliminary written summary of its review of the CPP. Copies of the CPP are available by contacting the person listed in the following **FOR FURTHER INFORMATION CONTACT** section. Once available, copies of EPA's preliminary written summary may also be requested.

FOR FURTHER INFORMATION CONTACT: Sarah B. Blackman, Office of Watersheds, at (215) 566–5720, or by e-mail at blackman.sarah@epamail.epa.gov.

Robert J. Mitkus,

Deputy Director, Water Protection Division, EPA Region III.

[FR Doc. 98–1914 Filed 1–26–98; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5954–8]

Announcement of Stakeholders Meeting on Arsenic in Drinking Water

AGENCY: Environmental Protection Agency.

ACTION: Notice of stakeholders meeting.

SUMMARY: The Environmental Protection Agency (EPA) will be holding a one-day public meeting on February 25, 1998 in San Antonio, Texas. The purpose of this meeting is to present information on EPA's plans for activities to develop a proposed National Primary Drinking Water Regulation (NPDWR) for arsenic under the Safe Drinking Water Act (SDWA) as amended, and solicit public input on major technical and implementation issues, and on preferred approaches for continued public involvement. This meeting will be very similar in content to the arsenic stakeholders meeting EPA held in Washington, DC on September 11–12, 1997. At the upcoming meeting, EPA is again seeking input from State and Tribal drinking water programs, the regulated community (water systems), public health organizations, academia, environmental and public interest groups, engineering firms, and other stakeholders on a number of issues related to developing the NPDWR for arsenic. EPA encourages the full participation of stakeholders throughout this process.

DATES: The stakeholder meeting on arsenic in drinking water will be held on Wednesday, February 25, 1998 from 8:30 a.m. to 12 noon and 1 p.m. to 5 p.m. Central Standard Time.

ADDRESSES: The meeting will be held in the Holiday Inn Riverwalk ((210) 224–2500), which is located at 217 North St. Mary's Street, San Antonio, TX 78205. To register for the meeting, please contact the Safe Drinking Water Hotline at 1–800–426–4791 between 9 a.m. and 5:30 p.m. Eastern Standard Time. Those registered for the meeting by Wednesday, February 18, 1998, will receive an agenda, logistics sheet, and discussion papers prior to the meeting. Members of the public who cannot attend the meeting in person may participate via conference call and should register with the Safe Drinking Water Hotline by February 18 in order to receive copies of the overheads in advance. Please provide your name, organization, title, mailing address, telephone number, facsimile number, e-mail address and telephone number for EPA to connect the caller via conference call [if applicable] for the "Arsenic meeting."

FOR FURTHER INFORMATION CONTACT: For general information on meeting logistics, please contact the Safe Drinking Water Hotline at 1–800–426–4791. For information on the activities related to developing the NPDWR for arsenic, contact the Safe Drinking Water Hotline at 1–800–426–4791, or visit the EPA Office of Ground Water and Drinking Water arsenic webpage at http://www.epa.gov/OGWDW/ars/arsenic.html, which contains electronic copies of the discussion papers from the September 11–12, 1997 stakeholders meeting. Registrants must make their own room reservations for the Holiday Inn Riverwalk by January 30, 1998 by calling 1–800–422–2419 and mention "EPA Arsenic Meeting" to guarantee the room rate of $94.

SUPPLEMENTARY INFORMATION:

A. Background

Arsenic (As) is a naturally occurring element found in the human body and is present in food, water, and air. Arsenic in drinking water occurs in ground water and surface water and is associated with certain natural geologic conditions, as well as with contamination from human activities. Arsenic ingestion is linked to skin cancer and arsenic inhalation to lung cancer. In addition, arsenic ingestion seems to be associated with vascular effects, gastrointestinal irritation, and cancers of the kidney, bladder, liver, lung, and other organs. Water primarily contains inorganic arsenic species (As^{V+} and As^{III+}), which tend to be more toxic than organic forms.

In 1976 EPA issued a National Interim Primary Drinking Water Regulation for arsenic at 50 parts per billion (ppb; µg/L). Under the 1986 amendments to SDWA, Congress directed EPA to publish Maximum Contaminant Level Goals (MCLGs) and promulgate National Primary Drinking Water Regulations (NPDWRs) for 83 contaminants, including arsenic. When EPA failed to meet the statutory deadline for promulgating an arsenic regulation, a citizens' group filed suit to compel EPA to do so. EPA entered into a consent decree to issue the regulation. EPA held internal workgroup meetings throughout 1994, addressing risk assessment, treatment, analytical methods, arsenic occurrence, exposure, costs, implementation issues, and regulatory options before deciding in early 1995 to defer the regulation in order to better characterize health effects.

On August 6, 1996, Congress amended the SDWA, adding section 1412(b)(12)(A) which requires, in part, that EPA propose a NPDWR for arsenic by January 1, 2000 and issue a final regulation by January 1, 2001. The current maximum contaminant level (MCL) of 50 µg/L remains in effect until the effective date of the revised rule.

The 1996 amendments to the SDWA also directed EPA to develop by February, 1997, a comprehensive arsenic research plan to assess health risks associated with exposure to low levels of arsenic. In December 1996, EPA announced the availability of the arsenic research plan, and the public had an opportunity to comment on the paper at a scientific peer review meeting in January, 1997. EPA reported to Congress in late January that the plan was publicly available and would be revised after consideration of the final report of the scientific peer review group, which was subsequently published May 8, 1997. In conducting the studies in the arsenic research plan, EPA will consult with the National Academy of Sciences, other Federal agencies, and other interested public and private parties.

B. Request for Stakeholder Involvement

EPA intends for the proposed NPDWR for arsenic to incorporate the best available science, risk assessment, treatment technologies, occurrence data, cost/benefit analyses, and stakeholder input on technical and implementation issues.

The stakeholders meeting will cover a broad range of issues including: (1) regulatory process, including risk management decisions; (2) arsenic risk assessment (exposure, health assessment, national occurrence); (3) key technical assessments (treatment technologies, treatment residuals, cost, analytical methods); (4) small system concerns; and (5) future stakeholder involvement. Background materials on arsenic in drinking water issues will be sent in advance of the meeting to those who register with the Safe Drinking Water Hotline by Wednesday, February 18, 1998.

EPA has announced this public meeting to hear the views of stakeholders on EPA's plans for activities to develop a NPDWR for arsenic. The public is invited to provide comments on the issues listed above and other issues related to the arsenic in drinking water regulation during the February 25, 1998 meeting and during future opportunities for stakeholder participation.

Dated: January 21, 1998.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 98–1931 Filed 1–26–98; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL COMMUNICATIONS COMMISSION

ITU Proposal for Cost Recovery

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission seeks comment on the appropriateness and feasibility of a proposal by the International Telecommunications Commission (ITU) for cost recovery for registering and processing satellite notifications.

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In particular, the Commission seeks comment on how the Commission could continue to make the ITU notifications while ensuring that the applicant makes cost recovery payments directly to the ITU.

DATES: Submit comments on or before February 27, 1998, and reply comments on or before March 27, 1998.

ADDRESSES: Send comments to Richard B. Engelman, Chief Planning and Negotiations Division, International Bureau, Federal Communications Commission, 2000 M Street, N.W., Washington, D.C. 20554.

SUPPLEMENTARY INFORMATION: During the June 23–27, 1997 meeting of the International Telecommunications Union Council, the subject of ITU cost recovery for registering and processing satellite notifications, as well as other products and services including terrestrial notifications, was addressed. The Council agreed to Resolution 1113 that adopted the principle of cost recovery for satellite registrations and notifications. The Federal Communications Commission (FCC) seeks comment on the appropriateness and feasibility of the recovery by the ITU of such fees and how, if adopted, the ITU cost recovery fees should be administered within the FCC notification process.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–1835 Filed 1–26–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45 and 97–160; DA 97–2623]

Universal Service

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this Public Notice, released December 16, 1997, the Common Carrier Bureau revises and approves universal service contribution factors for the first quarter of 1998. These factors will be used to calculate first quarter contributions to universal service.

FOR FURTHER INFORMATION CONTACT: Diane Law, Common Carrier Bureau, Accounting and Audits Division, (202) 418–7400, or via E-mail to "dlaw@fcc.gov."

SUPPLEMENTARY INFORMATION: In the *Universal Service Order* released on May 8, 1997, the Commission established new federal universal service support mechanisms consistent with the Communications Act of 1934, as amended.[1] The Commission required all telecommunications carriers that provide interstate telecommunications services, providers of interstate telecommunications, and payphone service providers to contribute to the federal universal service support mechanisms.[2] The Commission found that contributions for the schools, libraries, and rural health care support mechanisms would be based on interstate, intrastate, and international end-user telecommunications revenues.[3] The Commission also found that contributions for the high cost, rural, and insular and low-income support mechanisms would be based on interstate and international end-user telecommunications revenues.[4]

On July 18, 1997, the Commission released an Order directing the National Exchange Carrier Association (NECA) to create an independently functioning not-for-profit subsidiary, the Universal Service Administrative Company (USAC), through which it will administer temporarily certain aspects of the federal universal service support mechanisms.[5] The Commission also directed NECA to create two independent, not-for-profit entities, Schools and Libraries Corporation and Rural Health Care Corporation, to administer certain aspects of the schools, libraries, and rural health care support mechanisms.[6] The Commission instructed USAC, Schools and Libraries Corporation, and Rural Health Care Corporation to submit projections of demand and administrative expenses for their respective support mechanisms for the first quarter of 1998 to the Commission at least sixty days before the start of the first quarter of 1998.[7] USAC also was required to compile total interstate, intrastate, and international end-user telecommunications revenues and submit that information to the Commission.[8] The Commission stated that it would publish these figures and the proposed quarterly contribution factors in a Public Notice.[9]

On November 13, 1997, using the information submitted on October 31, 1997 by the Universal Service Administrative Company (USAC), Schools and Libraries Corporation, and Rural Health Care Corporation (collectively, the administrative corporations), the Accounting and Audits Division (Division) announced the proposed universal service contribution factors for the first quarter of 1998.[10] Pursuant to the Commission's rules, those contribution factors would have been deemed approved on November 28, 1997 if the Commission had taken no action regarding the proposed contribution factors.[11] On November 26, 1997, however, the Division extended the review period for the proposed first quarter 1998 universal service contribution factors until December 5, 1997.[12] On December 5, 1997, the Division further extended the period of time during which the Commission could modify the proposed universal service contribution factors for the first quarter of 1998 until December 12, 1997.[13] On December 12, 1997, the Division extended the review period for the proposed contribution factors until December 16, 1997.[14]

On December 16, 1997, the Commission released the *Third Order on Reconsideration in CC Docket 96–45.* In that Order, the Commission concluded that it could reduce the maximum amounts collected during the first six months of 1998 for the schools and libraries and rural health care support mechanisms without jeopardizing the sufficiency of the support mechanisms.[15] Consistent with the Commission's action on reconsideration, in this Public Notice, the Bureau revises the projections of demand for the low income and rural health care support mechanisms and approves revised universal service contribution factors for the first quarter of 1998.

The Commission concluded in the *Third Order on Reconsideration in CC Docket 96–45* that it should not impose unnecessary financial burdens on service provider contributors to universal service by collecting funds that exceed demand. Accordingly, the Bureau has reviewed all of the administrative corporations' projections and has determined that the estimated demand for the low income support mechanism should be approximately $500 million.[15a] This annual figure of $500 million yields a quarterly demand projection of $125 million, instead of the $136.3 million projected by USAC. Therefore, we find that the first quarter projection of demand for the low income support mechanism should be $125 million.

The Bureau also adjusts the first quarter total program costs for the rural health care support mechanism, consistent with the *Third Order on Reconsideration in CC Docket 96–45*, from $100 million to $25 million.[16]

On November 26, 1997, the Commission released the *Second Order on Reconsideration in CC Docket No. 96–45*, which authorized the Administrator to bill contributors and collect contributions on a monthly, rather than a quarterly basis.[17] That Order will reduce the interest income for the first quarter of 1998.[18] The amount of interest earned for the high cost and low income support mechanisms decreased because contributions will be collected on a monthly, as opposed to quarterly, basis, while support will continue to be distributed on a monthly basis. As a result of the 75-day window filing period, initial support for the schools and libraries and rural health care support mechanisms will be distributed in the second quarter.[19] The amount of interest earned for the schools and libraries and rural health care support mechanisms decreased slightly. Accordingly, we have adjusted the projected amount of interest income.

Therefore, first quarter projections of demand and administrative expenses are as follows (revised figures are in bold):[20]

[In millions of dollars]

Program	Program demand	Administrative expenses	Interest income	Total program costs
Schools and Libraries	**299.3**	2.7	**(2.0)**	300.0
Rural Health Care	**23.0**	[20]2.2	**(0.2)**	**25.0**
Subtotal	**322.3**	4.9	**(2.2)**	**325.0**
High Cost	434.0	1.1	**(1.0)**	**434.1**
Low Income	**125.0**	0.6	**(0.3)**	**125.3**
Subtotal	**559.0**	1.7	**(1.3)**	**559.4**
Total	**881.3**	6.6	**(3.5)**	**884.4**

[1] Federal-State Joint Board on Universal Service, *Report and Order*, 12 FCC Rcd 8776 (1997) (*Universal Service Order*).

[2] *Universal Service Order*, 12 FCC Rcd at 9173–9178, 9183–9185.

[3] *Universal Service Order*, 12 FCC Rcd at 9203, 9205.

[4] *Universal Service Order*, 12 FCC Rcd at 9200, 9202–9203.

[5] Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, *Report and Order and Second Order on Reconsideration*, CC Dockets No. 97–21, 96–45, FCC 97–253 (rel. July 18, 1997) (*NECA Report and Order*).

[6] *NECA Report and Order* at para. 57.

[7] *NECA Report and Order* at para. 47.

[8] *NECA Report and Order* at paras. 43–48. *See also* 47 CFR 54.709(a)(2), (3), and 54.711(b).

[9] *NECA Report and Order* at para. 48.

[10] Proposed First Quarter Universal Service Contribution Factors, *Public Notice*, DA 97–2392 (rel. Nov. 13, 1997). On November 19, 1997, AT&T filed comments on the November 13th Public Notice. *See* Letter from Rick D. Bailey, AT&T, to Magalie Roman Salas, FCC, dated November 19, 1997.

[11] 47 CFR 54.709(a)(3).

[12] Extended Review Period for First Quarter Universal Service Contribution Factors, *Public Notice*, DA 97–2510 (rel. Nov. 26, 1997).

[13] Further Extension of Review Period for First Quarter Universal Service Contribution Factors, *Public Notice*, DA 97–2560 (rel. Dec. 5, 1997).

[14] Additional Extension of Review Period for First Quarter Universal Service Contribution Factors, *Public Notice*, DA 97–2600 (rel. Dec. 12, 1997).

[15] Federal-State Joint Board on Universal Service, *Third Order on Reconsideration*, CC Docket 96–45, FCC 97–411 (rel. Dec. 16, 1997).

[15a] This $500 million projection of annual demand is based on the following: According to the 1997 Monitoring Report, 5.2 million customers participated in Lifeline in 1996. Monitoring Report, CC Docket No. 87–339, May 1997, pgs. 86–87, table 2.3. Assuming participation rates among existing customers remain constant, low income support for existing Lifeline participants will be $436 million for the year. (5.2 million people times $7, which is the maximum amount of federal support for Lifeline subscribers in states that provide matching funds, multiplied by 12 months). In the *Universal Service Order*, the Commission estimated that, by extending the low income support mechanism to non-participating states, approximately 1.9 million new low-income consumers would become eligible for the support mechanism. *Universal Service Order*, 12 FCC Rcd at 8966, n. 903. Assuming one-third of eligible consumers participate in the support mechanism and that non-participating states do not provide matching funds, low income support for new Lifeline participants will be $40 million for the year. (627,000 people (.33 x 1.9 million people) x $5.25 (the maximum amount of federal support for Lifeline subscribers in states that do not provide matching funds) x 12 months). We have assumed a one-third participation rate because the participation rate for Washington D.C.'s low income program is 32.3 percent. Chesapeake and Potomac Tel. Co., Formal Case No. 850, Order No. 9927, page 166 (rel. Jan. 29, 1992). In the *Universal Service Order*, the Commission estimated that annual funding for LinkUp will increase to $23.6 million. Universal Service Order, 12 FCC Rcd at 8966, n. 903. Thus, the projection of annual low income demand is approximately $500 million. ($436 million plus $40 million plus $23.6 million).

[16] The Rural Health Care Corporation may collect up to $25 million in the first quarter of 1998. *Third Order on Reconsideration* at para. 4.

[17] Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, *Second Order on Reconsideration in CC Docket 97–21*, CC Docket Nos. 97–21, 96–45, FCC 97–400 (rel. Nov. 26, 1997).

[18] In calculating interest income, USAC, Schools and Libraries Corporation, and Rural Health Care Corporation assumed payments for the entire quarter would arrive on January 1, 1998. USAC assumed the first payments for the high cost and low income support mechanisms would be distributed at the end of February. Schools and Libraries Corporation and Rural Health Care Corporation assumed that the first payments for the schools, libraries, and rural health care support mechanisms would be distributed 40 days after January 1, 1998.

[19] Schools and Libraries Corporation and Health Care Corporation Adopt Length of Filing Windows, *Public Notice*, DA 97–2349 (rel. Nov. 6, 1997). *See also* 47 CFR 69.616, 69.618(a)(7), 69.619(a)(7) (instructing the Schools and Libraries and Rural Health Care Corporations to authorize USAC to submit payments within 20 days of the receipt of requisite forms and instructing USAC to distribute payments within 20 days of receiving authorization). We anticipate that the window period for Schools and Libraries Corporation and Rural Health Care Corporation will not begin before the second week in January 1998, funds will not be distributed until after the 75-day window period has closed, and approximately 40 days have passed (20 days for submission of payments, 20 days to distribute payments, pursuant to 47 CFR 69.616, 69.618(a)(7), 69.619(a)(7)). Thus, payments for the schools and libraries and rural health care support mechanisms will not be distributed until May 1998.

[20] Administrative expenses appear to be high relative to projected quarterly demand, because start-up costs have been allocated to the first quarter. We anticipate that administrative expenses will total less than two percent of annual program costs.

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Based on information contained in the Universal Service Worksheets, FCC Form 457, USAC submitted the following information regarding end-user telecommunications revenues on November 13, 1997:

Total Interstate, Intrastate, and International End-User Telecommunications Revenues from January 1, 1997–June 30, 1997: $89.827 billion.

Total Interstate and International End-User Telecommunications Revenues from January 1, 1997–June 30, 1997: $35.001 billion.[21]

USAC recommended that, in calculating the contribution bases, the Commission adjust end-user telecommunications revenues downward to account for possible uncollectible contributions and possible errors in the projections of demand and administrative expense. The proposed contribution factors set forth in the November 13, 1997 Public Notice thus were based on USAC's recommended contribution bases.[22] The revised contribution factors set forth below, however, are based on contribution bases that include no adjustments for uncollectibles or errors in projection. Based on the low level of carrier-to-carrier uncollectibles for access charges,[23] we have concluded that projected levels of uncollectible contributions should be minimal. Furthermore, given the quarterly evaluation of demand, we find that we do not need to take into account possible errors in projections when setting the contribution factors. Any projection-related errors can be corrected in subsequent quarters.[24]

Finally, we note that the contribution factors proposed by USAC and set forth in the Public Notice were derived by dividing quarterly total program costs by revenues for a six-month period. Although these factors, if approved, would have been used to collect funds for the first quarter, they would have been applied to the six-month revenues reported on individual contributor's Universal Service Worksheets. To obtain contribution factors that will be applied to revenues that approximate first quarter revenues, the revised contribution factors set forth below are based on contribution bases that are divided by two. This results in a more accurate portrayal of the contribution factors but does not change the amounts collected.

Based on the figures submitted by USAC, Schools and Libraries Corporation, and Rural Health Care Corporation, and revised as set forth above, the approved contribution factors for the first quarter of 1998 are as follows:

Contribution factor for the schools and libraries and rural health care support mechanisms:

Total Program Costs / Contribution Base (Interstate, International, and Intrastate) = $0.325 billion / ($89.827 billion / 2) = **0.0072.**

Contribution factor for the high cost and low income support mechanisms:

Total Program Costs / Contribution Base (Interstate and International) = $0.559 billion / ($35.001 billion / 2) = **0.0319.**

These factors are the approved first quarter 1998 universal service contribution factors. To calculate contributions, USAC shall multiply these factors by one half of contributors' end-user telecommunications revenues for January 1, 1997 through June 30, 1997, as reported on Universal Service Worksheets. USAC will bill and collect those contributions on a monthly basis.

For further information, contact Diane Law, Universal Service Branch, Accounting and Audits Division, Common Carrier Bureau, at (202) 418–7382.

Federal Communications Commission.

Timothy A. Peterson,

Deputy Division Chief, Common Carrier Bureau.

[FR Doc. 98–1834 Filed 1–26–98; 8:45 am]

BILLING CODE 6712–01–P

[21] Letter from William Stern, NECA to Secretary, FCC, dated November 13, 1997.

[22] Letter from John A. Ricker, NECA to Universal Service Branch, dated November 10, 1997.

[23] The Commission estimates that carrier-to-carrier uncollectible rates are 0.2 percent. This estimate was calculated using 1996 ARMIS data. (1996 ARMIS 4301, Traffic Sensitive Total Uncollectibles (Column R, Row 1060) divided by Traffic Sensitive Total Revenues (Column R, Row 1090)).

[24] *See also* Letter from Rick D. Bailey, AT&T, to Magalie Roman Salas, FCC, dated November 19, 1997 at page 4.

FEDERAL COMMUNICATIONS COMMISSION

Meeting of the Advisory Committee for the 1999/2000 World Radiocommunication Conference (WRC–99 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC–99 Advisory Committee will be held on Tuesday, February 10, 1998, at the Federal Communications Commission.

The purpose of the meeting is to begin preparations for the 1999 World Radiocommunication Conference.

DATES: February 10, 1998; 9:30 a.m.–12:00 p.m.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Room 856, Washington D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Damon C. Ladson, FCC International Bureau, Planning and Negotiations Division, at (202) 418–0420.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–99 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 1999 World Radiocommunication Conference (WRC–99). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the initial meeting of the WRC–99 Advisory Committee. The WRC–99 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the first meeting is as follows:

Agenda

First Meeting of the WRC–99 Advisory Committee, Federal Communications Commission, 1919 M Street, N.W., Room 856, Washington, D.C. 20554

February 10, 1998; 9:30 a.m.–12:00 p.m.

1. Opening Remarks
2. Approval of Agenda
3. Report on FCC Reorganization of WRC Preparatory Process
4. Suggestions for Improving the Preparatory Process
5. Report on Recent ITU-R meetings
6. Advisory Committee Structure and Meeting Schedule
7. Other Business

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–1836 Filed 1–26–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 98–110]

Conference Call Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On January 22, 1998, the Commission released a public notice announcing the February 9, 1998, conference call meeting of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

FOR FURTHER INFORMATION CONTACT: Jeannie Grimes at (202) 418–2313. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, DC 20554. The fax number is: (202) 418–7314. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released January 22, 1998.

The North American Numbering Council (NANC), has scheduled a meeting to be held by conference call on February 9, 1998, from 11 a.m. until 1:30 p.m. EST. The conference bridge number is 1–888–582–4100, PIN 6621102. Due to limited port space, NANC members and Commission staff will have first priority on the call. Members of the public may join the call as remaining port space permits.

This notice of the February 9, 1998, NANC conference call meeting is being published in the **Federal Register** less than 15 calendar days prior to the meeting due to NANC's need to discuss a new, time sensitive issue before the next scheduled meeting. This statement complies with the General Services Administration Management Regulations implementing the Federal Advisory Committee Act. *See* 41 CFR § 101–6.1015(b)(2).

This meeting is open to the members of the general public. The FCC will attempt to accommodate as many participants as possible. Participation on the conference call is limited. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

Proposed Agenda

1. Discussion of New York Public Service Commission Petition for Expedited Waiver of 47 CFR § 52.19(c)(3)(ii), filed January 12, 1998.
2. NANC's responsibilities under FCC 97–51, in the Matter of the Use of N11 Codes and Other Abbreviated Dialing Arrangements.
3. Proposal for Activity of the NANC Steering Committee, Paul Hart, USTA, Memorandum to NANC members of December 18, 1997.
4. Other business.

Federal Communications Commission.

Geraldine A. Matise,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 98–1960 Filed 1–26–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meetings; Open Commission Meeting Thursday, January 29, 1998

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, January 29, 1998, which is scheduled to commence at 9:30 a.m. in Room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, Subject

1—Mass Media—Title: Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service (MM Docket No. 87–268). Summary: The Commission will consider petitions for reconsideration filed in response to the Commission's Fifth Report and Order in the digital television proceeding.

2—Common Carrier—Title: Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services (CC Docket No. 95–20); 1998 Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements. Summary: The Commission will consider action concerning the provision by Bell Operating Companies of intraLATA enhanced services. This item is also part of the Commission's 1998 biennial review of regulations.

3—Common Carrier—Title: Billed Party Preference for InterLATA 0+ Calls (CC Docket No. 92–77). Summary: The Commission will consider proposed rules concerning charges and practices of operator services providers (OSPs) in connection with calls from public phones and other aggregator locations such as payphones, hotels, hospitals, and educational institutions.

After consideration of these items, the Commission will hold an en banc presentation on the status of local telephone competition.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800 or fax (202) 857–3805 and 857–3184. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its–inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. For information on this service call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770; and from Conference Call USA (available only outside the Washington, DC. metropolitan area), telephone 1–800–962–0044. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Dated January 22, 1998.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–2030 Filed 1–23–98; 11:49 am]

BILLING CODE 6712–01–F

FEDERAL ELECTION COMMISSION

[Notice 1998–2]

Privacy Act of 1974; Republication and Notice of New Routine Uses for Disclosure

AGENCY: Federal Election Commission.

ACTION: Notice of effective date.

SUMMARY: On December 15, 1997, the Federal Election Commission published a proposed notice of amended and/or revised systems of records. There having been no comments or changes made in the amended/revised systems, these

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proposed systems of records become effective January 27, 1998.

Dated: January 21, 1998.

Joan Aikens,

Chairman, Federal Election Commission.

[FR Doc. 98–1842 Filed 1–26–98; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 10, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. James D. Evans, Miami, Florida; to acquire additional voting shares of Equitable Bank, Fort Lauderdale, Florida.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Michael W. Welge, Chester, Illinois; to acquire additional voting shares of Chester Bancorp, Inc., Chester, Illinois, and thereby indirectly acquire Chester National Bank, Chester, Illinois, and Chester National Bank, Perryville, Missouri.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. James Michael Adcock, and David Wesley Schubert, both of Shawnee, Oklahoma, as Trustees of the Don Bodard 1995 Revocable Trust; to acquire voting shares of First Medicine Lodge Bancshares, Inc., Medicine Lodge, Kansas, and thereby indirectly acquire First National Bank of Medicine Lodge, Medicine Lodge, Kansas.

Board of Governors of the Federal Reserve System, January 21, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–1824 Filed 1–26–98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 20, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. National City Bancshares, Inc., Evansville, Indiana; to merge with Vernois Bancshares, Inc., Mount Vernon, Illinois, and thereby indirectly acquire Bank of Illinois, Mount Vernon, Illinois. Comments regarding this application must be received by February 11, 1998.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. First Savings Bank of Washington Bancorp, Inc., Walla Walla, Washington; to merge with Towne Bancorp, Inc., Woodinville, Washington, and thereby indirectly acquire Towne Bank, Woodinville, Washington.

2. J, J, & B Capital, L.P., Los Angeles, California; to become a bank holding company by acquiring 59.5 percent of the voting shares of Founders National Bank of Los Angeles, Los Angeles, California.

Board of Governors of the Federal Reserve System, January 21, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–1823 Filed 1–26–98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 23, 1998.

A. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Banc One Corporation, Columbus, Ohio; to acquire and thereby merge with

First Commerce Corporation, New Orleans, Louisiana, and thereby indirectly acquire First National Bank of Commerce, New Orleans, Louisiana; City National Bank of Baton Rouge, Baton Rouge, Louisiana; Rapides Bank & Trust Company in Alexandria, Alexandria, Louisiana; The First National Bank of Lafayette, Lafayette, Louisiana; The First National Bank of Lake Charles, Lake Charles, Louisiana; Central Bank, Monroe, Louisiana; and First United Bank of Farmerville, Farmerville, Louisiana.

In connection with this application, Applicant also has applied to acquire First Commerce Service Corporation, New Orleans, Louisiana, and thereby engage in providing data processing and data transmission services, facilities, data bases, advice and access to such services, facilities, pursuant to § 225.28(b)(14) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. First United Bancshares, Inc., El Dorado, Arkansas; to merge with First Republic Bancshares, Inc., Rayville, Louisiana, and thereby indirectly acquire First Republic Bank, Rayville, Louisiana.

2. Unity Bancshares, L.L.C., St. John, Missouri; to become a bank holding company by acquiring 60.1 percent of the voting shares of St. Johns Bancshares, Inc., St. John, Missouri, and thereby indirectly acquire St. Johns Bank and Trust Company, St. John, Missouri.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. AmCorp Financial Inc., Ardmore, Oklahoma; to acquire 100 percent of the voting shares of First State Bank, Morton, Texas. In addition, the bank's main office will be relocated to Keller, Texas, and the bank will be renamed American Bank, Keller, Texas.

Board of Governors of the Federal Reserve System, January 22, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–1938 Filed 1–26–98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 20, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. City Holding Company, Charleston, West Virginia; to acquire Del Amo Savings Bank, F.S.B., Torrance, California, and thereby engage in operating a savings and loan association, pursuant to § 225.28(b)(4)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 21, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–1825 Filed 1–26–98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 12:00 noon, Monday, February 2, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on January 14, 1998.)

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. to business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 23, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–2112 Filed 1–23–98; 3:32 pm]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies; Report to Congressional Committees

AGENCY: Board of Governors of the Federal Reserve System (FRB).

ACTION: Notice of report to the Committee on Banking, Housing, and Urban Affairs of the United States Senate and to the Committee on Banking and Financial Services of the United States House of Representatives.

SUMMARY: This report was prepared by the FRB pursuant to section 121 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 1831n(c)). Section 121 requires each Federal banking and thrift agency to report annually to the above specified Congressional Committees regarding any differences between the accounting or capital standards used by such agency and the accounting or capital standards used by other banking and thrift agencies. The report must be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gerald A. Edwards, Deputy Associate Director (202/452–2741), Norah Barger, Assistant Director (202/452–2402),

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Barbara Bouchard, Manager (202/452–3072), or Arthur Lindo, Supervisory Financial Analyst (202/452–2695), Division of Banking Supervision and Regulation. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Diane Jenkins (202/452–3544), Board of Governors of the Federal Reserve System, 20th & C Street, NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The text of the report follows:

Report to the Congressional Committees Regarding Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies

Introduction and Overview

This is the eighth annual report [1] on the differences in capital standards and accounting practices that currently exist among the three banking agencies (the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) and the Office of Thrift Supervision (OTS).[2]

Overview

As stated in the previous reports to Congress, the three bank regulatory agencies have, for a number of years, employed a common regulatory framework that establishes minimum capital adequacy ratios for commercial banking organizations. In 1989, all three banking agencies and the OTS adopted a risk-based capital framework that was based upon the international capital accord (Basle Accord) developed by the Basle Committee on Banking Regulations and Supervisory Practices (Basle Supervisors Committee) and endorsed by the central bank governors of the G–10 countries.

The risk-based capital framework establishes minimum ratios of capital to risk-weighted assets. The Basle Accord requires banking organizations to have total capital (Tier 1 plus Tier 2) equal to at least 8 percent and Tier 1 capital equal to at least 4 percent of risk-weighted assets. Tier 1 capital includes common stock and surplus, retained earnings, qualifying perpetual preferred stock and surplus, and minority interest in consolidated subsidiaries, less disallowed intangibles such as goodwill. Tier 2 capital includes certain supplementary capital items such as general loan loss reserves, subordinated debt, and certain other preferred stock and convertible debt capital instruments, subject to appropriate limitations and conditions. The amount of Tier 2 includable in regulatory capital is limited to 100 percent of Tier 1. In addition, institutions that incorporate market risk exposure into their risk-based capital requirements may use "Tier 3" capital (i.e., short-term subordinated debt with certain restrictions on repayment provisions) to support their exposure to market risk. Tier 3 capital is limited to approximately 70 percent of an institution's measure for market risk. Risk-weighted assets are calculated by assigning risk weights of zero, 20, 50, and 100 percent to broad categories of assets and off-balance sheet items based upon their relative credit risk. The OTS has adopted a risk-based capital standard that in most respects is similar to the framework adopted by the banking agencies. Differences between the OTS capital rules and those of the banking agencies are noted elsewhere in this report.

The measurement of capital adequacy in the present framework is mainly directed toward assessing capital in relation to credit risk. In December 1995, the G–10 Governors endorsed an amendment to the Basle Accord that will, beginning in January 1998, require internationally-active banks to measure and hold capital to support their market risk exposure. Specifically, banks will be required to hold capital against their exposure to general market risk associated with changes in interest rates, equity prices, exchange rates, and commodity prices, as well as for exposure to specific risk associated with equity positions and certain debt positions in the trading portfolio. The FRB, FDIC, and OCC issued in August 1996 amendments to their respective risk-based capital standards that implemented the market risk amendment to the Accord. The banking agencies' amendments contain a threshold amount of trading activity: institutions with trading assets and liabilities greater than or equal to 10 percent of assets or trading assets and liabilities greater than or equal to $1 billion are required to apply the market risk rules. The OTS did not amend its capital rules in this regard since savings institutions do not have such significant levels of trading activity.

In addition to the risk-based capital requirements, the agencies also have established leverage standards setting forth minimum ratios of capital to total assets. The three banking agencies employ uniform leverage standards, while the OTS has established, pursuant to FIRREA, a somewhat different standard. On October 27, 1997, the agencies issued for public comment a proposal that would eliminate these differences.

All of the agencies view the risk-based capital standards as a minimum supervisory benchmark. In part, this is because the risk-based capital framework focuses primarily on credit risk; it does not take full or explicit account of certain other banking risks, such as exposure to changes in interest rates. The full range of risks to which depository institutions are exposed are reviewed and evaluated carefully during on-site examinations. In view of these risks, most banking organizations are expected to, and generally do, maintain capital levels well above the minimum risk-based and leverage capital requirements.

The staffs of the agencies meet regularly to identify and address differences and inconsistencies in their capital standards. The agencies are committed to continuing this process in an effort to achieve full uniformity in their capital standards. In addition, the agencies have considered the remaining differences as part of a regulatory review undertaken to comply with Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act), which specifies that the agencies "make uniform all regulations and guidelines implementing common statutory or supervisory policies."

Efforts To Achieve Uniformity

Leverage Capital Ratios

The three banking agencies employ a leverage standard based upon the common definition of Tier 1 capital contained in their risk-based capital guidelines. These standards, established in the second half of 1990 and in early 1991, require the most highly-rated institutions to meet a minimum Tier 1 capital ratio of 3 percent. For all other institutions, these standards generally require an additional cushion of at least 100 to 200 basis points, i.e., a minimum leverage ratio of at least 4 to 5 percent, depending upon an organization's financial condition. As required by FIRREA, the OTS has established a 3 percent core capital ratio and a 1.5 percent tangible capital leverage requirement for thrift institutions. Certain adjustments discussed in this report apply to the core capital definition used by savings associations.

On October 27, 1997, the four agencies issued a proposal for public comment addressing the leverage standards (62 FR 55686). Under the proposal, institutions rated a composite 1 under the Uniform Financial Institutions Rating System (UFIRS) [3] would be subject to a minimum 3.0 percent leverage ratio and all other institutions would be subject to a minimum 4.0 percent leverage ratio. This change would simplify and streamline the Board's, FDIC's, and OCC's leverage rules. In addition, changes proposed by the OTS, if adopted, would make all the agencies' rules uniform. The comment period for the proposal ended on December 26, 1997. Agency staffs intend to issue a final amendment in early 1998.

Efforts to Incorporate Non-Credit Risks

The Federal Reserve has been working with the other U.S. banking agencies and with regulatory authorities abroad to develop methods of measuring certain market and price risks and determining appropriate capital standards for these risks. These efforts have related to interest rate risk arising from all activities of a bank and to market risk associated principally with an institution's trading activities.

Regarding domestic efforts, the banking agencies have, for several years, been working to develop capital standards pertaining to interest rate risk. In June 1996, the U.S. banking agencies issued a joint policy statement describing a common framework for the supervision of interest rate risk in banking organizations. It calls for a review of the qualitative characteristics and adequacy of an institution's interest rate risk management, as well as an assessment of risk relative to its earnings and the economic value of its capital. The framework is consistent with 1995 revisions to the U.S. risk-based capital rules that incorporated the exposure of that economic value to changes in interest rates as an important element in the evaluation of capital adequacy. In September 1997, the Basle Supervisors Committee, with the agreement of the G–10 governors, released a paper, based on the U.S. joint policy statement, that contains a set of principles for the management of interest rate risk.

In 1995 the Basle Supervisors Committee issued an amendment to the Basle Accord that requires internationally-active banks to hold capital against market risk exposure. The FRB, FDIC and OCC amended their respective risk-based capital guidelines in 1996 to implement the amendment to the Accord. Under the agencies' guidelines, affected institutions must use an internal value-at-risk model to measure market risk and calculate corresponding capital requirements. The market risk rules become mandatory for certain institutions in January 1998. The OTS does not intend, at this time, to issue a rule on market risk since the savings institutions they supervise do not have significant levels of trading activity.

As mentioned in the introduction, the agencies have been meeting to fulfill the requirements of Section 303 of the Riegle Act that calls for uniform rules and guidelines. In this regard, in October 1997, the agencies issued for public comment a proposal that would eliminate existing minor differences among the agencies' risk-based capital treatment for the following assets: presold residential properties, junior liens on 1- to 4-family residential properties, and banks' holdings of mutual funds. In addition, the agencies worked together on the following capital issues.

Recourse

The agencies published in the **Federal Register** on November 5, 1997, (62 FR 5994), uniform, proposed rules that would use credit ratings to match the risk-based capital assessment more closely to an institution's relative risk of loss in certain asset securitizations.

Unrealized Gains on Certain Equity Securities

In October 1997 the agencies issued for public comment an interagency proposal that would permit institutions to include in Tier 2 capital up to 45 percent of unrealized gains on certain available-for-sale equity securities (62 FR 55682).

Capital Impact of Recent Changes to Accounting Standards

From time to time, the Financial Accounting Standards Board (FASB) issues new and modified financial accounting standards. The adoption of some of these standards for regulatory reporting purposes has the potential of affecting the definition and calculation of regulatory capital. Accordingly, the staffs of the agencies work together to propose uniform regulatory capital responses to such accounting changes. Over this past year, the agencies have dealt with certain capital effects of Statement of Financial Accounting Standard (FAS) No. 125, *"Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities"* which supersedes FAS No. 122, *"Accounting for Mortgages Servicing Rights." FAS 125, "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities."*

The agencies issued a proposal on August 4, 1997, to amend their capital standards to address the treatment of servicing assets on both mortgage assets and financial assets other than mortgages (62 FR 42006). The public comment period ended on October 3, 1997. The proposed rule reflects changes in accounting standards for servicing assets made in FAS 125. FAS 125 extended the accounting treatment for mortgage servicing to servicing on all financial assets. The proposed amendment would raise the capital limitation on the sum of all mortgage servicing assets and purchased credit card relationships from 50 percent of Tier 1 capital to 100 percent of Tier 1 capital. Furthermore, servicing assets on financial assets other than mortgages would be deducted from Tier 1 capital. A final rule should be in place in the first part of 1998.

Capital Differences

Differences among the risk-based capital standards of the OTS and the three banking agencies are discussed below.

Certain Collateral Transactions

The four agencies, on August 16, 1996, published a joint proposed rulemaking that would, if implemented, eliminate capital differences among the agencies' risk-based capital treatment for collateralized transactions (61 FR 42565).

The Federal Reserve permits certain collateralized transactions to be risk-weighted at zero percent. This preferential treatment is available only for claims fully collateralized by cash on deposit in the bank or by securities issued or guaranteed by OECD central governments or U.S. government agencies. A positive margin of collateral must be maintained on a daily basis fully taking into account any change in the banking organization's exposure to the obligor or counterparty under a claim in relation to the market value of the collateral held in support of that claim. Other collateralized claims, or

[1] The first two reports prepared by the Federal Reserve Board were made pursuant to section 1215 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The subsequent reports were made pursuant to section 121 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), which superseded section 1215 of FIRREA.

[2] At the federal level, the Federal Reserve System has primary supervisory responsibility for state-chartered banks that are members of the Federal Reserve System, as well as for all bank holding companies and certain operations of foreign banking organizations. The FDIC has primary responsibility for state nonmember banks and FDIC-supervised savings banks. National banks are supervised by the OCC. The OTS has primary responsibility for savings and loan associations.

[3] The UFIRS is used by supervisors to summarize their evaluations of the strength and soundness of financial institutions in a comprehensive and uniform manner.

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portions thereof, are risk-weighted at 20 percent.

The OCC permits portions of claims collateralized by cash or OECD government securities to receive a zero percent risk weight, provided that the collateral is marked to market daily and a positive margin is maintained. The FDIC's and OTS's rules permit portions of claims collateralized by cash or OECD government securities to receive a 20 percent risk weight.

Under the agencies' proposed rule, portions of claims collateralized by cash or OECD government securities could be assigned a zero percent risk weight, provided the transactions meet certain criteria, which would be uniform among the agencies. Agency staffs intend to finalize the outstanding proposal in early 1998.

FSLIC/FDIC—Covered Assets (Assets Subject to Guarantee Arrangements by the FSLIC or FDIC)

The three banking agencies generally place these assets in the 20 percent risk category, the same category to which claims on depository institutions and government-sponsored agencies are assigned. The OTS places these assets in the zero percent risk category.

Limitation of Subordinated Debt and Limited-life Preferred Stock

The three banking agencies limit the amount of subordinated debt and limited-life preferred stock that may be included in Tier 2 capital to 50 percent of Tier 1 capital. In addition, maturing capital instruments must be discounted by 20 percent in search of the last five years prior to maturity. The OTS has no limitation on the total amount of limited-life preferred stock or maturing capital instruments that may be included within Tier 2 capital. In addition, the OTS allows savings institutions the option of: (1) discounting maturing capital instruments issued on or after November 7, 1989, by 20 percent a year over the last 5 years of their term; or (2) including the full amount of such instruments provided that the amount maturing in any of the next seven years does not exceed 20 percent of the thrift's total capital.

Subsidiaries

Consistent with the Basle Accord and long-standing supervisory practices, the three banking agencies generally consolidate all significant majority-owned subsidiaries of the parent organization for capital purposes. This consolidation assures that the capital requirements are related to all of the risks to which the banking organization is exposed. As with most other bank subsidiaries, banking and finance subsidiaries generally are consolidated for regulatory capital purposes. However, in cases where banking and finance subsidiaries are not consolidated, the Federal Reserve, consistent with the Basle Accord, generally deducts investments in such subsidiaries in determining the adequacy of the parent bank's capital.

The Federal Reserve's risk-based capital guidelines provide a degree of flexibility in the capital treatment of unconsolidated subsidiaries (other than banking and finance subsidiaries) and investments in joint ventures and associated companies. For example, the Federal Reserve may deduct investments in such subsidiaries from an organization's capital, may apply an appropriate risk-weighted capital charge against the proportionate share of the assets of the entity, may require a line-by-line consolidation of the entity, or otherwise may require that the parent organization maintain a level of capital above the minimum standard that is sufficient to compensate for any risk associated with the investment.

The guidelines also permit the deduction of investments in subsidiaries that, while consolidated for accounting purposes, are not consolidated for certain specified supervisory or regulatory purposes. For example, the Federal Reserve deducts investments in, and unsecured advances to, Section 20 securities subsidiaries from the parent bank holding company's capital. The FDIC accords similar treatment to securities subsidiaries of state nonmember banks established pursuant to Section 337.4 of the FDIC regulations.

Similarly, in accordance with Section 325.5(f) of the FDIC regulations, a state nonmember bank must deduct investments in, and extensions of credit to, certain mortgage banking subsidiaries in computing the parent bank's capital. The Federal Reserve does not have a similar requirement with regard to mortgage banking subsidiaries. The OCC does not have requirements dealing specifically with the capital treatment of either mortgage banking or securities subsidiaries. The OCC, however, does reserve the right to require a national bank, on a case-by-case basis, to deduct from capital investments in, and extensions of credit to, any nonbanking subsidiary.

The deduction of investments in subsidiaries from the parent's capital is designed to ensure that the capital supporting the subsidiary is not also used as the basis of further leveraging and risk-taking by the parent banking organization. In deducting investments in, and advances to, certain subsidiaries from the parent's capital, the Federal Reserve expects the parent banking organization to meet or exceed minimum regulatory capital standards without reliance on the capital invested in the particular subsidiary. In assessing the overall capital adequacy of banking organizations, the Federal Reserve may also consider the organization's fully consolidated capital position.

Under the OTS capital guidelines, a distinction, mandated by FIRREA, is drawn between subsidiaries that are engaged in activities permissible for national banks and subsidiaries that are engaged in "impermissible" activities for national banks. Subsidiaries of thrift institutions that engage only inpermissible activities are consolidated on a line-by-line basis if majority-owned and on a pro rata basis if ownership is between 5 and 50 percent. As a general rule, investments, including loans, in subsidiaries that engage in impermissible activities are deducted in determining the capital adequacy of the parent.

Mortgage-Backed Securities (MBS)

The three banking agencies, in general, place privately-issued MBS in a risk category appropriate to the underlying assets but in no case to the zero percent risk category. In the case of privately-issued MBS where the direct underlying assets are mortgages, this treatment generally results in a risk weight of 50 percent or 100 percent. Privately-issued MBS that have government agency or government-sponsored agency securities as their direct underlying assets are generally assigned to the 20 percent risk category.

The OTS assigns privately-issued high quality mortgage-related securities to the 20 percent risk category. These are, generally, privately-issued MBS with AA or better investment ratings.

Both the banking and thrift agencies automatically assign to the 100 percent risk weight category certain MBS, including interest-only strips, residuals, and similar instruments that can absorb more than their pro rata share of loss.

Agricultural Loan Loss Amortization

In the computation of regulatory capital, those banks accepted into the agricultural loan loss amortization program pursuant to Title VIII of the Competitive Equality Banking Act of 1987 are permitted to defer and amortize losses incurred on agricultural loans between January 1, 1984 and December 31, 1991. The program also applies to losses incurred between January 1, 1983 and December 31, 1991, as a result of reappraisals and sales of agricultural Other Real Estate Owned (OREO) and agricultural personal property. These loans must be fully amortized over a period not to exceed seven years and, in any case, must be fully amortized by year-end 1998. Savings institutions are not eligible to participate in the agricultural loan loss amortization program established by this statute.

Treatment of Junior Liens on 1- to 4-Family Residential Properties

In some cases, a banking organization may make two loans on a single residential property, one secured by a first lien, the other by a second lien. In such a situation, the Federal Reserve views these two transactions as a single lien, provided there are no intervening liens. The total amount of these transactions would be assigned to either the 50 percent or the 100 percent risk category depending upon whether certain other criteria are met.

One criterion is that the loan must be made in accordance with prudent underwriting standards, including an appropriate ratio of the current loan balance to the value of the property (the loan-to-value ratio or LTV). When considering whether a loan is consistent with prudent underwriting standards, the Federal Reserve evaluates the LTV ratio based on the combined loan amount. If the combined loan amount satisfies prudent underwriting standards, both the first and second lien are assigned to the 50 percent risk category. The FDIC also combines the first and second liens to determine the appropriateness of the LTV ratio, but it applies the risk weights differently than the Federal Reserve. If the LTV ratio based on the combined loan amount satisfies prudent underwriting standards, the FDIC risk weights the first lien at 50 percent and the second lien at 100 percent, otherwise both liens are risk weighted at 100 percent. The OCC treats all first and second liens separately, with qualifying first liens risk weighted at 50 percent and non-qualifying first liens and all second liens risk weighted at 100 percent. The OTS has interpreted its rule to treat first and second liens to a single borrower as a single extension of credit, similar to the Federal Reserve.

Under the proposal issued by the agencies in October 1997, the agencies would follow the OCC capital treatment for first and second liens.

Pledged Deposits and Nonwithdrawable Accounts

The capital guidelines of the OTS permit thrift institutions to include in capital certain pledged deposits and nonwithdrawable accounts that meet the criteria of the OTS. Income Capital Certificates and Mutual Capital Certificates held by the OTS may also be included in capital by thrift institutions. These instruments are not relevant to commercial banks, and, therefore, they are not addressed in the banking agencies' capital rules.

Construction Loans on Presold Residential Property

The agencies all assign a qualifying loan to a builder to finance the construction of a presold 1- to 4-family residential property to the 50 percent risk category provided certain conditions are satisfied. The Federal Reserve and the FDIC permit a 50 percent risk weight once the residential property is sold, whether the sale occurs before or after the construction loan has been made. The OCC and the OTS permit the 50 percent risk weight treatment only if the property is sold to an individual who will occupy the residence upon completion of construction before the extension of credit to the builder.

The agencies' October proposal set forth the treatment followed by the Federal Reserve and the FDIC.

Mutual Funds

The three banking agencies generally assign all of a bank's holding in a mutual fund to the risk category appropriate to the highest risk asset that a particular mutual fund is permitted to hold under its operating rules. The OCC also permits, on a case-by-case basis, an institution's investment to be allocated on a pro rata basis among the risk categories based on the percentages of a portfolio authorized to be invested in a particular risk weight category. The OTS applies a capital charge appropriate to the riskiest asset that a mutual fund is actually holding at a particular time. The OTS also permits, on a case-by-case basis pro rata allocation among risk categories based on the fund's actual holdings. All of the agencies' rules provide that the minimum risk weight for investment in mutual funds is 20 percent.

The agencies have proposed following the banking agencies' general treatment and permitting institutions, at their option, to assign such investment on a pro rata basis according to the investment limits in the mutual fund prospectus.

Accounting Standards

Over the years, the three banking agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), have developed Uniform Reports of Condition and Income (Call Reports) for all commercial banks and FDIC-supervised savings banks. The reporting standards followed by the three banking agencies for recognition and measuring purposes are consistent with generally accepted accounting principles (GAAP). The agencies adopted GAAP as the reporting basis for the Call Report, effective for March 1997 reports. The adoption of GAAP for Call Report purposes eliminated the differences in accounting standards among the agencies that were set forth in previous reports to Congress. Thus, there are no material differences in regulatory reports filed with the federal banking agencies by commercial banks, savings banks, and savings associations.

By order of the Board of Governors of the Federal Reserve System, January 21, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98–1812 Filed 1–26–98; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. *Self-Evaluation and Recordkeeping Required by the Regulation Implementing Section 504 of the Rehabilitation Act of 1973 (45 CFR 84.6(c))*—Extension—0990–0124—Recipients of DHHS funds must conduct a single-time evaluation of their policies and practices for compliance with Section 504 of the Rehabilitation Act of 1973. *Respondents:* State or local governments, businesses or other for-profit, non-profit institutions; *Annual Number of Respondents:* 2,120; *Frequency of Response:* once; *Burden per Response:* 16 hours; *Total Annual Burden:* 33,920 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written

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comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, N.W., Washington, D.C. 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington, DC, 20201. Written comments should be received within 30 days of this notice.

Dated: January 16, 1998.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 98–1845 Filed 1–26–98; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 14½% for the quarter ended December 31, 1997. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: January 20, 1998.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 98–1844 Filed 1–26–98; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Population-Specific Issues.

Times and Dates: 9:00 a.m.–5:00 p.m., February 9, 1998; 9:00 a.m.–4:00 p.m., February 10, 1998.

Place: Wyndam Metro Center Hotel, 10220 North Metro Parkway East, Phoenix, Arizona.

Status: Open.

Purpose: The Subcommittee is in the process of examining a number of data needs and issues associated with Medicaid managed care. The purpose of this site visit to Arizona is to obtain information on one State's Medicaid managed care program, with special attention to data needs, data systems, data uses and data issues. Presentations are planned involving representatives of State agencies, providers, plans, and patient advocacy groups who will describe their data needs and issues relating to Medicaid managed care. A subsequent site visit to Massachusetts also is planned.

Contact Person for more Information: Substantive program information as well as a roster of committee members may be obtained from Carolyn Rimes, lead Subcommittee staff, Health Care Financing Administration, DHHS, 7500 Security Boulevard, C–3–21–06, Baltimore, Maryland 21244–1850, telephone (410) 786–6620, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050. Additional information about the full Committee is available on the NCVHS website, where the tentative agenda for the Subcommittee meeting will also be posted when available: http://aspe.os.dhhs.gov/ncvhs

Dated: January 20, 1998.

James Scanlon,

Director, Division of Data Policy.

[FR Doc. 98–1843 Filed 1–26–98; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0535]

Agency Information Collection Activities: Institutional Review Boards: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA's protection of human subjects recordkeeping and reporting requirements for institutional review boards (IRB's). IRB's are groups composed of members of varying backgrounds which are charged with reviewing the ethics and risk/benefit aspects of clinical studies involving human subjects to assure that the rights and welfare of human subjects are adequately protected.

DATES: Submit written comments on the collection of information by March 30, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Institutional Review Boards—(21 CFR Part 56.115)—(OMB Control Number 0910–0130)—Extension

When reviewing clinical research studies regulated by FDA, IRB's are required to create and maintain records describing their operations, and make the records available for FDA inspection when requested. These records include: (1) Written procedures describing the structure and membership of the IRB and the methods which the IRB will use in performing its functions; (2) the research protocols, informed consent documents, progress reports, and reports of injuries to subjects submitted by investigators to the IRB; (3) minutes of meetings showing attendance, votes and decisions made by the IRB, the number of votes on each decision for, against, and abstaining, the basis for requiring changes in or disapproving research; (4) records of continuing review activities; (5) copies of all correspondence between investigators and the IRB; (6) statements of significant new findings provided to subjects of the research; (7) and a list of IRB members by name, showing each member's earned degrees, representative capacity, and experience in sufficient detail to describe each member's contributions to the IRB's deliberations, and any employment relationship between each member and the IRB's institution. This information is used by the FDA in conducting audit inspections of IRB's to determine whether IRB's and clinical investigators are providing adequate protections to human subjects participating in clinical research.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
56.115	2,000	14.6	10,000	65	131,400

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The recordkeeping requirement burden is based on the following formula: Approximately 2,000 IRB's review FDA-regulated research involving human subjects annually. The burden for each of the paragraphs under 21 CFR 56.115 has been considered as one for purposes of estimating the burden. Each paragraph cannot reasonably be segregated from one another because all are interrelated. FDA has about 2,000 IRB's in its inventory. The 2,000 IRB's meet on an average of 14.6 times annually. The mean number of IRB meetings per year was derived from a study conducted by the agency and published by the Office of Planning and Evaluation. The agency estimates that approximately 4.5 hours of person time per meeting are required to transcribe and type the minutes of the meeting, to maintain records of continuing review activities, copies of all correspondence between the IRB and investigators, member records, and written IRB procedures which are approximately five pages per IRB.

Dated: January 20, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–1944 Filed 1–26–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96P–0316]

Determination That Minocycline Hydrochloride Tablets Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that minocycline hydrochloride tablets were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDA's) for minocycline hydrochloride tablets.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDA's do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments included what is now section 505(j)(6) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(6)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products with Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162). Regulations also provide that the agency must make a determination as to

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whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved (§ 314.161(a)(1) (21 CFR 314.161(a)(1)). FDA may not approve an ANDA that does not refer to a listed drug.

In a citizen petition dated August 26, 1996 (Docket No. 96P–0316/CP), submitted in accordance with 21 CFR 314.122, Clausen & Associates, Inc., requested that the agency determine whether minocycline hydrochloride tablets were withdrawn from sale for reasons of safety or effectiveness. Minocycline hydrochloride (Minocin) tablets are the subject of approved NDA 50–451 held by Lederle Laboratories. In 1996, Lederle withdrew minocycline hydrochloride tablets from sale.

FDA has reviewed its records and, under § 314.161, has determined that minocycline hydrochloride tablets were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will maintain minocycline hydrochloride tablets in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDA's that refer to minocycline hydrochloride tablets may be approved by the agency.

Dated: January 20, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–1849 Filed 1–26–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98M–0036]

Xytronyx, Inc.; Premarket Approval of the Periogard Periodontal Tissue Monitor

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Xytronyx, Inc., San Diego, CA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Periogard Periodontal Tissue Monitor (PTM). After reviewing the recommendation of the Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of June 23, 1997, of the approval of the application.

DATES: Petitions for administrative review by February 26, 1998.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Alfred W. Montgomery, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1243.

SUPPLEMENTARY INFORMATION: On September 19, 1996, Xytronyx, Inc., San Diego, CA 92121, submitted to CDRH an application for premarket approval of the PTM. The device is a visual, periodontal test kit and is indicated for use as a rapid, chair-side, visual test for the qualitative determination of aspartate aminotransferase (AST) in gingival crevicular fluid. The PTM kit detects elevated levels of AST associated with tissue necrosis. It is intended to be used as an objective, biochemical adjunct to traditional methods of monitoring patients to assist in the decision to apply treatment and in the evaluation of treatment effectiveness.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Dental Products Panel and/or the Clinical Chemistry and Toxicology Devices Panel of the Medical Devices Advisory Committee, FDA advisory committees, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by the panel. On June 23, 1997, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before February 26, 1998, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 31, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 98–1942 Filed 1–26–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98M–0038]

Guidant Corp.; Premarket Approval of VENTAK® AV™ AICD™ Model 1810/ Model 1815 Automatic Implantable Cardioverter Defibrillator (AICD™) with the Model 2833 Software Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Guidant Corp., St. Paul, MN, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the VENTAK® AV™ AICD™ System. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of July 18, 1997, of the approval of the application.

DATES: Petitions for administrative review by February 26, 1998.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carole C. Carey, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8609.

SUPPLEMENTARY INFORMATION: On August 20, 1996, Guidant Corp., St. Paul, MN 55112–5798, submitted to CDRH an application for premarket approval of VENTAK® AV™ AICD™ Model 1810/ Model 1815 Automatic Implantable Cardioverter Defibrillator (AICD™) with the Model 2833 Software Application which consists of the following: Model 1810/Model 1815 pulse generator and Model 2833 Software Application to be used with commercially available Cardiac Pacemakers, Inc., Programmer/ Recorder/Monitor (PRM). The device is a multiprogrammable automatic, implantable dual-chamber pacemaker and cardioverter defibrillator, and is indicated for use in patients who are at high risk of sudden cardiac death due to ventricular arrhythmias and who have experienced one of the following situations: (1) Survival of at least one episode of cardiac arrest (manifested by the loss of consciousness) due to a ventricular tachyarrhythmia; (2) recurrent, poorly tolerated sustained ventricular tachycardia (VT); (3) prior myocardial infarction, left ventricular ejection fraction of ≤ 35 percent, and a documented episode of nonsustained VT, with an inducible ventricular tachyarrhythmia. Patients suppressible with IV procainamide or an equivalent antiarrhythmic have not been studied. *NOTE: The clinical outcome of hemodynamically stable, sustained-VT patients is not fully known.* Safety and effectiveness studies have not been conducted. The VENTAK® AV™ AICD™ pulse generator is not intended for use solely as a primary bradycardia support device.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On July 18, 1997, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details. Petitioners may, at any time on or before February 26, 1998, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: January 5, 1998.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 98–1943 Filed 1–26–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anesthetic and Life Support Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Anesthetic and Life Support Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on February 5, 1998, 8 a.m. to 5:30 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug

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Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4090, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12529. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will hear presentations and discuss the occurrence of spinal/epidural hematomas with the concurrent use of approved low molecular weight heparins or heparinoids and spinal/epidural anesthesia or spinal puncture. The committee will also consider labeling for low molecular weight heparins and heparinoids concerning these adverse events. The approved drug products under discussion and their sponsors are: (1) Lovenox® (enoxeparin sodium) Injection, Rhone-Poulenc Rorer Pharmaceuticals, Inc.; (2) Fragmin® (dalteparin sodium) Injection, Pharmacia & Upjohn; (3) Orgaran® (danaparioid sodium) Injection, Organon, Inc.; and (4) Normiflo™ (ardeparin sodium) Injection, Wyeth Laboratories, Inc.

Procedure: On February 5, 1998, from 8 a.m. to 3:45 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 29, 1998. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 29, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On February 5, 1998, from 3:45 p.m. to 5:30 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). The investigational new drug and Phase I and II drug products in process will be presented and recent action on selected new drug applications will be discussed.

FDA regrets that it was unable to publish this notice 15 days prior to the February 5, 1998, Anesthetic and Life Support Drugs Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Anesthetic and Life Support Drugs Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 22, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–2024 Filed 1–23–98; 11:47 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Food Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on February 11, 12, and 13, 1998, 8:30 a.m. to 5 p.m.

Location: DoubleTree Hotel, Pentagon City, 300 Army Navy Dr., Arlington, VA.

Contact Person: Catherine M. DeRoever, Center for Food Safety and Applied Nutrition (HFS–22), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4251, FAX 202–205–4970, E-mail CDEROEVE@BANGATE.FDA.GOV, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 10564. Please call the Information Line for up-to-date information on this meeting.

Agenda: On February 11, 12, and 13, 1998, the committee will undertake discussions on dietary supplements. Issues raised in the report of the White House Commission on Dietary Supplement Labeling relating to postmarket surveillance and consumer research will be discussed. Also, two aspects relating to good manufacturing practices (GMP's) for dietary supplements will be addressed. The agency is interested in recommendations for ensuring the identity for different types of dietary ingredients and on recordkeeping requirements. On February 13, 1998, two committee working groups will continue discussing assignments stemming from the Keystone report on health claims.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 9, 1998. Oral presentations from the public will be scheduled between approximately 4 p.m. and 5 p.m. on February 11 and 12, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 9, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C., app. 2).

Dated: January 22, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–2023 Filed 1–23–98; 11:47 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Open Meeting For Representatives of Health Professional Organizations

AGENCY: Food and Drug Administration

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting with representatives of health professional organizations. The meeting will be chaired by Sharon Smith Holston, Deputy Commissioner for External Affairs. The agenda will include presentations and discussions on the topics of the FDA Modernization Act of 1997, and the role of FDA in the regulation of products used in complementary and alternative medicine. There will also be a brief update on tobacco.

DATES: The meeting will be held on Monday, February 9, 1998, from 1:30 p.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Bethesda Hyatt, One Metro Center, Bethesda, MD.

REGISTRATION: There is no registration fee, however, space is limited. Persons will be registered in the order in which calls are received. Please call Betty B. Palsgrove at 301–827–6618 to register. Registrations also may be transmitted by fax to 1–800–344–3332 or 301–443–2446. Please include the name and title of the person attending and the name of the organization.

FOR FURTHER INFORMATION CONTACT: Peter H. Rheinstein, M.D., J.D., Office of Health Affairs (HFY–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6630.

SUPPLEMENTARY INFORMATION:

The purpose of the meeting is to provide an opportunity for representatives of health professional organizations and other interested persons to be briefed by senior FDA staff. It will also provide an opportunity for informal discussion on these topics of particular interest to health professional organizations.

This public meeting is free of charge; however, space is limited. Registration for the meeting will be accepted in the order received and should be sent to the contact person. Registration should include the name and title of the person attending and the name of the organization being represented, if any.

Dated: January 20, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–1850 Filed 1–26–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Medical Imaging Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Medical Imaging Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on February 9, 1998, 8 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Leander B. Madoo, Center for Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–80–741–8138 (301–443–0572 in the Washington, DC area), code 12540. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss the safety and efficacy of new drug application (NDA) 20–887 AcuTect™, Diatide, Inc., a radiopharmaceutical agent for the detection and localization of acute venous thrombosis.

Procedure: On February 9, 1998, from 8 a.m. to 1 p.m. and from 2 p.m. to 5 p.m. the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 2, 1998. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9:30 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 2, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On February 9, 1998, from 1 p.m. to 2 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information relating to NDA 20–887 AcuTect™ (5 U.S.C. 552b(c)(4)).

FDA regrets that it was unable to publish this notice 15 days prior to the February 9, 1998, Medical Imaging Drugs Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Medical Imaging Drugs Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 22, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–2022 Filed 1–23–98; 11:47 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0017]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); Draft Guidance on Validation of Analytical Procedures: Definition and Terminology (#63), and Validation of Analytical Procedures: Methodolgy (#64); Availability; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for comment of two draft guidance for industry (GFI) documents entitled "Validation of Analytical Procedures: Definition and Terminology" (number 63) and "Validation of Analytical Procedures: Methodology" (number 64). These related draft GFI documents have been adapted for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH) from two guidelines, Q2A and Q2B, that were adopted by the International Conference on Harmonisation (ICH) of Technical Requirements for Registration of Pharmaceuticals for Human Use. The draft guidance is intended to provide guidance on characteristics that should be considered during the validation of analytical procedures included as part of registration applications for approval of veterinary medicinal products submitted to the European Union, Japan, and the United States.

DATES: Submit written comments on these draft GFI documents by March 30, 1998.

ADDRESSES: Submit written comments on the two draft GFI documents to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm 1–23, Rockville, MD 20857. Comments should be identified with the full title of the draft GFI document and the docket number found in the heading of this document.

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Submit written requests for single copies of these draft GFI documents to the Communications and Education Team (HFV–12), Center for Veterinary Medicine (CVM), Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855. Send two self-addressed adhesive labels to assist that office in processing your requests. Copies of these draft guidance documents may be obtained on the Internet from the CVM Home Page (http://www.cvm.fda.gov).

FOR FURTHER INFORMATION CONTACT:

Regarding the GFI's: William G. Marnane, Center for Veterinary Medicine (HFV–140), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0678. E-mail: wmarnane@bangate.fda.gov.

Regarding VICH: Sharon R. Thompson, Center for Veterinary Medicine (HFV–3), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1798. E-mail: sthompso@bangate.fda.gov.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities, industry associations, and individual sponsors to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seeking scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and reduce the differences in technical requirements for drug development among regulatory agencies.

FDA has actively participated in the ICH for several years to develop harmonized technical requirements for the registration of human pharmaceutical products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary pharmaceutical products. The VICH is concerned with developing harmonized technical requirements for the registration of veterinary pharmaceutical products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH meetings are held under the auspices of the Office International des Épizooties (OIE). During the initial phase of the VICH, an OIE representative chairs the VICH Steering Committee. The VICH Steering Committee is composed of member representatives from the European Commission; the European Medicines Evaluation Agency; the European Federation of Animal Health; the U.S. Food and Drug Administration; the U.S. Department of Agriculture; the Animal Health Institute; the Japanese Veterinary Pharmaceutical Association; and the Japanese Ministry of Agriculture, Forestry and Fisheries.

Four observers are eligible to participate in the VICH Steering Committee: One representative from the Government of Australia/ New Zealand, one representative from the industry in Australia/ New Zealand, one representative from MERCOSUR (Argentina, Brazil, Uruguay and Paraguay), and one representative from Federacion Latino-Americana de la Industria para la Salud Animal. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confédération Mondiale de L'Industrie de la Santé Animale (COMISA). A COMISA representative also participates in the VICH Steering Committee meetings.

At a meeting held on August 20 and 21, 1997, the VICH Steering Committee agreed that the draft GFI documents entitled "Validation of Analytical Procedures: Definition and Terminology" and "Validation of Analytical Procedures: Methodology" should be made available for public comment. These draft GFI documents were prepared by the VICH Quality Working Group and are based on the ICH Guidelines (Q2A and Q2B) that have already been adopted by FDA for human pharmaceuticals. With one exception, the deletion of the text "(e.g. metered dose inhalers)" included in the ICH guideline Q2B, Section 3, the documents are identical.

The draft GFI document entitled, "Validation of Analytical Procedures: Definition and Terminology," discusses the characteristics that should be considered during the validation of the analytical procedures included in an application for registration of veterinary medicinal products in the European Union, Japan, and the United States. This document pertaining to "Definition and Terminology" is not intended to cover testing requirements or procedures, rather it is intended to serve as a collection of terms and definitions. These common definitions such as "analytical procedures," "specificity," "precision," "accuracy," etc., are meant to bridge the differences that often exist among various compendia and requirements of the European Union, Japan, and the United States. The draft GFI document entitled, "Validation of Analytical Procedures: Methodology," discusses common analytical procedures and provides guidance and recommendations on how to consider various validation characteristics for each analytical procedure. It also indicates the data that should be included in an application for registration. Comments about these draft GFI documents will be considered by the FDA and the VICH Quality Working Group. Ultimately, FDA intends to adopt the VICH Steering Committee's final guidelines and publish them as future GFI documents.

If finalized, these documents will represent current FDA thinking on characteristics for consideration during the validation of the analytical procedures included as part of applications. The draft GFI documents will not create or confer any rights for or on any person and will not operate to bind FDA or the public. Alternate approaches may be used if they satisfy the requirements of applicable statutes, regulations, or both.

Interested persons may, on or before March 30, 1998, submit to the Dockets Management Branch (address above) written comments on the draft guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and with the full title of the guidance document. The comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. After review of these comments, FDA will implement the guidance document with any appropriate changes. Thereafter, interested persons may submit written comment on the guidance document directly to the CVM Communications and Education Team (address above).

Dated: January 20, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–1848 Filed 1–26–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act

ACTION: Notice.

SUMMARY: The collection of information described below will be submitted to OMB for approval under the provisions of the Paperwork Reduction Act of 1995. Copies of specific information collection requirements, related forms and explanatory material may be obtained by contacting the Service Information Collection Clearance officer at the address and/or phone numbers listed below.

DATES: Comments must be submitted on or before March 30, 1998.

ADDRESSES: Comments and suggestions on specific requirements should be sent to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222 ARLSQ, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Stephen R. Vehrs, Refuge Program Specialist, Division of Refuges, 703/358–2397.

SUPPLEMENTARY INFORMATION: The Service proposes to submit the following information collection clearance requirements to OMB for review and approval under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The issuance of a Permit by the Fish and Wildlife Service for access to units of the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd–668ee *et seq.*) as amended; the Refuge Recreation Act (16 U.S.C. 460K–3); the National Wildlife Refuge System Improvement Act of 1997 (Pub. L. 105–57); and as implemented by regulations in 50 CFR 25–38.

The information requested prior to issuing the Permit is required to obtain a benefit, and will assist the Service in administering System programs in accordance with the above statutory authorities. The Improvement Act requires that a wildlife dependent recreational use or any other uses of a refuge that, in the sound professional judgment of the Director, will not materially interfere with or detract from the fulfillment of the mission of the System or the purposes for which the refuge was established. The information is needed by the Service to make this determination before a permit can be issued.

The permit is required for any person entering a national wildlife refuge, unless otherwise provided under the provisions of 50 CFR, subchapter C. The permittee must abide by all the terms and conditions set forth in the permit.

Information collected in submitting an application for a permit, prior to issuing a permit, may be used to evaluate and conclude the eligibility of, or merely document, permit applicants. The Service will require the use of permits as a condition in new and revised regulations pursuant to the Refuge Improvement Act.

The Service will provide Special Use Permit forms as requested by interested citizens. The required written forms and/or verbal application information will be sued by the Service to ensure that the applicant is eligible to receive a Permit.

Title: United States Department of the Interior, Fish and Wildlife Service, Special Use Permit.

Bureau form number: 3–1383.

Frequency of collection: On occasion.

Description of respondents: Individuals or households; State, local, or Tribal governments; businesses or other for profit and not-for-profit institutions.

Number of respondents: 10,000.

Estimated completion time: The reporting burden for FWS Form 3–1383 (Special Use Permit) is estimated to be 30 minutes.

Burden estimate: 5,000 hours.

Dated: January 15, 1998.

Carolyn A. Bohan,

Acting Assistant Director for Refuges and Wildlife.

[FR Doc. 98–1862 Filed 1–26–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

PRT–697830

Applicant: Assistant Regional Director, Ecological Services, Region 3, U.S. Fish and Wildlife Service, Fort Snelling, Minnesota.

The applicant requests to renew and amend his current permit to take the following species for scientific purposes and the enhancement of propagation or survival of the species in the wild in accordance with listing, recovery outlines, recovery plans, and/or other Service work for those species:

Mammals

bat, gray (*Myotis grisescens*)
bat, Indiana (*Myotis sodalis*)
bat, Ozark big-eared (*Plecotus townsendii ingens*)
wolf (*Canis lupus*)

Birds

eagle, bald (*Haliaeetus leucocephalus*)
falcon, peregrine (*Falco peregrinus*)
plover, piping (*Charadrius melodus*)
tern, least tern (*Sterna antillarum*)
warbler, Kirtland's (wood) (*Dendroica kirtlandii*)

Reptiles

snake, copperbelly water (northern population) (*Nerodia erythrogaster neglecta*)

Fish

cavefish, Ozark (*Amblyopsis rosae*)
darter, Niangua (*Etheostoma nianguae*)
madtom, Scioto (*Noturus trautmani*)
madtom, Neosho (*Noturus placidus*)
sturgeon, pallid (*Scaphirhynchus albus*)

Clams

clubshell (*Pleurobema clava*)
fanshell [*Cyprogenia stegaria* (=*irrorata*)]
mussel, ring pink (=golf stick pearly) (*Obovaria retusa*)
mussel, winged mapleleaf (*Quadrula fragosa*)
pearlymussel, cracking [*Hemistena* (=*Lastena*) *lata*]
pearlymussel, Curtis' [*Epioblasma* (=*Dysnomia*) *florentina curtisi*]
pearlymussel, Higgins' eye (*Lampsilis higginsi*)
pearlymussel, orange-foot pimple back (*Plethobasus cooperianus*)
pearlymussel, pink mucket [*Lampsilis* (=*abrupta*) *orbiculata*]
pearlymussel, purple cat's paw pearly mussel [*Epioblasma* (=Dysnomia) *obliquata obliquata* (=*sulcata sulcata*)]
pearlymussel, tubercled-blossom [*Epioblasma* (=*Dysnomia*) *torulosa torulosa*]
pearlymussel, turgid-blossom [*Epioblasma* (=*Dysnomia*) *turgidula*]
pearlymussel, white cat's paw [*Epioblasma* (=*Dysnomia*) *obliquata perobliqua*]
pearlymussel, white wartyback (*Plethobasus cicatricosus*)

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pigtoe, rough (*Pleurobema plenum*)
pocketbook, fat (*Potamilus (=Proptera) capax*)
riffleshell, northern (*Epioblasma torulosa rangiana*)

Snails

snail, Iowa Pleistocene (*Discus macclintocki*)

Insects

beetle, American burying (=giant carrion) (*Nicrophorus americanus*)
beetle, Hungerford's crawling water (*Brychius hungerfordi*)
butterfly, Karner blue (*Lycaeides melissa samuelis*)
butterfly, Mitchell's satyr (*Neonympha mitchellii mitchellii*)
dragonfly, Hine's (=Ohio) emerald (*Somatochlora hineana*)

Plants

Aconitum noveboracense (northern wild monkshood)
Apios priceana (Price's potato-bean)
Asclepias meadii (Mead's milkweed)
Asplenium (=Phyllitis) scolopendrium (=japonica) var. *americanum* (American hart's-tongue fern)
Boltonia decurrens (decurrent false aster)
Cirsium pitcheri (Pitcher's thistle)
Dalea foliosa (=Petalostemum f.) (leafy prairie-clover)
Erythronium propullans (Minnesota dwarf trout lily)
Geocarpon minimum (no common name)
Hymenoxys herbacea (=acaulis var. *glabra)* (lakeside daisy)
Iris lacustris (dwarf lake iris)
Isotria medeoloides (small whorled pogonia)
Lespedeza leptostachya (prairie bush-clover)
Lesquerella filiformis (Missouri bladder-pod)
Lindera melissifolia (pondberry)
Mimulus glabratus var. *michiganensis* (Michigan monkey-flower)
Oxytropis campestris var. *chartacea* (Fassett's locoweed)
Platanthera leucophaea (eastern prairie fringed orchid)
Platanthera praeclara (western prairie fringed orchid)
Sedum integrifolium ssp. *leedyi* (Leedy's roseroot)
Solidago houghtonii (Houghton's goldenrod)
Spiraea virginiana (Virginia spiraea)
Trifolium stoloniferum (running buffalo clover)

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111—4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/725–3536 x224); FAX: (612/725–3526).

Dated: January 20, 1998.

Matthias A. Kerschbaum,

Acting Assistant Regional Director, IL, IN, MO (Ecological Services), Region 3, Fort Snelling, Minnesota.

[FR Doc. 98–1859 Filed 1–26–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10 (a)(1)(A) of the Endangered Species Act of 1973, as amended (16 USC 1531 *et seq.*).

Permit No. 837580

Applicant: Robert Weppler, Riverside, California.

The applicant requests a permit to take (harass by survey) the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) in southern California in conjunction with presence or absence surveys for the purpose of enhancing its survival.

Permit No. 799486

Applicant: Jan Randall, San Francisco, California.

The applicant requests an amendment of her permit to take (capture and remove eight individuals from the wild) the giant kangaroo rat (*Dipodomys ingens*) in conjunction with scientific research in Merced, Fresno, Monterey, San Luis Obispo, Kings, Kern, and Santa Barbara Counties, California, for the purpose of enhancing its survival.

Permit No.'s: 838028, 785138, 832945, 810768, 837301, 781217, 797999

Applicants: Michael G. Van Hattem, San Juan Capistrano, California; David Levine, Laguna Beach, California; Lisa M. Kegarice, San Bernardino, California; Harmsworth Associates, Dove Canyon, California; Jeffrey L. Lincer, Poway, California; Chambers Group, Inc., Irvine, California; Merkel and Associates, San Diego, California.

These applicants request a permit or a permit amendment to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys throughout the species range in California, for the purpose of enhancing its survival.

Permit No. 781384

Applicant: Thomas A. Leslie, Wildomar, California.

The applicant requests an amendment to his permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys and ecological research throughout the species range in California, for the purpose of enhancing its survival.

Permit No. 814215

Applicant: Claude Edwards, San Diego, California.

The applicant requests an amendment to his permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys and observational studies throughout the species range in California, for the purpose of enhancing its survival.

Permit No. 821229

Applicant: David G. Crawford, Agoura Hills, California.

The applicant requests an amendment to his permit to take (harass by survey) the Delhi-Sands flower loving fly (*Rhaphiomidas terminatus abdominalis*) in Riverside and San Bernardino Counties, California, and take (harass by survey) the tidewater goby (*Eucyclobius newberryi*) throughout its range in California in conjunction with presence or absence surveys, for the purpose of enhancing their survival.

Permit No. 838015

Applicant: Stephan Henry Sprague, Anaheim, California.

The applicant requests a permit to take (harass by survey) the Delhi-Sands flower loving fly (*Rhaphiomidas terminatus abdominalis*), Quino checkerspot butterfly (*Euphydryas editha quino*), and the coastal California gnatcatcher (*Polioptila californica californica*) in conjunction with presence or absence surveys throughout each species range, for the purpose of enhancing their survival.

Permit No. 787645

Thomas Olsen Associates, Inc., Hemet, California.

The applicant requests an amendment to his permit to take (harass by survey) the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) in conjunction with presence or absence surveys in Pima County, Arizona, for the purpose of enhancing its survival.

DATES: Written comments on these permit applications must be received on or before February 26, 1998.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: January 21, 1998.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–1884 Filed 1–26–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–070–08–1210–04]

Notice of Intent To Prepare and Environmental Impact Statement on Oil and Gas Development Within the Bisti/De-Na-Zin Wilderness Area; Invitation for Public Participation and Call for Information

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement,

invitation for public involvement, and call for information on oil and gas minerals and other resources.

SUMMARY: The Bureau of Land Management (BLM), Farmington District Office is initiating preparation of an Environmental Impact Statement (EIS) on proposed oil and gas development of three existing leases within the Bisti/De-Na-Zin Wilderness Area. The public is invited to participate in this planning effort with the identification of additional issues and planning criteria.

This notice is also to solicit oil and gas mineral and other resource information and indications of interest and need. Mineral extraction companies, environmental organizations, state, Tribal, and local governments, and the general public are encouraged to submit information to the BLM to assist in the determinations of oil and gas development potential and possible conflicts with other resources.

The planning document will be prepared by an interdisciplinary team of specialists within the Farmington District Office. Two public scoping meetings will be held: in Farmington, New Mexico on February 24, 1998 in the San Juan College Henderson Fine Arts Building, room 9012 at 7:00 p.m.; and in Santa Fe, New Mexico on February 25, 1998 in the BLM New Mexico State Office, 1474 Rodeo Road, at 7:00 p.m. Public hearings will be announced after the completion of a Draft EIS.

DATES: Comments relating to the identification issues and planning criteria, and responses to this call for oil and gas mineral and other resource information will be accepted through the close of business March 20, 1998.

ADDRESSES: Comments and requests to be included on the mailing list should be sent to: Lee Otteni, District Manager; Bureau of Land Management, Farmington District Office; 1235 La Plata Highway, Suite A, Farmington, New Mexico 87401. Proprietary data should be identified as such to ensure confidentiality.

FOR FURTHER INFORMATION CONTACT: Christopher V. Barns at the address above, or call 505–599–6338.

SUPPLEMENTARY INFORMATION: The existing leases are found in the Hunter Wash portion of the Bisti/De-Na-Zin Wilderness Area on 2,630.93 acres of the following public lands:

T. 24 N., R. 12 W., NMPM,
Sec. 3, lots 8, 9, 16, 17;
Sec. 4, lots 5 to 20, inclusive;
Sec. 8, lots 1, 2, 7 to 16, inclusive;
Sec. 9, lots 3, 4, 5, 6, 12, 13;
Sec. 17, lots 1 to 16, inclusive; and
Sec. 18, lots 13 to 20, inclusive.

The issues anticipated to be addressed by this EIS include the conflicting mandates of protecting wilderness resources and values while honoring valid existing oil and gas rights.

The proposed planning criteria include:

1. All proposed actions and alternatives considered must comply with current laws and federal regulations.

2. The EIS will weigh long-term benefits and detriments against short-term benefits and detriments.

3. This planning process will provide for public involvement including early notice and frequent opportunity for interested citizens and groups to participate in and comment on the preparation of plans and related guidance.

Dated: January 21, 1998.

M.J. Chávez,

State Director.

[FR Doc. 98–1882 Filed 1–26–98; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–1020–00]

Environmental Analysis; Cedar City District, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management, Cedar City District, has completed an Environmental Analysis (EA)/Finding of No Significant Impact (FONSI) of the Proposed Plan Amendments to the Cedar/Beaver/Garfield/Antimony and the Paria, Vermilion and Zion Management Framework Plans. The Proposed Amendments involve the addition of five new land tenure adjustment criteria (LTAs). These LTAs could be used to facilitate changes in land ownership enhancing the ability to provide for economic growth as well as provide additional protection for sensitive resources.

DATES: The protest period for these Proposed Plan Amendments will commence with the date of publication of this notice and last for 30 days. Protests must be received on or before January 27, 1998.

ADDRESSES: Protests must be addressed to the Director (WO–210), Bureau of Land Management, Attn: Brenda Williams, 1849 C Street, N.W.,

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Washington, D.C. 20240 within 30 days after the date of publication of this Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Verlin Smith, Area Manager, Kanab Resource Area, at 318 North First East, Kanab, Utah 84741, (801) 644–2672. Copies of the proposed Plan Amendments are available for review at the Kanab Field Office.

SUPPLEMENTARY INFORMATION: This action is announced pursuant to Section 202(a) of the Federal Land Management Act (1976) and 43 CFR Part 1610. These Proposed Amendments are subject to protests by any party who has participated in the planning process. Protest must be specific and contain the following information:

—The name, mailing address, phone number, and interest of the person filing the protest.
—A statement of the issue(s) being protested.
—A statement of the part(s) of the proposed amendment being protested and citing pages, paragraphs, maps etc., of the Proposed Plan Amendment.
—A copy of all documents addressing the issue(s) submitted by the protestor during the planning process or a reference to the date when the protester discussed the issue(s) for the record.
—A concise statement as to why the protester believes the BLM State Director is incorrect.

Dated: January 15, 1998.

G. William Lamb,

State Director, Utah.

[FR Doc. 98–1635 Filed 1–26–98; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–00;GP8–0067]

Notice of Meeting of the Eastern Washington Resource Advisory Council

AGENCY: Interior, Bureau of Land Management, Spokane District.

ACTION: Meeting of the Eastern Washington Resource Advisory Council; February 20, 1998, in Spokane, Washington.

SUMMARY: A meeting of the Eastern Washington Resource Advisory Council will be held on February 20, 1998. The meeting will convene at 8:00 a.m., at the Spokane District Office of the Bureau of Land Management, 1103 N. Fancher, Spokane, WA 99212. The meeting will adjourn at approximately 4:00 p.m. or upon completion of business. Public comments will be heard from 11:00 a.m. until 11:30 a.m. If necessary to accommodate all wishing to make public comments, a time limit may be placed upon each speaker. At an appropriate time, the meeting will adjourn for approximately one hour for lunch. The purposes of the meeting are to interact with the Director of the Bureau of Land Management in a video teleconference with other Resource Advisory Councils, to identify issues for the Council to address in 1998, and to schedule future 1998 meetings.

FOR FURTHER INFORMATION CONTACT: Richard Hubbard, Bureau of Land Management, Spokane District Office, 1103 North Fancher Road, Spokane, Washington, 99212; or call 509–536–1200.

Dated January 21, 1998.

Joseph K. Buesing,

District Manager.

[FR Doc. 98–1881 Filed 1–26–98; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on a proposal to extend the currently approved collection of information discussed below. The Paperwork Reduction Act of 1995 (PRA) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

DATES: Submit written comments by March 30, 1998.

ADDRESSES: Direct all written comments to the Rules Processing Team, Minerals Management Service, Mail Stop 4020, 381 Elden Street, Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of this collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart F, Oil and Gas Well-Workover Operations.

OMB Control Number: 1010–0043.

Abstract: The Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331 *et seq.*), as amended, requires the Secretary of the Interior to preserve, protect, and develop oil and gas resources in the OCS; make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of the human, marine, and coastal environment; ensure the public a fair and equitable return on the resources offshore; and preserve and maintain free enterprise competition. To carry out these responsibilities, MMS has issued regulations at 30 CFR Part 250. Subpart F, Oil and Gas Well-Workover Operations, of that part contains requirements and procedures for well-workover operations in the OCS.

The MMS uses the information collected under subpart F to analyze and evaluate planned well-workover operations in the OCS to ensure that operations result in personnel safety and protection of the environment. The evaluation is used in decisions on whether to approve, disapprove, or to require modification to the proposed well-workover operations. If respondents submit proprietary information, it will be protected under 30 CFR 250.18, Data and information to be made available to the public. No items of a sensitive nature are collected. The requirement to respond is mandatory.

Estimated Number and Description of Respondents: There are approximately 130 Federal OCS oil and gas or sulphur lessees.

Frequency: On occasion, varies by section.

Estimated Annual Reporting and Recordkeeping Hour Burden: There are 445 burden hours currently approved for this collection.

Comments: The MMS will summarize written responses to this notice and address them in its submission for OMB approval. All comments will become a matter of public record. We will also consult with a representative number of respondents on the accuracy of the burden estimate. As a result of the comments we receive and consultations, we will make any necessary adjustments for our submission to OMB. In calculating the burden, MMS may have assumed that respondents perform some of the requirements and maintain records in the normal course of their activities. The MMS considers these to be usual and customary. Commenters are invited to provide information if they disagree with this assumption, and they should tell us what the burden hours and costs imposed by this collection of information are.

(1) The MMS specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for the proper performance of MMS's functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

(2) In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping cost burden for the collection of this information. The MMS needs your comments on this item. Your response should split the cost estimate into two components: (a) Total capital and startup cost component; and (b) annual operation, maintenance, and purchase of services component. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: Before October 1, 1995; to comply with requirements not associated with the information collection; for reasons other than to provide information or keep records for the Government; or as part of customary and usual business or private practices.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: January 12, 1998.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 98–1861 Filed 1–26–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Meeting: Committee for the Preservation of the White House

In compliance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the Committee for the Preservation of the White House. The meeting will be held at the Old Executive Office Building, Washington, DC at 10 a.m., Friday, February 6, 1998. It is expected that the agenda will include policies, goals and long range plans. The meeting will be open, but subject to appointment and security clearance requirements. Clearance information must be received by February 2, 1998.

Inquiries may be made by calling the Committee for the Preservation of the White House between 9 a.m. and 4 p.m., weekdays at (202) 619–6344. Written comments may be sent to the Executive Secretary, Committee for the Preservation of the White House, 1100 Ohio Drive, SW, Washington, DC 20242.

James I. McDaniel,

Executive Secretary, Committee for the Preservation of the White House.

[FR Doc. 98–1889 Filed 1–26–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of proposed contractual actions pending through December 31, 1997, and contract actions that have been completed or discontinued since the last publication of this notice on October 27, 1997. From the date of this publication, future quarterly notices during this calendar year will be limited to modified, new, completed, or discontinued contract actions. This annual notice should be used as a point of reference to identify changes in future notices. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities. Additional Bureau of Reclamation (Reclamation) announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Alonzo Knapp, Manager, Reclamation Law, Contracts, and Repayment Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007; telephone 303–236–1061 extension 224.

SUPPLEMENTARY INFORMATION: Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) and 43 CFR 426.20 of the rules and regulations published in 52 FR 11954, Apr. 13, 1987, Reclamation will publish notice of the proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the "Final Revised Public Participation Procedures" for water resource-related contract negotiations, published in 47 FR 7763, Feb. 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. Each proposed action is, or is expected to be, in some stage of the contract negotiation process in 1998. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional

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directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (i) The significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Acronym Definitions Used Herein

(BCP) Boulder Canyon Project
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley Project
(CRSP) Colorado River Storage Project
(D&MC) Drainage and Minor Construction
(FR) Federal Register
(IDD) Irrigation and Drainage District
(ID) Irrigation District
(M&I) Municipal and Industrial
(O&M) Operation and Maintenance
(P-SMBP) Pick-Sloan Missouri Basin Program
(R&B) Rehabilitation and Betterment
(PPR) Present Perfected Right
(RRA) Reclamation Reform Act
(NEPA) National Environmental Policy Act
(SOD) Safety of Dams
(SRPA) Small Reclamation Projects Act
(WCUA) Water Conservation and Utilization Act
(WD) Water District

Pacific Northwest Region

Bureau of Reclamation, 1150 North Curtis Road, Boise, Idaho 83706–1234, telephone 208–378–5346.

1. Irrigation, M&I, and miscellaneous water users; Idaho, Oregon, Washington, Montana, and Wyoming: Temporary or interim water service contracts for irrigation, M&I, or miscellaneous use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Rogue River Basin Water Users, Rogue River Basin Project, Oregon: Water service contracts; $8 per acre-foot per annum.

3. Willamette Basin Water Users, Willamette Basin Project, Oregon: Water service contracts; $8 per acre-foot per annum.

4. Lake Chelan Reclamation District, Chief Joseph Dam Project, Washington; Consolidated ID, Spokane Valley Project, Washington; Individual Contractors, Crooked River Project, Oregon; Lower Payette Ditch Company Ltd., Pioneer Ditch Company, Boise Project, Idaho; Tumalo ID, Crescent Lake Dam Project, Oregon; Monroe Creek ID, Mann Creek Project, Idaho; Clark and Edwards Canal and Irrigation Company, Enterprise Canal Company, Ltd., Lenroot Canal Company, Liberty Park Canal Company, Parsons Ditch Company, Poplar ID, Wearyrick Ditch Company, all in the Minidoka Project, Idaho; Juniper Flat District Improvement Company, Wapinitia Project, Oregon; Roza ID, Yakima Project, Washington: Amendatory repayment and water service contracts; purpose is to conform to the RRA (Pub. L. 97–293).

5. Bridgeport ID, Chief Joseph Dam Project, Washington: Warren Act contract for the use of an irrigation outlet in Chief Joseph Dam.

6. Douglas County, Milltown Hill Project, Oregon: SRPA loan repayment contract; proposed combination loan and grant obligation of approximately $31 million.

7. Palmer Creek Water District Improvement Company, Willamette Basin Project, Oregon: Irrigation water service contract for approximately 13,000 acre-feet.

8. U. S. Fish and Wildlife Service and Boise-Kuna ID, Boise Project, Idaho: Memorandum of Agreement for the use of approximately 400 acre-feet of storage space annually in Anderson Ranch Reservoir. Water to be used for wildlife mitigation purposes (ponds and wetlands).

9. North Unit ID, Deschutes Project, Oregon: Long-term municipal water service contract for provision of approximately 125 acre-feet annually from the project water supply to the City of Madras.

10. Lewiston Orchards ID, Lewiston Orchards Project, Idaho: Repayment contract for reimbursable cost of dam safety repairs to Reservoir "A."

11. North Unit ID, Deschutes Project, Oregon: Repayment contract for reimbursable cost of dam safety repairs to Wickiup Dam.

12. Twenty-one individual contractors, Umatilla Project, Oregon: Repayment agreements for reimbursable cost of dam safety repairs to McKay Dam.

13. North Unit ID, Deschutes Project, Oregon: Warren Act contract with cost of service charge to allow for use of project facilities to convey nonproject water.

14. South Boise Mutual Irrigation Company, Ltd. and United Water Idaho, Boise Project, Idaho: Agreement amending contracts to approve the acquisition and municipal use of Anderson Ranch Reservoir water by United Water Idaho, and the transfer of Lucky Peak Reservoir water to the United States.

15. Baker Valley ID, Baker Project, Oregon: Warren Act contract with cost of service charge to allow for use of project facilities to store nonproject water.

16. Okanogan ID, Okanogan Project, Washington: SOD contract to repay district's share of cost to install an Early Warning System.

17. Rogue River Valley and Medford IDs, Rogue River Basin Project, Oregon: SOD contract to repay each district's share of cost to repair Fish Lake Dam.

18. Trendwest Resorts, Yakima Project, Washington: Long-term water exchange contract for assignment of Teanaway River and Big Creek water rights to Reclamation for instream flow use in exchange for annual use of up to 3,500 acre-feet of water from Cle Elum Reservoir for a proposed resort development.

19. Milner ID, Minidoka-Palisades Projects, Idaho: Amendment of storage contracts to reduce the district's spaceholding in Palisades Reservoir by up to 5,162 acre-feet, thereby allowing use of this space by Reclamation for flow augmentation.

20. Burley and Southwest IDs, Minidoka Project, Idaho: Warren Act contract with charge to allow for use of project facilities to convey nondistrict water to Southwest ID.

21. City of Cle Elum, Yakima Project, Washington: Contract for up to 2,170 acre-feet of water for municipal use.

The following contract actions have been completed in the Pacific Northwest Region since this notice was last published on October 27, 1997.

1. (15) Stanfield and Westland IDs and 69 individual contractors, Umatilla Project, Oregon: Repayment contracts for reimbursable cost of dam safety repairs to McKay Dam. Agreements have been executed with 50 individual contractors; a contract executed October 17, 1997, with Stanfield ID; and a contract executed January 1998 with Westland ID.

2. (24) J. R. Simplot Company and Partners, Boise Project, Idaho: Long-term contract for 3,000 acre-feet of Anderson Ranch Reservoir storage for M&I use. Contract executed November 10, 1997.

3. (25) Eagle Island Water Users Association, Inc., Boise Project, Idaho: Amendment of water service contract to reduce the Association's spaceholding in Lucky Peak Reservoir by approximately 5,300 acre-feet, thereby allowing use of this space by Reclamation for flow augmentation. Amendment executed November 10, 1997.

4. (27) The Dalles ID, The Dalles Project, Oregon: Amendatory SRPA loan repayment contract to modify the repayment schedule, including extension of repayment period from 30 to 34 years. Contract executed December 12, 1997.

Mid-Pacific Region

Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–979–2401.

1. Irrigation water districts, individual irrigators, M&I, and miscellaneous water users, Mid-Pacific Region projects other than CVP: Temporary (interim) water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; temporary Warren Act contracts for use of project facilities for terms up to 1 year; long-term contracts for similar service for up to 1,000 acre-feet annually.

Note: Copies of the standard forms of temporary water service contracts for the various types of service are available upon written request from the Regional Director at the address shown above.

2. Contractors from the American River Division, Buchanan Division, Cross Valley Canal, Delta Division, Friant Division, Hidden Division, Sacramento River Division, Shasta Division, and Trinity River Division, CVP, California: Renewal of existing long-term and interim renewal water service contracts with contractors whose contracts expire between 1998 and 2000; water quantities for these contracts total in excess of 1.7M acre-feet. These contract actions will be accomplished through interim renewal contracts pursuant to Public Law 102–575.

3. Redwood Valley County WD, SRPA, California: District is considering restructuring the repayment schedule pursuant to Public Law 100–516 or initiating new legislation to prepay the loan at a discounted rate. Prepayment option under Public Law 102–575 has expired.

4. Sacramento River water rights contractors, CVP, California: Contract amendment for assignment under voluntary land ownership transfers to provide for the current CVP water rates and update standard contract articles.

5. Naval Air Station and Truckee Carson ID, Newlands Project, Nevada: Amend water service Agreement No. 14–06–400–1024 for the use of project water on Naval Air Station land.

6. El Dorado County Water Agency, San Juan WD, and Sacramento County Water Agency, CVP, California: M&I water service contracts to supplement existing water supply: 15,000 acre-feet for El Dorado County Water Agency, 13,000 acre-feet for San Juan WD, and 22,000 acre-feet for Sacramento County Water Agency, authorized by Public Law 101–514.

7. U.S. Fish and Wildlife Service, California Department of Fish and Game, Grassland WD, CVP, California: Water service contracts to provide water supplies for refuges and private wetlands within the CVP pursuant to Public Law 102–575 and Federal Reclamation Laws; quantity to be contracted for is approximately 450,000 acre-feet.

8. Glenn-Colusa ID, Sutter Extension WD, Biggs-West Gridley WD, Central California ID, San Luis Canal Company, Grasslands WD, Buena Vista Water Storage District, and the State of California Department of Water Resources, CVP, California: Pursuant to Public Law 102–575, conveyance agreements for the purpose of wheeling refuge water supplies and funding of district facility improvements, and exchange agreements to provide water for refuge and private wetlands.

9. Mountain Gate Community Services District, CVP, California: Amendment of existing long-term water service contract to include right to renew. This amendment will also conform the contract to current Reclamation law, including Public Law 102–575.

10. Santa Barbara County Water Agency, Cachuma Project, California: Repayment contract for SOD work on Bradbury Dam.

11. CVP Service Area, California: Temporary water purchase agreements for acquisition of 20,000 to 200,000 acre-feet of water for fish and wildlife purposes as authorized by the Central Valley Project Improvement Act for terms of up to 3 years.

12. City of Roseville, CVP, California: Execution of long-term Warren Act contract for conveyance of nonproject water provided from the Placer County Water Agency. This contract will allow CVP facilities to be used to deliver nonproject water to the City of Roseville for use within their service area.

13. Sacramento Municipal Utility District, CVP, California: Amendment of existing water service contract to allow for additional points of diversion and assignment of up to 15,000 acre-feet of project water to the Sacramento County Water Agency. The amended contract will conform to current Reclamation law.

14. Mercy Springs WD, CVP, California: Assignment of Mercy Springs WD's water service contract to Pajaro Valley Water Management Agency. The assignment will provide for delivery of up to 13,300 acre-feet annually of water to the Agency from the CVP for agricultural purposes.

15. Santa Barbara County Water Agency, Cachuma Project, California: Contract to transfer responsibility for O&M and O&M funding of certain Cachuma Project facilities to the member units.

16. Stony Creek WD, Black Butte Dam and Lake, Sacramento River Division, CVP, California: A proposed amendment of Stony Creek WD's water service contract, No. 2–07–20–W0261, to allow the contractor to change from paying for all project water, whether used or not, to paying only for project water scheduled or delivered and to add another month to the irrigation period.

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17. M&T, Inc., Sacramento River Water Rights Contractors, CVP, California: A proposed exchange agreement with M&T, Inc., to take its Butte Creek water rights water from the Sacramento River in exchange for CVP water.

18. East Bay Municipal Utility District, CVP, California: Amendment to the long-term water service contract No. 14–06–200–5183A, to change the points of diversion.

19. Madera and Lindsay-Strathmore IDs, and Delta Lands Reclamation District No. 770, CVP, California: Execution of 2- to 3-year Warren Act contracts for conveyance of nonproject water in the Friant-Kern and/or Madera Canals when excess capacity exists.

20. Napa County Flood Control and Water Conservation District, Solano Project, California: Renewal of water service contract No. 14–06–200–1290A, which expires February 28, 1999.

21. Solano County Water Agency, Solano Project, California: Renewal of water service contract No. 14–06–200–4090, which expires February 28, 1999.

22. Reno, Sparks, and Washoe County; Washoe and Truckee Storage Projects; Nevada and California: Contract for the storage of non-Federal water in Truckee River reservoirs as authorized by Public Law 101–618 and consistent with the terms and conditions of the Truckee River Water Quality Settlement Agreement.

23. Sierra Pacific Power Company, Washoe and Truckee Storage Projects, Nevada and California: Contract for the storage of non-Federal water in Truckee River reservoirs as authorized by Public Law 101–618 and consistent with the terms and conditions of the proposed Truckee River Operating Agreement.

24. Casitas Municipal Water District, Ventura Project, California: Repayment contract for SOD work on Casitas Dam.

25. Centerville Community Services District, CVP, California: A long-term supplemental repayment contract for reimbursement to the United States for conveyance costs associated with CVP water conveyed to Centerville.

26. El Dorado ID, CVP, California: Execution of long-term Warren Act contract for conveyance of nonproject water. This contract will allow CVP facilities to be used to deliver nonproject water to the district for use within their service area.

27. Placer County Water Agency, CVP, California: Amendment of existing water service contract to allow for additional points of diversion and reduction in the amount of project water to be delivered from a maximum of 117,000 acre-feet to a maximum of 35,000 acre-feet. The amended contract will conform to current Reclamation law.

Lower Colorado Region

Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8536.

1. Milton and Jean Phillips, Kenneth or Ann Easterday, Robert E. Harp, Cameron Brothers Construction Co., Ogram Farms, Bruce Church, Inc., Sunkist Growers, Inc., Clayton Farms, BCP, Arizona: Water service contracts, as recommended by Arizona Department of Water Resources, with agricultural entities located near the Colorado River for up to an additional 15,557 acre-feet per year total.

2. Arizona State Land Department, State of Arizona, BCP, Arizona: Contract for 6,607 acre-feet per year of Colorado River water for agricultural use and related purposes on State-owned land.

3. Armon Curtis, Arlin Dulin, Jack Rayner, Glen Curtis, Jamar Produce Corporation, and Ansel T. Hall, BCP, Arizona: Water service contracts: purpose is to amend their contracts to exempt them from the RRA.

4. Brooke Water Co., Havasu Water Co., City of Quartzsite, McAllister Subdivision, and Arizona State Land Department, BCP, Arizona: Contracts for additional M&I allocations of Colorado River water to entities located along the Colorado River in Arizona for up to 2,657 acre-feet per year as recommended by the Arizona Department of Water Resources.

5. National Park Service for Lake Mead National Recreation Area, Supreme Court Decree in *Arizona* v. *California*, and BCP in Arizona and Nevada: Memorandum of Understanding for delivery of Colorado River water for the National Park Service's Federal Establishment PPR of 500 acre-feet of diversions annually and the National Park Service's Federal Establishment PPR pursuant to Executive Order No. 5125 (April 25, 1930).

6. Mohave Valley ID, BCP, Arizona: Amendment of current contract for additional Colorado River water, change in service area, diversion points, RRA exemption, and PPR.

7. Miscellaneous PPR entitlement holders, BCP, Arizona and California: New contracts for entitlement to Colorado River water as decreed by the U.S. Supreme Court in *Arizona* v. *California*, as supplemented or amended, and as required by section 5 of the Boulder Canyon Project Act. Miscellaneous PPR holders are listed in the January 9, 1979, Supreme Court Supplemental Decree in *Arizona* v. *California et al.*

8. Miscellaneous PPR No. 11, BCP, Arizona: Assign a portion of the PPR from Holpal to McNulty et al.

9. Federal Establishment PPR entitlement holders, BCP, Arizona: Individual contracts for administration of Colorado River water entitlement of the Colorado River, Fort Mojave, Quechan, Chemehuevi, and Cocopah Indian Tribes.

10. United States facilities; BCP; Arizona, California, and Nevada: Reservation of Colorado River water for use at Federal facilities and lands administered by Reclamation.

11. Windsor Beach State Park, Lake Havasu City, BCP, Arizona: Contract for 90 acre-feet entitlement to Colorado River domestic water.

12. Bureau of Land Management, BCP, Arizona: Contract for 1,176 acre-feet per year, for irrigation use, of Arizona's Colorado River water that is not used by higher priority Arizona entitlement holders.

13. Curtis Family Trust *et al.*, BCP, Arizona: Contract for 2,100 acre-feet per year of Colorado River water for irrigation.

14. Beattie Farms SW, BCP, Arizona: Contract for 1,890 acre-feet per year of unused Arizona entitlement for irrigation use.

15. Section 10 Backwater, BCP, Arizona: Contract for 250 acre-feet per year of unused Arizona entitlement for environmental use until a permanent water supply can be obtained.

16. U.S. Fish and Wildlife Service, Lower Colorado River Refuge Complex, BCP, Arizona: Proposed agreement for the administration of existing Colorado River water entitlement of refuge lands located in Arizona, resolving water rights coordination issues, and to provide for additional entitlement for nonconsumptive use of flow through water.

17. Hilander C ID, Colorado River Basin Salinity Control Project, Arizona: Water delivery contract for 4,500 acre-feet.

18. Maricopa-Stanfield IDD, CAP, Arizona: District has requested the United States to defer payments and restructure its $78 million distribution system repayment obligation.

19. Indian and non-Indian agricultural and M&I water users, CAP, Arizona: New and amendatory contracts for repayment of Federal expenditures for construction of distribution systems.

20. Gila River Indian Community, CAP, Arizona: Master repayment/O&M contract for the CAP-funded distribution system to serve up to approximately 77,000 acres of land.

21. Tohono O'odham Nation, SRPA, Arizona: Repayment contract for a $7.3 million loan for the Schuk Toak District.

22. San Tan ID, CAP, Arizona: Amend distribution system repayment contract No. 6–07–30–W0120 to increase the repayment obligation approximately $168,000.

23. Central Arizona Drainage and Irrigation District, CAP, Arizona: Amend distribution system repayment contract No. 4–07–30–W0048 to reschedule repayment terms pursuant to U.S. Bankruptcy Court, District of Arizona.

24. City of Needles, Lower Colorado Water Supply Project, California: Amend contract No. 2–07–30–W0280 to extend Needles subcontracting authority to the Counties of Imperial and Riverside.

25. Imperial ID/Coachella Valley WD and/or the Metropolitan WD of Southern California, BCP, California: Contract to fund the Department of the Interior's expenses to conserve All-American Canal seepage water in accordance with Title II of the San Luis Rey Indian Water Rights Settlement Act dated November 17, 1988.

26. Coachella Valley WD and/or the Metropolitan WD of Southern California, BCP, California: Contract to fund the Department of the Interior's expenses to conserve seepage water from the Coachella Branch of the All-American Canal in accordance with Title II of the San Luis Rey Indian Water Rights Settlement Act, dated November 17, 1988.

27. United States Navy, BCP, Niland, California: Contract for 23 acre-feet of surplus Colorado River water for domestic use delivered through the Coachella Canal.

28. Southern Nevada Water Authority, Robert B. Griffith Water Project, BCP, Nevada: Amend the repayment contract to provide for the incorporation of the Griffith Project into the expanded southern Nevada Water System, funded and built by Southern Nevada Water Authority, to facilitate the diversion, treatment, and conveyance of additional water out of Lake Mead for which the Authority has an existing entitlement to use.

29. Salt River-Pima Maricopa Indian Community, CAP, Arizona: O&M contract for its CAP water distribution system.

30. McMicken ID/Town of Goodyear, CAP, Arizona: Amend McMicken's CAP subcontract to reduce its entitlement by 507 acre-feet and Goodyear's water/service subcontract to increase its entitlement by 507 acre-feet.

31. Community Water Company of Green Valley/New Pueblo Water Co., CAP, Arizona: Execute an assignment assigning 237 acre-feet of New Pueblo's CAP water entitlement to Community. Amend Community's CAP subcontract to increase its entitlement by 237 acre-feet. Upon execution of the assignment from New Pueblo to Community, New Pueblo's CAP water service subcontract would terminate.

32. Bullhead City, BCP, Arizona: Assignment of 1,800 acre-feet of water and associated service area from Mohave County Water Conservation District to Bullhead City, Arizona.

33. Mr. Robert H. Chesney, BCP, Arizona: Amend contract No. 5–07–30–W0321 to increase the cubic-foot-per-second diversion and install a low-lift pump.

34. U.S. Army Proving Ground, BCP, Arizona: Agreement for 1,883 acre-feet of Colorado River water.

35. Arizona State Lands, BCP, Arizona: Water delivery contract for 1,400 acre-feet of Colorado River water for domestic use.

36. Miscellaneous PPR No. 38, BCP, California: Assign Schroeder's portion of the PPR to Murphy Broadcasting and change the place of use and type of the water use.

37. Berneil Water Co., CAP Arizona: Subcontracts associated with partial assignment of water service to the City of Scottsdale, Cave Creek Water Company, and the City of Phoenix.

38. Tohono O'odham Nation, CAP Arizona: Repayment contract for construction costs associated with distribution system on Central Arizona IDD.

39. Tohono O'odham Nation, Arizona: Contracts for Schuk Toak and San Xavier Districts for repayment of Federal expenditures for construction of distribution systems.

40. Arizona State Land Department, BCP, Arizona: Water delivery contract for delivery of up to 9,000 acre-feet per year of unused apportionment and surplus Colorado River water for irrigation.

41. Don Schuler, BCP, California: Temporary delivery contract for surplus and/or unused apportionment of Colorado River water for domestic and industrial use on 18 lots of recreational homes in California.

42. Bureau of Land Management, BCP, California: Agreement for 1,000 acre-feet of Colorado River water in accordance with Secretarial Reservation.

43. Bureau of Land Management, Lower Colorado Water Supply Project, California: Agreement for a consumptive use of 1,150 acre-feet of water for use on Bureau of Land Management-administered lands in California adjacent to the Colorado River.

44. Bureau of Land Management, BCP, Arizona: Agreement for 4,010 acre-feet of Colorado River water in accordance with Secretarial Reservations.

45. Arizona State Lands, CAP, Arizona: Assignment of 3,900 acre-feet of CAP water to the City of Scottsdale.

46. Town of Youngtown, CAP, Arizona: Assignment of 380 acre-feet of CAP water to Sun City Water Company.

The following contract actions have been completed or discontinued in the Lower Colorado Region since this notice was last published on October 27, 1997.

1. (5) City of Parker, BCP, Arizona: Contract for additional M&I allocation of Colorado River water as recommended by the Arizona Department of Water Resources.

2. (15) Crystal Beach Water Conservation District, BCP, Arizona: Contract for delivery of 132 acre-feet per year of Colorado River water for domestic use, as recommended by the Arizona Department of Water Resources.

3. (27) McMicken Irrigation District/Avondale, CAP, Arizona: Amend McMicken's CAP subcontract to reduce its entitlement by 647 acre-feet, and amend Avondale's CAP water service subcontract to increase its entitlement by 647 acre-feet of CAP water.

4. (28) City of Scottsdale and other M&I water subcontractors, CAP, Arizona: Subcontract amendments associated with assignment of M&I water service subcontracts from Camp Verde Water System, Inc., to provide the City of Scottsdale with an additional 17,823 acre-feet of CAP water.

5. (34) San Diego County Water Authority, San Diego, California, San Diego Project: Title transfer of the first and second barrels of the San Diego Aqueduct.

6. (42) Salt River Project, Inc., Salt River Project, Arizona: Repayment contract for SOD construction activities at Horse Mesa Dam and Mormon Flat Dam.

7. (4) Discontinued—Cibola Valley IDD, BCP, Arizona: Cibola Valley IDD was looking at the possibility of transferring, leasing, selling, or banking its entitlement of 22,560 acre-feet for use in Arizona, California, or Nevada

8. (9) Discontinued—Julia Soto Zozaya and Steve M. Zozaya, Mohave County, BCP, Arizona: Miscellaneous PPR contract for 720 acre-feet of irrigation water. This item has been included in No. 7.

9. (11) Discontinued—Atchison, Topeka and Santa Fe Railway Company, BCP, California: The company intends to transfer its miscellaneous PPR for the diversion of 1,260 acre-feet and consumptive use of 273 acre-feet of Colorado River water to the City of

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Needles. This item has been included in No. 7.

10. (21) Yuma Mesa IDD, Gila Project, Arizona: Amendment to provide for increase in domestic water deliveries (from 10,000 to 20,000 acre-feet) within its overall use in the district.

11. (24) Agricultural and M&I water users, CAP, Arizona: Water service subcontracts for percentages of available supply reallocated in 1992 for irrigation entities and up to 640,000 acre-feet per year allocated in 1983 for M&I use.

12. (39) Discontinued—Southern Nevada Water Authority, BCP, Nevada: Contract to use Federal facilities and land to divert water from Lake Mead at non-Federal expense.

13. (53) Discontinued—Arizona Public Service, BCP, Arizona: Colorado River water diversion contract for 1,500 acre-feet for domestic use at Yucca Power Plant near Yuma, Arizona.

Upper Colorado Region

Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–4419.

1. Individual irrigators, M&I, and miscellaneous water users, Initial Units, Colorado River Storage Project; Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 10 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(a) Harrison F. Russell and Patricia E. Russell, Aspinall Unit, CRSP, Colorado: Contract for 1 acre-foot to support an augmentation plan, Case No. 97CW39, Water Division Court No. 4, State of Colorado, to provide for a single family residential well, including home lawn and livestock watering (non-commercial).

(b) Lazear Domestic Water Corporation, Aspinall Unit, CRSP, Colorado: Contract for 44 acre-feet to support an augmentation plan, Case No. 95CW209, Water Division Court No. 4, State of Colorado, to provide domestic water service to up to 100 residences, lawns, gardens, and livestock watering.

(c) East Alum Creek Ranch Corporation, Aspinall Unit, CRSP, Colorado: Contract for 23 acre-feet to support an augmentation plan, Case No. 97CW198, Water Division Court No. 4, State of Colorado, to provide East Alum Creek Ranch Subdivision with domestic, lawn irrigation, pond evaporation, and livestock water.

(d) Horizon Ranch Corporation, Aspinall Unit, CRSP, Colorado: Contract for 4 acre-feet to support an augmentation plan, Case No. 97CW201, Water Division Court No. 4, State of Colorado, to provide Horizon Ranch with domestic, lawn irrigation, pond evaporation, and livestock water.

2. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Repayment contract for 26,500 acre-feet per year for M&I use and 2,600 acre-feet per year for irrigation use in Phase One and 700 acre-feet in Phase Two; contract terms to be consistent with binding cost-sharing agreement and water rights settlement agreement.

3. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado and New Mexico: Repayment contract; 6,000 acre-feet per year for M&I use in Colorado; 26,400 acre-feet per year for irrigation use in Colorado; 900 acre-feet per year for irrigation use in New Mexico; contract terms to be consistent with binding cost-sharing agreement and water rights settlement agreement.

4. Pine River ID, Pine River Project, Colorado: Contract to allow the district to convert up to 3,000 acre-feet of project irrigation water to municipal, domestic, and industrial uses.

5. San Juan-Chama Project, New Mexico: San Juan Pueblo repayment contract for up to 2,000 acre-feet of project water for irrigation purposes. Taos Area—The Taos Area Acequias, the Town and County of Taos are forming a joint powers agreement to form an organization to enter into a repayment contract for up to 2,990 acre-feet of project water to be used for irrigation and M&I in the Taos, New Mexico area.

6. City of El Paso, Rio Grande Project, Texas and New Mexico: Amendment to the 1941 and 1962 contracts to expand acreage owned by the city to 3,000 acres; extend terms of water rights assignments; and allow assignments outside city limits under authority of the Public Service Board.

7. The National Park Service, Colorado Water Conservation Board, Wayne N. Aspinall Unit, CRSP, Colorado: Contract to provide specific river flow patterns in the Gunnison River through the Black Canyon of the Gunnison National Monument.

8. Upper Gunnison River Water Conservancy District, Wayne N. Aspinall Unit, CRSP, Colorado: Long-term water service contract for municipal, domestic, and irrigation use.

9. Upper Gunnison River Water Conservancy District, Wayne N. Aspinall Unit, CRSP, Colorado: Substitute supply plan for the administration of the Gunnison River.

10. Uncompahgre Valley Water Users Association, Upper Gunnison River Water Conservancy District, Colorado River Water Conservation District, Uncompahgre Project, Colorado: Water management agreement for water stored at Taylor Park Reservoir and the Wayne N. Aspinall Storage Units to improve water management.

11. Southern Ute Indian Tribe, Florida Project, Colorado: Supplement to contract No. 14–06–400–3038, dated May 7, 1963, for an additional 181 acre-feet of project water, plus 563 acre-feet of water pursuant to the 1986 Colorado Ute Indian Water Rights Final Settlement Agreement.

12. Country Aire Estates, Forrest Groves Estates, and Los Ranchitos, Florida Project, Colorado: Water service contracts for a total of 86 acre-feet annually of domestic water as replacement water in State of Colorado approved augmentation plans. The water supply for these contracts are flow rights purchased and owned by the United States for project development and are not specifically a part of the project water supply.

13. Grand Valley Water Users Association, Orchard Mesa ID, and Public Service Company of Colorado, Grand Valley Project, Colorado: Water service contract for the utilization of project water for cooling purposes for a steam electric generation plant.

14. Public Service Company of New Mexico, CRSP, Navajo Unit, New Mexico: Amendatory water service contract for diversion of 20,200 acre-feet, not to exceed a depletion of 16,200 acre-feet of project water for cooling purposes for a steam electric generation plant.

15. Provo Reservoir Water Users Company, Wasatch Irrigation Company, Timpanogas Irrigation Company, Exchange Irrigation Company, Washington Irrigation Company, and the City of Provo; CUP, Utah: Water exchange contracts, water rights in several mountain lakes and reservoirs are being exchanged for equivalent contract water rights in Jordanelle Reservoir.

16. Sanpete County Water Conservancy District, Narrows Project, Utah: Application for a SRPA loan and grant to construct a dam, reservoir, and pipeline to annually supply approximately 5,000 acre-feet of water through a transmountain diversion from upper Gooseberry Creek in the Price River drainage (Colorado River Basin) to the San Pitch—Sevier River (Great Basin).

17. Emery County Water Conservancy District, Emery County Project, Utah: Warren Act contract to allow temporary storage of nonproject water in Joes Valley Reservoir and/or Huntington North Reservoir.

18. Town of Taos, San Juan-Chama Project, New Mexico: Contract to purchase water from Town of Taos to increase native flows in Rio Grande for benefit of the Silvery Minnow.

19. City of Albuquerque, San Juan-Chama Project, New Mexico: Amend water storage contract No. 3–CS–53–01510 to exempt the City of Albuquerque from acreage limitation and reporting provisions.

20. El Paso County Water Improvement District No. 1, Rio Grande Project, Texas and New Mexico: Supplemental contract between El Paso County Water Improvement District No. 1 and the United States to allow the conversion of project water from irrigation to M&I within the El Paso area.

21. Individual Irrigators, Dolores Project, Colorado: The United States proposes to lease up to 1,500 acre-feet of project water declared surplus under the authority of the Warren Act of 1911.

Great Plains Region

Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–247–7730.

1. Individual irrigators, M&I, and miscellaneous water users; Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Temporary (interim) water service contracts for the sale, conveyance, storage, and exchange of surplus project water and nonproject water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for a term up to 1 year.

2. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Water service contracts for irrigation and M&I; contract negotiations for sale of water from the marketable yield to water users within the Colorado River Basin of Western Colorado.

3. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Second round water sales from the regulatory capacity of Ruedi Reservoir. Negotiation of water service and repayment contracts for approximately 17,000 acre-feet annually for M&I use; contract with Colorado Water Conservation Board for remaining 21,650 acre-feet of marketable yield for interim use by U.S. Fish and Wildlife Service for benefit of endangered fishes in the Upper Colorado River Basin.

4. Garrison Diversion Unit, P-SMBP, North Dakota: Renegotiation of the master repayment contract with Garrison Diversion Conservancy District to conform with the Garrison Diversion Unit Reformulation Act of 1986; negotiation of repayment contracts with irrigators and M&I users.

5. Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas: Pursuant to section 501 of Public Law 101–434, negotiate amendatory contract to increase irrigable acreage within the project.

6. Lakeview ID, Shoshone Project, Wyoming: New long-term water service contract for up to 3,200 acre-feet of firm water supply annually and up to 11,800 acre-feet of interim water from Buffalo Bill Reservoir. Pursuant to section 9(e) of the Reclamation Project Act of 1939 and Public Law 100–516.

7. City of Rapid City and Rapid Valley Water Conservancy District, Rapid Valley Unit, P-SMBP, South Dakota: Contract renewal for up to 55,000 acre-feet of storage capacity in Pactola Reservoir.

8. North Platte Project, Pathfinder ID: Negotiation of contract regarding SOD program modification of Lake Alice Dam No. 1 Filter/Drain.

9. Northern Cheyenne Indian Reservation, Montana: In accordance with section 9 of the Northern Cheyenne Reserved Water Rights Settlement Act of 1992, the United States and the Northern Cheyenne Indian Tribe are proposing to contract for 30,000 acre-feet per year of stored water from Bighorn Reservoir, Yellowtail Unit, Lower Bighorn Division, P-SMBP, Montana. The Tribe will pay the United States both capital and O&M costs associated with each acre-foot of water the Tribe sells from this storage for M&I purposes.

10. Mid-Dakota Rural Water System, Inc., South Dakota: Pursuant to the Reclamation Projects Authorization and Adjustment Act of 1992, the Secretary of the Interior is authorized to make grants and loans to Mid-Dakota Rural Water System, Inc., a nonprofit corporation for the planning and construction of a rural water supply system.

11. Angostura ID, Angostura Unit, P-SMBP, South Dakota: The district had a contract for water service which expired on December 31, 1995. An interim 3-year contract provides for a continuing water supply and the district to operate and maintain the dam and reservoir. The proposed long-term contract would provide a continued water supply for the district and the district's continued O&M of the facility.

12. Cities of Loveland and Berthold, Colorado, Colorado-Big Thompson Project, Colorado: Long-term contracts for conveyance of nonproject M&I water through Colorado-Big Thompson Project facilities pursuant to the Town Sites and Power Development Act of 1906.

13. P-SMBP, Kansas and Nebraska: Initiate negotiations for renewal of long-term water supply contracts with Kansas-Bostwick, Nebraska-Bostwick, Frenchman Valley, and Frenchman-Cambridge IDs.

14. Northwest Area Water Supply, North Dakota: Long-term contract for water supply from Garrison Diversion Unit facilities. Draft basis of negotiation has been submitted to the Regional Office for review.

15. Fort Shaw and Greenfields IDs, Sun River Project, Montana: Contract for SOD costs for repairs to Willow Creek Dam. Greenfields ID has signed a 1-year repayment contract for its share of the SOD costs. Basis of negotiation for Fort Shaw ID has been submitted to the Denver Office for review.

16. P-SMBP, Kansas: Water service contracts with Kirwin and Webster IDs in the Solomon River Basin in Kansas will be extended for a period of 4 years in accordance with Pub. L. 104–326 enacted October 19, 1996. Water service contracts will be renewed prior to expiration.

17. P-SMBP, Nebraska: Water service contracts with the Loup Basin Reclamation District for Sargent and Farwell IDs in the Middle Loup River Basin in Nebraska will be extended for a period of 4 years in accordance with Public Law 104–326 enacted October 19, 1996.

18. City of Cheyenne, Kendrick Project, Wyoming: Negotiation of contract to renew for an additional term of 5 years. Contract for up to 10,000 acre-feet of storage space for replacement water on a yearly basis in Seminoe Reservoir. A temporary contract has been issued pending negotiation of the long-term contract.

19. Highland-Hanover ID, P-SMBP, Hanover-Bluff Unit, Wyoming: Renegotiation of long-term water service contract; includes provisions for repayment of construction costs.

20. Upper Bluff ID, P-SMBP, Hanover-Bluff Unit, Wyoming: Renegotiation of long-term water service contract; includes provisions for repayment of construction cost.

21. Fort Clark ID, P-SMBP, North Dakota: Negotiate an interim water service contract to continue delivery of project water pending renewal of a long-term water service-repayment contract.

22. Canadian River Project, Texas: Recalculate existing contract repayment schedule to conform with the provisions of the Emergency Drought Relief Act of 1996. The revised schedule is to reflect a consideration for project land transferred to the National Park Service, and a 3-year deferment of payments.

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23. Nueces River Project, Texas: Recalculate existing contract repayment schedule to conform with the provisions of the Emergency Drought Relief Act of 1996. The revised schedule is to reflect a 5-year deferment of payments.

24. Western Heart River ID, P-SMBP, Heart Butte Unit, North Dakota: Negotiation of water service contract to continue delivery of project water to the district.

25. Lower Marias Unit, P-SMBP, Montana: Water service contract expired June 1997. Initiating renewal of existing contract for 25 years for up to 480 acre-feet of storage from Tiber Reservoir to irrigate 160 acres. Basis of negotiation is in the process of being completed; existing contract was extended for 1 year pending negotiation of long-term contract.

26. Lower Marias Unit, P-SMBP, Montana: Initiating 25-year water service contract for up to 750 acre-feet of storage from Tiber Reservoir to irrigate 250 acres.

27. Glendo Unit, P-SMBP, Wyoming: Initiate negotiations for renewal of long-term water service contracts with Burbank Ditch, New Grattan Ditch Company, Torrington ID, Lucerne Canal and Power Company, and Wright and Murphy Ditch Company. The current contracts expire in 1998.

28. Glendo Unit, P-SMBP, Nebraska: Initiate negotiations for renewal of long-term water service contracts with Bridgeport, Enterprise, and Mitchell IDs, and Central Nebraska Public Power and Irrigation District. The current contracts expire in 1998.

29. Belle Fourche Unit, P-SMBP, South Dakota: Basis of negotiation has been approved for the negotiation of a long-term repayment contract deferring the Belle Fourche ID's 1997 construction payment and also reduction of the district's annual payment.

30. Fryingpan-Arkansas Project, Colorado: Repayment contract with Southeastern Colorado Water Conservancy District for repayment of cost of SOD modifications to Pueblo Dam.

31. Dickinson Heart River Mutual Aid Corporation, P-SMBP, Dickinson Unit, North Dakota: Negotiate renewal of water service contract for irrigation of lands below Dickinson Dam in western North Dakota.

32. Greenfields ID, Sun River Project, Montana: Contract for SOD costs for repairs to Pishkun Dike No. 4.

33. Public Service Company of Colorado: Agreement to furnish surplus water from the historic users pool at Green Mountain Reservoir for the purpose of generating hydroelectric power at the Grand Valley Power Plant, Palisade, Colorado.

Dated: January 20, 1998.

Wayne O. Deason,

Deputy Director, Program Analysis Office.

[FR Doc. 98–1883 Filed 1–26–98; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Environmental Partnership Program in Central and Eastern Europe (CEE) and the New Independent States (NIS) of the Former Soviet Union

ACTION: Availability of applications.

SUMMARY: The U.S. Agency for International Development (USAID) seeks applications from qualified U.S. organizations or consortia of organizations for award of a three to five-year Cooperative Agreement in support of a program to promote market-oriented solutions to environmental problems facing local governments and industries in Central and Eastern Europe (CEE) and the New Independent States (NIS) of the former Soviet Union. The successful applicant will coordinate a partnership grants program that will facilitate linkages among organizations within the CEE and the NIS and between U.S. entities and partners within the region, and promote CEE/NIS business opportunities for U.S. firms in the environmental sector. USAID seeks an organization with demonstrated capability to identify opportunities for partnering, as well as the capacity to nurture and facilitate such partnerships. Applicants must be prepared to contribute non-USAID resources toward meeting the overall cost of the program; all partnership grants within the program will also be made on a cost-sharing basis. This competitive RFA will be awarded as a component of a new initiative, entitled "Environmental Partnership Program (EPP)," which is a result of a year-long series of discussions on appropriate transition strategies for environmentally sound economic improvements by the U.S. in CEE/NIS. The goal of the overall EPP is to forge relationships with new partners, particularly private partners, to expand and accelerate environmental trade, investment and policy reform in this region. In addition to market-oriented solutions to environmental problems facing localities and industry in these countries, the purpose of the EPP is to stimulate sustainable environmental trade and investment linkages between the U.S. and the ENI region. It will complement, and be supported by, existing and future USAID programs to meet the continued need for strengthening environmental policies and regulatory frameworks within CEE/NIS nations. In some cases, it is expected, within the context of the overall EPP, limited technical assistance will be provided to ensure that policies exist and are implemented to support the investments stimulated by the program's primary work. USAID anticipates that the Program will serve as a catalyst across the region to increase public/private participation in environmentally sound economic development by: (1) Stimulating dialogue between these sectors and action on policies that encourage private participation in environmental projects; and (2) assisting ENI-based environmental decision-makers in accessing information on environmental technologies, approaches and services or locating partners who can help them solve priority environmental problems that are predominantly transboundary or regional in nature (air and water pollution, climate-change mitigation, solid and toxic waste cleanup, etc.). The RFA will fully describe the competitive application process, as well as the overall EPP and the Program Description for the proposed cooperative agreement. The RFA will outline what information is to be submitted for review by USAID. As stated above, the successful applicant will be expected to contribute to the proposed Program's cost in cash and/or in kind, in order to demonstrate commitment to the principles of the EPP and maximize its potential impact. The Agreement will be incrementally funded by USAID, subject to availability of funds.

DATES: The RFA will be available o/a January 12, 1998.

SUPPLEMENTARY INFORMATION:

Electronic Access: The preferred method of distribution of USAID procurement information is via the Internet or by request of a solicitation of a 3.5" floppy disk (WordPerfect 5.1/5.2 format). The RFA, once issued, may be downloaded from the Agency Website at: http//www.info.usaid.gov. From this homepage, select "Business and Procurement Opportunities," then "USAID Procurements," then "Download Available USAID Solicitations." Receipt of this RFA through the Internet must be confirmed by written notification to the contact person listed above. It is the responsibility of the recipient of this RFA to ensure that it has been received from the Internet in its entirety as USAID bears no responsibility for data errors resulting from the transmission on conversion processes.

FOR FURTHER INFORMATION CONTACT: Elaine Smialek, fax (202) 216–3396; esmialek@usaid.gov.

Dated: January 15, 1998.

Judith D. Johnson,

Division Chief, M/OP/ENI

[FR Doc. 98–1921 Filed 1–26–98; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Consistent with Departmental policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that on January 8, 1998, a proposed Consent Decree in *United States* v. *Abbott Laboratories, et al.*, Civil Action No. 98–1013–JAF, was lodged with the United States District Court for the District of Puerto Rico. The proposed Consent Decree will resolve the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, on behalf of the U.S. Environmental Protection Agency ("EPA") against defendants Abbott Laboratories, American Cyanamid Company, Browning-Ferris Industries of Puerto Rico, Inc., E.I. DuPont de Nemours & Company, Merck & Company, Inc., the Municipality of Barceloneta, Pharmacia & Upjohn Caribe Inc., Roche Products, Inc., Schering-Plough Products, Inc., and Union Carbide Corporation relating to the Barceloneta Landfill Superfund Site ("Site") located near the Municipality of Barceloneta, Puerto Rico. The Complaint alleges that each of the defendants is liable under Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607.

Pursuant to the Consent Decree, the settling defendants will implement the remedy selected in the July 5, 1996 Record of Decision (the "ROD") for the Site, now estimated to cost approximately $10.5 million, reimburse the United States for $425,000 of past costs, and make payment of EPA's future response costs, as defined in the Consent Decree, and up to $400,000 of EPA's oversight costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Abbott Laboratories, et al.*, Civil Action No. 98–1013–JAF, D.J. Ref. 90–11–3–1574.

The proposed consent decree may be examined at the Office of the United States Attorney, District of Puerto Rico, Federal Building, Chardon Avenue, Hato Rey, Puerto Rico, 00918 and at Region II, Office of the Environmental Protection Agency, 290 Broadway, New York, NY 10007–1866 and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $69.25 payable to the Consent Decree Library. If a copy of the Consent Decree without the attachments is sufficient, please specify that fact and enclose a check in the amount of $26.00.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–1920 Filed 1–26–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Pursuant to Department policy, 18 CFR 50.7, notice is hereby given that on December 18, 1997, a proposed Consent Decree in *Chester Residents Concerned for Quality Living, et al., and Commonwealth of Pennsylvania and United States of America* v. *Delaware County Regional Water Control Authority* ("DELCORA"), Civil Action No. 94–CV–5639 was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action the United States, as a plaintiff-intervenor, sought civil penalties and injunctive relief pursuant to Section 113 of the Clean Air Act, 42 U.S.C. 7413, against DELCORA for violations of the Clean Air Act in connection with the operation of sludge incinerators at DELCORA's sewage treatment plant located in Chester, Pennsylvania. Under the proposed Consent Decree DELCORA agrees to pay a civil penalty of $120,000, implement injunctive relief to prevent future violations at the plant, and perform a Supplemental Environmental Project to reduce exposure to lead among newborn infants in Chester, Pennsylvania.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *Chester Residents Concerned for Quality Living, et al., and Commonwealth of Pennsylvania and United States of America* v. *Delaware County Regional Water Control Authority* ("DELCORA"), D.J. Ref. 90–5–2–1–2071.

The Consent Decree may be examined at the Office of the United States Attorney, 5615 Chestnut Street, Suite 1250, Philadelphia, PA 19106, at U.S. EPA Region 3, 841 Chestnut Building, Philadelphia, PA 19107, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy exclusive of exhibits, please enclose a check in the amount of $9.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–1918 Filed 1–26–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Young Refining Company*, Civil Action No. 1–96–CV–1002–JEC, was lodged on December 31, 1997, with the United States District Court for the Northern District of Georgia. The consent decree settles a claim brought under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), for response costs incurred by the United States at the Basket Creek Drum Disposal site (the "Basket Creek site") in

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Douglasville, Georgia. Under the proposed consent decree, Continental Trading Company and Dr. Fred W.J. Liu will pay $67,500 to the United States in reimbursement of response costs incurred by the Environmental Protection Agency ("EPA") in connection with the Basket Creek site. Most of the removal of hazardous substances from the Basket Creek Site was conducted by Chem-Nuclear Systems, Inc. EPA has incurred costs of approximately $678,000 in connection with the Basket Creek Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Young Refining Company*, DOJ Ref. #90–11–2–755.

The proposed consent decree may be examined at the office of the United States Attorney, Richard Russell Federal Building, Suite 1800, 75 Spring Street, SW., Atlanta, Georgia 30335; the Region 4 Office of the Environmental Protection Agency, 61 Forsythe St., SE., Atlanta, Georgia 30303; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Walker B. Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–1919 Filed 1–26–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum ("PERF") Project 95–11

Notice is hereby given that, on October 2, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Petroleum Environmental Research Forum ("PERF") Project 95–11, titled "Advanced NDE for Acoustic Emission Interpretation", has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Exxon Research and Engineering Company, Florham Park, NJ; Shell Oil Company, Houston, TX; Aramco Services Company, Houston, TX; Chevron Research and Technology Company, Richmond, CA; Mobil Technology Company, Paulsboro, TX; and BP International Place, Sunbury-on-Thames, Middlesex TW167LN United Kingdom. The nature and objective of the research program is to deliver software and/or protocols to permit reliable use of AEI for onstream applications.

Participation in this venture will remain open to all interested persons and organizations until the final Project Completion Date which is presently anticipated to occur approximately twenty-one months after the project commences. Also the parties intend to file additional written notification disclosing all changes in membership. Information about participating in Project 95–11 may be obtained by contacting Emery B. Lendvai-Lintner, Exxon Research and Engineering Company, P.O. Box 101, Florham Park, NJ 07932–0101.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–1917 Filed 1–26–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting Notice No. 3–98]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Friday, February 20, 1998, 10:00 a.m.

SUBJECT MATTER: (1) Issuance of Proposed and Final Decisions on Claims Against Albania; (2) Hearings on the Record on Objections to Proposed Decisions on Claims Against Albania.

STATUS: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, N.W., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC, January 21, 1998.

Judith H. Lock,

Administrative Officer.

[FR Doc. 98–2045 Filed 1–23–98; 12:18 pm]

BILLING CODE 4410–01–U

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Statistics; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Prison population reports midyear counts and advance yearend counts-National prisoner statistics; Revision of a currently approved collection.

This information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until March 30, 1998. This process is conducted in accordance with the Paperwork Reduction Act of 1955.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or need additional information, please contact James Stephan, Statistician, Bureau of Justice Statistics, 810 7th Street NW, Washington, DC 20531, or via facsimile (202) to 202–307–1463.

Overview of This Information Collection

(1) Type of information collection. Revision of currently approved collection.

(2) The title of the Form/Collection: Prison Population Reports Midyear Counts; and Prison Population Report Advance Yearend Counts—National Prisoner Statistics.

(3) The agency form number and the applicable component of the Department sponsoring the collection. Form: NPS–1A; and NPS–1B. Corrections Unit, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: Primary: State Departments of Corrections. Others: The Federal Bureau of Prisons. For the NPS–1A form, 52 central reporters (one from each State, the District of Columbia, and the Federal Bureau of Prisons) responsible for keeping records on inmates will be asked to provide information for the following categories:

(a) As of June 30 of the current year and June 30 of the previous year, the number of male and female inmates under their jurisdiction with maximum sentences of more than one year, one year or less; and unsentenced inmates; and

(b) As of June 30 of the current year, and June 30 of the previous year, the number of male and female inmates in their custody with maximum sentences of more than one year, one year or less; and unsentenced inmates.

For the NPS–1B form, 52 central reporters (one from each State, the District of Columbia, and the Federal Bureau of Prisons) responsible for keeping records on inmates will be asked to provide information for the following categories:

(a) As of December 31 of the current year, and December 31 of the previous year, the number of male and female inmates under their jurisdiction with maximum sentences of more than one year, one year or less; and unsentenced inmates;

(b) The number of inmates housed in county or other local authority correctional facilities, or in other state or Federal facilities on December 31 of the current year solely to ease prison crowding;

(c) As of the direct result of state prison crowding during the current year, the number of inmates released via court order, administrative procedure or statute, accelerated release, sentence reduction, emergency release, or other expedited release; and

(d) The aggregate rated, operational, and design capacities, by sex, of each State's correctional facilities at yearend.

The Bureau of Justice Statistics uses this information in published reports and for the U.S. Congress, Executive Office of the President, practitioner, researchers, students, the media, and others interested in criminal justice statistics.

(5) An estimate of the total number of respondents and the amount of time needed for an average respondent to respond: 52 respondents each taking an average 2.5 hours to respond.

(6) An estimate of the total public burden (in hours) associated with the collection: 130 annual burden hours.

If additional information is required, contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW Washington, DC 20530.

Dated: January 21, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–1847 Filed 1–26–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Bureau of Justice Statistics

[OJP(BJS)–1151]

Continuation of Federal Justice Statistics Program

AGENCY: Office of Justice Programs, Bureau of Justice Statistics (BJS), Justice.

ACTION: Solicitation for award of cooperative agreement.

SUMMARY: The purpose of this notice is to announce a public solicitation for the continuation of the Bureau of Justice Statistics' (BJS) Federal Justice Statistics Program (FJSP). The FJSP serves as the national resource for data describing the processing of criminal cases in the Federal criminal justice system. Under this program, data generated by Federal criminal justice agencies are collected, maintained, analyzed, and archived. Data are also linked across agencies to permit more complex analyses of Federal criminal justice issues. Regular annual reports and special topical reports are prepared that describe the Federal criminal justice system, Federal defendants and offenses, and other special issues of interest. In addition, special tabulations are prepared, pursuant to BJS direction, in response to requests from government officials. The project to be funded under the proposed cooperative agreement will continue the program's current activities.

DATES: Proposals must be postmarked on or before March 31, 1998.

ADDRESSES: Proposals should be mailed to: Applications Coordinator, Bureau of Justice Statistics, 810 7th Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: John Scalia, Program Manager, Federal Justice Statistics Program, Bureau of Justice Statistics, (202) 616–3276.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Justice Statistics Federal Justice Statistics Program (FJSP) was initiated in 1982 to serve as a central resource for information describing the processing of Federal criminal defendants and characteristics of those defendants. The program collects data from different components of the Federal criminal justice system and tracks the progress of suspects from investigation through prosecution, adjudication, sentencing, and corrections. The program represents the primary BJS effort describing the Federal criminal justice system and responds directly to the legislative authorization that BJS "collect, analyze, and disseminate comprehensive Federal justice transaction statistics (including statistics on issues of Federal justice interest such as public fraud and high technology crime)" as set forth in 42 U.S.C. § 3732(c)(15).

In keeping with the original program plan which was designed to minimize data collection costs, no original data collection is supported under this program. Data are obtained from operational Federal agencies including the Executive Office for the United States Attorneys, the Administrative Office of the United States Courts, the Bureau of Prisons, and the United States Sentencing Commission. In order to trace the flow of cases from one stage to another and to supplement any individual agency's data, computer matching techniques have been developed that permit the linking of

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data obtained from different sources. The linking of these data permit more complex and detailed analysis of particular issues.

Throughout the history of the FJSP, a regular series of reports has been produced. These reports include the annual *Compendium of Federal Justice Statistics* (available on the Internet at www.ojp.usdoj.gov/bjs/abstract/cfjs93.htm) which describes transactions in the Federal criminal justice system for a particular year; and a series of Special Reports addressing specific aspects of the Federal criminal justice system, specific offenses, or other special issues of interest. Recent Special Report include: *Prisoner Petitions in the Federal Courts* (available on the Internet at www.ojp.usdoj.gov/bjs/abstract/ppfc96.htm), *Juvenile Delinquents in the Federal Criminal Justice System* (www.usdoj.gov/bjs/abstract/jdfcjs.htm), and *Noncitizens in the Federal Criminal Justice System* (www.usdoj.gov/bjs/abstract/nifcjs.htm). In addition, the program serves as the primary source of information for other BJS statistical series that describe individuals in the Federal criminal justice system; program staff have also responded to ad hoc BJS requests for specific data tabulations and analyses.

In addition, the FJSP supports the efforts of the Coordinating Committee on Federal Criminal Case Processing Statistics. This interagency committee—represented by the Administrative Office of the U.S. Courts, the Bureau of Justice Statistics, the Executive Office for the U.S. Attorneys, the Federal Bureau of Prisons, and the United States Sentencing Commission—was established as a forum for discussing issues related to the collection of data describing the Federal criminal justice system and the reporting of Federal criminal case processing statistics. With the support of the Coordinating Committee, beginning in 1998 BJS will annually publish *Federal Criminal Case Processing Statistics*. This report—which will supplement each agency's annual statistical report—will highlight specific aspects of the Federal criminal justice system as well as describe significant trends in Federal criminal case processing. The statistics presented will be tabulated according to procedures agreed upon by each participating agency.

Objectives

The purpose of this award is to support the continuation of the Federal Justice Statistics Program. The recipient of funds will serve as the Federal Justice Statistics Resource Center whereby the recipient will continue to collect, maintain, and archive data from Federal justice agencies, produce annual reports (the *Compendium of Federal Justice Statistics* and *Federal Criminal Case Processing*), and topical special reports. Any Special Reports prepared by the recipient will be prepared under the direction of BJS staff. In addition, BJS staff may also initiate Special Reports. The recipient will be expected to assist BJS staff with Special Reports by providing the necessary data for analysis and, when requested, assisting in the preparation of data tabulations and reviewing the methodology used to analyze the data.

Type of Assistance

Assistance will be made available under a cooperative agreement. Awards will be made for a period of 12 months with an option for two additional continuation years conditional upon the availability of funds and the quality of the initial performance and products. Costs are estimated at not to exceed $650,000 for the initial 12-month period. Funding for subsequent years may include reasonable increases for cost-of-living and changes in scope of work, where applicable.

Statutory Authority

The cooperative agreement to be awarded pursuant to this solicitation will be funded by the Bureau of Justice Statistics consistent with its mandate as set forth in 42 U.S.C. 3732.

Eligibility Requirements

Both for-profit and nonprofit organizations may apply for funds. Consistent with Office of Justice Programs fiscal requirements, no fees may be charged against this project by profit-making organizations.

Scope of Work

The objective of the proposed program is to continue basic activities initiated under the ongoing BJS Federal Justice Statistics Program. Specifically, the recipient of funds will serve as the Federal Justice Statistics Resource Center. The Resource Center will—

1. *Maintain and expand the Federal Justice Statistics Program Database.* This will involve the collection, processing, and maintenance of data provided by Federal agencies participating in the program. The agencies currently participating in the program are: the Executive Office for the United States Attorneys, the Administrative Office of the United States Courts, the Bureau of Prisons, and the United States Sentencing Commission. (In addition to providing data describing the Federal courts' criminal docket, the Administrative Office also provides data describing the activities of the Federal pretrial services agencies and the Federal Probation and Supervision Service. The Federal Judicial Center has provided data describing the Federal courts' appellate docket.) The recipient should attempt to expand the program to include other Federal law enforcement agencies. The recipient will also be responsible for processing data to meet uniform classification categories and for linking data to permit analysis of data obtained from different sources.

2. *Prepare tapes and related documentation for archiving in the national archive maintained by BJS.* The public use data tapes of the source data shall conform to BJS standards for submission to the National Archive of Criminal Justice Data at the University of Michigan. In addition, the recipient will prepare a set of standard analysis data files from each agency's source data for each fiscal year. These standard analysis data files will describe a particular cohort of defendants and will include all variables included in the source data and all variables created for the *Compendium of Federal Justice Statistics*. These standard analysis files will be included on a CD-ROM to be produced by BJS. The recipient will document each of the standard analysis data files and all programs used to create BJS reports. Such documentation, to the extent possible, will be maintained in an electronic database from which users can query variables of interest. This electronic data dictionary will also be included on the CD-ROM prepared by BJS. In addition, the recipient will document the methodology used to produce the *Compendium of Federal Justice Statistics*—including the production of the standard analysis data files.

3. *Prepare the Compendium of Federal Justice Statistics and the Federal Criminal Case Processing Statistics report and submit both text and tables in camera-ready format for each Federal fiscal year.*

4. *Prepare BJS Special Reports, data tabulations, analyses, data sets, and other data manipulations in response to BJS requests.* Any Special Reports proposed by the recipient will be designed in coordination with BJS. BJS will approve all Special Report topics proposed by the recipient. The recipient will provide tabulations, as requested, describing Federal offenders to support BJS's National Correctional Reporting Program and the National Judicial Reporting Program.

5. *Provide BJS with electronic access to the Federal Justice Statistics Resource Center (including all source data, standard analysis data files, and software used to produce BJS reports) and computing resources, as necessary.* In addition, the recipient must provide BJS staff with daily access to the standard analysis data files (for the most recent reporting period available) in a form in which variables name and values correspond to those included in the FJSP electronic data dictionary.

6. *Provide support to the interagency Coordinating Committee on Federal Criminal Case Processing Statistics.* The recipient will work with BJS to support the efforts of the Coordinating Committee on Federal Criminal Case Processing Statistics including the production of reconciled case processing statistics, matching records across agencies' databases, identifying differences in data collection and reporting methods, and other technical assistance, as requested.

7. *Provide Internet access to the Federal Justice Statistics Resource Center.* The recipient will provide direct access via the Internet to all FJSP data files (including those files prepared by prior recipients of this award) and the electronic data dictionary. In addition, the recipient will work with BJS to provide a World Wide Web-accessible query system for the Federal Justice Statistics Resource Center. The recipient must provide Internet users with the capability of performing queries of the FJSP data bases in order to extract basic information describing individuals processed in the Federal criminal justice system. Users should be able to disaggregate these data by Federal judicial district.

Award Procedures

Proposals should describe, in appropriate detail, the procedures to be undertaken in furtherance of each of the activities described under the **Scope of Work**. Information provided should focus on activities to be conducted during the initial 12-month period but should also include a more general discussion of three-year objectives for the program. Information on staffing levels and qualifications should be included for each task and descriptions of experience relevant to the project should be included. Resumes of the proposed project director and key staff should be included in the proposal.

Applications will be competitively reviewed by BJS. Final authority to enter into a cooperative agreement is reserved for the Director, BJS, or his designee, who may, in his discretion, determine that none of the applications shall be funded.

Applications will be evaluated on the overall extent to which they respond to criminal justice priorities, conform to the goals of the Federal Justice Statistics Program, and appear to be fiscally feasible and efficient. Applicants will be evaluated on the basis of—

1. Knowledge of, and experience in, working with different components of the criminal justice system with particular emphasis on knowledge of operational, management, and statistical data collected and maintained by various Federal criminal justice components;

2. Statistical expertise in the area of data analysis, data linkage, and research;

3. Experience in the application of statistical data to the analysis of criminal justice issues;

4. Demonstrated ability to prepare high quality statistical reports;

5. Availability of qualified professional and support staff and of suitable equipment for data processing and data manipulation;

6. Demonstrated fiscal, management, and organizational capability suitable for providing sound program direction for this multifaced effort;

7. Demonstrated ability to design and maintain interactive sites on the World Wide Web; and

8. Reasonableness of estimated costs for the total project and for individual cost categories.

Application and Award Process

An original and two (2) copies of the full proposal must be submitted on SF 424 (Rev. 1988), *Application for Federal Assistance*. Proposals must be accompanied by a Budget Detail Worksheet (replaced the SF 424A, *Budget Information*); OJP Form 4000/3 (Rev.1–93), *Program Narrative* and *Assurances*' OJP Form 4061/6, *Certification Regarding Lobbying; Disbarment, Suspension, and Other Responsibility Matters*; Drug-Free Workplace requirements; and OJP Form 7120/1 (Rev. 1–93), Accounting System and Financial Capability Questionnaire (to be submitted by applicants who have not previously received Federal funds from the Office of Justice Programs and are not state of local units of government). If appropriate, applicants must also complete the certificate regarding lobbying activities. All applicants must sign Certified Assurances that they are in compliance with the Federal laws and regulations which prohibit discrimination in program or activity that receives Federal funds. To obtain appropriate forms, contact Getha Hilario, BJS Management Assistant, at (202) 616–3500.

Proposals must include both narrative descriptions and a detailed budget. The program narrative shall describe activities as described in the previous section. The detailed budget and the budget narrative must provide estimated costs including salaries of staff involved in the project and the percentage of time devoted to the project, fringe benefit rate itemization and costs, travel costs, proposed equipment, supplied, and other expenses. Contractual services or equipment must be procured following Office of Justice Programs grant procurement procedures.

Dated: January 21, 1998.

Jan M. Chaiken,

Director, Bureau of Justice Statistics.

[FR Doc. 98–1864 Filed 1–26–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP(NIJ)–1153]

National Institute of Justice Solicitation for Drug Court Evaluation II

AGENCY: National Institute of Justice (NIJ), Office of Justice Programs.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice "Solicitation for Drug Court Evaluation II."

DATES: The deadline for applications is close of business March 13, 1998.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6771.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

NIJ is soliciting proposals to evaluate 16 drug court sites, which are administered by the Office of Justice Programs, Drug Court Program Office (DCPO). The evaluation will take place in two separate phases. A single initial grant of up to $500,000 will be awarded for a 12–24 month period. A second

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supplemental grant will be awarded for the second phase of the research, ranging from 12–24 months, the award amount dependent on the work required.

The first phase of research will include: a conceptual description of the 16 DCPO drug court sites; development of comprehensive descriptive, historical, and attitudinal data about drug court programs; and measurement of the data available for program evaluation. As part of phase one researchers will develop a viable strategy for evaluating program impact and success that will serve as a proposal for the supplemental grant to be awarded for phase two of the research.

Phase two of the research will assess the success of the drug courts at meeting their goals, including: desistance from criminal behavior and drug use, retention in treatment, and changes in life circumstances and productivity.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of "Solicitation for Drug Court Evaluation II, 1998" (refer to document no. SL000241). The solicitation is available electronically via the World Wide Web, connect to the National Institute of Justice homepage at http://ojp.usdoj.gov/nij/funding.htm.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 98–1898 Filed 1–26–98; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that this meeting will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* February 20, 1998.
   Time: 9:00 a.m. to 5:30 p.m.
   Room: 415.
   Program: This meeting will review applications for Humanities Projects in Media/Enterprise, submitted to the Division of Public Programs, for projects at the January 12, 1998 deadline.
2. *Date:* February 23, 1998.
   Time: 9:00 a.m. to 5:30 p.m.
   Room: 415.
   Program: This meeting will review applications for Humanities Projects in Libraries and Archives, submitted to the Division of Public Programs, for projects at the January 12, 1998 deadline.
3. *Date:* February 27, 1998.
   Time: 9:00 a.m. to 5:30 p.m.
   Room: 415.
   Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs, for projects at the January 12, 1998 deadline.

Nancy E. Weiss,

Advisory Committee, Management Officer.

[FR Doc. 98–1865 Filed 1–26–98; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–454 AND STN 50–456]

Commonwealth Edison Company; Notice of Withdrawal of Application for Amendment to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Commonwealth Edison Company (the licensee) to withdraw its January 31, 1997, application for proposed amendments to Facility Operating License Nos. NPF–37 and NPF–66, for Byron Station, Units 1 and 2, located in Ogle County, Illinois.

The proposed amendment would have modified the facility technical specifications (TS) to reduce the Byron, Unit 1, limiting TS value for the primary coolant dose equivalent iodine-131 (DEI) concentration from 0.35 to 0.20 microcuries per gram. The intent of this proposed TS revision was to limit the offsite dose at the exclusion area boundary to a small fraction of the radiation exposure guidelines in 10 CFR Part 100. In the interim, ComEd performed an operability assessment and administratively reduced the Byron, Unit 1, DEI to 0.20 microcuries per gram. On November 7, 1997, ComEd started its Byron, Unit 1, fall 1997 refueling outage during which the steam generators (SG) are being replaced. The replacement SG begin installed at Byron, Unit 1, will not have the relatively large end of cycle SG tube leakage attributed to the original SG. Accordingly, the license amendment requests submitted on January 31, 1997, was no longer needed.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 12, 1997, (62 FR 11489). However, by letter dated November 11, 1997, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated January 31, 1997, and the licensee's letter dated November 11, 1997, which withdrew the application for the license amendments. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 60481.

Dated at Rockville, Maryland, this 8th day of January, 1998.

For the Nuclear Regulatory Commission.

M. David Lynch,

Senior Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation

[FR Doc. 98–1900 Filed 1–26–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–454, STN 50–455 and STN 50–456, STN 50–457]

Commonwealth Edison Company; (Byron Station, Units 1 and 2); (Braidwood Station, Units 1 and 2); Exemption

I

Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating License Nos. NPF–37, NPF–66, NPF–72, and NPF–77, which authorize operation of Byron Station, Units 1 and 2, and Braidwood Station, Units 1 and 2, respectively. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The Byron facility consists of two pressurized-water reactors located at the licensee's site in Ogle County, Illinois. The Braidwood facility consists of two pressurized-water reactors located at the licensee's site in Will County, Illinois.

II

In its letter dated April 3, 1997, as supplemented on June 19, 1997, ComEd requested an exemption from the Commission's regulations. Title 10 of the Code of Federal Regulations, Part 50, Section 60 (10 CFR 50.60), "Acceptance Criteria for Fracture Prevention Measures for Lightwater Nuclear Power Reactors for Normal Operation," states that all lightwater nuclear power reactors must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary as stated in Appendices G and H to 10 CFR Part 50. Appendix G to 10 CFR Part 50 defines pressure-temperature (P-T) limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests to which the pressure boundary may be subjected over its service lifetime, and specifies that these P-T limits must be at least as conservative as the limits obtained by conforming to the methods of analysis and the margins of safety of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code), Section XI, Appendix G. 10 CFR 50.55a requires that any reference to ASME Code Section XI in 10 CFR Part 50 refers to addenda through the 1988 Addenda and editions through the 1989 Edition of the Code unless otherwise noted. It is specified in 10 CFR 50.60(b) that alternatives to the requirements described in Appendices G and H to 10 CFR Part 50 may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To mitigate low-temperature overpressure transients that would produce pressure excursions exceeding the required limits while the reactor is operating at low temperatures, the licensee installed a low-temperature overpressure protection (LTOP) system. The system includes pressure-relieving devices called power-operated relief valves (PORVs). The PORVs are set at a pressure low enough so that if an LTOP transient occurred, the mitigation system would prevent the pressure in the reactor vessel from exceeding the required limits. To prevent the PORVs from lifting as a result of normal operating pressure surges, some margin is needed between the PORV setpoint and the normal operating pressure. In addition, when instrument uncertainty is considered, the operating window between the PORV setpoint and the minimum pressure required for reactor coolant pump seals is small and presents difficulties for plant operation.

The licensee has requested the use of the 1996 Addenda to the ASME Code, Section XI, Appendix G, which allows the use of lower stress intensity factors for determining the applied stress intensity from pressure and thermal stresses, and allows use of an LTOP system setpoint so that system pressure does not exceed 110 percent of the P-T limits. The 1996 Addenda to the ASME Code, Section XI, Appendix G, is consistent with guidelines developed by the ASME Working Group on Operating Plant Criteria to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices used for LTOP. ASME Code, Section XI, Appendix G, 1996 Addenda, has been approved by the ASME Code Committee.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested entity or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. * * *"

The underlying purpose of 10 CFR 50.60 and 10 CFR Part 50 Appendix G is to establish fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences, to which the pressure boundary may be subjected over its service lifetime. Section IV.A.2 of Appendix G to 10 CFR Part 50, requires that the reactor vessel be operated with P–T limits at least as conservative as those obtained by following the methods of analysis and the required margins of safety of Appendix G of Section XI of the ASME Code. 10 CFR 50.55a requires that any reference to ASME Code Section XI in 10 CFR Part 50, Appendix G, refers to addenda through the 1988 Addenda and editions through the 1989 Edition of the ASME Code, unless otherwise noted.

Appendix G of the ASME Code requires that the P-T limits be calculated: (a) Using a safety factor of two on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one-quarter of the vessel wall thickness (¼ T) and a length of six (6) times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the reactor vessel material.

For determining the P–T limits, the licensee proposed to use the safety margins based on the 1996 Addenda to the ASME Code in lieu of the 1989 Edition. When compared to the 1989 Edition of the ASME Code, the 1996 Addenda permits the use of a lower stress intensity factor for determining the applied stress intensity from pressure and thermal stresses. This results in a slight reduction in the applied stress intensity and a corresponding shift in the allowable pressure at a given temperature in the non-conservative direction; however, this difference is minor when compared to the explicit conservatisms incorporated into Appendix G, and the changes in the stress intensity factor are supported by the work performed for NRC and for others by J.A. Keeney and T.L. Dickson at Oak Ridge National Laboratory (ORNL).

For determining the LTOP system setpoint, the licensee proposed to use safety margins based on the 1996 Addenda to the ASME Code. The 1996

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Addenda allows determination of the setpoint for mitigating LTOP events so that the maximum pressure in the vessel would not exceed 110 percent of the P–T limits that are determined using the 1996 methodology. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, the proposed criteria will provide adequate margins of safety for the reactor vessel during LTOP transients and, thus, will satisfy the underlying purpose of 10 CFR 50.60 for fracture toughness requirements. Further, by relieving the operational restrictions, the potential for undesirable lifting of the PORV would be reduced, thereby improving plant safety.

It should be noted that the provision to set the PORV setpoint so that system pressure remains below 110 percent of the P–T limits has already been incorporated into the Byron and Braidwood licensing basis. This provision was approved by an exemption to 10 CFR 50.60 granted to Byron, Units 1 and 2, on November 29, 1996, to Braidwood, Unit 1 on July 13, 1995, and to Braidwood, Unit 2 on December 12, 1997, to allow the use of ASME Code Case N–514. Therefore, although it represents a change from the 1989 Edition of the ASME Code, it is not a change to the current licensing basis for the facilities.

IV

For the foregoing reasons, the NRC staff has concluded that ComEd's proposed use of the alternate methodology in determining the acceptable setpoint for LTOP events will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2), in that 10 CFR 50.60 need not be applied in order to achieve the underlying purpose of this regulation, which is to provide adequate fracture toughness of the reactor pressure boundary.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants an exemption from the requirements of 10 CFR 50.60 so that the P–T limits may be determined using the 1996 Addenda to the ASME Code, Section XI, Appendix G, and the LTOP system setpoint may be determined so that system pressure does not exceed 110 percent of the P–T limits.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (63 FR 2268).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 16th day of January, 1998.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–1902 Filed 1–26–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corporation, Vermont Yankee Nuclear Power Station; Exemption

I

The Vermont Yankee Nuclear Power Corporation (the licensee) is the holder of Facility Operating License No. DPR–28, which authorizes operation of the Vermont Yankee Nuclear Power Station. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect. The facility consists of a single-unit boiling-water reactor located at the licensee's site in Windham County, Vermont.

II

Section 70.24 of Title 10 of the Code of Federal Regulations (10 CFR 70.24), "Criticality Accident Requirements," requires that each licensee authorized to possess special nuclear material (SNM) shall maintain a criticality accident monitoring system in each area where such material is handled, used, or stored. Subsections (a)(1) and (a)(2) of 10 CFR 70.24 specify detection and sensitivity requirements that these monitors must meet. Subsection (a)(1) also specifies that all areas subject to criticality accident monitoring must be covered by two detectors. Subsection (a)(3) of 10 CFR 70.24 requires licensees to maintain emergency procedures for each area in which this licensed SNM is handled, used, or stored and also requires that (1) the procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality accident monitor alarm, (2) the procedures must include drills to familiarize personnel with the evacuation plan, and (3) the procedures designate responsible individuals for determining the cause of the alarm and placement of radiation survey instruments in accessible locations for use in such an emergency. Subsection (b)(1) of 10 CFR 70.24 requires licensees to have a means for identifying quickly personnel who have received a dose of 10 rads or more. Subsection (b)(2) of 10 CFR 70.24 requires licensees to maintain personnel decontamination facilities, to maintain arrangements for the services of a physician and other medical personnel qualified to handle radiation emergencies, and to maintain arrangements for the transportation of contaminated individuals to treatment facilities outside the site boundary. Paragraph (c) of 10 CFR 70.24 exempts Part 50 licensees from the requirements of paragraph (b) of 10 CFR 70.24 for SNM used or to be used in the reactor. Paragraph (d) of 10 CFR 70.24 states that any licensee who believes that there is good cause why he or she should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

III

The SNM that could be assembled into a critical mass at Vermont Yankee is in the form of nuclear fuel; the quantity of SNM other than fuel that is stored on site in any given location is small enough to preclude achieving a critical mass. The Commission's technical staff has evaluated the possibility of an inadvertent criticality of the nuclear fuel at Vermont Yankee and has determined that it is extremely unlikely for such an accident to occur if the licensee meets the following seven criteria:

1. Only three new fuel assemblies are allowed out of a shipping cask or storage rack at one time.

2. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level, in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U–235 enrichment and flooded with pure water.

3. If optimum moderation occurs at low moderator density, then the k-effective does not exceed 0.98, at a 95% probability, 95% confidence level, in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U–235 enrichment and flooded with a moderator at the density corresponding to optimum moderation.

4. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level, in the event that the spent fuel storage racks are filled with fuel of the maximum permissible U–235 enrichment and flooded with pure water.

5. The quantity of forms of SNM other than nuclear fuel, that is stored on site in any given area is less than the quantity necessary for a critical mass.

6. Radiation monitors, as required by General Design Criterion (GDC) 63, are provided in fuel storage and handling areas to detect excessive radiation levels and to initiate appropriate safety actions.

7. The maximum nominal U–235 enrichment is limited to 5.0 weight percent.

By letter dated December 16, 1997, the licensee requested an exemption from 10 CFR 70.24. The licensee's letter dated January 13, 1998, provided additional information supporting the exemption. In the submittals, the licensee addressed criteria 1, 2, 4, 5, 6, and 7. Criterion 3 is satisfied because the licensee's submittal dated January 13, 1998, states that the cycle 20 fuel will be channeled and stored in the spent fuel storage pool until it is loaded in the core and that the licensee has no plans to store new fuel in the new fuel storage vault. The Commission's technical staff has reviewed the licensee's submittals and has determined that Vermont Yankee meets the criteria for prevention of inadvertent criticality; therefore, the staff has determined that it is extremely unlikely for an inadvertent criticality to occur in SNM handling or storage areas at Vermont Yankee.

The purpose of the criticality monitors required by 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of SNM, personnel would be alerted to that fact and would take appropriate action. The staff has determined that it is extremely unlikely that such an accident could occur; furthermore, the licensee has radiation monitors that meet GDC 63 in fuel storage and handling areas. These monitors will alert personnel to excessive radiation levels and allow them to initiate appropriate safety actions. The low probability of an inadvertent criticality, together with the licensee's adherence to GDC 63, constitutes good cause for granting an exemption to the requirements of 10 CFR 70.24.

IV

The Commission has determined that pursuant to 10 CFR 70.14, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the Vermont Yankee Nuclear Power Corporation an exemption from the requirements of 10 CFR 70.24.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the human environment (63 FR 2425).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 20th day of January 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–1901 Filed 1–26–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–22]

Westinghouse Electric Corporation (CBS Corporation); Westinghouse Test Reactor; Notice of Withdrawal of Application for Consent to Transfer Facility License and Conforming Amendment

The U.S. Nuclear Regulatory Commission (the Commission) has permitted the withdrawal of the August 18, 1997 application for consent to transfer Facility License No. TR–2 for the Westinghouse Test Reactor, located at the Westinghouse Waltz Mill site in Westmoreland County, Pennsylvania, and application for a conforming license amendment; submitted by Westinghouse Electric Corporation (CBS Corporation).

The proposed action would have approved the transfer of License No. TR–2 from the Westinghouse Electric Corporation to a new corporation that would have taken the name Westinghouse Electric Corporation, but would not have included in its lines of business certain media operations. The proposed action would have also amended the license to reflect the proposed transfer of the license.

The Commission had previously issued a Notice of Consideration of Approval of Transfer of License and Issuance of a Conforming Amendment to Facility License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing published in the **Federal Register** on September 26, 1997 (62 FR 50628). An Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on October 1, 1997 (62 FR 51493). However, by letter dated December 18, 1997, the licensee withdrew the August 18, 1997 application.

The licensee withdrew the application because its plan to reorganize and create a new corporation changed.

For further details with respect to this action, see the application for amendment dated August 18, 1997, and the letter from licensee dated December 18, 1997, which withdrew the application. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

Dated at Rockville, Maryland, this 20th day of January 1998.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–1899 Filed 1–26–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–263]

Draft Environmental Assessment; Relating to a Proposed License Amendment To Increase the Maximum Rated Thermal Power Level at the Monticello Nuclear Generating Plant

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission has prepared a draft environmental assessment related to the Northern States Power Company's (NSP's) request for a license amendment to increase the maximum rated thermal power level from 1670 megawatts-thermal (MWt) to 1775 MWt. As stated in the NRC staff's position paper on the Boiling-Water Reactor Extended Power Uprate Program dated February 8, 1996, the staff has the option of preparing an environmental impact statement if it believes a significant impact results from the power uprate. The staff did not identify a significant impact related to the NSP's request and, therefore, the NRC staff documented its

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environmental review in an environmental assessment (EA). In accordance with the February 8, 1996, staff position paper, the draft EA and finding of no significant impact is being published in the **Federal Register** for a 30-day comment period.

DATES: Comment period expires February 26, 1998. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Mail Stop T–6D–69, Washington, DC 20555–0001. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, from 7:30 am to 4:15 pm, Federal Workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tae Kim, Office of Nuclear Reactor Regulation, Mail Stop O–13D18, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1392.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–22, issued to Northern States Power Company, for operation of the Monticello Nuclear Generating Plant located in Wright County, Minnesota. The Commission's draft environmental assessment and finding of no significant impact related to the subject license amendment is provided below:

Environmental Assessment

1.0 Introduction

1.1 Description of Proposed Action

By letter dated July 26, 1996, as revised December 4, 1997, Northern States Power Company (NSP) requested an amendment to License No. DPR–22 for the Monticello Nuclear Generating Plant (MNGP) that would increase the maximum power level from 1670 megawatts-thermal (MWt) to 1775 MWt. This change is approximately 6.3 percent above the current maximum license power level and is considered an extended power uprate.

1.2 Need for the Proposed Action

NSP has projected the need for additional generation resources through a comparison of needs to available resources. NSP has projected a shortfall of generating capacity in the future. The proposed action would provide increased reactor power, thus adding an additional 26 MW of reliable electrical energy generating capacity without major hardware modifications to the plant. Hardware changes are not needed because of improvements in technology, performance, and design. These improvements have resulted in a significant increase in the difference between the calculated safety analysis results and licensing limits established by the original license.

2.0 Environmental Impacts

The issuance of the operating license for MNGP stated that any activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement (FES), which was issued in November 1972. The license for MNGP allowed a maximum reactor power level of 1670 MWt. NSP submitted an environmental evaluation supporting the proposed power uprate action and provided a summary of its conclusions concerning both the radiological and nonradiological environmental impacts of the proposed action. The evaluations performed by the licensee concluded that the environmental impacts of power uprate are well bounded or encompassed by previously evaluated environmental impacts and criteria established by the staff in the FES. A summary of the nonradiological and radiological effects on the environment that may result from the proposed amendment is provided below.

2.1 Nonradiological Impacts

2.1.1 Land use. Power uprate does not modify land use at the site. No new facilities, access roads, parking facilities, laydown areas, or onsite transmission and distribution equipment, including power line right of way, are needed to support the uprate or operation after uprate. No change to above or below ground storage tanks would occur as a result of power uprate and the uprate does not affect land with historical or archeological sites.

Based on the operating history at the MNGP, the effects of drift, icing, and fog have been negligible. The frequency of fog and drift were provided by the licensee at the time of original licensing and the impacts of that frequency of drift and fog are bounded by the evaluation contained in the FES. The FES assumed cooling tower operation of 7 months, with the total fogging time estimated at 45 hours per year. If the cooling tower fogging rate is assumed to increase proportional to the proposed power increase, the amount of fogging due to power uprate could increase by approximately 6.3 percent above the normal summer operating period of 4 months. Additionally, the licensee determined that power uprate may involve an extra week of cooling tower operation. Taking into account the additional fogging rate and the additional cooling tower operation, the conditions at power uprate are still bounded by the FES.

The increase in power level would cause a current and magnetic field increase on the onsite transmission line between the main generator and the plant substation. The line is located entirely within the fenced, licensee-controlled boundary of the plant, and it is not expected that members of the public or wildlife would be affected. Exposure from magnetic fields from the offsite transmission system is not expected to increase significantly.

2.1.2 Water Use. Power uprate does not involve a significant increase in water use at MNGP. Both ground and surface water appropriation limits are established by the Minnesota Department of Natural Resources. Operating history shows that over the last 5 years MNGP has used less than 13 million gallons of ground water per year. The annual limit established in the permit for groundwater use is 15 million gallons. Power uprate is not expected to change the groundwater usage and, therefore, operation within the allowable limit would continue. Under the surface water appropriation limit, MNGP may withdraw a maximum of 645 cubic feet per second (cfs) from the Mississippi River. There are special restrictions when the river flow is particularly high or low; however, power uprate is not expected to change the surface water requirements of the plant and, therefore, current appropriation limits would be maintained.

Power uprate would result in an increase in the evaporation rate of the cooling towers resulting in an increase in evaporative losses from the river. Assuming the evaporation rate of the cooling towers increases linearly in proportion to the power increase, the evaporation rate would increase to 4400 acre-ft/yr [acre-foot per year]. The value assumed in the FES was 5000 acre-ft/yr evaporative losses; therefore, the FES is still bounding.

Discharges to the water are governed by the National Pollutant Discharge Elimination System (NPDES) permit, issued by the State of Minnesota. Temperature and effluent limits at certain points are established in the permits. As a result of power uprate, a slight increase in circulating water discharge temperature is projected to occur. This is due to an increase in heat rejected by the condenser due to the increased power levels and increased steam flow. A conservative estimate by the licensee predicts a maximum 1.7 °F [degrees Fahrenheit] increase in the temperature of the water entering the discharge canal. This increase would not result in exceeding the limits delineated in the FES or the limits established by the State in the permit. Additionally, temperature monitoring is continuous and this maximum temperature increase would occur only at certain times of the year with certain river flows. In the past, when MNGP has approached the limit designated in the NPDES permit, NSP has reduced power at the plant to maintain compliance; this will continue in the future. The slight increase in temperature does not require any changes to permit requirements and would not result in any significant impacts to the environment that are different from those previously identified or change the previous Clean Water Act Section 316(a) demonstration concerning thermal plume in the Mississippi River.

Power uprate would not introduce any new contaminants or pollutants and would not significantly increase the amount of potential contaminants previously allowed by the State. NSP will continue to adhere to effluent limitation and monitoring requirements as part of compliance with the NPDES permit. As a result of the additional week of cooling tower operation, a slight increase in normal bromine and sodium hypochlorite injection may be required; however, the effluent concentrations would continue to be well below the NPDES permit limits. Continuous flowrate monitoring at designated points will continue.

Over the years of operation, a number of modifications to the intake structure have been implemented to reduce cold shock, impingement, and entrainment of organisms and fish. Because the discharge canal inlet temperature is expected to increase 1.7 °F at power uprate, the overall discharge canal temperature is not significantly increased; therefore, the temperature decrease during cold shock is not significantly changed.

Additionally, impingement and entrainment mortality of drift organisms is not increased above what was previously evaluated by the staff.

2.1.3 Other impacts. No significant increases or changes to the noise generated by MNGP are expected as a result of power uprate; therefore, the FES remains bounding. A small number of endangered and threatened species exist within the licensee-controlled area at MNGP. Using information from the Minnesota Department of Natural Resources, the licensee performed a biological assessment of the impact of power uprate on these species. The assessment did not identify any impacts. Power uprate would not result in any significant changes to land use or water use, or result in any significant changes to the quantity or quality of effluents; therefore, no effects on the endangered or threatened species or on their habitat are expected as a result of power uprate.

The proposed power uprate would not change the method of generating electricity nor the method of handling any influent from the environment or nonradiological effluents to the environment. Therefore, no changes or different types of nonradiological environmental impacts are expected.

2.2 Radiological Impacts

MNGP has a number of radioactive waste systems designed to collect, process, and dispose of solid, liquid, and gaseous radioactive waste. No changes to these systems are required for power uprate conditions. The licensee considered the effect of the higher power level on solid radioactive wastes, liquid radioactive wastes, gaseous radioactive wastes, and radiation levels.

As a result of power uprate, a slight increase in solid waste from the reactor water cleanup (RWCU) system demineralizers and condensate demineralizers would occur. This is due to more frequent filter backwashes. Additional RWCU filter backwashes would result in less than 1 cubic meter of additional resin waste per year; condensate demineralizer filter backwashes are estimated to result in an additional 4 cubic meters of resin waste per year. Therefore, the projected increase in spent resin volume is less than 6 cubic meters per year, which would bring the total generation rate to approximately 55 cubic meters per year.

In addition to the solid process waste, there are solid reactor system wastes generated from the plant. These include irradiated fuel assemblies and control blades. Due to extended burnup and the higher enrichments, the number of irradiated fuel assemblies is not expected to significantly increase the volume of waste; however, the activity of the waste generated from spent control blades and incore ion changers may increase slightly. This is due to the higher flux conditions expected under power uprate. Improvements in technology and longer fuel cycles are expected to offset this slight increase. The increase in waste would be insufficient to impact the amount of waste generated at the site. Further, the licensee believes ongoing efforts at MNGP to reduce radioactive wastes will balance the slight increase in waste that would be generated as a result of power uprate.

The FES and Technical Specifications allow MNGP to discharge a limited amount of liquid radioactive waste. The FES concluded that, based on the allowed amounts, no adverse environmental impact would result from release of the allowable radioactive waste. However, since 1972, an administrative limit of zero radioactive liquid release has been imposed by NSP. MNGP expects to keep the zero release administrative limit and remain well within the bounds of the FES.

A slight increase in input to the liquid radioactive waste system is expected due to the increase in backwash frequency of the RWCU and condensate demineralizer system. However, the liquid radioactive waste input will be recycled instead of discharged and will not result in a significant increase in volume of liquid radioactive waste. Other sources of liquid radioactive waste such as valve packings, pump seal flows, drain waste, etc., are not expected to change or increase as a result of power uprate. Based on the above, it does not appear that power uprate will cause an increase in liquid radioactive waste above the presently allowed limits and will not affect compliance with the limits of 10 CFR Part 20 or Appendix I of 10 CFR Part 50.

Gaseous radioactive waste effluents consist of two pathways: reactor building ventilation system and offgas system pathway. Operational experience at MNGP shows a 4-year average release of 688 Ci/yr [curie per year] noble gas and 0.22 Ci/yr iodine and particulate release. The FES assumed release rates of 110,376 Ci/yr for noble gases and 0.75 Ci/yr for iodine and particulate releases. Assuming power uprate increases the offgas release rate linearly in proportion to the core thermal power increase, the increase in offgas stack release would be well below that assumed in the FES. Assuming the radioactivity of the reactor coolant system increases in a linear fashion proportional to the power increase, the reactor building release rate is well below that assumed in the FES. Based on the above, power uprate has an insignificant effect on the present production and activity of gaseous effluents released through the reactor building ventilation system and the offgas system pathways and the dose from effluent releases is well within the bounds of Appendix I to 10 CFR Part 50

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and 10 CFR Part 20. The changes in core flux profile would result in increased consequences of a fuel defect for a bundle in a non-leak location; however, this continues to be bounded by the consequences for the peak bundle and those limits are not changed.

Power uprate does not introduce any new or different radiological release pathways and does not increase the probability of an operator error or equipment malfunction that would result in a radiological release.

Tables S–3 and S–4 of 10 CFR 51.51 and 10 CFR 51.52, respectively, outline the environmental effects of uranium fuel cycle activities and fuel and radioactive waste transportation. The environmental evaluation supporting Table S–3 assumed a reference reactor with a specific capacity factor that results in an adjusted daily electricity production during a reference year. An average burnup and enrichment are also assumed. MNGP will not exceed the assumption of the reference reactor year, but will exceed the average burnup and fuel enrichment criteria as a result of power uprate. The environmental impacts of the higher burnup and enrichment values were documented in NUREG/CR–5009, "Assessment of the Use of Extended Burnup Fuels in Light Water Power Reactors," and discussed in the Environmental Assessment and Finding of No Significant Impact, which was published in the **Federal Register** on February 29, 1988 (53 FR 6040). The staff concluded that no significant adverse effects will be generated by increasing the burnup levels as long as the maximum rod average burnup level of any fuel rod is no greater than 60 Gwd/MtU [gigawatt-days per metric ton of uranium]. The staff also stated that the environmental impacts summarized in Tables S–3 and S–4 for a burnup level of 33 Gwd/MtU are conservative and bound the corresponding impacts for burnup levels up to 60 Gwd/MtU and uranium-235 enrichments up to 5 weight percent. Based on the above, there are no adverse radiological or non-radiological impacts associated with the use of extended fuel burnup and/or increased enrichment and, therefore, power uprate will not significantly affect the quality of the human environment.

3.0 Alternatives

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the proposed action would result in no change in current environmental impacts of plant operation but would restrict operation to the currently licensed power level. The environmental impact of the proposed action and the alternative action are similar.

4.0 Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the MNGP.

5.0 Basis and Conclusions for Not Preparing an Environmental Impact Statement

The staff has reviewed the proposed power uprate for the MNGP relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the staff has concluded that there are no significant radiological or nonradiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined pursuant to 10 CFR 51.31 not to prepare an environmental impact statement for the proposed amendment but to prepare this draft finding of no significant impact.

For further details with respect to the proposed action, see the licensee's letter dated July 26, 1996, as revised by letter dated December 4, 1997, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 21st day of January 1998.

Cynthia A. Carpenter,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–1903 Filed 1–26–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY: Nuclear Regulatory Commission.

DATE: Weeks of January 26, February 2, 9, and 16, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 26

Wednesday, January 28

11:30 a.m.—Affirmation Session (Public Meeting) (if needed).

Week of February 2—Tentative

Wednesday, February 4

11:30 a.m.—Affirmation Session (Public Meeting) (if needed).

Week of February 9—Tentative

There are no meetings the week of February 9.

Week of February 16—Tentative

Thursday, February 19

9:30 a.m.—Meeting with Northeast Nuclear on Millstone (Public Meeting) (Contact: Bill Travers, 301–415–1200).

12:00 m.—Affirmation Session (Public Meeting) (if needed).

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: January 23, 1998.

William M. Hill, Jr.,

Secy, Tracking Officer, Office of the Secretary.

[FR Doc. 98–2090 Filed 1–23–98; 2:25 pm]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Discount Rates for Cost-Effectiveness Analysis of Federal Programs

AGENCY: Office of Management and Budget.

ACTION: Revisions to Appendix C of OMB Circular A–94.

SUMMARY: The Office of Management and Budget revised Circular A–94 in 1992. The revised Circular specified certain discount rates to be updated annually when the interest rate and inflation assumptions used to prepare the budget of the United States Government were changed. These discount rates are found in Appendix C of the revised Circular. The updated discount rates are shown below. The discount rates in Appendix C are to be used for cost-effectiveness analysis, including lease-purchase analysis, as specified in the revised Circular. They do not apply to regulatory analysis.

DATES: The revised discount rates are effective immediately and will be in effect through January 1999.

FOR FURTHER INFORMATION CONTACT: Robert B. Anderson, Office of Economic Policy, Office of Management and Budget, (202) 395–3381.

Joseph J. Minarik,

Associate Director for Economic Policy, Office of Management and Budget.

[OMB Circular No. A–94, Revised, October 29, 1992]

Appendix C

(Revised January 1998)

Discount Rates for Cost-Effectiveness, Lease Purchase, and Related Analyses

Effective Dates. This appendix is updated annually around the time of the President's budget submission to Congress. This version of the appendix is valid through the end of January, 1999. Copies of the updated appendix and the Circular can be obtained from the OMB Publications Office (202–395–7332) or in an electronic form through the OMB home page on the world-wide WEB, http://www.whitehouse.gov/WH/EOP/omb. Updates of this appendix are also available upon request from OMB's Office of Economic Policy (202–395–3381), as is a table of past years' rates.

Nominal Discount Rates. Nominal interest rates based on the economic assumptions from the budget are presented below. These nominal rates are to be used for discounting nominal flows, which are often encountered in lease-purchase analysis.

Nominal Interest Rates on Treasury Notes and Bonds of Specified Maturities (in Percent)

3-Year	5.6
5-Year	5.7
7-Year	5.8
10-Year	5.9
30-Year	6.1

Real Discount Rates. Real interest rates based on the economic assumptions from the budget are presented below. These real rates are to be used for discounting real (constant-dollar) flows, as is often required in cost-effectiveness analysis.

Real Interest Rates on Treasury Notes and Bonds of Specified Maturities (in Percent)

3-year	3.4
5-year	3.5
7-year	3.5
10-year	3.6
30-year	3.8

Analyses of programs with terms different from those presented above may use a linear interpolation. For example, a four-year project can be evaluated with a rate equal to the average of the three-year and five-year rates. Programs with durations longer than 30 years may use the 30-year interest rate.

[FR Doc. 98–1826 Filed 1–26–98; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23004; 812–10134]

Daily Money Fund, et al.; Notice of Application

January 20, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act") granting an exemption under section 6(c) of the Act from sections 13(a), 18(f), and 21(b) of the Act, under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and (3) of the Act, and under rule 17d–1 under the Act to permit certain transactions in accordance with section 17(d) of the Act and rule 17d–1.

SUMMARY OF APPLICATION: The requested order would permit certain registered open-end funds and unregistered funds to enter into insurance agreements with an affiliated mutual insurance company (the "Mutual Company"). The Mutual Company would provide limited insurance coverage for certain money market assets held by the funds.

APPLICANTS: Daily Money Fund, Fidelity Aberdeen Street Trust, Fidelity Advisor Series I, Fidelity Advisor Series II, Fidelity Advisor Series III, Fidelity Advisor Series IV, Fidelity Advisor Series V, Fidelity Advisor Series VI, Fidelity Advisor Series VII, Fidelity Advisor Series VIII, Fidelity Beacon Street Trust, Fidelity Boston Street Trust, Fidelity California Municipal Trust, Fidelity California Municipal Trust II, Fidelity Capital Trust, Fidelity Charles Street Trust, Fidelity Commonwealth Trust, Fidelity Concord Street Trust, Fidelity Congress Street Fund, Fidelity Contrafund, Fidelity Court Street Trust, Fidelity Court Street Trust II, Fidelity Destiny Portfolios, Fidelity Devonshire Trust, Fidelity Exchange Fund, Fidelity Financial Trust, Fidelity Fixed-Income Trust, Fidelity Government Securities Fund, Fidelity Hastings Street Trust, Fidelity Hereford Street Trust, Fidelity Income Fund, Fidelity Institutional Cash Portfolios, Fidelity Institutional Tax-Exempt Cash Portfolios, Fidelity Investment Trust, Fidelity Magellan Fund, Fidelity Massachusetts Municipal Trust, Fidelity Money Market Trust, Fidelity Mt. Vernon Street Trust, Fidelity Municipal Trust, Fidelity Municipal Trust II, Fidelity Newbury Street Trust, Fidelity New York Municipal Trust, Fidelity New York Municipal Trust II, North Carolina Capital Management Trust, Fidelity Phillips Street Trust, Fidelity Puritan Trust, Fidelity Revere Street Trust, Fidelity School Street Trust, Fidelity Securities Fund, Fidelity Select Portfolios, Fidelity Summer Street Trust, Fidelity Trend Fund, Fidelity Union Street Trust, Fidelity Union Street Trust II, Fidelity U.S. Investments-Bond Fund, L.P., Fidelity U.S. Investments-Government Securities Fund, L.P., Variable Insurance Products Fund, Variable Insurance Products Fund II, Variable Insurance Products Fund III (collectively, the "Trusts"); Fidelity Canadian Asset Allocation Fund, Fidelity U.S. Money Market Fund, Fidelity Asset Manager Fund, Fidelity Canadian Bond Fund, Fidelity Canadian Growth Company Fund, Fidelity Canadian Income Fund, Fidelity Canadian Short Term Asset Fund, Fidelity Capital Builder Fund, Fidelity Emerging Markets Bond Fund, Fidelity Emerging Markets Portfolio Fund, Fidelity European Growth Fund, Fidelity Far East Fund, Fidelity Growth America Fund, Fidelity International Portfolio Fund, Fidelity Japanese Growth Fund, Fidelity Latin America Growth Fund, Fidelity North American Income Fund, Fidelity RSP Global Bond Fund, Fidelity Small Cap America Fund, Fidelity True North Fund, Fidelity Managed Income Fund, Fidelity Focus Consumer Industries Fund, Fidelity Focus Financial Services Fund, Fidelity Focus Health Care Fund, Fidelity Focus Natural Resources Fund, Fidelity Focus Technology Fund (collectively, the "Canadian Funds"); Fidelity Advisor U.S. Large-Cap Stock Fund (Bermuda) Ltd., Fidelity Advisor World Europe Fund (Bermuda) Ltd., Fidelity Advisor World Southeast Asia Fund (Bermuda) Ltd., Fidelity World Advisor World U.S. Limited Term Bond Fund (Bermuda) Ltd., Fidelity Advisor World U.S. Government Investment Fund (Bermuda) Ltd., Fidelity Advisor World U.S. Treasury Money Fund

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(Bermuda) Ltd. (collectively, the "Fidelity Advisor World Funds"); Fidelity Investments Canada, Ltd. ("FICL"); Fidelity Management and Research Company ("FMR"); Fidelity Distributors Corporation ("FDC"); National Financial Services Corporation ("NFSC") [1]; each Trust and each registered investment company and series thereof that are currently or in the future advised by FMR or a person controlling, controlled by, or under common control with FMR (collectively with FMR, the "Adviser") or distributed by FDC or NFSC (collectively, the "Registered Funds"); the Fidelity Advisor World Funds, the Canadian Funds, and other pooled investment funds advised or in the future advised by the Adviser, that are offered exclusively outside the United States to non-U.S. residents (the "Unregistered Funds"); and state and local entities or accounts thereof advised or in the future advised by the Adviser that are exempt from regulation under the Act pursuant to section 2(b) of the Act (the "2(b) Entities") (collectively, the Registered Funds, the Unregistered Funds, and the 2(b) Entities are the "Funds").

FILING DATES: The application was filed on May 7, 1996, and amended on December 3, 1997.

HEARING OR NOTIFICATION OF HEARING. An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 16, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues consented. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 82 Devonshire Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Counsel, at (202) 942–0572 (Division of Investment Management, Office of Investment Company Regulation), or Mercer E. Bullard, Special Counsel, at (202) 942–0659 (Division of Investment Management, Office of Chief Counsel).

[1] The terms "FDC" and "NFSC" include any other company controlled by or under common control with FMR that acts in the future as distributor for the Trusts or their series.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549 (telephone (202) 942–8090).

Applicants' Representations

A. Overview

1. Each of the Registered Funds is an open-end investment company registered under the Act and offers one or more portfolios. The Fidelity Advisor World Funds are portfolios of mutual funds established under the laws of Bermuda. The Canadian Funds are portfolios established under the laws of Canada. The only 2(b) Entity that currently may rely on the requested order is the Massachusetts Municipal Depository Trust ("Municipal Trust"), which is established pursuant to Massachusetts law.[2]

2. The Adviser, an investment adviser registered under the Investment Advisers Act of 1940, acts as investment adviser to each Registered Fund and its portfolios and provides the Registered Funds with administrative services. FICL acts as the investment adviser to the Canadian Funds. FDC and NFSC act as the distributors of all the Registered Funds. FMR, FICL, FDC, and NFSC are all direct or indirect subsidiaries of FMR Corp.

3. Applicants propose that certain Funds ("Participating Funds") enter into insurance agreements with the Mutual Company. The Mutual Company would provide insurance coverage for certain loss events ("Loss Events") described below with regards to certain money market securities ("Insurable Assets"). Initially, applicants expect that the only Participating Funds will be U.S. dollar denominated money market funds.[3] Other types of Funds may participate in the future if the Fund's Adviser and board of trustees determine that the insurance would be of value to the Fund and that the Fund had an independent need for the insurance coverage.

B. Mutual Company Operations

1. The Mutual Company will be organized as a Bermuda mutual insurance company and will be governed by a board of directors consisting of employees of FMR or FMR Corp. and other persons associated with the Mutual Company. As a mutual insurance company, the Mutual Company will not issue stock. Proprietary interests in the Mutual Company will belong only to the Participating Funds as policyholders. Each Participating Fund will have equal voting rights, *i.e.*, each Participating Fund will have one vote. The board of trustees ("Trustees") of each Registered Fund will exercise the Fund's voting rights. The Funds will have voting rights with respect to (a) the election and removal of the Mutual Company's board of directors; (b) the dissolution or liquidation of the Mutual Company; (c) the amendment of the Mutual Company's articles of incorporation or other governing instrument; (d) any merger, consolidation or sale of substantially all of the Mutual Company's assets; and (e) additional matters relating to the Mutual Company as may be required or authorized by law.

2. Employees of the Adviser will be involved in the day-to-day operations of the Mutual Company, including determining and implementing the investment policies of the Mutual Company and managing its assets. The Mutual Company will employ an unaffiliated third party in Bermuda to conduct its administrative and ministerial activities.

3. The Mutual Company will operate on a break-even basis and any reserves and surplus will be used (a) to increase the Mutual Company's aggregate coverage and/or the risk retained by the Mutual Company and/or (b) to decrease the premiums charged by the Mutual Company. The Mutual Company will pay no dividends or distributions, and neither the Funds' interest in the Mutual Company nor the policies will be transferable. A Participating Fund that terminates its participation prior to the liquidation of the Mutual Company will not receive any proceeds, regardless of whether the Mutual Company has a surplus at the time. If the Mutual Company is liquidated when it has a surplus, Participating Funds at that time will divide the proceeds based on their relative levels of premium payments to the Mutual Company during its existence.

[2] In order to participate in the Mutual Company, a 2(b) Entity (including the Municipal Trust) would have to determine that the proposed investments in instruments through the proposed transactions are consistent with state laws or administrative rules regulating the 2(b) Entity. If not, it must seek to have those laws or rules amended. Accordingly, the Municipal Trust is not named as an applicant because it considers it premature to join formally.

[3] Money market funds are funds that have as their objective the generation of income and the preservation of capital. Money market funds are subject to rule 2a–7 under the Act, which contains several conditions limiting the risk and volatility of securities in which a money market fund may invest.

C. Insurance Coverage

1. Insurable Assets are securities that, at the time of purchase, are money market securities eligible pursuant to rule 2a–7 under the Act (including repurchase agreements), other than: (i) U.S. Treasury securities backed by the full faith and credit of the U.S. Government, and (ii) other obligations all of the principal and interest of which are backed by the full faith and credit of the U.S. Government.

2. Loss Events include losses incurred by a Participating Fund in connection with a nonpayment of principal or interest by the issuer when due and payable, or the institution of a bankruptcy, insolvency, or similar proceeding with respect to the issuer and/or credit enhancement provider (if any) of an Insurable Asset. Loss Events also include losses in connection with a default relating to a credit enhancement. In addition, Loss Events include the inability of a Fund to recover fully the amount loaned under a repurchase agreement because of an event of default under the contract ("repo-related Loss Event"), and losses resulting if certain payments to a Participating Fund were subsequently considered a preference in bankruptcy ("preference-related Loss Event"). In the future, the definition of Loss Events could be expanded.

3. The Adviser or the Mutual Company will retain insurance professionals to set the aggregate annual premium based upon their assessment of the risk of Loss Events occurring with respect to Insurable Assets in which the Funds invest. The insurable professionals, using actuarial standards, will allocate the premium among the Participating Funds based on the risk characteristics of the different types of Insurable Assets held by each Fund.

4. The insurance policy ("Policy") written by the Mutual Company will be structured as a claims-made policy. The Policy will have a term of one year and will be renewable. Neither the Mutual Company nor a Participating Fund will be permitted to terminate or decrease its coverage during a policy year. The Policy will have no cash surrender value, will not be transferable, and will not provide for the payment of any dividend or other distribution.

5. Loss recoveries by the Participating Funds will be limited to $100 million annually in the aggregate. A Participating Fund will recover for a Loss Event only to the extent that the amount of its loss exceeds the deductible amount of 0.30% of a Participating Fund's Insurable Assets, which will be applied on a per loss basis for each Fund. There are no limits (other than the Policy limit) on the amount of loss recoverable by a Participating Fund in a particular year or with respect to any single issuer.

6. The Mutual Company also would provide coverage for certain wrongful acts on the part of past or present officers, Trustees, or employees of a Participating Fund that result in the Fund sustaining a Loss Event. This coverage would not apply to FMR in its capacity as investment adviser to the Funds. Wrongful acts would include any breach of duty, neglect, error, misstatement, misleading statement, omission or other act committed or wrongfully attempted by an employee resulting in a Participating Fund sustaining a loss attributable to a Loss Event. The coverage is not fidelity bond coverage and will not be subject to rule 17g–1 under the Act. The coverage would generally expand the existing errors and omissions coverage maintained by a Participating Fund by covering losses not currently covered by the Fund's existing policy. For example, the Mutual Company would cover losses that result from wrongful acts in connection with the purchase of an investment that was not rule 2a–7 eligible and that are in an amount that exceeds the amount covered under the Participating Fund's existing errors and omissions policy.

D. Mutual Company Capitalization

1. As noted above, the Mutual Company will have an annual aggregate Policy limit of $100 million. The Mutual Company initially will cover the first $30 million in claims from payments collected from the Participating Funds and Fidelity, with third-party reinsurance covering the remaining $70 million. The first $30 million will be capitalized by the following sources: (i) A one-year loan by Fidelity of $250,000 ("Fidelity Note"), (ii) a one-year demand note by the participating funds of $450,000 in the aggregate ("Fund Notes"), (iii) first-year premiums of approximately $2.7 million, (iv) assessable premiums of approximately $11 million, and (v) a commitment by Fidelity of approximately $17 million. If the Mutual Company's reserves are insufficient to cover claims, it will use its other assets in the following order: (a) The Fund Notes, (b) the FMR Note, (c) the premium assessment, (d) FMR's commitment, and (e) reinsurance.

2. The amount of each Fund Note will be determined on a *pro rata* basis in the same proportion as the Fund's premium payment. Because the Fund Notes are demand notes, a Participating Fund will not be required to pay any monies to the Mutual Company unless these are one or more covered Loss Events exceeding the Mutual Company's available reserves and surplus funds. Fund Notes will be drawn upon and will be repaid to the Funds by the Mutual Company on a *pro rata* basis.

3. In addition, because annual premiums in the initial years of operation will be insufficient to permit the Mutual Company to provide the $30 million of coverage it will retain, the Company's insurance policies will be "assessable." Thus, if a Loss Event occurs, each Participating Fund will be subject, in addition to its annual premium payments, to a special premium assessment initially estimated to be approximately two and one half times its annual premium payment. A Fund's annual and special assessment premiums will be paid from the general assets of the Fund, except that FMR will pay the premiums for Funds with "all-inclusive" management agreements, under which FMR is contractually obligated to pay all Fund expenses. The special premium assessment will be made on a *pro rata* basis by each Participating Fund in the same proportion as the Fund's then current *pro rata* shares of its regular premium payment, regardless of which Fund actually sustains a Loss Event. If reserves and surplus funds in the Mutual Company build up sufficiently, applicants expect the assessment rate to decline over time.

4. Assuming that all the Fund Notes are fully drawn upon and the Funds are subject to the maximum special premium assessment, applicants anticipate that the maximum commitment by all Participating Funds (which as of October 31, 1997, had approximately $98 billion in net assets) to the Mutual Company would initially amount to approximately $11 million resulting in a projected maximum commitment by the Funds that would not exceed .04% of the Funds' net assets. Thus, any monies required to be paid by a Participating Fund pursuant to the Fund Notes or special assessment in a given year would not cause the net asset value of a money market Fund to be reduced below $1.00 per share.

5. The Mutual Company also will receive a $17 million commitment from FMR backed by a letter of credit to cover Loss Events exceeding the Mutual Company's reserves and surplus funds and the Participating Funds' assessable policies. FMR's commitment to cover losses would stand behind the premiums and assessable policies of the Participating Funds and is expected to decline over time as reserves increase. The Mutual Company will pay FMR an

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annual fee, at market rates, for the commitment. The rate of the annual fee will be the same amount as the lowest rate FMR would then pay a bank for a letter of credit in a comparable amount. The reinsurance obtained by the Mutual Company will stand behind the premiums, assessable policies, and FMR's commitment.

E. Insurance Claims

1. The order of the payment of claims will be based on the date the loss was incurred. In the event of multiple losses occurring on the same date in excess of the Policy limit, claims will be paid *pro rata* based on the amount of a fund's loss in excess of its deductible.

2. A Participating Fund that experiences a Loss Event typically would receive payment within approximately 30 days of filing an acceptable proof of loss with the Mutual Company. Entities providing reinsurance will be obligated to pay the Mutual Company within the same period of time. Normal insurance subrogation rights will be provided in connection with the insurance coverage.

3. Beginning the day of the Loss Event until the proceeds of a Participating Fund's claim are received from the Mutual Company, the net asset value of a Participating Fund that sustains a Loss Event will be computed by recording the amount of the expected recovery as a receivable on the books of the Fund, subject to the Policy limit. Prior to recording a receivable, a Participating Fund will have contacted the Mutual Company upon the occurrence of a Loss Event to determine the amount of available coverage. The recovery will be determined by calculating the amount of the Participating Fund's loss and comparing this number to the coverage remaining under the Policy limit for the policy year in question. The relevant receivable on a Participating Fund's books will be computable and recorded prior to the Fund's next net asset value determination following a Loss Event.

F. Disclosure of the Insurance

1. A brief description of the nature and extent of the insurance coverage will be contained in each Registered Fund's registration statement and, if required by generally accepted accounting principles ("GAAP"), its financial statements. The insurance coverage provided by the Mutual Company will not be used in connection with the marketing of the sale of shares of the Registered Funds, and thus will not be discussed in any marketing or sales literature distributed with respect to any Registered Fund.

Applicants' Legal Analysis

A. Sections 13(a) and 18(f)

1. Section 18(f)(1) of the Act generally prohibits a registered open-end investment company from issuing any senior security. Section 13(a)(2) of the Act requires that a registered investment company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Section 13(a)(3) of the Act provides that no registered investment company will, unless authorized by the vote of a majority of its outstanding voting securities, deviate from any investment policy that is changeable only if authorized by shareholder vote, or deviate from any policy recited in its registration statement pursuant to section 8(b)(3) of the Act. Each Registered Fund has a fundamental investment policy prohibiting the issuance of senior securities except as permitted under the Act. Applicants request relief from sections 13(a) and 18(f) to the extent that the assessable feature of the policy entered into by each Registered Fund and the obligation of each Fund pursuant to the Fund Notes could be deemed the issuance of senior securities by the Registered Funds, and thus be prohibited by section 18(f) and in contravention of a Registered Fund's fundamental policy against issuing senior securities pursuant to section 13(a)(2), and its deviation from that policy in contravention of section 13(a)(3). Relief from section 13(a)(3) would extend only to existing Registered Funds with a fundamental investment restriction prohibiting investments in senior securities and to any other Registered Funds that have such policies at the time the Adviser becomes the Fund's investment adviser.

2. Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision of the Act, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies of the Act. For the reasons provided below, applicants argue that the requested order meets the section 6(c) standards.

3. Applicants state that sections 13(a) and 18(f) resulted from Congress' desire to eliminate certain practices including (a) heavy borrowings by investment companies from the public without adequate assets and reserves, (b) the complexity of capital structures which induced investment companies to invest in risky securities to produce income necessary to cover the high cost of borrowings, (c) the freedom of investment companies to borrow funds for speculation, and (d) the propensity of senior securities to mislead investors by conveying false impression of freedom from risk, and to increase the speculative nature of both the common stock and senior securities of investment companies.

4. Applicants state that the assessable feature of the policy and the obligations created by the Fund Notes will not give rise to the abuses at which sections 13(a) and 18(f) are directed. Applicants submit that neither the assessable feature nor the Fund Notes will involve speculative trading or leverage in the typical sense because a Registered Fund will not be buying portfolio securities with borrowed money. Applicants believe that the proposed insurance coverage will not create an unduly complicated capital structure. Applicants contend that, because of the limited coverage and the deductible, the insurance coverage will not induce a Registered Fund to invest in risky securities.

5. Applicants further state that neither the special assessment feature nor the Fund Notes will change the risk/reward characteristics of any Registered Fund. Applicants submit that payment of monies by a Registered Fund pursuant to the Fund Notes will have no effect on the Fund's net asset value because the Fund will record a receivable on its books and will receive interest at market rates on those monies. Further, applicants believe that, even assuming that all the Fund Notes are drawn upon and the Funds are subject to the maximum special assessment, it is projected that the maximum amount payable by the Participating Fund will be *de minimis* in relation to their total net assets.

B. Sections 17(a) (1) and (2)

1. Sections 17(a) (1) and (2) of the Act generally prohibit sales or purchases of securities to or from a registered investment company by any affiliated person of the company or any affiliated person of an affiliated person. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any investment adviser of the investment company and anyone under common control with the investment company. Under section 2(a)(3), FMR, as investment adviser of each of the Funds, is an affiliated person of each Fund. Further, because the Funds either share a common investment adviser or have an investment adviser that is under common control with those of the other Funds, and most Registered Funds also share a common board of trustees or other governing body, each Fund may be deemed to be under common control with all other Funds and, therefore, may be deemed to be an affiliated person of those Funds.

2. Each Participating Fund will have voting rights in the Mutual Company. To the extent that the Mutual Company could be deemed to be controlled by, or under common control with, the Participating Funds or the Adviser and thus an affiliated person of the Registered Funds, applicants believe that the insurance coverage could be deemed to be controlled by, or under common control with, the Participating Funds or the Adviser and thus an affiliated person of the Registered Funds, applicants believe that the insurance coverage could be deemed "property" subject to the prohibition of section 17(a)(1) against an affiliate of a Registered Fund selling property to the Fund. In addition, applicants state that FMR's commitment to the Mutual Company could be viewed as a sale of property to the Registered Funds (as the indirect beneficiaries of the commitment and payers of the fee) by an affiliated person of the Registered Funds under section 17(a)(1). Further, applicants state that FMR's contribution of cash to the Mutual company in exchange for the FMR Note could be considered the sale of a security for property by the Mutual Company, a company controlled by the Registered Funds, to FMR under section 17(a)(2). Applicants request exemptions from the provisions of sections 17(a) (1) and (2) to permit these transactions.

3. Section 17(b) of the Act permits the SEC to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned. For the reasons stated below, applicants believe that the terms of the transactions meet the standards of sections 6(c) and 17(b).

4. Applicants state that the insurance coverage will provide the Participating Funds and their shareholders with a means of reducing their risk of loss from defaulting Insurable Assets and repo- and preference-related Loss Events and, in some cases, protection against their net asset value per share dropping below $1.00. Applicants believe that the proposed transactions do not involve overarching because the coverage could not be obtained from an unaffiliated third-party issuer at a comparable price. In addition, applicants state that the proposed arrangement is consistent with the policies of each Participating Fund.

C. Sections 17(a)(3) and 21(b)

1. Section 17(a)(3) of the Act generally prohibits an affiliated person or an affiliated person of an affiliated person of a registered investment company from borrowing money or other property from the company or from any company controlled by the registered company except in certain circumstances not relevant here. Section 21(b) makes it unlawful for any registered investment company to lend money or property to any person, directly or indirectly, if the person controls or is under common control with the registered company.

2. Applicants seek relief from section 17(a)(3) and from section 21(b) to the extent that the Fund Notes, if drawn upon by the Mutual Company, could be deemed the borrowing of money or property from the Registered Funds by an affiliated person. Applicants state that sections 17(a)(3) and 21(b) were intended to prevent a party with strong potential adverse interests and influence over the investment decisions of a registered investment company from causing or inducing the investment company to engage in lending transactions that are detrimental to the best interests of the investment company and its shareholders. Applicants believe that the Fund Notes do not raise these concerns because: (a) The amount of each Fund's Fund Note will be determined on a *pro rata* basis in the same proportion as the Fund's then current *pro rata* share of its regular premium payment, (b) all Fund Notes will have the same terms, which will be fair and reasonable to each Fund, and (c) any interest received by the Funds on the Fund Notes will be determined according to a market rate.

D. Section 17(d) and Rule 17d–1

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company or an affiliated person of an affiliated person, acting as principal, from participating in any joint arrangement in which the investment company participates unless the arrangement has been approved by the SEC. Applicants believe that the involvement of FMR and the Participating Funds in the Mutual Company could be deemed to constitute participation in a joint arrangement because of: (a) The payment of premiums by the Funds to the Mutual Company for insurance coverage and the rights of the Funds to certain payments from the Mutual Company in connection with a Loss Event, (b) the assessable feature of the Policies, (c) the receipt by FMR from the Mutual Company of interest on the FMR Note and an annual fee for its commitment, and (d) FMR's contribution of cash to the Mutual Company in exchange for the FMR Note.

2. Rule 17d–1(b) provides that, in determining whether to approve a transaction, the SEC is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment companies is on a basis different from or less advantageous than that of the other participants. For the reasons stated below, applicants believe that the requested relief meets these standards.

3. Applicants state that the Registered Funds will not participate in the arrangement on a basis that is different from or less advantageous than other Participating Funds because each Fund's premium will be allocated in accordance with the risk characteristics of the different types of Insurable Assets in which the Funds invest based upon actuarial standards. Applicants state that each Participating Fund's assessable portion will be on a *pro rata* basis according to its share of the regular premium payments. Applicants also state that, in the case of multiple loss events in a single year, the Mutual Company will make payments chronologically based on the date on which a Loss Event occurs up to the annual Policy limit. Applicants note that, while a Registered Fund may not recover on a loss in a particular year, all Registered Funds will be treated in the same manner.

4. Applicants state that the Mutual Company is intended to provide substantial benefits to the Participating Funds, including protection against losses incurred from defaulting Insurable Assets and from repo- and preference-related Loss Events. Further, applicants note that the interest received by FMR on the FMR note and the fee it will receive for its commitment to cover losses of the Mutual Company will be determined according to a market rate. Applicants state that the fees will compensate FMR for assuming significant economic risks and that FMR will receive no other direct benefits from its involvement with the Mutual Company.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. The Trustees, including a majority of the Trustees who are not "interested persons" of any Registered or Unregistered Fund, as defined in section

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2(a)(19) of the Act ("Disinterested Trustees"), will initially and at least annually thereafter, in each year a Registered Fund participates in the insurance arrangement, determine (a) that the Policy is in the best interests of the Registered Fund and its shareholders, (b) that any amounts paid or potentially payable to the Mutual Company by the Registered Fund including, without limitation, the premiums, the special assessable premium, and the Fund Notes, are fair and reasonable to the Registered Fund, (c) after reviewing all claims paid or denied by the Mutual Company, that the settlement of all claims has been reasonable and fair to the Registered Fund, and (d) that any procedures adopted pursuant to condition 3 have been complied with.

2. Any conflicts that may arise concerning the Participating Funds relating to the operation or policies of the Mutual Company will be resolved on an equitable basis by a committee of the Disinterested Trustees of the Registered Funds.

3. The Trustees of each Registered Fund, including a majority of the Disinterested Trustees, will adopt procedures that are reasonably designed to provide that the conditions in the application have been complied with. The procedures will include, without limitation, the guidelines set forth in the Statement of Policy Regarding Coverage, attached as Exhibit D to the application, as it may be amended from time to time.

4. Participation by a Registered Fund in the Mutual Company will be consistent with the policy of the Fund, as recited in its registration statement and reports filed under the Act.

5. The nature and extent of the insurance coverage will be briefly described in each Registered Fund's current registration statement and, if required by GAAP, in each Registered Fund's financial statements. Other than this disclosure, the insurance coverage provided by the Mutual Company will not be used in connection with the marketing of the sales of shares of the Registered Funds.

6. Each Registered Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition (3) and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any Fund participated in the Mutual Company, the first two years in an easily accessible place, a written record relating to the premiums paid and any claims made by the Fund and any action taken by the Mutual Company with respect to the claim, and the information or materials upon which the determinations described in condition (1) were made. The Mutual Company will make its records available to the Trustees and the staff of the SEC upon request.

7. The Mutual Company will pay FMR for its commitment to cover losses at a rate not to exceed the lowest rate FMR would then be paying a bank for a letter of credit in a comparable amount.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–1854 Filed 1–26–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39556; File No. SR–CBOE–97–65]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Placing of Orders Over the Outside Telephone Lines at the Equity Trading Posts

January 16, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 11, 1997, the Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Chicago Board Options Exchange, Inc. ("CBOE or the "Exchange") proposes to amend its policy [1] governing the use of member-owned or Exchange-owned telephones located at the equity trading post on the floor of the Exchange.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

[1] The two regulatory circulars that govern the use of telephones at the equity trading posts were approved by the Commission on October 28, 1996 [(*see* SR–CBOE–96–15, Securities Exchange Act Release No. 37876 (October 28, 1996), 61 FR 56728 (November 4, 1996)] and on March 2, 1994 [*See* SR–CBOE–93–24, Securities Exchange Act Release No. 33701 (March 2, 1994)].

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

The purpose of the proposed rule change is to amend the policy currently governing the use of telephones at equity option trading posts. The proposed amendment would permit floor brokers at these posts to receive orders, over telephones located at the equity option posts, when (i) those calls are patched through a booth on the floor as further described below and (ii) the order is from U.S. registered broker-dealers. The revised policy will be issued in a regulatory circular. In addition, the Exchange has filed as Exhibit B to the filing a proposed form of application and agreement to be used by members seeking approval to use the telephones at the equity option posts.

Orders Entered by Broker-Dealers

The proposed change is the latest in a continual expansion of direct telephone access of orders to the equity option trading posts since a telephone policy was first filed with the Commission in 1993, *see* SR–CBOE–93–24. The regulatory circular that was the subject of that original filing prohibited any orders from being transmitted over the outside telephone lines at the equity option posts. (At that time and today, orders could and can be transmitted over the intra-floor lines from one point on the Exchange floor to another.) In 1996, the Exchange liberalized its telephone policy in the equity crowds to allow market-makers to place orders over the outside telephone lines directly with floor brokers at the equity option posts.[2] This change allowed market-makers who need to be off the floor to transmit their orders more efficiently.

The current proposed change would expand the ability to transmit orders entered by broker-dealers over

[2] *See* SR–CBOE–96–15, approved in Securities Exchange Act Release No. 37876 (October 28, 1996), 61 FR 56728 (November 4, 1996).

telephones located at the equity option posts [3] where an order is transmitted over the telephones on a three way call involving the following persons at the following locations: (1) a representative of a member broker-dealer or its correspondent firm from a location from off of the Exchange trading floor, (2) a CBOE broker or an associated person of such broker including a Designated Primary Market-Maker ("DPM") acting in his capacity as a floor broker, at a booth on the floor of the Exchange, and (3) CBOE floor broker (including a DPM) or other person authorized to receive an order at an equity trading post on the floor of the Exchange.

In determining to limit the transmittal of orders in this proposal to orders from member broker-dealers and their correspondent firms, the Exchange has adopted the Equity Floor Procedure Committee's recommendation.[4] It is the judgment of this Committee which oversees trading at the equity option posts that it would be best to continue to expand telephone access to the equity option posts on an incremental basis. Because of concerns with the potential for error (and thus liability) in accepting orders from a wide range of customers, the Equity Floor Procedure Committee determined to limit access to this class of broker-dealers only. The requirement that the call must involve a person at a booth on the floor of the Exchange will help to ensure that there is a further record of the order in the event that a dispute arises later in connection with the order. The Equity Floor Procedure Committee and the Exchange will monitor the policy and determine whether a future expansion in line with the OEX model is appropriate. As with the use of telephones at the OEX trading post, the Exchange intends to police compliance with the conditions applicable to the use of telephones at the equity trading posts by means of customary floor surveillance procedures, including reliance on surveillance by Floor Officials and Exchange employees. Floor brokers accepting orders in this manner would not be required to be qualified pursuant to Exchange Rule 9.1 as with brokers accepting orders of public customers over OEX post telephones because the qualification requirements do not apply to the acceptance of orders from registered broker-dealers. However, the Department of Compliance will be required to review and approve all applications to ensure that the applicant is not intending to transact business which the applicant is not authorized to transact.

Application and Agreement

In order to implement the change in the policy, the Exchange is also seeking approval of a proposed form of application and agreement that members will be required to submit to be approved to use the telephones at the equity option posts pursuant to the revised policy. This application and agreement is nearly identical to the application and agreement used for OEX post telephones which was approved by the Commission, except to the extent that the agreement sets forth terms of the equity telephone policy that are different from the terms of the OEX telephone policy. The Exchange has determined to file the application and agreement for approval because it contains some provisions that have not otherwise been approved specifically for use of telephones at the equity option posts. Among the provisions in the application and agreement are paragraph G and H which deal with liability issues. Paragraph G states that the Exchange shall not be liable to members of their customers for losses resulting from the installation, operation, relocation, use of, or inability to use telephones or telephone lines at an equity option post. Paragraph H requires the member to indemnify the Exchange against any liabilities arising out of equity post telephones or lines.

The application and agreement will require an applicant to receive approval of the Department of Compliance as well as the Equity Floor Procedure Committee, as indicated on the form, before the Telecommunications Department may authorize a line or telephone to be installed. Before approving a telephone request, the Department of Compliance will review the application and contact the applicant if any questions are raised about the intended use of the telephone line.

Upon approval of the proposed rule changes, the Exchange will issue a regulatory circular substantially the same as Exhibit A to the submitted filing. The Exchange will implement these changes within sixty days of the approval of the changes.

The proposed rules are consistent with and further the objectives of Section 6(b)(5) of the Securities Exchange Act of 1934 in that they are designed to improve communications to and from the Exchange's trading floor in a manner that promotes just and equitable principles of trade, prevents fraudulent and manipulative acts and practices, and maintains fair and orderly markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W.,

[3] Equity option posts includes trading stations of both market-makers and Designated Primary Market-Makers where equity options are traded and any other trading stations over which the Equity Floor Procedure Committee has jurisdiction. Persons transacting business in broad-based index options traded at the same posts as equity options will not be subjected to the restrictions of this policy as long as the telephone lines are not used in contravention of this policy in conducting business related to equity options. The EFPC will determine whether a particular narrow-based index option is subject to this policy.

[4] It should be noted that the Exchange filed (*see* SR–CBOE–95–49) and the Commission approved (Securities Exchange Act Release No. 37487 (July 26, 1996)) a more liberal policy concerning the transmittal or orders over outside telephone lines at the trading post for Standard & Poor's 100 Stock Index options ("OEX"). That policy permits orders to be transmitted from any source provided the broker accepting the order is properly qualified under Exchange rules to accept the order and provided the broker has received approval from the Exchange to accept such orders over the telephone. The Exchange generally has deferred to the judgment of the various Floor Procedure Committees in determining to what extent they want to allow telephone access directly into the trading posts over which they have purview. The Equity Floor Procedure Committee recommended taking a more limited approach than the OEX Floor Procedure Committee but, after gaining experience with this expansion, they may decide to offer access to the same extent as the OEX Floor Procedure Committee.

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Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the file number in the caption above and should be submitted by February 17, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–1855 Filed 1–26–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39557; File No. SR–CHX–97–33]

Self-Regulatory Organizations; Chicago Stock Exchange; Notice of Filing of and Immediate Effectiveness of Proposed Rule Change Regarding Regulatory Cooperation

January 16, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 11, 1997, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of The Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article VIII, Rule 11 of its Rules to clarify the existing Rule and to require regulatory cooperation by members, member organizations, and others over whom the Exchange has jurisdiction in connection with certain investigations and proceedings that are initiated by other exchanges or self-regulatory organizations.

II. Self-Regulatory Organization's Statement of The Purpose of, and Statutory Basis For, The Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Article VIII, Rule 11 requires members (and certain others) to submit books and papers, furnish information, and appear and provide testimony to the Exchange's Board and other committees or officers of the Exchange, among other things. While the Exchange believes that the current rule provides adequate authority to require members (and others specified in the rule) to provide information to other regulatory organizations, the Exchange believes that clarifying this provision to expressly provide for such information is desirable, especially because other self-regulatory organizations have recently amended their rules to clarify their information-sharing authority.

The proposed rule change would expressly provide that no member, member organization, or partner, officer, director or other person associated with a member or other person or entity subject to the jurisdiction of the Exchange shall refuse to appear and testify before another exchange or self-regulatory organization in connection with a regulatory investigation, examination or disciplinary proceeding, or refuse to furnish documentary materials or other information, or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange requests such information or testimony in connection with an inquiry resulting from an agreement entered into by the Exchange with other exchanges or self-regulatory organizations with whom the Exchange has entered into agreements for the sharing of information and other forms of mutual assistance, including but not limited to members and affiliate members of the Intermarket Surveillance Group.[1] The proposed rule change would explicitly provide that the Exchange may enter into agreements with domestic and foreign self-regulatory organizations providing for the exchange of information and other forms of mutual assistance for market surveillance, investigative, enforcement and regulatory purposes. The requirements of the proposed rule would apply regardless of whether the Exchange had itself initiated a formal investigation or disciplinary proceeding.

The proposed rule change would also provide that any person or entity required to furnish information or testimony pursuant to the new rule must be afforded the same rights and procedural protections as that person or entity would have if the Exchange had initiated the request for information or testimony.

While the Exchange believes that the current rule provides adequate authority to require members and specified others to provide testimony, documentary materials or other information to the Exchange's Board or to the Exchange (or any committee, subcommittee or officer thereof) and refrain from impeding or delaying any examination, inquiry, or investigation (whether formal or informal) the Exchange believes that changes are desirable to conform this text to the new provisions added above. Specifically, the proposed rule change would provide that no member, member organization, or partner, officer, director or other person associated with a member or other person or entity subject to the jurisdiction of the Exchange shall impede or delay an Exchange examination, inquiry or investigation (whether formal or informal) with respect to possible violations within the disciplinary jurisdiction of the Exchange or with respect to possible limitations on access to Exchange services or otherwise with respect to the discharge of its duties nor refuse to furnish testimony, documentary materials or other information requested by the Board of Governors or by the Exchange (or by any committee, subcommittee, or officer thereof) during the course of such examination, inquiry or investigation or otherwise in furtherance of the discharge of its or his duties. Failure to furnish such testimony, documentary materials or other information requested pursuant to the proposed rule on the date or within the time period requested would be considered obstruction of an Exchange inquiry or investigation and would not be subject to formal disciplinary action.

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons regulating securities transactions, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from December 11, 1997, the date of which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of this Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–97–33 and should be submitted by February 17, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–1856 Filed 1–26–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39561; File No. SR–DTC–97–17]

Self-Regulatory Organizations; the Depository Trust Company; Notice of a Proposed Rule Change Relating to a Modification of the Coupon Collection Service

January 20, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 7, 1997. The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on December 22, 1997, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will expand DTC's coupon collection service ("CCS") to include the collection of interest relating to coupons from corporate bearer bonds.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CCS currently provides DTC participants with a method for the collection of interest relating to coupons from municipal bearer bonds.[3] Participants using CCS are required to deposit coupons in a standard sealed envelop or "shell," each of which may contain no more than 200 coupons for the same CUSIP number, series, and payable date. DTC submits the contents of the shells to the appropriate issuer or paying agent and then credits the interest to the participant's account.

Under the proposed rule change, CCS will be modified to process corporate bearer bonds in addition to municipal bearer bonds. With certain exceptions, DTC will handle shells containing corporate bearer bonds in the same manner in which it currently handles municipal bearer bonds.

First, DTC will contact the corporate paying agent before submitting the coupons for payment to determine whether the coupon proceeds are payable in U.S. dollars. To be eligible for CCS, corporate bearer bonds must be payable in either U.S. dollars or Canadian funds. Where the corporate bearer bonds are payable in Canadian funds, DTC will request the paying agent to convert the funds to U.S. dollars in accordance with the

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[5] 17 CFR 200.30–3(a)(12).

[1] The Intermarket Surveillance Group ("ISG") is an organization of securities industry self-regulatory organizations formed in 1983 to coordinate and develop intermarket surveillance programs designed to identify and combat fraudulent and manipulative acts and practices. In order to promote its purposes, members agree to exchange such information as is necessary for ISG members to perform their self-regulatory and market surveillance functions.

[1] 15 U.S.C. 78s(b)(1).

[2] The commission has modified the text of the summaries prepared by DTC.

[3] For a complete description of CCS, refer to Securities Exchange Act Release No. 35750 (January 22, 1996), 61 FR 2852 [File No. SR–DTC–95–18] (order approving proposed rule change).

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prevailing exchange rate. DTC will not process corporate bearer bonds through CCS unless the paying agent is able to convert the funds to U.S. dollars.

Second, DTC will suppress for corporate bearer coupons the automatic payment function that it applies to municipal bearer coupons. Under the current operation of CCS, DTC credits participants' accounts on the payable date of the municipal bearer coupons regardless of whether it has received the money. With corporate bearer bonds, DTC will need to receive the interest payment before paying the participant in order to avoid having to adjust participants' accounts due to fluctuations in exchange rates. DTC has informed the Commission that due to the additional processing and tracking of corporate bearer coupon deposits, a surcharge will be added in the future for the handling of these deposits.

DTC will require that each shell contain the following information on its face:

1. CUSIP number;
2. description of issue including purpose, series, date of issue, and maturity date;
3. payable date;
4. quantity of coupons enclosed;
5. dollar value of individual coupons;
6. total shell value unless payable in Canadian dollars;
7. participant number; and
8. contact number and telephone number of the depositing participant.

The shells will need to be accompanied by one completed deposit ticket for up to twenty-five shells which provides the following information:

1. participant number;
2. shell quantity;
3. total dollar value;
4. CUSIP number per shell;
5. coupon quantity per shell;
6. dollar value per shell unless payable in Canadian dollars; and
7. whether the coupons are future-due or past-due.

DTC will verify the number of shells listed on the deposit ticket and give the participant a time-stamped copy of the ticket. If the number of shells listed on the deposit ticket does not agree with the physical number of shells, the entire deposit will be rejected and sent back to the participant.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder because it promotes efficiencies in the clearance and settlement of securities transactions.

[4] 15 U.S.C. 78q–1.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, in the public interest, and for the protection of investors.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments from DTC participants and others have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–97–17 and should be submitted by February 17, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–1857 Filed 1–26–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39562; File No. SR–NASD–97–78]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Amended Interpretation of IM–8310–2 Concerning the Release of Additional Disciplinary Information

January 20, 1998.

I. Introduction

On October 17, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change which amended the Interpretation on the Release of Disciplinary Information, IM–8310–2 of Rule 8310 of the Procedural Rules of the NASD ("Interpretation" or "IM–8310–2"). A notice of the proposed rule change was published in the **Federal Register** on November 21, 1997.[3] The Commission has received no comment letters on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

In its notice, filed on October 17, 1997, the NASD Regulation, Inc. ("NASDR") proposed to amend IM–8310–2 to include the phrase "electronic inquiry" in the rule language so that it could respond to electronic inquiries, as well as written or telephonic inquiries. In the notice, the NASDR also proposed to amend the rule language to include the additional information required to be reported on the amended Forms U–4, U–5, and BD.

In November 1997, the NASDR requested that the Commission approve, on an accelerated basis, that portion of the amended rule language that would allow it to respond to electronic

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Rel. No. 39322 (Nov. 13, 1997), 62 FR 62391.

inquiries.[4] Hence, the Commission partially approved, on an accelerated basis, that portion of the NASDR's request which gives the NASD the option of responding to the electronic inquiries of persons or entities requesting employment and disciplinary history of its members and their associated persons.[5] This order approves the amended rule language that addresses the release of additional disciplinary history required to be disclosed pursuant to amended Forms U–4, U–5, and BD.

II. Description of Proposal

Under the NASD's Public Disclosure Program ("PDP"),[6] the NASD, in response to a written inquiry, electronic inquiry,[7] or telephonic inquiry via a toll-free telephone listing, releases certain information contained in the Central Registration Depository ("CRD") regarding the employment and disciplinary history of its members and their associated persons, including information regarding past and present employment history with Association members; all final disciplinary actions taken by federal, state, or foreign securities agencies or self-regulatory organizations that relate to securities or commodities transactions; all pending disciplinary actions that have been taken by federal or state securities agencies or self-regulatory organizations that relate to securities and commodities transactions and are required to be reported on Form BD or Form U–4; all foreign government or self-regulatory organization disciplinary actions that relate to securities or commodities transactions and are required to be reported on Form BD or Form U–4; and all criminal indictments, informations or convictions that are required to be reported on Form BD or Form U–4. The Association also releases information concerning civil judgments and arbitration decisions in securities and commodities disputes involving public customers.

On November 25, 1996, as part of its PDP, the NASD filed a proposed rule change, SR–NASD–96–38, designed to permit the NASD to release additional information regarding the disciplinary history of its members and persons associated with a member.[8] In January 1997, NASDR's senior management determined that the CRD redesign should be reassessed in light of changing business needs and rapidly advancing computer technology. After negotiations and discussions among the Commission, the NASD, and the North American Securities Administrators Association, Inc. ("NASAA") concerning CRD development and implementation, SR–NASD–96–38 was withdrawn and replaced by this filing, SR–NASD–97–78.

This filing proposes the same substantive disclosure as SR–NASD–96–38. Specifically, the proposed rule change allows the NASD to release all information on any question on page 3 (Question 22) of the amended Form U–4 and Question 11 of the amended Form BD, as approved by the Commission in July 1996.[9] The additional information that the NASD proposes to disclose includes:

1. All pending arbitrations and civil proceedings that relate to securities or commodities transactions;
2. Pending written customer complaints alleging sales practice violations and compensatory damages of $5,000 or more;
3. Settlement's of $10,000 or more of arbitrations, civil suits, and customer complaints involving securities or commodities transactions:
4. Current investigations involving criminal or regulatory matters;
5. Terminations of employment after allegations involving violation of investment-related statutes or rules, fraud, theft, or failure to supervise investment-related activities;
6. Bankruptcies less than 10 years old and outstanding liens or judgments;
7. Bonding company denials, pay outs, or revocations; and
8. Any suspension or revocation to act as an attorney, accountant, or federal contractor.

To accomplish the release of this additional information, however, the NASD has reformatted the questions set forth on page 3 of amended Form U–4; questions 13 through 16 on amended Form U–5; and the Disclosure Reporting Pages ("DRPs") for both forms in a manner that is compatible with its current CRD technology protocol. The reformatted, interim forms and DRPs contain no substantive changes to any of the questions.

The NASD proposes to make the interim forms and the disclosure of the additional information set forth in this rule filing effective on February 17, 1998.[10] This effective date will permit members and the NASD to complete annual registration renewals and permit the NASD to train members on the use of the interim forms before they are implemented. The information that would be released from January 1[11] to February 17, 1998, would include only that information that currently is required to be reported on the Forms U–4 and U–5.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act[12] and the rules and regulations promulgated thereunder applicable to the NASD. Specifically, the Commission believes that approval of the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) provides in relevant part that the rules of the Association be designed to foster cooperation and coordination with persons engaged in regulating and processing information with respect to securities and not to permit unfair discrimination among customers, issuers, brokers or dealers.

Pursuant to Section 15A(b)(6), the proposed rule change benefits the public because, by releasing this additional disciplinary information, the

[4] Telephone conversation with Alden S. Adkins, General Counsel and Mary M. Dunbar, Assistant General Counsel, NASDR, and Belinda Blaine, Associate Director, Katherine A. England, Assistant Director, and Mignon McLemore, Staff Attorney, Division of Market Regulation, November 26, 1997.

[5] *See* Securities Exchange Act Rel. No. 39442 (December 11, 1997), 62 FR 66706 (December 19, 1997).

[6] *See* Securities Exchange Act Rel. No. 30629 (April 23, 1992), 57 FR 18535 (April 30, 1992); and Securities Exchange Act Rel. No. 32568 (July 1, 1993), 58 FR 36723 (July 8, 1993).

[7] *See supra* note 5.

[8] The NASD proposal to release additional disciplinary history of its members and associated persons was initially filed with the Commission on November 26, 1996. *See* Securities Exchange Act Rel. No. 37994 (November 27, 1996), 61 FR 64549 (December 5, 1996) (SR–NASD–96–38).

[9] *See* Securities Exchange Act Rel. No. 37407 (July 5, 1996), 61 FR 36595 (July 11, 1996); and Securities Exchange Act Rel. No. 37431 (July 12, 1996), 61 FR 37357 (July 18, 1996); *See also* Securities Exchange Act Rel. No. 37632 (September 4, 1996), 61 FR 47412 (September 9, 1996).

[10] *See supra* note 3, at p. 62391. *See also* letter from Joan Conley, Secretary, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated November 13, 1997, (correcting Amendment No. 2 to reflect this effective date).

[11] Upon approval of the electronic inquiry portion of its proposal, the NASD had planned to begin responding to electronic inquiries for PDP information, via the Internet, on or about January 1, 1998. *See supra* note 3 at p. 62391. However, hardware problems and system capacity have hampered implementation. Telephone conversation between Alden S. Adkins, General Counsel, NASDR, and Katherine A. England, Assistant Director, Division of Market Regulation, SEC, December 29, 1997.

[12] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. The release of additional disciplinary history of the NASD's members and associated persons should result in competition for brokerage business among those broker-dealers with impeccable disciplinary histories. Efficiency should improve in the marketplace as members and their associated persons become more conscious of compliance and the potential ramifications of this increased disclosure. 15 U.S.C. 78c(f).

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NASD is providing investors with a resource to aid them in choosing a broker-dealer for their investment needs. Moreover, increasing disclosure of members' and their associated persons' relevant disciplinary history could help investors determine whether to conduct or continue to conduct business with a particular broker-dealer or associated person. The Commission notes that disclosure of this additional information may serve as a deterrent to fraudulent activity as well.

According to the NASD, the Forms U–4 and U–5 had to be redesigned to facilitate compliance with this disclosure requirement at this time. Thus, the forms were redesigned to be compatible with the current CRD protocol (*i.e.*, the answers on the interim forms now match the location of questions in the CRD system). Upon completion of the CRD redesign, the forms as originally designed will be implemented. The Commission, therefore, approves the use of these interim forms, recognizing their necessity in disseminating this additional disciplinary history to the public.

For the above reasons, the Commission believes that the proposed rule change is consistent with the provisions of the Act, and in particular, with Section 15A(b)(6).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the remaining portion of proposed rule change, SR–NASD–97–78, concerning the release of additional disciplinary information be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–1853 Filed 1–26–98; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Technical Management Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the RTCA Technical Management Committee meeting to be held February 19, 1998, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Chairman's Remarks; (2) Review and Approval of Summary of the Previous Meeting; (3) Consider and Approve: a. Proposed Final Draft, Minimum Aviation System Performance Standards for Automatic Dependent Surveillance Broadcast (ADS–B), RTCA Paper No. 007–98/TMC–308, Prepared by Special Committee (SC)–186; b. Proposed Final Draft, Guidance for Initial Implementation of Cockpit Display of Traffic Information, RTCA Paper No. 384–97/TMC–305, Prepared by SC–186; c. Proposed Change 2 to DO–229, Minimum Operational Performance Standards for Global Positioning System/Wide Area Augmentation System Airborne Equipment, RTCA Paper No. 381–97/SC159–773, Prepared by SC–159; (4) Discuss/Take Position on: a. Proposed Revision to the Terms of Reference for SC–190, RTCA Paper No. 279–97/SC190–021; b. Discussion on the Work Plan for SC–191, Collaborative Decisionmaking; c. Committee Chairman's Progress Report for SC–182, Avionics Computer Resource; d. Committee Milestones, RTCA Paper No. 006–98/TMC–307; e. Status of SC–169, Data Link; f. Proposal for Terrain Data Base Special Committee; g. Proposal for SC–181, Navigation Standards, to Develop a MOPS for Navigation Data Information on a Moving Map; h. Proposed Revision to the Terms of Reference for SC–147; (5) Other Business; (6) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036: (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www/rtca/org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 16, 1998.

Janice L. Peters,

Designated Official.

[FR Doc. 98–1924 Filed 1–26–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33539]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Southern Pacific Transportation Company

Southern Pacific Transportation Company (SPT) has agreed to grant overhead trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) over SPT's line between Caldwell, TX, in the vicinity of SPT's Ennis Subdivision milepost 30.8, and Placedo, TX, in the vicinity of SPT's Victoria Subdivision milepost 14.2, a distance of approximately 152.7 miles.[1]

The transaction was scheduled to be consummated on January 19, 1998. The purpose of the trackage rights is improve the operating efficiencies of SPT and BNSF.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33539, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Michael E. Roper, Esq., The Burlington Northern and Santa Fe Railway Company, 3017 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX 76161–0039.

Decided: January 20, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–1910 Filed 1–26–98; 8:45 am]

BILLING CODE 4915–00–P

[1] The trackage rights are limited to southbound movements and are provided solely to facilitate directional operations between Houston, TX, and Placedo. In addition, the trackage rights will continue only so long as SPT continues to operate directionally between Houston and Placedo.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33537]

GRC Holdings Corporation—Acquisition Exemption—Union Pacific Railroad Company

GRC Holdings Corporation (GRCH), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Union Pacific Railroad Company (UP) a 244.5-mile line of railroad between Vigus, MO (milepost 19.0), and Pleasant Hill, MO (milepost 263.5). GRCH intends immediately to convey to Missouri Central Railroad Company (MCRR) the assets necessary to conduct railroad operations over the line.

The earliest date possible for consummation of the transaction is March 17, 1998, 60 days after GRCH certified that it posted the required notice at the affected employees' workplace and served notice of the transaction, as required, on the national offices of the labor unions with employees on the affected line.

This transaction is related to STB Finance Docket No. 33508, *Missouri Central Railroad Company—Acquisition and Operation Exemption—Lines of Union Pacific Railroad Company*, wherein MCRR has filed a verified notice of exemption to acquire: (1) the above-noted railroad assets from GRCH, and (2) specified incidental trackage rights directly from UP.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*.[1] A petition to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33537, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on David C. Reeves, 1300 I Street, N.W., Suite 500 East, Washington, DC 20005–3314.[2]

Decided: January 20, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–1911 Filed 1–26–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33508]

Missouri Central Railroad Company—Acquisition and Operation Exemption—Lines of Union Pacific Railroad Company

Missouri Central Railroad Company (MCRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from GRC Holdings Corporation (GRCH) and to operate a 244.5-mile line of railroad currently owned by Union Pacific Railroad Company (UP) between Vigus, MO (milepost 19.0), and Pleasant Hill, MO (milepost 263.5). MCRR also is acquiring directly from UP incidental trackage rights over UP's lines of railroad between Vigus (milepost 19.0) and Rock Island Junction, MO (milepost 10.3), and between Pleasant Hill (milepost 263.5) and Leeds Junction, MO (milepost 288.3), a total distance of 33.5 miles.

The earliest date possible for consummation of the acquisition from GRCH is March 17, 1998, 60 days after GRC certified, in the related proceeding below, that it posted the required notice at the affected employees' workplace and served notice of the transaction, as required, on the national offices of the labor unions with employees on the affected line.

This transaction is related to STB Finance Docket No. 33537, *GRC Holdings Corporation—Acquisition Exemption—Union Pacific Railroad Company*, wherein GRCH has concurrently filed a verified notice of exemption to acquire the above-noted 244.5-mile line from UP.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*.[1] A petition to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33508, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on David C. Reeves, 1300 I Street, N.W., Suite 500 East, Washington, DC 20005–3314.[2]

Decided: January 20, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–1912 Filed 1–26–98; 8:45 am]

BILLING CODE 4915–00–P

[1] A petition to reject the notice has been filed. The Board will address that petition in a subsequent decision.

[2] There currently is a large service list in the related proceeding in STB Finance Docket No. 33508 because over 300 individuals representing themselves have filed letters opposing the transaction. In response to a request by joint petitioners, The Cities of Lee's Summit, MO, and Raytown, MO, and to relieve all parties of unnecessary burdens, the Board will place the individuals who reside in Lee's Summit or Raytown into "advise of all proceedings" status rather than "party of record" status. It will not be necessary to serve copies of pleadings on these individuals, but the Board will expect the joint petitioners to keep them fully informed so that they can participate in proceedings before the Board should they desire to do so.

DEPARTMENT OF THE TREASURY

[Treasury Directive 13–03]

Departmental Offices; Delegation of Authority Related to the United States Community Adjustment and Investment Program, and Designation of Representative on the Community Adjustment and Investment Program Finance Committee

January 21, 1998.

1. *Purpose.* This Directive makes certain delegations and a designation to the Assistant Secretary (Financial Markets) relating to the United States Community Adjustment and Investment Program (the CAI Program) in support of the North American Free Trade Agreement (the NAFTA).

2. *Background.* The North American Free Trade Agreement Implementation Act (Public Law 103–182, 107 Stat. 2057) (the Act) authorized the CAI Program in support of the NAFTA. Executive Order 12916, dated May 13, 1994 (the Executive Order), delegated to the Secretary of the Treasury certain functions given to the President under the Act relating to the CAI Program. The Executive Order also established an interagency Community Adjustment

[2] There currently is a large service list in this proceeding because over 300 individuals representing themselves have filed letters opposing the transaction. In response to a request by joint petitioners, The Cities of Lee's Summit, MO, and Raytown, MO, and to relieve all parties of unnecessary burdens, the Board will place the individuals who reside in Lee's Summit or Raytown into "advise of all proceedings" status rather than "party of record" status. It will not be necessary to serve copies of pleadings on these individuals, but the Board will expect the joint petitioners to keep them fully informed so that they can participate in proceedings before the Board should they desire to do so.

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and Investment Program Finance Committee (the Finance Committee) to implement the CAI Program. Treasury Order (TO) 100–13, "Delegation of Authority Related to the United States Community Adjustment and Investment Program in Support of NAFTA and Designation of Representative on the Community Adjustment and Investment Program Finance Committee," delegated to the Under Secretary for Domestic Finance, all of the Secretary's authorities under the Executive Order and designated the Under Secretary for Domestic Finance as the Department of the Treasury's representative on the Finance Committee.

3. *Delegation.* a. The duties, powers, rights, and obligations of the Secretary of the Treasury under the Executive Order, which are vested in the Under Secretary for Domestic Finance pursuant to TO 100–13, are hereby redelegated to the Assistant Secretary (Financial Markets).

OPI: U S (Domestic Finance)

b. The Department of the Treasury's representative on the Finance Committee established by the Executive Order, which is designated as the Under Secretary for Domestic Finance pursuant to TO 100–13, is hereby redesignated as the Assistant Secretary (Financial Markets).

4. *Redelegation.* The Assistant Secretary (Financial Markets) may redelegate in writing to an appropriate subordinate official the authorities granted under this Directive, and may redesignate in writing an appropriate subordinate official as the Department of the Treasury's representative on the Finance Committee.

5. *Authority.* TO 100–13, "Delegation of Authority Related to the United States Community Adjustment and Investment Program in Support of NAFTA and Designation of Representative on the Community Adjustment and Investment Program Finance Committee," dated August 17, 1995.

6. *Expiration Date.* This Directive shall expire three years from the date of issuance unless superseded or cancelled prior to that date.

7. *Office of Primary Interest.* Office of the Under Secretary for Domestic Finance.

John D. Hawke, Jr.,

Under Secretary for Domestic Finance.

[FR Doc. 98–1846 Filed 1–26–98; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 98–8

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 98–8, ligible Deferred Compensation Plans under Section 457.

DATES: Written comments should be received on or before March 30, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Eligible Deferred Compensation Plans under Section 457.

OMB Number: 1545–1580.

Notice Number: Notice 98–8.

Abstract: The Small Business Job Protection Act of 1996 and the Taxpayer Relief Act of 1997 made changes to rules under Internal Revenue Code section 457 regarding eligible deferred compensation plans offered by state and local governments. Notice 98–8 requires state and local governments to establish a written trust, custodial account, or annuity contract to hold the assets and income in trust for the exclusive benefit of its participants and beneficiaries. Also, new non-bank custodians must submit applications to the IRS to be approved to serve as custodians of section 457 plan assets.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 10,260.

Estimated Time Per Respondent: 1 hour, 2 minutes.

Estimated Total Annual Burden Hours: 10,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 15, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–1814 Filed 1–26–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–27–91]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–27–91 (TD 8442), Procedural Rules for Excise Taxes Currently Reportable on Form 720 (§§ 40.6302(c)–3(b)(2)(ii), 40.6302(c)–3(b)(2)(iii), and 40.6302(c)–3(e).

DATES: Written comments should be received on or before March 30, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Procedural Rules for Excise Taxes Currently Reportable on Form 720.

OMB Number: 1545–1296.

Regulation Project Number: PS–27–91.

Abstract: Internal Revenue Code section 6302(c) authorizes the use of Government depositaries for the receipt of taxes imposed under the internal revenue laws. These regulations provide reporting and recordkeeping requirements related to returns, payments, and deposits of tax for excise taxes currently reportable on Form 720.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Recordkeepers: 4,000.

Estimated Time Per Recordkeeper: 60 hours.

Estimated Total Annual Recordkeeping Hours: 240,000.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondents: 22 minutes.

Estimated Total Annual Reporting Hours: 1,850.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 15, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–1815 Filed 1–26–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–5: OTS No. 5194]

Heritage Federal Savings and Loan Association, Laurens, South Carolina; Approval of Conversion Application

Notice is hereby given that on January 16, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Heritage Federal Savings and Loan Association, Laurens, South Carolina, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, N.E., Atlanta, GA 30309.

Dated: January 22, 1998.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98–1896 Filed 1–26–98; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–3: OTS Nos. 03257 and H–2193]

Harbor Financial, M.H.C., Fort Pierce, Florida; Approval of Conversion Application

Notice is hereby given that on January 16, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Harbor Financial, M.H.C., Fort Pierce, Florida, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, N.E., Atlanta, GA 30309.

Dated: January 22, 1998.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98–1894 Filed 1–26–98; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–4: OTS Nos. 02497 and H–2024]

SouthBanc Shares, M.H.C., Anderson, South Carolina; Approval of Conversion Application

Notice is hereby given that on January 16, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of SouthBanc Shares, M.H.C., Anderson, South Caroiina, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Weshington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE, Atlanta, GA 30309.

Dated: January 22, 1998.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98–1895 Filed 1–26–98; 8:45 am]

BILLING CODE 6720–01–M

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federal register

Tuesday
January 27, 1998

Part II

Environmental Protection Agency

40 CFR Part 90
Phase 2 Emission Standards for New Nonroad Spark-Ignition Engines at or Below 19 Kilowatts; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 90

[FRL–5942–9]

RIN 2060–AE29

Phase 2 Emission Standards for New Nonroad Spark-Ignition Engines At or Below 19 Kilowatts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Today's action proposes a second phase of regulations to control emissions from new nonroad spark-ignition engines at or below 19 kilowatts (25 horsepower). These engines are used principally in lawn and garden equipment, both in nonhandheld applications such as lawnmowers, and also in handheld applications such as trimmers and chainsaws. The proposed standards are expected to result in a 30 percent reduction of emissions of hydrocarbons plus oxides of nitrogen from the current Phase 1 standards. If adopted, the standards would result in important reductions in emissions which contribute to excessively high ozone levels in many areas of the United States.

DATES: Written comments on this NPRM must be submitted on or before March 13, 1998. EPA will hold a public hearing on February 11, 1998 starting at 10:00; requests to present oral testimony must be received on or before February 6, 1998.

ADDRESSES: Written comments should be submitted (in duplicate if possible) to: EPA Air and Radiation Docket, Attention Docket No. A–96–55, Room M–1500 (mail code 6102), 401 M Street, SW, Washington, D.C. 20460. Materials relevant to this rulemaking are contained in this docket and may be viewed from 8:00 a.m. until 5:30 p.m. weekdays. The docket may also be reached by telephone at (202) 260–7548. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying. The public hearing will be held in Ann Arbor, MI at a location to be determined; call (313) 668–4278 for further information.

FOR FURTHER INFORMATION CONTACT: Robert Larson, Office of Mobile Sources, Engine Programs and Compliance Division, (313) 668–4278, larson.robert@epamail.epa.gov.

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I. Regulated Entities

Entities potentially regulated by this action are those that manufacture or introduce into commerce new small spark-ignition nonroad engines or equipment. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Manufacturers or importers of new nonroad small (at or below 19 kW) spark-ignition engines and equipment.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your company is regulated by this action, you should carefully examine the applicability criteria in § 90.1 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Legal Authority and Background

Authority for the actions set forth in this rule is granted to EPA by sections 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

In the summer of 1992, EPA initiated a convening process to determine the feasibility of a negotiated rulemaking for the development of the regulatory program for small nonroad spark-ignited (SI) engines at or below 19 kilowatts (hereafter referred to as "small SI engines"). An August 1992 report recommended an "Exploratory Meeting" which was held November 1992. Following meetings in January and June 1993, the group decided to pursue a regulatory negotiation process for the development of Phase 2 regulations for these engines, while EPA developed a first phase of controls for small SI engines through the traditional rulemaking process.

On July 3, 1995, EPA published the Phase 1 final rule, Emission Standards for New Nonroad Spark-ignition (SI) Engines At or Below 19 Kilowatts, hereafter referred to as the Phase 1 small SI engine regulations.[1] The Phase 1 small SI engine regulations established an effective date of model year 1997. Although the Phase 1 regulations were the first to establish nationwide new engine emission standards for this industry, the federal regulations were developed to harmonize with the Tier I[2] standards established by California's Air Resources Board.[3]

The engines covered by the existing Phase 1 rule include nonhandheld engines (Class I and II) used in applications such as lawnmowers, generator sets and riding mowers, and handheld engines, (Class III, IV and V), used in applications such as trimmers, edgers, brush cutters, leaf blowers, leaf vacuums, chain saws, augers and tillers. The proposed Phase 2 rules contained in today's notice would apply to the same types of engines and applications covered by Phase 1.

On September 30, 1993, the charter for the Small Nonroad Engine Negotiated Rulemaking Advisory Committee was filed with Congress. The purpose of the committee was to help EPA develop Phase 2 small SI engine regulations. The committee consisted of eleven members representing the range of stakeholders.[4] The committee adopted protocols and formed four task groups to examine key issues and bring recommendations to the full committee. The task groups included: Test Procedure; Technology; Certification; and Public Education and Market Incentives.

The committee and the task groups met numerous times between September 1993 and February 1996, with the final committee meeting on February 16, 1996, in Ann Arbor, Michigan. During the course of its work, the committee addressed many issues, including: applicability of the rule; engine/equipment classification; test procedures for engines; standards and standard structure; effective dates and lead time of the program; certification, enforcement and compliance strategies; in-use program; market-based incentive programs; public education programs; technologies; and dealer responsibility.

The committee developed data and draft language to address most of these issues, both through the work of the task groups and the work of the committee as a whole. However, the committee did not reach consensus on an agreement in principle or draft regulatory language during the course of the negotiations. While the committee did not achieve consensus, the regulatory negotiation process produced substantial useful information and provided EPA with input from numerous key stakeholders which has helped EPA develop the Phase 2 small SI engine regulatory program being proposed today.[5] In addition, during the meetings there was much useful discussion which has helped EPA understand the perspectives of the interests represented at the table.[6]

Following the final meeting of the regulatory negotiation committee in February 1996, EPA proceeded to develop the Phase 2 rule. EPA and other interested parties continued working to find areas of agreement on how certain aspects of a Phase 2 program would be addressed in the proposed rule. As these discussions proceeded, the involved parties worked together to develop written documents, Statements of Principles (SOPs), which have partly formed the basis of today's Phase 2 NPRM (see 62 FR 14740, March 27, 1997). A Statement of Principles (SOP) is a joint written statement by the U.S. EPA and supporting parties outlining a comprehensive plan for developing a proposed rulemaking. In this case, the two SOPs lay out the framework for a proposal for Phase 2 regulations covering small handheld and nonhandheld spark-ignited nonroad engines, respectively.

The "Handheld SOP", addressing issues affecting engines used in handheld equipment, was signed in May 1996 by EPA, the Auger and Power Equipment Manufacturers Association (APEMA), the North American Equipment Dealers Association (NAEDA), the Portable Power Equipment Manufacturers Association (PPEMA), the State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials (STAPPA/ALAPCO), and the Wisconsin Department of Natural Resources. The "Nonhandheld SOP", addressing issues affecting engines used in nonhandheld equipment, was signed in December 1996 by EPA, Briggs & Stratton Corporation, Kawasaki Motors Corporation, U.S.A., Kohler Company, Kubota, Mitsubishi Engine North America, Inc., Onan Corporation, Suzuki Motor Corporation, Tecumseh Products Company, The Toro Company,

[1] 60 FR 34582, July 3, 1995, codified at 40 CFR part 90. The docket for the Phase 1 small SI engine rulemaking, EPA Air Docket #A–93–25, is incorporated by reference.

[2] The California utility and lawn and garden equipment engine (utility engine) emission regulations are contained in Title 13, California Code of Regulations (CCR), Sections 2400–2407.

[3] Since the July 3, 1995 promulgation of the Phase 1 program, four changes have been made to Phase 1. First, provisions for allowing a streamlined certification process were promulgated May 8, 1996, 61 FR 20738. Second, revisions to the national security exemption provisions were promulgated October 4, 1996, 61 FR 52088. Third, revisions to the carbon monoxide (CO) emission standards for Class I and II engines, and provisions related to crankcase emissions, were promulgated, November 13, 1996, 61 FR 58296. Finally, provisions relating to replacement engines and 2-stroke engines in nonhandheld applications were published August 7, 1997, 62 FR 42637.

[4] The organizations participating in the regulatory negotiations as members of the Committee were: the American Lung Association (ALA); the Auger and Power Equipment Manufacturers Association (APEMA); the Engine Manufacturers Association (EMA); the Manufacturers of Emission Controls Association (MECA); the Natural Resources Defense Counsel (NRDC); the North American Equipment Dealers Association (NAEDA); the Outdoor Power Equipment Institute (OPEI); the Portable Power Equipment Manufacturers Association (PPEMA); the State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials (STAPPA/ALAPCO); the Wisconsin Department of Natural Resources; and U.S. EPA.

[5] EPA initially established EPA Air Docket A–93–29 for the Phase 2 rulemaking; this docket contains background materials on this Phase 2 rulemaking, as well as materials related to the Small Nonroad Engine Negotiated Rulemaking process. EPA Air Docket A–93–29 is hereby incorporated by reference.

[6] The final report by the facilitators to the regulatory negotiation process can be found in EPA Air Docket A–93–29, Item #II–A–10.

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and Wis-Con Total Power Corporation. While the two SOPs set out a framework for EPA's development of the proposed Phase 2 program, the Agency wishes to stress that they do not represent final decisions regarding Phase 2 or bind EPA as to how provisions in the final rule must be promulgated.

EPA published an Advanced Notice of Proposed Rulemaking (ANPRM) in March 1997 (see 62 FR 14740, March 27, 1997) which announced the signing of the two SOPs and requested comments on all aspects of the SOPs for purposes of developing today's proposal. EPA also specifically requested information on small business issues in the ANPRM. Significant comments received on the ANPRM are discussed in the context of the description of the program contained in today's proposal.

III. Overview of Proposed Provisions

EPA is proposing today a second phase of regulations for small SI engines 19 kW and below (hereafter referred to as small SI engines). Two principal goals of the proposed Phase 2 rule are to encourage a shift to cleaner engine technology, and to assure that the air quality benefits anticipated by the rule are achieved in actual use. To achieve these goals, the proposed Phase 2 program builds on the current Phase 1 program in two key ways. First, today's proposal includes more stringent standards for hydrocarbons (HC) plus oxides of nitrogen (NO_X) emissions, with a requirement that engines meet these emission standards through their useful lives.[7] Second, the proposal adds an in-use component to the Phase 1 compliance program to assure that the emission benefits are achieved in actual use.

As is clear from the analysis supporting this proposed rule (see Sections V, VI and VII, and draft Regulatory Support Document), further emission reductions from future model year small SI engines beyond those achieved through the Phase 1 program can be achieved in a cost-effective manner. Uncontrolled, small SI engines contribute approximately 3.4 percent of the national HC emission inventory, 9.3 percent of the mobile source HC emission inventory, and 34.4 percent of the nonroad mobile source HC emission inventory.

The Phase 1 small SI regulations are expected to reduce the HC emissions from these engines by 32 percent. However, even with Phase 1 controls in place, small SI engines continue to contribute significantly to the emission inventory that leads to ozone concentrations in nonattainment areas. After Phase 1, small SI engines contribute approximately 3.1 percent HC nationally, 8.4 percent of mobile source HC, and 31.6 percent of the nonroad mobile source HC inventory (note that these values do not reflect changes in inventories from other sectors).

In addition, further control of $HC+NO_X$ emissions from future model year small SI engines beyond Phase 1 levels, as proposed in today's notice for Phase 2 controls, is achievable through technology that will be available for the engines to which the standards would apply, considering cost, lead time noise, energy and safety factors. For nonhandheld engines, proposed Phase 2 emission levels are expected to be achieved through a combination of modifications to current engine technologies, and conversions to cleaner, more durable technology such as overhead valve engine technology. For handheld engines, proposed Phase 2 emission levels are expected to be achieved through improvements to current 2-stroke engine technologies (see discussion in Section IV.A of this preamble).

If the Phase 2 program is adopted as proposed, many elements of the existing Phase 1 program would remain essentially the same in the Phase 2 program. First, the types of engines covered by the proposed Phase 2 rule would remain essentially the same as those covered in the Phase 1 program (see discussion, Section IV.G). In addition, EPA would retain the five engine class categorization from Phase 1 for regulatory purposes as in Table 1 (see discussion, Section IV.G.3). Third, the Phase 1 criteria for determining whether an engine family would be allowed to certify to less stringent handheld standards would be retained (see Section IV.G.2).

TABLE 1.—SMALL SI ENGINE CLASSES

Nonhandheld		Handheld		
Class I	Class II	Class III	Class IV	Class V
<225 cc	≥225 cc	<20 cc	20 cc≤ and <50 cc	≥50 cc

In addition, other elements of the existing Phase 1 program that would remain essentially unchanged in this proposed Phase 2 program include: (1) Applicability of the rule and definitions (see 40 CFR Part 90, Subpart A), except as discussed in Section IV.G; (2) certification requirements (see 40 CFR Part 90, Subpart B), except for the proposed requirements to determine deterioration factors and to certify that engines meet the standards through their useful lives (see Section IV.D.1), and proposed flexibilities for small volume engine manufacturers (see Section IV.E); (3) provisions regarding test equipment and test procedures (see 40 CFR Part 90, Subparts D and E), except for minor changes addressed in Section IV.B; (4) provisions for selective enforcement audits (SEAs), (see 40 CFR Part 90, Subpart F), except that for the Phase 2 program SEA would exist primarily as a backstop to manufacturer-run production line testing program (see Section IV.D.2; and (5) provisions pertaining to importation of nonconforming engines, emission-related defect reporting requirements, voluntary emission recall program, exclusion and exemption of nonroad engines from regulations, prohibited acts and general enforcement provisions, and emission warranty and maintenance instructions (see 40 CFR Part 90, Subparts G, I, J, K, and L), except for provisions for ordered recall (see proposed § 90.808) and compliance flexibilities for small volume equipment manufacturers (see proposed § 90.1003). EPA solicits comment on the appropriateness of retaining these elements of the Phase 1 program in Phase 2.

Elements new to the regulatory requirements for small SI engines included in today's proposed Phase 2 program include: (1) proposed emission standard levels and useful life categories (see proposed amendments to Subpart B, and Section IV.A); (2) a certification averaging, banking and trading program for nonhandheld engines (see proposed Subpart C, and Section IV.A.5); (3) procedures for the determination of deterioration factors at the time of certification (see proposed amendments to Subpart B, and Section IV.D.1; (4) a manufacturer-run production line testing program, called CumSum (see proposed Subpart H, and Section IV.D.2); and (5) in-use testing programs for nonhandheld and handheld engines, with an in-use credit program for handheld engines (see proposed Subparts M and N, and Section IV.D.3).

In addition, this proposal contains a number of flexibilities to ease the transition to this more stringent Phase 2 program, some which would apply to all manufacturers, and others which would be targeted to ease the transition specifically for small production volume manufacturers (see discussion, Section IV.E). Finally, today's notice also describes EPA's intent to pursue a voluntary "green labeling" program and a voluntary fuel spillage reduction program for nonhandheld and handheld engines, and a particulate matter (PM) and hazardous air pollutant testing program for handheld engines (see Section IV.F).

The programs proposed today for nonhandheld and handheld engines are similar in many respects. They also have some important differences. The intertwining issues of more stringent standards and assurance of emission reductions in use can be addressed in a number of ways. The remainder of this section provides an overview of the Phase 2 program goals of encouraging a shift to cleaner technology and assuring that emission reductions are achieved in-use, and a description of the basic proposed programs for nonhandheld and handheld engines for achieving these goals.

A. More Stringent Standards and a Shift to Cleaner Technology

EPA is proposing today $HC+NO_X$ emission standards for nonhandheld and handheld engines that are expected to achieve important reductions of emissions that contribute to ozone nonattainment. The standards for Classes II–V would be fully phased-in by the 2005 model year, with Class I levels effective in the 2001 model year. Engines would be required to meet these levels throughout their useful lives. For nonhandheld engines, a certification averaging, banking and trading program is proposed as an integral part of feasibility of the proposed $HC+NO_X$ emission standards (see Section IV.A.5). A more complete discussion of the justification of the level of the standards and the technologies expected to meet these levels can be found in Section IV.A. This section contains a brief overview of the proposed nonhandheld engine emission standards, the proposed handheld emission standards, and the proposal for useful life categories for nonhandheld and handheld engines.

1. Nonhandheld Engine $HC+NO_X$ Emission Standards

The emission standards proposed today for nonhandheld engines, indicated in Table 2, represent an approximate 25 percent reduction in $HC+NO_X$ levels from Phase 1 levels. These standards are expected to be achieved in a cost-effective manner by modifications to current engine technologies and, especially in the case of Class II engines, by conversion of current side valve (SV) technology engines to cleaner, more durable technology, such as overhead valve (OHV) technology engines. For Class I, where engine sales are currently dominated by side-valve (SV) technology engines, the proposed levels are expected to result in cleaner and more emissions durable SV technology engines, but are not in themselves expected to result in conversion of SV engines to OHV or comparably clean and durable engine technology. These modifications to SV engines can be accommodated by 2001, the proposed effective date for the Phase 2 standard for Class I engines. For Class II engines, the proposed levels are expected to result in complete conversion to clean OHV or comparable technology. To allow this more significant design change, the proposed Phase II standards are gradually decreased from 2001 through 2005.

TABLE 2.—$HC+NO_X$ EMISSION STANDARDS FOR NONHANDHELD ENGINES IN GRAMS/KILOWATT-HOUR

[g/kW-hr][1]

Engine class	Model year 2001	Model year 2002	Model year 2003	Model year 2004	Model year 2005
Class I	25.0	25.0	25.0	25.0	25.0
Class II	18.0	16.6	15.0	13.6	[2]12.1

[1] Optional non-methane hydrocarbon (NMHC) plus NO_X emission standards for natural gas fueled engines only, and carbon monoxide (CO) emission standards, are also proposed in today's notice, and are discussed in Section IV.A.

[2] The 12.1 g/kW-hr Class II standard assumes a phase-in from 50 percent in model year 2001 to 100 percent in model year 2005 of OHV or comparably clean and durable technology.

A key aspect of the proposed Phase 2 program for nonhandheld engines is the belief that low emission standards for nonhandheld engines can be met through engine technology that can be low emitting both when the engine is new, and also when the engine has experienced hour accumulation to the engine's useful life. Therefore, these Phase 2 standards are based on useful life emission performance.

a. OHV and SV Engine Technologies. EPA believes that features inherent to the design of OHV technology engines are superior to those of SV engines and allow for lower new engine emissions as well as lower emission deterioration characteristics. In general, the combustion chamber and cylinder head design of OHV technology engines give these engines the potential to produce lower emissions both when new and also in-use. These engines have potential to exhibit lower emissions when new due to location of the combustion chamber directly over the piston, rather than partly to the side of the piston as in SV technology engines. This location allows a shorter combustion time, shorter flame propagation, better fuel combustion, and better cooling characteristics. In addition, OHV technology engines are designed with lower surface to volume ratios, which enhance fuel combustion. OHV technology engines also have the potential to exhibit improved in-use engine durability characteristics due to the location of the valves in the cylinder head rather than in the block, which affords more uniform exposure of the valves to heat sources and thus lower distortion of valves and valve seats. However, the Agency recognizes that the design of the engine is all-important,

[7] EPA is proposing a set of values for the useful life of the engines for regulatory purposes. The term "useful life" refers to these regulatory useful life categories, which are discussed in more detail in Section IV.A.4 of this preamble.

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and that it is possible to improve features of both SV and OHV technology engines to enhance new and in-use emission characteristics (e.g., cylinder heads, advanced carburetion, fuel injection). The Agency requests comment on the fundamental supposition of this rule that OHV technology engines have the potential to be superior to SV technology engines for new and in-use emissions characteristics. Further discussion of SV and OHV technology engines is contained in Section IV.A and Chapter 3 of the Draft Regulatory Support Document (RSD).

b. Class I Use of OHV Technology. The nonhandheld small SI engine market has traditionally been dominated by SV technology engines, with SV technology engines accounting for as much as 90 percent of engine sales in Class I and 65 percent of engine sales in Class II. The majority of Class I SV engines are used in low cost, consumer products such as walk-behind mowers. Recently, the market has been moving towards OHV for Class II, in recognition of OHV advantages in engine performance, engine durability, fuel economy, and emissions characteristics. These advantages would be expected to be more important in commercial equipment which tend to make up significant market for Class II engines. For Class I engines, there has not been this same trend to OHV technology.

One barrier to increased penetration of OHV technology engines into the Class I market, which is dominated by residential, low cost equipment, may have been the cost associated with the conversion of product lines from SV technology to OHV technology. These conversion costs to the engine manufacturer are expected to be in the range of $5 to $14 per engine, depending on volume; cost to the consumer would likely be even higher (see Section VI for further discussion of these costs). For residential, low cost equipment, the OHV engine's advantages in performance and durability may not outweigh the associated higher purchase price when compared to equipment using less expensive SV equipment, at least in the near term and in light of the lead time EPA is proposing for the proposed Class I standard. If consumers of residential equipment are particularly price sensitive, they may choose not to purchase new equipment if priced higher due to the use of an OHV engine. Rather, to the extent four stroke SV engines tend to continue providing operable service, consumers may choose to spend money on equipment maintenance, extending both the life of the equipment and the number of hours the existing, non-Phase II SV engines would be used. If this happens, sales of cleaner, Phase II engines could be depressed and the extended use of SV engines toward the end of their useful life would add disproportionately to emission from small engines as the emission performance of these engines tends to continue deteriorating with use. Moreover, promulgation of a more stringent Class I standard, combined with the proposed Class II standard, would raise questions about the need for providing significantly longer lead time before the standards became effective. Additionally lead time might be necessary to allow manufacturers to invest the greater level of engineering and production resources necessary to convert both Class I and Class II engines to OHV technology for their entire product line as could be necessary for a nationwide program. This additional lead time could delay the environmental benefits of the program.

Due to uncertainties as to consumer acceptance of OHV engines in typical Class I equipment applications if required nationwide and how a more stringent Class I standard might effect lead time for the program as a whole and the resulting uncertainty of emissions benefit, the Agency is not at this time proposing Class I standards which would mandate the conversion of Class I engines to OHV technology. However, EPA is requesting comments on the likely impacts of such a standard. Even if it is not appropriate to adopt more stringent Class I standards now, in the future, as uncertainties regarding consumer acceptance of OHV Class I engines and other issues are resolved, EPA will be able to re-evaluate the stringency of the proposed standard and pursue any necessary and appropriate revisions. Additionally, the experience in California will likely provide useful information.

While today's proposed emission standard for Class I engines are not expected to require additional conversion from SV to OHV technology, EPA does desire to encourage the production and sale of OHV engines into the Class I market on a mass volume basis. In order to encourage this, EPA has entered into Memoranda of Understanding (MOUs) with two individual engine manufacturers.[8-10] These two companies currently represent over 80 percent of all Class I engine sales. The two MOUs detail the specifics of Class I OHV engine demonstration programs which are designed as experiments to explore the consumer acceptance and feasibility of developing low cost OHV technology which can be applied to mass production Class I engines. The two programs include a series of reports to EPA on the level of success, impediments encountered, market response, costs, emission rates, and so forth. The two Class I OHV demonstration programs will begin prior to the proposed effective dates for the Phase 2 rule. While the MOUs are outside the scope of the regulatory process, if successful, this voluntary program may generate considerable emission benefits in addition to those anticipated to result from the proposed standards.

In addition, the proposed voluntary "green labeling" program is designed to encourage manufacturers to produce engines that are substantially below the standards proposed today. In Class I in particular, manufacturers may decide for market reasons to convert current SV engines to OHV or comparably clean and durable technology engines, in order to qualify for the "green label" (see discussion of the program in Section IV.F.1).

EPA requests comment on the general issue of the impact of moving to OHV technology for Class I engines, including the potential impact on sales of new equipment, the extended use of existing SV engines, the impact of a more stringent Class I standard on the ability of manufacturers to meet the proposed Class II standard under the proposed schedule, any options in addition to the voluntary "green labeling" program which would encourage the sale of clean OHV technology engines and the implications for emissions impact which would likely result from these actions.

c. Class II Use of OHV Technology. The 12.1 g/kW-hr HC + NO_X emission standard proposed to take effect in the 2005 model year for Class II engines is expected to result in complete conversion to clean OHV or comparably clean and durable engine technology. As is discussed below in Section IV.A, this is an aggressive standard for Class II engines. The transition to OHV technology should be eased by the phase-in of the standard and the certification averaging, banking, and trading provisions proposed today for nonhandheld engines.

2. Handheld Engine HC+NO_X Emission Standards

The standards proposed today for handheld engines represent an approximate 35 percent reduction from Phase 1 levels, to be phased-in on a percentage of production basis between the 2002 and 2005 model year, as indicated in Table 3. These standards are expected to be achieved in a cost-effective manner by use of improved 2-stroke technology engines (as discussed in more detail in Section IV.A).

[8-10] Copies of these MOUs are in EPA Air Docket A-96-55, Items II-B-03 and II-B-04.

TABLE 3.—HC+NO_X EMISSION STANDARDS FOR HANDHELD ENGINES

[In g/kW-hr]

Engine class	HC+NO_X emission standard (g/kW-hr)	Model year 2002 (percent)	Model year 2003 (percent)	Model year 2004 (percent)	Model year 2005 (percent)
Class III	210				
Class IV	172	20	40	70	100 [1]
Class V	116				

[1] The standards would be phased-in on the basis of percentage of total eligible sales. In this proposed rule, "eligible sales" or "U.S. sales" is defined as Phase 2 engines sold for purposes of being used in the United States, and includes any engine exported and subsequently imported in a new piece of equipment, but excludes any engine introduced into commerce, by itself or in a piece of equipment, for use in a state that has established its own emission requirements applicable to such engines pursuant to a waiver granted by EPA under section 209(e) of the Clean Air Act.

Two-stroke technology engines have traditionally been the dominant engine design used for handheld equipment applications. These engines have been well suited to meet the weight, multipositional use, and power requirements of these applications. However, 2-stroke technology engines also have very high engine emissions, compared with 4-stroke technologies, due in large part to fuel scavenging losses.

With the advent of emission control requirements federally and in California, research into other technologies to further control emissions from engines used in handheld applications has occurred. Promising technologies include light weight 4-stroke technology engines, and 2-stroke technology engines with aftertreatment. However, little is known about the in-use performance, in-use emissions characteristics and cost of these technologies, or how appropriate it is to consider these technologies across the full range of handheld equipment applications. Because of these uncertainties, today's standards would not require conversion to 4-stroke engine technology or the use of aftertreatment for handheld engines. However, EPA wants to encourage introduction of technologies into today's market which are cleaner than required by the proposed standards. For example, EPA recognizes that some engine manufacturers have recently developed and marketed cleaner, lightweight 4-stroke engines for use in handheld equipment. The Agency believes potentially cleaner 4-stroke engines, 2-stroke engines with aftertreatment and other advanced two-stroke technologies may enter the market to a limited extent on a national level during the time frame of the Phase 2 program. EPA's goal is to encourage development of such technology, and EPA believes that the proposed "green labeling" program, (discussed in Section IV.F.1) should provide important incentives to manufacturers to introduce cleaner technologies on a national basis. In addition, the Agency intends to conduct a technology review and a possible Phase 3 rulemaking to address the possibility that technological advances and/or cost reductions may occur after promulgation of the Phase 2 rule that could make greater, but still cost-effective reductions feasible in handheld engine emission levels.

3. Useful Life Categories

Today's proposal would require that engines meet the proposed emission standards throughout their useful lives. EPA is today proposing multiple useful life categories, indicated in Tables 4 and 5, given the numerous applications in which these engines are used, and wide variation in expected engine useful life in these different applications. In addition, the use of these engines in applications which experience primarily commercial rather than primarily consumer or residential usage can also impact the useful life of the engine.

TABLE 4.—USEFUL LIFE CATEGORIES FOR NONHANDHELD ENGINES

[Hours]

	Category C	Category B	Category A
Class I	66	250	500
Class II	250	500	1000

TABLE 5.—USEFUL LIFE CATEGORIES FOR HANDHELD ENGINES

[Hours]

	Residential	Commercial
Class III, IV and V	50	300

EPA is proposing that at the time of certification, engine manufacturers would have the responsibility to select the useful life period which most typically represents the in-use operating periods for the majority of engines in the engine family, based on information about that engine family including design and durability information, as well as information about the equipment in which the engine is expected to be used. Manufacturers would label the engine according to the useful life selection. See Section IV.A.4 for further discussion of the proposed useful life provisions for nonhandheld and handheld engines.

B. Assuring Emission Reductions are Achieved In-use

The goal of the in-use component of the proposed Phase 2 program is to provide assurance that the emission reduction benefits anticipated by the program are achieved in actual use. This section describes how EPA's traditional compliance programs for mobile sources achieve this goal, outlines various challenges in designing a compliance program for the small SI industry, provides an overview of the compliance program proposed today for nonhandheld and handheld engines, and discusses alternative compliance program options.

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1. Traditional Compliance Programs for Mobile Sources

EPA has traditionally used three-step compliance programs to implement and enforce mobile source emission standards. For a given engine family, the first of the three steps is certification, where, based on emission data from test engines, which are often prototype engines, EPA issues a license to the engine manufacturer known as a certificate of conformity. This license enables the manufacturer to introduce engines covered under the certificate into commerce in the United States. This step typically includes some means of projecting the emissions characteristics of the engine family over its useful life. If the manufacturer demonstrates according to the regulatory provisions that the engine family meets the emission standards for the useful life of the engines, EPA issues a certificate of conformity.

The second step is production line testing where the engine manufacturer demonstrates that actual production line engines meet emission standards. Production line testing provides an opportunity for EPA and the manufacturer to verify that designs approved based on certification testing are translated into mass production engines that meet standards and to catch production problems before they become in-use problems.

The last step involves the testing of in-use engines to ascertain whether the engines continue to meet standards during their useful lives in the hands of typical customers. EPA has the authority under Section 207(c) of the Clean Air Act to require a mandatory recall of vehicles or engines that have been shown not to comply with standards for their useful life. Such recalls are instigated based on evidence of nonconformities discovered through a variety of means, the most common of which are cases in which nonconformities are found either through production line testing or through in-use testing programs. In EPA's on-highway emission control programs, EPA's recall authority and recall practices have provided clear incentives to manufacturers to produce emissions durable engines and vehicles.

2. Compliance Programs for the Small SI Engine Industry

The Phase 1 emission control program for small SI engines does not follow this typical three-step compliance program. This is because, unlike other programs, the Phase 1 program includes "new engine" standards only, that is, standards that the engines must meet when new, without the requirement that they continue to meet those standards in-use throughout their useful lives. As such, while the Phase 1 program contains programs for certification and production line testing (in the form of EPA initiated Selective Enforcement Audits), the program does not contain a requirement for manufacturers to project the emissions characteristics of the engine family over its useful life at the time of certification (e.g., to determine a deterioration factor, or "df", for the engine family), nor does it contain mandatory in-use testing provisions. EPA promulgated such a program for Phase 1 for several reasons, including the belief that for a first phase of emission controls, significant emission reductions would occur in this sector even with the "new engine" standards. Equally important was the lack of data available to the Agency at the time of the rulemaking on which to base an in-use program (e.g., information supporting appropriate regulatory useful life periods and engine deterioration rates). In addition, EPA made clear its intention to address in-use issues in a second Phase of regulation.

In addition to determining appropriate useful life periods and engine emission deterioration characteristics for this proposed Phase 2 program, the Agency has also faced a key challenge of how to conduct an effective in-use testing program for these engines, and whether or not a recall program modeled on the traditional on-highway recall program could be an effective compliance tool for this sector of the nonroad engine industry. As EPA has begun to regulate a wide range of nonroad engines pursuant to Section 213 of the Clean Air Act, it has become evident that a mandatory recall program, as has been traditionally conducted for the on-highway industry, may not be the most effective program for some sectors of the nonroad engine industry, as compared with other means of assuring compliance in-use. This is especially true for the small SI engine industry, in which many of the engines are installed in consumer products which are not registered and thus would be difficult to track in the event of a recall, and in which the cost of conducting a potential recall could be large relative to the cost of the actual engines being recalled.

For certain nonroad engine industry sectors, such as the spark-ignition marine engine sector and the small SI engine sector, EPA has sought to develop alternative programs designed to provide reasonable means to address emissions exceedances identified through production line testing and in-use testing programs. For example, the spark-ignition marine engine program includes a voluntary in-use credit program that EPA expects will be an effective way to address exceedances identified through in-use testing, and the program also includes provisions for the use of certification credits to address exceedances identified through production line testing (see 40 CFR Part 91).

EPA believes that these alternative programs, designed to provide a means to address emission exceedances, should meet several criteria in order to be considered as effective as EPA's traditional mandatory recall programs. First, they should provide an incentive to manufacturers to build emission-durable engines. Second, they should be practical to implement. Third, they should provide an incentive to perform accurate testing. Fourth, such programs should offset additional emissions that occur as a result of the exceedence of the standards. Finally, such programs should not be unduly burdensome to manufacturers.

The compliance programs proposed today for small SI nonhandheld and handheld engines are intended to meet these criteria. While EPA retains the authority to order a recall if a substantial number of engines are found to be in nonconformity, and while this Phase 2 proposal does include regulatory language governing EPA's action in ordering recalls (see proposed Subparts I and M), EPA anticipates considering programs which would be effective alternatives to ordering a mandatory recall of Phase 2 certified engines. Instead, EPA would expect these alternatives to recall would address the exceedances of the emission standards in ways that meet the five criteria identified above. For nonhandheld engines, in some cases, the use of certification credits would be allowed to offset exceedances of the family emission limit [11, 12] in the event of PLT exceedances. For handheld engines, the use of in-use credits would be allowed as one means of addressing potential exceedances of standards in the event of exceedances determined through production line testing or in-use testing programs. For both nonhandheld and handheld engines, other possible alternatives for addressing exceedances of emissions standards would include voluntary recall and other possible alternative projects (these issues are discussed further in Section IV.D of this preamble).

[11, 12] For nonhandheld engines participating in the averaging, banking, and trading program described in more detail in Section IV.A.5, compliance would be demonstrated with the family emission limit, or FEL, rather than the standard.

3. The Proposed Phase 2 Compliance Program

Today's program proposes "in-use" standards for the first time for this industry.[13] New elements of the Phase 2 compliance program include processes for determining deterioration factors ("dfs") at the time of certification, a manufacturer-run Production Line Testing program, and in-use testing components.

i. Certification and In-Use Testing. Today's proposal includes three different approaches to certification df determination and in-use testing, based on engine class and engine technology, which are discussed briefly below. These approaches comprise the basic program proposed today. EPA is also proposing additional procedures for some engine classes and engine technologies to increase the flexibility of the rule.[14] All the approaches are discussed in more detail in Section IV.D.

First, for nonhandheld OHV technology engines, manufacturers would be allowed to apply an assigned deterioration factor or "assigned df" to new engine test values at the time of certification to determine a useful life certification value. Compared to an alternative of testing an engine over its full useful life to determine deterioration, these engines would be allowed to undergo this lower burden certification effort, in return for participation in an industry-wide OHV field durability and in-use emission performance demonstration program (as described in Sections IV.D.1 and IV.D.3). Second, for nonhandheld side-valve technology engines and engines with aftertreatment, manufacturers would certify their engines based on accumulating hours on the engines to the engines' full useful lives at the time of certification. This relatively heavier burden at the time of certification is balanced by a decreased in-use testing burden. Following full useful life certification, these engines would not be subject to further in-use testing requirements. Third, for all handheld engines, manufacturers would certify their engines to full useful life standards at the time of certification using new engine test values and dfs determined based on "good engineering judgment." Handheld engine manufacturers would then conduct an in-use testing program, by which each manufacturer would age and emissions test engines to ensure compliance in-use. A handheld engine manufacturer would in-use test up to 25 percent of its engine families each year.

Other than the addition of the requirements to demonstrate that engines meet the emission standards throughout their useful lives, and to determine a deterioration factor at the time of certification, the certification procedures proposed today for the Phase 2 program are essentially the same as those for Phase 1. In particular, EPA is proposing to retain a streamlined certification application form and process, with simple procedures for electronic submittal of information, as discussed further in Section IV.D.1.

ii. Production Line Compliance. Today's proposal would add a manufacturer-run Production Line Testing program known as CumSum to replace a Selective Enforcement Audit (SEA) program as the primary method of determining the compliance of new production engines. SEA would remain an optional or backstop program depending upon the class of engine, as described in Section IV.D.2.

iii. Aging Engines To Their Useful Lives. EPA believes that aging engines in field usage in typical representative applications would be the most accurate possible program for verifying in-use emissions. As such, the proposed OHV field durability and in-use emissions performance program ("Field Durability Program") is designed to produce significant quantities of reliable test data from OHV engines aged in typical field usage, and to verify that the conclusions used in the certification process with respect to the durability of OHV engines are accurate.

While aging engines in typical field usage would be the optimal program for assuring the emission reductions are being achieved in use, EPA recognizes that costs associated with aging engines in the field and administering a field aging program could be higher than, for example, costs of a bench aging program. It is for this reason that EPA is proposing that for full useful life certification for nonhandheld side-valve technology engines or engines with aftertreatment, and for in-use testing for handheld engines, manufacturers may age engines on bench cycles, in lieu of field aging, provided that a field/bench adjustment factor has previously been established, as discussed in Section IV.C. EPA requests comment on the proposal to allow manufacturers in some cases to age engines on bench cycles in lieu of field aging.

In addition, for nonhandheld engine manufacturers, who could be field aging engines for the OHV Field Durability Program and also for the field/bench adjustment program, EPA is proposing a cap on the number of field engine tests required in a given year. EPA requests comments on all aspects of the compliance program proposed today for Phase 2 small SI engine regulation.

4. Alternative Compliance Program Options

The program proposed today for Phase 2 regulation of small SI engines is essentially the same as the program described in the ANPRM for this rulemaking. EPA received comments on the ANPRM relating to the differences between the nonhandheld and handheld sides of the industry, and the merits of applying concepts and programs outlined for one side of the industry to the other. One commenter stressed that the nonhandheld and handheld engine industries are very different in composition, in marketing, in technology, as well as in application. This commenter suggested that the program for nonhandheld engines described in the ANPRM is an integrated whole, with each provision linked to other provisions, and that it would be a mistake to graft parts of the handheld program on to the nonhandheld program. Another commenter suggested that the Agency should take a comprehensive and balanced view of the program for the two sides of the industry, and that elements of the two proposals should be used to create a simpler and more effective regulation.

EPA is concerned that any changes to the programs being proposed today should be considered carefully as to their impact on the program as a whole, given linkages between the various elements of the programs proposed today. For example, the compliance program proposed for nonhandheld OHV technology engines is designed as an integrated whole. The proposal to allow manufacturers to use the assigned dfs for certification is reasonable because it is linked to the proposal for an industry-wide OHV Field Durability Program designed to verify the assumptions with respect to stable and low dfs. In addition, EPA believes this

[13] The fact that the proposed Phase 2 emissions standards are "in-use" standards, compared with the Phase 1 standards which are "new engine" standards, together with the fact that these engines do experience emissions deterioration over time, is why, when compared numerically with the Phase 1 levels, Phase 2 levels in fact are higher in the case of Class I. Despite this apparent numerical discrepancy, EPA still anticipates important reductions from all engine classes as a result of the proposed Phase 2 standards. Since Phase 2 designs will account for in-use deterioration, in-use emission levels will be lower under the proposed Phase 2 regulations compared to Phase 1 engines.

[14] For example, for nonhandheld OHV technology engines, manufacturers would have an option to use a "calculated df" rather than the "assigned df" described below.

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conversion of engines to OHV or comparably clean and durable technology, together with the OHV Field Durability Program, is one of the strongest elements of today's proposal, an element which links stringent standards forcing clean technology with a field testing program to verify that those emission reductions are being achieved in use.

However, EPA believes that there are multiple ways to design effective programs for reducing emissions from small SI engines, and for ensuring that those reductions are achieved in use. EPA requests comment on alternative compliance options. For example, EPA requests comment on an option which would allow nonhandheld manufacturers to establish certification dfs for SV engines and engines with aftertreatment through good engineering judgment (instead of the proposed program for full useful life aging for certification), linked to a program for field aging SV engines and engines with aftertreatment to verify the dfs established through good engineering judgment. EPA also requests comment on applying the in-use testing program proposed today for handheld engines to the nonhandheld side of the industry. EPA requests comments on these or other ways in which programs for the two sides of the industry could be designed to achieve the goals of providing assurance of environmental benefits in-use, easing the implementation burden for EPA and the industry, and achieving greater commonality in the programs for the two sides of the industry, where appropriate.

IV. Description of Proposed Program

Section IV of today's document contains a description of the programs proposed for nonhandheld and handheld small SI engines for Phase 2 regulations, including discussion of standards and related provisions, test procedures, a field/bench adjustment program, compliance programs, flexibilities, nonregulatory programs, and other general provisions.

A. Standards and Related Provisions

This section provides a detailed discussion of the standards being proposed for the Phase 2 program, as well as related provisions including useful life categories, certification averaging, banking, and trading provisions, and certification fuel.

The Agency is aware of the levels which the California Air Resources Board (CARB) is considering for their Tier 2 standards for their Utility, Lawn, and Garden Engine regulation. The CARB Tier 2 levels are more stringent and occur in a shorter time frame than the levels being proposed by the Agency for a Federal Phase 2 program. Although EPA's approach is not structured identically with CARB regulations, EPA believes there are two valid reasons for the distinction. First, Congress has recognized the need for California to maintain its own mobile source emission control program (*see* section 209 of the CAA) because it faces difficult and distinct air pollution problems and, as a result, may need to adopt measures more stringent than those that apply in the nation as a whole (*see, e.g., Motor & Equipment Manufacturers Association* v. *EPA*, 627 F.2d 1095, 1110–11 (D.C. Cir. 1979)). Second, EPA's nonroad emission standards are not allowed to be more stringent than is achievable for this nationwide program after consideration of cost and lead time according to section 213(a)(3) of the CAA. Although California is constrained by similar criteria per the authorization criteria of section 209(e), consideration of such criteria is limited to the State of California. The Agency must consider cost and lead time when nonroad emission regulations affect the nation as a whole. As discussed in the remainder of this section, the Agency believes the standards contained in today's proposal meet the section 213(a)(3) requirements to consider cost and lead time in setting Federal standards.

1. $HC+NO_X$ Emission Standards

The Agency believes the level of the standards contained in today's proposal would achieve the greatest degree of emission reduction achievable through application of technology which will be available and considering lead time under the proposed schedule of compliance, noise, energy, safety, and cost factors associated with applying such technology to a nationwide program. The sections below discuss how EPA addressed and weighed these factors in developing the proposed standards.

EPA is proposing in-use $HC+NO_X$ standards of 25 g/kW-hr effective in model year 2001 for Class I engines, and 12.1 g/kW-hr to be phased-in between model years 2001 and 2005 for Class II engines, as presented in Table 6. EPA expects that the Class II levels would result in a complete shift in engine technology from side-valve (SV) to cleaner overhead valve (OHV) or comparably clean and durable technology by 2005.

TABLE 6. $HC+NO_X$ EMISSION STANDARDS FOR NONHANDHELD ENGINES

[In g/kW-hr]

Engine class	Model year 2001	Model year 2002	Model year 2003	Model year 2004	Model year 2005
Class I	25.0	25.0	25.0	25.0	25.0
Class II	18.0	16.6	15.0	13.6	12.1

EPA is proposing in-use $HC+NO_X$ emissions levels for Class III, IV and V engines to be phased-in between model years 2002 and 2005 based on a percentage of U.S. sales as presented in Table 7.

TABLE 7.—$HC+NO_X$ EMISSION STANDARDS FOR HANDHELD ENGINES

[In g/kW-hr]

Engine class	$HC+NO_X$ emission standard (g/kW-hr)	Model year 2002 (percent)	Model year 2003 (percent)	Model year 2004 (percent)	Model year 2005 (percent)
Class III	210				
Class IV	172	20	40	70	100

TABLE 7.—$HC+NO_X$ EMISSION STANDARDS FOR HANDHELD ENGINES—Continued

[In g/kW-hr]

Engine class	$HC+NO_X$ emission standard (g/kW-hr)	Model year 2002 (percent)	Model year 2003 (percent)	Model year 2004 (percent)	Model year 2005 (percent)
Class V	116				

Unlike the nonhandheld Phase 2 program, for handheld engines, the phase-in process of mandatory percentages would result in Phase 1 and Phase 2 handheld engines being produced in the same model year, i.e., at least 20 percent of the engines produced in model year 2002 would be Phase 2 engines subject to the Phase 2 program, and up to 80 percent of the handheld engines produced in model year 2002 would be Phase 1 engines subject to the Phase 1 program, followed by a 40/60 split in model year 2003, and a 70/30 split between Phase 2/Phase 1 engines in model year 2004.

The remainder of this section describes the analysis and supporting data for the proposed $HC+NO_X$ standards for Class I nonhandheld engines, Class II nonhandheld engines, and Class III, IV, and V handheld engines. Each of these subsections is organized into the following topics: *(i) Historical Sales Trends by Engine Technology*—Historical trends are important to consider when assessing the range of field proven technologies. Historical trends assist in understanding what technologies have been demonstrated in actual use, what manufacturers' current production capabilities are, and the availability of new and in-use emission performance data; *(ii) In-use HC and NO_X Emission Performance of Uncontrolled Engines*—The Agency presents this information to highlight the in-use performance characteristics associated with small engine technologies and the need for careful consideration of the in-use performance of various control technologies. Phase 1 new engine emission performance data is available from Federal certification data. However, in-use emission performance on engines pulled from the field is limited; therefore, a discussion of the in-use performance of uncontrolled engines is warranted; *(iii) New Engine and In-use HC and NO_X Performance of Phase 1 Technology Engines*—A summary of the information available on the new and in-use emission performance of Phase 1 engines is presented. This information is used to assess the current status of the small engine industry, which is critical for the Agency's analysis when trying to predict the impact of technology changes on the industry; *(iv) Technologies Considered for Phase 2 $HC+NO_X$ Standards*—Discussion of the technologies the Agency considered when determining the level of the proposed standards is presented. This includes a discussion of new and in-use emission performance of each technology, and the per engine cost associated with each technology, and; *(v) Proposed Phase 2 $HC+NO_X$ Standard*—A discussion of the Phase 2 standards the Agency is proposing, including information on why the proposed standards are achievable, the proposed lead time, and a discussion and request for comment on more stringent standards (such as the CARB Tier 2 levels).

a. $HC+NO_X$ Emission Standard for Class I Nonhandheld Engines. This section presents information used by the Agency to determine the appropriate level for the proposed $HC+NO_X$ exhaust emission standards for nonhandheld Class I engines. A more detailed explanation of the engine technologies and costs described in this section is contained in the Draft Regulatory Support Document (RSD) for this proposal, a copy of which is available in the public docket for this rule.

i. Class I Historical Sales Trends by Engine Technology

Class I engine (<225 cc nonhandheld engines) sales have historically been dominated by low cost four-stroke side-valve engines. Two-stroke gasoline Class I engines are currently less than 10 percent of annual sales and will continue to decline as a result of the Phase 1 emission standards, which effectively calls for their phase-out by 2003 due to their high HC emissions. Prior to 1986, OHV engines represented less than one percent of annual Class I engine sales. In the past decade OHV engines have begun to penetrate the Class I marketplace, but they have hovered between 10 and 15 percent of total U.S. sales for the past eight years.

ii. In-use HC and NO_X Emission Performance of Uncontrolled Class I Engines

Unregulated Class I engines have demonstrated high new engine emission rates for HC and CO, and low levels of NO_X, as well as poor in-use performance (large deterioration factors) for HC and CO, with little deterioration of new engine NO_X values.[15] HC deterioration has been shown to be greater than two times the new engine value in as little as four years of engine use.

iii. New Engine and In-use HC and NO_X Performance of Phase 1 Class I Technology Engines

Phase 1 engines have improved new engine emission performance over uncontrolled engines, and may have improved in-use performance. The Draft RSD for this proposal contains publicly available information on engine families from all engine classes certified to the Phase 1 program. This information shows both SV and OHV technology can meet the Phase 1 Class I new engine standard.

The Agency has recently examined information presented by several engine manufacturers concerning emissions deterioration from Phase 1 technology Class I side-valve and over-head valve engines.[16] A more detailed discussion of this data is presented in the Draft RSD. This information covers over 50 Class I engines field aged by manufacturers, with usage varying from 20 to 300 hours. Table 8 contains a summary of the $HC+NO_X$ deterioration factors resulting from an analysis of this data.

[15] See "Emission Tests of In-use Small Utility Engines" Southwest Research Institute, Sept. 1991, EPA Air Docket A–91–24, Item #II–A–8, and "Nonroad Engine and Vehicle Emission Study" U.S. EPA Report #21A–2001, Nov. 1991, EPA Air Docket A–91–24, Item #II–A–10.

[16] See "Tier 1 Deterioration Factors for Small Nonroad Engines", Sept. 1996, a report by Air Improvement Resources, available in EPA Air Docket A–96–55, Item #II–D–11.

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TABLE 8.—SUMMARY OF IN-USE DETERIORATION OF PHASE 1 TECHNOLOGY CLASS I ENGINES

	Class I OHV	Class I SV
Estimated $HC+NO_X$ df at 66 Hours	1.35	1.87

Analysis of this information indicates Class I SV $HC+NO_X$ deterioration is higher than Class I OHV engines. The lower new engine emission levels of Class I OHV over SVs combined with lower in-use deterioration results in better in-use emission performance for Class I OHV engines compared to Class I SV engines.

iv. Technologies Considered for Phase 2 Class I $HC+NO_X$ Standards

The Agency analyzed the emission performance and cost of several technologies which could be applied to Class I engines, including improvements to existing SV engines, conversion of existing SV engines to OHV technology, and the application of catalytic converters to existing SV and OHV engines. Four-stroke SV technology utilizes an engine configuration in which the intake and exhaust valves are located to one side of the combustion chamber (also called an L-head design), as compared to four-stroke OHV technology in which the intake and exhaust valves are located directly above the combustion chamber. Catalytic converters are add-on after treatment devices which operate by chemically reducing or oxidizing exhaust gases. The Draft RSD for this proposal contains additional information regarding these three technologies.

As discussed previously, the majority of Class I engines utilize SV technology. Table 8 shows that Class I SV technology have $HC+NO_X$ deteriorations on the order of 1.87 times new engine levels at 66 hours of use. Combining this with the Phase 1 certification level of 16.1 g/kW-hr $HC+NO_X$ indicates an in-use level of approximately 30 g/kW-hr $HC+NO_X$. The Agency believes additional reductions can be achieved with improvements to existing Phase 1 SV engines. A more detailed discussion of these improvements is contained in the Draft RSD. A summary of the improvements are: lowering of new engine emission levels achieved through enleanment of intake air-fuel ratio; improvements to valve seat material which will lower in-use distortion, resulting in decreased valve leakage and deposit formation; improvements in cylinder ring design, which will result in better combustion chamber sealing and lower oil consumption and lower combustion chamber deposits; continued structural improvements to cylinder design to lower cylinder distortion inherent in side-valve configurations; and addition of valve stem seals to limit the creepage of oil into the combustion chamber. As presented in the Draft RSD, the Agency estimates the improvements to Class I SV engines would cost the manufacturer as much as $4 to $7 per engine, depending on the engine family volume. The Agency estimates changes would result in improvements to both new and in-use emission performance, combining for a 10 to 20 percent improvement in the in-use $HC+NO_X$ performance beyond Phase 1 designs.

As indicated by Table 8, Phase 1 OHV engines have better in-use performance compared to Phase 1 SV engines. A new engine level equal to the Phase 1 standard of 16.1 g/kW-hr combined with a $HC+NO_X$ df of 1.35 at 66 hours results in an in-use emission rate of 21.7 g/kW-hr. This level is well below the performance of Class I SV engines, therefore the Agency has considered the conversion of existing Class I SV to OHV engines in developing the proposed Phase 2 levels. Based on the Federal Phase 1 new engine certification data analyzed for this proposal, the average Class I OHV engine emits around 10.5 g/kW-hr. Based on the deterioration information presented in Table 8 and design improvements discussed elsewhere, the Agency estimates a well designed nonhandheld OHV engine could have an $HC+NO_X$ deterioration factor of 1.3. Assuming a 10 percent compliance margin, these specific Class I OHV engines could achieve an average in-use emission level of around 15 g/kW-hr. However, it should be noted that only about 10 percent of current Class I engines are OHV designs. The performance of these specific engines may not be representative of what would occur if all Class I engines were converted to OHV technology.

Federal certification data indicates a small number of Class I engines have certified to the Federal Phase 1 standards using catalyst technology. Though it is technologically feasible to apply catalysts to both SV and OHV engines, the Agency has little information regarding in-use durability and emission performance of engines equipped with catalysts. As discussed previously, the in-use emission performance of small engines is a critical component of the analysis EPA has undertaken in the development of the Phase 2 proposal. The Agency's experience with on-highway catalyst technology has shown considerable in-use deterioration of catalysts can occur. In recent years several technical papers have been published regarding catalyst durability on small engines, however, these papers have relied on laboratory durability programs, such as aging catalysts on dynamometers [17]. The Agency is not aware of any actual field-aged in-use catalyst durability information. The Agency requests comment on the relationship between laboratory durability data and in-use field data, any information on typical in-use aged catalyst performance, and all available data on individual catalysts aged under typical in-use conditions experienced by equipment using Class I engines. The Agency requests additional information regarding new engine emission performance, in-use emission performance, and cost of catalyst technology for Class I SV and OHV engines.

v. Proposed Phase 2 Class I $HC+NO_X$ Standard

The Agency is proposing a corporate average exhaust emission level of 25 g/kW-hr $HC+NO_X$ for Class I engines beginning in model year 2001 (for discussion of the averaging, banking, and trading program, see Section IV.A.5). The Agency believes this level is technologically achievable, and, as discussed previously, can be met by improvements to existing Class I SV engines. The Agency has performed an analysis using the existing Phase 1 certification data (which contains confidential sales projections) combined with reasonable assumptions for in-use deterioration. This analysis indicates an averaging standard of 25 g/kW-hr is achievable with improvements to existing SV engines and considering the emission performance of existing Phase 1 OHV engines. A standard of 25 g/kW-hr would not require an increase in the penetration of Class I OHV sales. Manufacturers would need to make improvements to existing SV engine families which would require improvements to several engine components. However, major retooling of engine production lines would not be required. In addition, the use of ABT provides manufacturers with considerable flexibility for determining the most appropriate expenditure of resources when deciding which engine families will need specific improvements to meet the proposed levels. The lead time between the finalization of this rule and model year 2001 would be sufficient for manufacturers to meet the proposed $HC+NO_X$ level.

[17] See Society of Automotive Engineers Technical Papers 930076, 932445, 941807, and 961735 for bench aged catalyst information.

The Agency has considered emission standard levels more stringent than the proposed 25 g/kW-hr $HC+NO_X$. As discussed above, a level more stringent than 25 g/kW-hr could be met by the conversion of existing SV technology engines to OHV technology. The Agency's analysis of existing Phase 1 certification data combined with confidential sales information indicates an in-use level of around 15 g/kW-hr could be met by current Phase 1 Class I OHV engines with some design improvements to assure in-use emissions durability. However, these Class I OHV engines represent only about 10 percent of Class I sales; it is uncertain what level of emission could be achieved by complete conversion to OHV technology. As discussed previously, the percentage of Class I OHV engine sales has remained fairly constant for the past eight years, despite superior durability, performance, and fuel economy. Several Class I engine manufacturers, including the two largest which represent the majority of the market in terms of sales, have discussed with the Agency their past attempts to sell low cost OHV engines, likely in competition with less expensive SV engines. Manufacturers have indicated they have seen little success in drawing consumers away from the even lower cost Class I SV engines. Engine manufacturers have indicated that the principle reason for the failure of OHVs to penetrate further into the Class I market is the cost difference between the two engine technologies, and consumers' unwillingness to pay this premium. Several engine manufacturers have indicated that low cost Phase 1 Class I SV engines have manufacturing costs on the order of $60 to $70 per engine. Engine manufacturers contend that for these low cost engines, the cost increase to purchase an OHV engine is large enough to prevent a larger market penetration by OHV engine, at least when they would have to compete in the market with SV engines (see 62 FR 14752, "Class I OHV Demonstration Program"). The Agency estimates the manufacturer's cost for conversion to OHV to be between $5 and $14 per engine. Engine manufacturers have indicated concern over what they perceive to be the potentially dramatic impacts on the Class I engine sales which would result from a standard which requires conversion to OHV technology. As discussed in the Overview Section III.A, above, EPA is also concerned that possible adverse impact on sales and the potential need for additional lead time could result in reduction in at least the near term emission benefits anticipated by this proposal. The Agency requests comment on the market concerns expressed by engine manufacturers, on the potential impact on lead time associated with more stringent Class I standards and on the potential for delay in at least the near term emission reduction benefits available from Class I engines if more stringent standards were adopted.

The Agency is aware of the emission standards being considered by CARB for the CARB Tier 2 Utility, Lawn, and Garden Engine (ULGE) regulation. The Agency's current understanding is that CARB is considering Class I engine in-use standards of 16.1g/kW-hr $NMHC+NO_X$ to be met by model year 2000, followed by a standard of 12.0g/kW-hr in model year 2004. In their comments to the ANPRM, California recommended a nationwide level of control equivalent to that being considered by CARB. Further, CARB suggested these standards could be met with the use of available technology, specifically, total conversion to OHV technology to achieve compliance with a 16.1 g/kW-hr $NMHC+NO_X$ standard and the addition of catalyst control to meet a 12.0 g/kW-hr $NMHC+NO_X$ standard. EPA understands that CARB is still evaluating its Tier 2 ULGE program and may adopt regulations which differ from these specific levels or implementation dates or both. As discussed under Section IV.A of this proposal, section 209 of the CAA allows California to set its own standards, considering criteria as they apply to the State of California. However, as discussed later in this section, the Agency requests comment on whether application of these emission control technologies as being considered by CARB are appropriate for a Federal program at this time, the level of emission control expected from such application of these technologies and what adjustments to the proposed Federal program might be necessary to accommodate standards which would require such widespread application of OHV and catalyst technology.

The Agency has considered the potential impacts associated with the conversion of Class I SVs to OHV technology. Due to uncertainties as to consumer acceptance of OHV engines in typical Class I equipment applications and as to how a more stringent Class I standard might effect lead time for the program as a whole and the resulting uncertainty of emissions benefits, the Agency has chosen not to propose Class I standards which would mandate the conversion of Class I engines to OHV or comparably clean technology. However, the Agency requests comment on such an option. EPA specifically requests additional supporting information regarding this issue to be made available to the Agency through the public comment process on this proposed rule to supplement that which informed EPA's analysis of CARB's proposed Tier 2 levels and EPA's cost estimates of converting Class I engines to OHV. The Agency requests comment on all aspects of the proposed Class I standards.

b. $HC+NO_X$ Emission Standard for Class II Nonhandheld Engines. This section presents information used by the Agency to determine the appropriate level for the proposed $HC+NO_X$ exhaust emission standards for nonhandheld Class II engines. A more detailed explanation of the engine technologies and costs described in this section is contained in the Draft RSD for this proposal, a copy of which is available in the public docket.

i. Class II Historical Sales Trends by Engine Technology

Class II engine sales have been dominated by 4-stroke SV engines in the past. As described in the Draft RSD, Class II engines were predominantly SV technology in the 1970's and early 1980's. Beginning in about 1985, OHV engines have steadily increased their annual sales penetration into the Class II market, averaging about a 3 percent increase per year; by 1995 OHV engine sales represented approximately 35 percent of the Class II market, with the remaining 65 percent being SV engines.

ii. In-use HC and NO_X Emission Performance of Uncontrolled Class II Engines

Information regarding new engine and in-use emission performance of uncontrolled Class II engines is limited. While some new engine data is available, the Agency does not have in-use emission information on uncontrolled Class II engines. The limited new engine information from uncontrolled engines comes from the CARB Technical Support Document for the CARB ULGE program.[18] The Agency used this information to estimate the new engine emission factors for the 1991 Nonroad Engine and Vehicle Emission Report. Those estimates were between 15.2 and 15.4 g/kW-hr for

[18] California Air Resources Board Mail Out #92–06, Technical Support Document for California Exhaust Emission Standards and Test Procedure for 1994 and Subsequent Model Year Utility and Lawn and Garden Equipment Engines, January 1992.

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typical new engine Class II HC+NO_X emission factors.

iii. New Engine and In-use HC and NO_X Performance of Phase 1 Class II Technology Engines

Table 9 is a summary of the new engine emission values for gasoline fueled SV and OHV engine families certified to the Federal Phase 1 regulations as of September 1997.

TABLE 9.—SUMMARY OF FEDERAL PHASE 1 CLASS II GASOLINE FUELED ENGINE FAMILIES

Technology	Number of families	Average new HC+NO_X (g/kW-hr)	Minimum new HC+NO_X (g/kW-hr)	Maximum new HC+NO_X (g/kW-hr)
Federal Phase 1 OHV	64	9.0	5.3	12.9
Federal Phase 1 SV	14	11.3	9.4	12.9

The values in Table 9 are an average of the certified new engine rates. EPA has access to manufacturers' confidential sales estimates for model year 1997. Using these projections the sales weighted new engine HC+NO_X emission rate is 11.7g/kW-hr for Class II SV engines, and 8.3g/kW-hr for Class II OHV. This certification data shows that OHV new engine HC+NO_X emissions tend to be lower than SV emissions.

In 1996 the Agency received a report from several engine manufacturers regarding the deterioration of Phase 1 technology Class II SV and OHV engines.[19] A more detailed discussion of this information is contained in the Draft RSD for this proposal. Table 10 contains a summary of this information.

TABLE 10.—SUMMARY OF IN-USE DETERIORATION FACTORS FOR PHASE 1 CLASS II ENGINES

	Class II OHV	Class II SV
Estimated HC+NO_X df 250 hours	1.4	1.6

iv. Technologies Considered for Phase 2 Class II HC+NO_X Standards

The Agency analyzed the emission performance and cost of several technologies which could be applied to Class II engines, including improvements to existing SV engines, conversion of existing SV engines to OHV technology, improvements to existing OHV engines, and the application of catalytic converters to existing SV and OHV engines. The Draft RSD for this proposal contains additional information regarding these technologies.

The Agency considered the costs and emission performance potential which would result from manufacturers making improvements to Phase 1 Class II SV engines. As discussed in the Draft RSD, several areas for improvement potentially exist, including: improvements to carburetors to lower variability and maintain more precise air/fuel control; enhancements to the cylinder structural integrity; improvements to valve stems and valve seats; and changes in piston ring design. These improvements would lower production variability and improve both new engine and in-use emission performance. The Agency estimates these changes would cost the manufacturer as much as $7 to $20 per engine depending on engine family volume and the improvements required. However, the Agency believes the improvement in the in-use emission performance from Phase 1 levels would be small. All spark-ignited engines have a lean performance limit, i.e., an air/fuel ratio beyond which additional enleanment will result in unstable combustion and poor engine performance. The basic design of the SV combustion chamber results in a lean performance limit which is reached relatively soon (compared to OHV technology). Improvements in the in-use performance can be made, but the Agency believes these improvements will also be relatively small. The Agency estimates that the improvements to SV technology considered would result in an overall 10 to 20 percent reduction in the in-use emissions from Phase 1 SV levels. With the Phase 1 Class II new engine standard equal to 13.4 g/kW-hr HC+NO_X, and a Phase 1 Class II SV df of 1.6, the Phase 1 in-use emission rate is 20.1g/kW-hr at 250 hours. A 10 to 20 percent reduction translates to an in-use emission rate between 16.8 and 18.9 g/kW-hr.

As described above in Section IV.A.1.a, the principal difference between SV and OHV engines is the location of the intake and exhaust valves with respect to the combustion chamber; in SV engines the valves are located to one side of the combustion chamber, while in OHV the valves are located at the top of the combustion chamber directly above the piston. The OHV location offers many performance advantages over the SV engine, including lower valve seat distortion, lower combustion chamber surface-to-volume ratio, and the ability to run stably at leaner air-fuel ratios. These differences are described in more detail in the Draft RSD. These differences can result in better new engine and in-use HC+NO_X emission performance for OHV over SV technology. Based on confidential Phase 1 Class II OHV Federally certified engine families sales projections, the Agency believes an average new engine emission rate of 9.3 g/kW-hr, which includes a 10 percent compliance margin, is achievable from OHV technology engines. This would result in an in-use emission level of 12.1 g/kW-hr (1.3 * 9.3 g/kW-hr), which is a 42 percent reduction from Phase 1 SV levels (Phase 1 SV = 13.4 g/kW-hr * 1.6 = 20.1 g/kW-hr). As presented in the Draft RSD, the Agency estimates the conversion of Class II SV to OHV technology would cost the manufacturer between $10 and $17 per engine, depending on the engine family volume. Engine manufacturers have indicated the higher cost associated with conversion of Class II SV to Class II OHV technology is reasonable because the equipment using Class II engines is typically more expensive than the equipment targeted toward the residential market, and the increased cost resulting from conversion to OHV design would not have a significant adverse impact on Class II engine sales. While EPA has no independent information on consumer price sensitivity for equipment using Class I engines, it is understandable that the higher price of this equipment and the typical commercial use of such equipment could allow the performance, fuel efficiency, and durability benefits of Class II OHV engines to outweigh the incremental impact on equipment price.

[19] "Tier 1 Deterioration Factors for Small Nonroad Engines" September 1996, a report by Air Improvement Resources, available in EPA Air Docket A–96–55, Item #II–D–11.

The Agency also considered improvements to existing Phase 1 OHV engines in determining the appropriate level of the Class II standard. In many cases, engine manufacturers have already optimized new engine emission performance and have incorporated improvements to engine designs to optimize in-use emission performance. However, as discussed in the Draft RSD, the Agency believes that for some Class II OHV engine families internal engine improvements can still be made which would result in lower new engine and/or better in-use performance. These changes include leaner carburetor calibrations to lower new engine HC+NO_X, optimization of combustion chamber design, and improvements to oil control. As discussed previously, the sales weighted new engine Phase 1 Class II OHV HC+NO_X level is 8.3g/kW-hr, and as shown in Table 10, the Class II HC+NO_X df is estimated to be 1.4 at 250 hours. The Agency believes changes to existing Class II OHV engines will primarily improve in-use emission performance. As presented in the Draft RSD, the Agency estimates these changes would cost the manufacturer as much as $3 to $8 per engine, depending on the engine family production volume and the improvements required. However, the Agency believes many engine families have already incorporated these design improvements. Based on existing Federal certification data and the deterioration information contained in Table 10, the Agency estimates these improvements will result in an in-use HC+NO_X deterioration rate of 1.3 at 250 hours, and average new engine emission rates (including a ten percent compliance margin) of 9.3 g/kW-hr, for an average in-use emission rate of 12.1 g/kW-hr.

Federal certification data indicates a small number of Class II SV and OHV engines families have certified to the Federal Phase 1 standards using catalyst technology. However, the majority of these engines are intended for indoor use on applications such as generators or floor buffers, where lowering CO emissions appears to be the primary focus. The majority of these catalyst equipped Class II engine families operate on propane fuel. No catalyst equipped Class II engine families have certified to the Phase 1 rule for use in lawn and garden equipment. Though it is technologically feasible to apply catalysts to both SV and OHV engines, the Agency has little information regarding in-use emission performance of engines equipped with catalysts. The Agency's experience with on-highway catalyst technology has shown that considerable in-use deterioration can occur. As previously discussed in the Class I standard section, information on laboratory aged small engine catalysts has appeared in recent years in the technical journals. The Agency requests comment on the relationship between laboratory and field aged catalyst durability data, any information on typical in-use aged catalyst performance and all available data on individual catalysts aged under typical in-use conditions experienced by equipment using Class II engines. The Agency requests additional information regarding the new engine emission performance, in-use emission performance, and cost of catalyst technology for Class II engines, particularly Class II engines designed for lawn and garden type applications.

v. Proposed Phase 2 Class II HC+NO_X Standard

The Agency is proposing a corporate average HC+NO_X emission standard of 12.1 g/kW-hr which will be phased in over five years, beginning in model year 2001. Based on the information presented in this section, the Agency believes an in-use level of 12.1g/kW-hr can be met by the conversion of Phase 1 SV engines to OHV technology, and by internal improvements to some existing Phase 1 OHV engines.

The proposed standards would require significant production line changes for many Class II engine manufacturers to convert existing SV models to OHV designs, as well as modifications to some Phase 1 OHV models which may need internal improvements to meet the 12.1 g/kW-hr level. To accommodate a smooth transition of existing SV engine family production lines to the new OHV technology or other comparably clean technology, the Agency is proposing a five year phase-in period, starting with a level of 18 g/kW-hr in 2001 and ramping down to the final year level of 12.1 in model year 2005. The Agency expects the proposed standards for Class II engines would result in increased penetration of and virtual total conversion to clean OHV technology by 2005. However, the proposal does not preclude other technologies from meeting the proposed standard.

The Agency recognizes that there are large differences in technology mixes currently being produced by Class II engine manufacturers. Some Class II engine manufacturers have already made significant investments in OHV technology prior to and during the Phase 1 program. For some of these manufacturers the standards in the early years of the Phase 2 phase-in (i.e., the 2001 standard of 18g/kW-hr and the 2002 standard is 16.6 g/kW-hr) may not require additional reductions in Class II engine emissions. At the same time, the Phase 1 standards do not require a shift to clean, durable OHV technology or comparably clean technology, and several Class II engine manufacturers currently produce a significant number of SV engines. For manufacturers who are relying on SV technology the proposed phase-in period will allow them to shift their production to new, cleaner technology which is capable of meeting the 2005 standard of 12.1g/kW-hr. The Agency believes the phase-in standards will address the inequities among manufacturers' current technology mixes but will also require manufacturers to produce the clean, durable 12.1g/kW-hr engines in 2005. Manufacturers have indicated the early banking provision will pull ahead clean technology and ease the transition to the 12.1 standard. However, due to the wide discrepancy between manufacturers' current technology mixes, some manufacturers may generate significant credits during the phase-in period. The Agency has recently performed an analysis, based on Federal Phase 1 certification data, which indicates under some conditions, early banking would result in significant credits being generated during the phase-in period which may in fact undermine the Agency's assumptions that the 12.1 standard in model year 2005 would require a virtual 100 percent shift to OHV or comparably clear technology for Class II engines. To insure the EPA's goals are met, the Agency is proposing a declining set of caps on how high the sales-weighed average level of HC+NO_X family emission limits (FELs) could be for Class II engine families beginning in 2005. A discussion of this proposal is contained in Section IV.A.5.

Engine manufacturers have commented that, while 12.1 g/kW-hr HC+NO_X can be met with engines designed for a typical 250-hour useful life, engines designed for the longer proposed useful life categories of 500 and 1000 hours need a higher standard due to their higher expected df as measured over these longer hour periods.[20] Specifically, they recommend a 500-hour engine standard of 13.0 g/kW-hr and a 1000-hour standard of 14.0 g/kW-hr HC+NO_X. In arriving at these recommendations, the manufacturers

[20] See the discussion in the March 27, 1997, ANPRM, 62 FR 14740, and the Memo to the Docket regarding the October 3, 1997 meeting between U.S. EPA and the Engine manufacturers Association, EPA Air Docket A–96–55, Item #II–E–11.

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assumed the new engine emission levels would be the same regardless of useful life category; this is also assumed by the Agency in developing its proposal. However, while the manufacturers also predict improvements in in-use emission durability, they do not expect these improvements would allow a constant deterioration factor (full useful life emission level divided by new engine emission level) regardless of useful life category. Rather, the manufacturers expect improved durability would allow typical deterioration factors of around 1.4 for 500-hour engines and 1.5 for 1000-hour engines. In making these recommendations, the manufacturers acknowledge that they have not provided any data or analyses to validate their recommendations, but also argue that the Agency has no full useful life data for these higher hour categories which substantiate the feasibility of the Agency's proposed standards. EPA requests any additional data and other pertinent information which would help the Agency reassess the appropriate level of standards for the 500-hour and 1000-hour engines.

Based on the May, 1997 CARB Workshop on their Tier 2 standards, the Agency believes CARB may propose a Tier 2 in-use standard of 12.0 g/kW-hr $NMHC+NO_X$ in model year 2000, followed by a level of 9.4 g/kW-hr $NMHC+NO_X$ in model year 2004. CARB's 12.0 level may be achievable with OHV technology and is very similar to the Agency's proposed Phase 2 level. CARB's 9.4 g/kW-hr level is more stringent than the Agency's 12.1 g/kW-hr proposal. CARB suggests an in-use 9.4g/kW-hr standard would require technology beyond conversion to OHV, such as an OHV engine equipped with a catalyst. The Agency believes the costs and lead time which could be necessary to achieve a 9.4 g/kW-hr level for a national program would be considerably greater than the program contained in today's proposal. However, as discussed under Section IV.A of this proposal, section 209 of the CAA allows California to set their own standards, considering criteria as they apply to the State of California. However, as discussed below, the Agency requests comment on whether the application of the technology anticipated by the standards being considered by CARB would be appropriate for a Federal program at this time.

The Agency requests comment on all aspects of the proposed Class II standards, and especially requests data, analyses and other information on the expected emission performance capability of Class II engines designed for in-use operating lives of 500 hours and 1000 hours.

c. $HC+NO_X$ Emission Standards for Class III, IV and V Handheld Engines. This section presents information used by the Agency to determine the appropriate level for the proposed $HC+NO_X$ exhaust emission standards for handheld engines (engine Class III, IV and V). A more detailed explanation of the engine technologies and costs described in this section is contained in the Draft RSD for this proposal, a copy of which is available in the public docket for this rule.

i. Class III, IV and V Historical Sales Trends by Engine Technology

Handheld engine sales have historically been dominated by crankcase charge scavenged two-stroke engines ("traditional 2-strokes"). Historical sales data indicate that until the recent introduction by one manufacturer, Ryobi, of a 4-stroke trimmer, 100 percent of gasoline engine powered handheld equipment used traditional 2-stroke engines.

ii. In-use HC and NO_X Emission Performance of Uncontrolled Class III, IV and V Engines

Information on uncontrolled 2-stroke engines is limited. However, what information is available indicates 2-stroke technology has the potential to experience high rates of in-use deterioration of HC, on the order of two times the new engine value.[21]

This same information indicated that little in-use deterioration of NO_X emissions occur from traditional 2-stroke engines.

iii. New Engine and In-use HC and NO_X Performance of Class III, IV and V Phase 1 Technology Engines

Federal Phase 1 certification data shows that over 150 two-stroke engine families have been certified for the 1997 and 1998 model years. A summary of the emission performance of these Phase 1 technology engine families is shown in Table 11.

TABLE 11.—SUMMARY OF FEDERAL PHASE 1 HANDHELD 2-STROKE ENGINE FAMILIES

Engine class	Number of families	Average new $HC+NO_X$ (g/kW-hr)	Minimum New $HC+NO_X$ (g/kW-hr)	Maximum New $HC+NO_X$ (g/kW-hr)
Class III	4	216	177	258
Class IV	131	189	97	236
Class V	19	136	90	161

The average emission rates for the Phase 1 Class III, IV and V traditional 2-stroke engines are 28 percent, 23 percent and 18 percent below the combined Phase 1 HC and NO_X standards. Federal certification data also show three Class IV four-stroke technology engine families and three Class IV two-stroke with catalysts engine families have been certified to the Federal rule. The average $HC+NO_X$ certification levels for these engine families are 27 and 165 g/kW-hr respectively.

Information on in-use emission performance of Phase 1 technology 2-strokes is also limited. In preparation for the Phase 1 regulation, several members of the Portable Power Equipment Manufacturers Association (PPEMA) ran a test program which included manufacturer controlled field testing of seven Phase 1 technology 2-stroke engines, six aged to 50 hours, and one to 225 hours.[22] This data shows relatively low deterioration in $HC+NO_X$ emissions, with dfs ranging from slightly less than 1.0 to approximately 1.2 at 50 hours, and slightly less than 1.0 for the 225 hour engine.

[21] See "Emission Tests of In-use Small Utility Engines" Southwest Research Institute, September 1991, EPA Air Docket A–91–24, Item #II–A–8, "Nonroad Engine and Vehicle Emission Study" U.S. EPA Report #21A–2001, November 1991, EPA Air Docket A–91–24, Item #II–A–10, "Emission Testing of In-use Handheld Engines" Southwest Research Institute, March 1994, EPA Air Docket A–93–25, Item #II–A–06, and "Regulatory Impact Analysis and Regulatory Support Document, Control of Air Pollution, Emission Standards for New Nonroad Spark-Ignition Engines at or Below 19 kilowatts" U.S. EPA, May 1995, EPA Air Docket A–93–25, Item #V–B–01.

[22] See Appendix C of "Regulatory Support Document, Control of Air Pollution, Emission Standards for New Nonroad Spark-Ignition Engines at or Below 19 kilowatts" U.S. EPA, May 1995, EPA Air Docket A–93–25, Item #V–B–01.

The Agency has little information on the in-use performance of 4-stroke handheld technology or on handheld catalyst technology.

iv. Technologies Considered for Phase 2 Class III, IV and V $HC+NO_X$ Standards

The Agency analyzed the emission performance and cost of several technologies which could be applied to handheld engines. These include improvements to existing 2-stroke engines, conversion of existing 2-stroke engines to 4-stroke technology, and the application of catalytic converters to existing 2-stroke engines. The Draft RSD for this proposal contains additional information regarding these technologies.

For Phase 1 2-stroke technology engines, fuel lost during the scavenging process represents the largest fraction of exhaust HC emissions, and HC emissions represent greater than 95 percent of the exhaust $HC+NO_X$ emissions. The Agency believes several types of improvements can be made to Phase 1 technology 2-stroke engines. The following is a summary of potential areas for lowering $HC+NO_X$ emissions: (1) improvements in carburetors to reduce production variability and tighter air/fuel ratio control; (2) redesign of the combustion chamber to promote more complete combustion; (3) optimizing port shapes and timing to reduce scavenging losses; (4) leaner carburetor calibrations to reduce HC emissions; and (5) tighter manufacturing tolerances for engine components to reduce component variation. These improvements are discussed in more detail in the Draft RSD. As described in the Draft RSD, the Agency estimates the cost of these improvements would cost the manufacturer as much as $2 to $6 per engine, depending on the production volume of the engine family and the improvements required. The Agency would expect these changes to lower the new and in-use emission rates of Phase 1 two-stroke technology engines. PPEMA members have indicated they believe a well designed, properly maintained 2-stroke engine is capable of performing with no in-use deterioration of $HC+NO_X$ emissions. Based on the small amount of in-use data from Phase 1 technology engines, the Agency estimates the in-use performance of an improved Phase 1 technology 2-stroke engine would deteriorate approximately 10 percent during its useful life. The Agency estimates that for the majority of handheld engines, improvements to Phase 1 2-stroke designs would result in a 30 percent reduction in the in-use emission rates from Phase 1 designs.

The Agency also analyzed the benefits and associated costs which would occur from the conversion of existing 2-stroke handheld engines to 4-stroke designs. Two engine manufacturers, Ryobi and Honda, have successfully demonstrated that 4-stroke designs are viable in at least some handheld equipment applications, notably a string trimmer application. However, the Agency is uncertain that 4-stroke technology would be viable in all handheld applications, particularly those applications which require high power and low weight, such as large, commercial chainsaw applications, where the lower power-to-weight ratio of 4-stroke engines may impede equipment performance. Four-stroke technology does not have the scavenging loss problem associated with traditional 2-strokes. Therefore 4-stroke exhaust HC emissions are substantially below those of a 2-stroke design. Federal Phase 1 certification data for Class IV engines indicates a 4-stroke string trimmer produces new engine $HC+NO_X$ emission rates of about 27 g/kW-hr, which is approximately 80 percent below the Phase 1 standard. Deterioration information on small displacement 4-stroke engines is limited, and the Agency has no deterioration information on handheld 4-stroke engines. The Agency has heard from one small engine manufacturer that the smaller 4-stroke engines would likely have higher deterioration than Class I OHV 4-stroke engines, which is on the order of 1.4 at 66 hours.[23] The Agency requests comment and additional information on the deterioration of smaller 4-stroke engines. As described in the Draft RSD, the Agency estimates the cost of converting an existing handheld 2-stroke to a 4-stroke engine would cost the manufacturer between $7 and $10 per engine, depending on the production volume of the engine family.

The Agency also considered the application of catalytic convertors to Phase 1 2-stroke technology. One handheld engine manufacturer, Husquvarna, has certified three engine families to the Phase 1 rule which utilize a 2-stroke engine with catalyst. This engine has been designed for lower scavenging losses to reduce engine out emissions, has improved fuel metering, and also uses a catalyst to further reduce exhaust emissions. EPA's testing of this engine showed new engine emission results for $HC+NO_X$ at the nominal carburetor setting on the order of 90 g/kW-hr, which is 63 percent below the combined Phase 1 Class IV $HC+NO_X$ new engine standard. The Agency does not have information regarding the actual in-use performance of this or other catalyst equipped 2-stroke engines. The Agency estimates the cost of adding a catalytic convertor to an improved 2-stroke handheld engine would cost the manufacturer between $6 and $12 per engine, depending on the production volume of the family. This cost estimate does not include any of the additional improvements to the Phase 1 technology 2-stroke mentioned previously, such as combustion chamber improvements or scavenging design improvements. As previously discussed, such improvements to existing 2-stroke designs would cost the manufacturer an additional $2 to $6 per engine. Therefore, the Agency estimates an improved 2-stroke design with a catalytic convertor would cost the manufacturer from $8 to $18 per engine. Comments are requested on these cost estimates.

v. Class III, IV and V Proposed Phase 2 $HC+NO_X$ Standard

The Agency is proposing an in-use $HC+NO_X$ standard of 210, 172 and 116 g/kW-hr for Class III, IV and V engines, respectively. As presented in Table 7, the proposed standards would begin in model year 2002, with a requirement that 20 percent of a manufacturer's U.S. sales meet the standards, followed by an increased percentage each year until model year 2005, when 100 percent of a manufacturer's U.S. sales would be required to meet the proposed standards.

The Agency expects the proposed in-use standards can be met primarily through improvements to existing Phase 1 technology 2-stroke engines. As presented previously, the Agency believes improvements to Phase 1 technology 2-stroke engines should result in approximately a 30 percent reduction in the in-use emissions of Phase 1 engines, which would be required to meet the proposed standards.

PPEMA members have indicated the proposed standards would require significant research and development time as well as a large capital investment to change existing production capabilities. The proposed phase-in period plus the lead time anticipated after this rule is finalized will allow manufacturers at least 6 years to make the necessary changes to existing product lines in order to meet the proposed standards, which should accommodate the manufacturers' concerns regarding lead time.

[23] See Item # II–E–08 in EPA Air Docket A–96–55 referencing a meeting between EPA and Honda.

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The Agency has not proposed a handheld standard which would require catalyst or 4-stroke technology. The Agency's experience with on-highway technology indicates catalysts and engine technology evolved together to prevent significant in-use deterioration. As previously discussed in the section on the Class I engine standard, publicly available information on bench aged catalysts used on 4-stroke engines has become available in recent years. The Agency requests comment on the relationship between bench aged and typical in-use aged catalyst performance, and all available data on individual catalysts aged under typical in-use conditions experienced by handheld equipment. The Agency requests additional information on the new and in-use emission performance of catalyst-equipped handheld engines. Two engine manufacturers have introduced 4-stroke engines into string trimmer applications. There are likely some applications, such as high power chainsaws, where 4-stroke technology may not be feasible as a power unit because of weight concerns. As previously discussed, the Agency estimates that conversion to 4-stroke designs would cost the manufacturer between $7 and $10 per engine. PPEMA has reported that in 1993 and 1994 the average retail price of a 2-stroke gasoline powered string trimmer or leaf blower was approximately $100, and the average retail price of a chainsaw was approximately $200. PPEMA members, who do not currently manufacture 4-stroke handheld products, have expressed concern regarding what they perceive to be the potential negative impacts on sales which would result from a large increase in engine costs, such as the cost of conversion to 4-stroke technology for handheld engines. While EPA has no independent information on consumer price sensitivity, it is concerned that the higher cost of equipment which would likely result if catalyst or 4-stroke technology were necessitated by a more stringent standard could result in significant financial burden if the industry were to absorb the cost impact or adverse impact on sales if the increase in cost were passed along to the consumer. EPA is also concerned that mandating near term conversion to 4-stroke technology could significantly increase the lead time necessary before implementing the standards and delay the emission benefits of the standards. The Agency requests comment on the market concerns expressed by these engine manufacturers as well as the potential impact on lead time of a more stringent standard and information on the cost to the consumer and in-use emissions performance if 2-stroke engines were required to be equipped with a catalyst.

The Agency believes that during the next several years additional information regarding the in-use performance of new technologies, such as handheld 4-strokes, or traditional 2-strokes equipped with catalysts, may become available, perhaps in response to the CARB Tier 2 program. In addition, EPA recognizes that technological advances and/or cost reductions may occur after promulgation of the Phase 2 rule that could make greater, but still cost-effective reductions feasible in handheld emission levels. The Agency proposes to conduct a technology review to address this possibility. In this review, EPA expects to examine issues including the potential for further reductions from existing 2-stroke engines, stratified charge 2-stroke technology, direct injection 2-stroke injection, the use of catalysts on handheld engines, and the conversion to 4-stroke technology. Following a technical review, the Agency intends to publish a Notice of Proposed Rulemaking in 2001 announcing any possible amendments to the standard levels or other program elements, or EPA's intention to maintain the existing handheld standards or program. The Agency expects that the final rulemaking would be completed by 2002 and, if adopted, Phase 3 standards would be phased in on a percentage basis and over of a period of time similar to Phase 2, beginning no earlier than model year 2007. This schedule is intended to provide a minimum five year period before the implementation of any Phase 3 standards in order to allow manufacturers to recoup their investments in Phase 2 technology and ensure the cost-effectiveness of the Phase 2 program.

The Agency is aware that CARB is considering a Tier 2 standard for all handheld engines of 72 g/kW-hr $HC+NO_X$, which is more stringent than the levels being proposed for the Federal program. CARB has stated this level could be met by the complete conversion of existing 2-stroke technology to 4-stroke technology. The Agency believes the costs and lead time which would be necessary to achieve a 72 g/kW-hr level for a national program could be considerably higher than the program contained in today's proposal. However, as discussed under Section IV.A of this proposal, section 209 of the CAA allows California to set its own standards, considering criteria as they apply to the State of California. However, as discussed below, the Agency requests comment on whether 4-stroke technology for all handheld applications would be appropriate for a Federal program at this time. The Agency requests comment on all aspects of the proposed handheld standards, and on what adjustments to the proposed Federal program might be necessary to accommodate such standards.

d. Proposed California Standards. As mentioned previously, the State of California has proposed standards for both handheld and nonhandheld small SI engines which are considerably more stringent than the standards which the Agency is proposing today. In this proposal, the Agency has noted several reasons why the level of control being considered by California is not being proposed today, including uncertainties regarding cost, the possible impact of potential price increases on consumer sales, and the lead time necessary for the industry should they be required to adopt the required changes in technology nationwide. However, EPA requests comment on the feasibility in the Federal program of requiring such technology as anticipated by the standards being considered by California, the level of emission control which would result, the costs of such technology for a nationwide program, and any impact on lead time necessary to allow the adoption of such levels of control nationwide.

2. $NMHC+NO_X$ Emission Standards for Class I and II Natural Gas Fueled Nonhandheld Engines

EPA is proposing optional separate standards for Class I and Class II natural gas fueled engines only, due to the fact that for these engines methane has very low ozone forming potential, i.e., low reactivity. The total hydrocarbon (THC or HC) emissions from Phase 1 technology 4-stroke gasoline engines is between 5 and 10 percent methane by mass. For natural gas engines, methane is on the order of 70 percent of total HC mass emissions. For natural gas fueled nonhandheld engines, the Agency is proposing an optional $NMHC+NO_X$ standard, as presented in Table 12.

TABLE 12.—$NMHC.+NO_X$ EMISSION STANDARDS FOR NATURAL GAS FUELED NONHANDHELD ENGINES

[g/kW-hr]

Engine class	Model year 2001	Model year 2002	Model year 2003	Model year 2004	Model year 2005
Class I	23.0	23.0	23.0	23.0	23.0
Class II	16.7	15.3	14.0	12.7	11.3

These proposed $NMHC+NO_X$ standards have been adjusted so that these standards are of equivalent stringency to the $HC+NO_X$ standards for gasoline fueled engines, i.e., 11.3 g/kW-hr $NMHC+NO_X$ is a deteriorated new engine $NMHC+NO_X$ level, assuming a new engine $THC+NO_X$ level of 9.3 g/kW-hr, a $NMHC+NO_X$ deterioration factor of 1.3, and a new engine split of 54 percent NMHC, 6 percent methane and 40 percent NO_X.

The Agency is proposing that for natural gas fueled engines, the standard be based on the level of $NMHC+NO_X$ reduction which a Phase 2 technology gasoline fueled nonhandheld engine could be expected to meet, not on the performance of a Phase 2 technology natural gas fueled engine. Natural gas fueled engines represent less than 1 percent of annual small engine sales and EPA recognizes that this is a technology that as a matter of environmental policy it may be desirable to encourage. The Agency believes very little environmental benefit would occur from basing this optional $NMHC+NO_X$ standard on the performance of Phase 2 technology natural gas engines. In consideration of the energy and safety factors associated with using natural gas technology rather than gasoline technology, EPA is proposing the $NMHC+NO_X$ standard at a level that gives manufacturers a greater incentive, as a result of the ABT program, to use natural gas technology. The Agency requests comment on this approach, and on whether it poses a meaningful risk of allowing over generation of positive credits in the ABT program.

The $NMHC+NO_X$ standard would require an additional testing burden for natural gas engine manufacturers, because these manufacturers would need an additional emission analyzer to measure the methane content of the exhaust gas. However, because natural gas engine manufacturers have requested this optional NMHC standard, and the Agency does not see any adverse effects for the formation of ozone, the Agency believes it is appropriate for this proposal. EPA is not proposing $NMHC+NO_X$ standards for handheld engines. EPA is not aware of any natural gas fueled handheld applications. Therefore, no $NMHC+NO_X$ standard is needed.

The Agency is aware that CARB may use a $NMHC+NO_X$ standard for all handheld and nonhandheld engine manufacturers. At this time, EPA does not believe an emissions benefit would occur by replicating this action for the Federal program. The Agency would need to adjust all standards downward to maintain equivalent stringency and require all manufacturers to begin testing for methane. If manufacturers of small SI engines were able to selectively target reductions in NMHC as compared to THC, an NMHC standard may be of some value to manufacturers. However, the Agency is not aware of small engine technologies which have this potential, other than natural gas fueled engines, which represent less than 1 percent of annual sales. Therefore, because a national NMHC standard would result in increased testing cost for little or no benefit, the Agency is not proposing NMHC standards for all small engines at this time.

3. CO Emission Standards

In addition to HC and NO_X standards, the Phase 1 final rulemaking (60 FR 34582) put in place a cap on the level of CO emissions from small SI engines. That cap was subsequently modified for Class I and II engines (61 FR 58296). In today's action EPA is proposing that the Phase 1 CO standards be adjusted to reflect in-use standards and to maintain the same level of stringency as afforded by the Phase 1 standards. Specifically, EPA proposes to take the Phase 1 standards and multiply them by the projected CO dfs over the useful lives of the engines to arrive at the Phase 2 in-use CO standards. For Class I and II engines, available data indicates that the df ranges considerably between less than 1.0 and something in excess of 2.0 depending on the engine. For Class III, IV and V engines, available data indicates that the df for CO ranges more narrowly and typically falls between 1.0 and 1.1. Consequently, EPA proposes that the following in-use CO standards in Table 13 apply for the Phase 2 program:

TABLE 13.—IN-USE CO EMISSION STANDARDS FOR SMALL SI ENGINES

[In g/kW-hr]

	Engine Class				
	I	II	III	IV	V
CO Standard (g/kW-hr)	610	610	805	805	603

These CO standards would not be subject to the averaging, banking, and trading provisions of the rule available for nonhandheld engines. Rather, these standards would serve as caps on the CO emissions allowed from all engine families.

EPA is proposing that for Class I and Class II engines, the proposed CO levels would be effective in the 2001 model year for a manufacturer's entire product line. For Class III, IV and V engines, those engine families complying with Phase 2 $HC+NO_X$ levels under the proposed phase-in for $HC+NO_X$ standards for handheld engines would be required to also comply with CO levels on the same phase-in schedule. This seemingly disparate treatment for handheld and nonhandheld is consistent with the other provisions of the program (e.g., phase-in from Phase 1 to Phase 2 for handheld but not for nonhandheld engines) and protects manufacturers from having to have engine families comply with Phase 2 CO requirements prior to those same engine

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families being subject to the other Phase 2 requirements.

EPA believes it is appropriate not to go beyond the Phase 1 stringency for CO emissions for two main reasons. First, in most parts of the country CO is primarily a wintertime problem (November through February), while the vast majority of engines covered by this rulemaking are used almost exclusively during the summer months. As a result, most additional CO emission reductions resulting from any increase in the stringency of the standard would not occur at a time when they would provide nonattainment areas with measurable benefit toward meeting the National Ambient Air Quality Standard (NAAQS) for CO.

Second, CO is a diminishing ambient air quality problem.[24] There has been approximately an 80 percent reduction in the number of nationwide exceedances of the NAAQS for CO since the Clean Air Act Amendments of 1990, and this trend is expected to continue without further tightening of CO requirements for small SI engines. Many of the CO nonattainment areas in 1990 have already been redesignated as being in attainment, many more are in the process of requesting redesignation, and many of those not currently requesting redesignation are expected to before the time the Phase 2 standards would go into effect.

Taken together, these two reasons indicate that it does not make sense to pursue more stringent CO standards at the national level for small SI engines at this time. Should this situation change, EPA can take appropriate action at that time.

While EPA does not believe it is appropriate at this point in time to pursue more stringent CO standards for small engines, we nevertheless do believe it is important to maintain the current level of stringency for CO. As discussed in the Phase 1 rulemaking, uncontrolled small SI engines do contribute approximately 1 percent of the emissions toward the national winter CO inventory.[25] As a result, while emissions from small SI engines represent a small piece of the inventory, they are significant. Furthermore, many small SI engines are used outside in close proximity to the equipment users, raising possible concerns over user health effects. A recent National Institute of Occupational Safety and Health Alert[26] raised serious health concerns regarding the operation of gasoline powered engines inside buildings or other partially enclosed spaces due to potential CO poisoning. The NIOSH Alert contains a list of suggested practices for the proper use of equipment powered by small gasoline engines which should be followed. The NIOSH alert does not recommend a more stringent CO standard for gasoline powered small SI engines.

Even without a more stringent CO standard for Phase 2, CO emissions from small engines will likely continue to decrease as manufacturers improve production quality (reduce tolerances and variability) and improve durability to meet the more stringent $HC+NO_x$ standards proposed for Phase 2. To the extent that this does occur, and Phase 2 engines are shown to clearly achieve the Phase 2 CO emission standards, the proposal would allow EPA the flexibility to waive the reporting of CO emissions in the future, thereby decreasing the compliance costs associated with the program as it transitions to one more focussed on $HC+NO_x$ emissions. EPA requests comment on this aspect of the proposed rule. To the extent that engines do exceed the Phase 2 CO emission standard, EPA could also consider in the future setting a more stringent CO standard, taking into account cost, lead time, energy and safety factors as required by the Clean Air Act.

4. Useful Life Categories.

Section 213(a)(3) of the Clean Air Act provides that regulations promulgated for nonroad engines shall apply to the useful lives of the engines. EPA is proposing that engine families meet the proposed Phase 2 emission standards throughout their useful lives, a requirement new to this Phase 2 program for small SI engines. Small SI engines can experience a wide range of useful lives, depending upon the applications and usage patterns, even within a single engine class. EPA believes that the three useful life categories each for Class I and Class II engines, and the two useful life categories each for Class III, IV and V engines proposed today would provide a means of sorting engines for regulatory purposes to reflect expected usage, without establishing an overly complex system of useful life categories. So that consumers have the best information available as to the emission durability of the engine being purchased, EPA is proposing that an indication of the useful life hours be included on the engine's certification label. Finally, in order to ensure that the air quality benefits anticipated by the proposed rule will in fact accrue, EPA is proposing that manufacturers select the useful life category most appropriate for the engine family. This section discusses the useful life categories proposed today for nonhandheld and handheld engines, proposed provisions for inclusion of the useful life hours on the engines' label, and proposed provisions relating to manufacturer selection of the appropriate useful life category.

a. Useful Life Hours. EPA is proposing three useful life categories each for Class I and Class II nonhandheld engines, and two useful life categories each for Class III, IV and V handheld engines, as shown in Tables 14 and 15. These categories are based on information of the ranges of useful lives experienced by the engines in these Classes.

TABLE 14.—NONHANDHELD ENGINE USEFUL LIFE CATEGORIES

[Hours]

	Category C	Category B	Category A
Class I ...	66	250	500
Class II ..	250	500	1000

TABLE 15.—HANDHELD ENGINE USEFUL LIFE CATEGORIES

[Hours]

	"Residential"	"Commercial"
Class III	50	300
Class IV ...	50	300
Class V	50	300

EPA is aware that the small SI engine and equipment industry is comprised of a wide variety of equipment with a wide range of usage patterns. Handheld and nonhandheld engines are designed for many different types of applications, with each application having specific design criteria, resulting in different expected lifetimes. The most obvious example of these differences is the distinction between commercial (or professional) operators and residential (or home) operators. In general, commercial operators, such as commercial lawn-care companies or rental companies, expect to accumulate high numbers of hours on equipment on an annual basis, while a residential operator, such as a residential chain saw owner, expects to accumulate a relatively low number of hours on an annual basis. Several organizations have investigated the issues related to average life and annual use of equipment powered by small SI engines, including industry organizations, the California Air Resources Board, and EPA (see Chapter 3 of the Draft RSD for a summary of several of these reports).

On the nonhandheld engine side, a 1992 phone survey of over 6,000 households collected information on usage rates for consumer-owned walk-behind and ride-on mowers, showing that on average consumers accumulated 100 hours of use on walk-behind mowers (typical of Class I "residential" engines) over a five year period of time, and 207 hours of use on ride-on mowers over a six year (five and six years being the estimates of when one-half of the mowers are no longer in service, or "B–50" life,[27] for walk-behind and ride-on mowers, respectively).[28] On the handheld side, a 1990 study demonstrated the large disparity between consumer and professional use, with consumer equipment expected life time estimates ranging from 53 to 80 hours, and professional equipment expected life time estimates ranging from 225 to 536 hours.[29] A 1990 study of both nonhandheld and handheld equipment in residential and commercial applications showed a large disparity in average lifespan between equipment used by residential and commercial applications, with residential equipment implied average lifespan estimates ranging from 35 to 394 hours, and commercial equipment implied average lifespan estimates ranging from 274 to 3024 hours.[30]

Based on these sources of information, EPA is proposing for regulatory purposes three useful life categories for nonhandheld engines, and two useful life categories for handheld engines. The determination of which useful life category is appropriate for a specific engine is largely dependent on its intended application. For example, Class II engines going into a consumer ride-on mower application may most appropriately have a regulatory useful life of "250 hours." The longer useful life categories would be appropriate for engines placed into "commercial" types of usage. For example, a Class II engine going into a "commercial" generator set application, may most appropriately have a regulatory useful life of 1000 hours. EPA believes that a number of features of engine and/or equipment design are reflective of the intended or expected usage of the engines. As discussed below, manufacturers would be expected to have information on the intended application of their engines which support their useful life category selections.

EPA received comments on the ANPRM arguing that the Class I shortest useful life (66 hours) is too short, and that the minimum lifetime compliance period for Class I engines should be set at 120 or 125 hours to reflect an average six year life with an average use of 20 hours a year for mower engines. While the Agency agrees that 120 or 125 hours may be more representative of the "B–50" life of residential Class I engines, EPA selected 66 hours as sufficient to determine the emission durability performance characteristic of engines in this Class I design category. EPA did so under the assumptions that certifying Class I engines to 66 hours rather than 120 or 125 hours would still provide adequate assurance of in-use emission performance over the life of the engines without the added burden which would be incurred with testing to the higher hours. If this proves not to be the case, EPA would likely have to adjust the useful life, deterioration factors and standards accordingly to provide such assurance. EPA requests comment on the tradeoff between compliance demonstration and in-use compliance assurance associated with the 66 hour useful life proposal.

For handheld engines, the 50 hours category reflects "residential" usage, and the 300 hour category reflects "commercial" usage. For example, a trimmer in residential use may most appropriately be certified to a regulatory useful life of 50 hours, while a chainsaw in commercial use may more appropriately be certified to a useful life of 300 hours. Again, EPA believes that a number of features of engine and/or equipment design are reflective of the intended or expected usage of the engines. As discussed below, manufacturers would be expected to have information in support of their useful life category selections for handheld engines.

EPA received comments on the ANPRM arguing that an intermediate useful life category for some handheld products might be appropriate, for example, in the case of products with intended useful lives of 150 hours. EPA believes that the 50 and 300 hour useful life hour categories are sufficient to distinguish residential and commercial usage, respectively. EPA has not received additional data in support of an intermediate useful life, and believes that it is desirable to avoid a proliferation of useful life categories. Thus, EPA is not proposing an intermediate useful life category for handheld engines. However, EPA requests comment and data on the issue of whether an intermediate category is appropriate, what would be the appropriate hours for an intermediate category, and what features of an engine with an intermediate useful life might distinguish it from engines more appropriately certified to a 50 or a 300 hour useful life.

EPA also received comments on the ANPRM regarding the use of "residential" and "commercial" to indicate the useful life for handheld engines. Several commenters suggested that the terms "residential" and "commercial" are potentially misleading to consumers of handheld engines. One commenter was concerned that dealers would have the responsibility to "qualify" a buyer of equipment, and in the event of injury, the dealer would be at risk for having sold the wrong buyer the wrong equipment. This commenter suggested instead that EPA categorize engines in terms of power, size, weight, or other factors that clearly would not risk making dealers think they have a responsibility to classify the expertise of the buyer. A second commenter suggested EPA could base the useful life on technical properties of engines such as "half crank" and "full crank" rather than "commercial" and "residential." A third industry commenter suggested that it is unnecessary and unwise for manufacturers to differentiate handheld engine families by the terms "residential" and "commercial," since these terms are not airtight, and in fact have substantial overlap for some models. This commenter suggested using useful life categories "A" and "B" instead, where a Category A engine (or

[24] See "National Air Pollution Emission Trends, 1900–1995," EPA–454/R–96–007, October 1997.

[25] Nonroad Engine and Vehicle Emission Study—Report, U.S. EPA, November 1991, EPA Air Docket A–91–24, Item #II–A–10.

[26] "Preventing Carbon Monoxide Poisoning from Small Gasoline-Powered Engines and Tools," Department of Health and Human Services Publication #96–118. Information on how to obtain this publication is contained in EPA Air Docket A–96–55, Item #II–B–1.

[27] The "B–50" is the point at which one-half of the equipment are no longer in service. For regulatory purposes, EPA anticipates that engines would be certified to a "useful life" which most accurately reflects this "B–50" value. Thus, for a Class II engine family certified to the 250 hour useful life category, half of those engines would be expected to no longer be in service after 250 hours.

[28] "Useful Life, Annual Usage, and In-Use Emissions of Consumer Utility Engines," memo from the OPEI CAAC In-Use Working Group to Ms. Gay MacGregor, U.S. EPA, EPA Air Docket A–96–55, Item # II–D–13.

[29] "A 1989 California Baseline Emissions Inventory for Total Hydrocarbon and Carbon Monoxide Emissions from Portable Two-Stroke Power Equipment," prepared by Heiden Associates, Inc., for the Portable Power Equipment Manufacturers Association, July 24, 1990, available in EPA Air Docket A–96–55, Item #II–D–14.

[30] "Utility Engine Emission report," prepared by Booz, Allen and Hamilton Inc., for the California Air Resources Board, November 20, 1990, available in EPA Air Docket A–93–25, Item #II–I–02. These implied average lifespan estimates were calculated from average annual use and estimated "B–50" values.

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engine family) would be "a handheld engine model or family designated by the manufacturer, at the time of certification, as an engine intended primarily for commercial use. Such an engine or family would be subject to testing requirements and warranty obligations for its regulatory useful life. The regulatory useful life of a Category A engine shall be 300 hours." A Category B engine (or engine family) would be "an engine model or family designated by the manufacturer, at the time of certification, as an engine intended primarily for residential use. Such an engine or engine family would be subject to testing requirements and warranty obligations for its regulatory useful life. The regulatory useful life of a Category B engine shall be 50 hours."

EPA agrees that commercial and residential are not airtight terms. However, EPA is proposing the following definitions for these terms and requests comments on these definitions. A "residential engine" would mean a handheld engine for which the engine manufacturer makes the statement to EPA that such engine and the equipment it is installed in by the engine manufacturer, where applicable, is not produced, advertised, marketed or intended for commercial or professional usage. A "commercial engine" would mean a handheld engine that is not a residential engine.

In response to the commenter's concerns about dealer responsibilities, EPA believes that inclusion of the terms "residential" and "commercial" should not pose a risk to dealers, and that the proposed duty of engine manufacturers to certify and label their engines for purposes of emissions durability would not transfer into a duty on the dealer's part to restrict sale of "commercial" products to "residential" purchasers. EPA requests comment on all aspects of the proposal for handheld useful life categories and the proposed definitions of "commercial" and "residential", or other alternative designations for the 50 and 300 hour useful life categories. In particular, EPA requests comment on eliminating the use of residential and commercial as regulatory terms, and simply retaining the "50" and "300" hour useful life categories.

In summary, the Agency's analysis indicates there is a large disparity in the useful life of engines within all five engine classes. The Agency is interested in striking a compromise between the need for representative useful lives, and the reality that different engines within a single class are designed for vastly different usage patterns. For this reason the Agency believes it is appropriate to have multiple useful life categories, but the Agency believes there should be a limit on the number of categories, to prevent an overly complex categorization system. Based on the information presented in this section, the Agency believes the proposed useful life categories presented in Tables 14 and 15 are appropriate. The Agency requests comment on these proposed useful life categories.

b. Useful Life on the Engine's Label. EPA is proposing that manufacturers would indicate their selection of useful life category by adding information concerning the engine's "emissions compliance period" to the engine's label. This information would be an important tool for consumers and purchasers of engines. EPA anticipates that manufacturers will use the useful life hours of the engine as a marketing tool. For example, a manufacturer might advertise that an engine family is emissions durable to 1000 hours, or is certified by EPA as a "commercial" engine. Thus, the requirement that manufacturers indicate the emissions compliance period on the engine's label would also have potential as a marketplace mechanism to help encourage manufacturers to select longer useful life categories.

For nonhandheld engines, EPA is proposing that the manufacturer would add to the compliance statement on the engine's label, "EMISSIONS COMPLIANCE PERIOD: [useful life] HOURS." In addition, consistent with the ANPRM, EPA is proposing as an option for nonhandheld manufacturers, rather than indicating the useful life in hours, the manufacturer may add to the compliance statement on the engine's label "EMISSIONS COMPLIANCE PERIOD: CATEGORY [A, B, OR C]. REFER TO OWNER'S MANUAL FOR FURTHER INFORMATION." In this case, the owner's manual would be required to contain the statement: "This engine has been shown to meet emission standards for a period of [useful life] hours." EPA is proposing this option in light of concerns voiced by manufacturers that putting the useful life of the engine, in hours, on the engines' label, could be misleading to consumers in that the emissions compliance period may or may not represent the expected lifetime of the engine. Nevertheless, EPA believes that putting the engine's useful life in hours on the engine's label could serve as an important mechanism to educate and inform consumers as to the emissions durability of the product they are considering. EPA requests comment on whether the option to allow a manufacturer to instead designate the useful life by using Category [A, B or C] on the engine's label, with information on the emissions compliance period in hours in the owners manual, is an effective substitute to achieve this goal of educating consumers.

In the case of handheld engines, the manufacturer would add to the compliance statement on the engine's label, for residential engines, "EMISSIONS COMPLIANCE PERIOD: 50 HOURS," and for commercial engines, "EMISSIONS COMPLIANCE PERIOD: 300 HOURS." Again, EPA believes that including the useful life, in hours, on the engine's label, is an important mechanism for educating consumers as to the emissions durability of the engine. EPA requests comment on whether requiring the designation "EMISSIONS COMPLIANCE PERIOD: 50 RESIDENTIAL HOURS," or "EMISSIONS COMPLIANCE PERIOD: 300 COMMERCIAL HOURS" would be more effective as the proposed requirement to only include the emissions compliance period, by hours, on the label. Similar to the option for nonhandheld engines, EPA is requesting comment on an option which would allow handheld engine manufacturers to use label statements which include a useful life category code (such as A, B, or C) and referencing the owner's manual to determine what the code means.

c. Manufacturer selection of useful life category. One of EPA's goals in the proposed Phase 2 program is to assure that engines are emissions durable for their useful lives, so that the air quality benefits anticipated for the rule are in fact achieved. EPA believes that the selection of the appropriate useful life category for an engine family is essential to achieving this goal. An appropriate useful life selection is important from an emissions compliance durability perspective, in terms of assuring that engines meet the appropriate emissions standards for the period of time that they are expected to be in service. However, EPA is concerned that since the useful life of engines, in hours, would be included in certification credit calculations for nonhandheld engines, and in-use credit calculations for handheld engines, and since these credits have real value, a manufacturer may have an important incentive to choose a useful life category for a particular family to maximize the manufacturer's credit balance, rather than to reflect the most accurate useful life selection for that family.

For example, in the case of a nonhandheld engine family whose FEL is significantly below the standard and is therefore generating substantial

credits, a manufacturer could generate four times as many certification credits if that family were certified to 1000 hours rather than 250 hours. Similarly, for a handheld engine family whose in-use test results are well below the standard, that family could generate six times as many in-use credits if certified to 300 hours rather than 50 hours. However, in cases where the credit generating engine is not expected to be used for 1000 hours (or 300 hours, in the handheld example), those clean air benefits may never be realized if the typical engine for that family is scrapped substantially before reaching 1000 hours of use. The "surplus" credits might be used to make up for higher emissions of other engine families even though the credits were generated based on an overestimation of the useful life. On the other hand, for engines which are emitting above the standard, the manufacturer might have an incentive to certify to the shortest useful life period, to minimize the credits needed to offset that engine's higher emissions. This could become an even greater concern if that engine is in fact expected to be placed into an application which experiences longer hours of use than indicated by the selected useful life category.

From an air quality perspective, a consumer education perspective, as well as from a marketing or competitive perspective, EPA believes that selection of an appropriate useful life is important, and certifying an engine to an inappropriate or inaccurate useful life presents serious problems. However, no one technical feature of an engine model would necessarily dictate that it be placed in one or another useful life category, and the distinctions between the useful life categories proposed today are not based on objective technical differences between engines (e.g., half crank, full crank).

EPA also recognizes that historically engine manufacturers have not always tracked the sale of engines, and may not have been able to ascertain the type of application in which an engine is used. On the other hand, EPA is also aware that in many cases manufacturers are able to determine the end application for a particular engine, and that in many cases an engine is designed for a specific end use.

Manufacturers, stressing that the nonhandheld SOP, as reflected in the March 1997 ANPRM, discussed useful life selection as being solely at the manufacturer's discretion, have maintained that marketing and competitive concerns would ensure that manufacturers select the most accurate and appropriate useful life category, and that additional requirements that manufacturers support their useful life selections are not needed. EPA understands that manufacturers have strong views regarding the nonhandheld SOP's discussion of useful life selection. However, the SOP indicates that it would be appropriate to certify engines to longer useful life categories when they are intended for longer hours of operations in-use. The signatories of the SOP further recognized that the greater use of an engine during the ozone season directly relates to its impact on air quality. In addition, since the signing of the SOP, EPA has become concerned that a number of various incentives are at play for the manufacturer when it comes to selection of a useful life category for an engine, including the requirement to demonstrate the engines' emissions durability, testing requirements and warranty obligations, generation or use of emissions credits, consumer education, and marketing and competitive issues. EPA is concerned that a manufacturer might inappropriately select useful life categories for certification so as to put itself in a position of competitive advantage compared to other manufacturers that fairly and accurately select useful life categories, and that the risk of this could cause other manufacturers to follow suit in order to remain competitive.

Therefore, to assure that no individual manufacturer is unfairly biasing its useful life selections in order to take advantage of the credits programs, EPA is proposing that all manufacturers would declare the applicable useful life category for each engine family at the time of certification, and would be required to retain at their facilities data appropriate to support their selections of useful life categories, to be furnished to the Administrator upon request. The manufacturer would be required to select the category which most closely approximates the actual useful lives of the equipment into which the engines are expected to be installed. The rule would also require manufacturers to have data supporting their selections sufficient to show that the majority of engines or a sales weighted average of engines of that family are used in applications having a useful life best represented by the chosen category. EPA would not expect to request such data unless there is evidence of problems with a manufacturer's useful life selections. Such problems might be indicated, for example, if all or the major portion of a manufacturer's credit-generating engine families were certified to the longest useful life categories, or if all or the major portion of a manufacturer's credit-using engine families were certified to the shortest useful life categories.

EPA is proposing that data in support of a useful life category selection could include: surveys of the life spans of the equipment in which the engines are installed; engineering evaluations of field aged engines to ascertain when engine performance deteriorates to the point where usefulness and/or reliability is impacted to a degree sufficient to necessitate overhaul or replacement; warranty statements and warranty periods; marketing materials regarding engine life; failure reports from engine customers; and engineering evaluations of the durability, in hours, of specific engine technologies, engine materials, or engine designs. EPA expects that retaining these types of data at their facilities would not be unduly burdensome to manufacturers, and that in most cases these types of data would be information that the manufacturer already has on hand. EPA requests comment on these types of data and their usefulness in helping to distinguish the most accurate and appropriate useful life category for a particular engine family.

Finally, EPA proposes that in the event that EPA reviewed data provided by the manufacturer in support of the useful life selection, and upon review of that and such other information available and discussion with the manufacturer EPA believed that a different useful life category would be more appropriate, the Agency would work with that manufacturer to determine a more appropriate selection of useful life categories. EPA requests comment on all aspects of this proposal.

5. Certification Averaging, Banking and Trading Program

With today's notice, EPA is proposing a certification averaging, banking and trading (ABT) program for nonhandheld small SI engines. The proposed program would be the first ABT program for nonhandheld small SI engines. The Phase 1 rule did not include an ABT program due to uncertainties regarding the in-use emission levels of engines certified to the Phase 1 standards. (The Phase 1 standards apply to "new" engines and do not require any determination of in-use deterioration as the proposed Phase 2 standards do.)

The Agency is not proposing a certification ABT program for handheld engines at this time. Based on the levels of the proposed standards and discussion with engine manufacturers, EPA does not believe a certification ABT program is warranted or desired for

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handheld engines. The Agency specifically requests comment on this issue. As discussed later, EPA is proposing an in-use credit program for handheld small SI engines that would be used to address potential in-use emission exceedances. The reader is directed to Section IV.D.3 of today's notice for further details of the proposed in-use credit program for handheld engines.

The nonhandheld small SI engine ABT program proposed today is a market-based incentive program designed to provide an incentive for early introduction of clean technologies, and provides engine manufacturers with additional flexibility for meeting the proposed HC+NO_x standards, while protecting the environmental benefits of the program. Implementation of the program should also reduce the cost of controlling HC+NO_x emissions from nonhandheld engines.

EPA believes that the proposed ABT program is consistent with the statutory requirements of section 213 of the Clean Air Act. Although the language of section 213 is silent on the issue of averaging, it allows EPA considerable discretion in determining what regulations are most appropriate for implementing section 213. The statute does not specify that a specific standard or technology must be implemented, and it requires EPA to consider costs, lead time, and other factors in making its determination of "the greatest degree of emissions reduction achievable through the application of technology which the Administrator determines will be available." As noted in the proposal for Tier I nonroad compression-ignition engine standards, which also contained a certification ABT program, section 213(a)(3) also indicates that EPA's regulations may apply to nonroad engine classes in the aggregate, and need not apply to each nonroad engine individually (see 58 FR 28809, May 17, 1993).

At the same time, EPA believes that any ABT program must be consistent with the statutory requirement that standards reflect the greatest degree of emission reduction achievable through the application of available technology. EPA believes the proposed ABT program is fully consistent with such a requirement. The proposed HC+NO_x emission standard of 25.0 g/kW-hr for Class I engines and the series of declining HC+NO_x standards for Class II engines were developed under the assumption that an ABT program would take effect at the same time as proposed standards, once adopted. In fact, as discussed earlier in Section IV.A.1, the conclusion that the proposed standards for Class I and Class II engines are feasible for all affected nonhandheld engines within the time available to manufacturers, is based in part on the availability of the proposed ABT program. In addition, the flexibilities provided to engine manufacturers via an ABT program should allow compliance with the proposed standard at a lower cost than may otherwise be the case. It is also possible that ABT allows the standard to be implemented sooner since, for example, not every family may need to be redesigned to meet the lower standard. If each engine family had to comply with the standards, the standards might be higher and/or the standards might need to be implemented later.

As noted above, the three aspects of the proposed ABT program are averaging, banking, and trading. Averaging means the exchange of emission credits among engine families within a given engine manufacturer's product line. Averaging allows a manufacturer to certify one or more engine families at levels above the applicable emission standard. However, the increased emissions would have to be offset by one or more engine families within that manufacturer's product line certified below the same emission standard, such that the average emissions in a given model year from all the manufacturer's families (weighted for engine power, useful life, load factor, and sales) are at or below the level of the emission standard. Averaging results would be calculated for each specific model year and, as proposed today, would be calculated for each engine class. The mechanism by which this is accomplished would be certification of the engine family to a "family emission limit" (FEL) set by the manufacturer, which may be above or below the standard. An FEL that is established above the standard could not exceed an upper limit specified in the ABT regulations. Once an engine family is certified to an FEL, that FEL would become the enforceable emissions limit used for compliance purposes and each engine in the engine family would be subject to compliance with the FEL.

Banking means the retention of emission credits by the engine manufacturer generating the credits for use in future model year averaging or trading. EPA believes that banking, including today's proposed provision which would allow early banking under certain conditions during the two years prior to implementation of the standards, would improve the feasibility of meeting standards by encouraging the development and early introduction of advanced emission control technology, allowing certain engine families to act as trailblazers for new technology. This can help provide valuable information to manufacturers on the technology prior to manufacturers needing to apply the technology throughout their product lines. An incentive for early introduction arises because the banked credits could subsequently be used by the manufacturer to ease the compliance burden of new, more stringent standards.

Trading means the exchange of emission credits between engine manufacturers which then can be used for averaging purposes, banked for future use, or traded to another engine manufacturer. Trading can be advantageous to smaller manufacturers who might have limited opportunity to optimize their costs through the use of averaging. Trading can also be advantageous to larger manufacturers because extending the effective averaging set through trading can allow for overall optimization of costs across manufacturers.

EPA is proposing that participation in the proposed ABT program for Phase 2 nonhandheld small SI engines would be voluntary. For those manufacturers who choose to utilize the program, compliance of individual engine families with their FELs would be determined and enforced in the same manner as compliance with the emission standards in the absence of an ABT program. In addition, except where specifically permitted in the case of production line testing failure (see section IV.D.2. of today's notice), the final number of credits available to the manufacturer in each engine class at the end of a model year after considering the manufacturer's use of credits from ABT would have to be greater than or equal to zero. Specific elements of the proposed ABT program for nonhandheld small SI engines are discussed below.

a. Calculation of Credits. Credits would be calculated as a function of the difference between the applicable Phase 2 emission standard and the FEL, the power, the useful life, the load factor, and the number of eligible engines sold of the engine family participating in the program. (Since the standards are expressed in terms of grams/kW-hour, the "power" and "load factor" variables are included to allow averaging across engines designed to different power.) EPA would expect manufacturers to follow the regulations for establishing its engine families and not disaggregate their families into multiple families or combine their existing families into fewer families to maximize credit generation or minimize credit usage.

EPA is proposing the following equation for calculating the emission credits from a given engine family, whether generating positive or negative credits.

Credits=(Standard − FEL)×(Power)×(Useful Life)×(Load Factor)×(Sales)

"Standard" represents the applicable Phase 2 emission standard as proposed by EPA. "FEL" is the family emission limit for the engine family as established by the manufacturer. "Power" represents the engine's maximum modal power produced during the certification test cycle. For those engine families that contain more than one configuration with different power ratings, EPA is proposing that the "Power" term be the sales-weighted maximum modal power determined across all configurations within the engine family. EPA assumes manufacturers know the general power characteristics of each of their engine configurations they are producing, and therefore, determining the power information necessary for the ABT calculations will not place any additional testing burden on manufacturers. EPA requests comment on this assumption.

"Useful Life" is the useful life category to which the engine family is certified, and represents the period of time for which the manufacturer is responsible for compliance with the emissions standards. "Load Factor" refers to the fraction of rated power at which the engine operates in use, on average. For the two main certification test cycles, referred to as cycle "A" and cycle "B", which EPA believes represent typical in-use operation, a load factor of 0.47 is proposed. For alternative test cycles, as approved by EPA, the load factor would need to be calculated based on the characteristics of the test procedure as described in the proposed regulations.

"Sales" represents the eligible number of Phase 2 engines sold in the United States in the applicable model year, excluding those engines subject to California regulations. Manufacturers would be allowed to use sales projections for initial certification. However, actual sales based on the location of the point of first retail sale (for example, retail customer or dealer) would have to be submitted at the end of the model year to verify end-of-year compliance. The Agency is proposing that manufacturers exclude engines subject to California's emission standards from the estimates of eligible engine sales because California will likely require all engines sold in California to meet its own tighter HC+NO_x standards. If California engines were included, then the credits generated by California sales would allow more engines with higher emission rates to be sold in states outside of California. This would detract from the goals of the Phase 2 program, and possibly undermine the emissions reductions expected to be achieved by the program throughout the country. Engines sold outside of the United States, including Canada and Mexico, would also be excluded from the manufacturer's estimates of sales unless those engines are subsequently imported back into the United States in a new piece of nonhandheld equipment.

Because only those engines sold in the United States, excluding engines subject to California's standards, would be included in the ABT program, manufacturers would need to determine the number of such engines sold each year to yield accurate estimates of credit generation and usage. Due to the difficulty in tracking point of first retail sales in the nonhandheld market compared to other markets (e.g., the on-highway segment where a more direct engine and vehicle distribution system exists), EPA is requesting comments on alternative methods manufacturers could use to determine their eligible sales for credit calculations. One possible option would be to allow engine manufacturers to query their customers, on an annual basis, to ascertain the percentage of Phase 2 engines of each family that constitute eligible sales. Based on the results of the query, the Agency could allow manufacturers to extrapolate those results, assuming they received responses sufficient to cover some high percentage of their sales, say 90 percent or more, to its total sales of engines in the United States. The Agency is open to considering other alternative methods for tracking engines for credit calculation purposes that provide high levels of confidence that eligible sales are accurately counted. EPA specifically requests comments on such alternatives and other information that would further address the Agency's concerns that eligible sales estimates be as accurate as possible. In addition, the Agency requests comments on appropriate methods for estimating the export of engines and the sales of engines subject to California's standards, since one method for estimating eligible sales for ABT purposes could be to deduct these two groups from total sales.

As discussed in Section IV.E of today's notice, EPA is proposing several compliance flexibility provisions for engine manufacturers and equipment manufacturers that would allow the limited use of Phase 1 engines in the Phase 2 time frame. To avoid penalizing manufacturers that produce engines to be used under the proposed flexibility provisions, EPA is proposing that manufacturers exclude such engines from the ABT program calculations. In other words, engine manufacturers would not be required to use credits to certify these Phase 1 engines used for the proposed flexibility provisions even though they would likely exceed the proposed Phase 2 standards.

Another proposed flexibility provision described in Section IV.E of today's notice would allow engine manufacturers to certify beyond the 2005 model year Class II side-valve engine families with annual sales of less than 1,000 units to an HC+NO_x cap of 24.0 g/kW-hr. For such engine families, EPA is proposing that manufacturers do not need to include such families in the ABT program calculations for 2005 and later model years. For the interim years, 2001 through 2004, a manufacturer could also exclude Class II side-valve engine families with annual sales of less than 1,000 units from the ABT program calculations as long as the deteriorated HC+NO_x emission level of the engine is less than 24.0 g/kW-hr. Class II side-valve engine families with annual sales of less than 1,000 units that are certified above the 24.0 g/kW-hr HC+NO_x level must be included in the manufacturers' ABT calculations during the interim years.

EPA is proposing an upper limit on the level of emissions allowed from those engine families a manufacturer wishes to include in the ABT program. Under the proposal, manufacturers would not be allowed to certify engines that have FELs above the upper limits described below. Typically, when EPA adopts an ABT program, the upper limit is set at the level of the previous standard. However, because the Phase 1 standards did not require manufacturers to take into account deterioration over the useful life of the engine as the proposed Phase 2 standards do, EPA believes it is appropriate to use the Phase 1 standards as the basis for calculating the upper limits and apply a deterioration factor to determine the equivalent deteriorated level of the Phase 1 emission standards. Based on the predominant side-valve engine technology certified under the Phase 1 program, EPA estimates that a typical Phase 1 engine would have emissions at the end of the useful life period about twice its new engine emission level.[31]

[31] See "Summary of EPA Analysis Regarding Upper Limits for Phase 2 Averaging, Banking & Continued

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Therefore a deterioration factor of 2.0 is appropriate for estimating the equivalent useful life level of engines designed to meet the Phase 1 standards. Based on the Phase 1 HC+NO_X standards and a deterioration factor of 2.0, EPA is proposing HC+NO_X upper limits of 32.2 g/kW-hr for Class I engines and 26.8 g/kW-hr for Class II engines. Therefore, a manufacturer would be allowed to certify an engine family only if the HC+NO_X FEL were at or below these proposed levels (and only if they had the appropriate number of credits to offset the family's credit needs). For families not participating in the ABT program, each family must comply with the standard which in effect is an analogous upper limit. EPA requests comment on the appropriateness of the proposed upper limits for engine families included in the ABT program.

Due to concerns over the amount of credits manufacturers could accumulate, as described below, EPA is proposing a declining set of caps on how high the sales-weighted average level of HC+NO_X FELs could be for Class II engine families beginning in 2005. Based on the certification information of Phase 1 nonhandheld engines submitted by manufacturers to EPA and assumptions about typical deterioration factors and compliance margins, it appears that some engine manufacturers have the potential to earn significant credits from their Class II engines prior to the 2005 model year. (Because the proposed emission standard for Class I engines assumes side-valve technology and because most Class I engines are expected to remain side-valve technology, it does not appear that there would be the same potential for significant credit generation by Class I engine manufacturers.) Manufacturers who adopt OHV technology earlier than anticipated by the proposed Class II phase-in standards appear best positioned to accumulate significant credits. The ability to generate credits during the transition years would occur primarily because the typically lower-emitting OHV engines could earn credits up to the proposed applicable model year standards (which, as noted earlier, would decline for each model year between 2001 and 2005 and assume an industry changeover to the cleaner OHV engines from the higher-emitting side-valve engines).

The environment benefits when a manufacturer produces engines which, on average, are cleaner than required during the transition years. However, EPA is concerned that some manufacturers, because their current product line is predominantly made up of OHV technology, would be able to accumulate significant credits during the phase-in years without any additional effort to improve emission performance. These credits could be, in turn, used by such manufacturers beginning in 2005 to, in effect, delay the need for that manufacturer to produce engines meeting the proposed 2005 model year standard. This action could put such manufacturers in a competitively advantageous position compared to manufacturers who did not have substantial credits and therefore needed to produce a product line which, on average, met the 2005 model year standard. Such action could similarly undermine the goal of this rule (and the SOP) to have 100 percent OHV technology (or similar technology meeting the 2005 model year standards) in place across the industry for Class II by 2005.

In order to ensure that this transition to cleaner technology occurs by the 2005 model year and to minimize the risk of credit "build-up" resulting in a delay of conversion to OHV or OHV-comparable technology, EPA is proposing that a manufacturer's sales-weighted average of Class II HC+NO_X FELs may not exceed 13.6 g/kW-hr in 2005, 13.1 g/kW-hr in 2006, and 12.6 g/kW-hr in 2007 or later. EPA believes this approach would ensure that Class II engines are converted to OHV or OHV-comparable technology by roughly 2005 while still encouraging the early introduction of cleaner, more durable technology and ensuring that manufacturers have the flexibility they need to comply with the proposed standards. EPA requests comment on the proposed caps and alternative approaches that would ensure the introduction of OHV or OHV-comparable technology by approximately 2005 while maintaining the flexibility offered to manufacturers by ABT and the encouragement to pull ahead cleaner, more durable technology.

As described earlier, EPA is proposing separate NMHC+NO_X standards for natural gas-fueled engines which are intended to be as stringent as the proposed HC+NO_X standards for the remaining nonhandheld small SI engines. All credit calculations for natural gas-fueled engines would be calculated against those standards. In addition, because the proposed standards are equivalent in stringency, and the market for nonhandheld natural gas-fueled small SI engines is extremely small (i.e., less than 0.1 percent of current nonhandheld sales), EPA is proposing to allow manufacturers to freely exchange NMHC+NO_X credits from nonhandheld engines fueled by natural gas with HC+NO_X credits from nonhandheld engines fueled by fuels other than natural gas in the ABT program.

b. Life of Credits. For all credits generated by Class I and Class II engines under the certification ABT program, EPA is proposing an unlimited credit life. EPA believes that unlimited life for these credits will promote the feasibility of the proposed Phase 2 Class I and Class II standards because it increases the value of these credits to the manufacturer by providing greater flexibility for the use of the credits. It is consistent with the general emission reduction goal of ABT programs, not only because of the increased manufacturer incentive but also because it reduces the incentive for manufacturers to use their credits as quickly as possible. As a result, unused credits, which are extra emission reductions beyond what the EPA regulations require, may remain off the market longer. It should be noted that EPA would expect to reconsider the appropriate life of Phase 2 emission credits in connection with any post-Phase 2 rulemaking for nonhandheld engines.

c. Early Use of the ABT Program. EPA is proposing that manufacturers be allowed to use the ABT program prior to implementation of the Phase 2 standards to provide an incentive to accelerate introduction of cleaner technologies into the market. The Agency believes that making bankable credits available prior to 2001 would reward those manufacturers who take on the responsibility of complying with the proposed standards sooner than required and would result in early environmental benefits. Under the proposed provisions, manufacturers would be allowed to begin using portions of the ABT program starting two model years before the proposed standards take effect provided the manufacturer certifies and complies with the proposed 2001 model year standards of 25.0 g/kW-hr for Class I engines and 18.0 g/kW-hr for Class II engines for their entire product line in a given nonhandheld engine class. The manufacturer could show it is in compliance with the proposed standards for each individual engine family or on average using the averaging provisions of the proposed ABT program. If a manufacturer meets this condition, the manufacturer could generate early credits to be banked for use in the 2001 or later model years from only those engines certified below 16.0 g/kW-hr HC+NO_X for Class I engines and below 12.1 g/kW-hr for Class II engines (or 15.0 g/kW-hr NMHC+NO_X for Class I natural-gas fueled engines and 11.3 g/kW-hr for Class II natural-gas fueled engines). However, all early credits would be calculated against the initial Phase 2 standards of 25.0 g/kW-hr HC+NO_X for Class I engines and 18.0 g/kW-hr HC+NO_X for Class II engines (or the corresponding NMHC+NO_X standards of 23.0 g/kW-hr and 16.7 g/kW-hr, respectively, for natural-gas fueled engines). If the manufacturer certifies its product line to the proposed Phase 2 standards early through the use of averaging, the manufacturer could bank credits for use in 2001 and later, but could only bank credits from those engines which were not needed to show early compliance with the proposed Phase 2 standards. In other words, manufacturers would not be allowed to bank credits from engines whose credits were already used to offset other engines with FELs above the proposed Phase 2 standards. This would prevent manufacturers from "double counting" credits needed to show early compliance with the proposed standards. Manufacturers would not be allowed to trade their early credits to other manufacturers until the 2001 model year or later.

In establishing the proposed set of declining standards for Class II engines, EPA assumed a certain phase-in of OHV or comparably clean and durable technology. As described in the March 1997 ANPRM, the proposed series of Class II HC+NO_X standards were based on the assumption that 50 percent of Class II engines would employ OHV or comparably clean and durable technology in 2001 (i.e., could meet a 12.1 g/kW-hr HC+NO_X standard without the use of credits). For the remaining years, the phase-in schedule assumed for "OHV emission performance" ("OEP") technology was 62.5 percent in 2002, 75 percent in 2003, 87.5 percent in 2004, and 100 percent in 2005. EPA believes this phase-in of OHV or comparably clean and durable technology is important due to the inherent emission benefits anticipated from this technology in use. Related to the concerns discussed above regarding credit life for pre-2005 credits, the Agency is concerned that manufacturers of Class II engines could bank early credits and use such credits to continue certifying a line of engine families that do not meet the OEP production phase-in schedule assumed by EPA in establishing the proposed standards. Therefore, EPA is proposing that manufacturers only be allowed to use early banked credits beginning in 2001 or later if they are meeting the OEP production phase-in schedule estimates for that model year. EPA believes prohibiting the use of early banked credits unless manufacturers meet such conditions will encourage the manufacturers to meet the OEP production phase-in schedule assumed in developing the proposed Phase 2 standards.

d. Cross-Class Exchange of Credits for Certification Purposes. Today's proposal contains limitations on the cross-class exchange of credits during certification. The limitations are meant to assure the ABT program fulfills its intended function of encouraging a transition to cleaner, more durable technology for both classes of nonhandheld engines and achieves the expected environmental benefits of the program. The proposed limitations are also intended to assure that the proposed ABT program does not affect competition between engine manufacturers.

With regard to encouraging cleaner, more durable technology, the proposed schedule of standards for Class II engines was established with the assumption that engine manufacturers will phase-in OHV technology over roughly the five year period from 2001 to 2005 based on the schedule noted earlier. In order to encourage manufacturers to follow the assumed OEP production phase-in schedule, EPA is proposing that limited cross-class exchange of credits for certification purposes, as noted below, would be allowed only if a manufacturer's Class II engine production meets or exceeds the assumed OEP production phase-in schedule for Class II engines presented earlier.

With regard to competition in the nonhandheld market, about two-thirds of nonhandheld engine manufacturers currently produce both Class I and Class II engines. The remaining one-third of the nonhandheld engine manufacturers produce only Class II engines. At this time, EPA is not aware of any nonhandheld engine manufacturers that only produce Class I engines. Allowing manufacturers to exchange credits across engine classes could cause a competitive disadvantage for those manufacturers who only produce Class II engines because they would not have the advantage of being able to use positive credits from Class I engines. Therefore, with regard to the cross-class exchange of credits, EPA is proposing that manufacturers would be allowed to exchange credits from credit generating Class II engines to credit using Class I engines for certification purposes. However, due to the competitive concerns noted above, EPA is not proposing to allow the exchange of credits from credit generating Class I engines to credit using Class II engines for certification purposes.

e. Use of Credits to Address Nonconformity Determined After Certification. As noted elsewhere in today's notice, EPA is proposing a number of provisions that address post-certification compliance aspects of the proposed standards. In two specific cases, EPA is proposing to allow manufacturers to use credits from the certification ABT program to address noncompliance determined after the time of certification. As noted in the discussion on compliance, EPA does not believe that the typical type of enforcement action that could be taken when a substantial nonconformity is identified (i.e., an engine family recall order) would generally be workable for nonhandheld small SI engines given the nature of the nonhandheld market. Whereas handheld engine nonconformities after certification would be addressed through the use of in-use credits, EPA is not proposing an in-use credit program for nonhandheld engines, as discussed in Section IV.D.

Instead, EPA is proposing to allow manufacturers to use certification ABT credit to address two different types of nonconformance. First, manufacturers would be allowed to use ABT credits to offset limited emission shortfalls for past production of engines determined through the Production Line Testing (PLT) program as described in Section IV.D.2. of today's notice. Second, manufacturers would be allowed to use ABT credits to offset emission shortfalls from Class II OHV engines that arise as a result of an adjustment to deterioration factors originally determined through good engineering judgement, as described in Section IV.E of today's notice. Under the proposed provisions, manufacturers would be allowed to use all credits available to them to offset such emission shortfalls. EPA does not believe it is necessary to limit the use of cross-class credits for these situations. Allowing manufacturers to exchange credits from one class to another should not raise the same concerns with regard to new engine competition as noted earlier because the manufacturer is addressing a nonconformance problem for engines that have already been sold and used in the field for a significant period of time. EPA requests comment on the proposed provisions for using certification ABT credits to address nonconformance with

Trading Program for Nonhandheld Engines", Item #II–B–05 in EPA Air Docket A–96–55.

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the Phase 2 emission standards determined after certification.

EPA is not proposing to allow manufacturers to use ABT credits to remedy a past production nonconformance situation in the Selective Enforcement Audit (SEA) program. As described in today's notice, EPA is planning to primarily rely on the PLT program to monitor the emissions performance of production engines. However, in the case of nonhandheld engines only, manufacturers would in some cases have the option of traditional SEA in lieu of PLT as a production line compliance program. In addition, SEAs could be conducted in cases where EPA has evidence of improper testing procedures or nonconformities not being addressed through PLT. As discussed in section IV.D.3, if EPA determines that an engine family is not complying with the standards as the result of an SEA, EPA plans to work with the manufacturer on a case-by-case basis to determine an appropriate method for dealing with the nonconformity. The option(s) agreed upon by EPA and the engine manufacturer may, or may not, include the use of ABT credits to make up for any "lost" emission benefits uncovered by the SEA.

As noted earlier, EPA solicits comments on all aspects of the proposed ABT program, including comments on the benefit of the program to manufacturers in meeting the proposed emission standards and any potential air quality impacts which might be associated with them.

6. Certification Fuel

The program for nonhandheld engines discussed in the March 1997 ANPRM specified that the proposed range for eligible certification fuels for Phase 2 would be the same as under Phase 1. The program for handheld engines in the ANPRM was silent on this issue. EPA received comment on the ANPRM that the continued use of Phase 1 certification fuels for Phase 2 testing is appropriate so long as the same fuel may be used to certify handheld engines under both EPA and CARB regulations.

EPA is proposing today that certification test fuel requirements for the Phase 2 program would remain the same as in the Phase 1 program, as specified at 40 CFR 90.308(b). While California "Phase 2" reformulated gasoline is not a proposed certification test fuel, EPA believes that continuation of the Phase 1 program for Phase 2 would continue to provide a means of harmonizing the Federal and California programs. As described in the February 1997 Draft U.S. EPA Small Engine Certification Guidance, Section X "Certification Fuel", manufacturers have four options for choice of certification fuel for Phase 1[32]; EPA is proposing that these options would continue for this rule.

The first option is to use average in-use gasoline specified at 40 CFR Part 90, Subpart D, Appendix A, Table 3. The second option is federal certification fuel (e.g., Indolene), specified at 40 FR 86.1313–94(a), Table N94–1. Third, manufacturers may use other fuels, such as natural gas, propane, methanol, or others, under conditions described at 40 CFR 90.308(b)(2) and (3). Fourth, manufacturers may request EPA approval for certification testing on fuels such as California "Phase 2" reformulated gasoline, which do not meet the requirements for "other fuels" under 40 CFR 90.308(b)(2) or (3). For this option, manufacturers would request EPA approval of an alternate test procedure (e.g., alternate test fuel) under 40 CFR 90.120(b)(1). Manufacturers may elect to use an alternative test procedure provided it yields results equal to the results from the specified test procedures (e.g., test fuels described at 40 CFR 90.308(b)), its use is approved by EPA, and the basis for equivalent results is fully described in the manufacturer's certification application (see 40 CFR 90.120(b)(1)). EPA would work with manufacturers to assist them in making the required technical demonstrations to show equivalency of the emission results. The continuation of these Phase 1 certification fuel requirements would continue to provide mechanisms for manufacturers to use the same fuel for certification to both EPA and California Air Resources Board regulations, as specified above.

B. Test Procedures

Test procedures are contained in today's proposal which would be used by engine manufacturers for the purpose of measuring emissions and determining emission rates for regulated emissions for certified engines. The test procedures being proposed today are in most respects identical to the procedures required for the certification of Phase 1 engines. Test procedures were discussed during the Regulatory Negotiation process, with the key issue being the appropriateness of the Phase 1 test cycles for Phase 2 engines. The draft Regulatory Support Document for this proposal contains a summary of the test procedure issues addressed during the Regulatory Negotiation process.

In general, the Agency believes the Phase 1 test procedures are appropriate for measuring engine emissions from Phase 2 engines.[33] In today's action, EPA is proposing the Phase 1 test procedures with the following minor changes. First, nonhandheld engines sold with an engine rotational speed governor would have to use the governor for speed control while running the appropriate test cycle. Second, the mode weightings for the handheld test cycle, Cycle C, would be adjusted to 0.85 for Mode 1 and 0.15 for Mode 2. Finally, appropriate changes to the test procedure and emission calculations have been proposed for the measurement of methane from natural gas fueled engines in order to determine non-methane hydrocarbon emissions for natural gas fueled nonhandheld engines. These proposed changes are discussed below. EPA requests comment on these issues.

1. Test Cycle: Requirement for the Use of a Speed Governor Operation for Testing of Nonhandheld Engines

Many small engines manufactured today make use of a speed control governor ("governor") to regulate engine rotational speed. In general, the governor is a mechanically or electronically controlled device that attempts to maintain engine rotational speed in a particular range as the engine experiences different loads. A typical example is the walk-behind mower, where the governor is designed to control engine throttle position in response to various loads to maintain the engine's rotational speed, and thus, mower blade rotating speed, to provide an adequate grass cut. For the Phase 1 test procedure, manufacturers are allowed to over-ride or disconnect the speed governing device and use an external piece of equipment, i.e., a throttle controller, for the purpose of replicating the speed and load conditions required by the test cycle (see 40 CFR 90.409(a)(3)). After the finalization of the Phase 1 rule during the regulatory negotiation process, the Test Procedure Task Group formed by the Regulatory Negotiation committee recognized that the use of the engine's designed governor, not an external throttle controller, may be a more accurate prediction of an engine's in-use performance. The Test Procedure Task Group members generally agreed that a Phase 2 test procedure should require the use of the engine's speed governor for speed control during the Federal Test Procedure (FTP) for those engines which are equipped by the manufacturer with a speed governor. However, there was not general agreement or detailed discussion of the specific requirements of how the speed governor should be used during the FTP. At this time the Agency believes the most appropriate method to operate engines on the speed governor for an emissions test would be to use fixed throttle operation for the 100 percent load mode, and then to use the engine governor for all subsequent power modes (75 percent, 50 percent, 25 percent and 10 percent). For each power mode, the engine speed governor set-point would be adjusted to the nominal test cycle set-point, 85 percent of rated speed for Cycle A, and 100 percent rated speed for Cycle B. This test method allows for a consistent and repeatable method of determining the 100 percent load condition, yet would allow the engine's governor to regulate speed for the remaining load conditions. This method is also straightforward and would be relatively simple to implement in a laboratory. The Agency requests comment on this test method and on other test methods which may be more appropriate.

2. Test Cycle: Adjustments for Weightings for 2-Mode Cycle for Handheld Engines

The Agency is proposing a change in the weighting factors for the handheld test procedure. For the Phase 1 rule, a weighting factor of 90 percent is applied to the 100 percent power mode, and a factor of 10 percent is applied to the idle mode, in order to combine the modal results for the final weighted emission value. The Agency is proposing for Phase 2 that a weighting factor of 85 percent is used for the 100 percent power mode, and 15 percent be used for the idle mode. This proposal is based on a study performed by members of PPEMA during the regulatory negotiation process.[34] PPEMA members collected real-time speed and throttle position data on several types of handheld equipment used during actual in-use operation. This data was analyzed and combined with estimates of annual use, load factors, and annual sales to weight the results of the field testing. EPA's summary of this report is contained in the Draft RSD. The Agency agrees with the report's conclusion that a more appropriate set of weighting factors for handheld engines is 85 percent for the 100 percent power mode and 15 percent for the idle mode. Therefore this change is being proposed for Phase 2.

3. Measurement of NMHC Emissions From Natural Gas Fueled Nonhandheld Engines

In order to accommodate the proposed optional non-methane hydrocarbon (NMHC) standard for natural gas fueled nonhandheld engines, the Agency is proposing to incorporate by reference the appropriate sections from 40 CFR Part 86 which relate to the measurement of methane emissions from spark-ignited engines. These appropriate sections were published as part of a final rulemaking titled "Standards for Emissions From Natural Gas-Fueled, and Liquefied Petroleum Gas-Fueled Motor Vehicles and Motor Vehicle Engines, and Certification Procedures for Aftermarket Conversions" see 59 FR 48472, published on September 21, 1994. The specific sections being incorporated can be found in the proposed regulatory language contained in this proposal at § 90.301(d) and § 90.401(d).

C. Field/Bench Adjustment Program

The ANPRM contemplates a so-called "bench field correlation program" for both handheld and nonhandheld small spark ignited engines.[35] For handheld engines, it is part of the in-use testing program (ANPRM, Appendix A, Section J(2)); for nonhandheld engines, it is part of the certification program (ANPRM, Appendix B, Sections 4(a) and (b)). In either case, the basic premise for these programs is the same: to allow manufacturers to age engines on the bench to demonstrate expected compliance in-use, it is necessary to demonstrate the "correlation" between field aging and bench aging.

The ANPRM sets out slightly different requirements for the proposed handheld and nonhandheld programs. Specifically, the ANPRM stipulates that the handheld correlation program would be conducted under EPA guidance; a portion of the engines would be aged in situations in which the manufacturer does not exercise control over the engines' maintenance, or limit their usage such that the engines are no longer used in a way that is representative of typical in-use engines; the full federal test procedure would be used; all pollutants would be measured; residential engines would be aged to their full regulatory life but commercial engines could be aged to 75 percent of their full regulatory life; samples sizes would be determined in the NPRM process; and there would be periodic spot checks of the correlation (ANPRM, Annex A, Section J(2)).

The ANPRM provisions for the nonhandheld engines are less comprehensive. For this category, the correlation program was specifically discussed for engines using side-valve or aftertreatment technologies. In addition, the ANPRM describes a simple "correlation" method (ratio of mean emission rates); would require periodic re-calculation (every other year for the first five years of the program and then every five years thereafter, e.g., 2001, 2003, 2005, 2010, 2015, etc.); and calls for changes in the correlation to apply prospectively only.

In today's NPRM, EPA is proposing a unified program, to be called the "field/bench adjustment program,"[36] that would apply to both nonhandheld engines that use side-valve or aftertreatment technologies and to handheld engines. EPA believes it is appropriate to design one program to apply to both categories of engines both because it is less complicated for manufacturers that produce both kinds of engines and because it simplifies the compliance program for administrative purposes. EPA seeks comment on the application of the same program and methodology to both categories of engines. The remainder of this section will set out the background for field/bench adjustment and the principles of such a program, a proposed methodology, and various practical requirements for the application of the program. It will end with a brief discussion of an alternative methodology.

1. Background and Principles

There are at least three ways to demonstrate compliance with in-use standards such as those proposed in today's rule. In general, the most representative way is to demonstrate compliance on engines that have been aged to their full regulatory lives by actual end-users. This ensures that the emissions reflect actual in-use conditions, including the presence of dirt and other matter such as clippings, operation at several degrees of orientation, operation in very hot ambient temperatures, etc. At the same time, consumer-based field aging is

[32] See "U.S. EPA Small Engine Certification Guidance, Draft, February 19, 1997," available in EPA Air Docket A–96–55, Item #II–C–03.

[33] For a discussion on the adequacy of the Phase 1 test procedure, see Chapter 1.1 in "Regulatory Support Document, Control of Air Pollution, Emission Standards for New Nonroad Spark-Ignition Engines At or Below 19 kilowatts" U.S. EPA, May 1995, EPA Air Docket A–93–25, Item #V–B–01.

[34] See "Hand Held Composite Duty Cycle Report", February 1995, prepared by members of the Portable Power Equipment Manufacturers Association, available in EPA Air Docket A–96–55, Item # II–D–18.

[35] The use of the term "correlation" was meant to describe an adjustment factor that can be applied to bench-aged engines to approximate field-aged conditions, and not a true statistical correlation.

[36] This nomenclature more accurately reflects the purpose of the program.

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difficult, not the least because it is cumbersome to organize a program with a sufficient number of end-users. In addition, it may take some end-use consumers years to put an appropriate number of hours on the engine through normal use.

The second method is to demonstrate compliance on engines that have been aged to their full regulatory lives on the bench. While this method can be more practical for the manufacturer, it also abstracts away many operational or environmental conditions that can affect deterioration.

The third way, and the way being proposed in today's notice, is a consolidation of some elements of the other two methods. Under it, manufacturers could bench age engines and then adjust the emission test results to reflect actual in-use conditions as represented by field aging. This would be accomplished by developing a field/bench adjustment factor that would be applied to emissions from bench-aged emissions to simulate field aging.

Thus, the objective of this field/bench adjustment program is to develop an adjustment factor based on the mathematical relationship between emissions from field-aged and bench-aged engines. For obvious reasons, it is very important to design a field/bench adjustment program that will yield an adjustment factor that is as closely related as possible to the true relationship between field and bench aging. Any deviation will result in an adjustment factor that either under-corrects or over-corrects the bench results, the ultimate result being an impact on the stringency of the emission limits. In addition, this field/bench adjustment program should take advantage of statistical techniques, both to take into account the inherent uncertainty in sampling [37] and to allow EPA to impose some restrictions on the use of this simplified compliance method. In today's notice, EPA is proposing to allow manufacturers to use the simple ratio of the field and bench mean emission results as an adjustment factor if the width of a confidence interval around the bench-aged and field-aged mean emission rates does not exceed a certain percentage of the standard. This restriction would limit the emission results for each sample, permitting a closer fix on the true population relationship.

2. General Methodology

Drawing on the elements of the "bench field correlation program" set out in the ANPRM and the criteria discussed above, EPA is proposing the following methodology to calculate the adjustment factor that would be applied to bench-aged emissions to approximate field aging. EPA seeks comments on all aspects of this program.

Two samples of engines would be aged, one in the field and one on the bench. The aging procedures for all engines in the field sample would be the same, and the aging procedures for all engines in the bench sample would be the same. The manufacturer would develop a test plan which would specify the conditions under which the engines would be aged on the bench and in the field. EPA would reserve the right to review any test plan, for handheld or nonhandheld engines, and to require the manufacturer to revise it if it does not reflect appropriate testing conditions. This review would enable EPA to exercise some oversight of the program without requiring the entire program to be performed under EPA guidance, as anticipated in the handheld program described in the ANPRM. With regard to sample size, today's proposed program contains only two constraints: the bench-aged and field-aged samples must initially be of equal size and must contain at least three engines. This minimum number is necessary to perform the statistical tests described below.

Next, each engine would be tested on the full federal test procedure after it has been run for its useful life. Then, for each sample, the mean $HC+NO_x$ emission rate would be calculated and two independent confidence intervals would be constructed, one around the mean of the field-aged engines, and one around the mean of the bench-aged engines, using the student's T distribution and a 90% confidence level.

The formula for the confidence interval would be:

$$\bar{x} \pm t_{(1-\alpha/2,\, n-1)} * S/\sqrt{n}$$

where

$\bar{x}$ is the sample mean,
$t(1-\alpha/2; n-1)$ is the appropriate parameter from Student's t table, depending on the level of confidence chosen by EPA,
s is the sample standard deviation, and
n is the number of engines in the sample.

The width of each confidence interval would then be compared to the "maximum allowable interval width" proposed today. EPA is proposing +/−20% of the standard as the maximum allowable interval width. If the confidence intervals around each of the field-aged and bench-aged means each are no wider than the maximum allowable interval width (e.g. +/−20% of the standard), then the adjustment factor that would be applied in the future to bench-aged engines to simulate field aging would be the ratio of the means ($\bar{x}_F/\bar{x}_B$), *provided* this ratio is greater than or equal to one.

EPA is proposing that these constraints be applied to both handheld and nonhandheld engines, but seeks comment as to whether the confidence levels and maximum allowable interval widths should be different among them. EPA chose 90% confidence levels for constructing the confidence intervals for the field-aged and bench-aged engines, and +/−20% of the standard maximum allowable interval widths, based on computer simulations [38, 39]; however, manufacturers or others commenting on this proposal may have information that suggest other levels.

Under the proposed program, if either or both of the confidence intervals do not pass the above-described statistical test, the manufacturer would have the choice of three remedies. First, the manufacturer could increase the size of the failing sample and repeat the statistical tests with the increased number of engines. Often, increasing the size of the sample will lead to a smaller sample variance, although this is not always the case with small samples. A manufacturer could repeat this remedy as many times as desired. Note that it would not be necessary to increase the size of both samples; only the sample that failed the statistical test would need to be increased. Alternatively, if the statistical tests are failed, the manufacturer could adjust the test plan and rerun the program, subject to EPA approval. In the third alternative, the manufacturer could choose to age all engines in the field for the purposes of the compliance program.

3. Practical Requirements of the Program

This section describes several practical elements of this proposed field/bench adjustment program and how it would work if adopted as proposed.

[37] To take full advantage of the field/bench adjustment program, engine manufacturers will presumably prefer to bench and field age only a relatively small number of engines. Thus, the results of the program will heavily depend on the characteristics of the sample (it is generally the case that a different sample would have different emission results and a different adjustment factor).

[38, 39] See "Simulation to Determine Confidence Level and Maximum Allowable Interval Width for Field/Bench Adjustment Factor Program," EPA Air Docket A–93–29, Item #II–B–01.

a. Initial Field/Bench Adjustment Factor Calculation. The ANPRM does not discuss an initial date by which the first correlation would have to be performed, and thus the first adjustment factor calculated. EPA is today proposing that a manufacturer may propose a field/bench adjustment program test plan up to 48 months prior to certification for Phase 2, and if EPA did not reject the proposed test plan within 90 days of submission of a complete test plan, the proposed test plan would automatically be accepted. EPA is also proposing that, at least 90 days before beginning bench aging for certification or in-use testing purposes, the manufacturer would provide a report to EPA for approval describing the aging and testing conducted for the field/bench adjustment program. This timing would ensure that adjustment factors have been established in time for demonstrating compliance with Phase 2 standards. EPA is also proposing that the initial field/bench adjustment program be performed on engines representative of Phase 2 engines.

b. Periodic Rechecks. The ANPRM contemplates that both the handheld and the nonhandheld correlation programs would require the correlation to be periodically rechecked, although only for the nonhandheld engines was a specific recheck schedule provided (every other year for the first five years of the program and every five years thereafter, e.g., 2001, 2003, 2005, 2010, 2015, etc.). In today's notice, EPA is proposing that the recheck period be the same for both handheld and nonhandheld engines. However, EPA suspects that the recheck period described in the ANPRM's nonhandheld program may be more comprehensive than is necessary. Specifically, it may be the case that the field/bench adjustment factor will not need to be checked so often, especially if technologies, production tolerances, and emission results do not change that much from year to year. As a result, EPA is proposing that the field/bench adjustment factor be re-estimated as often as every five years as determined by EPA on a case-by-case basis, except that EPA may require more frequent rechecks in model years prior to the 2006 model year. EPA seeks comment on this proposed recheck schedule. EPA also proposes that any new adjustment factor subsequent to a recheck be applied regardless of how similar it is to the adjustment factor from the previous correlation effort. However, the new adjustment factor would apply only prospectively, beginning with the next model year. EPA seeks comment on whether a longer lead time should be specified, for example, requiring the new adjustment factor to be applied with the engine model being certified at least six months after the new adjustment factor is determined. This would allow more time for engine manufacturers to adjust their designs, if necessary. Finally, EPA is not proposing any restrictions on the direction of modification of the field/bench adjustment factor that may results from future rechecks: it could be revised up or down, but not below 1.0.

c. Hours to Age. EPA is proposing that all bench-aged engines be aged to their full regulatory lives. Field-aged nonhandheld engines and field-aged residential handheld engines would also be aged to their full regulatory lives. However, following the program described in the ANPRM, under the proposed program field-aged commercial handheld engines could be field-aged to a minimum of 75 percent of their full regulatory lives. This flexibility is proposed today to reflect concerns that it may be hard to age these engines in the field due to equipment problems not related to emissions and engine durability which might be experienced at the end of the useful life. At the same time, as described below, field aging need not be done by actual end users but, instead, could be done by the manufacturer using a test plan that mimics as closely as possible actual field use. Under these conditions, the equipment may be less likely to break. Field aging to a minimum of 75 percent of regulatory useful life is being proposed as a cost savings measure for commercial engines which have the longest regulatory useful lives. Furthermore, EPA believes that test results on commercial engines aged to at least 75 percent of their regulatory useful lives can be appropriately extrapolated to the full regulatory useful life of the engine due to the generally more durable design of commercial engines which would tend to result in more predictable emission determination performance. Therefore, EPA seeks comment on the costs and benefits associated with field aging handheld commercial engines to their full regulatory lives. Finally, EPA is proposing that all engines in the same sample (bench or field) be aged to the same number of hours.

d. Test Plan. EPA is proposing that the manufacturer develop a test plan for both field and bench aging. All such test plans would be required to use the federal test procedure. The handheld program described in the ANPRM specified that "a portion of the field engines will be aged in individual usage or fleets where the manufacturer does not carry out or exercise control over the engines' maintenance, or limit their usage such that engines are no longer used in a way that is representative of typical in-use conditions." Manufacturers would have three ways to field-age engines: in individual usage, in an independent fleet, or in a fleet that may be controlled by the manufacturer but over which the manufacturer does not control the maintenance process or inappropriately limit use. EPA proposes to extend this choice to both handheld and nonhandheld engines. However, EPA proposes that, if the manufacturer chooses to field-age the engines in a non-independent fleet, the applicable test plan must explain how the engines will be used to approximate, as closely as possible, actual in-use conditions, and also the kind of maintenance program to be followed, which should approximate expected in-use maintenance by end-users. The key is to ensure that the engines will experience similar load demands and environmental factors. For example, in the case of lawn mowers, the test plan for a non-independent fleet would have to specify how the engine would be exercised in a way to be representative of typical in-use conditions, which likely include cutting both high and low grass, under wet and dry conditions, etc. Alternatively, if the manufacturer chooses to age the engines in an independent fleet, the test plan would have to detail how the use of the engine will be documented and how the user will ensure that it is used in a variety of different conditions. Finally, EPA could review this test plan and could require changes if the plan does not adequately approximate in-use conditions.

e. Technology Subgroups. For both individual-manufacturer and industry-wide programs (see f., below), the analysis could be done on engine technology subgroups which could be expected to have similar emission deterioration characteristics, that is, groups of engine families from one or more manufacturers having similar size, application, useful life and emission control equipment. It would not be appropriate for engines with significant differences in in-use emissions performance characteristics to be included in the same technology subgroup. Manufacturers would be required to provide a justification satisfactory to EPA that the engines families would be expected to have similar emission deterioration characteristics, and would thus be

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appropriately grouped in the same technology subgroup.

f. Individual-Manufacturer or Industry-Wide Estimation. EPA is proposing that the above-described field/bench adjustment program and estimation of the field/bench adjustment factor can be performed on either an individual-manufacturer basis or on an industry-wide basis. Any manufacturer who wants to use a field/bench adjustment factor instead of field aging engines would have to either conduct its own program, or participate in an industry-wide program. In other words, the engines that will benefit from the application of an adjustment factor would have to be included in the sample used to estimate that adjustment factor. This requirement would ensure that a manufacturer could not simply apply a field/bench adjustment factor estimated by another manufacturer that may not reflect the performance of the engines to which it is applied.

An industry-wide analysis would be subject to several additional constraints. First, EPA is proposing that all manufacturers participating in the same sample use the same test plan, except that maintenance schedules could vary across manufacturers to reflect differences in manufacturer-specified maintenance guidance to end-users. This is to reflect the fact that although manufacturers may pool their emissions results in the industry-wide program, they may want to test their engines separately. This uniformity is important to avoid biased aggregation of results. Second, the sample of engines used to estimate the field/bench adjustment factor would have to include at least one bench engine and one field engine from the same engine family from each participating manufacturer, but no fewer than three bench-aged engines three field-aged engines per technology subgroup. EPA seeks comment on whether the emissions should be sales weighted, to give a better picture of emissions across the category. EPA requests comment on how such a sales weighting procedure could be accomplished and still protect the confidentiality of sales information that might be covered by the confidential business information provisions of 90 CFR part 2. Third, EPA proposes to limit entries into and exits from the industry-wide program: a manufacturer could enter or drop out only before the adjustment factor goes into use for the first time. This will prevent constant revision of the adjustment factor. If a manufacturer drops out of the industry-wide adjustment program, the field/bench adjustment factor would have to be recalculated, both for that manufacturer and the industry. This is necessary to ensure that the field/bench adjustment factor reflects only the experience of the engines to which it will be applied. Presumably, a manufacturer will drop out only if its individual adjustment factor is more favorable than the industry-wide adjustment factor. Thus, if the industry-wide adjustment factor is not recalculated, then it will understate the experiences of the engines to which it will be applied. EPA seeks comment on whether such restrictions are necessary.

g. Restriction on Using Test Results for Other Purposes. One comment on the ANPRM requested that engine manufacturers be allowed to combine certification, correlation, and in-use testing for a family, such that bench results from the bench aged engines from the field/bench adjustment program can be used to satisfy in-use testing requirements. EPA proposes to allow test results from engines used for the field/bench adjustment program to be considered for purposes of determining handheld deterioration factors based on good engineering judgment. EPA believes this is appropriate because in the handheld certification program compliance is determined by applying a deterioration factor to new engines. Thus, the actual engines that are used for certification are not the field-aged engines. However, the test results from the field/bench adjustment program would not be acceptable to satisfy the in-use testing requirements for handheld engines, since this would create a situation in which engines that were used to estimate a parameter for the compliance program are also used to demonstrate compliance. Similarly, EPA would not allow the test results from the field/bench adjustment program to be used for demonstrating certification for the nonhandheld program. The nonhandheld engine compliance program relies on emission results from engines aged to their full regulatory lives. As in the handheld engine in-use testing example above, if the engines used in the field/bench adjustment program were also allowed to be used to demonstrate compliance, this would create a situation in which engines that were used to estimate a parameter for the compliance program are also used to demonstrate compliance. Finally, EPA proposes to prohibit emission results from engines tested to determine compliance with other parts of today's program from being used for purposes of calculating the field/bench adjustment factor. This restriction is necessary because otherwise manufacturers could choose among all of their test results and submit only the best emission results from a fairly large pool of engines, thus biasing the field/bench adjustment calculation. EPA does not believe this restriction will be burdensome, since manufacturers will be able to estimate a field/bench adjustment factor with as few as two engines (one bench-aged, one field-aged) if they participate in an industry-wide program, or six engines (three bench-aged and three field-aged) if they decide to establish their own adjustment factor.

h. Other Pollutants. The handheld program described in the ANPRM contemplated that all pollutants be measured. EPA is proposing that CO emissions be measured and adjustment factors for CO be determined for both the nonhandheld and handheld programs. However, EPA believes that the data set upon which statistical tests used to establish appropriate adjustment factors for $HC+NO_X$ are determined are sufficient to establish the relationship between CO emissions in the field and on the bench. Therefore, EPA proposes to allow manufacturers to use the same set of data to calculate a CO adjustment factor as would be used to establish the $HC+NO_X$ field/bench adjustment factor. EPA requests comment on this proposal.

4. Alternative Methodology Considered

EPA believes that the methodology described above is most appropriate because it balances the desires of industry for a simple program with the desire of EPA to put reasonable statistical constraints on the program without making it too difficult to perform or apply. However, there are other methods that can be used. Notably, EPA considered a statistical methodology in which a confidence interval would be constructed around the ratio of the means, and the adjustment factor would be the upper bound of that confidence interval.[40]

While both techniques attempt to apply statistical concepts, this alternative methodology could be considered in some ways more statistically sound than the one proposed above. However, it may be practically more difficult to use. Most importantly, the adjustment factor derived from this alternative methodology would be sensitive to the number of engines tested: a larger number of engines will most often result in a smaller adjustment factor, although this need not always be the case. Thus, manufacturers will be faced with either testing a large number of engines to ensure the smallest adjustment factor (closest to the straight ratio of the sample means) or using a larger adjustment factor with concomitant effects on the adjusted emission rate. EPA is concerned that this dynamic could lead manufacturers to test a large number of both bench-aged and field-aged engines. In addition, the adjustment factor derived from this alternative methodology will always be a conservative estimate of the relationship between bench and field-aged results, because it is the upper bound of the confidence interval, and it will always be greater than the simple ratio of the means. Yet, it is not clear why choosing a conservative adjustment factor is preferable to a simple ratio of the sample means. Nevertheless, EPA seeks comment on the use of this methodology and other alternative approaches as opposed to the proposed methodology.

[40] See "Simulation to Determine Confidence Level and Maximum Allowable Interval Width for Field/Bench Adjustment Factor Program," EPA Air Docket A–93–29, Item #II–B–01. For a description of this alternative approach, see "A Procedure for Adjustment of Emissions Results for Bench Aged Small Engines," located in EPA Air Docket A–96–55, Item #II–D–40.

D. Compliance Program

This section discusses the three step compliance program proposed today for the Phase 2 regulation of small SI engines, consisting of certification, production line testing, and in-use emission testing. As discussed above in Section III, today's proposal contains three basic elements new to the Phase 2 program. First, manufacturers would be required at the time of certification to account for emissions deterioration throughout the useful life of the engines. Second, EPA is today proposing a manufacturer-run production line testing program to replace the existing Selective Enforcement Audit (SEA) program as the primary method of determining the compliance of new production engines. Finally, EPA is proposing in-use emission testing programs for nonhandheld and handheld engines. EPA is also proposing appropriate remedies to address noncompliance with emission standards. Such remedies include mandatory recall but would also consider alternatives to mandatory recall, in the event of nonconformities found through production line testing or in-use testing programs. The basic proposed program for nonhandheld and handheld engine compliance is described in this section; Section IV.E outlines certain compliance flexibilities which may be made available to certain manufacturers depending on a manufacturer's size, the class of engines, or other factors.

1. Certification

The certification process as required in the Act is an annual process. The Act prohibits the sale, importation or introduction into commerce of regulated engines when not covered by a certificate. The certification process proposed in this notice differs from that required in Phase 1 in that it would require the manufacturer to demonstrate that the engines will meet standards throughout their useful lives. To account for emission deterioration over time, manufacturers would be required to either age engines out to their full useful lives to obtain certification, or to adjust their certification test results by assigned or calculated deterioration factors (dfs), as is currently done under other EPA mobile source rules. Where appropriate and with suitable justification, dfs would be allowed to be carried over from one model year to another and from one engine family to another. This section describes nonhandheld and handheld engine certification provisions, provisions for certification to CO standards, and EPA efforts to streamline the certification process.

a. Nonhandheld Certification. This notice proposes that certification for Class I and Class II nonhandheld engines continue as in Phase 1 except for the inclusion of an estimation of in-use deterioration. This deterioration estimate would be used to predict full useful life emission performance which would then be the basis for certification compliance decisions. The method for estimating in-use deterioration for certification purposes would depend on the type of engine technology.

i. Side-Valve Engines and Engines with Aftertreatment. For all side-valve engines and engines with aftertreatment, this notice proposes that one engine from each engine family would either be field aged in a representative application to its full useful life, or bench aged to its full useful life to demonstrate compliance with the standards.[41] If a manufacturer chose the bench aging option, it would be required to use a bench cycle approved in advance by the Administrator, adjusting the results using the field/bench adjustment factor established through the process described above at Section IV.C. In either case, the manufacturer would be required to run the full test procedure described in this rule when the engine is stabilized, accumulate hours on the engine, and then run a full test procedure at full useful life hours to determine a test value for certification.

The final field-aged results or the final adjusted results of the fully bench-aged engines would be compared against the applicable standard to determine compliance at the time of certification. In addition, a df would be calculated from the final test results compared against low hour stabilized test results. While not directly used in the certification program, this df would be used to adjust the results of engines tested in Production Line Testing program described below in Section IV.D.2.

For Class II SV engines and Class II engines with aftertreatment certified to the 250 hour useful life category, the manufacturer would have the option to bench age the engine to less than the full useful life and calculate a df at the engine's full useful life using a method of data extrapolation acceptable to the Administrator, as described below in Section IV.E.

ii. Overhead Valve Engines. As discussed elsewhere in this notice, EPA expects the Phase 2 rule to result in a virtually complete technological shift for Class II nonhandheld engines from SV to OHV or comparably clean and durable technology engines. In addition, EPA believes that OHV technology engines have the potential to show low and stable emissions deterioration characteristics as compared with SV technology engines.

EPA is today proposing that manufacturers of OHV technology engines be allowed to use an industry-wide assigned df for certification purposes. This program should allow manufacturers to focus more of their efforts on transitioning to a cleaner technology, by reducing the certification test burden on the engine manufacturers at the beginning of the Phase 2 program. EPA believes that offering manufacturers the opportunity to use an industry-wide assigned df rather than calculated dfs is reasonable for OHVs. A key element of the proposal for an assigned df is the proposed requirement that all manufacturers of OHV technology engines would participate in an industry-wide OHV Field Durability and In-use Performance Demonstration Program ("Field Durability Program") described in Section IV.D.3, below. This program would be designed to demonstrate the validity of the assigned df by producing significant amounts of data from real field-aged engines. If the OHV Field Durability Program data indicate that the assigned df is inappropriate, EPA would conduct a

[41] For nonhandheld engines participating in the averaging, banking and trading program described in more detail above in Section IV.A.5, compliance would be demonstrated with the family emission limit (FEL) rather than the standard.

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rulemaking to modify these proposed provisions to correct the assigned df program. This section describes the assigned df program for OHV engines, as well as an option for manufacturers to calculate dfs through field testing engines at the time of certification.

Assigned dfs For OHV Nonhandheld Engines

EPA is proposing that manufacturers of OHV technology engines would be allowed to use a multiplicative assigned df of 1.3 for OHV engines in all useful life categories for projecting emissions deterioration for compliance purposes. In the ANPRM, EPA discussed a value of 1.3 as the assigned df value for Class I and Class II OHV technology engines in the shortest useful life categories (i.e., 66 and 250 hours, respectively). In addition, EPA indicated that it would consider during the rulemaking process whether or not to propose an assigned df for all useful life categories, and if so, what the appropriate assigned df values would be. EPA indicated that the assigned df for Class II OHVs in the 500 and 1000 hour useful life categories would likely fall between 1.3 and 1.5. In addition, if an assigned df of 1.5 at 1000 hours, for example, appeared to be the appropriate value, EPA would propose a standard for the 1000 hour category adjusted by ratio to the proposed 12.1 g/kW-hr standard proposed for the 250 hour category.

EPA received comment on the ANPRM that the assigned df should be higher than 1.3 for the higher useful life categories, with a corresponding higher emission standard for the higher useful life categories. This commenter suggested that the application of a 1.3 df to longer useful life periods could reduce product offerings and impose unjustified costs on small equipment manufacturers. EPA received a similar recommendation for higher dfs for the 500 and 1000-hour useful life categories.[42] Specifically, an assigned df of 1.4 and a $HC+NO_X$ compliance standard of 13.0 g/kW–hr were recommended for 500-hour engines and an assigned df of 1.5 and a $HC+NO_X$ compliance standard of 14.0 were recommended for 1000-hour engines. In making these recommendations, the represented manufacturers argued that EPA had no full life emission performance information for these categories of engines. Although acknowledging they were providing no data to substantiate their recommendation, these manufacturers believe these higher dfs and emission standards provide a better assessment of equivalent stringency for these categories of engines compared to 250-hour engines certified with a 1.3 df to a 12.1 g/kW–hr standard.

EPA also received comment that use of assigned dfs should be limited to small volume manufacturers as a cost savings measure, and that the use of experimentally-derived dfs is preferable to the use of assigned dfs. This commenter argues that if the assigned df level is set too high, it could penalize those manufacturers who develop extremely durable engines, but if an assigned df were set too low, the result could be an underestimation of the emissions impact associated with an engine family or even the entire category. A final commenter asserted that assigned dfs are a bad idea; that the program described in the ANPRM results in a program in which future standards are uncertain due to the possibility of another rulemaking to adjust dfs; and that in the interval, engines may exceed the in-use standards because there is little incentive for manufacturers to reduce the deterioration rates of their engines.

EPA believes an industry-wide assigned df combined with the OHV Field Durability Program to validate assumptions as to the durability of OHV technology engines is a sound program. The Agency fully expects the assigned df to accurately reflect the industry-wide average df of OHV engines certified to the proposed standards at least in the near term. As manufacturers gain improved capabilities to produce OHV engines (as would be expected as an increasing proportion of small engines become OHVs), the industry-wide df could shift to a lower value. There is no expectation, however, for a shift to a higher average df. The OHV Field Durability Program is expected to yield significant quantities of in-use data designed to verify the assumptions as to the emissions durability characteristics of OHV technology engines underlying today's proposal. The future standards are not uncertain if the industry average assigned dfs prove to be low and stable, as anticipated by this proposed rule.

EPA is today proposing a 1.3 assigned df for all useful life categories for Class I and Class II engines, based on EPA analysis of available test data on engines aged in the field, provided by engine manufacturers.[43] While the data are limited, the data on Class II engines designed for longer useful life periods do not point to any value other than 1.3 for an assigned df for longer useful life hours. While no data were available on Class I engines designed for longer useful lives, EPA believes that a 1.3 assigned df at longer useful lives is a reasonable value. Longer useful life engines are designed for enhanced durability, and this is reflected in the emissions deterioration of the engines as well, with longer useful life engines experiencing the same emissions deterioration at longer hours as do short useful engines at short hours. Additional information on the derivation of the proposed assigned df of 1.3 is contained in the docket to this rulemaking.[44] Commenters who suggested a value other than 1.3 for assigned dfs at longer useful life hours did not supply data in support of their recommendations. However, EPA recognizes that the data upon which this proposal is based are very limited. EPA requests additional data on which to base the analysis for determining values for assigned dfs for OHV engines at longer useful lives. In particular, EPA requests comment on and any data supporting the assigned df and level of standards recommended by engine manufacturers (that is, 1.4 df and 13.0 g/kW–hr for 500-hour engines, and 1.5 df and 14.0 g/kW–hr for 1000-hr engines).

Finally, EPA is concerned that an industry-wide assigned df could reduce the incentive for a manufacturer to improve the durability of its engines. If manufacturers would be able to rely on an assigned df for certification performance regardless of in-use emission performance, manufacturers could design and produce engines which actually had much higher in-use deterioration than the assigned df. Manufacturers would be motivated to do so if they receive cost or other advantages from such a strategy. This is a real possibility since, in general, less expensive designs such as those with larger production tolerances or no oil control rings would also be expected to have higher emission deterioration. To protect against this, EPA is proposing limits on the use of assigned dfs. Specifically, EPA is proposing that if it determines the manufacturer's actual in-use sales weighted average df for a useful life category (e.g., all OHV families certified to a 500-hour useful life) exceeds the assigned df by more than 15 percent (i.e., actual in-use df is 1.5 or greater), then EPA may require the manufacturer to generate engine family-specific dfs for one or more engine families in that useful life category. Similarly, if EPA determines that a family has an actual in-use df greater than 1.8, then EPA may require the manufacturer to generate an engine-specific df for that family. In either case, if EPA requires such engine-specific dfs, they would be determined on the basis of data from three field-aged engines per engine family. This level of testing is the same as that for the program being proposed for a manufacturer which opts to not use the assigned dfs for certification (see discussion in the following section, "Calculated dfs for OHV Nonhandheld Engines"). EPA requests comment on the proposed thresholds for limits on the use of the 1.3 assigned df.

EPA recognizes that a requirement to generate an engine-family specific df for certification could be especially burdensome or perhaps practically impossible without disrupting production if the requirement was placed on the manufacturer close to the anticipated start of production for that family. EPA would take such issues into consideration when making any determination to require an engine-family-specific df to be generated.

EPA requests comment on all aspects of today's proposal for assigned dfs and calculated dfs for OHV technology engines, including the proposals for incentives for improving deterioration characteristics of OHV technology engines, and protections against misuse of the assigned dfs. EPA also requests additional data on which to determine the assigned dfs for OHV engines.

Calculated dfs for OHV Nonhandheld Engines

EPA views assigned dfs for OHV technology engines as the program engine manufacturers would most often select due to lower costs for certification. However, it is desirable to allow manufacturers of engines having improved durability characteristics to demonstrate and take credit for these lower dfs. Therefore, EPA is proposing as an option a procedure whereby a manufacturer could generate its own dfs for all engine families within a useful life category, in lieu of applying the assigned df for those families.

The assigned df is based on industry average data with some actual dfs above 1.3 and others below 1.3. EPA anticipates that manufacturers would choose the option of calculating their own dfs, over the option of selecting the 1.3 assigned df, in cases in which their engines exhibit superior deterioration characteristics. EPA is concerned that, if only these engines with superior deterioration characteristics are removed from the evaluation of the industry-wide assigned df values, then the industry average would be influenced upwards.

Therefore, to partially mitigate this concern, EPA is proposing that if a manufacturer chooses to establish its own df for one engine family in a useful life category, then it would be required to do so for all of its engine families within that useful life category. Thus the manufacturer would determine specific dfs for all of its families in that useful life category. In considering the types of data that would be required for manufacturer-determined dfs, EPA balanced the need for the program to be reasonable and practicable, yet rigorous enough to provide confidence in the dfs.

EPA is today proposing that calculated dfs for the full product line of OHV engines in a particular useful life category could be generated by field aging a minimum of three engines per engine family in a representative application to their regulatory useful lives. Each engine would be emission tested at least twice for all regulated pollutants using the full test procedure described in this rule. The first test point would occur after the engine had been stabilized by bench or field aging. The second test point would occur after the engine had been field aged to its useful life. The df for that engine family would be determined based on test data by dividing the average emissions at the full useful life by the average stabilized emissions for that family. If the manufacturer elects to conduct more than one test at either test point then the average of the data would be used. All test data would have to be at or below the standard (FEL, if applicable). EPA is also proposing that calculated dfs may cover families and model years in addition to the one upon which they were generated if the manufacturer submits a justification acceptable to EPA at the time of certification that the affected engine families can be reasonably expected to have similar emission deterioration characteristics.

The Agency is proposing for manufacturers who choose to develop their own OHV dfs by field aging three engines per engine family that these engines must be actual field-aged engines and not bench-aged even if adjusted by a field/bench adjustment factor. The proposed assigned dfs with df verification through the OHV Field Durability Program is the primary program for Class I and II OHV engines. The Agency believes that any alternative to the primary program for nonhandheld OHV engines must generate emission data of similar accuracy as that on which the assigned df and OHV Field Durability Program is based. Without this requirement, the primary program would be undermined. The Agency has proposed a field/bench adjustment program for handheld engines and for non-OHV technology Class I and II engines. In both of those programs the Agency has proposed a level of confidence which would have to be met before a field/bench adjustment factor would be allowed, and is therefore a compromise between data accuracy and test burden (see Section IV.C). The test burden associated with the assigned df and OHV Field Durability Program has been limited to an appropriate level because it is covered by a maximum number of field aged engines that a manufacturer would be required to test on an annual basis (see Section IV.D.3.c "Maximum Rates for Field Tested Nonhandheld Engines"). However, the proposed OHV Field Durability Demonstration does not permit a compromise on the accuracy of the field test data which would result from a field/bench adjustment program. Therefore, the Agency believes it is not appropriate that an alternative (i.e., manufacturer calculated dfs) to this primary program should allow such a compromise. The Engine Manufacturers Association[45] has recommended to the Agency that manufacturers be allowed to determine their own OHV dfs by performing a field/bench adjustment program. The Agency requests comment on this suggestion.

In the ANPRM, EPA indicated that it would consider during the rulemaking process the appropriateness of reserving certification credits pending verification of the dfs through in-use testing for families for which the manufacturer generates its own df. EPA believes that today's proposal for field aging three engines per engine family for calculating dfs provides adequate data up front to provide assurance as to the deterioration of these engines, and obviates the need to reserve certification credits pending in-use testing. However, engines for which the manufacturer calculates its own df would be subject to the OHV Field Durability Program. EPA requests comment on the proposal not to reserve certification credits

[42] See Memo to the Docket regarding the October 3, 1997 meeting between U.S. EPA and the Engine Manufacturers Association, EPA Air Docket A–96–55, Item #II–E–11.

[43] See "Tier 1 Deterioration Factors for Small Nonroad Engines", September 1996, a report by Air Improvement Resources, available in EPA Air Docket A–96–55, Item #II–D–11.

[44] See "Summary of EPA Analysis of Nonhandheld Engine HC and NO_X Exhaust Emission Deterioration Data for 500 Hour Useful Life Class II OHV Engines," EPA Memorandum, August 4, 1997, available in EPA Air Docket A–96–55, Item #II–B–02.

[45] See Memo to the Docket regarding the October 3, 1997 meeting between U.S. EPA and the Engine Manufacturers Association, EPA Air Docket A–96–55, Item #II–E–11.

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pending verification of the dfs through in-use testing.

Finally, to provide flexibility during the phase-in of the 12.1 g/kW–hr Class II standard, EPA is proposing that manufacturers choosing to establish their own dfs for the 500 and 1000 hour useful life categories for Class II OHV engine families may, with the advance approval of the Administrator, base their dfs on good engineering judgement (subject to future verification, as discussed below in Section IV.E).

b. Handheld Certification. This notice proposes that the certification of handheld engines continue as in Phase 1, except that manufacturers would be required to generate and apply a df to their stabilized emission results. EPA is proposing that manufacturers would be allowed to establish a df for each engine family based on technically appropriate analysis of test data on that engine family (or engine families of sufficiently similar design to be expected to have the same emissions durability) to reflect the emission deterioration expected to occur over the useful life of the engine. Manufacturers would be required to retain test data and description of their analysis to support their choice of dfs and to furnish this information to EPA upon request. EPA may reject the manufacturer's choice of df if it has evidence that the actual df is significantly higher or if the test data and analysis do not support the manufacturer's determination of a df. Data in support of the df could include data from the field/bench adjustment factor program as well as data from the in-use testing program.

EPA believes that the proposal to allow manufacturers flexibility in determining the test data necessary to establish dfs for handheld engine families is a reasonable program designed to assure the environmental benefits of the program are met without placing an undue burden on manufacturers at the time of certification. EPA requests comment on all aspects of the proposed provisions for certification of handheld engines and determination of emission deterioration factors for compliance purposes.

c. Certification to CO Emissions Standards. EPA is proposing that provisions for establishing CO emission dfs for use in the certification and production line testing programs would be the same as the provisions for established $HC+NO_X$ (or $NMHC+NO_X$) emission dfs, except in the case of OHV technology engines for which the manufacturer elected to use an assigned df. For these engines, the manufacturer would be allowed to establish a df for CO emissions using good engineering judgment.

d. Streamlining of the Certification Process. Since the promulgation of the Phase 1 rule, EPA has taken great strides to reduce the volume of information that must be submitted to obtain certification. A direct final rule published on May 8, 1996 (61 FR 20738), greatly reduced the reporting requirements necessary to obtain certification under the Phase 1 program. This proposal would continue the reduced reporting requirements, adding only information items related to new provisions required for the Phase 2 program.

EPA has also made strides to facilitate the electronic submittal of certification materials. Certification applications can currently be submitted on a computer disk, and the Agency hopes soon to be able to receive applications through a telephone data link. Further, EPA is working with the California Air Resources Board (CARB) in an effort to develop a common application format that would reduce the certification burden for manufacturers. EPA anticipates that for the Phase 2 program, EPA and CARB would accept the same application format and would have the same application submittal process.

2. Production Line Testing

This section addresses the production line testing program proposed today for nonhandheld and handheld engines. EPA is proposing that manufacturers conduct a manufacturer-run production line testing (PLT) program using the Cumulative Sum (CumSum) procedure, as the primary program for ensuring the emission performance of production engines.[46] The Phase 1 rule relies upon a traditional Selective Enforcement Auditing (SEA) program for production line compliance. SEA is a statistical sampling and testing scheme that must be initiated by EPA and provides a snapshot indication of whether a given engine family complies with applicable standards or FELs at a given point in time.

In the proposed Phase 2 PLT program, manufacturers would conduct continuous production line testing of all engine families and feed the results of that testing back into their design and production processes. CumSum is a statistical sampling and testing procedure which results in random periodic sampling and testing of engines from each engine family. The proposed CumSum procedure is useful both as an assessment tool for EPA and a quality control tool for engine manufacturers. The CumSum procedure assures that all configurations are susceptible to testing proportional to their production, and provides for continuous testing throughout the model year (except in cases in which an engine family shows clear compliance with the standards, in which cases testing can halt early, in as few as two engines). The CumSum procedure also allows manufacturers to monitor their own production and to fit production line testing into their normal production quality control procedures. The procedure is capable of detecting significant changes in the average level of a process, while ignoring minor fluctuations that are simply acceptable variation in the process. In summary, EPA believes that the CumSum procedure provides an effective measure for meeting EPA's goal of assuring that production engines comply with the applicable standards or FEL before they leave the production facility.

As testing of each engine family begins with a new model year, the CumSum process computes an action limit and a test statistic based on the deteriorated test results for each pollutant for each family. As new data are received, both the action limit and the test statistic are updated. The action limit and the test statistic are functions of the standard deviation of the sample. If the test results are clearly below the standard or FEL, and the standard deviation of the test result is appropriately low, the process will declare a halt to testing. With very low emitting engines, this can occur in as few as two tests. If test data are highly variable or the test results are very close to the standard or FEL, testing may proceed to as many as thirty tests per family (the proposed maximum test limit) spread equally throughout the model year. If the test statistic crosses the action limit for two sequential tests, then the process indicates a nonconformity and the manufacturer would be required to take corrective measures.

EPA is proposing a manufacturer-run PLT program for both nonhandheld and handheld engines. However, for nonhandheld engines, while PLT is the preferred option, EPA also is proposing an alternative program under which manufacturers would have the option to elect to be subject to the traditional SEA program (rather than PLT), as described in Section IV.D.2.d, below. In addition, EPA is proposing to retain SEA for "backstop" purposes when manufacturer-run PLT is being conducted for nonhandheld and handheld engines, as described below. Under the proposal, in some cases, some manufacturers or engine families may have the option not to conduct production line testing requirements, including manufacturers of very clean engine families, or manufacturers or families which qualify for small volume flexibilities, as described in Section IV.E. The following discussions outline the proposed CumSum procedure, reporting of PLT results, procedures in the event of PLT failures, the use of SEA, and other topics related to production line compliance testing.

a. The CumSum Procedure. The proposed CumSum procedure is outlined in this section. At the start of each model year, manufacturers would begin to test each newly-certified engine family at a rate of one percent of production. After conducting two tests, a manufacturer would determine the required sample size for the rest of the model year according to the sample size equation.[47] For carry-over engine families, to reduce testing burden, the manufacturer would determine the necessary sample size by conducting one test, then combining the test result with the last test result from the previous model year, and finally calculating the required sample size for the rest of the model year according the sample size equation. Tests would be required to be distributed evenly throughout the remainder of the model year. After each new test, the sample size would be recalculated with the updated sample mean, sample standard deviation, and 95 percent confidence coefficient.

The manufacturer would be allowed to stop testing at any time throughout the model year if the sample mean for each pollutant is less than or equal to the applicable standard or FEL, and if the number of tests required of the manufacturer, as calculated by the sample size equation, is less than the number of tests conducted. However, if at any time throughout the model year the sample mean for any pollutant is greater than the applicable standard or FEL, and if the manufacturer has not reached a "fail" decision, the manufacturer would be required to continue testing that engine family at the appropriate sampling rate.

The maximum required sample rate for an engine family, regardless of the result of the sample size equation, would be the lesser of three tests per month to a maximum of 30 per year, or one percent of projected annual production, distributed evenly throughout the model year. For example, if the sample size equation produces a value of 252 tests for a family with annual production of 20,000 engines, a manufacturer could elect to test only three engines per month to a maximum of 30 per year, instead of either 21 per month (which would be required if 252 tests were distributed evenly throughout the model year), or 17 per month (which would be required if one percent of annual production were distributed evenly throughout the model year).

Although the sample size equation may calculate sample sizes greater than the proposed maximum sample rates, EPA believes that above some sample size, the cost of testing would become unnecessarily burdensome for manufacturers of small SI engines. Further, EPA believes that the proposed maximum sample rates (e.g., 30 engines) are sufficiently large to adequately characterize the emission levels of the engine family for the purpose of making a compliance decision. After determining the appropriate sample size, the manufacturer would construct a CumSum equation for each regulated pollutant for each engine family. Following each emission test, manufacturers would update current CumSum statistics for each pollutant according to the CumSum equation. Manufacturers would continue to update the CumSum statistics throughout the model year.[48]

Manufacturers could elect to test additional engines provided that testing of the additional engines is performed in accordance with the applicable federal testing procedures for small SI engines. Such testing could be used, for example, to bracket a nonconformity determined through the CumSum procedure, and such bracketing could be used to reduce a manufacturer's liability for past production. If a manufacturer elects to perform additional testing, the results would not be included in the CumSum equation. However, the results of additional tests would be included in the quarterly reports to EPA. Manufacturers would be required to randomly select which engines are to be included in the CumSum program prior to any knowledge of the emission levels of CumSum engines or engines used for additional testing.

In cases where the CumSum sample size equation indicates that testing can be halted, the CumSum process indicates that there is 95 percent probability for each pollutant that the mean emission level for the engine family is below the applicable standard (or FEL). In cases where the test statistic exceeds the action limit for two consecutive tests, then EPA is highly confident, based on extensive computer simulations of the CumSum program, that the mean emission level of the engine family for that pollutant exceeds the standard (or FEL), i.e., that the engine family is in noncompliance for that pollutant. The risk that a complying engine family will incorrectly be determined to be noncomplying (manufacturer risk) is set at similar levels as in EPA's historical SEA program. The risk that a noncomplying engine family will incorrectly be determined to be in compliance (consumer risk) is set at improved (lower) levels as in EPA's SEA program. The Agency requests comment on all aspects of the proposed production line testing program and CumSum procedure. For more information on the derivation of the sample size and CumSum equations and some examples of the CumSum procedure, see the document *"Proposed Procedure for Quality Audits of Marine and Small Engines: A Cumulative Sum Approach"* (EPA Air Docket A–92–28, Item # IV–B–03).

b. Reporting of CumSum Results. EPA proposes that production line emission test results, as well as sample size calculations and CumSum calculations, would be reported to EPA on a quarterly basis. The Agency would then review the test data, sample size and CumSum calculations to assess the validity and representativeness of each manufacturer's production line testing program. If the CumSum process determines that an engine family is in noncompliance, the manufacturer would be required to report the emission test results and the appropriate sample size and CumSum equation calculations within two working days of the occurrence of the noncompliance.

EPA received comments on the ANPRM recommending that, in the event of a PLT failure, manufacturers should be required to report such exceedances within thirty days of discovering the failure, suggesting that thirty days provides a reasonable time for manufacturers to evaluate and verify test data and determine the existence of any production line problems. EPA

[46] The CumSum procedure has been promulgated for marine engines in EPA's spark-ignition marine rule at 40 CFR Part 91 (61 FR 52088, October 4, 1996). In this section, "PLT" refers to the manufacturer-run CumSum procedure, or other manufacturer-run production line testing procedure approved by EPA. "PLT" does not include Selective Enforcement Auditing (SEA), which is addressed separately in Section IV.D.2.d.

[47] For more discussion of the sample size equation, see *Proposed Procedure for Quality Audits of Marine and Small Engines: A Cumulative Sum Approach*, Item #IV–B–03 in EPA Air Docket A–92–28.

[48] For more discussion of maximum sample rates and updating CumSum statistics, see *Proposed Procedure for Quality Audits of Marine and Small Engines: A Cumulative Sum Approach*, Item #IV–B–03, in EPA Air Docket A–92–28.

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believes that thirty days is too long a period for the Agency to not be made aware of a PLT failure. Such delays would not occur, for example, under a traditional SEA program. In the event of a traditional SEA, EPA is aware immediately of the existence of an SEA failure, and can immediately begin working with the manufacturer to remedy the problem. EPA is proposing that the appropriate PLT test results be reported within a two working days, a time period consistent with that promulgated for the gasoline marine PLT program. A two-day delay in reporting would not unnecessarily delay EPA's ability to begin to work with manufacturers during that time to determine an appropriate response to a PLT failure. As discussed below, the manufacturer would have 30 days after the date of the last test before any suspension or revocation of a certificate for the engine family would occur. The manufacturer could use that time to determine the existence of production line problems.

EPA also received a comment that manufacturers should not be required to report all resultant test data to EPA quarterly (e.g., extensive raw test data in addition to calculated emissions results). This commenter suggests that the submission of a completed CumSum summary data sheet, permitting EPA to confirm that an engine family is in PLT compliance and to see where in the CumSum process compliance was attained, should be sufficient for quarterly reporting, and that manufacturers could maintain raw PLT data for a reasonable period of time and make such data available to EPA upon request.

It is not clear which raw data this commenter would prefer be allowed to be retained at the manufacturer's facility. EPA is proposing that manufacturers would submit to EPA on a quarterly basis pertinent engine information, individual test results, relevant CumSum calculations, and other information at Section 90.709(e) of the proposed regulations. EPA does not believe that this reporting requirement is overly burdensome. EPA expects that manufacturers will keep track of PLT data electronically, and EPA intends to develop a standard CumSum summary data sheet to facilitate electronic submittal of data for the quarterly reports. EPA requests comments on these proposed provisions.

c. Production Line Testing Failures. If an engine family is determined to be in noncompliance, or a manufacturer's submittal to EPA reveals that production line tests were not performed in accordance with applicable federal testing procedures, under the proposal EPA could suspend or revoke the manufacturer's certificate of conformity in whole or in part for that engine family subject to a thirty day waiting period (discussed in more detail below in Section IV.D.2.c.iv). EPA could reinstate a certificate of conformity subsequent to a suspension, or reissue one subsequent to a revocation, after the manufacturer demonstrates that improvements or modifications have brought the engine family into compliance. The proposed regulations include provisions for a hearing in which a manufacturer may challenge EPA's decision to suspend or revoke a certificate of conformity based on the CumSum procedure.

EPA is proposing procedures whereby a manufacturer could remedy the emissions problems from engines produced prior to the PLT failure. In EPA's traditional SEA program, SEA failures have typically been addressed by a recall of the past production engines for the failing family. Future production engines are expected to be brought into compliance by either adjustments to the certification FEL, in cases where the manufacturer is participating in a certification ABT program, or through appropriate engine and emission control system modifications. As discussed in Section III of this preamble, above, EPA is proposing alternative remedies in the event of PLT failures, given the likely difficulties of applying a traditional recall program to the small SI engine industry. For handheld engines, these procedures include the use of in-use credits or other alternative remedies. For nonhandheld engines, these procedures include the use of certification credits through the adjustment of a family's FEL or other alternative remedies. These procedures are discussed below.

i. Handheld Engines

EPA is proposing that when handheld manufacturers experience PLT failures, the excess emissions from engines that have already been introduced into commerce could be addressed by the application of in-use credits or another alternative remedy. In-use credits are discussed in detail in Section IV.D.3, below. The emission performance of future production would be addressed through a running change to the existing configuration or certification of a new configuration such that compliance is demonstrated.

ii. Nonhandheld Engines

Unlike the proposed program for handheld engines, the program proposed today for nonhandheld engines does not include provisions for in-use credit generation. Since in-use credits would not be available, and since recall of small SI engines is not likely to be effective, for nonhandheld engine manufacturers who use averaging, banking and trading to obtain certification, this notice proposes that, in the event of a CumSum failure, the manufacturer would be permitted to adjust its certification FEL to a level for which compliance could be demonstrated. This adjustment would apply to both past and future production of that family.

EPA has held in past programs that manufacturers should be liable for their FELs, and that the past production of that family is subject to recall if the family exceeds its FEL during an SEA. The Agency continues to believe that manufacturers should set FELs appropriately based upon adequate testing and engineering analysis. Thus, while proposing that nonhandheld engine manufacturers would be permitted to adjust FELs for past production of an engine family, EPA expects that the need for manufacturers to change an engine family's FEL retroactively in the event of CumSum failures should be rare or nonexistent. If there are substantial occurrences of the need to adjust FELs retroactively, this would suggest that manufacturers are not correctly setting FELs carefully and accurately for individual families, in which case the Agency should appropriately revisit this provision.

EPA is also proposing that nonhandheld manufacturers who experience CumSum failures could adjust their FELs even if they did not have adequate credits, provided that they could obtain the necessary credits by the end of the model year following the model year in which the production line failure occurs. If sufficient credits were still not obtained, the manufacturer would have two more years to obtain them, but would then be required to use credits on a 1.2 to 1 basis (i.e., such credits would be discounted twenty percent). Unlike in the proposed handheld engine in-use credit program, in which manufacturers would have opportunities to generate additional credits, the nonhandheld certification ABT program would not afford such opportunities. Thus, EPA believes it is reasonable in the program for nonhandheld small SI engines to provide additional time for manufacturers to acquire certification credits necessary to offset PLT exceedances. Requiring future model year credits to be discounted if used to remedy past production on

noncompliance assures that the manufacturer will not benefit economically from delayed compliance with the standards.

Because EPA believes manufacturers should set FELs accurately and carefully, and to encourage manufacturers to set FELs accurately, EPA is proposing that these provisions (e.g., the retroactive use of credits, and the ability to carry a credit "deficit") would only apply in the case of a manufacturer who fails no more than one engine family in a given model year, or who fails more than one engine family but the total production of those families is no greater than 10 percent of the manufacturer's U.S. sales. EPA requests comment on all aspects of this retroactive use of certification credits and its likely impact on the accuracy of the FELs determined at certification.

iii. Alternative Programs and Voluntary Recall

In the event of PLT failures, EPA prefers that handheld manufacturers use in-use credits for past production engines and that nonhandheld engines be recertified to a higher FEL which may require the application of certification credits, rather than some other alternative to recall. However, EPA is proposing that in the case of handheld or nonhandheld engines where the manufacturer did not have and could not obtain adequate in-use or certification credits, as appropriate, a manufacturer could conduct a voluntary recall, if it could show that an appropriate response rate was likely. EPA would also consider the appropriateness of alternative projects. These projects are essentially alternatives to recall and would be designed to provide an environmental benefit as well as an economic incentive to the manufacturer to produce complying engines. Guidelines for such projects are discussed in more detail in Section IV.D.4, below. A mandatory recall could be ordered by EPA for past production engines pursuant to proposed § 90.808 in cases where the manufacturer could not obtain appropriate credits and was unwilling to perform an alternative project acceptable to EPA.

iv. Suspensions and Revocations

EPA is proposing for engine families that fail production line compliance testing, that EPA would have the authority to suspend or revoke the certificate for that family. However, no suspension or revocation for a family could occur before thirty days after the date of the last test. During the thirty day period, EPA intends to work diligently with the manufacturer, as it always has in the case of SEA failures, to provide certification of appropriate production line changes. Further, this notice proposes that EPA would approve or disapprove a manufacturer's production line change within fifteen days of receipt, or the change would be considered automatically approved.

EPA believes that these waiting periods are reasonable to afford manufacturers and EPA sufficient time to work together to address problems, without the concern that EPA would hastily suspend or revoke the certificate of a family determined to be in nonconformity by a production line testing program. EPA believes that the proposed time frames are reasonable, and are consistent with longstanding EPA practices in the SEA program of providing a waiting period following an audit failure. In such failures, EPA works closely with the manufacturer to arrive at a solution for the problem engine family. With on-highway engines, such solutions have typically involved a recall of engines that have already been produced along with the recertification of the family to a new FEL, or the certification of a replacement engine configuration. As discussed above, for small SI engines, such solutions could involve the use of certification or in-use credits, voluntary recalls, or other alternative remedies. EPA has never caused an assembly line to shut down because of an audit failure and does not intend to start such a practice where other alternatives can be used.

d. Selective Enforcement Audits (SEA). While EPA is proposing the CumSum manufacturer-run PLT program as the preferred production line testing program for the Phase 2 program, EPA still sees a function for traditional SEA and is therefore not proposing to eliminate traditional SEA altogether. EPA is proposing that for both nonhandheld and handheld manufacturers, SEA would remain as a "backstop" for EPA to use in cases where there is evidence of improper testing procedures or nonconformities not being addressed by the CumSum process.

As mentioned earlier, the Agency is also proposing an alternative program under which nonhandheld manufacturers could choose not to conduct manufacturer-run PLT program, in which case all families would continue to be subject to an SEA program as under Phase 1. Although currently not preferred by the Agency, EPA is considering this option since it was included in the ANPRM and received support from the nonhandheld industry. EPA solicits comment on the appropriateness of providing this option, and on whether it would be better to require PLT for all families. Only one approach, either PLT with SEA as a "backstop", or manufacturers having the choice to use either PLT or SEA as the primary program, will be adopted as the final rule for nonhandheld manufacturers.

Under this alternative program, EPA is also proposing that nonhandheld engine manufacturers be limited in their ability to switch back and forth between PLT and SEA. Manufacturers involved in PLT would be required to implement that approach for a minimum of three consecutive model years and to provide EPA with notice one complete model year prior to the model year for which they were planning to opt out. In addition, a manufacturer would not be allowed to opt out of PLT while carrying a negative certification credit balance. However, a manufacturer would be allowed to opt in to PLT at any time.

Finally, where small volume engine manufacturers or small volume engine families would be entitled to exemptions from the PLT program under the proposal (see Section IV.E), those families would remain subject to SEA, although EPA would be unlikely to issue test orders without evidence of nonconformity.

In the event of an SEA failure for handheld engine manufacturers, EPA is proposing that the option to use in-use credits or another alternative to recall would be available to remedy past production engines. For future production, the manufacturer would be expected to modify the engine to come into compliance with all applicable standards.

In the event of an SEA failure for nonhandheld engine manufacturers, the manufacturer would have the option to adjust the FEL for future production of the engine family. EPA would address a remedy for the past production in the event of an SEA failure on a case-by-base basis, seeking to both preserve the environmental benefits of the program, maintain incentives to accurately set FELs in advance, and minimize the burden on the industry. Such a remedy might include, for example, a combination of measures such as mandatory PLT for appropriate time periods and portions of production, recertification of all or part of an engine family, and generation of credits to remedy exceedances over an appropriate period of time. However, consistent with past practice, EPA does not anticipate allowing the retroactive use of certification credits to remedy past production failures determined via

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SEA, or the carryover of any credit deficits, as would be allowed if the manufacturer chooses to conduct manufacturer-run PLT. Since SEA only evaluates production line performance during a "snap shot" in time and not throughout the entire production period, it would be inappropriate to use credits generated on the basis of total annual production to correct the SEA failure. Instead, a manufacturer would likely be expected to recall the noncomplying family or conduct an alternative remedy proposed by the manufacturer and accepted by EPA. EPA requests comments on the proposed provisions related to remedies for SEA failures.

EPA received a comment on the ANPRM that handheld manufacturers should be permitted to elect to be subject to routine SEA testing, as they currently are under Phase 1 emissions regulations, rather than conducting manufacturer-run PLT. This commentor suggested that manufacturers may desire to elect SEA for reasons of cost, confidence in their quality control, or familiarity with SEA, and that such an option could enhance the flexibility and reduce the cost of the PLT process, while at the same time assuring new engine compliance with Phase 2 emissions regulations.

EPA is not proposing routine SEA testing for handheld manufacturers. EPA believes that a manufacturer-run PLT program such as CumSum is a superior method of assuring that both handheld and nonhandheld production line engines meet the standards, that testing occurs continuously throughout the model year, and that each configuration is susceptible to testing. In addition, PLT affords benefits to the manufacturers of identifying problems early and addressing them without the disruption of an EPA-initiated SEA. EPA believes it is most useful and appropriate that manufacturers be responsible for and bear the burden of continuously monitoring their own emissions.

Under the production line compliance program proposed today, EPA expects that nonhandheld manufacturers may in some cases choose SEA as their primary production line compliance program, for cost reasons or fear of the unknown. However, EPA believes that the downsides of the choice of SEA as the primary production line compliance program are potentially great for all involved. EPA believes that in choosing SEA, the manufacturers would be foregoing an effective quality control tool for monitoring their own production, and would risk expensive and disruptive SEAs. In addition, EPA would not get the same coverage of engine families in the testing process. The regulations proposed today reflect the option, consistent with the program outlined in the ANPRM, for nonhandheld manufacturers in some cases to choose either PLT or SEA as the primary production line compliance program. However, EPA is also proposing in the alternative that the nonhandheld production line compliance program would be the same as the handheld program. That is, the manufacturer would not have the option to choose SEA as the primary production line compliance method. Rather, manufacturer-run PLT would be the primary program in all cases, with SEA existing as a backstop. Again, EPA requests comment on the appropriateness of the proposed program which allows nonhandheld manufacturers the option to elect routine SEA testing in lieu of PLT testing. EPA also requests comment on the option that nonhandheld manufacturers would use only PLT as the primary production line compliance program, with SEA existing as a backstop, and the effectiveness of this option in providing assurance of environmental benefits in-use, easing the implementation burden for EPA and the industry, and achieving greater commonality in the compliance programs for the handheld and nonhandheld sides of the small SI engine industry.

e. Annual Limits for SEA. The Phase 1 program contains annual limits on the number of SEAs the Agency may perform each year on a manufacturer, based on their number of engine families and sales. The Phase 1 annual limits serve to restrict the maximum number of audits for most manufacturers to a quantity equal to one fifth of the number of engine families (see 40 CFR 90.503(f)(1)). However, under the Phase 1 program, any test which the family fails or for which testing is not completed does not count against the annual limit (see 40 CFR 90.503(f)(3)). In addition, even if the annual limit is reached, EPA may initiate additional SEA testing to test families for which evidence exists indicating noncompliance (see 40 CFR 90.503(f)(4)).

EPA is not proposing any changes to the Phase 1 SEA annual limit provisions for Phase 2 except for the additional proposed provision that EPA may initiate additional SEA testing beyond the annual limit for families or configurations which the Administrator has reason to believe are not being appropriately represented or tested in production line testing (see proposed § 90.503(f)(4)).

EPA also requests comment on an option, not proposed, to raise the annual limit by one or two families for each failing audit in a given model year in cases where manufacturers choose SEA as the primary production line compliance program, should the regulations allow SEA as the primary production line compliance program. While this option is not included in the proposed regulatory text, EPA requests comment on the potential benefits or costs of this option for a higher number of potential routine SEAs for manufacturers who experience SEA failures. EPA requests comment on all aspects of the proposal for annual limits for SEAs under the proposed Phase 2 program.

f. Alternate Statistical Procedures for Production Line Testing. Consistent with the program outlined in the March 1997 ANPRM, EPA is proposing that manufacturers conducting manufacturer-run PLT could propose test schemes for EPA approval on a case-by-case basis other than the CumSum procedures described in this section and proposed in today's notice. EPA believes that this is reasonable because there may be situations where a single test scheme is not appropriate for a specific engine family or company. However, EPA also believes that it is desirable to avoid a multiplicity of testing schemes, and is concerned about the burden this could place on the Agency if multiple testing schemes are analyzed and developed with individual manufacturers. This notice proposes that EPA would have the right to review any alternate procedure to determine the ability of the procedure to (1) produce substantially the same levels of "producer risk" and "consumer risk" as the CumSum Procedure, i.e., the risk to a manufacturer that a complying family would fail in PLT testing, or the risk to the public that a failing family would pass in PLT testing; (2) to provide for continuous rather than point-in-time sampling; and (3) to include an appropriate decision mechanism for determining noncompliance upon which the Administrator can suspend or revoke the certificate of conformity. Further, it would be the requesting manufacturer's responsibility to provide an analysis and documentation that demonstrated the alternative satisfied these criteria. EPA would expect to reject any alternate statical procedure that did not fully satisfy these proposed criteria.

g. Test Procedures for PLT. EPA believes that the best way to determine whether new engines meet certification standards is to test them under the test used at certification. Therefore, EPA is proposing that the manufacturer-run PLT program proposed in this notice would require testing based on the full federal test procedure as used for certification and described in Subpart E of the attached regulations. EPA recognizes the potential need to permit minor adjustments to the test procedure to accommodate production line testing. Consistent with other compliance test programs for mobile sources, the proposed regulations allow the Administrator to approve such test procedure adjustments.

h. Harmonization of Production Line Testing with CARB. EPA is interested in finding ways to harmonize the production line testing requirements proposed today for Phase 2 with any production line testing requirements manufacturers must meet for the California small engine regulatory program. In particular, EPA would expect that data from production line testing of a 50-state family conducted for a California Quality Audit program could be acceptable for the CumSum process, if the subject engines are sold nationwide and test engines are appropriately selected and tested. EPA will also continue to work with the California Air Resources Board to harmonize reporting formats, and similar information needs.

3. In-use Emission Testing

EPA believes that a critical element in the success of its small SI engine program is ensuring that manufacturers build engines that continue to meet emission standards beyond certification and production stages and comply with standards for their full regulatory useful lives. Section 213(d) of the CAA specifically subjects nonroad engines to the in-use compliance provision of section 207.[49] EPA has authority to subject manufacturers to in-use testing (conducted by the Agency or by the manufacturer under section 208 of the Act) and to remedy any noncompliance (for example, by recall and repair of engines) for the full regulatory useful life of an engine. In-use compliance enforcement has proven to be an effective incentive for manufacturers to build emission durable motor vehicles.

However, as discussed above in Section III, in the case of small SI engines, EPA does not believe that a mandatory in-use compliance program which relies on recall, for example, is likely to be as effective and practical as it has proven to be in EPA's on-highway programs. Small SI engines differ from motor vehicles in that they are not registered and are therefore difficult to track so that their owners can be notified. Many are not easily transported to a servicing dealer for repair. The in-use programs described below are therefore designed to provide data on in-use performance and to provide incentives to manufacturers to produce emission-durable engines without relying on the use of recall. While the Production Line Testing programs described previously are very similar, the in-use programs proposed in this notice differ significantly for the two sides of the industry. Again, EPA requests comment on alternative in-use testing programs, such as applying the in-use testing program proposed for handheld engines to the nonhandheld side of the industry, as well as applying the field durability program proposed for OHV engines to side-valve engines, engines with aftertreatment, and/or handheld engines.

a. Nonhandheld Side-Valve Engines and Engines with Aftertreatment. For nonhandheld side-valve engines and engines with aftertreatment, the in-use program would consist of a certification program in which the engines would be aged to their full useful lives during the certification process and no certificates would be issued unless the engine family can first be shown to meet standards (or FELs) for its useful life, as described above in Section IV.C and Section IV.D.1. EPA believes that a program which does not rely on in-use testing after certification especially makes sense for Class II SV technology engines which are expected to be phased out by 2005. In addition, EPA would have data on SV technologies aged in the field for the field/bench adjustment factor program; if EPA suspected serious problems with regard to whether the emissions reductions anticipated by this rule were in fact being achieved, EPA would address these concerns through appropriate programmatic changes. EPA requests comment on the appropriateness of this full useful life certification to predict the in-use emissions durability of SV engines and engines with aftertreatment.

b. Nonhandheld OHV Field Durability and In-use Performance Demonstration Program. For overhead valve nonhandheld engines, the proposed in-use program would be one whose primary function is to verify that the industry-wide deterioration factors predicted for the OHV engines are indeed correct. The proposed OHV field durability and in-use performance demonstration program ("Field Durability Program") would generate significant quantities of emission data from engines aged in real field usage in representative pieces of equipment. If EPA's belief that the dfs of these engines are stable and predictable proves to be incorrect after receiving these data, or the assigned dfs specified in this rulemaking are significantly different than those that occur in real field usage of Phase 2 engines, then EPA would initiate appropriate programmatic changes through the regulatory process.

The proposed Field Durability Program is designed to provide data on the deterioration of OHV engines in actual field usage. EPA is proposing that engines for the program would be selected from or placed into service with residential or professional users. This program would be designed to provide a representative picture of actual in-use emissions, including representative age, maintenance, and sales mix of engines in the field. To the extent practical, engines would be selected from residential customers or professional users, in order to most accurately reflect actual usage patterns such as number of cold starts, typical maintenance patterns, and overwintering. However, EPA would also allow engines to be selected from manufacturers' fleets, provided the engines and their operation and maintenance are typical of in-use engines. Each engine in the program would be baseline tested at a number of hours equal to the break-in hours used in certification. The engine would then be field aged in an appropriate piece of equipment to full useful life, at which time the engine would be removed and retested. The df would be determined mathematically from the two test points from each engine.

Data from the OHV Field Durability and In-Use Emissions Performance Demonstration Program would not be designed to provide a basis for EPA to make in-use compliance determinations as to whether a particular engine family complies with its standard or FEL at the end of its useful life. Rather, the program is primarily designed to determine whether, in the aggregate, the industry-average assigned dfs for OHV engines are valid. Given the number of manufacturers expected to produce OHV engines and participate in this program, the program would generate meaningful volumes of real in-use data which would yield results indicating whether assigned dfs are realistic.

[49] Section 207(c) of the Act authorizes EPA to enforce compliance by vehicles and engines to applicable standards in actual use. Manufacturers are subject to recall "[i]f the Administrator determines that a substantial number of any class or category of vehicles or engines, although properly maintained and used, do not conform to the regulations * * * when in actual use * * *".

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This notice proposes that the OHV Field Demonstration Program testing could be spread over multiple years. EPA proposes that manufacturers provide a schedule to EPA each year of the engine families and approximate quantities of engines they intend to produce for U.S. sales over the coming four year period, as well as estimates of the number of field aged engines that would be tested each year for the field/bench adjustment program (see Section IV.C) and for calculating dfs for OHV engines at the time of certification (see Section IV.D.1). In addition, manufacturers may wish to recommend a proposed testing plan for the Field Durability Program that, for example, best fits testing into their marketing, production, test facility and budgetary constraints. EPA would consider such information in determining the engine families to be field tested over that time period as part of the OHV Field Durability Program.

Manufacturers have indicated their desire to perform industry-wide OHV Field Durability Program testing to try to reduce the number of engines that must be field aged. EPA is proposing that it would consider requests by manufacturers to work together when it reviews a manufacturer's plan for engine families to be field aged. EPA will review proposals for joint testing to evaluate how thoroughly they cover a portion of overhead valve engine sales, whether they will provide statistically useful quantities of data, and other factors to help EPA ascertain whether OHV dfs from certification are accurate and appropriate.

c. Maximum Rates for Field Tested Nonhandheld Engines. EPA believes that emission data from real field-aged engines would serve a crucial role in validating the use of assigned dfs, calculated dfs, and the aging cycles used for bench-aged certification of side-valve engines. While recognizing the importance of and need for these data, EPA is also sensitive to the cost and testing burden associated with directing large numbers of engines to be field aged and tested in a given year.

In today's action, EPA is proposing that in any one year the Agency would not require field testing for the OHV Field Durability Program such that, when added to the field testing a manufacturer performs for the optional certification df generation or for the field/bench adjustment program, it would require the manufacturer to emission test more than 24 total engines that were field aged to their full useful life. EPA believes that this number will provide important quantities of data without placing an undue burden on manufacturers. EPA is proposing that it would have the right to require field testing to the maximum amount, and expects that the maximum testing may be required in the initial years of the program. Manufacturers would have the option to field test more engines than required by EPA. EPA anticipates it would reduce the testing burden as appropriate, especially for smaller manufacturers, in subsequent years should, for example, EPA determine that the data being developed is quite stable from year to year.

The discussion of the Field Durability Program in the March 1997 ANPRM indicated EPA would provide "appropriate delays or waivers from the requirement of the bench correlation program in years when a manufacturer also runs the field durability program" (see 62 FR 14754). In the development of this proposal, EPA considered the need to propose procedures to provide for EPA granting delays or waivers from the requirements of the field/bench adjustment program in years when a manufacturer also runs the OHV Field Durability Program. In today's action, EPA is proposing no formal process by which manufacturers would request a waiver from the requirements of the field/bench adjustment program. EPA believes that the need for delays or waivers is obviated by the cap on the number of fully field aged engines EPA would be able to require to be tested in any one year.

The discussion of the Field Durability Program outlined in the March 1997 ANPRM also suggested that EPA would propose an appropriate scaling of the field engine test burden for smaller volume manufacturers (see 62 FR 14754). For this proposal, EPA considered proposing a cap on the number of field tested engines of fewer than 24 engines per year for smaller nonhandheld manufacturers by sales volume. However, EPA believes that a scaling back of the test burden would not be appropriate. Such a scaling would most appropriately be based on the inability of manufacturers to sustain the costs associated with the OHV Field Durability program; however, the ability to sustain the costs of the program would not appear to differ significantly among manufacturers. Therefore, EPA is proposing the same cap on the field engine test burden for all manufacturers. EPA believes that this 24 engine per year cap is a manageable burden on the smaller volume manufacturers as well as the larger volume manufacturers. The Agency does not anticipate identifying families certified by manufacturers who would qualify as small volume engine manufacturers for in-use testing, unless there was evidence of a nonconformity (see discussion in Section IV.E). EPA requests comment on all aspects of the applicability of a cap to the number of field aged engines that EPA could require to be tested in any one year.

d. In-Use Testing Program for Handheld Engines. In today's action, EPA is proposing an in-use testing program for handheld engines similar to that promulgated in the gasoline spark-ignition marine engine rule (see 40 CFR Part 91, Subpart I). As in the marine rule, EPA is also proposing an in-use credit program, as well as a number of criteria for evaluating other alternatives to mandatory recall. Mandatory recall is the primary remedy for noncompliance. However, as in the marine program, EPA is interested in considering options to mandatory recall and, if implemented, will monitor the use of these alternatives to make sure they are as effective as anticipated. EPA believes that the successful implementation of the in-use credits program and the other alternatives would provide a comprehensive remedy to address in-use emission noncompliance, as well as incentives to manufacturers to produce emission-durable engines, without the use of recall. The program for handheld engines proposed today differs from the gasoline marine engine program in that the engines may be bench-aged rather than field-aged, at the manufacturer's option, provided the manufacturer has previously established an adjustment factor between the bench aging cycle and field aging through the program described above at Section IV.C. EPA requests comment on the technical requirements which would allow bench-aged engines to represent the emission performance of field-aged products.

i. In-use Testing for Handheld Engines

EPA is today proposing an in-use testing program for handheld engines which would make all engine families potentially subject to mandatory in-use testing by the manufacturer. The manufacturer would age the test engines in the field to their full useful lives. Alternatively, the manufacturer could choose to age the engines on a bench cycle to their full useful lives, providing that an adjustment factor had previously been established between the bench-aged and field-aged results, through the procedures described above in Section IV.C. The engines would then be emission tested for all regulated pollutants using the full test procedure described in this proposed rule. The number of engines per engine family tested would vary depending on test results. Except for small volume and carry-over engine families, the minimum number of test engines would be four. For each engine that failed any pollutant, the manufacturer would test two additional engines, up to a maximum of ten. Small volume engine manufacturers would begin by testing two engines, adding two more for each failing engine up to the same maximum (see discussion of provisions for small volume engine manufacturers and other flexibilities in Section IV.E). Carry-over engine families would start with one engine. In the end, the emissions for each pollutant would be averaged and the family average compared against the appropriate standard to ascertain compliance. The in-use testing program proposed is designed as a method to provide adequate data on which to make compliance decisions, while allowing the testing of families which are found to emit below standard to conclude as expeditiously as possible.

Manufacturers would provide a schedule to EPA each year of the engine families and approximate quantities of engines they intend to produce for U.S. sale over the coming four year period. EPA would then select engine families to be in-use tested by the manufacturer over that time period or a fraction of that time period. EPA would identify no more than 25 percent of a manufacturer's families for in-use testing in any one year.

EPA received a comment on the ANPRM that it would be equally effective and potentially less costly to permit engine manufacturers to select the engine families for in-use testing. This would allow manufacturers to schedule in-use testing to better conform to production, marketing and budgetary constraints, and to choose their own mixture of commercial and residential engines to test each year. This commenter added that manufacturers could provide a testing schedule in advance to enable EPA to raise any concerns it has with a manufacturer's test plans.

EPA believes it is important to retain the authority to select engine families for in-use testing that potentially show risk of higher emissions in-use than predicted at the time of certification. Therefore, EPA is proposing to retain the authority select the engine families for in-use testing. However, EPA would work with manufacturers in an attempt to schedule testing to take into account production, marketing, test facility and budgetary constraints and would invite manufacturers to recommend a testing program which best suits their needs.

ii. In-Use Credit Program for Handheld Engines

As discussed above, the proposed in-use credit program for handheld engines is designed to address in-use nonconformities of handheld engines without the need for ordering manufacturers to conduct recalls of nonconforming engines. A reasonable means must exist to address in-use noncompliance that provides incentives to manufacturers to build emission-durable engines, that can be implemented practically, that encourages additional in-use testing, that offsets additional emissions resulting from noncompliance, and that is not unduly burdensome. EPA believes that the successful implementation of the proposed in-use credit program described below could be part of a comprehensive remedy to address in-use noncompliance, and that EPA would not, in practice, order mandatory recall of Phase 2 engines. When a manufacturer determines its average in-use emission levels for each pollutant, it would compare those numbers against the applicable standards. Emission levels below the standards could generate in-use credits. Emission levels above the standard would require the use of in-use credits. The credit formula as proposed here would be a function of the sales of the engine family, the difference between the family emission average and the applicable standard, the power rating of the engine, load factor, and the useful life of the engine.

In-use credits could be used to remedy emission exceedances of previously produced engines determined to be in nonconformity by in-use testing, production line testing or SEA failures. They would not be useable in handheld certification, and they would not be transferrable to nonhandheld engines, due to the considerable differences between the handheld and nonhandheld programs. Unlike certification credits for nonhandheld engines, they would not be useable for offsetting the high emissions from prospective production of an engine family following a PLT or SEA failure. In such cases, the manufacturer would be required to make a product change to improve emission performance of future production.

EPA is proposing that these in-use credits could be used at any time during the Phase 2 program, and that any future rulemaking concerning Phase 3 standards would address the use of the Phase 2 credits in Phase 3. EPA believes this unlimited life for in-use credits during the Phase 2 handheld program is justified since, if an engine demonstrates that it can remain under standards for its full useful life, then an environmental benefit has occurred and the manufacturer is entitled to that benefit for later use. However, unlimited life is not being extended beyond the Phase 2 program at this point, given the concern that Phase 2 credits could be used to effectively delay the implementation date of any Phase 3 standards. EPA requests comments on all aspects of credit life for in-use credits in the handheld in-use credits program.

A manufacturer could use in-use credits to average against in-use failures identified in that model year's testing. It could bank the credits for use in a later model year or trade the credits to another manufacturer. Manufacturers could test additional families and would generate or require additional credits according to that testing. However, the manufacturer would be required to report all in-use testing to EPA, including any test engines that were deleted from the aging process or testing process, and to provide to EPA a technical justification to support the deletion.

No restrictions are proposed on the application of in-use credits from one handheld engine class to another. EPA is not aware of any environmental or competitive concerns with allowing unrestricted use of in-use credits across handheld engine classes. EPA requests comments on the need for cross-class averaging restrictions, and the impact of having or not having them.

EPA is also proposing an adjustment factor to increase credits earned as the in-use testing sample size increases, similar to the program promulgated for the gasoline marine engine rule (see 40 CFR 91.1307). The proposal for an adjustment factor is reasonable because EPA's statistical certainty of the sample mean generally will increase with sample size.

In addition, EPA is proposing a provision that would require manufacturers to apply in-use test results to two past and one future model year when the engine family being tested meets the carryover criteria for those model years. EPA contemplates that manufacturers would not make frequent significant changes to engine families and that carryover certification would be common. Essentially, under this provision, the test results from one model year could apply to up to four model years; the one subject to testing, the two previous model years and the next model year. In-use credits would be generated or required, as appropriate. EPA requests comment on the

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appropriateness of and the need for these provisions.

The handheld in-use credit program is meant, in part, to obviate the need to resort to a traditional recall program, and the Agency wants to ensure that this alternative program, or any other alternatives considered, provide incentives to manufacturers to design engine configurations that will comply with standards for their entire useful lives. EPA believes that manufacturers should make every effort to prove out their designs prior to certification so that in-use nonconformities will not occur. Therefore, this notice proposes that credits be discounted by 10 percent before they are used. This would require a manufacturer to obtain or generate credits sufficient to offset 110 percent of the emissions from a family found to be in noncompliance. This discount is consistent with that applied to in-use credits in the gasoline marine rule. Comment is requested on the appropriateness of such discounting and on the appropriate size of the discount.

4. Criteria for Evaluating Alternatives to Mandatory Recall

This proposal contemplates that for handheld engines, in-use credits would be the primary method of addressing emission nonconformities determined through in-use testing or production line testing, whether through the use of credits banked or averaged, or credits purchased through available sources. For nonhandheld engines, EPA is proposing that in some cases, the use of certification credits would be allowed as a method of addressing emission exceedances determined through production line testing (as discussed above in Section IV.D.2).

However, EPA is also proposing that manufacturers have available alternatives to using in-use credits or certification credits, if they lack sufficient credits and are unable to obtain them, that would still avoid necessitating an order for mandatory recall. One such alternative could be for the manufacturer to conduct a voluntary recall. However, EPA would consider other alternatives as well. This proposal contains a number of criteria for evaluating alternatives to determine whether they meet the goals of addressing the environmental impact of the in-use problem while providing incentives to the manufacturer to produce emission-durable engines. EPA intends to allow a manufacturer to implement a reasonable alternative that met these criteria prior to making a determination of substantial nonconformity under section 207 of the Act.

In evaluating alternatives to mandatory recall, EPA would consider alternatives which (1) represent a new initiative that the manufacturer was not otherwise planning to perform at that time and that has a nexus to the emission problem demonstrated by the subject engine family; (2) cost substantially more than foregone compliance costs and consider the time value of the foregone compliance costs and the foregone environmental benefit of the subject family; (3) offset at least 100 percent of the exceedance of the standard; and (4) are able to be implemented effectively and expeditiously and completed in a reasonable time.

These proposed criteria would function as ground rules for evaluating projects to determine whether their nature and burden is appropriate to remedy the environmental impact of the nonconformity while providing assurance to the manufacturer that EPA would not require excessive projects.

In addition to being evaluated according to the above criteria, EPA is proposing that alternatives would be subject to a cost cap, as contemplated by the proposal for handheld engines in the March 1997 ANPRM. EPA proposes a cost cap of 75 percent above and beyond the foregone costs adjusted to present value, provided the manufacturer can appropriately itemize and justify these costs. EPA believes that this is an appropriate value which is both "substantial" and sufficient to encourage manufacturers to produce emission durable engines and maintain positive in-use credit balances.

In deciding what cost cap to propose, EPA believes a figure of 75 percent more than the foregone costs adjusted to present value is consistent with and informed by the principles inherent in the criteria for evaluating alternatives to recall. For example, criterion (2) would require that the alternative must cost substantially more than the costs the manufacturer was able to forego by producing a nondurable engine, and consider the time value of those foregone costs.

EPA believes that manufacturers should prove out the in-use durability of their designs carefully before certification and desires to set the cost cap for alternative projects high enough that manufacturers will take measures to carefully evaluate in-use durability before certification and to bank and maintain substantial in-use credits to handle an unforeseen problem. EPA believes that a cost cap which would merely measure the foregone costs, and adjust them to their present value would not provide the appropriate incentive, because the manufacturer would "break even" and may become indifferent between assuring in-use durability up front and addressing it only when durability problems are detected.

EPA is proposing in this rule that in-use credits be discounted by 10 percent when they are used. If in-use credits are marketed freely and their price is determined by what it costs to generate them, a manufacturer would pay at least 10 percent more than it cost another manufacturer to comply with the standards and generate the credits. This suggests that the minimum figure for the cap should be at least 10 percent of the failing manufacturer's foregone costs, after those costs have been adjusted to the present value. Given that under the proposal no more than one fourth of a manufacturer's families would be subject to in-use testing in a given year, a manufacturer that produces a non-durable, non-carryover family has at most a 25 percent chance that EPA would be aware that such a non-durable family was being produced. A reasonable individual might risk a 10 percent cost penalty if the risk of actually having to pay it was never more than 25 percent. EPA can not estimate the savings a manufacturer may reap by building a non-durable engine, and therefore can not compute the expected value of the savings when the 25 percent risk factor is added in.

EPA believes a figure of 75 percent more than the foregone costs adjusted to present value would be both "substantial" and sufficient to encourage manufacturers to produce emission durable engines and maintain positive in-use credit balances. EPA notes that these projects are alternatives to recall and that a recall with a response rate similar to those in the motor vehicle program would likely have a much higher cost than would be permitted under a 75 percent cap. EPA considered proposing that the cap be tied to the cost of purchasing in-use credits on the open market, but is concerned that these alternatives would be needed when there are no in-use credits available for sale. Further, based on EPA experience with other ABT programs, there is no guarantee that routine sales of credits would ever occur. EPA requests comment on the appropriate cap and the appropriate methodology for determining the cap, and the difficulties that could be faced in trying to ascertain foregone costs.

E. Flexibilities

This section addresses a variety of flexibilities proposed today to ease the transition from the Phase 1 to the Phase 2 program, to ensure that the Phase 2 standards are cost-efficient and achievable, and to reduce the compliance burden while maintaining the environmental benefits of the rule. Following an overview of the approach to providing compliance flexibilities, and a discussion of the proposed cutoffs for determining whether a manufacturer, an engine family, or an equipment model would qualify for the flexibilities proposed today, this section describes the flexibility provisions proposed today, including general flexibilities, phase-in flexibilities, flexibilities to address the concerns of small volume engine manufacturers, flexibilities to address the concerns of small volume equipment manufacturers, and provisions to encourage engine availability. While some of these flexibilities may overlap, EPA is proposing these flexibilities as a means to reduce the compliance costs of the proposed rule for those that can least afford them, while maintaining the environmental benefits of the proposed rule and adopting the most stringent emissions standards achievable. EPA requests comment on the proposed flexibilities individually and as a whole.

1. Overview of Approach to Providing Compliance Flexibilities

In this proposal, EPA has attempted to facilitate compliance by creating provisions that help avoid unnecessary hardship for engine and equipment manufacturers but that still achieve the desired environmental benefits. EPA believes that these provisions will help to avoid disruption of supplies of engines needed by equipment manufacturers and will enable both engine and equipment manufacturers to more easily and economically make the transition from Phase 1 to Phase 2. These provisions will also help ensure that the stringent standards proposed in the rule are achievable with technology that will be available during the Phase 2 time frame.

Some engine manufacturers have expressed concern that the Phase 2 program might be too burdensome for engine families with small volume production or for small volume manufacturers. These manufacturers have stated that, without some kind of relief, these burdens will lead them to stop producing certain engines rather than bear the additional costs. The engines most likely to be affected are special engines designed for niche markets. For these markets, there could be significant consequences to equipment manufacturers and operators if production of special engines were to cease. To address these concerns, EPA is proposing several compliance flexibilities intended especially to reduce the compliance burden on small volume products or small volume engine or equipment manufacturers.

2. Proposed Production Volume Cutoffs

EPA has developed proposed cutoffs to determine whether a manufacturer or engine/equipment family would qualify for the flexibilities proposed today. These cutoffs are described here, with a more detailed discussion in Chapter 9 of the Draft RSD. EPA decided not to propose the Small Business Administration's definition of "small business" as the criterion for a manufacturer to qualify for the proposed flexibilities (the SBA definition is either 500 or 1000 employees, depending on the SIC code of the industry). This is because, of 15 engine manufacturers qualifying as "small business" by the SBA definition, at least three produce large volumes of engines, between 75,000 and 700,000 units, and have very high annual income. EPA believes these companies will not experience significant burdens in complying with the proposed Phase 2 program. Instead, EPA is proposing the following production volume cutoffs[50] for qualifying for the flexibilities proposed today.

First, nonhandheld engine manufacturers would be considered "small volume engine manufacturers" when their total annual production is 10,000 units or less; handheld engine manufacturers would be considered "small volume engine manufacturers" when their total annual production is 25,000 units or less. While over 50 percent of the nonhandheld engine manufacturers, and up to 30 percent of the handheld engine manufacturers could qualify under this proposed cutoff, fewer than 1 percent of the engines sold in the U.S. would be covered by these cutoffs.

Second, nonhandheld small volume engine families would be those families of 1000 units of less; handheld small volume engine families would be those families of 2,500 units or less. These proposed thresholds were selected as high enough to include approximately 30 percent of the engine families in each category, while low enough to account for less than 1 percent of the engines sold. At these levels, EPA believes a reasonable amount of flexibility could be provided to a significant number of manufacturers without undue risk of loss in emission control. In comments to the ANPRM, PPEMA has recommended 10,000 units or less as a definition for small volume handheld families. Since this definition will impact the number of engines families within a manufacturer that could be exempt from PLT testing, EPA is uncertain as to why a larger sales volume cut-off is both appropriate from an enforcement perspective and of particular benefit to the manufacturer. EPA requests information on the necessity for expanding its small volume engine family definition to include larger volume family sales such as recommended by PPEMA (and a comparable volume for nonhandheld engine families), especially regarding the cost benefit to specific individual manufacturers, and the impact such a higher number would have on the confidence EPA would have that its PLT compliance program adequately evaluates the emission performance of the manufacturer's production.

Third, equipment manufacturers using nonhandheld engines would be considered "small volume equipment manufacturers" when their total annual output across all models is 2500 units or less; equipment manufacturers using handheld engines would be considered "small volume equipment manufacturers" when their total annual output across all models is 5000 units or less. Again, while over 80 percent of the nonhandheld equipment manufacturers, and up to 67 percent of the handheld equipment manufacturers could qualify under this proposed cutoff, fewer than 2 percent of the nonhandheld engines and 1 percent of the handheld engines sold in the U.S. would be covered under these thresholds.

Finally, equipment models using nonhandheld engines would be considered "small volume equipment models" when 500 or fewer units are produced per year; equipment models using handheld engines would be considered "small volume equipment models" when 2500 or fewer units are produced per year. On the nonhandheld side up to 3 percent of the equipment sold in the U.S. would be considered small volume equipment models. On the handheld side, up to 3.5 percent of the equipment sold in the U.S. would be considered small volume equipment models.

3. General Flexibilities

The program proposed today contains several general provisions intended to facilitate compliance for engine manufacturers. One proposed flexibility, available to both handheld and

[50] Annual production volume of U.S. sales, as defined by these proposed regulations. Note that the vast majority of "small" manufacturers together produce a very small fraction of the engines; a few very large manufacturers produce the large majority of the engines.

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nonhandheld engine manufacturers, is the ability to carry-over certification from one year to the next. This would reduce certification costs after the first year for those engines using technology that does not change significantly from year to year.

In addition, today's proposal contains two sets of proposed standard structure flexibilities which differ for handheld and nonhandheld engine manufacturers. For handheld engine manufacturers, the standards proposed in today's rule would be phased in, on a percentage of sales basis, which would facilitate compliance by allowing a manufacturer to spread initial compliance costs out over several years. It would also provide an opportunity for engine manufacturers to continue to supply Phase 1 engines to various equipment manufacturers, including the small volume equipment manufacturers that would also benefit from the special flexibilities described below.

For nonhandheld engine manufacturers, a declining corporate average standard for Class II nonhandheld engines would achieve those same goals. In addition, nonhandheld engine manufacturers would benefit from the certification averaging, banking, and trading program, which would help reduce compliance costs by allowing manufacturers to meet the standards with the most cost-effective technologies. Today's proposal would also allow manufacturers of nonhandheld overhead valve engines to use an assigned deterioration factor for nonhandheld overhead valve engines, further easing the compliance burden by reducing the number of tests needed to determine compliance.

For equipment manufacturers, EPA is proposing that the current provisions of 40 CFR 90.1003(b)(4) applicable for the transition from uncontrolled to Phase 1 emission regulations would also apply in concept during the transition from Phase 1 to Phase 2. Under today's proposal, equipment manufacturers would be allowed to continue to use Phase 1 engines until their stocks of engines are depleted, provided they do not engage in "stockpiling" (i.e., build up of an inventory of engines outside of normal business practices).

4. Phase-In Flexibilities

In addition to these general flexibilities, EPA is proposing two other provisions that would be applicable to all manufacturers of certain kinds of nonhandheld engines to ease compliance during the phase-in of the standards and ensure their achievability. First, because manufacturers' testing capacities may be substantially constrained during the transition to fully-phased-in standards, EPA is proposing to allow manufacturers of Class II OHV nonhandheld engines who elect not to use assigned dfs to use good engineering judgment to establish deterioration factors for the 500 and 1000 hour useful life categories during the phase-in of the 12.1 g/kW-hr Class II standard, subject to the approval of the Administrator. Recognizing the need to verify deterioration factors established based on good engineering judgment, EPA is proposing that, beginning in 2006, the Administrator may direct manufacturers to verify such deterioration factors using the same process as that for calculating deterioration factors described in Section IV.D.1 above (i.e, aging at least three engines in the field and calculating the deterioration factor based on the average of the test data). EPA is also proposing that the manufacturer would be allowed to offset any emission shortfalls resulting from a low deterioration factor through the use of certification credits (see discussion, Section IV.A.5) or other compensating measures approved by the Administrator.

Second, EPA is proposing an additional flexibility for manufacturers of Class II nonhandheld engines that use side-valve technology engines or engines with aftertreatment. During the transition to the Phase 2 standards, for engines which the manufacturer commits to cease production by the end of the 2004 model year, manufacturers would have the option to age engines for less than their full useful lives and extrapolate the deterioration factor to the full useful life using good engineering judgment.[51] Again, demonstration of such good engineering judgment would need to be made to the satisfaction of the Administrator. For the engine families which the manufacturer commits to phase out, engines certified to 250 hours could be aged for 120 hours, engines certified to 500 hours could be aged to 250 hours, and engines certified to 1000 hours could be aged to 500 hours. This flexibility, like the previous one, is intended to reduce the testing burden during the phase-in of the 12.1 g/kW-hr standard. However, EPA is not proposing to extend this flexibility to Class II engines which the manufacturer does not commit to cease production. In essence, this flexibility is designed to reduce the compliance burden at the start of the program for engines that are to be phased out, and thus to allow manufacturer to focus their resources on transitioning to engines that will meet the 2005 standards.

5. Flexibilities for Small Volume Engine Manufacturers and Small Volume Engine Families

EPA is proposing five compliance flexibilities to ensure the achievability of the standards and reduce the compliance burden on small volume engine manufacturers and small volume engine families, as follows.

First, small volume engine manufacturers could opt out of mandatory production line testing. This option would apply only to nonhandheld engine manufacturers with a total annual production of 10,000 engines or less and to handheld engine manufacturers with a total annual production of 25,000 engines or less. These engines would be subject to SEA testing. However, EPA anticipates little such testing unless it receives evidence of nonconformities or other problems.

Second, manufacturers of small volume nonhandheld engine families (those with total annual production of 1000 engines or less) and manufacturers of small volume nonhandheld engine families (those with total annual production of 2500 engines or less) could opt out of mandatory production line testing for those engine families. As above, these engines would remain subject to SEA testing, which would likely only occur if EPA had evidence of nonconformity.

Third, manufacturers of very clean engine families, that is, those whose $HC+NO_x$ certification levels are at least 50 percent below the standard (or FEL, if applicable) could also opt out of mandatory production line testing for those families. These engines would also be subject to SEA testing, although EPA sees little likelihood of conducting SEAs on engines certified substantially below the standard (or FEL). EPA seeks comment on the margin below the standard (or FEL) necessary to qualify for this exemption.

Fourth, small volume Class II side-valve technology engine families (whose annual production is 1,000 engines or less) would be allowed to meet an $HC+NO_x$ standard of 24 g/kW-hr, which represents the Phase 1 standard adjusted for deterioration. Note that these families could also opt out of mandatory production line testing, consistent with provision 2 above. This flexibility is intended to ensure that manufacturers can continue to produce these small volume engines, many of which are used in niche-market specialty equipment.

Fifth, small volume engine manufacturers could defer compliance with Phase 2 handheld requirements and Class II nonhandheld standards until the last year of the phase in. For handheld engines, this would mean that the engine manufacturer could, at its option, produce Phase 1 engines exclusively through the 2004 model year, with full Phase 2 compliance required in 2005. For nonhandheld Class II engines, the engines would be subject to the Phase 2 requirements beginning in 2001, but would not have to comply with the actual Phase 2 corporate average standards until the 2005 model year. These manufacturers could certify Class II engines to a standard of 24 g/kW-hr through 2004. These engines would neither use nor generate certification credits. If a small volume engine manufacturer desired to generate credits prior to the 2005 model year, it could do so for those engines certified below the applicable corporate average emission standard. Note that, consistent with the first provision above, these families would not have to be tested under mandatory production line testing. This flexibility is intended to provide another mechanism to reduce impact on small volume engine manufacturers and help ensure that manufacturers can continue to produce engines for specialty equipment.

EPA is not proposing to specifically exempt from in-use testing any group of engines to which in-use testing requirements are applicable based on the group's or the manufacturer's size. The Agency believes that all engines should meet their standards (or FELs, as applicable) for their full useful life and that manufacturers should design engines to be emission durable. It is therefore appropriate that all engines to which in-use testing or demonstration requirements are applicable be subject to in-use testing. However, under this proposal, the choice of engines which would require in-use testing or demonstration is EPA's. EPA would not be inclined to identify for mandatory in-use testing a very small volume engine family or a family certified by a very small company unless there was evidence of a nonconformity. EPA requests comment on the appropriateness of this position.

6. Flexibilities for Small Volume Equipment Manufacturers and Small Volume Equipment Models

Several equipment manufacturers who do not make their own engines have expressed concern that the transition to the Phase 2 program may disrupt their production because engine suppliers do not always provide adequate lead time for equipment redesigns needed to accommodate engine design changes. Engine changes could affect mounting and connection locations, heat rejection loads, and engine compartment requirements, for example. In addition, some equipment manufacturers cannot implement equipment design changes quickly, even with timely information from manufacturers because of the sheer volume of redesign work needed to change diverse product offerings with limited engineering staffs.

EPA believes that the engine manufacturer flexibilities described above will extend the availability of engines currently used by small volume equipment manufacturers and will help ease the transition from Phase 1 to Phase 2 for those entities. However, to respond more directly to concerns raised by equipment manufacturers, EPA is proposing three compliance flexibilities to help enable equipment manufacturers to make the transition from Phase 1 to Phase 2 engines.

First, EPA is proposing to temporarily exempt small volume equipment manufacturers from the requirement to use Phase 2 engines in cases where no Phase 2 engines with appropriate physical and performance characteristics are available to fit existing equipment models. This exemption would apply to those equipment manufacturers whose annual output across all models uses 2500 or fewer nonhandheld engines, or 5000 or fewer handheld engines, and would last through the third year after the last applicable phase-in date for that class of engines. Thus, for example, small volume equipment manufacturers who use Class II nonhandheld engines in an existing piece of equipment could continue using Phase 1 engines through the end of the 2008 model year, in cases where no suitable Phase 2 engines are available to fit existing equipment models.

Second, EPA is proposing to delay the impact of the Phase 2 requirements on individual small volume equipment models in cases where no suitable Phase 2 engines are available to fit existing equipment models. A small volume model, as proposed, is one with 500 or less units produced per year for nonhandheld equipment, and 2500 or fewer units produced per year for handheld equipment. These small volume models could continue to use Phase 1 engines throughout Phase 2, except as discussed below. EPA is proposing that this exemption would be allowed only for those equipment models in which a certified Phase 2 engine will not fit, and would apply only to models in production prior to the effective date of the Phase 2 standards. This is to avoid encouraging manufacturers to bring out new models designed to use Phase 1 engines after the Phase 2 standards have gone into effect. This exemption would also apply only so long as the equipment is not significantly modified. EPA believes that if the equipment manufacturer takes steps to significantly redesign a particular model, the use of a Phase 2 engine should be included. Finally, this exemption could apply only through the applicability of the Phase 2 program. EPA seeks comments on each of these restrictions, especially with regard to how they would affect equipment manufacturers who might incur a significant change in the cost of the engine if they were required to switch to a Phase 2 engine as the result of a significant model redesign.

Finally, EPA is proposing a hardship relief provision by which any equipment manufacturer could obtain relief to continue using Phase 1 engines, by demonstrating to the Administrator's satisfaction that, despite its best efforts, the manufacturer cannot meet the implementation dates without incurring substantial economic hardship, even with the transition flexibilities described above, due to unforeseeable factors beyond the equipment manufacturer's control. Such a situation may occur if an engine supplier were to change or drop an engine model very late in the implementation process. The intent of this provision is to recognize the concerns of equipment manufacturers about the uncertainty of timely supply of engines that meet equipment requirements by providing fair, objective criteria for hardship appeal that minimize the potential loss in environmental benefit, minimize the Agency's involvement in the financial affairs of the affected equipment manufacturer, and avoids straining the Agency's resources.

As proposed, this hardship relief provision would require requests to be made in writing, submitted before the earliest date of noncompliance, include evidence that failure to comply was unforeseeable and was not the fault of the equipment manufacturer (such as a supply contract broken by the engine supplier), and include evidence that the inability to sell the subject equipment will have a major impact on the company's solvency. The Agency would work with the applicant to ensure that all other remedies available under the flexibility provisions are exhausted

[51] As described in Section IV.D.1 of this preamble, Class II side-valve engines and engines with aftertreatment would be able to certify through a bench aging certification program, provided that a field/bench adjustment factor had been established.

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before granting further relief, and would limit the period of relief to no more than one year. Furthermore, the Agency proposes that applications for hardship relief could only be submitted through the first year after the last effective date of the phase-in period. EPA seeks comment on all aspects of this flexibility provision and on whether the Agency should require those who receive relief to cover some of the lost environmental benefit, such as purchasing lower emitting engines.

7. Engine Availability

EPA recognizes that the above-described equipment manufacturer flexibility provisions are of little use if Phase 1 engines are not available. Therefore, to help ensure availability of Phase 1 engines necessary for the above relief provisions to have full effect, EPA is proposing that engine manufacturers be allowed to build and sell the engines needed to meet the market demand created by these flexibilities. Specifically, EPA is proposing to continue to apply the Phase 1 compliance provisions to these engines. Thus, these Phase 1 engines would not be subject to Phase 2 useful life, production line testing or in-use demonstration requirements contained in today's program, since Phase 1 engines are not currently subject to those provisions. EPA desires to minimize any disincentives that engine manufacturers may have to producing these engines for small volume equipment users and is therefore proposing that these engines would be counted only to the extent necessary to determine the availability of the specific flexibility item that was being applied. These engines would not count in any other calculation of compliance with phase in requirements or against any other ceilings or limits proposed in this rule. These engines would not be required to use any emission credits nor would they be permitted to generate any such credits.

However, to prevent abuse of the ability to continue to produce Phase 1 engines, EPA believes it is necessary to impose some restrictions on the continued manufacture and sale of those engines. Therefore, EPA is proposing that equipment manufacturers procuring engines for use under the flexibility programs described above provide written assurance to the supplying engine manufacturer that such engines are being procured for this purpose. EPA requests comment on the need for a requirement that engine manufacturers maintain or annually provide to EPA records on the engines manufactured in support of the equipment manufacturer flexibilities described above, or whether EPA should rely on equipment manufacturer records.

F. Nonregulatory Programs

The following is a description of three nonregulatory programs which, though outside of the scope of the regulation, could yield important environmental benefits from the small SI engine sector. The first program is a voluntary incentive and recognition program for low-emitting nonhandheld and handheld engines, which would take the form of a "green labeling" program to identify engines which have emissions significantly lower than required by the proposed standards. The second program is a voluntary fuel spillage reduction program for nonhandheld and handheld engines. The third program is a particulate matter (PM) and hazardous air pollutant (HAP) testing program for handheld engines. These programs are described in the remainder of this section.

1. Voluntary "Green" Labeling Program

EPA is very interested in encouraging the design, production, and sale of small engines which are substantially cleaner than would be required by today's proposed Phase 2 programs. EPA plans to implement a voluntary program which would include consumer labeling of engines and equipment with superior emission performance as a way of providing public recognition and also allowing consumers to easily determine which engines have especially clean emission performance. At this time, EPA is considering a threshold of around 50 percent of the proposed standard (e.g., around 12.5 g/kW-hr for Class I engines) as the level below which engines would qualify for "green" labeling. To develop the details of such a program, the Agency requests comment on all aspects of the program, including the threshold for determining a "green" engine, whether the sales weighted certification level after dfs are applied should be used to establish the eligibility of an engine family, the design of and information to be included on the label, and other matters relevant to the successful implementation of the program. The Agency requests comment on program recommendations as part of today's proposal. In particular, the Agency seeks information on when such a program must be in place to effectively impact the sale of especially clean Phase 2 engines. The Agency is interested in working closely with consumer groups, engine and equipment manufacturers and others with an interest in making this program work. The Agency invites comment on the interest of any of these groups in working with the Agency to develop and implement this program.

2. Voluntary Fuel Spillage and Evaporative Emission Reduction Program

EPA is planning to develop a voluntary fuel spillage and evaporative emission reduction program specifically for the small engine industry and its customers. While this program would not impose enforceable requirements on engine manufacturers subject to this rulemaking, it is important to reduce fuel spillage and other sources of evaporative emissions. Every year, millions of gallons of gasoline are lost during refueling. It is estimated that if a few ounces are spilled during each refueling of lawn and garden equipment, they would total about 17 million gallons of gasoline, most of which evaporates into the air to contribute to the ground-level ozone problems. To reduce and prevent this pollution, a variety of measures will be needed, most involving increased public awareness and education.

The Agency believes it is appropriate to develop and implement a program targeted at the small SI industry and its customers to encourage public awareness and act as an incentive for technology investments. The Agency is interested in a voluntary partnership program which would involve EPA, engine manufacturers and equipment manufacturers, regional, state, and local air pollution agencies, health and environmental organizations, fuel container manufacturers, and other interested parties who would all contribute to the successful development and implementation of a voluntary fuel spillage and evaporative emission reduction program.

While the design of such a program will benefit from the thoughtful input of all partners, the program would likely encourage the development of technology that will assist equipment users in reducing spills and evaporative emissions, provide recognition for implementing technology developments that will assist equipment users in reducing spills, and provide education and training to commercial operators of equipment and to those persons who influence individuals doing the refueling (such as equipment sales staff or small engine course instructors), and similar target audiences.

Initial steps in this program involve identifying interested partners and convening a meeting to discuss the roles and responsibilities of each partner. The Agency seeks comment on the proposed voluntary partnership program, interest in participating in this partnership, appropriate strategies and target audiences, and other matters pertinent to establishing this program.

3. Particulate Matter and Hazardous Air Pollutant Testing Program for Handheld Engines

While section 213(a)(4) of the Clean Air Act allows EPA to establish standards for nonroad emissions of any air pollution which may reasonably be anticipated to endanger public health or welfare, today's notice does not propose to establish emission standards in Phase 2 for particulate matter (PM) or non-hydrocarbon hazardous air pollutants (HAP) listed under section 112(b) of the Clean Air Act. However, EPA and other parties have agreed that a PM and HAP test program will be conducted (see 62 FR 14746). The Portable Power Equipment manufacturers Association (PPEMA), in cooperation with EPA, will conduct a test program to evaluate and quantify emissions of PM and HAP including, but not limited to, formaldehyde, acetaldehyde, benzene, toluene, and 1,3 butadiene. EPA anticipates that testing will be conducted on Phase 2 technology handheld engines, with a sufficient magnitude of engines tested to represent the range of new basic technologies used to comply with Phase 2 small engine standards. EPA expects that the information generated by this program will be useful in informing any future implementation of section 213(a)(4) regarding small SI engines.

G. General Provisions

This section includes a description of certain other general provisions proposed in today's notice, including provisions related to annual production period flexibilities during the transition to Phase 2, the definition of handheld engines, a small displacement nonhandheld engine class, propane fueled indoor power equipment, dealer responsibility, engines used in recreational vehicles, engines used in rescue and emergency equipment, and replacement engines.

1. Model Year Definition and Annual Production Period Flexibilities During Transition to Phase 2

The programs for nonhandheld and handheld engines proposed today would be effective beginning with the 2001 and 2002 model years, respectively. EPA is not proposing to change the Phase 1 definition of model year for Phase 2. That is, model year (MY) would continue to mean the manufacturer's annual new model production period which includes January 1 of the calendar year, ends no later than December 31 of the calendar year, and does not begin earlier than January 2 of the previous calendar year. When a manufacturer has no annual new model production period, model year would mean calendar year (see 40 CFR 90.3). Under no circumstances would the model year definition be allowed to be interpreted to let existing models "skip" annual certification by pulling ahead the production of every other model year.

In addition, in order to provide additional lead time for the implementation of the program for nonhandheld engines, EPA is proposing to adopt similar flexibilities for the beginning of the Phase 2 program for nonhandheld engines as were available for the Phase 1 program (see 40 CFR 90.106 (a) and (b)). Thus, for the start up of Phase 2, EPA is proposing that every manufacturer of new nonhandheld engines produced during or after model year 2001 would be required to certify those engines to the Phase 2 program requirements. Nonhandheld engines manufactured during an annual production period beginning prior to September 1, 2000, would be allowed to certify to Phase 1 standards. However, annual production periods beginning prior to September 1, 2000, would not be allowed to exceed 12 months in length. In effect, all nonhandheld engine families would be required to be certified to the Phase 2 program by September 1, 2001. EPA is not proposing this provision for handheld engines, which have both a later effective date as well as a phase-in of the Phase 2 program based on percentage of engine sales. EPA requests comment on whether similar provisions for handheld engines should be adopted (except that in the case of handheld engines, September 1 of each year would be the date that the percentage of engine sales requirements for Phase 2 certification would have to be met). EPA requests comments on all aspects of these provisions relating to annual production periods in the transition from Phase 1 to Phase 2 certified engines.

2. Definition of Handheld Engines

EPA is not proposing any changes to the criteria listed in Phase 1 used to determine whether engines could be classed as Class III, IV or V. For Phase 2, EPA would continue to make determinations of applicability of the Class III, IV, or V standards based on the criteria found at 40 CFR 90.103(a)(2). During Phase 1, the multipositional use criterion has been used by EPA to make handheld determinations for certain two-person earth augurs, breakers and rammers, and power shovels. In each case, the manufacturer presented evidence to the satisfaction of the Agency demonstrating the multipositional use of the equipment, and provided a discussion of any constraints on engine design imposed by the usage of the equipment. The interpretation of multipositional use by EPA has been made relative to the equipment category and the technology available to meet the constraints imposed by the usage of the equipment.

EPA received comment on the ANPRM that EPA should revise the definition of handheld.[52] This commenter suggests that the Phase 1 definition of handheld restricts the replacement of 2-strokes by significantly cleaner 4-stroke engines, making it difficult to introduce a significantly cleaner engine for a product application. This commenter suggests that a different handheld definition and interpretation would improve the environment and permit the continued use of necessary products.

EPA believes that the current interpretation of criteria used to determine applicability of Class III, IV and V standards addresses this concern. Provided the 4-stroke engines are capable of performing the same intended functions as 2-stroke engines used in similar handheld applications, then EPA would likely determine that the 4-stroke engine also meets the criteria for applicability of the Class III, IV or V standards.

3. Small Displacement Nonhandheld Engine Class

EPA has considered whether there is a need for changes or additions to the five classes of small SI engines for regulatory purposes. In particular, the Agency has considered whether there is a need for addition of a new, small displacement class that would be considered "nonhandheld." In comments on the ANPRM, one commenter specifically requested EPA to consider proposing a new class, as follows: the new class would be nonhandheld engines with displacements less than 75cc, and be subject to an in-use standard of 72.4 g/kW-hr with useful life categories of 125 hours and 250 hours. The commenter believes a new class for nonhandheld is needed for several reasons. The commenter believes the existing Phase 1 standards did not contemplate small displacement nonhandheld engines, yet the Phase 1 rule left a void in the market

[52] See comments from Honda, Item #II–D–07 in EPA Air Docket A–96–55.

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which could be filled by small displacement nonhandheld engines. The commenter believes the Phase 1 standards prevented less than 75 cc 2-stroke engines from being certified into some nonhandheld applications which utilize small displacement engines, but that the proposed Phase 2 Class I standard is too stringent for less than 75 cc 4-strokes to meet.

The Agency is not proposing the addition of a new small displacement nonhandheld class. The Agency believes that the proposed Class I standard, which can be met through averaging, will allow a full range of small displacement nonhandheld engines to certify to the proposed Phase 2 standards. If the proposed Class I standard can be met through averaging, the creation of a new displacement class with a higher standard could result in a smaller environmental benefit from the Phase 2 program.

The Agency understands it is possible that some nonhandheld applications which use small displacement engines may no longer be able to utilize two-stroke engines if the Phase 2 standards are adopted as proposed, but believes that complying engines, perhaps of larger displacement, can be used. EPA requests additional information on this issue and the extent of its occurrence. The Agency also once again requests comment on the need for a new small displacement class, in particular, whether the proposed average Class I standard is sufficient to cover smaller displacement engines. The Agency also requests comment on the displacement cutoff (75cc), standard (72.4g/kW-hr), and useful lives (125 hours and 250 hours) suggested by the ANPRM commenter.

4. Liquefied Petroleum Gas Fueled Indoor Power Equipment

Manufacturers of equipment using liquefied petroleum gas (LPG) have argued that their situation deserves special consideration within the Phase 2 regulations.[53] The type of equipment they produce is often designed specifically for indoor use including, for example, floor washing and buffing equipment. The relatively low sales (likely fewer than 10,000 annually nationwide for the industry) and the fact that many of these manufacturers likely sell less than one thousand pieces of equipment annually means that both individually and collectively they account for a very small portion of the small SI engines sold annually. LPG is a popular fuel for indoor equipment due to the proven ability to calibrate LPG-fueled engines to operate at very low carbon monoxide (CO) levels. Low CO performance is especially important for indoor equipment to minimize CO exposure to the operator and others in the building. The Occupational Health and Safety Administration (OSHA) has set maximum CO standards for indoor ambient concentrations and some states have adopted even tighter indoor CO standards. While these are ambient standards, not emission limits for individual pieces of equipment, equipment manufacturers, to successfully market in this area, must be assured their equipment emits very low levels of CO and thus can be routinely used indoors without causing violations of OSHA or state indoor air quality requirements.

Because the specialized nature of their equipment places unique demands on these engines and due to the typically low sales volumes of many of the pieces of equipment, many of these indoor equipment manufacturers must not only design and produce their equipment but also to a significant extent are responsible for the modification of engines to power their equipment. In a number of cases these indoor equipment manufacturers buy gasoline-fueled engines and convert them to operate on LPG.

While manufacturers of LPG-fueled indoor power equipment must power their equipment with engines which meet all the requirements of the small engine Phase 1 rules, the manufacturers argue that the proposed Phase 2 rules would add significantly to their burden. While meeting the proposed federal $HC+NO_X$ Phase 2 standard should not be particularly difficult for LPG engines compared to gasoline-fueled engines, the combined need to also achieve very low CO emission levels in order to not cause violations of indoor ambient CO standards may present a design challenge. The necessary controls may well exceed those required to meet just the Phase 2 standards and may include, for example, the use of electronically controlled fuel systems and perhaps catalysts. This could add significant cost to a relatively few engines. Even at a higher cost, those equipment manufacturers currently being supplied LPG-fueled engines by an original engine manufacturer are concerned that their suppliers may decide it is not worth the effort to supply engines complying with the Phase 2 standards. For those equipment manufacturers modifying engines to operate on LPG at low CO levels, the same technical challenges are faced while their ability to spread the development costs across their engines is limited by the low number of engines modified.

While EPA has not done a thorough cost analysis for the impact of Phase 2 standards on this unique segment of the industry, EPA is persuaded that the technical challenges faced by this segment are significant. Many of these manufacturers would be considered "small volume engine manufacturers", with engines produced in "small volume engine families", under the criteria proposed today, and would therefore qualify for proposed compliance flexibilities for small volume engine manufacturers and small volume engine families. These include both additional flexibilities in the phase-in of the Phase 2 standard, and also an option to opt out of mandatory production line testing. In effect, the additional phase-in flexibilities would allow nonhandheld manufacturers of indoor LPG-fueled power equipment engines, whose annual production of small SI engines is 10,000 units or less, to continue producing Class II nonhandheld engines which meet a Phase 1 equivalent standard (24 g/kW-hr) until 2005. Beginning in 2005, when the Phase 2 standards are proposed to be fully phased in for gasoline-fueled engines, these LPG-fueled engines are proposed to also be required to meet the Phase 2 $HC+NO_X$ standards. This extra lead time would allow manufacturers to spread their development efforts over several additional years, for those manufacturers choosing or required to make their own fuel modifications. In addition, while these engine families would be certified to the Phase 2 program, the cost of the proposed compliance program for these manufacturers would be minimized, as these manufacturers and engine families would likely qualify for the proposed flexibilities that would allow manufacturers to carry-over certification from one year to the next and to opt out of mandatory production line testing. The provisions for small volume engine manufacturers and small volume engine families are discussed in more detail in Section IV.E.

Comments are requested on the impact of this proposed phase-in flexibility and other proposed compliance program flexibilities on the technical and economic ability of the indoor power equipment engine industry segment to successfully comply with the Phase 2 standard beginning in 2005, and any air quality impact concerns such a delayed implementation might cause.

EPA is also requesting comment on the possible deletion of the existing § 90.1003(b)(3). EPA believes this provision may be of only limited utility for this program and believes it could prove problematic for small SI engines. This provision provides that certain activities connected to conversion of engines to alternative fuels will not be regarded as tampering. At one point, the existing regulatory paragraph makes reference to "vehicle" standards, of which, of course, there are none in the small SI program. Further, it might be misconstrued as requiring an engine modifier to reinstall hardware that was removed in the conversion process after the conversion was complete. Under such a misreading, a modifier engaged in converting gasoline engines to operate on propane might be viewed as having to reinstall the original gasoline carburetor on an engine after conversion, even if that were not feasible.

Existing converters of small SI engines are currently certifying their products on the alternative fuel or are operating under EPA's tampering enforcement Memorandum 1–A. In light of this, for small SI engines, EPA believes that the discussion of the tampering implications of alternative fuel conversions for small SI engines could be best handled by the application of Memorandum 1–A. EPA does not expect that existing engine modifiers would be harmed by the deletion of this paragraph.

Text similar to existing § 90.1003(b)(3) is found in other nonroad rules. EPA intends, at some future date, to review the appropriateness and usefulness of this language in those rules.

5. Dealer Responsibility

This proposal contains no new constraints or responsibilities for dealers and repair facilities from the Phase 1 rule. Dealers and repair shops, like all other persons, would continue to be prohibited from tampering or causing tampering. Tampering refers to the removal or rendering inoperative of any device or element of design installed on or in an engine for purposes of emission control.

During the Phase 2 regulatory negotiation process, the issue of dealer responsibility was frequently raised out of concern that increasingly sophisticated control technologies would result in greater numbers of tampered engines being brought in for service. Another concern was that the Phase 2 rule not require that repair parts for emission control systems be obtained from the engine manufacturer.

While all persons, including dealers and repair facilities, are prohibited from tampering or causing tampering, they are not prohibited from working on tampered engines. Under EPA tampering policies, dealers and repair facilities are not expected to restore tampered products to their originally certified and functioning configuration unless the repair is to the tampered system or a component of the tampered system. In such a case, the dealer or repair facility should restore the system to a certified and properly functioning condition, but need not conduct emission testing to verify compliance with emission standards. With regard to the use of emission control repair parts, dealers and repair facilities may use parts represented by their manufacturers to be functionally equivalent to original equipment parts.

6. Engines Used in Recreational Vehicles

EPA is not proposing any changes to the provision in the Phase 1 rule that engines used in recreational vehicles would not be subject to the small SI engine regulations. EPA continues to believe that these engines are more appropriately regulated under a rulemaking separate from this small SI engine program. Thus, these engines would remain outside the scope of the program when Phase 2 takes effect. The Agency's rationale for excluding engines used to propel recreational vehicles was presented in the preamble for the Phase 1 Notice of Proposed Rulemaking (NPRM) (see 59 FR 25403, 25414), and the Agency addressed the comments received on this topic in the Phase 1 Response to Comments document (see Section 3.8 "Non-Coverage of Recreational Propulsion Engines", EPA Air Docket A–93–25, Docket Item V–C–01). As discussed in the Preamble for the Phase 1 NPRM, "EPA's primary reason for this exclusion is the extremely transient operation of the products in which these engines are used, which limits the ability of the proposed steady state test procedure to adequately represent exhaust emissions. This exclusion is not based on a determination that these engines do not contribute to air pollution and therefore need not be controlled." (59 FR 25414) EPA continues to be concerned that the test procedures covering the Phase 1 and Phase 2 engines may not be appropriate for engines used to propel recreational vehicles.

Engines used in recreational vehicles are defined at 40 CFR 90.1(b)(5), in part, as having a rated speed greater than or equal to 5,000 RPM and having no installed speed governor. While EPA is not proposing any changes to the provisions which exclude recreational vehicles from this rule, EPA does wish to clarify that some engines with installed "speed governors" and with ungoverned rated speed above 5000 rpm still qualify as recreational. For example, engines used in typical recreational vehicles such as snowmobiles and 4-wheel ATVs which, when designed for use by children have "speed governors" installed for safety purposes to limit the top speed of the vehicle, have been found by EPA to be "recreational vehicles" in implementation of Phase 1. These vehicles are still operated in a typical fashion for recreational vehicles up to that top speed. During the development of the Phase 1 rule, the Agency was not aware of the existence of snowmobiles designed for children, and therefore not aware of the existence of snowmobiles with "speed governors." The Agency would like to clarify that EPA continues to believe snowmobiles should not be covered under this rule, including snowmobiles designed for use by children which may in fact have a "speed governor" installed for safety purposes.

7. Engines Used in Rescue and Emergency Equipment

In consideration of safety factors associated with compliance with the Phase 2 program, today's proposal includes a provision that would exempt engines which are used exclusively in emergency and rescue equipment from compliance with any standards if the equipment manufacturer can demonstrate that no certified engine is available to power the equipment safely and practically. Although under Phase 1 EPA has received no reports of problems caused by the need to use certified engines in emergency and rescue equipment, EPA is concerned that such problems could arise. EPA foresees this exemption applying especially to handheld items used to work in tight places to perform such tasks as cutting metal to extricate passengers from wrecked vehicles, if the size, heat or other characteristics of the certified engine would render its use unsafe. EPA does not foresee this exemption applying to portable generators, compressors or hydraulic pumps that may be used to power rescue equipment from a distance, since such devices are not as subject to the size, weight and other considerations surrounding a tool that contains its own source of power.

EPA proposes this exemption to avoid any possible conflict between emission control and public safety. EPA wishes to reduce the chance that a piece of rescue equipment will go out of production or become more cumbersome because of the need to use certified engines. EPA sees no significant air quality impact

[53] See EPA Air Docket A–96–55, Items #II–D–02, II–D–04, and II–D–08.

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from such an exemption, because it would apply only to engines that are few in number and are subject to infrequent use for very short periods of time. In fact, EPA is not currently aware of any engine that is used exclusively in emergency or rescue equipment. The exemption, as proposed, would apply to engines and equipment produced during the remainder of the Phase 1 period as well as Phase 2 engines and equipment.

8. Replacement Engines

After promulgation of the Phase 1 rule, equipment manufacturers approached EPA with concerns that, once the rule took effect, they would not be able to obtain replacement engines to repair certain items of more expensive equipment such as commercial mowing and construction equipment when their engines fail. The equipment manufacturers provided evidence that many Phase 1 engines, especially Class II nonhandheld engines, would be configured differently from uncertified engines and would not fit in the engine compartments of some pre-regulatory equipment. The equipment manufacturers explained that occasional engine failures are often best remedied by replacing the engine. Commercial operators, many of whom are small businesses, may not be able to afford the downtime associated with waiting for an extensive engine repair. In effect, repairing the engines becomes more costly than replacing the engines, and may be less environmentally beneficial. EPA evaluated these concerns and gathered information from engine manufacturers, equipment manufacturers and their associations. EPA concluded that permitting the sale of uncertified replacement engines, which likely constitute less than one percent of annual small SI engine sales, was a cheaper alternative that was no worse for air quality than the repair or rebuilding of the failed engines, which were not prohibited by the Phase 1 rule. On August 7, 1997 (62 FR 42638), EPA issued a direct final rule amending the Phase 1 rule to allow engine manufacturers to sell uncertified engines for replacement purposes subject to certain controls designed to prevent abuse.[54] These controls require that the engine manufacturer ascertain that there is no currently certified engine that will fit in the equipment, that the engines be labeled for replacement purposes only, and that the engine manufacturer or its agent take ownership and possession of the old engine.

An environmental group has recently expressed concern to EPA about the replacement engine provisions for small SI engines published in the direct final rule described above. This group recommends that additional constraints and controls should be placed on the sale of these engines to prevent abuse since these engines either will not be built to comply with any standards, or will be built to comply with Phase 1 standards after those standards have been superseded by Phase 2 standards.

In today's notice, EPA is proposing to continue the replacement engine provision with an accommodation necessary to address Phase 1 engines after the implementation of Phase 2. EPA is also proposing additional requirements to address the concerns of the environmental group and better ensure that the ability to use replacement engines is not abused.

During Phase 2, the universe of small SI engines will expand to include uncertified engines, Phase 1 engines and Phase 2 engines. Consequently, the provision as proposed would be amended to permit uncontrolled engines to be sold for pre-regulatory equipment, and Phase 1 engines to be sold for equipment built with Phase 1 engines, subject to certain constraints. EPA has no reason to believe that this provision will result in significant adverse air quality impacts. In fact, many replacement engines for older equipment will be certified Phase 2 engines. This provision provides flexibility and cost savings for equipment operators. It affects primarily commercial equipment where the equipment cost is high enough to justify major engine repairs or replacement and the usage of the equipment is such that downtime for repairs is costly. Replacement engines are not typically used in handheld equipment, nor in lower cost nonhandheld items such as walk behind mowers. A more detailed discussion of the rationale for the replacement engine provision can be found in the preamble to the direct final rule cited above.

Although EPA does not believe that replacement engines will cause any significant air quality impacts, it is proposing to add safeguards and reporting and record keeping requirements to further ensure against abuse. EPA is proposing to amend the existing replacement engine provisions to require: (1) that manufacturers follow specific guidelines when ascertaining that no certified engine is available which can suitably repower a specific item of equipment; (2) that old engines being replaced are destroyed; (3) that engine manufacturers report to EPA annually the number of uncertified engines sold under the replacement engine provisions; (4) that manufacturers keep records, accessible to EPA, of the purchasers, quantities and equipment applications of replacement engines; and (5) that there be a limit on the time period for which uncertified replacement engines are normally available. EPA requests comment on the need for these additional requirements, and the burden they may pose to industry, equipment operators and engine distributors.

V. Environmental Benefit Assessment

National Ambient Air Quality Standards (NAAQS) have been set for criteria pollutants which adversely affect human health, vegetation, materials and visibility. Concentrations of ozone (O_3) are impacted by HC and NO_X emissions. Ambient concentrations of CO are, of course, impacted by CO emissions. EPA believes that the standards proposed today would reduce emissions of HC and NO_X and help most areas of the nation in their progress towards compliance with the NAAQS for ozone. The following provides a summary of the roles of HC and NO_X in ozone formation, the estimated emissions impact of the proposed regulations, and the health and welfare effects of ozone, CO, hazardous air pollutants, and particulate matter.

Much of the evaluation of the health and environmental effects related to HC, NO_X and CO found in this section is also discussed in the draft Regulatory Support Document (RSD), and in the March 1997 ANPRM. EPA encourages comments on the Agency's beliefs expressed in this proposal and in the RSD, a copy of which is in the public docket for this rulemaking.

A. Roles of HC and NO_X in Ozone Formation

Both HC and NO_X contribute to the formation of tropospheric ozone through a complex series of reactions. In a recent report, researchers emphasize that both HC and NO_X controls are needed in most areas of the United States.[55] EPA's primary reason for controlling emissions from small SI engines is the role of their HC emissions in forming ozone. Of the major air pollutants for which NAAQS have been designated under the CAA, the most widespread problem continues to be ozone, which is the most prevalent photochemical oxidant and an important component of smog. The primary ozone NAAQS represents the maximum level considered protective of public health by the EPA. Ozone is a product of the atmospheric chemical reactions involving oxides of nitrogen and volatile organic compounds. These reactions occur as atmospheric oxygen and sunlight interact with hydrocarbons and oxides of nitrogen from both mobile and stationary sources.

A critical part of this problem is the formation of ozone both in and downwind of large urban areas. Under certain weather conditions, the combination of NO_X and HC has resulted in urban and rural areas exceeding the national ambient ozone standard by as much as a factor of three. Thus it is important to control HC over wider regional areas if these areas are to come into compliance with the ozone NAAQS.

B. Health and Welfare Effects of Tropospheric Ozone

Ozone is a powerful oxidant causing lung damage and reduced respiratory function after relatively short periods of exposure (approximately one hour). The oxidizing effect of ozone can irritate the nose, mouth, and throat causing coughing, choking, and eye irritation. In addition, ozone can also impair lung function and subsequently reduce the respiratory system's resistance to disease, including bronchial infections such as pneumonia.

Elevated ozone levels can also cause aggravation of pre-existing respiratory conditions such as asthma.[56] Ozone can cause a reduction in performance during exercise even in healthy persons. In addition, ozone can also cause alterations in pulmonary and extrapulmonary (nervous system, blood, liver, endocrine) function.

The newly revised primary NAAQS[57] for ozone based on an 8-hour standard of 0.08 parts per million (ppm) is set at a level that, with an adequate margin of safety, is protective of public health. EPA also believes attainment of the new primary standard will substantially protect vegetation. Ozone effects on vegetation include reduction in agricultural and commercial forest yields, reduced growth and decreased survivability of tree seedlings, increased tree and plant susceptibility to disease, pests, and other environmental stresses, and potential long-term effects on forests and ecosystems.

High levels of ozone have been recorded even in relatively remote areas, since ozone and its precursors can travel hundreds of miles and persist for several days in the lower atmosphere. Ozone damage to plants, including both natural forest ecosystems and crops, occurs at ozone levels between 0.06 and 0.12 ppm.[58] Repeated exposure to ozone levels above 0.04 ppm can cause reductions in the yields of some crops above ten percent.[59] While strains of some crops are relatively resistant to ozone, many crops experience a loss in yield of 30 percent at ozone concentrations below the pre-revised primary NAAQS.[60] The value of crops lost to ozone damage, while difficult to estimate precisely, is on the order of $2 billion per year in the United States.[61] The effect of ozone on complex ecosystems such as forests is even more difficult to quantify. However, there is evidence that some forest types are negatively affected by ambient levels of ozone.[62] Specifically, in the San Bernadino Mountains of southern California, ozone is believed to be the agent responsible for the slow decline and death of ponderosa pine trees in these forests since 1962.[63]

Finally, by trapping energy radiated from the earth, tropospheric ozone may contribute to heating of the earth's surface, thereby contributing to global warming (that is, the greenhouse effect),[64] although tropospheric ozone is also known to reduce levels of UVB radiation reaching the earth's surface, the increase of which is expected to result from depletion of stratospheric ozone.[65]

C. Estimated Emissions Impact of Proposed Regulation

The emission standards proposed in today's action should reduce average in-use exhaust $HC+NO_X$ emissions from small SI engines 30 percent beyond Phase 1 standards by year 2025, by which time a complete fleet turnover is realized. This translates into an annual nationwide reduction of roughly 134,674 tons of exhaust $HC+NO_X$ in year 2025 over that expected from Phase 1. Reductions in CO beyond Phase 1 levels, due to improved technology, is also to be expected by year 2025.

Along with the control of all hydrocarbons, the proposed standards should be effective in reducing emissions of those hydrocarbons considered to be hazardous air pollutants (HAPs), including benzene and 1,3-butadiene. However, the magnitude of reduction would depend on whether the control technology reduces the individual HAPs in the same proportion as total hydrocarbons.

These emission reduction estimates are based on in-use population projections using estimates of annual engine sales, engine attrition (scrappage), activity indicator, and current new engine and proposed in-use emission factors. Data on activity indicators were based on the Phase 1 small SI regulation. Estimates of annual engine sales for years from 1973 to 1995 were based on engine data available from the PSR databases[66] and national shipment data provided by Outdoor Power Equipment Institute (OPEI), the Portable Power Equipment Manufacturers Association (PPEMA), and a study done for the California Air Resources Board by Booz Allen & Hamilton (BAH). Sales projections into the future were for the most part based on estimates of population growth for the United States. Attrition rates (survival probability that an engine remains in service into a specific calendar year) for all engines included in this analysis were developed on the assumption that the equipment attrition function may be represented by a two-parameter Weibull cumulative distribution function. The in-use emission factors are based on a multiplicative deterioration factor which is a function of the square root of the hours of equipment usage.

For the analysis summarized in Table 18, the emission inventories were developed for the five regulated engine classes as well as for all pieces of equipment using engines covered by this proposed rule. Using estimated engine sales and attrition, EPA projected the total in-service engine population for each year from 1973 to 2025. EPA projected the total annual nationwide HC, NO_X and CO emissions from small SI engines included in the proposal under the baseline (that is, with Phase 1 controls applied) and controlled (Phase 2) scenarios.

For the controlled scenario, EPA assumed that for both handheld and

[54] The docket for this rulemaking, EPA Air Docket #A–97–25, is incorporated by reference.

[55] National Research Council, *Rethinking the Ozone Problem in Urban and Regional Air Pollution*, National Academy Press, 1991.

[56] United States Environmental Protection Agency, Review of the National Ambient Air Quality Standards for Ozone—Assessment of Scientific and Technical Information: OAQPS Staff Paper, EPA–450/2–92–001, June 1989, pp. VI–11 to 13.

[57] See 62 FR 38896, Friday, July 18, 1997.

[58] U.S. EPA, *Review of NAAQS for Ozone*, p. X–10.

[59] U.S. EPA, *Review of NAAQS for Ozone*, p. X–10.

[60] See 62 FR 38856, Friday, July 18, 1997.

[61] U.S. EPA, *Review of NAAQS for Ozone*, p. X–22.

[62] U.S. EPA, *Review of NAAQS for Ozone*, p. X–27.

[63] U.S. EPA, *Review of NAAQS for Ozone*, p. X–29.

[64] NRC, *Rethinking the Ozone Problem*, p. 22.

[65] *The New York Times*, September 15, 1992, p. C4.

[66] Power Systems Research, Engine Data and Parts Link data bases, St. Paul, Minnesota, 1992.

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nonhandheld engines the standards would be phased in on a percentage of production basis as proposed in today's notice. Deterioration factors were determined using manufacturer-supplied in-use emission data and other relevant information.

TABLE 18.—PROJECTED ANNUAL NATIONWIDE EXHAUST HC+NO_X EMISSIONS

[tons/year]

Year	Without proposed controls (Phase 1)	With proposed controls	Tons reduced from Phase 1 revised baseline	Percentage reduction
2000	378,700	378,700		
2005	368,195	297,873	70,322	19.1
2010	389,641	279,061	110,580	28.4
2015	414,626	292,829	121,797	29.4
2020	439,413	309,221	130,192	29.6
2025	452,973	318,299	134,674	29.7

For simplicity in modeling the projected emission reductions, the Agency has assumed in the emissions inventory model that under the Phase 2 program, each engine would meet the proposed standard for the minimum useful life category: i.e., Class I engines meet the proposed standards at 66 hours; Class 2 engines at 250 hours; and Classes III, IV, and V at 50 hours. Therefore, the Agency has under estimated the emission benefits of the proposed standards, because some engines will be certifying to the longer useful life categories, and therefore a greater emission reduction than predicted in Table 18 will occur. The Agency will attempt to address this issue for a more accurate prediction of the emission benefits of the proposed program for the final rule.

In addition to the reductions in exhaust HC+NO_X emissions, the Agency is also estimating the proposed standards would result in a small reduction in HC refueling emissions (refueling emissions are HC emissions caused from fuel spillage and vapor displacement during the refueling of a small engine). As discussed in the RSD, refueling emissions represent approximately an additional 89,000 tons/year of HC in 2025 without Phase 2 controls. The Agency estimates that refueling emissions would be reduced under Phase 2 by the percent reduction in fuel consumption under Phase 2. The Agency estimates the proposed Phase 2 program would result in approximately a 9 percent reduction in fuel consumption by 2025. Therefore, the Agency estimates refueling emissions would be reduced by 9 percent. A 9 percent reduction in refueling emissions equates to an approximate 8,000 ton/year reduction in HC emissions in 2025.

D. Health and Welfare Effects of CO Emissions

Carbon monoxide (CO) is a colorless, odorless gas which can be emitted or otherwise enter into ambient air as a result of both natural processes and human activity. Although CO exists as a trace element in the troposphere, much of human exposure resulting in elevated levels of carboxyhemoglobin (COHb) in the blood is due to incomplete fossil fuel combustion, as occurs in small SI engines.

The concentration and direct health effect of CO exposure are especially important in small SI engines because the operator of a small SI engine application is typically near the equipment as it functions. In some applications, the operator must be adjacent to the exhaust outlet and is in the direct path of the exhaust as it leaves the engine. According to numbers published in the Nonroad Engine and Vehicle Emission Study (NEVES), a 4-stroke, 2.9 kW lawnmower engine emits 1051.1 g/hr CO, while a 2-stroke, 2.9 kW engine emits 1188.4 g/hr CO.

A Swedish study [67–69] on occupational exposure to 2-stroke chainsaw exhaust concludes, among other things, that a rich fuel-air mixture results in high levels of CO emissions (a mean exposure rate of 37.0 mg/m^3). The work conditions that gave rise to the most intense problems for loggers were deep snow, thick forest stands and calm weather. The main discomforts experienced by loggers from chainsaw exhaust were cough and eye, nose and throat irritation. In view of the discomfort experienced by loggers and the complex nature of the exposure to chainsaw exhaust, it was recommended that action be taken to reduce exposure by making technical modifications to the engine or control exhaust emissions.

The toxicity of CO effects on blood and tissues, and how these effects manifest themselves as organ function changes, have also been topics of substantial research efforts. Such studies provided information for establishing the National Ambient Air Quality Standard for CO. The current primary and secondary NAAQS for CO are 9 parts per million for the one-hour average and 35 parts per million for the eight-hour average.

E. Health and Welfare Effects of Hazardous Air Pollutant Emissions

The focus of today's action is reduction of HC emissions as part of the solution to the ozone nonattainment problem. However, direct health effects are also a reason for concern due to direct human exposure to emissions from small SI engines during operation of equipment using such engines. Of specific concern is the emission of hazardous air pollutants (HAPs). In some applications, the operator must be adjacent to the exhaust outlet and is in the direct path of the exhaust as it leaves the engine. Today's proposed regulations should be effective in reducing HAPs such as benzene and 1,3-butadiene, in so far as these are components of the HC emissions being reduced by the Phase 2 standards.

Benzene is a clear, colorless, aromatic hydrocarbon which is both volatile and flammable. Benzene is present in both exhaust and evaporative emissions. Health effects caused by benzene emissions differ based on concentration and duration of exposure. The International Agency for Research on Cancer (IARC), classified benzene as a Group I carcinogen., namely an agent carcinogenic to humans. Exposure to benzene has also been linked with genetic changes in humans and animals. 1,3-butadiene is a colorless, flammable gas at room temperature. This suspected human carcinogen is insoluble in water and its two conjugated double bonds make it highly reactive. 1,3-butadiene is formed in internal combustion engine exhaust by the incomplete combustion of the fuel and is assumed not present in evaporative and refueling emissions.

Epidemiologic studies of occupationally exposed workers were inconclusive with respect to the carcinogenity of 1,3-butadiene in humans. IARC has classified 1,3-butadiene as a Group 2A, probable human carcinogen. Other adverse noncancer health effects due to very high levels of exposure include heart, blood and lung diseases.

Since air toxic levels generally decrease in proportion to overall emissions once emission control technology is applied, the amount of benzene and 1,3-butadiene produced by new small SI engines should diminish after this rule becomes effective. Consequently, exposure to HAPs from new small SI engines would be reduced, as would associated health and environmental effects. Although there is little data on direct health effects of small SI engines, the Swedish study concludes benzene emissions from chain saw engines as being rather high. No study has been conducted involving the health effects of HAP emissions specifically from small SI engines. The Agency requests additional information on this topic.

F. Particulate Matter

Particulate matter, a term used for a mixture of solid particles and liquid droplets found in the air, has been linked to a range of serious respiratory health problems. These fine particles are of health concern because they easily reach the deepest recesses of the lungs. Batteries of scientific studies have linked particulate matter, especially fine particles (alone or in combination with other air pollutants), with a series of significant health problems including premature death, aggravated asthma and chronic bronchitis and increased hospital admissions. EPA has recently (July 1997) announced new NAAQS standards for particulate matter (PM) , by adding two new primary PM2.5 standards set at concentrations of 15 micrograms per cubic meter ($\mu g/m^3$), annual arithmetic mean, and 65$\mu g/m^3$, 24-hour average, to provide increased protection against the PM-related health effects found in community studies. EPA believes that the new standards will protect and improve the lives of millions of Americans.

Separate from the proposed rule, which would not establish emission standards for PM or toxic air contaminants listed under section 112(b) of the Clean Air Act, an agreement with PPEMA to conduct PM/HAP testing program for handheld engines in cooperation with EPA has been reached. Testing under the program would be conducted on Phase 2 technology handheld engines at EPA, industry, and/or independent facilities. The test program is to be designed to evaluate and quantify emissions of particulate matter and toxics including, but not limited to: formaldehyde, acetaldehyde, benzene, toluene and 1,3 butadiene.

VI. Economic Impacts

EPA has calculated the cost effectiveness of this proposed rule by estimating costs and emission benefits from these engines. EPA made best estimates of the combination of technologies that an engine manufacturer might use to meet the new standards, best estimates of resultant changes to equipment design, engine manufacturer compliance program costs and engine fuel savings in order to assess the expected economic impact of the proposed Phase 2 emission standards. Emission benefits are taken from the results of the environmental benefit assessment (Section V, above). The cost-effectiveness result of this rule is $390 per ton of HC+$NO_X$ when fuel savings are not taken into account. When fuel savings are also considered, the cost-effectiveness calculation results in −$700 per ton of HC+$NO_X$. This section describes the background and analysis behind these results.

The analysis for this proposed rulemaking is based on data from engine families certified to EPA's Phase 1 standards. It does not include any engine families or production volumes that are covered by CARB's Tier 1 standard. The California Air Resources Board (CARB) will implement emission standards for many of these engines a year or two prior to the proposed federal Phase 2 regulations. Therefore, this ruie only accounts for costs for each engine sold outside California and those engines sold in California that are not covered by the CARB Tier II rulemaking, such as those used in farm and construction equipment. Although EPA expects that engines already designed to meet CARB's earlier standards would incur no additional design cost to meet federal standards, no effort was made to estimate which models would be sold in California and subject to the earlier California standards. Rather for the purpose of this proposal, any Phase 1 engine design that would need to be modified to meet Phase 2 standards was assumed to incur the full cost of that modification including design cost. Similarly, the cost to equipment manufacturers was assumed to be fully attributed to this federal rule even if an equipment manufacturer would have to make the same modifications in response to the CARB Tier 2. Therefore, in both of these cases, the cost to the manufacturer due to these proposed rules is likely over estimated. EPA requests comment on these assumptions. The details of EPA's cost and cost-effectiveness analyses can be found in Chapters 4 and 7 of the Draft RSD.

A. Engine Technologies

Table 19 lists the changes in technology, compared to Phase 1 engines, that have been considered in the cost estimation for this rulemaking. As discussed in Section IV.A of this preamble, the proposed standards would require different engine improvements amongst the five classes and engine designs within those classes.[70] For example, several Class I SV models are expected to require some internal improvements to reduce new engine out emissions and several additional components to increase emission durability. For the purposes of this cost analysis, Class II standards are assumed to require that engines be of clean OHV design. For Classes III–V, the proposed standards for the handheld engines are assumed to require improved scavenging techniques, for the two stroke engines, to be developed to reduce the approximately 30 percent of the air/oil/fuel mixture that traditionally escapes from these engines unburned. This analysis assumes that engine manufacturers would not be required to adopt advanced technologies such as catalysts or fuel injection systems. Manufacturers who did adopt such technologies would choose to do so for other perceived benefits. Therefore, the cost of such optional technology is not included in this cost estimate. Additional detail regarding the impact of these modifications can be found in Chapter 3 and 4 of the Draft RSD.

[67–69] Occupational Exposure to Chain Saw Exhausts in Logging Operations, Am. Ind. Hyg. Assoc. J48, 1987.

[70] Currently, carbureted two-stroke, four-stroke side-valve and four-stroke overhead valve engine designs comprise the vast majority of engines used in nonhandheld and handheld applications.

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TABLE 19.—POTENTIAL TECHNOLOGY IMPROVEMENTS PER CLASS AND ENGINE DESIGN

Class	Engine design	Technologies
I	4 stroke—SV	Carburetor Improvements. Combustion Chamber Improvements and Intake System. Improved Oil Consumption (Piston oil control rings, valve stem seals).
I	4 stroke—OHV	None necessary.
I	2 stroke	None necessary.
II	4 stroke—SV	Conversion to clean OHV.
II	4 stroke—OHV	Piston and piston ring improvements. Improved combustion and intake system.
III–V	2 stroke	Carburetor Improvements. Improved Scavenging and Combustion Chamber Design. Manufacturing Tolerance Improvements.
IV	4-stroke	None necessary.

B. Engine Costs

The engine cost increase is based on incremental purchase prices for new engines and is comprised of variable costs (for hardware, assembly time and compliance programs), and fixed costs (for R&D and retooling). Variable costs were applied on a per engine basis and fixed costs were amortized at seven percent over five years. Engine technology cost estimates were based on the study by ICF and EF&EE in October 1996 entitled "Cost Study for Phase Two Small Engine Emission Regulations". Details of the assumed costs and analysis can be found in Chapters 4 and 7 of the Draft RSD.

1. Nonhandheld Engine Costs

Based on analysis of the EPA Phase 1 certification database, and use of the ABT program available to nonhandheld engines, it is assumed that four high production Class I SV engine families will need to incorporate all those technologies listed in Table 19. Incorporation of these technologies will require the engine manufacturer to incur both variable and fixed costs.

Analysis of Class II engine families, from the EPA Phase 1 certification database and use of the ABT calculation, shows that a number of Class II SV engine families will be converted to OHV engine design and a large number of OHV engine families will need to incorporate emission improvements. Such technologies will require both variable and fixed expenditures.

The proposed Phase 2 emission standards for this diverse industry would impact companies differently depending on the existing product offerings. Some companies currently manufacture very clean Class II OHV engines geared toward the commercial market and would be required to make very few changes in their current models. Companies that target the consumer market with SV and perhaps less expensive OHV engines would require application of the emission reduction technologies.

2. Handheld Engine Costs

Analysis of the Phase 1 certification database for handheld engines shows that nearly all engine families of two stroke design will require technologies to reduce engine emissions. Redesign of the existing two-stroke engine is allocated to fixed costs as companies perform R&D, build prototypes and perform numerous emission tests to achieve production-ready models.

C. Equipment Costs

While equipment manufacturers would bear no responsibility for meeting emission standards, they may need to make changes in the design of their equipment models to accommodate the Phase 2 engines. EPA's treatment of the impacts of the proposal therefore includes an analysis of costs for equipment manufacturers. The 1996 PSR EOLINK database was utilized as the source of information for equipment manufacturers, models and sales estimates for all classes. The costs for equipment conversion was derived from the ICF/EF&EE cost study [71] and improved through the work by ICF and EPA on the small business impact analysis. Full details of EPA's cost analysis can be found in Chapter 4 of the Draft RSD. EPA has assumed that capital costs would be amortized at seven percent over ten years.

1. Nonhandheld Equipment Manufacturers

Based on engine technologies estimated for this rulemaking, it is assumed that Class I engine redesign would have no impact on equipment manufacturers since the proposed standard would not require external changes or adversely impact the engine's performance.

The Class II engine change from SV to OHV design will have the largest impact on equipment changes. Review of the PSR database for equipment manufacturers that utilize Class II SV engines reveals that the majority (90 percent) of small engine equipment is produced from 32 companies with the remaining 353 companies representing only 10 percent of the overall production.

EPA's work analyzing small business impacts, as summarized in the work with ICF Incorporated,[72] indicates that many of the small businesses, indicated by the PSR database to use SV Class II engines, have already converted or are in the process of converting to using OHV engine design due to market forces or changes in their engine manufacturer's offerings. These companies tend to produce professional or commercial equipment and competition has driven the use of OHV engines. The study also revealed that at least one equipment manufacturer that produces a large volume of equipment, has already switched their lines from SV to OHV. For today's proposal, EPA assumed only the one large manufacturer has already incurred the costs of converting to the use of OHV engine. For the purpose of this proposal, EPA has assumed that any switch from SV to OHV engines by equipment manufacturers is a cost incurred due to this proposal. The cost estimates were based on equipment application (garden tractor, tiller, commercial turf, etc.) and in the case of the commercial turf equipment, on the power of the engine within that application. Flexibilities within this proposal which may lessen the impact of the costs of this rulemaking to equipment manufacturers were also not taken into account.

2. Handheld Equipment Manufacturers

The majority of technologies assumed in this analysis for handheld engines, see Table 19, include only internal redesign and thereby no change in the external design of the handheld engine is expected. Therefore, it is assumed that the outer dimensions and performance characteristics would be similar to the existing models and therefore the handheld equipment would not require any changes. Equipment costs have been included for manufacturers of augers who will need to incorporate changes to the transmission boxes in order to incorporate different speed-torque signatures of Phase 2 compliant engines.

D. Operating Costs

The total life-cycle operating costs for this proposed rulemaking include any expected decreases in fuel consumption. Life cycle costs have been calculated per class using the nonroad small engine emission model. The model calculates fuel savings from the year 2001–2026 and takes into account factors including equipment scrappage, projected yearly sales increase per equipment type and engine power. Details on the assumptions and calculations on fuel savings are included in Chapter 4 and 7 of the Draft RSD.

1. Nonhandheld Engines

No fuel consumption savings have been assumed from Class I engines. The addition of oil control piston rings and valve stem seals are not expected to affect fuel economy or maintenance requirements and changes to carburetion are expected to be only slight. The Class II SV engine conversion to OHV design is expected to result in improved fuel economy since data show that OHV engines can run at leaner air to fuel ratio's than SV engines.

2. Handheld Engines

Redesigned two-stroke engines are assumed to result in significant fuel savings as fuel/oil/air scavenging is significantly reduced.

E. Cost Per Engine and Cost-Effectiveness

1. Cost Per Engine

Total costs for this proposed rulemaking vary per year as engine families are phased-in to compliance with the Phase 2 standards over several years, capital costs are recovered and compliance programs are conducted. The term "uniform annualized cost" is used to express the cost of this rulemaking over the years of this analysis.

The methodology used for estimating the uniform annualized cost per engine is as follows. Cost estimates from 1996 and 1997 model years, for technology and compliance programs respectively, were estimated and increased at an inflation rate of 4 percent per year to the years in which they were assumed to be incurred. For engine technology costs, one set of technologies per class and engine design was assumed (see Table 19). The Phase 1 database was then analyzed to determine the number of engine families per class that would likely incorporate the emission reduction technologies. The estimated costs per year were then calculated by multiplying the number of engine families and corresponding production volume by the fixed and variable costs per technology grouping, respectively. Retail markups used are 16 percent by the engine manufacturer, 5 percent by the equipment manufacturer and 5 percent by the mass merchandiser. All markups are based on industry specific information from Phase 1. For compliance program costs, each program was outlined and assigned costs based on the likely number of participants or engine families to be included in each program which were determined from the Phase 1 certification database. The costs per year were discounted seven percent to the first year of Phase 2 regulation, 2001 for nonhandheld and 2002 for handheld engine classes, respectively. A uniform annualized cost was then calculated. Costs per engine are calculated from the uniform annualized cost for the first full year of implementation of the Phase 2 standard, 2005, and the last year of this analysis, 2026. The average cost per engine is calculated from these two values and the results are presented in Table 20.

The yearly fuel savings (tons/yr) per class were calculated from the nonroad small engine emission model. The tons/yr were converted to savings ($) per year through conversion to gallons per year multiplied by $0.765 (a 1995 average refinery price to end user). The yearly fuel savings were discounted by 3 percent to the first year of Phase 2 regulation, 2001 for nonhandheld engines and 2002 for handheld engines. The yearly results were totaled and then divided by an annualized factor to yield the uniform annualized fuel savings. The engine lifetime fuel savings for each engine class was calculated for the production years of 2005 and 2026. The average of these two values was utilized as the average fuel savings per engine per class is shown in Table 20. In particular, EPA notes that its estimate of fuel savings for Class II engine conversion to OHV technology is greater than the estimated cost of this conversion and thus would be economically beneficial to the consumer. EPA requests comment on its analysis of the fuel economy benefit for Class II conversion from SV to OHV technology and information as to why the market has not responded with a greater penetration of the more fuel efficient OHV technology.

The average resultant cost per engine class is calculated by subtracting the average fuel savings from the average cost, see Table 20. See Chapter 7 of the Draft RSD for more details of this analysis.

TABLE 20.—ENGINE LIFE TIME FUEL SAVINGS AND RESULTANT COST PER ENGINE

[Costs based on uniform annualized costs]

Class	Cost per engine	Savings per engine	Resultant cost per engine
I	$0.87	$0.00	$0.87
II	10.54	33.20	($22.66)
III	0.74	0.45	0.29
IV	1.92	0.99	0.92
V	16.21	4.12	12.07

[71] ICF and Engine, Fuel and Emissions Engineering, Incorporated; "Cost Study for Phase Two Small Engine Emission Regulations", Draft Final Report, October 25, 1996, in EPA Air Docket A–93–29, Item #II–A–04.

[72] "Small Business Impact Analysis of New Emission Standards for Small Spark-Ignition Nonroad Engines and Equipment", ICF Incorporated, September 1997, located in EPA Air Docket A–96–55, Item#II–A–01 .

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2. Cost Effectiveness

EPA has estimated the cost-effectiveness (i.e., the cost per ton of emission reduction) of the proposed HC+NO_X standard over the typical lifetime of the small SI equipment that would be covered by today's proposed rule. EPA has examined the cost-effectiveness by performing a nationwide cost-effectiveness in which the net present value of the cost of compliance per year is divided by the nationwide emission benefits per year over a period of 26 years. This is sufficient time to achieve fleet turnover. The resultant cost-effectiveness is $390 cost/ton HC+$NO_X$ without fuel savings. Chapter 7 of the Draft RSD contains a more detailed discussion of the cost-effectiveness analysis. EPA requests comments on all aspects of the cost-effectiveness analysis.

The overall cost-effectiveness of this rule on HC+NO_X emission reductions, with fuel savings, is shown in Table 21. Table 21 contains the cost effectiveness of other nonroad rulemakings, which contain fuel savings, to which the cost-effectiveness of this rulemaking can be compared.

TABLE 21.—COST-EFFECTIVENESS OF THE PROPOSED STANDARDS WITH FUEL SAVINGS

Standard	NPV cost/NPV ton (with fuel savings)	Pollutants
Proposed Small SI Engines <19 kW Phase 2	−$700	HC+NO_X
Small SI Engines <19 kW Phase 1	$217	HC+NO_X
Spark Ignition Marine Engines	$1000	HC
Proposed Nonroad CI Standards	$180–$400	HC+NO_X

VII. Public Participation

A. Comments and the Public Docket

The Agency welcomes comments on all aspects of this proposed rulemaking. All comments (preferably in duplicate), with the exception of proprietary information, should be directed to the EPA Air Docket Section, Docket No. A–96–02 (see **ADDRESSES**). Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments by:

- Labeling proprietary information "Confidential Business Information" and,
- Sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket.
- This will help ensure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission labeled as confidential business information as part of the basis for the final rule, then a nonconfidential version of the document, which summarizes the key data or information, should be sent to the docket.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed by and in accordance with the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, the submission may be made available to the public without notifying the commenters.

B. Public Hearing

Anyone wishing to present testimony about this proposal at the public hearing (see **DATES**) should, if possible, notify the contact person (see **FOR FURTHER INFORMATION CONTACT**) at least two business days prior to the day of the hearing. The contact person should be given an estimate of the time required for the presentation of testimony and notification of any need for audio/visual equipment. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling those who have not notified the contact earlier. This testimony will be scheduled on a first-come, first-served basis, and will follow the testimony that is arranged in advance.

The Agency recommends that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advance copy of any statement or material to be presented at the hearing at least two business days before the scheduled hearing date. This is to give EPA staff adequate time to review such material before the hearing. Advance copies should be submitted to the contact person listed.

C. Obtaining Electronic Copies of Documents

Materials relevant to this proposed rule are contained in Docket No. A–96–55, located at the Air Docket, 401 M Street, S.W., Washington, DC 20460, and may be reviewed in Room M–1500 from 8:00 a.m. until 5:30 p.m. Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying docket materials.

The preamble, regulatory language and draft Regulatory Support Document are also available electronically from the EPA internet Web site. This service is free of charge, except for any cost you already incur for internet connectivity. The text of the proposed rule is made available on the day of publication on the primary Web site listed below. The EPA Office of Mobile Sources also publishes these notices on the secondary Web site listed below.

Internet (Web)

http://www.epa.gov/docs/fedrgstr/EPA–AIR/

(Either select desired data or use search feature)

http://www.epa.gov/OMSWWW/

(Look in What's New or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc., may occur.

VIII. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866, [73] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

[73] 58 FR 51735 (October 4, 1993).

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory support document which presents EPA's analysis of the cost impacts of this proposed rule is available for review in the public docket. EPA estimates that the proposed standards and other regulatory provisions, if adopted, would not have an annual effect on the economy of more than $100 million, a criterion which is a major determinant in defining an "economically significant regulatory action." Although not "significant" based on this criterion, the rule may adversely affect in a material way that sector of the economy involved with the production of small spark-ignition engines or equipment utilizing such engines. As such, this action was submitted to OMB for review. Any written comments from OMB and any EPA response to OMB comments are in the public docket for this proposal.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Copies of the ICR document may be obtained from Sandy Farmer, Regulatory Information Division, EPA, 401 M Street, SW (2137), Washington, DC 20460 or by calling (202) 260–2740.

Table 22 provides a listing of this proposed rulemaking's information collection requirements along with the appropriate information collection request (ICR) numbers. The cost of this burden has been incorporated into the cost estimate for this rule. The Agency has estimated that the public reporting burden for the collection of information required under this rule would average approximately 6702 hours annually for a typical engine manufacturer. The hours spent by a manufacturer on information collection activities in any given year would be highly dependent upon manufacturer specific variables, such as the number of engine families, production changes, emission defects etc.

TABLE 22.—PUBLIC REPORTING BURDEN

EPA ICR No.	Type of information	OMB control No.
151490	Certification	2060–0338
23420	Averaging, banking and trading	2060–0338
N/A	Production line testing	N/A
1675.01	In-use testing	2060–0292
N/A	In-use credits	N/A
0095.07	Pre-certification and testing exemption	2060–0007
0012	Engine exclusion determination	2060–0124
0282	Emission defect information	2060–0048
1673.01	Importation of nonconforming engines	2060–0294

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, EPA, 401 M Street, SW (PM–223Y), Washington DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will contain responses to OMB or public comments on the information collection requirements contained in this proposal.

C. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising and small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this proposed rule is estimated to result in the expenditure by State, local and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective or least burdensome alternative. EPA has estimated the rule to cost the private sector an annualized cost of $90 million per year . However, the Agency has appropriately considered cost issues in developing this proposal as required by section 213(a)(3) of the Clean Air Act, and has designed the proposed rule such that it will in EPA's view be a cost-effective program. Because small governments would not be significantly or uniquely affected by this proposed rule, the Agency is not required to develop a plan with regard to small governments.

D. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For the reasons set out below, this proposed rule would not have a significant impact on a substantial number of small entities.

EPA has identified industries that would be subject to this proposed rule and has contacted small entities and small entity representatives to gain a better understanding of potential impacts of the proposed Phase 2 program on their businesses. This

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information was useful in estimating potential impacts of this rule on affected small entities, the details of which are fully discussed in Chapter 8 of the Draft RSD. Small not-for-profit organizations and small governmental jurisdictions are not expected to be impacted by this proposal. Thus EPA's impact analysis focuses on small businesses. For purposes of the impact analysis, "small business" is defined by number of employees or dollars of annual receipts according to Small Business Administration (SBA) regulations. The analysis focuses especially on impacts to manufacturers of Class II nonhandheld and Classes III–V handheld engines and equipment, since Class I side-valve engines are only expected to need minor modifications.

The economic impact of the proposed rule on engine and equipment manufacturers defined as small by the SBA was evaluated using a "sales test" approach which calculates annualized compliance costs as a function of sales revenue. The ratio is an indication of the severity of the potential impacts. The results of the analysis suggest that of those small entities analyzed, one small business engine manufacturer and two small business equipment manufacturers would experience an impact of greater than one percent of their sales revenue. However, none of these small entities would experience an impact greater than three percent of their sales revenue. These three companies represent approximately five percent of the total small business manufacturers on which the analysis was based. Given this, and the ratio levels at which these companies are projected to be impacted (i.e., less than three percent), EPA expects today's proposal to have a light impact on small business entities. The analysis assumes no passthrough of costs in price increases and thus can be characterized as depicting worst case impacts.

While the Agency does not consider these impacts to be significant, the Agency desires to minimize impacts to the extent possible for those companies which may be adversely affected and to ensure that the proposed emissions standards are achievable. Thus, flexibility provisions for the proposed rule (discussed in Section IV.E) were developed based on information gained through discussions with potentially affected small entities. Many of the flexibilities being proposed in today's rule should benefit both engine and equipment manufacturers qualifying as small. Some, but not all, of these provisions were considered in the impact assessment on small entities (see Chapter 8 of the Draft RSD). Those flexibilities not considered, including a hardship relief provision described in Section IV.E, were developed too late in the rule development process to be included in the impact assessment, but as they were added in order to further ensure the achievability of the proposed standards it is expected that they would further reduce the impacts of the proposed rule. EPA requests comment as to whether these proposed provisions adequately address the needs of affected manufacturers, and small entities in particular.

The results of the impact analysis show minimal impacts on small businesses. EPA expects impacts may be negligible if small companies take advantage of those additional flexibilities not considered in the analysis, and if companies pass through most of their costs to customers as was indicated as likely by most small companies contacted. Furthermore, EPA's outreach activities with small entities indicated that many engine and equipment manufacturers have already made the switch from side-valve engine technology to producing or using overhead valve engine technology for reasons other than today's proposed rule, and therefore may not incur substantial additional costs as a result of this program. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities and therefore a regulatory flexibility analysis for this proposal has not been prepared. The Agency continues to be interested in the potential impacts of the proposed rule on small entities and welcomes additional comments during the rulemaking process on issues related to such impacts. In spite of the expected minimal impacts on small entities, the Agency is continuing its efforts to notify other small business engine and equipment manufacturers of this rule and inform them of their opportunities for providing feedback to the Agency.

List of Subjects in 40 CFR Part 90

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Nonroad source pollution, Reporting and recordkeeping requirements, Research, Warranties.

Dated: December 23, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 90—CONTROL OF EMISSIONS FROM NONROAD SPARK-IGNITION ENGINES

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

Subpart A—General

2. Section 90.1 is amended by removing the period at the end of paragraph (b)(5)(iv) and adding a semicolon in its place, by adding paragraphs (b)(6) and (d) and by revising paragraph (c) to read as follows:

§ 90.1 Applicability.

* * * * *

(b) * * *

(6) Engines that are used exclusively in emergency and rescue equipment where no certified engines are available to power the equipment safely and practically, but not including generators, alternators, compressors or pumps used to provide remote power to a rescue tool. The equipment manufacturer bears the responsibility to ascertain on an annual basis and maintain documentation available to the Administrator that no appropriate certified engine is available from any source.

(c) Engines subject to the provisions of this subpart are also subject to the provisions found in subparts B through N of this part, except that subparts C, H, M and N of this part apply only to Phase 2 engines as defined in this subpart.

(d) Certain text in this part is identified as pertaining to Phase 1 or Phase 2 engines. Such text pertains only to engines of the specified Phase. If no indication of Phase is given, the text pertains to all engines, regardless of Phase.

3. Section 90.3 is amended by adding the following definitions in alphabetical order to read as follows:

§ 90.3 Definitions.

* * * * *

Aftertreatment means the passage of exhaust gases through a device or system such as a catalyst whose purpose is to chemically alter the gases prior to their release to the atmosphere.

* * * * *

Commercial Engine means a handheld engine that is not a residential engine.

DF or *df* means deterioration factor.

Eligible sales or *U.S. sales* means Phase 2 engines sold for purposes of being used in the United States, and includes any engine exported and subsequently imported in a new piece of equipment, but excludes any engine introduced into commerce, by itself or in a piece of equipment, for use in a state that has established its own emission requirements applicable to such engines pursuant to a waiver granted by EPA under section 209(e) of the Clean Air Act.

* * * * *

Family Emission Limit or *FEL* means an emission level that is declared by the manufacturer to serve in lieu of an emission standard for certification, production line testing, Selective Enforcement Auditing, and in-use testing for engines participating in the averaging, banking and trading program. An FEL must be expressed to the same number of decimal places as the applicable emission standard.

* * * * *

$HC+NO_X$ means total hydrocarbons plus oxides of nitrogen.

In-use credit means an emission credit that represents the difference between the mean in-use emission results of a regulated pollutant, CO, $HC+NO_X$ or $NMHC+NO_X$, and the applicable certification emission standard. In-use results below the standard lead to the calculation of positive in-use credits, while in-use results above the standard lead to the calculation of negative in-use credits.

* * * * *

$NMHC+NO_X$ means nonmethane hydrocarbons plus oxides of nitrogen.

* * * * *

Overhead valve engine means an otto-cycle, four-stroke engine in which the intake and exhaust valves are located above the combustion chamber within the cylinder head. Such engines are sometimes referred to as "valve-in-head" engines.

Overhead valve emission performance or *OEP engine* means a Class II overhead valve engine, or a Class II non-overhead valve engine that complies with the applicable 2005 model year emission standards without using emission credits.

Phase 1 engine means any handheld or nonhandheld engine, that was produced under a certificate of conformity issued under the regulations in this part and that is not a Phase 2 engine.

Phase 2 engine means any handheld engine as defined in this subpart that is subject to the standards that begin to phase-in in the 2002 model year; and any nonhandheld engine as defined in this subpart of the 2001 model year or later including those 1999 and 2000 model year engines certified under early banking provisions described in this part. Any engines exempted from the Phase 2 standards under this part are excluded from coverage under this definition.

* * * * *

Residential engine means a handheld engine for which the engine manufacturer makes a written statement to EPA as part of its certification application that such engine and the equipment it is installed in by the engine manufacturer, where applicable, is not produced, advertised, marketed or intended for commercial or professional usage.

Round, rounded or *rounding* means, unless otherwise specified, that numbers will be rounded according to *ASTM–E29–93a*, which is incorporated by reference in this part pursuant to § 90.7.

* * * * *

Side valve engine means an otto-cycle, four stroke engine in which the intake and exhaust valves are located to the side of the cylinder, not within the cylinder head. Such engines are sometimes referred to as "L-head" engines.

Small volume engine family means any handheld engine family whose eligible sales in a given model year are projected at the time of certification to be no more than 2,500 engines; or any nonhandheld engine family whose eligible sales in a given model year are projected at the time of certification to be no more than 1,000 units.

Small volume engine manufacturer means, for handheld engines, any engine manufacturer whose total eligible sales of handheld engines subject to regulation under this part are projected at the time of certification of a given model year to be no more than 25,000 handheld engines; and, for nonhandheld engines, any engine manufacturer whose total eligible sales of nonhandheld engines are projected at the time of certification of a given model year to be no more than 10,000 nonhandheld engines.

Small volume equipment manufacturer means, for handheld equipment, any equipment manufacturer whose production of handheld equipment subject to regulation under this part or powered by engines regulated under this part, does not exceed 5000 pieces for a given model year or annual production period excluding that equipment intended for introduction into commerce for use in a state that has established its own emission requirements applicable to such equipment or engines in such equipment, pursuant to a waiver granted by EPA under section 209(e) of the Clean Air Act. For nonhandheld equipment, the term "small volume equipment manufacturer" has the same meaning except that it is limited to 2500 pieces rather than 5000.

Small volume equipment model means, for handheld equipment, any unique model of equipment whose production subject to regulations under this part or powered by engines regulated under this part, does not exceed 2500 pieces for a given model year or annual production period excluding that equipment intended for introduction into commerce for use in a state that has established its own emission requirements applicable to such equipment or engines in such equipment, pursuant to a waiver granted by EPA under section 209(e) of the Clean Air Act. For nonhandheld equipment, the term "small volume equipment model" has the same meaning except that it is limited to 500 pieces rather than 2500.

Technology subgroup means a group of engine families from one or more manufacturers having similar size, application, useful life and emission control equipment; e.g., Class III, residential, non-catalyst, two stroke engine used in generator set applications.

* * * * *

Subpart B—Emission Standards and Certification Provisions

4. Section 90.103 is amended by revising paragraph (a) introductory text, and paragraphs (a)(3) and (a)(5) and by adding paragraphs (a)(6) through (a)(9) to read as follows:

§ 90.103 Exhaust emission standards.

(a) Exhaust emissions for new Phase 1 and Phase 2 nonroad spark ignition engines at or below 19 kilowatts (kW), shall not exceed the following levels. Throughout this part, $NMHC+NO_X$ standards are applicable only to natural gas fueled engines at the option of the manufacturer, in lieu of $HC+NO_X$ standards. The tables for Phase 1 and Phase 2 exhaust emissions levels follow:

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TABLE 1.—PHASE 1 EXHAUST EMISSION STANDARDS

[Grams per kilowatt-hour]

Engine displacement class	Hydrocarbons + oxides of nitrogen ($HC+NO_X$)	Hydrocarbons	Carbon monoxide	Oxides of nitrogen (NO_X)
I	16.1		519	
II	13.4		519	
III		295	805	5.36
IV		241	805	5.36
V		161	603	5.36

TABLE 2.—PHASE 2 NONHANDHELD EXHAUST EMISSION STANDARDS BY MODEL YEAR

[Grams per kilowatt-hour]

Engine class	Emission requirement	Model year				
		2001	2002	2003	2004	2005 and later
I	$HC+NO_X$	25.0	25.0	25.0	25.0	25.0
	$NMHC+NO_X$	23.0	23.0	23.0	23.0	23.0
	CO	610	610	610	610	610
II	$HC+NO_X$	18.0	16.6	15.0	13.6	12.1
	$NMHC+NO_X$	16.7	15.3	14.0	12.7	11.3
	CO	610	610	610	610	610
	Assumed OEP Percentage	50	62.5	75	87.5	100

TABLE 3.—PHASE 2 HANDHELD EXHAUST EMISSION STANDARDS SHOWING PHASE-IN BY AGGREGATE PERCENTAGE OF SALES

[Grams per kilowatt-hour]

Engine class	Emission standard		Model year			
	$HC+NO_X$	CO	2002 (percent)	2003 (percent)	2004 (percent)	2005 and later (percent)
III	210	805				
IV	172	805	20	40	70	100
V	116	603				

* * * * *

(3) Notwithstanding paragraph (a)(2) of this section, two stroke engines used to power lawnmowers or other nonhandheld equipment may meet Phase 1 Class III, IV or V standards and requirements, as appropriate, through model year 2002 subject to the provisions of § 90.107(e), (f) and (h). Such engines shall not be included in any computations of Phase 2 nonhandheld credits or sales nor in any computations used to ascertain compliance with Phase 2 phase-in requirements for handheld engines.

* * * * *

(5) Notwithstanding paragraph (a)(2) of this section, engines used exclusively to power products which are used exclusively in wintertime, such as snowthrowers and ice augers, at the option of the engine manufacturer, need not certify to or comply with standards regulating emissions of HC, NO_X, $HC+NO_X$ or $NMHC+NO_X$, as applicable. If the manufacturer exercises the option to certify to standards regulating such emissions, such engines must meet such standards. If the engine is to be used in any equipment or vehicle other than an exclusively wintertime product such as a snowthrower or ice auger, it must be certified to the applicable standard regulating emissions of HC, NO_X, $HC+NO_X$ or $NMHC+NO_X$ as applicable.

(6) During the phase-in of Phase 2 emission requirements for handheld engines, as applicable, those engine families not certified to Phase 2 requirements shall be certified to and shall meet Phase 1 requirements.

(7) Manufacturers of Phase 2 Class II engines must comply with the OEP percentages shown in Table 2 of this section in each model year in cases where the manufacturer desires to engage in cross class averaging of emission credits as permitted under subpart C of this part, and in cases where the manufacturer desires to use credits banked by itself or another manufacturer in the 1999 or 2000 model year as permitted under subpart C of this part. Compliance with OEP percentages shall be determined by dividing the manufacturer's eligible sales of Class II engines that are overhead valve engines or are certified at or below the 2005 $HC+NO_X$ ($NMHC+NO_X$) standard, by the manufacturer's total eligible sales of Class II engines for the subject model year. Side valve engine families with annual US sales of less than 1000 may be excluded from the calculation.

(8) Notwithstanding the standards shown in Table 2 of this section, the $HC+NO_X$ ($NMHC+NO_X$) standard for Phase 2 Class II sidevalve engine families with annual production of 1000 or less shall be 24.0 g/kW-hr (22.0 g/kW-hr) for model years 2005 and later. Engines produced subject to this provision may not exceed this standard and are excluded from the averaging, banking and trading program and any related credit calculations after the 2004 model year. During the 2001 through 2004 model years these engines are subject to applicable Phase 2 standards, but shall not require the application of certification credits if their $HC+NO_X$ ($NMHC+NO_X$) certification level is 24.0 g/kW-hr (22.0 g/kW-hr) or less.

(9) Notwithstanding the standards shown in Table 2 of this section, small volume engine manufacturers as defined in this part may, at their option, certify Phase 2 Class II engines to an $HC+NO_X$ ($NMHC+NO_X$) standard of 24.0 g/kW-hr (22.0 g/kW-hr) through the 2004 model year. Such engines shall not exceed this standard and are excluded from the averaging, banking and trading program through the 2004 model year.

* * * * *

5–6. Section 90.104 is amended by adding introductory text and paragraphs (d) through (i) to read as follows:

§ 90.104 Compliance with emission standards.

Paragraphs (a) through (c) of this section apply to Phase 1 engines only. Paragraphs (d) through (i) of this section apply only to Phase 2 engines.

* * * * *

(d) The exhaust emission standards (FELs, where applicable) for Phase 2 engines set forth in this part apply to the emissions of the engines for their full useful lives as determined pursuant to § 90.105.

(e) For all Phase 2 engines:

(1) If all test engines representing an engine family have emissions, when properly tested according to procedures in this part, less than or equal to each Phase 2 emission standard (FEL, where applicable) in a given engine displacement class and given model year, when multiplicatively adjusted by the deterioration factor determined in this section, that family complies with that class of emission standards for purposes of certification. If any test engine representing an engine family has emissions adjusted multiplicatively by the deterioration factor determined in this section, greater than any one emission standard (FEL, where applicable) for a given displacement class, that family does not comply with that class of emission standards.

(2) Except as otherwise permitted under this section, each manufacturer of handheld engines must comply with the Phase 2 phase-in schedule shown in § 90.103. Compliance with the Phase 2 phase-in schedule shall be determined each model year by dividing the manufacturer's total eligible sales of Phase 2 handheld engines of that model year by the manufacturer's total eligible sales of handheld engines subject to regulation under this part.

(3) In each model year during the Phase 2 phase-in period for handheld engines (i.e. model years 2002, 2003, and 2004), manufacturers of handheld engines shall project, updating as appropriate, and make available to the Administrator upon request, the sales figures necessary to complete the calculation required in paragraph (e)(2) of this section. Within 270 days after the end of each model year in the Phase 2 phase-in period, each manufacturer shall submit a report to the Administrator showing its calculation of compliance with the phase-in schedule.

(4) Small volume manufacturers of handheld engines as defined in this part are not subject to the phase-in requirements applicable to the 2002, 2003 or 2004 model years.

(f) Each manufacturer of nonhandheld engines must comply with all provisions of the averaging, banking and trading program outlined in subpart C of this part for each engine family participating in that program.

(g)(1) Deterioration factors for $HC+NO_X$ and $NMHC+NO_X$ emissions for all nonhandheld OHV Phase 2 engines without aftertreatment may be taken from Table 1 of this section or may be calculated according to the process described in paragraph (h) of this section. Except where the Administrator directs a nonhandheld engine manufacturer to calculate a df under paragraph (g)(2) or (g)(3) of this section, if a manufacturer elects to calculate a df for an engine family, it must do so for all families of that class in the same useful life category. Where a manufacturer elects to take an $HC+NO_X$ or $NMHC+NO_X$ df from the table, it may use good engineering judgment to determine an appropriate CO df, provided it maintains and makes available to the Administrator upon request, such rationale and supporting data used to determine the CO df.

(2) If the Administrator has evidence for a given class and useful life category indicating that a sales weighted average of a manufacturer's actual dfs of those families for which an assigned df is being used, exceeds the assigned df by more than 15%, the Administrator may require the manufacturer to submit appropriate data to establish a df for some or all of the engine families. Such data may be generated through the process described in paragraph (h) of this section or through another process approved by the Administrator.

(3) If the Administrator has evidence indicating that the actual df of an engine family for which a manufacturer is using an assigned df, exceeds 1.8, the Administrator may require the manufacturer to submit appropriate data to establish a df for that engine family. Such data may be generated through the process described in paragraph (h) of this section or through another process approved by the Administrator.

(4) Table 1 follows:

TABLE 1.—ASSIGNED $HC+NO_x$ and $NMHC+NO_x$ DETERIORATION FACTORS FOR NONHANDHELD PHASE 2 OVERHEAD VALVE ENGINES WITHOUT AFTERTREATMENT

Class I	Usefule life (hours)	66	250	500
	Deterioration factor	1.3	1.3	1.3
Class II	Useful life (hours)	250	500	1000
	Deterioration factor	1.3	1.3	1.3

(h) Manufacturers shall obtain an assigned df or calculate a df, as appropriate, for each regulated pollutant for all Phase 2 handheld and nonhandheld engine families. Such dfs shall be used, as applicable, for certification, production line testing, and Selective Enforcement Auditing. For handheld engines, and nonhandheld engines not using assigned dfs from Table 1 of this section, manufacturers shall calculate dfs for each pollutant through one of the following options:

(1) For handheld engines, dfs shall be determined using good engineering judgment and reflect the exhaust emission deterioration expected over the useful life of the engine except that no df may be less than 1.0. EPA may reject a df if it has evidence that the df is not appropriate for that family. The manufacturer must retain actual emission test data to support its choice of df and furnish that data to the Administrator upon request. Acceptable

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data sources include, but are not limited to:

(i) In-use data from an earlier model year of this family or a closely related family;

(ii) Data from engines used in the field/bench adjustment program described in subpart M of this part.

(2) For nonhandheld engines:

(i) On at least three test engines representing the configuration chosen to be the most likely to exceed $HC+NO_x$ ($NMHC+NO_x$) emission standards, (FELs where applicable), and constructed to be representative of production engines pursuant to § 90.117, conduct full Federal test procedure emission testing pursuant to the regulations of Subpart E of this part at the number of hours representing stabilized emissions pursuant to § 90.118. Average the results and round to the same number of decimal places contained in the applicable standard, expressed to one additional significant figure. Conduct such emission testing again following field aging in actual usage to a number of hours equivalent to the applicable useful life hours, plus or minus five percent. Average the results and round to the same number of decimal places contained in the applicable standard, expressed to one additional significant figure. Divide the full useful life average emissions for each regulated pollutant by the stabilized average emission results and round to two significant figures. The resulting number shall be the df, unless it is less than 1.0, in which case the df shall be 1.0; or

(ii) On at least three test engines representing the configuration chosen to be the most likely to exceed $HC+NO_x$ ($NMHC+NO_x$) emission standards (FELs where applicable), and constructed to be representative of production engines pursuant to § 90.117, conduct full Federal test procedure emission testing pursuant to the regulation of Subpart E of this part at no fewer than three points as follows: at the number of hours representing stabilized emissions pursuant to § 90.118; again following field aging in actual usage to a number of hours equivalent to the applicable useful life hours, plus or minus five percent; and also at no fewer than one point spaced approximately equally between the other two. The test results for each pollutant shall be rounded to the same number of decimal places contained in the applicable standard, expressed to one additional significant figure and plotted as a function of hours on the engine, rounded to the nearest whole hour. The best fit straight line, determined by the method of least squares, shall be drawn. Using this line, interpolate the emissions of each pollutant at 12 hours and at a number of hours equal to the applicable useful life. Divide the interpolated useful life emissions by the interpolated emissions at 12 hours and round this figure to two significant figures. The resultant number shall represent the df unless it is less than 1.0, in which case the df shall be 1.0; or

(iii) Perform another process, approved in advance by the Administrator, which will have the objective of adequately ascertaining the relationship of field aged emissions at full useful life with those tested with stabilized emissions at low hours; or

(iv) For manufacturers of Class II overhead valve engines certifying to 500 or 1000 hour useful lives, such manufacturers may establish dfs for such engines based on good engineering judgment that has been proposed in advance and determined to be satisfactory to the Administrator, for certification of model years 2001 through 2004. The Administrator may, in model year 2006 or later, direct the manufacturer to verify, in a period of time the Administrator determines to be reasonable, such dfs using methods described in paragraphs (h)(2)(i), (ii) or (iii) of this section. If the dfs established by the manufacturer under this provision underestimate the dfs determined by the methods under paragraphs (h)(2)(i), (ii) or (iii) of this section, by 15% or more, the Administrator shall provide the manufacturer with a period of two model years in which to obtain sufficient certification emission credits from other nonhandheld engines to cover the credit shortfall calculated by substituting the df determined under this provision for the original df in the equation in § 90.207(a).

(3) Calculated deterioration factors may cover families and model years in addition to the one upon which they were generated if the manufacturer submits a justification acceptable to the Administrator in advance of certification that the affected engine families can be reasonably expected to have similar emission deterioration characteristics.

(i)(1) Except as allowed in paragraph (i)(2) of this section, nonhandheld sidevalve engines or nonhandheld engines with exhaust aftertreatment shall be certified by field aging one engine in actual usage or by bench aging one engine on an aging cycle determined to represent field aged engines under § 90.1207 and § 90.1208, to its full useful life followed by emission testing using applicable test procedures under this part. Emission test results for such bench aged engines shall be adjusted using adjustment factors calculated under § 90.1208 to determine the certification levels. The dfs for such engines shall be calculated during this bench aging process using the techniques described in paragraphs (h)(2)(i), (ii) or (iii) of this section, except that bench aging of one engine may be used in place of field aging. In calculating the dfs of bench aged nonhandheld sidevalve engines or nonhandheld engines with aftertreatment, the emission test data at the number of hours equal to full useful life, shall first be multiplied by the adjustment factor applicable to that engine family and determined under § 90.1208.

(2) Sidevalve Class II or aftertreatment-equipped Class II engines for which the manufacturer commits in writing, at the time of certification, to cease production by the end of the 2004 model year, are eligible for reduced certification testing, at the manufacturer's option. Bench aging or field aging for the certification of such engines may be stopped at 120 hours for engines having a useful life of 250 hours as determined pursuant to regulations in this part; at 250 hours for engines having a useful life of 500 hours; and at 500 hours for engines having a useful life of 1000 hours. In such cases, based on emission results from stabilized engines and engines aged as described in this paragraph (i), the manufacturer shall project emissions to 250, 500 or 1000 hours, as applicable, using good engineering judgment acceptable to the Administrator. The manufacturer shall then adjust bench aged emissions (if applicable) with the adjustment factor determined pursuant to § 90.1208 for purposes of certification and computation of credits or credit needs. The manufacturer shall compute dfs for bench aged engines from the adjusted emission levels using good engineering judgment acceptable to the Administrator. For field aged engines, the manufacturer shall compute dfs from the projected 250, 500 or 1000 hour emissions, as applicable, using good engineering judgment acceptable to the Administrator.

7. Section 90.105 is revised to read as follows:

§ 90.105 Useful life periods for Phase 2 engines.

(a) Manufacturers shall declare the applicable useful life category for each engine family at the time of certification as described in this section. Unless otherwise approved by the Administrator, such category shall be that category which most closely approximates the actual useful lives of the equipment into which the engines are expected to be installed. Manufacturers shall retain data appropriate to support their choice of useful life category for each engine family. Such data shall be sufficient to show that the majority of engines or a sales weighted average of engines of that family are used in applications having a useful life best represented by the chosen category. Such data shall be furnished to the Administrator upon request.

(1) For handheld engines:

(i) Engines declared by the manufacturer at the time of certification as residential, as defined in § 90.3, shall have a useful life for purposes of regulation under this part of 50 hours.

(ii) Engines declared by the manufacturer at the time of certification as commercial, as defined in § 90.3, shall have a useful life for purposes of regulation under this part of 300 hours.

(2) For nonhandheld engines: Manufacturers shall select a useful life category from Table 1 of this section at the time of certification, as follows:

TABLE 1.—USEFUL LIFE CATEGORIES FOR NONHANDHELD ENGINES (HOURS)

	Category C	Category B	Category A
Class I ...	66	250	500
Class II ..	250	500	1000

(3) Data to support a manufacturer's choice of useful life category, for a given engine family, may include but are not limited to:

(i) Surveys of the life spans of the equipment in which the subject engines are installed;

(ii) Engineering evaluations of field aged engines to ascertain when engine performance deteriorates to the point where usefulness and/or reliability is impacted to a degree sufficient to necessitate overhaul or replacement;

(iii) Warranty statements and warranty periods;

(iv) Marketing materials regarding engine life;

(v) Failure reports from engine customers; and

(vi) Engineering evaluations of the durability, in hours, of specific engine technologies, engine materials or engine designs.

(b) [Reserved]

8. Section 90.106 is amended by revising paragraph (a) and adding new paragraph (b)(3) to read as follows:

§ 90.106 Certificate of conformity.

(a)(1) Except as provided in § 90.2(b), every manufacturer of new engines produced during or after model year 1997 must obtain a certificate of conformity covering such engines; however, engines manufactured during an annual production period beginning prior to September 1, 1996 are not required to be certified.

(2) Except as required in paragraph (b)(3) of this section, nonhandheld engines manufactured during an annual production period beginning prior to September 1, 2000 are not required to meet Phase 2 requirements.

(b) * * *

(3) Manufacturers who commence an annual production period for a nonhandheld engine family between January 1, 2000 and September 1, 2000 must meet Phase 2 requirements for that family only if that production period will exceed 12 months in length.

* * * * *

9. Section 90.107 is amended by adding a semicolon at the end of paragraph (d)(5), by removing "and" at the end of paragraph (d)(9), by removing the period at the end of paragraph (d)(10) and adding a semicolon in its place, and by adding new paragraphs (d)(11) and (d)(12) to read as follows:

§ 90.107 Application for certification.

* * * * *

(d) * * *

(11) This paragraph (d)(11) is applicable only to Phase 2 engines.

(i) Manufacturers of nonhandheld engines participating in the Averaging, Banking and Trading Program as described in Subpart C of this part shall declare the applicable Family Emission Limit (FEL) for $HC+NO_x$ ($NMHC+NO_x$).

(ii) Provide the applicable useful life as determined under § 90.105;

(12) In cases where the regulations in § 90.114(f) are applicable, a copy of the language to be included in the documents intended for the ultimate purchaser to describe the emission compliance period.

* * * * *

10. Section 90.108 is amended by adding paragraphs (c) and (d) to read as follows:

§ 90.108 Certification.

* * * * *

(c) For certificates issued for engine families included in the averaging, banking and trading program as described in subpart C of this part:

(1) All certificates issued are conditional upon the manufacturer complying with the provisions of subpart C of this part and the averaging, banking and trading related provisions of other applicable sections, both during and after the model year of production.

(2) Failure to comply with all applicable averaging, banking and trading provisions in this part will be considered to be a failure to comply with the terms and conditions upon which the certificate was issued, and the certificate may be determined to be void *ab initio*.

(3) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was granted were satisfied or waived.

(d) The Administrator may, upon request by a manufacturer, waive any requirement of this part otherwise necessary for the issuance of a certificate. The Administrator may set such conditions in a certificate as he or she deems appropriate to assure that the waived requirements are either satisfied or are demonstrated, for the subject engines, to be inappropriate, irrelevant or met by the application of a different requirement under this chapter. The Administrator may indicate on such conditional certificates that failure to meet these conditions may result in suspension or revocation or the voiding *ab initio* of the certificate.

11. Section 90.113 is amended by revising the section heading and adding two sentences to the beginning of paragraph (a) to read as follows:

§ 90.113 In-use testing program for Phase 1 engines.

(a) This section applies only to Phase 1 engines. In-use testing requirements for Phase 2 engines are found in subpart M of this part.* * *

* * * * *

12. Section 90.114 is amended by removing "and" at the end of paragraph (c)(9), by removing the period at the end of paragraph (c)(10) and adding a semicolon in its place, and by adding new paragraphs (c)(11), (c)(12) and (f) to read as follows:

§ 90.114 Requirement of certification—engine information label.

* * * * *

(c)* * *

(11) For nonhandheld Phase 2 engines, the useful life category as determined by the manufacturer pursuant to § 90.105. Such useful life category shall be shown by one of the following statements to be appended to the statement required under paragraph (c)(7) of this section:

(i) "EMISSIONS COMPLIANCE PERIOD: [useful life] HOURS"; or

(ii) "EMISSIONS COMPLIANCE PERIOD: CATEGORY [fill in C, B or A as indicated and appropriate from the chart in § 90.105], REFER TO OWNER'S

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MANUAL FOR FURTHER INFORMATION";

(12) For handheld Phase 2 engines, the useful life category as determined by the manufacturer pursuant to § 90.105. Such useful life category shall be shown by the following statement to be appended to the statement required under (c)(7) of this section: "EMISSIONS COMPLIANCE PERIOD: [50 or 300, as applicable] HOURS".

* * * * *

(f)(1) Manufacturers electing to use the labeling language of paragraph (c)(11)(ii) of this section must provide in the documents intended to be conveyed to the ultimate purchaser, the statement:

The Emissions Compliance Period referred to on the label entitled "Important Engine Information" indicates the number of operating hours for which the engine has been shown to meet Federal emission requirements. For engines less than 225 cc displacement, Category C= 66 hours, B= 250 hours and A = 500 hours. For engines of 225 cc or more, Category C = 250 hours, B = 500 hours and A = 1000 hours.

(2) The manufacturer must provide, in the same document as the statement in paragraph (f)(1) of this section, a statement of the engine's displacement or an explanation of how to readily determine the engine's displacement. The Administrator may approve alternate language to the statement in paragraph (f)(1) of this section, provided that the alternate language provides the ultimate purchaser with a clear description of the number of hours represented by each of the three letter categories for the subject engine's displacement.

13. Section 90.116 is amended by revising paragraph (d)(6) and (d)(7) and adding paragraphs (d)(8) through (d)(10) to read as follows:

§ 90.116 Certification procedure—determining engine displacement, engine class, and engine families.

* * * * *

(d) * * *

(6) The location of valves, where applicable, with respect to the cylinder (e.g., side valves or overhead valves);

(7) The number of catalytic converters, location, volume and composition;

(8) The thermal reactor characteristics;

(9) The fuel required (e.g., gasoline, natural gas, LPG); and

(10) The useful life category.

* * * * *

14. Section 90.117 is amended by revising paragraph (a) to read as follows:

§ 90.117 Certification procedure—test engine selection.

(a) For Phase 1 engines, the manufacturer must select, from each engine family, a test engine that the manufacturer determines to be most likely to exceed the emission standard. For Phase 2 engines, the manufacturer must select, from each engine family, a test engine of a configuration that the manufacturer determines to be most likely to exceed the $HC+NO_X$ [$NMHC+NO_X$] Family Emission Limit (FEL), or $HC+NO_X$ [$NMHC+NO_X$] standard if no FEL is applicable.

* * * * *

15. Section 90.118 is amended by revising the section heading and adding a new paragraph (e) to read as follows:

§ 90.118 Certification procedure—service accumulation and usage of deterioration factors.

* * * * *

(e) For purposes of establishing whether Phase 2 engines comply with applicable exhaust emission standards or FELs, the test results for each regulated pollutant as measured pursuant to § 90.119 shall be multiplied by the applicable df determined under § 90.104 (g), (h) or (i). The product of the two numbers shall be rounded to the same number of decimal places contained in the applicable standard, and compared against the applicable standard or FEL, as appropriate.

16. Section 90.122 is amended by revising the first sentence of paragraph (a) and adding paragraph (d)(4) as follows:

§ 90.122 Amending the application and certificate of conformity.

(a) The engine manufacturer must notify the Administrator when either an engine is to be added to a certificate of conformity, an FEL is to be changed, or changes are to be made to a product line covered by a certificate of conformity.

* * *

* * * * *

(d)* * *

(4) If the Administrator determines that a revised FEL meets the requirements of this subpart and the Act, the appropriate certificate of conformity will be amended, or a new certificate will be issued to reflect the revised FEL. The certificate of conformity is revised conditional upon compliance with § 90.207(b).

* * * * *

17. Subpart C, which was formerly reserved, is added to part 90 to read as follows:

Subpart C—Certification Averaging, Banking, and Trading Provisions for Nonhandheld Engines

Sec.

90.201 Applicability.
90.202 Definitions.
90.203 General provisions.
90.204 Averaging.
90.205 Banking.
90.206 Trading.
90.207 Credit calculation and manufacturer compliance with emission standards.
90.208 Certification.
90.209 Maintenance of records.
90.210 End-of-year and final reports.
90.211 Request for hearing.

Subpart C—Certification Averaging, Banking, and Trading Provisions for Nonhandheld Engines

§ 90.201 Applicability.

The requirements of this subpart C are applicable to all Phase 2 nonhandheld spark-ignition engines subject to the provisions of subpart A of this part except as provided in § 90.103(a). These provisions are not applicable to any Phase 1 engines or to any Phase 2 handheld engines. Participation in the averaging, banking and trading program is voluntary, but if a manufacturer elects to participate, it must do so in compliance with the regulations set forth in this subpart. The provisions of this subpart are applicable for $HC+NO_X$ ($NMHC+NO_X$) emissions but not for CO emissions.

§ 90.202 Definitions.

The definitions in subpart A of this part apply to this subpart. The following definitions also apply to this subpart:

Averaging means the exchange of emission credits between engine families within a given manufacturer's product line.

Banking means the retention of emission credits by the manufacturer generating the emission credits or obtaining such credits through trading, for use in future model year averaging or trading as permitted in this part.

Emission credits represent the amount of emission reduction or exceedance, by an engine family, below or above the applicable $HC+NO_X$ ($NMHC+NO_X$) emission standard, respectively. FELs below the standard create "positive credits," while FELs above the standard create "negative credits." In addition, "projected credits" refer to emission credits based on the projected applicable production/sales volume of the engine family. "Reserved credits" are emission credits generated within a model year waiting to be reported to EPA at the end of the model year. "Actual credits" refer to emission credits based on actual applicable sales volume as contained in the end-of-year reports submitted to EPA. Some or all of these credits may be revoked if EPA review of the end-of-year reports or any subsequent audit action(s) reveals problems or errors of any nature with credit computations.

Point of first retail sale means the point at which the engine is first sold directly to an end user. Generally, this point is the retail engine or equipment dealer. If the engine is sold first to an equipment manufacturer for installation in a piece of equipment, the equipment manufacturer may be the point of first retail sale if the equipment manufacturer can determine with reasonable certainty whether the engine is or is not exported or destined for retail sale in a state that has adopted applicable emission standards pursuant to a waiver granted by EPA under section 209(e) of the Act once it has been installed in a piece of equipment.

Trading means the exchange of emission credits between manufacturers.

§ 90.203 General provisions.

(a) The certification averaging, banking, and trading provisions for $HC+NO_X$ and $NMHC+NO_X$ emissions from eligible engines are described in this subpart.

(b) A nonhandheld engine family may use the averaging, banking and trading provisions for $HC+NO_X$ and $NMHC+NO_X$ emissions if it is subject to regulation under this part with certain exceptions specified in paragraph (c) of this section. $HC+NO_X$ and $NMHC+NO_X$ credits shall be interchangeable subject to the limitations on credit generation, credit usage, cross class averaging and other provisions described in this subpart.

(c) A manufacturer shall not include in its calculation of credit generation and may exclude from its calculation of credit usage, any new engines:

(1) Which are exported, unless the manufacturer has reason or should have reason to believe that such engines have been or will be imported in a piece of equipment; or

(2) Which are subject to state engine emission standards pursuant to a waiver granted by EPA under section 209(e) of the Act, unless the manufacturer demonstrates to the satisfaction of the Administrator that inclusion of these engines in averaging, banking and trading is appropriate.

(d) For an engine family using credits, a manufacturer may, at its option, include its entire production of that engine family in its calculation of credit usage for a given model year.

(e) A manufacturer may certify engine families at Family Emission Limits (FELs) above or below the applicable emission standard subject to the limitation in paragraph (f) of this section, provided the summation of the manufacturer's projected balance of credits from all credit transactions for each engine class in a given model year is greater than or equal to zero, as determined under § 90.207.

(1) A manufacturer of an engine family with an FEL exceeding the applicable emission standard must obtain positive emission credits sufficient to address the associated credit shortfall via averaging, banking, or trading.

(2) An engine family with an FEL below the applicable emission standard may generate positive emission credits for averaging, banking, or trading, or a combination thereof.

(3) In the case of an SEA failure, credits may be used to cover subsequent production of engines for the family in question if the manufacturer elects to recertify to a higher FEL. Credits may not be used to remedy a nonconformity determined by a Selective Enforcement Audit (SEA) or by in-use testing, except that the Administrator may permit the use of credits to address a nonconformity determined by an SEA where the use of such credits is one component of a multi-part remedy for the previously produced engines and the remedy, including the use of credits and the quantity of credits being used, is such that the Administrator is satisfied that the manufacturer has strong and lasting incentive to accurately verify its new engine emission levels and will set or reset its FELs for current and future model years so that production line compliance is assured.

(4) In the case of a production line testing failure pursuant to subpart H of this part, a manufacturer may revise the FEL based upon production line testing results obtained under subpart H of this part and upon Administrator approval pursuant to § 90.122(d). The manufacturer may use certification credits to cover both past production and subsequent production of nonhandheld engines as needed.

(f) No engine family may have an FEL that is greater than 32.2 g/kW-hr for Class I engines or 26.8 g/kW-hr for Class II engines.

(g)(1) All credits generated under this subpart will be designated as Class I or Class II credits, as appropriate. Except as described in § 90.204(b), credits generated in a given model year by an engine family subject to the Phase 2 emission requirements may only be used in averaging, banking or trading, as appropriate, for any nonhandheld engine family of the same class for which the Phase 2 requirements are applicable. Credits generated in one model year may not be used for prior model years, except as allowed under § 90.207(c) or § 90.104(h)(2)(iv).

(2) For the 2005 model year and for each subsequent model year, manufacturers of Class II engines must provide a demonstration that the sales weighted average FEL for $HC+NO_X$ (including $NMHC+NO_X$ FELs), for all of the manufacturer's Class II engines, will not exceed 13.6 g/kW-hr for the 2005 model year, 13.1 g/kW-hr for the 2006 model year and 12.6 g/kW-hr for the 2007 and each subsequent Phase 2 model year. Such demonstration shall be subject to the review and approval of the Administrator, shall be provided at the time of the first Class II certification of that model year and shall be based on projected eligible sales for that model year.

(h) Manufacturers must demonstrate compliance under the averaging, banking, and trading provisions for a particular model year by 270 days after the end of the model year. An engine family generating negative credits for which the manufacturer does not obtain or generate an adequate number of positive credits by that date from the same or previous model year engines will violate the conditions of the certificate of conformity. The certificate of conformity may be voided *ab initio* pursuant to § 90.123 for this engine family.

§ 90.204 Averaging.

(a) Negative credits from engine families with FELs above the applicable emission standard must be offset by positive credits from engine families having FELs below the applicable emission standard, as allowed under the provisions of this subpart. Averaging of credits in this manner is used to determine compliance under § 90.207(b).

(b) Cross-class averaging, i.e. the use of credits from Class I engines to cover Class II engines and vice versa, is permitted only for the two situations described in paragraphs (b)(1) and (b)(2) of this section and only when the affected Class II manufacturer meets the following minimum sales percentages for Class II overhead valve emission performance engines in that model year: 2001 (50%); 2002 (62.5%); 2003 (75%); 2004 (87.5%) and 2005 and later (100%). A manufacturer's sales percentage of overhead valve emission performance engines is determined by dividing the manufacturer's eligible sales (as defined in this part) of Class II overhead valve emission performance

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engines certified under this part by the manufacturer's total eligible sales of Class II engines certified under this part, and multiplying the resultant quotient by 100.

(1) Cross class averaging is allowed for credit exchanges from credit generating Class II engines to credit using Class I engines.

(2) Cross class averaging is allowed for credit exchanges from Class I engines to Class II engines where credits are necessary to address production line testing failures as permitted in § 90.207 or to address credit shortfalls that arise due to testing pursuant to § 90.104(h)(2)(iv) .

(c) Subject to the limitations in § 90.204(b), credits used in averaging for a given model year may be obtained from credits generated in the same model year by another engine family, credits banked in previous model years, or credits of the same or previous model year obtained through trading. The restrictions of this paragraph notwithstanding, credits from a given model year may be used to address credit needs of previous model year engines as allowed under § 90.207(c).

(d) The use of Class II credits from the 1999 and 2000 model years (early banking) is subject to regulation under this subpart and also to the provisions of § 90.103(a)(7).

§ 90.205 Banking.

(a) Beginning with the 2001 model year, a manufacturer of an engine family with an FEL below the applicable emission standard for a given model year may bank credits in that model year for use in averaging and trading. Negative credits may be banked only according to the requirements under § 90.207(c). Credits may also be banked in model years 1999 and 2000 subject to the requirements of paragraph (b) of this section.

(b) A manufacturer may bank credits for a given class of engines in the 1999 and 2000 model years for use in the 2001 and later model years, provided:

(1) For Class I credits: the manufacturer certifies its entire Class I production to the applicable 2001 model year requirements. $HC+NO_X$ ($NMHC+NO_X$) credits may only be banked from engine families certified below 16.0 g/kW-hr (15.0 g/kW-hr) where those credits are not needed to bring the manufacturer's total Class I sales into compliance with the 2001 model year standard.

(2) For Class II credits: the manufacturer certifies its entire Class II product line to the applicable 2001 model year requirements. $HC+NO_X$ ($NMHC+NO_X$) credits may only be banked from engine families certified below 12.1 (11.3 g/kw-hr) for engines where those credits are not needed to bring the manufacturer's total Class II sales into compliance with the 2001 model year standard.

(3) Engines certified under the provisions of this paragraph are subject to all of the requirements of this part applicable to Phase 2 engines.

(c) A manufacturer may bank actual credits only after the end of the model year and after EPA has reviewed the manufacturer's end-of-year reports. During the model year and before submittal of the end-of-year report, credits originally designated in the certification process for banking will be considered reserved and may be redesignated for trading or averaging in the end-of-year report and final report.

(d) Credits declared for banking from the previous model year that have not been reviewed by EPA may be used in averaging or trading transactions. However, such credits may be revoked at a later time following EPA review of the end-of-year report or any subsequent audit actions.

§ 90.206 Trading.

(a) An engine manufacturer may exchange emission credits with other nonhandheld engine manufacturers in trading.

(b) Credits for trading can be obtained from credits banked in previous model years or credits generated during the model year of the trading transaction.

(c) Traded credits can be used for averaging, banking, or further trading transactions.

(d) Traded credits are subject to the limitations on cross-class averaging, use for past model years, and the use of credits from early banking as set forth in § 90.204(b), (c) and (d).

(e) In the event of a negative credit balance resulting from a transaction, both the buyer and the seller are liable, except in cases involving fraud. Certificates of all engine families participating in a negative trade may be voided ab initio pursuant to § 90.123.

§ 90.207 Credit calculation and manufacturer compliance with emission standards.

(a) (1) For each engine family, $HC+NO_X$ [$NMHC+NO_X$] certification emission credits (positive or negative) are to be calculated according to the following equation and rounded to the nearest gram. Consistent units are to be used throughout the following equation:

Credits = Sales × (Standard—FEL) × Power × Useful life × Load Factor

Where:

Sales = eligible sales as defined in this part. Annual sales projections are used to project credit availability for initial certification. Eligible sales volume is used in determining actual credits for end-of-year compliance determination.

Standard = the current and applicable Small SI engine $HC+NO_X$ ($NMHC+NO_X$) emission standard in grams per kilowatt hour as determined in § 90.103.

FEL = the family emission limit for the engine family in grams per kilowatt hour.

Power = the sales weighted maximum modal power, in kilowatts, as calculated from the applicable federal test procedure as described in this part. This is determined by multiplying the maximum modal power of each configuration within the family by its eligible sales, summing across all configurations and dividing by the eligible sales of the entire family.

Useful Life = the useful life in hours corresponding to the useful life category for which the engine family was certified.

Load Factor = For Test Cycle A and Test Cycle B, the Load Factor = 47% (i.e. 0.47).

(2) For approved alternate test procedures, the load factor in paragraph (a)(1) of this section must be calculated according to the following formula:

$$\sum_{i=1}^{n}(\%\text{MTT mode}_i) \times (\%\text{MTS mode}_i) \times (\text{WF mode}_i)$$

Where:

$\%MTT\ mode_i$ = percent of the maximum FTP torque for mode i.

$\%MTS\ mode_i$ = percent of the maximum FTP engine rotational speed for mode i.

$WF\ mode_i$ = the weighting factor for mode i.

(b) Manufacturer compliance with the emission standard is determined on a corporate average basis at the end of each model year. A manufacturer is in compliance when the sum of positive and negative emission credits it holds for each class is greater than or equal to zero, except that the sum of positive and negative credits for a given class may be less than zero as allowed under paragraph (c) of this section.

(c)(1) A manufacturer may use credits from a later model year to address dfs of model year 2001 through 2004 Class II engines certified to 500 or 1000 hours, when the dfs are shown to be underestimated pursuant to the provisions of § 90.104(h)(2)(iv).

(2) If, as a result of production line testing as required in subpart H of this part, a nonhandheld engine family is determined to be in noncompliance pursuant to § 90.710, the manufacturer may raise its FEL for past and future production as necessary. Further, a manufacturer may carry a negative credit balance (known also as a credit deficit) for the subject class and model year and for the next three model years. The credit deficit may be no larger than that created by the nonconforming family. If the credit deficit still exists after the model year following the model year in which the nonconformity occurred, the manufacturer must obtain and apply credits to offset the remaining credit deficit at a rate of 1.2 grams for each gram of deficit within the next two model years. The provisions of this paragraph are subject to the limitations in paragraph (d) of this section.

(d) Regulations elsewhere in this part notwithstanding, if a nonhandheld engine manufacturer experiences two or more production line testing failures pursuant to the regulations in subpart H of this part in a given model year, the manufacturer may raise the FEL of previously produced engines only to the extent that such engines represent no more than 10% of the manufacturer's total eligible sales for that model year. For any additional engines determined to be in noncompliance, the manufacturer must conduct offsetting projects approved in advance by the Administrator.

(e) If, as a result of production line testing under this subpart, a manufacturer desires to lower its FEL it may do so subject to § 90.708(c).

(f) Except as allowed at paragraph (c) of this section, when a manufacturer is not in compliance with the applicable emission standard by the date 270 days after the end of the model year, considering all credit calculations and transactions completed by then, the manufacturer will be in violation of these regulations and EPA may, pursuant to § 90.123, void *ab initio* the certificates of engine families for which the manufacturer has not obtained sufficient positive emission credits.

§ 90.208 Certification.

(a) In the application for certification a manufacturer must:

(1) Submit a statement that the engines for which certification is requested will not, to the best of the manufacturer's belief, cause the manufacturer to be in noncompliance under § 90.207(b) when all credits are calculated for all the manufacturer's engine families.

(2) Declare an FEL for each engine family for $HC+NO_X$ ($NMHC+NO_X$). The FEL must have the same number of significant digits as the emission standard.

(3) Indicate the projected number of credits generated/needed for this family; the projected applicable eligible sales volume, by quarter; and the values required to calculate credits as given in § 90.207.

(4) Submit calculations in accordance with § 90.207 of projected emission credits (positive or negative) based on quarterly production projections for each family.

(5)(i) If the engine family is projected to have negative emission credits, state specifically the source (manufacturer/engine family or reserved) of the credits necessary to offset the credit deficit according to quarterly projected production.

(ii) If the engine family is projected to generate credits, state specifically (manufacturer/engine family or reserved) where the quarterly projected credits will be applied.

(b) All certificates issued are conditional upon manufacturer compliance with the provisions of this subpart both during and after the model year of production.

(c) Failure to comply with all provisions of this subpart will be considered to be a failure to satisfy the conditions upon which the certificate was issued, and the certificate may be determined to be void *ab initio* pursuant to § 90.123.

(d) The manufacturer bears the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied or waived.

(e) Projected credits based on information supplied in the certification application may be used to obtain a certificate of conformity. However, any such credits may be revoked based on review of end-of-year reports, follow-up audits, and any other verification steps considered appropriate by the Administrator.

§ 90.209 Maintenance of records.

(a) The manufacturer must establish, maintain, and retain the following adequately organized and indexed records for each engine family:

(1) EPA engine family identification code;

(2) Family Emission Limit (FEL) or FELs where FEL changes have been implemented during the model year;

(3) Maximum modal power for each configuration sold;

(4) Projected sales volume for the model year; and

(5) Records appropriate to establish the quantities of engines that constitute eligible sales as defined in § 90.202 for each power rating for each FEL.

(b) Any manufacturer producing an engine family participating in trading reserved credits must maintain the following records on a quarterly basis for each such engine family:

(1) The engine family;

(2) The actual quarterly and cumulative applicable production/sales volume;

(3) The values required to calculate credits as given in § 90.207;

(4) The resulting type and number of credits generated/required;

(5) How and where credit surpluses are dispersed; and

(6) How and through what means credit deficits are met.

(c) The manufacturer must retain all records required to be maintained under this section for a period of eight years from the due date for the end-of-model year report. Records may be retained as hard copy or reduced to microfilm, ADP diskettes, and so forth, depending on the manufacturer's record retention procedure; provided, that in every case all information contained in the hard copy is retained.

(d) Nothing in this section limits the Administrator's discretion in requiring the manufacturer to retain additional records or submit information not specifically required by this section.

(e) Pursuant to a request made by the Administrator, the manufacturer must submit to the Administrator the information that the manufacturer is required to retain.

(f) EPA may, pursuant to § 90.123, void *ab initio* a certificate of conformity for an engine family for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

§ 90.210 End-of-year and final reports.

(a) End-of-year and final reports must indicate the engine family, the class (I or II), the actual sales volume, the values required to calculate credits as given in § 90.207, and the number of credits generated/required. Manufacturers must also submit how and where credit surpluses were dispersed (or are to be banked) and/or how and through what means credit deficits were met. Copies of contracts related to credit trading must be included or supplied by the broker, if applicable. The report must include a calculation of credit balances to show that the credit summation for each class of engines is equal to or greater than zero (or less than zero in cases of negative credit balances as permitted in § 90.207(c)). For engines subject to the provisions of § 90.203(g)(2), the report must include a calculation of the sales weighted average $HC+NO_X$ (including $NMHC+NO_X$) FEL.

(b) The calculation of eligible sales for end-of-year and final reports must be based on the location of the point of first retail sale (for example, retail customer

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or dealer) also called the final product purchase location. Upon advance written request, the Administrator will consider other methods to track engines for credit calculation purposes that provide high levels of confidence that eligible sales are accurately counted.

(c)(1) End-of-year reports must be submitted within 90 days of the end of the model year to: Manager, Engine Compliance Programs Group (6403–J), U.S. Environmental Protection Agency, Washington, DC 20460.

(2) Unless otherwise approved by the Administrator, final reports must be submitted within 270 days of the end of the model year to: Manager, Engine Compliance Programs Group (6403–J), U.S. Environmental Protection Agency, Washington, DC 20460.

(d) Failure by a manufacturer to submit any end-of-year or final reports in the specified time for any engines subject to regulation under this part is a violation of § 90.1003(a)(2) and section 213(d) of the Clean Air Act for each engine.

(e) A manufacturer generating credits for banking only who fails to submit end-of-year reports in the applicable specified time period (90 days after the end of the model year) may not use the credits until such reports are received and reviewed by EPA. Use of projected credits pending EPA review is not permitted in these circumstances.

(f) Errors discovered by EPA or the manufacturer in the end-of-year report, including errors in credit calculation, may be corrected in the final report.

(g) If EPA or the manufacturer determines that a reporting error occurred on an end-of-year or final report previously submitted to EPA under this section, the manufacturer's credits and credit calculations must be recalculated. Erroneous positive credits will be void except as provided in paragraph (h) of this section. Erroneous negative credit balances may be adjusted by EPA.

(h) If within 270 days of the end of the model year, EPA review determines a reporting error in the manufacturer's favor (that is, resulting in an increased credit balance) or if the manufacturer discovers such an error within 270 days of the end of the model year, EPA shall restore the credits for use by the manufacturer.

§ 90.211 Request for hearing.

An engine manufacturer may request a hearing on the Administrator's voiding of the certificate under §§ 90.203(h), 90.206(e), 90.207(f), 90.208(c), or 90.209(f), pursuant to § 90.124. The procedures of § 90.125 shall apply to any such hearing.

Subpart D—Emission Test Equipment Provisions

18. Section 90.301 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 90.301 Applicability.

(a) This subpart describes the equipment required in order to perform exhaust emission tests on new nonroad spark-ignition engines and vehicles subject to the provisions of subpart A of this part. Certain text in this subpart is identified as pertaining to Phase 1 or Phase 2 engines. Such text pertains only to engines of the specified Phase. If no indication of Phase is given, the text pertains to all engines, regardless of Phase.

* * * * *

(d) For Phase 2 Class I and Phase 2 Class II natural gas fueled engines, the following sections from 40 CFR part 86 are applicable to this subpart. The requirements of these sections which pertain specifically to the measurement and calculation of non-methane hydrocarbon (NMHC) exhaust emissions from otto cycle heavy-duty engines must be followed when determining the NMHC exhaust emissions from Phase 2 Class I and Phase 2 Class II natural gas fueled engines. Those sections are: 40 CFR 86.1306–90 Equipment required and specifications; overview, 40 CFR 86.1309–90 Exhaust gas sampling system; otto-cycle engines, 40 CFR 86–1311–94 Exhaust gas analytical system; CVS bag sampling, 40 CFR 86.1313–94(e) Fuel Specification—Natural gas-fuel, 40 CFR 86.1314–94 Analytical gases, 40 CFR 86.1316–94 Calibrations; frequency and overview, 40 CFR 86.1321–94 Hydrocarbon analyzer calibration, 40 CFR 86.1325–94 Methane analyzer calibration, 40 CFR 86.1327–94 Engine dynamometer test procedures, overview, 40 CFR 86.1340–94 Exhaust sample analysis, 40 CFR 86.1342–94 Calculations; exhaust emissions, 40 CFR 86.1344–94(d) Required information—Pre-test data, 40 CFR 86.1344–94(e) Required information—Test data.

19. Section 90.302 is revised to read as follows:

§ 90.302 Definitions.

The definitions in § 90.3 apply to this subpart. The following definitions also apply to this subpart.

Intermediate speed means the engine speed which is 85 percent of the rated speed.

Natural gas means a fuel whose primary constituent is methane.

Rated speed means the speed at which the manufacturer specifies the maximum rated power of an engine.

Subpart E—Gaseous Exhaust Test Procedures

20. Section § 90.401 is amended by adding paragraphs (c) and (d) to read as follows;

§ 90.401 Applicability.

* * * * *

(c) Certain text in this subpart is identified as pertaining to Phase 1 or Phase 2 engines. Such text pertains only to engines of the specified Phase. If no indication of Phase is given, the text pertains to all engines, regardless of Phase.

(d) For Phase 2 Class I and Phase 2 Class II natural gas fueled engines, the following sections from 40 CFR part 86 are applicable to this subpart. The requirements of these sections which pertain specifically to the measurement and calculation of non-methane hydrocarbon (NMHC) exhaust emissions from otto cycle heavy-duty engines must be followed when determining the NMHC exhaust emissions from Phase 2 Class I and Phase 2 Class II natural gas fueled engines. Those sections are: 40 CFR 86.1327–94 Engine dynamometer test procedures, overview, 40 CFR 86.1340–94 Exhaust sample analysis, 40 CFR 86.1342–94 Calculations; exhaust emissions, 40 CFR 86.1344–94(d) Required information—Pre-test data, and 40 CFR 86.1344–94(e) Required information—Test data.

21. Section 90.404 is amended by adding a sentence after the first sentence of paragraph (b) to read as follows:

§ 90.404 Test procedure overview.

* * * * *

(b) * * * For Phase 2 Class I and II natural gas fueled engines the test is also designed to determine the brake-specific emissions of non-methane hydrocarbons. * * *

* * * * *

22. Section 90.409 is amended by revising paragraph (a)(3) to read as follows:

§ 90.409 Engine dynamometer test run.

(a) * * *

(3) For Phase 1 engines, at the manufacturer's option, the engine can be run with the throttle in a fixed position or by using the engine's governor (if the engine is manufactured with a governor). In either case, the engine speed and load must meet the requirements specified in paragraph (b)(12) of this section. For Phase 2 Class I and Class II engines equipped with an engine speed governor, the governor must be used to control engine speed during all test cycle modes except for Mode 1, and no external throttle control may be used. For Phase 2 Class I and Class II engines equipped with an engine speed governor, during Mode 1 fixed throttle operation may be used to determine the 100% torque value.

* * * * *

23. Section 90.410 is amended by revising paragraph (b) to read as follows:

§ 90.410 Engine test cycle.

* * * * *

(b) For Phase 1 engines and Phase 2 Class III, IV, V, and Phase 2 Class I and II engines not equipped with an engine speed governor, during each non-idle mode, hold both the specified speed and load within ± five percent of point. During the idle mode, hold speed within ± ten percent of the manufacturer's specified idle engine speed. For Phase 2 Class I and II engines equipped with an engine speed governor, during Mode 1 hold both the specified speed and load within ± five percent of point, during Modes 2–5, hold the specified load with ± five percent of point, and during the idle mode hold the specified speed within ± ten percent of the manufacturer's specified idle engine speed (see Table 1 in Appendix A to subpart E of this part for a description of test Modes).

* * * * *

24. In Appendix A to Subpart E of Part 90, Table 2 is revised to read as follows:

Appendix A to Subpart E of Part 90—Tables

* * * * *

TABLE 2.—TEST CYCLES FOR CLASS I–V ENGINES

Mode	1	2	3	4	5	6	7	8	9	10	11
Speed	Rated speed					Intermediate speed					Idle
Mode Points A Cycle	.....	.....	.....	.....	.....	1	2	3	4	5	6
Load Percent—A Cycle	.....	.....	.....	.....	.....	100	75	50	25	10	0
Weighting	.....	.....	.....	.....	.....	9%	20%	29%	30%	7%	5%
Mode Points B Cycle	1	2	3	4	5	.....	.....	.....	.....	.....	6
Load Percent—B Cycle	100	75	50	25	10	.....	.....	.....	.....	.....	0
Weighting	.....	.....	.....	.....	.....	9%	20%	29%	30%	7%	5%
Mode Points C Cycle	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	2
Load Percent—C Cycle	100	.....	.....	.....	.....	.....	.....	.....	.....	.....	0
Weighting for Phase 1 Engines	90%	.....	.....	.....	.....	.....	.....	.....	.....	.....	10%
Weighting for Phase 2 Engines	85%	.....	.....	.....	.....	.....	.....	.....	.....	.....	15%

Subpart F—Selective Enforcement Auditing

25. Section 90.503 is amended by revising paragraphs (f)(3) and (f)(4) to read as follows:

§ 90.503 Test orders.

* * * * *

(f) * * *

(3) Any SEA test order for which the family or configuration, as appropriate, fails under § 90.510 or for which testing is not completed will not be counted against the annual limit.

(4) When the annual limit has been met, the Administrator may issue additional test orders to test those families or configurations for which evidence exists indicating nonconformity, or for which the Administrator has reason to believe are not being appropriately represented or tested in Production Line Testing conducted under subpart H of this part, if applicable. An SEA test order issued pursuant to this provision will include a statement as to the reason for its issuance.

26. Section 90.509 is amended by revising paragraph (b) to read as follows:

§ 90.509 Calculation and reporting of test results.

* * * * *

(b)(1) Final test results are calculated by summing the initial test results derived in paragraph (a) of this section for each test engine, dividing by the number of tests conducted on the engine, and rounding to the same number of decimal places contained in the applicable standard. For Phase 2 engines only, this result shall be expressed to one additional significant figure.

(2) Final deteriorated test results (for Phase 2 test engines only) are calculated by applying the appropriate deterioration factors, from the certification process for the engine family, to the final test results, and rounding to the same number of decimal places contained in the applicable standard.

* * * * *

27. Section 90.510 is amended by revising paragraph (b) to read as follows:

§ 90.510 Compliance with acceptable quality level and passing and failing criteria for selective enforcement audits.

* * * * *

(b) A failed engine is a Phase 1 engine whose final test results pursuant to § 90.509(b), for one or more of the applicable pollutants exceed the emission standard. For Phase 2 engines, a failed engine is a Phase 2 engine whose final deteriorated test results pursuant to § 90.509(b), for one or more of the applicable pollutants exceed the emission standard (FEL, if applicable).

* * * * *

28. Section 90.512 is amended by revising paragraph (b) to read as follows:

§ 90.512 Request for public hearing.

* * * * *

(b) The manufacturer's request shall be filed with the Administrator not later than 15 days after the Administrator's notification of his or her decision to suspend, revoke or void, unless otherwise specified by the Administrator. The manufacturer shall simultaneously serve two copies of this request upon the Director of the Engine Programs and Compliance Division and file two copies with the Hearing Clerk of the Agency. Failure of the manufacturer to request a hearing within the time provided constitutes a waiver of the right to a hearing. Subsequent to the expiration of the period for requesting a hearing as of right, the Administrator may, in his or her discretion and for good cause shown, grant the manufacturer a hearing to contest the suspension, revocation or voiding.

* * * * *

Subpart G—Importation of Nonconforming Engines

29. Section 90.612 is amended by revising paragraph (g) to read as follows:

§ 90.612 Exemptions and exclusions.

* * * * *

(g) Applications for exemptions and exclusions provided for in paragraphs (b), (c), and (e) of this section are to be mailed to: U.S. Environmental

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Protection Agency, Office of Mobile Sources, Engine Compliance Programs Group (6403–J), Washington, D.C. 20460, Attention: Imports.

30. Subpart H, which was previously "reserved", is added to part 90 to read as follows:

Subpart H—Manufacturer Production Line Testing Program

Sec.

90.701 Applicability.
90.702 Definitions.
90.703 Production line testing by the manufacturer.
90.704 Maintenance of records; submittal of information.
90.705 Right of entry and access.
90.706 Engine sample selection.
90.707 Test procedures.
90.708 Cumulative Sum (CumSum) Procedure.
90.709 Calculation and reporting of test results.
90.710 Compliance with criteria for production line testing.
90.711 Suspension and revocation of certificates of conformity.
90.712 Request for public hearing.
90.713 Administrative procedures for public hearing.

Subpart H—Manufacturer Production Line Testing Program

§ 90.701 Applicability.

(a) Except as described in paragraph (b) of this section, the requirements of this subpart are applicable to all Phase 2 nonroad engines subject to the provisions of subpart A of this part.

(b) The requirements of this subpart are applicable to all handheld engine families described in paragraph (a) of this section unless otherwise exempted in this part. Manufacturers of nonhandheld engine families described in paragraph (a) of this section may choose between the Production Line Testing Program described in this subpart for all of their engine families and the Selective Enforcement Auditing Program described in Subpart F of this part for all of their engine families, subject to the restrictions of paragraph (d) of this section.

(c) Nonhandheld engine manufacturers shall notify EPA of their selection when they begin their first Phase 2 model year's certification.

(d) A manufacturer of nonhandheld Phase 2 engines may change from the Production Line Testing program described in this subpart to the Selective Enforcement Auditing program described in Subpart F of this part and vice versa, provided that:

(1) It does so for all of its engine families at the same time;

(2) When changing from Production Line Testing to Selective Enforcement Auditing, it has remained under Production Line Testing for a minimum of three model years;

(3) It provides written notice to EPA one complete model year prior to the model year for which it is requesting to change from Production Line Testing to Selective Enforcement Auditing;

(4) It provides written notice to EPA thirty (30) days prior to the date for which it is requesting to change from Selective Enforcement Auditing to Production Line Testing; and

(5) It is not carrying a negative credit balance at the time it changes from Production Line Testing to Selective Enforcement Auditing.

(e) The procedures described in this subpart are optional for small volume engine manufacturers and small volume engine families as defined in this part, and for engine families certified to a level at least 50% below the applicable $HC+NO_X$ ($NMHC+NO_X$) standard (FEL if applicable). Engine families for which the manufacturer opts not to conduct testing under this subpart pursuant to this paragraph shall be subject to the Selective Enforcement Auditing procedures of Subpart F of this part.

§ 90.702 Definitions.

The definitions in subpart A of this part apply to this subpart. The following definitions also apply to this subpart.

Configuration means any subclassification of an engine family which can be described on the basis of gross power, emission control system, governed speed, injector size, engine calibration, and other parameters as designated by the Administrator.

Test sample means the collection of engines selected from the population of an engine family for emission testing.

§ 90.703 Production line testing by the manufacturer.

(a) Manufacturers of small SI engines shall test production line engines from each engine family according to the provisions of this subpart.

(b) Production line engines must be tested using the test procedure specified in subpart E of this part except that the Administrator may approve minor variations that the Administrator deems necessary to facilitate efficient and economical testing where the manufacturer demonstrates to the satisfaction of the Administrator that such variations will not significantly impact the test results. Any adjustable engine parameter must be set to values or positions that are within the range recommended to the ultimate purchaser, unless otherwise specified by the Administrator. The Administrator may specify values within or without the range recommended to the ultimate purchaser.

(c) The Administrator, on the basis of a written application from a manufacturer, may approve alternate methods to evaluate production line compliance, where such alternate methods are demonstrated by the manufacturer to:

(1) Produce substantially the same levels of producer and consumer risk as the Cum Sum procedure described in this subpart that mean emissions of an engine family are below the appropriate standards (FEL, where applicable);

(2) Provide for continuous rather than point-in-time sampling; and

(3) Include an appropriate decision mechanism for determining noncompliance upon which the Administrator can suspend or revoke the certificate of conformity.

§ 90.704 Maintenance of records; submittal of information.

(a) The manufacturer of any new small SI engine subject to any of the provisions of this subpart must establish, maintain, and retain the following adequately organized and indexed records:

(1) *General records.* A description of all equipment used to test engines in accordance with § 90.703. Subpart D of this part sets forth relevant equipment requirements in §§ 90.304, 90.305, 90.306, 90.307, 90.308, 90.309, 90.310 and 90.313.

(2) *Individual records.* These records pertain to each production line test conducted pursuant to this subpart and include:

(i) The date, time, and location of each test;

(ii) The number of hours of service accumulated on the test engine when the test began and ended;

(iii) The names of all supervisory personnel involved in the conduct of the production line test;

(iv) A record and description of any adjustment, repair, preparation or modification performed prior to and/or subsequent to approval by the Administrator pursuant to § 90.707(b)(1), giving the date, associated time, justification, name(s) of the authorizing personnel, and names of all supervisory personnel responsible for the conduct of the repair;

(v) If applicable, the date the engine was shipped from the assembly plant, associated storage facility or port facility, and the date the engine was received at the testing facility;

(vi) A complete record of all emission tests performed pursuant to this subpart (except tests performed directly by EPA), including all individual

worksheets and/or other documentation relating to each test, or exact copies thereof, in accordance with the record requirements specified in §§ 90.405 and 90.406; and

(vii) A brief description of any significant events during testing not otherwise described under paragraph (a)(2) of this section, commencing with the test engine selection process and including such extraordinary events as engine damage during shipment.

(3) The manufacturer must establish, maintain and retain general records, pursuant to paragraph (a)(1) of this section, for each test cell that can be used to perform emission testing under this subpart.

(b) The manufacturer must retain all records required to be maintained under this subpart for a period of one year after completion of all testing required for the engine family in a model year. Records may be retained as hard copy (i.e., on paper) or reduced to microfilm, floppy disk, or some other method of data storage, depending upon the manufacturer's record retention procedure; provided, that in every case, all the information contained in the hard copy is retained.

(c) The manufacturer must, upon request by the Administrator, submit the following information with regard to engine production:

(1) Projected production or actual production for each engine configuration within each engine family for which certification has been requested and/or approved;

(2) Number of engines, by configuration and assembly plant, scheduled for production or actually produced.

(d) Nothing in this section limits the Administrator's discretion to require a manufacturer to establish, maintain, retain or submit to EPA information not specified by this section.

(e) All reports, submissions, notifications, and requests for approval made under this subpart must be addressed to: Manager, Engine Compliance Programs Group (6403J), U.S. Environmental Protection Agency, Washington, DC 20460.

(f) The manufacturer must electronically submit the results of its production line testing using EPA's standardized format. The Administrator may exempt manufacturers from this requirement upon written request with supporting justification.

§ 90.705 Right of entry and access.

(a) To allow the Administrator to determine whether a manufacturer is complying with the provisions of this subpart or other subparts of this part, one or more EPA enforcement officers may enter during operating hours and upon presentation of credentials any of the following places:

(1) Any facility, including ports of entry, where any engine to be introduced into commerce or any emission-related component is manufactured, assembled, or stored;

(2) Any facility where any test conducted pursuant to this or any other subpart or any procedure or activity connected with such test is or was performed;

(3) Any facility where any test engine is present; and

(4) Any facility where any record required under § 90.704 or other document relating to this subpart or any other subpart of this part is located.

(b) Upon admission to any facility referred to in paragraph (a) of this section, EPA enforcement officers are authorized to perform the following inspection-related activities:

(1) To inspect and monitor any aspect of engine manufacture, assembly, storage, testing and other procedures, and to inspect and monitor the facilities in which these procedures are conducted;

(2) To inspect and monitor any aspect of engine test procedures or activities, including test engine selection, preparation and service accumulation, emission test cycles, and maintenance and verification of test equipment calibration;

(3) To inspect and make copies of any records or documents related to the assembly, storage, selection, and testing of an engine; and

(4) To inspect and photograph any part or aspect of any engine and any component used in the assembly thereof that is reasonably related to the purpose of the entry.

(c) EPA enforcement officers are authorized to obtain reasonable assistance without cost from those in charge of a facility to help the officers perform any function listed in this subpart and they are authorized to request the manufacturer to make arrangements with those in charge of a facility operated for the manufacturer's benefit to furnish reasonable assistance without cost to EPA.

(1) Reasonable assistance includes, but is not limited to, clerical, copying, interpretation and translation services; the making available on an EPA enforcement officer's request of personnel of the facility being inspected during their working hours to inform the EPA enforcement officer of how the facility operates and to answer the officer's questions; and the performance on request of emission tests on any engine which is being, has been, or will be used for production line or other testing.

(2) By written request, signed by the Assistant Administrator for Air and Radiation, and served on the manufacturer, a manufacturer may be compelled to cause the personal appearance of any employee at such a facility before an EPA enforcement officer. Any such employee who has been instructed by the manufacturer to appear will be entitled to be accompanied, represented, and advised by counsel.

(d) EPA enforcement officers are authorized to seek a warrant or court order authorizing the EPA enforcement officers to conduct the activities authorized in this section, as appropriate, to execute the functions specified in this section. EPA enforcement officers may proceed *ex parte* to obtain a warrant or court order whether or not the EPA enforcement officers first attempted to seek permission from the manufacturer or the party in charge of the facility(ies) in question to conduct the activities authorized in this section.

(e) A manufacturer must permit an EPA enforcement officer(s) who presents a warrant or court order to conduct the activities authorized in this section as described in the warrant or court order. The manufacturer must also cause those in charge of its facility or a facility operated for its benefit to permit entry and access as authorized in this section pursuant to a warrant or court order whether or not the manufacturer controls the facility. In the absence of a warrant or court order, an EPA enforcement officer(s) may conduct the activities authorized in this section only upon the consent of the manufacturer or the party in charge of the facility(ies) in question.

(f) It is not a violation of this part or the Clean Air Act for any person to refuse to permit an EPA enforcement officer(s) to conduct the activities authorized in this section if the officer(s) appears without a warrant or court order.

(g) A manufacturer is responsible for locating its foreign testing and manufacturing facilities in jurisdictions where local law does not prohibit an EPA enforcement officer(s) from conducting the entry and access activities specified in this section. EPA will not attempt to make any inspections which it has been informed local foreign law prohibits.

§ 90.706 Engine sample selection.

(a) At the start of each model year, the small SI engine manufacturer will begin

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to randomly select engines from each engine family for production line testing at a rate of one percent of the projected eligible sales of that family. Each engine will be selected from the end of the assembly line.

(1) *For newly certified engine families*: After two engines are tested, the manufacturer will calculate the required sample size for the model year for each pollutant ($HC+NO_X$(NMHC+NO_X) and CO) according to the Sample Size Equation in paragraph (b) of this section.

(2) *For carry-over engine families*: After one engine is tested, the manufacturer will combine the test with the last test result from the previous model year and then calculate the required sample size for the model year for each pollutant according to the Sample Size Equation in paragraph (b) of this section.

(b)(1) Manufacturers will calculate the required sample size for the model year for each pollutant for each engine family using the Sample Size Equation in this paragraph. N is calculated for each pollutant from each test result. The higher of the two values for the number N indicates the number of tests required for the model year for an engine family. N is recalculated for each pollutant after each test. Test results used to calculate the variables in the following Sample Size Equation must be final deteriorated test results as specified in § 90.709(c):

$$N = \left[\frac{(t_{95} * \sigma)}{(x - FEL)}\right]^2 + 1$$

Where:

N = required sample size for the model year.

t_{95} = 95% confidence coefficient. It is dependent on the actual number of tests completed, n, as specified in the table in paragraph (b)(2) of this section. It defines one-tail, 95% confidence intervals.

σ = actual test sample standard deviation calculated from the following equation:

$$\sigma = \sqrt{\frac{\Sigma(X_i - x)^2}{n - 1}}$$

xi_i = emission test result for an individual engine.

x = mean of emission test results of the actual sample.

FEL = Family Emission Limit or standard if no FEL.

n = The actual number of tests completed in an engine family.

(2) The following table specifies the actual number of tests (n) & 1-tail confidence coefficients (t_{95}):

n	t_{95}
2	6.31
3	2.92
4	2.35
5	2.13
6	2.02
7	1.94
8	1.90
9	1.86
10	1.83
11	1.81
12	1.80
13	1.78
14	1.77
15	1.76
16	1.75
17	1.75
18	1.74
19	1.73
20	1.73
21	1.72
22	1.72
23	1.72
24	1.71
25	1.71
26	1.71
27	1.71
28	1.70
29	1.70
30	1.70
∞	1.645

(3) A manufacturer must distribute the testing of the remaining number of engines needed to meet the required sample size N, evenly throughout the remainder of the model year.

(4) After each new test, the required sample size, N, is recalculated using updated sample means, sample standard deviations and the appropriate 95% confidence coefficient.

(5) A manufacturer must continue testing and updating each engine family's sample size calculations according to paragraphs (b)(1) through (b)(4) of this section until a decision is made to stop testing as described in paragraph (b)(6) of this section or a noncompliance decision is made pursuant to § 90.710(b).

(6) If, at any time throughout the model year, the calculated required sample size, N, for an engine family is less than or equal to the actual sample size, n, and the sample mean, x, for HC + NO_X (NMHC+NO_X) and CO is less than or equal to the FEL or standard if no FEL, the manufacturer may stop testing that engine family.

(7) If, at any time throughout the model year, the sample mean, x, for HC + NO_X (NMHC+NO_X) or CO is greater than the FEL or standard if no FEL, the manufacturer must continue testing that engine family at the appropriate maximum sampling rate.

(8) The maximum required sample size for an engine family (regardless of the required sample size, N, as calculated in paragraph (b)(1) of this section) is the lesser of thirty tests per model year or one percent of projected annual production for that engine family for that model year.

(9) Manufacturers may elect to test additional engines. Additional engines, whether tested in accordance with the testing procedures specified in § 90.707 or not, may not be included in the Sample Size and Cumulative Sum equation calculations as defined in paragraph (b)(1) of this section and § 90.708(a), respectively. However, such additional test results may be used as appropriate to "bracket" or define the boundaries of the production duration of any emission nonconformity determined under this subpart. Such additional test data must be identified and provided to EPA with the submittal of the official CumSum results.

(c) The manufacturer must produce and assemble the test engines using its normal production and assembly process for engines to be distributed into commerce.

(d) No quality control, testing, or assembly procedures shall be used on any test engine or any portion thereof, including parts and subassemblies, that have not been or will not be used during the production and assembly of all other engines of that family, unless the Administrator approves the modification in production or assembly procedures in advance.

§ 90.707 Test procedures.

(a)(1) For small SI engines subject to the provisions of this subpart, the prescribed test procedures are specified in subpart E of this part.

(2) The Administrator may, on the basis of a written application by a manufacturer, prescribe test procedures other than those specified in paragraph (a)(1) of this section for any small SI engine the Administrator determines is not susceptible to satisfactory testing using procedures specified in paragraph (a)(1) of this section.

(b)(1) The manufacturer may not adjust, repair, prepare, or modify any test engine and may not perform any emission test on any test engine unless this adjustment, repair, preparation, modification and/or test is documented in the manufacturer's engine assembly and inspection procedures and is actually performed by the manufacturer on every production line engine or unless this adjustment, repair, preparation, modification and/or test is required or permitted under this subpart or is approved in advance by the Administrator.

(2) The Administrator may adjust or cause to be adjusted any engine parameter which the Administrator has determined to be subject to adjustment for certification, Production Line Testing and Selective Enforcement Audit testing, to any setting within the physically adjustable range of that parameter, as determined by the Administrator, prior to the performance of any test. However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator may not adjust it or require that it be adjusted to any setting which causes a lower engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter if the manufacturer had accumulated 12 hours of service on the engine under paragraph (c) of this section, all other parameters being identically adjusted for the purpose of the comparison. The manufacturer may be requested to supply information necessary to establish an alternate minimum idle speed. The Administrator, in making or specifying these adjustments, may consider the effect of the deviation from the manufacturer's recommended setting on emission performance characteristics as well as the likelihood that similar settings will occur on in-use engines. In determining likelihood, the Administrator may consider factors such as, but not limited to, the effect of the adjustment on engine performance characteristics and information from similar in-use engines.

(c) *Service Accumulation.* (1) Unless otherwise approved by the Administrator, prior to performing exhaust emission production line testing, the manufacturer may accumulate on each test engine a number of hours of service equal to the greater of 12 hours or the number of hours the manufacturer accumulated during stabilization in the certification process for each engine family. For catalyst-equipped engines, the manufacturer must accumulate a number of hours equal to the number of hours accumulated to represent stabilized emissions on the engine used to obtain certification.

(2) Service accumulation must be performed in a manner using good engineering judgment to obtain emission results representative of production line engines.

(d) Unless otherwise approved by the Administrator, the manufacturer may not perform any maintenance on test engines after selection for testing.

(e) If an engine is shipped to a remote facility for production line testing, and an adjustment or repair is necessary because of shipment, the engine manufacturer must perform the necessary adjustment or repair only after the initial test of the engine, except in cases where the Administrator has determined that the test would be impossible or unsafe to perform or would permanently damage the engine. Engine manufacturers must report to the Administrator, in the quarterly report required by § 90.709(e), all adjustments or repairs performed on test engines prior to each test.

(f) If an engine cannot complete the service accumulation or an emission test because of a malfunction, the manufacturer may request that the Administrator authorize either the repair of that engine or its deletion from the test sequence.

(g) *Testing.* A manufacturer must test engines with the test procedure specified in subpart E of this part to demonstrate compliance with the applicable FEL (or standard where there is no FEL). If alternate or special test procedures pursuant to regulations at § 90.120 are used in certification, then those alternate procedures must be used in production line testing.

(h) *Retesting.* (1) If an engine manufacturer reasonably determines that an emission test of an engine is invalid because of a procedural error, test equipment problem, or engine performance problem that causes the engine to be unable to safely perform a valid test, the engine may be retested. A test is not invalid simply because the emission results are high relative to other engines of the family. Emission results from all tests must be reported to EPA. The engine manufacturer must also include a detailed explanation of the reasons for invalidating any test in the quarterly report required in § 90.709(e). If a test is invalidated because of an engine performance problem, the manufacturer must document in detail the nature of the problem and the repairs performed in order to use the after-repair test results for the original test results.

(2) Routine retests may be conducted if the manufacturer conducts the same number of tests on all engines in the family. The results of these tests must be averaged according to procedures of § 90.709.

§ 90.708 Cumulative Sum (CumSum) Procedure.

(a) (1) Manufacturers must construct separate CumSum Equations for each regulated pollutant ($HC+NO_X$ (NMHC+NO_X) and CO) for each engine family. Test results used to calculate the variables in the CumSum Equations must be final deteriorated test results as defined in § 90.709(c). The CumSum Equation follows:

C_i=max [0 or ($C_{i-1}+X_i-(FEL+F)$)]

Where:

C_i=The current CumSum statistic.

C_{i-1}=The previous CumSum statistic. Prior to any testing, the CumSum statistic=0 (i.e. C_0=0).

X_i=The current emission test result for an individual engine.

FEL=Family Emission Limit (the standard if no FEL).

F=0.25×σ.

(2) After each test pursuant to paragraph (a)(1) of this section, C_i is compared to the action limit, H, the quantity which the CumSum statistic must exceed, in two consecutive tests, before the engine family may be determined to be in noncompliance for a regulated pollutant for purposes of § 90.710.

Where:

H=The Action Limit. It is 5.0×σ, and is a function of the standard deviation, σ.

σ=is the sample standard deviation and is recalculated after each test.

(b) After each engine is tested, the CumSum statistic shall be promptly updated according to the CumSum Equation in paragraph (a) of this section.

(c)(1) If, at any time during the model year, a manufacturer amends the application for certification for an engine family as specified in § 90.122(a) by performing an engine family modification (i.e., a change such as a running change involving a physical modification to an engine, a change in specification or setting, the addition of a new configuration, or the use of a different deterioration factor) with no changes to the FEL (where applicable), all previous sample size and CumSum statistic calculations for the model year will remain unchanged.

(2) If, at any time during the model year, a manufacturer amends the application for certification for an engine family as specified in § 90.122(a) by modifying its FEL (where applicable) for future production, as a result of an engine family modification, the manufacturer must continue its calculations by inserting the new FEL into the sample size equation as specified in § 90.706(b)(1) and into the CumSum equation in paragraph (a) of this section. All previous calculations remain unchanged. If the sample size calculation indicates that additional tests are required, then those tests must be performed. CumSum statistic calculations must not indicate that the family has exceeded the action limit for two consecutive tests. Where applicable, the manufacturer's final credit report as required by § 90.210 must break out the

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credits that result from each FEL and corresponding CumSum analysis for the set of engines built to each FEL.

(3) If, at any time during the model year, a manufacturer amends the application for certification for an engine family as specified in § 90.122(a) (or for an affected part of the year's production in cases where there were one or more mid-year engine family modifications), by modifying its FEL (where applicable) for past and/or future production, without performing an engine modification, all previous sample size and CumSum statistic calculations for the model year must be recalculated using the new FEL. If the sample size calculation indicates that additional tests are required, then those tests must be performed. The CumSum statistic recalculation must not indicate that the family has exceeded the action limit for two consecutive tests. Where applicable, the manufacturer's final credit report as required by § 90.210 must break out the credits that result from each FEL and corresponding CumSum analysis for the set of engines built to each FEL.

§ 90.709 Calculation and reporting of test results.

(a) Initial test results are calculated following the applicable test procedure specified in § 90.707(a). The manufacturer rounds these results to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure.

(b) Final test results are calculated by summing the initial test results derived in paragraph (a) of this section for each test engine, dividing by the number of tests conducted on the engine, and rounding to the same number of decimal places contained in the applicable standard expressed to one additional significant figure.

(c) The final deteriorated test results for each test engine are calculated by applying the appropriate deterioration factors, derived in the certification process for the engine to the final test results, and rounding to the same number of decimal places contained in the applicable standard.

(d) If, at any time during the model year, the CumSum statistic exceeds the applicable action limit, H, in two consecutive tests for any regulated pollutant, ($HC+NO_X$ ($NMHC+NO_X$) or CO) the engine family may be determined to be in noncompliance and the manufacturer must notify EPA within two working days of such exceedance by the Cum Sum statistic.

(e) Within 30 calendar days of the end of each quarter, each engine manufacturer must submit to the Administrator a report which includes the following information:

(1) The location and description of the manufacturer's or other's exhaust emission test facilities which were utilized to conduct testing reported pursuant to this section;

(2) Total production and sample sizes, N and n, for each engine family;

(3) The FEL (standard, if no FEL) against which each engine family was tested;

(4) A description of the process to obtain engines on a random basis;

(5) A description of the test engines;

(6) For each test conducted:

(i) A description of the test engine, including:

(A) Configuration and engine family identification;

(B) Year, make, and build date;

(C) Engine identification number; and

(D) Number of hours of service accumulated on engine prior to testing;

(ii) Location where service accumulation was conducted and description of accumulation procedure and schedule;

(iii) Test number, date, test procedure used, initial test results before and after rounding, final test results before and after rounding and final deteriorated test results for all exhaust emission tests, whether valid or invalid, and the reason for invalidation, if applicable;

(iv) A complete description of any adjustment, modification, repair, preparation, maintenance, and/or testing which was performed on the test engine, was not reported pursuant to any other paragraph of this subpart, and will not be performed on all other production engines;

(v) A CumSum analysis, as required in § 90.708, of the production line test results for each engine family; and

(vi) Any other information the Administrator may request relevant to the determination whether the new engines being manufactured by the manufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued;

(7) For each failed engine as defined in § 90.710(a), a description of the remedy and test results for all retests as required by § 90.711(g);

(8) The date of the end of the engine manufacturer's model year production for each engine family; and

(9) The following signed statement and endorsement by an authorized representative of the manufacturer:

This report is submitted pursuant to Sections 213 and 208 of the Clean Air Act. This production line testing program was conducted in complete conformance with all applicable regulations under 40 CFR Part 90. No emission-related changes to production processes or quality control procedures for the engine family tested have been made during this production line testing program that affect engines from the production line. All data and information reported herein is, to the best of (Company Name) knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder. (Authorized Company Representative.)

§ 90.710 Compliance with criteria for production line testing.

(a) A failed engine is one whose final deteriorated test results pursuant to § 90.709(c), for $HC + NO_X$ ($NMHC+NO_X$) or CO exceeds the applicable Family Emission Limit (FEL)or standard if no FEL.

(b) An engine family shall be determined to be in noncompliance, if at any time throughout the model year, the CumSum statistic, C_i, for $HC + NO_X$ ($NMHC+NO_X$) or CO, is greater than the action limit, H, for that pollutant, for two consecutive tests.

§ 90.711 Suspension and revocation of certificates of conformity.

(a) The certificate of conformity is suspended with respect to any engine failing pursuant to § 90.710 (a) effective from the time that testing of that engine is completed.

(b) The Administrator may suspend the certificate of conformity for an engine family which is determined to be in noncompliance pursuant to § 90.710(b). This suspension will not occur before thirty days after the engine family is determined to be in noncompliance and the Administrator has notified the manufacturer of its intent to suspend. During this thirty day period the Administrator will work with the manufacturer to achieve appropriate production line changes to avoid the need to halt engine production, if possible. The Administrator will approve or disapprove any such production line changes proposed to address a family that has been determined to be in noncompliance under this subpart within 15 days of receipt. If the Administrator does not approve or disapprove such a proposed change within such time period, the proposed change shall be considered approved.

(c) If the results of testing pursuant to these regulations indicate that engines of a particular family produced at one plant of a manufacturer do not conform to the regulations with respect to which the certificate of conformity was issued, the Administrator may suspend the certificate of conformity with respect to that family for engines manufactured by the manufacturer at all other plants.

(d) Notwithstanding the fact that engines described in the application for certification may be covered by a certificate of conformity, the Administrator may suspend such certificate immediately in whole or in part if the Administrator finds any one of the following infractions to be substantial:

(1) The manufacturer refuses to comply with any of the requirements of this subpart.

(2) The manufacturer submits false or incomplete information in any report or information provided to the Administrator under this subpart.

(3) The manufacturer renders inaccurate any test data submitted under this subpart.

(4) An EPA enforcement officer is denied the opportunity to conduct activities authorized in this subpart and a warrant or court order is presented to the manufacturer or the party in charge of the facility in question.

(5) An EPA enforcement officer is unable to conduct activities authorized in § 90.705 because a manufacturer has located its facility in a foreign jurisdiction where local law prohibits those activities.

(e) The Administrator shall notify the manufacturer in writing of any suspension or revocation of a certificate of conformity in whole or in part, except that the certificate is immediately suspended with respect to any failed engines as provided for in paragraph (a) of this section.

(f) The Administrator may revoke a certificate of conformity for an engine family after the certificate has been suspended pursuant to paragraph (b) or (c) of this section if the proposed remedy for the nonconformity, as reported by the manufacturer to the Administrator, is one requiring a design change or changes to the engine and/or emission control system as described in the application for certification of the affected engine family.

(g) Once a certificate has been suspended for a failed engine, as provided for in paragraph (a) of this section, the manufacturer must take the following actions before the certificate is reinstated for that failed engine:

(1) Remedy the nonconformity;

(2) Demonstrate that the engine conforms to the applicable standards (FELs, where applicable) by retesting the engine in accordance with these regulations; and

(3) Submit a written report to the Administrator, after successful completion of testing on the failed engine, which contains a description of the remedy and test results for each engine in addition to other information that may be required by this part.

(h) Once a certificate for a failed engine family has been suspended pursuant to paragraph (b) or (c) of this section, the manufacturer must take the following actions before the Administrator will consider reinstating the certificate:

(1) Submit a written report to the Administrator which identifies the reason for the noncompliance of the engines, describes the proposed remedy, including a description of any proposed quality control and/or quality assurance measures to be taken by the manufacturer to prevent future occurrences of the problem, and states the date on which the remedies will be implemented; and

(2) Demonstrate that the engine family for which the certificate of conformity has been suspended does in fact comply with the regulations of this part by testing as many engines as needed so that the CumSum statistic, as calculated in § 90.708(a), falls below the action limit. Such testing must comply with the provisions of this part. If the manufacturer elects to continue testing individual engines after suspension of a certificate, the certificate is reinstated for any engine actually determined to be in conformance with the Family Emission Limits (or standards if no FEL) through testing in accordance with the applicable test procedures, provided that the Administrator has not revoked the certificate pursuant to paragraph (f) of this section.

(i) Once the certificate has been revoked for an engine family, if the manufacturer desires to continue introduction into commerce of a modified version of that family, the following actions must be taken before the Administrator may issue a certificate for that modified family:

(1) If the Administrator determines that the proposed change(s) in engine design may have an effect on emission performance deterioration, the Administrator shall notify the manufacturer within five working days after receipt of the report in paragraph (h)(1) of this section whether subsequent testing under this subpart will be sufficient to evaluate the proposed change or changes or whether additional testing will be required;

(2) After implementing the change or changes intended to remedy the nonconformity, the manufacturer must demonstrate that the modified engine family does in fact conform with the regulations of this part by testing as many engines as needed from the modified engine family so that the CumSum statistic, as calculated in § 90.708(a) using the newly assigned FEL if applicable, falls below the action limit; and

(3) When the requirements of paragraphs (i)(1) and (i)(2) of this section are met, the Administrator shall reissue the certificate or issue a new certificate, as the case may be, to include that family. As long as the CumSum statistic remains above the action limit, the revocation remains in effect.

(j) At any time subsequent to a suspension of a certificate of conformity for a test engine pursuant to paragraph (a) of this section, but not later than 15 days (or such other period as may be allowed by the Administrator) after notification of the Administrator's decision to suspend or revoke a certificate of conformity in whole or in part pursuant to paragraph (b), (c), or (f) of this section, a manufacturer may request a hearing as to whether the tests have been properly conducted or any sampling methods have been properly applied.

(k) Any suspension of a certificate of conformity under paragraph (d) of this section shall:

(1) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with §§ 90.712 and 90.713; and

(2) Not apply to engines no longer in the possession of the manufacturer.

(l) After the Administrator suspends or revokes a certificate of conformity pursuant to this section and prior to the commencement of a hearing under § 90.712, if the manufacturer demonstrates to the Administrator's satisfaction that the decision to suspend or revoke the certificate was based on erroneous information, the Administrator shall reinstate the certificate.

(m) To permit a manufacturer to avoid storing non-test engines while conducting subsequent testing of the noncomplying family, a manufacturer may request that the Administrator conditionally reinstate the certificate for that family. The Administrator may reinstate the certificate subject to the following condition: the manufacturer must commit to performing offsetting measures that remedy the nonconformity at no expense to the owners, and which are approved in advance by the Administrator for all engines of that family produced from the time the certificate is conditionally reinstated if the CumSum statistic does not fall below the action limit.

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§ 90.712 Request for public hearing.

(a) If the manufacturer disagrees with the Administrator's decision to suspend or revoke a certificate or disputes the basis for an automatic suspension pursuant to § 90.711(a), the manufacturer may request a public hearing.

(b) The manufacturer's request shall be filed with the Administrator not later than 15 days after the Administrator's notification of his or her decision to suspend or revoke, unless otherwise specified by the Administrator. The manufacturer shall simultaneously serve two copies of this request upon the Manager of the Engine Compliance Programs Group and file two copies with the Hearing Clerk for the Agency. Failure of the manufacturer to request a hearing within the time provided constitutes a waiver of the right to a hearing. Subsequent to the expiration of the period for requesting a hearing as of right, the Administrator may, in his or her discretion and for good cause shown, grant the manufacturer a hearing to contest the suspension or revocation.

(c) A manufacturer shall include in the request for a public hearing:

(1) A statement as to which engine configuration(s) within a family is to be the subject of the hearing; and

(2) A concise statement of the issues to be raised by the manufacturer at the hearing, except that in the case of the hearing requested under § 90.711(j), the hearing is restricted to the following issues:

(i) Whether tests have been properly conducted (specifically, whether the tests were conducted in accordance with applicable regulations under this part and whether test equipment was properly calibrated and functioning);

(ii) Whether sampling plans and statistical analyses have been properly applied (specifically, whether sampling procedures and statistical analyses specified in this subpart were followed and whether there exists a basis for distinguishing engines produced at plants other than the one from which engines were selected for testing which would invalidate the Administrator's decision under § 90.711(c));

(3) A statement specifying reasons why the manufacturer believes it will prevail on the merits of each of the issues raised; and

(4) A summary of the evidence which supports the manufacturer's position on each of the issues raised.

(d) A copy of all requests for public hearings will be kept on file in the Office of the Hearing Clerk and will be made available to the public during Agency business hours.

§ 90.713 Administrative procedures for public hearing.

The administrative procedures for a public hearing requested under this subpart shall be those procedures set forth in the regulations found at §§ 90.513 through 90.516. References in § 90.513 to § 90.511(j), § 90.512(c)(2), § 90.511(e), § 90.512, § 90.511(d), § 90.503, § 90.512(c) and § 90.512(b) shall be deemed to refer to § 90.711(j), § 90.712(c)(2), § 90.711(e), § 90.712, § 90.711(d), § 90.703, and § 90.712(c) and § 90.712(b), respectively. References to "test orders" in § 90.513 can be ignored.

31. Subpart I is amended by revising the subpart heading to read as follows:

Subpart I—Emission-related Defect Reporting Requirements, Voluntary Emission Recall Program, Ordered Recalls

32. Section 90.801 is amended by designating the existing text as paragraph (a) and adding paragraphs (b), (c), (d), (e), (f) and (g) to read as follows:

§ 90.801 Applicability.

* * * * *

(b) Phase 2 engines subject to provisions of subpart B of this part are subject to recall regulations specified in 40 CFR part 85, subpart S, except as otherwise provided in this section.

(c) Reference to section 214 of the Clean Air Act in 40 CFR 85.1801 (a) is deemed to be a reference to section 216 of the Clean Air Act.

(d) Reference to section 202 of the Act in 40 CFR 85.1802(a) is deemed to be a reference to section 213 of the Act.

(e) Reference to "family particulate emission limits as defined in part 86 promulgated under section 202 of the Act" in 40 CFR 85.1803(a) and 85.1805(a)(1) is deemed to be a reference to "family emission limits as defined in subpart C of this part 90 promulgated under section 213 of the Act".

(f) Reference to "vehicles or engines" throughout 40 CFR part 85, subpart S, is deemed to be a reference to "Phase 2 nonroad small SI engines at or below 19 kw."

(g) In addition to the requirements in 40 CFR 85.1805(a)(9) for Phase 2 engines include a telephone number which may be used to report difficulty in obtaining recall repairs.

33. Section 90.802 is amended by adding a sentence at the end of the introductory text to read as follows:

§ 90.802 Definitions.

* * * The definitions of 40 CFR 85.1801 also apply to this part.

* * * * *

34. Section 90.803 is amended by revising paragraph (c) to read as follows:

§ 90.803 Emission defect information report.

* * * * *

(c) The manufacturer must submit defect information reports to EPA's Engine Compliance Programs Group not more than 15 working days after an emission-related defect is found to affect 25 or more engines manufactured in the same certificate or model year. Information required by paragraph (d) of this section that is either not available within 15 working days or is significantly revised must be submitted to EPA's Engine Compliance Programs Group as it becomes available.

* * * * *

35. Section 90.805 is amended by revising paragraph (a) to read as follows:

§ 90.805 Reports, voluntary recall plan filing, record retention.

(a) Send the defect report, voluntary recall plan, and the voluntary recall progress report to: Group Manager, Engine Compliance Programs Group, (6403-J), Environmental Protection Agency, Washington, D.C. 20460.

* * * * *

36. A new § 90.808 is added to subpart I to read as follows

§ 90.808 Ordered recall provisions.

(a) Effective with respect to Phase 2 small SI engines:

(1) If the Administrator determines that a substantial number of any class or category of engines, although properly maintained and used, do not conform to the regulations prescribed under section 213 of the Act when in actual use throughout their useful life (as defined under § 90.105), the Administrator shall immediately notify the manufacturer of such nonconformity and require the manufacturer to submit a plan for remedying the nonconformity of the engines with respect to which such notification is given.

(i) The manufacturer's plan shall provide that the nonconformity of any such engines which are properly used and maintained will be remedied at the expense of the manufacturer.

(ii) If the manufacturer disagrees with such determination of nonconformity and so advises the Administrator, the Administrator shall afford the manufacturer and other interested persons an opportunity to present their views and evidence in support thereof at a public hearing. Unless, as a result of such hearing, the Administrator withdraws such determination of nonconformity, the Administrator shall, within 60 days after the completion of

such hearing, order the manufacturer to provide prompt notification of such nonconformity in accordance with paragraph (a)(2) of this section. The manufacturer shall comply in all respects with the requirements of this subpart.

(2) Any notification required to be given by the manufacturer under paragraph (a)(1) of this section with respect to any class or category of engines shall be given to dealers, ultimate purchasers, and subsequent purchasers (if known) in such manner and containing such information as required in subparts I and M of this part.

(3)(i) Prior to an EPA ordered recall, the manufacturer may perform a voluntary emissions recall pursuant to regulations at § 90.804. Such manufacturer is subject to the reporting and recordkeeping requirements of § 90.805.

(ii) Once EPA determines that a substantial number of engines fail to conform with the requirements of section 213 of the Act or this part, the manufacturer will not have the option of a voluntary recall.

(b) The manufacturer bears all cost obligation a dealer incurs as a result of a requirement imposed by paragraph (a) of this section. The transfer of any such cost obligation from a manufacturer to a dealer through franchise or other agreement is prohibited.

(c) Any inspection of an engine for purposes of paragraph (a)(1) of this section, after its sale to the ultimate purchaser, is to be made only if the owner of such vehicle or engine voluntarily permits such inspection to be made, except as may be provided by any state or local inspection program.

Subpart J—Exclusion and Exemption of Nonroad Engines From Regulations

37. Section 90.905 is amended by revising paragraph (f) to read as follows:

§ 90.905 Testing exemption.

* * * * *

(f) A manufacturer of new nonroad engines may request a testing exemption to cover nonroad engines intended for use in test programs planned or anticipated over the course of a subsequent one-year period. Unless otherwise required by the Director, Engine Programs and Compliance Division, a manufacturer requesting such an exemption need only furnish the information required by paragraphs (a)(1) and (d)(2) of this section along with a description of the recordkeeping and control procedures that will be employed to assure that the engines are used for purposes consistent with § 90.1004(b).

38. Section 90.906 is amended by revising paragraphs (a) introductory text and (a)(3) introductory text to read as follows:

§ 90.906 Manufacturer-owned exemption and precertification exemption.

(a) Any manufacturer owned nonroad engine, as defined by § 90.902, is exempt from § 90.1003, without application, if the manufacturer complies with the following terms and conditions:

* * * * *

(3) Unless the requirement is waived or an alternative procedure is approved by the Director, Engine Programs and Compliance Division, the manufacturer must permanently affix a label to each nonroad engine on exempt status. This label should:

* * * * *

39. Section 90.909 is amended by revising paragraph (c) to read as follows:

§ 90.909 Export exemptions.

* * * * *

(c) EPA will maintain a list of foreign countries that have in force nonroad emission standards identical to U.S. EPA standards and have so notified EPA. This list may be obtained by writing to the following address: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division (6403–J), Environmental Protection Agency, Washington, D.C. 20460. New nonroad engines exported to such countries must comply with U.S. EPA certification regulations.

* * * * *

40. Section 90.911 is revised to read as follows:

§ 90.911 Submission of exemption requests.

Requests for exemption or further information concerning exemptions and/or the exemption request review procedure should be addressed to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division (6403J), Environmental Protection Agency, Washington, D.C. 20460.

Subpart K—Prohibited Acts and General Enforcement Provisions

41. Section 90.1003 is amended by revising paragraphs (a)(2), (a)(4)(i), (b)(4), and (b)(5) and by redesignating paragraphs (a)(4)(iii) and (a)(4)(iv) as paragraphs (a)(4)(iv) and (a)(4)(v) respectively, and by adding new paragraphs (a)(4)(iii) and (b)(6) to read as follows:

§ 90.1003 Prohibited acts.

(a) * * *

(2) (i) For a person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under § 90.1004.

(ii) For a person to fail or refuse to permit entry, testing or inspection authorized under §§ 90.126, 90.506, 90.705, 90.1004, or 90.1209.

(iii) For a person to fail or refuse to perform tests or to have tests performed as required under §§ 90.119, 90.504, 90.703, 90.1004, 90.1203, or 90.1250.

(iv) For a person to fail to establish or maintain records as required under §§ 90.209, 90.704, 90.805, 90.1004, or 90.1308.

(v) For a person to fail to submit a remedial plan as required under § 90.808.

* * * * *

(4) * * *

(i) To sell, offer for sale, or introduce or deliver into commerce, a nonroad engine unless the manufacturer has complied with the requirements of § 90.1103.

* * * * *

(iii) To fail or refuse to comply with the requirements of § 90.808.

* * * * *

(b) * * *

(4) Certified nonroad engines shall be used in all equipment or vehicles that are self-propelled, portable, transportable, or are intended to be propelled while performing their function, unless the manufacturer of the equipment or vehicle can prove that the vehicle or equipment will be used in a manner consistent with paragraph (2) of the definition of nonroad engine in § 90.3. Nonroad vehicle and equipment manufacturers may continue to use noncertified nonroad engines built prior to the applicable implementation date of the Phase 1 regulations in this part until noncertified engine inventories are depleted; further after the applicable implementation date of the Phase 2 regulations in this part, nonroad vehicle and equipment manufacturers may continue to use Phase 1 engines until Phase 1 engine inventories are depleted. Stockpiling (i.e., build up of an inventory of uncertified engines or Phase 1 engines beyond normal business practices to avoid or delay compliance with the Phase 1 or Phase 2 regulations in this part, respectively) will be considered a violation of this section.

(5) A new nonroad engine, intended solely to replace an engine in a piece of nonroad equipment that was originally produced with an engine manufactured prior to the applicable implementation

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date as described in §§ 90.2, 90.103 and 90.106, or with an engine that was originally produced in a model year in which less stringent standards under this part were in effect, shall not be subject to the requirements of § 90.106 or prohibitions and provisions of paragraphs (a)(1) and (b)(4) of this section provided that:

(i) The engine manufacturer has ascertained that no engine produced by itself or the manufacturer of the engine that is being replaced, if different, and certified to the requirements of this subpart, is available with the appropriate physical or performance characteristics to repower the equipment. Certified engines may be ascertained to lack appropriate physical characteristics where the engine is too large for the engine compartment or can not be connected to existing manifolds, air supplies, water supplies, fuel supplies or controls without modifications that add substantial cost or result in reliability or safety concerns. Certified engines may be ascertained to lack appropriate performance characteristics if the horsepower or rated speed of the engine are significantly different from the original engine to reduce the ability of the equipment to perform its function safely and efficiently; and

(ii) The engine manufacturer or its agent:

(A) Accepts the old engine in exchange for the new engine and destroys the old engine; or

(B) Obtains documentation from the purchaser sufficient to identify the old engine and prove that the purchaser has had the old engine destroyed by a separate party; and

(iii) The engine manufacturer retains records of the engine purchasers and the makes and models of equipment for which the engines are sold. Such records shall be made available to the Administrator upon request and shall be sufficient to enable the Administrator to determine the quantities of engines being applied to different makes and models of equipment; and

(iv) The engine manufacturer submits a written report to EPA, within 90 days of the end of each model year in which any uncertified replacement engines, or engines certified to an earlier model year's standards, were sold describing the numbers of such engines sold during the model year; and

(v) The engine manufacturer has determined and documented that the engine being replaced was no older than ten (10) years old or ten (10) model years old; and

(vi) The replacement engine is clearly labeled with the following language, or similar alternate language approved in advance by the Administrator: "THIS engine does not comply with Federal nonroad or on-highway emission requirements. Sale or installation of this engine for any purpose other than as a replacement engine in a nonroad vehicle or piece of nonroad equipment whose original engine was not certified, or was certified to less stringent emission standards than those that apply to the year of manufacture of this engine, is a violation of Federal law subject to civil penalty"; and

(vii) Where the replacement engine is intended to replace an engine built after the applicable implementation date of regulations under this part, but built to less stringent emission standards than are currently applicable, the replacement engine shall be identical in all material respects to a certified configuration of the same or later model year as the engine being replaced.

(6)(i) Regulations elsewhere in this part notwithstanding, for three model years after the phase-in of each set of Phase 2 standards; i.e. through the 2004 model year for Class I nonhandheld engines and through model year 2008 for handheld engines and Class II nonhandheld engines, small volume equipment manufacturers as defined in this part may continue to use, and engine manufacturers may continue to supply, engines certified to Phase 1 standards (or identified and labeled by their manufacturer to be identical to engines previously certified under Phase 1 standards), provided the equipment manufacturer has demonstrated to the satisfaction of the Administrator that no certified Phase 2 engine is available with suitable physical or performance characteristics to power a piece of nonhandheld equipment in production prior to the 2001 model year, or handheld equipment in production prior to the 2002 model year. The equipment manufacturer must also certify to the Administrator that the equipment model has not undergone any redesign which could have facilitated conversion of the equipment to accommodate a Phase 2 engine.

(ii) Regulations elsewhere in this part notwithstanding, for the duration of the Phase 2 regulations in this part, equipment manufacturers who certify to the Administrator that annual eligible sales of a particular model of equipment will not exceed 500 for a nonhandheld model in production prior to the 2001 model year, or 2500 for a handheld model in production prior to the 2002 model year, may continue to use in that model, and engine manufacturers may continue to supply, engines certified to Phase 1 requirements, (or identified and labeled by their manufacturer to be identical to engines previously certified under Phase 1 standards). To be eligible for this provision, the equipment manufacturer must have demonstrated to the satisfaction of the Administrator that no certified Phase 2 engine is available with suitable physical or performance characteristics to power the equipment. The equipment manufacturer must also certify to the Administrator that the equipment model has not undergone any redesign which could have facilitated conversion of the equipment to accommodate a Phase 2 engine.

(iii) An equipment manufacturer which is unable to obtain suitable Phase 2 engines and which can not obtain relief under any other provision of this part, may, prior to the date on which the manufacturer would become in noncompliance with the requirement to use Phase 2 engines, apply to the Administrator to be allowed to continue using Phase 1 engines, through the 2002 model year for Class I engines and through the 2006 model year for Class II, III, IV and V engines, subject to the following criteria:

(A) The inability to obtain Phase 2 engines is despite the manufacturer's best efforts and is the result of an extraordinary action on the part of the engine manufacturer that was outside the control of and could not be reasonably foreseen by the equipment manufacturer; such as canceled production or shipment, last minute certification failure, unforeseen engine cancellation, plant closing, work stoppage or other such circumstance; and

(B) The inability to market the particular equipment will bring substantial economic hardship to the equipment manufacturer resulting in a major impact on the equipment manufacturer's solvency.

(iv) The written permission from the Administrator to the equipment manufacturer shall serve as permission for the engine manufacturer to provide such Phase 1 engines required by the equipment manufacturers under this paragraph (b)(6). Such engines will not count against an engine manufacturer's final (100%) handheld phase-in percentage requirements, and are excluded from the nonhandheld certification, averaging, banking and trading program. As Phase 1 engines, these engines are exempt from Production Line Testing requirements under subpart H of this part and in-use testing requirements under subpart M of this part.

Subpart L—Emission Warranty and Maintenance Instructions

42. Section 90.1103 is amended by the revising paragraph (b) to read as follows:

§ 90.1103 Emission warranty, warranty period.

* * * * *

(b)(1) The manufacturer of each new Phase 1 small SI engine must warrant to the ultimate purchaser and each subsequent purchaser that the engine is designed, built and equipped so as to conform at the time of sale with applicable regulations under section 213 of the Act, and the engine is free from defects in materials and workmanship which cause such engine to fail to conform with applicable regulations for its warranty period.

(2) The manufacturer of each new Phase 2 small SI engine must warrant to the ultimate purchaser and each subsequent purchaser that the engine is designed, built, and equipped so as to conform for its designated useful life with applicable regulations under section 213 of the Act, and is free from defects in materials and workmanship which cause such engine to fail to conform with applicable regulations for its warranty period.

* * * * *

43. Section 90.1104 is amended by adding paragraph (e) to read as follows:

§ 90.1104 Furnishing of maintenance instructions to ultimate purchaser.

* * * * *

(e) If a manufacturer includes in an advertisement a statement respecting the cost or value of emission control devices or systems, the manufacturer shall set forth in the statement the cost or value attributed to these devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The Secretary of Labor, and his or her representatives, has the same access for this purpose to the books, documents, papers, and records of a manufacturer as the Comptroller General has to those of a recipient of assistance for purposes of section 311 of the Act.

44. A new subpart, Subpart M is added to part 90 to read:

Subpart M—In-Use Compliance Testing for Handheld Engines; Bench Aging Adjustment; In-Use Durability Demonstration Testing for Nonhandheld Engines

Sec.

90.1201 Applicability.
90.1202 Definitions.
90.1203 Manufacturer in-use testing program.
90.1204 Maintenance, procurement, aging and testing of engines.
90.1205 In-use test program reporting requirements.
90.1206 [Reserved]
90.1207 Bench aging adjustment factor testing.
90.1208 Bench aging adjustment; criterion for usage, calculation of adjustment factor, reporting requirements.
90.1209 Entry and access.
90.1210—90.1249 [Reserved]
90.1250 Field durability and in-use emission performance demonstration program for nonhandheld engines using overhead valve technology.

Subpart M—In-Use Compliance Testing for Handheld Engines; Bench Aging Adjustment; In-Use Durability Demonstration Testing for Nonhandheld Engines

§ 90.1201 Applicability.

The requirements of this subpart from § 90.1201 through § 90.1249 are applicable to all handheld Phase 2 engines subject to the provisions of subpart A of this part. The requirements of this subpart, except for those involving in-use credits, in §§ 90.1201, 90.1202, 90.1207, 90.1208, 90.1209 and those from § 90.1250 through § 90.1299 are applicable to nonhandheld Phase 2 engines subject to the provisions of subpart A of this part.

§ 90.1202 Definitions.

For the purposes of this subpart, except as otherwise provided, the definitions in subparts A and C of this part apply to this subpart.

§ 90.1203 Manufacturer in-use testing program.

(a) Unless otherwise approved by the Administrator, at the time of the first certification for each model year beginning with the 2002 model year, each manufacturer shall submit a schedule to the Administrator of the Phase 2 engine families, their useful lives, their design characteristics (two or four stroke; catalyst or noncatalyst, etc.), and their anticipated eligible sales, it intends to produce, by model year, over the subsequent four year period (the model year now being certified plus the next three model years).

(b) At the time the manufacturer submits the schedule required under paragraph (a) of this section, the manufacturer may include a proposed plan for the Administrator's review and approval for the in-use testing of the current model year and such future model years as it chooses to include. In such plans, the manufacturer shall propose the in-use testing of individual engine families and engine configurations subject to the requirements of this subpart. Such plans shall include a discussion of the rationale behind the choice of each family and configuration that the Administrator shall use to determine whether the manufacturer's plan meets the objective of generating in-use data on substantially all of a manufacturer's engines within a reasonable time period, and periodically updating that data.

(c) Based upon the schedule required in paragraph (a) of this section, any plan submitted under paragraph (b) of this section, and/or such other information as it has available, the Administrator may annually identify handheld engine families and at the Administrator's option, configurations within families which the manufacturer must then subject to in-use testing as described in this section and in § 90.1204. For each model year, the Administrator may identify a number of engine families that is no greater than the number of handheld engine families produced in that model year divided by four and rounded to the nearest whole number. If this calculation produces a value of zero, then the Administrator may identify no more than one engine family for in-use testing for that manufacturer. The Administrator may identify families and configurations under this paragraph by approving the manufacturer's plan described in paragraph (b) of this section, or by providing a written directive to the manufacturer.

(d) For each engine family identified by the Administrator under paragraph (c) of this section, engine manufacturers shall perform emission testing of an appropriate sample of in-use engines from each engine family. Manufacturers shall submit data from this in-use testing to the Administrator.

(e) *Number of engines to be tested.* An engine manufacturer shall test bench aged or field aged in-use engines from each engine family or family and configuration identified by the Administrator. Engines to be tested shall have accumulated a number of hours pursuant to paragraph (g) of this section. The number of engines to be tested by a manufacturer shall be determined by the following method:

(1) A minimum of four (4) engines per family provided that no engine fails any standard. For each failing engine, two more engines shall be tested until the total number of engines equals ten (10).

(2) For small volume engine families for the identified model year or for small volume engine manufacturers, a minimum of two (2) engines per family provided that no engine fails any standard. For each failing engine, two more engines shall be tested until the total number of engines equals ten (10).

(3) If an engine family was certified using carry over emission data and has

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been previously tested under paragraphs (e)(1) or (e)(2) of this section (and mean results did not exceed any applicable emission standard), then only one engine for that family must be tested. If that one engine fails any pollutant, testing must be conducted as outlined at paragraph (e)(1) or (e)(2) of this section, whichever is appropriate.

(f) At the discretion of the Administrator, an engine manufacturer may test more engines than the minima described in paragraph (e) of this section or may concede failure before testing a total of ten (10) engines.

(g) The Administrator may approve alternatives to manufacturer in-use testing as described in this subpart, that are designed to determine whether an engine family is in compliance with applicable standards in use, where:

(1) Engines, in their production form, or when removed from the piece of equipment in which they were installed, cannot safely or practically be operated and tested pursuant to subparts D and E of this part; or

(2) The Administrator finds that unique or extraordinary circumstances exist that support the need for alternative methods.

(h) *Collection of in-use engines.* The engine manufacturer shall bench age engines to their full certified useful life as described in subpart B of this part using a bench aging procedure approved by the Administrator under this subpart, or the engine manufacturer shall procure field aged engines which have been operated for at least the engine's useful life. Unless otherwise approved by the Administrator, the manufacturer shall complete emission testing of bench aged engines within 12 calendar months and complete emission testing of field aged engines within 24 calendar months after receiving notice that the Administrator has identified a particular engine family for testing. Field aged engines may be procured from sources associated with the engine manufacturer (i.e., manufacturer established fleet engines, etc.) or from sources not associated with the manufacturer (i.e., consumer-owned engines, independently-owned fleet engines, etc.).

§ 90.1204 Maintenance, procurement, aging and testing of engines.

This section is applicable to handheld engines used for in-use testing pursuant to § 90.1203.

(a) An in-use field aged engine must have a maintenance and use history representative of actual in-use conditions.

(1) To comply with this requirement, a manufacturer must obtain information from the end users regarding the accumulated usage, maintenance, operating conditions, and storage of the test engines.

(2) Documents used in the procurement process must be maintained as required in § 90.121.

(3) Each engine of a sample to be field aged shall be assigned a random number. Unless otherwise approved by the Administrator, the engine with the lowest number shall be tested first, followed by the next higher number until testing is completed.

(b)(1) For an engine family which is to be emission tested following bench aging, test engines shall be randomly chosen from normal engine production or storage; or randomly chosen from normal handheld equipment production or storage.

(2) Each engine of a sample to be bench aged shall be assigned a random number. In emission testing of the bench aged engines, the engine with the lowest number shall be tested first, followed by the next higher number until testing is completed.

(c)(1) Bench aged engines must be aged on a dynamometer using a bench aging cycle that has been shown to be capable of representing field aging for the appropriate technology subgroup pursuant to the regulations at §§ 90.1207 and 90.1208.

(2) Unless otherwise approved by the Administrator, once an engine has begun the bench aging process, it can be terminated and deleted only for catastrophic failure or safety concerns requiring major engine repair, or because testing of the engine family has been completed based upon lower numbered engines.

(d) The manufacturer may perform minimal set-to-spec maintenance on components of a test engine that are not subject to parameter adjustment. Unless otherwise approved by the Administrator, maintenance to any test engine may include only that which is listed in the owner's instructions for engines with the amount of service and age of the test engine. Documentation of all maintenance and adjustments shall be maintained and retained as required by § 90.121.

(e) At least one valid emission test, according to the test procedure outlined in subpart E of this part, is required for each test engine. Unless otherwise approved by the Administrator, no other emission testing or performance testing may be performed on a test engine prior to the testing at the end of hour accumulation using the test procedure outlined in subpart E of this part.

(f) The Administrator may waive portions or requirements of the test procedure, if any, that are not necessary to determine in-use compliance with applicable emission standards.

(g) If a selected test engine fails to comply with any applicable emission standard, the manufacturer shall make a reasonable effort, including troubleshooting, repairing and retesting, to determine the cause of noncompliance. The manufacturer must report all such reasons of noncompliance with the in-use test report required pursuant to § 90.1205.

§ 90.1205 In-use test program reporting requirements.

(a) The manufacturer shall submit to the Administrator within ninety (90) days of completion of testing for a given model year's engines, all emission testing results generated from the in-use testing program. The following information must be reported for each test engine:

(1) Engine family;

(2) Model;

(3) Engine serial number;

(4) Date of manufacture;

(5) Hours of use;

(6) Date and time of each test attempt;

(7) Results (if any) of each test attempt;

(8) Schedules, descriptions and justifications of all maintenance and/or adjustments performed;

(9) Schedules, descriptions and justifications of all modifications and/or repairs; and

(10) Determinations of noncompliance.

(b) The manufacturer must electronically submit the information required in this section using EPA's electronic information format. The Administrator may exempt manufacturers from this requirement upon written request with supporting justification as to the manufacturer's lack of adequate information processing technology.

(c) The report required in paragraph (a) of this section must include a listing of any test engines that were deleted from the aging process or testing process and provide a technical justification to support the deletion.

(d) All testing reports and requests for approvals made under this subpart shall be addressed to: Manager, Engine Compliance Programs Group (6403–J), U.S. Environmental Protection Agency, Washington, D.C. 20460.

(e) The Administrator may approve and/or require modifications to a manufacturer's in-use testing programs.

§ 90.1206 [Reserved]

§ 90.1207 Bench aging adjustment factor testing.

(a) This section is applicable to the bench aging procedures for handheld engines for in-use emission testing and to the bench aging procedures for the full useful life certification testing of nonhandheld sidevalve engines and nonhandheld engines with aftertreatment.

(b) The bench aging adjustment procedure described in § 90.1208 shall be used to determine whether a given bench aging cycle, approved for adjustment factor testing by the Administrator, can be used to represent field aged engines for handheld in-use testing under this subpart or for certification of nonhandheld sidevalve engines or nonhandheld engines with aftertreatment; and, if so, what the appropriate adjustment factor should be. If both the IW_B and IW_F as defined in § 90.1208 are less than or equal to 20% of the appropriate $HC+NO_X$ ($NMHC+NO_X$) standard, then the subject bench aging cycle can be used to generate emissions data for adjustment to represent field aged emissions.

(c) (1) Nothing in this section shall be construed to prohibit different manufacturers from jointly demonstrating that a particular bench aging cycle, approved by the Administrator for adjustment factor testing, may be used to represent the field aged emissions of engines of a particular technology subgroup when they each agree to use the same bench aging cycle, when they each contribute field and bench aged test engines for testing of that technology subgroup under § 90.1208, and when they each provide justification satisfactory to the Administrator that the engines can be expected to have similar emission deterioration characteristics and that a reasonable basis exists for such joint testing.

(2) Unless otherwise approved by the Administrator, a manufacturer participating or desiring to participate in a joint adjustment factor testing program may not enter or drop out of the joint program for that technology subgroup after the adjustment factor derived from the program has been used one or more times for certification of nonhandheld engines or in-use testing of handheld engines. When a manufacturer does drop out, the adjustment factor must be recalculated without that manufacturer's data. When an additional manufacturer is allowed to join, the adjustment factor must be recalculated to reflect the data generated by the new manufacturer's engines.

(d) Field aging of engines shall be performed in representative equipment in the hands of residential customers, or professional users or in manufacturers' fleets, except that a minimum of one third of the field aged engines but not less than one engine for a given engine family or technology subgroup, shall be aged in individual customer usage or in fleets where the engine manufacturer does not carry out or exercise control over the engines' maintenance or limit their usage such that the engines are not used in a way that is representative of typical in-use engines.

(e) For each engine family or technology subgroup for which a manufacturer desires to use bench aging, the manufacturer or group of manufacturers, as applicable, shall propose to the Administrator the bench aging cycle and an engine aging plan it intends or they intend to use to demonstrate the appropriateness of such cycle to represent field aged engines. Such proposals may be made up to 48 months prior to the start of a given model year. EPA shall reject such proposed aging cycles and/or engine aging plans in writing, within 90 days of receipt, or they shall be considered approved for adjustment factor testing pursuant to this section and § 90.1208. Such proposals shall include:

(1) A detailed description of the engine families a cycle is intended to cover, a justification satisfactory to the Administrator that the engines can be expected to have similar emission deterioration characteristics, a justification of the appropriateness of the subject cycle to represent field aging of the engines the cycle is intended to cover and data sufficient for the Administrator to ascertain whether the bench aging cycle has been previously determined to represent field aging for any other engine family under the provisions of this section and § 90.1208;

(2) A detailed description of the proposed bench aging cycle including, but not limited to, such parameters as duration at each throttle setting, sequencing of throttle changes, loading and load changes, hot starts and cold starts, idles, acceleration times, presence of accessory loads, periods of shutdown and other factors as the Administrator may require;

(3) A description of each engine to be aged in the field and on the bench, including make, model, engine family, displacement, power rating, rated speed and other such information as the Administrator may require to enable the Administrator to determine whether such engines are appropriate for evaluating the bench aging cycle for the engine families or technology subgroup described in paragraph (e)(1) of this section;

(4) A description of the way in which individual engines will be selected, uniquely identified and tracked for both bench and field aging and for subsequent emission testing;

(5) A description of the method by which each engine selected for field aging will be aged, the procedures for determining and carrying out appropriate engine maintenance during field aging and bench aging, a description and rationale for any maintenance the manufacturer proposes to perform additional to routine maintenance described in the maintenance schedule provided to the purchaser, and a description of records that will be kept of both bench and field engine operation and maintenance; and

(6) The location(s) of the facilities or sites at which each bench and field aged engine will be aged and tested.

(f) Upon approval by the Administrator of the bench aging cycle for evaluation testing and the engine aging plan, the manufacturer shall conduct hour accumulation to the full regulatory useful life of the engines according to the approved engine aging plan using the approved bench aging cycle. Such aging shall be followed by emission testing pursuant to the requirements of subpart E of this part. At its option, the manufacturer may age handheld commercial engines to 75% of their regulatory useful life for bench aging adjustment testing.

(g) Handheld engines aged for adjustment factor testing pursuant to the requirements of this section may not be used in the Manufacturer In-use Test Program required under § 90.1203.

(h) The Administrator may require that testing under this section and the evaluation of the appropriateness of a bench aging cycle to represent field aging under § 90.1208, be repeated for a particular engine family or technology subgroup as often as every five years; except that the Administrator may require that such testing be repeated more frequently in model years prior to the 2006 model year.

(1) The Administrator shall notify a manufacturer or group of manufacturers of the requirement to conduct a bench aging adjustment factor program for a particular engine family or technology subgroup and the period for completion of the program. The time period for completion shall be no less than one year for engines having 500 or 1000 hour useful lives.

(2) Within sixty days of the date of the Administrator's notice, the manufacturer or group of manufacturers shall provide a plan for the

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Administrator's review and approval meeting the requirements of paragraph (e) of this section including a proposed bench aging cycle and an engine aging plan.

(i) Upon completion of engine aging and testing pursuant to the requirements of this section, engine manufacturers wishing to use bench aging and the adjustment factors calculated pursuant to § 90.1208 for in-use emission testing of handheld engines or for certification of nonhandheld sidevalve engines or nonhandheld engines with aftertreatment, as applicable, shall provide a report to the Administrator describing the aging and testing conducted under this section and § 90.1208. Such report shall be submitted no less than 90 days before the initiation of any such bench aging for in-use or certification testing on the engines and engine families covered by the plan approved under this section. The Administrator shall disapprove the report within 30 days of the date of receipt, or the report shall be automatically approved and the manufacturer may use the bench aging cycle and adjustment factors described in the report for its bench aging activities of the subject families. Such report shall contain the following information about the field/bench adjustment program conducted under this section and § 90.1208:

(1) An identifying description of the bench aging cycle sufficient for the Administrator to ascertain which cycle proposed pursuant to this section has been evaluated;

(2) A description of all engines selected for bench aging and field aging for this engine family or technology subgroup, as applicable. Such description shall include the make, model, engine family, displacement, power rating, rated speed, unique identifying description, and other such information as the Administrator may require;

(3) A description of all maintenance performed on each engine during hour accumulation, including a detailed explanation of the need for any maintenance not contained in the maintenance schedule for that model engine provided to engine owners;

(4) A description of how each engine was aged (e.g., bench cycle, field aged-manufacturer fleet, or field aged-individual customer);

(5) A description of any engine selected for aging pursuant to paragraph (i)(2) of this section that was deleted from aging or testing. Include a full explanation of the rationale for deletion;

(6) Tabulations of all emission test results and all inputs and outcomes of the equations found in § 90.1208; and

(7) A statement signed by an appropriate official of the manufacturer responsible for compliance of engines with Federal emission requirements that clearly states that all engine selection, aging, maintenance, testing, results calculation, and data evaluation was performed in full accordance with the requirements under this part.

§ 90.1208 Bench aging adjustment; criterion for usage, calculation of adjustment factor, reporting requirements.

(a) Manufacturers desiring to use bench aging prior to performing in-use emission tests on handheld engines or prior to performing certification testing on nonhandheld sidevalve engines or nonhandheld engines with aftertreatment, must first demonstrate that the chosen bench aging cycle appropriately represents field aging as determined under this section and § 90.1207. Where a bench aging cycle is shown to appropriately represent field aging under this section and § 90.1207, manufacturers shall calculate separate multiplicative bench aging adjustment factors as described in this section to adjust the HC+NO_X (NMHC+NO_X) and CO emissions of bench aged engines.

(b) A minimum of six engines from each technology subgroup shall be aged and tested. Three of these engines must be aged on the bench and three must be aged in the field.

(c) Separate 90% confidence intervals shall be calculated around the HC+NO_X (NMHC+NO_X) mean of the bench aged engines and the HC+NO_X (NMHC+NO_X) mean of the field aged engines. The confidence intervals are independent of each other and are calculated according to the following equations:

(1)(i) For the 90% confidence interval about the mean of the group of bench aged engines, B_{90}:

$B_{90=\bar{x}_b} \pm IW_b$

Where:

B_{90}=The 90% confidence interval about the mean of the group of bench aged engines.

$\bar{x}_b$=The HC+NO_X (NMHC+NO_X) sample mean of the group of bench aged engines.

IW_b=The confidence interval width for the group of bench aged engines as defined by the equation in paragraph (c)(1)(ii) of this section.

(ii) IW_b is defined by the following equation:

$$IW_b = t_{90} * \left(s_b / \sqrt{n_b}\right)$$

Where:

t_{90}=The appropriate 90% critical point from Student's t table for 90% confidence and $n_b - 1$ observations; this value will decrease as n_b increases.

S_b=The HC+NO_X (NMHC+NO_X) sample standard deviation of the group of bench aged engines, where:

$$s_b^2 = 1/(n-1)\sum\left(X - \bar{x}_b\right)^2$$

n_b=The number of bench aged engines tested.

(2)(i) For the 90% confidence interval about the mean of the group of field aged engines, F_{90}:

$F_{90}=\bar{x}_f \pm IW_f$

Where:

F_{90}=The 90% confidence interval about the mean of the group of field aged engines.

$\bar{x}_f$=The HC+NO_X (NMHC+NO_X) sample mean of the group of field aged engines.

IW_f=The confidence interval width for the group of field aged engines as defined by the equation in paragraph (c)(2)(ii) of this section.

(ii) IW_f is defined by the following equation:

$$IW_f = t_{90} * \left(s_f / \sqrt{n_f}\right)$$

Where:

t_{90}=The appropriate 90% critical point from Student's t table for 90% confidence and $n_b - 1$ observations; this value will decrease as n_b increases.

S_f=The HC+NO_X (NMHC+NO_X) sample standard deviation of the group of field aged engines, where:

$$s_f^2 = 1/(n-1)\sum\left(X - \bar{x}_f\right)^2$$

n_f=The number of field aged engines tested.

(d) Both IW_b and IW_f must be rounded to the same number of significant digits as contained in the appropriate standard.

(e) If *both* IW_b and IW_f are less than or equal to 20% of the appropriate HC +NO_X (NMHC+NOX) standard as defined by § 90.103, then separate Bench Aging Adjustment factors, AFs, can be calculated for HC+NOX (NMHC+NO_X) and CO as follows:

AF=the maximum of [($\bar{x}_f$ / $\bar{x}_b$) or 1.0]

(f) If either or both confidence interval widths IW_b or IW_f is/are greater than 20% of the appropriate standard as defined by § 90.103, then the manufacturer may elect to test additional engines included and described in the plan approved under § 90.1207 and recalculate the relevant statistics. Additional testing need only be done for the group that exceeds 20% of the appropriate standard. After each additional test, B_{90}, F_{90}, IW_b and IW_f shall be recalculated according to paragraph (c) of this section. Additional engines may be added until such time as the newly calculated confidence interval width (IW_b or IW_f, or both) are less than or equal to 20% of the appropriate HC+NO_X (NMHC+NO_X) standard as defined by § 90.103. When both IW_b or IW_f are less than or equal to 20% of the appropriate standard as defined by § 90.103, then separate Bench Aging Adjustment Factors, AFs, may be calculated for each regulated pollutant according to paragraph (e) of this section.

(g) The adjustment factors calculated under paragraph (e) of this section shall be multiplicatively applied to the appropriate full useful life bench-aged handheld in-use test results or to the appropriate full useful life certification test results of nonhandheld sidevalve engines or nonhandheld engines with aftertreatment for that engine family or technology subgroup for all manufacturers whose engines were tested in the test program for that technology subgroup, until another bench aging adjustment program is conducted for that family or technology subgroup.

§ 90.1209 Entry and access.

(a) To allow the Administrator to determine whether a manufacturer is complying with the provisions under this subpart, EPA enforcement officers or their authorized representatives, upon presentation of credentials, shall be permitted entry, during operating hours, into any of the following places:

(1) Any facility where engines undergo or are undergoing bench aging, field aging, maintenance, repair, preparation for aging, selection for aging or emission testing.

(2) Any facility where records or documents related to any of activities described in paragraph (a)(1) of this section are kept.

(3) Any facility where any engine that is being tested or aged, was tested or aged or will be tested or aged is present.

(b) Upon admission to any facility referred to in paragraph (a) of this section, EPA enforcement officers or EPA authorized representatives are authorized to perform those activities set forth in § 90.705 (b) and also to inspect and make copies of records related to engine aging (service accumulation) and maintenance.

(c) The provisions of § 90.705(c), (d), (e), (f) and (g) also apply to entry and access under this subpart.

§§ 90.1210—90.1249 [Reserved.]

§ 90.1250 Field durability and in-use emission performance demonstration program for nonhandheld engines using overhead valve technology.

The testing required pursuant to this section shall be for the purpose of validating the appropriateness of assigned deterioration factors (dfs) or manufacturer determined dfs used pursuant to § 90.104 to represent the field aged deterioration of overhead valve technology engine families. For brevity, such testing is referred to as df validation testing.

(a) Unless otherwise approved by the Administrator, at the time of the first certification for each model year of Phase 2 engines, each manufacturer shall submit a schedule to the Administrator of the overhead valve technology engine families it intends to produce over the subsequent four year period (the model year now being certified plus the next three model years) including their useful lives, their design characteristics (i.e.; catalyst or noncatalyst, carbureted or fuel injected, etc.), and their anticipated eligible sales.

(b) In the schedule submitted under paragraph (a) of this section, and for the same time period, the manufacturer shall specify the engine families for which it intends to conduct field/bench adjustment testing under §§ 90.1207 and 90.1208 and shall also specify the engine families for which it intends to compute its own dfs pursuant to § 90.104(h)(2). Such schedule shall include an estimate of the number of field aged engines that will be emission tested each calendar year for the programs referenced in this paragraph.

(c) At the time the manufacturer submits the schedule required under paragraph (a) of this section, the manufacturer may include a proposed plan for the Administrator's review and approval of the overhead valve engine families, configurations and associated quantities of engines it plans to field age to full useful life and in-use test during those four years to determine the field aged dfs for engine families for which assigned dfs were used in certification. In such plans, the manufacturer:

(1) May consider the number of field aged engines it plans to test in each calendar year from paragraph (b) of this section and the limit on additional testing of field aged engines that can be assigned by EPA pursuant to paragraph (c) of this section.

(2) Shall include a discussion of the rationale for the choice of each family and configuration sufficient to enable the Administrator to determine whether the manufacturer's plan meets the objective of generating in-use data sufficient to validate the appropriateness of the assigned dfs on a substantial portion of a manufacturer's engines within a reasonable time period, and providing for periodic revalidation of the assigned dfs.

(d) If no plan submitted pursuant to paragraph (c) of this section is approved by the Administrator, then, based upon the schedule submitted pursuant to paragraph (a) of this section and other available information, and considering the field aging requirements of §§ 90.1207, 90.1208 and 90.104(h)(2), and any requests from manufacturers to work jointly, the Administrator may provide a schedule of the overhead valve engine families and associated quantities of engines that must be field aged to full useful life and in-use tested during those four years to validate dfs.

(e) EPA shall not require any nonhandheld engine manufacturer to conduct df validation emission testing such that df validation emission testing when added to that testing of field aged engines proposed by the manufacturer under paragraph (b) of this section would require the manufacturer to emission test more than 24 total field aged engines in one calendar year for bench aged field adjustment testing pursuant to §§ 90.1207 and 90.1208, df generation testing pursuant to § 90.104(h)(2), and df validation testing pursuant to this section.

(f) The Administrator may provide a schedule for engine testing to validate dfs pursuant to this section by approving the plan submitted by the manufacturer under paragraph (c) of this section, or by a written directive to the manufacturer under paragraph (d) of this section. Unless otherwise approved by the Administrator, for each test engine tested to fulfill the testing schedule provided by the Administrator under paragraph (c) or (d) of this section, the manufacturer shall conduct a baseline emission test at a number of hours equal to that on the corresponding certification engine followed by field aging to the certified useful life. Each engine shall then be emission tested using the applicable test procedures described in this part measuring all regulated pollutants. Field aging shall be performed in representative equipment in the hands of residential customers, or professional users or in manufacturers' fleets, under usage and conditions representative of typical use.

(1) Unless otherwise approved by the Administrator, equipment shall be considered to be representative if it is of the type (e.g., walk behind lawnmowers or concrete saws) of equipment into which at least one third of the engines

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are installed. If no one application of the engine constitutes one third of sales, then equipment shall be representative if it is taken from either or both of the two types of applications having the largest U.S. sales volumes.

(2) Unless otherwise approved by the Administrator, test engines that receive maintenance additional to that recommended to the purchaser in the owner's manual shall not be considered representative of typical use.

(g) No later than 90 days following the end of each model year, each manufacturer subject to this section shall provide a tabulation, by engine family, of all engines undergoing hour accumulation under this regulation, the number of hours accumulated on each engine, the equipment application for each engine and the basis for that choice of equipment. Such tabulation shall include the engine family, the engine identification number assigned for tracking purposes, the type of application, the projected test date and the geographic location (city and state) where hour accumulation is occurring. Such tabulation, or a separate tabulation submitted at the same time, shall contain all in-use test results that have been generated during the preceding model year. Such tabulation shall include the engine family, the engine identification number assigned for tracking purposes, the type of application, the applicable certification deterioration factor and the calculated $HC+NO_X$ deterioration factor determined from the testing required in this subpart.

45. Subpart N is added to part 90 to read as follows:

Subpart N—In-Use Credit Program for New Handheld Engines

Sec.

90.1301 Applicability.
90.1302 Definitions.
90.1303 General provisions.
90.1304 Averaging.
90.1305 Banking.
90.1306 Trading.
90.1307 Credit calculation.
90.1308 Maintenance of records.
90.1309 Reporting requirements.
90.1310 Request for hearing.

Subpart N—In-Use Credit Program for New Handheld Engines

§ 90.1301 Applicability.

Phase 2 handheld engines subject to the provisions of subpart A of this part are eligible to participate in the in-use credit program described in this subpart for HC +NO_X (NMHC+NO_X) and CO emissions.

§ 90.1302 Definitions.

The definitions in subpart A of this part and the definition of "point of first retail sale" from subpart C of this part apply to this subpart. The following definitions shall also apply to this subpart:

Averaging means the exchange of handheld engine in-use emission credits between engine families within a given manufacturer's product line.

Banked credits refer to positive emission credits based on actual applicable production/sales volume as contained in the end of model year in-use testing reports submitted to EPA. Some or all of these banked credits may be revoked if EPA review of the end of model year in-use testing reports or any subsequent audit action(s) uncovers problems or errors.

Banking means the retention of handheld engine in-use emission credits by the manufacturer generating the emission credits or obtaining such credits through trading, for use in future model year averaging or trading as permitted by these regulations.

Carry-over engine family means an engine family which undergoes certification using carryover test data from previous model years.

Compliance level for an engine family is determined by averaging the in-use test results from each test engine of the family. The compliance level for an individual configuration may be determined in cases where the Administrator directs the testing of an individual configuration.

Emission credits or in-use credits represent the amount of emission reduction or exceedance, for each regulated pollutant, by a handheld engine family below or above, respectively, the applicable certification standard to which the engine family is certified. Emission reductions below the standard are considered "positive credits," while emission exceedences above the standard are considered "negative or required credits."

Trading means the exchange of handheld engine in-use emission credits between manufacturers and/or brokers.

§ 90.1303 General provisions.

(a) The in-use credit program for eligible Phase 2 handheld engines is described in this subpart. Participation in this program is voluntary.

(b) Any handheld Phase 2 engine family subject to the provisions of subpart A of this part is eligible to participate in the in-use credit program described in this subpart.

(c) Credits generated and used in the nonhandheld engine certification averaging, banking, and trading program pursuant to the provisions of subpart C of this part are not interchangeable with credits generated and used in the handheld engine in-use credit program. In-use credits under this subpart may not be used to address the emissions of any nonhandheld engine. Nor may nonhandheld certification credits be used to address any in-use credit need determined under this subpart.

(d) An engine family with a compliance level, as determined by in-use testing pursuant to subpart M of this part and paragraph (h) of this section, below the applicable standard to which the engine family is certified may generate emission credits for averaging, banking, or trading in the in-use credit program.

(e) Positive credits generated in a given model year may be used in that model year and/or in any subsequent model year during the Phase 2 program.

(f) A manufacturer of an engine family with a compliance level exceeding the applicable standard to which the engine family is certified, may, prior to the date of the report required under paragraph (i) of this section, use previously banked credits, purchase credits from another manufacturer, or perform additional testing pursuant to paragraph (h) of this section to address (as calculated elsewhere in this subpart) the associated credit deficit (negative credits or a need for credits).

(g) In the case of in-use testing of engine families that were certified using carry-over data, and in the absence of other applicable test data acceptable to the Administrator, the test results from one model year's testing shall apply to up to four years of production of that family: the model year tested, the next model year (if carried over to that year), and one or two previous model years (if carried over from the previous year or the two previous years, respectively). In-use credits shall be generated or used, as appropriate.

(h) A manufacturer must notify EPA of plans to test additional engine families beyond those identified by EPA pursuant to regulations in subpart M of this part for the in-use testing program. Such notice must be submitted 30 days prior to initiation of service accumulation. If the additional testing discovers an engine family to be in noncompliance with the applicable standard, the testing must be treated as if it were a failure of the normal in-use testing requirement of an engine family. If the additional testing shows the engine family to be in compliance with the applicable standard, in-use credits may be generated subject to the provisions of this subpart.

(i) Manufacturers must demonstrate a zero or positive credit balance under the in-use credit program for all regulated pollutants for a particular model year within 90 days of the end of the in-use testing of that model year's engine families. At that time manufacturers must file a report with EPA pursuant to § 90.1309.

(j) Manufacturers shall maintain separate balances for $HC+NO_X$ ($NMHC+NO_X$) and CO credits. $HC+NO_X$ and $NMHC+NO_X$ credits are interchangeable with each other but not with CO credits.

§ 90.1304 Averaging.

(a) A manufacturer may use averaging across engine families to demonstrate a zero or positive credit balance for a model year. Positive credits to be used in averaging may be obtained from credits generated by another engine family of the same model year, credits banked in previous model years, or credits obtained through trading.

(b) Credits used to demonstrate a zero or positive credit balance must be used at a rate of 1.1 to 1.

§ 90.1305 Banking.

(a) A manufacturer of a handheld engine family with an in-use compliance level below the standard to which the engine family is certified for a given model year may bank positive in-use credits for that model year for use in in-use averaging and trading.

(b) A manufacturer may consider credits to be banked, for use in future averaging or trading, 30 days after the submission of the report required by § 90.1309(a). During the 30 day period EPA will work with the manufacturer to correct any error in calculating banked credits, if necessary.

§ 90.1306 Trading.

(a) A handheld engine manufacturer may exchange positive in-use emission credits with other handheld engine manufacturers through trading.

(b) In-use credits for trading can be obtained from credits banked for model years prior to the model year of the engine family requiring in-use credits.

(c) Traded in-use credits can be used for averaging, banking, or further trading transactions.

(d) Unless otherwise approved by EPA, a manufacturer that generates positive in-use credits must wait 30 days after it has both completed in-use testing for the model year for which the credits were generated and submitted the report required by § 90.1309(a) before it may transfer credits to another manufacturer or broker.

(e) In the event of a negative credit balance resulting from a transaction, both the buyer and the seller are liable, except in cases involving fraud. Engine families participating in a trade that leads to a negative credit balance may be subject to recall under subparts I and M of this part if the engine manufacturer having the negative credit balance is unable or unwilling to obtain sufficient credits in the time allowed under § 90.1303(i).

§ 90.1307 Credit calculation.

For each participating engine family, and for each regulated pollutant ($HC+NO_X$ ($NMHC+NO_X$) and CO) emission credits (positive or negative) are to be calculated according to the following equation and rounded to the nearest gram. Consistent units are to be used throughout the equation:

Credits = Sales × (Standard—CL) × Power × Useful life × AF × LF

Where:

Useful Life = the useful life in hours corresponding to the useful life category for which the engine family was certified.

Power = the sales weighted maximum modal power, in kilowatts, as calculated from the applicable federal test procedure as described in this part. This is determined by multiplying the maximum modal power of each configuration within the family by its eligible sales, summing across all configurations and dividing by the eligible sales of the entire family. Where testing is limited to certain configurations designated by the Administrator, the maximum modal power for the individual configuration(s) shall be used.

Sales = the number of eligible U.S. sales, as defined in subpart A of this part, for the engine family or configuration as applicable.

Standard = The applicable emission standard to which the engine family was certified under subpart B of this part.

CL = compliance level of the in-use testing for the subject pollutant in g/kW-hr.

AF = adjustment factor for the number of tests conducted as determined from the following table, except that when a manufacturer concedes failure before completion of testing as permitted under § 90.1203(f), the adjustment factor shall be 1.0:

No. Engines tested	1–5	6–7	8–9	10 or more.
Adjustment factor	0.5	0.75	0.9	1.0

LF = Load Factor of 0.85 for test cycle C. For manufacturers using alternative or special test cycles approved by the Administrator, the Load Factor is calculated using the Load Factor formula for nonhandheld engines found in § 90.207.

§ 90.1308 Maintenance of records.

(a) Any manufacturer that is participating in the in-use credit program set forth in this subpart shall establish, maintain, and retain the records required by § 90.209 with respect to its participation in the in-use credit program.

(b) EPA may void *ab initio* a certificate of conformity for an engine family for which the manufacturer fails to retain the records required under this section or to provide such information to the Administrator upon request.

§ 90.1309 Reporting requirements.

(a) Any manufacturer who participates in the in-use credit program is required to submit an in-use credit report with the end of the model year in-use testing report required under § 90.1205 within 90 days of the end of the in-use testing of a given model year's engine families. This report must show the calculation of credits from all the in-use testing conducted by the manufacturer for a given model year's engines. Such report shall show the applications of credits, the trading of credits, the discounting of credits that are used and the final credit balance. Such report shall calculate credit generation or usage for past model years and estimate credit generation or usage for the next model year when carry over families are tested pursuant to § 90.1303(g). The manufacturer may submit corrections to such end of model year reports in a final report for a period of up to 270 days after the end of the in-use testing of a given model year's engine families.

(b) The calculation of eligible sales for end-of-year and final reports must be based on the location of the point of first retail sale (for example, retail customer or dealer) also called the final product purchase location. Upon advance

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written request, the Administrator will consider other methods to track engines for credit calculation purposes that provide high levels of confidence that eligible sales are accurately counted.

(c) Reports shall be submitted to: Manager, Engine Compliance Programs Group (6403–J), U.S. Environmental Protection Agency, SW., Washington, DC 20460.

(d) A manufacturer that fails to submit a timely end of year report as required in paragraph (a) of this section will be considered ineligible to have participated in the in-use credit program.

(e) If EPA or the manufacturer determines that a reporting error occurred on an end of model year report previously submitted to EPA under this subpart, or an engine family in-use testing report submitted to EPA under subpart I of this part, the manufacturer's credits and credit calculations will be recalculated. Erroneous positive credits will be void. Erroneous negative credits may be adjusted by EPA. An update of previously submitted "point of first retail sale" information is not considered an error and no increase in the number of credits will be allowed unless an actual error occurred in the calculation of credits due to an error in the "point of first retail sale" information from the time of the original end of model year report.

§ 90.1310 Request for hearing.

An engine manufacturer may request a hearing on the Administrator's voiding of an engine family's certificate of conformity under § 90.1308(b). The administrative procedures for a public hearing requested under this subpart shall be those procedures set forth in §§ 90.512, 90.513, 90.514 and 90.515.

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January 27, 1998

Part III

Department of Labor

Pension and Welfare Benefits Administration

Proposed Exemptions; MBNA America Bank, National Association (MBNA); Notice

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10304, et al.]

Proposed Exemptions; MBNA America Bank, National Association (MBNA)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

MBNA America Bank, National Association (MBNA), Located in Newark, Delaware, (Application No. D–10304)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Transactions

A. Effective as of the date this proposed exemption is granted, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the trust, the sponsor or an underwriter and an employee benefit plan subject to the Act or section 4975 of the Code (a plan) when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to Section I.A.(1) or (2).

Notwithstanding the foregoing, Section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan, as defined in Section III.K. below, by any person who has discretionary authority or renders investment advice with respect to the assets of the Excluded Plan that are invested in certificates.[1]

B. Effective as of the date this proposed exemption is granted, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the trust, the sponsor or an underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to receivables contained in the trust constituting 0.5 percent or less of the fair market value of the obligations or receivables contained in the aggregate undivided interest in the trust allocated to the certificates of the relevant series, or (b) an affiliate of a person described in (a); if

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group, as defined in Section III.L., and at least 50 percent of the aggregate undivided interest in the trust allocated to the certificates of a series is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates of a series does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition;

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with

[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

respect to which the person has discretionary authority or renders investment advice is invested in certificates representing the aggregate undivided interest in a trust allocated to the certificates of a series and containing receivables sold or serviced by the same entity;[2] and

(v) Immediately after the acquisition of the certificates, not more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice is invested in certificates representing an interest in the trust, or trusts containing receivables sold or serviced by the same entity. For purposes of paragraphs B.(1)(iv) and B.(1)(v) only, an entity shall not be considered to service receivables contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that conditions set forth in Section I. B.(1)(i), (iii) through (v) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to Section I.B.(1) or (2).

C. Effective as of the date that the proposed exemption is granted, the restrictions of sections 406(a), 406(b) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, including reassigning receivables to the sponsor, removing from the trust receivables in accounts previously designated to the trust, changing the underlying terms of accounts designated to the trust, adding new receivables to the trust, designating new accounts to the trust, the retention of a retained interest by the sponsor in the receivables, the exercise of the right to cause the commencement of amortization of the principal amount of the certificates, or the use of any eligible swap transactions, provided that:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing agreement;

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust;[3]

(3) The addition of new receivables or designation of new accounts, or the removal of receivables in previously-designated accounts, meets the terms and conditions for such additions, designations or removals as are described in the prospectus or private placement memorandum of such certificates, which terms and conditions have been approved by Standard & Poor's Ratings Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch Investors Service, L.P., or their successors (collectively, the Rating Agencies), and does not result in the certificates receiving a lower credit rating from the Rating Agencies than the then current rating of the certificates; and

(4) The series of which the certificates are a part will be subject to an "Economic Pay Out Event" (as defined in Section III.X.), which is set forth in the pooling and servicing agreement and described in the prospectus or private placement memorandum associated with the series, the occurrence of which will cause any revolving period, scheduled amortization period or scheduled accumulation period applicable to the certificates to end, and principal collections to be applied to monthly payments of principal to, or the accumulation of principal for the benefit of, the certificateholders of such series until the earlier of payment in full of the outstanding principal amount of the certificates of such series or the series termination date specified in the prospectus or private placement memorandum.

Notwithstanding the foregoing, Section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act, or from the taxes imposed under section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) or (F) of the Code, for the receipt of a fee by the servicer of the trust, in connection with the servicing of the receivables and the operation of the trust, from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in Section III.U. below.

D. Effective as of the date that the proposed exemption is granted, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transaction to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider as described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

Section II—General Conditions

A. The relief provided under Section I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as such terms would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is either: (i) in one of the two highest generic rating categories from any one of the Rating Agencies; or (ii) for certificates with a duration of one year or less, the highest short-term generic rating category from any one of the Rating Agencies;
provided that, notwithstanding such ratings, this exemption (if granted) shall apply to a particular class of certificates only if such class (an Exempt Class) is part of a series in which credit support is provided to the Exempt Class through a senior-subordinated series structure or other form of third-party credit support which, at a minimum, represents five (5) percent of the outstanding principal balance of certificates issued for the Exempt Class, so that an investor in the Exempt Class will not bear the initial risk of loss;

(4) The trustee is not an affiliate of any other member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a

[2] For purposes of this proposed exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this proposed exemption, all references to "prospectus" include any related supplement thereto, and any documents incorporated by reference therein, pursuant to which certificates are offered to investors.

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pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the consideration received by the sponsor as a consequence of the assignment of receivables (or interests therein) to the trust, to the extent allocable to the series of certificates purchased by a plan, represents not more than the fair market value of such receivables (or interests); and the sum of all payments made to and retained by the servicer, to the extent allocable to the series of certificates purchased by a plan, represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission (SEC) under the Securities Act of 1933;

(7) The trustee of the trust is a substantial financial institution or trust company experienced in trust activities and is familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act (i.e. ERISA). The trustee, as the legal owner of, or holder of a perfected security interest in, the receivables in the trust, enforces all the rights created in favor of certificateholders of such trust, including plans;

(8) Prior to the issuance by the trust of any new series, confirmation is received from the Rating Agencies that such issuance will not result in the reduction or withdrawal of the then current rating of the certificates held by any plan pursuant to this exemption;

(9) To protect against fraud, chargebacks or other dilution of the receivables in the trust, the pooling and servicing agreement and the Rating Agencies require the sponsor to maintain a seller interest of not less than 2 percent of the principal balance of the receivables contained in the trust;

(10) Each receivable added to a trust is an eligible receivable, based on criteria of the relevant Rating Agency(ies) and as specified in the pooling and servicing agreement. The pooling and servicing agreement requires that any change in the terms of the cardholder agreements must be made applicable to the comparable segment of accounts owned or serviced by the sponsor which are part of the same program or have the same or substantially similar characteristics;

(11) The pooling and servicing agreement limits the number of the sponsor's newly originated accounts to be designated to the trust, unless the Rating Agencies otherwise consent in writing, to the following: (i) With respect to any three-month period, 15 percent of the number of existing accounts designated to the trust as of the first day of such period, and (ii) with respect to any twelve-month period, 20 percent of the number of existing accounts designated to the trust as of the first day of such twelve-month period;

(12) The pooling and servicing agreement requires the sponsor to deliver an opinion of counsel semi-annually confirming the validity and perfection of each transfer of newly originated accounts to the trust if such opinion is not delivered with respect to each interim addition;

(13) The pooling and servicing agreement requires the sponsor and the trustee to receive confirmation from a Rating Agency that no Ratings Effect (i) will result from a proposed transfer of newly originated accounts to the trust, or (ii) will have resulted from the transfer of all newly originated accounts added to the trust during the preceding three-month period (beginning at quarterly intervals specified in the pooling and servicing agreement and ending in the calendar month prior to the date such confirmation is issued), provided that a Rating Agency confirmation shall not be required under clause (ii) for any three-month period in which any additions of newly originated accounts occurred only after receipt of prior Rating Agency confirmation pursuant to clause (i);

(14) If a particular series of certificates held by any plan involves a Ratings Dependent or Non-Ratings Dependent Swap entered into by the trust, then each particular swap transaction relating to such certificates:

(a) Shall be an Eligible Swap;

(b) Shall be with an Eligible Swap Counterparty;

(c) In the case of a Ratings Dependent Swap, shall include as an early payout event, as specified in the pooling and servicing agreement, the withdrawal or reduction by any Rating Agency of the swap counterparty's credit rating below a level specified by the Rating Agency where the servicer (as agent for the trustee) has failed, for a specified period after such rating withdrawal or reduction, to meet its obligation under the pooling and servicing agreement to:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular series of certificates will not be withdrawn or reduced;

(d) In the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the swap counterparty is withdrawn or reduced below the lowest level specified in Section III.II. hereof, the servicer, as agent for the trustee, shall within a specified period after such rating withdrawal or reduction:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to post collateral with the trustee of the trust in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms; and

(e) Shall not require the trust to make any termination payments to the swap counterparty (other than a currently scheduled payment under the swap agreement) except from "Excess Finance Charge Collections" (as defined below in Section III.LL.) or other amounts that would otherwise be payable to the servicer or the seller; and

(15) Any series of certificates, to which one or more swap agreements entered into by the trust applies, may be acquired or held in reliance upon this proposed exemption only by Qualified Plan Investors.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Section I, if the provision in Section II.A.(6) above is not satisfied for the acquisition or holding by a plan of such certificates, provided that:

(1) Such condition is disclosed in the prospectus or private placement memorandum; and

(2) In the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees shall be required to make a written representation regarding compliance with the condition set forth in Section II.A.(6).

Section III—Definitions

For purposes of this proposed exemption:

A. *Certificate* means a certificate:

(1) That (i) represents a beneficial ownership interest in the assets of a trust and entitles the holder to payments denominated as principal, interest and/or other payments made as described in the applicable prospectus or private placement memorandum and in accordance with the pooling and servicing agreement in connection with the assets of such trust, to the extent allocable to the series of certificates purchased by a plan, either currently or after a revolving period during which principal payments on assets of the trust are reinvested in new assets, or (ii) is denominated as a debt instrument that represents a regular interest in a financial asset securitization investment trust (FASIT), within the meaning of section 860L(a) of the Code, and is issued by and is an obligation of the trust.

For purposes of this proposed exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust; and

(2) With respect to which (a) MBNA or any of its affiliates is the sponsor, and (b) MBNA, any of its affiliates, or an "underwriter" (as defined in Section III.C.) is the sole underwriter or the manager or co-manager of the underwriting syndicate or a selling or placement agent.

B. *Trust* means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Receivables (as defined in Section III.V.); or

(b) Participations in a pool of receivables (as defined in Section III.V.) where such beneficial ownership interests are not subordinated to any other interest in the same pool of receivables; [4]

(2) Property which has secured any of the assets described in Section III.B.(1); [5]

(3) Undistributed cash or permitted investments made therewith maturing no later than the next date on which distributions are to be made to certificate holders, except during a Revolving Period (as defined herein) when permitted investments are made until such cash can be reinvested in additional receivables described in paragraph (a) of this Section III.B.(1);

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any cash collateral accounts, insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements for any certificates, swap transactions, or under any yield supplement agreements,[6] yield maintenance agreements or similar arrangements; and

(5) Rights to receive interchange fees received by the sponsor as partial compensation for the sponsor's taking credit risk, absorbing fraud losses and funding receivables for a limited period prior to initial billing with respect to accounts designated to the trust.

Notwithstanding the foregoing, the term *trust* does not include any investment pool unless: (i) the investment pool consists only of receivables of the type which have been included in other investment pools; (ii) certificates evidencing interests in such other investment pools have been rated in one of the two highest generic rating categories by at least one of the Rating Agencies for at least one year prior to the plan's acquisition of certificates pursuant to this exemption; and (iii) certificates evidencing an interest in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter* means an entity which has received from the Department an individual prohibited transaction exemption which provides relief for the operation of asset pool investment trusts that issue asset-backed pass-through securities to plans that is similar in format and substance to this proposed exemption (each, an Underwriter Exemption); [7] any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity; and any member of an underwriting syndicate or selling group of which such firm or affiliated person described above is a manager or co-manager with respect to the certificates.

D. *Sponsor* means MBNA, or an affiliate of MBNA that organizes a trust by transferring credit card receivables or interests therein to the trust in exchange for certificates.

E. *Master Servicer* means MBNA or an affiliate that is a party to the pooling and servicing agreement relating to trust receivables and is fully responsible for servicing, directly or through subservicers, the receivables in the trust pursuant to the pooling and servicing agreement.

F. *Subservicer* means MBNA or an affiliate of MBNA, or an entity unaffiliated with MBNA which, under the supervision of and on behalf of the master servicer, services receivables contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means MBNA or an affiliate which services receivables contained in the trust, including the master servicer and any subservicer or their successors pursuant to the pooling and servicing agreement.

H. *Trustee* means an entity which is independent of MBNA and its affiliates and is the trustee of the trust. In the case of certificates which are denominated as debt instruments, "trustee" also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, provider of other credit support for, or other contractual counterparty of, a trust. Notwithstanding the foregoing, a swap counterparty is not an insurer, and a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any receivable included in the trust.

K. *Excluded Plan* means any plan with respect to which any member of

[4] The Department notes that no relief would be available under the exemption if the participation interests held by the trust were subordinated to the rights and interests evidenced by other participation interests in the same pool of receivables.

[5] MBNA states that it is possible for credit card receivables to be secured by bank account balances or security interests in merchandise purchased with credit cards. Thus, the proposed exemption should permit foreclosed property to be an eligible trust asset.

[6] In a series involving an accumulation period (as defined in Section III.Z.), a yield supplement agreement may be used by the Trust to make up the difference between (i) the reinvestment yield on permitted investments, and (ii) the interest rate on the certificates of that series.

[7] For a listing of Underwriter Exemptions, see the description provided in the text of the operative language of Prohibited Transaction Exemption (PTE) 97–34 (62 FR 39021, July 21, 1997).

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the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. *Restricted Group* with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Each swap counterparty;

(7) Any obligor with respect to receivables contained in the trust constituting more than 0.5 percent of the fair market value of the aggregate undivided interest in the trust allocated to the certificates of a series, determined on the date of the initial issuance of such series of certificates by the trust; or

(8) Any affiliate of a person described in Section III.L.(1)–(7).

M. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sale* includes the entrance into a forward delivery commitment (as defined in Section III.Q. below), provided that:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *Forward Delivery Commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. *Reasonable Compensation* has the same meaning as that term is defined in 29 CFR section 2550.408c–2.

S. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust and any supplement thereto pertaining to a particular series of certificates. In the case of certificates which are denominated as debt instruments, "pooling and servicing agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

T. *Series* means an issuance of a class or various classes of certificates by the trust all on the same date pursuant to the same pooling and servicing agreement, and any supplement thereto and restrictions therein.

U. *Qualified Administrative Fee* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing with respect to the receivables;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement or described in all material respects in the prospectus or private placement memorandum provided to the plan before it purchases certificates issued by the trust; and

(4) The amount paid to investors in the trust is not reduced by the amount of any such fee waived by the servicer.

V. *Receivables* means secured or unsecured obligations of credit card holders which have arisen or arise in Accounts designated to a trust. Such obligations represent amounts charged by cardholders for merchandise and services and amounts advanced as cash advances, as well as periodic finance charges, annual membership fees, cash advance fees, late charges on amounts charged for merchandise and services and certain other fees (such as bad check fees, cash advance fees, and other fees specified in the cardholder agreements) designated by card issuers (other than a qualified administrative fee as defined in Section III.U.).

W. *Accounts* are revolving credit card accounts serviced by MBNA or an affiliate, which were originated or purchased by MBNA or an affiliate, and are designated to a trust such that receivables arising in such accounts become assets of the trust.

X. *Revolving Period* means a period of time, as specified in the pooling and servicing agreement, during which principal collections allocated to a series are reinvested in newly generated receivables arising in the accounts.

Y. *Amortization Period* means a period of time specified in the pooling and servicing agreement during which a portion of the principal collections allocated to a series will commence to be paid to the certificateholders of such series in installments.

Z. *Accumulation Period* means a period of time specified in the pooling and servicing agreement during which a portion of the principal collections allocated to a series will be deposited in an account to be distributed to certificateholders in a lump sum on the expected maturity date.

AA. *Pay Out Event* means any of the events specified in the pooling and servicing agreement or supplement thereto that results (in some instances without further affirmative action by any party) in the early commencement of either an amortization period or an accumulation period, including (1) the failure of the sponsor or the servicer, whichever is subject to the relevant obligation under the pooling and servicing agreement, (i) to make any payment or deposit required under the pooling and servicing agreement within five (5) business days after such payment or deposit was required to be made, or (ii) to observe or perform any of its other covenants or agreements set forth in the pooling and servicing agreement, which failure has a material adverse effect on holders of investor certificates of the relevant series and continues unremedied for 60 days; (2) a breach of any representation or warranty made by the sponsor or the servicer in the pooling and servicing agreement that continues to be incorrect in any material respect for 60 days; (3) the occurrence of certain bankruptcy events relating to the sponsor or the servicer; (4) the failure by the sponsor to convey to the trust additional receivables to maintain the minimum seller interest that is required by the pooling and servicing agreement and the Rating Agencies; (5) if a class of investor certificates is in an Accumulation Period, the amount on deposit in the accumulation account in any month is less than the amount required to be on deposit therein; (6) the failure to pay in full amounts owing to investors on the expected maturity date; and (7) the Economic Pay Out Event.

BB. An *Economic Pay Out Event* occurs automatically when the portfolio yield for any series of certificates, averaged over three consecutive months (or such other period approved by one of the Rating Agencies) is less than the base rate of the series averaged over the same period. Portfolio yield for a series of certificates for any period is equal to the sum of the finance charge collections and other amounts treated as finance charge collections less total defaults for the series divided by the outstanding principal balance of the investor certificates of the series, or such other measure approved by one of the Rating Agencies. The base rate for a series of certificates for any period is the sum of (i) amounts payable to certificateholders of the series with respect to interest, (ii) servicing fees allocable to the series payable to the servicer, and (iii) any credit enhancement fee allocable to the series payable to a third party credit enhancer, divided by the outstanding principal balance of the investor certificates of the series, or such other measure approved by one of the Rating Agencies.

CC. *CCA* or *Cash Collateral Account* means that certain account established in the name of the trustee that serves as credit enhancement with respect to the investor certificates and holds cash and/or permitted investments (as defined below in Section III.KK.) which conform to applicable provisions of the pooling and servicing agreement.

DD. *Group* means a group of any number of series offered by the trust that share finance charge and/or principal collections in the manner described in the applicable prospectus or private placement memorandum.

EE. *Ratings Effect* means the reduction or withdrawal by a Rating Agency of its then current rating of the certificates held by any plan pursuant to this proposed exemption.

FF. *Principal Receivables Discount* means, with respect to any account designated by the sponsor, the portion of the related principal receivables that represents a discount from the face value thereof and that is treated under the pooling and servicing agreement as finance charge receivables.

GG. *Ratings Dependent Swap* means an interest rate swap, or (if purchased by or on behalf of the trust) an interest rate cap contract, that is part of the structure of a series of certificates where the rating assigned by the Rating Agency to any series of certificates held by any plan is dependent on the terms and conditions of the swap and the rating of the swap counterparty, and if such certificate rating is not dependent on the existence of the swap and rating of the swap counterparty, such swap or cap shall be referred to as a "Non-Ratings Dependent Swap". With respect to a Non-Ratings Dependent Swap, each Rating Agency rating the certificates must confirm, as of the date of issuance of the certificates by the trust, that entering into an Eligible Swap with such counterparty will not affect the rating of the certificates.

HH. *Eligible Swap* means a Ratings Dependent or Non-Ratings Dependent Swap:

(1) Which is denominated in U.S. Dollars;

(2) Pursuant to which the trust pays or receives, on or immediately prior to the respective payment or distribution date for the series of certificates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g. LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the trust receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the swap counterparty, with all simultaneous payments being netted;

(3) Which has a notional amount that does not exceed either (i) the certificate balance of the class of certificates to which the swap relates, or (ii) the portion of the certificate balance of such class represented by receivables;

(4) Which is not leveraged (i.e. payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in subparagraph (2) above, and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) Which has a final termination date that is the earlier of the date on which the trust terminates or the related class of certificates is fully repaid; and

(6) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in subparagraphs (1) through (4) above without the consent of the trustee.

II. *Eligible Swap Counterparty* means a bank or other financial institution which has a rating, at the date of issuance of the certificates by the trust, which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the certificates; provided that, if a swap counterparty is relying on its short-term rating to establish eligibility hereunder, such counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the series of certificates with which the swap is associated has a final maturity date of more than one year from the date of issuance of the certificates, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap counterparty.

JJ. *Qualified Plan Investor* means a plan investor or group of plan investors on whose behalf the decision to purchase certificates is made by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the trust and the effect such swap would have upon the credit ratings of the certificates. For purposes of the proposed exemption, such a fiduciary is either:

(1) a "qualified professional asset manager" (QPAM),[8] as defined under Part V(a) of PTE 84–14 (49 FR 9494, 9506, March 13, 1984);

(2) an "in-house asset manager" (INHAM),[9] as defined under Part IV(a) of PTE 96–23 (61 FR 15975, 15982, April 10, 1996); or

(3) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such certificates.

KK. *Permitted Investments* means investments that either (i) are direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligation is backed by the full faith and credit of the

[8] PTE 84–14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a QPAM, provided certain conditions are met. QPAMs (e.g. banks, insurance companies, registered investment advisers with total client assets under management in excess of $50 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under ERISA.

[9] PTE 96–23 permits various transactions involving employee benefit plans whose assets are managed by an INHAM, an entity which is generally a subsidiary of an employer sponsoring the plan which is a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of $50 million.

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United States, or (ii) have been rated (or the obligor thereof has been rated) in one of the three highest generic rating categories by a Rating Agency; are described in the pooling and servicing agreement; and are permitted by the relevant Rating Agency(ies).

LL. *Excess Finance Charge Collections* means, as of any day funds are distributed from the trust, the amount by which the finance charge collections allocated to certificates of a series exceed the amount necessary to pay certificate interest, servicing fees and expenses, to satisfy cardholder defaults or charge-offs, and to reinstate credit support.

The Department notes that this proposed exemption, if granted, will be included within the meaning of the term "Underwriter Exemption" as it is defined in Section V(h) of the Grant of the Class Exemption for Certain Transactions Involving Insurance Company General Accounts, which was published in the **Federal Register** on July 12, 1995 (see PTE 95–60, 60 FR 35925).

Summary of Facts and Representations

1. The applicant is MBNA America Bank, National Association (i.e. MBNA), a national banking association located in Wilmington, Delaware. MBNA conducts nationwide consumer lending programs principally comprised of credit card related activities. MBNA is a wholly-owned subsidiary of MBNA Corporation, a bank holding company organized under the laws of Maryland in 1990.

2. The transactions for which an exemption is requested are investments by employee benefit plans in certain certificates (Certificates) representing the right to receive principal and interest payments from the assets of various Trusts which hold credit card receivables. Each Trust will issue, from time to time, a particular series of Certificates (i.e. a Series) which will be secured by the Trust's assets. A Series may include one or more classes of Certificates, some of which may be subordinate to others. However, only senior certificates issued by such Trusts, which meet the restrictive criteria designed to ensure investor safety discussed herein would be eligible for the exemptive relief to be provided under this proposed exemption.

The Trusts

3. Each Trust is created under a Pooling and Servicing Agreement (PSA) between MBNA, as Seller and Servicer, and an independent and unaffiliated Trustee. Upon creation of a Trust, the Seller transfers to the Trust a pool of interest-bearing credit card receivables which are selected under strict criteria approved by one or more of certain nationally recognized rating agencies,[10] from the portfolio of revolving credit card accounts owned by MBNA. The PSA establishes the general parameters for the Trust, such as the requirements for eligible receivables to be transferred to the Trust, the manner of transferring and administering and servicing the receivables, Seller representations and covenants as to receivable eligibility, Servicer and Trustee duties and eligibility, and other matters.

The applicant represents that any Trust that issues a class of Certificates to be covered by the proposed exemption would include the following investor safeguards:

(a) Restricted selection of receivables;
(b) Periodic reporting and monitoring of accounts;
(c) Minimum receivable requirements;
(d) Restrictions regarding addition and removal of accounts;
(e) Servicer eligibility requirements;
(f) Servicer daily reports, duties and public accounting firm review;
(g) Trustee eligibility and duties;
(h) Restrictions on investments;
(i) Protection from the consequences of unplanned events; and
(j) Limited discretion.

These investor safeguards are discussed in the following paragraphs.

4. Restricted Selection of Receivables. In order for a receivable to be eligible for transfer to the Trust, either on the initial closing date or on any subsequent date, it must have arisen under an eligible account. An eligible account is one that is in existence and owned by and maintained with MBNA (as of the initial selection date or, with respect to additional accounts, as of the relevant addition date), and is payable in U.S. dollars. In addition, an eligible account must have a United States address for its obligor, must not have been classified as counterfeit, canceled, fraudulent, stolen or lost, and must not have been charged off by MBNA under its customary and usual charge-off procedures. The eligible receivable must have been created in compliance with applicable law. All consents, licenses and other approvals necessary for the creation of the receivable and the execution of the credit card agreement must have been obtained and be in full force and effect, and MBNA must have good title to the receivable, free and clear of liens. Finally, an eligible receivable must constitute the legal valid and binding payment obligation of the obligor, and constitute an "account" under Article 9 of the Uniform Commercial Code (the "UCC"), as in effect in the State of Delaware, so as to grant the Trust a first priority security interest in the event of bankruptcy. Once the pool of eligible accounts has been identified, accounts are selected at random for the transfer of their receivables to the Trust so as to provide a combination of receivables that is representative of the entire pool of eligible receivables.

MBNA represents and warrants that the receivables transferred to the Trust, and the accounts related to those receivables, meet the above-described standards for eligible receivables and accounts, and that no selection procedures adverse to the Certificateholders have been employed in selecting accounts. These restrictions on account selection are in place to prevent the concentration of high risk accounts. Each relevant Rating Agency requires that all of these safeguards be in place before a superior rating is given.

5. Periodic Reporting and Monitoring of Accounts. In connection with the transfer of the receivables to the Trust, MBNA must record and file a UCC financing statement (including any continuation statements, when applicable) in order to perfect the assignment of the receivables, and must deliver a file-stamped copy of such financing or continuation statement to the Trustee. MBNA must also indicate in its computer system file of credit card accounts the receivables transferred to the Trust by identifying the accounts with a unique designation, as described in the PSA. MBNA must deliver a complete list of all accounts in the Trust to the Trustee on or prior to the initial closing date and thereafter on a periodic basis as required by the PSA.

The Trustee is able to continually monitor the Trust's assets by reviewing the monthly reports regarding pool performance which are prepared for the Trustee and investors by MBNA, as Servicer. In addition, MBNA provides the Trustee with a complete list of accounts on a periodic basis, as required by the PSA. Each relevant Rating Agency requires significant monitoring procedures for the servicing of receivables to ensure investor safety before a superior rating is granted.

6. Minimum Receivable Requirements. The aggregate principal amount of the receivables held by the Trust must be at least equal to the sum of the principal amount of the Certificates (prior to the commencement of any related amortization or accumulation) for all Series then outstanding (other than a Series which is backed in full by accumulated cash or permitted investments (see Paragraph 11 below)). If, on the last business day of any month, the aggregate amount of principal receivables is less than the required minimum, MBNA must designate additional accounts (or may convey participations in other credit card receivable pools sponsored by MBNA) to be transferred to the Trust so that the aggregate principal receivables will meet the minimum requirement.

Interests in the assets of each Trust are allocated among the Certificate holders of each Series and the Seller (i.e., MBNA). The interest in the Trust assets allocated to the Seller is referred to as the "Seller Interest." To protect against fraud, chargebacks or other dilution of receivables in the Trust, the PSA and the Rating Agencies will require MBNA, as the Trust's sponsor, to maintain a seller interest of not less than 2 percent of the principal balance of the receivables contained in the Trust (referred to as the "Minimum Seller Interest"). If, during any period of 30 consecutive days, the Seller Interest averages less than the Minimum Seller Interest, MBNA must designate additional accounts (or participations in other MBNA credit card receivable pools) to be transferred by MBNA to the Trust in order to satisfy the minimum requirement. When account payments exceed account purchases, the total pool of receivables in the relevant Trust contracts. As a result, the Seller Interest declines, thus providing a buffer to prevent a decline in the principal balance of the Certificates prior to the scheduled payment of principal. Thus, when the receivable balances in the accounts that secure the Certificates decline, the Seller Interest decreases, not the principal balance of the Certificates. When the account balances again increase, the Seller Interest is increased. The Seller Interest will also decline as a result of dilution of the receivable portfolio resulting from noncash reductions such as merchandise returns or servicer errors.

The minimum receivable requirement and Minimum Seller Interest requirement imposed on MBNA by the PSA (as described above) cause the Trustee, Servicer or Seller to have limited discretion regarding the minimum size of the Trust. Each relevant Rating Agency gains comfort from these minimum receivable levels that the Trust will be maintained so as not to adversely affect the ability of the Trust assets to support the promised interest and/or principal payments to Certificate holders.

7. Restrictions Regarding Addition and Removal of Accounts. In addition to the limitations discussed above regarding the selection of accounts and minimum receivable requirements, the following restrictions apply to the addition of accounts subsequent to the initial transfer to the Trust. Any transfer of receivables from additional accounts must be preceded by written notice to the Trustee, each relevant Rating Agency and the Servicer specifying the approximate aggregate amount of receivables to be transferred. In connection with the transfer, MBNA will warrant that the additional accounts are eligible accounts and that each receivable is an eligible receivable, and that no selection procedures believed by MBNA to be materially adverse to the interest of the Certificateholders were utilized in selecting the accounts. MBNA must deliver an opinion of counsel with respect to the added receivables to the Trustee, with a copy to each relevant Rating Agency, that such addition is enforceable and that the Trust has either a valid transfer of, or a grant of security interest in, the additional accounts. The PSA requires that the Servicer and the Trustee receive confirmation from a Rating Agency that no Ratings Effect (i.e., a downgrade or withdrawal of the then current rating of any outstanding Series of Certificates) either (i) will result from a proposed transfer of receivables from additional accounts to the Trust, or (ii) will have resulted from the transfer of all receivables from additional accounts added to the Trust during the preceding three-month period (beginning at quarterly intervals specified in the PSA and ending in the calendar month prior to the date such confirmation is issued). However, a Rating Agency confirmation will not be required for any three-month period in which any additions of newly originated accounts occurred only after receipt of a prior Rating Agency confirmation.

MBNA may remove receivables, subject to the minimum receivable requirements discussed above, not more than once in a monthly period. MBNA must give the Trustee and the Servicer written notice stating the approximate aggregate principal balance of the removal, and certifying that such removal must not result in a Pay Out Event. MBNA must warrant that no selection procedures believed by it to be materially adverse to the Certificateholders were utilized in selecting the removed receivables. Each relevant Rating Agency must have confirmed that such proposed removal will not result in a Ratings Effect. MBNA states further that the amount of any receivables that are removed must be less than 5 percent of the aggregate amount of principal receivables or, if any Series is paid in full, the amount of receivables removed must approximate the initial investor interest of such Series.

Each Rating Agency has determined that the number of additional accounts from which receivables may be added is generally limited to: (i) with respect to any three-month period, 15 percent of the number of existing accounts designated to the Trust as of the first day of such period, and (ii) with respect to any twelve-month period, 20 percent of the number of accounts designated to the Trust as of the first day of such 12-month period. However, if this maximum amount is greater than a similar test (specified in the PSA) based on the calendar year, then the calendar year test serves as the maximum addition. MBNA may be able to exceed the maximum addition amount if approval is received from each relevant Rating Agency.

By informing the relevant Rating Agencies of all details regarding additions and removals, the Trust is effectively reexamined each time these events occur in order to assure that the changes to the Trust assets will not adversely affect the rating of any outstanding Series. Each relevant Rating Agency scrutinizes the receivables from the additional accounts, or the relative strength of the pool of receivables designated to the Trust both before and after the removal, as the case may be, in making any such re-examinations.

8. Servicer Eligibility Requirements. The Servicer of the receivables must be either the Seller (MBNA), an affiliate of MBNA, or an entity unaffiliated with MBNA acting as a "Subservicer" which is qualified to service a portfolio of consumer revolving credit card accounts and meets certain requirements. Under such requirements, the entity acting as either a Servicer or Subservicer must be legally qualified and have the capacity to service the accounts, must be qualified to use the software used to service the accounts, must have demonstrated the ability to professionally and competently service a portfolio of similar accounts in accordance with customary standards of skill and care, and must have a certain net worth (e.g. at least $50,000,000). These requirements are in line with the Rating Agencies' standards for servicers.

Regardless of whether the Servicer is MBNA, an affiliate, or a third party meeting the eligibility requirements discussed above, the Servicer's duties

[10] As noted in Section I.C.(3) above, these rating agencies are: (i) Standard & Poors Ratings Services, a division of McGraw-Hill Companies Inc.; (ii) Moody's Investors Service, Inc.; (iii) Duff & Phelps Credit Rating Co.; and (iv) Fitch Investors Service, L.P., or their successors (collectively, the Rating Agencies).

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are largely ministerial and are provided in detail in the PSA. The Servicer administers the receivables, collects payments due thereunder, makes withdrawals from the various accounts created under the PSA which are forwarded to the Trustee on the dates and in the manner provided under the PSA, commences enforcement proceedings with respect to delinquent receivables and makes filings and other necessary reports with the SEC and any state securities authorities as necessary to comply with the law. The Servicer must maintain fidelity bond coverage insuring against losses through its own wrongdoing, and is entitled to receive a reasonable servicing fee which is specifically enumerated in each PSA supplement.

9. Servicer Daily Reports, Duties and Public Accounting Firm Review. On each business day the Servicer must prepare and make available to the Trustee a record of the collections processed on the preceding day and the aggregate amount of receivables as of the close of business on the preceding day. The Servicer must prepare monthly for the Trustee, the paying agent, any credit enhancement provider, and each relevant Rating Agency, a certificate setting forth the aggregate collections processed during the preceding month with respect to each Series outstanding, the aggregate amounts of the investor percentages of collections of finance charge receivables and principal receivables processed during the preceding month with respect to each Series outstanding, the balances in the finance charge account, the principal account or any Series account during the preceding month, and other detailed information.

The Servicer will provide annually a certificate from an officer indicating that the Servicer's activities over a 12-month period were reviewed and the officer believed such obligations were fully performed under the PSA. Every year, a nationally recognized firm of independent certified public accountants will review the internal accounting controls and their relation to the servicing of the receivables as well as the mathematical accuracy of the Servicer's monthly reports, and the results will be provided to the Trustee, any credit enhancement provider, and each relevant Rating Agency. These additional reviews of the Servicer are designed to prevent Servicer fraud and limit Servicer discretion. These safeguards protect investors and are a positive factor in a Rating Agency's evaluation.

10. Trustee Eligibility and Duties. The Trustee must be a financial institution organized, doing business and regulated under the laws of the United States, any State and/or the District of Columbia and have a long-term unsecured debt rating as specified in the PSA. The Trustee must be independent of MBNA and its affiliates and meet the same requirements that would be necessary for an eligible Servicer (as discussed under "Servicer Eligibility Requirements" above). Any successor Trustee must also meet these requirements and be approved by each relevant Rating Agency.

The Trustee is responsible for receiving collections from receivables as provided in the PSA, investing any moneys as directed in the PSA, and directing payments to Certificateholders according to the plan of allocation and payment detailed in the PSA. In performing these functions, the Trustee has little, if any, discretion. The Trustee is also responsible for examining any resolutions, statements, certificates, opinions, reports or other instruments in order to determine whether they substantially conform to the requirements of the PSA. The Trustee has no power to vary the corpus of the Trust and must perform the duties of other parties should they fail to perform under the PSA. Like the Servicer restrictions, the restrictions on the Trustee limit discretion, enhance investor protection, and are a positive influence on a Rating Agency's evaluation.

11. Restrictions on Investments. The collections of principal receivables and finance charge receivables held in the Trust may be invested by the Trustee only in "permitted investments" during the interim periods between collection and payout to the Certificateholders. Such permitted investments are detailed in the PSA and represent what each relevant Rating Agency considers to be secure investments that sufficiently protect investors. Under the proposed exemption, permitted investments would be investments that either (i) are direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligation is backed by the full faith and credit of the United States, or (ii) have been rated (or the obligor thereof has been rated) in one of the three highest generic rating categories by a Rating Agency. In addition, all permitted investments must be described in the PSA and permitted by the relevant Rating Agencies.

12. Protection From the Consequences of Unplanned Events. If MBNA should desire to merge or consolidate with, or assume the obligations of, another entity, certain provisions of the PSA ensure that the Trust assets remain secure. The new entity involved in the merger or consolidation must be a national banking association, a state banking corporation or another entity not subject to bankruptcy laws and must be organized and regulated under the laws of the United States, any State and/or the District of Columbia. The new entity must expressly assume the performance of every covenant and obligation of MBNA, and MBNA must provide the Trustee with an opinion of counsel that such assumption is legal, valid and binding. Finally, each relevant Rating Agency must be notified in advance of the change. Similarly, a merger, consolidation or assumption of the obligations of the Servicer also requires the same protections of a full assumption of liabilities, an opinion of counsel and Rating Agency notification.

The Certificateholders of each Series receive protection from certain unplanned events (called "Pay Out Events"). If a "Pay Out Event" occurs with respect to a Series, either (i) a rapid amortization period will commence during which the Certificates of such Series will be paid down periodically, as provided in the PSA Supplement, with the principal collections allocable to such Series or with principal collections allocable to other Series which are shared within the same Group (as discussed in Paragraph 15 below), or (ii) a rapid accumulation period will commence during which the Series' principal collections will be accumulated until a designated payment date. Pay Out Events include "Trust Pay Out Events," which apply to all Series, and "Series Pay Out Events," which apply to particular Series. "Trust Pay Out Events" include: (i) certain events of insolvency, conservatorship or receivership relating to MBNA; (ii) the Trust becomes an "investment company" within the meaning of the Investment Company Act of 1940, as amended; and (iii) MBNA becomes unable for any reason to transfer receivables to the Trust as required by the PSA.

Series Pay Out Events generally include:

(a) Failure of MBNA to make required payments or observe its other covenants to the extent there is a material adverse effect on the Certificateholders of that Series;

(b) Breach by MBNA of its representations and warranties to the extent there is a material adverse effect on the Certificateholders of that Series;

(c) A default by the Servicer that would have a material adverse effect on the Certificateholders of that Series; and

(d) The portfolio yield for any three consecutive monthly periods is less than the average base rate for such period (an "Economic Pay Out Event").

With respect to item (d) above, MBNA states that an "Economic Pay Out Event" will occur automatically when the portfolio yield for any series of certificates, averaged over three consecutive months (or such other period approved by one of the Rating Agencies) is less than the base rate of the series averaged over the same period. Portfolio yield for a series of certificates for any period is equal to the sum of the finance charge collections and other amounts treated as finance charge collections less total defaults for the series divided by the outstanding principal balance of the investor certificates of the series, or such other measure approved by one of the Rating Agencies. The base rate for a series of certificates for any period is the sum of (i) amounts payable to certificateholders of the series with respect to interest, (ii) servicing fees allocable to the series payable to the servicer, and (iii) any credit enhancement fee allocable to the series payable to a third party credit enhancer, divided by the outstanding principal balance of the investor certificates of the series, or such other measure approved by one of the Rating Agencies.

MBNA states that an "Economic Pay Out Event" should not occur because the amount of receivables included within the Trust has been designed to create "excess spread" between the yield on the receivables and the certificate rates. *Excess spread* is the amount by which the yield on the receivables held by the Trust exceeds, at any point in time, the amounts necessary to pay certificate interest, principal (if such payments are due to certificateholders), servicing fees and expenses, and to satisfy cardholder defaults or charge-offs. The Rating Agencies examine the expected amount of "excess spread" very closely before providing a high credit rating for the certificates.

A "Pay Out Event" accelerates the scheduled payments or accumulation of principal on the Certificates as specified within each PSA Supplement, and eliminates shared allocations from such Series, thus increasing the probability of full payment to senior Certificateholders, including plan investors. During a rapid amortization period, which is triggered by a "Pay Out Event", all collections are distributed periodically (instead of being distributed on the originally scheduled principal payment dates), as provided in the PSA Supplement, until the senior Certificateholders are paid in full. During a rapid accumulation period, also triggered by a "Pay Out Event", all principal collections allocated to the senior Certificates are accumulated and invested by the Trustee until the senior Certificateholders' interest is backed in full by cash and/or permitted investments which will be distributed on the originally scheduled payment date. Payments or accumulations are then directed to the next level of Certificates below the senior Certificates, until all Certificates have been paid or accumulated, or the Trust terminates. Because this accelerated pay out or accumulation schedule is triggered as a result of poor performance, senior Certificateholders are protected from a loss which might result from long-term yield reduction, and are, to a level of certainty necessary to support a rating of "AA" (or better), likely to receive their entire investment return. The timing or amount of the payments or accumulations is specifically defined in each PSA Supplement, further protecting investors from mismanagement. This automatic pay out trigger is important to each relevant Rating Agency as well, because it strictly limits the potential losses to investors.

Investors are also protected from the negative consequences of an event of Seller insolvency. If one or more of a number of indications of insolvency are present, a "Pay Out Event" occurs and a rapid amortization or a rapid accumulation period is triggered. As discussed above, this event accelerates payments or accumulation of collections to maximize the probability that senior Certificateholders will be paid promptly and in full. In addition, the Trustee also liquidates the receivables (unless otherwise instructed by Certificateholders representing undivided interests aggregating more than 50 percent of each outstanding Series) in order to further accelerate the pay out or accumulation process. The proceeds of the liquidation are distributed or accumulated in the tiered manner discussed above in the low-yield scenario.

13. Limited Discretion. Inherent in all of the restrictions surrounding creation and management of the Trust, discussed above, is the limited ability of any party to the transaction to make discretionary decisions that would have a major impact on the Trust assets. The PSA addresses every possible important decision and provides the exact course of action required. Each detail is designed to ensure maximum investor security, and minimum Trustee and Servicer discretion.

The Series

14. Once a Trust is established, a Series of Certificates may be issued pursuant to a PSA Supplement. One Trust typically supports multiple Series of Certificates over time. Each Series issued under a Trust is secured, along with other outstanding Series, by the assets of the issuing Trust. The PSA Supplement builds on the PSA by specifying the parameters for the Series, such as the number and type of Certificates, subordination and payment structuring, and other credit enhancement features.

The life of a Series consists of a revolving period and an amortization or accumulation period. During both periods, daily collections are allocated to the Trust accounts in the manner specified in the PSA Supplement. Interest payments are made periodically to the Certificateholders as provided in the PSA Supplement, and principal is paid in a lump sum on the date designated in the PSA Supplement (in the case of an accumulation period), or periodically pursuant to a schedule in the PSA Supplement (in the case of an amortization period), for each class of Certificates. The allocation of collections and the priority of payments differs slightly during the revolving period and the amortization or accumulation period.

15. During a Series' revolving period, periodic interest payments are made to Certificateholders. Principal payments, however, are not made until the amortization period or at the end of the accumulation period. Principal collections during the revolving period typically are shared among the Series that are members of the same Group. If one Series has principal receipts greater than needed to pay principal for that period, the excess may be used to pay principal for another Series in the Group which may have a need for such principal collections. In such instances, the minimum principal receivable balances required by the Rating Agencies for all Series must be maintained. The process of sharing within the Group spreads payment risk over a broader base of collections and effectively allows concentration of principal collections supporting a particular Series, resulting in increased reliability of the payment streams.

Principal collections received during the amortization or accumulation period are also potentially shared, but are first applied to the principal funding for the Series to which they relate. The

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amortization or accumulation period ends on the earliest of: (i) when the investors interests are paid in full; (ii) the Series termination date provided in the PSA Supplement; or (iii) the commencement of a rapid amortization or rapid accumulation period. Finance charges and fees collected during the revolving period and the accumulation or amortization period are applied to the related Series, and are not generally shared within the Group.

16. Every Trust will have a variety of credit enhancement features, as described in the PSA and specified in the applicable PSA Supplement. In addition to the Group sharing of collections discussed above, other credit enhancements may include subordination and letters of credit or other third party arrangements. The type and value of credit enhancement for a particular Series is designed to compliment the underlying Trust receivables so that, as a whole, the Trust assets satisfy the relevant Rating Agency's requirements for the superior rating desired. In this regard, MBNA represents that the particular class of certificates for each series to which this proposed exemption would apply (an Exempt Class) will have credit support provided to the Exempt Class through either a senior-subordinated series structure or other form of third party credit support which, at a minimum, will represent five (5) percent of the outstanding principal balance of certificates issued for the Exempt Class, so that an investor in the Exempt Class will not bear the initial risk of loss.

Each Series with an Exempt Class covered by the proposed exemption will include one or more of the following credit enhancing investor safeguards (as discussed further below): (i) Subordination; (ii) Third Party Credit Enhancement; and (iii) Allocation of Collections and Payments to Certificateholders Allows No Variation.

17. Subordination. Typically, a Series will have some form of subordination incorporated within the payment schedule detailed in the PSA Supplement. Such a Series will consist of at least one class of senior Certificates (typically designated as "Class A Certificates") which will be allocated collections in a more favorable manner than, and/or prior to, another class (or other classes) of Certificates (i.e., the next lower level, typically designated as "Class B Certificates") and often will include an uncertificated class subordinate to the Class B Certificates (typically designated as the "Collateral Interest" or "Class C Interest"). The subordination process generally will involve both the receipt of collections and the effect of losses. Thus, such collections will be applied to the senior (or Class A) Certificates first and then the second tier (or Class B) Certificates, and will be applied last to the lowest level class of Certificates (or the Collateral Interest). Conversely, the losses will first reduce the lowest class of Certificates (or the Collateral Interest), only affecting the senior (or Class A) Certificates after all other classes have been reduced to zero. The result of this tiered structure is that the senior (or Class A) Certificates are protected from nonpayment by the lower classes. If the certainty of payment provided by the subordination or other credit support mechanism is insufficient to allow each relevant Rating Agency to bestow one of its two highest ratings on the senior Certificates, the senior Certificates would not be eligible for the relief provided under the proposed exemption.

18. Third Party Credit Enhancement. A Series may include a form of credit enhancement provided by an outside party, such as a letter of credit, a cash collateral account, insurance or a guaranty or other extension of credit. This arrangement will be documented by a separate contract outlining the terms of the enhancement. A holder of the Collateral Interest (described in the preceding paragraph) or other subordinate interest holder may be a loan provider or an investor in the Class C Interest, and the PSA Supplement typically requires that a minimum Collateral Interest (or subordinate interest) be a feature of each Series. As with all the forms of credit enhancement, the terms and the amount of the Collateral Interest will be dependent upon an evaluation of the other Trust assets and the additional support needed to satisfy each relevant Rating Agency that the Certificates are sufficiently protected from default.

19. Allocation of Collections and Payments to Certificateholders Allows No Variation. The PSA Supplement provides instructions to the Servicer regarding each day's collections and the allocation of those collections to the various accounts created by the PSA. These instructions indicate how to make the payments and allocations during the revolving period, the amortization or accumulation period and the rapid amortization or rapid accumulation period, if any. The instructions also cover the treatment of other moneys from loans or other credit enhancement features, and carefully describe how to accommodate any excess collections, or how to compensate for any shortfalls. In following these detailed instructions, the Servicer does not make any discretionary decisions. The tasks are predetermined and largely ministerial. These explicit instructions, in concert with the Servicer reporting and review requirements, are designed to permit each relevant Rating Agency to conclude that mismanagement risks are minimal.

The Certificates

20. Each Series may include a class or various classes of Certificates, some of which may be subordinate to others.

Certificateholders will be entitled to receive periodic payments of interest based upon a fixed or variable interest rate which is set forth in the PSA Supplement and applied to the Certificateholder's unpaid principal balance. Certificateholders will also be entitled to receive a lump sum principal payment on the scheduled payment date, or a series of periodic payments beginning on the scheduled payment commencement date, as specified in the PSA Supplement, to the extent of the Certificateholder's investor interest.

As noted earlier, only Certificates that are not subordinate to any other class or classes of Certificates (the "Senior Certificates") would be eligible for exemptive relief under the proposed exemption.

21. MBNA represents that a plan would invest in the Certificates for the same reasons any investor would invest in a highly secure, "AA" (or better) rated investment with attractive yields. The Senior Certificates represent an investment alternative which offers all the benefits of a highly rated fixed-income security, such as fixed payment streams, investment diversity and market rates of return. Permitting plans to invest in Senior Certificates in reliance on the proposed exemption would provide plans with additional and safe investment opportunities.

22. With respect to the credit ratings of the Certificates, MBNA states that the rating reflects a Rating Agency's opinion as to the relative amount of protection that investors have against loss of principal and interest during the life of the security. A high rating comports with a low risk of loss. In order to achieve this rating, each relevant Rating Agency requires the credit card securitizations effected through the Trust to include a variety of safeguards—such as subordination or other forms of credit enhancement, limitations on the Seller's discretion, and Rating Agency approval of certain actions taken with respect to the Trust or a Series of Certificates. Each relevant Rating Agency typically requires legal opinions regarding the credit card securitization's structure and performs stress tests on the portfolio of selected receivables in order to evaluate the securitization's anticipated performance within a range of significant market fluctuations. In addition, each relevant Rating Agency performs a comprehensive review of all documents related to the credit card securitization before the formal rating is given. Each relevant Rating Agency must provide confirmations that additions of receivables from accounts to a Trust, or withdrawals of existing accounts from a trust, will not result in a Ratings Effect on the Certificates.

After its rating is assigned, the Rating Agency monitors the performance of the credit card receivables included in a Trust in order to assess whether the performance remains consistent with the rating. Although variations in portfolio performance are expected during a Certificate's duration and are factored into a Rating Agency's analysis, extreme and unexpected performance results may result in a revision of the rating. MBNA makes its Trust performance information available to each relevant Rating Agency in a variety of ways, in order to ensure that the Rating Agency receives all the information it deems necessary to make its evaluation. For example, MBNA provides information on portfolio performance broken down by account balance, credit limit, account age, delinquency period and geographic distribution.

MBNA states that the receipt of one of the two highest generic ratings from a Rating Agency represents the result of an exhaustive analysis of the many risk factors involved with a Series of Certificates, and provides a comfort level to investors that the potential reduction in yield as a result of credit losses is minimal.[11]

23. MBNA represents that the statistics on Certificates backed by credit card trusts indicate that they are sound investments. In this regard, MBNA states that public credit card securitization transactions have been in existence since 1987 and issuers have successfully sold over $230 billion in Certificates backed by credit card receivables since then with a zero investor loss rate. MBNA states further that plans have invested during this time in such Certificates, despite the prohibited transaction provisions of the Act, in reliance upon the Department's regulation defining "plan assets" and, specifically, the "100-Holder Exception" for "publicly-offered" securities (see 29 CFR 2510.3–101).[12]

MBNA maintains that the proposed exemption offers a number of safeguards in the form of concentration restrictions that are designed to provide additional protections for plan investors which are not included in the typical 100-holder exception transactions. For example, for purposes of the relief from the prohibitions of section 406(b) of the Act[13] provided under Section I.B. herein (relating to certain obligors of the Trust who may have discretionary authority for a plan investing in certificates of the Trust), the proposed exemption limits such plan's investment in any class of Certificates of any Series to not more than 25 percent of the principal amount of the Certificates of that class outstanding at the time of acquisition. In addition, immediately after the acquisition of the certificates, not more than 25 percent of the assets of such a plan may be invested in certificates representing an interest in the trust, or trusts containing receivables sold or serviced by the same entity. Further, the proposed exemption requires that at least 50 percent of the outstanding principal amount of each class of Certificates in which plans have invested, and at least 50 percent of the outstanding aggregate interest of the Trust, in connection with the initial issuance of the Certificates, must be acquired by persons independent of the Sponsor, the Servicer and other related parties. These restrictions are designed to protect plan investors from the risks inherent in excessive ownership concentration and related party transactions.

24. MBNA represents that the requested exemption is similar to the Underwriter Exemptions.[14] The Underwriter Exemptions are a series of exemptions granted by the Department to various underwriters or trust sponsors for transactions relating to the acquisition by plans of certificates representing interests in trusts holding various types of assets (e.g. single and multi-family residential or commercial mortgages, motor vehicle leases and related vehicles, equipment leases or other secured obligations), as provided in Section III.B. of the Underwriter Exemptions.

The Trusts described under the proposed exemption for Certificates backed by credit card receivables differ from trusts holding secured obligations in that the Trusts do not contain a fixed pool of assets and the receivables are not secured by real or tangible personal property. However, MBNA states that this difference in structure does not represent a difference in the quality or safety of investments by plans and other investors in the Certificates. Under the proposed exemption, MBNA represents that the other forms of credit enhancement provide at least the same level of security for investors in Trusts holding credit card receivables as exists for investors in trusts holding tangible or real property as collateral for the payment obligations to Certificateholders. In addition, Trusts holding credit card receivables do not involve the expense and administrative complexities of foreclosure procedures relating to tangible and real property.

25. Certificateholders are entitled to receive periodic payments of interest based upon an interest rate, which may be variable or fixed. This interest rate is specified or defined in the PSA Supplement for the particular Series and is applied to the outstanding principal balance of the Certificates. This outstanding balance (net of any charge-offs) is known as the investor

[11] In this regard, the Department was advised by representatives from two of the Rating Agencies (RA Reps) of certain issues concerning the ratings of certificates issued by trusts holding credit card receivables. The RA Reps discussed, among other things, the fact that different banks use different underwriting standards and may offer cardholders different terms on their accounts. Some banks may be willing to accept cardholders with more risky credit histories while other banks may not or may offer better terms to cardholders with superior payment histories. The result may be that some banks have a higher quality portfolio of receivables than other banks. The RA Reps stated that if a bank securitizes a portfolio of receivables which holds a number of riskier accounts, the Rating Agencies will require more credit enhancement measures because different assumptions will have to be made about the performance of the portfolio—e.g. higher charge-off rates will be assumed and greater "excess spread" will be necessary to avoid losses—in order to achieve an "AAA" rating. Thus, for example, Bank A's certificates may receive an "AAA" rating along with MBNA's certificates even though Bank A may experience more charge-offs on the credit card accounts and may have different payment rates on the receivables associated with those accounts.

[12] The Department's regulation defining "plan assets" provides that, if a plan invests in a publicly-offered security, the plan's assets will not include, solely by reason of such investment, any of the underlying assets of the entity issuing the security (i.e. the "look-through rule" will not apply and the operations of the entity will not be subject to scrutiny under the prohibited transaction provisions of the Act). The regulation defines a "publicly-offered" security as one that is freely transferable, widely-held, and registered under the federal securities laws. A class of securities is "widely held" if it is owned by 100 or more investors who are independent of the issuer and of one another at the conclusion of the offering (see 29 CFR 2510.3–101(b)(3)).

[13] Section 406(b) of the Act, in pertinent part, prohibits a plan fiduciary from dealing with the assets of the plan in his own interest or for his own account, or from acting on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan and its participants and beneficiaries.

[14] As indicated in Footnote 7 above, PTE 97–34 (which granted an amendment to the Underwriter Exemptions) contains the most comprehensive listing of these exemptions.

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interest for the senior class of Certificates. Certificateholders are also entitled to receive principal payments on the scheduled payment dates, or sooner or later under certain limited circumstances, pursuant to the PSA Supplement to the extent of the Certificateholders' investor interest. The payments are funded from collections on the related receivables and allocated to the investor interests as provided in the PSA Supplement.

MBNA states that a Series or class of Certificates may have the benefit of an interest rate swap agreement entered into between the Trustee for a Trust and a bank or other financial institution acting as a swap counterparty. Pursuant to the swap agreement, the swap counterparty would pay a certain rate of interest to the Trust in return for a payment of a rate of interest by the Trust, from collections allocable to the relevant Series or class of Certificates, to the swap counterparty. MBNA represents that the credit rating provided to a particular Series or class of Certificates by the relevant Rating Agency may or may not be dependent upon the existence of a swap agreement. Thus, in some instances, the terms and conditions of the swap agreements will not effect the credit rating of the Series or class of Certificates to which the swap relates (i.e. a "Non-Ratings Dependent Swap").

MBNA states that whether or not the credit rating of a particular Series or class of Certificates is dependent upon the terms and conditions of one or more interest rate swap agreements entered into by the Trust (i.e. a "Ratings Dependent Swap" or a "Non-Ratings Dependent Swap"), each particular swap transaction will be an "Eligible Swap" as defined in Section III.HH. above.

In this regard, an Eligible Swap will be a swap transaction:

(a) Which is denominated in U.S. Dollars;

(b) Pursuant to which the Trust pays or receives, on or immediately prior to the respective payment or distribution date for the applicable senior class of Certificates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g. LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the Trust receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the counterparty, with all simultaneous payments being netted;

(c) Which has a notional amount that does not exceed either (i) the certificate balance of the class of certificates to which the swap relates, or (ii) the portion of the certificate balance of such class represented by receivables;

(d) Which is not leveraged (i.e. payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in item (b) above, and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(e) Which has a final termination date that is the earlier of the date on which the Trust terminates or the related class of Certificates is fully repaid; and

(f) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in items (a) through (e) above without the consent of the Trustee.

In addition, any Eligible Swap entered into by the Trust will be with an "Eligible Swap Counterparty", which will be a bank or other financial institution with a rating at the date of issuance of the Certificates by the Trust which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the Certificates (see Section III.II above). However, if a swap counterparty is relying on its short-term rating to establish its eligibility, such counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency.

With respect to a Ratings Dependent Swap, an Eligible Swap Counterparty will be subject to certain collateralization or other arrangements satisfactory to the Rating Agencies in the event of a rating downgrade of such swap counterparty below a level specified by the Rating Agency, which would be no lower than the level that would make such counterparty "eligible" under this proposed exemption (see Section III.II. above). If these arrangements are not established within a specified period, as described in the PSA, there will be an early payout event causing certificateholders to receive an earlier than expected payout of principal on their certificates for the series to which the swap relates. However, with respect to a Non-Ratings Dependent Swap, the PSA will not specify that there be an early payout event for the series to which the swap relates if the credit rating of the swap counterparty falls below the level required for it to be considered an Eligible Swap Counterparty (as described in Section III.II. above). In such instances, in order to protect the interests of the Trust as a swap counterparty, the servicer (as agent for the trustee of the trust) will be required to either:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement will terminate);

(ii) Cause the swap counterparty to post collateral with the trustee of the trust in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms.

Under any termination of a swap, the Trust will not be required to make any termination payments to the swap counterparty (other than a currently scheduled payment under the swap agreement) except from "excess finance charge collections" or other amounts that would otherwise be payable to the servicer or the seller (i.e. MBNA). In this regard, "excess finance charge collections" will be, as of any day funds are distributed from the Trust, the amounts by which the finance charge collections allocated to certificates of a series exceed the amounts necessary to pay certificate interest, servicing fees and expenses, to satisfy cardholder defaults or charge-offs, and to reinstate credit support.

With respect to Non-Ratings Dependent Swaps, each Rating Agency rating the Certificates must confirm, as of the date of issuance of the Certificates by the Trust, that entering into the swap transactions with the Eligible Swap Counterparty will not effect the rating of the Certificates, even if such counterparty is no longer an "eligible" counterparty and the swap is terminated.[15]

Any class of senior Certificates to which one or more swap agreements entered into by the trust applies, will be acquired or held only by Qualified Plan Investors (as defined in Section III.JJ. above). Qualified Plan Investors will be plan investors represented by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction relating to the class of senior Certificates to be purchased and the effect such swap would have upon the credit rating of the senior Certificates to which the swap relates.

For purposes of the proposed exemption, such a qualified independent fiduciary will be either:

(i) A "qualified professional asset manager" (i.e. QPAM), as defined under Part V(a) of PTE 84–14;[16]

(ii) an "in-house asset manager" (i.e. INHAM), as defined under Part IV(a) of PTE 96–23;[17] or

(iii) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such Certificates.

Disclosures Available to Investing Plans

26. In connection with the original issuance of certificates, the prospectus or private offering memorandum will be furnished to investing plans. The prospectus or private offering memorandum will contain information pertinent to a plan's decision to invest in the Certificates, such as:

(a) Information concerning the Certificates, including payment terms, certain tax consequences of owning and selling Certificates, the legal investment status and rating of the Certificates, and any special considerations with respect to the Certificates;

(b) Information about the underlying receivables, including the types of receivables, statistical information relating to the receivables, their payment terms, and the legal aspects of the receivables;

(c) Information about the servicing of the receivables, including the identity of the servicer and servicing compensation;

(d) Information about the Sponsor of the Trust;

(e) A full description of the material terms of the Pooling and Servicing Agreement; and

(f) Information about the scope and nature of the secondary market, if any, for such Certificates.

Certificateholders will be provided with information concerning the amount of principal and interest to be paid on Certificates in connection with each distribution to Certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the status of the Trust.

In the case of a Trust that offers and sells Certificates in a registered public offering, the Trustee, the Servicer or the Sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934 (the '34 Act). Although some Trusts that offer Certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many Trusts (i) obtain, by application to the SEC, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K; or (ii) are not subject to such requirements for one or more Series of Certificates issued by the Trust. If such an exemption is obtained, these Trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the Trust and the Certificates. While the SEC's interpretation of the periodic reporting requirement is subject to change, periodic reports concerning a Trust will be filed to the extent required under the '34 Act.

MBNA states that at or about the time distributions are made to Certificateholders, reports will be delivered to the Trustee as to the status of the Trust and its assets, including underlying Receivables. Such reports will typically contain information regarding the Trust's assets, payments received or collected by the Servicer, the amount of delinquencies and defaults, the amount of any payments made pursuant to any credit support or credit enhancement feature, and the amount of compensation payable to the Servicer. Such reports will also be delivered or made available to the Rating Agency that currently rates the Certificates. Such reports will be available to investors and its availability will be made known to potential investors. In addition, promptly after each distribution date, Certificateholders will receive a statement summarizing information regarding the Trust and its assets and the applicable Series, including underlying receivables.

28. In summary, MBNA represents that the proposed transactions will meet the statutory criteria of section 408(a) of the Act because, among other things:

(a) The acquisition of senior Certificates by a plan will be on terms (including Certificate price) that are at least as favorable to the plan as such terms would be in an arm's-length transaction with an unrelated party;

(b) The rights and interests evidenced by the senior Certificates will not be subordinated to the rights and interests evidenced by other investor Certificates of the Trust;

(c) Any senior Certificates acquired by a plan will have received a rating at the time of such acquisition that is in one of the two highest generic rating categories from any one of the Rating Agencies or, for certificates with a duration of one year or less, the highest short-term generic rating category from any one of the Rating Agencies;

(d) The Trustee of the Trust will not be an affiliate of any other member of the Restricted Group;

(e) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of Certificates will represent not more than reasonable compensation for underwriting or placing the Certificates; the consideration received by the Sponsor as a consequence of the assignment of receivables (or interests therein) to the Trust will represent not more than the fair market value of such receivables (or interests); and the sum of all payments made to and retained by the Servicer, which are allocable to the Series or class of certificates purchased by a plan, will represent not more than reasonable compensation for the Servicer's services under the Pooling and Servicing Agreement and reimbursement of the Servicer's reasonable expenses in connection therewith;

(f) Any plan investing in such Certificates will be an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the SEC under the Securities Act of 1933;

(g) The terms of each Series or class of Certificates, and the conditions under which MBNA may designate additional accounts to, or remove previously-designated accounts from, the Trust will be described in the prospectus or private placement memorandum provided to investing plans;

(h) The Trustee of the Trust will be a substantial financial institution or trust company experienced in trust activities and would be familiar with its duties, responsibilities and liabilities as a fiduciary under the Act;

(i) The PSA will include "Economic Pay Out Events" triggered by a decline in the performance of the receivables in the Trust;

(j) To protect against fraud, chargebacks or other dilution of the receivables in the Trust, the PSA and the Rating Agencies will require MBNA, as the Trust's sponsor, to maintain a seller interest of not less than 2 percent

[15] RA Reps have indicated to the Department that certain series of certificates issued by a trust holding credit card receivables will have certificate ratings that are not dependent on the existence of a swap transaction entered into by the trust. Therefore, a downgrade in the swap counterparty's credit rating would not cause a downgrade in the rating established by the Rating Agency for the certificates. RA Reps state that in such instances there will be more credit enhancements (e.g. "excess spread", letters of credit, cash collateral accounts) for the series to protect the certificateholders than there would be in a comparable series where the trust enters into a so-called Ratings Dependent Swap. Non-Ratings Dependent Swaps are generally used as a convenience to enable the trust to pay certain fixed interest rates on a series of certificates. However, the receipt of such fixed rates by the trust from the counterparty is not a necessity for the trust to be able to make its fixed rate payments to the certificateholders.

[16] See Footnote 8 above.

[17] See Footnote 9 above.

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of the principal balance of the receivables contained in the Trust;

(k) Each receivable added to a Trust will be an eligible receivable, based on criteria of the relevant Rating Agency(ies) and as specified in the PSA;

(l) The PSA will require that any change in the terms of any cardholder agreements also will be made applicable to the comparable segment of accounts owned or serviced by MBNA which are part of the same program or have the same or substantially similar characteristics;

(m) The addition of new receivables or designation of new accounts, or removal of previously-designated accounts, will meet the terms and conditions for such additions, designations, or removals as described in the prospectus or private placement memorandum for such Certificates, which terms and conditions will have been approved by each relevant Rating Agency, and will not result in the Certificates receiving a lower credit rating from the relevant Rating Agency than the then current rating of the Certificates;

(n) Any swap transaction relating to senior Certificates that are covered by the proposed exemption must satisfy the several investor-protective conditions applicable to Eligible Swaps and must be entered into by the Trust with an Eligible Swap Counterparty; and

(o) Any class of Certificates to which one or more swap agreements entered into by the Trust applies may be acquired or held by plans in reliance upon this proposed exemption only if such plans are represented by "Qualified Plan Investors."

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Citibank (South Dakota), N.A., Citibank (Nevada), N.A., and Affiliates
Located in North Sioux Falls, South Dakota
(Application No. D–10313)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Transactions

A. Effective as of the date this proposed exemption is granted, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the trust, the sponsor or an underwriter and an employee benefit plan subject to the Act or section 4975 of the Code (a plan) when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to Section I.A.(1) or (2).

Notwithstanding the foregoing, Section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan, as defined in Section III.K. below, by any person who has discretionary authority or renders investment advice with respect to the assets of the Excluded Plan that are invested in certificates.[18]

B. Effective as of the date this proposed exemption is granted, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the trust, the sponsor or an underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to receivables contained in the trust constituting 0.5 percent or less of the fair market value of the aggregate undivided interest in the trust allocated to the certificates of a series, or (b) an affiliate of a person described in (a); if

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group, as defined in Section III.L., and at least 50 percent of the aggregate undivided interest in the trust allocated to the certificates of a series is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates of a series does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition;

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice is invested in certificates representing the aggregate undivided interest in a trust allocated to the certificates of a series and containing receivables sold or serviced by the same entity; [19] and

(v) Immediately after the acquisition of the certificates, not more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice is invested in certificates representing an interest in the trust, or trusts containing receivables sold or serviced by the same entity. For purposes of paragraphs B.(1)(iv) and B.(1)(v) only, an entity shall not be considered to service receivables contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that conditions set forth in Section I. B.(1)(i), (iii) through (v) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to Section I.B.(1) or (2).

C. Effective as of the date that the proposed exemption is granted, the restrictions of sections 406(a), 406(b) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, including the reassignment to the sponsor of receivables, the removal from the trust of accounts previously designated to the trust, the changing of the underlying terms of accounts designated to the trust, the adding of

[18] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[19] For purposes of this proposed exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

new receivables to the trust, the designation of new accounts to the trust, the retention of a retained interest by the sponsor in the receivables, the exercise of the right to cause the commencement of amortization of the principal amount of the certificates, or the use of any eligible swap transactions, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing agreement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust; [20]

(3) The addition of new receivables or designation of new accounts, or the removal of receivables or previously-designated accounts, meets the terms and conditions for such additions, designations or removals as are described in the prospectus or private placement memorandum for such certificates, which terms and conditions have been approved by Standard & Poor's Ratings Services, Moody's Investor Service, Inc., Duff & Phelps Credit Rating Co., or Fitch Investors Service, L.P., or their successors (collectively, the Rating Agencies), and does not result in the certificates receiving a lower credit rating from the Rating Agencies than the then current rating for the Certificates; and

(4) The series of which the certificates are a part will be subject to an Economic Early Amortization Event, which is set forth in the pooling and servicing agreement and described in the prospectus or private placement memorandum associated with the series, the occurrence of which will cause any Revolving Period, Controlled Amortization Period, or Accumulation Period applicable to the certificates to end, and principal collections to be applied to monthly payments of principal to, or accumulated for the account of, the certificateholders of such series until the earlier of: (i) payment in full of the outstanding principal amount of such certificates of such series, or (ii) the series termination date specified in the prospectus or private placement memorandum.

Notwithstanding the foregoing, Section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act, or from the taxes imposed under section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) or (F) of the Code, for the receipt of a fee by the servicer of the trust, in connection with the servicing of the receivables and the operation of the trust, from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in Section III.S. below.

D. Effective as of the date that the proposed exemption is granted, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transaction to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider as described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

Section II—General Conditions

A. The relief provided under Section I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as such terms would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is either: (i) in one of the two highest generic rating categories from any one of the Rating Agencies; or (ii) for certificates with a duration of one year or less, the highest short-term generic rating category from any one of the Rating Agencies; provided that, notwithstanding such ratings, this exemption (if granted) shall apply to a particular class of certificates only if such class (an Exempt Class) is part of a series in which credit support is provided to the Exempt Class through a senior-subordinated series structure or other form of third-party credit support which, at a minimum, represents five (5) percent of the outstanding principal balance of certificates issued for the Exempt Class, so that an investor in the Exempt Class will not bear the initial risk of loss;

(4) The trustee is not an affiliate of any other member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the consideration received by the sponsor as a consequence of the assignment of receivables (or interests therein) to the trust represents not more than the fair market value of such receivables (or interests); and the sum of all payments made to and retained by the servicer, that are allocable to the series of certificates purchased by a plan, represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission (SEC) under the Securities Act of 1933;

(7) The trustee of the trust is a substantial financial institution or trust company experienced in trust activities and is familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act (i.e. ERISA). The trustee, as the legal owner of the receivables in the trust, enforces all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act;

(8) Prior to the issuance of any new series in the trust, confirmation must be received from the Rating Agencies that such issuance will not result in the reduction or withdrawal of the then current rating or ratings of the certificates held by any plan pursuant to this exemption;

(9) To protect against fraud, chargebacks or other dilution of receivables in the trust, the pooling and

[20] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this proposed exemption, all references to "prospectus" include any related supplement thereto, and any documents incorporated by reference therein, pursuant to which certificates are offered to investors.

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servicing agreement and the Rating Agencies require the sponsor to maintain a seller interest of not less than the greater of (i) 2 percent of the initial aggregate principal balance of investor certificates issued by the trust, or (ii) 7 percent of the outstanding aggregate principal balance of investor certificates issued by the trust;

(10) Each receivable added to the trust will be an eligible receivable, based on criteria of the Rating Agency and as specified in the pooling and servicing agreement. The pooling and servicing agreement requires that any change in the terms of any cardholder agreements also be made applicable to the comparable segment of Accounts owned or serviced by the sponsor which are part of the same program or have the same or substantially similar characteristics;

(11) The pooling and servicing agreement limits the number of the sponsor's newly originated accounts to be added to the trust, unless the Rating Agency otherwise affirmatively consents, to the following: (i) with respect to any three month period, 15 percent of the number of existing accounts designated to the trust as of the first day of such period, and (ii) with respect to any calendar year, 20 percent of the number of existing accounts designated to the trust as of the first day of such calendar year;

(12) The pooling and servicing agreement requires the sponsor to deliver an opinion of counsel semi-annually confirming the validity and perfection of each transfer of newly originated accounts to the trust;

(13) The pooling and servicing agreement requires the sponsor and the trustee to receive at specified quarterly intervals during the year, confirmation from a Rating Agency that the addition of all newly originated accounts added to the trust (during the three month period ending in the calendar month prior to such confirmation) will not have resulted in a Ratings Effect;

(14) If a particular series of certificates held by any plan involves a Ratings Dependent or Non-Ratings Dependent Swap entered into by the trust, then each particular swap transaction relating to such certificates:

(a) Shall be an Eligible Swap;

(b) Shall be with an Eligible Swap Counterparty;

(c) In the case of a Ratings Dependent Swap, shall include as an early amortization event, as specified in the pooling and servicing agreement, the withdrawal or reduction by any Rating Agency of the swap counterparty's credit rating below a level specified by the Rating Agency where the servicer (as agent for the trustee) has failed, for a specified period after such rating withdrawal or reduction, to meet its obligation under the pooling and servicing agreement to:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular series of certificates will not be withdrawn or reduced;

(d) In the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the swap counterparty is withdrawn or reduced below the lowest level specified in Section III.II. hereof, the servicer (as agent for the trustee) shall within a specified period after such rating withdrawal or reduction:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to post collateral with the trustee of the trust in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms; and

(e) Shall not require the trust to make any termination payments to the swap counterparty (other than a currently scheduled payment under the swap agreement) except from "Excess Finance Charge Collections" (as defined below in Section III.LL.) or other amounts that would otherwise be payable to the servicer or the seller; and

(15) Any Series of certificates which entails one or more swap agreements entered into by the trust shall be sold only to Qualified Plan Investors.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Section I, if the provision in Section II.A.(6) above is not satisfied for the acquisition or holding by a plan of such certificates, provided that:

(1) Such condition is disclosed in the prospectus or private placement memorandum; and

(2) In the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees shall be required to make a written representation regarding compliance with the condition set forth in Section II.A.(6).

Section III—Definitions

For purposes of this proposed exemption:

A. *Certificate means*

(1) A certificate:

(a) That represents a beneficial ownership interest in the assets of a trust;

(b) That entitles the holder to payments denominated as principal and interest, and/or other payments made in connection with the assets of such trust, either currently, or after a Revolving Period during which principal payments on assets in the trust are reinvested in new assets; or

(2) A certificate denominated as a debt instrument that represents an interest in a financial asset securitization investment trust (FASIT) within the meaning of section 860L of the Code, and that is issued by and is an obligation of a trust;

which is sold upon initial issuance by an underwriter (as defined in Section III.C.) in an underwriting or private placement.

For purposes of this proposed exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. *Trust* means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Receivables (as defined in Section III.T.); or

(b) Participations in a pool of receivables (as defined in Section III.T.) where such beneficial ownership interests are not subordinated to any other interest in the same pool of receivables; [21]

[21] The Department notes that no relief would be available under the exemption if the participation interests held by the trust were subordinated to the rights and interests evidenced by other participation interests in the same pool of receivables.

(2) Property which has secured any of the assets described in Section III.B.(1); [22]

(3) Undistributed cash or permitted investments made therewith maturing no later than the next date on which distributions are to be made to certificate holders, except during a Revolving Period (as defined herein) when permitted investments are made until such cash can be reinvested in additional receivables described in paragraph (a) of this Section III.B.(1);

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any cash collateral accounts, insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements for any certificates, swap transactions, or under any yield supplement agreements, [23] yield maintenance agreements or similar arrangements; and

(5) Rights to receive interchange fees received by the sponsor as partial compensation for the sponsor's taking credit risk, absorbing fraud losses and funding receivables for a limited period prior to initial billing with respect to accounts designated to the trust.

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) the investment pool consists only of receivables of the type which have been included in other investment pools; (ii) certificates evidencing interests in such other investment pools have been rated in one of the two highest generic rating categories by at least one of the Rating Agencies for at least one year prior to the plan's acquisition of certificates pursuant to this exemption; and (iii) certificates evidencing an interest in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter* means an entity which has received an individual prohibited transaction exemption from the Department that provides relief for the operation of asset pool investment trusts that issue "asset-backed" pass-through securities to plans, that is similar in format and structure to this proposed exemption (the Underwriter Exemptions); [24] any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity; and any member of an underwriting syndicate or selling group of which such firm or affiliated person described above is a manager or co-manager with respect to the certificates.

D. *Sponsor* means Citibank or an affiliate of Citibank that organizes a trust by transferring credit card receivables or interests therein to the trust in exchange for certificates.

E. *Master Servicer* means Citibank or an entity affiliated with Citibank that is a party to the pooling and servicing agreement relating to trust receivables and is fully responsible for servicing, directly or through subservicers, the receivables in the trust pursuant to the pooling and servicing agreement.

F. *Subservicer* means Citibank or an affiliate, or an entity unaffiliated with Citibank, which, under the supervision of and on behalf of the master servicer, services receivables contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means Citibank or an affiliate which services receivables contained in the trust, including the master servicer and any subservicer or their successors pursuant to the pooling and servicing agreement.

H. *Trustee* means an entity which is independent of Citibank and its affiliates and is the trustee of the trust. In the case of certificates which are denominated as debt instruments, "trustee" also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, provider of other credit support for, or other contractual counterparty of, a trust. Notwithstanding the foregoing, a swap counterparty is not an insurer, and a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any receivable included in the trust.

K. *Excluded Plan* means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. *Restricted Group* with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Each swap counterparty;

(7) Any obligor with respect to receivables contained in the trust constituting more than 0.5 percent of the fair market value of the aggregate undivided interest in the trust allocated to the certificates of a series, determined on the date of the initial issuance of such series of certificates by the trust; or

(8) Any affiliate of a person described in Section III.L.(1)–(7).

M. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sale* includes the entrance into a forward delivery commitment (as defined in Section III.Q. below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *Forward Delivery Commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory

[22] Citibank states that it is possible for credit card receivables to be secured by bank account balances or security interests in merchandise purchased with credit cards. Thus, the proposed exemption should permit foreclosed property to be an eligible trust asset.

[23] In a series involving an accumulation period (as defined in Section III.AA), a yield supplement agreement may be used by the Trust to make up the difference between (i) the reinvestment yield on permitted investments, and (ii) the interest rate on the certificates of that series.

[24] For a listing of the Underwriter Exemptions, see the description provided in the text of the operative language of Prohibited Transaction Exemption (PTE) 97–34 (62 FR 39021, July 21, 1997).

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contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. *Reasonable Compensation* has the same meaning as that term is defined in 29 CFR section 2550.408c–2.

S. *Qualified Administrative Fee* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing with respect to the receivables;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement or described in all material respects in the prospectus or private placement memorandum provided to the plan before it purchases certificates issued by the trust; and

(4) The amount paid to investors in the trust is not reduced by the amount of any such fee waived by the servicer.

T. *Receivables* means secured or unsecured obligations of credit card holders which have arisen or arise in Accounts designated to a trust. Such obligations represent amounts charged by cardholders for merchandise and services and amounts advanced as cash advances, as well as periodic finance charges, annual membership fees, cash advance fees, late charges on amounts charged for merchandise and services and over-limit fees and fees of a similar nature designated by card issuers (other than a qualified administrative fee as defined in Section III.S. above).

U. *Accounts* are revolving credit card accounts serviced by Citibank or an affiliate, which were originated or purchased by Citibank or an affiliate, and are designated to a trust such that receivables arising in such accounts become assets of the trust.

V. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust and any supplement thereto pertaining to a particular series of certificates. In the case of certificates which are denominated as debt instruments, "pooling and servicing agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. *Early Amortization Event* means the events specified in the pooling and servicing agreement that result (in some instances without further affirmative action by any party) in an early amortization of the certificates, including: (1) the failure of the sponsor or the servicer (i) to make any payment or deposit required under the pooling and servicing agreement or supplement thereto within five (5) business days after such payment or deposit was required to be made, or (ii) to observe or perform any of its other covenants or agreements set forth in the pooling and servicing agreement or supplement thereto, which failure has a material adverse effect on investors and continues unremedied for 60 days; (2) a breach of any representation or warranty made by the sponsor or the servicer in the pooling and servicing agreement or supplement thereto that continues to be incorrect in any material respect for 60 days; (3) the occurrence of certain bankruptcy events relating to the sponsor or the servicer; (4) the failure by the sponsor to convey to the trust additional receivables to maintain the minimum seller interest that is required by the pooling and servicing agreement and the Rating Agencies; (5) if a class of investor certificates is in an Accumulation Period, the amount on deposit in the accumulation account in any month is less than the amount required to be on deposit therein; (6) the failure to pay in full amounts owing to investors on the expected maturity date; and (7) the Economic Early Amortization Event.

X. *Series* means an issuance of a class or various classes of certificates by the trust all on the same date pursuant to the same pooling and servicing agreement and any supplement thereto and restrictions therein.

Y. *Revolving Period* means a period of time, as specified in the pooling and servicing agreement, during which principal collections allocated to a series are reinvested in newly generated receivables.

Z. *Controlled Amortization Period* means a period of time specified in the pooling and servicing agreement during which a portion of the principal collections allocated to a series will commence to be paid to the certificateholders of such series in installments.

AA. *Accumulation Period* means a period of time specified in the pooling and servicing agreement during which a portion of the principal collections allocated to a series will be deposited in an account to be distributed to certificateholders in a lump sum on the expected maturity date.

BB. *CCA or Cash Collateral Account* means that certain account, established by the trustee, that serves as credit enhancement with respect to the investor certificates and consists of cash deposits and the proceeds of investments thereon, which investments are permitted investments, as defined below.

CC. *Permitted Investments* means investments which: (1) are direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligation is backed by the full faith and credit of the United States, or (2) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a Rating Agency; are described in the pooling and servicing agreement; and are permitted by the Rating Agency.

DD. *Group* means a group of any number of series offered by the trust that share finance charge and/or principal collections in the manner described in the prospectus.

EE. *An Economic Early Amortization Event* occurs automatically when finance charge collections averaged over three consecutive months are less than the total amount payable on the investor certificates, including (i) amounts payable to, or on behalf of, certificateholders, with respect to interest, defaults, and chargeoffs, (ii) servicing fees payable to the servicer, and (iii) any credit enhancement fee payable to the third-party credit enhancer and allocable to the certificateholders. With respect to a series to which an Accumulation Period (as defined above in Section III.AA.) applies, an additional Economic Early Amortization Event occurs when, for any time during the Accumulation Period, the yield on the receivables in the Trust is less than the weighted average of the certificate rates of all series included in a particular Group within the Trust.

FF. *Ratings Effect* means the reduction or withdrawal by a Rating Agency of its then current rating of the investor certificates of any outstanding series.

GG. *Principal Receivables Discount* means, with respect to any account designated by the sponsor, the portion of the related principal receivables that represents a discount from the face value thereof and that is treated under the pooling and servicing agreement as finance charge receivables.

HH. *Eligible Swap* means an interest rate swap, or (if purchased by or on behalf of the trust) an interest rate cap, that is part of the structure of a Series of certificates:

(1) Which is denominated in U.S. Dollars;

(2) Pursuant to which the trust pays or receives on or immediately prior to the respective payment or distribution date for the series of certificates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g. LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the trust receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the swap counterparty, with all simultaneous payments being netted;

(3) Which has a notional amount that does not exceed either (i) the certificate balance of the class of certificates to which the swap relates, or (ii) the portion of the certificate balance of such class represented by receivables;

(4) Which is not leveraged, (i.e. payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in (2) above, and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) Which has a termination date that is the earlier of the date on which the trust terminates or the related Series of certificates is fully repaid; and

(6) Which does not incorporate any provision which could cause a unilateral alteration in a provision described in clauses (1) through (4) hereof without the consent of the trustee.

II. *Eligible Swap Counterparty* means a bank or other financial institution with a rating at the date of issuance of the certificates by the trust which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the certificates; provided that, if a swap counterparty is relying on its short-term rating to establish eligibility hereunder, such counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the series of certificates with which the swap is associated has a final maturity date of more than one year from the date of issuance of the certificates, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap to establish any collateralization or other arrangement satisfactory to the Rating Agency in the event of a ratings downgrade of the swap counterparty.

JJ. *Qualified Plan Investor* means a plan investor or group of plan investors on whose behalf the decision to purchase certificates is made by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the trust and the effect such swap would have upon the credit ratings of the certificates. For purposes of the proposed exemption, such a fiduciary is either:

(1) A "qualified professional asset manager" (QPAM), as defined under Part V(a) of PTE 84–14 (49 FR 9494, 9506, March 13, 1984);[25]

(2) An "in-house asset manager" (INHAM), as defined under Part IV(a) of PTE 96–23 (61 FR 15975, 15982, April 10, 1996);[26] or

(3) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such certificates.

KK. *Ratings Dependent Swap* means an interest rate swap, or (if purchased by or on behalf of the trust) an interest rate cap contract, that is part of the structure of a series of certificates where the rating assigned by the Rating Agency to any series of certificates held by any plan is dependent on the terms and conditions of the swap and the rating of the swap counterparty, and if such certificate rating is not dependent on the existence of such swap and rating of the swap counterparty, such swap or cap shall be referred to as a "Non-Ratings Dependent Swap". With respect to a Non-Ratings Dependent Swap, each Rating Agency rating the certificates must confirm, as of the date of issuance of the certificates by the trust, that entering into an Eligible Swap with such counterparty will not affect the rating of the certificates.

LL. *Excess Finance Charge Collections* means, as of any day funds are distributed from the trust, the amount by which the finance charge collections allocated to certificates of a series exceed the amount necessary to pay certificate interest, servicing fees and expenses, to satisfy cardholder defaults or charge-offs, and to reinstate credit support.

The Department notes that this proposed exemption, if granted, will be included within the meaning of the term "Underwriter Exemption" as it is defined in Section V(h) of the Grant of the Class Exemption for Certain Transactions Involving Insurance Company General Accounts, which was published in the **Federal Register** on July 12, 1995 (see PTE 95–60, 60 FR 35925).

Summary of Facts and Representations

1. The applicants are Citibank (South Dakota), N.A., Citibank (Nevada), N.A. (together referred to herein as either "the Banks" or "Citibank"), and their Affiliates (collectively, the Applicants). Each of the Banks is a national banking association and an indirect wholly-owned subsidiary of Citicorp.

2. The Banks are, collectively, through their securitization trust vehicles, the largest issuers of credit card receivable asset-backed securities (ABS) in the United States. As of May 26, 1996, such vehicles had issued over $46 billion of credit card receivable ABS. The Banks created Citibank Credit Card Master Trust I (the Trust), formerly known as Standard Credit Card Master Trust I, in May 1991 by entering into a pooling and servicing agreement (a Pooling Agreement) with Yasuda Bank and Trust Company (U.S.A.), as trustee (the Trustee), for the purpose of securitizing a portion of each Bank's portfolio of credit card receivables.

Although the Banks, the Trust and the Pooling Agreement are described herein, the Applicants request an exemption for any master trust similar to the Trust (a Similar Master Trust)[27] established by either of the Banks or an Affiliate pursuant to a pooling and servicing agreement or other contractual arrangement similar to the Pooling

[25] PTE 84–14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a QPAM, provided certain conditions are met. QPAMs (e.g. banks, insurance companies, registered investment advisers with total client assets under management in excess of $50 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under ERISA.

[26] PTE 96–23 permits various transactions involving employee benefit plans whose assets are managed by an INHAM, an entity which is generally a subsidiary of an employer sponsoring the plan which is a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of $50 million.

[27] With respect to such Similar Master Trusts, Citibank states that the Small Business Act of 1996 created a new form of statutory entity called a "financial asset securitization investment trust" (FASIT) which may be used to securitize debt obligations such as credit card receivables, home equity loans, and automobile loans. The Applicants state that a FASIT is equitably owned by a single taxable corporation and issues asset-backed securities that are treated as debt for Federal Income Tax purposes. Activities of a FASIT are generally limited to holding a portfolio of qualified loans. For local law purposes, a FASIT might be a trust, a corporation, or a designated subset of the assets of a trust or a corporation. The Applicants represent that some certificates covered by the proposed exemption may be issued by a FASIT, assuming all of the conditions of the exemption are met including the requirement that the certificates be issued by a Trust (as defined herein).

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Agreement and satisfying the conditions set forth in this proposed exemption. In addition, although Citibank (South Dakota) is described as the owner of Accounts and the servicer and a seller with respect to the Trust, the Applicants request an exemption for any Similar Master Trust established by the Banks or one or more Affiliates of the Banks, regardless of the identity or affiliation of the servicer, for which Citibank or an Affiliate acts as the Master Servicer.

The Series

3. The Pooling Agreement allows the Trust to issue multiple series of investor certificates (each, a Series) with different coupons, interest payment dates, maturities and other terms. The assets of the Trust consist primarily of receivables (the Receivables) from a portfolio of revolving credit card accounts (the Accounts) and collections thereon. The Banks are required to provide sufficient Receivables to allow the reinvestment of principal collections during the Revolving Period (as discussed below) for a Series. The Banks retain an ownership interest in the Trust in the form of a seller certificate. By maintaining this interest, the Banks share with the certificateholders of each Series a pro rata mutual interest in the overall credit quality of the Receivables in the Trust.

Investor certificates of a Series may be sold by the Banks directly to purchasers, through underwriting syndicates led by one or more managing underwriters, through an underwriter acting alone or through agents designated from time to time. As of June 25, 1997, investors in the Trust owned approximately $24.5 billion in certificates issued by the Trust, comprising 33 outstanding Series. The Banks expect to issue additional Series evidencing interests in the Trust from time to time. The Banks may offer additional Series with terms similar to or significantly different from an outstanding Series. Before issuance of any new Series, the Banks must receive confirmation from Standard & Poor's Ratings Group, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch Investors Service, L.P. (a Rating Agency) that the ratings on any outstanding Series will not be reduced or withdrawn (a Ratings Effect) as a result of such new issuance. The particular terms of each Series are determined at the time of sale and are contained in a supplement to the Pooling Agreement (a Series Supplement).

The investor certificates of each Series represent beneficial interests in the assets of the Trust and evidence the right to receive distributions of principal and interest therefrom. Although representing beneficial interests in the Trust assets, the investor certificates have a structure similar to debt instruments, with a principal amount and a coupon. The investor certificates are treated as debt for federal income tax purposes, and are also issued in authorized denominations like debt. Each Series has an expected maturity date (the Expected Final Payment Date) and a legal final maturity date (the Series Termination Date). Citibank states that the Expected Final Payment Date is not the date on which the payment of the security is legally obligated to be paid. Rather, the Expected Final Payment Date is the date on which, to a high degree of certainty, collections on the Receivables are expected to be sufficient to repay the investors. However, the investors must be repaid by the Series Termination Date and, if necessary, any interest in the Receivables represented by the investor certificates of such Series will be sold and the proceeds distributed to investors to make such repayment.

All Series issued by the Trust to date are subdivided into a senior class of investor certificates and a junior or subordinated class of investor certificates, or have the benefit of third-party credit support such that a person other than an investor in senior certificates bears the initial risk of loss. In this regard, Citibank represents that the particular class of certificates for each series to which this proposed exemption would apply (an Exempt Class) will have credit support provided to the Exempt Class through either a senior-subordinated series structure or other form of third party credit support which, at a minimum, will represent five (5) percent of the outstanding principal balance of certificates issued for the Exempt Class, so that an investor in the Exempt Class will not bear the initial risk of loss.

The subdivision of a Series into two classes, along with the credit enhancement discussed herein, permits the senior or Class A certificates to receive an "AAA" rating, the highest possible investment grade rating. The subordinate or Class B certificates also receive an investment grade rating, typically "A". The ratings address the likelihood that investors will receive all interest when due and principal by the legal final maturity date. As discussed in more detail below, these ratings are based upon, among other things, (i) the historical performance of the Receivables arising in the Accounts, (ii) a loan made by a third party financial institution to a cash collateral account (CCA) established by the Trustee to serve as credit enhancement for the Class A and Class B Certificates or other credit enhancement, and (iii) in the case of the Class A Certificates, the subordination of the Class B Certificates.

The Applicants state that if a CCA is used as credit enhancement for a Series, only cash in the form of a loan will be contributed or deposited in a CCA. The loans made to a CCA will be made by third-party financial institutions, unrelated to Citibank. The Trustee will have the right to draw on the CCA under the terms of the Series supplement to the Pooling Agreement and the related loan agreement for the CCA. Cash deposits held in a CCA will be invested in certain permitted investments, as described in the Pooling Agreement, and such investments will be either highly rated or otherwise approved by a Rating Agency. The Applicants state further that not all Series will have the benefit of a CCA. Some Series will have other forms of credit enhancement (such as a letter of credit or a reserve fund) as set forth in the applicable prospectus supplement for the Series.

In general, under current Rating Agency guidelines for the Master Trust, the Class A Certificates comprise 94 percent of the principal amount of a Series and the Class B Certificates comprise 6 percent of the principal amount of a Series. Citibank states that where a CCA is used as enhancement for a Series, the CCA will be funded at closing in an amount generally equal to 7 percent of the principal amount of the Series. The CCA is often further divided into a 5 percent shared CCA, which is shared by the Class A and Class B Certificateholders, but with the Class A Certificateholders having priority, and a 2% Class B CCA, which is for the exclusive benefit of the Class B Certificateholders. The CCA provider receives a monthly fee for providing the loan. This fee is deducted from the monthly finance charge collections allocated to the Series, but only after first deducting amounts payable to, or on behalf of, the investor certificateholders of such Series, as described below.

Citibank represents that the Trust may commence a new program (the "MTC Program") for the issuance of a new Series of investor certificates to be comprised of senior certificates (Series A Certificates) and subordinate certificates (Series B Certificates). Under the MTC Program, the Series B Certificates will be subordinated to each Series of Series A Certificates, in accordance with the current Rating Agency guidelines. The Series issued under the MTC Program will also have the benefit of a common CCA which will be funded in an amount sufficient to permit each of the Series A Certificates to receive an "AAA" rating and each of the Series B Certificates to receive at least an "A" rating.

The Receivables and the Accounts

4. The Receivables conveyed by the Banks to the Trust consist of all amounts charged by cardholders for merchandise and services and amounts advanced as cash advances (Principal Receivables), and all periodic finance charges, annual membership fees, cash advance fees, late charges on amounts charged for merchandise and services and certain other fees designated by the Banks (Finance Charge Receivables). Citibank states that as of April 21, 1997, the Trust had $35,677,604,475 in Receivables, of which $35,175,269,487 were Principal Receivables and $502,335,488 were Finance Charge Receivables. The Receivables conveyed to the Trust to date were generated under the VISA or MasterCard [28] programs and were either originated by Citibank or purchased by Citibank from other credit card issuers. Citibank states that other credit card receivables may be included in the Trust so long as the eligibility criteria discussed herein are met.

The Accounts are owned by Citibank (South Dakota), but a participation in the Receivables in certain of the Accounts was sold to Citibank (Nevada) prior to their conveyance to the Trust. The Accounts have been selected from substantially all of the Eligible Accounts (as defined under "Eligibility Criteria" below) in the credit card portfolio of Citibank (South Dakota) (referred to herein as "the Portfolio"). Citibank (South Dakota) believes that the Accounts are representative of the Eligible Accounts in the Portfolio. Citibank represents in the Pooling Agreement that the inclusion of the Accounts, as a whole, does not represent an adverse selection from among the Eligible Accounts.

The Pooling Agreement designates Citibank (South Dakota) to service the Accounts on behalf of the Trust, including collecting payments due under the Receivables. Citibank, as the servicer of the Trust, receives fees for its services from the Trustee or sponsor of the Trust. Citibank states that the sum of all payments made to and retained by Citibank, as the servicer of the Trust, which are allocable to the series of certificates purchased by a plan, will represent not more than reasonable compensation for such services and reimbursement of any reasonable expenses in connection therewith. Citibank, in its role as servicer of the Receivables in the Trust, does not receive fees from other persons other than the Trustee or sponsor. Citibank may receive fees from others for activities unrelated to the Trust, and may receive payments from obligors on Receivables in the Trust because it has some other relationship to the obligors, such as the provider of credit card insurance. In this regard, Citibank states that the proposed exemption would permit it to receive a "qualified administrative fee" (as defined in Section III.S) from a person other than the Trustee or sponsor of the Trust under circumstances which are similar to those which were permitted in the Underwriter Exemptions.

Principal receivables are sold to the Trust at par (or, as discussed below, at a discount to par) in exchange for a seller certificate or to maintain investor certificates during the Revolving Period. Each dollar of investor certificates entitles an investor to a dollar of principal receivables. Prior to transferring principal receivables to the Trust, Citibank may redesignate a portion of principal receivables to be classified as finance charge receivables (a/k/a the Principal Receivables Discount). This allows Citibank to transfer lower yielding receivables to the Trust at a discount from their par value and to treat the discounted portion of the principal receivables collected as finance charge receivables (a Discount Option). The Discount Option enables Citibank to add receivables relating to credit card accounts with relatively low finance charge rates without adversely effecting the "excess spread" between the certificate rate and the overall net yield on the receivables held in the Trust. The discounted portion of the principal receivables is not counted toward any requirements for maintaining the "required minimum principal balance" (as discussed below). Citibank states that the redesignation of principal receivables as finance charge receivables will not disadvantage investors as each dollar of investor certificates will always be entitled to a dollar of principal receivables held in the Trust.

Upon the sale of investor certificates, the transaction between Citibank and the Trust is characterized as a sale for generally accepted accounting principals. However, legal opinions issued in connection with such a sale may conclude that the transaction is either an absolute transfer of the receivables to the Trust or, in the alternative, a grant of a perfected security interest in the Receivables for the benefit of certificateholders in the Trust.

The Pooling Agreement sets forth the various requirements governing the quantity and quality of Receivables that may be included in the Trust. In connection with any conveyance to the Trust, Citibank must make certain representations and warranties regarding the Receivables, including that the Receivables to be conveyed meet eligibility criteria described below and specified in the Pooling Agreement. Citibank also must maintain the level of Principal Receivables at or above a certain minimum amount specified by the Rating Agencies (see discussion of additions of accounts in Paragraph 7 below).

Notwithstanding such requirements, the Pooling Agreement contains provisions analogous to the collateral substitution provisions in a loan agreement or indenture relating to a secured loan, which permit Citibank, subject to certain conditions imposed by the Rating Agencies, to designate new Accounts or remove certain Accounts, to cause the reassignment to Citibank of previously conveyed Receivables and, subject to certain limitations, to change the underlying terms of the Accounts with cardholders.

5. *Representations and Warranties.* On the issuance date for a Series of investor certificates, Citibank makes representations and warranties to the Trust relating to the Receivables and Accounts to the effect, among other things, that:

(a) Each Account was an Eligible Account (as defined under the "Eligibility Criteria" below), generally as of the date the Receivables arising therein were initially conveyed to the Trust;

(b) Each of the Receivables then existing in the Accounts is an Eligible Receivable; and

(c) As of the date of creation of any new Receivable, such Receivable is an Eligible Receivable.

The Pooling Agreement provides that if Citibank breaches any such representation or warranty, and such breach has a material adverse effect on the investor certificateholders' interest, as determined by the Trustee, the Receivables with respect to the affected Account will be reassigned to Citibank if the breach remains uncured after a specified period of time.

Citibank states that it also represents and warrants to the Trust, among other things, that as of the issuance date for a Series of investor certificates the Pooling Agreement and Series

[28] VISA and MasterCard are registered trademarks of VISA U.S.A., Inc. and MasterCard International Incorporated, respectively.

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Supplement thereto creates a valid sale, transfer and assignment to the Trust of all right, title and interest of Citibank in the Receivables or the grant of a first priority perfected security interest under the Uniform Commercial Code as in effect in South Dakota and Nevada in such Receivables. If Citibank breaches such representation or warranty, and such breach has a material adverse effect on the investor certificateholders' interest, the Trustee or the holders of the investor certificates may direct Citibank to accept the reassignment of the Receivables in the Trust and transfer funds to the Trust in an amount equal to the outstanding principal amount of the investor certificates plus accrued interest thereon.

6. *Eligibility Criteria.* An *Eligible Account* is a credit card account owned by Citibank (South Dakota) which: (a) is in existence and maintained by Citibank (South Dakota); (b) is payable in U.S. dollars; (c) in the case of initial Accounts, has a cardholder with a billing address located in the United States or its territories or possessions or a military address; (d) has a cardholder who has not been identified as being involved in a voluntary or involuntary bankruptcy proceeding; (e) has not been identified as an Account with respect to which the related card has been lost or stolen; (f) has not been sold or pledged to any other party; (g) does not have receivables which have been sold or pledged to any other party; and (h) in the case of the Accounts initially assigned to the Trust, is a VISA or MasterCard revolving credit card account.

An *Eligible Receivable* is a Receivable: (a) Which has arisen under an Eligible Account; (b) which was created in compliance in all material respects with all requirements of law and pursuant to a credit card agreement which complies in all material respects with all requirements of law; (c) with respect to which all material consents, licenses, approvals or authorizations of, or registrations with, any governmental authority required to be obtained or given in connection with the creation of such Receivable or the execution, delivery, creation and performance by Citibank (South Dakota) or by the original credit card issuer, if not Citibank (South Dakota), of the related credit card agreement have been duly obtained or given and are in full force and effect; (d) as to which at the time of its transfer to the Trust, the Banks or the Trust have good and marketable title, free and clear of all liens, encumbrances, charges and security interests; (e) which has been the subject of a valid transfer and assignment from the Banks to the Trust of all the Banks' right, title and interest therein or the grant of a first priority perfected security interest therein (and in the proceeds thereof); (f) which will at all times be a legal, valid and binding payment obligation of the cardholder thereof enforceable against such cardholder in accordance with its terms, subject to certain customary exceptions relating to the bankruptcy of the cardholder; (g) which at the time of its transfer to the Trust, has not been waived or modified except as permitted under the Pooling Agreement; (h) which is not at the time of its transfer to the Trust subject to any right of rescission, set off, counterclaim or defense (including the defense of usury), other than certain bankruptcy-related defenses; (i) as to which Citibank has satisfied all obligations to be fulfilled at the time it is transferred to the Trust; (j) as to which Citibank has done nothing, at the time of its transfer to the Trust, to impair the rights of the Trust or investor certificateholders of a Series therein, and (k) which constitutes either an "account" or a "general intangible" under the Uniform Commercial Code as then in effect under South Dakota or Nevada state law.

7. *Additions of Accounts.* To maintain Citibank's seller interest in the Trust, the Pooling Agreement contains provisions analogous to collateral maintenance requirements under a secured loan that require Citibank to designate new Accounts (the receivables in which will be conveyed to the Trust) if, as of the end of any calendar week, the total amount of Principal Receivables in the Trust is less than the amount required by the Rating Agencies (the Required Minimum Principal Balance).

The Pooling Agreement provides that Citibank will be required to make a Lump Sum Addition to the Trust in the event that the amount of Principal Receivables is not maintained at a minimum level equal to the greater of: (a) 107 percent of the sum of the invested amounts of all outstanding investor certificates of all Series, or (b) 102 percent of the sum of the initial invested amounts of all outstanding investor certificates of all Series (or, if applicable for a particular Series, the highest invested amount during a Due Period,[29] or, during any accumulation period, scheduled amortization period, early amortization period or Class A amortization period, the highest invested amount during the Due Period preceding the first Due Period for such accumulation scheduled amortization period, early amortization period or Class A amortization period). Citibank may, upon 30 days prior notice to the Trustee, the Rating Agency and any provider of Series credit enhancement, reduce the Required Minimum Principal Balance, provided that such reduction will not result in (1) a reduction or withdrawal of any Rating Agency's rating of the investor certificates of any outstanding Series, or (2) an adverse effect, as defined in the Pooling Agreement (an Adverse Effect) on the certificateholders of any Series, and provided further that the Required Minimum Principal Balance may never be less than 102 percent of the sum of the initial invested amounts of all outstanding investor certificates of all Series (or, if applicable for a particular Series, the highest invested amount during a Due Period, or, during any scheduled amortization period, early amortization period or Class A amortization period, the highest invested amount during the Due Period preceding the first Due Period for such scheduled amortization period, early amortization period or Class A amortization period).

As previously noted, the requirement that Citibank maintain Principal Receivables in an amount at least equal to the Required Minimum Principal Balance is one mandated by the Rating Agencies. The purpose of the Required Minimum Principal Balance is to ensure that Citibank's interest in the Trust is large enough to absorb dilution caused by obligors returning merchandise originally charged under their Account ("Returns") and possible seasonal fluctuations in the Receivables. In assessing the size of the Required Minimum Principal Balance, Rating Agencies generally consider a number of factors including historical portfolio dilution, the timing of Returns, the portfolio composition, rebate programs and the structural provisions designed to ensure that a minimum amount of Principal Receivables is maintained. The Rating Agencies must affirmatively confirm by written notice to the Trustee that any reduction in the Required Minimum Principal Balance will not result in the reduction or withdrawal of the rating assigned to any outstanding Series or class of investor certificates.

Conveyance of additional receivables (i.e. a Lump Sum Addition) may consist of:

(a) Receivables arising in additional Eligible Accounts from the Portfolio;

(b) Receivables arising in portfolios of revolving credit card accounts acquired by the Banks from other credit card issuers;

(c) Receivables arising from certain non-premium and premium MasterCard and VISA credit card accounts previously transferred by Citibank to certain trusts in securitization transactions that have matured or terminated;

(d) Receivables arising in any other revolving credit card accounts of a type which have not been previously included in the Accounts;[30] and/or

(e) Participations in a pool of receivables.

After giving effect to a Lump Sum Addition, the total amount of Principal Receivables in the Trust will at least equal the Required Minimum Principal Balance. In addition, subject to the conditions contained in the Pooling Agreement, Citibank may from time to time, at its sole discretion, voluntarily make a Lump Sum Addition to the Trust.

Subject to limitations and conditions in the Pooling Agreement, Citibank from time to time may also designate, at its sole discretion, Receivables in newly originated Eligible Accounts to be included as Accounts (New Accounts). By adding Receivables in New Accounts, the Seller's interest will be increased, but the Seller and the investors will share interests in all of the Receivables, including all those arising in New Accounts and in Accounts previously assigned to the Trust. Citibank has designated New Accounts (the Receivables in which have been added to the Trust) since the creation of the Trust, and Citibank may continue to do so in the future. To protect the Trust from dramatic changes in composition, the number of New Accounts Citibank may designate with respect to any specified three month period may not exceed 15 percent of the number of Accounts as of the first day of such period, and the number of New Accounts designated during any calendar year may not exceed 20 percent of the number of Accounts as of the first day of such calendar year. The Pooling Agreement also requires Citibank to deliver an opinion of counsel semi-annually with respect to the New Accounts included as Accounts, confirming the validity of each transfer of Receivables in such New Accounts.

8. *Reassignment of Receivables.* Citibank has the right to require the reassignment to Citibank of the Receivables with respect to certain Accounts. Citibank represents that it may desire such a reassignment, for example, to set up a new master trust or other securitization vehicle. However, such a reassignment may only occur upon satisfaction of certain conditions in the Pooling Agreement under guidelines established by the Rating Agencies, which are described in the Series prospectus. Citibank states that in order to satisfy such conditions, the Rating Agencies must confirm in advance that such reassignment will not cause the rating assigned to any outstanding Series or class of investor certificates to be withdrawn or reduced. In addition, Citibank must deliver an officers' certificate to the effect that Citibank reasonably believes that such reassignment will not, at the time of its occurrence or a future date: (a) Cause an early amortization event; (b) cause a reduction of the amounts of surplus finance charge collections with respect to any Series of investor certificates below the level required by the Rating Agencies; or (c) adversely affect the amount or timing of payments to investor certificateholders of any Series.

Only after satisfaction of these and other conditions set forth in the Series prospectus[31] for the removal of Accounts from the Trust will the Trustee execute and deliver to Citibank a written reassignment to reconvey to Citibank, without recourse, the Receivables arising in Removed Accounts (Removed Accounts).

9. *Modification to the Underlying Terms of the Accounts.* Each cardholder is subject to an agreement governing the terms and conditions of such cardholder's Account. Pursuant to such agreement, Citibank (South Dakota), as owner of the Accounts, has the right to change or terminate any terms, conditions, services or features of the Accounts (including increasing or decreasing periodic finance charges or minimum payments). Citibank has covenanted in the Pooling Agreement that, except as otherwise required by any requirement of law or as is deemed necessary by Citibank to maintain its credit card business on a competitive basis, it will not take actions which would reduce the net portfolio yield on the Receivables (after subtracting therefrom the amount of Principal Receivables that were written off as uncollectible) to be less than the sum of: (a) the weighted average certificate rate of each class of investor certificates of each Series; and (b) the weighted average of the net servicing fee rate allocable to each class of investor certificates of each Series. In addition, Citibank has agreed in the Pooling Agreement that, unless required by law, it will not reduce such net portfolio yield to less than the highest certificate rate for any outstanding Series or class. Citibank also has covenanted in the Pooling Agreement that it will change

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[29] A *Due Period* refers to the monthly period beginning at the close of business on the fourth-to-last business day of each month and ending at the close of business on the fourth-to-last business day of the immediately following month.

[30] Because additional Accounts may not be accounts of the same type as previously included in the Trust, Citibank states that there can be no assurance that such additional Accounts will be of the same credit quality as the initial Accounts or the additional Accounts currently included in the Trust. In addition, such additional Accounts may consist of credit card accounts which have different terms than the initial Accounts, including lower periodic finance charges, which may have the effect of reducing the average yield on the portfolio of Accounts. However, as with any removal of any Accounts, the designation of additional Accounts will be subject to the satisfaction of certain conditions required by the Rating Agencies, including that (i) such addition will not result in a Ratings Effect (i.e. a lower credit rating for the certificates), and (ii) Citibank must deliver to the Trustee and any provider of credit enhancement for the Series a certificate of an authorized officer to the effect that, in the reasonable belief of Citibank, such addition will not at the time of such addition or at a future date cause an early amortization event or adversely affect the timing or amount of payments to certificateholders (referred to in the Series prospectus as an "Adverse Effect"—see Paragraph 8 regarding the Reassignment of Receivables for further discussion of an Adverse Effect).

[31] The complete conditions specified by the Series prospectus for the removal of Accounts from the Trust are as follows:

(a) on or before the fifth business day immediately preceding the date upon which such Accounts are to be removed, Citibank will give the Trustee, the Servicer, the Rating Agency and any provider of credit support (i.e., Series Enhancement) written notice of such removal specifying the date for removal of the Removed Accounts (the Removal Date);

(b) on or prior to the date that is five business days after the Removal Date, Citibank will deliver to the Trustee a list of the Removed Accounts specifying for each such Account, as of the removal notice date, its account number, the aggregate amount outstanding in such Account and the aggregate amount of Principal Receivables outstanding in such Account;

(c) Citibank will represent and warrant as of each Removal Date that the list of Removed Accounts delivered pursuant to (b) above, as of the Removal Date, is true and complete in all material respects;

(d) the Trustee shall have received advance confirmation from the Rating Agency that such removal will not result in a Ratings Effect;

(e) Citibank will deliver to the Trustee and any provider of Series Enhancement a certificate of an authorized officer, dated as of the Removal Date, to the effect that Citibank reasonably believes that such removal will not at the time of its occurrence or at a future date cause an Adverse Effect (i.e., the occurrence of an early amortization event for any Series or a reduction of the amount of surplus finance charge collections below the level required by the Rating Agencies, or an event which adversely affects in any manner the timing or amount of payments to investor certificateholders of any Series or any enhancement invested amounts); and

(f) Citibank will deliver to the Trustee, the Rating Agency and any provider of Series Enhancement an opinion of counsel acceptable to the Trustee that for federal and state tax law purposes: (i) Following such removal the Trust will not be an association (or publicly traded partnership) taxable as a corporation, and (ii) such removal will not adversely affect the characterization of the investor certificates of any Series as debt and will not cause a taxable event to holders of any such investor certificates.

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the terms relating to the Accounts designated to the Trust only if such change is made applicable to the comparable segment of the portfolio of Accounts owned or serviced by Citibank which are part of the same program or which have the same or substantially similar characteristics. The ability of Citibank to change the terms of the Accounts is necessary to meet the competitive demands of the marketplace.

Citibank states that it offers a variety of different underwriting standards and terms on its credit card accounts. For example, Citibank offers Gold Visa cards and Regular Classic Visa cards. Citibank also offers "co-branded" cardholder programs, in conjunction with, among others, American Airlines, under which cardholders can earn frequent flyer miles or credits to be applied to the purchase price of goods or services. With respect to such programs, some Accounts are designated to the Trust and some are not. If Citibank determines to change an underwriting standard or cardholder agreement terms under one of these programs, Citibank does so without distinguishing those affected Accounts designated to the Trust from those affected Accounts which are not designated to the Trust. This failure to distinguish is mandated by the Pooling Agreement and the Rating Agencies. Citibank's decisions are fundamentally decisions with respect to how to operate its business in a competitive manner and will not treat Accounts designated to a Trust any differently than other Accounts.

Citibank states that if changes to underwriting standards or cardholder agreement terms were to adversely affect the performance of the Receivables in the Trust (e.g. cause an increase in charge-offs or defaults, or a lower yield on the Receivables), investors are protected by the early amortization event triggers (as discussed further in Paragraphs 13 and 14 below) and credit enhancement. In order for certificates issued by the Trust to obtain a high credit rating, there must be sufficient credit enhancement to meet the Rating Agency's "high stress" scenarios to ensure full and timely payment of principal and interest. In this regard, an "economic early amortization event" occurs immediately upon the occurrence of either of the two events specified in Paragraph 14 below, without any notice or other action on the part of the Trustee or the certificateholders.

Pass-Through of Cardholder Payments

10. Cardholder payments for each month are separated into principal collections and finance charge collections, both of which, as well as defaults on Principal Receivables, are allocated to each Series and to Citibank pro rata based on the relative interest of each in the Trust. Investors will, however, receive a fixed allocation of principal collections during the Accumulation or Amortization Period. Citibank's interest in the Trust represents the portion of the Principal Receivables in the Trust that is not represented by investor certificates. Finance charge collections are used to pay the coupon on the investor certificates of each Series, as well as to pay the servicing costs and cover defaults on principal payments due from cardholders. Principal collections are typically reinvested in new Receivables and/or allowed to accumulate for a period of time, rather than distributed immediately to investors, so that the investor certificates' payment characteristics will mirror those of comparable long-term debt instruments. However, the Pooling Agreement specifies Early Amortization Events following the occurrence of which all principal collections will commence being distributed to investors.

11. *Principal Collections.* If principal collections that were allocated to a Series were immediately distributed to the investors, the investors would be quickly repaid. For example, Citibank states that in 1996 the average monthly cardholder principal payment rate was 18.46 percent, which means all investors would be repaid over a six-month period assuming all Series in the Trust simultaneously amortize. To structure the investor certificates so as to perform as if they were long-term debt instruments, principal collections allocated to a Series are reinvested in newly generated Receivables arising in the Accounts for a period of time specified in the Series Supplement (i.e., the Revolving Period). Reinvestment in Receivables during the Revolving Period maintains the principal amount of the Series invested in the Trust for such period. At the end of the Revolving Period, shortly before the expected maturity date, a portion of the principal collections allocated to a Series either will commence to be paid to the investor certificateholders of such Series in monthly installments (a Controlled Amortization Period) or will be deposited in an account to be distributed to such certificateholders in a lump sum on the expected maturity date (an Accumulation Period), depending on the terms specified in the related Series Supplement. Generally, each of the recently issued Series has: (i) an eleven-month Accumulation Period for the Class A Certificates, which may be shortened (and the Revolving Period extended) according to an objective formula used to project the level of principal collections in the Trust; and (ii) a one-month accumulation period for the Class B Certificates.

12. *Finance Charge Collections.* Finance charge collections that are allocated to Series belonging to the same Group are pooled together and then shared among all Series in the Group based on the amount of total expenses of each Series for coupon, losses and servicing fees. [32] All Series issued to date have been designated as belonging to Group One. As a result of this reallocation of finance charges, those Series that have higher coupons will receive a proportionately larger share of the finance charge income and thus may avoid suffering a shortfall which might occur if finance charge income were allocated based on the relative interest (based on aggregate principal amounts) of such Series in the Trust. However, if finance charge income is not sufficient to cover total expenses in Group One, all Series within Group One will share proportionately in the shortfall regardless of the interest rate of the investor certificates of an individual Series. Finance charge collections allocable to a Series belonging to one Group will not impact finance charge collections allocable to any Series belonging to a different Group.

All Series issued under the MTC Program will be designated as belonging to Group Two. Finance charge collections that are allocated to Series belonging to Group Two will be pooled together and then shared the same way as the Series which are included in Group One.

Early Amortization Events

13. Citibank represents that an earlier than scheduled payout of principal to investor certificateholders of a Series will occur under certain circumstances specified in the Pooling Agreement (each condition is described as an Early Amortization Event).

Generally, Early Amortization Events include:

[32] In addition, Citibank states that in some instances principal collections on receivables allocated to a particular Series may be shared with other Series within the same Group, provided that the minimum principal receivable balances required by the Rating Agencies for all Series within the Group are maintained. However, Citibank states further that under its current payment structure, principal collections on receivables allocated to a particular Series are usually not shared.

(a) The failure of the Bank to either (i) make any payment or deposit required under the Pooling Agreement or any Series Supplement within five (5) business days after such payment or deposit was required to be made, or (ii) observe or perform any of its other covenants or agreements set forth in the Pooling Agreement or any Series Supplement, which failure has a material adverse effect on investors and continues unremedied for 60 days;

(b) A breach of any representation or warranty made by Citibank in the Pooling Agreement or any Series Supplement which continues to be uncorrected in any material respect for 60 days;

(c) The occurrence of certain bankruptcy events relating to either Bank (an Insolvency Event);

(d) The failure by the Banks to make a Lump Sum Addition;

(e) The occurrence of any servicer default by Citibank;

(f) If a class of investor certificates is in an Accumulation Period, the amount on deposit in the accumulation account in any month is less than the amount required to be on deposit therein;

(g) The failure to pay in full amounts owing to investors on the expected maturity date; and

(h) The Economic Early Amortization Event described below.

Each Series Supplement may contain other Early Amortization Events for the related Series in addition to those specified in the Pooling Agreement. To date, no Early Amortization Event has occurred with respect to any Series of investor certificates issued by the Trust.

Citibank has no discretion with respect to the determination whether an Early Amortization Event has occurred. However, certain Early Amortization Events, such as the breach of a representation or warranty, are qualified by materiality and may be declared at the option of the Trustee. Citibank states that in light of the complexity of these securitization transactions, such flexibility is intended to permit the Trustee to act in the best interests of investor certificateholders, which may be to forego early amortization by reason of a mere technical violation. Other Early Amortization Events, such as the Economic Early Amortization Event, are not qualified by materiality and operate automatically. In effect, such events are always material.

The occurrence of an Early Amortization Event will cause the Revolving Period, Controlled Amortization Period or Accumulation Period, as may be applicable, to end and principal collections will be used thereafter to make monthly payments of principal to the investor certificateholders of such Series (i.e. an Early Amortization Period) until the earlier of payment in full of the outstanding principal amount of the certificates of such Series or the legal final maturity date for such Series specified in the related Series Supplement. If an Accumulation Period has already begun for a Series, then all monies that have been previously deposited in an accumulation account for such Series will be withdrawn upon the occurrence of an Early Amortization Event and paid to the investor certificateholders of such Series.

In addition to the foregoing consequences of an Early Amortization Event described above, if an Insolvency Event occurs, Citibank will immediately cease to transfer Receivables to the Trust. Thereafter, unless the requisite number of investor certificateholders instruct otherwise, the Trustee will sell or otherwise liquidate the Receivables in the Trust in a commercially reasonable manner and on commercially reasonable terms. The proceeds of such sale or liquidation will be applied first to payments on the Class A Certificates, then to the Class B Certificates.

14. *Economic Early Amortization Events.* Citibank represents that all outstanding Series include an Economic Early Amortization Event, which is triggered if finance charge collections averaged over three consecutive months are less than the total amounts payable with respect to the Class A and Class B Certificates (including amounts payable with respect to interest, servicing fees, defaults, charge-offs and any credit enhancement fee).[33] Upon the occurrence of an Economic Early Amortization Event, monies on deposit in the CCA will be used to make payments of principal to the Class A Certificateholders and Class B Certificateholders. However, Citibank states that because the amount on deposit in a CCA is likely to be insufficient to pay outstanding principal amounts in full, additional collections with respect to the Receivables will be required to fully pay down the certificates. Thus, the Trust generally will depend on several forms of credit enhancement [e.g. "excess spread" between the Receivables and the certificate rate, subordination of the Class B Certificates, letters of credit or other third party credit enhancement], as well as any interest rate swap transactions (as discussed in Paragraph 16 below) and the maintenance of the "required minimum principal balance" for the Receivables under guidelines set by the Rating Agencies, to ensure timely repayment of principal and interest to the certificateholders.

[33] The Series to which an Accumulation Period applies contain an additional Economic Early Amortization Event which is triggered if, during the Accumulation Period, the yield on the Receivables in the Trust is less than the weighted average of the certificate rates of all Series included in the Group.

Utilization of Credit Support—The Role of the Master Servicer and the Role of the Trustee

15. The servicer of Citibank's credit card ABS does not supply credit support. Further, if the servicer fails to call upon a credit support mechanism to produce needed funds, the Trustee may exercise its rights as beneficiary of the credit support to obtain the funds under the credit support mechanism. Therefore, in all cases, the Trustee will be ultimately responsible for deciding when to exercise its rights as beneficiary of the credit support.

In some cases, the servicer or an affiliate will be required under the terms of the Pooling Agreement to provide liquidity (but not credit) advances to the Trust. In these cases, the servicer will advance funds to cover shortfalls and will be reimbursed on the following distribution date from collections on the Receivables or Series credit support. The servicer will not be required to make any such liquidity advance unless there is sufficient Series credit support available to ensure repayment of the liquidity advance on the following distribution date. If the servicer fails to advance funds in respect of a shortfall when obligated to do so, the Trustee will exercise its rights under any available credit support on the following distribution date to obtain the necessary funds under the credit support mechanism.

The servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which Receivables ordinarily are deemed uncollectible. The Pooling Agreement requires the servicer to follow its normal servicing guidelines and also sets forth in the definition of Defaulted Receivables the servicer's general policy as to the period of time after which delinquent Receivables will be considered uncollectible.

On a monthly basis the servicer is required to report to the Trustee the amount of all past-due payments along with other current information as to collections on the Receivables and draws upon, or payments to be made from, the credit support. Further, the servicer is required to deliver to the Trustee annually a certificate of an officer of the servicer stating that a review of the servicing activities has been made under such officer's

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supervision, and either stating that the servicer has fulfilled all of its obligations under the Pooling Agreement or, if the servicer has defaulted under any of its obligations, specifying any such default. The servicer's reports are reviewed annually by independent accountants to ensure that the servicer is following its normal servicing standards and that the servicer's reports conform to the servicer's internal accounting records. The results of the independent accountant's review are delivered to the Trustee.

Interest Rate Swap Agreements by the Trust

16. For certain Series of certificates, the Trust will have the benefit of interest rate swap agreements for the exclusive benefit of the Class A Certificateholders (the Class A Interest Rate Swap) and/or interest rate swap agreements for the exclusive benefit of the Class B Certificateholders (the Class B Interest Rate Swap). Citibank (South Dakota) and Citibank (Nevada) may be the counterparties to the Trust for these Interest Rate Swaps.[34]

Pursuant to the terms and conditions of the Interest Rate Swaps, the Trust will be obligated to make certain payments periodically to the swap counterparty based on either a fixed or floating interest rate. In turn, the swap counterparty will be obligated to make payments periodically to the Trust based on either a fixed or floating interest rate. Payments received by the Trust pursuant to the Class A Interest Rate Swaps will be available to pay interest due on the Class A Certificates on each Class A interest payment date and payments received by the Trust pursuant to the Class B Interest Rate Swaps will be available to pay interest due on the Class B Certificates on each Class B interest payment date. The Trust will also have the benefit of funds on deposit in a CCA or other applicable credit support.

As an example, Citibank has submitted information for the Series of certificates issued by the Trust on August 29, 1996 (known as $750,000,000 Floating Rate Class A Credit Card Participation Certificates, Series 1996–5 and $48,000,000 Floating Rate Class B Credit Card Participation Certificates, Series 1996–5). On the Series issuance date (August 29, 1996), the Trustee of the Trust, for the exclusive benefit of the Class A Certificateholders, entered into two Class A Interest Rate Swaps with Citibank (South Dakota) and Citibank (Nevada), respectively, which together had a combined notional amount as of any swap payment date equal to the outstanding principal amount of the Class A Certificates as of the close of business on the preceding distribution date.

Interest with respect to the investor certificates accrues from August 29, 1996 and is payable quarterly on the fifteenth day of March, June, September and December, commencing December 15, 1996. Pursuant to the Class A Interest Rate Swaps, on the business day preceding each distribution date, payments are made by the Trust to Citibank (if the following is a positive number), or by Citibank to the Trust (if the following is a negative number) of an amount in the aggregate equal to:[35]

(i) one quarter of the product of

(A) the Class A Notional Amount; and

(B) 6.8691 percent (the Class A Swap Rate); minus

(ii) the product of

(A) a fraction, the numerator of which is the actual number of days from and including the prior distribution date (excluding the related distribution date), and the denominator of which is 360;[36]

(B) the Class A Notional Amount; and

(C) The Class A Certificate Rate.

The Class A Certificate Rate for each interest period is a per annum rate equal to the arithmetic mean of London interbank offered quotations for United States dollar deposits (i.e. LIBOR) for the applicable three month period, plus .105 percent.[37]

The principal on the Class A and Class B Certificates issued on August 29, 1996, is scheduled to be paid on the September 2003 payment date, but principal and interest for such certificates may be paid earlier under the circumstances described herein (e.g. an economic early amortization event). Principal payments will not be made to Class B Certificateholders until the final principal payment has been made for the Class A Certificates. Unless an early amortization event has occurred, the Revolving Period will end and the Accumulation Period (i.e. for principal payments to certificateholders) will commence at the close of business on the fourth-to-last business day of August 2002. However, Citibank, as Servicer, may shorten the length of the Accumulation Period and extend by an equivalent period the length of the Revolving Period based on the amount of principal available to the investor certificates of all Series determined based on the principal payment rate on the Receivables and the amount of principal distributable to certificateholders of all outstanding Series.

The Series prospectus for these certificates indicates that the CCA was funded by an initial deposit of $55,860,000, of which $39,900,000 was for the benefit of both the Class A and Class B Certificates, and $15,960,000 was for the exclusive benefit of the Class B Certificates. In the event of an economic early amortization event, the available shared enhancement amount (after giving affect to other withdrawals from the CCA on the distribution date) will be applied to pay principal of the Class A Certificates and the remainder of the available CCA will be applied to pay principal of the Class B Certificates.

The Series prospectus states that it was a condition to the issuance of the Class A Certificates on August 29, 1996, that they be rated in the highest rating category by at least one Rating Agency. Under this proposed exemption, employee benefit plan investors are able

[34] Banks or financial institutions other than Citibank may be swap counterparties to the Trust on other interest rate swaps. In addition, an interest rate "cap" could be used where the Trust issues floating rate certificates. In such instances, a counterparty would be paid a premium in advance by Citibank (from its own funds). Under the interest rate cap agreement, if the floating rate on the certificates were to rise above a specified rate (i.e. the cap rate), the counterparty would be required to provide the Trust with the amounts in excess of the cap rate necessary to pay the balance of the interest on the certificates.

[35] If such amount is positive, it will be referred to as the "Class A Net Swap Payment", and if such amount is negative, it will be referred to as the "Class A Net Swap Receipt'.

[36] The day count fraction used in any swap would correspond to the day count fraction used in the related Series of certificates. For example, industry convention is that fixed rate securities bear interest on a 30/360 day count fraction while floating rate securities often bear interest on an actual/360 day count fraction. Accordingly, any floating payments made by a swap counterparty to the Trust which relate to a floating rate Series of certificates with an actual/360 day count fraction would also have an actual/360 day count fraction and any fixed payments made by a swap counterparty to a Trust which relate to a fixed rate Series of certificates with a 30/360 day count fraction would also have a 30/360 day count fraction.

[37] It should be noted that a substantial portion of the Receivables in the Trust bear interest at the prime rate plus a margin, while the investor certificates will bear interest at one or more fixed or floating rates specified in the related prospectus. If there is a decline in the prime rate, the amount of Finance Charge Receivables in the Trust may be reduced and, even if there is a similar reduction in any floating rate or other rates applicable to the investor certificates, there will not be a similar reduction in the other amounts (e.g. servicing fees or expenses for operating the Trust) required to be funded out of such Receivables. The subject Series prospectus notes that this mismatch between the various cashflows into and out of the Trust results in "basis risk" which is partially mitigated by the presence of the Interest Rate Swaps. Thus, as noted in more detail above, payment of the Class A Certificate Rate and the credit rating for such certificates may be dependent, in part, on the swap agreements and the creditworthiness of the swap counterparty.

to acquire only the Class A Certificates. The rating of the Class A Certificates was based primarily on the value of the Receivables (see Rating Agency Analysis in Paragraph 17 below), the extent of the initial shared enhancement amount (i.e. the CCA, etc.), the circumstances in which funds may be withdrawn from the CCA for the benefit of the investor certificateholders, the terms of the Class B Certificates and the Interest Rate Swaps and the credit ratings of the swap counterparties [e.g., Citibank (South Dakota) and Citibank (Nevada)]. In the event the short-term debt rating of either swap counterparty is withdrawn or reduced below A–1+ by Standard & Poor's Ratings Group or its long-term debt rating is withdrawn or reduced below Aa3 by Moody's Investors Service, the Servicer will (as agent for the Trustee),[38] within 30 days after such rating withdrawal or reduction, use reasonable efforts to (i) obtain a replacement interest rate swap agreement with terms substantially the same as the respective Interest Rate Swap, or (ii) establish any other arrangement satisfactory to the applicable Rating Agency, such that the ratings of the investor certificates by the applicable Rating Agency will not be withdrawn or reduced. In the event no such replacement interest rate swap agreement is obtained, or no other arrangement satisfactory to the Rating Agency is established within such period, an early amortization event will occur. The Series prospectus states that there can be no assurance that the ratings of the investor certificates will remain for any given period of time or that such ratings will not be lowered or withdrawn entirely by the Rating Agency if in its judgment circumstances in the future so warrant.[39]

The Series prospectus states that delivery of these investor certificates was made in book-entry form through the facilities of the Depository Trust Company (DTC), Cedel Bank and the Euroclear System on August 29, 1996. The underwriters for the Class A Certificates were Citibank, Goldman, Sachs & Co., Merrill Lynch & Co. and Salomon Brothers Inc. An application was made by Citibank to list the certificates on the Luxembourg Stock Exchange. The Trust had previously issued thirty (30) other Series of investor certificates which evidence undivided interests in the Trust which were still outstanding at that time.[40] The Series prospectus states that additional Series are expected to be issued from time to time by the Trust and that additional credit enhancement will be provided for each additional Series issued.

Citibank represents that the credit rating provided to a particular Series or class of certificates by the relevant Rating Agency may or may not be dependent upon the existence of a swap agreement. Thus, in some instances, the terms and conditions of a swap agreement entered into by the Trust will not effect the credit rating of the Series or class of certificates to which the swap relates (i.e. a "Non-Ratings Dependent" Swap). Citibank states that typically when a swap agreement is entered into by the Trust, the credit rating established by the Rating Agency for the particular Series of certificates to which the swap relates will be dependent upon the existence of the swap (i.e. a "Ratings Dependent" Swap).

Citibank represents further that each particular swap transaction entered into by the Trust will be an "Eligible Swap" (as defined in Section III.HH. above). In addition, each swap transaction will be with an "Eligible Swap Counterparty", which shall be a bank or other financial institution with a rating at the date of issuance of the certificates by the trust which is in one of the three highest long-term credit rating categories, and/or one of the two highest short-term credit rating categories, utilized by the Rating Agencies rating the certificates. However, if a swap counterparty is relying on its short-term rating to establish its eligibility, such counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency. If the rating of a particular Series or class of certificates is dependent upon the terms and conditions of an Eligible Swap entered into by the Trust (i.e., a "Ratings Dependent" Swap), the swap counterparty will be subject to certain collateralization or other arrangements satisfactory to the Rating Agencies in the event of a rating downgrade of the swap counterparty below a level specified by the Rating Agency, which would be no lower than the level that would make such counterparty "eligible" under this proposed exemption (see Section III.II above). If these arrangements are not established within a specified period, as described in the Pooling Agreement, there will be an early amortization event causing certificateholders to receive an earlier than expected payout of principal on their certificates for the series to which the swap relates. However, with respect to a Non-Ratings Dependent Swap, the Pooling Agreement will not specify that there be an early amortization event for the series to which the swap relates if the credit rating of the swap counterparty falls below the level required for it to be considered an Eligible Swap Counterparty (as described in Section III.II. above). In such instances, in order to protect the interests of the trust as a swap counterparty, the servicer (as agent for the trustee of the trust) will be required to either:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement will terminate);

(ii) Cause the swap counterparty to post collateral with the trustee of the trust in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms.

Under any termination of a swap, the trust will not be required to make any termination payments to the swap counterparty (other than a currently scheduled payment under the swap agreement) except from "excess finance charge collections" or other amounts that would otherwise be payable to the servicer or the seller (i.e. Citibank). In this regard, "excess finance charge collections" will be, as of any day funds are distributed from the trust, the amounts by which finance charge collections allocated to certificates of a

[38] In this regard, the Department notes that the Trustee would be obligated, as a fiduciary for "plan assets" held by the Trust, to ensure that the Servicer uses reasonable efforts to take whatever actions are necessary to satisfy the Rating Agency so as to avoid a reduction or withdrawal of the current rating for certificates of a particular Series following any reduction or withdrawal of the swap counterparty's rating.

[39] The Department cautions plan fiduciaries to fully understand the risks and benefits associated with investments made in asset-backed securities, such as credit card receivable ABS, or any other fixed-income security. In this regard, section 404(a) of the Act requires, among other things, that a plan fiduciary act prudently when making investment decisions on behalf of a plan. The Department also cautions plan fiduciaries that if the assets of a trust which issues certificates is deemed to be "plan assets" under the Department's regulations (see 29 CFR 2510.3–101), the plan's assets would include not only the certificates purchased but also an undivided interest in each of the underlying assets of the trust, including any interest rate swap agreement between the trust and a bank. For a current statement of the Department's views on the use of "derivatives" by pension plans, see DOL Letter from Olena Berg, Assistant Secretary for Pension and Welfare Benefits, to The Honorable Eugene A. Ludwig, Comptroller of the Currency, dated March 21, 1996.

[40] The Series prospectus states that the aggregate amount of Receivables in the Accounts included in the Trust as of July 7, 1996 was $31,796,288,366, of which $31,414,439,867 were Principal Receivables and $381,848,499 were Finance Charge Receivables.

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series exceed the amounts necessary to pay certificate interest, servicing fees and expenses, to satisfy cardholder defaults or charge-offs, and to reinstate credit support.

With respect to Non-Ratings Dependent Swaps, each Rating Agency rating the Certificates must confirm, as of the date of issuance of the Certificates by the Trust, that entering into the swap transactions with the Eligible Swap Counterparty will not affect the rating of the Certificates, even if such counterparty is no longer an "eligible" counterparty and the swap is terminated.[41]

Any Series of certificates which conveys rights with respect to an Eligible Swap would only be sold to a Qualified Plan Investor (as defined in Section III.JJ. above). Qualified Plan Investors will be plan investors represented by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the Trust and the effect such swap would have upon the credit ratings of the certificates. For purposes of the proposed exemption, such a qualified independent fiduciary would be either: (i) A "qualified professional asset manager" (i.e. QPAM), as defined under Part V(a) of PTE 84–14; (ii) an "in-house asset manager" (i.e. INHAM), as defined under Part IV(a) of PTE 96–23; or (iii) a plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such certificates.

Rating Agency Analysis

17. The Applicants state that the rating guidelines and stress scenarios used by the Rating Agencies in assigning a rating to a credit card receivable ABS take into consideration many factors and are determined on a case-by-case basis. The Rating Agencies review three principal areas in arriving at a credit enhancement level to support a rating for a credit card receivable ABS:

(i) Quantitative performance of the portfolio, including historical yield, loss, delinquency and monthly payment rates, as well as credit exposure caused by factors such as geographic concentration of risk;

(ii) Qualitative portfolio factors, such as the originator's underwriting standards, audit and control procedures, collection process and marketing strategy; and

(iii) Legal and structural issues raised by the securitization structure, such as priority of security interests, timeliness of cash flow and exposures to third party bankruptcy risk (e.g. seller, guarantor, obligor, servicer), etc.

The Applicants represent that each Rating Agency adopts a slightly different approach to the determination of credit enhancement levels. For example, Moody's Investors Service, Inc. (Moody's) generally uses a Monte Carlo simulation model utilizing various possible cases with subjectively assigned probabilities. This model then enables Moody's to arrive at an estimate of potential lifetime losses which must be covered by the credit support for the securitization. Standard and Poor's Ratings Group (S&P) looks at a "worst case" loss scenario based on subjectively assigned multiples of historical loss, portfolio yield and payment rates to reflect a severe economic downturn over the life of the securities. As with Moody's, this process produces an estimate of potential lifetime losses which must be covered by the credit support.

The Applicants state that because the credit card receivables in a master trust are unsecured revolving debt obligations, the Rating Agencies assume no recoveries on defaulted credit card accounts in determining credit enhancement levels for each Series. Stress scenarios are run reducing both the portfolio yield (total yield on the receivables minus the sum of certificate interest, the servicing fee and amounts necessary to satisfy cardholder defaults) and the monthly payment rate, in order to test the level of defaults that credit enhancement can withstand. Such stress tests assume no recoveries on defaulted credit card accounts in the master trust. For example, for "AAA" rated certificates, available enhancement levels are structured to enable a Series to withstand the worst case "AAA" scenarios, just as would be the case with similarly rated transactions involving collateralized assets such as mortgage loans or automobile loans or leases. The first level of enhancement is typically "excess spread" (i.e. the amount by which the yield on the credit card receivables exceeds amounts necessary to pay certificate interest and servicing fees and to satisfy cardholder defaults).[42] Additional forms of enhancement for a Series may include cash collateral accounts (i.e. a CCA), reserve funds, letters of credit, the use of a senior-subordinated structure or a combination thereof.

Citibank represents that, in addition to the enhancement described above, certificates have the benefit of one or more "economic early amortization event" triggers relating to the receivables performance. Breach of such a trigger will cause an early amortization event and an early payout of principal to certificateholders, thereby protecting certificateholders from any potential future deterioration of credit quality of receivables in the master trust portfolio. Citibank states that the combination of credit enhancement (sized to satisfy Rating Agency "high stress" scenarios) and early amortization event triggers assures that certificateholders will receive payment in full of interest and principal.

Citibank represents that its credit cards are marketed nationally and are held by millions of individuals. The consequent size and diversity of Citibank's credit card accounts provide balanced risk distribution. For example, as of June 25, 1997, the largest Citibank master trust held in excess of $35 billion of receivables, generated by more than 28 million accounts, and each individual cardholder had a principal balance that averaged approximately $1221. Similarly, Citibank states that its portfolios are geographically diverse with no more than 15 percent of the receivables in Citibank's largest master trust being concentrated in a single state and in only four states did the percentage exceed 5 percent. Citibank notes that the loss experience for a geographically well diversified portfolio

[41] Representatives from two of the Rating Agencies (RA Reps) have indicated to the Department that certain series of certificates issued by a trust holding credit card receivables will have certificate ratings that are not dependent on the existence of a swap transaction entered into by the trust. Therefore, a downgrade in the swap counterparty's credit rating would not cause a downgrade in the rating established by the Rating Agency for the certificates. RA Reps state that in such instances there will be more credit enhancements (e.g. "excess spread", letters of credit, cash collateral accounts) for the series to protect the certificateholders than there would be in a comparable series where the trust enters into a so-called Ratings Dependent Swap. Non-Ratings Dependent Swaps are generally used as a convenience to enable the trust to pay certain fixed interest rates on a series of certificates. However, the receipt of such fixed rates by the trust from the counterparty is not a necessity for the trust to be able to make its fixed rate payments to the certificateholders.

[42] For example, the annual portfolio yield for the Trust in 1995 was 18.11 percent. The annual certificate rates for each Series outstanding at that time varied between approximately 5.50 and 8.8 percent, depending upon the date of issuance, the expected duration, whether the particular Series certificates were Class A or Class B, etc. The Series servicing rates (including interchange fees) varied between 0.37 and 1.87 percent of the outstanding receivables. The annual loss rate for the receivables in the Trust, as a percentage of the average principal receivables outstanding was approximately 3.8 percent during this period. Under the Rating Agencies hypothetical "stress" scenarios submitted by Citibank, the annual loss rate could have been increased to approximately 27.5 percent during this period without resulting in a failure of the Trust to pay any interest or principal on the AAA rated certificates.

of a large number of relatively small obligations is more stable and predictable than a portfolio of fewer, large individual obligations, and/or high geographic concentrations. Citibank represents that because of this diversification, a Citibank master trust should be able to withstand a recession or similar economic downturn which might affect different industries or geographic regions at different times.

Citibank states that a combination of credit enhancement, early amortization triggers and portfolio characteristics are among the reasons why no investor has failed to receive payment in full of all principal and interest on the over $51 billion of Citibank credit card receivable ABS issued from 1988 to the present. Citibank states further that no Citibank credit card securitization has ever gone into early amortization.[43]

Disclosures Available to Investing Plans

18. In connection with the original issuance of certificates, the prospectus or private offering memorandum will be furnished to investing plans. The prospectus or private offering memorandum will contain information pertinent to a plan's decision to invest in the certificates, such as:

(a) Information concerning the certificates, including payment terms, certain tax consequences of owning and selling certificates, the legal investment status and rating of the certificates, and any special considerations with respect to the certificates;

(b) Information about the underlying Receivables, including the types of Receivables, statistical information relating to the Receivables, their payment terms, and the legal aspects of the Receivables;

(c) Information about the servicing of the Receivables, including the identity of the servicer and servicing compensation;

(d) Information about the sponsor of the Trust;

(e) A full description of the material terms of the Pooling Agreement; and

(f) Information about the scope and nature of the secondary market, if any, for such certificates.

Certificateholders will be provided with information concerning the amount of principal and interest to be paid on certificates at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the status of the Trust.

In the case of a Trust that offers and sells certificates in a registered public offering, the Trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934 (the '34 Act). Although some Trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many Trusts obtain, by application to the SEC, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these Trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the Trust and the certificates. While the SEC's interpretation of the periodic reporting requirement is subject to change, periodic reports concerning a Trust will be filed to the extent required under the '34 Act.

The applicant states that at or about the time distributions are made to certificateholders, a report will be delivered to the Trustee as to the status of the Trust and its assets, including underlying Receivables. Such report will typically contain information regarding the Trust's assets, payments received or collected by the servicer, the amount of delinquencies and defaults, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report will also be delivered or made available to the Rating Agencies or Agency that rated the Trust's certificates. Such report will be available to investors and its availability will be made known to potential investors. In addition, promptly after each distribution date, certificateholders will receive a statement summarizing information regarding the Trust and its assets, including underlying Receivables.

Reasons for Plans To Enter Into the Exemption Transactions

19. Citibank states that a plan would choose to purchase the investor certificates offered by a master trust to diversify its portfolio and enhance investment return. During the past 10 years, asset-backed securities (including Citibank credit card receivable backed certificates) have developed into a very significant sector of the U.S. capital markets. Citibank represents that in 1996, public issuance of asset-backed securities (i.e. ABS) totaled approximately $151.7 billion and almost equaled public issuance of corporate debt, which totaled approximately $161.8 billion. Further, Citibank states that the vast majority of public ABS issuances is AAA/Aaa-rated and, as a result, public issuance of investment grade ABS was greater than the public issuance of investment grade rated corporate debt, which totaled $135.1 billion.

Thus, Citibank represents that for many fixed income investors who have traditionally invested a significant portion of their portfolios in corporate bonds, credit card receivable ABS have become a corporate bond substitute. Citibank states that there are several primary attributes of credit card receivable ABS that make them corporate bond substitutes, including: (i) Very high credit quality (most are AAA/Aaa rated); (ii) basic payment terms which can be structured to replicate corporate bonds (*e.g.* bullet maturities or semiannual coupon payments); (iii) healthy yield spreads in comparison to U.S. Treasuries; and (iv) the issuance of large, liquid transactions that are characterized by relatively narrow bid/offer spreads in the secondary market. Citibank states that for these reasons, the investor base for credit card receivable ABS has expanded in recent years and today includes the entire range of institutional investors. Further, given the performance to date of the ABS market, the Applicants expect that these institutional investors will continue to increase the proportion of their portfolio devoted to ABS. The Applicants note that on the supply side of the market, given projections of continued growth in the credit card business and the growing importance of securitization as a funding source for the credit card industry, market participants predict further growth in credit card ABS issuance in the near term.

As a result of these developments, the Applicants believe that fixed income

[43] When the Department was advised by the Rating Agencies concerning the ratings of certificates issued by trusts holding credit card receivables, the RA Reps noted, among other things, that different banks use different underwriting standards and may offer cardholders different terms on their accounts. Some banks may be willing to accept cardholders with riskier credit histories while other banks may not or may offer better terms to cardholders with superior payment histories. The result may be that some banks have a higher quality portfolio of receivables than other banks. The RA Reps stated that if a bank securitizes a portfolio of receivables which holds a number of riskier accounts, the Rating Agencies will require more credit enhancement measures because different assumptions will have to be made about the performance of the portfolio—e.g. higher charge-off rates will be assumed and greater "excess spread" will be necessary to avoid losses—in order to achieve a Triple A rating. Thus, for example, Bank A's certificates may receive a Triple A rating along with Citibank's certificates even though Bank A may experience more charge-offs on the credit card accounts and may have different payment rates on the receivables associated with those accounts.

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investment managers seeking liquid, high credit quality fixed income securities which provide a fair yield to U.S. Treasuries at relatively low risk, are interested in or are already participating in the credit card ABS market. The requested exemption would facilitate more investment by plans in this market, and would enable the Applicants to better structure offerings which plan asset managers would find attractive.

Citibank credit card receivable ABS have been sold to employee benefit plans covered by the Act (ERISA plans) without concern regarding possible prohibited transactions involving the assets of the master trusts, as "publicly-offered" securities described in the Department's regulations defining "plan assets" (see 29 CFR 2510.3–101(b)(2)). However, Citibank has requested the proposed exemption in order to be able to sell such securities to ERISA plans without having to sell to one hundred independent investors. Thus, if the proposed exemption is granted, the Applicants would have the ability to sell credit card receivable ABS which are designed to meet the investment prerequisites of more limited groups of investors, including ERISA plans.

20. In summary, the Applicants represent that the proposed transactions will meet the statutory criteria of section 408(a) of the Act because, among other things:

(a) The acquisition of investor certificates by a plan will be on terms (including certificate price) that are at least as favorable to the plan as such terms would be in an arm's-length transaction with an unrelated party;

(b) The rights and interests evidenced by the investor certificates will not be subordinated to the rights and interests evidenced by other investor certificates of the trust;

(c) Any investor certificates acquired by a plan will have received a rating at the time of such acquisition that is in one of two highest generic rating categories from either of the Rating Agencies, and/or the highest short-term generic rating category from any one of the Rating Agencies;

(d) The particular class of certificates for each series to which this proposed exemption will apply (an Exempt Class) will have credit support provided to the Exempt Class through a senior-subordinated series structure or other form of third party credit support which, at a minimum, will represent five (5) percent of the outstanding principal balance of certificates issued by the Exempt Class, so that an investor in the Exempt Class will not bear the initial risk of loss;

(e) The trustee of the trust will not be an affiliate of any other member of the Restricted Group;

(f) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates will represent not more than reasonable compensation for underwriting or placing the certificates; the consideration received by the sponsor as a consequence of the assignment of receivables (or interests therein) to the trust will represent not more than the fair market value of such receivables (or interests); and the sum of all payments made to and retained by the servicer, that are allocable to the series of certificates purchased by a plan, will represent not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(g) Any plan investing in such certificates will be an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the SEC under the Securities Act of 1933;

(h) The Revolving Period for a Series of investor certificates, and the conditions under which Citibank may designate additional Accounts or remove previously-designated Accounts, will be described in the prospectus or private placement memorandum provided to investing plans;

(i) The Trustee of the Trust will be a substantial financial institution or trust company experienced in trust activities and would be familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act;

(j) The Pooling Agreement will include an Economic Early Amortization Event triggered by a decline in the performance of the Receivables in the Trust;

(k) The Pooling Agreement will require Citibank to maintain a seller interest of not less than the greater of (i) 2 percent of the initial aggregate principal balance of investor certificates issued by the trust, or (ii) 7 percent of the outstanding aggregate principal balance of investor certificates issued by the trust;

(l) The Pooling Agreement will require that any change in the terms of any cardholder agreements also will be made applicable to the comparable segment of Accounts owned or serviced by Citibank which are part of the same program or which have the same or substantially similar characteristics;

(m) The addition of new Receivables or designation of new Accounts, or removal of Receivables or previously-designated Accounts, will meet the terms and conditions for such additions, designations, or removals as described in the Pooling Agreement as well as the prospectus or private placement memorandum for such certificates, which terms and conditions will have been affirmatively approved by the Rating Agencies, and will not result in the certificates receiving a lower credit rating from the Rating Agencies than the then current rating for the certificates;

(n) Any swap transaction relating to senior Certificates that are covered by the proposed exemption must satisfy the several investor-protective conditions applicable to Eligible Swaps and must be entered into by the Trust with an Eligible Swap Counterparty; and

(o) Any Series of certificates which entails one or more swap agreements entered into by the Trust will be sold only to Qualified Plan Investors.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Massachusetts Mutual Life Insurance Company (MassMutual), Located in Springfield, Massachusetts

[Application No. D–10436]

Proposed Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the proposed mergers of the following Connecticut Mutual Life Insurance Company (CML) separate investment accounts (SIAs), the assets of which include assets of employee benefit plans (the Plans), into the following Massachusetts Mutual Life Insurance Company (MassMutual) SIAs: CML Select into MassMutual SIA–A, CML Fixed Income into MassMutual SIA–E, CML Basis into MassMutual SIA–F, CML Money Market into MassMutual SIA–G, and CML Overseas into MassMutual SIA–I (the Merger Transactions); (2) the proposed transfer of Plan assets from CML Dimensions and CML Converts, after termination of those SIAs, into MassMutual SIA–E and MassMutual SIA–A, respectively (the Termination Transfers); and (3) the proposed transfer of Plan assets from CML Life Style Funds designated as CML Asset Allocation A, CML Asset Allocation B, and CML Asset Allocation C, after termination of those funds, into MassMutual SIA–BC, MassMutual SIA–BP, and MassMutual SIA–BA, respectively (the Life Style Transfers; the Termination Transfers and the Life Style Transfers are referred to collectively as the Transfer Transactions); provided the following conditions are met:

(A) At least 30 days prior to the effective date of each Merger and Transfer Transaction, MassMutual provides to a fiduciary of each Plan participating in the CML SIAs (the Plan Fiduciary) affected by the Transaction full written disclosure of information concerning the proposed Transaction and the affected MassMutual SIAs, including a current prospectus and a full and detailed written description of the fees charged by the affected MassMutual SIA's and the funds in which they invest, the differential between that fee level and the fee level applicable to the affected CML SIAs and the reasons why MassMutual believes that the investment is appropriate for the Plans. The notice will also inform the Plan Fiduciary of the proposed effective date of the Transaction;

(B) As part of the disclosure required under paragraph (A) of this exemption, MassMutual notifies the Plan Fiduciary in writing that instead of participating in the particular Merger or Transfer Transaction proposed by MassMutual, the Plan Fiduciary may direct that the assets of the Plan in the affected CML SIA may be transferred, without penalty, charge or adjustment, to any other available MassMutual SIA or liquidated, without penalty, charge or adjustment, for a cash payment to the Plan equal to the fair market value of the Plan's interest in the affected SIA in lieu of the Plan's participation in the proposed transaction;

(C) Upon completion of the Merger Transactions, the fair market value of the interests of each Plan participating in the MassMutual SIAs immediately following such Merger Transactions equals the fair market value of such Plan's interest in the affected CML SIAs immediately before the transactions;

(D) Upon completion of the Transfer Transactions, the fair market value of the interests of each Plan participating in the MassMutual SIAs immediately following such Transfer Transactions equals the fair market value of such Plan's interest in the affected CML SIAs immediately before the transaction;

(E) The assets of each of the Plans are invested in the same or similar investment type or asset class before and after the Merger and Transfer Transactions;

(F) The assets of the CML SIAs will be valued for purposes of the Merger and Transfer Transactions at the "independent current market price" within the meaning of Rule 17a–7 of the Securities and Exchange Commission under the Investment Company Act of 1940. The assets of the CML SIAs being merged or transferred and the assets of the MassMutual SIAs affected by the merger or transfer will be valued in a single valuation using the same methodology by the same custodian at the close of the same business day that the Merger and Transfer Transactions are effected;

(G) No later than forty five (45) days after the Merger and Transfer Transactions, each Plan Fiduciary will be provided a written confirmation of the Transactions which will include a statement of the number of units held by each Plan in each affected CML SIA, the unit value of each such CML SIA unit and the aggregate dollar value of such Plan's CML SIA units, determined immediately prior to the Transactions, as well as the number of units held by each Plan in each affected MassMutual SIA, the unit value of each such MassMutual SIA unit, and the aggregate dollar value of such Plan's MassMutual SIA units, determined immediately after the Transactions.

(H) Neither MassMutual nor any of its affiliates receives any fees or commissions in connection with the Merger and Transfer Transactions;

(I) The Plans pay no sales commissions or fees in connection with the Merger and Transfer Transactions;

(J) The Plans participating in the CML SIAs are not employee benefit plans sponsored or maintained by MassMutual or CML; and

(K) All assets involved in the transactions are securities for which market quotations are readily available, or cash.

Summary of Facts and Representations

1. The Plans involved in this proposed exemption are pension, profit sharing and stock bonus plans which are exempt from Federal income taxation under section 501(a) of the Code by reason of qualifying under section 401(a) of the Code.

2. The proposed exemption is requested on behalf of the Massachusetts Mutual Life Insurance Company (MassMutual), a mutual life insurance company organized under Massachusetts law. Another previously-unrelated mutual life insurance company, Connecticut Mutual Life Insurance Company (CML), merged into MassMutual on February 29, 1996 (the Company Merger).

3. MassMutual represents that it performs a wide variety of services for employee benefit plans, including opportunities for the Plans to invest in group annuity contracts (the GACs), which are popular funding vehicles for Plans. The funds invested in the GACs are allocated by the Plans' fiduciaries or by individual participants among separate investment accounts (SIAs) maintained by MassMutual for investment in various types and classes of assets, including the MassMutual Institutional Funds and other mutual fund companies affiliated with Mass Mutual. For example, funds invested by a Plan in a GAC might be allocated among several SIAs, which in turn invest in various MassMutual mutual funds. MassMutual represents that prior to the Company Merger MassMutual maintained twenty-five SIAs (the MassMutual SIAs) and CML maintained twelve SIAs (the CML SIAs). The assets of the MassMutual SIAs involved in this proposed exemption are invested solely in mutual funds affiliated with MassMutual, whereas the assets of the CML SIAs involved in this proposed exemption are invested in various marketable equity and debt securities.

4. MassMutual represents that five of the CML SIAs have investment objectives and strategies which are substantially similar to those of five MassMutual SIAs, holding assets which are of the same or similar class and type. Since the Company Merger, these five CML SIAs have been maintained by MassMutual with the same investment advisors and portfolio managers as the corresponding MassMutual SIAs. In order to eliminate duplicative administrative expenses and take greater advantage of economies of scale, and to avoid the adverse consequences of declining asset pools in the CML SIAs, MassMutual proposes to merge the five CML SIAs (the Merging CML SIAs) into the corresponding MassMutual SIAs (the Merger Transactions).

5. In addition to the Merger Transactions, MassMutual also proposes to effect transfer transactions with respect to (a) two other CML SIAs (the Terminating CML SIAs) which MassMutual has determined to have investment objectives and asset types which are not widely utilized by Plans covered by the Act, and, consequently, will not maintain sufficient assets to provide an appropriate investment portfolio, and (b) three CML master funds, called Life Style Funds.

The Terminating CML SIAs: MassMutual states that upon the Company Merger, it was determined that MassMutual GAC funds would not be invested in the Terminating CML SIAs, and that CML GAC investors would be allowed to convert their investments to GACs issued by MassMutual. Since the Company Merger, the assets in the Terminating

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CML SIAs have declined steadily due to Plan transfers and withdrawals. As a result of these developments, MassMutual represents that it will be increasingly difficult for the Terminating CML SIAs to maintain well-diversified portfolios and risk and return profiles that are appropriate for the remaining Plan investors in the Terminating CML SIAs. Accordingly, MassMutual proposes to liquidate the Terminating CML SIAs by liquidation of the securities held in the SIAs and transfer of the proceeds into the two designated MassMutual SIAs to take greater advantage of economies of scale and to avoid the adverse consequences of declining asset pools. Thus, Plans previously invested in the Terminating CML SIAs would own units in the corresponding transferee MassMutual SIAs of an equal value to their units in the Terminating CML SIAs immediately prior to the transfer.

The Life Style Funds: The Life Style Funds are master funds, maintained by both CML and MassMutual, which distribute Plans' investments in GACs among various SIAs. Each of these Life Style Funds offers to Plan asset investors a particular approach to asset mix, investment philosophy and overall management, and a Plan asset investor is able to designate a Life Style Fund with an approach which is most consistent and responsive to the particular needs of the individual Plan. After designation of one of the Life Style Funds, those Plan assets invested in the GACs of the insurance company are directed into the designated Life Style Fund, where such monies are then directed to the particular SIAs in which the selected Life Style Fund invests. The CML Life Style Funds are designated as CML Asset Allocation A, CML Asset Allocation B, and CML Asset Allocation C. The MassMutual Life Style Funds are designated as MassMutual SIA-BC, MassMutual SIA-BP, and MassMutual SIA-BA.

MassMutual proposes to transfer the assets from the CML Life Style Funds into the three MassMutual Life Style Funds, as follows: The CML Life Style Funds are invested in (a) different combinations of the Merging CML SIAs, (b) the Terminating CML SIAs, and (c) two other CML SIAs (the Unaffected CML SIAs) which will continue to be maintained by MassMutual and will not be merged or terminated. Therefore, to the extent the CML Life Style Funds include investments in Merging CML SIAs, the Life Style Transfers will be accomplished in the same manner as the merger of the Merging CML SIAs with the corresponding MassMutual SIAs. However, any investments of the CML Life Style Funds which are held in one of the Terminating CML SIAs or an Unaffected CML SIA will be sold [44] and the proceeds from the sale will be transferred to the corresponding MassMutual Life Style Fund.

MassMutual is unable to conclude that the transactions described herein do not constitute prohibited transactions under the Act. Accordingly, MassMutual is requesting an administrative exemption from the prohibitions of sections 406(a) and 406(b)(1) and (b)(2) of the Act for the Merger and Transfer Transactions.

6. No less than thirty days in advance of each Merger and Transfer Transaction, MassMutual will provide to a fiduciary of each Plan participating in the CML SIA affected by the Transaction (the Plan Fiduciary) a written notice of the proposed Transaction (the Notice). The Notice will consist of a full written disclosure of information concerning the proposed Transaction, the affected MassMutual SIAs, and the proposed effective date of the Transaction. The Notice will include a current prospectus for each of the mutual funds in which the affected MassMutual SIAs invest and will describe the fees charged by the affected MassMutual SIAs and the funds in which they invest and the differential between that fee level and the fee level applicable to the affected CML SIAs. The proposed exemption requires that the Notice advise the Plan Fiduciary that in lieu of participating in the proposed Transaction, the Plan Fiduciary may direct that the assets of the Plan in the affected CML SIA may instead be transferred to any other available MassMutual SIA or liquidated for a cash payment to the Plan.[45] In addition, the Plan Fiduciary will be provided with a written confirmation of the subject Transaction.

7. In accordance with the procedures to be utilized by MassMutual in effecting the Merger and Transfer Transactions, the fair market value of the interests of the Plans participating in the MassMutual SIAs immediately following the Transactions will equal the fair market value of each participating Plan's interest in the affected CML SIAs immediately before the Transactions. MassMutual represents that the fair market value of the CML SIAs involved in the Transactions are readily ascertainable by reference to external markets, and that each underlying security involved in the subject transactions will be valued only at the "independent current market price" within the meaning of Rule 17a–7 of the Securities and Exchange Commission under the Investment Company Act of 1940 (the 1940 Act). MassMutual represents that Rule 17a–7 constitutes a set of standards for the determination of the independently verifiable prices for securities in transactions between registered investment companies and their affiliates.[46] The Merger and Transfer Transactions will be effected without payment of commissions or sales charges by the Plans, including fees payable in accordance with Rule 12b–1 under the 1940 Act.

8. In addition to notification of each Plan Fiduciary in advance of the Merger and Transfer Transactions, as discussed above, MassMutual will also provide to each Plan Fiduciary a written confirmation of the Transactions after they have been completed. No later than forty five days after the Merger and Transfer Transactions, each Plan Fiduciary will be provided a written confirmation of the Transactions which will include a statement of the number of units held by each Plan in each affected CML SIA, the unit value of each such CML SIA unit and the aggregate dollar value of such Plan's CML SIA units, determined immediately prior to the Transactions, as well as the number of units held by each Plan in each affected MassMutual SIA, the unit value of each such MassMutual SIA unit, and the aggregate dollar value of such Plan's MassMutual SIA units, determined immediately after the Transactions.

[44] The Unaffected CML SIAs will continue to be maintained by MassMutual on behalf of investors other than the Life Style Funds, and only the Life Style Funds' investments in the Unaffected CML SIAs will be liquidated for transfer to the MassMutual Life Style Funds. MassMutual chooses not to transfer the CML Life Style Funds' interests in the Unaffected CML SIAs to the MassMutual Life Style Funds because the Unaffected CML SIAs do not have corresponding counterpart MassMutual SIAs.

[45] MassMutual represents that such a transfer would be accomplished first by accessing available cash reserves in the affected CML SIA and then, to the extent cash reserves are depleted, by liquidating assets in the affected CML SIA.

[46] Rule 17a–7 under the 1940 Act provides a general exception from Section 17(a) of the Act for certain securities transactions between registered investment companies and certain of their affiliates. As a general matter, Section 17(a) of the 1940 Act prohibits any "affiliated person" of a registered investment company from selling any security to the registered investment company. Rule 17a–7 permits certain types of affiliate transactions if, among other things, the transaction is effected at an independently verifiable price, the "current independent market price" within the meaning of Rule 17a–7. MassMutual states that this standard of valuation is appropriate for the proposed exemption for purposes of valuing the assets held in the affected CML SIAs, which are not investments in registered investment companies, that will be merged or transferred into the affected MassMutual SIAs, which are solely invested in registered investment companies.

9. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons:

(a) Upon completion of the Merger and Transfer Transactions, the fair market value of the interests of each Plan participating in the MassMutual SIAs immediately following the Transactions will equal the fair market value of such Plan's interest in the affected CML SIA immediately before the Transaction;

(b) The assets of each participating Plan will be invested in the same or similar investment type or asset class before and after the Merger and Transfer Transactions;

(c) The Plans will not pay, and MassMutual and its affiliates will not receive, any fees or commissions in connection with the Merger and Transfer Transactions; and

(d) A fiduciary on behalf of each Plan, who is independent of and unrelated to MassMutual or any of its affiliates, will receive advance written disclosure of the Merger and Transfer Transactions, including notification that the assets of the Plan in the affected CML SIA may instead be transferred, without penalty, charge or adjustment, to any other available MassMutual SIA or liquidated, without penalty, charge or adjustment, for a cash payment to the Plan equal to the fair market value of the Plan's interest in the affected SIA in lieu of the Plan's participation in the proposed transaction.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 21st day of January, 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 98–1790 Filed 1–26–98; 8:45 am]

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Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 52
Federal Acquisition Regulation; Evidence of Shipment in Electronic Data Interchange (EDI) Transactions; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAR Case 97–011]

RIN 9000–AH73

Federal Acquisition Regulation; Evidence of Shipment in Electronic Data Interchange (EDI) Transactions

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to facilitate the use of electronic data interchange (EDI) transactions and to streamline the payment process when supplies are purchased free on board (f.o.b.) destination with inspection and acceptance at origin. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before March 30, 1998 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Washington, DC 20405. E-mail comments submitted over Internet should be addressed to: farcase.97–011@gsa.gov. Please cite FAR case 97–011 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAR case 97–011.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends the clause at FAR 52.247–48 to eliminate the current barriers to full implementation of electronic data interchange (EDI) in certain contracts awarded on an f.o.b. destination basis. Presently, if a contract is awarded on an f.o.b. destination basis, and if transportation is accomplished by a common carrier, the contractor is required to provide, with the invoice, a signed copy of the commercial bill of lading indicating the carriers receipt of the supplies or to furnish the information electronically as evidence of shipment. Additionally, if transportation is accomplished by other than a common carrier or parcel post, the contractor is required to provide, with the invoice, a copy of the appropriate delivery document showing receipt at the destination specified in the contract. To eliminate current barriers to transmission of signed bills of lading, or other required delivery documentation through EDI, this rule eliminates any requirement for contractors to provide evidence of shipment. However, contractors will be required to retain, and to make available to the Government for review as necessary, the evidence of shipment documentation for a period of 4 years after contract completion.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies to a limited number of EDI transactions, *e.g.*, when supplies are purchased f.o.b. destination, but inspection and acceptance will be at origin. Therefore, the rule is estimated to affect only a small number of entities, both large and small. For DoD, less than 1 percent (129) of all f.o.b. destination supply contracts over $25,000 (14,664) are likely to be affected by this rule. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 97–011), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) is deemed to apply because the proposed rule contains information collection requirements. It is estimated that the revision to the FAR clause at 52.247–48 will slightly increase, by 45 hours, to 74,795 hours, the annual paperwork burden associated with FAR Part 47 and related provisions and clauses approved by the Office of Management and Budget (OMB) under OMB Control Number 9000–0061.

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: January 21, 1998.

Jeremy F. Olson,

Acting Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Part 52 be amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR Part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 52.247–48 is revised to read as follows:

52.247–48 F.o.b. Destination—Evidence of Shipment.

As prescribed in 47.305–4(c), insert the following clause:

F.O.B. Destination—Evidence of Shipment (Date)

(a) If this contract is awarded on a free on board (f.o.b.) destination basis, the Contractor—

(1) Shall not submit an invoice for payment until the supplies covered by the invoice have been shipped; and

(2) Shall retain, and make available to the Government for review as necessary, the following evidence of shipment documentation for a period of 4 years after completion of the contract:

(i) If transportation is accomplished by common carrier, a signed copy of the commercial bill of lading for the supplies covered by the Contractor's invoice, indicating the carrier's intent to ship the supplies to the destination specified in the contract.

(ii) If transportation is accomplished by parcel post, a copy of the certificate of mailing.

(iii) If transportation is accomplished by other than common carrier or parcel post, a copy of the delivery document showing receipt at the destination specified in the contract.

(b) The Contractor is not required to submit evidence of shipment documentation with its invoice.

(End of clause)

[FR Doc. 98–1909 Filed 1–26–98; 8:45 am]

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Part V

Department of Housing and Urban Development

Indian Housing Block Grant Program—Revised Notice of Transition Requirements; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4170–N–11]

RIN: 2577–AB74

Indian Housing Block Grant Program—Revised Notice of Transition Requirements

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Revised notice of transition requirements.

SUMMARY: On January 27, 1997 (62 FR 3972), HUD published for public comment a notice to implement that part of section 106 of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) which requires HUD to establish the requirements necessary to provide for the transition from the provision of assistance for Indian tribes and Indian housing authorities under the United States Housing Act of 1937 and other related provisions of law to the provision of assistance in accordance with NAHASDA. The January 27, 1997 notice also provided notice of the negotiated rulemaking process for the development of regulations necessary to implement NAHASDA, and requested nominations for membership on the negotiated rulemaking committee. This notice addresses the public comments received on the January 27, 1997 transition requirements, and provides additional transition guidance and requirements.

DATES: The revised transition requirements are effective upon publication.

IHP submission date: No earlier than the publication date of the final regulations implementing NAHASDA and no later than July 1, 1998.

Effective date of NAHASDA section 701(c): November 3, 1998.

FOR FURTHER INFORMATION CONTACT: Deborah Lalancette, National Office of Native American Programs, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO; telephone (303) 675–1600 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

Indian tribes or tribally designated housing entities with specific questions relating to the preparation of Indian Housing Plans as required by this notice may call their Area Office of Native American Programs for assistance in resolving their questions. The telephone numbers and addresses for these Offices appear in Question 7 of this notice.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

The Native American Housing Assistance and Self-Determination Act of 1996 (Pub. L. 104–330, approved October 26,1996) (NAHASDA) reorganizes the system of Federal housing assistance to Native Americans by eliminating several separate programs of assistance and replacing them with a single block grant program. Beginning on October 1, 1997, the first day of the 1998 fiscal year (FY), a single block grant program replaced assistance previously authorized under:

1. The United States Housing Act of 1937 (1937 Act);
2. The Indian Housing Child Development Program under Section 518 of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 1701z-6 note);
3. The Youthbuild Program under subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12899 *et seq.*);
4. The Public Housing Youth Sports Program under section 520 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 11903a);
5. The HOME Investment Partnerships Program under title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12721 *et seq.*); and
6. Housing assistance for the homeless under title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11361 *et seq.*) and the Innovative Homeless Demonstration Program under section 2(b) of the HUD Demonstration Act of 1993 (42 U.S.C. 11301 note).

In addition to simplifying the process of providing housing assistance, the purpose of NAHASDA is to provide Federal assistance for Indian tribes in a manner that recognizes the right of tribal self-governance.

Section 106 of NAHASDA sets out the general procedure for the implementation of the new Indian housing block grant (IHBG) program. The procedure described is a two-step process. First, section 106(a) requires the publication of a notice in the **Federal Register** not later than 90 days from enactment of NAHASDA. The purpose of the notice is to establish any requirements necessary for the transition from the provision of assistance for Indian tribes and Indian housing authorities under the 1937 Act and other related provisions of law to the provision of assistance in accordance with NAHASDA.

Secondly, section 106(b) requires that HUD issue final regulations implementing NAHASDA no later than September 1, 1997. Further, section 106(b)(2)(A) of NAHASDA provides that all regulations required under NAHASDA be issued in accordance with the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570). Accordingly, the Secretary of HUD established the Native American Housing Assistance & Self-Determination Negotiated Rulemaking Committee to negotiate and develop a proposed rule implementing NAHASDA. This proposed rule was published on July 2, 1997 (62 FR 35718).

II. The January 27, 1997 Transition Notice and the July 2, 1997 Proposed Rule

On January 27, 1997 (62 FR 3972), HUD published the transition notice required by section 106(a) of NAHASDA. As directed by section 106(a), the January 27, 1997 notice requested public comment on the transition requirements and invited nominations for membership on the negotiated rulemaking committee. The January 27, 1997 notice described in detail the transition requirements and the establishment of the negotiated rulemaking committee.

The public comment period on the transition notice expired on February 27, 1997. Twelve comments were submitted on the transition requirements. Additionally, sixteen nominations for negotiated rulemaking committee membership were received. In several cases, the public comments raised issues more appropriately addressed in the proposed rule implementing NAHASDA, rather than in the transition requirements. Accordingly, the proposed rule addresses many of the public comments received on the January 27, 1997 transition notice.

Section III. of this notice presents a summary of the significant issues raised by the public commenters on the January 27, 1997 transition requirements and HUD's responses to these comments. Where appropriate, readers are referred to the provisions of the July 2, 1997 proposed rule that address the issue raised by the commenter.

The July 2, 1997 rule contains a detailed description of the proposed regulatory requirements and the negotiated rulemaking process. The public comment deadline on the proposed rule was August 18, 1997. All comments will be considered in the development of the final rule.

III. Discussion of Public Comments on the January 27, 1997 Transition Requirements

Indian Housing Plan Submission Date of June 1, 1997 Is Not Reasonable

Comment. Eight of the commenters objected to the June 1, 1997 IHP submission deadline established by the January 27, 1997 notice. The commenters believed that this date would not provide sufficient time for relevant tribal input in the development of the IHP. Specifically, it would not have allowed housing authorities (HAs) to adequately compile local and regional data and develop a quality, comprehensive housing plan.

Several of these commenters suggested alternate IHP submission dates. For example, five commenters objected to the submission of an IHP prior to the development of regulations implementing NAHASDA. Three of the commenters suggested that HUD extend the IHP submission deadline to August 1, 1997. This date is based on section 103 of NAHASDA, which provides HUD with a 60-day period to review an IHP submitted by a tribe or its TDHE. Since NAHASDA becomes effective on October 1, 1997, this alternate August date would provide HUD with a 60-day review period prior to the statute's effective date.

Response. HUD has addressed the concerns raised by these commenters. On February 24, 1997 (62 FR 8258), HUD published a notice in the **Federal Register** extending the IHP submission deadline to November 3, 1997. With the publication of the proposed rule, many commenters indicated that the deadline did not provide sufficient time to prepare an IHP. Also, it is not expected the regulations implementing NAHASDA will be effective by November 3, 1997. Therefore, it is unreasonable to expect a recipient to submit a plan prior to publication date of the program regulations.

Based on the above, this transition notice is establishing new IHP submission dates for Fiscal Year 1998 only. An IHP can be submitted no earlier than the publication date of the final regulations implementing NAHASDA and no later than July 1, 1998. The July 1, 1998, date is necessary in order to provide for a 60-day review period by the Office of Native American Program (ONAP) field staff and reservation of funds prior to September 30, 1998. The final regulations will establish IHP submission dates for all future years.

October 1, 1997 Implementation Date is Premature

Section 107 of NAHASDA states that "[e]xcept as otherwise expressly provided in this Act, this Act * * * shall take effect on October 1, 1997." Four of the commenters expressed concern about the short statutory deadline for the implementation of NAHASDA. The commenters believe that additional time is necessary for the successful implementation of this new program.

One of these commenters suggested that HUD use the waiver authority granted in section 101(b)(2) of NAHASDA to waive the requirement for an IHP submission in FY 1998, in order to permit HUD and affected Indian tribes adequate time to develop comprehensive final regulations implementing NAHASDA. This commenter also suggested that the Negotiated Rulemaking Committee develop interim regulations to put in place for FY 1998 to guide tribes in the administration of block grants during this interim period, rather than racing to complete regulations by October 1, 1997.

Response. The Negotiated Rulemaking Committee has developed a work schedule which it believes provides for the effective implementation of NAHASDA in a timely manner.

IHP Should Be Format Driven Rather Than Forms Driven

Comment. One commenter urged that HUD not implement the IHP requirement by prescribing a series of forms. The commenter believes that a forms driven approach will stifle innovation and increase administrative burden. This commenter fears that beneficial information might be omitted from the IHP if the tribe or its TDHE is unable to make it fit into a prescribed HUD form. Further, each planning innovation could potentially require an updated or new form. Accordingly, the commenter suggested that HUD maximize the flexibility available to tribes and their TDHEs by merely requiring that the IHP follow a certain format.

Response. The Negotiated Rulemaking Committee has considered this comment in the development of the proposed regulations. Interested readers should refer to the proposed requirements of 24 CFR part 1000, subpart C, which would govern IHP submission requirements.

Cooperation Agreement Requirement May Prevent the Receipt of Funding

Comment. The January 27, 1997 notice requires that the IHP include a certification that the tribe or its TDHE has entered into, or has begun negotiations to enter into, a local cooperation agreement with the governing body of the locality within which any affordable housing to be assisted with grant amounts will be situated (62 FR 3974). One commenter expressed concern that this requirement may prevent a tribe or its TDHE from receiving funding in situations where, through no fault of the housing entity or the affected tribal members, such an agreement cannot be negotiated before grant funds are needed to maintain existing housing. The commenter noted that the cooperation agreement requirement is set forth in NAHASDA section 101(b). The commenter supported amendments to NAHASDA which would permit HUD to waive the requirement for a cooperation agreement.

Response. The Negotiated Rulemaking Committee considered this public comment in the development of the proposed rule. Interested readers should consult the preamble to the July 2, 1997 proposed rule, which discusses the requirement for a local cooperation agreement and highlights this issue for public comment (See 62 FR 35728).

Concerns Regarding Tax Exemption and Reimbursement Requirements

Comment. The January 27, 1997 notice requires that the cooperation agreement discussed above provide that the tribe or its TDHE is exempt from all real or personal property taxes. The tribe or TDHE, however, must compensate the relevant political subdivision for the costs of providing governmental services (such as police and fire protection). Alternatively, if the tribe or its TDHE is not tax exempt, the cooperation agreement must provide for the reimbursement of the tribe or TDHE. The reimbursement amount will be equal to the difference between the tax amount and the costs of providing governmental services. (62 FR 3974.)

One commenter expressed reservations about this requirement. The commenter noted that a tribe or its TDHE may initiate a program to provide off-reservation housing within its area of operation. In these cases, a city council or board of supervisors may have to approve a cooperation agreement. The commenter wrote that under State law the council or board may lack the statutory authority to exempt a particular housing unit from real or personal property taxes imposed by state statute. If the combination of those taxes exceed the cost of providing governmental services, the affected city or county may be unable or unwilling to

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remit the difference in cash or tax remission.

The commenter suggested that HUD address this concern by keeping the requirement for a cooperation agreement separate from the tax exemption requirement. The commenter wrote that NAHASDA treats the local cooperation agreement requirement and the tax exemption requirement in separate subsections (See NAHASDA sections 101(c) and (d).) The certification required in the January 27, 1997 notice folds these requirements together, making the tax exemption requirements the contents of the cooperation agreements. The commenter noted that a cooperation agreement could address subjects other than tax exemptions and a tribe could comply with the tax exemption requirements without necessarily having an agreement with a local jurisdiction.

Response. The Negotiated Rulemaking Committee considered this comment in the development of the July 2, 1997 proposed rule. Interested readers should consult the preamble to the proposed rule, which discusses the tax exemption requirement and requests additional public comment on this issue (See 62 FR 35728).

Negotiated Rulemaking Committee Should Develop Budget Scenarios

Comment. Section 102 of NAHASDA requires that the IHP include an operating budget. One commenter questioned the ability of a tribe or its TDHE to develop a budget prior to FY 1998 appropriations. This commenter recommended that the Negotiated Rulemaking Committee develop budget information to assist tribes and their TDHEs in the preparation of the IHPs. The commenter noted that IHAs have an advantage in estimating probable allocation amounts based on historical allocations and awards. However, some tribes (especially those currently served by an umbrella housing authority) considering whether or not to submit an IHP may have very little to work from.

Response. The Negotiated Rulemaking Committee considered this issue in the development of the proposed rule. Interested readers should refer to the July 2, 1997 proposed regulatory requirements. Further, section 302(d) of NAHASDA speaks to funding levels under the Act.

Transition Notice Should Establish Streamlined IHP Requirements for Small Tribes and Small TDHEs

Comment. Section 102(f)(1) of NAHASDA permits the Secretary to "waive any [IHP] requirements * * * that the Secretary determines are burdensome or unnecessary for" small tribes and small TDHEs. One commenter questioned why the transition notice had not established such streamlined IHP requirements for these tribes and housing entities.

Response. The Negotiated Rulemaking Committee considered this comment in the development of the proposed rule. The proposed rule provides that there are no separate IHP requirements for small Indian tribes. The IHP requirements set forth in proposed 24 CFR part 1000, subpart C are minimal. Further, HUD has general authority under section 101 of NAHASDA to waive IHP requirements when an Indian tribe cannot comply with IHP requirements due to circumstances beyond its control. The waiver authority under section 101 provides flexibility to address the needs of every Indian tribe, including small Indian tribes.

Transition Requirements Should Reference Statutory Review Criteria

Comment. Section 103 of NAHASDA provides that the Secretary of HUD shall conduct a limited review of each Indian housing plan to ensure that the plan complies with the NAHASDA submission requirements for IHPs. One commenter believes that the January 27, 1997 notice should have provided an interpretation of the phrase "limited review." Section 103 of NAHASDA also establishes a 60-day deadline for review of an IHP. Further, this section requires that the Secretary of HUD provide an explanation to the tribe or TDHE if the Secretary finds the IHP deficient. The commenter believes these statutory review requirements should also have been referenced in the January 27, 1997 notice.

Response. The Negotiated Rulemaking Committee considered this comment in the development of the proposed rule. Interested readers should refer to proposed 24 CFR part 1000, subpart C, which would govern IHP submission procedures (including the process for HUD review of IHPs and IHP amendments).

Concerns Regarding TDHE Designation

Comment. Section 102 of NAHASDA provides that an IHP may be submitted by an Indian tribe or, if specifically empowered by the recognized tribal government, by the TDHE. The January 27, 1997 notice provided that if "a tribe does not specifically authorize an entity to act as its tribally designated housing entity, the tribe's * * * HA under the United States Housing Act of 1937, if there is one on the date of NAHASDA's enactment, is the tribe's [default] TDHE" (62 FR 3973).

One of the commenters believes that this provision violates the principle of tribal self-governance. First, the provision would delegate to the HA the authority to administer the block grant even if the tribe has not taken any affirmative step to designate the HA as its TDHE. Secondly, the January 27, 1997 notice fails to specify the timeframe in which a tribe would lose the important right to designate the TDHE. Further, the provision is unclear as to whether the IHP developed by an HA acting as the default TDHE must still be reviewed and approved by the tribe.

Response. HUD agrees with the commenter that the transition requirements must reflect the right of tribal self-governance and the unique relationship between the government of the United States and the governments of Indian tribes. This notice makes the appropriate revisions to the January 27, 1997 transition notice. The notice clarifies that NAHASDA section 102(d) requires that a tribe identify its TDHE, if any, in its IHP. Specifically, when an IHP is submitted on behalf of a tribe by its TDHE, the IHP must contain a certification by the recognized tribal government that either (1) the tribe has had an opportunity to review the IHP and has authorized its submission by the TDHE, or (2) the tribe has delegated to the TDHE the authority to submit an IHP without prior review by the tribe. This certification must be included in the IHP, even in those cases where the tribe's HA under the United States Housing Act of 1937 is serving as the tribe's default TDHE.

"Broad Discretion" of Section 204 of NAHASDA Should Be Referenced

Comment. Section 204(a) of NAHASDA provides:

(a) Subject to * * * [program requirements] and the Indian housing plan for an Indian tribe, the recipient for that tribe shall have—

(1) the discretion to use grant amounts for affordable housing activities through equity investments, interest-bearing loans or advances, noninterest bearing loans or advances, interest subsidies, leveraging of private investments, or any other form of assistance that the Secretary has determined to be consistent with the purposes of this Act; and

(2) the right to establish the terms of assistance.

One commenter interprets section 204(a) very broadly and recommended that the January 27, 1997 notice be amended to reference the ample discretion it believes this statutory provision grants to a tribe or its TDHE. Specifically, the commenter requested that HUD clarify that grant recipients have the discretion to use grant amounts for affordable housing activities using the alternatives expressly set out in NAHASDA (e.g., equity investments, interest-bearing loans or advances, etc.). The commenter believes that only in the case of "any other form of assistance" not expressly enumerated in section 204 does NAHASDA authorize the Secretary to determine whether the assistance is consistent with the purposes of the Act.

Response. The Negotiated Rulemaking Committee considered this comment in the development of the July 2, 1997 proposed rule. Interested readers should refer to proposed 24 CFR part 1000, subpart B, which would govern eligible affordable housing activities.

Exceptions to Low-Income Eligibility Requirements Should Be Identified

Comment. Section 201 of NAHASDA provides that, except under certain specified circumstances, "eligible housing activities under this Act shall be limited to low-income Indian families on Indian reservations and other Indian areas." One of the commenters suggested that the January 27, 1997 notice should be amended to identify the exceptions to this general rule.

Response. The Negotiated Rulemaking Committee considered this comment in the development of the proposed regulations. Interested readers are referred to proposed 24 CFR part 1000, subpart B, which would govern eligible affordable housing activities (including the provision of assistance to non low-income families).

Grant Agreement Process Should Be Identified

Comment. One commenter believes that the January 27, 1997 notice does not seem to anticipate or require the development of a grant agreement with the tribes. The commenter worried that the notice did not provide sufficient information regarding the grant agreements and the block grant process. For example, the IHP must contain goals and objectives to be accomplished during 1998. The commenter wondered whether these activities would be binding on the tribe through the grant agreement. The commenter recommended that HUD identify the grant agreement document or the process of developing the grant agreement as early as possible.

Response. The Negotiated Rulemaking Committee considered this comment in the development of the proposed rule. Interested readers should consult the proposed regulatory requirements for additional detail.

IV. Revised Effective Date for Section 701(c) of NAHASDA

Section 701(c) of NAHASDA establishes a new requirement for the Indian Housing Loan Guarantee Program (also called the Section 184 Program) under section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1515z–13a). Specifically, section 701(c) provides that Indian tribes wishing to participate in the Section 184 program must submit an IHP that provides for the use of Section 184 loan guarantees.

In order to prevent any interruption in the processing of Section 184 loan guarantees, HUD must establish an effective date for section 701(c) that takes into account the timeframes for submission and HUD review of IHPs. The January 27, 1997 transition notice established an effective date of October 1, 1997 for section 701(c), based on an IHP submission deadline of June 1, 1997. As described above, HUD is extending the IHP deadline date to no earlier than the publication date of the final regulations implementing NAHASDA and no later than July 1, 1998. This notice conforms the effective date for section 701(c) to the IHP deadline extension. Specifically, this notice amends the January 27, 1997 notice by establishing an effective date of November 3, 1998 for purposes of NAHASDA section 701(c).

V. Technical Correction to the January 27, 1997 Notice

The January 27, 1997 notice incorrectly designated the paragraph listing the certifications as paragraph (d) of Question and Answer 3. The paragraph should have been designated as paragraph (e). This notice makes the necessary correction.

VI. Additional Transition Requirements

The January 27, 1997 notice stated that HUD may also issue a supplemental notice with additional transition guidance and requirements. Accordingly, additional guidance and requirements for the treatment of housing, activities and funding under programs repealed by NAHASDA are included in this notice. For the convenience of all parties involved with NAHASDA, this notice presents the requirements of the January 27, 1997 notice, amended as discussed in sections IV. and V. of this notice, above, and the additional transition requirements in a single, consolidated document. The additional requirements follow the same Question and Answer format established in the January 27, 1997 notice and begin with Question 10 in this notice. If there are any inconsistencies between the requirements in this notice and any final rule issued under NAHASDA, the requirements of the rule shall govern.

VII. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995 and assigned control number 2577–0218. *An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.*

Regulatory Planning and Review

This notice has been reviewed in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the notice resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

Executive Order 12612, Federalism

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the policies contained in this notice will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. The notice only establishes temporary transition requirements for the initial participation by Indian tribes in a new statutory program

Environmental Review

A Finding of No Significant Impact with respect to the environment was made at the time of development of the January 27, 1997 notice in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. That Finding of No Significant Impact remains applicable to this notice and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel,

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Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

Transition Requirements for the Native American Housing Block Grant Program

Question 1. How is funding made available under NAHASDA?

Answer 1. Under NAHASDA, funding is made available for affordable housing activities on an annual basis, and is distributed each fiscal year according to an allocation formula on behalf of Indian tribes who submit an Indian Housing Plan (IHP) that is reviewed and approved by HUD. Unlike other programs, NAHASDA funds are not awarded on a competitive basis in which applications are given scores and are then funded in rank order so that only the highest scoring applications are funded. Every tribe, or entity designated by a tribe, that submits an IHP which complies with the necessary requirements is awarded a block grant which is a share of the available funds. The size of the share is determined by the allocation formula. The award is called a *block grant* because the recipient receives a single "block" of funds that may be used for any eligible affordable housing activities in accordance with the tribe's IHP.

Question 2. Who may submit an IHP to apply for a block grant?

Answer 2. An IHP may be submitted by an Indian tribe or, if specifically empowered by the recognized tribal government, by the tribally designated housing entity for the tribe. A tribally designated housing entity (TDHE) is an entity other than the tribal government which is authorized by the Indian tribe to receive the block grant amounts and provide assistance according to the requirements of NAHASDA.

NAHASDA section 102(d) requires that a tribe identify its TDHE, if any, in its IHP. Specifically, when an IHP is submitted on behalf of a tribe by its TDHE, the IHP must contain a certification by the recognized tribal government that either: (1) the tribe has had an opportunity to review the IHP and has authorized its submission by the TDHE; or (2) the tribe has delegated to the TDHE the authority to submit an IHP without prior review by the tribe. This certification must be included in the IHP, even in those cases where the tribe's HA under the United States Housing Act of 1937 is serving as the tribe's default TDHE.

An IHP submitted by a TDHE may cover more than one Indian tribe, but only if the IHP contains the certification described in the paragraph above from each tribe covered by the IHP. This option provides additional flexibility by permitting several tribes to agree to have their affordable housing activities administered by a single TDHE for reasons of greater economy or increased efficiency, or for any other reason.

Question 3. What information must be included in an IHP?

Answer 3. Each IHP shall be in a form prescribed by HUD and every IHP consists of two parts, a 5-year plan and a 1-year plan, each of which is discussed separately below. The NAHASDA final rule may also contain additional plan requirements.

The 5-year plan must contain the following information for the 5-year period beginning with the fiscal year (FY) for which the plan is submitted (for the first IHP submission under the transition requirements of this notice, the five fiscal years covered are 1998, 1999, 2000, 2001 and 2002):

(a) *Mission Statement*—A general statement of the mission of the Indian tribe to serve the housing needs of the low-income families in the jurisdiction of the Indian tribe during the 5-year period.

(b) *Goals and Objectives*—A statement of the goals and objectives of the Indian tribe to enable the tribe to serve the needs identified in the Mission Statement during the 5-year period.

(c) *Activities Plan*—An overview of the housing activities, including the NAHASDA-eligible affordable housing activities, planned during the 5-year period with an analysis of the manner in which the activities will enable the tribe to meet its mission, goals, and objectives.

The 1-year plan must contain the following information relating to the upcoming fiscal year (FY 1998 for purposes of the first IHP submission under the transition requirements of this notice):

(a) *Goals and Objectives*—A statement of the goals and objectives to be accomplished during FY 1998, including the NAHASDA-eligible affordable housing activities.

(b) *Statement of Needs*—A statement of the housing needs of the low-income Indian families residing in the jurisdiction of the Indian tribe and the means by which such needs will be addressed during FY 1998, including:

(1) A description of the estimated housing needs and the need for assistance for the low-income Indian families in the jurisdiction, including a description of the manner in which the geographical distribution of assistance is consistent with the geographical needs and needs for various categories of housing assistance; and

(2) A description of the estimated housing needs for all Indian families in the jurisdiction.

(c) *Financial Resources*—An operating budget for the recipient that includes:

(1) An identification and a description of the financial resources reasonably available to the recipient to carry out the NAHASDA-eligible affordable housing activities described in the IHP, including an explanation of the manner in which amounts made available will leverage additional resources; and

(2) The uses to which such resources will be committed, including eligible affordable housing activities and administrative expenses. (Section 101(h) of NAHASDA requires HUD, by regulation, to authorize each recipient to use a percentage of any grant amounts received for any reasonable administrative and planning expenses of the recipient relating to carrying out NAHASDA and activities assisted with such amounts, which may include costs for salaries of individuals engaged in administering and managing affordable housing activities assisted with grant amounts and expenses of preparing an IHP. This regulation will be developed by the negotiated rulemaking committee who will be proposing to HUD the percentage of grant amounts to be used for planning and administrative expenses.

(d) *Affordable Housing Resources*—A statement of the affordable housing resources currently available and to be made available during FY 1998, including:

(1) A description of the significant characteristics of the housing market in the tribe's jurisdiction, including the availability of housing from other public sources, private market housing, and the manner in which such characteristics influence the decision of the recipient to use grant amounts for rental assistance, production of new units, acquisition of existing units, or rehabilitation of units;

(2) A description of the structure, coordination, and means of cooperation between the recipient and any other governmental entities in the development, submission, or implementation of housing plans, including a description of the involvement of private, public, and nonprofit organizations and institutions, and the use of loan guarantees under section 184 of the Housing and Community Development Act of 1992, and other housing assistance provided by the Federal Government for Indian tribes, including loans, grants, and mortgage insurance;

(3) A description of the manner in which the plan will address the needs

identified in the Statement of Needs in the 1-year plan required by paragraph (b), above;

(4) A description of the manner in which the recipient will protect and maintain the viability of housing owned and operated by the recipient that was developed under a contract between HUD and an Indian housing authority pursuant to the United States Housing Act of 1937;

(5) A description of any existing and anticipated homeownership programs and rental programs to be carried out during FY 1998, and the requirements and assistance available under such programs;

(6) A description of any existing and anticipated housing rehabilitation programs necessary to ensure the long-term viability of the housing to be carried out during FY 1998, and the requirements and assistance available under such programs;

(7) A description of all other existing or anticipated housing assistance provided by the recipient during FY 1998, including transitional housing, homeless housing, college housing, supportive services housing, and the requirements and assistance available under such programs;

(8) A description of any housing to be demolished or disposed of, and a timetable for such demolition or disposition;

(9) A description of the manner in which the recipient will coordinate with tribal and State welfare agencies to ensure that residents of such housing will be provided with access to resources to assist in obtaining employment and achieving self-sufficiency;

(10) A description of the requirements established by the recipient to promote the safety of residents of such housing, facilitate the undertaking of crime prevention measures, allow resident input and involvement, including the establishment of resident organizations, and allow for the coordination of crime prevention activities between the recipient and tribal and local law enforcement officials; and

(11) A description of the entity that will carry out the activities under the IHP, including the organizational capacity and key personnel of the entity.

(e) *Certifications of compliance*—The IHP must include the following certifications:

(1) A certification that the recipient will comply with title II of the Civil Rights Act of 1968 in carrying out activities funded by NAHASDA, to the extent that such title is applicable, and other applicable Federal statutes, including Section 504 of the Rehabilitation Act of 1973;

(2) A certification that the recipient will maintain adequate insurance coverage for housing units that are owned and operated or assisted with grant amounts;

(3) A certification that policies are in effect and are available for review by HUD and the public governing:

(i) The eligibility, admission, and occupancy of families for housing assisted with grant amounts;

(ii) Rents charged, including the methods by which rents or homebuyer payments are determined, for housing assisted with grant amounts;

(iii) The management and maintenance of housing assisted with grant amounts provided under this Act;

(4) If an IHP is submitted on behalf of a tribe by its tribally designated housing entity (TDHE), the IHP must contain a certification by the recognized tribal government that either:

(i) The tribe has had an opportunity to review the IHP and has authorized its submission by the TDHE, or

(ii) The tribe has delegated to the TDHE the authority to submit an IHP without prior review by the tribe;

(5) If an IHP that covers more than one Indian tribe is submitted by a TDHE, each tribe covered by the IHP must submit as part of the IHP the certification described in paragraph (4), immediately above;

(6) A certification that the governing body of the locality within which any affordable housing to be assisted with the grant amounts will be situated has entered into, or has begun negotiations, which must be completed before any award of NAHASDA funds can be made, to enter into, a local cooperation agreement with the recipient for the tribe providing that:

(i) The affordable housing assisted with grant amounts received by the recipient (exclusive of any portions not assisted with amounts provided under NAHASDA) is exempt from all real and personal property taxes levied or imposed by any State, tribe, city, county, or other political subdivision; and

(ii) The recipient makes annual payments of user fees to compensate such governments for the costs of providing governmental services, including police and fire protection, roads, water and sewerage systems, utilities systems and related facilities, or payments in lieu of taxes to such taxing authority, in an amount equal to the greater of $150 per dwelling unit or 10 percent of the difference between the shelter rent and the utility cost, or such lesser amount as:

(A) Is prescribed by State, tribal, or local law;

(B) Is agreed to by the local governing body in the local cooperation agreement; or

(C) The recipient and the local governing body agree in the local cooperation agreement that such user fees or payments in lieu of taxes shall not be made; or

(iii) If the affordable housing assisted with grant amounts received by the recipient (exclusive of any portions not assisted with amounts provided under NAHASDA) is not exempt from all real and personal property taxes levied or imposed by any State, tribe, city, county, or other political subdivision, that the tribe, State, city, county, or other political subdivision in which the affordable housing development is located contributes, in the form of cash or tax remission, the amount by which the taxes paid with respect to the development exceed the amounts prescribed in section (6)(ii) of the 1-year plan requirements, above.

Question 4. What are the affordable housing activities that are eligible for funding under NAHASDA?

Answer 4. Affordable housing activities are activities to develop or to support affordable housing for rental or homeownership, or to provide housing services with respect to affordable housing, for the benefit of low-income Indian families on Indian reservations and other Indian areas. In the case of a low-income family residing in a dwelling unit assisted with NAHASDA grant amounts, affordable housing is housing for which the monthly rent or homebuyer payment (as applicable) does not exceed 30 percent of the family's monthly adjusted income. Eligible affordable housing activities are described below in sections (a) through (k) of this answer:

(a) *Indian Housing Assistance*—The provision of modernization or operating assistance for housing previously developed or operated pursuant to a contract between HUD and an Indian housing authority.

(b) *Development*—The acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include real property acquisition, site improvement, development of utilities and utility services, conversion, demolition, financing, administration and planning, and other related activities. Affordable housing includes permanent housing for homeless persons who are persons with disabilities, transitional housing, and single room occupancy housing.

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(c) *Housing Services*—The provision of housing-related services for affordable housing, such as housing counseling in connection with rental or homeownership assistance, establishment and support of resident organizations and resident management corporations, energy auditing, activities related to the provision of self-sufficiency and other services, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in other housing activities assisted with grant amounts.

(d) *Housing Management Services*—The provision of management services for affordable housing, including preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, and management of affordable housing projects.

(e) *Crime Prevention and Safety Activities*—The provision of safety, security, and law enforcement measures and activities appropriate to protect residents of affordable housing from crime.

(f) *Rental Assistance*—The provision of tenant-based rental assistance.

(g) *Model Activities*—Housing activities under model programs that are designed to carry out the purposes of NAHASDA and are specifically approved by HUD as appropriate for such purpose.

(h) *Administrative Expenses*—A percent of grant amounts, to be determined in the final rule, may be used for any reasonable administrative and planning expenses of a recipient relating to carrying out NAHASDA and activities assisted with such amounts, including costs for salaries of individuals engaged in administering and managing affordable housing activities assisted with grant amounts and the expenses of preparing an IHP.

Question 5. How may grant amounts be used to carry out eligible activities?

Answer 5. In addition to being used to directly pay for eligible activities, grant amounts may be used for affordable housing activities through equity investments, interest-bearing loans or advances, noninterest-bearing loans or advances, interest subsidies, leveraging of private investments, or any other form of assistance that HUD determines to be consistent with the purposes of NAHASDA. This answer is provided from section 204—"Types of Investments"—of NAHASDA. Guidance on the types of investments permissible under section 204 of NAHASDA will be provided in the final regulations.

Question 6. When must the IHP required by these transition requirements be submitted?

Answer 6. An IHP must be received by HUD no earlier than the publication date of the final regulations implementing NAHASDA and no later than July 1, 1998 in order to be considered for FY 1998 funding. Question 53, below, also addresses this issue.

Question 7. Where must an IHP be submitted?

Answer 7. All IHPs must be submitted to the local Area Office of Native American Programs as follows:

Tribes and IHAs located	ONAP address
East of the Mississippi River (including all of Minnesota) and Iowa.	Eastern/Woodlands Office of Native American Programs, 5P, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507, (312) 353–1282 or (800) 735–3239, TTY Numbers: 1–800–927–9275 or 312–886–3741.
Louisiana, Missouri, Kansas, Oklahoma, and Texas except for Yseleta del Sur.	Southern Plains Office of Native American Programs, 6.IPI, 500 West Main Street, Suite 400, Oklahoma City, Oklahoma 73012, (405) 553–7520, 553–7480.
Colorado, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming.	Northern Plains Office of Native American Programs, 8P, First Interstate Tower North, 633 17th Street, Denver, Colorado 80202–3607, (303) 672–5462, TTY Number: 303–844–6158.
Arizona, California, New Mexico, Nevada, and Yseleta del Sur in Texas.	Southwest Office of Native American Programs, 9EPI, Two Arizona Center, 400 North Fifth Street, Suite 1650, Phoenix, Arizona 85004–2361, (602) 379–4156, TTY Number: 602–379–4461, or Albuquerque Division of Native American Programs, 9EPIQ, Albuquerque Plaza, 201 3rd Street, NW, Suite 1830, Albuquerque, New Mexico 87102–3368, (505) 766–1372, TTY Number: None.
Idaho, Oregon, and Washington	Northwest Office of Native American Programs, 10PI, 909 First Avenue, Suite 300, Seattle, Washington 98104–1000, (206) 220–5270, TTY Number: (206) 220–5185.
Alaska	Alaska Office of Native American Programs, 10.1PI, 949 East 36th Avenue, Suite 401, Anchorage, Alaska 99508–4399, (907) 271–4633, TTY Number: (907) 271–4328.

Question 8. May an IHA continue to remain subject to the 1937 Act, and convert to a PHA?

Answer 8. No, because the purpose and result of NAHASDA is the exclusion of IHAs from the definition of a PHA as of September 30, 1997. After September 30, 1997, there may be IHAs that want to remain subject to the 1937 Act, but the consequence of NAHASDA section 501 is to make it impossible, after September 30, 1997, for an IHA to be considered a PHA. Further, section 502(b) provides that any IHA housing developed or operated under the 1937 Act must be considered and maintained as affordable housing for purposes of NAHASDA, and precludes the continued application of title I of the 1937 Act to IHAs after September 30, 1997. Question 30, below, also addresses this issue.

Question 9. What happens to grants already made under the homeless, Youthbuild and Indian HOME programs?

Answer 9. These grants continue to be governed by the statutes authorizing the programs as those statutes read on September 30, 1997 and by the grant agreements. After completion of the funded activities, the grants will be closed out in accordance with their program requirements and grant agreements. Questions 37 and 38, below, also address this issue.

General Impact on Housing and Funding

Question 10. On October 1, 1997, the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) legislation becomes effective. How does this impact the provision of housing assistance to Native Americans?

Answer 10. NAHASDA terminates provision of housing assistance under the United States Housing Act of 1937, as amended, (1937 Act) and creates a new program of grants made directly to Indian tribes. The new Indian Housing Block Grant (IHBG) is intended to provide greater flexibility to tribes in determining how to address their housing needs for low-income individuals within their jurisdiction.

Tribes assume a responsibility to maintain current housing stocks developed under the 1937 Act.

Question 11. Does the change in governing legislation affect who owns housing developed or assets and funds held by IHAs?

Answer 11. No. While IHA funds and assets become subject to the requirements of NAHASDA on October 1, 1997, the ownership of the housing funds and assets are not affected. Grants made to IHAs and the assets of IHAs continue to belong to the IHA. IHAs that are created by tribal ordinance are subject to the authority of the tribe. Tribes must review their existing ordinances and other documents affecting the organization and legal commitments of the tribe and its IHA to determine how to transfer funds and assets of the IHA to the tribe or its newly established tribally designated housing entity (TDHE).

Effect on 1937 Act Housing

Question 12. What happens to public housing units owned and operated by IHAs?

Answer 12. All units owned by IHAs become ineligible for assistance under the 1937 Act as of October 1, 1997. Public housing units owned and operated by IHAs are considered Indian housing units and become subject to NAHASDA on October 1, 1997.

Question 13. What happens to existing 1937 Act units if tribes in those jurisdictions do not or cannot submit an IHP?

Answer 13. NAHASDA does not provide the statutory authority for HUD to grant NAHASDA grant funds to an IHA, tribe or to a default TDHE which cannot obtain a tribal certification, if the requisite IHP is not submitted by a tribe or is determined to be out of compliance by HUD. There may be circumstances where this may happen, and in those cases, other methods of tribal, federal or private market support may have to be sought to maintain and operate those 1937 Act units.

Question 14. Should the public housing stock owned by IHAs be reflected in the current assisted stock element of the IHBG formula under NAHASDA?

Answer 14. Yes.

Question 15. Will the housing units in the current development pipeline be allowed to increase the 1937 Act count for NAHASDA formula purposes?

Answer 15. Yes. Upon completion of housing units currently in the development pipeline, HUD should be notified to adjust the information reflected in the formula for existing 1937 Act units operated by the IHA or recipient. The notification should take the same form as the current notification for Date of Full Availability under the Indian Housing program.

Question 16. What process would a tribe or TDHE follow in order to admit over-income families to a vacant unit developed under the 1937 Act or for new units developed under the 1937 Act which will be counted as Current Assisted Stock under the IHBG Formula?

Answer 16. Since the 1937 Act no longer applies to these units and the NAHASDA final rule will only address the procedures for admitting over-income families when using the recipient's annual grant amount, there is a need to develop procedures for these units.

For units to be developed after September 30, 1997, with funds provided under the 1937 Act, a recipient may use up to 10% of its funds available from 1937 Act programs to admit families whose income fall within 80 to 100% of median income without HUD approval. HUD approval is required if a recipient plans to use more than 10% of its 1937 Act funds for such assistance or to provide housing for families over 100% of median income.

For vacancies in homeownership programs where the units were under management as of September 30, 1997, occupancy by families whose income falls within 80 to 100% of median income may not exceed 10% of the dwelling units in the project or 5 dwelling units, whichever is greater, without HUD approval. HUD approval is required if a recipient plans to admit more than this amount in a project or to provide housing for families over 100% of median income.

Question 17. Can an IHA or recipient develop additional units with funds provided through the 1937 Act and have the extra units included in the IHBG formula?

Answer 17. No. While developing the maximum number of affordable housing units is encouraged, housing units over the number specified in the original grant approval will not be included in the total number of units developed with 1937 Act funds.

Question 18. Can an IHA be a NAHASDA sub-grantee of the tribe or TDHE for the purpose of maintaining housing developed under the 1937 Act?

Answer 18. Yes. Additionally, an IHA could be a sub-grantee for the purpose of developing and managing housing with NAHASDA funds.

Effect on 1937 Act Funding

Question 19. Must an IHA (or its successor entity) use grant funds provided under the 1937 Act for the original purpose after October 1, 1997?

Answer 19. No. Funds provided to an IHA under the 1937 Act can be used for any activity eligible under NAHASDA. An IHA (or its successor entity) must honor existing contracts the IHA has entered into with others prior to NAHASDA; however, an IHA may reprogram the use of funds for eligible activities subject to written notification to HUD.

Question 20. Will Indian housing authorities (IHA), tribes or tribally designated housing entities (TDHE) be eligible to apply for assistance under any programs covered by the 1937 Act?

Answer 20. No. Section 501 of NAHASDA repealed Title II of the 1937 Act and made Titles I and III inapplicable to Indian housing after September 30, 1997. Therefore, as of October 1, 1997, IHAs and tribes are ineligible for funding for the following programs:

—New development
—Modernization (both the Comprehensive Improvement Assistance Program and the Comprehensive Grant Program including the disaster/emergency reserve)
—Operating subsidy
—HOPE for Public and Indian Housing Homeownership
—Indian Housing Childhood Development
—Section 8

Question 21. Will any operating subsidy be provided to IHAs after October 1, 1997?

Answer 21. Yes. The Fiscal Year (FY) 1997 appropriation for operating subsidy under Section 9 of the 1937 Act covers IHAs fiscal years beginning (FYB) January 1, 1997 and ending December 31, 1997; FYB April 1, 1997 and ending March 31, 1998; FYB July 1, 1997 and ending June 30, 1998; and FYB October 1, 1997 and ending September 30, 1998. IHAs are eligible for funds appropriated prior to FY 98, and therefore, operating subsidy will be provided for the time periods stated in this paragraph.

After September 30, 1997, financial assistance may not be provided under the 1937 Act unless such assistance is provided from amounts made available for FY 97 and pursuant to a commitment entered into before September 30, 1997, therefore, all operating budgets for these periods must have been approved prior to September 30, 1997 in order to be eligible for funding. Operating budget adjustments or revisions after October 1, 1997, cannot be processed.

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Question 22. If an IHA has unobligated or unexpended funds in any of the programs listed in Answer 19, how are they handled?

Answer 22. Any unobligated/unexpended funds which were approved for new development, modernization, operations or HOPE can now be used for any eligible NAHASDA activity. Section 8 contracts remain in effect and the program is still governed by the 1937 Act and the existing contract provisions.

Question 23. What is the definition of "obligated" as it relates to the development and modernization programs?

Answer 23. Obligated means the cumulative amount of modernization or development commitments entered into by the housing authority; i.e., contract execution for contract labor, materials or services; start and continuation of physical work by force account labor; and start and continuation of administrative expenses. Contract execution means execution of the contract by both the housing authority and the contractor. For force account work, all funds for a group of sequentially-related physical work items are considered obligated when the first work item is started, such as kitchen cabinet replacement followed by kitchen floor replacement, but only where funds continue to be expended at a reasonable rate. Where one force account physical work item is started and is not sequentially related to other physical work items, such as site improvements and kitchen remodeling, then only the funds for the one physical work item started are considered obligated.

Question 24. Does an IHA need to enter into a new grant agreement with HUD covering the use of existing 1937 Act grant funds?

Answer 24. In most instances, the requirement limiting use of grant funds to eligible NAHASDA activities is self-implementing and does not require a new grant agreement between HUD and the IHA. However, in instances where a grant was never placed under annual contributions contract or where a tribe or other organization becomes the successor entity to an IHA, a grant agreement is required to obligate funds to the IHA or to establish the tribe or other organization as the successor entity to access IHA funds held by HUD.

Question 25. What Federal requirements apply after September 30, 1997 to funds provided under the 1937 Act?

Answer 25. Funds are subject to applicable Federal requirements which include but are not limited to:

- procurement requirements as listed under 24 CFR part 85 or as specified in the grantee's HUD approved procurement policy;
- environmental requirements as listed under 24 CFR part 58;
- labor requirements of Sec. 104(b) of NAHASDA;
- tenant or homebuyer selection requirements contained in the grantee's HUD approved admissions policy or which comply with Sections 203, 205 and 207(b) of NAHASDA;
- financial controls requirements specified at 24 CFR Part 85.

Question 26. Do the Federal requirements listed in Question 25 apply to IHAs if they are not designated as a TDHE?

Answer 26. Yes.

Question 27. Are there any reporting requirements after September 30, 1997 for grant funds provided under the 1937 Act?

Answer 27. Yes. When a recipient includes funds provided to an IHA in its IHP, reporting is included in the Annual Report and fiscal audit requirements under NAHASDA.

When funds provided to an IHA are not included in a recipient's IHP, reporting requirements in effect on September 30, 1997, continue to apply until the close-out of the grant activity or until the IHA notifies HUD and HUD acknowledges that the grant funds have been reprogrammed for eligible activities which support the regular operation of the IHA. This requirement applies only to categorical grants provided for specific purposes such as development or modernization grants and not to regular operating activities of the IHA. Please note that the modernization reporting requirements have been simplified and guidance has been provided to tribes, TDHEs, IHAs and Area ONAPs.

Question 28. What audit requirements apply to grants funded under the 1937 Act?

Answer 28. IHAs (or their successor entities) are responsible for providing HUD with audits of program activities in accordance with OMB Circulars A–128 and A–133 for any period prior to October 1, 1997, the effective date of NAHASDA. Notice PIH 97–30 (HA) provides the compliance supplement for annual audits of Indian housing authorities. This requirement includes any overdue audits. Additionally, any grant not included by the recipient in its IHP is subject to these audit requirements for the grant activity until all grant activities are completed and the grant is closed.

Question 29. What process does an IHA (or its successor entity) follow to close grants originally funded with 1937 Act monies?

Answer 29. Where grant activities are essentially completed and the IHA and HUD are in the process of closing the grant, the procedures for establishing actual grant costs in effect as of September 30, 1997, for the grant program are to be followed. This includes the requirement for audit verification of expenditures and final financial settlement between the IHA and HUD. Upon completion of the final financial settlement, HUD will adjust its financial records to reflect the actual cost of the grant.

Where grant activities are not completed, final settlement procedures are dependent upon whether the NAHASDA recipient assumes control of the grant funding. If the recipient does not assume responsibility for funds provided by the 1937 Act, procedures for closing grants are the same as stated in the above paragraph. Where the NAHASDA recipient assumes control of the grant funding, close-out procedures established for NAHASDA grants are to be followed even if a significant portion of the grant activities are completed prior to October 1, 1997.

Question 30. If an IHA wants to remain subject to the 1937 Act after October 1, 1997, can it be converted to a PHA?

Answer 30. No. To be eligible for Indian Housing under the 1937 Act, tribal and state enabling legislation allowed for the creation of housing authorities for the express benefit of Indians. IHAs that were created for the benefit of Indians are ineligible for funding under the 1937 Act after October 1, 1997. They cannot choose to be converted to PHAs.

Effect on ACCs

Question 31. Does the repeal of the 1937 Act terminate existing Annual Contributions Contracts (ACCs)?

Answer 31. Section 502(b) of NAHASDA states that Indian housing developed pursuant to an ACC "shall not be subject to any provision of [the 1937 Act] or any [ACC] or other agreement pursuant to such Act." Based on this language, existing ACCs are terminated with two exceptions (bond financed projects and Section 8) which are explained below in Questions 32 and 33.

Question 32. Can HUD continue funding for bond-financed projects in which the bonds were secured by ACCs?

Answer 32. Section 507 of NAHASDA addresses bond-financed projects. Annual contributions can be made by HUD, consistent with Section 507, to continue payments to trustees on behalf of holders of bonds issued, and outstanding, in connection with the development of Indian housing projects.

Section 8

Question 33. Are Section 8 ACCs terminated?

Answer 33. No. Section 503 of NAHASDA governs the provision of Section 8 rental assistance for units for which a contract was entered into before October 1, 1997. This section states that after September 30, 1997, financial assistance for rental housing assistance may not be provided to an IHA or TDHE, unless such assistance is provided pursuant to a contract for such assistance before October 1, 1997. Any such assistance shall be governed by the provisions of the 1937 Act and the provisions of such contract.

In other words, if an existing Section 8 contract does not expire until after October 1, 1997, funding will continue to be provided until the expiration date of the contract. This may be as late as fiscal year (FY) 2000. The program is to be operated in accordance with the existing ACC and HAP contract.

Question 34. What will happen to any remaining Section 8 operating reserves after the Section 8 contracts expire?

Answer 34. Section 8 operating reserves will remain with the entity administering the Section 8 program. Once the contract expires, the reserves shall be used for eligible activities under NAHASDA.

Question 35. What will happen to any remaining Section 8 program or project reserves?

Answer 35. Section 8 program or project reserves are those funds held by HUD to fund monthly housing assistance payments. When the contract expires, any remaining funds will remain with the Department.

Question 36. If a Tribe or TDHE chooses not to continue a Section 8 program after the current contract expires, is there a requirement to notify program participants of its intent to discontinue the program?

Answer 36. Yes, IHAs administering Section 8 rental certificates and rental voucher programs for which the ACC term will expire after September 30, 1997, must immediately notify Section 8 participants (including families that have exercised the portability provisions of the Section 8 program and have not been absorbed by the receiving housing authority) that their Section 8 assistance will end upon expiration of the ACC in accordance with the Housing Assistance Payment (HAP) contract, part B, Subpart 6, Paragraph iv.

Owners of Section 8 moderate rehabilitation units must also be notified that after September 30, 1997, HAP contracts will not be renewed upon the expiration of their current HAP contracts. Owners should be advised that they must provide written notice of the impending HAP contract expiration to each Section 8 family 180 days before the contract expires. A copy of the written notice must also be sent to the appropriate housing authority in accordance with Section 8(c)(9) of the 1937 Act, as amended. See PIH Notice 97–50, "Expiration of Section 8 Annual Contributions Contracts between the Department of Housing and Urban Development and Indian housing authorities" dated September 19, 1997, for further guidance.

Programs Under the Cranston-Gonzalez National Affordable Housing Act or the Stewart B. McKinney Homeless Assistance Act

Question 37. Will IHAs or tribes be eligible for programs funded under the Cranston-Gonzalez National Affordable Housing Act or the Stewart B. McKinney Homeless Assistance Act?

Answer 37. No. As of October 1, 1997, IHAs or tribes are no longer eligible for the following programs:

—Youth Sports
—Youthbuild
—HOME (Although tribes or IHAs are not eligible as direct grantees for HOME funds, States may choose to fund them if the needs of the tribes are reflected in the State's Consolidated Plan.)
—Housing Assistance for the Homeless which includes: Comprehensive Homeless Assistance Plan; Emergency Shelter Grants; Supportive Housing Programs; Safe Havens for Homeless Individuals Demonstration Program; Shelter Plus Care; Rural Homeless Housing Assistance; and Innovative Homeless Demonstration.

Question 38. If an IHA or tribe has unobligated or unexpended funds in any of the programs listed in Question 37, how are they handled?

Answer 38. Youth Sports, Youthbuild, HOME and the Housing Assistance for the Homeless Programs continue to be governed by the provisions of the statutes in effect at the time of funding. The program shall continue to be operated under existing program provisions. After completion of the funded activities, the grants will be closed out in accordance with their program requirements and grant agreements.

Question 39. What will happen to the Drug Elimination Program?

Answer 39. Section 704 of NAHASDA amends the Public and Assisted Housing Drug Elimination Act of 1990 to exclude IHAs as eligible applicants. However, TDHEs are now eligible applicants. The language in NAHASDA does not include tribes as eligible applicants.

Other Programs and Funds

Question 40. Will tribes be eligible for the Economic Development and Supportive Services (EDSS) Program?

Answer 40. The EDSS program is created by annual appropriations. The appropriation language currently makes IHAs and public housing agencies eligible for this program. Continued eligibility for IHAs will depend on future appropriation language. The language will need to be changed to include tribes and TDHEs. For those with existing EDSS grants, the program should continue to be operated under existing program provisions.

Question 41. Is the same true for the Tenant Opportunity Program (TOP) as for the EDSS Program under Question 40?

Answer 41. Yes.

Question 42. What happens to rental and homeownership operating reserves, mutual help equity accounts under the Mutual Help Homeownership Opportunity Program, earned home payment accounts under the Turnkey III programs and proceeds from the sale of homeownership units?

Answer 42. These funds can now be used for any eligible NAHASDA activity subject to any conditions imposed by the contract or agreement between the IHA and the homebuyer.

Question 43. Do tenant leases and homeownership agreements for the Mutual Help and Turnkey III Programs remain in effect?

Answer 43. Yes. For the rental program, leases remain in effect until the lease term expires. At that time, the tribe, TDHE, or IHA operate the units under the regulations governing NAHASDA. For homeownership programs, the agreements remain in effect until the contract term expires or modifications may be made to the agreement if these changes are acceptable to both parties. Modifications to the agreement must be in accordance with NAHASDA.

Question 44. What happens to tenant accounts receivables?

Answer 44. Since the terms of the rental leases and homeownership agreements remain in effect, the tenant accounts receivable are still due based on current program requirements. New policies regarding payment requirements for units developed under NAHASDA can be adopted by the tribe or TDHE.

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Other Pre-NAHASDA Requirements

Question 45. What happens to the current regulations governing the Indian housing program, 24 CFR 950?

Answer 45. As of October 1, 1997, the regulations are cancelled.

Question 46. What cash management and investment policies and procedures are in effect as of October 1, 1997?

Answer 46. Current procedures outlined in PIH Notice 96–33 (HA), extended by Notice 97–41 (HA) dated July 21, 1997, titled "Required HA Cash Management and Investment Policies and Procedures" will continue to apply until the effective date of the NAHASDA final regulation.

Question 47. Are IHAs responsible for resolving audit findings which were issued pursuant to activities prior to October 1, 1997?

Answer 47. Yes. Audit findings are open until closed. Findings that are based on operating policies or procedures can be resolved between an IHA (or its successor entity) and HUD by identifying such findings and agreeing that the correction of deficiencies is no longer required by statute or regulation. Findings that are not based on operating policies or procedures such as instances of fraud. criminal activities or ineligible program activities including repayment of any outstanding amounts due the Department, must be resolved between the IHA (or its successor entity) and HUD before the audit finding can be closed.

Question 48. Will financial statements be required when the IHA's FY ends?

Answer 48. The requirement to submit financial statements ended on September 30, 1997.

Question 49. Will the tribe or TDHE be required to submit the Multifamily Tenant Characteristic Reports, HUD 50058, as of 10–1–97?

Answer 49. As of October 1, 1997, the HUD 50058 does not need to be submitted for the rental and homeownership programs. The form is still required for the Section 8 program until the contract term expires.

Question 50. Will LOCCS access to funds be changed for IHAs on October 1, 1997?

Answer 50. No. LOCCS access to funds will be modified only if a recipient assumes responsibility for a grant. At that time, HUD must be notified of the change in responsibility so that access to the grant funds can be provided to the recipient.

LOCCS provides for the disbursement of funds by certain line items contained in program budgets. Since budgets are no longer required, the Area ONAP will enter the entire grant amount under account 1500 when they establish a project in LOCCS. This will obviate the need to provide budget information to the Area ONAP. For grants already established in LOCCS, the grantee can request the Area ONAP to transfer funds to line 1500 to enable access to the funds. The request to transfer funds can be in writing or by telephone.

Question 51. If an IHA is declared "high risk" under the provisions of 24 CFR 950.135, will this designation continue as of October 1, 1997?

Answer 51. No. There is no basis or authority for allowing the designation of "high risk" to continue because this designation was based on failure to comply with the 1937 Act, implementing regulations or the ACC. Regulations are being developed under NAHASDA which will outline corrective action under the new program.

Question 52. Are cooperation agreements transferable to a successor agency without requiring any action on the agreement by the local government or the successor agency?

Answer 52. Cooperation agreements may be transferable to a successor agency by their terms. However, it is also possible that the agreement is not transferable in which case a new agreement would have to be negotiated. Generally, if the current IHA becomes the TDHE, a new agreement is not needed because the designation of the IHA as a TDHE does not create a new legal entity. However, an IHA's cooperation agreement does not automatically become the Tribe's.

New Program Under NAHASDA

Question 53. What is the IHP submission deadline?

Answer 53. On January 27, 1997, a transition notice was published in the **Federal Register** which established the original IHP deadline submission date of June 1, 1997. Based on public comment, this date was later amended to extend the deadline to November 3, 1997. With the publication of the proposed rule, many commenters indicated that the deadline did not provide sufficient time to prepare an IHP. Therefore, it is unreasonable to expect a recipient to submit a plan prior to publication date of the program regulations.

Based on the above, this transition notice is establishing new IHP submission dates for Fiscal Year 1998 only. An IHP can be submitted no earlier than the publication date of the final regulations implementing NAHASDA and no later than July 1, 1998. The July 1, 1998, date is necessary in order to provide for a 60-day review period by Office of Native American Program (ONAP) field staff and reservation of funds prior to September 30, 1998. The final regulations will establish IHP submission dates for all future years.

Question 54. Will ONAP develop a model IHP as an example or guide for tribes or TDHEs? Is so, will it be available in a diskette format?

Answer 54. A draft IHP format has been developed and submitted to the Office of Management and Budget (OMB) for approval. This form was also mailed to all tribes and IHAs in August 1997.

To assist with the submission of the IHP, the Department is offering three ways in which to submit the IHP. The first is via the Internet. It is anticipated that this will be the easiest method and it will also provide you with on-line resources such as reviewing plan status. You may also develop your plan using a diskette which contains a template of the IHP in a Microsoft Word 6.0 format. Once completed, this diskette is submitted to the Area ONAP. The diskette and internet instructions were sent to all eligible recipients on July 24, 1997. Of course, a hard copy of the plan will also be accepted for the first several years of the program.

Question 55. Are costs incurred prior to the receipt of a FY 1998 Indian Housing Block Grant (IHBG) which are related to the development and preparation of an IHP (including the challenge of data) eligible for reimbursement from an IHBG?

Answer 55. Yes. Under the provisions of paragraph 32 of OMB Circular A–87, pre-award planning and administrative costs incurred by a recipient which are directly related to the development and preparation of its IHP (including the challenge of data) will be considered eligible IHBG expenditures under the following conditions:

(a) The costs would have been allowable if they had been incurred after the date of the award of the IHBG; and,

(b) The costs do not exceed more than 20% of the recipient's anticipated FY 1998 IHBG (or such other amounts approved in the IHP).

Question 56. Can an IHA which currently represents more than one tribe be designated by more than one tribe as their TDHE?

Answer 56. Yes.

Question 57. If a TDHE represents more than one tribe, do individual IHPs need to be submitted?

Answer 57. If a TDHE has been designated by more than one Indian tribe, the TDHE can submit a separate IHP for each Indian tribe or it may submit a single IHP that covers two or more tribes. However, the IHP must contain a separate certification in accordance with Section 102(d) of NAHASDA and the IHP Tables when requested by such tribes.

Question 58. What happens if a tribe had two IHAs as of September 30, 1996?

Answer 58. Tribes which had established and were operating two IHAs as of September 30, 1996, under the 1937 Act shall be allowed to form and operate two TDHEs under NAHASDA. Nothing in this section shall affect the allocation of funds otherwise due to a tribe under the formula.

Question 59. Who is considered as a tribe in Alaska?

Answer 59. The definition of Federally recognized tribe in NAHASDA reads: "The term 'federally recognized tribe' means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in or established pursuant the Alaska Native Claims Settlement Act, that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act of 1975."

Authority: Section 106 of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (Pub. L. 104–330, approved October 26, 1996).

Dated: January 15, 1998.

Kevin Emanuel Marchman,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 98–1939 Filed 1–26–98; 8:45 am]

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January 27, 1998

Part VI

Department of Housing and Urban Development

Notice of Annual Factors for Determining Public Housing Agency Administrative Fees for the Section 8 Rental Voucher, Rental Certificate and Moderate Rehabilitation Programs; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4290–N–01]

Notice of Annual Factors for Determining Public Housing Agency Administrative Fees for the Section 8 Rental Voucher, Rental Certificate and Moderate Rehabilitation Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of factors for determining public housing agency administrative fees for operation of the Section 8 rental voucher, rental certificate and moderate rehabilitation (including moderate rehabilitation single room occupancy and shelter plus care single room occupancy) programs.

SUMMARY: This Notice transmits the schedule of monthly per unit fee amounts for use in determining the on-going administrative fee for housing agencies (HAs) administering the rental voucher, rental certificate and moderate rehabilitation programs during Federal Fiscal Year 1998. The procedures for calculating the earned administrative fees will be issued in an ensuing Notice.

EFFECTIVE DATE: Procedures in this Notice will be used to review and approve the administrative fees stated in the HA's year-end financial statements for appropriateness for HA fiscal years ending on December 31, 1997; March 31, 1998; June 30, 1998; and September 30, 1998. These procedures may also be used to project earned administrative fees in the annual HA budget. This Notice applies to that portion of the HA fiscal year that falls within Federal Fiscal Year (FY) 1998 (October 1, 1997 to September 30, 1998).

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Senior Program Advisor, Office of Public and Assisted Housing Program Delivery, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, SW, Washington, DC 20410–8000, telephone number (202) 708–0477. Hearing or speech impaired individuals may call HUD's TDD number (202) 708–4594. (These numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB), under section 3204 (h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and have been assigned OMB control number 2577–0149. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

I. Purpose and Substantive Description

(a) The HUD-Independent Agencies Appropriations Act for Fiscal Year 1997 (P.L. 104–204) changed the method to be used in calculating HA administrative fees (see PIH Notice 97–11 issued March 11, 1997). The HA earns an administrative fee for the rental voucher, rental certificate, and moderate rehabilitation programs based on the total number of units under a housing assistance payments contract. This includes the moderate rehabilitation single room occupancy and shelter plus care single room occupancy programs.

The law also provides that HUD may approve preliminary fees of $500 per unit for the initial funding increment for the cost of expenses the HAs incur in the first year an HA administers a tenant-based rental voucher or rental certificate program. This provision applies to HAs that did not administer a tenant-based rental voucher or certificate program before September 26, 1996. The law does not provide for preliminary fees for the regular moderate rehabilitation program or the moderate rehabilitation single room occupancy program or the moderate rehabilitation shelter plus care single room occupancy program.

Additional administrative fees may be approved by HUD Headquarters for costs incurred in assisting families who experience difficulty in obtaining appropriate housing and for extraordinary costs as determined by HUD Headquarters.

II. Method to Determine Per Unit On-Going Administrative Fee

(a) Published Fee Amounts

The following is a schedule of monthly per unit fee amounts to be used by HAs in preparing annual operating budgets and by HUD in approving fiscal year-end financial statements. The tables are organized by the HUD established fair market rent areas and show the monthly fee amounts a HA will earn for each unit under a housing assistance payments contract on the first day of the applicable month.

HUD determined the per-unit monthly fee amounts using Bureau of Labor Statistics (BLS) data on local government wages (ES 202 Series). HUD adjusted the FY 97 monthly administrative fee per unit to develop the FY 98 administrative fee, effective for units assisted during the period from October 1, 1997 through September 30, 1998. The FY 98 administrative fee is calculated by multiplying the administrative fee amounts published in the **Federal Register** on March 12, 1997, by the percentage of change in the government wages using the most recent BLS data.

III. Monthly Fee Schedule

(a) Column A: Fees for 600 Units or Less

The amount in column A is the monthly per unit fee amount to be applied to the first 7,200 unit months (600 units) for the rental certificate and rental voucher programs combined and the first 7,200 unit months (600 units) for housing assistance payment contracts a HA has executed for moderate rehabilitation, including the moderate rehabilitation single room occupancy program and the shelter plus care single room occupancy program, during Federal FY 98 (October 1, 1997 to September 30, 1998).

Based on the applicable fiscal year end (FYE), a HA must use the following number of unit months to calculate its ongoing administrative fee for FY 98:

FYE December 31—1st quarter FY 98—Up to 1,800 unit months
FYE March 31—2nd quarter FY 98—Up to 3,600 unit months
FYE June 30—3rd quarter FY 98—Up to 5,400 unit months
FYE September 30—4th quarter FY 98—Up to 7,200 unit months

(b) Column B: Fees for Units in Excess of 600 Units

The amount in column B must be used to determine the administrative fee for FY 98 unit months in excess of the administrative fees for the first 600 units, for which fees were calculated in accordance with paragraph (a). The excess unit months, based on the HA's FYE and the number of rental voucher, rental certificate, and moderate rehabilitation units under housing assistance payment contracts during FY 98, are multiplied by the monthly fee per unit in column B. Column A and column B are not used for HA-owned units.

(c) Column C: Fees for HA-Owned Units

The monthly per unit fee amount in column C will be multiplied by the number of unit months available for the rental voucher, rental certificate, and moderate rehabilitation units owned by the HA and that are under housing assistance payments contracts during Federal FY 98. Column A and column B fee amounts are not used for HA-owned units.

(d) Future Year Publication Date

For subsequent fiscal years, HUD will publish an annual Notice in the **Federal Register** establishing the monthly per unit fee amounts for use in determining the on-going administrative fees for HAs operating the rental voucher, rental certificate and moderate rehabilitation programs in each metropolitan and each non-metropolitan fair market rent area for that Federal fiscal year. The annual change in the per-unit-month fee amounts will be based on changes in wage data or other objectively measurable data, as determined by HUD, that reflect the costs of administering the program.

The amounts shown on the attached schedule do not reflect the authority given to HUD to approve additional fees if necessary to reflect extraordinary expenses such as the higher costs of administering small programs and programs operating over large geographic areas or expenses incurred because of difficulties some categories of families are having in finding appropriate housing. HUD will consider HA requests for such increased Section 8 administrative fees. Furthermore, the amounts shown do not include preliminary fees.

Accordingly, the Department publishes the monthly per unit fee amounts to be used for determining HA administrative fees under the rental voucher, rental certificate and moderate rehabilitation programs as set forth on the following schedule:

IV. Findings and Certifications

Environmental Impact

In accordance with 24 CFR 50.19(c)(6) of the HUD regulations, the policies and procedures contained in this notice set forth rate determinations and related external administrative requirements and procedures which do not constitute a development decision that affects the physical condition of specific project areas or building sites, and therefore are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. The notice pertains to the determination of administrative fees for HAs administering the rental voucher, rental certificate and moderate rehabilitation programs during Federal FY 98, and does not alter the established roles of the Department, the States, and local governments.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 14.850.

Dated: January 13, 1998.

Kevin Emanuel Marchman,

Assistant Secretary for Public and Indian Housing.

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A L A B A M A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Anniston, AL MSA	36.41	33.97	14.56	Calhoun
Birmingham, AL MSA	37.42	34.93	14.97	Blount, St. Clair, Jefferson, Shelby
Columbus, GA-AL MSA	35.09	32.75	14.04	Russell
Decatur, AL MSA	36.41	33.97	14.56	Morgan, Lawrence
Dothan, AL MSA	36.49	34.05	14.60	Houston, Dale
Florence, AL MSA	36.41	33.97	14.56	Lauderdale, Colbert
Gadsden, AL MSA	36.41	33.97	14.56	Etowah
Huntsville, AL MSA	38.02	35.49	15.21	Limestone, Madison
Mobile, AL MSA	38.01	35.48	15.21	Baldwin, Mobile
Montgomery, AL MSA	36.41	33.97	14.56	Autauga, Montgomery, Elmore
Tuscaloosa, AL MSA	36.71	34.26	14.68	Tuscaloosa

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Barbour	36.85	34.39	14.74	Bullock	36.85	34.39	14.74
Bibb	36.85	34.39	14.74	Chilton	36.85	34.39	14.74
Cherokee	36.85	34.39	14.74	Chambers	36.85	34.39	14.74
Butler	36.85	34.39	14.74	Covington	36.85	34.39	14.74
Coosa	36.85	34.39	14.74	Conecuh	36.85	34.39	14.74
Coffee	36.85	34.39	14.74	Cleburne	36.85	34.39	14.74
Clay	36.85	34.39	14.74	Clarke	36.85	34.39	14.74
Choctaw	36.85	34.39	14.74	Macon	36.85	34.39	14.74
Lowndes	36.85	34.39	14.74	Lee	36.85	34.39	14.74
Lamar	36.85	34.39	14.74	Jackson	36.85	34.39	14.74
Henry	36.85	34.39	14.74	Hale	36.85	34.39	14.74
Greene	36.85	34.39	14.74	Geneva	36.85	34.39	14.74
Franklin	36.85	34.39	14.74	Fayette	36.85	34.39	14.74
Escambia	36.85	34.39	14.74	Dekalb	36.85	34.39	14.74
Dallas	36.85	34.39	14.74	Cullman	36.85	34.39	14.74
Crenshaw	36.85	34.39	14.74	Winston	36.85	34.39	14.74
Wilcox	36.85	34.39	14.74	Washington	36.85	34.39	14.74
Walker	36.85	34.39	14.74	Tallapoosa	36.85	34.39	14.74
Talladega	36.85	34.39	14.74	Sumter	36.85	34.39	14.74
Randolph	36.85	34.39	14.74	Pike	36.85	34.39	14.74
Pickens	36.85	34.39	14.74	Perry	36.85	34.39	14.74
Monroe	36.85	34.39	14.74	Marshall	36.85	34.39	14.74
Marion	36.85	34.39	14.74	Marengo	36.85	34.39	14.74

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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A L A S K A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Anchorage, AK MSA	56.93	53.13	22.77	Anchorage

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Northwest Arctic	56.32	52.57	22.53	North Slope	61.35	57.26	24.54
Nome	61.35	57.26	24.54	Matanuska-Susitna	50.39	47.04	20.16
Lake & Peninsula	56.32	52.57	22.53	Kodiak Island	68.00	63.47	27.20
Ketchikan Gateway	68.00	63.47	27.20	Kenai Peninsula	54.76	51.11	21.90
Juneau	68.00	63.47	27.20	Haines	59.28	55.33	23.71
Fairbanks North Star	58.28	54.39	23.31	Dillingham	61.35	57.26	24.54
Bristol Bay	59.28	55.33	23.71	Bethel	61.35	57.26	24.54
Aleutian West	59.28	55.33	23.71	Aleutian East	59.28	55.33	23.71
Yukon-Koyukuk	59.28	55.33	23.71	Wrangell-Petersburg	66.58	62.14	26.63
Wade Hampton	59.28	55.33	23.71	Valdez-Cordova	68.00	63.47	27.20
Southeast Fairbanks	48.80	45.55	19.52	Skagway-Yakutat-Angoon	59.28	55.33	23.71
Sitka	66.58	62.14	26.63	Pr.Wales-Outer Ketchikan	59.28	55.33	23.71

A R I Z O N A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Flagstaff, AZ	45.02	42.02	18.01	Coconino
Las Vegas, NV-AZ MSA	56.83	53.05	22.73	Mohave
Phoenix-Mesa, AZ MSA	41.17	38.42	16.47	Pinal, Maricopa
Tucson, AZ MSA	40.70	37.99	16.28	Pima
Yuma, AZ MSA	45.74	42.69	18.30	Yuma

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Cochise	35.37	33.01	14.15	Apache	34.74	32.42	13.89
Yavapai	44.09	41.15	17.64	Santa Cruz	36.61	34.17	14.64
Navajo	34.74	32.42	13.89	La Paz	44.88	41.89	17.95
Greenlee	35.37	33.01	14.15	Graham	35.37	33.01	14.15
Gila	36.00	33.60	14.40				

A R K A N S A S

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Fayetteville-Springdale-Rogers, AR MSA	34.35	32.06	13.74	Benton, Washington
Fort Smith, AR-OK MSA	34.35	32.06	13.74	Crawford, Sebastian
Jonesboro, AR MSA	34.35	32.06	13.74	Craighead
Little Rock-North Little Rock, AR MSA	37.47	34.98	14.99	Faulkner, Saline, Pulaski, Lonoke
Memphis, TN-AR-MS MSA	39.60	36.96	15.84	Crittenden

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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A R K A N S A S continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Pine Bluff, AR MSA	34.35	32.06	13.74	Jefferson
Texarkana, TX-Texarkana, AR MSA	34.16	31.88	13.66	Miller

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Ashley	34.35	32.06	13.74	Arkansas	34.35	32.06	13.74
Calhoun	34.35	32.06	13.74	Bradley	34.35	32.06	13.74
Boone	34.35	32.06	13.74	Baxter	34.35	32.06	13.74
Conway	34.35	32.06	13.74	Columbia	34.35	32.06	13.74
Cleveland	34.35	32.06	13.74	Cleburne	34.35	32.06	13.74
Clay	34.35	32.06	13.74	Clark	34.35	32.06	13.74
Chicot	34.35	32.06	13.74	Carroll	34.35	32.06	13.74
Cross	34.35	32.06	13.74	Desha	34.35	32.06	13.74
Dallas	34.35	32.06	13.74	Garland	34.35	32.06	13.74
Fulton	34.35	32.06	13.74	Franklin	34.35	32.06	13.74
Drew	34.35	32.06	13.74	Jackson	34.35	32.06	13.74
Izard	34.35	32.06	13.74	Independence	34.35	32.06	13.74
Howard	34.35	32.06	13.74	Hot Spring	34.35	32.06	13.74
Hempstead	34.35	32.06	13.74	Greene	34.35	32.06	13.74
Grant	34.35	32.06	13.74	White	34.35	32.06	13.74
Van Buren	34.35	32.06	13.74	Union	34.35	32.06	13.74
Stone	34.35	32.06	13.74	Sharp	34.35	32.06	13.74
Sevier	34.35	32.06	13.74	Searcy	34.35	32.06	13.74
Scott	34.35	32.06	13.74	St. Francis	34.35	32.06	13.74
Randolph	34.35	32.06	13.74	Prairie	34.35	32.06	13.74
Pope	34.35	32.06	13.74	Polk	34.35	32.06	13.74
Poinsett	34.35	32.06	13.74	Pike	34.35	32.06	13.74
Phillips	34.35	32.06	13.74	Perry	34.35	32.06	13.74
Ouachita	34.35	32.06	13.74	Newton	34.35	32.06	13.74
Nevada	34.35	32.06	13.74	Montgomery	34.35	32.06	13.74
Monroe	34.35	32.06	13.74	Mississippi	34.35	32.06	13.74
Marion	34.35	32.06	13.74	Madison	34.35	32.06	13.74
Logan	34.35	32.06	13.74	Little River	34.35	32.06	13.74
Lincoln	34.35	32.06	13.74	Lee	34.35	32.06	13.74
Lawrence	34.35	32.06	13.74	Lafayette	34.35	32.06	13.74
Johnson	34.35	32.06	13.74	Yell	34.35	32.06	13.74
Woodruff	34.35	32.06	13.74				

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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C A L I F O R N I A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Bakersfield, CA MSA	48.12	44.90	19.25	Kern
Chico-Paradise, CA MSA	42.28	39.45	16.91	Butte
Fresno, CA MSA	43.99	41.05	17.59	Madera, Fresno
Los Angeles-Long Beach, CA PMSA	63.13	58.93	25.25	Los Angeles
Merced, CA MSA	41.34	38.58	16.53	Merced
Modesto, CA MSA	46.32	43.23	18.53	Stanislaus
Oakland, CA PMSA	63.13	58.93	25.25	Alameda, Contra Costa
Orange County, CA PMSA	63.13	58.93	25.25	Orange
Redding, CA MSA	43.99	41.05	17.59	Shasta
Riverside-San Bernardino, CA PMSA	50.37	47.01	20.15	Riverside, San Bernardino
Sacramento, CA PMSA	47.94	44.74	19.18	El Dorado, Sacramento, Placer
Salinas, CA MSA	54.39	50.76	21.76	Monterey
San Diego, CA MSA	56.44	52.68	22.58	San Diego
San Francisco, CA PMSA	63.13	58.93	25.25	San Mateo, San Francisco, Marin
San Jose, CA PMSA	63.13	58.93	25.25	Santa Clara
San Luis Obispo-Atascadero-Paso Robles, CA PMSA	54.65	51.01	21.86	San Luis Obispo
Santa Barbara-Santa Maria-Lompoc, CA MSA	61.64	57.53	24.66	Santa Barbara
Santa Cruz-Watsonville, CA PMSA	63.13	58.93	25.25	Santa Cruz
Santa Rosa, CA PMSA	61.58	57.48	24.63	Sonoma
Stockton-Lodi, CA MSA	46.01	42.94	18.40	San Joaquin
Vallejo-Fairfield-Napa, CA PMSA	54.81	51.15	21.92	Napa, Solano
Ventura, CA PMSA	63.13	58.93	25.25	Ventura
Visalia-Tulare-Porterville, CA MSA	41.02	38.29	16.41	Tulare
Yolo, CA PMSA	47.94	44.74	19.18	Yolo
Yuba City, CA MSA	36.28	33.86	14.51	Yuba, Sutter

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Colusa	36.83	34.38	14.73	Calaveras	48.69	45.44	19.47
Amador	48.69	45.44	19.47	Alpine	48.69	45.44	19.47
Lassen	40.68	37.96	16.27	Lake	44.44	41.48	17.78
Kings	40.05	37.38	16.02	Inyo	48.69	45.44	19.47
Imperial	46.18	43.10	18.47	Humboldt	45.78	42.73	18.31
Glenn	36.83	34.38	14.73	Del Norte	44.44	41.48	17.78
Tuolumne	48.69	45.44	19.47	Trinity	44.44	41.48	17.78
Tehama	40.68	37.96	16.27	Siskiyou	40.68	37.96	16.27
Sierra	54.57	50.94	21.83	San Benito	50.39	47.03	20.16
Plumas	40.68	37.96	16.27	Nevada	54.57	50.94	21.83
Mono	50.39	47.03	20.16	Modoc	40.68	37.96	16.27
Mendocino	47.90	44.71	19.16	Mariposa	48.69	45.44	19.47

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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C O L O R A D O

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Boulder-Longmont, CO PMSA	49.06	45.78	19.62	Boulder
Colorado Springs, CO MSA	40.33	37.64	16.13	El Paso
Denver, CO PMSA	43.23	40.36	17.29	Arapahoe, Adams, Jefferson, Douglas, Denver
Fort Collins-Loveland, CO MSA	46.49	43.39	18.60	Larimer
Grand Junction, CO MSA	50.57	47.20	20.23	Mesa
Greeley, CO PMSA	40.09	37.42	16.04	Weld
Pueblo, CO MSA	39.93	37.27	15.97	Pueblo

NONMETROPOLITAN COUNTIES	A	B	C
Alamosa	41.29	38.53	16.51
Conejos	41.29	38.53	16.51
Cheyenne	35.35	32.98	14.14
Bent	35.35	32.98	14.14
Archuleta	41.29	38.53	16.51
Kiowa	35.35	32.98	14.14
Huerfano	41.29	38.53	16.51
Gunnison	54.58	50.94	21.83
Gilpin	47.43	44.27	18.97
Fremont	45.83	42.77	18.33
Eagle	56.49	52.72	22.60
Delta	54.58	50.94	21.83
Crowley	35.35	32.98	14.14
Washington	35.35	32.98	14.14
Summit	54.58	50.94	21.83
San Miguel	56.49	52.72	22.60
Saguache	41.29	38.53	16.51
Rio Grande	41.29	38.53	16.51
Prowers	35.35	32.98	14.14
Phillips	35.35	32.98	14.14
Ouray	54.58	50.94	21.83
Morgan	35.35	32.98	14.14
Montezuma	41.29	38.53	16.51
Mineral	41.29	38.53	16.51
Lincoln	35.35	32.98	14.14
La Plata	46.82	43.70	18.73

NONMETROPOLITAN COUNTIES	A	B	C
Costilla	41.29	38.53	16.51
Clear Creek	45.83	42.77	18.33
Chaffee	45.83	42.77	18.33
Baca	35.35	32.98	14.14
Kit Carson	35.35	32.98	14.14
Jackson	54.58	50.94	21.83
Hinsdale	54.58	50.94	21.83
Grand	54.58	50.94	21.83
Garfield	52.18	48.71	20.87
Elbert	36.57	34.14	14.63
Dolores	41.29	38.53	16.51
Custer	45.83	42.77	18.33
Yuma	35.35	32.98	14.14
Teller	46.08	43.01	18.43
Sedgwick	35.35	32.98	14.14
San Juan	41.29	38.53	16.51
Routt	54.58	50.94	21.83
Rio Blanco	52.18	48.71	20.87
Pitkin	56.49	52.72	22.60
Park	45.83	42.77	18.33
Otero	35.35	32.98	14.14
Montrose	54.58	50.94	21.83
Moffat	52.18	48.71	20.87
Logan	35.35	32.98	14.14
Las Animas	41.29	38.53	16.51
Lake	45.83	42.77	18.33

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C O N N E C T I C U T

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Bridgeport, CT PMSA	60.89	56.83	24.35	Fairfield county towns of Bridgeport town, Easton town Fairfield town, Monroe town, Shelton town Stratford town, Trumbull town New Haven county towns of Ansonia town, Beacon Falls town Derby town, Milford town, Oxford town, Seymour town
Danbury, CT PMSA	65.26	60.92	26.11	Fairfield county towns of Bethel town, Brookfield town Danbury town, New Fairfield town, Newtown town Redding town, Ridgefield town, Sherman town Litchfield county towns of Bridgewater town New Milford town, Roxbury town, Washington town
Hartford, CT PMSA	57.38	53.55	22.95	Hartford county towns of Avon town, Berlin town Bloomfield town, Bristol town, Burlington town Canton town, East Granby town, East Hartford town East Windsor town, Enfield town, Farmington town Glastonbury town, Granby town, Hartford town Manchester town, Marlborough town, New Britain town Newington town, Plainville town, Rocky Hill town Simsbury town, Southington town, South Windsor town Suffield town, West Hartford town, Wethersfield town Windsor town, Windsor Locks town Windham county towns of Ashford town, Chaplin town Windham town Tolland county towns of Andover town, Bolton town Columbia town, Coventry town, Ellington town Hebron town, Mansfield town, Somers town, Stafford town Tolland town, Vernon town, Willington town New London county towns of Colchester town, Lebanon town Middlesex county towns of Cromwell town, Durham town East Haddam town, East Hampton town, Haddam town Middlefield town, Middletown town, Portland town Litchfield county towns of Barkhamsted town Harwinton town, New Hartford town, Plymouth town Winchester town
New Haven-Meriden, CT PMSA	63.25	59.04	25.30	Middlesex county towns of Clinton town, Killingworth town New Haven county towns of Bethany town, Branford town Cheshire town, East Haven town, Guilford town Hamden town, Madison town, Meriden town, New Haven town North Branford tow, North Haven town, Orange town Wallingford town, West Haven town, Woodbridge town
New London-Norwich, CT-RI MSA	56.33	52.58	22.53	Middlesex county towns of Old Saybrook town Windham county towns of Canterbury town, Plainfield town New London county towns of Bozrah town, East Lyme town Franklin town, Griswold town, Groton town, Ledyard town Lisbon town, Montville town, New London town North Stonington t, Norwich town, Old Lyme town Preston town, Salem town, Sprague town, Stonington town Waterford town

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C O N N E C T I C U T continued

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Stamford-Norwalk, CT PMSA	65.25	60.92	26.11	Fairfield county towns of Darien town, Greenwich town New Canaan town, Norwalk town, Stamford town Weston town, Westport town, Wilton town
Waterbury, CT MSA	51.64	48.20	20.66	Litchfield county towns of Bethlehem town, Thomaston town Watertown town, Woodbury town New Haven county towns of Middlebury town, Naugatuck town Prospect town, Southbury town, Waterbury town Wolcott town
Worcester, MA-CT	54.21	50.60	21.69	Windham county towns of Thompson town

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Litchfield	54.39	50.76	21.76	Canaan town, Colebrook town, Cornwall town, Goshen town Kent town, Litchfield town, Morris town, Norfolk town North Canaan town, Salisbury town, Sharon town Torrington town, Warren town
Hartford	51.20	47.84	20.50	Hartland town
Windham	50.45	47.09	20.18	Brooklyn town, Eastford town, Hampton town Killingly town, Pomfret town, Putnam town, Scotland town Sterling town, Woodstock town
Tolland	56.98	53.17	22.79	Union town
New London	43.73	40.81	17.49	Lyme town, Voluntown town
Middlesex	60.98	56.91	24.39	Chester town, Deep River town, Essex town Westbrook town

D E L A W A R E

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Dover, DE MSA	44.76	41.77	17.90	Kent
Wilmington-Newark, DE-MD PMSA	52.57	49.06	21.03	New Castle

NONMETROPOLITAN COUNTIES	A	B	C
Sussex	46.57	43.46	18.63

D I S T . O F C O L U M B I A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Washington, DC-MD-VA	65.63	61.26	26.25	District of Columbia

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F L O R I D A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Daytona Beach, FL MSA	45.32	42.30	18.13	Volusia, Flagler
Fort Lauderdale, FL PMSA	57.44	53.61	22.98	Broward
Fort Myers-Cape Coral, FL MSA	47.53	44.37	19.01	Lee
Fort Pierce-Port Lucie, FL MSA	48.16	44.95	19.27	St. Lucie, Martin
Fort Walton Beach, FL MSA	35.64	33.25	14.25	Okaloosa
Gainesville, FL MSA	40.63	37.92	16.25	Alachua
Jacksonville, FL MSA	42.82	39.97	17.13	St. Johns, Nassau, Duval, Clay
Lakeland-Winter Haven, FL MSA	37.62	35.12	15.05	Polk
Melbourne-Titusville-Palm Bay, FL MSA	43.59	40.70	17.44	Brevard
Miami, FL PMSA	61.35	57.26	24.54	Dade
Naples, FL MSA	49.46	46.16	19.79	Collier
Ocala, FL MSA	37.05	34.58	14.82	Marion
Orlando, FL MSA	47.22	44.07	18.89	Lake, Osceola, Orange, Seminole
Panama City, FL MSA	35.64	33.25	14.25	Bay
Pensacola, FL MSA	37.05	34.58	14.82	Santa Rosa, Escambia
Punta Gorda, FL MSA	46.28	43.20	18.51	Charlotte
Sarasota-Bradenton, FL MSA	49.61	46.31	19.85	Manatee, Sarasota
Tallahassee, FL MSA	40.23	37.55	16.09	Gadsden, Leon
Tampa-St. Petersburg-Clearwater, FL MSA	45.21	42.19	18.08	Hernando, Pasco, Hillsborough, Pinellas
West Palm Beach-Boca Raton, FL MSA	47.91	44.71	19.16	Palm Beach

NONMETROPOLITAN COUNTIES	A	B	C
Bradford	33.42	35.86	15.37
Desoto	34.77	32.45	13.91
Citrus	34.77	32.45	13.91
Washington	34.77	32.45	13.91
Wakulla	34.77	32.45	13.91
Taylor	34.77	32.45	13.91
Sumter	34.77	32.45	13.91
Okeechobee	34.77	32.45	13.91
Madison	34.77	32.45	13.91
Levy	34.77	32.45	13.91
Jefferson	34.77	32.45	13.91
Indian River	46.02	43.71	18.73
Highlands	34.77	32.45	13.91
Hardee	34.77	32.45	13.91
Gulf	34.77	32.45	13.91
Gilchrist	34.77	32.45	13.91
Dixie	34.77	32.45	13.91

NONMETROPOLITAN COUNTIES	A	B	C
Baker	34.77	32.45	13.91
Columbia	34.77	32.45	13.91
Calhoun	34.77	32.45	13.91
Walton	34.77	32.45	13.91
Union	34.77	32.45	13.91
Suwannee	34.77	32.45	13.91
Putnam	34.77	32.45	13.91
Monroe	59.77	55.79	23.91
Liberty	34.77	32.45	13.91
Lafayette	34.77	32.45	13.91
Jackson	34.77	32.45	13.91
Holmes	34.77	32.45	13.91
Hendry	43.86	40.94	17.54
Hamilton	34.77	32.45	13.91
Glades	43.86	40.94	17.54
Franklin	34.77	32.45	13.91

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G E O R G I A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Albany, GA MSA	35.09	32.75	14.04	Dougherty, Lee
Athens, GA MSA	35.97	33.58	14.39	Clarke, Oconee, Madison
Atlanta, GA MSA	48.29	45.06	19.31	Carroll, Rockdale, Spalding, Paulding, Newton, Henry Gwinnett, Fulton, Forsyth, Fayette, Douglas, Dekalb Coweta, Cobb, Clayton, Cherokee, Bartow, Barrow, Walton Pickens
Augusta-Aiken, GA-SC MSA	35.97	33.58	14.39	Columbia, Richmond, Mcduffie
Chattanooga, TN-GA MSA	39.43	36.80	15.77	Catoosa, Walker, Dade
Columbus, GA-AL MSA	35.09	32.75	14.04	Muscogee, Harris, Chattahoochee
Macon, GA MSA	35.66	33.29	14.26	Bibb, Twiggs, Peach, Jones, Houston
Savannah, GA MSA	36.65	34.21	14.66	Bryan, Effingham, Chatham

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Appling	35.51	33.13	14.20	Bacon	35.51	33.13	14.20
Atkinson	35.51	33.13	14.20	Brooks	35.51	33.13	14.20
Brantley	35.51	33.13	14.20	Bleckley	35.51	33.13	14.20
Berrien	35.51	33.13	14.20	Ben Hill	35.51	33.13	14.20
Banks	35.51	33.13	14.20	Baldwin	35.51	33.13	14.20
Baker	35.51	33.13	14.20	Dawson	35.51	33.13	14.20
Crisp	35.51	33.13	14.20	Crawford	35.51	33.13	14.20
Cook	35.51	33.13	14.20	Colquitt	35.51	33.13	14.20
Coffee	35.51	33.13	14.20	Clinch	35.51	33.13	14.20
Clay	35.51	33.13	14.20	Chattooga	35.51	33.13	14.20
Charlton	35.51	33.13	14.20	Candler	35.51	33.13	14.20
Camden	35.51	33.13	14.20	Calhoun	35.51	33.13	14.20
Butts	48.11	44.90	19.24	Burke	35.51	33.13	14.20
Bulloch	35.51	33.13	14.20	Lanier	35.51	33.13	14.20
Lamar	35.51	33.13	14.20	Johnson	35.51	33.13	14.20
Jenkins	35.51	33.13	14.20	Jefferson	35.51	33.13	14.20
Jeff Davis	35.51	33.13	14.20	Jasper	35.51	33.13	14.20
Jackson	35.51	33.13	14.20	Irwin	35.51	33.13	14.20
Heard	35.51	33.13	14.20	Hart	35.51	33.13	14.20
Haralson	35.51	33.13	14.20	Hancock	35.51	33.13	14.20
Hall	39.24	36.62	15.70	Habersham	35.51	33.13	14.20
Greene	35.51	33.13	14.20	Grady	35.51	33.13	14.20
Gordon	35.51	33.13	14.20	Glynn	35.51	33.13	14.20
Glascock	35.51	33.13	14.20	Gilmer	35.51	33.13	14.20
Franklin	35.51	33.13	14.20	Floyd	35.51	33.13	14.20
Fannin	35.51	33.13	14.20	Evans	35.51	33.13	14.20
Emanuel	35.51	33.13	14.20	Elbert	35.51	33.13	14.20
Echols	35.51	33.13	14.20	Early	35.51	33.13	14.20

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G E O R G I A continued

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Dooly	35.51	33.13	14.20	Dodge	35.51	33.13	14.20
Decatur	35.51	33.13	14.20	Worth	35.51	33.13	14.20
Wilkinson	35.51	33.13	14.20	Wilkes	35.51	33.13	14.20
Wilcox	35.51	33.13	14.20	Whitfield	35.51	33.13	14.20
White	35.51	33.13	14.20	Wheeler	35.51	33.13	14.20
Webster	35.51	33.13	14.20	Wayne	35.51	33.13	14.20
Washington	35.51	33.13	14.20	Warren	35.51	33.13	14.20
Ware	35.51	33.13	14.20	Upson	35.51	33.13	14.20
Union	35.51	33.13	14.20	Turner	35.51	33.13	14.20
Troup	35.51	33.13	14.20	Treutlen	35.51	33.13	14.20
Towns	35.51	33.13	14.20	Toombs	35.51	33.13	14.20
Tift	35.51	33.13	14.20	Thomas	35.51	33.13	14.20
Terrell	35.51	33.13	14.20	Telfair	35.51	33.13	14.20
Taylor	35.51	33.13	14.20	Tattnall	35.51	33.13	14.20
Taliaferro	35.51	33.13	14.20	Talbot	35.51	33.13	14.20
Sumter	35.51	33.13	14.20	Stewart	35.51	33.13	14.20
Stephens	35.51	33.13	14.20	Seminole	35.51	33.13	14.20
Screven	35.51	33.13	14.20	Schley	35.51	33.13	14.20
Randolph	35.51	33.13	14.20	Rabun	35.51	33.13	14.20
Quitman	35.51	33.13	14.20	Putnam	35.51	33.13	14.20
Pulaski	35.51	33.13	14.20	Polk	35.51	33.13	14.20
Pike	35.51	33.13	14.20	Pierce	35.51	33.13	14.20
Oglethorpe	35.51	33.13	14.20	Murray	35.51	33.13	14.20
Morgan	35.51	33.13	14.20	Montgomery	35.51	33.13	14.20
Monroe	35.51	33.13	14.20	Mitchell	35.51	33.13	14.20
Miller	35.51	33.13	14.20	Meriwether	35.51	33.13	14.20
Marion	35.51	33.13	14.20	Macon	35.51	33.13	14.20
Mcintosh	35.51	33.13	14.20	Lumpkin	35.51	33.13	14.20
Lowndes	35.51	33.13	14.20	Long	35.51	33.13	14.20
Lincoln	35.51	33.13	14.20	Liberty	35.51	33.13	14.20
Laurens	35.51	33.13	14.20				

H A W A I I

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Honolulu, HI MSA	68.37	63.81	27.35	Honolulu

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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H A W A I I continued

NONMETROPOLITAN COUNTIES	A	B	C
Hawaii	59.35	55.39	23.74
Kauai	66.84	62.39	26.74
Maui	66.84	62.39	26.74

I D A H O

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Boise City, ID MSA	49.45	46.15	19.78	Canyon, Ada
Pocatello, ID MSA	39.80	37.14	15.92	Bannock

NONMETROPOLITAN COUNTIES	A	B	C
Adams	38.42	35.87	15.37
Bear Lake	39.76	37.11	15.90
Boise	38.42	35.87	15.37
Bingham	39.76	37.11	15.90
Clark	43.00	40.13	17.20
Caribou	39.76	37.11	15.90
Butte	43.00	40.13	17.20
Bonneville	43.00	40.13	17.20
Madison	43.00	40.13	17.20
Lewis	39.76	37.11	15.90
Latah	39.76	37.11	15.90
Jerome	40.76	38.04	16.30
Idaho	39.76	37.11	15.90
Gem	38.42	35.87	15.37
Franklin	39.76	37.11	15.90
Custer	43.00	40.13	17.20
Valley	38.42	35.87	15.37
Teton	43.00	40.13	17.20
Power	39.76	37.11	15.90
Owyhee	38.42	35.87	15.37
Nez Perce	39.76	37.11	15.90
Benewah	39.76	37.11	15.90
Bonner	39.76	37.11	15.90
Blaine	42.19	39.37	16.87
Clearwater	39.76	37.11	15.90
Cassia	40.76	38.04	16.30
Camas	40.76	38.04	16.30
Boundary	39.76	37.11	15.90
Minidoka	40.76	38.04	16.30
Lincoln	40.76	38.04	16.30
Lemhi	43.00	40.13	17.20
Kootenai	41.15	38.41	16.46
Jefferson	43.00	40.13	17.20
Gooding	40.76	38.04	16.30
Fremont	43.00	40.13	17.20
Elmore	38.42	35.87	15.37
Washington	38.42	35.87	15.37
Twin Falls	40.76	38.04	16.30
Shoshone	39.76	37.11	15.90
Payette	38.42	35.87	15.37
Oneida	39.76	37.11	15.90

I L L I N O I S

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Bloomington-Normal, IL MSA	41.68	38.91	16.67	Mclean
Champaign-Urbana, IL MSA	41.83	39.04	16.73	Champaign
Chicago, IL	59.35	55.39	23.74	Lake, Kane, Dupage, Cook, Will, Mchenry
Davenport-Moline-Rock Island, IA-IL MSA	43.68	40.77	17.47	Rock Island, Henry

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH — PAGE 12

I L L I N O I S continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Decatur, IL MSA	40.41	37.72	16.16	Macon
De Kalb County, IL	47.04	43.90	18.81	Dekalb
Grundy County, IL	60.54	56.50	24.22	Grundy
Kankakee, IL PMSA	40.49	37.80	16.20	Kankakee
Kendall County, Il	59.85	55.86	23.94	Kendall
Peoria-Pekin, IL MSA	46.86	43.74	18.74	Peoria, Woodford, Tazewell
Rockford, IL MSA	42.62	39.78	17.05	Winnebago, Ogle, Boone
St. Louis, MO-IL MSA	40.29	37.60	16.12	Clinton, St. Clair, Monroe, Madison, Jersey
Springfield, IL MSA	42.71	39.85	17.08	Sangamon, Menard

NONMETROPOLITAN COUNTIES	A	B	C
Alexander	35.57	33.19	14.23
Clark	35.57	33.19	14.23
Cass	35.57	33.19	14.23
Calhoun	35.57	33.19	14.23
Brown	35.57	33.19	14.23
Hamilton	35.57	33.19	14.23
Gallatin	35.57	33.19	14.23
Franklin	35.99	33.58	14.39
Fayette	35.57	33.19	14.23
Edwards	35.57	33.19	14.23
Douglas	35.57	33.19	14.23
Cumberland	35.57	33.19	14.23
Coles	35.57	33.19	14.23
Randolph	35.57	33.19	14.23
Pulaski	35.57	33.19	14.23
Pike	35.57	33.19	14.23
Perry	35.57	33.19	14.23
Morgan	35.57	33.19	14.23
Mercer	35.57	33.19	14.23
Mason	35.57	33.19	14.23
Marion	35.57	33.19	14.23
Mcdonough	35.57	33.19	14.23
Livingston	35.57	33.19	14.23
Lawrence	35.57	33.19	14.23
Knox	36.31	33.89	14.52
Jo Daviess	35.57	33.19	14.23
Jasper	35.57	33.19	14.23
Iroquois	35.57	33.19	14.23
Hardin	35.57	33.19	14.23
Adams	35.57	33.19	14.23
Christian	35.57	33.19	14.23
Carroll	35.57	33.19	14.23
Bureau	37.73	35.22	15.09
Bond	35.57	33.19	14.23
Greene	35.57	33.19	14.23
Fulton	37.73	35.22	15.09
Ford	35.57	33.19	14.23
Effingham	35.57	33.19	14.23
Edgar	35.57	33.19	14.23
De Witt	35.57	33.19	14.23
Crawford	35.57	33.19	14.23
Clay	35.57	33.19	14.23
Putnam	37.73	35.22	15.09
Pope	35.57	33.19	14.23
Piatt	35.57	33.19	14.23
Moultrie	35.57	33.19	14.23
Montgomery	35.57	33.19	14.23
Massac	35.57	33.19	14.23
Marshall	37.73	35.22	15.09
Macoupin	35.57	33.19	14.23
Logan	35.57	33.19	14.23
Lee	42.54	39.71	17.02
La Salle	42.54	39.71	17.02
Johnson	35.57	33.19	14.23
Jefferson	35.57	33.19	14.23
Jackson	35.99	33.58	14.39
Henderson	35.57	33.19	14.23
Hancock	35.57	33.19	14.23

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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I L L I N O I S continued

NONMETROPOLITAN COUNTIES	A	B	C
Williamson	35.99	33.58	14.39
White	35.57	33.19	14.23
Washington	35.57	33.19	14.23
Wabash	35.57	33.19	14.23
Union	35.57	33.19	14.23
Stark	37.73	35.33	15.09
Scott	35.57	33.19	14.23
Saline	35.57	33.19	14.23
Whiteside	42.54	39.71	17.02
Wayne	35.57	33.19	14.23
Warren	35.57	33.19	14.23
Vermilion	35.57	33.19	14.23
Stephenson	35.57	33.19	14.23
Shelby	35.57	33.19	14.23
Schuyler	35.57	33.19	14.23
Richland	35.57	33.19	14.23

I N D I A N A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Bloomington, IN MSA	37.19	34.72	14.88	Monroe
Cincinnati, OH-KY-IN	40.49	37.79	16.20	Dearborn
Elkhart-Goshen, IN MSA	36.27	33.85	14.51	Elkhart
Evansville-Henderson, IN-KY MSA	36.02	33.61	14.41	Posey, Warrick, Vanderburgh
Fort Wayne, IN MSA	37.53	35.03	15.01	Allen, Adams, Whitley, Wells, Huntington, De Kalb
Gary, IN PMSA	45.82	42.76	18.33	Porter, Lake
Indianapolis, IN MSA	41.49	38.72	16.60	Hamilton, Boone, Shelby, Morgan, Marion, Madison, Johnson Hendricks, Hancock
Kokomo, IN MSA	36.50	34.07	14.60	Howard, Tipton
Lafayette, IN MSA	40.07	37.40	16.03	Clinton, Tippecanoe
Louisville, KY-IN MSA	33.00	30.80	13.20	Clark, Scott, Harrison, Floyd
Muncie, IN MSA	34.96	32.63	13.98	Delaware
Ohio County, IN	34.96	32.63	13.98	Ohio
South Bend, IN MSA	36.94	34.47	14.78	St. Joseph
Terre Haute, IN MSA	34.96	32.63	13.98	Vermillion, Clay, Vigo

NONMETROPOLITAN COUNTIES	A	B	C
Bartholomew	37.49	34.99	14.99
Benton	34.61	32.30	13.84
Dubois	34.61	32.30	13.84
Daviess	34.61	32.30	13.84
Cass	34.61	32.30	13.84
Brown	37.49	34.99	14.99
Wayne	34.61	32.30	13.84
Warren	34.61	32.30	13.84
Union	34.61	32.30	13.84
Sullivan	34.61	32.30	13.84
Starke	34.61	32.30	13.84
Blackford	34.61	32.30	13.84
Fayette	34.61	32.30	13.84
Decatur	36.22	33.81	14.49
Crawford	34.61	32.30	13.84
Carroll	34.61	32.30	13.84
White	34.61	32.30	13.84
Washington	35.57	33.21	14.23
Wabash	34.61	32.30	13.84
Switzerland	34.61	32.30	13.84
Steuben	34.61	32.30	13.84
Spencer	34.61	32.30	13.84

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

I N D I A N A continued

NONMETROPOLITAN COUNTIES	A	B	C
Rush	34.61	32.30	13.84
Randolph	34.61	32.30	13.84
Pulaski	34.61	32.30	13.84
Perry	34.61	32.30	13.84
Owen	35.09	32.75	14.04
Noble	34.61	32.30	13.84
Montgomery	34.61	32.30	13.84
Martin	34.61	32.30	13.84
Lawrence	34.61	32.30	13.84
Lagrange	34.61	32.30	13.84
Knox	34.61	32.30	13.84
Jefferson	34.61	32.30	13.84
Jasper	34.61	32.30	13.84
Henry	34.61	32.30	13.84
Grant	34.61	32.30	13.84
Fulton	34.61	32.30	13.84
Fountain	34.61	32.30	13.84
Newton	34.61	32.30	13.84
Miami	34.61	32.30	13.84
Marshall	34.61	32.30	13.84
La Porte	35.82	33.43	14.33
Kosciusko	34.61	32.30	13.84
Jennings	36.22	33.81	14.49
Jay	34.61	32.30	13.84
Jackson	36.22	33.81	14.49
Greene	34.61	32.30	13.84
Gibson	34.61	32.30	13.84
Franklin	34.61	32.30	13.84

I O W A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Cedar Rapids, IA MSA	42.19	39.38	16.88	Linn
Davenport-Moline-Rock Island, IA-IL MSA	43.68	40.77	17.47	Scott
Des Moines, IA MSA	43.58	40.68	17.43	Polk, Dallas, Warren
Dubuque, IA MSA	39.04	36.44	15.62	Dubuque
Iowa City, IA MSA	44.42	41.46	17.77	Johnson
Omaha, NE-IA MSA	39.91	37.25	15.96	Pottawattamie
Sioux City, IA-NE MSA	38.13	35.59	15.25	Woodbury
Waterloo-Cedar Falls, IA MSA	42.35	39.53	16.94	Black Hawk

NONMETROPOLITAN COUNTIES	A	B	C
Adams	35.15	32.81	14.06
Buena Vista	35.15	32.81	14.06
Bremer	42.04	39.24	16.82
Benton	35.15	32.81	14.06
Appanoose	35.15	32.81	14.06
Sac	35.15	32.81	14.06
Poweshiek	35.15	32.81	14.06
Plymouth	35.15	32.81	14.06
Page	35.15	32.81	14.06
Adair	35.15	32.81	14.06
Buchanan	35.15	32.81	14.06
Boone	37.70	35.19	15.08
Audubon	35.15	32.81	14.06
Allamakee	35.15	32.81	14.06
Ringgold	35.15	32.81	14.06
Pocahontas	35.15	32.81	14.06
Palo Alto	35.15	32.81	14.06
Osceola	35.15	32.81	14.06

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

I O W A continued

NONMETROPOLITAN COUNTIES	A	B	C
O'Brien	35.15	32.81	14.06
Montgomery	35.15	32.81	14.06
Monona	35.15	32.81	14.06
Mills	35.15	32.81	14.06
Marion	35.15	32.81	14.06
Madison	35.15	32.81	14.06
Lucas	35.15	32.81	14.06
Lee	35.15	32.81	14.06
Keokuk	35.15	32.81	14.06
Jefferson	35.15	32.81	14.06
Jackson	37.04	34.57	14.81
Ida	35.15	32.81	14.06
Howard	35.15	32.81	14.06
Harrison	35.15	32.81	14.06
Hancock	35.15	32.81	14.06
Guthrie	35.15	32.81	14.06
Greene	35.15	32.81	14.06
Franklin	35.15	32.81	14.06
Fayette	35.15	32.81	14.06
Dickinson	35.15	32.81	14.06
Delaware	37.04	34.57	14.81
Davis	35.15	32.81	14.06
Clinton	37.04	34.57	14.81
Clay	35.15	32.81	14.06
Chickasaw	35.15	32.81	14.06
Cerro Gordo	35.15	32.81	14.06
Cass	35.15	32.81	14.06
Calhoun	35.15	32.81	14.06
Wright	35.15	32.81	14.06
Winnebago	35.15	32.81	14.06
Webster	35.15	32.81	14.06
Washington	35.15	32.81	14.06
Van Buren	35.15	32.81	14.06
Taylor	35.15	32.81	14.06
Story	38.19	35.64	15.20
Shelby	35.15	32.81	14.06

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Note: A = First 600 units; B = Remainder of units; C = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

K A N S A S

METROPOLITAN FMR AREAS

	A	B	C Counties of FMR AREA within STATE
Kansas City, MO-KS MSA	39.17	36.55	15.67 Johnson, Wyandotte, Miami, Leavenworth
Lawrence, KS MSA	41.56	38.80	16.62 Douglas
Topeka, KS MSA	37.61	35.11	15.05 Shawnee
Wichita, KS MSA	40.52	37.81	16.21 Butler, Sedgwick, Harvey

NONMETROPOLITAN COUNTIES	A	B	C
Brown	34.96	32.63	13.98
Barton	34.96	32.63	13.98
Atchison	34.96	32.63	13.98
Allen	34.96	32.63	13.98
Hodgeman	34.96	32.63	13.98
Harper	34.96	32.63	13.98
Greenwood	34.96	32.63	13.98
Gray	34.96	32.63	13.98
Graham	34.96	32.63	13.98
Geary	34.96	32.63	13.98
Ford	34.96	32.63	13.98
Ellsworth	34.96	32.63	13.98
Elk	34.96	32.63	13.98
Doniphan	34.96	32.63	13.98
Decatur	34.96	32.63	13.98
Cowley	34.96	32.63	13.98
Coffey	34.96	32.63	13.98
Clay	34.96	32.63	13.98
Cheyenne	34.96	32.63	13.98
Chautauqua	34.96	32.63	13.98
Wilson	34.96	32.63	13.98
Washington	34.96	32.63	13.98
Wabaunsee	34.96	32.63	13.98
Thomas	34.96	32.63	13.98
Stevens	34.96	32.63	13.98
Stafford	34.96	32.63	13.98
Sherman	34.96	32.63	13.98
Seward	34.96	32.63	13.98
Saline	34.96	32.63	13.98
Rush	34.96	32.63	13.98
Riley	34.96	32.63	13.98
Republic	34.96	32.63	13.98
Rawlins	34.96	32.63	13.98
Pottawatomie	34.96	32.63	13.98

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Note: A = First 600 units; B = Remainder of units; C = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

K A N S A S continued

NONMETROPOLITAN COUNTIES	A	B	C
Chase	34.96	32.63	13.98
Bourbon	34.96	32.63	13.98
Barber	34.96	32.63	13.98
Anderson	34.96	32.63	13.98
Jackson	34.96	32.63	13.98
Haskell	34.96	32.63	13.98
Hamilton	34.96	32.63	13.98
Greeley	34.96	32.63	13.98
Grant	34.96	32.63	13.98
Gove	34.96	32.63	13.98
Franklin	34.96	32.63	13.98
Finney	34.96	32.63	13.98
Ellis	34.96	32.63	13.98
Edwards	34.96	32.63	13.98
Dickinson	34.96	32.63	13.98
Crawford	34.96	32.63	13.98
Comanche	34.96	32.63	13.98
Cloud	34.96	32.63	13.98
Clark	34.96	32.63	13.98
Cherokee	34.96	32.63	13.98
Woodson	34.96	32.63	13.98
Wichita	34.96	32.63	13.98
Wallace	34.96	32.63	13.98
Trego	34.96	32.63	13.98
Sumner	34.96	32.63	13.98
Stanton	34.96	32.63	13.98
Smith	34.96	32.63	13.98
Sheridan	34.96	32.63	13.98
Scott	34.96	32.63	13.98
Russell	34.96	32.63	13.98
Rooks	34.96	32.63	13.98
Rice	34.96	32.63	13.98
Reno	34.96	32.63	13.98
Pratt	34.96	32.63	13.98

Note: A = First 600 units; B = Remainder of units; C = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

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K A N S A S continued

NONMETROPOLITAN COUNTIES	A	B	C
Phillips	34.96	32.63	13.98
Ottawa	34.96	32.63	13.98
Osage	34.96	32.63	13.98
Ness	34.96	32.63	13.98
Nemaha	34.96	32.63	13.98
Morris	34.96	32.63	13.98
Mitchell	34.96	32.63	13.98
Marshall	34.96	32.63	13.98
Mcpherson	34.96	32.63	13.98
Logan	34.96	32.63	13.98
Lincoln	34.96	32.63	13.98
Labette	34.96	32.63	13.98
Kingman	34.96	32.63	13.98
Jewell	34.96	32.63	13.98
Pawnee	34.96	32.63	13.98
Osborne	34.96	32.63	13.98
Norton	34.96	32.63	13.98
Neosho	34.96	32.63	13.98
Morton	34.96	32.63	13.98
Montgomery	34.96	32.63	13.98
Meade	34.96	32.63	13.98
Marion	34.96	32.63	13.98
Lyon	34.96	32.63	13.98
Linn	34.96	32.63	13.98
Lane	34.96	32.63	13.98
Kiowa	34.96	32.63	13.98
Kearny	34.96	32.63	13.98
Jefferson	34.96	32.63	13.98

K E N T U C K Y

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Cincinnati, OH-KY-IN	40.49	37.79	16.20	Kenton, Campbell, Boone
Clarksville-Hopkinsville, TN-KY MSA	40.12	37.45	16.05	Christian
Evansville-Henderson, IN-KY MSA	36.02	33.61	14.41	Henderson
Gallatin County, KY	33.00	30.80	13.20	Gallatin
Grant County, KY	33.00	30.80	13.20	Grant
Huntington-Ashland, WV-KY-OH MSA	36.64	34.19	14.66	Boyd, Greenup, Carter
Lexington, KY MSA	36.55	34.10	14.62	Clark, Bourbon, Scott, Madison, Jessamine, Fayette Woodford
Louisville, KY-IN MSA	33.00	30.80	13.20	Bullitt, Oldham, Jefferson
Owensboro, KY MSA	33.00	30.80	13.20	Daviess
Pendleton County, KY	33.00	30.80	13.20	Pendleton

NONMETROPOLITAN COUNTIES	A	B	C
Allen	33.61	31.37	13.45
Clay	33.61	31.37	13.45
Carroll	33.61	31.37	13.45
Calloway	33.61	31.37	13.45
Butler	33.61	31.37	13.45
Breathitt	33.61	31.37	13.45
Boyle	33.61	31.37	13.45
Bath	33.61	31.37	13.45
Ballard	33.61	31.37	13.45
Letcher	33.61	31.37	13.45
Adair	33.61	31.37	13.45
Casey	33.61	31.37	13.45
Carlisle	33.61	31.37	13.45
Caldwell	33.61	31.37	13.45
Breckinridge	33.61	31.37	13.45
Bracken	33.61	31.37	13.45
Bell	33.61	31.37	13.45
Barren	33.61	31.37	13.45
Anderson	34.23	31.95	13.69
Leslie	33.61	31.37	13.45

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

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K E N T U C K Y continued

NONMETROPOLITAN COUNTIES	A	B	C
Lee	33.61	31.37	13.45
Laurel	33.61	31.37	13.45
Knox	33.61	31.37	13.45
Johnson	33.61	31.37	13.45
Hopkins	33.61	31.37	13.45
Henry	33.61	31.37	13.45
Harrison	33.61	31.37	13.45
Hardin	33.61	31.37	13.45
Green	33.61	31.37	13.45
Graves	33.61	31.37	13.45
Fulton	33.61	31.37	13.45
Floyd	33.61	31.37	13.45
Estill	33.61	31.37	13.45
Edmonson	33.61	31.37	13.45
Crittenden	33.61	31.37	13.45
Wolfe	33.61	31.37	13.45
Webster	33.61	31.37	13.45
Washington	33.61	31.37	13.45
Union	33.61	31.37	13.45
Trigg	33.61	31.37	13.45
Taylor	33.61	31.37	13.45
Simpson	33.61	31.37	13.45
Russell	33.61	31.37	13.45
Rockcastle	33.61	31.37	13.45
Pulaski	33.61	31.37	13.45
Pike	33.61	31.37	13.45
Owsley	33.61	31.37	13.45
Ohio	33.61	31.37	13.45
Nelson	33.61	31.37	13.45
Morgan	33.61	31.37	13.45
Monroe	33.61	31.37	13.45
Mercer	34.23	31.95	13.69
Meade	33.61	31.37	13.45
Martin	33.61	31.37	13.45
Marion	33.61	31.37	13.45
Mclean	33.61	31.37	13.45
Mccracken	33.61	31.37	13.45
Logan	33.61	31.37	13.45
Lincoln	33.61	31.37	13.45
Lawrence	33.61	31.37	13.45
Larue	33.61	31.37	13.45
Knott	33.61	31.37	13.45
Jackson	33.61	31.37	13.45
Hickman	33.61	31.37	13.45
Hart	33.61	31.37	13.45
Harlan	33.61	31.37	13.45
Hancock	33.61	31.37	13.45
Grayson	33.61	31.37	13.45
Garrard	33.61	31.37	13.45
Franklin	34.23	31.95	13.69
Fleming	33.61	31.37	13.45
Elliott	33.61	31.37	13.45
Cumberland	33.61	31.37	13.45
Clinton	33.61	31.37	13.45
Whitley	33.61	31.37	13.45
Wayne	33.61	31.37	13.45
Warren	33.61	31.37	13.45
Trimble	33.61	31.37	13.45
Todd	33.61	31.37	13.45
Spencer	33.61	31.37	13.45
Shelby	33.61	31.37	13.45
Rowan	33.61	31.37	13.45
Robertson	33.61	31.37	13.45
Powell	33.61	31.37	13.45
Perry	33.61	31.37	13.45
Owen	33.61	31.37	13.45
Nicholas	33.61	31.37	13.45
Muhlenberg	33.61	31.37	13.45
Montgomery	33.61	31.37	13.45
Metcalfe	33.61	31.37	13.45
Menifee	33.61	31.37	13.45
Mason	33.61	31.37	13.45
Marshall	33.61	31.37	13.45
Magoffin	33.61	31.37	13.45
Mccreary	33.61	31.37	13.45
Lyon	33.61	31.37	13.45
Livingston	33.61	31.37	13.45
Lewis	33.61	31.37	13.45

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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L O U I S I A N A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Alexandria, LA MSA	35.22	32.86	14.09	Rapides
Baton Rouge, LA MSA	41.47	38.70	16.59	East Baton Rouge, Ascension, West Baton Rouge, Livingston
Houma, LA MSA	36.77	34.32	14.71	Terrebonne, Lafourche
Lafayette, LA MSA	35.22	32.86	14.09	Acadia, St. Martin, Lafayette, St. Landry
Lake Charles, LA MSA	35.22	32.86	14.09	Calcasieu
Monroe, LA MSA	35.22	32.86	14.09	Ouachita
New Orleans, LA	38.41	35.84	15.36	St. Bernard, Plaquemines, Orleans, Jefferson, St. Tammany St. John the Baptist, St. Charles
St. James Parish, LA	35.22	32.86	14.09	St. James
Shreveport-Bossier City, LA MSA	37.60	35.09	15.04	Bossier, Webster, Caddo

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Catahoula	34.48	32.18	13.79	Cameron	34.48	32.18	13.79
Caldwell	34.48	32.18	13.79	Bienville	34.48	32.18	13.79
Beauregard	34.48	32.18	13.79	Avoyelles	34.48	32.18	13.79
Assumption	34.48	32.18	13.79	Allen	34.48	32.18	13.79
Morehouse	34.48	32.18	13.79	Madison	34.48	32.18	13.79
Lincoln	34.48	32.18	13.79	La Salle	34.48	32.18	13.79
Jefferson Davis	34.48	32.18	13.79	Jackson	34.48	32.18	13.79
Iberville	34.48	32.18	13.79	Iberia	34.48	32.18	13.79
Grant	34.48	32.18	13.79	Franklin	34.48	32.18	13.79
Evangeline	34.48	32.18	13.79	East Feliciana	34.48	32.18	13.79
East Carroll	34.48	32.18	13.79	De Soto	34.48	32.18	13.79
Concordia	34.48	32.18	13.79	Claiborne	34.48	32.18	13.79
Winn	34.48	32.18	13.79	West Feliciana	34.48	32.18	13.79
West Carroll	34.48	32.18	13.79	Washington	34.48	32.18	13.79
Vernon	34.48	32.18	13.79	Vermilion	34.48	32.18	13.79
Union	34.48	32.18	13.79	Tensas	34.48	32.18	13.79
Tangipahoa	34.48	32.18	13.79	St. Mary	34.48	32.18	13.79
St. Helena	34.48	32.18	13.79	Sabine	34.48	32.18	13.79
Richland	34.48	32.18	13.79	Red River	34.48	32.18	13.79
Pointe Coupee	34.48	32.18	13.79	Natchitoches	34.48	32.18	13.79

M A I N E

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Bangor, ME MSA	42.09	39.28	16.84	Waldo county towns of Winterport town Penobscot county towns of Bangor city, Brewer city Eddington town, Glenburn town, Hampden town, Hermon town Holden town, Kenduskeag town, Milford town Old Town city, Orono town, Orrington town

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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M A I N E continued

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Lewiston-Auburn, ME MSA	41.46	38.70	16.59	Penobscot Indian I, Veazie town Androscoggin county towns of Auburn city, Greene town Lewiston city, Lisbon town, Mechanic Falls tow Poland town, Sabattus town, Turner town, Wales town
Portland, ME MSA	57.95	54.08	23.18	Cumberland county towns of Cape Elizabeth tow, Casco town Cumberland town, Falmouth town, Freeport town Gorham town, Gray town, North Yarmouth tow Portland city, Raymond town, Scarborough town South Portland cit, Standish town, Westbrook city Windham town, Yarmouth town York county towns of Buxton town, Hollis town Limington town, Old Orchard Beach
Portsmouth-Rochester, NH-ME PMSA	53.00	49.48	21.20	York county towns of Berwick town, Eliot town Kittery town, South Berwick town, York town

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Aroostook	38.43	35.87	15.37	
Androscoggin	38.06	35.52	15.22	Durham town, Leeds town, Livermore town Livermore Falls to, Minot town
Penobscot	38.98	36.38	15.59	Alton town, Argyle unorg., Bradford town, Bradley town Burlington town, Carmel town, Carroll plantation Charleston town, Chester town, Clifton town Corinna town, Corinth town, Dexter town, Dixmont town Drew plantation, East Central Penob, East Millinocket t Edinburg town, Enfield town, Etna town, Exeter town Garland town, Greenbush town, Greenfield town Howland town, Hudson town, Kingman unorg., Lagrange town Lakeville town, Lee town, Levant town, Lincoln town Lowell town, Mattawamkeag town, Maxfield town Medway town, Millinocket town, Mount Chase town Newburgh town, Newport town, North Penobscot un Passadumkeag town, Patten town, Plymouth town Prentiss plantatio, Seboeis plantation, Springfield town Stacyville town, Stetson town, Twombly unorg. Webster plantation, Whitney unorg., Winn town Woodville town
Oxford	37.72	35.20	15.09	
Lincoln	39.69	37.05	15.88	
Knox	40.34	37.66	16.14	
Kennebec	40.40	37.70	16.16	
Hancock	39.45	36.83	15.78	
Franklin	37.72	35.20	15.09	
Cumberland	44.01	41.08	17.61	Baldwin town, Bridgton town, Brunswick town Harpswell town, Harrison town, Naples town New Gloucester tow, Pownal town, Sebago town

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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M A I N E continued

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
York	50.64	47.26	20.26	Acton town, Alfred town, Arundel town, Biddeford city Cornish town, Dayton town, Kennebunk town Kennebunkport town, Lebanon town, Limerick town Lyman town, Newfield town, North Berwick town Ogunquit town, Parsonsfield town, Saco city Sanford town, Shapleigh town, Waterboro town, Wells town
Washington	38.98	36.38	15.59	
Waldo	38.98	36.38	15.59	Belfast city, Belmont town, Brooks town, Burnham town Frankfort town, Freedom town, Islesboro town Jackson town, Knox town, Liberty town, Lincolnville town Monroe town, Montville town, Morrill town Northport town, Palermo town, Prospect town Searsmont town, Searsport town, Stockton Springs t Swanville town, Thorndike town, Troy town, Unity town Waldo town
Somerset	38.35	35.80	15.34	
Sagadahoc	46.14	43.05	18.45	
Piscataquis	33.80	31.61	13.54	

M A R Y L A N D

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Baltimore, MD	47.85	44.65	19.14	Baltimore, Anne Arundel, Baltimore city, Queen Anne's Howard, Harford, Carroll
Columbia, MD	63.24	59.02	25.30	Columbia
Cumberland, MD-WV MSA	33.97	31.70	13.59	Allegany
Hagerstown, MD PMSA	37.54	35.03	15.01	Washington
Washington, DC-MD-VA	65.63	61.26	26.25	Prince George's, Montgomery, Frederick, Charles, Calvert
Wilmington-Newark, DE-MD PMSA	52.57	49.06	21.03	Cecil

NONMETROPOLITAN COUNTIES	A	B	C
Dorchester	36.66	34.22	14.66
Worcester	37.79	35.27	15.12
Talbot	42.19	39.38	16.88
St. Mary's	51.78	48.33	20.71
Garrett	34.42	32.12	13.77
Caroline	35.13	32.79	14.05
Wicomico	43.57	40.67	17.43
Somerset	36.66	34.22	14.66
Kent	38.61	36.04	15.44

M A S S A C H U S E T T S

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Barnstable-Yarmouth, MA MSA	64.96	60.63	25.98	Barnstable county towns of Barnstable town, Brewster town Chatham town, Dennis town, Eastham town, Harwich town Mashpee town, Orleans town, Sandwich town, Yarmouth town

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

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M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Boston, MA-NH PMSA	64.80	60.48	25.92	Worcester county towns of Berlin town, Blackstone town Bolton town, Harvard town, Hopedale town, Lancaster town Mendon town, Milford town, Millville town Southborough town, Upton town Suffolk county towns of Boston city, Chelsea city Revere city, Winthrop town Plymouth county towns of Carver town, Duxbury town Hanover town, Hingham town, Hull town, Kingston town Marshfield town, Norwell town, Pembroke town Plymouth town, Rockland town, Scituate town Wareham town Norfolk county towns of Bellingham town, Braintree town Brookline town, Canton town, Cohasset town, Dedham town Dover town, Foxborough town, Franklin town Holbrook town, Medfield town, Medway town, Millis town Milton town, Needham town, Norfolk town, Norwood town Plainville town, Quincy city, Randolph town, Sharon town Stoughton town, Walpole town, Wellesley town Westwood town, Weymouth town, Wrentham town Middlesex county towns of Acton town, Arlington town Ashland town, Ayer town, Bedford town, Belmont town Boxborough town, Burlington town, Cambridge city Carlisle town, Concord town, Everett city Framingham town, Holliston town, Hopkinton town Hudson town, Lexington town, Lincoln town Littleton town, Malden city, Marlborough city Maynard town, Medford city, Melrose city, Natick town Newton city, North Reading town, Reading town Sherborn town, Shirley town, Somerville city Stoneham town, Stow town, Sudbury town, Townsend town Wakefield town, Waltham city, Watertown town Wayland town, Weston town, Wilmington town Winchester town, Woburn city Essex county towns of Amesbury town, Beverly city Danvers town, Essex town, Gloucester city, Hamilton town Ipswich town, Lynn city, Lynnfield town, Manchester town Marblehead town, Middleton town, Nahant town Newbury town, Newburyport city, Peabody city Rockport town, Rowley town, Salem city, Salisbury town Saugus town, Swampscott town, Topsfield town Wenham town Bristol county towns of Berkley town, Dighton town Mansfield town, Norton town, Taunton city
Brockton, MA PMSA	53.91	50.32	21.56	Bristol county towns of Easton town, Raynham town Plymouth county towns of Abington town, Bridgewater town Brockton city, East Bridgewater t, Halifax town Hanson town, Lakeville town, Middleborough town

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

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M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
				Plympton town, West Bridgewater t, Whitman town
				Norfolk county towns of Avon town
Fitchburg-Leominster, MA MSA	54.31	50.69	21.72	Worcester county towns of Ashburnham town, Fitchburg city
				Gardner city, Leominster city, Lunenburg town
				Templeton town, Westminster town, Winchendon town
				Middlesex county towns of Ashby town
Lawrence, MA-NH PMSA	52.07	48.60	20.83	Essex county towns of Andover town, Boxford town
				Georgetown town, Groveland town, Haverhill city
				Lawrence city, Merrimac town, Methuen town
				North Andover town, West Newbury town
Lowell, MA-NH PMSA	54.39	50.76	21.76	Middlesex county towns of Billerica town, Chelmsford town
				Dracut town, Dunstable town, Groton town, Lowell city
				Pepperell town, Tewksbury town, Tyngsborough town
				Westford town
New Bedford, MA MSA	47.01	43.89	18.81	Plymouth county towns of Marion town, Mattapoisett town
				Rochester town
				Bristol county towns of Acushnet town, Dartmouth town
				Fairhaven town, Freetown town, New Bedford city
Pittsfield, MA MSA	49.74	46.43	19.90	Berkshire county towns of Adams town, Cheshire town
				Dalton town, Hinsdale town, Lanesborough town, Lee town
				Lenox town, Pittsfield city, Richmond town
				Stockbridge town
Providence-Fall River-Warwick, RI-MA PMSA	55.74	52.02	22.30	Bristol county towns of Attleboro city, Fall River city
				North Attleborough, Rehoboth town, Seekonk town
				Somerset town, Swansea town, Westport town
Springfield, MA MSA	48.70	45.45	19.48	Hampden county towns of Agawam town, Chicopee city
				East Longmeadow to, Hampden town, Holyoke city
				Longmeadow town, Ludlow town, Monson town
				Montgomery town, Palmer town, Russell town
				Southwick town, Springfield city, Westfield city
				West Springfield t, Wilbraham town
				Franklin county towns of Sunderland town
				Hampshire county towns of Amherst town, Belchertown town
				Easthampton town, Granby town, Hadley town
				Hatfield town, Huntington town, Northampton city
				Southampton town, South Hadley town, Ware town
				Williamsburg town
Worcester, MA-CT	54.21	50.60	21.69	Hampden county towns of Holland town
				Worcester county towns of Auburn town, Barre town
				Boylston town, Brookfield town, Charlton town
				Clinton town, Douglas town, Dudley town
				East Brookfield to, Grafton town, Holden town
				Leicester town, Millbury town, Northborough town
				Northbridge town, North Brookfield t, Oakham town
				Oxford town, Paxton town, Princeton town, Rutland town
				Shrewsbury town, Southbridge town, Spencer town
				Sterling town, Sturbridge town, Sutton town

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

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M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
				Uxbridge town, Webster town, Westborough town
				West Boylston town, West Brookfield to, Worcester city
NONMETROPOLITAN COUNTIES	**A**	**B**	**C**	**Towns within non metropolitan counties**
Barnstable	63.99	59.72	25.59	Bourne town, Falmouth town, Provincetown town
				Truro town, Wellfleet town
Worcester	47.89	44.70	19.16	Athol town, Hardwick town, Hubbardston town
				New Braintree town, Petersham town, Phillipston town
				Royalston town, Warren town
Nantucket	63.99	59.72	25.59	
Hampshire	58.63	54.71	23.45	Chesterfield town, Cummington town, Goshen town
				Middlefield town, Pelham town, Plainfield town
				Westhampton town, Worthington town
Hampden	46.71	43.60	18.69	Blandford town, Brimfield town, Chester town
				Granville town, Tolland town, Wales town
Franklin	48.60	45.37	19.44	Ashfield town, Bernardston town, Buckland town
				Charlemont town, Colrain town, Conway town
				Deerfield town, Erving town, Gill town, Greenfield town
				Hawley town, Heath town, Leverett town, Leyden town
				Monroe town, Montague town, New Salem town
				Northfield town, Orange town, Rowe town, Shelburne town
				Shutesbury town, Warwick town, Wendell town
				Whately town
Dukes	63.99	59.72	25.59	
Berkshire	43.15	40.28	17.26	Alford town, Becket town, Clarksburg town, Egremont town
				Florida town, Great Barrington t, Hancock town
				Monterey town, Mount Washington t, New Ashford town
				New Marlborough to, North Adams city, Otis town
				Peru town, Sandisfield town, Savoy town, Sheffield town
				Tyringham town, Washington town, West Stockbridge t
				Williamstown town, Windsor town

M I C H I G A N

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Ann Arbor, MI PMSA	53.98	50.38	21.59	Lenawee, Washtenaw, Livingston
Benton Harbor, MI MSA	39.49	36.89	15.80	Berrien
Detroit, MI PMSA	45.30	42.28	18.12	Lapeer, St. Clair, Oakland, Monroe, Macomb, Wayne
Flint, MI PMSA	38.99	36.39	15.60	Genesee
Grand Rapids-Muskegon-Holland, MI MSA	42.76	39.91	17.11	Kent, Allegan, Ottawa, Muskegon
Jackson, MI MSA	39.15	36.55	15.66	Jackson
Kalamazoo-Battle Creek, MI MSA	40.83	38.12	16.33	Calhoun, Van Buren, Kalamazoo
Lansing-East Lansing, MI MSA	43.44	40.54	17.38	Eaton, Clinton, Ingham

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

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M I C H I G A N continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Saginaw-Bay City-Midland, MI MSA	38.73	36.16	15.49	Bay, Saginaw, Midland

NONMETROPOLITAN COUNTIES	A	B	C
Benzie	37.42	34.93	14.97
Baraga	34.90	32.57	13.96
Antrim	37.42	34.93	14.97
Alger	34.90	32.57	13.96
Menominee	37.42	34.93	14.97
Mason	34.90	32.57	13.96
Manistee	37.42	34.93	14.97
Luce	34.90	32.57	13.96
Lake	34.90	32.57	13.96
Kalkaska	37.42	34.93	14.97
Iron	34.90	32.57	13.96
Ionia	34.98	32.64	13.99
Houghton	34.90	32.57	13.96
Gratiot	37.66	35.15	15.06
Gogebic	34.90	32.57	13.96
Emmet	37.42	34.93	14.97
Delta	34.90	32.57	13.96
Clare	34.90	32.57	13.96
Cheboygan	34.90	32.57	13.96
Cass	34.90	32.57	13.96
Wexford	37.42	34.93	14.97
Shiawassee	37.17	34.69	14.87
Sanilac	34.90	32.57	13.96
Roscommon	34.90	32.57	13.96
Otsego	34.90	32.57	13.96
Osceola	34.90	32.57	13.96
Ogemaw	34.90	32.57	13.96
Newaygo	34.90	32.57	13.96
Montcalm	34.90	32.57	13.96

NONMETROPOLITAN COUNTIES	A	B	C
Barry	38.37	33.94	14.55
Arenac	34.90	32.57	13.96
Alpena	34.90	32.57	13.96
Alcona	34.90	32.57	13.96
Mecosta	34.90	32.57	13.96
Marquette	37.42	34.93	14.97
Mackinac	34.90	32.57	13.96
Leelanau	38.48	35.92	15.39
Keweenaw	34.90	32.57	13.96
Isabella	37.68	35.15	15.06
Iosco	34.90	32.57	13.96
Huron	34.90	32.57	13.96
Hillsdale	37.25	34.77	14.90
Grand Traverse	38.73	36.15	15.49
Gladwin	34.90	32.57	13.96
Dickinson	34.90	32.57	13.96
Crawford	34.90	32.57	13.96
Chippewa	34.90	32.57	13.96
Charlevoix	37.42	34.93	14.97
Branch	35.14	32.79	14.05
Tuscola	35.02	32.68	14.01
Schoolcraft	34.90	32.57	13.96
St. Joseph	35.14	32.79	14.05
Presque Isle	34.90	32.57	13.96
Oscoda	34.90	32.57	13.96
Ontonagon	34.90	32.57	13.96
Oceana	34.90	32.57	13.96
Montmorency	34.90	32.57	13.96
Missaukee	37.42	34.93	14.97

M I N N E S O T A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Duluth-Superior, MN-WI MSA	37.25	34.77	14.90	St. Louis
Fargo-Moorhead, ND-MN MSA	38.08	35.54	15.23	Clay
Grand Forks, ND-MN MSA	36.40	33.97	14.56	Polk

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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M I N N E S O T A continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
La Crosse, WI-MN MSA	41.61	38.83	16.64	Houston
Minneapolis-St. Paul, MN-WI MSA	50.37	47.01	20.15	Carver, Anoka, Washington, Sherburne, Scott, Ramsey Isanti, Hennepin, Dakota, Chisago, Wright
Rochester, MN MSA	41.70	38.93	16.68	Olmsted
St. Cloud, MN MSA	38.38	35.82	15.35	Stearns, Benton

NONMETROPOLITAN COUNTIES	A	B	C
Big Stone	34.13	31.85	13.65
Becker	34.13	31.85	13.65
Cottonwood	34.13	31.85	13.65
Clearwater	34.13	31.85	13.65
Cass	34.13	31.85	13.65
Brown	34.13	31.85	13.65
Lac qui Parle	34.13	31.85	13.65
Kittson	34.13	31.85	13.65
Kanabec	34.13	31.85	13.65
Itasca	34.13	31.85	13.65
Grant	34.13	31.85	13.65
Freeborn	37.23	34.75	14.89
Faribault	34.13	31.85	13.65
Dodge	34.13	31.85	13.65
Yellow Medicine	34.13	31.85	13.65
Wilkin	34.13	31.85	13.65
Waseca	34.13	31.85	13.65
Wabasha	34.13	31.85	13.65
Todd	34.13	31.85	13.65
Stevens	34.13	31.85	13.65
Sibley	35.48	33.12	14.19
Rock	34.13	31.85	13.65
Renville	35.80	33.41	14.32
Red Lake	34.13	31.85	13.65
Pipestone	34.13	31.85	13.65
Pennington	34.13	31.85	13.65
Norman	34.13	31.85	13.65
Nicollet	35.95	33.56	14.38
Mower	34.13	31.85	13.65
Mille Lacs	34.13	31.85	13.65
Martin	34.13	31.85	13.65
Mahnomen	34.13	31.85	13.65
Lyon	34.13	31.85	13.65

NONMETROPOLITAN COUNTIES	A	B	C
Beltrami	34.13	31.85	13.65
Aitkin	35.23	32.89	14.09
Cook	34.13	31.85	13.65
Chippewa	34.13	31.85	13.65
Carlton	34.13	31.85	13.65
Blue Earth	37.32	34.83	14.93
Koochiching	34.13	31.85	13.65
Kandiyohi	35.80	33.41	14.32
Jackson	34.13	31.85	13.65
Hubbard	34.13	31.85	13.65
Goodhue	34.13	31.85	13.65
Fillmore	34.13	31.85	13.65
Douglas	34.13	31.85	13.65
Crow Wing	34.13	31.85	13.65
Winona	34.60	32.30	13.84
Watonwan	34.13	31.85	13.65
Wadena	34.13	31.85	13.65
Traverse	34.13	31.85	13.65
Swift	34.13	31.85	13.65
Steele	37.23	34.75	14.89
Roseau	34.13	31.85	13.65
Rice	38.35	35.79	15.34
Redwood	34.13	31.85	13.65
Pope	34.13	31.85	13.65
Pine	34.13	31.85	13.65
Otter Tail	34.13	31.85	13.65
Nobles	34.13	31.85	13.65
Murray	34.13	31.85	13.65
Morrison	34.13	31.85	13.65
Meeker	35.80	33.41	14.32
Marshall	34.13	31.85	13.65
Mcleod	35.80	33.41	14.32
Lincoln	34.13	31.85	13.65

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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M I N N E S O T A continued

NONMETROPOLITAN COUNTIES	A	B	C
Le Sueur	35.48	33.12	14.19
Lake	34.13	31.85	13.65

M I S S I S S I P P I

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Biloxi-Gulfport-Pascagoula, MS MSA	35.73	33.34	14.29	Hancock, Jackson, Harrison
Hattiesburg, MS MSA	35.73	33.34	14.29	Lamar, Forrest
Jackson, MS MSA	42.15	39.35	16.86	Madison, Hinds, Rankin
Memphis, TN-AR-MS MSA	39.60	36.96	15.84	Desoto

NONMETROPOLITAN COUNTIES	A	B	C
Alcorn	36.28	33.85	14.51
Bolivar	36.28	33.85	14.51
Attala	36.28	33.85	14.51
Coahoma	36.28	33.85	14.51
Clarke	36.28	33.85	14.51
Choctaw	36.28	33.85	14.51
Carroll	36.28	33.85	14.51
Yazoo	36.28	33.85	14.51
Winston	36.28	33.85	14.51
Webster	36.28	33.85	14.51
Washington	36.28	33.85	14.51
Walthall	36.28	33.85	14.51
Tunica	36.28	33.85	14.51
Tippah	36.28	33.85	14.51
Tallahatchie	36.28	33.85	14.51
Stone	36.28	33.85	14.51
Simpson	36.28	33.85	14.51
Scott	36.28	33.85	14.51
Prentiss	36.28	33.85	14.51
Pike	36.28	33.85	14.51
Pearl River	36.28	33.85	14.51
Oktibbeha	36.28	33.85	14.51
Newton	36.28	33.85	14.51
Montgomery	36.28	33.85	14.51
Marshall	36.28	33.85	14.51
Lowndes	36.28	33.85	14.51
Leflore	36.28	33.85	14.51
Leake	36.28	33.85	14.51

NONMETROPOLITAN COUNTIES	A	B	C
Lake of the Woods	34.13	31.85	13.65

NONMETROPOLITAN COUNTIES	A	B	C
Adams	36.28	33.85	14.51
Benton	36.28	33.85	14.51
Amite	36.28	33.85	14.51
Clay	36.28	33.85	14.51
Claiborne	36.28	33.85	14.51
Chickasaw	36.28	33.85	14.51
Calhoun	36.28	33.85	14.51
Yalobusha	36.28	33.85	14.51
Wilkinson	36.28	33.85	14.51
Wayne	36.28	33.85	14.51
Warren	36.28	33.85	14.51
Union	36.28	33.85	14.51
Tishomingo	36.28	33.85	14.51
Tate	36.28	33.85	14.51
Sunflower	36.28	33.85	14.51
Smith	36.28	33.85	14.51
Sharkey	36.28	33.85	14.51
Quitman	36.28	33.85	14.51
Pontotoc	36.28	33.85	14.51
Perry	36.28	33.85	14.51
Panola	36.28	33.85	14.51
Noxubee	36.28	33.85	14.51
Neshoba	36.28	33.85	14.51
Monroe	36.28	33.85	14.51
Marion	36.28	33.85	14.51
Lincoln	36.28	33.85	14.51
Lee	36.28	33.85	14.51
Lawrence	36.28	33.85	14.51

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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NONMETROPOLITAN COUNTIES	A	B	C
Lauderdale	36.28	33.85	14.51
Kemper	36.28	33.85	14.51
Jefferson Davis	36.28	33.85	14.51
Jasper	36.28	33.85	14.51
Issaquena	36.28	33.85	14.51
Holmes	36.28	33.85	14.51
Greene	36.28	33.85	14.51
Franklin	36.28	33.85	14.51
Copiah	36.28	33.85	14.51

M I S S O U R I

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Columbia, MO MSA	34.49	32.19	13.80	Boone
Joplin, MO MSA	34.29	32.00	13.71	Newton, Jasper
Kansas City, MO-KS MSA	39.17	36.55	15.67	Clay, Cass, Ray, Platte, Lafayette, Jackson, Clinton
St, Joseph, MO MSA	34.29	32.00	13.71	Andrew, Buchanan
St. Louis, MO-IL MSA	40.29	37.60	16.12	Crawford-Sullivan (part), St. Louis city, Warren St. Louis, St. Charles, Lincoln, Jefferson, Franklin
Springfield, MO MSA	34.29	32.00	13.71	Christian, Webster, Greene

NONMETROPOLITAN COUNTIES	A	B	C
Atchison	35.73	33.34	14.29
Bates	35.73	33.34	14.29
Barry	35.73	33.34	14.29
Carroll	35.73	33.34	14.29
Camden	35.73	33.34	14.29
Caldwell	35.73	33.34	14.29
Bollinger	35.73	33.34	14.29
Mcdonald	35.73	33.34	14.29
Linn	35.73	33.34	14.29
Lawrence	35.73	33.34	14.29
Knox	35.73	33.34	14.29
Iron	35.73	33.34	14.29
Howard	35.73	33.34	14.29
Hickory	35.73	33.34	14.29
Harrison	35.73	33.34	14.29
Gentry	35.73	33.34	14.29
Dunklin	35.73	33.34	14.29
Dent	35.73	33.34	14.29
Daviess	35.73	33.34	14.29

NONMETROPOLITAN COUNTIES	A	B	C
Lafayette	36.28	33.85	14.51
Jones	36.28	33.85	14.51
Jefferson	36.28	33.85	14.51
Itawamba	36.28	33.85	14.51
Humphreys	36.28	33.85	14.51
Grenada	36.28	33.85	14.51
George	36.28	33.85	14.51
Covington	36.28	33.85	14.51

NONMETROPOLITAN COUNTIES	A	B	C
Adair	35.73	33.34	14.29
Barton	35.73	33.34	14.29
Audrain	35.73	33.34	14.29
Cape Girardeau	35.73	33.34	14.29
Callaway	35.73	33.34	14.29
Butler	35.73	33.34	14.29
Benton	35.73	33.34	14.29
Livingston	35.73	33.34	14.29
Lewis	35.73	33.34	14.29
Laclede	35.73	33.34	14.29
Johnson	35.73	33.34	14.29
Howell	35.73	33.34	14.29
Holt	35.73	33.34	14.29
Henry	35.73	33.34	14.29
Grundy	35.73	33.34	14.29
Gasconade	35.73	33.34	14.29
Douglas	35.73	33.34	14.29
Dekalb	35.73	33.34	14.29
Dallas	35.73	33.34	14.29

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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NONMETROPOLITAN COUNTIES	A	B	C
Dade	35.73	33.34	14.29
Cooper	35.73	33.34	14.29
Clark	35.73	33.34	14.29
Cedar	35.73	33.34	14.29
Wright	35.73	33.34	14.29
Wayne	35.73	33.34	14.29
Vernon	35.73	33.34	14.29
Taney	35.73	33.34	14.29
Stone	35.73	33.34	14.29
Shelby	35.73	33.34	14.29
Scott	35.73	33.34	14.29
Schuyler	35.73	33.34	14.29
St. Francois	35.73	33.34	14.29
St. Clair	35.73	33.34	14.29
Reynolds	35.73	33.34	14.29
Ralls	35.73	33.34	14.29
Pulaski	35.73	33.34	14.29
Pike	35.73	33.34	14.29
Pettis	35.73	33.34	14.29
Pemiscot	35.73	33.34	14.29
Osage	35.73	33.34	14.29
Nodaway	35.73	33.34	14.29
Morgan	35.73	33.34	14.29
Monroe	35.73	33.34	14.29
Mississippi	35.73	33.34	14.29
Mercer	35.73	33.34	14.29
Maries	35.73	33.34	14.29
Macon	35.73	33.34	14.29

NONMETROPOLITAN COUNTIES	A	B	C
Crawford	35.73	33.34	14.29
Cole	35.73	33.34	14.29
Chariton	35.73	33.34	14.29
Carter	35.73	33.34	14.29
Worth	35.73	33.34	14.29
Washington	35.73	33.34	14.29
Texas	35.73	33.34	14.29
Sullivan	35.73	33.34	14.29
Stoddard	35.73	33.34	14.29
Shannon	35.73	33.34	14.29
Scotland	35.73	33.34	14.29
Saline	35.73	33.34	14.29
Ste. Genevieve	35.73	33.34	14.29
Ripley	35.73	33.34	14.29
Randolph	35.73	33.34	14.29
Putnam	35.73	33.34	14.29
Polk	35.73	33.34	14.29
Phelps	35.73	33.34	14.29
Perry	35.73	33.34	14.29
Ozark	35.73	33.34	14.29
Oregon	35.73	33.34	14.29
New Madrid	35.73	33.34	14.29
Montgomery	35.73	33.34	14.29
Moniteau	35.73	33.34	14.29
Miller	35.73	33.34	14.29
Marion	35.73	33.34	14.29
Madison	35.73	33.34	14.29

M O N T A N A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Billings, MT MSA	46.12	43.04	18.45	Yellowstone
Great Falls, MT MSA	40.83	38.12	16.33	Cascade

Note: A = First 600 units; B = Remainder of units; C = PHA owned units.

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M O N T A N A continued

NONMETROPOLITAN COUNTIES	A	B	C
Beaverhead	39.94	37.28	15.98
Big Horn	37.63	35.12	15.05
Carter	37.63	35.12	15.05
Broadwater	39.94	37.28	15.98
Flathead	40.76	38.05	16.31
Fallon	37.63	35.12	15.05
Dawson	37.63	35.12	15.05
Custer	37.63	35.12	15.05
Wheatland	37.63	35.12	15.05
Treasure	37.63	35.12	15.05
Teton	37.14	34.66	14.86
Stillwater	37.63	35.12	15.05
Sheridan	37.14	34.66	14.86
Rosebud	37.63	35.12	15.05
Richland	37.63	35.12	15.05
Prairie	37.63	35.12	15.05
Powder River	37.63	35.12	15.05
Phillips	37.14	34.66	14.86
Park	39.94	37.28	15.98
Missoula	40.76	38.05	16.31
Meagher	39.94	37.28	15.98
Mccone	37.63	35.12	15.05
Liberty	37.14	34.66	14.86
Lake	40.76	38.05	16.31
Jefferson	39.94	37.28	15.98
Granite	39.94	37.28	15.98
Glacier	37.14	34.66	14.86

NONMETROPOLITAN COUNTIES	A	B	C
Blaine	37.14	34.66	14.86
Chouteau	37.14	34.66	14.86
Carbon	37.63	35.12	15.05
Gallatin	44.80	41.81	17.92
Fergus	37.63	35.12	15.05
Deer Lodge	39.94	37.28	15.98
Daniels	37.14	34.66	14.86
Wibaux	37.63	35.12	15.05
Valley	37.14	34.66	14.86
Toole	37.14	34.66	14.86
Sweet Grass	37.63	35.12	15.05
Silver Bow	39.94	37.28	15.98
Sanders	40.76	38.05	16.31
Roosevelt	37.14	34.66	14.86
Ravalli	40.76	38.05	16.31
Powell	39.94	37.28	15.98
Pondera	37.14	34.66	14.86
Petroleum	37.63	35.12	15.05
Musselshell	37.63	35.12	15.05
Mineral	40.76	38.05	16.31
Madison	39.94	37.28	15.98
Lincoln	40.76	38.05	16.31
Lewis and Clark	46.45	43.35	18.58
Judith Basin	37.63	35.12	15.05
Hill	37.14	34.66	14.86
Golden Valley	37.63	35.12	15.05
Garfield	37.63	35.12	15.05

N E B R A S K A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Lincoln, NE MSA	39.39	36.76	15.76	Lancaster
Omaha, NE-IA MSA	39.91	37.25	15.96	Washington, Sarpy, Douglas, Cass
Sioux City, IA-NE MSA	38.13	35.59	15.25	Dakota

Note: A = First 600 units; B = Remainder of units; C = PHA owned units.

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N E B R A S K A continued

NONMETROPOLITAN COUNTIES	A	B	C
Adams	36.08	33.67	14.43
Antelope	36.08	33.67	14.43
Colfax	36.08	33.67	14.43
Cheyenne	36.08	33.67	14.43
Chase	36.08	33.67	14.43
Butler	36.08	33.67	14.43
Buffalo	36.08	33.67	14.43
Boyd	36.08	33.67	14.43
Boone	36.08	33.67	14.43
Banner	36.08	33.67	14.43
Thurston	36.08	33.67	14.43
Thayer	36.08	33.67	14.43
Sioux	36.08	33.67	14.43
Sheridan	36.08	33.67	14.43
Scotts Bluff	36.08	33.67	14.43
Saline	36.08	33.67	14.43
Richardson	36.08	33.67	14.43
Polk	36.08	33.67	14.43
Pierce	36.08	33.67	14.43
Perkins	36.08	33.67	14.43
Otoe	36.08	33.67	14.43
Nemaha	36.08	33.67	14.43
Morrill	36.08	33.67	14.43
Madison	36.08	33.67	14.43
Loup	36.08	33.67	14.43
Lincoln	36.08	33.67	14.43
Kimball	36.08	33.67	14.43
Keith	36.08	33.67	14.43
Johnson	36.08	33.67	14.43
Howard	36.08	33.67	14.43
Holt	36.08	33.67	14.43
Hayes	36.08	33.67	14.43
Hamilton	36.08	33.67	14.43
Greeley	36.08	33.67	14.43
Gosper	36.08	33.67	14.43
Garden	36.08	33.67	14.43
Furnas	36.08	33.67	14.43
Franklin	36.08	33.67	14.43
Dundy	36.08	33.67	14.43
Dixon	36.08	33.67	14.43

NONMETROPOLITAN COUNTIES	A	B	C
Arthur	36.08	33.67	14.43
Cuming	36.08	33.67	14.43
Clay	36.08	33.67	14.43
Cherry	36.08	33.67	14.43
Cedar	36.08	33.67	14.43
Burt	36.08	33.67	14.43
Brown	36.08	33.67	14.43
Box Butte	36.08	33.67	14.43
Blaine	36.08	33.67	14.43
Valley	36.08	33.67	14.43
Thomas	36.08	33.67	14.43
Stanton	36.08	33.67	14.43
Sherman	36.08	33.67	14.43
Seward	36.08	33.67	14.43
Saunders	36.08	33.67	14.43
Rock	36.08	33.67	14.43
Red Willow	36.08	33.67	14.43
Platte	36.08	33.67	14.43
Phelps	36.08	33.67	14.43
Pawnee	36.08	33.67	14.43
Nuckolls	36.08	33.67	14.43
Nance	36.08	33.67	14.43
Merrick	36.08	33.67	14.43
Mcpherson	36.08	33.67	14.43
Logan	36.08	33.67	14.43
Knox	36.08	33.67	14.43
Keya Paha	36.08	33.67	14.43
Kearney	36.08	33.67	14.43
Jefferson	36.08	33.67	14.43
Hooker	36.08	33.67	14.43
Hitchcock	36.08	33.67	14.43
Harlan	36.08	33.67	14.43
Hall	36.08	33.67	14.43
Grant	36.08	33.67	14.43
Garfield	36.08	33.67	14.43
Gage	36.08	33.67	14.43
Frontier	36.08	33.67	14.43
Fillmore	36.08	33.67	14.43
Dodge	36.08	33.67	14.43
Deuel	36.08	33.67	14.43

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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N E B R A S K A continued

NONMETROPOLITAN COUNTIES	A	B	C
Dawson	36.08	33.67	14.43
Custer	36.08	33.67	14.43
Wheeler	36.08	33.67	14.43
Wayne	36.08	33.67	14.43
Dawes	36.08	33.67	14.43
York	36.08	33.67	14.43
Webster	36.08	33.67	14.43

N E V A D A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Las Vegas, NV-AZ MSA	56.83	53.05	22.73	Nye, Clark
Reno, NV MSA	49.23	45.95	19.69	Washoe

NONMETROPOLITAN COUNTIES	A	B	C
Churchill	50.49	47.12	20.20
Lincoln	50.49	47.12	20.20
Humboldt	50.49	47.12	20.20
Esmeralda	50.49	47.12	20.20
Douglas	52.26	48.78	20.90
White Pine	50.49	47.12	20.20
Pershing	50.49	47.12	20.20
Lyon	50.49	47.12	20.20
Lander	50.49	47.12	20.20
Eureka	50.49	47.12	20.20
Elko	50.49	47.12	20.20
Carson City	50.49	47.12	20.20
Storey	50.49	47.12	20.20
Mineral	50.49	47.12	20.20

N E W H A M P S H I R E

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Boston, MA-NH PMSA	64.80	60.48	25.92	Rockingham county towns of Seabrook town South Hampton town
Lawrence, MA-NH PMSA	52.07	48.60	20.83	Rockingham county towns of Atkinson town, Chester town Danville town, Derry town, Fremont town, Hampstead town Kingston town, Newton town, Plaistow town, Raymond town Salem town, Sandown town, Windham town
Lowell, MA-NH PMSA	54.39	50.76	21.76	Hillsborough county towns of Pelham town
Manchester, NH PMSA	51.19	47.77	20.47	Rockingham county towns of Auburn town, Candia town Londonderry town Merrimack county towns of Allenstown town, Hooksett town Hillsborough county towns of Bedford town, Goffstown town Manchester city, Weare town
Nashua, NH PMSA	54.38	50.75	21.75	Hillsborough county towns of Amherst town, Brookline town Greenville town, Hollis town, Hudson town Litchfield town, Mason town, Merrimack town Milford town, Mont Vernon town, Nashua city New Ipswich town, Wilton town
Portsmouth-Rochester, NH-ME PMSA	53.00	49.48	21.20	Strafford county towns of Barrington town, Dover city Durham town, Farmington town, Lee town, Madbury town Milton town, Rochester city, Rollinsford town

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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NEW HAMPSHIRE continued

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
				Somersworth city Rockingham county towns of Brentwood town East Kingston town, Epping town, Exeter town Greenland town, Hampton town, Hampton Falls town Kensington town, New Castle town, Newfields town Newington town, Newmarket town, North Hampton town Portsmouth city, Rye town, Stratham town

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Carroll	47.77	44.53	19.11	
Belknap	47.53	44.36	19.01	
Sullivan	46.07	43.00	18.43	
Strafford	54.52	50.89	21.81	Middleton town, New Durham town, Strafford town
Rockingham	59.13	55.18	23.65	Deerfield town, Northwood town, Nottingham town
Merrimack	60.33	56.31	24.13	Andover town, Boscawen town, Bow town, Bradford town Canterbury town, Chichester town, Concord city Danbury town, Dunbarton town, Epsom town, Franklin city Henniker town, Hill town, Hopkinton town, Loudon town Newbury town, New London town, Northfield town Pembroke town, Pittsfield town, Salisbury town Sutton town, Warner town, Webster town, Wilmot town
Hillsborough	61.22	57.13	24.49	Antrim town, Bennington town, Deering town Francestown town, Greenfield town, Hancock town Hillsborough town, Lyndeborough town, New Boston town Peterborough town, Sharon town, Temple town Windsor town
Grafton	49.06	45.78	19.62	
Coos	43.25	40.37	17.30	
Cheshire	58.38	52.63	22.55	

NEW JERSEY

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Atlantic-Cape May, NJ PMSA	58.66	54.76	23.46	Cape May, Atlantic
Bergen-Passaic, NJ PMSA	71.04	66.31	28.42	Passaic, Bergen
Jersey City, NJ PMSA	59.20	55.26	23.68	Hudson
Middlesex-Somerset-Hunterdon, NJ PMSA	71.04	66.31	28.42	Hunterdon, Somerset, Middlesex
Monmouth-Ocean, NJ PMSA	69.55	64.90	27.82	Ocean, Monmouth
Newark, NJ PMSA	69.36	64.74	27.75	Morris, Essex, Warren, Union, Sussex
Philadelphia, PA-NJ PMSA	53.58	49.98	21.42	Burlington, Salem, Gloucester, Camden
Trenton, NJ PMSA	68.16	63.61	27.26	Mercer
Vineland-Millville-Bridgeton, NJ PMSA	56.40	52.63	22.56	Cumberland

Note: A = First 600 units; B = Remainder of units; C = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

NEW MEXICO

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Albuquerque, NM MSA	46.61	43.51	18.65	Bernalillo, Valencia, Sandoval
Las Cruces, NM MSA	36.99	34.53	14.80	Dona Ana
Santa Fe, NM MSA	55.16	51.48	22.06	Los Alamos, Santa Fe

NONMETROPOLITAN COUNTIES	A	B	C
Catron	35.35	32.98	14.14
Colfax	35.35	32.98	14.14
Chaves	35.76	33.37	14.30
Lea	39.47	36.84	15.79
Harding	35.35	32.98	14.14
Grant	35.35	32.98	14.14
Debaca	35.35	32.98	14.14
Torrance	35.35	32.98	14.14
Socorro	35.76	33.37	14.30
San Miguel	35.35	32.98	14.14
Roosevelt	35.35	32.98	14.14
Quay	35.35	32.98	14.14
Mora	35.35	32.98	14.14
Luna	35.35	32.98	14.14
Curry	35.35	32.98	14.14
Cibola	35.35	32.98	14.14
Lincoln	35.76	33.37	14.30
Hidalgo	35.35	32.98	14.14
Guadalupe	35.35	32.98	14.14
Eddy	39.47	36.84	15.79
Union	35.35	32.98	14.14
Taos	37.69	35.18	15.08
Sierra	35.76	33.37	14.30
San Juan	45.67	42.62	18.27
Rio Arriba	35.35	32.98	14.14
Otero	35.76	33.37	14.30
Mckinley	45.67	42.62	18.27

NEW YORK

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Albany-Schenectady-Troy, NY MSA	48.10	44.90	19.24	Montgomery, Albany, Schoharie, Schenectady, Saratoga Rensselaer
Binghamton, NY MSA	41.98	39.18	16.79	Tioga, Broome
Buffalo-Niagara Falls, NY PMSA	41.38	38.63	16.55	Niagara, Erie
Dutchess County, NY PMSA	66.28	61.86	26.51	Dutchess
Elmira, NY MSA	42.75	39.89	17.10	Chemung
Glens Falls, NY MSA	45.54	42.51	18.22	Washington, Warren
Jamestown, NY MSA	39.60	36.96	15.84	Chautauqua
Nassau-Suffolk, NY PMSA	68.91	64.32	27.57	Nassau, Suffolk
New York, NY PMSA	59.90	55.90	23.96	Bronx, Rockland, Richmond, Queens, Putnam, New York Kings
Westchester County, NY	68.91	64.32	27.57	Westchester
Newburgh, NY-PA PMSA	61.57	57.46	24.63	Orange
Rochester, NY MSA	50.64	47.27	20.26	Wayne, Orleans, Ontario, Monroe, Livingston, Genesee
Syracuse, NY MSA	44.27	41.32	17.71	Madison, Cayuga, Oswego, Onondaga
Utica-Rome, NY MSA	40.53	37.83	16.21	Oneida, Herkimer

Note: A = First 600 units; B = Remainder of units; C = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

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NEW YORK continued

NONMETROPOLITAN COUNTIES	A	B	C
Clinton	40.87	38.14	16.35
Cattaraugus	36.40	33.98	14.56
Hamilton	39.29	36.67	15.72
Fulton	36.56	34.13	14.62
Essex	39.29	36.67	15.72
Cortland	44.51	41.54	17.80
Yates	40.54	37.83	16.21
Ulster	52.74	49.23	21.10
Sullivan	47.78	44.59	19.11
Seneca	43.43	40.54	17.37
St. Lawrence	40.37	37.68	16.15
Lewis	42.35	39.53	16.94
Chenango	42.76	39.91	17.11
Allegany	36.40	33.98	14.56
Greene	45.25	42.23	18.10
Franklin	39.29	36.67	15.72
Delaware	39.96	37.30	15.98
Columbia	42.21	39.40	16.88
Wyoming	40.37	37.68	16.15
Tompkins	46.06	43.00	18.43
Steuben	40.79	38.06	16.31
Schuyler	40.79	38.06	16.31
Otsego	39.96	37.30	15.98
Jefferson	44.34	41.38	17.74

NORTH CAROLINA

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Asheville, NC MSA	35.83	33.43	14.33	Madison, Buncombe
Charlotte-Gastonia-Rock Hill, NC-SC MSA	39.25	36.62	15.70	Gaston, Cabarrus, Union, Rowan, Mecklenburg, Lincoln
Fayetteville, NC MSA	36.41	33.99	14.56	Cumberland
Goldsboro, NC MSA	35.83	33.43	14.33	Wayne
Greensboro--Winston-Salem--High Point, NC MSA	37.07	34.61	14.83	Davidson, Alamance, Yadkin, Stokes, Randolph, Guilford Forsyth, Davie
Greenville, NC MSA	35.83	33.43	14.33	Pitt
Hickory-Morganton, NC MSA	37.75	35.23	15.10	Alexander, Catawba, Caldwell, Burke
Jacksonville, NC MSA	35.83	33.43	14.33	Onslow
Norfolk-Virginia Beach-Newport News, VA-NC MSA	44.51	41.54	17.80	Currituck
Raleigh-Durham-Chapel Hill, NC MSA	42.80	39.94	17.12	Chatham, Franklin, Durham, Wake, Orange, Johnston
Rocky Mount, NC MSA	35.83	33.43	14.33	Edgecombe, Nash
Wilmington, NC MSA	35.83	33.43	14.33	Brunswick, New Hanover

NONMETROPOLITAN COUNTIES	A	B	C
Alleghany	35.31	32.95	14.13
Wilson	35.31	32.95	14.13
Watauga	42.90	40.04	17.16
Warren	35.31	32.95	14.13
Tyrrell	35.31	32.95	14.13
Swain	35.31	32.95	14.13
Stanly	35.31	32.95	14.13
Sampson	35.31	32.95	14.13
Rockingham	35.31	32.95	14.13
Richmond	35.31	32.95	14.13
Yancey	35.31	32.95	14.13
Wilkes	35.97	33.57	14.39
Washington	35.31	32.95	14.13
Vance	35.31	32.95	14.13
Transylvania	35.31	32.95	14.13
Surry	35.31	32.95	14.13
Scotland	35.31	32.95	14.13
Rutherford	35.31	32.95	14.13
Robeson	35.31	32.95	14.13
Polk	35.31	32.95	14.13

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

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NORTH CAROLINA continued

NONMETROPOLITAN COUNTIES	A	B	C
Person	35.31	32.95	14.13
Pender	35.31	32.95	14.13
Pamlico	35.31	32.95	14.13
Moore	35.31	32.95	14.13
Mitchell	35.31	32.95	14.13
Macon	35.31	32.95	14.13
Lenoir	35.31	32.95	14.13
Jones	35.31	32.95	14.13
Iredell	38.52	35.96	15.41
Hoke	35.31	32.95	14.13
Henderson	35.31	32.95	14.13
Harnett	35.31	32.95	14.13
Greene	35.31	32.95	14.13
Graham	35.31	32.95	14.13
Duplin	35.31	32.95	14.13
Craven	35.31	32.95	14.13
Cleveland	35.31	32.95	14.13
Chowan	35.31	32.95	14.13
Caswell	35.31	32.95	14.13
Camden	35.31	32.95	14.13
Bertie	35.31	32.95	14.13
Avery	35.31	32.95	14.13
Anson	35.31	32.95	14.13
Perquimans	35.31	32.95	14.13
Pasquotank	35.31	32.95	14.13
Northampton	35.31	32.95	14.13
Montgomery	35.31	32.95	14.13
Martin	35.31	32.95	14.13
Mcdowell	35.31	32.95	14.13
Lee	35.64	33.26	14.25
Jackson	35.31	32.95	14.13
Hyde	35.31	32.95	14.13
Hertford	35.31	32.95	14.13
Haywood	35.31	32.95	14.13
Halifax	35.31	32.95	14.13
Granville	35.31	32.95	14.13
Gates	35.31	32.95	14.13
Dare	35.31	32.95	14.13
Columbus	35.31	32.95	14.13
Clay	35.31	32.95	14.13
Cherokee	35.31	32.95	14.13
Carteret	35.31	32.95	14.13
Bladen	35.31	32.95	14.13
Beaufort	35.31	32.95	14.13
Ashe	35.31	32.95	14.13

NORTH DAKOTA

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Bismarck, ND MSA	38.15	35.60	15.26	Morton, Burleigh
Fargo-Moorhead, ND-MN MSA	38.08	35.54	15.23	Cass
Grand Forks, ND-MN MSA	36.40	33.97	14.56	Grand Forks

NONMETROPOLITAN COUNTIES	A	B	C
Billings	34.48	32.18	13.79
Barnes	34.48	32.18	13.79
Eddy	34.48	32.18	13.79
Divide	34.48	32.18	13.79
Cavalier	34.48	32.18	13.79
Bowman	34.48	32.18	13.79
Nelson	34.48	32.18	13.79
Mercer	34.48	32.18	13.79
Benson	34.48	32.18	13.79
Adams	34.48	32.18	13.79
Dunn	34.48	32.18	13.79
Dickey	34.48	32.18	13.79
Burke	34.48	32.18	13.79
Bottineau	34.48	32.18	13.79
Mountrail	34.48	32.18	13.79
Mclean	34.48	32.18	13.79

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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NORTH DAKOTA continued

NONMETROPOLITAN COUNTIES	A	B	C
Mckenzie	34.48	32.18	13.79
Mchenry	34.48	32.18	13.79
Lamoure	34.48	32.18	13.79
Hettinger	34.48	32.18	13.79
Grant	34.48	32.18	13.79
Foster	34.48	32.18	13.79
Williams	34.48	32.18	13.79
Ward	34.48	32.18	13.79
Traill	34.48	32.18	13.79
Stutsman	34.48	32.18	13.79
Stark	34.48	32.18	13.79
Sioux	34.48	32.18	13.79
Sargent	34.48	32.18	13.79
Richland	34.48	32.18	13.79
Ransom	34.48	32.18	13.79
Pierce	34.48	32.18	13.79
Oliver	34.48	32.18	13.79
Mcintosh	34.48	32.18	13.79
Logan	34.48	32.18	13.79
Kidder	34.48	32.18	13.79
Griggs	34.48	32.18	13.79
Golden Valley	34.48	32.18	13.79
Emmons	34.48	32.18	13.79
Wells	34.48	32.18	13.79
Walsh	34.48	32.18	13.79
Towner	34.48	32.18	13.79
Steele	34.48	32.18	13.79
Slope	34.48	32.18	13.79
Sheridan	34.48	32.18	13.79
Rolette	34.48	32.18	13.79
Renville	34.48	32.18	13.79
Ramsey	34.48	32.18	13.79
Pembina	34.48	32.18	13.79

OHIO

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Akron, OH PMSA	41.14	38.39	16.45	Portage, Summit
Brown County, OH	35.44	33.07	14.18	Brown
Canton-Massillon, OH MSA	35.44	33.07	14.18	Stark, Carroll
Cincinnati, OH-KY-IN	40.49	37.79	16.20	Hamilton, Clermont, Warren
Cleveland-Lorain-Elyria, OH PMSA	41.81	39.03	16.73	Ashtabula, Geauga, Cuyahoga, Medina, Lorain, Lake
Columbus, OH MSA	39.66	37.01	15.87	Delaware, Madison, Licking, Franklin, Fairfield, Pickaway
Dayton-Springfield, OH MSA	36.94	34.47	14.77	Clark, Miami, Greene, Montgomery
Hamilton-Middletown, OH PMSA	42.08	39.27	16.83	Butler
Huntington-Ashland, WV-KY-OH MSA	36.64	34.18	14.66	Lawrence
Lima, OH MSA	36.02	33.62	14.41	Allen, Auglaize
Mansfield, OH MSA	35.44	33.07	14.18	Crawford, Richland
Parkersburg-Marietta, WV-OH MSA	34.09	31.82	13.64	Washington
Steubenville-Weirton, OH-WV MSA	36.27	33.85	14.51	Jefferson
Toledo, OH MSA	41.56	38.80	16.62	Fulton, Wood, Lucas
Wheeling, WV-OH MSA	35.86	33.46	14.34	Belmont
Youngstown-Warren, OH MSA	36.02	33.62	14.41	Columbiana, Trumbull, Mahoning

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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OHIO continued

NONMETROPOLITAN COUNTIES	A	B	C
Champaign	35.12	32.78	14.05
Ashland	35.12	32.78	14.05
Preble	35.20	32.85	14.08
Perry	35.12	32.78	14.05
Ottawa	36.92	34.46	14.77
Muskingum	35.12	32.78	14.05
Morgan	35.12	32.78	14.05
Mercer	35.12	32.78	14.05
Marion	35.12	32.78	14.05
Knox	35.12	32.78	14.05
Huron	35.12	32.78	14.05
Hocking	35.12	32.78	14.05
Henry	36.10	33.70	14.44
Hardin	35.12	32.78	14.05
Guernsey	35.12	32.78	14.05
Fayette	35.12	32.78	14.05
Defiance	36.10	33.70	14.44
Coshocton	35.12	32.78	14.05
Wyandot	35.12	32.78	14.05
Wayne	35.28	32.93	14.11
Van Wert	35.12	32.78	14.05
Tuscarawas	35.12	32.78	14.05
Seneca	35.12	32.78	14.05
Sandusky	36.59	34.15	14.64
Putnam	35.12	32.78	14.05
Athens	35.12	32.78	14.05
Adams	35.12	32.78	14.05
Pike	35.12	32.78	14.05
Paulding	36.10	33.70	14.44
Noble	35.12	32.78	14.05
Morrow	35.12	32.78	14.05
Monroe	35.12	32.78	14.05
Meigs	35.12	32.78	14.05
Logan	35.12	32.78	14.05
Jackson	35.12	32.78	14.05
Holmes	35.12	32.78	14.05
Highland	35.12	32.78	14.05
Harrison	35.12	32.78	14.05
Hancock	35.20	32.85	14.08
Gallia	35.12	32.78	14.05
Erie	36.59	34.15	14.64
Darke	35.12	32.78	14.05
Clinton	35.12	32.78	14.05
Williams	36.10	33.70	14.44
Vinton	35.12	32.78	14.05
Union	39.13	36.53	15.65
Shelby	35.92	33.53	14.37
Scioto	35.12	32.78	14.05
Ross	35.12	32.78	14.05

OKLAHOMA

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Enid, OK MSA	39.24	36.62	15.70	Garfield
Fort Smith, AR-OK MSA	34.35	32.06	13.74	Sequoyah
Lawton, OK MSA	35.51	33.13	14.20	Comanche
Oklahoma City, OK MSA	36.50	34.07	14.60	Pottawatomie, Oklahoma, Mcclain, Logan, Cleveland Canadian
Tulsa, OK MSA	35.51	33.13	14.20	Osage, Creek, Wagoner, Tulsa, Rogers

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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O K L A H O M A continued

NONMETROPOLITAN COUNTIES	A	B	C
Adair	35.83	33.43	14.33
Beaver	35.83	33.43	14.33
Alfalfa	35.83	33.43	14.33
Lincoln	35.83	33.43	14.33
Latimer	35.83	33.43	14.33
Kingfisher	35.83	33.43	14.33
Johnston	35.83	33.43	14.33
Jackson	35.83	33.43	14.33
Haskell	35.83	33.43	14.33
Harmon	35.83	33.43	14.33
Grant	35.83	33.43	14.33
Garvin	35.83	33.43	14.33
Dewey	35.83	33.43	14.33
Custer	35.83	33.43	14.33
Cotton	35.83	33.43	14.33
Cimarron	35.83	33.43	14.33
Cherokee	35.83	33.43	14.33
Caddo	35.83	33.43	14.33
Blaine	35.83	33.43	14.33
Woods	35.83	33.43	14.33
Washington	35.83	33.43	14.33
Texas	35.83	33.43	14.33
Seminole	35.83	33.43	14.33
Pushmataha	35.83	33.43	14.33
Pittsburg	35.83	33.43	14.33
Pawnee	35.83	33.43	14.33
Okmulgee	35.83	33.43	14.33
Nowata	35.83	33.43	14.33
Muskogee	35.83	33.43	14.33
Mayes	35.83	33.43	14.33
Major	35.83	33.43	14.33
Mccurtain	35.83	33.43	14.33

NONMETROPOLITAN COUNTIES	A	B	C
Beckham	35.83	33.43	14.33
Atoka	35.83	33.43	14.33
Love	35.83	33.43	14.33
Le Flore	35.83	33.43	14.33
Kiowa	35.83	33.43	14.33
Kay	35.83	33.43	14.33
Jefferson	35.83	33.43	14.33
Hughes	35.83	33.43	14.33
Harper	35.83	33.43	14.33
Greer	35.83	33.43	14.33
Grady	35.83	33.43	14.33
Ellis	35.83	33.43	14.33
Delaware	35.83	33.43	14.33
Craig	35.83	33.43	14.33
Coal	35.83	33.43	14.33
Choctaw	35.83	33.43	14.33
Carter	35.83	33.43	14.33
Bryan	35.83	33.43	14.33
Woodward	35.83	33.43	14.33
Washita	35.83	33.43	14.33
Tillman	35.83	33.43	14.33
Stephens	35.83	33.43	14.33
Roger Mills	35.83	33.43	14.33
Pontotoc	35.83	33.43	14.33
Payne	35.83	33.43	14.33
Ottawa	35.83	33.43	14.33
Okfuskee	35.83	33.43	14.33
Noble	35.83	33.43	14.33
Murray	35.83	33.43	14.33
Marshall	35.83	33.43	14.33
Mcintosh	35.83	33.43	14.33

O R E G O N

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Eugene-Springfield, OR MSA	51.49	48.05	20.59	Lane
Medford-Ashland, OR MSA	51.15	47.73	20.46	Jackson
Portland-Vancouver, OR-WA PMSA	44.80	41.81	17.92	Washington, Multnomah, Columbia, Clackamas, Yamhill

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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O R E G O N continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Salem, OR PMSA	48.10	44.89	19.24	Marion, Polk

NONMETROPOLITAN COUNTIES	A	B	C
Baker	46.65	43.55	18.66
Coos	48.77	45.52	19.51
Benton	47.59	44.42	19.04
Hood River	49.36	46.07	19.75
Grant	46.65	43.55	18.66
Douglas	48.77	45.52	19.51
Curry	48.77	45.52	19.51
Wasco	49.36	46.07	19.75
Union	46.65	43.55	18.66
Tillamook	45.39	42.36	18.15
Morrow	46.65	43.55	18.66
Linn	47.59	44.42	19.04
Lake	44.54	41.57	17.82
Josephine	48.77	45.52	19.51
Crook	49.36	46.07	19.75
Clatsop	45.39	42.36	18.15
Jefferson	49.36	46.07	19.75
Harney	44.54	41.57	17.82
Gilliam	46.65	43.55	18.66
Deschutes	49.36	46.07	19.75
Wheeler	46.65	43.55	18.66
Wallowa	46.65	43.55	18.66
Umatilla	46.65	43.55	18.66
Sherman	49.36	46.07	19.75
Malheur	44.54	41.57	17.82
Lincoln	45.39	42.36	18.15
Klamath	44.54	41.57	17.82

P E N N S Y L V A N I A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Allentown-Bethlehem-Easton, PA MSA	45.61	42.57	18.24	Lehigh, Carbon, Northampton
Altoona, PA MSA	39.50	36.86	15.80	Blair
Erie, PA MSA	45.37	42.34	18.15	Erie
Harrisburg-Lebanon-Carlisle, PA MSA	46.67	43.56	18.67	Cumberland, Perry, Lebanon, Dauphin
Johnstown, PA MSA	38.35	35.79	15.34	Cambria, Somerset
Lancaster, PA MSA	47.41	44.25	18.96	Lancaster
Newburgh, NY-PA PMSA	56.37	52.62	22.55	Pike
Philadelphia, PA-NJ PMSA	53.55	49.98	21.42	Bucks, Philadelphia, Montgomery, Delaware, Chester
Pittsburgh, PA PMSA	37.38	34.88	14.95	Westmoreland, Washington, Fayette, Butler, Beaver Allegheny
Reading, PA MSA	44.47	41.51	17.79	Berks
Scranton--Wilkes-Barre--Hazleton, PA MSA	36.23	33.82	14.49	Columbia, Wyoming, Luzerne, Lackawanna
Sharon, PA MSA	42.10	39.30	16.84	Mercer
State College, PA MSA	50.84	47.45	20.34	Centre
Williamsport, PA MSA	38.35	35.79	15.34	Lycoming
York, PA MSA	42.84	39.99	17.14	York

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

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PENNSYLVANIA continued

NONMETROPOLITAN COUNTIES	A	B	C
Adams	43.71	40.79	17.48
Venango	36.88	34.42	14.75
Tioga	37.21	34.73	14.88
Sullivan	37.21	34.73	14.88
Schuylkill	41.62	38.85	16.65
Northumberland	38.55	35.98	15.42
Monroe	49.20	45.92	19.68
Mc Kean	37.72	35.20	15.09
Juniata	37.30	34.81	14.92
Indiana	44.79	41.80	17.92
Greene	38.55	35.98	15.42
Franklin	41.21	38.46	16.48
Elk	37.72	35.20	15.09
Clinton	37.38	34.89	14.95
Clarion	36.88	34.42	14.75
Bradford	37.21	34.73	14.88
Armstrong	44.79	41.80	17.92
Warren	38.21	35.67	15.29
Union	43.63	40.72	17.45
Susquehanna	37.21	34.73	14.88
Snyder	37.30	34.81	14.92
Potter	37.72	35.20	15.09
Montour	38.55	35.98	15.42
Mifflin	38.13	35.59	15.25
Lawrence	38.21	35.67	15.29
Jefferson	38.55	35.98	15.42
Huntingdon	36.21	33.80	14.49
Fulton	36.21	33.80	14.49
Forest	36.88	34.42	14.75
Crawford	38.21	35.67	15.29
Clearfield	38.55	35.98	15.42
Cameron	37.72	35.20	15.09
Bedford	36.21	33.80	14.49
Wayne	45.63	42.58	18.25

RHODE ISLAND

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
New London-Norwich, CT-RI MSA	56.33	52.58	22.53	Washington county towns of Hopkinton town, Westerly town
Providence-Fall River-Warwick, RI-MA PMSA	55.74	52.02	22.30	Kent county towns of Coventry town, East Greenwich tow Warwick city, West Greenwich tow, West Warwick town Bristol county towns of Barrington town, Bristol town Warren town Washington county towns of Charlestown town, Exeter town Narragansett town, North Kingstown to, Richmond town South Kingstown to Providence county towns of Burrillville town Central Falls city, Cranston city, Cumberland town East Providence ci, Foster town, Glocester town Johnston town, Lincoln town, North Providence t North Smithfield t, Pawtucket city, Providence city Scituate town, Smithfield town, Woonsocket city Newport county towns of Jamestown town Little Compton tow, Tiverton town

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

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RHODE ISLAND continued

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Newport	65.64	61.26	26.25	Middletown town, Newport city, Portsmouth town
Washington	50.18	46.83	20.07	New Shoreham town

SOUTH CAROLINA

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Augusta-Aiken, GA-SC MSA	35.97	33.58	14.39	Aiken, Edgefield
Charleston-North Charleston, SC MSA	38.52	35.95	15.41	Berkeley, Dorchester, Charleston
Charlotte-Gastonia-Rock Hill, NC-SC MSA	39.25	36.62	15.70	York
Columbia, SC MSA	38.93	36.34	15.57	Lexington, Richland
Florence, SC MSA	34.48	32.18	13.79	Florence
Greenville-Spartanburg-Anderson, SC MSA	34.48	32.18	13.79	Cherokee, Anderson, Spartanburg, Pickens, Greenville
Myrtle Beach, SC MSA	34.48	32.18	13.79	Horry
Sumter, SC MSA	34.48	32.18	13.79	Sumter

NONMETROPOLITAN COUNTIES	A	B	C
Abbeville	34.58	32.27	13.83
Allendale	34.58	32.27	13.83
Calhoun	34.58	32.27	13.83
Barnwell	34.58	32.27	13.83
Union	34.58	32.27	13.83
Orangeburg	34.58	32.27	13.83
Newberry	34.58	32.27	13.83
Marion	34.58	32.27	13.83
Lee	34.58	32.27	13.83
Lancaster	34.58	32.27	13.83
Jasper	34.58	32.27	13.83
Greenwood	34.58	32.27	13.83
Fairfield	34.58	32.27	13.83
Darlington	34.58	32.27	13.83
Clarendon	34.58	32.27	13.83
Bamberg	34.58	32.27	13.83
Chester	34.58	32.27	13.83
Beaufort	35.28	32.92	14.11
Williamsburg	34.58	32.27	13.83
Saluda	34.58	32.27	13.83
Oconee	34.58	32.27	13.83
Marlboro	34.58	32.27	13.83
Mccormick	34.58	32.27	13.83
Laurens	34.58	32.27	13.83
Kershaw	34.58	32.27	13.83
Hampton	34.58	32.27	13.83
Georgetown	34.58	32.27	13.83
Dillon	34.58	32.27	13.83
Colleton	34.58	32.27	13.83
Chesterfield	34.58	32.27	13.83

SOUTH DAKOTA

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Rapid City, SD MSA	37.27	34.79	14.91	Pennington
Sioux Falls, SD MSA	39.81	37.15	15.92	Minnehaha, Lincoln

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

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SOUTH DAKOTA continued

NONMETROPOLITAN COUNTIES	A	B	C
Beadle	35.57	33.19	14.23
Brown	35.57	33.19	14.23
Bon Homme	35.57	33.19	14.23
Ziebach	35.57	33.19	14.23
Walworth	35.57	33.19	14.23
Turner	35.57	33.19	14.23
Todd	35.57	33.19	14.23
Stanley	38.64	36.06	15.46
Shannon	35.57	33.19	14.23
Roberts	35.57	33.19	14.23
Perkins	35.57	33.19	14.23
Miner	35.57	33.19	14.23
Meade	35.57	33.19	14.23
Mcpherson	35.57	33.19	14.23
Lyman	35.57	33.19	14.23
Lake	35.57	33.19	14.23
Jones	35.57	33.19	14.23
Jackson	35.57	33.19	14.23
Hutchinson	35.57	33.19	14.23
Harding	35.57	33.19	14.23
Hand	35.57	33.19	14.23
Haakon	35.57	33.19	14.23
Grant	35.57	33.19	14.23
Fall River	35.57	33.19	14.23
Douglas	35.57	33.19	14.23
Deuel	35.57	33.19	14.23
Davison	35.57	33.19	14.23
Corson	35.57	33.19	14.23
Clay	35.57	33.19	14.23
Charles Mix	35.57	33.19	14.23
Butte	35.57	33.19	14.23
Brule	35.57	33.19	14.23

NONMETROPOLITAN COUNTIES	A	B	C
Aurora	35.57	33.19	14.23
Brookings	35.57	33.19	14.23
Bennett	35.57	33.19	14.23
Yankton	35.57	33.19	14.23
Union	35.57	33.19	14.23
Tripp	35.57	33.19	14.23
Sully	35.57	33.19	14.23
Spink	35.57	33.19	14.23
Sanborn	35.57	33.19	14.23
Potter	35.57	33.19	14.23
Moody	35.57	33.19	14.23
Mellette	35.57	33.19	14.23
Marshall	35.57	33.19	14.23
Mccook	35.57	33.19	14.23
Lawrence	35.57	33.19	14.23
Kingsbury	35.57	33.19	14.23
Jerauld	35.57	33.19	14.23
Hyde	35.57	33.19	14.23
Hughes	38.64	36.06	15.46
Hanson	35.57	33.19	14.23
Hamlin	35.57	33.19	14.23
Gregory	35.57	33.19	14.23
Faulk	35.57	33.19	14.23
Edmunds	35.57	33.19	14.23
Dewey	35.57	33.19	14.23
Day	35.57	33.19	14.23
Custer	35.57	33.19	14.23
Codington	35.57	33.19	14.23
Clark	35.57	33.19	14.23
Campbell	35.57	33.19	14.23
Buffalo	35.57	33.19	14.23

TENNESSEE

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Chattanooga, TN-GA MSA	39.43	36.80	15.77	Hamilton, Marion
Clarksville-Hopkinsville, TN-KY MSA	40.12	37.45	16.05	Montgomery
Jackson, TN MSA	36.69	34.24	14.68	Madison

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

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TENNESSEE continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Johnson City-Kingsport-Bristol, TN-VA MSA	36.69	34.24	14.68	Carter, Sullivan, Hawkins, Washington, Unicoi
Knoxville, TN MSA	36.95	34.48	14.78	Blount, Anderson, Union, Sevier, Loudon, Knox
Memphis, TN-AR-MS MSA	39.60	36.96	15.84	Tipton, Shelby, Fayette
Nashville, TN MSA	43.89	40.98	17.55	Cheatham, Rutherford, Robertson, Dickson, Davidson Wilson, Williamson, Sumner

NONMETROPOLITAN COUNTIES	A	B	C
Bedford	36.57	34.12	14.63
Bradley	36.57	34.12	14.63
Benton	36.57	34.12	14.63
Coffee	36.57	34.12	14.63
Clay	36.57	34.12	14.63
Chester	36.57	34.12	14.63
Cannon	36.57	34.12	14.63
Mcnairy	36.57	34.12	14.63
Lincoln	36.57	34.12	14.63
Lawrence	36.57	34.12	14.63
Lake	36.57	34.12	14.63
Jefferson	36.57	34.12	14.63
Humphreys	36.57	34.12	14.63
Hickman	36.57	34.12	14.63
Henderson	36.57	34.12	14.63
Hardin	36.57	34.12	14.63
Hancock	36.57	34.12	14.63
Grundy	36.57	34.12	14.63
Grainger	36.57	34.12	14.63
Gibson	36.57	34.12	14.63
Fentress	36.57	34.12	14.63
Dekalb	36.57	34.12	14.63
Cumberland	36.57	34.12	14.63
Weakley	36.57	34.12	14.63
Warren	36.57	34.12	14.63
Trousdale	36.57	34.12	14.63
Smith	36.57	34.12	14.63
Scott	36.57	34.12	14.63
Rhea	36.57	34.12	14.63
Polk	36.57	34.12	14.63
Perry	36.57	34.12	14.63
Obion	36.57	34.12	14.63
Moore	36.57	34.12	14.63

NONMETROPOLITAN COUNTIES	A	B	C
Campbell	36.57	34.12	14.63
Bledsoe	36.57	34.12	14.63
Crockett	36.57	34.12	14.63
Cocke	36.57	34.12	14.63
Claiborne	36.57	34.12	14.63
Carroll	36.57	34.12	14.63
Macon	36.57	34.12	14.63
Mcminn	36.57	34.12	14.63
Lewis	36.57	34.12	14.63
Lauderdale	36.57	34.12	14.63
Johnson	36.57	34.12	14.63
Jackson	36.57	34.12	14.63
Houston	36.57	34.12	14.63
Henry	36.57	34.12	14.63
Haywood	36.57	34.12	14.63
Hardeman	36.57	34.12	14.63
Hamblen	36.57	34.12	14.63
Greene	36.57	34.12	14.63
Giles	36.57	34.12	14.63
Franklin	36.57	34.12	14.63
Dyer	36.57	34.12	14.63
Decatur	36.57	34.12	14.63
White	36.57	34.12	14.63
Wayne	36.57	34.12	14.63
Van Buren	36.57	34.12	14.63
Stewart	36.57	34.12	14.63
Sequatchie	39.30	36.67	15.72
Roane	36.57	34.12	14.63
Putnam	36.57	34.12	14.63
Pickett	36.57	34.12	14.63
Overton	36.57	34.12	14.63
Morgan	36.57	34.12	14.63
Monroe	36.57	34.12	14.63

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

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T E N N E S S E E continued

NONMETROPOLITAN COUNTIES	A	B	C
Meigs	36.57	34.12	14.63
Marshall	36.57	34.12	14.63
Maury	36.57	34.12	14.63

T E X A S

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Abilene, TX MSA	34.16	31.88	13.66	Taylor
Amarillo, TX MSA	34.16	31.88	13.66	Potter, Randall
Austin-San Marcos, TX MSA	44.43	41.48	17.77	Bastrop, Williamson, Travis, Hays, Caldwell
Beaumont-Port Arthur, TX MSA	39.02	36.42	15.61	Orange, Jefferson, Hardin
Brazoria, TX PMSA	43.53	40.62	17.41	Brazoria
Brownsville-Harlingen-San Benito, TX MSA	34.64	32.33	13.85	Cameron
Bryan-College Station, TX MSA	45.64	42.60	18.26	Brazos
Corpus Christi, TX MSA	39.82	37.16	15.93	San Patricio, Nueces
Dallas, TX	45.56	42.53	18.23	Rockwall, Kaufman, Hunt, Ellis, Denton, Dallas, Collin
El Paso, TX MSA	37.75	35.23	15.10	El Paso
Fort Worth-Arlington, TX PMSA	42.45	39.62	16.98	Tarrant, Parker, Johnson, Hood
Galveston-Texas City, TX PMSA	39.15	36.54	15.66	Galveston
Henderson County, TX	34.16	31.88	13.66	Henderson
Houston, TX PMSA	40.31	37.62	16.12	Fort Bend, Chambers, Waller, Montgomery, Liberty, Harris
Killeen-Temple, TX MSA	34.16	31.88	13.66	Coryell, Bell
Laredo, TX MSA	34.16	31.88	13.66	Webb
Longview-Marshall, TX MSA	38.30	35.75	15.32	Gregg, Upshur, Harrison
Lubbock, TX MSA	34.16	31.88	13.66	Lubbock
Mc Allen-Edinburg-Mission, TX MSA	34.24	31.95	13.69	Hidalgo
Odessa-Midland, TX MSA	43.89	40.96	17.56	Midland, Ector
San Angelo, TX MSA	34.16	31.88	13.66	Tom Green
San Antonio, TX MSA	39.06	36.47	15.63	Bexar, Wilson, Guadalupe, Comal
Sherman-Denison, TX MSA	34.16	31.88	13.66	Grayson
Texarkana, TX-Texarkana, AR MSA	34.16	31.88	13.66	Bowie
Tyler, TX MSA	38.95	36.35	15.58	Smith
Victoria, TX MSA	47.33	44.16	18.93	Victoria
Waco, TX MSA	34.16	31.88	13.66	Mclennan
Wichita Falls, TX MSA	34.96	32.62	13.98	Wichita, Archer

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

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T E X A S continued

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Andrews	34.00	31.73	13.60	Anderson	34.00	31.73	13.60
Atascosa	34.00	31.73	13.60	Armstrong	34.00	31.73	13.60
Aransas	34.00	31.73	13.60	Angelina	34.00	31.73	13.60
Bosque	34.00	31.73	13.60	Borden	34.00	31.73	13.60
Blanco	34.00	31.73	13.60	Bee	34.00	31.73	13.60
Baylor	34.00	31.73	13.60	Bandera	34.00	31.73	13.60
Bailey	34.00	31.73	13.60	Austin	34.08	31.80	13.63
Delta	34.00	31.73	13.60	Deaf Smith	34.00	31.73	13.60
Dawson	34.00	31.73	13.60	Dallam	34.00	31.73	13.60
Culberson	34.00	31.73	13.60	Crosby	34.00	31.73	13.60
Crockett	34.00	31.73	13.60	Crane	34.00	31.73	13.60
Cottle	34.00	31.73	13.60	Cooke	34.00	31.73	13.60
Concho	34.00	31.73	13.60	Comanche	34.00	31.73	13.60
Colorado	34.08	31.80	13.63	Collingsworth	34.00	31.73	13.60
Coleman	34.00	31.73	13.60	Coke	34.00	31.73	13.60
Cochran	34.00	31.73	13.60	Clay	34.00	31.73	13.60
Childress	34.00	31.73	13.60	Cherokee	34.00	31.73	13.60
Castro	34.00	31.73	13.60	Cass	34.00	31.73	13.60
Carson	34.00	31.73	13.60	Camp	34.00	31.73	13.60
Callahan	34.00	31.73	13.60	Calhoun	34.00	31.73	13.60
Burnet	34.00	31.73	13.60	Burleson	34.00	31.73	13.60
Brown	34.00	31.73	13.60	Brooks	34.00	31.73	13.60
Briscoe	34.00	31.73	13.60	Brewster	34.00	31.73	13.60
Zavala	34.00	31.73	13.60	Zapata	34.00	31.73	13.60
Young	34.00	31.73	13.60	Yoakum	34.00	31.73	13.60
Wood	34.00	31.73	13.60	Wise	34.08	31.80	13.63
Winkler	34.00	31.73	13.60	Willacy	34.00	31.73	13.60
Wilbarger	34.00	31.73	13.60	Wheeler	34.00	31.73	13.60
Wharton	34.08	31.80	13.63	Washington	34.00	31.73	13.60
Ward	34.00	31.73	13.60	Walker	36.17	33.76	14.47
Van Zandt	34.00	31.73	13.60	Val Verde	34.00	31.73	13.60
Uvalde	34.00	31.73	13.60	Upton	34.00	31.73	13.60
Tyler	34.00	31.73	13.60	Trinity	34.00	31.73	13.60
Titus	34.00	31.73	13.60	Throckmorton	34.00	31.73	13.60
Terry	34.00	31.73	13.60	Terrell	34.00	31.73	13.60
Swisher	34.00	31.73	13.60	Sutton	34.00	31.73	13.60
Stonewall	34.00	31.73	13.60	Sterling	34.00	31.73	13.60
Stephens	34.00	31.73	13.60	Starr	34.00	31.73	13.60
Somervell	34.00	31.73	13.60	Sherman	34.00	31.73	13.60
Shelby	34.00	31.73	13.60	Shackelford	34.00	31.73	13.60

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

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T E X A S continued

NONMETROPOLITAN COUNTIES	A	B	C
Scurry	34.00	31.73	13.60
San Saba	34.00	31.73	13.60
San Augustine	34.00	31.73	13.60
Rusk	34.00	31.73	13.60
Robertson	34.00	31.73	13.60
Refugio	34.00	31.73	13.60
Red River	34.00	31.73	13.60
Reagan	34.00	31.73	13.60
Presidio	34.00	31.73	13.60
Pecos	34.00	31.73	13.60
Panola	34.00	31.73	13.60
Oldham	34.00	31.73	13.60
Nolan	34.00	31.73	13.60
Navarro	34.00	31.73	13.60
Motley	34.00	31.73	13.60
Moore	34.00	31.73	13.60
Mitchell	34.00	31.73	13.60
Milam	34.00	31.73	13.60
Medina	34.00	31.73	13.60
Matagorda	34.08	31.80	13.63
Martin	34.00	31.73	13.60
Madison	34.00	31.73	13.60
Mcculloch	34.00	31.73	13.60
Loving	34.00	31.73	13.60
Live Oak	34.00	31.73	13.60
Limestone	34.00	31.73	13.60
Lee	34.00	31.73	13.60
La Salle	34.00	31.73	13.60
Lamb	34.00	31.73	13.60
Knox	34.00	31.73	13.60
Kinney	34.00	31.73	13.60
Kimble	34.00	31.73	13.60
Kent	34.00	31.73	13.60
Kendall	34.00	31.73	13.60
Jones	34.00	31.73	13.60
Jim Hogg	34.00	31.73	13.60
Jasper	34.00	31.73	13.60
Jack	34.00	31.73	13.60
Hutchinson	34.00	31.73	13.60
Howard	34.00	31.73	13.60

NONMETROPOLITAN COUNTIES	A	B	C
Schleicher	34.00	31.73	13.60
San Jacinto	34.00	31.73	13.60
Sabine	34.00	31.73	13.60
Runnels	34.00	31.73	13.60
Roberts	34.00	31.73	13.60
Reeves	34.00	31.73	13.60
Real	34.00	31.73	13.60
Rains	34.00	31.73	13.60
Polk	34.00	31.73	13.60
Parmer	34.00	31.73	13.60
Palo Pinto	34.00	31.73	13.60
Ochiltree	34.00	31.73	13.60
Newton	34.00	31.73	13.60
Nacogdoches	34.55	32.25	13.82
Morris	34.00	31.73	13.60
Montague	34.00	31.73	13.60
Mills	34.00	31.73	13.60
Menard	34.00	31.73	13.60
Maverick	34.00	31.73	13.60
Mason	34.00	31.73	13.60
Marion	34.00	31.73	13.60
Mcmullen	34.00	31.73	13.60
Lynn	34.00	31.73	13.60
Llano	34.00	31.73	13.60
Lipscomb	34.00	31.73	13.60
Leon	34.00	31.73	13.60
Lavaca	34.00	31.73	13.60
Lampasas	34.00	31.73	13.60
Lamar	34.00	31.73	13.60
Kleberg	34.00	31.73	13.60
King	34.00	31.73	13.60
Kerr	34.00	31.73	13.60
Kenedy	34.00	31.73	13.60
Karnes	34.00	31.73	13.60
Jim Wells	34.00	31.73	13.60
Jeff Davis	34.00	31.73	13.60
Jackson	34.00	31.73	13.60
Irion	34.00	31.73	13.60
Hudspeth	34.00	31.73	13.60
Houston	34.00	31.73	13.60

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

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T E X A S continued

NONMETROPOLITAN COUNTIES	A	B	C
Hopkins	34.00	31.73	13.60
Hill	34.00	31.73	13.60
Haskell	34.00	31.73	13.60
Hardeman	34.00	31.73	13.60
Hamilton	34.00	31.73	13.60
Hale	34.00	31.73	13.60
Gray	34.00	31.73	13.60
Goliad	34.00	31.73	13.60
Gillespie	34.00	31.73	13.60
Gaines	34.00	31.73	13.60
Freestone	34.00	31.73	13.60
Foard	34.00	31.73	13.60
Fisher	34.00	31.73	13.60
Fannin	34.00	31.73	13.60
Erath	34.00	31.73	13.60
Eastland	34.00	31.73	13.60
Donley	34.00	31.73	13.60
Dickens	34.00	31.73	13.60

NONMETROPOLITAN COUNTIES	A	B	C
Hockley	34.00	31.73	13.60
Hemphill	34.00	31.73	13.60
Hartley	34.00	31.73	13.60
Hansford	34.00	31.73	13.60
Hall	34.00	31.73	13.60
Grimes	34.00	31.73	13.60
Gonzales	34.00	31.73	13.60
Glasscock	34.00	31.73	13.60
Garza	34.00	31.73	13.60
Frio	34.00	31.73	13.60
Franklin	34.00	31.73	13.60
Floyd	34.00	31.73	13.60
Fayette	34.00	31.73	13.60
Falls	34.00	31.73	13.60
Edwards	34.00	31.73	13.60
Duval	34.00	31.73	13.60
Dimmit	34.00	31.73	13.60
Dewitt	34.00	31.73	13.60

U T A H

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Kane County, UT	41.61	38.84	16.65	Kane
Provo-Orem, UT MSA	37.76	35.25	15.11	Utah
Salt Lake City-Ogden, UT MSA	35.81	33.42	14.32	Weber, Salt Lake, Davis

NONMETROPOLITAN COUNTIES	A	B	C
Beaver	41.88	39.09	16.75
Carbon	47.64	44.46	19.06
Box Elder	38.51	35.94	15.40
Washington	45.33	42.31	18.13
Uintah	47.64	44.46	19.06
Summit	49.30	46.01	19.72
Sanpete	41.88	39.09	16.75
Rich	38.51	35.94	15.40
Morgan	47.64	44.46	19.06
Juab	41.88	39.09	16.75
Grand	47.64	44.46	19.06
Emery	47.64	44.46	19.06

NONMETROPOLITAN COUNTIES	A	B	C
Daggett	47.64	44.46	19.06
Cache	38.51	35.94	15.40
Wayne	41.88	39.09	16.75
Wasatch	47.64	44.46	19.06
Tooele	38.51	35.94	15.40
Sevier	41.88	39.09	16.75
San Juan	47.64	44.46	19.06
Piute	41.88	39.09	16.75
Millard	41.88	39.09	16.75
Iron	41.88	39.09	16.75
Garfield	41.88	39.09	16.75
Duchesne	47.64	44.46	19.06

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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V E R M O N T

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Burlington, VT MSA	54.64	50.99	21.85	Chittenden county towns of Burlington city Charlotte town, Colchester town, Essex town Hinesburg town, Jericho town, Milton town, Richmond town St. George town, Shelburne town, South Burlington c Williston town, Winooski city Grand Isle county towns of Grand Isle town South Hero town Franklin county towns of Fairfax town, Georgia town St. Albans city, St. Albans town, Swanton town

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Bennington	45.18	42.17	18.07	
Addison	43.65	40.75	17.46	
Orleans	37.09	34.62	14.84	
Orange	44.46	41.49	17.78	
Lamoille	44.86	41.86	17.94	
Grand Isle	37.09	34.62	14.84	Alburg town, Isle La Motte town, North Hero town
Franklin	41.57	38.80	16.63	Bakersfield town, Berkshire town, Enosburg town Fairfield town, Fletcher town, Franklin town Highgate town, Montgomery town, Richford town Sheldon town
Essex	37.09	34.62	14.84	
Chittenden	50.54	47.17	20.22	Bolton town, Buels gore, Huntington town, Underhill town Westford town
Caledonia	37.09	34.62	14.84	
Windsor	47.74	44.56	19.10	
Windham	46.61	43.51	18.65	
Washington	44.70	41.72	17.88	
Rutland	48.22	45.01	19.29	

V I R G I N I A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Charlottesville, VA MSA	45.14	42.14	18.06	Charlottesville city, Greene, Fluvanna, Albemarle
Clarke County, VA	36.01	33.62	14.40	Clarke
Culpeper County, VA	37.52	35.02	15.01	Culpeper
Danville, VA MSA	34.64	32.32	13.86	Danville city, Pittsylvania
Johnson City-Kingsport-Bristol, TN-VA MSA	36.89	34.24	14.52	Bristol city, Washington, Scott
King George County, VA	42.00	39.20	16.80	King George
Lynchburg, VA MSA	35.93	33.54	14.37	Lynchburg city, Bedford city, Campbell, Bedford, Amherst
Norfolk-Virginia Beach-Newport News, VA-NC MSA	44.51	41.54	17.80	Gloucester, James City, Isle of Wight, Portsmouth city Poquoson city, Norfolk city, Newport News city Hampton city, Chesapeake city, York, Mathews

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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V I R G I N I A continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Richmond-Petersburg, VA MSA	40.37	37.68	16.15	Williamsburg city, Virginia Beach city, Suffolk city Charles City, Hanover, Goochland, Dinwiddie, Chesterfield Richmond city, Petersburg city, Hopewell city Colonial Heights city, Prince George, Powhatan, New Kent Henrico
Roanoke, VA MSA	35.53	33.16	14.21	Salem city, Roanoke city, Roanoke, Botetourt
Warren County, VA	36.01	33.62	14.40	Warren
Washington, DC-MD-VA	65.03	61.26	26.25	Arlington, Loudoun, Fairfax, Fredericksburg city Fauquier, Falls Church city, Fairfax city Alexandria city, Stafford, Spotsylvania, Prince William Manassas Park city, Manassas ci

NONMETROPOLITAN COUNTIES	A	B	C
Alleghany	34.46	32.16	13.78
Bath	34.46	32.16	13.78
Appomattox	34.38	32.09	13.75
Craig	34.38	32.09	13.75
Carroll	34.38	32.09	13.75
Buckingham	34.38	32.09	13.75
Brunswick	34.38	32.09	13.75
Lee	34.38	32.09	13.75
King William	34.38	32.09	13.75
Highland	34.46	32.16	13.78
Halifax	34.38	32.09	13.75
Grayson	34.38	32.09	13.75
Frederick	35.74	33.37	14.30
Floyd	34.38	32.09	13.75
Dickenson	34.38	32.09	13.75
Wythe	34.38	32.09	13.75
Westmoreland	34.38	32.09	13.75
Sussex	34.38	32.09	13.75
Southampton	34.38	32.09	13.75
Shenandoah	35.74	33.37	14.30
Rockingham	35.67	33.29	14.27
Richmond	34.38	32.09	13.75
Pulaski	34.38	32.09	13.75
Patrick	34.38	32.09	13.75
Orange	37.24	34.76	14.90
Northumberland	34.38	32.09	13.75
Nelson	34.38	32.09	13.75
Middlesex	34.38	32.09	13.75

NONMETROPOLITAN COUNTIES	A	B	C
Accomack	34.38	32.09	13.75
Augusta	34.46	32.16	13.78
Amelia	34.38	32.09	13.75
Charlotte	34.38	32.09	13.75
Caroline	41.69	38.91	16.68
Buchanan	34.38	32.09	13.75
Bland	34.38	32.09	13.75
Lancaster	34.38	32.09	13.75
King and Queen	34.38	32.09	13.75
Henry	34.54	32.24	13.82
Greensville	34.38	32.09	13.75
Giles	34.38	32.09	13.75
Franklin	34.38	32.09	13.75
Essex	34.38	32.09	13.75
Cumberland	34.38	32.09	13.75
Wise	34.38	32.09	13.75
Tazewell	34.38	32.09	13.75
Surry	34.38	32.09	13.75
Smyth	34.38	32.09	13.75
Russell	34.38	32.09	13.75
Rockbridge	34.46	32.16	13.78
Rappahannock	37.24	34.76	14.90
Prince Edward	34.38	32.09	13.75
Page	34.54	32.24	13.82
Nottoway	34.38	32.09	13.75
Northampton	34.38	32.09	13.75
Montgomery	41.77	38.99	16.71
Mecklenburg	34.38	32.09	13.75

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V I R G I N I A continued

NONMETROPOLITAN COUNTIES	A	B	C
Madison	36.55	34.11	14.62
Louisa	35.99	33.59	14.40
Lunenburg	34.38	32.09	13.75

W A S H I N G T O N

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Bellingham, WA MSA	50.51	47.14	20.20	Whatcom
Bremerton, WA PMSA	47.00	43.87	18.80	Kitsap
Olympia, WA PMSA	48.55	45.31	19.42	Thurston
Portland-Vancouver, OR-WA PMSA	44.80	41.81	17.92	Clark
Richland-Kennewick-Pasco, WA MSA	41.05	38.30	16.42	Benton, Franklin
Seattle-Bellevue-Everett, WA PMSA	53.21	49.66	21.28	Island, Snohomish, King
Spokane, WA MSA	40.88	38.16	16.35	Spokane
Tacoma, WA PMSA	45.19	42.18	18.08	Pierce
Yakima, WA MSA	42.68	39.83	17.07	Yakima

NONMETROPOLITAN COUNTIES	A	B	C
Adams	35.06	32.72	14.02
Asotin	45.20	42.19	18.08
Cowlitz	36.37	33.94	14.55
Clallam	45.45	42.42	18.18
Skagit	46.35	43.26	18.54
Pend Oreille	35.06	32.72	14.02
Okanogan	38.41	35.86	15.37
Lincoln	35.06	32.72	14.02
Klickitat	42.18	39.37	16.87
Jefferson	45.45	42.42	18.18
Grant	35.06	32.72	14.02
Ferry	35.06	32.72	14.02
Walla Walla	45.20	42.19	18.08
Stevens	35.06	32.72	14.02
Chelan	42.18	39.37	16.87
Douglas	42.18	39.37	16.87
Columbia	45.20	42.19	18.08
Skamania	42.18	39.37	16.87
San Juan	47.98	44.77	19.19
Pacific	45.45	42.42	18.18
Mason	45.45	42.42	18.18
Lewis	42.18	39.37	16.87
Kittitas	38.41	35.86	15.37
Grays Harbor	45.45	42.42	18.18
Garfield	45.20	42.19	18.08
Whitman	45.20	42.19	18.08
Wahkiakum	42.18	39.37	16.87

W E S T V I R G I N I A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Berkeley County, WV	37.04	34.58	14.81	Berkeley
Charleston, WV MSA	44.45	41.48	17.78	Kanawha, Putnam
Cumberland, MD-WV MSA	33.97	31.70	13.58	Mineral
Huntington-Ashland, WV-KY-OH MSA	36.64	34.19	14.66	Wayne, Cabell
Jefferson County, WV	37.18	34.70	14.87	Jefferson

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

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W E S T V I R G I N I A continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Parkersburg-Marietta, WV-OH MSA	34.09	31.82	13.64	Wood
Steubenville-Weirton, OH-WV MSA	36.27	33.85	14.51	Hancock, Brooke
Wheeling, WV-OH MSA	35.86	33.46	14.34	Ohio, Marshall

NONMETROPOLITAN COUNTIES	A	B	C
Lincoln	36.57	34.12	14.63
Jackson	37.33	34.84	14.93
Hardy	36.57	34.12	14.63
Greenbrier	36.57	34.12	14.63
Gilmer	36.90	34.44	14.76
Doddridge	36.57	34.12	14.63
Calhoun	37.33	34.84	14.93
Boone	36.57	34.12	14.63
Wyoming	36.57	34.12	14.63
Wetzel	36.57	34.12	14.63
Upshur	36.57	34.12	14.63
Tucker	36.57	34.12	14.63
Summers	36.57	34.12	14.63
Ritchie	36.57	34.12	14.63
Raleigh	36.57	34.12	14.63
Pocahontas	36.57	34.12	14.63
Pendleton	36.57	34.12	14.63
Morgan	36.57	34.12	14.63
Monongalia	40.15	37.47	16.06
Mercer	36.57	34.12	14.63
Marion	40.15	37.47	16.06
Logan	36.57	34.12	14.63
Lewis	36.57	34.12	14.63
Harrison	37.33	34.84	14.93
Hampshire	36.57	34.12	14.63
Grant	36.57	34.12	14.63
Fayette	36.57	34.12	14.63
Clay	36.57	34.12	14.63
Braxton	36.57	34.12	14.63
Barbour	36.57	34.12	14.63
Wirt	36.57	34.12	14.63
Webster	36.57	34.12	14.63
Tyler	36.57	34.12	14.63
Taylor	36.57	34.12	14.63
Roane	37.33	34.84	14.93
Randolph	36.57	34.12	14.63
Preston	40.15	37.47	16.06
Pleasants	36.57	34.12	14.63
Nicholas	36.57	34.12	14.63
Monroe	36.57	34.12	14.63
Mingo	36.57	34.12	14.63
Mason	36.57	34.12	14.63
Mcdowell	36.57	34.12	14.63

W I S C O N S I N

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Appleton-Oshkosh-Neenah, WI MSA	36.62	34.18	14.65	Calumet, Winnebago, Outagamie
Duluth-Superior, MN-WI MSA	37.25	34.77	14.90	Douglas
Eau Claire, WI MSA	35.14	32.79	14.05	Chippewa, Eau Claire
Green Bay, WI MSA	36.45	34.02	14.58	Brown
Janesville-Beloit, WI MSA	40.35	37.66	16.14	Rock
Kenosha, WI PMSA	44.97	41.97	17.99	Kenosha
La Crosse, WI-MN MSA	41.61	38.83	16.64	La Crosse
Madison, WI MSA	48.40	45.18	19.36	Dane

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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W I S C O N S I N continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Milwaukee-Waukesha, WI PMSA	43.49	40.58	17.39	Ozaukee, Milwaukee, Waukesha, Washington
Minneapolis-St. Paul, MN-WI MSA	50.37	47.01	20.15	St. Croix, Pierce
Racine, WI PMSA	39.72	37.07	15.89	Racine
Sheboygan, WI MSA	36.04	33.64	14.41	Sheboygan
Wausau, WI MSA	35.79	33.40	14.31	Marathon

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Adams	36.21	33.80	14.49	Green	35.64	33.25	14.25
Grant	35.64	33.25	14.25	Forest	35.64	33.25	14.25
Fond du Lac	37.38	34.89	14.95	Florence	35.64	33.25	14.25
Dunn	35.64	33.25	14.25	Door	35.64	33.25	14.25
Dodge	35.64	33.25	14.25	Crawford	35.64	33.25	14.25
Columbia	35.64	33.25	14.25	Clark	35.64	33.25	14.25
Burnett	35.64	33.25	14.25	Buffalo	35.64	33.25	14.25
Bayfield	35.64	33.25	14.25	Barron	35.64	33.25	14.25
Ashland	35.64	33.25	14.25	Wood	36.21	33.80	14.49
Waushara	35.64	33.25	14.25	Waupaca	35.64	33.25	14.25
Washburn	35.64	33.25	14.25	Walworth	39.12	36.51	15.65
Vilas	35.64	33.25	14.25	Vernon	35.64	33.25	14.25
Trempealeau	35.64	33.25	14.25	Taylor	35.64	33.25	14.25
Shawano	35.64	33.25	14.25	Sawyer	35.64	33.25	14.25
Sauk	36.21	33.80	14.49	Rusk	35.64	33.25	14.25
Richland	35.64	33.25	14.25	Price	35.64	33.25	14.25
Portage	36.29	33.87	14.52	Polk	35.64	33.25	14.25
Pepin	35.64	33.25	14.25	Oneida	35.64	33.25	14.25
Oconto	35.64	33.25	14.25	Monroe	35.64	33.25	14.25
Menominee	35.64	33.25	14.25	Marquette	35.64	33.25	14.25
Marinette	35.64	33.25	14.25	Manitowoc	35.64	33.25	14.25
Lincoln	35.64	33.25	14.25	Langlade	35.64	33.25	14.25
Lafayette	35.64	33.25	14.25	Kewaunee	35.64	33.25	14.25
Juneau	36.21	33.80	14.49	Jefferson	37.80	35.28	15.12
Jackson	35.64	33.25	14.25	Iron	35.64	33.25	14.25
Iowa	35.64	33.25	14.25	Green Lake	35.72	33.33	14.29

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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W Y O M I N G

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Casper, WY MSA	49.73	46.42	19.89	Natrona
Cheyenne, WY MSA	41.28	38.53	16.51	Laramie

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Albany	34.41	32.11	13.76	Campbell	33.81	31.55	13.52
Big Horn	33.81	31.55	13.52	Lincoln	33.81	31.55	13.52
Johnson	33.81	31.55	13.52	Hot Springs	33.81	31.55	13.52
Goshen	33.81	31.55	13.52	Fremont	33.81	31.55	13.52
Crook	33.81	31.55	13.52	Converse	33.81	31.55	13.52
Carbon	33.81	31.55	13.52	Weston	33.81	31.55	13.52
Washakie	33.81	31.55	13.52	Uinta	33.81	31.55	13.52
Teton	50.39	47.03	20.16	Sweetwater	33.81	31.55	13.52
Sublette	33.81	31.55	13.52	Sheridan	45.73	42.67	18.29
Platte	33.81	31.55	13.52	Park	33.81	31.55	13.52
Niobrara	33.81	31.55	13.52				

P A C I F I C I S L A N D S

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Pacific Islands	66.05	61.66	26.42				

P U E R T O R I C O

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Aguadilla, PR MSA	36.41	33.97	14.56	Aguada Municipio, Moca Municipio, Aguadilla Municipio
Arecibo, PR PMSA	39.97	37.31	15.99	Camuy Municipio, Arecibo Municipio, Hatillo Municipio
Caguas, PR PMSA	36.41	33.97	14.56	Caguas Municipio, Cidra Municipio, Cayey Municipio San Lorenzo Municipio, Gurabo Municipio
Mayaguez, PR MSA	36.41	33.97	14.56	Cabo Rojo Municipio, Anasco Municipio San German Municipio, Sabana Grande Municipio Mayaguez Municipio, Hormigueros Municipio
Ponce, PR MSA	39.12	36.51	15.65	Ponce Municipio, Penuelas Municipio, Juana Diaz Municipio Guayanilla Municipio, Yauco Municipio, Villalba Municipio
San Juan-Bayamon, PR PMSA	39.12	36.51	15.65	Barceloneta Municipio, Aguas Buenas Municipio Catano Municipio, Carolina Municipio, Canovanas Municipio Bayamon Municipio, Humacao Municipio, Guaynabo Municipio Florida Municipio, Fajardo Municipio, Dorado Municipio Corozal Municipio, Comerio Municipio, Ceiba Municipio Yabucoa Municipio, Vega Baja Municipio Vega Alta Municipio, Trujillo Alto Municipio Toa Baja Municipio, Toa Alta Municipio San Juan Municipio, Rio Grande Municipio

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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P U E R T O R I C O continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
				Naranjito Municipio, Naguabo Municipio, Morovis Municipio Manati Municipio, Luquillo Municipio, Loiza Municipio Las Piedras Municipio, Juncos Municipio

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Maunabo Municipio.....	36.47	34.03	14.59	Maricao Municipio.....	36.47	34.03	14.59
Las Marias Municipio....	36.47	34.03	14.59	Lares Municipio.....	36.47	34.03	14.59
Lajas Municipio.....	36.47	34.03	14.59	Jayuya Municipio.....	36.47	34.03	14.59
Isabela Municipio.....	36.47	34.03	14.59	Guayama Municipio.....	36.47	34.03	14.59
Guanica Municipio.....	36.47	34.03	14.59	Culebra Municipio.....	36.47	34.03	14.59
Coamo Municipio.....	36.47	34.03	14.59	Ciales Municipio.....	36.47	34.03	14.59
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Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

[FR Doc. 98-1941 Filed 1-26-98; 8:45 am]

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federal register

Tuesday
January 27, 1998

Part VII

Department of Education

National Institute on Disability and Rehabilitation Research; Notice of Proposed Funding Priority for Fiscal Years 1998–1999 for a Rehabilitation Engineering Research Center; Notice

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DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Notice of Proposed Funding Priority for Fiscal Years 1998–1999 for a Rehabilitation Engineering Research Center

AGENCY: Department of Education.

ACTION: Notice of Proposed Funding Priority for Fiscal Years 1998–1999 for a Rehabilitation Engineering Research Center.

SUMMARY: The Secretary proposes a funding priority for a Rehabilitation Engineering Research Center (RERC) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1998–1999. The Secretary takes this action to focus research attention on problems that are significant to disabled persons and to the research community. This priority is intended to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: Comments must be received on or before February 26, 1998.

ADDRESSES: All comments concerning this proposed priority should be addressed to Donna Nangle, U.S. Department of Education, 600 Maryland Avenue, SW., room 3418, Switzer Building, Washington, DC 20202–2645. Comments may also be sent through the Internet: comments@ed.gov.

You must include the term "Engineering Research Centers" in the electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–2742. Internet: Donna__Nangle@ed.gov.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: This notice contains a proposed priority under the Disability and Rehabilitation Research Projects and Centers program for an RERC focused on the development of rehabilitation technology devices, particularly low-cost prosthetic and orthotic devices, to meet the rehabilitation needs of land mine survivors.

The authority for RERCs is contained in section 204(b)(3) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(b)(3)). Under this program the Secretary makes awards to public and private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations, to conduct research, demonstration, and training activities regarding rehabilitation technology in order to enhance opportunities for meeting the needs of, and addressing the barriers confronted by, individuals with disabilities in all aspects of their lives. An RERC must be operated by or in collaboration with an institution of higher education or a nonprofit organization. NIDRR is authorized, under Section 204(b)(6) of the Rehabilitation Act, to provide support for a program of international rehabilitation research, demonstration, and training.

The authority for the Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 761a(g) and 762).

The Secretary will announce the final priority in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of a particular project depends on the final priority, the availability of funds, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does *not* solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following the notice of final priority.

Description of the Rehabilitation Engineering Research Center Program

RERCs carry out research or demonstration activities by:

(a) Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to (1) solve rehabilitation problems and remove environmental barriers, and (2) study new or emerging technologies, products, or environments;

(b) Demonstrating and disseminating (1) innovative models for the delivery of cost-effective rehabilitation technology services to rural and urban areas, and (2) other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities; or

(c) Facilitating service delivery systems change through (1) the development, evaluation, and dissemination of consumer-responsive and individual and family centered innovative models for the delivery to both rural and urban areas of innovative cost-effective rehabilitation technology services, and (2) other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities.

Each RERC must provide training opportunities to individuals, including individuals with disabilities, to become researchers of rehabilitation technology and practitioners of rehabilitation technology in conjunction with institutions of higher education and nonprofit organization.

Priority

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority.

Proposed Priority: Improved Technology Access for Land Mine Survivors

Background

In the House Report accompanying the appropriations for the Department of Education:

> The Committee has included up to $850,000 * * * for NIDRR to establish, through a competitive award, a rehabilitation engineering research center dealing with the unique needs of land mine survivors. The center is to operate in cooperation with an institution of higher education involved in both rehabilitation medicine and engineering research, training and service and is to focus on the unique rehabilitation needs of the victims of land mine injuries. Specifically, the center is to focus on the development of inexpensive replacement limbs; the development and dissemination of educational materials on prosthetics, and other appropriate prosthetic, orthotic, or assistive technology devices; and the training of health care providers in effective methods of assistance to this population.

In response to this report language, the Secretary is proposing the following priority. Both the Congress and NIDRR are aware of the historic significance of periods of international conflict in stimulating the science of rehabilitation to develop solutions to the impairments caused by sustained large-scale violence. Most recently, survivors of landmine injuries in dozens of nations in Latin America, Europe, Africa, and Asia are in need of innovative solutions to address the loss of limbs and other conditions such as sensory impairments, communication impairments, burns, and other conditions caused by anti-personnel land mines. The Secretary is particularly interested in receiving comments about the feasibility of addressing, to some extent, land mine injuries that do not involve missing limbs, such as vision, hearing, and other types of impairments within the scope of this RERC.

Because most of those with unmet needs are located in countries that are either not industrialized, lack infrastructures for rehabilitative services, or lack economic resources, the approaches to meeting these needs must be tailored to their particular circumstances. Solutions, which will focus on, but not be limited to, limb replacement, must be suitable for the available materials, resources, and expertise in the relevant countries, and must also concentrate on building capacity in those nations for design and fitting, manufacture, distribution, maintenance, and provision of supports and services. This RERC will have broad scope in the development of devices through scientific methods, training of indigenous scientists, service providers, and advocates, and transferring technology to the local economies.

There are many national and international organizations that play a role in addressing the problems of landmine survivors and the Center should involve relevant organizations in appropriate roles in Center operations. Included in this group are organizations of survivors themselves; these consumer organizations are important targets of education, information, and training, particularly in the areas of self-help, maintenance of devices, and the need for accommodations, supports, and follow-up care. Because so many of the victims of land mines are children, special attention must be directed toward the special needs of children who are growing and developing, and for whom most prostheses or orthoses therefore will have a limited period of utility. The Center may opt to address these problems through technological solutions where feasible, or through partnerships that will provide ongoing care and support.

The work of this RERC will have implications for the United States population as well. There is a continuing need for new and different types of prostheses and orthoses in the United States and other developed nations, with special need for prosthetic and orthotic devices and other rehabilitation technology that is suitable for different climates, low-cost, and appropriate in various cultures. New conditions of health care delivery portend limited resources for rehabilitation technologies and services and durable medical equipment; thus there will be a greater emphasis on durability, endurance, cost containment, and ease of maintenance. This Center's activities will contribute to advancing science, broadening knowledge of materials and methods, and increasing our understanding of and sensitivity to cultural and economic concerns in provision of these rehabilitation technologies.

Priority

The Secretary proposes to establish an RERC to address the unique rehabilitation needs of land mine survivors through developing and testing appropriate innovative replacement limbs (particularly low-cost limbs suitable for developing economies), and other prosthetic and orthotic devices; training indigenous technicians, manufacturers, and health care providers in the fabrication and fitting of appropriate devices; and educating land mine survivors and their families.

In carrying out the general purposes of this priority, the RERC shall:

1. Develop a sound scientific process for evaluating the suitability of existing devices, assessing user needs, developing new and innovative designs, and testing inexpensive replacement limbs, prototypes of prostheses, orthoses, and other appropriate rehabilitation technology devices.

2. Identify and evaluate existing technologies and systems used for limb replacement and related rehabilitation technology in various nations where there are extensive land mine injuries.

3. Demonstrate the suitability of proposed devices in terms of cost-effectiveness and appropriateness to the indigenous economies, including available materials, work force capabilities, and infrastructure capacity for timely production and delivery of devices.

4. Identify the needs of land mine survivors for other types of rehabilitation technologies which may include but need not be limited to vision, hearing and speech aids, and wheelchairs.

5. Develop and maintain a database to track and correlate consumer needs and characteristics, device specification and performance, and outcomes and conduct a definitive evaluation of the products and procedures.

In addition to its research functions, the RERC must:

- Address the needs of land mine survivors of all ages, with particular attention to systems for meeting the changing needs of growing children.
- Conduct, in the third year of the award, a state-of-the-science conference and provide NIDRR with a report on this conference by the end of the fourth year.
- Conduct training of health care providers in affected nations in effective methods of providing rehabilitative assistance to this population.
- Collaborate with key international organizations and Government agencies in the affected nations, with consumer organizations of land mine survivors, and with rehabilitation researchers and service providers, and other Federal agencies including the Department of Defense, Agency for International Development, Centers for Disease Control, and the Department of Veterans' Affairs.

Electronic Access to This Document: Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

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Note: The official version of this document is the document published in the **Federal Register**.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3424, Switzer Building, 330 C Street S.W., Washington, D.C., between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR parts 350 and 353.

Program Authority: 29 U.S.C. 760–762.

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(Catalog of Federal Domestic Assistance Number 84.133E, Rehabilitation Engineering Research Centers)

Dated: January 22, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

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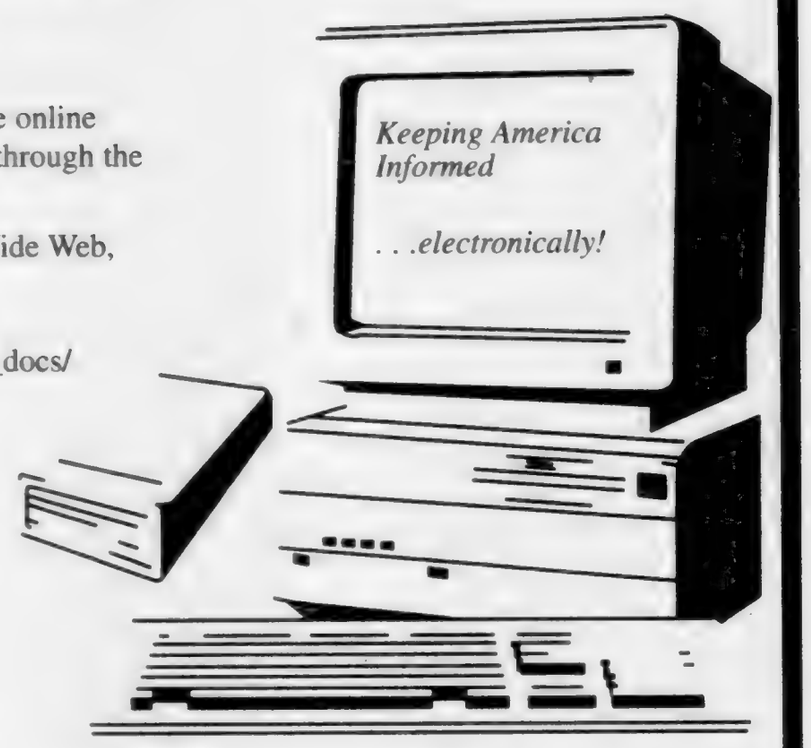
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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
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Wednesday, January 28, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97–101–1]

Imported Fire Ant Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the imported fire ant regulations by designating as quarantined areas all or portions of 10 counties in North Carolina, 3 counties in Oklahoma, 5 counties in South Carolina, 15 counties in Tennessee, and 13 counties in Texas. This action expands the areas quarantined for imported fire ant and imposes certain restrictions on the interstate movement of regulated articles from those areas. This action is necessary to prevent the artificial spread of the imported fire ant to noninfested areas of the United States.

DATES: Interim rule effective January 28, 1998. Consideration will be given only to comments received on or before March 30, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–101–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–101–1. Comments received may be inspected at USDA; room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Milberg, Operations Officer, Operational Support, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–5255; or e-mail: rmilberg@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The imported fire ant regulations (contained in 7 CFR 301.81 through 301.81–10, and referred to below as the regulations) quarantine infested States or infested areas within States and impose restrictions on the interstate movement of certain regulated articles for the purpose of preventing the artificial spread of the imported fire ant.

Imported fire ant, *Solenopsis invicta* Buren and *Solenopsis richteri* Forel, are aggressive, stinging insects that, in large numbers, can seriously injure or even kill livestock, pets, and humans. The imported fire ant feeds on crops and builds large, hard mounds that damage farm and field machinery. The imported fire ant is not native to the United States. The regulations prevent the imported fire ant from spreading throughout its ecological range within this country.

The regulations in § 301.81–3 provide that the Administrator of the Animal and Plant Health Inspection Service (APHIS) will list as a quarantined area each State, or each portion of a State, that is infested with imported fire ants. The Administrator will designate less than an entire State as a quarantined area only under the following conditions: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in § 301.81–2 that are equivalent to the interstate movement restrictions imposed by the regulations; and (2) designating less than the entire State will prevent the spread of the imported fire ant. The Administrator may include uninfested acreage within a quarantined area due to its proximity to an infestation or its inseparability from an infested locality for quarantine purposes.

We are amending § 301.81–3(e) by designating all or portions of the following counties as quarantined areas: Cabarrus, Dare, Greene, Mecklenburg, Montgomery, Moore, Pitt, Sampson, Stanly, and Wayne Counties in North Carolina; Choctaw, Comanche, and Johnston Counties in Oklahoma; Cherokee, Oconee, Pickens, Spartanburg, and York Counties in South Carolina; Bradley, Chester, Decatur, Fayette, Franklin, Giles, Hamilton, Henderson, Lawrence, Lincoln, Marion, McMinn, Polk, Shelby, and Wayne Counties in Tennessee; and Brown, Ector, Hidalgo, Jones, Kimble, La Salle, Maverick, Midland, Palo Pinto, Red River, Stephens, Val Verde, and Willacy Counties in Texas. We are taking this action because recent surveys conducted by APHIS and State and county agencies reveal that the imported fire ant has spread to these areas. See the rule portion of this document for specific descriptions of the new quarantined areas.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the artificial spread of the imported fire ant into noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This action affects the interstate movement of regulated articles from specified areas in North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. Affected entities include nurserymen, sod and hay growers, farm equipment dealers, construction companies, and others who sell, process, or move regulated articles interstate. There are approximately 890

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establishments within the newly regulated areas that could be affected by this interim rule; nearly 98 percent of these are small entities. However, most of the sales for these entities are local intrastate or within the regulated area, and would not be affected by this regulation.

The effect on those entities that do move regulated articles interstate is minimized by the availability of various treatments that, in most cases, will permit the movement of regulated articles with very little additional cost. Treatment costs range between $30 and $50 per shipment. The total projected annual cost of treatment required as a result of this rule is approximately $83,380. In 1992, the sales of nursery stock, sod, hay, and other regulated articles in the newly regulated areas had a market value of approximately $77 million. The potential costs to affected entities of treatments required as a result of this rule are minimal compared to the total value of regulated articles sold in these areas.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this program. The assessment provides a basis for the conclusion that the methods employed to regulate the imported fire ant will not significantly affect the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for pubic inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.81–3, paragraph (e), the list of quarantined areas is amended as follows:

a. By adding, in alphabetical order, the entries for Cabarrus, Greene, Moore, Stanly, and Wayne Counties in North Carolina to read as set forth below;

b. By adding, in alphabetical order, the entries for Choctaw, Comanche, and Johnston Counties in Oklahoma to read as set forth below;

c. By adding, in alphabetical order, the entries for Cherokee, Oconee, Pickens, and Spartanburg Counties in South Carolina to read as set forth below;

d. By adding, in alphabetical order, the entries for Chester, Decatur, Franklin, Giles, Henderson, Lawrence, Lincoln, Marion, Polk, and Shelby Counties in Tennessee to read as set forth below;

e. By adding, in alphabetical order, the entries for Brown, Ector, Hidalgo, Jones, La Salle, Maverick, Palc Pinto, Red River, Stephens, Val Verde, and Willacy Counties in Texas to read as set forth below;

f. By revising the entries for Dare, Mecklenburg, Montgomery, Pitt, and Sampson Counties in North Carolina to read as set forth below;

g. By revising the entry for York County in South Carolina to read as set forth below;

h. By revising the entries for Bradley, Fayette, Hamilton, McMinn, and Wayne Counties in Tennessee to read as set forth below; and

i. By revising the entries for Kimble and Midland Counties in Texas to read as set forth below.

§ 301.81–3 Quarantined areas.

* * * * *

(e) * * *

* * * * *

North Carolina

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Cabarrus County. That portion of the county bounded by a line beginning at the intersection of the Cabarrus/Mecklenburg County line and State Highway 73; then east along State Highway 73 to U.S. Highway 601 Business; then southeast along U.S. Highway 601 Business to State Highway 200; then southeast along State Highway 200 to the Cabarrus/Stanly County line; then south along the Cabarrus/Stanly County line to the Cabarrus/Union County line; then northwest along the Cabarrus/Union County line to the Cabarrus/Mecklenburg County line; then northwest along the Cabarrus/Mecklenburg County line to the point of beginning.

* * * * *

Dare County. The entire county, excluding the portion of the barrier islands south of Oregon Inlet.

* * * * *

Greene County. That portion of the county beginning at the intersection of the Greene/Lenoir County line and U.S. Highway 258; then north along U.S. Highway 258 to the Greene/Pitt County line; then south along the Greene/Pitt County line to the Greene/Lenoir County line; then southwest along the Greene/Lenoir County line to the point of beginning.

* * * * *

Mecklenburg County. That portion of the county beginning at the intersection of the Mecklenburg/Cabarrus County line and State Road 2459 (Eastfield Road); then south along State Road 2459 (Eastfield Road) to State Highway 115; then north along State Highway 115 to State Road 2117 (Hambright Road); then west along State Road 2117 (Hambright Road) to State Road 2074 (Beatties Road/Neck Road); then west along State Road 2074 (Beatties Road/Neck Road) to the Catawba River; then south along the shoreline of the Catawba River to the North Carolina/South Carolina State line; then east, north, and west along the North Carolina/South Carolina State line to the Mecklenburg/Union County line; then northeast along the Mecklenburg/Union County line to the Mecklenburg/Cabarrus County line; then northwest along the Mecklenburg/Cabarrus County line to the point of beginning.

Montgomery County. The entire county.

Moore County. That portion of the county bounded by a line beginning at the intersection of the Moore/Chatham County line and State Highway 22; then south along State Highway 22 to State Highway 24/27; then east along State Highway 24/27 to State Road 1805 (Union Church Road); then southeast along State Road 1805 (Union Church Road) to U.S. Highway 1; then south along U.S. Highway 1 to State Road 1001 (Lobelia Road); then southeast along State Road 1001 (Lobelia Road) to the Moore/Cumberland County line; then north along the Moore/Cumberland County line to the Moore/Harnett County line; then north, west, and east along the Moore/Harnett County line to the Moore/Lee County line; then northwest along the Moore/Lee County line to the Moore/Chatham County line; then west along the Moore/Chatham County line to the point of beginning.

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Pitt County. The entire county.

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Sampson County. That portion of the county bounded by a line beginning at the intersection of the Sampson/Cumberland County line and U.S. Highway 13; then northeast along U.S. Highway 13 to the Sampson/Wayne County line; then southeast along the Sampson/Wayne County line to the Sampson/Duplin County line; then south and east along the Sampson/Duplin County line to the Sampson/Pender County line; then southwest along the Sampson/Pender County line to the Sampson/Bladen County line; then northwest along the Sampson/Bladen County line to the Sampson/Cumberland County line; then northwest along the Sampson/Cumberland County line to the point of beginning.

* * * * *

Stanly County. That portion of the county bounded by a line beginning at the intersection of the Stanly/Cabarrus County line and State Highway 24/27; then east along State Highway 24/27 to the Stanly/Montgomery County line; then south along the Stanly/Montgomery County line to the Stanly/Anson County line; then west along the Stanly/Anson County line to the Stanly/Union County line; then west along the Stanly/Union County line to the Stanly/Cabarrus County line; then north along the Stanly/Cabarrus County line to the point of beginning.

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Wayne County. That portion of the county bounded by a line beginning at the intersection of the Wayne/Duplin County line and U.S. Highway 117; then north along U.S. Highway 117 to State Highway 111; then north along State Highway 111 to State Road 1003 (New Hope Road); then east along State Road 1003 (New Hope Road) to State Road 1714 (Parkstown Road); then east along State Road 1714 (Parkstown Road) to the Wayne/Lenoir County line; then south along the Wayne/Lenoir County line to the Wayne/Duplin County line; then west along the Wayne/Duplin County line to the point of beginning.

Oklahoma

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Choctaw County. The entire county.

Comanche County. The entire county.

Johnston County. The entire county.

* * * * *

South Carolina

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Cherokee County. That portion of the county bounded by a line beginning at the intersection of the Cherokee/Spartanburg County line and Interstate Highway 85; then north along Interstate Highway 85 to the South Carolina/North Carolina State line; then east along the South Carolina/North Carolina State line to the Cherokee/York County line; then south along the Cherokee/York County line to the Cherokee/Union County line; then northwest along the Cherokee/Union County line to the Cherokee/Spartanburg County line; then northwest along the Cherokee/Spartanburg County line to the point of beginning.

* * * * *

Oconee County. That portion of the county bounded by a line beginning at the intersection of the South Carolina/Georgia State line and U.S. Highway 123; then east along U.S. Highway 123 to U.S. Highway 76; then southeast along U.S. Highway 76 to State Highway 183; then northeast along State Highway 183 to Oconee County Road 107; then east along Oconee County Road 107 to State Highway 11; then north along State Highway 11 to State Highway 183; then east along State Highway 183 to the Oconee/Pickens County line; then south along the Oconee/Pickens County line to the Oconee/Anderson County line; then southwest along the Oconee/Anderson County line to the South Carolina/Georgia State line; then northwest along the South Carolina/Georgia State line to the point of beginning.

* * * * *

Pickens County. That portion of the county bounded by a line beginning at the intersection of the Pickens/Oconee County line and State Highway 183; then northeast along State Highway 183 to Pickens County Road 160; then southeast along Pickens County Road 160 to State Highway 133; then south along State Highway 133 to Pickens County Road 15; then southeast along Pickens County Road 15 to State Highway 93; then northeast along State Highway 93 to Pickens County Road 395; then east along Pickens County Road 395 to Pickens County Road 27; then south along Pickens County Road 27 to U.S. Highway 123; then northeast along U.S. Highway 123 to U.S. Highway 178; then south along U.S. Highway 178 to the Pickens/Anderson County line; then southwest along the Pickens/Anderson County line to the Pickens/Oconee County line; then north along the Pickens/Oconee County line to the point of beginning.

* * * * *

Spartanburg County. That portion of the county bounded by a line beginning at the intersection of the Spartanburg/Greenville County line and State Highway 357; then northeast along State Highway 357 to Spartanburg County Road 38; then east along Spartanburg County Road 38 to U.S. Highway 176; then southeast along U.S. Highway 176 to Spartanburg County Road 56; then east along Spartanburg County Road 56 to U.S. Highway 221; then northeast along U.S. Highway 221 to Spartanburg County Road 105; then southeast along Spartanburg County Road 105 to State Highway 110; then north along State Highway 110 to the Spartanburg/Cherokee County line; then south along the Spartanburg/Cherokee County line to the Spartanburg/Union County line; then southwest along the Spartanburg/Union County line to the Spartanburg/

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Laurens County line; then northwest along the Spartanburg/Laurens County line to the Spartanburg/Greenville County line; then northwest and north along the Spartanburg/Greenville County line to the point of beginning.

* * * * *

York County. The entire county.

Tennessee

Bradley County. The entire county.
Chester County. The entire county.
Decatur County. That portion of the county lying south of State Highway 100.
Fayette County. That portion of the county lying south of U.S. Highway 64. That portion of the county lying east of State Highway 76.
Franklin County. That portion of the county lying south of latitude 35°5′.
Giles County. That portion of the county lying south of U.S. Highway 64.
Hamilton County. The entire county.

* * * * *

Henderson County. That portion of the county lying south of State Highway 100.
Lawrence County. That portion of the county lying south of U.S. Highway 64.
Lincoln County. That portion of the county lying south of latitude 35°5′.
Marion County. That portion of the county lying south of latitude 35°10′.
McMinn County. That portion of the county lying south of latitude 35°20′.

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Polk County. The entire county.
Shelby County. That portion of the county lying south of latitude 35° 13′.
Wayne County. The entire county.

Texas

* * * * *

Brown County. The entire county.

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Ector County. The entire county.

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Hidalgo County. The entire county.

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Jones County. The entire county.

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Kimble County. The entire county.

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La Salle County. The entire county.

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Maverick County. The entire county.

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Midland County. The entire county.

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Palo Pinto County. The entire county.

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Red River County. The entire county.

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Stephens County. The entire county.

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Val Verde County. The entire county.

* * * * *

Willacy County. The entire county.

* * * * *

Done in Washington, DC, this 22nd day of January 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–2050 Filed 1–27–98; 8:45 am]
BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–ANE–44; Amendment 39–10291; AD 98–02–08]

RIN 2120–AA64

Airworthiness Directives; Certain Textron Lycoming 320 and 360 Series Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Textron Lycoming 320 and 360 series reciprocating engines, that requires visual inspections of the inside diameter (ID) of the crankshaft for corrosion pits, and if corrosion pits are found during this inspection, prior to further flight, performing a magnetic particle inspection (MPI) or fluorescent penetrant inspection (FPI) of the ID for cracks. In addition, this AD requires reporting findings of inspections to the FAA. Finally, terminating action to the inspections of this AD is the application of a preventive treatment coating on non-corroded crankshafts to prevent corrosion. This amendment is prompted by reports of cracks in crankshafts originating from corrosion pits in the ID. The actions specified by this AD are intended to prevent crankshaft failure, which can result in engine failure, propeller separation, forced landing, and possible damage to the aircraft.

DATES: Effective March 30, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 30, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Textron Lycoming, 652 Oliver St., Williamsport, PA 17701; telephone (717) 327–7080, fax (717) 327–7100. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rocco Viselli or Raymond Reinhardt , Aerospace Engineers, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth St., Valley Stream, NY 11581–1200; telephone (516) 256–7531 , fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: On October 18, 1993, the Civil Aviation Authority (CAA), which is the airworthiness authority of the United Kingdom (UK), received a report that a Piper PA–28–161 aircraft, with a Textron Lycoming O–320–D3G reciprocating engine installed, executed a forced landing due to an engine crankshaft failure which caused the propeller to separate from the aircraft. The cause of the crankshaft failure was determined to be due to a high cycle fatigue mechanism that had initiated from a number of corrosion pits in the crankshaft bore. After the cracks had progressed through a substantial proportion of the crankshaft section, the rate of advance had increased until the remaining unseparated portion had failed as a result of overload. The cracking occurred in high cycle fatigue and it had progressed over an extended period of service. At the time of the accident the engine had operated for 1,950 hours time in service (TIS) since overhaul and had accumulated 4,429 hours total time since new over a period of 16 years. In addition, the Federal Aviation Administration (FAA) has confirmed that four other failures in the United States and 10 in foreign countries were due to cracks initiating from corrosion pits in the crankshaft bore on certain Textron Lycoming 320 and 360 reciprocating engines with ratings of 160 horsepower or greater. Of the 10 failures in foreign countries, four resulted in the propeller separating from the aircraft inflight. Three of these four were from 1993 to 1996. The FAA utilized metallurgical failure analysis reports and other information to conclude that these failures were due to cracks originating from corrosion pits. This condition, if not corrected, could result in crankshaft failure, which can result in engine failure, propeller separation, forced landing, and possible damage to the aircraft.

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would

apply to Textron Lycoming 235 Series and 290 Series, and certain 320 and 360 series reciprocating engines, was published in the **Federal Register** on November 28, 1995 (60 FR 58580); the comment period was reopened in a reprinting of the original proposal on April 8, 1996 (61 FR 15430). That action proposed to require initial and repetitive inspections of the crankshaft inside diameter (ID) for corrosion and cracks, and replacement of cracked crankshafts with a serviceable part. In addition, the proposed AD would have permitted operation of engines with crankshafts that were found to have corrosion pits but were free of cracks provided repetitive inspections were performed until the next engine overhaul or 5 years after the initial inspection, whichever occurred first, at which time the proposed AD would have required those crankshafts with corrosion pits but no cracks to be replaced. Those proposed actions would be performed in accordance with Textron Lycoming Mandatory Service Bulletin (MSB) No. 505A, dated October 18, 1994.

The FAA had determined that fluorescent penetrant inspections (FPI) were warranted if corrosion pits were found. The FPI inspection program was developed due to reports from Textron Lycoming and other approved repair stations that most of the crankshafts that are pitted do not contain cracks. The FAA determined that visual inspections alone were not sufficient to detect a crack. The FPI inspection was based on crack propagation data developed by the FAA in conjunction with Textron Lycoming and with consideration of the technical base in the U.S. for performing nondestructive inspections. The FPI process was shown to be reliable for detection of cracks down to 0.050 inches in depth and 0.100 inches in length. The FPI inspection interval was based on the crack propagation data such that a crack could be reliably detected before the crankshaft failed. If an installed engine was found to have a pitted crankshaft, the FAA did not propose to allow the removal of metal to remove the corrosion pits due to possible contamination of the engine oil supply with metal filings and to ensure that the concentricity of the crankshaft would not be compromised.

Interested persons were afforded an opportunity to participate in the making of this amendment. Over 200 comments were received in response to the initial NPRM. In addition, the FAA met with the Aircraft Owners and Pilots Association (AOPA), Aeronautical Repair Station Association (ARSA), and Textron Lycoming to discuss the data that formed the basis for this action. A summary of that meeting is contained in the docket file.

A Supplemental Notice of Proposed Rulemaking (SNPRM), in response to the comments, was published in the **Federal Register** on January 3, 1997 (62 FR 343). That SNPRM fully addressed the comments received in response to the NPRM and the issues raised at the meeting with AOPA, ARSA, and the manufacturer. That action proposed to revise the proposal by limiting the applicability of the proposed AD to only certain Textron Lycoming 320 and 360 series reciprocating engines, excluding additional engines installed in helicopters; permitting any certificated mechanic holding an airframe or powerplant rating to perform the FPI; permitting continued use of a pitted crankshaft as long as repetitive FPI inspections are performed; and deleting the five year limit on the use of crankshafts that are pitted but not cracked. Also, the FAA received new cost information, and revised the economic analysis with respect to the initial inspection time, the time to remove and replace crankshafts, the cost of the replacement crankshafts, and the cost for repetitive FPI inspections. Finally, the revised proposal introduced a public reporting survey to provide the FAA with a broader database on the condition of crankshafts when observed during the initial inspections.

Twenty-one comments were received in response to the SNPRM. Due consideration has been given to the comments received.

Seven commenters state that there have not been enough crankshaft failures to justify the AD, that the proposed actions are too costly, and that the FAA should acquire more data before promulgating this rule. The FAA does not concur. As stated in the SNPRM, the FAA received data and studies that substantiated the need for an AD. These studies and data confirm the crankshaft fracture occurred at a stress concentration caused by a corrosion pit on the inside of the crankshaft. In addition, since the NPRM was issued, six additional crankshaft failures on 160 horsepower Textron Lycoming engines are being investigated. The FAA has, however, performed additional analysis to limit the population of engines impacted by this proposed AD and has deleted the five year limit on pitted crankshafts undergoing repetitive FPI inspections. These measures will decrease the cost of the AD to the public.

Two commenters state that the corrosion problem is caused by a design flaw; i.e., the crankshafts should be solid instead of hollow. The FAA does not concur. A coating has been incorporated on the inside bore of new crankshafts shipped in engines and as spares from Textron Lycoming since February 15, 1997. Textron Lycoming has issued Service Bulletin (SB) No. 530 dated December 1, 1997, which describes applying Urethabond 104 as a protective coating on the inside bore of the crankshafts. This coating should only be applied during overhaul due to the preparation requirement of degreasing the inside bore prior to the application of the coating.

One commenter states that a dye penetrant inspection should be performed in lieu of the FPI, as it is more accurate in detecting cracks. The FAA does not concur. Dye penetrant actually includes both visible dye and fluorescent dye penetrant techniques. Recent use of the term within the inspector community has limited the meaning to visible dye penetrant. The reliability of inspection data available to the FAA indicates that FPI has a better probability of detection than visible dye penetrant (color contrast) inspection. The preferred dye penetrant inspection method is the FPI method.

One commenter states that a magnetic particle inspection (Magnaflux) should be performed in lieu of the FPI, as it is more accurate in detecting cracks. The FAA concurs in part. The magnetic particle inspection (MPI) is the preferred method with the shaft removed from the engine at overhaul. An FPI should only be performed if the crankshaft is installed in the engine such as during an on-wing inspection. An MPI should not be performed with the crankshaft installed in the engine due to the difficulty in obtaining a suitable magnetic field. In addition, the residual field effects after the demagnetization process may have a harmful effect on the rotating components in the engine, including the bearings.

One commenter states that the AD should take into consideration the operation and service history for each engine in specifying corrective action. The FAA partially concurs. The FAA has taken into consideration service history and has limited the applicability of this AD to engines with 160 hp or greater. The survey to be completed for the initial inspection of the crankshaft may aid the FAA in determining other causal effects which may be used for future rulemaking.

Five commenters state that the AD should require application of a preventive treatment on the inside bore of the crankshaft to prevent future corrosion. The FAA concurs. Textron

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Lycoming has developed a preventive treatment known as Urethabond 104 and has issued MSB No. 530, dated December 1, 1997, which describes procedures for applying this coating. Crankshafts that are confirmed to have the letters "PID" stamped on the outside diameter of the propeller flange (PID stands for Painted Internal Diameter), do not require the inspection requirements of this AD. The application of the Urethabond 104 coating constitutes terminating action for the inspection requirements of this AD.

One commenter states that the FAA should impose a life limit of 4,000 hours time in service on all affected crankshafts. The FAA does not concur. To date, the FAA has no data from Textron Lycoming nor from any other source which would substantiate a 4,000 hour time in service life limit.

Two commenters state the FAA should distinguish in the AD between major and minor pitting action. The FAA does not concur. The FAA has no data to substantiate taking action for a minor versus a major pit other than what is presented in Textron Lycoming MSB 505B. The survey to be completed for the initial inspection of the crankshaft may assist the FAA in determining a relationship between the number of pits and the number of crankshafts cracked. This information may be used for future rulemaking.

One commenter states that pitted crankshafts should be replaced at overhaul. The FAA partially concurs. Textron Lycoming MSB 505B requires that the crankshaft be replaced at overhaul if it is pitted. However, from the data the FAA has received to date, many crankshafts are pitted but not cracked. In addition, the FAA has received no substantiation from Textron Lycoming or other sources to justify replacing a pitted crankshaft at overhaul as long as it has received an MPI and has been determined to have no cracks; and, when the engine is reinstalled in an aircraft, an FPI is performed every 100 hours TIS to ensure that the crankshaft is not cracked. The inspection survey will be utilized by the FAA to determine the number of engines under repetitive FPI inspections, the number of crankshafts that are found to be cracked, whether another failure mechanism is contributing to the crankshaft failures, and possible adjustment of the repetitive inspection interval. The information obtained by this survey may lead to future rulemaking.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The total number of engines impacted worldwide is 16,357 (11,000, 160 hp, 320 series; and 5,357, 360 Series). The FAA estimates that 60% of that number, 9,814 engines are installed on aircraft of U.S. registry, and are affected by this AD. The FAA estimates that it will take approximately 8 work hours per engine to accomplish the initial visual inspection, and that the average labor rate is $60 per work hour; therefore the estimated cost impact for the initial visual inspections would be $4,710,720. The FAA also estimates, based on information received from the UK CAA regarding the number of engines undergoing repetitive inspections in the UK due to the UK CAA AD on the same subject, that 12%, or 1,178, of the affected engines may contain crankshafts that require FPI. The FAA estimates that each FPI will take approximately 8 hours, and that operators with corroded crankshafts may perform one FPI per year. The estimated cost for the repetitive FPI, therefore, is $565,286 annually. Lastly, the FAA estimates that 5 crankshafts will require replacement per year due to cracks, and that it will take 38 work hours per engine to replace cracked crankshafts. Assuming that a replacement crankshaft will cost approximately $6,000 per engine, the estimated cost for replacement of 5 crankshafts will be $41,400 annually. Therefore, the total estimated cost impact of this AD is $5,317,406 for the first year, and $606,686 each year thereafter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–02–08 Textron Lycoming: Amendment 39–10291. Docket 94–ANE–44.

Applicability: Textron Lycoming 320 series limited to 160 horsepower, and 360 series, four cylinder reciprocating engines with fixed pitch propellers; except for the following installed in helicopters or with solid crankshafts: HO–360 series, HIO–360 series, LHIO–360 series, VO–360 series, and IVO–360 series, and Models O–320–B2C, O–360–J2A, AEIO–360–B4A, O–360–A4A, –A4G, –A4J, –A4K, –A4M, and –C4F. In addition, engines with crankshafts containing "PID" stamped on the outside diameter of the propeller flange are exempt from the inspection requirements of this AD. The affected engines are installed on but not limited to reciprocating engine powered aircraft manufactured by Cessna, Piper, Beech, American Aircraft Corporation, Grumman American Aviation, Mooney, Augustair Inc., Maule Aerospace Technology Corporation, Great Lakes Aircraft Co., and Commander Aircraft Co.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent crankshaft failure, which can result in engine failure, propeller separation, forced landing, and possible damage to the aircraft, accomplish the following:

(a) For engines shipped new from Textron Lycoming prior to and including December 31, 1984, and that have never been overhauled, or any engine remanufactured or overhauled and that has accumulated 1,000 hours or more time in service (TIS) since remanufacture or overhaul, visually inspect the inside diameter (ID) of the crankshaft for corrosion pits within the next 100 hours TIS after the effective date of this AD, or 6 months after the effective date of this AD, whichever occurs first, in accordance with Textron Lycoming Mandatory Service Bulletin (MSB) No. 505B, dated December 1, 1997.

(1) If corrosion pits are found during this inspection, prior to further flight, accomplish the following:

(i) If the crankshaft is installed in the engine such as during an on-wing inspection, perform a fluorescent penetrant inspection (FPI) in accordance with Textron Lycoming MSB No. 505B, dated December 1, 1997.

(ii) If the crankshaft is removed from the engine at overhaul, perform a magnetic particle inspection (MPI) in accordance with Textron Lycoming MSB No. 505B, dated December 1, 1997.

(2) Within 48 hours after these inspections, report the finding of the inspection in accordance with paragraph (e) of this AD.

(b) For engines shipped new from Textron Lycoming after December 31, 1984, and that have never been overhauled, or any engine remanufactured or overhauled and that has accumulated less than 1,000 hours TIS since remanufacture or overhaul, visually inspect the ID of the crankshaft for corrosion pits, at the earliest occurrence of any event specified in subparagraph (3) of this paragraph, and in accordance with Textron Lycoming MSB No. 505B, dated December 1, 1997.

(1) If corrosion pits are found during this inspection, prior to further flight perform an FPI or MPI in accordance with Textron Lycoming MSB No. 505B, dated December 1, 1997.

(2) Within 48 hours after these inspections, report the finding of the inspection in accordance with paragraph (e) of this AD.

(3) Visually inspect the ID of the crankshaft for corrosion pits at the earliest of the following:

(i) The next engine overhaul or disassembly.

(ii) Within 10 years of the original shipping date or 6 months from the effective date of this AD, whichever occurs later.

(iii) Within 1,000 hours TIS since remanufacture or overhaul, or 6 months from the effective date of this AD, whichever occurs later.

(c) Thereafter, if no corrosion pits or cracks are found on the ID of the crankshaft during the initial visual inspection, perform a visual inspection at intervals not to exceed 5 years since last inspection, or at the next engine overhaul or disassembly, whichever occurs first, in accordance with Textron Lycoming MSB No. 505B, dated December 1, 1997. If corrosion pits but no cracks are found on the ID of the crankshaft during the initial visual inspection and the ID does not exceed the maximum ID specified in Textron Lycoming MSB No. 505B, dated December 1, 1997, repeat the FPI at intervals not to exceed 100 hours TIS since last FPI or until a serviceable crankshaft is installed in the engine.

(d) Prior to further flight, remove from service and replace with a serviceable part any crankshaft found cracked during FPI or MPI performed in accordance with Textron Lycoming MSB No. 505B, dated December 1, 1997.

(e) After accomplishing the initial visual inspection and, if necessary, the FPI or MPI, required by this AD, complete Appendix 1 of this AD and submit to the Manager, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth St., Valley Stream, NY 11581; fax (516) 568–2716. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

Appendix 1

TEXTRON LYCOMING CRANKSHAFT INSPECTION SURVEY

AD Docket No. 94–ANE–44

Date of Inspection _____
Inspector's Information
Name _____
Address _____
State _____ Zip Code _____
Telephone No. _____
Facsimile No. _____
Engine Model Number _____
Engine Serial Number (S/N) _____
Date of Manufacture _____ (M/D/YR).
Total Time (TT) _____ hrs
Time Since Major Overhaul (SMOH) _____ hrs
Crankshaft Part Number (located on prop flange) _____ S/N _____
Aircraft Make and Model _____
Frequency of Flights _____ per month (average).
Duration _____ hrs per Flight
How was aircraft being utilized? _____ Training, _____ Personal, _____ Banner Towing, _____ Glider Towing, _____ Agricultural, Other (please explain) _____
Propeller Make and Model _____
Has the aircraft ever experienced a propeller strike during service? _____ Yes _____ No
Was propeller ever removed for servicing or overhaul? _____ Yes _____ No
If yes, describe reason for removal in detail? _____
What was the condition of the crankshaft internal bore?
Corroded ___ Yes ___ No. If corroded, how many pits? ___ 1 to 5, ___ 6 to 10, ___ More than 10 _____
Was a crack found? ___ Yes ___ No. If crack was found, complete the following:
_____ Distance from crankshaft end (Inches) _____ Crack Length (Inches)
Comments:

(f) The application of Urethabond 104 to the inner bore of the crankshaft and confirmed by stamping of the letters "PID" on the outside diameter of the propeller flange in accordance with Textron Lycoming MSB No. 530, dated December 1, 1997, constitutes terminating action to the inspection requirements of this AD.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the New York Aircraft Certification Office.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(i) The actions required by this AD shall be done in accordance with the following Textron Lycoming MSB:

Document No.	Pages	Date
505B	1–5	Dec. 1, 1997.
Total pages	5	
530	1–2	Dec. 1, 1997.
Total pages	7	

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Textron Lycoming, 652 Oliver St., Williamsport, PA 17701; telephone (717) 327–7080, fax (717) 327–7100. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(j) This amendment becomes effective on March 30, 1998.

Issued in Burlington, Massachusetts, on January 9, 1998.

James C. Jones,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–1705 Filed 1–27–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–ANE–05; Amendment 39–10290; AD 89–23–06 R1]

RIN 2120–AA64

Airworthiness Directives; CFM International CFM56–2, –3, –3B, –3C, and –5 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to CFM International (CFMI) CFM56–2, –3, –3B, –3C, and –5 series turbofan engines, that currently requires repetitive magnetic chip detector (MCD) inspections and removal from service of certain No. 3 bearings. This amendment removes the requirement for MCD inspections for certain No. 3 bearings if the bearing has 6,000 or more hours time in service since new, extends the removal from service date for certain No. 3 bearings, changes the inspection interval for certain No. 3 bearings, deletes a specific No. 3 bearing part number, and replaces reference to specific maintenance manuals with service bulletins. Other requirements of the current AD remain unchanged and are carried over into this revised AD. This amendment is prompted by additional data that demonstrates a reduced bearing failure rate after a period of time in service; therefore, an acceptable level of safety can be maintained with a relaxation of some of the current AD requirements. The actions specified by this AD are intended to prevent a No. 3 bearing failure, and a subsequent inflight engine shutdown.

DATES: Effective January 28, 1998. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 28, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2981, fax (513) 552–2816. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Glorianne Messemer, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7132, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by revising AD 89–23–06, Amendment 39–6370 (54 FR 43581, October 26, 1989), which is applicable to CFM International (CFMI) CFM56–2, –3, –3B, –3C, and –5 series turbofan engines, was published in the **Federal Register** on September 19, 1997 (62 FR 49177). That action proposed to require removing the requirement for magnetic chip detector (MCD) inspections for certain No. 3 bearings if the bearing has 6,000 or more hours time in service since new, extending the removal from service date for certain No. 3 bearings, changing the inspection interval for certain No. 3 bearings, deleting a specific No. 3 bearing part number, and replacing reference to specific maintenance manuals with service bulletins. Other requirements of the current AD remain unchanged and are carried over into this revised AD.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Two comments were received from air carriers, both of which support the rule as proposed. No comments were received on the FAA's determination of the cost to the public.

The FAA has revised paragraphs (a)(2) and (b)(2) of this AD in order to more accurately define an "affected No. 3 bearing." In addition, the FAA has revised paragraph (h) of this AD in order to more accurately define a "shop visit". Lastly, the FAA has added paragraph (g) in the AD to clarify what constitutes terminating action to the inspections required by the AD.

The FAA has also revised the calendar end-date in paragraphs (a)(2) and (b)(2) of this AD to January 31, 1998, based upon the anticipated effective date of this AD.

All changes introduced in this revised AD are relaxatory in nature except for the new inspection interval in paragraph (d). The manufacturer has advised the FAA that there is only one engine, not installed on a U.S. registered aircraft, that is affected by this new inspection interval. Therefore, no additional cost to U.S. operators is expected to result from this relaxatory action. In addition, since no U.S. operators will be affected by the new inspection interval a situation exists that allows the immediate adoption of this regulation. Therefore, it is found that good cause exists for making this amendment effective in less than 30 days following publication.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–6370 (54 FR 43581, October 26, 1989) and by adding a new airworthiness directive, Amendment 39–10290, to read as follows:

89–23–06 R1 CFM International: Amendment 39–10290. Docket 89–ANE–05. Revises AD 89–23–06, Amendment 39–6370.

Applicability: CFM International (CFMI) CFM56–2, –3, –3B, –3C, and –5 series turbofan engines, installed on but not limited to Airbus A319 and A320 series, McDonnell Douglas DC–8 series, and Boeing 737 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a No. 3 bearing failure and subsequent inflight engine shutdown, accomplish the following:

(a) For CFM56–3, –3B, and –3C series engines equipped with No. 3 bearings, Part Number (P/N) 9732M10P12 (Serial Number (S/N) series FAFDxxxx or FAFExxxx); 9732M10P18; or 1362M76P02 accomplish the following:

(1) Inspect the forward sump magnetic chip detector (MCD) in accordance with CFM56–3/–3B/–3C Service Bulletin (SB) No. 72–530, Revision 3, dated November 17, 1995, within the next 50 hours time in service (TIS) after the effective date of this AD. Thereafter, inspect the forward sump MCD at intervals not to exceed 50 hours TIS since the last inspection (SLI) in accordance with CFM56–3/–3B/–3C SB No. 72–530, Revision 3, dated November 17, 1995, until accomplishment of paragraph (a)(2) below, or, for bearing P/N 9732M10P12, until the TIS since new is 6,000 hours or more. Remove from service, prior to further flight, engines which exhibit MCD metallic debris defined as not serviceable in accordance with CFM56–3/–3B/–3C SB No. 72–530, Revision 3, dated November 17, 1995.

(2) Remove from service No. 3 bearings, P/N 9732M10P18 and 1362M76P02, at the next shop visit, or before January 31, 1998, whichever occurs first. Removal of No. 3 bearings in accordance with this paragraph constitutes terminating action to the inspection requirements of paragraph (a)(1) of this AD.

(b) For CFM56–2 series engines equipped with No. 3 bearings, P/N 9732M10P12 (S/N series FAFDxxxx or FAFExxxx) or 9732M10P18, accomplish the following:

(1) Inspect the forward sump MCD in accordance with CFM56–2 SB No. 72–620, Revision 4, dated November 17, 1995, within the next 50 hours TIS after the effective date of this AD. Thereafter, inspect the forward sump MCD at intervals not to exceed 50 hours TIS SLI in accordance with CFM56–2 SB No. 72–620, Revision 4, dated November 17, 1995, until accomplishment of paragraph (b)(2) below, or, for bearing P/N 9732M10P12, until the TIS since new is 6,000 hours or more. Remove from service, prior to further flight, engines which exhibit MCD metallic debris defined as not serviceable in accordance with CFM56–2 SB No. 72–620, Revision 4, dated November 17, 1995.

(2) Remove from service No. 3 bearings, P/N 9732M10P18, at the next engine shop visit, or before January 31, 1998, whichever occurs first. Removal of No. 3 bearings in accordance with this paragraph constitutes terminating action to the inspection requirements of paragraph (b)(1) of this AD.

(c) For CFM56–3, –3B, and –3C series engines equipped with No. 3 bearings, P/N 9732M10P10; 9732M10P17; or 9732M10P12 (S/N series other than FAFDxxxx or FAFExxxx), inspect the forward sump MCD in accordance with CFM56–3/–3B/–3C SB No. 72–530, Revision 3, dated November 17, 1995, within the next 75 hours TIS after the effective date of this AD. Thereafter, inspect the forward sump MCD at intervals not to exceed 75 hours TIS SLI in accordance with CFM56–3/–3B/–3C SB No. 72–530, Revision 3, dated November 17, 1995, until the bearing TIS since new is 6,000 hours or more. Remove from service, prior to further flight, engines which exhibit MCD metallic debris defined as not serviceable in accordance with CFM56–3/–3B/–3C SB No. 72–530, Revision 3, dated November 17, 1995.

(d) For CFM56–2 series engines equipped with No. 3 bearings, P/N 9732M10P10; 9732M10P17; or 9732M10P12 (S/N series other than FAFDxxxx or FAFExxxx), inspect the forward sump MCD in accordance with CFM56–2 SB No. 72–620, Revision 4, dated November 17, 1995, within the next 75 hours TIS after the effective date of this AD. Thereafter, inspect the forward sump MCD at intervals not to exceed 75 hours TIS SLI in accordance with CFM56–2 SB No. 72–620, Revision 4, dated November 17, 1995, until the bearing TIS since new is 6,000 hours or more. Remove from service, prior to further flight, engines which exhibit MCD metallic debris defined as not serviceable in accordance with CFM56–2 SB No. 72–620, Revision 4, dated November 17, 1995.

(e) For CFM56–5 series engines equipped with No. 3 bearing, P/N 9542M60P01, inspect the forward sump MCD in accordance with the Accomplishment Instructions of CFM56–5 Alert Service Bulletin (ASB) No. 72–A118, Revision 1, dated August 1, 1997, within the next 50 hours TIS after the effective date of this AD. Thereafter, inspect the forward sump MCD at intervals not to exceed 50 hours TIS SLI in accordance with the Accomplishment Instructions of CFM56–5 ASB No. 72–A118, Revision 1, dated August 1, 1997. Remove from service, prior to further flight, engines which exhibit MCD metallic debris defined as not serviceable in accordance with CFM56–5 ASB No. 72–A118, Revision 1, dated August 1, 1997.

(f) Bearing inspections accomplished in accordance with AD 89–17–04 or AD 89–23–06 satisfy the corresponding requirements of this AD.

(g) No. 3 bearing, P/N 9732M10P12 (S/N series FAFDxxxx or FAFExxxx), identified in paragraphs (a) or (b); or No. 3 bearing, P/N 9732M10P10, 9732M10P17, or 9732M10P12 (S/N series other than FAFDxxxx or FAFExxxx), identified in paragraphs (c) or (d); with a TIS since new of 6,000 hours or more constitutes terminating action to the applicable inspection requirements of paragraphs (a)(1), (b)(1), (c), or (d) of this AD.

(h) For the purpose of this AD, a shop visit is defined as the induction of an engine into the shop for maintenance resulting in exposure of the inlet gearbox.

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(j) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(k) The actions required by this AD shall be done in accordance with the following CFMI SBs:

Document No.	Pages	Revision	Date
(CFM56–2) SB 72–620	1–3	4	November 17, 1995.
	4–9	3	November 22, 1993.
	10	4	November 17, 1995.
Total pages	10		
(CFM56–3/3B/3C) SB 72–530	1–3	3	November 17, 1995.
	4–11	2	November 22, 1993.
	12	3	November 17, 1995.
Total pages	12		
(CFM56–5) SB 72–A118	1–7	1	August 1, 1997.

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Document No.	Pages	Revision	Date
Total pages	7		

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2981, fax (513) 552–2816. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment becomes effective on January 28, 1998.

Issued in Burlington, Massachusetts, on January 15, 1998.

James C. Jones,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–1704 Filed 1–27–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–35–AD; Amendment 39–10289; AD 98–02–07]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc. Model HC–E4A–3(A,I) Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Hartzell Propeller Inc. Model HC–E4A–3(A,I) propellers. This action requires replacing propeller blade counterweight clamp bolts with improved bolts. This amendment is prompted by reports of a manufacturing defect in the counterweight clamp bolts that resulted in the blade counterweight separating and causing damage to the propeller. The actions specified in this AD are intended to prevent counterweight clamp bolt failure, which can result in propeller blade counterweight separation and damage to the propeller and aircraft.

DATES: Effective February 12, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 12, 1998.

Comments for inclusion in the Rules Docket must be received on or before March 30, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–35–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356–2634, ATTN: Product Support; telephone (937) 778–4200, fax (937) 778–4321. This information may be examined at the FAA, New England Region, Office of the Regional Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Ave., Des Plaines, IL 60018; telephone (847) 294–7031, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received a report that a Hartzell Propeller Inc. Model HC–E4A–3(A,I) propeller blade counterweight clamp bolt broke, the propeller blade counterweight separated in flight and damaged the adjacent propeller blade (about 12 inches from the hub). The investigation revealed that the propeller blade counterweight clamp bolt failure was caused by a manufacturing defect known as liquid metal embrittlement. The manufacturer has informed the FAA that all propellers operated on aircraft of U.S. registry have accomplished the required actions, and, therefore, are no longer affected by this unsafe condition. This AD, then, is necessary to require accomplishment of the required actions for propellers installed on aircraft currently of foreign registry that may some day be imported into the U.S. Accordingly, the FAA has determined that notice and prior opportunity for comment are unnecessary and good cause exists for making this amendment effective in less than 30 days. This condition, if not corrected, could result in counterweight clamp bolt failure, which can result in propeller blade counterweight separation and damage to the propeller and aircraft.

The FAA has reviewed and approved the technical contents of Hartzell Propeller Inc. Service Bulletin (ASB) No. HC–ASB–61–219, Revision 1, dated July 2, 1996, that describes procedures for replacing propeller blade counterweight clamp bolts with improved bolts.

Since an unsafe condition has been identified that is likely to exist or develop on other propellers of the same type design, this AD is being issued to prevent counterweight clamp bolt failure. This AD requires replacing propeller blade counterweight clamp bolts with improved bolts. The actions are required to be accomplished in accordance with the SB described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–ANE–35–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–02–07 Hartzell Propeller Inc.: Amendment 39–10289. Docket 97–ANE–35–AD.

Applicability: Hartzell Propeller Inc. Model HC–E4A–3(A,I) propellers with serial numbers HJ1 to HJ654, installed on but not limited to Raytheon Beech 1900D series aircraft.

Note 1: This airworthiness directive (AD) applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent counterweight clamp bolt failure, which can result in propeller blade counterweight separation and damage to the propeller and aircraft, accomplish the following:

(a) Within 45 days or 400 hours time in service (TIS) after the effective date of the AD, whichever occurs first, identify and replace defective propeller blade counterweight clamp bolts with improved bolts in accordance with Hartzell Propeller Inc. Service Bulletin (ASB) No. HCA–SB–61–219, Revision 1, dated July 2, 1996.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(d) The actions required by this AD shall be done in accordance with the following Hartzell Propeller Inc. ASB:

Document No.	Pages	Revision	Date
HC–ASB–61–219.	1–8	1	July 2, 1996.
Total pages:	8.		

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356–2634, ATTN: Product Support; telephone (937) 778–4200, fax (937) 778–4321. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 12, 1998.

Issued in Burlington, Massachusetts, on January 9, 1998.

James C. Jones,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–1742 Filed 1–27–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–189–AD; Amendment 39–10293; AD 98–03–01]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere Falcon 200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Dassault Model Mystere Falcon 200 series airplanes, that requires reducing the life limit of the polyurethane foam used in the fuselage fuel tanks. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to ensure replacement of the polyurethane foam in the fuselage fuel tanks when it has reached its maximum life limit; polyurethane foam that is not replaced in a timely manner could result in fuel contamination or

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increased risk of explosion in the fuselage fuel tank.

EFFECTIVE DATE: March 4, 1998.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Dassault Model Mystere Falcon 200 series airplanes was published in the **Federal Register** on November 26, 1997 (62 FR 63041). That action proposed to require reducing the life limit of the polyurethane foam used in the fuselage fuel tanks.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 20 Model Mystere Falcon 200 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $4,000 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $89,600, or $4,480 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–03–01 Dassault Aviation: Amendment 39–10293 Docket 97–NM–189–AD.

Applicability: All Model Mystere Falcon 200 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel contamination or increased risk of explosion in the fuselage fuel tank as a result of degradation of the polyurethane foam used in the fuselage fuel tanks, accomplish the following:

(a) Replace the polyurethane foam in the fuselage fuel tanks with new foam, in accordance with procedures specified in Chapter 5 of the Dassault Falcon 200 Maintenance Manual, at the later of the times specified in paragraph (a)(1) or (a)(2) of this AD. Thereafter, replace the foam with new foam at intervals not to exceed 8 years.

(1) Within 8 years after the last replacement of the foam; or

(2) Within 7 months or 350 flight hours after the effective date of this AD, whichever occurs first.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive (CN) 96–078–021(B), dated April 10, 1996.

(d) This amendment becomes effective on March 4, 1998.

Issued in Renton, Washington, on January 21, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–1971 Filed 1–27–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95-AWA–1]

RIN 2120–AA66

Modification of the Houston Class B Airspace Area; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Houston, TX, Class B airspace area. Specifically, this action reconfigures two existing subarea boundaries and establishes an additional subarea within the Houston Class B airspace area. The FAA is taking this action to enhance safety, reduce the potential for midair collision, and to improve management of air traffic operations into, out of, and through the Houston Class B airspace area while accommodating the concerns of airspace users. Additionally, the graphic that accompanied the notice proposing this action inadvertently depicted several incorrect mileage points. This action corrects those errors.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Sheri A. Edgett Baron, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591: telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1991, the FAA published the Airspace Reclassification Final Rule (56 FR 65655). This rule discontinued the use of the term "Terminal Control Area" and replaced it with the designation "Class B airspace area." This change in terminology is reflected in this final rule.

The Class B airspace area program was developed to reduce the potential for midair collision in the congested airspace surrounding airports with high density air traffic by providing an area wherein all aircraft are subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increases the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier or military aircraft, or another GA aircraft. The basic causal factor common to these conflicts was the mix of aircraft operating under visual flight rules (VFR) and aircraft operating under instrument flight rules (IFR). Class B airspace areas provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of Class B airspace areas afford the greatest protection for the greatest number of people by giving air traffic control (ATC) increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

On May 21, 1970, the FAA published the Designation of Federal Airways, Controlled Airspace, and Reporting Points Final Rule (35 FR 7782). This rule provided for the establishment of Class B airspace areas. To date, the FAA has established a total of 29 Class B airspace areas.

The standard configuration of a Class B airspace area contains three concentric circles centered on the primary airport extending to 10, 20, and 30 nautical miles (NM), respectively. The standard vertical limit of a Class B airspace area normally should not exceed 10,000 feet mean sea level (MSL), with the floor established at the surface in the inner area and at levels appropriate for the containment of operations in the outer areas. Variations of these criteria may be utilized contingent on the terrain, adjacent regulatory airspace, and factors unique to the terminal area.

The coordinates in this docket are based on North American Datum 83. Class B airspace areas are published in paragraph 3000 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997 which is incorporated by reference in 14 CFR 71.1. The Class B airspace area listed in this document will be published subsequently in the Order.

Related Rulemaking Actions

On June 21, 1988, the FAA published the Transponder with Automatic Altitude Reporting Capability Requirement Final Rule (53 FR 23356). This rule requires all aircraft to have an altitude encoding transponder when operating within 30 NM of any designated Class B airspace primary airport from the surface up to 10,000 feet MSL. This rule excluded those aircraft that were not originally certificated with an engine driven electrical system, (or those that have not subsequently been certified with such a system), balloons, or gliders.

On October 14, 1988, the FAA published the Terminal Control Area (TCA) Classification and TCA Pilot and Navigation Equipment Requirements Final Rule (53 FR 40318). This rule, in part, requires the pilot-in-command of a civil aircraft operating within a Class B airspace area to hold at least a private pilot certificate, except for a student pilot who has received certain documented training.

Public Input

In June 1992, an ad hoc committee was formed, representing airspace users, to analyze the Houston Class B airspace area and develop recommendations for modifying the existing airspace design. The ad hoc committee met on several occasions and submitted written recommendations for modifying the Houston Class B airspace area.

As announced in the **Federal Register** on January 28, 1994 (59 FR 4134), a pre-NPRM informal airspace meeting was held on April 19, 1994, in Pasadena, TX, to provide local airspace users an opportunity to present input on the design of the planned modifications of the Houston Class B airspace area.

On October 30, 1997, the FAA published an NPRM (62 FR 58694) that proposed to modify the Houston, TX, Class B airspace area. Interested parties were invited to participate in this rulemaking effort by submitting comments on the proposal to the FAA. In response to this NPRM, the FAA received one comment from the Chapter 712 Experimental Aircraft Association. This comment supported the proposal.

The Rule

This amendment to 14 CFR part 71 (part 71) modifies the Houston Class B airspace area. Specifically, this action reconfigures subarea A, expands subarea D, and establishes an additional subarea E southwest of the William P. Hobby Airport within the existing Houston Class B airspace area. The FAA is taking this action to enhance safety, reduce the potential for midair collision, and to improve management of air traffic operations into, out of, and through the Houston Class B airspace area while accommodating the concerns of airspace users.

This action realigns a portion of the eastern boundary of subarea D where it intersects I–10 in the vicinity of Bayton Airport and R.W.J. Airpark, by extending the boundary along the Humble VORTAC 30 NM arc until it intercepts the 20 NM arc of the Hobby VOR/DME. The 4,000 feet MSL floor of subarea D allows nonparticipating aircraft ingress and egress out of the Bayton Airport and R.W.J. Airpark.

Additionally, this action reconfigures a portion of subarea A around William P. Hobby Airport by reconfiguring its eastern boundary. This modification provides aircraft operators utilizing Ellington Airport approximately 1 ½-miles of additional airspace for aircraft operations west of Ellington Airport.

This action also creates a new subarea E in the vicinity of Southwest Airport with a floor of 2,500 feet MSL. This modification provides additional airspace for nonparticipating aircraft operating below the floor of the Houston Class B airspace area.

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The graphic included in the NPRM inadvertently depicted several incorrect mileage points. The 15 and 20-mile arcs were depicted with incorrect mileage, and the 8-mile arc surrounding the George Bush Intercontinental Airport did not depict mileage. Except for mileage corrections made to the graphic, this amendment is the same as that proposed in the notice.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this final rule: (1) Will generate benefits that justify its costs and is not "a significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will not constitute a barrier to international trade; and (5) will not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply. These analyses are summarized here in the preamble and in the full Regulatory Evaluation in the docket.

The regulatory evaluation analyzes the potential costs and benefits of the final rule to amend part 71. This final rule reconfigures several subareas and establishes a subarea within the Houston, TX, Class B airspace area. Specifically, this final rule reconfigures subarea A, expands subarea D, and establishes a subarea E with a floor of 2,500 feet MSL.

The FAA has determined that this rule will generate benefits for system users and the agency by enhancing aviation safety and operational efficiency. Operational efficiency will increase through the enhanced capability of Houston Air Traffic Control Tower (ATCT) to provide sequencing and separation of arrivals and departures for IFR and VFR operations in areas of higher complexity by releasing airspace in that portion of subarea A where there is less traffic.

The FAA has determined that aircraft operators will not incur any additional navigational or equipment costs as a result of this rule. The modification of subarea D slightly expands the overall size of the Class B airspace area, and will not impose any additional avionics equipment or circumnavigation cost onto operators. The reconfiguration of subarea A will move the lateral boundary inward (west), subsequently reducing the overall size of the subarea. The FAA contends that the reduction of the subarea lateral boundary may reduce circumnavigation cost for GA operations.

The final rule will not impose any additional administrative costs onto the FAA for personnel, facilities, or equipment. This action provides additional ATC participation in subarea D with higher operations complexity, but will not expand the Class B airspace area lateral boundaries beyond the 30 NM arc.

In view of the potential benefits of enhanced aviation safety and increased operational efficiency and the negligible cost of compliance, the FAA has determined that this rule will be cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires regulatory agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The FAA certifies that the final rule will not have an adverse effect on a substantial number of small entities. This assessment is based on the premise that potentially impacted operators regularly fly into airports where radar approach control services have already been established. In addition, increasing the overall size of the Class B airspace area by such a small area will not impose any additional cost on circumnavigating operators for time and fuel. The FAA contends that the final rule will not result in a significant economic impact on a substantial number of small entities, in view of the negligible cost of compliance. Therefore, a regulatory flexibility analysis is not required under the terms of the RFA.

International Trade Impact Assessment

The final rule will not constitute a barrier to international trade to either the export of American goods and services to foreign countries, or to the import of foreign goods and services into the United States. This modification will not impose costs on aircraft operators or aircraft manufacturers in the U.S. or foreign countries. The modifications of the Houston Class B airspace area will only affect U.S. terminal airspace operating procedures in the vicinity of Houston. The modification will not have international trade ramifications because it is a domestic airspace matter that will not impose additional costs or requirements on affected entities.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more adjusted annually for inflation in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local and tribal governments, in the aggregate, of $100 million, adjusted annually for inflation, in any one year. Section 203 of the Act, 203 U.S.C 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 3000—Subpart B—Class B Airspace

* * * * *

ASW TX B Houston, TX [Revised]

George Bush Intercontinental Airport (IAH) (Primary Airport)
(lat. 29°58′50″ N., long. 95°20′23″ W.)
William P. Hobby Airport (Secondary Airport)
(lat. 29°38′44″ N., long. 95°16′44″ W.)
Ellington Field (lat. 29°38′27″ N., long. 95°09′32″ W.)
Humble VORTAC (IAH) (lat. 29°57′25″ N., long. 95°20′45″ W.)
Hobby VOR/DME (HUB) (lat. 29°39′01″ N., long. 95°16′45″ W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL bounded by a line beginning at the intersection of the Humble VORTAC 8-mile arc and the 090° radial; thence clockwise along the Humble VORTAC 8-mile arc to the Humble VORTAC 069° radial; thence east along the Humble VORTAC 069° radial to the 10-mile arc of Humble VORTAC; thence clockwise along the 10-mile arc to the Humble VORTAC 090° radial; thence west to the point of beginning; and that airspace bounded by a line beginning at lat. 29°45′37″ N., long. 95°21′58″ W.; to lat. 29°45′46″ N., long. 95°11′47″ W.; thence clockwise along the Hobby VOR/DME 8-mile DME arc to intercept the Hobby VOR/DME 056° radial; thence southwest along the Hobby VOR/DME 056° radial to the 5.1 NM fix, thence direct to the Hobby VOR/DME 131°/005.8 NM fix; thence southeast along the Hobby VOR/DME 131° radial to intercept the Hobby VOR/DME 7 NM arc; thence clockwise on the 7 NM arc to the Hobby VOR/DME 156° radial; thence north along the Hobby VOR/DME 156° radial to the Hobby VOR/DME 6-mile fix; thence clockwise along the Hobby VOR/DME 6 NM arc to the Hobby VOR/DME 211° radial; thence south along the Hobby VOR/DME 211° radial to the Hobby VOR/DME 8-mile arc clockwise to the point of beginning.

Area B. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of State Highway 59 (SH 59) and the Hobby VOR/DME 15-mile arc; thence counterclockwise along the Hobby VOR/DME 15-mile arc to the intersection of the Hobby VOR/DME 15-mile arc and State Road 6 (SR 6); thence southeast along SR 6 to the intersection of SR 6 and Farm Road 521 (FR 521); thence south along FR 521 to the intersection of FR 521 and the Hobby VOR/DME 15-mile arc; thence counterclockwise along the Hobby VOR/DME 15-mile arc to the Hobby VOR/DME 211° radial; thence northeast along the Hobby VOR/DME 211° radial to the Hobby VOR/DME 10-mile arc; thence east along the Hobby VOR/DME 10-mile arc to the Hobby VOR/DME 156° radial; thence southeast along the Hobby VOR/DME 156°radial to the Hobby VOR/DME 15-mile arc; thence counterclockwise on the Hobby VOR/DME 15-mile arc to the intersection of the Hobby VOR/DME 15-mile arc and the Humble VORTAC 15-mile arc; thence counterclockwise along the Humble VORTAC 15-mile arc to the intersection of the Hobby VOR/DME 15-mile arc and Westheimer Road lat. 29°44′07″ N., long. 95°28′47″ W.; thence southwest to and along SH 59 to the point of beginning, excluding Area A.

Area C. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of SH 59 and the Humble VORTAC 20-mile DME arc; thence clockwise along the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and Interstate 10 (I–10), west on I–10 to the Hobby VOR/DME 15-mile arc; thence counterclockwise along the Hobby VOR/DME 15-mile arc to the Humble VORTAC 15-mile DME arc; thence counterclockwise along the Humble VORTAC 15-mile DME arc to the intersection of the Humble VORTAC 15 NM DME arc and Westheimer Road; thence southwest to and along SH 59 to the point of beginning; and that airspace beginning at the intersection of the Hobby VOR/DME 15-mile arc and 156° radial; thence north along the Hobby VOR/DME 156° radial to the Hobby VOR/DME 10-mile arc clockwise along the Hobby VOR/DME 10-mile arc to the Hobby VOR/DME 211° radial; thence south along the Hobby VOR/DME 211° radial to intersect the 15-mile arc to the point of beginning.

Area D. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of SH 59 and the Humble VORTAC 30-mile DME arc; thence clockwise along the Humble VORTAC 30-mile DME arc to the intersection of the Humble VORTAC 30 NM arc and the Hobby VOR/DME 20 NM arc; thence clockwise along the Hobby VOR/DME 20-mile arc to SH 59; thence southwest on SH 59 to the point of beginning, excluding Areas B, C, and E.

Area E. That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of the Hobby VOR/DME 15 NM arc and State Road 6 (SR 6); thence southeast along SR 6 to the intersection of SR 6 and Farm Road 521 (FR 521); thence south along FR 521 to the intersection of FR 521 and the Hobby VOR/DME 15 NM arc; thence counterclockwise along the Hobby VOR/DME 15 NM arc to the point of the beginning.

* * * * *

Issued in Washington, DC, on January 14, 1998.

John S. Walker,

Program Director for Air Traffic Airspace Management.

Note: This Appendix will not appear in the Code of Federal Regulations.

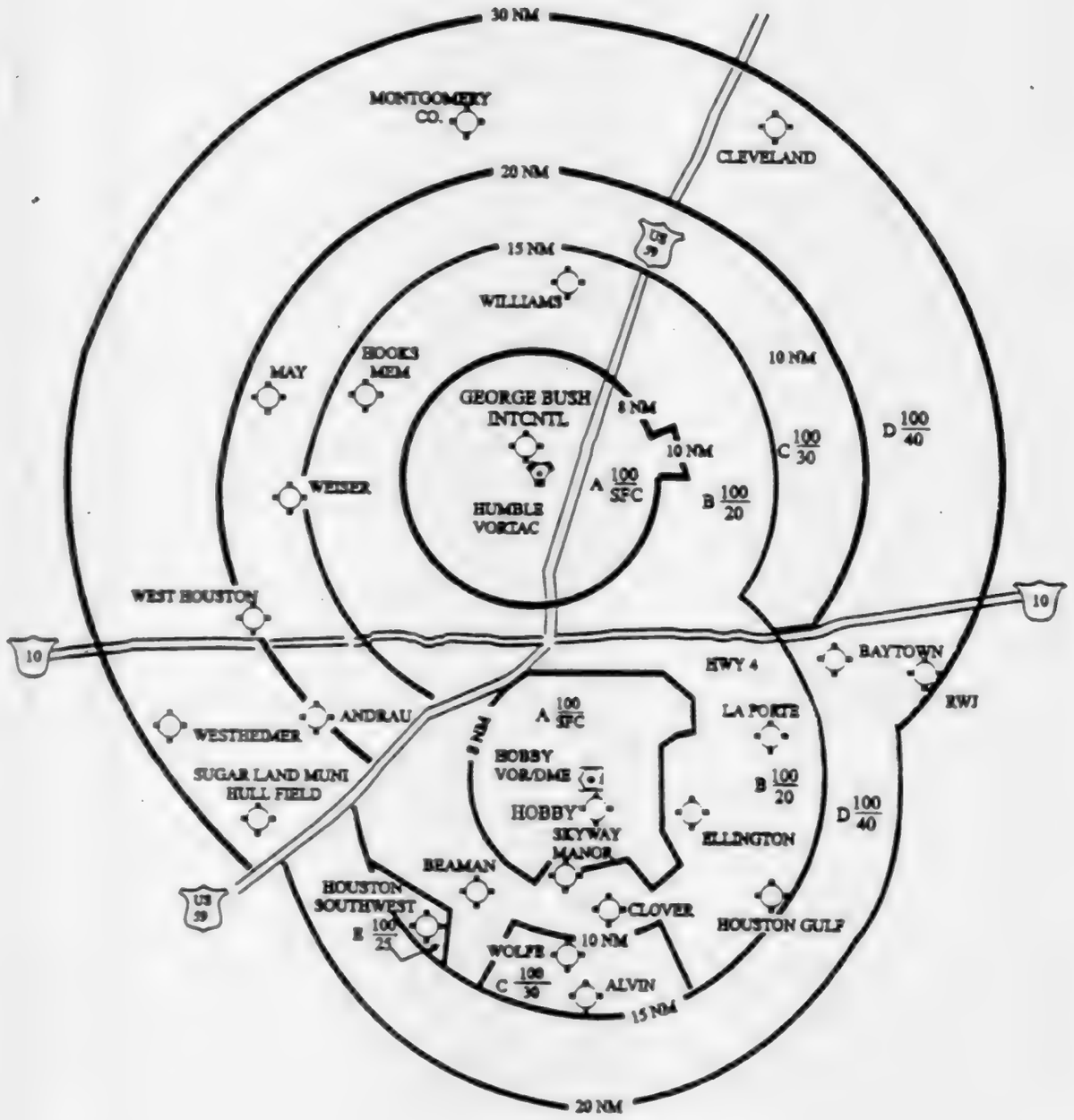
Appendix—Houston, TX, Class B Airspace Area.

BILLING CODE 4910–13–P

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HOUSTON, TEXAS
CLASS B AIRSPACE AREA

(Not to be used for navigation)



Prepared by the
FEDERAL AVIATION ADMINISTRATION
Air Traffic Publications
ATA-10

[FR Doc. 98–1624 Filed 1–27–98; 8:45 am]
BILLING CODE 4910–13–C

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 18, and 114

[T.D. 98–10]

RIN 1515–AC03

Bilateral Carnet Agreement Between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations which apply to carnets to reflect a bilateral agreement between the Taipei Economic and Cultural Representative in the United States (TECRO) and the American Institute in Taiwan (AIT). This agreement established a TECRO/AIT Carnet for the temporary admission of goods, commercial samples and professional equipment.

EFFECTIVE DATE: February 27, 1998.

FOR FURTHER INFORMATION CONTACT: Sharon Goodson or Dennis Sequeira, International Organizations and Agreements Division, U.S. Customs, 202–927–0971.

SUPPLEMENTARY INFORMATION:

Background

A carnet is an international customs document, backed by an internationally valid guarantee, which may be used for the entry of articles under various customs procedures such as temporary importation and transportation in bond. The carnet is used in place of the usual national customs documentation and guarantees the payment of duties (including taxes and associated penalties) which may become due if the carnet requirements are not satisfied. The existence of a single document rather than numerous national documents facilitates international commerce.

The carnet guarantee is based on chains of national guaranteeing associations established in the countries accepting the carnets. The guaranteeing association is jointly and severally liable with the carnet holder for payment of the sums due in the event of noncompliance with the conditions or the procedures for which the carnet is used.

Benefits of the TECRO/AIT Carnet

In recent years, trade between the United States and Taiwan has increased. It is expected that this trend will continue, and that such trade can be facilitated through the use of carnets. However, Taiwan is currently ineligible to accede to the A.T.A. (Admission Temporaire—Temporary Admission) Carnet Convention, under which carnets facilitate trade among more than fifty contracting parties. Thus, Taiwan has sought access to the carnet facility through the recently concluded bilateral agreement between the Taipei Economic and Cultural Representative in the United States (TECRO) and the American Institute in Taiwan (AIT). This agreement established a TECRO/AIT Carnet for the temporary admission of goods, commercial samples and professional equipment. This agreement was negotiated pursuant to the authority contained in 22 U.S.C. 3305.

On November 4, 1996, Customs published a Notice of Proposed Rulemaking in the **Federal Register** (61 FR 56645) which proposed amending the Customs Regulations to reflect the TECRO/AIT Carnet and solicited comments on the proposal. No comments were received in response to the publication. After further consideration, Customs has determined to proceed to amend the regulations as proposed.

A Notice informing the public of the decision of the Commissioner of Customs regarding the selection of an issuing and guaranteeing association for the TECRO/AIT carnet will be made in a separate publication in the **Federal Register**.

Regulatory Flexibility Act

Insofar as the amendment is intended to facilitate international trade and remove some existing impediments to the conduct of business, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

The amendment does not meet the criteria for a "significant regulatory action" under E.O. 12866.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

Customs duties and inspection, Exports, Reporting and recordkeeping requirements.

19 CFR Part 18

Common carriers, Customs duties and inspection, Exports, Surety bonds.

19 CFR Part 114

Customs duties and inspection, Exports, Trade agreements.

Amendments to the Regulations

Parts 10, 18 and 114 of the Customs Regulations (19 CFR parts 10, 18 and 114) are amended as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

* * * * *

§ 10.31 [Amended]

2. Section 10.31 is amended by adding in paragraphs (a)(1) and (a)(2) the phrase "or a TECRO/AIT carnet" immediately after the words "A.T.A. carnet".

§ 10.39 [Amended]

3. Section 10.39(d)(2) is amended by adding the words "or Agreement" immediately after the phrase "in the Convention".

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. The general authority citation for part 18 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1624.

* * * * *

§ 18.1 [Amended]

2. Section 18.1(a)(3) is amended by adding the phrase "or TECRO/AIT" immediately after the abbreviation "A.T.A." each time it appears.

§ 18.8 [Amended]

3. Section 18.8(e)(3) is amended by adding the phrase "or TECRO/AIT" immediately after the abbreviation "A.T.A." each time it appears.

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PART 114—CARNETS

1. The authority citation for part 114 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624.

2. In § 114.1, paragraphs (b) and (c) are amended by adding the phrase "or bilateral Agreement" immediately after the words "Customs Convention" each time they appear, and a new paragraph (g) is added to read as follows:

§ 114.1 Definitions.

* * * * *

(g) *TECRO/AIT Carnet.* "TECRO/AIT carnet" means the document issued pursuant to the Bilateral Agreement between the Taipei Economic and Cultural Representative Office (TECRO) and the American Institute in Taiwan (AIT) to cover the temporary admission of goods.

3. Section 114.2 is amended by revising the section heading and the introductory text and by adding a new paragraph (d) to read as follows:

§ 114.2 Customs Conventions and Agreements.

The regulations in this part relate to carnets provided for in the following Customs Conventions and Agreements:

* * * * *

(d) Agreement Between the Taipei Economic and Cultural Representative Office in the United States and the American Institute in Taiwan on TECRO/AIT Carnet for the Temporary Admission of Goods (hereinafter referred to as the Agreement).

§ 114.3 [Amended]

4. In § 114.3, the introductory text in paragraph (a) and paragraph (a)(2) are amended by adding the words "or Agreement" immediately after the word "Convention" each time it appears.

§ 114.11 [Amended]

5. Section 114.11 is amended by adding the words "or Agreement" immediately after the word "Convention" each time it appears.

6. Section 114.22 is amended by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

§ 114.22 Coverage of carnets.

* * * * *

(d) *TECRO/AIT carnet.*—(1) *Use.* The TECRO/AIT carnet is acceptable for the following two categories of goods to be temporarily imported, unless importation is prohibited under the laws and regulations of the United States:

(i) Professional equipment; and

(ii) Commercial samples and advertising material imported for the purpose of being shown or demonstrated with a view to soliciting orders.

(2) *Issue and use.* (i) Issuing associations shall indicate on the cover of the TECRO/AIT carnet the customs territory in which it is valid and the name and address of the guaranteeing association.

(ii) The period fixed for re-exportation of goods imported under cover of a TECRO/AIT carnet shall not in any case exceed the period of validity of that carnet.

* * * * *

7. Section 114.23 is amended by adding a new paragraph (c) to read as follows:

§ 114.23 Maximum period.

* * * * *

(c) *TECRO/AIT carnet.* A TECRO/AIT carnet shall not be issued with a period of validity exceeding one year from the date of issue. This period of validity cannot be extended and must be shown on the front cover of the carnet.

§ 114.24 [Amended]

8. Section 114.24 is amended by adding the phrase "or TECRO/AIT" immediately after the abbreviation "A.T.A.".

§ 114.25 [Amended]

9. Section 114.25 is amended by adding the phrase "or TECRO/AIT" immediately after the abbreviation "A.T.A.".

§ 114.26 [Amended]

10. In § 114.26, paragraphs (a) and (b) are amended by adding the phrase "or TECRO/AIT" immediately after the abbreviation "A.T.A." each time it appears.

§ 114.31 [Amended]

11. Section 114.31(b) is amended by adding the phrase "or TECRO/AIT" immediately after the abbreviation "A.T.A.".

§ 114.32 [Amended]

12. Section 114.32 is amended by adding the phrase "or TECRO/AIT" immediately after the abbreviation "A.T.A." the first time it appears and by adding the phrase "or TECRO/AIT Agreement" immediately after the phrase "A.T.A. Convention".

§ 114.33 [Amended]

13. Section 114.33 is amended by adding the words "or Agreement" immediately after the word "Convention".

§ 114.34 [Amended]

14. Section 114.34 is amended by adding, in the heading and text of paragraph (b), the phrase "or TECRO/AIT" immediately after the abbreviation "A.T.A." each time it appears.

George J. Weise,

Commissioner of Customs.

Approved: August 22, 1997.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–1950 Filed 1–27–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8762]

RIN 1545–AB43

Installment Obligations Received From Liquidating Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the use of the installment method to report the gain recognized by a shareholder who receives, in exchange for the shareholder's stock, certain installment obligations that are distributed upon the complete liquidation of a corporation. Changes to the applicable tax law were made by the Installment Sales Revision Act of 1980 and the Tax Reform Act of 1986. These regulations affect taxpayers who receive installment obligations in exchange for their stock upon the complete liquidation of a corporation.

DATES: This regulation is effective January 28, 1998.

For dates of applicability, see § 1.453–11(e) of these regulations.

FOR FURTHER INFORMATION CONTACT: George F. Wright, (202) 662–4950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 453(h), relating to the tax treatment of installment obligations received by a shareholder from a liquidating corporation, was added to the Internal Revenue Code of 1954 by the Installment Sales Revision Act of 1980, Pub. L. 96–471, 94 Stat. 2247, 2250. Proposed regulations under section 453(h) were published in the **Federal Register** for January 13, 1984 (49 FR 1742). Subsequently, section

453(h) was amended as part of the Tax Reform Act of 1986, Pub. L. 99–514, 100 Stat. 2085, 2274, pursuant to which both C and S corporations became subject to tax upon making liquidating distributions of installment obligations to shareholders. The Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, 102 Stat. 3342, 3403, added section 453B(h), which provides that no gain or loss is recognized by S corporations with respect to certain liquidating distributions of installment obligations. The regulations proposed on January 13, 1984 (49 FR 1742), were withdrawn by the notice of proposed rulemaking published on January 22, 1997 (62 FR 3244), except for paragraph (e) relating to liquidating distributions received in more than one taxable year, and paragraph (g) containing the effective date provision. The notice of proposed rulemaking published in the **Federal Register** for January 22, 1997, reserved paragraph (d) for liquidating distributions received in more than one taxable year. Written comments responding to this notice were received. No public hearing was held because no hearing was requested. After consideration of all comments received, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

A. Overview of Provisions

Prior to the Installment Sales Revision Act of 1980, a shareholder recognized gain or loss on receipt of an installment obligation that was distributed by a liquidating corporation in exchange for the shareholder's stock. Gain could not be reported under the installment sale provisions of section 453 as payments were received on the obligation distributed by the corporation in the liquidation.

As enacted by the Installment Sales Revision Act of 1980 and amended by the Tax Reform Act of 1986, section 453(h) provides a different treatment for certain installment obligations that are distributed in a complete liquidation to which section 331 applies. Under section 453(h), a shareholder that does not elect out of the installment method treats the payments under the obligation, rather than the obligation itself, as consideration received in exchange for the stock. The shareholder then takes into account the income from the payments under the obligation using the installment method. In this manner, the shareholder generally is treated as if the shareholder sold the shareholder's stock to an unrelated purchaser on the installment method.

This treatment under section 453(h) applies generally to installment obligations received by a shareholder (in exchange for the shareholder's stock) in a complete liquidation to which section 331 applies if (a) the installment obligations are qualifying installment obligations, i.e., the installment obligations are acquired in respect of a sale or exchange of property by the corporation during the 12-month period beginning on the date a plan of complete liquidation is adopted, and (b) the liquidation is completed within that 12-month period. However, an installment obligation acquired in a sale or exchange of inventory, stock in trade, or property held for sale in the ordinary course of business qualifies for this treatment only if the obligation arises from a single bulk sale of substantially all of such property attributable to a trade or business of the corporation. If an installment obligation arises from both a sale or exchange of inventory, etc., that does not comply with the requirements of the preceding sentence and a sale or exchange of other assets, the portion of the installment obligation that is attributable to the sale or exchange of other assets is a qualifying installment obligation.

B. Discussion of Comments

Interaction of Section 453(h) and Limitations on the Installment Method

The regulations provide that, if the stock of a liquidating corporation is traded on an established securities market, an installment obligation received by a shareholder from that corporation as a liquidating distribution is not a qualifying installment obligation and does not qualify for installment reporting, regardless of whether the requirements of section 453(h) are otherwise satisfied. However, if an installment obligation is received by a shareholder from a liquidating corporation whose stock is not publicly traded, and the obligation arose from a sale by the corporation of stock or securities that are traded on an established market, then the obligation generally is a qualifying installment obligation in the hands of the transferor. An exception to the above rule applies if the liquidating corporation is formed or availed of for a principal purpose of avoiding limitations on the availability of installment sales treatment, such as section 453(k), through the use of a related party.

One commentator suggested that the anti-abuse rule directed at cases in which there is a principal purpose to avoid section 453(k) is not necessary. The commentator suggests that the effect of a contribution of publicly-traded stock to a nonpublicly-traded corporation, followed by the sale of the publicly-traded stock for an installment obligation and the liquidation of the nonpublicly-traded corporation, is the creation of two levels of tax because the liquidating corporation must recognize gain on the distribution of the installment obligation. Accordingly, the commentator does not believe that the transaction offers any tax avoidance opportunities that warrant a specific anti-abuse rule.

The anti-abuse rule is directed at circumvention of the prohibition in section 453(k) against the use of the installment method for a sale of publicly-traded securities. It is designed to prevent a shareholder from indirectly entering into such a sale on the installment method when the shareholder could not have done so through a direct sale. Accordingly, the anti-abuse rule has been retained.

Liquidating Distributions Received in More Than One Year

Under § 1.453–2(e) proposed on January 13, 1984, if liquidating distributions, including qualifying installment obligations, are received in more than one taxable year, a shareholder must file an amended return if the reallocation of basis required under section 453(h)(2) affects the computation of gain recognized in an earlier year. If the shareholder has transferred the installment obligation to a person whose basis in the obligation is determined by reference to the shareholder's basis, then the transferee generally is required to reallocate basis and, if necessary, file an amended return. The proposed effective date applied to distributions of qualifying installment obligations made after March 31, 1980.

In the preamble to the 1997 proposed regulations, the IRS and Treasury Department suggested that an alternative to the amended return requirement would be to require the shareholder to recognize in the current year the additional amount of gain that would have been recognized in the earlier year had the total amount of the liquidating distributions been known in the earlier year. Comments were requested regarding these and any other methods of accomplishing the basis reallocation. Proposed § 1.453–11(d) relating to liquidating distributions received in more than one taxable year was reserved.

One commentator questioned whether amended returns were necessary and noted that the alternative method

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discussed in the preamble is simpler and less burdensome for taxpayers. The commentator then suggested an ordering rule as another method of achieving the intended purpose. Under the proposed ordering rule, basis first would be allocated to assets other than installment obligations distributed in the liquidation with the remainder allocated to the installment obligations. The commentator acknowledged that it might not be appropriate to implement this approach by regulation without amending the statute.

The proposed ordering rule does not satisfy the basis reallocation requirement of section 453(h)(2) and would require complex provisions to implement it. Accordingly, the suggested approach is not adopted in the final regulations.

The purpose underlying section 453(h)(2) is to ensure that gain is recognized in the appropriate year when liquidating distributions are received in more than one taxable year. The IRS and Treasury Department believe that this purpose can be substantially fulfilled without imposing the burden of filing amended returns. Accordingly, the final regulations incorporate a current-year recognition rule. Under the current-year recognition rule, a shareholder is required to recognize in the current year the additional amount of gain that would have been recognized in the earlier year had the total amount of the liquidating distributions been known in the earlier year. In allocating basis to calculate the gain to be reported in the first year in which a liquidating distribution is received, a shareholder is required to reasonably estimate the anticipated aggregate distributions. For this purpose, the shareholder must take into account distributions and other events occurring up to the time at which the return for the first taxable year is filed. Section 1.453–2(e) of the 1984 proposal is adopted as revised by this Treasury decision. The effective date provision in § 1.453–2(g) of the proposal is not adopted.

Recognition of Gain or Loss to the Distributing Corporation Under Section 453B

Under section 453B, the disposition of an installment obligation generally results in the recognition of gain or loss to the transferor. Thus, in accordance with sections 453B and 336, a C corporation generally recognizes gain or loss upon the distribution of an installment obligation to a shareholder in exchange for the shareholder's stock, including complete liquidations covered by section 453(h). Section 453B(d) provides an exception to this general rule if the installment obligation is distributed in a liquidation to which section 337(a) applies (regarding certain complete liquidations of 80 percent or more owned subsidiaries). However, that exception does not apply to liquidations under section 331.

In the case of a liquidating distribution by an S corporation, however, section 453B(h) provides that if an S corporation distributes an installment obligation in exchange for a shareholder's stock, and payments under the obligation are treated as consideration for the stock pursuant to section 453(h)(1), then the distribution generally is not treated as a disposition of the obligation by the S corporation. Thus, except for purposes of sections 1374 and 1375 (relating to certain built-in gains and passive investment income), the S corporation does not recognize gain or loss on the distribution of the installment obligation to a shareholder in a complete liquidation covered by section 453(h). One commentator believed that it is inequitable to allow a shareholder to recognize gain on the installment basis while the liquidating C corporation has immediate recognition upon distribution of an obligation. As an alternative, the commentator suggested that the corporation's tax liability arising from the distribution of an obligation carry over to the shareholders and be taken into account by them as payments are received on the obligation. The suggested approach would be inconsistent with the statutory provisions of sections 336 and 453B and, accordingly, is not adopted in the final regulations.

Another commentator requested that the regulations provide relief from a bunching of income that occurs for shareholders receiving liquidating distributions from S corporations. The bunching can occur, for example, by virtue of the interrelationship of the S corporation and installment sale provisions if, in the year in which assets are sold, an S corporation receives a payment on an installment obligation arising from the sale before the corporation liquidates. The commentator suggested that the regulations allow a shareholder first to apply the basis in the stock against the initial payment received, with any remaining basis allocated to any additional payments to be received. Since the bunching of income results from the successive application of section 453(c) at the corporate and shareholder levels and no statutory exception for shareholders of S corporations is provided, this issue cannot be appropriately addressed in these final regulations.

Incorporation of Guidance on Section 338(h)(10) Elections

Three commentators suggested that the regulations be expanded to address the use of the installment method to the sale of stock of a corporation with respect to which an election under section 338(h)(10) has been made. This issue does not arise under section 453(h) and is beyond the scope of these regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is George F. Wright of the Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.453–11 also issued under 26 U.S.C. 453(j)(1) and (k). * * *

Par. 2. Section 1.453–11 is added to read as follows:

§ 1.453–11 Installment obligations received from a liquidating corporation.

(a) *In general*—(1) *Overview.* Except as provided in section 453(h)(1)(C) (relating to installment sales of depreciable property to certain closely related persons), a qualifying shareholder (as defined in paragraph (b) of this section) who receives a qualifying installment obligation (as defined in paragraph (c) of this section) in a liquidation that satisfies section 453(h)(1)(A) treats the receipt of payments in respect of the obligation, rather than the receipt of the obligation itself, as a receipt of payment for the shareholder's stock. The shareholder reports the payments received on the installment method unless the shareholder elects otherwise in accordance with § 15a.453–1(d) of this chapter.

(2) *Coordination with other provisions*—(i) *Deemed sale of stock for installment obligation.* Except as specifically provided in section 453(h)(1)(C), a qualifying shareholder treats a qualifying installment obligation, for all purposes of the Internal Revenue Code, as if the obligation is received by the shareholder from the person issuing the obligation in exchange for the shareholder's stock in the liquidating corporation. For example, if the stock of a corporation that is liquidating is traded on an established securities market, an installment obligation distributed to a shareholder of the corporation in exchange for the shareholder's stock does not qualify for installment reporting pursuant to section 453(k)(2).

(ii) *Special rules to account for the qualifying installment obligation*—(A) *Issue price.* A qualifying installment obligation is treated by a qualifying shareholder as newly issued on the date of the distribution. The issue price of the qualifying installment obligation on that date is equal to the sum of the adjusted issue price of the obligation on the date of the distribution (as determined under § 1.1275–1(b)) and the amount of any qualified stated interest (as defined in § 1.1273–1(c)) that has accrued prior to the distribution but that is not payable until after the distribution. For purposes of the preceding sentence, if the qualifying installment obligation is subject to § 1.446–2 (e.g., a debt instrument that has unstated interest under section 483), the adjusted issue price of the obligation is determined under § 1.446–2(c) and (d).

(B) *Variable rate debt instrument.* If the qualifying installment obligation is a variable rate debt instrument (as defined in § 1.1275–5), the shareholder uses the equivalent fixed rate debt instrument (within the meaning of § 1.1275–5(e)(3)(ii)) constructed for the qualifying installment obligation as of the date the obligation was issued to the liquidating corporation to determine the accruals of original issue discount, if any, and interest on the obligation.

(3) *Liquidating distributions treated as selling price.* All amounts distributed or treated as distributed to a qualifying shareholder incident to the liquidation, including cash, the issue price of qualifying installment obligations as determined under paragraph (a)(2)(ii)(A) of this section, and the fair market value of other property (including obligations that are not qualifying installment obligations) are considered as having been received by the shareholder as the selling price (as defined in § 15a.453–1(b)(2)(ii) of this chapter) for the shareholder's stock in the liquidating corporation. For the proper method of reporting liquidating distributions received in more than one taxable year of a shareholder, see paragraph (d) of this section. An election not to report on the installment method an installment obligation received in the liquidation applies to all distributions received in the liquidation.

(4) *Assumption of corporate liability by shareholders.* For purposes of this section, if in the course of a liquidation a shareholder assumes secured or unsecured liabilities of the liquidating corporation, or receives property from the corporation subject to such liabilities (including any tax liabilities incurred by the corporation on the distribution), the amount of the liabilities is added to the shareholder's basis in the stock of the liquidating corporation. These additions to basis do not affect the shareholder's holding period for the stock. These liabilities do not reduce the amounts received in computing the selling price.

(5) *Examples.* The provisions of this paragraph (a) are illustrated by the following examples. Except as otherwise provided, assume in each example that A, an individual who is a calendar-year taxpayer, owns all of the stock of T corporation. A's adjusted tax basis in that stock is $100,000. On February 1, 1998, T, an accrual method taxpayer, adopts a plan of complete liquidation that satisfies section 453(h)(1)(A) and immediately sells all of its assets to unrelated B corporation in a single transaction. The examples are as follows:

Example 1. (i) The stated purchase price for T's assets is $3,500,000. In consideration for the sale, B makes a down payment of $500,000 and issues a 10-year installment obligation with a stated principal amount of $3,000,000. The obligation provides for interest payments of $150,000 on January 31 of each year, with the total principal amount due at maturity.

(ii) Assume that for purposes of section 1274, the test rate on February 1, 1998, is 8 percent, compounded semi-annually. Also assume that a semi-annual accrual period is used. Under § 1.1274–2, the issue price of the obligation on February 1, 1998, is $2,368,450. Accordingly, the obligation has $631,550 of original issue discount ($3,000,000–$2,368,450). Between February 1 and July 31, $19,738 of original issue discount and $75,000 of qualified stated interest accrue with respect to the obligation and are taken into account by T.

(iii) On July 31, 1998, T distributes the installment obligation to A in exchange for A's stock. No other property is ever distributed to A. On January 31, 1999, A receives the first annual payment of $150,000 from B.

(iv) When the obligation is distributed to A on July 31, 1998, it is treated as if the obligation is received by A in an installment sale of shares directly to B on that date. Under § 1.1275–1(b), the adjusted issue price of the obligation on that date is $2,388,188 (original issue price of $2,368,450 plus accrued original issue discount of $19,738). Accordingly, the issue price of the obligation under paragraph (a)(2)(ii)(A) of this section is $2,463,188, the sum of the adjusted issue price of the obligation on that date ($2,388,188) and the amount of accrued but unpaid qualified stated interest ($75,000).

(v) The selling price and contract price of A's stock in T is $2,463,188, and the gross profit is $2,363,188 ($2,463,188 selling price less A's adjusted tax basis of $100,000). A's gross profit ratio is thus 96 percent (gross profit of $2,363,188 divided by total contract price of $2,463,188).

(vi) Under §§ 1.446–2(e)(1) and 1.1275–2(a), $98,527 of the $150,000 payment is treated as a payment of the interest and original issue discount that accrued on the obligation from July 31, 1998, to January 31, 1999 ($75,000 of qualified stated interest and $23,527 of original issue discount). The balance of the payment ($51,473) is treated as a payment of principal. A's gain recognized in 1999 is $49,414 (96 percent of $51,473).

Example 2. (i) T owns Blackacre, unimproved real property, with an adjusted tax basis of $700,000. Blackacre is subject to a mortgage (underlying mortgage) of $1,100,000. A is not personally liable on the underlying mortgage and the T shares held by A are not encumbered by the underlying mortgage. The other assets of T consist of $400,000 of cash and $600,000 of accounts receivable attributable to sales of inventory in the ordinary course of business. The unsecured liabilities of T total $900,000.

(ii) On February 1, 1998, T adopts a plan of complete liquidation complying with section 453(h)(1)(A), and promptly sells Blackacre to B for a 4-year mortgage note (bearing adequate stated interest and otherwise meeting all of the requirements of section 453) in the face amount of $4 million. Under the agreement between T and B, T (or its successor) is to continue to make principal and interest payments on the underlying mortgage. Immediately thereafter, T completes its liquidation by distributing to A its remaining cash of $400,000 (after

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payment of T's tax liabilities), accounts receivable of $600,000, and the $4 million B note. A assumes T's $900,000 of unsecured liabilities and receives the distributed property subject to the obligation to make payments on the $1,100,000 underlying mortgage. A receives no payments from B on the B note during 1998.

(iii) Unless A elects otherwise, the transaction is reported by A on the installment method. The selling price is $5 million (cash of $400,000, accounts receivable of $600,000, and the B note of $4 million). The total contract price also is $5 million. A's adjusted tax basis in the T shares, initially $100,000, is increased by the $900,000 of unsecured T liabilities assumed by A and by the obligation (subject to which A takes the distributed property) to make payments on the $1,100,000 underlying mortgage on Blackacre, for an aggregate adjusted tax basis of $2,100,000. Accordingly, the gross profit is $2,900,000 (selling price of $5 million less aggregate adjusted tax basis of $2,100,000). The gross profit ratio is 58 percent (gross profit of $2,900,000 divided by the total contract price of $5 million). The 1998 payments to A are $1 million ($400,000 cash plus $600,000 receivables) and A recognizes gain in 1998 of $580,000 (58 percent of $1 million).

(iv) In 1999, A receives payment from B on the B note of $1 million (exclusive of interest). A's gain recognized in 1999 is $580,000 (58 percent of $1 million).

(b) *Qualifying shareholder.* For purposes of this section, *qualifying shareholder* means a shareholder to which, with respect to the liquidating distribution, section 331 applies. For example, a creditor that receives a distribution from a liquidating corporation, in exchange for the creditor's claim, is not a qualifying shareholder as a result of that distribution regardless of whether the liquidation satisfies section 453(h)(1)(A).

(c) *Qualifying installment obligation*—(1) *In general.* For purposes of this section, *qualifying installment obligation* means an installment obligation (other than an evidence of indebtedness described in § 15a.453–1(e) of this chapter, relating to obligations that are payable on demand or are readily tradable) acquired in a sale or exchange of corporate assets by a liquidating corporation during the 12-month period beginning on the date the plan of liquidation is adopted. See paragraph (c)(4) of this section for an exception for installment obligations acquired in respect of certain sales of inventory. Also see paragraph (c)(5) of this section for an exception for installment obligations attributable to sales of certain property that do not generally qualify for installment method treatment.

(2) *Corporate assets.* Except as provided in section 453(h)(1)(C), in paragraph (c)(4) of this section (relating to certain sales of inventory), and in paragraph (c)(5) of this section (relating to certain tax avoidance transactions), the nature of the assets sold by, and the tax consequences to, the selling corporation do not affect whether an installment obligation is a qualifying installment obligation. Thus, for example, the fact that the fair market value of an asset is less than the adjusted basis of that asset in the hands of the corporation; or that the sale of an asset will subject the corporation to depreciation recapture (e.g., under section 1245 or section 1250); or that the assets of a trade or business sold by the corporation for an installment obligation include depreciable property, certain marketable securities, accounts receivable, installment obligations, or cash; or that the distribution of assets to the shareholder is or is not taxable to the corporation under sections 336 and 453B, does not affect whether installment obligations received in exchange for those assets are treated as qualifying installment obligations by the shareholder. However, an obligation received by the corporation in exchange for cash, in a transaction unrelated to a sale or exchange of noncash assets by the corporation, is not treated as a qualifying installment obligation.

(3) *Installment obligations distributed in liquidations described in section 453(h)(1)(E)*—(i) *In general.* In the case of a liquidation to which section 453(h)(1)(E) (relating to certain liquidating subsidiary corporations) applies, a qualifying installment obligation acquired in respect of a sale or exchange by the liquidating subsidiary corporation will be treated as a qualifying installment obligation if distributed by a controlling corporate shareholder (within the meaning of section 368(c)) to a qualifying shareholder. The preceding sentence is applied successively to each controlling corporate shareholder, if any, above the first controlling corporate shareholder.

(ii) *Examples.* The provisions of this paragraph (c)(3) are illustrated by the following examples:

Example 1. (i) A, an individual, owns all of the stock of T corporation, a C corporation. T has an operating division and three wholly-owned subsidiaries, X, Y, and Z. On February 1, 1998, T, Y, and Z all adopt plans of complete liquidation.

(ii) On March 1, 1998, the following sales are made to unrelated purchasers: T sells the assets of its operating division to B for cash and an installment obligation. T sells the stock of X to C for an installment obligation. Y sells all of its assets to D for an installment obligation. Z sells all of its assets to E for cash. The B, C, and D installment obligations bear adequate stated interest and meet the requirements of section 453.

(iii) In June 1998, Y and Z completely liquidate, distributing their respective assets (the D installment obligation and cash) to T. In July 1998, T completely liquidates, distributing to A cash and the installment obligations respectively issued by B, C, and D. The liquidation of T is a liquidation to which section 453(h) applies and the liquidations of Y and Z into T are liquidations to which section 332 applies.

(iv) Because T is in control of Y (within the meaning of section 368(c)), the D obligation acquired by Y is treated as acquired by T pursuant to section 453(h)(1)(E). A is a qualifying shareholder and the installment obligations issued by B, C, and D are qualifying installment obligations. Unless A elects otherwise, A reports the transaction on the installment method as if the cash and installment obligations had been received in an installment sale of the stock of T corporation. Under section 453B(d), no gain or loss is recognized by Y on the distribution of the D installment obligation to T. Under sections 453B(a) and 336, T recognizes gain or loss on the distribution of the B, C, and D installment obligations to A in exchange for A's stock.

Example 2. (i) A, a cash-method individual taxpayer, owns all of the stock of P corporation, a C corporation. P owns 30 percent of the stock of Q corporation. The balance of the Q stock is owned by unrelated individuals. On February 1, 1998, P adopts a plan of complete liquidation and sells all of its property, other than its Q stock, to B, an unrelated purchaser for cash and an installment obligation bearing adequate stated interest. On March 1, 1998, Q adopts a plan of complete liquidation and sells all of its property to an unrelated purchaser, C, for cash and installment obligations. Q immediately distributes the cash and installment obligations to its shareholders in completion of its liquidation. Promptly thereafter, P liquidates, distributing to A cash, the B installment obligation, and a C installment obligation that P received in the liquidation of Q.

(ii) In the hands of A, the B installment obligation is a qualifying installment obligation. In the hands of P, the C installment obligation was a qualifying installment obligation. However, in the hands of A, the C installment obligation is not treated as a qualifying installment obligation because P owned only 30 percent of the stock of Q. Because P did not own the requisite 80 percent stock interest in Q, P was not a controlling corporate shareholder of Q (within the meaning of section 368(c)) immediately before the liquidation. Therefore, section 453(h)(1)(E) does not apply. Thus, in the hands of A, the C obligation is considered to be a third-party note (not a purchaser's evidence of indebtedness) and is treated as a payment to A in the year of distribution. Accordingly, for 1998, A reports as payment the cash and the fair market value of the C obligation distributed to A in the liquidation of P.

(iii) Because P held 30 percent of the stock of Q, section 453B(d) is inapplicable to P. Under sections 453B(a) and 336, accordingly, Q recognizes gain or loss on the distribution of the C obligation. P also recognizes gain or loss on the distribution of the B and C installment obligations to A in exchange for A's stock. See sections 453B and 336.

(4) *Installment obligations attributable to certain sales of inventory*—(i) *In general.* An installment obligation acquired by a corporation in a liquidation that satisfies section 453(h)(1)(A) in respect of a broken lot of inventory is not a qualifying installment obligation. If an installment obligation is acquired in respect of a broken lot of inventory and other assets, only the portion of the installment obligation acquired in respect of the broken lot of inventory is not a qualifying installment obligation. The portion of the installment obligation attributable to other assets is a qualifying installment obligation. For purposes of this section, the term *broken lot of inventory* means inventory property that is sold or exchanged other than in bulk to one person in one transaction involving substantially all of the inventory property attributable to a trade or business of the corporation. See paragraph (c)(4)(ii) of this section for rules for determining what portion of an installment obligation is not a qualifying installment obligation and paragraph (c)(4)(iii) of this section for rules determining the application of payments on an installment obligation only a portion of which is a qualifying installment obligation.

(ii) *Rules for determining nonqualifying portion of an installment obligation.* If a broken lot of inventory is sold to a purchaser together with other corporate assets for consideration consisting of an installment obligation and either cash, other property, the assumption of (or taking property subject to) corporate liabilities by the purchaser, or some combination thereof, the installment obligation is treated as having been acquired in respect of a broken lot of inventory only to the extent that the fair market value of the broken lot of inventory exceeds the sum of unsecured liabilities assumed by the purchaser, secured liabilities which encumber the broken lot of inventory and are assumed by the purchaser or to which the broken lot of inventory is subject, and the sum of the cash and fair market value of other property received. This rule applies solely for the purpose of determining the portion of the installment obligation (if any) that is attributable to the broken lot of inventory.

(iii) *Application of payments.* If, by reason of the application of paragraph (c)(4)(ii) of this section, a portion of an installment obligation is not a qualifying installment obligation, then for purposes of determining the amount of gain to be reported by the shareholder under section 453, payments on the obligation (other than payments of qualified stated interest) shall be applied first to the portion of the obligation that is not a qualifying installment obligation.

(iv) *Example.* The following example illustrates the provisions of this paragraph (c)(4). In this example, assume that all obligations bear adequate stated interest within the meaning of section 1274(c)(2) and that the fair market value of each nonqualifying installment obligation equals its face amount. The example is as follows:

Example. (i) P corporation has three operating divisions, X, Y, and Z, each engaged in a separate trade or business, and a minor amount of investment assets. On July 1, 1998, P adopts a plan of complete liquidation that meets the criteria of section 453(h)(1)(A). The following sales are promptly made to purchasers unrelated to P: P sells all of the assets of the X division (including all of the inventory property) to B for $30,000 cash and installment obligations totalling $200,000. P sells substantially all of the inventory property of the Y division to C for a $100,000 installment obligation, and sells all of the other assets of the Y division (excluding cash but including installment receivables previously acquired in the ordinary course of the business of the Y division) to D for a $170,000 installment obligation. P sells ⅓ of the inventory property of the Z division to E for $100,000 cash, ⅓ of the inventory property of the Z division to F for a $100,000 installment obligation, and all of the other assets of the Z division (including the remaining ⅓ of the inventory property worth $100,000) to G for $60,000 cash, a $240,000 installment obligation, and the assumption by G of the liabilities of the Z division. The liabilities assumed by G, which are unsecured liabilities and liabilities encumbering the inventory property acquired by G, aggregate $30,000. Thus, the total purchase price G pays is $330,000.

(ii) P immediately completes its liquidation, distributing the cash and installment obligations, which otherwise meet the requirements of section 453, to A, an individual cash-method taxpayer who is its sole shareholder. In 1999, G makes a payment to A of $100,000 (exclusive of interest) on the $240,000 installment obligation.

(iii) In the hands of A, the installment obligations issued by B, C, and D are qualifying installment obligations because they were timely acquired by P in a sale or exchange of its assets. In addition, the installment obligation issued by C is a qualifying installment obligation because it arose from a sale to one person in one transaction of substantially all of the inventory property of the trade or business engaged in by the Y division.

(iv) The installment obligation issued by F is not a qualifying installment obligation because it is in respect of a broken lot of inventory. A portion of the installment obligation issued by G is a qualifying installment obligation and a portion is not a qualifying installment obligation, determined as follows: G purchased part of the inventory property (with a fair market value of $100,000) and all of the other assets of the Z division by paying cash ($60,000), issuing an installment obligation ($240,000), and assuming liabilities of the Z division ($30,000). The assumed liabilities ($30,000) and cash ($60,000) are attributed first to the inventory property. Therefore, only $10,000 of the $240,000 installment obligation is attributed to inventory property. Accordingly, in the hands of A, the G installment obligation is a qualifying installment obligation to the extent of $230,000, but is not a qualifying installment obligation to the extent of the $10,000 attributable to the inventory property.

(v) In the 1998 liquidation of P, A receives a liquidating distribution as follows:

Item	Qualifying installment obligations	Cash and other property
Cash		$190,000
B note	$200,000	
C note	$100,000	
D note	$170,000	
F note		$100,000
G note [1]	$230,000	$ 10,000
Total	$700,000	$300,000

[1] Face amount $240,000.

(vi) Assume that A's adjusted tax basis in the stock of P is $100,000. Under the installment method, A's selling price and the contract price are both $1 million, the gross profit is $900,000 (selling price of $1 million less adjusted tax basis of $100,000), and the gross profit ratio is 90 percent (gross profit of $900,000 divided by the contract price of $1 million). Accordingly, in 1998, A reports gain of $270,000 (90 percent of $300,000 payment in cash and other property). A's adjusted tax basis in each of the qualifying installment obligations is an amount equal to 10 percent of the obligation's respective face amount. A's adjusted tax basis in the F note, a nonqualifying installment obligation, is $100,000, i.e., the fair market value of the note when received by A. A's adjusted tax basis in the G note, a mixed obligation, is $33,000 (10 percent of the $230,000 qualifying installment obligation portion of the note, plus the $10,000 nonqualifying portion of the note).

(vii) With respect to the $100,000 payment received from G in 1999, $10,000 is treated as the recovery of the adjusted tax basis of the nonqualifying portion of the G installment obligation and $9,000 (10 percent of $90,000) is treated as the recovery of the adjusted tax basis of the portion of the note that is a qualifying installment obligation. The remaining $81,000 (90 percent of $90,000) is reported as gain from the sale of A's stock. See paragraph (c)(4)(iii) of this section.

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(5) *Installment obligations attributable to sales of certain property*—(i) *In general.* An installment obligation acquired by a liquidating corporation, to the extent attributable to the sale of property described in paragraph (c)(5)(ii) of this section, is not a qualifying obligation if the corporation is formed or availed of for a principal purpose of avoiding section 453(b)(2) (relating to dealer dispositions and certain other dispositions of personal property), section 453(i) (relating to sales of property subject to recapture), or section 453(k) (relating to dispositions under a revolving credit plan and sales of stock or securities traded on an established securities market) through the use of a party bearing a relationship, either directly or indirectly, described in section 267(b) to any shareholder of the corporation.

(ii) *Covered property.* Property is described in this paragraph (c)(5)(ii) if, within 12 months before or after the adoption of the plan of liquidation, the property was owned by any shareholder and—

(A) The shareholder regularly sold or otherwise disposed of personal property of the same type on the installment plan or the property is real property that the shareholder held for sale to customers in the ordinary course of a trade or business (provided the property is not described in section 453(l)(2) (relating to certain exceptions to the definition of dealer dispositions));

(B) The sale of the property by the shareholder would result in recapture income (within the meaning of section 453(i)(2)), but only if the amount of the recapture income is equal to or greater than 50 percent of the property's fair market value on the date of the sale by the corporation;

(C) The property is stock or securities that are traded on an established securities market; or

(D) The sale of the property by the shareholder would have been under a revolving credit plan.

(iii) *Safe harbor.* Paragraph (c)(5)(i) of this section will not apply to the liquidation of a corporation if, on the date the plan of complete liquidation is adopted and thereafter, less than 15 percent of the fair market value of the corporation's assets is attributable to property described in paragraph (c)(5)(ii) of this section.

(iv) *Example.* The provisions of this paragraph (c)(5) are illustrated by the following example:

Example. Ten percent of the fair market value of the assets of T is attributable to stock and securities traded on an established securities market. T owns no other assets described in paragraph (c)(5)(ii) of this section. T, after adopting a plan of complete liquidation, sells all of its stock and securities holdings to C corporation in exchange for an installment obligation bearing adequate stated interest, sells all of its other assets to B corporation for cash, and distributes the cash and installment obligation to its sole shareholder, A, in a complete liquidation that satisfies section 453(h)(1)(A). Because the C installment obligation arose from a sale of publicly traded stock and securities, T cannot report the gain on the sale under the installment method pursuant to section 453(k)(2). In the hands of A, however, the C installment obligation is treated as having arisen out of a sale of the stock of T corporation. In addition, the general rule of paragraph (c)(5)(i) of this section does not apply, even if a principal purpose of the liquidation was the avoidance of section 453(k)(2), because the fair market value of the publicly traded stock and securities is less than 15 percent of the total fair market value of T's assets. Accordingly, section 453(k)(2) does not apply to A, and A may use the installment method to report the gain recognized on the payments it receives in respect of the obligation.

(d) *Liquidating distributions received in more than one taxable year.* If a qualifying shareholder receives liquidating distributions to which this section applies in more than one taxable year, the shareholder must reasonably estimate the gain attributable to distributions received in each taxable year. In allocating basis to calculate the gain for a taxable year, the shareholder must reasonably estimate the anticipated aggregate distributions. For this purpose, the shareholder must take into account distributions and other relevant events or information that the shareholder knows or reasonably could know up to the date on which the federal income tax return for that year is filed. If the gain for a taxable year is properly taken into account on the basis of a reasonable estimate and the exact amount is subsequently determined the difference, if any, must be taken into account for the taxable year in which the subsequent determination is made. However, the shareholder may file an amended return for the earlier year in lieu of taking the difference into account for the subsequent taxable year.

(e) *Effective date.* This section is applicable to distributions of qualifying installment obligations made on or after January 28, 1998.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved: December 18, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 98–1820 Filed 1–27–98; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8760]

RIN 1545–AU72 and 1545–AU73

Continuity of Interest and Continuity of Business Enterprise

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing guidance regarding satisfaction of the continuity of interest and continuity of business enterprise requirements for corporate reorganizations. The final regulations affect corporations and their shareholders.

DATES: These regulations are effective January 28, 1998.

Applicability: These regulations apply to transactions occurring after January 28, 1998, except that they do not apply to any transaction occurring pursuant to a written agreement which is (subject to customary conditions) binding on January 28, 1998, and at all times thereafter.

FOR FURTHER INFORMATION CONTACT: Regarding § 1.368–1(e) (continuity of interest) §§ 1.338–2 and 1.368–1 (a) and (b): Phoebe Bennett, (202) 622–7750 (not a toll-free number); regarding § 1.368–1(d) (continuity of business enterprise) and, §§ 1.368–1 (a) and (b), 1.368–2(k): Marlene Peake Oppenheim, (202) 622–7750 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

On December 23, 1996, the IRS published a notice of proposed rulemaking (REG–252231–96) in the **Federal Register** (61 FR 67512) relating to the continuity of interest (COI) requirement (proposed COI regulations). On January 3, 1997, the IRS published a notice of proposed rulemaking (REG–252233–96) in the **Federal Register** (62 FR 36101) (proposed COBE regulations) relating to (1) the continuity of business enterprise (COBE) requirement; and (2) transfers of acquired assets or stock following certain otherwise qualifying reorganizations (remote continuity of interest). Many written comments were received in response to these notices of proposed rulemaking. A public hearing on both proposed regulations was held on May 7, 1997. After consideration of all comments, the regulations proposed by REG–252231–96 and REG–252233–96 are adopted as revised by this Treasury decision, along with temporary regulations and proposed regulations cross-referencing the temporary regulations regarding COI published elsewhere in this issue of the **Federal Register**.

Explanation of Provisions

The Internal Revenue Code of 1986 provides general nonrecognition treatment for reorganizations specifically described in section 368. In addition to complying with the statutory requirements and certain other requirements, a transaction generally must satisfy the continuity of interest requirement and the continuity of business enterprise requirement.

A. Continuity of Interest

The purpose of the continuity of interest requirement is to prevent transactions that resemble sales from qualifying for nonrecognition of gain or loss available to corporate reorganizations. The final regulations provide that the COI requirement is satisfied if in substance a substantial part of the value of the proprietary interest in the target corporation (T) is preserved in the reorganization. A proprietary interest in T is preserved if, in a potential reorganization, it is exchanged for a proprietary interest in the issuing corporation (P), it is exchanged by the acquiring corporation for a direct interest in the T enterprise, or it otherwise continues as a proprietary interest in T. The *issuing corporation* means the acquiring corporation (as the term is used in section 368(a)), except that, in determining whether a reorganization qualifies as a triangular reorganization (as defined in § 1.358–6(b)(2)), the issuing corporation means the corporation in control of the acquiring corporation. However, a proprietary interest in T is not preserved if, in connection with the potential reorganization, it is acquired by P for consideration other than P stock, or P stock furnished in exchange for a proprietary interest in T if the potential reorganization is redeemed. All facts and circumstances must be considered in determining whether, in substance, a proprietary interest in T is preserved.

Rationale for the COI Regulations

The proposed and final regulations permit former T shareholders to sell P stock received in a potential reorganization to third parties without causing the reorganization to fail to satisfy the COI requirement. Some commentators have questioned whether the regulations are consistent with existing authorities.

The COI requirement was applied first to reorganization provisions that did not specify that P exchange a proprietary interest in P for a proprietary interest in T. Supreme Court cases imposed the COI requirement to further Congressional intent that tax-free status be accorded only to transactions where P exchanges a substantial proprietary interest in P for a proprietary interest in T held by the T shareholders rather than to transactions resembling sales. See *LeTulle* v. *Scofield*, 308 U.S. 415 (1940); *Helvering* v. *Minnesota Tea Co.*, 296 U.S. 378 (1935); *Pinellas Ice & Cold Storage Co.* v. *Commissioner*, 287 U.S. 462 (1933). See also *Cortland Specialty Co.* v. *Commissioner*, 60 F.2d 937 (2d Cir. 1932), *cert. denied* 288 U.S. 599 (1933).

None of the Supreme Court cases establishing the COI requirement addressed the issue of whether sales by former T shareholders of P stock received in exchange for T stock in the potential reorganization cause the COI requirement to fail to be satisfied. Since then, however, some courts have premised decisions on the assumption that sales of P stock received in exchange for T stock in the potential reorganization may cause the COI requirement to fail to be satisfied. *McDonald's Restaurants of Illinois, Inc.* v. *Commissioner*, 688 F.2d 520 (7th Cir. 1982); *Penrod* v. *Commissioner*, 88 T.C. 1415 (1987); *Heintz* v. *Commissioner*, 25 T.C. 132 (1955), *nonacq.*, 1958–2 C.B. 9; *Estate of Elizabeth Christian* v. *Commissioner*, 57 T.C.M. (CCH) 1231 (1989). The apparent focus of these cases is on whether the T shareholders intended on the date of the potential reorganization to sell their P stock and the degree, if any, to which P facilitates the sale. Based on an intensive inquiry into nearly identical facts, some of these cases held that as a result of the subsequent sale the potential reorganization did not satisfy the COI requirement; others held that satisfaction of the COI requirement was not adversely affected by the subsequent sale. The IRS and Treasury Department have concluded that the law as reflected in these cases does not further the principles of reorganization treatment and is difficult for both taxpayers and the IRS to apply consistently.

Therefore, consistent with Congressional intent and the Supreme Court precedent which distinguishes between sales and reorganizations, the final regulations focus the COI requirement generally on exchanges between the T shareholders and P. Under this approach, sales of P stock by former T shareholders generally are disregarded.

The final regulations will greatly enhance administrability in this area by both taxpayers and the government. The regulations will prevent "whipsaw" of the government, such as where the former T shareholders treat the transaction as a tax-free reorganization, and P later disavows reorganization treatment to step up its basis in the T assets based on the position that sales of P stock by the former T shareholders did not satisfy the COI requirement. See, e.g., *McDonald's Restaurants, supra.* In addition, this approach will prevent unilateral sales of P stock by former majority T shareholders from adversely affecting the section 354 nonrecognition treatment expected by former minority T shareholders.

Dispositions of T Stock

The proposed COI regulations do not specifically address the effect upon COI of dispositions of T stock prior to a potential reorganization, but ask for comments on that issue. The IRS and Treasury Department believe that issues concerning the COI requirement raised by dispositions of T stock before a potential reorganization correspond to those raised by subsequent dispositions of P stock furnished in exchange for T stock in the potential reorganization. As requested by commentators, the final regulations apply the rationale of the proposed COI regulations to transactions occurring both prior to and after a potential reorganization. Cf. *J.E. Seagram Corp.* v. *Commissioner*, 104 T.C. 75 (1995) (sales of T stock prior to a potential reorganization do not affect COI if not part of the plan of reorganization). The final regulations provide that, for COI purposes, a mere disposition of T stock prior to a potential reorganization to persons not related to P is disregarded and a mere disposition of P stock received in a potential reorganization to persons not related to P is disregarded. But see § 1.368–1T(e)(1)(ii)(A) and (B).

In soliciting comments on the effect upon COI of dispositions of T stock prior to a potential reorganization, the preamble to the proposed COI regulations specifically requests comments on *King Enterprises, Inc.* v. *United States*, 418 F.2d 511 (Ct. Cl. 1969) (COI requirement satisfied where, pursuant to a plan, P acquires the T stock for 51 percent P stock and 49 percent debt and cash, and T merges upstream into P), and *Yoc Heating Corp.* v. *Commissioner*, 61 T.C. 168 (1973) (COI requirement not satisfied where, pursuant to a plan, P acquires 85 percent of the T stock for cash and notes, and T merges into P's newly formed subsidiary with minority

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shareholders receiving cash). Consistent with these cases, where the step transaction doctrine applies to link T stock purchases with later acquisitions of T, the final regulations provide that a proprietary interest in T is not preserved if, in connection with the potential reorganization, it is acquired by P for consideration other than P stock. Whether a stock acquisition is made in connection with a potential reorganization will be determined based on the facts and circumstances of each case. See generally § 1.368–1(a). This regulation does not address the effect, if any, of section 338 on corporate transactions (except for conforming changes to § 1.338–2(c)(3)). See generally § 1.338–2(c)(3) (certain tax effects of a qualified stock purchase without a section 338 election on the post-acquisition elimination of T).

Related Person Rule

The proposed COI regulations provide that "[i]n determining whether [COI is satisfied], all facts and circumstances must be considered, including any plan or arrangement for the acquiring corporation or its successor corporation (or a person related to the acquiring corporation or its successor corporation within the meaning of section 707(b)(1) or 267(b) (without regard to section 267(e))) to redeem or acquire the consideration provided in the reorganization." The final regulations provide a more specific rule that a proprietary interest in T is not preserved if, in connection with a potential reorganization, a person related (as defined below) to P acquires, with consideration other than a proprietary interest in P, T stock or P stock furnished in exchange for a proprietary interest in T in the potential reorganization. The IRS and Treasury Department believe, however, that certain related party acquisitions preserve a proprietary interest in T and therefore, the rule includes an exception to the related party rule. Under this exception, a proprietary interest in T is preserved to the extent those persons who were the direct or indirect owners of T prior to the potential reorganization maintain a direct or indirect proprietary interest in P. See, e.g., Rev. Rul. 84–30 (1984–1 C.B. 114).

Commentators stated that the proposed COI regulations' rule, which employs sections 707(b)(1) and 267(b) to define persons related to P, is too broad. In response, the final regulations adopt a narrower related person definition which has two components in order to address two separate concerns.

First, the IRS and Treasury Department were concerned that acquisitions of T or P stock by a member of P's affiliated group were no different in substance from an acquisition or redemption by P, because of the existence of various provisions in the Code that permit members to transfer funds to other members without significant tax consequences. Accordingly, § 1.368–1(e)(3)(i)(A) includes as related persons corporations that are members of the same affiliated group under section 1504, without regard to the exceptions in section 1504(b).

Second, because the final regulations take into account whether, in substance, P has redeemed the stock it exchanged for T stock in the potential reorganization, the final regulations treat two corporations as related persons if a purchase of the stock of one corporation by another corporation would be treated as a distribution in redemption of the stock of the first corporation under section 304(a)(2) (determined without regard to § 1.1502–80(b)).

Because the final regulations focus generally on the consideration P exchanges, related persons do not include individual or other noncorporate shareholders. Thus, the IRS will no longer apply the holdings of *South Bay Corporation* v. *Commissioner*, 345 F.2d 698 (2d Cir. 1965), and *Superior Coach of Florida, Inc.* v. *Commissioner*, 80 T.C. 895 (1983), to transactions governed by these regulations.

T Stock Not Acquired in Connection With a Potential Reorganization

Commentators requested clarification of whether P must actually furnish stock to T shareholders that own T stock which was not acquired in connection with a potential reorganization. The final regulations provide that a proprietary interest in T is preserved if it is exchanged by the acquiring corporation (which may or may not also be P) for a direct interest in the T enterprise, or otherwise continues as a proprietary interest in T.

Redemptions of T Stock or Extraordinary Distributions With Respect to T Stock

In addition to the final regulations, the IRS and Treasury Department are contemporaneously issuing temporary regulations and proposed regulations cross-referencing the temporary regulations published elsewhere in this issue of the **Federal Register** with the same effective date as these final regulations. The temporary and proposed regulations provide that a proprietary interest in T is not preserved if, in connection with a potential reorganization, it is redeemed or acquired by a person related to T, or to the extent that, prior to and in connection with a potential reorganization, an extraordinary distribution is made with respect to it.

Transactions Following a Qualified Stock Purchase

As stated above, these final regulations focus the COI requirement generally on exchanges between the T shareholders and P. Accordingly, the language of § 1.338–2(c)(3) is conformed to these final COI regulations to treat the stock of T acquired by the purchasing corporation in the qualified stock purchase as though it was not acquired in connection with the transfer of the T assets.

Effect on Other Authorities

The IRS and Treasury Department continue to study the role of the COI requirement in section 368(a)(1)(D) reorganizations and section 355 transactions. Therefore, these final COI regulations do not apply to section 368(a)(1)(D) reorganizations and section 355 transactions. See § 1.355–2(c).

These COI regulations apply solely for purposes of determining whether the COI requirement is satisfied. No inference should be drawn from any provision of this regulation as to whether other reorganization requirements are satisfied, for example, whether P has issued solely voting stock for purposes of section 368(a)(1)(B) or (C).

Effect on Other Documents

Rev. Proc. 77–37 (1977–2 C.B. 568) and Rev. Proc. 86–42 (1986–2 C.B. 722) will be modified to the extent inconsistent with these regulations.

Rev. Rul. 66–23 (1966–1 C.B. 67) is hereby obsoleted because it indicates that a plan or arrangement in connection with a potential reorganization for disposition of stock to unrelated persons does not satisfy the COI requirement.

B. Continuity of Business Enterprise

The COBE requirement is fundamental to the notion that tax-free reorganizations merely readjust continuing interests in property. In § 1.368–1(d), as effective prior to these final regulations, COBE generally required the acquiring corporation to either continue a significant historic T business or use a significant portion of T's historic business assets in a business. However, a valid reorganization may qualify as tax-free even if the acquiring corporation does not directly carry on the historic T business or use the historic T assets in a business. See section 368(a)(2)(C). See also Rev. Rul. 68–261 (1968–1 C.B. 147); Rev. Rul. 81–247 (1981–1 C.B. 87).

Consistent with the view that the acquiring corporation need not directly conduct the T business or use the T assets, the final regulations provide rules under which, in an otherwise qualifying corporate reorganization, the assets and the businesses of the members of a qualified group of corporations are treated as assets and businesses of the issuing corporation. Accordingly, in the final regulations, COBE requires that the issuing corporation either continue T's historic business or use a significant portion of T's historic business assets in a business.

A qualified group is one or more chains of corporations connected through stock ownership with the issuing corporation, but only if the issuing corporation owns directly stock meeting the requirements of section 368(c) in at least one of the corporations, and stock meeting the requirements of section 368(c) in each of the corporations is owned directly by one of the other corporations.

The judicial continuity of interest doctrine historically included a concept commonly known as remote continuity of interest. Commonly viewed as arising out of *Groman* v. *Commissioner*, 302 U.S. 82 (1937), and *Helvering* v. *Bashford*, 302 U.S. 454 (1938), remote continuity of interest focuses on the link between the T shareholders and the former T business assets following the reorganization. In § 1.368–1(d), as effective prior to these final regulations, COBE focuses on the continuation of T's business, or the use of T's business assets, by the acquiring corporation. Section 1.368–1(d), as revised herein, expands this concept by treating the issuing corporation as conducting a T business or owning T business assets if these activities are conducted by a member of the qualified group or, in certain cases, by a partnership that has a member of the qualified group as a partner.

The proposed COBE regulations separately address COBE (§ 1.368–1(d)) and remote continuity of interest (§ 1.368–1(f)). The IRS and Treasury Department believe the COBE requirements adequately address the issues raised in *Groman* and *Bashford* and their progeny. Thus, these final regulations do not separately articulate rules addressing remote continuity of interest.

Definition of the Qualified Group

The proposed COBE regulations define the qualified group using a control test based on section 368(c). The IRS and Treasury Department received comments suggesting the replacement of the section 368(c) definition of control by the affiliated group definition of control stated in section 1504, without regard to section 1504(b). However, because section 368 generally determines control by reference to section 368(c), the final regulations retain the approach of the proposed COBE regulations.

Rules for Aggregation of Interests in Historic T Assets and Businesses Held in Partnership Solution

In determining whether COBE is satisfied, the proposed COBE regulations aggregate the interests of the members of a qualified group. In addition, the proposed COBE regulations attribute a business of a partnership to a corporate transferor partner if the partner has a sufficient nexus with that partnership business. However, the proposed COBE regulations only consider the transferor partner's interest in the partnership business, and do not aggregate this interest with interests in the partnership held by other members of the qualified group.

In response to comments requesting a partnership aggregation rule, the final regulations, through a system of attribution, aggregate the interests in a partnership business held by all the members of a qualified group. The final regulations provide rules under which a corporate partner may be treated as holding assets of a business of a partnership. Additionally, P is treated as holding all the assets, and conducting all the businesses of its qualified group. Furthermore, in certain circumstances, P will be treated as conducting a business of a partnership. Once the relevant T businesses and T assets are attributed to P, COBE is tested under the general rule of the final COBE regulations. See § 1.368–1(d)(1).

The proposed COBE regulations do not discuss tiered partnerships. In response to comments, the final regulations provide guidance on this issue. See § 1.368–1(d)(5), *Example 12*.

C. Transfers of Assets or Stock to Controlled Corporations as Part of a Plan of Reorganization

The proposed COBE regulations are limited in their application to COBE and remote continuity of interest. The rules of the proposed COBE regulations provide that for certain reorganizations, transfers of acquired assets or stock among members of the qualified group, and in certain cases, transfers of acquired assets to partnerships, do not disqualify a transaction from satisfying the COBE and remote continuity of interest requirements. The preamble to the proposed COBE regulations states that these rules do not address any other issues concerning the qualification of a transaction as a reorganization.

Comments suggest that the proposed COBE regulations are ambiguous as they could be interpreted to mean that a transfer of stock or assets to a qualified group member after an otherwise tax-free reorganization would be given independent significance and the step transaction doctrine would not apply. Under such an interpretation, the potential reorganization would not be recast as a taxable acquisition or another type of reorganization. To eliminate this ambiguity, § 1.368–1(a) of the final regulations provides that, in determining whether a transaction qualifies as a reorganization under section 368(a), the transaction must be evaluated under relevant provisions of law, including the step transaction doctrine. Section 1.368–1(d) of the final regulations is limited to a discussion of the COBE requirement, and does not address satisfaction of the explicit statutory requirements of a reorganization, which is the subject of § 1.368–2. However, § 1.368–2(k) of the final regulations does provide guidance in this regard, extending the application of section 368(a)(2)(C) to certain successive transfers.

Section 1.368–2(k) of the final regulations states that a transaction otherwise qualifying under section 368(a)(1) (A), (B), (C), or (G) (where the requirements of sections 354(b)(1) (A) and (B) are met) shall not be disqualified by reason of the fact that part or all of the acquired assets or stock acquired in the transaction are transferred or successively transferred to one or more corporations controlled in each transfer by the transferor corporation. Control is defined under section 368(c). The final regulations also provide a rule for transfers of assets following a reorganization qualifying under section 368(a)(1)(A) by reason of section 368(a)(2)(E). No inference is to be drawn as to whether transactions not described in § 1.368–2(k) otherwise qualify as reorganizations.

The final regulations also provide that, if a transaction otherwise qualifies as a reorganization, a corporation remains a party to the reorganization even though stock or assets acquired in the reorganization are transferred in a transaction described in § 1.368–2(k).

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See § 1.368–2(f). Furthermore, if a transaction otherwise qualifies as a reorganization, a corporation shall not cease to be a party to the reorganization solely because acquired assets are transferred to a partnership in which the transferor is a partner if the COBE requirement is satisfied.

Section 368(a)(1)(D), 368(a)(1)(F), and 355 Transactions

The proposed COBE regulations, applying only to the COBE and remote continuity of interest requirements, are limited to transactions otherwise qualifying for reorganization treatment under section 368(a)(1) (A), (B), (C), or (G) (where the requirements of sections 354(b)(1) (A) and (B) are met). The IRS and Treasury Department received comments stating that the final regulations should apply to reorganizations qualifying under section 368(a)(1) (D) or (F) or to transactions qualifying under section 355.

The final regulations do not limit the application of § 1.368–1(d) to the transactions enumerated in section 368(a)(2)(C). The COBE provisions in the final regulations apply to all reorganizations for which COBE is relevant.

Section 1.368–2(k)(1) of the final regulations, however, is limited in its application to the transactions described in section 368(a)(2)(C), and does not apply in determining whether a reorganization qualifies under section 368(a)(1)(D), section 368(a)(1)(F), or section 355. The IRS and Treasury Department believe that further study is needed prior to extending § 1.368–2(k)(1) to one or more of these provisions.

Effective Date

The amendments to these regulations apply to transactions occurring after January 28, 1998, except that they do not apply to any transaction occurring pursuant to a written agreement which is (subject to customary conditions) binding on January 28, 1998, and at all times thereafter. Commentators requested that the effective date be changed to allow these regulations to apply to transactions occurring on or before January 28, 1998. The IRS and Treasury Department believe that adopting an earlier effective date increases the likelihood that T, P, and each of the former T shareholders would report the transaction inconsistently (in some cases using hindsight), and would reduce administrability of the regulation. No inference should be drawn from any provision of this regulation as to application of the COI or COBE requirements to transactions occurring on or before January 28, 1998.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notices of proposed rulemaking preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Phoebe Bennett, regarding § 1.368–1(e) (continuity of interest), and Marlene Peake Oppenheim, regarding § 1.368–1(d) (continuity of business enterprise) and § 1.368–2(k), both of the Office of the Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.338–2 is amended:

1. By revising paragraph (c)(3)(ii).

2. In paragraph (c)(3)(iv) example, by revising the first sentence of paragraph (B).

The revisions read as follows:

§ 1.338–2 Miscellaneous issues under section 338.

* * * * *

(c) * * *

(3) * * *

(ii) *Continuity of interest.* By virtue of section 338, in determining whether the continuity of interest requirement of § 1.368–1 (b) and (e) is satisfied on the transfer of assets from target to the transferee, the purchasing corporation's target stock acquired in the qualified stock purchase shall be treated as though it was not acquired in connection with the transfer of target assets.

* * * * *

(iv) *Example.* * * *

(B) *Status of transfer as a reorganization.* By virtue of section 338, for the purpose of determining whether the continuity of interest requirement of § 1.368–1(b) is satisfied, P's T stock acquired in the qualified stock purchase shall be treated as though it was not acquired in connection with the transfer of T assets to X. * * *

* * * * *

Par. 3. Section 1.368–1 is amended by:

1. Adding three sentences immediately following the first sentence of paragraph (a).

2. Removing the third sentence and adding four sentences in its place to paragraph (b).

3. Removing paragraph (d)(1).

4. Redesignating paragraphs (d)(2), (d)(3), and (d)(4) as paragraphs (d)(1), (d)(2), and (d)(3), respectively.

5. Removing the first sentence of newly designated paragraph (d)(1) and adding two sentences in its place.

6. Adding new paragraph (d)(4).

7. Paragraph (d)(5) is amended by:

a. Adding two sentences to the end of paragraph (d)(5) introductory text.

b. Removing the parentheses around the numbers in the paragraph headings for *Example (1)* through *Example (5).*

c. Adding *Example 6* through *Example 12.*

8. Adding paragraph (e).

The additions and revisions read as follows:

§ 1.368–1 Purpose and scope of exception of reorganization exchanges.

(a) * * * In determining whether a transaction qualifies as a reorganization under section 368(a), the transaction must be evaluated under relevant provisions of law, including the step transaction doctrine. But see §§ 1.368–2 (f) and (k) and 1.338–2(c)(3). The preceding two sentences apply to transactions occurring after January 28, 1998, except that they do not apply to any transaction occurring pursuant to a written agreement which is binding on January 28, 1998, and at all times thereafter. * * *

(b) * * * Requisite to a reorganization under the Internal Revenue Code are a continuity of the business enterprise through the issuing corporation under the modified corporate form as described in paragraph (d) of this section, and (except as provided in section 368(a)(1)(D)) a continuity of interest as described in paragraph (e) of this section. (For rules regarding the continuity of interest requirement under section 355, see § 1.355–2(c).) For purposes of this section, the term *issuing corporation* means the acquiring corporation (as that term is used in section 368(a)), except that, in determining whether a reorganization qualifies as a triangular reorganization (as defined in § 1.358–6(b)(2)), the issuing corporation means the corporation in control of the acquiring corporation. The preceding three sentences apply to transactions occurring after January 28, 1998, except that they do not apply to any transaction occurring pursuant to a written agreement which is binding on January 28, 1998, and at all times thereafter.

* * *

* * * * *

(d) *Continuity of business enterprise—*(1) *General rule.* Continuity of business enterprise (COBE) requires that the issuing corporation (P), as defined in paragraph (b) of this section, either continue the target corporation's (T's) historic business or use a significant portion of T's historic business assets in a business. The preceding sentence applies to transactions occurring after January 28, 1998, except that it does not apply to any transaction occurring pursuant to a written agreement which is binding on January 28, 1998, and at all times thereafter. * * *

* * * * *

(4) *Acquired assets or stock held by members of the qualified group or partnerships.* The following rules apply in determining whether the COBE requirement of paragraph (d)(1) of this section is satisfied:

(i) *Businesses and assets of members of a qualified group.* The issuing corporation is treated as holding all of the businesses and assets of all of the members of the qualified group, as defined in paragraph (d)(4)(ii) of this section.

(ii) *Qualified group.* A qualified group is one or more chains of corporations connected through stock ownership with the issuing corporation, but only if the issuing corporation owns directly stock meeting the requirements of section 368(c) in at least one other corporation, and stock meeting the requirements of section 368(c) in each of the corporations (except the issuing corporation) is owned directly by one of the other corporations.

(iii) *Partnerships*—(A) *Partnership assets.* Each partner of a partnership will be treated as owning the T business assets used in a business of the partnership in accordance with that partner's interest in the partnership.

(B) *Partnership businesses.* The issuing corporation will be treated as conducting a business of a partnership if —

(*1*) Members of the qualified group, in the aggregate, own an interest in the partnership representing a significant interest in that partnership business; or

(*2*) One or more members of the qualified group have active and substantial management functions as a partner with respect to that partnership business.

(C) *Conduct of the historic T business in a partnership.* If a significant historic T business is conducted in a partnership, the fact that P is treated as conducting such T business under paragraph (d)(4)(iii)(B) of this section tends to establish the requisite continuity, but is not alone sufficient.

(iv) *Effective date.* This paragraph (d)(4) applies to transactions occurring after January 28, 1998, except that it does not apply to any transaction occurring pursuant to a written agreement which is binding on January 28, 1998, and at all times thereafter.

(5) * * * All corporations have only one class of stock outstanding. The preceding sentence and paragraph (d)(5) *Example 6* through *Example 12* apply to transactions occurring after January 28, 1998, except that they do not apply to any transaction occurring pursuant to a written agreement which is binding on January 28, 1998, and at all times thereafter.

* * * * *

Example 6. Use of a significant portion of T's historic business assets by the qualified group. (i) *Facts.* T operates an auto parts distributorship. P owns 80 percent of the stock of a holding company (HC). HC owns 80 percent of the stock of ten subsidiaries, S–1 through S–10. S–1 through S–10 each separately operate a full service gas station. Pursuant to a plan of reorganization, T merges into P and the T shareholders receive solely P stock. As part of the plan of reorganization, P transfers T's assets to HC, which in turn transfers some of the T assets to each of the ten subsidiaries. No one subsidiary receives a significant portion of T's historic business assets. Each of the subsidiaries will use the T assets in the operation of its full service gas station. No P subsidiary will be an auto parts distributor.

(ii) *Continuity of business enterprise.* Under paragraph (d)(4)(i) of this section, P is treated as conducting the ten gas station businesses of S–1 through S–10 and as holding the historic T assets used in those businesses. P is treated as holding all the assets and conducting the businesses of all of the members of the qualified group, which includes S–1 through S–10 (paragraphs (d)(4)(i) and (ii) of this section). No member of the qualified group continues T's historic distributorship business. However, subsidiaries S–1 through S–10 continue to use the historic T assets in a business. Even though no one corporation of the qualified group is using a significant portion of T's historic business assets in a business, the COBE requirement of paragraph (d)(1) of this section is satisfied because, in the aggregate, the qualified group is using a significant portion of T's historic business assets in a business.

Example 7. Continuation of the historic T business in a partnership satisfies continuity of business enterprise. (i) *Facts.* T manufactures ski boots. P owns all of the stock of S–1. S–1 owns all of the stock of S–2, and S–2 owns all of the stock of S–3. T merges into P and the T shareholders receive consideration consisting of P stock and cash. The T ski boot business is to be continued and expanded. In anticipation of this expansion, P transfers all of the T assets to S–1, S–1 transfers all of the T assets to S–2, and S–2 transfers all of the T assets to S–3. S–3 and X (an unrelated party) form a new partnership (PRS). As part of the plan of reorganization, S–3 transfers all the T assets to PRS, and S–3, in its capacity as a partner, performs active and substantial management functions for the PRS ski boot business, including making significant business decisions and regularly participating in the overall supervision, direction, and control of the employees of the ski boot business. S–3 receives a 20 percent interest in PRS. X transfers cash in exchange for an 80 percent interest in PRS.

(ii) *Continuity of business enterprise.* Under paragraph (d)(4)(iii)(B)(*2*) of this section, P is treated as conducting T's historic business because S–3 performs active and substantial management functions for the ski boot business in S–3's capacity as a partner. P is treated as holding all the assets and conducting the businesses of all of the members of the qualified group, which includes S–3 (paragraphs (d)(4)(i) and (ii) of this section). The COBE requirement of paragraph (d)(1) of this section is satisfied.

Example 8. Continuation of the historic T business in a partnership does not satisfy continuity of business enterprise. (i) *Facts.* The facts are the same as *Example 7* except that S–3 transfers the historic T business to PRS in exchange for a 1 percent interest in PRS.

(ii) *Continuity of business enterprise.* Under paragraph (d)(4)(iii)(B)(*2*) of this section, P is treated as conducting T's historic business because S–3 performs active and substantial management functions for the ski boot business in S–3's capacity as a partner. The fact that a significant historic T business is conducted in PRS, and P is treated as conducting such T business under (d)(4)(iii)(B) tends to establish the requisite continuity, but is not alone sufficient (paragraph (d)(4)(iii)(C) of this section). The COBE requirement of paragraph (d)(1) of this section is not satisfied.

Example 9. Continuation of the T historic business in a partnership satisfies continuity of business enterprise. (i) *Facts.* The facts are the same as *Example 7* except that S–3 transfers the historic T business to PRS in

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exchange for a 33⅓ percent interest in PRS, and no member of P's qualified group performs active and substantial management functions for the ski boot business operated in PRS.

(ii) *Continuity of business enterprise.* Under paragraph (d)(4)(iii)(B)(*1*) of this section, P is treated as conducting T's historic business because S–3 owns an interest in the partnership representing a significant interest in that partnership business. P is treated as holding all the assets and conducting the businesses of all of the members of the qualified group, which includes S–3 (paragraphs (d)(4)(i) and (ii) of this section). The COBE requirement of paragraph (d)(1) of this section is satisfied.

Example 10. Use of T's historic business assets in a partnership business. (i) *Facts.* T is a fabric distributor. P owns all of the stock of S–1. T merges into P and the T shareholders receive solely P stock. S–1 and X (an unrelated party) own interests in a partnership (PRS). As part of the plan of reorganization, P transfers all of the T assets to S–1, and S–1 transfers all the T assets to PRS, increasing S–1's percentage interest in PRS from 5 to 33⅓ percent. After the transfer, X owns the remaining 66⅔ percent interest in PRS. Almost all of the T assets consist of T's large inventory of fabric, which PRS uses to manufacture sportswear. All of the T assets are used in the sportswear business. No member of P's qualified group performs active and substantial management functions for the sportswear business operated in PRS.

(ii) *Continuity of business enterprise.* Under paragraph (d)(4)(iii)(A) of this section, S–1 is treated as owning 33⅓ percent of the T assets used in the PRS sportswear manufacturing business. Under paragraph (d)(4)(iii)(B)(*1*) of this section, P is treated as conducting the sportswear manufacturing business because S–1 owns an interest in the partnership representing a significant interest in that partnership business. P is treated as holding all the assets and conducting the businesses of all of the members of the qualified group, which includes S–1 (paragraphs (d)(4)(i) and (ii) of this section). The COBE requirement of paragraph (d)(1) of this section is satisfied.

Example 11. Aggregation of partnership interests among members of the qualified group: use of T's historic business assets in a partnership business. (i) *Facts.* The facts are the same as *Example 10*, except that S–1 transfers all the T assets to PRS, and P and X each transfer cash to PRS in exchange for partnership interests. After the transfers, P owns 11 percent, S–1 owns 22⅓ percent, and X owns 66⅔ percent of PRS.

(ii) *Continuity of business enterprise.* Under paragraph (d)(4)(iii)(B)(*1*) of this section, P is treated as conducting the sportswear manufacturing business because members of the qualified group, in the aggregate, own an interest in the partnership representing a significant interest in that business. P is treated as owning 11 percent of the assets directly, and S–1 is treated as owning 22⅓ percent of the assets, used in the PRS sportswear business (paragraph (d)(4)(iii)(A) of this section). P is treated as holding all the assets of all of the members of the qualified group, which includes S–1, and thus in the aggregate, P is treated as owning 33⅓ of the T assets (paragraphs (d)(4)(i) and (ii) of this section). The COBE requirement of paragraph (d)(1) of this section is satisfied because P is treated as using a significant portion of T's historic business assets in its sportswear manufacturing business.

Example 12. Tiered partnerships: use of T's historic business assets in a partnership business. (i) *Facts.* T owns and manages a commercial office building in state Z. Pursuant to a plan of reorganization, T merges into P, solely in exchange for P stock, which is distributed to the T shareholders. P transfers all of the T assets to a partnership, PRS–1, which owns and operates television stations nationwide. After the transfer, P owns a 50 percent interest in PRS–1. P does not have active and substantial management functions as a partner with respect to the PRS–1 business. X, not a member of P's qualified group, owns the remaining 50 percent interest in PRS–1. PRS–1, in an effort to expand its state Z television operation, enters into a joint venture with U, an unrelated party. As part of the plan of reorganization, PRS–1 transfers all the T assets and its state Z television station to PRS–2, in exchange for a 75 percent partnership interest. U contributes cash to PRS–2 in exchange for a 25 percent partnership interest and oversees the management of the state Z television operation. PRS–1 does not actively and substantially manage PRS–2's business. PRS–2's state Z operations are moved into the acquired T office building. All of the assets that P acquired from T are used in PRS–2's business.

(ii) *Continuity of business enterprise.* Under paragraph (d)(4)(iii)(A) of this section, PRS–1 is treated as owning 75 percent of the T assets used in PRS–2's business. P, in turn, is treated as owning 50 percent of PRS–1's interest the T assets. Thus, P is treated as owning 37½ percent (50 percent x 75 percent) of the T assets used in the PRS–2 business. Under paragraph (d)(4)(iii)(B)(*1*) of this section, P is treated as conducting PRS–2's business, the operation of the state Z television station, and under paragraph (d)(4)(iii)(A) of this section, P is treated as using 37½ percent of the historic T business assets in that business. The COBE requirement of paragraph (d)(1) of this section is satisfied because P is treated as using a significant portion of T's historic business assets in its television business.

(e) *Continuity of interest*—(1) *General rule.* (i) The purpose of the continuity of interest requirement is to prevent transactions that resemble sales from qualifying for nonrecognition of gain or loss available to corporate reorganizations. Continuity of interest requires that in substance a substantial part of the value of the proprietary interests in the target corporation be preserved in the reorganization. A proprietary interest in the target corporation is preserved if, in a potential reorganization, it is exchanged for a proprietary interest in the issuing corporation (as defined in paragraph (b) of this section), it is exchanged by the acquiring corporation for a direct interest in the target corporation enterprise, or it otherwise continues as a proprietary interest in the target corporation. However, a proprietary interest in the target corporation is not preserved if, in connection with the potential reorganization, it is acquired by the issuing corporation for consideration other than stock of the issuing corporation, or stock of the issuing corporation furnished in exchange for a proprietary interest in the target corporation in the potential reorganization is redeemed. All facts and circumstances must be considered in determining whether, in substance, a proprietary interest in the target corporation is preserved. For purposes of the continuity of interest requirement, a mere disposition of stock of the target corporation prior to a potential reorganization to persons not related (as defined in paragraph (e)(3) of this section determined without regard to paragraph (e)(3)(i)(A) of this section) to the target corporation or to persons not related (as defined in paragraph (e)(3) of this section) to the issuing corporation is disregarded and a mere disposition of stock of the issuing corporation received in a potential reorganization to persons not related (as defined in paragraph (e)(3) of this section) to the issuing corporation is disregarded.

(ii) [Reserved] For further guidance see § 1.368–1T(e)(1)(ii)(A) and (B).

(2) *Related person acquisitions.* (i) A proprietary interest in the target corporation is not preserved if, in connection with a potential reorganization, a person related (as defined in paragraph (e)(3) of this section) to the issuing corporation acquires, with consideration other than a proprietary interest in the issuing corporation, stock of the target corporation or stock of the issuing corporation furnished in exchange for a proprietary interest in the target corporation in the potential reorganization, except to the extent those persons who were the direct or indirect owners of the target corporation prior to the potential reorganization maintain a direct or indirect proprietary interest in the issuing corporation.

(ii) [Reserved] For further guidance see § 1.368–1T(e)(2)(ii).

(3) *Definition of related person*—(i) *In general.* For purposes of this paragraph (e), two corporations are related persons if either—

(A) The corporations are members of the same affiliated group as defined in section 1504 (determined without regard to section 1504(b)); or

(B) A purchase of the stock of one corporation by another corporation would be treated as a distribution in redemption of the stock of the first corporation under section 304(a)(2) (determined without regard to § 1.1502–80(b)).

(ii) *Special rules.* The following rules apply solely for purposes of this paragraph (e)(3):

(A) A corporation will be treated as related to another corporation if such relationship exists immediately before or immediately after the acquisition of the stock involved.

(B) A corporation, other than the target corporation or a person related (as defined in paragraph (e)(3) of this section determined without regard to paragraph (e)(3)(i)(A) of this section) to the target corporation, will be treated as related to the issuing corporation if the relationship is created in connection with the potential reorganization.

(4) *Acquisitions by partnerships.* For purposes of this paragraph (e), each partner of a partnership will be treated as owning or acquiring any stock owned or acquired, as the case may be, by the partnership in accordance with that partner's interest in the partnership. If a partner is treated as acquiring any stock by reason of the application of this paragraph (e)(4), the partner is also treated as having furnished its share of any consideration furnished by the partnership to acquire the stock in accordance with that partner's interest in the partnership.

(5) *Successors and predecessors.* For purposes of this paragraph (e), any reference to the issuing corporation or the target corporation includes a reference to any successor or predecessor of such corporation, except that the target corporation is not treated as a predecessor of the issuing corporation and the issuing corporation is not treated as a successor of the target corporation.

(6) *Examples.* For purposes of the examples in this paragraph (e)(6), P is the issuing corporation, T is the target corporation, S is a wholly owned subsidiary of P, all corporations have only one class of stock outstanding, A and B are individuals, PRS is a partnership, all reorganization requirements other than the continuity of interest requirement are satisfied, and the transaction is not otherwise subject to recharacterization. The following examples illustrate the application of this paragraph (e):

Example 1. Sale of stock to third party. (i) *Sale of issuing corporation stock after merger.* A owns all of the stock of T. T merges into P. In the merger, A receives P stock having a fair market value of $50x and cash of $50x. Immediately after the merger, and pursuant to a preexisting binding contract, A sells all of the P stock received by A in the merger to B. Assume that there are no facts and circumstances indicating that the cash used by B to purchase A's P stock was in substance exchanged by P for T stock. Under paragraphs (e)(1) and (2) of this section, the sale to B is disregarded because B is not a person related to P within the meaning of paragraph (e)(3) of this section. Thus, the transaction satisfies the continuity of interest requirement because 50 percent of A's T stock was exchanged for P stock, preserving a substantial part of the value of the proprietary interest in T.

(ii) *Sale of target corporation stock before merger.* The facts are the same as paragraph (i) of this *Example 1*, except that B buys A's T stock prior to the merger of T into P and then exchanges the T stock for P stock having a fair market value of $50x and cash of $50x. The sale by A is disregarded. The continuity of interest requirement is satisfied because B's T stock was exchanged for P stock, preserving a substantial part of the value of the proprietary interest in T.

Example 2. Relationship created in connection with potential reorganization. A owns all of the stock of T. X, a corporation which owns 60 percent of the P stock and none of the T stock, buys A's T stock for cash prior to the merger of T into P. X exchanges the T stock solely for P stock in the merger which, when combined with X's prior ownership of P stock, constitutes 80 percent of the stock of P. X is a person related to P under paragraphs (e)(3)(i)(A) and (ii)(B) of this section, because X becomes affiliated with P in the merger. The continuity of interest requirement is not satisfied, because X acquired a proprietary interest in T for consideration other than P stock, and a substantial part of the value of the proprietary interest in T is not preserved. See paragraph (e)(2) of this section.

Example 3. Participation by issuing corporation in post-merger sale. A owns 80 percent of the T stock and none of the P stock, which is widely held. T merges into P. In the merger, A receives P stock. In addition, A obtains rights pursuant to an arrangement with P to have P register the P stock under the Securities Act of 1933, as amended. P registers A's stock, and A sells the stock shortly after the merger. No person who purchased the P stock from A is a person related to P within the meaning of paragraph (e)(3) of this section. Under paragraphs (e)(1) and (2) of this section, the sale of the P stock by A is disregarded because no person who purchased the P stock from A is a person related to P within the meaning of paragraph (e)(3) of this section. The transaction satisfies the continuity of interest requirement because A's T stock was exchanged for P stock, preserving a substantial part of the value of the proprietary interest in T.

Example 4. Redemptions and purchases by issuing corporation or related persons. (i) *Redemption by issuing corporation.* A owns 100 percent of the stock of T and none of the stock of P. T merges into S. In the merger, A receives P stock. In connection with the merger, P redeems all of the P stock received by A in the merger for cash. The continuity of interest requirement is not satisfied, because, in connection with the merger, P redeemed the stock exchanged for a proprietary interest in T, and a substantial part of the value of the proprietary interest in T is not preserved. See paragraph (e)(1) of this section.

(ii) *Purchase of target corporation stock by issuing corporation.* The facts are the same as paragraph (i) of this *Example 4*, except that, instead of P redeeming its stock, prior to and in connection with the merger of T into S, P purchases 90 percent of the T stock from A for cash. The continuity of interest requirement is not satisfied, because in connection with the merger, P acquired a proprietary interest in T for consideration other than P stock, and a substantial part of the value of the proprietary interest in T is not preserved. See paragraph (e)(1) of this section. However, see § 1.338–2(c)(3) (which may change the result in this case by providing that, by virtue of section 338, continuity of interest is satisfied for certain parties after a qualified stock purchase).

(iii) *Purchase of issuing corporation stock by person related to issuing corporation.* The facts are the same as paragraph (i) of this *Example 4*, except that, instead of P redeeming its stock, S buys all of the P stock received by A in the merger for cash. S is a person related to P under paragraphs (e)(3)(i)(A) and (B) of this section. The continuity of interest requirement is not satisfied, because S acquired P stock issued in the merger, and a substantial part of the value of the proprietary interest in T is not preserved. See paragraph (e)(2) of this section.

Example 5. Redemption in substance by issuing corporation. A owns 100 percent of the stock of T and none of the stock of P. T merges into P. In the merger, A receives P stock. In connection with the merger, B buys all of the P stock received by A in the merger for cash. Shortly thereafter, in connection with the merger, P redeems the stock held by B for cash. Based on all the facts and circumstances, P in substance has exchanged solely cash for T stock in the merger. The continuity of interest requirement is not satisfied, because in substance P redeemed the stock exchanged for a proprietary interest in T, and a substantial part of the value of the proprietary interest in T is not preserved. See paragraph (e)(1) of this section.

Example 6. Purchase of issuing corporation stock through partnership. A owns 100 percent of the stock of T and none of the stock of P. S is an 85 percent partner in PRS. The other 15 percent of PRS is owned by unrelated persons. T merges into P. In the merger, A receives P stock. In connection with the merger, PRS purchases all of the P stock received by A in the merger for cash. Under paragraph (e)(4) of this section, S, as an 85 percent partner of PRS, is treated as having acquired 85 percent of the P stock exchanged for A's T stock in the merger, and as having furnished 85 percent of the cash paid by PRS to acquire the P stock. S is a person related to P under paragraphs

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(e)(3)(i)(A) and (B) of this section. The continuity of interest requirement is not satisfied, because S is treated as acquiring 85 percent of the P stock issued in the merger, and a substantial part of the value of the proprietary interest in T is not preserved. See paragraph (e)(2) of this section.

Example 7. Exchange by acquiring corporation for direct interest. A owns 30 percent of the stock of T. P owns 70 percent of the stock of T, which was not acquired by P in connection with the acquisition of T's assets. T merges into P. A receives cash in the merger. The continuity of interest requirement is satisfied, because P's 70 percent proprietary interest in T is exchanged by P for a direct interest in the assets of the target corporation enterprise.

Example 8. Effect of general stock repurchase program. T merges into P, a corporation whose stock is widely held and publicly traded and that has one class of common stock outstanding. In the merger, T shareholders receive common stock of P. Immediately after the merger, P repurchases a small percentage of its common stock in the open market as part of its ongoing stock repurchase program. The repurchase program was not created or modified in connection with the acquisition of T. Continuity of interest is satisfied, because based on all of the facts and circumstances, the redemption of a small percentage of the P stock does not affect the T shareholders' proprietary interest in T, because it was not in connection with the merger, and the value of the proprietary interest in T is preserved. See paragraph (e)(1) of this section.

Example 9. Maintenance of direct or indirect interest in issuing corporation. X, a corporation, owns all of the stock of each of corporations P and Z. Z owns all of the stock of T. T merges into P. Z receives P stock in the merger. Immediately thereafter and in connection with the merger, Z distributes the P stock received in the merger to X. X is a person related to P under paragraph (e)(3)(i)(A) of this section. The continuity of interest requirement is satisfied, because X was an indirect owner of T prior to the merger who maintains a direct or indirect proprietary interest in P, preserving a substantial part of the value of the proprietary interest in T. See paragraph (e)(2) of this section.

(7) *Effective date.* This paragraph (e) applies to transactions occurring after January 28, 1998, except that it does not apply to any transaction occurring pursuant to a written agreement which is binding on January 28, 1998, and at all times thereafter.

Par. 4. Section 1.368–2 is amended by:

1. Removing the second sentence of paragraph (a) and adding two sentences in its place.
2. Removing the second sentence of paragraph (f) and adding four sentences in its place.
3. Removing the second sentence in paragraph (j)(1).
4. Revising paragraph (j)(3)(ii).
5. Revising the first sentence in paragraph (j)(3)(iii).
6. Adding paragraph (j)(3)(iv).
7. Removing paragraph (j)(4).
8. Redesignating paragraphs (j)(5), (j)(6), and (j)(7) as (j)(4), (j)(5), and (j)(6), respectively.
9. Removing the parentheses around the numbers in the paragraph headings for *Example (1)* through *Example (9)* in newly designated paragraph (j)(6).
10. Adding paragraph (k).

The additions and revisions read as follows:

§ 1.368–2 Definition of terms.

(a) * * * The term does not embrace the mere purchase by one corporation of the properties of another corporation. The preceding sentence applies to transactions occurring after January 28, 1998, except that it does not apply to any transaction occurring pursuant to a written agreement which is binding on January 28, 1998, and at all times thereafter. * * *

* * * * *

(f) * * * If a transaction otherwise qualifies as a reorganization, a corporation remains a party to the reorganization even though stock or assets acquired in the reorganization are transferred in a transaction described in paragraph (k) of this section. If a transaction otherwise qualifies as a reorganization, a corporation shall not cease to be a party to the reorganization solely by reason of the fact that part or all of the assets acquired in the reorganization are transferred to a partnership in which the transferor is a partner if the continuity of business enterprise requirement is satisfied. See § 1.368–1(d). The preceding three sentences apply to transactions occurring after January 28, 1998, except that they do not apply to any transaction occurring pursuant to a written agreement which is binding on January 28, 1998, and at all times thereafter.

* * *

* * * * *

(j) * * *

(3) * * *

(ii) Except as provided in paragraph (k)(2) of this section, the controlling corporation must control the surviving corporation immediately after the transaction.

(iii) After the transaction, except as provided in paragraph (k)(2) of this section, the surviving corporation must hold substantially all of its own properties and substantially all of the properties of the merged corporation (other than stock of the controlling corporation distributed in the transaction). * * *

(iv) Paragraphs (j)(3)(ii) and (iii) of this section apply to transactions occurring after January 28, 1998, except that they do not apply to any transaction occurring pursuant to a written agreement which is binding on January 28, 1998, and at all times thereafter.

* * * * *

(k) *Transfer of assets or stock in section 368(a)(1)(A), (B), (C), or (G) reorganizations*—(1) *General rule for transfers to controlled corporations.* Except as otherwise provided in this section, a transaction otherwise qualifying under section 368(a)(1)(A), (B), (C), or (G) (where the requirements of sections 354(b)(1)(A) and (B) are met) shall not be disqualified by reason of the fact that part or all of the acquired assets or stock acquired in the transaction are transferred or successively transferred to one or more corporations controlled in each transfer by the transferor corporation. Control is defined under section 368(c).

(2) *Transfers following a reverse triangular merger.* A transaction qualifying under section 368(a)(1)(A) by reason of the application of section 368(a)(2)(E) is not disqualified by reason of the fact that part or all of the stock of the surviving corporation is transferred or successively transferred to one or more corporations controlled in each transfer by the transferor corporation, or because part or all of the assets of the surviving corporation or the merged corporation are transferred or successively transferred to one or more corporations controlled in each transfer by the transferor corporation.

(3) *Examples.* The following examples illustrate the application of this paragraph (k). P is the issuing corporation and T is the target corporation. P has only one class of stock outstanding. The examples are as follows:

Example 1. Transfers of acquired assets to controlled corporations. (i) *Facts.* T operates a bakery which supplies delectable pastries and cookies to local retail stores. The acquiring corporate group produces a variety of baked goods for nationwide distribution. P owns 80 percent of the stock of S–1. Pursuant to a plan of reorganization, T transfers all of its assets to S–1 solely in exchange for P stock, which T distributes to its shareholders. S–1 owns 80 percent of the stock of S–2; S–2 owns 80 percent of the stock of S–3, which also makes and supplies pastries and cookies. Pursuant to the plan of reorganization, S–1 transfers the T assets to S–2; S–2 transfers the T assets to S–3.

(ii) *Analysis.* Under this paragraph (k), the transaction, otherwise qualifying as a reorganization under section 368(a)(1)(C), is not disqualified by reason of the fact of the successive transfers of all of the acquired assets from S–1 to S–2, and from S–2 to S–3 because in each transfer, the transferee corporation is controlled by the transferor corporation. Control is defined under section 368(c).

Example 2. Transfers of acquired stock to controlled corporations. (i) *Facts.* The facts are the same as Example 1 except that S–1 acquires all of the T stock rather than the T assets, and as part of the plan of reorganization, S–1 transfers all of the T stock to S–2, and S–2 transfers all of the T stock to S–3.

(ii) *Analysis.* Under this paragraph (k), the transaction, otherwise qualifying as a reorganization under section 368(a)(1)(B), is not disqualified by reason of the fact of the successive transfers of all of the acquired stock from S–1 to S–2, and from S–2 to S–3 because in each transfer, the transferee corporation is controlled by the transferor corporation.

Example 3. Transfers of acquired stock to partnerships. (i) *Facts.* The facts are the same as in Example 2. However, as part of the plan of reorganization, S–2 and S–3 form a new partnership, PRS. Immediately thereafter, S–3 transfers all of the T stock to PRS in exchange for an 80 percent partnership interest, and S–2 transfers cash to PRS in exchange for a 20 percent partnership interest.

(ii) *Analysis.* This paragraph (k) describes the successive transfer of the T stock to S–3, but does not describe S–3's transfer of the T stock to PRS. Therefore, the characterization of this transaction must be determined under the relevant provisions of law, including the step transaction doctrine. See § 1.368–1(a). The transaction fails to meet the control requirement of a reorganization described in section 368(a)(1)(B) because immediately after the acquisition of the T stock, the acquiring corporation does not have control of T.

(4) This paragraph (k) applies to transactions occurring after January 28, 1998, except that it does not apply to any transaction occurring pursuant to a written agreement which is binding on January 28, 1998, and at all times thereafter.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved: January 12, 1998.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8761]

RIN 1545–AV80

Continuity of Interest

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations providing guidance regarding satisfaction of the continuity of interest requirement for corporate reorganizations. The temporary regulations affect corporations and their shareholders. Final regulations published elsewhere in this issue of the **Federal Register** also provide guidance regarding satisfaction of the continuity of interest requirement for corporate reorganizations. These temporary regulations amplify the final regulations. The text of these temporary regulations also serves as the text of proposed regulations published elsewhere in this issue of the **Federal Register**.

DATES: These regulations are effective January 28, 1998.

Applicability: These regulations apply to transactions occurring after January 28, 1998, except that they do not apply to any transaction occurring pursuant to a written agreement which is (subject to customary conditions) binding on January 28, 1998, and at all times thereafter.

FOR FURTHER INFORMATION CONTACT: Phoebe Bennett, (202) 622–7750 (not a toll-free number).

SUPPLEMENTARY INFORMATION: This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 368. These temporary regulations provide that, in determining whether the continuity of interest requirement for corporate reorganizations is satisfied with respect to a potential reorganization, a proprietary interest in the target corporation is not preserved if, in connection with a potential reorganization, it is redeemed or acquired by a person related to the target corporation, or to the extent that, prior to and in connection with a potential reorganization, an extraordinary distribution is made with respect to it.

Background

On December 23, 1996, the IRS published a notice of proposed rulemaking (REG–252231–96) in the **Federal Register** (61 FR 67512) relating to the continuity of interest requirement. Many written comments were received in response to this notice of proposed rulemaking. A public hearing on the proposed regulations was held on May 7, 1997. After consideration of all comments, the regulations proposed by REG–252231–96 are adopted as final regulations, and published elsewhere in this issue of the **Federal Register**. These temporary regulations supplement the final regulations.

Explanation of Provisions

Final regulations published elsewhere in this issue of the **Federal Register** provide that in determining whether the continuity of interest (COI) requirement for corporate reorganizations is satisfied, dispositions of stock of the target corporation (T) by a T shareholder generally are not taken into account.

Redemptions of T Stock or Extraordinary Distributions With Respect to T Stock

Commentators requested guidance on the circumstances under which a redemption by T of its stock would adversely affect satisfaction of the COI requirement.

Some commentators suggested that the IRS and Treasury Department adopt an approach that would identify either the issuing corporation (P) or T as the source of the funds for the redemption. If, in connection with an acquisition of T, the facts and circumstances indicate that P did not directly or indirectly furnish funds used by T to redeem T shareholders, these commentators suggested that satisfaction of the COI requirement should not be adversely affected. In many transactions, however, such a tracing approach would be extremely difficult to administer. For example, if P acquired the assets, rather than the stock, of T or if T redeemed stock for a note, it would be unclear in many circumstances whether in substance T or P assets were used to fund the redemption or to repay the note.

Another commentator suggested that redemptions by T in connection with a potential reorganization should adversely affect satisfaction of the COI requirement because the effect on COI is the same as if P had furnished the redemption consideration in the transaction. The temporary regulations generally adopt this approach because it reflects that T and P will be combined economically and because of the difficulties of administering a tracing approach, as previously described.

Treatment of stock redeemed by T as proprietary interests that are not preserved in the reorganization also accords the same tax result to transactions that reach the same result by different steps. For example, T could merge into P for a combination of consideration, of which 30 percent is P stock and 70 percent is a P promissory note. Conversely, T could issue its promissory note to redeem 70 percent of the T stock and then P would assume the T note in the merger, in which the

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remaining T shareholders receive solely P stock. From the perspective of P, T, and the T shareholders, these two transactions are substantively identical, and the COI requirement is not satisfied in the first transaction. The temporary regulations provide that the second transaction likewise does not satisfy the COI requirement.

In addition, this approach corresponds with the rule of the final regulations that a proprietary interest in T is not preserved if, in connection with the potential reorganization, P stock furnished in exchange for a proprietary interest in T in the potential reorganization is redeemed. Because the final regulations do not inquire, in the case of a subsequent P redemption, whether the source of consideration furnished in the redemption was former T assets or historic P assets, the temporary regulations similarly do not make an inquiry in the case of a prior T redemption. Instead, for purposes of the COI requirement, the temporary regulations treat T and P as a combined economic enterprise. In an asset acquisition, this approach avoids the difficult process of identifying the source of payments as between T and P.

Commentators have suggested that this approach is inconsistent with authorities which hold that redemptions of stock of the target corporation with assets of the target corporation do not violate the solely-for-voting-stock requirement applicable to section 368(a)(1)(B) reorganizations. See, e.g., Rev. Rul. 55–440 (1955–2 C.B. 226). None of these authorities address the effect on continuity of interest of such redemptions. For the reasons stated above, the temporary regulations take such redemptions into account for continuity purposes.

The temporary regulations provide that a proprietary interest in T is not preserved if, in connection with a potential reorganization, it is redeemed or to the extent that, prior to and in connection with a potential reorganization, an extraordinary distribution is made with respect to it. An extraordinary distribution with respect to T stock, followed by a sale of the remaining T stock to P, has the same effect on the value of the proprietary interest in T as a pro rata redemption by T followed by a sale of the outstanding T stock to P.

The temporary regulations do not provide guidance on the determination of whether a distribution will be treated as an extraordinary distribution, except that the rules of section 1059 do not apply for this purpose. The IRS and Treasury Department invite comments on whether the regulations should provide more specific guidance in this area.

A section 355 distribution of controlled corporation stock by T will preserve a proprietary interest in T, except to the extent that the T shareholders receive other property or money to which section 356(a) applies or the distribution is extraordinary in amount and is a distribution of property or money to which section 356(b) applies.

Related Person Rule

In determining whether the COI requirement is satisfied, dispositions of T stock to persons that are not related to T or P are disregarded. The final regulations provide that a proprietary interest in T is not preserved if, in connection with a potential reorganization, a person related to P acquires, with consideration other than a proprietary interest in P, T stock or P stock furnished in exchange for a proprietary interest in T in the potential reorganization. Consistent with the final regulations, the temporary regulations provide that a proprietary interest in T is not preserved if, prior to and in connection with a potential reorganization, a person related to T acquires T stock with consideration other than T stock or P stock.

Definition of Related Person of T

The final regulations include as related persons any corporation that is a member of the affiliated group, within the meaning of section 1504, of which P is a member, and any corporation whose purchase of P stock would be treated as a redemption of that stock under section 304(a)(2). The section 1504 test was adopted because the IRS and Treasury Department were concerned that acquisitions of T stock or P stock by P affiliated corporations were no different in substance than acquisitions or redemptions by P. This concern does not generally extend to members of T's affiliated group that are not also considered related to T under section 304(a)(2) because such corporations are T shareholders participating in the potential reorganization along with the other shareholders of the target corporation. The temporary regulations treat two corporations as related persons if a purchase of the stock of one corporation by another corporation would be treated as a distribution in redemption of the stock of the first corporation under section 304(a)(2) (determined without regard to § 1.1502–80(b)).

Effect on Other Authorities

These COI regulations apply solely for purposes of determining whether the COI requirement is satisfied. No inference should be drawn from any provision of this regulation as to whether other reorganization requirements are satisfied, or as to the characterization of a related transaction. See, e.g., § 1.301–1(1).

Effect on Other Documents

Rev. Proc. 77–37 (1977–2 C.B. 568) and Rev. Proc. 86–42 (1986–2 C.B. 722) will be modified to the extent inconsistent with these temporary regulations.

Effective Date

These regulations apply to transactions occurring after January 28, 1998, except that they do not apply to any transaction occurring pursuant to a written agreement which is (subject to customary conditions) binding on January 28, 1998, and at all times thereafter.

Special Analyses

It has been determined that these temporary regulations are not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these temporary regulations and, because the temporary regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Phoebe Bennett of the Office of the Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.368–1T is added to read as follows:

§ 1.368–1T Purpose and scope of exception of reorganization exchanges (temporary).

(a) through (e)(1)(i) [Reserved] For further guidance see § 1.368–1(a) through (e)(1)(i).

(e)(1)(ii)(A) *General rule.* A proprietary interest in the target corporation (other than one held by the acquiring corporation) is not preserved if, prior to and in connection with a potential reorganization, it is redeemed or to the extent that, prior to and in connection with a potential reorganization, an extraordinary distribution is made with respect to it. The determination of whether a distribution with respect to stock of the target corporation is an extraordinary distribution for purposes of this paragraph (e)(1)(ii) will be made on the basis of all of the facts and circumstances, but the treatment of the distribution under section 1059 (relating to extraordinary dividends) will not be taken into account.

(B) *Exception.* Paragraph (e)(1)(ii)(A) of this section does not apply to a distribution of stock by the target corporation to which section 355(a) (or so much of section 356 as relates to section 355) applies, except to the extent that—

(*1*) The target corporation shareholders receive other property or money to which section 356(a) applies; or

(*2*) The distribution is extraordinary in amount and is a distribution of property or money to which section 356(b) applies.

(2)(i) [Reserved] For further guidance, see § 1.368–1(e)(2)(i).

(ii) A proprietary interest in the target corporation is not preserved if, prior to and in connection with a potential reorganization, a person related (as defined in § 1.368–1(e)(3) determined without regard to § 1.368–1(e)(3)(i)(A)) to the target corporation acquires stock of the target corporation, with consideration other than stock of either the target corporation or the issuing corporation.

(e)(3) through (e)(6) *Example 9.* [Reserved] For further guidance, see § 1.368–1(e)(3) through (e)(6) *Example 9.*

(e)(6) *Example 10. Acquisition of target corporation stock before merger.* (i) *Redemption by target corporation.* A owns 85 percent and B owns 15 percent of the stock of T. The fair market value of T is $100x. Neither A nor B own stock of P. Prior to and in connection with the merger of T into P, T redeems A's T stock for $85x and issues to A its promissory note in exchange for the stock. At the time of the merger T has a value of $15x, after giving effect to the redemption of its stock. In the merger, B receives solely P stock. The continuity of interest requirement is not satisfied because T redeemed A's stock, and a substantial part of the value of the proprietary interest in T is not preserved. See paragraph (e)(1)(ii)(A) of this section.

(ii) *Purchase by person related to target corporation.* The facts are the same as paragraph (i) of this *Example 10*, except that X, T's wholly owned subsidiary, acquires A's T stock prior to and in connection with the merger for cash of $85x. Under paragraph (e)(2)(ii) of this section and § 1.368–1(e)(3)(i)(B), X's acquisition of A's T stock is an acquisition by a related person. The continuity of interest requirement is not satisfied, because X acquired T stock, for consideration other than P stock, and a substantial part of the value of the proprietary interest in T is not preserved. See paragraph (e)(2)(ii) of this section.

Example 11. Extraordinary distribution before merger. A owns all of the stock of T. The fair market value of T is $100x. Prior to and in connection with the merger of T into P, T pays A an extraordinary distribution of an $85x note. T merges into P, and A receives solely P stock. P assumes T's obligation on the note. The continuity of interest requirement is not satisfied, because T paid A an extraordinary distribution, and a substantial part of the value of the proprietary interest in T is not preserved. See paragraph (e)(1)(ii)(A) of this section.

(f) *Effective date.* This section applies to transactions occurring after January 28, 1998, except that it does not apply to any transaction occurring pursuant to a written agreement which is (subject to customary conditions) binding on January 28, 1998, and at all times thereafter.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved: January 12, 1998.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 98–1818 Filed 1–23–98; 12:15 pm]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 356

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds (Department of the Treasury Circular, Public Debt Series No. 1–93)

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury ("Treasury" or "Department") is issuing in final form an amendment to 31 CFR Part 356 (Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds). This final rule incorporates a change in the timeframe for certain restrictions pertaining to bidders that bid noncompetitively in Treasury auctions. The amendment states that between the date of the offering announcement and the time of the official announcement by the Department of the auction results, a noncompetitive bidder may not hold, at any time, a position for its own account in when-issued trading or in futures or forward contracts in the security being auctioned or enter into any agreement to purchase or sell or otherwise dispose of the securities it is acquiring in the auction.

EFFECTIVE DATE: January 28, 1998.

ADDRESSES: This final rule is available for downloading from the Bureau of the Public Debt's Internet site at the following address: www.publicdebt.treas.gov. It is also available for public inspection and copying at the Treasury Department Library, FOIA Collection, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, N.W., Washington, D.C., 20220. Persons wishing to visit the library should call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Kerry Lanham (Acting Director) or Lee Grandy (Government Securities Specialist), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 219–3632.

SUPPLEMENTARY INFORMATION: 31 CFR Part 356, also referred to as the uniform offering circular, sets out the terms and conditions for the sale and issuance by the Department of the Treasury to the public of marketable Treasury bills, notes, and bonds. The uniform offering circular, in conjunction with offering announcements, represents a comprehensive statement of those terms

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and conditions. [1] This final rule amends paragraph 356.12(b)(2), "Additional restrictions," and is applicable to bidders bidding noncompetitively for their own account in Treasury security auctions.

The current rule under paragraph 356.12(b)(2) provides that a bidder may not bid noncompetitively for its own account if, in the security being auctioned, it holds or has held a position in when-issued trading or in futures or forward contracts at any time between the date of the offering announcement and the designated closing time for the receipt of competitive tenders in the auction. Further, the paragraph provides that prior to the designated closing time for receipt of competitive bids a noncompetitive bidder may not enter into any agreement to purchase or sell or otherwise dispose of the securities it is acquiring in the auction.

The noncompetitive bidding option's objective is to achieve a broader distribution of Treasury securities by allowing relatively small investors, who may not have current market information, to participate successfully in Treasury auctions by providing assurance that they can obtain a limited amount of securities without competition. As stated in the January 1992 *Joint Report on the Government Securities Market* ("Joint Report"), noncompetitive bidding allows the small investor to purchase securities at a current market yield by eliminating the risk that a prospective investor might bid a yield that is too high and not obtain the securities desired or might bid a yield that is too low and pay too much for the securities. [2] The restriction on noncompetitive bidders under current paragraph 356.12(b)(2), which is discussed above, is directed at limiting the noncompetitive bidding option to small, less sophisticated bidders.

The noncompetitive bidding option is not intended to be used as a substitute for competitive bidding, which is available to all investors. The Joint Report referenced several instances of investors using noncompetitive awards for what appeared to be arbitrage purposes that went against the spirit of the noncompetitive award system. [3]

[1] The uniform offering circular was published as a final rule on January 5, 1993 (58 FR 412). The circular, as amended, is codified at 31 CFR Part 356.

[2] Department of the Treasury, Securities and Exchange Commission, and Board of Governors of the Federal Reserve System, *Joint Report on the Government Securities Market*, (January 1992), p. A–2.

[3] See *supra* note 2, at p. B–50.

The Department has reexamined the situation where bidders bid noncompetitively for their own accounts in an auction and also enter into positions in the security being auctioned in the when-issued, futures, or forward markets, and has determined that further tightening of the noncompetitive bidding restriction is necessary. The Department views a bidder in an auction who enters into a position in the when-issued or futures or forward markets in the same security being auctioned, prior to the time of Treasury's announcement of the auction results as a sophisticated bidder who should be bidding competitively, not noncompetitively.

Accordingly, paragraph 356.12(b)(2) of the uniform offering circular is amended to state that between the date of the offering announcement and the time of the official announcement by the Department of the auction results, a noncompetitive bidder may not hold, at any time, a position for its own account in when-issued trading or in futures or forward contracts in the security being auctioned or enter into any agreement to purchase or sell or otherwise dispose of the securities it is acquiring in the auction. The amended paragraph now also states that, for purposes of this paragraph, futures contracts include those: (i) that require delivery of the specific security being auctioned; (ii) for which the security being auctioned is one of several securities that may be delivered; or (iii) that are cash-settled.

The Department notes that for the purposes of amended paragraph 356.12(b)(2), the meaning of "futures contracts" is different, and significantly broader, than it is for the net long position calculation purposes pursuant to paragraph 356.13(b) of this part. For net long position reporting purposes, "futures contracts" encompass only those contracts that require delivery of the specific security being auctioned. The different meanings of "futures contracts" in paragraphs 356.12(b) and 356.13(b) reflect the different objectives of the two provisions. The net long position reporting requirement in section 356.13 is used to enforce Treasury's policy that no bidder in an auction of a particular security will have acquired more than 35 percent of the amount awarded to the public and, accordingly, the focus is on control of the specific security being auctioned. This results in a narrower approach by excluding futures contracts that are cash-settled and those requiring delivery of securities other than the specific security being auctioned, since these two types of contracts do not constitute control of the specific security being auctioned. In contrast, the restrictions on noncompetitive bidders at paragraph 356.12(b)(2) are intended to limit the noncompetitive bidding option to small, less sophisticated bidders, and therefore, the restrictions encompass a broader range of positions in futures contracts.

The modifications to paragraph 356.12(b)(2) extend the applicable deadline for this noncompetitive bidding restriction to the time of the announcement of the auction results, which is later than the designated closing time for receipt of competitive tenders in an auction. After the conclusion of an auction, the Department makes an official announcement of the auction results through a press release. Once Treasury announces the auction results, the various electronic financial wire services (e.g., Dow Jones, Reuters, Bloomberg, Bridge News, Associated Press) quickly disseminate this information, as do other major news and financial publications. Thus, a noncompetitive bidder that wants to know if the auction results have been announced can check for the results over various electronic wire services. Once the official announcement by the Department of the auction results is released, noncompetitive bidders in that particular auction may enter into positions in when-issued trading or in futures or forward contracts for the security just auctioned or may enter into agreements to purchase or sell or otherwise dispose of the securities acquired in the auction.

The Department also notes that paragraph 356.15(b) of the uniform offering circular, which sets out the terms of bidding through investment advisers, provides that regardless of whether the bid for a controlled account is in the name of the investment adviser or in the name of the controlled account, the account is subject to the noncompetitive bidding restrictions contained in paragraph 356.12(b). This means that the changes contained in this amendment to the uniform offering circular apply to bidders in an auction that are bidding noncompetitively through an investment adviser, as well as all other noncompetitive bidders in the auction.

Procedural Requirements

This final rule does not meet the criteria for a "significant regulatory action" pursuant to Executive Order 12866.

Because this rule relates to public contracts and procedures for United States securities, the notice, public comment, and delayed effective date provisions of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

There is no new collection of information contained in this final rule, and, therefore, the Paperwork Reduction Act does not apply. The collections of information of 31 CFR Part 356 have been previously approved by the Office of Management and Budget under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) under control number 1535–0112. Under this Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

List of Subjects in 31 CFR Part 356

Bonds, Federal Reserve System, Government securities, Securities.

For the reasons set forth in the preamble, 31 CFR chapter II, subchapter B, part 356, is amended as follows:

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1–93)

1. The authority citation for part 356 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3102, *et seq.*; 12 U.S.C. 391.

2. Section 356.12 is amended by revising paragraph (b)(2) to read as follows:

§ 356.12 Noncompetitive and competitive bidding.

* * * * *

(b) * * *

(2) *Additional restrictions.* Between the date of the offering announcement and the time of the official announcement by the Department of the auction results, a noncompetitive bidder may not hold, at any time, a position for its own account in when-issued trading or in futures or forward contracts in the security being auctioned or enter into any agreement to purchase or sell or otherwise dispose of the securities it is acquiring in the auction. For purposes of this paragraph, futures contracts include those:

(i) That require delivery of the specific security being auctioned;

(ii) For which the security being auctioned is one of several securities that may be delivered; or

(iii) That are cash-settled.

* * * * *

Dated: January 21, 1998.

Donald V. Hammond,

Acting Fiscal Assistant Secretary.

[FR Doc. 98–1958 Filed 1–27–98; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 215

Notice, Comment, and Appeal Procedures for National Forest System Projects and Activities

AGENCY: Forest Service, USDA.

ACTION: Interim final rule; request for comment.

SUMMARY: The Department is amending the rules governing who can participate in administrative appeals of decisions authorizing National Forest System projects and activities, by removing a prohibition on appeals by Forest Service employees. This regulatory change results from a reassessment of this provision in response to a recent legal challenge. Public comment is invited on this interim rule and will be considered in promulgating a final rule.

DATES: This interim rule is effective January 28, 1998. Comments on this rulemaking must be received by March 30, 1998.

ADDRESSES: Written comments on this rule must be sent to Susan Yonts-Shepard, Appeals Coordinator, National Forest Systems Deputy Area, MAIL STOP 1106, Forest Service, USDA P.O. Box 96090, Washington, DC 20090–9060. All comments, including names and addresses, when provided, will be placed in the record and are made available for public inspection and copying.

FOR FURTHER INFORMATION CONTACT: Susan Yonts-Shepard, Forest Service, telephone, (202) 202–1519.

SUPPLEMENTARY INFORMATION:

Background

Section 322 of the 1993 Interior and Related Agencies Appropriations Act directed the Department to establish a process by which persons or organizations receive notice and the opportunity to comment on proposed actions affecting the National Forest System. The Act also required the establishment of procedures by which persons or organizations may appeal decisions subsequently made on proposed actions. Following the publication of a proposed rule with a request for public comment (58 FR 19369), the Forest Service received over 9,000 comments on certain aspects of this rulemaking. However, no comment was submitted on the proposed provision prohibiting agency employees from participating in the appeal process as appellants or as interested parties at § 215.11(c). Having concluded that there was no concern with this provision, the Department adopted paragraph (c) in § 215.11, without change from the proposed rule, November 4, 1993 (58 FR 58904).

A recent lawsuit brought by a Forest Service employee challenging this regulation (*Dalton* v. *Forest Service*, Civil Act Number 97–0774, U.S.D.C., D.D.C.) has led to a reassessment of the employee appeal limitation in 36 CFR 215.11(c) and has raised issues not considered at the time of the earlier rulemaking. Moreover, the rulemaking record does not speak directly to the § 215.11(c) provision. Therefore, the Deputy Under Secretary, in a declaration to the court, indicated that the Department would cease immediately to enforce the employee appeal prohibition and would repeal the employee prohibition provision at § 215.11(c). The declaration also indicated that, at a later date, after additional consideration of relevant factors, the Forest Service may decide to publish a new proposed rule to address the matter of appeals by employees. If so, public comment would be requested at that time.

Employees appealing a National Forest System project may violate 18 U.S.C. 208 if their appeal is based upon an imputed financial interest and their official duties involve the appeal. Also, representation of others in the appeal process may be prohibited under 18 U.S.C. 203 and 205. Assuming that an employee appealing a National Forest System project would file the appeal as a private citizen, in accordance with Office of Government Ethics regulations at 5 CFR part 2635, subpart G, Misuse of position, the employee may not be on official duty or use government property or equipment in the preparation or transmittal of an appeal. Also, in preparing the appeal, the employee must not use official information not yet released to the public. A new paragraph (d) has been added to § 215.11 to address the standards of ethical conduct for employees filing an appeal.

Agencies are not required by the Administrative Procedure Act to give notice and opportunity to comment prior to adoption of this interim final rule because the decision to repeal § 215.11(c) involves a matter relating to

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agency personnel and, thus, is exempt pursuant to 5 U.S.C. 553(a)(2). However, the Department believes the public should have an opportunity to comment on this rescission before it is adopted as a final rule. Among concerns and questions that reviewers may wish to consider are: the appropriateness and ethical implications of allowing employees to appeal certain Forest Service decisions; the potential impact of employee appeals on the process of permit administration; and the potential impact of allowing employee appeals on the delivery of goods and services from the National Forest System.

Regulatory Impact

This interim final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This action consists of administrative changes to regulations that would allow employee appeals of agency projects and activities under 36 CFR part 215. This interim final rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. Also, this rule will not interfere with an action taken or planned by another agency or raise new legal or policy issues. In short, little or no effect on the national economy will result from this interim final rule. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this interim final rule is not subject to OMB review under Executive Order 12866.

Moreover, this interim final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it is hereby certified that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of this rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Environmental Impact

Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The agency's assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

No Takings Implications

This interim final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of Constitutionally-protected private property. There are no Constitutionally-protected private property rights to be affected, since the regulation applies only to agency employees.

Civil Justice Reform Act

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This interim final rule (1) preempts all State and local laws and regulations that are in conflict or which would impede its full implementation, (2) has no retroactive effect, and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

Controlling Paperwork Burdens on the Public

This interim final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 36 CFR Part 215

Administrative practice and procedures, National forests.

Therefore, for the reasons set forth in the preamble, part 215 of Title 36 of the Code of Federal Regulations is amended, as follows:

PART 215—NOTICE, COMMENT, AND APPEAL PROCEDURES FOR NATIONAL FOREST SYSTEM PROJECTS AND ACTIVITIES

1. The authority citation for part 215 continues to read as follows:

Authority: 16 U.S.C. 472, 551; sec. 322, Pub. L. 102–381, 106 Stat. 1419 (16 U.S.C. 1612 note).

§ 215.11 [Amended]

2. Amend § 215.11 to revise paragraph (c) and add a new paragraph (d) to read as follows:

§ 215.11 Who may participate in appeals.

* * * * *

(c) Federal agencies may not participate as appellants or interested parties.

(d) Federal employees filing appeals under this part shall comply with Federal conflict of interest statutes at 18 U.S.C. 202–209 and with employee ethics requirements at 5 CFR part 2635. Specifically, employees shall not be on official duty or use government property or equipment in the preparation or transmittal of an appeal. Employees also shall not use official information not yet released to the public.

Dated: January 22, 1998.

Brian Eliot Burke,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 98–2043 Filed 1–27–98; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH58–1a; FRL–5954–6]

Approval and Promulgation of State Implementation Plan; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action, EPA is approving as a revision to the Ohio State Implementation Plan (SIP) a rate-of-progress plan for the purpose of reducing volatile organic compounds (VOC) emissions in the Ohio portion of the Cincinnati-Hamilton area by 15 percent by November 15, 1996. The plan and regulations will help to protect the public's health and welfare by reducing the VOC emissions that contribute to the formation of ground-level ozone, commonly known as urban smog. Elsewhere in this **Federal Register**, EPA is proposing approval and soliciting comment on this action; if written adverse comments (not previously addressed) are received on the approval of the rate-of-progress plan, EPA will withdraw the direct final approval of the plan and address the comments received in a new final rule. Unless this direct final is withdrawn, no further rulemaking will occur on this requested SIP revision.

DATES: This rule is effective March 30, 1998 unless EPA receives adverse or critical comments by February 27, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: *Comments may be mailed to:* J. Elmer Bortzer, Chief, Regulation Development Section, Air and Radiation Division, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the documents relevant to this action are available at the above address for public inspection during normal business hours.

FOR FURTHER INFORMATION CONTACT: William Jones, Environmental Scientist at (312) 886–6058 and Francisco Acevedo, Environmental Protection Specialist at (312) 886–6061.

SUPPLEMENTARY INFORMATION:

I. Background on Rate-of-Progress and Contingency Plan Requirement

On November 15, 1990, Congress enacted amendments to the 1977 Clean Air Act (CAA); Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

Section 182(b)(1) of the Clean Air Act requires moderate and above ozone nonattainment areas to submit plans to reduce their VOC emissions by 15 percent by 1996. These plans are referred to as 15 percent rate of progress (15% ROP) plans. These plans were due to be submitted to the Environmental Protection Agency (EPA) by November 15, 1993. In Ohio, these plans were due for the Toledo, Dayton-Springfield, Cleveland-Akron-Lorain areas, and the Ohio portion of the Cincinnati-Hamilton Moderate ozone nonattainment area.

On November 12, 1993, Ohio submitted 15% plans for the Toledo, Dayton-Springfield, Cleveland-Akron-Lorain, and the Ohio portion of the Cincinnati-Hamilton areas. EPA reviewed these plans to determine if they satisfied the completeness criteria so that the rulemaking process could begin. On January 21, 1994, EPA notified Ohio that EPA was making a finding of incompleteness on the 15% ROP plan submittals and starting a clock for imposing sanctions in these areas. In order to stop this clock the State had to submit a complete 15% ROP plan for the State's moderate ozone nonattainment areas.

On March 14, 1994, OEPA Director Schregardus submitted Ohio's 15% ROP plans, along with several other State Implementation Plan revisions, to EPA. Only the 15% ROP plan for the Ohio portion of the Cincinnati-Hamilton area is subject to this approval. The requirements for a 15% ROP plan in the Toledo and Dayton-Springfield areas were no longer applicable after these areas were redesignated as ozone attainment areas, see 60 FR 39115 (dated August 1, 1995) and 60 FR 22289 (dated May 5, 1995). The 15% ROP plan requirement for the Cleveland-Akron-Lorain area was determined to be fulfilled since the area reached attainment and, therefore, no further emissions reductions were necessary to reach attainment of the ozone air quality standard. See 61 FR 20458 (dated May 7, 1996).

The 15% ROP plans submitted by OEPA on March 14, 1994, were found complete by EPA on August 8, 1994, in a letter to the State of Ohio. The completeness review of the plans is contained in an EPA memorandum dated May 12, 1994, a copy of which can be found in the docket.

II. Review Criteria

The requirements for a 15% ROP plan and its contents are found in Section 182(b)(1) of the CAA and the following EPA documents:

1. *Procedures for Preparing Emissions Projections*, EPA–450/4–91–019, July 1991.

2. State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Proposed rule (57 FR 13498), **Federal Register**, April 16, 1992.

3. "November 15, 1992, Deliverables for RFP and modeling Emission Inventories," Memorandum from J. David Mobley, Edwin L. Meyer, and G. T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, August 7, 1992.

4. *Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for the 15 Percent Rate of Progress Plans*, EPA–452/R–92–005, October 1992.

5. "Quantification of Rule Effectiveness Improvements," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, October 1992.

6. *Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of-Progress Plans*, EPA–452/R–93–002, March 1993.

7. "Correction to 'Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for the 15 Percent Rate of Progress Plans'," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 2, 1993.

8. "15 Percent Rate-of-Progress Plans," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 16, 1993.

9. *Guidance on the Relationship Between the 15 Percent Rate-of-Progress Plans and Other Provisions of the Clean Air Act*, EPA–452/R–93–007, Environmental Protection Agency, May 1993.

10. "Credit Toward the 15 Percent Rate-of-Progress Reductions from Federal Measures," G. T. Helms, Chief Ozone/Carbon Monoxide Programs Branch, May 6, 1993.

11. *Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-of-Progress Plans*, EPA–452/R–93–005, Environmental Protection Agency, June 1993.

12. "Correction Errata to the 15 Percent Rate-of-Progress Plan Guidance Series," G.T. Helms, Chief, Ozone and Carbon Monoxide Programs Branch, July 28, 1993.

13. "Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas," G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 13, 1993.

14. "Region III Questions on Emission Projections for the 15 Percent Rate-of-Progress Plans," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, August 17, 1993.

15. "Guidance on Issues Related to 15 Percent Rate-of-Progress Plans," Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, August 23, 1993.

16. "Credit Toward the 15 Percent Requirements from Architectural and Industrial Maintenance Coatings," John S. Seitz, Director, Office of Air Quality Planning and Standards, September 10, 1993.

17. "Reclassification of Areas to Nonattainment and 15 Percent Rate-of-Progress Plans," John S. Seitz, Director, Office of Air Quality Planning and Standards, September 20, 1993.

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18. "Clarification of 'Guidance for Growth Factors, Projections and Control Strategies for the 15 Percent Rate of Progress Plans'," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, October 6, 1993.

19. "Review and Rulemaking on 15 Percent Rate-of-Progress Plans," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, October 6, 1993.

20. "Questions and Answers from the 15 Percent Rate-of-Progress Plan Workshop," G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, October 29, 1993.

21. "Rate-of-Progress Plan Guidance on the 15 Percent Calculations," D. Kent Berry, Acting Director, Air Quality Management Division, October 29, 1993.

22. "Clarification of Issues Regarding the Contingency Measures that are due November 15, 1993 for Moderate and Above Ozone Nonattainment Areas," D. Kent Berry, Acting Director, Air Quality Management Division, November 8, 1993.

23. "Credit for 15 percent Rate-of-Progress Plan Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule," John S. Seitz, Director, Office of Air Quality Planning and Standards, December 9, 1993.

24. "Guidance on Projection of Nonroad Inventories to Future Years," Memorandum from Philip A. Lorang, Director, Emission Planning and Strategies Division, Office of Air and Radiation, Environmental Protection Agency, February 4, 1994.

25. "Discussion at the Division Directors' Meeting on June 1 Concerning the 15 Percent and 3 Percent Calculations," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, June 2, 1994.

26. "Future Nonroad Emission Reduction Credits for Court-Ordered Nonroad Standards," Memorandum from Philip A. Lorang, Director, Emission Planning and Strategies Division, Office of Air and Radiation, Environmental Protection Agency, November 28, 1994.

27. "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule," John S. Seitz, Director, Office of Air Quality Planning and Standards, November 29, 1994.

28. "Transmittal of Rule Effectiveness Protocol for 1996 Demonstrations," Memorandum from Susan E. Bromm, Director, Chemical, Commercial Services and Municipal Division, Office of Compliance, Environmental Protection Agency, December 22, 1994.

29. "Future Nonroad Emission Reduction Credits for Locomotives," Memorandum from Philip A. Lorang, Director, Emission Planning and Strategies Division, Office of Air and Radiation, Environmental Protection Agency, January 3, 1995.

30. "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule," John S. Seitz, Director, Office of Air Quality Planning and Standards, March 22, 1995.

31. "Fifteen Percent Rate-of-Progress Plans—Additional Guidance," John S. Seitz, Director, Office of Air Quality Planning and Standards, May 5, 1995.

32. "Update on the credit for the 15 percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial maintenance coatings rule," John S. Seitz, Director, Office of Air Quality Planning and Standards, March 7, 1996.

33. "Date by which States Need to Achieve all the Reductions Needed for the 15% Plan from Inspection and Maintenance (I/M) and Guidance for Recalculation," memorandum from Margo Oge, Director, Office of Mobile Sources, and John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, August 13, 1996.

34. "Modeling 15 Percent Volatile Organic Compound (VOC) Reduction(s) from I/M in 1999: Supplemental Guidance," memorandum from Gay MacGregor, Director, Regional and State Programs Division, and Sally Shaver, Director, Air Quality Strategies and Standards Division, Environmental Protection Agency, December 23, 1996.

35. "15% Volatile Organic Compound (VOC) State Implementation Plan (SIP) Approvals and the 'As Soon As Practicable' Test," memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, and Richard B. Ossias, Deputy Associate General Counsel, Division of Air and Radiation, Office of General Counsel, Environmental Protection Agency, February 12, 1997.

Section 182(b)(1) requires that the ROP plan provide for a 15 percent reduction in base line emissions of VOCs, accounting for any growth in emissions after 1990. Section 182(b)(1) also allows an area to reduce its emissions by a percentage less than 15 percent provided that (1) the State demonstrates that the area requires new source review provisions to the same extent as required in Extreme Areas, except that the definition of a major source is lowered to sources with a potential to emit 5 tons per day of VOCs; (2) Reasonably Available Control Technology (RACT) is required for all existing major stationary sources; and (3) the plan includes all measures that can feasibly be implemented in the area, in light of technological achievability. To qualify for a percentage less than 15 percent, a State must demonstrate to the satisfaction of the EPA that the plan for the area includes the measures that are achieved in practice by sources in the same source category in nonattainment areas of the next higher category.

The CAA also provides details on calculating the 15 percent emissions reduction. The CAA defines the base line emissions to be the total amount of actual VOC emissions from all anthropogenic sources in the area during the calendar year of 1990, excluding emissions that would be eliminated under any Federal Motor Vehicle Emissions Control Program (FMVECP) measures promulgated by EPA by January 1, 1990, and any Reid Vapor Pressure (RVP) regulations promulgated by EPA by November 15, 1990 or required to be promulgated under section 211 of the Act. This is further explained in EPA's General Preamble at 57 FR 13498.

Section 182(b)(1) allows emissions reductions to be creditable except for the RVP and FMVECP programs mentioned above, any measures requiring corrections to motor vehicle inspection and maintenance programs required to be submitted immediately after enactment, and corrections to the States VOC RACT rules that were required by section 182(a)(2)(A) concerning RACT fix-up requirements.

In general, emissions reductions are creditable toward the ROP emissions reduction to the extent they have actually occurred, as of 6 years after November 15, 1990, resulting from the implementation of measures required under the applicable implementation plan, rules promulgated by the Administrator, or a permit issued under Title V.

In addition, section 172(C)(9) requires that the plan provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the applicable attainment date. Such measures shall be included in the plan revision as contingency measures.

III. Review of the 15% ROP Plan

EPA compared the State's submittal for consistency with the requirements of the CAA and Agency policy and guidance. A summary of this analysis is provided below.

A. Emission Inventory

Sections 172(c)(3) and 182(a)(1) of the Act require that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. This inventory provides an estimate of the amount of VOC, carbon monoxide and oxides of nitrogen produced by emissions sources such as automobiles, powerplants, and the use of consumer solvents in the household. On December 7, 1995, EPA approved Ohio's 1990 base year inventory for the Cincinnati-Hamilton area. For specific details of the final rulemaking, see 60 FR 62737. Therefore, the Cincinnati-Hamilton area has a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area.

The 1990 base year emissions inventory required by section 182(a) was submitted to EPA at the same time that the 15 percent ROP plan was submitted for the Cincinnati-Hamilton area, in March of 1994. The base year emissions inventory was later modified by the State based on EPA comments. The modified inventory resulted in a higher level of estimated VOC emissions in 1990. The State based its 15% ROP plan on its emissions inventory that was submitted in March of 1994. The State will not be required to revise the 15% ROP plan at this time to account for a revised 1990 base year level of VOC emissions. If the State were required to go back and adjust its 15% ROP plan whenever something changes in the base year emissions inventory, it would result in a moving emissions reduction target that the State would have to try to meet by continually adjusting the control measures being relied on. This would result in a significant delay in developing 15% ROP plans. This is not a reasonable expectation for areas that are required to prepare the 15% ROP plans, and, accordingly, EPA is not requiring that the State change its 15% ROP plan at this time.

B. Calculation of the Adjusted Base Year Inventory

The Act specifies the emission baseline from which the 15 percent reduction is calculated. This baseline value is termed the 1990 adjusted base year inventory. Section 182(b)(1)(D) excludes from the baseline the emissions that would be eliminated by FMVECP regulations promulgated by January 1, 1990, and RVP regulations (55 FR 23666, June 11, 1990) promulgated by EPA prior to November 15, 1990, which limit the volatility of gasoline in nonattainment areas during the peak ozone season. The FMVECP provides requirements that automobile manufacturers must meet in building new automobiles. These requirements result in automobiles being manufactured today that produce less pollution compared to cars manufactured years ago.

The adjusted base year inventory is determined by starting with the base year 1990 emission inventory (which is described under A. above), and then removing all biogenic emissions as well as emissions from sources located outside of the designated nonattainment boundary. The resulting inventory is termed the 1990 rate-of-progress base year inventory. The 1990 rate-of-progress base year inventory is then adjusted by removing the expected FMVECP and RVP reductions in order to derive the adjusted base year inventory. As specified by EPA's General Preamble, see 57 FR 13507, emission credits banked preenactment were not included in the emissions inventories.

Ohio used EPA's MOBILE5a emission factor model to calculate its adjusted base year inventory. The documentation includes actual 1990 motor vehicle emissions using 1990 vehicle miles traveled (VMT) and MOBILE5a emission factors, and the adjusted emissions using 1990 VMT and the MOBILE5a emission factors in calendar year 1996 with the appropriate RVP for the nonattainment area as required by EPA.

Provided in table 1 is a summary of the results of the emissions calculations used to determine the required 15 percent ROP plan reduction.

TABLE 1.—CALCULATIONS SUMMARY

Rate of progress summary for the Ohio portion of the Cincinnati-Hamilton area	
Calculation of reduction needs by 1996	VOC emissions (tons/day)
1990 Cincinnati-Hamilton VOC Emissions	383.40
1990 Rate-of-Progress Base Year Emissions Inventory (Anthropogenic Only)	273.51
Noncreditable Emission Reductions from FMVECP and RVP expected by 1996	58.57
1990 Adjusted Base Year Inventory (minus RVP and FMVECP)	214.94
15 percent of Adjusted Base Year Emissions	32.24
1990–1996 Noncreditable Emission Reductions from corrections to VOC RACT rules and the required Basic Automobile Inspection/Maintenance program	4.80
Total expected emissions reductions by 1996	95.61
1996 Target Level of Emissions	177.90
Estimated 1996 Emissions (Anthropogenic), including growth	225.89
REQUIRED REDUCTIONS BY 1996 TO MEET THE 15 PERCENT RATE OF PROGRESS REQUIREMENTS	47.99
Control Measures Used to Meet ROP	VOC emissions (tons/day)
Stage II Gasoline Vapor Recovery	4.29
Enhanced Automobile Inspection and Maintenance (E-Check)	18.80
NESHAP for reducing coke by product Benzene emissions	20.06
Enforcement Cases	0.85
Architectural Coatings	4.00
TOTAL EMISSIONS REDUCTIONS	48.00
CONTINGENCY EMISSIONS REDUCTION	7.01

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C. Required VOC Emission Reductions

The 1990 adjusted base year inventory is multiplied by 0.15 to calculate 15% of the adjusted base year emissions. Therefore, to meet the rate-of-progress requirement, Ohio's plan must provide for at least a 32.24 tons per day (TPD) reduction in VOC emissions, in addition to the reduction needed to offset growth.

Under section 182(b)(1)(D) of the Act, the following reductions are not creditable toward the rate-of-progress reductions: (1) FMVECP regulations promulgated by January 1, 1990; (2) RVP regulations promulgated by EPA before enactment of the 1990 Clean Air Act amendments; (3) certain corrections to VOC RACT rules (which require controls on certain industrial operations); and (4) corrections to basic automobile inspection and maintenance programs. Thus, the total expected reductions are comprised of the reductions necessary to meet the ROP requirement and the expected emissions reductions from the four noncreditable programs just described. The total expected emissions reductions are 95.61 TPD.

The amount of reduction necessary to meet the contingency plan requirement is 3 percent of the adjusted base year inventory. Therefore, the adjusted base year inventory is multiplied by 0.03 to calculate the amount of required reduction for the contingency plan requirement. Therefore, to meet the contingency requirement, the State's plan must provide for at least a 6.45 TPD reduction in VOC emissions, in addition to the other emissions reduction measures. Ohio has documented the correct amount for the total expected reductions in the nonattainment area by showing each step used in the calculations. The 1996 target level of VOC emissions is the 1990 ROP base year inventory minus the total expected emission reductions.

D. Projected Emission Inventory

Emission projections for sources within an air basin are needed to determine if the rate-of-progress requirements in the Act are met and to determine if the area will attain the National Ambient Air Quality Standards (NAAQS) by the applicable attainment date. The purpose of projecting the emission inventories into the future is not solely to predict what is likely to happen without additional controls, but also to gauge the ability of the regulations in the control strategy to meet the ROP goals.

Growth factors are not included in the calculations of the 1990 adjusted base year inventory or the 1996 target level of emissions. Growth factors are needed, however, to project emissions to 1996 for the ROP demonstration as part of the ROP plan.

The State calculated the point source emissions growth based on earnings data obtained from the Bureau of Economic Analysis. The point source growth factors ranged from a 4 percent decrease to a 5 percent increase per year. Area source emissions were projected based on population, industrial employment, and state gasoline consumption growth. The annual population growth factors for the four Ohio counties range from 0.1 percent to 1.6 percent. Industrial employment is projected to decrease by about 0.1 percent per year. The State gasoline consumption is estimated to decrease by about 8 percent from 1990 to 1996. The VMT were projected to grow from 25,671,581 miles per day in 1990 to 27,586,074 miles per day in 1996. This is a 7.46 percent increase in VMT over 6 years. These are acceptable growth estimates. Total estimated 1996 VOC emissions including growth was calculated as 225.89 TPD. Mobile source emissions account for 80.32 TPD of the total emissions.

E. Required Emissions Reduction

The required VOC emissions reduction to meet the 15% ROP requirements is 47.99 TPD. This is the difference between the estimated 1996 emissions with growth and no additional controls and the 1996 target level of emissions.

F. Control Measures

The revision submitted by the State lists a series of control measures projected to achieve a 48.0 TPD reduction in VOC emissions. See the table below for a list of the measures and their status. The table does not include any Federal measures used to reduce the mobile source emissions. These reductions are already accounted for in the MOBILE5a emissions model that in combination with the projected VMT for the area was used to estimate the future emissions for the area.

Enhanced I/M Program

Of the 15% ROP plans originally submitted to EPA, most contain enhanced I/M programs because they achieve more VOC emission reductions than most, if not all, other control strategies. However, because most States experienced substantial difficulties implementing enhanced I/M programs, only a few States are currently actually testing cars using the original enhanced I/M protocol.

On September 18, 1995 (60 FR 48029), EPA finalized revisions to its enhanced I/M rule allowing States significant flexibility in designing I/M programs appropriate for their needs. Further, Congress enacted the National Highway Systems Designation Act of 1995 (NHSDA), which provides States with more flexibility in determining the design of enhanced I/M programs. The substantial amount of time needed by States to re-design enhanced I/M programs in accordance with the final enhanced I/M rules and/or the guidance contained within the NHSDA, to secure State legislative approval when necessary, and set up the infrastructure to perform the testing program has precluded States from obtaining emission reductions from enhanced I/M by November 15, 1996.

Given the heavy reliance by many States on enhanced I/M programs to help satisfy 15% ROP plan requirements, and the recent NHSDA and regulatory changes regarding enhanced I/M programs, EPA has recognized that it is not possible for many States to achieve the portion of the 15% ROP reductions that are attributed to enhanced I/M by November 15, 1996. Under these circumstances, disapproval of the 15% ROP plan State Implementation Plans (SIPs) would serve no purpose. Consequently, under certain circumstances, EPA will allow States that pursue re-design of enhanced I/M programs to receive emission reduction credit from these programs in their 15% ROP plans, even though the emission reductions from the I/M program will occur after November 15, 1996.

Specifically, the EPA will approve 15% ROP SIPs if the emission reductions from the revised, enhanced I/M programs, as well as from the other 15% ROP plan measures, will achieve the 15% level as soon after November 15, 1996, as practicable. To make this "as soon as practicable" determination, the EPA must determine that the 15% ROP plan contains all VOC control strategies that are practicable for the nonattainment area in question and that meaningfully accelerate the date by which the 15% level is achieved. The EPA does not believe that measures meaningfully accelerate the 15% date if they provide only a relatively small amount of reductions.

The Enhanced I/M program (E-Check) began operation in the Cincinnati-Hamilton area in January 1996. The program is a biennial testing program which requires two years of testing to complete one test cycle. The program will not achieve its full emissions reduction potential until the cycle is complete. The 15% ROP plan anticipated that the program would start up in January 1995, but the program actually started in January 1996. The emissions reduction benefits of E-Check have been delayed beyond November 15, 1996.

Ohio implemented E-Check in the Cincinnati area in January 1996. In August 1996 vehicle testing was suspended due to technical and operational problems. On January 5, 1998, OEPA resumed the E-Check program in the Cincinnati area. EPA performed a modeling analysis to determine if the emission reduction credits claimed in the 15% plan from enhanced I/M would be achieved by November 1999.[1] EPA modeled the emission reductions from the program, with an enhanced I/M start date of January 1996, out to November 1999, as provided for in EPA policy. EPA subtracted emissions for the period of time the testing program was suspended (from August 1996 to December 1997). Other program characteristics modeled included actual I/M emission cutpoints in place at the time of evaluation, and projected 1996 vehicle miles traveled information for the Cincinnati area. EPA's analysis showed that the E-Check program would provide the necessary VOC emissions reductions for the 15% plan by November 1999.

To determine whether there are other available potential control measures which can meaningfully accelerate the date by which 15% emission reduction in the Cincinnati-Hamilton area can be achieved, EPA compared the area's 15% Rate of Progress (ROP) and contingency plans with control measures included in 15% ROP plans nation-wide, which are listed in EPA's report, "Sample City Analysis: Comparison of Enhanced I/M Reductions Versus Other 15 Percent ROP Plan Measures," December 12, 1996, referenced in EPA's policy document "15% VOC SIP Approvals and the 'As Soon As Practicable' Test," February 12, 1997. The report listed several possible control measures which were not included in the Cincinnati-Hamilton 15% plan. Some of these control measures have the potential to achieve significant emission reductions. These control measures include the federal reformulated gasoline program, federal Transfer, Storage, and Disposal Facility (TSDF) regulations, and federal consumer/commercial products regulations.

The federal reformulated gasoline program (RFG) (40 CFR part 80, subpart D) requires that gasoline providers in certain areas sell only gasoline which meets certain blending requirements to reduce pollution. Areas not already subject to these requirements, such as the Cincinnati-Hamilton area, can, under section 211(k)(6) of the Act, "opt-in" to the program, upon request to EPA by the Governor.

In the Cincinnati area there is not enough lead time to get a fuels program selected, approved, and in place for this summer's ozone season and by the next ozone season (the summer of 1999) the E-Check program will be about three quarters of the way through testing. In Phoenix, Arizona, for example, the Governor established an Air Quality Strategies Task Force in May 1996 to develop a report describing ozone reduction measures. In January 1997 the Governor requested to opt into the Reformulated Gasoline program. USEPA approved the program on June 3, 1997, with an effective date of August 4, 1997 for retailers and wholesale purchase-consumers. It took about 15 months, on an extremely expedited schedule from the time the task force was formed, for the program to become effective in the Phoenix area.

In addition, phase II RFG will be required in nonattainment areas using RFG in the year 2000, instead of the current phase I RFG used in certain nonattainment areas across the country. Given the short lead time, the start up of the E-Check program, and the national change over to phase II of RFG in areas using RFG, it is not practical to implement phase I RFG in place of E-Check in an effort to achieve the 15% ROP reduction requirement as soon as practicable. The Greater Cincinnati area will experience immediate benefits from the E-Check program, and these benefits will increase as more cars are tested and repaired. A significant portion of the automobiles will be tested and repaired by this summer in time for this year's ozone season. These benefits will help the area to make progress toward attaining the ozone standard as soon as practicable. Therefore, for all of these reasons, USEPA believes the reformulated gasoline program could not be implemented in the Ohio portion of the Cincinnati-Hamilton area significantly faster than E-check.

The federal TSDF regulations, promulgated pursuant to the Resource Conservation and Recovery Act (RCRA) as amended, require air pollution controls on certain facilities which manage hazardous wastes containing VOC and hazardous air pollutants. These regulations were promulgated in two phases, one on June 21, 1990 (55 FR 25454), and the other on December 6, 1994 (59 FR 62896). The final compliance date for the second phase of control was December 8, 1997. These Federal regulations are expected to provide significant emissions reduction in the Cincinnati area and will assist the area in making progress towards attainment of the ozone standard.

The February 12 EPA memorandum from Seitz and Ossias provides a report listing a cutback asphalt ban and open burning ban as measures the State could potentially adopt to achieve emission reductions. However, the report overestimates the emission reduction potential of a cutback asphalt ban because the use of cutback asphalt is prohibited in Ohio by OAC 3745-21-09(N). The State of Ohio also has an open burning ban that has been in place for a number of years. As for other control measures, such as regulating industrial adhesives reformulation and/or solvent cleaning substitution/equipment, these measures are not expected to achieve reductions significantly faster than E-check, because it would take Ohio one to two years to develop, adopt, and implement these measures. It is not reasonable to implement other controls to make up for the delay in implementing the E-check program and the emissions reduction is expected to be met by 1999 with the help of Federal emissions control programs.

Federal Architectural Coatings Rule

The State estimated that the anticipated Federal rule for architectural coatings would provide for a 25 percent emission reduction in that category. An EPA policy memorandum issued after the State had submitted its plan to EPA stated that only 20 percent is allowed. In addition there have been delays in proposing the rule, and the compliance date is not expected to occur until 1998. This change in policy would revise the emission reduction estimated downward by 0.8 TPD.

The State did not take credit in its plan for the Federal Nonroad engine emissions standards rule. This rule sets standards for new engines and will reduce emissions in the future. In addition, the State did not take credit for the automobile refinishing rule which is estimated to provide a 1.6 TPD emissions reduction. This assumes a 30 percent reduction in VOC emissions from the national automobile refinishing rule EPA is developing. These factors will help to offset the change in

[1] This analysis was based on the methodology specified in EPA's policy memoranda, "Date by Which States Need to Achieve All the Reductions Needed for the 15% Plan from I/M and Guidance for Recalculation," August 13, 1996, and "Modeling 15% VOC Reduction(s) from I/M in 1999—Supplemental Guidance," December 23, 1996. EPA policy provides that credit in 15% plans can be claimed from the I/M start date to November 1999.

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emissions reduction credit for architectural coatings.

The State's plan provides a table of cost effectiveness estimates for the various control measures considered by the State for its plan.

TABLE 2.—STATUS OF EMISSIONS CONTROL MEASURES IN THE CINCINNATI-HAMILTON AREA 15 PERCENT ROP PLAN

Control measure	Status of rules
Stage II Vapor Recovery	Approved on October 20, 1994, at 59 FR 52911.
Enhanced Automobile Inspection and Maintenance.	Approved on April 4, 1995, at 60 FR 16989.
NESHAP for reducing coke by product Benzene emissions.	Federal Regulation (see 40 CFR part 61).
Enforcement Cases	Sources brought in to compliance since 1990 with preexisting rule.
Architectural Coatings	Federal Regulation for which Ohio may take credit. (see memorandum dated March 7, 1996 from John Seitz, Director, Office of Air Quality Planning and Standards to Regional Division Directors).
CONTINGENCY EMISSIONS REDUCTION	Lower RVP rule to be addressed in subsequent rulemaking action.

G. Rate-of-Progress and Contingency Plan Demonstrations

Overall, Ohio's ROP plan provides for a 48.0 TPD emissions reduction, which meets the ROP requirements. The contingency plan provides for the necessary 3 percent emission reduction and both the contingency measure and the contingency plan will be addressed in a subsequent rulemaking action. EPA can address the contingency plan in a subsequent rulemaking action because it is not a prerequisite to approving the 15% ROP plan.

H. Enforceability

Each rule developed by the State for the Ohio portion of the Cincinnati-Hamilton area 15% ROP plan has been independently reviewed and approved by EPA as part of the State's SIP. Part of this review process includes a review of the enforceability of the rule. The remaining rules that the State is taking credit for are Federal rules or are expected to soon be issued as Federal rules.

IV. Final Rulemaking Action

EPA is approving the 15% rate of progress plan for the Ohio portion of the Cincinnati-Hamilton ozone nonattainment area. The plan will provide for a 15% emissions reduction by 1999, which is as soon as practicable.

For the purposes of transportation conformity determinations, final approval of this ROP plan revision also approves the 1996 mobile source emission budget of 57.23 TPD of VOC for the Ohio portion of the Cincinnati-Hamilton area. This budget is the projected 1996 emissions including growth and the reductions expected from E-Check and stage II gasoline vapor recovery. For years later than 1996, conformity determinations addressing VOCs must demonstrate consistency with this plan revision's motor vehicle emissions budget. Final approval of this ROP plan revision does not eliminate the need for a build/no-build test for oxides of nitrogen.

Because EPA considers this action noncontroversial and routine, we are approving it without prior proposal. This action will become effective on March 30, 1998. However, if EPA receives significant adverse comments on the approval of the rate-of-progress plan in writing by February 27, 1998, which have not already been addressed by the State or EPA, EPA will withdraw the direct final approval of the plan and address the comments received in a new final rule.

V. Miscellaneous

A. Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

B. Ohio Audit Privilege and Immunity Law

Nothing in this action should be construed as making any determination or expressing any position regarding Ohio's audit privilege and immunity law (sections 3745.70–3745.73 of the Ohio Revised Code). EPA will be reviewing the effect of the Ohio audit privilege and immunity law on various Ohio environmental programs, including those under the Clean Air Act, and taking appropriate action(s), if any, after thorough analysis and opportunity for Ohio to state and explain its views and positions on the issues raised by the law. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any Ohio CAA program resulting from the effect of the audit privilege and immunity law. As a consequence of the review process, the regulations subject to the action taken herein may be disapproved, federal approval for the Clean Air Act program under which they are implemented may be withdrawn, or other appropriate action may be taken, as necessary.

C. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

D. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, the Administrator certifies that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976).

E. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

F. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register.** This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

G. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeal for the appropriate circuit by March 30, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

VII. List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone.

Dated: January 9, 1998.

Michelle D. Jordan,

Acting Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1885 is amended by adding paragraph (z) to read as follows:

§ 52.1885 Control Strategy: Ozone.

* * * * *

(z) The 15 percent rate-of-progress requirement of section 182(b) of the Clean Air Act, as amended in 1990, is satisfied for the Ohio portion of the Cincinnati-Hamilton ozone nonattainment area.

[FR Doc. 98–2081 Filed 1–27–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–27; RM–8901]

Radio Broadcasting Services; Salome, Arizona

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 241A to Salome, Arizona, as that community's first local aural transmission service in response to a petition filed on behalf of Browns Well Broadcasting. *See* 62 FR 4226, January 29, 1997. Coordinates used for Channel 241A at Salome, Arizona, are 33–46–54 and 113–36–42. As Salome is located within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government to this allotment was requested but has not been received. Therefore, Channel 241A has been alloted to Salome with the following interim condition: "Operation with the facilities specified herein is subject to modification, suspension, or termination without right to a hearing if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement" ("Agreement"). The condition is a temporary measure as we have determined that Channel 241A at Salome complies with the Agreement. Once an official response from the Mexican government has been obtained, the interim condition may be removed. With this action, the proceeding is terminated.

DATES: Effective March 9, 1998. A filing window for Channel 241A at Salome, Arizona, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a separate Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–27, adopted January 14, 1998, and released January 23, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Salome, Channel 241A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–2034 Filed 1–27–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 10

[Docket No. OST–96–1472]

RIN: 2105–AC68

Privacy Act; Implementation

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: DOT amends its rules implementing the Privacy Act of 1974 to exempt from certain provisions of the Act the Coast Guard's Marine Safety Information System.

DATES: This amendment is effective February 27, 1998.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, C–10, Department of Transportation, Washington, DC 20590, telephone (202) 366–9156, FAX (202) 366–9170.

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SUPPLEMENTARY INFORMATION:

Regulatory History

On November 28, 1997, the Department published a notice of proposed rulemaking entitled, Privacy Act; Implementation in the **Federal Register** (62 FR 63304). The Department did not receive any comments on the proposed rulemaking.

Background

The Coast Guard's Marine Safety Information System (MSIS) collects selected information on commercial and/or documented vessels operating in US waters, and collects and manages the data needed to monitor the safety performance of maritime vessels and facilities with which the Coast Guard comes into contact while performing its marine safety functions. It also monitors the identities of individuals and corporations that own or operate these vessels, and, if appropriate, aids the Coast Guard to develop law enforcement actions against such vessels, facilities, individuals, and corporations.

MSIS consolidates information from three other Coast Guard Privacy Act record systems: DOT/CG 561, Port Safety Reporting System (Individual Violation Histories); and DOT/CG 587, Investigations of Violations of Marine Safety Laws, and the automated, but not the manual, portions of DOT/CG 590, Merchant Vessel Casualty Reporting System. It also encompasses the automated, but not the manual, portions of DOT/CG 591, Merchant Vessel Documentation System.

Because of the capability to retrieve information by the names or other unique identifiers of individuals, MSIS is subject to the Privacy Act, which imposes many restrictions on the use and dissemination of information in the system. However, because MSIS can be used for law enforcement purposes, it is exempted from some of these restrictions.

This rule is being published as a final rule and is being made effective on February 15, 1998. Pursuant to 5 U.S.C. 553, good cause exists for promulgating this rule and for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard is scheduled to commence Operational Testing and Evaluation for the Vessel Identification System (VIS), a congressionally mandated project, on February 15, 1998. VIS will incorporate specific vessel documentation information from the MSIS. The completion of this operational test is essential to the deployment of the VIS. Making the final rule effective at the time of the commencement of the operational test will significantly improve the transition to the VIS and negate any unintended consequences of not meeting the Congressional Mandate. Delaying the test may have adverse effects on the development and implementation of the VIS. Further, because the test will only involve a limited number of state administrators, and the information contained in VIS will be destroyed following the completion of the test, no adverse impacts are expected. For these reasons, the Coast Guard finds good cause, under 5 U.S.C. 553(d)(3), that the effective date of this rule should be made effective in less than 30 days after publication.

Privacy Act exemption

Under subsection (k) of the Privacy Act (5 USC 552a(k)), qualifying records may be exempted from various provisions of the Act. Among these provisions are the requirement in subsection (c)(3) to maintain an accounting of disclosures of information from a system of records and make that accounting available on request to the record subject; in subsection (d) to grant to a record subject access to information maintained on him/her under the Act; in subsection (e)(1) to maintain only such information as is relevant and necessary to accomplish a purpose of the agency under statute or Executive Order; in subsection (e)(4)(G), (e)(4)(H), and (e)(4)(I) to advise record subjects of the agency procedures to request if a system of records contains records pertaining to them, how they can gain access to such records and contest their content, and the categories of sources of such records; and in subsection (f) to establish rules governing the procedures above.

Under Subsection (k)(2) of the Privacy Act (5 USC 552a(k)(2)), investigatory material compiled for law enforcement purposes, other than material encompassed within Subsection (j)(2), may be exempted from these provisions, and DOT proposes to exempt MSIS accordingly; however, if an individual would be denied any right, privilege, or benefit to which he/she would otherwise be entitled by Federal law, of for which he/she would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

DOT proposed to exempt MSIS from these provisions and invited public comment; none was received. DOT therefore is making its proposal final as written.

Analysis of regulatory impacts

This rule is not a "significant regulatory action" within the meaning of Executive Order 12866. It is also not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, I certify that this rule will not have a significant economic impact on a substantial number of small entities, because the reporting requirements, themselves, are not changed and because it applies only to information on individuals.

This rule does not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A "Federal mandate," is a new or additional enforceable duty, imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities, to spend, in aggregate, $100 million or more in any one year the UMRA analysis is required. This rule does not impose Federal mandates on any State, local or tribal governments or the private sector.

List of Subjects in 49 CFR Part 10

Penalties, Privacy.

Accordingly, DOT amends 49 CFR part 10 as follows:

PART 10—[AMENDED]

1. The authority citation to part 10 continues to read as follows:

Authority: 5 USC 552a; 49 USC 322.

2. Part II.A of the Appendix is amended by republishing the introductory text and by adding a new paragraph 16, to read as follows:

* * * * *

APPENDIX TO PART 10—EXEMPTIONS

* * * * *

Part II. Specific exemptions.

A. The following systems of records are exempt from subsection (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) of 5 USC 552a, to the extent that they contain investigatory material compiled for law enforcement purposes in accordance with 5 USC 552a(k)(2):

* * * * *

16. Marine Safety Information System, maintained by the Operations Systems Center, U.S. Coast Guard (DOT/CG 588). The purpose of this exemption is to prevent persons who are the subjects of criminal investigations from learning too early in the investigative process that they are subjects, what information there is in Coast Guard files that indicates that they may have committed unlawful conduct, and who provided such information.

* * * * *

Issued in Washington, DC, on January 20, 1998.

Rodney Slater,

Secretary of Transportation.

[FR Doc. 98–1923 Filed 1–27–98; 8:45 am]

BILLING CODE 4910–62–P

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Proposed Rules

Federal Register
Vol. 63, No. 18
Wednesday, January 28, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 319

[Docket No. 96–016–22]

RIN 0579–AA83

Karnal Bunt; Movement From Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Karnal bunt regulations to allow, under certain conditions, commercial lots of seed to move from restricted areas for seed. We also propose to amend the testing requirements for regulated articles other than seed, remove certain articles from the list of articles regulated because of Karnal bunt, clarify the terms "used mechanized harvesting equipment" and "used seed conditioning equipment," and clarify requirements for soil movement with vegetables. These changes would relieve restrictions on the movement of articles from areas regulated because of Karnal bunt. We also propose to amend the requirements for treating millfeed and soil, and remove the methyl bromide treatment alternative for decorative articles. These changes appear necessary to help prevent the spread of Karnal bunt. We also propose to amend the definition of surveillance areas to more clearly distinguish between surveillance areas and restricted areas. In addition, we are proposing to amend the regulations governing the importation of wheat into the United States to make the definition of the term "Karnal bunt" consistent with the definition of that term in the Karnal bunt regulations.

DATES: Consideration will be given only to comments received on or before March 30, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–016–22, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–016–22. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores, primarily through the movement of infected seed. In the absence of measures taken by the U.S. Department of Agriculture (USDA) to prevent its spread, the establishment of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets. The regulations regarding Karnal bunt in the United States are set forth in 7 CFR 301.89–1 through 301.89–14.

We are proposing to amend the Karnal bunt regulations to allow, under certain conditions, commercial lots of seed to move from restricted areas for seed; amend the testing requirements for regulated articles other than seed; remove certain articles from the list of articles regulated because of Karnal bunt; clarify the terms "used mechanized harvesting equipment" and "used seed conditioning equipment"; clarify requirements for soil movement with vegetables; amend the requirements for treating millfeed and soil; remove the methyl bromide treatment alternative for decorative articles; and amend the definition of surveillance areas.

Movement of Seed From Restricted Areas for Seed

Under the current Karnal bunt regulations, areas regulated because of Karnal bunt are divided into three categories: restricted areas for regulated articles other than seed, surveillance areas, and restricted areas for seed. Restricted areas for regulated articles other than seed are individual fields that were (1) found during survey to contain a bunted wheat kernel, (2) planted with seed from a lot that was found to contain a bunted wheat kernel, or (3) found during survey to contain spores consistent with Karal bunt and determined to be associated with grain at a handling facility containing a bunted wheat kernal. No field currently identified as a restricted area for regulated articles other than seed are currently planted with Karnal bunt host crops (wheat, durum wheat, and triticale), and no host crops may be planted in these fields. Surrounding these fields are the surveillance areas. The restricted areas for seed encompass the largest area, covering and extending beyond the other two categories of regulated areas.

The movement of commercial lots of seed from a restricted area for seed is prohibited; seed in smaller lots for germplasm or research purposes may be moved from a restricted area for seed if treated in accordance with the regulations at § 301.89–13(e).

Those portions of a restricted area for seed that extend beyond the surveillance areas do not contain any fields where a bunted wheat kernal has been found or any fields found to contain spores consistent with Karnal bunt and associated with grain at a handling facility containing a bunted wheat kernal. We propose to allow commercial lots of seed to move from a restricted area for seed if: (1) The field or fields where the seed was grown are not part of a restricted area for regulated articles other than seed or a surveillance area; (2) the seed tests negative for Karnal bunt (spores and bunted kernels); (3) the most recent previous Karnal bunt host crop grown in the field or fields where the seed intended for movement was grown also tested negative for Karnal bunt (spores and bunted kernels); and (4) the seed intended for movement is treated in accordance with § 301.89–13(e), currently designated as the treatment for seed used as germplasm or for research purposes.

We would not allow seed to move from a restricted area for seed if the field where the seed was grown is also a part of a restricted area for articles other than seed or a surveillance area because of the higher risk of the presence of Karnal bunt in such areas. As noted above, the regulations do not allow for the planting of host crops in a restricted area for regulated articles other than seed. Therefore, seed cannot be grown in those areas. However, it is possible that a bunted kernel may be detected in a field that is not currently designated a restricted area for regulated articles other than seed while that field is planted with a Karnal bunt host crop. In that case, when the bunted kernel is detected, the field would immediately be designated a restricted area for regulated articles other than seed, and the crop would not be eligible for certified movement as a commercial lot of seed. Unlike restricted areas for regulated articles other than seed, surveillance areas may be planted with host crops, in accordance with § 301.89–4, and, therefore, seed could be grown in surveillance areas. Yet because of a surveillance area's proximity to a restricted area for regulated articles other than seed (i.e., a field associated with bunted kernels), we would not allow commercial lots of seed from surveillance areas to move out of the regulated area.

We would require that, prior to movement from the restricted area for seed, the seed test negative for Karnal bunt (spores and bunted kernels) to help reduce the risk of the spread of the disease to noninfected areas of the United States. Because of its intended use as seed for planting, seed presents a higher risk than grain of spreading Karnal bunt. Therefore, in accordance with § 301.89–4(b), we would require that seed test negative for both spores and bunted kernels before moving from the restricted area for seed.

Also, the most recent previous Karnal bunt host crop grown in the field or fields where the seed intended for movement was grown must have tested negative for Karnal bunt (spores and bunted kernels). This requirement would help verify the production area's long-term freedom from Karnal bunt. Because crops are rotated, a field will likely not be planted with Karnal bunt host crops in consecutive years. Negative test results for fields surveyed for Karnal bunt during the 1995–1996 and the 1996–1997 growing seasons would allow the next applicable Karnal bunt host crop planted in those fields to meet this eligibility requirement. If a field has not yet been surveyed, that field would have to be surveyed while planted with a host crop and found free of Karnal bunt (spores and bunted kernels) in order for a subsequent seed crop, during a future growing season, to meet this eligibility requirement. During each crop season, we would survey fields in the restricted area for seed that are planted with Karnal bunt host crops intended for use as seed and survey additional fields in the area. The data that we collect in these surveys will provide information over a period of years and through a variety of environmental conditions to confirm an area's continued freedom from the disease.

Lastly, we would require that, prior to movement from the restricted area for seed, the seed be treated in accordance with the treatment currently authorized for seed for use as germplasm or for research purposes (see § 301.89–13(e)). This requirement would help reduce the risk of the spread of Karnal bunt to noninfected areas of the United States.

Testing Requirements for Regulated Articles Other Than Seed

Currently, to be eligible for certified movement, regulated articles other than seed must be tested for both Karnal bunt spores and bunted kernels prior to movement from the regulated area (see § 301.89–6(b) and (d)). However, because of its intended uses (for example, processing for millfeed or animal feed), grain presents a much lower risk of spreading Karnal bunt than seed. We therefore propose to allow the certified movement of grain other than for seed if the grain is tested prior to movement from the field or before being commingled with other grains and found free of bunted kernels only, rather than Karnal bunt spores and bunted kernels. We believe that this testing of grain for bunted kernels provides an appropriate level of protection against the spread of Karnal bunt by grain.

Removal of Regulated Articles

Certain articles present a significant risk of spreading Karnal bunt if the articles are moved from regulated areas without restriction. We call these articles "regulated articles." When Karnal bunt was first detected in the United States, we established an extensive list of regulated articles. Based on our experience with the control of other plant diseases, we included, as a precautionary measure, many articles on the list of regulated articles that we believed could present a significant risk of spreading Karnal bunt.

Subsequently, a further assessment of the risk involved in moving regulated articles was performed. This assessment considered factors such as additional information about Karnal bunt and the way in which it spreads, the size of regulated areas, the movement of regulated articles within and outside of regulated areas, and the normal business practices involved in the handling of regulated articles. As a result of this assessment, we are proposing to amend the list of regulated articles by removing used bags, sacks, and containers; used farm tools; used mechanized cultivating equipment; and used soil moving equipment from the list of regulated articles because these items present a negligible risk of spreading Karnal bunt. Accordingly, as these articles would no longer be regulated, we are also proposing to revise paragraph (a) of § 301.89–12 to remove the requirement that these articles be treated in accordance with § 301.89–13; to revise paragraph (a) of § 301.89–13, which describes treatments for mechanized farm equipment (which includes mechanized cultivating equipment), farm tools, and soil moving equipment; and to remove paragraph (f) of § 301.89–13, which describes treatments for bags, sacks, and containers. As a result of these changes to the regulations, used bags, sacks, containers, and used farm tools, mechanized cultivating equipment, and soil moving equipment would no longer have to be treated before being moved from a regulated area. These actions would relieve an unnecessary regulatory burden on the wheat industry in areas regulated because of Karnal bunt while continuing to protect against the spread of Karnal bunt to noninfected areas of the United States.

Used Mechanized Harvesting Equipment and Used Seed Conditioning Equipment

When we first established the regulations to prevent the spread of Karnal bunt in the United States, we listed as regulated articles "used mechanized harvesting equipment" and "used seed conditioning equipment" because, when this type of equipment is used in a regulated area in the production of Karnal bunt host crops, the equipment presents a risk of spreading Karnal bunt if moved outside the regulated area without restriction. However, in the regulations, we did not specify what was meant by the word "used." Therefore, any mechanized harvesting equipment or seed conditioning equipment used in the area regulated for Karnal bunt, whether or not that equipment was used in association with Karnal bunt host crops, was subject to the requirements of the

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regulations, including the treatment requirements in § 301.89–13.

Within the areas regulated because of Karnal bunt, there is no reason to regulate mechanized harvesting equipment and seed conditioning equipment if the equipment is not used in the production of Karnal bunt host grains. Therefore, we are proposing to amend § 301.89–2 (l) and (m) to clarify that only mechanized harvesting equipment and seed conditioning equipment that were used in the production of wheat, durum wheat, or triticale are considered regulated articles. Accordingly, we would also revise paragraph (a) of § 301.89–12 to clarify that only mechanized harvesting equipment and seed conditioning equipment that were used in the production of wheat, durum wheat, or triticale are required to be treated in accordance with § 301.89–13 prior to movement from the regulated area. (A regulated area includes all restricted areas for seed and all restricted and surveillance areas for regulated articles other than seed.) This action would relieve an unnecessary regulatory burden on producers in Karnal bunt regulated areas.

Soil Movement

We are also proposing to clarify the requirements for soil movement with vegetables, located at § 301.89–12(b), because there has been confusion concerning the requirements for soil attached to root crops and other commodities moving from areas regulated because of Karnal bunt. We have stated in previous documents that we believe that there is a risk of spreading Karnal bunt through the movement of soil. However, we recognize this risk in most cases is negligible based on (1) survey data, (2) intended use of the produce for consumption, and (3) the cleaning and handling of root crops and other commodities in normal business practice. Consequently, in this proposed rule, we propose to specify that soil attached to root crops and other commodities must be removed only if the crops or commodities were grown in fields that are in restricted areas for regulated articles other than seed because these are the fields that have been determined to be directly associated with bunted kernels. We believe that these fields are high risk for spreading Karnal bunt and warrant the soil removal restrictions. We believe that root crops and commodities from fields in proximity (i.e., restricted areas for seed) are lower risk, and that the intended use of the products (consumption) and normal business practices (cleaning and grading of the crops) are sufficient to mitigate the risk of spreading Karnal bunt to other areas of the United States. This action would relieve an unnecessary regulatory burden on growers of vegetables and fruits within regulated areas.

Millfeed Treatment

We are proposing to amend the requirements for treatment of millfeed. In the October 4, 1996, final rule, we established special requirements for the treatment and handling of millfeed. Specifically, we required that millfeed be treated with a moist heat treatment of 170 °F for at least 1 minute if the millfeed resulted from the milling of grain from either: (1) Fields in which preharvest samples test positive for Karnal bunt during the 1996–1997 crop season; or (2) fields located in a restricted area. During the 1996 harvest season, we allowed a destination State willing to accept appropriate monitoring responsibilities to determine the appropriate treatment and handling of millfeed based on the intended use of the millfeed within the destination State.

Because of changes to the description of "restricted area" made in the May 1, 1997, interim rule, millfeed must only be treated if it is produced from grain grown in a restricted area. However, under the May 1, 1997, interim rule, individual fields that are in restricted areas may not be planted with wheat, durum wheat, or triticale. Therefore, no millfeed is produced from grain grown in fields in restricted areas, and consequently, no millfeed currently requires treatment under the regulations. However, we believe that millfeed, if it results from the milling of grain that tests positive for Karnal bunt, carries a risk of spreading Karnal bunt. Therefore, we are proposing to amend § 301.89–13(c) to require that millfeed produced from grain that tests positive for Karnal bunt be treated with a moist heat treatment of 170 °F for at least 1 minute. This action will help prevent the spread of Karnal bunt into noninfected areas of the United States.

Methyl Bromide Treatment

The regulations at § 301.89–13(b) allow, among other things, straw/stalks/seed heads for decorative purposes to move from a regulated area if they are treated with methyl bromide. Straw/stalks/seed heads may move without treatment if they have been processed or manufactured prior to movement and are for use indoors. We are proposing to remove the methyl bromide treatment for straw/stalks/seed heads for decorative purposes. Results of recently conducted research indicate that methyl bromide is not effective in devitalizing teliospores of *Tilletia indica* under dry conditions. Wetting the straw/stalks/seed heads is not practical because the articles would be damaged. Straw/stalks/seed heads for decorative purposes would still be eligible for movement, if processed or manufactured prior to movement and intended for use indoors, or if moved under limited permit for specified handling, utilization, or processing, under the provisions of § 301.89–6. This action would remove an ineffectual treatment method from the regulations.

Section 301.89–13(b) also provides that soil may be moved from a regulated area after treatment with methyl bromide. Because we have established that methyl bromide does not deactivate teliospores of *Tilletia indica* under dry conditions, we are proposing to add a moisture condition to the treatment of soil. Based on research, we are proposing to require that soil be wetted with water, to a depth of 1 inch, just prior to methyl bromide treatment. The water may be added by irrigation or rain. This action would help prevent the spread of Karnal bunt into noninfected areas of the United States.

Definition of Surveillance Areas

We are proposing to amend the description of surveillance area at § 301.89–3(e)(4) to clarify that a surveillance area is an area where Karnal bunt is not known to occur but where, for various reasons, intensive surveys are necessary. This action would help differentiate between the status of a restricted area for regulated articles other than seed and the status of a surveillance area.

Definition of Karnal Bunt

The regulations at 7 CFR 319.59 through 319.59–2 govern the importation of wheat into the United States to prevent the introduction of foreign wheat diseases, such as flag smut and Karnal bunt. We are proposing to revise the definition of "Karnal bunt" at § 319.59–1 to make it consistent with the definition of Karnal bunt in § 301.89–1. The new definition of Karnal bunt at § 319.59–1 would read "A plant disease caused by the fungus *Tilletia indica* (Mitra) Mundkur."

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be economically significant for the purposes of Executive Order 12866 and, therefore, has been

reviewed by the Office of Management and Budget.

The Karnal bunt regulations were established under the Plant Quarantine Act (7 U.S.C. 151–165 and 167) and the Federal Plant Pest Act (7 U.S.C. 150aa–150jj), which authorize the Secretary of Agriculture to take measures necessary to prevent the spread of plant pests, including diseases, that are new to, or not widely prevalent in, the United States.

We are proposing to amend the Karnal bunt regulations to allow, under certain conditions, commercial lots of seed to move out of a restricted area for seed and to amend the testing requirements for regulated articles other than seed. We also propose to remove certain articles from the list of articles regulated because of Karnal bunt, clarify the terms "used mechanized harvesting equipment" and "used seed conditioning equipment," and clarify requirements for soil movement with vegetables. These changes would relieve restrictions on the movement of articles from areas regulated because of Karnal bunt. We also propose to amend the requirements for treating millfeed and soil, and remove the methyl bromide treatment alternative for decorative articles.

The proposed change to allow, under certain conditions, commercial lots of seed to move out of a restricted area for seed would benefit regulated growers of wheat seed and other affected entities. For the first time since the regulated area was established, commercial lots of wheat seed would be eligible to move out of the regulated area, if, among other things, the seed was grown in a restricted area for seed that is not also part of a restricted area for regulated articles other than seed or a surveillance area. Those regulated areas that are restricted areas for seed, but that are not also part of a restricted area for regulated articles other than seed or a surveillance area, amount to an estimated 727,335 acres of regulated land in four States (Arizona, California, New Mexico, and Texas). These 727,335 acres represent 75 percent of the combined regulated area in those four States. The proposed change would, therefore, open up a substantial volume of regulated acreage to export sales of wheat seed. The estimated current regulated acreage, by State and regulatory designation, is as follows:

	Arizona	California	New Mexico	Texas	Total
Restricted area for seed	797,000	100,000	58,650	[1] 20,469	976,119
Restricted area for regulated articles other than seed	6,162	3,113	3,990	1,519	14,784
Surveillance area	135,000	84,000	0	15,000	234,000
Portion of restricted area for seed that would be eligible to grow wheat seed for movement in commercial lots from the regulated area	655,838	12,887	54,660	3,950	727,335

[1] For El Paso, restricted area for seed includes only acreage for the plowdown fields.

The opportunity for export sales of seed should have a positive impact on seed planting in the regulated area. The magnitude of that impact is difficult to measure, however, because year-to-year changes in seed planting is a function of many factors, including factors not related to the regulatory environment (e.g., prices). The impact of this proposal would likely be most noticeable 1 to 2 years after the effective date of the rule; by that time, growers would have had the chance to adjust planting schedules to take advantage of the amended restrictions and would have had the opportunity to satisfy another of the proposal's requirements, that is, that the most recent previous Karnal bunt host crop grown in the field must have tested negative for Karnal bunt (spores and bunted kernels).

Another of the proposal's requirements, that seed be treated prior to movement, may limit the amount of seed that can be moved in the short term and may also discourage some growers from planting seed. Under the proposal, in addition to fungicide treatments, commercial lots of seed would have to be treated with sodium hyperchloride (chlorine) as currently designated for the treatment of seed used for germplasm or for research purposes. Because of the corrosive nature of chlorine, stainless steel vats or containers may need to be installed for treating the seed. Thus, in addition to expenditures for chemicals, some producers may incur costs for special equipment in order to comply with the conditions of the proposal. However, the proposed treatment for commercial seed is necessary to reduce the risk of the spread of Karnal bunt to noninfected areas of the United States.

Notwithstanding these requirements, the positive potential of the proposed changes on seed plantings could be considerable. As indicated above, an estimated 727,335 acres of regulated land would be eligible to grow wheat seed that could, under certain conditions, move in commercial lots outside of the regulated area. It is estimated that only about 15 percent of those 727,335 acres are currently planted with wheat, leaving the remaining 85 percent (approximately 618,235 acres) potentially available for wheat seed planting in the future. Even if only 5 percent of the 618,235 acres were planted with seed as a result of the proposed changes, an additional 30,912 acres in the regulated area would be planted with seed. By comparison, 118,087 acres of wheat were planted in the entire regulated area in the 1996–97 growing season.

We are also proposing to amend the testing requirements for grain used other than for seed. Under the proposal, such grain would have to be tested and found free of bunted kernels, rather than spores and bunted kernels, prior to movement from the regulated area. Growers and handlers of grain would benefit from this change in the testing requirements.

As much as 90 percent of the acreage of surveillance areas that is planted with wheat is devoted to the production of grain. This rule change, therefore, has the potential to affect most of the wheat grown in surveillance areas. Because grain intended for movement from the regulated area would be surveyed for bunted kernels only, and because those surveys would be conducted at the field rather than at the conveyance, we expect that the new testing procedures would save time for grain handlers. In addition, because laboratory analyses for spores would no longer be required, USDA would save money as a result of the new testing procedures. However, it is difficult to predict the savings in time or money, or if there would be an increase in the number of shipments that would move from the regulated area, before the new testing procedures are in place. Nevertheless, this proposed change would likely have a positive impact on the movement of grain and other regulated articles other than seed from the regulated area.

For both of these proposed changes (i.e., to allow, under certain conditions, the movement of commercial lots of seed from restricted areas for seed and to amend the testing requirements for regulated articles other than seed), the

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entities that would likely be most affected by the changes would be wheat producers. It is estimated that there are currently a total of 354 wheat growers in the regulated areas: 248 in Arizona, 21 in California, 23 in New Mexico, and 62 in Texas. Of those, the number of wheat growers in surveillance areas is estimated to be 84, with 21 in Arizona, 18 in California, and 45 in Texas, and the number of wheat growers in the restricted area for seed (not including restricted areas for regulated articles other than seed or surveillance areas) is estimated to be 270, with 227 in Arizona, 3 in California, 23 in New Mexico and 17 in Texas. Most of these wheat growers are assumed to have gross annual receipts of less than $0.5 million, the U.S. Small Business Administration's threshold for classifying wheat producers as small entities. Accordingly, these proposed changes would positively impact primarily small entities. Growers would benefit from fewer restrictions on the movement of regulated articles, which would enable growers to reach new markets for their products. In addition, wheat seed dealers, harvesters, transporters, and processors may also benefit from the proposed changes to the regulations, but the magnitude of the impact on these entities cannot be determined.

Regarding the remainder of the proposed actions in this document, three main parties would be affected by these amendments: vegetable growers, millers, and decorative wheat product makers.

It is estimated that there are nearly 50 vegetable growers within the regulated areas. However, vegetables are expected to be grown on only about one-quarter of the total restricted acreage in the regulated area. Those who do grow vegetables in this area are believed to already sufficiently clean their root crop produce so that few, if any, will be affected by APHIS cleaning protocol.

There are fewer than 30 millers who would potentially be affected by the proposed changes. The exact number of millers who elect to mill wheat that has tested positive for Karnal bunt is unknown at this time. However, data show that for the four States in the original regulated area, the number of wheat millers are: California (12, with 1 processing durum); Arizona (2, with 1 processing durum); New Mexico (1); and Texas (7, with 1 processing rye). In 1996–97, there were 24 wheat millers in and around the regulated area that entered into limited permits with APHIS: 2 in Arizona, 1 in New Mexico, and 21 in California. Data from limited permits issued in the regulated areas indicate that millers in the following States were also affected: Minnesota, Oregon, Virginia, Missouri, and Wisconsin. However, it is anticipated that very little wheat that tests positive for Karnal bunt will be present and thus available for milling. Also, it is likely that any wheat that tests positive for Karnal bunt will be channeled into animal feed uses.

No information is available on the number and size of affected firms that deal in decorative wheat products. Any data on the number and size of these entities are welcomed from the public.

Virtually all of the industries affected are likely to be composed of producers and firms that can be categorized as small according to the Small Business Administration (SBA) size classification. Economic impacts resulting from this rule would therefore largely affect small entities. The analysis of economic impacts discussed below would thus fulfill the requirement of a cost-benefit analysis under E.O. 12866, as well as the analysis of impacts of small entities as required by the Regulatory Flexibility Act. Unless otherwise noted, the SBA's characterization of a small business for the categories of interest in this analysis is a firm that employs at most 500 employees, or has sales of $5 million or less.

It is expected that these proposed regulatory changes would provide some positive economic relief to entities in the regulated area. This is especially true for businesses that produce decorative wheat products and ship outside the regulated area and for vegetable growers on non-restricted acres because these persons are effectively deregulated. Cleaning of vegetables and treatment of millfeed could increase costs to some affected firms. However, cleaning of vegetables, according to APHIS protocol, is not expected to differ greatly from normal business practices, so additional costs should be minimal. Also, it is expected that little of the wheat that tests positive for Karnal bunt in surveillance areas will be milled for flour.

In terms of the vegetable cleaning protocol, it is expected that, at most, one-quarter of the restricted acres, or 3,356 acres, comes into vegetable production in 1997. Assuming a cleaning cost of $20 per acre, this cleaning requirement would create an economic cost of $67,115 (or 3,356 acres at $20 per acre).[2] This total cost is not expected to significantly increase the cost of production on individual operations. An additional $1,345 would be incurred in cleaning vegetables on a typical farm ($67,115 divided by 50 entities). Any additional information concerning the impact on vegetable growers is welcomed from the public.

In terms of millfeed treatment, assuming a 15-percent infection rate on the 1,072,800 bushels expected to be produced in the surveillance areas in the regulated area in 1997, only 160,920 bushels of wheat that tests positive for Karnal bunt is expected. If 50 percent of this quantity were to remain in the regulated area and be milled into flour, 604 tons of millfeed would be produced. In the worst case scenario, if all production were to test positive for Karnal bunt and remain in the regulated area for milling, 8,046 tons of millfeed would be produced. It is expected that most millers who must handle millfeed produced from wheat that tests positive for Karnal bunt have the facilities or access to facilities to treat it at this time. Cost estimates on a per establishment basis are not available because the Karnal bunt contamination rate and the amount of wheat that tests positive for Karnal bunt to be milled is not known. Additionally, compensation for millfeed treatment produced from wheat grown in a regulated area that tests positive for Karnal bunt has been proposed and published in the **Federal Register** on July 11, 1997. The level of compensation proposed is $35 per ton. At this level of cost offset, and assuming that the initial purchase of treatment facilities has been made, the proposed compensation level is expected to cover almost all the costs of treatment. Thus, the amount of compensation requested on all of this millfeed ($21,121 of compensation in the first scenario discussed above and $281,610 in the worst case scenario) is expected to offset all of the economic costs incurred by millers in following APHIS millfeed protocol requirements.

In terms of methyl bromide treatment for producers of decorative wheat products, this proposed rule change would, effectively, relax current regulations and, therefore, is expected to result in lower production costs for firms using decorative wheat products. No estimate of this relief is possible given the data available. Similarly, the additional cost associated with the moisture requirement for the methyl bromide treatment of soil is also unknown but is expected to be small. Any additional information from the public concerning these impacts is welcomed.

[2] This *additional* cost of $20 per acre is for added labor and equipment that would be incurred by vegetable growers in adhering to APHIS' cleaning protocols.

These rule changes are being proposed as a result of new evidence that indicates that no additional risk of Karnal bunt spread is likely if they are adopted. For example, the articles released from regulation have been determined to pose minimal risk of Karnal bunt spread to non-infected areas. Millfeed treatment has been relaxed on flour produced from wheat production on fields that test negative for Karnal bunt, but treatment is still required for wheat that tests positive for Karnal bunt. Decorative wheat products which are likely to come into contact with soil in and outside the regulated area pose little if any risk of disease spread. These proposed regulatory changes are the result of continuous research and practical industry experience in dealing with Karnal bunt.

We also propose to amend the definition of surveillance areas to more clearly distinguish between surveillance areas and restricted areas. In addition, we propose to amend the regulations governing the importation of wheat into the United States to make the definition of the term "Karnal bunt" consistent with the definition of that term in the Karnal bunt regulations. We do not anticipate that these changes would have any economic impact.

The proposed changes to the regulations would not result in any new information collection or recordkeeping requirements.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR parts 301 and 319 are proposed to be amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. Section 301.89–2 would be amended as follows:

a. By removing paragraphs (i), (j), (k), and (n).

b. By redesignating paragraphs (l), (m), and (o) as paragraphs (i), (j), and (k), respectively.

c. By revising newly designated paragraphs (i) and (j) to read as set forth below:

§ 301.89–2 Regulated articles.

* * * * * *

(i) Mechanized harvesting equipment that has been used in the production of wheat, durum wheat, and triticale;

(j) Seed conditioning equipment that has been used in the production of wheat, durum wheat, and triticale; and

* * * * * *

3. Section 301.89–3 would be amended by revising paragraph (e)(3) to read as follows:

§ 301.89–3 Regulated areas.

* * * * * *

(e) * * *

(3) *Surveillance areas.* A surveillance area is a distinct definable area where Karnal bunt is not known to exist but, because of its proximity to a field found during survey to contain a bunted kernel or because of its association with grain at a handling facility containing a bunted kernel, where intensive surveys are required.

* * * * * *

4. In § 301.89–5, the period at the end of paragraph (a)(3) would be removed and a semicolon added in its place and a new paragraph (a)(4) would be added to read as follows:

§ 301.89–5 Movement of regulated articles from regulated areas.

(a) * * *

(4) Without a certificate or limited permit, provided the regulated article is straw/stalks/seed heads for decorative purposes that have been processed or manufactured prior to movement and are intended for use indoors.

* * * * * *

5. Section 301.89–6 would be amended as follows:

a. By revising paragraph (b) to read as set forth below.

b. By adding a new paragraph (d) to read as set forth below.

§ 301.89–6 Issuance of a certificate or limited permit.

* * * * * *

(b) To be eligible for movement under a certificate, grain from a field within a surveillance area must be tested prior to its movement from the field or before it is commingled with other grains and must be found free from bunted kernels. If bunted kernels are found, the grain will be eligible for movement only under a limited permit issued in accordance with paragraph (c) of this section.

* * * * * *

(d) To be eligible for movement as seed under certificate, commercial lots of seed grown in a restricted area for seed must:

(1) Originate from a field or fields that are not part of a restricted area for regulated articles other than seed or a surveillance area;

(2) Originate from a field or fields where the most recent previous Karnal bunt host crop tested negative for Karnal bunt;

(3) Test negative for Karnal bunt; and

(4) Be treated in accordance with § 301.89–13(e).

* * * * * *

6. Section 301.89–12 would be revised to read as follows:

§ 301.89–12 Cleaning and disinfection.

(a) Mechanized harvesting equipment and seed conditioning equipment that have been used in the production of Karnal bunt host crops must be cleaned and disinfected in accordance with § 301.89–13 prior to movement from a regulated area.

(b) Prior to movement from a regulated area, vegetable crops grown in fields that are in restricted areas for regulated articles other than seed must be cleaned of all soil and plant debris or be moved under limited permit in accordance with § 301.89–6.

7. Section 301.89–13 would be amended as follows:

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a. By revising paragraph (a) introductory text to read as set forth below.

b. By revising paragraphs (b) and (c) to read as set forth below.

c. By revising paragraph (e) introductory text to read as set forth below.

d. By removing paragraph (f).

§ 301.89–13 Treatments.

(a) All conveyances, mechanized harvesting equipment, seed conditioning equipment, grain elevators, and structures used for storing and handling wheat, durum wheat, or triticale required to be cleaned and disinfected under this subpart must be cleaned by removing all soil and plant debris and disinfected by one of the methods specified in paragraphs (a)(1) through (a)(4) of this section, unless a particular treatment is designated by an inspector. The treatment used must be that specified by an inspector if that treatment is deemed most effective in a given situation:

* * * * *

(b) Soil must be wet to a depth of 1 inch by water (irrigation or rain) just prior to treatment and must be treated by fumigation with methyl bromide at the dosage of 15 pounds/1000 cubic feet for 96 hours.

(c) Millfeed must be treated with a moist heat treatment of 170 °F for at least 1 minute if the millfeed resulted from the milling of wheat, durum wheat, or triticale that tested positive for Karnal bunt.

* * * * *

(e) Commercial lots of seed originating from an eligible restricted area for seed, as described in § 301.89–6(d)(1), or seed originating from a restricted area for seed that will be used for germplasm or for research purposes, must be treated with a 1.5 percent aqueous solution of sodium hypochlorite (=30 percent household bleach) containing 2 mL of Tween 20™ per liter agitated for 10 minutes at room temperature followed by a 15-minute rinse with clean, running water and then by drying, and either:

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

8. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

9. In § 319.59–1, the definition of "Karnal bunt" would be revised to read as follows:

§ 319.59–1 Definitions.

* * * * *

Karnal bunt. A plant disease caused by the fungus Tilletia indica (Mitra) Mundkur.

* * * * *

Done in Washington, DC, this 20th day of January 1998.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–1776 Filed 1–27–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–120882–97]

RIN 1545–AV81

Continuity of Interest

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: The IRS is issuing temporary regulations published elsewhere in this issue of the **Federal Register** providing guidance regarding satisfaction of the continuity of interest requirement for corporate reorganizations. The temporary regulations affect corporations and their shareholders. The text of those temporary regulations also serves as the text of these proposed regulations. In addition, this document provides notice of a public hearing on these proposed regulations.

DATES: Written comments and outlines of topics to be discussed at the hearing scheduled for Tuesday, May 26, 1998, must be received by Tuesday, May 5, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–120882–97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG–120882–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Phoebe Bennett, (202) 622–7750; concerning submissions and the hearing, LaNita Van Dyke, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations published elsewhere in this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) under section 368. The temporary regulations provide that in determining whether the continuity of interest requirement for corporate reorganizations is satisfied with respect to a potential reorganization, a proprietary interest in the target corporation is not preserved if, in connection with a potential reorganization, it is redeemed or acquired by a person related to the target corporation, or to the extent that, prior to and in connection with a potential reorganization, an extraordinary distribution is made with respect to it.

The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations describes the temporary regulations.

The temporary regulations do not provide guidance on the determination of whether a distribution will be treated as an extraordinary distribution, except that the rules of section 1059 do not apply for this purpose. The IRS and Treasury Department invite comments on whether the regulations should provide more specific guidance in this area.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled at 10 a.m. on Tuesday, May 26, 1998, in room 2615, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by Tuesday, May 5, 1998 and submit an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by Tuesday, May 5, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Proposed Effective Date

These regulations are proposed to apply to transactions occurring after January 28, 1998, except that they do not apply to any transaction occurring pursuant to a written agreement which is (subject to customary conditions) binding on January 28, 1998, and at all times thereafter.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.368–1 is amended as follows:

1. Revising paragraphs (e)(1)(ii)(A), (e)(1)(ii)(B), (e)(2)(ii), and (f).

2. Adding paragraph (e)(6) *Example 10* and *Example 11*.

The addition and revisions read as follows:

§ 1.368–1 Purpose and scope of exception of reorganization exchanges.

[The text of proposed paragraphs (e)(1)(ii)(A) and (B), (e)(2)(ii), (e)(6) *Example 10* and *Example 11*, and (f) is the same as the text of § 1.368–1T published elsewhere in this issue of the **Federal Register**].

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–1817 Filed 1–23–98; 12:15 pm]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–251985–96]

RIN 1545–AU79

Source of Income From Sales of Inventory Partly From Sources Within a Possession of the United States; Also, Source of Income Derived From Certain Purchases From a Corporation Electing Section 936; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations governing the source of income from sales of inventory produced in the United States and sold in a possession of the United States or produced in a possession of the United States and sold in the United States.

DATES: The public hearing originally scheduled for Thursday, January 29, 1998, beginning at 10:00 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 863 and 936 of the Internal Revenue Code. A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** on Friday, October 10, 1997 (62 FR 52953), announced that the public hearing on proposed regulations under sections 863 and 936 of the Internal Revenue Code would be held on Thursday, January 29, 1998, beginning at 10:00 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C.

The public hearing scheduled for Thursday, January 29, 1998, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 98–2013 Filed 1–27–98; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH58–1b; FRL–5954–5]

Approval and Promulgation of State Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the ozone State Implementation Plan (SIP) revision submitted by the State of Ohio for the purpose of reducing volatile organic compound (VOC) emissions in the Ohio portion of the Cincinnati-Hamilton area by 15 percent by November 15, 1996. The plan and regulations will help to protect the public's health and welfare by reducing the emissions of VOCs that contribute to the formation of ground-level ozone, commonly known as urban smog. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision, as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule no further activity is contemplated in relation to this proposed rule. If EPA receives significant adverse comments, in writing, which have not been addressed, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document.

DATES: Comments on this proposed rule must be received on or before February 27, 1998.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

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Copies of the State submittal and EPA's analysis of it are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: William Jones at (312) 886–6058 and Francisco Acevedo at (312) 886–6061.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 9, 1998.

Michelle D. Jordan,

Acting Regional Administrator.

[FR Doc. 98–2085 Filed 1–27–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5956–7]

Notice of Proposed Rulemaking (NPR) for NO_x SIP Call—Clarification of Comment Process

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; clarification of comment process.

SUMMARY: On November 7, 1997, the **Federal Register** published the Environmental Protection Agency's (the Agency's) Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone; Proposed Rule, 40 CFR part 52. The proposed rule provides a 120-day comment period which ends March 9, 1998. The proposed rule also states that "Because commenters may wish to submit technical information that may require additional time to develop, EPA will accept additional pertinent information beyond the 120-day time frame and will do what is possible to take the information into account for the final rulemaking." However, the EPA is publishing today's document to clarify that certain information, described below, must be submitted by the end of the 120-day comment period to be considered in the final rulemaking.

As part of the final rulemaking, EPA intends to perform certain air quality modeling analyses. In order for these analyses to be completed in time for the final rulemaking, emission inventory data need to be finalized by mid-March. Therefore, any comments concerning emission inventory data that are to be considered in the modeling analyses must be received by EPA within the official 120-day comment period (i.e., by March 9, 1998). Comments related to the inventory that are received after this date cannot be considered for the purpose of modeling.

FOR FURTHER INFORMATION CONTACT: Laurel Schultz, Office of Air Quality Planning and Standards, Emissions, Monitoring and Analysis Division, MD–14, Research Triangle Park, NC 27711, telephone (919) 541–5511.

Dated: January 23, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 98–2207 Filed 1–27–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–2; RM–9217]

Radio Broadcasting Services; Hawesville and Whitesville, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by WLME, Inc., proposing the reallotment of Channel 246A from Hawesville to Whitesville, Kentucky, and the modification of Station WXCM(FM)'s license accordingly. Channel 246A can be reallotted to Whitesville in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.9 kilometers (8.6 miles) north to accommodate petitioner's requested site. The coordinates for Channel 246A at Whitesville are North Latitude 37–48–39 and West Longitude 86–53–18. In accordance with § 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 246A at Whitesville, Kentucky.

DATES: Comments must be filed on or before March 16, 1998, and reply comments on or before March 31, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Patricia M. Chuh, Pepper & Corazzini, L.L.P., 1176 K Street, NW., Suite 200, Washington, DC. 20006 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–2, adopted January 14, 1998, and released January 23, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–2033 Filed 1–27–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–3; RM–9218]

Radio Broadcasting Services; Manson, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Manson Broadcasting proposing the allotment of Channel 234C3 at Manson, Washington, as the community's first local aural transmission service. Channel 234C3 can be allotted to Manson in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 234C3 at Manson are North Latitude 47–53–18 and West Longitude 120–09–18. Since Manson is located within 320 kilometers (200 miles) the U.S.-Canadian border, concurrence of the Canadian government has been requested.

DATES: Comments must be filed on or before March 16, 1998, and reply comments on or before March 31, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Duane J. Polich, Manson Broadcasting, P.O. Box 70, Oak Harbor, Washington 98277 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–3, adopted January 14, 1998, and released January 23, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–2032 Filed 1–27–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE57

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Plant Astragalus Desereticus (Deseret milk-vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine a Utah plant species, *Astragalus desereticus* (Deseret milk-vetch), to be a threatened species under the authority of the Endangered Species Act of 1973, as amended (Act). *Astragalus desereticus*, considered extinct for 72 years prior to 1981, exists as one small population in Utah County, Utah. Threats to the plant include residential development, livestock grazing, livestock and wildlife trampling, and threats associated with small population size. This proposal, if made final, would implement Federal protection provided by the Act. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by March 30, 1998. Public hearing requests must be received by March 16, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Utah Ecological Services Field Office, U.S. Fish and Wildlife Service, Lincoln Plaza Suite 404, 145 East 1300 South, Salt Lake City, Utah 84115. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John L. England at the above address (telephone: 801/524–5001, ext. 138).

SUPPLEMENTARY INFORMATION:

Background

Marcus E. Jones collected a distinctive *Astragalus* from "below Indianola," a town in Sanpete County, Utah, on June 2, 1893. The same species was again collected by Ivar Tidestrom from "near Indianola" on June 17, 1909. Specimens from these two collections lay in obscurity in various herbaria until Rupert Barneby recognized their uniqueness and described them as *Astragalus desereticus* (Barneby 1964). Efforts to relocate the species were initially fruitless (Barneby 1964; Welsh 1978a, 1978c), leading to a presumption of extinction (Ripley 1975; Welsh 1975, 1978b). However, a population of *A. desereticus* was discovered by Elizabeth Neese on May 27, 1981, on a sandstone outcrop above the town of Birdseye, Utah County, Utah, less than 16 kilometers (km) (10 miles (mi)) from Indianola (Welsh and Chatterley 1985). This population remains the only known occurrence of this species (Franklin 1990, 1991; U.S. Fish and Wildlife Service (USFWS) 1991). It is possible that this population is the one from which Jones and/or Tidestrom made their collections more than 70 years earlier (Franklin 1990, 1991; Welsh and Chatterley 1985).

Astragalus desereticus is a perennial, herbaceous plant in the bean family (Fabaceae). Individual plants are approximately 4 to 15 centimeters (cm) (2 to 6 inches (in)) in height, with stems about 6 cm (2 in) tall. The pinnately compound leaves are 4 to 11 cm (2 to 4 in) long with 11 to 17 leaflets. The leaflets are elliptic to ovate in shape, with dense silvery gray hairs on both sides. The flowers are 1.8 to 2.2 cm (0.7 to 0.9 in) long, white in color with a purple tip on the keel, and borne on a stalk of 5 to 10 flowers. The seed pods are 1 to 2 cm (0.4 to 0.8 in) long, covered with lustrous hairs, and bear 14 to 16 ovules (Barneby 1964; Barneby in Cronquist *et al.* 1989; Welsh 1978c; Welsh *et al.* 1987).

Astragalus desereticus occurs primarily on steep south- and west-facing slopes. The plant grows on soils derived from a specific and unusual portion of the geologic Moroni Formation. This geologic feature is characterized by coarse, crudely bedded conglomerate (Franklin 1990). The plant community in which *A. desereticus* occurs is dominated by pinon pine (*Pinus edulis*) and Utah juniper (*Juniperus osteosperma*). Other associated plant species include: sagebrush (*Artemisia tridentata*), scrub oak (*Quercus gambelii*), and wild buckwheat (*Eriogonum brevicaule*) (Franklin 1990).

The only known population of *Astragalus desereticus* consists of between 5,000 and 10,000 individuals growing in an area of less than 120 hectares (ha) (300 acres (ac)) (Franklin 1990, Stone 1992). The species' total range is approximately 2.6 km (1.6 mi) long and 0.5 km (0.3 mi) across. Extensive searches of similar habitat in other parts of Utah have not revealed any other populations (Franklin 1991; Larry England, USFWS, pers. comm., 1997). The land upon which *A. desereticus* grows is owned by the State

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of Utah and three private landowners (Franklin 1990, 1991; Chris Montague, The Nature Conservancy, pers. comms., 1992, 1997). This plant species is threatened by grazing and trampling by ungulates, alteration of its habitat due to residential development and road widening, and naturally occurring events such as fire, due to its limited distribution.

Previous Federal Action

Section 12 of the Act directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) accepting the report as a petition to list those taxa named therein under section 4(c)(2) (now 4(b)(3)) of the Act, and its intention to review the status of those plants. *Astragalus desereticus* was included in the July 1, 1975, notice on list "C," indicating that the species was probably extinct.

On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to designate approximately 1,700 vascular plant species, including *Astragalus desereticus*, as endangered pursuant to section 4 of the Act. The list of those 1,700 plant species was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. In the proposed rule, the Service also designated *A. desereticus* as a species about which the Service was particularly interested in obtaining any new information on living specimens and extant populations. General comments received in relation to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The 1978 amendments to the Act required that all proposals over 2 years old be withdrawn, although proposals published before the 1978 amendments' enactment could not be withdrawn before the end of a 1-year grace period beginning on the enactment date. On December 10, 1979, the Service published a notice of withdrawal (44 FR 70796) of that portion of the June 16, 1976, proposal that had not been made final, which included *A. desereticus*.

On December 15, 1980, the Service published a revised notice of review for native plants in the **Federal Register** (45 FR 82480) designating *Astragalus desereticus* a category 1 candidate species. Category 1 candidates were defined as those taxa for which the Service had on file information on biological vulnerability and threats to support the preparation of listing proposals. In addition, *A. desereticus* was identified as a species that may have recently become extinct. In 1981, a population of *A. desereticus* was discovered. On November 28, 1983, the Service published a revised notice of review in the **Federal Register** (48 FR 53640) in which *A. desereticus* was included as a category 2 candidate species. Category 2 candidates were formerly defined as taxa for which data on biological vulnerability and threats indicated that listing was possibly appropriate, but for which data were not sufficient to support issuance of listing proposals. In preparing the 1983 notice, the Service deemed it appropriate to acquire additional information on the distribution and abundance of *A. desereticus* before proposing the species for listing. The Service maintained *A. desereticus* as a category 2 species in updated notices of review published on September 27, 1985 (50 FR 39526), and February 21, 1990 (55 FR 6184). As a result of additional information obtained in 1990 and 1991 status surveys (Franklin 1990, USFWS 1991), the Service reclassified *A. desereticus* as a category 1 candidate in the September 30, 1993, notice of review (58 FR 51144). In the February 28, 1996, notice of review (61 FR 7596), the Service discontinued the designation of category 2 candidates. *Astragalus desereticus* was included as a candidate in the February 28, 1996 (61 FR 7596), and September 19, 1997, notices of review (62 FR 49398).

The processing of this proposed rule conforms with the Service's final listing priority guidance for fiscal year 1997, published in the **Federal Register** on December 5, 1996 (61 FR 64475). In a **Federal Register** notice published on October 23, 1997 (62 FR 55628), the guidance was extended beyond fiscal year 1997 until new guidance is published following passage of the fiscal year 1998 appropriations bill for the Department of the Interior. The fiscal year 1997 guidance clarifies the order in which the Service will process rulemakings following two related events: (1) The lifting on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6), and (2) the restoration of significant funding for listing through passage of the Omnibus Budget Reconciliation Act on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. Based on biological considerations, this guidance establishes a "multi-tiered approach that assigns relative priorities, on a descending basis, to actions to be carried out under section 4 of the Act" (61 FR 64479). The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. Tier 3 includes the processing of new proposed listings for species facing high magnitude threats. This proposed rule for *Astragalus desereticus* falls under Tier 3. The guidance states that "effective April 1, 1997, the Service will concurrently undertake all of the activities presently included in Tiers 1, 2, and 3" (61 FR 64480). The Service has thus begun implementing a more balanced listing program, including processing more Tier 3 activities. The completion of this Tier 3 activity (a proposal for a species with high-magnitude, imminent threats) follows those guidelines.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Astragalus desereticus* Barneby (Deseret milk-vetch) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Astragalus desereticus is located on highly accessible public and private land that is used for cattle grazing and wildlife management (Franklin 1991, Stone 1992). The land managed by the State of Utah Division of Wildlife Resources (DWR) is a wildlife management area that is also used for cattle grazing (Franklin 1991). Cattle are used by DWR in the spring to encourage plant growth for big game forage in the winter. This grazing occurs within the habitat of *A. desereticus* (Stone 1992). The cattle tend to concentrate primarily on the upslope areas where forage production is greater (Stone 1992). Erosion in these areas is exacerbated by cattle grazing and game trails. In addition to the effects of erosion, trampling threatens *A. desereticus*, particularly at the southern end of the range (Franklin 1991). As cattle and wildlife graze the habitat of *A. desereticus*, the animals are likely to trample plants as they forage. Whereas mule deer (*Odocoileus hemionus*) have maintained stable numbers recently, Rocky Mountain elk (*Cervas elephas*) populations are increasing. Erosion and trampling by cattle and wildlife constitute threats to *A. desereticus*.

Development in the Wasatch Front metropolitan area is spreading into the surrounding agricultural lands, especially small communities in the drainages of the Provo, Spanish Fork, and Weber rivers (Utah Governor's Office of Planning and Budget (UGOPB) 1997). Areas such as Birdseye are predicted to be rezoned residential within a short time. The population growth of the metropolitan area is expected to nearly double by the year 2020. In addition, conversion of agricultural land to urban use is also expected to nearly double in the same time period (UGOPB 1997). The entire *Astragalus desereticus* population is within 300 meters (1,000 feet) of U.S. Highway 89 and is within the area proposed for future development (UGOPB 1997). Transportation needs of the expanding population will also require roads to be widened or improved. U.S. Highway 89 is currently a two-lane rural highway that will likely be expanded when residential development expands into southern Utah County and northern Sanpete County. Such highway widening and the concomitant residential development could destroy a significant portion of the remaining habitat of *A. desereticus*.

A potential threat to *Astragalus desereticus* is related to the populations of ungulates in the area and their effect on pollinators. Other species in the genus *Astragalus* have suffered from low numbers of pollinators due to the indirect effects ungulates may have on the pollinators' nest sites (Stone 1992). Bumblebees (*Bombus* sp.), which nest in abandoned rodent burrows, are likely the primary pollinators of *A. desereticus*. Land use practices which increase grazing pressure may cause burrows to collapse, destroying bumblebee nests (Stone 1992). Since bees have low fecundity, their populations may not recover for many years, particularly if grazing by large numbers of ungulates is maintained.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not known to be a threat to *Astragalus desereticus*.

C. Disease or Predation

In contrast to many species of *Astragalus*, *A. desereticus* appears to be palatable to cattle. Many *Astragalus* species concentrate the toxic element selenium in their tissues; these species, called selenophytes, poison grazing cattle (Stone 1992). The fact that *A. desereticus* does not produce a "snakelike" odor typical of other "snakeweeds," as selenophytes are sometimes called, and the fact that no other selenophytes occur in the area, indicate that *A. desereticus* is not a selenophyte (Stone 1992). While *A. desereticus* may not be preferred forage for cattle or native ungulates, it is palatable and may be inadvertently taken along with preferred forage in the area.

In habitat similar to that occupied by *Astragalus desereticus* in Utah County that has been surveyed by Service personnel, overgrazing by domestic ungulates has almost completely denuded the landscape (USFWS 1991). Similar grazing pressure has been known from the current habitat of *A. desereticus;* therefore, the effects of grazing, particularly overgrazing, constitute a likely threat. This species is much less abundant in the more heavily grazed southern portion of its habitat (Franklin 1990, 1991), indicating that grazing may be a significant threat. Cattle grazing may be particularly harmful because it occurs during a critical period for *A. desereticus* reproduction (i.e., flowering) (Stone 1992).

There are no known insect parasites or disease organisms that significantly affect this species.

D. The Inadequacy of Existing Regulatory Mechanisms

Astragalus desereticus presently receives no protection or consideration under any Federal, State or local law or regulation.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

By virtue of the limited number of individuals and range of the single remaining population of *Astragalus desereticus*, this species may be threatened with extinction from naturally occurring events. The probability that a natural event such as a fire, drought, or disease will cause extinction is greater for species having a small population size and highly restricted range (Stone 1992). Rare species in the genus *Astragalus* have exhibited low levels of genetic diversity when compared to other more widespread, closely related species (Stone 1992). Low genetic variability may make it difficult for a species to respond to changes in the environment and thus places it at greater risk to extinction or additional range reduction.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Astragalus desereticus* in determining to propose this rule. Grazing and trampling by ungulates, residential development, road widening, and naturally occurring events such as fire variously threaten this species. Based on this evaluation, the preferred action is to list *A. desereticus* as threatened. Threatened status reflects the vulnerability of this species to factors that may negatively affect the species and its limited habitat. While not in immediate danger of extinction, *A. desereticus* is likely to become an endangered species in the foreseeable future if present threats continue or increase. Critical habitat is not being proposed for this species for reasons discussed in the "Critical Habitat" section of this proposal.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. The Service determines that designation of critical habitat for

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Astragalus desereticus is not prudent due to lack of benefit to the species.

Critical habitat receives consideration under section 7 of the Act with regard to actions carried out, authorized, or funded by a Federal agency (see Available Conservation Measures section). As such, designation of critical habitat may affect activities on Federal lands and may affect activities on non-Federal lands where such a Federal nexus exists. Under section 7 of the Act, Federal agencies are required to ensure that their actions do not jeopardize the continued existence of a species or result in destruction or adverse modification of critical habitat. However, both jeopardizing the continued existence of a species and adverse modification of critical habitat have similar standards and thus similar thresholds for violation of section 7 of the Act. In fact, biological opinions that conclude that a Federal agency action is likely to adversely modify critical habitat but not jeopardize the species for which the critical habitat has been designated are extremely rare. Also, the designation of critical habitat for the purpose of informing Federal agencies of the locations of *Astragalus desereticus* habitat is not necessary because the Service can inform Federal agencies through other means. For these reasons, the designation of critical habitat for *A. desereticus* would provide no additional benefit to the species beyond that conferred by listing, and therefore, such designation is not prudent.

Astragalus desereticus has an extremely narrow distribution in a sandstone outcrop, totaling about 120 ha (300 ac) in one population. At the present time, no other site is known to be occupied by or suitable for this plant. The private landowners at Birdseye are aware of the plant's presence and extremely limited habitat, as are the DWR managers and others involved in management of the area. Therefore, designation of critical habitat would provide no benefit with respect to notification. In addition, given the species' narrow distribution and precarious status, virtually any conceivable adverse effect to the species' habitat would very likely jeopardize its continued existence. Designation of critical habitat for *A. desereticus* would, therefore, provide no benefit to the species apart from the protection afforded by listing the plant as threatened.

Protection of the habitat of *Astragalus desereticus* will be addressed through the section 4 recovery process and the section 7 consultation process. Although this plant occurs only on private and State land, it may be affected by projects with Federal connections, including potential Federal Highway Administration funding of road widening. The Service believes that activities involving a Federal action which may affect *A. desereticus* can be identified without designating critical habitat, by providing Federal agencies with information on the location of occupied habitat and information on the kinds of activities which could affect the species. For the reasons discussed above, the Service finds that the designation of critical habitat for *A. desereticus* is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The single known population of *Astragalus desereticus* is on State and privately owned land. However, highway widening, which could adversely affect *A. desereticus* due to the proximity of the plants to the highway, could be partially funded by the Federal Highway Administration, thereby providing an avenue for section 7 consultation.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71 for threatened plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits malicious damage or destruction on areas under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to this species in the future if such regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked "Of Cultivated Origin." Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits are also available for botanical and horticultural exhibition, educational purposes, or special reasons consistent with the Act's purposes. With respect to *Astragalus desereticus*, it is anticipated that few, if any, trade permits would be sought or issued, since the species is not common in the wild and is unknown in cultivation. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to: Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act if a species is listed. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within a species' range. This species is not located on areas under Federal jurisdiction. Collection, damage, or destruction of this species on Federal lands is prohibited (although in appropriate cases a Federal endangered species permit may be issued to allow collection for scientific or recovery purposes). Such activities on areas not under Federal jurisdiction would constitute a violation of section 9 if conducted in knowing violation of State law or regulations, or in violation of State criminal trespass law. Normal highway maintenance, fence maintenance, and recreational hunting are among the activities that would be unlikely to violate section 9. Questions regarding whether specific activities would constitute a violation of section 9, should this species be listed, should be directed to the Field Supervisor, Utah Ecological Services Field Office (see **ADDRESSES** section).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. In particular, comments are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Astragalus desereticus*;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

A final determination of whether to list this species will take into consideration the comments and any additional information received by the Service. Such communications may lead to a final decision document that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests for hearings must be received within 45 days of the date of the publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor, Utah Ecological Services Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, Utah Ecological Services Field Office (see **ADDRESSES** section).

Author: The primary author of this proposed rule is John L. England, Utah Ecological Services Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.12(h) by adding the following, in alphabetical order under Flowering Plants, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
.	.	.	.	.	.	.	.
Astragalus desereticus.	Deseret milk-vetch ..	U.S.A. (UT)	Fabaceae	T	.....	NA	NA
.	.	.	.	.	.	.	.

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Dated: December 30, 1997.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 98–2012 Filed 1–27–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[I.D. No. 101097A]

Designated Critical Habitat; Central California Coast and Southern Oregon/ Northern California Coast Coho Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: NMFS is reopening the public comment period on proposed regulations to designate critical habitat for Central California Coast and Southern Oregon/Northern California Coast coho salmon (*Oncorhynchus kisutch*). These proposals were made on November 25, 1997, under provisions of the Endangered Species Act of 1973 (ESA). NMFS has received several requests for additional time to complete the review and compilation of information. NMFS finds the requests to be reasonable and hereby reopens the comment period until April 26, 1998.

DATES: Comments on the proposed rule must be received on or before April 26, 1998.

ADDRESSES: Comments should be sent to: Garth Griffin, NMFS, Protected Resources Division, 525 NE Oregon St. - Suite 500, Portland, OR 97232–2737; or Craig Wingert, NMFS, Southwest Region, Protected Species Management Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Garth Griffin at (503) 231–2005, Craig Wingert at (562) 980–4021, or Joe Blum at (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 1996, NMFS published its determination to list the Central California Coast Evolutionarily Significant Unit (ESU) of coho salmon as threatened under the ESA (61 FR 41514). Subsequently, on May 6, 1997, NMFS published its determination to list the Southern Oregon/Northern California Coast coho salmon ESU as threatened under the ESA (62 FR 24588). On November 25, 1997 (62 FR 62741), NMFS published a proposed rule identifying critical habitat for each ESU and identified a 90-day comment period (which ends January 26, 1998) to solicit information relevant to the proposal. During the comment period, three public hearings were held between December 8–11, 1997 in Gold Beach, Oregon; Eureka, California; and Santa Rosa, California.

Requests for an extension of the public comment period have been received from a California Congressional representative, as well as several county and private organizations and private citizens in northern California and southern Oregon. Reasons given for these requests included additional time required under state law to assemble county governments for a review of the proposal, and time needed to assess the scope and impact of the proposed rule. NMFS finds the requests to be reasonable and hereby reopens the comment period.

Critical habitat is defined as the specific areas within the geographical area occupied by the species, on which are found those physical and biological features essential to the conservation of the species and which may require special management considerations or protections (ESA section 3(5)(A)(I)). Critical habitat shall not include the entire geographical area occupied by the species unless failure to designate such areas would result in the extinction of the species.

Proposed critical habitat for the Central California Coast ESU encompasses accessible reaches of all rivers (including estuarine areas and tributaries) between Punta Gorda and the San Lorenzo River (inclusive) in California. Also included are two rivers entering San Francisco Bay: Mill Valley Creek and Corte Madera Creek. Proposed critical habitat for the Southern Oregon/Northern California Coast ESU encompasses accessible reaches of all rivers (including estuarine areas and tributaries) between the Mattole River in California and the Elk River in Oregon, inclusive.

The areas described in the proposed rule represent the current freshwater and estuarine range of the listed species. Marine habitats are also vital to the species and ocean conditions are believed to have a major influence on coho salmon survival. However, there does not appear to be a need for special management consideration or protection of this habitat. Therefore, NMFS is not proposing to designate critical habitat in marine areas at this time. For both ESUs, critical habitat includes all waterways, substrate, and adjacent riparian zones below longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years). NMFS has identified twelve dams in the range of these ESUs (see proposed rule) that currently block access to habitats historically occupied by coho salmon. However, NMFS has not designated these inaccessible areas as critical habitat because areas downstream are believed to be sufficient for the conservation of the ESUs. The economic and other impacts resulting from this critical habitat designation are expected to be minimal.

NMFS is soliciting information, comments and/or recommendations on any aspect of this proposal from all concerned parties (see **ADDRESSES**); comments must be received by April 26, 1998. In particular, NMFS is requesting any data, maps, or reports describing areas that currently or historically supported coho salmon populations and that may require special management considerations. NMFS will consider all information received before reaching a final decision.

Date: January 22, 1998.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–2074 Filed 1–27–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 63, No. 18

Wednesday, January 28, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; Revision of System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of Revision of an Existing Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), the Department of Agriculture (USDA) is issuing notice of our intent to amend the system of records entitled the Personnel and Payroll System for USDA Employees, USDA/OP–1, to include a new routine use. The disclosure is required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193). We invite public comment on this publication.

DATES: Persons wishing to comment on the proposed routine use must do so by 30 days from date of publication. (February 27, 1998).

EFFECTIVE DATE: The proposed routine use will become effective as proposed without further notice 45 days from date of publication (March 16, 1998), unless comments dictate otherwise.

ADDRESSES: Interested individuals may comment on this publication by writing to Joan Golden, Room 341–W Jamie L. Whitten Federal Building, 1400 Independence Avenue, SW., Washington, DC 20250, by fax to (202) 720–8721, or by email to *joan.golden@usda.gov*. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Evelyn Davis, Room 43–W Jamie L. Whitten Federal Building, 1400 Independence Avenue, SW., Washington, DC 20250, (202) 720–7765, (202) 690–4728 (Fax).

SUPPLEMENTARY INFORMATION: Pursuant to Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, USDA will disclose data from its Personnel and Payroll System for USDA Employees system of records to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for use in the National Database of New Hires, part of the Federal Parent Locator Service (FPLS) and Federal Tax Offset System, DHHS/OCSE No. 09–90–0074. A description of the Federal Parent Locator Service may be found at 62 FR 51663 (October 2, 1997).

FPLS is a computerized network through which States may request location information from Federal and State agencies to find non-custodial parents and their employers for purposes of establishing paternity and securing support. On October 1, 1997, the FPLS was expanded to include the National Directory of New Hires, a database containing employment information on employees recently hired, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. On October 1, 1998, the FPLS will be expanded further to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the national Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, that State will be notified. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

When individuals are hired by USDA, we may disclose to the FPLS their names, social security numbers, home addresses, dates of birth, dates of hire, and information identifying us as the employer. We also may disclose to FPLS names, social security numbers, and quarterly earnings of each USDA employee, within one month of the end of the quarterly reporting period.

Information submitted by USDA to the FPLS will be disclosed by the Office of Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct. The data disclosed by USDA to the FPLS will also be disclosed by the Office of Child Support Enforcement to the Secretary of Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

A "Report on New System," required by 5 U.S.C. 552a(o), as implemented by Transmittal Memoranda 1 and 3 to OMB Circular A–108, was sent to the Chairman, Committee on Governmental Affairs, United States Senate, the Chairman, Committee on Government Reform and Oversight, House of Representatives, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget on January 22, 1998.

Signed at Washington, DC, on January 22, 1998.

Dan Glickman,

Secretary of Agriculture.

Accordingly, the system notice is amended as follows:

USDA/OP–1

SYSTEM NAME:

Personnel and Payroll System for USDA Employees.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(26) The names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees may be disclosed to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193).

[FR Doc. 98–2051 Filed 1–27–98; 8:45 am]

BILLING CODE 3410–96–M

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DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Notice of Intent to Seek Approval to Extend and Revise a Current Information Collection

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44977, August 29, 1995), this notice announces the Cooperative State Research, Education, and Extension Service's (CSREES) intention to request approval to revise and extend a current information collection from applicants for Federal financial assistance.

DATES: Comments on this notice must be received by April 3, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Sally J. Rockey, Deputy Administrator, Competitive Research Grants and Awards Management, CSREES, USDA, STOP 2240, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2240, (202) 401–1761. E-mail: OEP@reeusda.gov.

SUPPLEMENTARY INFORMATION:

Title: Application Kit for Research, Education, and Extension Projects.

OMB Number: 0524–0022.

Expiration Date of Current Approval: May 31, 1998.

Type of Request: Intent to seek approval to revise and extend an information collection for three years.

Abstract: USDA/CSREES sponsors ongoing agricultural research, education, and extension programs under which competitive, special, and other awards of a high-priority nature are made. These programs are authorized pursuant to the authorities contained in the Act of August 4, 1965, Pub. L. 89–106, as amended (7 U.S.C. 450i); Section 1414 of Pub. L. 95–113, "National Agricultural Research, Extension, and Teaching Policy Act of 1977" (7 U.S.C. 450i(b)); Sections 1417(b)(1), 1417(b)(4), 1419, 1458A, 1472, 1473D, 1475, and 1480 of Pub. L. 95–113, as amended (7 U.S.C. 3154); Section 9 of Pub. L. 95–592, as amended, 7 U.S.C. 5821, "Native Latex Commercialization and Economic Development Act of 1978," (7 U.S.C. 178); Research and Marketing Act of 1946, as amended (7 U.S.C. 427i, 1624); section 1433 of Pub. L. 97–98, "National Agricultural Research, Extension, and Teaching Policy Act Amendments of 1981"; Section 632 of the Foreign Assistance Act (22 U.S.C. 2392(a)); Pub. L. 100–460; Section 1668 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5921); Section 1455 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended by Section 815 of the Federal Agriculture Improvement and Reform Act (FAIR Act) of 1996 (7 U.S.C. 3241); the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 *et seq.*) for the Tribal Colleges Education Equity Grants Program; the Small Business Development Act of 1982, Pub. L. 97–219, as amended (15 U.S.C. 638); Section 25 of the Food Stamp Act of 1977, as amended by Section 401(h) of the FAIR Act of 1996 (Pub. L. 104–127) (7 U.S.C. 2034); Section 793 of the FAIR Act of 1996 (7 U.S.C. 2204(f)).

In addition, formula-funded programs administered by CSREES use one form to provide assurances about their programs. These programs are authorized by the Hatch Act of 1887, as amended (7 U.S.C. 361a–i); the Evans-Allen Cooperative Agricultural Program, Section 1445 of Pub. L. 95–113, the Food and Agriculture Act of 1977, as amended (7 U.S.C. 3222); Section 1433 of Subtitle E (Section 1429–1439), Title XIV of Pub. L. 95–113 (7 U.S.C. 3191–3201, as amended; and the McIntire-Stennis Cooperative Forestry Research Act of October 10, 1962 (16 U.S.C. 582a–582a–7).

Before awards can be made, certain information is required from applicants as part of an overall proposal package. In addition to project summaries, descriptions of the research, extension, or education efforts, literature reviews, curricula vitae of principal investigators/project directors, and other, relevant technical aspects of the proposed project, supporting documentation of an administrative and budgetary nature also must be provided. Because of the nature of the competitive, peer-reviewed process, it is important that information from applicants be available in a standardized format to ensure equitable treatment.

Each year, solicitations are issued requesting proposals for various research, education, and extension areas targeted for support. Applicants submit proposals for these targeted areas following formats outlined in the proposal application guidelines accompanying each program's solicitation. These proposals are evaluated by peer review panels and awarded on a competitive basis.

These programs use forms approved in prior OMB-approved collection of information packages (OMB Nos. 0524–0022 and 0524–0024).

Forms CSREES–661, "Proposal Cover Page;" CSREES–55, "Proposal Budget;" CSREES–662, "Assurance Statement(s)," CSREES–663, "Current and Pending Support;" and CSREES–1234, "National Environmental Policy Act Exclusions" are mainly used for proposal evaluation and administration purposes. The CSREES–1234 has been approved under a separate CSREES collection (OMB Number 0524–0033 contains the burden hours for all CSREES programs) and is included in the Application Kit so an applicant can provide pertinent information regarding the possible environmental impacts of a proposed project. While some of the information will be used to respond to inquiries from Congress and other government agencies, the forms are not designed to be statistical surveys or data collection instruments. Their completion by potential recipients is a normal part of the application to Federal agencies which support basic and applied science.

The following information will continue to be collected:

Form CSREES–661—*Proposal Cover Page:* Provides names, mailing and electronic addresses, and telephone numbers of principal investigators/project directors and authorized agents of applicant institutions and general information regarding the proposals.

Form CSREES–55—*Proposal Budget:* Provides a breakdown of the purposes for which funds will be spent in the event of an award.

Form CSREES–662—*Assurance Statement(s):* Provides required assurances of compliance with regulations involving the protection of human subjects, animal welfare, and recombinant DNA research. This form is used for competitive, special, and formula-funded projects.

Form CSREES–663—*Current and Pending Support:* Provides information for active and pending projects.

Form CSREES–1234—*National Environmental Policy Act Exclusions:* Allows identification of whether or not the proposal fits one of the exclusions listed for compliance with the National Environmental Policy Act (7 CFR Part 3407). This information has been and will continue to be used in determinations as to whether or not further action is needed to meet the requirements of this Act.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average five and three-quarter (5¾) hours per response (including one-quarter hour for the CSREES–1234).

Respondents: Non-profit institutions, individuals, business, Federal government, and State, local, or Tribal governments.

Estimated Number of Responses per Form: 8,900. 6,600 complete the entire collection; 2,300 complete only the CSREES–662.

Estimated Total Annual Burden on Respondents: 37,450 hours, broken down by: 19,800 hours for Form CSREES–661 (three hours per 6,600 respondents); 6,600 hours for Form CSREES–55 (one hour per 6,600 respondents); 4,450 hours for Form CSREES–662 (one-half hour per 8,900 respondents); and 6,600 hours for Form CSREES–663 (one hour per 6,600 respondents).

Frequency of Responses: Annually.

Copies of this information collection can be obtained from Suzanne Plimpton, Policy and Program Liaison Staff, CSREES, (202) 401–1302. *E-mail:* OEP@reeusda.gov.

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Sally J. Rockey, Deputy Administrator, Competitive Research Grants and Awards Management, CSREES, USDA, STOP 2240, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2240, (202) 401–1761. E-mail: OEP@reeusda.gov. Comments also may be submitted directly to OMB and should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20502.

All responses to this notice will be summarized and included in the request for OMB approval. All comments also will become a matter of public record.

Done at Washington, D.C., this day of 21st day of January 1998.

B.H. Robinson,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 98–1979 Filed 1–27–98; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Rural Housing Service

Rural Business-Cooperative Service

Notice of Request for Extension of Currently Approved Information Collection

AGENCIES: Farm Service Agency, Rural Housing Service, and Rural Business-Cooperative Service, USDA.

ACTION: Proposed Collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the Farm Service Agency (FSA), Rural Housing Service (RHS), and the Rural Business-Cooperative Service (RBS) to request an extension of currently approved information collections for four regulations and a form used in support of the FSA Farm Loan Program (FLP) (formerly Farmer Programs of the Farmers Home Administration (FmHA)), two regulations used in support of the RHS Multi-family Housing (MFH) and Community Facilities (CF) loan programs, and one regulation used in support of the RBS Direct Business and Industry loan program. These rules do not involve the loans of the Commodity Credit Corporation (CCC) administered by FSA or the Single Family Housing (SFH) loans of RHS. This renewal does not involve any revisions to the program rules.

DATES: Comments on this notice must be received on or before March 30, 1998 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: For additional information contact Phillip Elder, Senior Loan Officer, USDA, Farm Service Agency, Farm Loan Programs, Loan Servicing Division, 1400 Independence Avenue, SW., STOP 0523, Washington, DC 20013–0523; Telephone (202) 690–4012; Electronic mail: pelder@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Form FmHA 1962–1, Agreement for the Use of Proceeds/Release of Chattel Security.

OMB Control Number: 0560–0171.

Expiration Date of Approval: March 31, 1998.

Type of Request: Extension of Currently Approved Information Collection.

Abstract: The collection of information on Form FmHA 1962–1 is required by a consent decree executed in relation to Coleman V. Block, 663 F. Supp 1315 (D.N.D. 1987). The former Farmers Home Administration (FmHA) agreed in the consent decree to approve a borrower's planned use of proceeds from the disposition of their chattel security, record any changes to planned use, and record the actual disposition of chattel security for the year of operation. Also, this form is needed to implement Section 335(f) of the Consolidated Farm and Rural Development Act (Act) (7 U.S.C. 1985(f)), which requires release of normal income security to pay essential household and farm operating expenses of the borrower, until the Agency accelerates the loan. Form FmHA 1962–1 provides a uniform method for local Agency loan officers to approve these actions.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated Number of Respondents: 56,075.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 18,505 hours.

Title: 7 CFR 1806–A, Real Property Insurance.

OMB Control Number: 0575–0087.

Expiration Date: March 31, 1998.

Type of Request: Extension of Currently Approved Information Collection.

Abstract: This regulation is currently shared by FSA and the MFH programs of RHS. This regulation governs the servicing of property insurance on buildings and land securing the interest of RHS or FSA in connection with an FSA FLP Loan or RHS MFH loan. This regulation does not apply to the CF and SFH programs of RHS. The information collections pertain primarily to the verification of insurance on property securing Agency loans. This information collection is submitted by FSA or RHS borrowers to Agency offices. It is necessary to protect the government from losses due to weather, natural disasters, or fire and ensure that the Act's loan making requirements of hazard insurance are met by loan applicants. See §§ 303(c), 312(c), and 321(b) of the Act.

Estimate of Burden: Public reporting burden for this collection of information

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is estimated to average 29 minutes per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated Number of Respondents: 20,391.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 9,944 hours.

Title: 7 CFR 1951–L, Servicing Cases Where Unauthorized Loan or Other Assistance Was Received.

OMB Control Number: 0560–0160.

Expiration Date: March 31, 1998.

Type of Request: Extension of Currently Approved Information Collection.

Abstract: FSA encounters cases where unauthorized assistance was received by a borrower. This assistance may be a loan where the recipient did not meet the eligibility requirements set forth in statute or program regulations, or both, or where the borrower qualified for loan assistance but a lower subsidized interest rate was charged on the loan, resulting in the borrower's receipt of unauthorized interest subsidy benefits. The unauthorized assistance may also be in the form of loan servicing where a borrower received an excessive write-down or write-off of their debt. The information collected under this regulation is provided on a voluntary basis by the borrower, although failure to cooperate to correct loan accounts may result in liquidation of the loan. The information to be collected will primarily be financial data such as amount of income, farm operating expenses, depreciation, crop yields, etc.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4 hours per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated Number of Respondents: 105.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 420 hours.

Title: 7 CFR 1965–A, "Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases."

OMB Control Number: 0560–0158.

Expiration Date: March 31, 1998.

Type of Request: Extension of Currently Approved Information Collection.

Abstract: This regulation promulgates provisions of sections 331 and 335 of the Act (7 U.S.C. §§ 1981 and 1985). Section 331, of the Act, in part, authorizes the Secretary of Agriculture to modify, subordinate and release terms of security instruments, leases, contracts, and agreements entered into by FSA. That section also authorizes transfers of security property as the Secretary deems necessary to carry out the purpose of the loan or protect the Government's financial interest. Section 335 of the Act provides servicing authority for real estate security; operation or lease of realty, disposition of property; conveyance of real property interest of the United States; easements; and condemnations. The information collection required by this subpart relates to a program benefit recipient or loan borrower requesting action on security which they own, which was purchased with FSA loan funds, improved with FSA loan funds or has otherwise been mortgaged to the Agency to secure a government loan. The information to be collected will primarily be financial data not already on file, such as borrower asset values.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .42 hours per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated Number of Respondents: 15,263.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 6,465 hours.

Title: 7 CFR part 1951, subpart F—Analyzing Credit Needs and Graduation of Borrowers.

OMB Control Number: 0575–0093.

Expiration Date: March 31, 1998.

Type of Request: Extension of Currently Approved Information Collection.

Abstract: This regulation is currently shared by FSA, RHS, and RBS. Section 333 of the Act and § 502 of the Housing Act of 1949, as amended, require the Agencies to graduate their direct loan borrowers to other credit when they are able to do so. Graduation is an integral part of Agency lending, as Government loans are not meant to be extended beyond a borrower's need for subsidized rates or non-market terms. The notes, security instruments, or loan agreements of most borrowers require borrowers to refinance their Agency loans when other credit becomes available at reasonable rates and terms. If a borrower finds other credit is not available at reasonable rates and terms, the Agency will continue to review the borrower for possible graduation at periodic intervals. Also, § 333A(f) of the Act (7 U.S.C. 1983a(f)) requires the Agency to provide a financial prospectus to lenders who may be interested in providing guaranteed and non-guaranteed credit to the FSA's direct farm loan borrowers. The information to be collected to carry out these mandates will primarily be financial data such as amount of income, farm operating expenses, asset values, and liabilities.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.85 hours per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated Number of Respondents: 69,781.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 199,020.

Title: 7 CFR part 1941, Subpart A—Operating Loan Policies, Procedures and Authorizations.

OMB Control Number: 0560–0162.

Expiration Date: March 31, 1998.

Type of Request: Extension of Currently Approved Information Collection.

Abstract: Section 311 of the Act (7 U.S.C. 1941) requires that an applicant for an FSA farm operating loan be a citizen of the United States, possess the legal capacity to incur the loan obligation, have training and experience sufficient to assure reasonable prospects of success in the proposed farm operation, be an operator of not larger than a family farm, be unable to obtain sufficient credit elsewhere, and not have received a direct operating loan in 6 or fewer years. Section 373 of the Act also generally prohibits the Secretary from making or guaranteeing a farm loan to a borrower who has received debt forgiveness on such a loan. The Debt Collection Improvement Act (31 U.S.C. § 3720B(a)) further generally precludes an agency from making a loan to a borrower who to a person who is delinquent on any Federal debt. Also, FSA loan approval officials must determine that adequate security and repayment ability for the loan are available, and that funds are used only for those purposes authorized by law. Reporting requirements to ensure compliance with these eligibility requirements are imposed on the public by regulations set out in 7 CFR part 1941, subpart A.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .21 hours per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated Number of Respondents: 56,170.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 11,673 hours.

Comments

The Agencies are soliciting comments on the burden of all of the above subparts regarding: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. These comments should be sent to Phillip Elder, Senior Loan Officer, USDA, FSA, Farm Loan Programs, Loan Servicing Division, 1400 Independence Avenue, SW., STOP 0523, Washington, DC 20250–0523.

Copies of the information collections may be obtained from Mr. Elder at the above address. Comments regarding paperwork burden will be summarized and included in the request for OMB approval of the information collection. All comments will also become a matter of public record.

Signed in Washington, DC, on January 20, 1998.

Bruce R. Weber,

Acting Administrator, Farm Service Agency.

Jan E. Shadburn,

Administrator, Rural Housing Service.

Dayton J. Watkins,

Administrator, Rural Business—Cooperative Service.

[FR Doc. 98–2054 Filed 1–27–98; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

Forest Service

Committee of Scientists Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Committee of Scientists is scheduled for February 12–13, 1998, in Seattle, Washington. The purpose of the meeting is to discuss planning issues concerning the National Forests in the Pacific Northwest (Washington and Oregon) and Alaska Regions; to meet with representatives from federal, state, and tribal organizations, to share information and ideas about Committee members' assignments; to continue discussions on the scientific principles underlying land and resource management; and to conduct any other Committee business that may arise. The meeting is open to the public.

DATES: The meeting is scheduled for February 12–13 in Seattle, Washington.

ADDRESSES: The meeting will be held at the University Plaza Hotel, 400 NE 45th Street, Seattle, Washington.

Written comments on improving land and resource management planning may be sent to the Committee of Scientists, P.O. Box 2140, Corvallis, OR 97339. Also the Committee may be accessed via the Internet at www.cof.orst.edu./org/scicomm/.

FOR FURTHER INFORMATION CONTACT:

Bob Cunningham, Designated Federal Official to the Committee of Scientists, telephone: 202–205–2494.

SUPPLEMENTARY INFORMATION: On February 12, the Committee of Scientists meeting will begin at 8 a.m. and end at 7 p.m. On February 13, the meeting will begin at 8 a.m. and end at 4 p.m. Citizens may address the Committee, February 12, beginning at 4 p.m., to present ideas on how to improve National Forest System land and resource management planning. Citizens who wish to speak must register at the meeting before 4 p.m. Each speaker will be limited to a maximum of 5 minutes. Persons may also submit written suggestions to the Committee at the meeting or by mail at the addresses listed under the Addresses heading.

The Committee of Scientists is chartered to provide scientific and technical advice to the Secretary of Agriculture and the Chief of the Forest Service on improvements that can be made to the National Forest System land and resource management planning process (62 FR 43691); August 15, 1997). Notice of the names of the appointed Committee members was published December 16, 1997 (62 FR 65795). Agendas and locations for future meetings will be published as separate notices in the **Federal Register**.

Dated: January 22, 1998.

Robert C. Joslin,

Deputy Chief for National Forest System.

[FR Doc. 98–2044 Filed 1–27–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Willamette Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Willamette PAC Committee will meet on Thursday, February 19, 1998, at the Courtyard By Marriott, 3443 Hutton Street, Springfield, Oregon 97477; phone (541) 726–2121. The PAC Committee meeting is scheduled for 9:00 a.m. to approximately 3:00 p.m. The tentative agenda includes: (1) Riparian Reserves, (2) Update on Province Late-Successional Reserve Assessment, (3) Update from Interagency Advisory Committee Staff, (4) Decision on response to 1997 Monitoring results, and (5) Public Forum.

The public forum is tentatively scheduled to begin at 10:00 a.m. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged. Written comments may be submitted prior to the meeting by sending them to Designated Federal Official Neal Forrester at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Neal Forrester, Willamette National Forest, 211 East Seventh Avenue, Eugene, Oregon 97401; (541) 465–6924.

Dated: January 22, 1998.

Herbert L. Wick,

Natural Resources Staff Officer.

[FR Doc. 98–2001 Filed 1–27–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business—Cooperative Service

Maximum Portion of Guarantee Authority Available for Fiscal Year 1998

AGENCY: Rural Business—Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: As set forth in the final rule under 7 CFR part 4279, subpart B, each fiscal year the Agency shall establish a limit on the maximum portion of guarantee authority available for that fiscal year that may be used to guarantee loans with a guarantee fee of 1 percent or guaranteed loans with a guarantee percentage exceeding 80 percent.

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Allowing the guarantee fee to be reduced to 1 percent or exceeding the 80 percent guarantee on certain guaranteed loans that meet the conditions set forth in subpart B of part 4279 will allow for the targeting of projects in rural communities that remain persistently poor, experience long-term population decline and job deterioration, and other related criteria.

Not more than 7 percent of the Agency quarterly apportioned guarantee authority will be reserved for loan requests with a guarantee fee of 1 percent, and not more than 15 percent of the Agency quarterly apportioned guarantee authority will be reserved for guaranteed loan requests with a guaranteed percentage exceeding 80 percent. Once the above quarterly limits have been reached, all additional loans guaranteed during the remainder of that quarter will require a 2 percent guarantee fee and not exceed an 80 percent guarantee limit.

Written requests by the Rural Development State Office for approval of a guaranteed loan with a 1 percent guarantee fee or a guaranteed loan exceeding 80 percent must be forwarded to the National Office, Attn.: Director, Business Programs Processing Division, for review and consideration prior to obligation of the guaranteed loan. The Administrator will provide a written response to the State Office confirming approval or disapproval of the request.

EFFECTIVE DATE: January 28, 1998.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Hennings, Senior Loan Specialist, Business Programs Processing Division, Rural Business—Cooperative Service, USDA, Stop 3221, Washington, DC 20250–3221, telephone (202) 690–3809.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866.

Dated: January 11, 1998.

Dayton J. Watkins,

Administrator.

[FR Doc. 98–2053 Filed 1–27–98; 8:45 am]

BILLING CODE 3410–XY–U

COMMISSION ON CIVIL RIGHTS

Hearing on Police-Community Relations—Sonoma County

AGENCY: Commission on Civil Rights.

ACTION: Notice of hearing.

SUMMARY: Notice is hereby given pursuant to the provisions of the Civil Rights Commission Amendments Act of 1994, Section 3, Public Law 103–419, 108 Stat. 4338, as amended, and 45 CFR 702.3, that a public hearing before a Subcommittee of the U.S. Commission on Civil Rights will commence on Friday, February 20, 1998, beginning at 8:30 a.m., in the Justice Joseph A. Rattigan Building, in Conference Room 410, located at 50 D Street, Santa Rosa, CA 95404.

The purpose of the hearing is to collect information within the jurisdiction of the Commission, under 45 CFR 702.2, related particularly to administration of justice, police-community relations, and the interaction between Federal and local law enforcement agencies in Sonoma County in order to determine underlying causes contributing to allegations of excessive force by policy and other administration of justice officials.

The Commission is authorized to hold hearings and to issue subpoenas for the production of documents and the attendance of witnesses pursuant to 45 CFR 701.2(c). The Commission is an independent bipartisan, factfinding agency authorized to study, collect, and disseminate information, and to appraise the laws and policies of the Federal Government, and to study and collect information with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.

Hearing impaired persons who will attend the hearing and require the services of a sign language interpreter, should contact Betty Edmiston, Administrative Services and Clearinghouse Division at (202) 376–8105 (TDD (202) 376–8116), at least five (5) working days before the scheduled date of the hearing.

FOR FURTHER INFORMATION CONTACT: Barbara Brooks, Press and Communications (202) 367–8312.

Dated: January 23, 1998.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 98–2113 Filed 1–23–98; 4:12 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818, A–489–805]

Certain Pasta From Italy and Turkey: Notice of Extension of Time Limits for Antidumping Duty First Administrative and New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 28, 1998.

FOR FURTHER INFORMATION CONTACT: Edward Easton or John Brinkmann, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1777 and (202) 482–5288, respectively.

SUPPLEMENTARY INFORMATION:

Postponement of Preliminary Results

A. First Administrative Reviews

On August 28, 1997, the Department initiated the first administrative reviews of the antidumping duty orders on certain pasta from Italy and Turkey, covering the period January 19, 1996 through June 30, 1997 (62 FR 45621). The current deadline for the preliminary results of these reviews is April 2, 1998. Section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("the Act"), requires the Department to make a preliminary determination in an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) allows the Department to extend this time period to up to 365 days.

We determine that it is not practicable to complete this review within the original time frame because this review involves collecting and analyzing information from a large number of companies and examining allegations of sales below the cost of production for all companies. Although section 751(a)(3)(A) of the Act allows for an extension of up to 120 days, we believe at this time that only a limited extension of the deadline is necessary to analyze the complex legal and methodological issues and coordinate verification of the companies participating in these reviews. Accordingly, the Department is extending the time limit for completion of the preliminary results of these administrative reviews by 90 days, or until July 1, 1998. We plan to issue the final results of these administrative reviews within 120 days after publication of the preliminary results.

B. New Shipper Review

On August 15, 1997, the Department initiated a new shipper review relating to the antidumping duty order on certain pasta from Italy, covering the period July 1, 1996 through June 30, 1997 (62 FR 44643, August 22, 1997). The current deadline for the preliminary results is February 11, 1998. Section 751(a)(2)(B)(iv) of the Act requires the Department to make a preliminary determination within 180 days after the date on which the new shipper review was initiated. However, if the Department concludes that the case is extraordinarily complicated, it may extend the 180-day period to 300 days.

Pursuant to section 751(a)(2)(B)(iv) of the Act, the Department has determined that this case is extraordinarily complicated given the complex nature of the issues similar to those in the first administrative reviews, including an allegation of sales below the cost of production. In order to analyze the issues specific to this case and to benefit from the analyses of similar issues in the administrative reviews, we are extending the deadline for issuing the preliminary results to no later than June 11, 1998. We plan to issue the final results within 90 days after the date the preliminary results are issued.

These extensions are in accordance with sections 751(a)(2)(B)(iv) and 751(a)(3)(A) of the Act.

Dated: January 22, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–2058 Filed 1–27–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

City College of New York; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Decision: Denied. Applicant has failed to establish that domestic instruments of equivalent scientific value to the foreign instrument for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the following docket.

Docket Number: 97–054. *Applicant:* City College of New York, CUNY, 140th Street and Convent Avenue, Room 165, New York, NY 11235. *Instrument:* Rapid Kinetics Device, Model SFA–20. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Date of Denial Without Prejudice to Resubmission:* September 9, 1997.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–2059 Filed 1–27–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

National Institutes of Health; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 97–093. *Applicant:* National Institutes of Health, Bethesda, MD 20892. *Instrument:* Micromanipulator Microscope, Model MSM. *Manufacturer:* Singer Instrument Co., Ltd., United Kingdom. *Intended Use:* See notice at 62 FR 62288, November 21, 1997.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides an optical microscope mounted over a micromanipulator with a videoscreen and camera and a unique optic-fiber dissection needle. A university research laboratory and a manufacturer of similar equipment advised December 23, 1997 that (1) this capability is pertinent to the applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–2060 Filed 1–27–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Pennsylvania State University at Erie, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 97–079. *Applicant:* Pennsylvania State University at Erie, Erie, PA 16563–1702. *Instrument:* Thermodynamic Measuring Equipment, Model pvT 100. *Manufacturer:* SWO Polymertechnik GmbH, Germany. *Intended Use:* See notice at 62 FR 52685, October 9, 1997. *Reasons:* The foreign instrument provides the capability to perform thermal conductivity and pvT measurements. *Advice received from:* National Institute of Standards and Technology, December 12, 1997.

Docket Number: 97–081. *Applicant:* University of North Carolina at Chapel Hill, Chapel Hill, NC 27599–3255. *Instrument:* X-Ray Diffractometer with Accessory, Model DIP–2020 V. *Manufacturer:* Nonius-Enraf, The Netherlands. *Intended Use:* See notice at 62 FR 52685, October 9, 1997. *Reasons:* The foreign instrument provides a large-area, on-line imaging plate detector for x-ray diffraction using 2 sheets at 200 mm. *Advice received from:* Domestic manufacturer of similar equipment, December 12, 1997.

The National Institute of Standards of Technology and a domestic manufacturer of similar equipment

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advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–2057 Filed 1–27–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Illinois at Urbana-Champaign; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 97–091. *Applicant:* University of Illinois at Urbana-Champaign, Urbana, IL 61801. *Instrument:* Upgrade and Replacement Parts for Asphalt Testing Equipment. *Manufacturer:* Industrial Process Controls Ltd., United Kingdom. *Intended Use:* See notice at 62 FR 62287, November 21, 1997.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides a pneumatically-driven triaxial pressure cell which can monitor the properties of asphalt composites under field conditions at construction sites. A university-based highway research laboratory and the Federal Highway Administration advised December 23, 1997 that (1) this capability is pertinent to the applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–2061 Filed 1–27–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Worcester Polytechnic Institute, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 97–089. *Applicant:* Worcester Polytechnic Institute, Worcester, MA 01609. *Instrument:* Fire Modeling Research Apparatus. *Manufacturer:* Fire Testing Technology Ltd., United Kingdom. *Intended Use:* See notice at 62 FR 61092, November 14, 1997. *Reasons:* The foreign instrument provides: (1) anti-vibration mountings on top of the frame and in the test area, (2) a pressure transducer to compensate for atmospheric pressure fluctuations, (3) an enclosed-case housing for the load cell and (4) compatibility with an existing cone calorimeter. *Advice received from:* National Institute of Standards and Technology, December 24, 1997.

Docket Number: 97–092. *Applicant:* University of Wisconsin, Madison, WI 53706. *Instrument:* Flame Ionization Detector System, Model HFR400. *Manufacturer:* Cambustion Ltd., United Kingdom. *Intended Use:* See notice at 62 FR 62287, November 21, 1997. *Reasons:* The foreign instrument provides a time constant of less than 4.0 ms for measuring hydrocarbon emissions during transients of a gasoline engine. *Advice received from:* National Institute of Standards and Technology, December 23, 1997.

The National Institute of Standards and Technology advises that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–2062 Filed 1–27–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration, Commerce

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 97–00003.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to The Association for the Administration of Rice Quotas, Inc. ("AARQ"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1997).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Semi-milled or wholly milled rice, whether or not polished or glazed (item 1006.30 of the Harmonized Tariff Schedules (HTS)), and husked (brown) rice (item 1006.20 of the HTS).

Export Markets

Rice for which TRQ awards have been made will be exported to the countries that comprise the European Union. Exports that will serve as a basis for distribution of the proceeds of the TRQ awards will be to the European Union as well as all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operations

1. Purpose. AARQ will manage on an open tender basis the tariff-rate quotas ("TRQs") for milled and brown rice granted by the European Union ("EU") to the United States under the U.S.-EU Enlargement Agreement signed July 22, 1996, or any amended or successor agreement providing for EU rice TRQs for the United States and provide for distribution of the proceeds received from the tender process based on exports of milled and brown rice, and rice in the husk (paddy or rough) as set forth below ("the TRQ System").

2. Implementation.

A. Administrator

AARQ shall contract with a neutral third party Administrator who is not engaged in the production, milling, distribution, or sale of rice, who shall bear responsibility for administering the TRQ System, subject to general oversight and supervision by the Board of Directors of AARQ.

B. Membership

Any person or entity domiciled or incorporated in the United States may become a Member of AARQ upon (i) submission to the Administrator of an application accompanied by evidence that the applicant is a rice mill or has exported U.S. rice from the United States, (ii) execution of the AARQ Operating Agreement, and (iii) in the case of applications received after December 31, 1997, payment of a one-time, nonrefundable fee of $3,000 to AARQ. The fee may be waived for small exporters, as determined by the Board of Directors of AARQ.

C. Open Tender Process; Persons or Entities Eligible To Bid

(a) AARQ shall offer TRQ Certificates for duty-free or reduced-duty shipments of rice to the EU on open tender to the highest bidders. All U.S. TRQ quantities (in metric tons) shall be allocated through the Open Tender Process for such tranches ("TRQ Tranches") as may be provided for in the relevant EU regulations. The Open Tender Process shall constitute the sole and exclusive mechanism by which AARQ allocates TRQ quantities.

(b) Any person or entity incorporated or domiciled in the United States, whether or not a Member of AARQ, shall be eligible to bid in any Open Tender Process.

D. Notice

The Administrator will publish notice ("Notice") of each Open Tender Process to be held for the allocation of TRQs for each TRQ Tranche in the Journal of Commerce, and at the discretion of AARQ in other publications of general circulation within the U.S. rice industry. The Notice will invite independent bids and will specify (i) the total amount (in metric tons) of each TRQ to be allocated pursuant to the applicable TRQ Tranche; and (ii) the date on which all bids for TRQ Certificates must be submitted to and received by the Administrator (the "Bid Date"). The Notice will normally be published not later than 45 days prior to the opening of the TRQ Tranche; if EU decisions on the opening of TRQs or EU regulations necessitate a condensed timetable for notice and bidding, the Administrator will publish the required Notice as promptly as possible after the EU announcements, and will in any event specify a Bid Date that is at least 5 working days after publication of the Notice. The Notice will provide information on how to obtain forms to be used to submit bids. Bids may be submitted by hand delivery or facsimile, and must be received by the Administrator by 5:00 p.m. EST on the Bid Date.

E. Form of Bid; Performance Security

(a) A bid shall be submitted on a form provided by the Administrator and shall state (i) the name, address, telephone, and facsimile or telex number of the bidder; (ii) the form of rice and quantity in metric tons bid, with a minimum bid quantity of twenty (20) metric tons; (iii) the bid price in U.S. dollars per metric ton; and (iv) the total value of the bid.

(b) The bid form shall contain a provision, signed by the bidder, that the bidder agrees that any dispute that may arise relating to the bidding process or the award of TRQ Certificates shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

(c) The bidder shall submit with its bid(s) a performance bond, irrevocable letter of credit drawn on a U.S. bank, cashier's check, wire transfer, or equivalent performance security, in a form approved by AARQ and for the benefit of an account designated by the Administrator, in the amount of $50,000 or the total value of its bid(s), whichever is less. Such performance security shall be forfeited if the bidder fails timely to pay for TRQ Certificates awarded to it. At the option of a successful bidder, its performance security may be applied to the price of its successful bid(s), or retained as security for a subsequent Open Tender Process. Any performance security not forfeited, applied to a bid price, or retained as future security shall be returned to the bidder promptly after the close of the Open Tender Process.

(d) The contents of the bids shall be treated by the Administrator as confidential and may be disclosed only to another neutral third party as necessary to ensure the effective operation of the TRQ System; provided, however, that after issuance of all TRQ Certificates in an Open Tender Process, the Administrator shall promptly notify all bidders of and release to the public (i) the total tonnage for which TRQ Certificates were awarded under the milled rice TRQ Tranche and the brown rice TRQ Tranche, respectively, and (ii) the price per metric ton of the lowest successful bid for each TRQ Tranche.

F. TRQ Certificate Awards

(a) Following the close of the bidding period, after having carefully reviewed each apparently high bid to ensure its conformity with applicable requirements, the Administrator shall notify each high bidder that its bid(s) have been determined to be high bid(s). If two or more bidders have submitted identically priced high bids that together cover more than the available tonnage, the Administrator shall divide the award among those bidders in proportion to the quantities of their bids and offer the proportionate shares to each of those bidders. If any of those bidders rejects all or part of the quantity offered, it shall be offered first to the remaining such bidder(s) and then to the next highest bidder.

(b) Promptly after issuance of the notification that its bid is a high bid, a bidder shall pay the full amount of the bid to the Administrator either by certified check or by wire transfer to an account designated by the Administrator. If the bidder fails to pay the full amount of the bid on a timely

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basis, the Administrator shall revoke the award, and grant the award to the next highest bidder.

(c) If the total bids received cover less than the tonnage of the relevant TRQ Tranche, the unused portion shall, to the extent consistent with EU regulations, be carried over to a succeeding Tranche. In any Tranche as to which EU regulations prohibit such carry-over, should total bids received cover less than the total tonnage available in the Tranche, the unused portion shall be offered to all successful bidders, in proportion to the size of their respective awards, at the lowest successful bid price.

(d) The full amounts received from successful bidders shall be deposited in an interest-bearing account designated by the Administrator in a financial institution approved by the Board of Directors of AARQ.

G. Delivery of TRQ Certificates

(a) Promptly after receiving the full amount of a successful bid, the Administrator shall transmit to the successful bidder(s) a TRQ Certificate that designates the quantity and form of rice covered by the bid and any known expiration date pursuant to EU regulations.

(b) To facilitate monitoring of shipments of packaged rice pursuant to EU regulations, the TRQ Certificate shall include a space for designation by the exporter of the type of packaging, if any, of the rice covered by the TRQ Certificate.

(c) TRQ Certificates issued to successful bidders shall be freely transferable.

H. Disposition of Tender Proceeds

(a) The proceeds of Open Tender Processes shall be applied and distributed as provided in paragraphs (b) through (g) below.

(b) Operating expenses of AARQ, including legal, accounting, and administrative costs of establishing and operating the TRQ System, shall be paid as incurred from tender proceeds as they become available, pursuant to authorization by the AARQ Board of Directors.

(c) From the remaining proceeds of tenders as soon as available—

(i) The U.S. Rice Industry Coalition for Exports, Inc. ("US RICE") shall be reimbursed for its documented TRQ-related legal expenses up to $450,000.

(ii) The Rice Millers' Association ("RMA") shall be reimbursed up to $450,000 (A) for its documented TRQ-related legal and administrative expenses, (B) for payment of up to $100,000 to the Committee for Fair Allocation of Rice Quotas for its documented TRQ-related legal expenses, (C) for payment of up to $25,000 to each former member of RMA's former export trade certificate of review (96–00003) (RMA/ETCR) for its documented third party legal expenses in calendar years 1996 and 1997 in connection with the establishment of an ETC for administration of the TRQs, and (D) for payment of $25,000 to each former member of the RMA/ETCR that documents that it shipped a minimum of 500 metric tons of milled or brown rice to the EU in calendar year 1996 and has not received a distribution under item (C). If there are insufficient funds available to make payments provided for in subparagraphs (c)(ii)(C) and (D), the amount that each former RMA/ETCR member would otherwise be entitled to receive will be reduced by a pro-rata amount so that the total distribution will be equal to the amount available for this purpose.

(d) From the proceeds of tenders in each of the first two years of operations, each Member of AARQ that documents to the Administrator exports of milled or brown rice to Austria, Sweden, or Finland during 1990–1994 shall be paid up to $75 per metric ton of its documented 1990–1994 annual average of such shipments, provided, however, that the total amount paid to all eligible Members under this provision may not exceed $1,800,000 in each of the two years. If $1,800,000 is insufficient to permit payments of $75 per metric ton, the amount that each eligible Member would otherwise be entitled to receive will be reduced pro rata so that the total distribution will be equal to the amount available for this purpose. Any documented costs previously incurred by the RMA in reviewing and analyzing documentation of member shipments to Austria, Finland, or Sweden during 1990–1994 shall be considered a cost of administering the TRQ System, pursuant to paragraph (b) above.

(e) Of the proceeds remaining at the end of each year of operations—

(i) Thirty-nine percent (39%) shall be distributed to Members exporting U.S. paddy, brown, and/or milled rice to the EU based on their percentage shares by volume, adjusted as provided in item (iii) of this subparagraph, of Members' exports to the EU during that year.

(ii) Thirty-nine percent (39%) shall be distributed to Members exporting U.S. paddy, brown, and/or milled rice to all non-EU Export Markets, based on their percentage shares by volume, adjusted as provided in item (iii) of this subparagraph, of Members' non-EU Export Markets exports during that year.

(iii) The computation of Members' exports under this paragraph (e) shall be made on a milled rice equivalent basis using U.S. Department of Agriculture standard equivalency factors.

(f) A year shall be the calendar year, except that if an Open Tender Process occurs in 1997, the first year of operations shall be the period from the date of that tender through December 31, 1998.

(g) Notwithstanding the foregoing provisions of this paragraph, promptly upon implementation of the TRQ System by the EU, the Board of Directors shall consider and may direct distributions during 1998 of proceeds from tenders of a major portion of the TRQ tonnage to be offered in the first year of operations, basing distributions pursuant to paragraph (e) (i) and (ii) on Members' exports during calendar year 1997.

I. Eligibility for Distributions; Submission of Export Documentation

Any Member of AARQ will be eligible to participate in distributions of tender proceeds if: (i) it is a member under the ETCR issued to AARQ by the U.S. Department of Commerce on the date of a distribution or its membership under the ETCR is the subject of an ETCR amendment pending with the Department of Commerce on that date, and (ii) it has timely submitted the required export documentation to the Administrator.

J. Distribution of Tender Proceeds

Within sixty (60) days of the submission of the required documentation for the year or as soon as practicable thereafter, the Administrator shall notify each Member, on a confidential basis, of its percentage share of U.S. rice exports by Members to the EU and/or non-EU destinations, as applicable, for the previous year, and the dollar amount of its distribution. As promptly as possible following such notification, the Administrator shall cause the distributions to be made to eligible Members. If an amendment to include an eligible Member under the ETCR is pending at the Department of Commerce, the Administrator shall cause such Member's distribution to be held for distribution promptly upon issuance of the amendment.

K. Arbitration of Disputes

Any controversy or claim arising out of or relating to the TRQ System or to the AARQ Operating Agreement, or the breach thereof, including *inter alia* a Member's qualification for a distribution, the interpretation of documents, or the distribution itself, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Decisions by arbitrators shall not be incorporated by reference in this Certificate of Review. Any change to the Export Trade Activities and Methods of Operation listed in this certificate as a result of arbitration shall not be covered by this Certificate of Review unless certified by an amendment to this Certificate of Review.

L. Confidential Information

Confidential export documentation and any other confidential information submitted to AARQ by an applicant for membership, by a Member in connection with qualifying for a distribution, or by any person in connection with the TRQ System shall be marked "Confidential" and submitted to the Administrator, who shall maintain its confidentiality. The Administrator shall not disclose such confidential information to any Member other than the submitter, or to any officers, agents, or employees of any Member other than the submitter, and shall not disclose such confidential information to any other person except to another neutral third party as necessary to make the determination for which the information was submitted, to process distributions, or in connection with the arbitration of a dispute.

M. Annual Reports

In accordance with its Bylaws, AARQ shall publish an annual report, including a statement of the operating expenses and aggregate data on the distribution of proceeds, as reflected in the audited financial statement of the AARQ TRQ System.

3. Cooperation with the U.S. Government and the European Commission. AARQ will provide whatever information and consultations may be useful in order to ensure effective consultations between the U.S. Government and the European Commission concerning the implementation and operation of the TRQ System. In particular, while maintaining the confidentiality of confidential information submitted by bidders and Members, AARQ will provide its annual report, regular reports following the tender for each TRQ Tranche, reports on distributions of tender proceeds, and/or any other information that might be requested by the U.S. Government. Directly or through the U.S. Government, AARQ will endeavor to accommodate any information requests from the Commission (while protecting confidential data), and will consult with the Commission as appropriate.

4. Miscellaneous Implementing Provisions. AARQ and/or its members may (i) meet, discuss and provide for an administrative structure to implement the foregoing tariff rate quota management system, assess its operations and discuss modifications as necessary to improve its workability, (ii) meet, exchange and discuss information regarding the structure and method for implementing the foregoing tariff rate quota management system, (iii) meet, exchange and discuss the types of information needed regarding the bidding process, distribution of the bid proceeds, and past export transactions that are necessary for implementation of the system, (iv) meet, exchange and discuss information concerning U.S. and foreign agreements, legislation and regulations affecting the TRQ management system, (v) and otherwise meet, discuss and exchange information as necessary to implement the activities described above and take the necessary action to implement the foregoing TRQ management system.

Terms and Conditions of Certificate

1. Except as authorized in Paragraphs 2.E(d) and H(c) and (d) of the Export Trade Activities and Methods of Operation, in engaging in Export Trade Activities and Methods of Operation, neither AARQ, the Administrator, any Member, nor any neutral third party shall intentionally disclose, directly or indirectly, to any Member (including parent companies, subsidiaries, or other entities related to any Member) any information regarding any other Member's costs, production, inventories, domestic prices, domestic sales, capacity to produce Products for domestic sale, domestic orders, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless such information is already generally available to the trade or public.

2. AARQ and its Members will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

Definition

Neutral third party, as used in this Certificate of Review, means a party not otherwise associated with AARQ or any of its Members and who is not engaged in the production, milling, distribution, or sale of rice.

Members (Within the Meaning of Section 325.2(1) of the Regulations)

Members (in addition to applicant): Affiliated Rice Milling, Inc., Alvin, Texas; American Rice, Inc., Houston, Texas; Brinkley Rice Milling Company, Brinkley, Arkansas; Broussard Rice Mill, Inc., Mermentau, Louisiana; Busch Agricultural Resources, Inc., St. Louis, Missouri; Cargill, Inc. for the activities of its division, Cargill Rice Milling, Greenville, Mississippi; Connell Rice & Sugar Co., Westfield, New Jersey; Continental Grain Company, New York, New York; El Campo Rice Milling Company, Louise, Texas; Farmers' Rice Cooperative, Sacramento, California; Farmers Rice Milling Company, Inc., Lake Charles, Louisiana; Gulf Rice Milling, Inc., Houston, Texas; Liberty Rice Mill, Inc., Kaplan, Louisiana; Louis Dreyfus Corporation, Wilton, Connecticut; Newfield Partners Ltd., Miami, Florida; Producers Rice Mill, Inc., Stuttgart, Arkansas; Riceland Foods, Inc., Stuttgart, Arkansas; RiceTec, Inc., Alvin, Texas; Riviana Foods, Inc., Houston, Texas; SunWest Foods, Inc., Davis, California; Supreme Rice Mill, Inc., Crowley, Louisiana; The Rice Company, Roseville, California; and Uncle Ben's, Inc., Houston, Texas.

Protection Provided by Certificate

This Certificate protects AARQ, its Members, and directors, officers, and employees acting on behalf of AARQ and its Members from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

Other Conduct

Nothing in this Certificate prohibits AARQ and its Members from engaging

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in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

Disclaimer

The issuance of this Certificate of Review to AARQ by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary of Commerce or by the Attorney General concerning either (a) the viability or quality of the business plans of AARQ or its Members or (b) the legality of such business plans of AARQ or its Members under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country.

The application of this Certificate to conduct in export trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V.(D.) of the "Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition)," 50 Fed. Reg. 1786 (January 11, 1985).

In accordance with the authority granted under the Act and Regulations, this Certificate of Review is hereby granted to Association for the Administration of Rice Quotas, Inc.

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: January 22, 1998.

Morton Schnabel,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 98–2056 Filed 1–27–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by Jessie W. Taylor From an Objection by South Carolina

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of decision.

On December 30, 1997, the Secretary of Commerce (Secretary) issued a decision in the consistency appeal of Mr. Jessie W. Taylor (Appellant). The Appellant had applied to the U.S. Army Corps of Engineers (Corps) for a permit to fill wetlands to construct a commercial business on the property. In conjunction with the Federal permit application, the Appellant submitted to the Corps a certification that the proposed activity is consistent with the State's federally approved Coastal Management Program (CMP). The State of South Carolina's coastal management agency, reviewed the certification pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1456(c)(3)(A).

On March 11, 1996, the State objected to the Appellant's consistency certification for the proposed project on the ground that the proposed project is not consistent with the enforceable policies contained in the State's coastal management program. State policies prevented OCRM from considering the Appellant's offer of mitigation in evaluating his activity. Under CZMA section 307(c)(3)(A) and 15 CFR 930.131, the State's consistency objection precludes the Corps from issuing a permit for the activity unless the Secretary finds that the activity is either consistent with the objectives or purposes of the CZMA (Ground I) or necessary in the interest of national security (Ground II). The Appellant based his appeal on Ground I.

Upon consideration of the information submitted by the Appellant, the State and interested Federal agencies, the Secretary made the following findings pursuant to 15 CFR 930.121: First, the proposed project furthers one or more of the competing national objectives or purposes of the CZMA by minimally contributing to the national interest in economic development of the coastal zone. Second, the proposed project, including the Appellant's mitigation measure, would lessen rather than increase cumulative impacts on the natural resources of the coastal zone. Thus, there would appear to be no adverse coastal effects to outweigh the projects minimal contribution to the national interest. Third, the proposed activity will not violate the requirements of the Clean Water Act or the Clean Air Act. Fourth, there would be no reasonable alternative available to the Appellant that would permit the activity to be conducted in a manner consistent with the State's coastal management program. Accordingly, the proposed project is consistent with the objectives or purposes of the CZMA. Because the Appellant's proposed project satisfied all of the requirements of Ground I, the Secretary overrode the State's objection to the Appellant's consistency certification. Consequently, the proposed project may be permitted by Federal agencies. Copies of the decision may be obtained from the contact person listed below.

Margo E. Jackson, Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910, (301) 713–2967.

Dated: January 16, 1998.

Monica Medina,

General Counsel.

[FR Doc. 98–2035 Filed 1–27–98; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012098B]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a number of public meetings of its oversight committees and advisory panels in February, 1998, to consider actions affecting New England fisheries in the exclusive economic zone. Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held between February 10 and February 24, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Meetings will be held in Peabody, MA; East Boston, MA; Warwick, RI, and Portsmouth, NH. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (781) 231-0422.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Tuesday, February 10, 1998, 9:30 a.m.—Groundfish Committee Meeting

Location: Peabody Marriott Hotel, 8A Centennial Drive, Peabody, MA 01960; telephone: (978) 977–9700.

Groundfish Advisory Panel and Plan Development Team reports on a proposal to protect Gulf of Maine cod submitted by the Gulf of Maine Fishermen's Alliance; review of overfishing definitions, stock status, and effort reduction requirements to meet the Sustainable Fisheries Act requirements; development of related management options where appropriate.

Tuesday, February 10, 1998, 10 a.m.—Joint New England Fishery Management Council Herring Committee and Atlantic States Marine Fisheries Commission Herring Section Meeting

Location: Holiday Inn, One Newbury Street (Route 1), Peabody, MA 01960; telephone: (978) 535-4600.

Further development of management measures for inclusion in a Herring Fishery Management Plan (FMP) public hearing document.

Wednesday and Thursday, February 11-12, 1998, 9:30 a.m.—Monkfish Committee Meeting

Location: Airport Holiday Inn, 225 McClellan Highway, East Boston, MA 02128; telephone: (617) 569-5250.

Development of recommendations for final management measures; review of draft submission documents for Amendment 9 to the Northeast Multispecies FMP.

Thursday, February 12, 1998, 9:30 a.m.—Joint Habitat Committee and Advisory Panel Meeting

Location: Holiday Inn, One Newbury Street (Route 1), Peabody, MA 01960; telephone: (978) 535-4600.

Further development of essential fish habitat designations for Council-managed species.

Wednesday, February 18, 1998, 8:30 a.m.—Scallop Committee Meeting

Location: Radisson Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739-3000.

Development of management measures to address the requirement of the Sustainable Fisheries Act concerning overfishing; development of objectives for an open/closed area management program; development framework adjustments to the Multispecies and Scallop FMPs to open the areas of Georges Bank now closed to scallop fishing for groundfish conservation purposes.

Monday, February 23, 1998, 10 a.m.—Interspecies Committee Advisory Panel Meeting

Location: Holiday Inn, One Newbury Street (Route 1), Peabody, MA 01960; telephone: (978) 535-4600.

Discussion of long-range management strategies; update on efforts to eliminate inconsistencies in vessel upgrading provisions; development of policy statement concerning the introduction of fish harvesting innovations and new fisheries technology.

Tuesday, February 24, 1998, 10 a.m.—Interspecies Committee Meeting

Location: Sheraton Portsmouth, 250 Market Street, Portsmouth, NH 03801; telephone: (603) 431-2300.

Same agenda as Advisory Panel meeting listed above.

Although other issues not contained in these agendas may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in the agendas listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **FOR FURTHER INFORMATION CONTACT**) at least 5 days prior to the meeting dates. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1097; telephone: (781) 231-0422.

Dated: January 23, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–2242 Filed 1-26-98; 3:07 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011398A]

Marine Mammals; Scientific Research Permit No. 550–1441 (File No. P36D)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. Bernd Wursig, Director, Marine Mammal Research Program, Texas A&M University, 4700 Avenue U/Building 303, Galveston, Texas 77551, has been issued a permit to take Atlantic bottlenose dolphins (*Tursiops truncatus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS,

1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southeast Regional Office, NMFS, NOAA, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (813/570–5301).

SUPPLEMENTARY INFORMATION: On October 29, 1997, notice was published in the **Federal Register** (62 FR 56151), that the above-named applicant had submitted a request for a scientific research permit to harass bottlenose dolphins during the course of: (1) photo-identification and boat-based behavioral studies; (2) biopsy sampling of 100 individuals for genetic and contaminant studies; and (3) acoustic playback experiments to test the behavioral reaction of the dolphins to "pingers" used to deter marine mammal entanglement in commercial fishing gear. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

Dated: January 21, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–2075 Filed 1–27–98; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission.

TIME AND DATE: 10:00 a.m., Thursday, February 5, 1998.

LOCATION: Room 420, East-West Towers, 4330 East-West Highway, Bethesda, Maryland.

(Previously scheduled for Wednesday, January 28, 1998)

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Bicycle Helmets: The Commission will consider options for a final safety standard for bicycle helmets.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East-West Highway, Bethesda, MD 20207 (301) 504–0800.

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Dated: January 26, 1998.

Sadye E. Dunn,

Secretary.

[FR Doc. 98–2280 Filed 1–26–98; 3:41 pm]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission.

TIME AND DATE: 2:00 p.m., Thursday, February 5, 1998.

LOCATION: Room 410, East-West Towers, 4330 East-West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report: The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East-West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: January 26, 1998.

Sadye E. Dunn,

Secretary.

[FR Doc. 98–2281 Filed 1–26–98; 3:41 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Air Force ROTC College Scholarship Application; AF Form 113; OMB Number 0701–0101.

Type of Request: Extension.

Number of Respondents: 11,000.

Responses Per Respondent: 1.

Annual Responses: 11,000.

Average Burden Per Response: 42 minutes.

Annual Burden Hours: 7,700.

Needs and Uses: Respondents are high school students or graduates between the ages of 16 and 21 years. Respondents must complete all requirements listed in the application package and return before the final deadline of December 1. Due to the number of factors that have proven to influence successful completion of a college program, it is necessary to collect information in all areas listed on the application. Additionally, the national average attrition from college is about 40 percent. In order to obtain a reasonable return for the dollars expended on scholarships, we must apply as comprehensive an evaluation of each candidate as possible. Without this screening process, the consequences to this federal program would be wasted dollars on individuals who left the program prior to incurring an obligation to serve in the military. In addition to the concern for the economy of scholarship dollars, Congressional oversight of the program demands that the Services be able to report on the numbers and kinds of individuals who apply for scholarships and provide leads for AFROTC units around the nation.

Affected Public: Individuals or Households.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DOD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: January 22, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 98–1954 Filed 1–27–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

List of Institutions of Higher Education Ineligible for Federal Funds

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: This document is published to identify institutions of higher education that are ineligible for contracts and grants by reason of a determination by the Secretary of Defense that the institution prevents military recruiter access to the campus or students or maintains a policy against ROTC. It also implements the requirements set forth in the Omnibus Consolidated Appropriations Act of 1997 and 32 CFR Part 216.

Recently, American University reported modifications to policies of its Washington College of Law sufficient to merit removal of that college from the list of ineligible schools. Currently, no institution of higher education is ineligible for contracts of grants under the aforementioned law and policy.

ADDRESSES: Director for Accession Policy, Office of the Assistant Secretary of Defense for Force Management Policy, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: William J. Carr, (703) 697–8444.

SUPPLEMENTARY INFORMATION: On April 8, 1997 (62 FR 16691), the Department of Defense published 32 CFR part 216 as an interim rule. This rule requires that the Department of Defense semi-annually publish a list of the institutions of higher education ineligible for Federal funds due to a policy or practice that either prohibits, or in effect prevents, the Secretary of Defense from obtaining, for military recruiting purposes, entry to campuses, access to students on campuses, access to directory information on students or that has an anti-ROTC policy. On December 9, 1997 (62 FR 64813), the Department of Defense published a list of the institutions of higher education ineligible for Federal funding; this notice updates and supersedes that listing.

Dated: January 22, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–1952 Filed 1–27–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Acceptance of Group Application Under Public Law 95–202 and Department of Defense Directive (DoDD) 1000.20 "Chamorros, Including the Chamorro Marine Scouts, Who Assisted the U.S. Marines in the Offensive Operations Against the Japanese on the Saipan, Pagan, and Maug Islands, of the Northern Mariana Islands, From June 19, 1944, Through September 2, 1945

Under the provisions of section 401, Public Law 95–202 and DoD Directive 1000.20, the Department of Defense Civilian/Military Service Review Board has accepted an application on behalf of the group know as: "Chamorros, including the Chamorro Marine Scouts, who assisted the U.S. Marines in the offensive operations against the Japanese on the Saipan, Pagan, and Maug Islands, of the Northern Mariana Islands, from June 19, 1944, through September 2, 1945." Persons with information or documentation pertinent to the determination of whether the service of this group should be considered active military service to the Armed Forces of the United States are encouraged to submit such information or documentation within 60 days to the DoD Civilian/Military Service Review Board, 1535 Command Drive, EE–Wing, 3rd Floor, Andrews Air Force Base, MD 20762–7002. Copies of documents or other materials submitted cannot be returned.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98–2027 Filed 1–27–98; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Acceptance of Group Application Under Public Law 95–202 and Department of Defense Directive (DoDD) 1000.20 "The Operational Analysis Group of the Office of Scientific Research and Development, Office of Emergency Management, Which Served Overseas With the U.S. Army Air Corps From December 7, 1941 Through August 15, 1945"

Under the provisions of section 401, Public Law 95–202 and DoD Directive 1000.20, the Department of Defense Civilian/Military Service Review Board has accepted an application on behalf of the group known as: "The Operational Analysis Group of the Office of Scientific Research and Development, Office of Emergency Management, which served overseas with the U.S. Army Air Corps from December 7, 1941 through August 15, 1945." Persons with information or documentation pertinent to the determination of whether the service of this group should be considered active military service to the Armed Forces of the United States are encouraged to submit such information or documentation within 60 days to the DoD Civilian/Military Service Review Board, 1535 Command Drive, EE-Wing, 3rd Floor, Andrews Air Force Base, MD 20762–7002. Copies of documents or other materials submitted cannot be returned.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98–2028 Filed 1–27–98; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Going To Space Kick Off Meeting in support of the HQ USAF Scientific Advisory Board will meet at ANSER, Arlington, VA on February 12–13, 1998, from 8 a.m. to 5 p.m.

The purpose of the meeting is to gather information and receive briefings for the 1998 Summer Study.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code; specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98–2029 Filed 1–27–98; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff for Personnel (DAPE–ZXI–RM), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 30, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of the Army, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MTOP–T–S (Barbara Cornell). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614–0454.

Title: Tender of Service and Letter of Intent for Personal Property, Household Goods and Unaccompanied Baggage Shipments, OMB Control Number 0702–0022, DD Form 619.

Needs and Uses: The Tender of Service is the carrier's certification that they will conduct business with DoD IAW the Tender of Service, solicitations, and other instructions, as published. The DD Form 619 is a receipt for goods/services provided by the carrier. The Tender of Service specifies the terms and conditions of participation in the DOD personal property program, and provides details concerning service and performance requirements, and certifications.

Affected Public: Business or other for profit.

Annual Burden Hours: 64,118.

Number of Respondents: 2,404.

Responses Per Respondent: 619.

Average Burden Per Response: 1.22 hrs for Tender of Service and 5 minutes for DD 619.

Frequency: On occasion.

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SUPPLEMENTARY INFORMATION: Since household goods move at government expense, data is needed to choose the best service at least cost. The information provided serves as a bid for contract to transport household goods and unaccompanied baggage. The best service for least cost carrier receives the contract.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–2005 Filed 1–27–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff for Personnel (DAPE–ZXI–RM), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected, and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 30, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of the Army, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MTOP–T–P (Carol Burgess). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614–0454.

Title: Uniform Tender of Rates and/or Charges for Domestic Transportation Services (DOD/USCG) Sponsored HHG, OMB Control Number 0702–0018, Form Number MT–HQ–43.

Needs and Uses: DOD-approved household goods carriers file voluntary rates to engage in the movement of DOD and USCG-sponsored shipments within CONUS. The Uniform Tender of Rates and/or Charges for Domestic Transportation Services is carriers' certification that they will conduct business with DOD IAW Tender of Service, solicitations, and other instructions, as published. HQ MTMC evaluates the rates and awards traffic to low-rate responsible carriers whose rates are responsive and most advantageous to the government.

Affected Public: Business or other for profit.

Annual Burden Hours: 2,701.

Number of Respondents: 1,268.

Responses Per Respondent: 4.

Average Burden Per Response: 30 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The Uniform Tender of Rates and/or Charges is used by transportation carriers to bid rates in response to MTMC solicitations, and carriers use the tender to solicit DOD's business by offering transportation rates and services.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–2006 Filed 1–27–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff for Personnel (DAPE–ZXI–RM), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 30, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of the Army, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MTOP–OP (Harris Yeager). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614–0454.

Title: Signature and Tally Records, OMB Control Number 0702–0027, DD Form Number 1907.

Needs and Uses: Signature and Tally Record (STR) is an integral part of the Defense Transportation System and is used for commercial movements of all sensitive and classified material. The STR provides continuous responsibility for the custody of shipments in transit and requires each person responsible for the proper handling of the cargo to sign their name at the time they assume responsibility for the shipment, from point of origin and at specified stages until delivery at destination. When two drivers are used, both drivers will sign the form when the pair assume responsibility for the shipment.

Affected Public: Business or other for profit.

Annual Burden Hours: 5,000.

Number of Respondents: 200.

Responses Per Respondent: 500.

Average Burden Per Response: 3 minutes.

Frequency: As required.

SUPPLEMENTARY INFORMATION: The designation transportation officer uses the DD Form 1907 to assure that the carriers utilize the STR and provide the transportation service as requested by origin shipper. A copy of the STR, along with other transportation documentation, is forwarded by the carrier to the appropriate finance center for payment. The DD Form 1907 verifies the protected service requested in the

Government Bill of Lading was provided.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–2007 Filed 1–27–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff for Personnel (DAPE–ZXI–RM), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Action of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 30, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of the Army, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MTOP–T–S (Barbara Cornell). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614–0454.

Title: DOD Standard Tender of Freight Services, OMB Control Number 0704–0261, Form Number MT 364–R.

Needs and Uses: The information derived from the DOD tenders on file with MTMC is used by MTMC subordinate commands and DOD shippers to select the lowest cost carrier to transport about 1.2 million surface freight shipments annually. This information is also used to develop about 140,000 procurement rate quotations annually. Additionally, DOD tender rate and other pertinent tender data are noted on the Government Bill of Lading at the time of shipment. The DOD tender also is the source document for the General Services Administration post-shipment audit of carrier freight bills.

Affected Public: Business or other for profit.

Annual Burden Hours: 9,682.

Nubmer of Respondents: 993.

Responses Per Respondent: 13.

Average Burden Per Response: 45 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The DOD Standard Tender of Freight Services collection of information is used to determine freight transportation charges, accessorial and security service costs, and to select carriers for 1.2 million Global bill of lading (GBL) freight shipments annually.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–2008 Filed 1–27–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of a Novel Non-Lethal Munition for Exclusive, Partially Exclusive or Non-Exclusive Licenses

AGENCY: U.S. Army Research Laboratory, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to a novel non-lethal munition as described in the U.S. Army Research Laboratory patent docket #ARL 98–3 and a subsequent patent application to the U.S. Patent and Trademark Office. A licensing meeting is scheduled for Thursday, 2 April 1998, at Aberdeen Proving Ground, MD. Visit http://www.fedlabs.org/flc/ma/pl for technical and registration information. A non-disclosure agreement *must* be signed prior to attending the licensing meeting. Licenses shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–CS–TT/Bldg. 434, Aberdeen Proving Ground, Maryland 21005–5425, Telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–2004 Filed 1–27–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by January 30, 1998. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before March 30, 1998.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708-9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

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Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506 (c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 22, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: Annual Performance Report and Report to the Secretary Under the Infants and Toddlers with Disabilities Program (Part H, Individuals with Disabilities Education Act (IDEA)).
Abstract: The State Interagency Coordinating Counsel in each State is required to submit an Annual Report to the Secretary on the status of the Early Intervention Program operated within the State for infants and toddlers with disabilities and their families. States are required to submit a performance report in accordance with CFR § 80.40. This collection serves both functions.
Additional Information: Part H of IDEA requires States to prepare and submit an annual report to the Secretary on the status of early intervention programs for infants and toddlers with disabilities which they operated within the State.

Since the Secretary cannot waive the statutory requirement, it is necessary that we immediately seek an emergency review. The collection is for the period July 1, 1996 through September 30, 1997.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 54.
Burden Hours: 810.

[FR Doc. 98–1990 Filed 1–27–98; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.
ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 27, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: January 22, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension.
Title: Application for the Upward Bound and Upward Bound Math and Science Centers Program.
Frequency: Annually.
Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 1,500.
Burden Hours: 51,000.
Abstract: The application form is needed to conduct a national competition for program year 98–99 for the Upward Bound and Upward Bound Math and Science Centers. These applications provide federal financial assistance in the form of grants to institutions of higher education, public and private agencies and organizations, combinations of institutions and agencies, and in exceptional cases, secondary schools to establish and operate projects designed to generate skills and motivation necessary for success in education beyond secondary school. The Math and Science Centers provide an intensive six-week summer math-science curriculum program.

Office of Vocational and Adult Education

Type of Review: Reinstatement.
Title: Application for Vocational Education Direct Grants.
Frequency: Annually.
Affected Public: Business or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Burden:
Responses: 200.
Burden Hours: 18,000.
Abstract: This form will be used by applicants to apply for funding under the Carl D. Perkins Vocational and Applied Technology Education Act administered by the Office of Vocational and Adult Education. The information will be used to make grants and cooperative agreements.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (OMB Control No. 1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

[FR Doc. 98–1991 Filed 1–27–98; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

[CFDA No.: 84.234N]

Projects With Industry

Notice reopening the closing date for transmittal of applications for new awards for fiscal year (FY) 1998.

Deadline for Transmittal of Applications: The deadline date for transmittal of applications is reopened from January 13, 1998, to April 21, 1998.

On October 30, 1997, the Secretary published in the **Federal Register** (62 FR 58725) a notice inviting applications for new awards for fiscal year 1998 under the Projects With Industry program.

The purpose of this notice is to reopen the deadline date for transmittal of applications. This action is taken because a Department World Wide Web site inadvertently contained the fiscal year 1997, and not the fiscal year 1998, application kit and fiscal year 1998 notice inviting applications for new awards under the Projects With Industry program. The Department discontinued public access to the fiscal year 1997 application kit and notice on January 8, 1998, but applicants who visited the World Wide Web site prior to that date may have downloaded and mistakenly used the fiscal year 1997 application kit to prepare for the fiscal year 1998 competition. Applicants must use the fiscal year 1998 application kit for the fiscal year 1998 competition.

Deadline for Intergovernmental Review: June 20, 1998.

For Applications Contact: The Grants and Contracts Service Team (GCST), U.S. Department of Education, 600 Independence Avenue, S.W., Room 3317, Switzer Building, Washington, D.C. 20202–2649. Telephone: (202) 205–8351. The preferred method for requesting applications is to FAX your request to (202) 205–8717. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Martha Muskie, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3320, Switzer Building, Washington, D.C. 20202–2740. Telephone: (202) 205-3293.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to this Document: Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:
http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219-1511 or toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 29 U.S.C. 795g.

Dated: January 22, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–2079 Filed 1–27–98; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records

AGENCY: Office of Inspector General, Department of Education.
ACTION: Notice of an altered system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Act), the Department of Education (Department) publishes this notice of proposed alterations to its system of records for the Investigatory Material Compiled for Personnel Security and Suitability Purposes for the Office of Inspector General (OIG)—18–10–0002. These alterations serve to update the system of records to reflect current administrative and related procedures, implementation of computer database technology, organizational restructuring, clarification and expanded language to provide greater detail and description applicable to the system of records, and proposed new and revised routine uses of the information contained in this system of records. Because the routine uses have been revised or expanded, the Department requests comment regarding the proposed routine uses contained in this notice.

DATES: Comments on the proposed routine uses of this system of records must be received by the Department on or before February 27, 1998. The Department filed a report on the altered system of records with the Chair of the Committee on Governmental Affairs of the Senate, the Chair of the Committee on Government Reform and Oversight of the House, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on January 23, 1998. This altered system of records will become effective after the 30-day period for

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OMB review of the system expires on February 22, 1998, unless OMB gives specific notice within the 30 days that the system is not approved for implementation or requests an additional 10 days for its review. The new and revised routine uses become effective 30 days after publication unless they need to be changed as a result of public comment. The Department will publish any changes to the routine uses that are required as a result of the comments.

ADDRESSES: All comments on the proposed routine uses should be addressed to the Deputy Inspector General, U.S. Department of Education, 600 Independence Avenue, SW., 4022 MES, Washington, DC 20202–1510. Comments may also be sent through the Internet to: Comments@ed.gov

You must include the term "Security Notice" in the subject line of the electronic comment.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 4022 Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:00 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

On request the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for this notice. An individual with a disability who wants to schedule an appointment for this type of aid may call (202) 205–8113 or (202) 260–9895. An individual who uses a TDD may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Sandra H. Warren, Security Officer, Office of Inspector General, U.S. Department of Education, 600 Independence Avenue, SW., 4022 MES, Washington, DC 20202–1510. Telephone: (202) 205–5400. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

General

The Act (5 U.S.C. 552a)(e)(4) requires the Department to publish in the **Federal Register** this notice of an altered system of records. The Department's regulations implementing the Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b. A system of records is considered altered whenever an agency changes the way it retrieves records, expands the types or categories of information, or revises its routine uses for information contained in the system. This system notice has not been updated since its publication in the **Federal Register** on April 20, 1982. As a result, revisions are needed to accurately describe the current system of records that maintains investigatory material on current and former Department employees, individuals who have applied for employment with the Department, and other individuals doing business with the Department.

The records in this system are maintained to provide the Inspector General and other responsible Department of Education (Department) officials with information to assist them in making individual personnel determinations concerning suitability for Federal employment, security clearances, access to classified information or restricted areas, and evaluations as to suitability for performance under Federal contracts or other agreements with the Federal Government. For those investigations conducted by the Office of Inspector General, these records may also be disclosed to other Federal and non-Federal investigatory agencies to protect the public or Federal interest, or both.

The revisions in this system notice change the name of the system manager and add additional system locations; update the authority for the maintenance of the system; provide a detailed description of the nature of the security investigation case files; revise and clarify the purpose of the system; expand the categories of individuals covered by the system to include people seeking association with the Department under Federal contracts or other agreements as well as individuals seeking employment or retention with the Department; revise and expand the routine use disclosures to provide for the disclosure of information to contractors, grantees, experts, consultants, or volunteers performing or working on a contract, grant, or service for the Department and with respect to litigation-related disclosures and for purposes relating to the Freedom of Information Act; and disclosures to specified intelligence agencies of the Federal Government for use in intelligence or investigation activities. This notice also revises the manner in which the records are stored, retrieved, and safeguarded with regard to the use of computer database technology; clarifies the retention and disposal period for records maintained in the system; and expands the notification procedures to assist the system manager in the identification of requested information contained in the system of records.

Direct access is restricted to authorized agency staff in the performance of their official duties. Due to the extensive revisions in this notice, it is being published in its entirety.

Dated: January 23, 1998.

Thomas R. Bloom,

Inspector General.

The Office of Inspector General of the U.S. Department of Education publishes notice of an altered system of records as follows:

18–10–0002

SYSTEM NAME:

Investigatory Material Compiled for Personnel Security and Suitability Purposes—ED/OIG.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

Security Program Staff, Office of Inspector General, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202–1510.

U.S. Office of Personnel Management, Investigations Group, P.O. Box 886, Washington, DC 20044–0886.

Washington National Records Center, Suitland, MD 20746–2042.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants seeking employment with the Department of Education (Department), former and current employees of, and other persons and entities doing business with, the Department.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain investigative information pertaining to current and former Department employees, current and former contractor personnel, and current employees of entities making offers to the Department for purposes of doing business. This information regards individuals' character, conduct, and loyalty to the United States as relevant to their association with the Department. These records may, as appropriate to the individual being investigated, include the following types of information: (1) Documentation as to his or her arrests and convictions for violations of the law. (2) Reporting as to interviews held with the individual, his or her present and former supervisors, co-workers, associates, neighbors, educators, etc. (3) Correspondence relating to adjudication matters involving the individual. (4) Reports of inquiries made of law enforcement agencies for information about the individual contained in the agencies' records. (5) Information provided by organizations having association with the individual, such as employers, educational institutions attended, professional or fraternal or social organizations to which the individual is or was a member, etc. (6) Reports of action following an Office of Personnel Management (OPM) investigation or a Federal Bureau of Investigation Section 8(d) full field investigation. (7) Other information developed from the previous sources.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Orders 10450, 10577, and 12968; as amended.

PURPOSE(S):

Records in this system are maintained to provide the Inspector General and other responsible Department officials with information to assist them in making individual personnel determinations concerning suitability for Federal employment, security clearances, access to classified information or restricted areas, and evaluations as to suitability for performance under Federal contracts or other agreements with the Federal Government. Incidental to this purpose, for those investigations conducted by the OIG, these records may also be disclosed to other Federal and non-Federal investigatory agencies to protect the public or Federal interest, or both.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information contained in this system of records may be disclosed as a routine use in the following instances:

1. To public or private sources to the extent necessary to obtain information to be included in this system of records.

2. To officials and employees of a Federal, State, or local governmental entity in response to its request in connection with the issuance of security clearances or the conduct of security or suitability investigations of individuals seeking employment, licensure, other benefits, or to perform contractual services, or to otherwise associate with the governmental entity.

3. To a Federal, State, local, or foreign entity or other public authority responsible for the investigation, prosecution, enforcement, or implementation of a statute, rule, regulation, or order, when a record on its face or in combination with any other information indicates a violation or potential violation of law (whether civil, criminal, or regulatory in nature) if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving entity. It is OIG policy not to disclose records under this routine use that pertain to those questions for which the OIG has promised confidentiality under Standard Form 85P, "Questionnaire for Public Trust Positions."

4. To contractors, grantees, experts, consultants, or volunteers performing or working on a contract, grant, service, or job for the Department or under a Department program.

5. To parties pertaining to litigation disclosure as follows:

a. In the event that one of the following parties is involved in litigation, or has an interest in litigation, the Department may disclose certain records to the parties described in the following paragraphs b, c, and d of this routine use under the conditions specified in those paragraphs:

(i) The Department or any of its components.

(ii) Any Department employee in his or her official capacity.

(iii) Any employee of the Department in his or her official capacity where the Department of Justice (Justice) has agreed to provide or arrange for representation of the employee.

(iv) Any employee of the Department in his or her individual capacity where the Department has agreed to represent the employee.

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

b. If the Department determines that disclosure of certain records to the Department of Justice (DOJ) or attorneys engaged by DOJ is relevant and necessary to litigation and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to DOJ.

c. If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, individual, or entity designated by the Department or otherwise empowered to resolve disputes is relevant and necessary to the administrative litigation and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

d. If the Department determines that disclosure of certain records to an opposing counsel, representative, or witness in an administrative proceeding is relevant and necessary to the litigation and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to the counsel, representative, or witness.

6. To the Department of Justice for the purpose of obtaining advice regarding the releasability of records maintained in this system of records under the Freedom of Information Act and the Privacy Act of 1974.

7. To a Member of Congress in response to an inquiry from that member made at the written request of the individual about whom the information pertains; however, the congressional member's right to the information is no greater than the right of the individual who requested it.

8. To the intelligence agencies of the Department of Defense, the National Security Agency, the Central Intelligence Agency, and the Federal Bureau of Investigation for use in intelligence or investigation activities.

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POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in folders secured in fire resistant safes with manipulation proof combination locks, or in metal lock-bar file cabinets with three position combination locks, and in a computer database.

RETRIEVABILITY:

Records are alphabetically indexed by name of the individual subject of the file. Retrieval is made by the name, date of birth, and social security number of the individual on whom they are maintained.

SAFEGUARDS:

Folders are maintained and secured in fire resistant safes with manipulation proof combination locks, or in metal file cabinets secured by three position combination locks. All records, including those records that are maintained on the computer database, are in limited access rooms with keyless cipher locks. All employees are required to have an appropriate security clearance before they are allowed access, on a need-to-know basis, to the records. Computer databases are kept on a local area network that is not connected to any outside network including the Internet. Database accessibility is restricted to hard wire network connection from within the office or via modem. Authorized log-on codes and passwords prevent unauthorized users from gaining access to data and system resources. All users have unique log-on codes and passwords. The password scheme requires that users must change passwords every 90 days and may not repeat the old password. Any individual attempting to log on who fails is locked out of the system after three attempts. Access after that time requires intervention by the system manager.

RETENTION AND DISPOSAL:

Most background investigative records are maintained for five years after the individual separates from his or her departmental association if subject to Executive Orders 12968 and 10450, as amended. Reports of background investigations conducted by the Office of Inspector General are retained for 15 years, plus the current year of the most recent investigative activity, in accordance with OPM guidance. The records are disposed of by electronic erasure, shredding, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, Office of Inspector General, U.S. Department of Education, 600 Independence Avenue, SW, Washington, DC 20202–1510.

NOTIFICATION PROCEDURE:

If an individual wishes to determine whether a record exists regarding him or her in this system of records, the individual must provide the system manager with his or her name, date of birth, social security number, signature, and the address to which the record information should be sent. Requests for notification about an individual must meet the requirements of the Department's Privacy Act regulations in 34 CFR 5b.5.

RECORD ACCESS PROCEDURE:

If an individual wishes to gain access to a record in this system, he or she must contact the system manager and provide information as described in the notification procedure.

CONTESTING RECORD PROCEDURE:

If an individual wishes to change the content of a record in the system of records, he or she must contact the system manager with the information described in the notification procedure, identify the specific item or items to be changed, and provide a written justification for the change, including any supporting documentation. Requests to amend a record must meet the requirements of the Department's Privacy Act regulations in 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information contained in this system of records is obtained from—

a. Investigative and other record material furnished by other Federal entities, other departmental components, State, local, and foreign governments;

b. Applications and other personnel and security forms;

c. Personal investigation, written inquiry, interview, or the electronic accessing of computer databases of sources, such as the OPM system of records known as "Personnel Investigations Records" (OPM/Central-9), employers, educational institutions, references, neighbors, associates, police departments, courts, credit bureaus, medical records, probation officials, prison officials, newspapers, magazines, periodicals, and other publications; and

d. Confidential sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

As indicated in 34 CFR 5b.11, individuals will be provided information from this record system unless, in accordance with the provisions of 5 U.S.C. 552a(k)(5)—(1) Disclosure of that information would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence; or (2) The information was obtained prior to September 27, 1975 and disclosure of that information would reveal the identity of a source who provided information under an implied promise that the identity of the source would be held in confidence.

[FR Doc. 98–2077 Filed 1–27–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–172]

Application To Export Electric Energy; the Power Company of America, L.P.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Power Company of America, L.P. (PCA), a power marketer, has submitted an application to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before February 27, 1998.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. § 824a(e)).

On January 15, 1998, PCA applied to the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Canada, as a power marketer, pursuant to section 202(e) of the FPA. Specifically, PCA has proposed to transmit to Canada electric energy purchased from electric utilities and other suppliers within the U.S.

PCA would arrange for the exported energy to be transmitted to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Detroit Edison Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Maine Electric Power Company, Maine Public Service Company, Minnesota Power and Light Company, Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. Each of these transmission facilities, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any persons desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions, comments and protests should be filed with the DOE on or before the date listed above. Additional copies are to be filed directly with Stephen C. Smith, President, The Power Company of America, Two Greenwich Plaza, Greenwich, CT 06830 and Lynn H. Hargis, Robert F. Shapiro, Chadbourne & Parke LLP, 1200 New Hampshire Ave., N.W., Suite 300, Washington, DC 20036.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on January 23, 1998.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal and Power Im/Ex, Office of Coal and Power Systems, Office of Fossil Energy.

[FR Doc. 98–2046 Filed 1–27–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Record of Decision on the Disposal of the S3G and D1G Prototype Reactor Plants

AGENCY: Department of Energy.

ACTION: Record of decision.

SUMMARY: This Record of Decision has been prepared on the Disposal of the S3G and D1G Prototype Reactor Plants, located at the Knolls Atomic Power Laboratory Kesselring Site (Kesselring Site) near West Milton, New York, pursuant to Section 102(2) of the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*), and in accordance with the Council on Environmental Quality regulations implementing NEPA procedures (40 CFR parts 1500–1508), and Department of Energy (DOE) regulations implementing NEPA procedures (10 CFR part 1021). The DOE Office of Naval Reactors (Naval Reactors Program) has decided to promptly dismantle the defueled S3G and D1G Prototype reactor plants. The project will be completed as soon as practicable subject to available appropriated funding. To the extent practical, the resulting low-level radioactive materials will be recycled at existing commercial facilities. The remaining low-level radioactive wastes will be disposed of at the DOE Savannah River Site in South Carolina. All non-radiological waste would be recycled or disposed of off-site at permitted facilities using licensed haulers.

FOR FURTHER INFORMATION CONTACT: Requests for further information should be directed to Mr. Andrew S. Baitinger, Chief, West Milton Field Office, Office of Naval Reactors, Department of Energy, PO Box 1069, Schenectady, NY 12301–1069, *telephone* (518) 884–1234.

SUPPLEMENTARY INFORMATION: The S3G and D1G Prototype reactor plants are located on the 65-acre Kesselring Site near West Milton, New York, approximately 17 miles north of Schenectady. The S3G and D1G Prototype reactor plants first started operation in 1958 and 1962, respectively, and served for more than 30 years as facilities for testing reactor plant components and equipment and for training of U.S. Navy personnel. As a result of the end of the Cold War and the downsizing of the Navy, the S3G and D1G Prototype reactor plants were shutdown in May 1991 and March 1996, respectively. Removal of the spent nuclear fuel from the S3G and D1G Prototype reactors and shipments of the spent nuclear fuel to the Expended Core Facility at the DOE's Idaho National Engineering and Environmental Laboratory were completed in July 1994 and February 1997, respectively. After defueling, the S3G and D1G Prototype reactor plants were placed in a safe and stable protective storage condition. The Kesselring Site will not be released for other uses in the foreseeable future since two active prototype reactor plants continue to operate to perform training of U.S. Navy personnel and testing of naval nuclear propulsion plant equipment.

The alternatives analyzed in detail in the Final Environmental Impact Statement were the preferred alternative of prompt dismantlement, a deferred dismantlement alternative, and a no action alternative of keeping the defueled S3G and D1G Prototype reactor plants in protective storage indefinitely.

DOE has selected prompt dismantlement of the S3G and D1G Prototype reactor plants. All S3G and D1G Prototype reactor plant systems, components and structures will be removed from the Kesselring Site. To the extent practicable, the resulting low-level radioactive metals will be recycled at existing commercial facilities. The remaining low-level radioactive waste will be disposed of at the DOE Savannah River Site in South Carolina. There will be an estimated total of 60 radioactive material shipments from the Kesselring Site to either the Savannah River Site or to commercial recycling facilities. Two or three of the shipments will be by rail and the remainder will be by truck. The Savannah River Site currently receives low-level radioactive waste from Naval Reactors' sites in the eastern United States. Both the volume and radioactive content of the S3G and D1G Prototype reactor plant low-level waste fall within the projections of Naval Reactors' waste provided to the Savannah River Site, which are included and analyzed in the *Savannah River Site Waste Management Final Environmental Impact Statement*, dated July 1995. All nonradiological shipments would be by truck, and would be recycled or disposed of off-site at permitted facilities using licensed haulers.

The deferred dismantlement alternative would involve keeping the defueled S3G and D1G Prototype reactor plants in protective storage for 30 years before dismantlement. Deferring dismantlement for 30 years would allow nearly all of the cobalt-60 radioactivity to decay. Nearly all of the gamma radiation within the reactor plant comes from cobalt-60. The very small amount of longer-lived radioisotopes, such as nickel-59, would remain and would

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have to be addressed during dismantlement.

The no action alternative would involve keeping the defueled S3G and D1G Prototype reactor plants in protective storage indefinitely. Since there is some residual radioactivity with long half-lives, such as nickel-59, in the defueled reactor plant, this alternative would leave some radioactivity at the Kesselring Site indefinitely.

The Naval Reactors Program distributed the Draft Environmental Impact Statement on the Disposal of the S3G and D1G Prototype Reactor Plants in July 1997. Comments from 14 individuals and agencies were received in either oral or written statements at a public hearing or in comment letters. Approximately one-third of the commenters expressed a preference for the Naval Reactors' preferred alternative, prompt dismantlement. Based on U.S. Environmental Protection Agency (EPA) review of the Draft Environmental Impact Statement, EPA rated the proposed project as "LO" (Lack of Objection). All of the comments and Naval Reactors' responses are included in an appendix to the Final Environmental Impact Statement, distributed in November 1997.

From an environmental perspective, no single alternative stands out as environmentally preferable. The radiation exposure to the general public would be small and comparable for all three alternatives. Occupational exposure would be higher for the prompt dismantlement alternative, however, this expected exposure would be comparable in magnitude to the radiation exposure routinely received during current operation and maintenance activities of Naval prototype reactor plants. Non-radiological environmental, health and safety impacts associated with all of the alternatives would also be small and consistent with ongoing Kesselring Site operations. Based on current conditions, any of the alternatives could be accomplished within Federal and State requirements, in both the short term and the long term. However, 30 years from now, changing conditions associated with the regulatory environment, and the availability of trained personnel and waste disposal facilities could result in unforeseeable complications or delays. Such future unforeseeable conditions cause additional uncertainty in the impacts associated with the deferred dismantlement and no action alternatives. Naval Reactors has identified the prompt dismantlement alternative as the preferred alternative since it is consistent with the Naval Reactors' record of managing waste efficiently and minimizing its generation. Prompt dismantlement would allow Naval Reactors to utilize an experienced work force that is presently located at the Kesselring Site. Prompt dismantlement can be accomplished safely, economically, and with a high degree of certainty that the environmental impacts would be small.

As discussed in the Final Environmental Impact Statement, the Naval Reactors Program implements a large number of conservative engineering practices in its operations. These conservative engineering practices will serve to ensure that environmental impacts will be very small. No additional mitigative measures have been identified which are needed to further reduce the small impacts which were described in the Final Environmental Impact Statement. Accordingly, all practicable means to avoid or minimize environmental harm from the preferred alternative have been adopted.

Issued at Arlington, VA, this 20th day of January 1998.

F.L. Bowman,

Admiral, U.S. Navy, Director, Naval Nuclear Propulsion Program.

[FR Doc. 98–1946 Filed 1–27–98; 8:45 am]

BILLING CODE 8460–01–P

DEPARTMENT OF ENERGY

Record of Decision, Shutdown of the River Water System at the Savannah River Site, Savannah River Operations Office, Aiken, South Carolina

AGENCY: U.S. Department of Energy.

ACTION: Record of Decision.

SUMMARY: The U.S. DOE has decided to implement the No Action alternative identified in the Final Environmental Impact Statement for the Shutdown of the River Water System (RWEIS) at the Savannah River Site (SRS). Under this alternative, DOE will continue to operate and maintain the system and maintain the water level of L-Lake.

DOE will assess the need for future environmental remediation alternatives for L-Lake under existing Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) commitments. Characterization activities associated with CERCLA closure are expected to begin in the year 2000 and be completed in several years. This characterization will inform any required remedial action. Pending these activities, DOE will continue to operate the RWS. If during continued operation of the RWS a system component fails, DOE will take appropriate emergency actions. DOE will then determine if the system is too costly to repair (by comparing this cost to estimated shutdown costs and future possible remediation costs under the CERCLA). If DOE determines that the RWS is too costly to repair, it will reevaluate all relevant commitments and the information in the RWEIS, to determine necessary actions to shut down the RWS. However, the RWS is in good condition and not expected to fail over this period of time.

This RWEIS evaluates three alternatives for the disposition of the RWS at the SRS. The RWS is a 50-mile underground concrete piping structure and pumping system that was built in the early 1950s to provide cooling water for the SRS' five nuclear production reactors. The RWEIS alternatives cover the spectrum of reasonable options as follows:

(1) Continue operation of the RWS (No Action Alternative);

(2) Shut down and maintain the RWS for potential restart (Preferred Alternative); and

(3) Shut down and deactivate the RWS with no maintenance for potential restart.

Based on the RWEIS evaluation of the potential environmental impacts, as well as the costs, energy consumption, and regulatory implications of the alternatives, DOE has selected the No Action alternative and will continue to operate the RWS. Other than potential CERCLA remediation activities, if DOE continued to operate and maintain the RWS indefinitely the No-Action Alternative would require the greatest commitment of money and energy resources. The RWS would continue to supply 5,000 gpm to L-Lake from the Savannah River. To do so, DOE would spend approximately $1,084,000 annually to provide RWS surveillance and maintenance and $494,000 annually for electrical energy to pump the water uphill from the river. Finally, DOE would continue to dredge the RWS intake canal to keep it clear of debris. However, there is great uncertainty regarding the cost of remedial action under CERCLA. Therefore, until characterization is completed, it will not be evident whether shutting down or continuing to operate and maintain the RWS is economically the most prudent course of action.

In its present configuration, the RWS circulates water from the Savannah River to a 1000 acre man-made lake known as L-Lake. L-Lake no longer serves to mitigate thermal effluents from L-Reactor because it no longer operates. RWS flow is necessary to maintain the full pool water level of L-Lake.

Low-levels of radionuclides were released to Steel Creek before L-Lake was constructed. As a result, contaminated sediments are largely confined to the former Steel Creek stream bed and floodplain that exists under L-Lake. The methods for any needed environmental remediation of these low-level radionuclide releases to Steel Creek, as well as those to other SRS streams, will be determined under the Federal Facility Agreement (FFA). This agreement, between DOE, the U.S. Environmental Protection Agency (EPA), and the South Carolina Department of Health and Environmental Control (SCDHEC), provides a commitment and schedule for the comprehensive remediation of contamination at the SRS, including SRS streams and lakes.

In accordance with the present FFA schedule, DOE will begin characterization of the L-Lake CERCLA unit in fiscal year 2000. DOE anticipates that this process will lead to an Interim Record of Decision (IROD) in Fiscal Year 2001. At that time DOE will decide whether L-Lake should be drawn down to facilitate characterization of future risks to human health and the environment. The characterization process and risk evaluation will lead to the selection of a preferred remedial alternative.

During these future draw down and characterization activities, DOE expects to stabilize exposed sediments and address the "reasonable and prudent" measures for protection of threatened and endangered species that the U. S. Fish and Wildlife Service (USFWS) has recommended as a result of the Endangered Species Act Section 7 consultation process.

FOR FURTHER INFORMATION CONTACT: *For RWEIS information:* Andrew R. Grainger, NEPA Compliance Officer, U.S. Department of Energy, Savannah River Operations Office, Building 773–42A, Rm. 212, Aiken, South Carolina 29802, *Telephone:* (800) 881–7292, *Attention:* RWEIS, *E-mail:* nepa@srs.gov

For general information on the DOE National Environmental Policy Act (NEPA) process: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, *Telephone:* (202) 586–4600, or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

Located in southwest South Carolina, the SRS occupies an area of approximately 300 square miles (800 square kilometers). The Savannah River forms the SRS's southwestern boundary for approximately twenty-seven miles (forty-three kilometers) on the South Carolina-Georgia border. The SRS is approximately twenty-five miles (forty kilometers) southeast of Augusta, Georgia and twenty miles (thirty-two kilometers) south of Aiken, South Carolina, the nearest major population centers. The U.S. Atomic Energy Commission (AEC), a DOE predecessor agency, established the SRS in the early 1950s for the production of nuclear materials to support the United States' national defense, research, and medical programs.

SRS produced these materials by irradiating nuclear fuel and targets in SRS' five production reactors (C-, K-, L-, P-, and R-Reactors). In the reactors, closed pipe loops contained water to cool the fuel assemblies by passing water directly across them. The water in this closed loop was then pumped to heat exchangers where heat was transferred from the closed system to a secondary-cooling system. This arrangement of closed loops minimized contamination of the environment.

The water for the secondary-cooling system was provided by the RWS. The RWS pumped river water from the Savannah River using intake canals and pumps to the heat exchangers in the reactor areas (C-, K-, L-, P-, and R-Reactor areas) by way of distribution piping and water-storage basins.[1] The RWS also pumped water to Par Pond, which was used to store additional secondary-cooling water for P- and R-Reactors.

After passing through the heat exchangers and absorbing the heat from the primary closed-loop cooling system, the heated water in the secondary-cooling system was returned to the Savannah River by way of several discharge canals and streams. After 1985, when construction of L-Lake was completed, heated secondary-cooling water was also returned to the Savannah River by way of L-Lake which dissipated the heat from the thermal effluent (hot water) from L-Reactor. Thus, in all, the RWS is composed of river water intake canals, intake pumps, distribution piping to the reactor areas, 186-Basins, discharge canals, receiving streams, and lakes (Par Pond and L-Lake).

At the end of the Cold War in 1992, SRS' mission emphasis shifted from the production of nuclear materials to cleanup and environmental restoration. Consequently, SRS' reactors were shut down, thereby decreasing the demand for RWS flow. From 1988 to 1996, demand for RWS flow and flow discharged to onsite streams decreased from 380,000 gallons per minute (gpm) to 5,000 gpm. Therefore, reflecting decreased water needs and DOE's mandate to reduce operating costs, a 5,000 gpm pump was installed in 1997 to replace a larger, and more costly to operate, 28,000 gpm pump.[2] Further, because of reduced RWS demand, and because SRS' reactors will not operate again, DOE identified the RWS as excess infrastructure, costly to operate and maintain, but with limited application. Accordingly, DOE prepared the RWEIS to examine the environmental impacts of RWS shutdown with the preference of eliminating the operational costs of this infrastructure, now only marginally useful.

[1] The water-storage basins are also known as 186-Basins.

NEPA Process

DOE prepared this Record of Decision pursuant to the regulations of the Council on Environmental Quality for implementing the National Environmental Policy Act (NEPA), 40 CFR Parts 1500–1508, and DOE's NEPA Implementing Procedures, 10 CFR Part 1021. This Record of Decision is based on DOE's Final RWEIS for the Shutdown of the River Water System at the Savannah River Site, Aiken, South Carolina (DOE/EIS–0268), for which DOE published a Notice of Intent to prepare on June 12, 1996, in the **Federal Register**, 61 Fed. Reg. 29744. The notice announced a public scoping period, ending on July 12, 1996, and solicited comments and suggestions on the EIS' scope. DOE held scoping meetings in North Augusta, South Carolina on June 27, 1996. Comments received during the scoping period and DOE's responses thereto were used to prepare an action plan, issued in August 1996, defining the scope and approach of the RWEIS. The action plan and reference materials cited in the RWEIS were made available for review in the DOE Public Reading Room, located at the University of South Carolina-Aiken Campus, Gregg-Graniteville Library, 2nd Floor,

[2] In the RWEIS, the No-Action Alternative impacts are assessed against the baseline provided by operation of the 5,000 gpm pump. DOE reviewed installation of the 5,000 gpm pump as a categorical exclusion (EEC–SS–G–96–003) in accordance with DOE's NEPA regulations. 10 CFR 1021. During assessment of the categorical exclusion, DOE determined that a 5,000 gpm pump would be sufficient to maintain L-Lake at 190 feet MSL and to provide the minimum operating needs of K- and L-Reactor areas without violating any SRS permits. Accordingly, the categorical exclusion was approved on June 6, 1996, and the pump installed thereafter.

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University Parkway, Aiken, South Carolina at (803) 641–3320.

DOE completed the draft RWEIS in November 1996, and on November 15, 1996, EPA published a Notice of Availability for the document in the **Federal Register**, 61 Fed. Reg. 58548. This notice started the public comment period for the draft RWEIS, which extended through December 30, 1996. DOE received comments by letter, electronic mail, and statements made during public hearings held in North Augusta, South Carolina on December 4, 1996, all of which were considered in preparing the final RWEIS. DOE completed distribution of the final RWEIS in May 1997, and on May 16, 1997, EPA published a Notice of Availability in the **Federal Register**, 61 Fed. Reg. 27024. This ROD is the culmination of and final step in the NEPA process for action on the RWS and announces DOE's selection of an alternative.

Alternatives Considered in Final RWEIS

No-Action Alternative

The No-Action Alternative does not change the current status quo and involves continued operation of the RWS using a 5,000 gpm pump. Under this alternative, L-Lake would maintain its water level at 190 feet MSL with makeup water provided by the RWS. Par Pond water level would continue to fluctuate naturally between 195 feet and 200 feet MSL. Under severe drought conditions, and if necessary, the RWS could be used to maintain Par Pond water level.

Proposed Action—Shut Down and Maintain Alternative

The Proposed Action—and Preferred Alternative, the Shut Down and Maintain Alternative—provides for shutdown and maintenance of the RWS in a standby condition that would allow restart. RWS shutdown would result in the L-Lake water level returning to the original Steel Creek stream bed over a ten year period. RWS shutdown would not change the status quo regarding Par Pond's water level; it would continue to fluctuate naturally between 195 feet and 200 feet MSL.

Under the Shut Down and Maintain Alternative, the RWS operational capacity would be preserved in a standby mode to account for unforeseen events, mission changes, or remedial action decisions. Maintaining the RWS in a standby condition [3] requires draining the system of water and placing the equipment in a protective state minimizing degradation.[4] Under this alternative, the RWS operation could be restored to provide water for future missions or, if necessary, to maintain Par Pond water level above 195 feet MSL in the unlikely event of a severe drought. In addition, the RWS could be restarted if the final outcome of the FFA process recommends refilling L-Lake with water to manage risk from contaminated sediments in the Steel Creek stream bed. During the interim, or in the event none of these potentialities are realized, shutdown of the RWS would eliminate operational costs associated with this system.

Shut Down and Deactivate Alternative

The Shut Down and Deactivate Alternative provides for the permanent cessation of RWS operation and does not preserve system capabilities, even in the most marginal state, for restart. DOE would shut down and deactivate the system in a secure, environmentally satisfactory condition and isolate all the intake pipes to prevent river water intrusion into the RWS. DOE would conduct no maintenance or surveillance on the RWS, with the exception of the L-Lake dam, which would be maintained until the Lake's water level returned to the original Steel Creek stream bed in approximately 10 years.

Under this alternative, L-Lake water level would return to the original Steel Creek stream bed. Par Pond water level would continue to fluctuate naturally between 195 feet and 200 feet MSL. Under severe drought conditions, the RWS could not be used to maintain Par Pond water level, even if necessary. Furthermore, the RWS could not be restarted if the final outcome of the FFA process recommended refilling L-Lake with water to manage risk from contaminated sediments in the Steel Creek stream bed.

Environmental Impacts of the Alternatives

Environmental Impacts of No Action Alternative

The No Action alternative would preserve the status quo and continue current operation of the RWS through a 5,000 gpm pump.[5] Under the No Action Alternative, L-Lake would remain at its normal water level of 190 feet MSL. Par Pond water level would continue to fluctuate naturally between 195 feet and 200 feet MSL.

Environmental Impacts of Shut Down and Maintain & Shut Down and Deactivate Alternatives

The environmental impacts of the Proposed Action—and Preferred Alternative, the Shut Down and Maintain Alternative—are the same as those of the Shut Down and Deactivate Alternative. Both alternatives call for DOE to shutdown the RWS. While the Proposed Action calls for DOE to preserve the RWS in a standby condition, the actions necessary to accomplish that goal do not entail environmental impacts beyond those associated with the shutdown action. Accordingly, the environmental impacts of either alternative are the same and DOE considers them together in the following paragraphs.

L-Lake

Under either the Shut Down and Maintain Alternative or the Shut Down and Deactivate Alternative, DOE would not augment water flow to L-Lake. L-Lake cannot maintain a water level of 190 feet MSL, its normal full pool water level, without flow augmentation from the RWS. Consequently, it would recede to the original Steel Creek stream bed conditions over a ten-year period.

As L-Lake recedes to the Steel Creek stream bed as a consequence of either shutdown alternative, habitat for amphibians, reptiles, semi-aquatic mammals, wading birds, and waterfowl would be gradually reduced and eliminated. Consequently, these species would be more vulnerable to predation. Eventually, alligators would be displaced due to the loss of habitat. Drawdown of L-Lake would result in the loss of nests, eggs, or hatchlings.

In addition, the reversion of L-Lake water level to the former Steel Creek stream bed would uncover lake bed sediments. As a result, these sediments could be susceptible to the forces of erosion, especially during storm events. In addition, the reversion of L-Lake water level to the original Steel Creek stream bed could expose some sediments, primarily in the Steel Creek stream bed, that could contain low levels of contamination, primarily cesium-137.[6] Animals foraging in the L-Lake lake bed or Steel Creek stream bed could be exposed to these sediments via inhalation, ingestion, direct radiation exposure, and/or skin contact. Similarly, an on-site human working in the L-Lake bed lake could be exposed to the contaminants in sediments via inhalation, incidental ingestion, direct radiation exposure and/or skin contact. An off-site human could be exposed to contaminants in sediments through atmospheric or aqueous pathways via inhalation or ingestion from sediments that have been re-suspended in air or water. The off-site human would not be exposed to direct radiation.

Exposure to L-Lake lake bed contaminants is unlikely to pose a significant risk to SRS workers, the public, or the environment. The L-Lake lake bed contaminants would be unlikely to pose a significant risk to SRS workers because the concentration of the contaminants in the sediments is low and the amount of time that an SRS worker would be expected to spend in the lake bed would not yield an annual dose above DOE administrative limits (700 mrem). For example, an SRS worker spending eight hours per days for 250 days a year over a twenty-five year period would receive an annual dose of 41 mrem. The 41 mrem dose is well below DOE's 700 mrem administrative limit.

The L-Lake lake bed contaminants would be unlikely to pose a significant risk to the public because the public would not be exposed to direct radiation, which is the primary hazard associated with cesium-137. The probability of the maximally-exposed individual, located at the SRS site boundary, developing a fatal cancer as a result of 70 years exposure would be less than one in a million (5.6 X 10E–7). In DOE's judgment this risk is extremely small.

Finally, the L-Lake lake bed contaminants would be unlikely to pose a significant risk to the environment because erosion would be controlled and contaminated sediments would not pose a significant risk to foraging animals. Erosion would be controlled because, based on DOE's historic hydrologic data and models, L-Lake would probably recede during the growing season. As the Lake's water level slowly receded, wetland plants growing in the shore zone would recede down slope with the water. Seed banks along the shoreline would germinate and stabilize sediments in portions of the newly exposed shoreline. In addition, DOE would artificially seed the exposed L-Lake lake bed with appropriate vegetation in order to further stabilize the sediment. Thus, exposure to contaminants in the L-Lake due to erosion or resuspension of lake bed sediment would be minimized because the sediments would be protected from wave or wind agitation.

Furthermore, erosion and transport of contaminated L-Lake lake bed sediments would be reduced by the slow drawdown of the water level in the Lake, occurring over a ten year period, and by the resulting growth of stabilizing vegetation. Because of this slow drawdown and growth of stabilizing vegetation, suspension of sediments in the water column would be minimized. Further, DOE would maintain the Steel Creek dam during the drawdown to impede the transport of those sediments that became suspended in the water column. The Steel Creek dam would minimize the movement of contaminants suspended in the water column by creating a stilling basin to still the water and allow sediments to settle out of the water column.

Contaminants in L-Lake lake bed would not pose a significant risk to foraging animals either from radiological or non-radiological sources. As described in the RWEIS, radiological contaminants were screened against known background contaminant concentrations yielding estimated radiation dose rates, which were then compared to applicable standards. This comparison indicated that two radionuclides exceeded twice the background level, namely cesium-137 and Co-60. Cs-137 and Co-60 in L-Lake lake bed sediments would primarily cause risk from the direct exposure of penetrating gamma radiation. The concentrations of these radiological sources was used to estimate a dose rate to selected receptor species. The estimated radiation dose rates to selected receptor species are well below the applicable standards.

For non-radiological sources, it was recognized that L-Lake lake bed sediments would be exposed and that the sediments could become surface soil or facilitate vegetative growth. All samples detected in sediments were compared to screening levels for sediments, surface soils, and terrestrial plants. No sediment contaminants were present in average concentrations that exceeded available screening levels. Screening levels were not available for four non-radiological samples found in L-Lake sediment—beryllium, cobalt, thallium, and vanadium—which had an average concentration between two and three times their background levels. The potential risk of these contaminants (as well as all contaminants that were detected) were assessed by screening their respective concentrations against surface soil screening levels.

Assuming the sediments became surface soils, the average concentrations of beryllium, thallium, chromium, and vanadium were between two and three times their average background levels. Thallium was detected in five of forty-four samples and beryllium, chromium, and vanadium slightly exceeded twice its background screening level. This indicated that these contaminants either are not present in high concentrations or are not widespread because of the few occurrences in samples. Accordingly, they would not represent an unacceptable risk. The average concentration of cobalt was below its associated screening level.

Assuming the detected sediment concentrations were found in terrestrial plants, chromium, thallium and vanadium were between two and three times their background screening levels. Again, thallium was detected in five of 44 samples. It should also be noted that plants absorb chromium, thallium, and vanadium minimally from soils. Because of this fact and that L-Lake currently supports a healthy, diverse ecological community, it does not appear that effects to L-Lake plants from contaminants are occurring or would occur under the Proposed Action.

The screening process is discussed in greater detail in Appendix B of the RWEIS.

Par Pond

Par Pond water level would not be impacted by any of the alternatives considered in the RWEIS. Par Pond has not received makeup water from the RWS since January 1996, and has been allowed to fluctuate naturally between 195 feet and 200 feet MSL. Accordingly, ceasing operation of the RWS could not effect Par Pond water level because it is not currently receiving make-up water from the RWS.

[3] This standby condition is also referred to as "lay-up."

[4] Placing the RWS in lay-up also allows maintaining portions of the system in a higher state of readiness in order to restore pumping capability more rapidly. Maintenance of certain portions of the RWS in such a condition might be warranted (1) where those portions are likely to be needed for future missions; (2) where they might be necessary to maintain Par Pond water levels in the event of a severe drought; or (3) where they might be necessary to refill L-Lake in the event of determination to do so as a result of the FFA process.

[5] As previously noted, the environmental impacts of the 5,000 gpm pump were evaluated under a categorical exclusion. On December 30, 1996, EPA provided comments on the Draft RWEIS and questioned the appropriateness of this categorical exclusion. EPA requested DOE to describe more thoroughly the impacts associated with the 5,000 gpm pump. In response to EPA's comment, those impacts were included in the Final RWEIS. A discussion demonstrating the appropriateness of the categorical exclusion may be found in the RWEIS at page E–61.

[6] Cesium-137 is an external radiation hazard from direct exposure to gamma radiation which penetrates clothing and skin. Measurements taken under the surface of L-Lake show that cesium in the Lake sediments is largely concentrated in the original Steel Creek floodplain, currently beneath the surface of L-Lake. These measurements also show that a maximum (24-hour per day) radiation dose received by a human would be approximately 180 mrem per year above the typical radiation dose to which Americans are routinely exposed (approximately 360 mrem per year). The occupational dose limit for adults is 5,000 mrem per year, and this additional dose would not exceed that limit. 10 CFR § 20.1201.

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Allowing Par Pond to fluctuate naturally was the product of prior analysis and decisions conducted under authority of NEPA and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). In response to safety concerns presented by a 1992 leak in the Par Pond dam, DOE prepared a NEPA document called a Special Environmental Analysis (SEA) to assess the environmental impacts of an emergency drawdown of the Par Pond water level from 200 feet MSL, its normal water level, to 181 feet MSL. The SEA reviewed the anticipated and observed environmental impacts of drawing down, repairing, and refilling Par Pond, including potential health and ecological impacts resulting from the possible exposure to radiocesium contaminated sediment. It concluded that "consideration would be given to begin refilling operations as soon as possible, perhaps before dam repairs are completed, to minimize impacts on the Par Pond ecosystem." DOE, Special Environmental Analysis for Par Pond at the Savannah River Site, page 4, (April, 1992). In addition, the SEA summarized consequences of possible future repair, remedial, and refilling actions, and developed a Mitigation Action Plan (MAP) to reduce the impacts of the repair activity. Under authority of the SEA, DOE proceeded with the Par Pond drawdown and repair project.

Following the repair action, DOE prepared a Par Pond Interim Record of Decision (IROD) to provide a CERCLA remedial action to address the interim period following the dam repair until a final remedial action could be studied and selected. The IROD's selected remedy consisted of refilling and maintaining Par Pond to 200 +/-1 feet until a NEPA evaluation could be accomplished to evaluate the environmental impacts from reduced flow to Lower Three Runs Creek (the creek below Par Pond dam), fluctuating reservoir water level, and discontinuing of river water pumping to the reservoir. DOE, Interim Action Record of Decision, Remedial Alternative Selection, Par Pond Unit, WSRC–RP–93–1549 (January 26, 1995). EPA and SCDHEC approved the IROD in February 1995, and Par Pond was completely refilled by March 15, 1995.

In 1995, DOE prepared a NEPA Environmental Assessment (EA), Natural Fluctuation of Water Level in Par Pond and Reduced Water Flow in Steel Creek Below L-Lake at the SRS (DOE/EA–1070). The EA analysis showed that no significant impacts would likely result to the Par Pond ecosystem if the Pond's water level were maintained at 195 feet MSL or above. Hydrological models analyzed in the EA showed that even without RWS flow augmentation, the Par Pond water level is not likely to decrease below 196 feet MSL, even in drought conditions. Further, the EA analysis showed that elimination of RWS water flow and the accompanying reduction of Savannah River nutrients flowing through Par Pond would cause the Pond's ecosystem to revert to that typically found in reservoirs in the southeastern United States. Based on the analysis in the EA, DOE issued a Finding of No Significant Impact (FONSI) in August 1995 under which RWS water flow to Par Pond was eliminated. Under the FONSI, if Par Pond water level decreases to 195 feet MSL or below, DOE will resume water flow augmentation through the RWS. Since issuance of the FONSI, natural water flow into Par Pond has maintained the Pond above 199 feet MSL.

Under either of the RWEIS shutdown alternatives, the status quo would not be changed and RWS water would not augment natural water flow into Par Pond. Under the Shut Down and Maintain Alternative DOE would be able to restart the RWS and resume pumping to Par Pond if the water level drops below 195 feet MSL, as called for in the FONSI and consistent with the IROD. However, under the Shut Down and Deactivate Alternative, DOE would not have the capability to restart the RWS to augment water flow to Par Pond in the event a severe drought demanded such an action.

Other Impacts

Under either of the shutdown alternatives, DOE would need to find an alternate water supply for auxiliary equipment cooling and for fire protection water reserves. The alternate water supply would be approximately 400 gpm and be drawn from groundwater. This groundwater would be provided by existing wells at rates much less than was historically provided by these same wells during reactor operations.

RWS shutdown would result in increased survival of Savannah River larval fish and fish eggs because they would no longer be entrained at the RWS intake structures. In addition, RWS shutdown would return 225 acres of original wetlands inundated by the damming of Steel Creek and creation of L-Lake. This acreage is approximately the same amount of wetlands that exists along the present shoreline of L-Lake that would be lost as L-Lake water level recedes to the original Steel Creek stream bed.

Environmentally Preferable Alternative

The proposed action in this instance presents a situation where the environmentally preferable action is different based on whether a short-term or long-term period of reference is used. Based on the analysis in the RWEIS, DOE finds that in the short-term, the environmentally preferable alternative is the No-Action Alternative to preserve the status quo and continue current operation of the RWS through a 5,000 gpm pump. The No-Action Alternative would preserve L-Lake and prevent the return of the Lake's water level to the original Steel Creek stream bed. The preservation of the Lake would, in turn, preserve up to 1000 acres of aquatic habitat formed by it, and forestall the transition of this habitat to uplands and wetlands habitat.

However, in the long-term, the Shut Down and Maintain Alternative is the environmentally preferable alternative. Under this alternative, L-Lake water level would return to the original Steel Creek stream bed over a ten year period, which would allow for the gradual restoration of a more stable ecosystem, such as that in existence prior to construction of L-Lake. The pre-Lake ecosystem would be more stable because it is the indigenous ecosystem, and because it would not be susceptible to potential imbalances, such as those introduced by changes in L-Lake water level associated with repair or renovation of the Steel Creek dam.

Furthermore, the restored L-Lake ecosystem would benefit from the reemergence of 225 acres of wetlands inundated by the creation of L-Lake, an amount that approximately equals the amount of wetland acreage that would be lost along the shoreline of L-Lake as it gradually recedes. After these areas are exposed, they would naturally reestablish wetland characteristics with cycles of drying and flooding typical of other hardwood swamps on the SRS and in the southeast. As typical wetlands they would support diverse ecological communities.

In addition, while a decrease in aquatic productiyity would be expected as a consequence of the return of L-Lake water level to the original Steel Creek stream bed, an increase in terrestrial productivity would occur concomitantly. As the L-Lake water level receded, grasses, forbs, shrubs, and trees indigenous to the ecosystem would re-colonize the L-Lake lake bed over time. In addition to flora, indigenous fauna would return to the ecosystem, and a variety of terrestrial and semi-aquatic animal species would inhabit the area as L-Lake gradually receded to the original Steel Creek stream bed.

Other than potential CERCLA remediation activities, if DOE continued to operate and maintain the RWS indefinitely the No-Action Alternative would require the greatest commitment of money and energy resources. The RWS would continue to supply 5,000 gpm to L-Lake from the Savannah River. To do so, DOE would spend approximately $1,084,000 annually to provide RWS surveillance and maintenance and $494,000 annually for electrical energy to pump the water uphill from the river. Finally, DOE would continue to dredge the RWS intake canal to keep it clear of debris. However, there is great uncertainty regarding the cost of remedial action under CERCLA. Therefore, until characterization is completed, it will not be evident whether shutting down or continuing to operate and maintain the RWS is economically the most prudent course of action.

Associated Actions

DOE considered a number of actions that affect the selection of an alternative for the RWS, as well as the timing of implementing a selected alternative. The actions are described in the following paragraphs.

Remedial Action Process for L-Lake

Through the FFA, DOE, EPA, and SCDHEC established the procedure for environmental restoration activities at the SRS. The FFA integrates DOE responsibilities under the Resource Conservation and Recovery Act (RCRA) and CERCLA. In response to EPA and SCDHEC comments on the Draft RWEIS, DOE recommends further assessment of L-Lake under the FFA, possibly resulting in a Baseline Risk Assessment (BRA) and a Remedial Investigation/ Feasibility Study (RI/FS).

A BRA will assess the risk associated with the contaminants identified in the L-Lake sediment, primarily located in the original Steel Creek stream bed, and it will provide a quantified expression of risk for key receptors, such as humans or wildlife, which may be exposed to the contaminants. An RI/FS will gather data necessary to determine more exactly the nature and extent of contamination in L-Lake sediment, establish criteria for remediating the Lake, identify the preliminary alternatives for remedial actions, and support the technical and cost analyses of the remedial alternatives.

DOE believes that the analysis and data collection necessary to prepare a BRA and RI/FS is more accurately, easily, and economically obtained once L-Lake has returned to its original Steel Creek stream bed. This is because there are inherent difficulties in taking sediment samples while L-Lake is filled if additional samples are needed. Because shutdown of the RWS will present no unreasonable risk to human health or the environment, and because analysis of L-Lake sediment is more appropriate after the Lake has returned to the original Steel Creek stream bed, DOE anticipates that this process will be accomplished under an Interim Record of Decision (IROD). In accordance with the present FFA schedule, DOE will begin characterization of the L-Lake CERCLA unit in fiscal year 2000 and begin L-Lake draw down in Fiscal Year 2001. The characterization process and risk evaluation will lead to the selection of a preferred remedial alternative. It is DOE's intention to incorporate National Environmental Policy Act values in the IROD and supporting documents.

Remedial Action Process for Onsite Streams

Steel Creek, Four Mile Branch, Pen Branch, and Lower Three Runs, are listed in the FFA as RCRA/CERCLA units because each stream received contaminants from past operations. EPA and SCDHEC expressed concern about the effect on these units due to the installation of the 5,000 gpm pump because the installation of that pump reduced water flow capacity through the streams from 28,000 gpm to 5,000 gpm. The reduction in water flow through the SRS streams has increased the concentration of tritium transported to SRS streams from the seepage basins.

Increased tritium concentrations in site streams are the consequence of two factors. First, tritium from the seepage basins is carried with rainwater to site streams as it percolates through the soil at a fairly constant rate. Second, the RWS flow formerly diluted the tritium-containing rainwater as it percolated to the streams. Installation of the 5,000 gpm pump reduced RWS flow contribution to the streams and removed this dilution water. Consequently, installation of the 5,000 gpm pump had the effect of increasing tritium concentrations.

To respond to comments on the draft RWEIS, the Final RWEIS evaluated the impacts to workers, ecosystems, and the public due to the installation of the 5,000 gpm pump from the resulting increase in tritium concentrations. Workers and ecological receptors would be at risk due to increased tritium exposure through incidental ingestion and skin contact. The public could be at risk due to ingestion of increased concentrations of tritium in drinking water. However, the RWEIS risk assessment showed that a hypothetical future worker's annual dose would be below 1 mrem. The RWEIS environmental risk assessment showed that the highest annual dose to an ecological receptor would be 92 mrem. Both of these dose rates are well below accepted standards.

Drinking water taken from the Savannah River would not be impacted because installation of the 5,000 gpm did not increase the total amount of tritium released to the River. Because the flow rate of water in the Savannah River is typically over 10,000 cubic feet per second (compared to the 45 cubic feet per second reduction of flow from installation of the 5,000 gpm pump) and because the nearest domestic water plant intake is approximately 40 miles downstream from SRS, the on-site increased concentrations have an insignificant health impact to the public. In summary, the increased concentrations of tritium in site streams were determined to be acceptable because these concentrations did not pose an unacceptable risk to workers, the ecosystems or the public.

Steel Creek, Four Mile Branch, Pen Branch, and Lower Three Runs, as well as other SRS streams have received low-levels of radionuclides, including tritium, from past SRS operations. Therefore, all of them will be evaluated in accordance with the FFA and be the subject of a risk analysis based on hypothetical future residents and industrial workers.[7] DOE is scheduled to provide information to EPA and SCDHEC, which will assist in the characterization of each stream and the selection of a remedial alternative.

Water Requirements for Alternatives

Under the No-Action Alternative, the RWS would continue to supply existing operational cooling and make-up water requirements for the reactor areas and maintain L-Lake at 190 feet MSL. For either of the shutdown alternatives, DOE must supply 400 gpm of groundwater to replace that provided by the RWS to cool auxiliary equipment and to provide make-up water for fire protection reserves.

[7] These two hypothetical future groups could be at risk because the risk analysis assumes that they drink water from SRS streams before it is mixed with the Savannah River. A down stream receptor is not at risk because the Savannah River flow rate is significantly higher than SRS streams and, in effect, dilutes tritium to concentrations which do not pose a risk to human health.

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L-Area Sanitary Wastewater Treatment Plant

The L-Area sanitary wastewater effluent mixes with RWS flow before reaching L-Lake. The L-Area Sanitary Wastewater Treatment Plant wastewater permit took credit for RWS blending flow in determining the extent of treatment necessary before the wastewater was discharged to L-Lake. To stop RWS flow, DOE must implement an alternate compliance method to manage L-Area sanitary wastewater.

Reactor 186-Basins Alternative Uses Study

In 1994, DOE analyzed the feasibility of using the SRS C-, L-, P-, and R-Reactor 186-Basins[8] and 904-Retention Basins[9] for aquacultural purposes. In March 1995 DOE advertised the availability of the Reactor 186-Basins for commercial use. DOE accepted one fish farming proposal that would have relied on ground water for make-up water, although this proposal was later withdrawn. At the present time, no future uses of the 186-Basins or the 904-Retention Basins are planned. DOE could accept similar proposals in the future regardless of the RWEIS alternative selected because the basins do not rely on the RWS for make-up water.

Decision

DOE selects the No Action Alternative of the RWEIS—Continue to Operate the RWS. Under this alternative, DOE will continue to operate and maintain the system as well as maintain the water level of L-Lake at its full pool water level of 190 feet MSL.

DOE will assess the need for future environmental remediation alternatives for L-Lake under existing CERCLA commitments. Characterization activities associated with CERCLA closure are expected to begin in the year 2000 and be completed in several years. This characterization will inform any required remedial action. Pending these activities, DOE will continue to operate the RWS. If during continued operation of the RWS a system component fails, DOE will take appropriate emergency actions. DOE will then determine if the system is too costly to repair (by comparing this cost to estimated shutdown costs and future possible remediation costs under CERCLA). If DOE determines that the RWS is too costly to repair, it will reevaluate all relevant commitments and the information in the RWEIS, to determine necessary actions to shut down the RWS. However, the RWS is in good condition and not expected to fail over this period of time.

In accordance with the present FFA schedule, DOE will begin characterization of the L-Lake CERCLA unit in fiscal year 2000. DOE anticipates that this process will lead to an Interim Record of Decision (IROD) in Fiscal Year 2001. At that time DOE will decide whether L-Lake should be drawn down to facilitate characterization of future risks to human health and the environment. The characterization process and risk evaluation will lead to the selection of a preferred remedial alternative. Not withstanding a major system failure, DOE has decided to operate and maintain the RWS until a preferred remedial alternative is selected.

DOE made this decision after considering the most recent operating and maintenance costs and estimated shutdown implementation costs. DOE has concluded the amount and uncertainty in shutdown implementation costs suggest the RWS should continue to be operated while DOE monitors RWS operating and maintenance costs to determine when continued operation becomes too costly. For example, if a portion of the system failed, DOE may elect to take an emergency action in accordance with 40 CFR 1506.11, if appropriate, and then determine if repair was too costly. If DOE determines that repair is too costly it will announce this decision in a future Record of Decision under the requirements of NEPA and CERCLA, as necessary.

Prior to drawdown, DOE will notify the USFWS to ensure all "reasonable and prudent" measures, which were recommended by USFWS during the Endangered Species Action consultation process to protection of threatened and endangered species, are still adequate and appropriate. DOE will also negotiate a schedule with USFWS for the review and completion of these measures.

During any future draw down and characterization activities DOE expects to stabilize exposed sediments and address the "reasonable and prudent" measures, discussed above.

DOE considers continued operation of the RWS to be environmentally preferable in the short-term because L-Lake remain as a lake with its ecology unaffected.

Comments on Final RWEIS

DOE received two letters commenting on the Final RWEIS. The first, a letter from EPA, Region IV, dated June 12, 1997, expressed concern that the RWEIS does not adequately consider injury or impacts to endangered species. To consider injury or impacts to these species DOE and USFWS entered into a formal consultation process regarding endangered species. The USFWS recommended specific "reasonable and prudent" measures to protect the bald eagle and wood stork during the L-Lake water level return to the original Steel Creek stream bed. DOE endorsed these reasonable and prudent measures. However, these measures will not be implemented at this time because the draw down of L-Lake will not occur as a result of this decision.

The letter from EPA, Region IV also expressed concern that the RWEIS did not adequately consider the ecological risks associated with shutdown of the RWS. However, as explained in the Environmental Impacts section, the RWEIS ecological risk assessment (ERA) concluded that significant potential risks to ecological receptors from contaminants is not likely.

Finally, as a general statement, the letter from EPA, Region IV stated that, "This NEPA action should be coordinated to the fullest extent possible with FFA activities". The selection of the No Action alternative has been made, in part, in response to this statement.

In addition, the RWEIS documented several measures that were taken to coordinate the NEPA with the FFA process, which include the following: (1) use of FFA criteria as contamination level screening limits to estimate future potential remedial action decisions; (2) movement of the L-Lake unit from Appendix G to Appendix C of the FFA in order to avoid the unnecessary generation of a Site Evaluation Report and expedite the FFA process; and (3) preservation of the ability to refill L-Lake under the RWEIS shut down and maintain alternative in the event that such action is determined to be necessary under the FFA.

The second letter, dated June 11, 1997, from the Office of Environmental Policy and Compliance within the Department of the Interior (DOI) addressed several concerns regarding the revised ecological risk assessment (ERA) provided in the RWEIS. Specifically, DOI commented that guidance DOE used to develop the RWEIS ERA "is inadequate and inconsistent with the US EPA's guidance on ecological risk assessment." To the contrary, DOE believes the RWEIS ERA was conducted in accordance with the most current EPA guidance.

The objective of the RWEIS ERA was to determine, as accurately as possible under the existing L-Lake characteristics, the probable outcome of a CERCLA ERA.[10] The RWEIS ERA is adequate because it used maximum contaminant concentrations in its risk assessments. In fact, all radiological risks were within dosimetry-based limits acceptable to the International Atomic Energy Agency. Where the maximum concentrations of some non-radiological contaminants showed a risk potential, either the average concentration of the contaminant was compared to background levels or, alternately, the contaminant concentration was compared with more contaminant-specific information available in accepted scientific literature. This procedure is part of the typical process of interpreting the results and uncertainties of an ERA and represents the general ERA approach recommended in the EPA guidance for Superfund. EPA, Ecological Risk Assessment for Superfund: Process for Designing and Conducting Ecological Risk Assessments, Review Draft, (1996).

DOI also asserted that the "[c]onclusions of no risk are inconsistent with actual research findings." DOI cited specific DOE studies sent to USFWS during the formal Endangered Species Act consultation. The studies DOI cited assessed DNA changes found in blood samples of various wildlife species present on the SRS. In response to this assertion, DOE notes that, in no case did any of the studies suggest that an observable change in a wildlife population would result from the exposure to low levels of radionuclides found in L-Lake. Accordingly, this supports the RWEIS ERA finding that significant potential risks to ecological receptors from contaminants are not likely.

Finally, DOI commented on various DOE studies showing the presence of elevated mercury concentrations in the SRS environment. However, DOI's comment does not reflect the fact that the presence of mercury in the SRS environment is not the result of releases attendant to SRS operations. Indeed, mercury is elevated throughout areas of the southeastern United States due to atmospheric deposition, not due to SRS operations. Reflecting and restating this fact, SCDHEC issued a fish consumption advisory for numerous lakes and rivers in South Carolina based on mercury concentrations in fish. Again, the presence of this mercury was not and cannot be correlated to any SRS operations. Accordingly, DOE has no control over and is not responsible for the atmospheric deposition of mercury at SRS, or in other areas of the southeastern United States. Consequently, a returning L-Lake water level to the original Steel Creek stream bed would not exacerbate this regional phenomenon or increase ecological risk.

Conclusion

After consideration of all relevant information and data, DOE selects the No Action alternative as the most appropriate action for the future of the River Water System at the Savannah River Site at this time. This operational decision is made in recognition of all beneficial and adverse environmental impacts, monetary costs, regulatory implications and commitments under the FFA, and dictates of relevant statutes.

Signed this 23rd day of December, 1997, at Aiken, South Carolina.

Greg Rudy,

Acting Manager, Savannah River Operations Office.

[FR Doc. 98–1947 Filed 1–27–98; 8:45 am]

BILLING CODE 6450–01–P

[8] 186-Basins are water storage basins which are not contaminated.

[9] 904-Retention Basins are 50 million gallon basins that were designed to receive emergency cooling water in the event of a reactor accident.

[10] The CERCLA ERA will be used to aid the determination of a final remedial action at L-Lake. A final action is typically made only after the lake bed is characterized in detail using information such as groundwater hydrogeology, extent of groundwater contamination, and existing burial area contamination profiles. Presently, these areas are under as much as 50 feet of water and cannot be adequately characterized. As a result, a complete risk assessment cannot be performed and a final remedial alternative cannot be selected until L-Lake returns to the original Steel Creek stream bed.

DEPARTMENT OF ENERGY

Hydrogen Technical Advisory Panel

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770, as amended), notice is hereby given of the following advisory committee meeting: Hydrogen Technical Advisory Panel.

Date: Monday, March 2, 1998, 9:00 A.M.–4:30 P.M., Tuesday, March 3, 1998, 9:00 A.M.–3:30 P.M.

Place: Sheraton Premiere Hotel at Tysons Corners, 8631 Leesburg Pike, Vienna, Virginia 22182; Telephone: 800–572–7666.

FOR FURTHER INFORMATION CONTACT: Russell Eaton, Designated Federal Official, Department of Energy, Golden Field Office, 1617 Cole Blvd, Golden, CO 80401, Telephone: 303–275–4740.

SUPPLEMENTARY INFORMATION:

Purpose of the Panel: The Hydrogen Technical Advisory Panel (HTAP) will advise the Secretary of Energy who has the overall management responsibility for carrying out the programs under the Matsunaga Hydrogen Research, Development, and Demonstration Program Act of 1990, Pub. L. No. 101–566 and the Hydrogen Future Act of 1996, Public Law No. 104–271. The Panel will review and make any necessary recommendations to the Secretary on the following items: (1) The implementation and conduct of programs required by the Act, and (2) the economic, technological, and environmental consequences of the deployment of hydrogen production and use systems.

Tentative Schedule

Monday, March 2, 1998

9:00 AM, Introduction and Opening Comments—A. Lloyd
9:15, Opening Comments and Introduction of New Panelists—A. Lloyd/A. Hoffman
9:45, DOE Federal Report—R. Eaton
10:00, Report of the President's Committee of Advisors on Science and Technology (P–CAST), 11-Lab Study—S. Gronich
10:30, Break
10:45, Russian-American Fuel Cell Consortium (RAFCO)—R. Bradshaw
11:15, DOE's Fuel Cell Coordination Committee—R. Bradshaw
12:00 PM, Lunch
1:30, Strategic Directions Draft Plan—Bailey/Kamal/Zalosh
2:30, DOE Fuel Cell Program for Transportation—P. Patil
3:00, Break
3:15, California Hydrogen Business Council—D. Moard
3:30, Public Comments—Audience
4:00, HTAP Panel Comments—Panel
4:30, Adjourn
6:00, Reception

Tuesday, March 3, 1998

9:00 AM, HTAP Report to Congress—A. Lloyd
12:00 PM, Lunch
1:30, HTAP Report to Congress—Discussion
2:45, Public Comments
3:15, HTAP Panel Discussion and Roundup Panel
3:30, Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Russell Eaton's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000

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Independence Avenue, SW, Washington, DC 20585, between 9:00 A.M. and 4 P.M., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Russell Eaton, Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, CO 80401, or by calling (303) 275–4740.

Issued at Washington, DC, on January 23, 1998.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–2047 Filed 1–27–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board—Openness Advisory Panel.

Date and Time: Friday, February 13, 1998, 8:30 A.M.—3:30 P.M.

Place: Doubletree Hotel, Columbia Room, 802 George Washington Way, Richland, Washington 99352.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1709.

SUPPLEMENTARY INFORMATION: The purpose of the Openness Advisory Panel is to provide advice to the Secretary of Energy Advisory Board regarding the status and strategic direction of the Department's classification and declassification policies and programs, and other aspects of the Department's ongoing Openness Initiative. The Panel's work will help institutionalize the Department's Openness Initiative.

Tentative Agenda

Friday, February 13, 1998

8:30–9:00 AM, Opening Remarks & Introductions—R. Meserve, Chairman
9:00–9:30 AM, Subgroup Report: Observations from the February 4 Meeting of the Hanford Openness Workshop—T. Cotton, OAP Member
9:30–10:15 AM, Presentation & Discussion: Hanford Openness Workshop Overview—Objectives, Issues, Observations & Status—Hanford Openness Workshop Spokesperson
10:15–10:30 AM, Break
10:30–11:30 AM, Status Report: Records Management Implementation Strategy & Status Report—Howard Landon, DOE Office of Information Management
11:30–12:00 PM, Public Comment Period
12:00–1:00 PM, Lunch
1:00–1:45 PM, Status Report: Declassification Implementation Strategy & Status—Richard Lyons, DOE Office of Declassification
1:45–2:45 PM, Panel Discussion: Declassification & Records Management Issues: A Path Forward—Guest Panelists & OAP Members
2:45–3:15 PM, Public Comment Period
3:15 PM, Adjourn

This tentative agenda is subject to change. A final agenda will be available at the meeting.

Public Participation: The Chairman of the Panel is empowered to conduct the meeting in a way which will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Richland, Washington the Panel welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Panel will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

Minutes: Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 A.M. and 4:00 P.M., Monday through Friday except Federal holidays. Information on the Openness Advisory Panel may also be found at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on January 23, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–2048 Filed 1–27–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–183–000]

ANR Pipeline Company; Notice of Application

January 22, 1998.

Take notice that on January 14, 1998, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP98–183–000, an application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Federal Energy Regulatory Commission's Regulations for permission and approval to abandon a natural gas exchange service with Koch Gateway Pipeline Company (Koch), all as more fully set forth in the application on file with the Commission and open to public inspection.

ANR states that the exchange service was originally authorized by Commission order issued November 15, 1983, in Docket No. CP83–457–000. ANR further states that under the terms of the agreement, ANR is authorized to exchange up to 10,000 Mcf of natural gas per day with Koch. ANR indicates that this agreement is designated as Rate Schedule X–138 in ANR's FERC Gas Tariff, Original Volume No. 2.

Any person desiring to be heard or to make protest with reference to said application should on or before February 12, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. Under the procedure provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1982 Filed 1–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–558–001]

CNG Transmission Corporation; Notice of Amendment

January 22, 1998.

Take notice that on January 15, 1998, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP96–558–001 an amendment pursuant to Section 7 of the Natural Gas Act, as amended, and the Commission's Rules and Regulations thereunder, to amend its certificate issued at Docket No. CP96–558–000 on October 11, 1996, all as more fully set forth in the application on file with the Commission and open to public inspection.

According to CNG, the above order approved the abandonment in place of 67.07 miles of 14-inch pipeline, known as Line 14, located in Potter County, Pennsylvania and Livingston, Allegany and Wyoming Counties, New York. By this amendment, CNG requests to abandon an additional 5.5 miles of Line 14 in Allegany County, New York, due to age and condition.

CNG states that the abandonment of Line 14 will have no impact on CNG's existing services. This is so, according to CNG, because (1) the markets served by Line 14 have declined, and (2) CNG's existing, parallel pipelines, Lines 24 and 554 have sufficient capacity to maintain existing services to the markets served by this part of CNG's system.

Any person desiring to be heard or to make any protest with reference to said application, should on or before February 12, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (Rule 210, 211, or 214) and regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act, as amended, and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission, or its delegate, on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the certificate is required by the public convenience and necessity.

If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that an oral hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CNG to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1981 Filed 1–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No CP98–188–000]

CNG Transmission Corporation; Notice of Request Under Blanket Authorization

January 22, 1998.

Take notice that on January 15, 1998, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP98–188–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon in place 0.42 mile of 12-inch pipeline, located in Marshall County, West Virginia, crossing the Ohio River and ending in York Township, Ohio, under CNG's blanket certificate issued in Docket No. CP82–537–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CNG proposes to abandon in place 0.42 mile of bare 12-inch pipeline, known as H–197, starting in Marshall County, West Virginia, crossing the Ohio River, and ending in York Township, Ohio, where it originally tied into East Ohio Gas Company's TPL–9. CNG states that gas has not flowed through this segment of H–197 since the 1980's, therefore the abandonment of this segment of H–197 will have no effect on any existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1983 Filed 1–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–113–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

January 22, 1998.

Take notice that on January 20, 1998, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing, with a requested effective date of May 1, 1998.

CIG states that the purpose of the filing is to reform its Gas Quality Control service and low-Btu purchase requirements pursuant to Section 1.15 of the Stipulation and Agreement in Docket No. RP96–190–000, approved by the Commission on October 16, 1997.

CIG states that the copies of the filing are being mailed to all holders of the tariff and to public bodies.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed in

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accordance with Section 154.210 of the Commission's Regulations. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1988 Filed 1–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–572–000]

Easton Utilities Commission; Notice of Filing

January 22, 1998.

Take notice that on April 11, 1997, the Easton Utilities Commission on behalf of the Town of Easton, Maryland (Easton) filed a request for waiver of the standards of conduct and functional separation requirements adopted by the Commission in Order No. 889. Easton also seeks a declaration by the Commission that Easton's willingness to provide information concerning its transmission system for inclusion in data provided to the Pennsylvania-New Jersey-Maryland (PJM). Interconnection for posting of PJM's Oasis Shall be deemed to satisfy any requirements applicable to Easton to establish an OASIS.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 4, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1980 Filed 1–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–373–000]

Koch Gateway Pipeline Company; Notice of Informal Settlement Conference

January 22, 1998.

Take notice that an informal settlement conference will be convened in this proceeding on February 10, 1998, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Edith A. Gilmore at (202) 208–2158 or Sandra J. Delude at (202) 208–0583.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1986 Filed 1–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP95–326–016 and RP95–242–015]

Natural Gas Pipeline Company of America; Notice of Filing Refund Report

January 22, 1998.

Take notice that on January 16, 1998, Natural Gas Pipeline Company of America (Natural) filed its report of refunds in the above referenced docket for the period April 1, 1996, through November 30, 1997.

Natural states the refunds were disbursed on December 19, 1997, and that customers were served with calculations supporting their individual refunds at that time.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before January 29, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1984 Filed 1–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–344–000]

Texas Gas Transmission Corporation; Notice of Informal Settlement Conference

January 22, 1998.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding at 10 a.m. on Wednesday, January 28, 1998, reconvening at 10 a.m. on Thursday, January 29, 1998, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214) prior to attending.

For additional information please contact Michael D. Cotleur at (202) 208–1076, or Russell B. Mamone at (202) 208–0744.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1985 Filed 1–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–112–000]

Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

January 22, 1998.

Take notice that on January 20, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the following revised tariff sheets to become effective January 1, 1998:

Second Revised Volume No. 1

1st Rev 28th Revised Sheet No. 15
1st Rev 31st Revised Sheet No. 16
1st Rev 27th Revised Sheet No. 18
1st Rev 24th Revised Sheet No. 21

Original Volume No. 2

1st Rev 72nd Revised Sheet No. 11B

Williston Basin states that it has determined that the take-or-pay amounts associated with Docket No. RP93–175–000 have been fully recovered as of December 31, 1997. As a result, the instant tariff sheets reflect the elimination of the throughput surcharge associated with Docket No. RP93–175–000, effective January 1, 1998. Williston Basin further states that it will file a final reconciliation of such throughput surcharge at the time of its next annual reconciliation, to be filed May 29, 1998. At that time, the appropriate accounting will be finalized and Williston Basin will propose a mechanism for final disposition of any overcollections.

Williston Basin also states that on December 31, 1997, it filed its Semi-annual Fuel Reimbursement Adjustment filing in Docket No. TM98–2–49–000. The tariff sheets in that filing reflected an effective date of February 1, 1998. Therefore, Williston Basin has filed the following revised tariff sheets to its December 31, 1997 filing in Docket No. TM98–2–49–000 to reflect the reduction in the take-or-pay surcharge reflected in the instant filing:

Second Revised Volume No. 1

Sub Twenty-ninth Revised Sheet No. 15
Sub Thirty-second Revised Sheet No. 16
Sub Twenty-eighth Revised Sheet No. 18
Sub Twenty-fifth Revised Sheet No. 21

Original Volume No. 2

Sub Seventy-third Revised Sheet No. 11B

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1987 Filed 1–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1186–000, et al.]

The Dayton Power and Light Company, et al.; Electric Rate and Corporate Regulation Filings

January 21, 1998.

Take notice that the following filings have been made with the Commission:

1. The Dayton Power and Light Company

[Docket No. ER98–1186–000]

Take notice that on December 23, 1997, The Dayton Power and Light Company (Dayton), submitted service agreements establishing DTE Energy Trading, Inc., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of the filing were served upon establishing DTE Energy Trading, Inc., and the Public Utilities Commission of Ohio.

Comment date: February 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Energy Masters International, Inc.

[Docket No. ER98–1187–000]

Take notice that on December 19, 1997, Energy Masters International, Inc. (Energy Masters), filed a Notice of Succession pursuant to § 35.16 and § 131.51 of the Commission's Regulations for the purpose of notifying the Commission that Energy Masters has succeeded to the tariffs and contracts of Cenerprise, Inc., currently on file with the Commission, as of December 9, 1997.

Comment date: February 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Commonwealth Electric Company

[Docket No. ER98–1188–000]

Take notice that on December 23, 1997, Commonwealth Electric Company (Commonwealth), tendered for filing a non-firm point-to-point transmission service agreement between Commonwealth and Williams Energy Services Company (Williams Energy). Commonwealth states that the service agreement sets out the transmission arrangements under which Commonwealth will provide non-firm point-to-point transmission service to Williams Energy under Commonwealth's open access transmission tariff accepted for filing in Docket No. ER97–1341–000, subject to refund and issuance of further order.

Comment date: February 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. PECO Energy Company

[Docket No. ER98–1189–000]

Take notice that on December 23, 1997, PECO Energy Company (PECO), filed a Service Agreement dated December 15, 1997, with QST Energy Trading, Inc. (QST), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds QST as a customer under the Tariff.

PECO requests an effective date of December 15, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to QST and to the Pennsylvania Public Utility Commission.

Comment date: February 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Madison Gas and Electric Company

[Docket No. ER98–1190–000]

Take notice that on December 23, 1997, Madison Gas and Electric Company (MGE), tendered for filing a service agreement with:

- NP Energy Inc.
- Southern Energy Trading & Marketing, Inc.
- TransCanada Energy Ltd.
- Williams Energy Services Company

MGE requests an effective date 60 days from the filing date.

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Comment date: February 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Madison Gas and Electric Company

[Docket No. ER98–1191–000]

Take notice that on December 23, 1997, Madison Gas and Electric Company (MGE), tendered for filing a service agreement under MGE's Power Sales Tariff with:

- NP Energy Inc.
- Southern Energy Trading & Marketing, Inc.
- TransCanada Energy Ltd.
- Williams Energy Services Company

MGE requests an effective date 60 days from the filing date.

Comment date: February 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Portland General Electric Company

[Docket No. ER98–1192–000]

Take notice that on December 23, 1997, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), an executed Service Agreement for Short-Term Firm Point-to-Point Transmission Service with LG&E Energy Marketing.

Pursuant to 18 CFR 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the Service Agreement to become effective December 1, 1997.

A copy of this filing was caused to be served upon LG&E Energy Marketing as noted in the filing letter.

Comment date: February 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Fitchburg Gas and Electric Light Company

[Docket No. ER98–1193–000]

Take notice that on December 23, 1997, Fitchburg Gas and Electric Light Company (Fitchburg), tendered for filing five service agreements between Fitchburg and Green Mountain Power, Inc., New England Power Company, The United Illuminating Company, New Energy Ventures, and Enron Power Marketing, Inc., for service under Fitchburg's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2463–000. Fitchburg requests an effective date of November 23, 1997, for Green Mountain Power, Inc., New England Power Company and Enron Power Marketing, Inc., and an effective date of December 25, 1997, for United Illuminating Company, and December 26, 1997, for New Energy Ventures.

Comment date: February 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Illinois Power Company

[Docket No. ER98–1195–000]

Take notice that on December 23, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Edgar Electric Cooperative Association will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of January 1, 1997.

Comment date: February 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Arizona Public Service Company

[Docket No. ER98–1196–000]

Take notice that on December 22, 1997, Arizona Public Service Company (the Company), tendered for filing an informational report on refunds of over billed amounts to wholesale customers through the Company's FERC Fuel Adjustment Clause.

Copies of this filing have been served upon the affected parties as follows:

Customer name	APS–FPC/FERC rate schedule
Electrical District No. 3 (ED–3)	12
Tohono O'odham Utility Authority (TOUA)	52
Arizona Electric Power Cooperative[1] (AEPCO)	57
Wellton-Mohawk Irrigation and Drainage District (Wellton-Mohawk)	58
Arizona Power Authority[1] (APA)	59
Colorado River Indian Irrigation Project[1] (CRIIP)	65
Electrical District No. 1 (ED–1)	68
Arizona Power Pooling Association[1] (APPA)	70
Town of Wickenburg (Wickenburg)	74
Southern California Edison Company (SCE)	120
Electrical District No. 6 (ED–6)	126
Electrical Distnct No. 7 (ED–7)	128
City of Page[1] (Page)	134
Electrical District No. 8 (ED–8)	140
Aguila Irrigation District (AID)	141
McMullen Valley Water Conservation and Drainage District (MVD)	142
Tonopah Irrigation District (TID)	143
Citizens Utilities Company[1] (Citizens)	149
Harquahala Valley Power District (HVPD)	153
Buckeye Water Conservation and Drainage District (Buckeye)	155
Roosevelt Irrigation District (RID)	158
Maricopa County Municipal Water Conservation District (MCMWCD)	168
City of Williams (Williams)	192
San Carlos Indian Irrigation Project (SCIIP)	201
Maricopa County Municipal Water Conservation District at Lake Pleasant (MCMLk.Pl.)	209

[1] AFS–FPC Rate Schedule in effect during the refund period.

Copies of the filing have been served upon the California Public Utilities Commission and the Arizona Corporation Commission.

Comment date: February 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Cinergy Services, Inc.

[Docket No. ER98–1197–000]

Take notice that on December 24, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Power Sales Standard Tariff (the Tariff) entered into between Cinergy and Canadian Niagara Power Company (CNP).

Cinergy and CNP are requesting an effective date of December 1, 1997.

Comment date: February 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Northeast Utilities Service Company

[Docket No. ER98–1199–000]

Take notice that on December 24, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with the Town of Littleton, New Hampshire Water & Light Department (Littleton), under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to Littleton.

NUSCO requests that the Service Agreement become effective January 1, 1998.

Comment date: February 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Wisconsin Electric Power Company

[Docket No. ER98–1200–000]

Take notice that on December 24, 1997, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2). Wisconsin Electric respectfully requests an effective date of January 2, 1998. Wisconsin Electric is authorized to state that Tenaska Power Services Company joins in the requested effective date.

Copies of the filing have been served on Tenaska Power Services Company, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: February 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Additional Signatories to PJM Interconnection, L.L.C. Operating Agreement

[Docket No. ER98–1201–000]

Take notice that on December 23, 1997, the PJM Interconnection, L.L.C. (PJM), filed, on behalf of the Members of the LLC, membership application's for MidCon Gas Services Corporation and Mc2. PJM requests an effective on the day after received by FERC.

Comment date: February 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Texas Utilities Electric Company

[Docket No. ER98–1202–000]

Take notice that on December 23, 1997, Texas Utilities Electric Company (TU Electric), tendered for filing certain unexecuted Transmission Service Agreements (TSA's), with customers receiving service from TU Electric pursuant to TU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections (TFO Tariff).

By its October 15, 1997, Order in Docket No. ER97–3113–000, the Commission accepted the revised TFO Tariff for filing, with modifications, to become effective as of January 1, 1997. TU Electric requests an effective date for the TSA's that corresponds to the January 1, 1997, effective date of the revised TFO Tariff. Copies of the filing were served on customers receiving service under the TSA's, as well as the Public Utility Commission of Texas.

Comment date: February 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Public Service Company of New Mexico

[Docket No. ER98–1204–000]

Take notice that on December 24, 1997, Public Service Company of New Mexico (PNM), submitted for filing an executed service agreement, dated December 17, 1997, for firm point-to-point transmission service and ancillary service, between PNM Transmission Development and Contracts (Transmission Provider) and PNM International Business Development (Transmission Customer), under the terms of PNM's Open Access Transmission Service Tariff. This service agreement supersedes an existing service agreement between the Transmission Provider and the Transmission Customer which will expire by its own terms on December 31, 1997.

Under the Service Agreement, Transmission Provider provides to Transmission Customer reserved capacity from PNM's San Juan Generating Station 345 kV Switchyard (point of receipt) to PNM's Luna 345 kV Switching Station (point of Delivery) for the period beginning January 1, 1998 and ending December 31, 1998.

Comment date: February 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Central Illinois Light Company

[Docket No. ER98–1205–000]

Take notice that on December 24, 1997, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and two service agreements for two new customers, Tenaska Power Services Co., and Griffin Energy Marketing L.L.C.

CILCO requested an effective date of December 7, 1997.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: February 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1989 Filed 1–27–98; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5955–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Hazardous Waste Combustors; Revised Standards; Final Rule—Part 1

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following new Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Hazardous Waste Combustors; Revised Standards; Final Rule—Part 1, EPA No. 1840.01. The ICR describes the nature of the information collection and its expected burden and cost.

DATES: Comments must be submitted on or before February 27, 1998.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1840.01.

SUPPLEMENTARY INFORMATION:

Title: Hazardous Waste Combustors; Revised Standards; Final Rule—Part 1, EPA No. 1840.01. This is a new collection.

Abstract: On April 19, 1996, EPA proposed revised standards for hazardous waste combustors (HWCs) (61 FR 17358), defined as incinerators, cement kilns, and light-weight aggregate kilns that burn hazardous waste. These rules were proposed under joint authority of the Resource Conservation and Recovery (RCRA) and the Clean Air Act (CAA), as amended. The proposal fulfills the Agency's commitments to meet CAA requirements and also to upgrade the emission standards for hazardous waste burning facilities, as outlined in the 1994 Hazardous Waste Combustion Strategy.

In the rulemaking entitled "Hazardous Waste Combustors; Revised Standards; Final Rule—Part 1," EPA finalizes some of the requirements

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contained in the earlier proposal. This ICR covers reporting and recordkeeping provisions of the new requirements. The changes to the RCRA regulations: (1) outline provisions for excluding generators of comparable/syngas fuel from the definition of solid waste under 40 CFR part 261; and (2) provide new RCRA permit modification provisions to make it easier for facilities to make changes to existing permits when adding air pollution equipment or making other changes in equipment or operation needed to comply with the upcoming air emission standards.

In addition to the RCRA changes, under the CAA the rule establishes 40 CFR part 63, subpart EEE, which applies to HWCs. As a first step in establishing national emission standards for hazardous air pollutants (NESHAPs) for HWCs (these standards were proposed on April 19, 1996 at 61 FR 17358), part 63, subpart EEE provides public notification and regulatory notification of intent to comply (NIC) provisions. These provisions require HWCs to submit materials to EPA outlining their plan to comply with the forthcoming NESHAP standards, which will be promulgated at a later date. These provisions also allow for extensions to the compliance period to promote the installation of cost effective pollution prevention technologies to replace or supplement emission control technologies for meeting the emission standards.

EPA is collecting the information for this rule to ensure adequate environmental protection. The information being collected is primarily for facilities to demonstrate to EPA that they meet the necessary criteria for regulatory exemptions. The information is necessary for EPA to ensure that the specified facilities are appropriately regulated, but that duplicate regulation is not taking place. EPA also requires the HWC notification procedures to ensure stakeholder involvement and to ensure that facilities are preparing to comply with the forthcoming NESHAPs for HWCs. Responses to this information collection are mandatory according to the Resource Conservation and Recovery Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The proposed rule was published on April 19, 1996 (61 FR 17358); and no comments were received on the information requirements.

Burden Statement: For those generators applying for the comparable/syngas fuel exemption, the average annual respondent reporting burden is estimated to be 0.5 hours per facility and the average annual recordkeeping burden is estimated to be 24.9 hours per facility. For burners of comparable/syngas fuels, there is no reporting burden and the annual recordkeeping burden is 3.3 hours per facility. For HWCs complying with the notification of intent to comply regulations, the average annual reporting burden (to EPA) is 60.4 hours per facility and the average annual recordkeeping burden is 9.0 hours per facility. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Hazardous waste combustors.

Estimated Number of Respondents: 315.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 12,905 hours.

Estimated Total Annualized Cost Burden: $1,660,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1840.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503

Dated: January 22, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–2084 Filed 1–27–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5954–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Clean Water Act State Revolving Fund Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Clean Water Act State Revolving Fund Program, OMB Control Number 2040–0118, and expiration date of 02/28/98. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 27, 1998.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1391.04.

SUPPLEMENTARY INFORMATION:

Title: Clean Water Act State Revolving Fund Program; OMB Control No. 2040–0118; EPA ICR No. 1391.04; expiring on 02 /28/98. This is a request for an extension of a currently approved collection.

Abstract: The Clean Water Act, as amended by "The Water Quality Act of 1987" (U.S.C. 1381–1387 *et seq.*), created a Title VI which authorizes grants to States for the establishment of State Water Pollution Control Revolving Funds (SRFs). The information activities are pursuant to section 606 of the Act, and SRF Interim Final Rule (March 1990).

The 1987 Act declares that water pollution control revolving loan funds shall be administered by an instrumentality of the State subject to the requirements of the Act. This means that each State has a general

responsibility for administering its revolving fund and must take on certain specific responsibilities in carrying out its administrative duties. The information collection activities will occur primarily at the program level through the Capitalization Grant Application and Agreement / Intended Use Plan, Annual Report, State Audit, and Financial Assistance Application Review.

The State must prepare a Capitalization Grant Application and Agreement that includes an Intended Use Plan (IUP) outlining in detail how it will use the program funds. The agreement is an instrument by which the State commits to manage its revolving fund program.

The State must agree to complete and submit an Annual Report on the uses of the fund. The report will indicate how activities financed will contribute toward meeting the goals and objectives and provides information on loan recipients, loan amounts, loan terms and project categories of eligible costs.

The State will conduct or have conducted a financial audit of its CWSRF program. The audit report will contain an opinion on the financial statements of the CWSRF, a report on its internal controls, and a report on whether the compliance requirements have been met.

Since the States provide assistance to local applicants, the States will review completed loan applications and verify that proposed projects meet all applicable Federal and State requirements.

EPA will use the Capitalization Grant Agreement and Application / Intended Use Plan, Annual Report, and Annual Audit to conduct its oversight responsibilities as mandated by the CWA.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 11/21/97 (FRL–5926–1); no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 1,915 hours per State response and 60 hours per local community response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Fifty states, Puerto Rico, and the recipients of assistance in these jurisdictions.

Estimated Number of Respondents: 1,530.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 186,405 hours.

Estimated Total Annualized Cost Burden: $3,573,740.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1391.04 and OMB Control No. 2040–0118 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: January 22, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–2086 Filed 1–27–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5955–5]

Clean Air Advisory Committee Notice of Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990 to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical, scientific, and enforcement policy issues.

OPEN MEETING POLICY: Pursuant to 5 U.S.C. App. 2 section 10(a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold its next open meeting on Wednesday, February 18, 1998, from 8:30 a.m., to 3:00 p.m. at Omni Shoreham Hotel, 2500 Calvert Street, N.W., Washington, D.C. Seating will be available on a first come, first served basis. Four Subcommittees will conduct meeting on Tuesday, February 17, 1998, at the same hotel at approximately the following time periods: (1) The Energy, Clean Air and Climate Change Subcommittee from 10:00 a.m. to 2:00 p.m.; (2) the Linking Transportation, Land Use and Air Quality Concerns Subcommittee from 1:00 p.m. to 5:00 p.m.; (3) the Permits/NSR/Toxics Subcommittee from 5:00 p.m. to 9:00 p.m.; and (4) the Economic Incentives and Regulatory Innovations Subcommittee from 5:00 p.m. to 9:00 p.m.

INSPECTION OF COMMITTEE DOCUMENTS: The Committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Therefore, these documents, together with CAAAC meeting minutes, will be available by contacting Committee DFO Paul Rasmussen at (202) 260–6877.

FOR FURTHER INFORMATION: Concerning this meeting of the CAAAC, please contact Paul Rasmussen, Office of Air and Radiation, US EPA (202) 260–6877, Fax (202) 260–4185 or by mail at US EPA, Office of Air and Radiation (Mail Code 6102), Washington, D.C. 20460. If you would like to receive an agenda for the CAAAC meeting, please leave your fax number on Mr. Rasmussen's voice mail and it will be forwarded to you.

Dated: January 22, 1998.

Robert D. Brenner,

Acting Assistant Administrator For Air and Radiation.

[FR Doc. 98–2089 Filed 1–27–98; 8:45 am]

BILLING CODE 6560–50–M

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–5955–6]

Public Stakeholders Meeting on the Process for Implementing the Guidelines for Carcinogen Risk Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: This document announces a stakeholders meeting sponsored by the Environmental Protection Agency's (EPA's) Science Policy Council. EPA is presenting a process for reassessing cancer assessments as part of EPA's initiative for implementing the Guidelines for Carcinogen Risk Assessment. The Guidelines were proposed in 1996. EPA also proposed an implementation process for reassessing cancer assessments in 1996 and is revising the process based on public comments. EPA is now seeking additional public comment and input on its current implementation process. The implementation process will be finalized at the same time as the Guidelines for Carcinogen Risk Assessment. The agenda will include opportunities for short stakeholder presentations, as well as structured, informal discussion based on the issues.

DATES: The meeting will begin on Tuesday, February 24, 1998, at 8:30 a.m. and end on Wednesday, February 25, 1998, at approximately 12 noon. Members of the public are invited to attend.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel at 18th and Eads Streets in Arlington, VA.

Resolve, Inc., an EPA contractor, has sub-contracted to The Mediation Institute, the logistical support and facilitation for the meeting. EPA urges participants to pre-register with Alana Knaster or Janet Pittman, The Mediation Institute, 4508 Park Cordero, Calabasas, CA 91302, Tel: 818/591–9526, FAX: 818/591–0980 as soon as possible. Space is limited. Registrants will receive an information packet containing the draft meeting agenda, and a discussion document outlining EPA's position on several major issues, along with other meeting information.

PRESENTATIONS: Members of the public who are interested in making a short presentation on a particular issue at the stakeholder meeting are requested to sign up for one of the topic areas at the time of their registration. EPA would appreciate receiving a short summary of the presentation, which should be no more than one page. Presentations are limited to 5 minutes. Because EPA is seeking a variety of opinions, the facilitator will ensure that there is a balance of viewpoints.

SUBMITTING COMMENTS: To ensure that stakeholders who are unable to attend the meeting may present their views, EPA will also accept short written comments on the implementation process until March 27, 1998. Comments should be submitted to: Alana Knaster, same address and phone numbers as above.

Please note that all comments responding to this notice will be placed in a public administrative record. For that reason, commentors should not submit personal information such as medical data or home addresses, confidential business information or information protected by copyright. Due to limited time and resources, acknowledgments will not be sent.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, as well as questions about the meeting, please contact Alana Knaster, same address and phone numbers as above. The main discussion document containing the implementation process can be obtained from the EPA World Wide Web site at http://www.epa.gov/ncea/riskassf.htm.

SUPPLEMENTARY INFORMATION: EPA is presenting a process for implementing the Guidelines for Carcinogen Risk Assessment for reassessing cancer assessments. The Guidelines were developed under the auspices of the EPA's Risk Assessment Forum (RAF) and proposed in 1996 (61 FR 17960). EPA also proposed an implementation process for reassessing cancer assessments in 1996 (61 FR 32799) and is revising the process based on public comments. The implementation process will be finalized at the same time as the Guidelines for Carcinogen Risk Assessment.

It is expected that once the Guidelines become final, existing cancer assessments will need reassessment based upon the revised Guidelines. The implementation process will help the EPA and the public select and prioritize the chemicals that would need a reassessment. It will also allow a selection of new assessments to be incorporated in the schedule for the reassessments.

The four main issues for which EPA specifically seeks public opinion include: (1) The implementation process, including opportunities for public input, (2) the criteria for selection of chemicals for reassessment, (3) whether small changes can be made in toxicity assessments without completely reassessing all toxicity information, and (4) the form of external review for identification and prioritization of chemicals.

Following this meeting, EPA will use the comments to finalize the implementation process for cancer reassessments once the Guidelines for Carcinogen Risk Assessment are final.

Dated: January 22, 1998.

Dorothy E. Patton,

Director, Office of Science Policy.

[FR Doc. 98–2083 Filed 1–27–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–787; FRL–5763–6]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–787, must be received on or before February 27, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Amelia M. Acierto	Rm. 4W60, 4th. floor, CSI #2, 703–308–8377, e-mail:acierto.amelia@epamail.epa.gov.	2800 Crystal Drive, Arlington, VA
Adam Heyward	Rm. 206, CM #2, 703–305–5518, e-mail: heyward. adam@epamail.epa.gov.	1921 Jefferson Davis Hwy., Arlington, VA
Joseph Tavano	Rm. 214, CM #2, 703–305–6411, e-mail: tavano.joseph@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–787] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–787] and appropriate petition number. Electronic comments on notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 20, 1998

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Gowan Company

PP 6F4738

In May, 1996, EPA received a pesticide petition (PP 6F4738) from Gowan Company, P. O. Box 5569, Yuma, AZ 85366-5569. The petition proposed, pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish tolerances for the acaricide hexythiazox and its metabolites in or on the raw agricultural commodities stone fruits (except plums) at 1 part per million (ppm), almonds at 0.2 ppm and almond hulls at 10 ppm, and also in milk, cattle meat and cattle fat at 0.05 ppm, and cattle meat byproducts at 0.1 ppm (April 30, 1997, 62 FR 23455-23457) (FRL-5600-8). In April 1997, the registrant amended the tolerance petition by proposing to establish a tolerance for stone fruits including plums at 1 ppm, a tolerance for prunes at 5 ppm, and a tolerance for all tree nuts at 0.2 ppm. The proposed tolerances for animal products were unchanged. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition. The proposed analytical method is high performance liquid chromatography with an ultraviolet detector. As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act (FQPA) Pub. L. 104-170, Gowan Company included in the petition a summary of the petition and authorization for the summary to be published in the Federal Register in a notice of receipt of the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of hexythiazox in apples, citrus, grapes and pears has been studied. The major portion of the residue is parent compound. The metabolites are hydroxycyclohexyl and ketocyclohexyl analogs of hexythiazox and the amide formed by loss of the cyclohexyl ring.

2. *Analytical method.* An adequate analytical method (HPLC with UV detection) is available for enforcement purposes. Parent compound and all of its metabolites are converted to a common moiety before analysis.

3. *Magnitude of residues.* Twenty-four stone fruit residue trials were conducted over 3–years. The geographic distribution of the trials agrees with the recommendation given in the "EPA Residue Chemistry Guidance"(1994). In these trials, the maximum combined residues of hexythiazox and its metabolites were 0.52 ppm. Twelve tree nut residue trials were conducted over 4 years. In these trials, the maximum combined residues of hexythiazox and its metabolites were 0.17 ppm in almond nutmeat and 7.5 ppm in the raw agricultural commodity almond hulls.

B. Toxicological Profile

1. *Acute toxicity.* The acute oral and dermal LD_{50} of technical hexythiazox is greater than 5,000 milligram/kilograms (mg/kg), and the 4-hour acute inhalation LC_{50} is greater than 2 mg/L. It is not a dermal irritant or sensitizer and is a mild eye irritant.

2. *Genotoxicity.* The following genotoxicity tests were all negative:

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Ames gene mutation, CHO gene mutation, CHO chromosome aberration, mouse micronucleus and rat hepatocyte unscheduled DNA synthesis.

3. *Reproductive and developmental toxicity.* Hexythiazox has not been observed to induce developmental or reproductive effects. The lowest reproductive or developmental no-observed-effect-level (NOEL) observed was 200 milligram/kilograms/day (mg/kg/day), the highest dose tested, in a 2-generation rat reproduction study.

4. *Subchronic toxicity.* The Office of Pesticide Programs has established the RfD for hexythiazox at 0.025 mg/kg/day. The RfD for hexythiazox is based on a 1–year dog feeding study with a NOEL of 2.5 mg/kg/day and an uncertainty factor of 100. The endpoint effect of concern was hypertrophy of the adrenal cortex in both sexes, decreased red blood cell counts, hemoglobin content and hematocrit in males.

5. *Chronic toxicity.* The Agency has classified hexythiazox as a category C (possible human) carcinogen based on an increased incidence of hepatocellular carcinomas ($p = 0.028$) and combined adenomas/carcinomas ($p = 0.024$) in female mice at the highest dose tested (1,500 ppm) when compared to the controls as well as a significantly increased ($p > 0.001$) incidence of pre-neoplastic hepatic nodules in both males and females at the highest dose tested. The decision supporting a category C classification was based primarily on the fact that only one species was affected and mutagenicity studies were negative. In classifying hexythiazox as a category C carcinogen, the Agency concluded that a quantitative estimate of the carcinogenic potential for humans should be calculated because of the increased incidence of liver tumors in the female mouse. A Q^{1*} of 0.039 $(mg/kg/day)^{-1}$ in human equivalents was calculated.

C. Aggregate Exposure

Tolerances have been established (40 CFR 180.448) for the combined residues of hexythiazox [trans-5-(4-chlorophenyl)-N-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide] and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety in or on apples at 0.02 ppm and pears at 0.3 ppm. The nature and metabolism of hexythiazox in plants and animals is adequately understood.

Hexythiazox is also registered for use on outdoor ornamental plants by commercial applicators only. It is believed that non-occupational exposure from this use is very low. Hexythiazox is not registered for greenhouse, lawn, garden, or residential use. The environmental fate of hexythiazox has been evaluated, and the compound is not expected to contaminate groundwater or surface water to any measurable extent.

1. *Dietary exposure.* The Agency has calculated in the **Federal Register** of February 21, 1996 (61 FR 6152-6154) (FRL-5350-6), that current uses on apples and pears would result in an exposure of 0.000051 mg/kg/day for the U.S. population, assuming that all residues are at tolerance levels and 100% of the crops are treated. Non-nursing infants, the subgroup having the highest exposure, would have an exposure of 0.000600 mg/kg/day. Using the same conservative assumptions, it is calculated that the current and proposed uses together would result in an exposure of 0.001133 mg/kg for the U.S. population and 0.007256 mg/kg/day for non-nursing infants, which remains the most highly exposed subgroup.

Actual exposure will be much lower, however. Only a small fraction of these crops will be treated with hexythiazox, and average residues are far below the tolerance levels. For example, residues in apples treated at 10 times the currently approved application rate remained below the limit of quantitation, 0.01 ppm. Also, residues in apple juice are expected to be less than 50% of the residue level in the whole fruit. Average residues in stone fruits except cherries are expected to be 7% of the proposed tolerance level, average residues in cherries are expected to be 11% of the tolerance level and average residues in almond nutmeat are expected to be below 20% of the proposed tolerance level. Furthermore, only a very small percentage of crops (less than 1% up to 5%, depending on the crop) are expected to be treated with hexythiazox. When actual residues rather than tolerance levels and the percentage of treated crop are taken into account, then the actual exposure is estimated to be 0.0000069 mg/kg/day for the U.S. population.

2. *Drinking water.* The Agency has not conducted a detailed analysis of potential exposure to hexythiazox via drinking water or outdoor ornamental plants. However, it is believed that chronic exposure from these sources is very small.

3. *Non-dietary exposure.* No developmental, reproductive or mutagenic effects have been observed with hexythiazox. Therefore, an analysis of acute exposure has not been conducted.

D. Cumulative Effects

At this time the Agency has not reviewed available information concerning the potentially cumulative effects of hexythiazox and other substances that may have a common mechanism of toxicity. For purposes of this petition only, the Agency is considering only the potential risks of hexythiazox in its aggregate exposure.

E. Determination of Safety for U.S. Population

1. *Chronic risk.* The Agency has calculated (FR 61 6152-6154), assuming that residues are at tolerance levels and 100% of crops are treated, that the current use on apples and pears utilizes 0.2% of the reference dose (RfD) for the U.S. population and 2.4% of the RfD for non-nursing infants. Using these same assumptions, it is calculated that all current and proposed uses would result in TMRCs equivalent to 4.5% of the RfD for the U.S. population and 29.0% of the RfD for non-nursing infants. However, when actual residues rather than tolerance levels and the percent of crop treated are taken into account, actual chronic risk for the U.S. population is expected to be only 0.43% of the RfD.

The actual dietary carcinogenic risk to the U.S. population is calculated to be 2.7×10^{-7}, which is below the Agency's criterion of 1×10^{-6}.

2. *Acute risk.* An estimate of acute risk with this compound has not been conducted since no acute reproductive or developmental effects have been observed.

F. Determination of Safety for Infants and Children

In assessing the potential for additional sensitivity of infants and children to residues of hexythiazox, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during pre-natal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

No developmental or reproductive effects have been observed in any study with hexythiazox. The lowest acute NOEL was 2,400 ppm in the diet (200 mg/kg/day), the highest dose tested, in the 2-generation rat reproduction study. In the rat developmental study, the maternal and fetotoxic NOEL was 240 mg/kg/day and the developmental NOEL was 2,160 mg/kg/day, the highest dose tested. In the rabbit developmental study, the maternal and developmental NOEL was 1,080 mg/kg/day, the highest dose tested.

Taking into account current toxicological data requirements, the database for hexythiazox relative to pre-natal and post-natal effects is complete. In the rat developmental study, the NOELs for maternal toxicity and fetotoxicity were the same, which suggests that there is no special pre-natal sensitivity in the absence of maternal toxicity. Furthermore, the lowest developmental or reproductive NOEL is two orders of magnitude higher than the chronic NOEL on which the RfD is based. It is concluded that there is a reasonable certainty of no harm to infants and children from aggregate exposure to hexythiazox residues.

G. International Tolerances

Codex maximum residue levels (MRLs) of 1 mg/kg (1 ppm) have been established for residues of hexythiazox in cherries and peaches. The U.S. tolerance proposal for stone fruits is in harmony with these MRLs. There are no Codex MRLs for the other commodities in this petition. There are no Canadian or Mexican MRLs for hexythiazox. (Adam Heyward)

2. Monsanto Company

PP 5E4503

EPA has received a pesticide petition (PP 5E4503) from Monsanto Company, 700 14th St., NW., Washington, DC 20005, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the inert ingredient 4-(dichloroacetyl)-1-oxa-4-azospiro [4.5] decane (MON 4660) in or on the raw agricultural commodity, corn, resulting from early post-emergence applications. The analytical method, which determines the residue by gas-liquid chromatography using an electron-capture detector has been reviewed by the Agency and accepted for enforcement purposes. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of MON 4660 in corn was studied with radiolabeled MON 4660 in the greenhouse and the field. Parent MON 4660 was not found in any of the corn samples. MON 4660 is rapidly and extensively metabolized to a large number of highly polar metabolites characterized as weak organic acids or residues conjugated to natural sugars.

2. *Analytical method.* Monsanto has developed an analytical method using gas liquid chromatography with electron capture detection that has a verified limit of quantitation of 0.005 ppm for parent MON 4660 in all corn matrices. This method has been validated by the Agency.

3. *Magnitude of residues.* Monsanto has conducted 14 residue field studies with MON 4660 applied pre-emergence to corn. Analysis of corn forage, silage, fodder and grain showed no residues above the limit of quantitiation of 0.005 ppm. Two residue field studies with MON 4660 applied pre-emergence to corn at rates 20 and 28 times the proposed maximum use rate showed no measurable residues (<0.005 ppm) in corn grain. Based on these results it was concluded that the potential for measurable concentration of MON 4660 in processed commodities of corn was very low. Eight residue field trials (2 samples per trial) were conducted with MON 4660 applied early post-emergence with corn plants 6 to 11 inches tall. Analysis of corn forage, fodder and grain again showed no measurable residues (<0.005 ppm). These residues, derived from postemergence applications are below the established Sensitivity of Method Tolerance for corn (0.005 ppm).

B. Toxicological Profile

The toxicology data considered in support of the revised tolerance include the following:

1. *Acute toxicity*— i. An acute oral toxicity study in the rat with an LD_{50} of 2,600 mg/kg. Toxicity Category III.

ii. An acute dermal toxicity study in the rabbit with an LD_{50} of > 5,000 mg/kg. Toxicity Category IV.

iii. An acute inhalation study in the rat with a 4-hour inhalation LC_{50} of 0.27 mg/L. Toxicity Category III.

iv. A rabbit eye irritation study in which 4-(dichloroacetyl)-1-oxa-4-azospiro [4.5] decane is determined not to be an eye irritant. Toxicity Category III.

v. A dermal irritation study which exhibited slight skin irritation. Toxicity Category IV.

vi. A guinea pig dermal sensitization study in which 4-(dichloroacetyl)-1-oxa-4-azospiro [4.5] decane is determined to be a skin sensitizer.

2. *Genotoxicity.* Mutagenicity studies including *Salmonella typhimurium*/mammalian plate incorporation (Ames) assay, CHO/HGPRT gene mutation assay, DNA repair studies (rat hepatocytes), and *Salmonella*/mammalian activation gene mutation (Ames) assay were negative with and without activation.

3. *Reproductive and developmental toxicity*— i. A rat developmental effects study with a NOEL for maternal toxicity of 10 mg/kg/day and developmental toxicity of 75 mg/kg/day.

ii. A rabbit developmental effects study with a NOEL for maternal toxicity of 10 mg/kg/day and developmental toxicity of 30 mg/kg/day.

iii. A 2-generation reproduction study in the rat fed diet levels of 0, 10, 100, and 1,000 ppm. There were no treatment-related effects on mating, fertility or offspring survival in this study. The NOEL for toxicity in parental animals and offspring was 100 ppm (6 to 7 mg/kg/day). As there were no adverse effects on reproductive performance, the NOEL for reproductive toxicity was 1,000 ppm (57 to 72 mg/kg/day).

4. *Subchronic toxicity*— i. A 90–day oral toxicity study in the rat with a NOEL of 120 parts per million (ppm) or 12 mg/kg/day.

ii. A 90-day oral (gavage) study in the dog with a NOEL of 30 mg/kg/day, the highest dose tested.

5. *Chronic toxicity*— i. A mouse oncogenicity study in which 5 groups of 60 male and 60 female CD-1 mice were administered diets containing 4-(dichloroacetyl)-1-oxa-4-azospiro [4.5] decane at concentrations 0, 5, 80, 800 or 2,500 ppm for approximately 18 months. These concentrations corresponded to 0, 0.7, 10.7, 108 and 350 mg/kg/day in males and 0, 1, 16.8, 167 and 556 mg/kg/day in females. The primary target organs were liver, lung and stomach. The NOEL for both oncogenic and non-oncogenic effects was considered to be 10.7 mg/kg/day in males and 116.8 mg/kg/day in females.

ii. A chronic toxicity/oncogenicity study in rats in which 5 groups of 60 male and 60 female rats were administered diets containing 4-(dichloroacetyl)-1-oxa-4-azospiro [4.5] decane for approximately 23 months. Target concentrations were 0, 5, 50, 500, or 1,600 ppm for males and, 0, 5, 50, or 1,200 ppm for females. These concentrations correspond to 0, 0.2, 2.2, 22 and 71 mg/kg/day in males and 0, 0.3, 2.8, 29 and 69 mg/kg/day in females. The primary effects in this study occurred in the liver and stomach. The NOEL for oncogenic effects is 22 mg/kg/day in males and 29 mg/kg/day in females. The NOEL for non-

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oncogenic effects is 2.2 mg/kg/day in males and 2.8 mg/kg/day in females.

6. *Animal metabolism.* Because field trial residue data showed non-detectable residues of MON 4660 in corn, neither animal metabolism nor residue transfer studies with livestock were required. It is considered likely that metabolism will be similar to that of other dichloroacetamide safeners in mammals which are characterized by extensive metabolism and elimination of most of the residue from the body with very low levels of parent safener, if any, retained in the tissues. The major route of metabolism is typically glutathione conjugation followed by formation of an aldehyde intermediate which is then either oxidized to an oxamic acid or reduced to the corresponding alcohol.

7. *Metabolite toxicology.* The metabolism of MON 4660 is extensive and results in a large number of polar metabolites each of which is present in soil or corn plants in very low concentrations. These metabolites have not been identified as being of toxic concern.

Based on the available toxicity data, Monsanto believes the RfD for MON 4660 will be 0.02 mg/kg/day based on a 2–year feeding study in rats with a NOEL of 2.2 mg/kg/day and application of an uncertainty factor of 100. For cancer risk assessment for MON 4660, Monsanto believes that margin of exposure assessment should be calculated using the carcinogenic NOEL of 10.7 mg/kg/day observed in the mouse, which was the most sensitive species.

C. Aggregate Exposure

1. *Dietary exposure*— i. *Food.* Monsanto has used the Theoretical Maximum Residue Contribution as a conservative estimate of the potential dietary exposure for MON 4660. This approach assumes that 100% of all raw agricultural commodities for which tolerances have been established for acetochlor, bear tolerance-level (0.005 ppm) residues of MON 4660. This over-estimate of actual dietary exposure provides a quite conservative basis for risk assessment.

ii. *Drinking water.* Although MON 4660 is stable to hydrolyis and shows only a small amount of photodegradation in soil and in water, it is rapidly degraded in the soil. The aerobic soil half-life is approximately 18 days. This low persistence in the environment combined with the low application rate (maximum of 0.4 pound per acre) indicates that MON 4660 is not likely to be present in groundwater. Based on these considerations, Monsanto does not anticipate exposure to residues of MON 4660 in drinking water. The EPA has not established a Maximum Concentration Level or a health advisory level for residues of MON 4660 in drinking water.

2. *Non-dietary exposure.* MON 4660 is used only as a safener or antidote to the effects of acetochlor herbicide on corn seed or seedlings. It is sold only as part of acetochlor herbicide end-use products which are classified as Restricted Use by EPA which means they are used only by certified applicators and are not available to the general public. Herbicide products containing MON 4660 are not registered for residential, home owner, or other non-crop uses. They are thus not used in parks, school grounds, public buildings, roadsides or rights-of-way or other public areas. Commercial cornfields are generally located well away from public areas where incidental contact could occur. Therefore, the general public is very unlikely to have any non-dietary exposure to MON 4660.

D. Cumulative Effects

Monsanto has no reliable data or information to suggest that MON 4660 has toxic effects that arise from toxic mechanisms that are common to other substances. Therefore, a consideration of common toxic mechanism and cumulative effects with other substances is not appropriate for MON 4660, and Monsanto is considering only the potential effects of MON 4660 in this exposure assessment.

E. Safety Determination

1. *U.S. population*— i. *Chronic risk.* The conservative estimate of aggregate chronic exposure is 2.0 x 10^{-6} mg/kg/day. This potential exposure represents only 0.01% of the RfD of 0.02 mg/kg/day and provides a Margin of Exposure of 5,350,000 when compared to the 10.7 mg/kg/day carcinogenic reference point. EPA generally has no concern for exposures below 100% of the RfD and there are adequate margins of safety for cancer. Monsanto concludes there is a reasonable certainty of no harm resulting from exposure to MON 4660.

ii. *Acute risk.* The acute toxicity of MON 4660 is low, and there are no concerns for acute dietary, occupational or non-occupational exposures to MON 4660.

2. *Infants and children.* Employing the same conservative TMRC estimates of exposure used in the risk assessment for the general population, Monsanto has calculated that the aggregate exposures for nursing infants, non-nursing infants, children age 1–6 and children age 7–12 are less than one-tenth of 1% of the RfD for each group.

Monsanto notes the developmental toxicity NOELs for rats (75 mg/kg/day) and rabbits (30 mg/kg/day) are 34-fold and 14-fold higher than the NOEL of 2.2 mg/kg/day in the chronic rat study on which the RfD is based. This indicates that the RfD is adequate for assessing risk to children. Also, the developmental toxicity NOELs for rats and rabbits are higher than the NOELs for maternal toxicity (10 mg/kg/day in each specie) indicating that the offspring were no more sensitive to MON 4660 than were the parents.

In the 2-generation reproduction study in rats, the NOEL for pup toxicity (57-72 mg/kg/day) was higher than the NOEL for parental or systemic effects (6-7 mg/kg/day) indicating that offspring were no more sensitive to MON 4660 than were the parents. Also, the NOEL for pup toxicity (57-72 mg/kg/day) was 25 to 33-fold higher than the NOEL for chronic toxicity upon which the RfD is based.

Monsanto believes that these data do not indicate an increased pre-natal or post-natal sensitivity of children and infants to MON 4660 exposure and concludes that the 100-fold uncertainty factor used in the RfD is adequate to protect infants and children.

F. International Tolerances

The Codex Alimentarius Commission has not established a maximum residue level for MON 4660. (Amelia Acierto)

3. Rohm and Haas Company

PP 5F4587

EPA has received a pesticide petition (PP 5F4587) from Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106-2399, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of Tebufenozide, benzoic acid,3,5-dimethyl-,1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide in or on the raw agricultural commodity pecans at .05 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of tebufenozide in plants (apples, beets, grapes, rice and sugar) is adequately understood for the purposes of these tolerances. The metabolism of tebufenozide in all crops was similar and involves oxidation of the alkyl substituents of the aromatic rings primarily at the benzylic positions. The extent of metabolism and degree of oxidation are a function of time from application to harvest. In all crops, parent compound comprised the majority of the total dosage. None of the metabolites were in excess of 10% of the total dosage. The metabolism of tebufenozide in goats and hens proceeds along the same metabolic pathway as observed in plants. No accumulation of residues in tissues, milk or eggs occurred.

2. *Analytical method.* High performance liquid chromatographic (HPLC) analytical method using ultraviolet (UV) or mass selective detection has been developed for pecans. The method involves Soxhlet extraction with solvents, purification of the extracts by liquid-liquid partitions and final purification of the residues using solid phase extraction column chromatography. The limit of quantitation of the method is 0.01 ppm (HPLC) analytical method using (UV) or mass selective detection has been developed for pecans. The method involves Soxhlet extraction with solvents, purification of the extracts by liquid-liquid partitions and final purification of the residues using solid phase extraction column chromatography. The limit of quantitation of the method is 0.01 ppm.

B. Toxicological Profile

1. *Acute toxicity.* Tebufenozide has low acute toxicity. Tebufenozide Technical was practically non-toxic by ingestion of a single oral dose in rats and mice (LD_{50} > 5,000 mg/kg) and was practically non-toxic by dermal application (LD_{50} > 5,000 mg/kg). Tebufenozide Technical was not significantly toxic to rats after a 4-hr inhalation exposure with an LC_{50} value of 4.5 mg/L (highest attainable concentration), is not considered to be a primary eye irritant or a skin irritant and is not a dermal sensitizer. An acute neurotoxicity study in rats did not produce any neurotoxic or neuropathologic effects.

2. *Genotoxicity.* Tebufenozide technical was negative (non-mutagenic) in an Ames assay with and without hepatic enzyme activation and in a reverse mutation assay with E. *coli.* Tebufenozide technical was negative in a hypoxanthine guanine phophoribosyl transferase (HGPRT) gene mutation assay using Chinese hamster ovary (CHO) cells in culture when tested with and without hepatic enzyme activation. In isolated rat hepatocytes, tebufenozide technical did not induce unscheduled DNA synthesis (UDS) or repair when tested up to the maximum soluble concentration in culture medium. Tebufenozide did not produce chromosome effects *in vivo* using rat bone marrow cells or *in vitro* using Chinese hamster ovary cells (CHO). On the basis of the results from this battery of tests, it is concluded that tebufenozide is not mutagenic or genotoxic.

3. *Reproductive and developmental toxicity*— i. No Observable Effect Levels (NOELs) for developmental and maternal toxicity to tebufenozide were established at 1,000 mg/kg/day (Highest Dose Tested) in both the rat and rabbit. No signs of developmental toxicity were exhibited.

ii. In a 2–generation reproduction study in the rat, the reproductive/developmental toxicity NOEL of 12.1 mg/kg/day was 14-fold higher than the parental (systemic) toxicity NOEL 10 ppm 0.85 mg/kg/day. Equivocal reproductive effects were observed only at the 2,000 ppm dose.

iii. In a second rat reproduction study, the equivocal reproductive effects were not observed at 2,000 ppm (the NOEL equal to 149-195 mg/kg/day) and the NOEL for systemic toxicity was determined to be 25 ppm (1.9-2.3 mg/kg/day).

4. *Subchronic toxicity*— i. The NOEL in a 90–day rat feeding study was 200 ppm (13 mg/kg/day for males, 16 mg/kg/day for females). The Lowest Observed Effect Level (LOEL) was 2,000 ppm (133 mg/kg/day for males, 155 mg/kg/day for females). Decreased body weights in males and females was observed at the LOEL of 2,000 ppm. As part of this study, the potential for tebufenozide to produce subchronic neurotoxicity was investigated. Tebufenozide did not produce neurotoxic or neuropathologic effects when administered in the diets of rats for 3 months at concentrations up to and including the limit dose of 20,000 ppm (NOEL = 1,330 mg/kg/day for males, 1,650 mg/kg/day for females).

ii. In a 90–day feeding study with mice, the NOEL was 20 ppm (3.4 and 4.0 mg/kg/day for males and females, respectively). The LOEL was 200 ppm (35.3 and 44.7 mg/kg/day for males and females, respectively). Decreases in body weight gain were noted in male mice at the LOEL of 200 ppm.

iii. A 90–day dog feeding study gave a NOEL of 50 ppm (2.1 mg/kg/day for males and females). The LOEL was 500 ppm (20.1 and 21.4 mg/kg/day for males and females, respectively). At the LOEL, females exhibited a decrease in rate of weight gain and males presented an increased reticulocyte.

iv. A 10-week study was conducted in the dog to examine the reversibility of the effects on hematological parameters that were observed in other dietary studies with the dog. Tebufenozide was administered for 6 weeks in the diet to 4 male dogs at concentrations of either 0 or 1,500 ppm. After the 6th week, the dogs receiving treated feed were switched to the control diet for 4 weeks. Hematological parameters were measured in both groups prior to treatment, at the end of the 6–week treatment, after 2–weeks of recovery on the control diet and after 4–weeks of recovery on the control diet. All hematological parameters in the treated/recovery group were returned to control levels indicating that the effects of tebufenozide on the hemopoietic system are reversible in the dog.

v. In a 28-day dermal toxicity study in the rat, the NOEL was 1,000 mg/kg/day, the highest dose tested. Tebufenozide did not produce toxicity in the rat when administered dermally for 4–weeks at doses up to and including the limit dose of 1,000 mg/kg/day.

5. *Chronic toxicity*— i. A 1–year feeding study in dogs resulted in decreased red blood cells, hematocrit, and hemoglobin and increased Heinz bodies, reticulocytes, and platelets at the LOEL of 8.7 mg/kg/day. The NOEL in this study was 1.8 mg/kg/day.

ii. An 18-month mouse carcinogenicity study showed no signs of carcinogenicity at dosage levels up to and including 1,000 ppm, the highest dose tested.

iii. In a combined rat chronic/oncogenicity study, the NOEL for chronic toxicity was 100 ppm (4.8 and 6.1 mg/kg/day for males and females, respectively) and the LOEL was 1,000 ppm (48 and 61 mg/kg/day for males and females, respectively). No carcinogenicity was observed at the dosage levels up to 2,000 ppm (97 mg/kg/day and 125 mg/kg/day for males and females, respectively).

6. *Animal metabolism.* The adsorption, distribution, excretion and metabolism of tebufenozide in rats was investigated. Tebufenozide is partially absorbed, is rapidly excreted and does not accumulate in tissues. Although tebufenozide is mainly excreted unchanged, a number of polar metabolites were identified. These metabolites are products of oxidation of the benzylic ethyl or methyl side chains of the molecule. These metabolites were detected in plant and other animal (goat, hen, rat) metabolism studies.

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7. *Metabolite toxicology.* Common metabolic pathways for tebufenozide have been identified in both plants (apple, beet, grape, and sugar) and animals (goat, hen, rat). The metabolic pathway common to both plants and animals involves oxidation of the alkyl substituents (ethyl and methyl groups) of the aromatic rings primarily at the benzylic positions. Extensive degradation and elimination of polar metabolites occurs in animals such that residue are unlikely to accumulate in humans or animals exposed to these residues through the diet.

8. *Endocrine disruption.* The toxicology profile of tebufenozide shows no evidence of physiological effects characteristic of the disruption of the hormone estrogen. Based on structure-activity information, tebufenozide is unlikely to exhibit estrogenic activity. Tebufenozide was not active in a direct in vitro estrogen binding assay. No indicators of estrogenic or other endocrine effects were observed in mammalian chronic studies or in mammalian and avian reproduction studies. Ecdysone has no known effects in vertebrates. Overall, the weight of evidence provides no indication that tebufenozide has endocrine activity in vertebrates.

C. Aggregate Exposure

1. *Dietary exposure—i. Food.* Tolerances for residues of tebufenozide are currently expressed as benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2(4-ethylbenzoyl) hydrazide. Tolerances currently exist for residues on apples at 1.0 ppm (import tolerance) and on walnuts at 0.1 ppm (see 40 CFR 180.482). In addition to this action, a request to establish a tolerance for pecans, other petitions are pending for the following tolerances: pome fruit, livestock commodities, wine grapes (import tolerance), cotton, the crop subgroups leafy greens, leaf petioles, head and stem Brassica and leafy Brassica greens, and kiwifruit (import tolerance).

ii. *Acute risk.* No appropriate acute dietary endpoint was identified by the Agency. This risk assessment is not required.

iii. *Chronic risk.* For chronic dietary risk assessment, the tolerance values are used and the assumption that all of these crops which are consumed in the U.S. will contain residues at the tolerance level. The theoretical maximum residue contribution (TMRC) using existing and future potential tolerances for tebufenozide on food crops is obtained by multiplying the tolerance level residues (existing and proposed) by the consumption data which estimates the amount of those food products consumed by various population subgroups and assuming that 100% of the food crops grown in the U.S. are treated with tebufenozide. The Theoretical Maximum Residue Contribution (TMRC) from current and future tolerances is calculated using the Dietary Exposure Evaluation Model (Version 5.03b, licensed by Novigen Sciences Inc.) which uses USDA food consumption data from the 1989-1992 survey. With the current and proposed uses of tebufenozide, the TMRC estimate represents 20.1% of the RfD for the U.S. population as a whole. The subgroup with the greatest chronic exposure is non-nursing infants (less than 1 year old), for which the TMRC estimate represents 52.0% of the RfD. Using anticipate residue levels for these crops utilizes 3.38% of the RfD for the U.S. population and 12.0% for non-nursing infants. The chronic dietary risks from these uses do not exceed EPA's level of concern.

3. *Drinking water.* An additional potential source of dietary exposure to residues of pesticides are residues in drinking water. Review of environmental fate data by the Environmental Fate and Effects Division concludes taht tebufenozide is moderately persistent to persistent and mobile, and could potentially leach to groundwater and runoff to surface water under certain environmental conditions. However, in terrestrial field dissipation studies, residues of tebufenozide and its soil metabolites showed no downward mobility and remained associated with the upper layers of soil. Foliar interception (up to 60% of the total dosage applied) by target crops reduces the ground level residues of tebufenozide. There is no established Maximum Concentration Level (MCL) for residues of tebufenozide in drinking water. No drinking water health advisory levels have been established for tebufenozide.

There are no available data to perform a quantitative drinking water risk assessment for tebufenozide at this time. However, in order to mitigate the potential for tebufenozide to leach into groundwater or runoff to surface water, precautionary language has been incorporated into the product label. Also, to the best of our knowledge, previous experience with more persistent and mobile pesticides for which there have been available data to perform quantitative risk assessments have demonstrated that drinking water exposure is typically a small percentage of the total exposure when compared to the total dietary exposure. This observation holds even for pesticides detected in wells and drinking water at levels nearing or exceeding established MCLs. Considering the precautionary language on the label and based on our knowledge of previous experience with persistent chemicals, significant exposure from residues of tebufenozide in drinking water is not anticipated.

4. *Non-dietary exposure.* Tebufenozide is not registered for either indoor or outdoor residential use. Non-occupational exposure to the general population is therefore not expected and not considered in aggregate exposure estimates.

D. Cumulative Effects

The potential for cumulative effects of tebufenozide with other substances that have a common mechanism of toxicity was considered. Tebufenozide belongs to the class of insecticide chemicals known as diacylhydrazines. The only other diacylhydrazine currently registered for non-food crop uses is halofenozide. Tebufenozide and halofenozide both produce a mild, reversible anemia following subchronic/chronic exposure at high doses; however, halofenozide also exhibits other patterns of toxicity (liver toxicity following subchronic exposure and developmental/systemic toxicity following acute exposure) which tebufenozide does not. Given the different spectrum of toxicity produced by tebufenozide, there is no reliable data at the molecular/mechanistic level which would indicate that toxic effects produced by tebufenozide would be cumulative with those of halofenozide (or any other chemical compound).

In addition to the observed differences in mammalian toxicity, tebufenozide also exhibits unique toxicity against target insect pests. Tebufenozide is an agonist of 20-hydroxyecdysone, the insect molting hormone, and interferes with the normal molting process in target lepidopteran species by interacting with ecdysone receptors from those species. Unlike other ecdysone agonists such as halofenozide, tebufenozide does not produces symptoms which may be indicative of systemic toxicity in beetle larvae (Coleopteran species). Tebufenozide has a different spectrum of activity than other ecdysone agonists. In contrast to the other agonists such as halofenozide which act mainly on coleopteran insects, tebufenozide is highly specific for lepidopteran insects.

Based on the overall pattern of toxicity produced by tebufenozide in mammalian and insect systems, the compound's toxicity appears to be distinct from that of other chemicals, including organochlorines, organophosphates, carbamates, pyrethroids, benzoylureas, and other diacylhydrazines. Thus, there is no evidence to date to suggest that cumulative effects of tebufenozide and other chemicals should be considered.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described above and taking into account the completeness and reliability of the toxicity data, the dietary exposure to tebufenozide from the current and future tolerances will utilize 20.1% of the RfD for the U.S. population and 52.0% for non-nursing infants under 1-year old. Using anticipate residue levels for these crops utilizes 3.38% of the RfD for the U.S. population and 12.0% for non-nursing infants. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Rohm and Haas concludes that there is a reasonable certainty that no harm will result from aggregate exposure to tebufenozide residues to the U.S. population and non-nursing infants.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of tebufenozide, data from developmental toxicity studies in the rat and rabbit and two 2-generation reproduction studies in the rat are considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during pre-natal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity. Developmental toxicity was not observed in developmental studies using rats and rabbits. The NOEL for developmental effects in both rats and rabbits was 1,000 mg/kg/day, which is the limit dose for testing in developmental studies.

In the 2-generation reproductive toxicity study in the rat, the reproductive/ developmental toxicity NOEL of 12.1 mg/kg/day was 14-fold higher than the parental (systemic) toxicity NOEL (0.85 mg/kg/day). The reproductive (pup) LOEL of 171.1 mg/kg/day was based on a slight increase in both generations in the number of pregnant females that either did not deliver or had difficulty and had to be sacrificed. In addition, the length of gestation increased and implantation sites decreased significantly in F1 dams. These effects were not replicated at the same dose in a second 2-generation rat reproduction study. In this second study, reproductive effects were not observed at 2,000 ppm (the NOEL equal to 149-195 mg/kg/day) and the NOEL for systemic toxicity was determined to be 25 ppm (1.9-2.3 mg/kg/day).

Because these reproductive effects occurred in the presence of parental (systemic) toxicity and were not replicated at the same doses in a second study, these data do not indicate an increased pre-natal or post-natal sensitivity to children and infants (that infants and children might be more sensitive than adults) to tebufenozide exposure. FFDCA section 408 provides that EPA shall apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety is appropriate. Based on current toxicological data discussed above, an additional uncertainty factor is not warranted and the RfD at 0.018 mg/kg/day is appropriate for assessing aggregate risk to infants and children. Rohm and Haas concludes that there is a reasonable certainty that no harm will occur to infants and children from aggregate exposure to residues of tebufenozide.

F. International Tolerances

There are no approved CODEX maximum residue levels (MRLs) established for residues of tebufenozide. (Joseph Tavano)

[FR Doc. 98-2088 Filed 1-27-98; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00518; FRL-5761-7]

Test Guidelines; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA has established a unified library for Test Guidelines issued by the Office of Prevention, Pesticides and Toxic Substances (OPPTS), and is announcing the availability of final test guidelines for Series 835—Fate, Transport and Transformation. These final guidelines are for the Office of Pollution Prevention and Toxics (OPPT) and have been harmonized with test guidelines of the Organization for Economic Cooperation and Development (OECD). The goals of the project include the formulation of

Development (OECD). The draft guidelines were made available by notice in the **Federal Register** (61 FR 16486, April 15, 1996)(FRL-5363-1) and were peer reviewed at a Scientific Advisory Panel (SAP) meeting on May 30, 1996. These final guidelines incorporate changes recommended by the SAP and other changes resulting from public comment. This notice also describes the unified library of OPPTS Test Guidelines. The Agency issues Federal Register notices periodically as new test guidelines are added to the OPPTS unified library.

ADDRESSES: The guidelines are available from the U.S. Government Printing Office, Washington, DC 20402 on *The Federal Bulletin Board.* By modem dial (202) 512-1387, telnet and ftp: fedbbs.access.gpo.gov (IP 162.140.64.19), or call (202) 512-0132 for disks or paper copies. The guidelines are also available electronically in ASCII and PDF (portable document format) from the EPA's World Wide Web site (http://www.epa.gov/epahome/research.htm) under the heading "Researchers and Scientists/Test Methods and Guidelines/Harmonized Test Guidelines."

FOR FURTHER INFORMATION CONTACT: For general information: By mail: *Toxic Substances Control Act (TSCA) information*: Contact the TSCA Hotline at: TATS/7408, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone number: (202) 554-1404; fax: (202) 554-5603, e-mail: TSCA-hotline@epamail.epa.gov.

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) information: Contact the Communications Services Branch (7506C), Field and External Affairs Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone number: (703) 305-5017; fax: (703) 305-5558.

For technical questions only on Series 835 OPPT test guidelines: Robert Boethling, (202) 260-3912, or e-mail: boethling.bob@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. EPA's Process for Developing a Unified Library of Test Guidelines

EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) has been engaged in a multi-year project to harmonize and/or update test guidelines among the Office of Pesticide Programs (OPP), the Office of Pollution Prevention and Toxics (OPPT), and the Organization for Economic Cooperation and Development (OECD). The goals of the project include the formulation of

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harmonized OPP and OPPT guidelines for those in common between the two programs, the harmonization of OPPT and/or OPP guidelines with those of the OECD, the updating of any guidelines unique to OPP or OPPT programs, and the addition of several new guidelines.

Testing guidelines that are changed substantively in the harmonization process or through other updating/amending activities, or which are new (e.g., for a previously unaddressed testing endpoint) will be made available for public comment by notice in the **Federal Register**. Additionally, EPA submits substantively revised and new test guidelines to peer review by expert scientific panels. Guidelines which are reformatted but not changed in any substantive way are not made available for public comment or submitted to peer review.

All final guidelines will be made available through the GPO Electronic Bulletin Board and the Internet on the EPA World Wide Web home page as a unified library of OPPTS Test Guidelines for use by either EPA program office. Printed versions of the unified library of OPPTS test guidelines will also be available to the public through the GPO. For purposes of this **Federal Register** notice, "publication" of the unified library of guidelines generally describes the availability of these final guidelines through the GPO and Internet. Because harmonization and updating is an ongoing task that will periodically result in modified guidelines, some guidelines being made available via GPO and Internet will be revised in the future. These efforts will ensure that industry is provided with testing guidelines that are current.

The test guidelines appearing in the unified library will be given numerical designations that are different from the designations provided at 40 CFR parts 158, 795, 796, 797, 798, and 799. OPPTS test guidelines will be published in 10 disciplinary series as follows:

Series 810—Product Performance Test Guidelines
Series 830—Product Properties Test Guidelines
Series 835—Fate, Transport and Transformation Test Guidelines
Series 840—Spray Drift Test Guidelines
Series 850—Ecological Effects Test Guidelines
Series 860—Residue Chemistry Test Guidelines
Series 870—Health Effects Test Guidelines
Series 875—Occupational and Residential Exposure Test Guidelines
Series 880—Biochemicals Test Guidelines
Series 885—Microbial Pesticide Test Guidelines

The Agency issues **Federal Register** notices periodically announcing any new test guidelines added to the OPPTS unified library. As each set of guidelines is published, it will be accompanied by a Master List which cross references the new OPPTS guideline numbers to the original OPP and OPPT numbers.

II. Series 835 Changes

Significant changes to the Series 835 test guidelines include addition of a new guideline, Biodegradability in Sea Water, in OPPTS 835.3160; recommendation of the alkali addition method in the Sealed Vessel Carbon Dioxide Production Test in OPPTS 835.3120; clarification of guideline scope with respect to redox conditions and recommendation of field temperature incubation in the Sediment/Water Microcosm Biodegradation Test in OPPTS 835.3180; discussion of the importance of maintaining influent dissolved organic carbon (DOC) levels and addition of language to permit periodic wastage of sludge in the Porous Pot Test in OPPTS 835.3220; and discussion of evidence supporting the contention that treated (deactivated) sludge retains the characteristics of viable sludge in the Activated Sludge Sorption Isotherm Test in OPPTS 835.1110. In addition, test guideline OPPTS 835.3400, Anaerobic Biodegradability of Organic Chemicals, is retained despite several negative comments on the method. Major revisions to this protocol are presently being considered in several fora (ASTM; ISO; OECD) and EPA intends to revisit this topic when consensus is reached on certain technical issues. Explicit test requirements for pesticide registration are set out in 40 CFR part 158 which refers to specific guidelines by guideline number. Studies initiated 45 days or more after final publication should be performed in accordance with the revised guidelines.

III. Public Record

A detailed description of the response to comments and the changes to each guideline are available under docket control number OPP–00518 in the Public Docket and Freedom of Information Section, Office of Pesticide Programs, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA; telephone 703–305–5805, or by mail: Public Docket and Freedom of Information Section, Office of Pesticide Programs, Field Operations Division (7506C), Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460.

IV. Notice of Availability of Final Test Guidelines

This notice announces the availability of final test guidelines for OPPT in the 835 Series. The following is the list of guidelines being made available at this time.

Series 835—Fate, Transport and Transformation Test Guidelines

OPPTS Number	Name	Existing Numbers			EPA Pub. no.
		OTS	OPP	OECD	712–C–
	Group A—Laboratory Transport Test Guidelines.				
835.1110	Activated sludge sorption isotherm	none	none	none	98–298
835.1210	Soil thin layer chromatography	796.2700	none	none	98–047
835.1220	Sediment and soil adsorption/desorption isotherm	796.2750	none	106	98–048
	Group B—Laboratory Abiotic Transformation Test Guidelines.				
835.2110	Hydrolysis as a function of pH	796.3500	none	111	98–057
835.2130	Hydrolysis as a function of pH and temperature	796.3510	none	none	98–059
835.2210	Direct photolysis rate in water by sunlight	796.3700	none	none	98–060
835.2310	Maximum direct photolysis rate in air from UV/visible spectroscopy	796.3800	none	none	98–066
	Group C—Laboratory Biological Transformation Test Guidelines.				
835.3100	Aerobic aquatic biodegradation	796.3100	none	none	98–075

Series 835—Fate, Transport and Transformation Test Guidelines—Continued

OPPTS Number	Name	Existing Numbers			EPA Pub. no.
		OTS	OPP	OECD	712–C–
835.3110	Ready biodegradability	796.3180, .3200, .3220, .3240, .3260	none	301	98–076
835.3120	Sealed-vessel carbon dioxide production test	none	none	none	98–311
835.3160	Biodegradability in sea water	none	none	306	98–351
835.3170	Shake flask die-away test	none	none	none	98–297
835.3180	Sediment/water microcosm biodegradation test	none	none	none	98–083
835.3200	Zahn-Wellens/EMPA test	796.3360	none	302B	98–084
835.3210	Modified SCAS test	796.3340	none	302A	98–085
835.3220	Porous pot test	none	none	none	98–301
835.3300	Soil biodegradation	796.3400	none	304A	98–088
835.3400	Anaerobic biodegradability of organic chemicals	796.3140	none	none	98–090
	Group E—Transformation Chemical-Specific Test Guidelines.				
835.5045	Modified SCAS test for insoluble and volatile chemicals	795.45	none	none	98–097
835.5154	Anaerobic biodegradation in the subsurface	795.54	none	none	98–098
835.5270	Indirect photolysis screening test: Sunlight photolysis in waters containing dissolved humic substances	795.70	none	none	98–099

List of Subjects

Environmental Protection, Test guidelines.

Dated: January 8, 1998.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 98–1769 Filed 1–27–98; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Submitted to OMB for Review and Approval

January 16, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 27, 1998. OMB Notification of Action is due on or before March 30, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: On October 17, 1997, the Commission released a Report and Order and Second Further Notice of Proposed Rulemaking, FCC 97–376, which addresses rules and policies concerning cable inside wiring. Among other things, this rulemaking amends the Commission's regulations relating to the disposition of cable home wiring and related issues including the sharing of molding, the demarcation point for multiple dwelling unit buildings ("MDUs"), loop-through cable wiring configurations, customer access to cable home wiring before termination of service, and signal leakage.

OMB Approval Number: 3060–0692.

Title: Home Wiring Provisions.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 30,500 (20,500 multichannel video program distributors and 10,000 multiple dwelling unit building owners).

Estimated Time Per Response: 5 minutes–20 hours.

Total Annual Burden to Respondents: 46,114 hours, calculated as follows: This collection (3060–0692) accounts for all information collection requirements that may come into play during the disposition of cable home wiring in single dwelling units, as well as the disposition of home run wiring and cable home wiring in MDUs. All multichannel video programming distributors ("MVPDs"), both cable and non-cable alike, are now subject to these disposition rules. Pursuant to the Paperwork Reduction Act, when modifying only portions of an information collection, agencies are still obligated to put forth the entire collection for public comment.

This information collection now accounts for the information collection requirement stated in 47 CFR 76.613,

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where MVPDs causing harmful signal interference may be required by the Commission's engineer in charge (EIC) to prepare and submit a report regarding the cause(s) of the interference, corrective measures planned or taken, and the efficacy of the remedial measures. Through the course of this rulemaking proceeding, the Commission identified this collection as not having previously been reported to OMB for approval. We estimate that no more than 10 interference reports will be submitted annually to the Commission's EIC, each having an average burden of 2 hours to prepare. (10 reports×2 hours = 20 hours). 47 CFR 76.620 applies the Commission's signal leakage rules to all non-cable MVPDs. Our rules require that each cable system perform an independent signal leakage test annually, therefore, non-cable MVPDs will now be subject to the same requirement. We recognize, however, that immediate compliance with these requirements may present hardships to existing non-cable MVPDs not previously subject to such rules. We will allow a five-year transition period from the effective date of these rules to afford non-cable MVPDs time to comply with our signal leakage rules other than § 76.613. The transition period will apply only to systems of those non-cable MVPDs that have been substantially built as of January 1, 1998. Considering non-cable MVPD systems that will be built as of January 1, 1998, we estimate that 500 new entities will be subject to signal leakage filing requirements, with an estimated burden of 20 hours per entity. (500 systems×20 hours = 10,000 hours). 47 CFR 76.802, Disposition of Cable Home Wiring, gives individual video service subscribers in single unit dwellings and MDUs the opportunity to purchase their cable home wiring at replacement cost upon voluntary termination of service. In calculating hour burdens for notifying individual subscribers of their purchase rights, we make the following assumptions: There are approximately 20,000 MVPDs serving approximately 72 million subscribers in the United States. The average rate of churn (subscriber termination) for all MVPDs is estimated to be 1% per month, or 12% per year. MVPDs own the home wiring in 50% of the occurrences of voluntary subscriber termination and subscribers or property owners already have gained ownership of the wiring in the other 50% of occurrences (e.g., where the MVPD has charged the subscriber for the wiring upon installation, has treated the wiring as belonging to the subscriber for tax purposes, or where state and/or local law treats cable home wiring as a fixture). Where MVPDs own the wiring, we estimate that they intend to actually remove the wiring 5% of the time, thus initiating the disclosure requirement. We believe in most cases that MVPDs will choose to abandon the home wiring because the cost and effort required to remove the wiring generally outweigh its value. The burden to disclose the information at the time of termination will vary depending on the manner of disclosure, e.g., by telephone, customer visit or registered mail. Virtually all voluntary service terminations are done by telephone. The estimated average time consumed in the process of the MVPD's disclosure and subscriber's election is 5 minutes (.083 hours). Estimated annual number of occurrences is 72,000,000×12%×50%×5%=216,000. (216,000×.083 hours=17,928 hours).

In addition, 47 CFR 76.802 states that if a subscriber in an MDU declines to purchase the wiring, the MDU owner or alternative provider (where permitted by the MDU owner) may purchase the home wiring where reasonable advance notice has been provided to the incumbent. According to the Statistical Abstracts of the United States, 1995 at 733 Table No. 1224, over 28 million people resided in MDUs with three or more units in 1993. We therefore estimate that there are currently 30 million MDU residents and that MDUs house an average of 50 residents, and so we estimate that there are approximately 600,000 MDUs in the United States. We estimate that 2,000 MDU owners will provide advance notice to the incumbent that the MDU owner or alternative provider (where permitted by the MDU owner) will purchase the home wiring where a terminating individual subscriber declines. The estimated average time for MDU owners to provide such notice is estimated to be 15 minutes (.25 hours). The estimated average time consumed in the process of the MVPD's subsequent disclosure and the MDU owner or alternative provider's election is 5 minutes (.083 hours). Estimated annual time consumed is 2,000 notifications×.333 hours=666 hours. 47 CFR 76.802 also states that, to inform subscribers of per-foot replacement costs, MVPDs may develop replacement cost schedules based on readily available information; if the MVPD chooses to develop such schedules, it must place them in a public file available for public inspection during regular business hours. We estimate that 50% of MVPDs will develop such cost schedules to place in their public files. Virtually all individual subscribers terminate service via telephone, and few subscribers are anticipated to review cost schedules on public file. The annual recordkeeping burden for these cost schedules is estimated to be 0.5 hours per MVPD. (20,000 MVPDs×50%×0.5 hours=5,000 hours). 47 CFR 76.804 Disposition of Home Run Wiring. We estimate the burden for notification and election requirements for building-by-building and unit-by-unit disposition of home run wiring as described below. Note that these requirements apply only when an MVPD owns the home run wiring in an MDU and does not (or will not at the conclusion of the notice period) have a legally enforceable right to remain on the premises against the wishes of the entity that owns or controls the common areas of the MDU or have a legally enforceable right to maintain any particular home run wire dedicated to a particular unit on the premises against the MDU owner's wishes. We use the term "MDU owner" to include whatever entity owns or controls the common areas of an apartment building, condominium or cooperative. For building-by-building disposition of home run wiring, the MDU owner gives the incumbent service provider a minimum of 90 days' written notice that its access to the entire building will be terminated. The incumbent then has 30 days to elect what it will do with the home run wiring. Where parties negotiate a price for the wiring and are unable to agree on a price, the incumbent service provider must elect among abandonment, removal of the wiring, or arbitration for a price determination. Also, regarding cable home wiring, when the MDU owner notifies the incumbent service provider that its access to the building will be terminated, the incumbent provider must, within 30 days of the initial notice and in accordance with our home wiring rules, (1) offer to sell to the MDU owner any home wiring within the individual dwelling units which the incumbent provider owns and intends to remove, and (2) provide the MDU owner with the total per-foot replacement cost of such home wiring. The MDU owner must then notify the incumbent provider as to whether the MDU owner or an alternative provider intends to purchase the home wiring not later than 30 days before the incumbent's access to the building will be terminated. For unit-by-unit disposition of home run wiring, an MDU owner must provide at least 60 days' written notice to the incumbent MVPD that it intends to permit multiple MVPDs to compete for the right to use the individual home run wires dedicated to each unit. The incumbent service provider then has 30 days to provide the MDU owner with a written election as to whether, for all of the incumbent's home run wires dedicated to individual subscribers who may later choose the alternative provider's service, it will remove the wiring, abandon the wiring, or sell the wiring to the MDU owner. In other words, the incumbent service provider will be required to make a single election for how it will handle the disposition of individual home run wires whenever a subscriber wishes to switch service providers; that election will then be implemented each time an individual subscriber switches service providers. Where parties negotiate a price for the wiring and are unable to agree on a price, the incumbent service provider must elect among abandonment, removal of the wiring, or arbitration for a price determination. The MDU owner also must provide reasonable advance notice to the incumbent provider that it will purchase, or that it will allow an alternative provider to purchase, the cable home wiring when a terminating individual subscriber declines. If the alternative provider is permitted to purchase the wiring, it will be required to make a similar election during the initial 30-day notice period for each subscriber who switches back from the alternative provider to the incumbent MVPD. According to the Statistical Abstracts of the United States, 1995 at 733 Table No. 1224, over 28 million people resided in MDUs with three or more units in 1993. We therefore estimate that there are currently 30 million MDU residents and that MDUs house an average of 50 residents, and so we estimate that there are approximately 600,000 MDUs in the United States. In many instances, incumbent service providers may no longer own the home run wiring or may continue to have a legally enforceable right to remain on the premises. Also, MDU owners may forego the notice and election processes for various other reasons, e.g., they have no interest in purchasing the home run or cable home wiring. We estimate that there will be approximately 12,500 notices and 12,500 elections made on an annual basis. The number of notices accounts for the occasions when the MDU owner simultaneously notifies the incumbent provider that: (1) It is invoking the home run wiring disposition procedures, and (2) whether the MDU owner or alternative provider intends to purchase the cable home wiring. It also accounts for those occasions when the MDU owner makes a separate notification regarding the purchase of cable home wiring. The number of elections accounts for instances when the incumbent elects to sell the wiring but the parties are unable to agree on a price, therefore necessitating a second election. We assume all notifications and elections (except when an individual subscriber is terminating service) will be in writing and take an average burden of 30 minutes (0.5 hours) to prepare. (25,000 notifications and elections×0.5 hours=12,500 hours).

Total Cost to Respondents: Total Annual Cost to Respondents: $37,510, estimated as follows: Under the annual operation and maintenance costs category, we estimate that stationery and postage costs for interference reports submitted to the Commission pursuant to § 76.613 to be $1 per report. (10 reports×$1=$10). We estimate stationery and postage costs for signal leakage filings to be $1 per filing. (500 filings×$1=$500). We estimate that 50% of the 20,000 MVPDs will annually develop cost schedules. We estimate recordkeeping expenses for these schedules to be $1 per MVPD. (20,000×50%×$1=$10,000). We estimate stationery and postage costs for the various disposition notifications and elections to be $1 per occurrence. (27,000 advance notices and notifications and elections×$1=$27,000). There are no estimated capital and start-up costs.

Needs and Uses: The various notification and election requirements in this collection (3060–0692) are set forth in order to promote competition and consumer choice by minimizing any potential disruption in service to a subscriber switching video providers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–2031 Filed 1–27–98; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Additional Item To Be Considered at Open Meeting Thursday, January 29, 1998

January 23, 1998.

The Federal Communications Commission will consider an additional item on the subject listed below at the Open Meeting scheduled for 9:30 a.m., Thursday, January 29, 1998, at 1919 M Street, N.W., Washington, D.C. See meeting notice published on January 27, 1998.

Item No., Bureau and Subject

4—Office of Engineering and Technology—Title: Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service (MM Docket No. 87–268). Summary: The Commission will consider petitions for reconsideration filed in response to the Commission's Sixth Report and Order regarding allotment of channels for digital television.

The prompt and orderly conduct of the Commission business requires that less than 7-days notice be given consideration of this additional item.

Action by the Commission January 23, 1998, Chairman Kennard and Commissioners Ness, Furchtgott-Roth, Powell and Tristani voting to consider this item.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800 or fax (202) 857–3805 and 857–3184. These copies are available in paper format and alternative media which includes, large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its__inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. For information on this service call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770; and from Conference Call USA (available only outside the Washington, D.C. metropolitan area), telephone 1–800–962–0044. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–2275 Filed 1–26–98; 3:55 pm]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1195–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1195–DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: January 14, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 1998:

Citrus, Lake, Orange and Sumter Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–2065 Filed 1–27–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1195–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1195–DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: January 12, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 1998:

Pasco County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–2066 Filed 1–27–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1195–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–1195–DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: January 14, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective January 14, 1998.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–2067 Filed 1–27–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1195–DR]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–1195–DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: January 6, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 6, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Florida, resulting from severe storms, high winds, tornadoes, and flooding beginning on December 25, 1997, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288 as amended, ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Paul Fay of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared major disaster:

Hernando, Hillsborough, Osceola, and Polk Counties for Individual Assistance.

All counties within the State of Florida are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 98–2068 Filed 1–27–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1198–DR]

Maine; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Maine, (FEMA–1198–DR), dated January 13, 1998, and related determinations.

EFFECTIVE DATE: January 15, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Maine, is hereby amended to include Individual Assistance in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 13, 1998:

The counties of Androscoggin, Cumberland, Franklin, Hancock, Kennebec, Knox, Lincoln, Penobscot, Piscataquis, Oxford, Sagadahoc, Somerset, Waldo, Washington, and York for Individual Assistance (already designated for Public Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Catherine H. Light,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–2072 Filed 1–27–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1198–DR]

Maine; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Maine, (FEMA–1198–DR), dated January 13, 1998, and related determinations.

EFFECTIVE DATE: January 15, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Maine, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 13, 1998:

Aroostook County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–2073 Filed 1–27–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1196–DR]

New York; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–1196–DR), dated January 10, 1998, and related determinations.

EFFECTIVE DATE: January 10, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 10, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of New York, resulting from severe winter and ice storms, high winds, and flooding beginning on January 5, 1998, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288 as amended, ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas. Further, you are authorized to provide reimbursement for debris removal and emergency protective measures under the Public Assistance program in the designated areas. Other forms of assistance may be added at a later date, as you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Barbara Russell of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared major disaster:

Clinton, Essex, Franklin, Jefferson, and St. Lawrence Counties for Individual Assistance and Categories A and B under the Public Assistance program.

All counties within the State of New York are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dated: January 13, 1998.

James L. Witt,

Director.

[FR Doc. 98–2070 Filed 1–27–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1196–DR]

New York; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New York, (FEMA–1196–DR), dated January 10, 1998, and related determinations.

EFFECTIVE DATE: January 12, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of New York, is hereby amended to include Categories C through G under the Public

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Assistance program in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 10, 1998:

Lewis County for Individual Assistance and Public Assistance.

Clinton, Essex, Franklin, Jefferson, and St. Lawrence Counties for Categories C through G under the Public Assistance program (already designated for Individual Assistance and Categories A and B under the Public Assistance program).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–2071 Filed 1–27–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1192–DR]

Commonwealth of the Northern Mariana Islands; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of the Northern Mariana Islands, (FEMA–1192–DR), dated December 8, 1997, and related determinations.

EFFECTIVE DATE: January 6, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of the Northern Mariana Islands, is hereby amended to include Hazard Mitigation in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 8, 1997:

All islands within the Commonwealth of the Northern Mariana Islands are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–2069 Filed 1–27–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 203–011279–006.

Title: The Latin America Agreement.

Parties: The Members of the following: Central America Discussion Agreement; Southeastern Caribbean Discussion Agreement; Hispaniola Discussion Agreement; U.S. Jamaica Discussion Agreement; Venezuela American Maritime Association; Caribbean Shipowners' Association; Aruba Bonaire Curacao Liner Association; Inter-American Freight Conference; Venezuelan Discussion Agreement; and Puerto Rico/Caribbean Discussion Agreement.

Synopsis: The proposed modification changes the name of the Agreement from the "Western Hemisphere Discussion Agreement" to the "Latin America Agreement", as well as making membership changes to the list of members of the Central America Discussion Agreement and the Inter-American Freight Conference.

Agreement No.: 203–011452–010

Title: Trans-Pacific Policing Agreement

Parties: American President Lines, Ltd.; Cho Yang Line; China Ocean Shipping Company; DSR-Senator Joint Service; Evergreen Marine Corp.; Hanjin Shipping Co., Ltd.; Hapag-Lloyd Container Linie GmbH; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; A.P. Moller-Maersk Line; Mtsui O.S.K. Lines, Ltd.; Neptune Orient Lines, Ltd.; Nippon Yusen Kaisha Line; Orient Overseas Container Line, Inc.; P&O Nedlloyd Limited; P&O Nedlloyd Lijnen, B.V.; Sea-Land Service, Inc.; and Wilhelmsen Lines AS, Yang Ming Marine Transport Corp.

Synopsis: The proposed amendment would expand the scope of the Agreement's policing program to include rates, charges, terms, and condition established pursuant to Agreement No. 203–011325 (the Westbound Transpacific Stabilization Agreement) for wastepaper and metal scrap. It also deletes Transportation Maritima Mexicana S.A. de C.V. as a party to the Agreement.

Agreement No.: 232–011606.

Title: The COSCON/KL Slot Exchange Agreement.

Parties: COSCO Container Lines, Kawasaki Kisen Kaisha, Ltd.

Synopsis: The proposed Agreement would permit the parties to charter space to one another and to agree upon the deployment and utilization of vessels in the trade between United States Pacific Coast ports and ports in Asia, and inland points in the U.S. and Asia served via such ports.

Dated: January 22, 1998.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–1978 Filed 1–27–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 23, 1998.

A. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. First Capital Bancshares, Inc., Chillicothe, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens National Bank, Chillicothe, Ohio.

B. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. First Union Corporation, Charlotte, North Carolina; to acquire 100 percent of the voting shares and thereby merge with CoreStates Financial Corp., Philadelphia, Pennsylvania, and thereby indirectly acquire CoreStates Bank, N.A., Philadelphia, Pennsylvania, and CoreStates Bank of Delaware, N.A., Wilmington, Delaware.

In connection with this application, Applicant also has applied to acquire Electronic Payment Services, Inc., Wilmington, Delaware, and thereby engage in providing data processing and transmission services to retail merchants using point-of-sale terminals and to banks who are members of its automatic teller machine (ATM) network. Electronic Payment Services, Inc., also provides electronic benefits transfer services, stored value card services, electronic data interchange services, and data processing for ATMs to dispense tickets, gift certificates, prepaid telephone cards and other documents, pursuant to § 225.28(b)(14) of the Board's Regulation Y; Congress Financial Corporation, New York, New York, and thereby engage in factoring services, asset based lending, and commercial finance, pursuant to § 225.28(b)(1) of the Board's Regulation Y; CoreStates Community Development Corporation, Inc., Philadelphia, Pennsylvania, and thereby engage in investments to promote community welfare and engage in acquiring, rehabilitating, and selling residential real estate to former homeless women, pursuant to § 225.28(b)(12) of the Board's Regulation Y; CoreStates Securities Corporation, Philadelphia, Pennsylvania, and thereby engage in securities brokerage activities, pursuant to §§ 225.28(b)(6) and (b)(7) of the Board's Regulation Y; and in underwriting and dealing in, to a limited extent, certain municipal revenue bonds, 1-4 family mortgage-related securities, consumer receivable-related securities, and commercial paper (*See Citicorp*, 73 Fed. Res. Bull. 473 (1987)); providing financial and investment advisory services, pursuant to § 225.28(b)(6) of the Board's Regulation Y; buying and selling all types of securities on order of customers as a riskless principal, pursuant to § 225.28(b)(7)(ii) of the Board's Regulation Y; acting as agent in the private placement of all types of securities, pursuant to § 225.28(b)(7)(iii) of the Board's Regulation Y; providing other transactional services, pursuant to § 225.28(b)(7)(v) of the Board's Regulation Y; and providing investing and trading services, pursuant to § 225.28(b)(8)(ii) of the Board's Regulation Y; McGlinn Capital Management, Inc., Reading, Pennsylvania, and thereby engage in investment advisory services, pursuant to § 225.28(b)(6) of the Board's Regulation Y; Meridian Asset Management, Inc., Valley Forge, Pennsylvania, and thereby engage in non-fiduciary custodial and agency services, and trust services, pursuant to §§ 225.28(b)(5) and (b)(6) of the Board's Regulation Y; Meridian Securities, Inc., Reading, Pennsylvania, and thereby engage in securities brokerage activities, pursuant to § 225.28(b)(7) of the Board's Regulation Y; Pennco Life Insurance Company, Phoenix, Arizona, and thereby engage in underwriting credit life, health, and accident insurance for loans made by affiliates, pursuant to § 225.28(b)(11) of the Board's Regulation Y; Meridian Life Insurance Company, Reading, Pennsylvania, and thereby engage in underwriting credit life, health, and accident insurance for loans made by affiliates, pursuant to § 225.28(b)(11) of the Board's Regulation Y; and Princeton Life Insurance Company, Lancaster, Pennsylvania, and thereby engage in underwriting credit life, health, and accident insurance for loans made by affiliates, pursuant to § 225.28(b)(11) of the Board's Regulation Y.

C. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Ohnward Bancshares, Inc., Maquoketa, Iowa; to acquire 100 percent of the voting shares of Gateway State Bank, Clinton, Iowa.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Countryside Bancshares, Inc., Republic, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Countryside Bank (in organization), Republic, Missouri.

E. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Marshall Community Bancshares, Inc., Marshall, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank of Marshall, Marshall, Missouri.

F. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. The Community Group, Inc., Dallas, Texas, and The Delaware Community Group, Inc., Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of United Community Group, N.A., Highland Village, Texas.

G. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Busby Holdings, Inc., Los Angeles, California; to become a bank holding company by acquiring 59.5 percent of the voting shares of Founders National Bank of Los Angeles, Los Angeles, California. Comments regarding this application must be received not later than February 20, 1998.

Board of Governors of the Federal Reserve System, January 23, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–2063 Filed 1–27–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be

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received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 23, 1998.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Commerce Bancorp, Inc., Cherry Hill, New Jersey; to acquire A.H. Williams & Co., Inc., Philadelphia, Pennsylvania, and thereby engage in the following: underwriting and dealing in municipal revenue bonds, private ownership industrial development bonds issued for traditional government services, mortgage-backed securities, commercial paper, and consumer receivable-related securities. *See Citicorp*, 73 Fed. Res. Bull. 473 (1987); *Chemical New York Corporation*, 73 Fed. Res. Bull. 731 (1987); *Crestar Financial Corporation*, 83 Fed. Res. Bull. 512 (1997); activities that are usual in connection with making, acquiring, brokering, or servicing loans or other extensions of credit, pursuant to § 225.28(b)(2) of the Board's Regulation Y; leasing personal or real property or acting as agent, broker, or adviser in leasing such property, pursuant to § 225.28(b)(3) of the Board's Regulation Y; acting as investment or financial advisor, pursuant to § 225.28(b)(6) of the Board's Regulation Y; providing agency transactional services for customer investments, pursuant to § 225.28(b)(7) of the Board's Regulation Y; underwriting and dealing in bank-eligible securities, pursuant to § 225.28(b)(8)(i) of the Board's Regulation Y; engaging as principal in investment and trading activities, pursuant to § 225.28(b)(8)(ii) of the Board's Regulation Y; and providing management consulting and employee benefits counseling services, pursuant to § 225.28(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. One Valley Bancorp, Inc., Charleston, West Virginia; to acquire FFVA Financial Corporation, Lynchburg, Virginia, and thereby indirectly acquire its subsidiary, First Federal Savings Bank of Lynchburg, Lynchburg, Virginia, and thereby engage in operating a savings and loan association, pursuant to § 225.28(b)(4)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 23, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–2064 Filed 1–27–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

National Committee on Vital and Health Statistics: Meetings

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Health Data Needs, Standards, and Security.

Times and Dates: 9:00 a.m.–5:00 p.m., February 9, 1998. 9:00 a.m.–5:00 p.m., February 10, 1998.

Place: Room 303A, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, D.C. 20201.

Status: Open.

Purpose: Under the Administrative Simplification provisions of Public Law 104–191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Secretary of Health and Human Services is required to adopt standards for specified transactions to enable health information to be exchanged electronically. The law requires that, within 24 months of adoption, all health plans, health care clearinghouses, and health care providers who choose to conduct these transactions electronically must comply with these standards. The law also requires the Secretary to adopt a number of supporting standards including standards for code sets and classifications systems. The Secretary is required to consult with the National Committee on Vital and Health Statistics (NCVHS) in complying with these provisions. The NCVHS is the Department's federal advisory committee on health data, privacy and health information policy.

The NCVHS already has provided recommendations to HHS relating to most of the transaction and supporting standards, and proposed regulations adopting those standards are being prepared by HHS for public review and comment in the **Federal Register**. HIPAA allowed an additional twelve months for adoption of the standard for claims attachments. To assist in the development of the NCVHS recommendations to HHS relating to the claims attachment standards, the NCVHS Subcommittee on Health Data Needs, Standards, and Security has scheduled a public meeting on February 9–10, 1998. At the meeting, the Subcommittee will obtain the perspectives, concerns and recommendations of interested and affected parties relating to this standard. In addition, the Subcommittee will review and discuss its overall work plan for the year, including medical classification issues and activities relating to population based-data.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey building by non-government employees. Thus, persons without a government identification card may need to have the guard call for an escort to the meeting.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Bill Braithwaite, lead Subcommittee staff, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 440–D, Humphrey Building, 200 Independence Avenue S.W., Washington, D.C. 20201, telephone (202) 260–0546, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050. Information also is available on the NCVHS home page of the HHS website: http://aspe.os.dhhs.gov/ncvhs/, where the agenda for the meeting will be posted when available.

Dated: January 21, 1998.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 98–2041 Filed 1–27–98; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Health Resources and Service Administration; Statement of Delegation of Authority

Notice is hereby given that I have delegated to the Administrator of the Health Resources and Services Administration (HRSA), with authority to redelegate, all authorities vested in the Secretary of Health and Human Services under Title XXVI of the Public Health Service Act, Public Law 101–381, The Ryan White Comprehensive AIDS Resources Emergency Act of 1990, as amended by Public Law 104–146, as amended hereafter, pertaining to the HIV Health Care Services Program, as follows:

1. Part A (Title I of the CARE Act and Section 2601–07 of the PHS Act)—Emergency Relief for Areas with Substantial Need for Services;

2. Part B (Title II of the CARE Act and Sections 2611–21 of the PHS Act)—Care Grant Program to States and Territories;

3. Part C (Title III of the CARE Act and Sections 2651–54 of the PHS Act)—Early Intervention Services at community health clinics;

4. Part D (Title IV of the CARE Act and Section 2671 of the PHS Act)—Grants for Coordinated Services and Access to Research for Women, Infants, Children and Youth;

5. Part F.I., Section 2691 of the PHS Act—Special Projects of National Significance (SPNS);

6. Part F.II(a)., Section 2692(a) of the PHS Act—AIDS Education and Training Centers (AETC);

7. Part F.II.(b)., Section 2692(b) of the PHS Act—Dental Schools Reimbursement Program.

This delegation supersedes the delegation memorandum from the Assistant Secretary for Health to the HRSA Administrator, dated May 24, 1991.

This delegation is effective upon date of signature. In addition, I hereby affirm and ratify any actions taken by the HRSA Administrator or any subordinates which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: January 20, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–2040 Filed 1–27–98; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee on Immunization Practices (ACIP).

Times and Dates: 8:30 a.m.–5:15 p.m., February 11, 1998; 8:30 a.m.–1:15 p.m., February 12, 1998.

Place: CDC, Auditorium B, Building 2, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters To Be Discussed: Agenda items will include updates from the National Center for Infectious Diseases; the National Immunization Program; the Vaccine Injury Compensation Program; the National Vaccine Program; update on influenza A(H5N1): epidemiologic and virologic surveillance and present status of vaccine development; update on influenza surveillance—U.S. and worldwide; influenza vaccination and Guillain Barre syndrome: update and proposed changes to ACIP recommendations; proposed changes to the 1998–1999 ACIP recommendations for prevention and control of influenza; immunization of bone marrow transplant recipients recommendations on the use of Rotashield® (rotavirus vaccine) as part of the routine childhood immunization schedule; report of work group on computerization of ACIP recommendations; ACIP combination vaccines recommendation; comprehensive resolutions for the Vaccines for Children (VFC) Program; vaccine identification standards initiative; and alopecia associated with hepatitis B vaccination. Other matters of relevance among the committee's objectives may be discussed.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Gloria A. Kovach, Committee Management Specialist, CDC, 1600 Clifton Road, NE, M/S D–50, Atlanta, Georgia 30333, telephone 404/639–7250.

Dated: January 21, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–1998 Filed 1–27–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a tentative schedule of forthcoming meetings of its public advisory committees for 1998. At the request of the Commissioner of Food and Drugs (the Commissioner), the Institute of Medicine (the IOM) conducted a study of the use of FDA's advisory committees. The IOM recommended that the agency publish an annual tentative schedule of its meetings in the **Federal Register**. In response to that recommendation, FDA is publishing its annual tentative schedule of meetings for 1998.

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4820.

SUPPLEMENTARY INFORMATION: The IOM, at the request of the Commissioner, undertook a study of the use of FDA's advisory committees. In its final report, the IOM recommended that FDA adopt a policy of publishing an advance yearly schedule of its upcoming public advisory committee meetings in the **Federal Register**. FDA has implemented this recommendation. A tentative schedule of forthcoming meetings will be published annually in the **Federal Register**. The annual publication of tentatively scheduled advisory committee meetings will provide both advisory committee members and the public with the opportunity, in advance, to schedule attendance at FDA's upcoming advisory committee meetings. The schedule is tentative and amendments to this notice will not be published in the **Federal Register**. FDA will publish a **Federal Register** notice at least 15 days in advance of each upcoming advisory committee meeting, announcing the meeting (21 CFR 14.20).

The following list announces FDA's tentatively scheduled advisory committee meetings for 1998:

Committee Name	Dates of Meetings	Information-Line Code
OFFICE OF THE COMMISSIONER		
Science Board to the Food and Drug Administration	May 19 September 15	12603
CENTER FOR BIOLOGICS EVALUATION AND RESEARCH		
Allergenic Products Advisory Committee	March 23–24 September 14–15	12388
Biological Response Modifiers Advisory Committee	March 23–24	12389

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Committee Name	Dates of Meetings	Information-Line Code
	July 30–31	
	November 12–13	
Blood Products Advisory Committee	March 12–13	19516
	June 18–19	
	September 17–18	
	December 10–11	
Transmissible Spongiform Encephalopathies Advisory Committee	April 15–16	12392
	July 9–10	
	October 22–23	
Vaccines and Related Biological Products Advisory Committee	January 30	12391
	March 23–24	
	May 26–27	
	July 20–21	
	September 1–2	
	November 19–20	
CENTER FOR DRUG EVALUATION AND RESEARCH		
Advisory Committee for Pharmaceutical Science	April 7–8	12539
	June 23–24	
	October 22–23	
Advisory Committee for Reproductive Health Drugs	March 19–20	12537
	June 11–12	
	September 17–18	
Anesthetic and Life Support Drugs Advisory Committee	February 5–6	12529
	June 1–2	
	September 10–11	
Anti-Infective Drugs Advisory Committee	February 19–20	12530
	April 1–3	
	July 15–17	
	November 4–6	
Antiviral Drugs Advisory Committee	January 14	12531
	May 4–6	
	July 13–15	
	September 9–11	
Arthritis Advisory Committee	February 20	12532
	March 24–25	
	June 2–3	
	September 15–16	
	October 30	
	December 1–2	
Cardiovascular and Renal Drugs Advisory Committee	January 27–28	12533
	April 9	
	July 9–10	
	October 22–23	
Dermatologic and Ophthalmic Drugs Advisory Committee	March 19–20	12534
	June 4–5	
	July 23–24	
	August 20–21	
	September 10–11	
	October 1–2	
	November 5–6	
	December 2–4	
Drug Abuse Advisory Committee	February 19–20	12535
	June 25–26	
	October 22–23	
Endocrinologic and Metabolic Drugs Advisory Committee	March 12–13	12536
	April 9–10	
	May 14–15	
	July 30–31	
	September 17–18	
	October 15–16	
	December 10–11	
Gastrointestinal Drugs Advisory Committee	May 28–29	12538
Medical Imaging Drugs Advisory Committee	February 9	12540
	June 25–26	
	October 15–16	
Nonprescription Drugs Advisory Committee	March 11–13	12541

Committee Name	Dates of Meetings	Information-Line Code
	May 20–22	
	May 27–28	
	July 27–29	
	September 9–11	
	October 7–8	
	October 29–30	
	December 2–3	
	December 9–11	
Oncologic Drugs Advisory Committee	March 19–20	12542
	June 1–2	
Peripheral and Central Nervous System Drugs Advisory Committee	April 16–17	12543
	September 17–18	
Psychopharmacologic Drugs Advisory Committee	March 30–31	12544
Pulmonary-Allergy Drugs Advisory Committee	April 13–14	12545
	September 18	
CENTER FOR FOOD SAFETY AND APPLIED NUTRITION		
Food Advisory Committee	February 11–13	10564
	April 8–10	
	June 17–19	
	August 19–21	
	November 4–6	
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH		
Device Good Manufacturing Practice Advisory Committee	May 2	12398
Medical Devices Advisory Committee		
Anesthesiology and Respiratory Therapy Devices Panel	May 22	12624
	August 28	
	November 6	
Circulatory System Devices Panel	March 16	12625
	May 7–8	
	August 20–21	
	October 26–27	
Clinical Chemistry and Clinical Toxicology Devices Panel	March 5–6	12514
	June 1–2	
	September 14	
	December 7	
Dental Products Panel	January 12–13	12518
	March 10–11	
	May 12–14	
	August 4–6	
	November 3–5	
Ear, Nose, and Throat Devices Panel	April 29	12522
	July 8	
	September 30	
Gastroenterology and Urology Devices Panel	February 12–13	12523
	April 30 and May 1	
	July 30–31	
	October 29–30	
General and Plastic Surgery Devices Panel	January 29–30	12519
	April 22–23	
	July 27–28	
	September 24–25	
	November 16–17	
General Hospital and Personal Use Devices Panel	March 2–3	12520
	June 8–9	
	September 14–15	
	November 16	
Hematology and Pathology Devices Panel	January 28	12515
	April 29–30	
	September 17–18	
	December 10–11	
Immunology Devices Panel	February 2	12516
	April 10	
	July 17	
	October 16	
Microbiology Devices Panel	February 11–13	12517
	April 16–17	
	June 4–5	
	August 13–14	
	October 8–9	
Neurological Devices Panel	March 12–13	12513

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Committee Name	Dates of Meetings	Information-Line Code
	June 11–12 September 10–11 December 7–8	
Obstetrics and Gynecology Devices Panel	January 27–28 April 6–7 July 20–21 October 19–20	12524
Ophthalmic Devices Panel	February 12–13 April 23–24 July 23–24 October 22–23	12396
Orthopaedic and Rehabilitation Devices Panel	January 12–13 April 27–28 July 9–10 October 8–9	12521
Radiological Devices Panel	February 23 May 11 August 17 November 16	12525
National Mammography Quality Assurance Advisory Committee	May 13	12397
Technical Electronic Product Radiation Safety Standards Committee	September 22	12399
CENTER FOR VETERINARY MEDICINE		
Veterinary Medicine Advisory Committee	No meetings planned	12546
NATIONAL CENTER FOR TOXICOLOGICAL RESEARCH		
Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants	April 10–11	12560
Science Board to the National Center for Toxicological Research	March 24–25	12559

Dated: January 22, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–2025 Filed 1–27–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0021]

Draft Guidance for Industry; Container and Closure Integrity Testing in Lieu of Sterility Testing as a Component of the Stability Protocol for Sterile Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Guidance for Industry: Container and Closure Integrity Testing *in Lieu* of Sterility Testing as a Component of the Stability Protocol for Sterile Products." The draft guidance is intended to provide recommendations and offer alternative methods for sterility testing to confirm the integrity of container and closure systems for sterile biological products, human and veterinary drugs, and medical devices. The draft guidance applies only to the replacement of the sterility test with an appropriate container and closure integrity test in the stability protocol, and it is not offered as a replacement for sterility testing for product release.

DATES: Written comments may be provided at any time, however, to ensure comments are considered for the next revision they should be submitted by March 30, 1998.

ADDRESSES: Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Submit written requests for single copies of the draft guidance entitled "Guidance for Industry: Container and Closure Integrity Testing *in Lieu* of Sterility Testing as a Component of the Stability Protocol for Sterile Products" to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the SUPPLEMENTARY INFORMATION section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance entitled "Guidance for Industry: Container and Closure Integrity Testing *in Lieu* of Sterility Testing as a Component of the Stability Protocol for Sterile Products." The draft guidance provides general information on procedures and practices that should be considered when a manufacturer selects alternative methods to confirm sterility during stability studies of sterile biological products, human and veterinary drugs, and medical devices.

All sterile products are required to have adequate container and closure integrity and to remain free from contamination throughout the product's entire dating period. As a consequence of the limitations of sterility testing, FDA has determined that alternative methods are available that may more reliably confirm the integrity of the container and closure system in the final form throughout the entire dating period.

The draft guidance was prepared jointly by the following Centers: Center for Biologics Evaluation and Research (CBER), Center for Drug Evaluation and Research (CDER), Center for Veterinary Medicine (CVM), and Center for Devices and Radiological Health (CDRH). At the request of CBER's Stability and Formulation Committee, representatives from the Centers met on May 19, 1994, to discuss sterility testing as a component of the stability protocol. The ability of containers/packaging to maintain sterility should be proven for all sterile products.

As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements. Alternative approaches may be warranted in specific situations, and certain aspects may not be applicable to all situations. If a manufacturer believes that the procedure described in the draft guidance is inapplicable to a particular method and other procedures are appropriate for FDA's consideration, the manufacturer may wish to discuss the matter further with the agency to prevent expenditure of money and effort on activities that later may be determined to be unacceptable by FDA. FDA will continue to review alternative methods on a case-by-case basis.

The draft guidance represents the agency's current thinking on container and closure integrity testing during stability monitoring for sterile products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both. The draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time.

II. Request for Comments

Interested persons may, at any time, submit written comments to the Dockets Management Branch (address above) regarding this draft guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments and requests for copies are to be identified with the docket number found in the brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

In order to receive the "Guidance for Industry: Container and Closure Integrity Testing *in Lieu* of Sterility Testing as a Component of the Stability Protocol for Sterile Products" via your fax machine, call the FAX Information System at 1–888–CBER–FAX or 301–827–3844.

Persons with access to the Internet may obtain the draft guidance document by using the World Wide Web (WWW). For WWW access, connect to CBER at "http://www.fda.gov/cber/guidelines.htm". Received comments will be considered in determining whether further revision of the draft guidance document is warranted.

Dated: January 21, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–2021 Filed 1–27–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *telephone:* 301/496–7057; *Fax:* 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Novel Attenuated Strains Mycobacterium Tuberculosis

CE Barry, Y. Yuan (NIAID).

Serial No.: 60/025,199 filed 10 July 97.

Licensing Contact: Carol Salata, 301/496–7735 ext 232.

This invention provides for novel attenuated strains of *Mycobacterium tuberculosis* and *M. bovis*. Attenuation is achieved by down-regulating the expression of the α-crystallin heat shock protein gene ("acr gene"). This gene is essential for virulence of the organism. Since this strain is isogenic with virulent *M. tuberculosis* but for this deletion, the full complement of antigens remains present and the organism is viable in vitro. The invention provides for vaccines and methods of vaccinating mammals for protection against *Mycobacterium sp.* that cause tuberculosis.

Method of Promoting Tumor Necrosis Using MIG

G Tosato (FDA), J Farber (NIAID), C Sgardari (FDA).

Serial No.: 08/850,914 filed 2 May 97.

Licensing Contact: Jaconda Wagner, 301/496–7735 ext 284.

Monokine induced by IFN–γ (Mig), which is structurally related to interferon-inducible protein 10 (IP–10), has been shown to exhibit antitumor activity. Mig is a member of the α chemokine family. Members of this chemokine family, PF4, PBP, CTAP–III βTG, NAP–2, IL–8 GROα, GROβ, GROγ, and IP–10, have been shown to act as an angiogenic or angiostatic factor. This invention relates to the use of Mig to promote the death of tumor tissue. It also relates to a method of inhibiting angiogenesis at a tumor site using Mig.

This research has been published in Blood 1997 Apr 15;89(8):2635–43 and J Leukoc Biol 1997 Mar;61(3):246–57.

A related case is also available for licensing: Serial No. 08/455,079 filed 31 May 95 entitled "Interferon-Inducible 10 (IP–10) is a Potent Inhibitor of Angiogenesis"; inventors are G Tosato, AL Angiolillo, and C Sgardari.

Formation of Human Bone In Vivo

PG Robey (NIDR), P Bianco (Universita dell Aquilla), Sa Kuznetsov (NIDR), PH Krebsback (NIDR), DW Rowe (University of Connecticut.

Serial No.: 08/798, 715 filed 12 Feb. 97.

Licensing Contact: Jaconda Wagner, 301/496–7735 ext 284.

This invention provides a model for studying human bone metabolism *in*

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vivo. The model system can be used to screen compounds which inhibit or stimulate bone formation. A protocol using marrow stromal fibroblasts is also presented. Use of the protocol results in the formation of self-maintained human bone which supports hematopoiesis. The marrow stromal fibroblasts combined with the described delivery vehicles can be implanted into humans to augment bone implants or to repair bone defects.

This research has been published in J Bone Miner Res 1997 Sep;12(9):1335–47 and Transplantation 1997 Apr 27;63(8):1059–69.

Synthesis and Purification of Hepatitis C Virus Like Particles In Vitro

TJ Liang and TF Baumert (NIDDK).
Serial No.: 60/030,238 filed 8 Nov 96; PCT/US97/05096 filed 25 Mar. 97.
Licensing Contact: Carol Salata, 301/496–7735 ext 232.

Hepatitis C virus (HCV) is a major causative agent of posttransfusion and community-acquired hepatitis worldwide. Analysis of the structural features of HCV has been hampered by the inability to propagate the virus efficiently in cultural cells and the lack of a convenient animal model. This invention discloses the production and purification of HCV-like particles in eukaryotic cells. Infection of insect cells with a recombinant baculovirus containing the cDNA for the HCV structural proteins resulted in the formation of HCV-like particles in cytoplasmic cisternae of the insect cells. Sucrose gradient purification HCV-like particles exhibited similar biophysical properties as putative HCV virions. HCV-like particles, purified in large quantities, may be useful in HCV vaccine development or in diagnostic kits.

An Enzyme-Linked Immunosorbent Assay (ELISA) to Detect Antibodies to a Nonstructural Protein of Hepatitis A Virus (HAV)

RH Purcell, T Schultheiss, D Stewart, S Emerson (NIAID).
Serial No.: 60/013, 333 filed 13 Mar. 96; PCT/US97/03428 filed 13 Mar. 97.
Licensing Contact: George Keller, 301/496–7735 ext 246.

The current invention embodies an assay which can differentiate between an individual who has been vaccinated against Hepatitis A Virus (HAV), and one who has actually been infected with the virus. HAV infection results in the production of antibodies against both structural and nonstructural proteins of the virus. Inactivated HAV vaccines, which are commonly used for immunization against HAV, cause the production of antibodies against the structural proteins. Assays currently in use for determining exposure to HAV measure only antibodies to structural proteins, and therefore are incapable of differentiating between individuals who have been infected with HAV and those who have merely been immunized with the inactivated virus.

The assay embodied in the current invention is capable of detecting antibodies to the 3C proteinase, which is a nonstructural protein of HAV. This assay, which utilizes an ELISA for the detection of such antibodies, should represent a significant improvement over assays which are currently available.

Restriction Display (RD–PCR) of Differentially Expressed mRNAs

JN Weinstein, J. Buolamwini (NCI).
Serial No.: 60/011, 379 filed 09 Feb 96; PCT/US97/02009 filed 7 Feb. 97.
Licensing Contact: J. Peter Kim, 301/496–7056 ext 264.

This invention provides a kit and methods for detecting gene expression in cells by reverse transcribing mRNA molecules into cDNA, and selectively amplifying a subset of the cDNA by a polymerase chain reaction (PCR) to present a two-dimensional display of the fragments or for cloning into a vector using restriction enzyme recognition sites added during the PCR. In one aspect of this invention, only cDNA corresponding to the 3′ end of the mRNA is amplified and displayed or cloned. In another aspect of the invention, cDNA corresponding to the entire mRNA molecule is amplified for display or cloning. The method and kit may be useful in characterizing cells based on their mRNA content, representing expressed genes, and discovering therapeutics that alter cellular gene expression by characterizing cells of different types under a variety of physiological conditions. In addition to drug discovery, this approach may be used whenever expression of mRNA is to be assessed, for example, in studies of malignant transformation, carcinogenesis, immune activation, and developmental biology.

Selective Elimination of T-Cells that Recognize Specific Preselected Targets

A Rosenberg (FDA).
Serial No.: 60/002, 964 filed 30 Aug. 95; PCT filed 30 /Aug. 96.
Licensing Contact: Jaconda Wagner, 301/496–7735 ext 284

The invention relates to methods and compositions for the elimination of T cells that recognize specific preselected targets which can be used to threat autoimmune diseases and graft rejection.

The invention provides a method for selectively inhibiting or killing T cells that recognize a specific preselected target molecule and also for modified killer cells that bear a signal transduction molecule to which is attached the preselected target molecule. Recognition of the preselected molecule by a T cell activates the killer cell which then kills or inhibits the T cell. Where the preselected molecule is an extracellular domain of an MHC from a xenograft or an allograft, treatment of the graft recipient with the modified killer T cells delays or inhibits graft rejection. Similarly, where the preselected molecule is an MHC that binds the antigenic determinant of the autoimmune disease, treatment of the organism with the modified T cells mitigates the autoimmune response directed against the antigenic determinant.

This research was published in Transpl Immunol 1993; 1(2):93–9.

Dated: January 16, 1998.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 98–1967 Filed 1–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following National Institute of General Medical Sciences Initial Review Group (IRG) meeting:

Name of IRG: Minority Biomedical Research Support.
Date: March 10–12, 1998.
Time: March 10—8 p.m.–11 p.m.; March 11—8:30 a.m–6 p.m.; March 12—8:30 a.m.–adjournment.
Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.
Contact Person: Dr. Michael A. Sesma, Scientific Review Administrators, NIGMS, Natcher Building—Room 1AS–19, Bethesda, Maryland 20892, Telephone: 301–594–2048.
Purpose/Agenda: To evaluate and review research training grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. (93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research 93.880, Minority Access Research Careers (MARC); and 93.375, Minority Biomedical Research Support (MBRS)], National Institutes of Health)

Dated: January 22, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–1961 Filed 1–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel (SEP) meeting.

Name of SEP: SBIR Fast Track Initiative (teleconference).
Date: February 3, 1998.
Time: 9:00 a.m.-adjournment.
Place: Natcher Building, 45 Center Drive, Room 5AS25U, Bethesda, Maryland 20892.
Contact Person: Tommy L. Broadwater, Ph.D., Scientific Review Administrator, Natcher Building, 45 Center Drive, Rm 5AS25U, Bethesda, Maryland 20892, Telephone: 301–594–4953.
Purpose/Agenda: To evaluate and review contract application.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of this application could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This meeting is being published less than 15 days prior to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.846, Project Grants in Arthritis, Musculoskeletal and Skin Disease Research], National Institutes of Health, HHS)

Dated: January 22, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–1962 Filed 1–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name of SEP: ZDK1 GRB4–C2B.
Date: February 13, 1998.
Time: 3:00 p.m.
Place: Room 6as–37A, Natcher Building, NIH (Telephone Conference Call).
Contact: William Elzinga, Ph.D., Review Branch, DEA, NIDDK, Natcher Building, Room 6as–37A, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8895.
Purpose/Agenda: To review and evaluate contract proposals.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: January 20, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–1964 Filed 1–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Name of SEP: National Institute on Aging Special Emphasis Panel, Calcium Regulation in Brain Aging and Alzheimer's Disease.
Date of Meeting: February 12, 1998.
Time of Meeting: 1 p.m. to adjournment.
Place of Meeting: Wyndham Garden Hotel, 1938 Stanton Way, Lexington, Kentucky 40511.
Purpose/Agenda: To review one grant application.
Contact Person: Dr. Maria Mannarino, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of SEP: National Institute on Aging Special Emphasis Panel, The Einstein Aging Study (Teleconference).
Date of Meeting: February 24, 1998.
Time of Meeting: 1:30 p.m. to adjournment.
Place of Meeting: Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814.
Purpose/Agenda: To review a program project.
Contact Person: Dr. Maria Mannarino, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of SEP: National Institute on Aging Special Emphasis Panel, Molecular Mechanisms of T Cell Aging in Mice.
Date of Meeting: February 27, 1998.
Time of Meeting: 1:00 p.m. to adjournment.
Place of Meeting: University of Michigan, Ann Arbor, Michigan.
Purpose/Agenda: To review a program project grant.
Contact Person: Dr. James Harwood, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of SEP: National Institute on Aging Initial Review Group, Neurosciences of Aging Review Committee.
Date of Meeting: March 16–18, 1998.
Times of Meeting: March 16—7 p.m. to recess, March 17—8 a.m. to 6 p.m., March 18—8 a.m. to adjournment.
Place of Meeting: Hyatt Regency Hotel, 7400 Block of Wisconsin Avenue, Bethesda, Maryland 20814.
Purpose/Agenda: To review grant applications.
Contact Person: Dr. Maria Mannarino, Dr. Louise Hsu, Scientific Review Administrators, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

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Dated: January 20, 1998.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 98–1965 Filed 1–27–98; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Primate Immunology Laboratory (Telephone Conference Call).
Date: February 12, 1998.
Time: 1:00 p.m. to Adjournment.
Place: Teleconference, 6003 Executive Boulevard, Solar Building, Room 4C16, Bethesda, MD 20892, (301) 496–2550.
Contact Person: Dr. Madelon Halula, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C16, Bethesda, MD 20892, (301) 496–2550.
Purpose/Agenda: To evaluate contract proposals.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: January 20, 1998.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 98–1966 Filed 1–27–98; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Clinical Sciences.
Date: February 5, 1998.
Time: 1 p.m.
Place: Bethesda Ramada Hotel, Bethesda, MD.
Contact Person: Dr. Anshumali Chaudhari, Scientific Review Administrator, 6701 Rockledge Drive, Room 4128, Bethesda, Maryland 20892, (301) 435–1210.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Biological and Physiological Sciences.
Date: March 23, 1998.
Time: 8:30 a.m.
Place: Doubletree Hotel, Rockville, MD.
Contact Person: Dr. Michael Micklin, Scientific Review Administrator, 6701 Rockledge Drive, Room 5198, Bethesda, Maryland 20892, (301) 435–1258.

Name of SEP: Chemistry and Related Sciences.
Date: April 5–7, 1998.
Time: 8 a.m.
Place: Inn at the Collanade, Baltimore, MD.
Contact Person: Dr. Jean D. Sipe, Scientific Review Administrator, 6701 Rockledge Drive, Room 5152, Bethesda, Maryland 20892, (301) 435–1743.

Purpose/Agenda: To review Small Business Innovation Research.
Name of SEP: Multidisciplinary Sciences.
Date: March 2, 1998.
Time: 8 a.m.
Place: Doubletree Hotel, Rockville, MD.
Contact Person: Dr. Houston Baker, Scientific Review Administrator, 6701 Rockledge Drive, Room 5208, Bethesda, Maryland 20892, (301) 435–1175.

Name of SEP: Biological and Physiological Sciences.
Date: March 9–10, 1998.
Time: 8:30 a.m.
Place: Holiday Inn-Georgetown, Washington, DC.
Contact Person: Dr. Syed Quadri, Scientific Review Administrator, 6701 Rockledge Drive, Room 4132, Bethesda, Maryland 20892, (301) 435–1211.

Name of SEP: Multidisciplinary Sciences.
Date: March 16–17, 1998.
Time: 8 a.m.
Place: Woodfin Suites, Rockville, MD.
Contact Person: Dr. Houston Baker, Scientific Review Administrator, 6701 Rockledge Drive, Room 5208, Bethesda, Maryland 20892, (301) 435–1175.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 22, 1998.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 98–1963 Filed 1–27–98; 8:45 am]
BILLING CODE 4140–01–M

INTER-AMERICAN FOUNDATION

Sunshine Act Meeting

TIME AND DATE: 11:30 a.m.–3:30 p.m., February 9, 1998.
PLACE: 901 N. Stuart Street, Tenth Floor, Arlington, Virginia 22203.
MATTERS TO BE CONSIDERED:

1. Approval of the Minutes of the October 29, 1997, Meeting of the Board of Directors.
2. Update on the Grassroots Development Framework.
3. Report on Congressional Affairs.
4. Report on Program Office.
5. Report on External Affairs.
6. Report on Learning & Dissemination.
7. Report by the Board Audit Committee.

CONTACT PERSON FOR MORE INFORMATION: Adolfo A. Franco, Secretary to the Board of Directors, (703) 841–3894.

Dated: January 26, 1998.
Adolfo A. Franco,
Sunshine Act Officer.
[FR Doc. 98–2278 Filed 1–26–98; 3:48 pm]
BILLING CODE 7025–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Endangered Species Permit

AGENCY: Fish and Wildlife Service, Interior.
ACTION: Notice of receipt.

The following applicant has applied for a permit to conduct certain activities with an endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

PRT–838253

Applicant: New York State Department of Environmental Conservation, Albany, New York.

The applicant requests authorization to take (harm and/or harass during management of habitat and monitoring of species) the Karner blue butterfly (*Lycaeides melissa samuelis*) throughout Albany, Schenectady, Saratoga, Warren,

Erie, and Oneida Counties of New York for the purpose of enhancement and survival of the species.

Written data or comments should be submitted to the Regional Permits Coordinator, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035 and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035, Attention: Diane Lynch, Regional Permits Coordinator. *Telephone:* (413) 253–8628; *FAX:* (413) 253–8482.

Dated: January 22, 1998.
Ronald E. Lambertson,
Regional Director, Region 5.
[FR Doc. 98–2000 Filed 1–27–98; 8:45 am]
BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P; F–14943–B]

Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Tanacross Incorporated for 10.69 acres. The lands involved are in the vicinity of Tok, Alaska.

Copper River Meridian, Alaska

T. 18 N., R. 13 E.,
Sec. 18, lots 1 and 2 of Block 5 embraced in the North Addition of Tok Alaska Townsite subdivision.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Fairbanks Daily News-Miner.* Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until February 27, 1998 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Patricia K. Underwood,
Land Law Examiner, ANCSA Team Branch of 962 Adjudication.
[FR Doc. 98–1997 Filed 1–27–98; 8:45 am]
BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–931–1310–00–NPRA]

Northeast National Petroleum Reserve-Alaska Draft Integrated Activity Plan/ Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.
ACTION: Notice.

SUMMARY: The Bureau of Land Management announces a 30-day extension of the public comment period for the Northeast National Petroleum Reserve-Alaska Draft Integrated Activity Plan/Environmental Impact Statement (IAP/EIS).

DATE: Written comment must be submitted or postmarked no later than March 12, 1998.

ADDRESSES: Comments on the document should be addressed to: NPR-A Planning Team, Bureau of Land Management, Alaska State Office (930), 222 West 7th Avenue, Anchorage, Alaska 99513–7599. Comments can also be sent to the NPR–A home page (http://aurora.ak.blm.gov/npra/).

FOR FURTHER INFORMATION CONTACT: Gene Terland (907–271–3344; gterland@ak.blm.gov) or Jim Ducker (907–271–3369; jducker@ak.blm.gov). They can be reached by mail at the Bureau of Land Management (930), Alaska Sate Office, 222 West 7th Avenue, Anchorage, Alaska 99513–7599.

SUPPLEMENTAL INFORMATION: The Bureau of Land Management published a notice of availability for the IAP/EIS on December 12, 1997 (62 FR 65440). That notice indicates that the public comment period for the document ends February 10, 1998. The Bureau of Land Management has received requests from the public that the comment period be extended. This extension to March 12, 1998, responds to those requests.

Date: January 22, 1998.
Sally Wisely,
Associate State Director.
[FR Doc. 98–2002 Filed 1–27–98; 8:45 am]
BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–07–1210–00]

Meeting of the California Desert District Advisory Council

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet in formal session on Friday, February 20 from 1 p.m. to 5 p.m. and on Saturday, February 21 from 8 a.m. to 12 noon. The meeting will be held in the Regency conference room at the Riverside Holiday Inn, located at 3400 Market Street, Riverside, California.

All Desert District Advisory Council meetings are open to the public. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507–0714. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: Carole Levitzky at (909) 697–5217 or Doran Sanchez at (909) 697–5220, BLM California Desert District Public Affairs.

Dated: January 22, 1998.
Tim Salt,
Acting District Manager.
[FR Doc. 98–1999 Filed 1–27–98; 8:45 am]
BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from the Island of Oahu, HI in the Possession of the Bishop Museum, Honolulu, HI

AGENCY: National Park Service.
ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.10 (b)(2), of the completion of an inventory of human

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remains and associated funerary objects from the Island of Oahu, HI in the possession of the Bishop Museum, Honolulu, HI.

A detailed assessment of the human remains was made by Bishop Museum professional staff in consultation with representatives of Adminstrator of the Island Burial Councils, Alu Like, Hawaiian Civic Club of Honolulu, Daughters and Sons of Hawaiian Warriors, Hui Malama I Na Kupuna O Hawai'i Nei, Ka Lahui Hawai'i, Kamehameha Schools/Bishop Estate, Nahoa 'Olelo O Kamehameha Society, the O'ahu Burial Council, the Office of Hawaiian Affairs, and Royal Order of Kamehameha I.

In 1901, human remains representing one individual recovered from Palama, Oahu was donated to the Bishop Museum by a student at the Kamehameha Schools. No known individual was identified. No associated funerary objects are present.

In 1913, human remains representing two individuals from Waikiki, Oahu were donated to the Bishop Museum by Reverend W.D. Westervelt. No known individuals were identified. No associated funerary objects are present.

In 1914, human remains representing one individual from an unknown site on Oahu were collected by Felix von Luschan and John F.G. Stokes and donated to the Bishop Museum. No known individual was identified. No associated funerary objects are present.

In 1914, human remains representing two individuals recovered from Palama, Oahu by Charles N. Forbes and assistants and were donated to the Bishop Museum. No known individuals were identified. No associated funerary objects are present.

In 1914, human remains representing one individual from Pawaa, Oahu were donated to the Bishop Museum by Charles H. Rose. No known individual was identified. No associated funerary objects are present.

In 1916, human remains representing two individuals from the Kamehameha School grounds, Oahu were donated to the Bishop Museum by Ralph J. Borden. No known individuals were identified. No associated funerary objects are present.

In 1916, human remains representing one individual from Waikiki, Oahu were donated to the Bishop Museum by the City and County Medical Examiner. No known individual was identified. No associated funerary objects are present.

In 1916, human remains representing one individual from Manoa, Oahu were donated to the Bishop Museum by Fred P. Pierce. No known individual was identified. No associated funerary objects are present.

In 1917, human remains representing one individual from Honolulu, Oahu were donated to the Bishop Museum by Gerrit P. Wilder. No known individual was identified. No associated funerary objects are present.

In 1920, human remains representing one individual from Punchbowl, Oahu were donated to the Bishop Museum by Malcolm Perez. No known individual was identified. No associated funerary objects are present.

In 1922, human remains representing two individuals from Honolulu, Oahu were donated to the Bishop Museum by Charles A. McWayne. No known individuals were identified. No associated funerary objects are present.

In 1922, human remains representing two individuals from Manoa, Oahu were donated to the Bishop Museum by Mrs. E.A. Fennel. No known individuals were identified. No associated funerary objects are present.

In 1923, human remains representing one individual from the Ainahau district, Waikiki, Oahu were donated to the Bishop Museum by the Hawaiian Dredging Company. No known individual was identified. No associated funerary objects are present.

In 1923, human remains representing five individuals from Helumoa, Waikiki, Oahu were collected by Kenneth P. Emory. Museum information indicates they were victims of the 1853 smallpox epidemic. No known individuals were identified. No associated funerary objects are present.

In 1923, human remains representing 36 individuals from a cave in Nuuanu Valley, Oahu were collected by Kenneth P. Emory. No known individuals were identified. The sixteen associated funerary objects include a mirror, combs, and clothing.

In 1924, human remains representing eight individuals from Kahuku, Oahu were donated to the Bishop Museum by Kenneth P. Emory and R.T. Aitken. No known individuals were identified. No associated funerary objects are present.

In 1924, human remains representing 33 individuals from Kawailoa, Oahu were donated to the Bishop Museum by Kenneth P. Emory and Ronald von Holt. Museum information indicates these remains were found on a Hawaiian Pineapple Company road. No known individuals were identified. The nine associated funerary objects include buttons and earrings.

In 1924, human remains representing 36 individuals from Kawailoa, Oahu were donated to the Bishop Museum by Kenneth P. Emory and Ronald von Holt. No known individuals were identified. The two associated funerary objects are parts of a canoe coffin.

In 1924, human remains representing two individuals from Manoa, Oahu were donated to the Bishop Museum by Mrs. E.A. Fennel. No known individuals were identified. No associated funerary objects are present.

In 1924, human remains representing one individual from Nuuanu, Oahu were donated to the Bishop Museum by Hans G. Hornbostel. No known individual was identified. The one associated funerary objects is a shell.

In 1925, human remains representing one individual from the beach at Waianae, Oahu were donated to the Bishop Museum by T.J. Simpson. No known individual was identified. No associated funerary objects are present.

In 1925, human remains representing three individuals from Moiliili, Oahu were donated to the Bishop Museum by John F.G. Stokes and H.S. Palmer. No known individuals were identified. The one associated funerary object is a basalt flake.

In 1925, human remains representing thirteen individuals from Moiliili, Oahu were donated to the Bishop Museum by E.S.C. Handy. No known individuals were identified. The five associated funerary objects include small mammal bones.

In 1926, human remains representing one individual from Waikiki, Oahu were donated to the Bishop Museum by Joseph R. Carriera. Museum information indicates these remains were found during house construction. No known individual was identified. No associated funerary objects are present.

In 1926, human remains representing six individuals from Makiki, Oahu were donated to the Bishop Museum by Charles A. McWayne. No known individuals were identified. No associated funerary objects are present.

In 1926, human remains representing 16 individuals from Bishop Estate land in Kalihi, Oahu were donated to the Bishop Museum by Kilmer O. Moe and John F.G. Stokes. No known individuals were identified. The six associated funerary objects include basalt, cloth fragments, a mat fragment, and a wood fragment.

In 1926, human remains representing 20 individuals from a cave at Maunalua, Oahu were donated to the Bishop Museum by Kilmer O. Moe. No known individuals were identified. No associated funerary objects are present.

In 1926, human remains representing 28 individuals from Maunalua, Oahu were donated to the Bishop Museum by Kilmer O. Moe. No known individuals were identified. No associated funerary objects are present.

In 1926, human remains representing two individuals from Kailua, Oahu were donated to the Bishop Museum by Kenneth P. Emory. No known individuals were identified. No associated funerary objects are present.

In 1927, human remains representing one individual from Waikiki, Oahu were collected by C.C. Hartwell and acquired by the Bishop Museum. No known individual was identified. No associated funerary objects are present.

In 1927, human remains representing one individual from Lanikai, Oahu were donated to the Bishop Museum by Medford R. Kellum. Museum documentation indicates the remains were in a bundle at a depth of 5–1/2 feet. No known individual was identified. No associated funerary objects are present.

In 1927, human remains representing 22 individuals from Waialae Golf Course grounds, Oahu were donated to the Bishop Museum by the Bishop Estate. No known individuals were identified. No associated funerary objects are present.

In 1928, human remains representing three individuals from Nuuanu, Oahu were donated by Mrs. George Sherman. No known individual was identified. The one associated funerary object is a stick.

In 1928, human remains representing one individual from Hahaione Valley, Maunalua, Oahu were collected by John McCombs and acquired by the Bishop Museum. No known individual was identified. No associated funerary objects are present.

In 1928, human remains representing one individual from Lanikai, Oahu were collected by Kenneth Emory and acquired by the Bishop Museum. No known individual was identified. No associated funerary objects are present.

In 1929, human remains representing four individuals from Honolulu, Oahu were donated to the Bishop Museum by Chester R. Clark. No known individuals were identified. The one associated funerary object is a canine skull.

In 1929, human remains representing one individual from Waialae Iki, Oahu were donated to the Bishop Museum by John McCombs. No known individual was identified. No associated funerary objects are present.

In 1930, human remains representing three individuals from Kamoku Gulch, Waimea, Oahu were collected by J. Gilbert McAllister and donated to the Bishop Museum. No known individuals were identified. No associated funerary objects are present.

In 1930, human remains representing three individuals from a shallow shelter in the Kamilonui Valley, Oahu were collected by J. Gilbert McAllister and acquired by the Bishop Museum. No known individuals were identified. No associated funerary objects are present.

In 1931, human remains representing one individual from a cave at Black Point, Oahu were donated to the Bishop Museum by Jens M. Ostergaard. No known individual was identified. No associated funerary objects are present.

In 1931, human remains representing two individuals from Manoa, Oahu were donated to the Bishop Museum by Mr. and Mrs. George C. Cantlay. No known individuals were identified. No associated funerary objects are present.

In 1931, human remains representing one individual from Kahala, Oahu were donated to the Bishop Museum by John McCombs on behalf of Bishop Estate. Museum documentation indicates these remains were found during construction of a water pipe trench. No known individual was identified. No associated funerary objects are present.

In 1932, human remains representing one individual from Honolulu, Oahu were donated to the Bishop Museum by the Hawaiian Sugar Planters Association Experiment Station. No known individual was identified. No associated funerary objects are present.

In 1932, human remains representing one individual from Makiki, Oahu were acquired by the Bishop Museum. Museum documentation indicates these remains were found during house construction and collected by Edwin H. Bryan and Kenneth P. Emory. No known individual was identified. No associated funerary objects are present.

In 1933, human remains representing three individuals from stone pits at Ewa, Oahu were collected by J.W. Barrington and Edwin H. Bryan and acquired by the Bishop Museum. No known individuals were identified. No associated funerary objects are present.

In 1933, human remains representing five individuals from the beach at Kawailoa, Oahu were collected by Edwin H. Bryan and Kenneth P. Emory and acquired by the Bishop Museum. No known individuals were identified. No associated funerary objects are present.

In 1933, human remains representing one individual from Honolulu, Oahu were donated to the Bishop Museum by John T. Waterhouse. No known individual was identified. No associated funerary objects are present.

In 1933, human remains representing one individual from Kalama, Kailua, Oahu were donated to the Bishop Museum by Frederic C. Scribner. No known individual was identified. No associated funerary objects are present.

In 1936, human remains representing two individuals from a cave on a pipeline at Wailupe, Oahu were collected by Kenneth P. Emory and acquired by the Bishop Museum. No known individuals were identified. No associated funerary objects are present.

In 1937, human remains representing four individuals from Waialae Kahala, Oahu were donated to the Bishop Museum by John McCombs of Bishop Estate. Museum documentation indicates these remains were found in three feet of sand and may be from the 1853 smallpox epidemic. No known individuals were identified. No associated funerary objects are present.

In 1938, human remains representing six individuals from Honouliuli, Ewa, Oahu were collected by Kenneth P. Emory and William A. Lessa and acquired by the Bishop Museum. Museum documentation indicates these remains were in a shallow crypt burial one mile from the coast. No known individuals were identified. No associated funerary objects are present.

In 1939, human remains representing two individuals from Kahala, Oahu were donated to the Bishop Museum by B. Kanakanui Palmer. No known individuals were identified. No associated funerary objects are present.

In 1939, human remains representing one individual from Oahu were collected by Keith K. Jones and acquired by the Bishop Museum. No known individual was identified. No associated funerary objects are present.

In 1940, human remains representing one individual from Manoa, Oahu were collected by Joel M. Brooks and acquired by the Bishop Museum. No known individual was identified. No associated funerary objects are present.

In 1940, human remains representing two individuals from Waialae were donated to the Bishop Museum by John McCombs on behalf of the Bishop Estate. No known individuals were identified. The associated funerary object is a fish bone.

In 1941, human remains representing seven individuals from Pearl City, Oahu were donated to the Bishop Museum by Dr. and Mrs. Homer Hayes. No known individuals were identified. The associated funerary object is a stone.

In 1942, human remains representing two individuals from Kualakai, Ewa Beach, Oahu were donated to the Bishop Museum by an unknown donor. No known individuals were identified. No associated funerary objects are present.

In 1946, human remains representing one individual from "Waialee" Beach, Oahu were donated to the Bishop Museum by an unknown donor. No

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known individual was identified. No associated funerary objects are present.

In 1947, human remains representing two individuals from Kailua, Oahu were donated to the Bishop Museum by Father Gay. No known individuals were identified. No associated funerary objects are present.

In 1948, human remains representing two individuals from Makiki, Oahu were donated to the Bishop Museum by Any Greenwell. No known individuals were identified. The six associated funerary object include glass, ivory and stone beads, shell ornaments, and a bone handle.

In 1948, human remains representing one individual from a cave at Waialua, Oahu were donated to the Bishop Museum by Charlotte Hall. No known individual was identified. No associated funerary objects are present.

In 1948, human remains representing two individuals from Sunset Beach, Oahu were donated to the Bishop Museum by R.P. Franklin. No known individuals were identified. No associated funerary objects are present.

In 1949, human remains representing two individuals from Palolo, Oahu were donated to the Bishop Museum by George M. Pacheco. No known individuals were identified. No associated funerary objects are present. Based on wood fragments and nails found at the site, these remains appear to have been interred in a coffin.

In 1949, human remains representing one individual from Mokuleia, Oahu were received by the Bishop Museum from Otto Degener. No known individual was identified. No associated funerary objects are present.

In 1950, human remains representing two individuals from Sunset Beach, Oahu were donated to the Bishop Museum by Colonel Oliver R. Franklin. No known individuals were identified. No associated funerary objects are present.

In 1950, human remains representing three individuals recovered from Diamond Head, Oahu during property excavation were donated to the Bishop Museum by Kenneth Murphy. No known individuals were identified. No associated funerary objects are present.

In 1950, human remains representing one individual from a cave on Hawaiiloa Ridge, Oahu were donated to the Bishop Museum by Everett E. Carlson. No known individual was identified. No associated funerary objects are present. Donor information indicates these remains were contained in a canoe and box coffin. These objects were not included in the donation.

In 1950, human remains representing two individuals from Kailua, Oahu were donated to the Bishop Museum by Dr. Harold L. Houvener. No known indivduals were identified. No associated funerary objects are present.

In 1950, human remains representing two individuals from Honolulu, Oahu were donated to the Bishop Museum by Tommy Giles. No known individuals were identified. The one associated funerary object is a butchered cow bone.

In 1950, human remains representing five individuals from Kuliouou Valley were donated to the Bishop Museum by an unknown donor. No known individuals were identified. The two associated funerary objects are turtle bones.

In 1950, human remains representing one individual from Niu, Oahu were donated to the Bishop Museum by Walter Johnson. No known individual was identified. No associated funerary objects are present.

In 1951, human remains representing fourteen individuals from Kahala, Oahu were collected by Mary Stacey and donated to the Bishop Museum. These remains were encountered during the laying of a sewer line. No known individuals were identified. No associated funerary objects are present.

In 1951, human remains representing one individual from Windward Oahu were donated to the Bishop Museum by an unknown donor. No known individual was identified. No associated funerary objects are present.

In 1951, human remains representing one individual from Wailupe Valley, Oahu were donated to the Bishop Museum by Mrs. George Whisenand. These remains were removed from a small burial cave found by neighborhood children. No known individual was identified. The six associated funerary objects include pieces of tapa, a bone whistle, matting, a comb, a pipe, and cordage.

In 1952, human remains representing one individual from Kahala, Oahu were collected by George F. Arnemann and donated to the Bishop Museum. No known individual was identified. No associated funerary objects are present.

In 1952, human remains representing 56 individuals from Kailua, Oahu were collected by Kenneth P. Emory and donated to the Bishop Museum. These human remains were recovered during construction of a subdivision. No known individuals were identified. No associated funerary objects are present.

In 1952, human remains representing 23 individuals from Kaneohe Bay, Oahu were donated to the Bishop Museum by Kenneth P. Emory. These human remains were collected by Dr. Emory and a University of Hawaii archaeology class. No known individuals were identified. The three associated funerary objects include cloth, shell, and a fish bone.

In 1952, human remains representing 18 individuals from Kailua, Oahu were donated to the Bishop Museum by Dorothy Barrere and Catherine Summers. No known individuals were identified. No associated funerary objects are present.

In 1952, human remains representing one individual from Nuuanu, Oahu were donated to the Bishop Museum by Dr. Howard H. Honda. No known individual was identified. No associated funerary objects are present.

In 1953, human remains representing two individuals from Kailua, Oahu were donated to the Bishop Museum by Dorothy Barrere. No known individuals were identified. No associated funerary objects are present.

In 1953, human remains representing seven individuals from Kailua, Oahu were donated to the Bishop Museum by Catherine Summers. No known individuals were identified. The four associated funerary objects are botanics, metal fragments, and glass beads.

In 1953, human remains representing four individuals from Kailua, Oahu were donated to the Bishop Museum by Mr. and Mrs. Thomas Dewey. These human remains were recovered as a result of bulldozing activity. No known individuals were identified. No associated funerary objects are present.

In 1953, human remains representing one individual from Honolulu, Oahu were donated to the Bishop Museum by Ichiro Oyeda. No known individual was identified. No associated funerary objects are present.

In 1954, human remains representing five individuals from Manoa Valley, Oahu were donated to the Bishop Museum by Edwin H. Bryan, Jr.. These human remains were found in a cave by two boys, and donor information indicates coffin material and post-contact artifacts were seen in the cave. No known individuals were identified. The three associated funerary objects are cloth, an iron implement, and a coffin fragment.

In 1954, human remains representing one individual from Kailua, Oahu were donated to the Bishop Museum by W.E. Thompson. These human remains were recovered as a result of house construction. No known individual was identified. No associated funerary objects are present.

In 1954, human remains representing two individuals from the bank of Kawainui Canal, Kailua, Oahu donated to the Bishop Museum by Catherine Summers. No known individuals were identified. No associated funerary objects are present.

In 1954, human remains representing one individual from Palolo Valley, Oahu were donated to the Bishop Museum by Rev. Floyd Sullivan, who collected the remains 30–40 years prior to the donation. No known individual was identified. No associated funerary objects are present.

In 1955, human remains representing four individuals from Lanikai, Oahu were donated to the Bishop Museum by Robert Creps. No known individuals were identified. No associated funerary objects are present.

In 1955, human remains representing one individual from Tantalus, Oahu were donated to the Bishop Museum by an unknown person. No known individual was identified. No associated funerary objects are present.

In 1955, human remains representing two individuals from Waikiki, Oahu were donated to the Bishop Museum by an unknown person. No known individuals were identified. No associated funerary objects are present.

In 1955, human remains representing one individual from Oahu were donated to the Bishop Museum by Dr. Howard H. Honda. No known individual was identified. No associated funerary objects are present.

In 1955, human remains representing one individual from Wailupe, Oahu were donated to the Bishop Museum by E.B. Kudlich. No known individual was identified. No associated funerary objects are present.

In 1956, human remains representing 32 individuals from Pupukea, Oahu were donated to the Bishop Museum by Fred Shimote. These human remains were recovered from a reburial pit. No known individuals were identified. No associated funerary objects are present.

In 1956, human remains representing 17 individuals from Kailua, Oahu were donated to the Bishop Museum by Kenneth P. Emory. These human remains were collected by Kenneth P. Emory and assistants. The one associated funerary object is a turtle bone.

In 1956, human remains representing 26 individuals from Wailupe Valley, Oahu were donated to the Bishop Museum by Lawrence P. Richards. No known individuals were identified. The one associated funerary object is a glass bead.

In 1957, human remains representing nine individuals from Waikiki, Oahu were donated to the Bishop Museum by G.D. Center. No known individuals were identified. The one associated funerary object is a canine bone.

In 1958, human remains representing three individuals from Kuliouou Valley, Oahu were donated to the Bishop Museum by Mrs. Ernest Dias. Donor information indicates these human remains were recovered from a walled cave. No known individuals were identified. No associated funerary objects are present.

In 1958, human remains representing ten individuals from Kailua, Oahu were donated to the Bishop Museum by Arthur M. Tavares. No known individuals were identified. No associated funerary objects are present.

In 1959, human remains representing two individuals from Kalihi Valley, Oahu were donated to the Bishop Museum by Lino Patubo, Jr.. Donor information indicates these human remains were found near a small cave. No known individuals were identified. No associated funerary objects are present.

In 1959, human remains representing seven individuals from Ewa, Oahu were donated to the Bishop Museum by the Anthropology Club of the University of Hawaii. Donor information indicates these remains were recovered from Standard Oil Refinery land. No known individuals were identified. The one associated funerary object is decayed wood.

In 1959, human remains representing one individual from Niu Valley, Oahu were donated to the Bishop Museum by R. Smith. Donor information indicates these human remains were found in a cave. No known individual was identified. No associated funerary objects are present.

In 1960, human remains representing one individual from Kalihi Valley, Oahu were donated to the Bishop Museum by Manuel Diaz, Charles Kahunanui, and Randy Babino. No known individual was identified. No associated funerary objects are present.

In 1960, human remains representing one individual from Kawailoa Valley, Oahu were donated to the Bishop Museum by A. Anderson. No known individual was identified. The four associated funerary objects include tapa, sticks, kukui nuts, and fibers.

In 1961, human remains representing one individual from Kailua, Oahu were collected and donated to the Bishop Museum by Chet Gorman. Donor information indicates these human remains were recovered from the west bank of Kaelepulu Stream after exposure by bulldozing. No known individual was identified. No associated funerary objects are present.

In 1961, human remains representing one individual from Waikiki, Oahu were collected and donated to the Bishop Museum by Chet Gorman. No known individual was identified. The three associated funerary objects include two glass bottles, and a kukui nut.

In 1961, human remains representing seven individuals from Kaluanui Ridge, Oahu were donated to the Bishop Museum by Marimari Kellum. No known individuals were identified. The one associated funerary object is a drilled dog tooth.

In 1962, human remains representing one individual from Waikiki, Oahu were donated to the Bishop Museum by David Jackson Engineering Equipment Company. No known individual was identified. The one associated funerary object is a piece of metal.

In 1962, human remains representing one individual from Kailua, Oahu were collected and donated to the Bishop Museum by Robert N. Bowen. Donor information indicates these human remains were recovered from the west bank of Kaelepulu Stream. No known individual was identified. The three associated funerary objects include a basalt flake, sand, and a shell.

In 1962, human remains representing one individual from Waialae-Kahala were collected and donated to the Bishop Museum by Robert N. Bowen. No known individual was identified. The one associated funerary object is a piece of coral.

In 1963, human remains representing five individuals from Waikiki, Oahu were donated to the Bishop Museum by W.T. Chang contractors. No known individuals were identified. No associated funerary objects are present.

In 1963, human remains representing 96 individuals from Waikiki, Oahu were collected and donated to the Bishop Museum by Robert N. Bowen. No known individuals were identified. The 17 associated funerary objects include coral, shells, a soil sample, a glass jar, sand and charcoal samples, and bovine bones.

In 1963, human remains representing one individual from Kailua, Oahu were collected and donated to the Bishop Museum by Robert N. Bowen. Donor information indicates these human remains were collected from a bank on the Kaelepulu stream. No known individual was identified. No associated funerary objects are present.

In 1963, human remains representing three individuals from Waialae Golf Course, Oahu were collected and donated to the Bishop Museum by Robert N. Bowen. No known individuals were identified. The three associated funerary objects include a piece of basalt, a piece of coral, and whale tooth beads.

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In 1964, human remains representing three individuals from Maili Beach Park, Oahu were collected and donated to the Bishop Museum by Robert N. Bowen. No known individuals were identified. The nine associated funerary objects include a soil sample, a botanical sample, a wood fragment, nails, sand, and metal fragments.

In 1964, human remains representing one individual from Kailua, Oahu were donated to the Bishop Museum by Homer Hayes. No known individual was identified. No associated funerary objects are present.

In 1964, human remains representing four individuals from Waikiki, Oahu were collected and donated to the Bishop Museum by Lloyd J. Soehren. No known individuals were identified. No associated funerary objects are present.

In 1964, human remains representing seven individual from Dillingham, Oahu were donated to the Bishop Museum by an unknown person. No known individuals were identified. No associated funerary objects are present.

In 1964, human remains representing one individual from St. Louis Heights, Oahu were donated to the Bishop Museum by Glenn Shiroma. No known individual was identified. No associated funerary objects are present.

In 1964, human remains representing one individual from Kailua, Oahu were donated to the Bishop Museum by Allan M. Anderson. No known individual was identified. No associated funerary objects are present.

In 1965, human remains representing one individual from Black Point, Oahu were donated to the Bishop Museum by George Kuprash. Donor information indicates these human remains were recovered during house construction. No known individual was identified. The one associated funerary object is a soil sample.

In 1965, human remains representing one individual from Makapuu Beach, Oahu were donated to the Bishop Museum by John Wolfe. No known individual was identified. No associated funerary objects are present.

In 1965, human remains representing one individual from Kahala, Oahu were donated to the Bishop Museum by Barbara Walker. No known individual was identified. The seven associated funerary objects include basalt stones, coral, fishbone, and shell.

In 1965, human remains representing 43 individuals from Palolo Valley, Oahu were donated to the Bishop Museum by Hiram Teshima. No known individuals were identified. The eight associated funerary objects include a gourd fragment, a bird beak, lauhala pieces, rat bones, and a coconut.

In 1965, human remains representing one individual from Kahuku, Oahu were collected and donated to the Bishop Museum by Robert N. Bowen. No known individual was identified. No associated funerary objects are present.

In 1965, human remains representing nine individuals from Manoa Valley, Oahu were donated to the Bishop Museum by Joseph Backus. Donor information indicates these human remains were removed from a cave. No known individuals were identified. The nine associated funerary objects include a wood pipe, a bone comb, nails, a button, glass beads, and kukui nuts.

In 1965, human remains representing two individuals from Kaneohe Bay, Oahu were donated to the Bishop Museum by L.D. Ackerman. No known individuals were identified. The one associated funerary object is a rabbit skull.

In 1966, human remains representing 32 individuals from Kahala cemetary, Oahu were collected and donated to the Bishop Museum by Robert N. Bowen and Lloyd J. Soehren. Donor information indicates these human remains were collected during construction activity. No known individuals were identified. The 189 associated funerary objects include coins, rings, glass beads, pottery, pipes, cloth, and thimbles.

In 1966, human remains representing one individual from Kahala, Oahu were donated to the Bishop Museum by Lloyd J. Soehren. No known individual was identified. No associated funerary objects are present.

In 1966, human remains representing two individuals from Aina Haina, Oahu were collected and donated to the Bishop Museum by Lloyd J. Soehren. Donor information indicates these human remains were removed from a small cave. No known individuals were identified. No associated funerary objects are present.

In 1966, human remains representing one individual from Kahala, Oahu were collected and donated to the Bishop Museum by Robert N. Bowen. Donor information indicates these human remains were recovered during construction activity. No known individual was identified. No associated funerary objects are present.

In 1966, human remains representing one individual from Kailua, Oahu were donated to the Bishop Museum by an unknown person. Information with these human remains indicates they were recovered by a construction crew. No known individual was identified. No associated funerary objects are present.

In 1966, human remains representing one individual from Makiki Heights, Oahu were donated to the Bishop Museum by George Santana and Milburn Halemanu. No known individual was identified. No associated funerary objects are present.

In 1966, human remains representing one individual from Kawailoa, Oahu were donated to the Bishop Museum by P. Crooks. No known individual was identified. No associated funerary objects are present.

In 1967, human remains representing one individual from Waikiki, Oahu were collected and donated to the Bishop Museum by Lloyd J. Soehren. No known individual was identified. The one associated funerary object is a shell.

In 1967, human remains representing one individual from Waimea Valley, Oahu were donated to the Bishop Museum by T. Foss. No known individual was identified. No associated funerary objects are present.

In 1969, human remains representing one individual from Laie, Oahu were donated to the Bishop Museum by Hal H. Hunter. Donor information indicates these human remains were recovered from an eroding sand dune. No known individual was identified. No associated funerary objects are present.

In 1969, human remains representing four individuals from Kahuku, Oahu were donated to the Bishop Museum by Sidney Kim-Han of the Honolulu Police Department. Donor information indicates these human remains were recovered from the ocean side of the Kahuku rubbish dump. No known individuals were identified. No associated funerary objects are present.

In 1969, human remains representing one individual from Haleiwa, Oahu were donated to the Bishop Museum by Frank O. Hay, Jr.. Donor information indicates these human remains were washed out by oceanwaves at the site. No known individual was identified. The one associated funerary object is a rock.

In 1969, human remains representing one individual from Kaneaki Heiau, Makaha, Oahu were accessioned by the Bishop Museum. These human remains were collected by Edmund Ladd and Russ Apple and are associated with Bishop Museum Archaeology project 012. No known individual was identified. No associated funerary objects are present.

In 1970, human remains representing eight individuals from Waikiki, Oahu were donated to the Bishop Museum by the Sheraton Hawaii Corp. Donor information indicates these human remains were recovered during excavations for tank construction. No known individuals were identified. No associated funerary objects are present.

In 1971, human remains representing 11 individuals from Kaalakei Ridge, Oahu were recovered from a cave by Patrick C. McCoy during Bishop Museum Archaeology Project 045. No known individuals were identified. No associated funerary objects are present.

In 1972, human remains representing three individuals from the north shore of Oahu were donated to the Bishop Museum by Dr. James Thoene. Donor information indicates Dr. Thoene received these human remains from a transient. No known individuals were identified. The three associated funerary objects include a stick, cordage, and basalt.

In 1972, human remains representing one individual from Kuliouou, Oahu were donated to the Bishop Museum by Roxanne Grigalot. No known individual was identified. No associated funerary objects are present.

In 1972, human remains representing two individuals from Haiku Valley, Oahu were collected and donated to the Bishop Museum by Robert Quick. Donor information indicates these human remains were recovered during bulldozing activity. No known individuals were identified. No associated funerary objects are present.

In 1972, human remains representing five individuals from Kahuku, Oahu were donated to the Bishop Museum by D. Yuen. No known individuals were identified. The one associated funerary object is a bird bone.

In 1974, human remains representing one individual from Oahu were donated to the Bishop Museum by Dr. Kam Chun. Donor information indicates Dr. Chun received these human remains in 1927 from a naval officer at the Wailupe Naval Station. The exact provenance of these human remains is unknown. No known individual was identified. No associated funerary objects are present.

In 1974, human remains representing four individuals from Kailua were donated to the Bishop Museum by Gene Hunter. No known individuals were identified. No associated funerary objects are present.

In 1975, human remains representing one individual from an unspecified location on Oahu were donated to the Bishop Musem by Beth Cutting. Donor information indicates these human remains were purchased from an antique shop. No known individual was identified. No associated funerary objects are present.

In 1975, human remains representing one individual from Kaneohe were recovered during Bishop Museum Archaeology Project 60 and 138 by Patrick C. McCoy, Aki Sinoto, Ranjit Cooray, Patrick Kirch, and Paul Rosendahl. No known individual was identified. No associated funerary objects are present.

In 1977, human remains representing one individual from Laie, Oahu were donated to the Bishop Museum by Aki Sinoto. No known individual was identified. The one associated funerary object is a canine bone.

In 1978, human remains representing two individuals from Kahuku, Oahu were donated to the Bishop Museum by the Honolulu Police Department. No known individuals were identified. The one associated funerary object is fish bone.

In 1979, human remains representing three individuals from Makiki, Oahu were recovered by Eric Komori during the Bishop Museum Archaeology Project 222. Project documentation indicates these human remains were recovered from the former Hawaii Sugar Planters Association Experiment Station. No known individuals were identified. The one associated funerary object is glass bead.

In 1980, human remains representing two individuals from Honolulu, Oahu were donated to the Bishop Museum by Royal Queen Emma Partners. No known individuals were identified. No associated funerary objects are present.

In 1980, human remains representing one individual from Laie, Oahu were donated to the Bishop Museum by the Honolulu Police Department. Donor information indicates these human remains were recovered from a sand burial. No known individual was identified. No associated funerary objects are present.

In 1980, human remains representing nine individuals from Honouliuli, Oahu were collected and donated to the Bishop Museum by Robert Albert, Douglas Borthwick, and William Folk. Donor information indicates these human remains were recovered from coral sinkholes. No known individuals were identified. No associated funerary objects are present.

In 1981, human remains representing five individuals from the Yokohama Bay area, Oahu were donated to the Bishop Museum by Officer Louis Souza of the Honolulu Police Department. Donor information indicates these human remains were found in a cave by hikers. No known individuals were identified. No associated funerary objects are present.

In 1981, human remains representing eight individuals from Waikiki, Oahu were collected and donated to the Bishop Museum by Bertell Davis. No known individuals were identified. No associated funerary objects are present.

In 1982, human remains representing one individual from Kailua Beach, Oahu were donated to the Bishop Museum by Mrs. Faye Myers. No known individual was identified. The three associated funerary objects include a turtle bone, a stone, and a nail.

In 1982, human remains representing one individual from Kailua, Oahu were donated to the Bishop Museum by Ray H. Greenfield. No known individual was identified. No associated funerary objects are present.

In 1982, human remains representing three individuals from Anahulu, Waialua, Oahu were collected and donated to the Bishop Museum by Arthur Saxe. No known individuals were identified. The three associated funerary objects include kapa, cordage, and a kukui nut.

In 1983, human remains representing four individuals from Kaneohe or Kahaluu, Oahu were donated to the Bishop Museum by Ray H. Greenfield. Donor information indicates that Mr. Greenfield collected the human remains in c. 1963, but could not remember the specific location. No known individuals were identified. No associated funerary objects are present.

In 1984, human remains representing two individuals from Kawailoa were recovered by Anne M. Garland during Bishop Museum Archaeology Project 324. No known individuals were identified. No associated funerary objects are present.

In 1984, human remains representing two individuals from Waimea, Oahu were donated to the Bishop Museum by an unknown person. No known individuals were identfied. No associated funerary objects are present.

In 1985, human remains representing two individuals from Waikalua-loko, Kaneohe, Oahu were recovered by Stephan Clark and Mary Riford during Bishop Museum Archaeology Project 347. No known individuals were identified. The two associated funerary objects are basalt cobbles.

In 1986, human remains representing two individuals from Kahala, Oahu were collected and donated to the Bishop Museum by Toni Han and Wendall Kim. Donor information indicates these human remains were recovered during a gardening project. No known individuals were identified. The five asssociated funerary objects are shell, glass fragments, metal fragments, and a porcine bone.

In 1986, human remains representing one individual from Queen's Beach, Oahu were collected and donated to the Bishop Museum by Toni Han and Aki Sinoto. No known individual was

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identified. The two associated funerary objects are a penny, and a bovine bone.

In 1987, human remains representing one individual from Makaha, Oahu were recovered by Eric Komori during Bishop Museum Archaeology Project 382. No known individual was identified. No associated funerary objects are present.

In 1989, human remains representing one individual from Kahuku, Oahu were collected and donated to the Bishop Museum by Paul Cleghorn. Donor information indicates these human remains were recovered during construction activity. No known individual was identified. The one associated funerary object is a shell.

In 1990, human remains representing one individual from the Sunset Beach area were donated to the Bishop Museum by Douglas M. Hawkins. Donor information indicates these human remains were collected in 1957. No known individual was identified. No associated funerary objects are present.

In 1995, human remains representing one individual from Oahu were donated to the Bishop Museum by Christopher A. Hays. Donor information indicates the donor's father removed these human remains from a burial cave at some time during 1963–1966. No known individual was identified. No associated funerary objects are present.

In 1995, human remains representing one individual from Waianae, Oahu were found in the collections of the Bishop Museum. Information with the remains indicates they were acquired from Dr. C.P. Hoyt at an unknown date. No known individual was identified. No associated funerary objects are present.

In 1995, human remains representing one individual from Kahuku, Oahu were found in the collections of the Bishop Museum. Information with the remains indicates they were acquired from Aki Sinoto and Eric Komori at an unknown date. No known individual was identified. The three associated funerary objects are porcine bone, shell, wood fragments.

In 1995, human remains representing one individual from Nuuanu Valley, Oahu were found in the collections of the Bishop Museum. No acquisition date or donor has been identified. No known individual was identified. No associated funerary objects are present.

In 1995, human remains representing 11 individuals from Kalihi Valley and Manoa Valley, Oahu were found in the collections of the Bishop Museum. Information with these human remains indicates they were donated in 1916 by a Mr. Olsen. No known individuals were identified. No associated funerary objects are present.

In 1995, human remains representing one individual from Kailua, Oahu were found in the collections of the Bishop Museum. Information with these human remains indicates they were donated circa 1938 from a Dr. Dudley. No known individual was identified. No associated funerary objects are present.

In 1995, human remains representing eight individuals from Kuliouou, Oahu were found in the collections of the Bishop Museum. Information with these human remains indicates they were collected by Kenneth P. Emory, acquisition date unknown. No known individuals were identified. No associated funerary objects are present.

In 1996, human remains representing one individual from Waikiki, Oahu were found in the collections of the Bishop Museum. Information with the remains indicates they were acquired during the early 1900s from an unknown donor. No known individual was identified. No associated funerary objects are present.

In 1996, human remains representing one individual from Kaneohe, Oahu were donated to the Bishop Museum by Nicolas Fern. No known individual was identified. No associated funerary objects are present.

In 1996, human remains representing one individual from Kuliouou were found in the collections of the Bishop Museum. Information with these remains indicates they were donated in 1956 by Kenneth P. Emory. No known individual was identified. No associated funerary objects are present.

In 1996, human remains representing one individual from Oahu were found in the collections of the Bishop Museum. No further information is available. No known individual was identified. No associated funerary objects are present.

In 1996, human remains representing one individual from Maunalua, Oahu were found in the collections of the Bishop Museum. Information with the remains indicates they were donated by Kenneth P. Emory at an unknown date. No known individual was identified. No associated funerary objects are present.

Based on the style and type of associated funerary objects, manner of interments, and recovery locations, the human remains listed above have been determined to be Native Hawaiian. In consultation with Native Hawaiian organizations, the Bishop Museum decided that no attempt would be made to determine the age of the human remains.

Based on the above mentioned information, officials of the Bishop Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 953 individuals of Native American ancestry. Officials of the Bishop Museum have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 357 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bishop Museum have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Adminstrator of the Island Burial Councils, Alu Like, Hawaiian Civic Club of Honolulu, Daughters and Sons of Hawaiian Warriors, Hui Malama I Na Kupuna O Hawai'i Nei, Ka Lahui Hawai'i, Kamehameha Schools/Bishop Estate, Nahoa 'Olelo O Kamehameha Society, the Oahu Burial Council, the Office of Hawaiian Affairs, and Royal Order of Kamehameha I.

This notice has been sent to officials of Adminstrator of the Island Burial Councils, Alu Like, Hawaiian Civic Club of Honolulu, Daughters and Sons of Hawaiian Warriors, Hui Malama I Na Kupuna O Hawai'i Nei, Ka Lahui Hawai'i, Kamehameha Schools/Bishop Estate, Nahoa 'Olelo O Kamehameha Society, the Oahu Burial Council, the Office of Hawaiian Affairs, and Royal Order of Kamehameha I. Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Janet Ness, Registrar, Bernice Pauahi Bishop Museum, 1525 Bernice Street, Honolulu, HI 96817; telephone: (808) 848–4105; before February 27, 1998. Repatriation of the human remains and associated funerary objects to the culturally affiliated Native Hawaiian organizations may begin after that date if no additional claimants come forward.

Dated: January 20, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeologist and Ethnography Program.

[FR Doc. 98–1993 Filed 1–27–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Maine in the Possession of the Department of Anthropology, University of Maine, Orono, ME

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and associated funerary objects from Maine in the possession of the Department of Anthropology, University of Maine, Orono, ME.

A detailed assessment of the human remains was made by University of Maine professional staff and a consulting forensic anthropologist in consultation with representatives of the Aroostook Band of MicMacs, Houlton Band of Maliseets, Passamaquoddy Tribe, and the Penobscot Indian Nation.

Prior to 1966, human remains representing one individual were uncovered at Benton Falls, ME during a mill foundation excavation. These human remains were donated to the Department of Anthropology, University of Maine by an unknown person. No known individual was identified. The three associated funerary objects are tubular copper beads.

Based on the associated funerary objects, this individual has been determined to be Native American. The copper beads also appear to be from the historic period (post–1600 AD). Because these human remains are likely from the post-contact period (post–1600 A.D.) and historical documents place the Wabanaki in Maine during this time, these human remains are affiliated with the Micmac, Malecite, Passamaquoddy, Penobscot present-day tribes.

In 1968, human remains representing one individual were recovered from the Hathaway site (91–1), Passadumkeag, ME during an archaeological excavation conducted by Dr. Dean Snow and sponsored by the University of Maine and the National Science Foundation. No known individual was identified. No associated funerary objects were present.

Archaeological evidence based on the material culture of Maine indicates that the Ceramic Period (c. 1,000 B.C. to the contact period) "is the prehistory of those Algonkian speakers known generally as the Wabenakis; including the Micmac, Malecite, Passamaquoddy, [and] Penobscot." A radiocarbon date of 200+/–80 A.D. from charcoal near the human remains dates these remains to well within the Ceramic Period considered ancestral to the present-day tribes of Maine.

During the 1960s, human remains representing one individual were donated to the University of Maine by the Portland Society of Natural History. In 1930, these human remains were recovered during streetcar track construction in Waterville, ME. No known individuals were identified. No associated funerary objects are present.

Based on dental morphology, this individual has been determined to be Native American. Published reports of the excavation indicated there was red-stained sand in association with these human remains (the sand was not recovered). Based on the state of preservation and the lack of red staining on these human remains, the date of burial has been estimated to be from the Ceramic into the Historic period (c. 1,000 B.C. to post–1600 A.D.). Archaeological evidence based on the material culture of Maine indicates that the Ceramic Period (c. 1,000 B.C. to the contact period) "is the prehistory of those Algonkian speakers known generally as the Wabenakis; including the Micmac, Malecite, Passamaquoddy, [and] Penobscot."

During the 1960s, human remains representing one individual were donated to the University of Maine by the Portland National History Society. No known individual was identified. No associated funerary objects are present.

Information accompanying these human remains indicate they were recovered from Rogers (possibly Roques or Rogues) Island. No further information is available. Based on the state of preservation of the remains and coastal location of the site, a shell midden context for these human remains is likely. Interment in shell middens is commonly associated with the Ceramic period. Archaeological evidence based on the material culture of Maine indicates that the Ceramic Period (c. 1,000 B.C. to the contact period) "is the prehistory of those Algonkian speakers known generally as the Wabenakis; including the Micmac, Malecite, Passamaquoddy, [and] Penobscot."

During the 1960s, human remains representing one individual were donated to the Department of Anthropology, University of Maine by the Portland Natural History Society. No known individual was identified. No associated funerary objects are present.

Information accompanying these human remains indicates that they were acquired in 1924 by Mr. Samuel Hiscock of Round Pond, ME from a "workman" digging in the Damariscotta Oyster Shell Heaps, ME. This information also suggests there may have been some Ceramic period objects with the human remains which were not included in the donation. Archaeological evidence based on the material culture of the Damariscotta Shell Heaps indicates that the Ceramic Period (c. 1,000 B.C. to the contact period) "is the prehistory of those Algonkian speakers known generally as the Wabenakis; including the Micmac, Malecite, Passamaquoddy, [and] Penobscot."

During the 1960s, human remains representing two individuals from Cape Elizabeth and South Freeport, ME were donated to the Department of Anthropology, University of Maine by the Portland Natural History Society. No known individuals were identified. No associated funerary objects are present.

Information with these human remains indicates they were removed from Cape Elizabeth, ME and donated to the Portland Natural History Society in 1955 by Mr. and Mrs. Rogerson of Portland, ME; and a Mr. Randall donated additional human remains from South Freeport, ME. These human remains were not cataloged by the Portland Natural History Society, and have been co-mingled so that it is not possible to separate them by locality. Based on dental morphology, these human remains have been determined to be Native American. Based on the recovery of these human remains from the bases of eroded banks and the state of preservation of the remains, the date of burial has been estimated to be from the Ceramic into the Historic period (c. 1,000 B.C. to post–1600 A.D.). Archaeological evidence based on the material culture of Maine indicates that the Ceramic Period (c. 1,000 B.C. to the contact period) "is the prehistory of those Algonkian speakers known generally as the Wabenakis; including the Micmac, Malecite, Passamaquoddy, [and] Penobscot."

Prior to 1971, human remains representing one individual from "High Point", Hampden, ME were donated to the Department of Anthropology, possibly by Mr. Earl Banks. No known individual was identified. No funerary objects are present.

Based on the molar wear patterns present, this individual has been determined to be Native American. Although this exact site is unknown, the state of preservation of these human remains indicate that they are fairly recent, probably post-contact (c.1600).

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Because these human remains are likely from the post-contact period (post–1600 A.D.) and historical documents place the Wabanaki in Maine during this time, these human remains are affiliated with the Micmac, Malecite, Passamaquoddy, Penobscot present-day tribes.

In 1973, human remains representing a minimum of one individual were recovered from a highly disturbed sand dune (71–2) in Farmington Falls, ME by unknown person(s) and have been curated at the Department of Anthropology, University of Maine, since that time. No known individual was identified. No associated funerary objects are present.

Based on the state of preservation, these human remains are believed to date from the Ceramic period into the contact period. Archaeological evidence based on the material culture of Maine indicates that the Ceramic Period (c. 1,000 B.C. to the contact period) "is the prehistory of those Algonkian speakers known generally as the Wabenakis; including the Micmac, Malecite, Passamaquoddy, [and] Penobscot."

In 1973, human remains representing two individuals were removed from Winnock's Neck (site 8–1), Scarboro, ME during investigations by amateur archeologists. These human remains and field notes pertaining to them were subsequently donated to the University of Maine by unknown individual(s). No known individuals were identified. No associated funerary objects are present.

The field notes accompanying these remains indicate they were recovered with three pottery sherds, indicating a likely Ceramic Period date for these human remains. Archaeological evidence based on the material culture of Maine indicates that the Ceramic Period (c. 1,000 B.C. to the contact period) "is the prehistory of those Algonkian speakers known generally as the Wabenakis; including the Micmac, Malecite, Passamaquoddy, [and] Penobscot."

In 1984, human remains representing a minimum of one individual from the Todd site (17–11) Bremem, ME were recovered by a University of Maine research team. No known individual was identified. No associated funerary objects are present.

The Todd site (17–11) has been identified as a shell midden dating to the late Ceramic period (post 1000 A.D.). Archaeological evidence based on the material culture of Maine indicates that the Ceramic Period (c. 1,000 B.C. to the contact period) "is the prehistory of those Algonkian speakers known generally as the Wabenakis; including the Micmac, Malecite, Passamaquoddy, [and] Penobscot."

In 1989, human remains representing a minimum of nine individuals were recovered from the Eddington Bend site (74–8), Eddington, ME during a FERC-required recovery excavation by University of Maine personnel. No known individuals were identified. No associated funerary objects were recoverable.

Based on dental morphology, these individuals have been determined to be Native American. Based on the presence of a highly oxidized and unrecoverable piece of iron in the pit feature with the human remains and apparent iron or steel tool cut marks on the bones, these human remains probably date to the post-contact period. Because these human remains are likely from the post-contact period (post–1600 A.D.) and historical documents place the Wabanaki in Maine during this time, these human remains are affiliated with the Micmac, Malecite, Passamaquoddy, Penobscot present-day tribes.

Based on the above mentioned information, officials of the Department of Anthropology, University of Maine have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 21 individuals of Native American ancestry. Officials of the Department of Anthropology, University of Maine have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the three objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Department of Anthropology, University of Maine have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Aroostook Band of MicMacs, Houlton Band of Maliseets, Passamaquoddy Tribe, and the Penobscot Indian Nation.

This notice has been sent to officials of the Aroostook Band of MicMacs, Houlton Band of Maliseets, Passamaquoddy Tribe, and the Penobscot Indian Nation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. David Sanger, Department of Anthropology, University of Maine, Orono, ME 04469; telephone: (207) 581–1894, before February 27, 1998. Repatriation of the human remains and associated funerary objects to the culturally affiliated tribes may begin after that date if no additional claimants come forward.

Dated: January 15, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–1992 Filed 1–27–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

President's Advisory Board on Race; Meetings

ACTION: President's Advisory Board on Race and related meetings.

SUMMARY: The President's Advisory Board on Race will meet on February 10 and 11, 1998 in the San Francisco Bay area. On February 10, Advisory Board members will visit sites in the area where organizations are having success at addressing issues relating to poverty and race. At approximately 6:00 p.m., there will be a community forum in San Jose at a site to be determined. The purpose of the forum is to provide an opportunity for residents from the community to raise issues of general concern in the areas of race and racial reconciliation.

On February 11, the Advisory Board will meet in San Jose at a site to be determined to discuss issues relating to race and poverty. The meeting will include panel discussions with national experts, as well as individuals with local and regional expertise. The meeting will include time for questions from the public.

The public is welcome to attend the community forum and the Advisory Board meeting on a first-come, first-seated basis. Members of the public may also submit to the contact person, any time before or after the meeting, written statements to the Board. Written comments may be submitted by mail, telegram, facsimile, or electronic mail, and should contain the writer's name, address and commercial, government, or organizational affiliation, if any. The address of the President's Initiative on Race is 750 17th Street, NW., Washington, D.C. 20503. The electronic mail address is http://www.whitehouse/gov/Initiatives/OneAmerica.

FOR FURTHER INFORMATION: Contact our main office number, (202) 395–1010, for the exact time and location of the meetings. Other comments or questions regarding this meeting may be directed to Randy D. Ayers, (202) 395–1020.

Dated: January 23, 1998.

Randy Ayers,

Executive Officer.

[FR Doc. 98–2092 Filed 1–23–98; 3:22 pm]

BILLING CODE 4410–AR–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *John L. Conner, Jr., et al.*, Civil Action No. B–C–97–85 (E.D. Ark.), was lodged with the United States District Court for the Eastern District of Arkansas on December 19, 1997.

The proposed consent decree would resolve the United States' allegations in the above-referenced enforcement action that Defendants have violated Sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344, by unlawfully discharging dredged or fill material into approximately 70 acres of waters of the United States at twelve different sites in Jackson, Woodruff and Lawrence Counties.

The proposed consent decree would require Defendants: (1) To pay a $400,000 civil penalty; (2) to restore the three largest violation sites, which total approximately 50 acres; (30) to create approximately 85 acres of wetlands; and (4) to preserve 100 acres of forested land, 95 of which are currently wetlands. The decree would also permanently enjoin Defendants from discharging dredged or fill materials into waters of the United States without an applicable permit.

The Department of Justice will accept written comments relating to the proposed consent decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Wendy L. Blake, Environmental Defense Section, P.O. Box 23986, Washington, D.C. 20026–3986, and should refer to *United States* v. *Conner et al.*, DJ Reference No. 90–5–1–4–385.

The proposed consent decree may be examined at either the Clerk's Office, United States District Court, Eastern District of Arkansas, Room 402, 600 West Capitol Street, Little Rock, Arkansas, or at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, D.C. 20005. Requests for a copy of the consent decree may be mailed to the Consent Decree Library at the above address and must include a check in the amount of $20.25.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 98–1994 Filed 1–27–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 22, 1998.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd, R. Owen ([202] 219–5096 ext. 143) or by E-Mail to Owen-Todd@dol.gov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call [202] 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday–Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ([202] 395–7316), within 30 days from the date of this publication in the **Federal Register**. The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Administrative Procedures—20 CFR 601 including Form MA 8–7.

OMB Number: 1205–0222 (Extension).

Frequency: As needed.

Affected Public: State or local governments.

Number of Respondents: 53.

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 53.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: Administrative Procedures—20 CFR 601 requires States to submit copies of their unemployment compensation laws for approval by the Secretary of Labor, as well as all relevant State materials which allow the Secretary to make findings required by the Internal Revenue Code, Social Security Act and Wagner-Peyser Act.

Agency: Employment Training Administration.

Title: Lifelong Learning Demonstration Follow-up Survey.

OMB Number: 1205–0NEW.

Frequency: One-Time.

Affected Public: Individuals.

Number of Respondents: 4,000.

Estimated Time Per Respondent: 35 minutes.

Total Burden Hours: 2,333.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The Lifelong Learning demonstration provided randomly-selected adult workers in the Greater Baltimore area with comprehensive information about post-secondary education and training opportunities and streamlined referrals of interested workers educational institutions. The results of this data collection will be used by both DOL and Education to evaluate the Demonstration, to inform future public information campaigns on lifelong learning, and provide useful information for other ETA and Education programs affecting the education and training of adults in the U.S. work force.

Agency: Employment Standards Administration.

Title: Request from Claimant for Information on Earnings, Dual Benefits, Dependents, and Third Party Settlements (Form CA–1032).

OMB Number: 1215–0151 (Extension).

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Frequency: Annually.
Affected Public: Individuals or Households.
Number of Respondents: 50,000.
Estimated Time Per Respondent: 20 minutes.
Total Burden Hours: 16,667.
Total Annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): $16,000.
Description: The Federal Employees' Compensation Act (FECA) provides for the collection of information from claimants, receiving continuing compensation on the periodic disability rolls. This form is used to obtain necessary information from claimants receiving compensation for an extended period of time. This information is necessary to ensure that compensation being paid is correct.

Agency: Employment Standards Administration.
Title: Application for Farm Labor Contractor and Farm Labor Contractor Employee Certificates of Registration (Form WH–530 replacing current forms WH–510 and WH–512).
OMB Number: 1215–0037 (Extension).
Frequency: Biennially.
Affected Public: Individuals or households; business or other for-profit; farms.
Number of Respondents: 7,500.
Estimated Time Per Respondent: 30 minutes.
Total Burden Hours: 3,750.
Total Annualized capital/startup costs: $1,560.
Total annual costs (operating/maintaining systems or purchasing services): 0.
Description: The Migrant and Seasonal Agricultural Worker Protection Act provides that no individual may perform farm labor contracting activities without a certificate of registration. Form WH–530 is the application form which provides the Department of Labor with the information necessary to issue certificates specifying the farm labor contracting activities are authorized.

Agency: Occupational Safety and Health Administration.
Title: Voluntary Protection Program (VPP) Information Collection.
OMB Number: 1218–ONEW.
Frequency: On Occasion.
Affected Public: Applicants to the Voluntary Protection Program.
Number of Respondents: 90 to 100 per year.
Estimated Time Per Respondent: 200 hours.
Total Burden Hours: 18,000.
Total Annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): 0.
Description: The information collection is necessary to determine if the applicant has a safety and health program that should qualify for participation in one of OSHA's Voluntary Protection Programs.

Todd R. Owen,
Departmental Clearance Officer.

[FR Doc. 98–2036 Filed 1–27–98; 8:45 am]
BILLING CODE 4510–27–M, 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 5th day of January, 1998.

Grant D. Beale,
Acting Director, Office of Trade Adjustment Assistance.

APPENDIX
[Petitions instituted on 01/05/98]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,125	Healthtex, Inc (Comp)	Warrenton, GA	12/19/97	Children's Knit Clothing.
34,126	Crown Cork and Seal Co (Wrks)	Philadelphia, PA	12/17/97	Aerosol and Sanitary Cans.
34,127	Country Elegance Wedding (Comp)	North Hollywood, CA ..	12/14/97	Bridal Gowns.
34,128	Romia Ventilator Co (Wrks)	Gardena, CA	11/24/97	Sheet Metal Products.
34,129	National Electrical (Wrks)	E. Stroudsburg, PA	12/03/97	Carbon Brushes.

[FR Doc. 98–2039 Filed 1–27–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

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Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address show below, not later than February 9, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 12th day of January, 1998.

Grant D. Beale,
Acting Director, Office of Trade Adjustment Assistance.

APPENDIX
[Petitions instituted on 01/12/98]

TA–W	Subject firm (petitioners)	Location	Date of petition	Products(s)
34,130	Unifi, Inc (Co.)	Graham, NC	12/19/97	Coated Yarn.
34,131	Unifi, Inc (Co.)	Lincolnton, NC	12/19/97	Coated Yarn.
34,132	Burgess Machine and Tool (Wkrs)	St. Claire, MI	12/18/97	Plastic Injection Molds.
34,133	Outokumpu Copper Kenosha (USWA)	Kenosha, WI	12/28/97	Light Gauge Brass and Copper Strip.
34,134	P and M Cedar Products (Wkrs)	Anderson, CA	12/13/97	Basswood Window Slats.
34,135	Anchor Glass Container (Wkrs)	Keyser, WV	12/17/97	Glass Containers.
34,136	DELCO Remy America (UAW)	Meridian, MS	12/15/97	Cranking Motors.
34,137	Allied Signal (IUE)	Eatontown, NJ	12/16/97	Power Generators.
34,138	Quality Dinettes, Inc (Wkrs)	Haleyville, AL	11/30/97	Wood Dinette Tables, Chairs.
34,139	Trellebong (Wkrs)	South Haven, MI	12/13/97	Plastic Boot Seals for Vehicles.
34,140	International Jensen (Wkrs)	Punysutawney, PA	12/19/97	Speakers and Components.
34,141	Mascotech Industrial (UAW)	Duffield, VA	12/15/97	Gas and Electric Cook Tops and Ranges.
34,142	Red Kap Industries (Wkrs)	Ripley, MS	12/18/97	Uniforms.
34,143	Prentiss Manufacturing (Co.)	Booneville, MS	12/30/97	Men's Shirts—Work, Western, Sport.
34,144	Alfa Laval Separation (IUE)	Warminster, PA	12/18/97	Centrifuges.
34,145	Bassett Motion Furniture (Co.)	Booneville, MS	12/19/97	Motion Recliners and Sofas.
34,146	Briggs Industries (GMP)	Somerset, PA	12/26/97	China Toilet Bowels and Tanks.
34,147	Empire Jewelry (Wkrs)	New York, NY	12/25/97	Jewelry Finishing.
34,148	Molten Metal Technology (Wkrs)	Fall River, MA	12/22/97	Solid Waste Incinerators.
34,149	Zenith Electronics (Wkrs)	Glenview, IL	01/02/98	Purchasing Dept—Televisions.
34,150	A. Koral Fashion, Inc (Co.)	Schuylkill Haven, PA ...	12/18/97	Men's, Ladies' and Children's Clothing.
34,151	NCR Corp (Co.)	Morristown, TN	01/02/98	Ink Ribbons—Cassette Style.
34,152	Lorraine Wardy/Opal (Wkrs)	El Paso, TX	01/05/98	Ladies' Clothing.

[FR Doc. 98–2038 Filed 1–27–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02054]

Procter & Gamble Health Care Division, Greenville, South Carolina; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on December 5, 1997 in response to a petition filed on behalf of workers at Procter and Gamble, Health Care Division, Greenville, South Carolina.

In a letter dated January 16, 1998, the petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 21st day of January 1998.

Grant D. Beale,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–2037 Filed 1–27–98; 8:45 am]
BILLING CODE 4510–30–M

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98-007]

Privacy Act; Annual Notice and Amendment to Systems of Records

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Annual Notice and Amendment of Systems of Records.

SUMMARY: Each Federal agency is required by the Privacy Act of 1974, 5 U.S.C. 552a, to publish a description of the systems of records it maintains containing personal information when a system is substantially revised, deleted, or created. In this notice, NASA provides the required information on all 20 of its previously-noticed systems of records, is deleting from its inventory two systems of records no longer being created or maintained, is renaming an existing system and adding a new routine use which is required by the Personal Responsibility and Work Opportunity Reconciliation Act, and is making several revisions to these existing systems of records to provide editorial and organizational changes to NASA's Systems of Records which were last published in the **Federal Register** on October 10, 1984. The systems of records which are being abolished are entitled "53BHTR—Wallops Flight Facility Base Housing Tenant Records," and "73FHAP—WSTF Federal Housing Administration (FHA) 809 Housing Program—NARA," and were previously published in the **Federal Register** on October 10, 1984 (49 FR 39742). The records described in these two existing systems of records will be maintained in accordance with NASA's Records Retention Schedules and will be destroyed accordingly. The system previously identified as "NASA 10PAYS—Payroll Systems," has been renamed as "NASA 10NPPS—NASA Personal and Payroll System," and was previously published in the **Federal Register** on October 10, 1984 (49 FR 39742). We invite public comment on this publication.

EFFECTIVE DATE: Janaury 28, 1998. Comments are invited but must be received in writing on or before February 27, 1998.

ADDRESSES: Chief Information Office, Code AO, NASA Headquarters, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Donald J. Andreotta, 202–358–1367, or Adria A. Lipka, 202–358–1372.

SUPPLEMENTARY INFORMATION: NASA currently maintains 20 systems of records under the Privacy Act. Each system is described and published below in its entirety, as amended.

Donald J. Andreotta,

NASA Privacy Officer.

Table of Contents

NASA 10ACMQ—Aircraft Crewmembers Qualifications and Performance Records.
NASA 10BRPA—Biographical Records for Public Affairs.
NASA 10EEOR—Equal Opportunity Records.
NASA 10ERMS—Executive Resources Management System.
NASA 10GMVP—Government Motor Vehicle Operators Permit Records.
NASA 10HABC—History Archives Biographical Collection.
NASA 10HERD—Human Experimental and Research Data Records.
NASA 10HIMS—Health Information Management System.
NASA 10IGIC—Inspector General Investigations Case Files.
NASA 10NPPS—NASA Personnel and Payroll Systems (NPPS).
NASA 10SCCF—Standards of Conduct Counseling Case Files.
NASA 10SECR—Security Records System.
NASA 10SPER—Special Personnel Records.
NASA 10XROI—Exchange Records on Individuals.
LEWIS 22ORER—LeRC Occupational Radiation Exposure Records.
GODDARD 51LISTS—Locator and Information Services Tracking System (LISTS).
GODDARD 51RSCR—GSFC Radiation Safety Committee Records.
JOHNSON 72XOPR—JSC Exchange Activities Records.
KENNEDY 76RTES—KSC Radiation Training and Experience Summary.
KENNEDY 76STCS—KSC Shuttle Training Certification System (YC04).
KENNEDY 76XRAD—KSC USNRC Occupational External Radiation.
Exposure History for Nuclear Regulatory Commission Licenses.

NASA 10ACMQ

SYSTEM NAME:

Aircraft Crewmembers Qualifications and Performance Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Locations 1 through 11 inclusive as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Crewmembers of NASA aircraft.

CATEGORIES OF RECORDS IN THE SYSTEM:

System contains: (1) Record of qualification, experience, and currency, e.g., flight hours (day, night, and instrument), types of approaches and landings, crew position, type of aircraft, flight check ratings and related examination results, training performed and medical records; (2) flight itineraries and passenger manifests; and (3) biographical information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473 and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used within NASA for: Evaluation of crewmember performance by supervisory flight operations personnel and staff; by the individuals whose records are maintained; on occasion by flight operations and safety survey teams; and accident reporting and investigating, including mishap and collateral reports and investigations. In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA: (1) In cases of accident investigations, including mishap and collateral investigations, access to this system of records may be granted to Federal or local agencies such as Department of Defense, Federal Aviation Administration, National Transportation Safety Board, or foreign governments, but may not be released to the public except pursuant to NASA regulations (see (3) below); (2) To other agencies, companies, or governments requesting qualifications of crewmembers prior to authorization to participate in their flight programs; or to other agencies, companies, or governments whose crewmembers may participate in NASA's flight programs; (3) public or press releases either by prior approval of the individual, or in case of public release of information from mishap or collateral investigation reports, pursuant to NASA regulations; and (4) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper or hard-copy documents and magnetic media.

RETRIEVABILITY:

Records are indexed by name or aircraft number.

SAFEGUARDS:

Records are protected in accordance with the requirements and procedures which appear at 14 CFR part 1212.

RETENTION AND DISPOSAL:

Records are maintained and destroyed in accordance with NASA Records Retention Schedules, Schedule 8 (UFI 8650).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Aircraft Management Office, Location 1.

Subsystem Managers: Chief, Ames Research Aircraft Operations Division, Location 2; Chief, Dryden Research Aircraft Operations Division, Location 3; Head, Aeronautical Programs Branch, Location 4; Chief, Aircraft Operations Division, Location 5; Chief, Aircraft Operations Office, Location 6; Chief, Flight Operations and Support Division, Location 7; Chief, Aircraft Operations Branch, Location 8; Chief, Aircraft Operations, Location 9; Chief, Contract Management, Location 10; Aircraft Management Officer, Location 11 (Locations are set forth in Appendix A).

NOTIFICATION PROCEDURE:

Information may be obtained from the cognizant system or subsystem manager listed above.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Address stated in the Notification Section above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear at 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Individuals, training schools or instructors, medical units or doctors.

NASA 10BRPA

SYSTEM NAME:

Biographical Records for Public Affairs.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Locations 1 through 9 inclusive and Location 11, as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Principal and prominent management and staff officials, program and project managers, scientists, engineers, speakers, other selected employees involved in newsworthy activities, and other participants in Agency programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Current biographical information about the individuals with a recent photograph when available. Data items are those generally required by NASA or the news media in preparing news or feature stories about the individual and/or the individual's activity with NASA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473 and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is compiled, updated, and maintained at NASA Centers for ready reference material and for immediate availability when required by the news media for news stories about the individual generally involving participation in a major NASA activity.

The data serves as background information about the individual and is used within NASA to prepare public appearance announcements of key officials, speaking engagements, special appointments, participation in professional societies, etc.; to write news stories about special achievements, awards, participation in major NASA activities, programs, etc.; and to prepare responses to inquiries submitted to the Public Affairs Division from the news media.

Users are the staff members of the public information office within each Office of Public Affairs.

In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA: These records are made available to professional societies, civic clubs, industrial and other organizations, news media representatives, researchers, authors, Congress, other agencies and other members of the public in connection with NASA public affairs activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper or hard-copy documents and electronic media.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Since the records are a matter of public information, no safeguard requirements are necessary.

RETENTION AND DISPOSAL:

Records are maintained and destroyed in accordance with NASA Records Retention Schedules, Schedule 1.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, NASA Newsroom, Public Affairs Division, Location 1.

Subsystem Managers: Public Information Officer, Location 2; Public Affairs Officer at Locations 3 through 9 and Location 11 as set forth in Appendix A.

NOTIFICATION PROCEDURE:

An individual desiring to find out if a Biographical System of Records contains a record pertaining to him/her should call, write, or visit the Public Affairs Office at the appropriate NASA location.

RECORD ACCESS PROCEDURES:

An individual may request access to his/her record by calling, writing, or visiting the Public Affairs Office at the appropriate NASA locations. Individuals may examine or obtain a copy of their biographical record at any time.

CONTESTING RECORD PROCEDURES:

The information in the record was provided voluntarily by the individual with the understanding that the information will be used for public release. The individual is at liberty at any time to revise, update, add, or delete information in his/her biographical record to his/her own satisfaction.

RECORD SOURCE CATEGORIES:

Information in the biography of an individual in the system of records is provided voluntarily by the individual generally with the aid of a form questionnaire.

NASA 10EEOR

SYSTEM NAME:

Equal Opportunity Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Locations 1 through 9 and Location 11 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees and applicants for employment.

CATEGORIES OR RECORDS IN THE SYSTEM:

(1) Complaints and (2) applications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; Executive Order 11478, dated August 8, 1969; EEOC Regulations; 29 CFR part 1614; MSPB Regulations; 5 CFR parts 1200–1202.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used within NASA to process complaints of alleged

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discrimination, including investigations, hearings, and appeals; to maintain active discrimination complaints files; and to retain inactive discrimination complaints files.

In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA: (1) Disclosures to the Equal Employment Opportunity Commission and the Merit Systems Protection Board to facilitate their processing of discrimination complaints, including investigations, hearings, and reviews on appeals; (2) Responses to other Federal agencies and other organizations having legal and administrative responsibilities related to the NASA Equal Employment Opportunity Programs and to individuals in the record; (3) Disclosures may be made to a Congressional office from the record of an individual in response to a written inquiry from the Congressional office made at the request of that individual; and (4) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper or hard-copy documents and electronic media.

RETRIEVABILITY:

These records are indexed by name.

SAFEGUARDS:

Records are locked in file cabinets or in secured rooms with access limited to those whose official duties require access. Electronic data are maintained within locked areas in disk form.

RETENTION AND DISPOSAL:

Records are maintained and destroyed in accordance with NASA Records Retention Schedules, Schedule 3.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Administrator for Equal Opportunity Programs, Location 1.

Subsystem Managers: Equal Opportunity Officer, Locations 1 and 11; Head, Equal Opportunity Programs Office, Location 4; Director of Equality Opportunity Programs at Locations 5 and 6; Locations are as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Information may be obtained from the cognizant system or subsystem manager listed above.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the same address as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear at 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Current and former employees, applicants, NASA Center Equal Employment Opportunity (EEO) officers, complainants, EEO counselors, EEO investigators, EEOC complaints examiners, Merit System Protection Board officials, complaints coordinators, Associate Administrator for Equal Opportunity Programs.

NASA 10ERMS

SYSTEM NAME:

Executive Resources Management System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Location 1, as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Approximately 2,000 individuals with experience and education unique to the NASA mission in the technical and administrative fields who are considered to be candidates for key positions within NASA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical data, education, training, work experience, and career interests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; 5 U.S.C. 4103; 5 U.S.C. 3396.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used within NASA for the identification of replacement candidates. In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA: (1) Disclosures may be made to organizations or individuals having contract, legal, administrative, or cooperative relationships with NASA, including labor unions, academic organizations, governmental organizations, nonprofit organizations, and contractors; and to organizations or individuals seeking or having available a service or other benefit or advantage. The purpose of such disclosures is to satisfy a need or needs, further cooperative relationships, offer information, or respond to a request; (2) Statistical or data presentations may be made to governmental or other organizations or individuals having need of information about individuals in the records; (3) Responses may be made to other Federal agencies, and other organizations having legal or administrative responsibilities related to programs and individuals in the records; (4) Disclosure may be made to a Congressional office from the record of an individual in response to a written inquiry from the Congressional office made at the request of that individual; and (5) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper or hard-copy documents and magnetic media.

RETRIEVABILITY:

The records are indexed by Social Security Number.

SAFEGUARDS:

Records are protected in accordance with the requirements and procedures which appear in NASA regulations at 14 CFR part 1212.

RETENTION AND DISPOSAL:

Records will be maintained in accordance with NASA Records Retention Schedules, Schedule 3.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Training and Development Division, Location 1.

Subsystem Managers: None.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager only.

RECORDS ACCESS PROCEDURES:

Requests from individuals should be addressed to the same address stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The NASA regulations pertaining to access to records and for contesting contents and appealing initial determinations by the individual concerned are set forth in 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Individuals to whom the records pertain, NASA employees, other Federal employees, other organizations and individuals, and NASA personnel records.

NASA 10GMVP

SYSTEM NAME:

Government Motor Vehicle Operators Permit Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Locations 1 through 8 and 10 through 14 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NASA employees, contractor employees, other Federal and State Government employees. Location 8 does not maintain records on contractor employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, home address, Social Security Number, physical description of individual, physical condition of individual, traffic record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; 41 CFR subpart 101–38.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used within NASA for the purpose of identifying and checking the records of each applicant and issuing permits for operation of Government vehicles. In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA: (1) National Driver Register, Department of Transportation, where Form 1047 is received for review and check against driver's motor vehicle record, and (2) Standard routine uses 1 through 4 inclusive, as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OR RECORDS IN THE SYSTEM:

STORAGE:

Paper or hard-copy documents and electronic media.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Records are kept in locked cabinets with access limited to those whose official duties require access. Room is locked during nonduty hours.

RETENTION AND DISPOSAL:

Records will be maintained in accordance with NASA Records Retention Schedules, Schedule fi.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Logistics Services Branch, Location 1.

Subsystem Managers; Chief, Security Branch, Location 2; Transportation Officer, Location 3; Chief, Logistics Management Division, Location 4; Chief, Transportation Branch, Location 5; Chief, Transportation Branch, Location 6; Chief, Logistics Management Division, Location 7; Transportation and Motor Vehicle Officer, Location 8; Director, Management Operations Office, Location 9; Chief, Installation Services Division, Location 11; Chief, Administration Office, Location 12; Chief, Maintenance and Administration Office, Location 13; Chief of Facilities, Location 14. Locations are as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Information may be obtained from the cognizant system manager listed above.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the same address as stated in the Notification Section above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear at 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Individual NASA employees and individual contractor employees. Location 8 and 11 do not maintain records on contractor employees. Location 7 does not maintain records on Government motor vehicle operator permits.

NASA 10HABC

SYSTEM NAME:

History Archives Biographical Collection.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Locations 1 and 5 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are of historical significance in aeronautics, astronautics, space science, and other concerns of NASA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical data; speeches and articles by an individual; correspondence, interviews, and various other tapes and transcripts of program activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473 and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used within NASA for researching and writing official histories and answering queries from various NASA offices. In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA: Disclosure to scholars (historians and other disciplines), or any other interested individuals for research and to write dissertations, articles, and books, for Government, commercial and nonprofit publication or develop material for other media use.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper or hard-copy documents and electronic media.

RETRIEVABILITY:

The records are indexed by name.

SAFEGUARDS:

Because these records are archive material and, therefore, a matter of public information, there are no special safeguard procedures required.

RETENTION AND DISPOSAL:

Records are maintained in accordance with NASA Records Retention Schedules, Schedule 1.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Historian, Location 1.

Subsystem Managers: JSC History Office Coordinator, Location 5; Public Affairs Officer, Location 11 (Locations are set forth in Appendix A).

NOTIFICATION PROCEDURE:

Information may be obtained from the cognizant system or subsystem manger listed above.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to same address as stated in the Notification Section above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear at 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Press releases, newspapers, journals, and the individuals themselves and copies of internal Agency records.

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NASA 10HERD

SYSTEM NAME:

Human Experimental and Research Data Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Locations 2, 3, 5, 6, and 9, as stated in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been involved in space flight, aeronautical research flight, and/or participated in NASA tests or experimental or research programs; Civil Service employees, military, employees of other Government agencies, contractor employees, students, human subjects (volunteer or paid), and other volunteers on whom information is collected as part of an experiment or study.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data obtained in the course of an experiment, test, or research medical data from inflight records, other information collected in connection with an experiment, text, or research.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2475 and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The information contained in this system of records is used by NASA for the purposes of evaluating new analytical techniques, equipment, and re-examining flight data for alternative interpretations, developing applications of experimental techniques or equipment, reviewing and improving operational procedures with respect to experimental protocols (both inflight and ground), life support system operating procedures, determining human engineering requirements, and carrying out other research.

In addition to the internal use of the information contained in this system of records, the following are routine uses outside of NASA: Disclosures to other individuals or organizations, including Federal, State, or local agencies, and nonprofit, educational, or private entities, who are participating in NASA programs or are otherwise furthering the understanding or application of biological, physiological, and behavioral phenomena as reflected in the data contained in this system of records; and the standard routine use 4 as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper of hard-copy documents, electronic media, micrographic media, photographs, or motion pictures film; and various medical recordings, such as, electrocardiograph tapes, stripcharts, and x-rays.

RETRIEVABILITY:

By name, experiment, or test; arbitrary experimental subject number; flight designation; or crew member designation on a particular space or aeronautical flight.

SAFEGUARDS:

Access is limited to Government personnel requiring access in the discharge of their duties, and to appropriate support contractor employees on a need-to-know basis. Computerized records are identified by code number and records are maintained in locked rooms or files. Records are protected in accordance with the requirements and procedures which appear in the NASA regulations set forth in 14 CFR part 1212.

RETENTION AND DISPOSAL:

Records are maintained in accordance with NASA Records Retention Schedules, Schedule 7.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Occupational Health Office, Location 1.

Subsystem Managers: Chief Engineer, Location 2; Director of Man/Systems Integration Division, Location 3; Assistant Director for Life Sciences, Space and Life Sciences Directorate, Location 5; Director, Biomedical Operations Office, Location 6; Director, Management Services Office, Location 9. Locations are as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Information may be obtained from the system or subsystem manager named above.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the same address as stated in the Notification Section above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting and appealing initial determinations by the individual concerned appear at 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Experimental test subjects, physicians, principal investigators and other researchers, and previous experimental test or research records.

NASA 10HIMS

SYSTEMS NAME:

Health Information Management System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

In Medical Clinics/Units and Environmental Health Offices at locations 1 through 14 inclusive as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NASA Civil Service employees and applicants; other Agency Civil Service and military employees working at NASA; visitors to NASA Centers; on-site contractor personnel who receive job related examinations, have mishaps or accidents, or come to clinic for emergency or first aid treatment; space flight personnel and their families.

CATEGORIES OF RECORDS IN THE SYSTEM:

General medical records of first aid, emergency treatment, examinations, exposures, and consultations.

Information resulting from physical examinations, laboratory and other tests, and medical history forms; treatment records; screening examination results; immunization records; administration of medications prescribed by private/personal physicians; statistical records; examination schedules; daily log of patients; correspondence; chemical, physical, and radiation exposure records; other environmental health data; alcohol/drug patient information; consultation records; Employee Assistance Program records; and health hazard and abatement data.

Astronauts and their families—more detailed and complex physical examinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; Public Law 92–255.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used within NASA for the following purposes: Reference by examining physicians in conduct of physical examinations; review by physicians, nurses, and other health care specialists in consideration of fitness for duty; evaluation for physical disability retirement; statistical data development; patient recall; in-space medical evaluation for astronauts; exposure data for radiation/toxic exposure limits, compliance, and examinations; consultations; evaluation of employees, applicants, and contractor employees for specialized or hazardous duties; accident reporting and investigating including mishap and collateral reports and investigations; and determining reliability pursuant to the Mission Critical Space Systems Personnel Reliability Program (14 CFR part 1214 subpart 1214.5).

In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA: (1) Referral to private physicians designated by the individual when requested in writing; (2) Patient referrals; (3) Referral to the Office of Personnel Management, Occupational Safety and Health Administration, and other Federal agencies as required in accordance with these special program responsibilities; (4) Referral of information to a non-NASA individual's employer; (5) Evaluation by medical consultants; (6) Disclosure to the employer of non-NASA personnel, information affecting the reliability of such officer or employee for purposes of the Mission Critical Space Systems Personnel Reliability Program; (7) Disclosure to non-NASA personnel performing research, studies, or other activities through arrangements or agreements with NASA and for mutual benefit; (8) Disclosure to the public of pre-space flight information having mission impact concerning an individual crewmember, limited to the crewmember's name and the fact that a medical condition exists; (9) Disclosure to the public of a summary of the space flight crew inflight information as it relates to mission impact, and limited to name, diagnosis, treatment, and prognosis; (10) During the time period following Shuttle landing and concluding with completion of the post-space flight return to duty medical evaluation, if a flight crewmember is for medical reasons unable to perform a scheduled public event, a disclosure to the public, limited to the crewmember's name and the fact that a medical condition exists; (11) Disclosure to the public of medical conditions arising from accidents, consistent with NASA regulations; and (12) Standard routine use 4 as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are in file folders, punch cards, electrocardiographic tapes, x-rays, microfiche, and electronic media. They are handled between NASA Centers by telecommunications.

RETRIEVABILITY:

By name, date of birth, and Social Security Number.

SAFEGUARDS:

Access limited to concerned medical environmental health personnel on a need-to-know basis. Computerized records are identified by code number and records are maintained in locked rooms or files. Records are protected in accordance with the requirements and procedures which appear in the NASA regulations at 14 CFR part 1212.

RETENTION AND DISPOSAL:

In accordance with Office of Personnel Management regulations and NASA Records Retention Schedules 1 and 8.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Occupational Health Office, Location 1.

Subsystem Managers: Medical Director or Medical Administrator or Safety and Health Coordinator at Locations 1 through 15 inclusive as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Information may be obtained from the cognizant system or subsystem manager listed above.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the same address as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appears in 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Individuals, physicians, and previous medical records of individuals.

NASA 10IGIC

SYSTEM NAME:

Inspector General Investigations Case Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Locations 1 through 11 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of NASA, contractors, and subcontractors, and others whose actions have affected NASA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case files pertaining to matters including, but not limited to, the following classifications of cases: (1) Fraud against the Government; (2) Theft of Government property; (3) Bribery; (4) Lost or stolen lunar samples; (5) Misuse of Government property; (6) Conflict of interest; (7) Waiver of claim for overpayment of pay; (8) Leaks of Source Evaluation Board information; (9) Improper personal conduct; (10) Irregularities in awarding contracts; and (11) computer crimes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; 28 U.S.C. 535(b); 5 U.S.C. App.; 4 CFR part 91; Executive Order 11478.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used within NASA for: (1) Providing management with information resulting from investigation(s) and other reports which will serve as a possible basis for appropriate administrative action or the establishment of NASA policy; (2) Providing the Administrator of NASA (or the Director, Office of Management and Budget, as appropriate) sufficient information to provide a basis for decisions concerning a request for waiver of claim in the case of an erroneous payment of pay.

In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA: (1) Responding to the White House regarding matters inquired of; (2) Disclosure to a Congressional office from the record of an individual in response to a written inquiry from the Congressional office made at the request of that individual; (3) Providing data to Federal intelligence elements; (4) Providing data to any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested; (5) Providing personal identifying data to Federal, State, local, or foreign law enforcement representatives seeking confirmation of identity of persons under investigation; (6) Disclosing, as necessary, to a contractor, subcontractor, or grantee firm or institution, to the extent that the disclosure is in NASA's interest and is relevant and necessary in order that the contractor, subcontractor, or grantee is able to take administrative or corrective action; (7) Standard routine uses 1

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through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper or hard-copy documents and electronic media.

RETRIEVABILITY:

Information is retrieved by name of the individual.

SAFEGUARDS:

Information is kept in locked cabinets and in secured vault and computer rooms. Information stored on computers is on a restricted-access server and is password- and user id-protected. Access is limited to Inspector General personnel with a need-to-know.

RETENTION AND DISPOSAL:

Records are maintained and destroyed in accordance with NASA Records Retention Schedules, Schedule 9.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Investigations, Location 1.

Subsystem Managers: Special and Resident Agents in Charge, Locations 2, and 4 through 10 inclusive as set forth in Appendix A.

NOTIFICATION PROCEDURE:

None. System is exempt (see below).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Exempt.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

(1) The Inspector General Investigations Case Files system of records is exempt from any part of the Privacy Act (5 U.S.C. 552a) EXCEPT the following subsections:

(b) relating to conditions of disclosure; (c) (1) and (2) relating to keeping and maintaining a disclosure accounting; (e)(4) (A) through (F) relating to publishing a system notice setting forth name, location, categories of individuals and records, routine uses, and policies regarding storage, retrievability, access controls, retention and disposal of the records; (e) (6), (7), (9), (10), and (11) relating to dissemination and maintenance of records; (i) relating to criminal penalties. This exemption applies to those records and information contained in the system of records pertaining to the enforcement of criminal laws.

(2) To the extent that there may exist noncriminal investigative files within this system of records, the Inspector General Investigations Case Files system of records is exempt from the following subsections of the Privacy Act (5 U.S.C. 552a): (c)(3) relating to access to disclosure accounting; (d) relating to access to reports, (e)(1) relating to the type of information maintained in the records; (e)(4) (G), (H), and (I) relating to publishing the system notice information as to agency procedures for access and amendment and information as to the categories of sources of records; and (f) relating to developing agency rules for gaining access and making corrections.

The determination to exempt this system of records has been made by the Administrator of NASA in accordance with 5 U.S.C. 552a (j) and (k) and subpart 5 of the NASA regulations appearing in 14 CFR part 1212, for the reason that a component of the Office of Inspector General, NASA, performs as its principal function activities pertaining to the enforcement of criminal laws, within the meaning of 5 U.S.C. 552a(j)(2).

NASA 10NPPS

SYSTEM NAME:

NASA Personnel and Payroll System (NPPS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Locations 1 through 9 inclusive and Location 11, as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former NASA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The date contained in this system of records includes payroll, employee leave, insurance, labor and human resource distribution and overtime information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; 5 U.S.C. 5501 et seq.; 5 U.S.C. 6301 et seq.; General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies, Title 6; Treasury Fiscal Requirements Manual, Part III; and NASA Financial Management Manual, Sections 9300 and 9600.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used within NASA for maintaining the payroll records and related areas.

In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA: (1) To furnish to a third party a verification of an employee's status upon written request of the employee; (2) To facilitate the verification of employee contributions and insurance data with carriers and collection agents; (3) To report to the Office of Personnel Management (a) withholdings of premiums for life insurance, health benefits, and retirements, and (b) separated employees subject to retirement; (4) To furnish the U.S. Treasury magnetic tape reports and/or electronic files on net pay, net savings allotments and bond transmittal pertaining to each employee; (5) To provide the Internal Revenue Service with detail of wages taxable under the Federal Insurance Contributions Act and to furnish a magnetic tape listing on Federal tax withholdings; (6) To furnish various financial institutions itemized listings of employee's pay and savings allotments transmitted to the institutions in accordance with employee requests; (7) To provide various Federal, State, and local taxing authorities itemized listings of withholdings for individual income taxes; (8) To respond to requests for State employment security agencies and the U.S. Department of Labor for employment, wage, and separation data on former employees for the purpose of determining eligibility for unemployment compensation; (9) To report to various Combined Federal Campaign offices total contributions withheld from employee wages; (10) To furnish leave balances and activity to the Office of Personnel Management upon request; (11) To furnish data to labor organizations in accordance with negotiated agreements; (12) To furnish pay data to the Department of State for certain NASA employees located outside the United States; (13) To furnish data to a consumer reporting agency or bureau, private collection contractor or debt collection center in accordance with section 3711 of Title 31; (14) To forward delinquent debts, and all relevant information related thereto, to the U.S. Department of Treasury, for collection, (15) To the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, National Directory of New Hires, part of the Federal Parent Locator Service (FPLS) and the Federal Tax Offset System, DHHS/OCSE No. 09–90–0074, for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Pub. L. 104–193; and, (15) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

DISCLOSURE TO CONSUMER REPORTING AGENCIES OR PRIVATE COLLECTION CONTRACTOR:

Disclosure pursuant to 5 U.S.C. 552a(b): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), or "private collection contractor" under the Federal Claims Collection Act of 1966 as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701, et seq.).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper or hard-copy documents and electronic media.

RETRIEVABILITY:

Records are indexed by name and/or Social Security Number.

SAFEGUARDS:

Records are protected in accordance with the requirements and procedure which appear in the NASA regulations at 14 CFR part 1212.

RETENTION AND DISPOSAL:

Records are maintained and destroyed in accordance with NASA Records Retention Schedules, Schedule 3.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Management Division, Office of the Chief Financial Officer, Location 1.

Subsystem Managers: Chief, Financial Management Division, Locations 2, 4, 5, 6, 7, and 8; Financial Management Officer, Location 3; Director, Financial Management Office, Location 9; Chief, Financial Management Office, Location 11. Locations are as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Information may be obtained from the cognizant system or subsystem manager listed above.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the same address as identified in the notification section above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear at 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained, personnel office(s), and the individual's supervisor.

NASA 10SCCF

SYSTEM NAME:

Standards of Conduct Counseling Case Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Location 1.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current, former, and prospective NASA employees, who have sought advice or have been counseled regarding conflict of interest requirements for Government employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Depending upon the nature of the problem, information collected may include employment history, financial data, and information concerning family members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; 18 U.S.C. 201, 203, 205, 207–209; 5 U.S.C. 7324–7327; 5 U.S.C. App.; 14 CFR 1207; 5 CFR 2634–2641; 5 CFR 6901; and, Executive Order 12674 as modified by Executive Order 12731.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in the system of records is used within NASA for the purpose of counseling employees regarding conflict of interest problems. In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA: (1) Office of Personnel Management and Merit Systems Protection Board, for investigation of possible violations of standards of conduct which the agencies directly oversee; (2) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are documentary and maintained in loose leaf binders or file folders.

RETRIEVABILITY:

By name of individual.

SAFEGUARDS:

Restricted access to a few authorized persons; stored in combination lock safe.

RETENTION AND DISPOSAL:

Records are maintained in accordance with NASA Records Retention Schedules, Schedule 1.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant General Counsel for General Law, Code GG, Location 1, and Chief Counsel, Locations 2 through 11.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the System Manager and must include employee's full name and NASA Center where employed.

CONTESTING RECORD PROCEDURES:

The NASA regulations and procedures for access to records and for contesting contents and appealing initial determinations by the individual concerned appear at 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Information collected directly from individual and from his/her official employment record.

NASA 10SECR

SYSTEM NAME:

Security Records System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Locations 1 through 9, and Locations 11, 12, and 14 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, applicants, NASA committee members, NASA consultants, NASA experts, NASA Resident Research Associates, guest workers, contractor employees, detailees, visitors, correspondents (written and telephonic), Faculty Fellows, sources of information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel Security Records, Criminal Matter Records, Traffic Management Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2451, et seq., the National Aeronautics and Space Act of 1958, as amended; Espionage and Information Control Statutes, 18 U.S.C. 793 through

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799; Sabotage Statutes, 18 U.S.C. 2151 through 2157; Conspiracy Statute, 18 U.S.C. 371; 18 U.S.C. 202–208, and 3056; Internal Security Act of 1950, Atomic Energy Act of 1954, as amended; Executive Order 12958, as amended, Classified National Security Information; Executive Order 12968, as amended, Access to Classified Information; Executive Order 10865, Safeguarding Classified Information Within Industry; Executive Order 10450, Security Requirements for Government Employees; Public Law 81–733; Federal Property Management Regulation, 41 CFR Ch. 101; 14 CFR parts 1203 through 1203b; and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Personnel Security Records: The information contained in this category of records is used within NASA for the purpose of granting security clearances; for determining qualifications, suitability, and loyalty to the United States Government; for determining qualifications for access to classified information, security areas, and NASA Centers, and for determining qualifications to travel to Communist controlled areas.

In addition to the internal uses of the information contained in this category of records, the following are routine uses outside of NASA: (1) To determine eligibility to perform classified visits to other Federal agencies and contractor facilities; (2) To provide data to Federal intelligence elements; (3) To provide data to any source from which information is requested in the source of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested; (4) To provide a basis for determining preliminary visa eligibility; (5) To respond to White House inquiries; (6) Disclosures may be made to a Congressional office from the record of an individual in response to a written inquiry from the Congressional office made at the request of that individual; (7) To provide personal identifying data to Federal, State, local, or foreign law enforcement representatives seeking confirmation of identity of persons under investigation; (8) Disclosure to a NASA contractor, subcontractor, grantee, or other Government organization information developed in an investigation or administrative inquiry concerning a violation of a Federal or State statute or NASA regulation on the part of an officer or employee of the contractor, subcontractor, grantee, or other Government organization; (9) To provide relevant information to an internal or external organization or element thereof, conducting audit activities of a NASA contractor or subcontractor; (10) Disclosure to the employer of non-NASA personnel information affecting the reliability of such officer or employee for purposes of the Mission Critical Space Systems Personnel Reliability Program; and, (11) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

Criminal Matter Records: The information contained in this category of records is used within NASA for providing management with information which will serve as a possible basis for administrative action. In addition to the internal uses of the information contained in this category of records, the routine uses outside of NASA are: (1) To provide personal identifying data to Federal, State, local, or foreign law enforcement representatives seeking confirmation of identity of persons under investigation; (2) To provide a NASA contractor, subcontractor, grantee, or other Government organization information developed in an investigation or administrative inquiry concerning a violation of a Federal or State Statute or NASA regulation on the part of an officer or employee of the contractor, subcontractor, grantee, or other Government organization; and (3) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

Traffic Management Records: The information contained in this category of records is used within NASA to provide designated officials and employees with data concerning vehicle ownership, traffic accidents, violation of traffic laws, suspension of driving privileges, traffic control, vehicle parking, and car pools. In addition to the internal uses of the information contained in this category of records, the routine uses outside of NASA are: (1) To provide personal identifying data to Federal, State, local, or foreign law enforcement representatives seeking confirmation of identity of persons under investigation; (2) To provide a NASA contractor, subcontractor, grantee, or other Government organization information developed in an investigation or administrative inquiry concerning a violation of a Federal or State Statute or NASA regulation on the part of an officer or employee of the contractor, subcontractor, grantee, or other Government organization; and (3) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper or hard-copy documents and electronic media.

RETRIEVABILITY:

Records are indexed by name, file number, organization, place of origin, badge number, decal number, date of event, space number, payroll number, and social security number.

SAFEGUARDS:

Access to Personnel Security Records is controlled by Government and selected contractor security personnel. However, access to information extracted from personnel security records or information to be inserted into personnel security records is controlled by either Government personnel or selected personnel of NASA contractor guard force or contractor personnel. Examples would be information required to prepare an identification badge and/or process a security clearance visitor request. Access to Criminal Matter Records is controlled by either Government personnel or selected personnel of NASA contractor guard forces.

After presenting proper identification and requesting a file or record, a person with a need-to-know and, if appropriate, a proper clearance may have access to a file or record only after it has been retrieved and approved for release by a NASA security representative. These records are secured in security storage equipment.

Traffic Management Records: Access to these records is controlled by either Government personnel or selected personnel of NASA contractor guard forces. Access to these records is permitted after a determination has been made that the requester has an official interest. These records are stored in locked containers.

RETENTION AND DISPOSAL:

Records will be maintained in accordance with NASA Records Retention Schedules, Schedule 1.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Security Management Office, Location 1.

Subsystem Managers: Chief, Security Branch, Locations 2, 4, and 5; Security Officer, Location 3, 8, and 11; Chief Protective Services Office, Location 6; Head, Security Services Branch, Location 7; Chief, Security Division, Location 9; Chief, Administration Officer, Location 12; Safety and Security Officer at Location 15. Locations are as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Information may be obtained from the cognizant system of subsystem manager listed above. Requests must contain the following identifying data concerning the requester: First, middle, and last name; date of birth; social security number; period and place of employment with NASA, if applicable.

RECORD ACCESS PROCEDURES:

Personnel Security Records compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information have been exempted by the Administrator under 5 U.S.C. 552a(k)(5) from the access provisions of the Act.

Criminal Matter Records compiled for civil or criminal law enforcement purposes have been exempted by the Administrator under 5 U.S.C. 552a(k)(2) from the access provisions of the Act.

Traffic Management Records: Requests from individuals should be addressed to the same address as stated in the Notification section above.

CONTESTING RECORD PROCEDURES:

For Personnel Security Records and Criminal Matters Records see Record Access Procedures, above. For Traffic Management Records, the NASA rules for access to records and for contesting contents and appealing initial determinations by the individual concerned appear in the NASA rules section of the **Federal Register**.

RECORD SOURCE CATEGORIES:

Personnel Security Records: Exempt.

Criminal Matter Records: Exempt.

Traffic Management Records: Employees, civil investigative agencies, civil law enforcement agencies, Federal and local judicial systems, medical records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Personnel Security Records compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a confidential source, are exempt from the following sections of the Privacy Act of 1974, 5 U.S.C. 552a:

(c)(3) Relating to access to the disclosure accounting; (d) relating to access to the records; (e)(1) relating to the type of information maintained in the records; (e)(4) (G) (H) and (I) relating to publishing in the annual system notice information as to agency procedures for access and correction and information as to the categories of sources of records; and (f) relating to developing Agency rules for gaining access and making corrections.

The determination to exempt this portion of the Security Records System has been made by the Administrator of NASA in accordance with 5 U.S.C. 552a(k)(5) and Subpart 5 of the NASA regulations appearing in 14 CFR part 1212.

Criminal Matter Records to the extent they constitute investigatory material compiled for law enforcement purposes are exempt from the following sections of the Privacy Act of 1974, 5 U.S.C. 552a:

(c)(3) Relating to access to the disclosure accounting; (d) relating to access to the records; (e)(1) relating to the type of information maintained in the records; (e)(4) (G), (H), and (I) relating to publishing in the annual system notice information as to agency procedures for access and correction and information as to the categories of sources of records; and (f) relating to developing agency rules for gaining access and making corrections.

The determination to exempt this portion of the Security Records System has been made by the Administrator of NASA in accordance with 5 U.S.C. 552a(k)(2) and subpart 5 of the NASA regulations appearing in 14 CFR part 1212.

Records subject to the provisions of 5 U.S.C 552(b)(1), required by Executive order to be kept in the interest of national defense or foreign policy, are exempt from the following sections of the Privacy Act of 1974, 5 U.S.C. 552a:

(c)(3) Relating to access to the disclosure accounting; (d) relating to the access to the records; (e)(1) relating to the type of information maintained in the records; (e)(4) (G), (H), and (I) relating to publishing in the annual system notice information as to agency procedures for access and correction and information as to the categories of sources of records; and (f) relating to developing agency rules for gaining access and making corrections.

The determination to exempt this portion of the Security Records System has been made by the Administrator of NASA in accordance with 5 U.S.C. 552a(k)(1) and subpart 5 of the NASA regulations appearing in 14 CFR part 1212.

NASA 10SPER

SYSTEM NAME:

Special Personnel Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Locations 1 through 9 inclusive, and Location 11 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Candidates for and recipients of awards or NASA training; civilian and active duty military detailees to NASA; participants in enrollee programs; Faculty, Science, National Research Council and other Fellows, Associates and Guest Workers including those at NASA Centers but not on NASA rolls; NASA contract and grant awardees and their associates having access to NASA premises and records; individuals with interest in NASA matters including Advisory Committee Members; NASA employees and family members, prospective employees, and former employees; former and current participants in existing and future educational programs, including the Summer High School Apprenticeship Research Program (SHARP).

CATEGORIES OF RECORDS IN THE SYSTEM:

Special Program Files including: (1) Alien Scientist files; (2) Award files; (3) Counseling files, Life and Health Insurance, Retirement, Upward Mobility, and Work Injury Counseling files; (4) Military and Civilian Detailee files; (5) Personnel Development files such as nominations for and records of training or education, Upward Mobility Program files, Intern Program files, Apprentice files, and Enrollee Program files; (6) Special Employment files such as Federal Junior Fellowship Program files, Stay-in-School Program files, Summer Employment files, Worker-Trainee Opportunity Program files, NASA Executive Position files, Expert and Consultant files, and Cooperative Education Program files; and (7) Supervisory Appraisals under Competitive Placement Plan.

Correspondence and related information including: (1) Claims correspondence and records about insurance such as life, health, and travel; (2) Congressional and other Special Interest correspondence, including employment inquiries; (3) Correspondence and records concerning travel related to permanent change of address; (4) Debt complaint correspondence; (5) Employment interview records; (6) Information related to outside employment and activities of NASA employees; (7) Placement followups; (8) Preemployment inquiries and reference checks; (9) Preliminary records related to possible adverse actions; (10) Records related to reductions-in-force; (11) Records under Agency as well as

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negotiated grievance procedures; (12) Separation information including exit interview records, death certificates, and other information concerning death, retirement records, and other information pertaining to separated employees; (13) Special planning analysis and administrative information; (14) Performance appraisal records; (15) Working papers for prospective or pending retirements.

Special Records and Rosters including: (1) Locator files, (2) Ranking lists of employees; (3) Repromotion candidate lists; (4) Retired military employee records; (5) Retiree records; (6) Followup records for educational programs, such as the Summer High School Apprenticeship Research Program (SHARP) an other existing or future programs.

Agencywide and Center automated personnel information. Rosters, applications, recommendations, assignment information and evaluations of Faculty, Science, National Research Council and other Fellows, Associates, and Guest Workers including those at NASA Centers but not on NASA rolls; also, information about NASA contract and grant awardees and their associates having access to NASA premises and records.

Information about members of advisory committees and similar organizations. All NASA-maintained information of the same types as, but not limited to, that information required in systems of records for which the Office of Personnel Management and other Federal personnel-related agencies publish Government wide Privacy Act Notices in the **Federal Register**.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The information contained in this system of records is used by officials and employees within NASA for preview, planning, review, and management decisions regarding personnel and activities related to the records.

In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA: (1) Disclosures may be made to organizations or individuals having contract, legal, administrative, or cooperative relationships with NASA, including labor unions, academic organizations, governmental organizations, nonprofit organizations, and contractors; and to organizations or individuals seeking or having available a service or other benefit or advantage. The purpose of such disclosures is to satisfy a need or needs, further cooperative relationships, offer information, or respond to a request; (2) Statistical or data presentations having need of information about individuals in the records; (3) Responses may be made to other Federal agencies and other organizations having legal or administrative responsibilities related to programs and individuals in the records; (4) Disclosure may be made to a Congressional office from the record of an individual in response to a written inquiry from the Congressional office made at the request of that individual; and (5) Standard routine uses 1 through 4 inclusive as set forth in Appendix B may also apply.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper or hard-copy documents and electronic media.

RETRIEVABILITY:

Records are indexed by any one or a combination of name, birth date, Social Security Number, or identification number.

SAFEGUARDS:

Records are protected in accordance with the requirements and procedures which appear in the NASA regulations at 14 CFR part 1212.

RETENTION AND DISPOSAL:

Records are maintained and destroyed in accordance with NASA Records Retention Schedules, Schedule 3.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Administrator for Human Resources and Education, Location 1.

Subsystem Managers: Director, Personnel Division, Office of Inspector General, and Chief, Elementary and Secondary Programs Branch, Education Division, Location 1; Director of Personnel, Locations 1 through 4, 6, 8, and 9; Director of Human Resources, Location 5; Head, Office of Human Resources, Location 7; Human Resources Officer, Location 11. Locations are set forth in Appendix A.

NOTIFICATION PROCEDURE:

Apply to the System or Subsystem Manager at the appropriate location above. In addition to personal identification (name, Social Security Number, etc.), indicate the specific type of record, the appropriate date or period of time, and the specific kind of individual applying (e.g., employee, former employee, contractor employee, etc.).

RECORD ACCESS PROCEDURES:

Same as notification procedures above.

CONTESTING RECORD PROCEDURES:

The NASA regulations pertaining to access to records and for contesting contents and appealing initial determinations by individual concerned are set forth in 14 CFR part 1212.

NASA 10XROI

SYSTEM NAME:

Exchange Records on Individuals.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Locations, 6, 7, 8, and 9 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former employees of, and applicants for employment, with NASA Exchanges, Recreational Associations, and Employers' Clubs at NASA Centers, and members of or participants in NASA Exchange activities, clubs and/or recreational associations. Individuals with active loans or charge accounts at one or more of the several organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Exchange Employee's personnel and payroll records, including injury claims, unemployment claims, biographical data, performance evaluations, annual and sick leave records, membership and participation records on Exchange-sponsored activities, clubs and/or recreational associations, and all other employee records. Credit records on NASA employees with active accounts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473 and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The information contained in this system of records is used within NASA for (1) maintaining exchange employees' payroll, leave, and other records; (2) determining pay adjustment eligibility; (3) determining Federal, State, and City tax withholdings; (4) determining leave eligibility; (5) determining person to notify in emergency; (6) certification of unemployment or injury claims; (7) determining credit standing; and (8) determining eligibility for participation in Exchange-sponsored club or activities and/or admittance into Exchange facilities.

In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA: (1) To furnish a third party a verification of an employee's status upon written request of the employee; (2) To facilitate the verification of employee contributions for insurance data with carriers and collection agents; (3) To provide various Federal, State, and local taxing authorities itemized listing of withholdings for individual income taxers; (4) To respond to State employment compensation requests for wage and separation data on former employees; (5) To report previous job injuries to worker's compensation organizations; (6) For person to notify in an emergency; (7) To report unemployment record to appropriate State and local authorities; (8) When requested, provide other employers with work record; and (9) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper or hard-copy documents and electronic media.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are protected in accordance with the requirements and procedures which appear in the NASA regulations at 14 CFR part 1212.

RETENTION AND DISPOSAL:

Records are maintained and destroyed in accordance with NASA Records Retention Schedules, Schedule 9.

SYSTEMS MANAGER(S) AND ADDRESS:

NASA Comptroller, Location 1.

Subsystem Managers: Chairperson, Exchange Council, Location 6 and 7; Treasurer, NASA Exchange, Location 8; Exchange Operations Manager, Location 9; Manager, NASA Exchange, Location 11; Head, Administrative Management Branch, and Treasurer Wallops Exchange and Morale Association, Location 4. Locations are as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Individuals may obtain information from the cognizant Subsystem Managers listed above.

RECORDS ACCESS PROCEDURE:

Requests from individuals should be directed to the same address as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The NASA rules for access to records and for contesting contents and appealing initial determinations by the individual concerned appear in the NASA rules section of the **Federal Register**.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained and the individual's supervisor.

NASA 220RER

SYSTEM NAME:

LeRC Occupational Radiation Exposure Records.

SECURITY CLASSIFICATION;

None.

SYSTEM LOCATION:

Locations 8 and 13, as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former LeRC employees and contractor personnel who may be exposed to radiation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, exposure history, name of license holder, Social Security Number, employment, and training history.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; 42 U.S.C. 2021, 2073, 2093, 2095, 2111, 2133, 2134, 2201; 10 CFR part 20.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The information contained in this system of records is used within NASA to inform individuals of their radiation dosage.

In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA: (1) Standard routine uses 1 through 4 inclusive as set forth in Appendix B and (2) The Nuclear Regulatory Commission may inspect records pursuant to fulfilling their responsibilities in administering and issuing licenses to use radiation sources.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper or hard-copy documents and electronic media.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are personally supervised during the day and locked in the office at night.

Records are protected in accordance with the requirements and procedures which appear in the NASA rules section of the **Federal Register**.

RETENTION AND DISPOSAL:

Records are maintained and destroyed in accordance with NASA Records Retention Schedules, Schedule 1.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Environmental Health, Location 8.

Subsystem Manager: Manager, Plum Brook Reactor Facility, Location 13. Locations are set forth in Appendix A.

NOTIFICATION PROCEDURE:

Individuals may obtain information from the cognizant System Manager or Subsystem Manager listed above.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

The NASA rules for access to records and for contesting contents and appealing initial determinations by the individual concerned appear in the NASA rules section of the **Federal Register**.

RECORD SOURCE CATEGORIES:

Individual is sole source.

NASA 51LISTS

SYSTEM NAME:

Locator and Information Services Tracking System (LISTS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Location 4 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All on-site and off-site NASA/GSFC civil servants and on-site and near-site contractors, tenants, and other guest workers possessing or requiring badge identifications.

CATEGORIES OF RECORDS IN THE SYSTEM:

In order to achieve the goal for LISTS of a comprehensive and accurate source of information for institutional services and planning, general, and personal information as noted below must be collected.

General information: (1) Last name; (2) First Name; (3) Middle Initial; (4) Nickname; (5) Title/Degree; (6) Position/Job Title; (7) Skill Classification; (8)

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Administrative Level; (9) Organization Code; (10) Mail Code; (11) Telephone Extension; (12) Alternate Telephone Extension; (13) Building; (14) Room; (15) Use of Office Space; (16) Shift Worked; (17) Off-Site Telephone Number; (18) Off-Site Location; (19) Contract Number; (20) Authorization Type if NonContractor/Civil Servant; (21) and (22) Acronym of Contractor and/or Host Organization, and (23) Goddard Identification Number.

Personal information: (1) Social Security Number; (2) Birth Date; (3) Sex; (4) Citizenship; (5) If Not U.S. Citizen, Immigration Alien Number; (7) Street Residence; (7) City Residence; (8) County Residence; (9) State Residence; (10) Zip Code Residence; (11) Residence Telephone; (12) Name of Emergency Contact; (13) Relationship of Emergency Contact; (14) Telephone Number of Emergency Contact; (15) Address of Emergency Contact.

AUTHORITY FOR MAINTENANCE FOR THE SYSTEM:

5 U.S.C. 301; 42 U.S.C. 2473; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The intended official uses of the privacy and personal information are: To assist the Security Office in issuing picture badge identifications and coordinating clearance requests; to establish for the library and authorization for use of its printed materials; to identify the listed emergency contact in case of an emergency to a Center employee or guest worker; and to provide a home address in case an employee or guest worker must be contacted during off hours or for official mailings to a home address.

Other official uses of the general (nonprivacy/personal) records are: To locate individuals working for or at the Goddard Space Flight Center; to improve services provided to the Center including mail room operations, space utilization, identification of potentially hazardous work environments, scheduling of annual physical examinations, and maintenance of electronic mail user identification names; and as a tool for performing short- and long-term institutional planning.

The information contained in this system of records is used by officials and employees within NASA for preview, planning, review, and management decisions regarding personnel and institutional services related to the records.

In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA: (1) Disclosures may be made to organizations or individuals having contract, legal, administrative, or cooperative relationships with NASA, including labor unions, academic organizations, governmental organizations, nonprofit organizations, and contractors; and to organizations or individuals seeking or having available a service or other benefit or advantage. The purpose of such disclosures is to satisfy a need or needs, further cooperative relationships, offer information, or respond to a request; (2) Statistical or data presentations may be made to governmental or other organizations or individuals having need of information about individuals in the records; (3) Disclosure may be made to a Congressional office from the record of an individual in response to written inquiry from the Congressional office made at the request of that individual; and (4) Standard routine uses 1 through 4 inclusive as set forth in Appendix B may also apply.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper or hard-copy documents and electronic media.

RETRIEVABILITY:

General fields are indexed by any one or combination of choices to authorized users. Personal fields are not retrievable except by designees in the Security and Library Offices and the System Manager. For the Library, the retrievability is for Social Security Number, immigration alien number, and name only.

SAFEGUARDS:

Records are protected in accordance with the requirements and procedures which appear in the NASA regulations at 14 CFR part 1212 and through the password and access protections built into the data base management software system.

RETENTION AND DISPOSAL:

Records are maintained and destroyed in accordance with NASA Records Retention Schedules, Schedule 1.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Administrative Support Branch, Code 231.0, Logistics Management Division, Location 4 as set forth in Appendix A.

NOTIFICATION PROCEDURES:

Apply to the System Manager at the appropriate location above. In addition to personal identification (name, social security number, etc.), indicate the specific type of record, the appropriate date or period of time, and the specific kind of individual applying (current employee, former employee, civil servant, contractor, etc.).

RECORD ACCESS PROCEDURES:

Same as notification procedures above.

CONTESTING RECORD PROCEDURES:

The NASA regulations pertaining to access to records and for contesting contents and appealing initial determinations by the individual concerned are set forth in 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Individuals to whom the records pertain.

NASA 51RSCR

SYSTEM NAME:

GSFC Radiation Safety Committee Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Location 4 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Radiation users and custodians under GSFC cognizance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employment and training history.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2743; 44 U.S.C. 3101; USNRC License and GHB 1860.1, "Radiation Safety Handbook;" GHB 1860.2, "Radiation Safety Radio Frequency;" GHB 1860.3, "Radiation Safety Laser."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used within NASA for review and approval of custodians and users of ionizing and non-ionizing radiation by the Radiation Safety Committee. In addition to the internal uses of the information contained in this system of records, the following are routine uses outside NASA: (1) The Nuclear Regulatory Commission may inspect records pursuant to fulfilling their responsibilities in administering and issuing licenses to use radiation sources; (2) Occupational Safety and Health Administration (Federal and State) may inspect records pursuant to fulfilling their responsibilities under the Occupational Safety and Health laws;

(3) The Environmental Protection Agency may inspect records pursuant to fulfilling their responsibilities under the Environmental Protection laws and Executive order; (4) The Food and Drug Administration may inspect records pursuant to fulfilling their responsibilities respecting use of lasers and x-rays; (5) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper or hard-copy documents and electronic media.

RETRIEVABILITY:

Records are indexed by name only.

SAFEGUARDS:

Records are located in locked metal file cabinets in a locked room with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are maintained and destroyed in accordance with NASA Records Retention Schedules, Schedule 1.

SYSTEMS MANAGER(S) AND ADDRESS:

Chief, Health, Safety, and Security Office, Location 4 as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Individauls may obtain information from the System Manager.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear at 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Employees.

NASA 72XOPR

SYSTEM NAME:

JSC Exchange Activities Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Location 4 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and past employees of JSC Exchange Operations, applicants under the JSC Exchange Scholarship Program, and JSC employees or JSC contractor employees participating in sports or special activities sponsored by the Exchange.

CATEGORIES OF RECORDS IN THE SYSTEM:

For present and past employees of the JSC Exchange Operations, the system includes a variety of records relating to personnel actions and determinations made about an individual while employed by the NASA Exchange-JSC. These records contain information about an individual relating to birth date; social security number; home address and telephone number; marital status; references; veteran preference, tenure, handicap; position description, past and present salaries, payroll deductions, leave; letters of commendation and reprimand; adverse actions, charges and decisions on charges; notice of reduction-in-force; personnel actions, including but not limited to, appointment, reassignment, demotion, detail, promotion, transfer and separation; minority group; records relating to life insurance, health and retirement benefits; designation of beneficiary; training; performance ratings; physical examinations; criminal matters; data documenting the reasons for personnel actions or decisions made about an individual; awards; and other information relating to the status of the individual.

For successful applicants under the JSC Exchange Scholarship Program, the system contains information supplied by individual Center employees who have applied for an Exchange Scholarship for financial transactions or holdings, employment history, medical data, and other related information.

For participants in social or sports activities sponsored by the Exchange, information includes employees' or contractors' employee identification number, organization, location, telephone number, and other information directly related to status or interest in participation in such activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; NASA Management Instruction 9050.6; Treasury Fiscal Requirement Manual, Part III, Payroll Deductions and Withholdings; and the Federal Personnel Manual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used within NASA for the following purposes: (1) With respect to past or present employees of the JSC Exchange Operations, information in the system is used to: (a) Pay employees and advise employees through Leave and Earnings Statements, (b) provide for promotion opportunities, disciplinary actions, staffing controls, budget requirements, employee fringe benefits, and other related personnel managerial purposes, and (c) submit reports in accordance with legal or policy directives and regulations to Center management and NASA Headquarters; (2) With respect to successful applicants under the JSC Scholarship Program, the information in the system is used to award scholarships to the sons and daughters of NASA–JSC employees, and (3) With respect to participants in the social or sports activities sponsored by the Exchange, the information maintained in the system is used to facilitate participation in such activities.

In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA for information maintained on JSC Exchange Operations employees only: (1) Provide information in accordance with legal or policy directives and regulations to the Internal Revenue Service, Department of Labor, Department of Commerce, Texas State Government Agencies, labor unions; (2) Provide information to insurance carriers with regard to worker's compensation, health and accident, and retirement insurance coverages; (3) Provide employment or credit information to other parties as requested by a current or former employee of the JSC Exchange Operations; and (4) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Paper or hard-copy documents and electronic media.

RETRIEVABILITY:

For Exchange employees, records are maintained by name and filed as current or past employee. For Scholarship applicants, records are maintained by name. For participants in social or sports activities, records are maintained by name.

SAFEGUARDS:

Records are located in locked metal file cabinets with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are maintained and destroyed in accordance with NASA Records Retention Schedules, Schedule 9.

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SYSTEM MANAGER(S) AND ADDRESS:

Manager, Exchange Operations, NASA Exchange-JSC, Location 5, as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Individuals may obtain information from the System Manager.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear in 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

For employees of the JSC Exchange Operations, information is obtained from the individual employee, the employee references, insurance carriers, JSC Health Services Division, JSC Security, employment agencies, Texas Unemployment Commission, credit bureaus, and creditors.

With respect to the JSC Exchange Scholarship Program, the information is obtained from the parents or guardians of the scholarship participants.

For JSC employees and JSC contractor employees, participation in social or sports activities sponsored by the Exchange information is obtained from the individual participant.

NASA 76RTES

SYSTEM NAME:

KSC Radiation Training and Experience Summary.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Location 6 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Custodians and/or users of sources radiation (ionizing and non-ionizing). Applicable to all users or custodians at KSC and NASA or NASA contractor personnel at Cape Canaveral Air Force Station, Florida, or Vandenberg Air Force Base, California.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individuals name and radiation-related training and experience.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; 42 U.S.C. 2021, 2111, 2201, 2232, 2233, 10 CFR part 33 for Federal Licensee, and Florida Administrative Code, Chapter 10 D–56 for State Licensee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used within NASA to determine the suitability of individuals for specific assignments dealing with radiation and to preclude unnecessary exposure to self and others.

In addition to the internal uses of the information contained in this system of records, routine uses outside of NASA include (1) Disclosure to Air Force Radiation Protection Officers at Eastern Space and Missile Center, Patrick Air Force Base, Florida, and Vandenberg Air Force Base, California, to governmental and private license holders, and to NASA contractors using sources of radiation to facilitate protection of the individual and the public; (2) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper or hard-copy documents and electronic media.

RETRIEVABILITY:

Records are indexed by name, program/project title. Use authorization number and/or license number as applicable.

SAFEGUARDS:

Records are personally supervised during the day and locked in the office at night. Records are protected in accordance with the requirements and procedures which appear in the applicable NASA regulations at 14 CFR part 1212.

RETENTION AND DISPOSAL:

Records are maintained and destroyed in accordance with NASA Records Retention Schedules, Schedule 1.

SYSTEM MANAGER(S) AND ADDRESS:

KSC Radiation Protection Officer, Location 6 as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Individuals may obtain information from the System Manager.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear at 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Individual is sole source.

NASA 76STCS

SYSTEM NAME:

KSC Shuttle Training Certification and Record System (YC–04).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Location 6 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

KSC Civil Service, KSC contractor, and Department of Defense personnel who have received systems, safety, reliability and quality assurance, and skills, training in support of KSC or Space Shuttle operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of training attendance and certifications, including certifications of physical ability to perform hazardous tasks.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used within NASA to determine training needs, and the operational readiness of the work force, to provide data for badging and access control to hazardous areas or critical operations, to determine the size of individual protective equipment and to identify personnel with needed skill combinations. In addition to the internal uses of the information contained in the systems of records, the following are routine uses outside of NASA: (1) Disclosure is made of information on employees of KSC contractors to those contractor organizations and to the Base Operations Contractor, to facilitate the performance of the contracts. The Base Operations Contractor compiles these training records for KSC; (2) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper or hard-copy documents and electronic media. All records for KSC are maintained by a NASA Contractor on computer tape with printouts made as required. Bar code readers are utilized for transfer of information on course attendees to a central processing unit by contractor personnel.

RETRIEVABILITY:

Indexed by Social Security Number, name, organization, and skill.

SAFEGUARDS:

These training records are maintained under administrative control of responsible organizations in areas that are locked when not in use. In addition, records are safeguarded in accordance with the requirements and procedures which appear in the NASA regulations at 14 CFR part 1212.

RETENTION AND DISPOSAL:

Records are maintained and destroyed in accordance with NASA Records Retention Schedules, Schedule 8.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Human Resources Development Branch, Location 6 as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Individuals may obtain information from the System Manager.

RECORDS ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and for appealing initial determinations by the individual concerned appear at 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Information is obtained from class input, rosters, operational records, reports of physical examination completions, and actions implemented by certifications boards.

NASA 76XRAD

SYSTEM NAME:

KSC USNRC Occupational External Radiation Exposure History for Nuclear Regulatory Commission Licenses.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Location 6 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

KSC civil servants and KSC contractor personnel who have received radiation exposure.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, exposure history, name of license holder, Social Security Number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; 42 U.S.C. 2021, 2073, 2093, 2095, 2111, 2133, 2134, and 2201; 10 CFR part 20 for Federal Licensee; and Florida Administrative Code, Chapter 10 D–56 for State Licensee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used within NASA to record exposure and to inform individuals of their approaching or exceeding radiation dose limits.

In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA: (1) Disclosure to Air Force Radiation Protection Offices at Eastern Space and Missile Center, Patrick Air Force Base, Florida, and Vandenberg Air Force Base, California, to governmental and private license holders, and to NASA contractors using radioactive materials or ionizing radiation producing devices to facilitate the protection of individuals; (2) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper or hard-copy documents and electronic media.

RETRIEVABILITY:

Records are indexed by name in personnel dosimetry files.

SAFEGUARDS:

Records are personally supervised during the day and locked in the office at night. Records are protected in accordance with the requirements and procedures which appear in the NASA regulations at 14 CFR part 1212.

RETENTION AND DISPOSAL:

Records are maintained and destroyed in accordance with NASA Records Retention Schedules, Schedule 1.

SYSTEM MANAGER(S) AND ADDRESS:

KSC Radiation Protection Officer, Location 6 as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Individuals may obtain information from the System Manager.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear at 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Individual is sole source.

APPENDIX A—LOCATION NUMBERS AND MAILING ADDRESSES OF NASA CENTERS AT WHICH RECORDS ARE LOCATED

Location 1

NASA Headquarters, National Aeronautics and Space Administration, Washington, DC 20546–0001

Location 2

Ames Research Center, National Aeronautics and Space Administration, Moffett Field, CA 94035–1000

Location 3

Dryden Flight Research Center, National Aeronautics and Space Administration, PO Box 273, Edwards, CA 93523–0273

Location 4

Goddard Space Flight Center, National Aeronautics and Space Administration, Greenbelt, MD 20771–0001

Location 5

Lyndon B. Johnson Space Center, National Aeronautics and Space Administration, Houston, TX 77058–3696

Location 6

John F. Kennedy Space Center, National Aeronautics and Space Administration, Kennedy Space Center, FL 32899–0001

Location 7

Langley Research Center, National Aeronautics and Space Administration, Hampton, VA 23681–0001

Location 8

Lewis Research Center, National Aeronautics and Space Administration, 21000 Brookpark Road, Cleveland, OH 44135–3191

Location 9

George C. Marshall Space Flight Center, National Aeronautics and Space Administration, Marshall Space Flight Center, AL 35812–0001

Location 10

HQ NASA Management Office—JPL, National Aeronautics and Space Administration, 4800 Oak Grove Drive, Pasadena, CA 91109–8099

Location 11

John C. Stennis Space Center, National Aeronautics and Space Administration, Stennis Space Center, MS 39529–6000

Location 12

JSC White Sands Test Facility, National Aeronautics and Space Administration, P.O. Drawer MM, Las Cruces, NM 88004–0020

Location 13

LeRC Plum Brook Station, National Aeronautics and Space Administration, Sandusky, OH 44870

Location 14

MSFC Michoud Assembly Facility, National Aeronautics and Space Administration, P.O. Box 29300, New Orleans, LA 70189

Location 15

NASA Independent Verification and Validation Facility (NASA IV&V), 100 University Drive, Fairmont, WV 26554

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Appendix B—Standard Routine Uses—NASA

The following routine uses of information contained in systems of records subject to the Privacy Act of 1974 are standard for many NASA systems. They are cited by reference in the paragraph "Routine uses of records maintained in the system, including categories of users and the purpose of such uses" of the **Federal Register** notice on those systems to which they apply.

Standard Routine Use No. 1—LAW ENFORCEMENT—In the event that this system of records indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

Standard Routine Use No. 2—DISCLOSURE WHEN REQUESTING INFORMATION—A record from this system of records may be disclosed as a 'routine use' to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

Standard Routine Use No. 3—DISCLOSURE OF REQUESTED INFORMATION—A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

Standard Routine Use No. 4—COURT OR OTHER FORMAL PROCEEDINGS—In the event there is a pending court or formal administrative proceeding, any records which are relevant to the proceeding may be disclosed to the Department of Justice or other agency for purposes of representing the Government, or in the course of presenting evidence, or they may be produced to parties or counsel involved in the proceeding in the course of pre-trial discovery.

[FR Doc. 98–2055 Filed 1–27–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing on Korean Air Flight 801 Accident

In connection with its investigation of the accident involving Korean Air flight 801, a Boeing 747–300, in Agana, Guam, on August 6, 1997, the National Transportation Safety Board will convene a public hearing beginning at 9 a.m. local time on Tuesday, March 24, 1998, at the Hawaii Convention Center, 1833 Kalakua Avenue, Honolulu, Hawaii. For more information, contact the NTSB Major Investigations Division, telephone (202) 314–6310 or Paul Schlamm or Keith Holloway, NTSB Office of Public Affairs, telephone (202) 314–6100.

Dated: January 22, 1998.

Ray Smith,

Alternate Federal Register Liaison Officer.

[FR Doc. 98–1995 Filed 1–27–98; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Application for a License to Export a Utilization Facility

Pursuant to 10 CFR 110.70 (b)(1) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an export license. Copies of the application are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, N.W., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

In its review of the application for a license to export a utilization facility as defined in 10 CFR Part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility to be exported. The information concerning the application follows.

Name of applicant, date of application, date received, application No.	Description of facility	End use	Country of destination
Combustion Engineering, Dec. 23, 1997, Dec. 31, 1997, XR165.	Two (2) Nuclear utilization facilities 1000MWE each.	Commercial operation of electricity	North Korea.

Dated this 21st day of January 1998 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Director, Division of Nonproliferation, Exports and Multilateral Relations, Office of International Programs.

[FR Doc. 98–2018 Filed 1–27–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission will convene a meeting of a subcommittee of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on February 9 and 10, 1998. The meeting will take place at the address provided below. All sessions of the meeting will be open to the public.

Topic of discussion will be the proposed rule text for the revision of 10 CFR part 35 and associated guidance.

DATES: The meeting will begin at 8:00 a.m., on February 9 and 10, 1998.

ADDRESSES: U.S. Nuclear Regulatory Commission, Two White Flint North, 11545 Rockville Pike, Room T2B3, Rockville, MD 20852–2738.

FOR FURTHER INFORMATION, CONTACT: Patricia Vacherlon, U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, MS T8F5, Washington, DC 20555, Telephone (301) 415–6376.

Conduct of the Meeting

Mr. Dennis Swanson will chair the meeting. Mr. Dennis Swanson will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit a reproducible copy to Patricia Vacherlon (address listed previously), by February 2, 1998. Statements must pertain to the topics on the agenda for the meeting.

2. At the meeting, questions from members of the public will be permitted at the discretion of the Chairman.

3. The transcript and written comments will be available for inspection, and copying, for a fee, at the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20555, telephone (202) 634–3273, on or about April 1, 1998. Minutes of the meeting will be available on or about May 1, 1998.

4. Seating for the public will be on a first-come, first-served basis.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, U.S. Code of Federal Regulations, part 7.

Dated: January 22, 1998.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 98–2019 Filed 1–27–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on March 1–2, 1998. The meeting will take place at the address provided below. All sessions of the meeting will be open to the public.

Topics of discussion will include: (1) An update on the revision of 10 CFR part 35 and associated activities to include a detailed discussion on the proposed rule text; (2) a discussion of the committee's response to the Commission's request for the ACMUI to take a focused look at revisions to part 35; (3) a discussion of the committee's response to the Commission's request for the ACMUI to identify criteria for evaluation of committee performance; (4) a discussion of the calibration and the correct use of Strontium-90 eye applicators; (5) a discussion of current training and experience requirements to conduct intravascular brachytherapy; (6) a discussion of previous ACMUI recommendations.

DATES: The meeting will begin at 8 a.m., on March 1 and 2, 1998.

ADDRESSES: U.S. Nuclear Regulatory Commission, Two White Flint North, 11545 Rockville Pike, Room T2B3, Rockville, MD 20852–2738.

FOR FURTHER INFORMATION, CONTACT: Patricia Vacherlon, U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, MS T8F5, Washington, DC 20555, Telephone (301) 415–6376.

Conduct of the Meeting

Judith Ann Stitt, M.D., will chair the meeting. Dr. Stitt will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit a reproducible copy to Patricia Vacherlon (address listed previously), by February 20, 1998. Statements must pertain to the topics on the agenda for the meeting.

2. At the meeting, questions from members of the public will be permitted at the discretion of the Chairman.

3. The transcript and written comments will be available for inspection, and copying, for a fee, at the NRC Public Document Room, 2120 L Street, N.W., Lower Level, Washington, DC 20555, telephone (202) 634–3273, on or about April 1, 1998. Minutes of the meeting will be available on or about May 1, 1998.

4. Seating for the public will be on a first-come, first-served basis.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, *Code of Federal Regulations*, Part 7.

Dated: January 23, 1998.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 98–2080 Filed 1–27–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Workshop: Demonstrating Compliance With the Radiological Criteria for License Termination—Methods to Conduct a Final Status Survey and Dose Modeling

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of workshop.

SUMMARY: The NRC will hold a public workshop in Rockville, Maryland to receive input from licensees and the public on working papers on "Methods to Conduct a Final Status Survey," and "Dose Modeling." These working papers are being developed as part of a future Regulatory Guide. The Regulatory Guide is being written to describe an acceptable method to comply with the NRC's recent final rule on Radiological Criteria for License Termination (62 FR 39058; July 21, 1997). These working papers have received only limited NRC staff review or approval. The purpose of the workshop is to obtain comments, suggestions, and information from the public on the approach in the working papers so that a better Regulatory Guide can be developed. All interested licensees and members of the public are invited to attend this workshop.

DATES: The workshop will be held on February 18 and 19, 1998, beginning at 9 a.m. and ending at about 5 p.m. There is no pre-registration. Interested parties, unable to attend the workshop, are encouraged to provide written comments by March 13, 1998.

ADDRESSES: The public workshop will be held in the NRC's auditorium at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. Visitor parking around the NRC building is limited; however, the workshop site is located adjacent to the White Flint Station on the Metro Red Line. A transcript of this workshop will be available for inspection, and copying for a fee at the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20555, on or about March 2, 1998.

Obtaining the Working Paper

Copies of the draft working papers to be discussed will be made available electronically, prior to the workshop, at the NRC Technical Conference Forum Website under the topic "Final Rule for License Termination" at http://techconf.llnl.gov/cgi-bin/topics or from the NRC's Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC 20555; telephone 202–634–3273; fax 202–634–3343. To view

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the working papers at the Website, select "Final Rule on Radiological Criteria for License Termination," then select "Lic Term Document Library," then select "Regulatory Guide," and then select "Module C.2: Regulatory Position—Final Status Survey," or "Module C.1: Regulatory Position—Dose Modeling."

Meeting Agenda

9:00 Welcome and introduction

9:05 Presentation describing issues considered in developing the draft working paper

10:30 Break

10:45 Public comments on the draft working paper. Attendees will be asked for questions and comments on each section of the draft working paper.

12:00 Lunch

1:30 Continuation of public comments.

5:00 Adjourn

Submitting Written Comments

Comments may be posted electronically on the NRC Technical Conference Forum Website mentioned above. Comments submitted electronically can also be viewed at that Website. Comments may also be mailed to the Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION: For information or questions on meeting arrangements, contact Nina Barnett, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–415–6187, fax 301–415–5385, E-mail: NMB@NRC.GOV. For technical information or questions, contact Stephen A. McGuire, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–415–6204; fax: 301–415–5385; E-mail: SAM2@NRC.GOV.

Dated at Rockville, Maryland this 22nd day of January, 1998.

For the Nuclear Regulatory Commission.

Cheryl Trottier,

Chief, Radiation Protection and Health Effects Branch, Division of Regulatory Applications, RES.

[FR Doc. 98–2017 Filed 1–27–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 5, 1998, through January 15, 1998. The last biweekly notice was published on January 14, 1998 (63 FR 2271).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By February 27, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or

petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, Docket No. 50–261, H.B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: December 17, 1997.

Description of amendment request: The requested amendment revises Technical Specification Section 5.6.5, "Core Operating Limits Report (COLR)." The revisions add reference to an additional approved methodology for correlating departure from nucleate boiling (DNB) ratios. The added methodology is the Siemens Power Corporation Topical Report, EMF–92–153(P)(A), "HTP: Departure from Nucleate Boiling Correlation for High Thermal Performance Fuel."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change adds a methodology that has been previously reviewed and approved by the NRC for determining the DNB safety limit. The new methodology utilizes the High Thermal Performance (HTP) correlation developed by the fuel manufacturer, Siemens Power Corporation. The HTP correlation is empirically based and results in a DNB safety limit that corresponds to a 95% probability at a 95% confidence level that DNB will not occur. The DNB ratio safety limit is a conservative design value which is used as a basis for setting core safety limits. The DNB correlation is not assumed to be an initiator of analyzed events or transients, and use of the new DNB correlation will not alter assumptions relative to mitigation of accident or transient events. The proposed change has been confirmed to ensure that no previously evaluated accident or transient results in a DNB less than the DNB correlation safety limit. The HTP DNB correlation assures with high confidence that, for accidents and transients that do not result in a DNBR less than the HTP DNBR safety limit, departure from nucleate boiling and subsequent fuel overheat will not occur in HTP fuel.

Therefore, the proposed change does not involve any increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve any physical alteration of plant systems, structures, or components or changes in parameters governing normal plant operation. The proposed change

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will allow use of the new DNB correlation in like manner as the existing DNB correlation in the analysis of accidents and transients to assure that the acceptance criteria for current analyses are met. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change allows use of a DNB correlation that determines a safety limit that is slightly lower than the currently used DNB correlation. While the slightly lower DNB correlation safety limit allows a small increase in margin in analyzing accidents and transients, the change from the existing DNB correlation to the proposed DNB correlation is not directly comparable to the margin of safety. This is because the margin of safety for a particular accident or transient is that margin that results from the difference between the DNBR calculated for the particular accident or transient using the DNB correlation and the DNBR safety limit determined by the DNB correlation. Since both the safety limit and the accident or transient calculated DNB use the same DNB correlation, the margin of safety is consistently calculated and evaluated for acceptability. Since both the current and proposed DNB correlation closely approximate test data, and they still meet the 95/95 criterion, and the new DNB correlation does not result in a DNBR from an accident or transient less than the DNBR correlation safety limit, the proposed change does not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: Gordon E. Edison, Acting.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: June 6, 1997, as supplemented September 25, 1997.

Description of amendment request: The proposed amendment would delete the requirement to sample the spray additive tank per Technical Specification (TS) Table 4.1–2, "Frequency for Sampling Tests," and delete the sodium hydroxide (NaOH) reference in TS Section 5.2.C.1. The request to delete the requirement and the reference was inadvertently omitted as part of the licensee's original submittal dated August 22, 1996, supplemented March 28, 1997, to eliminate the requirement for the NaOH containment spray additive and spray additive tank.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response:

The request to remove the requirement for the spray additive tank was approved as part of Amendment No. 191 to Operating License No. DPR 26. By letter dated April 23, 1997, the Commission reviewed and approved the amendment request. However, Consolidated Edison failed to include the deletion of the requirement to sample the spray additive tank. The removal of the requirement for the spray additive tank has been analyzed and approved; therefore, there is no further basis for continued testing of the tank. Further, the deletion of the requirement would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response:

The proposed changes allow the containment safeguards to mitigate the consequences of a design basis LOCA [loss-of-coolant accident] in a manner equivalent to that previously approved. Therefore, the proposed changes do not create an accident or malfunction of safety equipment of a different type.

(3) Does the proposed amendment involve a significant reduction in margin of safety?

Response:

With the proposed changes, all of the safety criteria previously evaluated are still valid and remain conservative. Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: S. Singh Bajwa, Director.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: December 17, 1997.

Description of amendment request: The proposed amendments would revise Section 6.9.1.9 of the Technical Specifications (TS) to reference updated or recently approved topical reports, which contain methodologies used to calculate cycle-specific limits contained in the Core Operating Limits Report. These topical reports have all been previously approved by the staff under licensing actions separate from the current amendment request.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's analysis is presented below.

1. Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes do not involve any modification to existing systems, components, operating limits, or operating procedure. Therefore, these proposed changes will have no impact on the consequences or probabilities of any previously evaluated accidents.

2. Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. No actual plant equipment or operating procedure will be affected by the proposed changes. Hence, no new equipment failure modes or accidents from those previously evaluated will be created.

3. Will the change involve a significant reduction in a margin of safety?

No. Margin of safety is associated with confidence in the design and operation of the plant. The proposed changes to the TS do not involve any change to plant design or operation. Thus, the margin of safety previously analyzed and evaluated is maintained.

Based on this analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Attorney for licensee: Mr. Paul R. Newton, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28242–0001.

NRC Project Director: Herbert N. Berkow.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: December 17, 1997.

Description of amendment request: The proposed amendments would revise Section 6.9.1.9 of the Technical Specifications (TS) to reference updated or recently approved topical reports, which contain methodologies used to calculate cycle-specific limits contained in the Core Operating Limits Report. These topical reports have all been previously approved by the staff under licensing actions separate from the current amendment request.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's analysis is presented below.

1. Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes do not involve any modification to existing systems, components, operating limits, or operating procedure. Therefore, these proposed changes will have no impact on the consequences or probabilities of any previously evaluated accidents.

2. Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. No actual plant equipment or operating procedure will be affected by the proposed changes. Hence, no new equipment failure modes or accidents from those previously evaluated will be created.

3. Will the change involve a significant reduction in a margin of safety?

No. Margin of safety is associated with confidence in the design and operation of the plant. The proposed changes to the TS do not involve any change to plant design or operation. Thus, the margin of safety previously analyzed and evaluated is maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, North Carolina.

Attorney for licensee: Mr. Albert Carr, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: September 23, 1997.

Description of amendment request: The proposed amendment changes the Reactor Protective System and Engineering Safety Actuation System trip set point and allowable values for steam generator low pressure. The proposed amendment also relocates the RPS and ESFAS response time tables from the Technical Specifications to the Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does Not Involve a Significant Increase in the Probability or Consequences of and Accident Previously Evaluated.

The proposed changes included in this amendment request do not affect the accident initiators in any of the accidents previously evaluated. The proposed trip setpoints and allowable values for Steam Generator Pressure—Low are being reduced by this proposed amendment request. This change is necessary to increase the operating margin between the full power steam generator pressure and these setpoints. The change should reduce the probability of an inadvertent Main Steam Isolation Signal (MSIS) from occurring at power since it will increase the operating space between the operating pressure and the setpoints. Therefore, this amendment request will not increase the probability of any accident previously evaluated.

The secondary system pipe break safety analyses were reanalyzed for the Steam Generator Pressure—Low setpoint reduction effort. This effort included the removal of unnecessary analysis conservatisms resulting in a significant reduction in the associated setpoints. The proposed changes do not involve any change to the configuration or method of operation of any plant equipment used to mitigate the consequences of an accident. The previously evaluated accidents which were determined to be impacted by this setpoint change were evaluated with no significant increase in the consequences.

This amendment request contains the relocation of the Reactor Protective System (RPS) and Engineered Safety Features Actuation System (ESFAS) response time information from the Technical Specifications (TS) to the Safety Analysis Report. This proposed change adopts the TS "line-item improvement" as recommended in NRC Generic Letter 93–08, "Relocation of Technical Specification Tables of Instrument Response Time Limits," dated December 29, 1993. The NRC has concluded that 10 CFR 50.36 does not require the response time tables to be retained in TSs and has issued Generic Letter 93–08 as a line item improvement to allow their removal. Response time testing will still be required by the ANO–2 TS after the relocation of the associated response time information in this amendment request. Relocating the response time information for the RPS and ESFAS from the TS to the SAR will not alter these surveillance requirements. Therefore, the relocated response time portion of this amendment request is considered administrative in nature and will not affect the probability or consequences of any accident previously evaluated.

Therefore, this change does *not* involve a significant increase in the

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probability or consequences of any accident previously evaluated.

2. Does Not Create the Possibility of a New or Different Kind of Accident from and Previously Evaluated.

The proposed changes do not involve any physical modifications (i.e., new systems, new components, etc.) to the plant. The proposed changes do not involve any change to the configuration or method of operation of any plant equipment used to mitigate the consequences of an accident. The results of the accident reanalyzes suggest no different phenomena or plant behavior than previously considered. The Steam Generator Pressure Low setpoint change does not create any new or different system actuations or interactions than evaluated previously. The relocated response time portion of this amendment request is considered administrative in nature and is not considered an accident initiator. Therefore, this change does *not* create the possibility of a new or different kind of accident from any previously evaluated.

3. Does Not Involve a Significant Reduction in the Margin of Safety.

The accidents which were determined to be impacted by the Steam Generator Pressure Low setpoint change were evaluated to ensure acceptable results are maintained. The instrument error calculations supporting the lower Steam Generator Pressure Low setpoint and allowable values will ensure the present accident analysis assumptions are still maintained. The methodology used to determine the instrument loop errors and uncertainties is the same as that used in previous amendment requests that have been reviewed and approved by the NRC. Based on these evaluations, the proposed changes do *not* involve a significant reduction in a margin of safety.

Therefore, based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations has determined that the reauested chance does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005–3502.

NRC Project Director: John Hannon.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: September 23, 1997.

Description of amendment request: The proposed amendment reduces the minimum primary system flow that is specified in the technical specifications to reflect the effects of increased primary system resistance caused by steam generator tube plugging.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

Entergy Operations is proposing a change to the Technical Specifications for Arkansas Nuclear One—Unit 2 (ANO–2) to accommodate a larger number of plugged steam generator tubes. The proposed amendment request will revise the Technical Specifications to conservatively account for the reduced reactor coolant system (RCS) flow effects of plugging up to 30 percent of the tubes in either steam generator. This change will reduce the minimum RCS total flow rate from 120.4×10^6 lbm/hr to 108.4×10^6 lbm/hr until the steam generators are replaced. The steam generators are currently scheduled for replacement during the fall of the year 2000. After the steam generators are replaced, the minimum RCS flow will then return to the current value of 120.4×10^6 lbm/hr.

The tube plugs that are installed in the steam generators are passive components by nature. This amendment request does not change the type of plugs which may be installed in the steam generators nor does it change the criteria for plugging steam generator tubes. Reducing the minimum required RCS flow does not change the plant's required mode of operation or modify any active component. Therefore, this amendment request will not significantly increase the probability of the occurrence of a previously evaluated accident.

The installation of steam generator tube plugs removes the affected tube from service thus reducing the heat transfer surface area and increasing the steam generator primary side flow resistance. The increased flow resistance in the affected steam generator leads to a reduction in the RCS flow available for core cooling. The reduced RCS flow rate and heat transfer surface area resulted in a change in several primary and secondary parameters that required reanalysis. The ANO–2 accident reanalyses supporting the additional steam generator tube plugging and the reduction in RCS flow have been completed.

The Design Basis Accidents (DBAs) affected by these changes were reanalyzed to determine if the effects of increased steam generator tube plugging and the reduced RCS flow could result in exceeding the acceptance criteria applicable to each of these events. It was determined that the DBA acceptance criteria would *not* be exceeded as a result of increased steam generator tube plugging and reduction in the minimum RCS flow rate.

Based on the results of the analysis, it is concluded that the emergency core cooling system design satisfies the acceptance criteria of 10 CFR 50.46(b) for a spectrum of small break and large break loss of coolant accidents (LOCAs). The specified acceptable fuel design limits (SAFDLs) and the RCS pressure boundary limits also are not violated. The fuel and core performance were also determined to remain within acceptable limits. Primary and secondary system pressures remain below their respective pressure limits.

Analyses and evaluations of the DBAs have been performed demonstrating that the NRC acceptance criteria for these events are met. The revised analyses and evaluations consider reduced RCS flow, increased RCS temperatures, and increased steam generator tube plugging conditions. Although the offsite dose during a steam generator tube rupture event could increase, the results remain well within 10 CFR [Part] 100 limits. Therefore, the consequences of a previously evaluated accident are not significantly increased.

Therefore, this change does *not* involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed amendment reduces the minimum RCS total flow to account for the effects of steam generator tube plugging. This amendment request will not change the modes of operation defined in the Technical Specifications. This change does not add any new equipment, modify any interfaces with any existing equipment, change the equipment's function, or the method of operating the equipment. The proposed change does not change plant conditions in a manner which could affect other plant components. Reactor core, RCS, and steam generator parameters remain within appropriate design limits during normal operation. The proposed change could not cause any existing equipment to become an accident initiator. Therefore, this change does *not* create the possibility of a new or different kind of accident from any previously evaluated.

3. Does Not Involve a Significant Reduction in the Margin of Safety.

The margins of safety associated with this change are defined in the fuel and core related analyses, and in each of the transient and accident analyses affected by the reduced RCS flow. An evaluation of the affected analyses confirmed that the established acceptance criteria for specified acceptable fuel design limits, primary and secondary system over-pressurization, and the acceptance criteria for the emergency core cooling systems have been satisfied by this license amendment request. The evaluation concludes that, when considering the proposed Limiting Conditions for Operation for the minimum RCS total flow rate, all applicable acceptance criteria limits are met. The margins of safety associated with the transient and accident analyses affected by this change will not be significantly reduced. Therefore, this change does *not* involve a significant reduction in the margin of safety.

Therefore, based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations has determined that the requested change does *not* involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005–3502.

NRC Project Director: John Hannon.

GPU Nuclear Corporation, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: December 10, 1997.

Description of amendment request: To clarify certain sections of the Technical Specifications (TSs) and Bases which have been demonstrated to be unclear or conflicting. Administrative changes include TS 2.3 Bases, Table 3.1.1.G.1, Table 3.1.1.M.2, Section 4.3.C, and Section 6.1.1. Technical changes include Table 3.3.3, note b, Section 3.4 Bases, Section 3.8 Bases and Section 4.5 Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

With respect to the administrative changes, they are typical of the example I.c.2.e.i in 51 FR 7744 and therefore, they do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or

3. Involve a significant reduction in the margin of safety; in that they are purely administrative changes to achieve consistency or correct an error in the TS.

With respect to technical change, Table 3.1.1, note b:

1. Involve a siginificant increase in the probability or consequences of an accident previously evaluated; (or)

The proposed change would restore the original value of less than 600 psig. This lower value would not increase the probability of any accident as it provides a more conservative level below which protection can be bypassed.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated; (or)

The proposed change would restore the original value of less than 600 psig. The setpoint of a bypass cannot create a different kind of accident, it can only affect the severity.

3. Involve a significant reduction in a margin of safety; As the requested change lowers the bypass setpoint, the margin of safety will be increased.

With respect to Section 3.4 Bases:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; (or)

The proposed change to the Bases removes a possible area of confusion from the [TS], and updates the Bases to reflect the results of newer, approved methodologies. Therefore, no change to any probability calculation occurs.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated; (or)

The proposed change addresses an existing accident (Small Break LOCA) and removes outdated and possibly confusing information. Therefore, no new or different kind of accident is created.

3. Involve a significant reduction in a margin of safety;

The proposed change does not change the way the plant is operated or the way design Bases are maintained. It only removes an outdated and possibly confusing paragraph from the Bases, therefore, no margin of safety is affected.

With respect to Section 3.8 Bases:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; (or)

The Isolation Condenser Radiation Monitors had no impact o[n] the operation of any plant system. Additionally, the monitors were not relied upon for any post accident evaluations. They were removed from the plant using the 10 CFR 50.59 process. As this request updates the [TS] Bases to reflect the plant as currently configured, no impact on the probability or consequences of any previously evaluated accident is possible.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated; (or)

The Isolation Condenser Radiation Monitors had no impact o[n] the operation of any plant system. Additionally, the monitors were not relied upon for any post accident evaluations. They were removed from the plant using the 10 CFR 50.59 process. As this request updates the [TS] Bases to reflect the plant as currently configured, no new or different kind of accident is created.

3. Involve a significant reduction in a margin of safety;

The Isolation Condenser Radiation Monitors had no impact o[n] the operation of any plant system. Additionally, the monitors were not relied upon for any post accident evaluations. They were removed from the plant using the 10 CFR 50.59 process. As this request updates the [TS] Bases to reflect the plant as currently configured, no reduction in any margin of safety can occur.

With respect to Section 4.5 Bases:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; (or)

No change to any procedure, nor any modification to any system is requested. The same surveillance will be performed at the same frequency. Only the brand of chemical used to perform the surveillance will be affected. As an equivalent chemical will be selected, no increase in the probability or consequences of an accident previously evaluated can be created.

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2. Create the possibility of a new or different kind of accident from any accident previously evaluated; (or)

No change to any procedure, nor any modification to any system is requested. The same surveillance will be performed at the same frequency. Only the brand of chemical used to perform the surveillance will be affected. As an equivalent chemical will be selected, no new or different kind of accident previously evaluated can be created.

3. Involve a significant reduction in the margin of safety;

No change to any procedure, nor any modification to any system is requested. The same surveillance will be performed at the same frequency. Only the brand of chemical used to perform the surveillance will be affected. As an equivalent chemical will be selected, no margin of safety can be affected.

The staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Ronald B. Eaton.

IES Utilities Inc., Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment requests: October 3, 1997.

Description of amendment requests: The proposed amendment would revise the Operating License to allow the start of core offload as soon as 60 hours after shutdown instead of the 120 hours currently specified.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Operating License Amendment will not significantly increase the probability or consequences of any previously evaluated accidents.

The proposed change will allow initiation of core offload earlier after shutdown than is currently allowed. Thermal-hydraulic analysis shows that maximum bulk SFP, local water, and fuel clad temperatures will remain within acceptable limits and, in fact, do not exceed those previously reviewed and approved for Amendment 195.

Thermal-hydraulic analysis shows the minimum time to action is calculated at 4.5 hours versus 5.5 hours previously reviewed and approved for Amendment 195. In the event of a loss of forced cooling with cask pit isolation gate failure event, the DAEC will use Emergency Service Water (ESW), a Seismic Category I system, to provide makeup to the SFP. It is estimated to take no more than 2 hours to provide ESW makeup to the SFP, therefore the minimum time to action of 4.5 hours is sufficient time to prevent uncovering the fuel in the SFP.

The DAEC design basis refueling accident, as discussed in Section 15.10.2 of the Updated Final Safety Analysis Report, assumes a twenty-four hour decay time before core offload begins. The proposed change does not adversely affect that accident analysis.

Therefore, the proposed change will not result in an increase in probability or consequences of an accident previously evaluated.

2. The proposed changes will not create a new or different kind of accident from those previously evaluated.

Thermal-hydraulic analysis shows that the proposed change will not result in maximum bulk SFP, local water, or fuel clad temperatures which would initiate bulk pool boiling, challenge fuel rod integrity or jeopardize the structural integrity of the pool.

As stated above, the minimum time to action of 4.5 hours allows sufficient time to provide ESW makeup to the SFP. Therefore, this change does not create the possibility of a new or different type of accident.

3. The proposed change will not result in a significant reduction in any margin of safety.

This change will not result in maximum bulk SFP, local water, and fuel clad temperatures in excess of those previously evaluated and accepted per Amendment 195. The thermal-hydraulic analysis for Case C does show a reduction in the minimum time to action by one hour. However, 4.5 hours does provide sufficient time to provide ESW makeup to the SFP as this task is estimated to require no more than 2 hours. Furthermore, this change does not result in any change to the Technical Specifications. Therefore, this change does not result in a significant reduction in a margin of safety.

Based upon the above, we have determined that the proposed amendment will not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, Iowa 52401.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: December 15, 1997.

Description of amendment request: The proposed amendment would revise Technical Specifications (TSs) 2.1 and 3/4.4.1 to change the safety limit minimum critical power ratio (MCPR) for the upcoming fuel operating cycle (Cycle 7) from 1.07 to 1.09 for two recirculation loop operation and from 1.08 to 1.10 for single loop operation. An obsolete footnote in TS 3/4.4.1, which states that "the MCPR Safety Limit of 1.07 will be used through the first operating cycle," would be deleted. The associated Bases 2.1 would be changed to (1) reflect the new MCPR values, (2) delete certain details (including Bases Table B2.1.2–1, "Uncertainties Used in the Determination of the Fuel Cladding Safety Limit," and Bases Table B2.1.2–2, "Nominal Values of Parameters Used in the Statistical Analysis of Fuel Cladding Integrity Safety Limit,") and (3) substitute for the deleted detail a reference to General Electric Standard Application for Reactor Fuel (GESTAR II), NEDE–24011–P–A, and to the cycle-specific analysis. The TS Index would be changed to reflect deletion of Bases Tables B2.1.2–1 and B2.1.2–2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The derivation of the revised Safety Limit MCPR was performed using the NRC approved methodology in GESTAR II. The Safety Limit MCPR is a TS numerical value that cannot initiate an event. Maintaining compliance with this limit will assure that 99.9 percent of the fuel rods will not experience transition boiling during transient events. The deletion of the footnote that is no longer necessary and the revision to the Bases information are administrative only. Thus, the margin of safety to fuel cladding failure due to insufficient cladding heat transfer during transient events is not reduced. Therefore, this change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: S. Singh Bajwa.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: November 13, 1997.

Description of amendment request: The proposed amendment would change the Technical Specifications (TSs) to (1) modify the low temperature overpressure protection (LTOP) requirements; (2) modify the reactor coolant system (RCS) heatup and cooldown limits; and (3) make changes to correct various items based on the licensee's review of the current TSs. The supporting TS Bases sections would also be changed to reflect the proposed TS changes.

The affected TSs are: TS 3.1.2.1, "Flow Paths—Shutdown;" TS 3.1.2.2, "Flow Paths—Operating;" TS 3.1.2.3, "Charging Pump—Shutdown;" TS 3.1.2.4, "Charging Pumps—Operating;" TS 3.1.2.5, "Boric Acid Pumps—Shutdown;" TS 3.1.2.6, "Boric Acid Pumps—Operating;" TS 3.1.2.8, "Borated Water Sources—Operating;" TS 3.4.1.3, "Coolant Loops and Coolant Circulation—Shutdown;" TS 3.4.3, "Relief Valves;" TS 3.4.9.1, "Reactor Coolant System;" TS 3.4.9.2, "Pressurizer;" TS 3.4.9.3, "Overpressure Protection Systems;" TS 3.5.3, "ECCS Subsystems—T_{avg} < 300 °F;" and TS 3.10.3, "Pressure/Temperature Limitation—Reactor Criticality."

The November 13, 1997, submittal provides specific details related to each of the proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Each of the proposed changes have been grouped together, as appropriate, to address this criteria.

HPSI Pump Not Required To Be Operable In Modes 5 and 6. The proposed change to only require one charging pump to be operable in Modes 5 and 6, instead of the current requirement for one charging pump and one high pressure safety injection pump (HPSI) pump to be operable, will result in sufficient, but not excessive, Reactor Coolant System (RCS) makeup capability. When the plant is in Mode 5 or 6 there are two major factors to consider with respect to the number of RCS makeup pumps required to be operable. If too many RCS makeup pumps are required, an inadvertent start of these pumps can result in a mass addition transient beyond the capacity of the Low Temperature Overpressure Protection (LTOP) System. This may result in an RCS pressure increase that exceeds the 10CFR50 Appendix G pressure/temperature limits. Compliance with the mass input and venting restrictions contained in the proposed Technical Specification 3.4.9.3 will ensure the Appendix G limits are not exceeded.

The minimum number of RCS makeup pumps required to be operable in Modes 5 and 6 ensures sufficient makeup capability is available for RCS inventory control and RCS boration requirements. RCS inventory control is necessary in Modes 5 and 6 to ensure sufficient water is available for core cooling. A rapid loss of RCS inventory due to catastrophic pipe failures is unlikely in Modes 5 and 6 due to the reduced RCS pressure and temperature. An inventory loss is more likely to occur due to small system component failures or during infrequently performed evolutions, such as reduced inventory operation. This type of inventory loss will occur at a slower rate. Plant operators will have time to perform the necessary actions to mitigate the event. Reliance on automatic operation of the Emergency Core Cooling System is not necessary and Technical Specifications do not require automatic actuation by the Engineered Safety Features Actuation System to be operable in Mode 4 or below. Operator action is sufficient to mitigate a loss of RCS inventory in Mode 4 or below, provided sufficient

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RCS makeup capability is available. Plant procedures and shutdown risk management will provide adequate administrative control to ensure sufficient RCS makeup capability is available, or that contingency plans have been developed.

The minimum number of RCS makeup pumps required to be operable in Modes 5 and 6 ensures sufficient makeup capability is available for RCS boration requirements. The RCS is required to be borated to a sufficient boron concentration to ensure the Technical Specification Shutdown Margin (SDM) requirements are met. The appropriate SDM requirements must be met before entry is allowed into Mode 5 or 6. RCS boron concentration is increased to establish the required SDM. This is normally accomplished by adding borated water to the RCS during plant cooldown to compensate for the contraction of the RCS inventory. The proposed change will restrict the number of pumps available, which will increase the time required to adequately borate the RCS. However, the change will not affect the ability to add boric acid to the RCS.

Even though the proposed change will remove the Technical Specification requirement for an operable HPSI pump in Modes 5 and 6, sufficient RCS makeup capability will be available to meet RCS boration and inventory requirements. Therefore, the proposed change will not result in a significant increase in the probability or consequences of an accident previously evaluated.

LTOP Mass Input and Vent Size Requirements. The proposed changes to the RCS venting requirements currently contained in Technical Specification 3.4.9.3, and the RCS makeup requirements that will be relocated to Technical Specification 3.4.9.3 are necessary to be consistent with the new LTOP analysis. These changes will ensure the 10CFR50 Appendix G limits are not exceeded.

The proposed changes to the mass input restrictions will still allow two charging pumps and one HPSI pump to be capable of injecting into the RCS when the RCS is operating in Mode 4 [less than or equal to] 275 °F. This combination will be allowed in Mode 5 until RCS temperature is [less than or equal to] 190 °F. When RCS cold leg temperature is at or below 190 °F only one charging pump will be allowed to be capable of injecting into the RCS. This restriction will continue to apply until the RCS is vented through a passive vent [greater than or equal to] 2.2 in ^{2}. If this passive vent size is established, two charging pumps and one HPSI pump are allowed to be capable of injecting.

The passive vent required if one or two power operated relief valves (PORVs) are inoperable (Technical Specification Action Statements (TSASs) a, b, and c) will be changed from 2.8 in ^{2} or 1.4 in ^{2} to 2.2 in ^{2}. A passive vent of 1.4 in ^{2} is equivalent to the vent area of one PORV. Since the LTOP analysis assumes 2 operable PORVs initially, and then one PORV fails to actuate, RCS overpressure protection will be ensured by a passive vent of 1.4 in ^{2}. However, a passive vent is established by removing a pressurizer PORV or the pressurizer manway, the normal vent path. The value of 2.2 in ^{2} is the minimum size of vent that will ensure RCS pressure remains [less than or equal to] 300 psia, which is more conservative than the Appendix G limits. This vent size will also ensure that RCS pressure does not exceed the SDC System design pressure. In addition, this is the size of vent that will satisfy Technical Specification 3.4.9.1 to allow a 50 °F/hr cooldown rate below 190 °F.

TSAS d will be added to address excessive pumping capacity. The required completion time of "immediate" reflects the importance of this restriction, and is consistent with current Technical Specification requirements (Technical Specification 3.1.2.3 TSAS b and Technical Specification 3.5.3 TSAS c) for this situation.

These proposed changes are all more restrictive than the previous requirements, except for allowing 2 charging pumps and one HPSI in Mode 5 between 200 °F and 190 °F, and requiring a vent of 2.2 in ^{2} instead of 2.8 in ^{2} when two PORVs are inoperable. However, the proposed mass input and venting restrictions are consistent with the new LTOP analysis. This analysis has demonstrated that with the proposed restrictions the required LTOP system will provide adequate protection for RCS overpressurization transients. Therefore, the proposed changes will not result in a significant increase in the probability or consequences of an accident previously evaluated.

Increase in Technical Specification Applicability. The applicability of Technical Specification 3.4.9.3 will be expanded to include all of Mode 5, and Mode 6 until the reactor vessel head is removed. The current applicability is limited in Modes 5 and 6 to when the RCS is not vented through a vent [greater than or equal to] 2.8 in ^{2}. Expanding the applicability will ensure an LTOP System is in place, except when RCS pressurization is not possible (reactor vessel head removed). This will ensure the 10 CFR 50 Appendix G limits are not exceeded.

The applicability of Technical Specification 3.4.9.1 will be expanded. The current applicability is Modes 1 through 5. However, concern for non-ductile failure of the reactor vessel and flange applies at all times, not just in Modes 1 through 5. Therefore, the applicability will be expanded. Increasing the applicability of Technical Specification 3.4.9.1 will place additional restrictions on the plant. However, these additional restrictions will ensure the integrity of the RCS, in particular the reactor pressure vessel, is maintained. Therefore, the RCS will continue to function as designed.

These more restrictive changes will not result in a significant increase in the probability or consequences of an accident previously evaluated.

LTOP PORV Setpoint Change. The required PORV actuation setpoint will be reduced from [less than or equal to] 450 psig to [less than or equal to] 415 psia (400 psig). The 50 psi setpoint reduction (pressure units have also been changed to agree with control room indication) will cause the PORVs to actuate earlier during an LTOP transient to prevent an RCS overpressurization. It is a more restrictive change that is consistent with the new LTOP analysis.

PORV actuation at the proposed setpoint, in combination with the proposed mass input restrictions, will ensure the 10 CFR 50 Appendix G limits are not exceeded. Therefore, the proposed change will not result in a significant increase in the probability or consequences of an accident previously evaluated.

RCP Start Criteria. The requirements to start the first reactor coolant pump (RCP), when RCS temperature is [less than or equal to] 275 °F, will be modified. The new criteria will ensure that starting an RCP will not result in an energy addition transient that could exceed the capability of the steam bubble in the pressurizer to mitigate the event. (No credit for PORV actuation during this energy addition transient was assumed in the new LTOP analysis.) This will ensure that the 10 CFR 50 Appendix G limits are not exceeded.

The proposed RCP restrictions are consistent with the new LTOP analysis. This analysis has demonstrated that with the proposed restrictions the pressurizer will provide adequate protection for RCS overpressurization transients. Therefore, the proposed changes will not result in a significant increase in the probability or consequences of an accident previously evaluated.

Boron Dilution Analysis. The analysis of the boron dilution event contained in the Millstone Unit No. 2 FSAR [Final Safety Analysis Report] Section 14.4.6 assumes that dilution flow rate is limited to 88 gpm in Modes 4, 5, and 6. Since the charging pumps are the assumed dilution source, no more than two charging pumps can be injecting for this assumption to remain valid. This results in a Technical Specification requirement that no more than two charging pumps can be operable when the RCS is in Mode 4 or below (< 300 °F). This requirement will be modified by replacing the word "operable" with "capable of injecting into the RCS." This more accurately addresses the boron dilution analysis restriction of limiting the dilution flow to two charging pumps since an inoperable pump can still inject into the RCS. This change is consistent with the boron dilution accident analysis. The boron dilution analysis further assumes that if this dilution flow rate restriction is met, there will be sufficient time for the operators to recognize and terminate the dilution before a complete loss of shutdown margin occurs. Operator action to restore shutdown margin by boration is not assumed.

The proposed changes will not affect the current Technical Specification restriction that no more than two charging pumps can be capable of injecting into the RCS (operable) when the RCS is below 300 °F. However, no corresponding action statement currently exists in Technical Specification 3.1.2.4 to provide guidance if this requirement is not met. The addition of the proposed action statement to Technical Specification 3.1.2.4 will require immediate action to correct this situation. This is consistent with other current Technical Specification requirements (Technical Specification 3.1.2.3 TSAS b and Technical Specification 3.5.3 TSAS c) that address excessive RCS makeup capacity. Therefore, the proposed changes will not result in a significant increase in the probability or consequences of an accident previously evaluated.

RCS Pressure/Temperature and Heatup/Cooldown Limit Changes. The proposed changes to the heatup and cooldown rates are a result of the new analysis of the RCS pressure/temperature and heatup/cooldown limits. These changes will provide flexibility during plant heatup and cooldown, and especially during equipment manipulations such as securing RCPs, swapping shutdown cooling (SDC) heat exchangers, and initiating SDC.

Figure 3.4.2 will be replaced by two curves, Figures 3.4–2a and 3.4–2b. Each figure will contain the minimum flange boltup temperature and the minimum temperature for criticality. The heatup figure (Figure 3.4–2a) will also contain the inservice leak and hydrostatic testing limits. The temperature change limits will be contained in the new Table 3.4–2, instead of in the LCO [limiting condition for operation]. The new limits will use cold leg temperature instead of average temperature to determine when to change rates. There should be little difference between these two temperatures, and cold leg indication is directly available to the control room operators.

The proposed curves and rates are based on indicated cold leg temperature. This parameter, which is the best available indication of reactor vessel downcomer temperature, will normally be monitored by using either RCS cold leg temperature indication or SDC return temperature. Plant conditions will determine which one is the appropriate indication to use. Actual RCS cold leg temperature will be used if any RCP is operating or natural circulation is occurring. Otherwise, SDC return temperature will be used.

RCP restrictions, assumed in the development of the heatup and cooldown curves, will be added to the curves. Most of the RCP restrictions already exist either in other Technical Specifications or in plant procedures. Two new RCP restrictions will be added to Technical Specifications. The restriction of no more than three RCPs until RCS temperature is above 500 °F already exists in plant procedures, but it will be added to Technical Specifications. The restriction of no more than two RCPs when RCS temperature is below 200 °F already exists in Technical Specifications (3.4.1.4). The RCP restriction of no RCPs below 150 °F during plant cooldown will be added to Technical Specifications. This restriction will have no effect on plant operations because RCPs will normally be secured when cooling down below 150 °F to minimize heat input.

The inservice leak and hydrostatic testing temperature change limit currently specified in Technical Specification 3.4.9.1.c will be relocated to Table 3.4–2. The wording will be modified (clarification only) to specify the limit also applies for one hour prior to the start of inservice leak and hydrostatic testing. This is necessary since the development of the inservice leak and hydrostatic testing test curve assumes isothermal conditions. The wording will also be modified to specify the restrictions apply during testing above the heatup curve instead of above system design pressure. This type of testing is not performed above system design pressure.

The 50 °F/hr cooldown rate and curve will normally be used when the RCS is <190 °F and an RCS vent of >2.2 in ^{2} has been established. This curve and rate may also be used when RCS cold leg temperature is below 230 °F to demonstrate compliance with Appendix G limits when unanticipated temperature excursions occur.

The current action statements of Technical Specification 3.4.9.1 will be separated by Mode and will be modified. Similar changes will be made to the action statements of Technical Specification 3.4.9.2. A time limit of 72 hours will be placed on the performance of the engineering evaluation. If this evaluation is not performed in this time period, or the evaluation does not allow continued operation, the plant will be required to enter Mode 5 ([less than or equal to] 200 °F), instead of the current requirement to be <200 °F. This slight relaxation will have no significant impact on plant operations because plant temperature is not normally maintained at the mode change temperature limit.

The required RCS pressure will be reduced from 500 psia to 300 psia. This is closer to the actual plant conditions established in Mode 5. The required RCS pressure will be reduced from 500 psig to 500 psia for the Pressurizer, Technical Specification 3.4.9.2. The change in units is consistent with plant instrumentation. Establishing a lower RCS pressure is more conservative because it will result in less pressure stress on either the reactor vessel or the pressurizer.

In other than Modes 1 through 4, immediate action will be required for limit restoration. Violation of these limits is typically more severe when the RCS is cold (<200 °F), therefore an immediate response is appropriate. A time limit of prior to entering Mode 4 will be placed on the performance of the engineering evaluation. This will prevent plant startup until the evaluation has determined that the RCS is acceptable for continued operation.

The frequency of surveillance requirements 4.4.9.1.c, 4.4.9.2, 4.10.3.1 will be increased from once per hour to once per 30 minutes. This more restrictive change will provide the plant operators with earlier indication that a limit may be exceeded, so that action can be taken to prevent exceeding the limit. The proposed changes to the RCS

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pressure/temperature limits and temperature change rates are based on the new analysis. This analysis uses standard approved methods that ensure the margins of safety required by 10 CFR 50, Appendix G are maintained. The other changes discussed are more restrictive enhancements to Technical Specification requirements. Therefore, the proposed changes will not result in a significant increase in the probability or consequences of an accident previously evaluated.

Other Changes. The scope of the action statement for Technical Specification 3.1.2.6 will be expanded to cover all three flowpaths identified in Technical Specification 3.1.2.2.a. The intent of the current wording is to address all flowpaths. These minor wording changes will meet this intent.

Clarification will be added to SR 4.1.2.8.d to be consistent with SR 4.1.2.7.c. The clarification will allow the boric acid storage tank (BAST) temperature to be verified by checking the ambient air temperature.

A note will be added to Technical Specification 3.4.3 TSAS a to allow the block valve(s) to be cycled during plant cooldown when the block valve(s) is(are) closed due to inoperable PORV(s). The footnote will allow the PORV block valve(s) to be cycled during a plant cooldown to prevent thermal binding. This will ensure the associated block valve(s) can be opened to allow the PORV(s) which is(are) inoperable, can be manually cycled if necessary. Therefore, the PORV block valve(s) will be able to function as designed.

The wording of Technical Specification 3.4.3 Action Statement d will be revised to state what action should be performed, and to remove specific details on how to perform the required action. This does not change the intent of the action statement. Therefore, the pressurizer PORVs will continue to function as designed.

An action statement will be added to Technical Specification 3.4.9.3 to provide an exception to Technical Specification 3.0.4 requirements. This is necessary to allow a plant cooldown to MODE 5 if one or both PORVs are inoperable. MODE 5 conditions may be necessary to repair the PORV(s).

A footnote will be added to Technical Specification 3.5.3 to allow entry into Mode 4 without an operable high pressure safety injection pump. This new footnote will allow the plant to enter Mode 4 where this specification is applicable without any operable HPSI pumps. However, this condition will only be allowed for a very short time period, one hour. The proposed change to Technical Specification 3.4.9.3 will allow a HPSI pump to be operable above 190 °F. However, the 10 °F range before Mode 4 is reached may not allow sufficient time to ensure a HPSI pump is operable. Adding this note will provide the operating crew sufficient time to make an orderly transition into Mode 4. This condition will only be allowed for one hour, which fs the same time allowed by the first part of TSAS a for an inoperable HPSI pump.

The LTOP requirements currently contained in Technical Specifications 3.1.2.3 and 3.5.3 will be relocated to the LTOP Technical Specification 3.4.9.3. Relocating requirements within Technical Specifications will not change the technical content of the requirement.

Various redundant or outdated Technical Specification requirements will be eliminated and references will be adjusted to reflect the proposed changes. Removal of redundant or outdated requirements from Technical Specifications and adjustments to references to other requirements will not impact any technical requirements.

Minor wording changes have been made to many of the Technical Specifications contained in this license amendment request. These changes do not change any technical aspect of the Technical Specification affected. They are editorial changes only.

The proposed changes do not alter the way any structure, system, or component functions. There will be no effect on equipment important to safety. Therefore, the proposed changes will not result in a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes have no effect on any of the design basis accidents previously evaluated. Therefore, the license amendment request does not impact the probability of an accident previously evaluated nor does it involve a significant increase in the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. They do not alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated. The proposed changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes will modify the LTOP requirements, RCS pressure/temperature limits, and the RCS heatup and cooldown limits. The majority of the proposed changes are being made as a result of the new pressure/temperature and LTOP analyses performed. The new pressure/temperature curves and heatup and cooldown rates were developed in accordance with the requirements and methods described in 10 CFR 50 Appendix G and are consistent with the criteria contained in the Standard Review Plan Section 5.3.2. The new LTOP mass input and RCP starting restrictions and LTOP PORV setpoints are consistent with the criteria contained in the Standard Review Plan Section 5.2.2. Additional changes have been proposed to correct various items identified during the review of the Millstone Unit No. 2 Technical Specifications. The proposed changes do not change the requirements to maintain RCS pressure and temperature within the requirements defined in Technical Specifications. This will ensure the integrity of the reactor vessel is maintained during all aspects of plant operation. Therefore, there is no significant effect on the probability or consequences of any accident previously evaluated and no significant impact on offsite doses associated with previously evaluated accidents. This License Amendment Request does not result in a reduction of the margin of safety as defined in the Bases for the Technical Specifications addressed by the proposed changes.

The NRC has provided guidance concerning the application of standards in 10 CFR 50.92 by providing certain examples (March 6, 1986, 51 FR 7751) of amendments that are considered not likely to involve an SHC [significant hazards consideration]. The changes proposed herein to correct terminology, numbering, references, and relocating requirements within Technical Specifications are enveloped by example (i), a purely administrative change to Technical Specifications. The more restrictive changes proposed herein that are based on the new analyses performed and the more restrictive enhancements are enveloped by example (ii), a change that constitutes an additional limitation, restriction, or control not presently included in Technical Specifications. All other changes proposed herein are not enveloped by a specific example.

As described above, this License Amendment Request does not impact the probability of an accident previously evaluated, does not involve a significant increase in the consequences of an accident previously evaluated, does not create the possibility of a new or different kind of accident from any accident previously evaluated, and does not result in a significant reduction in a margin of safety. Therefore, NNECO [Northeast Nuclear Energy Company] has concluded that the proposed changes do not involve an SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Deputy Director: Phillip F. McKee.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut.

Date of amendment request: December 8, 1997.

Description of amendment request: The proposed amendment would change the Technical Specifications (TSs) to resolve several compliance issues. The proposed changes would (1) correct the wording and the formula in TS Definition 1.18 "Azimuthal Power Tilt—T_q;" (2) correct the wording in TS 4.1.1.1.2 "Reactivity Control Systems Shutdown Margin—T_{avg} [less than or equal to] 200 °F;" (3) correct the mode applicability from Mode 3 to Modes 1 and 2 in TS 3.1.3.4 "Reactivity Control Systems—Rod Drop Time;" (4) correct the terminology used to refer to the power dependent insertion limit alarm in TS 4.1.3.6 "Reactivity Control Systems—Regulating CEA [Control Element Assembly] Insertion Limits;" (5) add a footnote for Mode 4 operability requirement clarification to TS 3.5.3 "Emergency Core Cooling Systems, ECCS Subsystems—T_{avg} <300 °F;" (6) correct the wording, frequency, and reference number for the surveillance requirements in TS 3.6.3.2 "Containment Systems Containment Ventilation System;" (7) correct the nomenclature used for the A.C. busses in TSs 3.8.2.1 and 3.8.2.1A "Onsite Power Distribution Systems A.C. Distribution—Operating;" (8) correct TS Bases by modifing the applicable sections to reflect the proposed changes; (9) delete the word "original" from the statement "original design provision" in Design Features Section—TSs 5.1.3 "Flood Control," 5.2.3 "Penetrations," 5.3.2 "Control Element Assemblies," and 5.7.1 "Seismic Classification;" and (10) delete Design Features Section—TS 5.9 "Shoreline Protection."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change in the wording and associated formula of Technical Specifications Definition 1.18 will ensure the calculated value of Azimuthal Power Tilt (T_q) used to verify compliance with Technical Specification 3.2.4 is associated with the quadrant of highest power production with respect to the average of the four quadrants, instead of the quadrant that deviates the most (increases or decreases) from the average of the four quadrants. This is consistent with the method by which power distribution factors are calculated and applied in the accident analysis and how the Core Power Distribution Monitoring System calculates T_q. The proposed change will not alter the way T_q is calculated by the Core Power Distribution Monitoring System, nor will it alter any of the power distribution assumptions used in the accident analysis. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.

Surveillance Requirement (SR) 4.1.1.1.2 requires that the difference between predicted and measured core reactivity values be maintained within [plus or minus] 1.0% [delta]k/k, and that an adjustment be made between the measured and predicted core reactivity conditions prior to exceeding 60 EFPD [effective full power days] following a refueling outage. The proposed change will not affect the requirement to maintain predicted and measured core reactivity values within [plus or minus] 1.0% [delta]k/k. However, it will no longer be necessary to make an adjustment prior to exceeding 60 EFPD provided the [plus or minus] 1.0% [delta]k/k requirement is met. Historically, this difference has been small at Millstone Unit No. 2 (less than approximately [plus or minus] 1.0% [delta]k/k) and an adjustment has not been necessary to ensure the [plus or minus] 1.0% [delta]k/k requirement is met. The fact that no adjustment (normalization) will be necessary when reactivity differences are small will not affect the ability to identify reactivity anomalies. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.

The proposed change to Technical Specification 3.1.3.4 will change the applicability from Mode 3 to Modes 1 and 2. This is necessary to allow performance of SR 4.1.3.4 at the conditions in the accident analysis, and also specified in the [Limiting] Condition [for] Operation (LCO). CEA [Control Element Assembly] drop time is important for the mitigation of accidents that are initiated while the reactor is critical. To ensure the CEA drop time assumed in the accident analysis is valid, it is necessary to verify CEA drop time with plant conditions consistent with those expected when the reactor is critical. This proposed change will allow this verification, and thereby ensure the CEAs will function as designed to mitigate design basis accidents. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.

The proposed change to SR 4.1.3.6 will modify the terminology used to refer to the power dependent insertion limit (PDIL) alarm to agree with plant terminology. This change will not alter equipment operation or any technical aspect of the SR. The information added to the Bases will specify what equipment provides the PDIL alarm. These changes will eliminate any confusion with alarm terminology. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.

Technical Specification 3.5.3 requires an operable flowpath capable of taking a suction from the refueling water storage tank (RWST) on a safety injection actuation signal (SIAS), and automatically transferring suction to the containment sump on a sump recirculation actuation signal (SRAS) in Mode 4. In Mode 4, the automatic SIAS generated by low pressurizer pressure and high containment pressure, and the automatic SRAS generated by low RWST level, are not required to be operable. Automatic actuation in Mode 4 is not required because adequate time is available for plant operators to evaluate plant conditions and respond by manually operating engineered safety

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features components. Since the manual actuation (trip pushbuttons) portions of the safety injection and sump recirculation actuation signal generation are required to be operable in Mode 4, credit can be taken for remote manual operation to generate the SIAS and SRAS which will position all components to the required accident position. The proposed change to Technical Specification 3.5.3 will add a footnote (***) to explain how these requirements are met in Mode 4. This change will not reduce operability or surveillance requirements for the Emergency Core Cooling System (ECCS) subsystem required to be operable by Technical Specification 3.5.3. The ECCS will continue to function as designed to mitigate design basis accidents. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.

The proposed change to Technical Specification 3.6.3.2 will revise the wording of the LCO and SR by changing "locked closed" to "sealed closed," and deleting the requirement to be electrically deactivated. The action statement will also be revised to reflect these proposed changes. These changes will not affect the requirement for the containment purge valves to be closed in Modes 1 through 4. Therefore, the proposed changes will not significantly increase the probability or consequences of an accident previously evaluated.

The proposed change to SR 4.6.1.7 will change the surveillance frequency from "prior to each reactor startup" to "at least once per 31 days." This change, which will require the surveillance to be performed more often (assuming a normal plant startup sequence) will provide additional assurance that the containment purge valves are sealed closed. In addition, this change will ensure consistency between the SR and the applicability of this specification, and also with the requirements to verify containment integrity in accordance with Technical Specification 3.6.1.1. Therefore, the proposed change will not significantly increase the probability or consequences of an accident previously evaluated.

The change in numbering of SR 4.6.1.7 to SR 4.6.3.2 is an administrative change only. It will not affect any technical aspect of the SR. Therefore, the proposed change will not significantly increase the probability or consequences of an accident previously evaluated.

The proposed changes to Technical Specifications 3.8.2.1 and 3.8.2.1A will modify the nomenclature used to refer to the vital A.C. buses to be consistent with the terminology used by Operations Department personnel and the nomenclature contained in their procedures. These changes will not alter equipment operation or any technical aspects of these specifications. These proposed changes are administrative changes only. The A.C. buses will continue to function as designed to mitigate design basis accidents. Therefore, these changes will not significantly increase the probability or consequences of an accident previously evaluated.

The proposed changes to Technical Specifications 5.1.3, 5.2.3, 5.3.2, and 5.7.1 will remove the word "original." Reference to original design is not appropriate since these items can be changed by approved processes. However, these changes will still require the items addressed by these specifications to be designed and maintained in accordance with the Final Safety Analysis Report (FSAR). The proposed changes have no affect on the current approved plant design. Therefore, these changes will not significantly increase the probability or consequences of an accident previously evaluated.

Technical Specification 5.9 will be deleted. The required provisions for shoreline protection have been completed, and this Technical Specification is no longer necessary. The removal of this outdated specification will not impact any current requirements. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.

The proposed changes do not alter how any structure, system, or component functions. There will be no effect on equipment important to safety. The proposed changes have no effect on any of the design basis accidents previously evaluated. Therefore, this License Amendment Request does not impact the probability of an accident previously evaluated, nor does it involve a significant increase in the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. They do not alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated. The proposed changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change to the definition of T_q will make the Technical Specification definition consistent with the approved calculation methodology. This will ensure the core power distribution is consistent with accident analysis assumptions. The proposed change to the wording of SR 4.1.1.1.2 will not affect the acceptance criteria of [plus or minus] 1.0% [delta]k/k, which ensures the accident analysis accurately reflects core reactivity conditions. The proposed change in the applicability of Technical Specification 3.1.3.4 will allow verification of CEA drop time at plant conditions assumed in the accident analysis. This will ensure the CEAs will function as assumed. The proposed change to SR 4.1.3.6 will modify the terminology used to refer to the PDIL alarm to agree with plant terminology. This change will not alter equipment operation or any technical aspect of the SR. Adding the footnote to Technical Specification 3.5.3 will not change any technical aspects of this specification. One ECCS subsystem will be available for accident mitigation. The wording of Technical Specification 3.6.3.2 will not affect the requirement for the containment purge valves to be closed in Modes 1 through 4. The proposed change in the frequency of performance for SR 4.6.1.7 will provide greater assurance that the containment purge valves are closed to prevent the potential release of radioactive material through these penetrations during accident conditions. The proposed changes in terminology in Technical Specifications 3.8.2.1 and 3.8.2.1A will not change any technical requirements for the equipment covered. The equipment will still function as assumed. Modifying the Bases of Technical Specifications are necessary to be consistent with the proposed changes will not change any requirements of these specifications. The modification to Technical Specifications 5.1.3, 5.2.3, 5.3.2, and 5.7.1 will not affect the requirement to maintain these items in accordance with requirements contained in the FSAR. Deleting Technical Specification 5.9 will not affect any requirements since the requirements contained in this specification have already been completed.

The proposed changes do not affect any of the assumptions used in the accident analysis, nor do they affect any operability requirements for equipment important to plant safety. Therefore, these proposed changes will not result in a significant reduction in the margin of safety as defined in the Bases for Technical Specifications covered in this License Amendment Request.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Deputy Director: Phillip F. McKee.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: December 12, 1997.

Description of amendment request: The proposed amendment would revise the facility Technical Specifications (TSs) regarding normal working hours of plant staff to provide for shift duration of 12 hours. It would also revise the TSs to maintain existing "once per shift" surveillance requirements at 8-hour intervals.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the proposed licensing amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response:

Establishing operating personnel work hours at "a normal 8 to 12 hour day, nominal 40-hour week" allows normal plant operations to be managed more effectively and does not adversely affect performance of operating personnel. Overtime remains controlled by site administrative procedures in accordance with NRC Policy Statement on working hours (Generic Letter 82–12). If 8 hour shifts are maintained in part or whole, then acceptable levels of performance from operating personnel is assured through effective control of shift turnovers and plant activities. No physical plant modifications are involved and none of the precursors of previously evaluated accidents are affected. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Editorial changes clarify sections 6.2.2.6.b. and 6.2.2.6.c. without changing the intent or meaning. [...] Changes to sections 4.5.F.3., 4.5.F.4., 4.5 Bases, and 4.7.A.7.a. do not change the intent or meaning of the Technical Specifications, do not change operating procedures, and are consistent with surveillance requirements. [Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.]

Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Establishing operating personnel work hours at "a normal 8 to 12 hour day, nominal 40-hour week" allows normal plant operation to be managed more effectively and does not adversely affect performance of operating personnel. If 8 hour shifts are maintained in part or whole, then acceptable levels of performance from operating personnel is assured through effective control of shift turnovers and plant activities. Overtime remains controlled by site administrative procedures in accordance with the NRC Policy Statement on working hours (Generic Letter 82–12). No physical modification of the plant is involved. As such, the change does not introduce any new failure modes or conditions that may create a new or different accident. Therefore, plant operation in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

Editorial changes clarify sections 6.2.2.6.b. and 6.2.2.6.c. without changing the intent or meaning. [* * *] Changes to sections 4.5.F.3., 4.5.F.4., 4.5 BASES, and 4.7.A.7.a. do not change the intent or meaning of the Technical Specifications or operating procedures. All previously performed functions are being maintained.

Therefore, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the proposed amendment involve a significant reduction in a margin of safety?

Establishing operating personnel work hours at "a normal 8 to 12 hour day, nominal 40-hour week" allows normal plant operations to be managed more effectively and does not adversely affect performance of operating personnel. If 8 hour shifts are maintained in part or whole, then acceptable levels of performance from operating personnel is assured through effective control of shift turnovers and plant activities. Overtime remains controlled by site administrative procedures in accordance with the NRC Policy Statement on working hours (Generic Letter 82–12). The proposed change involves no physical modification of the plant, or alterations to any accident or transient analysis. [* * *] Therefore, the change does not involve any significant reduction in a margin of safety.

Editorial changes clarify sections 6.2.2.6.b. and 6.2.2.6.c. without changing the intent or meaning. [* * *] Changes to sections 4.5.F.3., 4.5.F.4., 4.5 BASES, 4.7.A.7.a. do not change the intent or meaning of the Technical Specifications or operating procedures.

All previously performed functions are being maintained. Therefore, the changes do not involve any significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. David E. Blabey, 1633 Broadway, New York, New York 10019.

NRC Project Director: S. Singh Bajwa, Director.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: December 19, 1997.

Description of amendment request: The proposed amendment would revise the Hope Creek Generating Station (HCGS) Technical Specifications (TS) to incorporate changes that reflect the completion of the Salt Drift Monitoring Program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

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issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes, which update the Terrestrial Ecology Monitoring Program status, are administrative in nature and in no way affect the initial conditions, assumptions, or conclusions of the Hope Creek Generating Station accident analyses. In addition, the proposed changes would not affect the operation or performance of any equipment assumed in the accident analyses. Based on the above information, we conclude that the proposed changes would not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

As previously stated, the proposed changes are administrative in nature and in no way impact or alter the configuration or operation of the facilities and create no new modes of operation. PSE&G therefore concludes that the proposed changes would not create the possibility of a new or different kind of accident.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The changes are administrative in nature and in no way affect plant or equipment operation or the accident analysis. PSE&G therefore concludes that the proposed changes would not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Project Director: John F. Stolz.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: November 14, 1997.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TSs) to provide surveillance requirements for the service water accumulator vessels. Specifically, surveillance requirements are provided for vessel level, pressure and temperature, and discharge valve response time. The surveillance requirements are included in TS 3/4.6.1.1 and 3/4.6.2.3, and the applicable Bases sections are expanded to provide supporting information.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes provide surveillance requirements for the Service Water (SW) accumulator tank level, pressure and temperature parameters and the discharge valve response time test. Supporting information is included in the Bases section of the applicable technical specifications. The SW accumulator tank and discharge valve design has been reviewed and approved by the NRC staff as documented in NRC Safety Evaluation Report (SER) dated June 19, 1997. The proposed surveillance requirements do not alter the design as reviewed by the NRC staff. The addition of tank parameter surveillance requirements to the technical specifications does not alter the physical plant arrangement or the installed monitoring instrumentation. The proposed addition of tank discharge valve response time surveillance requirements to the technical specifications does not alter the method of performing these surveillance requirements.

Therefore the proposed changes do not increase the probability of an accident. The surveillance requirements provide additional controls for ensuring the SW accumulator tank and discharge valves will be maintained within the design parameters assumed in the safety analysis. This provides added assurance that the accumulator tanks and discharge valves will be capable of performing their required design function during accident conditions. There is no change to the performance requirements of these components in preventing two phase flow conditions and water column separation waterhammer vulnerabilities identified in GL [Generic Letter] 96–06. Therefore, the proposed changes do not involve an increase in the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes provide surveillance requirements for Service Water Accumulator tank level, pressure and temperature and discharge valve time response. Supporting information is included in the Bases section of the applicable technical specifications. The SW accumulator tank and discharge valve design has been reviewed and approved by the NRC staff as documented in NRC Safety Evaluation Report (SER) dated June 19, 1997. The proposed surveillance requirements do not alter the plant configuration. Installed instrumentation will be used to accomplish the tank surveillance requirements. The current plant installation also provides for completion of the discharge valve response time surveillance utilizing test equipment in accordance with plant procedures and configurations. Therefore the performance of these surveillance requirements does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The Service Water Accumulator Vessels and discharge valves were installed to address the Generic Letter 96–06 issues of column separation waterhammer and two phase flow in the containment fan coil unit (CFCU) piping during an accident involving loss of offsite power. This design has been reviewed and approved by the NRC staff as documented in NRC Safety Evaluation Report (SER) dated June 19, 1997. The proposed surveillance requirements do not alter the design as reviewed by the NRC staff. By providing added assurance that these components are capable of performing their specified safety function as assumed in the safety analysis, the additional surveillance requirements assure system operability to further minimize the possibility of waterhammer and two phase flow in the CFCU piping during accident conditions. The proposal therefore minimizes the possibility of a new or different kind of accident from those previously evaluated accidents.

3. The proposed change does not involve a significant reduction in a margin of safety.

The additional surveillances provide added assurance that the margin of safety assumed in the containment integrity and containment cooling technical specification will be maintained. The additional surveillance requirements further ensure that in the event the SW accumulator vessels are out of specification or the discharge valves do not meet their response time requirements, corrective actions will be completed in accordance with the existing containment integrity technical specification allowed outage time to restore containment integrity. The surveillance requirements further ensure that in the event the SW accumulator vessel or discharge valves do not meet these requirements, corrective actions will be completed in accordance with the containment cooling technical specification allowed outage time to restore the full complement of containment fan coil units to operability. Since the proposal maintains the margin of safety provided in the containment integrity and containment cooling technical specification, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Project Director: John F. Stolz.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: September 16, 1997.

Description of amendment requests: The licensee proposes to revise Technical Specification (TS) 3.4.13, "RCS Operational Leakage," TS 5.5.2.11, "Steam Generator (SG) Tube Surveillance Program," and TS 5.7.2, "Special Reports." The proposed change is to allow steam generator tube repair using ASEA Brown Boveri/Combustion Engineering (ABB/CE) leak tight sleeving as an alternative steam generator tube repair to plugging.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The supporting technical evaluation and safety evaluation for the ASEA Brown Boveri/Combustion Engineering (ABB/CE) leak tight sleeves demonstrate that the sleeve configuration will provide steam generator (SG) tube structural and leakage integrity under normal operating and accident conditions. The sleeve configurations have been designed and analyzed in accordance with the requirements of the ASME Code. Mechanical testing has shown that the sleeve and sleeve joints provide margin above acceptance limits. Ultrasonic Testing (UT) is used to verify the leak tightness of the weld above the tubesheet. Testing has demonstrated the leak tightness of the hardroll joint due to the reinforcing effect of the tubesheet. Tests have demonstrated that tube collapse will not occur due to postulated Loss of Coolant Accident (LOCA) loadings.

A new, more conservative, Technical Specification (TS) SG tube leakage rate requirement is introduced by this change. Accident analysis assumptions remain unchanged in the event that significant leakage does occur from the sleeve joint or that the sleeve assembly ruptures. Any leakage through the sleeve assembly is fully bounded by the existing SG tube rupture analysis included in the San Onofre Nuclear Generating Station (SONGS) Updated Final Safety Analysis Report. Reactor coolant flow reduction from sleeving is addressed by a ratio of number of tubes sleeved to equal a plugged tube. The proposed sleeving repair process does not adversely impact any other previously evaluated design basis accidents.

Therefore, proposed changes do not involve a significant increase in the probability or consequences of an accident.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Installation of the sleeves does not introduce any significant changes to the plant design basis. The use of a sleeve to span the area of degradation of the SG tube restores the structural and leakage integrity of the tubing to meet the original design bases. Stress and fatigue analysis of the sleeve assembly shows that the requirements of the ASME Code are met. Mechanical testing has demonstrated that margin exists above the design criteria. Any hypothetical accident as a result of any degradation in the sleeved tube would be bounded by the existing tube rupture accident analysis.

Therefore, the operation of the facility in accordance with proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The use of sleeves to repair degraded SG tubing has been demonstrated to maintain the integrity of the tube bundle commensurate with the requirements of the ASME Code and draft Regulatory Guide (RG) 1.121 and to maintain the primary to secondary pressure boundary under normal and postulated accident conditions. The safety factors used in the verification of the strength of the sleeve assembly are consistent with the safety factors in the ASME Boiler and Pressure Vessel Code used in SG design. The operational and faulted condition stresses and cumulative usage factors are bounded by the ASME Code requirements. The sleeve assembly has been verified by testing to prevent both tube pullout and significant leakage during normal and postulated accident conditions. A test program was conducted to ensure the lower hardrolled joint design was leak tight and capable of withstanding the design loads. The primary coolant pressure boundary of the sleeve assembly will be periodically inspected by Non-Destructive Examination to identify sleeve degradation due to operation.

Installation of the sleeves will decrease the number of tubes which must be taken out of service due to plugging. There is a small amount of primary coolant flow reduction due to the sleeve for which the equivalent sleeve to plug ratio is assigned based on sleeve length. The ratio is used to assess the final equivalent plugging percentage as an input to other safety analyses. The sleeve maintains the design basis requirements for the SG tubing.

Therefore, operation of the facility with the proposed changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, Irvine, California 92713.

Attorney for licensee: T. E. Oubre, Esquire, Southern California Edison

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Company, P. O. Box 800, Rosemead, California 91770.

NRC Project Director: William H. Bateman.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: October 17, 1997.

Description of amendment requests: The licensee proposes to amend the licenses for SONGS Units 2 and 3 to revise the Final Safety Analysis Report (FSAR) to permit digital radiation monitor installation for both trains supplying the containment purge isolation signal, and permit digital radiation monitor installation for both trains supplying the control room isolation signal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is required to permit using digital radiation monitors as input to both trains of the Control Room Isolation Signal (CRIS), and to both trains of the Containment Purge Isolation Signal (CPIS). These changes will allow replacement of the remaining safety related obsolete radiation monitor equipment to address spare parts and equipment availability issues. The new containment airborne radiation digital monitor will have the same basic architecture as the existing analog system, and serves to perform the same function. In addition, the digital radiation monitors are expected to be more reliable than the existing equipment which is of an analog design.

Furthermore, defense-in-depth equipment is available that either provides, or allows for, actions to mitigate the release of offsite and Control Room doses to within existing licensing limits based on realistic event input assumptions. Analyses show that if "realistic" input assumptions are utilized and reasonable operator actions are allowed, then acceptable dose consequences result both to the general public offsite, and to the Control Room operators.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will permit upgrading the existing analog radiation monitors with upgraded digital radiation monitors. Replacement of an analog system to a predominantly digital system, uses software algorithms to perform the required functions. A satisfactory software verification and validation (V&V) report, including continued software change control procedures, provides assurance that a software common mode failure is not likely.

In addition, the design, installation, testing, maintenance, and operation of the affected equipment will assure that no new or different kinds of accidents will be created. The ESFAS radiation monitors involved are portions of systems that respond to accidents. They can not, by their actions or inactions, create a new or different accident from any accident previously evaluated.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The CRIS and CPIS Radiation Monitor Systems provide an accident mitigation function for offsite doses (10 CFR 100) and Control Room doses (10 CFR 50 Appendix A, General Design Criteria 19). A change in the margin of safety is introduced due to the possibility of a software common mode failure in redundant equipment simultaneously affecting equipment performing a different function.

This change is not a significant reduction in the margin of safety, however, due to the following:

(1) A probabilistic risk analysis has determined that the availability of the affected radiation monitors, including software, should be better than the existing equipment based on industry data to date,

(2) The software V&V and preoperational testing to be performed will provide assurance of system operation, and

(3) The combined occurrence of a software common mode failure that simultaneously causes failure of all available ESFAS radiation monitors concurrent with a design bases accident is very unlikely.

In the unlikely event of a software common mode failure that causes all ESFAS radiation monitors to be inoperable concurrent with a design bases accident, analyses show that if "realistic" input assumptions are utilized and reasonable operator actions are allowed, then acceptable dose consequences result both to the general public offsite, and to the Control Room operators.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, Irvine, California 92713.

Attorney for licensee: T. E. Oubre, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770.

NRC Project Director: William H. Bateman.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: December 18, 1997.

Description of amendment request: The proposed amendments would modify or delete obsolete conditions from the Unit 1 and Unit 2 Operating Licenses. The changes are editorial or administrative in nature.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes either remove or modify provisions in the Plant Hatch Unit 1 and Unit 2 Operating Licenses that have been completed or are otherwise obsolete. Certain Surveillance Requirements (SRs) that were either added or modified at the time of Improved Technical Specifications (ITS) implementation were listed in the Operating Licenses with a schedule for performance. With the exception of Unit 1 SR 3.8.1.18, all SRs are deleted from the Operating Licenses, because they have since been performed according to schedule, and will henceforth be performed in accordance with the Technical Specifications.

A requirement for submittal of the Unit 1 inservice inspection plan for the recirculation and residual heat removal systems' piping is deleted due to completion of the activity.

Two exemptions granted at Unit 2 startup are deleted due to completion of the required activities associated with the exemptions. These were seismic qualification demonstration for the Unit 2 reactor protection system power supply and completion of the long-term BWR [boiling water reactor] Owner's Group Mark I containment program.

A requirement to conduct the Unit 2 Initial Test Program according to the requirements in Chapter 14 of the Final Safety Analysis Report without major changes is deleted due to completion of the activity. A condition relating to environmental protection is deleted from the Unit 2 Operating License, since it was superseded by the Environmental Protection Plan (Nonradiological), Appendix B to the Operating Licenses. Attachment 2, Items To Be Completed Prior To Opening Main Steam Isolation Valves, is deleted due to completion of the activities.

The proposed changes discussed above are strictly administrative/editorial and do not affect the operation or function of any plant system, component, or structure. Therefore, the proposed changes do not increase the probability of occurrence or the consequences of a previously evaluated accident.

2. The proposed changes do not create the possibility of a new and different type of accident from any previously evaluated.

The proposed administrative/editorial changes do not alter the operation of any plant system or equipment and do not introduce a new mode of operation. Thus, the proposed changes cannot create a new accident initiating mechanism. Therefore, the proposed changes do not create the possibility of a new and different type of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

Since the proposed changes are strictly administrative/editorial and do not involve any physical or procedural changes to the plant, the margin of safety, as defined in the bases for any Technical Specification is not affected by the proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC.

NRC Project Director: Herbert N. Berkow.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: December 17, 1997.

Description of amendment request: The proposed amendment would extend the surveillance interval of the containment spray system nozzle air flow test from five years to ten years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. Operation of the facility in accordance with the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not result in any hardware changes. The Containment Spray system trains or nozzles are not assumed to be the initiators of any analyzed events. Extending the surveillance interval for performing the Containment Spray system nozzle air flow test from five to ten years does not represent a significant increase in the probability of an accident. The Containment Spray system nozzles are not precursors to any accident analyses.

The Containment Spray system trains and nozzles function to mitigate the consequences of an analyzed event by providing spray flow to containment during an accident. The proposed change still provides assurance that the Containment Spray system nozzles will be maintained operable due to the passive nature of the design, the materials of construction, and the low-stress non-wetted environment. The extension of the surveillance interval does not significantly increase the probability or consequences of an accident since the nozzle will still be OPERABLE between surveillance tests.

B. Operation of the facility in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not necessitate a physical alteration of the plant or changes in parameters governing normal plant operation. No new or different types of equipment will be installed. The proposed change will still ensure Containment Spray system nozzle OPERABILITY is adequately maintained.

C. Operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

The increased interval between the Containment Spray system nozzle air flow test is acceptable due to the passive design of the nozzles and industry operating experience as detailed in NURG–1366. The increased interval is considered acceptable for maintaining nozzle OPERABILITY. The Containment Spray system, including the nozzles, will continue to provide their required safety function with the increase from five to ten years between inspections.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, N.W., Washington, DC 20036–5869.

NRC Project Director: John Hannon.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: December 31, 1997.

Description of amendment request: The proposed amendment would revise Technical Specifications 2.1 (Safety Limits), 2.2 (Limiting Safety System Settings), and 3/4.2.5 (Departure from Nucleate Boiling Parameters) by including alternate operating criteria to allow continued plant operation with a reduced measured reactor coolant system flow rate, if necessary.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

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consideration, which is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The affected Reactor Protection System functions will continue to provide their current safety function under alternate operating criteria for reduced measured Reactor Coolant System flow conditions. The OT Delta-T [Overtemperature Delta-T], OP Delta-T [Overpower Delta-T], and f(Delta-I) [a function of the indicated difference between top and bottom detectors of the power-range neutron ion chambers] safety-analysis reactor trip setpoints have been recalculated to appropriately reflect the reduced flow conditions. In doing so, the difference, or margins, between the nominal and maximum values of the reference trip setpoints (*i.e.*, K1, and K4 for the OT Delta-T and the OP Delta-T setpoints, respectively) have been maintained so that the Total Allowance remains unchanged and, therefore, the instrument accuracy uncertainties are unaffected.

Furthermore, implementation of the provisions for reduced measure Reactor Coolant System flow under alternate operating criteria for the South Texas Project Technical Specifications does not increase the probability or consequences of an accident previously evaluated in the UFSAR [Updated Final Safety Analysis Report]. This change cannot directly initiate an accident. The consequences of accidents previously evaluated in the UFSAR are unaffected by this proposed change because no change to any equipment response or accident mitigation scenario has resulted. There are no additional challenges to fission product barrier integrity. Therefore, the probability of an accident previously evaluated has not been increased.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No new failure mechanisms or accident scenarios or limiting single failures are introduced as a result of this proposed change. Operation of the plant will be consistent with that previously modeled. All of the accident analyses previously evaluated in the UFSAR for South Texas Project Units 1 and 2 have been evaluated to support alternate operating condition with a 3 percent reduction in the minimum measured Reactor Coolant System flow. The new nominal Reactor Coolant System operating conditions supported by these evaluations have been determined. Revised Core Thermal Safety Limits have been established and will be incorporated into the Technical Specifications for the 3 percent Reactor Coolant System measured flow reduction; and, the OT Delta-T and OP Delta-T setpoints are re-calculated based on the new Safety Analysis Limits, appropriate for the reduced flow operation. These reactor protection system functions affected by the change in operating conditions will, therefore, continue to provide an appropriate response equivalent to current safety analysis modeling. The proposed Technical Specification amendment does not challenge the performance or integrity of safety-related systems. The possibility of a new or different kind of accident, therefore, is not created.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

The modification will have no effect on the availability, operability, or performance of the South Texas Project safety-related systems and components. This is based on: the evaluation performed of all accidents previously evaluated in the UFSAR for operation of South Texas Project Units 1 and 2 at reduced Reactor Coolant System flow conditions; establishment of revised Core Thermal Safety Limits that are reflected in the proposed Technical Specification applicable for the 3 percent Reactor Coolant System flow reduction; and, the appropriately re-calculated OT Delta-T and OP Delta-T setpoints, also applicable for these reduced flow conditions. Allowing provision for these alternate operating criteria does not prevent inspections or surveillance required by the Technical Specifications. The margin of safety associated with the acceptance criteria for any accident is unchanged, and therefore, the proposed modification will not reduce the margin of safety as defined in the Bases of the South Texas Project Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, N.W., Washington, DC 20036–5869.

NRC Project Director: John N. Hannon.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: December 23, 1997.

Description of amendment request: The license amendment request proposes changes to technical specification surveillances to remove the requirements related to accelerated testing of the standby emergency diesel generators, consistent with the recommendations in NRC Generic Letter 94–01, "Removal of Accelerated Testing and Special Reporting Requirements for Emergency Diesel Generators."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not significantly increase the probability of occurrence of a previously evaluated accident because the standby diesel generators (including the High Pressure Core Spray [HPCS] diesel generator) are not initiators of previously evaluated accidents. The standby diesel generators mitigate the consequences of previously evaluated accidents involving a loss of offsite power. The Perry Nuclear Power Plant (PNPP) program developed to meet the Maintenance Rule (10 CFR 50.65) will continue to ensure the diesel generators perform their function when called upon. The change to the surveillance frequency does not affect the design of the diesel generators, the operational characteristics of the diesel generators, the interfaces between the diesel generators and other plant systems, the function, or the reliability of the diesel generators. Thus, the diesel generators will be capable of performing their accident mitigation function, there is no impact to the radiological consequences of any accident analysis, and the probability and consequences of previously evaluated accidents are not increased by this activity.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed activity involves a change to the frequency for specific technical specification surveillance requirements. No physical or operational changes to the diesel generators or supporting systems are made by this activity. Since the proposed changes do not involve a change to the plant design or operation and thus no new system interactions are created by this change, these changes do not produce any parameters or conditions that could contribute to the initiation of accidents different from those already evaluated in the Updated Safety Analysis Report. The proposed changes only address the methods used to ensure diesel generator reliability. Thus, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes involve the methods used to ensure diesel generator performance and reliability. No changes, other than to frequency, are made to Technical Specification Surveillance Requirements 3.8.1.2 and 3.8.1.3. The NRC, in Generic Letter 94–01, has acknowledged the acceptability of the use of the Maintenance Rule program for the diesel generators to ensure diesel generator performance in lieu of accelerated testing. These proposed changes do not involve a change to the plant design or operation, and thus do not affect the design of the diesel generators, the operational characteristics of the diesel generator, the interfaces between the diesel generators and other plant systems, or the function or reliability of the diesel generators. Because the diesel generator performance and reliability will continue to be ensured by the diesel generator program to meet the Maintenance Rule, the proposed changes do not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, OH 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Richard P. Savio.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: December 23, 1997.

Description of amendment request: The proposed amendment would change Technical Specification (TS) Section 4.4.5, "Reactor Coolant System—Steam Generators—Surveillance Requirements (SRs)." SR 4.4.5.8 would be modified to provide flexibility in the scheduling of steam generator inspections during refueling outages.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

The Davis-Besse Nuclear Power Station has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit No. 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no change is being made to any accident initiator. No previously analyzed accident scenario is changed, and initiating conditions and assumptions remain as previously analyzed. The proposed change to Technical Specification (TS) Surveillance Requirement (SR) 4.4.5.8, to allow performance of required visual inspections of the secured internal auxiliary feedwater header, header to shroud attachment welds, and the external header thermal sleeves during the third period of the ten-year Inservice Inspection Interval, does not affect any Updated Safety Analysis Report (USAR) accident initiators. These inspections will continue to take place at a prescribed time interval scheduled similar to American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code Section XI components. Therefore, it can be concluded that the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed change does not affect accident conditions or assumptions used in evaluating the radiological consequences of an accident. The proposed change does not alter the source term, containment isolation or allowable radiological releases.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change does not alter the way the plant is operated, and no new or different failure modes have been defined for any plant system or component important to safety, nor has any limiting single failure been identified as a result of the proposed changes.

These inspections were established to ensure that there are no new failure mechanisms resulting from these components. These inspections will continue to take place in the third period of each inservice inspection interval. No new or different types of failures or accident initiators are introduced by the proposed changes.

3. Not involve a significant reduction in a margin of safety because visual inspections will be performed on a prescribed frequency that is consistent with the schedules established for ASME Code components in accordance with ASME Code Section XI.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: December 23, 1997.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 1.0, "Definitions," to clarify the meaning of core alteration; would relocate TS Section 3/4.9.5, "Refueling Operations—Communications," and the associated bases to the Technical Requirements Manual; and would add TS Section 3.0.6 and the associated bases to address the return to service of inoperable equipment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards

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consideration, which is presented below:

The Davis-Besse Nuclear Power Station (DBNPS) has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit Number 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because the probability of previously analyzed accidents is not affected by the criteria in the core alteration definition (Technical Specification (TS) 1.12). Nor do these changes, the proposed relocation of the refueling communications TS 3/4.9.5 and Bases to the DBNPS Updated Safety Analysis Report (USAR) Technical Requirements Manual (TRM), or the proposed addition of new TS 3.0.6 and Bases regarding return to service of inoperable equipment, affect any accident initiator, or assumption made in any safety analysis. The proposed changes are administrative in nature and are consistent with NUREG–1430, Revision 1, "Standard Technical Specifications, Babcock and Wilcox Plants," dated April 1995, as modified by a pending NUREG–1430 change approved by the NRC, Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler Number 165.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not affect accident conditions or assumptions used in evaluating the radiological consequences of an accident. The proposed changes do not significantly alter the source term, containment isolation, or allowable radiological releases.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not change the way the plant is operated. No new or different types of failures or accident initiators are introduced by the proposed changes.

3. Not involve a significant reduction in a margin of safety because no inputs into the calculation of any Technical Specification Safety Limit, Limiting Safety System Settings, Technical Specification Limiting Condition for Operation, or other previously defined margins for any structure, system, or component important to safety are being affected by the proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH.

Attorney for licensee: Jack Newman, Al Gutterman, Morgan, Lewis & Brockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Acting Project Director: Richard P. Savio.

Yankee Atomic Electric Company, Docket No. 50–029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: December 18, 1997.

Description of amendment request: By letter dated May 15, 1997, the licensee submitted a License Termination Plan. The NRC previously published a notice dated August 14, 1997, in the **Federal Register** (62 FR 43559) advising of receipt of the Plan. The proposed request is for a license amendment approving the Plan for the Yankee Nuclear Power Station.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. Accident analyses are included in the approved Decommissioning Plan and incorporated into the FSAR. All decommissioning and fuel storage activities described in the License Termination Plan are consistent with those in the approved Decommissioning Plan. No systems, structures, or components that could initiate or be required to mitigate the consequences of an accident are affected by the proposed change in any way not previously evaluated in the approved Decommissioning Plan. Therefore, the proposed change is administrative in nature and does not involve an increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. Accident analyses are included in the approved Decommissioning Plan and are incorporated into the FSAR. All decommissioning and fuel storage activities described in the License Termination Plan are consistent with those in the approved Decommissioning Plan. The proposed change does not affect plant systems, structures, or components in any way not previously evaluated in the approved Decommissioning Plan, and no new or different failure modes will be created. Therefore, the proposed change is administrative in nature and does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety. Approval of the License Termination Plan by license amendment is administrative in nature since all decommissioning and fuel storage activities described in the License Termination Plan are consistent with those in the approved Decommissioning Plan. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110–2624.

NRC Project Director: Seymour H. Weiss.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action, see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: October 2, 1997.

Brief description of amendments: The amendment changes the Calvert Cliffs Unit 1 Technical Specification Requirements 4.8.1.1.2.a.5, 4.8.1.1.2.d.4, and 4.8.1.1.2.d.5. Baltimore Gas and Electric Company is planning to modify existing 1B emergency diesel generator (EDG) to increase its rated continuous capacity from 2700 kW to 3000 kW by increasing the mechanical capacity of the engine. The change revises the above surveillance requirements to reflect the new electrical capacity of 1B EDG.

Date of issuance: January 5, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 224.

Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 5, 1997 (62 FR 59913).

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated January 5, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: September 25, 1997.

Brief description of amendment: The amendment changes the Technical Specifications (TSs) by modifying the Limiting Condition for Operation (LCO) 3.6.1.2 (Containment Leakage), the associated action, and Surveillance Requirement (SR) 4.6.1.2 for Waterford Steam Electric Station, Unit 3 (Waterford 3). The air lock door seal leakage rate acceptance criteria in TS 6.15 is being changed from $0.01L_a$ to $0.005L_a$. TS 6.15 is also being modified to make the terms used in the Containment Leakage Rate Testing Program consistent with terms used in the TS.

Date of issuance: January 15, 1998.

Effective date: January 15, 1998.

Amendment No.: 138.

Facility Operating License No. NPF–38: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 22, 1997 (62 FR 54872).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 15, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

GPU Nuclear Corporation, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: October 10, 1997.

Brief description of amendment: The amendment revises the Oyster Creek Nuclear Generating Station (OCNGS) operating license and technical specifications to reflect the registered trade name of "GPU Energy" under which the owner of OCNGS now does business and to reflect the change of the legal name of the operator of OCNGS from GPU Nuclear Corporation to GPU Nuclear, Inc. In addition, two minor editorial corrections associated with the name change are included in the amendment.

Date of issuance: January 14, 1998.

Effective date: As of the date of issuance, with full implementation within 30 days.

Amendment No.: 194.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 5, 1997 (62 FR 59915). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated January 14, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: October 8, 1997, and October 21, 1997.

Brief description of amendments: The amendments increase both the minimum required ice mass per ice basket and the total minimum required ice mass in the ice condenser, and change the bases for the technical specifications.

Date of issuance: January 2, 1998.

Effective date: January 2, 1998, with full implementation within 45 days.

Amendment Nos.: 220 and 204.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 22, 1997 (62 FR 54863).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 2, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: October 15, 1997.

Brief description of amendment: Technical Specification Surveillances 4.1.2.3.1, 4.1.2.4.1, 4.5.2, 4.6.2.1, and 4.6.2.2 require the recirculation spray, quench spray, residual heat removal, centrifugal charging, and safety injection pumps to be tested on a periodic basis and after modifications that alter subsystem flow characteristics. The amendment replaces the specific surveillance pump pressure with a statement that the test be conducted in accordance with Specification 4.0.5, Inservice Testing Program. The

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amendment also decreases the required individual safety injection and centrifugal charging pump injection line flow rates, increases the allowed individual safety injection pump runout flow rate, and makes editorial changes to the surveillances.

Date of issuance: December 24, 1997.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 155.

Facility Operating License No. NPF–49: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 5, 1997 (62 FR 59918).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 24, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: November 4, 1997.

Brief description of amendments: These amendments revise Technical Specification 3/4.8.1 on the emergency diesel generators to (1) delete the 18-month surveillance requirements 4.8.1.1.2.d.1 and (2) eliminate the accelerated testing requirement of Table 4.8–1.

Date of issuance: January 8, 1998.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment Nos.: 203 and 185.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 3, 1997 (62 FR 63982).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 8, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Tennessee Valley Authority, Docket No. 50–327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of application for amendments: November 21, 1997 (TS 97–05).

Brief description of amendments: The amendments change the Technical Specifications (TS) to allow a one-time provision for testing power-operated relief valves in Mode 5.

Date of issuance: January 13, 1998.

Effective date: January 13, 1998.

Amendment No.: 230.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the TS.

Date of initial notice in **Federal Register**: December 1, 1997 (62 FR 63565).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 13, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 21st day of January 1998.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–1904 Filed 1–27–98; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Requests Under OMB Review

ACTION: Notice of public use form review request to the Office of Management and Budget.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 USC, Chapter 35), the Peace Corps is requesting emergency approval and clearance from the Office of Management and Budget for use of the Peace Corps Day Brochure/Form to be used by the World Wise Schools program. A copy of the information collection may be obtained from Monica Fitzgerald, Office of World Wise Schools, Peace Corps, 1990 K St., NW, Washington, DC 20525. Ms. Fitzgerald may be called at (202) 606–9498. Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Comments on this form should be addressed to Victoria Becker Wassmer, Desk Officer, Office of Management and Budget, NEOB, Washington, DC 20503.

Information Collection Abstract

Title: Peace Corps Day Brochure/Form.

Need for and use of the Information: This form is completed voluntarily by Returned Peace Corps Volunteers and educators throughout the country. This information will be used by WWS to identify individuals interested in participating in the Peace Corps's annual Peace Corps Day program. Enrollment in this program also fulfills the third goal of Peace Corps as required by Congressional legislation and to enhance the Office of World Wise Schools global education program.

Respondents: Returned Peace Corps Volunteers and educators throughout the public and private school systems in the United States.

Respondents obligation to reply: Voluntary.

Burden on the Public:

a. Annual reporting burden: 4,750 hrs.

b. Annual record keeping burden: 0 hrs.

c. Estimated average burden per response: 3 min.

d. Frequency of response: annually.

e. Estimated number of likely respondents: 95,000.

f. Estimated cost to respondents: $0.79.

This notice is issued in Washington, DC on January 23, 1998.

Bessy Kong,

Acting Associate Director for Management.

[FR Doc. 98–2020 Filed 1–27–98; 8:45 am]

BILLING CODE 6051–01–M

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Allocating Unfunded Vested Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") is requesting that the Office of Management and Budget ("OMB") extend approval, under the Paperwork Reduction Act, of a collection of information in its regulation on Allocating Unfunded Vested Benefits (29 CFR part 4211) (OMB control number 1212–0035). This notice informs the public of the PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by February 27, 1998.

ADDRESSES: Comments should be mailed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503. Copies of the request for extension (including the collection of information) are available from the Communications and Public Affairs Department of the Pension Benefit Guaranty Corporation, suite 240, 1200 K Street, NW., Washington, DC 20005–4026, between 9 a.m. and 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC administers the pension plan termination insurance programs under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Section 4211(c)(5)(A) of ERISA requires the PBGC to prescribe by regulation a procedure whereby multiemployer pension plans can change the way they allocate unfunded vested benefits to withdrawing employers, subject to PBGC approval. Approval of a change is to be based on a determination that the change will not significantly increase the risk of loss to plan participants or the PBGC.

The PBGC's regulation on Allocating Unfunded Vested Benefits (29 CFR part 4211) includes, in § 4211.22, rules for requesting the PBGC's approval of an amendment to a plan's allocation method. Section 4211.22(d) prescribes information that the PBGC needs to identify the plan and evaluate the risk of loss, if any, posed by the amendment (and, hence, determine whether it should approve the amendment). Section 4211.22(e) requires the submission of other information that the PBGC may need to review the amendment. (The regulation may be accessed on the PBGC's home page at http://www.pbgc.gov.)

The collection of information under the regulation has been approved by OMB under control number 1212–0035. The PBGC is requesting that OMB extend its approval for three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The PBGC estimates that it receives five submissions from plan sponsors annually under the regulation; that virtually all submissions are prepared by outside consultants; that the total annual hour burden of engaging the services of such consultants is one hour; and that the total annual cost burden of having the submissions prepared is $1,575.

Issued in Washington, DC, this 23d day of January 1998.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 98–2078 Filed 1–27–98; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23005; 812–10514]

Merrill Lynch & Co., Inc., et al.; Notice of Application

January 21, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from all provisions of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit Merrill Lynch Preferred Funding I, L.P. (the "First Partnership") and Merrill Lynch Preferred Capital Trust I (the "First Trust") to sell securities and use the proceeds to finance the business activities of its parent company, Merrill Lynch & Co., Inc. ("ML & Co."), and companies controlled by ML & Co.

APPLICANTS: ML & Co., the First Trust, and the First Partnership.

FILING DATES: The application was filed on January 28, 1997. Applicants have agreed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 11, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, World Financial Center, North Tower, 250 Vesey Street, New York, NY 10281–1318.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. ML & Co. is a company incorporated under Delaware law. It is a holding company that, through its subsidiaries, provides investment, financing, insurance, and related services on a global basis. Its principal subsidiary, Merrill Lynch, Pierce, Fenner & Smith Incorporated, is a leading broker-dealer, investment banking firm, and underwriter. Other subsidiaries provide a variety of financial services on a global basis, including broker-dealer services, swap activities, futures activities, banking, investment banking, consumer and mortgage lending, real estate activities, and asset management. Applicants state that ML & Co. is primarily engaged in the business of a holding company, and does not hold more than 40% of its assets in "investment securities," as defined in section 3(a)(2) of the Act.

2. ML & Co. has formed a two-tier structure, consisting of the First Trust and the First Partnership, to provide financing to itself and entities controlled by ML & Co. ("Controlled Companies"). To provide additional financing, ML & Co. proposes to form one or more two-tier structures

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substantially similar to the First Trust and First Partnership [1] as well as one or more finance subsidiaries that differ in structure (each, an "Other Finance Subsidiary").

3. Each Trust will be a statutory business trust organized under the laws of Delaware or another jurisdiction. Each Partnership will be a limited partnership organized under the laws of Delaware or another jurisdiction. The general partner interests in the Partnership (the "General Partner Interests") will be owned by ML & Co. and/or one or more Controlled Companies, which will be the sole general partners of the Partnership (the "General Partners").

4. Each Trust will issue common securities ("Trust Common Securities") and preferred securities ("Trust Preferred Securities"). The Trust Common Securities will represent undivided beneficial interests in the assets of the Trust and will be owned by ML & Co. and/or one or more of its Controlled Companies. The Trust Preferred Securities will represent preferred undivided beneficial interests in the assets of the Trust and will entitle the holders to receive cumulative cash distributions accumulating from the date of original issuance and payable quarterly in arrears at a specified rate, as well as a specified amount on liquidation of the Trust, if, as, and when the Trust has funds available for payment. The distribution rate and payment dates on the Trust Preferred Securities will correspond to the distribution rate and payment dates for the Partnership Preferred Securities (as defined below) which, as described below, generally will be the only assets of the Trust.

5. Each Partnership will sell the General Partner Interests and limited partnership interests (the "Partnership Preferred Securities"). The Partnership Preferred Securities will provide essentially for the same distributions and liquidation payments as the Trust Preferred Securities. The funds for distributions on the Partnership Preferred Securities will come primarily from payments made to the Partnership by ML & Co. and/or its Controlled Companies.

6. Each Trust will use all of the proceeds of its offering of Trust Preferred Securities to purchase the Partnership Preferred Securities. The Trust will not invest or make loans to any other company. Each Partnership will make investments in or loans to ML & Co. and/or its Controlled Companies of at least 85% of any cash or cash equivalent raised or to be raised from the sale of the Partnership Preferred Securities, within six months of the receipt of such cash or cash equivalents. Applicants anticipate that substantially all of the proceeds from the sale of the Partnership Preferred Securities (and indirectly, from the sale of the Trust Preferred Securities), together with the capital contribution from the General Partners, will be used by the Partnership to purchase debentures or equity securities of ML & Co. and/or one or more of its Controlled Companies.

7. Amounts that are not loaned to ML & Co. and/or its Controlled Companies will consist of: (i) interest and dividends receivable from such investments and loans, cash on hand and demand deposits, time deposits and certificates of deposit, in no case having a maturity of greater than nine months; (ii) United States government securities; (iii) repurchase agreements having a maturity of no greater than nine months with respect to United States government securities; and (iv) other debt securities (*e.g.*, commercial paper) which arise out of current transactions, and which have maturities at the time of issuance not exceeding nine months.

8. The payment of distributions by the Trust or the Partnership and the payments on liquidation of the Trust or the Partnership will be guaranteed on a subordinated basis by ML & Co. (the "Guarantee").[2] If ML & Co. fails to make a guarantee payment, a holder of either Trust Preferred Securities or Partnership Preferred Securities may institute directly a proceeding against ML & Co. for enforcement of the payment without first proceeding against any other entity.

Applicants' Legal Analysis

1. Applicants request an order pursuant to section 6(c) of the Act granting an exemption from all provisions of the Act for the Trust, the Partnership, and the Other Finance Subsidiaries.[3] Applicants state that rule 3a–5 under the Act provides an exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies.

2. Rule 3a–5(b)(3)(i) in relevant part defines a "company controlled by the parent company" to be a corporation, partnership, or joint venture that is not considered an investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules and regulations under section 3(a). Certain of the Controlled Companies do not fit within the definition of "companies controlled by the parent company" because they derive their non-investment company status from section 3(c)(2), 3(c)(3), 3(c)(4), 3(c)(5), or 3(c)(6) of the Act. None of the Controlled Companies which will receive loans from the Partnership or the Other Finance Subsidiary will be relying on section 3(c)(1), 3(c)(5)(C), or 3(c)(7) of the Act.

3. Applicants state that none of the Controlled Companies engage primarily in investment company activities. In addition, if ML & Co. or the Controlled Companies were themselves to issue the securities that are to be issued by the Trust or the Partnership and use the proceeds for their own purposes, they would not be subject to regulation under the Act. While ML & Co. has chosen to use the Trust, the Partnership, and the Other Finance Subsidiaries as financing vehicles, the Guarantee ensures that holders of Trust Preferred Securities will have direct recourse against ML & Co.

4. Section 6(c) of the Act permits the SEC to exempt any person or class of persons from any provision of the Act or from any rule under the Act, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. Applicants submit that the relief requested satisfies the section 6(c) standard.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following condition:

Applicants will comply with all of the provisions of rule 3a–5 under the Act, except that the Controlled Companies will not meet the portion of the definition of "company controlled by a parent company" in rule 3a–5(b)(3)(i) solely because they are excluded from the definition of investment company under section 3(c)(2), 3(c)(3), 3(c)(4), 3(c)(5), or 3(c)(6) of the Act, provided that any such entity excluded from the definition of investment company under section 3(c)(5) of the Act will fall within section 3(c)(5)(A) or section 3(c)(5)(B) solely by reason of its holdings of accounts receivable of either their own customers or of the customers of other ML & Co. subsidiaries, or by reason of loans made by it to such subsidiaries or customers, provided, further, that any such entity excluded from the definition of investment company under section 3(c)(6) of the Act will not be engaged primarily, directly, or through majority-owned subsidiaries in one or more of the businesses described in section 3(c)(5) of the Act (except as permitted in this condition).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–2016 Filed 1–27–98; 8:45 am]

BILLING CODE 8010–01–M

[1] The First Trust and each future organized trust is referred to herein as the "Trust" and the First Partnership and each future organized partnership is referred to herein as the "Partnership."

[2] *See, e.g., Cleary, Gottlieb, Steen & Hamilton* (pub. avail. Dec. 23, 1985).

[3] Applicants are not seeking relief for the two-tier structure. *See KDSM Inc. and Sinclair Capital* (pub. avail. March 17, 1997).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Struthers Industries, Inc.; Order of Suspension of Trading

United States of America Before the Securities and Exchange Commission

January 26, 1998.

On January 9, 1998, the Securities and Exchange Commission (the "Commission") ordered a 10 day suspension in trading in Struthers Industries, Inc. ("Struthers") because of questions regarding the accuracy of statements, and material omissions, concerning, among other things, (1) the value of certain broadcast licenses in which Struthers claims to have an ownership interest, (2) the presence of or potential for a recapitalization which will enable Struthers to pursue its business plan, and (3) the resignation of Struthers' auditors.

It appears to the Commission that there is a further lack of current and accurate information concerning the securities of Struthers because of separate and additional questions regarding the accuracy of statements and material omissions in a press release issued by Struthers on or about January 12, 1998 to the effect that, among other things:

(1) Struthers continues to work closely with representatives of its former auditor, BDO Seidman, to resolve the "disagreement with the SEC" over the value of the IVDS licenses Struthers holds under contract; and

(2) Struthers' former auditor strongly believes that Struthers has fairly and accurately valued these licenses.

The Commission is of the opinion that the public interest and the protection of investors require a second suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, January 26, 1998 through 11:59 p.m. EST, on February 6, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–2183 Filed 1–26–98; 12:31 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [To be Published]

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: To Be Published.

CHANGE IN THE MEETING: Cancellation of Meeting.

The closed meeting scheduled for Thursday, January 29, 1998, at 10:00 a.m., has been cancelled.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary (202) 942–7070.

Dated: January 23, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–2136 Filed 1–23–98; 4:35 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39550; File No. SR–NASD–96–51]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2, 3, and 4 to the Proposed Rule Change Relating to NASD Rule 11890 Regarding Clearly Erroneous Transactions

January 14, 1998.

On December 17, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act") [1] and Rule 19b–4 thereunder.[2] On January 17, 1997, the NASD filed Amendment No. 1 to the proposed rule change.[3] Notice of the proposed rule change and Amendment No. 1 thereto, including the substance of the proposal, were published for comment in the **Federal Register**.[4] No comments were received. On March 11, 1997, August 13, 1997, and January 5, 1998, the NASD, through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Commission Amendment Nos. 2,[5] 3,[6] and 4 [7] respectively, to the proposed rule change. The Commission is hereby approving the proposed rule change, including Amendment 1 to the proposal. In addition, the Commission is publishing this notice to solicit

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated January 17, 1997 ("Amendment No. 1"). Amendment No. 1 corrected typographical errors in the text of the proposed rule change.

[4] Securities Exchange Act Release No. 38196 (Jan. 22, 1997) 62 FR 4368 (Jan. 29, 1997) ("Notice").

[5] *See* Letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Ivette Lopez, Assistant Director, Division of Market Regulation, SEC, dated March 11, 1997 ("Amendment No. 2"). In Amendment No. 2, the NASD: (1) Provides the names of Nasdaq officers who have authority to declare transactions clearly erroneous (*see* footnote 12, below); (2) replaces the term "Association" with "Nasdaq" in section (b)(4) of NASD Rule 11890; (3) clarifies that the Market Operations Review Committee's ("MORC's") decision constitutes the final action of the NASD; (4) clarifies that the officers with the authority to declare on their own motion transactions clearly erroneous because of a system malfunction are the same persons who are authorized to take action when a member makes a complaint; (5) clarifies the length of time for Nasdaq to act on an allegedly clearly erroneous transaction; and (6) explains that as soon as Nasdaq obtains a written appeal from a party, Nasdaq would notify the other party to the transaction.

[6] *See* Letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Ivette Lopez, Assistant Director, Division of Market Regulation, SEC, dated August 13, 1997 ("Amendment No. 3"). In Amendment No. 3, Nasdaq adds to NASD Rule 11890(d)(1) a provision that if Nasdaq notifies the parties of action taken pursuant to paragraph (c) of that rule after 4:00 p.m., either party has until 9:30 a.m. the next trading day to appeal.

[7] *See* Letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated January 5, 1998 ("Amendment No. 4"). In Amendment No. 4 Nasdaq corrected a drafting error to proposed NASD Rule 11890(d)(1) to clarify that an "appeal to the Committee [*i.e.*, the MORC] shall not operate as a stay of the determination made pursuant to paragraphs (a)(2) or (c)" of proposed NASD Rule 11890.

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comments from interested persons on Amendment Nos. 2, 3, and 4 to the proposed rule change and is approving those amendments on an accelerated basis.

I. Description of Rule Changes

A. Background

In April 1990, the SEC approved an NASD proposal to add Section 70 to the Uniform Practice Code (now NASD Rule 11890) to permit the NASD to declare clearly erroneous transactions null and void if they arise out of the use or operation of any automated quotation, execution, or communication system owned or operated by the NASD. Previously, the NASD had no authority to cancel a transaction, even if one or more terms of the transaction clearly was in error. As described in Nasdaq's filing, one of the catalysts for adopting Rule 11890 was a member's complaint concerning a transaction executed over SelectNet. The transaction was ten points away from the inside quotation, which the member argued was clearly an error, but the contra party refused to cancel the transaction. NASD Rule 11890 gives Nasdaq the ability to resolve disputes involving obvious errors in an expeditious manner, akin to an exchange floor governor ruling.[8]

B. Current Procedures

NASD Rule 11890 governs the review and resolution of clearly erroneous transaction complaints. Currently, the rule permits the NASD to declare any transaction arising out of the use or operation of any automated quotation, execution, or communication system owned or operated by the NASD or any subsidiary thereof, null and void when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security. The rule also sets forth procedures for declaring a transaction null and void.

Under NASD Rule 11890(b)(1), a member or person associated with a member seeking to have a transaction declared null and void must notify an officer of the NASD designated by the President of the transaction during Nasdaq's operating hours on the same business day the transaction occurs, and provide such official with all facts and information necessary for a determination. The rule requires the complainant to confirm in writing any information communicated orally. Each member and/or person associated with a member involved in the transaction must provide the NASD with any information requested to resolve the matter on a timely basis.

Under NASD Rule 11890(b)(2), the designated officer must then review the information submitted and determine whether the transaction is clearly erroneous and detrimental to the maintenance of a fair and orderly market and the protection of investors and the public interest. The official may decline to act on a disputed transaction if he or she believes that action is unnecessary or inappropriate. Under NASD Rule 11890(b)(3), if either party wishes to appeal the staff determination, it may seek review by the Market Operations Review Committee ("MORC").

While the current procedures have served as a vehicle to cancel erroneous transactions, experience has shown that NASD Rule 11890 can be improved to enhance the fairness and expediency with which clearly erroneous transaction complaints are resolved. Experience with the Rule also has revealed shortcomings in the scope of Nasdaq's authority to take action with respect to clearly erroneous transactions. In particular, there have been instances in the past where it would have been appropriate for NASDAQ to declare a series of transactions clearly erroneous even through the parties to the transactions were unaware of any error and therefore were not in a position to bring the error to Nasdaq's attention. The proposed changes to NASD Rule 11890 are intended to eliminate these shortcomings and to provide Nasdaq with additional capabilities to resolve clearly erroneous transactions.

C. Proposed Amendments

The proposed amendments provide greater specificity and flexibility regarding declarations of clearly erroneous transactions. As explained in more detail below, the proposed amendments would:

(1) Provide Nasdaq officials the authority to effciently and expeditiously nullify or modify the price and size of clearly erroneous transactions (currently, Nasdaq officials may only nullify, affirm, or decline to act with respect to an allegedly clearly erroneous transaction) (NASD Rule 11890(a)(2));

(2) Shorten the time period in which parties may submit clearly erroneous transaction complaints from any time the same day to within 30 minutes of the disputed transaction (NASD Rule 11890(b)(1));

(3) Clarify the procedures by which the parties to an allegedly clearly erroneous transaction may submit written information concerning the transaction (NASD Rule 11890(b)(2)–(4));

(4) Provide Nasdaq officials the requisite authority to cancel or modify clearly erroneous transactions on their own motion during system disruptions or malfunctions in the use or operation of any automated quotation, execution, or communication system owned or operated by Nasdaq and approved by the Commission (NASD Rule 11890(c));

(5) Prohibit a member from withdrawing a clearly erroneous transaction complaint unless the other party to the transaction agrees to withdraw the matter (NASD Rule 11890(b)(5));

(6) Shorten the time period to appeal a clearly erroneous transaction determination from four "market" hours to 30 minutes (NASD Rule 11890(d)(1)); and

(7) Clarify that an appeal of a clearly erroneous transaction determination does not operate as a stay of the determination (NASD Rule 11890(d)(1)).

Under the proposed rule change, a complainant seeking to have a transaction reviewed must submit a written complaint to Nasdaq Market Operations: (1) By 10:30 a.m., Eastern Time, for transactions occurring prior to 10:00 a.m.; or (2) within 30 minutes of the transaction for transactions occurring on or after 10:00 a.m.[9] Once a complaint is received, the complainant has up to 30 minutes, or such longer period as specified by Nasdaq staff, to submit any supporting written information concerning the complaint necessary for a determination.[10] The counterparty to the transaction would be verbally notified of the complaint by Nasdaq staff and would have up to 30 minutes, or such longer period as specified by Nasdaq staff, to submit any supporting written information concerning the complaint necessary for a determination. Either party to a disputed transaction may request the written information provided by the other party. Once a party to a disputed transaction communicates that it does not intend to submit any further information concerning a complaint, the party may not thereafter provide additional information unless requested to do so by Nasdaq staff.[11] If both parties to a disputed transaction indicate that they have no further information to provide concerning the complaint before their respective 30-minute periods have elapsed, the matter would be immediately presented by a Nasdaq officer for a determination.

Under the proposed rule change, the President of Nasdaq would designate officers of Nasdaq who would have the authority to review any transaction arising out of the use or operation of any automated quotation, execution, or communication system owned or operated by Nasdaq and approved by the Commission.[12] A Nasdaq officer would review the transactions with a view toward maintaining a fair and orderly market and protecting investors and the public interest. Based upon this review, the officer would (1) Decline to act on a disputed transaction if the officer believes the transaction under dispute is not clearly erroneous, or (2) declare the transaction null and void or modify one or more terms of the transaction if the officer determines that the transaction is clearly erroneous.

With respect to the modification of transactions, the Nasdaq officer may adjust any of the terms of a disputed transaction (*e.g.*, price, number of shares or other unit of trading, or identification of the security) to achieve an equitable rectification of the error that would place the parties to the transaction in the same position or as close as possible to the same position as they would have been in had the error not occurred. After making a determination with respect to a particular transaction or group of transactions, Nasdaq would promptly provide oral notification of that determination to the parties and thereafter issue a written confirmation of the determination.[13] Under the proposal, once a party has applied to Nasdaq for review, the transaction would be reviewed and a determination rendered, unless both parties to the transaction agree to withdraw the application for review prior to a decision being rendered.[14]

The proposed rule change also would provide Nasdaq with the authority and procedures to review transactions executed during system disruptions or malfunctions in the use or operation of any automated quotation, execution or communication system owned or operated by Nasdaq and approved by the Commission.[15] In such an event, Nasdaq, acting through an officer designated by the President of Nasdaq, may, on its own motion, declare the transactions null and void or modify the terms of the transactions.[16] The proposed rule provides that in the absence of extraordinary circumstances, a Nasdaq officer must take action within 30 minutes of detection of the clearly erroneous transactions, but by no later than 6:00 p.m., Eastern Time, on the next trading day following the date of the transactions at issue. When Nasdaq takes action under these circumstances, the member firms involved in the transactions would be notified as soon as practicable and have a right to appeal such action.

Finally, the NASD proposal changes the process by which a Nasdaq officer's determination is appealed. Under the proposal, a member or person associated with a member may appeal a determination to the MORC, provided that such an appeal is made in writing within 30 minutes after the member or person associated with a member receives verbal notification of such determination.[17] An exception exists for circumstances where Nasdaq notifies the parties of action taken pursuant to paragraph (c) (*i.e.*, in cases of system disruptions or malfunctions) after 4:00 p.m. Under these circumstances, either party has until 9:30 a.m. the next trading day to appeal after the member or person associated with a member receives verbal notification of such determination. Once a written appeal has been received, the counterparty to the transaction would be notified of the appeal[18] and both parties would be permitted to submit any additional supporting written information until the time the appeal is considered by the MORC. Either party to a disputed transaction may request the written information provided by the other party during the appeal process. An appeal to the MORC would not operate as a stay of the determination. Once a party has appealed a determination to the MORC, the determination would be reviewed and a decision rendered. Upon consideration of the record and after such hearings as it may in its discretion order, the MORC would affirm, modify, reverse, or remand the determination of the designated Nasdaq officer. Under the proposal, any adverse determination by a Nasdaq officer or any adverse decision by the MORC would be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.[19]

II. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 2, 3, and 4. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–96–51 and should be submitted by February 18, 1998.

[8] *See, e.g.*, New York Stock Exchange Rule 75.

[9] Proposed NASD Rule 11890(b)(1).

[10] Proposed NASD Rule 11890(b)(2).

[11] Proposed NASD Rule 11890(b)(3).

[12] Proposed NASD Rule 11890(a)(2). According to the NASD, officers of Nasdaq are designated by the President of Nasdaq based on the breadth and depth of their experience regarding Nasdaq's rules and market procedures. Alfred Berkeley, Nasdaq's President, has designated, in addition to himself, the following senior officers of Nasdaq as having the authority to act under Rule 11890(a)(2) and 11890(c): John T. Wall, Executive Vice President; John Hickey, Executive Vice President; Glen Shipway, Senior Vice President; Sherman W. Broka, Senior Vice President; Mark DeNat, Vice President; Donald Bosic, Vice President; Beth Weimer, Vice President; William Wlcek, Vice President; Richard Gonzales, Vice President; Richard Bayha, Vice President; and Robert E. Aber, Vice President and General Counsel. According to the NASD, these officers are the only officers that are authorized to declare a transaction clearly erroneous. A list of these designated officers would be maintained by Nasdaq Market Operations and the NASD's Corporate Secretary. *See* Amendment No. 2.

[13] The NASD has represented to the Commission that Nasdaq officers will render a decision based upon the record as soon as possible under the circumstances. According to the NASD, currently, in almost all cases, the officer makes a decision on the same day the transaction occurred. The NASD indicated that a matter is not handled on the transaction date only where the complaint was filed late in the day (*i.e.*, after 5:00 p.m.) and the necessary information cannot be obtained the same day. The NASD explained that, generally, a decision is made within an hour of the final submission from a party except where a particular transaction involves complexities that require the staff to take additional time to verify facts provided by the parties. *See* Amendment No. 2.

[14] Proposed NASD Rule 11890(b)(5).

[15] Proposed NASD Rule 11890(c).

[16] The officials who have the authority to review transactions on their own motion would be the same officials who have the authority to review transactions submitted by a member's complaint. *See* Amendment No. 2 and note 12, above.

[17] Proposed NASD Rule 11890(d).

[18] As soon as Nasdaq obtains a written appeal from a party, Nasdaq would notify the other party to the transaction of the appeal. *See* Amendment No. 2, and note 5, above.

[19] *See* Proposed NASD Rule 11890(d)(2). In Amendment No. 4, Nasdaq clarified the ability of parties to seek arbitration: With respect to the ability of a party to submit a dispute to arbitration without prejudice notwithstanding an adverse decision by a Nasdaq officer or the Committee [*i.e.*, the MORC], as set forth in paragraph (d)(2) [of proposed NASD Rule 11890], it should be made clear that this rule does not prevent such party from seeking arbitration either before any such decision is rendered, or in the absence of a determination altogether.

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III. Discussion

The Commission finds the proposed rule change, by helping to ensure that clearly erroneous transactions are quickly corrected or nullified and properly reported to the public, is consistent with the Exchange Act and in particular with Sections 15A(b)(6) and 11A(a)(1)(C) of the Exchange Act. Among other things, Section 15A(b)(6) requires that the rules of a national securities association be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Section 15A(b)(6) also provides that the rules of the association not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 11A(a)(1)(C) provides that, among other things, it is in the public interest to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

In the proposed rule change, the NASD provides greater specificity in the procedures for resolving clearly erroneous transactions and greater flexibility to Nasdaq officials to remedy such errors expeditiously. The Commission believes that the amendments to the NASD's procedures to review these transactions should benefit market participants by promoting fair and efficient resolution of disputes involving clearly erroneous transactions. In addition, the proposed rule change—in particular the provision for appeal to the MORC—addresses concerns raised by the Commission in its August 8, 1996, Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and The Nasdaq Stock Market regarding the fairness of the clearly erroneous review process. The NASD believes, and the Commission agrees, that with these amendments the process for resolving clearly erroneous transaction complaints would become fairer and more efficient. In this regard, the proposal is consistent with Exchange Act Section 15A(b)(6) because it helps to ensure that NASD Rule 11890 does not permit unfair discrimination between customers, issuers, brokers, or dealers.

Further, it is important for the proper functioning of the securities markets that investors be able to rely on reported transactions as accurately reflecting the current state of the market and actual executions. When clearly erroneous transactions are publicly reported, it is important that, whenever possible,[20] Nasdaq correct these clear errors and correct the inaccurate information that was disseminated in the market about these transactions as quickly as possible.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to national securities association and, in particular, the requirements of Sections 15A(b)(6) and 11A(a)(1)(c) and the rules and regulations thereunder.[21]

Finally, the Commission finds good cause for approving Amendment No. 2, 3, and 4 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The Exchange's proposal was published in the**Federal Register** for the full statutory period.[22] Amendment Nos. 2, 3, and 4 are technical amendments that clarify the operation of the rule to enhance market participants' comprehension and compliance with these procedures. The Amendments do not diminish the rights of any prospective party with respect to resolving clearly erroneous transactions. Consequently, the Commission finds that there is good cause, consistent with the Exchange Act, to accelerate approval of Amendment Nos. 2, 3, and 4.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[23] that the proposed rule change (SR–NASD–96–51) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

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[20] Regarding the transparency of voided or modified clearly erroneous transactions, Nasdaq represented to the Division of Market Regulation that whenever possible within the constraints of Nasdaq's systems, Nasdaq will endeavor to ensure that the tape and historical record will be corrected as soon as possible. Given that allegedly clearly erroneous trades will now be brought to Nasdaq's attention within 30 minutes rather than within four hours as was previously the case, it will be significantly less likely that transactions voided or modified as clearly erroneous will not be corrected on the tape or historical record. Nasdaq also represented that in 1997, when the time period was still four hours, clearly erroneous transactions that were modified or voided were almost always corrected on the tape or historical record. Conversation between Andrew S. Margolin, Office of the General Counsel, Nasdaq, and Jeffrey R. Schwartz, Special Counsel, Division of Market Regulation, SEC, January 8, 1998.

[21] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. The proposed rule change likely will enhance the efficiency and fairness of the process by which clearly erroneous transactions are modified or nullified. The proposal also should increase the accuracy of transaction reports disseminated to the public. The net effect of approving the proposed rule change will be positive. 15 U.S.C. § 78c(f).

[22] *See* Securities Exchange Act Release No. 38196, *supra* note 4.

[23] 15 U.S.C. § 78s(b)(2).

[24] 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39563; File No. SR–NSCC–97–14]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change to Modify NSCC's Procedures Regarding its Trade Comparision Service

January 20, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 9, 1997, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commisssion") the proposed rule change (File No. SR–NSCC–97–14) as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will modify NSCC's procedures regarding its trade comparison system for over-the-counter ("OTC") securities.

II. Self-Regulatory Organizations's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries submitted by NSCC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change will modify NSCC's procedures regarding its trade comparison service. The proposed rule change will discontinue the following instructions: the "delete of original trade input,"[3] the "demand withold,"[4] and the "demand as of."[5] Such instructions are used very infrequently by NSCC members due to the growth of automated processing systems. Their elimination will result in reduced costs to members.

Additionally, the change will eliminate the ability to submit an advisory listing after the first day after trade date ("T+1") for original input and as of trades.[6] This change results from extremely limited acceptances of advisories of T+2 and will also reduce costs.

Under the third change, the supplemental contract lists and the added trade contract lists will no longer carry forward totals. The supplemental contract lists show all compared trades resulting from adjustments submitted on T+1. The added trade contract lists show trades that are compared on T+2 and thereafter. NSCC has been advised that due to the increasingly automated processing environment, totalled information is no longer necessary. This will reduce computer processing time and therefore will also diminish production costs. These modifications are scheduled to take place in April of 1998.

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder since it will facilitate the prompt and accurate clearance and settlement of securities transactions and, in general, will protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which NSCC consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the file number SR–NSCC–97–14 and should be submitted by February 28, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

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[3] NSCC members use the delete of original trade input to delete any item for which the comparison process resulted in an uncompared trade.

[4] The demand withhold service deletes previously compared OTC transactions which have been canceled by mutual agreement of the buyer and the seller.

[5] OTC trade data submitted by members which is uncompared may be resubmitted through the demand as of service.

[6] Advisory listings indicate trades which were submitted by another party against the member but which did not match any trade the member submitted.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39564; File No. SR–NYSE–97–30]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change To Amend and To Make Permanent the Allocation Policy and Procedures Pilot Program

January 20, 1998.

I. Introduction

On October 20, 1997, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend and to obtain permanent approval of the Exchange's Allocation Policy and Procedures pilot program.

The proposed rule change was published for comment in the **Federal Register** on November 7, 1997.[3] No comments were received on the proposal. On January 2, 1998, the NYSE submitted Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change and approves Amendment No. 1 on an accelerated basis.

II. Background and Description of the Proposal

The Exchange's Allocation Policy and Procedures ("Policy") are intended: (1) to ensure that securities are allocated in an equitable and fair manner and that all specialist units have a fair opportunity for allocations based on established criteria and procedures; (2) to provide an incentive for ongoing enhancement of performance by

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 39288 (October 30, 1997) 62 FR 60297.

[4] *See* Letter from Agnes M. Gautier, Vice President, Market Surveillance, NYSE to Sharon Lawson, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated December 26, 1997 ("Amendment No. 1"). In Amendment No. 1, the NYSE clarified the proposal with respect to: (1) Exchange representation at interviews between specialist units and listing companies; (2) Exchange review of written materials supplied by specialist units to listing companies; and (3) specialist unit contact with a listing company. In addition, Amendment No. 1 deletes the sentence inviting listing companies to express in a letter sent to the Exchange's Allocation Committee any preference not to be traded by specialist units which trade the stock of the listing companies' competitors.

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specialist units; (3) to provide the best possible match between specialist unit and security; and (4) to contribute to the strength of the specialist system. On February 28, 1997, the Exchange proposed to change the Policy to allow greater listing company input. On March 7, 1997, the Commission approved the proposal as a seven-month pilot program, effective until October 7, 1997.[5] Subsequently, the Commission has approved two extensions of the Exchange's pilot program; the current extension expires January 16, 1998.[6]

Under the pilot program, listing companies may: (1) Have the Allocation Committee select their specialist unit ("Option 1"); or (2) make the final selection of a specialist unit from among a group of three of five specialist units selected by the Allocation Committee ("Option 2"). In either case, the listing company may submit a generic letter to the Allocation Committee which may describe desired general characteristics of a specialist unit, but may not mention particular specialist units. Under Option 2, the listing company meets, either in person or by teleconference, with the specialist units selected by the Allocation Committee within two business days after their selection. The listing company must make its decision as to a specialist unit by the next business day.

The Exchange is proposing several changes to the Policy in addition to requesting permanent approval of the pilot permitting Option 2. First, when the listing company selects Option 2, currently the Allocation Committee will select a group of three, four or five units that are the most qualified specialist units among the units that apply. It is proposed that if three units are selected, the Allocation Committee may select an alternate specialist unit to be among the group of units that a company may interview in the event a unit is eliminated. A specialist unit could be eliminated if it cannot meet with the listing company at the appointed time. A unit chosen as an alternate will be informed of its status as such. Currently, the policy is silent regarding this procedure.

Second, the Exchange is proposing several changes covering contacts between specialist units and listing companies. The NYSE is proposing to codify in its Policy its prohibition on contact between listing companies and specialist units from the time allocation applications are solicited until Allocation Committee meetings. The current Policy is silent regarding contact between listing companies and specialist units. However, the NYSE's Information Memo No. 97–13 states that once allocation applications are distributed, the Exchange expects that specialist units will have no contact with the listing companies. The proposed change would codify this existing restriction into the Policy itself.[7]

The proposal also would allow specialist units to provide written material to Exchange staff from the time of selection of an interviewing pool to no later than two hours before the scheduled interview. Exchange staff would provide the written material to the listing company on the day of the interview. The proposal further would require written material to be limited to information pertaining to the specialist unit, and would not permit any reference to another specialist unit or units, except overall floorwide statistics. In addition, the amended proposal would require periodic, random reviews of such material by Exchange staff after the allocation process has been completed. The NYSE represents that it will take appropriate regulatory action should problems with the written materials provided to listing companies be disclosed.[8]

Under the terms of the proposal, a specialist unit may not supply information at the interview [9] concerning another specialist unit or units either orally or in writing, except it may refer to overall floorwide statistics. The proposal would permit any information contained in Exchange documents to be provided by the unit orally or in writing on the unit's letterhead. Following its interview, the proposal would prohibit a specialist unit from having any contact with listing company and any follow-up questions by the company regarding publicly available information on a unit would be required to be sent to the Exchange. If the Exchange approves, a response would be provided. The proposal provides that the specialist units in the group of units interviewed would be advised of such requests.

Third, under the Policy, the listing company's letters to the Allocation Committee can describe characteristics that focus on the specialist unit rather than the listing company. According to the NYSE, letters which describe the listing company are more helpful to the Allocation Committee in assessing the type of specialist unit that would be appropriate for the company. Therefore, the Exchange proposes to change the Policy to require that any letter submitted by the listing company to the Allocation Committee focus on the history and background of the company and its industry; how the company historically has funded its operations; characteristics of its shareholder base and any unusual trading patterns that may result therefrom; and any public information regarding the company's plans for the future. The letter may also include the company's specific views on being traded by a specialist unit with experience in trading in its industry or country.[10]

Fourth, under the current policys within two business days after the selection of a group of specialist units by the Allocation Committee, the listing company must meet with the specialist unit's representative. In addition, the listing company must select its specialist unit within one business day of the interview. The Exchange believes that these time frames have been, at times, too compressed for company travel arrangements or preparation by the specialist units. Accordingly, the NYSE is proposing to amend this portion of the policy to permit the listed company to meet with the selected group of specialist units' representatives up until the close of business on the last Exchange business day of the week in which the selection of the group was

[5] *See* Securities Exchange Act Release No. 38372, 62 FR 13421 (March 21, 1997) (notice of filing and immediate effectiveness of File No. SR–NYSE–97–04). On April 16, 1997, the Exchange filed another proposed change to its Policy not covered under the pilot program. *See* Securities Exchange Act Release No. 38828 (July 9, 1997) 62 FR 39043 (July 21, 1997) (order approving File No. SR–NYSE–97–12).

[6] *See* Securities Exchange Act Release Nos. 39206 (October 6, 1997) 62 FR 53679 (October 15, 1997) (notice of filing and order granting accelerated approval of File No. SR–NYSE–97–27); and 39368 (November 26, 1997) 62 FR 64613 (December 8, 1997) (notice of filing and immediate effectiveness of File No. SR–NYSE–97–32).

[7] The current Policy does require specialist units to describe in their allocation applications any contacts with the listing company with regard to its prospective listing on the Exchange within six months prior to the date that allocation applications are solicited. According to the NYSE, such contacts are among the factors considered by the Allocation Committee in allocating a stock to a specialist unit or selecting a unit to be interviewed by the listing company. *See* Amendment No. 1, *supra* note 4.

[8] *See* Amendment No. 1 *supra* note 4.

[9] According to the NYSE, staff of its Listing Department will continue to attend interviews between listing companies and specialist units. In addition, Exchange Regulatory staff will randomly attend interviews for two listings each month and conduct meetings with members of the Exchange's Listings staff to educate them on regulatory issues. *See* Amendment No. 1, *supra* note 4.

[10] The NYSE also proposed to amend the Policy to invite a listing company to include in its letter any preference that its stock not be traded by specialist units which trade competitors' stock. In Amendment No. 1, the NYSE deleted all reference to any preferences the listing company may have with respect to the units trading competitors' stock. Listing companies will not, however, be prohibited from stating such a preference in letters sent to the Allocation Committee. *See* Amendment No. 1, *supra* note 4.

made by the Allocation Committee. Further, the amended proposal provides that as soon as practicable, following its meeting with representatives of the specialist units, the listing company would be required to select its specialist unit. If a listing company meets with any of its specialist units on the last Exchange business day of the week, it would be required to make its decision on that day.

Fifth, the Policy currently permits telephone interviews at the request of a listing company. According to the NYSE, in-person interviews have been shown to be more effective. Therefore, under the proposal, telephone interviews would not be permitted for domestic listing companies, unless approved by the Exchange for compelling circumstances. Telephone interviews would continue to be permitted for non-U.S. listing companies.

Finally, the NYSE is proposing to change the Policy concerning spin-offs and related companies. Under the proposed revisions to the Policy, a listing company that is a spin-off or related company may choose to stay with the specialist unit registered in the related listed company. Currently, situations in which a listing company is a spin-off of or related to a listed company are handled as new listings, with allocation open to all specialist units. Under the terms of the proposal, if a listing company that is a spin-off or related company chooses to have the Allocation Committee select its specialist, the listing company may request, and the Allocation Committee will honor, that it not be traded by the unit that trades the related listed company. Alternatively, the proposal would permit the listing company to choose Option 2 and request that the Allocation Committee include or exclude the specialist unit registered in the related listed stock from the pool of specialist units.[11]

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6 of the Act [12] and the rules and regulations thereunder applicable to a national securities exchange.[13] The Commission believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act [14] in that it is designed to perfect the mechanism of a free and open market and to protect investors and the public interest.

From the outset, the Commission has had two primary concerns relating to the Exchange's pilot program: (1) whether the resulting allocations would be based on objective factors, such as specialist performance, or influenced by such factors as promotional efforts of specialist units; and (2) whether this new procedure would create the appearance of impropriety between the specialist and the listing company and thereby undermine public confidence in the integrity of the marketplace. The Commission approved the new procedures as a pilot program to give the NYSE time to gain experience with the new procedures and to allow both the Exchange and the Commission additional time to evaluate the merits of the program.

After assessing the results of the NYSE's pilot program, the Commission has determined to approve on a permanent basis the proposed changes to the Policy. The Commission notes that there is no evidence of any problems with the pilot program during its ten months of operation and the Commission believes that the Exchange is applying the established criteria appropriately. In addition, the Commission believes that the proposed amendments implement and enforce safeguards which should ensure that inappropriate or prohibited relationships between specialist units and listing companies do not develop.

Specifically, the Commission believes that it is appropriate to continue to permit listing companies to have the choice to have greater input in the selection of the specialist unit that will trade the companies' stock. The Commission notes that listing companies retain the right to request the Allocation Committee to select a specialist unit on their behalf based on the criteria specified in the Policy.[15] The Commission further notes that under Option 2, where a listing company has the opportunity to select its own specialist unit, it must do so from a group of three to five units that are selected by the Allocation Committee as the most qualified specialist units among the units that apply based on the criteria in the Policy.[16] Because under either Option, the allocation criteria, which focuses primarily on specialist performance, must be applied by the Allocation Committee, the Commission believes that the allocation process will continue to ensure that the best qualified and performing units will be rewarded with allocations.

Second, the NYSE's proposal contains several safeguards to ensure the continued integrity of the allocation process and that contacts between specialists and listing companies are appropriately monitored when Option 2 is used. In this regard, the NYSE's proposal codifies in its Policy its prohibition on contact between listing companies and specialist units from the time allocation applications are solicited until Allocation Committee meetings. This should help to maintain the integrity of the allocation process and ensure that inappropriate contacts and solicitations are not permitted. The Commission also notes that the current Policy requires specialist units to disclose all contacts with the listing company within six months of the date that allocation applications are solicited. The Commission believes that it is appropriate for the Allocation Committee, in allocating a stock to a specialist unit or selecting units to be interviewed by the listing company, to consider prior contacts between the listing company and the specialist units as a factor in the decisionmaking process.[17]

The Commission further believes that the provisions of the proposal restricting written material to information pertaining to the specialist unit, except overall floorwide statistics, is reasonable as it allows specialist units to provide evidence of their own perceived strengths and historical performance, and will help to prevent unsubstantiated claims against other units also competing for the allocation. The NYSE has stated that it will randomly review the written materials supplied by specialist units to listing companies after the allocation process

[11] This is similar to the Policy's current approach to relisting and listed company mergers.

[12] 15 U.S.C. 78f.

[13] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] Under the Policy, the Allocation Committee is required to base allocation decisions on: (1) the results of the Specialist Performance Evaluation Questionnaire ("SPEQ"); (2) objective performance measures; and (3) the Allocation Committee's expert professional judgment in considering the SPEQ, objective measures of performance, and other enumerated criteria, such as professional judgment, listing company input, allocations received, capital deficiency, disciplinary actions, justifiable complaints and foreign listing considerations. The SPEQ includes several facets, including ratings in the current quarter, improved ratings, and ratings over time. Objective measures of performance considered by the Allocation Committee include dealer participation rates, stabilization, capital utilization, and near neighbor analysis, as well as timeliness of regular openings, promptness in seeking Floor official approval of non-regulatory delayed openings, timelessness of DOT turnaround, and response to administrative messages.

[16] *Id.*

[17] *See* Amendment No. 1, *supra* note 4.

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has been completed to discover any inaccuracies in the material.[18] While the Commission believes that prior review by Exchange staff of all written materials provided to listing companies would help to ensure that information provided by specialist units is not false, misleading, or ambiguous, we note that specialists are still under a duty to ensure that their statements, both oral and written, are not misleading or false. In light of the NYSE's representations that appropriate regulatory action will be taken in the event that any problems are discovered, the Commission believes that it is reasonable for the NYSE to initially start with a random review by Exchange staff of written material provided to listing companies by specialist units after the allocation process has been completed.[19] If such reviews disclose problems with communications, we would expect the NYSE to consider replacing its review process with a more comprehensive one to be conducted prior to the allocation.

In addition, the NYSE represents that all interviews between specialist units and listing companies will continue to be attended by staff of the Exchange's Listing Department. Moreover, members of the Exchange's Regulatory staff will randomly attend interviews for two listings each month and conduct meetings with members of the Exchange's Listings staff to educate them on regulatory issues. The Commission believes that the proposed procedures, without placing too great of an administrative burden on the Exchange's Regulatory staff, should ensure that any specialist units making inappropriate remarks to listing companies at interviews will be subject to appropriate regulatory action.

Third, the Commission notes, as described above, that the proposal would change the requirements for listing company letters submitted to the Allocation Committee. Instead of requiring such letters to describe the desired characteristics of the specialist unit, the Policy would be amended to require such letters to contain detailed information regarding the background and operations of the listing company and its industry. The Commission agrees with the NYSE that specific information about the listing company may better assist the Allocation Committee in selecting the appropriate specialist unit(s). The Policy also will continue to prohibit the listing company from identifying a specific specialist unit in its letter to the Allocation Committee. These requirements together should ensure that the Allocation Committee will be able to select the most qualified units based on the allocation criteria. Accordingly, the Commission finds that the proposed provisions relating to the company's letter are consistent with the Act.

Fourth, the Commission notes that the proposal would generally relax the time frames during which a listing company must meet with and select a specialist unit from the group of units selected by the Allocation Committee. The proposed rule allows the listing company to meet with the selected group of specialist units' representatives by the close of business on the last Exchange business day of the week in which the selection of the group was made, rather than within two business days. In addition, the Policy is being changed to permit the listing company to select its specialist unit as soon as practicable, as opposed to within one business day, following its meeting with representatives of the specialist units.[20] The NYSE has represented that most Allocation Committee meetings occur on Mondays.[21] Accordingly, for most allocations, listing companies will have more time to meet (a total of five business days between Monday and Friday, rather than two) and select their specialist unit. The Commission further notes that should compelling circumstances prevent the required meetings within the established time frames, the proposal grants the Exchange discretion to permit telephone interviews for domestic listing companies.[22] Otherwise, the proposal would permit telephone interviews solely for non-U.S. listing companies. The Commission believes that the proposed time frames are reasonable and should allow, in most cases, sufficient opportunity for specialist units to prepare for the interviews and for listing companies to arrange to meet with representatives of the selected specialist units.

Fifth, the Commission believes that the Exchange's deletion of the proposed sentence in the Policy inviting a listing company to include in its letter to the Allocation Committee its preference not to be traded by specialist units trading competitors' stock is appropriate and consistent with the Act. The Commission believes that the existence of the provision would serve only to encourage the expression of such preferences and consequently, to unnecessarily limit the pool of specialist units to be selected by the Allocation Committee. In addition, the Commission does not believe there is any regulatory reason to prohibit a specialist unit from trading competitors' stock. Indeed, a specialist's market making expertise in a certain industry may actually prove to be a benefit to a listing company. Although the Policy will not prohibit listing companies from expressing such preferences in letters to the Allocation Committee, the Commission believes that the absence of the provision in the Exchange's Policy should enhance competition among specialist units to the benefit of both listing companies and the Exchange.

Sixth, the proposal allows the Allocation Committee to select an alternate unit in cases in which only three units are selected to be interviewed. The Commission recognizes that based on the established time frames, situations may arise in which either the listing company or a particular specialist unit cannot meet at the appointed time. Accordingly, the Commission believes that when only three specialist units are selected by the Allocation Committee, the selection of an alternate unit to be interviewed by the listing company is reasonable and will ensure an adequate pool from which to select a specialist.

Finally, the Commission believes that the NYSE's proposal to allow a listing company that is a spin-off of or related to a listed company to choose to stay with the specialist unit for the related company is reasonable because of the relationship between the spun-off company and the former company. The proposal also requires the Allocation Committee to honor the spin-off company's request not to be allocated to the specialist unit that had traded the related company's stock. The Commission recognizes that both allowing the spin-off company to stay with the original specialist unit and barring the original specialist unit from receiving the listing does raise some concerns about ensuring that all specialist units will be allowed to compete for the allocation on an equal basis. Nonetheless, the Commission believes that there may be legitimate reasons why an unlisted company may want to remain with the related company's specialist unit or may believe it is more appropriate to be allocated to a new specialist unit rather than the one that has dealings with the related company. For the same reasons, the Commission believes that the provisions which allow a listing company to choose Option 2 and request that the Allocation Committee include or exclude the specialist unit registered in the related listed stock are reasonable. Accordingly, the Commission finds these provisions are consistent with the Act.

The Commission finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** The Commission notes that Amendment No. 1 further clarifies the process by which listings are allocated to specialist units and raises no new regulatory issues. Specifically, Amendment No. 1 interprets the Policy's provisions relating to interviews between listing companies and specialist units, written materials provided to listing companies by specialist units, and specialist units' contact with listing companies during the six month period prior to the solicitation of allocation applications and helps to strengthen the proposal and ensure compliance with the Policy. Regarding the deletion of the proposal to permit listing companies to state their preference not to be traded by units trading competitors' stock, the Commission notes that the elimination of this provision, which would have further restricted the pool of specialist units to be allocated a particular listing, raises no issues of regulatory concern. Finally, the Commission notes that no comments were received on the publication of the proposal or at the time of the approval and subsequent extensions of the pilot program. Accordingly, the Commission believes that good cause exists, consistent with Section 6(b)(5) of the Act,[23] to approve Amendment No. 1 to the NYSE's proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of all such filings will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–97–30 and should be submitted by February 18, 1998.

V. Conclusion

The Commission believes that the Exchange's amended pilot program, which allow greater listing company input, has been crafted to ensure that allocation decisions continue to be based primarily on specialist performance and objective criteria. In addition, the Commission believes that the procedures adopted by the NYSE in the Policy will help to identify, minimize and penalize potential conflicts arising out of the relationships between specialist units and listing companies and ensure the continued integrity of the allocation process. Based on this, we believe the permanent approval of Option 2, along with the amendments to the Policy, are reasonable and consistent with the requirements of the Act applicable to a national securities exchange, and in particular, with the requirements of Section 6 of the Act[24] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[25] that the proposed rule change (SR–NYSE–97–30), including Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–1974 Filed 1–27–98; 8:45 am]

BILLING CODE 8010–01–M

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[18] See Amendment No. 1, *supra* note 4.

[19] Regulatory action which the NYSE could consider would include reallocation of the stock.

[20] As noted above, under the amended Policy, if a listing company meets with any of its specialist units on the last Exchange business day of the week, it must make its decision on that day.

[21] Telephone conversation between Donald Siemer, Director, Rule Development, NYSE, and Deborah Flynn, Attorney, Division, Commission, on November 3, 1997.

[22] The Exchange stated in its filing that in-person interviews have shown to be more effective. Accordingly, telephone interviews generally are not permitted unless the NYSE approves of it for compelling circumstances. The Exchange has stated that compelling circumstances would include bad weather, which may severely hamper a listing company's ability to attend a scheduled interview. Telephone conversation between Donald Siemer, Director, Rule Development, NYSE, and Deborah Flynn, Attorney, Division, Commission, on November 3, 1997.

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78f.

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Deadline for Submission of Application for Airport Grant Funds Under the Airport Improvement Program (AIP) for Fiscal Year 1998

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces May 1, 1998, as the deadline for having on file with the FAA an acceptable application for airport grant funds under the AIP for fiscal year 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley Lou, Manager, Programming Branch, Airports Financial Assistance Division, Office of Airport Planning and Programming, APP–520, on (202) 267–8809.

SUPPLEMENTARY INFORMATION: Section 47105(f) of Title 49, United States Code, provides that the sponsor of each airport to which entitlement funds are apportioned shall notify the Secretary, by such time and in a form as prescribed by the Secretary, of the sponsor's intent to apply for passenger and cargo entitlement funds. Notification of the sponsor's intent to apply during fiscal year 1998 for any of its entitlement funds, including those unused from prior years, shall be in the form of a project application (SF 424) submitted to the FAA field office no later than May 1, 1998.

This notice is promulgated to expedite and prioritize grants in the final quarter of the fiscal year. Absent an acceptable application by May 1, FAA intends to defer an airport's entitlement funds until the next fiscal year.

Issued in Washington, DC, January 22, 1998.

Stan Lou,

Manager, Programming Branch.

[FR Doc. 98–2015 Filed 1–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In December 1997, there were seven applications approved. This notice also includes information on two

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applications, approved in November 1997, inadvertently left off the November 1997 notice. Additionally, six approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: City of Lawton/Lawton Municipal Airport Authority, Lawton, Oklahoma.
Application Number: 97–02–C–00–LAW.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $393,200.
Earliest Charge Effective Date: January 1, 1998.
Estimated Charge Expiration Date: March 1, 2000.
Class of Air Carriers Not Required To Collect PFC's: None.
Brief Description of Projects Approved for Collection and Use:
Relocate guidance signs.
Correct ponding on runway 17/35.
Commute-a-walk system.
Conduct ecological study.
Correct structural problems with aircraft rescue and firefighting (ARFF) station and snow plow bay.
Decision Date: November 7, 1997.
For Further Information Contact: Ben Cuttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: Central Wisconsin Joint Airport Board acting on behalf of the Counties of Marathon and Portage, Mosinee, Wisconsin.
Application Number: 97–03–C–00–CWA.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $3,529,500.
Earliest Charge Effective Date: November 1, 2012.
Estimated Charge Expiration Date: November 1, 2021.
Class of Air Carriers Not Required To Collect PFC's: On-demand air taxi operators operating aircraft with less than 20 seats.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Central Wisconsin Airport.
Brief Description of Project Approved for Collection and Use: Runway 17/35 and taxiway extension.
Decision Date: November 18, 1997.
For Further Information Contact: Nancy M. Nistler, Minneapolis Airports District Office, (612) 713–4361.

Public Agency: Bloomington-Normal Airport Authority, Bloomington, Illinois.
Application Number: 97–02–C–00–BMI.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $5,752,503.
Earliest Charge Effective Date: December 1, 2010.
Estimated Charge Expiration Date: November 1, 2021.
Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Central Illinois Regional Airport.
Brief Description of Projects Approved for Collection and Use: PFC program development.
Runway 20 Federal Aviation Regulation Part 150 land acquisition.
Terminal building addition.
Terminal jetway facility.
Mobile air stairs.
Extend runway 2/20 600 feet.
Purchase airfield deicing truck.
Purchase two commutal walks.
Expand auto parking facility.
Baggage claim improvements.
Passenger lift device.
Brief Description of Project Approved for Collection Only: Construct new terminal development area.
Decision Date: December 5, 1997.
For Further Information Contact: Denis Rewerts, Chicago Airports District Office, (847) 294–7195.

Public Agency: Luzerne and Lackawanna Counties Bi-County Board of Commissioners, Avoca, Pennsylvania (Wilkes-Barre/Scranton Airport).
Application Number: 97–02–U–00–AVP.
Application Type: Use PFC revenue.
PFC Level: $3.00.
Total PFC Revenue to be Used in This Decision: $3,312,694.
Charge Effective Date: December 1, 1993/December 1, 1997.
Estimated Charge Expiration Date: March 1, 2000.
Class of Air Carriers Not Required to Collect PFC's: No change from previous decision.
Brief Description of Projects Approved for Use:
Design passenger terminal.
Design passenger terminal apron.
Design ARFF building.
Construct parallel taxiway—runway 10/28.
Construct ARFF building.
Construct phase I—air cargo apron.
Decision Date: December 10, 1997.
For Further Information Contact: John Carter, Harrisburg Airports District Office, (717) 782–4548.

Public Agency: Greater Orlando Aviation Authority, Orlando, Florida.
Application Number: 98–05–C–00–MCO.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $231,750,000.
Earliest Charge Effective Date: June 1, 1998.
Estimated Charge Expiration Date: April 1, 2005.
Class of Air Carriers Not Required to Collect PFC's: None
Brief Description of Projects Approved for Collection and Use at Orlando International Airport (MCO):
Replace four additional high mast light poles.
North crossfield taxiway construction.
Upgrade ARFF vehicle Crash-84 and replace ARFF vehicle Crash-82.
Loop road taper improvement.
Airside 2—final design and construction.
Brief Description of Projects Approved for Collection at MCO and Use at Orlando Executive Airport:
West quadrant improvements (phase III C).
Construct Taxiway C–2 and fillet joiner.
Rehabilitate north west quadrant ramp.
Parallel taxiway west of runway 13/31.
Replace direct buried airfield lights.
Rehabilitate runway 13/31 and pave taxiway shoulders.
Decision Date: December 11, 1997.
For Further Information Contact: Vernon Rupinta, Orlando Airports District Office, (407) 812–6331, extension 24.

Public Agency: Houghton County Memorial Airport Committee, Hancock, Michigan.
Application Number: 97–05–C–00–CMX.
Application Type: Impose and use a PFC.

PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $71,634.
Earliest Charge Effective Date: January 1, 1998.
Estimated Charge Expiration Date: July 1, 1999.
Estimated Charge Expiration Date: July 1, 1999.
Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Houghton County Memorial Airport.
Brief Description of Projects Approved for Collection and Use:
Construct security fence (phase I).
Rehabilitate high intensity runway lighting—runway 13/31.
General aviation apron expansion—200 feet by 600-fee.
Sanitary sewer upgrade—phase I lift station.
Terminal building heating, ventilating, and air conditioning system rehabilitation.
Snow removal equipment (front end loader).
Rehabilitate runway 13/31/ engineering only.
Brief Description of Project Approved in Part for Collection and Use:
Reimbursement of charges for PFC application preparation.
Determination: Partially approved. The public agency requested reimbursement for costs associated with both the 95–03–U–00–CMX and 96–04–C–00–CMX applications. However, the public agency was previously reimbursed for consultant services for the 95–03–U–00–CMX application under the 96–04–C–00–CMX approval. Cost overruns for the 95–03–U–00–CMX have been determined to not be eligible. Therefore, the approval for this project was limited to costs associated the 96–04–C–00–CMX application.
Decision Date: December 16, 1997.
For Further Information Contact: Jon Gilbert, Detroit Airports District Office, (313) 487–7281.

Public Agency: City of Manchester, New Hampshire.
Application Number: 97–05–C–00–MHT.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $2,331,162.
Earliest Charge Effective Date: February 1, 1998.
Estimated Charge Expiration Date: October 1, 1998.
Class of Air Carriers Not Required to Collect PFC's: On-demand air taxi/commercial operators that (1) do not enplane or deplane passengers at the airport's main passenger terminal building and (2) enplane less than 200 passengers per year at the airport.
Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Manchester Airport.
Brief Description of Projects Approved for Collection and Use:
Acquire snow removal equipment.
Construct two remote aircraft parking aprons.
Brief Description of Project Withdrawn: Acquire snow removal equipment storage building.
Determination: This project was withdrawn by the public agency by letter dated December 3, 1997. Therefore, the FAA did not rule on this project in this decision.
Decision Date: December 17, 1997.
For Further Information Contact: Priscilla Scott, New England Region Airports Division, (617) 238–7614.

Public Agency: Dallas/Fort Worth International Airport Board, Dallas/Fort Worth, Texas.
Application Number: 97–03–C–00–DFW.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $249,093,427.
Earliest Charge Effective Date: October 1, 1998.
Estimated Charge Expiration Date: September 1, 2001.
Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators operating under a certificate authorizing transport of passengers for hire under Part 135 that file FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Dallas/Fort Worth International Airport.
Brief Description of Projects Approved for Collection and Use:
High speed exits E3 and M3 and cross taxiways EL and WL.
Runway 17C ARFF road realignment.
Taxilane 23 (west support).
ARFF vehicles.
Drainage rehabilitation—diagonal runways.
Replace airfield concrete slabs taxiways 18, 19, and G.
Rehabilitate Carbon Road.
West Airfield Drive improvements.
Industrial waste system study.
East Airfield Drive extension.
West air freight (west 18th Street) improvements.
Terminal 4E apron rehabilitation.
Drainage/rehabilitation of runway 17R/35L.
Conduct final environmental impact statement revalidation on runway 16/34.
Conduct airport pavement conditions study.
Brief Description of Projects Approved in Part for Collection and Use: Terminal 2W–A, gate expansion, renovation, and associated development.
Determination: Approved in part. Project elements such as ramp services areas, flight services areas, flight operations areas, and airline employee office space have been identified as ineligible through an FAA analysis and have been excluded from the amount approved for collection and use. In addition, costs associated with other items such as mechanical rooms, electrical rooms, wire closets, and facilities maintenance rooms have been prorated based on the eligible area of the terminal.
General aviation and 3W hardstand relocation.
Relocation: Approved in part. The portion of the project for the in-kind replacement of the general aviation terminal is limited in eligibility to the estimated cost to demolish and remove the existing building, minus any salvage value in accordance with paragraph 595(a) of FAA Order 5100.38A, AIP Handbook (October 24, 1989).
Brief Description of Project Approved for Collection Only: Runway 16/34, west development.
Brief Description of Projects Disapproved: Fiber optics communication system.
Determination: Disapproved. This project was determined to exceed the requirements necessary to serve the security system mandated by Part 107.14. Therefore, this project is ineligible in accordance with paragraph 563 of FAA Order 5100.38A, AIP Handbook (October 24, 1989).
Terminal 2E/3E graphics.
Determination: Disapproved. This project was determined to benefit terminals which are leased on a long-term, exclusive use basis. Therefore, this project is ineligible in accordance with Part 158, Appendix A(5).
Decision Date: December 18, 1997.

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For Further Information Contact: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: City of Manchester, New Hampshire.

Application Number: 98–06–U–00–MHT.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue To Be Used in This Decision: $1,626,000.

Charge Effective Date: January 1, 1993.

Estimated Charge Expiration Date: October 1, 1998.

Class of Air Carriers Not Required to Collect PFC's: No change from previous decision.

Brief Description of Project Approved for Use: Upgrade runway 6/24.

Decision Date: December 30, 1997.

For Further Information Contact: Priscilla Scott, New England Region Airports Division, (617) 238–7614.

AMENDMENTS TO PFC APPROVALS

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge expiration date	Amended estimated charge expiration date
96–02–C–02–DFW, Dallas/Forth Worth, TX	10/16/97	$96,803,051	$97,530,051	05/01/98	05/01/98
97–02–C–01–LAW, Lawton, OK	12/11/97	393,200	405,200	03/01/00	04/01/00
92–01–C–03–MHT, Manchester, NH	12/18/97	5,679,523	4,394,523	09/01/97	10/01/98
96–02–U–01–MHT, Manchester, NH	12/18/97	1,100,000	1,400,000	09/01/97	10/01/98
96–03–U–01–MHT, Manchester, NH	12/18/97	177,000	0	09/01/97	10/01/98
94–01–C–01–ICT, Wichita, KS	12/24/97	4,259,535	4,468,400	11/01/97	11/01/97

Issued in Washington, DC., on January 20, 1998.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 98–2014 Filed 1–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Senior Executive Service; Departmental Performance Review Board

AGENCY: Treasury Department.

ACTION: Notice of members of the Departmental Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Departmental PRB. The purpose of this PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions for which the Secretary or Deputy Secretary is the appointing authority. These positions include SES bureau heads, deputy bureau heads and certain other positions. The Board will perform PRB functions for other key bureau positions if requested.

COMPOSITION OF DEPARTMENTAL PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of the PRB members are as follows:

Nancy Killefer, Assistant Secretary for Management and Chief Financial Officer—Chairperson

Kay Frances Dolan, Deputy Assistant Secretary (Human Resources)

John P. Simpson, Deputy Assistant Secretary (Regulatory, Tariff & Trade Enforcement)

Alex Rodriguez, Deputy Assistant Secretary (Administration)

William H. Gillers, Project Coordinator, Bureau of Engraving and Printing

James E. Johnson, Assistant Secretary (Enforcement)

David A. Lebryk, Assistant Fiscal Assistant Secretary

Margrethe Lundsager, Deputy Assistant Secretary (Trade & Investment Policy)

Mary E. Chaves, Director, Office of International Debt Policy

Jane L. Sullivan, Director, Office of Information Resources Management

Joan Affleck-Smith, Director, Office of Financial Institutions Policy

John W. Magaw, Director, Bureau of Alcohol, Tobacco and Firearms

Samuel H. Banks, Deputy Commissioner, U.S. Customs Service

Vincette L. Goerl, Assistant Commissioner (Finance)/CFO, U.S. Customs Service

Douglas M. Browning, Assistant Commissioner (International Affairs), U.S. Customs Service

Lewis C. Merletti, Director, U.S. Secret Service

W. Ralph Basham, Assistant Director, Administration, U.S. Secret Service

John P. Mitchell, Deputy Director, U.S. Mint

Richard B. Calahan, Deputy Inspector General

Richard L. Gregg, Acting Commissioner, Financial Management Service

Thomas A. Ferguson, Acting Director, Bureau of Engraving and Printing

Michael P. Dolan, Deputy Commissioner, Internal Revenue Service

David A. Mader, Chief Officer, Management and Administration, Internal Revenue Service

Frederick V. Zeck, Acting Commissioner, Bureau of the Public Debt

Kenneth R. Schmalzbach, Assistant General Counsel (General Law & Ethics)

Roberta K. McInerney, Assistant General Counsel (Banking & Finance)

DATES: Membership is effective January 28, 1998.

FOR FURTHER INFORMATION CONTACT: Ronald A. Glaser, Department of the Treasury, Acting Director, Office of Personnel Policy, Annex Building, Room 4150, Pennsylvania Avenue at Madison Place, N.W., Washington, DC 20220, Telephone: (202) 622–1890.

This notice does not meet the Department's criteria for significant regulations.

Ronald A. Glaser,

Acting Director, Office of Personnel Policy.

[FR Doc. 98–2052 Filed 1–27–98; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Customs Service

TECRO/AIT Carnet Issuing and Guaranteeing Association

AGENCY: Customs Service, Department of the Treasury.

ACTION: General Notice.

SUMMARY: This notice informs the public that Customs has selected the United States Council for International Business as the organization which will issue and guarantee TECRO/AIT carnets. These carnets are being issued pursuant to the TECRO/AIT Carnet Agreement which has been entered into between the Taipei Economic and Cultural Representative in the United States (TECRO) and the American Institute in Taiwan (AIT) for the temporary admission of goods, commercial samples and professional equipment.

FOR FURTHER INFORMATION CONTACT: William Scopa, Office of Field Operations 202–927–3112.

SUPPLEMENTARY INFORMATION:

Background

This notice advises the public that the United States Council for International Business has been selected as the issuing and guaranteeing organization for a new carnet, known as the "TECRO/AIT Carnet". This carnet is being offered as a result of the signing of a bilateral carnet agreement between the Taipei Economic and Cultural Representative in the United States (TECRO) and the American Institute in Taiwan (AIT) for the temporary admission of goods, commercial samples and professional equipment. In a final rule also published in this issue of the **Federal Register**, Customs is amending its regulations which apply to carnets to reflect this new agreement.

A carnet is an international customs document, backed by an internationally valid guarantee, which may be used for the temporary admission of merchandise. The carnet is used in place of the usual national customs documentation and guarantees the payment of duties (including taxes) which may become due if the requirements of the carnet are not satisfied.

Taiwan is currently ineligible to accede to the ATA Carnet Convention, under which carnets facilitate trade among more than fifty contracting parties. Thus, Taiwan has sought access to the carnet facility through the recently concluded TECRO/AIT Carnet Agreement. This agreement was negotiated pursuant to the authority contained in 22 U.S.C. 3305.

On November 4, 1996, a Notice was published in the **Federal Register** (61 FR 56740) in which the Customs Service informed the public of the TECRO/AIT carnet and solicited applications for an organization to issue and guarantee the new carnet.

The issuing association must be approved by the Commissioner of Customs. The guaranteeing association is jointly and severally liable with the carnet holder for the payment of the sums. The guaranteeing association also must be approved by the Commissioner of Customs.

Pursuant to § 114.11, Customs Regulations (19 CFR 114.11), an association, in order to be approved by Customs, must provide in writing that it will undertake to perform the functions and fulfill the obligations specified in the Agreement to which the United States accedes.

Based upon the information received from the United States Council for International Business, the Commissioner of Customs has determined that the United States Council for International Business satisfies the conditions to be designated an issuing and guaranteeing organization for the TECRO/AIT Carnet.

Dated: July 15, 1997.

Editorial note: This document was received by the Office of the Federal Register on January 22, 1998.

George J. Weise,

Commissioner of Customs.

[FR Doc. 98–1951 Filed 1–27–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Application and Renewal Fees Imposed on Surety Companies and Reinsuring Companies; Increase in Fees Imposed

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

SUMMARY: Effective December 31, 1997, The Department of the Treasury, Financial Management Service, is increasing the fees it imposes on and collects from surety companies and reinsuring companies.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch, (202) 874–6765.

SUPPLEMENTARY INFORMATION: The fees imposed and collected, as referred to in 31 CFR 223.22, cover the costs incurred by the Government for services performed relative to qualifying corporate sureties to write Federal business. These fees are determined in accordance with the Office of Management and Budget Circular A–25, as amended. The increase in fees is the result of a thorough analysis of costs associated with the Surety Bond Branch.

The new fee rate schedule is as follows:

(1) Examination of a company's application for a Certificate of Authority as an acceptable surety or as an acceptable reinsuring company on Federal bonds—$3,900.

(2) Determination of a company's continued qualification for annual renewal of its Certificate of Authority—$2,300.

(3) Examination of a company's application for recognition as an Admitted Reinsurer (except on excess risks running to the United States)—$1,385.

(4) Determination of a company's continued qualification for annual renewal of its authority as an Admitted Reinsurer—$975.

Questions concerning this notice should be directed to the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Hyattsville, MD 20782, Telephone (202) 874–6850.

Dated: January 16, 1998.

Charles F. Schwan III,

Acting, Assistant Commissioner, Financial Information, Financial Management Service.

[FR Doc. 98–1977 Filed 1–27–98; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 67 (Rev. 24)]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The specific authority to sign the name of, or on behalf of, Charles O. Rossotti, Commissioner of Internal Revenue. The text of the delegation order appears below.

EFFECTIVE DATE: November 13, 1997.

FOR FURTHER INFORMATION CONTACT: Ronald Ridgley, Chief, Office of Organizational Research, M:SP:A, Room 401, 1255 22nd Street, NW, Washington, D.C. 20037, (202) 874–4479 (not a toll-free call).

Delegation Order No. 67 (Rev. 24)

Effective: November 13, 1997.

Signing the Commissioner's Name or on the Commissioner's Behalf

Authority: To sign the name of, or on behalf of Charles O. Rossotti, Commissioner of Internal Revenue.

Delegated to: Persons with existing authority to sign the name or, or on behalf of, Michael P. Dolan, Acting Commissioner of Internal Revenue.

Redelegation: This authority may not be redelegated.

Source of Authority: Treasury Order 150–10.

This order is effective 11:00 a.m., November 13, 1997, and supersedes Delegation Order 67 (Rev. 23), effective May 26, 1997.

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Dated: January 21, 1998.
Charles O. Rossotti,
Commissioner.
[FR Doc. 98–1948 Filed 1–27–98; 8:45 am]
BILLING CODE 4830–01–U

Corrections

Federal Register
Vol. 63, No. 18
Wednesday, January 28, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 97-127-1]

Restrictions on the Importation of Ruminants, Meat and Meat Products From Ruminants, and Certain Other Ruminant Products

Correction

In rule document 98–266 beginning on page 406, in the issue of Tuesday, January 6, 1998, make the following corrections:

§ 94.18 [Corrected]

1. On page 408, in the second column, in § 94.18(a)(2), in the sixth line, "and" should read "an".

2. On page 408, in the second column, in § 94.18(a)(3), in the second line "considers" should read "consider" and in the fifth line, after "forth" insert "in".

3. On page 408, in the third column, in § 94.18(b), in the fourth line, "ruminant" should read "ruminants".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Public Notice of Availability of the Draft Supplemental Environmental Impact Statement for the Limited Reevaluation Study for the Deepening of the Arthur Kill-Howland Hook Marine Terminal Navigation Channels

Correction

In notice document 98–1488 beginning on page 3311, in the issue of Thursday, January 22, 1998, make the following correction:

On page 3312, in the first column, in the second line, "not" should read "now".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at Fort Lauderdale-Hollywood International Airport, Fort Lauderdale, FL

Correction

In notice document 98–1498 beginning on page 3388, in the issue of Thursday, January 22, 1998, make the following correction:

On page 3388, in the third column, under the heading **DATES:**, "January 23, 1998." should read "February 23, 1998."

BILLING CODE 1505-01-D

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Part II

Department of Agriculture

Forest Service

36 CFR Part 212
Administration of the Forest Development Transportation System: Management Regulations Revision and Temporary Suspension of Road Construction in Roadless Areas; Proposed Rules

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 212

RIN AB–67–0095

Administration of the Forest Development Transportation System

AGENCY: Forest Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Forest Service proposes to revise the regulations concerning the management of the National Forest System transportation system to address changes in how the road system is developed, used, maintained, and funded. The existing road system on National Forest System lands was largely funded and constructed to develop areas for timber harvesting and the development of other resources. In the last two decades, interest in the appropriate uses of the resources of the national forests, as well as the costs associated with resource development, including road-building, has generated much public debate. At the same time, resource uses on the national forests have shifted substantially toward recreation. The agency believes this is an appropriate time to consider changes in public opinion, public demand, and public use of national forest resources in the context of the accumulated body of scientific information about the benefits and environmental impacts of roads, and to consider adjustments in the management of the forest road system to respond to these changes and, thus, better serve present and future management objectives in a more efficient manner. Public comments on the scope and nature of a proposed revision of the Forest Services road management policy are invited. The agency will consider all comments in developing the proposed rule.

DATES: Comments must be received in writing by March 30, 1998.

ADDRESSES: Send written comments to: Gerald (Skip) Coghlan, Acting Director, Engineering Staff, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090, and also at roads/wo@fs.fed.us on the Internet.

All comments, including names and addresses when provided, are available for public inspection and copying. Persons wishing to inspect the comments are encouraged to call ahead (202–205–1400) to facilitate entrance into the building.

FOR FURTHER INFORMATION CONTACT: Gerald (Skip) Coghlan, Acting Director, Engineering Staff, 202–205–1400.

SUPPLEMENTARY INFORMATION:

Background

The road system on National Forest System lands is extensive and diverse. It includes an estimated 373,000 miles of inventoried forest system roads. These roads are essential for the active management of the resources of the National Forests. They carry an estimated 9,000 Forest Service administrative vehicles daily throughout the forests to duties as varied as wildlife habitat improvement projects, maintenance of recreation facilities, fire suppression, law enforcement, and search and rescue activities. National Forest System roads also carry an estimated 15,000 vehicles daily that are associated with timber harvesting and the development of other resources.

Roads are also essential for public use and enjoyment of the National Forests and Grasslands. The agency estimates that 1.7 million vehicles involved in recreation travel forest roads every day, an increase of over 10 times since 1950.

In addition to the 373,000 miles of inventoried system roads, there are 60,000 miles of roads which exist on National Forest System lands, created by repeated public use, that are not managed or maintained by the agency or considered part of the forest road system.

Public use and demands on national forest resources have shifted considerably during the past 10 years. There has been a decrease in timber harvesting and other commodity uses and steadily-increasing growth in the amount and type of recreation uses. The shift in public use and associated changes in user expectations and access needs requires new approaches to deciding the appropriate size and configuration of the road system. In addition, current funding mechanisms and levels are not adequate to maintain roads to the standards originally planned, to assure minimum ecological impacts, as well as to ensure efficient and safe use. Thus, the agency needs to explore new sources of dependable funding as well as ways to better manage roads with limited resources.

The accumulation of new scientific information is increasing the understanding of the ecological and social impacts of existing roads, new construction of roads in roaded and roadless areas, and the impacts of the management activities associated with maintaining and reconstructing roads. New developments in road-building technology have fewer negative ecological impacts; however, ecological impacts from existing roads are more extensive than previously thought. For example, under some conditions, existing roads may cause increased frequency of flooding and landslides, increased stream sedimentation, and associated reductions in fish habitat productivity. There may also be concerns associated with the fragmentation and degradation of habitat for some wildlife species caused by roading, as well as reductions in travel corridors of species with large home ranges. Research also indicates that under some circumstances, roading may begin or accelerate the invasion of exotic plant species that ultimately displace native species.

In addition to the impacts of road-building and roads themselves, there are impacts associated with the increased levels of human activities in previously-inaccessible areas provided by new roads. For example, increases in visitor-use have associated resource impacts, including ground and habitat disturbance, increased pressure on wildlife species from hunters and fishers, and increased expectations for amenities. Also, increases in human access may be associated with increases in the frequency of person-caused fires. A more detailed listing of facts related to the nature and scope of the National Forest Road System, public demand, funding, and environmental impacts of roads are published as Appendix A at the end of this notice.

Rulemaking Objectives

The shifts in resource demands and public use coupled with the need to ensure that decisions associated with the location, design, construction, reconstruction, upgrading, decommissioning, and maintenance of roads are informed by current scientific information lead the Forest Service to conclude that it must thoroughly review its road management policy and develop a comprehensive science-based policy for the future. This policy should allow the Forest Service to balance scientific information, public needs and funding levels when determining the size, purpose, and extent of the future forest road transportation system and any specific road building activities. The following are among the expected outcomes and key features of such a long-range policy:

1. Roads will be removed where they are no longer needed, and ecological values will be rehabilitated and restored in formerly-roaded areas. These outcomes will be accomplished by aggressively decommissioning unneeded roads to reduce adverse environmental impacts.

2. Roads most heavily used by the public will be safe and will promote efficient travel. These outcomes will be accomplished by aggressively updating roads (reconstruction, design and maintenance) and reducing environmental impacts in these areas.

3. New roads that are determined necessary for National Forest System management will be designed more carefully to minimize ecological damage, and limited funds will be spent appropriately. These outcomes will be achieved by carefully analyzing factors surrounding the decision to build new roads in roaded areas, as well as the decision to build new roads in roadless areas, to assure that managers make more informed decisions and that only necessary construction is taking place.

The agency invites comments and suggestions on procedures for improving management of the national forest road system.

Agency Actions

Several research efforts are underway to examine the National Forest road system and its uses; to synthesize scientific information on Forest Service roads; and to analyze attitudes toward roads as expressed in the news media. Drafts of these reports are available from Director, Pacific Northwest Research Station, P.O. Box 3890, Portland, OR 97208–3890, 503–808–2100 and also at pnw/r6pnw@fs.fed.us on the Internet.

An essential element of this comprehensive overhaul of forest road policy is to develop improved analytical tools for land managers and resource specialists. To that end, agency researchers and specialists are developing an improved analysis process that assures that the ecological, social, and economic impacts of proposed construction and reconstruction of National Forest System roads are objectively evaluated, and that there is a full consideration of public demand on National Forest System roads in the context of current scientific information. This process will undergo an independent technical and scientific peer review before adoption.

Until the effects of roads can be more rigorously assessed, the Forest Service is also proposing to issue an interim rule to temporarily suspend road construction and reconstruction in roadless areas for not more than 18 months. The proposed interim rule appears in the same separate part of today's **Federal Register** with a request for public comment and notice of the initiation of scoping under the National Environmental Policy Act of 1969.

Suggestions on the scope and nature of a proposed revision of the Forest Service's road management policy, as well as comments on the agency's preliminary suggestions are invited. The agency will consider all comments in developing the proposed rule.

Dated: January 22, 1998.

Mike Dombeck,

Chief, Forest Service.

Appendix A—Facts About the National Forest Road System

1. The National Forest Road System is extensive and diverse; it includes an estimated 373,000 miles of forest roads.

a. One-fourth (23%) are called arterial or collector roads and they serve all users, including passenger cars.

b. Over one-half (57%) are roads that are only passable by high-clearance vehicles such as four-wheel drives.

c. One-fifth (20%) are closed by gates.

d. The Forest Service has identified an additional estimated 60,000 miles of "uninventoried roads" that were created by repeated use but never build or maintained to any standards. The actual number of miles of "uninventoried roads" is likely far greater than this estimate. There are also additional public roads on National Forest System lands, such as state and county roads that are typically maintained by others.

e. There are more than 7,000 bridges on forest roads, three-fourths of these are on the arterial and collector roads.

f. In 1996, new construction of National Forest System roads was 434 miles, or 0.1% of the total National Forest road system.

2. Roads are essential for public use and enjoyment of National Forests and Grasslands.

a. An estimated 15,000 logging trucks and vehicles associated with timber harvesting use National Forest roads each day, about the same number as in 1950.

b. An estimated 1.7 million vehicles associated with recreation activities travel forest roads each day, over 10 times more than in 1950. Recreation usage is projected to continue to increase.

c. An estimated 9,000 Forest Service administrative vehicles travel forest roads each day, conducting duties essential to the stewardship of forest resources, including special use administration, wildlife habitat improvement projects, maintenance and operation of recreation facilities, law enforcement, and fire suppression.

3. Public use and demands on National Forest System lands have shifted considerably during the past 10 years. The size and composition of the National Forest System road system has not been adjusted accordingly.

a. Recreation usage has increased from less than 250 million Recreation Visitor Days to almost 350 million and is projected to continue to increase.

b. Timber harvest has dropped to below 4 billion board feet from a high of about 12 billion board feet annually.

c. The need for, and understanding of, ecological benefits that these forest and rangelands provide has increased, such as clean water, wildlife habitat, and habitat for endangered species.

4. While a significant portion of the 191,000,000 acres of the National Forest System is roaded, a significant portion remains roadless.

a. An estimated 34,000,000 acres are currently designated as wilderness; an estimated 6,000,000 acres are designated as proposed wilderness in forest plans.

b. An estimated 33,000,000 acres are currently unroaded in blocks of 5,000 acres or more for which the existing forest plans have proposed management that could include building new roads.

c. Of the 33,000,000 acres that are unroaded and available for management activities that could include roading, an estimated 8,000,000 acres are classified as "suitable for timber production.

5. Current funding levels are inadequate to maintain the roads to planned standards that permit efficient and safe use and keep ecological impacts at acceptably low levels.

a. About 40% of National Forest System roads are fully maintained to the planned safety and environmental standards for which they were designed.

b. The backlog of reconstruction needs on National Forest System roads is considerable. For example, the backlog on arterial and collector roads alone is estimated to be over $10 million, due to their age (three-fourths are over 50 years old) and their lack of adequate regular maintenance.

c. From 1991 to 1996, funding for decommissioning roads has only financed a reduction of about 0.5% of National Forest System roads per year.

6. New scientific information continues to increase our understanding of the ecological and social impacts from existing roads and associated management activities. In some instances, ecological impacts from existing roads are more extensive than previously thought. Examples of these impacts include: increased frequency of flooding and landslides: increased stream sedimentation and associated reduction in fish habitat productivity; increased habitat fragmentation and degradation which reduce the travel corridors needed by species requiring large home ranges; increased frequency of person-caused fires as a result of access; and invasion of exotic species that displace native species. In contrast, recently constructed roads that are better designed and better located than earlier roads, and result in fewer and less severe ecological impacts.

[FR Doc. 98–1907 Filed 1–27–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 212

RIN AB–68–0095

Administration of the Forest Development Transportation System: Temporary Suspension of Road Construction in Roadless Areas

AGENCY: Forest Service, USDA.

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ACTION: Notice of proposed interim rule; request for comment.

SUMMARY: In an Advanced Notice of Proposed Rulemaking (ANPR) published elsewhere in today's **Federal Register** the Forest Service has announced its intentions to revise its management of the National Forest Road System. In concert with that ANPR, the Forest Service proposes to suspend temporarily road construction and reconstruction in most roadless areas of the National Forest System. The intended effect is to safeguard the significant ecological values of roadless areas from potentially adverse effects associated with road construction, while new and improved analytical tools are developed to evaluate the impact of locating and constructing roads. The temporary suspension of road construction and reconstruction would expire upon the application of the new and improved analysis tools or 18 months, whichever is sooner. This rulemaking is a component of a larger effort to address a number of National Forest System transportation issues. Public comment is invited and will be considered in adoption of an interim rule.

DATES: Comments are due by February 27, 1998.

ADDRESSES: Send written comments to Director, Ecosystem Management Coordination Staff, MAIL STOP 1104, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090. Comments also may be sent via the Internet to roads/wo@fs.fed.us.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying at the Forest Service National Headquarters Offices, 14th and Independence Avenue SW, Washington, D.C. Persons wishing to inspect the comments are encouraged to call ahead (202–205–0895) to facilitate entrance into the building.

FOR FURTHER INFORMATION CONTACT: Gerald (Skip) Coghlan, Engineering Staff, 202–205–1400 or Rhey Solomon, Ecosystem Management Coordination Staff, 202–205–0939.

SUPPLEMENTARY INFORMATION: This proposed interim rule is being published in association with an Advance Notice of Proposed Rulemaking (ANPR) published elsewhere in this separate part in today's **Federal Register**. In the ANPR, the Forest Service is giving notice of its intention to revise the regulations concerning the management of the National Forest System transportation system to address changes in how the road system is developed, used, maintained, and funded. As part of the ANPR, the agency also indicates that the development of improved scientific and analytical tools for land managers and resource specialists is an essential element of the comprehensive overhaul of forest road policy.

As noted in the ANPR, the road system on the National Forest System is extensive and diverse. It includes an estimated 373,000 miles of forest system roads. Roads are essential for the active management of the resources of the National Forests and Grasslands. These roads also are essential for public use and enjoyment of the National Forest System.

In addition, the agency estimates that there are more than 60,000 miles of roads created by repeated public use of the National Forests and Grasslands. Although these roads occur on National Forest System lands, they are not planned, managed or maintained by the agency or considered part of the forest road system.

A growing body of scientific information demonstrates that road construction in sensitive areas, such as roadless areas, may cause the introduction of exotic plant species, disrupt wildlife habitat, and otherwise compromise the attributes that make roadless areas ecologically important and often unique. Roadless areas are often aquatic strongholds for fish of great recreational and commercial value. These areas also often provide critical habitat and migration routes for many wildlife species, and they are particularly important for those species requiring large home ranges, such as the grizzly bear and the wolf.

The effects of road construction may persist for decades. Many of the remaining areas with the National Forest System are in areas with steep slopes that surround headwater streams. Road construction increases the risk of erosion, landslides, and slope failure, which may compromise critically important water quality. Until new and improved analytical tools can be developed and implemented to evaluate the positive benefits and adverse impacts of roads, the adoption of an interim rule to temporarily suspend road construction or reconstruction within National Forest System roadless areas is viewed as critical to preserve land and resource management options.

Draft Proposed Interim Rule

The agency proposes to temporarily suspend road construction activities, including the construction of temporary roads on National Forest System roadless areas, through issuance of an interim rule to a new § 212.13 of Part 212 of Title 36 of the Code of Federal Regulations. Specifically, the interim rule would apply the temporary suspension to roadless areas of 5,000 acres or more inventoried in RARE II (Roadless Area Review and Evaluation) and other unroaded areas, regardless of size, identified in a forest plan; unroaded areas greater than 1,000 acres contiguous to Congressionally-designated Wilderness or contiguous to federally-administered components of the National Wild and Scenic Rivers System that are classified as "Wild"; and all unroaded areas greater than 1,000 acres contiguous to roadless areas of 5,000 acres or more on other federal lands. In addition, the suspension would apply to two other categories: (1) any National Forest System (NFS) area of low-density road development or (2) any other NFS area that retains its roadless characteristics which the Regional Forester subsequently determines have such special and unique ecological characteristics or social values that no road construction or reconstruction should proceed. The agency does not anticipate that Regional Foresters will create a new inventory of roadless areas that meet the criteria of these latter two categories. Rather, it is expected that Regional Foresters will apply these categories on a project-by-project basis. Examples of areas that might be considered under these latter categories are areas needed to protect the values of municipal watersheds, including public drinking water sources, or to provide habitat for listed or proposed endangered and threatened fish, wildlife, or plants. Another example might be the National Forest System roadless areas listed in Table 5.1 of the Southern Appalachian Area Assessment, Social/Cultural/Economic Technical Report, Report 4 of 5, July 1996.

The suspension would remain in effect until any suspended road construction could be evaluated using the new analytical tools that are being developed, but no longer than 18 months from the effective date of the interim rule.

The proposed interim rule would expressly exempt four categories of roadless areas from the temporary suspension of road construction and reconstruction:

1. Roadless areas within National Forests that have a signed Record of Decision revising their forest plans and have completed the administrative appeal process as of the effective date of the rule.

2. Roadless areas within National Forests that have a signed Record of Decision revising their forest plans on which the administrative appeal process is underway, but not completed as of the effective date of the rule.

3. Roadless areas in Washington, Oregon, and California within those portions of National Forests encompassed by the Northwest Forest Plan; and

4. Road construction or reconstruction in roadless areas needed for public safety or to ensure access to private lands pursuant to statute or outstanding and reserved rights.

The exemptions for final revised forest plans and for the Northwest Forest Plan recognize the currency of the scientific information, evaluations, public participation, and decisions made in these plans and the need to minimize disruption in programs of work. The proposed interim rule also recognizes the necessity to ensure public safety and access to private property. The exemption for revised plans currently under appeal also honors exiting decisionmaking and administrative appeal processes and seeks to avoid undue interruptions or interference with established planning processes. We specifically request comment on whether additional measures are needed to implement exemption (b)(2).

The proposed interim rule would not modify, suspend, or cause to be re-examined any existing permit, contract, or other instrument authorizing occupancy and use of the National Forest System, any land and resource management plan, any land allocation decision, or other management activity or use within roadless areas in which road construction or reconstruction are temporarily suspended. The intent is not to halt active management of roadless areas but to protect their values while improved analytical tools are developed to better assess the impacts of road construction on roadless area values.

Regulatory Impact

Under the proposed interim rule, some currently planned land management projects that are dependent on new road construction, such as timber sales and ecosystem restoration activities, may not be implemented in the timeframe currently planned. During the interim period, some projects may proceed in an altered form and some may be postponed until such time that the road assessment process is implemented. Those projects may eventually be altered as a result of new information provided by the forest road assessment process. It is difficult to estimate with precision the costs and benefits associated with deferring projects due to considerable variation in site-specific factors; the fact that projects are in various stages of development and readiness to execute; the fact that planning and analysis often take much longer to complete than originally anticipated; and the fact that some project work can be shifted to other sites outside roadless areas.

Nationwide, the agency estimates that of the total 3.8 billion board feet planned for FY 1998, the volume of timber actually offered for sale will be reduced by 100–275 million board feet. Although the actual amounts are very difficult to estimate, this reduction in timber volume offered could lead to corresponding reductions in employment and in payments to states. It is expected that the Intermountain and Northern Regions of the National Forest System will experience a disproportionately higher effect from the suspension than other geographic regions of the country, due to the higher dependence on roadless areas for timber production in these regions.

While the delay in these projects will have some adverse economic impact in the short term, these impacts are offset by the benefits to be gained from the temporary suspension of road construction and reconstruction in these areas. The benefits would include the prevention of an increased risk of erosion, landslides, and slope failure, all of which may compromise critically important water quality in the headwater streams that are found in many of the covered roadless areas. The temporary suspension would also help to prevent introduction of exotic plant species into these areas. The development of a new road analysis process would also allow currently proposed and future projects requiring road construction to reflect current scientific information and resource use trends. This will help managers and the public better understand the consequences of locating and building roads in roadless areas.

This proposed interim rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is a significant rule because of the importance of road policy issues. While this proposed interim measure would create some costs associated with temporarily suspending actions on road construction or reconstruction, the suspension is limited to roadless areas and some low-density roaded areas and is temporary, not to exceed 18 months. This proposed interim rule will not have an annual effect of $100 million or more on the economy nor have a significant adverse effect on productivity, competition, jobs, the environment, public health or safety, nor State or local governments. Accordingly, this proposed interim rule has been reviewed by OMB under Executive Order 12866.

Moreover, this proposed interim rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it is hereby certified that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of this proposed interim rule on State, local, and tribal governments and the private sector. This proposed interim rule does not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Environmental Impact

Section 31.1b of Forest Service Handbook (FSH) 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The agency's assessment is that this proposed interim rule falls within this category of actions. Nevertheless, in furtherance of the purposes of the National Environmental Policy Act, the agency has elected to undertake environmental analysis and documentation prior to publication of the final interim rule. As part of the agency scoping under its NEPA procedures, public comment is invited.

No Takings Implications

This proposed interim rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the proposed interim rule does not pose the risk of taking of Constitutionally-protected private property. There are no Constitutionally-protected private property rights to be affected, since the proposed interim rule applies only to federal lands and explicitly ensures access to private property pursuant to statute or to outstanding or reserved rights.

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Civil Justice Reform Act

This proposed interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed interim rule (1) preempts all State and local laws and regulations that are in conflict or which would impede its full implementation, (2) has no retroactive effect on existing permits, contracts, or other instruments authorizing the occupancy and use of the National Forest System, and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

Controlling Paperwork Burdens on the Public

This proposed interim rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 36 CFR Part 212

Highways and roads, National forests, Rights-of-way, and Transportation.

Therefore, the Forest Service proposes an interim rule amending 36 CFR part 212 as follows:

PART 212—ADMINISTRATION OF THE FOREST DEVELOPMENT TRANSPORTATION SYSTEM

1. The authority citation for part 212 continues to read as follows:

Authority: Sec. 1, 30 Stat. 35, as amended sec. 205, 72 Stat. 907; 16 U.S.C. 551, 23 U.S.C. 205, unless otherwise noted.

2. Add a new § 212.13 to read as follows:

§ 212.13 Temporary suspension of road construction in roadless areas.

(a) *Suspensions.* Except as provided in paragraphs (b) and (c) of this section, new road construction projects, including temporary roads, and road reconstruction projects are suspended within the following areas of the National Forest System:

(1) ALL RARE II inventoried roadless areas of 5,000 acres or more within the National Forest System and all other roadless areas, regardless of size, identified in a land and resource management plan;

(2) All National Forest System roadless areas greater than 1,000 acres that are contiguous to Congressionally-designated Wilderness Areas or that are contiguous to federally-administered components of the National Wild and Scenic River System (16 U.S.C. 1274) which are classified as Wild;

(3) All National Forest System roadless areas greater than 1,000 acres that are contiguous to roadless areas of 5,000 acres or more on other federal lands;

(4) Any National Forest System area, regardless of size, with low-density road development that essentially retains its roadless characteristics on which the Regional Forester subsequently determines that road construction or reconstruction should not proceed, because of the area's special and unique ecological characteristics or social values; and

(5) Any other National Forest System area, regardless of size, that essentially retains its roadless characteristics on which the Regional Forester subsequently determines that road construction or reconstruction should not proceed, because of the area's special and unique ecological characteristics or social values.

(b) *Exemptions.* Road construction and reconstruction projects within the following roadless areas are exempt from the suspension required by paragraph (a) of this section:

(1) Roadless areas within National Forests that have a signed Record of Decision revising their land and resource management plans prepared pursuant to the National Forest Management Act (16 U.S.C. 1604(f)(5)) on which the administrative appeals process under 36 CFR Part 217 has been completed as of the effective date of the final interim rule;

(2) Roadless areas within a National Forest that has a signed Record of Decision revising the land and resource management plan prepared pursuant to the National Forest Management Act (16 U.S.C. 1604(f)(5)) on which the administrative appeals process under 36 CFR Part 217 is underway as of the effective date of the final interim rule. (For these forests, issues related to the construction of roads in roadless areas will be addressed in the appeal decision, when appropriate.);

(3) Roadless areas within National Forest System lands in Washington, Oregon, and California, that are encompassed by the Northwest Forest Plan which is described in the "Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl and Standards and Guidelines for Management of Habitat for Late Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl, April 13, 1994;" and

(4) Road construction or reconstruction in roadless areas needed for public safety or to ensure access provided by statute or provided pursuant to reserved or outstanding private rights.

(c) *Scope and applicability.* (1) This section does not suspend or modify any existing permit, contract, or other instrument authorizing the occupancy and use of National Forest System land. Additionally, this section does not suspend or modify any existing National Forest System land allocation decision, nor is this section intended to suspend or otherwise affect other management activities or uses within roadless areas in which road construction or reconstruction projects are suspended pursuant to paragraph (a) of this section.

(2) The suspensions provided by paragraph (a) of this section remain in effect until any suspended road construction in roadless areas can be evaluated using new analytical tools, or 18 months, which ever is first.

(d) *Effective date.* The suspension of road construction and reconstruction projects in roadless areas as provided in paragraph (a) of this section is effective upon the date of publication of the final interim rule.

Dated: January 22, 1998.

Mike Dombeck,

Chief, Forest Service.

[FR Doc. 98–1906 Filed 1–27–98; 8:45 am]

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federal register

Wednesday
January 28, 1998

Part III

Department of Justice

Bureau of Prisons

28 CFR Part 571

Fines and Costs for "Old Law" Inmates; Final Rule

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 571

[BOP–1033–F]

RIN 1120–AA29

Fines and Costs for "Old Law" Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its regulations on fines, or fines and costs, ordered by the court with respect to an inmate convicted of an offense committed before November 1, 1987. The amended regulations conform with 18 U.S.C. 3569, requiring a United States Magistrate Judge to determine whether an inmate is indigent, for the purpose of determining the inmate's ability to pay a committed fine, or fine and costs. This statutory authority previously had included the Warden as a determining official. In accordance with delegated authority by the Attorney General, final determination as to the retention by the inmate of property in excess of that which is by law exempt from being taken on civil process is to be made by the appropriate United States Attorney. Bureau regulations previously had designated the Regional Director as the determining official.

EFFECTIVE DATE: January 28, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on fines and costs (28 CFR part 571, subpart F). A final rule on this subject was published in the **Federal Register** on October 21, 1983 (48 FR 48971).

These amendments conform Bureau regulations to reflect 18 U.S.C. 3569 which, as revised and still applicable to offenses committed before November 1, 1987, specifies a U.S. Magistrate Judge in the district where the inmate is imprisoned as the official responsible for determining whether an inmate is indigent for the purpose of determining the inmate's ability to pay a committed fine, or fine and costs. Previously, this statute had also authorized the Warden as a determining official. These amendments also conform to delegated authority (28 CFR 0.171(g)) from the Attorney General to United States Attorneys regarding findings on retention by the inmate of property in excess of that which is by law exempt from being taken on civil process for debt. A discussion of the specific changes follows.

In § 571.50, the introductory paragraph and paragraph (a) are revised to identify clearly the applicability of the regulations. There is no change in the intent of these paragraphs. Paragraph (b) is amended to remove references to the Warden and the Regional Director as determining officials, to include reference to the United States Attorneys, and to remove unnecessary explanatory information.

In § 571.51, paragraph (b) has been revised for editorial purposes. There is no change in the intent of this paragraph.

In § 571.52, paragraphs (a) and (b) have been revised for editorial purposes. There is no change in the intent of these paragraphs. Paragraph (c) has been amended to remove a reference to the Warden as a determining official.

Former § 571.53 has been removed. Removal of this provision is necessary because the Warden no longer has the authority to determine an inmate's ability to pay his or her fine or fine and costs. Former § 571.56 has also been removed, because the final determination as to the retention of property which is reasonably necessary for the inmate's support or that of his or her family has been delegated by the Attorney General to United States Attorneys.

The material in §§ 571.54 and 571.55 has been redesignated and revised as new §§ 571.53 and 571.54.

New § 571.53 restates material formerly in old § 571.54. Paragraph (a) is revised to specify that an inmate must apply to the U.S. Magistrate Judge in the district where the inmate is incarcerated to determine whether the inmate is indigent for the purpose of determining the inmate's ability to pay his or her fine, or fine and costs. As revised, paragraph (b) removes the condition of a determination of non-indigency by the Warden before an inmate may elect to apply to the U.S. Magistrate Judge. This paragraph still directs institution staff to offer to send all forms and information to the U.S. Magistrate Judge for the inmate. Paragraph (c) has been revised for editorial purposes. There is no change in the intent of this paragraph. Paragraph (d) has been revised to include reference to the United States Attorney as a determining official.

New § 571.54 restates material in old § 571.55. Paragraphs (a), (b) and (c) have been revised for editorial purposes. There is no change in the intent of these paragraphs. A new paragraph (d) is added parallel the provisions in new § 571.53(d) for forwarding a referral package to the appropriate United States Attorney subsequent to a finding of non-indigency.

Because these changes impose no new restrictions on inmates and either conform to statutory requirements, other delegated authority, or are administrative in nature, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant economic impact on a substantial number of small entities, within the definition of the Act. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

List of Subjects in 28 CFR Part 571

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 571 in subchapter D of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER D—COMMUNITY PROGRAMS AND RELEASE

PART 571—RELEASE FROM CUSTODY

1. The authority citation for 28 CFR part 571 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3565, 3568–3569 (Repealed in part as to offenses committed on or after November 1, 1987), 3582, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166, and 4201–4218 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5031–5042; 28 U.S.C. 509, 510; U.S. Const., Art. II, Sec. 2; 28 CFR 0.95–0.99, 1.1–1.10.

2. § 571.50 is revised to read as follows:

§ 571.50 Purpose and scope.

This subpart establishes procedures for processing a fine, or fine and costs ordered by the court with respect to an inmate convicted of an offense committed before November 1, 1987. When the court orders a prisoner's confinement until payment of a fine, or fine and costs under 18 U.S.C. 3565, the Bureau of Prisons shall confine that inmate until the fine, or fine and costs are paid, unless the inmate qualifies for release under 18 U.S.C. 3569.

(a) An inmate held on the sole basis of his/her inability to pay such fine, or fine and costs, and whose non-exempt property does not exceed $20.00 may request discharge from imprisonment on the basis of indigency (see 18 U.S.C. 3569).

(b) Under 18 U.S.C. 3569, the determination of indigency may be made by a U.S. Magistrate Judge. Where the U.S. Magistrate Judge makes a finding of non-indigency based on the inmate's application for a determination of his ability to pay the committed fine, or fine and costs, staff shall refer the application to the appropriate United States Attorney for the purpose of making a final decision on the inmate's discharge under 18 U.S.C. 3569. It is to be noted that 18 U.S.C. 3569 provides for confining an inmate for nonpayment of a committed fine, or fine and costs.

3. In § 571.51, the concluding text is removed and paragraph (b) is revised as follows:

§ 571.51 Definitions.

* * * * *

(b) *Costs*—Monetary costs of the legal proceeding which the court may levy. Imposition of costs is similar in legal effect to imposition of a fine. The court may also impose costs with a condition of imprisonment.

* * * * *

4. § 571.52 is revised to read as follows:

§ 571.52 Procedures—committed fines.

(a)(1) Promptly after the inmate's commitment, staff shall inform the inmate that there is a committed fine, or fine and costs on file, as part of the sentence. Staff shall then impound the inmate's trust fund account until the fine, or fine and costs is paid, except—

(i) The inmate may spend money from his/her trust fund account for the purchase of commissary items not exceeding the maximum monthly allowance authorized for such purchases.

(ii) Staff may authorize the inmate to make withdrawals from his/her trust fund account for emergency family, emergency personal needs or furlough purposes.

(2) This rule of impounding an inmate's trust fund account applies only when the inmate is confined in a federal institution. It does not apply to a federal inmate confined in a state institution or a contract community-based facility.

(b) If the inmate pays the committed fine, or fine and costs, or staff have verified payment, staff shall document payment in the appropriate file and release the inmate's trust fund account from impoundment.

(c) Staff shall interview the inmate with an unpaid committed fine at least 75 days prior to the inmate's release date. Staff shall explain to the inmate that to secure release without paying the committed fine, or fine and costs in full, the inmate must make an application, on the appropriate form, to the U.S. Magistrate Judge for determination as to whether the inmate can be declared indigent under 18 U.S.C. 3569.

§§ 571.53 and 571.56 [Removed]

5. §§ 571.53 and 571.56 are removed.

6. §§ 571.54, 571.55 are redesignated as new §§ 571.53 and 571.54 and revised as follows:

§ 571.53 Determination of indigency by U.S. Magistrate—inmates in federal institutions.

(a) An inmate with a committed fine, or fine and costs who is imprisoned in a federal institution may make application for a determination of indigency directly to the U.S. Magistrate Judge in the district where the inmate is imprisoned under 18 U.S.C. 3569.

(b) After completion of the application, staff shall offer to forward the completed forms and any other applicable information the inmate chooses to the U.S. Magistrate Judge.

(c) If the U.S. Magistrate Judge finds that the inmate is indigent, the U.S. Magistrate Judge will administer the oath to the inmate. The inmate shall be released no earlier than the regularly established release date.

(d) If the U.S. Magistrate Judge finds that the inmate is not indigent, Bureau staff shall forward a referral package to the appropriate United States Attorney for a final determination as to the inmate's ability to pay the committed fine, or fine and costs.

§ 571.54 Determination of indigency by U.S. Magistrate Judge—inmates in contract community-based facilities or state institutions.

(a) Inmates with a committed fine, or fine and costs may be transferred to contract community-based facilities, state institutions as boarders, or state institutions for service of federal sentences running concurrently with state sentences.

(b) Inmates with a committed fine, or fine and costs may be committed directly to contract community-based facilities or state institutions as boarders or may be designated to state institutions for service of federal sentences running concurrently with state sentences.

(c) An inmate with a committed fine, or fine and costs who is imprisoned in a contract community-based facility or state institution and desires to make application for a determination of ability to pay the committed fine, or fine and costs under 18 U.S.C. 3569 may make application directly to the U.S. Magistrate Judge.

(d) Upon receipt of a finding by the U.S. Magistrate Judge that the inmate is not indigent, Bureau staff shall forward a referral package to the appropriate United States Attorney for a final determination as to the inmate's ability to pay the committed fine, or fine and costs.

[FR Doc. 98–2091 Filed 1–27–98; 8:45 am]

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Part IV

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Allocation of 1998 Essential Use Allowances; Interim Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–5953–6]

RIN 2060–AG48

Protection of Stratospheric Ozone: Allocation of 1998 Essential Use Allowances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: With this action, EPA allocates essential-use allowances for the 1998 control period. The United States nominated specific uses of ozone-depleting substances (ODS) as essential uses for 1998 under the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol). The Parties to the Protocol subsequently approved production and import of ODS for the uses nominated by the United States in the quantities specified. In today's action, EPA allocates essential use allowances based on the quantities approved by the Parties for the nominated uses. Essential use allowances permit a person to obtain controlled ozone-depleting substances as an exemption to the January 1, 1996 regulatory phaseout of production and import. Essential use allowances are allocated to a person for exempted production or importation of a specific quantity of a controlled substance solely for the designated essential purpose.

DATES: This action is effective January 28, 1998. EPA will consider all written comments received by February 27, 1998, to determine if any change to this action is necessary.

ADDRESSES: Comments on and materials supporting this interim final rule are collected in Air Docket No. A–92–13, U.S. Environmental Protection Agency, 401 M Street, SW., Room M–1500, Washington, DC 20460. The Docket is located in room M–1500, First Floor, Waterside Mall at the address above. The materials may be inspected from 8 am until 4 pm Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials. Those wishing to notify EPA of their intent to submit adverse comments on this action should contact Tom Land, EPA, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, SW., Washington, DC 20460, (Docket # A–92–13), (202)–564–9185.

FOR FURTHER INFORMATION CONTACT: Tom Land, EPA, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, SW., Washington, DC 20460, (202)–564–9185 or The Stratospheric Ozone Hotline at (800)–296–1996.

SUPPLEMENTARY INFORMATION:

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I. Background

The Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) sets specific deadlines for the phaseout of production and importation of ozone depleting substances (ODS). At their Fourth Meeting in 1992, the signatories to the Protocol (the Parties) amended the Protocol to allow exemptions to the phaseout for uses agreed by the Parties to be essential. At the same Meeting, the Parties also adopted Decision IV/25, which established both criteria for determining whether a specific use should be approved as essential and a process for the Parties to use in making such a determination.

The criteria for an essential use as set forth in Decision IV/25 are the following:

"(1) that a use of a controlled substance should qualify as 'essential' only if:

(i) it is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and

(ii) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health;

(2) that production and consumption, if any, of a controlled substance for essential uses should be permitted only if:

(i) all economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and

(ii) the controlled substance is not available in sufficient quantity and quality from existing stocks of banked or recycled controlled substances, also bearing in mind the developing countries' need for controlled substances."

Decision IV/25 also sets out the procedural steps for implementing this process. It first calls for individual Parties to nominate essential uses. These nominations are then to be evaluated by the Protocol's Technology and Economic Assessment Panel (TEAP or the Panel) which makes recommendations to representatives of all Protocol Parties. The final decision on which nominations to approve is to be taken by a meeting of the Parties.

The initial cycle of implementing this Decision has been completed in the context of halons which were phased out of production at the end of 1993. This initial timetable separated nominations for halons from those for other ozone-depleting substances. EPA issued a **Federal Register** notice requesting nominations for essential uses of halons (February 2, 1993; 58 FR 6786). In response, the Agency received over ten nominations, but was able to work with applicants to resolve their near-term requirements. As a result, the U.S. did not nominate any uses for continued halon production in 1994. About a dozen other nations put forth nominations which were reviewed by the Technical and Economic Assessment Panel. Because the Panel determined that in each case alternatives existed or that the existing supply of banked halons was adequate to meet near-term needs, it did not recommend approval of any of the nominations. In November of 1993, at the Fifth Meeting, the Parties unanimously adopted the recommendation of the Panel not to approve any essential uses for the production or consumption of halons in 1994.

EPA issued a second notice for essential use nominations for halons on October 18, 1993 (58 FR 53722). These nominations covered possible production of halons in 1995 for essential uses. In response to this inquiry, EPA received no nominations.

Only one nomination (from France) was received by the TEAP for production and consumption of halons for an essential use in 1995. The TEAP did not recommend approval of this nomination.

EPA also issued a **Federal Register** notice requesting nominations for essential use applications which would need to continue beyond the 1996 phaseout of consumption and production allowances for CFCs, methyl chloroform, carbon tetrachloride, and hydrobromofluorocarbons (May 20, 1993, 58 FR 29410). EPA received 20 applications in response to this notice. For several of these applications, EPA determined that the criteria contained in Decision IV/25 had not been satisfied. For example, two applications sought CFCs for servicing existing air-conditioning equipment. EPA rejected these applications on the basis that if all economically feasible steps were taken prior to the 1996 phaseout, then adequate supplies of banked and recycled CFCs should be available. However, in rejecting these nominations, the United States noted that servicing existing air-conditioning and refrigeration equipment remains a major challenge to the successful transition from the use of CFCs and that a future nomination in this area might be necessary if a combination of retrofits, replacements, recycling, recovery at disposal, and banking do not adequately address these needs.

Of the responses to the **Federal Register** request for essential use applications, the United States submitted essential use nominations to the Protocol Secretariat for the following uses of CFCs: metered dose inhalers and other selected medical applications; a bonding agent for the Space Shuttle; aerosol wasp killers; limited use in a specified bonding agent and polymer application; and a generic application for laboratory uses under specified limitations. (Letter from Pomerance to UNEP, September 27, 1993).

Nominations from the U.S. and other countries for over 200 specific uses were submitted to the Montreal Protocol Secretariat and provided to the Technical and Economic Assessment Panel for review. In March 1994, the Panel issued the "1994 Report of the Technology and Economic Assessment Panel." The Report includes the Panel's recommendations for essential-use production and consumption exemptions. The Panel recommended that essential use exemptions be granted for nominations of: Methyl chloroform in solvent bonding for the Space Shuttle; CFCs used in metered dose inhalers; and specific controlled substances needed for laboratory and analytical applications. For each of the other nominations submitted, the TEAP determined that one or more of the criteria for evaluating an essential use had not been satisfied. For example, in the case of several of the U.S. nominations, the report states that alternatives are available and therefore the essential use exemption is not warranted.

In every year since 1994, the Parties have reviewed recommendations by the Technology and Economic Assessment Panel and made final decisions on essential use authorizations. Today's action follows decisions taken by the Parties after considering recommendations by the TEAP in 1996 and 1997.

In 1993, the Parties to the Protocol modified the timetable for submission of essential use nominations to combine both halons and all the other class I controlled substances (except methyl bromide) and to reduce the overall length of time between nomination and decision. According to Decision V/18, essential use nominations for halon consumption and production for 1995 and beyond, and essential use nominations for all the other class I controlled substances (except methyl bromide) for 1997 and beyond, must be submitted to the Secretariat prior to January 1st of the year prior to the year for which production and consumption is being sought. The Parties again revised the timetable for essential use nominations in Decision VIII/9 requiring submission by 31 January in the year in which decisions would be taken for subsequent years. EPA revised the domestic schedule accordingly so a **Federal Register** notice calling for essential use applications for class I controlled substances for future years is published prior to the Protocol deadline for submission to the Ozone Secretariat.

Decision V/18 directed the Technology and Economic Assessment Panel to develop a "handbook on essential use nominations" (Handbook). The July 1994 Handbook contained forms and instructions for how to apply for an essential-use exemption. Subsequent decisions by the Parties to the Protocol created additional criteria for essential use authorizations now reflected in the August 1997 Handbook. The Handbook may be obtained from the Stratospheric Protection Division, U.S. Environmental Protection Agency or the Ozone Secretariat of the Montreal Protocol in Nairobi.

II. Allocation of 1998 Essential Use Allowances

In today's action, EPA is allocating essential use allowances for the 1998 control period to the entities listed in Table I for exempted production or import of the specific quantity of class I controlled substances solely for the specified essential use.

TABLE I.—ESSENTIAL USES AGREED TO BY THE PARTIES TO THE PROTOCOL FOR 1998 AND ESSENTIAL USE ALLOWANCES

Company/entity	Class I controlled substance	Quantity (metric tonnes)
(i) Metered Dose Inhalers for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
International Pharmaceutical Aerosol Consortium (IPAC)—Abbott Laboratories, Armstrong Laboratories, Boehringer Ingelheim, Glaxo Wellcome, 3M, Rhone Poulenc Rorer, Schering-Plough Corporation.	CFC–11	1043.6
	CFC–12	2512.2
	CFC–114	338.0
Medisol	CFC–11	78.0
	CFC–12	132.0
	CFC–114	11.0
Aeropharm	CFC–11	83.0
	CFC–12	166.7
(ii) Cleaning, Bonding and Surface Activation Applications for the Space Shuttle Rockets and Titan Rockets		
National Aeronautics and Space Administration (NASA)/Thiokol Rocket	Methyl Chloroform	56.7
United States Air Force/Titan Rocket	Methyl Chloroform	3.4
(iii) Laboratory and Analytical Applications		
Global Exemption (Restrictions in Appendix G Apply)	All Class I Controlled Substances (except Group VI).	No (1)

[1] No quantity specified.

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The International Pharmaceutical Aerosol Consortium (IPAC) consolidated requests for an essential use exemption to be nominated to the Protocol as an agent of its member companies for administrative convenience. By means of a confidential letter to each of the companies listed above, EPA will allocate essential-use allowances separately to each company in the amount requested by it for the nomination.

Applications submitted by these companies requested class I controlled substances for uses claimed to be essential during the 1998 control period. The applications provided information in accordance with the criteria set forth in Decision VI/25 of the Protocol and the procedures outlined in the "Handbook on Essential Use Nominations." The applications request exemptions for the production and import of specific quantities of specific class I controlled substances after the phaseout as set forth in 40 CFR 82.4. The applications were reviewed by the U.S. government and nominated to the Protocol Secretariat for analysis by the Technical and Economic Assessment Panel (TEAP) and its Technical Option Committees (TOCs). The Parties to the Montreal Protocol approved the U.S. nominations for essential-use exemptions during meetings in 1995 and 1996. In today's action essential-use allowances are allocated to United States entities based on nominations decided upon by the Parties to the Protocol.

The 1998 global essential use exemption for analytical and laboratory applications published in today's rule imposes strict requirements both in § 82.13 and in Appendix G of this subpart. The restrictions for the global laboratory and analytical essential use exemption listed in Appendix G include requirements regarding purity of the class I controlled substances and the size of the containers. In addition, there are detailed reporting requirements in § 82.13 for persons that take advantage of the global laboratory and analytical essential-use exemption for class I controlled substances. The strict requirements are established because the Parties to the Protocol, and today's rule, do not specify a quantity of essential use allowances permitted for analytical and laboratory applications, but establish a global essential-use exemption, without a named recipient.

Any person obtaining class I controlled substances after the phaseout under the essential use exemptions published in today's rule is subject to all the restrictions and requirements in other sections of 40 CFR part 82, subpart A. Holders of essential-use allowances or persons obtaining class I controlled substances under the essential-use exemptions must comply with the recordkeeping and reporting requirements in § 82.13 of this subpart and the restrictions in Appendix G of this subpart.

Section 307(d) of the Clean Air Act Amendments of 1990 (CAA or the Act) states that in the case of any rule to which section 307(d) applies, notice of proposed rulemaking must be published in the **Federal Register** (CAA 307(d)(3)). The promulgation or revision of regulations under title VI of the CAA (relating to stratospheric ozone protection) is generally subject to section 307(d). However, section 307(d) does not apply to any rule referred to in subparagraphs (A) or (B) of section 553(b) of the Administrative Procedure Act (APA), 5 U.S.C. 551 et seq.

APA section 553(b) requires that any rule to which it applies be issued only after the public has received notice of, and an opportunity to comment on, the rule. However, APA section 553(b)(B) exempts from those requirements any rule for which the issuing agency for good cause finds that providing prior notice-and-comment would be impracticable, unnecessary or contrary to the public interest. Thus, any rule for which EPA makes such a finding is exempt from the notice-and-comment requirements of both APA section 553(b) and CAA section 307(d).

EPA believes that the circumstances presented here provide good cause to take this action without prior notice and comment. EPA finds that providing prior notice and comment would be impracticable and contrary to the public interest because the ozone-depleting substances need to be available to the listed entities in 1998 for the health and safety of society as defined in the Protocol essential use criteria. The allocation of essential-use allowances for CFCs to the manufacturers of metered-dose inhalers will ensure the availability of treatment in order to protect the health of U.S. patients with asthma and chronic obstructive pulmonary disease. The allocation of essential-use allowances for methyl chloroform for the manufacture of the Thiokol/Space Shuttle Rockets and the Titan Rockets will provide a guarantee of safety from explosions that are unacceptable risks to both national programs.

Nonetheless, EPA is providing 30 days for submission of public comments following today's action. EPA will consider all written comments submitted in the allotted time period to determine if any change to this action is necessary.

Section 553(d) of the APA generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. However, APA section 553(d)(1) excepts from this provision any action that grants or recognizes an exemption or relieves a restriction. Since today's action grants an exemption from the phaseout of production and consumption of most class I ozone-depleting substances, EPA is making this action immediately effective to ensure the availability of ozone-depleting substances for essential uses during the 1998 control period.

III. Additional Changes in the Essential Use Process To Be Published in Subsequent Proposed Rulemaking

EPA will be publishing a Notice of Proposed Rulemaking that includes changes to the essential-use provisions published in the **Federal Register** on May 10, 1995. One of the proposals will be a simplification of the process for allocating essential-use allowances by providing that allowances will be allocated through a Notice published in the **Federal Register** rather than through a Final Rulemaking. EPA will propose allocating essential-use allowances according to the quantities approved by the Parties to the Protocol for which applications were submitted to the U.S. government. EPA will be seeking comments on a simplification of the current allocation process.

EPA will also be proposing changes to the reporting requirements for holders of essential-use allowances in the subsequent Notice of Proposed Rulemaking. EPA will propose changes to the reporting requirements to allow the U.S. to gather information in accordance with Decision VIII/9, paragraph 9. Under the reporting format associated with Decision VIII/9, paragraph 9, Parties to the Protocol are requested to report data regarding essential uses, including inventories of CFCs, quantities of CFCs imported and produced for essential uses, the amount of CFCs that are actually filled into metered-dose inhalers, and stockpiles of CFCs remaining at the end of a control period.

IV. Summary of Supporting Analysis

A. Unfunded Mandates Reform Act and Regulatory Flexibility Act

Since this action is not subject to notice-and-comment rulemaking requirements under the APA or any other law, it is also not subject to sections 202, 204 or 205 of the Unfunded Mandates Reform Act (UMRA). In addition, since this action does not impose annual costs of $100 million or more on small governments or uniquely affect small governments, the Agency has no obligations under section 203 of UMRA. Moreover, since this action is not subject to notice-and-comment requirements under the APA or any other statute as stated above, it is not subject to section 603 or 604 of the Regulatory Flexibility Act.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by EPA that this rule is not a "significant regulatory action" within the meaning of the Executive Order.

C. Paperwork Reduction Act

This action does not add any information collection requirements or increase burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) previously approved the information collection requirements contained in the final rule promulgated on May 10, 1995, and assigned OMB control number 2060–0170 (EPA ICR No. 1432.16).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

D. Executive Order 12875

Today's action does not impose any unfunded mandate upon any State, local, or tribal government; therefore, Executive Order 12875 does not apply to this rulemaking.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Ozone layer, Reporting and recordkeeping requirements.

Dated: January 16, 1998.

Carol M. Browner,

Administrator.

40 CFR part 82 is to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart A—Production and Consumption Controls

2. Section 82.4(r)(2) is amended by revising the table to read as follows:

§ 82.4 Prohibitions.

* * * * *

(r) * * *

(2) * * *

TABLE I.—ESSENTIAL USES AGREED TO BY THE PARTIES TO THE PROTOCOL FOR 1998 AND ESSENTIAL USE ALLOWANCES

Company/entity	Class I controlled substance	Quantity (metric tonnes)
(i) Metered Dose Inhalers for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
International Pharmaceutical Aerosol Consortium (IPAC)[1]—Abbott Laboratories, Armstrong Laboratories, Boehringer Ingelheim, Glaxo Wellcome, 3M, Rhone Poulenc Rorer, Schering—Plough Corporation.	CFC–11	1043.6
	CFC–12	2512.2
	CFC–114	338.0
Medisol	CFC–11	78.0
	CFC–12	132.0
	CFC–114	11.0
Aeropharm	CFC–11	83.0
	CFC–12	166.7
(ii) Cleaning, Bonding and Surface Activation Applications for the Space Shuttle Rockets and Titan Rockets		
National Aeronautics and Space Administration (NASA)/Thiokol Rocket	Methyl Chloroform	56.7
United States Air Force/Titan Rocket	Methyl Chloroform	3.4

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TABLE I.—ESSENTIAL USES AGREED TO BY THE PARTIES TO THE PROTOCOL FOR 1998 AND ESSENTIAL USE ALLOWANCES—Continued

Company/entity	Class I controlled substance	Quantity (metric tonnes)
(iii) Laboratory and Analytical Applications		
Global Exemption (Restrictions in Appendix G Apply)	All Class I Controlled Substances (except Group VI).	[2]

[1] IPAC consolidated requests for an essential use exemption to be nominated to the Protocol as an agent of its member companies for administrative convenience. By means of a confidential letter to each of the companies listed above, EPA will allocate essential-use allowances separately to each company in the amount requested by it for the nomination.
[2] No quantity specified.

* * * * *

[FR Doc. 98–2082 Filed 1–27–98; 8:45 am]
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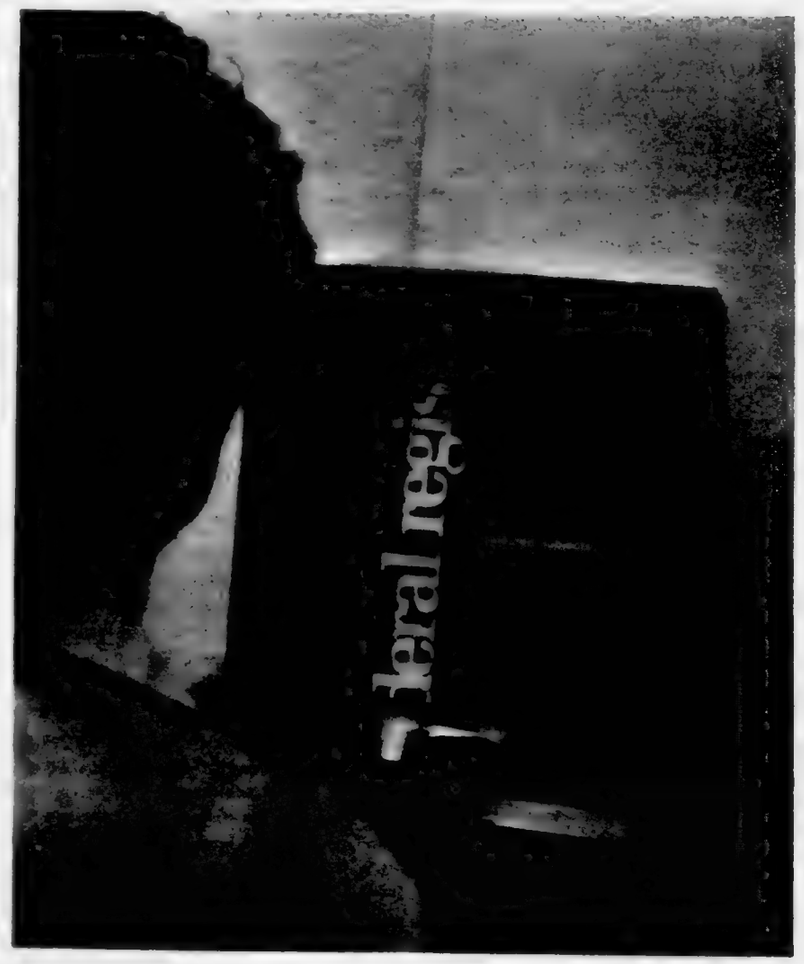
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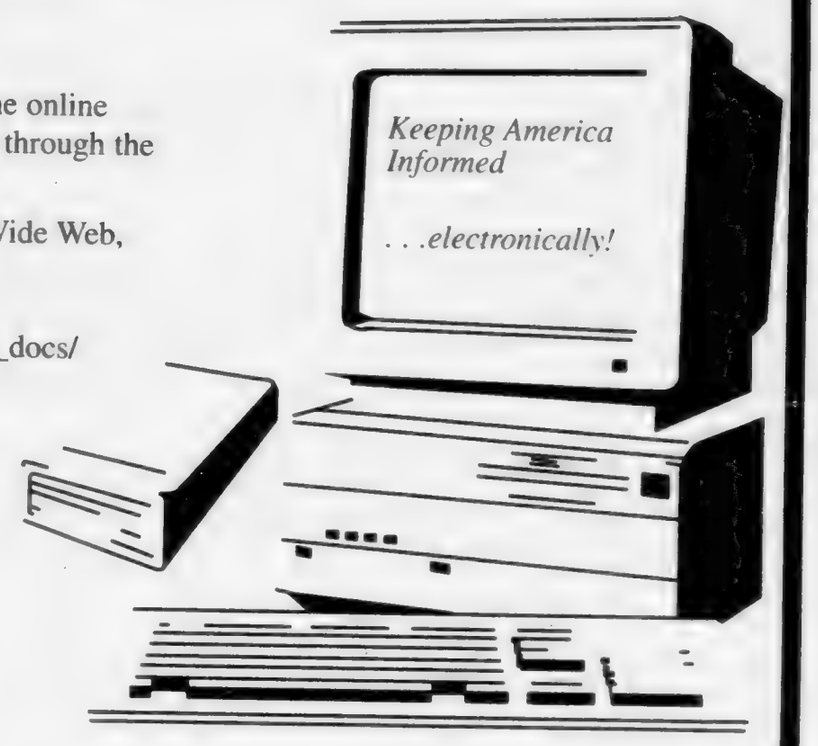
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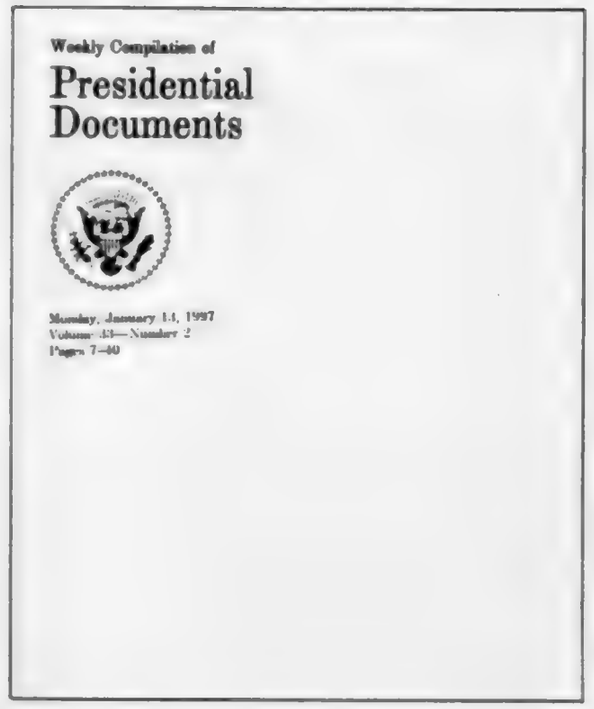
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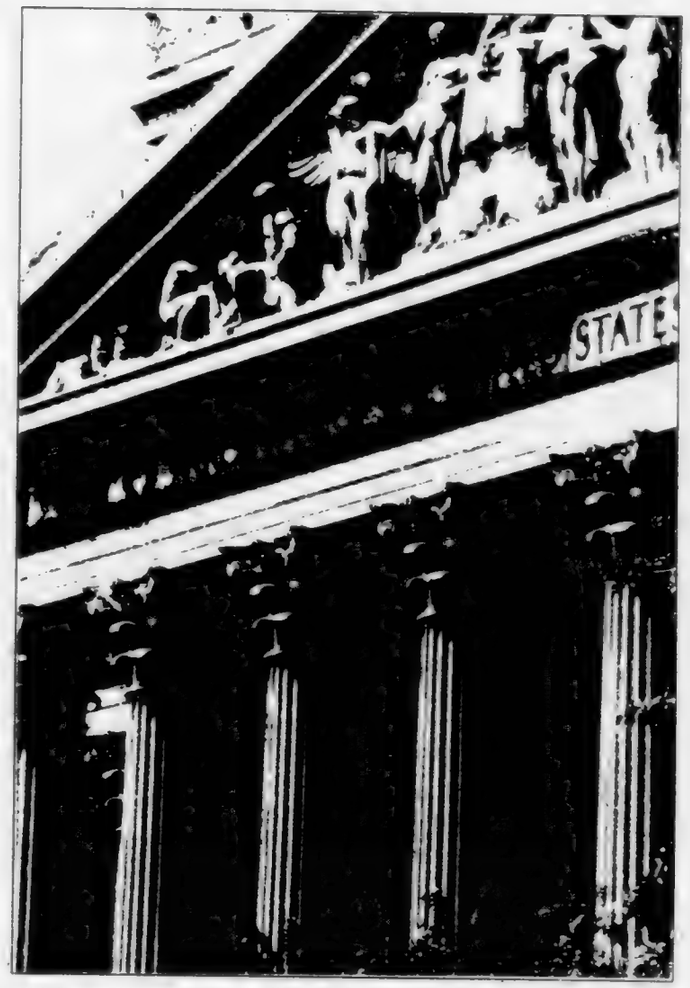
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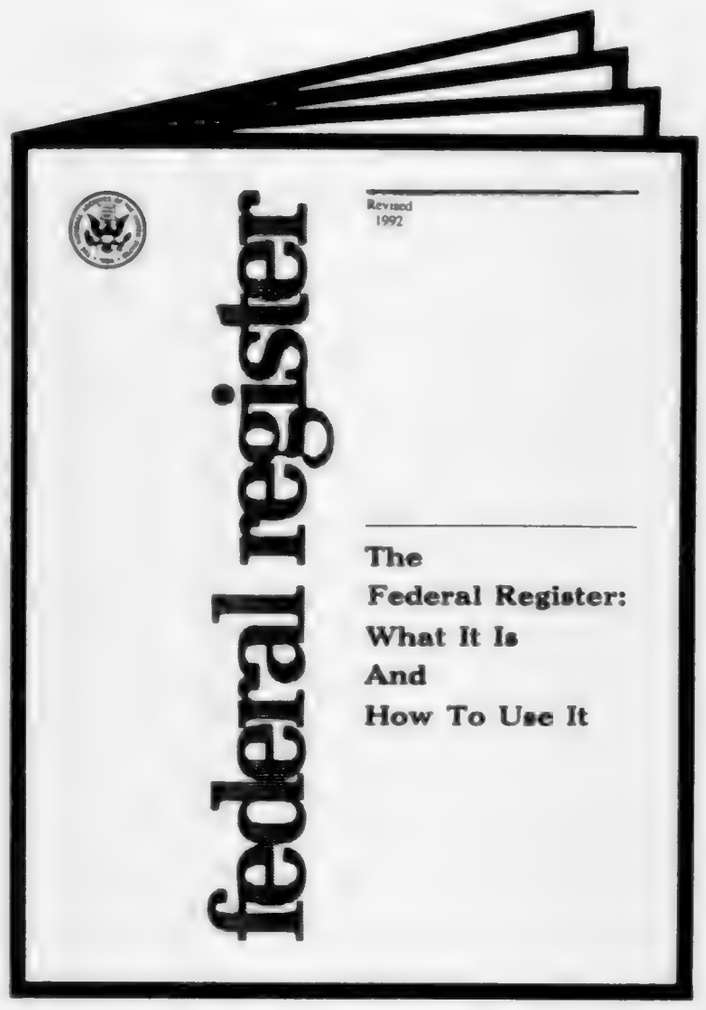
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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 63, No. 19
Thursday, January 29, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1605

Correction of Administrative Errors

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Interim rule with request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing an amendment to its final rules on correction of administrative errors affecting Thrift Savings Plan (TSP) accounts. The amendment provides for attribution of makeup contributions from a participant to the appropriate prior year in which the contributions should have been made. Such makeup contributions are permitted only if aggregation with other contributions made in (or with respect to) the appropriate prior year would not result in contributions in excess of the limits imposed by sections 402(g) and 415(c) of the Internal Revenue Code (I.R.C.).

DATES: *Effective date:* January 29, 1998. *Comment date:* March 30, 1998.

ADDRESSES: Send comments to Elizabeth S. Woodruff, Associate General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Elizabeth S. Woodruff, (202) 942–1661.

SUPPLEMENTARY INFORMATION: A final rule governing the correction of administrative errors was published in the **Federal Register** on December 24, 1996 (61 FR 68464). That rule revised the final regulations that were published in the **Federal Register** on December 4, 1987 (52 FR 46314). Both sets of regulations required a limitation on TSP makeup contributions when a retroactive adjustment to an employee's pay included a correction for the employee's inability to have made TSP contributions during the period of retroactivity. At the time these regulations were issued, the Board interpreted I.R.C. 402(g) and its discussions with the Internal Revenue Service (IRS) as requiring that such makeup contributions always be counted against the IRS deferral limit of the year in which they were actually made, rather than the limit of the year to which they were attributable.

On June 25, 1997, a decision was issued in the matter of *Kahmann* v. *Reno*, 967 F. Supp. 731 (N.D.N.Y.), holding that application of the current IRS deferral limit to makeup contributions for prior years was contrary to the purpose of a make-whole award. The court required the participant's employing agency to calculate contributions for each pay period for which the employee could have made a TSP contribution and to deposit the appropriate contributions (and lost earnings) to the employee's account without regard to the current deferral limit.

Because this holding involved the Board's interpretation of I.R.C. 402(g), the Board requested guidance from the IRS on whether a participant's makeup contributions to the TSP in the current year could be attributed to the years in which the contributions should have been made for purposes of the limit on annual contributions found in I.R.C. 402(g). The IRS advised the Board that such makeup contributions could indeed be so attributed.

For this reason, § 1605.4(c)(1) of the Board's error correction regulations is being amended to provide that makeup contributions to the TSP will be attributed to the year in which the contributions should have been made to determine compliance with the (applicable) IRS deferral limit. The board intends to apply this rule to all situations in which contributions should have been made in an earlier year, regardless of the reason the employee was improperly not permitted to contribute to the TSP. Because this change could affect the ongoing makeup contributions of some participants, it is being given immediate effect.

Regulatory Flexibility Act

I certify that this amendment will not have a significant economic impact on a substantial number of small entities. It will only affect TSP participants.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking and 30-day Delay of Effective Date

Under 5 U.S.C. 553(b)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. These regulations facilitate correction of errors in the amount of contributions made to Thrift Savings Plan accounts. Prompt implementation of the regulations will provide necessary guidance to employing agencies and TSP participants.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, section 201, Public Law 104–4, 109 Stat. 48, 64, the effect of these regulations on State, local, and tribal governments and on the private sector has been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by any State, local, and tribal governments in the aggregate, or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64–65, is not required.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), the Board submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before the publication of this rule in today's **Federal Register**. This rule is not a major rule as defined in section 804(2) of title 5, United States Code.

List of Subjects in 5 CFR Part 1605

Claims, Government employees, Pensions, Retirement.

Roger W. Mehle,
Executive Director.

Federal Retirement Thrift Investment Board

For the reasons set forth in the preamble, part 1605 of chapter VI of title

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5 of the Code of Federal Regulations is amended as follows:

PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

1. The authority citation for part 1605 continues to read as follows:

Authority: 5 U.S.C. 8351 and 8474.

2. Section 1605.2 is amended by revising paragraph (c)(5) to read as follows:

§ 1605.2 Makeup of missed or insufficient contributions.

* * * * *

(c) * * *

(5) When establishing a schedule of makeup contributions, the employing agency must review any schedule proposed by the affected participant, as well as the participant's prior TSP contributions, if any, to determine whether the makeup contributions, when combined with prior contributions, would exceed the annual contribution limit(s) contained in sections 402(g) and 415 of the Internal Revenue Code (I.R.C.) (26 U.S.C. 402(g) and 415) for the prior year(s) with respect to which the contributions are being made.

(i) The employing agency must not permit contributions that, when combined with prior contributions, would exceed the applicable annual contribution limit(s) contained in I.R.C. 402(g) and 415.

(ii) A schedule of makeup contributions may be suspended if a participant has insufficient net pay to permit the makeup contributions. If this happens, the period of suspension should not be counted against the maximum number of pay periods to which the participant is entitled in order to complete the schedule of makeup contributions.

* * * * *

3. Section 1605.4 is amended by revising paragraph (c)(1) to read as follows:

§ 1605.4 Back pay awards and other retroactive pay adjustments.

* * * * *

(c)(1) Makeup employee contributions required under paragraphs (a) and (b) of this section must be computed before the back pay or other retroactive pay adjustment is made. The makeup employee contributions must be deducted from the back pay or other retroactive pay adjustment and contributed to the TSP. However, contributions must not be made that would cause the participant to exceed the annual contribution limit(s) contained in sections 402(g) and 415 of the Internal Revenue Code (I.R.C.) (26 U.S.C. 402(g) and 415) for the prior year(s) with respect to which the contributions are being made, taking into consideration the TSP contributions already made in (or with respect to) that year.

* * * * *

[FR Doc. 98–2166 Filed 1–28–98; 8:45 am]
BILLING CODE 6760–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 979

[Docket No. FV98–979–1 IFR]

Melons Grown in South Texas; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule decreases the assessment rate established for the South Texas Melon Committee (Committee) under Marketing Order No. 979 for the 1997–98 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of melons grown in South Texas. Authorization to assess Texas melon handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1997–98 fiscal period began October 1 and ends September 30. The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective January 30, 1998. Comments received by March 30, 1998, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Cynthia Cavazos or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501; telephone: (956) 682–2833, Fax: (956) 682–5942 or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 156 and Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas melon handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable melons beginning October 1, 1997, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 1997–98 and subsequent fiscal periods from $0.07 to $0.04 per carton.

The Texas melon marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of South Texas melons. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–97 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee, in a telephone vote, unanimously recommended 1997–98 administrative expenses of $100,000 for personnel, office, and the travel portion of the compliance budget. These expenses were approved in September 1997. The assessment rate and funding for research projects, promotion, and the road guard station maintenance portion of the compliance budget were to be recommended at a later Committee meeting.

The Committee subsequently met on December 16, 1997, and unanimously recommended 1997–98 expenditures of $158,200 and an assessment rate of $0.04 per carton of melons. In comparison, last year's budgeted expenditures were $308,000. The assessment rate of $0.04 is $0.03 less than the rate currently in effect. The Committee voted to lower its assessment rate and use more of the reserve to cover its expenses. The assessment rate decrease is necessary to bring expected assessment income closer to the amount necessary to administer the program for the 1997–98 fiscal period. At the current rate, assessment income would exceed anticipated expenses by about $112,700, and the projected reserve of $234,269 on September 30, 1998, would exceed the level the Committee believes to be adequate to administer the program.

Major expenses recommended by the Committee for the 1997–98 fiscal period include $84,500 for personnel and administrative expenses, $40,500 for compliance, $23,200 for research projects, and $10,000 for promotion. Budgeted expenses for these items in 1996–97 were $84,500, $115,500, $108,000, and $0, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas melons. Melon shipments for the year are estimated at 3,870,000 cartons, which should provide $154,800 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently $228,669) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses; § 979.44).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1997–98 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 33 producers of South Texas melons in the production area and approximately 16 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of South Texas melon producers and handlers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 1997–98 and subsequent fiscal periods from $0.07 to $0.04 per carton. The Committee unanimously recommended 1997–98 expenditures of $158,200 and an assessment rate of $0.04 per carton of melons. In comparison, last year's budgeted expenditures were $308,000. The assessment rate of $0.04 is $0.03 less than the rate currently in effect. At the rate of $0.07 per carton and an estimated 1998 melon production of 3,870,000 cartons, the projected reserve on September 30, 1998, would exceed the level the Committee believes to be adequate to administer the program. The Committee decided that an assessment rate of less than $0.04 would not generate the income necessary to administer the program with an adequate reserve.

Major expenses recommended by the Committee for the 1997–98 fiscal period include $84,500 for personnel and administrative expenses, $40,500 for compliance, $23,200 for research projects, and $10,000 for promotion. Budgeted expenses for these items in 1996–97 were $84,500, $115,500, $108,000, and $0, respectively.

Melon shipments for the year are estimated at 3,870,000 cartons, which should provide $154,800 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently $228,669) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses; § 979.44).

Recent price information indicates that the grower price for the 1997–98 marketing season will range between $7.00 and $9.00 per carton of cantaloupes and between $5.00 and $7.00 per carton of honeydew melons.

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Therefore, the estimated assessment revenue for the 1997–98 fiscal period as a percentage of total grower revenue will range between .006 and .004 percent for cantaloupes and between .008 and .006 percent for honeydew melons.

This action reduces the assessment obligation imposed on handlers. While this rule imposes some additional costs on handlers, the costs are minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the South Texas melon industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 16, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action will not impose any additional reporting or recordkeeping requirements on either small or large South Texas melon handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action reduces the current assessment rate for South Texas melons; (2) the 1997–98 fiscal period began on October 1, 1997, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable melons handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 979 is amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 979 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 979.219 [Amended]

2. Section 979.219 is amended by removing the words "October 1, 1998," and adding in their place the words "October 1, 1997," and by removing "$0.07" and adding in its place "$0.04."

Dated: January 23, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–2123 Filed 1–28–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV97–989–3 FIR]

Raisins Produced From Grapes Grown in California; Modifications to the Raisin Diversion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule modifying the raisin diversion program (RDP) currently authorized under the Federal marketing order for California raisins. The marketing order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). Under the RDP, producers are issued certificates representing reserve raisins for voluntarily reducing their raisin production in order to bring raisin supplies more closely in line with market needs. Producers may then sell these certificates to handlers, who, in turn, can redeem the certificates for reserve raisins. This rule continues in effect various modifications to the diversion program to improve compliance and bring the program in line with current industry practices. Improving compliance with the RDP helps ensure equity among all producers who participate in the program, and helps maintain the integrity of the RDP.

EFFECTIVE DATE: March 2, 1998.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989, both as amended (7 CFR part 989), regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

This rule continues in effect modifications to the raisin diversion program currently authorized under the Federal marketing order for California raisins. Under the RDP, producers are issued certificates representing reserve raisins for voluntarily reducing their raisin production in order to bring raisin supplies more closely in line with market needs. Producers may then sell these certificates to handlers, who, in turn, can redeem the certificates for reserve raisins. This rule makes various modifications to the RDP to improve compliance and bring the RDP in line with current industry practices. Improving compliance with the RDP helps ensure equity among all producers who participate in the program, and helps maintain the integrity of the RDP.

The Federal marketing order for California raisins provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage of the crop must be held by handlers in a reserve pool (or reserve) for the account of the Committee. Reserve pool raisins are disposed through certain programs authorized under the order. For example, reserve raisins may be sold by the Committee to handlers for sale to any market; exported to authorized countries; carried over as a hedge against a short crop the following year; or may be disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. The RDP is another program concerning reserve pool raisins authorized under the order, and may be used as a means for controlling overproduction. The RDP is described in the following paragraphs.

Pursuant to § 989.56 of the order, the Committee meets by November 30 of each crop year to review raisin data, including information on production, supplies, market demand, and inventories. If the Committee determines that the available supply of raisins, including those in the reserve pool, exceeds projected market needs, it can decide to implement a diversion program, and announce the amount of tonnage eligible for diversion during the subsequent crop year. Producers who wish to participate in the RDP must submit an application to the Committee. Such producers then curtail their production by vine removal or some other means established by the Committee and receive a certificate from the Committee which represents the quantity of raisins diverted. Producers sell these certificates to handlers who pay producers for the free tonnage applicable to the diversion certificate minus the established harvest cost for the diverted tonnage. Handlers redeem the certificates by presenting them to the Committee and paying an amount equal to the established harvest cost plus payment for receiving, storing, fumigating, handling, and inspecting the tonnage represented on the certificate. The Committee then gives the handler raisins from the reserve pool in an amount equal to the tonnage represented by the diversion certificate.

Section 989.156 of the order's administrative rules and regulations prescribes additional procedures for the RDP. At a meeting on August 14, 1997, the Committee unanimously recommended that various changes be made to these additional RDP procedures to improve compliance and bring the RDP in line with current industry practices.

The first change to the RDP recommended by the Committee concerns references throughout § 989.156 to partial production units. Such references are contained in paragraphs (d), (h)(2), (h)(3), (i), (s)(1), and (s)(3) of § 989.156. As defined in § 989.156(o), a production unit is a clearly defined geographic area with permanent boundaries (either natural or man-made). For example, a production unit could be 30 acres of raisins surrounded by a permanent road on two sides and permanent fencing on the other two sides.

Partial production units have been allowed under the RDP in past years. For instance, in the 30-acre production unit example, three rows of vines from that unit could qualify as a partial production unit under the RDP. Under § 989.156(s)(3) of the order's administrative rules and regulations, the determination of the tonnage allowed for acreage removed for such a partial unit would be computed by multiplying the previous year's tonnage produced and verified on the entire unit by the ratio of the acreage removed divided by the acreage contained in the total production unit. However, the Committee is concerned that some producers may be removing weak vines in a production unit and getting credit under the RDP for an inflated amount of tonnage. In the 30-acre example, a producer could have an average past production of 2.2 tons of raisins on the entire unit, remove three rows of low-producing vines that averaged only 1.5 tons of raisins per acre, and get credit in the RDP for 2.2 tons of raisins per acre. Although § 989.56(a) of the order specifies a cap of 2.75 tons of raisins per acre for an approved production unit (which can be changed through informal rulemaking), the Committee is still concerned that actual production on a partial unit could be inflated.

Thus, the Committee recommended that partial production units no longer be accepted as part of the RDP. This change will help ensure that producers who participate in an RDP do not receive credit for an inflated amount of tonnage and gain a financial advantage over other producers. This change will help ensure equity among all producers who participate in the program, and help maintain the integrity of the RDP.

In addition, the Committee believes that this change will improve the accuracy of the amount of tonnage accepted into the RDP. When an RDP is established, a quantity of raisins equivalent to the amount diverted would be made available in the subsequent crop year from the prior year's reserve. This RDP diverted tonnage from the reserve is included in the Committee's marketing policy computations for that year and subject to free and reserve percentages. Thus, it is important for the Committee to have as accurate a figure as possible for RDP tonnage. The Committee believes that not allowing partial production units into the RDP will improve the accuracy of this figure. Appropriate changes have been made to the applicable paragraphs to implement this recommended change.

According to Committee staff, most of the RDP applications over the years have been for full production units. The partial unit authority has typically been used by a producer desiring to receive credit under the RDP for a few weak rows of vines, which usually amounts to less than an acre. Thus, this change is not expected to adversely impact RDP participants.

The second change recommended by the Committee concerns paragraph (g) of § 989.156 regarding procedures to verify whether producers under the RDP are curtailing their production. This section

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currently specifies that committees of industry persons may be established to serve as agents of the Committee in assuring producer compliance with the RDP. These groups of industry persons may be furnished approved RDP applications and are to advise the Committee on the progress of the diversion within a particular district.

Such industry committees have been utilized during only one season since the inception of the RDP in 1985. Committee staff has assumed the functions of monitoring producer diversion and assuring program compliance. Thus, the Committee recommended that reference to these RDP industry committees be removed from § 989.156(g) of the order's administrative rules and regulations. This change brings RDP procedures in line with current industry practices.

A third change to the RDP recommended by the Committee concerns paragraph (h) of § 989.156 regarding compliance. Paragraph (h)(1) of § 989.156 currently specifies that an approved applicant must remove or spur-prune vines to preclude grapes from being produced and harvested on the production unit involved in the program: *Provided*, That vine removal may be the only acceptable means of diversion in some seasons as determined by the Committee. If the Committee representatives or agents determine that there is an average of more than four bunches per vine remaining on a properly spur-pruned production unit, the producer must be notified in writing and given 2 weeks to remove such bunches.

The Committee recommended that this section be modified to remove the impression that spur-pruning is the only acceptable method of diverting the crop, other than removing the vines altogether. Other methods such as spraying with certain substances should also be allowed. Producers should be allowed to remove and destroy the bunches of grapes by whatever method they choose in order to receive a diversion certificate. The Committee also recommended that the word "acceptable" in the first sentence in § 989.156(h)(1) be removed because it is not necessary. In addition, the Committee recommended that the section be modified to strengthen the requirement regarding producer notification of noncompliance with the RDP. Specifically, Committee staff must notify producers "immediately by certified mail," in writing, and give producers 2 weeks to remove extra bunches. The Committee believes that this added language will strengthen producer compliance with the RDP.

The Committee also recommended that paragraph (h)(3) of § 989.156 concerning failure to divert be revised to specify that any producer who has more than one production unit and fails to divert on an approved production unit may be denied the opportunity to participate in the next RDP on all of that producer's production units. The current provisions specify that the producer should be denied participation, and not the specific production unit. However, the provisions have been interpreted so that producers only have been denied the opportunity to participate in the next RDP on the unit that was not properly diverted, not all of that producer's units. The clarification will eliminate the confusion and is expected to provide producers more incentive to remain in compliance with the RDP because the clarified provisions specify that the failure to comply could mean denial to participate on any of that producer's production units in the next RDP. Thus, this provision is expected to strengthen producer compliance with the RDP which will help ensure that the integrity of the program is maintained.

The fourth change to the RDP recommended by the Committee concerns paragraph (o) of § 989.156. This section defines a production unit. As previously mentioned, a production unit is a clearly defined geographic area with permanent boundaries (either natural or man-made). Under the RDP, producers must be able to document to the Committee the previous year's production data for that specific area by means of sales receipts or other delivery or transfer documents which indicate the creditable fruit weight delivered to handlers from that specific area. Additional criteria are specified for new production units and existing units that may have been transferred to another producer.

The Committee believes that additional information may be necessary in some cases to verify the appropriate production figure to apply to a production unit. There have been concerns that some producers have inflated their production units under past RDP's by reporting statistics showing higher than actual raisin production. For example, since diversion certificate tonnage is based on the tons of raisins delivered per acre during the prior year, producers could inflate their tonnage by acquiring raisins from another source and adding them to deliveries from their production units, thereby receiving credit for a greater amount of raisins than actually produced on the acreage. By inflating yield figures, producers could receive diversion certificates equal to more raisins from the reserve pool than they actually would have produced from those production units.

Thus, the Committee recommended that authority be added to paragraph (o) of § 989.156 authorizing Committee staff to request additional documentation to substantiate the tonnage of raisins produced on any known production unit. This documentation may include information such as tray count, employee payroll records, prior years' production for all production units, and insurance records. This information is maintained by producers in the normal course of business. Such information for approved production units, in addition to producers' other known production units, will give Committee staff another tool to ensure producer compliance with the RDP so that the integrity of the program is maintained.

This rule also continues to make minor changes to remove obsolete language in paragraph (s)(1) in § 989.156. That paragraph makes two references to provisions particular to the 1985 calendar year which marked the inception of the RDP. Certain parameters regarding dates particular to 1985 were incorporated into the order's administrative rules and regulations that are no longer necessary. Thus, those two references have been removed.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. No more than 8 handlers, and a majority of producers, of California raisins may be classified as small entities. Twelve of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 8 handlers have sales less than $5,000,000, excluding receipts from any other sources.

This rule continues to modify the RDP currently authorized under § 989.56 of the Federal marketing order for California raisins. Under the RDP, the Committee issues diversion certificates to producers who have removed grapes in accordance with § 989.156 to reduce raisin production and bring raisin supplies more closely in line with market needs. Such certificates represent an amount of reserve tonnage raisins equal to the amount of raisins diverted. Diversion certificates may be submitted by producers to handlers. Handlers may then redeem such certificates for reserve pool raisins from the Committee. This rule continues to make various modifications to § 989.156 of the order's administrative rules and regulations concerning the RDP. The changes include: Removing authority for the diversion of partial production units in an RDP; removing authority for committees of industry persons to assist the Committee in compliance efforts; clarifying that spur-pruning is not the only acceptable method of aborting a crop; and making other changes to strengthen compliance with the RDP.

Regarding the impact of this rule on affected entities, the changes are designed to either improve compliance with the RDP, or are administrative in nature to bring the RDP in line with current industry practices. None of the changes concerning compliance are expected to increase the cost of administering the RDP. Also, because most of the producer applications over the years have been for full production units, rather than for partial production units, discontinuance of partial production units as part of the RDP is not expected to increase appreciably costs to producers. Moreover, the addition of other methods of diversion, like chemical application, should have a positive affect. The changes are intended to ensure equity among all those participating in the RDP and to maintain the integrity of the program. Thus, the changes are expected to be equally beneficial to all affected entities who are adhering to the requirements of the program, regardless of size.

Other alternatives to the RDP procedures were considered by the raisin industry prior to the Committee's recommendation. The Committee has an appointed Amendment Subcommittee and Working Group which held several public meetings throughout the year to consider changes to the RDP and other order provisions. One alternative considered was to leave the RDP procedures unchanged. However, the Committee concluded that the changes established by this rule were necessary to improve the RDP and better accomplish program objectives. The Working Group also considered adding to the rules and regulations a scale that would correlate production ranges with an appropriate production cap for each range, to help ensure that participating producers did not receive credit for an inflated amount of tonnage and gain a financial advantage over other participants. Another related option concerned modifying the rules and regulations to specify that the production cap should be based on a 5-year rolling average of production per acre with a maximum of 2.75 tons per acre. However, Committee staff indicated that data concerning total industry production on a per acre basis was not available, and the Working Group decided not to recommend these changes.

The Working Group also considered adding guidelines to the RDP procedures for hardship cases where producers have been denied participation in an RDP. For example, there have been cases in past seasons where producers have submitted an application to participate in an RDP, curtailed production, and then been denied a certificate from Committee staff because such producers did not satisfy the terms of the RDP (i.e., could not document their previous year's production). Under the current rules and regulations, such producers have the option of appealing such a decision to the Committee and ultimately the Department. After some deliberation, the Working Group decided not to change this appeal process by trying to specify various "what if" scenarios in the rules and regulations. The group believed it was best to address each such situation on a case-by-case basis. Ultimately, the full Committee concluded that the changes to the RDP previously discussed were appropriate at this time.

Regarding any additional reporting or recordkeeping requirements, this rule continues to allow Committee staff to request additional information from producers participating in an RDP to verify production. However, such information will only be requested on a case-by-case basis for use as a compliance tool when the information submitted on a producer's application concerning a unit's production is significantly greater than past production on the unit, production on neighboring units, or the industry norm, or when Committee staff is unable to verify production based on submitted documentation. For instance, if a producer had multiple production units of similar size, and the production on the unit to be diverted was significantly different than the others, the Committee wants its staff to be authorized to request additional information such as that mentioned to verify the accuracy of the producer application. Additional information may also be needed in cases where the production on a unit to be diverted is significantly different from that of neighboring production units. As a third example, if information obtained from weigh tags and other delivery documents provided to the Committee did not correspond to the production figure indicated on the producer's application, Committee staff may request additional information.

This rule requires no new forms and the number of producers for which additional information may be requested is expected to be small. According to the Committee staff, only about 5–10 percent of producer applications raise questions for which additional information may be needed. During the industry's diversion program in 1996 which provided for only vine removal (as opposed to allowing spur pruning), 66 producers participated. In 1995's program, which provided for spur pruning and vine removal, 778 producers participated.

Using the 778 participation figure and the 10 percent figure for questionable applications, a total of 78 producer applicants might need to provide additional information. The Committee staff estimated that it will take each of these participants about 10 minutes to compile, package, and submit this information. Thus, the time taken by the 78 participants as a group will total about 13 hours, and this time is currently approved under OMB No. 0581–0178 by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

The industry is currently implementing a diversion program for Zante Currant raisins for the 1997–98 season. The Department is monitoring producer reporting under the current diversion program.

This rule does not impose a reporting burden above that currently approved for small and large raisin producers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules

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that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the raisin industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the August 14, 1997, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations to the Committee. As previously mentioned, the Committee's Amendment Working Group met throughout the year at public meetings to discuss various changes to the raisin order, including the recommended changes to the RDP. The Working Group made its recommendations concerning revisions to the RDP to the Amendment Subcommittee on August 7, 1997. The Amendment Subcommittee in turn made its recommendations to the full Committee on August 14, 1997. All of these meetings were public meetings and both large and small entities were able to participate and express their views.

As stated earlier and in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0178.

An interim final rule concerning this action was published in the **Federal Register** on November 13, 1997. Copies of the rule were mailed by the Committee's staff to all raisin handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended on January 12, 1998. Interested persons were also invited to submit information on the information and regulatory impact of the rule. No comments were received.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing this interim final rule, as published in the **Federal Register** (62 FR 60764; November 13, 1997), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 989 which was published at 62 FR 60764 on November 13, 1997, is adopted as a final rule without change.

Dated: January 23, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–2122 Filed 1–28–98; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Final amendment to interpretive ruling and policy statement 94–1 (IRPS 98–1).

SUMMARY: The NCUA Board is updating the requirements for a credit union converting to a community charter. The final amendment deletes the requirement that a credit union converting to a community charter provide evidence of community support, since such evidence is not necessary for the agency to determine the economic viability of the credit union.

EFFECTIVE DATE: March 1, 1998.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: J. Leonard Skiles, President, Asset Management and Assistance Center, 4807 Spicewood Springs Road, Suite 5100, Austin, Texas 78759, or telephone (512) 795–0999; Lynn K. McLaughlin, Program Officer, Office of Examination and Insurance, 1775 Duke Street, Alexandria, Virginia 22314–3428, or telephone (703) 518–6360; Michael J. McKenna, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Comments

On October 22, 1997, the NCUA Board proposed clarifying amendments on what is necessary for the approval of a community charter (62 FR 56134 (October 29, 1997)). Sixty-four comments were received. Comments were received from forty-two federal credit unions, two state-chartered credit unions, thirteen state credit union leagues, four national credit union trade associations, one state regulatory agency, one consumer group and one banking association.

B. Serving All Segments of the Community

In the proposal, the Board stated that all community charters must be prepared to serve all segments of the community. The Board suggested that membership and loan penetration rates, among other factors, could be reviewed to assess how well the credit union is serving the entire community. The proposal also would have required that a credit union receiving a community charter review its business plan regularly, as well as membership and loan penetration rates throughout the community, to determine if the community is being adequately served. The Board specifically proposed that a new community charter or a credit union converting to a community charter be held accountable for its business plan/marketing strategy outlining how it will serve the entire community. The proposal also would have required that a credit union converting to a community charter provide information on the groups being served. Finally, the Board proposed deleting the requirement that a credit union converting to a community charter provide written evidence of community support such as letters of support, petitions or surveys.

At this time, the Board is addressing only one aspect of the proposal regarding credit unions converting to a community charter. The Board needs further time to study the remaining proposed amendments to ensure that they are necessary and will not unduly burden credit unions. The Board plans on addressing these issues in the near future and will respond to the issues raised by the commenters at that time.

C. Written Evidence of Community Support

As stated above, the Board proposed deleting the requirement that a credit union converting to a community charter provide written evidence of community support such as letters of support, petitions or surveys. Twenty-nine commenters do not believe a credit union applying to convert to a community charter should be required to provide evidence of community support. Most of these commenters find the current requirement to be burdensome. Seven commenters specifically stated that the validity of these documents is questionable and the effort to obtain such documentation is time-consuming and expensive. Some commenters believe that community leaders are reluctant to give support because they fear a backlash from banks. Three commenters support any action by NCUA to simplify the application process and reduce the processing time for community charter conversions. Most of these commenters believe that credit union management is better able to gauge the depth of community support than a petition or survey. Two commenters stated that a letter from the board of directors showing evidence of the attitude of the credit union's sponsors and members toward a conversion should be sufficient documentation. One commenter stated that the elimination of this requirement offers modest relief from the burden of providing information in support of the conversion request.

Ten commenters believe a credit union applying to convert to a community charter should be required to provide evidence of community support before the conversion can be approved. Two commenters believe this evidence is a key element to any good marketing plan and would provide the credit union with valuable information about its new market as well as an introduction to potential new constituencies. These commenters state further that this evidence is useful to NCUA in making its determination whether the applied for area actually constitutes a community. One commenter also believes this evidence helps build a substantial administrative record in case of a legal challenge. One commenter believes that credit unions wishing to convert to a community charter should be required to demonstrate community support in a manner validating the credit union's business plan. One commenter, although opposing this amendment, believes that, if we delete this requirement for converting credit unions, we should also eliminate it for new credit unions.

The NCUA Board believes that providing evidence of written support is expensive, burdensome and not a reliable indicator of the economic viability of the converting credit union. Such evidence is still needed for a new charter so that the agency may accurately determine the economic viability of the new credit union. Economic viability of an existing credit union is self-evident. Furthermore, a converting credit union can still submit such evidence if it believes it would be helpful to demonstrate that the area is a well-defined community where residents interact or will support some other aspect of the credit union's business plan or marketing strategy.

The final amendment deletes the requirement for a converting credit union to provide written evidence of community support. Nothing in this final amendment changes or relaxes the requirement that a credit union converting to a community charter must demonstrate that the proposed community is a well-defined area where residents interact.

D. Groups Outside the Community

The Board also proposed to eliminate the ability of a credit union converting to a community charter to continue to serve groups outside the new community boundaries. At this time, the Board is still considering the implications of such a policy change. As a practical matter, because of the injunction issued in the consolidated cases of *First National Bank and Trust Co., et al.* v. *NCUA* and the *American Bankers Association* v. *NCUA, et al.*, which was partially stayed by the Court of Appeals on December 24, 1996, a credit union converting to a community charter cannot continue to serve groups outside the new community boundaries, but may only serve members of record. The Board plans on addressing this issue in the near future and will respond to the concern raised by the commenters at that time.

E. Ongoing Litigation

Five commenters did not believe that this is the appropriate time to initiate changes to field of membership policies, because of the ongoing litigation involving multiple group credit unions. NCUA disagrees since NCUA's community chartering policy is not affected by the injunction issued in the consolidated cases of *First National Bank and Trust Co., et al.* v. *NCUA* and the *American Bankers Association* v. *NCUA, et al.*, which was partially stayed by the Court of Appeals on December 24, 1996. Nor would other ongoing chartering litigation be affected because this change in policy modifies only the requirement for evidence of support for conversion to a community charter, not the requirement for evidence that the community to be served is a "well-defined community."

The NCUA Board believes it is necessary to address the documentation requirements for converting credit unions because questions regarding cost and value have been raised during NCUA Board review of requests by credit unions converting to community charters. The NCUA Board has not been provided with any compelling rationale that would justify a delay in amending this aspect of community chartering policy at this time.

F. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The final amendment will not have a significant economic impact on a substantial number of small credit unions and therefore a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the final amendment does not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget (OMB). 60 FR 44978 (August 29, 1995).

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. This final amendment makes no significant changes with respect to state credit unions and therefore, will not materially affect state interests.

Congressional Review

Awaiting OMB determination.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on January 22, 1998.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 12 U.S.C. 1601 *et seq.*, 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

2. Section 701.1 is revised to read as follows:

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§ 701.1 Federal credit union chartering, field of membership modifications, and conversions.

National Credit Union Administration policies concerning chartering, field of membership modifications, and conversions are set forth in Interpretive Ruling and Policy Statement 94–1, Chartering and Field of Membership Policy (IRPS 94–1), as amended by IRPS 96–1 and IRPS 98–1. Copies may be obtained by contacting NCUA at the address found in § 792.2(g)(1) of this chapter. The combined IRPS are incorporated into this section.

(Approved by the Office of Management and Budget under control number 3133–0015.)

IRPS 94–1—[Amended]

Note: The text of the Interpretive Ruling and Policy Statement (IRPS 94–1) does not, and the following amendments will not, appear in the Code of Federal Regulations.

3. IRPS 94–1, Chapter 1, Section II.C.2 is amended by removing the words "field of membership expansion or conversion to a community credit union".

4. In IRPS 94–1, Chapter 2, Section IV.B is revised to read as follows:

* * * * *

IV.B—Conversion to Community Charter

An existing occupational, associational, or multiple group federal credit union may apply to convert to a community charter. In most cases, groups currently in the credit union's field of membership but outside the new community credit union's boundaries may be included in the new community charter.

In order to support a case for a conversion to community charter, the applicant federal credit union must, in addition to the requirements for a community charter set forth in Chapter I (except for the requirement to demonstrate community support), develop a detailed business plan which may include, but not be limited to the following data:

- Current financial statements, including the income statement and a summary of loan delinquency;
- A map or maps showing both the existing and proposed boundaries for the field of membership, as well as existing and planned service facilities;
- A written description of the area of community service for the proposed community credit union;
- The most current population figures for the existing and proposed boundaries;
- The source of the population information (census data are considered the most authoritative); the greater the population of the proposed area, the greater justification necessary to support the existence of the "community" and interaction among its residents;
- Evidence that the proposed area is a "community" as defined in "Community Common Bond" in Chapter 1;
- Information concerning the availability of financial services to the residents of the new area;
- A list of credit unions with a home or branch office in the proposed area (If present credit union service to the residents of the new area is adequate, there may be no basis for the proposed conversion.);
- The attitude of the current credit union sponsors and existing credit union members toward the proposed conversion; and
- The anticipated financial impact on the credit union in terms of need for additional employees and fixed assets.

* * * * *

[FR Doc. 98–2076 Filed 1–28–98; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–293–AD; Amendment 39–10295; AD 98–03–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes. This action requires a one-time inspection of the free-fall actuators of the landing gear for discrepancies, and replacement of discrepant actuators with new, improved actuators. This action also requires eventual replacement of certain free-fall actuators. This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent electrical short circuits to the free-fall actuators of the landing gear, which could result in failure to extend the landing gear, and consequent damage to the airplane structure during landing.

DATES: Effective February 13, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 13, 1998.

Comments for inclusion in the Rules Docket must be received on or before March 2, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–293–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330 and A340 series airplanes. The DGAC advises that, during several attempted free-fall extensions of the landing gear, electrical short circuits and circuit breaker overloads have occurred. The cause of the short circuits was attributed to installation of incorrect screws in the motor brush housing of the free-fall actuators during manufacture. This condition, if not corrected, could result in electrical short circuits to the free-fall actuators of the landing gears, which could result in failure to extend the landing gear, and consequent damage to the airplane structure during landing.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A340–32–4066, Revision 1, and A340–32–3042, Revision 1, both dated September 19, 1995, which describe procedures for a one-time inspection of the free-fall actuators of the landing gear to ensure that no electrical short circuit occurs, and to ensure that replacement free-fall actuators having correct serial numbers are installed. The service bulletins also describe procedures for eventual replacement of certain actuators with new, improved actuators. The DGAC classified these service bulletins as mandatory and issued French airworthiness directives 95–187–020(B) and 95–189–032(B), both dated September 27, 1995, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

None of the Airbus Model A330 and A340 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 3 work hours per airplane to accomplish the inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection would be $180 per airplane.

It would require approximately 16 to 28 work hours (depending upon airplane configuration) to accomplish the replacement, at an average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of the replacement on U.S. operators is estimated to be between $960 and $1,680 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–293–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–03–03 Airbus Industrie: Amendment 39–10295. Docket 97–NM–293–AD.

Applicability: Model A330 series airplanes, as listed in Airbus Service Bulletin A330–32–3042, Revision 1, dated September 19, 1995; and Model A340 series airplanes, as listed in Airbus Service Bulletin A340–32–4066, Revision 1, dated September 19, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical short circuits to the free-fall actuators of the landing gear, which could result in failure to extend the landing gear, and consequent damage to the airplane structure during landing, accomplish the following:

(a) Within 500 flight hours after the effective date of this AD, inspect the free-fall actuators of the landing gear for

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discrepancies, in accordance with Airbus Service Bulletin A330–32–3042, Revision 1 (for Model A330 series airplanes), or A340–32–4066, Revision 1 (for Model A340 series airplanes), both dated September 19, 1995; as applicable. Prior to further flight, replace any discrepant actuator with a new, improved actuator in accordance with the applicable service bulletin.

Note 2: Airbus Service Bulletins A330–32–3042 and A340–32–4066 both reference LUCAS AEROSPACE Alert Service Bulletin AR024–A32–001, dated July 28, 1995, as an additional source of service information.

(b) Within 15 months after the effective date of this AD, replace any free-fall actuator having a serial number specified in Airbus Service Bulletin A330–32–3042, Revision 1 (for Model A330 series airplanes) or A340–32–4066, Revision 1 (for Model A340 series airplanes), both dated September 19, 1995, with a new, improved actuator in accordance with the applicable service bulletin.

(c) As of the effective date of this AD, no person shall install on any airplane a free-fall actuator, type AR02403, AR02404, or AR02405 having a serial number specified in Lucas Aerospace Limited Service Bulletin AR024–A32–001, dated July 28, 1995.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with the following Airbus service bulletins, which contain the specified list of effective pages:

Service Bulletin Referenced and Date	Page Number	Revision Level Shown on Page	Date Shown on Page
A330–32–3042, ...	1–4, 9, 11, 13	1	September 19, 1995
Revision 1, September 19, 1995	5–8, 10, 12, 14.	Original.	August 2, 1995
A340–32–4066, ...	1–5, 11, 13, 15	1	September 19, 1995
Revision 1, September 19, 1995	6–10, 12, 14, 16.	Original.	August 2, 1995

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directives 95–187–020(B) and 95–189–032(B), both dated September 27, 1995.

(g) This amendment becomes effective on February 13, 1998.

Issued in Renton, Washington, on January 21, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–1972 Filed 1–28–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–35]

Amendment to Class D and Class E Airspace; Salina, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class D and Class E airspace areas at Salina, KS. The current description indicates part-time operation for the Class E airspace area at Salina Municipal Airport, Salina, KS. The actual hours of operation for the Class E airspace area are continuous. The Class E airspace area description at Salina, KS, is revised to indicate the area is in effect continuously. A review of the airspace for Salina Municipal Airport indicates it does not meet the criteria for 700 feet Above Ground Level (AGL) Class E airspace as required in FAA Order 7400.2D. A revision to the Airport Reference Point (ARP) is included in this document. The intended effect of this amendment is to indicate the Class E airspace area is in effect continuously, comply with the criteria of FAA Order 7400.2D, and amend the ARP for the Class D and Class E airspace areas.

DATES: *Effective date:* 0901 UTC, April 23, 1998.

Comment date: Comments for inclusion in the Rules Docket must be received on or before March 2, 1998.

ADDRESSES: Send comments in triplicate to the Federal Aviation Administration (FAA), Manager, Airspace Branch, Air Traffic Division, (ACE–520), Attention: Rules Docket Number 97–ACE–35, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 pm., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 amends the Class D and Class E airspace at Salina Municipal Airport, Salina, KS. The Class E airspace is amended by removing the statement which indicates part-time status. The Class E airspace area description does not reflect the actual hours of operation, which are continuous. This action will amend the description for the Class E airspace area at Salina Municipal Airport, Salina, KS, to indicate the area is in effect continuously. A review of the airspace for Salina Municipal Airport indicates it does not meet the criteria for 700 feet AGL Class E airspace area as required in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile, plus the distance from the ARP to the end of the outermost runway.

Any fractional part of a mile is converted to the next higher tenth of a mile increment. The Class E 700 feet AGL airspace area has been enlarged to conform to the criteria of FAA Order 7400.2D. This action will also amend the ARP for the Class D and Class E airspace areas, at Salina, KS. The areas will be depicted on appropriate aeronautical charts. Class D airspace areas are published in paragraph 5000, Class E airspace areas designated as a surface area for an airport are published in paragraph 6002, Class E airspace areas designated as an extension to a Class D or Class E surface area are published in paragraph 6004, and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, aeronautical, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–ACE–35." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * * *

ACE KS D Salina, KS [Revised]

Salina Municipal Airport, KS
(Lat. 38°47′29″ N., long. 97°39′02″ W.)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.9-mile radius of Salina Municipal Airport. The Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * * *

ACE KS E2 Salina, KS [Revised]

Salina Municipal Airport, KS
(Lat. 38°47′29″ N., long. 97°39′02″ W.)

Within a 4.9-mile radius of Salina Municipal Airport.

* * * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D or Class E surface area.

* * * * * *

ACE KS E4 Salina, KS [Revised]

Salina Municipal Airport, KS
(Lat. 38°47′29″ N., long. 97°39′02″ W.)
Salina VORTAC
(Lat. 38°55′35″ N., long. 97°37′16″ W.)

That airspace extending upward from the surface within 2 miles each side of the Salina

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VORTAC 190° radial extending from the 4.9-mile radius of Salina Municipal Airport to the VORTAC.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Salina, KS [Revised]

Salina Municipal Airport, KS
(Lat. 38°47'29" N., long. 97°39'02" W.)
Salina VORTAC
(Lat. 38°55'35" N., long. 97°37'16" W.)
FLORY LOM
(Lat. 38°40'54" N., long. 97°38'42" W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Salina Municipal Airport and within 4.4 miles each side of the 010° radial of the Salina VORTAC extending from the 7.4-mile radius to 12 miles north of the VORTAC and within 4 miles west and 8 miles east of the Salina Municipal ILS localizer south course extending from the airport to 16 miles south of the FLORY LOM.

* * * * *

Issued in Kansas City, MO, on December 19, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–2216 Filed 1–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–36]

Amendment to Class D and Class E Airspace; Topeka, Philip Billard Municipal Airport, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class D and Class E airspace areas at Topeka, Philip Billard Municipal Airport, KS. The current description indicates part-time operation for the Class E airspace area at Topeka, Philip Billard Municipal Airport, KS. The actual hours of operation for the Class E airspace area are continuous. The Class E airspace area description at Topeka, Philip Billard Municipal Airport, KS, is revised to indicate the area is in effect continuously. A revision to the Airport Reference Point (ARP) is included in this document. The intended effect of this amendment is to indicate the Class E airspace area is in effect continuously, and amend the ARP for the Class D and Class E airspace areas.

DATES: *Effective date:* 0901 UTC, April 23, 1998.

Comment date: Comments for inclusion in the Rules Docket must be received on or before March 2, 1998.

ADDRESSES: Send comments in triplicate to the Federal Aviation Administration (FAA), Manager, Airspace Branch, Air Traffic Division (ACE–520), Attention: Rules Docket Number 97–ACE–36, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 amends the Class D and Class E airspace at Topeka, Philip Billard Municipal Airport, KS. The Class E airspace is amended by removing the statement which indicates part-time status. The Class E airspace area description does not reflect the actual hours of operation, which are continuous. This action will amend the description for the Class E airspace area at Topeka, Philip Billard Municipal Airport, KS, to indicate the area is in effect continuously. This action will also amend the ARP for the Class D and Class E airspace areas at Topeka, Philip Billard Municipal Airport, KS. The Class D and Class E airspace areas will be depicted on appropriate aeronautical charts. Class D airspace areas are published in paragraph 5000, Class E airspace areas designated as a surface area for an airport are published in paragraph 6002, and Class E airspace areas designated as an extension to a Class D or Class E surface area are published in paragraph 6004, of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, aeronautical, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made. "Comments to Docket No. 97–ACE–36." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ACE KS D Topeka, Philip Billard Municipal Airport, KS [Revised]

Topeka, Philip Billard Municipal Airport, KS
(Lat. 39°04'07" N., long. 95°37'21" W.)
Topeka Forbes Field, KS
(Lat. 38°57'01" N., long. 95°39'51" W.)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 4-mile radius of Philip Billard Municipal Airport, excluding that airspace within the Topeka Forbes Field, KS, Class D airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ACE KS E2 Topeka, Philip Billard Municipal Airport, KS [Revised]

Topeka, Philip Billard Municipal Airport, KS
(Lat. 39°04'07" N., long. 95°37'21" W.)
Topeka Forbes Field, KS
(Lat. 38°57'01" N., long. 95°39'51" W.)

Within a 4-mile radius of Philip Billard Municipal Airport, excluding that airspace within the Topeka Forbes Field, KS, Class D and E airspace areas.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D or Class E surface area.

* * * * *

ACE KS E4 Topeka, Philip Billard Municipal Airport, KS [Revised]

Topeka, Philip Billard Municipal Airport, KS
(Lat. 39°04'07" N., long. 95°37'21" W.)
Topeka VORTAC
(Lat. 39°08'14" N., long. 95°32'51" W.)

That airspace extending upward from the surface within 1.8 miles each side of the Topeka VORTAC 219° radial extending from the 4-mile radius of Philip Billard Municipal Airport to the VORTAC and within 1.8 miles each side of the Philip Billard Municipal Airport ILS localizer southeast course extending from the 4-mile radius of Philip Billard Municipal Airport to 10 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on December 19, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–2217 Filed 1–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–26]

Amendment to Class E Airspace; Wellsboro, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Wellsboro, PA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 28 and the amendment of the VHF Omnidirectional Radio Range (VOR)/GPS A SIAP at Grand Canyon State Airport have made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations for aircraft executing the GPS RWY 28 SIAP and the VOR/GPS A SIAP to Grand Canyon State Airport at Wellsboro, PA.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal A'viation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 17, 1997, a proposal to amend 14 CFR Part 71 to modify the Class E airspace at Wellsboro, PA, was published in the **Federal Register** (62 FR 53982). The development of a GPS RWY 28 SIAP and the amendment of the VOR/GPS A SIAP for Grand Canyon State Airport require the amendment of the Class E airspace at Wellsboro, PA. The proposal was to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

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The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR Part 71 modifies Class E airspace at Wellsboro, PA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 28 SIAP and VOR/GPS A SIAP to Grand Canyon State Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigations it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA AEA E5 Wellsboro, PA [Revised]

Grand Canyon State Airport, PA
(Lat. 41°43'40" N., long. 77°23'47" W.)
Stonyfork VORTAC
(Lat. 41°41'43" N., long. 77°25'12" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Grand Canyon State Airport and within 4 miles each side of the 208° bearing from the Stonyfork VORTAC extending from the 6.5-mile radius to 7 miles southwest of the VORTAC

* * * * *

Issued in Jamaica, New York, on December 16, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–2213 Filed 1–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–34]

Revocation, Establishment, and Modification of Class E Airspace Areas; Cedar Rapids, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action revokes the Class E surface area airspace designated "Cedar Rapids Municipal Airport, IA," and establishes a larger Class E surface airspace area in its place designated "Cedar Rapids, The Eastern Iowa Airport, IA." The name of the Cedar Rapids Municipal Airport has been changed to the Eastern Iowa Airport. In order to rename the Class E surface area, it is necessary to revoke the existing airspace designation, and to reestablish the airspace under the new designation. This action also increases the size of both the Class E surface area, and the Cedar Rapids Class E airspace area extending upward from 700 feet above ground level (AGL). The additional controlled airspace is necessary to accommodate two new Global Positioning System (GPS) standard instrument approach procedures (SIAP) which have been established to serve The Eastern Iowa Airport.

DATES: *Effective date:* 0901 UTC, April 23, 1998.

Comment date: Comments for inclusion in the Rule Docket must be received on or before March 2, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Federal Aviation (FAA), Manager, Airspace Branch, Air Traffic Division, (ACE–520), Attention: Rules Docket Number 97–ACE–34, 601 East 12th Street, Kansas City MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 13 and GPS RWY 31 SIAPs to serve The Eastern Iowa Airport, Cedar Rapids, IA. The amendment to Class E airspace at Cedar Rapids, IA, will provide additional controlled airspace from the surface, and at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules (IFR). The areas will be depicted on appropriate aeronautical charts. Class E airspace areas designated as surface area for an airport are published in paragraph 6002, and Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area the VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket Number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, aeronautical, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in responses to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–ACE–34." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11035, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ACE IA E2 Cedar Rapids Municipal Airport, IA [Removed]

ACE IA E2 Cedar Rapids, The Eastern Iowa Airport, IA [New]

Cedar Rapids, The Eastern Iowa Airport, IA
(lat. 41°53'05"N., long. 91°42'39"W.)

Within a 4.4-mile radius of The Eastern Iowa Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Cedar Rapids, IA. [Revised]

Cedar Rapids, The Eastern Iowa Airport, IA.
(lat. 41°53'05"N., long. 91°42'39"W.)
CINDY LOM
(lat. 41°53'08"N., long 91°48'09"W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of The Eastern Iowa Airport and within 3 miles each side of the 269° bearing from the CINDY LOM, extending from the 7.4-mile radius to 19.3 miles west of the airport.

* * * * *

Issued in Kansas City, MO, on December 17, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division Central Region.

[FR Doc. 98–2214 Filed 1–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–37]

Amendment to Class E Airspace; Iola, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment modifies the Class E airspace area at Allen County Airport, Iola, KS. The FAA has developed Global Positioning System (GPS) Runway (RWY) 1 and RWY 19 Standard Instrument Approach Procedures (SIAPs) to serve the Allen County Airport, Iola, KS. Additional controlled airspace 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs. The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the GPS RWY 1 and GPS RWY 19 SIAPs.

DATES: *Effective date.* 0901 UTC, April 23, 1998.

Comment date: Comments for inclusion in the Rules Docket must be received on or before March 2, 1998.

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ADDRESSES: Send comments regarding the rule in triplicate to: Federal Aviation Administration (FAA), Manager, Airspace Branch, Air Traffic Division, ACE–520, Attention: Rules Docket Number 97–ACE–37, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 1 and GPS RWY 19 SIAPs to serve the Allen County Airport, Iola, KS. The amendment to Class E airspace at Iola, KS, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules (IFR). The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, aeronautical, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–ACE–37." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Iola, KS [Revised]

Iola, Allen County Airport KS
(Lat. 37°52′12″ N., long. 95°23′11″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Allen County Airport and within 2 miles each side of the 008° bearing from the Allen County Airport extending from the 6.4-mile radius to 9.4 miles north of the airport.

* * * * *

Issued in Kansas City, MO, on December 17, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–2215 Filed 1–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–39]

Amendment to Class E Airspace; Syracuse, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Syracuse, NY. The development of Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAP) at Syracuse Hancock International Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations for aircraft executing the GPS Runway (RWY) 10 SIAP, the GPS RWY 14 SIAP, the GPS RWY 28 SIAP, and the GPS RWY 32 SIAP to Syracuse Hancock International Airport at Syracuse, NY.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York, 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 17, 1997, a proposal to amend 14 CFR Part 71 to modify the Class E airspace at Syracuse, NY, was published in the **Federal Register** (62 FR 53985). The development of a GPS RWY 10 SIAP, a GPS RWY 14 SIAP, a GPS RWY 28, and a GPS RWY 32 SIAP for Syracuse Hancock International Airport requires an amendment to the Class E airspace at Syracuse, NY. The proposal was to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR Part 71 modifies Class E airspace at Syracuse, NY, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 10 SIAP, the GPS RWY 14, the GPS RWY 28, and the GPS RWY 32 SIAP to Syracuse Hancock International Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NY AEA E5 Syracuse, NY [Revised]

Syracuse Hancock International Airport, NY
(Lat. 43°06′40″ N., Long. 76°06′23″ W.)

That airspace extending upward from 700 feet above the surface within a 14-mile radius of Syracuse Hancock International Airport and within a 20-mile radius of the airport extending clockwise from a 245° bearing to a 305° bearing from the airport, excluding that portion that coincides with the Fulton, NY, Durhamville, NY, and Skaneateles, NY, Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on December 16, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–2218 Filed 1–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–37]

Establishment of Class E Airspace; Ticonderoga, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Ticonderoga, NY. The development of Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAP) at Ticonderoga Municipal Airport has made this action necessary. This action is intended to provide adequate Class E airspace to

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contain instrument flight rules (IFR) operations for aircraft executing the GPS Runway (RWY) 20 SIAP and the GPS RWY 2 SIAP to Ticonderoga Municipal Airport at Ticonderoga, NY.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 17, 1997, a notice proposing to amend 14 CFR Part 71 to establish Class E airspace at Ticonderoga, NY, was published in the **Federal Register** (62 FR 53981). A GPS RWY 20 SIAP and a GPS RWY 2 SIAP developed for Ticonderoga Municipal Airport, Ticonderoga, NY, require the establishment of Class E airspace at the airport. The notice proposed to establish controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR Part 71 establishes Class E airspace at Ticonderoga, NY, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 20 SIAP and the GPS RWY 2 SIAP to Ticonderoga Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NY AEA E5 Ticonderoga, NY [New]

Ticonderoga Municipal Airport, NY
(Lat. 43°52'37" N., long. 73°24'47" W.)

That airspace extending upward from 700 feet above the surface within an 11-mile radius of Ticonderoga Municipal Airport, excluding the portion that coincides with the Rutland, VT, Class E airspace area.

* * * * *

Issued in Jamaica, New York, on December 16, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–2219 Filed 1–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–36]

Establishment of Class E Airspace; Towanda, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Towanda, PA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Bradford County Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations for aircraft executing the GPS Runway (RWY) 23 SIAP to Bradford County Airport at Towanda, PA.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 17, 1997, a notice proposing to amend 14 CFR Part 71 to establish Class E airspace at Towanda, PA, was published in the **Federal Register** (62 FR 53989). A GPS RWY 23 SIAP developed for Bradford County Airport, Towanda, PA, requires the establishment of the Class E airspace at the airport. The notice proposed to establish controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR Part 71 establishes Class E airspace at Towanda, PA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 23 SIAP to Bradford County Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS, AIRWAYS, ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AEA PA AEA E5 Towanda, PA [New]

Bradford County Airport, PA
(Lat. 41°44'40" N., long. 76°26'39" W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Bradford County Airport and within 4 miles each side of the 035° bearing from the Bradford County Airport extending from the 6-mile radius to 11 miles northeast of the airport.

* * * * *

Issued in Jamaica, New York, on December 16, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–2220 Filed 1–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–35]

Establishment of Class E Airspace; Churchville, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Churchville, MD. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) and a VHF Omnidirectional Radio Range (VOR) SIAP at Harford County Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations for aircraft executing the GPS Runway (RWY) 10 SIAP and VOR A SIAP to Hartford County Airport at Churchville, MD.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 17, 1997, a notice proposing to amend 14 CFR Part 71 to establish Class E airspace at Churchville, MD, was published in the **Federal Register** (62 FR 53980). A GPS RWY 10 SIAP and a VOR A SIAP developed for Harford County Airport, Churchville, MD, requires the establishment of the Class E airspace at the airport. The notice proposed to establish controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR Part 71 establishes Class E airspace at Churchville, MD, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 10 SIAP and VOR A SIAP to Harford County Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedure and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

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Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA MD AEA E5 Churchville, MD [New]

Harford County Airport, MD
(Lat. 39°34'02" N., long. 76°12'07" W.)

That airspace extending upward from 700 feet above the surface within an 6.5-mile radius of Harford County Airport, excluding the airspace in Restricted Area R–4001A when it is in effect, and the Aberdeen, MD, and Edgewood, MD, Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on January 5, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–2221 Filed 1–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–27]

Amendment to Class E Airspace; Pineville, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Pineville, WV. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) and VHF Omnidirectional Radio Range (VOR) SIAP at Kee Field Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instruments flight rules (IFR) operations for aircraft executing the GPS RWY 7 SIAP and the VOR RWY 25 SIAP to Kee Field Airport at Pineville, WV.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553-4521.

SUPPLEMENTARY INFORMATION:

History

On October 17, 1997, a proposal to amend 14 CFR Part 71 to modify the Class E airspace at Pineville, WV, was published in the **Federal Register** (62 FR 53983). The development of a GPS RWY 7 SIAP and a VOR RWY 25 SIAP for Kee Field Airport requires the amendment of the Class E airspace at Pineville, WV. The propsoal was to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR Part 71 modifies the Class E airspace at Pineville, WV, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 7 SIAP and VOR RWY 25 SIAP to Kee Field Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA WV AEA E5 Pineville, WV [Revised]

Kee Field Airport, WV
(Lat. 37°36'01" N., long. 81°33'33" W.)

That airspace extending upward from 700 feet above the surface within a 7.2-mile radius of Kee Field Airport and within 4 miles each side of the 249° bearing from the Kee Field Airport extending from the 7.2-mile radius to 10 miles southwest of the airport and within 4 miles south and 5.7 miles north of the 062° bearing from the Kee Field Airport extending from the 7.2 mile radius to 21 miles northeast of the airport excluding that portion that coincides with the Beckley, WV, Class E airspace area.

* * * * *

Issued in Jamaica, New York on December 16, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–2222 Filed 1–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–10]

Modification of Class E Airspace; Tracy, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace areas at Tracy, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 11, GPS SIAP to RWY 25, and a GPS SIAP to RWY 29 at Tracy Municipal Airport has made this action necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the approach and departure procedures at Tracy Municipal Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Tracy Municipal Airport, Tracy, CA.

EFFECTIVE DATE: 0901 UTC April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION:

History

On November 20, 1997, the FAA proposed to amend 14 CFR part 71 to modify the Class E airspace area at Tracy, CA (62 FR 61927). The development of GPS SIAP's at Tracy Municipal Airport has made this action necessary. The intended effect of this action is to provide additional controlled airspace extending upward from 700 feet or more above surface of the earth is needed to contain aircraft executing the GPS RWY 11 SIAP, GPS RWY 25 SIAP, GSP RWY 29 SIAP, and other IFR operations at Tracy Municipal Airport, Tracy, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace area at Tracy, CA. The development of a GPS RWY 11 SIAP, GPS RWY 25 SIAP, and a GPS RWY 29 SIAP at Tracy Municipal Airport has made this action necessary. Additional controlled airspace extending upward from 700 feet or more above the surface is needed to contain aircraft executing the approach and departures procedures at Tracy Municipal Airport. The intended effect of this action is to provide adequate controlled airspace for aircraft executing the GPS RWY 11 SIAP, a GPS RWY 25 SIAP, and a GPS RWY 29 SIAP, and other IFR operations at Tracy Municipal Airport, Tracy, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Tracy, CA [Revised]

Tracy Municipal Airport, CA
(Lat. 37°41'21"N, long. 121°26'31"W)
Manteca VORTAC
(Lat. 37°50'01"N, long. 121°10'17"W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Tracy Municipal Airport and within 2.2 miles each side of the Manteca VORTEC 237° radial, extending from the 6.4-mile radius to 4.9 miles southwest of the Manteca VORTAC and within 1.8 miles each side of the 117° bearing from the Tracy Municipal Airport, extending from the 6.4-mile radius to 8.4 miles southeast of the Tracy Municipal Airport and within 1.8 miles each side of the 326° bearing from the Tracy Municipal Airport, extending from the 6.4-mile radius to 7.7 miles northwest of Tracy Municipal Airport, excluding that portion within the Byron, CA, Class E and Modesto, CA, Class E airspace areas, and excluding that airspace within Restricted Area R2531A.

* * * * *

Issued in Los Angeles, California, on January 6, 1998.

George D. Williams,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98–2223 Filed 1–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–43]

Amendment to Class E Airspace; Somerset, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Somerset, PA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Somerset County Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations for aircraft executing the GPS Runway (RWY) 6 SIAP to Somerset County Airport, Somerset, PA.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On November 13, 1997, a proposal to amend 14 CFR Part 71 to modify the Class E airspace at Somerset, PA, was published in the **Federal Register** (62 FR 60814). The development of a GPS RWY 6 SIAP for Somerset County Airport requires the amendment of the Class E airspace at Somerset, PA. The proposal was to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR Part 71 modifies Class E airspace at Somerset, PA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 6 SIAP to Somerset County Airport.

The FAA has determined that this regulation only involves as established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routing matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA AEA E5 Somerset, PA [Revised]

Somerset County Airport, PA
(Lat. 40°02′20″ N., long. 79°00′47″ W.)
Stoystown NDB
(Lat. 40°05′09″ N., long. 78°55′00″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Somerset County Airport and within 3.1 miles each side of the 058° bearing from the Stoystown NDB extending from the 6.4-mile radius to 9.6 miles northeast of the NDB and 4 miles each side of the 236° bearing from the Somerset County Airport extending from the 6.4-mile radius to 9.5 miles southwest of the airport, excluding that portion that coincides with the Seven Springs, PA, Class E airspace area.

* * * * *

Issued in Jamaica, New York, on December 16, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–2224 Filed 1–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–42]

Amendment to Class E Airspace; Allentown, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Allentown, PA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Allentown-Queen City Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations for aircraft executing the GPS Runway (RWY) 7 SIAP to Allentown-Queen City Airport, Allentown, PA.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On November 6, 1997, a proposal to amend 14 CFR Part 71 to modify the Class E airspace at Allentown, PA, was published in the **Federal Register** (62 FR 60051). The development of a GPS RWY 7 SIAP for Allentown-Queen City Airport requires the amendment of the Class E airspace at Allentown, PA. The proposal was to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace extending upward from 700 or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR Part 71 modifies Class E airspace at Allentown, PA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 7 SIAP to Allentown-Queen City Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA AEA E5 Allentown, PA [Revised]

Lehigh Valley International Airport, PA
(lat. 40°39′09″N., long. 75°26′25″W.)
LEEHI LOM
(lat. 40°35′09″N., Long. 75°32′58″W.)
Allentown-Queen City Municipal Airport
(lat. 40°34′13″N., long. 75°29′17″W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Lehigh Valley International Airport and within a 7.5-mile radius of Allentown-Queen City Airport and within 3.1 miles north and 5 miles south of the Lehigh Valley International Airport localizer southwest course extending from the LEEHI LOM to 10 miles southwest of the LOM, excluding that portion that coincides with the Easton, PA, and Quakertown, PA, Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on December 16, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–2225 Filed1–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–41]

Amendment to Class E Airspace; York, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at York, PA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) and amendments to existing SIAPs at York Airport have made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operation for aircraft executing the GPS Runway (RWY) 17 SIAP, and the amended GPS RWY 35 SIAP and Nondirectional Beacon (NDB) RWY 17 SIAP to York Airport at York, PA.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 17, 1997, a proposal to amend 14 CFR Part 71 to modify the Class E airspace at York, PA, was published in the **Federal Register** (62 FR 53995). The development of a GPS RWY 17 SIAP, and the amendments to the GPS RWY 35 SIAP and the NDB RWY 17 SIAP for York Airport, require the amendment of the Class E airspace at York, PA. The proposal was to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR Part 71 modifies Class E airspace at York, PA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 17 SIAP, the GPS RWY 35 SIAP, and the NDB RWY 17 SIAP to York Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "significant regulatory action"

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under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA AEA E5 York, PA [Revised]

York Airport, PA
(Lat. 39°55'01" N., long. 76°52'23" W.)
York NDB
(Lat. 39°55'12" N., long. 76°52'39" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of York Airport and within 4 miles each side of the 155° bearing from the York Airport extending from the 6.5-mile radius to 11 miles southeast of the airport and 4 miles west and 6 miles east of the 339° bearing from the York NDB extending from the 6.5-mile radius to 11 miles north of the NDB, excluding that portion that coincides with the Harrisburg, PA, Class E airspace area.

* * * * *

Issued in Jamaica, New York, on December 16, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–2226 Filed 1–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–40]

Amendment to Class E Airspace; Lewisburg, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Lewisburg, WV. The development of new VHF Omnidirectional Radio Range (VOR) Standard Instrument Approach Procedures (SIAP) at Greenbrier Valley Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations for aircraft executing the VOR Runway (RWY) 22 SIAP and VOR RWY 4 SIAP to Greenbrier Valley Airport, Lewisburg, WV.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building 1#111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 17, 1997, a proposal to amend 14 CFR Part 71 to modify the Class E airspace at Lewisburg, WV, was published in the **Federal Register** (62 FR 53986). The development of a VOR RWY 4 SIAP and a VOR RWY 22 SIAP for Greenbrier Valley Airport requires the amendment of the Class E airspace at Lewisburg, WV. The proposal was to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR Part 71 modifies the Class E airspace at Lewisburg, WV, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the VOR RWY 4 SIAP and VOR RWY 22 SIAP to Greenbrier Valley Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA WV AEA E5 Lewisburg, WV [Revised]

Greenbrier Valley Airport, WV
(lat. 37°51'30"N., long. 80°23'58"W.)
BUSHI NDB (LOM)
(lat. 37°46'56"N., long. 80°28'06"W.)

That airspace extending upward from 700 feet above the surface within a 12-mile radius of Greenbrier Valley Airport and within 4.4 miles each side of the 217° bearing from the BUSHI NDB (LOM) extending from the 12-mile radius to 10 miles southwest of the NDB (LOM).

* * * * *

Issued in Jamaica, New York, on December 16, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–2227 Filed 1–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–18]

Amendment of Class E Airspace; Sheridan, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action changes the Sheridan, WY, Class E airspace legal description from part-time to continuous. A review of the airspace for Sheridan Airport reveals a need for continuous use as indicated in the Airport/Facility Directory (A/F D).

DATES: Effective 0901 UTC, April 29, 1998.

Comments for inclusion in the Rules Docket must be received on or before March 2, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ANM–520, Federal Aviation Administration, Docket Number 97–ANM–18, 1601 Lind Avenue, S.W., Renton, Washington 98055–4056.

The official docket may be examined in the office of the Regional Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket Number 97–ANM–18, 1601 Lind Avenue, S.W., Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION: The Sheridan, WY, Class E airspace was originally effective on a part-time basis. The Class E airspace is now used on a continuous basis as is stated in the A/F D. The statement in the A/F D is meant to be temporary until the legal description can be changed. This amendment changes the legal airspace description from part-time to continuous, thereby reflecting actual operations. The boundaries of the airspace remain the same.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designated as a surface area for an airport are published in Paragraph 6002 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment, and, therefore, issues it as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a docket in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket Number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions are extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–ANM–18." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant

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rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that these proposed rules will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 Class E airspace designated as a surface area for an airport.

* * * * *

ANM WY E2 Sheridan, WY [Revised]

Sheridan County Airport, WY
(Lat. 44°46'09"N, long. 106°58'49"W)
Sheridan VORTAC
(Lat. 44°50'32"N, long. 107°03'40"W)

Within a 4.5-mile radius of the Sheridan County Airport, and within 4.5 miles each side of the 157° bearing from the airport, extending from the 4.5-mile radius to 17.6 miles southeast of the airport, and within 3.5 miles each side of the Sheridan VORTAC 312° and 327° radials extending from the 4.5-mile radius to 10.1 miles northwest of the VORTAC, and within 3.5 miles each side of the Sheridan VORTAC 140° radial extending from the 4.5-mile radius to 21.4 miles southeast of the VORTAC.

* * * * *

Issued in Seattle, Washington, on January 5, 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–2228 Filed 1–28–98 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–12]

Amendment of Class E Airspace; Powell, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Powell, WY, Class E airspace. This amendment provides additional airspace to fully encompass the procedures for a new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Yellowstone Regional Airport, Cody, WY.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 97–ANM–12, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On October 31, 1997, the FAA proposed to amend Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) by amending the Class E airspace area at Powell WY (62 FR 58931). This action would provide additional airspace to fully encompass a revised SIAP at Yellowstone Regional Airport. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

This action is the same as the proposal except for two typographical errors discovered (and corrected herein) in the coordinates for the Powell NDB and the Powell Municipal Airport. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises the 1200-foot Class E airspace at Powell, WY. The revised airspace, which overlies the Yellowstone Regional Airport, provides an extension to the south from approximately 6 to 26 miles, thus fully encompassing the new SIAP.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WY E5 Powell, WY [Revised]

Powell Municipal Airport, WY
(Lat. 44°52'07" N, long. 108°47'35" W)
Powell NDB
(Lat. 44°52'01" N, long. 108°47'11" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Powell Municipal Airport, and within 2.7 miles each side of the Powell NDB 164° bearing extending from the 7-mile radius to 7.9 miles southeast of the Powell NDB; that airspace extending upward from 1,200 feet above the surface beginning at lat. 45°22'00" N, long. 108°55'03" W; to lat. 45°22'00" N, long. 108°11'02" W; to lat. 44°15'15" N, long. 108°11'02" W, thence southwestward along the edge of the Worland, WY, 1,200-foot Class E airspace area to lat. 44°00'00" N, long. 108°24'43" W; west to lat. 44°00'00" N, long. 109°00'00" W; north to lat. 44°20'00" N, long. 109°00'00" W; thence west along lat. 44°20'00" N, to the east side of V–465, thence northeast along the east side of V–465 to the point of beginning.

* * * * *

Issued in Seattle, Washington, on December 23, 1997.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–2229 Filed 1–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 42

[Public Notice 2664]

Visas: Issuance of New or Replacement Immigrant Visas

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule.

SUMMARY: This rule amends the Department's regulations to comply with a change in the Immigration and Nationality Act (INA) that requires the Department to factor the number of immigrant visas issued to immediate relatives into the annual worldwide limitation on immigration.

EFFECTIVE DATE: January 29, 1998.

FOR FURTHER INFORMATION CONTACT: Pam Chavez, Legislation and Regulations Division, Visa Services, Department of State, Room L6–21, SA–1, Washington, DC 20520–0106. Phone: (202) 663–1203.

SUPPLEMENTARY INFORMATION: On November 29, 1990, the President signed the Immigration Act of 1990 (IMMACT 90) which, among other things, amended by including the number of aliens granted immediate relative status into the calculation for determining the annual family preference limitation. Before IMMACT 90 (Pub. L. 101–649) the number of immediate relative visas issued to the spouses, minor children and parents of U.S. citizens was not a factor in determining the overall annual numerical limitation for worldwide immigration.

IMMACT 90 amended the INA by requiring the Department to deduct the number of immediate relatives granted permanent resident status in the United States during the previous fiscal year from the worldwide 480,000 annual limit for the current fiscal year, but limited the annual family preference limit to no less than 226,000. To avoid double-counting the number of visas issued to immediate relatives who, for reasons beyond their control, are unable to use their original immigrant visas, consular offices will now issue replacement visas rather than new visas. The Department is amending its regulations at 22 CFR 42.74 accordingly.

Final Rule

The Department has determined that there is good cause for this rule to be exempt from notice comment requirements under 5 U.S.C. 553(b)(3)(A) because Public Law 101–649 requires that the number of aliens granted immediate relative status be included in the calculation of the annual family preference limitation and the use of replacement visas rather than new visas is simply an administrative mechanism to avoid double counting. Notice and public comment thereon are therefore unnecessary.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, as amended in 1996 (5 U.S.C. Chapter 6), requires the Federal Government to anticipate and minimize the impact of rules and paperwork requirements on small entities. Such entities are defined as small businesses (those with fewer than 500 employees), small non-profit organizations (those with fewer that 500 employees), and small governmental entities (those in areas with fewer than 50,000 residents). The Department has assessed the potential impact of the Rule and the Assistant Secretary for Consular Affairs by approving it certifies that it will not have a significant economic effect on a substantial number of small entities. It imposes no requirements on such entities.

In addition, pursuant to the Small Business Regulatory Fairness Act (5 U.S.C. Chapter 8), the Department has screened the Rule and determined that it is not a "major rule", as defined in 5 U.S.C. 804(2). It will not result in an annual effect on the economy of $100,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies in domestic and export markets.

Paperwork Reduction Act

No new information requirements are contained in this final rule.

Executive Orders 12866 and 12988

This rule is exempt from Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the objectives thereof. This rule also has been reviewed as required by Executive Order 12988 and determined to be in compliance therewith.

Executive Order 12612

This rule will not have substantial direct effect on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) and Executive Order 12875.

List of Subjects in 22 CFR Part 42

Aliens, Immigrants, Visas and passports.

In view of the foregoing 22 CFR is amended as follows:

PART 42—[AMENDED]

1. The authority citation for part 42 continues to read:

Authority: 8 U.S.C. 1104.

2. 22 CFR 42.74 is amended by revising paragraph (a) and (b) to read as follows:

§ 42.74 Issuance of new or replacement visas.

(a) *New immigrant visa for a special immigrant under INA 101(a)(27)(A) and (B).*

(1) The consular officer may issue a new immigrant visa to a qualified alien entitled to status under INA 101(a)(27)(A) or (B), who establishes:

(i) That the original visa has been lost, mutilated or has expired, or

(ii) The alien will be unable to use it during the period of its validity;

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(2) Provided:

(i) The alien pays anew the statutory application and issuance fees; and

(ii) The consular officer ascertains whether the original issuing office knows of any reason why a new visa should not be issued.

(b) *Replacement immigrant visa for an immediate relative or for an alien subject to numerical limitation.*

(1) A consular officer may issue a replacement visa under the original number of a qualified alien entitled to status under INA 201(b)(2)(A)(i), INA 203(a), (b), or (c), or under INA 124, if—

(i) The alien is unable to use the visa during the period of its validity due to reasons beyond the alien's control;

(ii) The visa is issued during the same fiscal year in which the original visa was issued;

(iii) The number has not be returned to the Department as a "recaptured visa number";

(iv) The alien pays anew the statutory application and issuance fees; and

(v) The consular officer ascertain whether the original issuing office of knows of any reason why a new visa should not be issued.

(2) In issuing a visa under this paragraph (b), the consular officer shall insert the word "REPLACE" on Form OF–155A, Immigrant Visa and Alien Registration, before the word "IMMIGRANT" in the title of the visa.

* * * * *

Dated: December 17, 1997.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 98–1780 Filed 1–28–98; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 42

[Public Notice 2715]

Visas: Immigrant Religious Workers

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule.

SUMMARY: The Immigration Act of 1990 created a new special immigrant visa classification for religious workers who have 2 years of membership in a religious denomination; two years of experience in a religious occupation or vocation and who intend to continue to work in such occupation or vocation. The legislation, as originally enacted, required religious workers (other than ministers) to seek entry into the United States before October 1, 1994.

On October 25, 1994 in the Immigration and Nationality Technical Corrections Act of 1994 the deadline was extended to allow religious workers to enter the United States "before October 1, 1997".

The Religious Workers Act of 1997 enacted on October 6, 1997 further extended the deadline to "before October 1, 2000". Thus, this final rule amends the previously published regulation and extends the allowable validity date of immigration visas for aliens seeking to enter the United States as special immigrant religious workers to not later than September 30, 2000.

EFFECTIVE DATE: January 29, 1998.

FOR FURTHER INFORMATION CONTACT: Pam Chavez, Legislation and Regulations Division, Visa Services, (202) 663–1206.

SUPPLEMENTARY INFORMATION:

Immigration Act of 1990

Section 151 of the Immigration Act of 1990 (IMMACT 90), Public Law 101–649, amended INA 101(a)(27)(C) by adding a new category of special immigrant visas for aliens who will work in a religious occupation or vocation for a religious organization in a professional or other capacity. Unlike the provision for special immigrant ministers of religion, which does not contain a sunset provision, the provisions for religious workers (as defined under INA 101(a)(27)(C)(ii)(II) and (III)), as originally enacted, required religious workers to seek to enter the United States before October 1, 1994.

Immigration and Nationality Technical Corrections Act of 1994

On October 25, 1994, sec. 214 of the Immigration and Nationality Technical Corrections Act of 1994 (Pub. L. 103–416) amended INA 101(a)(27)(C)(ii) to extend the sunset date to before October 1, 1997.

Religious Workers Act of 1997

Sec. 1 of the Religious Workers Act of 1997, Public Law 105–54, enacted October 6, 1997 further extended the deadline for special immigrant religious workers to enter the United States until before October 1, 2000. This final rule implements this section by revising 42.32(d)(1)(ii) to extend the visa validity date to not later than September 30, 2000.

Final Rule

This rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule imposes no reporting or recordkeeping action from the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act requirements. This rule has been reviewed as required by E.O. 12778 and certified to be in compliance therewith. This rule is exempted from E.O. 12866 but has been coordinated with INS and reviewed to ensure consistency therewith.

List of Subjects in 22 CFR Part 42

Aliens, Immigration, Passports and visas.

In view of the foregoing 22 CFR Chapter I is amended as follows:

PART 42—[AMENDED]

1. The authority citation for Part 42 is revised to read:

Authority: 8 U.S.C. 1104.

2. Section 42.32 is amended by revising paragraph (d)(1)(ii) to read as follows:

§ 42.32 Employment based preference immigrants.

* * * * *

(d) *Fourth preference—Special immigrants*—(1) *Religious workers.*

* * *

(ii) *Timeliness of application.* An immigrant visa issued under INA 203(b)(4) to an alien described in INA 101(a)(27)(C), other than a minister of religion, who qualifies as a "religious worker" as defined in 8 CFR 204.5 shall bear the usual validity except that in no case shall it be valid later than September 30, 2000.

* * * * *

Dated: January 12, 1998.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 98–1779 Filed 1–28–98; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8763]

RIN 1545–AU06

Modifications of Bad Debts and Dealer Assignments of Notional Principal Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations that deem a charge-off and allow a deduction for a partially worthless debt when the terms of a debt instrument have been modified.

The regulations provide guidance to certain taxpayers that have claimed a deduction for a partially worthless debt and then modified the terms of the debt instrument. This document also contains regulations relating to certain assignments of notional principal contracts by dealers in those contracts. The regulations provide guidance to taxpayers relating to the consequences of these assignments.

DATES: *Effective date:* These regulations are effective February 29, 1998.

Applicability date: These regulations apply to significant modifications of debt instruments and assignments of interest rate swaps, commodity swaps, and other notional principal contracts occurring on or after September 23, 1996.

FOR FURTHER INFORMATION CONTACT: Concerning the modifications of bad debts, Craig Wojay, (202) 622–3920, and concerning dealer assignments of notional principal contracts, Thomas M. Preston, (202) 622–3940 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On June 25, 1996, temporary regulations (TD 8676) relating to modifications of bad debts and dealer assignments of notional principal contracts under sections 166 and 1001 of the Internal Revenue Code (Code) were published in the **Federal Register** (61 FR 32653). A notice of proposed rulemaking (REG–209743–94, formerly FI–59–94) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (61 FR 32728). No public hearing was requested or held.

Written comments responding to the notice were received. After consideration of the comments, the regulations proposed by REG–209743–94 are adopted by this Treasury decision, and the corresponding temporary regulations are removed.

Explanation of Provisions

The preamble to the temporary regulations sets forth limited circumstances under which a taxpayer will be permitted to deduct an amount on account of a partially worthless debt even though an amount has not been charged off within the taxable year.

Section 166(a)(2) and § 1.166–3(a) provide that a deduction for a partially worthless debt is allowed only to the extent the debt is charged off in the taxable year. The charge-off requirement is satisfied when a portion of the debt is removed from the taxpayer's books and records. This generally is accomplished by reducing the debt's book basis. Thus, when an amount has been deducted for partial worthlessness, there is generally a reduction of both the book basis and the tax basis of a debt.

When a taxpayer is required to recognize gain under § 1.1001–1 because of a modification of a debt instrument, the taxpayer's tax basis in the debt is increased by the amount of gain recognized. However, regulatory and general accounting principles generally would not permit a corresponding increase in the book basis of the debt. Because the prior charge-off is not restored (that is, the book basis of the debt is not increased), there is no opportunity for the taxpayer to take a new charge-off for pre-existing worthlessness.

The purpose of the temporary regulations is to preserve a portion of a taxpayer's bad debt deduction with respect to a partially worthless debt. The portion preserved corresponds to the amount the taxpayer would have been entitled to deduct for partial worthlessness with respect to the modified debt if the book basis of the modified debt were increased to the same extent as the tax basis of that debt. Thus, if all the conditions of the temporary regulations are satisfied, then a modified debt is deemed to have been charged off in the year in which gain is recognized. The amount of the deemed charge-off, however, is limited to the difference between the tax basis of the debt and the greater of the book basis or the fair market value of the debt. The temporary regulations also address debt that constitutes transferred basis property under section 7701(a)(43).

In addition, the temporary regulations provide a limited rule dealing with a dealer's assignment of its position in an interest rate swap, commodity swap, or other notional principal contract to another dealer. If the assignment is permitted by the terms of the contract, the assignment is not treated as a deemed exchange by the nonassigning party of the original contract for a new contract that differs materially either in kind or in extent. Thus, an assignment to which the rule applies does not trigger gain or loss to the dealer's counterparty.

Three comments were received on the § 1.166–3T regulations. The first comment requests a deemed charge-off for a taxpayer that purchased at a discount debt for which a previous deduction for partial worthlessness was claimed, and then significantly modified the debt under § 1.1001–3 and recognized gain on the modification. Whenever debt is purchased for less than the stated redemption price, recognized gain from a significant modification is attributable to market discount as defined in section 1278(a)(2)(A) and not to a previously claimed deduction for partial worthlessness. In addition, the temporary regulations refer to § 1.166–3(a) (1) and (2) for guidance relating to prior charge-offs and deductions for partial worthlessness. Extending the temporary regulations to cover a discount purchase would significantly expand the regulations beyond their intended scope and create a situation that would be extremely difficult to administer. The regulations do not adopt the request to extend the regulations to cover such a purchase.

The second comment requests a deemed charge-off for a member of a consolidated group that purchased debt, for which a previous deduction for partial worthlessness was claimed, from another member of the group, then significantly modified the debt under § 1.1001–3 and recognized gain on the modification. Whenever debt is purchased for less than the stated redemption price, subsequently recognized gain from a significant modification is attributable to market discount as defined in section 1278(a)(2)(A) and not to a previously claimed deduction for partial worthlessness. Extending the temporary regulations to cover a purchase from another member of the consolidated group would significantly expand the regulations beyond their intended scope. The regulations do not adopt the request to extend the regulations to cover an intercompany transaction.

The third comment requests expanding the temporary regulations to include other situations in which a taxpayer has tax basis in a debt but no corresponding book basis. The first situation involves the accrual of interest income on loans that have been placed on non-accrual status for book purposes. The second situation involves the requirement to accrue interest on original issue discount obligations even if the loan has become uncollectible. This comment deals with situations other than the modification of a debt instrument and is beyond the scope of this regulation project.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of

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the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of the regulations concerning the modifications of bad debts is Craig Wojay, Office of the Assistant Chief Counsel (Financial Institutions and Products), IRS. The principal author of the regulations concerning the dealer assignments of notional principal contracts is Thomas M. Preston, Office of the Assistant Chief Counsel (Financial Institutions and Products), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.166–3, paragraph (a)(3) is added to read as follows:

§ 1.166–3 Partial or total worthlessness.

(a) * * *

(3) *Significantly modified debt*—(i) *Deemed charge-off.* If a significant modification of a debt instrument (within the meaning of § 1.1001–3) during a taxable year results in the recognition of gain by a taxpayer under § 1.1001–1(a), and if the requirements of paragraph (a)(3)(ii) of this section are met, there is a deemed charge-off of the debt during that taxable year in the amount specified in paragraph (a)(3)(iii) of this section.

(ii) *Requirements for deemed charge-off.* A debt is deemed to have been charged off only if—

(A) The taxpayer (or, in the case of a debt that constitutes transferred basis property within the meaning of section 7701(a)(43), a transferor taxpayer) has claimed a deduction for partial worthlessness of the debt in any prior taxable year; and

(B) Each prior charge-off and deduction for partial worthlessness satisfied the requirements of paragraphs (a) (1) and (2) of this section.

(iii) *Amount of deemed charge-off.* The amount of the deemed charge-off, if any, is the amount by which the tax basis of the debt exceeds the greater of the fair market value of the debt or the amount of the debt recorded on the taxpayer's books and records reduced as appropriate for a specific allowance for loan losses. The amount of the deemed charge-off, however, may not exceed the amount of recognized gain described in paragraph (a)(3)(i) of this section.

(iv) *Effective date.* This paragraph (a)(3) applies to significant modifications of debt instruments occurring on or after September 23, 1996.

* * * * *

§ 1.166–3T [Removed]

Par. 3. Section 1.166–3T is removed.

Par. 4. Section 1.1001–4 is added to read as follows:

§ 1.1001–4 Modifications of certain notional principal contracts.

(a) *Dealer assignments.* For purposes of § 1.1001–1(a), the substitution of a new party on an interest rate or commodity swap, or other notional principal contract (as defined in § 1.446–3(c)(1)), is not treated as a deemed exchange by the nonassigning party of the original contract for a modified contract that differs materially either in kind or in extent if—

(1) The party assigning its rights and obligations under the contract and the party to which the rights and obligations are assigned are both dealers in notional principal contracts, as defined in § 1.446–3(c)(4)(iii); and

(2) The terms of the contract permit the substitution.

(b) *Effective date.* This section applies to assignments of interest rate swaps, commodity swaps, and other notional principal contracts occurring on or after September 23, 1996.

§ 1.1001–4T [Removed]

Par. 5. Section 1.1001–4T is removed.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved: January 14, 1998.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 98–2093 Filed 1–28–98; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–33–1–7374; FRL–5955–9]

Approval and Promulgation of State Implementation Plans (SIP) for Louisiana: Motor Vehicle Inspection and Maintenance (I/M) Program; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects the section number in subpart T of part 40 of the Code of Federal Regulations (CFR) citation published in the **Federal Register** (FR) of November 19, 1997, regarding final disapproval of the Louisiana I/M SIP. Section 52.994 was inadvertently chosen for Disapprovals, when it had previously been assigned to Conditional Approvals. This document changes the section number for Disapprovals to 52.996.

DATES: Effective on January 29, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Rennie, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214)665–7367.

SUPPLEMENTARY INFORMATION:

I. Background

The EPA published document 97–30376 in the November 19, 1997, **Federal Register** (FR), finalizing disapproval of the I/M program in the Baton Rouge ozone nonattainment area. See 62 FR 61633 for the background and rulemaking for that action.

In amending part 52 of 40 CFR, a section was added in subpart T—Louisiana, for Disapprovals. Inadvertently, the section number chosen was already in use for Conditional Approvals. The purpose of this action is to change the section number for Disapprovals from 52.994 to 52.996.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is, therefore, not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandates as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Conformity, Hydrocarbons, Nitrogen dioxide, Ozone.

Dated: January 14, 1998.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

In rule FR Doc. 97–30376, published on November 19, 1997 (62 FR 61633), make the following correction:

1. On page 61634, in the third column, the amendatory instruction is corrected to read as follows:

2. Section 52.996 is added to read as follows:

2. In the text, the section number is changed from 52.994 to 52.996.

[FR Doc. 98–2087 Filed 1–28–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5954–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of partial deletion of the Prewitt Abandoned Refinery Superfund Site from the National Priorities List.

SUMMARY: The United States Environmental Protection Agency (EPA) Region 6 announces the deletion of the surface portion of the Prewitt Abandoned Refinery Superfund Site (the Site) from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, 42 U.S.C. 9605, is codified at Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300. This partial deletion is consistent with the EPA's Notice of Policy Change: Policy Regarding Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55466 (November 1, 1995). This partial deletion pertains to the surface portion, which includes all surface soils, and also includes the former separator area. This partial deletion does not pertain to the subsurface portion of the Site including without limitation ground water and subsurface soils. The subsurface portion of the Site will remain on the NPL, and response activities will continue at that portion. With the concurrence of the State of New Mexico through the New Mexico Environment Department (NMED), and with the concurrence of the Navajo Nation through the Navajo Nation Superfund Office (NSO), the EPA has determined that responsible parties have implemented all appropriate response actions required at the surface portion of the Site (neither the CERCLA-required five-year reviews, nor operation and maintenance of the constructed remedy is considered further response action for these purposes), that all appropriate Hazardous Substance Response Trust Fund (Fund) financed response actions under CERCLA have been implemented at the surface portion of the Site, and that no further response action by responsible parties is appropriate for the surface portion of the Site. Moreover, the EPA, with State of New Mexico concurrence through the NMED, and with Navajo Nation concurrence through the NSO, has determined that Site investigations show that the surface portion of the Site now poses no significant threat to public health or the environment; consequently, pursuant to CERCLA section 105, and 40 CFR 300.425(e), the surface portion of the Site is hereby deleted from the NPL.

EFFECTIVE DATE: January 29, 1998.

FOR FURTHER INFORMATION CONTACT: Greg J. Lyssy, Remedial Project Manager, (214) 665–8317, United States Environmental Protection Agency, Region 6, Mail Code: 6SF–LT, 1445 Ross Avenue, Dallas, Texas 75202. Information on the Site is available at the local information repository located at: Prewitt Fire House, PO Box 472, Prewitt, New Mexico 87045, (505) 876–4068. Requests for comprehensive copies of documents should be directed formally to the Regional Superfund Management Branch, care of Steve Wyman, (214) 665–2792, EPA Region 6, Mail Code: 6SF–PO, 1445 Ross Avenue, Dallas, Texas 75202.

SUPPLEMENTARY INFORMATION: The site to be partially deleted from the NPL is the Prewitt Abandoned Refinery Superfund Site located near the town of Prewitt, in McKinley County, New Mexico. This partial deletion pertains to the surface portion of the Site, which consists of all surface soils and the former separator area. This partial deletion does not pertain to the subsurface portion of the Site including without limitation ground water and subsurface soils. This Partial Deletion is in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List, 60 FR 55466 (Nov. 1, 1995). A Notice of Intent for Partial Deletion was published on October 6, 1997 (62 FR 52074). The closing date for comments on the Notice of Intent for Partial Deletion was November 5, 1997. The EPA received two comment letters, both of which supported the partial deletion.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Fund-financed remedial actions. Section 300.425(e)(3) of the NCP, 40 CFR 300.425(e)(3), states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede EPA efforts to recover costs associated with response efforts.

Lists of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: January 8, 1998.

Lynda F. Carroll,

Acting Regional Administrator (6RA), Region 6.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR 1987 Comp., p. 193.

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2. Table 1 of Appendix B to part 300 is amended by revising the entry for "Prewitt Abandoned Refinery" by adding a note "P" so that it reads as follows:

Appendix B—[Amended]

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site Name	City/county	Notes[a]
NM	Prewitt Abandoned Refinery	Prewitt	P

P=Sites with partial deletion(s).

[FR Doc. 98–1915 Filed 1–28–98; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No.95–74; RM–8579, RM–8690]

Radio Broadcasting Services; Benavides, Bruni, and Rio Grande City, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission denies a petition for rule making filed by Benavides Communications requesting the reallotment of Channel 299C2 from Benavides to Bruni, Texas; the allotment of Channel 254A at Benavides; and the modification of Station KXTM–FM's authorization to specify Bruni as its community of license. *See* 60 FR 29817, June 6, 1995. The proposed reallotment was denied because granting Sound Investments' counterproposal would provide first and second aural reception service to a greater number of people. In response to a counterproposal filed by Sound Investments unlimited, Inc.(RM–8690), the Commission substitutes Channel 298C2 for Channel 276A at Rio Grande City, Texas, and modifies Station KCTM–FM's license in accordance with Section 1.420(g) of the Commission's Rules. Channel 298C2 can be allotted to Rio Grande City in compliance with the Commission's minimum distance separation requirements at coordinates 26–22–42 NL and 98–48–48 WL. Mexican concurrence has been obtained for this allotment as a specially negotiated short-spaced, limited allotment since Rio Grande City is located within 320 kilometers (200 miles) of the U.S.-Mexican border. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 9, 1998.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, 202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 95–74, adopted January 14, 1998, and released January 23, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 276A and adding Channel 298C2 at Rio Grande City.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–2194 Filed 1–28–98; 8:45 am]
BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 63, No. 19
Thursday, January 29, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 406 and 457

Nursery Crop Insurance Regulations; Common Crop Insurance Regulations; and Nursery Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Nursery Crop Insurance Provisions. The intended effect of this action is to provide policy changes to better meet the needs of insureds, and to restrict the effect of the Nursery Crop Insurance Regulations (7 CFR part 406) to the 1995 and prior crop years.

DATES: Written comments and opinions on this proposed nursery rule will be accepted until the close of business March 16, 1998 and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through March 30, 1998.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., EDT, Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: Rob Cerda, Insurance Management Specialist, Research and Evaluation Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–6343.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined this rule to be not significant and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

This rule proposes to amend the information collection requirements previously approved by OMB under OMB control number 0563–0053 through October 31, 2000. This rule increases the producer (respondent) audience participation due to expanded coverage to include in-ground plants and ornamental nurseries; to insure plants that produce edible berries or nuts as long as the fruits or nuts are not intended for sale; and to offer a Peak Inventory Endorsement and Optional Unit Endorsement. All of the forms cleared under OMB control number 0563–0053 represent the minimum requirement for information to determine eligibility and losses qualifying for payment due to nursery coverage.

Revised reporting estimates and requirements for usage of OMB control number 0563–0053 will be submitted to OMB for approval under the provisions of 44 U.S.C., chapter 35. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through March 30, 1998.

The FCIC is seeking comments on the following Information Collection Request (ICR).

Title: Multiple Peril Crop Insurance.

Respondents/Affected Entities: Parties affected by the information collection requirements included in this rule are nursery producers.

Abstract: This rule proposes to expand nursery coverage to include in-ground plants and ornamental nurseries; to insure plants that produce edible berries or nuts as long as the fruits or nuts are not intended for sale; and to offer a Peak Inventory Endorsement and Optional Unit Endorsement. FCIC believes the proposed policy will increase participation in the nursery program and offer a better commodity to nursery producers.

Estimate of Burden: Public reporting burden for this collection of information is estimated at 68.7 minutes per participant because of the high degree of automation associated with the data collection.

Respondents: Nursery growers.

Estimated Number of Respondents: 1,689.

Estimated Number of Responses Per Respondent: 1.7.

Estimated Total Annual Burden on Respondents: 1,935 hours.

FCIC is requesting comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The Office of Management and Budget (OMB) is required to make a decision concerning the collections of information contained in this rule between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the rule.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implication to

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warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and a report of plant inventory. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. This regulation does not alter those requirements. The amount of work required of the insurance companies and insured may actually decrease because the plant inventory report has been simplified and insureds no longer have to report all their plants. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

FCIC proposes to revise and reissue the nursery crop insurance provisions found at 7 CFR 457.114. The new provisions will be effective for the 1999 and succeeding crop years. FCIC also proposes to amend 7 CFR part 406 to limit its effect to the 1995 and prior crop years.

This rule makes minor editorial and format changes to improve the Nursery Crop Insurance Provisions. In addition, FCIC is proposing substantive changes in the provisions for insuring nursery as follows:

1. Section 1—Adds definitions for the terms "amount of insurance," "brownout," "crop year," "crop year deductible," "eligible plant listing," "field grown," "in-ground fabric bag," "irrigated practice," "largest dimension," "nursery," "occurrence deductible," "plant inventory value report," "plant price schedule," "policy renewal date," "price level," "sales closing date," and "stock plants."

The definition of "crop year loss deductible," has been changed to "crop year deductible" for clarification. Revised the definitions of "standard nursery containers," "field market value A," and "field market value B" for clarification.

2. Section 2—Changed "Unit Division" guidelines to permit only one unit per county but allows for optional units by endorsement. Optional units will generally be by plant type unless otherwise provided in the Special Provisions.

3. Section 4—Change the contract change date to March 31 of the crop year for policies with a policy renewal date after July 1. Producers with policy renewal dates between March 31 and June 30 can elect to delay the effect of contract changes until the next crop year.

4. Section 5—Change the cancellation and termination dates to the day preceding the policy renewal dates. This change will give the insured year-round coverage.

5. Section 6(b)—Specify that the nursery plant inventory value report must be submitted with the application or not later than the policy renewal date for subsequent crop years in order to determine the amount of insurance before insurance attaches for the next crop year.

6. Section 6(c)—Add provisions to clarify the nursery inventory will be valued according to the plant price schedule in order to standardize prices and make the program more fair and equitable to all producers and reduce the risk of fraud.

7. Section 6(h)—Specify that the insured must ensure the full value of the insurable nursery plant inventory.

8. Section 7(a)—Add provisions to specify that the "annual premium" for each unit will be calculated by multiplying the amount of insurance by the appropriate premium rate listed on the actuarial documents by the insured share.

9. Section 8(b)—Add provisions to expand coverage to include the ornamental nursery industry as required by the Federal Agricultural Improvement and Reform Act of 1996.

10. Section 8(c)—Add provisions to expand coverage to include plants that produce edible berries or nuts as long as the fruits or nuts are not intended for sale.

11. Section 9—Add provisions specifying that insurance coverage commences on each unit 30 days after the application is signed and submitted, provided the premium has been paid, and at 12:01 a.m. of each subsequent annual policy renewal date. Currently, coverage begins on each unit or part of a unit on the later of October 1 or the date the insurance inventory is accepted. This provision will allow time for the insurance provider to inspect and accept or deny the insurance inventory.

12. Section 10(b)—Add provisions to exclude insects and plant disease as an insurable cause of loss, unless a disease or insect infestation occurs for which no approved control measures exists, or coverage is specifically provided by the Special Provisions.

13. Section 12—Add provisions clarifying indemnity calculations.

14. Section 13—Add provisions making the late and prevented planting provisions in the Basic Provisions not applicable to nursery.

15. Add a new section to include the Nursery Peak Inventory Endorsement.

List of Subjects in 7 CFR Parts 406 and 457

Crop insurance, Nursery, Reporting and record keeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby proposes to amend the Nursery Crop Insurance Regulations (7 CFR part 406) and revise and reissue the Common Crop Insurance Regulations (7 CFR part 457), effective for the 1999 and succeeding crop years, to read as follows:

PART 406—NURSERY CROP INSURANCE REGULATIONS FOR THE 1989 THROUGH THE 1995 CROP YEARS

1. The authority citation for 7 CFR part 406 is revised to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. The part heading is revised to read as set forth above.

3. The subpart heading "Subpart—Regulations for the 1989 and succeeding crop years" is removed.

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

4. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

4a. The part heading is revised as set forth above.

5. Section 457.114 is revised to read as follows:

§ 457.114 Nursery crop insurance provisions.

The Nursery Crop Insurance Provisions for the 1999 and succeeding crop years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Nursery Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions, and (4) the Basic Provisions, with (1) controlling (2), etc.

1. *Definitions.*

Amount of insurance. The value reported on the plant inventory value report (including any revised report accepted by us) multiplied by the coverage level percentage you elect, multiplied by the price level you elect, and multiplied by your share.

Crop year. In lieu of the definition in the Basic Provisions, the 12 month period beginning the day we accept the insurance inventory and extending until 11:59 p.m. of the day preceding the policy renewal date and designated by the year in which the insurance period ends.

Crop year deductible. The greater of: (1) The value reported on the plant inventory value report times 100 percent minus your coverage level percentage; or (2) field market value A times 100 percent minus your coverage level percentage.

Eligible plant listing. A listing published by FCIC that specifies the plants eligible for insurance as well as insurability requirements for such plants.

Field grown. Nursery plants planted and grown in the ground without the use of any artificial root containment device. In-ground fabric bags will not be considered as an artificial root containment device.

Field market value A. The value of the insurable plants, based on the plant prices contained in the plant price schedule, in the unit immediately prior to the occurrence of any loss.

Field market value B. The value of the insurable plants, based on the plant prices contained in the plant price schedule, in the unit following the occurrence of a loss, as determined by our appraisal of the crop, plus any loss in value due to an uninsured cause.

In-ground fabric bag. Also called a grow bag or a root control bag, is a porous fabric bag made of a nonbiodegradable material such as polypropylene, that typically has a plastic bottom, and is used for growing woody plants in the ground.

Irrigated practice. In lieu of the definition in the Basic Provisions the application of water, using appropriate systems and at the proper times, to provide the quantity of water needed to maintain your insured plant inventory.

Nursery. A business enterprise that produces nursery plant materials, a majority of which are sold in the wholesale market.

Plant inventory value report. Your report that declares the value of insurable plants in accordance with section 6.

Plant price schedule. A listing provided by FCIC of the maximum amount we will pay for insurable plants.

Policy renewal date. The policy renewal date is each anniversary of the original beginning of the insurance coverage (e.g. if insurance begins on October 1, 1998, the first policy renewal date is October 1, 1999).

Price level. The percentage of the plant price schedule price, up to 100 percent, that you elect and that is used to determine the amount of insurance and any indemnity.

Standard nursery containers. Rigid containers not less than 3 inches across the largest interior dimension at the top of the container, and which are appropriate in size and have drainage holes appropriate for the plant. In-ground fabric bags, trays, and cellpacks with individual cells less than 3 inches across the largest dimension, and burlap are not considered standard nursery containers under these crop provisions.

Stock plants. Plants used solely for propagation that are not intended for sale during the crop year.

2. *Unit Division.*

(a) In lieu of the definition of "basic unit" contained in section 1 of the Basic Provisions, a basic unit consists of all insurable plant inventory in the county in which you have a share.

(b) Inventory that would otherwise be one basic unit may be divided by electing an optional unit endorsement when you submit your application or prior to the policy renewal date for any subsequent crop year.

(c) The optional unit provisions in the Basic Provisions are not applicable.

3. *Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.*

(a) The production reporting requirements contained in section 3 of the Basic Provisions are not applicable.

(b) In lieu of the requirement in section 3(b) of the Basic Provisions that specifies that changes to the coverage level, price, or amount of insurance must be made by the sales closing date, you must give us written notice of such changes not later than 15 days prior to the policy renewal date.

4. *Contract Changes.*

In accordance with section 4 of the Basic Provisions:

(a) The contract change date is March 31 of each year.

(b) If your policy renewal date is on or after July 1, your insurance coverage will be in accordance with the policy, as changed, if any, by the March 31 contract change date. If your policy renewal date is between March 31 and June 30 inclusive, you may elect to convert your policy to the changed policy or keep your current policy for one year. For the subsequent crop year, the changed policy terms will apply. The election must be made on our form by June 30 and the elected policy terms will be effective July 1.

5. *Cancellation and Termination Dates.*

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are the day preceding the policy renewal date.

6. *Plant Inventory Value Report.*

(a) Section 6 of the Basic Provisions is not applicable.

(b) You must submit a plant inventory value report to us with your application not later than the day preceding each subsequent policy renewal date.

(c) The plant inventory value report must include all growing locations, the value of your inventory, and your share. At our option, you will be required to provide documentation in support of your plant inventory value report including but not limited to a detailed plant inventory listing that includes each type of plant, the number of each plant type, and the value of each plant type; detailed individual sales and purchases of plants for the 3 previous crop years; sales totals for the previous 3 years; purchases of plant material, etc., and your ability to properly obtain and maintain nursery stock.

(d) Your plant inventory value report will be used to determine your premium and amount of insurance. If you do not submit a plant inventory value report or other information that may be required under section 6(c) by the date required, we will determine the plant inventory value or deny liability. Errors in reporting may be corrected by us at the time of loss adjustment.

(e) Your inventory must be valued according to the plant price schedule.

(f) You may revise your plant inventory value report to correct or change the value reported. If you wish to revise your plant inventory value report to reflect an increase in inventory value, you must notify us in writing at least 14 days before the change in inventory value will become effective. We

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may inspect the inventory. Insurance will not attach on any proposed increase in inventory value until we accept the plant inventory in writing.

(g) You may choose the optional Peak Inventory Endorsement to cover temporary increases in your inventory value.

(h) You must insure the full value of your insurable plant inventory. Failure to insure the full value of your insurable plant inventory will result in the reduction of any claim in accordance with section 12(b)(1).

7. *Annual Premium.*

In lieu of section 7 of the Basic Provisions:

(a) We will determine your premium for the plant inventory value by multiplying the amount of insurance by the appropriate premium rate for basic units listed on the actuarial documents and by your share.

(b) The annual premium will be earned in full when insurance attaches. It is due and payable as follows:

(1) Forty percent on the date we accept the insurance inventory;

(2) If you apply or your policy renewal date is between January 1 and June 30 inclusive, you must pay the remaining premium by September 30 of the same year; and

(3) If you apply, or your policy renewal date is at any other time, you must pay the remaining premium by March 31 of the following year.

(c) Additional premium from an increase in the plant inventory value report is due and payable when the revised plant inventory value report is accepted by us.

(d) Interest will accrue at the rate of one and one-fourth percent simple interest per calendar month, or any part thereof, on any unpaid amount due us. For the purpose of premium amounts due us, interest will start on the first day of the month following the premium due dates specified in paragraph 7(b) above.

(e) Premium will not be reduced due to a decrease in the plant inventory value once the insurance period has begun.

8. *Insured Plants.*

In lieu of the provisions of sections 8 and 9 of the Basic Provisions, the insured nursery plant inventory will be all the nursery plants in the county that:

(a) Are contained in the eligible plant listing, unless a written agreement provides otherwise;

(b) Are classified as woody, herbaceous or foliage ornamental plants;

(c) Produce edible fruits or nuts, provided the fruit or nuts are not intended for sale;

(d) Are determined by us to be acceptable;

(e) Are grown in a county for which a premium rate is provided in the actuarial documents;

(f) Are grown under an irrigation practice for which you have adequate irrigation equipment and water to carry out a good irrigation practice at the time coverage begins, unless otherwise provided by the actuarial documents or written agreement.

(g) Are not stock plants;

(h) Are grown in accordance with the production practices for which premium rates have been established;

(i) Are grown in an appropriate medium; and

(j) Are grown in nursery facilities or at locations inspected by us and determined to be acceptable.

9. *Insurance Period.*

In lieu of the provisions of section 11 of the Basic Provisions, if you have paid your premium in accordance with section 7(b)(1), coverage begins 30 days after your application is signed by you, or the date the insurance inventory is accepted whichever is later, and at 12:01 a.m. of each subsequent policy renewal date as long as the policy remains in force and your plant inventory value report is received. Insurance ends at the earliest of:

(a) The date of final adjustment of a loss when the total indemnities paid equal the amount of insurance; or

(b) 11:59 p.m. of the day preceding the policy renewal date.

10. *Causes of Loss.*

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided for unavoidable damage caused only by the following causes of loss that occur within the insurance period:

(1) Adverse weather conditions, except as specified in section 10(b)(4);

(2) Fire, except where weeds and other forms of undergrowth in the vicinity of the plants or buildings on your insured site are not controlled by chemical or mechanical means or by removal;

(3) Wildlife;

(4) Earthquake;

(5) Volcanic eruption; or

(6) Failure of the irrigation water supply due to a cause of loss specified in section 10(a)(1) through (5) that occurs within the insurance period.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we do not insure against any loss caused by:

(1) Disease or insect infestation, unless:

(i) A disease or insect infestation occurs for which no effective control measure exists; or

(ii) Coverage is specifically provided by the Special Provisions.

(2) A failure of or a reduction in the power supply, unless such failure is due to an insurable cause of loss specified in section 10(a);

(3) The inability to market the nursery plants as a direct result of quarantine, boycott, or refusal of a buyer to accept production;

(4) Frost or freeze, if frost or freeze protection is shown as being required in the eligible plant listing, unless:

(i) You have installed adequate frost or freeze protection equipment or facilities and there is a failure or breakdown that is directly caused by an insurable cause of loss specified in section 10(a). The insured plants must be damaged by cold temperatures and the damage must occur within 72 hours of the failure of such equipment or facilities unless you establish that repair or replacement was not possible between the time of failure or breakdown and the time the damaging temperatures occurred; or

(ii) The lowest temperature reached exceeded the ability of the required frost or freeze protection equipment to keep the insured plants from sustaining cold damage.

(5) Collapse or failure of buildings or structures, unless the damage to the building or structures results from a cause of loss specified in section 10(a).

11. *Duties in the Event of Damage or Loss.*

In addition to your duties contained under section 14 of the Basic Provisions, you must:

(a) Obtain our written consent prior to:

(1) Destroying, selling or otherwise disposing of any plant inventory that is damaged; or

(2) Changing or discontinuing your normal growing practices with respect to care and maintenance of the insured plant inventory.

(b) Failure to obtain our written consent will result in the denial of your claim.

(c) Submit a claim for indemnity to us on our form, not later than 60 days after the date of your loss, but in no event later than 60 days after the end of the insurance period.

12. *Settlement of Claim.*

(a) If at the time of loss, field market value A does not exceed the value on your accepted plant inventory value report, including any peak inventory endorsement, your indemnity will be determined by us for each unit as follows:

(1) Subtract field market value B from field market value A;

(2) Subject to section 12(c), subtract the crop year deductible from the result of section 12(a)(1) to obtain the loss amount;

(3) If the result of section 12(a)(2) is greater than zero, and subject to the limit of section 12(d), your indemnity equals the result of multiplying the result of section 12(a)(2) by your price level and by your share.

(b) If at the time of loss, field market value A exceeds the amount shown on your accepted plant inventory value report, we will pay any indemnity in the following manner:

(1) Divide the value shown on your accepted plant inventory value report by field market value A (rounded off to the nearest hundredth);

(2) Subtract field market value B from field market value A;

(3) Subject to section 12(c), subtract the crop year deductible from the result in section 12(b)(2) to obtain the loss amount; and

(4) If the result of section 12(b)(3) is greater than zero, and subject to the limit of section 12(d), your indemnity equals the result of section 12(b)(3) multiplied by section 12(b)(1), multiplied by your price level, and multiplied by your share.

(c) Individual insured losses occurring during the crop year may be accumulated to satisfy the crop year deductible if you timely report each loss to us. Sections 12(a)(2) and 12(b)(3) will not apply to any subsequent individual loss determinations when the total amount of accumulated losses is equal to or greater than the crop year deductible. However, no indemnities will be paid for subsequent losses after the crop year deductible has been met unless the value of the damaged plants exceeds the lesser of one percent of your inventory value or $250.

(d) The total of all indemnities for the crop year will not exceed the amount of insurance.

(e) The value of any insured plant inventory will be determined on the basis of our appraisals.

13. *Late and prevented planting.*

The late and prevented planting provisions in the Basic Provisions are not applicable.

14. *Written agreements.*

(a) In lieu of section 18(g) of the Basic Provisions each agreement must be applied for by the insured in writing with the application or not later than the policy renewal date;

(b) In addition to the requirements of section 18 of the Basic Provisions:

(1) Any written agreement is valid only until 11:59 p.m. of the day preceding the policy renewal date;

(2) Written agreements will not be approved to insure container plants if the container does not qualify as a standard nursery container; and

(3) In lieu of section 18(c), an application for a written agreement submitted after the year of application for insurance or the policy renewal date may be approved if you demonstrate your physical inability to have applied timely with your application for insurance or provide by the policy renewal date, and after physical inspection of the nursery plant inventory, we determine that the inventory will be salable at the value shown in the plant inventory value report as the actual date of the application.

Nursery Crop Insurance—Peak Inventory Endorsement

This endorsement is not a continuous contract.

In return for payment of premium for the coverage contained herein, this endorsement will be attached to and made part of the Nursery Crop Insurance Policy, subject to the terms and conditions described herein.

1. *Definitions.*

Coverage commencement date. The later of the date you declare as the beginning of the coverage or 30 days after a properly completed peak inventory value report is accepted by us.

Coverage term. The coverage term begins on the coverage commencement date and ends on the coverage termination date. It is calculated in months (rounded to the nearest tenth) by dividing the number of calendar days in the coverage term by 30. The minimum coverage term for premium calculation purposes is one month.

Coverage termination date. The date you declare that the peak amount of insurance for your nursery insurance contract will cease. This date cannot be later than the end of the crop year.

Peak amount of insurance. The additional value reported on the peak inventory value report multiplied by the coverage level and price level you elected under the Crop Provisions, and multiplied by your share.

Peak inventory value report. A report that declares the increase in aggregated wholesale market value of insurable plants over the value reported on the plant inventory value report, the coverage commencement and termination dates, and the other requirements of section 6 of the Nursery Crop Provisions.

2. *Eligibility.*

(a) You must have a Nursery crop insurance policy in effect for the crop year that this endorsement applies;

(b) You must have elected either the limited or additional level of coverage. This endorsement is not available if you have elected the Catastrophic Risk Protection Endorsement.

(c) You must submit a peak inventory value report that will serve as the application for coverage under this endorsement. We may reject the peak inventory value report if all requirements in this endorsement and the Nursery Crop Provisions are not met.

3. *Coverage.*

(a) The amount of insurance provided under the Nursery Crop Provisions is increased by the peak amount of insurance for the coverage term.

(b) Indemnities paid on the peak amount of insurance will apply to your crop year deductible in the same proportion as your peak amount of insurance under this endorsement has to your amount of insurance under the Nursery Crop Provisions.

(c) Except as provided herein, this endorsement does not change, amend or otherwise modify any other provision of your Nursery Crop Insurance Policy.

4. *Peak insurance period.*

Coverage begins on the coverage commencement date, provided you paid the required premium in accordance with section 5, and ends on the coverage termination date.

5. *Premium.*

(a) The premium for this endorsement is determined by multiplying the peak amount of insurance times the appropriate premium rate in the actuarial documents, times the coverage term and times your share.

(b) The premium for this endorsement is due and payable when the peak amount of insurance becomes effective.

6. *Reporting requirements.*

(a) In addition to the reporting requirements of section 6 of the Nursery Crop Provisions, you must submit a peak inventory value report on our form.

(b) If you have in effect an Optional Unit Endorsement, you must submit a peak inventory value report for each unit to which such report is applicable.

7. *Liability limit.*

The peak amount of insurance is limited to an amount equal to the amount of insurance you declare under the Nursery Crop Provisions.

Nursery Crop Insurance—Optional Unit Endorsement

This is a continuous endorsement.

In return for payment of premium for the coverage contained herein, this endorsement will be attached to and made part of the Basic Crop Insurance Policy and the Nursery Crop Provisions subject to the terms and conditions described herein.

1. *Definitions.*

Occurrence Deductible. Field market value A times (100 percent minus your coverage level election percentage.)

2. *Eligibility.*

(a) You must have a Nursery crop insurance policy in effect for the crop year that this endorsement applies.

(b) You must have elected either the limited or additional level of coverage. This endorsement is not available if you have elected the Catastrophic Risk Protection Endorsement.

3. *Reports.*

(a) In addition to information required under section 6 of the Nursery Crop Provisions, you must also provide the maximum value of insurable plants for each unit during the insurance period on the plant inventory value report. We will use no more than the value reported for each unit in calculating a claim under section 12 of the Nursery Crop Provisions.

(b) If you elect to obtain a Peak Inventory Endorsement and you have optional units under this endorsement, you must submit a peak inventory value report for each optional unit to which the Peak Inventory Endorsement will apply.

4. *Unit Division.*

(a) Your indemnity will be determined for each unit.

(b) This endorsement provides optional units for each practice for which a separate rate is established in the actuarial documents and for each plant group listed in section 3(c).

(c) Plant Groups.

1. Deciduous Trees (Shade and Flower);
2. Broadleaf Evergreen Trees;
3. Coniferous Evergreen Trees;
4. Fruit and Nut Trees;
5. Deciduous Shrubs;
6. Broadleaf Evergreen Shrubs;
7. Coniferous Evergreen Shrubs;
8. Small Fruits;
9. Herbaceous Perennials;
10. Roses;
11. Ground Cover and Vines;
12. Annuals;
13. Foliage; and
14. In addition, other plant groupings as listed in the Special Provisions, if the type of plant would meet the criteria for more than one of the plant groups specified in this subsection, you must elect only one plant group and all plants of that type must be included in that group.

5. *Premium.*

In lieu of section 7(a) of the Nursery Crop Provisions, your premium will be calculated by multiplying the amount of insurance determined under the Nursery Crop Provisions by the appropriate premium rate for basic units listed on the actuarial documents, by the premium rate for optional units listed on the actuarial documents, and by your share.

6. *Settlement of claim.*

(a) In lieu of section 12(a)(2) of the Nursery Crop Provisions, and subject to section 12(c), subtract the occurrence deductible from the result of section 12(a)(1).

(b) In lieu of section 12(b)(3) of the Nursery Crop Provisions, and subject to section 12(c), subtract the occurrence deductible from the result of section 12(b)(2).

Signed in Washington, DC, on January 22, 1998.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 98–2095 Filed 1–28–98; 8:45 am]

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FEDERAL ELECTION COMMISSION

11 CFR Chapter I

[Notice 1998—4]

Composition of the Commission

AGENCY: Federal Election Commission.

ACTION: Notice of disposition of petition for rulemaking.

SUMMARY: The Commission announces its disposition of a Petition for Rulemaking filed on December 4, 1997, by John J. Wheeling, Treasurer of the National Reform Party Organizing Committee. The petition asked the Commission to amend its rules to require either that two members of the current six-member Commission be affiliated with minor political parties, or to expand the Commission from six to nine members, with the three new members required to be affiliated with minor political parties. Further information is provided in the supplementary information that follows.

DATES: March 2, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On December 4, 1997, the Commission received a Petition for Rulemaking from John J. Wheeling, Treasurer of the National Reform Party Organizing Committee. The Petition asked the Commission to amend its rules to require either that two members of the current six-member Commission be affiliated with minor political parties; or to expand the Commission from six to nine members, with the three new members required to be affiliated with minor political parties. The Petition states that this action is necessary to protect the rights of minor political parties which, it argues, are infringed by what it claims is a statutory requirement at 2 U.S.C. 437c(a)(1) that the six-member Commission be composed of three Commissioners affiliated with the Democratic Party, and three affiliated with the Republican Party.

The Petition does not identify the specific section(s) of the regulations to be affected by these changes, as required by the Commission's rules governing rulemaking petitions at 11 CFR 200.2(b)(3), because the Commission's rules do not address this situation. Nor could they, because the requested actions are outside the scope of the Commission's rulemaking authority. For this reason the Commission did not publish a Notice of Availability in the **Federal Register** seeking comments on the Petition's merits, which action is normally taken pursuant to 11 CFR 200.3(a)(1) for petitions that meet the requirements of paragraph 200.2(b).

The Constitution at Art. II, section 2, cl. 2 provides that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint * * * [all] Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law." Congress has by law established a six-member Federal Election Commission, 2 U.S.C. 437c(a)(1); and Congress, not the Commission, has the sole authority to alter its size, either by adding three additional Commissioners or in any other way.

Under the Appointments Clause, the President is entitled to choose the individuals to nominate as Commissioners. However, it has been long recognized that "it is entirely proper for Congress to specify the qualifications for an office that it has created." *Bowsher* v. *Synar*, 478 U.S. 714, 740 (1986) (Stevens, J., concurring). The provision in section 437c(a)(1) that "no more than 3 [of the six] members of the Commission" appointed by the President "may be affiliated with the same political party" simply sets the necessary qualifications for the members of the Commission. Again, it is for Congress, and not the Commission, to determine how, if at all, these qualifications should be changed.

The Commission notes that there is nothing in the text of the law to require that the Commission be made up of three Democrats and three Republicans. The President can comply with this provision by choosing from among millions of persons affiliated with political parties, and millions more not affiliated with any party. The fact that Presidents to date have appointed only Democrats and Republicans as Commissioners does not mean that this will continue in the future, when they may choose to appoint a member of another political party, or an independent affiliated with no political party.

Moreover, contrary to the petitioner's claim, the statutory requirement that no more than three Commissioners be affiliated with the same political party does not discriminate against minor parties. In fact, the reverse is true: By ensuring that no more than three Commissioners be affiliated with the same political party, and at the same time requiring an absolute majority of four votes for the Commission to take formal action, 2 U.S.C. 437c(c), Congress has acted to insure that no political party will be able to single-handedly dictate Commission action. These considerations, however, are secondary to the Constitutional and statutory provisions, discussed above, under which the Commission is powerless to take the requested action.

The Commission's rules governing rulemaking petitions state 11 CFR 200.5 (a) and (d) that the Commission's decision on whether to initiate a rulemaking in response to a rulemaking petition may include, *inter alia*, consideration of the Commission's statutory authority and the necessity of statutory revision to accomplish the requested result. The Commission believe these factors are controlling and, therefore, at its open meeting of January 22, 1998, voted not a initiate a rulemaking to reconstitute the Commission as requested in this Petition.

Dated: January 23, 1998.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 98–2098 Filed 1–28–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–163–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, and –300A and Model Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146–100A, –200A, and –300A and Model Avro 146–RJ series airplanes. This proposal would require repetitive inspections of the attachment brackets between the horizontal and vertical stabilizers to detect intergranular corrosion, and follow-on actions. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct reduced structural integrity of the stabilizer brackets due to corrosion, which could result in reduced controllability of the airplane.

DATES: Comments must be received by March 2, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–163–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–163–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–163–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain British Aerospace Model BAe 146–100A, –200A, and –300A and Model Avro 146–RJ series airplanes. The CAA advises that, during a routine inspection, intergranular corrosion was found on the attachment fittings between the horizontal and vertical stabilizers and on the adjoining vertical stabilizer lugs. Such corrosion may result from improper manufacturing techniques and, therefore, may exist on other airplanes of the same type design. This condition, if not detected and corrected in a timely manner, could reduce the structural integrity of the stabilizer attachment brackets, which could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

British Aerospace has issued Service Bulletin SB.55–15, dated April 14, 1997, which describes procedures for a visual or an ultrasonic inspection of the attachment brackets between the horizontal and vertical stabilizers to detect intergranular corrosion. For airplanes on which no corrosion is found, the service bulletin describes procedures for restoration of the original protective treatment and application of additional surface protection to the attachment brackets. For airplanes on which corrosion is found that is accessible, the service bulletin describes procedures for blending out the corrosion, re-protecting the blended areas, and applying additional surface protection to the attachment brackets. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 001–04–97 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between the Proposed Rule and Relevant Service Information

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Operators also should note that the service bulletin and the British airworthiness directive do not specify accomplishment of repetitive inspections after the one-time inspection described in the service bulletin because repetitive inspections are included in a revised Maintenance Review Board (MRB) Report. However, the FAA has determined that it is necessary to mandate the repetitive inspections in paragraph (a) of this AD to ensure continued operational safety of the fleet.

Cost Impact

The FAA estimates that 40 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,400, or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship

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between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Regional Aircraft Limited [Formerly British Aerospace Regional Aircraft Limited, Avro International Division; British Aerospace, PLC; British Aerospace Commercial Aircraft Limited]: Docket 97–NM–163–AD.

Applicability: Model BAe 146–100A, –200A, and –300A and Model Avro 146–RJ series airplanes, certificated in any category, having the following constructors numbers:

Model	*Constructors Nos.*
BAe 146–100A, –200A, and –300A.	All.
Avro 146–RJ70/70A ..	All up to and including E1267.
Avro 146–RJ85/85A ..	All up to and including E2300.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct reduced structural integrity of the stabilizer attachment brackets due to corrosion, which could result in reduced controllability of the airplane, accomplish the following:

(a) Perform an inspection to detect corrosion of the attachment brackets between the horizontal and vertical stabilizers, in accordance with British Aerospace Service Bulletin SB.55–15, dated April 14, 1997, at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable. Thereafter, repeat the inspection at intervals not to exceed 12,000 flight cycles or 4 years after the initial inspection, whichever occurs first.

(1) For Model BAe 146–100A, –200A, and –300A series airplanes having constructors numbers identified in paragraph D.(1)(a) of the Planning Information section of the service bulletin: Inspect within 20 months after the effective date of this AD.

(2) For Model BAe 146–100A, –200A, and –300A series airplanes having constructors numbers identified in paragraph D.(1)(b) of the Planning Information section of the service bulletin: Inspect within 32 months after the effective date of this AD.

(3) For Model BAe 146–100A, –200A, and –300A series airplanes and Avro 146–RJ70A, –85A, and –100A airplanes having constructors numbers identified in paragraph D.(1)(c) of the Planning Information section of the service bulletin: Inspect within 44 months after the effective date of this AD.

(b) If no corrosion is detected, prior to further flight, restore the original protective treatment and apply additional surface protection to the attachment brackets in accordance with British Aerospace Service Bulletin SB.55–15, dated April 14, 1997.

(c) If any corrosion is detected and it is accessible, prior to further flight, blend out the corrosion, re-protect the blended areas, and apply additional surface protection to the attachment brackets in accordance with British Aerospace Service Bulletin SB.55–15, dated April 14, 1997.

(d) If any corrosion is detected and it is not accessible or, if after blending, the damage to the attachment brackets is found to be outside the limits identified in British Aerospace Service Bulletin SB.55–15, dated April 14, 1997, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in British airworthiness directive 001–04–97.

Issued in Renton, Washington, on January 22, 1998.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2138 Filed 1–28–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–278–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0070 and 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Fokker Model F28 Mark 0070 and 0100 series airplanes. This proposal would require a one-time inspection of the torque links of the main landing gear (MLG) assemblies to determine if the lockwire is present on the apex bolt; and corrective action, if necessary. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the MLG due to loose connections between the upper and lower torque links of the MLG.

DATES: Comments must be received by March 2, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97-NM–278-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97-NM–278-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97-NM–278-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on all Fokker Model F28 Mark 0070 and 0100 series airplanes. The RLD advises that it received a report of an incident involving a Fokker Model F28 Mark 0070 series airplane in which the flight crew aborted takeoff due to excessive vibration. The flight crew suspected that the vibration originated from the main landing gear (MLG). Subsequent investigation of the torque link of the right MLG assembly revealed that the locking bolt and the plate of the apex joint were loose; additionally, the lockwire, which was intended to secure the locking bolt, was missing. Investigation of the left MLG assembly also revealed that the lockwire was missing. Similar discrepancies were noted on other Menasco MLG assemblies during production. In addition, the applicable maintenance documents for Messier-Dowty and Menasco MLG assemblies subsequently were reviewed, and no reference to the lockwire was noted. Such missing lockwire or loose locking bolt, if not corrected, could result in failure of the MLG.

Explanation of Relevant Service Information

The manufacturer has issued Fokker F100 All Operator Message (AOM) AOF100.013, reference TS96.68988, dated December 19, 1996, which describes procedures for a one-time inspection of the torque links of the MLG assembly to determine if lockwire is present on the apex bolt; and for retorquing the apex bolt and installing lockwire, if no lockwire is present. The RLD issued Dutch airworthiness directive 1996–147 (A), dated December 23, 1996, in order to assure the continued airworthiness of these airplanes in the Netherlands. The RLD refers to Menasco Service Bulletin 41050–32–13, dated December 20, 1996, as an additional source of service information for accomplishment of the actions required by this AD.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the AOM described previously.

Cost Impact

The FAA estimates that 131 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $7,860, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant

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economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 97–NM–278–AD.

Applicability: All Model F28 Mark 0070 and 0100 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main landing gear (MLG) due to loose connections between the upper and lower torque links of the MLG, accomplish the following:

(a) Inspect the torque links of the left and right MLG assemblies to determine if the lockwire is installed on the apex bolt, in accordance with Fokker F100 All Operator Message (AOM) AOF100.013, Reference TS96.68988, dated December 19, 1996, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. If any discrepancy is found, prior to further flight, retorque the apex bolt and install lockwire in accordance with the AOM.

(1) For airplanes equipped with Menasco Aerospace, Ltd., MLG assemblies: Inspect within 5 days after the effective date of this AD.

(2) For airplanes equipped with Messier-Dowty, Ltd., MLG assemblies: Inspect within 30 days after the effective date of this AD.

(b) As of the effective date of this AD, no person shall install on any airplane an MLG torque link unless it has been inspected and corrective action has been accomplished, in accordance with Fokker F100 All Operator Message (AOM) AOF100.013, Reference TS96.68988, dated December 19, 1996.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive 1996–147 (A), dated December 23, 1996.

Issued in Renton, Washington, on January 22, 1998.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2137 Filed 1–28–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209682–94]

RIN 1545–AS39

Adjustments Following Sales of Partnership Interests

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking, amendment to notice of proposed rulemaking; notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document withdraws a portion of the notice of proposed rulemaking published in the **Federal Register**, February 16, 1984 (49 FR 5940); contains proposed regulations relating to the optional adjustments to the basis of partnership property following certain transfers of partnership interests under section 743, the calculation of gain or loss under section 751(a) following the sale or exchange of a partnership interest, the allocation of basis adjustments among partnership assets under section 755, and the allocation of a partner's basis in its partnership interest to properties distributed to the partner by the partnership under section 732(c); and, finally, amends proposed regulations relating to the computation of a partner's proportionate share of the adjusted basis of depreciable property (or depreciable real property) under section 1017. The changes are necessary to provide clearer guidance on the proper application of these sections and will effect partnerships and partners where there are transfers of partnership interests, distributions of property, or elections under sections 108(b)(5) or (c). In addition, the proposed regulations under section 732(c) reflect changes to the law made by the Taxpayer Relief Act of 1997.

DATES: Written comments must be received by April 29, 1998. Outlines of topics to be discussed at the public hearing scheduled for Wednesday, July 8, 1998, at 10 a.m. must be received by Wednesday, June 24, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–209682–94), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–209682–94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC.

Alternatively, taxpayers may submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Terri A. Belanger, (202) 622–3070; concerning submissions and the hearing, LaNita VanDyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by March 30, 1998. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up cost and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in §§ 1.743–1(b), 1.743–1(k), and 1.755–1. This information is required in order for partners to have adequate knowledge to comply with section 743 and for the IRS to verify compliance with section 743. This information will be used to determine whether the amount of tax has been computed correctly. Responses to this collection of information are mandatory for partnerships that have made an election under section 754 and for which a section 743 transfer has been made. The likely respondents are businesses or other for-profit institutions.

Estimated total annual recordkeeping burden under § 1.743–1(b): 600,000 hours.

The estimated annual burden per recordkeeper varies from 1 hour to 300 hours, depending on the individual circumstances, with an estimated average of 4 hours.

Estimated number of recordkeepers: 150,000.

Estimated total annual reporting burden under § 1.743–1(k)(1): 225,000 hours.

The estimated annual burden per respondent is estimated at an average of 3 hours.

Estimated number of respondents: 75,000.

Estimated frequency of responses: On occasion.

Estimated total annual reporting burden under § 1.743–1(k)(2): 75,000 hours.

The estimated annual burden per respondent is estimated at an average of 1 hour.

Estimated number of respondents: 75,000.

Estimated frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document proposes to (a) revise §§ 1.743–1 and 1.755–1 of the Income Tax Regulations (26 CFR part 1), (b) withdraw § 1.168–2(n) of the proposed Income Tax Regulations published on February 16, 1984 (49 FR 5940), and (c) amend §§ 1.732–1, 1.732–2, 1.734–1, 1.751–1 of the Income Tax Regulations, and § 1.1017–1 of the proposed Income Tax Regulations published January 7, 1997 (62 FR 955).

Section 743(b) provides for an optional adjustment to the basis of partnership property following certain transfers of partnership interests. The Code provides for basis adjustments in an attempt to coordinate the transferee's tax consequences and economic consequences. The amount of the basis adjustment is the difference between the transferee's basis in the partnership interest (outside basis) and its share of the partnership's basis in the partnership's assets (inside basis). Once the amount of the basis adjustment is determined, it is allocated among the partnership's various assets pursuant to section 755.

The proposed regulations coordinate sections 704(c), 743, 751, and 755, and reflect changes in the Code and Income Tax Regulations since the adoption of the current regulations. The proposed regulations also provide rules concerning adjustments to the basis of partnership property made pursuant to section 1017(b)(3)(C). The proposed regulations describe how to determine a partner's proportionate share of the adjusted basis of depreciable property (or depreciable real property) under section 1017, and clarify that an adjustment to the basis of partnership property made under section 1017(b)(3)(C) is treated in the same manner as an adjustment to the basis of partnership property made under section 743.

Section 732(c) provides for the allocation of a partner's basis in its partnership interest upon certain distributions of property to the partner by the partnership. Section 732(c) was amended by the Taxpayer Relief Act of 1997, Public Law 105–34, section 1061, 111 Stat. 788, 945–46 (1997). Under prior law, the allocation was made based on the adjusted basis of the distributed property to the partnership immediately before the distribution. Under the new law, the allocation is made, in general, based on the fair market value of the distributed property on the date of distribution. The proposed regulations amend the existing regulations under section 732 to reflect this change.

Explanation of Provisions

A. Section 743

In General

If an election is in effect under section 754, section 743 requires the partnership to adjust the basis of partnership property upon the transfer of an interest in the partnership by sale or exchange or on the death of a partner. The partnership is required to increase the adjusted basis of partnership property by the excess of the transferee's basis in the transferred partnership interest over the transferee's share of the adjusted basis to the partnership of the partnership's property. The partnership is also required to decrease the adjusted basis of partnership property by the excess of the transferee's share of the adjusted basis to the partnership of partnership property over the transferee's basis in the transferred partnership interest.

The proposed regulations address a number of issues raised in connection with the calculation, treatment, and reporting of basis adjustments under section 743. In particular, the proposed regulations (i) Clarify the manner in which the partnership calculates a transferee's income, gain, loss, or deduction when the transferee has a

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basis adjustment under section 743 (including the recovery of negative basis adjustments) and (ii) coordinate sections 743 and 704(c) when partnerships elect the remedial allocation method under § 1.704–3(d). The proposed regulations also provide that partnerships (rather than partners) are required to make and report the basis adjustments under section 743(b). Partnerships are required to adjust the transferee's distributive share of partnership tax items so that the information reported on the transferee's Schedule K–1 reflects the adjustments to the transferee's distributive share of the partnership items affected by the basis adjustment.

Determining the Amount of the Basis Adjustment

The amount of the basis adjustment with respect to partnership property under section 743 is the difference between the transferee's share of the partnership's inside basis and the transferee's outside basis. The current regulations provide that a partner's share of the adjusted basis of partnership property is equal to the sum of the partner's interest as a partner in partnership capital and surplus, plus the partner's share of partnership liabilities. The current regulations also provide that where section 704(c) applies to property contributed to the partnership, section 704(c) is taken into account in determining a partner's share of the adjusted basis of partnership property.

The current regulations do not provide, other than by example, specific guidance on how to determine a transferee partner's share of the adjusted basis of partnership property. The proposed regulations provide that a transferee's share of the adjusted basis to the partnership of partnership property is equal to the sum of the transferee's interest as a partner in the partnership's previously taxed capital, plus the transferee's share of partnership liabilities. The partner's share of the partnership's previously taxed capital is determined by reference to a hypothetical transaction in which (immediately after the transfer of the partnership interest) the partnership is assumed to have sold all of its assets in a fully taxable transaction for cash equal to the fair market value of the assets. The partner's share of the partnership's previously taxed capital is equal to: (i) The amount of cash that the transferee would receive on liquidation of the partnership immediately following the hypothetical transaction, increased by (ii) the amount of tax loss that would be allocated to the transferee from the hypothetical transaction, and decreased by (iii) the amount of tax gain that would be allocated to the transferee from the hypothetical transaction.

Calculation of Income, Gain, or Loss

The basis adjustment under section 743, like any other basis amount, is a reference used to calculate income, gain, loss, and deduction. However, generally the basis adjustment under section 743 is an adjustment with respect to the transferee. No adjustment is made to the common basis of partnership property (i.e., the partnership's adjusted basis for the property). Thus, for purposes of income, deduction, gain, loss, and distribution, the transferee will have a special basis for those partnership properties that are adjusted under section 743(b). The proposed regulations clarify the rules contained in the current regulations.

The basis adjustment under section 743 does not affect the partnership's computation of any item under section 703, and does not have any effect on the partners' capital accounts. Partnerships compute their tax items at the partnership level under section 703 without regard to the basis adjustments. Partnership level tax items (including any remedial allocations under § 1.704–3(d)) are then allocated among the partners, including the transferee, in accordance with section 704. Finally, the partnership adjusts the transferee's distributive share of partnership tax items to reflect the transferee's special basis in the properties that give rise to the tax items. A transferee's income, gain, or loss from the sale of partnership property in which the transferee has a basis adjustment is equal to the transferee's distributive share of partnership income, gain, or loss (including any remedial allocations under § 1.704–3(d)) from the sale of the property adjusted to account for the amount of the transferee's basis adjustment with respect to the property.

Coordination of Section 743 With Section 704(c)

Section 704(c) is taken into account in determining a transferee's share of the partnership's basis in the partnership's assets. As a result, some or all of a transferee's basis adjustment may be attributable to section 704(c) built-in gain or loss when a transferee purchases a partnership interest from a partner that contributed section 704(c) property to the partnership. For example, assume that A contributes property with a fair market value of $100 and an adjusted tax basis of $10 to a partnership for a fifty percent interest and B contributes $100 of cash for the remaining fifty percent interest. Immediately after the formation of the partnership, A's share of the partnership's basis in the partnership property is $10, while B's share is $100. The contributed asset then appreciates in value to $120, and A transfers its entire interest to T for $110 while an election is in effect under section 754. T will have a basis adjustment of $100. The first $90 of the basis adjustment is attributable to the section 704(c) built-in gain, while the remaining $10 of the basis adjustment is attributable to T's fifty percent share of the $20 of post-contribution appreciation in the contributed property.

Despite the fact that a portion of the basis adjustment may be attributable to a property's section 704(c) built-in gain, section 704(c) and section 743 operate independently. Section 1.704–1(b)(2)(iv)(g)(3) requires a partnership to recover the value of section 704(c) property on the books of the partnership over the property's remaining useful life, determined with reference to the property's useful life in the hands of the contributing partner. At the same time, § 1.168–2(n)(1) of the proposed Income Tax Regulations provides that the entire basis adjustment is recovered as though it is new property. Cf. Sections 168(i)(7) and 197(f)(2). As a result, the book and tax items representing the section 704(c) built-in gain are recovered over different periods.

Although a portion of the basis adjustment may represent actual tax basis equal to the amount of the section 704(c) built-in gain, the deductions attributable to the basis adjustment cannot be allocated to the noncontributing partner. The basis adjustment does not, therefore, eliminate any book-tax disparities that result from ceiling rule problems relating to the section 704(c) property. Because the basis adjustment only affects the transferee, the Service and Treasury believe that it is appropriate for sections 704(c) and 743(b) to operate independently.

When a partnership adopts the remedial allocation method, however, the partners may be viewed as agreeing to shift, over time, a portion of the partnership's basis in its assets from the noncontributing partner to the contributing partner. Partnership basis that was considered part of the noncontributing partner's share of the partnership's basis at the time the adjustment to basis was made will be transferred to the contributing partner as the property is recovered on the partnership's books. In addition, a partnership that adopts the remedial allocation method with respect to contributed property must depreciate or amortize the portion of the contributed property's book basis that is attributable to section 704(c) built-in gain as though it is new property at the time of contribution. As a result, the Service and Treasury believe that it is appropriate to coordinate the recovery periods of the section 704(c) built-in gain and the built-in gain portion of the basis adjustment where the partnership uses the remedial allocation method.

Where a partnership adopts the remedial allocation method, the proposed regulations treat the portion of any basis adjustment that is attributable to section 704(c) built-in gain differently from the rest of the basis adjustment. Instead of treating the section 704(c) built-in gain portion of the basis adjustment and the basis adjustment in excess of such amount as newly acquired property, the section 704(c) built-in gain portion of the basis adjustment is recovered over the remaining cost recovery period for the section 704(c) built-in gain. The recovery period for the partner's share of common basis continues to be determined by reference to the property's useful life in the hands of the contributing partner, and the remaining basis adjustment in excess of the section 704(c) built-in gain portion of the basis adjustment is recovered as if it were new property.

If a partnership receives remedial allocations of income under § 1.704–3(d) with respect to an item of adjusted partnership property, the partner does not offset the cost recovery deductions from the property against the remedial allocations of income. Rather, the partner will receive an allocation of remedial income and a separate cost recovery deduction. If a partner receives remedial allocations of deductions under § 1.704-3(d) with respect to an item of partnership property that has a negative basis adjustment, the partner first adds the amount of the remedial allocation of deduction to any common basis deductions received from the property. The partner then reduces the total amount of deductions from the property by the amount of the negative basis adjustment recovered in that year.

One result of this proposal is that the interests in a partnership will generally be fungible (i.e. the tax consequences that stem from the purchase of a partnership interest do not vary with the identity of the transferor), if: (i) Each partnership interest has an identical right in capital and profits, and (ii) each item of the partnership's section 704(c) property is subject to the remedial allocation method. The Service and Treasury request comments on situations in which the fungibility of partnership interests may otherwise be accommodated without significantly adding to the complexity of subchapter K. In addition, comments are requested concerning the application of the remedial allocation method to contributed property where there are no distortions caused by the ceiling rule at the time the property is contributed to the partnership.

Recovery of Negative Basis Adjustments

Section 1.168–2(n)(2) of the proposed Income Tax Regulations provides that a negative basis adjustment to depreciable property is recovered over the property's remaining recovery period in the hands of the partnership (i.e., the adjustment made to the common basis of the partnership property). The portion of the adjustment that is recovered in any year is equal to the product of (i) the amount of the decrease to the item's adjusted basis (determined as of the date of the transfer), multiplied by (ii) a fraction, the numerator of which is the portion of the adjusted basis of the item recovered by the partnership in that year, and the denominator of which is the adjusted basis of the item on the date of transfer (determined prior to any basis adjustments).

Because the basis adjustment under section 743 is personal to the transferee, the primary method adopted by the proposed regulations for recovering a negative basis adjustment provides that the basis adjustment does not affect the common basis of partnership property and does not affect the tax consequences of partners other than the transferee. Under this method, the recovery of the negative basis adjustment may generate ordinary income to the extent that it exceeds the transferee's share of the depreciation deductions. The proposed regulations provide that, unless the partnership elects to make a common basis adjustment, as described below, the amount of the basis adjustment recovered in any year first decreases the transferee's distributive share of the partnership's deductions from the adjusted item of property for that year. If, in any year, a partnership does not allocate to a transferee sufficient deductions from the adjusted property to offset the recovery of the negative basis adjustment, then the transferee's distributive share of the deductions from other items of partnership property is decreased. The transferee then recognizes income equal to the excess of the amount of the negative basis adjustment recovered in the year over the transferee's share of deductions from the other items of property for the year.

As an alternative, the proposed regulations also allow partnerships to elect to follow the approach of the old proposed regulations. If this election is made, the partnership treats the amount of the negative basis adjustment as an item of built-in gain, decreasing the total amount of depreciation or amortization that the partnership may allocate for tax purposes. This election would prevent the transferee from ever recognizing income in situations where the partnership did not allocate to the transferee sufficient depreciation to offset the negative basis adjustment. It should be noted, however, that this election has no effect on the partners' capital accounts, which continue to be adjusted to reflect the depreciation or amortization of the adjusted property as though there was no basis adjustment to the property. Consequently, to the extent that the basis adjustment causes the amount of the deductions allocated to the non-transferee partners for book purposes to exceed the amount of tax depreciation available to be allocated to them by the partnership, a book-tax disparity results for the non-transferee partners.

The Service and Treasury request comments concerning the recovery of negative basis adjustments under section 743. Specifically, the Service and Treasury request comments regarding whether there are other possible ways of accounting for the recovery of negative basis adjustments that treat the basis adjustment as personal to the transferee and, at the same time, do not interfere with the economic agreement among the partners.

Reporting and Returns

The statutory language of section 743(b) indicates that partnerships are responsible for making the basis adjustments. This mandate is repeated in the language of the current regulations issued under both sections 743 and 755. Notwithstanding that partnerships are required to make and allocate basis adjustments under the current regulations, transferees are required to report the basis adjustments. Transferees accomplish this by attaching statements to their returns that show how the section 743(b) adjustment was determined and how the adjustment was allocated among the various partnership properties. No existing guidance indicates when (i.e., before or after the Schedule K–1) the effect of the basis adjustment to specific partnership items is to be determined or who is required to make and report the adjustments to the partnership items.

The proposed regulations clarify that partnerships are required to make the basis adjustments. In addition, the

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proposed regulations place the responsibility for reporting basis adjustments on partnerships. Partnerships report basis adjustments by attaching statements to their partnership returns when they acquire knowledge of transfers subject to section 743. In addition, partnerships are required to adjust specific partnership items in light of the basis adjustments. Consequently, amounts reported on the transferee's Schedule K–1 are adjusted amounts.

Transferees are subject to an affirmative obligation to notify partnerships of their basis in acquired partnership interests. To accommodate partnership concerns about the reliability of the information provided, partnerships are entitled to rely on the written representations of transferees concerning either the amount paid for the partnership interest or the transferee's basis in the partnership interest under section 1014 (unless clearly erroneous).

B. Section 751

Section 751(a) provides that to the extent an amount realized on the sale or exchange of a partnership interest is attributable to the transferor's interest in unrealized receivables or inventory items of the partnership, the amount realized is considered to be an amount realized from the sale or exchange of property other than a capital asset. Thus, the transferor partner may recognize ordinary income or loss on the sale or exchange of its partnership interest. Under the current section 751 regulations, the amount of income or loss realized by a partner on the sale or exchange of an interest in section 751 property is equal to the difference between: (i) The portion of the total amount realized for the partnership interest allocated to section 751 property, and (ii) the portion of the transferor partner's basis in its partnership interest allocated to the property. Generally, the portion of the total amount realized allocated to section 751 property is determined by the seller and purchaser in an arm's length agreement. The portion of the partner's adjusted basis in the partnership interest allocated to the section 751 property equals the basis that the property would have had under section 732 if the transferor partner had received its proportionate share of the property in a current distribution immediately before the sale.

The proposed regulations amend these rules for determining the transferor partner's gain or loss from the sale or exchange of its interest in section 751 property. Rather than attempting to allocate a portion of the transferor partner's amount realized and adjusted basis to the section 751 property, the proposed regulations adopt a hypothetical sale approach. Thus, the income or loss realized by a partner from section 751 property upon the sale or exchange of its interest is the amount of income or loss that would have been allocated to the partner from section 751 property (to the extent attributable to the partnership interest sold or exchanged) if the partnership had sold all of its property in a fully taxable transaction for fair market value immediately prior to the partner's transfer of the partnership interest.

C. Section 755

In General

The current regulations under section 755 contain a number of problems that prevent partnerships from allocating the section 743(b) basis adjustments to appropriate assets. The proposed regulations resolve these problems and implement the purposes of section 743(b) by focusing on the items that the transferee partner would receive upon a fair market value sale of all of the partnership's assets.

At the same time, the proposed regulations recognize that adjustments under section 734 differ significantly from adjustments under section 743. Specifically, adjustments under section 743(b) are intended to affect the transferee partner only. In contrast, adjustments under section 734 affect all of the partners. As a result, the proposed regulations under section 755 contain two separate regimes—one that applies to adjustments under section 734, and another that applies to adjustments under section 743. While the regime allocating adjustments under section 743 focuses on the transferee, the regime allocating adjustments under section 734 focuses on the difference between value and basis at the partnership entity level.

Allocating Adjustments Under Section 743(b)

The proposed regulations provide that allocations of basis adjustments under section 743 among partnership assets are made based on the amount of income, gain, or loss (including remedial allocations under § 1.704–3(d)) that the transferee would be allocated if, immediately after the section 743(b) transfer, all of the partnership's assets were disposed of in a fully taxable transaction at fair market value. By adopting this method, in some situations the proposed regulations will require adjustments to be made that increase the basis of some assets and decrease the basis of others.

Hypothetical Sale

The current regulations do not take each partner's interest in specific assets into account. The amount of the section 743 adjustment is allocated among partnership properties to reduce the difference between the fair market value and the adjusted basis of partnership properties at the partnership entity level rather than at the partner level. This formulation of the rule fails to take into account special allocations or the varying treatment of different partners by virtue of the operation of section 704(c) or the minimum gain chargeback. Therefore, basis adjustments will often be made to the wrong assets, exposing the partners to tax consequences that may vary significantly from the partners' economic consequences.

Rather than attempt to define a partner's share of the basis or fair market value of a specific partnership asset, the proposed regulations focus on the actual tax items that would be allocated to the transferee in a fully taxable, fair market value sale. Under the proposed regulations, partnerships are required to adjust the basis of partnership assets in a manner that reflects the amount of income, gain, or loss that the transferee would recognize if all of the partnership's assets were sold in the hypothetical transaction.

Two-Way Adjustments

Under the current regulations, the partnership may not increase the basis of assets that have a fair market value in excess of basis and, at the same time, decrease the basis of assets that have a basis in excess of fair market value. Thus, if the section 743(b) adjustment is positive, the partnership may only increase the basis of assets that have a basis that is less than their fair market value. This restriction prevents the partnership from adjusting the basis of its assets in a manner that coordinates a transferee's tax consequences with its economic consequences.

The proposed regulations remove this restriction. Instead, the amount of the section 743 adjustment is viewed as a net adjustment. This net amount is then allocated between the partnership's two classes of assets (capital gain property and ordinary income property). The amount of the adjustment allocated to ordinary income property may be an increase while the amount of the adjustment allocated to capital gain property is a decrease. The amount of the adjustment allocated to each class is then allocated among the assets within each class. The amount of the adjustment allocated to one item within the class may also be an increase even if the amount allocated to another item is a decrease.

Allocation Between Classes

The amount of the basis adjustment allocated to the class of ordinary income property is equal to the total amount of income, gain, or loss (including any remedial allocations under § 1.704–3(d)) that would be allocated to the transferee from the sale of all ordinary income property in the hypothetical transaction.

The amount of the basis adjustment to capital gain property is equal to (i) the total amount of the basis adjustment under section 743, less (ii) the amount of the basis adjustment allocated to ordinary income; provided, however, that in no event may the amount of any decrease in basis allocated to capital gain property exceed the partnership's basis in capital gain property.

In the event that a decrease in basis allocated to capital gain property exceeds the partnership's basis in capital gain property, the excess is applied to reduce the basis of ordinary income property.

Allocation Within Classes

The amount of the basis adjustment allocated to each item of property within the class of ordinary income property equals:

(a) The amount of income, gain, or loss (including any remedial allocations under § 1.704–3(d)) that would be allocated to the transferee from the hypothetical sale of the item, minus

(b) The product of (1) any decrease to the amount of the basis adjustment to ordinary income property required because the partnership did not have enough basis in capital gain property to reduce, multiplied by (2) a fraction, the numerator of which is the fair market value of the item of property to the partnership and the denominator of which is the total fair market value of all items of the partnership's ordinary income property.

The amount of the basis adjustment allocated to each item of property within the class of capital gain property equals:

(a) The amount of income, gain, or loss (including any remedial allocations under § 1.704–3(d)) that would be allocated to the transferee from the hypothetical sale of the item, minus

(b) The product of (1) the total amount of gain or loss (including any remedial allocations under § 1.704–3(d)) that would be allocated to the transferee from the hypothetical sale of all items of capital gain property, minus the amount of the positive basis adjustment to all items of capital gain property or plus the amount of the negative basis adjustment to all items of capital gain property, multiplied by (2) a fraction, the numerator of which is the fair market value of the item of property to the partnership and the denominator of which is the total fair market value of all of the partnership's items of capital gain property.

Allocating Adjustments Under Section 734

As under the current regulations, the proposed regulations provide that allocations of section 734 adjustments among partnership assets are made based on the difference between the value of the property and the property's basis. Where there is a distribution of partnership property resulting in an adjustment to the basis of undistributed partnership property under section 734(b)(1)(B) or (b)(2)(B), the adjustment must be allocated to remaining partnership property of a character similar to that of the distributed property with respect to which the adjustment arose. If there is an increase in basis to be allocated within a class of property, the increase must be allocated first to properties with unrealized appreciation in proportion to their respective amounts of unrealized appreciation before such increase (but only to the extent of each property's unrealized appreciation). Any remaining increase must be allocated among the properties within the class in proportion to their fair market values. If there is a decrease in basis to be allocated within a class, the decrease must be allocated first to properties with unrealized depreciation in proportion to their respective amounts of unrealized depreciation before such decrease (but only to the extent of each property's unrealized depreciation). Any remaining decrease must be allocated among the properties within the class in proportion to their adjusted bases (as adjusted under the preceding sentence).

D. Section 1017

Section 1017 provides rules concerning basis reductions resulting from a taxpayer's exclusion of cancellation of indebtedness income. In general, under § 1.1017–1(f) of the proposed Income Tax Regulations, if a partner makes an election under section 108(b)(5) or section 108(c), the partner may treat a partnership interest as depreciable property (or depreciable real property) to the extent the partnership correspondingly reduces the partner's proportionate share of the adjusted basis of depreciable property (or depreciable real property) held by the partnership. These proposed regulations provide guidance regarding the determination of a partner's proportionate share of the partnership's basis in depreciable property (or depreciable real property) and the consequences of the basis reductions required under sections 108 and 1017.

In general, these proposed regulations provide that a partner's share of the partnership's basis in depreciable property (or depreciable real property) equals the sum of (a) the partner's section 743(b) basis adjustment, if any, in the partnership items of depreciable property (or depreciable real property) and (b) the common basis depreciation deductions (not including remedial allocations of depreciation under § 1.704–3(d)) that are reasonably expected to be allocated to the partner over the partnership property's remaining useful life. The amount of common basis depreciation deductions that a partner may reasonably expect to be allocated over the partnership property's useful life is based on all the facts and circumstances in effect at the time of the basis reduction. It is per se unreasonable, however, for the partnership to treat the same depreciation deductions as "reasonably expected" by more than one partner. Thus, the amount of the partners' total basis reductions under sections 108(b)(5) and 108(c) cannot exceed the partnership's basis in depreciable property (or depreciable real property).

The proposed regulations further provide that any reduction to the basis of depreciable property required under sections 108 and 1017 constitutes an adjustment to the basis of partnership property with respect to the partner only. These adjustments, therefore, are similar to the basis adjustments required under section 743(b). Accordingly, the proposed regulations provide that these adjustments have the same effect and are recovered in the same manner as basis adjustments required under section 743(b); provided, however, that the election to treat the negative basis adjustment as an item of built-in gain (which decreases the amount of depreciation or amortization that the partnership may allocate) is not applicable. Consequently, if a partner's actual share of the partnership's common basis depreciation deductions in any year is less than the amount that was included in determining the partner's proportionate share of the partnership's common basis depreciation deductions for that year, the partner will recognize income.

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E. Section 732

In General

With some exceptions, partners generally may receive distributions of partnership property without recognition of gain or loss. Rules are provided for determining the basis of the distributed property in the hands of the distributee. In the event that multiple properties are distributed by a partnership, section 732(c) provides allocation rules for determining their bases in the distributee partner's hands.

Section 732(c) was amended by the Taxpayer Relief Act of 1997, Public Law 105–34, § 1061, 111 Stat. 788, 945–46 (1997). Under prior law, a partner's basis in its partnership interest was allocated among property distributed to the partner based on the distributed properties' adjusted bases. The rules allocated the partner's basis in its partnership interest first to unrealized receivables and inventory items in an amount equal to the partnership's adjusted basis (or if the basis to be allocated was less than the partnership's basis, then in proportion to the partnership's basis). To the extent that there was any basis remaining to be allocated among distributed properties, the basis was allocated among the other properties in proportion to their adjusted bases to the partnership.

Section 1061 of the Taxpayer Relief Act of 1997, Public Law 105–34, section 1061, 111 Stat. 788, 945–46 (1997), revised the allocation rules for determining basis in the distributee partner's hands. As under prior law, basis is allocated first to any distributed unrealized receivables and inventory items before it is allocated to any other distributed property. Basis is then allocated among the other distributed properties to the extent of each such property's adjusted basis to the partnership. Any remaining basis adjustment, if an increase, is allocated among properties with unrealized appreciation in proportion to their respective amounts of unrealized appreciation (to the extent of each property's appreciation), and then in proportion to their respective fair market values. If the remaining basis adjustment is a decrease, it is allocated among properties with unrealized depreciation in proportion to their respective amounts of unrealized depreciation (to the extent of each property's depreciation), and then in proportion to their respective adjusted bases (taking into account the adjustment already made). The proposed regulations amend the current regulations to incorporate these changes to section 732(c).

Section 732(d)

Section 732(d) provides a special rule that applies to determine the basis of property distributed to a transferee partner who acquired any part of its partnership interest in a transfer when an election under section 754 was not in effect. When the special rule applies, the basis of distributed property is adjusted immediately before the distribution to reflect the basis that the property would have had if the partnership had a section 754 election in effect at the time the transferee acquired the partnership interest. As a result, the basis of the distributed property in the hands of the partnership immediately before the distribution more closely approximates its fair market value. Consequently, the transferee's basis in the distributed property will also more closely approximate its fair market value.

Section 1.732–1(d)(4) of the current regulations requires transferees to apply the special basis rule in certain cases. Specifically, transferees are required to apply the special basis rule if at the time of the acquisition of the partnership interest—

(i) The fair market value of all partnership property (other than money) exceeded 110 percent of its adjusted basis to the partnership,

(ii) An allocation of basis under section 732(c) upon a liquidation of the partnership interest immediately after the transfer of the interest would have resulted in a shift of basis from property not subject to an allowance for depreciation, depletion, or amortization, to property subject to such an allowance, and

(iii) A basis adjustment under section 743(b) would change the basis to the transferee partner of the property actually distributed.

The purpose of § 1.732–1(d)(4) was to prevent distortions caused by section 732(c) that might inflate the basis of depreciable, depletable, or amortizable property above its fair market value. At the time that the regulations were adopted, such distortions might occur because section 732(c) allocated basis among distributed properties based on their relative bases. The changes made to section 732(c) by the Taxpayer Relief Act of 1997, Public Law 105–34, section 1061, 111 Stat. 788, 945–46 (1997), make the distortions targeted by the regulations less likely to occur. As a result, the Service and Treasury request comments on the proper scope of section 732(d), and specifically, under what circumstances, if any, the Secretary should exercise its authority to mandate the application of section 732(d) to a transferee.

Proposed Effective Date

The regulations are proposed to be effective: (i) For all transfers of partnership interests on and after the date the regulations are published as final regulations in the **Federal Register**, (ii) for all distributions from partnerships on and after the date the regulations are published as final regulations in the **Federal Register**, and (iii) for all elections under sections 108(b)(5) and 108(c) made on or after the date the regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. An initial regulatory flexibility analysis has been prepared for the collection of information in this notice of proposed rulemaking under 5 U.S.C. 603. A summary of the analysis is set forth below under the heading "Summary of Initial Regulatory Flexibility Analysis." Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Summary of Initial Regulatory Flexibility Analysis

This initial analysis is prepared pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). In general, the proposed regulations require a transferee that acquires an interest in a partnership with an election under section 754 in effect, to notify the partnership of the transfer. This notification must include the name and taxpayer identification number of the transferee and the transferee's basis in the acquired partnership interest. The partnership is required to include a statement with its Form 1065, U.S. Partnership Return of Income for the taxable year in which the partnership acquires knowledge of the transfer. This statement must identify the name and taxpayer identification number of the transferee and the computation of the basis adjustment and the allocation of that adjustment to partnership properties. These requirements will ensure that the partnership has notice that a transfer has occurred and that the proper basis adjustments are computed. The legal basis for this requirement is contained in sections 743(b), 6001, 7805(a).

There were approximately 1,494,000 partnerships in 1994. However, these proposed regulations apply only to partnerships that have made an election under section 754. The election under section 754 is generally not made unless there has been a transfer of a partnership interest or a distribution by the partnership. Moreover, the effects of the election attach to specific items of partnership property and may provide only temporary benefits for the partners. The election also cannot be revoked without the consent of the Secretary. Accordingly, the Service and Treasury believe that most partnerships do not make the election under section 754. Therefore, most partnerships will not be affected by the proposed regulations in any given year.

After a partner conveys information to the partnership concerning a transfer of a partnership interest, the partnership must adjust the partner's interest in the basis of partnership property. Because these basis adjustments will affect the partner's share of depreciation or amortization deductions and amounts of gain or loss on the disposition of certain items of partnership property, the partnership must prepare and maintain special entries on its books. However, in many cases, partnership returns are prepared using computer software that can prepare and maintain these special entries after the initial year.

The IRS and Treasury Department are not aware of any federal rules that may duplicate, overlap, or conflict with the proposed rule.

As an alternative to the disclosure described above, the Service and Treasury considered, but rejected, a rule that would have required the partners, and not the partnerships, to make the basis reductions and to determine the effects of the basis adjustments on the partner's distributive shares. This alternative was rejected because the Service and Treasury believe that partnerships generally have better access to the information necessary to report section 743 basis adjustments properly. To require the partners rather than the partnerships to bear the burden of reporting would require the partnerships to provide the partners with significant amounts of information not otherwise needed by the partners. There are no known alternative rules that are less burdensome to the partnerships and their partners but that accomplish the purpose of the statute. The Service and Treasury request comments concerning possible alternatives.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are timely submitted to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, July 8, 1998, at 10 a.m. in the IRS Auditorium of the Internal Revenue Building. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons that wish to present oral comments at the hearing must submit written comments by April 29, 1998, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by Wednesday, June 24, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these proposed regulations are Brian M. Blum and Terri A. Belanger of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in their development.

Partial Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, § 1.168–2(n) in the notice of proposed rulemaking published February 16, 1984 (49 FR 5940) is withdrawn.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.168–2 also issued under 26 U.S.C. 168. * * *

Section 1.732–1 also issued under 26 U.S.C. 732.

Section 1.732–2 also issued under 26 U.S.C. 732.

Section 1.734–1 also issued under 26 U.S.C. 734.

Section 1.743–1 also issued under 26 U.S.C. 743.

Section 1.751–1 also issued under 26 U.S.C. 751.

Section 1.755–1 also issued under 26 U.S.C. 755. * * *

Section 1.1017–1 also issued under 26 U.S.C. 1017. * * *

Par. 2. Section 1.732–1 is amended by revising paragraphs (c), (d)(1)(vi), (d)(4)(iii) and the last sentence of paragraph (d)(1)(v) and removing the undesignated text including the examples immediately following paragraph (d)(4)(iii) to read as follows:

§ 1.732–1 Basis of distributed property other than money.

* * * * *

(c) *Allocation of basis among properties distributed to a partner*—(1) *General rule*—(i) *Unrealized receivables and inventory items.* The basis to be allocated to properties distributed to a partner under section 732(a)(2) or (b) is allocated first to any unrealized receivables (as defined in section 751(c)) and inventory items (as defined in section 751(d)(2)) in an amount equal to the adjusted basis of each such property to the partnership immediately before the distribution. If the basis to be allocated is less than the sum of the adjusted bases to the partnership of the distributed unrealized receivables and inventory items, the adjusted basis of the distributed property must be decreased in the manner provided in paragraph (c)(2)(i) of this section.

(ii) *Other distributed property.* Any basis not allocated to unrealized receivables or inventory items under paragraph (c)(1)(i) of this section is allocated to any other property distributed to the partner in the same transaction by assigning to each distributed property an amount equal to the adjusted basis of the property to the partnership immediately before the distribution. However, if the sum of the adjusted bases to the partnership of such other distributed property does not equal the basis to be allocated among the distributed property, any increase or decrease required to make the amounts equal is allocated among the distributed property as provided in paragraph (c)(2) of this section.

(2) *Adjustment to basis allocation*—(i) *Decrease in basis.*

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Any decrease to the basis of distributed property required under paragraph (c)(1) of this section is allocated first to distributed property with unrealized depreciation in proportion to each property's respective amount of unrealized depreciation before any decrease (but only to the extent of each property's unrealized depreciation). If the required decrease exceeds the amount of unrealized depreciation in the distributed property, the excess is allocated to the distributed property in proportion to the adjusted bases of the distributed property, as adjusted pursuant to the immediately preceding sentence.

(ii) *Increase in basis.* Any increase to the basis of distributed property required under paragraph (c)(1)(ii) of this section is allocated first to distributed property (other than unrealized receivables and inventory items) with unrealized appreciation in proportion to each property's respective amount of unrealized appreciation before any increase (but only to the extent of each property's unrealized appreciation). If the required increase exceeds the amount of unrealized appreciation in the distributed property, the excess is allocated to the distributed property (other than unrealized receivables or inventory items) in proportion to the fair market value of the distributed property.

(3) *Unrealized receivables and inventory items.* If the basis to be allocated upon a distribution in liquidation of the partner's entire interest in the partnership is greater than the adjusted basis to the partnership of the unrealized receivables and inventory items distributed to the partner, and if there is no other property distributed to which the excess can be allocated, the distributee partner sustains a capital loss under section 731(a)(2) to the extent of the unallocated basis of the partnership interest.

(4) *Examples.* The provisions of this paragraph (c) are illustrated by the following examples:

Example 1. A is a one-fourth partner in partnership PRS and has an adjusted basis in its partnership interest of $650. PRS distributes inventory items and Assets X and Y to A in liquidation of A's entire partnership interest. The distributed inventory items have a basis to the partnership of $100 and a fair market value of $200. Asset X has an adjusted basis to the partnership of $50 and a value of $400. Asset Y has an adjusted basis to the partnership and value of $100. Neither Asset X nor Asset Y consists of inventory items or unrealized receivables. Under this paragraph (c), A's basis in its partnership interest is allocated first to the inventory items in an amount equal to their adjusted basis to the partnership. A, therefore, has an adjusted basis in the inventory items of $100. The remaining basis, $550, is allocated to the distributed property first in an amount equal to the property's adjusted basis to the partnership. Thus, Asset X is allocated $50 and Asset Y is allocated $100. Asset X is then allocated $350, the amount of unrealized appreciation in Asset X. Finally, the remaining basis, $50, is allocated to Assets X and Y in proportion to their fair market values: $40 to Asset X (400/500 x $50), and $10 to Asset Y (100/500 x $50). Therefore, after the distribution, A has an adjusted basis of $440 in Asset X and $110 in Asset Y.

Example 2. B is a one-fourth partner in partnership PRS and has an adjusted basis in its partnership interest of $200. PRS distributes Asset X and Asset Y to B in liquidation of its entire partnership interest. Asset X has an adjusted basis to the partnership and fair market value of $150. Asset Y has an adjusted basis to the partnership of $150 and a fair market value of $50. Neither of the assets consists of inventory items or unrealized receivables. Under this paragraph (c), B's basis is first assigned to the distributed property to the extent of the partnership's basis in each distributed property. Thus, Asset X and Asset Y are each assigned $150. Because the aggregate adjusted basis of the distributed property, $300, exceeds the basis to be allocated, $200, a decrease of $100 in the basis of the distributed property is required. Assets X and Y have unrealized depreciation of zero and $100, respectively. Thus, the entire decrease is allocated to Asset Y. After the distribution, B has an adjusted basis of $150 in Asset X and $50 in Asset Y.

Example 3. C, a partner in partnership PRS, receives a distribution in liquidation of its entire partnership interest of $6,000 cash, inventory items having an adjusted basis to the partnership of $6,000, and real property having an adjusted basis to the partnership of $4,000. C's basis in its partnership interest is $9,000. The cash distribution reduces C's basis to $3,000, which is allocated entirely to the inventory items. The real property has a zero basis in C's hands. The partnership bases not carried over to C for the distributed properties are lost unless an election under section 754 is in effect requiring the partnership to adjust the bases of remaining partnership properties under section 734(b).

Example 4. Assume the same facts as in *Example 3* of this paragraph except C receives a distribution in liquidation of its entire partnership interest of $1,000 cash and inventory items having a basis to the partnership of $6,000. The cash distribution reduces C's basis to $8,000, which can be allocated only to the extent of $6,000 to the inventory items. The remaining $2,000 basis, not allocable to the distributed property, constitutes a capital loss to partner C under section 731(a)(2). If the election under section 754 is in effect, see section 734(b) for adjustment of the basis of undistributed partnership property.

(5) *Effective date.* This paragraph (c) applies to distributions of property from a partnership that occur on or after the date final regulations are published in the **Federal Register**.

(d) * * *

(1) * * *

(v) * * * (For a shift of transferee's basis adjustment to like property, see § 1.743–1(g).)

(vi) The provisions of this paragraph (d)(1) may be illustrated by the following example:

Example. (i) Transferee partner, T, purchased a one-fourth interest in partnership PRS for $17,000. At the time T purchased the partnership interest, the election under section 754 was not in effect and the partnership inventory had a basis to the partnership of $14,000 and a value of $16,000. T's purchase price reflected $500 of this difference. Thus, $4,000 of the $17,000 paid by T for the partnership interest was attributable to T's share of partnership inventory with a basis of $3,500. Within 2 years after T acquired the partnership interest, T retired from the partnership and received in liquidation of its entire partnership interest the following property:

	Assets	
	Adjusted basis to PRS	Market value
Cash	$1,500	$1,500
Inventory	3,500	4,000
Asset X	2,000	4,000
Asset Y	4,000	5,000

(ii) The value of the inventory received by T was one-fourth of the value of all partnership inventory and was T's share of such property. It is immaterial whether the inventory T received was on hand when T acquired the interest. In accordance with T's election under section 732(d), the amount of T's share of partnership basis that is attributable to partnership inventory is increased by $500 (one-fourth of the $2,000 difference between the value of the property, $16,000, and its $14,000 basis to the partnership at the time T purchased its interest). This adjustment under section 732(d) applies only for purposes of distributions to T, and not for purposes of partnership depreciation, depletion, or gain or loss on disposition. Thus, the amount to be allocated among the properties received by T in the liquidating distribution is $15,500 ($17,000, T's basis for the partnership interest, reduced by the amount of cash received, $1,500). This amount is allocated as follows: The basis of the inventory items received is $4,000, consisting of the $3,500 common partnership basis, plus the basis adjustment of $500 which T would have had under section 743(b). The remaining basis of $11,500 ($15,500 minus $4,000) is allocated among the remaining property distributed to T by assigning to each property the adjusted basis to the partnership of such property and adjusting that basis by any required increase or decrease. Thus, the adjusted basis to T of Asset X is $5,111 ($2,000, the adjusted basis of Asset X to the partnership, plus $2,000, the amount of unrealized appreciation in Asset X, plus $1,111 ($4,000/$9,000 multiplied by $2,500). Similarly, the adjusted basis of Asset Y to T is $6,389 ($4,000, the adjusted basis of Asset Y to the partnership, plus $1,000, the amount of unrealized appreciation in Asset Y, plus, $1,389 ($5,000/$9,000 multiplied by $2,500).

* * * * *

(4) * * *

(iii) A basis adjustment under section 743(b) would change the basis to the transferee partner of the property actually distributed.

* * * * *

Par. 3. Section 1.732–2 is amended by adding a new sentence at the end of the *Example* in paragraph (b) to read as follows:

§ 1.732–2 Special partnership basis of distributed property.

* * * * *

(b) * * *

Example. * * * See § 1.743–1(g).

* * * * *

Par. 4. In § 1.734–1, paragraph (e) is added to read as follows:

§ 1.734–1 Optional adjustment to basis of undistributed partnership property.

* * * * *

(e) *Recovery of adjustments to basis of partnership property*—(1) *Increases in basis.* For purposes of section 168, if the basis of a partnership's recovery property is increased as a result of the distribution of property to a partner, then the increased portion of the basis must be taken into account as if it were newly-purchased recovery property placed in service when the distribution occurs. Consequently, any applicable recovery period and method may be used to determine the recovery allowance with respect to the increased portion of the basis. However, no change is made for purposes of determining the recovery allowance under section 168 for the portion of the basis for which there is no increase.

(2) *Decreases in basis.* For purposes of section 168, if the basis of a partnership's recovery property is decreased as a result of the distribution of property to a partner, then the decrease in basis must be accounted for over the remaining recovery period of the property beginning with the recovery period in which the basis is decreased.

(3) *Effective date.* This paragraph (e) applies to distributions of property from a partnership that occur on or after the date final regulations are published in the **Federal Register**.

Par. 5. Section 1.743–1 is revised to read as follows:

§ 1.743–1 Optional adjustment to basis of partnership property.

(a) *Generally.* The basis of partnership property is adjusted as a result of the transfer of an interest in a partnership by sale or exchange or on the death of a partner only if the election provided by section 754 (relating to optional adjustments to the basis of partnership property) is in effect with respect to the partnership. Whether or not the election provided in section 754 is in effect, the basis of partnership property is not adjusted as the result of a contribution of property, including money, to the partnership.

(b) *Determination of adjustment.* In the case of the transfer of an interest in a partnership, either by sale or exchange or as a result of the death of a partner, a partnership that has an election under section 754 in effect—

(1) Increases the adjusted basis of partnership property by the excess of the transferee's basis for the transferred partnership interest over the transferee's share of the adjusted basis to the partnership of the partnership's property; or

(2) Decreases the adjusted basis of partnership property by the excess of the transferee's share of the adjusted basis to the partnership of the partnership's property over the transferee's basis for the transferred partnership interest.

(c) *Determination of transferee's basis in the transferred partnership interest.* In the case of the transfer of a partnership interest by sale or exchange or as a result of the death of a partner, the transferee's basis in the transferred partnership interest is determined under section 742. See also section 752 and §§ 1.752–1 through 1.752–5.

(d) *Determination of transferee's share of the adjusted basis to the partnership of the partnership's property*—(1) *Generally.* A transferee's share of the adjusted basis to the partnership of partnership property is equal to the sum of the transferee's interest as a partner in the partnership's previously taxed capital, plus the transferee's share of partnership liabilities. Generally, a transferee's interest as a partner in the partnership's previously taxed capital is equal to—

(i) The amount of cash that the transferee would receive on a liquidation of the partnership following the hypothetical transaction, as defined in paragraph (d)(2) of this section; increased by

(ii) The amount of tax loss (including any remedial allocations under § 1.704–3(d)) that would be allocated to the transferee from the hypothetical transaction, as defined in paragraph (d)(2) of this section; and decreased by

(iii) The amount of tax gain (including any remedial allocations under § 1.704–3(d)) that would be allocated to the transferee from the hypothetical transaction, as defined in paragraph (d)(2) of this section.

(2) *Hypothetical transaction defined.* For purposes of paragraph (d)(1) of this section, the hypothetical transaction means the disposition by the partnership of all of the partnership's assets, immediately after the transfer of the partnership interest, in a fully taxable transaction for cash equal to the fair market value of the assets. For example, if the partnership properly maintains capital accounts under the rules of § 1.704–1(b)(2)(iv), the transferee's interest as a partner in the partnership's previously taxed capital is equal to—

(i) The transferee's capital account adjusted for the hypothetical transaction; increased by

(ii) The amount of tax loss (including any remedial allocations under § 1.704–3(d)) that would be allocated to the transferee from the hypothetical transaction; and decreased by

(iii) The amount of tax gain (including any remedial allocations under § 1.704–3(d)) that would be allocated to the transferee from the hypothetical transaction.

(3) *Examples.* The provisions of this paragraph (d) are illustrated by the following examples:

Example 1. (i) A is a member of partnership PRS in which the partners have equal interests in capital and profits. The partnership has made an election under section 754, relating to the optional adjustment to the basis of partnership property. A sells its interest to T for $22,000. The balance sheet of the partnership at the date of sale shows the following:

	Assets	
	Adjusted basis	Market value
Cash	$ 5,000	$5,000
Accounts receivable	10,000	10,000
Inventory	20,000	21,000
Depreciable assets	20,000	40,000
Total	55,000	76,000

	Liabilities and capital	
	Adjusted per books	Market value
Liabilities	$10,000	$10,000
Capital:		
A	15,000	22,000
B	15,000	22,000

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	Liabilities and capital	
	Adjusted per books	Market value
C	15,000	22,000
Total	55,000	76,000

(ii) The amount of the basis adjustment under section 743(b) is the difference between the basis of T's interest in the partnership and T's share of the adjusted basis to the partnership of the partnership's property. Under section 742, the basis of T's interest is $25,333 (the cash paid for A's interest, $22,000, plus $3,333, T's share of partnership liabilities). T's interest in the partnership's previously taxed capital is $15,000 ($22,000, the amount of cash T would receive if PRS liquidated immediately after the hypothetical transaction, decreased by $7,000, the amount of tax gain allocated to T from the hypothetical transaction). T's share of the adjusted basis to the partnership of the partnership's property is $18,333 ($15,000 share of previously taxed capital, plus $3,333 share of the partnership's liabilities). The amount of the basis adjustment to partnership property therefore, is $7,000, the difference between $25,333 and $18,333.

Example 2. A, B, and C form partnership PRS, to which A contributes land worth $1,000 (Asset 1) with an adjusted basis to A of $400, and B and C each contribute $1,000 cash. Each partner has $1,000 credited to it on the books of the partnership as its capital contribution. The partners share in profits equally. During the partnership's first taxable year, Asset 1 appreciates in value to $1,300. A sells its one-third interest in the partnership to T for $1,100, when an election under section 754 is in effect. The amount of tax gain that would be allocated to T from the hypothetical transaction is $700 ($600 section 704(c) built-in gain, plus one-third of the additional gain). Thus, T's interest in the partnership's previously taxed capital is $400 ($1,100, the amount of cash T would receive if PRS liquidated immediately after the hypothetical transaction, decreased by $700, T's share of gain from the hypothetical transaction). The amount of T's basis adjustment to partnership property is $700 (the excess of $1,100, T's cost basis for its interest, over $400, T's share of the adjusted basis to the partnership of partnership property).

(e) *Allocation of basis adjustment.* For the allocation of the basis adjustment under this section among the individual items of partnership property, see section 755 and the regulations thereunder.

(f) *Subsequent transfers.* Where there has been more than one transfer of a partnership interest, a transferee's basis adjustment is determined without regard to any prior transferee's basis adjustment. In the case of a gift of an interest in a partnership, the donor is treated as transferring, and the donee as receiving, that portion of the basis adjustment attributable to the gifted partnership interest. The provisions of this paragraph (f) may be illustrated by the following example:

Example. (i) A, B, and C form partnership PRS. A and B each contribute $1,000 cash and C contributes land with a basis and value of $1,000. When the land has appreciated in value to $1,300, A sells its interest to T1 for $1,100 (one-third of $3,300, the value of the partnership property). An election under section 754 is in effect; therefore, T1 has a basis adjustment of $100.

(ii) After the land has further appreciated in value to $1,600, T1 sells its interest to T2 for $1,200 (one-third of $3,600, the value of the partnership property). T2 has a basis adjustment of $200. This amount is determined without regard to any basis adjustment that T1 may have had in the partnership assets.

(iii) During the following year, T2 makes a gift to T3 of fifty percent of T2's interest in PRS. At the time of the transfer, T2 has a $200 basis adjustment. T2 is treated as transferring $100 of the basis adjustment to T3 with the gift of the partnership interest.

(g) *Distributions*—(1) *Distribution of adjusted property to the transferee*—(i) *Coordination with section 732.* If a partnership distributes property to a transferee and the transferee has a basis adjustment for the property, the basis adjustment is taken into account under section 732. See § 1.732–2(b).

(ii) *Coordination with section 734.* For certain adjustments to the common basis of remaining partnership property after the distribution of adjusted property to a transferee, see § 1.734–2(b).

(2) *Distribution of adjusted property to another partner*—(i) *Coordination with section 732.* If a partner receives a distribution of property with respect to which another partner has a basis adjustment, the distributee does not take the basis adjustment into account under section 732.

(ii) *Reallocation of basis.* A transferee with a basis adjustment in property that is distributed to another partner reallocates the basis adjustment among the remaining items of partnership property pursuant to § 1.755–1(c).

(3) *Distributions in complete liquidation of a partner's interest.* If a transferee receives a distribution of property (whether or not the transferee has a basis adjustment in such property) in liquidation of its interest in the partnership, the adjusted basis to the partnership of the distributed property immediately before the distribution includes the transferee's basis adjustment for the property in which the transferee relinquished an interest (either because it remained in the partnership or was distributed to another partner). Any basis adjustment to property in which the transferee is deemed to relinquish its interest is reallocated among the properties distributed to the transferee under § 1.755–1(c).

(4) *Coordination with other provisions.* The rules of sections 704(c)(1)(B), 731, 737, and 751 apply before the rules of this paragraph (g).

(5) *Example.* The provisions of this paragraph (g) are illustrated by the following example:

Example. (i) A, B, and C are equal partners in partnership PRS. Each partner originally contributed $10,000 in cash, and PRS used the contributions to purchase five nondepreciable capital assets. PRS has no liabilities. After five years, PRS's balance sheet appears as follows:

	Assets	
	Adjusted basis	Market value
Asset 1	$10,000	$10,000
Asset 2	4,000	6,000
Asset 3	6,000	6,000
Asset 4	7,000	4,000
Asset 5	3,000	13,000
Total	30,000	39,000

	Capital	
	Adjusted per books	Market value
Partner A	$10,000	$13,000
Partner B	10,000	13,000
Partner C	10,000	13,000
Total	30,000	39,000

(ii) A sells its interest to T for $13,000 when PRS has an election in effect under section 754. T receives a basis adjustment in the partnership property that is equal to $3,000 (the excess of T's basis in the partnership interest, $13,000, over T's share of the adjusted basis to the partnership of partnership property, $10,000). The basis adjustment is allocated under section 755, and the partnership's balance sheet appears as follows:

	Assets		
	Adjusted basis	Market value	Basis adjustment
Asset 1	$10,000	$10,000	0.00
Asset 2	4,000	6,000	666.67
Asset 3	6,000	6,000	0.00
Asset 4	7,000	4,000	(1,000.00)
Asset 5	3,000	13,000	3,333.33
Total	30,000	39,000	4,000.00

	Capital		
	Adjusted per books	Market value	Special basis
Partner T	$10,000	$13,000	$3,000
Partner B	10,000	13,000	0
Partner C	10,000	13,000	0
Total	30,000	39,000	3,000

(iii) Assume that PRS distributes Asset 2 to T in partial liquidation of T's interest in the partnership. T has a basis adjustment of $666.67 in Asset 2. Under paragraph (g)(1)(i) of this section, T takes the basis adjustment into account under section 732. Therefore, T will have a basis in Asset 2 of $4,666.67 following the distribution.

(iv) Assume instead that PRS distributes Asset 5 to C in complete liquidation of C's interest in PRS. T has a basis adjustment of $3,333.33 in Asset 5. Under paragraph (g)(2)(i) of this section, C does not take T's basis adjustment into account under section 732. Therefore, the partnership's basis for purposes of sections 732 and 734 is $3,000. Under paragraph (g)(2)(ii) of this section, T's $3,333.33 basis adjustment is reallocated among the remaining partnership assets under § 1.755–1(c).

(v) Assume instead that PRS distributes Asset 5 to T in complete liquidation of its interest in PRS. Under paragraph (g)(3) of this section, immediately prior to the distribution of Asset 5 to T, PRS must adjust the basis of Asset 5. Therefore, immediately prior to the distribution, PRS's basis in Asset 5 is equal to $6,000, which is the sum of (A) $3,000, PRS's common basis in Asset 5, plus (B) $3,333.33, T's basis adjustment to Asset 5, plus (C) ($333.33), the sum of T's basis adjustments in Assets 2 and 4. For purposes of sections 732 and 734, therefore, PRS will be treated as having a basis in Asset 5 equal to $6,000.

(h) *Contributions of adjusted property*—(1) *Section 721(a) transactions.* If, in a transaction described in section 721(a), a partnership (the upper tier) contributes to another partnership (the lower tier) property with respect to which a basis adjustment has been made, the basis adjustment is treated as contributed to the lower tier, regardless of whether the lower tier partnership makes a section 754 election. The lower tier's basis in the contributed assets and the upper tier's basis in the partnership interest received in the transaction are determined with reference to the basis adjustment. However, that portion of the basis of the upper tier's interest in the lower tier attributable to the basis adjustment must be segregated and allocated solely to the transferee partner for whom the basis adjustment was made. Similarly, that portion of the lower tier's basis in its assets attributable to the basis adjustment must be segregated and allocated solely to the upper tier and the transferee. A partner with a basis adjustment in property held by a partnership that terminates under section 708(b)(1)(B) will continue to have the same basis adjustment with respect to property deemed contributed by the terminated partnership to the new partnership under § 1.708–1(b)(1)(iv), regardless of whether the new partnership makes a section 754 election.

(2) *Section 351 transactions*—(i) *Basis in transferred property.* A corporation's adjusted tax basis in property transferred to the corporation by a partnership in a transaction described in section 351 is determined with reference to any basis adjustment to the property under section 743(b) (other than any basis adjustment that reduces a partner's gain under paragraph (h)(2)(ii) of this section).

(ii) *Partnership gain.* The amount of gain, if any, recognized by the partnership on a transfer of property by the partnership to a corporation in a transfer described in section 351 is determined without reference to any basis adjustment to the transferred property under section 743(b). The amount of gain, if any, recognized by the partnership on the transfer that is allocated to a partner with a basis adjustment in the transferred property is adjusted to reflect the partner's basis adjustment in the transferred property.

(iii) *Basis in stock.* The partnership's adjusted tax basis in stock received from a corporation in a transfer described in section 351 is determined without reference to the basis adjustment in property transferred to the corporation in the section 351 exchange. A partner with a basis adjustment in property transferred to the corporation, however, has a special basis adjustment in the stock received by the partnership in the section 351 exchange in an amount equal to the partner's basis adjustment in the transferred property, reduced by any basis adjustment that reduced the partner's gain under paragraph (h)(2)(ii) of this section.

(i) [Reserved].

(j) *Effect of basis adjustment*—(1) *In general.* The basis adjustment constitutes an adjustment to the basis of partnership property with respect to the transferee only. No adjustment is made to the common basis of partnership property. Thus, for purposes of income, deduction, gain, loss, and distribution, the transferee will have a special basis for those partnership properties the bases of which are adjusted under section 743(b) and this section. The adjustment to the basis of partnership property under section 743 has no effect on the partnership's computation of any item under section 703.

(2) *Computation of partner's distributive share of partnership items.* The partnership first computes its items of income, deduction, gain, or loss at the partnership level under section 703. The partnership then allocates the partnership items among the partners, including the transferee, in accordance

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with section 704, and adjusts the partners' capital accounts accordingly. The partnership then adjusts the transferee's distributive share of the items of partnership income, deduction, gain, or loss, in accordance with paragraphs (j)(3) and (4) of this section, to reflect the effects of the transferee's basis adjustment to the property that is the source of the item of partnership income, deduction, gain, or loss. These adjustments to the transferee's distributive shares do not affect the transferee's capital account.

(3) *Effect of basis adjustment in determining items of income, gain, or loss*—(i) *In general.* The amount of a transferee's income, gain, or loss from the sale or exchange of a partnership asset in which the transferee has a basis adjustment is equal to the transferee's share of the partnership's gain or loss from the sale of the asset (including any remedial allocations of gain or loss under § 1.704–3(d)), minus the amount of the transferee's positive basis adjustment for the partnership asset (determined by taking into account the recovery of the basis adjustment under paragraph (j)(4)(i)(B) of this section) or plus the amount of the transferee's negative basis adjustment for the partnership asset (determined by taking into the account the recovery of the basis adjustment under paragraph (j)(4)(ii)(B) of this section).

(ii) *Examples.* The following examples illustrate the principles of this paragraph (j)(3):

Example 1. A and B form equal partnership PRS. A contributes nondepreciable property with a fair market value of $50 and an adjusted tax basis of $100. PRS will use the traditional allocation method under § 1.704–3(b). B contributes $50 cash. A sells its interest to T for $50. PRS has an election in effect to adjust the basis of partnership property under section 754. T receives a negative $50 basis adjustment that, under section 755, is allocated to the nondepreciable property. PRS then sells the property for $60. PRS recognizes a book gain of $10 and a tax loss of $40. T will receive an allocation of $40 of tax loss under the principles of section 704(c). Because T has a negative $50 basis adjustment in the nondepreciable property, T recognizes a $10 gain from the partnership's sale of the property.

Example 2. A and B form equal partnership PRS. A contributes nondepreciable property with a fair market value of $100 and an adjusted tax basis of $50. B contributes $100 cash. PRS will use the traditional allocation method under § 1.704–3(b). A sells its interest to T for $100. PRS has an election in effect to adjust the basis of partnership property under section 754. Therefore, T receives a $50 basis adjustment that, under section 755, is allocated to the nondepreciable property. PRS then sells the nondepreciable property for $90. PRS recognizes a book loss of $10 and a tax gain of $40. T will receive an allocation of the entire $40 of tax gain under the principles of section 704(c). Because T has a $50 basis adjustment in the property, T recognizes a $10 loss from the partnership's sale of the property.

Example 3. A and B form equal partnership PRS. PRS will make allocations under section 704(c) using the remedial allocation method described in § 1.704–3(d). A contributes property with a fair market value of $100 and an adjusted tax basis of $150. B contributes $100 cash. A sells its partnership interest to T for $100. PRS has an election in effect to adjust the basis of partnership property under section 754. T receives a negative $50 basis adjustment that, under section 755, is allocated to the property. The partnership then sells the property for $120. The partnership recognizes a $20 book gain and a $30 tax loss. The book gain will be allocated equally between the partners. The entire $30 tax loss will be allocated to T under the principles of section 704(c). To match its $10 share of book gain, B will be allocated $10 of remedial gain and T will be allocated an offsetting $10 of remedial loss. T was allocated a total of $40 of tax loss with respect to the property. Because T has a negative $50 basis adjustment to the property, T recognizes a $10 gain from the partnership's sale of the property.

(4) *Effect of basis adjustment in determining items of deduction*—(i) *Increases*—(A) *Additional deduction.* The amount of any positive basis adjustment that is recovered by the transferee in any year is added to the transferee's distributive share of the partnership's depreciation or amortization deductions for the year. The basis adjustment is adjusted under section 1016(a)(2) to reflect the recovery of the basis adjustment.

(B) *Recovery period*—(*1*) *In general.* Except as provided in paragraph (j)(4)(i)(B)(*2*) of this section, for purposes of section 168, if the basis of a partnership's recovery property is increased as a result of the transfer of a partnership interest, then the increased portion of the basis is taken into account as if it were newly-purchased recovery property placed in service when the transfer occurs. Consequently, any applicable recovery period and method may be used to determine the recovery allowance with respect to the increased portion of the basis. However, no change is made for purposes of determining the recovery allowance under section 168 for the portion of the basis for which there is no increase.

(*2*) *Remedial allocation method.* If a partnership elects to use the remedial allocation method described in § 1.704–3(d) with respect to an item of the partnership's recovery property, then the portion of any increase in the basis of the item of the partnership's recovery property under section 743(b) that is attributable to section 704(c) built-in gain is recovered over the remaining recovery period for the partnership's excess book basis in the property as determined in the final sentence of § 1.704–3(d)(2). Any remaining portion of the basis increase is recovered under paragraph (j)(4)(i)(B)(*1*) of this section.

(C) *Examples.* The provisions of this paragraph (j)(4)(i) are illustrated by the following examples:

Example 1. (i) A, B, and C are equal partners in partnership PRS, which owns Asset 1, an item of depreciable property that has a fair market value in excess of its adjusted tax basis. C sells its interest in PRS to T while PRS has an election in effect under section 754. PRS, therefore, increases the basis of Asset 1 with respect to T.

(ii) Assume that in the year following the transfer of the partnership interest to T, T's distributive share of the partnership's common basis depreciation deductions from Asset 1 is $1,000. Also assume that, under paragraph (j)(4)(i)(B) of this section, the amount of the basis adjustment that T recovers during the year is $500. The total amount of depreciation deductions from Asset 1 reported by T is equal to $1,500.

Example 2. (i) A and B form equal partnership PRS. A contributes property with an adjusted basis of $100,000 and a fair market value of $500,000. B contributes $500,000 cash. When PRS is formed, the property has five years remaining in its recovery period. The partnership's adjusted basis of $100,000 will, therefore, be recovered over the five years remaining in the property's recovery period. PRS elects to use the remedial allocation method under § 1.704–3(d) with respect to the property. If PRS had purchased the property at the time of the partnership's formation, the basis of the property would have been recovered over a 10 year period. The $400,000 of section 704(c) built-in gain will, therefore, be amortized under § 1.704–3(d) over a 10 year period beginning at the time of the partnership's formation.

(ii) Except for the depreciation deductions, PRS's expenses equal its income in each year of the first two years commencing with the year the partnership is formed. After two years, A's share of the adjusted basis of partnership property is $120,000, while B's is $440,000.

CAPITAL ACCOUNTS

	A		B	
	Book	Tax	Book	Tax
Initial Contribution	$500,000	$100,000	$500,000	$500,000
Depreciation Year 1	(30,000)		(30,000)	(20,000)
Remedial		10,000		(10,000)
Subtotal	470,000	110,000	470,000	470,000
Depreciation Year 2	(30,000)		(30,000)	(20,000)
Remedial		10,000		(10,000)
Total	440,000	120,000	440,000	440,000

(iii) A sells its interest in PRS to T for its fair market value of $440,000. A valid election under section 754 is in effect with respect to the sale of the partnership interest. Accordingly, PRS makes an adjustment, pursuant to section 743(b), to increase the basis of partnership property. Under section 743(b), the amount of the basis adjustment is equal to $320,000. Under section 755, the entire basis adjustment is allocated to the property.

(iv) At the time of the transfer, $320,000 of section 704(c) built-in gain from the property was still reflected on the partnership's books, and all of the basis adjustment is attributable to section 704(c) built-in gain. Therefore, the basis adjustment will be recovered over the remaining recovery period for the section 704(c) built-in gain under § 1.704–3(d).

(ii) *Decreases*—(A) *Effect on depreciation deductions—(1)—Reduced deduction to transferee. Except as provided in paragraph (j)(4)(ii)(A)(2)* of this section, the amount of the basis adjustment to an item of depreciable or amortizable property that is recovered in any year first decreases the transferee's distributive share of the partnership's depreciation or amortization deductions from that item of property for the year. If the amount of the basis adjustment recovered in any year exceeds the transferee's distributive share of the partnership's depreciation or amortization deductions from the item of property, then the transferee's distributive share of the partnership's depreciation or amortization deductions from other items of partnership property is decreased. The transferee then recognizes ordinary income to the extent of the excess, if any, of the amount of the basis adjustment recovered in any year over the transferee's distributive share of the partnership's depreciation or amortization deductions from all items of property.

(*2*) *Election to reduce deduction of other partners by excess adjustment.* The partnership may elect to treat the amount of the basis adjustment as an item of built-in gain, decreasing the amount of depreciation or amortization that the partnership may allocate for tax purposes. This election has no effect on the depreciation or amortization of the property on the books of the partnership. The partnership must make this election on the statement required to be attached to its return pursuant to paragraph (k) of this section for the year that the adjustment is made to the item of property.

(B) *Recovery period.* For purposes of section 168, if the basis of an item of a partnership's recovery property is decreased as the result of the transfer of an interest in the partnership then the decrease is recovered over the remaining useful life of the item of the partnership's recovery property. The portion of the decrease that is recovered in any year during the recovery period is equal to the product of—

(*1*) The amount of the decrease to the item's adjusted basis (determined as of the date of the transfer); multiplied by

(*2*) A fraction, the numerator of which is the portion of the adjusted basis of the item recovered by the partnership in that year, and the denominator of which is the adjusted basis of the item on the date of the transfer (determined prior to any basis adjustments).

(C) *Examples.* The provisions of this paragraph (j)(4)(ii) are illustrated by the following examples:

Example 1. (i) A, B, and C are equal partners in partnership PRS, which owns Asset 2, an item of depreciable property that has a fair market value that is less than its adjusted tax basis. C sells its interest in PRS to T while PRS has an election in effect under section 754. PRS, therefore, decreases the basis of Asset 2 with respect to T.

(ii) Assume that in the year following the transfer of the partnership interest to T, T's distributive share of the partnership's common basis depreciation deducations from Asset 2 is $1,000. Also assume that, under paragraph (j)(4)(ii)(B) of this section, the amount of the basis adjustment that T recovers during the year is $500. The total amount of depreciation deductions from Asset 2 reported by T is equal to $500.

Example 2. (i) A and B form equal partnership PRS. A contributes property with an adjusted basis of $100,000 and a fair market value of $50,000. B contributes $50,000 cash. When PRS is formed, the property has five years remaining in its recovery period. The partnership's adjusted basis of $100,000 will, therefore, be recovered over the five years remaining in the property's recovery period. PRS uses the traditional allocation method under § 1.704–3(b) with respect to the property. As a result, B will receive $5,000 of depreciation deductions from the property in each of years 1–5, and A, as the contributing partner, will receive $15,000 of depreciation deductions in each of these years.

(ii) Except for the depreciation deductions, PRS's expenses equal its income in each of the first two years commencing with the year the partnership is formed. After two years, A's share of the adjusted basis of partnership property is $70,000, while B's is $40,000. A sells its interest in PRS to T for its fair market value of $40,000. A valid election under section 754 is in effect with respect to the sale of the partnership interest. Accordingly, PRS makes an adjustment, pursuant to section 743(b), to decrease the basis of partnership property. Under section 743(b), the amount of the adjustment is equal to ($30,000). Under section 755, the entire adjustment is allocated to the property.

(iii) The basis of the property at the time of the transfer of the partnership interest was $60,000. In each of years 3 through 5, the partnership will realize depreciation deductions of $20,000 from the property. Thus, one third of the negative basis adjustment ($10,000) will be recovered in each of years 3 through 5. Consequently, T will be allocated for tax purposes depreciation of $15,000 each year from the partnership and will recover $10,000 of its negative basis adjustment. Thus, T's net depreciation deducation from the partnership in each year is $5,000.

Example 3. (i) A, B, and C are equal partners in partnership PRS, which owns Asset 2, an item of depreciable property that has a fair market value that is less than its adjusted tax basis. C sells its interest in PRS to T while PRS has an election in effect under section 754. PRS, therefore, decreases the basis of Asset 2 with respect to T.

(ii) Assume that in the year following the transfer of the partnership interest to T, T's distributive share of the partnership's common basis depreciation deductions from Asset 2 is $500. PRS allocates no other depreciation to T. Also assume that, under paragraph (j)(4)(ii)(B) of this section, the amount of the negative basis adjustment that

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T recovers during the year is $1,000. T will report $500 of ordinary income because the amount of the negative basis adjustment recovered during the year exceeds T's distributive share of the partnership's common basis depreciation deductions from Asset 2.

Example 4. (i) A and B are equal partners in partnership PRS. PRS has one depreciable asset that it purchased with cash. On the first day of a year, A transfers its interest to T at a time when the fair market value of the depreciable asset is $50 and its adjusted tax basis is $200. The partnership has an election in effect under section 754, resulting in a $75 decrease in the basis of the depreciable asset to T under section 743.

(ii) The depreciable asset has a remaining useful life of two years and is being recovered using the straight-line method. The partnership elects, under paragraph (j)(4)(ii)(A)(*2*) of this section, to treat the decrease in basis under section 743 as an item of built-in gain, decreasing the amount of depreciation that the partnership can allocate from $200 to $125. This reduces the amount of depreciation available to be allocated to the partners in each year from $100 to $62.50. This election has no effect on the depreciation or amortization of the property on the books of the partnership. Therefore, the partnership will recover $100 of depreciation on its books in each year.

(iii) At the end of the year, the partnership allocates each partner $50 of depreciation for book purposes. Under the principles of section 704(c), the first $50 of tax depreciation is allocated to B. The remaining $12.50 of tax depreciation is allocated to T.

(5) *Depletion.* Where an adjustment is made under section 743(b) to the basis of partnership property subject to depletion, any depletion allowance is determined separately for each partner, including the transferee partner, based on the partner's interest in such property. See § 1.702–1(a)(8).

(6) *Example.* The provisions of paragraph (j)(5) of this section are illustrated by the following example:

Example. A, B, and C each contributes $5,000 cash to form partnership PRS, which purchases oil property for $15,000. A, B, and C have equal interests in capital and profits. C subsequently sells its partnership interest to T for $100,000 when the election under section 754 is in effect. T has a basis adjustment for the oil property of $95,000 (the difference between T's basis, $100,000, and its share of the basis of partnership property, $5,000). Assume that the depletion allowance computed under the percentage method would be $21,000 for the taxable year so that each partner would be entitled to $7,000 as its share of the deduction for depletion. However, under the cost depletion method, at an assumed rate of 10 percent, the allowance with respect to T's one-third interest which has a basis to him of $100,000 ($5,000, plus its basis adjustment of $95,000) is $10,000, although the cost depletion allowance with respect to the one-third interest of A and B in the oil property, each of which has a basis of $5,000, is only $500. For partners A and B, the percentage depletion is greater than cost depletion and each will deduct $7,000 based on the percentage depletion method. However, as to T, the transferee partner, the cost depletion method results in a greater allowance and T will, therefore, deduct $10,000 based on cost depletion. See section 613(a).

(k) *Returns*—(1) *Statement of adjustments.* A partnership that must adjust the bases of partnership properties under section 743 must attach a statement to the partnership return for the year of the transfer setting forth the name and taxpayer identification number of the transferee as well as the computation of the adjustment and the partnership properties to which the adjustment has been allocated.

(2) *Requirement that transferee notify partnership*—(i) *Sale or exchange.* A transferee that acquires, by sale or exchange, an interest in a partnership with an election under section 754 in effect, must notify the partnership, in writing, within 30 days of the sale or exchange (or, if earlier, by January 15 of the calendar year following the calendar year in which the sale or exchange occurred). The written notice to the partnership must include the names and addresses of both parties to the sale or exchange, the taxpayer identification numbers of the transferee and (if known) of the transferor, the date of the transfer, and the amount of any money and the fair market value of any other property delivered or to be delivered for the transferred interest in the partnership.

(ii) *Transfer on death.* A transferee that acquires, on the death of a partner, an interest in a partnership with an election under section 754 in effect, must notify the partnership, in writing, within one year of the death of the deceased partner. The written notice to the partnership must include the names and addresses of the deceased partner and the transferee, the taxpayer identification numbers of the deceased partner and the transferee, the date on which the transferee became the owner of the partnership interest, the fair market value of the partnership interest on the applicable date of valuation set forth in section 1014, and the manner in which the fair market value of the partnership interest was determined.

(3) *Reliance.* In making the adjustments under section 743 and any statement or return relating to such adjustments under this section, a partnership may rely on the written notice provided by a transferee pursuant to paragraph (k)(2) of this section to determine the transferee's basis in a partnership interest. The previous sentence shall not apply if the tax matters partner (as defined under section 6231(a)(7)) or any other partner who has responsibility for federal income tax reporting by the partnership has knowledge of facts indicating that the statement is clearly erroneous.

(4) *Partnership not required to make or report adjustments under section 743 until it has notice of the transfer.* A partnership is not required to make the adjustments under section 743 (or any statement or return relating to those adjustments) with respect to any transfer until it has been notified of the transfer. For purposes of this section, a partnership is notified of a transfer when either—

(i) The partnership receives the written notice from the transferee required under paragraph (k)(2) of this section; or

(ii) The tax matters partner (as defined under section 6231(a)(7)) or any other partner who has responsibility for federal income tax reporting by the partnership has knowledge that there has been a transfer of a partnership interest.

(5) *Effect on partnership of the failure of the transferee to comply.* If the transferee fails to provide the partnership with the written notice required by paragraph (k)(2) of this section, the partnership must attach a statement to its return in the year that the partnership is otherwise notified of the transfer. This statement must set forth the name and taxpayer identification number (if known) of the transferee. In addition, the following statement must be prominently displayed in capital letters on the first page of the partnership's return for such year, and on the first page of any schedule or information statement relating to such transferee's share of income, credits, deductions, etc.: "RETURN FILED PURSUANT TO § 1.743–1(k)(5)." The partnership will then be entitled to report the transferee's share of partnership items without adjustment to reflect the transferee's basis adjustment in partnership property. If, following the filing of a return pursuant to this paragraph (k)(5), the transferee provides the applicable written notice to the partnership, the partnership must make such adjustments as are necessary to adjust the basis of partnership property (as of the date of the transfer) in any amended return otherwise to be filed by the partnership or in the next annual partnership return of income to be regularly filed by the partnership. At such time, the partnership must also provide the transferee with such information as is necessary for the transferee to amend its prior returns to properly reflect the adjustment under section 743.

(l) *Effective date.* This section applies to transfers of partnership interests that occur on or after the date final regulations are published in the **Federal Register**.

Par. 6. Section 1.751–1 is amended by:

1. Revising paragraphs (a)(2) and (a)(3) and *Example 1* of paragraph (g).

2. Adding a sentence at the end of paragraph (f).

The addition and revisions read as follows:

§ 1.751–1 Unrealized receivables and inventory items.

(a) * * *

(2) *Determination of gain or loss.* The income or loss realized by a partner upon the sale or exchange of its interest in section 751 property is the amount of income or loss from section 751 property (including any remedial allocation under § 1.704–3(d)) that would have been allocated to the partner (to the extent attributable to the partnership interest sold or exchanged) if the partnership had sold all of its property in a fully taxable transaction immediately prior to the partner's transfer of the interest in the partnership. Any gain or loss recognized that is attributable to section 751 property will be ordinary gain or loss. The difference between the amount of capital gain or loss that the partner would realize in the absence of section 751 and the amount of ordinary income or loss determined under this paragraph (a)(2) is the transferor's capital gain or loss on the sale of its partnership interest.

(3) *Statement required.* A partner selling or exchanging any part of an interest in a partnership that has any section 751 property at the time of sale or exchange must submit with its income tax return for the taxable year in which the sale or exchange occurs a statement setting forth separately the following information—

(i) The date of the sale or exchange;

(ii) The amount of any gain or loss attributable to the section 751 property; and

(iii) The amount of any gain or loss attributable to capital gain or loss on the sale of the partnership interest.

* * * * *

(f) * * * The rules contained in paragraphs (a) (2) and (3) of this section apply to transfers of partnership interests that occur on or after the date final regulations are published in the **Federal Register**.

(g) * * *

Example 1. (i) A and B are equal partners in personal service partnership PRS. B transfers its interest in PRS to T for $15,000 when PRS's balance sheet (reflecting a cash receipts and disbursements method of accounting) is as follows:

	Assets	
	Adjusted basis	Market value
Cash	$3,000	$3,000
Loans Receivable	10,000	10,000
Capital Assets	7,000	5,000
Unrealized receivables	0	14,000
Total	20,000	32,000

	Liabilities and capital	
	Adjusted per books	Market value
Liabilities	$2,000	$2,000
Capital:		
A	9,000	15,000
B	9,000	15,000
Total	20,000	32,000

(ii) None of the assets owned by PRS is section 704(c) property. The total amount realized by B is $16,000, consisting of the cash received, $15,000, plus $1,000, B's share of the partnership liabilities assumed by T. See section 752. B's undivided half-interest in the partnership property includes a half-interest in the partnership's unrealized receivables items. B's basis for its partnership interest is $10,000 ($9,000, plus $1,000, B's share of partnership liabilities). If section 751(a) did not apply to the sale, B would recognize $6,000 of capital gain from the sale of the interest in PRS. However, section 751(a) does apply to the sale.

(iii) If PRS sold all of its section 751 property in a fully taxable transaction immediately prior to the transfer of B's partnership interest to T, B would have been allocated $7,000 of ordinary income from the sale of PRS's unrealized receivables. Therefore, B will recognize $7,000 of ordinary income with respect to the unrealized receivables. The difference between the amount of capital gain or loss that the partner would realize in the absence of section 751 ($6,000) and the amount of ordinary income or loss determined under paragraph (a)(2) of this section ($7,000) is the transferor's capital gain or loss on the sale of its partnership interest. In this case, B will recognize a $1,000 capital loss.

* * * * *

Par. 7. Section 1.755–1 is revised to read as follows:

§ 1.755–1 Rules for allocation of basis.

(a) *Generally.* A partnership that has an election in effect under section 754 must adjust the basis of partnership property under the provisions of section 734(b) and section 743(b) pursuant to the provisions of this section. The basis adjustment is first allocated between the two classes of property described in section 755(b). These classes of property consist of—

(1) Capital assets and section 1231(b) property (capital gain property); and

(2) Any other property of the partnership (ordinary income property). The portion of the basis adjustment allocated to each class is then allocated among the items within the class. Adjustments under section 743(b) are allocated under paragraph (b) of this section. Adjustments under section 734(b) are allocated under paragraph (c) of this section.

(b) *Adjustments under section 743(b)*—(1) *Generally.* In general, the allocation of the basis adjustment under section 743 between the classes of property and among the items of property within each class are made based on the allocations of income, gain, or loss (including remedial allocations under § 1.704–3(d)) that the transferee partner would receive (to the extent attributable to the acquired partnership interest) if, immediately after the transfer of the partnership interest, all of the partnership's assets were disposed of in a fully taxable transaction for fair market value (the hypothetical transaction). The portion of the basis adjustment allocated to one class of property may be an increase while the portion allocated to the other class is a decrease. This would be the case even though the total amount of the basis adjustment is zero. The portion of the basis adjustment allocated to one item of property within a class may be an increase while the portion allocated to another is a decrease. This would be the case even though the basis adjustment allocated to the class is zero.

(2) *Allocations between classes of property*—(i) *In general.* The amount of the basis adjustment allocated to the class of ordinary income property is equal to the total amount of income, gain, or loss (including any remedial allocations under § 1.704–3(d)) that would be allocated to the transferee (to the extent attributable to the acquired partnership interest) from the sale of all ordinary income property in the hypothetical transaction. The amount of the basis adjustment to capital gain property is equal to—

(A) The total amount of the basis adjustment under section 743; less

(B) The amount of the basis adjustment allocated to ordinary income property under the preceding sentence; provided, however, that in no event may the amount of any decrease in basis allocated to capital gain property exceed the partnership's basis (or in the case of

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property subject to the remedial allocation method, the transferee's share of any remedial loss under § 1.704-3(d) from the hypothetical transaction) in capital gain property. In the event that a decrease in basis allocated to capital gain property would otherwise exceed the partnership's basis in capital gain property, the excess must be applied to reduce the basis of ordinary income property.

(ii) *Examples.* The provisions of this paragraph (b)(2) are illustrated by the following example:

Example 1. (i) A and B form equal partnership PRS. A contributes $50,000 and Asset 1, a capital asset with a fair market value of $50,000 and an adjusted tax basis of $25,000. B contributes $100,000. PRS uses the cash to purchase Assets 2, 3, and 4. After a year, A sells its interest in PRS to T for $120,000. At the time of the transfer, A's share of the partnership's basis in partnership assets is $75,000. Therefore, T receives a $45,000 basis adjustment.

(ii) Immediately after the transfer of the partnership interest to T, the adjusted basis and fair market value of PRS's assets are as follows:

	Assets	
	Adjusted basis	Market value
Capital Gain Property:		
Asset 1	$25,000	$75,000
Asset 2	100,000	117,500
Ordinary Income Property:		
Asset 3	40,000	45,000
Asset 4	10,000	2,500
Total	175,000	240,000

(iii) If PRS sold all of its assets in a fully taxable transaction at fair market value immediately after the transfer of the partnership interest to T, the total amount of capital gain that would be allocated to T is equal to $46,250 ($25,000 section 704(c) built-in gain from Asset 1, plus fifty percent of the $42,500 appreciation in capital gain property). T would also be allocated a $1,250 ordinary loss from the sale of the ordinary income property.

(iv) The amount of the basis adjustment that is allocated to ordinary income property is equal to ($1,250) (the amount of the loss allocated to T from the hypothetical sale of the ordinary income property).

(v) The amount of the basis adjustment that is allocated to capital gain property is equal to $46,250 (the amount of the basis adjustment, $45,000, less ($1,250), the amount of loss allocated to T from the hypothetical sale of the ordinary income property).

Example 2. (i) A and B form equal partnership PRS. A and B each contribute $1,000 cash which the partnership uses to purchase Assets 1, 2, 3, and 4. After a year, A sells its partnership interest to T for $1,000. T's basis adjustment under section 743 is zero.

(ii) Immediately after the transfer of the partnership interest to T, the adjusted basis and fair market value of PRS' assets are as follows:

	Assets	
	Adjusted basis	Market value
Capital Gain Property:		
Asset 1	$500	$750
Asset 2	500	500
Ordinary Income Property:		
Asset 3	500	250
Asset 4	500	500
Total	2,000	2,000

(iii) If, immediately after the transfer of the partnership interest to T, PRS sold all of its assets in a fully taxable transaction at fair market value, T would be allocated a loss of $125 from the sale of the ordinary income property. Thus, the amount of the basis adjustment to ordinary income property is ($125). The amount of the basis adjustment to capital gain property is $125 (zero, the amount of the basis adjustment under section 743, less ($125), amount of the basis adjustment allocated to ordinary income property).

(3) *Allocation within the class*—(i) *Ordinary income property.* The amount of the basis adjustment to each item of property within the class of ordinary income property is equal to—

(A) The amount of income, gain, or loss (including any remedial allocations under § 1.704–3(d)) that would be allocated to the transferee (to the extent attributable to the acquired partnership interest) from the hypothetical sale of the item; reduced by

(B) The product of—

(*1*) Any decrease to the amount of the basis adjustment to ordinary income property required pursuant to the last sentence of paragraph (b)(2)(i) of this section; multiplied by

(*2*) A fraction, the numerator of which is the fair market value of the item of property to the partnership and the denominator of which is the total fair market value of all of the partnership's items of ordinary income property.

(ii) *Capital gain property.* The amount of the basis adjustment to each item of property within the class of capital gain property is equal to—

(A) The amount of income, gain, or loss (including any remedial allocations under § 1.704–3(d)) that would be allocated to the transferee (to the extent attributable to the acquired partnership interest) from the hypothetical sale of the item; minus

(B) The product of—

(*1*) The total amount of gain or loss (including any remedial allocations under § 1.704–3(d)) that would be allocated to the transferee (to the extent attributable to the acquired partnership interest) from the hypothetical sale of all items of capital gain property, minus the amount of the positive basis adjustment to all items of capital gain property or plus the amount of the negative basis adjustment to capital gain property; multiplied by

(*2*) A fraction, the numerator of which is the fair market value of the item of property to the partnership and the denominator of which is the total fair market value of all of the partnership's items of capital gain property.

(iii) *Examples.* The provisions of this paragraph (b)(3) are illustrated by the following example:

Example 1. (i) Assume the same facts as Example 1 in paragraph (b)(2)(ii) of this section. Of the $45,000 basis adjustment, $46,250 was allocated to capital gain property. The amount allocated to ordinary income property was ($1,250).

(ii) Asset 1 is a capital gain asset, and T would be allocated $37,500 from the sale of Asset 1 in the hypothetical transaction. Therefore, the amount of the adjustment to Asset 1 is $37,500.

(iii) Asset 2 is a capital gain asset, and T would be allocated $8,750 from the sale of Asset 2 in the hypothetical transaction. Therefore, the amount of the adjustment to Asset 2 is $8,750.

(iv) Asset 3 is ordinary income property, and T would be allocated $2,500 from the sale of Asset 3 in the hypothetical transaction. Therefore, the amount of the adjustment to Asset 3 is $2,500.

(v) Asset 4 is ordinary income property, and T would be allocated ($3,750) from the sale of Asset 4 in the hypothetical transaction. Therefore, the amount of the adjustment to Asset 4 is ($3,750).

Example 2. (i) Assume the same facts as Example 1 in paragraph (b)(2)(ii) of this section, except that A sold its interest in PRS to T for $110,000 rather than $120,000. T, therefore, receives a basis adjustment under section 743 of $35,000. Of the $35,000 basis adjustment, ($1,250) is allocated to ordinary income property, and $36,250 is allocated to capital gain property.

(ii) Asset 3 is ordinary income property, and T would be allocated $2,500 from the sale of Asset 3 in the hypothetical transaction. Therefore, the amount of the adjustment to Asset 3 is $2,500.

(iii) Asset 4 is ordinary income property, and T would be allocated ($3,750) from the sale of Asset 4 in the hypothetical transaction. Therefore, the amount of the adjustment to Asset 4 is ($3,750).

(iv) Asset 1 is a capital gain asset, and T would be allocated $37,500 from the sale of Asset 1 in the hypothetical transaction. Asset 2 is a capital gain asset, and T would be allocated $8,750 from the sale of Asset 2 in the hypothetical transaction. The total amount of gain that would be allocated to T from the sale of the capital gain assets in the hypothetical transaction is $46,250, which exceeds the amount of the basis adjustment allocated to capital gain property. The amount of the adjustment to Asset 1 is $33,604 (the sum of $37,500, less $3,896 ($10,000 x $75,000/192,500)). The amount of the basis adjustment to Asset 2 is $2,646 (the sum of $8,750, less $6,104 ($10,000 x $117,500/192,500)).

(c) *Adjustments under section 734(b)*—(1) *Allocations between classes of property*—(i) *General rule.* Where there is a distribution of partnership property resulting in an adjustment to the basis of undistributed partnership property under section 734(b)(1)(B) or (b)(2)(B), the adjustment must be allocated to remaining partnership property of a character similar to that of the distributed property with respect to which the adjustment arose. Thus, when the partnership's adjusted basis of distributed capital gain property immediately prior to distribution exceeds the basis of the property to the distributee partner (as determined under section 732), the basis of the undistributed capital gain property remaining in the partnership is increased by an amount equal to the excess. Conversely, when the basis to the distributee partner (as determined under section 732) of distributed capital gain property exceeds the partnership's adjusted basis of such property immediately prior to the distribution, the basis of the undistributed capital gain property remaining in the partnership is decreased by an amount equal to such excess. Similarly, where there is a distribution of ordinary income property, and the basis of the property to the distributee partner (as determined under section 732) is not the same as the partnership's adjusted basis of the property immediately prior to distribution, the adjustment is made only to undistributed property of the same class remaining in the partnership.

(ii) *Special rule.* Where there is a distribution resulting in an adjustment under section 734(b)(1)(A) or (b)(2)(A) to the basis of undistributed partnership property, the adjustment is allocated only to capital gain property.

(2) *Allocations within the classes*—(i) *Increases.* If there is an increase in basis to be allocated within a class, the increase must be allocated first to properties with unrealized appreciation in proportion to their respective amounts of unrealized appreciation before such increase (but only to the extent of each property's unrealized appreciation). Any remaining increase must be allocated among the properties within the class in proportion to their fair market values.

(ii) *Decreases.* If there is a decrease in basis to be allocated within a class, the decrease must be allocated first to properties with unrealized depreciation in proportion to their respective amounts of unrealized depreciation before such decrease (but only to the extent of each property's unrealized depreciation). Any remaining decrease must be allocated among the properties within the class in proportion to their adjusted bases (as adjusted under the preceding sentence).

(3) *Limitation in decrease of basis.* Where a decrease in the basis of partnership assets is required under section 734(b)(2) and the amount of the decrease exceeds the adjusted basis to the partnership of property of the required character, the basis of such property is reduced to zero (but not below zero).

(4) *Carryover adjustment.* Where, in the case of a distribution, an increase or a decrease in the basis of undistributed property cannot be made because the partnership owns no property of the character required to be adjusted, or because the basis of all the property of a like character has been reduced to zero, the adjustment is made when the partnership subsequently acquires property of a like character to which an adjustment can be made.

(5) *Goodwill.* The application of the rules with respect to the allocation of an adjustment in basis under this paragraph (c) requires that a portion of the adjustment be allocated to partnership goodwill, to the extent that goodwill exists and is reflected in the value of the property distributed in accordance with the difference between such value of the goodwill and its adjusted basis at the time of the distribution.

(6) *Example.* The following example illustrates this paragraph (c):

Example. (i) A, B, and C form equal partnership PRS. A contributes $50,000 and Asset 1, capital gain property with a fair market value of $50,000 and an adjusted tax basis of $25,000. B and C each contributes $100,000. PRS uses the cash to purchase Assets 2, 3, 4, 5, and 6. None of the partnership's assets are section 751 property. The partnership has an election in effect under section 754. After five years, the adjusted basis and fair market value of PRS's assets are as follows:

	Assets	
	Adjusted basis	Market value
Capital Gain Property:		
Asset 1	$25,000	$75,000
Asset 2	100,000	117,500
Asset 3	50,000	60,000
Ordinary Income Property:		
Asset 4	40,000	45,000
Asset 5	50,000	60,000
Asset 6	10,000	2,500
Total	275,000	360,000

(ii) *Allocation between classes.* Assume that PRS distributes Assets 3 and 5 to A in complete liquidation of A's interest in the partnership. A's basis in the partnership interest was $75,000. The partnership's basis in Assets 3 and 5 was $50,000 each. A's $75,000 basis in its partnership interest is allocated between Assets 3 and 5 under sections 732(b) and (c). A will, therefore, have a basis of $37,500 in each of Assets 3 and 5. The distribution results in a $12,500 increase in the basis of both capital gain property and ordinary income property.

(iii) *Allocation within classes*—(A) *Capital gain property.* The amount of the basis increase to capital gain property is $12,500, and must be allocated among the remaining capital gain assets in proportion to the difference between the value and basis of each. The fair market value of Asset 1 exceeds its basis by $50,000. The fair market value of Asset 2 exceeds its basis by $17,500. Therefore, the basis of Asset 1 will be increased by $9,260 ($12,500, multiplied by $50,000, divided by $67,500), and the basis of Asset 2 will be increased by $3,240 ($12,500 multiplied by $17,500, divided by $67,500).

(B) *Ordinary income property.* The amount of the basis increase to ordinary income property is $12,500, and must be allocated among the remaining ordinary income assets in proportion to the difference between the value and basis of each. Because the basis of Asset 6 exceeds its fair market value, no part of the basis adjustment will be allocated to Asset 6. The fair market value of Asset 4, $45,000, exceeds its basis, $40,000, by $5,000. Because the partnership owns no other ordinary income property that has a value in excess of its basis, the entire basis adjustment will be allocated to Asset 4, increasing its basis from $40,000 to $52,500.

(d) *Effective date.* This section applies to transfers of partnership interests and distributions of property from a partnership that occur on or after the date final regulations are published in the **Federal Register**.

Par. 8. Section 1.1017–1 as proposed to be revised at 62 FR 958, January 7, 1997, is amended by:

1. Revising paragraph (f)(2)(iv).
2. Adding paragraph (f)(2)(v).

The addition and revision read as follows:

§ 1.1017–1 Basis reductions following a discharge of indebtedness.

* * * * *

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(f) * * *
(2) * * *

(iv) *Partner's share of partnership basis*—(A) *In general.* For purposes of this paragraph (f), a partner's proportionate share of the partnership's basis in depreciable property (or depreciable real property) is equal to the sum of—

(*1*) The partner's section 743(b) basis adjustments to items of partnership depreciable property (or depreciable real property); and

(*2*) The common basis depreciation deductions (but not including remedial allocations of depreciation deductions under § 1.704–3(d)) that, under the terms of the partnership agreement, are reasonably expected to be allocated to the partner over the property's remaining useful life. The assumptions made by a partnership in determining the reasonably expected allocation of depreciation deductions must be consistent for each partner. For example, a partnership may not treat the same depreciation deductions as being reasonably expected by more than one partner.

(B) *Effective date.* This paragraph (f)(2)(iv) applies to elections made under sections 108(b)(5) and 108(c) on or after the date the regulations are published as final regulations in the **Federal Register**.

(v) *Treatment of basis reduction*—(A) *Basis adjustment.* The amount of the reduction to the basis of depreciable partnership property constitutes an adjustment to the basis of partnership property with respect to the partner only. No adjustment is made to the common basis of partnership property. Thus, for purposes of income, deduction, gain, loss, and distribution, the partner will have a special basis for those partnership properties the bases of which are adjusted under section 1017 and this section.

(B) *Recovery of adjustments to basis of partnership property.* Adjustments to the basis of partnership property under this section are recovered in the manner described in § 1.743–1.

(C) *Effect of basis reduction.* Adjustments to the basis of partnership property under this section are treated in the same manner and have the same effect as an adjustment to the basis of partnership property under section 743, provided, however, that the election in § 1.743–1(j)(4)(ii)(A)(*2*) is not available. The following example illustrates this paragraph (f)(2)(v):

Example. (i) A, B, and C are equal partners in partnership PRS, which owns (among other things) Asset 1, an item of depreciable property with a basis of $30,000. A's basis in its partnership interest is $20,000. Under the terms of the partnership agreement, A's share of the depreciation deductions from Asset 1 over its remaining useful life will be $10,000. Under section 1017, A requests, and PRS agrees to decrease the basis of Asset 1 with respect to A by $10,000.

(ii) In the year following the reduction of basis under section 1017, PRS amends its partnership agreement to provide that items of depreciation and loss from Asset 1 will be allocated equally between B and C. In that year, A's distributive share of the partnership's common basis depreciation deductions from Asset 1 is now $0. Under § 1.743–1(j)(4)(ii)(B), the amount of the section 1017 basis adjustment that A recovers during the year is $1,000. A will report $1,000 of ordinary income because A's distributive share of the partnership's common basis depreciation deductions from Asset 1 ($0) is insufficient to offset the amount of the section 1017 basis adjustment recovered by A during the year ($1,000).

(iii) In the following year, PRS sells Asset 1 for $15,000 and recognizes a $12,000 loss. This loss is allocated equally between B and C, and A's share of the loss is $0. Upon the sale of Asset 1, A recovers its entire remaining section 1017 basis adjustment ($9,000). A will report $9,000 of ordinary income.

(D) *Effective date.* This paragraph (f)(2)(v) applies to elections made under sections 108(b)(5) and 108(c) on or after the date the regulations are published as final regulations in the **Federal Register**.

* * * * *

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–1949 Filed 1–28–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1915

Fire Protection for Shipyard Employment Negotiated Rulemaking Advisory Committee; Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Fire protection for shipyard employment negotiated rulemaking advisory committee; notice of open meeting.

SUMMARY: The Occupational Safety and Health Administration announces a meeting of the Negotiated Rulemaking Advisory Committee for Fire Protection for Shipyard Employment. OSHA invites all interested persons to attend. The committee members represent groups interested in, or significantly affected by, the outcome of the rulemaking: They come from shipyards, labor unions, professional associations, and government agencies. The committee will continue its discussions on scope and application, administrative, engineering, and work practice controls, fire brigades, written fire plans, technological advances, costs of fire protection, and the content of appendices for a proposed standard to protect workers from hazards in shipyard employment. The committee's goal is to recommend to the Assistant Secretary a safety standard and explanatory preamble that the members support.

DATES: The meeting dates are Tuesday, February 24, 1998, through Thursday, February 26, 1998, from 9:00 a.m. to about 5:00 p.m. daily. Submit comments, requests for oral presentation, and requests for disability accommodations by February 10, 1998.

ADDRESSES: The meeting will be held at the Holiday Inn on the Bay, 1355 North Harbor Drive at the Embarcadero, San Diego, CA, 92101; telephone 619–232–3861. Mail comments and requests for oral presentations to Ms. Odet Shaw, U.S. Dapartment of Labor, OSHA Office of Maritime Standards, 200 Constitution Avenue, NW, Room N–3647, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph V. Daddura, Project Officer, Office of Maritime Standards, OSHA (202–219–7234 ext. 123). For disability accommodations, contact Ms. Theda Kenney (202–219–8061 ext. 100; FAX: 202–219–7477).

SUPPLEMENTARY INFORMATION:

Meeting Agenda. The Committee will focus its discussions on fire brigades and current rules.

Public Participation. Interested persons may send written comments, data, views, or statements for consideration by the Fire Protection for Shipyard Employment Negotiated Rulemaking Committee to Ms. Odet Shaw. Interested persons may also submit requests for presentations by providing to Ms. Shaw a summary of the proposed presentation, an estimate of the time desired, and a statement of the interest that the person represents.

Authority. This notice is issued under the authority of Section 3 of the Negotiated Rulemaking Act of 1990 (104 Stat. 4969; Title 5 U.S.C. 561 *et seq.*) and Section 7(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1597; Title 29 U.S.C. 656).

Signed at Washington, D.C., this 23rd day of January, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–2097 Filed 1–28–98; 8:45 am]

BILLING CODE 4510–26–M

Notices

Federal Register
Vol. 63, No. 19
Thursday, January 29, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Pines Coal Lease Tract, UTU–76195, Manti-La Sal National Forest, Sanpete, Sevier, and Emery Counties, Utah

ACTION: Notice of Intent to Prepare a Third-Party Environmental Impact Statement.

SUMMARY: The Forest Service and Bureau of Land Management will direct preparation of a Third-Party Environmental Impact Statement (EIS) to document the analysis and disclose the environmental and human effects of proposed actions to offer the Pines Coal Lease Tract for competitive bidding in accordance with 43 CFR part 3425. As the surface management agency, the Forest Service will be the lead agency for preparation of the EIS and the Bureau of Land Management will be a joint or cooperating agency. The Office of Surface Mining will also participate as a cooperating agency.

The coal lease tract, as delineated by the Tract Delineation Team, encompasses 7,311 acres of Federal coal lands on the Manti-La Sal National Forest as follows:

T. 20 E., R. 5 E., SLM,
Sec. 36: W½S, ¼, SE¼SW¼, NE¼SW¼, S½SW¼, SE¼;
T. 21 S., R. 5 E., SLM,
Sec. 1: lots 3–4, S½SW¼, SW¼SE¼;
Sec. 2: lots 1–4, S½S½;
Sec. 3: lots 1–2, S½SE¼;
Sec. 10: E½;
Sec. 11–14: All;
Sec. 15: E½;
Sec. 22, E½;
Sec. 23–24: All;
Sec. 25: N½, N½S½;
Sec. 25: N½, NE¼SW¼, E½NW¼SW¼, SE¼.
T. 21 S., R. 6 E., SLM,
Sec. 19, lots 3–4, E½SW¼;
Sec. 30, lots 1–3, E½NW¼, NE¼SW¼.

Additions and/or deletions could be considered in alternatives to the proposed action to be developed and analyzed based on issues and management needs.

Canyon Fuel Company, LLC applied to the Bureau of Land Management for the lease to obtain additional coal reserves to increase the production life of their SUFCO Mine. The tract lies directly adjacent to the east boundary of the existing approved permit area for this underground mine. If Canyon Fuel obtains the tract, it would be mined by longwall and room-and pillar methods from underground workings in the existing permit area. The existing portal facilities in Convulsion Canyon would be used. If another company obtains the tract, it is most likely that new portal facilities would be required at the coal outcrop in Link Canyon. The underground mining methods and layout would be similar. The EIS would consider the effects of both scenarios, the No Action Alternative, and other alternatives to be developed after completion of project scoping.

AGENCY DECISIONS: In accordance with the Mineral Leasing Act of 1920, as amended, the Utah State Director of the Bureau of Land Management must decide whether or not to offer the tract for competitive leasing and under what terms, conditions, and stipulations.

In accordance with the Coal Leasing Amendments Act of 1975, which amended the Mineral Leasing Act of 1920, the Forest Supervisor, Manti-La Sal National Forest, must decide whether or not to consent to leasing by the Bureau of Land Management and identify special coal lease stipulations needed to protect non-mineral resources.

DATES: Written comments concerning the scope of the analysis described in this Notice should be received on or before March 2, 1998.

ADDRESSES: Send written comments to Manti-La Sal National Forest, 599 West Price River Drive, Price, Utah 84501.

FOR FURTHER INFORMATION: Questions concerning the proposed action and EIS should be addressed to Carter Reed or Aaron Howe, Manti-La Sal National Forest, phone (435) 637–2817.

SUPPLEMENTARY INFORMATION: This EIS will tier to the Final EIS and Record of Decision for the Manti-La Sal National Forest Land and Resource Management Plan (Forest Plan). The Manti-La Sal Forest Plan provides the overall guidance (Goals, Objectives, Standards, and Management Area Direction) to achieve the Desired Future Condition for the area being analyzed, and contains specific management area prescriptions for the entire Forest. The proposed lease tract is available for further consideration for coal leasing. The Forest Service and Bureau of Land Management have determined that data is available to meet the Data Adequacy Standards for Federal Coal Leasing, Uinta-Southwestern Utah Coal Region.

Issues and alternatives to be evaluated in the analysis will be determined through public scoping. The major issues are expected to include the socioeconomic benefits of mining; the potential impacts of underground mining and mining-induced subsidence to surface and ground water, vegetation, wildlife, cultural/paleontological resources, range improvements, and other land uses; and the potential impacts of any new surface facilities to the Forest and human environments.

The Forest Service is seeking information and comments from Federal, State, and local agencies as well as individuals and organizations who may be interested in, or effected by the proposed action. The Forest Service invites written comments and suggestions on the issues related to the proposal and the area being analyzed.

Information received will be used in preparation of the Draft EIS and Final EIS. For most effective use, comments would be submitted to the Forest Service within 30 days from the date of publication of this Notice in the **Federal Register**. Preparation of the EIS will include the following steps:

1. Define the purpose of and need for action.
2. Identify potential issues.
3. Eliminate issues of minor importance or those that have been covered by previous and relevant environmental analysis.
4. Select issues to be analyzed in depth.
5. Identify reasonable alternatives to the proposed action.
6. Describe the affected environment.
7. Identify the potential environmental effects of the alternatives.

Steps 2, 3, and 4 will be completed through the scoping process.

Step 5 will consider a range of alternative developed from the key issues and management needs. At a minimum, the "No Action" and "Proposed Action" Alternatives will be

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analyzed. Other alternatives could involve modified tract boundaries (additions and/or reductions) and different sets of special lease stipulations for the protection of non-mineral resources. Alternatives may also be developed to include analysis of mining in the existing adjacent lease area and a potential modification of adjacent existing leases to add up to 160 acres/lease to prevent bypassing minable reserves.

Step 6 will describe the physical attributes of the area to be affected by this proposal, with special attention to the environmental factors that could be adversely affected.

Step 7 will analyze the environmental effects of each alternative. This analysis will be consistent with management direction outlined in the Forest Plan. The direct, indirect, and cumulative effects of each alternative will be analyzed and documented. In addition, the site specific mitigation measures for each alternative will be identified and the effectiveness of these mitigation measures will be disclosed.

Agency representatives and other interested people are invited to visit with Forest Service officials at any time during the EIS process. Two specific time periods are identified for the receipt of formal comments on the analysis. The two comment periods are, (1) During the scoping process, the next 30 days following publication of this Notice in the **Federal Register**, and (2) during the formal review period of the Draft EIS.

The Draft EIS is estimated to be filed with the Environmental Protection Agency (EPA) and available for public review in July, 1998. At this time the EPA will publish an availability notice of the Draft EIS in the **Federal Register**.

The comment period on the Draft EIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the Draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (See The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel, (9th Circuit, 1986), and Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final document.

To assist the Forest Service in identifying and considering issues and concerns related to the proposed action, comments on the Draft EIS should be as specific as possible. Referring to specific pages or chapters of the Draft EIS is most helpful. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act, 40 CFR 1503.3, in addressing these points.)

The final EIS is expected to be released in October, 1998.

The Forest Supervisor for the Manti-La Sal National Forest and Utah State Director of the Bureau of Land Management, who are the responsible officials for the EIS, will then make their respective decisions regarding this proposal, after considering the comments, responses, and environmental consequences discussed in the Final Environmental Impact Statement, and applicable laws, regulations, and policies. The rationale for the respective agency decisions will be documented in the Record(s) of Decisions.

Dated: January 20, 1998.

Janette S. Kaiser,

Forest Supervisor, Manti-La Sal National Forest.

[FR Doc. 98–2241 Filed 1–28–98; 8:45 am]

BILLING CODE 3410–11–M

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, February 6, 1998, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of January 9, 1998 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Reports
- "Residential Mortgage Lending Disparities in Washington, D.C." (Washington, D.C.)
- "Civic Crisis and Civic Challenge. . . . Police Community Relations in Jackson, Mississippi" (Mississippi)

VI. Management Information System
VII. Executive Session to Discuss Personnel Matter
VIII. Future Agenda Items.

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 98–2295 Filed 1–26–98; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This collection has been submitted under the emergency Paperwork Reduction Act procedures.

Agency: Bureau of Export Administration.

Title: Reporting and Recordkeeping Requirements Under the National Defense Authorization Act.

Agency Form Number: None.

OMB Approval Number: 0694–.

Type of Request: New Collection—Emergency Review—Request approval by January 30, 1998.

Burden: 782 hours.

Number of Respondents: 2,800.

Average time per response: 5 to 52 minutes.

Needs and uses: The information required by this collection is required biannually from all exporters of certain items specified in § 743.1 of the Export Administration Regulations controlled for national security reasons on the Commerce Control List and exported under certain License Exceptions.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion.

Respondents Obligation: Mandatory.

OMB Desk Officer: Victoria Wassmer, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written or oral comments and recommendations for the proposed information collection should be sent to Victoria Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503, telephone (202) 395–7340. Comments should be provided no later than January 30, 1998.

Dated: January 23, 1998.

Wilson D. Haigler, Jr.,

Chief, Management Control Division, Office of Management and Organization.

[FR Doc. 98–2155 Filed 1–28–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility to Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To Give Firms an Opportunity to Comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 12/18/97–01/15/98

Firm name	Address	Date petition accepted	Product
Dina, Inc	303 Coons Avenue, Oswego, KS 67356.	01/02/98	Cultured Marble Home Accessories—Picture Frames, Mirror Frames and Inspirational Statuettes.
E.C.C. Corporation	P.O. Box 176, Jefferson, MA 01522.	12/23/97	Printed Circuit Boards for Computers and Electronic Devices, Including but not Limited to Scanners.
Fox Press, Inc. (The)	P.O. Box 458, Windsor, CT 06095.	12/23/97	Commercial Printed Materials—Trade Advertising, Brochures, Leaflets, Etc.
Form-a-Chem, Inc	10834 Ambassador Boulevard, St. Louis, MO 63132.	12/29/97	Personal Care Products—Shampoos and Hair Conditioners and Industrial Cleaners—Oven, Window, Etc.
Insport International, Inc	1870 NW 173rd Avenue, Beaverton, MA 97006.	01/02/98	Men's and Women's Jackets and Pants.
Republic Container Company	P.O. Box 37, Nitro, WV 25143	01/02/98	Fifty Five Gallon Drums and Misc. Containers—Trash Drums and Bulk and Plastic Containers.
T.C. Corporation	814 North Hayden Meadows Drive, Portland, OR 97217.	01/02/98	Textile Bags—Industrial Cases, Travel Bags and Mis Advertising Specialty Items.
Fuzetron, Inc. dba Creative Industries.	1946 John Towers Avenue, El Cajon, CA 92020.	01/06/98	Electronic Pottery Wheels.
Higbee, Inc	P.O. Box 4882, Syracuse, NY 13221.	01/06/98	Gaskets.
Lift Industries, Inc	2322 I–70 Frontage Road, Grand Junction, CO 81505.	01/13/98	Industrial Machinery for the Production of Semi-Conductor Devices.
Southwest American Manufacturing Co., Inc.	1623 E. Apache, Tulsa, OK 74106.	01/13/98	Shampoo and Hair Kits.
Gulf Coast Laboratories, Inc	2410 Broadwalk, San Antonio, TX 78217.	01/14/98	Printed Circuit Boards.
Sylvia, Inc	1520 Washington Avenue, 7th Floor, St. Louis, MO 63103.	01/15/98	Millinery.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: January 16, 1998.

Brenda A. Johnson,

Technical Assistance Specialist, Planning and Development Assistance.

[FR Doc. 98–2162 Filed 1–28–98; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–816]

Certain Cut-to-Length Carbon Steel Plate From Germany; Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

EFFECTIVE DATE: January 29, 1998.

SUMMARY: On September 25, 1997, the Department of Commerce ("the

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Department") published in the **Federal Register** (62 FR 50292) a notice announcing the initiation of an administrative review of the antidumping duty order on Certain Cut-to-Length Carbon Steel Plate (Carbon Steel Plate) from Germany. This review covered the period August 1, 1996 through July 31, 1997. This review has now been rescinded as a result of the absence of shipments and entries into the United States of subject merchandise during the period of review.

FOR FURTHER INFORMATION CONTACT:

Nancy Decker or Linda Ludwig, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0196 or 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 2, 1997, Dewey Ballantine, on behalf of petitioners in this proceeding, requested a review of sales made by AG Der Dillinger Huttenwerke (Dillinger). On September 16, 1997, and September 22, 1997, Dillinger filed letters certifying to the Department that there had been no sales or entries of subject merchandise during the period of review (POR). The Department sent a no-shipment inquiry regarding Dillinger to U.S. Customs on October 16, 1997. Customs did not indicate that there were any such entries.

Because Dillinger made no entries into the customs territory of the United States during the POR, the Department is therefore rescinding this review.

This administrative review is being rescinded in accordance with Section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 351.213(d)(3).

Dated: January 22, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 98–2236 Filed 1–28–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–506]

Porcelain-on-Steel Cooking Ware From the People's Republic of China: Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review And Intent Not To Revoke Antidumping Duty Order, In Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of changed circumstances antidumping duty administrative review and intent not to revoke antidumping duty order, in part.

SUMMARY: The Department of Commerce is conducting a changed circumstances administrative review of the antidumping duty order on porcelain-on-steel cooking ware from the People's Republic of China to determine whether to revoke partially the order with respect to porcelain-on-steel tea kettles. General Housewares Corp., the petitioner and sole U.S. producer of porcelain-on-steel cooking ware, has expressed interest in maintaining the order with respect to porcelain-on-steel tea kettles from the People's Republic of China, and objects to the partial revocation of this order with respect to porcelain-on-steel tea kettles. We preliminarily determine not to revoke the order, in part, with respect to porcelain-on-steel tea kettles. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: January 29, 1998.

FOR FURTHER INFORMATION CONTACT:

Suzanne King or Lorenza Olivas, Office of CVD/AD Enforcement 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as set forth at 19 CFR 353.1, *et seq.*, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130), which were applicable on May 30, 1997, the date of the respondents' request for a changed circumstances administrative review of the antidumping duty order on porcelain-on-steel cooking ware from the PRC.

Background

On December 2, 1986, the Department of Commerce (the Department) published in the **Federal Register** (51 FR 43414) an antidumping duty order on porcelain-on-steel (POS) cooking ware from the People's Republic of China (PRC).

On May 30, 1997, Clover Enamelware Enterprises Ltd. and Lucky Enamelware Factory Ltd. (Clover/Lucky) requested that the Department conduct a changed circumstances administrative review to determine, pursuant to 19 CFR 353.25(d), whether to revoke partially the antidumping duty order on POS cooking ware from the PRC with regard to POS tea kettles. The basis for Clover/Lucky's request was that the sole U.S. producer of POS cooking ware, General Housewares Corp. (GHC), affirmatively stated in its request for a changed circumstances review of the antidumping duty order on POS cooking ware from Taiwan, that it no longer manufactured POS tea kettles and thus had no interest in the importation or sale of POS tea kettles. Based on GHC's affirmative statement of no interest, with respect to tea kettles, submitted in the antidumping proceeding on POS cooking ware from Taiwan, the Department revoked the antidumping order on POS cooking ware from Taiwan, with respect to tea kettles. See Porcelain on Steel Cooking Ware from Taiwan: Final Results of Changed Circumstances Antidumping Administrative Review, and Revocation in Part of Antidumping Duty Order, 62 FR 10024 (March 5, 1997). Clover/Lucky asserted that GHC's statements in the Taiwan case should also be the basis for revoking, in part, the antidumping duty order on POS cooking ware from the PRC with respect to tea kettles.

On August 27, 1997, the Department published in the **Federal Register** (62 FR 45395) a notice of initiation of changed circumstances review of the antidumping duty order on POS cooking ware from the PRC, based on the information contained in Clover/Lucky's May 30, 1997 request. On September 11, 1997, the Department issued a questionnaire to GHC, the sole U.S. producer of POS cooking ware, to determine whether GHC is interested in retaining POS tea kettles within the scope of the antidumping duty order on POS cooking ware from the PRC. In its September 25, 1997 response, GHC stated that it is interested in the antidumping order with regard to POS tea kettles from the PRC, and objected to the partial revocation of the order with respect to POS tea kettles.

Scope of Review

The products covered by this antidumping duty order are POS cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. Kitchenware is not subject to this order. See Antidumping Duty Order: Porcelain-on-Steel Cooking Ware from the People's Republic of China, 51 FR 43414 (December 2, 1986).

The products covered by this changed circumstances review are POS tea kettles from the PRC. Imports of POS tea kettles are currently classifiable under the harmonized tariff schedule (HTS) subheading 7323.94.00.10. The HTS subheading is provided for convenience and Customs purposes. Our written description of the scope of this proceeding is dispositive. The order with regard to imports of other POS cooking ware is not affected by this changed circumstances review.

Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review

Pursuant to section 751(d) of the Act, the Department may partially revoke an antidumping duty order based on a review under section 751(b) of the Act. Section 782(h) of the Act and § 353.25(d)(1) of the Department's regulations provide that the Department may revoke an order, or revoke an order in part, if it determines that changed circumstances sufficient to warrant revocation of the order, or part of the order, exist. The petitioner and sole U.S. producer of POS cooking ware submitted an affirmative statement of interest in this order with respect to POS tea kettles. On the basis of the record developed in this proceeding, we preliminarily determine that changed circumstances sufficient to warrant partial revocation of the antidumping duty order on POS cooking ware from the PRC with respect to POS tea kettles do not exist.

The current requirements for the cash deposit of estimated antidumping duties on all subject merchandise will remain in effect until the publication of the final results of the next administrative review.

Public Comment

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held no later than 28 days after the date of publication of this notice, or the first working day thereafter. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication of this notice. As part of the case brief, petitioners are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in those case briefs or comments, may be filed no later than 37 days after the publication of this notice. All written comments must be submitted in accordance with 19 CFR 353.31(e) and must be served on all interested parties on the Department's service list in accordance with 19 CFR 353.31(g). Persons interested in attending the hearing should contact the Department for the date and time of the hearing. The Department will publish in the **Federal Register** a notice of final results of this changed circumstances antidumping duty administrative review, including the results of its analysis of any issues raised in any written comments.

This notice is in accordance with sections 751 (b)(1) and (d) and 777(i) of the Act and 19 CFR 353.22(f)(1).

Dated: January 22, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–2237 Filed 1–28–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010998C]

Magnuson-Stevens Act Provisions; Atlantic Shark Fisheries; Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Applications for EFPs; deadline for receipt of EFP applications; request for comments.

SUMMARY: NMFS announces the receipt of three applications for EFPs. If granted, these EFPs would authorize, over a period of 1 year, collections for public display of a limited number of sharks from the large coastal and prohibited species groups from Federal waters in the Atlantic Ocean. NMFS also announces the deadline for receipt of exempted fishing permit applications for the 1998 fishing year.

DATES: Written comments on the applications must be received on or before February 13, 1998. Applications for EFPs must be received on or before April 29, 1998.

ADDRESSES: Send comments to Rebecca Lent, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. The applications and related documents and copies of the regulations under which exempted fishing permits are subject may also be requested from this address.

FOR FURTHER INFORMATION CONTACT:

Sarah McLaughlin or Margo Schulze, 301–713–2347; fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: These EFPs are requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and regulations at 50 CFR 600.745 concerning scientific research activity, exempted fishing, and exempted educational activity.

Dynasty Marine Associates, Inc., in Marathon, FL, intends to collect four nurse sharks, two lemon sharks, three sandbar sharks, and four sand tiger sharks for public display by using a single hook and line as well as a short longline not consisting of more than 50 hooks. Fishing will occur in the Florida Bay and in the Atlantic Ocean off the middle Florida Keys area, in New Jersey, and in Maryland. Issuance of an EFP is necessary, according to the applicant, because the commercial season for large coastal sharks is closed for long periods of time and because possession of sand tiger sharks is prohibited. The applicant also requested an EFP to collect one sawfish; however, as NMFS does not regulate sawfish at this time, no EFP is necessary to collect this species in Federal waters.

Charles Jamison, in Summerland Key, FL, intends to collect an unspecified number of nurse and lemon sharks for schools and public display by using a short fishing line or cast net, or by hand in the Florida Keys. The applicant requested the issuance of an EFP to collect nurse and lemon sharks because the commercial season for large coastal sharks is closed for long periods of time. The applicant also requested an EFP to collect bonnethead sharks; however, as the commercial season for small coastal sharks has not closed to date, this species may be possessed legally by

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obtaining a Federal commercial shark permit and an EFP is not required.

Carolina Sharks, in Georgetown, SC, intends to collect an unspecified number of large coastal sharks, including bull, sandbar, blacktip, and nurse sharks, as well as an unspecified number of sand tiger sharks for public display. The applicant intends to collect specimens by using hand rod and reels, longlines no greater than 2.4 kilometers, anchor hooks, and gillnets of unspecified length with 10–33 centimeter stretch mesh. Fishing will occur from February through October in Federal waters off New York, North Carolina, South Carolina, Georgia, and Florida, as well as in the Chesapeake Bay. Issuance of an EFP is necessary, according to the applicant, because the commercial season for large coastal sharks is closed for long periods of time and because possession of sand tiger sharks is prohibited.

The proposed collections for public display involve activities otherwise prohibited by regulations implementing the Fishery Management Plan for Sharks of the Atlantic Ocean. The applicants require authorization to fish for and to possess large coastal sharks outside the Federal commercial seasons and to fish for and to possess prohibited species.

Based on a preliminary review, NMFS finds that these applications warrant further consideration. A final decision on issuance of EFPs will depend on the submission of all required information and on NMFS' review of public comments received on the applications, conclusions of any environmental analyses conducted pursuant to the National Environmental Policy Act, and any consultations with any appropriate Regional Fishery Management Councils, states, or Federal agencies.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 22, 1998.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–2255 Filed 1–28–98; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Wednesday, February 4, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–2339 Filed 1–27–98; 12:07 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, February 9, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–2340 Filed 1–27–98; 12:07 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Tuesday, February 17, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–2341 Filed 1–27–98; 12:07 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, February 23, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–2342 Filed 1–27–98; 12:07 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, February 6, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–2343 Filed 1–27–98; 12:07 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, February 27, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–2344 Filed 1–27–98; 12:07 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, February 20, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–2345 Filed 1–27–98; 12:07 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, February 13, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–2346 Filed 1–27–98; 8:45 am]

BILLING CODE 6351–01–M

CONGRESSIONAL BUDGET OFFICE

Notice of Transmittal of Sequestration Preview Report for Fiscal Year 1999 to Congress and the Office of Management and Budget

Pursuant to Section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 904(b)), the Congressional Budget Office hereby reports that it has submitted its Sequestration Preview Report for Fiscal Year 1999 to the House of Representatives, the Senate, and the Office of Management and Budget.

James L. Blum,

Deputy Director, Congressional Budget Office.

[FR Doc. 98–2240 Filed 1–28–98; 8:45 am]

BILLING CODE 1450–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by February 4, 1998.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506 (c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 23, 1998.

Linda Tague,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Advanced Placement Fee Payment Program.

Abstract: States must submit an application in order to participate in the Advanced Placement Fee Payment. The Department will award grants to States to enable States to reimburse individuals to cover part or all of the cost of advanced placement test fees to low income student who are enrolled in an advanced placement class, and who plan to take an advanced placement test.

Additional Information: An emergency clearance is requested by February 4, 1998, due to an unanticipated event. Congress appropriated funds to be used to pay Advanced Placement examination fees for low income students in the FY 1998 appropriations bill. The Department has worked closely with Congress and other groups to develop the program and fulfill the intent of Congress. The Department needs to make awards to States in sufficient time for States to use the funds this school year for students who are currently enrolled in Advanced Placement courses. If the normal clearance process were followed, awards would not be made.

Frequency: Biennially.

Affected Public: Individual or households; State, local or Tribal Government, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 4,057.

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Burden Hours: 44,627.

[FR Doc. 98–2153 Filed 1–28–98; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities, Department of Education

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and agenda of the forthcoming meeting of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is also required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: February 5, 1998 from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Sheraton City Centre Hotel located at 1143 New Hampshire Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sterling Henry, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 600 Independence Avenue, SW., the Portals Building, Suite 605, Washington, DC 20202–5120. Telephone: (202) 708–8667.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities was established under Executive Order 12876 of November 1, 1993. The Board is established to advise on the financial stability of Historically Black Colleges and Universities, to issue an annual report to the President on HBCU participation in Federal programs, and to advise the Secretary of Education on increasing the private sector role in strengthening HBCUs.

The meeting of the Board is open to the public. The meeting will be primarily devoted to: Reauthorization of the Higher Education Act, and Federal Agency Performance Reports.

Records are kept of all Board procedures, and are available for public inspection at the White House Initiative on Historically Black Colleges and Universities located at 1250 Maryland Avenue, SW., the Portals Building, Suite 605, Washington, DC 20202, from the hours of 8:30 a.m. to 5:00 p.m.

Dated: January 23, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 98–2117 Filed 1–28–98; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–186–000]

K N Interstate Gas Transmission Company; Notice of Request Under Blanket Authorization

January 23, 1998.

Take notice that on January 15, 1998, K N Interstate Gas Transmission Company (K N Interstate), Post Office Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP98–186–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to install and operate two new delivery taps and appurtenant facilities, to accommodate deliveries to K N Energy, Inc. (K N Energy). K N Interstate make such request under its blanket certificate issued in Docket Nos. CP83–140–000 and CP83–140–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

K N Interstate avers that K N Energy, a local distribution company, has requested the addition of new delivery points under K N Energy's existing transportation service agreement with K N Interstate. Specifically, K N Interstate proposes to install:

1. A delivery point in Grant County, Kansas at an estimated cost of $29,000—to serve an irrigation customer. The quantities of gas to be delivered through that proposed point will be approximately 4,800 Mcf on a peak day and 158,400 Mcf annually, and

2. A delivery point in Deuel County, Nebraska at an estimated cost of $20,000—to serve a commercial customer. The quantities of gas to be delivered through that proposed point will be approximately 24 Mcf on a peak day and 1,440 Mcf annually.

K N Interstate states that it provides open-access transportation services, pursuant to a certificate issued by the Commission in Docket No. CP89–1043–000, and the Commission's Regulations found at 18 CFR Part 284. It is stated that since the delivery volumes are within the current maximum transportation quantities set forth in K N Interstate's transportation service agreement with K N Energy, that the addition of the proposed delivery points will not have any adverse impact, on a daily or annual basis upon K N Interstate's existing customers.

It is further stated that the addition of the proposed delivery points would provide K N Interstate with additional outlets for natural gas transported through its system and would provide K N Energy with the opportunity to serve additional direct retail sales customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2141 Filed 1–28–98; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–190–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

January 23, 1998.

Take notice that on January 16, 1998, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP98–190–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for approval to abandon by removal a 2-inch delivery tap and riser, under the blanket certificate issued in Docket No. CP82–430–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway proposes to abandon by removal a 2-inch tap and riser that formerly served the Horseshoe Lake Road town border station on behalf of Louisiana Gas Services (LGS), a local distribution company in Ouachita Parish, Louisiana. LGS no longer requires gas service at this point because it has extended its own distribution system to reach customers in this area.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2142 Filed 1–28–98; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–373–009]

Koch Gateway Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

January 23, 1998.

Take notice that on January 20, 1998, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet to be effective December 1, 1997:

Substitute Sixth Revised Sheet No. 2707

Koch states that it is submitting this substitute tariff sheet to revise a previously suspended version of Sheet 2707 with a modification that was made and accepted during its suspension period.

Koch states that copies of this filing have been served upon each party contained in the official service list as compiled by the Secretary in the above captioned proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's regulations. All such protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2144 Filed 1–28–98; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–67–005]

Montaup Electric Company; Notice of Filing

January 23, 1998.

Take notice that on August 29, 1997, Montaup Electric Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 28, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2151 Filed 1–28–98; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1125–000]

Northeast Empire Limited Partnership #2; Notice of Filing

January 23, 1998.

On January 20, 1998, Northeast Empire Limited Partnership #2 (NELP#2), petitioned the Commission for an order accepting rate schedule for filing and granting waivers and blanket approvals.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 4, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2149 Filed 1–28–98; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–347–010]

Northern Natural Gas Company; Notice of Compliance Filing

January 23, 1998.

Take notice that on October 31, 1997, Northern Natural Gas Company (Northern) tendered for filing additional information pertaining to the July 1, 1997, Carlton Resolution surcharge refund report. The instant report was made to comply with a director letter order issued on October 21, 1997 (81 FERC ¶ 61,078 (1997).

Northern states the report is in response to the protests filed by Northern Municipal Distributors Group and the Midwest Region Gas Task Force Association and Minnegasco, a Division of NorAm Energy Corp. The information provided in the report pertains to buyout allocations, commodity surcharge allocation, carrying charge allocation, and Market Area volumes.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before January 30, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are

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available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2143 Filed 1–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–184–000]

Southern Natural Gas Company; Notice of Application

January 23, 1998.

Take notice that on January 14, 1998 Southern Natural Gas Company (Southern), P.O. Box 2563 Smith, Birmingham, Alabama 35202–2563 filed in Docket No. CP98–184–000 an application pursuant to Section 7(b) and 7(c) of the Natural Gas Act for permission and approval for Southern to abandon certain pipeline and appurtenant facilities and to construct, install, and operate certain new facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Southern requests authority to abandon in place approximately 1.567 miles of Southern's 20-inch North Main Line extending from Mile Post 340.948 to Mile Post 342.525 in St. Clair County, Alabama. Southern also requests authority to replace the proposed abandoned segment with a new 20-inch pipeline segment to be constructed outside the existing right-of-way. Southern states that the segment to be replaced has begun to deteriorate, as a result of corrosion, to the point that it needs to be replaced. Southern estimates the cost of the project to be $1,482,500 and requests that the Commission issue a predetermination that rolled-in rates are appropriate for the proposed facilities.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before February 13, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Southern to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2140 Filed 1–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–6–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 23, 1998.

Take notice that on January 8, 1998, Transcontinental Gas Pipe Line Corporation tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets which are enumerated in Appendix A to the filing.

Transco states that the purpose of the filing is to track rate and fuel changes attributable to storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28, the costs of which are included in the rates and charges payable under Transco's Rate Schedule S–2 and transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT, the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT.

Transco states that the filing is being made pursuant to tracking provisions under Section 26 of the General Terms and Conditions of Transco's Volume No. 1 Tariff and Section 4 of Transco's Rate Schedule FT-NT.

Transco states that included in Appendices B and C attached to the filing are explanations of the rate and fuel charges and details regarding the computation of the revised Rate Schedule S–2 and FT–NT rates.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.214 and Section 385.211 of the Commission's Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2147 Filed 1–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–6–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 23, 1998.

Take notice that on January 20, 1998 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Tenth Revised Sheet No. 50, to be effective December 1, 1997.

Transco states that the purpose of the instant filing is to track rate changes attributable to transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT. The filing is being made pursuant to tracking provisions under Section 4 of Transco's Rate Schedule FT–NT.

Transco states that included in Appendix B attached to the filing is the explanation of the rate changes and details regarding the computation of the revised Rate Schedule FT–NT rates.

Transco states that copies of the filing are being mailed to each of its FT–NT customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2148 Filed 1–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–55–002]

Transwestern Pipeline Company; Notice of Compliance Filing

January 23, 1998.

Take notice that on January 20, 1998, Transwestern Pipeline Company (Transwestern), tendered for filing to become part of Transwestern's FERC Gas Tariff the following tariff sheets proposed to become effective on December 20, 1997:

Second Revised Volume No. 1

First Revised Sheet No. 116C

Transwestern states that the instant filing is made in compliance with the Commission's Letter Order accepting tariff sheets, subject to conditions, issued on December 18, 1997 in Docket No. RP98–55–000.

Transwestern states that copies of the filing were served upon Transwestern's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2145 Filed 1–28–98; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–181–000]

Trunkline Gas Company, Notice of Request Under Blanket Authorization

January 23, 1998.

Take notice that on January 13, 1998, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP98–181–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct, own and operate certain facilities to be located in Harris County, Texas, under Trunkline's blanket certificate issued in Docket No. CP83–84–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Trunkline proposes to install a 2″ hot tap, check valve, insulating flange and associated facilities on its 24″ Line 100–1 in Harris County at milepost 1.53, and install electronic gas measurement equipment (EGM) to establish a delivery point to Cypress Public Service, L.P. The new interconnect will have a design capacity up to 2,000 Mcf/d. The estimated cost of the proposed facilities is approximately $38,820.

Trunkline states that the construction of the proposed facilities will have no effect on its peak day and annual deliveries, that its existing tariff does not prohibit additional facilities, that deliveries will be accomplished without detriment or disadvantage to its other customers and that the total volumes delivered will not exceed total volumes authorized prior to this request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

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authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2139 Filed 1–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95–1382–009]

Utility-Trade Corp.; Notice of Filing

January 23, 1998.

Take notice that on May 19, 1997, Utility-Trade Corp., tendered for filing its compliance filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 2, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2150 Filed 1–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–77–001]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

January 23, 1998.

Take notice that on January 20, 1998 Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain revised tariff sheets listed on Appendix A to the filing, with the effective dates provided in Appendix A.

Williston Basin states that the revised tariff sheets are being filed to remove all references to the Gas Research Institute (GRI) from its Tariff in compliance with the Commission's "Order Accepting Tariff Sheets, Subject to Conditions" issued December 30, 1997 in the above referenced docket, as more fully explained in the filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2146 Filed 1–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DR98–19–000, et al.]

Minnesota Power Company, et al.; Electric Rate and Corporate Regulation Filings

January 22, 1998.

Take notice that the following filings have been made with the Commission:

1. Minnesota Power Company

[Docket No. DR98–19–000]

Take notice that on December 19, 1997, Minnesota Power tendered for filing a petition for approval of a change in depreciation rates for accounting purposes only. Copies of the filing have been served on the Minnesota Public Utilities Commission.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Entergy Gulf States, Inc. and Entergy Louisiana, Inc.

[Docket No. DR98–17–000]

Take notice that on December 19, 1997, Entergy Services, Inc. (ESI), on behalf of its public utility affiliates, Entergy Gulf States, Inc., and Entergy Louisiana, Inc., submitted an application for approval of changes in depreciation rates for accounting purposes implemented after April 19, 1994.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Tampa Electric Company

[Docket No. DR98–20–000]

Take notice that on December 23, 1997, Tampa Electric Company (Tampa Electric), filed an application for approval of changes to depreciation rates and amortization schedules that occurred on or after April 19, 1994, and prior to May 22, 1997. Tampa Electric proposes an effective date of January 1, 1996, for the changes. Tampa Electric states that the changes did not affect any wholesale electric power or transmission rate on file with the Commission.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Electric Power Company

[Docket No. DR98–21–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on December 23, 1997, tendered for filing a petition for approval of a change in depreciation rates for accounting purposes only. Copies of the filing have been served on the Michigan Public Service Commission and the Public Service Commission of Wisconsin.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. The Empire District Electric Company

[Docket No. DR98–22–000]

Take notice that on December 23, 1997, The Empire District Electric Company (EDE) tendered for filing an application pursuant to Rule 204 of the Commission Rules of Practice and Procedures, 18 CFR 385.204 seeking approval by the Federal Energy Regulatory Commission of a change in depreciation rates for production, transmission, distribution, and general plant utilized by EDE.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Orange and Rockland Utilities, Inc.

[Docket No. DR98–23–000]

Take notice that on December 24, 1997, Orange and Rockland Utilities, Inc. (Orange and Rockland), tendered for filing a change in depreciation rates for its wholesale jurisdiction. Orange and Rockland requests that the depreciation rate changes be made effective as of May 3, 1996.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. West Texas Utilities

[Docket No. DR98–48–000]

Take notice that on January 5, 1998, West Texas Utilities (WTU), filed a request, pursuant to Section 302 of the Federal Power Act, for approval to continue utilizing a blended rate approach to allocate depreciation expense to its retail and wholesale customers.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Boston Edison Company

[Docket No. EC98–16–000]

Take notice that on January 16, 1998, Boston Edison Company (Boston Edison) and Sithe Energies, Inc. (Sithe), supplemented Boston Edison's application in this docket, seeking the Commission's approval for the sale of transmission facilities, such as step-up transformers, to be sold as part of the divestiture of Boston Edison's fossil generating units. In the supplemental filing Boston Edison and Sithe provide the Commission with a Purchase and Sale Agreement and information concerning Sithe and join in requesting the Commission to approve the sale at the earliest possible date and not later than March 16, 1998, 60 days after the filing of the supplement.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. The Cincinnati Gas & Electric Co., Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Illinois Power Company, PSI Energy, Inc., Wisconsin Electric Power Company, Union Electric Co., Central Illinois Public Service Co., Louisville Gas & Electric Company, and Kentucky Utilities Company

[Docket No. EC98–24–000]

Take notice that on January 15, 1998, the Midwest ISO Public Utilities, pursuant to Section 203 of the Federal Power Act, 16 U.S.C. § 824b, filed an Application for approval to transfer operational control over the Midwest ISO Public Utilities' identified transmission facilities to the Midwest Independent Transmission System Operator, Inc. (Midwest ISO).

The Midwest ISO Public Utilities state that their Application is a companion to, and a necessary part of, the Midwest ISO's concurrent filing, under Section 205 of the Federal Power Act, 16 U.S.C. § 824d, to establish an independent transmission system operator.

Comment date: March 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Southwestern Power Administration

[Docket No. EF98–4011–000]

Take notice that the Deputy Secretary, U.S. Department of Energy, on January 8, 1998, submitted to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis, pursuant to the authority vested in the FERC by Delegation Order No. 0204–108, as amended November 10, 1993, 58 FR 59717, the following Southwestern Power Administration (Southwestern), Integrated System rate schedules:

Rate Schedule P–98A, Wholesale Rates for Hydro Peaking Power
Rate Schedule NFTS–98, Wholesale Rates for Point-to-Point and Network Transmission Service
Rate Schedule EE–98, Wholesale Rate for Excess Energy

The Integrated System rate schedules were confirmed and approved on an interim basis by the Deputy Secretary in Rate Order No. SWPA–37 for the period January 1, 1998, through September 30, 2001, and have been submitted to the FERC for confirmation and approval on a final basis for the same period. The System rate schedules would increase ultimate annual revenue by $1,805,772, or 1.9 percent, from $96,344,200 to $98,149,972 effective January 1, 1998, in part to recover increases in Corps of Engineers and Southwestern investments. Southwestern has changed the rate structure to conform with the intent of the FERC's Order No. 888 consequently, the actual rate impact on each customer will vary based on the type of service requested and provided. Also, a credit, specifically designed for each customer, will apply against the purchased power adder component of the rate schedules to refund both excess revenues and interest accruing on such revenues in the purchased power deferral account during recent years of favorable water conditions. This credit is intended to equalize the customer's average purchased power adder cost. These credits will be provided to each customer over a 6-month service period beginning January 1, 1998. This customer specific credit, along with the Administrator's discretionary purchased power adder adjustment, will offset the immediate impact of increasing the purchased power adder to 1.1 mills/kWh, for those applicable customers. This rate proposal also includes a provision to continue and increase the Administrator's Discretionary Purchased Power Adder Adjustment, from up to $0.0005 to up to $0.0011 per kilowatthour, as necessary, to adjust the purchased power adder annually, under a formula-type rate, with notification to the FERC.

The Deputy Secretary has also submitted for confirmation and approval on a final basis the previous extensions of the Integrated System rates. The extensions were confirmed and approved on an interim basis by the Deputy Secretary in Rate Order Nos. SWPA–29 effective October 1, 1994, through September 30, 1995; SWPA–32 effective October 1, 1995, through September 30, 1996; SWPA–34 effective October 1, 1996, through September 30, 1997; and SWPA–35 effective October 1, 1997, through March 31, 1998.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Southwestern Power Administration

[Docket No. EF98–4081–000]

Take notice that the Deputy Secretary, U.S. Department of Energy, on January 8, 1998, submitted to the Federal Energy Regulatory Commission (Commission) for confirmation and approval on a final basis, pursuant to the authority vested in the Commission by Delegation Order No. 0204–108, as amended November 10, 1993, 58 FR 59717, an annual power rate of $302,928 for the sale of power and energy by the Southwestern Power Administration (Southwestern) from the Robert Douglas Willis Hydropower Project (Robert D. Willis) to the Sam Rayburn Municipal Power Agency (SRMA). The rate was confirmed and approved on an interim basis by the Deputy Secretary in Rate Order No. SWPA–36 for the period January 1, 1998, through September 30, 2001, and has been submitted to the Commission for confirmation and approval on a final basis for the same period. The rate supersedes the annual power rate of $266,928, which the Commission approved on a final basis January 28, 1997, under Docket No. EF96–4081–000 for the period October 1, 1996, through September 30, 2000. The annual rate of $302,928 is based on the 1997 Revised Power Repayment Study for Robert D. Willis and represents an annual increase in revenue of $36,000, or 13.5 percent, to satisfy repayment criteria.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Enron Power Marketing, Inc. v. Pennsylvania-New Jersey-Maryland Interconnection and PECO Energy Company

[Docket No. EL98–12–000]

Take notice that on January 12, 1998, Enron Power Marketing, Inc., filed a

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corrected copy of Exhibits 13 to its Complaint filed on December 15, 1997, in the above-referenced docket.

Comment date: February 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Montana-Dakota Utilities Company

[Docket No. ER97–940–002]

Take notice that on December 31, 1997, Montana-Dakota Utilities Company tendered for filing its refund report in the above-referenced docket.

Comment date: February 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Montana-Dakota Utilities Company

[Docket No. ER97–2618–002]

Take notice that on December 31, 1997, Montana-Dakota Utilities Company tendered for filing its refund report in the above-referenced docket.

Comment date: February 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Orange and Rockland Utilities, Inc.

[Docket No. ER98–353–001]

Take notice that on December 29, 1997, Orange and Rockland Utilities, Inc., acting on behalf of itself and its wholly owned subsidiaries, Rockland Electric Company and Pike County Light & Power Company, filed a revised Open Access Transmission Service Tariff which incorporates changes to its Energy Imbalance Service.

Comment date: February 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER98–411–001]

Take notice that on January 15, 1998, Wolverine Power Supply Cooperative, Inc., tendered for filing its compliance filing in the above-referenced docket.

Comment date: Febrary 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Boston Edison Company

[Docket No. ER98–507–001]

Take notice that on January 14, 1998, Boston Edison Company tendered for filing its refund report in the above-referenced docket.

Comment date: February 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Cinergy Services, Inc.

[Docket No. ER98–523–001]

Take notice that on January 6, 1998, Cinergy Services, Inc., on behalf of The Cincinnati Gas & Electric Company and PSI Energy, Inc. (The Cinergy Operating Companies), filed an amended unexecuted blanket form of Service Agreement under their Open Access Transmission Tariff.

Comment date: February 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Consumers Energy Company

[Docket No. ER98–742–001]

Take notice that on January 9, 1998, Consumers Energy Company (CECo), tendered for filing a letter stating that the service was provided by CECo and the Detroit Edison Company to Wabash Valley Power Association, Inc., or Electric Clearinghouse, Inc., under the Transmission Service Agreements accepted to refund conditions by the Commission January 2, 1998, letter order in the above-referenced docket.

Comment date: February 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Unitil Power Corp.

[Docket No. ER98–1194–000]

Take notice that on December 23, 1997, Unitil Power Corp. (UPC), tendered for filing three service agreements between UPC and Green Mountain Power, Inc., New England Power Company, and New Energy Ventures for service under UPC's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in [Docket No. ER97–2460–000.

UPC requests an effective date of November 23, 1997, for Green Mountain Power, Inc., and New England Power Company, and an effective date of December 26, 1997, for New Energy Ventures.

Comment date: February 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Cinergy Services, Inc.

[Docket No. ER98–1206–000]

Take notice that on December 24, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Hoosier Energy Rural Electric Cooperative, Inc., (Hoosier).

Cinergy and Hoosier are requesting an effective date of December 15, 1997.

Comment date: February 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Central Illinois Light Company

[Docket No. ER98–1207–000]

Take notice that on December 24, 1997, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements for two new customers, Williams Energy Services Company and Griffin Energy Marketing, L.L.C.

CILCO requested an effective date of December 12, 1997.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: February 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. PP&L, Inc.

[Docket No. ER98–1208–000]

Take Notice that on December 24, 1997, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company)(PP&L), filed a Service Agreement dated December 22, 1997, with Orange and Rockland Utilities, Inc. (O&R), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds O&R as an eligible customer under the Tariff.

PP&L requests an effective date of December 24, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to O&R and to the Pennsylvania Public Utility Commission.

Comment date: February 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Wisconsin Power and Light Company

[Docket No. ER98–1209–000]

Take notice that on December 24, 1997, Wisconsin Power and Light Company (WP&L), tendered for filing an executed Form Of Service Agreement for Firm Point-to-Point Transmission Service between Wisconsin Power and Light Company and Wisconsin Power and Light Company. The Form Of Service Agreement for Firm Point-to-Point Transmission Service provides firm transmission service under WPL's Open Access Transmission Tariff.

WP&L requests an effective date of January 1, 1998, and accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: February 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Cinergy Services, Inc.

[Docket No. ER98–1210–000]

Take notice that on December 24, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Continental Energy Services, L.L.C. (Continental).

Cinergy and Continental are requesting an effective date of December 1, 1997.

Comment date: February 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Cinergy Services, Inc.

[Docket No. ER98–1211–000]

Take notice that on December 24, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Continental Energy Services, L.L.C. (Continental).

Cinergy and Continental are requesting an effective date of December 1, 1997.

Comment date: February 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Cinergy Services, Inc.

[Docket No. ER98–1213–000]

Take notice that on December 24, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier).

Cinergy and Hoosier are requesting an effective date of December 15, 1997.

Comment date: February 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Louisville Gas and Electric Company

[Docket No. ER98–1214–000]

Take notice that on December 29, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Non-Firm Point-To-Point Transmission Service Agreement between LG&E and AES Power, Inc., under LG&E's Open Access Transmission Tariff.

Comment date: February 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Louisville Gas and Electric Company

[Docket No. ER98–1215–000]

Take notice that on December 29, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Commonwealth Edison Company under LG&E's Open Access Transmission Tariff.

Comment date: February 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. Louisville Gas and Electric Company

[Docket No. ER98–1216–000]

Take notice that on December 29, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Coral Power L.L.C., under LG&E's Open Access Transmission Tariff.

Comment date: February 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. Louisville Gas and Electric Company

[Docket No. ER98–1217–000]

Take notice that on December 29, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and LG&E Energy Marketing, Inc., under LG&E's Open Access Transmission Tariff.

Comment date: February 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. Illinois Power Company

[Docket No. ER98–1218–000]

Take notice that on December 29, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Entergy Power Marketing Corporation will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of December 10, 1997.

Comment date: February 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. Great Bay Power Corporation

[Docket No. ER98–1219–000]

Take notice that on December 29, 1997, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between PacifiCorp Power Marketing, Inc., and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on May 17, 1996, in Docket No. ER96–726–000. The service agreement is proposed to be effective December 18, 1997.

Comment date: February 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. Maine Public Service Company

[Docket No. ER98–1220–000]

Take notice that on December 29, 1997, Maine Public Service Company (Maine Public), filed an executed Service Agreement for non-firm point-to-point transmission service under Maine Public's open access transmission tariff with Cinergy Capital & Trading, Inc.

Comment date: February 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. Micah Tech Industries, Inc., Power Marketing Division

[Docket No. ER98–1221–000]

Take notice that on December 29, 1997, Micah Tech Industries, Inc., Power Marketing Division, petitioned the Commission for acceptance of Micah Tech Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Micah Tech intends to engage in wholesale electric power and energy purchases and sales as a marketer. Micah Tech is not in the business of generating or transmitting electric power.

Comment date: February 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

36. Houston Lighting & Power Company

[Docket No. ER98–1222–000]

Take notice that on December 29, 1997, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA), with Engage Energy US, L.P. (Engage), for Non-Firm Transmission Service under HL&P's FERC Electric Tariff, Third Revised Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of December 29, 1997.

Copies of the filing were served on Engage and the Public Utility Commission of Texas.

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Comment date: February 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

37. Houston Lighting & Power Company

[Docket No. ER98–1223–000]

Take notice that on December 29, 1997, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA), with Tenaska Power Services Co. (Tenaska), for Non-Firm Transmission Service under HL&P's FERC Electric Tariff, Third Revised Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of December 29, 1997.

Copies of the filing were served on Tenaska and the Public Utility Commission of Texas.

Comment date: February 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

38. Southern California Edison Company

[Docket No. ER98–1224–000]

Take notice that on December 29, 1997, Southern California Edison Company (Edison), tendered for filing revised Radial Lines Agreements (Revised Agreements) for Mandalay and Cool Water Generating Stations to be executed by Edison and Houston Industries Power Generation, Inc.

Edison requests waiver of the Commission's 60-day notice requirements and that the Commission accept the Revised Agreements for filing, unexecuted.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: February 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

39. Northern California Power Agency

[Docket No. OA98–7–000]

Take notice that on December 2, 1997, the Northern California Power Agency has filed a request for waiver of separation of functions requirements under Order Nos. 888 and 888–A and under Orders 889 and 889–A.

Comment date: February 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2196 Filed 1–28–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–537–000, et al.]

Western Energy Marketers, Inc., et al. Electric Rate and Corporate Regulation Filings

January 23, 1998.

Take notice that the following filings have been made with the Commission:

1. Western Energy Marketers, Inc.

[Docket No. ER98–537–000]

Take notice that on December 29, 1997, Western Energy Marketers, Inc., tendered for filing an amendment in the above-referenced docket.

Comment date: February 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER98–433–001]

Take notice that on December 29, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (GPU Energy), tendered for filing its compliance filing in the above-referenced docket.

Comment date: February 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Power & Light Company

[Docket No. ER98–1225–000]

Take notice that on December 29, 1997, Wisconsin Power & Light Company (WPL), tendered for filing an Amendment to Common Use Transmission Facility Agreement dated March 13, 1997, between Adams-Columbia Electric Cooperative (ACEC) and WPL. WPL states that this Amendment revises the previous agreement between the two parties dated December 1, 1975.

The parties have amended the previous agreement to outline the terms and conditions whereby WPL will tap an ACEC transmission line. Service provided by ACEC under this Amendment in no way affects the electric service that WPL provides to ACEC pursuant to rate schedule FERC No. 144.

WPL requests that an effective date concurrent with the planned construction completion date be assigned. WP&L indicates that copies of the filing have been provided to ACEC and to the Public Service Commission of Wisconsin.

Comment date: February 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power & Light Company

[Docket No. ER98–1226–000]

Take notice that on December 29, 1997, Florida Power & Light Company (FPL), tendered for filing a proposed notice of cancellation of an umbrella service agreement with PanEnergy Power Services, Inc., for Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed cancellation be permitted to become effective on December 31, 1997.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: February 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Commonwealth Edison Company

[Docket No. ER98–1227–000]

Take notice that on December 29, 1997, Commonwealth Edison Company (ComEd), submitted for filing one Service Agreements, establishing one Service Agreement, establishing Plum Street Energy Marketing, Inc. (PSEM), as customers under the terms of ComEd's Power Sales and Reassignment of Transmission Rights Tariff PSRT–1 (PSRT–1 Tariff). The Commission has previously designated the PSRT–1 Tariff as FERC Electric Tariff, First Revised Volume No. 2.

ComEd requests an effective date of December 5, 1997, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon PSEM, and the Illinois Commerce Commission.

Comment date: February 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Entergy Services, Inc.

[Docket No. ER98–1228–000]

Take notice that on December 29, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., (Entergy Gulf States), Entergy Louisiana, Inc. (Entergy Louisiana), Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Network Integration Transmission Service Agreement, a Network Operating Agreement, a Firm Point-to-Point Transmission Service Agreement, a Non-Firm Point-to-Point Transmission Service Agreement, and an Interchange Agreement, each between Entergy Services, as agent for the Entergy Operating Companies and Cajun Electric Power Cooperative, Inc., (Cajun). The agreements are intended to supersede existing transmission and interconnection agreements that Entergy Gulf States and Entergy Louisiana have with Cajun.

Comment date: February 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER98–1229–000]

Take notice that on December 29, 1997, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 36 to add two (2) new Customers to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service on an hourly, daily, weekly, monthly or yearly basis. Allegheny Power requests a waiver of notice requirements to make service available as of December 1, 1997, to CNG Retail Services Corporation; and as of December 24, 1997, to Equitable Power Services Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: February 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power & Light Company

[Docket No. ER98–1230–000]

Take notice that on December 29, 1997, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with Duke Energy Trading and Marketing, L.L.C., for Short-Term Firm and Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on January 1, 1998.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: February 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Orange and Rockland Utilities, Inc.

[Docket No. ER98–1231–000]

Take notice that on December 29, 1997, Orange and Rockland Utilities, Inc. (Orange and Rockland), filed a Service Agreement between Orange and Rockland and PacifiCorp Power Marketing, Inc., (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of November 21, 1997, for the Service Agreement. Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: February 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. New England Power Company

[Docket No. ER98–1232–000]

Take notice that on December 29, 1997, New England Power Company (NEP), tendered for filing an Interconnection Service Agreement with Millennium Power Partners, L.P.

Comment date: February 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. New England Power Company

[Docket No. ER98–1233–000]

Take notice that on December 29, 1997, New England Power Company (NEP), tendered a supplement to an amendment to The Narragansett Electric Company's service agreement under NEP's FERC Electric Tariff, Original Volume No. 1. NEP requests an effective date of January 1, 1998, for the Supplement.

Comment date: February 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company

[Docket No. ER98–1234–000]

Take notice that on December 24, 1997, Central Power and Light Company (CPL), West Texas Utilities Company (WTU), Public Service Company of Oklahoma (PSO), and Southwestern Electric Power Company (SWEPCO) (collectively, the CSW Operating Companies) submitted for filing service agreements under which the CSW Operating Companies will provide firm point-to-point transmission service to WTU in accordance with the CSW Operating Companies' open access transmission service tariff. The CSW Operating Companies also submitted a notice of cancellation for each firm point-to-point transmission service agreement.

The CSW Operating Companies state that a copy of the filing has been served on WTU.

Comment date: February 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. The Montana Power Trading & Marketing Company

[Docket No. ER98–1235–000]

Take notice that on December 24, 1997, MP Energy Inc., tendered for filing a letter of Change of Name to The Montana Power Trading & Marketing Company. This action was simply a name change. The ownership of MP Energy Inc., (now the Montana Power Trading & Marketing Company) has not changed.

Comment date: February 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–1236–000]

Take notice that on December 29, 1997, consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 123, a facilities agreement with Central Hudson Gas and Electric Corporation (CH). The Supplement provides for an increase in the monthly carrying charges. Con Edison has requested that this decrease take effect as of September 1, 1997.

Con Edison states that a copy of this filing has been served by mail upon CH.

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Comment date: February 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–1237–000]

Take notice that on December 29, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing, pursuant to its FERC Electric Tariff Rate Schedule No. 2, a service agreement for the New England Power Company to purchase electric capacity and energy pursuant at negotiated rates, terms, and conditions.

Con Edison states that a copy of this filing has been served by mail upon the New England Power Company.

Comment date: February 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. New England Power Pool

[Docket No. ER98–1238–000]

Take notice that on December 29, 1997, the New England Power Pool Executive Committee filed for acceptance a signature page to the New England Power Pool (NEPOOL), Agreement dated September 1, 1971, as amended, signed by Energis Resources Incorporated (Energis Resources). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of Energis Resources' signature page would permit NEPOOL to expand its membership to include Energis Resources. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Energis Resources a member in NEPOOL. NEPOOL requests an effective date of January 1, 1998, for commencement of participation in NEPOOL by Energis Resources.

Comment date: February 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. PacifiCorp

[Docket No. ER98–1239–000]

Take notice that on December 29, 1997, PacifiCorp's Merchant Function, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, PacifiCorp's FERC Electric Tariff, First Revised Volume No. 12 (Tariff). The tariff has been revised to provide for the sale or assignment of transmission service by PacifiCorp's Merchant Function.

Copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: February 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Cinergy Services, Inc.

[Docket No. ER98–1240–000]

Take notice that on December 29, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a refund report in the above-referenced docket.

Copies of the filing were served on the Public Utilities Commission of Ohio, the Kentucky Public Service Commission, the Indiana Utility Regulatory Commission and Mr. John P. Cook, Deputy Consumer Counselor for Federal Affairs.

Comment date: February 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. New England Power Pool

[Docket No. ER98–1241–000]

Take notice that on December 29, 1997, the New England Power Pool Executive Committee filed for acceptance a signature page to the New England Power Pool (NEPOOL), Agreement dated September 1, 1971, as amended, signed by Cinergy Capital & Trading, Inc., (CC&T). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of CC&T's signature page would permit NEPOOL to expand its membership to include CC&T. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make CC&T a member in NEPOOL. NEPOOL requests an effective date of January 1, 1998, for commencement of participation in NEPOOL by CC&T.

Comment date: February 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Arizona Public Service Company

[Docket No. ER98–1242–000]

Take notice that on December 30, 1997, Arizona Public Service Company (APS), tendered for filing a Service Agreement to provide Network Integration Transmission Service under APS' Open Access Transmission Tariff to the Arizona Public Service Company—Merchant Group.

A copy of this filing has been served on APS' Merchant Group and the Arizona Corporation Commission.

Comment date: February 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Citizens Utilities Company

[Docket No. ES98–19–000]

Take notice that on December 22, 1997, Citizens Utilities Company filed an application, under Section 204 of the Federal Power Act, seeking authorization to act as guarantor, from time to time during a two year period, of obligations of its subsidiaries in an aggregate principal amount not to exceed $500 million outstanding at any one time.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Maine Public Service Company

[Docket No. FA96–26–001

Take notice that on January 20, 1998, Maine Public Service Company tendered for filing its refund report in the above-referenced docket.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2197 Filed 1–28–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11072–001 New York]

Trenton Falls Hydroelectric Company, Inc.; Notice of Availability of Draft Environmental Assessment

January 23, 1998.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for original license for the Boye Dam Hydroelectric Project, located on the East Branch of the Fish Creek in Lewis County, New York, and has prepared a Draft Environmental Assessment (DEA) for the project.

Copies of the DEA are available in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to David P. Boergers, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. For further information, contact William Diehl at (202) 219–2813 or Ed Lee at (202) 219–2809.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2152 Filed 1–28–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5956–6]

Agency Information Collection Activities; Proposed Collection; Comment Request; Landfill Methane Outreach Program ICR

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): The Landfill Methane Outreach Program ICR, EPA ICR #1849.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection described below.

DATES: Comments must be submitted on or before March 2, 1998.

ADDRESSES: Comments may be mailed to The Docket Clerk, Docket #A–98–06, located in the U.S. EPA Office of Air & Radiation. One original and two copies of each comment should be submitted. Hand delivery of comments should be made to: Air Docket, USEPA, MC 6102, 401 M Street, SW, Room M1500, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Tom Kerr, U.S. Environmental Protection Agency, Atmospheric Pollution Prevention Division, (6202J), 401 M St., SW, Washington, DC 20460, or call (202) 564–9768.

SUPPLEMENTARY INFORMATION: EPA is seeking comment on the ICR for the Landfill Methane Outreach Program (EPA ICR #1849.01).

Affected Entities: Entities affected by this action are landfill gas-to-energy project developers, landfill owners and landfill gas energy customers that have joined the Landfill Methane Outreach Program.

Abstract: The Landfill Methane Outreach Program is an EPA-sponsored voluntary program that encourages landfill owners, communities and project developers to implement methane recovery technologies to utilize the methane as a source of fuel and to reduce emissions of landfill methane, a potent greenhouse gas. The Landfill Methane Outreach Program further encourages utilities and other energy customers to support and promote the use of landfill methane at their facilities. The Landfill Methane Outreach Program signs voluntary Memoranda of Understanding with these organizations to enlist their support in promoting cost-effective landfill gas utilization. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed information collection is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, clarity and utility of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond including the use of electronic, Internet-based or other technological collection techniques.

Burden Statement: The estimated average public burden per respondent for new Allies is 5 hours per response, including time for reviewing instructions, searching existing data sources, gathering the necessary data, and completing the collection of information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing or providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents: Landfill owners, landfill gas energy purchasers, and landfill gas project developers.

Estimated number of respondents: 500.

Estimated Total Annual Burden on Respondents: 2,500 hours.

Frequency of Collection: as needed.

Dated: January 16, 1998.

Edward Callahan,

Acting Director, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 98–2209 Filed 1–28–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5956–2]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Approval of an Application for Certification of Equipment and Amendment to a Previously-Approved Certification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of agency approval of an application for equipment certification.

SUMMARY: The Agency received a notification of intent to certify urban

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bus retrofit/rebuild equipment for 4-stroke petroleum fueled diesel engines pursuant to 40 CFR part 85, subpart O from Engine Control Systems Ltd. (ECS). Pursuant to section 85.1407(a)(7), a June 16, 1997 **Federal Register** document summarized the notification and announced that the notification would be available for public review and comment, and initiated a 45-day period during which comments could be submitted. In the notice the Agency stated it would review this notification of intent to certify, as well as comments received, to determine whether the equipment should be certified.

This action also notified the public that ECS proposed to amend its' two-stroke engine certification. On January 6, 1997, EPA approved certification of the ECS retrofit kit which demonstrated a 25% reduction in PM for 1979 to 1993 Detroit Diesel Corporation (DDC) 2-stroke engines. On February 11, 1997, ECS requested that this certification be modified to also include 8V71N engines for model years 1973 to 1984.

SUPPLEMENTARY INFORMATION: The Agency received an application dated October 31, 1996, from Engine Control Systems Ltd. with principal place of business at 165 Pony Drive, Newmarket, Ontario, Canada for certification of urban bus retrofit/rebuild equipment pursuant to 40 CFR sections 85.1401–85.1415. On June 16, 1997, EPA published notification that the application had been received and made the application available for public review and comment for a period of 45 days (62 FR 32602). EPA has completed its review of this application and the Director of the Engine Program & Compliance Division (EPCD) has determined that it meets the requirements for certification. Testing demonstrated that the equipment reduced particulate matter (PM) by 18% for petroleum fueled diesel Cummins L–10 engines and all other 4-stroke engines that were originally manufactured prior to and including 1993 engines and is certified for Program 2 only. It does not apply for operators utilizing Program 1 as ECS did not demonstrate the minimum 25% reduction in PM necessary for Program 1 certification.

In addition, EPA has completed its review of ECS' February 11, 1997 request to modify the certification approved by EPA on January 6, 1997 (62 FR 46) which demonstrated a 25% reduction in PM for 1979 to 1993 DDC 2-stroke engines to also include 8V71N engines for model years 1973 to 1984. EPA published notice of this amendment request and requested comments for a period on 45 days in the same notice cited above. EPA has completed its review of this request and the Director of EPCD approves the certification amendment to include the 8V71N model for model years 1973 to 1984 for both programs 1 and 2.

DATES: The date of this document, January 29, 1998, is the official certification date for both the application and the amendment approval.

ADDRESSES: The ECS applications, as well as other materials specifically relevant to them, are contained in Public Docket A–93–42 (Category XIV–A or XVI–A), entitled "Certification of Urban Bus Retrofit/Rebuild Equipment." This docket is located in room M–1500, Waterside Mall (Ground Floor), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by the Agency for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Anthony Erb, Engine Compliance Programs Group, Engine Programs & Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460. Telephone: (202) 233–9259.

SUPPLEMENTARY INFORMATION:

I. Background

On October 31, 1996 ECS applied for certification of a kit, for use on 4-cycle petroleum fueled diesel Cummins L–10 and all other 4-stroke petroleum fuel urban bus engines that were originally manufactured prior to and including the 1993 model year. The kit includes a diesel oxidation converter muffler (CM). The application was submitted under EPA's Urban Bus/Retrofit program under Program 2 only.[1]

The CM functions as a catalytic converter and a muffler. It takes the place of the original muffler in the engine exhaust system. Through testing in accordance with the Federal Test Procedure for heavy-duty diesel engines, ECS documented that emissions of particulate matter (PM) were reduced by 19% with the candidate equipment installed on the test engine. The CM is certified for use with Program 2 to provide an 18% reduction relative to the original engine configuration. Additionally, the equipment is certified to provide an 18% reduction on engines equipped with certified rebuild kits that do not include a converter muffler. This equipment is certified to the PM emission levels as specified in Table A. below.

TABLE A.—ECS RETROFIT/REBUILD CERTIFICATION LEVELS FOR CUMMINS ENGINES[2]

Engine family	Control parts list (CPL)	Manufacture dates	New engine PM level	Retrofit PM level with CM	Retrofit PM level with CM and Cummins kit
343B	780	11/20/85 to 12/31/87 ...	0.58	0.48	0.28
343B	781	11/20/85 to 12/31/87 ...	.59	.48	.28
343C	0774	11/20/85 to 12/31/89 ...	.46	.38	.28
343C	0777	11/20/85 to 12/31/89 ...	.61	.50	.28
343C	0996	12/04/87 to 08/19/88 ...	.61	.50	.28
343C	1226	07/26/88 to 12/31/90 ...	.50	.41	.28
343F	1226	07/12/90 to 08/26/92 ...	.45	.37	.28
343F	1441	12/18/90 to 12/31/92 ...	.46	.38	.28
343F	1622	04/24/92 to 12/31/92 ...	.46	.38	.28
343F	1624	04/24/92 to 12/31/92 ...	.45	.37	.28

[1] EPA promulgated the Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses on April 23, 1993 (58 FR 21359). This final rule established the provisions for an urban bus retrofit/rebuild program as required by section 219(d) of the Clean Air Act Amendments (CAAA) of 1990.

TABLE A.—ECS RETROFIT/REBUILD CERTIFICATION LEVELS FOR CUMMINS ENGINES[2]—Continued

Engine family	Control parts list (CPL)	Manufacture dates	New engine PM level	Retrofit PM level with CM	Retrofit PM level with CM and Cummins kit
Other 4-stroke engines		1985 to 1993		18% reduction from original PM levels.	N/A

[2] The New Engine PM certification levels are based on the certification level or the average test audit result for each engine family. It is noted that for engine family 343F, although the PM standard for 1991 and 1992 was 0.25 g/bhp-hr and the NO_x standard was 5.0 g/bhp-hr, Cummins certified the 1226, 1441, 1622, and 1624 CPLs to a Federal Emission Limit (FEL) of 0.49 g/bhp-hr PM and 5.6 g/bhp-hr NO_x under the averaging, banking and trading program.

Urban bus operators who choose to comply with Program 2 and use the ECS equipment will use the PM emission value from Table A when calculating their average fleet PM level.

In addition, EPA has completed its review of ECS' February 11, 1997 request to amend the kit approved by EPA on January 6, 1997 (62 FR 46) which demonstrated a 25% reduction in PM for 1979 to 1993 DDC 2-stroke engines to also include 8V71N engines for model years 1973 to 1984. The certification covers those engines that are rebuilt to original specifications or in-use engines that are not rebuilt at the time the CM is installed provided the engine meets specified oil consumption limits. This certification does not trigger any new rebuild requirements for applicable engines because the requirement to use equipment certified to achieve at least a 25% reduction has already been triggered for the 8V71N engines. The PM certification levels are provided in Table B. below.

TABLE B.—ECS RETROFIT/REBUILD CERTIFICATION LEVELS FOR DDC 8V71N MODELS

DDC engine model	Model year	PM level with converter muffler	Code/family
8V71N	1973–84	0.38	All.

II. Summary and Analysis of Comments

EPA received comments from one party on the ECS application during the comment period. The Chicago Transit Authority commented on the backpressure shown in the data for the 4-stroke kit noting the increase by 4.7% (from 2.36" Hg to 2.47" Hg with a *new* catalytic converter. The CTA expressed concerns about the increase in backpressure restriction of the engine and the negative effects, as the catalytic converter accumulates mileage in service. The CTA also commented that the fuel consumption increased from 0.397 lb/bhp-hr in the baseline engine test to 0.403 lb/bhp-hr in the test with the catalyst by 1.51%. It was noted by CTA that if the increase in fuel consumption in a 4-stroke Cummins engine also applies to the 2-stroke DDC engine, CTA will incur an additional expense of approximately $122,766 based on it's operation of 1,115 buses with DDC 6V92TA diesel engines. CTA also commented that the catalytic converter should be tested for structural durability to ensure it will hold up in service and that in the absence of a durability test structural failure of the catalytic muffler should be covered for 150,000 miles with no time limitation.

In regard to concerns expressed relative to the backpressure concern, ECS indicates in a letter to EPA dated September 17, 1997, that it designs its catalyst units to provide backpressure comparable to the original muffler. The test catalyst utilized the minimum catalyst volume in what ECS termed the poorest flowpath that could be used for Cummins L10 engines according to ECS. ECS reported that all tests to date have shown that the converter muffler designs maintain exhaust system backpressure under the maximum level recommended by Cummins (3 inches of Mercury). The catalyst used by ECS for exhaust testing had been degreened, that is, put in place on an exhaust system for 100 hours under steady state conditions to more closely represent the performance of an in-use catalyst.

With regard to comments on fuel consumption, the CTA noted that if the 1.51% increase in fuel consumption seen in the 4-stroke testing were applicable to the 2-stroke engines, CTA would incur additional fuel expenses for a large number of engines in its fleet. Since the certification being discussed herein relative the 4-stroke application and the testing performed on the 4-stroke engine is relevant only to the 4-stroke application, the discussion of the application of the 4-stroke catalyst and its application and effects on fuel economy on a 2-stroke engine would not be pertinent. Therefore, this comment does not address the 4-stroke application. Further, since the 4-stroke application being reviewed herein is for certification under Program 2 only, operators are not required to purchase this equipment as it is not trigger technology. Any decision by an operator to purchase this equipment can be made by an operator based on individual fleet composition and evaluation of the costs associated with available compliance options.

With regard to CTA's concern that the catalytic converter should be tested for structural durability to ensure it will hold up in service and that in the absence of the durability test structural failure of the catalytic muffler should be covered for 150,000 miles with no time limitation, the regulations at section 85.1409(a) require that the certifier shall warrant the retrofit/rebuild equipment will not cause an urban bus engine to exceed emission requirements for a period of 150,000 miles from when the equipment is installed. Section 85.1409(b) requires that the certifier shall replace all defective parts, free of charge for a period of 100,000 miles from when the equipment is installed. There is no time limitation on the time the warranties are in effect. In addition, there is no requirement in the regulations that the certifier shall provide durability data on the equipment. As discussed in the preamble to the final rule (58 FR page 21379, April 21, 1993) EPA decided not to require durability testing for this program. Any change to the warranty requirements can be made only through a regulatory amendment process which is beyond the scope of the certification decision being made in this document.

With regard to the ECS request to amend the previously certified kit to include the DDC 8V71N, CTA commented on engine exhaust backpressure restriction and structural durability of the catalytic converter. Again, in the absence of a durability test, CTA recommended that the structural failure of the catalytic converter muffler should be covered for 150,000 miles with no time limitation.

ECS has stated that it designs the systems to include a larger catalyst

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volume which results in lower particulate mass flow through each individual substrate cell and a greater catalyst volume to ensure the substrate remains free from excessive carbon build up. According to ECS, this ensures that the converter muffler exhaust backpressure will remain within acceptable levels throughout the normal life. With regard to the request to perform durability testing and to require that the converter muffler should be warranted for 150,000 miles, please refer to the discussion of these concerns in the section above.

III. Certification Approval

The Agency has reviewed this application, along with comments received from interested parties, and finds that this equipment reduces particulate matter emissions without causing urban bus engines to fail to meet other applicable Federal emission requirements. Additionally, EPA finds that installation of this equipment will not cause or contribute to an unreasonable risk to the public health, welfare or safety, or result in any additional range of parameter adjustability or accessibility to adjustment than that of the engine manufacturer's emission related part. The application meets the requirements for certification under the Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (40 CFR sections 85.1401 and 85.1415). Thus, the Agency hereby approves the certification of this equipment.

IV. Operator Requirements and Responsibilities

With regard to the 4-stroke kit, for operators who have chosen to comply with Program 2, this equipment is immediately available for use and those who use this certified kit may claim the PM emissions reduction as stated in Table A when calculating their Fleet Level Attained. With regard to the 2-stroke amendment for the previously certified kit, the kit may be used to meet the requirements of both Programs 1 and 2 for the 8V71N engine family for model years 1973–84.

As stated in the regulations, operators should maintain records for each engine in their fleet to demonstrate that they are in compliance with the requirements, beginning January 1, 1995. These records include purchase records, receipts, and part numbers for the parts and components used in the rebuilding of urban bus engines.

Dated: January 20, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 98–2211 Filed 1–28–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5956–5]

Meeting of the Ozone Transport Commission for the Northeast United States

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing the Winter meeting of the Ozone Transport Commission to be held on February 10, 1998.

This meeting is for the Ozone Transport Commission to deal with appropriate matters within the transport region, as provided for under the Clean Air Act Amendments of 1990. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

DATES: The meeting will be held on February 10, 1998, from 9:00 a.m. to 3:30 p.m.

ADDRESSES: The meeting will be held at: Hotel du Pont, 7th and Market Streets, Wilmington, DE 19801, (302) 594–3100.

FOR FURTHER INFORMATION CONTACT:

EPA: Susan Studlien, Region I, U.S. Environmental Protection Agency, John F. Kennedy Federal Building, Boston, MA 02203, (617) 565–3800.

THE STATE CONTACT:

Host Agency: Carol Brown, Delaware Department of Natural Resources and Environmental Conservation, 89 Kings Highway, Dover, DE 19903, (302) 739–4403.

FOR DOCUMENTS AND PRESS INQUIRIES CONTACT: Stephanie A. Cooper, Ozone Transport Commission, 444 North Capitol Street, NW., Suite 638, Washington, DC 20001, (202) 508–3840, e-mail: ozone@sso.org.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at section 184 provisions for the "Control of Interstate Ozone Air Pollution." Section 184(a) establishes an ozone transport region comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia.

The Assistant Administrator for Air and Radiation of the Environmental Protection Agency convened the first meeting of the commission in New York City on May 7, 1991. The purpose of the Transport Commission is to deal with ground level ozone formation, transport, and control within the transport region.

The purpose of this notice is to announce that this Commission will meet on February 10, 1998. The meeting will be held at the address noted earlier in this notice.

Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meetings of Transport Commissions are not subject to the provisions of the Federal Advisory Committee Act. This meeting will be open to the public as space permits.

Type of Meeting: Open.

Agenda: Copies of the final agenda will be available from Stephanie Cooper of the OTC office (202) 508–3840 (or by e-mail: ozone@sso.org) on Tuesday, February 3, 1998. The purpose of this meeting is to review air quality needs within the Northeast and Mid-Atlantic States, including reduction of motor vehicle and stationary source air pollution. The OTC is also expected to address issues related to the transport of ozone into its region, including actions by EPA under sections 110 and 126 of the Clean Air Act, and to discuss market-based programs to reduce pollutants that cause ozone.

John DeVillars,

Regional Administrator, EPA Region I.

[FR Doc. 98–2208 Filed 1–28–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5956–3]

Proposed CERCLA Prospective Lessee Agreement for the True Temper Sports Facility Site

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Proposal of CERCLA prospective lessee agreement for the True Temper Sports Facility site.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Public Law 99–499, notice is hereby given that a proposed lessee agreement ("PLA") for the True Temper Sports Facility Removal Action Site ("the Site") located in Geneva, Ohio, has been executed by Tackle Hill Limited Liability Company. The proposed PLA has been submitted to the Attorney General for approval.

Two potentially responsible parties ("PRPs") are currently conducting a removal action at the True Temper Sports Facility Site under an Administrative Order on Consent, issued pursuant to sections 106, 107, and 122 of CERCLA, 42 U.S.C. 9606, 9607 and 9622. Tackle Hill Limited Liability Company is leasing a small portion of the Site, an access road. The proposed PLA would require Tackle Hill Limited Liability Company to pay the United States $7,000 to be applied toward response costs incurred by the United States in conducting groundwater monitoring activities at the Site after the removal action is completed by the PRPs. The Site is not on the National Priorities List, and, after the groundwater monitoring, no further response activities at the Site are anticipated at this time.

DATES: Comments on the proposed PLA must be received on or before March 2, 1998.

ADDRESSES: A copy of the proposed PLA is available for review at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Gaylene Vasaturo at (312) 886–1811, prior to visiting the Region 5 office.

Comments on the proposed PLA should be addressed to Gaylene Vasaturo, Office of Regional Counsel, U.S. EPA, Region 5, 77 West Jackson Boulevard (Mail Code C–14J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Gaylene Vasaturo at (312) 886–1811, of the U.S. EPA Region 5 Office of Regional Counsel.

A 30-day period, commencing on the date of publication of this document, is open for comments on the proposed PLA. Comments should be sent to the addressee identified in this notice.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 98–2210 Filed 1–28–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

January 22, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 30, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–XXXX.

Title: Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling System (Memorandum Opinion and Order, CC Docket 94–102).

Form Number: N/A.

Type of Review: New collection.

Respondents: Cellular, broadband PCS, and SMR carriers subject to the modified rules; State and local government entities; Public Safety Answering Points.

Number of Respondents: 42,031.

Estimated Time Per Response:

a. Two time notification burden on 4,700 PSAPs @ 1 hr per=9,400 hours.

b. Two time response burden on carriers @ 1 hr per=9,400 hours.

c. One time review or establishment of cost recovery program by 375 government entities @ 10 hrs per=3,750 hours.

One time burden for consultation for remaining 125 government entities using contractors to review and/or establish cost recovery program @ 1 hr per=125 hours.

d. One time burden for 3,469 digital licensees to place notification information in digital user manuals or service contracts @ ½ hr per=1,735 hours.

e. One time burden on 3,469 digital licensees to notify existing digital subscribers @ ¼ hr per=868 hours.

f. One time burden on 7 representative organizations to draft survey for quarterly TTY report @ 1 hr per=7 hours.

Quarterly burden on 7 representative organizations to review survey results @ 12 hrs per=84 hours.

Quarterly burden on 7 representative organizations to draft joint quarterly TTY report @ 20 hrs. per=140 hours.

Quarterly burden on 3,469 licensees to respond to survey @ 8 hrs. per=27,752 hours.

g. One time burden on 31,530 SMR licensees offering direct dispatch capability to place notification in user manuals and service agreements @ ½ hour per=15,765 hours.

h. One time burden on 31,530 SMR licensees offering direct dispatch capability to notify existing customers @ ¼ hr per=7,884.

i. One time burden on 35,424 carriers to consult on determining a designated PSAP @ 1 hr per=35,424 hours.

j. One time burden on 500 government entities to consult with 35,424 carriers in determining a designated PSAP @ 1 hr per=35,424 hours.

k. One time burden on 1,400 telephone systems to consult on definition of pseudo-ANI @ 3 hr per=4,200 hours.

l. One time burden on 8,500 licensees to prepare a deployment schedule to accompany a waiver request @ 4 hours per=34,000 hours.

One time burden on 8,500 licensees to consult with a contract engineer to prepare a deployment schedule to accompany a waiver request @ 1 hr per=8,500 hours.

Total Annual Burden: 194,457 hours.

Frequency of Response: One time and on occasion reporting requirements; quarterly reporting requirements.

Estimated Cost Per Respondent: $7,050,000.

Review and/or establishment of cost recovery program to 125 state and local entities using contract CPAs @ $200 per hour=$2000 per entity.

Preparation of deployment schedule to 8,500 licensees using contract engineers @ $100 per hour=$800.

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Needs and Uses: The notification burden on PSAPs will be used by carriers to verify that wireless 911 calls are referred to PSAPs who have the technical capability to use the data to the caller's benefit. TTY and dispatch notification requirements will be used to avoid consumer confusion as to the ability to reach 911 services using their wireless handsets. These notifications will also avoid delays in emergency response time. The quarterly reports will be used to monitor the progress of TTY compatibility. Consultations on the specific meaning assigned to pseudo-ANI are appropriate to ensure that all parties are working with the same information. Coordination between carriers and State and local entities to determine the PSAPs that are appropriate to receive 911 calls is necessary because of the difficulty in assigning PSAPs based on the location of the caller. The deployment schedule that should be submitted by carriers seeking a waiver of the Phase I or Phase II schedule will be used by the Commission to guarantee that the rules adopted in this proceeding are enforced in as timely a manner as possible within technological constraints.

OMB Control No.: 3060–0179.
Title: Section 73.1590, Equipment Performance Measurements.
Form No.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Businesses or other for profit; not-for-profit institutions.
Number of Respondents: 5,052 AM stations, 7,787 FM stations and 312 TV stations.
Estimated Time Per Response: 0.5 hours for AM/FM stations and 18 hours for TV stations.
Frequency of Response: On occasion reporting requirement and recordkeeping requirement.
Estimated Cost Per Respondent: N/A.
Total Annual Burden: 12,036 hours.
Needs and Uses: Section 73.1590 requires licensees of AM, FM and TV stations to make audio and video equipment performance measurements for each main transmitter. These measurements and a description of the equipment and procedure used in making the measurements must be kept on file at the transmitter for two years. In addition, this information must be made available to the FCC upon request. The data is used by station licensees to minimize the potential for interference to other stations and by the FCC staff in field investigations to identify sources of interference.

OMB Control No.: 3060–0210.
Title: Section 73.1930, Political Editorials.
Form No.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Businesses or other for profit; not-for-profit institutions.
Number of Respondents: 2,758.
Estimated Time Per Response: 3.0 hours.
Frequency of Response: On occasion reporting requirement.
Estimated Cost Per Respondent: N/A.
Total Annual Burden: 8,274 hours.
Needs and Uses: Section 73.1930 requires that when a commercial licensee in an editorial endorses or opposes a candidate, the licensee must notify the other qualified candidate(s) for the same office or the candidate opposed, of the date and time of editorial, provide a script or tape of editorial, and offer reasonable opportunity to respond over licensee's facility. This information is used to provide a qualified candidate reasonable opportunity to respond to a political editorial.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 98–2195 Filed 1–28–98; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Boston Logistics, Inc., 186A Lee Burbank Highway, Revere, MA 02151, Officer: Anthony M. Puleio, Jr. President

Logistics Transportation Services, Inc., 18815 Decathalon Ct., Humble, TX 77346, Officer: Ana H. Pena, President

Interamericas Consulting, Import, Export Inc., 22716 SW 65th Way, Boca Raton, FL 33428–5303, Officer: Iracema V.S. Heidal, President

Eastern International, 8411 Mobud, Houston, TX 77036, Afsaneh Saie-Oskoei, Sole Proprietor

Dated January 23, 1998.
Joseph C. Polking,
Secretary.
[FR Doc. 98–2118 Filed 1–28–98; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.
ACTION: Notice.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number. Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is, supporting statements, and the approved collection of information instruments will be placed into OMB's public docket files. The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following: a. Whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; b. the accuracy of the Federal Reserve's estimates of the burden of the proposed information collection, including the validity of the methodology and assumptions used; c. ways to enhance the quality, utility, and clarity of the information to be collected; and d. ways to minimize the burden of information collection on

respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before March 30, 1998.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M–P–500 between 9:00 a.m. and 5:00 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. McLaughlin, Chief, Financial Reports Section (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202–452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

For further information on the proposals concerning the FR Y–9 reports, contact Robert T. Maahs, Senior Supervisory Financial Analyst (202–872–4935). For further information on the proposals concerning the FR Y–11 reports, contact Tina Robertson, Supervisory Financial Analyst (202–452–2949).

General Information

The FR Y–9 and FR Y–11 series of reports have historically been, and continue to be, the primary source of financial information on bank holding companies and their nonbanking activities between on-site inspections. Financial information are used to detect emerging financial problems, to review performance for pre-inspection analysis, to monitor and evaluate capital adequacy, to evaluate bank holding company mergers and acquisitions, and to analyze holding companies overall financial condition and performance as part of the Federal Reserve System's overall supervisory responsibilities.

Proposal To Approve Under OMB Delegated Authority the Revision of the Following Reports

1. *Report title:* Consolidated Financial Statements for Bank Holding Companies.
Agency form number: FR Y–9C.
OMB control number: 7100–0128.
Frequency: Quarterly.
Reporters: Bank holding companies.
Annual reporting hours: 196,578.
Estimated average hours per response: Ranges from 5 to 1,250 hours.
Number of respondents: 1,457.
Small businesses are affected.
General description of report: The information collection is mandatory 12 U.S.C. 1844(b) and (c) and 12 CFR 225.5(b). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form. Data reported on the FR Y–9C, Schedule HC–H, Column A, requiring information on "assets past due 30 through 89 days and still accruing" and memoranda item 2 are confidential pursuant to Section (b)(8) of the Freedom of Information Act 5 U.S.C. 552(b)(8).

The FR Y–9C consists of standardized financial statements similar to the commercial bank Report of Condition and Income (Call Report)(FFIEC 031–034; OMB No. 7100–0036). The FR Y–9C is filed quarterly by top-tier bank holding companies with total consolidated assets of $150 million or more and by lower-tier bank holding companies that have total consolidated assets of $1 billion or more. In addition, multibank holding companies with total consolidated assets of less than $150 million with debt outstanding to the general public or engaged in certain nonbank activities must file the FR Y–9C.

The Federal Reserve proposes to make the following changes to the FR Y–9C effective with the March 31, 1998, reporting date to parallel proposed and recent changes to the Call Report.

Schedule HC–B, Part II—Trading Assets and Liabilities

Eliminate the separate reporting of item 6, "Certificates of deposit in domestic offices," item 7, "Commercial paper in domestic offices," and item 8, "Bankers acceptances in domestic offices." Instead, existing items 6 and 8 would be included in existing item 9, "Other trading assets in domestic offices." Commercial paper held for trading would begin to be reported as part of the bank holding company's trading account securities, in existing item 5, "Other debt securities in domestic offices," consistent with the change in balance sheet classification of commercial paper not held for trading and the elimination of the loan schedule memorandum item for commercial paper, both of which took effect as of March 31, 1997.

Schedule HC–I—Risk-Based Capital

(1) Add an item for the reporting of the "Maximum contractual dollar amount of recourse exposure in low level recourse transactions" to allow respondents to report low level recourse for capital purposes under the "direct reduction method." Currently, bank holding companies can only report its low level recourse transactions using the "gross-up" method. In general, the gross-up method requires the bank holding company to multiply the maximum amount of its recourse exposure by the reciprocal of the full effective minimum risk-based capital requirement for the assets transferred and to report the resulting dollar amount as an off-balance sheet credit equivalent amount in the risk weight category appropriate to the assets transferred. However, the greater the volume of a bank holding company's low level recourse transactions and the higher the bank holding company's risk-based capital in relation to the minimum requirement, the more the bank holding company's calculated risk-based capital ratios become distorted as a result of applying the gross-up method. In these situations, another method of handling the bank holding company's low level recourse transactions, the so-called direct reduction method, results in a more accurate measure of the bank holding company's risk-based capital ratios.

(2) Add two items to incorporate new capital requirements for the measurement of market risk. These items are: "Market risk equivalent assets" and "Tier 3 Capital." In addition, include an item to report the amount of "Tier 2 Capital."

(3) Revise the caption of Item 3 of Part III to read "Net risk-weighted assets (gross risk-weighted assets less excess allowance [amount that exceeds 1.25% of gross risk-weighted assets] and all other deductions)."

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Allowance for Credit Losses

The American Institute of Certified Public Accountants' (AICPA) Industry Audit Guide for Banks and Savings Institutions, issued as of April 1, 1996, requires the allocation on the balance sheet of the allowance for credit losses between on-balance sheet financial instruments and off-balance sheet credit exposures. Previously, these allowance components often were reported in the aggregate in the allowance for loan and lease losses (ALLL).

Bank holding companies have been advised to allocate the allowance for credit losses on Schedule HC—Balance Sheet consistent with their allocation methodology for other financial reporting purposes. For example, portions of the allowance for credit losses related to off-balance sheet exposures that are reported as liabilities are to be included in Schedule HC, item 23, "Other liabilities." Bank holding companies have also been advised to aggregate these components of the allowance for credit losses when completing Schedule HI–B, Part II,—Allowance for Loan and Lease Losses. In addition, bank holding companies were advised to disclose the amounts of these components in the "Notes to the Balance Sheet."

The Federal Reserve proposes to retain this methodology of reporting the allowance for credit losses. In doing so, Schedule HI–B, Part II would be retitled "Allowance for Credit Losses," and item 4.a, of Schedule HI—Income Statement would be recaptioned "Provision for credit losses." However, Schedule HI–B, Part I—Charge Offs and Recoveries on Loans and Leases would not be changed, that is, bank holding companies would continue to disclose their loan and lease charge-offs and recoveries only.

Schedule HI—Income Statement

Add a memorandum item to determine whether the bank holding company has made a Subchapter S selection for the purposes of the current tax year.

Instructions

Instructional revisions and clarifications would be made as necessary, particularly with respect to implementing certain deferred provisions of Financial Accounting Standards Board Statement No. 125, "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities," that become effective in 1998. Instructional revisions and clarifications will be done in accordance with changes made to the Call Report instructions and revisions, if any, to the Capital Guidelines.

2. *Report title:* Parent Company Only Financial Statements for Large Bank Holding Companies.
Agency form number: FR Y–9LP.
OMB control number: 7100–0128.
Frequency: Quarterly.
Reporters: Bank holding companies.
Annual reporting hours: 33,032.
Estimated average hours per response: Range from 2.0 to 13.5 hours.
Number of respondents: 1,807.
Small businesses are affected.
General description of report: The information collection is mandatory 12 U.S.C. 1844(b) and (c) and 12 CFR 225.5(b). Confidential treatment is not routinely given to the information in these reports. However, confidential treatment for the report information, in whole or in part, can be requested in accordance with the instructions to the form.

The FR Y–9LP includes standardized financial statements filed quarterly on a parent company only basis from each bank holding company that files the FR Y–9C. In addition, for tiered bank holding companies, a separate FR Y–9LP must be filed for each lower tier bank holding company.

The Federal Reserve proposes the following revisions to the FR Y–9LP effective with the March 31, 1998, reporting date.

Schedule PC–B—Memoranda

Revise item 9, "Total combined nonbank assets of nonbank subsidiaries," and expand the information reported about nonbank subsidiaries. In addition, instructional clarifications would be made to the existing item related to combined nonbank assets of nonbank subsidiaries. Existing item 9 would be moved to a new item (item 15), and additional reporting items would be included. However, all of these items would only be reported by the top-tier bank holding company in a multi-tier bank holding company. In addition to reporting the total combined nonbank assets of nonbank subsidiaries, the top-tier bank holding company would report separately the amount of combined thrift assets and the combined foreign subsidiary assets that are included in the total combined nonbank assets of nonbank subsidiaries. The top-tier bank holding company would also report the total *number* of nonbank subsidiaries that are included in the combined total assets, combined thrift, and combined foreign nonbank asset balances.

Schedule PI—Income Statement

Change item 2(c)(1), "Provision for possible loan and lease losses" to the "Provision for credit losses" to parallel the revision made to Schedule HI—Income Statement of the FR Y–9C.

Instructions

Instructional revisions and clarifications would be made as necessary, particularly with respect to the reporting of goodwill, negative goodwill, and other identifiable intangible assets on Schedule PC and Schedule PC–A.

3. *Report title:* Parent Company Only Financial Statements for Small Bank Holding Companies.
Agency form number: FR Y–9SP.
OMB control number: 7100–0128.
Frequency: Semiannual.
Reporters: Bank holding companies.
Annual reporting hours: 31,912.
Estimated average hours per response: Range from 1.5 to 6.0 hours.
Number of respondents: 4,166.
Small businesses are affected.
General description of report: The information collection is mandatory 12 U.S.C. 1844(b) and (c) and 12 CFR 225.5(b). Confidential treatment is not routinely given to the information in these reports. However, confidential treatment for the report information, in whole or in part, can be requested in accordance with the instructions to the form.

The FR Y–9SP is a parent company only financial statement filed on a semiannual basis by one-bank holding companies with total consolidated assets of less than $150 million, and multibank holding companies with total consolidated assets of less than $150 million that meet certain other criteria. This report, an abbreviated version of the more extensive FR Y–9LP, is designed to obtain basic balance sheet and income statement information for the parent company, information on intercompany transactions, and data for capital adequacy evaluation.

The Federal Reserve proposes the following revisions to the FR Y–9SP effective with the June 30, 1998, reporting date.

Balance Sheet

Expand memorandum item 8 for the reporting of additional information about nonbank subsidiaries. Specifically, existing memorandum item 8 would be moved to memorandum item 16, and this item would be completed only by the top-tier bank holding company in a multi-tiered bank holding company. In addition, the top-tier bank holding company would disclose the combined thrift assets included in total combined nonbank assets, as well as the total number of nonbank entities (and separately the number of thrifts) that are included in the amount of total combined nonbank assets reported. Instructional clarifications would also be made to the existing item related to combined nonbank assets of nonbank subsidiaries.

Income Statement

Add a memorandum item to ask whether the bank holding company has made a Subchapter S selection for the purposes of the current tax year.

Instructions

Instructional revisions and clarifications would be made as necessary, particularly with respect to the reporting of goodwill, negative goodwill, and other identifiable intangible assets on the balance sheet.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, With Revision, of the Following Reports

1. *Report title:* Quarterly Financial Statements of Nonbank Subsidiaries of Bank Holding Companies.
Agency form number: FR Y–11Q.
OMB control number: 7100–0244.
Frequency: Quarterly.
Reporters: Bank holding companies.
Annual reporting hours: 7,589.
Estimated average hours per response: Range from 3.0 to 8.0 hours.
Number of respondents: 306.
Small businesses are affected.
General description of report: The information collection is mandatory 12 U.S.C. 1844(b) and (c) and 12 CFR 225.5(b). Confidential treatment is not routinely given to most of the data in these reports. However, confidential treatment for the report information, in whole or in part, can be requested in accordance with the instructions to the form. FR Y–11Q, memorandum item 7.a, "loans and leases past due 30 through 89 days" and FR Y–11Q, memorandum item 7.d, "loans and leases restructured and included in past due and nonaccrual loans" are confidential pursuant to Section (b)(8) of the Freedom of Information Act 5 U.S.C. 552(b)(8).

The FR Y–11Q is filed quarterly by the top tier bank holding companies for each nonbank subsidiary of a bank holding company with total consolidated assets of $150 million or more in which the nonbank subsidiary has total assets of 5 percent or more of the top-tier bank holding company's consolidated Tier 1 capital, or where the nonbank subsidiary's total operating revenue equals 5 percent or more of the top-tier bank holding company's consolidated total operating revenue. The report consists of a balance sheet, income statement, off-balance-sheet items, information on changes in equity capital, and a memoranda section.

The Federal Reserve proposes a minor revision to the FR Y–11Q effective with the March 31, 1998, reporting date.

Income Statement

Item 4, "Provision for loan and lease losses" would be changed to "Provision for credit losses." This revision, which would parallel a proposed change to the FR Y–9C, would conform with the requirements of the American Institute of Certified Public Accountants' (AICPA) Industry Audit Guide for Banks and Savings Institutions that was issued as of April 1, 1996.

2. *Report title:* Annual Financial Statements of Nonbank Subsidiaries.
Agency form number: FR Y–11I.
OMB control number: 7100–0244.
Frequency: Annual.
Reporters: Bank holding companies.
Annual reporting hours: 6,720.
Estimated average hours per response: Range from .4 to 8.0 hours.
Number of respondents: 2,100.
Small businesses are affected.
General description of report: The information collection is mandatory 12 U.S.C. 1844(b) and (c) and 12 CFR 225.5(b). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the report information, in whole or in part, can be requested in accordance with the instructions to the form. FR Y–11I, Schedule A, item 7.a, "loans and leases past due 30 through 89 days" and FR Y–11I, Schedule A, item 7.d, "loans and leases restructured and included in past due and nonaccrual loans" are confidential pursuant to Section (b)(8) of the Freedom of Information Act 5 U.S.C. 552(b)(8).

The FR Y–11I is filed annually by the top tier bank holding companies for each of their nonbank subsidiaries that are not required to file a quarterly FR Y–11Q. The FR Y–11I report consists of similar balance sheet, income statement, off-balance-sheet, and change in equity capital information that is included on the FR Y–11Q. In addition, the FR Y–11I also includes a loan schedule to be submitted only by respondents engaged in credit extending activities.

The Federal Reserve proposes a minor revision to the FR Y–11I effective with the December 31, 1998, reporting date.

Income Statement

Item 4, "Provision for loan and lease losses" would be changed to "Provision for credit losses." This revision, which would parallel a proposed change to the FR Y–9C, would conform with the requirements of the American Institute of Certified Public Accountants' (AICPA) Industry Audit Guide for Banks and Savings Institutions that was issued as of April 1, 1996.

Board of Governors of the Federal Reserve System, January 26, 1998.
William W. Wiles,
Secretary of the Board.
[FR Doc. 98–2254 Filed 1–28–98; 8:45 am]
BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 13, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Sam Bryan Cook, St. Louis, Missouri, and Robert Marion Robuck, Jefferson City, Missouri; both individually to retain voting shares of, and jointly, through Trust, to acquire additional voting shares of Central Bancompany, Inc., and thereby indirectly control shares of Central Trust Bank, Jefferson City, Missouri.

Board of Governors of the Federal Reserve System, January 26, 1998.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 98–2252 Filed 1–28–98; 8:45 am]
BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research; Contract Review Meeting

In accordance with Section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), the Agency for Health Care Policy and Research

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(AHCPR) announces the following technical review committee to meet during the month of February 1998:

Name: Exhibit Logistics Support.

Date and Time: February 5, 1998, 9:30 a.m.–12:00 p.m.

Place: Agency for Health Care Policy and Research, Executive Office Building, 5th floor (East Wing) OHID Conference Room, 2101 East Jefferson Street, Rockville, MD 20852.

This meeting will be closed to the public.

Purpose: The technical Review Committee's charge is to provide, on behalf of the AHCPR Contracts Review Committee, recommendations to the Administrator, AHCPR, regarding the technical merit of contract proposals submitted in response to a specific Request for Proposal for the Exhibit Logistics Support contract. The purpose of this contract is to continue the provision of logistical support services for AHCPR exhibits. The support services include pre-exhibit negotiations with professional organizations concerning logistical requirements; arrangements for space, furniture, equipment rentals,and on-site services; arrangements for shipping of appropriate publications and support materials; arrangements for booth set up and tear down, recrating and return shipping when the exhibit is over; providing knowledgeable professionals to staff exhibits during meetings when required; and evaluation/analysis of the impact of each exhibit in terms of exhibit strategy in reaching audiences and in generating interest in programs.

Agenda: The Committee meeting will be devoted entirely to the technical review and evaluation of the contract proposal submitted in response to the above referenced Request for Proposal. The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This action is necessary to protect the free and full exchange of views in the contract evaluation process and safeguard confidential proprietary information, and personal information concerning individuals associated with the proposal that may be revealed during the meeting. This action is taken in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C., Appendix 2, 5 U.S.C. 522 (b)(c)(6), 41 CFR 101–6.1023 and Department procurement regulations, 48 CFR 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Sandra Shane, Office for Health Information Dissemination, Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 501, Rockville, Maryland 20852, 301/594–1364, X1377.

Dated: January 23, 1998.

John M. Eisenberg,

Administrator.

[FR Doc. 98–2190 Filed 1–28–98; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notices of Meetings

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following subcommittees schedules to meet during the month of February 1998:

Name: Health Care Quality and Effectiveness Research.

Date and Time: February 2, 1998, 8:00 a.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Delaware Room, Bethesda, Maryland 20814.

Open February 2, 8:00 a.m. to 8:15 a.m.

Closed for remainder of meeting.

Name: Health System Research.

Date and Time: February 13, 1998, 8:00 a.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Delaware Room, Bethesda, Maryland 20814.

Open February 13, 8:00 a.m. to 8:15 a.m.

Closed for remainder of meeting.

Name: Health Care Technology and Decision Sciences.

Date and Time: February 26, 1998, 1:00 p.m.

Place: Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 602, Conference Room 1, Rockville, Maryland 20852.

Open February 26, 1:00 p.m. to 1:15 p.m.

Closed for remainder or meeting.

Name: Health Research Dissemination and Implementation.

Date and Time: February 27, 1998, 9:00 a.m.

Place: Ramada Inn, 1775 Rockville Pike, Montrose Room, Rockville, Maryland 20852.

Open February 27, 9:00 a.m. to 9:15 a.m.

Closed remainder of meeting.

Purpose: To review and evaluate grant applications.

Agenda: The open session of the meetings will be devoted to business covering administrative matters and reports. During the closed sessions, the Subcommittees will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6), the Administrator, Agency for Health Care Policy and Research, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associations with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Mrs. Sheila Simmons, Committee Management Officer, Office of Scientific Affairs, Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1452×1627.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: January 23, 1998.

John Eisenberg,

Administrator.

[FR Doc. 98–2191 Filed 1–28–98; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–98–10]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC/ATSDR Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC/ATSDR Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Project Intensive Care Antimicrobial Resistance Epidemiology (ICARE), Phase 3—Reinstatement—The Hospital Infections Program, National Center for Infectious Diseases, Centers for Disease Control and Prevention, is proposing a study to investigate the relationship between use of antimicrobial agents and the incidence of antimicrobial resistance at 40 U.S. hospitals. The proposed Phase 3 study of Project ICARE will be very similar to Phase 2 ICARE with minor revisions. We hope to enroll 40 hospitals and address many confounding factors of antimicrobial resistance. In addition, these hospitals will serve as a sentinel surveillance system for different antimicrobial resistant pathogens, such as vancomycin resistant staphylococci. About half of the hospitals have participated in Phase 2 of Project ICARE. Participating hospitals will all be active participants of the CDC's National Nosocomial Infections Surveillance (NNIS) system. Phase 3 of Project ICARE is a refinement of the Phase 2 study and will allow interhospital comparison of data (i.e., sending interim reports back to study hospitals) facilitated by incorporating differences in culturing frequency, case-mix by ICU type and speciality wards (i.e., internal organization), barrier precautions, and prescribing practice policies. Phase 3 will also allow for valid comparison of attempts at reducing antimicrobial resistance in study hospitals (i.e., publish results of interventions to reduce antimicrobials resistance at study hospitals). Also, key parameters of antimicrobial use could be correlated with antimicrobial resistance levels and tracked through the hospital's quality improvement indicator process, pharmacy and therapeutics committee, or medical staff. Unnecessary use of antimicrobials may be reduced by these efforts if the information can be provided to hospitals. Average cost to respondents is $17.18.

Form name	Number of respondents	Number responses/respondent	Average burden/response (in hours)	Total burden (in hours)
Primary contact	40	12	1	480
Pharmacy	40	48 (median)	2.0	3,840
Microbiology	40	60 (median)	0.5	1,200
Isolates	40	80 (maximum)	0.20	640
Total				6,160

Dated: January 23, 1998.

Charles Gollmar,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–2163 Filed 1–28–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Child Support Enforcement; Statement of Organization, Functions, and Delegations of Authority

This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KF, The Office of Child Support Enforcement (OCSE) (62 FR 14152), as last amended, March 25, 1997. This reorganization will establish two new offices within the OCSE, Office of Central Office Operations and Office of Automation and Special Projects.

I. Amend Chapter KF as follows:

a. KF.00 Mission. Delete in its entirety and replace with the following:

KF.00 Mission. The Office of Child Support Enforcement (OCSE) advises the Secretary, through the Assistant Secretary for Children and Families, on matters relating to child support enforcement. The Office, in conjunction with Regional Offices, provides direction, guidance and oversight to State Child Support Enforcement (CSE) program offices and for activities authorized and directed by title IV–D of the Social Security Act and other pertinent legislation. The general purpose of the CSE legislation is to permit States to develop programs for establishing and enforcing support obligations by locating absent parents, establishing paternity when necessary, obtaining child support orders, and enforcing those orders. The specific responsibilities of this Office are to: Develop, recommend and issue policies, procedures and interpretations for State programs for locating non-custodial parents, establishing paternity, and obtaining child support; develop procedures for review and approval or disapproval of State plan material; conduct audits of child support programs; assist States in establishing adequate reporting procedures and maintaining records for the operation of the CSE programs and of amounts collected and disbursed under the CSE program and the costs incurred in collecting such amounts; provide technical assistance and training to the States to help them develop effective procedures and systems for establishing paternity, establishing support orders and collecting child support; certify applications from States for permission to utilize the courts of the United States to enforce court orders for support against absent parents; operate the Federal Parent Locator Service; certify to the Secretary of the Treasury amounts of child support obligations that require collection in appropriate instances; submit an annual report to Congress on all activities undertaken relative to the CSE program; approve advanced data processing planning documents; and review, assess and inspect planning, design and operation of state management information systems.

b. KF.10 Organization. Delete in its entirety and replace with the following:

KF.10 Organization. The Office of Child Support Enforcement is headed by a Director and consists of:

Office of the Director (KFA)
Office of Central Office Operations (KFB)
Division of Audit (KFB1)
Division of Program Operations (KFB2)
Division of Policy and Planning (KFB3)
Division of Consumer Services (KFB4)
Division of State and Local Assistance (KFB5)
Office of Automation and Special Projects (KFC)
Division of Child Support Information Systems (KFC1)

c. KF.20 Functions. Delete in its entirety and replace with the following:

KF.20 Functions. A. Office of the Director. The Director is also the Assistant Secretary for Children and Families and is directly responsible to the Secretary for carrying out OCSE's mission. The Deputy Director/Commissioner has day-to-day operational responsibility for Child Support Enforcement programs. The Deputy Director/Commissioner assists the Director in carrying out responsibilities of the Office and provides direction and leadership to the

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Office of Central Office Operations and Office of Automation and Special Projects.

The Office is responsible for developing regulations, guidance and standards for States to observe in locating absent parents; establishing paternity and support obligations and enforcing support obligations; maintaining relationships with Department officials, other federal departments, State and local officials, and private organizations and individuals interested in the CSE program; coordinating and planning child support enforcement activities to maximize program effectiveness; and approving all instructions, policies and publications issued by OCSE staff.

B. Office of Central Office Operations is headed by an Associate Commissioner who reports to the Deputy Director/Commissioner and provides leadership and direction to the divisions of Audit, Program Operations, Policy and Planning, Consumer Services, and State and Local Assistance.

Within the Office of Central Office Operations, an administrative staff assists the Associate Commissioner in managing the formulation and execution of program and salaries and expense budgets and in providing administrative, personnel and data processing support services to OCSE staff.

1. Division of Audit, as required by section 452(a)(4) of the Social Security Act (the Act), develops, plans, schedules and conducts periodic audits of State CSE programs in accordance with audit standards promulgated by the Comptroller General of the United States.

The Division will audit, at least once every three years (or more frequently in the case of a State which fails to meet the performance standards and the tests of the reliability of program data), the reliability of the State's financial and statistical data reporting systems used in calculating the paternity establishment percentage and the performance indicators used as the basis for the payments of performance based financial incentives to the States. These audits will examine the computer systems general and application controls and include in depth testing of the data produced by the system to ensure that it is valid, complete and reliable. The Division will also conduct financial audits to determine whether federal and other funds made available to carry out the State programs are being appropriately expended, and properly and fully accounted for. These audits will also examine collections and disbursements of support payments for proper processing and accounting treatment.

The Division will also provide technical assistance to States in developing their self-assessment capabilities and implementing the annual reporting requirements contained in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996.

In addition, the Division will also conduct other audits and examinations of program operations as may be necessary or requested by program officials for the purpose of improving the efficiency, effectiveness and economy of State and local child support activities; develops consolidated reports for the Director and Deputy Director/Commissioner, OCSE based on findings; provides specifications for the development of audit regulations and requirements for audits of State CSE programs; and coordinates and maintains effective liaison with the HHS Inspector General's Office and with the General Accounting Office.

2. Division of Program Operations is responsible for the day-to-day operation of the Federal Parent Locator Service (FPLS), the Federal Tax Refund Offset Program and Project 1099, the IRS Full Collection Project, and the SSN Enumeration Verification System. The Division is also responsible for the design, development, implementation and operation of the Federal Case Registry and the National Directory of New Hires within the expanded FPLS. It is responsible for monitoring contracts with vendors who provide automated systems support and quality assurance to these programs; working with vendors to define scope of work to be performed and by whom; negotiating interagency agreements; and providing contract oversight. The Division, in consultation with the Division of State and Local Assistance, also provides technical assistance to State and local child support enforcement agencies and other State agencies involved in these program areas. The Division provides guidance and expertise to States concerning other State, interstate and national locate networks and sources. In addition, the Division works with the U.S. Department of State on passport revocation.

3. Division of Policy and Planning proposes and implements national policy on the CSE program and provides policy guidance and interpretations to States in developing and operating their programs according to federal law. It develops legislative proposals and regulations to implement new legislation, court decisions or directives from higher authority. The Division develops procedures for review and approval of State plans by the OCSE regional offices. It develops and monitors research, interstate, and other demonstration and evaluation studies and publishes program statistics. The Division is also responsible for strategic planning and performance measurements and standards development. It prepares legislative cost estimates and is responsible for national child support budget formulation.

4. Division of Consumer Services provides direction and leadership for a variety of consumer affairs activities in support of the nationwide child support enforcement program. Provides advice on strategies and approaches to be used to improve public understanding of and access to OCSE programs and policies. Develops and publishes informational materials and disseminates through the National Reference Center. Promotes "best" child support practices to the public through monthly publication of the Child Support Report. Advises the Deputy Director/Commissioner through the Associate Commissioner of the impact of child support enforcement policy and program upon consumers and provides a focal point for intergovernmental and consumer relations and consultation. The Division is also responsible for national electronic communications activities including disseminating information and operation of the OCSE Homepage on the internet and insuring that the information is placed thereon in a timely and accurate manner.

5. Division of State and Local Assistance, in concert with regional offices, provides information and assistance on State Child Support Enforcement operations. It provides national direction and leadership for training and technical assistance activities to increase Child Support Enforcement (CSE) program effectiveness both at Federal and State levels; develops guides and resource materials and serves as a clearinghouse for specialized program techniques for use by ACF regional offices and States; and ensures transfer of best practices among State and local CSE enforcement agencies. The Division operates a national CSE training center; provides logistical support for both training events and meetings; and monitors contracts with organizations affiliated with child support enforcement programs in the areas of training and technical assistance. The Division provides outreach and liaison services to a variety of special interest populations concerning establishment of paternity and collection of child support. The Division, in consultation with the Division of Consumer Services, develops informational materials.

C. Office of Automation and Special Projects is headed by an Associate Commissioner who reports to the Deputy Director/Commissioner and provides leadership and direction to the Division of Child Support Information Systems. In addition, the Office of Automation and Special Projects has responsibility for implementation of the International Child Support Program, Native American Child Support Program, Advocacy Relations, Data Center Coordination, Grants Preparation and other projects and task forces appointed by the Deputy Director/Commissioner from time to time.

1. Division of Child Support Information Systems reviews, analyzes, and approves/disapproves State requests for Federal financial participation for automated systems development activities which support the Child Support program. It provides assistance to States in developing or modifying automation plans to conform to Federal requirements. It monitors approved State systems development activities; certifies state-wide automated systems; conducts periodic reviews to assure State compliance with regulatory requirements applicable to automated systems supported by Federal financial participation. It provides guidance to States on functional requirements for these automated information systems. It promotes interstate transfer of existing automated systems and provides assistance and guidance to improve ACF's programs through the use of automated systems.

II. Amend Notice 63 FR 81, dated January 2, 1998, Roman numeral III, Chapter KL, replace the term "Office of the Assistant Secretary for Policy and External Affairs" with "Office of the Deputy Assistant Secretary for Policy and External Affairs."

Date: January 25, 1998.

Olivia A. Golden,

Assistant Secretary for Children and Families.

[FR Doc. 98–2238 Filed 1–28–98; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98M–0037]

Medtronic, Inc.; Premarket Approval of the Interstim® Sacral Nerve Stimulation (SNS)™ System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Medtronic, Inc., Minneapolis, MN, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Interstim® Sacral Nerve Stimulation (SNS)™ System. After reviewing the recommendation of the Gastroenterology and Urology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 29, 1997, of the approval of the application.

DATES: Petitions for administrative review by March 2, 1998.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Laura J. Byrd, Center for Devices and Radiological Health (HFZ–472), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194.

SUPPLEMENTARY INFORMATION: On January 30, 1997, Medtronic, Inc., Minneapolis, MN 55432–3576, submitted to CDRH an application for premarket approval of the Interstim® Sacral Nerve Stimulation (SNS)™ System. The device is an implantable sacral nerve electrical stimulation system and is indicated for the treatment of urinary urge incontinence in patients who have failed or could not tolerate more conservative treatments.

On August 6, 1997, the Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On September 29, 1997, CDRH approved the application by a letter to the applicant from the Deputy Director of Clinical and Review Policy, Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 2, 1998, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: January 5, 1998.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 98–2114 Filed 1–28–98; 8:45 am]

BILLING CODE 4160–01–F

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Joint Meeting of the Microbiology Devices Panel, the Clinical Chemistry and Clinical Toxicology Devices Panel, the Hematology and Pathology Devices Panel, and the Immunology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Joint meeting of the Microbiology Devices Panel, the Clinical Chemistry and Clinical Toxicology Devices Panel, the Hematology and Pathology Devices Panel, and the Immunology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on February 11, 1998, 11 a.m. to 5 p.m.

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: Freddie M. Poole, Center for Devices and Radiological Health (HFZ–440). Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–2096, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12517. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will provide advice and recommendations to the agency on issues concerning appropriate data collection, analysis, and resolution of discrepant results, using sound scientific and statistical analysis to support indications for use of in vitro diagnostic devices. After hearing a series of presentations on the subject, the committee will discuss appropriate recommended analysis of data when the new device is compared to another device, a recognized reference method or "gold standard," other procedures not commonly used, and/or clinical criteria for diagnosis. The committee will be asked: (1) How the FDA should proceed in this area of discrepant resolution when new technology such as nucleic acid amplification is perceived to be more accurate than the reference or "gold standard" methods, (2) for guidance to implement their recommendations, and (3) for the appropriate approach to address these issues in the product labeling (package insert). These draft questions proposed for discussion may be subject to modifications or additions prior to the advisory committee meeting. FDA will consider these recommendations in the future development of review criteria for the collection and analysis of data to support the indications for use of in vitro diagnostic devices.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 28, 1998. Oral presentations from the public will be scheduled between approximately 1:45 p.m. and 2:45 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 28, 1998 and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

FDA regrets that it was unable to publish this notice 15 days prior to the February 11, 1998, Joint meeting of the Microbiology Devices Panel, the Clinical Chemistry and Clinical Toxicology Devices Panel, the Hematology and Pathology Devices Panel, and the Immunology Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Joint meeting of the Microbiology Devices Panel, the Clinical Chemistry and Clinical Toxicology Devices Panel, the Hematology and Pathology Devices Panel, and the Immunology Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 23, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–2264 Filed 1–26–98; 4:24 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0022]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Hearing Aid Devices: Professional and Patient Package Labeling and Conditions for Sale—21 CFR 801.420 and 801.421" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 15, 1997 (62 FR 48291), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0171. The approval expires on November 30, 1998.

Dated: January 21, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–2115 Filed 1–28–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–118]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement without change of a previously approved collection for which approval has expired; *Title of Information Collection:* Peer Review Organization Contracts; Solicitation Statements of Interest from In-State Organizations, General Notice; *Form No.:* HCFA–R–118; *Use:* This notice is a solicitation of sources sought for the procurement of medical review services. This information is required for potential contractors to demonstrate that they meet the statutory requirements as a Peer Review Organization; *Frequency:* On occasion; *Affected Public:* Business or other for-profit; *Total Annual Hours:* 1.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 20, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, Division of HCFA Enterprise Standards, Health Care Financing Administration.

[FR Doc. 98–2125 Filed 1–28–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Form # HCFA–1500; OMB #0938–0008]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services (DHHS), has submitted to the Office of Management and Budget (OMB) the following request for Emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 CFR, part 1320. The HCFA–1500 is used to determine proper payment for certain Medicare services rendered to Medicare beneficiaries. Without this information HCFA would not be able to obtain the information necessary to reimburse providers. The Agency cannot reasonably comply with the normal clearance procedures because public harm is likely to result due to the possibility of providers not rendering services to Medicare beneficiaries due to the possibility of non-payment.

HCFA is requesting OMB review and approval of this collection by February 28, 1998, with a 180-day approval period. During this 180-day period HCFA will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. Then HCFA will submit the requirements for OMB review and an extension of this emergency approval. In this submission HCFA will respond as appropriate to the public comments received in response to the October 24, 1996 **Federal Register** notice requesting public comment on the continued use of the HCFA–1500 and related data.

1. *Type of Information Collection Request:* Extension of a currently approved collection, without change; *Title of Information Collection:* Medicare/Medicaid Health Insurance Common Claim Form and Instructions, and Supporting Regulations 42 CFR 424.32 (Basic Requirements for all Claims) and 42 CFR 414.40 (Coding and Ancillary Policies); *Form No.:* HCFA–1500 (OMB #0938–0008); *Use:* This form and instructions are standardized for use in the Medicare/Medicaid programs to apply for reimbursement for covered services. HCFA does not require exclusive use of this form for Medicaid. 42 CFR 424.32 and 42 CFR 414.40 are regulations underlying the use of the form HCFA–1500 and the information captured on the form HCFA–1500, including the use of diagnostic and procedural coding systems. HCFA solicits comments on any and all aspects of the HCFA–1500, and the use of diagnostic and procedural coding systems: HCFA currently uses the most current version of the ICD–9–CM and CPT/HCPCS; *Frequency:* On occasion; *Affected Public:* Business or other for profit, not for profit institutions, State, local or tribal government; *Number of Respondents:* 976,239; *Total Annual Responses:* 644,802,413; *Total Annual Hours:* 46,797,008.

To obtain copies of the supporting statement and any related forms and instructions for the proposed paperwork collection referenced above, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

HCFA is requesting OMB review and approval of this collection by February 28, 1998, with a 180-day approval period.

Written comments and recommendations for the proposed information collection should be faxed (202) 395–6974 or sent directly to the OMB Desk Officer designated at the following address, by February 27, 1998. OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 22, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Health Care Financing Administration.

[FR Doc. 98–2239 Filed 1–28–98; 8:45 am]

BILLING CODE 4120–03–P

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Practitioner Data Bank; Change in User Fee and Elimination of Diskette Queries

The Health Resources and Services Administration (HRSA), Department of Health and Human Services (DHHS), is announcing a one dollar increase in the fee charged to entities authorized to request information from the National Practitioner Data Bank (Data Bank) for all queries. Concurrently, HRSA is announcing that the Data Bank will no longer accept queries submitted via diskette.

The current fee structure was announced in the **Federal Register** on January 21, 1997 (62 FR 3048). The user fee is $3.00 per name per query fee for queries submitted via telecommunications network and paid via an electronic funds transfer or credit card, with query response sent via the telecommunications network. A three dollar surcharge is applied when queries are submitted electronically on a diskette to pay for the extra handling and mailing costs for these queries. An additional $4.00 is charged for all queries which are paid for by check or money order rather than by electronic funds transfer or credit card to cover the cost of debt management.

The Data Bank is authorized by the Health Care Quality Improvement Act of 1986 (the Act), title IV of Public Law 99–660, as amended (42 U.S.C. 11101 *et seq.*). Section 427(b)(4) of the Act authorizes the establishment of fees for the costs of processing requests for disclosure and of providing such information.

Final regulations at 45 CFR part 60 set forth the criteria and procedures for information to be reported to and disclosed by the Data Bank. Section 60.3 of these regulations defines the terms used in this announcement.

In determining any changes in the amount of the user fee, the Department uses the criteria set forth in § 60.12 (b) of the regulations, as well as allowable costs pursuant to the DHHS Appropriations Act of 1998, Public Law 105–78, enacted November 13, 1997. This Act requires that the Department recover the full costs of operating the Data Bank through user fees. Paragraph (b) of the regulations states:

> The amount of each fee will be determined based on the following criteria:
> (1) Use of electronic data processing equipment to obtain information—the actual cost for the service, including computer search time, runs, printouts, and time of computer programmers and operators, or other employees,
> (2) Photocopying or other forms of reproduction, such as magnetic tapes—actual cost of the operator's time, plus the cost of the machine time and the materials used,
> (3) Postage—actual cost, and
> (4) Sending information by special methods requested by the applicant, such as express mail or electronic transfer—the actual cost of the special service.

Based on analysis of the comparative costs of the various methods for filing and paying for queries, the Department is raising all query fees by $1.00 per name. This price increase is necessitated by increased labor costs and escalating costs for the Data Bank's telecommunications network and data transmission services.

Despite the one dollar increase, electronic querying (telecommunications network) and electronic payment continue to be the most cost-effective methods for requesting information from the Data Bank. The new fee for electronic queries (telecommunications network) with electronic payment will be $4.00. The fee for querying the Data Bank by telecommunications network and non-electronic payment will be $8.00. This change is effective March 2, 1998.

When a query is for information on one or more physicians, dentists, or other health care practitioners, the appropriate total fee will be $4.00 (plus a $4.00 surcharge for submission and payment as described above) multiplied by the number of individuals about whom information is being requested. For examples, see the table below.

Additionally, due to the continuing decrease in the number of queries submitted via diskette and the wider availability of the telecommunications network, the Department is discontinuing its support for the diskette option. Fewer than 2% of queries are currently submitted via diskette. Therefore, the Department has determined that it is no longer cost-efficient for the Data Bank to accept for processing queries submitted via diskette. The Department recognizes that a few entities may have technical difficulties, the remedies for which may be beyond their control, that preclude successful transmission via the telecommunications network. The Data Bank will attempt to work out appropriate accommodations with these entities. Entities experiencing difficulties submitting queries via the telecommunications network should contact the Data Bank Helpline at 1–800–767–6732 for assistance.

The Department will continue to review the user fee periodically, and will revise it as necessary. Any changes in the fee and their effective date will be announced in the **Federal Register**.

Query method	Fee per name in query, by method of payment	Examples
Electronic query (Telecommunications network) with electronic payment.	$4.00 (if paid electronically via credit card or other electronic means and response received electronically).	10 names in query. 10x$4=$40.00.
Electronic query (Telecommunications network) with non-electronic payment.	$8.00 (if not paid via credit card or other electronic means) ($4.00 fee plus $4.00 surcharge).	10 names in query. 10x$8=$80.00.

Dated: January 23, 1998.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 98–2116 Filed 1–28–98; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting of the National Cancer Advisory Board and its Subcommittees

Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given of the meeting of the National Cancer Advisory Board (Board), National Cancer Institute (NCI), and its Subcommittees on February 2–4, 1998. The meetings of the Board and its Subcommittees will be open to the public as indicated below. Attendance by the public will be limited to space available.

A portion of the Board meeting will be closed to the public in accordance with the provisions set forth in sections 552b (c)(4) and 552b(c)(6), Title 5 U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications and for discussion of issues pertaining to programmatic areas and/or NCI personnel. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning the individuals associated with the applications or programs, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, Room 609, 6130 Executive Boulevard, MSC 7410, Bethesda, Maryland 20892–7410, (301) 496–5708 will provide summaries of the meetings and rosters of the Board members, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Linda Quick-Cameron, Committee Management Officer, at (301) 496–5708 in advance of the meeting.

Name of Committee: Subcommittee on Cancer Centers.

Contact Person: Dr. Brian Kimes, Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 502, 6130 Executive Blvd., Bethesda, MD 20892, (301) 496–8537.

Date of Meeting: February 2, 1998.

Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro, Bethesda, MD 20814.

Open: 7:00 p.m. to 8:00 p.m.

Agenda: To Discuss Policies and Procedures of Cancer Programs.

Name of Committee: Subcommittee on Planning and Budget.

Contact Person: Ms. Cherie Nichols, Executive Secretary, National Cancer Institute, NIH, 7550 Wisconsin Avenue, Room 312, MSC 9010, Bethesda, MD 20892–9010, (301) 496–5515.

Date of Meeting: February 3, 1998.

Place of Meeting: Natcher Building, Atlanta Room, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Agenda: To Discuss the NCI Budget and Various Planning Issues.

Name of Committee: Subcommittee on Clinical Investigations.

Contact Person: Dr. Philip Shein, Executive Secretary, National Cancer Institute, NIH, Building 31, Room 3A44, MSC 2440, 9000 Rockville Pike, (301) 496–4291.

Date of Meeting: February 3, 1998.

Place of Meeting: Natcher Building, Conference Room F, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Open: Approximately 5:15 p.m. to Adjournment.

Agenda: To Discuss the Design of Prospective Studies of the Impact of Managed Care on Cancer Clinical Investigations, Education and Training.

Name of Committee: National Cancer Advisory Board.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 600, 6130 Executive Blvd., MSC 7405, Bethesda, MD 20892–7405, (301) 496–5147.

Dates of Meeting: February 3–4, 1998.

Place of Meeting: Natcher Building, Conference Room E1 & E2, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Open: February 3—9:00 a.m. to 4:00 p.m.; February 4—9:00 a.m. to 11:45 a.m.

Agenda: Report of the Deputy Director, National Cancer Institute; Legislative Update; Report of the President's Cancer Panel; Remarks by the President, American Association for Cancer Research; Updates, Bishop/Calabresi: Closure; NCI Office of Special Populations Research; Status Report: Director, Center for Scientific Review; Mini Symposium; Evidence/Based Medicine & The Cocharan Collaboration; Implementation of Program Review Group Recommendations; Director's Consumer Liaison Group; Subcommittee Reports; Annual Delegations of Authority; Extramural Reports and Other NCAB Business.

Closed: February 3—4:15 p.m. to Approximately 5:15 p.m.

Agenda: Review and Discussion of Grant Applications and Extramural/Intramural, Programmatic and Personnel Policies.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers (93.393, Cancer Cause and Prevention Research: 93.392, Cancer Detection and Diagnosis Research; 93.394, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: January 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–2171 Filed 1–28–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Center for Research Resources Special Emphasis Panel (SEP) meeting:

Name of SEP: Biomedical Research Technology, Small Business Innovation Research (Telephone Conference Call).

Date: February 2, 1998.

Time: 12:00 p.m.

Place: National Institutes of Health, 6507 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965.

Contact Person: Dr. D.G. Patel, Scientific Review Administrator, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0822.

Purpose/Agenda: To evaluate and review grant applications. This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.371, Biomedical Research Technology, National Institutes of Health, HHS)

Dated: January 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH

[FR Doc. 98–2177 Filed 1–28–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute on Alcohol Abuse and Alcoholism Initial Review Group:

Purpose/Agenda: To review and evaluate grant applications.

Name of Committee: Clinical and Treatment Subcommittee.

Dates of Meeting: February 26–27, 1998.

Time: February 26, 8:30 a.m. to recess. February 27, 8:30 a.m. to adjournment.

Place of Meeting: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Elsie D. Taylor, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, 301–443–9787.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as

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patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; and 93.891, Alcohol Research Center Grants; National Institutes of Health)

Dated: January 22, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–2172 Filed 1–28–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meetings:

Name of SEP: Laboratory Support for AIDS Vaccine and Other Prevention Clinical Trials.
Date: February 20, 1998.
Time: 9:00 a.m. to Adjournment.
Place: Solar Building, Room 1A1, 6003 Executive Blvd., Bethesda, MD 20892, (301) 496–2550.
Contact Person: Dr. Paula Strickland, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C02, Bethesda, MD 20892, (301) 402–0643.
Purpose/Agenda: To evaluate contact proposals.

Name of SEP: Preclinical Evaluation of Therapies for Treatment of Cryptococcosis.
Date: February 27, 1998.
Time: 8:30 a.m. to Adjournment.
Place: Bethesda Ramada Hotel and Conference Room, Parlor Room, 8400 Wisconsin Avenue, Bethesda, MD 20814, (301) 654–1000.
Contact Person: Dr. Vassil Georgiev, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C04, Bethesda, MD 20892, (301) 496–8206.
Purpose/Agenda: To evaluate contract proposals.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: January 22, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–2173 Filed 1–28–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.
Date: February 3, 1998.
Time: 10 am to 12 pm.
Place: 6120 Executive Blvd., Rockville MD 20892, (telephone conference call).
Contact Person: George M. Barnas, Ph.D., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, Bethesda MD 20892–7180, 301–496–8683.
Purpose/Agenda: To review and evaluate a contract proposal.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code. The applications and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: January 22, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–2174 Filed 1–28–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the National Institutes of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, the Developing Kidney in Health and Disease, January 22, 1998, Holiday Inn Chevy Chase, Bethesda, Maryland which was published in the **Federal Register** on January 14 (62 FR 2254).

The meeting is postponed until a later date.

Dated: January 22, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–2175 Filed 1–28–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.
Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: February 12–13, 1998.
Time: 8:30 a.m.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Richard Marcus, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–3936.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: January 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–2176 Filed 1–28–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary—Water and Science; Central Utah Project Completion Act

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice of intent to negotiate a contract between the Strawberry Water Users Association (SWUA) and the Department of the Interior for the conversion of a portion of Strawberry Valley Project (SVP) water from irrigation to municipal and industrial (M&I) use.

SUMMARY: The SVP, authorized December 15, 1905, is one of the earliest Reclamation Projects. The SVP stores water from the Colorado River Basin in the Strawberry Reservoir. The stored water is then conveyed through the Syar Tunnel/Sixth Water Aqueduct into the Great Basin where it is delivered through natural stream courses to a Spanish Fork River diversion structure and into the Strawberry Service Canal. The SVP service area is located in south Utah County, Utah. The SWUA has operational responsibilities for the SVP and contractually uses Central Utah Project (CUP) facilities to store and convey SVP water.

Suburban development in the SVP service area has resulted in agricultural land being taken out of production, annexed into the cities, and developed into residential areas. Under the authority of the Water for Miscellaneous Purposes Act of 1920 (43 U.S.C. 521), the Secretary of Interior has authority to approve converting a portion of the SVP water from irrigation to M&I use. This conversion will: (1) Allow the SWUA to provide M&I water to the cities in south Utah County ; (2) ensure the orderly marketing of CUP and SVP M&I water; (3) provide an adequate water supply to the cities; (4) generate revenue to fund the rehabilitation of SVP facilities; and (5) eliminate unauthorized use of SVP water within the service area. Of the total SVP annual average water supply of about 71,000 acre-feet, 7,000 to 8,000 acre-feet of SVP water presently appurtenant to non-agricultural lands will be converted from irrigation to M&I use in the near future with the opportunity to gradually convert additional amounts as growth continues in the area.

The negotiation process will define the terms and conditions whereby the conversion of SVP water from irrigation to M&I use will be allowed.

DATES: Dates for public negotiation sessions will be announced in local newspapers.

FOR FURTHER INFORMATION: Additional information on matters related to this **Federal Register** notice can be obtained at the address and telephone number set forth below:

Mr. Reed Murray, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo UT 84606–6154, Telephone: (801) 379–1237, E-Mail address: rmurray@uc.usbr.gov

Dated: January 23, 1998.

Ronald Johnston,

CUP Program Director, Department of the Interior.

[FR Doc. 98–2160 Filed 1–28–98; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

RT–838490

Applicant: Veterinary Genetics Laboratory, Ann Bowling, Davis, CA.

The applicant requests a permit to import hair samples collected from captive born Przewalski's horse (*Equus przewalskii*) collected by Dr. W. Zimmermann, Curator of Mammals, Cologne Zoo, Germany for the purpose of scientific research.

PRT–832442

Applicant: Centers for Disease Control & Prevention Division of Parasitic Diseases, Atlanta, GA.

The applicant requests a permit to import biological samples from endangered Primates, obtained incidental to other research activities for wild and captive-held primates, for the purpose of scientific research.

PRT–838696

Applicant: Patrick F. Taylor, Foxworth, MS.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–838453

Applicant: William J. Coppola, Santa Fe, NM.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–838217

Applicant: Columbus Zoo, Powell, OH.

The applicant requests a permit to import samples from Mexico taken from captive-held and captive-born bonobo (*Pan paniscus*) for the purpose of scientific research.

PRT–835371

Applicant: Ken Wilson, Kerrville, TX.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–821764

Applicant: Erik D. Keyster, Tremont, IL.

The applicant requests a permit to import four Chinese giant salamanders (*Andrias davidianus*) from Klaus Haker, Hilden, Germany, for the purpose of enhancement of the species through captive propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director on or before March 2, 1998.

The public is invited to comment on the following applications for permits to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–838243

Applicant: Robert C. Senter, Sr., Plaistow, NH.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted prior to April 30, 1994 from the Viscount Melville polar bear

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population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of any of these complete applications, or requests for a public hearing on these applications should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received on or before March 2, 1998. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with the application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above address on or before March 2, 1998.

Dated: January 23, 1998.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–2111 Filed 1–28–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 USC 1531 *et seq.*).

Permit No. 777965

LSA, Riverside, California

The applicant requests an amendment to his permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys throughout the species range in California for the purpose of enhancing its survival.

Permit No. 780566

Applicant: Ruben Ramirez, Diamond Bar, California

The applicant requests an amendment to his permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) and the Laguna Mountain skipper (*Pyrgus ruralis lagunae*) in conjunction with presence or absence surveys throughout the species range in California for the purpose of enhancing its survival.

Permit No. 838742

Applicant: Michelle Dohran, Glendale, California

The applicant requests a permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys throughout the species range in California for the purpose of enhancing its survival.

DATES: Written comments on these permit applications must be received on or before March 2, 1998.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; FAX: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments, including names and addresses, received will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: January 23, 1998.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–2157 Filed 1–28–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Issuance of Permit for Marine Mammals

On July 18, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 136, Page 38575, that an application had been filed with the Fish and Wildlife Service by the Natural History Museum of Los Angeles County, Los Angeles, CA for renewal of a permit (FWS# 717015, NMFS# 375–1392) to import, export, re-import and re-export biological samples from all Cetacea, Pinnipedia, Sirenia, sea and marine otters for the purpose of scientific research.

Notice is hereby given that on January 6, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service in cooperation with the National Marine Fisheries Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 700, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: January 23, 1998.

Karen Anderson,

Acting Chief, Branch of Permits, Office of Management Authority, Fish and Wildlife Service.

Dated: January 9, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

[FR Doc. 98–2109 Filed 1–28–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On November 14,1997, a notice was published in the **Federal Register**, Vol. 62, No. 220, Page 61139, that an application had been filed with the Fish and Wildlife Service by Charles L. Chappell for a permit (PRT–836256) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Lancaster Sound population, Northwest Territories, Canada, prior to April 30, 1994 for personal use.

Notice is hereby given that on January 9,1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On November 14, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 220, Page 61139, that an application had been filed with the Fish and Wildlife Service by Robert E. Chappell for a permit (PRT–836255) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Lancaster Sound population, Northwest Territories, Canada, prior to April 30, 1994 for personal use.

Notice is hereby given that on January 9,1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On November 14, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 220, Page 61139, that an application had been filed with the Fish and Wildlife Service by Richard N. Biewer, St. Clair, MI for a permit (PRT–836264) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Lancaster Sound population, Northwest Territories, Canada, prior to April 30, 1994, for personal use.

Notice is hereby given that on January 9, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On November 20, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 224, Page 62068, that an application had been filed with the Fish and Wildlife Service by Taylor Mills for a permit (PRT 836587) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Gulf of Bothia population, Northwest Territories, Canada, prior to April 30, 1994 for personal use.

Notice is hereby given that on January 6, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 700, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: January 23, 1998.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–2110 Filed 1–28–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Extension of Existing Information Collection Submitted to OMB for Review Under the Paperwork Reduction Act

A request extending the information collection described below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Act of 1995 (44 U.S.C. 3506(c)(2)). Copies of the proposed collection may be obtained by contacting the Bureau's clearance officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Public comments on the proposal should be made directly to the Desk office for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: North American Reporting Center for Amphibian Malformations.

OMB Approval No: 1028–0056.

Summary: The collection of information referred herein applies to a World-Wide Web site that permits individuals who observed malformed amphibians or who inspect substantial numbers of normal or malformed amphibians to report those observations and related information. The Web-site is termed the North American Reporting Center for Amphibian Malformations. Information will be used by scientists and federal, state, and local agencies to identify areas where malformed amphibians occur and the rates of occurrence.

Estimated Completion Time: 20 minutes.

Estimated Annual Number of Respondents: 900.

Frequency: Once.

Estimated Annual Burden Hours: 300 hours.

Affected Public: Primarily U.S. and Canadian residents.

FOR FURTHER INFORMATION CONTACT: To obtain copies of the survey, contact the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313, or go to the Website (http://www.npsc.nbs.gov./narcam).

Dated: January 12, 1998.

Dennis B. Fenn,

Chief Biologist.

[FR Doc. 98–2165 Filed 1–28–98; 8:45 am]

BILLING CODE 4310–31–M

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DEPARTMENT OF THE INTERIOR

Geological Survey

Advisory Committee on Water Information; Meeting

BUREAU: Geological Survey (USGS), Interior.

ACTION: Notice of a meeting of the Advisory Committee on Water Information (ACWI).

SUMMARY: This is to inform the public about the February 1998 meeting of the ACWI. The meeting is open to the public.

DATE: The meeting will begin on February 17, 1998, at 9 a.m. EST, and will adjourn on February 18 at 12:45 p.m.

LOCATION: Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, VA.

FOR FURTHER INFORMATION CONTACT: Nancy Lopez, Executive Secretary of the ACWI, at telephone number: (703) 648–5014 or facsimile number: (703) 648–5644. Her address is 417 National Center, U.S. Geological Survey, Reston, VA 20192. Anyone needing special arrangements of services to participate effectively in the meeting is requested to inform Beth Cox at telephone number (703) 648–6832. For special arrangements please let Ms. Cox know by noon EST, Friday 13, so that your needs can be accommodated.

SUPPLEMENTARY INFORMATION: The ACWI is the major national mechanism for implementing Office of Management and Budget Memorandum No. 92–01, Coordination of Water Resources Information. With over 30 member organizations, the ACWI represents a wide range of water-resources interests and functions. The members include all levels of government and the private sector. The ACWI advises the Federal Government on activities and plans related to Federal water-information programs and the effectiveness of those programs in meeting the Nation's water information needs. Also, member organizations of the ACWI collaborate with others to sponsor workshops, symposia, and other forums to foster better communication among Federal and non-Federal sectors about water-information activities and needs.

At this meeting, the ACWI will discuss a variety of topics including water-resources aspects of the President's Fiscal Year 1999 Budget Request, the Clean Water Action Plan, water-resources decision support systems, geospatial data priorities for water-resources management, streamgaging concerns, the need for a subordinate group to address water quantity information issues, and water-quality monitoring and assessment. For more detailed information about the program, please contact Ms. Lopez as shown above.

The meeting will include an opportunity for public comments. To make public comments, please provide a written request by noon EST, February 12, 1998, to Ms. Lopez. The request should include the name of the person that will be speaking and the general topic. Verbal comments to the ACWI should not exceed 5 minutes. At the meeting please provide 40 written copies of the comments to the registration desk for distribution and archiving as required by law. Anyone wishing to provide written information to the ACWI may do so at anytime by providing 40 copies to Ms. Lopez.

Dated: January 23, 1998.

Lewis Wade,

Acting Assistant Chief Hydrologist, Office of Information.

[FR Doc. 98–2164 Filed 1–28–98; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

National Tribal Consultation; Meeting

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Tribal Consultation Meeting—Tribal Trust Account Holders and Allottees.

SUMMARY: Notice is hereby given that the Office of the Secretary will conduct four (4) consultation meetings with any Indian tribe, band, nation, allottee group, individual allottee, other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the trust programs and services provided by the United States to Indians because of their status as Indians.

The purpose of these consultation meetings is to obtain oral comments regarding the Recommendations of the Secretary of the Interior for Settlement of Disputed Tribal Trust Fund Accounts, which were delivered to the U.S. Congress on November 13, 1997. The Recommendations of the Department were based on comments received in a prior consultation process in January 1997, on legislative options for settling tribal trust fund claims. The Recommendations developed by the Department of the Interior consist of a report and legislative proposals aimed at settling more than two decades of disputed balances in Tribal Trust Fund accounts.

The Administration is pursuing a three-pronged strategy to address issues related to the Department of the Interior's administration and management of Indian trust funds. First, it is proposing this legislative approach that utilizes informal dispute resolution mechanisms to address claims that tribes may have with regard to the Department's past management of tribal trust fund accounts. Second, in conjunction with the special Trustee for American Indians, the Department has developed recommendations for improving the underlying trust management and accounting systems. Third, the Department has proposed legislation to end the increasing fractionation of ownership of Indian allotted lands.

The consultation meetings will be held to receive tribal comments on the first part of this strategy—the Secretary's Recommendations for settlement of disputed tribal trust funds accounts. Tribes may attend any of the consultation sessions.

DATES (1998): Four consultation sessions will be conducted:

February 9, 1998, Portland, OR, Airport Sheraton Hotel, 8235 NE Airport Way, Portland OR, 503–281–2500.

February 10, 1998, Albuquerque, NM, Sheraton Uptown Albuquerque, 2600 Louisiana Blvd., NE., Albuquerque, NM, 505–881–0000.

February 11, 1998, Oklahoma City, OK, Radisson Inn Hotel, West Interstate 40 & Meridian Ave., Oklahoma City, OK, 405–947–7681.

February 12, 1998, Minneapolis, MN, Minneapolis/St Paul Hilton, 3800 East 80th Street, Minneapolis, MN, 612–854–2100 or 800–637–7453.

All sessions will begin at 9 AM and continue until completed, except the Albuquerque, NM meeting which will begin at 8 AM. Public attendance may be limited to the space available.

FOR FURTHER INFORMATION CONTACT: Deputy Commissioner, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW., Washington, DC 20240, 202–208–5116, FAX 202–208–6334.

SUPPLEMENTARY INFORMATION: The purpose of these consultation meetings is to provide Indian Tribal trust account holders and Allottees an opportunity to provide comments regarding the "Recommendations of the Secretary of the Interior for Settlement of Disputed Tribal Trust Fund Accounts." The objectives of the Recommendations are:

- Acknowledge and respect tribal sovereignty.
- Achieve a settlement that is fair to both the Indian community and the general public.
- Achieve the most resource-efficient settlement of claims (in terms of conserving federal government and tribal time, money, and staff).
- Encourage settlement by providing incentives to settle and disincentives to litigate.
- Use the most informal settlement processes available rather than litigation to encourage tribal participation.
- Obtain funding for the settlement without reducing appropriations for the BIA and Special Trustee budgets and tribal programs.
- Achieve agreement on account balances through September 30, 1992, or the date of settlement, as an agreed-upon starting point for the future.

The Department's Recommendations build on the legislative options for settlement that the Department submitted to Congress on December 11, 1996, and that we sent to you at the same time. After submitting the options to Congress, the Department consulted with and provided an opportunity for written comments from tribal representatives throughout the country about the approaches we were considering. A copy of the Report on the Recommendations of the Department was distributed to all Tribal Leaders on November 13, 1997.

All oral comments presented by tribes and individuals at these consultation meetings will be recorded and transcribed.

Summaries of the meetings will be available for public inspection and copying ten days following the meeting.

Dated: January 23, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–2094 Filed 1–28–98; 8:45 am]

BILLING CODE 4310–02–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Order of Temporary Closure to Non-Authorized Use of Certain Public Lands in Ward Valley, San Bernardino County, CA

AGENCY: Bureau of Land Management, Needles Field Office.

ACTION: Order of temporary closure to non-authorized uses of public lands.

SUMMARY: This order closes approximately 2,000 acres within Ward Valley, California to all uses, including but not limited to camping, motorized vehicle use, recreation, and casual use, unless those uses are otherwise specifically authorized by the Bureau of Land Management. This closure does not affect uses authorized by any right-of-way, permit, or other valid authorization approved by the BLM authorized officer for the public lands described in this order, except that the existing protest encampment maintained by the Fort Mojave Tribe under BLM permit CA–37890 shall be relocated to site E, as described in permit CA–37890, consistent with the terms provided in permit CA–37890. No activities authorized by the encampment permit shall be undertaken outside the cleared area of site E on any lands closed pursuant to this notice. The closure covers the following public lands:

T. 9. N., R. 19 E., SBM
Sec 22, S½;
Sec 23, W½ of SW¼;
Sec 26, W½ of W½;
Sec 27, all;
Sec 34, all;
Sec 35, W½W½.

EFFECTIVE DATE: The closure will become effective February 13, 1998 and will remain effective for a period of six months from the effective date, unless terminated earlier through an order reopening the lands upon completion of the drilling activities referenced below.

SUPPLEMENTARY INFORMATION: The purpose of this temporary closure is to ensure that drilling and related activities to be undertaken by the Department of the Interior and the California Department of Health Services pursuant to a decision record issued January 16, 1998, at the Ward Valley site are carried out under conditions which will ensure public safety, promote site security, and provide for integrity of the sampling activities. Authority for this closure may be found in Title 43 Code of Federal Regulations 8364.1. The closure effected by this order is the minimum necessary for effective law enforcement because it is the minimum which will allow for control of access from Interstate 40.

This closure was analyzed in environmental assessment CA–069–EA7–42. The closure is within the scope of the Finding of No Significant Impacts prepared on EA CA–069–EA7–42. The impacts identified were temporary and minor.

This order constitutes the final decision of the Department.

FOR FURTHER INFORMATION CONTACT: Molly Brady, Field Manager, U.S. D.I., Bureau of Land Management, Needles Field Office, 101 West Spikes Road, Needles, California 92363, tel: (760) 326–7000.

Approved: January 26, 1998.

Bob Armstrong,

Assistant Secretary, Lands and Minerals Management.

[FR Doc. 98–2312 Filed 1–27–98; 9:02 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–985–0777–66]

Intent to Prepare an Environmental Impact Statement for Coalbed Methane Development Projects South of Gillette, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement for Coalbed Methane Development Projects South of Gillette, Wyoming, in Campbell County.

SUMMARY: The Bureau of Land Management (BLM) under the National Environmental Policy Act (NEPA) must analyze the impacts of actions we permit on Federal lands and minerals. As part of this analysis, the cumulative affects of the proposed action and other activities occurring in the area must be considered. Three Environmental Assessments (EA) (Pistol Point, Marquiss, and Lighthouse) and one Environmental Impact Statement (EIS) (Gillette South) to address proposed coalbed methane (CBM) development have been completed for the area south of Gillette. When we completed the EIS in October of 1997, the apparent success of the coalbed methane play was drawing additional operators into the basin.

Feedback we received from industry indicated we could see an additional 2,600 to 3,000 CBM wells south of Gillette by the year 2007 if development success continues as it has been. With this information, BLM decided another EIS would be necessary to address this additional interest.

DATES: Comments to be considered in the draft EIS should be submitted by March 2, 1998. The draft EIS should be available for public review by October of 1998.

ADDRESSES: Questions or concerns should be addressed to Richard Zander in the BLM Buffalo Resource Area Office, 1425 Fort Street, Buffalo, WY 82834.

FOR FURTHER INFORMATION CONTACT: Richard Zander, phone 307–684–1100.

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SUPPLEMENTARY INFORMATION: When we began preparation of the Gillette South CBM EIS in June of 1996, we had developed a proposed action to analyze a total of 640 CBM wells. This proposed action was based on the best available information we had from industry at that time. It took into account potential development based on depth to coal and what industry knew at that time about the potential to produce methane from the coal. The proposed action also included the prior Marquiss and Lighthouse CBM projects to address developmental changes which had occurred since these two projects had been analyzed by EAs. When we completed the EIS in October of 1997, the apparent success of the coalbed methane play was drawing additional operators into the basin. The following are some of the major issues raised during the preparation of the Gillette South CBM EIS. These issues are provided to help you understand what has occurred in past environmental documents and perhaps stimulate addition thoughts, questions, and issues.

- People were concerned with the loss of hydraulic head related to groundwater associated with the coal seam. Concerns related to lowering of water levels and increased pumping costs because water would have to be pumped from greater depths.
- Concerns were voiced on how the differentiation would be made between coal mine-caused and coalbed methane-caused impacts to the lowering of the water in the coal seam. How would the responsible entity be identified?
- Questions were posed on what effects the coalbed methane development would have on air quality. Of concern were possible hazardous emissions and pollutants released as a result of compressor emissions.
- Disposing water on the surface raised concerns about water quality due to possible increased erosion and possible weed infestations because of water flow fluctuations.
- Questions were raised about the use of produced water for dust control, stock watering, and the creation of wetlands. What were the ramifications of using this water in this manner?
- Concern was voiced that the mines had been venting methane for years and now we had companies working to recover the methane and pay royalty on production. Were we going to make the mines pay back royalty and future royalty for the methane they vent?
- There were concerns that we had not done further groundwater modeling to predict possible drawdowns and impacts.
- Concern was voiced about the use of the 1988 CHIA (Cumulative Potential Hydrologic Impacts of Surface Coal Mining in the Eastern Powder River Structural Basin, Northeastern Wyoming) and how this affected cumulative impacts.
- Concerns were voiced that previous documents had underestimated the magnitude of impacts when in actuality we had underestimated rate of impact occurrence.
- Concerns were raised that we had not addressed impacts to threatened and endangered species, raptors, and fisheries.
- Concern was expressed about the effects of surface disposal of water and operating a ranch with ongoing methane development operations.

BLM held a meeting with companies on November 19, 1997, to discuss the implications of the recently signed Record of Decision for the Gillette South EIS. This meeting covered the mitigation steps that would be required of those operators developing Federal minerals. Specifically covered were monitoring requirements, use of the Water Well Agreement, and the formation of a groundwater monitoring group similar to the coal industry's Gillette Area Groundwater Monitoring Organization (GAGMO) Group. Another topic of discussion was the question of where the CBM operators thought development was headed. No specifics were voiced at this meeting, but the general consensus was that development over and above that analyzed in the Gillette South EIS was a certainty. BLM asked the operators to provide us feedback on their development plans so we could plan for future environmental analysis needs.

Feedback we received from industry indicated we could see an additional 2,600 to 3,000 CBM wells south of Gillette by the year 2007 if development success continues as it has been. With this information, BLM decided another EIS would be necessary to address this additional interest.

A public scoping meeting will be held on February 5, 1998, at 7 p.m., at the Holiday Inn in Gillette, Wyoming, to discuss this increased industry interest and solicit comments, questions, issues, or concerns you may have. We will use the feedback in the preparation of the EIS.

Dated: January 22, 1998.

Alan R. Pierson,

State Director.

[FR Doc. 98–2156 Filed 1–28–98; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Intent To Prepare a Joint Environmental Impact Report/ Environmental Impact Statement on a Proposed 30-year Expansion and Waste Management Plan for the Molycorp Mountain Pass Mine, Mountain Pass, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a Joint Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) on a proposed 30-year expansion and waste management plan for the Molycorp Mountain Pass Mine, Mountain Pass, California and notice of scoping meeting.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM), Needles Field Office, and the County of San Bernardino, in accordance with the California Environmental Quality Act, will be directing the preparation of a joint EIR/EIS to be prepared by a third-party contractor on the impacts of a proposed 30-year mine expansion and waste management plan for the Molycorp Mountain Pass Mine, located in Mountain Pass, San Bernardino County, California.

DATES: Written comments will be accepted until February 28, 1998. A public scoping meeting will be held beginning at 7 p.m. on February 3, 1998, at the Baker Community Center, 73730 Baker Boulevard, Unit C, Baker, California.

ADDRESSES: Comments should be sent to the Needles Field Office, Bureau of Land Management, 101 West Spike's Road, Needles, California 92363, ATTN: Molycorp Mountain Pass Mine Project.

FOR FURTHER INFORMATION, CONTACT: George R. Meckfessel, Planning and Environmental Coordinator, at (760) 326–7000.

SUPPLEMENTARY INFORMATION: In the early 1990s, Molycorp Inc. (Molycorp) developed a plan to expand its mining operations for an additional 30 years. Because the expansion area would exceed 25 percent of the vested area, Molycorp was required to obtain a Mining Conditional Use Permit from the County of San Bernardino. At the time that Molycorp proposed to expand its mining operations, portions of the main mine site were located on public land managed by BLM. Therefore, the original environmental review for the project was planned to be an EIR/EIS.

However, in 1992, Molycorp and BLM entered into a land transfer, which exchanged 879 acres of public land for 1,920 acres of private land. Due to the land transfer the environmental review was conducted as an EIR, with the County as the Lead Agency.

A Draft EIR was circulated for public review in December 1996. The comment period closed on February 12, 1997. Numerous comments were received from public agencies and private individuals, including the following:

- BLM
- U.S. Geological Survey
- National Park Service
- U.S. Fish and Wildlife Service
- California Regional Water Quality Control Board
- California Department of Transportation
- Mojave Desert Air Quality Management District
- County of San Bernardino Fire Department Hazardous Materials Division
- San Bernardino County Museum
- County of San Bernardino Division of Environmental Health Services
- The Desert Tortoise Council
- The Wilderness Society
- The Sierra Club, San Gorgonio Chapter
- Desert Survivors
- National Outdoor Coalition
- People Against Radioactive Dumps
- Best, Best & Krieger representing Primadonna Corporation
- Marjorie Mikels
- Dr. Howard Wilshire

The predominant issues identified by commentors involved waste discharges, off-site groundwater contamination, potential air contamination, and full disclosure of mine components and processes. Upon review of the numerous comments received, the County determined that additional technical analysis would be required to adequately address the issues raised by those commenting on the Draft EIR. The County concluded that the Draft EIR would need to be recirculated to provide for proper public review of the additional analysis.

During the summers of 1995 and 1996, releases were experienced in the 13-mile-long pipeline that carries waste discharges from the main mine processing area to the existing New Ivanpah Evaporation Pond. The New Ivanpah Evaporation Pond is located approximately 9 miles to the northeast of the main mine processing area. This pipeline crosses lands managed by the BLM and the NPS. The releases and subsequent issues related to integrity of the Ivanpah evaporation ponds heightened concerns about waste management and disposal. Molycorp indicated a desire to replace the discharge pipeline. The BLM felt that the environmental review process for considering a replacement pipeline would best be accomplished in concert with the County's consideration of the proposed expansion. Discussions with the County subsequently led to the decision to conduct a joint environmental review and to recirculate the 1996 Draft EIR as a Draft EIR/EIS that would add to the existing project the analysis of potential environmental impacts associated with replacing the waste discharge pipeline, and would also address issues of impacts to public lands from existing and potential contaminant migration from the main mine site and the existing New Ivanpah Evaporation Pond.

Comments received on the Draft EIR/EIS will be addressed in the Final EIR/EIS. Commentors on the December 1996 Draft EIR will be included in the distribution of the Draft EIR/EIS and are invited to provide comments on the Draft EIR/EIS.

Molycorp is proposing to continue its current lanthanide (rare-earth elements) mining operation at its Mountain Pass Mine facility for the next 30 years. This continued effort would result in an expansion of the open pit, overburden storage areas, and mill tailings storage areas. Plant production rates would not increase as a result of the project. Expansion of the mine would consist of enlarging the surface area and depth of the open pit, expanding existing overburden stockpiles, expanding the existing North Tailings Pond or constructing a new tailings pond, and replacing the existing waste discharge pipeline to the existing New Ivanpah Evaporation Pond, either through pipeline replacement, or the construction of an on-site effluent treatment facility, or a combination of both.

As described in the December 1996 Draft EIR, the mine expansion would occur over 30 years in three phases of 10 years each, with a final monitoring phase of 5 years. Phase I would include the following activities:

- Revisions to the existing means of waste disposal to the existing New Ivanpah Evaporation Pond, either through replacement of the existing pipeline, on-site effluent treatment, or a combination of both and potential modifications to or closure of the evaporation pond
- Continued mining and expansion of the pit westward by approximately 10 acres
- Realignment of power distribution lines
- Expansion of the west Overburden Stockpile by approximately 80 acres and realignment of the AT&T access road
- Expansion of the North Tailings Pond after retrofitting with a liner or design and construction of a new tailings pond and closure of the North Tailings Pond
- Relocation and expansion of the mine equipment yard
- Stockpiling of surface material from pit and overburden expansion for future reclamation of the tailings pond and overburden stockpiles.

Phase 2 would include the following:

- Expansion of the open pit by 35 acres
- Expansion of Overburden Stockpile by 125 acres
- Increase tailings pond by 60 acres
- Relocation of Shadow Valley water supply line and explosives magazine
- Initiation of reclamation and revegetation of tailings pond and Overburden Stockpile

Phase 3 would include the following:

- Expansion of the open pit by 35 acres
- Expansion of the Overburden Stockpile by 125 acres
- Increase tailings pond by 50 acres
- Continued reclamation and revegetation of tailings pond and Overburden Stockpile

Phase 4 would include the following:

- Termination of mining and contouring of pit slopes
- Closure of tailings pond
- Closure of hazardous waste holding area
- Final reclamation and revegetation of Overburden Stockpile and previously vegetated disturbed surfaces.

The Draft EIR/EIS will present final proposed acreages of mine facilities subject to final mine design.

The components of the project remain the same as those described in the December 1996 Draft EIR, with the exception of Molycorp facilities occurring on federally administered lands. Such facilities include the replacement of the waste discharge pipeline to the existing New Ivanpah Evaporation Pond and the replacement of the existing fresh water pipeline. Alternatives to the expansion project, as identified in the December 1996 EIR, include a No Project Alternative, a Reduced Project Alternative, and an Underground Mining Alternative. Other alternatives addressing the waste management plans will be included. These alternatives will include three waste discharge pipeline alternative alignments, two on-site treatment alternatives, including (1) full treatment at the main mine site with no discharge to the existing New Ivanpah

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Evaporation Pond and closure of the evaporation pond and (2) partial treatment at the main mine site with continued discharge to the existing New Ivanpah Evaporation Pond, and a No Project alternative, whereby no action would be taken to replace the pipeline or provide on-site treatment.

During preparation of the December 1996 Draft EIR, significant impacts to the environment from the project and the project alternatives were identified in the following issue areas: Geologic Hazards, Flood Hazards, Biological Resources, Cultural Resources, Air Quality, Scenic Resources, Soil Resources, and Hazardous/Radioactive Materials. Cumulative impacts were also identified in these issue areas. The Draft EIR/EIS will review the impact assessment provided in the December 1996 Draft EIR in light of comments received from agencies and the public during the December 1996 Draft EIR circulation period and will revise the impact assessment in accordance with the components and activities of the redesigned project.

The Draft EIR/EIS will also evaluate potential impacts of the pipeline replacement project and alternatives as well as the potential impacts from continuing contaminant migration from the main mine site from continuing operations. Technical studies are planned or underway in the following areas:

- Survey of the existing waste discharge pipeline for contamination from potential past releases
- Evaluation of the biological resources along the corridors of the pipeline alternatives
- Evaluation of cultural and paleontological resources in the area of the pipeline replacement alternatives
- Hydrology studies of the main mine site and nearby washes
- Hydrology studies of the existing New Ivanpah Evaporation Pond
- Waste discharge treatment alternatives
- Pipeline alignment alternatives
- Human health and ecological risk assessments
- Pit lake water quality modeling

The Draft EIR/EIS will use the data provided in the technical reports to analyze the potential impacts to the environment from the proposed project and alternatives.

A public scoping meeting will be held at the Baker Community Center, 73730 Baker Boulevard, Unit C, Baker, California, on February 3, 1998 at 7 p.m. Upon close of the comment period for the joint Notice of Preparation (NOP)/ Notice of Intent (NOI), the County and BLM will direct the preparation of the Draft EIR/EIS. It is anticipated that the Draft document will be available for circulation within 6 to 8 months. The Draft EIR/EIS will be circulated for 60 days, during which time comments will be solicited from interested parties and organizations and a public hearing will be held. The Final EIR/EIS is expected to be completed within 3 to 4 months following close of the comment period.

The BLM scoping process for this EIR/EIS will include the following: (1) Identification of issues to be addressed, (2) identification of viable alternatives, and (3) notification of interest groups, individuals, and agencies so that additional information concerning these issues can be obtained.

The scoping process will consist of a news release announcing the start of the EIR/EIS process and letters of invitation to participate in the scoping process.

Molly S. Brady,

Manager, Needles Field Office.

[FR Doc. 98–2311 Filed 1–28–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–070–7110–8389; NMNM97589]

Notice of Realty Action—Recreation and Public Purpose (R&PP) Act Classification, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of R&PP lease/patent of public land in San Juan County, New Mexico.

SUMMARY: The following described public land is determined suitable for classification for leasing and patenting to the Lee/Hammond Water Treatment Plant (Lee/Hammond), Bloomfield, New Mexico under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*). Lee/Hammond proposes to use the land for water treatment facilities.

New Mexico Principal Meridian

T. 29 N., R. 11 W.,
Sec. 28, SE¼SW¼
Containing 40 acres, more or less.

DATES: On or before March 16, 1998, interested parties may submit comments regarding the proposed leasing and conveyance, or classification of the lands to the Bureau of Land Management at the following address. Any adverse comments will be reviewed by the Bureau of Land Management, Farmington District Manager, 1235 LaPlata Highway, Suite A, Farmington, NM 87401, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action becomes the final determination of the Department of the Interior and effective 60 days from publication date.

FOR FURTHER INFORMATION CONTACT: Information related to this action, including the environmental assessment, is available for review at the Bureau of Land Management, Farmington District Office, 1235 LaPlata Highway, Suite A, Farmington, NM 87401.

SUPPLEMENTARY INFORMATION: Publication of this notice segregates the public land described above from all other forms of appropriation under the public land laws, including the general mining laws, except for leasing and conveyance under the R&PP Act and leasing under the mineral leasing laws for a period of two (2) years from date of this publication in the **Federal Register**. The segregative affect will terminate upon issuance of the lease and patent to Lee/Hammond, or two (2) years from the date of this publication, whichever occurs first.

The lease, when issued, will be subject to the following terms:

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.
2. Provisions of the Resource Conservation and Recovery Act of 1976 (RCRA) as amended, 42 U.S.C. 6901–6987 and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended, 42 U.S.C. 9601 and all applicable regulations.
3. Provisions of Title VI of the Civil Rights Act of 1964.
4. Provisions that the lease be operated in compliance with the approved Development Plan.

The patent, when issued, will be subject to the following terms:

1. Reservation to the United States of a right-of-way for ditches and canals in accordance with 43 U.S.C. 945.
2. Reservation to the United States of all minerals.
3. All valid existing rights, e.g., rights-of-way and leases of record.
4. Provisions that if the patentee or its successor attempts to transfer title to or control over the land to another or the land is devoted to a use other than that for which the land was conveyed, without the consent of the Secretary of the Interior or his delegate, or prohibits or restricts, directly or indirectly, or permits it agents, employees, contractors, or subcontractors, including without limitation, lessees, sublessees and permittees), to prohibit or restrict, directly or indirectly, the use of any part of the patented lands or any of the facilities whereon by any person because of such person's race, creed, color, or national origin, title shall revert to the United States.

The lands are not needed for Federal purposes. Leasing and later patenting is consistent with current Bureau of Land Management policies and land use planning. The estimated intended time of lease issuance is April 15, 1998, with the patent being issued upon substantial development taking place. The proposal serves the public interest since it would provide modern water treatment facilities that would meet the water needs of the public.

Dated: January 22, 1998.

Joel Farrell,

Assistant District Manager for Resources.

[FR Doc. 98–2158 Filed 1–28–98; 8:45 am]

BILLING CODE 4120–FB–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Marine Transportation of Federal Outer Continental Shelf (OCS) Crude Oil Produced Offshore California

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Extending comment period for proposed Notice to Lessees and Operators (NTL).

SUMMARY: This document extends to April 6, 1998, the deadline for the submission of comments on the proposed NTL on Marine Transportation of Federal OCS Crude Oil Produced Offshore California published December 5, 1997 (62 FR 64399).

DATES: We will consider all comments received by April 6, 1998.

ADDRESSES: Mail or hand-carry written comments to MMS Pacific Region; 770 Paseo Camarillo; Camarillo, CA 93010; Attention: E. Aronson. E-mail comments to transportation.ntl@mms.gov.

FOR FURTHER INFORMATION CONTACT: Ellen Aronson, Office of the Regional Director, at (805) 389–7502.

SUPPLEMENTARY INFORMATION: The MMS received several requests for extending the comment period. To provide the necessary time for commenters to prepare detailed and comprehensive comments, MMS is extending the comment period 62 days from the original February 3, 1998, deadline.

Dated: January 23, 1998.

J. Lisle Reed,

Regional Director, Pacific OCS Region, Minerals Management Service.

[FR Doc. 98–2161 Filed 1–28–98; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Final Environmental Impact Report/ Final Environmental Impact Statement (FEIR/FEIS) for the Hamilton City Pumping Plant Fish Screen Improvement Project, Central Valley, California

AGENCIES: Bureau of Reclamation, Interior, and the U.S. Army Corps of Engineers, Defense.

ACTION: Notice of availability of final environmental impact report/final environmental impact statement (FEIR/FEIS) FES 98 02.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 (as amended), the Bureau of Reclamation (Reclamation), the U.S. Army Corps of Engineers (Corps), the Glenn-Colusa Irrigation District (GCID), and the California Department of Fish and Game (DFG) have prepared a FEIR/FEIS for the Hamilton City Pumping Plant Fish Improvement Screen Project (Project). The Project responds to concerns about impacts to salmon and other fish species from water diversion operations at the Hamilton City Pumping Plant.

The FEIR/FEIS analyzes the no-action alternative as well as three action alternatives. The action alternatives would minimize loss of all fish species in the vicinity of the pumping plant diversion while maximizing GCID's capability to divert the full quantity of water to which it is entitled to divert to meet its water supply delivery obligations. The agency-preferred alternative would include an extension of the existing fish screen, internal fish bypasses, improvements to the intake and bypass channel, and a gradient facility.

DATES: No decision will be made on the proposed action until 30 days after release of the FEIR/FEIS. After the 30-day waiting period, Reclamation and the Corps will complete a Record of Decision which states the action that will be implemented and discusses all factors leading to the decision.

ADDRESSES: Requests for copies of the FEIR/FEIS should be submitted to the Fish Screen Improvement Project, Attention: Rick Lind, 455 Capitol Mall, Suite 600, Sacramento, California 95814. His telephone number is (916) 325–4050.

FOR FURTHER INFORMATION CONTACT: Mr. Kurt Flynn, Reclamation, (916) 275–1554; Mr. Matt Davis, Corps, (916) 557–6708; Ms. Sandra Dunn, GCID, (916) 446–7979; or Nick Villa, DFG, (916) 358–2943.

SUPPLEMENTARY INFORMATION:

Locations where FEIR/FEIS is Available for public Inspection and Review

- Bureau of Reclamation, Room E–1704, 2800 Cottage Way, Sacramento, CA 95825–1898; (916) 978–5104.
- Bureau of Reclamation, Northern California Area Office, Attn: NC–320, 16349 Shasta Dam Blvd, Shasta Lake, CA 96019–8400; (916) 275–1554.
- Surface Water Resources, Inc., 455 Capitol Mall, Suite 600, Sacramento, CA 95814; (916) 325–4050.
- Bureau of Reclamation, Willows Construction Office, Attn: WCO–200, 1140 West Wood Street, Willows, CA 95988–0988; (916) 934–7066.
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW, Main Interior Building, Washington DC 20240–0001.
- Library, Bureau of Reclamation, 6th Avenue and Kipling, Room 167, Building 67, Denver Federal Center, Denver, CO 80225–0007.
- University of California Berkeley, Water Resources Center Archives, 410 O'Brien Hall, Berkeley, CA 94720–1718.
- California State University Chico, Government Publications Center, Meriam Library, Chico, CA 95929–0295.
- Butte County Library, Publications, 1820 Mitchell Ave, Oroville, CA 95966–5333.
- Shasta County Public Library, Redding Main Branch, 1855 Shasta Street, Redding, CA 96001–0418.
- U.S. Army Corps of Engineers, 1325 J Street, Sacramento, CA 95814.

Dated: January 20, 1998.

Kirk C. Rodgers,

Deputy Regional Director, Bureau of Reclamation.

Dated: January 22, 1998.

Dorothy F. Klasse, COL, EN,

District Engineer, Army Corps of Engineers.

[FR Doc. 98–2251 Filed 1–28–98; 8:45 am]

BILLING CODE 4310–94–P

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for the permanent program performance standards—underground mining activities at 30 CFR Part 817.

DATES: Comments on the proposed information collection must be received by March 30, 1998, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Room 210–SIB, Washington, DC 20240. Comments may also be submitted electronically to jtreleas@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d)). This notice identifies information collections that OSM will be submitting to OMB for extension. These collections are contained in 30 CFR 817.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request at 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Permanent Program Performance Standards—Underground Mining Activities, 30 CFR Part 817.

OMB Control Number: 1029–0048.

Summary: Sections 515 and 516 of the Surface Mining Control and Reclamation Act of 1977 provide that permittees conducting surface coal mining operations with underground mining activities shall meet all applicable performance standards of the Act. The information collected is used by the regulatory authority in monitoring and inspecting surface coal mining activities to ensure that they are conducted in compliance with the requirements of the Act.

Bureau Form Number: None.

Frequency of Collection: On occasion, quarterly and annually.

Description of Respondents: Underground coal mining operators.

Total Annual Responses: 52,690.

Total Annual Burden Hours: 183,284.

Dated: January 26, 1998.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 98–2243 Filed 1–28–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of new information collection under emergency review; COPS monitoring visit satisfaction survey.

The Department of Justice, Office of Community Oriented Policing Services (COPS) has submitted the following information collection request utilizing emergency review procedures, to OMB for review and clearance in accordance with sections 1320.13 (a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The COPS has determined that it cannot reasonably comply with the normal clearance procedures under this Part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Therefore, OMB approval has been requested by January 31, 1998. If granted the emergency approval is only valid for 180 days. All comments and questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer (Ms. Victoria Wassmer), Washington, DC, 20503. Comments regarding the emergency submission of this information collection may also be submitted to OMB via facsimile at 202–395–7285.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to: U.S. Department of Justice, Office of Community Oriented Policing Services, Attention: Jody Nescola, 202–616–9606, 1100 Vermont Avenue, NW, Washington, DC 20530.

Comments are encouraged and will be accepted until March 30, 1998. Your comments should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected, and

4. Evaluate whether the data collection instrument will minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Bob Briggs, U.S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, D.C. 20530.

Overview of this information collection:

(1) Type of Information Collection: New collection.

(2) Title of the Form/Collection: Community Oriented Policing Services (COPS) Monitoring Visit Satisfaction Survey.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: 23/01. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State, local, or tribal governments. Other: None. The information collected may be used to determine Monitoring Division best practices and to evaluate the strengths and weaknesses of the site visit process in order to make adjustments that would improve grantee satisfaction.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 300 respondents at 5 minutes per response. The information will be collected once from each respondent.

(6) An estimate of the total public burden (in hours) associated with the collection: 25 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: January 23, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–2167 Filed 1–28–98; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of new information collection under Emergency Review; COPS Monitoring Visit Satisfaction Survey.

The Department of Justice, Office of Community Oriented Policing Services (COPS) has submitted the following information collection request utilizing emergency review procedures, to OMB for review and clearance in accordance with sections 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The COPS has determined that it cannot reasonably comply with the normal clearance procedures under this Part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Therefore, OMB approval has been requested by January 31, 1998. If granted the emergency approval is only valid for 180 days. All comments and questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer (Ms. Victoria Wassmer), Washington, DC 20503. Comments regarding the emergency submission of this information collection may also be submitted to OMB via facsimile at 202–395–7285.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to: U.S. Department of Justice, Office of Community Oriented Policing Services, Attention: Jody Nescola, 202–616–9606, 1100 Vermont Avenue, NW., Washington, DC 20530.

Comments are encouraged and will be accepted until March 30, 1998. Your comments should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected, and

4. Evaluate whether the data collection instrument will minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses:

Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Bob Briggs, U.S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, D.C. 20530.

Overview of this information collection:

(1) Type of Information Collection: New collection.

(2) Title of the Form/Collection: Community Oriented Policing Services (COPS) Monitoring Visit Satisfaction Survey.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: 23/01. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State, local, or tribal governments. Other: None. The information collected may be used to determine Monitoring Division best practices and to evaluate the strengths and weaknesses of the site visit process in order to make adjustments that would improve grantee satisfaction.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 300 respondents at 5 minutes per response. The information will be collected once from each respondent.

(6) An estimate of the total public burden (in hours) associated with the collection: 25 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: January 23, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–2170 Filed 1–28–98; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed consent decree in *United States* v. *American Recovery Company, et al.*, Civil Action No. 95–1590, was lodged on January 17, 1998 with the United States District Court for the Western District of Pennsylvania. The United States filed this action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") to recover past and future response costs incurred at or in connection with the Municipal and

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Industrial Disposal Company Site. The Consent Decree requires defendant the City of Pittsburgh to pay $33,000 to reimburse a portion of the United States' past costs associated with the investigation and clean up of the Municipal & Industrial Disposal Company Superfund Site ("Site"), located in Elizabeth Township, Pennsylvania.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *American Recovery Company, et al.*, DO Ref. #90–11–2–949.

The proposed consent decree may be examined at the office of the United States Attorney, 633 Post Office & Courthouse, 7th & Grant Streets, Pittsburgh, PA 15219; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.75 (25 cents per page reproduction costs) for each decree, payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–2133 Filed 1–28–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 to 9675

Notice is hereby given that a proposed consent decree in *United States* v. *Ameritech Corp., et al.*, Civil Action No. 97 C 2207, was lodged on January 9, 1998, with the United States District Court for the Northern District of Illinois. The proposed consent decree resolves the United States' claims against the defendants for past costs incurred in connection with the Elgin Salvage Superfund Site located in Elgin, Illinois, in return for a total payment of $375,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Ameritech Corp., et al.*, DOJ Ref. #90–11–2–1187.

The proposed consent decree may be examined at the office of the United States Attorney, 219 S. Dearborn St., 5th Floor, Chicago, Illinois 60604; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–2130 Filed 1–28–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Safe Drinking Water Act, as Amended

Notice is hereby given that on January 5, 1998, a proposed consent decree in *United States* v. *Andover Water District*, Civil Action No. 98–3–PC, was lodged with the United States District Court for the District of Maine.

In this action, the United States alleged that the Andover Water District (District) failed to comply with requirements of the Safe Drinking Water Act, 42 U.S.C. 300f–300j–26, as amended by the Safe Drinking Water Act Amendments of 1996, Public Law 104–182 (1996) (Act), and the regulations promulgated thereunder, including the Surface Water Treatment Rule (SWTR), 40 CFR 141.71. The complaint alleges, *inter alia*, that the District: failed to meet the filtration requirements of the SWTR; failed to comply with an administrative order issued by the United States Environmental Protection Agency with respect to that violation; and, failed to fulfill certain public education and notice requirements. The proposed consent decree resolves the United States' claims against the District. Under the terms of the proposed consent decree, the District will, *inter alia*, construct a new ground water well to supply drinking water to its users, comply with other provisions of the Act, including public education and notification requirements, and pay a $5,000 civil penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed partial consent decree. Comments should be addressed to the assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Andover Water District*, Civil Action No. 98–3–PC, D.J. Ref. 90–5–1–1–4379.

The proposed consent decree may be examined at the Office of the United States Attorney, District of Maine, East Tower, 100 Middle Street Plaza, Portland, Maine 14101, at U.S. EPA Region I, J.F.K. Federal Building, Boston, Massachusetts 02203, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $7.50 (25 cent per page reproduction cost).

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–2132 Filed 1–28–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 C.F.R. 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *The University of Notre Dame Du Lac*, 2:98CV007RL was lodged on Jan. 8, 1998, with the United States District Court for the Northern District of Indiana. The proposed Consent Decree settles the injunctive relief and civil penalty claims of Plaintiff, the United States of America, regarding Defendant's violations at its powerplant in Notre Dame, Indiana, of the federally-approved State of Indiana Air Pollution Implementation Plan ("Indiana SIP"). The proposed settlement requires Defendant to operate and test boilers 2, 3 and 4 of its powerplant in compliance with the Clean Air Act and specifications set forth in the proposed settlement, and to pay civil penalty of $250,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed partial consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *The University of Notre Dame Du Lac*, DOJ Ref. #90–5–2–1–2103.

The proposed consent decree may be examined at the office of the United States Attorney, Joseph Cooley, Assistant United States Attorney, Northern District of Indiana, 507 State Street, 4th Floor, Hammond, Indiana 46320; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $8.00, (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief Environment and Natural Resources Division.

[FR Doc. 98–2131 Filed 1–28–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Criminal Justice Information Services; Agency Information Collection Activities: Proposed Collection: Comment Request

ACTION: Notice of Information Collection Under Review: Supplementary Homicide Report.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until March 2, 1998.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

All comments and questions pertaining to this pending request for approval must be directed to OMB, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer (Ms. Victoria Wassmer), Washington, DC 20503. Comments regarding the submission of this information collection may also be submitted to OMB via facsimile at 202–395–7285.

Overview of this information collection:

(1) Type of information collection: Extension of Current Collection.

(2) The title of the form/collection: Supplementary Homicide Report (SHR).

(3) The agency form number, if any, and applicable component of the Department sponsoring the collection. Form: 1–704. Federal Bureau of Investigation, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as brief abstract. Primary: State and Local Law Enforcement Agencies. This collection is needed to provide data regarding age, sex, race, victim/offender relationships, weapons and motives of murders committed throughout the United States. Data are tabulated and published in the annual "Crime in the United States."

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 17,145 agencies with 205,740 responses which includes Zero reports; and with an average completion time of 9 minutes a month per response.

(6) An estimate of the total public burden (in hours) associated with this collection: 30,861 hours annually.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: January 23, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–2168 Filed 1–28–98; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

National Institute of Justice

Office of Science and Technology; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under emergency review; survey of force in the arrest of persons with impaired judgment.

The Department of Justice, National Institute of Justice, has submitted the following information request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. OMB approval has been requested by January 31, 1998. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Victoria Wassmer: 202–395–5871 and Department of Justice Desk Officer, Washington, DC, 20503.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until: March 30, 1998.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Dr. Raymond Downs (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Dr. Raymond Downs, (202) 307–0646, Office of Science and Technology, National Institute of Justice, Office of Justice Programs, U.S. Department of Justice, 633 Indiana Avenue, NW, Room 870, Washington, DC 20531. Additionally, comments may also be submitted to OST via facsimile to (202) 307–9907.

Overview of this information collection:

(1) Type of information collection: New collection.

(2) Title of the form/collection: Use of Force in the Arrest of Persons with Impaired Judgement.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: none. Office of Science an Technology, National Institute of Justice, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Law enforcement agencies. Other; none. This survey will be constructed in collaboration with police agencies in a large metropolitan area of the United States. It will compare the force required to arrest persons with impaired judgement to the force required to arrest persons with intact judgement with regard to types of force used and their effectiveness and safety to arrestee and arresting officer. Data collected will help determine if modifications are necessary in training officers in the arrest of persons with impaired judgement or if new methods or technology are required to effect these arrests safely to all concerned.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 7,000 respondents at an average of 3 minutes per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 350 burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: January 23, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–2169 Filed 1–28–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Homeless Veterans' Reintegration Project Competitive Grants for Rural Areas

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training.

ACTION: Notice of availability of funds and solicitation for grant applications for Rural Homeless Veterans Reintegration Projects (SGA 98–02).

SUMMARY: This notice contains all of the necessary information and forms needed to apply for grant funding. All applicants for grant funds should read this notice in its entirety. The U.S. Department of Labor, Veterans' Employment and Training Service (VETS) announces a grant competition for Homeless Veterans Reintegration Projects (HVRP) authorized under the Stewart B. McKinney Homeless Assistance Act to serve rural areas. Such projects will assist eligible veterans who are homeless by providing employment, training, supportive services, and transitional housing assistance where possible. Under this solicitation, VETS expects to award up to five grants in FY 1998.

This notice describes the background, the application process, description of program activities, evaluation criteria, and reporting requirements for Solicitation of Grant Applications (SGA) 98–02. VETS anticipates that up to $300,000 will be available for grant awards under this SGA.

The information and forms contained in the Supplementary Information Section of this announcement constitute the official application package for this Solicitation. In order to receive any amendments to this Solicitation which may be subsequently issued, all applicants must register their name and address with the Procurement Services Center. Please send this information as soon as possible, Attention: Grant Officer, to the following address: U. S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Please reference SGA 98–02.

DATES: One (1) ink-signed original, complete grant application (plus three (3) copies of the Technical Proposal and three (3) copies of the Cost Proposal shall be submitted to the U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, N.W., Washington, D.C. 20210, not later than 4:45 p.m., Eastern Standard Time, March 2, 1998, or be postmarked by the U.S. Postal Service on or before that date. Hand delivered applications must be received by the Procurement Services Center by that time.

ADDRESSES: Applications shall be mailed to the U.S. Department of Labor, Procurement Services Center, Attention: Lisa Harvey, Reference SGA 98–02, Room N–5416, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 219–6445 [not a toll free number].

SUPPLEMENTARY INFORMATION:

Rural Homeless Veterans Reintergration Project Solicitation

I. Purpose

The U.S. Department of Labor (DOL), Veterans' Employment and Training Service (VETS) is requesting grant applications for the provision of employment and training services in accordance with Title VII, Subtitle C, Section 738 of the Stewart B. McKinney Homeless Assistance Act (MHAA), 42 U.S.C. 11448. These instructions contain general program information, requirements and forms for application for funds to operate a Rural Homeless Veterans Reintegration Project (HVRP).

II. Background

The Stewart B. McKinney Homeless Assistance Act of 1987, enacted on July 22, 1987, under Title VII, Subtitle C, Section 738 provides that "The Secretary shall conduct, directly or through grant or contract, such programs as the Secretary determines appropriate to expedite the reintegration of homeless veterans into the labor force."

This program was reauthorized under Section 621 of the McKinney Homeless Assistance Amendments Act of 1990 (Pub. L. 101–645) for an additional three years, i.e., through FY 1993. Under the Homeless Veterans Comprehensive Service Programs Act of 1992 (Pub. L. 102–590—enacted on November 10, 1992) the Homeless Veterans Reintegration Project was reauthorized through Fiscal Year 1995. However, the program was rescinded in FY 1995. Pub. L. 104–275, dated October 9, 1996, was amended to reauthorize the program through FY 1998. Public Laws 105–41 and 105–114, enacted in 1997, extend the program through FY 1999.

The Homeless Veterans Reintegration Project was the first nationwide Federal program that focused on placing homeless veterans into jobs. In accordance with the MHAA, the Assistant Secretary for Veterans' Employment and Training (ASVET) is making approximately $300,000 of the funds available to award grants for HVRPs in rural area in FY 1998 under this competition. Projects are expected to provide valuable information on approaches that work in a rural environment.

III. Application Process

A. Rural Areas

Under this announcement, applications will be accepted from eligible applicants, (as defined in Section B. of this part) to serve homeless veterans in rural areas.

The Census Bureau has defined "urban" for the 1990 census, and territory, population, and housing units not classified as urban constitute "rural." Most specifically; "urban" consists of territory, persons, and housing units in:

1. Places of 2,500 or more persons incorporated as cities, villages boroughs (except in Alaska and New York), and towns, (except in the six New England States, New York, and Wisconsin), but excluding the rural portions of "extended cities."

2. Census designated places of 2,500 or more persons.

3. Other territory, incorporated or unincorporated, included in urbanized areas.

Those not constituted as "urban" likely fall into the category of "rural." Potential applicants are referred to the Geography Division, U.S. Bureau of the Census, Washington, DC 20233, for any questions or clarification on the Census Bureau's definition. It is expected that an applicant's submission under this solicitation will clearly demonstrate the rural nature of the area to be served.

B. Eligible Applicants

Applications for funds will be accepted from State and local public agencies, Private Industry Councils, and nonprofit organizations as follows:

1. Private Industry Councils (PICS) as defined in Title I, Section 102 of the Job Training Partnership Act (JTPA), Pub. L. 97–300, are eligible applicants, as well as State and local public agencies. "Local public agency" refers to any public agency of a general purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers. (This typically refers to cities and counties). A State agency may propose in its application to serve one or more of the potential jurisdictions located in its State. This does not preclude a city or county agency from submitting an application to serve its own jurisdiction. (Although cities are mentioned in the above explanation, this solicitation is limited to rural jurisdictions.)

Applicants are encouraged to utilize, through subgrants, experienced public agencies, private nonprofit organizations, and private businesses which have an understanding of the unemployment and homeless problems of veterans, a familiarity with the area to be served, and the capability to effectively provide the necessary services.

2. Also eligible to apply are nonprofit organizations who have operated an HVRP or similar employment and training program for the homeless or veterans; or have proven capacity to manage Federal grants, and have or will provide the necessary linkages with other service providers. Nonprofit organizations will be required to submit with their application recent (within one year) financial audit statements that attest to the financial responsibility of the organization.

Entities described in Section 501(c)4 of the Internal Revenue Code that engage in lobbying activities are not eligible to receive funds under this announcement. The Lobbying Disclosure Act of 1995, Pub. L. 104–65, 109 Stat. 691, prohibits the award of Federal funds to these entities if they engage in lobbying activities.

C. Funding Levels

The total amount of funds available for this solicitation is $300,000. It is anticipated that up to 5 awards will be made under this solicitation. Awards are expected to range from $50,000 to $75,000. The Federal government reserves the right to negotiate the amounts to be awarded under this competition. Please be advised that requests exceeding this range by 15% or more will be considered non-responsive.

D. Period of Performance

The period of performance will be for one year from date of award. It is expected that successful applicants will commence program operations under this solicitation on or before March 31, 1998. Actual start dates will be negotiated with each successful applicant.

E. Late Proposals

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at the Office of Procurement Services after 4:45 pm EST, March 2, 1998, will not be considered unless it is received before the award is made and:

1. it was sent by registered or certified mail not later than the fifth calendar day before March 2, 1998;

2. it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. it was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 pm at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to March 2, 1998.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper

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and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office. Applications sent by telegram or facsimile (FAX) will not be accepted.

F. Submission of Proposal

A cover letter, and an original and three (3) copies of the proposal shall be submitted. The proposal shall consist of two(2) separate and distinct parts:

PART I—TECHNICAL PROPOSAL shall consist of a narrative proposal that demonstrates the applicant's knowledge of the need for this particular grant program, its understanding of the services and activities proposed to alleviate the need and its capabilities to accomplish the expected outcomes of the proposed project design. The technical proposal shall consist of a narrative not to exceed fifteen (15) pages double-spaced, typewritten on one side of the paper only. Charts and exhibits are not counted against the page limit. Applicants should be responsive to the Rating Criteria contained in Section VI and address all of the rating factors noted as thoroughly as possible in the narrative. The following format is strongly recommended:

1. Need for the project: The applicant should identify the geographical area to be served and the rural characteristics of the area; provide an estimate of the number of homeless veterans and their needs; poverty and unemployment rates in the area, and gaps in the local community infrastructure the project would fulfill in addressing the employment and other barriers of the targeted veterans. Include the outlook for job opportunities in the service area.

2. Approach or strategy to increase employment and job retention: The applicant should describe the specific supportive services and employment and training services to be provided under this grant and the sequence or flow of such services. Participant flow charts may be provided. Include a description of the relationship with other employment and training programs such as Disabled Veterans' Outreach Program (DVOP) and the Local Veterans' Employment Representative (LVER) program, and programs under the Job Training Partnership Act. Please include a plan for follow up of participants who entered employment at 30 and 90 days and the capacity to assist the Department of Labor in one-year and/or multi-year follow up efforts. (See discussion on results in Section V. D.) Please include the chart of proposed performance goals and planned expenditures listed in Appendix D. Although the form itself is not mandatory, the information called for in Appendix D must be provided by the applicant.

3. Linkages with other providers of employment and training services to the homeless and to veterans: Describe what linkages this programs will have with other providers of services to veterans and to the homeless in the community outside of the HVRP grant. List the types of services provided by each. Note the type of agreement in place if applicable. Any linkages with the workforce development system [inclusive of JTPA and State Employment Security Agencies (SESAs)] and with the Department of Veterans Affairs resources should be delineated.

4. Organizational capability in providing required program activities: The applicant's relevant current or prior experience in operating employment and training or related programs serving the homeless or veterans should be delineated. Provide information denoting outcomes of past programs in terms of enrollments and placements or other measures of success. Applicants who have operated an HVRP program, or more recent Homeless Veterans Employment and Training (HVET) program should include final or most recent technical performance reports. (This information is subject to verification by the Veterans' Employment and Training Service.) Provide evidence of key staff capability. Non-profit organizations should submit evidence of satisfactory financial management capability including recent financial and/or audit statements.

5. Proposed housing strategy for homeless veterans: Describe how housing resources for homeless veterans in the rural area may be obtained or accessed. These resources may be from linkages or sources other than the HVRP grant such as HUD, community housing resources, DVA leasing or other programs. The applicant should explain whether HVRP resources will be used and why this is necessary.

PART II—COST PROPOSAL shall contain the Standard Form (SF) 424, "Application for Federal Assistance," and the Budget Information Sheet in Appendix B. In addition the budget shall include—on a separate page(s)—a detailed cost break-out of each line item on the Budget Information Sheet. Please label this page or pages the "Budget Narrative." Also to be included in this Part is the Assurance and Certification Page, Appendix C. Copies of all required forms with instructions for completion are provided as appendices to this solicitation. The Catalog of Federal Domestic Assistance number for this program is 17.805, which should be entered on the SF 424, Block 10. In Block 11, please enter the following: Homeless Veterans Reintegration Project (RURAL). Please show leveraged resources/matching funds and/or the value of in-kind contributions in Section B of the Budget Information Sheet.

Budget Narrative Information

As an attachment to the Budget Information Sheet, the applicant must provide at a minimum, and on separate sheet(s), the following information:

(a) A breakout of all personnel costs by position, title, salary rates and percent of time of each position to be devoted to the proposed project (including subgrantees);

(b) An explanation of fringe benefit rates and associated charges. Rates exceeding 35% of salaries and wages require justification;

(c) An explanation of the purpose and composition of, and method used to derive the costs of each of the following: travel, equipment, supplies, subgrants/contracts and any other costs. The applicant should include costs of any required travel described in this Solicitation. Mileage charges shall not exceed 31 cents per mile;

(d) Description/specification of and justification for equipment purchases, if any. Tangible, non-expendable, personal property having a useful life of more than one year and a unit acquisition cost of $5,000 or more per unit must be specifically identified; and

(e) Identification of all sources of leveraged or matching funds and an explanation of the derivation of the value of matching/in-kind Services.

IV. Participant Eligibility

To be eligible for participation under HVRP, an individual must be homeless and a veteran defined as follows:

A. The term *homeless or homeless individual* includes persons who lack a fixed, regular, and adequate nighttime residence. It also includes persons whose primary nighttime residence is either a supervised public or private shelter designed to provide temporary living accommodations; an institution that provides a temporary residence for individuals intended to be institutionalized; or a private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. (Reference 42 USC 11302).

B. The term *veteran* means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable. [Reference 38 USC 101(2)]

V. Project Summary

A. Program Concept and Emphasis

The HVRP grants under Section 738 of the Stewart B. McKinney Homeless Assistance Act are intended to address dual objectives:

Provide services to assist in reintegrating homeless veterans into the labor force; and stimulate the development of effective service delivery systems that will seek to address the complex problems facing homeless veterans. These programs are designed to be flexible in addressing the universal as well as local or regional problems barring homeless veterans from the workforce. The program in FY 1998 will continue to strengthen the provision of comprehensive services through a case management approach, the attainment of housing resources for veterans entering the labor force, and strategies for employment and retention.

B. Required Features

1. The HVRP has since its inception featured an outreach component consisting of veterans who have experienced homelessness. In recent years this requirement was modified to allow the projects to utilize formerly homeless veterans in other positions where there is direct client contact if outreach was not needed extensively, such as counseling, peer coaching, intake and follow up. This requirement applies to projects funded under this solicitation.

2. Projects will be required to show linkages with other programs and services which provide support to homeless veterans. Coordination with the Disabled Veterans' Outreach Program (DVOP) Specialists in the jurisdiction is particularly encouraged.

3. Projects will be "employment focused." That is, they will be directed towards (a) increasing the employability of homeless veterans through providing for or arranging for the provision of services which will enable them to work; and (b) matching homeless veterans with potential employers.

C. Scope of Program Design

The HVRP project design should provide or arrange for the following services:

—Outreach, intake, assessment, counseling and employment services. Outreach should, to the degree practical, be provided at shelters, day centers, soup kitchens and/or other locations particular to the rural environment, and other programs for the homeless. Program staff providing outreach services are to be veterans who have experienced homelessness.

Coordination with veterans' services programs and organizations such as:

—Disabled Veterans' Outreach Program (DVOP) Specialists and Local Veterans' Employment Representatives (LVERs) in the State Employment Security/Job Service Agencies (SESAs) or in the newly instituted workforce development system's One-Stop Centers, JTPA Title IV, Part C (IV–C) Veterans' Employment Program

—Department of Veterans' Affairs (DVA) services, including its Health Care for Homeless Veterans, Domiciliary and other programs, including those offering transitional housing

—Veteran service organizations such as The American Legion, Disabled American Veterans, and the Veterans of Foreign Wars, Vietnam Veterans of America, and the American Veterans (AMVETS)

Referral to necessary treatment services, rehabilitative services, and counseling including, but not limited to:

—Alcohol and drug
—Medical
—Post Traumatic Stress Disorder
—Mental Health
—Coordinating with MHAA Title VI programs for health care for the homeless

Referral to housing assistance provided by:

—Local shelters
—Federal Emergency Management Administration (FEMA) food and shelter programs
—Transitional housing programs and single room occupancy housing programs funded under MHAA Title IV
—Permanent housing programs for the handicapped homeless funded under MHAA Title IV
—Department of Veterans' Affairs programs that provide for leasing or sale of acquired homes to homeless providers
—Transitional housing leased by HVRP funds (HVRP funds cannot be used to purchase housing)

Employment and training services such as:

—Basic skills instruction
—Basic literacy instruction
—Remedial education activities
—Job search activities
—Job counseling
—Job preparatory training, including resume writing and interviewing skills
—Subsidized trial employment (Work Experience)
—On-the-Job Training
—Classroom Training
—Job placement in unsubsidized employment
—Placement follow up services
—Services provided under JTPA Program Titles

D. Results-Oriented Model

Based on past experience of grantees working with this target group, a workable program model evolved which is presented for consideration by prospective applicants. No model is mandatory, and the applicant should design a program that is responsive to local needs, but will carry out the objectives of the HVRP to successfully reintegrate homeless veterans into the workforce.

With the advent of implementing the Government Performance and Results Act (GPRA), Congress and the public are looking for results rather than process. While entering employment is a viable outcome, it will be necessary to measure results over a longer term to determine the success of programs. The following program discussion emphasizes that followup is an integral program component.

The first phase of activity consists of the level of outreach that is necessary in the community to reach veterans who are homeless. This may also include establishing contact with other agencies that encounter homeless veterans such as shelters, soup kitchens and other facilities in the rural area. An assessment should be made of the supportive and social rehabilitation needs of the client and referral may take place to services such as drug or alcohol treatment or temporary shelter. When the individual is stabilized, the assessment should focus on the employability of the individual and they are enrolled into the program if they would benefit from pre-employment preparation such as resume writing, job search workshops, related counseling and case management, and initial entry into the job market through temporary jobs, sheltered work environments, or entry into classroom or on-the-job training. Such services should also be noted in an Employability Development Plan so that successful completion of the plan may be monitored by the staff.

Entry into full-time employment or a specific job training program should

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follow in keeping with the objective of HVRP to bring the participant closer to self-sufficiency. Transitional housing may assist the participant at this stage or even earlier. Job development is a crucial part of the employability process. Wherever possible, DVOP and LVER staff should be utilized for job development and placement activities for veterans who are ready to enter employment or who are in need of intensive case management services. Many of these staff have received training in case management at the National Veterans' Training Institution and have as a priority of focus, assisting those most at a disadvantage in the labor market. VETS urges working hand-in-hand with DVOP/LVER staff to achieve economies of resources.

Follow up to determine if the veteran is in the same or similar job at the 30 day period after entering employment is required and important in keeping contact with the veterans and so that assistance in keeping the job may be provided. The 90 day followup is fundamental to assessing the results of the program interventions. Grantees should be careful to budget for this activity so that followup can and will occur for those placed at or near the end of the grant period. Such results will be reported in the final technical performance report.

VETS emphasizes in its Strategic Plan to implement GPRA that suitable outcomes involve careers, not just jobs. Successful results are achieved when the veterans is in the same or similar job after one or more years. Towards that end, VETS solicits the cooperation of successful applicants in retaining participant information pertinent to a longitudinal follow up survey, i.e., at least for one year after the grant period ends. Retention of records will be reflected in the Special Provisions at time of award.

E. Related HVRP Program Development Activities

1. Community Awareness Activities

In order to promote linkages between the HVRP program and local service providers (and thereby eliminate gaps or duplication in services and enhance provision of assistance to participants), the grantee should provide project orientation and/or service awareness activities that it determines are the most feasible to local providers of hands-on services to the homeless, Federal, State and local entitlement services (such as the Social Security Administration, DVA, and the local Job Service office(s), and civic and private sector groups to enlist their support for the program.

VI. Rating Criteria for Award

Applications will be reviewed by a DOL panel using the point scoring system specified below. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member. The ranking will be the primary basis to identify approximately 5 applicants as potential grantees. Although the Government reserves the right to award on the basis of the initial proposal submissions, the Government may establish a competitive range, based upon the proposal evaluation, for the purpose of selecting qualified applicants. The panel's conclusions are advisory in nature and not binding on the Grant Officer. The government reserves the right to ask for clarification or hold discussions, but is not obligated to do so. The Government further reserves the right to select applicants out of rank order if such a selection would, in its opinion, result in the most effective and appropriate combination of funding, program models, and geographical service areas. The Grant Officer's determination for award under SGA 98–02 is the final agency action. The submission of the same proposal from any prior year HVRP or HVET competition does not guarantee an award under this Solicitation.

Panel Review Criteria

1. Need for the Project: 15 Points

The applicant shall document the extent of need for this project, as demonstrated by: (1) The potential number or concentration of homeless individuals and homeless veterans in the proposed project area relative to other similar areas of jurisdiction; (2) the high rates of poverty and/or unemployment in the proposed project area as determined by the census or other surveys; and (3) the extent of gaps in the local infrastructure the program would fill to effectively address the employment barriers which characterize the target population in the rural area.

2. Overall Strategy to Increase Employment and Retention: 30 Points

The application must include a description of the proposed approach to providing comprehensive employment and training services, including job training, job development, placement and post placement follow up services. The supportive services to be provided as part of the strategy of promoting job readiness and job retention should be indicated. The applicant should identify the local human resources and sources of training to be used for participants. A description of the relationship, if any, with other employment and training program such as SESAs (DVOP and LVER Programs), JTPA IV–C, other JTPA programs, and Workforce Development Boards or entities where in place, should be presented. It should be indicated how the activities will be tailored or responsive to the needs of homeless veterans in the rural area. A participant flow chart may be used to show the sequence and mix of services.

Note: The applicant MUST complete the chart of proposed program outcomes to include participants served, and job retention. (See Appendix D)

3. Quality and Extent of Linkages With Other Providers of Services to the Homeless and to Veterans: 20 Points

The application should provide information on the quality and extent of the linkages this program will have with other providers of services to benefit the homeless or veterans in the local community outside of the HVRP grant. For each service, it should be specified who the provider is, the source of funding (if known), and the type of linkages/referral system established or proposed. Describe to the extent possible, how the project would fit into the community's approach to respond to homelessness.

4. Demonstrated Capability in Providing Required Program Services: 20 Points

The applicant should describe its relevant prior experience in operating employment and training programs and providing services to participants similar to that which is proposed under this solicitation. Specific outcomes achieved by the applicant should be described in terms of clients placed in jobs, or other outcome measures of success. The applicant must also delineate its staff capability and ability to manage the financial aspects of Federal grant programs. Relevant documentation such as financial and/or audit statements should be submitted (required for applicants who are non-profit agencies). Final or most recent technical reports for HVRP, HVET or other relevant programs should be submitted as applicable. The applicant should also address its capacity for timely startup of the program.

5. Quality of Overall Housing Strategy: 15 Points

The application should demonstrate how the applicant proposes to obtain or access housing resources for veterans in the program and entering the labor force. This discussion should specify the provisions made to access temporary, transitional, and permanent housing for participants through

community resources, HUD, lease, HVRP or other means unique to the locale. HVRP funds may not be used to purchase housing.

Applicants can expect that the cost proposal will be reviewed for allowability, allocability, and reasonableness of costs, but will not be scored.

VII. Post Award Conference

A post-award conference for those awarded FY 1998 HVRP funds is tentatively planned for April or May, 1998. Costs associated with attending this conference for up to three grantee representatives will be allowed as long as they were incurred in accordance with Federal travel regulations. Such costs shall be charged as administrative costs and reflected in the proposed budget. The site of the conference has not yet been determined but will likely be in Washington, D.C. Please use Washington, D.C. for budget planning purposes. The conference will focus on providing information and assistance on reporting, record keeping, and grant requirements, and will also include best practices from past projects.

VIII. Reporting Requirements

The grantee shall submit the reports and documents listed below:

A. Financial Reports

The grantee shall report outlays, program income, and other financial information on a quarterly basis using SF 269A, Financial Status Report, Short Form. These forms shall cite the assigned grant number and be submitted to the appropriate State Director for Veterans' Employment and Training (DVET) no later than 30 days after the ending date of each Federal fiscal quarter during the grant period. In addition, a final SF 269 shall be submitted no later than 90 days after the end of the grant period.

B. Program Reports

Grantees shall submit a Quarterly Technical Performance Report 30 days after the end of each Federal fiscal quarter to the DVET which contains the following:

1. a comparison of actual accomplishments to established goals for the reporting period and any findings related to monitoring efforts;

2. reason for slippage if established goals are not met and identification of the corrective action which will be taken to meet the goals, and the timetable for accomplishment of the corrective action.

A final Technical Performance Report will also be required as part of the final report package due 90 days after grant expiration.

C. Summary of Final Report Package

The grantee shall submit 90 days after the grant expiration date the following final report package:

1. Final Financial Status Report.

2. Final Technical Performance Report.

3. Final Narrative Report—Grantees will be required to submit a final narrative report identifying major successes of the program as well as obstacles to success.

IX. Administrative Provisions

A. Limitation on Administrative and Indirect Costs

1. Direct Costs for administration, plus any indirect charges claimed, may not exceed 20 percent of the total amount of the grant.

2. Indirect costs claimed by the applicant shall be based on a federally approved rate. A copy of the negotiated, approved, and signed indirect cost negotiation agreement must be submitted with the application. (Do not submit the State cost allocation plan.)

3. Rates traceable and trackable through the SESA Cost Accounting System represent an acceptable means of allocating costs to DOL and, therefore, can be approved for use in MHAA grants to SESAS.

4. If the applicant does not presently have an approved indirect cost rate, a proposed rate with justification may be submitted. Successful applicants will be required to negotiate an acceptable and allowable rate with the appropriate DOL Regional Office of Cost Determination within 90 days of grant award.

B. Allowable Costs

Determinations of allowable costs shall be made in accordance with the following applicable Federal cost principles:

State and local government—OMB Circular A–87

Nonprofit organizations—OMB Circular A–122

C. Administrative Standards and Provisions

All grants shall be subject to the following administrative standards and provisions:

29 CFR Part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

29 CFR Part 95—Grants and Agreements with Institutes of Higher Education, Hospitals, and Other Non-Profit Organizations.

29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

29 CFR Part 30—Equal Employment Opportunity in Apprenticeship and Training.

29 CFR Part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964.

Signed at Washington, D.C. this 22nd day of January, 1998.

Lawrence J. Kuss,

Grant Officer.

Appendices

Appendix A: Application for Federal Assistance SF Form 424
Appendix B: Budget Information Sheet
Appendix C: Assurances and Certifications Signature Page
Appendix D: Technical Performance Goals Form

BILLING CODE 4510–79–P

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APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: ☐☐–☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other(specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐–☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

   -- "New" means a new assistance award.

   -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

   -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel	$		
2. Fringe Benefits(Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)	$		
9. Indirect Cost(Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)	$		

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution	$		
3. TOTAL Cost Sharing / Match (Rate %)	$		

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. **Personnel:** Show salaries to be paid for project personnel.
2. **Fringe Benefits:** Indicate the rate and amount of fringe benefits.
3. **Travel:** Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.
4. **Equipment:** Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.
5. **Supplies:** Include the cost of consumable supplies and materials to be used during the project period.
6. **Contractual:** Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.
7. **Other:** Indicate all direct costs not clearly covered by lines 1. through 6 above, including consultants.
8. **Total, Direct Costs:** Add lines 1 through 7.
9. **Indirect Costs:** Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.
10. **Training /Stipend Cost:** (If allowable)
11. **Total Federal funds Requested:** Show total of lines 8 through 10.

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

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ASSURANCES AND CERTIFICATIONS - SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Assurances - Non-Construction Programs

B. Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters and Drug-Free/Tobacco-Free Workplace Requirements.

C. Certification of Release of Information

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instructions shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

RECOMMENDED FORMAT FOR PLANNED QUARTERLY TECHNICAL PERFORMANCE GOALS

(data entered cumulatively)

Performance Goals

	1ST QTR	2ND QTR	3RD QTR	4TH QTR
Assessments				
Participants Enrolled				
Placed Into Transitional Or Permanent Housing				
Direct Placements Into Unsubsidized Employment				
Assisted Placements Into Unsubsidized Employment				
Combined Placements Into Unsubsidized Employment (Direct & Assisted)				
Cost Per Placement				
Number Retaining Jobs For 30 Days				
Number Retaining Jobs For 90 Days				
Rate of Placement Into Unsubsidized Employment				
Average Hourly Wage At Placement				

Employability Development Services - (As Applicable)

Classroom Training				
On-The-Job Training				
Remedial Education				
Vocational Counseling				
Pre-employment Services				
Occupational Skills Training				
_____				
_____				
_____				
_____				

Planned Expenditures

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
Total Expenditures	$	$	$	$
Administrative Costs	$	$	$	$
Participant Services*	$	$	$	$

*Services may include training and/or supportive.

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HVRP PERFORMANCE GOAL DEFINITIONS

1. Assessments. This process includes addressing the supportive services and employability and training needs of individuals before enrolling them in an HVRP program. Generally, this includes an evaluation and/or measurement of vocational interests and aptitudes, present abilities, previous education and work experience, income requirements, addressing supportive service needs, substance abuse treatment needs, counseling needs, temporary or transitional housing needs, personal circumstances and other related services.

2. Participants Enrolled. A client should be recorded as having been enrolled when an intake form has been completed, and services, referral, or employment has been received through the HVRP program. This should be an unduplicated count over the year: i.e., each participant is recorded only once, regardless of the number of times she or he receives assistance.

3. Placed Into Transitional Or Permanent Housing. A placement into transitional or permanent housing should be recorded when a veteran served by the program upgrades his/her housing situation during the reporting period from shelter/streets to transitional housing or permanent housing or from transitional housing to permanent housing. Placements resulting from referrals by HVRP staff shall be counted. This item is however an unduplicated count over the year, except that a participant may be counted once upon entering transitional housing and again upon obtaining permanent housing.

4. Direct Placements Into Unsubsidized Employment. A direct placement into unsubsidized employment must be a placement made directly by HVRP-funded staff with an established employer who covers all employment costs for 20 or more hours per week at or above the minimum wage. Day labor and other very short-term placements should not be recorded as placements into unsubsidized employment.

5. Assisted Placements Into Unsubsidized Employment. Assisted placements into unsubsidized employment should be recorded where the definition for placement with unsubsidized employment above is met, but the placement was arranged by an agency to which the HVRP referred the homeless veteran, such as a Job Training Partnership Act (JTPA) program.

6. Cost Per Placement. The cost per placement into unsubsidized employment is obtained by dividing the total HVRP funds expended by the total of direct placements plus assisted placements.

7. Number Retaining Job For 30 Days. To be counted as retaining a job for 30 days, continuous employment with one or more employers for at least 30 days must be verified and the definition for either direct placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 30 days as long as the client has been steadily employed for that length of time.

8. Number Retaining Job For 90 Days. To be counted as retaining a job for 90 days, continuous employment with one or more employers for at least 90 days must be verified, and the definition for either placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 90 days as long as the client has been steadily employed for that length of time.

9. Rate of Placement Into Unsubsidized Employment. The rate of placement into unsubsidized employment is obtained by dividing the number placed into unsubsidized employment (HVRP), plus the number of assisted placements into unsubsidized employment by the number of clients enrolled.

10. Average Hourly Wage At Placement. The average hourly wage at placement is the average hourly wage rates at placement of all assisted placements plus direct placements.

11. Employability Development Services. This includes services and activities which will develop or increase the employability of the participant. Generally, this includes vocational counseling, classroom and on-the-job training, pre-employment services (such as job seeking skills and job search workshops), temporary or trial employment, sheltered work environments and other related services and activities. Planned services should assist the participant in addressing specific barriers to employment and finding a job. These activities may be provided by the applicant or by a subgrantee, contractor or another source such as the local Job Partnership Training Act program or the Disabled Veterans'Outreach Program (DVOP) personnel or Local Veterans' Employment Representatives (LVERs). Such services are not mandatory but entries should reflect the services described in the application and the expected number of participants receiving or enrolled in such services during each quarter. Participants may be recorded more than once if they receive more than one service.

12. Total Planned Expenditures. Total funds requested. Identify forecasted expenditures needed for each fiscal quarter.

13. Administrative Costs. Administrative costs shall consist of all direct and indirect costs associated with the supervision and management of the program. These costs shall include the administrative costs, both direct and indirect, of subrecipients and contractors.

14. Participant Services. This cost includes supportive, training, or social rehabilitation services which will assist in stabilizing the participant. This category should reflect all costs other than administrative.

[FR Doc. 98–2096 Filed 1–28–98; 8:45 am]
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LEGAL SERVICES CORPORATION

Meeting of the Board of Directors Operations and Regulations Committee; Sunshine Act Meeting

Time and Date: The Operations and Regulations Committee of the Legal Services Corporation's Board of Directors will meet on February 6, 1998. The meeting will begin at 9:00 a.m. and continue until the committee concludes its agenda.

Location: Legal Services Corporation, 750 First Street N.E.—10th Floor, Washington, DC 20002.

Status of Meeting: Open.

Matters to be Considered:

1. Approval of agenda.
2. Approval of minutes of the committee's meeting of Nov. 14, 1997.
3. Consideration of proposed amendments to the Corporation's 403(b) Thrift Plan.
4. Consideration of proposed revisions to 45 CFR Part 1602, Procedures for disclosure of information under the Freedom of Information Act.
5. Consideration of proposed rule 45 CFR Part 1644, Disclosure of case information.
6. Consider and act on other business.

CONTACT PERSON FOR INFORMATION:
Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Sylvia Speight at (202) 336–8906.

Dated: January 27, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98–2378 Filed 1–27–98; 2:57 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Finance Committee

Time and Date: The Finance Committee of the Legal Services Corporation's Board of Directors will meet on February 6, 1998. The meeting will begin at 10:00 a.m. and continue until conclusion of the committee's agenda.

Location: Legal Services Corporation, 750 First Street NE.—10th Floor, Washington, DC 20002.

Status of Meeting: Open.

Matters to be Considered:

1. Approval of agenda.
2. Approval of minutes of the committee's meeting of Dec. 18, 1997.
3. Presentation of FY '97 financial audit by Thompson, Cobb, Bazilio & Associates, P.C.
4. Review and adoption of FY '98 operating budget.
5. Review of expenses through December 31, 1997.
6. Consider and act on other business.
7. Public comment.

CONTACT PERSON FOR INFORMATION:
Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Sylvia Speight at (202) 336–8906.

Dated: January 27, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98–2379 Filed 1–27–98; 2:57 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Ad Hoc Committee on Performance Reviews of the President and Inspector General

Time and Date: The *Ad Hoc* Committee on Performance Reviews of the President and Inspector General of the Legal Services Corporation's Board of Directors will meet on February 6, 1998. The meeting will begin at 11:30 a.m. and continue until conclusion of the committee's agenda.

Location: Legal Services Corporation, 750 First Street NE.—10th Floor, Washington, DC 20002.

Status of Meeting: Except for approval of the committee's agenda and any miscellaneous business that may come before the committee, the meeting will be closed to the public. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(2) and (6)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR 1622.5(a) and (e)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

Matters to be Considered:

Open Session:

1. Approval of agenda.
2. Approval of minutes of the committee meeting of November 14, 1997.
3. Presentation of FY '97 financial audit by Thompson, Cobb, Bazilio & Associates, P.C.
4. Review and adoption of FY '98 operating budget.
5. Review of expenses through December 31, 1997.
6. Consider and act on other business.
7. Public comment.

CONTACT PERSON FOR INFORMATION:
Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Sylvia Speight at (202) 336–8906.

Dated: January 27, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98–2380 Filed 1–27–98; 2:57 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Committee on Provision for the Delivery of Legal Services

Time and Date: The Committee on Provision for the Delivery of Legal Services of the Legal Services Corporation's Board of Directors will meet on February 6, 1998. The meeting will begin at 2:00 p.m. and continue until conclusion of the committee's agenda.

Location: Legal Services Corporation, 750 First Street NE.—10th Floor, Washington, DC 20002.

Status of Meeting: Open.

Matters to be Considered:

1. Approval of agenda.
2. Approval of minutes of the July 13, 1997, committee meeting.
3. Report by the Corporation's Inspector General on the status of implementation of § 509 of Pub. L. 104–134.
4. Report by Office of Program Operations staff on the status of implementation of § 509 of Pub. L. 104–134.
5. Report on current and proposed activities of the Office of Program Operations.
6. Report on state planning initiative.
   a. Staff presentation.
   b. Field presentation.
7. Consider and act on other business.

CONTACT PERSON FOR INFORMATION:
Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Sylvia Speight at (202) 336–8906.

Dated: January 27, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98–2381 Filed 1–27–98; 2:57 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

Time and Date: The Board of Directors of the Legal Services Corporation will meet on February 7, 1998. The meeting will begin at 9:00 a.m. and continue until conclusion of the Board's agenda.

Location: Legal Services Corporation, 750 First Street NE.—10th Floor, Washington, DC 20002.

Status of Meeting: Open, except that a portion of the meeting may be closed pursuant to a unanimous vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act (5 U.S.C. 552b(c) (10)) and the corresponding provisions of the Legal Services Corporation's implementing regulation (45 CFR § 1622.5(h)). A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

Matters to be Considered:

Open Session:

1. Approval of agenda.
2. Approval of minutes of the Board's meeting of Nov. 15, 1997.
3. Approval of minutes of the Board's executive session meeting of Nov. 15, 1997.
4. Approval of minutes of the Board's teleconference meeting of Jan. 22, 1998.
5. Chairman's and Members' Reports.
6. Election of officers of the Board.
7. Scheduling meetings of the Board for the balance of FY '98.
8. President's Report.
9. Consider and act on the report of the Board's Operations and Regulations Committee.
10. Consider and act on the report of the Board's Finance Committee.
11. Consider and act on the report of the Board's Provision for the Delivery of Legal Services Committee.
12. Consider and act on the report of the Ad Hoc Committee on Performance Reviews of the President and Inspector General.
13. Consider and act on report on the strategic planning process.
14. Consider and act on a technical amendment to section 6.10 of the Corporation's bylaws.
15. Inspector General's Report.

Closed Session:

16. Briefing [1] by the Inspector General on the activities of the OIG, including a draft report on special audits.
17. Consider and act on the General Counsel's report on potential and pending litigation involving the Corporation.

Open Session:

18. Public comment.
19. Consider and act on other business.

CONTACT PERSON FOR INFORMATION:
Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Sylvia Speight, at (202) 336–8906.

Dated: January 27, 1998.

Victor M. Fortuno,

General Counsel and Secretary of the Corporation.

[FR Doc. 98–2382 Filed 1–27–98; 2:57 pm]

BILLING CODE 7050–01–P

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 CFR § 1622.2 & 1622.3.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–010)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: January 29, 1998.

FOR FURTHER INFORMATION CONTACT:
Office of the Patent Counsel, Langley Research Center, Mail Code 212, Hampton, VA 23681–0001; telephone (757) 864–9260.

NASA Case No. LAR 15289–2: Three-Dimensional Object Tracking System and Method Employing Plural Sensors and Plural Processors for Performing Parallel Processing (FWC of–1);

NASA Case No. LAR 15627–1: Sol-Gel Surface Preparation for Bonding Applications;

NASA Case No. LAR 15128–2: Method and Fabricating Composite Structures Including Continuous Press Forming & Pultrusion Processing (Div of–1);

NASA Case No. LAR 15128–3: Method for Fabricating Composite Structures Including Continuous Press Forming and Pultrusion Processing (Div of–1);

NASA Case No. LAR 15128–4: Method for Fabricating Composite Structures Including Continuous Press Forming and Pultrusion Processing;

NASA Case No. LAR 15515–2–CU: Improved Two-Stage Gas Measurement System (FWC of–1);

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–011)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: January 29, 1998.

FOR FURTHER INFORMATION CONTACT:
Yvonne Kellogg, Dryden Flight Research Center, Mail Stop D–4839A, P.O. Box 273, Edwards, CA 93523–0273, telephone (805) 258–3720.

NASA Case No. DRC–095–028: Digital Premodulation Lowpass Filter for Pulse-Code-Modulated Signals.

Dated: January 20, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–2246 Filed 1–28–98; 8:45 am]

BILLING CODE 7510–01–M

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NASA Case No. LAR 14640–4–CU: An Interferometer Having Fused Optical Fibers, and Apparatus and Method Using the Interferometer (FWC of–3, now aband);

NASA Case No. LAR 15496–2: Carbon-Carbon Turbocharger Housing Unit for Intermittent Combustion Engines (Div of–1);

NASA Case No. LAR 14898–2: Composite Sandwich Structure and Method for Making (Cont of–1);

NASA Case No. LAR 15280–3–SB: Cryogenic High Pressure Sensor (Div of–2).

Dated January 20, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–2247 Filed 1–28–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–112)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: January 29, 1998.

FOR FURTHER INFORMATION CONTACT: Beth Vrioni, Patent Counsel, Kennedy Space Center, Mail Stop DE–TPO, at (407) 867–6225.

NASA Case No. KSC–11865: Non-Intrusive Cable Tester;

NASA Case No. KSC–11929: Ultrasonic Bolt Gage;

NASA Case No. SSC–00048: Multi Spectral Imaging System.

Dated: January 20, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–2256 Filed 1–28–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–013)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

Copies of patent applications cited are available from the Office of Patent Counsel, Goddard Space Flight Center. Claims are deleted from the patent applications to avoid premature disclosure.

DATES: January 29, 1998.

FOR FURTHER INFORMATION CONTACT: Guy M. Miller, Patent Counsel, Goddard Space Flight Center, Mail Code 204, Greenbelt, MD 20771; telephone (301) 286–7351.

NASA Case No. GSC–13,703–1: Method of Apparatus for Ultra-High Sensitivity, Incremental and Absolute Optical Encoding;

NASA Case No. GSC–13,708–1: Segmented Cold Cathode Display Panel;

NASA Case No. GSC–13,710–2: Continuously Variable Planetary Transmission Having Gears with Movable Teeth;

NASA Case No. GSC–13,787–1: Portable Hyper-Spectral Flash Lamp Reflectance Analyzer System;

NASA Case No. GSC–13,813–1: Parallel Integrated Frame Synchronizer (PIFS) Chip;

NASA Case No. GSC–13,879–1: Method and Apparatus for Controlling a Tool;

NASA Case No. GSC–13,890–1: Service Processor;

NASA Case No. GSC–13,907–1: Method for Attitude Determination Using GPS Carrier Phase Measurements from Nonaligned Antennas.

Dated: January 20, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–2257 Filed 1–28–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–009)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

Copies of patent applications cited are available from the Office of Patent Counsel, Lewis Research Center. Claims are deleted from the patent applications to avoid premature disclosure.

DATE: January 29, 1998.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Attorney, Lewis Research Center, Mail Code 500–118, Cleveland, OH 44135; telephone (216) 433–8855, fax (216) 433–6790.

NASA Case No. LEW–16,374–1: Method for Growth of Crystal Surfaces and Growth of Heteroepitaxial Single Crystal Films Thereon;

NASA Case No. LEW–16,368–1: Integrated Fluorescence Enhancement Filtering and Sensing System and Method;

NASA Case No. LEW–16,391–1: Method for Surface Texturing Titanium Products;

NASA Case No. LEW–16,345–1: High Speed Gear Failure Digital Video Imaging System;

NASA Case No. LEW–16,469–1: Method of Deploying or Dispensing Liquid Drops and Gas Bubbles Using Acoustic Radiation Pressure;

NASA Case No. LEW–16,470–1: Manipulation of Liquids Using Acoustic Phased Array Generated Acoustic Radiation Pressure and Acoustic Streaming;

NASA Case No. LEW–15,805–1: Process for Fabrication of Soft Tissue Implants with Microscopic Surface Roughness;

NASA Case No. LEW–16,390–1: Controlled Thermal Expansion Bond Coat for Thermal Barrier Coatings;

NASA Case No. LEW–16,457–1: Stereo Imaging Velocimetry.

Dated: January 20, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–2261 Filed 1–28–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–015)]

NASA Advisory Council (NAC), Aeronautics and Space Transportation Technology Advisory Committee, Task Force on NASA's Aviation Environmental Compatibility Research; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Task Force on NASA's Aviation Environmental Compatibility Research meeting.

DATES: February 24, 1998, 8:30 a.m. to 5 p.m., and February 25, 1998, 8:30 a.m. to 12 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 6H46, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Darlene Boykins, Office of Aeronautics and Space Transportation Technology, National Aeronautics and Space Administration, Washington DC 20546, (202) 358–4743.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The preliminary agenda for the meeting is as follows:

—Team Charter
—Environmental Impact of Aviation
—Emission Reduction Goals and Status
—Technology Transfer Into a Product
—Status of Emissions Regulations
—Environmental Impact of Aviation vs. Other Emissions Sources
—Status of Noise Regulations
—Go Forward Plan

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: January 23, 1998.

Alan M. Ladwig,

Associate Administrator for Policy and Plans.

[FR Doc. 98–2259 Filed 1–28–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–014)]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Solar System Exploration Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Solar System Exploration Subcommittee.

DATES: Monday, February 16, 1998, 8:30 a.m. to 5 p.m.; and Tuesday, February 17, 1998, 8:30 a.m. to 5 p.m.

ADDRESSES: Jet Propulsion Laboratory, Building 180, Room 101, California Institute of Technology, 4800 Oak Grove Drive, Pasadena, California 91109–8099.

FOR FURTHER INFORMATION CONTACT: Carl Pilcher, Code S, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2470.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—Goals of meeting
—ESS and OSS updates, budget
—Mars program issues and mission options
—Near-Earth asteroid prospector
—R & A task group report
—Outer planets mission sets:
—Viable opportunities
—Program costs
—Technology needs and programs

Discussion and assessment of mission sets:

—Apply selection criteria
—Identify pros and cons
—Discussion and formulation of recommendations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 23, 1998.

Alan M. Ladwig,

Associate Administrator for Policy and Plans, National Aeronautics and Space Administration.

[FR Doc. 98–2258 Filed 1–28–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–016)]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Astronomical Search for Origins and Planetary Systems (ORIGINS); Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee, ORIGINS Subcommittee.

DATES: Tuesday, February 24, 1998, 8:30 a.m. to 5 p.m.; Wednesday, February 25, 1998, 8:30 a.m. to 5 p.m.; and Thursday, February 26, 1998, 8:30 a.m. to noon.

ADDRESSES: Carnegie Observatory, 813 Santa Barbara Street, Pasadena, CA 91101.

FOR FURTHER INFORMATION CONTACT: Dr. Edward J. Weiler, Code SA, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2150.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Status of ORIGINS Mission
—Discussion of NGST Institute
—Status of 2002 HST Instruments
—ORIGINS Technology Status
—SScAC Task Force Status

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 23, 1998.

Alan M. Ladwig,

Associate Administrator for Policy and Plans, National Aeronautics and Space Administration.

[FR Doc. 98–2260 Filed 1–28–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–008)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives that SGL Carbon Composites, Inc., of Gardena, California 90249–2506, has applied for a partially exclusive to practice the inventions described and claimed in NASA Case Numbers LAR 15643–1, entitled "Chopped-Fiber Composite Piston Architecture"; LAR 15274–1, entitled "Carbon Fiber Reinforced Carbon Composite Valve for an Internal Combustion Engine," and LAR 15653–1, entitled "Method of Manufacturing Carbon Fiber Reinforced Carbon Composite Valves for an Internal Combustion Engine," for which United States Patent Applications were filed by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

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DATE: Responses to this notice must be received by March 30, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly A. Chasteen, Patent Attorney, NASA Langley Research Center, Mail Stop 212, Hampton, VA 23681–0001, telephone 864–3227 and fax (757) 864–9190.

Dated: January 21, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–2245 Filed 1–28–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Committee Management; Notice of Establishment

The Deputy Director of the National Science Foundation has determined that the establishment of NSF2000 Steering Committee is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: NSF2000 Steering Committee.

Purpose: The Foundation will be observing its 50th anniversary in the year 2000. To advise and assist in this important endeavor, NSF is establishing a steering committee that includes representatives from science and engineering and other key groups, such as educators, to help ensure that the objectives of NSF2000 are met. These objectives are to highlight 50 years of U.S. achievements in science and engineering research and education, and to increase awareness of NSF's role in enabling U.S. world leadership in science and engineering.

Balanced Membership Plans. The Committee will be balanced with 15 to 20 men and women who represent science and engineering and education. Members will be selected:

- For having made significant contributions and commitment to science and technology and/or to science and engineering education,
- For having standing and creditability with the key target audiences of NSF2000,
- For having knowledge of or experience with NSF, and
- For having knowledge and experience to help NSF2000 reach its goals and objectives.

Responsible NSF Official: Mary Bullock, Section Head, Special Projects Section, Office of Legislative and Public Affairs, Room 1245, National Science Foundation, 4301 Wilson Boulevard, Arlington, Va. 22300, telephone (703) 306–1070.

Dated: January 23, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–2206 Filed 1–28–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Engineering, Committee of Visitors (1170).

Date and Time: February 18–19, 1998; 8:00 a.m. to 5:30 p.m.

Place: Rooms 365 and 580, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Delcie Durham, Program Director, Materials Processing and Manufacturing, and Dr. Ming Leu, Program Director, Manufacturing Machines and Equipment, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone (703) 306–1330.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewers comments, and other privileged materials.

Agenda: To provide oversight review of the Materials Processing and Manufacturing, and the Manufacturing Machines and Equipment Programs.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: January 23, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–2205 Filed 1–28–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Graduate Education

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Graduate Education (#57).

Date and time: February 18 and 19, 1998; 8:30 a.m.–5:00 p.m.

Place: Room 330, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of meeting: Closed.

Contact persons: Dr. Sonia Ortega, Mrs. Carolyn L. Piper and Mrs. Arneeta S. Speight, Division of Graduate Education, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Telephone: (703) 306–1697.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the NSF–NATO program as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 26, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–2202 Filed 1–28–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Information and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information and Intelligent Systems (1200).

Date and Time: February 12–13, 1998, 8:30 am–5:00 pm

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Gary Strong, Acting Deputy Division Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1928.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Knowledge and Cognitive Systems Program proposals as part of the selection process of awards.

Reasons for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 23, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–2204 Filed 1–28–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Sciences; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Materials Research (1203) will be holding panel meetings for the purpose of reviewing proposals submitted to the Integrative Graduate Education and Research Training Program. These proposals reflect multidisciplinary research themes that draw from all areas of science, engineering, and education supported by the National Science Foundation. In order to review the proposals, panel meetings will be held on February 19–20, 1998 (2). All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, from 8:00 AM to 5:00 PM each day.

Contact person: Dr. Henry Blount, Head, Office of Multidisciplinary Activities, Office of the Assistant Director for Mathematical and Physical Sciences, National Science Foundation, Room 1005, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1946.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 26, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–2203 Filed 1–28–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: Thursday, February 19, 1998; 8:30 a.m. to 5:00 p.m., Friday, February 20, 1998; 8:30 a.m. to 5:00 p.m., Saturday, February 21, 1998; 8:30 a.m. to 2:00 p.m. all in Room 1280.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Bradley D. Keister, Program Director for Nuclear Physics, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1891.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the Nuclear Physics program for financial support.

Agenda: To review and evaluate the Nuclear Physics proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 26, 1998.

Linda Allen-Benton,

Deputy Director, Human Resource Management.

[FR Doc. 98–2201 Filed 1–28–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334 and 50–412]

In the Matter of The Cleveland Electric Illuminating Company, et al; Order Approving Application Regarding Merger Agreement Between DQE, Inc. and Allegheny Power System, Inc.

I

The Cleveland Electric Illuminating Company (CEI), Duquesne Light Company (DLC), Ohio Edison Company (OE), Pennsylvania Power Company (Penn Power), and Toledo Edison Company (TE) are the licensees of Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and BVPS–2). DLC acts as agent for the other licensees and has exclusive responsibility for and control over the physical construction, operation, and maintenance of BVPS–1 and BVPS–2 as reflected in Facility Operating Licenses Nos. DPR–66 and NPF–73. The Nuclear Regulatory Commission (NRC) issued Licenses Nos. DPR–66 and NPF–73 on July 2, 1976, and on August 14, 1987, respectively, pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50). The facility is located on the southern shore of the Ohio River in Beaver County, Pennsylvania, approximately 22 miles northwest of Pittsburgh and 5 miles east of East Liverpool, Ohio.

II

Under cover of a letter dated August 1, 1997, DLC submitted an application for consent under 10 CFR 50.80 regarding a proposed merger of DQE, Inc. (the parent holding company of DLC) and Allegheny Power System, Inc., which would result in DQE, Inc. becoming a wholly owned subsidiary of Allegheny Power System, Inc. Allegheny Power System, Inc. would change its name to Allegheny Energy, Inc. (Allegheny Energy). CEI, OE, Penn Power, and TE are not involved in the merger. Supplemental information was submitted by letter dated October 30, 1997.

Under the proposed merger, DLC will become an indirect subsidiary of Allegheny Energy by reason of DQE, Inc. becoming a subsidiary of Allegheny Energy. DLC and the other current licensees will continue to hold the licenses, and no direct transfer of the licenses will result from the merger. On September 12, 1997, a Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring was published in the **Federal Register** (62 FR 48113). An Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on September 25, 1997 (62 FR 50411).

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information submitted in the application and letters of August 1, 1997, and October 30, 1997, the NRC staff has determined that the proposed merger will not affect the qualifications of DLC as holder of Facility Operating Licenses Nos. DPR–66 and NPF–73, and that the transfer of control of the licenses, to the extent effected by the proposed merger, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. These findings are supported by a safety evaluation dated January 23, 1998.

III

Accordingly, pursuant to Sections 161b, 161i, 161o. and 184 of the Atomic Energy Act of 1954, as amended, 42 USC 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It is hereby ordered*

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that the Commission approve the application regarding the merger agreement between DQE, Inc. and Allegheny Power System, Inc. subject to the following: (1) DLC shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from DLC to its first- or second-tier parent or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent of DLC's consolidated net utility plant, as recorded on DLC's books of account; and (2) should the merger not be completed by December 31, 1998, this Order shall become null and void, unless upon application and for good cause shown this date is extended.

This Order is effective upon issuance.

IV

By March 2, 1998, any person adversely affected by this Order may file a request for a hearing with respect to issuance of the Order. Any person requesting a hearing shall set forth with particularity how such person's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is to be held, the Commission will issue an order designating the time and place of such hearing.

The issue to be considered at any such hearing shall be whether this Order should be sustained.

Any request for a hearing must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Copies should also be sent to the Office of the General Counsel and to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to John O'Neill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for DLC.

For further details with respect to this action, see the application submitted under cover of a letter dated August 1, 1997, and supplemental letter dated October 30, 1997, and the safety evaluation dated January 23, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC., and at the local public document room located at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Dated at Rockville, Maryland, this 23rd day of January 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–2181 Filed 1–28–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–352 and 50–353]

Philadelphia Electric Company Notice of Consideration of Issuance of Amendment to Facility Operating Licenses and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–39 and NPF–85, issued to Philadelphia Electric Company (the licensee), for operation of the Limerick Generating Station (LGS), Units 1 and 2, located in Montgomery and Chester Counties, Pennsylvania.

The proposed amendment would allow installation of replacement suction strainers for the Emergency Core Cooling System at LGS, Units 1 and 2. The installation for LGC, Unit 1, will be during the refueling outage currently scheduled for April 1998. Installation of the suction strainers in LGS, Unit 2, would be completed at a later date. Moreover, the licenses for LGS, Units 1 and 2, would be revised to reflect approval of the installation of the above cited strainers. The new large-capacity replacement strainers would be installed in the Residual Heat Removal and Core Spray systems' pump suction piping.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 2, 1998 the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Pottstown Public Library, 500 High Street, Pottstown, PA 19464. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to J.W. Durham, Sr., Esquire Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, PA 19101, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated October 6, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Dated at Rockville, Maryland, this 23rd day of January, 1998.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–2 Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 98–2180 Filed 1–28–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–352]

Philadelphia Electric Company; Limerick Generating Station, Unit 1 Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for Facility Operating License No. NPF–39 issued to Philadelphia Electric Company (the licensee), for operation of the Limerick Generating Station (LGS), Unit 1, located in Montgomery and Chester Counties, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt Philadelphia Electric Company from the requirements of 10 CFR 70.24(a), which requires in each area in which special nuclear material is handled, used, or stored, a monitoring system that will energize clear audible alarms if accidental criticality occurs. The proposed action would also exempt the licensee from the requirements to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon the sounding of the alarm, to familiarize personnel with the evacuation plan, and to designate responsible individuals for determining the cause of the alarm, and to place radiation survey instruments in accessible locations for use in such an emergency.

The proposed action is in accordance with the licensee's application for exemption dated December 23, 1997.

The Need for the Proposed Action

The purpose of 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate action. At a commercial nuclear power plant the inadvertent criticality with which 10 CFR 70.24 is concerned could occur during fuel handling operations. The special nuclear material that could be assembled into a critical mass at a commercial nuclear power plant is in the form of nuclear fuel; the quantity of other forms of special nuclear material that is stored on site in any given location is small enough to preclude achieving a critical mass. Because the fuel is not enriched beyond 5.0 weight percent Uranium-235 and because commercial nuclear plant licensees have procedures and design features that prevent inadvertent criticality, the staff has determined that it is unlikely that an inadvertent criticality could occur due to the handling of special nuclear material at a commercial power reactor. The requirements of 10 CFR 70.24(a), therefore, are not necessary to ensure the safety of personnel during the handling of special nuclear materials at commercial power reactors. However, an exemption to 10 CFR 70.24(a) is needed to permit deviation from these requirements.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed action involves features located entirely within the protected area as defined in 10 CFR part 20.

The proposed action will not result in an increase in the probability or consequences of accidents or result in a change in occupational or offsite dose. Therefore, there are no radiological impacts associated with the proposed action.

The proposed action will not result in a change in nonradiological plant effluents and will have no other nonradiological environmental impact.

Accordingly, the Commission concludes that there are no environmental impacts associated with this action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or

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greater environmental impact need not be evaluated. As an alternative to the proposed exemption, the staff considered denial of the requested exemption. Denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement Related to the Operation of Limerick Generating Station, Units 1 and 2," dated November 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on January 23, 1998, the staff consulted with the Pennsylvania State official, Mr. David Ney of the Bureau of Radiation Protection, Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 23, 1997, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Dated at Rockville, Maryland, this 23rd day of January 1998.

For the Nuclear Regulatory Commission.

Bartholomew C. Buckley,

Senior Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–2179 Filed 1–28–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication; Year 2000 Readiness of Computer Systems at Nuclear Power Plants (MA0138)

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter to all holders of operating licenses for nuclear power plants, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel, to require that all addressees provide certain information regarding their programs, planned or implemented, to address the Year 2000 (Y2K) problem in computer systems at their facilities. In particular, addressees are being asked to provide written confirmation of implementation of the programs, and written certification that their facilities are Y2K ready and in compliance with the terms and conditions of their licenses and NRC regulations. This information is being requested under 10 CFR 50.54(f).

The NRC is seeking comment from interested parties on both the technical and regulatory aspects of the proposed generic letter presented under the Supplementary Information heading. In this regard, the NRC encourages the industry to propose a viable alternative to the generic letter as a means of providing the necessary assurance to the NRC that licensees are effectively addressing the Y2K problem in computer systems at their facilities. Such an alternative could consist of a voluntary initiative on the part of the nuclear power industry to obtain licensee inputs and communicate its findings to the NRC.

The proposed generic letter has been endorsed by the Committee to Review Generic Requirements (CRGR). Relevant information that was sent to the CRGR will be placed in the NRC Public Document Room. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter. The NRC's final evaluation will include a review of the technical position and, as appropriate, an analysis of the value/impact on licensees. Should this generic letter be issued by the NRC, it will become available for public inspection in the NRC Public Document Room.

DATES: Comment period expires March 2, 1998. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules and Directives Branch, Division of Administrative Services, U.S. Nuclear Regulatory Commission, Mail Stop T6–D69, Washington, DC 20555–0001. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, between 7:45 am to 4:15 pm, Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Matthew Chiramal, (301) 415–2845.

SUPPLEMENTARY INFORMATION:

NRC Generic Letter No. 98–XX: Year 2000 Readiness of Computer Systems at Nuclear Power Plants

Addressees

All holders of operating licenses for nuclear power plants, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to require that all addressees provide the following information regarding their programs, planned or implemented, to address the Year 2000 (Y2K) problem in computer systems at their facilities: (1) written confirmation of implementation of the programs, and (2) written certification that the facilities are Y2K ready and in compliance with the terms and conditions of their licenses and NRC regulations.

Description of Circumstances

Simply stated the Y2K computer problem pertains to the potential inability of computers to correctly recognize dates beyond the current century, i.e., beginning with January 1, 2000 and beyond. The problem results from computer hardware or software that uses two-digit fields to represent the year. If the Y2K problem is not corrected, computer systems will be unable to recognize the change in century and will misread "00," for the year 2000, as 1900. The Y2K problem has the potential to interfere with the proper operation of any computer system, any hardware that is microprocessor-based (embedded

software), and any software or database at nuclear power plants. As a consequence, there is a risk that affected plant systems and equipment will fail to function properly.

The Y2K problem is urgent because it has a fixed, non-negotiable deadline. This matter requires priority attention because of the limited time remaining to assess the magnitude of the problem, its associated technical and cost risks, and resource availability, and to implement programs that will achieve satisfactory resolution.

Existing reporting requirements under 10 CFR part 21, 10 CFR 50.72, and 10 CFR 50.73 provide for notification to the NRC staff of deficiencies, non-conformance and failures, such as the Y2K problem in safety-related systems. To date, the NRC staff has not identified nor received notification from licensees or vendors of digital protection systems (e.g., Westinghouse, General Electric, Combustion Engineering, Foxboro, Allen Bradley, or Framatome/Babcock & Wilcox) that a Y2K problem exists with safety-related initiation and actuation systems. However, problems have been identified in non-safety, but important, computer-based systems. Such systems, primarily databases and data collection processes necessary for plant operation that are date driven, may need to be modified for Y2K compliance. Some examples of systems and computer equipment that may be affected by Y2K problems follow:

- Security computers
- Plant process (data scan, log, and alarm) and safety parameter display system computers
- Emergency response systems
- Radiation monitoring systems
- Dosimeters and readers
- Plant simulators
- Engineering programs
- Communication systems
- Inventory control systems
- Surveillance and maintenance tracking systems
- Control systems

To alert nuclear power plant licensees to the Y2K problem, the NRC issued Information Notice (IN) 96–70, "Year 2000 Effect on Computer System Software," on December 24, 1996. In IN 96–70 the staff described the potential problems that nuclear power plant computer systems and software may encounter as a result of the change to the new century and how the Y2K issue may affect NRC licensees. In IN 96–70 the staff encouraged licensees to examine their uses of computer systems and software well before the turn of the century and suggested that licensees consider actions appropriate to examine and evaluate their computer systems for Y2K vulnerabilities. The NRC staff also incorporated recognition of the Y2K concern in the updated Standard Review Plan (SRP), NUREG–0800, Chapter 7, "Instrumentation and Control," dated August 1997, which contains guidance for staff review of computer-based instrumentation and control systems.

At the Nuclear Utilities Software Management Group (NUSMG) Year 2000 Workshop, an industry workshop held in July 1997, nuclear power plant licensees described their Y2K programs, and gave examples of areas in which they addressed Y2K issues in order to ensure the safety and operability of their plants on January 1, 2000. Some of the issues discussed were the (1) evaluation of the impact of the Y2K problem on plant equipment, (2) assessment process involved in the identification of Y2K affected components, vendors, and interfaces, (3) development of Y2K testing strategies, and (4) identification of budget needs to address the Y2K problem.

The Nuclear Energy Institute (NEI) met with NUSMG and nuclear plant utility representatives in August 1997 to formulate an industry-wide plan to address the Y2K issue. On October 7, 1997, representatives of NEI and NUSMG met with the NRC staff to discuss actions NEI was taking to help utilities make their plants "Year 2000 ready." NEI was preparing a framework document with guidance for utility use in readying for the Year 2000. The framework document makes a distinction in terminology between "Y2K readiness" ("Y2K Ready" is defined as a computer system or application that has been determined to be suitable for continued use into the year 2000 even though the computer system or application is not fully Y2K Compliant) and "Y2K compliance" ("Y2K Compliant" is defined as computer systems or applications that accurately process date/time data (including but not limited to, calculating, comparing, and sequencing) from, into and between the twentieth and twenty-first centuries, the years 1999 and 2000, and leap-year calculations). NEI/NUSMG issued the framework document NEI/NUSMG 97–07, "Nuclear Utility Year 2000 Readiness" to all licensees in November 1997. The document recommends methods for nuclear utilities to attain Y2K readiness and thereby ensure that their facilities remain safe and continue to operate within the requirements of their license. The scope of NEI/NUSMG 97–07 covers software, or software-based systems or interfaces, whose failure (due to the Y2K problem) would (1) prevent the performance of the safety function of a structure, system or component and (2) degrade, impair, or prevent operability of the nuclear facility.

Discussion

Diverse concerns are associated with the potential impact of the Y2K problem on nuclear power plants because of the variety and types of computer systems in use. Some of the concerns are the (1) scheduling of maintenance and technical specification surveillance requirements, (2) use and application of programmable logic controllers and other commercial off-the-shelf software and hardware, (3) operation of process control systems, (4) performance of engineering calculations, and (5) collection of operating and post-accident plant parameter data.

Some vendors have taken such actions as placing information on the Internet discussing which of their products are Y2K compliant, and how the vendor is addressing the Y2K problem with respect to specific products, including products purchased by their nuclear power plant customers. When addressing some of the particular issues associated with the use and application of software, it has been found that even if the application has no apparent date manipulation algorithms, it may still be affected by a Y2K related problem. For example, a subroutine that date stamps the header information in archival tapes regardless of the rest of the content of the tape may be affected. In addition, although individually several systems may be "date safe," the integrated operations that the systems support may be vulnerable to the Y2K problem. Further, there are potential impacts from the operating system supporting their instrumentation system's application software and from sub-programs (such as calibration and data recording/reporting) associated with the main application software.

One application which is common to all power reactor licensees is the link between plant computers and the NRC's Emergency Response Data System (ERDS). This application performs the communication and data transmission function which provide near real-time data availability to NRC and state incident response personnel during declared emergencies. The NRC is currently performing Y2K related upgrades to ERDS which will maintain the same communication protocol as the current system with the exception that either 2-digit or 4-digit year fields will be accepted. Those licensees that anticipate changes to their ERDS link should allow time in their schedules for retesting their systems. NRC contractors

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will support requests for testing on a "first come, first served" basis.

NEI/NUSMG 97–07 suggests a strategy for developing and implementing a nuclear utility Y2K program. The strategy recognizes management, implementation, quality assurance, regulatory considerations, and documentation as the fundamental elements of a successful Y2K project. The document contains additional guidance for these fundamental elements. The recommended components for management planning are management awareness, sponsorship, project leadership, project objectives, project management team, management plan, project reports, interfaces, resources, oversight, and quality assurance. The suggested phases of implementation are awareness, initial assessment (which includes inventory, categorization, classification, prioritization, and analysis of initial assessment), detailed assessment (including vendor evaluation, utility-owned or -supported software evaluation, interface evaluation, remedial planning), remediation, Y2K testing and validation, and notification. The quality assurance (QA) measures apply to project management QA and implementation QA.

Regulatory considerations include the performance of appropriate reviews, reporting requirements, and documentation. Documentation of Y2K program activities and results includes documentation requirements, project management documentation, vendor documentation, inventory lists, checklists for initial and detailed assessments, and record retention. NEI/NUSMG 97–07 also contains examples of various plans and checklists as appendices.

The staff believes that the guidance in NEI/NUSMG 97–07, when properly implemented, will present an appropriate approach for licensees to address the Y2K problem at nuclear power plant facilities.

In the course of implementing the Y2K readiness program, problems could be identified that potentially impact the licensing basis of the plants. In certain cases, license amendments may be needed to address the problem resolution. Licensees should submit such license amendments to the NRC on a timely basis. The utility Y2K readiness programs and schedules should have the flexibility to accommodate such an eventuality. In addition, licensees are reminded that any changes to their facilities that impact their current licensing basis must be reviewed in accordance with existing NRC requirements and the change properly documented.

Required Response

In order to gain the necessary assurance that addressees are effectively addressing the Y2K problem and are in compliance with the terms and conditions of their licenses and NRC regulations, the NRC staff requires that all addressees submit a written response to this generic letter as follows:

(1) Within 90 days of the date of this generic letter, submit a written response indicating whether or not you have pursued and are continuing to pursue a Y2K readiness program as outlined in NEI/NUSMG 97–07. If you are not conforming to the NEI/NUSMG guidance, present a brief description of the program(s) that have already been completed, are being conducted, or are planned to ensure Y2K readiness of the computer systems at your facility(ies). This response should address the program's scope, assessment process, and plans for corrective actions (including testing, and schedules).

(2) Upon completing your Y2K readiness program, or, in any event, no later than July 1, 1999, submit a written response confirming that your facility is Y2K ready and in compliance with the terms and conditions of your license(s) and NRC regulations. In addition, the response should contain a status report of work remaining to be done to complete your Y2K program, including completion schedules. ("Y2K Ready" is defined as a computer system or application that has been determined to be suitable for continued use into the year 2000 even though the computer system or application is not fully Y2K Compliant. "Y2K Compliant" is defined as computer systems or applications that accurately process date/time data (including but not limited to, calculating, comparing, and sequencing) from, into and between the twentieth and twenty-first centuries, the years 1999 and 2000, and leap-year calculations.)

Address the written reports to the U.S. Nuclear Regulatory Commission, Attention: Document Control Desk, Washington, D.C. 20555–0001, under oath or affirmation under the provisions of Section 182a, Atomic Energy Act 1954, as amended, and 10 CFR 50.54(f). In addition, submit a copy to the appropriate regional administrator.

Backfit Discussion

This generic letter only requests information from addressees under the provisions of Section 182a of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f). The requested information will enable the staff to verify that each nuclear power plant licensee is implementing an effective plan to address the Y2K problem and provide for safe operation of the facility before January 1, 2000, and is in compliance with the terms and conditions of their license(s) and NRC regulations. The following NRC regulations are a basis for this request:

- 10 CFR 50.36, "Technical Specifications," paragraph (c)(3), "Surveillance requirements," and paragraph (c) (5), "Administrative controls." These relate, respectively, to requirements relating to test, calibration, or inspection to assure that the necessary quality of systems and components is maintained, and to provisions relating to management, procedures, record keeping, and review and audit necessary to assure operation of the facility in a safe manner.
- 10 CFR 50.47, "Emergency plans," paragraph (b)(8), which relates to the provision and maintenance of adequate emergency facilities and equipment to support the emergency responses.
- Appendix B to 10 CFR Part 50, Criterion III, "Design Control," requires that design control measures shall provide for verifying or checking the adequacy of design, such as by the performance of design reviews, by the use of alternate or simplified calculational methods, or by the performance of a suitable testing program.
- Appendix B to 10 CFR Part 50, Criterion XVII, "Quality Assurance Records," requires that sufficient records shall be maintained to furnish evidence of activities affecting quality. The records are to include, among others, operating logs and results of reviews.
- Appendix E to 10 CFR 50, Section VI, "Emergency Response Data System" which relates to the provision and maintenance of licensee links to the Emergency Response Data System.

In addition, the following requirements from Appendix A to 10 CFR part 50, "General Design Criteria for Nuclear Power Plants", also provide a basis for the request: (In the statement of consideration (SOC) for the amendment to 10 CFR part 50 which added Appendix A, "General Design Criteria for Nuclear Power Plants," published in the **Federal Register** on February 20, 1971, the Commission noted that the general design criteria added as Appendix A to Part 50 establish the minimum requirements for the principal design criteria for water-cooled nuclear power plants similar in design and location to plants for which construction permits have been issued by the Commission. Principal design criteria established by an applicant and accepted by the Commission will be incorporated by reference in the construction permit. The SOC also notes that in considering the issuance of an operating license under part 50, the Commission will require assurance that these criteria have been satisfied in the detailed design and construction of the facility and any changes in such criteria are justified. It should be noted that a proposed Appendix A to 10 CFR part 50 was published in the **Federal Register** on July 11, 1967, and the comments and suggestions received in response to the notice of proposed rule making and subsequent developments in the technology and in the licensing process have been considered in developing the general design criteria.)

- Appendix A to 10 CFR part 50, General Design Criterion (GDC) 13, "Instrumentation and control," which addresses the provision of appropriate instrumentation and controls to monitor and control systems and variables during normal operation, anticipated operational occurrences, and accident conditions as appropriate to ensure adequate safety.
- Appendix A to 10 CFR part 50, GDC 19, "Control room," which requires the provision of a control room from which actions can be taken to operate the nuclear plant safely.
- Appendix A to 10 CFR part 50, GDC 23, "Protection system failure modes," which requires that the protection system shall be designed to fail into a safe state or into a state demonstrated to be acceptable on some other defined basis.

Dated at Rockville, Maryland, this 23rd day of January 1998.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Acting Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–2182 Filed 1–28–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8989; License No. SUA–1559]

Envirocare of Utah, Inc.; Notice of Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by petition dated December 12, 1997, Mr. Thomas B. Cochran, Director of Nuclear Programs, Natural Resources Defense Council (NRDC) requested that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to Envirocare of Utah, Inc. (Envirocare). The Petitioner requests that the NRC: (1) Conduct an immediate investigation of issues raised in the Petition and immediately suspend Envirocare's NRC license; (2) conduct an investigation of possible criminal violations of section 223 of the Atomic Energy Act of 1954, as amended (the Act); (3) immediately suspend Envirocare's license with the State of Utah, under section 274j(2) of the Act; (4) investigate the adequacy of the State of Utah agreement state program to protect whistle blowers; (5) contact each current and former Envirocare employee personally, on a confidential basis, to advise them of their rights to inform the NRC of unsafe practices and violations, to inform them of the protections available to them, and to ask them if they have any information which they wish to disclose, on a confidential basis or otherwise; and (6) order a special independent review of Envirocare's relationships with its employees, along the lines of the review ordered by the NRC for the Millstone site.

As a basis for this request, the petitioner states that Envirocare's employee-related practices and contractual provisions constitute a violation of 42 U.S.C. 5851 and the NRC's whistle blower protection regulations under Parts 19 and 40 of Title 10 of the Code of Federal Regulations (i.e., 10 CFR 19.16, 19.20, and 40.7). Specifically, the petitioner states that current and former Envirocare employees who have provided to governmental authorities information adverse to Envirocare's interests fear for their lives and the lives of their families, should their identities become known to an officer of Envirocare. The petitioner also states that certain provisions in Envirocare's standard employment contract prevent its employees from disclosing to the NRC information concerning unsafe practices and violations under the NRC license and threaten them with severe financial penalties in the event of a disclosure.

The request for an investigation and the suspension of Envirocare's NRC license is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Material Safety and Safeguards. As provided by § 2.206, appropriate action will be taken on this petition within a reasonable time. By letter dated January 16, 1998, the Director denied the petitioner's request for immediate action concerning Envirocare's NRC license. A copy of the petition is available for public inspection and copying at the NRC Public Document Room, in the Gelman Building, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 16th day of January 1998.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–2178 Filed 1–28–98; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments Are Invited On

(a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Withholding Certificate for Railroad Retirement Monthly Annuity Payments; OMB 3220–0149.

The Internal Revenue Code requires all payers of tax liable private pensions to U.S. citizens to: (1) Notify each recipient at least concurrent with initial withholding that the payer is, in fact, withholding benefits for tax liability and that the recipient has the option of electing not to have the payer withhold, or to withhold at a specific rate; (2) withhold benefits for tax purposes (in the absence of the recipient's election not to withhold benefits); and (3) notify all beneficiaries, at least annually, that they have the option of changing their withholding status or elect not to have benefits withheld.

The Railroad Retirement Board provides Form RRB–W4P, Withholding Certificate for Railroad Retirement

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Payments, to its annuitants to exercise their withholding options. Completion of the form is required to obtain or retain a benefit. One response is requested of each respondent.

No changes are being proposed to the current version of Form RRB W–4P used by the RRB. The RRB estimates that 25,000 annuitants utilize Form RRB W–4P annually. The completion time for Form RRB W–4P varies depending on individual circumstances. The average completion time for Form RRB W–4P is estimated at 40 minutes for recordkeeping, 20 minutes for learning about the law or the form, and 49 minutes for preparing the form.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 98–2129 Filed 1–28–98; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23007; 812–10932]

American Century Capital Investment Management, Inc., et al.; Notice of Application

January 22, 1998.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: American Century Capital Portfolios, Inc. (the "Company"), on behalf of its series American Century Real Estate Fund (the "Fund"), American Century Investment Management, Inc. (the "Advisor"), RREEF Real Estate Securities Adviser, L.P. (the "Subadvisor"), and ROMEO America. L.L.C. (the "New Subadvisor").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act to exempt applicants from the provisions of section 15 (a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the implementation, without prior shareholder approval, of an investment subadvisory agreement ("New Subadvisory Agreement") among the Fund, the Advisor and the New Subadvisor for a period of up to 120 days following the later of the acquisition of substantially all the assets of the Subadvisor by the New Subadvisor or the date on which the order is issued, but in no event later than May 27, 1998 (the "Interim Period"). The order would also permit the New Subadvisor to receive from the Advisor fees earned under the New Subadvisory Agreement following approval by the Fund's shareholders.

FILING DATES: The application was filed on December 29, 1997. Applicant has agreed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An Order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 13, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Skadden, Arps, Slate, Meagher & Flom (Illinois), 333 West Wacker Drive, Suite 2300, Chicago, Illinois 60606, Attn: Peter C. Krupp.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. The Company is a Maryland corporation registered under the Act as an open-end management investment company. The Fund is a series of the Company. The Advisor, a Delaware corporation and an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act"), acts as the Fund's investment adviser. The Subadvisor, a California limited partnership and an investment adviser registered under the Advisers Act, acts as subadviser to the Fund under the terms of a subadvisory agreement (the "Existing Subadvisory Agreement"). The New Subadvisor is a Delaware limited liability company and an indirect, wholly-owned subsidiary of ROMEO U.S. Group, Inc. ("ROMEO"). The applicants represent that the New Subadvisor will be a duly registered investment adviser under the Advisers Act because either (i) the New Subadvisor shall have filed a Form ADV with the SEC that has become effective on or before the Closing Date (as defined below), or (ii) in reliance on section 203(g) of the Advisers Act.

2. The New Subadvisor has agreed to acquire and purchase substantially all of the assets of the Subadvisor pursuant to an acquisition agreement dated December 14, 1997 (the "Acquisition"). In connection with the Acquisition, the Subadvisor will transfer all of the investment advisory agreements to which the Subadvisor is a party, including the Existing Subadvisory Agreement, to ROMEO. Applicants expect that the Acquisition will be consummated on January 27, 1998.

3. The consummation of the Acquisition will result in an assignment of the Existing Subadvisory Agreement within the meaning of section 2(a)(4) of the Act, terminating such agreement according to its terms and the Act. Applicants seek an exemption to permit: (i) The implementation, without prior shareholder approval, of the New Subadvisory Agreement; and (ii) the New Subadvisor to receive from the Advisor, subject to shareholder approval, any and all fees earned under the New Subadvisory Agreement during the Interim Period. The requested exemption would cover an Interim Period of not more than 120 days beginning on the later of the day the Acquisition is consummated (the "Closing Date"), or the issuance of the requested order and continuing through the date the New Subadvisory Agreement is approved by the shareholders of the Fund (and in any event no later than May 27, 1998).[1] The New Subadvisory Agreement will contain substantially the same terms and conditions as the Existing Subadvisory Agreement, except for the dates of execution and termination and the inclusion of escrow arrangements.

4. Applicants state that prior to the Closing Date, the Board of Directors of the Company (the "Board") will meet, in accordance with Section 15(c) of the Act to consider the New Subadvisory Agreement and to evaluate whether the terms of the New Subadvisory Agreement are in the best interests of the Fund and its shareholders. The Board intends to hold such a meeting on January 23, 1998. To the extent that the Board cannot meet prior to the Closing Date, applicants acknowledge that they may not rely on the exemptive relief requested in the application.

5. Applicants propose to enter into escrow arrangements with an unaffiliated financial institution as escrow agent. The arrangements, in substance, would provide that: (i) The portion of the investment subadvisory fees earned by the New Subadvisor during the Interim Period under the New Subadvisory Agreement would be paid into an interest-bearing escrow account maintained by the escrow agent; and (ii) the amounts in the escrow account (including interest earned on such amounts) would be paid to the New Subadvisor only upon approval by the Fund's shareholders of the New Subadvisory Agreement or, in the absence of such approval, to the Fund. Before any such release is made, the Board will be notified.

Applicants' Legal Analysis

1. Section 15(a) of the Act prohibits an investment adviser from providing investment advisory services to a registered investment company except under a written contract that has been approved by a majority of the voting securities of the investment company. Section 15(a) of the Act further requires that the written contract provide for automatic termination in event of its assignment. Section 2(a)(4) of the Act defines "assignment" to include any direct or indirect transfer of a contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

2. Applicants represent that the Acquisition will result in an "assignment," within the meaning of section 2(a)(4) of the Act, of the Existing Subadvisory Agreement, terminating the Agreement according to its terms.

3. Rule 15a–4 provides, in pertinent part, that if an investment adviser's investment advisory contract with a registered investment company is terminated by assignment, the adviser may continue to act as such for 120 days under a written contract that has not been approved by the investment company's shareholders, if the new contract is approved by the board of directors of the investment company (including a majority of the noninterested directors), the compensation to be paid under the new contract does not exceed the compensation which would have been paid under the contract most recently approved by shareholders of the investment company, and neither the investment adviser nor any controlling person of the investment adviser "directly or indirectly receive money or other benefit" in connection with the assignment. Applicants cannot rely on rule 15a–4 because of the benefits to the members, partners and shareholders of the Subadviser arising from the Acquisition.

4. Section 6(c) of the Act permits the SEC to conditionally or unconditionally exempt any person, security, or transaction from any provision of the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard.

5. Applicants note that the terms and timing of the Acquisition were determined by the New Subadvisor and the Subadvisor in response to a number of factors beyond the scope of the Act and substantially unrelated to the Fund. The Acquisition contemplates the sale of the assets of four entities, including the Subadvisor, and the assignment of more than 200 investment advisory and property management contracts. The assignment of the Existing Subadvisory Agreement constitutes a relatively small part of the Acquisition.

6. During the Interim Period, the New Subadvisor will render investment subadvisory services to the Fund under the New Subadvisory Agreement, which will be substantially the same as the Existing Subadvisory Agreement. The applicants represent that during the Interim Period the Fund will receive the same scope and quality of investment subadvisory services provided by essentially the same personnel under the New Subadvisory Agreement as it receives under the Existing Subadvisory Agreement, in the same manner and at the same fee levels. Although the Subadvisor does not anticipate any change in the personnel providing services to the Fund, if such personnel change materially, the New Subadvisor will apprise and consult with the Board to make sure that the Board, including a majority of the noninterested Board members, is satisfied that the services provided during the Interim Period will not be diminished in scope and quality.

7. Applicants believe that the requested relief is consistent with the protection of investors because it will permit continuity of investment subadvisory services to the Fund. Applicants submit that to deprive the New Subadvisor of investment advisory fees earned during the Interim Period would be an unduly harsh and unreasonable penalty.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by this application that:

1. The New Subadvisory Agreement will contain substantially the same terms and conditions as the Existing Subadvisory Agreement, except for the dates of execution and termination and the inclusion of escrow arrangements.

2. That portion of the investment subadvisory fee earned by the New Subadvisor during the Interim Period will be maintained in an interest-bearing escrow account, and amounts in the account (including interest earned on such amounts) will be paid (a) to the New Subadvisor in accordance with the New Subadvisory Agreement, only upon approval of the Fund's shareholders, or (b) in the absence of such approval prior to the expiration of the Interim Period, to the Fund.

3. The Fund will promptly schedule a meeting of shareholders to vote on the approval of the New Subadvisory Agreement to be held within 120 days following the commencement of the Interim Period (but in no event later than May 27, 1998).

4. The Subadvisor or the New Subadvisor will pay the costs of preparing and filing the application. The Subadvisor or the New Subadvisor will pay the costs relating to the solicitation and approval of Fund shareholders of the New Subadvisory Agreement necessitated by the Acquisition.

5. The New Subadvisor will take all appropriate actions to ensure that the scope and quality of subadvisory and other services provided to the Fund by the New Subadvisor during the Interim Period will be at least equivalent, in the

[1] Applicants state that if the Closing Date precedes issuance of the requested order, the New Subadvisor will serve as subadviser to the Fund after the Closing Date and until the issuance of the order in a manner consistent with its fiduciary duty. Applicants also state that the Advisor will be required to pay to the New Subadvisor, with respect to the period from the Closing Date until the issuance of the order, no more than the actual out-of-pocket cost to the New Subadvisor for providing investment subadvisory services to the Fund.

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judgment of the Board, including a majority of the noninterested Board members, to the scope and quality of services previously provided. In the event of any material change in personnel providing material services pursuant to the New Subadvisory Agreement, the New Subadvisor will apprise and consult with the Board to make sure that the Board, including a majority of the noninterested members, is satisfied that the services provided will not be diminished in scope or quality.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–2135 Filed 1–28–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23006; File No. 812–10750]

Great-West Life & Annuity Insurance Company, et al; Notice of Application

January 22, 1998.

AGENCY: The Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940 (the "1940 Act") approving certain substitutions of securities, and pursuant to Section 17(b) of the 1940 Act exempting related transactions from Section 17(a) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered unit investment trusts to substitute shares of certain registered open-end investment companies for shares of certain registered investment companies currently held by those unit investment trusts, and to permit certain in-kind redemptions of portfolio securities in connection with the substitutions.

APPLICANTS: Great-West Life & Annuity Insurance Company ("GWL&A"), Maxim Series Account (the "Maxim Account"), Pinnacle Series Account (the "Pinnacle Account," together with GWL&A and the Maxim Account, the "Separate Accounts"), Maxim Series Fund, Inc. ("Maxim Series Fund") and BenefitsCorp Equities, Inc. ("BCE").

FILING DATE: The application was filed on August 8, 1997, and amended and restated on December 9, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 17, 1998, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Jorden Burt Berenson & Johnson, LLP, 1025 Thomas Jefferson Street, N.W., Suite 400 East, Washington, D.C. 20007–0805, Attention: Josephine Cicchetti, Esq.

FOR FURTHER INFORMATION CONTACT: Ethan D. Corey, Senior Counsel, at (202) 942–0675, or Kevin M. Kirchoff, Branch Chief, at (202) 942–0672, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. GWL&A, a Colorado stock life insurance company, does business in the District of Columbia, Puerto Rico, and in all states of the United States, except New York.

2. GWL&A is wholly-owned by The Great-West Life Assurance Company, which is a subsidiary of Great-West Lifeco Inc., an insurance holding company. Great-West Lifeco Inc. is a subsidiary of Power Financial Corporation of Canada, which is controlled by Power Corporation of Canada.

3. The Maxim Account, a separate account established by GWL&A under Colorado law, is registered with the Commission as a unit investment trust. The Maxim Account is a distinct investment account of GWL&A which acts as a funding vehicle for certain individual flexible premium variable deferred annuity contracts (the "Maxim Contracts").

4. Currently there are three different Maxim Contracts issued under the Maxim Account. Two of the Maxim Contracts ("MSA–1" and "MSA–2") are no longer sold, have fewer than 5,000 participants and no longer file post effective amendments in reliance upon a no-action letter. MSA–1 has five investment divisions, each of which invests exclusively in one of the corresponding portfolios of Maxim Series Fund, an open-end management investment company. MSA–2 has seven investment divisions, five of which invest solely in corresponding portfolios of Maxim Series Fund and two of which invest solely in corresponding portfolios of American Century Variable Portfolios, Inc. ("American Century"), another open-end management investment company. The third Maxim Contract ("MVP") has fifteen investment divisions, thirteen of which invest solely in corresponding portfolios of Maxim Series Fund and two of which invest solely in corresponding portfolios of American Century.

5. The Maxim Account is used in connection with Maxim Contracts that may be issued under retirement plans which qualify for federal tax benefits under Sections 401 and 408 of the Internal Revenue Code (the "Code") as individual retirement accounts and under other retirement plans which do not qualify under the Code.

6. The Pinnacle Account, a separate account established by GWL&A under Colorado law, is registered with the Commission as a unit investment trust. The Pinnacle Account is a distinct investment account of GWL&A which acts as a funding vehicle for certain single premium variable life insurance policies (the "Policies," together with the Maxim Contracts, the "Contracts").

7. The Policies have five investment divisions, each of which invests exclusively in one of the corresponding portfolios of the Maxim Series Fund.

8. The Pinnacle Account no longer files post-effective amendments to its registration statement in reliance upon a no-action letter granted to GWL&A and the Pinnacle Account.

9. BCE is the principle underwriter and distributor of MVP. The Policies, MSA–1, and MSA–2 are not currently sold and there is no need for an underwriter. BCE is registered with the Commission under the Securities Exchange Act of 1934 as a broker-dealer and is a member of the National Association of Securities Dealers, Inc.

10. Of the Contracts and Policies, only MVP is still sold. MVP may be issued under retirement plans which qualify for federal tax benefits under Sections 401 and 408 of the Code as individual retirement accounts and under other retirement plans which do not qualify under the Code.

11. All of the Contracts expressly reserve GWL&A's right, both on its own behalf and on behalf of the Separate Accounts, to eliminate investment divisions, combine two or more investment divisions, or substitute one or more underlying funds for others in which its investment divisions are invested.

12. GWL&A, on its own behalf and on behalf of the Pinnacle Account and the Maxim Account, proposes to exercise its contractual right to eliminate the Maxim Series Fund Total Return Portfolio ("Total Return Portfolio") as an investment division under the Policies and MSA–1. GWL&A also proposes, on its behalf and on behalf of the Maxim Account to exercise its contractual right to eliminate the Total Return Portfolio and the American Century Balanced Portfolio (collectively, the "Eliminated Portfolios") as investment divisions under MVP and MSA–2.

13. With respect to MVP, GWL&A proposes to substitute shares of the Maxim Series Fund Maxim INVESCO Balanced Portfolio (the "Balanced Portfolio") for shares of the Eliminated Portfolios. In addition, with respect to MSA–1 and MSA–2, GWL&A proposes to substitute shares of the Maxim Series Fund Maxim Stock Index Portfolio (the "Index Portfolio," together with the Balanced Portfolio, the "Substituted Portfolios") for shares of the Eliminated Portfolios. Finally, with respect to the Policies, GWL&A proposes to substitute shares of the Index Portfolio for shares of the Total Return Portfolio. When discussed together, the Pinnacle Account and the Maxim Account substitutions will be collectively referred to as the "Substitution." Applicants believe the Substitution will benefit the Contract owners by eliminating portfolios with below average historical return..

14. The investment objective of the Total Return Portfolio is to obtain the highest possible total return, through a combination of income and capital appreciation, consistent with reasonable risk. The investment objective of the American Century Balanced Portfolio is capital growth and current income. The investment objective of the Index Portfolio is to provide investment results, before fees, that correspond to the total return of the Standard & Poor's ("S&P") 500 Index and the S&P Mid-Cap Index, weighted according to their respective pro-rata shares of the market. The investment objective of the Balanced Portfolio is to achieve a high total return on investment through capital appreciation and current income.

15. As of September 30, 1997, the Maxim Total Return Portfolio has provided 1, 5 and 10 year (or since investment division inception) total returns of (i) 24.91%, 12.01% and 9.30% to MSA–1 Contract owners; (ii) 24.72%, 11.87% and 9.52% to MSA–2 Contract owners; (iii) 24.95% and 9.39% to MVP Contract owners; and (iv) 25.81%, 12.87% and 12.43% to Pinnacle Policy owners.[1] The American Century Balanced Portfolio has provided 1, 5 and 10 year (or since investment division inception) total returns of 19.20%, 10.56% and 10.23% to MSA–2 Contract owners. The Maxim Stock Index Fund has provided 1, 5 and 10 year (or since investment division inception) total returns of: (i) 36.68%, 17.00% and 11.37% to MSA–1 Contract owners; (ii) 37.40%, 17.21% and 11.41% to MSA–2 Contract owners; and (iii) 38.52%, 18.31% and 12.42% to Pinnacle Policy owners. The Maxim INVESCO Balanced Portfolio has provided total return of 28.26% to MVP Contract owners since its inception on October 1, 1996. The Maxim INVESCO Balanced Portfolio was created to copy the investment strategy of the INVESCO Balanced Fund and is sub-advised by the same portfolio manager that advises the INVESCO Balanced Fund. The one-year and since-inception total return of the INVESCO Balanced Fund are 25.75% and 20.63%, respectively. The expense level of the INVESCO Balanced Fund is 1.29%; the expense level of the Maxim INVESCO Balanced Portfolio is 1.00%.

16. Contract owners will be advised of their ability to transfer their Contract value to the remaining investment divisions or to leave their Contract value in the Eliminated Portfolios for an automatic substitution on the date that GWL&A will schedule the Substitution to occur (the "Automatic Selection Date"). As of the Automatic Selection Date, all Contract values allocated to the Eliminated Portfolios automatically will be reallocated to the Substituted Portfolios. No Eliminated Portfolio will accept additional premium payments (i.e., new money or transfers) on or after the Automatic Selection Date. Contract owners can transfer their assets from the Substituted Portfolios to any remaining investment division available under their Contracts. No sales load deductions or transfer charges will be assessed in connection with any transfers among the portfolios because of the Substitution or otherwise.

[1] Total return figures for the Pinnacle Policies do not reflect the deduction of cost of insurance charges..

17. Applicants represent that, as noted before, the total expenses of the Balanced Portfolio currently are 1.00%, which is the same as the total expenses of the American Century Balanced Portfolio. Therefore, MVP owners with investments in the American Century Balanced Portfolio will not pay greater costs at the portfolio level. The total expenses of the Maxim Total Return Portfolio are 0.60%. Should MVP owners with current allocations in the Maxim Total Return Portfolio determine that another investment is more appropriate, due to the change in portfolio expenses, those owners of MVP can transfer their assets to any of the remaining twelve investment divisions available under their Contract.

18. With respect to MSA–1 and MSA–2, Applicants represent the total expenses of the Index Portfolio are 0.60%. This is less than the total expenses of the American Century Balanced Portfolio and equal to the total expenses of the Maxim Total Return Portfolio. Should MSA–1 and MSA–2 Contract owners with current allocations in the Eliminated Portfolios determine that another investment is more appropriate for their needs, such Contract owners can transfer their assets to any of the remaining investment divisions available under their respective Contracts.

19. Policy owners will not incur any additional expenses at the policy level. As stated above, the total expenses of the Index Portfolio are equal to the total expenses of the Maxim Total Return Portfolio. Should Policy owners with current allocations in the Eliminated Portfolio determine that another investment is more appropriate for their needs, such Policy owners can transfer their assets to any of the remaining investment divisions.

Applicants' Legal Analysis And Conditions

1. Section 26(b) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution; and the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act. Section 26(b) protects the expectation of investors that the unit investment trust will accumulate shares of a particular issuer and is intended to insure that unnecessary or burdensome sales loads, additional reinvestment

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costs or other charges will not be incurred due to unapproved substitutions of securities.

2. Applicants request an order pursuant to Section 26(b) of the 1940 Act approving the Substitution. Applicants represent that the purposes, terms, and conditions of the Substitution are consistent with the protection for which Section 26(b) was designed. Applicants believe the Substitution will benefit MVP and MSA–2 owners by eliminating two portfolios with below-average historical returns and consolidating their investments in portfolios which have investment objectives similar to the Eliminated Portfolios. MSA–1 owners and Policy owners will also benefit because of the elimination of a poorly performing portfolio and the consolidation of their investments in a portfolio which has investment objectives similar to the Total Return Portfolio.

3. Any Contract owner who does not want his or her assets allocated to the Substituted Portfolios would be able to transfer assets to any one of the other investment divisions available under their Contract without charge prior to or after the Automatic Selection Date.

4. Applicants represent that the Substitution will be effected at net asset value in conformity with Sections 22(c) and 22(g) of the 1940 Act and Rule 22c–1 thereunder. The Substitution may be effected primarily for cash, but also may involve partial redemptions in-kind of securities ("Related Transactions"). The use of in-kind redemptions in conformity with Section 22(g) of the 1940 Act would alleviate the impact of the brokerage fees and expenses upon GWL&A or the investment adviser or sub-adviser of the Substituted Portfolio, as these entities will bear all expenses related to the Substitution. The Related Transactions will be effected to the extent consistent with the investment objectives and any applicable diversification requirements.

5. GWL&A or the investment adviser of the Substituted Portfolios will assume the transfer and custodial expenses and legal and accounting fees incurred with respect to the Substitution. Contract owners will not incur any fees or charges as a result of the transfer of account values from any portfolio. Applicants represent that there will be no increase in the Contract or Separate Account fees and charges after the Substitution. Applicants further represent that the Substitution is designed to avoid any adverse federal income tax effect on Contract owners or Policy owners.

6. Section 17(a)(1) of the 1940 Act prohibits any affiliated person or an affiliate of an affiliated person, of a registered investment company, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits such affiliated persons from purchasing any security or other property from such registered investment company.

7. Section 17(b) of the 1940 Act authorizes the Commission to issue an order exempting a proposed transaction from Section 17(a) if: (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act.

8. Applicants request an order pursuant to Section 17(b) of the 1940 Act exempting the Related Transactions from the provisions of Section 17(a) of the 1940 Act.

9. Applicants represent that the terms of the Substitution are reasonable and fair and do not involve overreaching on the part of any person concerned. The Substitution will be effected at the net asset value of the securities involved and the interests of Contract owners will not be diluted. In-kind redemptions will alleviate some of the expenses involved with the Substitution and only will be used to the extent they are consistent with the investment objectives and applicable diversification requirements of the affected portfolios. All in-kind redemptions will be conducted in a manner conforming with the conditions of Rule 17a–7 under the 1940 Act.

10. Applicants represent that the Substitution and the Related Transactions are consistent with the policies of each investment company involved and the general purposes of the 1940 Act, and comply with the requirements of Section 17(b).

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the Substitution and Related Transactions should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–2134 Filed 1–28–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39570; File No. SR–Amex–98–2]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc., To Revise the Exchange's Equity Fee Schedule To Include Transactions in DIAMONDS

January 22, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 12, 1998, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to revise its Equity Fee Schedule to reflect to transaction charges that will be imposed on trades in the newly listed and traded product called DIAMONDS.™ The Exchange commenced trading in DIAMONDS on January 20, 1998.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Purposed Rule Change

1. Purpose

The Exchange recently amended its Equity Fee Schedule to revise the transaction charges that apply to trades in Standard & Poor's Depositary Receipts ("SPDRs") and Standard Poor's MidCap Depositary Receipts ("MidCap SPDRs")[2]. The transaction charges vary depending on for whom the trade is executed. Under the updated fee schedule, specialists are assessed a transaction charge of $.006 per share ($.60 per 100 shares), capped at $300 per trade (50,000 shares). Registered Traders are assessed a transaction charge of $.007 per share ($.70 per 100 shares), capped at $350 per trade (50,000 shares). Off-floor orders (both customer and broker-dealer) are assessed a transaction charge of $.006 per share ($.60 per 100 shares), capped at $100 per trade (16,667) shares).

In addition, orders up to 5,099 shares in SPDRs and MidCap SPDRs routed to the Exchange floor electronically through the Exchange's Post Execution Reporting (PER) System are exempt from transaction charges. This provision is consistent with the waiver that also exempts from transaction charges those PER System orders for up to 1,099 shares in equity securities. However, neither of those exemptions may be applied to a PER System order that is for the account of a non-member competing market maker.[3] Lastly, all trades executed on the Exchange in SPDRs and MidCAP SPDRs are exempt from the Exchange's Regulatory Fee ($.00005 × Total Value).[4]

The Exchange seeks to impose on DIAMONDS the same transaction charge schedule that currently applies to trading in SPDRs and MidCap SPDRs. As a result, all transaction charges and exemptions therefrom now applicable to SPDRs and MidCap SPDRS will also apply to trades in DIAMONDS. The exchange also proposed to charge the specialist in DIAMONDS, in addition to the $.006 per share transaction charge, a separate fee of $90,000 per month payable at the beginning of each month.

These changes are intended to lower the costs incurred by users of the DIAMONDS product while making the cost of trading DIAMONDS on the Exchange comparable to the economics of trading this and functionally similar products in other markets. The revisions to the Equity Fee Schedule have been implemented by the Exchange concurrently with the start of trading in DIAMONDS. Accordingly, the Exchange notified member firms regarding the changes to the equity Fee Schedule, as well as the date of their effectiveness.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4),[6] in particular, in that it is designed to assure the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (e) of Rule 19b–4[8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–98–2 and should be submitted by February 19, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–2188 Filed 1–28–98; 8:45 am]

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[2] See Securities Exchange Act Release No. 39333 (Nov. 17, 1997), 62 FR 62795 (Nov. 25, 1997).

[3] The Amex Equity Fee Schedule defines a "competing market maker" as a specialist or market maker registered as such on a registered stock exchange (other than Amex), or a market maker bidding and offering over-the-counter, in an Amex-traded security.

[4] Like the previously described exemptions, this provision does not apply to PER System orders that are for the accounts of non-member competing market makers.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(e).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39575; File No. SR–CBOE–97–68]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Changes by the Chicago Board Options Exchange, Inc. Relating to Continuing Education of Registered Persons

January 23, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on December 30, 1997, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.[2]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission is concurrently publishing notice of parallel proposed rule changes from other self-regulatory organizations relating to continuing education for registered persons. See Securities Exchange Act Releases Nos. 39574 (NASD); 39576 (MSRB); and 39577 (NYSE).

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I. Self Regulatory Organization's Statement of the Term of Substance of the Proposed Rule Change

The CBOE, in support of the recommendations of The Securities Industry/Regulatory Council on Continuing Education ("Council"),[3] proposes to amend CBOE 9.3A *Continuing Education of Registered Persons*, by strengthening the requirements applicable to registered persons and implementing a new program specifically designed for managers and supervisors.

The text of the proposed rule change may be examined at the places specified in Item IV below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and statutory basis for, the proposed rule changes and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose, of and Statutory Basis for, Proposed Rule Change

1. Purpose

The proposed rule change is to revise the CBOE's continuing education requirements contained in Rule 9.3A. The continuing education program consists of two parts—a Regulatory Element and a Firm Element. The Regulatory Element requires registered persons to participate in an interactive computer-based training at specified intervals and encompasses regulatory and compliance issues, sales practice concerns and business ethics. The current Regulatory Element contains content common to all registered representatives, supervisory persons, as well as other registration categories. This proposed rule change is intended to strengthen the continuing education requirements for Registered Representatives by implementing a new program component specifically designed for managers and supervisors. In addition, it is contemplated that in the future, specific programs may be implemented for other registration categories.

The CBOE also proposes, as recommended by the Council, to require ongoing participation in the Regulatory Element for the duration of a registered person's career in the industry, specifically, on the second registration anniversary and every three years thereafter (i.e., the fifth, eighth, eleventh, etc. anniversaries), with no graduation from the program. Under the current Rule 9.3A, after ten years an individual does not have to participate in the computer-based training, unless they have been subject to certain disciplinary action as enumerated in the Rule. The CBOE also proposes to amend the rule to clarify that a person's initial registration date shall establish the cycle of anniversary dates for purposes of the Rule.

The proposed rule change will allow a one-time graduation from the Regulatory Element for persons who, as of the effective date of the rule amendments, have been registered for more than ten years and who have not been the subject of a disciplinary action. However, persons delegated supervisory responsibility or authority pursuant to Rule 9.8 will have to have been registered for more than ten years and not been subject to any disciplinary action as enumerated in the Rule in order to be covered by this one-time provision for graduation. Therefore, those supervisors who have graduated from the program requirements based on their initial registration date but who have not completed ten years as a supervisor, will be required to re-enter the program.

Finally, the CBOE is proposing an amendment to the Firm Element component of Rule 9.3A. The proposed rule change will require each member organization's required analysis of training needs to specifically focus on supervisory training needs. If it is determined that there is a specific need for supervisory training, it must then be addressed in the Firm Element training plan.

These amendments, which will be adopted uniformly with rule changes of the other SRO Council members, will significantly enhance the continuing education program by requiring all registered persons to participate in the Regulatory Element on an ongoing basis.

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(c)(3) of the Act.[4] Under that Section, it is the CBOE's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations. Pursuant to this statutory obligation, the CBOE has proposed this rule change in order to enhance the established continuing education program for registered persons.

The proposed rule change is also consistent with the requirements of Section 6(b)(5) of the Act.[5] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule changes will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number SR–CBOE–97–68 and should be submitted by February 19, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–2187 Filed 1–28–98; 8:45 am]

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[3] The Council is comprised of 6 self-regulatory organizations ("SROs") and 13 broker-dealer representatives to represent the interests and needs of wide cross-section of the industry. The SROs, in addition to the CBOE, are the American Stock Exchange; the Municipal Securities Rulemaking Board; the National Association of Securities Dealers; the New York Stock Exchange, and the Philadelphia Stock Exchange.

[4] 15 U.S.C. 78f(c)(3).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39576; File No. SR–MSRB–98–2]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rule G–3 on Professional Qualifications

January 23, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1935 ("Act"),[1] notice is hereby given that on January 21, 1998, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–MSRB–98–2). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[2]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith an amendment to rule G–3, on professional qualifications (hereinafter referred to as the "proposed rule change"). The proposed rule change consists of an amendment to rule G–3 regarding the Board's continuing education requirements. The text of the proposed rule change may be examined at the places specified in Item IV below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change is to revise the Board's continuing education requirements contained in rule G–3(h). Rule G–3(h) provides for a continuing education program for registered persons of brokers, dealers and municipal securities dealers. The program, which is uniform within the securities industry, consists of two parts—a Regulatory Element and a Firm Element. The Regulatory Element requires registered persons to participate in interactive computer-based training at specified intervals and encompasses regulatory and compliance issues, sales practice concerns and business ethics.

The Regulatory Element program applies generally to *all* registered persons and currently does not discern between registration types or categories. The exiting program contains content common to registered representatives, supervisory persons as well as other registration categories. The Securities Industry/Regulatory Council on Continuing Education (a council of broker-dealer and self-regulatory organization ("SRO")[3] representatives that oversees and provides ongoing development and operation of the program) has recommended development of a new program component specifically for supervisors. In addition, it is contemplated that in the future, specific programs may be implemented for other registration categories. The proposed rule change will allow for the Board to require new programs as appropriate with customized training for various registration categories, with the supervisor's program being the first such initiative. For purposes of Board rules, the following registration categories shall be deemed to be included in the supervisory categories: Series 8 (Municipal Securities Sales Supervisor Examination); Series 27 (Financial and Operations Principal Examination); and Series 53 (Municipal Securities Principal Qualification Examination).

The proposed rule change also addresses the time-frames at which registered persons must participate in the Regulatory Element computer-based training. Rule G–3(h) currently requires all registered persons to complete the training on three occasions, *i.e.*, their second, fifth and tenth registration anniversaries, and also when they are the subject of significant disciplinary action(s). Once persons are registered for more than ten years, they are graduated from the program and are not required to participate further in the Regulatory Element unless they become subject to significant disciplinary action. The Council has recommended that this requirement be revised to require ongoing participation in the program by registered persons. In accordance with that recommendation, the proposed rule change will require participation in the Regulatory Element throughout a registered person's career, specifically on the second registration anniversary and *every* three years thereafter (*i.e*, the fifth, eight, eleventh, etc, anniversaries), with no graduation from the program.

The proposed rule change will allow a one-time exemption for persons currently graduated from the program by providing that those persons who have been registered for more than ten years as of the effective date of the rule amendments, and who have not been the subject of a disciplinary action during the past ten years, will continue to be excluded from required ongoing participation in the Regulatory Element. However, persons registered in a

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission is concurrently publishing notice of parallel proposed rule changes from other self-regulatory organizations relating to continuing education for registered persons. See Securities Exchange Act Releases Nos. 39574 (NASD); 39575 (CBOE); and 39577 (NYSE).

[3] In addition to the Board, SROs represented on the Council include the American Stock Exchange, Chicago Board Options Exchange, National Association of Securities Dealers, New York Stock Exchange and Philadelphia Stock Exchange.

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supervisory capacity will have to have been registered in a supervisory capacity for more than 10 years in order to be covered by this one-time provision for graduation from participation in the program. Therefore, those supervisors who have graduated from the program requirements based on their initial registration date who have not completed 10 years as a supervisor, will be required to re-enter the program.

The Firm Element requires that each broker, dealer and municipal securities dealer conduct annually an analysis of their training needs and administer such training, as is appropriate, to their registered persons who have direct contact with customers and the immediate supervisors of such registered persons, on an ongoing basis in topics specifically related to their business such as new products, sales practices, risk disclosure and new regulatory requirements and concerns. The proposed rule change will require brokers, dealers and municipal securities dealers to specifically focus on supervisory training needs in conducting their analysis of training needs and, if it is determined that there is a specific need for supervisory training, it must be addressed in the Firm Element training plan.

These amendments, which will be adopted uniformly with rule changes of the other SRO Council members, will significantly enhance the continuing education program by requiring all registered persons to participate in the Regulatory Element on an ongoing basis throughout their securities industry careers. In addition, the Board believes that rule amendments allowing for the implementation of a program specifically geared towards supervisors and the issues that may arise in that role will result in more effective regulatory training of supervisors as well as improved front-line supervision overall of brokers, dealers and municipal securities dealers.

2. Statutory Basis

The Board believes the proposed rule change is consistent with the Act and the rules and regulations thereunder. The Board believes that the proposed rule change is consistent with Section 15B(b)(2)(A) of the Act,[4] which states that the rules of the Board, as a minimum, shall provide such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors. The proposed rule change is also consistent with Section 15B(b)(2)(C) of the Act,[5] which requires, in pertinent part, that the Board's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. Pursuant to this statutory obligation, the Board has proposed this rule change in order to enhance the established continuing education program for registered persons.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested people are invited to submit written data, views, and arguments concerning the foregoing. People making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–98–2 and should be submitted by February 19, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–2184 Filed 1–28–98; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78*o*–4.

[5] 15 U.S.C. 78*o*–4.

[6] 17 CFR 200–30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39574; File No. SR–NASD–98–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Continuing Education Requirements

January 23, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 22, 1998, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation, Inc. ("NASD Regulation"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[2]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to Amend Rule 1120 regarding the continuing education requirements for registered persons. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission is concurrently publishing notice of parellel proposed rule changes from other self-regulatory organizations relating to continuing education for registered persons. See Securities Exchange Act Releases Nos. 39575 (CBOE); 39576 (MSRB); and 39577 (NYSE).

1120. Continuing Education Requirements

This Rule prescribes requirements regarding the continuing education of certain registered persons subsequent to their initial qualification and registration with the Association. The requirements shall consist of a Regulatory Element and a Firm Element as set forth below.

(a) Regulatory Element

(1) Requirements: No member shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person unless such person has complied with the requirements of paragraph (a) hereof.

(A) Each registered person shall complete the Regulatory Element on [three occasions, after] the occurrence of their second[, fifth and tenth] registration anniversary [dates] *date and every three years thereafter,* or as otherwise prescribed by the Association. On each [of three occasions] occasion, the Regulatory Element must be completed within [one hundred twenty] *120* days after the person's registration anniversary date. *A person's initial registration date shall establish the cycle of anniversary dates for purposes of this Rule.* The content of the Regulatory Element shall be [prescribed by the Association] *determined by the Association and shall be appropriate to either the registered representative or principal status of person subject to the Rule.*

(B) *Persons Exempted from the Rule*—[Registered persons] *Persons* who have been continuously registered for more than 10 years [as of the effective date of this Rule] *on July 1, 1998,* shall be exempt from participation in the Regulatory Element *programs for registered representatives,* provided such persons have not been subject *within the last ten years* to any disciplinary action [within the last 10 years] as enumerated in paragraph (a)(3). *A person who has been continuously registered as a principal for more than 10 years on July 1, 1998, shall be exempt from participation in the Regulatory Element programs for registered principals, provided such person has not been subject within the last ten years to any disciplinary action as enumerated in paragraph (a)(3).* In the event [of such disciplinary action,] *that* a [person] *registered representative or principal who was exempt from participation in Regulatory Element programs subsequently becomes the subject of a disciplinary action as enumerated in paragraph (a)(3), such person shall* [will] be required to satisfy the requirements of the Regulatory Element [by participation for the period from the effective date of this Rule to 10 years after the occurrence of the disciplinary action] *as if the date of such disciplinary action is such person's initial registration date with the Association.*

(C) Persons who have been currently registered for 10 years or less as of [the effective date of this Rule] *July 1, 1998,* shall [initially] participate in the Regulatory Element within 120 days after the occurrence of the second[, fifth or tenth] registration anniversary date, *or every third year thereafter,* whichever anniversary date first applies[, and on the applicable registration anniversary date(s) thereafter. Such persons will have satisfied the requirements of the Regulatory Element after participation on the tenth registration anniversary].

[(D) All registered persons who have satisfied the requirements of the Regulatory Element shall be exempt from further participation in the Regulatory Element subject to re-entry into the program as set forth in paragraph (a)(3).]

(2) Failure to Complete—No change.

(3) Re-entry into Program: Unless otherwise determined by the Association, a registered person will be required to re-enter the Regulatory Element and satisfy all of its requirements in the event such person:

(A)–(C) No change.

Re-entry shall commence with initial participation within 120 days of the registered person becoming subject to the statutory disqualification, in the case of (A) above, or the disciplinary action becoming final, in the case of (B) and (C) above[, and on three additional occasions thereafter, at intervals of two, five and 10 years after re-entry, notwithstanding that such person has completed all or part of the program requirements based on length of time as a registered person or completion of ten years of participation in the program]. *The date of the disciplinary action shall be treated as such person's initial registration date with the Association.*

(4) Reassociation in a Registered Capacity: Any registered person who has terminated association with a member and who has, within two years of the date of termination, become reassociated in a registered capacity with a member shall participate in the Regulatory Element at such intervals [(two, five and 10 years)] that may apply (*second anniversary and every three years thereafter*) based on the initial registration anniversary date rather than based on the date of reassociation in a registered capacity.

(5) Definition of Registered Person: For purposes of this Rule, the term "registered person" means any person registered with the Association as a representative, principal, or assistant representative pursuant to the Rule 1020, 1030, 1040, and 1110 Series.

(b) Firm Element

(1) Persons Subject to the Firm Element—No change.

(2) Standards for the Firm Element:

(A) Each member must maintain a continuing and current education program for its covered registered persons to enhance their securities knowledge, skill, and professionalism. At a minimum, each member shall at least annually evaluate and prioritize its training needs and develop a written training plan. The plan must take into consideration the member's size, organizational structure, and scope of business activities, as well as regulatory developments and the performance of covered registered persons in the Regulatory Element. *If a member's analysis establishes the need for supervisory training for persons with supervisory responsibilities, such training must be included in the member's training plan.*

(B) Minimum Standards for Training Programs—Programs used to implement a member's training plan must be appropriate for the business of the member and, at a minimum must cover the following matters concerning securities products, services, and strategies offered by the member:

(i) General investment features and associated risk factors;

(ii) Suitability and sales practice considerations; *and*

(iii) Applicable regulatory requirements.

(C) Administration of Continuing Education Program—A member must administer its continuing education programs in accordance with its annual evaluation and written plan and must maintain records documenting the content of the programs and completion of the programs by covered registered persons.

(3) Participation in the Firm Element: Covered registered persons included in a member's plan must take all appropriate and reasonable steps to participate in continuing education programs as required by the member.

(4) Specific Training Requirements: The Association may require a member, individually or as part of a larger group, to provide specific training to its covered registered persons in such areas as the Association deems appropriate. Such a requirement may stipulate the class of covered registered persons for

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which it is applicable, the time period in which the requirement must be satisfied, and, where appropriate, the actual training content.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to revise Rule 1120. Rule 1120 provides for a continuing education program for certain persons registered with the NASD. The program, which is uniform within the industry, consists of two parts, a Regulatory Element and a Firm Element. The Regulatory Element requires registered persons to participate in interactive computer-based training at specified intervals and encompasses regulatory and compliance issues, sales practice concerns, and business ethics. The Regulatory Element program applies generally to all registered persons and currently does not distinguish among registration types or categories. The existing program contains content common to registered representatives, supervisors, and other registration categories. The Securities Industry/Regulatory Council on Continuing Education [3] has recommended development of a new program component specifically for supervisors. In addition, it is contemplated that in the future, specific programs may be implemented for other registration categories. The proposed amendments to Rule 1120 would allow for NASD Regulation to require new programs as appropriate with customized training for various registration categories, with the supervisor's program being the first initiative. For purposes of the proposed rule, all the principal registration categories under Rule 1022 would be included in the supervisory program.

The proposed amendments also address the time frames at which registered persons must participate in the Regulatory Element computer-based training. Rule 1120 currently requires all registered persons to complete the training on three occasions, *i.e.*, their second, fifth and tenth registration anniversaries. After a person is registered for more than ten years, he or she is graduated from the program and not required to participate further in the Regulatory Element. However, if at any time a registered person is subject to certain disciplinary actions enumerated in the Rule, then the registered person is required to re-enter the Regulatory Element program. The Council has recommended that these requirements be revised to require ongoing participation in the program by registered persons. In accordance with that recommendation, the proposed amendments to Rule 1120 would require participation in the Regulatory Element throughout a registered persons's career, specifically, on the second registration anniversary and *every* three years thereafter, with no graduation from the program.

Proposed Rule 1120 would allow a one-time exemption for persons currently graduated from the program by providing that those persons who have been registered for more than ten years as of the effective date of the proposed rule, and who have not been the subject of a disciplinary action enumerated in the Rule during the past ten years, would continue to be excluded from required ongoing participation in the Regulatory Element. Persons registered in a supervisory capacity would have to have been registered in a supervisory capacity for more than 10 years in order to be covered by this one-time provision for graduation from participation in the program. Therefore, those supervisors who have graduated from the program requirements based on their initial registration date but who have not completed 10 years as a supervisor would be required to re-enter the program.

The Firm Element requires that each member conduct annually an analysis of their training needs and administer such training, as is appropriate, to their registered persons who have direct contact with customers and the immediate supervisors of such registered persons, on an ongoing basis. Topics must be specifically related to their business, such as new products, sales practices, risk disclosure, and new regulatory requirements and concerns. The proposed amendments to Rule 1120 would require members to focus specifically on supervisory training needs in conducting their analysis of training needs, and if it is determined that there is a specific need for supervisory training, it must be addressed in the Firm Element training plan.

These amendments, which would be adopted uniformly with rule changes of the other SRO Council members, would significantly enhance the continuing education program by requiring all registered persons to participate in the Regulatory Element on an ongoing basis throughout their securities industry careers. In addition, NASD Regulation believes that the proposed rule allowing for the implementation of a program specifically geared towards supervisory and the issues that may arise in that role would result in more effective regulatory training of supervisors as well as improved overall supervision of members.

NASD Regulation proposes to make the rule change effective on July 1, 1998.

2. Statutory Basis

NASD Regulation believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the NASD, and in particular, Section 15A(g)(3).[4] Under that Section, it is the NASD's responsibility to prescribe standards of training, experience, and competence for persons associated with NASD members. Pursuant to this statutory obligation, NASD Regulation has proposed this rule change in order to enhance the established continuing education program for registered persons.

The proposed rule change also is consistent with Section 15A(b)(6) of the Act,[5] which requires, among other things, that the rules of a registered securities association be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

[3] The Securities Industry/Regulatory Council on Continuing Education was created in November 1993 and comprises six self-regulatory organizations ("SROs") and 13 broker-dealers to represent the interests and needs of a wide cross-section of the industry. The SROs include the American Stock Exchange; the Chicago Board Options Exchange, Incorporated; the Municipal Securities Rulemaking Board; the National Association of Securities Dealers Inc.; the New York Stock Exchange, Inc.; and the Philadelphia Stock Exchange. In addition, the Commission and the North American Securities Administrators Association have each assigned liaisons to the Council.

[4] 15 U.S.C. 78*o*–3(g)(3).

[5] 15 U.S.C. 78*o*–3(b)(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD Regulation. All submissions should refer to the file number in the caption above and should be submitted by February 19, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

[6] 17 CFR 300.30(a)(12).

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98–2186 Filed 1–28–98; 8:45 am]
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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39577; File No. SR–NYSE–97–33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Continuing Education for Registered Persons

January 23, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 8, 1997, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[2]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Rule 345A ("Continuing Education for Registered Persons"). Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Continuing Education for Registered Persons

Rule 345A

(a) Regulatory Element—No member or member organization shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the continuing education requirements of Section (a) of this Rule.

Each registered person shall complete the Regulatory Element of the continuing education program on [three occasions, after] the occurrence of their second[, fifth and tenth] registration anniversary date[s] *and every three years thereafter* or as otherwise prescribed by the Exchange. On each [of the three] occasion[s], the Regulatory Element must be completed within one hundred twenty days after the person's registration anniversary date. *A person's initial registration date shall establish the cycle of anniversary dates for purposes of this Rule.* The content of the Regulatory Element of the program shall be [prescribed] *determined* by the Exchange *for each registration category of persons subject to the rule.*

(1) [Registered] *Persons* who have been continuously registered for more than ten years as of the effective date of this rule [shall be] *are* exempt from *the requirements of this rule relative to* participation in the Regulatory Element of the continuing education program, provided such persons have not been subject to any disciplinary action within the last ten years as enumerated in subsection (a)(3)(i)–(ii) of this Rule. *However, persons delegated supervisory responsibility or authority pursuant to Rule 342 and registered in such supervisory capacity are exempt from participation in the Regulatory Element under this provision only if they have been continuously registered in a supervisory capacity for more than ten years as of the effective date of this rule and provided that such supervisory person has not been subject to any disciplinary action under subsection (a)(3)(i)–(ii) of this Rule.*

In the event that a registered person who is exempt from participation in the Regulatory Element subsequently becomes the subject of a disciplinary action as enumerated in subsection (a)(3)(i)–(ii), such person shall be required to satisfy the requirements of the Regulatory Element as if the date the disciplinary action becomes final is the person's initial registration anniversary date. [Persons who have been currently registered for ten years or less as of the effective date of this Rule shall initially participate in the Regulatory Element of the continuing education program within one hundred twenty days after the occurrence of the second, fifth or tenth registration anniversary date, whichever anniversary date first applies, and on the applicable registration anniversary dates thereafter. Such persons will have satisfied the requirements of the Regulatory Element of the program after participation on the tenth registration anniversary.]

[All registered persons who have satisfied the requirements of the Regulatory Element shall be exempt from further participation in the Regulatory Element of the program, subject to re-entry into the program as set forth in subsection (a)(3) of this Rule.]

(2) No change.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission is concurrently publishing notice of parallel proposed rule changes from other self-regulatory organizations relating to continuing education for registered persons. See Securities Exchange Act Releases Nos. 39574 (NASD); 39575 (CBOE); and 39576 (MSRB).

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(3) Re-entry into the program—Unless otherwise determined by the Exchange, a registered person will be required to re-enter the Regulatory Element of the program and satisfy the program's requirements in their entirety in the event such person:

(i)–(iii) No change.

Re-entry shall commence with initial participation within one hundred twenty days of the registered person becoming subject to the statutory disqualification, in the case of (i) above, or the completion of the sanction or the disciplinary action becoming final, in the case of (ii) and (iii) above. [, and on three additional occasions thereafter, after the occurrence of their second, fifth and tenth anniversary dates of re-entry into the program, notwithstanding that such person has completed all or part of the program requirements based on length of time as a registered person or completion of ten years of participation in the program] *The date that the disciplinary action becomes final will be deemed the person's initial registration anniversary date for purposes of this Rule.*

(b) Firm Element:

(1) No change.

(2) Standards

(i) Each member and member organization must maintain a continuing and current education program for its covered registered persons to enhance their securities knowledge, skills and professionalism. At a minimum, each member and member organization shall at least annually evaluate and prioritize its training needs and develop a written training plan. The plan must take into consideration the member's or member organization's size, organizational structure, and scope of business activities, as well as regulatory developments and the performance of covered registered persons in the Regulatory Element. *If a member's or member organization's analysis determines a need for supervisory training for persons with supervisory responsibilities, such training must be included in the member's or member organization's training plan.*

(ii)–(iii) No Change.

(3) No change.

(4) No change.

* * * Supplementary Material.

.10 No change.

.20 No change.

[.30 A registered person who has been continuously registered for more than ten years as of the date of implementation of this Rule who has been subject to a disciplinary action as enumerated in subsections (a) (3)(i)-(ii) of the Rule within the last ten years, will be required to satisfy the requirements of the Regulatory Element of the continuing education program by participation for the period from the date of implementation of this rule to ten years after the occurrence of the disciplinary action.]

[.40] *.30* Any registered person who has terminated associated with a registered broker or dealer and who has, within two years of the date of termination, become reassociated in a registered capacity with a registered broker or dealer shall participate in the Regulatory Element of the continuing education program [on three occasions, after the occurrence of their second, fifth or tenth] *at such intervals that apply (second registration anniversary and every three years thereafter) based on the* initial registration anniversary date, rather than based on the date of reassociation in a registered capacity.

Any former registered person who becomes reassociated in a registered capacity with a registered broker or dealer more than two years after termination as such will be required to satisfy the program's requirements in their entirety [on three occasions] *(second registration anniversary and every three years thereafter),* based on the most recent registration date.

[.50] *.40* No change in text.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and statutory basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to revise Rule 345A. Exchange Rule 345A provides for a continuing education program for registered persons of Exchange members and member organizations. The program, which is uniform within the industry, consists of two parts—a Regulatory Element and a Firm Element. The Regulatory Element requires registered persons to participate in interactive computer-based training at specified intervals and encompasses regulatory and compliance issues, sales practice concerns and business ethics.

The Regulatory Element program applies generally to *all* registered persons and currently does not discern between registration types or categories. The existing program contains content common to registered representatives, supervisory persons as well as other registration categories. The Securities Industry/Regulatory Council on Continuing Education (a council of broker-dealer and Self-Regulatory Organization ("SRO")[3] representatives that oversees and provides ongoing development and operation of the program) has recommended development of a new program component specifically for supervisors. In addition, it is contemplated that in the future, specific programs may be implemented for other registration categories. The proposed amendments to Rule 345A will allow for the Exchange to require specific new programs as appropriate with customized training for various registration categories, with the supervisor's program, being the first such initiative. For purposes of Exchange rules, the following registration categories shall be deemed to be included in the supervisory category: Series 4 (Registered Options Principal Examination); Series 8 (General Securities Sales Supervisor Examination); Series 12 (NYSE Branch Manager Examination); Series 14 (NYSE Compliance Official Examination); Series 16 (NYSE Supervisory Analyst Examination); Series 27 (Financial and Operations Principal Examination); Series 28 (Introducing Broker-Dealer Financial and Operational Principal Examination); and the Series 53 (Municipal Securities Principal Qualification Examination).

The proposed amendments also address the time-frames at which registered persons must participate in the Regulatory Element computer-based training. Rule 345A currently requires all registered persons to complete the training on three occasions, *i.e.*, their second, fifth and tenth registration anniversaries, and also when they are the subject of significant disciplinary action(s). Once persons are registered for more than ten years they are currently graduated from the program and are not required to participate further in the Regulatory Element unless they become subject to significant disciplinary action. The Council has recommended that the requirement be revised to require ongoing participation in the program by registered persons. In accordance with that recommendation, the proposed amendments to Rule 345A will require participation in the Regulatory Element throughout a registered person's career, specifically, on the second registration anniversary and *every* three years thereafter (*i.e.*, the fifth, eighth, eleventh, etc. anniversaries), with no graduation from the program.

Proposed amended Rule 345A will allow a one-time exemption for persons currently graduated from the program by providing that those persons who have been registered for more than ten years as of the effective date of the rule amendments, and who have not been the subject of a disciplinary action during the past ten years, will continue to be excluded from required ongoing participation in the Regulatory Element. However, persons registered in a supervisory capacity will have to have been registered in a supervisory capacity for more than 10 years in order to be covered by this one-time provision for graduation from participation in the program. Therefore, those supervisors who have graduated from the program requirements based on their initial registration date, but who have not completed 10 years as a supervisor, will be required to re-enter the program.

The Firm Element requires that each member and member organization conduct annually an analysis of their training needs and administer such training, as is appropriate, to their registered persons who have direct contact with customers and the immediate supervisors of such registered persons, on an ongoing basis in topics specifically related to their business such as new products, sales practices, risk disclosure and new regulatory requirements and concerns. The proposed amendments to Rule 345A will require members and member organizations to additionally focus on supervisory training needs in conducting their analysis of training needs and, if it is determined that there is a specific need for supervisory training, address such training needs in the Firm Element training plan.

These amendments, which will be adopted uniformly with rule changes of the other SRO Council members, will significantly enhance the continuing education program by requiring all registered persons to participate in the Regulatory Element on an ongoing basis throughout their securities industry careers. In addition, we believe that rule amendments allowing for the implementation of a program specifically geared towards supervisors and the issues that may arise in that role will result in more effective regulatory training of supervisors as well as improved front-line supervision overall of members and member organizations.

2. Statutory Basis

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(c)(3) of the Act.[4] Under that Section, it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations. Pursuant to this statutory obligation, the Exchange has proposed this rule change in order to enhance the established continuing education program for registered persons.

The proposed rule change is also consistent with the requirements of Section 6(b)(5) of the Act.[5] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number SR–NYSE–97–33 and should be submitted by February 19, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–2185 Filed 1–28–98; 8:45 am]

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[3] SROs represented on the Council include the American Stock Exchange, Chicago Board Options Exchange, Municipal Securities Rulemaking Board, National Association of Securities Dealers, New York Stock Exchange, and Philadelphia Stock Exchange.

[4] 15 U.S.C. 78f(c)(3).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39571; File No. SR–Phlx–97–53]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Amending Its Floor Procedure Advice A–1 Regarding Displaying Best Bids and Offers

January 22, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 3, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission")

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On December 23, 1997, and January 20, 1998, respectively, the Exchange filed amendments 1 and 2 to the proposal with the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx hereby proposes to amend its Floor Procedure Advice A–1, regarding Displaying Best Bids and Offers, in order to require Floor Brokers and Registered Options Traders ("ROT"s) to immediately remove stale bids/offers. Accordingly, the Phlx is proposing to amend Floor Procedure Advice ("Advice") A–1 to require that the Floor Broker or ROT, after voicing a bid/offer, use due diligence to inform the Specialist when s/he is no longer bidding/offering at that price. The Floor Broker or ROT must immediately inform the Specialist when s/he is "out" of that bid/offer, including due to an execution or departure from the crowd.

The Phlx also proposes to adopt a fine schedule, pursuant to the Exchange's minor rule violation enforcement and reporting plan ("minor rule plan"),[4] for minor violations of proposed new paragraph (b) of the Advice.

The text of the proposed rule change is available at the Office of the Secretary, the Phlx and at the Commission.

[3] See Letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Phlx to David Sieradzki, Attorney, SEC dated December 18, 1997 and letter from J. Keith Kessel, Phlx to David Sieradzki, Attorney, SEC dated January 16 1998. Amendments 1 and 2 made several changes to clarify the purpose section of the filing.

[4] The Phlx's minor rule plan, codified in Phlx Rule 970, contains floor procedure advices, such as Advice A–1, along with the accompanying fine schedules. Rule 19d–1(c)(2) under the Act authorizes national securities exchanges and other self-regulatory organizations (SRO's) to adopt minor rule violation plans for summary discipline and abbreviated reporting. Rule 19d–1(c)(1) under the Act requires that SROs promptly file notice with the Commission of any final disciplinary actions. However, minor rule violations not exceeding $2,500 where the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies at the SRO with respect to the matter are deemed not final for purposes of Rule 19d–1(c)(1), thereby permitting periodic, as opposed to immediate, reporting. See Phlx Rule 970 and 17 CFR 240.19d–1(c).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx is proposing to amend its Advice A–1, regarding Displaying Best Bids and Offers in order to require Floor Brokers and ROTs to immediately remove stale bids/offers. Currently, Advice A–1 requires that Specialists use due diligence to ensure that the best available bid and offer is displayed for those option series in which s/he is assigned. For the purposes of Advice A–1, bids and offers for the Specialist's own account, bids and offers on the book, and bids and offers established in the crowd are deemed to be available for display purposes. The Phlx proposes: (i) To designate the foregoing display advice as paragraph (a) and (ii) to create an additional paragraph, (b), to govern situations where a member of the trading crowd is no longer bidding and offering. In the latter situations, the Floor Broker or ROT shall use due diligence to inform the Specialist when s/he is no longer bidding/offering at that price. The Floor Broker or ROT must immediately inform the Specialist when s/he is "out" of that bid/offer, including due to an execution or departure from the crowd.

Maintaining accurate option quotes is integral to the Specialist's role in the marketplace. Thus, although a member posting a bid/offer is generally not held to that market after leaving the trading crowd, the purpose of the proposed rule change is to discourage stale markets by giving the Exchange the ability to impose fines for failure to remove such a bid/offer. Failure to remove a bid/offer may cause the member making the bid/offer or other crowd participants to have to honor an incorrectly disseminated quote that may have attracted order flow, including Phlx Automatic Execution System orders.

The proposed new paragraph (b) is being proposed to address situations where members have been "out" of a bid/offer, yet failed to inform the Specialist. Oftentimes, that member is no longer present in the trading crowd. In that instance, if a trade occurs because someone accepted the stale bid/offer, either the member who initiated the bid/offer, the Specialist or the other members of the trading crowd will be required to honor the trade. Regardless of who honors the trade, the intent of this proposal is to deter these occurrences by imposing fines for such conduct. The proposed language refers to being "out" of a market for reasons including (but not limited to) an execution or a departure from the crowd. Other reasons may also apply, but the Exchange determined that an exhaustive list is neither possible, nor necessary, and, therefore, the violation involve the general failure to inform the Specialist, regardless of the particular reason for being "out."

Failure to uphold the obligations imposed by new paragraph (b) will subject the member of the fine.[5] Fines are imposed by Option Floor Officials who would make a determination based upon the facts of the case whether a stale quote was caused by a Specialist not using the due diligence to ensure that the best available bid and offer is displayed pursuant to paragraph (a) or whether it was caused by a Floor Broker or ROT not using due diligence to inform the Specialist that it was longer bidding/offering at that price, pursuant to paragraph (b) of the Advice. The Exchange believes that the proposed fine schedule is appropriate and reasonable. Specifically, violations of proposed new paragraph (b) of the Advice involving a failure to notify the Specialist when a Floor Broker or ROT is "out" of a market are within the purview of Phlx Rule 970 and are otherwise designed to be easily verifiable and objective. The proposed fines are comparable to those in other advices, such as Advices A–2, B–4 and B–5.

The Advice will apply on both the Equity/Index Options floor and the Foreign Currency Options floor.

[5] The fine schedule applicable to proposed new paragraph (b) of the Advice will be as follows:

1st Occurrence—$250.000.
2nd Occurrence—$500.000.
3rd and Thereafter—Sanction is discretionary with Business Conduct Committee.

The fine schedule applicable to specialists, which will remain unchanged, is as follows:

1st Occurrence—$50.00.
2nd Occurrence—$100.00.
3rd Occurrence—$250.00.
4th and Thereafter—Sanction is discretionary with Business Conduct Committee.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)(5) of the Act[6] in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, protect investors and the public interest, as well as prevent unfair discrimination among customers, issuers, brokers or dealers by ensuring the dissemination of accurate option market quotes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange represents that no written comments were solicited or received regarding the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying of the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange.

All submissions should refer to File No. SR–PHLX–97–53 and should be submitted by February 19, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–2192 Filed 1–28–98; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3045]

State of Florida (Amendment #1)

In accordance with notices from the Federal Emergency Management Agency dated January 12 and 14, 1998, the above-numbered Declaration is hereby amended to include the counties of Citrus, Lake, Orange, Pasco, and Sumter in the State of Florida as a disaster area due to damages caused by severe storms, high winds, tornadoes, and flooding, and to establish the incident period for this disaster as beginning on December 25, 1997 and continuing through January 14, 1998.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Levy, Marion, Seminole, and Volusia in the State of Florida may be filed until the specified date at the previously designated location. All other information remains the same, i.e., the deadline for filing applications for physical damage is March 7, 1998 and for economic injury the termination date is October 6, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 16, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–2232 Filed 1–28–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3052]

State of Maine

As a result of the President's major disaster declaration on January 13, 1998 for Public Assistance only, and an amendment thereto on January 15, 1998 adding Individual Assistance, I find that the entire State of Maine constitutes a disaster area due to damages caused by severe ice storms, rain and high winds beginning on January 5, 1998 and continuing. Applications for loans for physical damages may be filed until the close of business on March 16, 1998, and for loans for economic injury until the close of business on October 15, 1998 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Carroll, Coos, Rockingham, and Strafford in the State of New Hampshire may be filed until the specified date at the above location.

The interest rates are:

	Percent
Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	7.625
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.812
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.125
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The number assigned to this disaster for physical damage is 305211. For economic injury the numbers are 972000 for Maine and 972100 for New Hampshire.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: January 16, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–2234 Filed 1–28–98; 8:45 am]

BILLING CODE 8025–01–P

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SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3046]

State of New York

As a result of the President's major disaster declaration on January 10, 1998 and an amendment thereto on January 12, I find that Clinton, Essex, Franklin, Jefferson, Lewis, and St. Lawrence Counties in the State of New York constitute a disaster area due to damages caused by severe winter and ice storms, high winds, and flooding beginning on January 5, 1998 and continuing. Applications for loans for physical damages as a direct result of this disaster may be filed until the close of business on March 10, 1998, and for loans for economic injury until the close of business on October 13, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Hamilton, Herkimer, Oneida, Oswego, Warren, and Washington in the State of New York, and Addison, Chittenden, and Grand Isle Counties in the State of Vermont may be filed until the specified date at the above location.

The interest rates are:

	Percent
Physical damage:	
Homeowners with credit available elsewhere	7.625
Homeowners without credit available elsewhere	3.812
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 304611. For economic injury the numbers are 971200 for New York and 971300 for Vermont.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 15, 1998.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–2231 Filed 1–28–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3053]

State of North Carolina

As a result of the President's major disaster declaration on January 15, 1998, I find that Avery and Mitchell Counties in the State of North Carolina constitute a disaster area due to damages caused by severe storms and flooding beginning on January 7, 1998 and continuing. Applications for loans for physical damages may be filed until the close of business on March 16, 1998, and for loans for economic injury until the close of business on October 15, 1998 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Burke, Caldwell, McDowell, Watauga, and Yancey in North Carolina may be filed until the specified date at the above location.

Any counties contiguous to the above-named counties and not listed herein have been previously declared under a separate declaration for the same occurrence.

The interest rates are:

	Percent
Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	7.625
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.812
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.125
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The number assigned to this disaster for physical damage is 305306 and for economic injury the number is 972200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: January 16, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–2235 Filed 1–28–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3050]

Pennsylvania (and Contiguous Counties in New Jersey)

Philadelphia County and the contiguous Counties of Bucks, Delaware, and Montgomery in Pennsylvania, and Burlington, Camden, and Gloucester Counties in New Jersey constitute a disaster area as a result of damages caused by a fire on January 1, 1998 in the Gorgas Court apartment complex in the City of Philadelphia. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on March 16, 1998 and for economic injury until the close of business on October 15, 1998 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Boulevard South, 3rd Floor, Niagara Falls, NY 14303

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	7.625
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.812
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.125
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The numbers assigned to this disaster for physical and economic injury damages are 305005 and 971800 for Pennsylvania, and 305105 and 971900 for New Jersey.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: January 15, 1998.

John T. Spotila,

Acting Administrator.

[FR Doc. 98–2233 Filed 1–28–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3049]

State of Tennessee

As a result of the President's major disaster declaration on January 13, 1998, I find that Carter County in the State of Tennessee constitutes a disaster area due to damages caused by severe storms and flooding beginning on January 6, 1998 and continuing. Applications for loans for physical damages may be filed until the close of business on March 13, 1998, and for loans for economic injury until the close of business on October 13, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Johnson, Sullivan, Unicoi, and Washington in Tennessee, and Avery, Mitchell, and Watauga Counties in North Carolina may be filed until the specified date at the above location.

The interest rates are:

	Percent
Physical damage:	
Homeowners with credit available elsewhere	7.625
Homeowners without credit available elsewhere	3.812
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 304906. For economic injury the numbers are 971600 for Tennessee and 971700 for North Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 15, 1998.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–2230 Filed 1–28–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Office of Defense Trade Controls

[Public Notice No. 2671]

Notifications to the Congress of Proposed Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each letter.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State ((703) 875–6644).

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: December 18, 1997.

William J. Lowell,

Director, Office of Defense Trade Controls.

United States Department of State

Washington, D.C. 20520

December 4, 1997.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed export of defense articles or defense services sold under contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves training, operation and maintenance for Peace Shield, a command, control and communications system supporting air defense for the Kingdom of Saudi Arabia.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, although unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC–3–98

The Honorable Newt Gingrich, Speaker of the House of Representatives.

[FR Doc. 98–2126 Filed 1–28–98; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–192 (Sub-No. 1)]

The Birmingham Southern Railroad Company; Abandonment and Discontinuance of Trackage Rights in Jefferson County, AL

On January 9, 1998, the Birmingham Southern Railroad Company (BS) amended an application it filed with the Surface Transportation Board (Board) on December 22, 1997, to abandon a portion of its line of railroad known as the Birmingham Branch, extending from BS Milepost 146+97.22 near East Thomas Station to the end of the line near Birmingham Station, a distance of 3.869 miles, in Jefferson County, AL;[1] and to discontinue its trackage rights over Norfolk Southern Railway Company's (NSR) line between NSR's Mileposts 143 and 144 near Birmingham Station, a distance of .614 miles in Jefferson County, AL. The trackage rights include the right of BS to travel over approximately 500 feet of main line track over which NSR continues to maintain traffic, and approximately 2,741 feet of yard track which was removed by NSR approximately 10 years ago. The line includes only one station, Birmingham Station No. 605, near BS Milepost 25+67.42 and

[1] BS amended its original filing to clarify that the portion of the Birmingham Branch sought to be abandoned consists of only two segments: (1) The Birmingham Running Track, extending a distance of 2.78 miles between BS station 0+00 and BS station 146+97.22; and (2) the Birmingham Yard, extending a distance of 1.08 miles between BS station 0+00 and BS station 56+83.94. BS maintains that a third segment originally included in its December 22, 1997 filing (the Ingalls Iron Works Track, extending a distance of .29 miles between BS station 3+20.28 and BS station 18+41.48), is actually exempt industry/switching track that should not have been included in the abandonment application. Accordingly, BS does not seek abandonment authorization for the Ingalls Iron Works Track. The abandonment application will be deemed to have been filed on January 9, 1998, the date the clarification was filed, and hence the procedural schedule will run from that date.

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traverses United States Postal Service ZIP Codes 35203, 35204 and 35233.

The line does not contain federally granted rights-of way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The applicant's entire case for abandonment and discontinuance was filed with the application.

The Birmingham Branch has appeared on the applicant's system diagram map or has been included in its narrative in category 1 since 1990.

The interest of railroad employees will be protected by the conditions in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

Any interested person may file with the Board written comments concerning the proposed abandonment and discontinuance or protests (including the protestant's entire opposition case), by February 23, 1998. All interested persons should be aware that following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 10905 (49 CFR 1152.28) or for a trail use condition under 16 U.S.C. 1247(d) (49 CFR 1152.29) must be filed by February 23, 1998. Each trail use request must be accompanied by a $150 filing fee. See 49 CFR 1002.2(f)(27). The applicant's reply to any opposition statements and its response to trail use requests must be filed by March 10, 1998. See 49 CFR 1152.26(a).

Persons opposing the proposed abandonment and discontinuance that wish to participate actively and fully in the process should file a protest. Persons who may oppose the abandonment and discontinuance but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence should file comments. Persons interested only in seeking public use or trail use conditions should also file comments.

In addition, a commenting party or protestant may provide:

(i) An offer of financial assistance (OFA) for continued rail service under 49 U.S.C. 10904 (due 120 days after the application is filed or 10 days after the application is granted by the Board, whichever occurs sooner);

(ii) Recommended provisions for protection of the interests of employees;

(iii) A request for a public use condition under 49 U.S.C. 10905; and

(iv) A statement pertaining to prospective use of the right-of way for interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29.

All filings in response to this notice must refer to STB Docket No. AB–192 (Sub-No. 1) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Maria A. Sandala, Attorney, 135 Jamison Lane, P.O. Box 68, Monroeville, PA 15146. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

The lines sought to be abandoned and discontinued will be available for subsidy or sale for continued rail use if the Board decides to permit the abandonment and discontinuance in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). Each OFA must be accompanied by a $900 filing fee. See 49 CFR 1002.2(f)(25). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning sale or subsidy terms is Mr. J. L. Neis, General Superintendent, Birmingham Southern Railroad Company, 6200 E. J. Oliver Blvd., P.O. Box 579, Fairfield, AL 35064.

Persons seeking further information concerning the abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental sessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Decided: January 22, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–2198 Filed 1–28–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–31 (Sub–No. 31X)]

Grand Trunk Western Railroad, Incorporated—Abandonment Exemption—in Oakland County, MI

Grand Trunk Western Railroad Incorporated (GTW) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon a 0.72-mile line of its railroad between milepost MP–0.0 (south end) and MP–0.72 (north of Tregent Street) on the Cass City Subdivision in Pontiac, Oakland County, MI. The line traverses United States Postal Service Zip Code 48342.

GTW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic that previously moved over the line can be rerouted over other GTW lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short LineR. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 28, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by February 9, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 18, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Robert P. vom Eigen, Esq., Rachel Danish Campbell, Esq., Hopkins & Sutter, 888 Sixteenth Street, NW., Washington, DC 20006.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

GTW has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by February 3, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), GTW shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by GTW's filing of a notice of consummation by January 29, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

Decided: January 22, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–2364 Filed 1–28–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network; Proposed Collection; Comment Request

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Financial Crimes Enforcement Network ("FinCEN") is soliciting comments concerning certain regulations in 31 CFR part 103 relating to Financial Recordkeeping and Reporting of Currency and Foreign Transactions, and TD F 90–22.1, Report of Foreign Bank and Financial Accounts.

DATES: Written comments should be received on or before March 30, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to: Office of Legal Counsel, Financial Crimes Enforcement Network, Department of the Treasury, Suite 200, 2070 Chain Bridge Road, Vienna, VA 22182–2536, *Attention:* Extension of OMB Number 1506–0009. Comments also may be submitted by electronic mail to the following Internet address: "regcomments@fincen.treas.gov" with the caption in the body of the text, "*Attention:* Extension of OMB Number 1506–0009."

FOR FURTHER INFORMATION CONTACT: Requests for information should be directed to Charles Klingman, Financial Institutions Policy Specialist, FinCEN, at (703) 905–3602.

SUPPLEMENTARY INFORMATION:

Title: Financial Recordkeeping and Reporting of Currency and Foreign Transactions, and TD F 90–22.1, Report of Foreign Bank and Financial Accounts.

OMB Number: 1506–0009. (This collection was formerly assigned Control Number 1505–0063.)

Form Number: TD F 90–22.1.

Abstract: The Bank Secrecy Act, Titles I and II of Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, inter alia, to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330) appear at 31 CFR part 103. The authority of the Secretary to administer the Bank Secrecy Act regulations has been delegated to the Director of FinCEN.

Money laundering is a vital component of, not only drug trafficking, but other illegal operations throughout the world. The reporting and recordkeeping requirements of the Bank Secrecy Act, codified at 12 U.S.C. 1829, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, aid in creating a paper trail to trace drug and other proceeds back to their illegal sources and help to identify the sources, volume, and movements of domestic and international currency. The Secretary of the Treasury has determined that the records and reports required by the Bank Secrecy Act have a high degree of usefulness in criminal, tax, or regulatory investigations. The information collected and retained under these regulations and the information collected on form TD F 90–22.1 (as well as other Bank Secrecy Act reporting and recordkeeping requirements that are not the subject of this notice) assist federal, state and local law enforcement in the identification, investigation, and prosecution of individuals involved in money laundering, tax evasion, narcotics trafficking, organized crime, fraud, embezzlement and other crimes. The information also assists in tax collection and examination and other regulatory matters. The implementing regulations have been issued in 31 CFR part 103 and provide, to the extent covered by this control number, as follows:

1. *103.22*—Financial institutions must report transactions in currency that exceed $10,000 in one business day (103.22(a); 103.27(a), (d), (e); 103.28). Financial institutions must satisfy requirements for exempt customers (103.22(f), (g), and (h)). Financial institutions must keep exemption statements of customers that have been unilaterally exempted from the reporting requirements of 103.22(a) (103.22(d)). Financial institutions may

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apply to the Internal Revenue Service for additional exemption authority not granted under 103.22(b) (103.22(e)).[1]

2. *103.23*—Reports required on the international transportation and receipt of currency or monetary instruments that exceed $10,000 (103.23; 103.27(b), (d), (e)).

3. *103.24*—Reports must be filed by persons with foreign bank or other financial accounts (103.24; 103.27(c), (d), and (e)).

4. *103.25*—Reports of transactions with foreign financial agencies are required on a targeted basis.

5. *103.26*—Reports of certain domestic coin and currency transactions must be made as required on a geographically targeted basis.

6. *103.27*—Reports required by 103.22, 103.23, and 103.24 must be filed as provided in 103.27.

7. *103.28*—Before concluding any transaction with respect to which a report must be filed under 103.22, a financial institution must verify and record the name of the individual presenting the transaction and must record certain other information about the individual.

8. *103.29*—Financial institutions must maintain logs of the cash sale of bank checks or drafts, cashier's checks, money orders and traveler's checks between $3,000–$10,000, and must provide the logs to Treasury, upon request.

9. *103.32*—Records must be maintained by persons having financial interests in foreign financial accounts.

10. *103.33*—This section addresses records that must be made and retained by all financial institutions.

11. *103.34*—This section addresses additional records required to be made and retained by banks.

12. *103.35*—This section addresses additional records required to be made and retained by brokers or dealers in securities.

13. *103.36*—This section addresses additional records required to be made and retained by casinos.

14. *103.37*—This section addresses additional records required to be made and retained by currency dealers or exchangers.

15. *103.38*—This section addresses the nature of records and retention period.

16. *103.43*—This section addresses the availability of information.

17. *103.45*—The Secretary may grant exceptions and exemptions, including exemptions for casinos in states whose regulatory system substantially meets the reporting and recordkeeping requirements of 31 CFR part 103.

18. *103.54*—This section addresses special rules for casinos, including a written compliance program.

19. *103.71, 103.72, 103.73, 103.75, 103.76, and 103.77*—These sections address administrative rulings under the Bank Secrecy Act. They explain how to submit a ruling request (103.71), how nonconforming requests are handled (103.72), how oral communications are treated (103.73), how rulings are issued (103.75), how rulings are modified or rescinded (103.76), and how information may be disclosed (103.77).

Form TD F 90–22–1 is filed by persons with foreign bank or other financial accounts.

Current Actions: This document does not change the existing regulations or the form.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit institutions, not-for-profit institutions, individuals, (and in limited situations) federal, state, local, and tribal governments.

Estimated Number of Respondents: 140,000.

Estimated Total Annual Responses: 13,000,000.

Estimated Total Annual Burden Hours: 11,529,711.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the Bank Secrecy Act must be retained for five years. Generally, information collected pursuant to the Bank Secrecy Act is confidential, but may be shared as provided by law with regulatory and law enforcement authorities.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology, and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: January 23, 1998.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 98–2189 Filed 1–28–98; 8:45 am]

BILLING CODE 4820–03–P

[1] The exemption system is currently being re-examined. *See* the notice of proposed rulemaking published September 8, 1997. (62 FR 47156).

DEPARTMENT OF THE TREASURY

Customs Service

Notice of Issuance of Final Determination Concerning PC Cards

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that Customs has issued a final determination concerning the country of origin of certain PC cards which are being offered for sale to the U.S. Government. The final determination found that based upon the facts presented, the country of origin of the PC cards which are produced in Mexico from U.S. and foreign components is Mexico.

DATES: The final determination was issued on January 9, 1998. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of the final determination within 30 days of January 29, 1998. A copy of the final determination will be published in the Customs Bulletin.

FOR FURTHER INFORMATION CONTACT: Burton L. Schlissel, Senior Attorney, Office of Regulations and Rulings, (202) 927–1034.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on January 9, 1998, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), Customs issued a final determination concerning the country of origin of certain PC cards which are being offered to the U.S. Government. The U.S. Customs ruling number is HQ 559815. This final determination was issued at the request of the offeror under procedures set forth in 19 CFR 177 subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). The final determination concluded that based upon the facts presented, printed circuit boards and other components imported into Mexico are substantially transformed as a consequence of the assembly operations performed in Mexico resulting in the completed PC cards. Accordingly, the country of origin of the PC cards is Mexico. This document gives notice pursuant to § 177.29, Customs Regulations (19 CFR 177.29), of that final determination. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of January 29, 1998.

Dated: January 26, 1998.

John Durant,

Acting Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 98–2253 Filed 1–28–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0325]

Proposed Information Collection Activity: Proposed Collection; Comment Request; Revision

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to authorize advance payment of educational assistance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 30, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0325" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: Certification of Delivery of Advance Payment and Enrollment, VA Form 22–1999v.

OMB Control Number: 2900–0325.

Type of Review: Extension of a currently approved collection.

Abstract: VA is authorized to pay educational assistance to veterans and other eligible individuals pursuing approved programs of education under Title 38, U.S.C., chapters 30, 32 and 35, section 903 of Public Law 96–342, and Title 10, U.S.C., chapter 1606. If certain requirements are met, VA is authorized to issue payments in advance of the beginning date of training. The schools or training establishments deliver advance payments and are required to certify the deliveries to VA. The schools or training establishments are also required to report the following to VA: (1) The failure of the student to enroll; (2) an interruption or termination of attendance; or, (3) a finding of unsatisfactory attendance conduct or progress. VA Form 22–1999v serves as the certification of delivery of the advance payment and also the report of any changes in training status.

Affected Public: Business or other for-profit—not-for-profit institutions—State, Local or Tribal Governments.

Estimated Annual Burden: 2,829 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Responses: 33,590.

Dated: December 24, 1997.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst/Information Management Service.

[FR Doc. 98–2099 Filed 1–28–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0212]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to decline Veterans Mortgage Life Insurance and the information needed to determine insurance premiums.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 30, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0212" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the

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collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: Veterans Mortgage Life Insurance Statement, VA Form 29–8636.

OMB Control Number: 2900–0212.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by veterans who have received Specially Adapted Housing Grants to decline Veterans Mortgage Life Insurance or to provide information upon which the insurance premium can be based. The information is used by VA to process the veteran's request.

Affected Public: Individuals or households.

Estimated Annual Burden: 113 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 450.

Dated: December 24, 1997.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 98–2100 Filed 1–28–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0202]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to apply for replacement insurance to replace the amount of Modified Life Insurance that was reduced at age 70.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 30, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0202" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Numbers: Application for Ordinary Life Insurance (Age 70), VA Form 29–8485a; and Information About Modified Life Insurance Reduction and Replacement Features (Age 70), VA Form 29–8701.

OMB Control Number: 2900–0202.

Type of Review: Extension of a currently approved collection.

Abstract: The forms are used by the insured to apply for replacement insurance to replace the amount of Modified Life Insurance that was reduced at age. The information is used by VA to initiate the granting of the coverage for which applied.

Affected Public: Individuals or households.

Estimated Annual Burden: 642 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 7,700.

Dated: December 24, 1997.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 98–2101 Filed 1–28–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0093]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on requirements to obtaining organizational information from builders in order to identify individuals who have controlling, proprietary, or financial interest in their company.

DATES: Comments must be submitted on or before March 30, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0093" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: Request for Organizational Data from Builder, VA Form Letter 26–312.

OMB Control Number: 2900–0093.

Type of Review: Extension of a currently approved collection.

Abstract: VA will refuse to appraise properties if it is determined that any party or parties involved, or financially interested in the construction of a unit, have participated in the construction of units sold to veterans which involved substantial deficiencies in construction or a failure or indicated inability to discharge contractual obligations to the veteran who contracted for the construction of the unit. The form letter is completed by builders and sponsors to identify individuals who have controlling, proprietary, or financial interest in their company. The information is used by VA to determine eligibility for participation in the Loan Guaranty Program.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 4,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 8,000.

Dated: December 24, 1997.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 98–2102 Filed 1–28–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0387]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on requirements to determine whether a veteran qualified as a prospective mortgagor for mortgage insurance or guaranty or as a borrower for a rehabilitation loan under the VA program.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 30, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0387" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–5079 or FAX (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: Request for Verification of Deposit, VA Form 26–8497a.

OMB Control Number: 2900–0387.

Type of Review: Extension of a currently approved collection.

Abstract: The form is primarily used by lenders making guaranteed and insured loans to verify deposits of applicants in banks and other savings institutions. It is also used in processing direct loans, offers on acquired properties, and release from liability/substitution of entitlement cases when needed. In these types of cases, part I of the form is completed by the lender and signed by the applicant then forwarded to the depository. The depository completes part II, verifying the applicant's deposits, providing information and payment experience on outstanding loans, and returns the form to the lender. The information is used by VA to determine the applicant's present and anticipated income and expenses and that the applicant is a satisfactory credit risk.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 21,565 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 258,775.

Dated: December 24, 1997.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 98–2103 Filed 1–28–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0525]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to change the

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account number and/or bank from which automatic deductions were previously authorized.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 30, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0525" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: VA MATIC, VA Form 29–0165.

OMB Control Number: 2900–0525.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to change the account number and/or bank from which a VA MATIC deduction was previously authorized. The information is used by VBA to process the veteran's request.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,250 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,000.

Dated: December 18, 1997.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–2104 Filed 1–28–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0317]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on obtaining additional information from a correspondent when the incoming correspondence does not provide sufficient information to identify and associate the previous correspondence with the correct veteran's loan application or loan records.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 30, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0317" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–5079 or FAX (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: Request for Identifying Information Re: Veteran's Loan Records, VA Form Letter 26–626.

OMB Control Number: 2900–0317.

Type of Review: Extension of a currently approved collection.

Abstract: The form letter is used to notify a correspondent that additional information is needed in order to identify and associate the previous correspondence with the correct veteran's loan application or loan records.

Affected Public: Individuals or households.

Estimated Annual Burden: 200 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,400.

By direction of the Secretary.

Dated: December 18, 1997.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–2105 Filed 1–28–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0118]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to ensure that individuals are pursuing their approved program while enrolled at a different training institution.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 30, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0118" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: Transfer of Scholastic Credit (Schools), VA Form Letter 22–315.

OMB Control Number: 2900–0118.

Type of Review: Extension of a currently approved collection.

Abstract: When a student receiving VA education benefits is enrolled at two training institutions, the institution at which the student pursues his approved program of education must verify that courses pursued at a second or supplemental institution will be accepted at full credit toward the student's course objective. Educational payment for courses pursued at the second institution are not payable unless evidence is received to verify that the student is pursuing his or her approved program while enrolled in these courses. VA Form Letter 22–315 is sent to the student by a VA claims examiner. The letter directs the student to have the certifying official of his or her primary institution complete the bottom portion of the form. The certifying official uses the letter to list the course or courses pursued at the second institution for which the primary institution will give full credit. The completed letter is then returned to the VA regional office and the information is used to ensure that students are pursuing their approved program while enrolled at a different school. Without this information, VA might underpay or overpay benefits.

Affected Public: Not-for-profit institutions—State, Local or Tribal Government.

Estimated Annual Burden: 175 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,048.

By direction of the Secretary.

Dated: December 18, 1997.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–2106 Filed 1–28–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0066]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on a request to an employer for employment information in connection with a veteran's claim for disability insurance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 30, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0066" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: Request to Employer for Employment Information in Connection with Claim for Disability Benefits, VA Form 29–459.

OMB Control Number: 2900–0066.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to request employment information in connection with a claim for disability insurance benefits. The information collected is used by VBA to establish the insured's eligibility for disability insurance benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 862 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,167.

Dated: December 18, 1997.

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By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–2107 Filed 1–28–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0046]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on an application for payment of credits due the estate of a deceased veteran.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 30, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0046" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: Statement of Heirs for Payment of Credits Due Estate of Deceased Veteran, VA Form Letter 29–596.

OMB Control Number: 2900–0046.

Type of Review: Extension of a currently approved collection.

Abstract: The form letter is used to obtain information for payment of credits due the estate of a deceased veteran. The information is used by VBA to establish entitlement to the refundable credits.

Affected Public: Individuals or households.

Estimated Annual Burden: 78 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 312.

Dated: December 18, 1997.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–2108 Filed 1–28–98; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 63, No. 19

Thursday, January 29, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Office of Surface and Mining Reclamation and Enforcement

30 CFR Part 901

[SPATS No. AL–067–FOR]

Alabama Regulatory Program

Correction

In rule document 97–33335 beginning on page 66819, in the issue of Monday, December 22, 1997, make the following corrections:

1. On page 66819, in the table, in the first column, in the third line, "Hydrologic Ground Water Monitoring" should read "Hydrologic Balance: Surface and Ground Water Monitoring".

2. On page 66819, in the second column, in the fifth line from the bottom, after "Federal Regulations", start a new paragraph with the heading "Rules 880-X-10C-.40 and 880-X-10D-.36 Coal Mine Waste: Refuse Piles".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–32]

Amendment to Class E Airspace; Columbus, NE

Correction

In rule document 98–1230, beginning on page 2887, in the issue of Tuesday, January 20, 1998, make the following correction:

§ 71.1 [Corrected]

On page 2888, in the second column, in the tenth line, "360°" should read "330°".

BILLING CODE 1505–01–D

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Part II

Small Business Administration

Table of Small Business Size Standards; Notice

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SMALL BUSINESS ADMINISTRATION

Table of Small Business Size Standards

Note: The U.S. Small Business Administration (SBA) is withdrawing its January 7, 1998 **Federal Register** (63 FR 902–921) Notice of publication of full table of small business size standards. That table contained a large number of errors that occurred during publication and that were outside of SBA's control. SBA is therefore republishing the full table of small business size standards to correct those errors. This corrected table replaces the one that was published on January 7, 1998.

AGENCY: Small Business Administration.

ACTION: Correction. Republication of full table of small business size standards.

SUMMARY: The U.S. Small Business Administration (SBA) is publishing a full table of small business size standards by four-digit Standard Industrial Classification (SIC) code. This table does not create, establish or modify any size standards currently in existence. This table merely presents all four-digit SIC codes for which SBA has established a small business size standard as a convenient reference for users of SBA's size standards.

FOR FURTHER INFORMATION CONTACT: SBA Office of Size Standards at (202) 205–6618.

SUPPLEMENTARY INFORMATION: SBA is publishing below a full table of small business size standards in accordance with 13 CFR § 121.101. On January 31, 1996, SBA published in the **Federal Register** (61 FR 3280) a Final Rule that clarified and streamlined its small business size standards and related eligibility requirements under 13 CFR 101, "Small Business Size Regulations." The simplification of SBA's Small Business Size Regulations reduced the apparent size of the table of small business size standards in § 121.201 by listing general size standards by SIC Division. Those standards apply to all industries in that Division except those two-digit major group or four-digit industry codes listed with other specific standards. This streamlined table eliminated the duplication of common industry size standards within a Division and reduced the Code of Federal Regulations by fourteen pages.

Since the January 31, 1996, publication of the streamlined size standards table in § 121.201, no small business size standard has been changed. The table published here does not create, establish or modify any size standards currently in existence, but only presents all size standards in an expanded and more convenient format. Changes or modifications to 13 CFR § 121 are only made in accordance with the Administrative Procedures Act and the Regulatory Flexibility Act. Any changes to the table of small business size standards will be reflected in the annual publication of the full list of size standards. SBA will also provide copies of any size related rules on its Internet web site at http://www.sba.gov/. Those with access to the Internet can obtain and download the current table of size standards, listed by four-digit SIC industry code, at http://www.sbaonline.sba.gov/gopher/Financial-Assistance/Size-Standards/. Others may contact any SBA office to verify size standards currently in effect.

SBA was aware when it published the streamlined table of size standards that many users prefer a table listing size standards for each four-digit SIC code. To accommodate those users, the SBA stated in the Final Rule (§ 121.101) that it would publish such an entire table annually in the **Federal Register**. SBA recognizes that having the entire list of small business size standards with the four-digit SIC codes often makes it easier for users to apply the proper standards to their needs, and that it should also reduce the chance for error. This also provides users with additional size standards information without expanding federal regulations. Accordingly, this notice contains a table matching a small business size standard with each four-digit SIC code for which SBA has established a size standard.

Since the publication of the streamlined size standards table, SBA has received questions as to whether small business size standards apply to the four-digit SIC codes that are not specifically listed in the text of § 121.201. The paragraph at the head of the table in § 121.201 states that "Size standards are listed by Division and apply *to all industries in that Division* [emphasis added] except those specifically listed with separate size standards for a specific two-digit major group or four-digit industry code." This means that *all* four-digit SIC codes within that major group have the same size standard, unless otherwise noted as exceptions. For example, the size standard for management consulting services, SIC code 8742, is $5 million in average annual revenues. Although this industry is not listed in the size table in § 121.201, a size standard does exist for that industry.

The proper application of the size standards table in § 121.201 is very important since to be eligible for programs reserved for small businesses, SBA requires that a concern qualify as a small business using the size standard(s) for the appropriate industry. In connection with SBA financial assistance programs, § 121.301 states that "(a) For Business Loans and Disaster Loans (other than physical disaster loans), an applicant must not exceed the size standard for the *industry* [emphasis added] in which: (1) The applicant combined with its affiliates is primarily engaged; and (2) The applicant alone is primarily engaged." Also, to be eligible as a small business for federal procurement programs, a concern must meet the size standard specified in the solicitation, which the contracting officer selects giving primary consideration "to the *industry descriptions in the SIC Manual,* * * * [emphasis added]" (§ 121.402).

The 1987 SIC Manual, Appendix B (page 699), designates "industry" by a four-digit SIC code. The industries described in the SIC Manual are all four-digit industries. SBA's small business size standards were established and continue to exist for the various SIC industries, which are identified solely by their four-digit codes. By publishing this full table of small business size standards annually, SBA intends to facilitate the correct use of the small business size standards.

SIC	Size Standards by SIC industry Description (N.E.C.= Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
	DIVISION A—AGRICULTURE, FORESTRY AND FISHING	
	MAJOR GROUP 01—AGRICULTURAL PRODUCTION—CROPS	
0111	Wheat	$0.5
0112	Rice	$0.5
0115	Corn	$0.5
0116	Soybeans	$0.5
0119	Cash Grains, N.E.C.	$0.5
0131	Cotton	$0.5
0132	Tobacco	$0.5
0133	Sugarcane and Sugar Beets	$0.5
0134	Irish Potatoes	$0.5
0139	Field Crops, Except Cash Grains, N.E.C.	$0.5
0161	Vegetables and Melons	$0.5
0171	Berry Crops	$0.5
0172	Grapes	$0.5
0173	Tree Nuts	$0.5
0174	Citrus Fruits	$0.5
0175	Deciduous Tree Fruits	$0.5
0179	Fruits and Tree Nuts, N.E.C.	$0.5
0181	Ornamental Floriculture Nursery Products	$0.5
0182	Food Crops Grown Under Cover	$0.5
0191	General Farms, Primarily Crop	$0.5
	MAJOR GROUP 02—LIVESTOCK AND ANIMAL SPECIALTIES	
0211	Beef Cattle Feedlots (Custom)	$1.5
0212	Beef Cattle, Except Feedlots	$0.5
0213	Hogs	$0.5
0214	Sheep and Goats.	$0.5
0219	General Livestock, Except Dairy and Poultry	$0.5
0241	Dairy Farms.	$0.5
0251	Broiler, Fryer, and Roaster Chickens	$0.5
0252	Chicken Eggs	$9.0
0253	Turkeys and Turkey Eggs	$0.5
0254	Poultry Hatcheries	$0.5
0259	Poultry and Eggs, N.E.C.	$0.5
0271	Fur-Bearing Animals and Rabbits	$0.5
0272	Horses and Other Equines	$0.5
0273	Animal Aquaculture	$0.5
0279	Animal Specialties, N.E.C.	$0.5
0291	General Farms, Primarily Livestock and Animal Specialties	$0.5
	MAJOR GROUP 07—AGRICULTURAL SERVICES	
0711	Soil Preparation Services	$5.0
0721	Crop Planting, Cultivating, and Protecting	$5.0
0722	Crop Harvesting, Primarily by Machine	$5.0
0723	Crop Preparation Service for Market, Except Cotton Ginning	$5.0
0724	Cotton Ginning	$5.0
0741	Veterinary Services for Livestock	$5.0
0742	Veterinary Services for Animal Specialties	$5.0
0751	Livestock Services, Except Veterinary	$5.0
0752	Animal Specialty Services, Except Veterinary	$5.0
0761	Farm Labor Contractors and Crew Leaders	$5.0
0762	Farm Management Services	$5.0
0781	Landscape Counseling and Planning	$5.0
0782	Lawn and Garden Services	$5.0
0783	Ornamental Shrub and Tree Services	$5.0
	MAJOR GROUP 08—FORESTRY	
0811	Timber Tracts	$5.0
0831	Forest Nurseries and Gathering of Forest Products	$5.0
0851	Forestry Services	$5.0

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SIC	Size Standards by SIC industry Description (N.E.C.= Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
	MAJOR GROUP 09—FISHING, HUNTING, AND TRAPPING	
0912	Finfish	$3.0
0913	Shellfish	$3.0
0919	Miscellaneous Marine Products	$3.0
0921	Fish Hatcheries and Preserves	$3.0
0971	Hunting and Trapping, and Game Propagation	$3.0
	DIVISION B—MINING	
	MAJOR GROUP 10—METAL MINING	
1011	Iron Ores	500
1021	Copper Ores	500
1031	Lead and Zinc Ores	500
1041	Gold Ores	500
1044	Silver Ores	500
1061	Ferroalloy Ores, Except Vanadium	500
1081	Metal Mining Services	$5.0
1094	Uranium-Radium-Vanadium Ores	500
1099	Miscellaneous Metal Ores, N.E.C.	500
	MAJOR GROUP 12—COAL MINING	
1221	Bituminous Coal and Lignite Surface Mining	500
1222	Bituminous Coal Underground Mining	500
1231	Anthracite Mining	500
1241	Coal Mining Services	$5.0
	MAJOR GROUP 13—OIL AND GAS EXTRACTION	
1311	Crude Petroleum and Natural Gas	500
1321	Natural Gas Liquids	500
1381	Drilling Oil and Gas Wells	500
1382	Oil and Gas Field Exploration Services	$5.0
1389	Oil and Gas Field Services, N.E.C	$5.0
	MAJOR GROUP 14—MINING AND QUARRYING OF NONMETALLIC MINERALS, EXCEPT FUELS	
1411	Dimension Stone	500
1422	Crushed and Broken Limestone	500
1423	Crushed and Broken Granite	500
1429	Crushed and Broken Stone, N.E.C.	500
1442	Construction Sand and Gravel	500
1446	Industrial Sand	500
1455	Kaolin and Ball Clay	500
1459	Clay, Ceramic, and Refractory Minerals, N.E.C.	500
1474	Potash, Soda, and Borate Minerals	500
1475	Phosphate Rock	500
1479	Chemical and Fertilizer Mineral Mining, N.E.C.	500
1481	Nonmetallic Minerals Services, Except Fuels	$5.0
1499	Miscellaneous Nonmetallic Minerals, Except Fuels	500
	DIVISION C—CONSTRUCTION	
	MAJOR GROUP 15—BUILDING CONSTRUCTION—GENERAL CONTRACTORS AND OPERATIVE BUILDERS	
1521	General Contractors—Single-Family Houses	$17.0
1522	General Contractors—Residential Buildings, Other than Single-Family	$17.0
1531	Operative Builders	$17.0
1541	General Contractors—Industrial Buildings and Warehouses	$17.0
1542	General Contractors—Nonresidential Buildings, Other than Industrial Buildings and Warehouses	$17.0
	MAJOR GROUP 16—HEAVY CONSTRUCTION OTHER THAN BUILDING CONSTRUCTION—CONTRACTORS	
1611	Highway and Street Construction, Except Elevated Highways	$17.0
1622	Bridge, Tunnel, and Elevated Highway Construction	$17.0

SIC	Size Standards by SIC industry Description (N.E.C.= Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
1623	Water, Sewer, Pipeline, and Communications and Power Line Construction	$17.0
1629	Heavy Construction, N.E.C.	$17.0
EXCEPT,	Dredging and Surface Cleanup Activities	[1] $13.5
	MAJOR GROUP 17—CONSTRUCTION—SPECIAL TRADE CONTRACTORS	
1711	Plumbing, Heating, and Air-Conditioning	$7.0
1721	Painting and Paper Hanging	$7.0
1731	Electrical Work	$7.0
1741	Masonry, Stone Setting, and Other Stone Work	$7.0
1742	Plastering, Drywall, Acoustical and Insulation Work	$7.0
1743	Terrazzo, Tile, Marble, and Mosaic Work	$7.0
1751	Carpentry Work	$7.0
1752	Floor Laying and Other Floor Work, N.E.C.	$7.0
1761	Roofing, Siding, and Sheet Metal Work	$7.0
1771	Concrete Work	$7.0
1781	Water Well Drilling	$7.0
1791	Structural Steel Erection	$7.0
1793	Glass and Glazing Work	$7.0
1794	Excavation Work	$7.0
1795	Wrecking and Demolition Work	$7.0
1796	Installation or Erection of Building Equipment, N.E.C.	$7.0
1799	Special Trade Contractors, N.E.C.	$7.0
EXCEPT,	Base Housing Maintenance	[12] $7.0
	DIVISION D—MANUFACTURING [2]	
	MAJOR GROUP 20—FOOD AND KINDRED PRODUCTS	
2011	Meat Packing Plants	500
2013	Sausages and Other Prepared Meat Products	500
2015	Poultry Slaughtering and Processing	500
2021	Creamery Butter	500
2022	Natural, Processed, and Imitation Cheese	500
2023	Dry, Condensed, and Evaporated Dairy Products	500
2024	Ice Cream and Frozen Desserts	500
2026	Fluid Milk	500
2032	Canned Specialties	1,000
2033	Canned Fruits, Vegetables, Preserves, Jams, and Jellies	[3] 500
2034	Dried and Dehydrated Fruits, Vegetables, and Soup Mixes	500
2035	Pickled Fruits and Vegetables, Vegetable Sauces and Seasonings, and Salad Dressings	500
2037	Frozen Fruits, Fruit Juices, and Vegetables	500
2038	Frozen Specialties, N.E.C.	500
2041	Flour and Other Grain Mill Products	500
2043	Cereal Breakfast Foods	1,000
2044	Rice Milling	500
2045	Prepared Flour Mixes and Doughs	500
2046	Wet Corn Milling	750
2047	Dog and Cat Food	500
2048	Prepared Feeds and Feed Ingredients for Animals and Fowls, Except Dogs and Cats	500
2051	Bread and Other Bakery Products, Except Cookies and Crackers	500
2052	Cookies and Crackers	750
2053	Frozen Bakery Products, Except Bread	500
2061	Cane Sugar, Except Refining	500
2062	Cane Sugar Refining	750
2063	Beet Sugar	750
2064	Candy and Other Confectionery Products	500
2066	Chocolate and Cocoa Products	500
2067	Chewing Gum	500
2068	Salted and Roasted Nuts and Seeds	500
2074	Cottonseed Oil Mills	500
2075	Soybean Oil Mills	500
2076	Vegetable Oil Mills, Except Corn, Cottonseed, and Soybean	1,000
2077	Animal and Marine Fats and Oils	500
2079	Shortening, Table Oils, Margarine, and Other Edible Fats and Oils, N.E.C.	750
2082	Malt Beverages	500
2083	Malt	500
2084	Wines, Brandy, and Brandy Spirits	500
2085	Distilled and Blended Liquors	750

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SIC	Size Standards by SIC industry Description (N.E.C.= Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
2086	Bottled and Canned Soft Drinks and Carbonated Waters	500
2087	Flavoring Extracts and Flavoring Syrups, N.E.C.	500
2091	Canned and Cured Fish and Seafoods	500
2092	Prepared Fresh or Frozen Fish and Seafoods	500
2095	Roasted Coffee	500
2096	Potato Chips, Corn Chips, and Similar Snacks	500
2097	Manufactured Ice	500
2098	Macaroni, Spaghetti, Vermicelli, and Noodles	500
2099	Food Preparations, N.E.C.	500
	MAJOR GROUP 21—TOBACCO PRODUCTS	
2111	Cigarettes	1,000
2121	Cigars	500
2131	Chewing and Smoking Tobacco and Snuff	500
2141	Tobacco Stemming and Redrying	500
	MAJOR GROUP 22—TEXTILE MILL PRODUCTS	
2211	Broadwoven Fabric Mills, Cotton	1,000
2221	Broadwoven Fabric Mills, Manmade Fiber and Silk	500
2231	Broadwoven Fabric Mills, Wool (Including Dyeing and Finishing)	500
2241	Narrow Fabric and Other Smallwares Mills: Cotton, Wool, Silk and Manmade Fiber	500
2251	Women's Full-Length and Knee-Length Hosiery, Except Socks	500
2252	Hosiery, N.E.C.	500
2253	Knit Outerwear Mills	500
2254	Knit Underwear and Nightwear Mills	500
2257	Weft Knit Fabric Mills	500
2258	Lace and Warp Knit Fabric Mills	500
2259	Knitting Mills, N.E.C.	500
2261	Finishers of Broadwoven Fabrics of Cotton	1,000
2262	Finishers of Broadwoven Fabrics of Manmade Fiber and Silk	500
2269	Finishers of Textiles, N.E.C.	500
2273	Carpets and Rugs	500
2281	Yarn Spinning Mills	500
2282	Yarn Texturizing, Throwing, Twisting, and Winding Mills	500
2284	Thread Mills	500
2295	Coated Fabrics, Not Rubberized	1,000
2296	Tire Cord and Fabrics	1,000
2297	Nonwoven Fabrics	500
2298	Cordage and Twine	500
2299	Textile Goods, N.E.C.	500
	MAJOR GROUP 23—APPAREL AND OTHER FINISHED PRODUCTS MADE FROM FABRICS AND SIMILAR MATERIALS	
2311	Men's and Boys' Suits, Coats and Overcoats	500
2321	Men's and Boys' Shirts, Except Work Shirts	500
2322	Men's and Boys' Underwear and Nightwear	500
2323	Men's and Boys' Neckwear	500
2325	Men's and Boys' Separate Trousers and Slacks	500
2326	Men's and Boys' Work Clothing	500
2329	Men's and Boys' Clothing, N.E.C.	500
2331	Women's, Misses', and Juniors' Blouses and Shirts	500
2335	Women's, Misses', and Juniors' Dresses	500
2337	Women's, Misses', and Juniors' Suits, Skirts, and Coats	500
2339	Women's, Misses', and Juniors' Outerwear, N.E.C.	500
2341	Women's, Misses', Children's, and Infants' Underwear and Nightwear	500
2342	Brassieres, Girdles, and Allied Garments	500
2353	Hats, Caps, and Millinery	500
2361	Girls', Children's, and Infants' Dresses, Blouses, and Shirts	500
2369	Girls', Children's, and Infants' Outerwear, N.E.C.	500
2371	Fur Goods	500
2381	Dress and Work Gloves, Except Knit and All-Leather	500
2384	Robes and Dressing Gowns	500
2385	Waterproof Outerwear	500
2386	Leather and Sheep-Lined Clothing	500
2387	Apparel Belts	500
2389	Apparel and Accessories, N.E.C.	500
2391	Curtains and Draperies	500
2392	Housefurnishings, Except Curtains and Draperies	500
2393	Textile Bags	500

SIC	Size Standards by SIC industry Description (N.E.C.= Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
2394	Canvas and Related Products	500
2395	Pleating, Decorative and Novelty Stitching, and Tucking for the Trade	500
2396	Automotive Trimmings, Apparel Findings, and Related Products	500
2397	Schiffli Machine Embroideries	500
2399	Fabricated Textile Products, N.E.C.	500
	MAJOR GROUP 24—LUMBER AND WOOD PRODUCTS, EXCEPT FURNITURE	
2411	Logging	500
2421	Sawmills and Planing Mills, General	500
2426	Hardwood Dimension and Flooring Mills	500
2429	Special Product Sawmills, N.E.C.	500
2431	Millwork	500
2434	Wood Kitchen Cabinets	500
2435	Hardwood Veneer and Plywood	500
2436	Softwood Veneer and Plywood	500
2439	Structural Wood Members, N.E.C.	500
2441	Nailed and Lock Corner Wood Boxes and Shook	500
2448	Wood Pallets and Skids	500
2449	Wood Containers, N.E.C.	500
2451	Mobile Homes	500
2452	Prefabricated Wood Buildings and Components	500
2491	Wood Preserving	500
2493	Reconstituted Wood Products	500
2499	Wood Products, N.E.C.	500
	MAJOR GROUP 25—FURNITURE AND FIXTURES	
2511	Wood Household Furniture, Except Upholstered	500
2512	Wood Household Furniture, Upholstered	500
2514	Metal Household Furniture	500
2515	Mattresses, Foundations, and Convertible Beds	500
2517	Wood Television, Radio, Phonograph, and Sewing Machine Cabinets	500
2519	Household Furniture, N.E.C.	500
2521	Wood Office Furniture	500
2522	Office Furniture, Except Wood	500
2531	Public Building and Related Furniture	500
2541	Wood Office and Store Fixtures, Partitions, Shelving, and Lockers	500
2542	Office and Store Fixtures, Partitions, Shelving, and Lockers, Except Wood	500
2591	Drapery Hardware and Window Blinds and Shades	500
2599	Furniture and Fixtures, N.E.C.	500
	MAJOR GROUP 26—PAPER AND ALLIED PRODUCTS	
2611	Pulp Mills	750
2621	Paper Mills	750
2631	Paperboard Mills	750
2652	Setup Paperboard Boxes	500
2653	Corrugated and Solid Fiber Boxes	500
2655	Fiber Cans, Tubes, Drums, and Similar Products	500
2656	Sanitary Food Containers, Except Folding	750
2657	Folding Paperboard Boxes, Including Sanitary	750
2671	Packaging Paper and Plastics Film, Coated and Laminated	500
2672	Coated and Laminated Paper, N.E.C.	500
2673	Plastics, Foil, and Coated Paper Bags	500
2674	Uncoated Paper and Multiwall Bags	500
2675	Die-Cut Paper and Paperboard and Cardboard	500
2676	Sanitary Paper Products	500
2677	Envelopes	500
2678	Stationery, Tablets, and Related Products	500
2679	Converted Paper and Paperboard Products, N.E.C.	500
	MAJOR GROUP 27—PRINTING, PUBLISHING, AND ALLIED INDUSTRIES	
2711	Newspapers: Publishing, or Publishing and Printing	500
2721	Periodicals: Publishing, or Publishing and Printing	500
2731	Books: Publishing, or Publishing and Printing	500
2732	Book Printing	500
2741	Miscellaneous Publishing	500
2752	Commercial Printing, Lithographic	500
2754	Commercial Printing, Gravure	500

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SIC	Size Standards by SIC industry Description (N.E.C.= Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
2759	Commercial Printing, N.E.C.	500
2761	Manifold Business Forms	500
2771	Greeting Cards	500
2782	Blankbooks, Looseleaf Binders and Devices	500
2789	Bookbinding and Related Work	500
2791	Typesetting	500
2796	Platemaking and Related Services	500
	MAJOR GROUP 28—CHEMICALS AND ALLIED PRODUCTS	
2812	Alkalies and Chlorine	1,000
2813	Industrial Gases	1,000
2816	Inorganic Pigments	1,000
2819	Industrial Inorganic Chemicals, N.E.C.	1,000
2821	Plastics Materials, Synthetic Resins, and Nonvulcanizable Elastomers	750
2822	Synthetic Rubber (Vulcanizable Elastomers)	1,000
2823	Cellulosic Manmade Fibers	1,000
2824	Manmade Organic Fibers, Except Cellulosic	1,000
2833	Medicinal Chemicals and Botanical Products	750
2834	Pharmaceutical Preparations	750
2835	In Vitro and In Vivo Diagnostic Substances	500
2836	Biological Products, Except Diagnostic Substances	500
2841	Soap and Other Detergents, Except Specialty Cleaners	750
2842	Specialty Cleaning, Polishing, and Sanitation Preparations	500
2843	Surface Active Agents, Finishing Agents, Sulfonated Oils, and Assistants	500
2844	Perfumes, Cosmetics, and Other Toilet Preparations	500
2851	Paints, Varnishes, Lacquers, Enamels, and Allied Products	500
2861	Gum and Wood Chemicals	500
2865	Cyclic Organic Crudes and Intermediates, and Organic Dyes and Pigments	750
2869	Industrial Organic Chemicals, N.E.C.	1,000
2873	Nitrogenous Fertilizers	1,000
2874	Phosphatic Fertilizers	500
2875	Fertilizers, Mixing Only	500
2879	Pesticides and Agricultural Chemicals, N.E.C.	500
2891	Adhesives and Sealants	500
2892	Explosives	750
2893	Printing Ink	500
2895	Carbon Black	500
2899	Chemicals and Chemical Preparations, N.E.C.	500
	MAJOR GROUP 29—PETROLEUM REFINING AND RELATED INDUSTRIES	
2911	Petroleum Refining	[4] 1,500
2951	Asphalt Paving Mixtures and Blocks	500
2952	Asphalt Felts and Coatings	750
2992	Lubricating Oils and Greases	500
2999	Products of Petroleum and Coal, N.E.C.	500
	MAJOR GROUP 30—RUBBER AND MISCELLANEOUS PLASTICS PRODUCTS	
3011	Tires and Inner Tubes	[5] 1,000
3021	Rubber and Plastics Footwear	1,000
3052	Rubber and Plastics Hose and Belting	500
3053	Gaskets, Packing, and Sealing Devices	500
3061	Molded, Extruded, and Lathe-Cut Mechanical Rubber Goods	500
3069	Fabricated Rubber Products, N.E.C.	500
3081	Unsupported Plastics Film and Sheet	500
3082	Unsupported Plastics Profile Shapes	500
3083	Laminated Plastics Plate, Sheet, and Profile Shapes	500
3084	Plastics Pipe	500
3085	Plastics Bottles	500
3086	Plastics Foam Products	500
3087	Custom Compounding of Purchased Plastics Resins	500
3088	Plastics Plumbing Fixtures	500
3089	Plastics Products, N.E.C.	500
	MAJOR GROUP 31—LEATHER AND LEATHER PRODUCTS	
3111	Leather Tanning and Finishing	500
3131	Boot and Shoe Cut Stock and Findings	500
3142	House Slippers	500

SIC	Size Standards by SIC industry Description (N.E.C.= Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
3143	Men's Footwear, Except Athletic	500
3144	Women's Footwear, Except Athletic	500
3149	Footwear, Except Rubber, N.E.C.	500
3151	Leather Gloves and Mittens	500
3161	Luggage	500
3171	Women's Handbags and Purses	500
3172	Personal Leather Goods, Except Women's Handbags and Purses	500
3199	Leather Goods, N.E.C.	500
	MAJOR GROUP 32—STONE, CLAY, GLASS, AND CONCRETE PRODUCTS	
3211	Flat Glass	1,000
3221	Glass Containers	750
3229	Pressed and Blown Glass and Glassware, N.E.C.	750
3231	Glass Products, Made of Purchased Glass	500
3241	Cement, Hydraulic	750
3251	Brick and Structural Clay Tile	500
3253	Ceramic Wall and Floor Tile	500
3255	Clay Refractories	500
3259	Structural Clay Products, N.E.C.	500
3261	Vitreous China Plumbing Fixtures and China and Earthenware Fittings and Bathroom Accessories	750
3262	Vitreous China Table and Kitchen Articles	500
3263	Fine Earthenware (Whiteware) Table and Kitchen Articles	500
3264	Porcelain Electrical Supplies	500
3269	Pottery Products, N.E.C.	500
3271	Concrete Block and Brick	500
3272	Concrete Products, Except Block and Brick	500
3273	Ready Mixed Concrete	500
3274	Lime	500
3275	Gypsum Products	1,000
3281	Cut Stone and Stone Products	500
3291	Abrasive Products	500
3292	Asbestos Products	750
3295	Minerals and Earths, Ground or Otherwise Treated	500
3296	Mineral Wool	750
3297	Nonclay Refractories	750
3299	Nonmetallic Mineral Products, N.E.C.	500
	MAJOR GROUP 33—PRIMARY METAL INDUSTRIES	
3312	Steel Works, Blast Furnaces (Including Coke Ovens), and Rolling Mills	1,000
3313	Electrometallurgical Products, Except Steel	750
3315	Steel Wiredrawing and Steel Nails and Spikes	1,000
3316	Cold-Rolled Steel Sheet, Strip, and Bars	1,000
3317	Steel Pipe and Tubes	1,000
3321	Gray and Ductile Iron Foundries	500
3322	Malleable Iron Foundries	500
3324	Steel Investment Foundries	500
3325	Steel Foundries, N.E.C.	500
3331	Primary Smelting and Refining of Copper	1,000
3334	Primary Production of Aluminum	1,000
3339	Primary Smelting and Refining of Nonferrous metals, Except Copper and Aluminum	750
3341	Secondary Smelting and Refining of Nonferrous Metals	500
3351	Rolling, Drawing, and Extruding of Copper	750
3353	Aluminum Sheet, Plate, and Foil	750
3354	Aluminum Extruded Products	750
3355	Aluminum Rolling and Drawing, N.E.C.	750
3356	Rolling, Drawing, and Extruding of Nonferrous Metals, Except Copper and Aluminum	750
3357	Drawing and Insulating of Nonferrous Wire	1,000
3363	Aluminum Die-Castings	500
3364	Nonferrous Die-Castings, Except Aluminum	500
3365	Aluminum Foundries	500
3366	Copper Foundries	500
3369	Nonferrous Foundries, Except Aluminum and Copper	500
3398	Metal Heat Treating	750
3399	Primary Metal Products, N.E.C.	750
	MAJOR GROUP 34—FABRICATED METAL PRODUCTS, EXCEPT MACHINERY AND TRANSPORTATION EQUIPMENT	
3411	Metal Cans	1,000
3412	Metal Shipping Barrels, Drums, Kegs, and Pails	500

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SIC	Size Standards by SIC industry Description (N.E.C.= Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
3421	Cutlery	500
3423	Hand and Edge Tools, Except Machine Tools and Handsaws	500
3425	Saw Blades and Handsaws	500
3429	Hardware, N.E.C.	500
3431	Enameled Iron and Metal Sanitary Ware	750
3432	Plumbing Fixture Fittings and Trim	500
3433	Heating Equipment, Except Electric and Warm Air Furnaces	500
3441	Fabricated Structural Metal	500
3442	Metal Doors, Sash, Frames, Molding, and Trim	500
3443	Fabricated Plate Work (Boiler Shops)	500
3444	Sheet Metal Work	500
3446	Architectural and Ornamental Metal Work	500
3448	Prefabricated Metal Buildings and Components	500
3449	Miscellaneous Structural Metal Work	500
3451	Screw Machine Products	500
3452	Bolts, Nuts, Screws, Rivets, and Washers	500
3462	Iron and Steel Forgings	500
3463	Nonferrous Forgings	500
3465	Automotive Stampings	500
3466	Crowns and Closures	500
3469	Metal Stampings, N.E.C.	500
3471	Electroplating, Plating, Polishing, Anodizing, and Coloring	500
3479	Coating, Engraving, and Allied Services, N.E.C.	500
3482	Small Arms Ammunition	1,000
3483	Ammunition, Except for Small Arms	1,500
3484	Small Arms	1,000
3489	Ordnance and Accessories, N.E.C.	500
3491	Industrial Valves	500
3492	Fluid Power Valves and Hose Fittings	500
3493	Steel Springs, Except Wire	500
3494	Valves and Pipe Fittings, N.E.C.	500
3495	Wire Springs	500
3496	Miscellaneous Fabricated Wire Products	500
3497	Metal Foil and Leaf	500
3498	Fabricated Pipe and Pipe Fittings	500
3499	Fabricated Metal Products, N.E.C.	500
	MAJOR GROUP 35—INDUSTRIAL AND COMMERCIAL MACHINERY AND COMPUTER EQUIPMENT	
3511	Steam, Gas, and Hydraulic Turbines, and Turbine Generator Set Units	1,000
3519	Internal Combustion Engines, N.E.C.	1,000
3523	Farm Machinery and Equipment	500
3524	Lawn and Garden Tractors and Home Lawn and Garden Equipment	500
3531	Construction Machinery and Equipment	750
3532	Mining Machinery and Equipment, Except Oil and Gas Field Machinery and Equipment	500
3533	Oil and Gas Field Machinery and Equipment	500
3534	Elevators and Moving Stairways	500
3535	Conveyors and Conveying Equipment	500
3536	Overhead Traveling Cranes, Hoists, and Monorail Systems	500
3537	Industrial Trucks, Tractors, Trailers, and Stackers	750
3541	Machine Tools, Metal Cutting Types	500
3542	Machine Tools, Metal Forming Types	500
3543	Industrial Patterns	500
3544	Special Dies and Tools, Die Sets, Jigs and Fixtures, and Industrial Molds	500
3545	Cutting Tools, Machine Tool Accessories, and Machinists' Precision Measuring Devices	500
3546	Power-Driven Handtools	500
3547	Rolling Mill Machinery and Equipment	500
3548	Electric and Gas Welding and Soldering Equipment	500
3549	Metalworking Machinery, N.E.C.	500
3552	Textile Machinery	500
3553	Woodworking Machinery	500
3554	Paper Industries Machinery	500
3555	Printing Trades Machinery and Equipment	500
3556	Food Products Machinery	500
3559	Special Industry Machinery, N.E.C.	500
3561	Pumps and Pumping Equipment	500
3562	Ball and Roller Bearings	750
3563	Air and Gas Compressors	500
3564	Industrial and Commercial Fans and Blowers and Air Purification Equipment	500
3565	Packaging Machinery	500
3566	Speed Changers, Industrial High-Speed Drives, and Gears	500

SIC	Size Standards by SIC industry Description (N.E.C.= Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
3567	Industrial Process Furnaces and Ovens	500
3568	Mechanical Power Transmission Equipment, N.E.C.	500
3569	General Industrial Machinery and Equipment, N.E.C.	500
3571	Electronic Computers	1,000
3572	Computer Storage Devices	1,000
3575	Computer Terminals	1,000
3577	Computer Peripheral Equipment, N.E.C.	1,000
3578	Calculating and Accounting Machines, Except Electronic Computers	1,000
3579	Office Machines, N.E.C.	500
3581	Automatic Vending Machines	500
3582	Commercial Laundry, Drycleaning, and Pressing Machines	500
3585	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment	750
3586	Measuring and Dispensing Pumps	500
3589	Service Industry Machinery, N.E.C.	500
3592	Carburetors, Pistons, Piston Rings, and Valves	500
3593	Fluid Power Cylinders and Actuators	500
3594	Fluid Power Pumps and Motors	500
3596	Scales and Balances, Except Laboratory	500
3599	Industrial and Commercial Machinery and Equipment, N.E.C.	500
	MAJOR GROUP 36—ELECTRONIC AND OTHER ELECTRICAL EQUIPMENT AND COMPONENTS, EXCEPT COMPUTER EQUIPMENT	
3612	Power, Distribution, and Specialty Transformers	750
3613	Switchgear and Switchboard Apparatus	750
3621	Motors and Generators	1,000
3624	Carbon and Graphite Products	750
3625	Relays and Industrial Controls	750
3629	Electrical Industrial Apparatus, N.E.C.	500
3631	Household Cooking Equipment	750
3632	Household Refrigerators and Home and Farm Freezers	1,000
3633	Household Laundry Equipment	1,000
3634	Electric Housewares and Fans	750
3635	Household Vacuum Cleaners	750
3639	Household Appliances, N.E.C.	500
3641	Electric Lamp Bulbs and Tubes	1,000
3643	Current-Carrying Wiring Devices	500
3644	Noncurrent-Carrying Wiring Devices	500
3645	Residential Electric Lighting Fixtures	500
3646	Commercial, Industrial, and Institutional Electric Lighting Fixtures	500
3647	Vehicular Lighting Equipment	500
3648	Lighting Equipment, N.E.C.	500
3651	Household Audio and Video Equipment	750
3652	Phonograph Records and Prerecorded Audio Tapes and Disks	750
3661	Telephone and Telegraph Apparatus	1,000
3663	Radio and Television Broadcasting and Communications Equipment	750
3669	Communications Equipment, N.E.C.	750
3671	Electron Tubes	750
3672	Printed Circuit Boards	500
3674	Semiconductors and Related Devices	500
3675	Electronic Capacitors	500
3676	Electronic Resistors	500
3677	Electronic Coils, Transformers, and Other Inductors	500
3678	Electronic Connectors	500
3679	Electronic Components, N.E.C.	500
3691	Storage Batteries	500
3692	Primary Batteries, Dry and Wet	1,000
3694	Electrical Equipment for Internal Combustion Engines	750
3695	Magnetic and Optical Recording Media	1,000
3699	Electrical Machinery, Equipment, and Supplies	750
	MAJOR GROUP 37—TRANSPORTATION EQUIPMENT	
3711	Motor Vehicles and Passenger Car Bodies	1,000
3713	Truck and Bus Bodies	500
3714	Motor Vehicle Parts and Accessories	750
3715	Truck Trailers	500
3716	Motor Homes	1,000
3721	Aircraft	1,500
3724	Aircraft Engines and Engine Parts	1,000
3728	Aircraft Parts and Auxiliary Equipment, N.E.C.	[9] 1,000
3731	Shipbuilding and Repair of Nuclear Propelled Ships	1,000

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SIC	Size Standards by SIC industry Description (N.E.C.= Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
EXCEPT, ...	Shipbuilding of Nonnuclear Propelled Ships	1,000
	Ship Repair (Including Overhauls and Conversions) Performed on Nonnuclear Propelled and Nonpropelled Ships East of the 108th Meridian.	1,000
	Ship Repair (Including Overhauls and Conversions) Performed on Nonnuclear Propelled and Nonpropelled Ships West of the 108th Meridian.	1,000
3732	Boat Building and Repairing	500
3743	Railroad Equipment	1,000
3751	Motorcycles, Bicycles, and Parts	500
3761	Guided Missiles and Space Vehicles	1,000
3764	Guided Missile and Space Vehicle Propulsion Units and Propulsion Unit Parts	1,000
3769	Guided Missile and Space Vehicle Parts and Auxiliary Equipment, N.E.C.	1,000
3792	Travel Trailers and Campers	500
3795	Tanks and Tank Components	1,000
3799	Transportation Equipment, N.E.C.	500
	MAJOR GROUP 38—MEASURING, ANALYZING, AND CONTROLLING INSTRUMENTS; PHOTOGRAPHIC, MEDICAL, AND OPTICAL GOODS; WATCHES AND CLOCKS	
3812	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instruments	750
3821	Laboratory Apparatus and Furniture	500
3822	Automatic Controls for Regulating Residential and Commercial Environments and Appliances	500
3823	Industrial Instruments for Measurement, Display, and Control of Process Variables; and Related Products	500
3824	Totalizing Fluid Meters and Counting Devices	500
3825	Instruments for Measuring and Testing of Electricity and Electrical Signals	500
3826	Laboratory Analytical Instruments	500
3827	Optical Instruments and Lenses	500
3829	Measuring and Controlling Devices, N.E.C.	500
3841	Surgical and Medical Instruments and Apparatus	500
3842	Orthopedic, Prosthetic, and Surgical Appliances and Supplies	500
3843	Dental Equipment and Supplies	500
3844	X-Ray Apparatus and Tubes and Related Irradiation Apparatus	500
3845	Electromedical and Electrotherapeutic Apparatus	500
3851	Ophthalmic Goods	500
3861	Photographic Equipment and Supplies	500
3873	Watches, Clocks, Clockwork Operated Devices, and Parts	500
	MAJOR GROUP 39—MISCELLANEOUS MANUFACTURING INDUSTRIES	
3911	Jewelry, Precious Metal	500
3914	Silverware, Plated Ware, and Stainless Steel Ware	500
3915	Jewelers' Findings and Materials, and Lapidary Work	500
3931	Musical Instruments	500
3942	Dolls and Stuffed Toys	500
3944	Games, Toys, and Children's Vehicles, Except Dolls and Bicycles	500
3949	Sporting and Athletic Goods, N.E.C.	500
3951	Pens, Mechanical Pencils, and Parts	500
3952	Lead Pencils, Crayons, and Artists' Materials	500
3953	Marking Devices	500
3955	Carbon Paper and Inked Ribbons	500
3961	Costume Jewelry and Costume Novelties, Except Precious Metal	500
3965	Fasteners, Buttons, Needles, and Pins	500
3991	Brooms and Brushes	500
3993	Signs and Advertising Specialties	500
3995	Burial Caskets	500
3996	Linoleum, Asphalted-Felt-Base, and Other Hard Surface Floor Coverings, N.E.C.	750
3999	Manufacturing Industries, N.E.C.	500
	DIVISION E—TRANSPORTATION, COMMUNICATIONS ELECTRIC, GAS AND SANITARY SERVICES	
	MAJOR GROUP 40—RAILROAD TRANSPORTATION	
4011	Railroads, Line-Haul Operating	1,500
4013	Railroad Switching and Terminal Establishments	500
	MAJOR GROUP 41—LOCAL AND SUBURBAN TRANSIT AND INTERURBAN HIGHWAY PASSENGER TRANSPORTATION	
4111	Local and Suburban Transit	$5.0
4119	Local Passenger Transportation, N.E.C.	$5.0
4121	Taxicabs	$5.0

SIC	Size Standards by SIC industry Description (N.E.C.= Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
4131	Intercity and Rural Bus Transportation	$5.0
4141	Local Bus Charter Service	$5.0
4142	Bus Charter Service, Except Local	$5.0
4151	School Buses	$5.0
4173	Terminal and Service Facilities for Motor Vehicle Passenger Transportation	$5.0
	MAJOR GROUP 42—MOTOR FREIGHT TRANSPORTATION AND WAREHOUSING	
4212	Local Trucking Without Storage	$18.5
EXCEPT, ...	Garbage and Refuse Collection, Without Disposal	$6.0
4213	Trucking, Except Local	$18.5
4214	Local Trucking With Storage	$18.5
4215	Courier Services, Except by Air	$18.5
4221	Farm Product Warehousing and Storage	$18.5
4222	Refrigerated Warehousing and Storage	$18.5
4225	General Warehousing and Storage	$18.5
4226	Special Warehousing and Storage, N.E.C.	$18.5
4231	Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation	$5.0
	MAJOR GROUP 44—WATER TRANSPORTATION	
4412	Deep Sea Foreign Transportation of Freight	500
4424	Deep Sea Domestic Transportation of Freight	500
4432	Freight Transportation on the Great Lakes—St. Lawrence Seaway	500
4449	Water Transportation of Freight, N.E.C.	500
4481	Deep Sea Transportation of Passengers, Except by Ferry	500
4482	Ferries	500
4489	Water Transportation of Passengers, N.E.C.	500
4491	Marine Cargo Handling	$18.5
4492	Towing and Tugboat Services	$5.0
4493	Marinas	$5.0
4499	Water Transportation Services, N.E.C.	$5.0
EXCEPT, ...	Offshore Marine Water Transportation Services	$20.5
	MAJOR GROUP 45—TRANSPORTATION BY AIR	
4512	Air Transportation, Scheduled	1,500
4513	Air Courier Services	1,500
4522	Air Transportation, Nonscheduled	1,500
EXCEPT, ...	Offshore Marine Air Transportation Services	$20.5
4581	Airports, Flying Fields, and Airport Terminal Services	$5.0
	MAJOR GROUP 46—PIPELINES, EXCEPT NATURAL GAS	
4612	Crude Petroleum Pipelines	1,500
4613	Refined Petroleum Pipelines	1,500
4619	Pipelines, N.E.C.	$25.0
	MAJOR GROUP 47—TRANSPORTATION SERVICES	
4724	Travel Agencies	[6]$1.0
4725	Tour Operators	$5.0
4729	Arrangement of Passenger Transportation, N.E.C.	$5.0
4731	Arrangement of Transportation of Freight and Cargo	$18.5
4741	Rental of Railroad Cars	$5.0
4783	Packing and Crating	$18.5
4785	Fixed Facilities and Inspection and Weighing Services for Motor Vehicle Transportation	$5.0
4789	Transportation Services, N.E.C.	$5.0
	MAJOR GROUP 48—COMMUNICATIONS	
4812	Radiotelephone Communications	1,500
4813	Telephone Communications, Except Radiotelephone	1,500
4822	Telegraph and Other Message Communications	$5.0
4832	Radio Broadcasting Stations	$5.0
4833	Television Broadcasting Stations	$10.5
4841	Cable and Other Pay Television Services	$11.0
4899	Communications Services, N.E.C.	$11.0

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	MAJOR GROUP 49—ELECTRIC, GAS, AND SANITARY SERVICES	
4911	Electric Services	4 million megawatt hrs.
4922	Natural Gas Transmission	$5.0
4923	Gas Transmission and Distribution	$5.0
4924	Natural Gas Distribution	500
4925	Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Distribution	$6.0
4931	Electric and Other Services Combined	$5.0
4932	Gas and Other Services Combined	$5.0
4939	Combination Utilities, N.E.C.	$5.0
4941	Water Supply	$5.0
4952	Sewerage Systems	$5.0
4953	Refuse Systems	$6.0
4959	Sanitary Services, N.E.C.	$5.0
4961	Steam and Air-Conditioning Supply	$9.0
4971	Irrigation Systems	$5.0
	DIVISION F—WHOLESALE TRADE	
	(Not Applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies.)	
	MAJOR GROUP 50—WHOLESALE TRADE—DURABLE GOODS	
5012	Automobiles and Other Motor Vehicles	100
5013	Motor Vehicle Supplies and New Parts	100
5014	Tires and Tubes	100
5015	Motor Vehicle Parts, Used	100
5021	Furniture	100
5023	Homefurnishings	100
5031	Lumber, Plywood, Millwork, and Wood Panels	100
5032	Brick, Stone, and Related Construction Materials	100
5033	Roofing, Siding, and Insulation Materials	100
5039	Construction Materials, N.E.C.	100
5043	Photographic Equipment and Supplies	100
5044	Office Equipment	100
5045	Computers and Computer Peripheral Equipment and Software	100
5046	Commercial Equipment, N.E.C.	100
5047	Medical, Dental, and Hospital Equipment and Supplies	100
5048	Ophthalmic Goods	100
5049	Professional Equipment and Supplies, N.E.C.	100
5051	Metals Service Centers and Offices	100
5052	Coal and Other Minerals and Ores	100
5063	Electrical Apparatus and Equipment, Wiring Supplies, and Construction Materials	100
5064	Electrical Appliances, Television and Radio Sets	100
5065	Electronic Parts and Equipment, N.E.C.	100
5072	Hardware	100
5074	Plumbing and Heating Equipment and Supplies (Hydronics)	100
5075	Warm Air Heating and Air-Conditioning Equipment and Supplies	100
5078	Refrigeration Equipment and Supplies	100
5082	Construction and Mining (Except Petroleum) Machinery and Equipment	100
5083	Farm and Garden Machinery and Equipment	100
5084	Industrial Machinery and Equipment	100
5085	Industrial Supplies	100
5087	Service Establishment Equipment and Supplies	100
5088	Transportation Equipment and Supplies, Except Motor Vehicles	100
5091	Sporting and Recreational Goods and Supplies	100
5092	Toys and Hobby Goods and Supplies	100
5093	Scrap and Waste Materials	100
5094	Jewelry, Watches, Precious Stones, and Precious Metals	100
5099	Durable Goods, N.E.C.	100
	MAJOR GROUP 51—WHOLESALE TRADE—NONDURABLE GOODS	
5111	Printing and Writing Paper	100
5112	Stationery and Office Supplies	100
5113	Industrial and Personal Service Paper	100

SIC	Size Standards by SIC industry Description (N.E.C.= Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
5122	Drugs, Drug Proprietaries, and Druggists' Sundries	100
5131	Piece Goods, Notions, and Other Dry Goods	100
5136	Men's and Boys' Clothing and Furnishings	100
5137	Women's, Children's, and Infants' Clothing and Accessories	100
5139	Footwear	100
5141	Groceries, General Line	100
5142	Packaged Frozen Foods	100
5143	Dairy Products, Except Dried or Canned	100
5144	Poultry and Poultry Products	100
5145	Confectionery	100
5146	Fish and Seafood	100
5147	Meats and Meat Products	100
5148	Fresh Fruits and Vegetables	100
5149	Groceries and Related Products, N.E.C.	100
5153	Grain and Field Beans	100
5154	Livestock	100
5159	Farm-Product Raw Materials, N.E.C.	100
5162	Plastics Materials and Basic Forms and Shapes	100
5169	Chemical and Allied Products, N.E.C.	100
5171	Petroleum Bulk Stations and Terminals	100
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals	100
5181	Beer and Ale	100
5182	Wine and Distilled Alcoholic Beverages	100
5191	Farm Supplies	100
5192	Books, Periodicals, and Newspapers	100
5193	Flowers, Nursery Stock, and Florists' Supplies	100
5194	Tobacco and Tobacco Products	100
5198	Paints, Varnishes, and Supplies	100
5199	Nondurable Goods, N.E.C.	100
	DIVISION G—RETAIL TRADE	
	(Not Applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies.)	
	MAJOR GROUP 52—BUILDING MATERIALS, HARDWARE, GARDEN SUPPLY, AND MOBILE HOME DEALERS	
5211	Lumber and Other Building Materials Dealers	$5.0
5231	Paint, Glass, and Wallpaper Stores	$5.0
5251	Hardware Stores	$5.0
5261	Retail Nurseries, Lawn and Garden Supply Stores	$5.0
5271	Mobile Home Dealers	$9.5
	MAJOR GROUP 53—GENERAL MERCHANDISE STORES	
5311	Department Stores	$20.0
5331	Variety Stores	$8.0
5399	Miscellaneous General Merchandise Stores	$5.0
	MAJOR GROUP 54—FOOD STORES	
5411	Grocery Stores	$20.0
5421	Meat and Fish (Seafood) Markets, Including Freezer Provisioners	$5.0
5431	Fruit and Vegetable Markets	$5.0
5441	Candy, Nut, and Confectionery Stores	$5.0
5451	Dairy Products Stores	$5.0
5461	Retail Bakeries	$5.0
5499	Miscellaneous Food Stores	$5.0
	MAJOR GROUP 55—AUTOMOTIVE DEALERS AND GASOLINE SERVICE STATIONS	
5511	Motor Vehicle Dealers (New and Used)	$21.0
5521	Motor Vehicle Dealers (Used Only)	$17.0
5531	Auto and Home Supply Stores	$5.0
5541	Gasoline Service Stations	$6.5
5551	Boat Dealers	$5.0
5561	Recreational Vehicle Dealers	$5.0
5571	Motorcycle Dealers	$5.0

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SIC	Size Standards by SIC industry Description (N.E.C.= Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
5599	Automotive Dealers, N.E.C.,	$5.0
EXCEPT,	Aircraft Dealers, Retail	$7.5
	MAJOR GROUP 56—APPAREL AND ACCESSORY STORES	
5611	Men's and Boys' Clothing and Accessory Stores	$6.5
5621	Women's Clothing Stores	$6.5
5632	Women's Accessory and Specialty Stores	$5.0
5641	Children's and Infants' Wear Stores	$5.0
5651	Family Clothing Stores	$6.5
5661	Shoe Stores	$6.5
5699	Miscellaneous Apparel and Accessory Stores	$5.0
	MAJOR GROUP 57—HOME FURNITURE, FURNISHINGS, AND EQUIPMENT STORES	
5712	Furniture Stores	$5.0
5713	Floor Covering Stores	$5.0
5714	Drapery, Curtain, and Upholstery Stores	$5.0
5719	Miscellaneous Homefurnishings Stores	$5.0
5722	Household Appliance Stores	$6.5
5731	Radio, Television, and Consumer Electronics Stores	$6.5
5734	Computer and Computer Software Stores	$6.5
5735	Record and Prerecorded Tape Stores	$5.0
5736	Musical Instrument Stores	$5.0
	MAJOR GROUP 58—EATING AND DRINKING PLACES	
5812	Eating Places	$5.0
EXCEPT,	Food Service, Institutional	$15.0
5813	Drinking Places (Alcoholic Beverages)	$5.0
	MAJOR GROUP 59—MISCELLANEOUS RETAIL	
5912	Drug Stores and Proprietary Stores	$5.0
5921	Liquor Stores	$5.0
5932	Used Merchandise Stores	$5.0
5941	Sporting Goods Stores and Bicycle Shops	$5.0
5942	Book Stores	$5.0
5943	Stationery Stores	$5.0
5944	Jewelry Stores	$5.0
5945	Hobby, Toy, and Game Shops	$5.0
5946	Camera and Photographic Supply Stores	$5.0
5947	Gift, Novelty, and Souvenir Shops	$5.0
5948	Luggage and Leather Goods Stores	$5.0
5949	Sewing, Needlework, and Piece Goods Stores	$5.0
5961	Catalog and Mail-Order Houses	$18.5
5962	Automatic Merchandising Machine Operators	$5.0
5963	Direct Selling Establishments	$5.0
5983	Fuel Oil Dealers	$9.0
5984	Liquefied Petroleum Gas (Bottled Gas) Dealers	$5.0
5989	Fuel Dealers, N.E.C	$5.0
5992	Florists	$5.0
5993	Tobacco Stores and Stands	$5.0
5994	News Dealers and Newsstands	$5.0
5995	Optical Goods Stores	$5.0
5999	Miscellaneous Retail Stores, N.E.C.	$5.0
	DIVISION H—FINANCE, INSURANCE, AND REAL ESTATE	
	MAJOR 60—DEPOSITORY INSTITUTIONS	
6021	National Commercial Banks	$100 million in Assets [7]
6022	State Commercial Banks	$100 million in Assets [7]
6029	Commercial Banks, N.E.C.	$100 million in Assets [7]
6035	Savings Institutions, Federally Chartered	$100 million in Assets [7]

SIC	Size Standards by SIC industry Description (N.E.C.= Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
6036	Savings Institutions, Not Federally Chartered	$100 million in Assets [7]
6061	Credit Unions, Federally Chartered	$100 million in Assets [7]
6062	Credit Unions, Not Federally Chartered	$100 million in Assets [7]
6081	Branches and Agencies of Foreign Banks	$100 million in Assets [7]
6082	Foreign Trade and International Banking Instutitions	$100 million in Assets [7]
6091	Nondeposit Trust Facilities	$5.0
6099	Functions Related to Depository Banking, N.E.C.	$5.0
	MAJOR GROUP 61—NONDEPOSITORY INSTITUTION	
6141	Personal Credit Institutions	$5.0
6153	Short-Term Business Credit Institutions, Except Agriculture	$5.0
6159	Miscellaneous Business Credit Institutions	$5.0
6162	Mortgage Bankers and Loan Correspondents	$5.0
6163	Loan Brokers	$5.0
	MAJOR GROUP 62—SECURITY AND COMMODITY BROKERS, DEALERS, EXCHANGES AND SERVICES	
6211	Security Brokers, Dealers and Flotation Companies	$5.0
6221	Commodity Contracts Brokers and Dealers	$5.0
6231	Security and Commodity Exchanges	$5.0
6282	Investment Advice	$5.0
6289	Services Allied With the Exchange of Securities or Commodities, N.E.C.	$5.0
	MAJOR GROUP 63—INSURANCE CARRIERS	
6311	Life Insurance	$5.0
6321	Accident and Health Insurance	$5.0
6324	Hospital and Medical Service Plans	$5.0
6331	Fire, Marine, and Casualty Insurance	1,500
6351	Surety Insurance	$5.0
6361	Title Insurance	$5.0
6371	Pension, Health and Welfare Funds	$5.0
6399	Insurance Carriers, N.E.C.	$5.0
	MAJOR GROUP 64—INSURANCE AGENTS, BROKERS, AND SERVICE	
6411	Insurance Agents, Brokers, and Service	$5.0
	MAJOR GROUP 65—REAL ESTATE	
6512	Operators of Nonresidential Buildings	$5.0
6513	Operators of Apartment Buildings	$5.0
6514	Operators of Dwellings Other Than Apartment Buildings	$5.0
6515	Operators of Residential Mobile Home Sites	$5.0
EXCEPT,	Leasing of Building Space to Federal Government by Owners	[8] $15.0
6517	Lessors of Railroad Property	$5.0
6519	Lessors of Real Property, N.E.C.	$5.0
6531	Real Estate Agents and Managers	[6] $1.5
6541	Title Abstract Offices	$5.0
6552	Land Subdividers and Developers, Except Cemeteries	$5.0
6553	Cemetery Subdividers and Developers	$5.0
	MAJOR GROUP 67—HOLDING AND OTHER INVESTMENT OFFICES	
6712	Offices of Bank Holding Companies	$5.0
6719	Offices of Holding Companies, N.E.C.	$5.0
6722	Management Investment Offices, Open-End	$5.0
6726	Unit Investment Trusts, Face-Amount Certificate Offices, and Closed-End Management Investment Offices	$5.0
6732	Educational, Religious, and Charitable Trusts	$5.0
6733	Trusts, Except Educational, Religious, and Charitable	$5.0
6792	Oil Royalty Traders	$5.0
6794	Patent Owners and Lessors	$5.0
6798	Real Estate Investment Trusts	$5.0
6799	Investors, N.E.C.	$5.0

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SIC	Size Standards by SIC industry Description (N.E.C.= Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
	DIVISION I—SERVICES	
	MAJOR GROUP 70—HOTELS, ROOMING HOUSES, CAMPS, AND OTHER LODGING PLACES	
7011	Hotels and Motels	$5.0
7021	Rooming and Boarding Houses	$5.0
7032	Sporting and Recreational Camps	$5.0
7033	Recreational Vehicle Parks and Campsites	$5.0
7041	Organization Hotels and Lodging Houses, on Membership Basis	$5.0
	MAJOR GROUP 72—PERSONAL SERVICES	
7211	Power Laundries, Family and Commercial	$10.5
7212	Garment Pressing, and Agents for Laundries and Drycleaners	$5.0
7213	Linen Supply	$10.5
7215	Coin-Operated Laundries and Drycleaning	$5.0
7216	Drycleaning Plants, Except Rug Cleaning	$3.5
7217	Carpet and Upholstery Cleaning	$3.5
7218	Industrial Launderers	$10.5
7219	Laundry and Garment Services, N.E.C.	$5.0
7221	Photographic Studios, Portrait	$5.0
7231	Beauty Shops	$5.0
7241	Barber Shops	$5.0
7251	Shoe Repair Shops and Shoeshine Parlors	$5.0
7261	Funeral Service and Crematories	$5.0
7291	Tax Return Preparation Services	$5.0
7299	Miscellaneous Personal Services, N.E.C.	$5.0
	MAJOR GROUP 73—BUSINESS SERVICES	
7311	Advertising Agencies	[6] $5.0
7312	Outdoor Advertising Services	[6] $5.0
7313	Radio, Television, and Publishers' Advertising Representatives	[6] $5.0
7319	Advertising, N.E.C.	[6] $5.0
7322	Adjustment and Collection Services	$5.0
7323	Credit Reporting Services	$5.0
7331	Direct Mail Advertising Services	$5.0
7334	Photocopying and Duplicating Services	$5.0
7335	Commercial Photography	$5.0
7336	Commercial Art and Graphic Design	$5.0
7338	Secretarial and Court Reporting Services	$5.0
7342	Disinfecting and Pest Control Services	$5.0
7349	Building Cleaning and Maintenance Services, N.E.C.	$12.0
7352	Medical Equipment Rental and Leasing	$5.0
7353	Heavy Construction Equipment Rental and Leasing	$5.0
7359	Equipment Rental and Leasing, N.E.C.	$5.0
7361	Employment Agencies	$5.0
7363	Help Supply Services	$5.0
7371	Computer Programming Services	$18.0
7372	Prepackaged Software	$18.0
7373	Computer Integrated Systems Design	$18.0
7374	Computer Processing and Data Preparation and Processing Services	$18.0
7375	Information Retrieval Services	$18.0
7376	Computer Facilities Management Services	$18.0
7377	Computer Rental and Leasing	$18.0
7378	Computer Maintenance and Repair	$18.0
7379	Computer Related Services, N.E.C.	$18.0
7381	Detective, Guard, and Armored Car Services	$9.0
7382	Security Systems Services	$9.0
7383	News Syndicates	$5.0
7384	Photofinishing Laboratories	$5.0
7389	Business Services, N.E.C.	$5.0
EXCEPT,	Map Drafting Services, Mapmaking (Including Aerial) and Photogrammetric Mapping Services	$3.5
	MAJOR GROUP 75—AUTOMOTIVE REPAIR, SERVICES, AND PARKING	
7513	Truck Rental and Leasing, Without Drivers	$18.5
7514	Passenger Car Rental	$18.5
7515	Passenger Car Leasing	$18.5
7519	Utility Trailer and Recreational Vehicle Rental	$5.0

SIC	Size Standards by SIC industry Description (N.E.C.= Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
7521	Automobile Parking	$5.0
7532	Top, Body, and Upholstery Repair Shops and Paint Shops	$5.0
7533	Automotive Exhaust System Repair Shops	$5.0
7534	Tire Retreading and Repair Shops	$10.5
7536	Automotive Glass Replacement Shops	$5.0
7537	Automotive Transmission Repair Shops	$5.0
7538	General Automotive Repair Shops	$5.0
7539	Automotive Repair Shops, N.E.C.	$5.0
7542	Carwashes	$5.0
7549	Automotive Services, Except Repair and Carwashes	$5.0
	MAJOR GROUP 76—MISCELLANEOUS REPAIR SERVICES	
7622	Radio and Television Repair Shops	$5.0
7623	Refrigeration and Air-Conditioning Service and Repair Shops	$5.0
7629	Electrical and Electronic Repair Shops, N.E.C.	$5.0
7631	Watch, Clock, and Jewelry Repair	$5.0
7641	Reupholstery and Furniture Repair	$5.0
7692	Welding Repair	$5.0
7694	Armature Rewinding Shops	$5.0
7699	Repair Shops and Related Services, N.E.C.	[9] $5.0
	MAJOR GROUP 78—MOTION PICTURES	
7812	Motion Picture and Video Tape Production	$21.5
7819	Services Allied to Motion Picture Production	$21.5
7822	Motion Picture and Video Tape Distribution	$21.5
7829	Services Allied to Motion Picture Distribution	$5.0
7832	Motion Picture Theaters, Except Drive-In	$5.0
7833	Drive-In Motion Picture Theaters	$5.0
7841	Video Tape Rental	$5.0
	MAJOR GROUP 79—AMUSEMENT AND RECREATION SERVICES	
7911	Dance Studios, Schools, and Halls	$5.0
7922	Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services	$5.0
7929	Bands, Orchestras, Actors, and Other Entertainers and Entertainment Groups	$5.0
7933	Bowling Centers	$5.0
7941	Professional Sports Clubs and Promoters	$5.0
7948	Racing, Including Track Operation	$5.0
7991	Physical Fitness Facilities	$5.0
7993	Coin-Operated Amusement Devices	$5.0
7996	Amusement Parks	$5.0
7997	Membership Sports and Recreation Clubs	$5.0
7999	Amusement and Recreation Services, N.E.C.	$5.0
	MAJOR GROUP 80—HEALTH SERVICES	
8011	Offices and Clinics of Doctors of Medicine	$5.0
8021	Offices and Clinics of Dentists	$5.0
8031	Offices and Clinics of Doctors of Osteopathy	$5.0
8041	Offices and Clinics of Chiropractors	$5.0
8042	Offices and Clinics of Optometrists	$5.0
8043	Offices and Clinics of Podiatrists	$5.0
8049	Offices and Clinics of Health Practitioners, N.E.C.	$5.0
8051	Skilled Nursing Care Facilities	$5.0
8052	Intermediate Care Facilities	$5.0
8059	Nursing and Personal Care Facilities, N.E.C.	$5.0
8062	General Medical and Surgical Hospitals	$5.0
8063	Psychiatric Hospitals	$5.0
8069	Specialty Hospitals, Except Psychiatric	$5.0
8071	Medical Laboratories	$5.0
8072	Dental Laboratories	$5.0
8082	Home Health Care Services	$5.0
8092	Kidney Dialysis Centers	$5.0
8093	Specialty Outpatient Facilities, N.E.C.	$5.0
8099	Health and Allied Services, N.E.C.	$5.0

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SIC	Size Standards by SIC industry Description (N.E.C.= Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
	MAJOR GROUP 81—LEGAL SERVICES	
8111	Legal Services	$5.0
	MAJOR GROUP 82—EDUCATIONAL SERVICES	
8211	Elementary and Secondary Schools	$5.0
8221	Colleges, Universities, and Professional Schools	$5.0
8222	Junior Colleges and Technical Institutes	$5.0
8231	Libraries	$5.0
8243	Data Processing Schools	$5.0
8244	Business and Secretarial Schools	$5.0
8249	Vocational Schools, N.E.C.	$5.0
8299	Schools and Educational Services, N.E.C.	$5.0
EXCEPT,	Flight Training Services	$18.5
	MAJOR GROUP 83—SOCIAL SERVICES	
8322	Individual and Family Social Services	$5.0
8331	Job Training and Vocational Rehabilitation Services	$5.0
8351	Child Day Care Services	$5.0
8361	Residential Care	$5.0
8399	Social Services, N.E.C.	$5.0
	MAJOR GROUP 84—MUSEUMS, ART GALLERIES, AND BOTANICAL AND ZOOLOGICAL GARDENS	
8412	Museums and Art Galleries	$5.0
8422	Arboreta and Botanical or Zoological Gardens	$5.0
	MAJOR GROUP 86—MEMBERSHIP ORGANIZATIONS	
8611	Business Associations	$5.0
8621	Professional Membership Organizations	$5.0
8631	Labor Unions and Similar Labor Organizations	$5.0
8641	Civic, Social, and Fraternal Associations	$5.0
8651	Political Organizations	$5.0
8661	Religious Organizations	$5.0
8699	Membership Organizations, N.E.C.	$5.0
	MAJOR GROUP 87—ENGINEERING, ACCOUNTING, RESEARCH, MANAGEMENT, AND RELATED SERVICES	
8711	Engineering Services	$2.5
EXCEPT,	Military and Aerospace Equipment and Military Weapons	$20.0
EXCEPT,	Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992	$20.0
EXCEPT,	Marine Engineering and Naval Architecture	$13.5
8712	Architectural Services	$2.5
8713	Surveying Services	$2.5
8721	Accounting, Auditing, and Bookkeeping Services	$6.0
8731	Commercial Physical and Biological Research	[10] 500
EXCEPT,	Aircraft	1,500
EXCEPT,	Aircraft Parts, and Auxiliary Equipment, and Aircraft Engine Parts	1,000
EXCEPT,	Space Vehicles and Guided Missiles, their Propulsion Units, their Propulsion Units Parts, and their Auxiliary Equipment and Parts.	1,000
8732	Commercial Economic, Sociological, and Educational Research	$5.0
8733	Noncommercial Research Organizations	$5.0
8734	Testing Laboratories	$5.0
8741	Management Services	$5.0
EXCEPT,	Conference Management Services	[9] $5.0
8742	Management Consulting Services	$5.0
8743	Public Relations Services	$5.0
8744	Facilities Support Management Services	[11] $5.0
EXCEPT,	Base Maintenance	[12] $20.0
EXCEPT,	Environmental Remediation Services	[13] 500
8748	Business Consulting Services, N.E.C.	$5.0
	MAJOR GROUP 89—SERVICES, NOT ELSEWHERE CLASSIFIED	
8999	Services, N.E.C.	$5.0

SIC	Size Standards by SIC industry Description (N.E.C.= Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
	DIVISION K—NONCLASSIFIABLE ESTABLISHMENTS	
9999	Nonclassifiable Establishments	$5.0

Endnotes

1. SIC code 1629—Dredging: To be considered small for purposes of Government procurement, a firm must perform at least 40 percent of the volume dredged with its own equipment or equipment owned by another small dredging concern.

2. SIC Division D—Manufacturing: For rebuilding machinery or equipment on a factory basis, or equivalent, use the SIC code for a newly manufactured product. Concerns performing major rebuilding or overhaul activities do not necessarily have to meet the criteria for being a "manufacturer" although the activities may be classified under a manufacturing SIC code. Ordinary repair services or preservation are not considered rebuilding.

3. SIC code 2033: For purposes of Government procurement for food canning and preserving, the standard of 500 employees excludes agricultural labor as defined in 3306(k) of the Internal Revenue Code, 26 U.S.C. 3306(k).

4. SIC code 2911: For purposes of Government procurement, the firm may not have more than .1,500 employees nor more than 75,000 barrels per day capacity of petroleum-based inputs, including crude oil or bona fide feedstocks. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

5. SIC code 3011: For purposes of Government procurement, a firm is small for bidding on a contract for pneumatic tires within Census Classification codes 30111 and 30112, provided that:

(1) The value of tires within Census Classification codes 30111 and 30112 which it manufactured in the United States during the previous calendar year is more than 50 percent of the value of its total worldwide manufacture,

(2) the value of pneumatic tires within Census Classification codes 30111 and 30112 comprising its total worldwide manufacture during the preceding calendar year was less than 5 percent of the value of all such tires manufactured in the United States during that period, and

(3) the value of the principal product which it manufactured or otherwise produced, or sold worldwide during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during that period.

6. SIC codes 4724, 653.1, 731.1, 7312, 7313, 7319, and 8741 (part): As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue.

7. A financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year. *Assets* for the purposes of this size standard means the assets defined according to the Federal Financial Institutions Examination Council 034 call report form.

8. SIC code 6515: Leasing of building space to the Federal Government by Owners: For Government procurement, a size standard of $15.0 million in gross receipts applies to the owners of building space leased to the Federal Government. The standard does not apply to an agent.

9. SIC codes 7699 and 3728: Contracts for the rebuilding or overhaul of aircraft ground support equipment on a contract basis are classified under SIC code 3728.

10. SIC code 8731: For research and development contracts requiring the delivery of a manufactured product, the appropriate size standard is that of the manufacturing industry.

(1) Research and Development means laboratory or other physical research and development. It does not include economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.

(2) For purposes of the Small Business Innovation Research (SBIR) program only, a different definition has been established by law. See § 121.701 of these regulations.

(3) Research and development for guided missiles and space vehicles includes evaluations and simulation, and other services requiring thorough knowledge of complete missiles and spacecraft.

11. Facilities Management, a component of SIC code 8744, includes establishments, not elsewhere classified, which provide overall management and the personnel to perform a variety of related support services in operating a complete facility in or around a specific building, or within another business or Government establishment. Facilities management means furnishing three or more personnel supply services which may include, but are not limited to, secretarial services, typists, telephone answering, reproduction or mimeograph service, mailing service, financial or business management, public relations, conference planning, travel arrangements, word processing, maintaining files and/or libraries, switchboard operation, writers, bookkeeping, minor office equipment maintenance and repair, or use of information systems (not programming).

12. SIC code 8744

(1) If one of the activities of base maintenance, as defined in paragraph (2) of this endnote, can be identified with a separate industry and that activity (or industry) accounts for 50 percent or more of the value of an entire contract, then the proper size standard is that of the particular industry, and not the base maintenance size standard.

(2) "Base Maintenance" requires the performance of three or more separate activities in the areas of service or special trade construction industries. If services are performed, these activities must each be in a separate SIC code including, but not limited to, Janitorial and Custodial Service, Fire Prevention Service, Messenger Service, Commissary Service, Protective Guard Service, and Grounds Maintenance and Landscaping Service. If the contract requires the use of special trade contractors (plumbing, painting, plastering, carpentry, etc.), all such special trade construction activities are considered a single activity and classified as Base Housing Maintenance. Since Base Housing Maintenance is only one activity, two additional activities are required for a contract to be classified as "Base Maintenance."

13. SIC code 8744

(1) For SBA assistance as a small business concern in the industry of Environmental Remediation Services, other than for Government procurement, a concern must be engaged primarily in furnishing a range of services for the remediation of a contaminated environment to an acceptable condition including, but not limited to, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, containment, remedial action, removal of contaminated materials, storage of contaminated materials and security and site closeouts. If one of such activities accounts for 50 percent or more of a concern's total revenues, employees, or other related factors, the concern's primary industry is that of the particular industry and not the Environmental Remediation Services Industry.

(2) For purposes of classifying a Government procurement as Environmental Remediation Services, the general purpose of the procurement must be to restore a contaminated environment and also the procurement must be composed of activities in three or more separate industries with separate SIC codes or, in some instances (e.g., engineering), smaller sub-components of SIC codes with separate, distinct size standards.

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These activities may include, but are not limited to, separate activities in industries such as: Heavy Construction; Special Trade Construction; Engineering Services; Architectural Services; Management Services; Refuse Systems; Sanitary Services, Not Elsewhere Classified; Local Trucking Without Storage; Testing Laboratories; and Commercial, Physical and Biological Research. If any activity in the procurement can be identified with a separate SIC code, or component of a code with a separate distinct size standard, and that industry accounts for 50 percent or more of the value of the entire procurement, then the proper size standard is the one for that particular industry, and not the Environmental Remediation Service size standard.

Note: The U.S. Small Business Administration (SBA) is withdrawing its January 7, 1998 **Federal Register** (63 FR 902–921) Notice of publication of full table of small business size standards. That table contained a large number of errors that occurred during publication and that were outside of SBA's control. SBA is therefore republishing the full table of small business size standards to correct those errors. This corrected table replaces the one that was published on January 7, 1998.

Dated: January 13, 1998.

Gary M. Jackson,

Assistant Administrator for Size Standards.

[FR Doc. 98–1186 Filed 1–28–98; 8:45 am]

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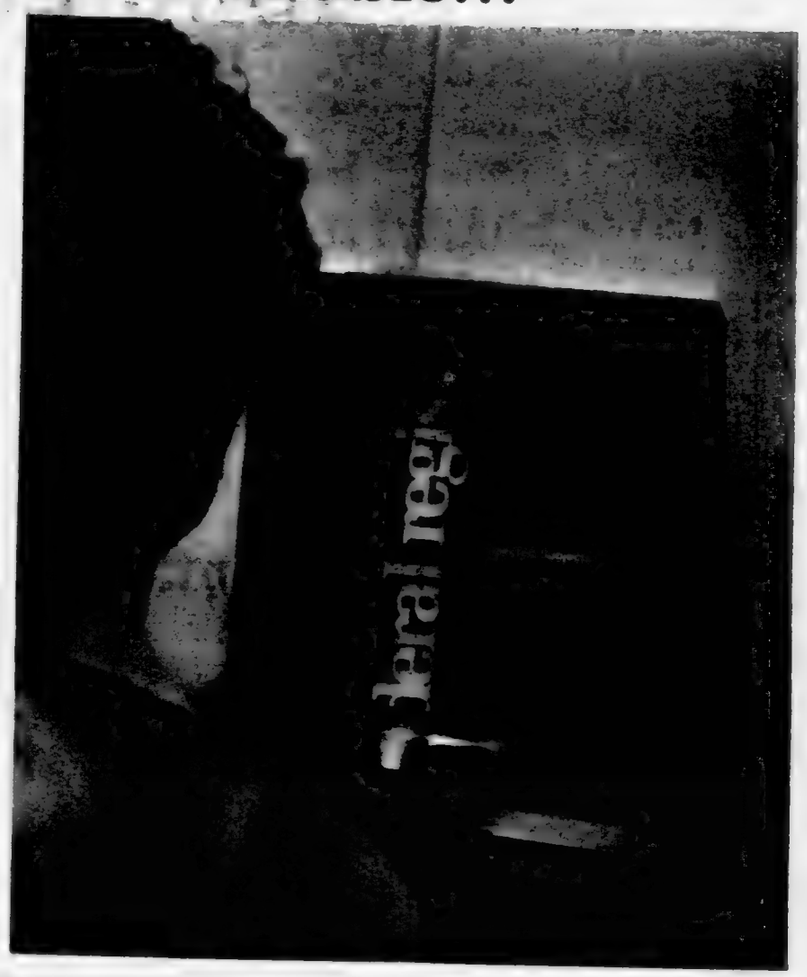
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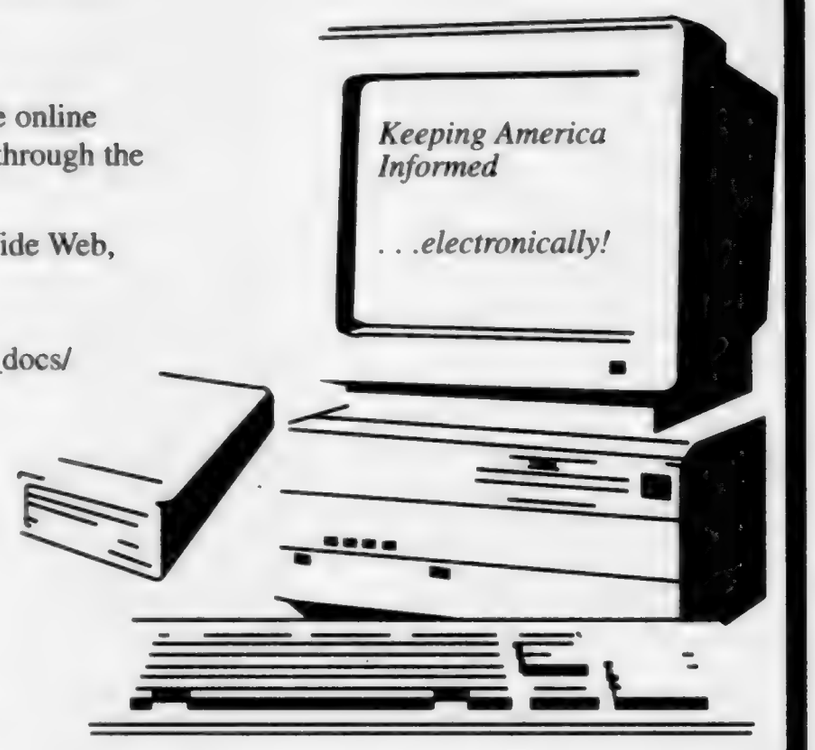
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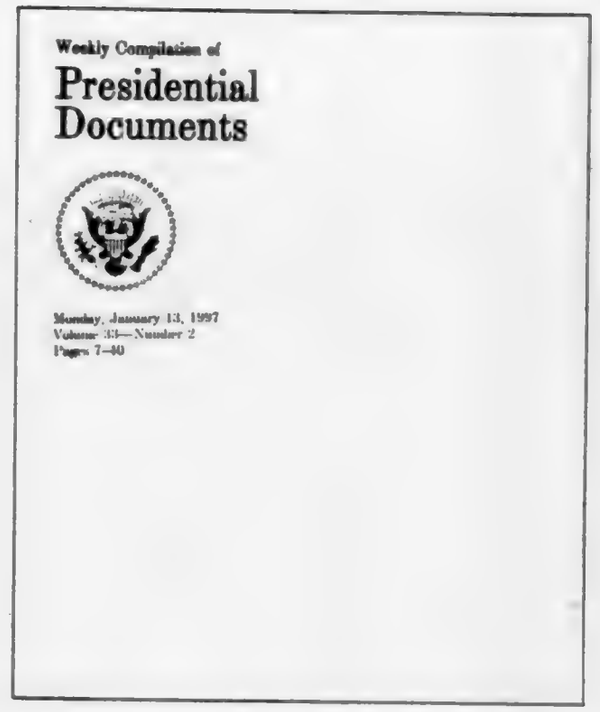
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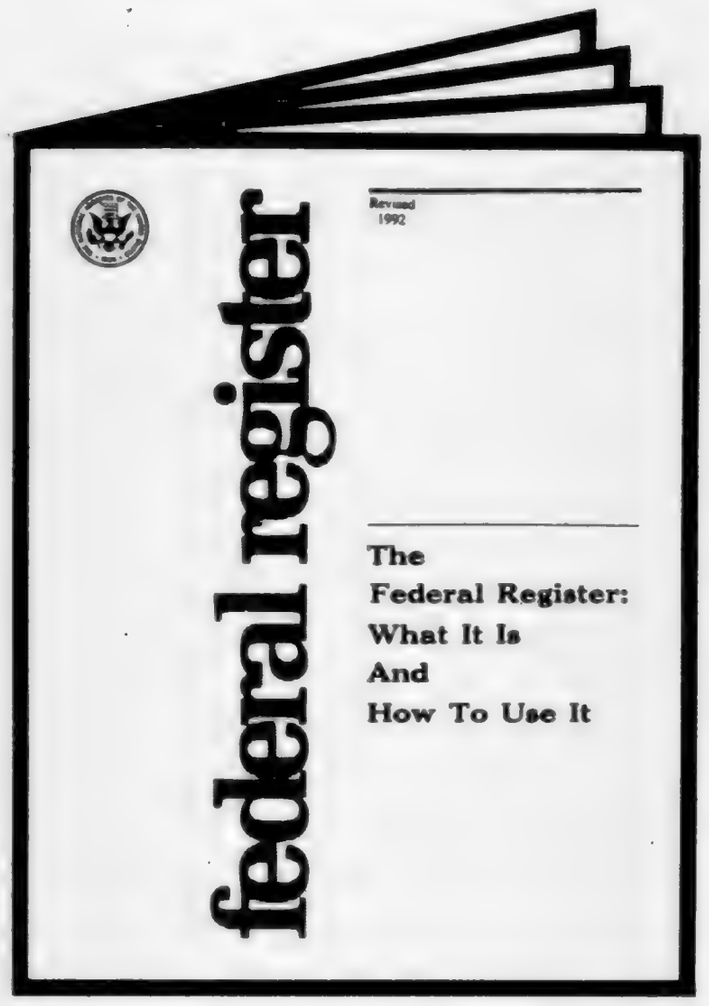
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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Federal Register
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Friday, January 30, 1998

Presidential Documents

Title 3—

The President

Proclamation 7065 of January 28, 1998

Year of the Ocean, 1998

By the President of the United States of America

A Proclamation

More than 70 percent of the Earth's surface is covered by water, and more than half the world's population lives within 50 miles of a coastline. We rely on the ocean as both a source and sustenance of life on our planet. It contains a wondrous abundance and diversity of life, from the smallest microorganism to the mammoth blue whale. It is a key source of food, medicine, energy, commerce, and recreation for the peoples of the world, and the more we learn about its influence on climate and weather, the more we realize its impact on our safety and quality of life.

We are only beginning to understand the depths of the ocean's mysteries, but we are quickly learning one crucial lesson: the ocean's resources are limited, and we must work together to preserve them. Many areas are already overfished; decades of pollution, including industrial waste, sewage, and toxic runoff, has taken its toll on the health of the ocean and its living creatures. Many species of fish are threatened with extinction, and even our precious coral reefs, once a safe haven for an amazing variety of animal and plant life, have suffered greatly.

Because the ocean is a treasure that all nations of the world share in common, we must work in partnership to become wise stewards of its many riches. We must strive together—at local, national, and international levels—to preserve the ocean's health, to protect the marine environment, and to ensure the sustainable management of the myriad resources the ocean contains.

Dedicating 1998 as the Year of the Ocean is an important first step in this worldwide endeavor. Throughout the year, individuals, organizations, and governments will participate in activities designed to raise public awareness of the vital role the ocean plays in human life and of the equally vital role that human beings must play in the life of the ocean. The Year of the Ocean provides us with an extraordinary opportunity to learn more about the ocean's unique environment and to collaborate on protecting and preserving its invaluable resources.

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NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim 1998 as the Year of the Ocean. I encourage the Governors of the States and the Commonwealth of Puerto Rico and officials of other areas subject to the jurisdiction of the United States to participate in the observance of this year. I invite all Americans to take this opportunity to learn more about the ocean and its vast biodiversity and to become involved in keeping our coastal waters safe and clean.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of January, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 98–2532
Filed 1–29–98; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 63, No. 20
Friday, January 30, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

RIN 3206–AF78

5 CFR Part 733

Political Activity: Federal Employees Residing in Designated Localities

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule regarding the political activity of Federal employees residing in designated localities. The final rule will inform Federal employees of the political activities which are permitted and prohibited under the Hatch Act Reform Amendments of 1993 for employees who reside in localities designated by OPM, and in connection with elections for local partisan political office in these localities. The regulation also includes a list of the designated localities.

EFFECTIVE DATE: March 2, 1998.

FOR FURTHER INFORMATION CONTACT: Jo-Ann Chabot at (202) 606–1700.

SUPPLEMENTARY INFORMATION: On October 6, 1993, President Clinton signed the Hatch Act Reform Amendments of 1993. The Reform Amendments became effective on February 3, 1994 and specifically authorize OPM to issue regulations on the political activities of Federal employees regarding matters described in 5 U.S.C. 7325, as amended, concerning Federal employees' participation in the local elections of the localities in which they reside. On February 4, 1994, OPM published an interim regulation on the political activities of Federal employees residing in specified localities designated by OPM. 59 FR 5313. In view of the comments that it received concerning the interim regulation, OPM published a proposed rule on June 24, 1997. 62 FR 34017. OPM received comments concerning the proposed rule from two individuals and two Federal agencies before the comment period closed on August 25, 1997. OPM's analysis of the comments generally follows the numerical order of the regulations.

Section 733.103(b)(1) of the proposed regulation specifies that the Federally employed residents of designated localities may run for local partisan political office as independent candidates. Section 733.104(b)(1) of the proposed regulation prohibits these employees from running for local partisan political office as the representatives of a political party. An individual commented that, except for the legislative history of the Reform Amendments, OPM did not provide any reason for requiring the Federally employed residents of designated localities to run as independent candidates for local partisan political office. He states his belief that §§ 733.103(b)(1) and 733.104(b)(1) of the proposed regulation violate provisions in section 2(a) of the Reform Amendments that are codified at 5 U.S.C. 7321 and 7325. He noted that the Reform Amendments, at 5 U.S.C. 7321, state the policy of Congress that:

> [E]mployees should be encouraged to exercise fully, freely, and without fear of penalty or reprisal, and to the extent not expressly prohibited by law, their right to participate or to refrain from participating in the political processes of the Nation.

He believes that the proposed regulation violates section 7321 because it discourages Federal employees from fully exercising their right to participate in the political processes of the nation.

He also noted that under the Reform Amendments, at 5 U.S.C. 7325, OPM may prescribe regulations permitting the Federally employed residents of designated localities to take an active part in local partisan political campaigns, "without regard to" the prohibition against candidacy for partisan political office specified in 5 U.S.C. 7323(a)(3). He believes that Congress expressed its intent through 5 U.S.C. 7325 that Federal employees in designated localities should be permitted to run for partisan political office as the representatives of political parties. Accordingly, he also believes that §§ 733.103(b)(1) and 733.104(b)(1) of the proposed regulation violate 5 U.S.C. 7325 by requiring Federal employees to run as independent candidates for local partisan political office.

Finally, he noted that, although § 733.103(b)(3) of the proposed regulation permits the Federally employed residents of designated localities to accept and receive political contributions on behalf of candidates for local partisan political office who represent political parties, § 733.104(b)(2) prohibits Federal employees from soliciting political contributions on behalf of such candidates. He also believes that there is a minimal difference between soliciting political contributions and accepting and receiving such contributions. Thus, he believes that OPM should permit Federal employees to solicit political contributions on behalf of candidates who represent political parties.

OPM notes in response that section 7325 of title 5, United States Code, provides OPM with discretionary authority to permit Federal employees to run for local "partisan political office" when certain statutory prerequisites are fulfilled, and does not include language reflecting any Congressional intent to permit these employees to run for local partisan political office as the candidates of political parties. According to the Reform Amendments, at 5 U.S.C. 7322(2), a "partisan political office" includes "any office for which any candidate is nominated or elected as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected." Under this definition, a public office becomes a "partisan political office" when any candidate for election to that office represents a political party whose candidates for Presidential elector received votes in the last Presidential election. Accordingly, an independent candidate becomes a candidate for "partisan political office" when he or she opposes the candidates of such political parties in an election for public office. Thus, OPM concluded that permitting employees to run as independent candidates for local partisan political office while prohibiting them from running as the representatives of political parties does not violate 5 U.S.C. 7325 or ignore the

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intent of Congress in enacting this provision.

Although section 2(a) of the Reform Amendments provides that Federal employees should be encouraged to participate fully in the political processes of the nation "to the extent not expressly prohibited by law," section 10 of the Reform Amendments (the Sense of the Senate) limits section 2(a) by providing that Federal employees should not be authorized to solicit political contributions from the general public, or run for the nomination or as a candidate for a local partisan political office, except as expressly provided under current law. It is clear from the language of the Reform Amendments, particularly section 10, and from the legislative history of the Reform Amendments that Congress was especially concerned about candidacy for partisan political office and soliciting political contributions. As OPM stated in its notice of proposed rulemaking, the legislative history of the Reform Amendments shows that Congress was well acquainted with the provisions concerning candidacy for local partisan political office that were in effect under the Hatch Act and that Congress intended to preserve those provisions in enacting the Reform Amendments. See 62 FR 34017, 34018–19 (June 24, 1997). Under those provisions, the Federally employed residents of designated localities were required to run as independent candidates for local partisan political office. OPM believes that the proposed regulation, at §§ 733.103(b)(1) and 733.104(b)(1), complies with the Reform Amendments and reflects the intent of Congress in enacting the Reform Amendments.

Similarly, Federal employees residing in designated localities prior to the enactment of the Reform Amendments were permitted to solicit, accept, and receive political contributions only on behalf of independent candidates for local partisan political office. Although section 10 of the Reform Amendments provides that Federal employees should not be authorized to solicit political contributions, it does not include any provision concerning the acceptance or receipt of political contributions. Therefore, the proposed regulation permits Federal employees to accept and receive political contributions on behalf of candidates who represent political parties but prohibits Federal employees from contributions for such candidates. OPM also believes that §§ 733.103(b)(3) and 733.104(b)(2) of the proposed regulation comply with the Reform Amendments and reflect the intent of Congress in enacting the Reform Amendments.

In commenting on OPM's regulatory proposal, another individual asked: "Does the Constitution [of the United States] mean anything" to OPM? The individual did not respond to OPM's request to elaborate on that comment. OPM notes in response to this comment that the Supreme Court of the United States upheld the constitutionally of the former Hatch Act's prohibitions in two decisions. *United Public Workers of America* v. *Mitchell*, 330 U.S. 75 (1947); *United States Civil Service Commission* v. *National Association of Letter Carriers AFL–CIO*, 413 U.S. 548 (1973). These more stringent prohibitions are almost identical to the prohibitions that currently apply to employees in sensitive agencies and positions under the Reform Amendments. Moreover, these prohibitions are significantly more restrictive than the prohibitions that currently apply to the majority of Federal employees under the Reform Amendments.

Section 733.105(a) of the proposed regulation describes certain sensitive agencies and positions whose employees and incumbents are prohibited from partisan political participation under the Reform Amendments, except for participation in elections for local partisan political office in localities designated by OPM. The Central Imagery Office currently appears in the list of sensitive agencies and positions at § 733.105(a)(13) of the OPM regulatory proposal for 5 CFR part 733. Officials at two Federal agencies commented that section 1111 (a) and (b) of the National Defense Authorization Act for Fiscal Year 1997, Pub. L. 104–201, consolidated the Central Imagery Office listed in § 733.105(a)(13) with the Defense Mapping Agency to form the National Imagery and Mapping Agency. Section 1122(a)(1) of Pub. L. 104–201 further amends the Hatch Act Reform Amendments at 5 U.S.C. 7323(b)(2)(B)(I)(XIII) by substituting the National Imagery and Mapping Agency for the Central Imagery Office. Accordingly, § 733.105(a)(13) of the final rule identifies the National Imagery and Mapping Agency, rather than the Central Imagery Office, as an agency whose employees are subject to the Reform Amendments' more restrictive prohibitions against partisan political participation.

OPM notes in this regard that the Reform Amendments, at 5 U.S.C. 7323(b)(2) and 7325, prohibit employees in specified sensitive agencies and positions from participating actively in partisan political activities, except for those activities connected with elections to local partisan political offices in the localities designated by OPM. Under 5 U.S.C. 7323(b)(2), individuals who have been appointed by the President, by and with the advice and consent of the Senate (PAS employees), have been excluded from the prohibition on active participation in partisan political activities, even though these individuals are employed in the sensitive agencies or positions described in section 7323(b)(2)(B).

Sections 733.105 and 733.106 of the proposed regulation apply to individuals who are employed in sensitive agencies and positions and who also reside in the localities designated by OPM. Sections 733.105 and 733.106 permit these employees to participate in the local elections of the designated localities but only as, or on behalf of, individuals who are running as independent candidates for local partisan political offices. The proposed regulation did not adequately reflect that PAS employees are not subject to the statutory prohibition against active participation in partisan political activities and, therefore, that they also are not subject to §§ 733.105 and 733.106 of the regulation. Accordingly, OPM has amended these provisions to reflect clearly that PAS employees in sensitive agencies and positions are covered by §§ 733.103 and 733.104 of the regulation and that the provisions in §§ 733.105 and 733.106 do not apply to them.

The Reform Amendments, at 5 U.S.C. 7323(a) (2) and (3), prohibit Federal employees from becoming candidates for partisan political office and from soliciting, accepting, or receiving political contributions. However, the Reform Amendments, at 5 U.S.C. 7325, authorize OPM to prescribe regulations permitting employees in certain communities to participate in local elections for partisan political office without regard to the prohibitions in 5 U.S.C. 7323(a) (2) and (3) if the requirements specified in section 7325 are met. The first requirement is that the community or political subdivision must be located in Maryland or Virginia and in the immediate vicinity of the District of Columbia. Alternatively, the majority of the community's registered voters must be employed by the United States Government. The second requirement is that OPM must determine that it is in the domestic interest of the employees to permit that political participation because of special or unusual circumstances existing in the municipality or political subdivision.

Section 733.107(a) of the final regulation reflects these statutory requirements. Under part 733, the exemption from the prohibitions in 5 U.S.C. 7323(a) (2) and (3) is a partial exemption because employees are required to run as independent candidates for local partisan political office and they are permitted to participate in other political activities connected with elections for local public office as specified in part 733. Section 733.107(c) of the final regulation includes a list of designated localities whose residents have been granted a partial exemption by OPM.

In its notice of proposed rulemaking, OPM noted that Spotsylvania County, Virginia and St. Mary's County, Maryland had fulfilled the statutory requirements for a partial exemption to issue and proposed the addition of these counties to the regulatory list of designated localities. 62 FR 34017, 34020 (June 24, 1997). OPM also placed legal notices in local newspapers to advise the residents of Spotsylvania County and St. Mary's County concerning the proposals. The legal notice regarding Spotsylvania County appeared in the Free Lance-Star on July 15, 1997 and a legal notice concerning St. Mary's County appeared in the Enterprise on July 16, 1997. OPM received only one comment concerning these proposals from a resident of St. Mary's County who supported the addition of that county to the regulatory list. Therefore, the final regulation includes Spotsylvania County, Virginia and St. Mary's County, Maryland in the list of designated localities at § 733.107(c) of the regulation. The addition of Spotsylvania County will be listed among the designated Virginia municipalities and political subdivisions after Prince William County and before Stafford County. The addition of St. Mary's County to the designated Maryland municipalities and political subdivisions will be listed after Rockville and before Seat Pleasant. Public notices concerning the addition of Spotsylvania and St. Mary's Counties to the list of designated localities in the OPM final regulation will be published in a local newspaper serving each county.

The District of Columbia currently is included in the OPM regulatory list of designated localities. The District of Columbia was added to this list on July 5, 1977, by the United States Civil Service Commission. As OPM pointed out in its proposed regulation, however, two Federal agencies submitted comments questioning whether the District of Columbia should continue to be listed as a partially exempt municipality in view of the unpublished memorandum opinion of the United States District Court for the District of Columbia in *Ward Three Democratic Committee* v. *United States*, No. 78–853 (D.D.C. Aug. 29, 1980). 62 FR 34017, 34020–21. OPM recognizes that, when the statutory exemption requirements were enacted in 1940, Congress did not foresee a need for an exemption for the District of Columbia because the District held no local elections at the time and was, instead, governed by three Commissioners appointed by the President of the United States.

In discussing the history of the district court decision, one of the Federal agencies noted that, on May 30, 1974, the Civil Service Commission added the District of Columbia to the list of exempted localities at 5 CFR 733.124, retroactively effective May 16, 1974. 39 FR 18761 (1974). In *Joseph* v. *United States Civil Service Commission*, 554 F. 2d 1140 (1977), the United States Court of Appeals for the District of Columbia declared invalid the exemption for the District of Columbia because it was not published after a notice and comment period, as required by the Administrative Procedure Act. The appeals court held that, under the Hatch Act, the District of Columbia could not qualify under the first alternative for an exemption to issue. *Id.* at 1154–1155. The appeals court stated in this regard that

> Although there can be no dispute that it is "in the immediate vicinity of the District of Columbia," it is equally certain that it is not in the states of Maryland or Virginia. The legislative history of this first alternative clearly indicates that it was proposed to restrict the Civil Service Commission's exemption authority to areas adjacent to the District. (Citation omitted.) Admittedly the failure to include areas within the District may well have been due to the fact that there were no elective positions within the District Government in 1940 when the Commission was given its exemption authority. (Footnote omitted.) The literal language of the first alternative in subsection 7327(b)(1), however, clearly does not include the District, and although a court should interpret the meaning of statutory language in light of the intent of its drafters, we cannot rewrite the statute to compensate for unforeseen circumstances.

Id. The appeals court also stated that, if the Civil Service Commission republished the exemption, it should furnish statistical evidence that a majority of District of Columbia voters were employed by the Untied States Government or the District of Columbia Government. *Id.* at 1152–1157. In order to comply with the decision in *Joseph*, the Civil Service Commission subsequently proposed to add the District of Columbia to the list of exempted localities on May 6, 1977, 42 FR 23160 (1977), and the District was then added to the list of exempted localities, effective July 5, 1977. 42 FR 34308.

In a second suit challenging the validity of § 733.124, the appeals court remanded the case to the district court to gather statistical evidence to determine whether the majority of registered voters in the District of Columbia were employed by the United States or the District of Columbia Governments. *Ward Three Democratic Committee* v. *United States*, 609 F. 2d 10 (D.C. Cir. 1979). On remand, the district court found that, based upon the statistical evidence submitted by the parties, less than 50 percent of registered voters in the District of Columbia were employed by the United States Government or the District of Columbia Government. Thus, the district court held that § 733.124(b), the regulation which provided for partial exemptions at that time, was "not applicable to the District of Columbia and shall not be applied thereto." *Ward Three Democratic Committee* v. *United States*, No. 78–853 (D.D.C. Aug. 29, 1980). Although this judicial decision was based upon requirements stated in the former Hatch Act for an exemption to issue, the same requirements also appear in the Reform Amendments.

OPM discussed these judicial decisions in its notice of proposed rulemaking and requested further comments from the public as well as from Federal, Postal Service, and District of Columbia Government employees who are registered voters in the District of Columbia. 62 FR 34017, 34020–34021 (June 24, 1997). OPM also placed an official notice concerning this matter in the July 14, 1997 edition of the Washington Post. Publication of the proposed regulation and official notice has not resulted in any comments concerning the District of Columbia or any evidence showing that the District of Columbia should remain on the list of designated localities.

Moreover, on several occasions, OPM corresponded with the Office of the Corporation Counsel for the District of Columbia about this matter. In correspondence to OPM dated June 12, 1995, the Office of the Corporation Counsel advised that:

> [B]ased upon the decision in Ward Three Democratic Committee v. United States, No. 78–853 (D.D.C. Aug 29, 1980), we reluctantly conclude that deletion of the District of Columbia from the list of exempt jurisdictions is not inconsistent with the Hatch Act Reform Amendments regarding political management and political campaigns involving the District.

In succeeding letters to OPM, dated September 18, 1995, and July 29, 1997,

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the Office of the Corporation Counsel reaffirmed this statement.

In view of these circumstances, OPM does not have any choice except to remove the District of Columbia from the regulatory list of designated localities in § 733.107(c) of the final regulation. Accordingly, the final regulation reflects that the District of Columbia has been removed from the list of designated localities in § 733.107(c). A public notice concerning the removal of the District of Columbia from the list of designated localities in the final version of 5 CFR 733.107(c) will be published in a local newspaper serving that city.

Finally, OPM noted in its proposed rule that it would pursue a legislative solution to place the District of Columbia on the same footing as the surrounding Virginia and Maryland localities. OPM will continue to pursue a legislative solution in this matter.

E.O. 12866, Regulatory Review

This regulation has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the changes will affect only employees of the Federal Government.

List of Subjects in 5 CFR Part 733

Political activities (Government employees).

Office of Personnel Management.

Janice R. Lachance,

Director.

Part 733 is revised to read as follows:

PART 733—POLITICAL ACTIVITY—FEDERAL EMPLOYEES RESIDING IN DESIGNATED LOCALITIES

Sec.

733.101 Definitions.
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733.104 Prohibited political activities—employees who reside in designated localities.
733.105 Permitted political activities—employees who reside in designated localities and are employed in certain agencies and positions.
733.106 Prohibited political activities—employees who reside in designated localities and are employed in certain agencies and positions.
733.107 Designated localities.

Authority: 5 U.S.C. 7325; sec. 308 of Pub. L. 104–93, 109 Stat. 961, 966 (Jan. 6, 1996).

§ 733.101 Definitions.

In this part:

Accept means to come into possession of something from a person officially on behalf of a candidate, a campaign, a political party, or a partisan political group, but does not include ministerial activities which precede or follow this official act.

Candidate means an individual who seeks nomination or election to any elective office whether or not the person is elected. An individual is deemed to be a candidate if the individual has received political contributions or made expenditures or has consented to another person receiving contributions or making expenditures with a view to bringing about the individual's nomination or election.

Campaign means all acts done by a candidate and his or her adherents to obtain a majority or plurality of the votes to be cast toward a nomination or in an election.

Election includes a primary, special, runoff, or general election.

Employee means:

Any individual (other than the President, the Vice President, or a member of the uniformed services) employed or holding office in—

(1) An Executive agency other than the General Accounting Office;

(2) A position within the competitive service which is not in an Executive agency;

(3) The government of the District of Columbia, other than the Mayor or a member of the City Council or the Recorder of Deeds; or

(4) The United States Postal Service or the Postal Rate Commission.

On Duty means the period when an employee is:

(1) In a pay status other than paid leave, compensatory time off, credit hours, time off as an incentive award, or excused or authorized absence (including leave without pay); or

(2) Representing any agency or instrumentality of the United States Government or any agency or instrumentality of the District of Columbia Government in an official capacity.

Partisan when used as an adjective means related to a political party.

Partisan political group means any committee, club, or other organization which is affiliated with a political party or candidate for public office in a partisan election, or organized for a partisan purpose, or which engages in partisan political activity.

Partisan political office means any office for which any candidate is nominated or elected as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, but does not include any office or position within a political party or affiliated organization.

Person means an individual; a State, local, or foreign government; or a corporation and the subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution, including any officer, employee, or agent of such person or entity.

Political activity means an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.

Political contribution means any gift, subscription, loan, advance, or deposit of money or anything of value, made for any political purpose.

(1) A political contribution includes:

(i) Any contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any political purpose;

(ii) Any payment by any person, other than a candidate or a political party or affiliated organization, of compensation for the personal services of another person which are rendered to any candidate or political party or affiliated organization without charge for any political purpose; and

(iii) The provision of personal services, paid or unpaid, for any political purpose.

(2) A political contribution does not include the value of services provided without compensation by any individual who volunteers on behalf of any candidate, campaign, political party, or partisan political group.

Political management means the direction or supervision of a partisan political group or campaign for partisan political office.

Political party means a national political party, a State political party, or an affiliated organization.

Political purpose means an objective of promoting or opposing a political party, candidate for partisan political office, or partisan political group.

Receive means to come into possession of something from a person officially on behalf of a candidate, a campaign, a political party, or a partisan political group, but does not include ministerial activities which precede or follow this official act.

Room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency thereof includes, but is not limited to:

(1) Any Federally owned space (including, but not limited to, "public buildings" as defined in 40 U.S.C. 612(1)) or Federally leased space in which Federal employees perform official duties on a regular basis;

(2) Public areas as defined in 40 U.S.C. 490(a)(17) and 41 CFR 101–20.003 of buildings under the custody and control of the General Services Administration.

(3) A room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency thereof does not include rooms in the White House, or in the residence of the Vice President, which are part of the Residence area or which are not regularly used solely in the discharge of official duties.

Solicit means to request expressly of another person that he or she contribute something to a candidate, a campaign, a political party, or partisan political group.

Subordinate refers to the relationship between two employees when one employee is under the supervisory authority, control or administrative direction of the other employee.

Uniformed services means uniformed services as defined in 5 U.S.C. 2101(3).

§ 733.102 Exclusion of employees in the Criminal Division of the United States Department of Justice.

Employees in the Criminal Division in the Department of Justice (except employees appointed by the President, by and with the advice and consent of the Senate) specifically are excluded from coverage under the provisions of this part.

§ 733.103 Permitted political activities—employees who reside in designated localities.

(a) This section does not apply to an individual who is employed in an agency or position described in § 733.105(a), unless that individual has been appointed by the President, by and with the advice and consent of the Senate.

(b) Employees who reside in a municipality or political subdivision designated by OPM under § 733.107 may:

(1) Run as independent candidates for election to partisan political office in elections for local office in the municipality or political subdivision;

(2) Solicit, accept, or receive a political contribution as, or on behalf of, an independent candidate for partisan political office in elections for local office in the municipality or political subdivision;

(3) Accept or receive a political contribution on behalf of an individual who is a candidate for local partisan political office and who represents a political party;

(4) Solicit, accept, or receive uncompensated volunteer services as an independent candidate, or on behalf of an independent candidate, for local partisan political office, in connection with the local elections of the municipality or subdivision; and

(5) Solicit, accept, or receive uncompensated volunteer services on behalf of an individual who is a candidate for local partisan political office and who represents a political party.

§ 733.104 Prohibited political activities—employees who reside in designated localities.

(a) This section does not apply to an individual who is employed in an agency or position described in § 733.105(a), unless that individual has been appointed by the President, by and with the advice and consent of the Senate.

(b) Employees who reside in a municipality or political subdivision designated by OPM under § 733.107 may not:

(1) Run as the representative of a political party for local partisan political office;

(2) Solicit a political contribution on behalf of an individual who is a candidate for local partisan political office and who represents a political party;

(3) Knowingly solicit a political contribution from any Federal employee, except as permitted under 5 U.S.C. 7323(a)(2)(A)–(C).

(4) Accept or receive a political contribution from a subordinate; or

(5) Solicit, accept, or receive uncompensated volunteer services from a subordinate for any political purpose.

(c) An employee covered under this section may not participate in political activities:

(1) While he or she is on duty:

(2) While he or she is wearing a uniform, badge, or insignia that identifies the employing agency or instrumentality or the position of the employee;

(3) While he or she is in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof; or

(4) While using a Government-owned or leased vehicle or while using a privately owned vehicle in the discharge of official duties.

(d) An employee described in 5 U.S.C. 7324(b)(2) may participate in political activity otherwise prohibited by § 733.104(c) if the costs associated with that political activity are not paid for by money derived from the Treasury of the United States.

(e) Candidacy for, and service in, a partisan political office shall not result in neglect of, or interference with, the performance of the duties of the employee or create a conflict, or apparent conflict, of interest.

§ 733.105 Permitted political activities—employees who reside in designated localities and are employed in certain agencies and positions.

(a) This section applies to employees who reside in designated localities and are employed in the following agencies or positions:

(1) Federal Election Commission;
(2) Federal Bureau of Investigation;
(3) United States Secret Service;
(4) Central Intelligence Agency;
(5) National Security Council;
(6) National Security Agency;
(7) Defense Intelligence Agency;
(8) Merit Systems Protection Board;
(9) United States Office of Special Counsel;
(10) Office of Criminal Investigation of the Internal Revenue Service;
(11) Office of Investigative Programs of the United States Customs Service;
(12) Office of Law Enforcement of the Bureau of Alcohol, Tobacco, and Firearms;
(13) National Imagery and Mapping Agency;
(14) Career Appointees in the Senior Executive Service;
(15) Administrative Law Judges; and
(16) Contract appeals board members described in 5 U.S.C. 5372a.

(b) This section does not apply to individuals who have been appointed by the President by and with the advice and consent of the Senate, even though they are employed in the agencies and positions described in paragraph (a) of this section.

(c) Employees who are covered under this section and who reside in a municipality or political subdivision designated by OPM under § 733.107 may:

(1) Run as independent candidates for election to partisan political office in elections for local office in the municipality or political subdivision;

(2) Solicit, accept, or receive a political contribution as, or on behalf of, an independent candidate for partisan political office in elections for local office in the municipality or political subdivision;

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(3) Solicit, accept, or receive uncompensated volunteer services as, or on behalf of, an independent candidate for partisan political office in elections for office in the municipality or subdivision; and

(4) Take an active part in other political activities associated with elections for local partisan political office and in managing the campaigns of candidates for election to local partisan political office in the municipality or political subdivision, but only as an independent candidate or on behalf of, or in opposition to, an independent candidate.

§ 733.106 Prohibited political activities—employees who reside designated localities and are employed in certain agencies and positions.

(a) This section does not apply to individuals who have been appointed by the President, by and with the advice and consent of the Senate, even though they are employed in the agencies and positions described in § 733.105(a).

(b) Employees who are employed in the agencies and positions described in § 733.105(a), and who reside in a municipality or political subdivision designated by OPM under § 733.107, may not:

(1) Run as the representative of a political party for local partisan political office;

(2) Solicit, accept, or receive a political contribution on behalf of an individual who is a candidate for local partisan political office and who represents a political party;

(3) Knowingly solicit a political contribution from any Federal employee;

(4) Accept or receive a political contribution from a subordinate;

(5) Solicit, accept, or receive uncompensated volunteer services on behalf of an individual who is a candidate for local partisan political office and who represents a political party;

(6) Solicit, accept, or receive uncompensated volunteer services from a subordinate for any political purpose; or

(7) Take an active part in other political activities associated with elections for local partisan political office, when such participation occurs on behalf of a political party, partisan political group, or a candidate for local partisan political office who represents a political party.

(c) An employee covered under this section may not participate in political activities:

(1) While he or she is on duty;

(2) While he or she is wearing a uniform, badge, or insignia that identifies the employing agency or instrumentality or the position of the employee;

(3) While he or she is in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof; or

(4) While using a Government-owned or leased vehicle or while using a privately owned vehicle in the discharge of official duties.

(d) Candidacy for, and service in, or partisan political office shall not result in neglect of, or interference with, the performance of the duties of the employee or create a conflict, or apparent conflict, of interest.

§ 733.107 Designated localities.

(a) OPM may designate a municipality or political subdivision in Maryland or Virginia and in the immediate vicinity of the District of Columbia, or a municipality in which the majority of voters are employed by the Government of the United States, when OPM determines that, because of special or unusual circumstances, it is in the domestic interest of employees to participate in local elections.

(b) Information as to the documentation required to support a request for designation is furnished by the General Counsel of OPM on request.

(c) The following municipalities and political subdivisions have been designated, effective on the day specified:

In Maryland

Annapolis (May 16, 1941).
Anne Arundel County (March 14, 1973).
Berwyn Heights (June 15, 1944).
Bethesda (Feb. 17, 1943).
Bladensburg (April 20, 1942).
Bowie (April 11, 1952).
Brentwood (Sept. 26, 1940).
Calvert County (June 18, 1992).
Capitol Heights (Nov. 12, 1940).
Cheverly (Dec. 18, 1940).
Chevy Chase, section 3 (Oct. 8, 1940).
Chevy Chase, section 4 (Oct. 2, 1940).
Chevy Chase View (Feb. 26, 1941).
Chevy Chase Village, Town of (March 4, 1941).
College Park (June 13, 1945).
Cottage City (Jan. 15, 1941).
District Heights (Nov. 2, 1940).
Edmonston (Oct. 24, 1940).
Fairmont Heights (Oct. 24, 1940).
Forest Heights (April 22, 1949).
Frederick County (May 31, 1991).
Garrett Park (Oct. 2, 1940).
Glenarden (May 21, 1941).
Glen Echo (Oct. 22, 1940).
Greenbelt (Oct. 4, 1940).
Howard County (April 25, 1974).
Hyattsville (Sept. 20, 1940).
Kensington (Nov. 8, 1940).
Landover Hills (May 5, 1945).
Martin's Additions, Village of (Feb. 13, 1941).
Montgomery County (April 30, 1964).
Morningside (May 19, 1949).
Mount Rainier (Nov. 22, 1940).
New Carrollton (July 7, 1981).
North Beach (Sept. 20, 1940).
North Brentwood (May 6, 1941).
North Chevy Chase (July 22, 1942).
Northwest Park (Feb. 17, 1943).
Prince George's County (June 19, 1962).
Riverdale (Sept. 26, 1940).
Rockville (April 15, 1948).
St. Mary's County (March 2, 1998).
Seat Pleasant (Aug. 31, 1942).
Somerset (Nov. 22, 1940).
Takoma Park (Oct. 22, 1940).
University Park (Jan. 18, 1941).
Washington Grove (April 5, 1941).

In Virginia

Alexandria (April 15, 1941).
Arlington County (Sept. 9, 1940).
Clifton (July 14, 1941).
Fairfax, City of (Feb. 9, 1954).
Fairfax County (Nov. 10, 1949).
Falls Church (June 6, 1941).
Herndon (April 7, 1945).
Loudoun County (Oct. 1, 1971).
Manassas (Jan. 8, 1980).
Manassas Park (March 4, 1980).
Portsmouth (Feb. 27, 1958).
Prince William County (Feb. 14, 1967).
Spotsylvania County (March 2, 1998).
Stafford County (Nov. 2, 1979).
Vienna (March 18, 1946).

Other Municipalities

Anchorage, Alaska (Dec. 29, 1947).
Benicia, Calif. (Feb. 20, 1948).
Bremerton, Wash. (Feb. 27, 1946).
Centerville, Ga. (Sept. 16, 1971).
Crane, Ind. (Aug. 3, 1967).
Elmer City, Wash. (Oct. 28, 1947).
Huachuca City, Ariz. (April 9, 1959).
New Johnsonville, Tenn. (April 26, 1956).
Norris, Tenn. (May 6, 1959).
Port Orchard, Wash. (Feb. 27, 1946).
Sierra Vista, Ariz. (Oct. 5, 1955).
Warner Robins, Ga. (March 19, 1948).

[FR Doc. 98–2277 Filed 1–29–98; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 417

[Docket No. 97–082N]

Contents of HACCP Plans; Critical Control Points

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Compliance with the HACCP system regulations.

SUMMARY: The Food Safety and Inspection Service (FSIS) is publishing this document to ensure that the owners and operators of federally inspected establishments are aware that the identification of appropriate critical control points is crucial to complying with the Agency's regulations on hazard analysis and critical control point (HACCP) systems. The HACCP system regulations require that a HACCP plan list critical control points for each food safety hazard identified as reasonably likely to occur in the production process. The number of critical control points will depend upon the production process and the hazard, but a HACCP plan must specify as critical control points the points, steps, or procedures at which control can be applied and, as measured by critical limits, occurrence of the hazard can be prevented, eliminated, or reduced to an acceptable level, and at a minimum, the critical limits must be designed to ensure that applicable targets or performance standards established by FSIS, and any other requirement in the Agency's regulations pertaining to the specific process or product, are met. These requirements implement FSIS's judgment that whenever a food safety hazard is reasonably likely to occur in the production process, by applying control measures, the establishment can at least reduce the hazard to an acceptable level, even if it cannot entirely prevent or eliminate its occurrence.

FOR FURTHER INFORMATION CONTACT: Patricia F. Stolfa, Assistant Deputy Administrator, Regulations and Inspection Methods, Food Safety and Inspection Service, Washington, DC 20250–3700; (202) 205–0699.

SUPPLEMENTARY INFORMATION: The Food Safety and Inspection Service (FSIS) administers a regulatory program under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) to protect the health and welfare of consumers by preventing the distribution of livestock products and poultry products that are unwholesome, adulterated, or misbranded. To further the goal of reducing the risk of foodborne illness from meat and poultry products to the maximum extent possible, FSIS issued the Pathogen Reduction-Hazard Analysis and Critical Control Point (HACCP) Systems final rule (61 FR 38806, July 25, 1996).

The HACCP system regulations, part 417,[1] require that every federally inspected establishment conduct, or have conducted for it, a hazard analysis to determine the food safety hazards reasonably likely to occur in the production process and identify the preventive measures the establishment can apply to control those hazards (§ 417.2(a)). Whenever a hazard analysis reveals one or more food safety hazards that are reasonably likely to occur, the establishment must develop and implement a HACCP plan, or plans, to control those hazards (§ 417.2(b)). Although it is possible that a hazard analysis conducted in accordance with the regulations will reveal no food safety hazard that is reasonably likely to occur, as the Agency stated when it issued the regulations, FSIS is not aware of any meat or poultry production process that can be deemed, categorically, to pose no likely hazards (61 FR 38824).[2]

For purposes of part 417, a critical control point (CCP) is a point, step, or procedure in a food process at which control can be applied and, as a result, a food safety hazard can be prevented, eliminated, or reduced to acceptable levels (§ 417.1).) Every HACCP plan must "list the critical control points for each of the identified food safety hazards, including, as appropriate:"

(i) Critical control points designed to control food safety hazards that could be introduced in the establishment, and

(ii) Critical control points designed to control food safety hazards introduced outside the establishment, including food safety hazards that occur before, during, and after entry into the establishment * * *

(§ 417.2(c)(2)). The plan also must comply with the related requirements to specify the critical limits (maximum and minimum values) to be met at CCP's, the corrective actions to be followed in response to deviations from critical limits at CCP's, and the monitoring and verification procedures to ensure appropriate corrective actions if and when those deviations occur (§§ 417.1, 417.2(c), 417.3(a), and 417.4(a)). At a minimum, critical limits must be designed to ensure that applicable targets or performance standards established by FSIS, and any other requirement in FSIS's regulations (9 CFR chapter III) pertaining to the specific process or product, are met (§ 417.2(c)(3)).

It has come to FSIS's attention that in developing HACCP plans, some persons are viewing CCP's so narrowly that they risk noncompliance with regulatory requirements. FSIS is concerned that some establishments may be relying solely on HACCP concepts and theory, without evaluating CCP's in accordance with regulatory requirements. The Agency is publishing this notice to ensure that the owners and operators of federally inspected establishments are aware that the identification of appropriate critical control points is crucial.

The number of critical control points will depend upon the production process and the hazard. FSIS will treat failure to specify at least one CCP for each food safety hazard identified in accordance with the regulations as reasonably likely to occur as a failure to develop and implement a HACCP plan that complies with § 417.2 (§ 417.2(e)). The only exception, as specified in § 417.2(b)(3), is for food safety hazards associated with microbiological contamination: HACCP plans that cover thermally processed/commercially sterile products produced in accordance with the current canning regulations (part 318, subpart G, or part 381, subpart X) need not, at this time, address microbial hazards.[3]

FSIS anticipates that to operate in accordance with part 417, many establishments will find that for each identified hazard, they need more than one CCP, particularly if they are producing raw products. The Agency believes that depending upon a single CCP increases establishment exposure to production-disrupting corrective actions that affect large amounts of product. While FSIS is not prepared to say that compliance cannot be achieved with a single CCP when, for example, a product is treated sufficiently to be shelf stable, even though it is not commercially sterile, the Agency is concerned that establishments may be viewing CCP's too restrictively to ensure compliance with the regulations.

The part 417 requirements addressed in this notice implement the Agency's conclusion that whenever a food safety hazard is reasonably likely to occur in the production process, even if an establishment cannot entirely prevent or eliminate occurrence of the hazard, by applying control measures, the establishment can at least reduce it to an acceptable level. Part 417 requires all federally inspected establishments to take the prudent, preventive approach and develop systematic measures for controlling such hazards.

[1] Part 417 requirements will apply as of January 26, 1998, in establishments with 500 or more employees; January 25, 1999, in establishments with 10 or more but fewer than 500 employees (unless the establishment has annual sales of less than $2.5 million); and January 25, 2000, in establishments with fewer than 10 employees or annual sales of less than $2.5 million.

[2] Food safety hazards include any biological, chemical, or physical property that may cause a food to be unsafe for human consumption (§ 417.1).

[3] FSIS intends to convert the canning regulations to performance standards, which are more consistent with HACCP (61 FR 38824).

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Done at Washington, DC, on: January 26, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 98–2297 Filed 1–29–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 417

[Docket No. 97–074N]

Contents of HACCP Plans

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Compliance with the HACCP system regulations.

SUMMARY: The Food Safety and Inspection Service is publishing this document to ensure that the owners and operators of federally inspected establishments are aware that its hazard analysis and critical control point (HACCP) system regulations require that an HACCP plan be a self-contained document. In particular, the Agency does not view references to good manufacturing practices, or establishment actions in accordance with good manufacturing practices, as satisfying the requirements for the contents of an HACCP plan. Among other things, an HACCP plan must list the critical control points for each food safety hazard reasonably likely to occur in the production process, the critical limits that must be met at each of the critical control points, and the procedures, and frequency with which they will be performed, that will be used to monitor each critical control point to ensure compliance with critical limits and to verify that the plan is being effectively implemented. An HACCP plan also must identify the corrective actions to be followed in response to deviations from critical limits at critical control points.

FOR FURTHER INFORMATION CONTACT: Patricia F. Stolfa, Assistant Deputy Administrator, Regulations and Inspection Methods, Food Safety and Inspection Service, Washington, DC 20250–3700; (202) 205–0699.

SUPPLEMENTARY INFORMATION: The Food Safety and Inspection Service (FSIS) administers a regulatory program under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) to protect the health and welfare of consumers by preventing the distribution of livestock products and poultry products that are unwholesome, adulterated, or misbranded. To further the goal of reducing the risk of foodborne illness from meat and poultry products to the maximum extent possible, FSIS issued the Pathogen Reduction-Hazard Analysis and Critical Control Point (HACCP) Systems final rule (61 FR 38806, July 25, 1996). As amended by that rule, FSIS's regulations require federally inspected establishments to take preventive and corrective measures at each stage of the food production process where food safety hazards occur.

The regulations on HACCP systems, part 417,* require a hazard analysis to determine the food safety hazards reasonably likely to occur in the production process and identify the preventive measures an establishment can apply to control them (§ 417.2(a)(1)) and, whenever this analysis reveals one or more such hazards, development and implementation of a written HACCP plan (§ 417.2(b)(1)). In § 417.2(c), the regulations specify minimum requirements for the contents of each HACCP plan, including requirements to list the food safety hazards for each process; list the critical control points for each of the identified hazards; list the critical limits that must be met at each of the critical control points; list the procedures, and frequency with which they will be performed, that will be used to monitor each of the critical control points to ensure compliance with the critical limits; and list the verification procedures, and the frequency with which they will be performed, that the establishment will use in accordance with § 417.4 (*i.e.*, to verify that the plan is being effectively implemented) (paragraphs (c)(1), (c)(2), (c)(3), (c)(4), and (c)(7) of § 417.2). In addition, a HACCP plan must include all corrective actions that have been developed in accordance with § 417.3(a), which requires the identification of the corrective action to be followed in response to a deviation from a critical limit (§ 417.2(c)(5)).

Given the explicit requirements to list critical control points, critical limits, and monitoring and verification procedures and to develop and identify corrective actions, and the Agency's statement, in issuing part 417, that it was clarifying requirements for the identification of critical control points within a HACCP plan (61 FR 38825), FSIS is concerned that some industry members and consultants to industry think that they can comply with § 417.2(c) by referring to good manufacturing practices, or establishment actions in accordance with good manufacturing practices. While FSIS has considered good manufacturing practices in developing some requirements that protect the public against livestock products and poultry products that are misbranded or economically adulterated (21 U.S.C. 453 and 601), the Agency has not adopted specific good manufacturing practices as part of its regulations.

The Agency is publishing this notice to ensure that the owners and operators of federally inspected establishments are aware that references to good manufacturing practices, or establishment actions in accordance with good manufacturing practices, rather than stating the critical control points, critical limits, monitoring and verification procedures, and corrective actions themselves is insufficient to satisfy the requirements of § 417.5(c). Part 417 requires that a HACCP plan be a self-contained document.

Moreover, the function of critical control points and critical limits is to prevent, eliminate, or reduce to an acceptable level one or more food safety hazards. By definition, critical limits are maximum and minimum values (§ 417.1), and by regulation, critical limits must be designed, at a minimum, to ensure that applicable targets or performance standards established by FSIS, and any other requirement in FSIS's regulations (9 CFR chapter III) pertaining to the specific process or product, are met (§ 417.2(c)(3)). To determine whether critical limits are met and, if not, prevent the distribution of adulterated food and future deviations, the regulations require plan-specific monitoring, verification, and corrective action procedures.

Done at Washington, DC, on: January 26, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 98–2296 Filed 1–29–98; 8:45 am]

BILLING CODE 3410–DM–P

* Part 417 requirements will apply as of January 26, 1998, in establishments with 500 or more employees; January 25, 1999, in establishments with 10 or more but fewer than 500 employees (unless the establishment has annual sales of less than $2.5 million); and January 25, 2000, in establishments with fewer than 10 employees or annual sales of less than $2.5 million.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 143CE; Special Conditions No. SC–23–ACE–93]

Special Conditions: EXTRA Flugzeugbau GmbH, Model EA–400; Heat Capability of the Engine Mount and the Fuselage Connection Joint

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the EXTRA Flugzeugbau GmbH, Model EA–400 airplane. This airplane will have a novel or unusual design feature associated with the Heat Capability of the Engine Mount and the Fuselage Connection Joint. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: March 2, 1998.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Payauys, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Background

On April 6, 1993, EXTRA Flugzeugbau GmbH applied for a type certificate for their new Model EA–400. The EA–400 design is a two-place (side-by-side), all composite material, cantilevered high-wing, retractable gear, unpressurized, single reciprocating engine airplane with a maximum design weight of 3,974 pounds (1800 kilograms). It is intended for 14 CFR part 91 operation as a day-VFR normal category airplane.

The proposed type design of the EXTRA Flugzeugbau GmbH Model EA–400 airplane incorporates certain novel and unusual design features for which the exiting airworthiness regulations do not contain adequate or appropriate safety standards. These features include certain performance characteristics necessary for this type of airplane design that were not foreseen by the existing regulations.

This special condition addresses the flight safety of the EA–400 in case of an engine compartment fire with resulting heat conduction through the engine-mounts to composite structure joints beyond the firewall. The type certificate applicant shall demonstrate that the airplane structure design, especially the engine-mount attachments to the structure beyond the firewall, is able to retain the engine while withstanding the following:

1. An engine compartment fire, the loss of the most highly loaded composite joint, and heating of the next most highly loaded composite joint from those that remain;
2. Maximum continuous power for 5 minutes; and
3. Combined airplane flight maneuver and gust limit loads for at least 15 minutes.

Note: The engine-mount attachments at the firewall are not the same as the engine-to-engine-mount attachments, which contain vibration dampers.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.17, EXTRA Flugzeugbau GmbH must show that the Model EA–400 meets the applicable provisions of 14 CFR part 23, effective February 1, 1965, through amendment 23–45, effective August 6, 1993; 14 CFR part 36, effective December 1, 1969, through amendment 36–21 effective December 28, 1995; exemptions, if any; equivalent level of safety findings, if any; and the special conditions adopted by this rulemaking action.

Special conditions are issued, as appropriate, under 14 CFR part 11 § 11.49 after public notice, as required by § 11.28 and § 11.29(b), and become part of the type certification basis in accordance with 14 CFR part 21, § 21.17(a)(2)).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of 14 CFR part 21, § 21.101(a)(1)).

Novel or Unusual Design Features

The Model EA–400 will incorporate the following novel or unusual design features: Heat Capability of the Engine Mount and the Fuselage Connection Joint.

Discussion of Comments

Notice of proposed special conditions No. SC–23–ACE–93 for the EXTRA Flugzeugbau GmbH EA–400 airplanes was published on November 20, 1997 (62 FR 61926). No comments were received and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Model A–400. Should EXTRA Flugzeugbau GmbH apply at a later date for a change to the type certificate to include another model incorporating the same level or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for EXTRA Flugzeugbau GmbH Model EA–400 airplanes:

Heat Capability of the Engine Mount and the Fuselage Connection Joint

(a) Modify the airworthiness standards given in 14 CFR part 23, POWERPLANT FIRE PROTECTION, *Nacelle areas behind firewalls* (§ 23.1182), by making the most critical composite engine-mount attachment ineffective (assumed destroyed by heat). Then, for 15 minutes, apply an additional flame test of 500° C (932° F) to the next most structurally critical engine-mount of those remaining. The flame shall encompass the whole engine-mount structural attach fitting. Conductive heat will affect the metallic and composite joint structural capability beyond the firewall. Test the joint structural capability with these simultaneous limit load conditions (under these conditions, the engine shall remain attached to the airplane):

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(1) The combined thrust, torque and gyroscopic loads resulting from the engine and propeller at maximum continuous power for the first 5 minutes, and

(2) The airplane normal inertial limit loads that result from the following:

(i) A maneuver load factor equal to that obtained from a constant altitude 30° bank, combined with

(ii) The positive and negative vertical design gust load factors that occur at the design maneuvering speed and the minimum flying weight, and

(iii) A factor-of-safety equal to one.

Issued in Kansas City, Missouri on January 22, 1998.

Marvin Nuss,

Assistant Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2399 Filed 1–29–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–256–AD; Amendment 39–10294; AD 98–03–02]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–1A11 and CL–600–2A12 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model CL–600–1A11 and CL–600–2A12 series airplanes, that requires replacement of the anti-noise filter on the standby and auxiliary power unit (APU) fuel pump assemblies with a new filter. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent electrical arcing between the internal wiring and casing of the anti-noise filter on the standby and APU fuel pump assemblies, and consequent increased risk of fuel tank explosion or fire.

DATES: Effective March 6, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 6, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wing Chan, Aerospace Engineer, Systems and Equipment Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7511; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–1A11 and CL–600–2A12 series airplanes was published in the **Federal Register** on November 19, 1997 (62 FR 61706). That action proposed to require replacement of the anti-noise filter on the standby and auxiliary power unit (APU) fuel pump assemblies with a new filter.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 84 Model CL–600–1A11 and CL–600–2A12 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $5,689 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $578,676, or $6,889 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–03–02 Bombardier, Inc. (Formerly Canadair): Amendment 39–10294. Docket 97–NM–256–AD.

Applicability: Model CL–600–1A11 series airplanes, as listed in Bombardier Canadair Challenger Alert Service Bulletin A600–0644, Revision 01, dated March 31, 1995; and Model CL–600–2A12 series airplanes, as listed in Bombardier Canadair Challenger Alert Service Bulletin A601–0441, Revision 01, dated March 31, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing between the internal wiring and casing of the anti-noise filter on the standby and auxiliary power unit (APU) fuel pump assemblies, and consequent increased risk of fuel tank explosion or fire, accomplish the following:

(a) Within 100 flight hours after the effective date of this AD, replace the anti-noise filter on the standby and auxiliary power unit (APU) fuel pump assemblies with a new filter, in accordance with Part B of Bombardier Canadair Challenger Alert Service Bulletin A600–0644, Revision 01, dated March 31, 1995 (for Model CL–600–1A11 series airplanes), or Bombardier Canadair Challenger Alert Service Bulletin A601–0441, Revision 01, dated March 31, 1995 (for Model CL–600–2A12 series airplanes); as applicable.

(b) As of the effective date of this AD, no person shall install on any airplane a fuel pump having part number (P/N) 600–62966–25 or 600–62966–27 with an anti-noise filter having P/N 160–151501 (prior to revision H stamped on the part) installed.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The replacement shall be done in accordance with Bombardier Canadair Challenger Alert Service Bulletin A600–0644, Revision 01, dated March 31, 1995; Bombardier Canadair Challenger Alert Service Bulletin A601–0441, Revision 01, dated March 31, 1995; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–97–02, dated February 25, 1997.

(f) This amendment becomes effective on March 6, 1998.

Issued in Renton, Washington, on January 21, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–1973 Filed 1–29–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–301–AD; Amendment 39–10295; AD 98–03–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes. This action requires revising the Airplane Flight Manual (AFM) to prohibit use of the autobrake during landing on contaminated runways. This action also requires replacement of the brake and steering control unit (BSCU) with a new BSCU, which eliminates the need for the AFM revision. For certain airplanes, this action also requires installation of new brakes. This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent insufficient braking capability, which could increase the potential for landing overrun.

DATES: Effective February 17, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 17, 1998.

Comments for inclusion in the Rules Docket must be received on or before March 2, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–301–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330 and A340 series airplanes. The DGAC advises that some operators reported braking discrepancies at low taxi speed. Investigation has revealed anomalies in the standard of software associated with the brake and steering control unit (BSCU), which could result in insufficient braking capability. This condition, if not corrected, could increase the potential for landing overrun.

Explanation of Relevant Service Information

Airbus has released A330 Flight Manual Temporary Revision 4.03.00/05, dated July 12, 1996, and A340 Flight Manual Temporary Revision 4.03.00/13, dated July 12, 1996. These temporary revisions describe a revision to the Limitations Section of the Airplane Flight Manual (AFM) to prohibit use of the autobrake during landing on contaminated runways.

Airbus also has issued Service Bulletins A330–32–3062, Revision 2 (for Model A330 series airplanes), and A340–32–4087, Revision 2 (for Model A340 series airplanes), both dated May

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27, 1997. These service bulletins describe procedures for installation of an improved S6D standard BSCU, which will improve braking capability.

Additionally, Airbus has issued Service Bulletins A330–32–3061, Revision 1, dated May 6, 1997 (for Model A330 series airplanes), and A340–32–4086, Revision 2, dated June 13, 1997 (for Model A340 series airplanes). These service bulletins, applicable to airplanes equipped with Bendix brakes, describe procedures for installation of improved Bendix brakes, which will reduce susceptibility to braking discrepancies at low taxi speed. For airplanes equipped with Bendix brakes, Airbus Service Bulletin A330–32–3061 must be accomplished prior to or concurrently with the accomplishment of Airbus Service Bulletin A330–32–3062; and Airbus Service Bulletin A330–32–4086 must be accomplished prior to or concurrently with the accomplishment of Airbus Service Bulletin A330–32–4087.

Accomplishment of Airbus Service Bulletin A330–32–3062 or A340–32–4087, as applicable, eliminates the need for the AFM revision. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

The DGAC classified these service bulletins and the temporary revisions as mandatory and issued French airworthiness directives 97–086–046(B)(R1) and 97–142–048(B), both dated July 2, 1997 (for Model A330 series airplanes); and 97–087–056(B), dated March 12, 1997 (for Model A340 series airplanes); in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires accomplishment of the actions specified in the service information described previously.

Cost Impact

None of the airplanes affected by this action is on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, estimated costs are provided as follows.

It would require approximately 1 work hour to accomplish the temporary revision of the AFM, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the temporary revision of the AFM required by this AD would be $60 per airplane.

It would require approximately 3 work hours to install an improved BSCU, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the BSCU installation required by this AD would be $180 per airplane.

For airplanes equipped with Bendix brakes, it would require approximately 8 work hours to install new Bendix brakes, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the brake installation required by this AD would be $480 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–301–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–03–04 Airbus Industrie: Amendment 39–10296. Docket 97–NM–301–AD.

Applicability: Model A330 and A340 series airplanes on which Airbus Modification 45006 has not been installed, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent insufficient braking capability, which could increase the potential for landing overrun, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) in accordance with paragraph (a)(1) or (a)(2) of this AD, as applicable. This action may be accomplished by inserting a copy of this AD into the applicable AFM.

(1) For Model A330 series airplanes: Revise the AFM to include the following:

"AUTOBRAKE

Do not use the autobrake on contaminated runway (runway covered with more than 3 millimeters of water or slush or snow or ice) and on suspected slippery runway (for example, runway having heavy rubber traces).

On contaminated runway or on suspected slippery runway:

—Apply manual braking only after the nose landing gear is on ground.

—Increase the landing distance by 4% (1% on icy runway)."

Note 2: This AFM revision also may be accomplished by inserting into the Limitations Section of the AFM a copy of Airbus A330 Flight Manual Temporary Revision 4.03.00/05, dated July 12, 1996.

(2) For Model A340 series airplanes: Revise the AFM to include the following:

"AUTOBRAKE

Do not use the autobrake on contaminated runway (runway covered with more than 3 millimeters of water or slush or snow or ice) and on suspected slippery runway (for example, runway having heavy rubber traces).

On contaminated runway or on suspected slippery runway:

—Apply manual braking only after the nose landing gear is on ground.

—Increase the landing distance by 5% (1% on icy runway)."

Note 3: This AFM revision also may be accomplished by inserting into the Limitations Section of the AFM a copy of Airbus A340 Flight Manual Temporary Revision 4.03.00/13, dated July 12, 1996.

(b) For airplanes equipped with Bendix brakes: Prior to or concurrently with the accomplishment of paragraph (c) of this AD, replace existing Bendix brakes with new Bendix brakes in accordance with paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For Model A330 series airplanes: Install Bendix brakes having increased zero torque pressure, in accordance with Airbus Service Bulletin A330–32–3061, Revision 1, dated May 6, 1997.

(2) For Model A340 series airplanes: Install Bendix brakes having increased zero torque pressure, in accordance with Airbus Service Bulletin A340–32–4086, Revision 2, dated June 13, 1997.

(c) Within 6 months after the effective date of this AD, replace the existing brake and steering control unit (BSCU) with a BSCU having part number C2029336D6D6D, in accordance with paragraph (c)(1) or (c)(2) of this AD, as applicable. Accomplishment of this modification constitutes terminating action for the requirements of paragraph (a) of this AD; after the modification has been accomplished, the temporary AFM limitation may be removed.

(1) For Model A330 series airplanes: Replace the BSCU with a modified BSCU, in accordance with Airbus Service Bulletin A330–32–3062, Revision 2, dated May 27, 1997.

(2) For Model A340 series airplanes: Replace the BSCU with a modified BSCU, in accordance with Airbus Service Bulletin A330–32–4087, Revision 2, dated May 27, 1997.

(d) As of the effective date of this AD, no person shall install a BSCU having P/N C2029335B5B5B on any airplane.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The replacements shall be done in accordance with the following Airbus service bulletins, as applicable, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
A330–32–3061, Revision 1, May 6, 1997	1–4	1	May 6, 1997.
	5–8	Original	Oct. 22, 1996.
A330–32–3062, Revision 2, May 27, 1997	1–8	2	May 27, 1997.
A340–32–4086, Revision 2, June 13, 1997	1, 2	2	June 13, 1997.
	3–8	1	Feb. 10, 1997.
A340–32–4087, Revision 2, May 27, 1997	1–8	2	May 27, 1997.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French airworthiness directives 97–086–046(B)(R1) and 97–142–048(B), both dated July 2, 1997; and 97–087–056(B), dated March 12, 1997.

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(h) This amendment becomes effective on February 17, 1998.

Issued in Renton, Washington, on January 21, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–1970 Filed 1–29–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–320–AD; Amendment 39–10297; AD 98–03–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A330 and A340 series airplanes. This action requires removal of three electric motor-driven hydraulic pumps (EHP) and associated wiring, and installation of placards in the flight deck. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent operation of the EHP, which could result in fire in the wheel well area, and consequent damage to airplane structure or injury to airplane occupants.

DATES: Effective February 17, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 17, 1998.

Comments for inclusion in the Rules Docket must be received on or before March 2, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–320–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A330 and A340 series airplanes. The DGAC advises that it has received several reports of fires in the wheel well area. The cause of the fires has been attributed to use of the electric motor-driven hydraulic pumps (EHP). The DGAC had previously issued French airworthiness directives to require electrical isolation of the three EHP in order to address the unsafe condition. However, since that time, the DGAC has received one additional report of an on-ground fire in the wheel well. The investigation into the cause of this incident has not yet concluded; however, deliberate or inadvertent operation of the EHP is believed to be related to the incident. This condition, if not corrected, could result in fire in the wheel well area, and consequent damage to airplane structure or injury to airplane occupants.

Explanation of Relevant Service Information

Airbus has issued All Operators Telex (AOT) 29–21, Revision 1, dated January 8, 1997, which describes procedures for the disconnection and electrical isolation of all EHP's, and the installation of certain system 'inoperative' placards in the flight deck.

Airbus also has issued Service Bulletins A330–29–3041, dated February 25, 1997 (for Model A330 series airplanes), and A340–29–4041, dated February 26, 1997 (for Model A340 series airplanes), which describe procedures for removal of the three EHP's and associated wiring to permit installation of alternative pumps, or installation of provisions that would allow use of dedicated ground support equipment. Accomplishment of the actions specified in the AOT and service bulletins described previously is intended to adequately address the identified unsafe condition.

The DGAC classified the AOT and service bulletins as mandatory and issued French airworthiness directives 97–017–043(B)R2, dated June 18, 1997, as revised by ERRATUM, dated July 2, 1997; and 97–018–059(B)R2, dated June 18, 1997, as revised by ERRATUM, dated July 2, 1997; in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the AD requires accomplishment of the actions specified in the AOT and service bulletins described previously.

Differences Between This AD and the French AD's

This AD differs from the parallel French airworthiness directives in that it requires a single method of preventing operation of the three EHP's. The DGAC AD's provide three methods of compliance: describing procedures for disconnection and electrical isolation of the three EHP's; removal of the three EHP's with installation of placards in the flight deck; or removal of the three EHP's and subsequent installation of replacement EHP's. However, the FAA has determined that removal of the EHP's is the most effective method of addressing the unsafe condition; therefore, this AD requires the removal of the three EHP's and installation of placards in the flight deck. Operators should note that such removal of the three EHP's allows the option of using ground support equipment, or installing alternative pumps, as described in the French airworthiness directives.

Cost Impact

None of the Model A330 and A340 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 20 work hours to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no charge to the operator. Based on these figures, the cost impact of this AD would be $1,200 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–320–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–03–05 Airbus: Amendment 39–10297. Docket 97–NM–320–AD.

Applicability: All Model A330 and A340 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent operation of the electric motor-driven hydraulic pumps (EHP), which could result in fire in the wheel well area, and consequent damage to airplane structure or injury to airplane occupants, accomplish the following:

(a) Within 48 hours after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Remove the three EHP's and associated wiring in accordance with Airbus Service Bulletin A330–29–3041, dated February 25, 1997 (for Model A330 series airplanes), or A340–29–4041, dated February 26, 1997 (for Model A340 series airplanes), as applicable; and

(2) Open circuit breakers associated with the EHP's, and install placards in the flight deck, in accordance with paragraphs 4.2.2 and 4.2.3 of Airbus All Operators Telex (AOT) 29–21, Revision 1, dated January 8, 1997.

Note 2: Operators should note that removal of the three EHP's allows the option of using ground support equipment, or installing alternative pumps, as described in French airworthiness directives 97–017–043(B)R2, dated June 18, 1997, as revised by ERRATUM, dated July 2, 1997; and 97–018–059(B)R2, dated June 18, 1997, as revised by ERRATUM, dated July 2, 1997.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Airbus Service Bulletin A330–29–3041, dated February 25, 1997; or Airbus Service Bulletin A340–29–4041, dated February 26, 1997; as applicable; and Airbus All Operators Telex (AOT) 29–21, Revision 1, dated January 8, 1997. This incorporation by

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reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directives 97–017–043(B)R2, dated June 18, 1997, as revised by ERRATUM, dated July 2, 1997; and 97–018–059(B)R2, dated June 18, 1997, as revised by ERRATUM, dated July 2, 1997.

(e) This amendment becomes effective on February 17, 1998.

Issued in Renton, Washington, on January 23, 1998.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2286 Filed 1–29–98; 8:45 am]

BILLING CODE 4910–13–U

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulations No. 4]

RIN 0960–AE80

Federal Old-Age, Survivors and Disability Insurance; Determining Disability and Blindness; Extension of Expiration Date for the Cardiovascular Body System Listings

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: The Social Security Administration (SSA) adjudicates claims at the third step of its sequential process for evaluating disability using the Listing of Impairments (the listings) under the Social Security and supplemental security income (SSI) programs. This rule extends the date on which the cardiovascular body system listings will no longer be effective. We have made no revisions to the medical criteria in these listings; they remain the same as they now appear in the Code of Federal Regulations. This extension will ensure that we continue to have medical evaluation criteria in the listings to adjudicate claims for disability based on impairments in the cardiovascular body system at step three of our sequential evaluation process.

EFFECTIVE DATE: This regulation is effective January 30, 1998.

FOR FURTHER INFORMATION CONTACT: Regarding this **Federal Register** document—Richard M. Bresnick, Legal Assistant, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1758; regarding eligibility or filing for benefits—our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: We use the listings in appendix 1 (Listing of Impairments) to subpart P of part 404 at the third step of the sequential evaluation process to evaluate claims filed by adults and individuals under age 18 for benefits based on disability under the Social Security and SSI programs. The listings are divided into parts A and B. We use the criteria in part A to evaluate impairments of adults. We use the criteria in part B first to evaluate impairments of individuals under age 18. If those criteria do not apply, then the medical criteria in part A will be used.

When we published revised listings in 1985 and subsequently, we indicated that medical advances in disability evaluation and treatment and program experience would require that the listings be periodically reviewed and updated. Accordingly, we established dates ranging from 3 to 8 years on which the various body system listings would no longer be effective unless extended by the Secretary of Health and Human Services or revised and promulgated again. Effective March 31, 1995, the authority to issue regulations was transferred to the Commissioner of Social Security by section 102 of Public Law 103–296, the Social Security Independence and Program Improvements Act of 1994.

In this final rule, we are extending the date on which the cardiovascular body system listings (4.00 and 104.00) will no longer be effective to February 10, 2000.

We last published final rules for the cardiovascular body system listings on February 10, 1994 (59 FR 6468).

We believe that the requirements in these listings are still valid for our program purposes. Specifically, if we find that an individual has an impairment that meets the statutory duration requirement and also meets or is medically equivalent in severity to an impairment in the listings or functionally equivalent to the listings in SSI claims based on disability filed by individuals under age 18, we will find that the individual is disabled at the third step of the sequential evaluation process.

Regulatory Procedures

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), as amended by section 102 of Public Law 103–296, SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures in this case. Good cause exists because this regulation only extends the date on which the cardiovascular body system listings will no longer be effective. It makes no substantive changes to the listings. The current regulations expressly provide that the listings may be extended, as well as revised and promulgated again. Therefore, opportunity for prior comment is unnecessary, and we are issuing this regulation as a final rule.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, we are not making any substantive changes in these body system listings. However, without an extension of the expiration date for these listings, we will lack regulatory guidelines for assessing impairments in the cardiovascular body system at the third step of the sequential evaluation processes after the current expiration date of the listings. In order to ensure that we continue to have regulatory criteria for assessing cardiovascular impairments under the listings, we find that it is in the public interest to make this rule effective upon publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this rule does not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, it was not subject to OMB review.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

This regulation imposes no reporting/recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: January 20, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set forth in the preamble, chapter III, part 404, subpart P of title 20 of the Code of Federal Regulations is amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—[Amended]

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

2. Appendix 1 to subpart P of part 404 is amended by revising item 5 of the introductory text before part A to read as follows:

Appendix 1 to Subpart P—Listing of Impairments

* * * * *

5. Cardiovascular System (4.00 and 104.00): February 10, 2000.

* * * * *

[FR Doc. 98–2276 Filed 1–29–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 814

[Docket No. 97N–0133]

Revising the Announcement Procedures for Approvals and Denials of Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to revise the premarket approval application (PMA) announcement procedure. FDA is discontinuing the publication of individual PMA approvals and denials in the **Federal Register**. Instead, the agency will announce approvals and denials of PMA's on the Internet. FDA will make the summaries of safety and effectiveness available through the Internet and by placing them in FDA's Dockets Management Branch. FDA will publish in the **Federal Register** for each quarter a list of the approvals and denials announced in that quarter. FDA is taking this action in order to expedite the availability of this information.

EFFECTIVE DATE: March 2, 1998.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–2974.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 12, 1980 (45 FR 81769 at 81772), FDA prescribed the contents of a PMA and the criteria for approving, disapproving, or withdrawing approval of a PMA. FDA acknowledged that, although the statute does not require it to publish the approval of a PMA in the **Federal Register**, section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) permits an interested person to obtain review of an approved PMA. Consequently, FDA proposed to announce approval of any PMA in the **Federal Register** and to include in the announcement notice of opportunity to petition for administrative review under section 515(g) of the act. (See 45 FR 81769 at 81772 and 81776). FDA also proposed to publish notice of any denial of approval or proposed withdrawal of approval of any PMA in the **Federal Register** and to include in the announcement notice of opportunity for administrative review under section 515(g) of the act. (See 45 FR 81769 at 81773 and 81777.) Subsequently, in the **Federal Register** of July 22, 1986 (51 FR 26342), FDA issued a final rule providing, among other things, that notice of approval of a PMA, notice of an order denying approval of a PMA, and notice of an order withdrawing approval of a PMA will be published in the **Federal Register**. (See 21 CFR 814.44(d), 814.45(d), and 814.46(e).) In the **Federal Register** of June 27, 1997 (62 FR 34680), FDA issued a proposed rule to revise the PMA announcement procedure by discontinuing publication of PMA approvals and denials in the **Federal Register** and, instead, announcing them on the Internet. Interested persons were given until September 25, 1997, to comment on the proposed regulation. FDA received two comments supporting the proposal, one from an in vitro diagnostic manufacturer and the other from a dental association.

II. Summary of the Final Rule

FDA is discontinuing publication of individual PMA approvals and denials in the **Federal Register**. Instead, FDA will notify the public of PMA approvals and denials by posting them on FDA's home page on the Internet (http://www.fda.gov), by placing the summaries of safety and effectiveness on the Internet and in FDA's Dockets Management Branch, and by publishing in the **Federal Register** after each quarter a list of the PMA approvals and denials announced in that quarter.

FDA believes that this procedure will expedite public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than is the **Federal Register**.

In accordance with section 515(d)(3) of the act, notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515 (g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA will begin on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant, in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to selects regulatory

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approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that the final rule is consistent with regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the final rule involves a minor procedural change that primarily affects FDA and has no direct effect on small companies, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

V. Paperwork Reduction Act of 1995

This final rule contains no additional information collection requirements which are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

List of Subjects in 21 CFR Part 814

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 814 is amended as follows:

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

1. The authority citation for 21 CFR part 814 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 353, 360, 360c-360j, 371, 372, 373, 374, 375, 379, 379e, 381.

2. Section 814.44 is amended by revising paragraph (d) to read as follows:

§ 814.44 Procedures for review of a PMA.

* * * * *

(d)(1) FDA will issue to the applicant an order approving a PMA if none of the reasons in § 814.45 for denying approval of the application applies. FDA will approve an application on the basis of draft final labeling if the only deficiencies in the application concern editorial or similar minor deficiencies in the draft final labeling. Such approval will be conditioned upon the applicant incorporating the specified labeling changes exactly as directed and upon the applicant submitting to FDA a copy of the final printed labeling before marketing. FDA will also give the public notice of the order, including notice of and opportunity for any interested persons to request review under section 515(d)(3) of the act. The notice of approval will be placed on FDA's home page on the Internet (http://www.fda.gov), and it will state that a detailed summary of information respecting the safety and effectiveness of the device, which was the basis for the order approving the PMA, including information about any adverse effects of the device on health, is available on the Internet and has been placed on public display, and that copies are available upon request. FDA will publish in the **Federal Register** after each quarter a list of the approvals announced in that quarter. When a notice of approval is published, data and information in the PMA file will be available for public disclosure in accordance with § 814.9.

(2) A request for copies of the current PMA approvals and denials document and for copies of summaries of safety and effectiveness shall be sent in writing to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

* * * * *

3. Section 814.45 is amended by revising paragraph (d) to read as follows:

§ 814.45 Denial of approval of a PMA.

* * * * *

(d)(1) FDA will give the public notice of an order denying approval of the PMA. The notice will be placed on the FDA's home page on the Internet (http://www.fda.gov), and it will state that a detailed summary of information respecting the safety and effectiveness of the device, including information about any adverse effects of the device on health, is available on the Internet and has been placed on public display and that copies are available upon request. FDA will publish in the **Federal Register** after each quarter a list of the denials announced in that quarter. When a notice of denial of approval is made publicly available, data and information in the PMA file will be available for public disclosure in accordance with § 814.9.

(2) A request for copies of the current PMA approvals and denials document and copies of summaries of safety and effectiveness shall be sent in writing to the Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

* * * * *

Dated: January 22, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–2263 Filed 1–29–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 147

RIN 0790–AG54

Personnel Security Policies for Granting Access to Classified Information

AGENCY: Department of Defense.

ACTION: Interim final rule.

SUMMARY: This rule is published to streamline security practices throughout the government, uniform adjudicative guidelines, investigative standards and guidelines for temporary access are being established. This initiative will simplify security processing and allow the deserving public to obtain a security clearance in a faster, more efficient manner.

DATES: This rule is effective March 24, 1997. Comments must be received by March 31, 1998.

ADDRESSES: Forward comments to the Security Policy Board Staff, 1215 Jefferson Davis Highway, Suite 1101, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. T. Thompson, 703–602–9969.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, Regulatory Planning and Review

It has been determined that this interim rule (32 CFR part 147) is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, Regulatory Flexibility Act (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This part will streamline personnel security clearance procedures and make the process more efficient.

Public Law 96–511, Paperwork Reduction Act (44 U.S.C. Chapter 35)

It has been certified that this part does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 147

Classified information, Investigations, Security measures.

Accordingly, Title 32 of the Code of Federal Regulations, Chapter I, subchapter C is amended to add part 147 to read as follows:

PART 147—ADJUDICATIVE GUIDELINES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED INFORMATION

Subpart A—Adjudicative Guidelines

Sec.

147.1 Introduction.
147.2 Adjudicative process.
147.3 Guideline A—Allegiance to the United States.
147.4 Guideline B—Foreign influence.
147.5 Guideline C—Foreign preference.
147.6 Guideline D—Sexual behavior.
147.7 Guideline E—Personal conduct.
147.8 Guideline F—Financial considerations.
147.9 Guideline G—Alcohol consumption.
147.10 Guideline H—Drug involvement.
147.11 Guideline I—Emotional, mental, and personality disorders.
147.12 Guideline J—Criminal conduct.
147.13 Guideline K—Security violations.
147.14 Guideline L—Outside activities.
147.15 Guideline M—Misuse of information technology systems.

Subpart B—Investigative Standards

147.18 Introduction.
147.19 The three standards.
147.20 Exception to periods of coverage.
147.21 Expanding investigations.
147.22 Transferability.
147.23 Breaks in service.
147.24 The national agency check.

Subpart C—Guidelines for Temporary Access

147.28 Introduction.
147.29 Temporary eligibility for access.
147.30 Temporary eligibility for access at the CONFIDENTIAL AND SECRET levels and temporary eligibility for "L" access authorization.
147.31 Temporary eligibility for access at the TOP SECRET levels and temporary eligibility for "Q" access authorization. For someone who is the subject of a favorable investigation not meeting the investigative standards for access at those levels.
147.32 Temporary eligibility for access at the TOP SECRET and SCI levels and temporary eligibility for "Q" access authorization: For someone who is not the subject of a current, favorable personnel or personnel-security investigation of any kind.
147.33 Additional requirements by agencies.

Authority: E.O. 12968 (60 FR 40245, 3 CFR 1995 Comp., p 391).

Subpart A—Adjudication

§ 147.1 Introduction.

The following adjudicative guidelines are established for all United States Government civilian and military personnel, consultants, contractors, employees of contractors, licensees, certificate holders or grantees and their employees and other individuals who require access to classified information. They apply to persons being considered for initial or continued eligibility for access to classified information, to include sensitive compartmented information and special access programs and are to be used by government departments and agencies in all final clearance determinations.

§ 147.2 Adjudicative process.

(a) The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating the relevance of an individual's conduct, the adjudicator should consider the following actors:

(1) The nature, extent, and seriousness of the conduct;

(2) The circumstances surrounding the conduct, to include knowledgeable participation;

(3) The frequency and recency of the conduct;

(4) The individual's age and maturity at the time of the conduct;

(5) The voluntariness of participation;

(6) The presence or absence of rehabilitation and other pertinent behavioral changes;

(7) The motivation for the conduct;

(8) The potential for pressure, coercion, exploitation, or duress;

(9) The likelihood of continuation of recurrence.

(b) Each case must be judged on its own merits, and final determination remains the responsibility of the specific department or agency. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.

(c) The ultimate determination of whether the granting or continuing of eligibility for a security clearance is clearly consistent with the interests of national security must be an overall common sense determination based upon careful consideration of the following, each of which is to be evaluated in the context of the whole person, as explained further below:

(1) Guideline A: Allegiance to the United States.

(2) Guideline B: Foreign influence.

(3) Guideline C: Foreign preference.

(4) Guideline D: Sexual behavior.

(5) Guideline E: Personal conduct.

(6) Guideline F: Financial considerations.

(7) Guideline G: Alcohol consumption.

(8) Guideline H: Drug involvement.

(9) Guideline I: Emotional, mental, and personality disorders.

(10) Guideline J: Criminal conduct.

(11) Guideline K: Security violations.

(12) Guideline L: Outside activities.

(13) Guideline M: Misuse of Information Technology Systems.

(d) Although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or emotionally unstable behavior. Notwithstanding, the whole person concept, pursuit of further investigations may be terminated by an appropriate adjudicative agency in the face of reliable, significant, disqualifying, adverse information.

(e) When information of security concern becomes known about an individual who is currently eligible for access to classified information, the adjudicator should consider whether the person:

(1) Voluntarily reported the information;

(2) Was truthful and complete in responding to questions;

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(3) Sought assistance and followed professional guidance, where appropriate;

(4) Resolved or appears likely to favorably resolve the security concern;

(5) Has demonstrated positive changes in behavior and employment;

(6) Should have his or her access temporarily suspended pending final adjudication of the information.

(f) If after evaluating information of security concern, the adjudicator decides that the information is not serious enough to warrant a recommendation of disapproval or revocation of the security clearance, it may be appropriate to recommend approval with a warning that future incidents of a similar nature may result in revocation of access.

§ 147.3 Guideline A—Allegiance to the United States.

(a) *The concern.* An individual must be of unquestioned allegiance to the United States. The willingness to safeguard classified information is in doubt if there is any reason to suspect an individual's allegiance to the Untied States.

(b) *Conditions that could raise a security concern and may be disqualifying include:* (1) Involvement in any act of sabotage, espionage, treason, terrorism, sedition, or other act whose aim is to overthrow the Government of the United States or alter the form of government by unconstitutional means;

(2) Association or sympathy with persons who are attempting to commit, or who are committing, any of the above acts;

(3) Association or sympathy with persons or organizations that advocate the overthrow of the United States Government, or any state or subdivision, by force or violence or by other unconstitutional means;

(4) Involvement in activities which unlawfully advocate or practice the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any state.

(c) *Conditions that could mitigate security concerns include:* (1) The individual was unaware of the unlawful aims of the individual or organization and severed ties upon learning of these;

(2) The individual's involvement was only with the lawful or humanitarian aspects of such an organization;

(3) Involvement in the above activities occurred for only a short period of time and was attributable to curiosity or academic interest;

(4) The person has had no recent involvement or association with such activities.

§ 147.4 Guideline B—Foreign influence.

(a) *The concern.* A security risk may exist when an individual's immediate family, including cohabitants and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the Untied States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

(b) *Conditions that could raise a security concern and may be disqualifying include:* (1) An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;

(2) Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists;

(3) Relatives, cohabitants, or associates who are connected with any foreign government;

(4) Failing to report, where required, associations with foreign nationals;

(5) Unauthorized association with a suspected or known collaborator or employee of a foreign intelligence service;

(6) Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government;

(7) Indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, coercion or pressure;

(8) A substantial financial interest in a country, or in any foreign owned or operated business that could make the individual vulnerable to foreign influence.

(c) *Conditions that could mitigate security concerns include:* (1) A determination that the immediate family member(s) (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States;

(2) Contacts with foreign citizens are the result of official United States Government business;

(3) Contact and correspondence with foreign citizens are casual and infrequent;

(4) The individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons or organizations from a foreign country;

(5) Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

§ 147.5 Guideline C—Foreign preference.

(a) *The concern.* When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

(b) Conditions that could raise a security concern and may be disqualifying include:

(1) The exercise of dual citizenship;

(2) Possession and/or use of a foreign passport;

(3) Military service or a willingness to bear arms for a foreign country;

(4) Accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country;

(5) Residence in a foreign country to meet citizenship requirements;

(6) Using foreign citizenship to protect financial or business interests in another country;

(7) Seeking or holding political office in the foreign country;

(8) Voting in foreign elections;

(9) Performing or attempting to perform duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

(c) *Conditions that could mitigate security concerns include:* (1) Dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(2) Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship;

(3) Activity is sanctioned by the United States;

(4) Individual has expressed a willingness to renounce dual citizenship.

§ 147.6 Guidance D—Sexual behavior.

(a) *The concern.* Sexual behavior is a security concern if it involves a criminal offense, indicates a personality or emotional disorder, may subject the individual to coercion, exploitation, or duress, or reflects lack of judgment or discretion.[1] Sexual orientation or

[1] The adjudicator should also consider guidelines pertaining to criminal conduct (Guideline J) and emotional, mental and personality disorders (Guideline I) in determining how to resolve the security concerns raised by sexual behavior.

preference may not be used as a basis for or a disqualifying factor in determining a person's eligibility for a security clearance.

(b) *Conditions that could raise a security concern and may be disqualifying include:* (1) Sexual behavior of a criminal nature, whether or not the individual has been prosecuted;

(2) Compulsive or addictive sexual behavior when the person is unable to stop a pattern or self-destructive or high-risk behavior or that which is symptomatic of a personally disorder;

(3) Sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress;

(4) Sexual behavior of a public nature and/or that which reflects lack of discretion or judgment.

(c) *Conditions that could mitigate security concerns include:* (1) The behavior occurred during or prior to adolescence and there is no evidence of subsequent conduct of a similar nature;

(2) The behavior was not recent and there is no evidence of subsequent conduct of a similar nature;

(3) There is no other evidence of questionable judgment, irresponsibility, or emotional instability;

(4) The behavior no longer serves as a basis for coercion, exploitation, or duress.

§ 147.7 Guideline E—Personal conduct.

(a) *The concern.* Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(1) Refusal to undergo or cooperate with required security processing, including medical and psychological testing;

(2) Refusal to complete required security forms, releases, or provide full, frank and truthful answers to lawful questions of investigators, security officials or other representatives in connection with a personnel security or trustworthiness determination.

(b) *Conditions that could raise a security concern and may be disqualifying also include:* (1) Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances;

(2) The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(3) Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other representative in connection with a personnel security or trustworthiness determination;

(4) Personal conduct or concealment of information that may increase an individual's vulnerability to coercion, exploitation, or duties, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail;

(5) A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency;

(6) Association with persons involved in criminal activity.

(c) *Conditions that could mitigate security concerns include:* (1) The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability;

(2) The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;

(3) The individual made prompt, good faith efforts to correct the falsification before being confronted with the facts;

(4) Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided;

(5) The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress;

(6) A refusal to cooperate was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information;

(7) Association with persons involved in criminal activities has ceased.

§ 147.8 Guideline F—Financial considerations.

(a) *The concern.* An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

(b) *Conditions that could raise a security concern and may be disqualifying include:* (1) A history of not meeting financial obligations;

(2) Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;

(3) Inability or unwillingness to satisfy debts;

(4) Unexplained affluence;

(5) Financial problems that are linked to gambling, drug abuse, alcoholism, or other issues of security concern.

(c) *Conditions that could mitigate security concerns include:* (1) The behavior was not recent;

(2) It was an isolated incident;

(3) The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downtrun, unexpected medical emergency, or a death, divorce or separation);

(4) The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

(5) The affluence resulted from a legal source;

(6) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

§ 147.9 Guideline G—Alcohol consumption.

(a) *The concern.* Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

(b) *Conditions that could raise a security concern and may be disqualifying include:* (1) Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use;

(2) Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job;

(3) Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

(4) Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff

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member of a recognized alcohol treatment program;

(5) Habitual or binge consumption of alcohol to the point of impaired judgment;

(6) Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.

(c) *Conditions that could mitigate security concerns include:* (1) The alcohol related incidents do not indicate a pattern;

(2) The problem occurred a number of years ago and there is no indication of a recent problem;

(3) Positive changes in behavior supportive of sobriety;

(4) Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed impatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

§ 174.10 Guideline H—Drug involvement.

(a) *The concern.* (1) Improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

(2) Drugs are defined as mood and behavior altering substances, and include:

(i) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens),

(ii) Inhalants and other similar substances.

(3) Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

(b) *Conditions that could raise a security concern and may be disqualifying include:* (1) Any drug abuse (see above definition);

(2) Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution;

(3) Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;

(4) Evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program;

(5) Failure to successfully complete a drug treatment program prescribed by a credentialed medical professional. Recent drug involvement, especially following the granting of a security clearance, or an expressed intent not to discontinue use, will almost invariably result in an unfavorable determination.

(c) *Conditions that could mitigate security concerns include:* (1) The drug involvement was not recent;

(2) The drug involvement was an isolated or aberration event;

(3) A demonstrated intent not to abuse any drugs in the future;

(4) Satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional.

§ 147.11 Guideline I—Emotional, mental, and personality disorders.

(a) *The concern:* Emotional, mental, and personality disorders can cause a significant deficit in an individual's psychological, social and occupation functioning. These disorders are of security concern because they may indicate a defect in judgment, reliability, or stability. A credentialed mental health professional (e.g., clinical psychologist or psychiatrist), employed by, acceptable to or approved by the government, should be utilized in evaluating potentially disqualifying and mitigating information fully and properly, and particularly for consultation with the individual's mental health care provider.

(b) *Conditions that could raise a security concern and may be disqualifying include:* (1) An opinion by a credentialed mental health professional that the individual has a condition or treatment that may indicate a defect in judgment, reliability, or stability;

(2) Information that suggests that an individual has failed to follow appropriate medical advice relating to treatment of a condition, e.g., failure to take prescribed medication;

(3) A pattern of high-risk, irresponsible, aggressive, anti-social or emotionally unstable behavior;

(4) Information that suggests that the individual's current behavior indicates a defect in his or her judgment or reliability.

(c) *Conditions that could mitigate security concerns include:* (1) There is no indication of a current problem;

(2) Recent opinion by a credentialed mental health professional that an individual's previous emotional, mental, or personality disorder is cured, under control or in remission and has a low probability of recurrence or exacerbation;

(3) The past emotional instability was a temporary condition (e.g., one caused by a death, illness, or marital breakup), the situation has been resolved, and the individual is no longer emotionally unstable.

§ 147.12 Guideline J—Criminal conduct.

(a) *The concern.* A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

(b) *Conditions that could raise a security concern and may be disqualifying include:* (1) Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;

(2) A single serious crime or multiple lesser offenses.

(c) *Conditions that could mitigate security concerns include:* (1) The criminal behavior was not recent;

(2) The crime was an isolated incident;

(3) The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life;

(4) The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur;

(5) Acquittal;

(6) There is clear evidence of successful rehabilitation.

§ 147.13 Guideline K—Security violations.

(a) *The concern.* Noncompliance with security regulations raises doubt about an individual's trustworthiness, willingness, and ability to safeguard classified information.

(b) *Conditions that could raise a security concern and may be disqualifying include.* (1) Unauthorized disclosure of classified information;

(2) Violations that are deliberate or multiple or due to negligence.

(c) *Conditions that could mitigate security concerns include actions that:* (1) Were inadvertent;

(2) Were isolated or infrequent;

(3) Were due to improper or inadequate training;

(4) Demonstrate a positive attitude towards the discharge of security responsibilities.

§ 147.14 Guideline L—Outside activities.

(a) *The concern.* Involvement in certain types of outside employment or activities is of security concern if it poses a conflict with an individual's

security responsibilities and could create an increased risk of unauthorized disclosure of classified information.

(b) *Conditions that could raise a security concern and may be disqualifying include any service, whether compensated, volunteer, or employment with:* (1) A foreign country;

(2) Any foreign national;

(3) A representative of any foreign interest;

(4) Any foreign, domestic, or international organization or person engaged in analysis, discussion, or publication of material on intelligence, defense, foreign affairs, or protected technology.

(c) *Conditions that could mitigate security concerns include:* (1) Evaluation of the outside employment or activity indicates that it does not pose a conflict with an individual's security responsibilities;

(2) The individual terminates the employment or discontinues the activity upon being notified that it is in conflict with his or her security responsibilities.

§ 147.15 Guideline M—Misuse of information technology systems.

(a) *The concern.* Noncompliance with rules, procedures, guidelines, or regulations pertaining to information technology systems may raise security concerns about an individual's trustworthiness, willingness, and ability to properly protect classified systems, networks, and information. Information Technology Systems include all related equipment used for the communication, transmission, processing, manipulation, and storage of classified or sensitive information.

(b) *Conditions that could raise a security concern and may be disqualifying include:* (1) Illegal or unauthorized entry into any information technology system;

(2) Illegal or unauthorized modification, destruction, manipulation or denial of access to information residing on an information technology system;

(3) Removal (or use) of hardware, software, or media from any information technology system without authorization, when specifically prohibited by rules, procedures, guidelines or regulations;

(4) Introduction of hardware, software, or media into any information technology system without authorization, when specifically prohibited by rules, procedures, guidelines or regulations.

(c) *Conditions that could mitigate security concerns include:* (1) The misuse was not recent or significant;

(2) The conduct was unintentional or inadvertent;

(3) The introduction or removal of media was authorized;

(4) The misuse was an isolated event;

(5) The misuse was followed by a prompt, good faith effort to correct the situation.

Subpart B—Investigative Standards

§ 147.18 Introduction.

The following investigative standards are established for all United States Government civilian and military personnel, consultants, contractors, employees of contractors, licensees, certificate holders or grantees and their employees and other individuals who require access to classified information, to include Sensitive Compartmented Information and Special Access Programs, and are to be used by government departments and agencies as the investigative basis for final clearance determinations. However, nothing in these standards prohibits an agency from using any lawful investigative procedures in addition to these requirements in order to resolve any issue identified in the course of a background investigation or reinvestigation.

§ 147.19 The three standards.

There are three standards (Attachment D to this subpart part summarizes when to use each one):

(a) The investigation and reinvestigation standards for "L" access authorizations and for access to confidential and secret (including all secret-level Special Access Programs not specifically approved for enhanced investigative requirements by an official authorized to establish Special Access Programs by section in 4.4 of Executive Order 12958) (60 FR 19825, 3 CFR 1995 Comp., p. 33);

(b) The investigation standard for "Q" access authorizations and for access to top secret (including top secret Special Access Programs) and Sensitive Compartmented Information;

(c) The reinvestigation standard for continued access to the levels listed in paragraph (b) of this section.

§ 147.20 Exception to periods of coverage.

Some elements of standards specify a period of coverage (e.g. seven years). Where appropriate, such coverage may be shortened to the period from the subject's eighteenth birthday to the present or to two years, whichever is longer.

§ 147.21 Expanding investigations.

Investigations and reinvestigations may be expanded under the provisions of Executive Order 12968 (60 FR 40245, 3 CFR 1995 Comp., p. 391) and other applicable statutes and Executive Orders.

§ 147.22 Transferability.

Investigations that satisfy the requirements of a given standard and are current meet the investigative requirements for all levels specified for the standard. They shall be mutually and reciprocally accepted by all agencies.

§ 147.23 Breaks in service.

If a person who requires access has been retired or separated from U.S. government employment for less than two years and is the subject of an investigation that is otherwise current, the agency regranting the access will, as a minimum, review an updated Standard Form 86 and applicable records. A reinvestigation is not required unless the review indicates the person may no longer satisfy the standards of Executive Order 12968 (60 FR 40245, 3 CFR 1995 Comp., p. 391); (Attachment D to this subpart, Table 2).

§ 147.24 The national agency check.

The National Agency Check is a part of all investigations and reinvestigations. It consists of a review of;

(a) Investigative and criminal history files of the FBI, including a technical fingerprint search;

(b) OPM's Security/Suitability Investigations Index;

(c) DoD's Defense Clearance and Investigations Index;

(d) Such other national agencies (e.g., CIA, INS) as appropriate to the individual's background.

Attachment A to Subpart B—Standard A—National Agency Check With Local Agency Checks and Credit Check (NACLC)

(a) *Applicability.* Standard A applies to investigations and reinvestigations for;

(1) Access to CONFIDENTIAL and SECRET (including all SECRET-level Special Access Programs not specifically approved for enhanced investigative requirements by an official authorized to establish Special Access Programs by sect. 4.4 of Executive Order 12958) (60 FR 19825, 3 CFR 1995 Comp., p. 333);

(2) "L" access authorizations.

(b) *For Reinvestigation: When to Reinvestigate.* The reinvestigation may be initiated at any time following completion of, but not later than ten years (fifteen years for CONFIDENTIAL) from the date of, the previous investigation or reinvestigation. (Attachment D to this subpart, Table 2, reflects the specific requirements for when to request a reinvestigation, including when there has been a break in service.)

(c) *Investigative Requirements.* Investigative requirements are as follows:

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(1) *Completion of Forms:* Completion of Standard Form 86, including applicable releases and supporting documentation.

(2) *National Agency Check:* Completion of a National Agency Check.

(3) *Financial Review:* Verification of the subject's financial status, including credit bureau checks covering all locations where the subject has resided, been employed, or attended school for six months or more for the past seven years.

(4) *Date and Place of Birth:* Corroboration of date and place of birth through a check of appropriate documentation, if not completed in any previous investigation; a check of Bureau of Vital Statistics records when any discrepancy is found to exist.

(5) *Local Agency Checks:* As a minimum, all investigations will include checks of law enforcement agencies having jurisdiction where the subject has lived, worked, and/or attended school within the last five years, and, if applicable, of the appropriate agency for any identified arrests.

(d) *Expanding the Investigation:* The investigation may be expanded if necessary to determine if access is clearly consistent with the national security.

Attachment B to Subpart B—Standard B—Single Scope Background Investigation (SSBI)

(a) *Applicability.* Standard B applies to initial investigations for:

(1) Access to TOP SECRET (including TOP SECRET Special Access Programs) and Sensitive Compartment Information;

(2) "Q" access authorizations.

(b) *Investigative Requirements.* Investigative requirements are as follows:

(1) *Completion of Forms:* Completion of Standard Form 86, including applicable releases and supporting documentation.

(2) *National Agency Check:* Completion of a National Agency Check.

(3) *National Agency Check for the Spouse or Cohabitant (if applicable):* Completion of a National Agency Check, without fingerprint cards, for the spouse or cohabitant.

(4) *Date and Place of Birth:* Corroboration of date and place of birth through a check of appropriate documentation; a check of Bureau of Vital Statistics records when any discrepancy is found to exist.

(5) *Citizenship:* For individuals born outside the United States, verification of US citizenship directly from the appropriate registration authority; verification of US citizenship or legal status of foreign-born immediate family members (spouse, cohabitant, father, mother, sons, daughters, brothers, sisters).

(6) *Education:* Corroboration of most recent or most significant claimed attendance, degree, or diploma. Interviews of appropriate educational sources if education is a primary activity of the subject during the most recent three years.

(7) *Employment:* Verification of all employments for the past seven years; personal interviews of sources (supervisors, coworkers, or both) for each employment of six months or more; corroboration through records or sources of all periods of unemployment exceeding sixty days; verification of all prior federal and military service, including discharge type. For military members, all service within one branch of the armed forces will be considered as one employment, regardless of assignments.

(8) *References:* Four references, of whom at least two are developed; to the extent practicable, all should have social knowledge of the subject and collectively span at least the last seven years.

(9) *Former Spouse:* An interview of any former spouse divorced within the last ten years.

(10) *Neighborhoods:* Confirmation of all residences for the last three years through appropriate interviews with neighbors and through records reviews.

(11) *Financial Review:* Verification of the subject's financial status, including credit bureau checks covering all locations where subject has resided, been employed, and/or attended school for six months or more for the last seven years.

(12) *Local Agency Checks:* A check of appropriate criminal history records covering all locations where, for the last ten years, the subject has resided, been employed, and/or attended school for six months or more, including current residence regardless of duration.

Note: If no residence, employment, or education exceeds six months, local agency checks should be performed as deemed appropriate.

(13) *Public Records:* Verification of divorces, bankruptcies, and other court actions, whether civil or criminal, involving the subject.

(14) *Subject Interview:* A subject interview, conducted by trained security, investigative, or counterintelligence personnel. During the investigation, additional subject interviews may be conducted to collect relevant information, to resolve significant inconsistencies, or both. Sworn statements and unsworn declarations may be taken whenever appropriate.

(15) *Polygraph (only in agencies with approved personnel security polygraph programs):* In departments or agencies with policies sanctioning the use of the polygraph for personnel security purposes, the investigation may include a polygraph examination, conducted by a qualified polygraph examiner.

(c) *Expanding the Investigation.* The investigation may be expanded as necessary. As appropriate, interviews with anyone able to provide information or to resolve issues, including but not limited to cohabitants, relatives, psychiatrists, psychologists, other medical professionals, and law enforcement professionals may be conducted.

Attachment C to Subpart B—Standard C—Single Scope Background Investigation Periodic Reinvestigation (SSBI–PR)

(a) *Applicability.* Standard C applies to reinvestigation for:

(1) *Access to TOP SECRET (including TOP SECRET Special Access Programs) and Sensitive Compartmented Information;*

(2) "Q" access authorizations.

(b) *When to Reinvestigate.* The reinvestigation may be initiated at any time following completion of, but not later than five years from the date of, the previous investigation (see Attachment D to this subpart, Table 2).

(c) *Reinvestigative Requirements.* Reinvestigative requirements are as follows:

(1) *Completion of Forms:* Completion of Standard Form 86, including applicable releases and supporting documentation.

(2) *National Agency Check:* Completion of a National Agency Check (fingerprint cards are required only if there has not been a previous valid technical check of the FBI).

(3) *National Agency Check for the Spouse or Cohabitant (if applicable):* Completion of a National Agency Check, without fingerprint cards, for the spouse or cohabitant. The National Agency Check for the spouse or cohabitant is not required if already completed in conjunction with a previous investigation or reinvestigation.

(4) *Employment:* Verification of all employments since the last investigation. Attempts to interview a sufficient number of sources (supervisors, coworkers, or both) at all employments of six months or more. For military members, all services within one branch of the armed forces will be considered as one employment, regardless of assignments.

(5) *References:* Interviews with two character references who are knowledgeable of the subject; at least one will be a developed reference. To the extent practical, both should have social knowledge of the subject and collectively span the entire period of the reinvestigation. As appropriate, additional interviews may be conducted, including with cohabitants and relatives.

(6) *Neighborhoods:* Interviews of two neighbors in the vicinity of the subject's most recent residence of six months or more. Confirmation of current residence regardless of length.

(7) *Financial Review:—Financial Status:* Verification of the subject's financial status, including credit bureau checks covering all locations where subject has resided, been employed, and/or attended school for six months or more for the period covered by the reinvestigation;

(ii) *Check of Treasury's Financial Data Base:* Agencies may request the Department of the Treasury, under terms and conditions prescribed by the Secretary of the Treasury, to search automated data bases consisting of reports of currency transactions by financial institutions, international transportation of currency or monetary instruments, foreign bank and financial accounts, and transactions under $10,000 that are reported as possible money laundering violations.

(8) *Local Agency Checks:* A check of appropriate criminal history records covering all locations where, during the period covered by the reinvestigation, the subject has resided, been employed, and/or attended school for six months or more, including current residence regardless of duration. (Note: If no residence, employment, or education exceeds six months, local agency checks should be performed as deemed appropriate.)

(9) *Former Spouse:* An interview with any former spouse unless the divorce took place before the date of the last investigation or reinvestigation.

(10) *Public Records:* Verification of divorces, bankruptcies, and other court actions, whether civil or criminal, involving the subject since the date of the last investigation.

(11) *Subject Interview:* A subject interview, conducted by trained security, investigative, or counterintelligence personnel. During the reinvestigation, additional subject interviews may be conducted to collect relevant information, to resolve significant inconsistencies, or both. Sworn statements and unsworn declarations may be taken whenever appropriate.

(d) *Expanding the Reinvestigation:* The reinvestigation may be expanded as necessary. As appropriate, interviews with anyone able to provide information or to resolve issues, including but not limited to cohabitants, relatives, psychiatrists, psychologists, other medical professionals, and law enforcement professionals may be conducted.

Attachment D to Subpart B—Decision Tables

TABLE 1.—WHICH INVESTIGATION TO REQUEST

If the requirement is for	And the person has this access	Based on this investigation	Then the investigation required is	Using standard
Confidental Secret; "L"	None	None	NACLC	A
		Out of date NACLC or SSBI.		
	Conf, Sec; "L"			
Top Secret, SCI; "Q"	None	None	SSBI	B
	None; Conf, Sec; "L"	Current or out of date NACLC		
		Out of date SSBI		
	TS, SCI; "Q"		SSBI–PR	C

TABLE 2.—REINVESTIGATION REQUIREMENTS

If the requirement is for	And the age of the investigation is	Type required if there has been a break in service of	
		0–23 months	24 month's or more
Confidential	0 to 14 years. 11 mos	None (note 1)	NACLC
	15 yrs. or more	NACLC.	
Secret; "L"	0 to 9 yrs 11 mos	None (note 1).	
	10 yrs. or more	NACLC	
Top Secret, SCI; "Q"	0 to 4 yrs. 11 mos	None (note 1)	SSBI
	5 yrs or more	SSBI–PR.	

Note: As a minimum, review an updated Standard Form 84 and applicable records. A reinvestigation (NACLC or SSBI–PR) is not required unless the review indicates the person may no longer satisfy the standards of Executive Order 12968.

Subpart C—Guidelines for Temporary Access

§ 147.28 Introduction.

The following minimum investigative standards, implementing section 3.3 of Executive Order 12968, *Access to Classified Information,* are established for all United States Government and military personnel, consultants, contractors, subcontractors, employees of contractors, licensees, certificate holders or grantees and their employees and other individuals who require access to classified information before the appropriate investigation can be completed and a final determination made.

§ 147.29 Temporary eligibility for access.

Based on a justified need meeting the requirements of section 3.3 of Executive Order 12968, temporary eligibility for access may be granted before investigations are complete and favorably adjudicated, where official functions must be performed prior to completion of the investigation and adjudication process. The temporary eligibility will be valid until completion of the investigation and adjudication; however, the agency granting it may revoke it at any time based on unfavorable information identified in the course of the investigation.

§ 147.30 Temporary eligibility for access at the confidential and secret levels and temporary eligibility for "L" access authorization.

As a minimum, such temporary eligibility requires completion of the Standard Form 86, including any applicable supporting documentation, favorable review of the form by the appropriate adjudicating authority, and submission of a request for an expedited National Agency Check with Local Agency Checks and Credit (NACLC).

§ 147.31 Temporary eligibility for access at the top secret levels and temporary eligibility for "Q" access authorization: For someone who is the subject of a favorable investigation not meeting the investigative standards for access at those levels.

As a minimum, such temporary eligibility requires completion of the Standard Form 86, including any applicable supporting documentation, favorable review of the form by the appropriate adjudicating authority, and expedited submission of a request for a Single Scope Background Investigation (SSBI).

§ 147.32 Temporary eligibility for access at the top secret and SCI levels and temporary eligibility for "Q" access authorization: For someone who is not the subject of a current, favorable personnel or personnel-security investigation of any kind.

As a minimum, such temporary eligibility requires completion of the Standard Form 86, including any applicable supporting documentation, favorable review of the form by the appropriate adjudicating authority, immediate submission of a request for

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immediate submission of a request for an expedited Single Scope Background Investigation (SSBI), and completion and favorable review by the appropriate adjudicating authority of relevant criminal history and investigative records of the Federal Bureau of Investigation and of information in the Security/Suitability Investigations Index (SII) and the Defense Clearance and Investigations Index (DCII).

§ 147.33 Additional requirements by agencies.

Temporary eligibility for access must satisfy these minimum investigative standards, but agency heads may establish additional requirements based on the sensitivity of the particular, identified categories of classified information necessary to perform the lawful and authorized functions that are the basis for granting temporary eligibility for access. However, no additional requirements shall exceed the common standards for background investigations developed under section 3.2(b) of Executive Order 12968. Temporary eligibility for access is valid only at the agency granting it and at other agencies who expressly agree to accept it and acknowledge understanding of its investigative basis. It is further subject to limitations specified in sections 2.4(d) and 3.3 of Executive Order 12968, *Access to Classified Information*.

Dated: January 22, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–1955 Filed 1–29–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 148

RIN 0790–AG55

National Policy on Reciprocity of Facilities and Guidelines for Implementation of Reciprocity

AGENCY: Department of Defense.

ACTION: Interim final rule.

SUMMARY: This rule is published to make physical facilities available for reciprocal use in the storage of classified information. Once a facility has been certified as suitable for classified use by one organization, it may also be used by another for like purposes. No impact on the public is foreseen.

DATES: This rule is effective September 16, 1997. Comments must be received by March 31, 1998.

ADDRESSES: Forward comments to the Security Policy Board Staff, 1215 Jefferson Davis Highway, Suite 1101, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT:

Mr. T. Thompson, 703–602–9969.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, Regulatory Planning and Review

It has been determined that this interim rule (32 CFR part 148) is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, Regulatory Flexibility Act (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This part will streamline personnel security clearance procedures and make the process more efficient.

Public Law 96–511, Paperwork Reduction Act (44 U.S.C. Chapter 35)

It has been certified that this part does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 148

Classified information, Investigations, Security measures.

Accordingly, Title 32 of the Code of Federal Regulations, Chapter I, subchapter C is amended to add part 148 to read as follows:

PART 148—NATIONAL POLICY AND IMPLEMENTATION OF RECIPROCITY OF FACILITIES

Subpart A—National Policy on Reciprocity of Use and Inspections of Facilities

148.1 Interagency reciprocal acceptance.
148.2 Classified programs.
148.3 Security review.
148.4 Policy documentation.
148.5 Identification of the security policy board.
148.6 Agency review.

Subpart B—Guidelines for the Implementation and Oversight of the Policy on Reciprocity of Use and Inspections of Facilities

148.10 General.
148.11 Policy.
148.12 Definitions.
148.13 Responsibilities.
148.14 Procedures.

Authority: E.O. 12968 (60 FR 40245, 3 CFR 1995 Comp., p. 391.)

Subpart A—National Policy on Reciprocity of Use and Inspections of Facilities

§ 148.1 Intergency reciprocal acceptance.

Interagency reciprocal acceptance of security policies and procedures for approving, accrediting, and maintaining the secure posture of shared facilities will reduce aggregate costs, promote interoperability of agency security systems, preserve vitality of the U.S. industrial base, and advance national security objectives.

§ 148.2 Classified programs.

Once a facility is authorized, approved, certified, or accredited, all U.S. Government organizations desiring to conduct classified programs at the facility at the same security level shall accept the authorization, approval, certification, or accreditation without change, enhancements, or upgrades. Executive Order, Safeguarding Directives, National Industrial Security Program Operating Manual (NISPOM), the NISPOM Supplement, the Director of Central Intelligence Directives, interagency agreements, successor documents, or other mutually agreed upon methods shall be the basis for such acceptance.

§ 148.3 Security review.

After initial security authorization, approval, certification, or accreditation, subsequent security reviews shall normally be conducted no more frequently than annually.

Additionally, such reviews shall be aperiodic or random, and be based upon risk management principles. Security reviews may be conducted "for cause", to follow up on previous findings, or to

accomplish close-out actions. Visits may be made to a facility to conduct security support actions, administrative inquiries, program reviews, and approvals as deemed appropriate by the cognizant security authority or agency.

§ 148.4 Policy documentation.

Agency heads shall ensure that any policy documents their agency issues setting out facilities security policies and procedures incorporate the policy set out herein, and that such policies are reasonable, effective, efficient, and enable and promote interagency reciprocity.

§ 148.5 Idenfification of the security policy board.

Agencies which authorize, approve, certify, or accredit facilities shall provide to the Security Policy Board Staff a points of contact list to include names and telephone numbers of personnel to be contacted for verification of authorized, approved, certified, or accredited facility status. The Security Policy Board Staff will publish a comprehensive directory of points of contact.

§ 148.6 Agency review.

Agencies will continue to review and assess the potential value added to the process of co-use of facilities by development of electronic data retrieval across government. As this review continues, agencies creating or modifying facilities databases will do so in a manner which facilitates community data sharing, interest of national defense or foreign policy.

Subpart B—Guidelines for the Implementation and Oversight of the Policy on Reciprocity of use and Inspections of Facilities

§ 148.10 General.

(a) Redundant, overlapping, and duplicative policies and practices that govern the co-use of facilities for classified purposes have resulted in excessive protection and unnecessary expenditure of funds. Lack of reciprocity has also impeded achievement of national security objectives and adversely affected economic and technological interest.

(b) Interagency reciprocal acceptance of security policies and procedures for approving, accrediting, and maintaining the secure posture of shared facilities will reduce the aggregate costs, promote interoperability of agency security systems, preserve the vitality of the U.S. industrial base, and advance national security objectives.

(c) Agency heads, or their designee, are encouraged to periodically issue written affirmations in support of the policies and procedures prescribed herein and in the Security Policy Board (SPB) policy, entitled "Reciprocity of Use and Inspections of Facilities."

(d) The policies and procedures prescribed herein shall be applicable to all agencies. This document does not supersede the authority of the Secretary of Defense under Executive Order 12829 (58 FR 3479, 3 CFR 1993 Comp., p. 570); the Secretary of Energy or the Chairman of the Nuclear Regulatory Commission under the Atomic Energy Act of 1954, as amended; the Secretary of State under the Omnibus Diplomatic Security and Anti-Terrorism Act of 1986; the Secretaries of the military departments and military department installation Commanders under the Internal Security Act of 1950; the Director of Central Intelligence under the National Security Act of 1947, as amended, or Executive Order 12333; the Director of the Information Security Oversight Office under Executive Order 12829 or Executive Order 12958 (60 FR 19825, 3 CFR 1995 Comp., p. 333); or substantially similar authority instruments assigned to any other agency head.

§ 148.11 Policy.

(a) Agency heads, or their designee, shall ensure that security policies and procedures for which they are responsible are reasonable, effective, and efficient, and that those policies and procedures enable and promote interagency reciprocity.

(b) To the extent reasonable and practical, and consistent with US law, Presidential decree, and bilateral and international obligations of the United States, the security requirements, restrictions, and safeguards applicable to industry shall be equivalent to those applicable within the Executive Branch of government.

(c) Once a facility is authorized approved, certified, or accredited, all government organizations desiring to conduct classified programs at the facility at the same security level shall accept the authorization, approval, certification, or accreditation without change, enhancements, or upgrades.

§ 148.12 Definitions.

Agency. Any "executive agency," as defined in 5 U.S.C. 105; any "Military department" as defined in 5 U.S.C. 102; and any other entity within the Executive Branch that comes into possession of classified information.

Classified Information. All information that requires protection under Executive Order 12958, or any of its antecedent orders, and the Atomic Energy Act of 1954, as amended.

Cognizant Security Agency (CSA). Those agencies that have been authorized by Executive Order 12829 to establish an industrial security program for the purpose of safeguarding classified information disclosed or released to industry.

Cognizant Security Office (CSO). The office or offices delegated by the head of a CSA to administer industrial security in a contractor's facility on behalf of the CSA.

Facility. An activity of a government agency or cleared contractor authorized by appropriate authority to conduct classified operations or to perform classified work.

Industry. Contractors, licensees, grantees, and certificate holders obligated by contract or other written agreement to protect classified information under the National Industrial Security Program.

National Security. The national defense and foreign relations of the United States.

Senior Agency Official. Those officials, pursuant to Executive Order 12958, designated by the agency head who are assigned the responsibility to direct and administer the agency's information security program.

§ 148.13 Responsibilities.

(a) Each Senior Agency Official shall ensure that adequate reciprocity provisions are incorporated within his or her regulatory issuances that prescribe agency safeguards for protecting classified information.

(b) Each Senior Agency Official shall develop, implement, and oversee a program that ensures agency personnel adhere to the policies and procedures prescribed herein and the reciprocity provisions of the National Industrial Security Program Operating Manual (NISPOM).

(c) Each Senior Agency Official must ensure that implementation encourages reporting of instances of non-compliance, without fear of reprisal, and each reported instance is aggressively acted upon.

(d) The Director, Information Security Oversight Office (ISOO), consistent with his assigned responsibilities under Executive Order 12829, serves as the central point of contact within Government to consider and take action on complaints and suggestions from industry concerning alleged violations of the reciprocity provisions of the NISPOM.

(e) The Director, Security Policy Board Staff (D/SPBS) or his/her designee, shall serve as the central point

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of contact within Government to receive from Federal Government employees alleged violations of the reciprocity provisions prescribed herein and the policy "Reciprocity of Use and Inspections of Facilities" of the SPB.

§ 148.14 Procedures.

(a) Agencies that authorize, approve, certify, or accredit facilities shall provide to the SPB Staff a points of contact list to include names and telephone numbers of personnel to be contacted for verification of the status of facilities. The SPB Staff will publish a comprehensive directory of agency points of contact.

(b) After initial security authorization, approval, certification, or accreditation, subsequent reviews shall normally be conducted no more frequently than annually. Additionally, such reviews shall be aperiodic or random, and be based upon risk-management principles. Security Reviews may be conducted "for cause", to follow up on previous findings, or to accomplish close-out actions.

(c) The procedures employed to maximize interagency reciprocity shall be based primarily upon existing organizational reporting channels. These channels should be used to address alleged departures from established reciprocity requirements and should resolve all, including the most egregious instances of non-compliance.

(d) Two complementary mechanisms are hereby established to augment existing organizational channels: (1) An accessible and responsive venue for reporting and resolving complaints/reported instances of non-compliance. Government and industry reporting channels shall be as follows:

(1) *Governnment.* (A) Agency employees are encouraged to bring suspected departures from applicable reciprocity requirements to the attention of the appropriate security authority in accordance with established agency procedures.

(B) Should the matter remain unresolved, the complainant (employee, Security Officer, Special Security Officer, or similar official) is encouraged to report the matter formally to the Senior Agency Official for resolution.

(C) Should the Senior Agency Official response be determined inadequate by the complainant, the matter should be reported formally to the Director, Security Policy Board Staff (D/SPBS). The D/SPBS, may revisit the matter with the Senior Agency Official or refer the matter to the Security Policy Forum as deemed appropriate.

(D) Should the matter remain unresolved, the Security Policy Forum may consider referral to the SPB, the agency head, or the National Security Council as deemed appropriate.

(ii) *Industry.* (A) Contractor employees are encouraged to bring suspected departures from the reciprocity provisions of the NISPOM to the attention to their Facility Security Officer (FSO) or Contractor Special Security Officer (CSSO), as appropriate, for resolution.

(B) Should the matter remain unresolved, the complainant (employee, FSO, or CSSO) is encouraged to report the matter formally to the Cognizant Security Office (CSO) for resolution.

(C) Should the CSO responses be determined inadequate by the complainant, the matter should be reported formally to the Senior Agency Official within the Cognizant Security Agency (CSA) for resolution.

(D) Should the Senior Agency Official response be determined inadequately by the complainant, the matter should be reported formally to the Director, information Security Oversight Office (ISOO) for resolution.

(E) The Director, ISOO, may revisit the matter with the Senior Agency Official or refer the matter to the agency head or the National Security Council as deemed appropriate.

(2) An annual survey administered to a representative sampling of agency and private sector facilities to assess overall effectiveness of agency adherence to applicable reciprocity requirements.

(i) In coordination with the D/SPBS, the Director, ISOO, as Chairman of the NISP Policy Advisory Committee (NISPPAC), shall develop and administer an annual survey to a representative number of cleared contractor activities/employees to assess the effectiveness of interagency reciprocity implementation. Administration of the survey shall be coordinated fully with each affected Senior Agency Official.

(ii) In coordination with the NISPPAC, the D/SPBS shall develop and administer an annual survey to a representative number of agency activities/personnel to assess the effectiveness of interagency reciprocity implementation. Administration of the survey shall be coordinated fully with each affected Senior Agency Official.

(iii) The goal of annual surveys should not be punitive but educational. All agencies and departments have participated in the crafting of these facilities policies, therefore, non-compliance is a matter of internal education and direction.

(e) Agencies will continue to review and assess the potential value added to the process of co-use of facilities by development of electronic data retrieval across government.

Dated: January 22, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–1956 Filed 1–29–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 149

RIN 0790–AG56

National Policy on Technical Surveillance Countermeasures

AGENCY: Department of Defense.

ACTION: Interim final rule.

SUMMARY: This rule is published to limit the use of technical surveillance countermeasures within the boundaries of the U.S. to cases where there is a reasonable showing of threat. No impact on the public is forseen.

DATES: This rule is effective September 16, 1997. Comments must be received by March 31, 1998.

ADDRESSES: Forward comments to the Security Policy Board Staff, 1215 Jefferson Davis Highway, Suite 1101, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. T. Thompson, 703–602–9969.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, Regulatory Planning and Review

It has been determined that this interim rule (32 CFR Part 149) is not a significant regulatory action. The rule does not:

"(1) Have an annual effect to the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment, public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by other Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, Regulatory Flexibility Act (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This part will streamline personnel security clearance procedures and make the process more efficient.

Public Law 96–511, Paperwork Reduction Act (44 U.S.C. Chapter 35)

It has been certified that this part does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 149

Classified information, Investigations, Security measures Accordingly; Title 32 of the Code of Federal Regulations, Chapter I, subchapter C is amended to add part 149 to read as follows:

Part 149—Policy on Technical Surveillance Countermeasures

Sec.

149.1 Policy.
149.2 Responsibilities.
149.3 Definitions.

Authority: E.O. 12968 (60 FR 40245, 3 CFR 1995 Comp., p. 391.)

§ 149.1 Policy.

(a) Heads of federal departments and agencies which process, discuss, and/or store classified national security information, restricted data, and sensitive but unclassified information, shall, in response to specific threat data and based on risk management principles, determine the need for Technical Surveillance Countermeasures (TSCM).

To obtain maximum effectiveness by the most economical means in the various TSCM programs, departments and agencies shall exchange technical information freely; coordinate programs; practice reciprocity; and participate in consolidated programs, when appropriate.

§ 149.2 Responsibilities.

(a) Heads of U.S. Government departments and agencies which plan, implement, and manage TSCM programs shall:

(1) Provide TSCM support consisting of procedures and countermeasures determined to be appropriate for the facility, consistent with risk management principles.

(2) Report to the Security Policy Board, attention: Chair, Facilities Protection Committee (FPC), for appropriate dissemination, all-source intelligence that concerns technical surveillance threats, devices, techniques, and unreported hazards, regardless of the source or target, domestic or foreign.

(3) Train a professional cadre of personnel in TSCM techniques.

(4) Ensure that the FPC and Training and Professional Development Committee are kept apprised of their TSCM program activities as well as training and research and development requirements.

(5) Assist other departments and agencies, in accordance with federal law, with TSCM services of common concern.

(6) Coordinate, through the FPC, proposed foreign disclosure of TSCM equipment and techniques.

(b) The FPC shall advise and assist the Security Policy Board in the development and review of TSCM policy, including guidelines, procedures, and instructions. The FPC shall:

(1) Coordinate TSCM professional training, research, development, test, and evaluation programs.

(2) Promote and foster joint procurement of TSCM equipment.

(3) Evaluate the impact on the national security of foreign disclosure of TSCM equipment or techniques and recommend policy changes as needed.

(4) Develop guidance for use in obtaining intelligence information on the plans, capabilities and actions of organizations hostile to the U.S. Government concerning technical penetrations and countermeasures against them.

(5) Biennially, review, update and disseminate the national strategy for TSCM.

§ 149.3 Definitions.

Classified National Security Information (CNSI). Information that has been determined pursuant to Executive Order 12958 (60 FR 19825, 3 CFR 1995 Comp., p. 333) or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

Restricted Data (RD). All data concerning design, manufacture or utilization of atomic weapons; the production of special nuclear material; or the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the RD category pursuant to section 102 of the Atomic Energy Act of 1954, as amended.

Sensitive but Unclassified. Any information, the loss, misuse, or unauthorized access to or modification of which could adversely affect the national interest or the conduct of federal programs, or the privacy to which individuals are entitled under 5 U.S.C. 552a, but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.

Technical Surveillance Countermeasures (TSCM). Techniques and measures to detect and nullify a wide variety of technologies that are used to obtain unauthorized access to classified national security information, restricted data, and/or sensitive but unclassified information.

Dated: January 22, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–1957 Filed 1–29–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–97–004]

RIN 2115–AE47

Drawbridge Operation Regulations; Minnesota River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the 24 hour advance notice requirement from the regulation governing operation of drawbridges over the Minnesota River between the mouth and LeSueur, MN. This action is being taken to update the regulation to reflect existing conditions and to ensure the reasonable needs of navigation are met. The change will require drawbridges on that reach of the river to operate under the General Drawbridge Operating Regulation contained in 33 CFR part 117 subpart A and thus open on demand.

DATES: This final rule is effective March 2, 1998.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Director, Western Rivers Operations, Bridge Branch, 1222 Spruce Street, Suite 2.107f, St. Louis, Missouri, 63103–2832, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (314) 539–3900, extension 378.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge

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Administrator, Director, Western Rivers Operations, (314) 539–3900, extension 378.

SUPPLEMENTARY INFORMATION:

Regulatory History

On September 4, 1997 the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulation for the Minnesota River in the **Federal Register** (62 FR 46697). The Coast Guard received no comments on the proposed rulemaking. No public hearing was requested, and none was held.

Background

In the past, the low number of vessel transits that required draw openings on the Minnesota River from its mouth through LeSueur, MN did not require the draw at Savage, MN to be manned 24 hours per day. Thus, the existing regulation, 33 CFR 117.663(a), required that river traffic provide a 24 hours advance notice in the event the railroad drawbridge at Savage, MN required opening. However, in the last several years, a significant increase in river traffic on this stretch of the Minnesota River, combined with the increased importance of that traffic's cargoes, has resulted in the need to open this draw on demand. In order to accommodate this increase in river traffic—and to better facilitate commerce—the Coast Guard organized a meeting between waterway users and the owners of the only affected drawbridge at Savage, MN, Mile 14.3 on the Minnesota River. This meeting resulted in an agreement between the waterway users and the bridge owners to eliminate the 24-hour advance-notice-opening requirement and institute an open-on-demand policy for the Savage, MN railroad bridge. Thus, the requirement in 33 CFR 117.663(a), that river traffic shall provide a 24 hours advance notice before the draw will be opened, is no longer applicable and requires deletion. All bridges at and below LeSueur, MN will now operate under the general bridge requirements found in 33 CFR Part 117 Subpart A. That is, the draws will open upon demand.

As previously mentioned, the only bridge that will be affected by this proposed rulemaking is the railroad drawbridge at Savage, MN. The regulation maintains the existing language in the second paragraph of 33 CFR 117.663 stating that the draws of bridges above LeSueur, MN need not be opened for the passage of vessels.

Discussion of Comments and Changes

No comments were received during the comment period for the Notice of Proposed Rulemaking. Removing the 24-hour-advance-notice requirement in 33 CFR 117.663(a) requires all drawbridges located downstream of LeSueur, MN on the Minnesota River to open upon demand for passage of river traffic as required by the General Drawbridge Operating Regulation, 33 CFR Part 117 Subpart A. The only bridge affected is the railroad drawbridge at Savage, MN.

Regulatory Evaluation

This rule is not a significant regulatory action under 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory polices and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The rule affects one drawbridge and is not expected to significantly alter the day-to-day activities of any businesses. This evaluation is supported by the fact that the Coast Guard did not receive any comments on the expense of implementing the regulation. Moreover, since this change reflects existing operating conditions at the Savage, MN railroad drawbridge there are no impacts and additional costs associated with this rulemaking.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this change has significant economic impact on the substantial number of small entities. Small entities include (1) small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and (2) governmental jurisdictions with populations of less than 50,000. Specifically, since this rule only affects one drawbridge and the owners of that draw have already implemented an open-on-demand, policy the Coast Guard expects the impact of this change to be minimal. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et se.*) that this change will not have a significant economic impact on a substantial number of small entities.

Assance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Any individual that qualifies or, believes he or she qualifies as a small entity, and requires assistance with the provisions of this rule, may contact Mr. Roger K. Wiebusch, Bridge Administrator, Director, Western Rivers Operations, (314) 539–3900 extension 378.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Agreement.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2(e)(32)(e) of the NEPA Implementing Procedures, COMDTINST M16475.1B, this change is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found not to have significant effect on the human environment. A "Categorical Exclusion Determination" is available for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

1. The authority citation for 33 CFR part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.663 is revised to read as follows:

§ 117.663 Minnesota River.

The draws of bridges above LeSueur need not be opened for the passage of vessels.

Dated: January 20, 1998.

T.W. Josiah,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 98–2300 Filed 1–29–98; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300604; FRL–5766–5]
RIN 2070–AB78

Carboxin; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the fungicide carboxin and its metabolites in or on onion seed at 0.2 parts per million (ppm) for an additional 1-year period, to January 31, 1999. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on onion seed. Additionally, this rule changes the commodity expression for the tolerance from "onion seed" to "onions, dry bulb." Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective January 30, 1998. Objections and requests for hearings must be received by EPA, on or before March 31, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300604], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300604], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 267, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–308–9362; e-mail: schaible.stephen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of February 3, 1997 (62 FR 4911) (FRL–5584–5), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of carboxin and its metabolites in or on onion seed at 0.2 ppm, with an expiration date of January 17, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of carboxin on onion seed for this year's growing season due to the urgent and non-routine situation resulting from a lack of effective registered pesticides or alternative practices to control onion smut in northern onion producing States. After having reviewed the submission, EPA concurs that emergency conditions exist for these States. EPA has authorized under FIFRA section 18 the use of carboxin on onion seed for control of onion smut in onions, dry bulb.

EPA assessed the potential risks presented by residues of carboxin in or on onions, dry bulb. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of February 3, 1997 (62 FR 4911). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1-year period. Although this tolerance will expire and is revoked on January 31, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on onions, dry bulb after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by March 31, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is

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requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 51/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300604]. No CBI should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

III. Regulatory Assessment Requirements

This final rule extends a time-limited tolerancethat was previously extended by EPA under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

Since this extension of an existing time-limited tolerance does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 14, 1998.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.301 is amended by adding a heading to paragraph (a); by revising paragraph (b); and by adding and reserving paragraphs (c) and (d) with headings to read as follows:

§ 180.301 Carboxin; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* A time-limited tolerance is established for residues of the combined residues (free and bound) of the fungicide carboxin (5,6-dihydro-2-methyl-1,4-oxathiin-3-carboxanilide) and its sulfoxide metabolite (5,6-dihydro-3-carboxanilide-2-methyl-1,4-oxathiin-4-oxide), each expressed as the parent compund in connection with use of the pesticide under section 18 emergency exemption granted by EPA. The tolerance will expire and is revoked on the date specified in the following table:

Commodity	Parts per million	Expiration/revocation date
Onions, dry bulb	0.2	1/31/99

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 98–2212 Filed 1–29–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5956–4]

Tennessee; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Tennessee has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Tennessee's revision consists of the provisions contained in rules promulgated between July 1, 1993 through June 30, 1994, otherwise known as RCRA Cluster IV. These requirements are listed in section B of this document. The Environmental Protection Agency (EPA) has reviewed Tennessee's application and has made a decision, subject to public review and comment, that Tennessee's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Tennessee's hazardous waste program revisions. Tennessee's application for program revision is available for public review and comment.

DATES: Final authorization for Tennessee's program revision shall be effective March 31, 1998, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Tennessee's program revision application must be received by the close of business, March 2, 1998.

ADDRESSES: Copies of Tennessee's program revision application are available during normal business hours at the following addresses for inspection and copying: Tennessee Department of Environment and Conservation, Division of Solid Waste Management, 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243–1535; U.S. EPA Region 4, Library, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104; (404) 562–8190. Written comments should be sent to Narindar Kumar at the address listed below.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-3104; (404) 562–8440.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260–268 and 124 and 270.

B. Tennessee

Tennessee initially received final authorization for its base RCRA program effective on February 5, 1985. Tennessee has received authorization for revisions to its program on July 22, 1996, October 23, 1995, July 7, 1995, July 31, 1992, and August 11, 1987. In June 1995, Tennessee submitted a program revision application for additional program approvals. Today, Tennessee is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Tennessee's application and has made an immediate final decision that Tennessee's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Tennessee. The public may submit written comments on EPA's immediate final decision up until March 2, 1998.

Copies of Tennessee's application for these program revisions are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

Approval of Tennessee's program revisions shall become effective March 31, 1998, unless an adverse comment pertaining to the State's revisions discussed in this document is received by the end of the comment period.

If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a document containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision. EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Tennessee is today seeking authority to administer the following Federal requirements promulgated between July 1, 1993 through June 30, 1994.

Checklist	Federal requirement	FR promulgation date	HSWA or FR reference	State authority
125	Boilers and Industrial Furnaces; Changes for Consistency with New Air Regulations.	7/20/93	58 FR 38816	TCA 68–212–106(a); 68–212–107(a) & (d)(1,3,5–6) TRC 1200–1–11–.01(2)(b); .09(1)(a).
126	Test and Monitoring Activities	8/31/93	58 FR 46040	TCA 68–212–104(7); 68–212–106(a)(1); 68–212–107(d)(1); TRC 1200–1–11–.01(2)(b); .01(3)(c); .02(3)(a); .02(5)(a); .06(10)(a); .06(14)(a); .05(10)(a); .05(14)(a); .10(1)(a); .10(3)(a); .10(5)(a); .01(2)(b); .07(5)(b); .07(1)(e); .07(1)(j).
127	Boilers and Industrial Furnaces; Administrative Stay and Interim Standards for Bevel Residues.	11/9/93	58 FR 59598	TCA 68–212–106(a)(1); 68–212–107(a) & (d)(1)(3)(5)(6); TRC 1200–1–11–.09(1)(a).

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Checklist	Federal requirement	FR promulgation date	HSWA or FR reference	State authority
128	Wastes From the Use of Chlorophenolic Formulations in Wood Surface Protection.	1/4/94	59 FR 458	TCA 68–212–104 (7); 68–212–106(a)(1); 68–212–107 (d)(1); TRC 1200–1–11–.01(2)(b); .02(5)(a).
129	Revision of Conditional Exemption for Small Scale Treatability Studies.	8/18/94	59 FR 8362	TCA 68–212–104(7) & (16); 68–212–106(a) & (d)(1) & (6); TRC 1200–1–11–.02(1)(a).
130	Recycled Used Oil Management Standards: Technical Amendments and Corrections II.	3/4/94	59 FR 10550	TCA 68–212-.06(a)(1); 68–212–107(a) & (d)(1) (3) (5) & (6); TRC 1200–1–11–.11(1)(a).
131	Recordkeeping Instructions: Technical Amendment.	3/24/94	59 FR 13891	TCA 68–212–104(8); 68–212–106(a)(3); 68–212–107(d)(2) (5) & (6); TRC 1200–1–11–.06(33)(a); .05(31)(a).
132	Wood Surface Protection: Correction	6/2/94	59 FR 28484	TCA 68–212–104(7); 68–212–106(a)(1); 68–212–107(d)(1); TRC 1200–1–11–.01(2)(b).
133	Letter of Credit Revision	6/10/94	59 FR 29958	TCA 68–212–107(a) & (d)(3); 68–212–108(d); TRC 1200–1–11–.06(8)(m) 3 & 10.
134	Correction of Beryllium Powder	6/20/94	59 FR 31551	TCA 68–212–104(7); 68–212–106(a)(1); 68–212–107(d)(1) & (9); TRC 1200–1–11–.02(4)(a); .02(5)(a); .10(3)(a).

C. Decision

I conclude that Tennessee's application for these program revisions meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Tennessee is granted final authorization to operate its hazardous waste program as revised.

Tennessee now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Tennessee also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector. The Act excludes from the definition of a "Federal mandate" duties that arise from participation in a voluntary Federal program, except in certain annual federal entitlement programs of $500 million or more that are not applicable here. Tennessee's request for approval of a hazardous waste program or revisions to its authorized hazardous waste program is voluntary and imposed no Federal mandate within the meaning of the Act. Rather, by having its hazardous waste program approved, the State will gain the authority to implement the program within its jurisdiction, in lieu of EPA thereby eliminating duplicative State and Federal requirements. If a State chooses not to seek authorization for administration of a hazardous waste program under RCRA Subtitle C, RCRA regulation is left to EPA.

In any event, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year. EPA does not anticipate that the approval of Tennessee's hazardous waste program referenced in today's document will result in annual costs of $100 million or more.

EPA's approval of state programs generally may reduce, not increase, compliance costs for the private sector since the State, by virtue of the approval, may not administer the program in lieu of EPA and exercise primary enforcement. Hence owners and operators of treatment, storage and disposal facilities (TSDFs) generally no longer face dual Federal and State compliance requirements, thereby reducing overall compliance costs. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA had determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The agency recognizes that small governments may own and/or operate TSDFs that will become subject to the requirements of an approved State hazardous waste program. However, such small governments which own and/or operate TSDFs are already subject to the requirements in 40 CFR parts 264, 265, 270, and 280 and are not subject to any additional significant or unique requirements by virtue of this program approval. Once EPA authorizes a State to administer its own hazardous waste program and any revisions to that program, these same small governments will be able to own and operate their TSDFs under the approved State program, in lieu of the Federal program.

Certification Under the Regulatory Flexibility Act

EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. EPA recognizes that small entities may own and/or operate TSDFs that will become subject to the requirements of an approved State hazardous waste program. However, since such small entities which own and/or operate TSDFs are already subject to the requirements in 40 CFR parts 264, 265 and 270, this authorization does not impose any additional burdens on these small entities. This is because EPA's authorization would result in an administrative change (i.e., whether EPA or the State administers the RCRA Subtitle C program in that State), rather than result in a change in the substantive requirements imposed on small entities. Once EPA authorizes a state to administer its own hazardous waste program and any revisions to that program, these same small entities will be able to own and operate their TSDFs under the approved State program, in lieu of the federal program. Moreover, this authorization, in approving a state program to operate in lieu of the federal program, eliminates duplicative requirements for owners and operators of TSDFs in that particular state.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively approves the Tennessee program to operate in lieu of the federal program, thereby eliminating duplicative requirements for handlers of hazardous waste in the state. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, and Water supply.

Authority: This document is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

R.F. McGhee,

Acting Regional Administrator, Region 4.

[FR Doc. 98–2361 Filed 1–29–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL–5936–5]

Commonwealth of Puerto Rico; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on the Commonwealth of Puerto Rico's application for program approval.

SUMMARY: The Commonwealth of Puerto Rico has applied for final approval of its underground storage tank program for petroleum and hazardous substances under subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended. The United States Environmental Protection Agency (EPA) has reviewed the Commonwealth of Puerto Rico's application and has made a final determination that the Commonwealth of Puerto Rico's underground storage tank program for petroleum and hazardous substances satisfies all of the requirements necessary to qualify for final approval. Thus, EPA is granting final approval to the Commonwealth of Puerto Rico to operate its underground storage tank program for petroleum and hazardous substances.

EFFECTIVE DATES: Final approval for the Commonwealth of Puerto Rico shall be effective on March 31, 1998.

FOR FURTHER INFORMATION CONTACT: Madho Ramnarine Singh, Water Compliance Branch (DECA–WCB), U.S. EPA Region 2, 290 Broadway, New York, NY 10007–1866, Phone: (212) 637–4237 or Mr. Victor Trinidad, Caribbean Environmental Protection Division, Centro Europa Building, Suite 417, 1492 Ponce De Leon Avenue, Stop 22, Santurce, Puerto Rico 00907–4127, Phone: (787) 729–6951.

SUPPLEMENTARY INFORMATION:

I. Background

Section 9004 of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991c, authorizes EPA to grant approval to any State, which term includes the Commonwealth of Puerto Rico pursuant to section 1004(31) of RCRA, 42 U.S.C. § 6903(31), to operate its underground storage tank program in the State in lieu of the federal underground storage tank (UST) program. To qualify for approval, a State's program must be "no less stringent" than the federal program in all seven elements set forth at section 9004(a) (1) through (7) of RCRA, 42 U.S.C. 6991c(a) (1) through (7); include the notification requirements of section 9004(a)(8) of RCRA, 42 U.S.C. 6991c(a)(8); and provide for adequate enforcement of compliance with UST standards (section 9004(a) of RCRA, 42 U.S.C. 6991c(a)).

On January 17, 1996, EPA received the Commonwealth of Puerto Rico's formal application for approval of its underground storage tank program. In 1997 EPA received supplemental information as part of the Commonwealth's application. On August 6, 1997, EPA published a tentative determination announcing its intent to approve the Commonwealth of Puerto Rico program. Further background on the tentative decision to grant approval appears in the **Federal Register** at 62 FR 42222 (August 6, 1997).

Along with the tentative determination, EPA announced the availability of the application for public review and comment and the date of public hearings on the application and EPA's tentative determination. EPA requested advance notice for testimony and reserved the right to cancel the public hearing in the event of insufficient public interest. The public hearings were held on September 8, 1997 in the Public Hearing Room of the Puerto Rico Environmental Quality Board in Hato Rey, Puerto Rico, and on

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September 9, 1997 in the Public Hearing Room of the Environmental Quality Board, Mayaguez Regional Office in Mayaguez, Puerto Rico. While a number of people attended the hearings, none of them chose to comment on EPA's decision. In addition, no written comments were submitted to EPA. As a result, no substantive issues were raised and EPA has decided to finalize its decision to approve the Commonwealth of Puerto Rico program.

Some provisions of the Commonwealth of Puerto Rico's underground storage tank program will not be part of the federally approved State program, because they are broader in scope than the federal program. "Broader in scope" provisions cannot be enforced by EPA; the Commonwealth of Puerto Rico, however, will continue to enforce such provisions. For instance, the federal program does not cover any underground storage tank system used for storing heating oil for consumptive use on the premises where stored, but this type of underground storage tank system is regulated under the Commonwealth's program. In addition, the Commonwealth charges fees for certain underground storage tank activities, such as annual notification and re-certification of underground storage tank facilities, transfer of ownership, duplication of records, and revision of permanent closure plans, and requires underground storage tank owners to obtain permits for certain activities, such as drilling and installation of groundwater monitoring and/or extraction wells. Although the federal underground storage tank program addresses neither fees nor permits, the Commonwealth may charge such fees and require such permits as it deems appropriate.

The public should also be aware that the Commonwealth's statutes, regulations and rules that will become part of the federally approved State program are available in English and Spanish translation. The English translation of the Commonwealth's statutes, regulations and rules is referenced as follows:

Statutes

(1) Puerto Rico Public Policy Environmental Act of 1970, Act Number 9, June 18, 1970, as amended, 12 Law of Puerto Rico Annotated (L.P.R.A.) §§ 1121 *et seq.*

(2) Puerto Rico Environmental Emergency Fund Act, 12 L.P.R.A. § 1271 *et seq.*

Regulations

(1) Underground Storage Tank Control Regulations, Regulation Number 4362, promulgated by the Commonwealth of Puerto Rico Environmental Quality Board on November 7, 1990.

Rules

(1) Puerto Rico Civil Procedure Rules of 1979, 32 L.P.R.A. Appendix III

(2) Rules of Administrative Procedure for Hearings in Environmental Quality Board, Regulation Number 3672, promulgated in October 19, 1988.

II. Final Decision

I conclude that the Commonwealth of Puerto Rico's application for program approval meets all of the statutory and regulatory requirements established by subtitle I of RCRA and 40 CFR part 281. Accordingly, the Commonwealth of Puerto Rico is granted final approval to operate its underground storage tank program for petroleum and hazardous substances in lieu of the federal underground storage tank program. This approval is subject to the terms and conditions set forth in the Commonwealth's application for approval (including, but not limited to, the Memorandum of Agreement) and in the August 6, 1997 **Federal Register** Notice of Tentative Determination on Application of the Commonwealth of Puerto Rico for Final Approval.

III. Compliance With Executive Order 12866

The Office of Management and Budget has exempted this action from the requirements of section 6 of Executive Order 12866.

IV. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with federal mandates, as defined by the UMRA, that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. The section 202 and 205 requirements do not apply to today's action because it is not a "federal mandate" and because it does not impose annual costs of $100 million or more.

Today's rule contains no federal mandates for state, local or tribal governments or the private sector for two reasons. First, today's action does not impose new or additional enforceable duties on any state, local or tribal governments or the private sector because the requirements of the Commonwealth of Puerto Rico program are already part of the Commonwealth law. Second, the Act also generally excludes from the definition of a "federal mandate" duties that arise from participation in a voluntary federal program. The Commonwealth's participation in an authorized UST program is voluntary.

Even if today's rule did contain a federal mandate, this rule will not result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the Commonwealth's program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector.

The requirements of section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, section 203 of the UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that although small governments may own and/or operate USTs, they are already subject to the regulatory requirements under existing Commonwealth law, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval of such requirements.

V. Certification Under the Regulatory Flexibility Act

EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which own and/or operate USTs are already subject to the regulatory requirements under existing Commonwealth law. EPA's authorization does not impose any additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing Commonwealth law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

VI. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative Practice and Procedure, Hazardous Materials, State Program Approval, and Underground Storage Tanks.

Authority: This document is issued under the authority of Section 9004 of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991c.

Dated: December 10, 1997.

Jeanne M. Fox,

Regional Administrator.

[FR Doc. 98–1531 Filed 1–29–98; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[FRL 5938–6]

Underground Storage Tank Program: Approved State Program for the Commonwealth of Puerto Rico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Resource Conservation and Recovery Act of 1976 (RCRA), as amended, authorizes the United States Environmental Protection Agency (EPA) to grant approval to any State to operate its underground storage tank program in the State in lieu of the federal program. 40 CFR part 282 codifies EPA's decision to approve State programs and incorporates by reference those provisions of the State statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA subtitle I and other applicable statutory and regulatory provisions. This rule codifies in part 282 the approval of the Commonwealth of Puerto Rico's underground storage tank program and incorporates by reference appropriate provisions of the Commonwealth's statutes and regulations.

DATES: This regulation is effective March 31, 1998, unless EPA publishes a prior **Federal Register** document withdrawing this immediate final rule. All comments on the codification of the Commonwealth of Puerto Rico's underground storage tank program must be received by the close of business March 2, 1998. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of March 31, 1998, in accordance with 5 U.S.C. 552(a).

ADDRESSES: Comments may be mailed to the Mr. John Kushwara, Chief, Ground Water Compliance Section (DECA–WCB), U.S. EPA Region II, 290 Broadway, 20th Floor, New York, NY 10007–1866 or Mr. Victor Trinidad, Caribbean Environmental Protection Division, Centro Europa Building, Suite 417, 1492 Ponce De Leon, Stop 22, Santurce, Puerto Rico 00907–4127. Comments received by EPA may be inspected in the public docket, located in the EPA Region II Library, 290 Broadway, 16th Floor, New York , New York 10007–1866, from 9 a.m. to 4:30 p.m., Monday through Thursday and from 9 a.m. to 1:30 p.m. on Friday, excluding Federal holidays, Phone: (212) 637–3185 or EPA Region II, Caribbean Environmental Protection Division, Centro Europa Building, 1492 Ponce De Leon Avenue, Suite 417, Santurce, Puerto Rico 00907–4127, Phone: (787) 729–6951.

FOR FURTHER INFORMATION CONTACT: Madho Ramnarine Singh, U.S. EPA Region II, Water Compliance Branch (DECA–EWCB), 290 Broadway, New York, NY 10007–1866. Phone: (212) 637–4237 or Mr. Victor Trinidad, Caribbean Environmental Protection Division, Centro Europa Building, Suite 417, 1492 Ponce De Leon Avenue, Stop 22, Santurce, Puerto Rico 00907–4127, Phone: (787) 729–6951.

SUPPLEMENTARY INFORMATION:

Background

Section 9004 of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991c, authorizes the United States Environmental Protection Agency (EPA) to grant approval to any State, which term includes the Commonwealth of Puerto Rico pursuant to Section 1004(31) of RCRA, 42 U.S.C. 6903(31), to operate its underground storage tank program in the State in lieu of the federal underground storage tank program. EPA is publishing a **Federal Register** document announcing its decision to grant approval to Commonwealth of Puerto Rico concurrently with this document. Approval will be effective on March 31, 1998.

EPA codifies its approval of State programs in 40 CFR part 282 and incorporates by reference therein those provisions of the State statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions. Today's rulemaking codifies EPA's approval of the Commonwealth of Puerto Rico's underground storage tank program. This codification reflects the State program in effect at the time EPA grants the Commonwealth's approval under section 9004(a), 42 U.S.C. 6991c(a) for its underground storage tank program. Notice and opportunity for comment were provided earlier on EPA's tentative determination to approve the Commonwealth of Puerto Rico program, and EPA is not now reopening that decision nor requesting comment on it.

This effort provides clear notice to the public of the scope of the approved program in the Commonwealth of Puerto Rico. Codifying and incorporating by reference the Commonwealth's statutes and regulations does not restrict in any way federal authority to promulgate new laws or regulations relating to subtitle I of RCRA or to act otherwise pursuant to federal authority. By codifying the approved Commonwealth of Puerto Rico program and by amending the Code of Federal Regulations whenever a new or different set of requirements is approved in Puerto Rico, the status of federally approved requirements of the Commonwealth of Puerto Rico program will be readily discernible. Only those provisions of the Commonwealth's underground storage tank program for which approval has been granted by EPA may be incorporated by reference for enforcement purposes.

To codify EPA's approval of the Commonwealth of Puerto Rico's underground storage tank program, EPA has added section 282.102 to Title 40 of the CFR. Section 282.102 incorporates by reference for enforcement purposes the Commonwealth's statutes and regulations. Section 282.102 also references the Attorney General's

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Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the underground storage tank program under subtitle I of RCRA. With regard to the statutory references contained in the Attorney General's Statement, the Commonwealth of Puerto Rico has chosen to cite to Articles in a compilation of the Commonwealth's statute in its amended form, rather than to corresponding Sections in the codified version of that amended statute.

EPA retains the authority under sections 9003(h)(1), 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991b(h)(1), 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections, enforcement and corrective actions in approved States. With respect to such actions, EPA will rely on federal sanctions, federal authorities, and federal procedures rather than the State authorized analogues to these provisions. Therefore, the approved Commonwealth of Puerto Rico enforcement authorities will not be incorporated by reference. Section 282.102 lists those approved Commonwealth authorities that would fall into this category.

The public also needs to be aware that some provisions of the Commonwealth's underground storage tank program are not part of the federally approved State program, because such provisions are "broader in scope" than subtitle I of RCRA. See 40 CFR 281.12(a)(3)(ii). As a result, State provisions which are "broader in scope" than the federal program are not incorporated by reference for purposes of enforcement in Part 282. Section 282.102 of the codification simply lists for reference and clarity the Commonwealth of Puerto Rico statutory and regulatory provisions which are "broader in scope" than the federal program and which are not, therefore, part of the approved program being codified today. "Broader in scope" provisions cannot be enforced by EPA; the Commonwealth of Puerto Rico, however, will continue to implement and enforce such provisions.

Certification Under the Regulatory Flexibility Act

EPA has determined that this codification will not have a significant economic impact on a substantial number of small entities. Such small entities which own and/or operate USTs are already subject to the Commonwealth requirements authorized by EPA under 40 CFR Part 281. EPA's codification does not impose any additional burdens on these small entities. This is because EPA's codification would simply result in an administrative change, rather than a change in the substantive requirements imposed on small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this codification will not have a significant economic impact on a substantial number of small entities. This codification incorporates the Commonwealth of Puerto Rico's requirements which have been authorized by EPA under 40 CFR Part 281 into the Code of Federal Regulations. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with federal mandates, as defined by the UMRA, that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. The section 202 and 205 requirements do not apply to today's action because it is not a "federal mandate" and because it does not impose annual costs of $100 million or more.

Today's rule contains no federal mandates for State, local or tribal governments or the private sector for two reasons. First, today's action does not impose new or additional enforceable duties on any State, local or tribal governments or the private sector because it merely makes federally enforceable existing requirements with which regulated entities must already comply under Commonwealth law. Second, the Act also generally excludes from the definition of a "federal mandate" duties that arise from participation in a voluntary federal program. The requirements being codified today are the result of the Commonwealth of Puerto Rico's voluntary participation in accordance with RCRA subtitle I.

Even if today's rule did contain a federal mandate, this rule will not result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector because today's action merely codifies an existing Commonwealth program that EPA is authorizing. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The requirements of section 203 of UMRA also do not apply to this action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, section 203 of UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA recognizes that although small governments may own and/or operate USTs, this codification incorporates into the Code of Federal Regulations the Commonwealth of Puerto Rico's requirements which are being authorized concurrently by EPA under 40 CFR part 281 and, thus, small governments are not subject to any additional significant or unique requirements by virtue of this codification.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, federal agencies must consider the paperwork burden imposed by any information request contained in a proposed or final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects In 40 CFR Part 282

Environmental protection, Hazardous substances, Incorporation by reference, Intergovernmental relations, State program approval, Underground storage tanks, Water pollution control.

Dated: December 10, 1997.

Jeanne M. Fox,

Regional Administrator, Region 2.

For the reasons set forth in the preamble, 40 CFR part 282 is amended as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

1. The authority citation for Part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991b(h)(1), 6991c, 6991d, and 6991e.

Subpart B—Approved State Programs

2. Subpart B is amended by adding § 282.102 to read as follows:

§ 282.102 Puerto Rico State-Administered Program.

(a) The Commonwealth of Puerto Rico is approved to administer and enforce an underground storage tank program in lieu of the federal program under subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The Commonwealth's program, as administered by the Commonwealth of Puerto Rico Environmental Quality Board, is approved by EPA pursuant to 42 U.S.C. 6991c and Part 281 of this chapter. EPA is publishing the notice of final determination on the approved Commonwealth of Puerto Rico underground storage tank program concurrently with this notice and it will be effective on March 31, 1998.

(b) The Commonwealth of Puerto Rico has primary responsibility for enforcing its underground storage tank program. However, EPA retains the authority to exercise its corrective action, inspection and enforcement authorities under sections 9003(h)(1), 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991b(h)(1), 6991d and 6991e, as well as its authority under other statutory and regulatory provisions.

(c) To retain program approval, the Commonwealth of Puerto Rico must revise its approved program to adopt new changes to the federal subtitle I program which make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If the Commonwealth obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the **Federal Register**.

(d) The Commonwealth of Puerto Rico has final approval for the following elements submitted to EPA in its program application for final approval and to be published in the **Federal Register** concurrently with this notice, and to be effective on March 31, 1998. Copies may be obtained from the Underground Storage Tank Program, Puerto Rico Environmental Quality Board, 431 Ponce De Leon Avenue, Nacional Plaza, Suite 614, Hato Rey, PR 00917, Phone: (787) 767–8109.

(1) *State statutes and regulations.* (i) The provisions cited in this paragraph are incorporated by reference as part of the underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(A) Puerto Rico Statutory Requirements Applicable to the Underground Storage Tank Program, 1997.

(B) Puerto Rico Regulatory Requirements Applicable to the Underground Storage Tank Program, 1997.

(ii) The following specifically identified sections and rules in the Commonwealth of Puerto Rico's statutes, regulations and rules are part of the approved Commonwealth program, although not incorporated by reference herein for enforcement purposes.

(A) The statutory provisions include:

(*1*) Public Policy Environmental Act of 1970, Act Number 9, June 18, 1970, as amended, 12 Laws of Puerto Rico Annotated (L.P.R.A.) § 1121 *et seq.*

(*i*) Section 1131 Functions and duties [Insofar as paragraphs (10), (12), (13), (19), (22), (23), (25), (26), (29), and (30) set forth enforcement authorities.]

(*ii*) Section 1134 Hearings, orders and judicial proceedings

(*iii*) Section 1136 Penalty

(*iv*) Section 1139 Civil actions

(*v*) Section 1142 Powers [Insofar as (b)(5) sets forth enforcement authorities.]

(*2*) Puerto Rico Environmental Emergency Fund Act, 12 L.P.R.A. § 1269 *et seq.*

(B) The regulatory provisions include:

(*1*) Underground Storage Tank Control Regulations, Regulation Number 4362, promulgated by the Commonwealth of Puerto Rico Environmental Quality Board on November 7, 1990.

(*2*) Part X—General Provisions.

(*i*) Rule 1005 Right of Entry

(*ii*) Rule 1007 Notice of Violation and Compliance Order

(*iii*) Rule 1008 Closure of an Underground Storage Tank

(*iv*) Rule 1010 Penalties

(C) Other provisions include:

(*1*) Puerto Rico Civil Procedure Rules of 1979, 32 L.P.R.A. Appendix III

(*2*) Rules of Administrative Procedure for Hearings in Environmental Quality Board, Regulation Number 3672, promulgated on October 19, 1988.

(iii) The following specifically identified sections and rules in the Commonwealth of Puerto Rico's statutes, regulations and rules are broader in scope than the federal program, are not part of the approved program, and are not incorporated by reference herein for enforcement purposes.

(A) The statutory provisions include:

(*1*) Public Policy Environmental Act of 1970, Act Number 9, June 18, 1970, as amended, 12 Laws of Puerto Rico Annotated (L.P.R.A.) §§ 1121 *et seq.*

(*i*) Section 1131—Functions and duties [Insofar as paragraph (13) addresses permit and license requirements and associated fees, as well as the NPDES and UIC programs; and paragraph (34) relates solely to the solid and hazardous waste programs.]

(*ii*) Section 1132—Transfer of powers

(*iii*) Section 1135—Character of Board for federal purposes [Insofar as it addresses permit requirements.]

(*iv*) Section 1138—Effectiveness of previous documents [Insofar as it addresses permit and licensing requirements.]

(B) The regulatory provisions include:

(*1*) Underground Storage Tank Control Regulations, Regulation Number 4362, promulgated by the Commonwealth of Puerto Rico Environmental Quality Board on November 7, 1990.

(*i*) Part VI—Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances: Rule 603—Initial Abatement Measures and Site Check [Insofar as 603(A)(5) requires owners and operators to obtain permits or franchises for drilling and installation of groundwater monitoring and/or extraction wells.]; Rule 605—Free Product Removal [Insofar as 605(A) and 605(D)(6) require owners and operators to obtain permits or franchises for drilling and installation of water monitoring and/or extraction wells.].

(*ii*) Part XII—Fee Rules [Insofar as fees are broader in scope than the federal program.]: Rule 1201—Applicability; Rule 1202—Annual Notification Fees; Rule 1203—Fee Relative to Transfer of Ownership; Rule 1204—Fees for Duplication of Records; Rule 1205—Fee Payments; Rule 1206—Exemptions from Fees; Rule 1207—Fees for Revision of Permanent Closure Plans; Rule 1208—Fees for Annual Re-certification of UST Facilities.

(2) *Statement of legal authority.* The Attorney General Statement, a letter

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signed on July 2, 1997, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The "Demonstration of Procedures for Adequate Enforcement" submitted as part of the application for approval on January 17, 1996, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program Description.* The program description and any other material submitted as part of the application on January 17, 1996 and supplemented on April 17, 1997, though not incorporated by reference, are referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 2 and the Puerto Rico Environmental Quality Board, signed by an authorized representative of the Environmental Quality Board on March 7, 1997 and subsequently by an authorized representative of EPA, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

3. Appendix A to Part 282 is amended by adding in alphabetical order "Puerto Rico" and its listing.

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

Puerto Rico

(a) The statutory provisions include:

1. Public Policy Environmental Act of 1970, Act Number 9, June 18, 1970, as amended, 12 Laws of Puerto Rico Annotated (L.P.R.A.) § 1121 *et seq.*

(1) Section 1121—Short title
(2) Section 1122—Purpose
(3) Section 1123—Declaration of policy
(4) Section 1124—Interpretation of legal provisions
(5) Section 1125—Duties of governmental agencies
(6) Section 1126—Savings clause
(7) Section 1127—Complementary character
(8) Section 1128—Annual report of Governor
(9) Section 1129—Creation of Board; composition; term
(10) Section 1130—Duties of Chairman
(11) Section 1130A—Consulting Council
(12) Section 1131—Functions and duties [Except paragraphs (10), (12), (19), (22), (23), (25), (26), (29), and (30), insofar as they outline enforcement authorities; paragraph (13), insofar as it addresses enforcement authorities, permit and license requirements and associated fees, as well as the NPDES and UIC programs; and paragraph (34), insofar as it relates solely to the solid and hazardous waste programs.]
(13) Section 1133—Consultation and use of facilities
(14) Section 1135—Character of Board for federal purposes [Except insofar as it addresses permit requirements.]
(15) Section 1135A—Administration of the Puerto Rico Water Pollution Control Revolving Fund
(16) Section 1137—Confidential documents
(17) Section 1138—Effectiveness of previous documents [Except insofar as it addresses permit and licensing requirements.]
(18) Section 1140—Limitations
(19) Section 1141—Definitions
(20) Section 1142—Powers [Except insofar as (b)(5) sets forth enforcement authorities.]

(b) The regulatory provisions include:

1. Underground Storage Tank Control Regulations, Regulation Number 4362, promulgated by the Commonwealth of Puerto Rico Environmental Quality Board on November 7, 1990.

a. Part I—Program Scope and Interim Prohibition.

(1) Rule 101—Program Scope
(2) Rule 102—Purpose
(3) Rule 103—Applicability
(4) Rule 104—Interim Prohibition for Deferred UST Systems
(5) Rule 105—Definitions and Abbreviations [Except insofar as the Puerto Rico definition of "Underground Storage Tank or UST" does not exclude from regulation heating oil tanks used for storing heating oil for consumptive use on the premises where stored.]

b. Part II—UST Systems: Design, Construction, Installation, and Notification.

(1) Rule 201—Performance Standards for New UST Systems
(2) Rule 202—Upgrading of Existing UST Systems
(3) Rule 203—Notification Requirements

c. Part III—General Operating Requirements.

(1) Rule 301—Spill and Overfill Control
(2) Rule 302—Operation and Maintenance of Corrosion Protection
(3) Rule 303—Compatibility
(4) Rule 304—Repairs Allowed
(5) Rule 305—Reporting and Recordkeeping

d. Part IV—Release Detection.

(1) Rule 401—General Requirements for all UST Systems
(2) Rule 402—Requirements for Petroleum UST Systems
(3) Rule 403—Requirements for Hazardous Substance UST Systems
(4) Rule 404—Methods of Release Detection for Tanks
(5) Rule 405—Methods of Release Detection for Piping
(6) Rule 406—Release Detection Recordkeeping

e. Part V—Release Reporting and Investigation.

(1) Rule 501—Reporting of Suspected Releases
(2) Rule 502—Investigation Due to Off-site Impacts
(3) Rule 503—Release Investigation and Confirmation Steps
(4) Rule 504—Reporting and Cleanup of Spills and Overfills

f. Part VI—Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances.

(1) Rule 601—General
(2) Rule 602—Initial Response
(3) Rule 603—Initial Abatement Measures and Site Check [Except insofar as 603(A)(5) requires owners and operators to obtain permits or franchises for drilling and installation of groundwater monitoring and/or extraction wells.]
(4) Rule 604—Initial Site Characterization
(5) Rule 605—Free Product Removal [Except insofar as 605(A) and 605 (D)(6) require owners and operators to obtain permits or franchises for drilling and installation of water monitoring and/or extraction wells.]
(6) Rule 606—Investigation for Soil and Groundwater Clean-up
(7) Rule 607—Corrective Action Plan
(8) Rule 608—Public Participation

g. Part VII—Out-Of-Service UST Systems and Closure.

(1) Rule 701—Temporary Closure
(2) Rule 702—Permanent Closure and Changes-in-Service
(3) Rule 703—Assessing the Site at Closure or Change-in-Service
(4) Rule 704—Applicability to Previously Closed UST Systems
(5) Rule 705—Closure Methods

h. Part VIII—Notification Requirements and Procedures.

(1) Rule 801—Notification of Underground Storage System
(2) Rule 802—Notification Requirements
(3) Rule 803—Notification Responsibility
(4) Rule 804—UST Notification Identification Number
(5) Rule 805—Changes to Facility Notification Data

i. Part IX—Financial Responsibility Requirements.

(1) Rule 901—Applicability
(2) Rule 902—Compliance Dates
(3) Rule 903—Definition of Terms
(4) Rule 904—Amount and Scope of Required Financial Responsibility
(5) Rule 905—Allowable Mechanisms and Combinations of Mechanisms
(6) Rule 906—Financial Test of Self-Insurance
(7) Rule 907—Guarantee
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(9) Rule 909—Surety Bond
(10) Rule 910—Letter of Credit
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(1) Rule 1001—Amendments to this Regulation
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k. Part XI—General Prohibitions.

(1) Rule 1101—Purpose, Scope and Applicability
(2) Rule 1102—General Prohibitions

[FR Doc. 98–1532 Filed 1–29–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 405, 410, 411, and 414

[HCFA–1884–CN]

RIN 0938–AH94

Medicare Program; Revisions to Payment Policies and Adjustments to the Relative Value Units Under the Physician Fee Schedule, Other Part B Payment Policies, and Establishment of the Clinical Psychologist Fee Schedule for Calendar Year 1998; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of final rule with comment period.

SUMMARY: This document corrects technical errors that appeared in the final rule with comment period published in the **Federal Register** on October 31, 1997 entitled "Medicare Program; Revisions to Payment Policies and Adjustments to the Relative Value Units Under the Physician Fee Schedule, Other Part B Payment Policies, and Establishment of the Clinical Psychologist Fee Schedule for Calendar Year 1998."

EFFECTIVE DATE: These corrections are effective October 31, 1997.

FOR FURTHER INFORMATION CONTACT: Stanley Weintraub, (410) 786–4498.

SUPPLEMENTARY INFORMATION:

Background

In FR Doc. 97–28973 of October 31, 1997 (62 FR 59048), there were a number of technical errors. The errors relate to an omission in the preamble in the discussion of practice expense relative value units (RVUs) for procedures furnished in both in-office and out-of-office settings, to an inconsistency between the preamble discussion and information in the addenda for HCPCS code G0101 (Cervical or Vaginal Cancer Screening: Pelvic and Clinical Breast Examination), to inconsistencies between the preamble discussion and the regulations text for screening mammography and screening pelvic examinations, and to an omission of a reference to status indicator "I" in the explanation of the information in Addendum B. We also printed incorrect information for certain procedure codes in Addendum B, beginning on page 59103. The corrections appear in this document under the heading "Correction of Errors."

Correction of Errors

In FR Doc. 97–28973 of October 31, 1997 (62 FR 59048), make the following corrections:

Page 59078

Addendum C of the proposed rule titled "Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule, Other Part B Payment Policies, and Establishment of the Clinical Psychologist Fee Schedule for Calendar Year 1998" published in the **Federal Register** on June 18, 1997 (62 FR 33158) generally provided resource-based practice expense RVUs for both in-office and out-of-office settings. We intended to calculate final resource-based practice expense RVUs by code and for the two sites in the final rule. However, section 4505 of the Balanced Budget Act of 1997 (BBA 1997) (Public Law 105–33), enacted on August 5, 1997, postponed the implementation of this provision until 1999. For the final rule, we wanted the carriers to make the same site-of-service calculations as they have done in previous years. However, we neglected to change the language in the preamble to state that the carriers will continue to calculate the differential. Therefore, on page 59078, in the second column, in the fourth full paragraph, the fourth sentence is incorrect and currently reads, "To coordinate this policy with the site-of-service distinctions in the June 1997 proposed rule and the interaction of the provisions of section 4505 of the BBA 1997, we are listing in Addendum B the practice expense RVUs for the two sites for the 700 procedure codes instead of allowing the carrier to calculate the 50 percent reduction." Remove this sentence and replace it with the following two sentences: "Addendum B lists the practice expense RVUs for both the facility and nonfacility settings. If the code is subject to the site-of-service differential, the carrier will reduce the facility practice expense RVU by 50 percent in calculating the allowance for the code."

Page 59091

On page 59091, in the first column, in the first full sentence, we incorrectly stated that the RVUs assigned to HCPCS code G0101 (Cervical or Vaginal Cancer Screening: Pelvic and Clinical Breast Examination) are comparable to the RVUs assigned to a *new* patient office visit. This statement is inconsistent with the RVUs assigned to this code, which are correctly listed in Addenda B and C. We should have stated that the RVUs for HCPCS code G0101 are comparable to the RVUs assigned to an *established* patient office visit. Therefore, remove the first full sentence in the first column on page 59091 and replace it with the following: "We decided that this service is comparable to a level 2 evaluation and management established patient office visit."

Page 59100

On page 59100, there is an inaccuracy that needs to be corrected so that the regulations text is consistent with the preamble discussion of mammography services on pages 59078 through 59079, which states that section 4101(a) of the BBA 1997 amends section 1834(c)(2)(A) of the Social Security Act effective January 1, 1998 to simply provide that in the case of any woman over 39 years of age, payment may be made for a screening mammography if at least 11 months have passed following the month in which the last screening mammography was performed. On page 59100, we failed to state in the amendatory language in item 4 for § 410.34 (Mammography services: Conditions for and limitations on coverage) that we were removing paragraphs (d)(5) and (d)(6), which specify certain age limitations on the frequency of screening mammography before the enactment of the BBA 1997 and which are now obsolete. In addition, because we should have removed these two paragraphs, the line

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of asterisks following paragraph (d)(4) in the regulations text itself should not have been included. Therefore, on page 59100, in the first column, correct the amendatory language in item 4 to read as follows:

"4. Section 410.34 is amended by revising the introductory text to paragraph (d) and paragraph (d)(4), and by removing paragraphs (d)(5) and (d)(6), to read as follows:" Also on page 59100, in the regulations text itself under § 410.34 (Mammography services: Conditions for and limitations on coverage), remove the asterisks that follow paragraph (d)(4).

Page 59101

On page 59101, there is an inaccuracy that needs to be corrected so that the regulations text is consistent with the law and the preamble discussion of screening pelvic examinations on pages 59082 through 59083, which defines such an examination to be one performed for the early detection of cervical or vaginal cancer without regard to whether the results are normal or not. On page 59101, in the regulations text under § 410.56 (Screening pelvic examinations), correct paragraphs (b)(1) and (b)(4) by removing the words "and found to be normal" at the end of each sentence.

Page 59103

On page 59103, in the explanation of the information in Addendum B, we omitted a reference to status indicator "I." Therefore, on page 59103, add the following after the entry for status code "G":

"I=Code not valid for Medicare purposes. Medicare does not recognize codes assigned this status. Medicare uses another code for reporting of, and payment for, these services. This indicator is treated in the same manner as status indicator "G." Its use allows for more efficient carrier processing of Medicare claims.

Addendum B, pages 59103 through 59247

We assigned incorrect RVUs to the following CPT codes. Entries on the pages listed below for the codes listed are corrected as follows: Page 59103 for CPT codes 11055, 11056, and 11057; page 59104 for CPT code 11719; page 59158 for CPT codes 59150 and 59151; page 59183 for CPT codes 76076 and 76076–TC; and page 59214 for CPT codes 92543, 92543–TC, and 92543–26.

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3 4]	Non-facility practice expense RVUs [5]	Facility practice expense RVUs [5]	Malpractice RVUs	Non-facility total	Facility total	Global
11055		R	Trim skin lesion	0.27	0.26	0.26	0.01	0.54	0.54	000
11056		R	Trim 2-4 skin lesions	0.39	0.35	0.35	0.02	0.76	0.76	000
11057		R	Trim over 4 skin lesions	0.50	0.28	0.28	0.02	0.80	0.80	000
11719		R	Trim nail(s)	0.11	0.24	0.12	0.01	0.36	0.24	000
59150		A	Treat ectopic	*11.20	4.53	4.53	1.05	16.78	16.78	090
59151		A	Treat ectopic pregnancy	*11.10	8.61	8.61	0.64	20.35	20.35	090
76076		A	Dual energy x-ray study	0.22	0.82	0.82	0.07	1.11	1.11	XXX
76076	TC	A	Dual energy x-ray study	0.00	0.72	0.72	0.05	0.77	0.77	XXX
92543		A	Caloric vestibular test	0.10	0.21	0.21	0.02	0.33	0.33	XXX
92543	TC	A	Caloric vestibular test	0.00	0.10	0.10	0.01	0.11	0.11	XXX
92543	26	A	Caloric vestibular test	0.10	0.11	0.11	0.01	0.22	0.22	XXX

[1] CPT codes and descriptions only are copyright 1997 American Medical Association. All Rights Reserved. Applicable FARS/DFARS Apply.
[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] * Work RVUs increased in global surgical package.
[5] # Indicates reduction of Practice Expense RVUs as a result of 110% PE reduction.

Page 59239

We erroneously assigned a status indicator of "A" (Active code) in the column labeled "Status" for HCPCS code G0116 (NETT; psychosocial counsel). The corrected status indicator should be "R," which means restricted coverage.

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUS [3 4]	Non-facility practice expense RVUs [5]	Facility practice expense RVUs [5]	Malpractice RVUs	Non-facility total	Facility total	Global
G0116		R	NETT; psychosocial counsel	0.11	0.35	0.35	0.05	1.51	1.51	XXX

[1] CPT codes and descriptions only are copyright 1997 American Medical Association. All Rights Reserved. Applicable FARS/DFARS Apply.
[2] Copyright 1994 American Dental Association. All rights reserved.
[3] Indicates RVUs are not used for Medicare payment.
[4] Work RVUs increased in global surgical package.
[5] Indicates reduction of Practice Expense RVUs as a result of 110% PE reduction.

Additionally, we printed incorrect short descriptors for certain codes in Addendum B. Entries on the pages listed below for the codes listed are corrected as follows: Page 59107 for CTP code 17200; page 59194 for CPT codes 80004, 80009, 80010, 80018, and 80019; page 59202 for CTP codes 86287, 86290, 86295, and 86311; page 59208 for CPT

codes 88157, and 88157–26; page 59211 for CTP codes 90825 and 90855; and page 59226 for CPT codes 99353 and 99376.

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3 4]	Non-facility practice expense RVUs [5]	Facility practice expense RVUs [5]	Malpractice RVUs	Non-facility total	Facility total	Global
17200		D	Electro-cautery of skin tags	*0.00	0.00	0.00	0.00	0.00	0.00	XXX
80004		D	4 clinical chemistry tests	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80009		D	9 clinical chemistry tests	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80010		D	10 clinical chemistry tests	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80018		D	17–18 blood/urine tetlls	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80019		D	19 blood/urine tests	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86287		D	Hepatitis B (HBsAg)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86290		D	Hepatitis BC antibody test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86295		D	Hepatitis BE antibody test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86311		D	HIV antigen test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88157		D	TBS smear (bethesda system)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88157	26	D	TSB smear (bethesda system)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90825		D	Evaluation of tests/records	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90855		D	Individual psychotherapy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99353		D	Home visit/estab patient	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99376		D	Care plan oversight/over 60	0.00	0.00	0.00	0.00	0.00	0.00	XXX

[1] CPT codes and descriptions only are copyright 1997 American Medical Association. All Rights Reserved. Applicable FARS/DFARS Apply.
[2] Copyright 1994 American Dental Association. All rights reserved.
[3] Indicates RVUs are not used for Medicare payment.
[4] Work RVUs increased in global surgical package.
[5] Indicates reduction of Practice Expense RVUs as a result of 100% reduction.

Section 1848 of the Social Security Act (42 U.S.C. 1395w–4)).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 14, 1998.

Neil J. Stillman,

Deputy Assistant, Secretary for, Information Resources Management.

[FR Doc. 98–2328 Filed 1–29–98; 8:45 am]

BILLING CODE 4120–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Chapter XII and Part 1201

Service of Process; Production or Disclosure of Official Material or Information

AGENCY: Corporation for National and Community Service.

ACTION: Final Rule.

SUMMARY: The Corporation for National and Community Service is revising this regulation regarding the disclosure of litigation-related information. This final rule establishes consistency in the Corporation's assertions of privileges and objections, thereby reducing the potential for both inappropriate disclosure of information and wasteful allocation of Corporation resources.

EFFECTIVE DATE: February 20, 1998.

FOR FURTHER INFORMATION CONTACT: Britanya Rapp, Senior Attorney Advisor, Corporation for National and Community Service at (202) 606–5000, ext. 258.

SUPPLEMENTARY INFORMATION: On July 17, 1997, the Corporation for National end Community Service (hereinafter

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"Corporation") published, for public comment, a Notice of Proposed Rulemaking (NPRM) to remove its obsolete regulations on standards of conduct that were superseded by the Office of Government Ethics Uniform Standards of Conduct (5 CFR part 2635). There were no public comments received. The Corporation publishes this rulemaking in order to clarify policies, procedures, and responsibilities regarding (1) the service of legal process on the Corporation and any individuals connected with the Corporation; (2) the production of official Corporation information in matters of litigation; and (3) the appearance of, and testimony by, any individuals connected with the Corporation in matters of litigation. The Corporation expects this rule will promote consistency in the Corporation's assertions of privileges and objections, thereby reducing the potential for both inappropriate disclosure of information and wasteful allocation of Corporation resources. This rule is intended only to inform the public about Corporation procedures concerning the service of process and responses to demands or requests and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the Corporation or the United States.

These regulations are not subject to the provisions of the Paperwork Reduction Act, the Freedom of Information Act, or the Government in the Sunshine Act because they do not contain any information requirements within the meaning of those Acts. These regulations also do not signify a "significant regulatory action" as defined by Executive Order 12866, and thus do not fall within the requirements of that Order. Nothing in this part otherwise permits disclosure of information by the Corporation or any individuals connected to the Corporation except as provided by statute or other applicable law.

List of Subjects in 45 CFR Part 1201

Administrative practice and procedure, Courts, Freedom of information.

Accordingly, and under the authority of 42 U.S.C. 12501 et seq., Chapter XII of title 45 of the Code of Federal Regulations is amended as follows:

1. The heading for Chapter XII is revised to read as follows:

CHAPTER XII—CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

2. Part 1201 is revised to read as follows:

PART 1201—PRODUCTION OR DISCLOSURE OF OFFICIAL INFORMATION IN RESPONSE TO COURT ORDERS, SUBPOENAS, NOTICES OF DEPOSITIONS, REQUESTS FOR ADMISSIONS, INTERROGATORIES, OR IN CONNECTION WITH FEDERAL OR STATE LITIGATION

Sec.

1201.1 Definitions.
1201.2 Scope.
1201.3 Service of summonses and complaints.
1201.4 Service of subpoenas, court orders, and other demands or requests for official information or action.
1201.5 Testimony and production of documents prohibited unless approved by appropriate Corporation officials.
1201.6 Procedure when testimony or production of documents is sought.
1201.7 Procedure when response is required prior to receiving instructions.
1201.8 Procedure in the event of an adverse ruling.
1201.9 Considerations in determining whether the Corporation will comply with a demand or request.
1201.10 Prohibition on providing expert or opinion testimony.
1201.11 Authority.

Authority: 42 USC Sec. 12501 *et seq.*

§ 1201.1 Definitions.

(a) *Corporation Employee* means the Chief Executive Officer of the Corporation and all employees, former employees, National Civilian Community Corps Members (hereinafter sometimes known as "Corps Members"), and VISTA Volunteers (hereinafter sometimes also known as "AmeriCorps*VISTA Members"), who are or were subject to the supervision, jurisdiction, or control of the Chief Executive Officer, except as the Corporation may otherwise determine in a particular case.

(b) *Litigation* encompasses all pre-trial, trial, and post-trial stages of all judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards, or other judicial or quasi-judicial bodies or tribunals, whether criminal, civil, or administrative in nature.

(c) *Official Information* means all information of any kind, however stored, that is in the custody and control of the Corporation, relates to information in the custody and control of the Corporation, or was acquired by individuals connected with the Corporation as part of their official status within the Corporation while such individuals are employed by, or serve on behalf of, the Corporation.

§ 1201.2 Scope.

(a) This part states the procedures followed with respect to:

(1) Service of summonses and complaints or other requests or demands directed to the Corporation or to any Corporation employee in connection with Federal or State litigation arising out of, or involving the performance of, official activities of the Corporation; and

(2) Oral or written disclosure, in response to subpoenas, orders, or other requests or demands from Federal or by State judicial or quasi-judicial authority, whether civil or criminal, or in response to requests for depositions, affidavits, admissions, responses to interrogatories, document production, or other litigation-related matters of:

(i) Any material contained in the files of the Corporation; or

(ii) Any information acquired:

(A) When the subject of the request is currently a Corporation employee or was a Corporation employee; or

(B) As part of the performance of the person's duties or by virtue of the person's position.

§ 1201.3 Service of summonses and complaints.

(a) Only the Corporation's General Counsel or his/her designee (hereinafter "General Counsel"), is authorized to receive and accept summonses or complaints sought to be served upon the Corporation or its employees. All such documents should be delivered or addressed to General Counsel, Corporation for National and Community Service, 1201 New York Avenue, NW., Suite 8200, Washington, DC 20525.

(b) In the event any summons or complaint is delivered to a Corporation Employee other than in the manner specified in this part, such attempted service shall be ineffective, and the recipient thereof shall either decline to accept the proffered service or return such document under cover of a written communication that refers the person attempting to effect service to the procedures set forth in this part.

(c) Except as otherwise provided in § 1201.4(c), the Corporation is not an authorized agent for service of process with respect to civil litigation against Corporation Employees purely in their personal, non-official capacity. Copies of summonses or complaints directed to Corporation Employees in connection with legal proceedings arising out of the performance of official duties may, however, be served upon the General Counsel.

§ 1201.4 Service of subpoenas, court orders, and other demands or requests for official information or action.

(a) Except in cases in which the Corporation is represented by legal counsel who have entered an appearance or otherwise given notice of their representation, only the General Counsel is authorized to receive and accept subpoenas, or other demands or requests directed to any component of the Corporation or Corporation Employees, whether civil or criminal in nature, for:

(1) Material, including documents, contained in the files of the Corporation;

(2) Information, including testimony, affidavits, declarations, admissions, response to interrogatories, or informal statements, relating to material contained in the files of the Corporation or which any Corporation employee acquired in the course and scope of the performance of official duties;

(3) Garnishment or attachment of compensation of Corporation Employees; or

(4) The performance or non-performance of any official Corporation duty.

(b) In the event that any subpoena, demand, or request is sought to be delivered to a Corporation Employee other than in the manner prescribed in paragraph (a) of this section, such attempted service shall be ineffective. Such Corporation Employee shall, after consultation with the General Counsel, decline to accept the subpoena, and demand or request the return of it under cover of a written communication referring to the procedures prescribed in this part.

(c) Except as otherwise provided in this part, the Corporation is not an agent for service or otherwise authorized to accept on behalf of Corporation Employees any subpoenas, show-cause orders, or similar compulsory process of federal or state courts, or requests from private individuals or attorneys, which are not related to the employees' official duties except upon the express, written authorization of the individual Corporation Employee to whom such demand or request is directed.

(d) Acceptance of such documents by the General Counsel does not constitute a waiver of any defenses that might otherwise exist with respect to service under the Federal Rules of Civil or Criminal Procedure at 28 U.S.C. Appendix, Rules 4–6 or 18 USC Appendix or other applicable rules.

§ 1201.5 Testimony and production of documents prohibited unless approved by appropriate Corporation officials.

(a) Unless authorized to do so by the General Counsel, no Corporation Employee shall, in response to a demand or request in connection with any litigation, whether criminal or civil, provide oral or written testimony by deposition, declaration, affidavit, or otherwise concerning any information acquired:

(1) While such person was a Corporation Employee;

(2) As part of the performance of that person's official duties; or

(3) By virtue of that person's official status.

(b) No Corporation Employee shall, in response to a demand or request in connection with any litigation, produce for use at such proceedings any document or any other material acquired as part of the performance of that individual's duties or by virtue of that individual's official status, unless authorized to do so by the General Counsel.

§ 1201.6 Procedure when testimony or production of documents is sought.

(a) If Official Information is sought, either through testimony or otherwise, the party seeking such information must (except as otherwise required by federal law or authorized by the General Counsel) set forth in writing with as much specificity as possible, the nature and relevance of the Official Information sought. The party must identify the record or reasonably describe it in terms of date, format, subject matter, the offices originating or receiving the record, and the names of all persons to whom the record is known to relate. Corporation Employees may produce, disclose, release, comment upon, or testify concerning only those matters that were specified in writing and properly approved by the General Counsel. The General Counsel may waive this requirement in appropriate circumstances.

(b) To the extent it deems necessary or appropriate, the Corporation may also require from the party seeking such testimony or documents a schedule of all reasonably foreseeable demands, including but not limited to the names of all current and former Corporation Employees from whom discovery will be sought, areas of inquiry, expected duration of proceedings requiring oral testimony, and identification of potentially relevant documents.

(c) The General Counsel will notify the Corporation Employee and such other persons as circumstances may warrant of the decision regarding compliance with the request or demand.

(d) The General Counsel will consult with the Department of Justice regarding legal representation for Corporation Employees in appropriate cases.

§ 1201.7 Procedure when response to demand is required prior to receiving instructions.

(a) If a response to a demand or request for Official Information pursuant to litigation is required before the General Counsel renders a decision, the Corporation will request that either a Department of Justice attorney or a Corporation attorney designated for the purpose:

(1) Appear, if feasible, with the employee upon whom the demand has been made;

(2) Furnish the court or other authority with a copy of the regulations contained in this part;

(3) Inform the court or other authority that the demand or request has been or is being, as the case may be, referred for the prompt consideration of the General Counsel; and

(4) Respectfully request the court or authority to stay the demand or request pending receipt of the requested instructions.

(b) In the event that an immediate demand or request for production or disclosure is made in circumstances that would preclude the proper designation or appearance of a Department of Justice or Corporation attorney on behalf of the Corporation employee, the Corporation Employee shall respectfully request the court or other authority for a reasonable stay of proceedings for the purpose of obtaining instructions from the Corporation.

§ 1201.8 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand or request in response to a request made pursuant to § 1201.7, or if the court or other authority rules that the demand or request must be complied with irrespective of the Corporation's instructions not to produce the material or disclose the information sought, the Corporation Employee upon whom the demand or request has been made shall, if so directed by the General Counsel, respectfully decline to comply with the demand or request, citing *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951), and the regulations in this part.

§ 1201.9 Considerations in determining whether the Corporation will comply with a demand or request.

(a) In deciding whether to comply with a demand or request, Corporation officials and attorneys are encouraged to consider:

(1) Whether such compliance would be unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure

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governing the case or matter in which the demand arose;

(2) Whether compliance is appropriate under the relevant substantive law concerning privilege or disclosure of information;

(3) The public interest;

(4) The need to conserve the time of Corporation Employees for the conduct of official business;

(5) The need to avoid spending the time and money of the United States for private purposes;

(6) The need to maintain impartiality between private litigants in cases where a government interest is not implicated;

(7) Whether compliance would have an adverse effect on performance by the Corporation of its mission and duties; and

(8) The need to avoid involving the Corporation in controversial issues not related to its mission.

(b) Among those demands and requests in response to which compliance may not ordinarily be authorized are those when compliance would:

(1) Violate a statute, a rule of procedure, a specific regulation, or an executive order;

(2) Reveal information properly classified in the interest of national security;

(3) Reveal confidential commercial or financial information or trade secrets without the owner's consent;

(4) Reveal the internal deliberative processes of the Executive Branch; or

(5) Potentially impede or prejudice an ongoing law enforcement investigation.

§ 1201.10 Prohibition on providing expert or opinion testimony.

(a) Except as provided in this section, Corporation Employees shall not provide opinion or expert testimony based upon information that they acquired in the scope and performance of their official Corporation duties, except on behalf of the United States or a party represented by the Department of Justice.

(b) Upon a showing by the requester of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the United States, the General Counsel, in the exercise of discretion, may grant special, written authorization for Corporation Employees to appear and testify as expert witnesses at no expense to the United States.

(c) If, despite the final determination of the General Counsel, a court of competent jurisdiction or other appropriate authority orders the appearance and expert or opinion testimony of a Corporation Employee such individual shall immediately inform the General Counsel of such order. If the General Counsel determines that no further legal review of or challenge to the court's order will be made, the Corporation Employee shall comply with the order. If so directed by the General Counsel, however, the individual shall respectfully decline to testify.

§ 1201.11 Authority.

The Corporation receives authority to change its governing regulations from the National and Community Service Act of 1990 as amended (42 U.S.C. 12501 *et seq.*).

Dated: January 27, 1998.

Kenneth L. Klothen,

General Counsel, Office of the General Counsel.

[FR Doc. 98–2369 Filed 1–29–98; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208295–7295–01; I.D. 012398D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim specification for pollock in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 26, 1998, until superseded by the Final 1998 Harvest Specification of Groundfish, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486–6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The interim specification of pollock total allowable catch in Statistical Area 610 was established by the Interim 1998 Harvest Specifications (62 FR 65622, December 15, 1997) as 6,050 metric tons (mt), determined in accordance with § 679.20(c)(2)(i).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1998 interim specification of pollock in Statistical Area 610 soon will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 5,550 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e) and (f).

Classification

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

This action responds to the interim TAC limitations and other restrictions on the fisheries established in the interim 1998 harvest specifications for groundfish for the GOA. It must be implemented immediately to prevent overharvesting the 1998 interim TAC of pollock in Statistical Area 610 of the GOA. A delay in the effective date is impracticable and contrary to public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 26, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–2282 Filed 1–26–98; 4:44 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 20
Friday, January 30, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

RIN 1515–AB59

Andean Trade Preference

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to implement the duty preference provisions of the Andean Trade Preference Act (the Act). The document sets forth the country of origin and related rules which apply for purposes of duty-free or reduced-duty treatment on imported goods under the Act and specifies the documentary and other procedural requirements which apply to any claim for such preferential tariff treatment under the Act,

DATES: Comments must be received on or before March 31, 1998.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Operational Aspects: Tony Mazzoccoli, Office of Field Operations (202–927–0564).

Legal Aspects: Craig Walker, Office of Regulations and Rulings (202–927–1116).

SUPPLEMENTARY INFORMATION:

Background

On December 4, 1991, President Bush signed into law the Andean Trade Preference Act (Public Law 102–182, Title II, §§ 201–206, 105 Stat. 1236–1244) ("the Act", commonly referred to as the ATPA), the provisions of which are codified at 19 U.S.C. 3201 through 3206. Sections 202 and 204(c) of the Act (19 U.S.C. 3201 and 3203(c)) authorize the President to proclaim duty-free treatment for all eligible articles, and duty reductions for certain other goods, from any country designated by the President as a beneficiary country pursuant to section 203 of the Act (19 U.S.C. 3202). On July 2, 1992, President Bush signed Proclamation 6455 (57 FR 30069) which (1) Proclaimed the duty treatment authorized by the Act, (2) designated Colombia as a beneficiary country for purposes of the Act, and (3) modified the Harmonized Tariff Schedule of the United States (HTSUS) to incorporate the substance of the relevant provisions of the Act; under the terms of the proclamation, the proclaimed duty treatment was effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 22, 1992. On the same date President Bush signed Proclamation 6456 (57 FR 30097) designating Bolivia as a beneficiary country for purposes of the Act, similarly effective July 22, 1992. On April 13, 1993, President Clinton signed Proclamation 6544 (58 FR 19547) which, among other things, designated Ecuador as a beneficiary country for purposes of the Act, effective April 30, 1993. On August 11, 1993, President Clinton signed Proclamation 6585 (58 FR 43239) designating Peru as a beneficiary country for purposes of the Act, effective August 26, 1993. The modifications to the HTSUS contained in Proclamation 6455 setting forth the substance of the relevant provisions of the Act are now contained in General Note 11, HTSUS, and eligible articles and other goods to which preferential duty treatment under the Act applies are identified within the HTSUS by the designation "J" appearing with or without an asterisk in the "Special" rate of duty subcolumn.

Sections 204(a)–(c) of the Act (19 U.S.C. 3203(a)–(c)) set forth the standards which govern the eligibility of articles for duty-free or reduced-duty treatment under the Act. Section 204(a), which contains the basic origin and related rules for purposes of duty-free treatment, was based on section 213(a) of the Caribbean Basin Economic Recovery Act, as amended (19 U.S.C. 2703(a)), which sets forth the origin and related rules governing duty-free treatment under the Caribbean Basin Initiative (CBI). Thus, in order to be eligible for duty-free treatment under the Act, an article imported from a designated beneficiary country must meet three basic requirements: (1) It must be imported directly from a beneficiary country into the customs territory of the United States; (2) it must have its origin in a beneficiary country, that is, it either must be wholly the growth, product, or manufacture of a beneficiary country or must be a new or different article of commerce that has been grown, produced, or manufactured in a beneficiary country; and (3) it must have a minimum domestic value content, that is, at least 35 percent of its appraised value must be attributed to the sum of the cost or value of materials produced in one or more beneficiary countries plus the direct costs of processing operations performed in one or more beneficiary countries. The provisions of section 204(a) of the Act further parallel the provisions of section 213(a) of the CBI statute in the following regards: (1) Simple combining or packaging operations or mere dilution with water or another substance does not confer beneficiary country origin on an imported article or on a constituent material of an imported article; (2) the term "beneficiary country" is defined as including the Commonwealth of Puerto Rico and the U.S. Virgin Islands for purposes of determining compliance with the 35 percent value content requirement; (3) the cost or value of materials produced in the customs territory of the United States (other than in Puerto Rico) may be counted toward the 35 percent value content requirement to a maximum of 15 percent of the appraised value of the imported article; and (4) the expression "direct costs of processing operations" is defined in the same manner. However, the origin and related rules of section 204(a) of the Act differ from the corresponding provisions in section 213(a) of the CBI statute in two principal respects: (1) Section 204(a) of the Act specifically allows input attributable to one or more CBI beneficiary countries for purposes of the 35 percent value content requirement (the corresponding CBI statutory provision makes no mention of input attributable to beneficiary countries under the Act); and (2) section 204(a) of the Act has no provision corresponding

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to section 213(a)(4) of the CBI statute which was added to facilitate the addition of value to an article in Puerto Rico and the granting of duty-free treatment after final exportation of an article from a CBI beneficiary country. Section 204(b) of the Act lists eight categories of goods excluded from the duty-free treatment provided for in section 204(a), one of which refers to articles to which reduced rates of duty apply under section 204(c) of the Act. Section 204(c) directs the President to proclaim reductions in the rates of duty on handbags, luggage, flat goods, work gloves and leather wearing apparel that: (1) Are the product of any beneficiary country; and (2) were not designated on August 5, 1983, as eligible articles for purposes of the Generalized System of Preferences (GSP) under Title V of the Trade Act of 1974 (19 U.S.C. 2461–2466). These reduced duty rates, which were generally implemented in equal annual stages over a 5-year period (commencing in 1992 and ending in 1996), appear in the HTSUS in the "Special" rate of duty subcolumn followed by the symbol "J" within parentheses.

The U.S. Customs Service is responsible for the administration of laws and regulations regarding the entry of merchandise into the United States. Moreover, section 204(a)(2) of the Act specifically directs the Secretary of the Treasury to promulgate such regulations as may be necessary to carry out the duty-free treatment provisions of the Act. Accordingly, this document proposes to amend the Customs Regulations to implement the duty preference provisions of the Act.

In view of the similarity between the origin and related rules under the Act and those under the CBI, the proposed regulations set forth in this document are based in significant part on the CBI regulations contained in §§ 10.191–10.198 of the Customs Regulations (19 CFR 10.191–10.198). However, some variations have been made from the CBI approach, in some cases to reflect differences between the Act and the CBI statute and in other cases to simplify or otherwise improve on the layout of the CBI regulations. The proposed regulations are discussed in detail below.

Discussion of Proposed Amendments

Section 10.201

This section sets forth a general statement regarding the purpose of the regulations with reference to the Act and its implementation by the President.

Section 10.202

This section sets forth definitions of terms or expressions of general use throughout the regulatory texts.

Paragraph (a), which defines "beneficiary country", reflects both the definition in section 203(a)(1) of the Act and the approach taken in § 10.191(b)(1) of the CBI regulations. The exception language in the definition is directed to those entities that are treated as beneficiary countries only for the limited purpose of the 35 percent value content requirement (see the discussion of § 10.206(b) below). Thus, where the term "beneficiary country" appears in a regulatory text without any modifier or qualification and the context does not involve the 35 percent value content requirement, such term has reference only to an ATPA beneficiary country as so designated by the President.

The definition of "eligible articles" in paragraph (b) is similar to the approach taken in § 10.191(b)(2) of the CBI regulations. The definition refers specifically to duty-free treatment, which is authorized under section 204(a) of the Act, and thus does not apply to reduced-duty treatment under section 204(c) of the Act (see § 10.208 below). The list of articles excluded from the definition reflect the terms of section 204(b) of the Act.

The definition of "entered" in paragraph (c) is taken from section 203(a)(2) of the Act.

The definition of "wholly the growth, product, or manufacture of a beneficiary country" in paragraph (d) simply refers to the definition of the same expression set forth in § 10.191(b)(3) of the CBI regulations.

Section 10.203

This section makes a general reference to the requirements for preferential duty treatment and with cross-references to the specific sections which set forth those requirements in detail. Although somewhat different from the approach taken in the CBI regulations, Customs believes that this general statement/cross-reference approach will facilitate the reader's overall understanding of the duty-free aspects of the Act and the requirements thereunder.

This section refers only to duty-free treatment (which is provided for under section 204(a) of the Act) and to those sections of the regulations that deal with the requirements for such treatment. Thus, this section and the other sections cited therein have no application in the case of reduced-duty treatment which is provided for separately under section 204(c) of the Act (see the discussion of § 10.208 below).

Section 10.204

This section implements the "imported directly" requirement of section 204(a)(1)(A) of the Act and is based on § 10.193 of the CBI regulations. As in the case of the CBI, reference is made to shipment from "any" beneficiary country because, under the wording of the statute (and as a means to facilitate cumulation of value among multiple beneficiary countries—see § 10.206 below), the article merely must be imported directly from "a" beneficiary country and thus does not have to be shipped from the beneficiary country where it was produced.

Section 10.205

This section sets forth the basic country of origin rules which apply to articles for purposes of duty-free treatment under section 204 of the Act.

The "wholly the growth, product, or manufacture" language in paragraph (a)(1) and the "new or different article of commerce which has been grown, produced, or manufactured" language in paragraph (a)(2) reflect standards required by section 204(a)(2) of the Act to be included in the implementing regulations.

Paragraph (b) implements the simple combining or packaging or mere dilution exceptions to duty-free eligibility required to be in the regulations by section 204(a)(2) of the Act. Since the language of the Act in this regard is identical to language used in the CBI statute, this paragraph follows § 10.195(a)(1) of the CBI regulations by including the words "(as opposed to complex or meaningful)" after the word "simple", and the last sentence is intended to shorten the regulatory text by incorporating by reference the provisions of the CBI regulations which clarify the meaning and application of identical statutory language. It should be noted that, as in the case of the CBI, the simple combining or packaging or mere dilution language operates only in the limited context of eligibility for duty-free treatment; that language does not limit or otherwise affect a determination as to whether a new or different article of commerce has been created in a beneficiary country within the meaning of paragraph (a)(2) of this section.

Section 10.206

This section implements the 35 percent value content requirement contained in section 204(a)(1)(B) of the Act.

Paragraph (a) sets forth the basic requirement but refers simply to "a beneficiary country or countries"

without specifically mentioning CBI beneficiary countries even though such countries are specified in the statutory text with regard to both the cost or value of materials and the direct costs of processing operations (see the discussion of paragraph (b) below). As in the case of the CBI, the statutory and regulatory texts permit unlimited cumulation of value among "beneficiary countries" for purposes of meeting the 35 percent value content requirement.

In paragraph (b), the first sentence defines "beneficiary country" as including, for purposes of the 35 percent value content requirement, (1) the Commonwealth of Puerto Rico and the U.S. Virgin Islands and (2) any CBI beneficiary country. The reference to CBI beneficiary countries in this regulatory context (rather than in paragraph (a) of this section) is intended to simplify the regulatory texts here and elsewhere and will have no substantive effect on the proper interpretation and application of the statutory provisions. The second sentence of this paragraph is based on the second sentence of § 10.195(b) of the CBI regulations and is intended to clarify a basic legal limitation on the statutorily-permitted cumulation of value attributable to entities that are not "beneficiary countries" as defined in section 203(a)(1) of the Act: except in the case of Puerto Rico which is part of the customs territory of the United States, if value is added to an article in any such entity (that is, in the U.S. Virgin Islands or in a CBI beneficiary country) after final exportation of the article from a beneficiary country designated as such by the President under the Act and prior to importation into the United States, such addition of value would disqualify the article from duty-free treatment because the article would have entered the commerce of the intermediate entity and thus could not be considered to be "imported directly" upon arrival in the customs territory of United States within the meaning of section 204(a)(1)(A) of the Act and § 10.204 of the implementing regulations. While the same legal limitation would not apply *per se* in the case of value added in Puerto Rico or in the case of U.S.-produced materials added in the United States (see paragraph (c) of this section), as a practical matter the opportunities for such additions in a post-final-exportation context and prior to entry for consumption are limited by the following factors: (1) Bonded manufacturing warehouses cannot be used because under 19 U.S.C. 1311 and § 19.15 of the Customs Regulations (19 CFR 19.15) the article subjected to a manufacturing process in such a warehouse may not be withdrawn for consumption but rather must be exported; (2) while a storage and manipulation warehouse under 19 U.S.C. 1557 and 1562 and Part 144 of the Customs Regulations (19 CFR Part 144) could be used, the benefit as regards added value would not be significant in most cases because manufacturing processes are precluded in such warehouses; (3) while foreign-trade zones established and operated under 19 U.S.C. 81a–81u and Part 146 of the Customs Regulations (19 CFR Part 146) could be used, such facilities involve special procedures and limitations; and (4) while an article could be imported under a temporary importation bond for processing (including manufacture) under subheading 9813.00.05, HTSUS, and § 10.31 of the Customs Regulations (19 CFR 10.31), such an article ultimately would have to be exported in accordance with the terms of the bond. It is also noted in this regard that the Act contains no provision similar to section 213(a)(4) of the CBI statute (19 U.S.C. 2703(a)(4)) which was added in 1984 specifically for the purpose of facilitating the addition of value through tail-end processing performed in bonded manufacturing warehouses located in Puerto Rico.

Paragraph (c) reflects section 204(a)(1) as regards the inclusion of U.S.-produced materials and is based on § 10.195(c) of the CBI regulations.

Paragraph (d) is based on § 10.196 of the CBI regulations. The following points are noted as regards this paragraph:

1. Subparagraph (1) corresponds to paragraph (a) of the CBI regulation but with the following principal differences: (1) the simple combining or packaging or mere dilution limitation (also applicable to materials under section 204(a)(2) of the Act) has been included directly, rather than as a cross-reference to the rule set forth in the regulatory provision covering articles (§ 10.205(b)), for purposes of clarity and in order to ensure that a clear distinction is made between application of the rule for purposes of eligibility of an article for duty-free treatment and application of the rule for purposes of determining the origin of a material for purposes of the 35 percent value content requirement; and (2) to avoid unnecessary repetition of regulatory text, the examples of § 10.196(a), and the principles and examples of § 10.195(a)(2), of the CBI regulations have been incorporated by reference since those CBI provisions are equally applicable in the present context.

2. Subparagraph (2) is taken from § 10.196(b) of the CBI regulations.

3. Subparagraph (3) follows § 10.196(c) of the CBI regulations but also refers specifically to materials produced in the customs territory of the United States.

Paragraph (e) implements section 204(a)(3) of the Act (which is identical to section 213(a)(3) of the CBI statute (19 U.S.C. 2703(a)(3)) and follows the terms of § 10.197 of the CBI regulations.

Paragraph (f) is based on, and is used in the same context as, § 10.195(e) of the CBI regulations. Wherever origin terminology and the term "beneficiary country" are used together with reference to an article, the latter term is restricted so as to cover only a beneficiary country designated under the Act by the President, in order to reflect the fact that an article (as opposed to materials incorporated in an article) must be a product of such a beneficiary country and cannot be a product of a CBI beneficiary country.

Section 207

This section is intended to cover all procedural requirements, including the submission of documentation required to support a claim for duty-free treatment. The provisions of this section are based on CBI regulatory provisions.

Paragraph (a), which concerns the procedure for filing a claim for duty-free treatment, is based on § 10.192 of the CBI regulations but does not include the first sentence of the CBI provision which Customs believes is redundant and thus unnecessary. The exception language at the beginning of the paragraph is intended to reflect the fact that this procedure does not apply in the case of an informal entry.

Paragraph (b) concerns the documentary evidence of country of origin and of compliance with the 35 percent value content requirement and, subject to changes to reflect the context of the Act, follows the terms of § 10.198(a) of the CBI regulations.

Paragraph (c) sets forth the procedures which apply in the case of informal entries and is based on § 10.198(b) of the CBI regulations.

Paragraph (d), which concerns evidence of direct importation, is based on § 10.194 of the CBI regulations. However, the last sentence of paragraph (a) of the CBI provision has not been included because it is covered by paragraph (e) of this section.

Paragraph (e), which concerns verification of submitted documentation, is based on § 10.198(c) of the CBI regulations but refers to all documentation submitted under § 10.207, that is, evidence of country of

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origin and of compliance with the 35 percent value content requirement submitted under paragraph (b) and evidence of direct importation submitted under paragraph (d).

Section 10.208

This section implements the duty-reduction provisions of section 204(c) of the Act. This section is set forth separately to reflect the fact that the Act treats the duty-reduction provisions separately from the duty-free provisions of section 204(a) and without any repetition of, or cross-reference to, the legal requirements that apply for purposes of duty-free treatment. Thus, paragraph (a) of this section does not refer to direct importation, the 35 percent value content requirement, or the simple combining or packaging or mere dilution limitation because, under the terms of the Act, those legal standards apply only for purposes of duty-free treatment under section 204(a), and no ATPA Declaration is required under this section because the ATPA Declaration is directed primarily to compliance with the 35 percent value content requirement. However, because Customs believes that the words "product of" as used in section 204(c)(1)(A) of the Act should be interpreted as synonymous with the basic origin rule used for Customs purposes, paragraph (a) of this section repeats the rule set forth in § 10.205(a) as discussed above. Paragraph (b), which sets forth the normal procedure for filing a reduced-duty claim, and paragraph (c), which covers verification of a reduced-duty claim, are variations of §§ 10.207(a) and (e) and are otherwise self-explanatory.

Comments

Before adopting the proposed amendments as a final rule, consideration will be given to any written comments (preferably in triplicate) timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Anenue, N.W., 3rd Floor, Washington, D.C.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. The amendments reflect statutory requirements that are already in effect and follow existing regulatory provisions that implement similar statutory programs. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information in these proposed regulations is in § 10.207. This information conforms to requirements in 19 U.S.C. 3203(a) and is used by Customs to determine whether goods imported from designated beneficiary countries are entitled to duty-free entry under that statutory provision. The likely respondents are business organizations including importers, exporters, and manufacturers.

Estimated total annual reporting and/or recordkeeping burden: 5,000 hours.

Estimated average annual burden per respondent/recordkeeper: 2 minutes.

Estimated number of respondents and/or recordkeepers: 150,000.

Estimated annual number of responses: 150,000.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 10

Andean trade preference, Customs duties and inspection, Entry procedures, Exports, Imports, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

For the reasons set forth above, it is proposed to amend Part 10, Customs Regulations (19 CFR Part 10), as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 continues to read, and a specific authority citation for §§ 10.201 through 10.207 is added to read, as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

§ 10.201 through 10.207 also issued under 19 U.S.C. 3203.

2. Part 10 is amended by adding a new center heading followed by new sections 10.201 through 10.208 to read as follows:

Andean Trade Preference

10.201 Applicability.
10.202 Definitions.
10.203 Eligibility criteria in general.
10.204 Imported directly.
10.205 Country of origin criteria.
10.206 Value content requirement.
10.207 Procedures for filing duty-free treatment claim and submitting supporting documentation.
10.208 Duty reductions for certain products.

Andean Trade Preference

§ 10.201 Applicability.

Title II of Public Law 102–182 (105 Stat. 1233), entitled the Andean Trade Preference Act (ATPA) and codified at 19 U.S.C. 3201–3206, authorizes the President to proclaim duty-free treatment for all eligible articles from any beneficiary country, to designate countries as beneficiary countries, and to proclaim duty reductions for certain goods not eligible for duty-free treatment. The provisions of §§ 10.202 through 10.208 of this part set forth the legal requirements and procedures that apply for purposes of obtaining such duty-free or reduced-duty treatment for articles from a beneficiary country which are identified for purposes of such treatment in General Note 11, Harmonized Tariff Schedule of the United States (HTSUS), and in the "Special" rate of duty column of the HTSUS.

§ 10.202 Definitions.

The following definitions apply for purposes of §§ 10.201 through 10.208:

(a) *Beneficiary country.* Except as otherwise provided in § 10.206(b), the term "beneficiary country" refers to any country or successor political entity with respect to which there is in effect a proclamation by the President designating such country or successor political entity as a beneficiary country in accordance with section 203 of the ATPA (19 U.S.C. 3202).

(b) *Eligible articles.* The term "eligible" when used with reference to an article means any merchandise which is imported directly from a beneficiary country as provided in § 10.204, which meets the country of origin criteria set forth in § 10.205 and the value-content requirement set forth in § 10.206, and which, if the requirements of § 10.207 are met, is therefore entitled to duty-free treatment under the ATPA. The following merchandise shall not be considered eligible articles entitled to duty-free treatment under the ATPA:

(1) Textile and apparel articles which are subject to textile agreements;

(2) Footwear not designated on December 4, 1991, as eligible for the purpose of the Generalized System of Preferences under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461–2466);

(3) Tuna, prepared or preserved in any manner, in airtight containers;

(4) Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710, Harmonized Tariff Schedule of the United States (HTSUS);

(5) Watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTSUS column 2 rates of duty apply;

(6) Sugars, syrups, and molasses classified in subheadings 1701.11.03, 1701.12.02, 1701.99.02, 1702.90.32, 1806.10.42, and 2106.90.12, HTSUS;

(7) Rum and tafia classified in subheading 2208.40.00, HTSUS; or

(8) Articles to which reduced rates of duty apply under section 204(c) of the ATPA (19 U.S.C. 3203(c)) (see § 10.208).

(c) *Entered.* The term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(d) *Wholly the growth, product, or manufacture of a beneficiary country.* The expression "wholly the growth, product, or manufacture of a beneficiary country" has the same meaning as that set forth in § 10.191(b)(3) of this part.

§ 10.203 Eligibility criteria in general.

An article classifiable under a subheading of the Harmonized Tariff Schedule of the United States for which a rate of duty of "Free" appears in the "Special" subcolumn followed by the symbol "J" or "J*" in parentheses is eligible for duty-free treatment, and will be accorded such treatment, if each of the following requirements is met:

(a) *Imported directly.* The article is imported directly from a beneficiary country as provided in § 10.204.

(b) *Country of origin criteria.* The article complies with the country of origin criteria set forth in § 10.205.

(c) *Value content requirement.* The article complies with the value content requirement set forth in § 10.206.

(d) *Filing of claim and submission of supporting documentation.* The claim for duty-free treatment is filed, and any required documentation in support of the claim is submitted, in accordance with the procedures set forth in § 10.207.

§ 10.204 Imported directly.

In order to be eligible for duty-free treatment under the ATPA, an article shall be imported directly from a beneficiary country into the customs territory of the United States. For purposes of this requirement, the words "imported directly" mean:

(a) Direct shipment from any beneficiary country to the United States without passing through the territory of any non-beneficiary country; or

(b) If shipment from any beneficiary country to the United States was through the territory of a non-beneficiary country, the articles in the shipment did not enter into the commerce of the non-beneficiary country while en route to the United States, and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(c) If shipment from any beneficiary country to the United States was through the territory of a non-beneficiary country and the invoices and other documents do not show the United States as the final destination, then the articles in the shipment, upon arrival in the United States, are imported directly only if they:

(1) Remained under the control of the customs authority in the intermediate country;

(2) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the articles are imported into the United States as a result of the original commercial transaction between the importer and the producer or the latter's sales agent; and

(3) Were not subjected to operations in the intermediate country other than loading and unloading, and other activities necessary to preserve the articles in good condition.

§ 10.205 Country of origin criteria.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an article may be eligible for duty-free treatment under the ATPA if the article is either:

(1) Wholly the growth, product, or manufacture of a beneficiary country; or

(2) A new or different article of commerce which has been grown, produced, or manufactured in a beneficiary country.

(b) *Exceptions.* No article shall be eligible for duty-free treatment under the ATPA by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. The principles and examples set forth in § 10.195(a)(2) of this part shall apply equally for purposes of this paragraph.

§ 10.206 Value content requirement.

(a) *General.* An article may be eligible for duty-free treatment under the ATPA only if the sum of the cost or value of the materials produced in a beneficiary country or countries, plus the direct costs of processing operations performed in a beneficiary country or countries, is not less than 35 percent of the appraised value of the article at the time it is entered.

(b) *Commonwealth of Puerto Rico, U.S. Virgin Islands and CBI beneficiary*

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countries. For purposes of determining the percentage referred to in paragraph (a) of this section, the term "beneficiary country" includes the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country as defined in § 10.191(b)(1) of this part. Any cost or value of materials or direct costs of processing operations attributable to the Virgin Islands or any CBI beneficiary country must be included in the article prior to its final exportation to the United States from a beneficiary country as defined in § 10.202(a).

(c) *Materials produced in the United States.* For purposes of determining the percentage referred to in paragraph (a) of this section, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico). The principles set forth in paragraph (d)(1) of this section shall apply in determining whether a material is "produced in the customs territory of the United States" for purposes of this paragraph.

(d) *Cost or value of materials.* (1) *"Materials produced in a beneficiary country or countries" defined.* For purposes of paragraph (a) of this section, the words "materials produced in a beneficiary country or countries" refer to those materials incorporated in an article which are either:

(i) Wholly the growth, product, or manufacture of a beneficiary country or two or more beneficiary countries; or

(ii) Substantially transformed in any beneficiary country or two or more beneficiary countries into a new or different article of commerce which is then used in any beneficiary country as defined in § 10.202(a) in the production or manufacture of a new or different article which is imported directly into the United States. For purposes of this paragraph (d)(1)(ii), no material shall be considered to be substantially transformed into a new or different article of commerce by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. The examples set forth in § 10.196(a) of this part, and the principles and examples set forth in § 10.195(a)(2) of this part, shall apply for purposes of the corresponding context under paragraph (d)(1) of this section.

(2) *Questionable origin.* When the origin of a material either is not ascertainable or is not satisfactorily demonstrated to the appropriate port director, the material shall not be considered to have been grown, produced, or manufactured in a beneficiary country or in the customs territory of the United States.

(3) *Determination of cost or value of materials.* (i) The cost or value of materials produced in a beneficiary country or countries or in the customs territory of the United States includes:

(A) The manufacturer's actual cost for the materials;

(B) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

(C) The actual cost of waste or spoilage, less the value of recoverable scrap; and

(D) Taxes and/or duties imposed on the materials by any beneficiary country or by the United States, provided they are not remitted upon exportation.

(ii) Where a material is provided to the manufacturer without charge, or at less than fair market value, its cost or value shall be determined by computing the sum of:

(A) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(B) An amount for profit; and

(C) Freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer's plant.

(iii) If the pertinent information needed to compute the cost or value of a material is not available, the appraising officer may ascertain or estimate the value thereof using all reasonable ways and means at his disposal.

(e) *Direct costs of processing operations.* (1) *Items included.* For purposes of paragraph (a) of this section, the words "direct costs of processing operations" mean those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific merchandise under consideration. Such costs include, but are not limited to the following, to the extent that they are includable in the appraised value of the imported merchandise:

(i) All actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(ii) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise;

(iii) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific merchandise; and

(iv) Costs of inspecting and testing the specific merchandise.

(2) *Items not included.* For purposes of paragraph (a) of this section, the words "direct costs of processing operations" do not include items which are not directly attributable to the merchandise under consideration or are not costs of manufacturing the product. These include, but are not limited to:

(i) Profit; and

(ii) General expenses of doing business which either are not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

(f) *Articles wholly the growth, product, or manufacture of a beneficiary country.* Any article which is wholly the growth, product, or manufacture of a beneficiary country as defined in § 10.202(a), and any article produced or manufactured in a beneficiary country as defined in § 10.202(a) exclusively from materials which are wholly the growth, product, or manufacture of a beneficiary country or countries, shall normally be presumed to meet the requirement set forth in paragraph (a) of this section.

§ 10.207 Procedures for filing duty-free treatment claim and submitting supporting documentation.

(a) *Filing claim for duty-free treatment.* Except as provided in paragraph (c) of this section, a claim for duty-free treatment under the ATPA may be made at the time of filing the entry summary by placing the symbol "J" as a prefix to the Harmonized Tariff Schedule of the United States subheading number applicable to each article for which duty-free treatment is claimed on that document.

(b) *Shipments covered by a formal entry.* (1) *Articles not wholly the growth, product, or manufacture of a beneficiary country.* (i) *Declaration.* In a case involving an article covered by a formal entry for which duty-free treatment is claimed under the ATPA and which is not wholly the growth, product, or manufacture of a single beneficiary country as defined in § 10.202(a), the exporter or other appropriate party having knowledge of the relevant facts in the beneficiary country as defined in § 10.202(a) where the article was produced or last processed shall be prepared to submit directly to the port director, upon request, a declaration setting forth all pertinent detailed information concerning the production or manufacture of the article. When requested by the port director, the declaration shall be prepared in substantially the following form:

ATPA DECLARATION

I, _____ (name), hereby declare that the articles described below (a) were produced or manufactured in _____ (country) by means of processing operations performed in that country as set forth below and were also subjected to processing operations in the other beneficiary country or countries (including the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country) as set forth below and (b) incorporate materials produced in the country named above or in any other beneficiary country or countries (including the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country) or in the customs territory of the United States (other than the Commonwealth of Puerto Rico) as set forth below:

Number and date of invoices	Description of articles and quantity	Processing operations performed on articles		Material produced in a beneficiary country or in the U.S.	
		Description of processing operations and country of processing	Direct costs of processing operations	Description of material, production process, and country of production	Cost or value of material

Date _____

Address _____

Signature _____

Title _____

(ii) *Retention of records and submission of declaration.* The information necessary for the preparation of the declaration shall be retained in the files of the party responsible for its preparation and submission for a period of 5 years. In the event that the port director requests submission of the declaration during the 5-year period, it shall be submitted by the appropriate party directly to the port director within 60 days of the date of the request or such additional period as the port director may allow for good cause shown. Failure to submit the declaration in a timely fashion will result in a denial of duty-free treatment.

(iii) *Value added after final exportation.* In a case in which value is added to an article in the Commonwealth of Puerto Rico or in the United States after final exportation of the article from a beneficiary country as defined in § 10.202(a), in order to ensure compliance with the value requirement under § 10.206(a), the declaration provided for in paragraph (b)(1)(i) of this section shall be filed by the importer or consignee with the entry summary. The declaration shall be completed by the party responsible for the addition of such value.

(2) *Articles wholly the growth, product, or manufacture of a beneficiary country.* In a case involving an article covered by a formal entry for which duty-free treatment is claimed under the ATPA and which is wholly the growth, product, or manufacture of a single beneficiary country as defined in § 10.202(a), a statement to that effect shall be included on the commercial invoice provided to Customs.

(c) *Shipments covered by an informal entry.* The normal procedure for filing a claim for duty-free treatment as set forth in paragraph (a) of this section need not be followed, and the filing of the declaration provided for in paragraph (b)(1)(i) of this section will not be required, in a case involving a shipment covered by an informal entry. However, the port director may require submission of such other evidence of entitlement to duty-free treatment as deemed necessary.

(d) *Evidence of direct importation.* (1) *Submission.* The port director may require that appropriate shipping papers, invoices, or other documents be submitted within 60 days of the date of entry as evidence that the articles were "imported directly", as that term is defined in § 10.204.

(2) *Waiver.* The port director may waive the submission of evidence of direct importation when otherwise satisfied, taking into consideration the kind and value of the merchandise, that the merchandise was, in fact, imported directly and that it otherwise clearly qualifies for duty-free treatment under the ATPA.

(e) *Verification of documentation.* The documentation submitted under this section to demonstrate compliance with the requirements for duty-free treatment under the ATPA shall be subject to such verification as the port director deems necessary. In the event that the port director is prevented from obtaining the necessary verification, the port director may treat the entry as fully dutiable.

§ 10.208 Duty reductions for certain products.

(a) *General.* Handbags, luggage, flat goods, work gloves, and leather wearing apparel that were not designated on August 5, 1983, as eligible articles for purposes of the Generalized System of Preferences under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461–2466), are not eligible for duty-free treatment under the ATPA. However, any such article from a beneficiary country may be subject to a reduced rate of duty set forth in the Harmonized Tariff Schedule of the United States in the applicable "Special" subcolumn followed by the symbol "J" in parenthesis, provided the article is a product of any beneficiary country. For purposes of this section, an article is a "product of" a beneficiary country if the article is either:

(1) Wholly the growth, product, or manufacture of a beneficiary country; or

(2) A new or different article of commerce which has been grown, produced, or manufactured in a beneficiary country.

(b) *Filing reduced-duty claim.* A claim for reduced-duty treatment under the ATPA may be made at the time of filing the entry summary or other entry document by placing thereon the symbol "J" as a prefix to the Harmonized Tariff Schedule of the United States subheading number applicable to each article for which reduced-duty treatment is claimed and

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by placing thereon the reduced duty rate applicable to each such article.

(c) *Verification of reduced-duty claim.* Any claim for reduced-duty treatment under this section shall be subject to such verification as the port director deems necessary. In the event that the port director is prevented from obtaining the necessary verification, the port director may treat the entry as dutiable at the applicable non-ATPA rate.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: December 24, 1997.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–2249 Filed 1–29–98; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE56

Endangered and Threatened Wildlife and Plants; Proposal To Determine the Pecos Pupfish (Cyprinodon pecosensis) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list the Pecos pupfish (*Cyprinodon pecosensis*) as an endangered species without critical habitat under authority of the Endangered Species Act of 1973, as amended (Act). The historical range of the Pecos pupfish included the mainstream Pecos River and various lakes, gypsum sinkholes, saline springs, and tributaries associated with the river from the vicinity of Roswell, Chaves County, New Mexico, downstream to the vicinity of Sheffield, Pecos County, Texas. The Pecos pupfish has been replaced by sheepshead minnow (*C. variegatus*) x Pecos pupfish hybrids throughout more than two-thirds of its historical range. The Pecos pupfish was declining prior to introduction of the sheepshead minnow, primarily as a result of competition and depredation by nonnative fish species, and habitat loss caused by such factors as water diversion, groundwater depletion, channelization, and watershed disturbance (Sublette et al. 1990, Minckley et al. 1991). This proposal, if made final, will implement Federal protection provided by the Act for the Pecos pupfish.

DATES: Comments from all interested parties must be received by March 31, 1998. Public hearing requests must be received by March 16, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Ecological Services Field Office, U.S. Fish and Wildlife Service, 2105 Osuna NE., Albuquerque, New Mexico 87113. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jennifer Fowler-Propst, Field Supervisor, Ecological Services Field Office (Albuquerque) (see **ADDRESSES** section) (telephone 505/761–4525).

SUPPLEMENTARY INFORMATION:

Background

The Pecos pupfish, described by Echelle and Echelle (1978), is a member of the family Cyprinodontidae. The taxonomic status of the Pecos pupfish had been uncertain for more than 30 years because of a previous description of a pupfish (*Cyprinodon bovinus*) from the Pecos River (Baird and Girard 1853). Type specimens from the Pecos River in the original series were lost or in poor condition, but were assumed to be the same as the Pecos pupfish until an extant population of *C. bovinus* was found at Leon Springs, Texas, and confirmed as different from the form in the Pecos River proper (Echelle and Miller 1974).

The Pecos pupfish is a small, deep-bodied (2.8 to 4.6 centimeter (cm) (1.1 to 1.8 inch (in.)) standard length) gray-to-brown fish. Male dorsal and anal fins are black almost to the margin with no yellow on the dorsal, anal, or caudal fins. The lateral bars on the female are typically broken into blotches ventrolaterally. The abdomen is generally naked (i.e., without scales) except for a few scales in front of the pelvic fins and a patch just behind the gill membrane isthmus. There are 20 to 21 gill rakers, and usually 3 or 4 preorbital pores on each side of the head (Echelle and Echelle 1978).

The Pecos pupfish is native to the Pecos River and its tributaries, and nearby lakes, sinkholes, and saline springs in New Mexico and Texas. The historical range of the species included the Pecos River from Bitter Lake National Wildlife Refuge and Bottomless Lakes State Park near Roswell, Chaves County, New Mexico, downstream approximately 650 km (404 mi) to the mouth of Independence Creek, southeast of Sheffield, Pecos County, Texas (Wilde and Echelle 1992). It was also found in gypsum sinkholes and saline springs at Bitter Lake National Wildlife Refuge (including the Salt Creek Wilderness Area); sinkholes and springs at Bottomless Lakes State Park (Brooks and Woods 1988); and in Salt Creek, Reeves County, Texas.

In Texas, genetically pure populations of the Pecos pupfish are now thought to occur only in the upper reaches of Salt Creek, Culberson and Reeves counties, Texas (Wilde and Echelle 1992) and, less probably, in 2 water-filled gravel pits owned by the Phipps Gravel Company, in Pecos County 10.8 km (6.7 mi) west of Grandfalls, Texas. In New Mexico, the species still occurs in the Pecos River from north of Malaga upstream to Bitter Lake National Wildlife Refuge. It continues to survive in the Salt Creek Wilderness Area (North Tract) of Bitter Lake National Wildlife Refuge, where it is found in sinkholes, springs and Salt Creek (Brooks and Woods 1988, Sublette et al. 1990, Hoagstrom and Brooks 1997). It is also found at Bottomless Lakes State Park. This range reduction represents a loss of more than two-thirds of the species' former range (Echelle and Connor 1989).

Previous Federal Actions

In both the December 30, 1982, Review of Vertebrate Wildlife, Notice of Review (47 FR 58454); and the September 18, 1985, Review of Vertebrate Wildlife, Notice of Review (50 FR 37958), the Pecos pupfish was included as a category 2 species. Category 2 candidates were those species for which the Service had information indicating that listing may be warranted but for which it lacked sufficient information on status and threats to support issuance of proposed listing rules. However, based on new information from more recent surveys, the Pecos pupfish was identified as a Category 1 candidate in the January 6, 1989, Animal Notice of Review (54 FR 554) and in the November 21, 1991, Animal Notice of Review (56 FR 58804). Category 1 candidates were those species for which the Service had on file sufficient information to support issuance of proposed listing rules. In the February 28, 1996, Candidate Notice of Review (61 FR 7596), the Service discontinued the designation of multiple categories of candidates, and only former category 1 species are now recognized as candidates for listing purposes. The Pecos pupfish remained as a candidate species in the February 28, 1996, Notice of Review (61 FR 7596) and in the September 19, 1997, Notice of Review (62 FR 49398).

Pre-proposal letters requesting comments and information were mailed to interested parties, including Federal, State, and local agencies, in June 1991 and again in March 1997. Responses were received to the 1991 request from three New Mexico State agencies, one Texas State agency, a national wildlife refuge, three Federal agencies, three scientific experts, and a county judge. One Federal agency, one State agency, two universities, and one environmental group responded to the 1997 request. Where appropriate, the comments received were included in this proposed rule. A presentation of the current known status of the species was made at the Annual Meeting of the Pecos River Compact Commission on April 17, 1997.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Pecos pupfish (*Cyprinodon pecosensis*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Historical habitat of the Pecos pupfish in New Mexico has been drastically altered or destroyed by human uses of the Pecos River and activities in its watershed. These alterations include: conversion of flowing waters into slack waters by impoundment; alteration of flow regimes (including conversion of perennial flow to intermittent or no flow, and the reduction, elimination, or modification of natural flooding patterns); alteration of silt and bed loads; loss of marshes and backwaters; increases or decreases in water temperatures; and alteration of stream channel characteristics from well-defined, surface level, heavily vegetated channels with a diversity of substrates and habitats, to deeply cut unstable arroyos with little riparian vegetation, uniform substrate, and little habitat diversity. Causes of such alterations include: water diversion, damming, channelization, channel down-cutting, excessive groundwater pumping with resultant lowering of water tables, destruction of riparian vegetation, and other watershed disturbances. These ongoing changes in habitat conditions, along with displacement of the species by hybrids, threaten the survival of the Pecos pupfish throughout its entire range (Wilde and Echelle 1992).

Low velocity floodplain habitats adjacent to the main channel of the Pecos River provide refugia for the small Pecos pupfish from high flows in the main channel. These habitats are also characterized by higher levels of productivity and more stable food sources for the omnivorous pupfish. However, channelization and stream incision of the Pecos River, exacerbated by encroachment and channel armoring by salt cedar, have eliminated extensive floodplain habitat along the Pecos River. Wetlands and marshes adjacent to the river, once regularly flooded by peak river flows, are now dry or are only sporadically wetted. Reduction of base flows also occurred as a result of dam construction and reservoir operation, greatly reducing the number and extent of these habitats linked to the main river channel. The continuing loss of these floodplain habitats is a significant threat to the Pecos pupfish.

Pecos pupfish living in sinkholes and springs are threatened by groundwater depletion. In southeastern New Mexico, groundwater is the primary water source for a variety of uses, including drinking water and irrigation. This dependence on groundwater has lowered the water tables, resulting in a decline in water levels in sinkholes and springs where Pecos pupfish live. When the water table was higher, water flowed between sinkholes; because the water table has been lowered, these sinkholes are no longer interconnected (Lee Marlatt, U.S. Fish and Wildlife Service, Bitter Lake National Wildlife Refuge, pers. comm. 1987). Because they are isolated from the river which is inhabited by sheepshead minnows, sinkhole populations of Pecos pupfish are more protected from the threat of hybridization than are river populations. Because sinkhole populations are more protected from the threat of hybridization, the loss of these populations would seriously affect the survival of the species.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The Service is unaware of threats to the species from these factors. Pecos pupfish may occasionally be collected as bait by anglers and as specimens for scientific study, but these uses probably have a negligible effect on total population numbers.

C. Disease or Predation

The Service is unaware of threats to the species from disease. Sinkholes that support introduced game fish have lower numbers of pupfish than sinkholes without game fish (Echelle and Echelle 1978). As the Pecos pupfish population is impacted by habitat loss and degradation and refugia become scarce, predation may become a more important threat.

D. The Inadequacy of Existing Regulatory Mechanisms

New Mexico State law provides limited protection for the Pecos pupfish. The State of New Mexico lists the Pecos pupfish as a threatened species. Threatened species, as defined by the State of New Mexico, are those species "* * * whose prospects of survival or recruitment within the State are likely to be in jeopardy within the foreseeable future." This designation provides the protection of the New Mexico Wildlife Conservation Act (sections 17–2–37 through 17–2–46) and prohibits taking of such species except under the issuance of a scientific collecting permit. The State also has a limited ability to protect the habitat of the species through the Habitat Protection Act (sections 17–6–1 through 17–6–11) and through water quality statutes and regulations. The species' habitat is also protected tangentially through a provision of the Habitat Protection Act (section 17–4–14) which makes it illegal to de-water areas used by game fish.

New Mexico water law does not include provisions for the acquisition of instream water rights for protection of fish and wildlife and their habitat. Thus, there are no opportunities for protection of Pecos pupfish habitat in New Mexico through acquisition of water rights to maintain instream flows.

The Pecos pupfish was listed as threatened by the State of Texas on March 1, 1987. The State prohibits taking, possessing, and transporting State-listed species or goods made from such species (Texas Parks and Wildlife Code, section 68.015 (1975)). However, State-listing in Texas provides no protection for the habitat of listed species.

State regulations in New Mexico and Texas allow for the use of live bait in the Pecos River in areas containing the Pecos pupfish. This has encouraged the spread of detrimental species, specifically the sheepshead minnow, which replaces and/or hybridizes with the Pecos pupfish (see factor E).

Although both New Mexico and Texas provide protection against taking of the Pecos pupfish by virtue of State listing of the species, neither State provides sufficient protection to the aquatic habitat of the Pecos pupfish, and neither prohibits the introduction or spread of

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such detrimental species as the sheepshead minnow.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The primary cause for the recent (post 1980) range reduction of Pecos pupfish is the introduction of the sheepshead minnow, a species once confined to shallow, brackish, coastal waters of the Gulf and Atlantic coasts of the continental United States. The two *Cyprinodon* species appear to have little in the way of premating isolating mechanisms and readily hybridize (Cokendolpher 1980). Hybridization with and/or replacement by the sheepshead minnow poses a major threat to the Pecos pupfish. The sheepshead minnow was introduced into the Pecos River, probably in the vicinity of Pecos, Texas, sometime between 1980 and 1984. Sheepshead minnow x Pecos pupfish hybrids have since moved upstream and downstream at a rapid pace despite the presence of six irrigation diversion dams. The spread of hybrids has occurred both naturally and presumably through "bait bucket" introductions.

By 1984, surveys at four sites along the Pecos River below Red Bluff Reservoir, Texas, revealed evidence of hybridization between the Pecos pupfish and sheepshead minnow (Echelle 1985). In the vicinity of Pecos, Texas, the Pecos pupfish had been entirely replaced by sheepshead minnow x Pecos pupfish hybrids. At sites ranging from 50 km (31 mi) further upstream to 250 km (156 mi) downstream, evidence of hybridization was still apparent, though less pronounced (Echelle and Connor 1989).

Surveys in 1986 found the presence of genetic markers for sheepshead minnows in pupfish from Red Bluff Reservoir, New Mexico (Wilde and Echelle 1992). The introduction of sheepshead minnows into Red Bluff Reservoir means that genetically pure populations of Pecos pupfish south of Malaga, New Mexico (including the entire Texas population in the Pecos River), have been or probably will be eliminated except in areas not connected to the river or where effective fish barriers prevent access to habitat now occupied by the pupfish. In 1995, hybrids were taken from the Pecos River near the Loving Bridge (Eddy County), New Mexico, which is upstream of the pure pupfish population at Malaga Bend (Hoagstrom and Brooks, 1995).

The purity of the pupfish populations in Salt Creek, Texas, and in the abandoned gravel pits near Grandfalls, Texas, is unknown. Both populations occur on privately owned lands, and surveys have not been conducted on these lands since 1989. Because the gravel pits are close to the Pecos River and because hybrids occur in that portion of the river, the gravel pit populations may not be genetically pure.

The northward expansion of sheepshead minnow x Pecos pupfish hybrids had reduced the range of the Pecos pupfish by approximately 60 percent by the late 1980's (Wilde and Echelle 1992). Subsequent expansion of the hybrids into the Pecos River upstream from Red Bluff Reservoir has further constricted the range of the pupfish. Genetically pure populations of Pecos pupfish may now occur only in off-channel habitats. The river populations are most susceptible to replacement by and/or hybridization with sheepshead minnow. However, the sinkhole populations are also considered vulnerable to hybridization due to the possibility of anglers releasing sheepshead minnows into sinkholes.

Sinkhole, lake, and spring populations may also be susceptible to introductions of exotic fish species during periods of river flooding. Flood waters have inundated sinkholes and springs and could allow exotic species, including the sheepshead minnow, to access these otherwise isolated sites.

Large scale fish kills caused by algal blooms occurred in the Pecos River, Texas, in 1985 and 1986 (Rhodes and Hubbs 1992). Such algal blooms may affect the Pecos pupfish (Rhodes and Hubbs 1992).

Other threats to the Pecos pupfish include nonnative fish introductions and piscicide applications. Anglers interested in developing sport fisheries in sinkholes apply piscicides to remove unwanted fish species prior to introducing sport fish. Such manipulation, although conducted in compliance with State laws, can adversely affect or eliminate Pecos pupfish populations.

Oil spills from pipelines into Salt Creek in Texas have occurred and represent an ongoing threat to water quality and Pecos pupfish habitats.

The Service has carefully reviewed the status of the species and assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Pecos pupfish as endangered. The species has experienced a large population decline and great reduction of its range. This species is in danger of becoming extinct throughout all or a significant portion of its range. Threatened status would not accurately reflect the population decline, vulnerability, and imminent threats to this species. Critical habitat is not being proposed for the reasons discussed below.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Pecos pupfish at this time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Critical habitat receives consideration under section 7 of the Act with regard to actions carried out, authorized, or funded by a Federal agency (see Available Conservation Measures section). As such, designation of critical habitat may affect activities on Federal lands and may affect activities on non-Federal lands where such a Federal nexus exists. Under section 7 of the Act, Federal agencies are required to ensure that their actions do not jeopardize the continued existence of a species or result in destruction or adverse modification of critical habitat. However, both jeopardizing the continued existence of a species and adverse modification of critical habitat have similar standards and thus similar thresholds for violation of section 7 of the Act. In fact, biological opinions that conclude that a Federal agency action is likely to adversely modify critical habitat but not jeopardize the species for which the critical habitat has been designated are extremely rare. Also, the designation of critical habitat for the purpose of informing Federal agencies of the locations of occupied Pecos pupfish habitat is not necessary because the Service can inform Federal agencies through other means. For these reasons, the designation of critical habitat for the Pecos pupfish would provide no additional benefit to the species beyond that conferred by listing, and therefore, such designation is not prudent.

Occupied habitat for the Pecos pupfish occurs adjacent to and on the Bitter Lake National Wildlife Refuge and the Bureau of Land Management's (BLM) Bottomless Lakes Waterfowl Management Area. Because these occupied habitats are well known to the managers of these Federal lands, no adverse modification of this habitat is likely to occur without consultation under section 7 of the Act. Because of the small size of the species' current range, any adverse modification of the species' critical habitat would also likely jeopardize the species' continued existence. Designation of critical habitat for the Pecos pupfish on Federal land, therefore, is not prudent because it would provide no additional benefit to the species beyond that conferred by listing.

Because the aquatic habitat of the Pecos pupfish is considered "waters of the United States" under section 404 of the Clean Water Act, alteration of this habitat on private land may be regulated by the Army Corps of Engineers (COE) and may require consultation under section 7 of the Act. Certain other activities causing direct or indirect effects to habitat on private lands also may involve a Federal agency action. Although there may be COE or other Federal involvement requiring consultation for activities occurring in the species' habitat on private lands, because of the small size of the species' current range, any consultation which would result in a finding that the activity causes adverse modification of the species' critical habitat would also likely result in a finding that the activity jeopardizes the species' continued existence. Designation of critical habitat for the Pecos pupfish on private land, therefore, is not prudent because it would provide no additional benefit to the species beyond that conferred by listing.

Protection of the habitat of the Pecos pupfish will be addressed through the section 4 recovery process and the section 7 consultation process. The Service believes that activities involving a Federal action which may affect the Pecos pupfish can be identified without designating critical habitat by providing Federal agencies with information on the locations of occupied habitats and information on the kinds of activities which could affect the species. For the reasons discussed above, the Service finds that the designation of critical habitat for the Pecos pupfish is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Activities which may involve a Federal agency action and which may require conference and/or consultation as described in the preceding paragraph include: ground water pumping which can lower the water level in occupied sinkholes and springs; water diversion which dries streams; and other activities which cause habitat destruction or degradation including water quality degradation.

Lands along the Pecos River and tributaries are primarily privately owned. However, small areas of BLM land exist along the Pecos River between Fort Sumner and Roswell, New Mexico, and a short segment of the Pecos River flows through the Bitter Lake National Wildlife Refuge. Activities on private lands which may affect the Pecos pupfish or its habitat and which involve a Federal agency action require conference and/or consultation. Activities on BLM, Service, or other Federal lands which may affect the Pecos pupfish or its habitat also require conference and/or consultation.

Water use in the Pecos River basin is regulated by the States of New Mexico and Texas in accordance with the Pecos River Compact (Compact), a Congressionally approved agreement addressing allocation of water between New Mexico and Texas. The U.S. Bureau of Reclamation (BR) and the COE operate dams on the river, and thereby regulate flows, in accordance with the Compact. The operation of dams by the BR and COE requires conference and/or consultation.

Additionally, other Federal agency actions along the Pecos River that may require conference and/or consultation include: Environmental Protection Agency authorization of discharges under the National Pollutant Discharge Elimination System (NPDES) and registration and regulation of pesticides; Federal Highway Administration involvement in road and bridge construction and maintenance; BLM issuance of grazing permits and oil and gas leases; COE authorization of discharges of dredged or fill material into waters of the United States under section 404 of the Clean Water Act (e.g., authorization of oil, gas, and water pipeline construction); U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service programs (e.g., Rangeland Grasshopper Cooperative Management); USDA Natural Resources Conservation Service projects and technical assistance programs; USDA Farm Service Agency programs (e.g., financial assistance for certain irrigation projects); and the Department of Housing and Urban Development's Small Cities Community Development Block Grant program.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general trade prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot,

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wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

It is the policy of the Service (July 1, 1994, 59 FR 34272) to identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act at the time of listing. The intent of this policy is to increase public awareness of the effect of listing on proposed or ongoing activities. The Service believes that, based on the best available information, the following actions will not result in a violation of section 9, provided these activities are carried out in accordance with any existing regulations and permit requirements:

1. Livestock grazing which does not destroy or significantly degrade occupied Pecos pupfish habitat.
2. Groundwater pumping in areas where the groundwater is not connected to riverine or sinkhole habitats occupied by Pecos pupfish.
3. Oil and gas exploration and drilling in areas where surface or groundwater is not connected to habitats occupied by Pecos pupfish.

The following activities would likely violate section 9 of the Act:

1. Livestock grazing which causes destruction or significant degradation of occupied Pecos pupfish habitat.
2. Stocking of piscivorous fish or introduction of sheepshead minnows into habitat occupied by Pecos pupfish or into waters which are connected to, or which during high flows become connected to, habitat occupied by Pecos pupfish.
3. Pumping of groundwater which causes a significant reduction in the quantity or quality of water in areas occupied by Pecos pupfish.
4. Channelization or other activities which cause dewatering of habitats occupied by the Pecos pupfish.
5. Activities which cause significant degradation of surface water or groundwater quality of habitat occupied by the Pecos pupfish.

The term "significant degradation of habitat" as used in the descriptions of activities above, is that amount of degradation which causes "take" of Pecos pupfish. Not all of the activities mentioned above will result in violation of section 9 of the Act; only those activities which result in "take" of Pecos pupfish are considered violations of section 9. Contacts have been identified to assist the public in determining whether a particular activity would be prohibited under section 9 of the Act. In New Mexico, contact the Field Supervisor, Ecological Services Field Office (Albuquerque) (see **ADDRESSES** section). In Texas, contact the Field Supervisor, Ecological Services Field Office, 10711 Bernet Road, Suite 200, Hartland Bank Building, Austin, Texas 78758, (512/490–0057).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species;

(4) Current or planned activities in the subject area and their possible impacts on this species, and;

(5) Any other information related to the status of, or threats to, the Pecos pupfish.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Ecological Services Field Office (Albuquerque) (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Service's Ecological Services Field Office (Albuquerque) (see **ADDRESSES** section).

Author: The primary author of this proposed rule is Jennifer Fowler-Propst (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.11(h) by adding the following, in alphabetical order under "Fishes," to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
•	•	•	•	•	•	•	•
Pupfish, Pecos	*Cyprinodon pecosensis.*	USA (NM, TX)	Entire	E	.....	NA	NA
•	•	•	•	•	•	•	•

Dated: January 21, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–2273 Filed 1–29–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Request for Information and Recommendations on Species to Consider for Changes to the CITES Appendices

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Request for information.

SUMMARY: This notice solicits recommendations for amending Appendices I or II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The U.S. Fish and Wildlife Service invites information and comment from the public on animal or plant species that should be considered as candidates for U.S. proposals to amend Appendices I or II. Such amendments may concern the addition of species to Appendix I or II, the transfer of species from one Appendix to another, or the removal of species from Appendix I or II.

DATES: The Service will consider all information and comments received by March 31, 1998.

ADDRESSES: Correspondence concerning this request pertaining to species amendments should be sent to Chief, Office of Scientific Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, Room 750; Arlington, Virginia 22203. Comments and materials received will be available for public inspection by appointment from 8 a.m. to 4 p.m., Monday through Friday, at the Office of Scientific Authority.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Lieberman, Acting Chief, Office of Scientific Authority, phone 703–358–1708, fax 703–358–2276, e-mail susan_lieberman@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249 (hereinafter referred to as CITES or the Convention), is an international treaty designed to control and regulate international trade in certain animal and plant species that are now or potentially may be threatened with extinction. These species are listed in Appendices to CITES, copies of which are available from the Office of Scientific Authority at the above address or from the Service's World Wide Web site http://www.fws.gov/r9dia/applinks.html. Currently 143 countries, including the United States, are Parties to the Convention. CITES calls for biennial meetings of the Conference of the Parties, which review its implementation, make provisions enabling the CITES Secretariat in Switzerland to carry out its functions, consider amendments to the list of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose amendments to Appendices I and II for consideration by the other Parties.

This is the first in a series of **Federal Register** notices which, together with announced public meetings, provide an opportunity for the public to participate in the development of the United States' negotiating positions for the eleventh regular meeting of the Conference of the Parties to CITES (COP11). The Service's regulations governing this public process are found in 50 CFR 23.31–23.39.

The Service expects the eleventh meeting of the Conference of the Parties to be held in November 1999, in Indonesia.

Request for Information and Comments

One of the purposes of this notice is to solicit information that will help the Service identify species that are candidates for addition, removal, or reclassification in the CITES Appendices or to identify issues warranting attention by the CITES Nomenclature Committee. This request is not limited to species occurring in the United States. Although U.S. proposals submitted for recent Conferences of the Parties have focused on species native to the United States, any Party may submit proposals concerning animal or plant species occurring in the wild anywhere in the world. The Service encourages the submission of information on species for possible inclusion in the Appendices if these species are subject to international trade that may be detrimentally impacting the status of the species. Complete proposals are not being requested at this time, but rather we are asking interested persons to submit convincing information describing: (1) The status of the species, especially trend information; (2) conservation and management programs for the species, including the effectiveness of enforcement efforts; and (3) the level of domestic as well as international trade in the species, especially trend information. Any other relevant information can also be provided.

The term "species" is defined in CITES as "any species, sub-species, or geographically separate population thereof." Each species for which trade is controlled is included in one of three Appendices, either as a separate listing or incorporated within the listing of a higher taxon. The basic standards for inclusion of species in the Appendices are contained in Article II of CITES. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species which, although not necessarily now threatened with extinction, may become so unless trade in them is strictly controlled.

Appendix II also lists species that must be subject to regulation in order that trade in those currently and potentially threatened species may be brought under effective control. Such listings frequently are required because of difficulty in distinguishing specimens of currently or potentially threatened

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species from other species at ports of entry. Appendix III includes species that any Party country identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation and for which it needs the cooperation of other Parties to control trade. The present notice concerns only Appendices I and II.

CITES specifies that international trade in any readily recognizable part or derivative of animals listed in Appendix I or II, or plants listed in Appendix I, is subject to the same conditions that apply to trade in the whole organism. With certain standard exclusions formally approved by the Parties, the same applies to the readily recognizable parts and derivatives of most plant species listed in Appendix II. Parts and derivatives usually not included (i.e., not regulated) for Appendix II plants are: seeds, spores, pollen (including pollinia), and seedling or tissue cultures obtained *in vitro* and transported in sterile containers. Also see 50 CFR 23.23(d), and the October 6, 1995, **Federal Register** (60 FR 52450) and February 22, 1996, **Federal Register** (61 FR 6793) for further exceptions and limitations.

In 1994, the CITES Parties adopted new criteria for inclusion of species in Appendices I and II (in Resolution Conf. 9.24). These criteria apply to all future proposals and are available from the CITES Secretariat, the World Conservation Monitoring Centre's World Wide Web site, or upon request to the Office of Scientific Authority (see **ADDRESSES** section above). Resolution Conf. 9.24 also established a format for complete proposals.

However, for purpose of submitting information on species subject to international trade for possible listing in the Appendices, submitters of such information to the Service are asked to include as much of the following information as possible:

(1) Scientific name and common name;

(2) Population size estimates (including reference if available);

(3) Population trend information;

(4) Threats to species status (other than from trade);

(5) Level/trend of international trade (as specific as possible but without a request for new searches of Service records);

(6) Level/trend in total take from the wild (as specific as reasonable); and

(7) Short summary statement clearly presenting the rationale for inclusion in or delisting from one of the Appendices.

Persons wishing to submit more complete proposals for the United States to consider, should consult Resol. Conf. 9.24 for the format for proposals and a detailed explanation of each of the categories. Proposals to transfer a species from Appendix I to Appendix II, or to remove a species from Appendix II, must be consistent with the precautionary measures described in Annex 4 of Resol. Conf. 9.24.

Persons having information and comments on species that are potential candidates for CITES proposals are urged to contact the Service's Office of Scientific Authority.

Species Being Considered

The Service is considering proposing to transfer the North American population of the gyrfalcon (*Falco rusticolus*) from Appendix I to Appendix II. The gyrfalcon is circumpolar in distribution, including arctic and subarctic regions of Alaska, Canada, Greenland, and Iceland. The Service is not aware of any evidence that the North American gyrfalcon population has ever been threatened due to habitat loss, nest robbing, or trade. European range States have expressed concern in the past about enforcement problems that could arise if the North American population of this bird were downlisted. However, husbandry techniques have been developed for breeding the species in captivity, and the trade in North American gyrfalcons would not appear to pose a significant threat to the European gyrfalcon populations.

The Service is also considering proposing to include the timber rattlesnake (*Crotalus horridus*) in Appendix II. The timber rattlesnake occurs in 27 of the States, from New Hampshire and Minnesota south to Texas and Florida, having been extirpated from Maine and Rhode Island. Populations of timber rattlesnakes have declined greatly over much of their range. They are listed as endangered in many northern States, but commercial utilization is occurring for the pet trade, and for meat and leather products.

Draft proposals on the North American population of the gyrfalcon and on the timber rattlesnake are available from the Office of Scientific Authority for review and comment. Additional information on biological status and trade levels is solicited.

Furthermore, the CITES Animals Committee as part of its responsibilities under Resolution Conf. 9.1 (Rev.) Annex 2 to conduct periodic reviews of the Appendices, has noted that the Sonoran green toad (*Bufo retiformis*) and the orange-throated whiptail lizard (*Cnemidophorus hyperythrus*) have not been reported to be in international trade, and the United States and Mexico should consider proposing to remove them from the Appendices. Therefore the Service solicits biological and trade information on these two species.

At its November 1997 meeting, the CITES Plants Committee in accord with its responsibilities under Resolution Conf. 9.1 (Rev.) Annex 3, committed to conducting a review of all plant species or other taxa included in the Appendices before COP5 in 1985 (except for the higher-taxon listings of cycads, and the family listings of tree ferns, orchids, and cacti in Appendix II [which are supported by Resol. Conf. 9.18 (Rev.)]), and will seek to assess whether the rest of the taxa are appropriately listed on the basis of the criteria in Resol. Conf. 9.24 (adopted in 1994). In addition, the Parties at COP10 agreed to a review of all the timber tree species (see Decision 10.87). As part of the general review process, the Secretariat on December 19, 1997, in Notification No. 1009 advised the Parties that range States for the taxa under review may be contacted by co-ordinators mentioned therein for information and advice with regard to the assessment. The Secretariat, in consultation with the Chair of the Plants Committee (who is the general co-ordinator for the whole review), will extract a base of information on the tree species from a report due by April 1998 and send it to the range States and relevant organizations, asking for their opinions (and the extracted summaries will be available from the Service on request). Preferably using the categories in Resol. Conf. 9.24, the Service would appreciate receiving comments by the date due (see **DATES** section above) (including any additional comments soon after receiving the tree species synopses), on status or trade regarding those plant species or other taxa native to the United States and included in the CITES Appendices through 1983 (COP4) and the other native tree species, and is particularly interested in information that might warrant a change for any separately listed species or subspecies.

Finally, the Service notes that it is discussing with State wildlife agency representatives the appropriateness of listing some native species in Appendix III. This possibility includes some species originally proposed for inclusion in Appendix II in June 1997 at COP10, which is the most recent regular meeting of the Conference of the Parties. Any preliminary decisions to include species in Appendix III would be announced and comments solicited in a **Federal Register** notice. Furthermore, any proposal to include species in Appendix III would be made following the procedure outlined in Resol. Conf. 9.25 (copies available on request).

Future Actions

The next regular meeting of the Conference of the Parties (COP11) is expected to be held in November 1999 in Indonesia, and a tentative U.S. schedule has been developed to prepare for that meeting. Any proposals to amend Appendix I or II must be submitted by the United States to the CITES Secretariat 150 days prior to the start of COP11 (i.e., in June 1999). In order to fully accommodate the schedule's deadlines, the Service plans to expand its discussions with the States comprising the United States. Therefore, the Service is initiating this request for status and trade information on species earlier than in past years, because it is seeking greater involvement of the State wildlife agencies in the review process. Thus, after this initial request for species to consider, the State animal and plant conservation agencies will be asked for specific status and management information on those native species that are being considered. After review of any information received, the Service may make some preliminary decisions and may seek assistance in developing more complete proposals during the summer and fall of 1998.

The Service intends to publish a **Federal Register** notice in December 1998 to announce tentative species proposals to be submitted by the United States and to solicit further information and comments on them, as well as providing summary comment on information provided in response to this notice. In January 1999, a public meeting will be held to allow for additional input. All CITES Parties within the geographic range of species proposed for amendments to the Appendices will be consulted by March 1999, so that final proposals will have the benefit of their consideration and comments, in accord with Resol. Conf. 8.21. Another **Federal Register** notice in about June 1999 will announce the Service's final decisions and those species proposals submitted by the United States to the CITES Secretariat. The deadline for submission of the proposals to the Secretariat is expected to be in June 1999, as COP11 is currently being planned to take place in November 1999.

Through a series of additional notices in advance of COP11, the Service will solicit recommendations for possible agenda items and resolutions designed to improve the implementation of the Convention, inform the public about preliminary and final negotiating positions on resolutions and amendments to the Appendices proposed by other Parties for consideration at COP11, and explain how observer status is obtained for non-governmental organizations that plan to attend. The Service will also publish announcements of public meetings expected to be held in January 1999 and August 1999, to receive public input on its positions regarding COP11 issues.

Authors: This notice was prepared by Dr. Charles W. Dane and Dr. Bruce MacBryde, Office of Scientific Authority, under the authority of the U.S. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*, 87 Stat. 884, as amended).

List of Subjects in 50 CFR Part 23

Endangered and threatened species, Exports, Imports, and Treaties.

Dated: January 23, 1998.

Jamie Rappaport Clark,

Director.

[FR Doc. 98–2388 Filed 1–29–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 971230317-7317-01; I.D. No. 120197A]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on Petition To Revise Critical Habitat for Snake River Spring/Summer Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of determination.

SUMMARY: NMFS announces a 12-month determination of how it intends to proceed on a petition to revise critical habitat for Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*), pursuant to the Endangered Species Act (ESA) of 1973. After a review of the best available scientific information, NMFS determines the petitioned action is not warranted.

DATES: The determination announced in this notice was signed on January 26, 1998.

ADDRESSES: Requests for information concerning this action should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232; internet (jim.lynch@noaa.gov).

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Protected Resources Division, Northwest Region, (503) 231–2005 or Joe Blum, Office of Protected Resources, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On June 27, 1991, NMFS proposed the listing of Snake River spring/summer chinook salmon as a threatened species under the Endangered Species Act (ESA) (56 FR 29542). The final determination listing Snake River spring/summer chinook salmon as a threatened species was published on April 22, 1992 (57 FR 14653) and corrected on June 3, 1992 (57 FR 23458). Critical habitat was designated on December 28, 1993 (58 FR 68543). In the December 28, 1993 notice, NMFS designated all river reaches presently or historically accessible to listed spring/summer chinook salmon (except river reaches above impassable natural falls, and Dworshak and Hells Canyon Dams) in various hydrologic units as critical habitat (58 FR 68543). Napias Creek, the area in question, occurs within one of these designated hydrologic units (Middle Salmon-Panther, USGS Hydrologic Unit 17060203).

On January 6, 1997, the Secretary of Commerce (Secretary) received a petition from Meridian Gold Company (Meridian) to revise critical habitat for Snake River spring/summer chinook salmon in Napias Creek, a tributary to the Salmon River, located near Salmon, Idaho. In accordance with section 4(b)(3)(D) of the ESA, NMFS issued a determination on April 28, 1997, that the petition presented substantial scientific information indicating that a revision may be warranted (62 FR 22903). In that notice of finding, NMFS solicited information and comments from interested parties concerning the petitioned action (62 FR 22903). The comment period on the petitioned action closed on June 27, 1997 (62 FR 22903).

On June 23, 1997, NMFS received a request from Meridian requesting NMFS to extend the deadline for new information and comments until September 15, 1997. In its request for extension, Meridian stated that additional time was needed to complete studies to support the petitioned action. By a letter dated July 16, 1997, NMFS declined to extend the official comment period for the petitioned action. In this letter, NMFS concluded that an extension was not warranted since the original comment period was 30 days

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longer than that required by law and only one comment had been received during the original public comment period (NMFS, 1997a).

While NMFS declined to extend the public comment period for the petitioned action, NMFS stated in its July 16, 1997, response to Meridian that it would consider any pertinent information prior to making a determination (NMFS, 1997a). NMFS' willingness to consider pertinent information was communicated to the State of Idaho and to the only commenter, the Sierra Club Legal Defense Fund (SCLDF).

On September 16, 1997, Meridian submitted additional information in support of its petition. Specifically, Meridian submitted three new reports entitled: (1) "Ability of Salmon and Steelhead to Pass Napias Creek Falls"; (2) "Investigation of Physical Conditions at Napias Creek Falls"; and (3) "Historical and Ethnographic Analysis of Salmon Presence in the Leesburg Basin, Lemhi County, Idaho." This new information was added to the administrative record and was considered by NMFS in its 12-month determination. Copies of this information are available upon request (see **ADDRESSES**).

Summary of Comments Received on the Petitioned Action

One comment was received on the petitioned action during the 60-day public comment period. The commenter, SCLDF, contends the that petitioned action is not supported by available evidence and that Meridian's studies do not address the question of historic passability of Napias Creek (SCLDF, 1997). SCLDF further states that Meridian's desire to revise the critical habitat designation is to avoid measures necessary to mitigate its adverse modification of critical habitat (SCLDF, 1997). SCLDF ultimately recommends that NMFS deny Meridian's petition (SCLDF, 1997).

NMFS believes that SCLDF's views of Meridian's motivation for pursuing this action is not relevant for the purposes of determining the merits of Meridian's petition. While SCLDF provides no new information concerning the historic accessibility of this area to listed chinook salmon, NMFS considers the merits of available scientific information below.

Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the ESA as "(i) the specific areas within the geographical area occupied by the species * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species * * * upon a determination by the Secretary of Commerce (Secretary) that such areas are essential for the conservation of the species" (see 16 U.S.C. 1532(5)(A)). The term "conservation," as defined in section 3(3) of the ESA, means " * * * to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary" (see 16 U.S.C. 1532(3)).

In designating critical habitat, NMFS considers the following requirements of the species: (1) Space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, or rearing of offspring; and, generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of this species (see 50 CFR § 424.12(b)). In addition to these factors, NMFS also focuses on the known physical and biological features (primary constituent elements) within the designated area that are essential to the conservation of the species and may require special management considerations or protection. These essential features may include, but are not limited to, spawning sites, food resources, water quality and quantity, and riparian vegetation (see 50 CFR § 424.12(b)).

Analysis of Available Information and Comments

Meridian presents two main arguments in support of its petition to remove areas of Napias Creek, above Napias Creek Falls, from designated Snake River chinook salmon critical habitat. First, Meridian contends that, currently, Napias Creek Falls is a complete migration barrier to listed Snake River chinook salmon as evidenced by recent hydrologic studies. Second, Meridian contends that habitat above Napias Creek Falls has historically been inaccessible to chinook salmon as evidenced by historical research. These issues are discussed here.

Current Passage Conditions at Napias Creek Falls

Meridian conducted several studies to determine the ability of chinook salmon to migrate above Napias Creek Falls. One study evaluated the geomorphology of the falls, while another study assessed the potential for fish passage using the methods of Powers and Orsborn (P&O) as described in "Analysis of Barriers to Upstream Fish Migration" (Bonneville Power Administration (BPA), 1984). A third study entitled "Ability of Salmon and Steelhead to Pass Napias Creek Falls" analyzed information and conclusions of the preceding two studies and concluded that "Napias Creek Falls is an absolute barrier to upstream migration of salmon and steelhead in Napias Creek." (Meridian, 1997). NMFS has reviewed all information and studies submitted by Meridian regarding this issue. Further, NMFS conducted several on-site inspections of Napias Creek Falls to independently assess the potential for chinook salmon passage in this area. Based on an assessment of information contained in the petition, and on an independent assessment of physical conditions at Napias Creek Falls, NMFS concludes that chinook salmon can migrate past Napias Creek Falls during certain flow conditions (NMFS, 1997b). The following paragraphs summarize NMFS' analysis and conclusions.

First, conceding that the swimming capability of the anadromous fish that may have occupied Napias Creek can not be precisely determined, the swimming burst velocity (V_f) chosen for Napias Creek Falls in Meridian's petition, which is about 16.8 feet per second (fps) (5.12 meters per second (mps)) for Napias Creek Falls, was used by NMFS in its analysis. Based on a V_f of 16.8 fps (5.12 mps), Meridian uses the methods of P&O to calculate a potential jump height (H_j) of 4.3 feet(ft) (1.31 m) However, the P&O report states "Aaserude noted that to determine the true leaping height above the water surface, the length of the fish should be added to equation (6) (clarification - the projectile motion equation) because the fish uses its full propulsive power up until the point the fish's tail leaves the water * * *" (BPA, 1984). Therefore, the length of the fish should be added to the height of the jump. Since a small adult chinook salmon might measure 2 ft (.61 m) in length, adding this length to H_j yields a total potential jump height (H_t) of 6.3 ft (1.92 m).

Using data from Meridian's petition, the height of Napias Creek Falls is 9 ft (2.74 m) when streamflow is 49 cfs (1.37 cubic meters per second (cms)), and the water velocity at the crest of the falls is 7 fps (2.13 mps). After water drops 2.7 ft (.82 m) from the falls crest, gravity accelerates the water velocity to 11.7 fps (3.57 mps) (V_h) at the fish landing point, as calculated using the equations given in Meridian's petition. Since this velocity is below the burst velocity of a chinook salmon, the fish should be able to swim for 5 to 10 seconds at a V_f of 16.8 seconds (Bell, 1991). Swimming at a net velocity (V_f - V_h) of 5.1 fps (1.55 mps) for 5 seconds, a fish can travel a distance of 25.5 ft (7.77 m), much further than what would be required to pass the crest of the falls.

According to Meridian's petition, at 49 cfs (1.37 cms) the pool below Napias Creek Falls is 6 ft. deep (1.83 m), which is of sufficient depth for a fish to stage and leap at the falls. The P&O report states:

> From a research project the author participated in observing fish leaping over weirs at John's Creek Fish Hatchery, near Shelton, Washington (Aasrude 1984), it was concluded that two conditions should be satisfied to provide optimum leaping conditions in plunge pools: (1) depth of penetration of falling water should be less than the depth in the plunge pool, and (2) depth of the plunge pool must be on the order of, or greater than the length of the fish attempting to pass (BPA 1984).

Information from Meridian's petition shows that the pool below the uppermost falls at Napias Creek satisfies both of these conditions.

Finally, the issue of aerated two-phase (air-water) flow is discussed in Meridian's petition as a condition that further impedes the swimming and leaping ability of the fish. No data are given to reveal the extent of aeration at Napias Creek Falls and this is very difficult to measure in situ. Based on basic fluid drag equations that relate to the forces exerted by and on a moving submerged object, such as a fish, the drag force is directly proportional to the unit weight of water. Since the drag forces involved with the movement of a fish include propulsion by fins and friction drag produced by water velocity passing over the shape of a fish, the reduction of the unit weight of water due to aeration has force components that both increase and decrease the fish's swimming ability. This is an area that has not been specifically studied in bio-mechanical tests. However, it is reasonable to assume that, in the case of Napias Creek Falls, flowing at 49 cfs (1.37 cms), aeration will have an effect on the leaping ability of the fish, either positive or negative depending on the percent aeration of the flow. Data reported in the U.S. Bureau of Reclamation's Engineering Monograph No. 41, "Air-Water Flow in Hydraulic Structures" show that entrained air concentration decreases to near zero at the channel bottom of the receiving pool of a 15–degree slope chute to around 7 percent at mid-depth, with higher concentrations only nearer to the water surface. In the context of a fish's jumping ability, the majority of the water column produces only a slight decrease (some fraction of 0 percent to 7 percent) in the swimming speed reached before the jump commences. Noting that flow over most (if not all) falls is aerated, aeration of flow does not or did not preclude passage over Tumwater, Sherars, Celilo, and Willamette Falls. Presumably, this would also be the case at Napias Creek Falls.

Based on its analysis of data from the reports and from observation of Napias Creek Falls, NMFS concludes that chinook salmon could pass the current configuration of the falls at river flows of about 50 cfs (1.4 cms).

Historical Passage Conditions at Napias Creek Falls

Meridian conducted two studies to determine if, historically, chinook salmon were observed above Napias Creek Falls. The first study reviewed historical accounts of chinook salmon occurring above Napias Creek Falls. Meridian states that reviews of historical and independent ethnographic research document that salmon or steelhead were not observed or caught above Napias Creek Falls and, therefore, the fish were not historically present in this area. A second study reviews the genesis of Napias Creek Falls and concludes that the falls are a natural feature and, therefore, historically impassable to chinook salmon.

While the studies provided by Meridian tend to indicate that Napias Creek Falls may have been a historic barrier to salmon passage, this conclusion is called into question by comments from a United States Forest Service fishery biologist (Forest). In a report dated February 8, 1996, Bruce Smith, Salmon and Challis National Forest Fisheries Biologist, concludes that Napias Creek historically contained chinook salmon (Smith, 1996a). Furthermore, Smith states that areas above Napias Creek Falls currently contain relict indicator species, specifically bull trout and rainbow trout (Smith, 1996a), indicating pre-historic accessibility of this area to anadromous salmon species such as chinook (Smith, 1996b).

In its petition, Meridian provides a letter from George Matejko, Forest Supervisor, Salmon and Challis National Forests, dated April 30, 1996, to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, concerning the Smith reports. This letter states "it is the Forest Service's opinion that the Upper Napias Creek Watershed above Napias Creek Falls is not historic chinook salmon habitat" and "the minority opinion submitted to your office by Bruce Smith does not reflect the official Forest position on this issue" (Matejko, 1996).

While NMFS understands the Smith reports may not constitute the official position of the Forest on whether Upper Napias Creek is historical chinook salmon habitat, NMFS believes these reports provide relevant scientific information worthy of consideration.

Furthermore, while the Forest questions NMFS' use and interpretation of scientific information contained in the Smith reports, the Forest does not seek to refute all aspects of these reports (e.g., the presence of relict indicator species above the falls), nor does it provide new scientific information that would call into question conclusions contained in these reports.

Smith concluded that based on historical, ethnobiological, and biological evidence, it is likely chinook salmon historically occurred in Napias Creek, including areas above Napias Falls (Smith, 1996a; Smith, 1996b). Meridian attempts to prove that Napias Falls is a historic barrier to chinook salmon migration based on historic, ethnographic, and geologic studies of the area in question. NMFS concludes that the evidence contained in the Smith reports is not overcome by the evidence presented by Meridian or the Forest, and is persuasive on the question of the historical presence of chinook salmon in Upper Napias Creek.

While NMFS concludes it is likely that historically, chinook salmon and steelhead occurred above Napias Creek Falls, the issue of historical use of this area may in fact be moot since NMFS concludes chinook salmon can now migrate above Napias Creek Falls, (i.e., the area above Napias Creek Falls is within the current range of chinook salmon).

Essential Features of Habitat

NMFS' ESA implementing regulations state that it "shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species" (50 CFR § 424.12(e)). Therefore, in the

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event that areas outside a species' current range contain unique biological features that would aid in the conservation of the species, NMFS may designate such areas as critical habitat.

Documents submitted by Meridian indicate that habitat above Napias Creek Falls is of high quality and that this habitat may therefore be desirable for recovery of listed chinook salmon. In an undated report from Idaho Department of Fish and Game (IDFG) submitted by Meridian, the State concludes that "excellent spawning areas exist in the upper half of the stream" (IDFG, undated). This conclusion is supported by a recent NMFS assessment of this habitat (NMFS, 1997c). NMFS' recent habitat assessment is summarized here.

In assessing the quality of habitat in Napias Creek, NMFS' fishery biologists conducted onsite habitat evaluations and reviewed available scientific literature regarding the area. The portion of Napias Creek above Napias Creek Falls from approximately River Mile (RM) 3 to RM 10 has a lower gradient and often meanders through a more open floodplain. This stream stretch contains a high proportion of low gradient riffles, along with glides, runs, plunge pools, main channel pools, and lateral scour pools that create important spawning and rearing habitat for anadromous fishes (Thurow and Overton, 1993). Gravel and rubble tend to dominate the existing substrate, and occasional deep pools exist. Some portions of this stream reach may be considered pristine, although there is also some evidence of historical mining (ACZ Inc., 1990).

Napias Creek is an important source of high-quality dilution water within the Panther Creek system. Any degradation of dilution flows from Napias Creek would negatively impact efforts to reestablish anadromous fisheries in Panther Creek (ACZ Inc., 1990). According to Smith (1990), the dilution effect on Panther Creek creates a "habitat window" with natural benthic and fisheries values for about six miles downstream, to the confluence with Big Deer Creek, where Blackbird Mine drainage becomes a problem. Napias Creek water is also considered to have extremely low hardness (approximately 10 mg/l $CaCO_3$) relative to Panther Creek water (approximately 30 mg/l $CaCO_3$).

In most years, spring/summer chinook salmon should be able to navigate through Napias Creek Falls between late-June to mid-July when streamflows and water levels are more favorable (NMFS, 1997b). This time window will be more selective for early arriving adult chinook salmon. Historically, the Panther Creek system likely maintained an early migration of adult spring/summer chinook salmon (Parkhurst, 1950). The early spawning run and the low hardness factor may expand the genetic variability of listed Snake River chinook salmon, thereby enhancing the survival characteristics of the entire Snake River chinook salmon ESU.

Based on its own independent scientific analysis, NMFS concludes that areas above Napias Creek Falls contain a significant amount of high quality chinook salmon habitat. Given its assessment of habitat above Napias Creek Falls, NMFS believes that habitat above Napias Creek Falls contains unique features that will aid in the conservation and recovery of listed salmonid species. Therefore, if future studies indicate areas above Napias Creek Falls are outside the current range of listed chinook salmon, it is possible that such habitat areas may be found essential for conservation and recovery of listed salmonid species.

Determination

NMFS has reviewed Meridian's petition to revise critical habitat for Snake River spring/summer chinook salmon in Napias Creek, a tributary to the Salmon River, located near Salmon, Idaho. Based on its assessment of the best available scientific information, NMFS concludes that the petitioned action is not warranted.

References

A complete list of references is available upon request (see **ADDRESSES**).

Authority: 16 U.S.C. § 1531 *et seq.*

Dated: January 26, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–2368 Filed 1–29–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 970527125–8016–03; I.D. 122297D]

RIN: 0648–AJ95

Appointment of Members to the Regional Fishery Management Councils

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would amend guidelines contained at 50 CFR 600.215 that affect the nomination of obligatory and at-large members appointed by the Secretary of Commerce (Secretary) to the eight Regional Fishery Management Councils (RFMCs).

DATES: Comments must be received by March 2, 1998.

ADDRESSES: Comments should be sent to Dr. Gary C. Matlock, F/SF, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Loretta E. Williams, F/SF5, NMFS, 301–713–2337.

SUPPLEMENTARY INFORMATION:

Background

Section 302(b)(2)(C) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) establishes procedures for the nomination and appointment of RFMC members. On October 11, 1996, President Clinton signed into law the Sustainable Fisheries Act which, in pertinent part, amended the Magnuson-Stevens Act by adding a new seat on the Pacific Fishery Management Council (Council). The seat is to be held by a representative from an Indian tribe with federally recognized fishing rights from the States of California, Oregon, Washington, or Idaho (section 302(b)(5)(A)). On September 10, 1997, NMFS issued a final rule (62 FR 47584) to revise the regulations contained at 50 CFR 600.215. The final rule introduced into § 600.215 new procedures applicable to the nomination and appointment of a tribal Indian representative to the Council. This proposed revision reorganizes text contained in the final rule into more a logical order and makes editorial changes for readability. It also reemphasizes the requirement for each RFMC constituent State Governor, tribal Indian governments, and each RFMC nominee to comply with the March 15 nomination deadline, by which time each completed nomination package is to be received by the NMFS Assistant Administrator.

Obligatory seats for which completed nomination packages are not received by March 15 will remain unfilled until the nominators and nominees have furnished all required information. If complete nomination packages for at-large seats are not received by March 15, they will be returned and will not be processed further; the appointments will be made from among nominees whose complete packages were received by the deadline.

Classification

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule would (1) reorganize procedures and improve readability of procedures affecting the nomination and appointment of RFMC members, and (2) clarify and emphasize guidelines that relate to the compliance by RFMC constituent State Governors, appropriate tribal Indian governments, and each RFMC nominee for the submission of complete nomination packages by the March 15 deadline identified in the section. Because this rule is procedural only, it will not have an economic impact on the fishing industry or on small entities operating in the fishery.

This rule restates collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). They have been approved under OMB Control Number 0648–0314. The total public reporting burden for nominations submitted by state Governors, tribal Indian Governments, and nominees is estimated to be 120 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on these or any other aspects of the collection of information to the Office of Sustainable Fisheries (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB Control Number.

This rule has been determined to be not significant for the purposes of E.O. 12866.

List of Subjects in 50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

Dated: January 26, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR 600 is proposed to be amended as follows:

PART 600–MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et. seq.*

2. Section 600.215 is revised to read as follows:

§ 600.215 Council nomination and appointment procedures.

(a) *General.* (1) Each year, the 3-year terms for approximately one-third of the appointed members of the Councils expire. New members will be appointed, or seated members will be reappointed to another term, by the Secretary of Commerce (Secretary) to fill the seats being vacated.

(2) There are two categories of seats to which voting members are appointed: "Obligatory" and "at-large."

(i) Obligatory seats are state-specific. Each constituent state is entitled to one seat on the Council on which it is a member, except that the State of Alaska is entitled to five seats, and the State of Washington is entitled to two seats on the North Pacific Fishery Management Council. When the term of a state's obligatory member is expiring or when that seat becomes vacant before the expiration of its term, the Governor of that state must submit the names of at least three qualified individuals to fill that Council seat.

(ii) The Magnuson-Stevens Act also provides for appointment, by the Secretary, of one treaty Indian tribal representative to the Pacific Fishery Management Council (Pacific Council). To fill that seat, the Secretary solicits written nominations from the heads of governments of those Indian Tribes with federally recognized fishing rights from the States of California, Oregon, Washington, or Idaho. The list of nominees must contain a total of at least three individuals who are knowledgeable and experienced regarding the fishery resources under the authority of the Pacific Council. The Secretary will appoint one tribal Indian representative from this list to the Pacific Council for a term of 3 years and rotate the appointment among the tribes.

(iii) At-large seats are regional. When the term of an at-large member is expiring or when that seat becomes vacant before the expiration of a term, the Governors of all constituent states of that Council must each submit the names of at least three qualified individuals to fill the seat.

(b) *Responsibilities of State Governors.* (1) Council members are selected by the Secretary from lists of nominees submitted by Governors of the constituent states pursuant to section 302(b)(2)(C) of the Magnuson-Stevens Act. For each applicable vacancy, a Governor must submit the names of at least three nominees who meet the qualification requirements of the Magnuson-Stevens Act. A Governor must provide a statement explaining how each of his/her nominees meet the qualification requirements, and must also provide appropriate documentation to the Secretary that each nomination was made in consultation with commercial and recreational fishing interests of that state; and that each nominee is knowledgeable and experienced by reason of his or her occupational or other experience, scientific expertise, or training in one or more of the following ways related to the fishery resources of the geographical area of concern to the Council:

(i) Commercial fishing or the processing or marketing of fish, fish products, or fishing equipment;

(ii) Fishing for pleasure, relaxation, or consumption, or experience in any business supporting fishing;

(iii) Leadership in a state, regional, or national organization whose members participate in a fishery in the Council's area of authority;

(iv) The management and conservation of natural resources, including related interactions with industry, government bodies, academic institutions, and public agencies. This includes experience serving as a member of a Council, Advisory Panel, Scientific and Statistical Committee, or Fishing Industry Advisory Committee;

(v) Representing consumers of fish or fish products through participation in local, state, or national organizations, or performing other activities specifically related to the education or protection of consumers of marine resources; or

(vi) Teaching, journalism, writing, consulting, practicing law, or researching matters related to fisheries, fishery management, and marine resource conservation.

(2) To assist in identifying qualifications, each nominee must furnish to the appropriate Governor's office a current resume, or equivalent, describing career history—with particular attention to experience related to the criteria in paragraph (b)(1)

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of this section. Nominees may provide such information in any format they wish.

(3) A constituent State Governor must determine the state of residency of each of his/her nominees. A Governor may not nominate a non-resident of that state for appointment to a Council seat obligated to that state. A Governor may nominate residents of another constituent state of a Council for appointment to an at-large seat on that Council.

(4) If, at any time during a term, a member changes residency to another state that is not a constituent state of that Council, or a member appointed to an obligatory seat changes residency to any other state, the member may no longer vote and must resign from the Council. For purposes of this paragraph, a state resident is an individual who maintains his/her principal residence within that constituent state and who, if applicable, pays income taxes to that state and/or to another appropriate jurisdiction within that state.

(5) When the terms of both an obligatory member and an at-large member expire concurrently, the Governor of the state holding the expiring obligatory seat may indicate that the nominees who were not selected for appointment to the obligatory seat may be considered for appointment to an at-large seat. The Secretary may select from any of the nominees for such obligatory seat and from the nominees for any at-large seat submitted by the Governor of that state, provided that the resulting total number of nominees submitted by that Governor for the expiring seats is no fewer than six. If a total of fewer than six nominees is submitted by the Governor, each of the six will be considered for the expiring obligatory seat, but not for the expiring at-large seat.

(c) *Responsibilities of eligible tribal Indian governments.* The tribal Indian representative on the Pacific Council will be selected by the Secretary from a list of no fewer than three individuals submitted by the tribal Indian governments with federally recognized fishing rights from California, Oregon, Washington, and Idaho, pursuant to section 302(b)(5) of the Magnuson-Stevens Act. To assist in assessing the qualifications of each nominee, each head of an appropriate tribal Indian government must furnish to the Assistant Administrator a current resume, or equivalent, describing the nominee's qualifications, with emphasis on knowledge and experience related to the fishery resources affected by recommendations of the Pacific Council. Prior service on the Pacific Council in a different capacity will not disqualify nominees proposed by tribal Indian governments.

(d) *Nomination deadlines.* Nomination letters and completed kits must be forwarded by express mail under a single mailing to the address specified by the Assistant Administrator by March 15. For appointments outside the normal cycle, a different deadline for receipt of nominations will be announced.

(1) *Obligatory seats.* The Governor of the state for which the term of an obligatory seat is expiring must submit the names of at least three qualified individuals to fill that seat by the March 15 deadline. The Secretary will appoint to the Pacific Council a representative of an Indian tribe from a list of no fewer than three individuals submitted by the tribal Indian governments. If the nominator fails to provide a nomination letter and at least three complete nomination kits by March 15, the obligatory seat will remain vacant until all required information has been received and processed and the Secretary has made the appointment.

(2) *At-large seats.* (i) If a Governor chooses to submit nominations for an at-large seat, he/she must submit lists that contain at least three different qualified nominees for each vacant seat. A nomination letter and at least three complete nomination kits must be forwarded by express mail under a single mailing to the address specified by the Assistant Administrator.

(ii) Nomination packages that are incomplete as of March 15 will be returned to the nominating Governor and will not be processed further. At-large members will be appointed from among the nominations submitted by the Governors who complied with the nomination requirements and the March 15 deadline.

(e) *Responsibilities of the Secretary.* (1) The Secretary must, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries in the Council's area of authority. Further, the Secretary must take action to ensure, to the extent practicable, that those persons dependent for their livelihood upon the fisheries in the Council's area of authority are fairly represented as voting members on the Councils.

(2) The Secretary will review each list submitted by a Governor or the tribal Indian governments to ascertain whether the individuals on the list are qualified for the vacancy. If the Secretary determines that a nominee is not qualified, the Secretary will notify the appropriate Governor or tribal Indian government of that determination. The Governor or tribal Indian government shall then submit a revised list of nominees or resubmit the original list with an additional explanation of the qualifications of the nominee in question. The Secretary reserves the right to determine whether nominees are qualified.

(3) The Secretary will select the appointees from lists of qualified nominees provided by the Governors of the constituent Council states or the tribal Indian governments that are eligible to nominate candidates for that vacancy.

(i) For Governor-nominated seats, the Secretary will select an appointee for an obligatory seat from the list of qualified nominees submitted by the Governor of the state. In filling expiring at-large seats, the Secretary will select an appointee(s) for an at-large seat(s) from the list of all qualified candidates submitted. The Secretary will consider only complete slates of nominees submitted by the Governors of the Council's constituent states. When an appointed member vacates his/her seat prior to the expiration of his/her term, the Secretary will fill the vacancy for the remainder of the term by selecting from complete nomination letters and kits that are timely and contain the required number of candidates.

(ii) For the tribal Indian seat, the Secretary will solicit nominations of individuals for the list referred to in paragraph (c) of this section only from those Indian tribes with federally recognized fishing rights from California, Oregon, Washington, or Idaho. The Secretary will consult with the Bureau of Indian Affairs, Department of the Interior, to determine which Indian tribes may submit nominations. Any vacancy occurring prior to the expiration of any term shall be filled in the same manner as described in paragraphs (d)(1) and (2) of this section, except that the Secretary may use the list referred to in paragraph (b)(1) of this section from which the vacating member was chosen. The Secretary shall rotate the appointment among the tribes, taking into consideration:

(A) The qualifications of the individuals on the list referred to in paragraph (c) of this section;

(B) The various rights of the Indian tribes involved, and judicial cases that set out the manner in which these rights are to be exercised;

(C) The geographic area in which the tribe of the representative is located; and

(D) The limitation that no tribal Indian representative shall serve more than three consecutive terms in the Indian tribal seat.

[FR Doc. 98–2283 Filed 1–29–98; 8:45 am]
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Notices

Federal Register
Vol. 63, No. 20
Friday, January 30, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 97-075N]

HACCP; Opportunity for Early Implementation

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) announces that federally inspected meat and poultry slaughter and processing establishments may, upon request, implement and receive inspection under the new Hazard Analysis and Critical Control Point (HACCP) regulations prior to the mandatory implementation date. FSIS expects to be able to make early implementation available to most interested establishments beginning in spring 1998.

DATES: Written comments must be received on or before March 31, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. William Smith, Acting Assistant Deputy Administrator, Inspection Operations, Room 4437 South Building, Washington, DC 20250; (202) 720–3697.

SUPPLEMENTARY INFORMATION:

Background

The Hazard Analysis and Critical Control Points (HACCP) regulations set forth in 9 CFR part 417 become mandatory in all federally inspected meat and poultry slaughter and processing establishments during the period between January 26, 1998, and January 25, 2000 (61 FR 38806; July 25, 1996). The mandatory implementation date for large establishments (500 or more employees) is January 26, 1998; for small establishments (10 to 499 employees), it is January 25, 1999; and for very small establishments (fewer than 10 employees), it is January 25, 2000.

Some small and very small establishments have expressed interest in implementing the HACCP regulations set forth in 9 CFR part 417 before the mandatory date. Because the implementation of HACCP will likely reduce the risk of food borne illness from meat and poultry products, the Food Safety and Inspection Service (FSIS) will make every effort to accommodate requests for early HACCP implementation.

FSIS has expedited the training of inspectors, and expects by March 1998 to have a sufficient number of HACCP-trained inspectors available to respond positively to most requests. However, because the agency cannot project the actual number of requests, the granting of requests will be contingent on the availability of HACCP-trained inspectors.

Establishments that desire to be subject to the HACCP regulations before the mandatory date should submit a letter to this effect to the District Manager for the area in which the establishment is located. The letter should contain: (1) The establishment number; (2) the date that the establishment requests HACCP inspection to begin; and (3) an acknowledgment that the establishment cannot revert to traditional inspection once HACCP inspection is provided. Interested establishments should understand that early HACCP implementation means advancing the effective date of the HACCP regulations for them and that FSIS will enforce the HACCP regulatory requirements. FSIS will acknowledge receipt of the request and address the practicability of the requested implementation date, based on the availability of HACCP trained inspectors in a return letter. Because of the resource requirements involved in accommodating an establishment's request for early HACCP implementation, once the exchange of letters with FSIS confirming the agreement to implement HACCP on a given date is complete, the establishment will not be able to alter or withdraw from that agreement.

Done at Washington, DC, on: January 26, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 98–2298 Filed 1–29–98; 8:45 am]

BILLING CODE 3410–DM–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a commodity and services previously furnished by such agencies.

EFFECTIVE DATE: March 2, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 3, November 28, December 5 and 12, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (62 FR 51827, 63314, 64352 and 65411) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Office and Miscellaneous Supplies (Requirements for the Marine Corps Air Station, Yuma, Arizona)
Office and Miscellaneous Supplies (Requirements for the Marine Corps Air Station, Beaufort, South Carolina)
Knife, Kitchen 7340–00–205–3335
7340–00–223–7771
7340–00–488–7950
7340–00–680–2758
7340–00–488–7939
7340–00–197–1271

Services

Janitorial/Custodial, Federal Building, 648 Mission, Ketchikan, Alaska
Janitorial/Custodial, for the following Grand Rapids, Michigan locations: VA Outpatient Clinic, 3019 Coit Avenue, Special Mental Health Clinic, 3000 Monroe Street
Janitorial/Custodial, U.S. Army Reserve Center, 443 Route 119 N, Indiana, Pennsylvania
Janitorial/Custodial, Johnstown Aviation Support Facility, Airport Road #2, Johnstown, Pennsylvania
Janitorial/Grounds Maintenance, West Los Angeles Federal Building & U.S. Post Office, 11000 Wilshire Boulevard, Los Angeles, California
Mailroom Operation, U.S. Army Corps of Engineers, Humphreys Engineer Center Support Activity, Kingman Building, Telegraph and Leaf Road, Fort Belvoir, Virginia

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodity and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodity and services are hereby deleted from the Procurement List:

Commodity

Remover, Floor Polish
7930–00–045–6923

Services

Grounds Maintenance, U.S. Army Reserve Center, 2000 North New Road, Waco, Texas
Grounds Maintenance, U.S. Army Reserve Center, 6401 Imperial Drive, Waco, Texas
Janitorial/Custodial, U.S. Army Reserve Center, 200 North New Road, Waco, Texas
Janitorial/Custodial, U.S. Army Reserve Center, 6401 Imperial Drive, Waco, Texas.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–2372 Filed 1–29–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 2, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Grounds Maintenance, Aliamanu Military Reservation, Oahu, Hawaii, NPA: Lanakila Rehabilitation Center, Honolulu, Hawaii
Janitorial/Custodial, U.S. Army Reserve Center, San Bernadino & Bell, California, NPA: Lincoln Training Center & Rehabilitation Workshop, South El Monte, California
Janitorial/Custodial for the following locations: Schroeder Hall U.S. Army Reserve Center, 3800 Willow Street, Long Beach, California
Patton Hall U.S. Army Reserve Center, 5340 Bandini Boulevard, Bell,

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California, NPA: Goodwill Industries of Southern California, Los Angeles, California
Janitorial/Custodial, U.S. Coast Guard, CGC Eagle (WIX–327), 15 Mohegan Avenue, New London, Connecticut, NPA: CW Resources, Inc., New Britain, Connecticut
Janitorial/Grounds Maintenance, Pactola Harney Ranger District Recreation Areas, Black Hills National Forest, Custer, South Dakota, NPA: Southern Hills Developmental Services, Inc., Hot Springs, South Dakota
Laundry Service, Medical Clinics (BMC NS, NAS), San Diego, California, NPA: Job Options, Inc., San Diego, California
Library Services, Travis Air Force Base, California, NPA: PRIDE Industries, Roseville, California.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–2373 Filed 1–29–98; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–680–825]

Oil Country Tubular Goods From Korea; Extension of Time Limit for Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limit for antidumping duty administrative review of oil country tubular goods from Korea.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary results of the ongoing antidumping duty administrative review of the antidumping order on oil country tubular goods from Korea. This review covers one manufacturer and exporter of the subject merchandise: SeAH Steel Corporation, Ltd. The period of review is August 1, 1996 through July 31, 1997.

EFFECTIVE DATE: January 30, 1998.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian or Steven Presing, AD/CVD Enforcement Group III—Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230, telephone (202) 482–0162 or 482–0194, respectively.

SUPPLEMENTARY INFORMATION: The Department initiated this review in the **Federal Register** on September 25, 1997 (62 FR 50292). Currently, the preliminary results for this review are due May 3, 1998. However, due to the complexity of the issues involved in this case, including further manufacturing, multiple layers in the U.S. sales process, and the need to use third country market sales as the basis for normal value and for the Department's recently initiated cost investigation, the Department has determined that it is not practicable to complete this review within the time limits set forth by section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act. Therefore, the Department is extending the time limit for the preliminary results of the aforementioned review to August 31, 1998. This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994 (19 U.S.C. 1675(a)(3)(A)). *See* memorandum from Joseph A. Spetrini to Robert S. LaRussa, which is on file in Room B–099 at the Department's headquarters.

Dated: January 23, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 98–2359 Filed 1–29–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012398B]

Magnuson Act Provisions; Effects of Fishing on Essential Fish Habitat; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: NMFS will hold a public meeting to brief the Pacific Fishery Management Council's (PFMC) Groundfish Management Team and interested parties on the results of a synthesis of available scientific information on fishing gear impacts on habitat entitled: *The Indirect Effects of Fishing* by Peter J. Auster and Richard W. Langton. Following a presentation there will be an opportunity for questions and comments. NMFS requests that comments be limited to those concerning the adequacy of the synthesis, i.e., what scientific studies are missing, and any disagreements with the scientific conclusions.

DATES: The meeting will be held February 9, 1998. See **SUPPLEMENTARY INFORMATION** for specific location, and time.

ADDRESSES: Requests for copies of the draft report and additional information should be addressed to Office of Habitat Conservation, Attention: Gear Impacts, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282; telephone: 301/713–2325.

FOR FURTHER INFORMATION CONTACT: Jim Thomas, NMFS, 301/713–2325.

SUPPLEMENTARY INFORMATION:

Background

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act of 1996, requires that the Councils minimize, to the extent practicable, adverse effects of fishing on habitat. The Magnuson-Stevens Act further stipulates that fishers and other interested parties be involved in this process. This process begins with a synthesis that surveys and assesses all available information through the scientific literature concerning adverse effects of fishing. The draft synthesis is being presented and discussed at this public meeting. The final synthesis document will be available to all of the Councils and to other interested parties for use in addressing adverse impacts from fishing gear within fishery management plans. NMFS is hosting a series of meetings to inform the Councils and to involve interested parties early in the process of addressing the effects of fishing on habitat. Information on the locations of the other meetings was provided in an earlier notice (63 FR 2217, January 14, 1998) and will not be repeated here. The meeting announced in this notice will provide an opportunity for members of the PFMC's Groundfish Management Team, West Coast fishers, and the public an opportunity to comment on the draft synthesis document.

Public Meeting

Monday, February 9, 1998, from 7:00 p.m. to 10:00 p.m. PST at the Doubletree Downtown Hotel, Multnomah Falls Room, 310 SW Lincoln, Portland, OR 97201; telephone 503/221–0450.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Jim Thomas (see **FOR FURTHER INFORMATION CONTACT**) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 26, 1998.

James P. Burgess,

Director, Office of Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 98–2279 Filed 1–26–98; 4:44 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012398F]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Salmon Technical Team (STT) will hold a work session which is open to the public.

DATES: The meeting will begin at 10 a.m. on Tuesday, February 17, 1998, and continue from approximately 8 a.m. to 5 p.m. each day through Friday, February 20, 1998.

ADDRESSES: The meeting will be held at the Council office in Portland, OR.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dr. John Coon, Salmon Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting, which is primarily a work session of the STT, is to draft the stock status report, "Preseason Report 1: Stock Abundance Analysis for 1998 Ocean Salmon Fisheries." The final report will be distributed to the public and reviewed by the Council at its March 1998 meeting in Millbrae, CA.

Although other issues not contained in this agenda may come before this Team for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Team action during this meeting. Team action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Eric Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: January 26, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–2370 Filed 1–29–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012398G]

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Law Enforcement Committee and Advisory Panel.

DATES: The meeting will be held from February 19-20, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Unison Insurance Building, One Southpark Circle, Suite 306, Charleston, SC 29407-4699 (Council headquarters); telephone: (803) 571-4366.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407-4699.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, Public Information Officer; telephone: (803) 571-4366; fax: (803) 769-4520; email: susan.buchanan@noaa.gov

SUPPLEMENTARY INFORMATION:

Meeting Dates

February 19, 1998, 1:30 p.m. to 5:00 p.m.

The Committee and Advisory Panel will hear a report on the status and scope of the NMFS/South Carolina cooperative enforcement agreement and discuss the potential for other states' participation in the future, and hear a report on the NMFS Enforcement fishing vessel monitoring systems.

February 20, 1998, 8:30 a.m. to 5:00 p.m.

The Committee and Advisory Panel will discuss the consolidated regulations for the Southeast region, specifically the development of an index for the consolidated regulations and recommendations for revisions to the consolidated regulations; discuss standardization of measurements used for enforcement; hear the status of the NOAA General Counsel penalty schedule and summary settlement policy; review proposed management measures in Amendment 9 to the Fishery Management Plan for the Coastal Migratory Pelagics Resource; develop recommendations for targeting areas for recreational violations; discuss potential content and merits of a national marine law enforcement workshop; discuss how implementation of Amendment 8 to the Fishery Management Plan for Coastal Migratory Pelagics Resources will affect enforcement of illegal mackerel netting on the east coast of Florida; and discuss other business.

Although other issues not contained in this agenda may come before this Committee/Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Committee/Panel action during the meeting. Committee/Panel action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by February 12, 1998.

Dated: January 26, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–2371 Filed 1–29–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012398A]

Marine Mammals; Permit No. 926 (P562)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Dr. Robin Baird, Department of Biology, Dalhousie University, Halifax, Nova Scotia, Canada B3H 4J1, has requested an amendment to Permit No. 926.

DATES: Written comments must be received on or before March 2, 1998.

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ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA (206/526–6150);

Regional Administrator, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221); and

Regional Administrator, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001).

Written data or views, or requests for a public hearing on this request should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, National Marine Fisheries Service, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The Permit Holder is currently authorized to: (1) radio tag via suction cup attachment up to 25 killer whales (*Orcinus orca*) and up to 100 Dall's porpoise (*Phocoenoides dalli*) annually in waters off Washington State, over a five year period; and (2) harass up to 300 killer whales and 200 Dall's porpoise annually during the conduct of the tagging activities. The purpose of the research is to study the behavior and ecology of these species. The Holder is now requesting that the Permit be amended to expand the geographic coverage of the research to include the waters of southeast Alaska, Oregon, and California.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: January 23, 1998.

Ann D. Terbush, Chief,

Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–2367 Filed 1–29–98; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of submission of information collection #3038–0047—Contract market transactions.

SUMMARY: The Commodity Futures Trading Commission has submitted Information Collection 3038–0047, Contract Market Transactions, to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act of 1995, (Pub. L. 104–13). On October 2, 1995, pursuant to section 4(c) of the Commodity Exchange Act ("Act"), 7 U.S.C. § 6(c)(1994), the Commission published final rules in the **Federal Register** which exempted certain contract market transactions from specified requirements of the Act and Commission regulations thereunder (60 FR 51323). The information collected pursuant to this rule is required in order to assist the Commission in its determination that the exempted transaction will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act, and that the exemption would be consistent with the public interest and the purposes of the Act.

DATES: Comments must be received on or before March 2, 1998.

ADDRESS: Persons wishing to comment on this information collection should contact the Desk Officer, CFTC, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the submission are available from the Agency Clearance Officer, (202) 418–5160.

Title: Contract Market Transactions.

Control Number: 3038–0047.

Action: Extension.

Respondents: Contract Markets.

Estimated Annual Burden: 5,033.

Respondents	Regulation (17 CFR)	Estimated no. of respondents	Annual responses	Estimated average hours per response
Contract	36.5	100	100	0.33
Markets	36.7	200	2,000	2.50

Issued in Washington, DC, on January 26, 1998.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 98–2338 Filed 1–29–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats.

DATES: Thursday, February 5, 1998, 6:00 p.m.–9:30 p.m.

ADDRESS: Westminster City Hall, Lower-level Multi-purpose Room, 4800 West 92nd Avenue, Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, EM SSAB—Rocky Flats, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021, phone: (303) 420–7855, fax: (303) 420–7579.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. There will be a discussion and follow-up questions from the first annual State of the Flats meeting. At the State of the Flats meeting on January 28, Rocky Flats managers will share with the community cleanup accomplishments from 1997 and plans for 1998.

2. The board will discuss comments it will submit to DOE regarding the Environmental Impact Statement for the treatment of certain plutonium residues currently at the site.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9:00 a.m. and 4:00 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the Board's office address or telephone number listed above.

Issued at Washington, DC on January 26, 1998.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–2383 Filed 1–29–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation.

DATES: Wednesday, February 4, 1998, 6:00 p.m.–9:30 p.m.

ADDRESS: Ramada Inn, 420 South Illinois Avenue, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Marianne Heiskell, Ex-Officio Officer, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, (423) 576–0314.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: A business meeting will be conducted with no technical presentation provided.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Marianne Heiskell at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments near the beginning of the meeting. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 8:30 am and 5:00 pm on Monday, Wednesday, and Friday; 8:30 am and 7:00 pm on Tuesday and Thursday; and 9:00 am and 1:00 pm on Saturday, or by writing to Marianne Heiskell, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, or by calling her at (423) 576–0314.

Issued at Washington, DC on January 26, 1998.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–2384 Filed 1–29–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah Gaseous Diffusion Plant.

DATES: Thursday, February 19, 1998, 5:00 p.m.–10:00 p.m.

ADDRESS: Executive Inn, McKinley Room, 1 Executive Boulevard, West Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: Carlos Alvarado, Site-Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (502) 441–6804.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The meeting will include administrative plans for the board at the beginning of the meeting; Environmental Management and Enrichment Facilities (EMEF) Project updates; a review of the SSAB Draft Work Plan; updates on Waste Area Groupings (WAGs) 6 and 22 (if regulatory comments have been received).

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Carlos Alvarado at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the

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meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments as the first item on the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday through Friday, or by writing to Carlos Alvarado, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, or by calling him at (502) 441–6804.

Issued at Washington, DC on January 26, 1998.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–2386 Filed 1–29–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford Site.

DATES: Thursday, February 5, 1998, 8:30 a.m.–6:00 p.m.; Friday, February 6, 1998, 8:30 a.m.–5:00 p.m.

ADDRESS: Radisson Hotel Seatac Airport, 17001 Pacific Highway South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Gail McClure, Public Involvement Program Manager, Department of Energy Richland Operations Office, P.O. Box 550 (A7–75), Richland, WA, 99352; Ph: (509) 373–5647; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: There will be a Tank Waste Remediation System Workshop on Thursday, February 5 and on the morning of Friday, February 6. The Board will also receive information on and discuss issues related to: the FY2000 Budget and Spent Nuclear Fuel on Friday, February 6.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gail McClure's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments near the beginning of the meeting. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Gail McClure, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling him at (509) 376–9628.

Issued at Washington, DC on January 26, 1998.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–2387 Filed 1–29–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER94–1045–009 and ER96–688–006]

Kansas City Power & Light Company and Northeast Power Marketing Company, L.L.C.; Notice of Filing

January 26, 1998.

Take notice that on November 18, 1997, Kansas City Power & Light Company (KCP&L), and Northeast Power Marketing Company, L.L.C. tendered for filing an errata to its notice filed on November 17, 1998, relating to limitations on affiliate sales under their respective market rate authority pursuant to the Commission's policies requiring merging companies to consider one another as affiliates pending consummation of their merger.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 5, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2306 Filed 1–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL96–57–000]

City of Needles v. Nevada Power Company; Notice of Filing

January 26, 1998.

Take notice that on September 19, 1997, the City of Needles tendered for filing a request to withdraw its complaint in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2305 Filed 1–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–9–000]

Puget Sound Energy, Inc., Notice of Filing

January 26, 1998.

Take notice that on January 15, 1998, Puget Sound Energy, Inc. (PSE), submitted for filing a request to withdraw its Amendment No. 1, to Power Exchange Agreement with British Columbia Power Exchange Corporation filed October 2, 1997, and to terminate this docket.

PSE has provided copies of the filing to all parties appearing on the official service list for the above proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 5, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2309 Filed 1–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4082–000]

The Washington Water Power Company; Notice of Filing

January 26, 1998.

Take notice that on December 10, 1997, the Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission an amendment in the above-referenced docket.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2307 Filed 1–29–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5957–3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NESHAP for Equipment Leaks (Fugitive Emission Sources)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NESHAP for Equipment Leaks (Fugitive Emission Sources), 2060–0068, expiration date March 31, 1998. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 2, 1998.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call Sandy Farmer at EPA, (202) 260–2740, email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No.1153.06.

SUPPLEMENTARY INFORMATION: Title: NESHAP for Equipment Leaks (Fugitive Emission Sources), 2060–0068, ICR 1153.06,expiring March 31, 1998. This ICR is a request for extension of a currently approved collection.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Equipment Leaks (Fugitive Emission Sources) were proposed on January 5, 1981 and promulgated on June 6, 1984. These standards apply to fugitive emissions from equipment sources operating in volatile hazardous air pollutant (VHAP) service (containing or contacting fluids with at least 10% VHAP by weight): Affected facilities are those which own and/or operates pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, flanges and other connectors, product accumulator vessels, and control devices or systems in VHAP service. This information is being collected to assure compliance with 40 CFR part 61, subpart V.

Owners or operators of the affected facilities described must make one-time-only notifications including: notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate, notification of the initial performance test, including information necessary to determine the conditions of the performance test, and performance test measurements and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports and records are required, in general, of all sources subject to the NESHAPs.

Monitoring requirements specific to the Equipment Leaks (Fugitive Emission Sources) NESHAP provides information on leak detection. Owners or operators are also required to submit semiannual reports of the number of valves, pumps, and compressors for which leaks were detected, and explanations for any leak repair delays.

Any owner or operator subject to the provisions of this part shall maintain a file of these reports and retain the file for at least two years following the date of such records.

Approximately 75 sources are currently subject to the standard, and no new sources are expected in the next three years. However, approximately two modified, reconstructed, or new process units are expected per year. According to OAQPS' Emission Standard Division, the number of affected sources is expected to decline

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during the next three years. Therefore, the number of affected sources by this standard will remain unchanged from the previous submittal.

All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on August 20, 1997, and no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 337 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Facilities using pumps, compressors and various devices/systems in volatile hazardous air pollutant service.

Estimated Number of Respondents: 77.

Frequency of Response: 2.

Estimated Total Annual Hour Burden: 57,495 hours.

Estimated Total Annualized Cost Burden: $19,327.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for reducing a respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1153.06 and OMB Control No. 2060–0068 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: January 26, 1998.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 98–2360 Filed 1–29–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5488–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 12, 1998 Through January 16, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the OFFICE OF FEDERAL ACTIVITIES AT (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 1997 (62 FR 16154).

Draft EISs

ERP No. D–BLM–K65275–CA Rating EO2, Fourmile Hill Geothermal Development Project, Construction, Operation and Maintenance, 49.9 megawatt (MW) Geothermal Power Plant, Federal Geothermal Leases CA–21924 and CA–21926, Glass Mountain Known Geothermal Resource Area, Klamath and Modoc National Forests, Siskiyou and Modoc Counties, CA.

Summary: EPA has expressed objections to the significance of potential environmental impacts to the freshwater system and indicated that insufficient data was provided regarding the applied conceptual hydrogeologic model. EPA also expressed objection because the proposed action could establish a precedent for future action with significant effects. EPA also recommended that a second proposed project be included in the same EIS because it is a similiar action. ERP No. D–USA–B11022–MA Rating EU3, Massachusetts Military Reservation Facilities Upgrade, Implementation, 10 Projects, Towns of Bourne, Sandwich, Falmouth and Mashpee, Barnstable County, MA.

Summaey: EPA deemed the draft EIS inadequate because it lacked essential information relating to the environmental impacts of past, current and future training activities at the training range and impact area at the military reservation. EPA commented that the most critical deficiency of the DEIS was its failure to address adequately the contamination of Cape Cod's sole source aquifer as the result of past military operations and the potential for future contamination from current and proposed training activities. EPA called for the substantial revision and reissuance of the DEIS as a SEIS in order to provide a basis for understanding the baseline environmental conditions and potential impacts of the expansion of the training ranges.

ERP No. DS–FHW–B40071–CT Rating EC2, I–95 at New Haven Harbor Crossing (Quinnipac River Bridge) Updated Information for Seven Alternatives on (Q-Bridge) Study, Funding, COE Section 404 Permit, U.S. Coast Guard Bridge Permit, New Haven, East Haven, Branford, Madison and Clinton, CT.

Summary: EPA commented that additional information with regard to wetland and air quality impacts should be provided to fully evaluate the environmental acceptability of various alternatives. EPA also indicated that it is crucial for the final EIS to demonstrate that funding can and will be secured for the transit features of the project. Additionally, EPA asked CTDOT/FHWA to demonstrate the affirmative and effective steps to assure that TSM and transit incentive components will be implementated for the project.

Final EISs

ERP No. F–AFS–L65267–AK Helicopter Landings within Wilderness, Implementation, Tongass National Forest, Chatham, Stikine and Ketchikan Area, AK.

Summary: Review of the final EIS has been completed and the project found to be satisfactory. No formal comment letter was sent to the preparing agency.

ERP No. FA–DOE–A22076–NM Waste Isolation Pilot Plant Disposal Phase, Updated Information, Disposal of Transuranic Waste, Carlsbad, NM.

Summary: EPA has no further comment to offer on the NEPA process. Final approval for operation of the WIPP facility will be based upon EPA's completion of the certification process conducted by EPA's Office of Radiation and Indoor Air and the RCRA permit review and approval process conducted by the New Mexico Environment Department.

Dated: January 27, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–2376 Filed 1–29–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5488–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed January 19, 1998 Through January 23, 1998 Pursuant to 40 CFR 1506.9.

EIS No. 980012, DRAFT EIS, COE, CA, Santa Clara River and Major Tributaries Project, Approval of 404 Permit and 1603 Streambed Alteration Agreement, City Santa Clarita, Los Angeles County, CA, Due: March 25, 1998, Contact: Bruce Henderson (805) 641–1128.

EIS No. 980013, DRAFT EIS, FHW, NM, Paseo del Volcon Corridor, Acquisition of Right-of-Way and Construction of Roadway, from the Intersection of I–40 to Intersection of NM–44 near the Town of Bernalillo, Bernalillo and Sandoval Counties, NM, Due: March 16, 1998, Contact: Gregory D. Rawlings (505) 820–2027.

EIS No. 980014, DRAFT EIS, AFS, OR, Nicore Mining Project, Implementation, Plan-of-Operations, Mining of Four Sites, Road Construction, Reconstruction, Hauling and Stockpiling of Ore, Rough and Ready Creek Watershed, Illinois Valley Ranger District, Siskiyou National Forest, Medford District, Josephine County, OR, Due: March 16, 1998, Contact: Rochelle Desser (541) 592–2166.

EIS No. 980015, FINAL SUPPLEMENT, COE, PA, Lower Monogahela River Navigation System, Locks and Dam Nos 2, 3 and 4 Improvement, Additional Documentation, Disposal and Dredge and Excavated Material, Funding, Allegheny, Washington and Westmoreland Counties, PA, Due: March 02, 1998, Contact: James Purdy (412) 395–7224.

Dated: January 27, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–2377 Filed 1–29–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[PF–788; FRL–5766–2]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–788, must be received on or before March 2, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch (7502C), Information Resources and Services Division, Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Joanne Miller (PM 23) ...	Rm. 237, CM #2, 703–305–6224, e-mail: miller.joannes@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Cynthia Giles-Parker (PM 22).	Rm. 229, CM #2, 703–305–7740, e-mail: giles-parker.cynthia@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–788] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by

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the docket control number [PF–788] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 22, 1998.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. FMC Corporation

PP 7F4795

EPA has received a pesticide petition (PP 7F4795) from FMC Corporation, 1735 Market Street, Philadelphia, PA 19103, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of carfentrazone-ethyl in or on the raw agricultural commodities (RAC) cereal grain at 0.1 parts per million (ppm), 0.3 ppm in or on hay; 0.2 ppm in or on straw; 1.0 ppm in or on forage; 0.15 ppm in or on stover and 0.1 ppm in or on sweet corn, K + CWHR (kernels plus cob with husk removed) and in or on the RACs soybeans and soybean seed at 0.1 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of carfentrazone-ethyl in plants is adequately understood. Corn, wheat, and soybean metabolism studies with carfentrazone-ethyl have shown uptake of material into plant tissue with no significant movement into grain or seeds. All three plants extensively metabolized carfentrazone-ethyl and exhibited a similar metabolic pathway. The residues of concern are the combined residues of carfentrazone-ethyl and carfentrazone-ethyl-chloropropionic acid.

2. *Analytical method.* There is a practical analytical method for detecting and measuring levels of carfentrazone and its metabolites in or on food with a limit of quantitation (LOQ) that allows monitoring of food with residues at or above the levels set in the tolerances. The analytical method for carfentrazone-ethyl involves separate analyses for parent and its metabolites. The parent is analyzed by GC/ECD. The metabolites are derivatized with boron trifluoride and acetic anhydride for analysis by GC/MSD using selective ion monitoring.

3. *Magnitude of residues.* Carfentrazone-ethyl 50DF was applied postemergent to 28 wheat trials, 24 corn trials, and 22 soybean trials in the appropriate EPA regions. The RACs were harvested at the appropriate growth stages and subsequent analyses determined that the residues of carfentrazone-ethyl and its metabolites will not exceed the proposed tolerances of 1.0, 0.3, 0.2, and 0.1 ppm for wheat forage, hay, straw, and grain, respectively; 0.1 ppm each for corn forage, fodder, and grain; and 0.1 ppm for soybean seed. Residue data from a cow feeding study demonstrated that no accumulation of carfentrazone-ethyl or its metabolites occurred in milk or tissues.

B. Toxicological Profile

1. *Acute toxicity.* Carfentrazone-ethyl demonstrates low oral, dermal and inhalation toxicity. The acute oral LD_{50} value in the rat was greater than 5,000 milligram/kilograms (mg/kg), the acute dermal LD_{50} value in the rat was greater than 4,000 mg/kg and the acute inhalation LC_{50} value in the rat was greater than 5.09 mg/L/4h. Carfentrazone-ethyl is non-irritating to rabbit skin and minimally irritating to rabbit eyes. It did not cause skin sensitization in guinea pigs. An acute neurotoxicity study in the rat had a systemic No observed adverse effect level (NOAEL) of 500 mg/kg based on clinical signs and decreased motor activity levels; the NOAEL for neurotoxicity was greater than 2,000 mg/kg (highest dose tested); (HDT) based on the lack of neurotoxic clinical signs or effects on neuropathology.

2. *Genotoxicity.* Carfentrazone-ethyl did not cause mutations in the Ames assay with or without metabolic activation. There was a positive response in the Chromosome Aberration assay without activation but a negative response with activation. The Mouse Micronucleus assay (an *in vivo* test which also measures chromosome damage), the CHO/HGPRT forward mutation assay and the Unscheduled DNA Synthesis assay were negative. The overwhelming weight of the evidence supports the conclusion that Carfentrazone-ethyl is not genotoxic.

3. *Reproductive and developmental toxicity.* Carfentrazone-ethyl is not considered to be a reproductive or a developmental toxin. In the 2-generation reproduction study, the No observed effect level (NOEL) for reproductive toxicity was greater than 4,000 ppm (greater than 323 to greater than 409 mg/kg/day). In the developmental toxicity studies, the rat and rabbit maternal NOELs were 100 mg/kg/day and 150 mg/kg/day, respectively. The developmental NOEL for the rabbit was greater than 300 mg/kg/day which was the highest dose tested and for the rat the NOEL was 600 mg/kg/day based on increased litter incidences of thickened and wavy ribs at 1,250 mg/kg/day. These two findings (thickened and wavy ribs) are not considered adverse effects of treatment but related delays in rib development which are generally believed to be reversible.

4. *Subchronic toxicity.* Ninety-day feeding studies were conducted in mice, rats and dogs with Carfentrazone-ethyl. The NOEL for the mouse study was 4,000 ppm (571 mg/kg/day), for the rat study was 1,000 ppm (57.9 mg/kg/day for males; 72.4 mg/kg/day for females) and for dogs was 150 mg/kg/day. A 90-day subchronic neurotoxicity study in the rat had a systemic NOEL of 1,000 ppm (59.0 mg/kg/day for males; 70.7 mg/kg/day for females) based on decreases in body weights, body weight gains and food consumption at 10,000 ppm; the neurotoxicity NOEL was greater than 20,000 ppm (1,178.3 mg/kg/day for males; 1,433.5 mg/kg/day for females) which was the highest dose tested.

5. *Chronic toxicity.* Carfentrazone-ethyl is not carcinogenic to rats or mice. A 2-Year Combined Chronic Toxicity/Oncogenicity study in the rat was negative for carcinogenicity and had a chronic toxicity NOEL of 200 ppm (9 mg/kg/day) for males and 50 ppm (3 mg/kg/day) for females based on red fluorescent granules consistent with porphyrin deposits in the liver at the 500 and 200 ppm levels, respectively.

An 18 Month Oncogenicity study in the mouse had a carcinogenic NOEL that was greater than 7,000 ppm (>1,090 mg/kg/day for males; >1,296 mg/kg/day for females) based on no evidence of carcinogenicity at the highest dose tested. A 1-Year Oral Toxicity study in the dog had a NOEL of 50 mg/kg/day based on isolated increases in urine porphyrins in the 150 mg/kg/day group (this finding was not considered adverse).

Using the Guidelines for Carcinogen Risk Assessment, carfentrazone-ethyl should be classified as Group "E" for carcinogenicity -- no evidence of carcinogenicity -- based on the results of carcinogenicity studies in two species. There was no evidence of carcinogenicity in an 18-month feeding study in mice and a 2-year feeding study in rats at the dosage levels tested. The doses tested are adequate for identifying a cancer risk. Thus, a cancer risk assessment is not necessary.

6. *Animal metabolism.* The metabolism of carfentrazone-ethyl in animals is adequately understood. Carfentrazone-ethyl was extensively metabolized and readily eliminated following oral administration to rats, goats, and poultry via excreta. All three animals exhibited a similar metabolic pathway. As in plants, the parent chemical was metabolized by hydrolytic mechanisms to predominantly form carfentrazone-ethyl-chloropropionic acid which was readily excreted.

7. *Endocrine disruption.* An evaluation of the potential effects on the endocrine systems of mammals has not been determined; however, no evidence of such effects were reported in the chronic or reproductive toxicology studies described above. There was no observed pathology of the endocrine organs in these studies. There is no evidence at this time that carfentrazone-ethyl causes endocrine effects.

C. Aggregate Exposure

1. *Dietary exposure*— i. *Acute dietary.* The Agency has determine that there is no concern for an acute dietary risk assessment since the available data do not indicate any evidence of significant toxicity from a 1-day or single event exposure by the oral route (**Federal Register**: September 30, 1997, 62 FR 51032-51038). Thus an acute dietary risk assessment is not necessary.

ii. *Chronic dietary.* Based on the available toxicity data, the EPA has established a provisional Reference Dose (RfD) for carfentrazone-ethyl of 0.06 mg/kg/day. The RfD for carfentrazone-ethyl is based on a 90-day feeding study in rats with a threshold NOEL of 57.9 mg/kg/day and an uncertainty factor of 100, with an additional modifying factor of 10 to account for the fact that the chronic studies have not yet been reviewed by the EPA. For purposes of assessing the potential chronic dietary exposure, a Tier 1 dietary risk assessment was conducted based on the Theoretical Maximum Residue Contribution (TMRC) from the proposed tolerances for carfentrazone-ethyl on soybeans at 0.1 ppm, wheat at 0.2 ppm and corn (field) at 0.15 ppm. (The TMRC is a "worse case" estimate of dietary exposure since it is assumed that 100% of all crops for which tolerances are established are treated and that pesticide residues are present at the tolerance levels.) At this time the dietary exposure to residues of carfentrazone-ethyl in or on food will be limited to residues on soybeans, wheat and corn. There are no other established U.S. tolerances for carfentrazone-ethyl, and there are no registered uses for carfentrazone-ethyl on food or feed crops in the U.S. In conducting this exposure assessment, the following very conservative assumptions were made-- 100% of soybeans, wheat and corn will contain carfentrazone-ethyl residues and those residues would be at the level of the tolerance which result in an overestimate of human exposure.

2. *Food.* Dietary exposure from the proposed uses would account for 1.3% or less of the RfD in subpopulations (including infants and children).

3. *Drinking water.* Studies have indicated that carfentrazone-ethyl will not move into groundwater, therefore water has not been included in the dietary risk assessment.

4. *Non-dietary exposure.* No specific worker exposure tests have been conducted with carfentrazone-ethyl. The potential for non-occupational exposure to the general population has not been fully assessed. No specific worker exposure tests have been conducted with carfentrazone-ethyl.

D. Cumulative Effects

EPA is also required to consider the potential for cumulative effects of carfentrazone-ethyl and other substances that have a common mechanism of toxicity. EPA consideration of a common mechanism of toxicity is not appropriate at this time since EPA does not have information to indicate that toxic effects produced by carfentrazone-ethyl would be cumulative with those of any other chemical compounds; thus only the potential risks of carfentrazone-ethyl are considered in this exposure assessment.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described and based on the completeness and reliability of the toxicity data, the aggregate exposure to carfentrazone-ethyl will utilize 0.61% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, there is a reasonable certainty that no harm will result from aggregate exposure to residues of carfentrazone-ethyl, including all anticipated dietary exposure and all other non-occupational exposures.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of carfentrazone-ethyl, EPA considers data from developmental toxicity studies in the rat and rabbit and the 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to effects on the reproductive capacity of males and females exposed to the pesticide. Developmental toxicity was not observed in developmental toxicity studies using rats and rabbits. In these studies, the rat and rabbit maternal NOELs were 100 mg/kg/day and 150 mg/kg/day, respectively. The developmental NOEL for the rabbit was greater than 300 mg/kg/day which was the highest dose tested and for the rat was 600 mg/kg/day based on increased litter incidences of thickened and wavy ribs. These two findings are not considered adverse effects of treatment but related delays in rib development which are generally believed to be reversible.

In a 2-generation reproduction study in rats, no reproductive toxicity was observed under the conditions of the study at 4,000 ppm which was the highest dose tested.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. Based on the current toxicological data requirements, the database relative to pre- and post-natal effects for children is complete and an additional uncertainty factor is not warranted. Therefore at this time, the provisional RfD of 0.06 mg/kg/day is

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appropriate for assessing aggregate risk to infants and children.

3. *Reference dose (RfD).* Using the conservative exposure assumptions described above, the percent of the RfD that will be utilized by aggregate exposure to residues of carfentrazone-ethyl for non-nursing infants (<1 year old) would be 0.28% and for children 1-6 years of age would be 1.37% (the most highly exposed.

F. International Tolerances

There are no Codex Alimentarius Commission (Codex) Maximum Residue Levels (MRLs) for carfentrazone-ethyl on any crops at this time. However, MRLs for small grains in Europe have been proposed which consist of carfentrazone-ethyl and carfentrazone-ethyl-chloropropionic acid. (PM 23)

2. Rohm and Haas Company

PP 2F4127 2F4135, 3F4194, 3H5663, 7F4887, and 7F4900

EPA has received six pesticide petitions (PP 2F4127, 2F4135, 3F4194, 3H5663, 7F4887, and 7F4900) from Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106-2399, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing permanent tolerances for almond, apple, and grapefruit and time-limited tolerances for wheat and animal commodities for residues of [alpha-(2-(4-chlorophenyl)-ethyl)-alpha-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile (fenbuconazole) in or on the raw agricultural commodities (RAC) almond nuts at 0.05 parts per million (ppm); almond hulls at 3.0 ppm; apples at 0.4 ppm; apple pomace, wet at 1.0 ppm; grapefruit at 1.0 ppm; citrus oil (grapefruit) at 35.0 ppm; grapefruit pulp, dried at 4.0 ppm; sugar beet root at 0.2 ppm; sugar beet top at 9.0 ppm; sugar beet pulp, dried at 1.0 ppm; sugar beet molasses at 0.4 ppm; wheat grain at 0.05 ppm; wheat straw at 10.0 ppm; fat of cattle, hogs, horses, goats, and sheep at 0.05 ppm; and liver of cattle, hogs, horses, goats, and sheep at 0.3 ppm. The analytical method involves soxhlet extraction, partitioning, redissolving, clean-up, and analysis by gas-liquid chromatography using nitrogen specific thermionic detection. EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petitions. Additional data may be needed before EPA rules on the petitions.

A. Residue Chemistry

The tolerance expression for fenbuconazole residues in or on almond nuts or hulls, apples or apple process fractions, grapefruit and all related commodities, sugar beets, and wheat grain or straw is α-(2-(4-chlorophenyl)-ethyl)-α-phenyl-(1*H*-1,2,4-triazole-1-propanenitrile, plus cis-5-(4-chlorophenyl) dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl-)-2(3*H*)-furanone, plus trans-5-(4-chlorophenyl) dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl-)-2(3*H*)-furanone. Residues of these compounds are combined and expressed as parent compound to determine the total residue in or on almond nuts or hulls, apples or apple process fractions, grapefruit and all related commodities, sugar beets and all related commodities, and wheat grain or straw.

The tolerance expression for fenbuconazole residues in or on animal fat is α-(2-(4-chlorophenyl)-ethyl)-α-phenyl-(1*H*-1,2,4-triazole-1-propanenitrile, plus 4-chloro-α-(hydroxymethyl)-α-phenyl-benzenebutanenitrile. Residues of these compounds are combined and expressed as parent compound to determine the total residue.

The tolerance expression for fenbuconazole residues in or on animal liver is α-(2-(4-chlorophenyl)-ethyl)-α-phenyl-(1*H*-1,2,4-triazole-1-propanenitrile, plus cis-5-(4-chlorophenyl) dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl-)-2(3*H*)-furanone, plus trans-5-(4-chlorophenyl) dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl-)-2(3*H*)-furanone, plus 4-chloro-α-(hydroxymethyl)-α-phenyl-benzenebutanenitrile. Residues of these compounds are combined and expressed as parent compound to determine the total residue.

Analytical methods to measure the components of the residue in or on almond nuts and almond hulls, apples, apple process fractions, grapefruit, sugar beets, wheat grain and wheat straw, and animal commodities have been validated and accurately quantify residues of fenbuconazole. The residues of fenbuconazole will not exceed the proposed Permanent Tolerances in/on apples or apple process fractions, in/on almonds or related commodities, in/on grapefruit or related commodities following foliar treatment, on sugar beets or related commodities, or in/on wheat or related commodities following foliar or seed treatment.

1. *Analytical method.* Fenbuconazole residues (parent plus lactones) are measured at an analytical sensitivity of 0.01 mg/kg in apples, and wheat grain and straw by soxhlet extraction of samples in methanol, partitioning into methylene chloride, redissolving in toluene, clean-up on silica gel, and gas-liquid chromatography (GLC) analysis using nitrogen specific thermionic detection. Fenbuconazole residues are measured at an analytical sensitivity of 0.01 mg/kg in fat and liver in essentially the same manner except that one of the analytes in these matrices, 4-chloro-α-(hydroxymethyl)-α-phenyl-benzenebutanenitrile, is measured at a sensitivity of 0.05 ppm.

2. *Magnitude of residues*— i. *Wheat.* Residue studies have been conducted in accordance with the geographic distribution mandated by the EPA for wheat. In the wheat grain, the raw agricultural commodity, the fenbuconazole residues ranged from no detectable residue (NDR < LOQ = 0.01 mg/kg) to approximately 0.01 ppm. In wheat straw the fenbuconazole residues ranged from approximately 0.05 ppm to approximately 4.5 ppm. Residues were measured in processed fractions of wheat including cleaned grain, bread, patent flour, flour, red dog, bran, shorts/germ, and middlings. The EPA concluded that no concentration above the residue levels in the RAC occurred so no tolerances for any of these commodities were required. Tolerances of 0.05 ppm in wheat grain and 10 ppm in wheat straw are proposed based on these data.

Feeding studies in the cow, goat, and hen indicated that the only animal commodities which require tolerances are fat and liver. There were no significant residues in eggs or milk at any dose level. In cows there were residues in fat only at the 10x level in one animal at 0.06 mg/kg. Liver contained quantifiable residues in all dose groups and the magnitude of the residue correlated closely with the dose level. At study day 28 the 1 x livers averaged 0.08 mg/kg. Residues declined significantly during the depuration period. In the fat and liver one of the components of the fenbuconazole tolerance expression has a LOQ = 0.05 mg/kg. Because there were detectable residues only in liver, not fat, at the 1x level, the LOQ of the least sensitive component drives the fat tolerance. Tolerances of 0.05 ppm in fat and 0.3 ppm in liver are proposed based on the animal data.

Tolerances for wheat process fractions and wheat rotation crops are not required because no concentration of residues occurs in process fractions of wheat and no residues occur in rotation crops.

ii. *Apples.* Residue studies have been conducted in accordance with the geographic distribution mandated by the EPA for apples. In the apples, the raw agricultural commodity (RAC), the fenbuconazole residues ranged from approximately 0.1 mg/kg to approximately 0.3 mg/kg. Residues were measured in process fractions of apples, apple juice, and apple pomace. Concentration above the residue levels in the RAC occurred only in the pomace at approximately two-fold. Thus, no tolerance for juice is required, but a tolerance for pomace is required.

Seven field trials on apples were carried out in 1990 in six states: Pennsylvania, Washington, North Carolina, Michigan, Virginia, and West Virginia. Two application rates were used in each of the studies, the anticipated maximum application rate of 0.14 kg ai/ha and a 2x exaggerated rate of 0.28 kg ai/ha. A total of eight to ten applications were made at the normal timing in each trial, and the fruit was harvested at 0, 7, and 13 or 14 days after the final application. All samples were frozen immediately after they were harvested and were kept frozen until analysis, or shipped fresh immediately after harvest and processed and frozen immediately upon receipt and kept frozen until analysis. Samples were analyzed using the residue analytical method for RH-7592 parent and metabolites in stone fruit, and residues were corrected for average fortification recoveries. As would be expected, the residue levels were seen to increase with decreased PHI and increased application rate. The average half-life of residue decline for six studies was 11.9 days. The average parent residue at 13-14 PHI at the 0.14 kg ai/ha rate was 0.086 mg/kg.

Formulation bridging studies were conducted on apples in 1993. Apples grown in Washington and Pennsylvania were treated, in separate plots, with the 2F and 75 WP formulations of fenbuconazole at a rate of 0.14 kg ai/ha/application. A total of ten or twelve applications were made using an airblast sprayer at the normal timing of each trial, and the fruit was harvested at 14 days after the final application (14 day Pre-Harvest Interval or PHI). Samples were shipped fresh immediately after harvest and frozen immediately upon receipt and kept frozen until processing and subsequent analysis. Samples were analyzed using the residue analytical method for RH-7592 parent and metabolites in stone fruit, but residues were not corrected for average fortification recoveries. Total residues from the two trials were 0.226 and 0.135 mg/kg in the 2F formulation, and 0.184 and 0.162 mg/kg in the 75WP formulation. There were no significant differences in apparent residues found from the use of the two formulations, and residues due to parent compound constituted greater than 85% of the total residues found on the fruit.

Seven field residue trials were conducted on apples in 1995, in California, Colorado, Michigan, New York, Ohio, Oregon, and Washington. Apples were treated with dilute (0.014 kg ai/hl) and concentrate (0.035 kg ai/hl) sprays of the 2F formulation of fenbuconazole at a 0.14 kg ai/ha. A total of eight to ten applications were made using airblast sprayers, with first application at early bud break and subsequent applications on a 10-14 day schedule through bloom and a 14 to 21 day schedule in the cover sprays until harvest. The apples were harvested by hand at a PHI of 14 days. Residue samples were analyzed using the residue analytical method for RH-7592 parent and metabolites in stone fruit, but residues were not corrected for average fortification recoveries. Samples from three sites were also analyzed using the residue analytical method for metabolite RH-7905. Metabolite RH-7905 was not detected in any of the samples. The total residues from the concentrate sprays ranged from 0.015 to 0.274 mg/kg and averaged 0.137 mg/kg. The total residues from the dilute sprays ranged from 0.019 to 0.295 mg/kg and averaged 0.139 mg/kg. There is not a significant difference in the magnitude of the residues between dilute and concentrate spray volumes of the 2F formulation of fenbuconazole.

An additional residue study was conducted on apples grown in Pennsylvania in 1994 and the fruit was used for a processing study. The apples received nine foliar applications of the 2F formulation of fenbuconazole at the normal timing at a rate of 0.14 kg ai/ha/application. The fruit was harvested 14 days after the last treatment. The RAC samples were shipped fresh and either immediately processed or frozen for storage. All RAC and processed samples were analyzed within a less than 30 day period, eliminating the need for generation of storage stability data. The apples were processed at the Food Research Laboratory of Cornell University using methodology simulating commercial apple processing. Briefly, the processing consisted of washing the apples in water, grinding in a hammer mill to apple mash, and pressing of the mash to form both fresh apple juice and wet pomace. The juice was either canned (sampled as unpasteurized juice) or canned and pasteurized (sampled as pasteurized juice). The wet pomace (moisture content 69%) was also sampled. All samples were frozen on generation and stored frozen until analysis. Samples were analyzed using the residue analytical method for RH-7592 and metabolites in stone fruit, and residues were not corrected for average fortification recovery. The average total residues for each component, and its concentration factor, were as follows: unwashed fruit 0.065 mg/kg NA, washed fruit 0.070 mg/kg NA, wet pomace 0.159 mg/kg 2.46, unpasteurized juice 0.004 mg/kg 0.06, pasteurized juice 0 mg/kg 0.00. No concentration of residues was seen in the human diet component, i.e. apple juice. Concentration of residues of approximately 2-fold was seen in wet pomace, which is not a component of the human diet.

Feeding studies in the cow, goat, and hen indicated that the only animal commodities which require tolerances are fat and liver. There were no significant residues in eggs or milk at any dose level. Residues in animals declined significantly during the depuration peried. In the fat and liver one of the components of the fenbuconazole tolerance expression has a LOQ = 0.05 mg/kg. Because there were detectable residues only in liver, not fat, the LOQ of the least sensitive component drives the fat tolerance. Tolerances of 0.05 ppm in fat and 0.3 ppm in liver were proposed based on the animal data.

Tolerances for other apple process fractions and for rotation crops are not required because no concentration of residues occurs in other process fractions of apples and rotation crops are not a concern for perennial crops.

iii. *Almonds.* Residue studies have been conducted in accordance with the geographic distribution mandated by the EPA for almonds. There are no process fractions of almonds. Six field trials in almonds were carried out at five sites in California in 1987. In all of the studies, the anticipated maximum application rate of 0.11 kg ai/ha and a 2X exaggerated rate of 0.22 kg ai/ha. A total of three applications were made at the normal timing in all trials, and the almonds were harvested at maturity, 127-200 days after the final application. Samples were shipped fresh or frozen. Hulls were separated from the nuts and processed in a Hobart food processor with dry ice or in a Wiley Mill without dry ice. Nuts were shelled and the nutmeat homogenized in a Waring food processor with dry ice. The processed samples were stored frozen until analysis. Samples were analyzed using the residue analytical method for RH-

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7592 and metabolites. No residue in any nutmeat sample at the 1x application rate reached 0.01 mg/kg. Residues in the hull at the 1x rate ranged from 0.1 to 1.5 mg/kg. One nutmeat sample treated at the 2x rate had a quantifiable residue of 0.027 mg/kg. The remainder had no detectable residue. Hull sample residues from the 2x rate ranged from 0.5 to 6.6 mg/kg.

Feeding studies in the cow, goat, and hen indicated that the only animal commodities which require tolerances are fat and liver. There were no significant residues in eggs or milk at any dose level. Residues in animals declined significantly during the depuration period. In the fat and liver one of the components of the fenbuconazole tolerance expression has a LOQ = 0.05 mg/kg. Because there were detectable residues only in liver, not fat, the LOQ of the least sensitive component drives the fat tolerance. Tolerances of 0.05 ppm in fat and 0.3 ppm in liver were proposed based on the animal data.

Tolerances for almond process fractions and rotational crops are not required because there are no process fractions of almonds and rotational crops are not a concern for perennial crops.

iv. *Grapefruit.* Trials included both grapefruit and orange, so the following text covers the residue results for both. Six residue trials were conducted in 1993 on grapefruit and oranges grown in Texas, Florida and California (one grapefruit and one orange trial at each site). Three airblast sprayer applications of the 2F formulation of fenbuconazole at the rate of 0.28 kg ai/ha/application were made at the normal timing, and the fruit was harvested by hand at Pre-Harvest Intervals (PHIs) of 0 days (all trials), and approximately 15, 30 and 60 days (three trials). The whole fruit was analyzed using the residue analytical method for RH-7592 parent and metabolites in stone fruit and residues were not corrected for average fortification recoveries. The average total residue in whole grapefruit at 0 day PHI was 0.344 mg/kg, with a range of 0.190 - 0.499 mg/kg. The average total residue in whole oranges at 0 day PHI was 0.438 mg/kg, with a range of 0.339 - 0.528 mg/kg. For both fruits, the 0 day PHI residues were >97% parent. In the three trials which measured residue decline, the average total residue value had decreased to about 40% of the original value by 60 PHI.

Residue trials were conducted in 1993 and 1994 on grapefruit and oranges grown in seven different locations. Sites with both grapefruit and orange trials were in Texas (2) and Florida (3), and in California there was one site for oranges and another for grapefruit. Three airblast sprayer applications of the 2F formulation of fenbuconazole at the rate of 0.28 kg ai/ha/application were made at the normal timing, and the fruit was harvested by hand on the day of the final application (for a 0 day Pre-Harvest Interval). The fruit was processed in two different ways: as whole fruit, or as pulp only with the peel discarded. Samples were analyzed using the residue analytical method for RH-7592 parent and metabolites in stone fruit, and residues were not corrected for average fortification recoveries. Six of the RAC samples were also analyzed using the residue analytical method for metabolite RH-7905 (the glucoside conjugate). No detectable residues of RH-7905 were found in any sample. Average total residue for whole oranges was 0.238 mg/kg, and 0.0082 mg/kg for orange pulp. Average total residue for whole grapefruit was 0.141 mg/kg, and 0.0078 mg/kg for grapefruit pulp. Nearly all of the fenbuconazole residues lie on the peel, and [NDR] no detectable residue to LOQ levels are seen in the edible portion of the fruit, i.e. the pulp.

Feeding studies in the cow, goat, and hen indicated that the only animal commodities which require tolerances are fat and liver. There were no significant residues in eggs or milk at any dose level. Residues in animals declined significantly during the depuration period. In the fat and liver one of the components of the fenbuconazole tolerance expression has a LOQ = 0.05 mg/kg. Because there were detectable residues only in liver, not fat, the LOQ of the least sensitive component drives the fat tolerance. Tolerances of 0.05 ppm in fat and 0.3 ppm in liver were proposed based on the animal data. Tolerances for rotational crops are not required for tree fruits.

v. *Sugar beets.* Residue studies have been conducted in accordance with the geographic distribution mandated by the EPA for sugar beets. Following full season foliar treatment, the residues of fenbuconazole were higher in the sugar beet tops than in the root. Combined residues in root averaged 0.415 mg/kg. Residues in tops were more variable, and ranged from 0.56-8.89 mg/kg. In a formulation bridging study the residues were higher in the sugar beet tops compared to the root. Total root residues in the 75WP formulation ranged from 0.0061 to 0.268 mg/kg and averaged 0.0616 mg/kg. Total root residues in the 2F formulation ranged from 0.0223 to 0.0523 mg/kg and averaged 0.0328 mg/kg. Total top residues averaged 2.15 mg/kg in the 75WP formulation, and 2.69 mg/kg in the 2F formulation. There was no significant difference in residues between formulations of fenbuconazole. In a processing study the concentration factor for each component was: root - 1.0X, dry pulp - 5.39X, molasses - 1.82X, and refined sugar - 0.1X. Compared to raw roots, a reduction of residues was seen in the human diet component, sugar. Concentration of residues was seen in molasses and dry pulp, neither of which is a component of the human diet.

Tolerances for rotational crops are not required because EPA determined under the wheat petition that rotational crops are not a concern for fenbuconazole.

B. Toxicological Profile

The toxicology of fenbuconazole is summarized in the following sections. There is no evidence to suggest that human infants and children will be more sensitive than adults, that fenbuconazole will modulate human endocrine systems at anticipated dietary exposures, or cause cancer in humans at the dietary exposures anticipated for this fungicide. While the biochemical target for the fungicidal activity of members of the DMI class is shared, it cannot be concluded that the mode of action of fenbuconazole which produces phytotoxic effects in plants or toxic effects in animals is also common to a single class of chemicals.

1. *Acute toxicity.* Fenbuconazole is practically nontoxic after administration by the oral, dermal and respiratory routes. The acute oral LD_{50} in mice and rats is >2,000 mg/kg. The acute dermal LD_{50} in rats is >5,000 mg/kg. Fenbuconazole was not significantly toxic to rats after a 4-hour inhalation exposure, with an LD_{50} value of >2.1 mg/L. Fenbuconazole is classified as not irritating to skin (Draize score = 0), inconsequentially irritating to the eyes (mean irritation score = 0), and it is not a sensitizer. No evidence exists regarding differential sensitivity of children and adults to acute exposure.

2. *Mutagenicity.* Fenbuconazole has been adequately tested in a variety of *in vitro* and *in vivo* mutagenicity tests. It is negative in the Ames test, negative in *in vitro* and *in vivo* somatic and germ cell tests, and did not induce unscheduled DNA synthesis (UDS). Fenbuconazole is not genotoxic.

3. *Reproductive and developmental toxicity.* These conclusions were extracted from the **Federal Register** of May 24, 1995 (60 FR 27419). Fenbuconazole is not teratogenic. The maternal no observable effect level (NOEL) in rabbits was 10 mg/kg/day and 30 mg/kg/day in rats. The fetal NOEL was 30 mg/kg/day in both species. The parental NOEL was 4.0 mg/kg/day (80 ppm) in a 2-generation reproduction study in rats. The reproductive NOEL in this study was greater than 40.0 mg/kg/day (800 ppm; highest dose tested). Fenbuconazole had no effect on male reproductive organs or reproductive performance at any dose. The adult lowest observed effect level (LOEL) was 40.0 mg/kg/day (800 ppm; highest dose tested). Systemic effects of decreased body weight gain; maternal deaths; and hepatocellular, adrenal, and thyroid follicular cell hypertrophy were observed. No effects on neonatal survival or growth occurred below the adult toxic levels. Fenbuconazole does not produce birth defects and is not toxic to the developing fetus at doses below those which are toxic to the mother.

4. *Subchronic toxicity.* In a 21-day dermal toxicity study in the rat, the NOEL was greater than 1,000 mg/kg/day, with no effects seen at this limit dose.

5. *Chronic toxicity.* In 2-year combined chronic toxicity/oncogenicity studies in rats, the NOEL was 80 ppm (3.03 mg/kg/day for males and 4.02 mg/kg/day for females) based on decreased body weight, and liver and thyroid hypertrophy. In a 1-year chronic toxicity study in dogs, the NOEL was 150 ppm (3.75 mg/kg/day) based on decreased body weight, and increased liver weight. The LOEL was 1,200 ppm (30 mg/kg/day). In a 78-week oncogenicity study in mice, the NOEL was 10 ppm (1.43 mg/kg/day). The LOEL was 200 ppm (26.3 mg/kg/day, males) and 650 ppm (104.6 mg/kg/day, females) based on increased liver weights and histopathological effects on the liver. These effects were consistent with chronic enzyme induction from high dose dietary exposure.

A Reference Dose (RfD) for systemic effects at 0.03 mg/kg/day was established by EPA in 1995 based on the NOEL of 3.0 mg/kg/day from the rat chronic study. This RfD adequately protects both adults and children.

6. *Carcinogenicity.* Twenty-four-month rat chronic feeding/carcinogenicity studies with fenbuconazole showed effects at 800 and 1,600 ppm. Fenbuconazole produced a minimal, but statistically significant increase in the incidence of combined thyroid follicular cell benign and malignant tumors. These findings occurred only in male rats following life-time ingestion of very high levels (800 and 1,600 ppm in the diet) fenbuconazole. Ancillary mode-of-action studies demonstrated that the increased incidence of thyroid tumors was secondary to increased liver metabolism and biliary excretion of thyroid hormone in the rat. This mode of action is a nonlinear phenomenon in that thyroid tumors occur only at high doses where there is an increase in liver mass and metabolic capacity of the liver. At lower doses of fenbuconazole in rats, the liver is unaffected and there is no occurrence of the secondary thyroid tumors. Worst-case estimates of dietary intake of fenbuconazole in human adults and children indicate effects on the liver or thyroid, including thyroid tumors, will not occur, and there is a reasonable certainty of no harm.

In support of the findings above, EPA's Science Advisory Board has approved a final thyroid tumor policy, confirming that it is reasonable to regulate chemicals on the basis that there exists a threshold level for thyroid tumor formation, conditional upon providing plausible evidence that a secondary mode of action is operative. This decision supports a widely-held and internationally respected scientific position.

In a 78-week oncogenicity study in mice there was no statistically significant increase of any tumor type in males. There were no liver tumors in the control females and liver tumor incidences in treated females just exceeded the historical control range. However, there was a statistically significant increase in combined liver adenomas and carcinomas in females at the high dose only (1,300 ppm; 208.8 mg/kg/day). In ancillary mode-of-action studies in female mice, the increased tumor incidence was associated with changes in several parameters in mouse liver following high doses of fenbuconazole including: an increase in P450 enzymes (predominately of the CYP 2B type), an increase in cell proliferation, an increase in hepatocyte hypertrophy, and an increase in liver mass (or weight). Changes in these liver parameters as well as the occurrence of the low incidence of liver tumors were nonlinear with respect to dose (i.e., were observed only at high dietary doses of fenbuconazole). Similar findings have been shown with several pharmaceuticals, including phenobarbital, which is not carcinogenic in man. The nonlinear relationship observed with respect to liver changes (including the low incidence of tumors) and dose in the mouse indicates that these findings should be carefully considered in deciding the relevance of high-dose animal tumors to human dietary exposure.

The Carcinogenicity Peer Review Committee (PRC) of the Health Effects Division (HED) classified fenbuconazole as a Group C tumorigen (possible human carcinogen with limited evidence of carcinogenicity in animals). The PRC used a low-dose extrapolation model. The $Q1^*$ risk factor applied (1.06×10^{-2} $(mg/kg/day)^{-1}$) was based on the rat oncogenicity study and surface area was estimated by (body weight) $^{3/4}$.

Since the PRC published the above estimate they have agreed that low-dose extrapolation for fenbuconazole, based on rat thyroid tumors, is inappropriate given the EPA's policy regarding thyroid tumors and the data which exist for fenbuconazole. The PRC agrees that the more appropriate dataset for the low-dose extrapolation and risk factor estimate is the mouse. From these data a $Q1^*$ of (0.36×10^{-2} $(mg/kg/day)^{-1}$) is calculated when surface area is estimated by (body weight) $^{3/4}$. All estimates of dietary oncogenic risk are based on this risk factor.

Since fenbuconazole will not leach into groundwater (see below) there is no increased cancer risk from this source. Neither is fenbuconazole registered for residential use, so there is no risk from non-occupational residential exposure either. All estimates of excess risk to cancer are from dietary sources.

7. *Endocrine effects.* The mammalian endocrine system includes estrogen and androgens as well as several other hormone systems. Fenbuconazole does not interfere with the reproductive hormones. Thus, fenbuconazole is not estrogenic or androgenic.

While fenbuconazole interferes with thyroid hormones in rats by increasing thyroid hormone excretion, it does so only secondarily and only above those dietary levels which induce metabolism in the liver. These effects are reversible in rats, and humans are far less sensitive to these effects than rats. The RfD protects against liver induction because it is substantially below the animal NOEL. As noted previously, maximal human exposures are far below the RfD level, and effects on human thyroid will not occur at anticipated dietary levels.

We know of no instances of proven or alleged adverse reproductive or developmental effects to domestic animals or wildlife as a result of exposure to fenbuconazole or its residues. In fact, no effects should be seen because fenbuconazole has low octanol/water partition coefficients and is known not to bioaccumulate. Fenbuconazole is excreted within 48 hours after dosing in mammalian studies.

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C. Aggregate Exposure

1. *Dietary exposure— Food.* i. *Wheat.* For wheat, children 1 to 6 years old, not infants, are the highest consumers (g/kg bw/d basis). For children 1-6 the dietary TMRC for existing tolerances utilizes only 5% of the RfD. The dietary TMRC for wheat in this group is estimated to be 0.00016 mg/kg/day and uses 0.52% of the RfD. Additional dietary exposure (TMRC) to fenbuconazole from residues which might be transferred to animal fat and liver from treated wheat is estimated to be 0.00006 mg/kg/day and uses 0.22% of the RfD. No residues occur in animal meats, milk, or eggs. Thus, the TMRC, the worst-case exposure, in the two most sensitive subpopulations of consumers, non-nursing infants less than one year old and children 1 to 6 years old, still utilizes less than 18% and less than 6%, respectively, of the fenbuconazole RfD. The dietary TMRCs for other children and for adults utilize less than this.

The calculated additional cancer risk for wheat ($Q1^* = 0.36 \times 10^{-2}$ $(mg/kg/day)^{-1}$) has an upper-bound of 0.2×10^{-6}. The calculated additional cancer risk for animal fat and liver has an upper-bound of 0.1×10^{-6}. The upper bound estimate on excess cancer risk for all uses including wheat is 0.7×10^{-6}. The estimate shows that the TMRC, the worst-case exposure, for consumers to fenbuconazole presents a reasonable certainty of no harm. The actual residue contribution is anticipated to be significantly less than this estimate.

ii. *Apples.* The EPA used the DRES model to estimate consumer dietary exposure to fenbuconazole residues for the most recently approved tolerance in bananas (memorandum of E.A. Doyle, February 8, 1995). (memorandum of E.A. Doyle, 8 February 1995). The EPA used the Theoretical Maximum Residue Contribution (TMRC) for pecans and bananas, and adjusted the TMRC for the stone fruit crop group by excluding plums/prunes and limiting sales volume to 12.8% of the available stone fruit market. From this EPA calculated an upper-bound risk of 0.9 x 10-6 for additional cancer risk ($Q1^* = 1.06 \times 10^{-2}$ $(mg/kg/day)^{-1}$). (**Federal Register** of May 24, 1995 (60 FR 27419)). This estimate does not reflect the change in $Q1^*$, the use of the DEEM database, the percent crop treated for all crops, or average residues. When these factors are included the aggregate lifetime exposure for consumers to fenbuconazole has an upper bound risk estimate of 0.18×10^{-6} for apples and 0.28×10^{-6} for all pending and approved uses combined. The theoretical maximum estimated exposure to the most sensitive subpopulation, non-nursing infants less than one year old, for this same scenario utilizes no more than 0.89% of the RfD. Thus, the addition of fenbuconazole use on apples meets the EPA criterion of reasonable certainty of no harm.

iii. *Almonds.* The consumer dietary exposure to fenbuconazole residues was estimated for the most recently approved tolerance in bananas (memorandum of E.A. Doyle, 8 February 1995). The EPA used the Theoretical Maximum Residue Contribution (TMRC) for pecans and bananas, and adjusted the TMRC for the stone fruit crop group by excluding plums/prunes and limiting sales volume to 12.8% of the available stone fruit market. From this EPA calculated an upper-bound risk of 0.9×10^{-6} for additional cancer risk ($Q1^* = 1.06 \times 10^{-2}$ $(mg/kg/day)^{-1}$). (**Federal Register** of May 24, 1995 (60 FR 27419)). This estimate does not reflect the change in $Q1^*$, the use of the DEEM database, the percent crop treated for all crops, or average residues. When these factors are included the aggregate lifetime exposure for consumers to fenbuconazole has an upper bound cancer risk estimate of 7.5×10^{-11} for almonds and 0.28×10^{-6} for all pending and approved uses combined. The theoretical maximum estimated exposure to the most sensitive subpopulation, non-nursing infants less than one year old, for this same scenario utilizes no more than 0.89% of the RfD. Thus, the addition of fenbuconazole use on almonds meets the EPA criterion of reasonable certainty of no harm.

This estimate shows that the estimated exposure for consumers to fenbuconazole presents a reasonable certainty of no harm. The actual dietary residue contribution will likely be less than this estimate.

iv. *Grapefruit.* The consumer dietary exposure to fenbuconazole residues was estimated for the most recently approved tolerance in bananas (memorandum of E.A. Doyle, 8 February 1995). The EPA used the Theoretical Maximum Residue Contribution (TMRC) for pecans and bananas, and adjusted the TMRC for the stone fruit crop group by excluding plums/prunes and limiting sales volume to 12.8% of the available stone fruit market. From this EPA calculated an upper-bound risk of 0.9 x 10-6 for additional cancer risk ($Q1^* = 1.06 \times 10^{-2}$ $(mg/kg/day)^{-1}$). (**Federal Register** of May 24, 1995 (60 FR 27419)). This estimate does not reflect the change in $Q1^*$, the use of the DEEM database, the percent crop treated for all crops, or average residues. When the new $Q1^*$ of $(0.36 \times 10^{-2}$ $(mg/kg/day)^{-1})$ and surface area estimated by $(body\ weight)^{3/4}$ plus the other factors are included, the aggregate lifetime exposure to consumers to fenbuconazole has an upper bound risk estimate of 7.0×10^{-8} for grapefruit and 0.17×10^{-6} for all pending and approved uses combined. The theoretical maximum estimated exposure to the most sensitive subpopulation, non-nursing infants less than one year old, for this same scenario utilizes no more than 0.39% of the RfD. Thus, the addition of fenbuconazole use on grapefruit meets the EPA criterion of reasonable certainty of no harm.

This estimate shows that the estimated exposure for consumers to fenbuconazole presents a reasonable certainty of no harm. The actual dietary residue contribution will likely be less than this estimate.

v. *Sugar beets.* The consumer dietary exposure to fenbuconazole residues was estimated for the most recently approved tolerance in bananas (memorandum of E.A. Doyle, 8 February 1995). The EPA used the TMRC for pecans and bananas, and adjusted the TMRC for the stone fruit crop group by excluding plums/prunes and limiting sales volume to 12.8% of the available stone fruit market. From this EPA calculated an upper-bound risk of 0.9 x 10^{-6} for additional cancer risk ($Q1^* = 1.06 \times 10^{-2}$ $(mg/kg/day)^{-1}$). (**Federal Register** of May 24, 1995 (60 FR 27419)). This estimate does not reflect the change in $Q1^*$, the use of the DEEM database, the percent crop treated for all crops, or average residues. When the new $Q1^*$ of $(0.36 \times 10^{-2}$ $(mg/kg/day)^{-1})$ and surface area estimated by $(body\ weight)^{3/4}$ plus the other factors are included the aggregate lifetime exposure for consumers to fenbuconazole has an upper bound cancer risk estimate of 1.0 x 10^{-8} for sugar beets and 0.17×10^{-6} for all pending and approved uses combined. The theoretical maximum estimated exposure to the most sensitive subpopulation, non-nursing infants less than one year old, for this same scenario utilizes no more than 0.01% of the RfD for sugar beets and 0.39% of the RfD for all crops combined. Thus, the addition of fenbuconazole use on sugar beets meets the EPA criterion of reasonable certainty of no harm.

2. *Drinking water.* Fenbuconazole has minimal tendency to contaminate groundwater or drinking water because of its adsorptive properties on soil, solubility in water, and degradation rate. Data from laboratory studies and field dissipation studies have been used in the USDA PRZM/GLEAMS computer model to predict the movement of fenbuconazole. The model predicts that fenbuconazole will not leach into groundwater, even if heavy rainfall is simulated. The modeling predictions are consistent with the data from environmental studies in the laboratory and the results of actual field dissipation studies. There are no data on passage of fenbuconazole through water treatment facilities and there are no State water monitoring programs which target fenbuconazole.

3. *Non-dietary exposure.* Fenbuconazole has no veterinary applications and is not approved for use in swimming pools. It is not labeled for application to residential lawns or for use on ornamentals, nor is fenbuconazole applied to golf courses or other recreational areas. Therefore, there are no data to suggest that these exposures could occur. Any acute exposures to children would come from dietary exposure or inadvertent dermal contact. As previously discussed, fenbuconazole is neither orally or dermally acutely toxic. Thus, there is a reasonable certainty that no exposure would occur to adults, infants or children from these sources.

D. Cumulative Effects

The toxicological effects of fenbuconazole are related to the effects on rodent liver. These are manifest in rats and mice differently.

Fenbuconazole causes liver toxicity in rats and mice in the form of hepatocyte enlargement and enzyme induction. In rats the liver enzyme induction causes increased biliary removal of thyroxin and the hepatotoxicity leads to elevated thyroid stimulating hormone levels with subsequent development of thyroid gland hyperplasia and tumors. This process is reversible and demonstrates a dose level below which no thyroid gland stimulation can be demonstrated in rats. Liver toxicity in the mouse is manifest by hepatocyte enlargement, enzyme induction, and hepatocellular hyperplasia (cell proliferation). These processes are associated with the appearance of a small number of liver tumors. In both cases, rats and mice, the initiating event(s) do not occur below a given dose, i.e., the effects are nonlinear, and the processes are reversible. Therefore, since the tumors do not occur at doses below which hepatocyte enlargement and enzyme induction occur, the RfD protects against tumors because it is substantially below the NOEL for liver effects and maximal human exposures are below the RfD. Effects on human thyroid will not occur at anticipated dietary levels. The mode of action data should be carefully considered in deciding the relevance of these high-dose animal tumors to human dietary exposure.

Extensive data are available on the biochemical mode of action by which fenbuconazole produces animal tumors in both rats and mice. However, there are no data which suggest that the mode of action by which fenbuconazole produces these animal tumors or any other toxicological effect is common to all fungicides of this class. In fact, the closest structural analog to fenbuconazole among registered fungicides of this class is not tumorigenic in animals even at maximally tolerated doses and has a different spectrum of toxicological effects.

E. Safety Determination

1. *U.S. population*— i. *Wheat.* The Rohm and Haas Company estimates the risk to the U.S. adult population from use of fenbuconazole on wheat as utilizing approximately 0.36% of the RfD. Using the EPA low dose extrapolation model and the risk factor based on the mouse data (0.36 x 10-6 $(mg/kg/day)^{-1}$) the excess cancer risk from dietary sources for fenbuconazole use on wheat and the associated animal commodities is estimated at 0.3×10^{-6}. The upper bound estimate on excess cancer risk for ali uses including wheat is 0.7×10^{-6}.

This assumes that all of the wheat consumed in the U.S. will contain residues of fenbuconazole (in actuality a small fraction of the total crop is likely to be treated). The combined risk for wheat plus registered uses will not exceed either the dietary risk standard established by the Food Quality Protection Act (FQPA) for the US population, (one x 10^{-6}), or the RfD.

The sole acute risk would be for women of childbearing age. The EPA/OREB calculated that the worst-case Margin of Exposure (MOE) for fenbuconazole measured against the developmental LOEL would be greater than 30,000. This is clearly adequate. The MOE would be even higher for consumer dietary exposure from any source. Thus, there is adequate safety for this group and there is a reasonable certainty that no harm will result from fenbuconazole use on wheat.

ii. *Apples.* When the DEEM database is used and the assumptions in the above calculations the Rohm and Haas Company estimates the risk to the U.S. adult population from use of fenbuconazole on apples as utilizing approximately 0.17% of the RfD. The calculated upper bound estimate on excess cancer risk for all uses (apples, apricots, almonds, bananas, cherries, nectarines, peaches, pecans, and wheat, plus the associated processing and animal commodities) is 0.28×10^{-6}.

The combined risk for apples plus registered uses plus almonds and wheat will not exceed the dietary risk standards established by the FQPA for the US population (one x 10^{-6} excess cancer risk, or the RfD).

The sole acute risk would be for women of childbearing age. The EPA/OREB calculated that the worst-case Margin of Exposure (MOE) for fenbuconazole measured against the developmental LOEL would be greater than 30,000. This is clearly adequate. The MOE would be even higher for consumer dietary exposure from any source. Thus, there is adequate safety for this group and there is a reasonable certainty that no harm will result from fenbuconazole use on apples.

iii. *Almonds.* When the DEEM database is used and the assumptions in the above calculations the Rohm and Haas Company estimates the risk to the U.S. adult population from use of fenbuconazole on almonds as utilizing approximately 0.00007% of the RfD. The calculated upper bound estimate on excess cancer risk for all uses (apples, apricots, almonds, bananas, cherries, nectarines, peaches, pecans, and wheat, plus the associated processing and animal commodities) is 0.28×10^{-6}.

The combined risk for almonds plus registered uses plus apples and wheat will not exceed the dietary risk standards established by the FQPA for the US population (one x 10^{-6} excess cancer risk, or the RfD.

The sole acute risk would be for women of childbearing age. The EPA/OREB calculated that the worst-case Margin of Exposure (MOE) for fenbuconazole measured against the developmental LOEL would be greater than 30,000. This is clearly adequate. The MOE would be even higher for consumer dietary exposure from any source. Thus, there is adequate safety for this group and there is a reasonable certainty that no harm will result from fenbuconazole use on almonds.

iv. *Grapefruit.* When the DEEM database is used and the assumptions in the above calculations the Rohm and Haas Company estimates the risk to the U.S. adult population from use of fenbuconazole on grapefruit as utilizing approximately 0.06% of the RfD. The calculated upper bound estimate on excess cancer risk for all uses (apples, apricots, almonds, bananas, cherries, grapefruit, nectarines, peaches, pecans, sugar beets, and wheat, plus the associated processing and animal commodities) is 0.17×10^{-6}.

The combined risk for grapefruit plus registered and pending uses will not exceed the dietary risk standards established by the FQPA for the U.S.

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population (one x 10-6 excess cancer risk, or the RfD).

The sole acute risk would be for women of childbearing age. The EPA/OREB calculated that the worst-case Margin of Exposure (MOE) for fenbuconazole measured against the developmental LOEL would be greater than 30,000. This is clearly adequate. The MOE would be even higher for consumer dietary exposure from any source. Thus, there is adequate safety for this group and there is a reasonable certainty that no harm will result from fenbuconazole use on grapefruit.

v. *Sugar beets.* When the DEEM database is used and the assumptions in the above calculations the Rohm and Haas Company estimates the risk to the U.S. adult population from use of fenbuconazole on sugar beets as utilizing approximately 0.009% of the RfD. The calculated upper bound estimate on excess cancer risk for all uses (apples, apricots, almonds, bananas, cherries, grapefruit, nectarines, peaches, pecans, sugar beets, and wheat, plus the associated processing and animal commodities) is 0.17×10^{-6}. Therefore, the combined risk for sugar beets plus registered and pending uses will not exceed the dietary risk standards established by the FQPA for the U.S. population (one x 10^{-6} excess cancer risk, or the RfD).

The sole acute risk would be for women of childbearing age. The EPA/OREB calculated that the worst-case Margin of Exposure (MOE) for fenbuconazole measured against the developmental LOEL would be greater than 30,000. This is clearly adequate. The MOE would be even higher for consumer dietary exposure from any source. Thus, there is adequate safety for this group and there is a reasonable certainty that no harm will result from fenbuconazole use on sugar beets.

2. *Infants and children*— i. *Wheat.* The reproductive and developmental toxicity data base for fenbuconazole is complete. There is no selective increase in toxicity to developing animals. Thus, there is no evidence that prenatal and postnatal exposure would present unusual or disproportionate hazard to infants or children. Therefore, there is no need to impose an additional uncertainty factor to protect infants and children.

The EPA calculated the dietary risk to infants and children for existing tolerances. The estimated dietary exposure (TMRC) for this subpopulation is 0.00522 mg/kg/day which represents only 17% of the RfD; no other subgroup used in excess of 17% of the RfD. The EPA estimated lifetime oncogenic risk in the range of one in a million at 0.9 x 10^{-6}, using ($Q1^* = 1.06 \times 10^{-2}$ (mg/kg/day)$^{-1}$). (**Federal Register** of May 24, 1995 (60 FR 27419)).

For the wheat use the most sensitive subgroup is children 1 to 6 years old and the estimated risk to this subgroup is less than 18% of the RfD. Utilizing the risk factor ($Q1^* = 0.36 \times 10^{-2}$ (mg/kg/day)$^{-1}$), the estimated excess cancer risk for the U.S. population is less than 1×10^{-6}. Therefore the wheat use is safe within the meaning of the FQPA and there is a reasonable certainty that no harm will result to infants or children from the approval of fenbuconazole use on wheat.

ii. *Apples and almonds.* The reproductive and developmental toxicity data base for fenbuconazole is complete. There is no selective increase in toxicity to developing animals. Thus, there is no evidence that prenatal and postnatal exposure would present unusual or disproportionate hazard to infants or children. Therefore, there is no need to impose an additional uncertainty factor to protect infants and children. The dietary exposure estimate for children utilizes only 0.89% of the RfD.

iii. *Grapefruit and sugar beets.* The reproductive and developmental toxicity data base for fenbuconazole is complete. There is no selective increase in toxicity to developing animals. Thus, there is no evidence that prenatal and postnatal exposure would present unusual or disproportionate hazard to infants or children. Therefore, there is no need to impose an additional uncertainty factor to protect infants and children. The dietary exposure estimate for children utilizes only 0.39% of the RfD.

F. Environmental Fate

Fenbuconazole has little to no mobility in soil (Koc = 4425). It is stable to hydrolysis and aqueous photolysis in buffered solutions, but does degrade photolytically in natural waters and soil (half-life 87 and 79 days, respectively). Laboratory soil metabolism half-lives or DT50 values for fenbuconazole range from 29 to 532 days under terrestrial conditions and from 442 to 906 days in soil exposed to aquatic conditions. Field-trial soil dissipation studies had half-lives ranging from 157 to 407 days and indicated no significant downward movement of residues. These field trials show fenbuconazole degrades more rapidly outdoors than in laboratory metabolism studies. When material was applied in a single application, fenbuconazole degraded to about 50% of the applied material in less than 60 days. In wheat the DT50 in green heads was measured as 18 days and in green wheat stalks the DT50 was 84.4 days. These results only reflect foliar dissipation in wheat at the particular growth stage(s) during the study and not at all stages of wheat. The results of residue decline analyses in a number of environmental media support the EPA conclusion that there is no environmental hazard associated with the proposed agricultural use of this chemical.

G. International Tolerances

There are no Codex Maximum Residue Levels (MRLs) for fenbuconazole, but the fenbuconazole database will be evaluated by the WHO and the FAO Expert Panels at the Joint Meeting on Pesticide Residues (JMPR) in September 1997. An Allowable Daily Intake (ADI (RfD)) of 0.03 mg/kg/day is proposed and a total of 36 Codex MRLs are proposed in the data submission. (PM 22)

[FR Doc. 98–2363 Filed 1–29–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2250]

Petitions For Reconsideration and Clarification of Action in Rulemaking Proceedings

January 27, 1998.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed February 17, 1998. See Section 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed by February 24, 1998.

Subject: Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States (IB Docket No. 96–111).

Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations (CC Docket No. 93–23, RM–7931).

Communication Satellite Corporation

Request for Waiver of Section 25.131(j)(1) of the Commission's Rules As it Applies to Services Provided via the Intelsat K Satellite (File No. ISP–92–007).

Number of Petitions filed: 5.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–2329 Filed 1–29–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Tuesday, January 27, 1998, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate, supervisory, and resolution activities.

In calling the meeting, the Board determined, on motion of Director Joseph H. Neely (Appointive), seconded by Ms. Julie Williams, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Director Ellen S. Seidman (Director, Office of Thrift Supervision), and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: January 27, 1998.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 98–2446 Filed 1–28–98; 10:56 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 17, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. JNV Limited Partnership II, Arlington, Virginia; to acquire voting shares of United Financial Banking Companies, Inc., Vienna, Virginia, and thereby indirectly acquire The Business Bank, Vienna, Virginia.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. James Michael Adcock, and David Wesley Schubert, both of Shawnee, Oklahoma, and George N. Cook, Jr., Kansas City, Missouri; to acquire voting shares of United Oklahoma Bankshares, Inc., Del City, Oklahoma, and thereby indirectly acquire United Bank, Del City, Oklahoma.

2. James Michael Adcock, and David Wesley Schubert, both of Shawnee, Oklahoma, as Trustees of the Don Bodard 1995 Revocable Trust; to acquire voting shares of Ameribank Corporation, Shawnee, Oklahoma, and thereby indirectly acquire American National Bank & Trust Company, Shawnee, Oklahoma.

Board of Governors of the Federal Reserve System, January 27, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–2349 Filed 1–29–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 25, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Deposit Guaranty Corp., Jackson, Mississippi; to merge with Victory Bancshares, Inc. (formerly Cordova Bancshares, Inc.), Cordova, Tennessee, and thereby indirectly acquire Victory Bank and Trust Company, Cordova, Tennessee.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Hometown Bancshares, Inc., Carthage, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Hometown Bank, N.A., Carthage, Missouri.

2. First Place Financial Corporation, Farmington, New Mexico; to acquire 100 percent of the voting shares of Capital Bank, Albuquerque, New Mexico

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Board of Governors of the Federal Reserve System, January 27, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–2348 Filed 1–29–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 25, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Magna Group, Inc., St. Louis, Missouri; to acquire Charter Financial, Inc. Sparta, Illinois, and thereby indirectly acquire Charter Bank, S.B., Sparta, Illinois, and thereby engage in the operation of a savings association, pursuant to § 225.28(b)(4)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 27, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–2350 Filed 1–29–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m. (EST) February 9, 1998.

PLACE: 4th Floor, Conference Room 4506, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the January 12, 1998, Board member meeting.

2. Thrift Savings Plan activity report by the Executive Director.

3. Review of investment policy.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: January 27, 1998.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 98–2418 Filed 1–27–98; 4:07 pm]

BILLING CODE 6760–01–M

FEDERAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Trade Commission.

TIME AND DATE: 10:00 a.m., Thursday, February 19, 1998.

PLACE: Federal Trade Commission Building, Room 532, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions Open to Public:

(1) Oral Argument in Toys "R" Us, Docket 9278.

Portions Closed to the Public:

(2) Executive Session to follow Oral Argument in Toys "R" Us, Docket 9278.

CONTACT PERSON FOR MORE INFORMATION: Victoria Streitfeld, Office of Public Affairs: (202) 326–2180, Recorded Message: (202) 326–2711.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 98–2441 Filed 1–28–98; 10:32 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of a Cooperative Agreement With the Congress of National Black Churches

The Office of Minority Health (OMH), Office of Public Health and Science, announces that it will enter into an umbrella cooperative agreement with The Congress of National Black Churches, Inc. (CNBC). This cooperative agreement will establish the broad programmatic framework within which specific projects can be funded as they are identified during the project period.

The purpose of this cooperative agreement is to assist this national association in expanding and enhancing its activities relevant to education, health promotion, disease prevention, and family and youth violence prevention with the ultimate goal of improving the health status of minorities and disadvantaged people, especially within the African American community. The OMH will provide consultation, including administrative and technical assistance as needed, for the execution and evaluation of all aspects of this cooperative agreement. The OMH will also participate and/or collaborate with the awardee in any workshops or symposia to exchange current information, opinions, and research findings.

Authorizing Legislation

This cooperative agreement is authorized under Section 1707(d)(1) of the Public Health Service Act.

Background

Assistance will be provided only to CNBC. No other applications are solicited. CNBC is the only organization capable of administering this cooperative agreement because it has:

1. Developed, expanded, and managed an infrastructure to coordinate and implement various educational programs within local communities, organizations, and local and national churches that deal with racial and ethnic minorities, especially African Americans. CNBC has been actively involved and instrumental in providing a vehicle for coalition building between the church and community-based organizations, and in providing leadership for health promotion strategy and dissemination of prevention information in the African community. The association established 9 national initiatives; Affiliate Relations, Church Rebuilding and Arson Prevention, Institutional Advancement, National Anti-Drug/Violence Program, National Voter Education Program, Children and Family Development, Economic Development Program, Leadership Development Program, and the National Health Program. All of these programs provide a foundation upon which to develop, promote, and manage education and health-related programs aimed at preventing and reducing unnecessary morbidity and mortality rates among African Americans, as well as, improving the quality of life for African Americans.

2. Established itself and its members as a national association with numerous clergy and professionals who serve as leaders and experts in planning, developing, implementing, and promoting educational policy campaigns (locally and nationally) aimed at reducing adverse health behaviors and improving the African American community's overall educational and social well being.

3. Developed a national association whose membership consist of 8 historic black denominations with established linkages to 65,000 African American churches and 19 million people.

4. Developed a base of critical knowledge, skills, and abilities related to serving African Americans with a range of health and social problems. Through the collective efforts of various diverse groups; special institutions, governmental agencies, businesses, legislative and judicial bodies, media and other parts of the community. CNBC has demonstrated (1) the ability to form successful partnerships on mutual education, research, and health endeavors relating to the goal of health promotion and disease prevention in African Americans, (2) leadership necessary to attract minority students into public service and health careers, and (3) the leadership needed to assist health care professionals to work more effectively with African American clients and communities.

This cooperative agreement will be awarded in FY 1998 for a 12-month budget period within a project period of 5 years. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, contact Ms. Georgia Buggs, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852 or telephone (301) 443–5084.

The Catalogue of Federal Domestic Assistance number is 93.004.

Dated: December 2, 1997.

Clay E. Simpson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 98–2326 Filed 1–29–98; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of National AIDS Policy

Notice of Meeting of the Presidential Advisory Council on HIV/AIDS and its Subcommittees

Pursuant to P.L. 92–463, notice is hereby given of the meeting of the Presidential Advisory Council on HIV/AIDS on March 15–18, 1998, at the Madison Hotel, Washington, DC. The meeting of the Presidential Advisory Council on HIV/AIDS will take place on Sunday, March 15, Monday, March 16, Tuesday, March 17, and Wednesday, March 18 from 8:30 am to 5:30 pm at the Madison Hotel, Fifteenth and M Streets, NW, Washington, DC 20005. The meetings will be open to the public.

The purpose of the subcommittee meetings will be to finalize any recommendations and assess the status of previous recommendations made to the Administration. The agenda of the Presidential Advisory Council on HIV/AIDS may include presentations from the Council's seven committees, Research, Services, Prevention, International, Discrimination, Communities for African and Latino Descent, and Prison Issues.

Daniel C. Montoya, Executive Director, Presidential Advisory Council on HIV and AIDS, Office of National AIDS Policy, 808 17th Street, N.W., Suite 820, Washington, D.C. 20006, Phone (202) 632–1090, Fax (202) 632–1096, will furnish the meeting agenda and roster of committee members upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ann Borlo at (301) 986–4870 no later than February 15, 1998.

Dated: January 23, 1998.

Daniel C. Montoya,

Executive Director, Presidential Advisory Council on HIV and AIDS, Office of National AIDS Policy.

[FR Doc. 98–2327 Filed 1–29–98; 8:45 am]

BILLING CODE 3195–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–98–1]

Fiscal Year 1998 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications to carry out the functions of a National Long-Term Care Ombudsman Resource Center.

SUMMARY: The Administration on Aging announces that it will hold a cooperative agreement/grant award competition under this program announcement for a National Long-Term Care Ombudsman National Resource Center. The deadline date for the submission of applications is March 16, 1998. Public and/or nonprofit agencies, organizations, and institutions are eligible to apply under this program announcement. To be considered for funding, however, Center applicants must demonstrate a proven track record of experience with the operation and organization of the Long-Term Care Ombudsman Program at national, state, and local levels, as well as a thorough command of the history and current status of the program and the policy considerations bearing on its future development.

Application kits are available by writing to the Department of Health and Human Services, Administration on Aging, Office of Elder Rights Protection, 330 Independence Avenue, SW., Room 4254, Washington, DC 20201, or by calling 202/619–7585.

Jeanette C. Takamura,

Assistant Secretary for Aging.

[FR Doc. 98–2313 Filed 1–29–98; 8:45 am]

BILLING CODE 4150–40–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Hanford Thyroid Morbidity Study Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Hanford Thyroid Morbidity Study Advisory Committee.

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Time and Date: 9 a.m.-5 p.m., February 13, 1998.

Place: Doubletree Hotel, 18740 Pacific Highway South, Seattle, Washington 98188, telephone 206/246–8600, fax 206/431–8687.

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with providing advice and guidance to the Director, CDC, regarding the scientific merit and direction of the Hanford Thyroid Morbidity Study. The Committee will review development of the study protocol and recommend changes of scientific merit to CDC, and advise on the conduct of a full-scale epidemiologic study using the approved protocol. During the conduct of the full-scale epidemiologic study, the Committee will advise CDC on the design and conduct of the study and analysis of the results.

Matters to be Discussed: The Committee will discuss the progress and updates on the status of various components of the Hanford Thyroid Disease Study being conducted by the Fred Hutchinson Cancer Research Center. Agenda items include: National Center for Environmental Health (NCEH) activities on the progress of current studies, an update on the Native American component, and public involvement activities.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Mike Donnelly, Public Health Advisor, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: January 23, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–2437 Filed 1–29–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84N–0102]

Cumulative List of Orphan Drug and Biological Designations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a cumulative list of designated orphan drugs and biologics as of December 31, 1997. FDA has announced the availability of previous lists, which are brought up-to-date monthly, identifying the drugs and biologicals granted orphan-drug designation under the Federal Food, Drug, and Cosmetic Act (the act).

ADDRESSES: Copies of the list of current orphan-drug designations and of any future lists are or will be available from the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, and the Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3666.

FOR FURTHER INFORMATION CONTACT: Erica K. McNeilly, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0983.

SUPPLEMENTARY INFORMATION: FDA's Office of Orphan Products Development (OPD) reviews and takes final action on applications submitted by sponsors seeking orphan-drug designation under section 526 of the act (21 U.S.C. 360bb). In accordance with this section of the act, which requires public notification of designations, FDA maintains a list of designated orphan drugs and biologicals. This list is made current on a monthly basis and is available upon request from OPD (contact identified above). At the end of each calendar year, the agency publishes an up-to-date cumulative list of designated orphan drugs and biologicals, including the names of designated compounds, the specific disease or condition for which the compounds are designated, and the sponsors' names and addresses. The cumulative list of compounds receiving orphan-drug designation through 1988 was published in the **Federal Register** of April 21, 1989 (54 FR 16294). This list is available on request from FDA's Dockets Management Branch (address above). Those requesting a copy should specify the docket number found in brackets in the heading of this notice.

The list that is the subject of this notice consists of designated orphan drugs and biologicals through December 31, 1997, and, therefore, brings the March 13, 1997 (62 FR 11900) publication up to date.

The orphan-drug designation of a drug or biological applies only to the sponsor who requested the designation. Each sponsor interested in developing an orphan drug or biological must apply for orphan-drug designation in order to obtain exclusive marketing rights. Any request for designation must be received by FDA before the submission of a marketing application for the proposed indication for which designation is requested. (See 53 FR 47577, November 23, 1988.) Copies of the regulations (see 57 FR 62076, December 29, 1992) for use in preparing an application for orphan-drug designation may be obtained from the OPD (address above).

The names used in the cumulative list for the drug and biological products that have not been approved or licensed for marketing may not be the established or proper names approved by FDA for these products if they are eventually approved or licensed for marketing. Because these products are investigational, some may not have been reviewed for purposes of assigning the most appropriate established proper name.

Dated: January 21, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–2265 Filed 1–29–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98M–0039]

NIC Ltd.; Premarket Approval of NiC1800 Needle Disposal System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application submitted by NIC Ltd., Half Moon Bay, CA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of NiC1800 Needle Disposal System. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 26, 1997, of the approval of the application.

DATES: Petitions for administrative review by March 2, 1998.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Chiu S. Lin, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8913.

SUPPLEMENTARY INFORMATION: On August 8, 1997, NIC Ltd., Half Moon Bay, CA 94019, submitted to CDRH an application for premarket approval of the NiC1800 Needle Disposal System. The device is a needle destruction device and is indicated for the disposal of standard plastic syringe-mounted hypodermic needles (19 through 28 gauge, up to 2 inches in length) in patient treatment and clinical laboratory settings.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the General Hospital and Personal Uses Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On September 26, 1997, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 2, 1998, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: January 5, 1998.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 98–2272 Filed 1–29–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–2082]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Statistical Report on Medical Care: Eligibles, Recipients, Payments and Services; *Form No.:* HCFA–2082 (OMB# 0938–0345); *Use:* State data are reported either on the hard copy HCFA–2082 or by the Federally mandated electronic process, known as the Medicaid Statistical Information System (MSIS). These data are the basis of actuarial forecasts for Medicaid service utilization, costs of analysis, cost savings estimates and responding to requests for information from HCFA components, the Department, Congress and other customers.; Frequency: Quarterly and Annually; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 53; *Total Annual Responses:* 212; *Total Annual Hours:* 6,808.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room C2–26–17 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Date: January 22, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–2304 Filed 1–29–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4283–N–75]

Notice of Proposed Information Collection for Public Comments

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is

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soliciting public comments on the subject proposal.

DATES: Comments due: March 31, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, S.W., Room 4238, Washington, D.C. 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642. extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on hose who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g. permitted electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Requisition for Partial Payment of Annual Contributions, Supporting Data for Annual Contributions, Voucher for Payment.

OMB Control Number: 2577–0149.

Description of the need for the information and proposed use: Housing Agencies (HAs) administering the Section 8 Rental Voucher, Rental Certificate and Moderate Rehabilitation Programs are required to maintain financial reports in accordance with accounting standards to permit timely and effective audits. The financial forms estimate the HA's annual contributions requirements; assure that program costs do not exceed the amount of contract authority authorized in the Annual Contributions contract (ACC); requisition the advance of annul contributions; and report annual receipts and expenditures under the ACC. The authority for the collection of this information is the Housing and Community Development Act of 1987.

Agency form numbers, if applicable: HUD–52263, HUD–52672, HUD–52673, HUD–52681.

Members of affected public: State, Local or Tribal Governments.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 6,200 respondents, seven responses per respondent, 1.4 hour average per response, 62,000 hours total reporting burden.

Status of the proposed information collection: Extension.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 23, 1998.

Kevin Emanuel Marchman,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

Suggested Format for Requisition for Partial Payment of Annual Contributions

Section 8 Housing Assistance Payments Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0149 (Exp. 1/30/98)

Public reporting burden for this collection of information is estimated to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless that collection displays a valid OMB control number. Authority for this collection of information is the Housing and Community Development Act of 1987. Housing Agencies (HAs) required to maintain financial reports in accordance with accepted accounting standards too permit timely and effective audits. The financial records identify the amount of annual contributions that are received and disbursed by HAs. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

1. Date of Requisition	2. No. of Months in 1st FY	4. Public Housing Agency (HA) (Name and Address)
3. Project No.		

5. Housing Program Type (Mark one)
☐ (a) Moderate Rehabilitation ☐ (c) Rental Vouchers
☐ (b) Rental Certificates

6. HA Fiscal Year Ending Date (Mark one box and complete year)
☐ (a) March 31, ☐ (b) June 30, ☐ (c) September 30, ☐ (d) December 31, 19:

7. Number of Units Under Lease to Eligible Families as of Date of Requisition	8. Average Monthly Housing Assistance Payment Per Unit as of Date of Requisition	9. Estimated Number of Units to be Under Lease at End of Requested Year	10. Unit Months Under Lease Year to Date	11. Average Monthly Housing Assistance Payment Per Unit Year to Date

	Funds Required for Requested Year
12. Preliminary Administrative and General Expense	
13. Estimated Housing Assistance Payments (Account 4715)	
14. Estimated Ongoing Administrative Fee	
15. Estimated Hard-to-House Fee (Existing Housing Certificates and Housing Vouchers Only)	
16. Independent Public Accountant Audit Costs (Section 8 Only)	
17. Total Funds Required to End of Requested Year (Sum of Lines 12 through 16)	
18. Payments Previously Approved for the Fiscal Year (applicable only to revised requisition)	
19. Adjustment to Requisition (Difference of Line 17 and Line 18. Do not use brackets)	
20. Total Payment Requirement For Requested Year (Line 18 plus or minus adjustment on Line 19 if revised requisition. Total must equal Line 17)	

21. ☐ Paid in Equal Installments (Original Requisition Only) ☐ Paid in Unequal Installments

22. Installment	1	2	3	4	5	6
HA Total						
HUD Revision						
Installment	7	8	9	10	11	12
HA Total						
HUD Revision						

23a. Total (HA) $	23b. Total (HUD) $	24. Revised Monthly Installments Begin Month Of:

I Certify that (1) housing assistance payments have been or will be made only in accordance with Housing Assistance Payments Contracts or Housing Voucher contracts in the form prescribed by HUD and in accordance with HUD regulations and requirements; (2) units have been inspected by the HA in accordance with HUD regulations and requirements; and (3) this requisition for annual contributions has been examined by me and to the best of my knowledge and belief is true, correct and complete.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Title of Authorized HA Official	Title of Authorized HUD Approving Official
Signature / Date	Signature / Date

Previous editions are obsolete

form HUD-52663 (9/94)
ref Handbook 7420.7

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Supporting Data for Annual Contributions Estimates

Section 8 Housing Assistance Payments Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0149 (Exp. 1/30/98)

Public reporting burden for this collection of information is estimated to average 40 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless that collecton displays a valid OMB control number. Authority for this collection of information is the Housing and Community Development Act of 1987. Housing Agencies (HAs) required to maintain financial reports in accordance with accepted accounting standards too permit timely and effective audits. The financial records identify the amount of annual contributions that are received and disbursed by HAs. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

1. Public Housing Agency (Name and Address)

2. Project No.

3. Submission ☐ Original ☐ Revision No.

4. No. of Dwelling Units | 5. No. of Unit Months

Part I Estimate of Annual Housing Assistance Payments Required

	Bedroom Size of Dwelling Units	Number of Dwelling Units	Monthly Gross Rent/Payment Standard	Amount Payable by Family Toward Gross Rent	Monthly Housing Assistance Payments	Unit Months Under Lease	Annual Housing Assistance Payments
6.	0 BR						
7.	1 BR						
8.	2 BR						
9.	3 BR						
10.	4 BR						
11.							
12.							
13							
14.							
15.	Total						$

Part II Calculation of Estimated Ongoing Administrative Fee

	Unit Months (a)	HUD Published 2-BR Fair Market Rent x (b)	Product of Columns (a) x (b) = (c)	Allowable Percent x (d)	Administrative Fee = (e)
16.	0 BR				
17.	1 BR				
18.	Total				

Part III Calculation of Estimated Hard- to- House (Existing Housing Certificate and Housing Vouchers Only)

		Estimated Number of Families (a)	Fee Per Family x (b)	Total Hard-to-House Fee = (c)
19.				

Part IV Calculation of Estimated Preliminary Expense

		Requested Amount	
		Requested Amount	HUD Modifications
Administrative Expenses	20. Administrative Salaries		
	21. Employee Benefit Contributions		
	22. Legal Expense		
	23. Travel Expense		
	24. Sundry		
	25. Office Rent		
	26. Accounting and Auditing Fees		
	27. Total Administrative Expenses		
Non-Expendable Equipment Expenses	28. Office Equipment		
	29. Office Furnishings		
	30. Automotive		
	31. Other		
	32. Total Non-Expendable Equipment Expenses		
General Expenses	33. Maintenance and Operation (Non-Expend. Equip. Only)		
	34. Insurance		
	35. Sundry		
	36. Total General Expense		
Total Preliminary Expenses	37. Sum of Lines 27, 32, and 36		

Submit three copies
Previous editions are obsolete

form HUD-52672 (2/85)
ref Handbook 7420.7

Estimate of Total Required Annual Contributions

Section 8 Housing Assistance Payments Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0149 (Exp.1/30/98)

Public reporting burden for this collection of information is estimated to average 40 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless that collecton displays a valid OMB control number. Authority for this collection of information is the Housing and Community Development Act of 1987. Housing Agencies (HAs) required to maintain financial reports in accordance with accepted accounting standards too permit timely and effective audits. The financial records identify the amount of annual contributions that are received and disbursed by HAs. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

1. Public Housing Agency (Name and Address)

2. Project No.

3. Submission ☐ Original ☐ Revision No.

4. Annual Contributions Contract No. | 5. HUD Field Office | 6. HUD Regional Office | 7. No. Dwelling Units | 8. No. Units Months

9. Housing Program Type (Mark One)
☐ (a) New Construction ☐ (b) Substantial Rehabilitation ☐ (c) Moderate Rehabilitation ☐ (d) Existing Housing Certificates ☐ (e) Housing Vouchers

10. PHA Fiscal Year Ending Date (Mark one and complete year)
☐ (a) March 31, ☐ (b) June 30, ☐ (c) September 30, ☐ (d) December 31, 19:

I. Maximum Annual Contributions	PHA Estimate (Housing Vouchers Only) Housing Payments	PHA Fee	PHA Estimate Total	HUD Approved (Housing Vouchers Only) Housing Payments	PHA Fee	HUD Approved Total
11. Maximum Annual Contributions Commitment						
12. Prorata Maximum Annual Contributions Applicable to a Period in Excess of 12 Months						
13. Maximum Annual Contributions for Fiscal Year (Line 11 plus Line 12)						
14. Project Account-Estimated or Actual Balance at Beginning of Requested Fiscal Year						
15. Total Annual Contributions Available—Estimated or Actual (Line 13 plus Line 14)						

Previous editions are obsolete
Submit an Original and 2 copies

form HUD-52673 (2/85)
ref Handbook 7420.7

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II. Maximum Annual Contributions	PHA Estimate (Housing Vouchers Only) Housing Payments	PHA Fee	PHA Estimate Total	HUD Approved (Housing Vouchers Only) Housing Payments	PHA Fee	HUD Approved Total
16. Estimated Annual Housing Assistance Payments (form HUD-52672, Line 15)						
17. Estimated Ongoing Administrative Fee (form HUD-52672, Line 18)						
18. Estimated Hard-to-House Fee (form HUD-52672, Line 19)						
19. Estimated Independent Public Accountant Audit Costs						
20. Estimated Preliminary Administrative and General Expense (form HUD-52672, Lines 27 and 36)						
21. Carryover of Preliminary Administrative and General Expense not Expended in the Previous FY Ending: (/ /)						
22. Estimated Non-Expendable Equipment Expense (form HUD-52672, Line 32)						
23. Carryover of Non-Expendable Equipment Expense not Expended in the Previous FY Ending: (/ /)						
24. Total Annual Contributions Required—Requested Fiscal Year (Lines 16 through 23)						
25. Deficit at End of Current Fiscal Year—Estimated or Actual						
26. Total Annual Contributions Required (Line 24 plus Line 25)						
27. Estimated Project Account Balance at End of Requested Fiscal Year (Line 15 minus Line 26)						
28. Provision for Project Account—Requested Fiscal Year Increase (decrease) (Line 27 minus Line 14)						
III. Annual Contributions Approved						
29. Total Annual Contributions Approved—Requested Fiscal Year (Line 26 plus increase, if any, on Line 28)						
30. Source of Total Contributions Approved—Requested Fiscal Year: (a) Requested Fiscal Year Maximum Annual Contributions Commitment (Line 13 or Line 29, whichever is smaller)						
(b) Project Account (Line 29 minus Line 30(a))						

Signature, Name and Title of PHA Approving Official (and date)

Signature, Name and Title of Approving HUD Field Office Official (and date)

Previous editions are obsolete
Submit an Original and 2 copies

form HUD-52673 (2/85)
ref Handbook 7420.7

Year-End Settlement Statement
Suggested Format

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0149 (Exp. 1/30/98)

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless that collecton displays a valid OMB control number. Authority for this collection of information is the Housing and Community Development Act of 1987. Housing Agencies (HAs) required to maintain financial reports in accordance with accepted accounting standards too permit timely and effective audits. The financial records identify the amount of annual contributions that are received and disbursed by HAs. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

1. Public Housing Agency (HA) (name and address)

2. Project Number

3. Annual Contributions Contract Number

4. Housing Program Type:
☐ Rental Certificate ☐ Rental Voucher ☐ Moderate Rehab. ☐ Section 23

5. HA Fiscal Year Ending Date: (mark one and complete the year)
☐ March 31, ____ ☐ June 30, ____ ☐ Sept. 30, ____ ☐ December 31, ____

6. Number of Unit Months under Lease by Bedroom Size: 1BR	2BR	3BR	4BR	5BR	Other

7. Average Tenant Contribution

8. Portability
Accounts Payable _____ Accounts Receivable _____

Request is hereby made for the payment of annual contributions pursuant to the terms and conditions of the above numbered Annual Contributions Contract for the project and fiscal year shown above.

Part I. Request for Payment	Approved Budget Estimates (a)	HA Actuals Total (b)	HUD Approved Total (c)
Maximum Annual Contributions Available			
9. Maximum Annual Contributions Commitment (per ACC)			
10. Prorata Maximum Annual Contributions applicable to a Period of less than Twelve Months			
11. Contingency Reserve, ACC Program Reserve			
12. Total Annual Contributions Available (sum of lines 9, 10, and 11)			
Annual Contributions Required			
13. 4715 Housing Assistance Payments			
14. Security and Utility Deposit Fund (Section 23 Only)			
15. Ongoing Administrative Fees Earned			
16. Hard-to-House Fees Earned (Rental Certificates, Rental Vouchers, and Moderate Rehabilitation units converted to Rental Certificates)			
17. Actual Independent Public Accountant Audit Costs			
18. Total Preliminary Fees Earned			
19. Total Funds Required (sum of lines 13 thru 18)			
20. Deficit at End of Preceding Fiscal Year			
21. Program Receipts Other than Annual Contributions (3610, 3690, 7530, and Section 23 Security and Utility Deposits Repaid)			
22. Ongoing Fee Reduction			
23. Total Annual Contributions Required (line 19 plus line 20 minus line 21 minus line 22)			

Previous editions are obsolete

form HUD-52681 (8/95)
ref Handbook 7420.7

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	Approved Budget Estimates (a)	HA Actuals Total (b)	HUD Approved Total (c)
Balance of Annual Contributions Available			
24. ACC Program Reserve Balance (Amount by which line 12 exceeds line 23)			
25. Deficit (amount by which line 23 exceeds line 12)			
26. Provision for ACC Program Reserve a) Increase (Amount by which line 24 exceeds line 11)			
b) Decrease (amount by which line 11 exceeds line 24)			
Year End Settlement			
27. Annual Contributions due for Fiscal Year (line 23 minus line 25)			
28. Total Partial Payments Approved by HUD for Fiscal Year			
29. Underpayment due HA (amount by which line 27 exceeds line 28)			
30. Overpayment due HUD (amount by which line 28 exceeds line 27)			
Part II. Operating Receipts			
31. 3300 Interest Earned on Operating Reserve			
32. 3300P Administrative Fee Income - Portable Certificates and Vouchers			
33. 3610 Interest Earned on General Fund Investment			
34. 3690 Other Income			
35. 7530 Receipts from Non-Expendable Equipment not Replaced			
36. Total Annual Contributions Required (line 23)			
37. Total Receipts (sum of lines 31 thru 36)			
Part III. Operating Expenditures			
38. 4715 Housing Assistance Payments			
39. Independent Public Accountant Costs (Section 8 only)			
40. Total Ongoing Administrative Expenses			
41. Total Preliminary Fees Earned			
42. Total Expenditures (sum of lines 38 thru 41)			
Prior Year Adjustments			
43. Affecting Residual Receipts (or Deficit) for Debit (Credit)			
44. Total Operating Expenses (line 42 plus line 43)			
45. Net Income (or Deficit) before Provision for Operating Reserve (line 37 minus line 44)			

	Approved Budget Estimates (a)	HA Actuals Total (b)	HUD Approved Total (c)
Part IV. Analysis of Operating Reserve			
46. Operating Reserve - Balance at Beginning of FY Covered by this Statement			
47. Cash Deposits to (or Withdrawals from) Operating Reserve During Fiscal Year			
48. Net Income (or Deficit) before Provision for Operating Reserve (line 45)			
Provision for Operating Reserve(Acct. 7016/Sec. 8; Acct. 7016.1/Rental Vouchers)			
49. Addition (The amount of income, if any, on line 48)			
50. Deduction (The amount of deficit, if any, on line 48)			
51. Operating Reserve - Balance at End of Fiscal Year Covered by this Statement (line 46 plus or minus line 47 plus line 49 or minus line 50)			

I Certify that: (1) housing assistance payments have been or will be made only in accordance with Housing Assistance Payments Contracts or Rental Voucher Contracts in the form prescribed by HUD and in accordance with HUD regulations and requirements;

(2) units have been inspected by the HA in accordance with HUD regulations and requirements; and

(3) this voucher for annual contributions has been examined by me and to the best of my knowledge and belief is true, correct and complete.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Public Housing Agency	Title of Authorized HA Official	
	Signature of Authorized HA Official	Date

The Field Office has reviewed calculations of the Ongoing Administrative Fee. The HUD approved totals are the official totals as reported in HUD CAPs.

Name of Office	Signature of Director, Office of Public Housing	Date

Overpayment to be offset $_____ Underpayment certified for payment to the HA $_____

[FR Doc. 98–2766 Filed 1–29–98; 8:45 am]
BILLING CODE 4210–33–C

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4263–N–76]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* March 31, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Shelia E. Jones, Department of Housing and Urban Development, 451—7th Street, SW, Room 7230, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Paul Webster at (202) 708–1871 ext. 4563 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: The Economic Development Iniative (EDI) Grants Program.

OMB Control Number, if applicable: 2506–1053.

Description of the need for the information and proposed use: The information collection is required to assist HUD in selecting applicants to receive EDI grant funds and to document program compliance. Information to be collected for application submission is specified in the NOFA. The information collected is essential in order to rate and rank proposals, in keeping with the statutory provisions, and in order to determine the eligibility of applicants and proposed activities. The selection criteria are as required by the Act, and may include additional criteria if the Secretary deems necessary. After the Congressional notification of grant awards are made, recipients are required to follow applicable Federal CDBG (see OMB No. 2506–0077) and Section 108 loan guarantee requirements (see OMB No. 2506–0123). Information which is required to satisfy the record keeping requirements of these programs will be collected and maintained. Information collected will be used to drawdown funds and prepare annual performance reports. HUD may monitor grantee records to periodically verify compliance.

Agency form numbers, if applicable: SF424.

Members of affected public: Eligible applicants are Community Development Block Grant (CDBG) entitlement units of general local government, and non-entitlement units of general local government which are eligible to receive Section 108 loan guarantees under 24 CFR 570.702. Eligible expenses are those authorized under 24 CFR 570.703 of the Community Development Block Grant program.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Collection requirement	Annual frequency	Number of respondents	Burden hours per respondent	Total burden hours
Application	One-time	150	40	6,000
LOCCS Access	Each week (52)	60	1	3,120
Record keeping and reporting	Each week (52)	60	1	3,120
Total Burden				12,240

Status of the proposed information collection: Current approval expired on December 21, 1996.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 23, 1998.

Saul N. Ramirez, Jr.,

Assistant Secretary of Community Planning and Development.

[FR Doc. 98–2267 Filed 1–29–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–77]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: March 2, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer of the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 22, 1998.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Crime Survey in Chicago Public Housing and the Surrounding Neighborhoods.

Office: Policy Development and Research.

OMB Approval Number: None.

Description of the Need for the Information and its Proposed Use: The Chicago Housing Authority's Henry Horner Homes are undergoing a HUD-sponsored redesign. Crime prevention is a principal objective. The survey will replicate and refine HUD's approach to survey research on criminal victimization of public housing residents, while gauging the effects of the redesign on crime.

Form Number: None.

Respondents: Individuals or Households.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	500		1		.33		167

Total Estimated Burden Hours: 167.
Status: New.
Contact: Harold R. Holzman, HUD, (202) 708–1336 x123; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: January 22, 1998.

[FR Doc. 98–2268 Filed 1–29–98; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4163–N–03]

Announcement of Funding Awards; Emergency Shelter Grants Set-Aside for Indian Tribes and Alaskan Native Villages Fiscal Year 1997

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1997 for the Emergency Shelter Grants Set-Aside for Indian Tribes and Alaskan Native Villages. The purpose of this notice is to publish the names and addresses of the award winners and the amount of the awards made available by HUD to provide assistance to the Indian Tribes and Alaskan Native Villages.

FOR FURTHER INFORMATION CONTACT: Robert Barth, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, P.O. Box 36003, 450 Golden Gate Avenue, San Francisco, CA 94102; telephone (415) 436–8122 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Emergency Shelter Grants Set-aside for Indian Tribes and Alaskan Native Villages funds for this notice is authorized by subtitle B, title IV of the Stewart B. McKinney Homeless Assistance Act. The proposed rule on Emergency Shelter Grants Program; Set-Aside Allocation for Indian Tribes and Alaskan Native Villages, published in the **Federal Register** on April 5, 1993 (58 FR 17764), describes the method for allocating these funds.

This notice announces FY 1997 funding of $1,265,000 to be used to help improve the quality of existing emergency shelters for the homeless, make available additional emergency shelters, meet the costs of operating emergency shelters and of providing essential social services to homeless individuals, and help prevent homelessness. The FY 1997 awards announced in this Notice were selected for funding consistent with the provisions in the Notice of Funding Availability (NOFA) published in the **Federal Register** on April 11, 1997 (62 FR 17970).

The Catalog of Federal Domestic Assistance number for this program is 14.231.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is hereby publishing the names, addresses, and amounts of those awards as shown in Appendix A.

Dated: January 22, 1998.

Kevin Emanuel Marchman,

Assistant Secretary for Public and Indian Housing.

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APPENDIX A—FISCAL YEAR 1997; ESG SET-ASIDE FOR INDIAN TRIBES AND ALASKAN NATIVE VILLAGES RECIPIENTS OF FUNDING DECISIONS

Funding recipient (name and address)	Amount approved
Eastern/Woodlands ONAP	
Grand Traverse Band of Ottawa & Chippewa Indians, 2602 N. West Bayshore Dr., Suttons Bay, MI 49682	103,520
Ho-Chunk Nation, W9814 Airport Rd., P.O. Box 667, Black River Falls, WI 54615–0667	100,000
Lac Courte Oreilles Tribal Governing Board, Route 2, Box 2700, Hayward, WI 54843	147,287
Poach Band of Creek Indians, 5811 Jack Springs Road, Atmore, AL 36502–6502	40,000
Southern Plains ONAP	
Fort Sill Apache Tribe of Oklahoma, Route 2, Box 121, Apache, OK 73006	57,759
Choctaw Nation of Oklahoma, P.O. Drawer 1210, Durant, OK 74702–4702	37,287
Miami Tribe of Oklahoma, P.O. Box 1326, Miami, OK 74355	125,000
Cherokee Nation, P.O. Box 948, Tahlequah, OK 74465–4465	29,791
Northern Plains ONAP	
Oglala Sioux Tribe, P.O. Box H, Pine Ridge, SD 57770–7770	124,320
Northern Cheyenne Tribe, P.O. Box 128, Lame Deer, MT 59043–9043	109,111
Southwest ONAP	
Inter-Tribal Council of California, Inc., 2755 Cottage Way, Suite 14, Sacramento, CA 95825	155,000
Northwest ONAP	
Hoh Indian Tribe of the Hoh Reservation, 2464 Lower Hoh Road, Forks, WA 98550	117,900
Alaska ONAP	
Cook Inlet Tribal Council, P.O. Box 93330, Anchorage, AK 99509	96,785
Orutsararmiut Native Council, P.O. Box 927, Bethel, AK 99559	21,240

[FR Doc. 98–2269 Filed 1–29–98; 8:45 am]
BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4191–N–04]

Announcement of Funding Awards, Federally Assisted Low Income Housing Drug Elimination Grants, Fiscal Year 1997

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding awards made by the Department under a **Federal Register** notice for the Federally Assisted Low Income Drug Elimination Grant Program. This announcement contains the names and addresses of the Federally Assisted Low Income Housing Drug Elimination Program grantees and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Michael Diggs, Office of Multifamily Housing Asset Management and Disposition, Department of Housing and Urban Development, room 6176, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0558 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: These grants are authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et seq.*), as amended by section 581 of the National Affordable Housing Act (NAHA) of 1990 (Pub. L. 101–625, 104 Stat. 4079, approved November 28, 1990), and section 161 of the Housing and Community Development Act of 1992 (HCDC 1991) (Pub. L. 102–550, approved October 28, 1992). Section 581 of NAHA expanded the Drug Elimination Program to include Federally assisted, low-income housing.

The Notice of Funding Availability (NOFA) published on May 23, 1997 (62 FR 28564) for the Federally Assisted Low-Income Housing Drug Elimination Program announced the availability of $17,000,000. The purposes of the Assisted Housing Drug Elimination Program are to eliminate drug-related crime and related problems in and around the revises of Federally assisted low-income housing, and to make available grants to help owners of such housing carry out plans to address these issues.

The Catalog of Federal Domestic Assistance number for this program is 14.193.

After reviewing and ranking the applications according to the processes described in the May 23, 1997 (62 FR 28564) NOFA, HUD, in accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), is hereby publishing the names and addresses of the grantees that received funding under the NOFA, and the amount of funds awarded to each in Appendix A. The total amount awarded during this period was $17,042,261 to 158 applicants.

Dated: January 24, 1998.

Sarah Rosen,

Associate General Deputy Assistant Secretary for Housing.

FISCAL YEAR 1997 DRUG ELIMINATION PROGRAM GRANTEES

NEW ENGLAND REGION OFFICE: BOSTON MA

ALGONQUIN HEIGHTS (023–41033)
ALGONQUIN TERRACE, PLYMOUTH, MA 02360
RECIPIENT: ALGONQUIN HEIGHTS ASSOCIATES
CONTACT PERSON: CHERYL A. CHAMBERLIN (508) 746–4133
FUND AMOUNT: $85,159

CARTER HEIGHTS (023–135NI)
10 FORSYTH STREET, CHELSEA, MA 02150
RECIPIENT: CARTER HEIGHTS C/O PEABODY PROPERTIES INCORPORATED
CONTACT PERSON: DOREEN BUSHASHIA (617) 328–1313
FUND AMOUNT: $118,860

COBBET HILL APARTMENTS (MA06K023001)
498 ESSEX STREET, LYNN, MA 01902
RECIPIENT: COBBET HILL ASSOCIATES C/O LANDEX CORPORATION
CONTACT PERSON: ALISON LEVINS (617) 581–2180
FUND AMOUNT: $122,720

JARVIS HEIGHTS APARTMENTS (023–045NI)
GERARD WAY, HOLYOKE, MA 01040
RECIPIENT: JARVIS HEIGHTS APARTMENTS ASSOCIATES
CONTACT PERSON: ANN BEREZIN (413) 539–9500 X–108
FUND AMOUNT: $122,000

MADISON PARK VILLAGE (023–35245)
122 DE WITT DRIVE, BOSTON (ROXBURY), MA 02120
RECIPIENT: MADISON PARK HOUSING CORPORATION
CONTACT PERSON: DIANA J. KELLY (617) 449–7887
FUND AMOUNT: $125,000

NORTH VILLAGE AT WEBSTER II (023–022NI)
18 VILLAGE WAY, WEBSTER, MA 01570
RECIPIENT: NORTH VILLAGE ASSOCIATES
CONTACT PERSON: LEANNE CHALIFOUX (508) 987–1595
FUND AMOUNT: $125,000

QUINCY-GENEVA GRANITE II (023–36616)
544 WARREN STREET, BOSTON (DORCHESTER), MA 02121
RECIPIENT: QUINCY-GENEVA HOUSING CORPORATION
CONTACT PERSON: SENESIE M. KABBA (617) 442–5711
FUND AMOUNT: $125,000

RIVER PLACE APARTMENTS (MA06K005005)
667 MAIN STREET, HOLYOKE, MA 01040
RECIPIENT: RIVERPLACE APARTMENTS LIMITED PARTNERSHIP
CONTACT PERSON: ANN BEREZIN (413) 539–9500 X–108
FUND AMOUNT: $124,960

SARGEANT WEST APARTMENTS (023–44199)
151 WEST STREET, HOLYOKE, MA 01040
RECIPIENT: SARGEANT WEST APARTMENTS ASSOCIATES
CONTACT PERSON: ANN BEREZIN (413) 539–9500 X–108
FUND AMOUNT: $124,300

SOUTHFIELD GARDENS (023–44002)
165 CARL AVENUE #34B, BROCKTON, MA 02402
RECIPIENT: SOUTHFIELD GARDENS COMPANY C/O FIRST REALTY MANAGEMENT CORP.
CONTACT PERSON: NANCY HOGAN (617) 423–7000
FUND AMOUNT: $125,000

WARREN GARDENS (023–55049)
45 WALNUT AVENUE, BOSTON (ROXBURY), MA 02119
RECIPIENT: WARREN GARDENS HOUSING CORPORATION C/O L.E. SMITH MANAGEMENT
CONTACT PERSON: LORING E. SMITH (617) 357–7188
FUND AMOUNT: $125,000

NEW ENGLAND REGION OFFICE: HARTFORD, CT

BEAVER ST COOPERATIVE APARTMENTS (01744083)
ROSE STREET, DANBURY, CT 06810
RECIPIENT: BEAVER ST APARTMENTS COOP
CONTACT PERSON: SONJA J. GAYESKI 860 521 6999
FUND AMOUNT: $125,000

CASA VERDE SUR (01735127)
60 WADSWORTH ST, HARTFORD, CT 06106
RECIPIENT: CHAUNCEY HARRIS ASSOC LP
CONTACT PERSON: KIM PIETRORAZIO 860 563 3777
FUND AMOUNT: $125,000

CLAY HILL ASSOC. (01735152)
ALBANY AVE, HARTFORD, CT 06112
RECIPIENT: CLAY HILL ASSOC LP
CONTACT PERSON: RICHARD WEAVER-BEY 860 522 1263
FUND AMOUNT: $124,990

FRESHWATER POND (01735089)
THISTLE LANE, ENFIELD, CT 06082
RECIPIENT: FRESHWATER POND LP
CONTACT PERSON: KAREN DEAN 860 939 1309
FUND AMOUNT: $125,000

JEFFERSON GARDENS (01744202)
7A MICHAEL RD, NEW LONDON, CT 06320
RECIPIENT: JEFFERSON GDNS ASSOC LP/ SK RESIDENTIAL CORP GP
CONTACT PERSON: KIM PIETRORAZIO 860 563 3777
FUND AMOUNT: $125,000

KENSINGTON SQUARE I (01735164)
195 CHURCH ST., NEW HAVEN, CT 06510
RECIPIENT: THE COMMUNITY BUILDERS, INC.
CONTACT PERSON: JO-ANN BARBOUR 203 781 8042
FUND AMOUNT: $123,314

NORTH STREET TOWNHOUSES (01711021)
NORTH ST., NEW BRITAIN, CT 06050
RECIPIENT: JOSE FRANCISCO & ASSOC.
CONTACT PERSON: CLARA STEVENS 203 574 3221
FUND AMOUNT: $125,000

PARK ASSOCIATES (01744107)
S. MARSHALL ST., HARTFORD, CT 06112
RECIPIENT: SOUTH MARSHALL ASSOC.
CONTACT PERSON: RICHARD WEAVER-BEY 860 522 1263
FUND AMOUNT: $124,968

VINE ST APTS (01735071)
VINE ST, HARTFORD, CT 06112
RECIPIENT: VINE ST ASSOC LP
CONTACT PERSON: RICHARD WEAVER-BEY 860 522 1263 FUND AMOUNT: $124,980

WINDHAM HEIGHTS I (01744116)
202C SCOTT RD, WILLIMANTIC, CT 06226
RECIPIENT: WINDHAM HTS PHASE I LP, SK RESIDENTIAL CORP, GP
CONTACT PERSON: KIM PIETRORAZIO 860 563 3777
FUND AMOUNT: $125,000

WINDHAM HEIGHTS II (01744160)
202C SCOTT RD, WILLIMANTIC, CT 06226
RECIPIENT: WINDHAM HTS II LP, SK RESIDENTIAL CORP GP
CONTACT PERSON: KIM PIETRORAZIO 860 563 3777
FUND AMOUNT: $125,000

NEW ENGLAND REGION OFFICE: MANCHESTER

ARMORY SQUARE APARTMENTS (VT36K007006)
UNION STREET, WINDSOR, VT 05089
RECIPIENT: ARMORY SQUARE LIMITED PARTNERSHIP
CONTACT PERSON: ANN BEREZIN (413) 539–9500 X108
FUND AMOUNT: $117,540

NEW ENGLAND REGION OFFICE: PROVIDENCE

LAWN TERRACE APARTMENTS (016–44095)
320 AND 360 MINERAL SPRING AVENUE, PAWTUCKET, RI 02860
RECIPIENT: FERLAND PROPERTY MANAGEMENT
CONTACT PERSON: JEFFREY FERLAND (401) 725–7613
FUND AMOUNT: $125,000

NEW YORK/NEW JERSEY REGION OFFICE: BUFFALO

SHORELINE I (01401NI)
200 NIAGARA STREET, BUFFALO, NY 14201
RECIPIENT: SHORELINE LIMITED PARTNERSHIP
CONTACT PERSON: OPHELIA ALEXANDER 716–852–2027
FUND AMOUNT: $125,000

NEW YORK/NEW JERSEY REGION OFFICE: NY STATE OFFICE

HOMESTEAD VILLAGE APARTMENTS (NY36M000168)
P.O. BOX 425, CORAM, NY 11727–4000
RECIPIENT: JEEFERY COLE, ESCO ASSOCIATES
CONTACT PERSON: DAVID STERN (516) 732–5600
FUND AMOUNT: $125,000

NEW YORK/NEW JERSEY REGION OFFICE: NEWARK

254 BERGEN AVENUE (NJ39E087231)
254 BERGEN AVENUE, JERSEY CITY, NJ 07306
RECIPIENT: JERSEY CITY HOUSING AUTHORITY

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CONTACT PERSON: JOAN POLLACK 973–547–6600
FUND AMOUNT: $125,000

ARLINGTON GARDENS (NJ39E087231P)
380–388 ARLINGTON AVENUE, JERSEY CITY, NJ 07306
RECIPIENT: JERSEY CITY HOUSING AUTHORITY
CONTACT PERSON: JOAN POLLOCK 973–547–6600
FUND AMOUNT: $125,000

MID-ATLANTIC REGION OFFICE: BALTIMORE

KINGSLEY PARK APTS. (05294016)
1630 DARTFORD RD., BALTIMORE, MD 21221
RECIPIENT: HOUSING MGMT. CORP.
CONTACT PERSON: JENNIFER FEIT 410–686–5875
FUND AMOUNT: $124,841

MID-ATLANTIC REGION OFFICE: CHARLESTON

APPLE TREE GARDENS (045–35112)
102 APPLE TREE GARDENS ROAD, RANSON, WV 25438
RECIPIENT: JAMES I. HUMPHEY, JR
CONTACT PERSON: GREG GRIFFIN 301 680–4343
FUND AMOUNT: $81,767

FRANKLIN MANOR (045–35147)
700 WEST BURKE STREET, MARTINSBURG, WV 25401
RECIPIENT: JAMES I. HUMPHREY JR
CONTACT PERSON: GREG GRIFFIN 301 680–4343
FUND AMOUNT: $124,382

SPRING HILL APTS (045–44002)
1300 ROSEBERRY CIRCLE, CHARLESTON, WV 25311
RECIPIENT: ARNOLD KARP
CONTACT PERSON: KIMMEL CAMERON JR (301) 468–9525
FUND AMOUNT: $116,647

MID-ATLANTIC REGION OFFICE: PENNSYLVANIA

ROLLING HILLS (PA26H084013)
2120 BUCHERT ROAD, BOX 235, POTTSTOWN, PA 19464
RECIPIENT: ROLLING HILLS APARTMENTS, LTD.
CONTACT PERSON: BEVERLY BUCCI, ARM (610)-323–5130
FUND AMOUNT: $78,657

MID-ATLANTIC REGION OFFICE: PITTSBURGH

BETTER HOUSING FOR ERIE WEST (033–44098)
502 EAST 12TH STREET, ERIE, PA 16503
RECIPIENT: BETTER HOUSING FOR ERIE WEST
CONTACT PERSON: CHARLES SCALISE 814–459–1047
FUND AMOUNT: $24,231

FIRST ERIE BETTER HOUSING EAST (033–35020)
502 EAST 12TH STREET, ERIE, PA 16503
RECIPIENT: FIRST EREIE BETTER HOUSING EAST
CONTACT PERSON: JENNIFER MARTIN 814–459–1047
FUND AMOUNT: $34,190

MID-ATLANTIC REGION OFFICE: VIRGINIA

RUFFIN ROAD APARTMENTS (051–44201)
2219–A RUFFIN ROAD, RICHMOND, VA 23234
RECIPIENT: NATIONAL CORPORATION FOR HOUSING PARTNERSHIPS
CONTACT PERSON: REGINA HARRIS (804) 672–2236
FUND AMOUNT: $47,760

MID-ATLANTIC REGION OFFICE: WASHINGTON,DC

GLENARDEN APARTMENTS I & II (000–55019)
8405 HAMLIN STREET, LANHAM,, MD 20706
RECIPIENT: UNITED GLENARDEN I & II LIMITED PARTNERSHIPS
CONTACT PERSON: WILLIAM B. GUESSFORD, ASSET MNGR. (301) 879–8818
FUND AMOUNT: $118,914

SOUTHEAST/CARIBBEAN REGION OFFICE: GEORGIA STATE OFFICE

CARRIAGE HOUSE ATLANTA (061–44091)
415 SYLVIA DRIVE, BUILDING N, FOREST PARK, GA 30020
RECIPIENT: CARRIAGE HOUSE ASSOCIATES
CONTACT PERSON: ERMA B. RISLEY (502) 691–0552
FUND AMOUNT: $122,093

ETHERIDGE COURT APARTMENTS I (061–55042)
2500 CENTER STREET, ATLANTA, GA 30318
RECIPIENT: ETHERIDGE COURT APARTMENTS I
CONTACT PERSON: VALERIE RUSSELL CALLOWAY (404) 330–0966
FUND AMOUNT: $25,214

ETHERIDGE COURT II (061–44161)
2500 CENTER STREET, ATLANTA, GA 30318
RECIPIENT: ETHERIDGE COURT II
CONTACT PERSON: VALERIE CALLOWAY (404) 330–0966
FUND AMOUNT: $125,000

FARVIEW APARTMENTS (061–35022)
300 AVENUE "F", THOMASTON, GA 30286
RECIPIENT: FARVIEW APARTMENTS, LTD.
CONTACT PERSON: LINDSEY JOHNSON (912) 738–0085
FUND AMOUNT: $125,000

LONDON TOWNE HOUSES (061–55019)
308 SCOTT STREET, S.W., ATLANTA, GA 30311
RECIPIENT: LONDON TOWNE HOUSES, INC.
CONTACT PERSON: JEROME HAGLEY (404) 347–8030
FUND AMOUNT: $125,000

MOUNT ZION VILLAGE APARTMENTS (061–94038)
3705 ATLANTA STREET, COLLEGE PARK, GA 30337
RECIPIENT: MOUNT ZION VILLAGE APARTMENTS
CONTACT PERSON: VINCENT L. ABELL (202) 722–4900
FUND AMOUNT: $125,000

RIVER GLEN APARTMENTS (061–35411)
201 TELFAIR STREET, AUGUSTA, GA 30901
RECIPIENT: RIVER GLEN ASSOCIATES
CONTACT PERSON: CHARLES HENLEY 704–561–5232
FUND AMOUNT: $109,166

SOUTHEAST/CARIBBEAN REGION OFFICE: BIRMINGHAM

NORMANDALE APARTMENTS (06235283)
NORMAN BRIDGE ROAD, MONTGOMERY, AL 36104
RECIPIENT: NORMANDALE APARTMENTS, LTD.
CONTACT PERSON: JUDY DONALDSON 205–933–1020
FUND AMOUNT: $124,885

PINES APARTMENTS (06235007)
620 CRUMPTON DRIVE, SW, BESSEMER, AL 35020
RECIPIENT: THE PINES APARTMENTS, LTD.
CONTACT PERSON: JUDY DONALDSON 205–933–1020
FUND AMOUNT: $125,000

SUMMIT RIDGE APARTMENTS (06244062)
149 HAVERSHAM, BIRMINGHAM, AL 35315
RECIPIENT: SUMMIT RIDGE HOUSING, L.P.
CONTACT PERSON: STEVE NAIL 601–956–6000
FUND AMOUNT: $125,000

SOUTHEAST/CARIBBEAN REGION OFFICE: SC STATE OFFICE

BAYSIDE GARDENS (054–44001)
108D NORTH ROMNEY STREET, CHARLESTON, SC 29403
RECIPIENT: LARRY BARRETT
CONTACT PERSON: LARRY BARRETT (803) 881–6765
FUND AMOUNT: $100,444

BAYSIDE MANOR (054–35022)
108D NORTH ROMNEY STREET, CHARLESTON, SC 29403
RECIPIENT: LARRY BARRETT
CONTACT PERSON: LARRY BARRETT (803) 881–6765
FUND AMOUNT: $100,444

MT. ZION AME I (054–35037)
619 ERVIN COURT, FLORENCE, SC 29506
RECIPIENT: JAMES R. ARCHER, CHAIRMAN
CONTACT PERSON: MELANIE THOMPSON (803) 798–9488
FUND AMOUNT: $82,500

MT. ZION II APARTMENTS (054–44005)
619 ERVIN COURT, FLORENCE, SC 29506
RECIPIENT: JAMES R. ARCHIE, CHAIRMAN
CONTACT PERSON: MELANIE THOMPSON (803) 798–9488
FUND AMOUNT: $45,000

ST. STEPHENS (054–35075)
1602 MCNEIL STREET, DILLON, SC 29536
RECIPIENT: DONALD BOWEN, II
CONTACT PERSON: MELANIE THOMPSON (803) 798–9488
FUND AMOUNT: $118,070

SOUTHEAST/CARIBBEAN REGION OFFICE: GREENSBORO

CORNELIUS VILLAGE (NC19R000061)
19315 MERIDIAN STREET, CORNELIUS, NC 28031
RECIPIENT: PETER O'CONNELL, SR. VICE PRESIDENT, WESTMINSTER COMPANY
CONTACT PERSON: JODEE SINCLAIR 704–892–3912

FUND AMOUNT: $124,999

NEWGATE GARDENS (053–44257)
605D GRANBY AVENUE, HIGH POINT, NC 27260
RECIPIENT: WESTMINSTER COMPANY, PETER O'CONNELL
CONTACT PERSON: SANDRA DUBOSE 910–886–5528
FUND AMOUNT: $124,996

PARKER HEIGHTS (053–92503)
1505 PARKER DRIVE, CHARLOTTE, NC 28208
RECIPIENT: DIANE VANDEVERE, REMOUNT PROPERTIES
CONTACT PERSON: ROBIN WOODS 704–377–9090
FUND AMOUNT: $125,000

SOUTHEAST/CARIBBEAN REGION OFFICE: MS STATE OFFICE

BROOKVILLE GARDEN APARTMENTS (065–35014)
305 EVERGLADE, STARKVILLE, MS 39759
RECIPIENT: BROOKVILLE GARDEN ASSOCIATES, LTD
CONTACT PERSON: REV. JOHN SMITH (601) 323–8116
FUND AMOUNT: $125,000

CARMEL MANOR APARTMENTS (065-EH188)
910 BOWMAN STREET, VICKSBURG, MS 39180
RECIPIENT: NATIONAL BAPTIST CONVENTION HOUSING BOARD, INC. XXII
CONTACT PERSON: TOMMIE WHITE (615) 631–0556
FUND AMOUNT: $104,520

SOUTHVIEW APARTMENTS (065–35039)
307 HARDY STREET, ABERDEEN, MS 39730
RECIPIENT: SOUTHVIEW ASSOCIATES, LTD.
CONTACT PERSON: DIANNE HARRIS (601) 369–8149
FUND AMOUNT: $125,000

SOUTHEAST/CARIBBEAN REGION OFFICE: JACKSONVILLE

ESCAMBIA ARMS (063–35026)
200 HICKORY ST.. PENSACOLA, FL 32505
RECIPIENT: ESCAMBIA ARMS APTS. OF THE BATES REALTIES PARTNERSHIP
CONTACT PERSON: MAXINE GOODWIN (904) 433–2026
FUND AMOUNT: $113,814

HILLTOP VILLAGE (063–35019)
1646 WEST 45TH ST., JACKSONVILLE, FL 32208
RECIPIENT: HILLTOP VILLAGE ASSOCIATES, LIMITED PARTNERSHIP
CONTACT PERSON: SUSAN CHAMLIN (914) 592–2400
FUND AMOUNT: $96,061

HOLIFIELD ARMS APTS. (063–35055)
2525 TEXAS STREET, TALLAHASSEE, FL 32301
RECIPIENT: HOLIFIELD ARMS APARTMENTS, LTD.
CONTACT PERSON: MAXINE GOODWIN (904) 433–2026
FUND AMOUNT: $125,000

SOUTHEAST/CARIBBEAN REGION OFFICE: KENTUCKY STATE

JACKSON WOODS/SMOKETOWN (083–44085)
PO BOX 11609, LOUISVILLE, KY 40251
RECIPIENT: NEW DIRECTIONS HOUSING CORPORATION
CONTACT PERSON: LISA D. THOMPSON 502–589–2272
FUND AMOUNT: $123,900

SOUTHEAST/CARIBBEAN REGION OFFICE: KNOXVILLE

OAK RIDGE TOWERS AKA FAIRVIEW (08735011)
100 UTICA CIRCLE, OAK RIDGE, TN 37830
RECIPIENT: REED MCCANDLESS
CONTACT PERSON: REED MCCANDLESS 423–265–1362
FUND AMOUNT: $125,000

TABERNACLE APARTMENTS (08735007)
2624 WIMPOLE STREET, KNOXVILLE, TN 37914
RECIPIENT: AMERICAN APARTMENT MANAGEMENT COMPANY
CONTACT PERSON: PATTY OWNBY 423–525–7500
FUND AMOUNT: $125,000

TOWNVIEW TERRACE I (08744026) 300 MULVANEY STREET, SE, KNOXVILLE, TN 37915
RECIPIENT: GERALD DAVES, WOOD PROPERTIES
CONTACT PERSON: GERALD DAVES 423–637–7777
FUND AMOUNT: $118,012

TOWNVIEW TERRACE II (08744044) 200 TOWNVIEW DRIVE, KNOXVILLE, TN 37915 .
RECIPIENT: GERALD DAVES, WOOD PROPERTIES
CONTACT PERSON: GERALD DAVES 423–637–7777
FUND AMOUNT: $118,012

TOWNVIEW TOWERS (08744032) 1000 TOWNVIEW DRIVE, KNOXVILLE, TN 37915
RECIPIENT: GERALD DAVES, WOOD PROPERTIES
CONTACT PERSON: GERALD DAVES 423–637–7777
FUND AMOUNT: $118,021

SOUTHEAST/CARIBBEAN REGION OFFICE: NASHVILLE, TN

WALNUT PARK APTS (08135018) 203 EAST RED OAK DRIVE, MEMPHIS, TN 38112
RECIPIENT: ALCO MANAGEMENT, INC.
CONTACT PERSON: GEORGE C. CARUSO (901) 526–1211
FUND AMOUNT: $90,937

SOUTHEAST/CARIBBEAN REGION OFFICE: CARIBBEAN OFFICE

VILLAS DE MONTEREY (05644036) 21 CORNER 22, REXVILLE, BAYAMON, PR 00956
RECIPIENT: FUNDACION DE HOGARES PARA TRABAJADORES
CONTACT PERSON: LUIS MEDINA (787) 268–0222
FUND AMOUNT: $125,000

MIDWEST REGION OFFICE: ILLINOIS STATE

ADELINE PLACE APARTMENTS (IL06K002001B)
105–11 SOUTH CENTRAL, CHICAGO, IL 60644
RECIPIENT: PEOPLE'S REINVESTMENT & DEVELOPMENT EFFORT
CONTACT PERSON: MARION COLEMAN 773–379–4412
FUND AMOUNT: $28,215

COLUMBUS PARK EAST (IL06K002001A)
133–45 SOUTH CENTRAL, CHICAGO, IL 60644
RECIPIENT: PEOPLE'S REINVESTMENT & DEVELOPMENT EFFORT (PRIDE)
CONTACT PERSON: CAROL COLEMAN 773–379–4412
FUND AMOUNT: $38,858

DAVIS APARTMENTS (071–35364)
3632 SOUTH INDIANA, CHICAGO, IL 60653
RECIPIENT: DAVIS ASSOCIATES
CONTACT PERSON: MICHAEL LATOCQUE 312–335–2650
FUND AMOUNT: $125,000

GARDEN COURT ASSOCIATES D/B/A EVERGREEN TERRACE APTS. (072–35088)
902 SOUTH 25TH STREET, SPRINGFIELD, IL 62703
RECIPIENT: GARDEN COURT ASSOCIATES D/B/A EVERGREEN TERRACE APARTMENTS
CONTACT PERSON: JANET B. PICKERING 217–544–7847
FUND AMOUNT: $94,643

GRANDVIEW TERRACE (IL06K002003)
5836 WEST WASHINGTON BLVD., CHICAGO, IL 60644
RECIPIENT: PEOPLE'S REINVESTMENT & DEVELOPMENT EFFORT
CONTACT PERSON: CAROL COLEMAN 773–379–4412
FUND AMOUNT: $25,795

GREEN MEADOW APARTMENTS (IL06E000083)
1610 A EDGEWOOD DRIVE, DANVILLE, IL 61832
RECIPIENT: CENTURY PACIFIC HOUSING PARTNERSHIP VI,
DBA GREEN MEADOW APART.
CONTACT PERSON: DILIA CAMACHO-SAEEDI 312–443–1360
FUND AMOUNT: $124,596

LAVERGNE COURTS (071–35597)
4943 WEST QUINCY, CHICAGO, IL 60644
RECIPIENT: LAVERGNE COURTS LIMITED PARTNERSHIP
C/O SHOREBANK DEV. CORP.
CONTACT PERSON: SUSAN MCCANN 773–854–4503
FUND AMOUNT: $106,732

LOCKWOOD TERRACE (IL06K004003)
5301 W. WASHINGTON, CHICAGO, IL 60644
RECIPIENT: PEOPLE'S REINVESTMENT & DEVELOPMENT EFFORT (PRIDE)
CONTACT PERSON: MARION COLEMAN 773–379–4412
FUND AMOUNT: $28,655

NORTHWEST TOWER APPARTMENTS (071–44009)
1170 WEST ERIE STREET, CHICAGO, IL 60622
RECIPIENT: NORTHWEST TOWER RESIDENTS ASSOCIATION
CONTACT PERSON: DORAN O. HARPER 312–633–9057
FUND AMOUNT: $125,000

PARKSHORE EAST COOPERATIVE (071–35418)
6250 SOUTH HARPER AVENUE, CHICAGO, IL 60637

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RECIPIENT: PARK SHORE EAST COOPERATIVE
CONTACT PERSON: CAROLE MILLISON 773–288–5840 XT.236
FUND AMOUNT: $125,000
PARKVIEW APARTMENTS (IL06K002004)
33–35 NORTH LOREL, CHICAGO, IL 60644
RECIPIENT: PEOPLE'S REINVESTMENT & DEVELOPMENT EFFORT
CONTACT PERSON: MARION COLEMAN 773–379–4412
FUND AMOUNT: $18,535
REBECCA WALKER (IL06K002014)
126 & 221 SOUTH CENTRAL AVENUE, CHICAGO, IL 60644
RECIPIENT: PEOPLE'S REINVESTMENT & DEVELOPMENT EFFORT (PRIDE)
CONTACT PERSON: MARION COLEMAN 773–379–4412
FUND AMOUNT: $13,530
SHERWOOD GLEN ON THE FOX I (071–44069)
3 OXFORD ROAD #14, CARPENTERSVILLE, IL 60110–1070
RECIPIENT: SHERWOOD GLEN ON THE FOX I D/B/A FOX VIEW APARTMENTS
CONTACT PERSON: MR. TRACY HILL 847–806–6020
FUND AMOUNT: $124,923
SHERWOOD GLEN ON THE FOX II (071–44124)
3 OXFORD ROAD #14, CARPENTERSVILLE, IL 60110–1070
RECIPIENT: SHERWOOD GLEN ON THE FOX II D/B/A/ FOX VIEW APARTMENTS
CONTACT PERSON: MR. TRACY HILL 847–806–6020
FUND AMOUNT: $124,923
WHITMORE APARTMENTS (071–35580)
421 & 501 SOUTH CENTRAL, CHICAGO, IL 60644
RECIPIENT: PEOPLE'S REINVESTMENT & DEVELOPMENT EFFORT
CONTACT PERSON: MARION COLEMAN 773–379–4412
FUND AMOUNT: $20,790

MIDWEST REGION OFFICE: CINCINNATI

DEANNA APARTMENT CO. (SCATTERED SITES) (04635389)
30 EAST CENTRAL PARKWAY, SUITE 702, CINCINNATI, OH 45202
RECIPIENT: WILLIAM R. HILL (GENERAL PARTNER)
CONTACT PERSON: DAWN TRAMMEL (513) 621–3685
FUND AMOUNT: $68,600
EAST HILL (SCATTERED SITE) C/O METRO MANAGEMENT CO (04635180)
30 EAST CENTRAL PARKWAY, SUITE 702, CINCINNATI, OH 45202
RECIPIENT: WILLIAM R. HILL, GENERAL PARTNER
CONTACT PERSON: DAWN TRAMMEL (513) 621–3685
FUND AMOUNT: $39,200
FIELDS ERTEL TOWNHOUSES (04635511)
MASON WAY COURT, CINCINNATI, OH 45249
RECIPIENT: ROBERT E. SCHULER, CEO, NATIONAL REALTY COMPANY
CONTACT PERSON: BOBBY ARTIST (513) 489–1900
FUND AMOUNT: $125,000
HICKORY WOODS (04635521)
1240 HAMILTON AVENUE, CINCINNATI, OH 45223
RECIPIENT: ROBERT E. SCHULER, CEO, NATIONAL REALTY CO.
CONTACT PERSON: BOBBY ARTIST (513) 489–1990
FUND AMOUNT: $125,000
JUSTINE APARTMENTS (SCATTERED SITES) C/O OF METRO MANAGEMENT (04644109)
30 EAST CENTRAL PARKWAY, SUITE 702, CINCINNATI, OH 45202
RECIPIENT: WILLIAM R. HILL, GENERAL PARTNER, C/O MANAGEMENT CO.
CONTACT PERSON: DAWN TRAMMEL (513) 621–3685
FUND AMOUNT: $42,000
NEILAN PARK I (04635014)
15 HURM STREET, HAMILTON, OH 45011
RECIPIENT: GEORGE R. OBERER, SR., GENERAL PARTNER, GOLD KEY REALTY
CONTACT PERSON: TRISH L. MARSH (937) 278–0851
FUND AMOUNT: $108,640
NEILAN PARK II (04635040)
15 HURM STREET, HAMILTON, OH 45011
RECIPIENT: GEORGE R. OBERER, SR., GENERAL PARTNER, GOLD KEY REALTY
CONTACT PERSON: TRISH L. MARSH (937) 278–0851
FUND AMOUNT: $111,679
ROLLING RIDGE (04635517)
258–259 YEARLING COURT, CINCINNATI, OH 45211
RECIPIENT: ROBERT E. SCHULER, CEO, NATIONAL REALTY CO.
CONTACT PERSON: BOBBY ARTIST (513) 489–1900 EXT 125
FUND AMOUNT: $125,000
STONEWALL APT., (SCATTERED SITES) C/O METRO MANAGEMENT (04635339)
30 EAST CENTRAL AVENUE, SUITE 700, CINCINNATI, OH 45202
RECIPIENT: WILLIAM R. HILL, GENERAL PARTNER
CONTACT PERSON: DAWN TRAMMEL (513) 621–3685
FUND AMOUNT: $56,000
WESTHILL SCATTERED SITES C/O METRO MANAGEMENT CO. (04635172)
30 EAST CENTRAL PARKWAY, SUITE 720, CINCINNATI, OH 45202
RECIPIENT: WILIAM R. HILL, GENERAL PARTNER
CONTACT PERSON: DAWN TRAMMEL (513) 621–3685
FUND AMOUNT: $29,400

MIDWEST REGION OFFICE: CLEVELAND

CHIP TOWNHOUSES I (042–55052)
3124 KALAHARI N.E., CANTON, OH 44705
RECIPIENT: DEANE EARL ROSS
CONTACT PERSON: TERRY UPPERMAN (412) 795–4755
FUND AMOUNT: $124,971

MIDWEST REGION OFFICE: OHIO STATE OFFICE

AGLER GREEN TOWNHOUSES (043–44018)
3274 GATEWOOD COURT, COLUMBUS, OH 43219
RECIPIENT: AGLER TOWNHOUSES, INC.
CONTACT PERSON: JACKIE SOWARDS (614) 471–2416
FUND AMOUNT: $125,000
CAPITAL PARK APARTMENTS (043–44003)
2144 AGLER ROAD, COLUMBUS, OH 43224
RECIPIENT: NATIONAL CORPORATION FOR HOUSING
CONTACT PERSON: ELLIE ARNOLD (614) 471–1204
FUND AMOUNT: $125,000
CROSSROADS APARTMENTS (043–44065)
2943 CASSADY COURT SOUTH, COLUMBUS, OH 43219
RECIPIENT: TUSKEGEE ALUMNI FOUNDATION, INC.
CONTACT PERSON: JAN TETER (614) 451–9000
FUND AMOUNT: $125,000
LONDONTOWN APARTMENTS (043–44085)
300 CHELSEA STREET, DELAWARE, OH 43015
RECIPIENT: DELAWARE HOUSING CORPORATION, INC.
CONTACT PERSON: MARILYN MCCOOL (614) 363–1235
FUND AMOUNT: $125,000
NORTHWOOD APARTMENTS (043–35148)
531 BROWER ROAD, LIMA, OH 45801
RECIPIENT: NORTHWOOD APARTMENTS LTD.
CONTACT PERSON: KRISTINE SAWYER (419) 229–4488
FUND AMOUNT: $96,909
SOUTHPARK APARTMENTS (043–35275)
841 GREENFIELD DRIVE, COLUMBUS, OH 43223
RECIPIENT: GREENFIELD MEADOWS, LTD.
CONTACT PERSON: NANCY NEUHAUSER (423) 525–7500
FUND AMOUNT: $125,000

MIDWEST REGION OFFICE: DETROIT MI

ELMWOOD TOWERS (044–44030)
1325 CHENE, DETROIT, MI 48207
RECIPIENT: ET–92 LDHA LIMITED PARTNERSHIP
CONTACT PERSON: GERALD A. KRUEGER 313–881–8150
FUND AMOUNT: $125,000
FREEDOM PLACE (NON–603–1)
1101 W. WARREN, DETROIT, MI 48201
RECIPIENT: UNIVERSITY CITY LIMITED DIVIDEND ASSOCIATION
CONTACT PERSON: RITA M. MOODY 248–353–7981
FUND AMOUNT: $125,000
LANCASTER VILLAGE COOPERATIVE (044–44005)
633 PALMER DR., PONTIAC, MI 48342
RECIPIENT: LANCASTER VILLAGE COOPERATIVE
CONTACT PERSON: LEONA PATTERSON 248–373–4780
FUND AMOUNT: $125,000
MARTIN LUTHER KING APARTMENTS (044–94054)
595 CHENE, DETROIT, MI 48207
RECIPIENT: MLK LIMITED DIVIDEND HOUSING ASSOCIATION
CONTACT PERSON: NANCY HOPKINS 248–851–9600
FUND AMOUNT: $118,558
NEWMAN COURT APARTMENTS (044–44012)
630 KETTERING, PONTIAC, MI 48340
RECIPIENT: NEWMAN NP HOUSING COPORATION
CONTACT PERSON: MARY HURT 248–373–7298

FUND AMOUNT: $125,000
RESTORATION TOWERS (044-EH020)
16651 LASHER, DETROIT, MI 48219
RECIPIENT: DETROIT INTERNATIONAL STAKE ADULT HOUSING CORPORATION
CONTACT PERSON: MARGARET DAVEY 313–538–0360
FUND AMOUNT: $125,000

MIDWEST REGION OFFICE: GRAND RAPIDS

STUYVESANT APARTMENTS (047–35184)
140 MADISON STREET, SE, GRAND RAPIDS, MI 49503
RECIPIENT: STUYVESANT LDHA
CONTACT PERSON: CARA MONTGOMERY (616) 456–9665
FUND AMOUNT: $123,597

MIDWEST REGION OFFICE: INDIANA

GREENWOOD APARTMENTS (07335018)
1460 SOUTH 16TH STREET, RICHMOND, IN 47374
RECIPIENT: GREENWOOD APARTMENTS INC
CONTACT PERSON: RAMONA NELSON 513–961–6011
FUND AMOUNT: $125,000

MIDWEST REGION OFFICE: MILWAUKEE, WI

WINDSOR COURT APARTMENTS (075–94002)
1831 WEST JUNEAU AVENUE, MILWAUKEE, WI 53233
RECIPIENT: JUNEAU AVENUE ASSOCIATES, LTD.
CONTACT PERSON: NANCY NEUHAUSER, CPM 423–525–7500
FUND AMOUNT: $125,000

MIDWEST REGION OFFICE: MINNEAPOLIS MN

RIVERSIDE PLAZA (092–94006)
1525 S FOURTH ST, MINNEAPOLIS, MN 55454
RECIPIENT: RIVERSIDE PLAZA LIMITED PARTNERSHIP
CONTACT PERSON: LARRY MITCHELL 612–338–6161
FUND AMOUNT: $125,000

SOUTHWEST REGION OFFICE: NEW MEXICO

COX ESTATES & ST. ANTHONY PLAZA (11635034)
4528 CARLISLE BLVD N.E., ALBUQUERQUE, NM 87109
RECIPIENT: CUDA ROBERSON PROPERTY MANAGEMENT, INC
CONTACT PERSON: PAUL MUELLER (505) 883–1840
FUND AMOUNT: $125,000
HOUSING AUTHORITY OF THE CITY OF LAS CRUCES, NM (NM02002004)
926 S. SAN PEDRO STREET, LAS CRUCES, NM 88001
RECIPIENT: LAS CRUCES HOUSING DEVELOPMENT CORPORTAION
CONTACT PERSON: ANDREW HOLGUIN (505) 526–5541
FUND AMOUNT: $125,000
MOUNTAIN VIEW (11655002)
2323 KATHRYN AVE S.E., ALBUQUERQUE, NM 87106
RECIPIENT: LAKECREST L.P., A DELAWARE LTD. PARTNERSHIP
CONTACT PERSON: RUDY CUPICH (505)293–7462
FUND AMOUNT: $125,000

SOUTHWEST REGION OFFICE: FT. WORTH

ROYAL CREST APARTMENTS (TX16E000033)
3558 WILHURT, DALLAS, TX 75216
RECIPIENT: ROYAL CREST
CONTACT PERSON: JACK OLIVER 913–451–0770
FUND AMOUNT: $125,000

SOUTHWEST REGION OFFICE: HOUSTON

ARBOR COURT APARTMENTS (11435238)
802 SEMINAR ROAD, HOUSTON, TX 77060
RECIPIENT: THP–ARBOR COURT, L.P. STEVE H. SISSON
CONTACT PERSON: STEVE H. SISSON 901/759–1855
FUND AMOUNT: $125,000
CLEME MANOR APARTMENTS (114–35063)
5300 COKE STREET, HOUSTON, TX 77020
RECIPIENT: CLEME MANOR CHARITABLE TRUST
CONTACT PERSON: PAULA T. BEALL 713/667–6454
FUND AMOUNT: $125,000
COLUMBUS VILLAGE APARTMENTS (114–35038)
803 RILEY, HEARNE, TX 77859
RECIPIENT: COLUMBUS 80
CONTACT PERSON: JANE GRUBBS 281/240–3330
FUND AMOUNT: $125,000
COOLWOOD OAKS APARTMENTS (114–35275)
777 COOLWOOD DRIVE, HOUSTON, TX 77013
RECIPIENT: HERBERT J. ZIEBEN
CONTACT PERSON: PAULA T. BEALL 713/667–6454
FUND AMOUNT: $125,000
GARDEN CITY APARTMENTS (114–35036)
9601 WEST MONTGOMERY ROAD, HOUSTON, TX 77088
RECIPIENT: HELEN KRULL
CONTACT PERSON: PAULA T. BEALL 713/667–6454
FUND AMOUNT: $125,000
HAVERSTOCK HILL APARTMENTS (114–11002)
5619 ALDINE BENDER ROAD, HOUSTON, TX 77032
RECIPIENT: HJZ INC.
CONTACT PERSON: PAULA T. BEALL 713/667–6454
FUND AMOUNT: $125,000
PLYMOUTH VILLAGE APARTMENTS (114–35078)
5080 HELBIG ROAD, BEAUMONT, TX 77708
RECIPIENT: PLYMOUTH VILLAGE CHARITABLE TRUST
CONTACT PERSON: PAULA T. BEALL 713/667–6454
FUND AMOUNT: $125,000
SUNFLOWER TERRACE APARTMENTS (114–44004)
505 SUNFLOWER, HOUSTON, TX 77033
RECIPIENT: ALLYN S. PATRICK
CONTACT PERSON: PAULA T. BEALL (713)667–6454
FUND AMOUNT: $125,000
SUNLIGHT MANOR (114–35085)
2950 SOUTH 8TH STREET, BEAUMONT, TX 77701
RECIPIENT: SUNLIGHT BAPTIST CHURCH PROPERTIES
CONTACT PERSON: PAULA T. BEALL 713/667–6454
FUND AMOUNT: $125,000
SUNSET HILLS APARTMENTS (114–35050)
HOLLIE COURTS STREET, SAN AUGUSTINE, TX 77972
RECIPIENT: KNIGHTS OF PHYTHIAS, INCORPORATED D.B.A. SUNSET HILLS APARTMENT
CONTACT PERSON: RUDOLPH V. RASMUS 713/864–6033
FUND AMOUNT: $125,000

SOUTHWEST REGION OFFICE: LITTLE ROCK

FAIR OAKS APTS (08244072)
9600 WEST 36TH ST, LITTLE ROCK, AR 72204
RECIPIENT: WESIDE REHAB CORPORATION
CONTACT PERSON: CAROL RUDD (501)227–5466
FUND AMOUNT: $124,936
SHORTER COLLEGE GARDENS APTS (08235002)
800 BEECH STREET, NORTH LITTLE ROCK, AR 72114
RECIPIENT: SHORTER GARDENS LIMITED PARTNERSHIP
CONTACT PERSON: GEORGE MAYS (501) 280–0037
FUND AMOUNT: $125,000
TERRACE GREEN (08235029)
8223 SCOTT HAMILTON DR, LITTLE ROCK, AR 72209
RECIPIENT: TERRACE GREEN APTS
CONTACT PERSON: SAM SEXTON (501)782–7268
FUND AMOUNT: $125,000

SOUTHWEST REGION OFFICE: NEW ORLEANS

VERSAILLES ARMS I (0644032)
14639 SAIGON DRIVE, NEW ORLEANS, LA 70129
RECIPIENT: VERSAILLES ARMS I
CONTACT PERSON: MELANIE OTTAWAY (504) 271–4022
FUND AMOUNT: $125,000

SOUTHWEST REGION OFFICE: SAN ANTONIO

OAK VILLAGE APARTMENTS (115–55021)
2330 AUSTIN HIGHWAY, SAN ANTONIO, TX 78218
RECIPIENT: TERRA GENESIS HOUSING, INC.
CONTACT PERSON: RON ANDERSON 210–732–3394
FUND AMOUNT: $125,000

SOUTHWEST REGION OFFICE: SHREVEPORT

STONE VISTA (059–35196)
541 EAST STONER AVE., SHREVEPORT, LA 71101
RECIPIENT: STONE VISTA-FAIRFIELD DEVELOPMENT CO.
CONTACT PERSON: KATHY POSS 318–227–8697
FUND AMOUNT: $123,440

SOUTHWEST REGION OFFICE: TULSA

NORMANDY APARTMENTS (118–55012)

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6221 EAST 38TH STREET, TULSA, OK 74135
RECIPIENT: NORMANDY APARTMENTS, LTD.
CONTACT PERSON: KELLY SIMMONS 918–622–4428
FUND AMOUNT: $125,000

GREAT PLAINS REGION OFFICE: DES MOINES IA

OAKRIDGE NEIGHBORHOOD (074–44015)
1236 OAKRIDGE DRIVE, DES MOINES, IA 50314
RECIPIENT: HOMES OF OAKRIDGE, INC.
CONTACT PERSON: MARGARET TOOMEY 515–244–7702
FUND AMOUNT: $125,000

GREAT PLAINS REGION OFFICE: KANSAS CITY

BENTON VILLA (084–55051)
220 GARFIELD, KANSAS CITY, MO 64124
RECIPIENT: RITA ORLANDO, C/O METRO CORP
CONTACT PERSON: JACK OLIVER 913–451–0770
FUND AMOUNT: $33,773

PARKVIEW HOMES I (084–44143)
1000 PASEO BOULEVARD, KANSAS CITY, MO 64106
RECIPIENT: UNITED PARKVIEW I, LP
CONTACT PERSON: DENNIS WATTS 816–842–1266
FUND AMOUNT: $54,000

PARKVIEW HOMES II (084–44163)
1000 PASEO BOULEVARD, KANSAS CITY, MO 64106
RECIPIENT: UNITED PARKVIEW II, LP
CONTACT PERSON: DENNIS WATTS 816–842–1266
FUND AMOUNT: $102,800

ROANOKE RIDGE I (084–44025)
3443 WYOMING, KANSAS CITY, MO 64111
RECIPIENT: ROANOKE RIDGE I APARTMENTS
CONTACT PERSON: JACK OLIVER 913–451–0770
FUND AMOUNT: $123,650

ROANOKE RIDGE II (084–44026)
3443 WYOMING, KANSAS CITY, MO 64111
RECIPIENT: ROANOKE RIDGE II APARTMENTS
CONTACT PERSON: JACK OLIVER 913–451–0770
FUND AMOUNT: $76,925

TERRACE VIEW I APARTMENTS (084–55027)
220 GARFIELD, KANSAS CITY, MO 64124
RECIPIENT: RITA ORLANDO, C/O METRO CORP
CONTACT PERSON: JACK OLIVER 913–451–0770
FUND AMOUNT: $59,143

TERRACE VIEW II APARTMENTS (084–55042)
220 GARFIELD, KANSAS CITY, MO 64124
RECIPIENT: RITA ORLANDO, C/O METRO CORP
CONTACT PERSON: JACK OLIVER 913–451–0770
FUND AMOUNT: $53,106

VALLEY VIEW APARTMENTS (084–55031)
220 GARFIELD, KANSAS CITY, MO 64124
RECIPIENT: RITA ORLANDO, C/O METRO CORP
CONTACT PERSON: JACK OLIVER 913–451–0770
FUND AMOUNT: $89,681

GREAT PLAINS REGION OFFICE: ST LOUIS

BOAZ APARTMENTS (085–35001)
5530 MABLE #A–3, KINLOCH, MO 63140
RECIPIENT: WILSHIRE-BOAZ, L.P.
CONTACT PERSON: CONSUETTA HARRIS 314–521–6016
FUND AMOUNT: $105,000

ROCKY MOUNTAINS REGION OFFICE: DENVER

SIERRA VISTA APARTMENTS (10194005)
8851 EAST FLORIDA AVENUE, DENVER, CO 80231
RECIPIENT: THE ROSS GROUP
CONTACT PERSON: DEBORAH ROSS WESELOH 303–860–7885
FUND AMOUNT: $125,000

PACIFIC/HAWAII REGION OFFICE: LOS ANGELES

UJIMA VILLAGE (CA16E00028)
941 EAST 126TH STREET, LOS ANGELES, CA 90059
RECIPIENT: COMMUNITY DEVELOPMENT COMMISSION OF LOS ANGELES COUNTY
CONTACT PERSON: MARIA BADRAKHAN (213) 890–7135
FUND AMOUNT: $125,000

PACIFIC/HAWAII REGION OFFICE: ARIZONA STATE OFFICE

CORONADO COURTS (123–94011)
1830 BONITA AVE., DOUGLAS, AZ 85607
RECIPIENT: ESSEX MANAGEMENT CORP.
CONTACT PERSON: BEVERLY HOGAN 520–364–4637
FUND AMOUNT: $125,000

PACIFIC/HAWAII REGION OFFICE: SACRAMENTO

ELLISON APARTMENTS I (136–44141)
1275 WALNUT STREET, RED BLUFF, CA 96080
RECIPIENT: MICHAEL FORCE
CONTACT PERSON: MICHAEL FORCE 916–348–1188
FUND AMOUNT: $47,000

PACIFIC/HAWAII REGION OFFICE: SAN DIEGO

CALEXICO GARDENS (12955004)
1620 ROCKWOOD AVENUE, CALEXICO, CA 92231
RECIPIENT: CALEXICO HOUSING AUTHORITY
CONTACT PERSON: LUPITA RIOS 760–357–3013
FUND AMOUNT: $125,000

PACIFIC/HAWAII REGION OFFICE: SAN FRANCISCO

DAKOTA WOODS II (12135705)
2021 WEST DAKOTA AVENUE, FRESNO, CA 93711
RECIPIENT: LINCOLN DAKOTA WOODS ASSOCIATES
CONTACT PERSON: HENRY SMITH, BUSINESS MANAGER 209–222–6200
FUND AMOUNT: $125,000

MONTE ALBAN APARTMENTS (12135016)
1324 SANTEE DRIVE, SAN JOSE, CA 95122
RECIPIENT: JOHN K. STEWART, GENERAL PARTNER
CONTACT PERSON: H.J.CHRIS BURSON 408–286–1903
FUND AMOUNT: $105,000

PRINCE HALL APARTMENTS (12144005)
1170 MCALLISTER STREET, SAN FRANCISCO, CA 94115
RECIPIENT: BETHEL AFRICAN METHODIST EPISCOPAL CHURCH
CONTACT PERSON: OLGA DE LEONARDIS 510–632–6712
FUND AMOUNT: $125,000

PACIFIC/HAWAII REGION OFFICE: NEVADA STATE OFFICE

SIERRA POINTE APARTMENTS (125–94004)
1064 SIERRA VISTA DRIVE, LAS VEGAS, NV 89109
RECIPIENT: SIERRA VISTA HOUSING ASSOCIATES
CONTACT PERSON: DEBORAH ROSS WESELOH (303) 860–7885 EXT.4
FUND AMOUNT: $124,977

NORTHWEST/ALASKA REGION OFFICE: ANCHORAGE

WOODSIDE VILLAGE (17644018)
1019 EAST 20TH AVENUE, ANCHORAGE, AK 99501
RECIPIENT: WOODSIDE VILLAGE, A LIMITED PARTNERSHIP
CONTACT PERSON: MARIANNA OLSON 907–277–9564
FUND AMOUNT: $69,000

NORTHWEST/ALASKA REGION OFFICE: PDX

ABBIE LANE (OR16H029115)
1011 ABBIE LANE, EUGENE, OR 97401
RECIPIENT: HOUSING AUTHORITY AND COMMUNITY SERVICES AGENCY OF LANE COUNTY
CONTACT PERSON: MERILEE EISEN 541–682–4090
FUND AMOUNT: $96,357

FOURTEEN PINES (126–44041)
65 WILLAKENZIE ROAD, EUGENE, OR 97401
RECIPIENT: HOUSING AUTHORITY AND COMMUNITY SERVICES AGENCY OF LANE COUNTY
CONTACT PERSON: MERILEE EISEN 541/687–3875
FUND AMOUNT: $125,000

ST. JOHNS WOODS APARTMENTS (126–44011)
8652 NORTH SWIFTWAY, PORTLAND, OR 97203
RECIPIENT: ST. JOHNS WOODS ASSOCIATES LTD. OREGON BY JAYWIN, INC.
CONTACT PERSON: MARLYS LAVER 503/242–3614
FUND AMOUNT: $115,323

VIKING VILLAGE (126–35026)
3424 FAIRHAVEN AVENUE N.E., SALEM, OR 97303
RECIPIENT: WESTFAIR ASSOCIATES
CONTACT PERSON: BARBARA KAUSS 503/588–6443
FUND AMOUNT: $125,000

VILLAGE OAKS (126–44037)
3308 WEST 18TH, EUGENE, OR 97402
RECIPIENT: HOUSING AUTHORITY AND COMMUNITY SERVICES AGENCY OF LANE COUNTY
CONTACT PERSON: MERILEE EISEN 541/687–4090
FUND AMOUNT: $125,000

NORTHWEST/ALASKA REGION OFFICE: WASHINGTON STATE

FRYE APARTMENT (12735097)
223 YESLER WAY, SEATTLE, WA 98104
RECIPIENT: FRYE ASSOCIATES LTD
CONTACT PERSON: DAVID LABEL (206) 622–5323
FUND AMOUNT: $92,133

TOTAL PROJECTS: 158
TOTAL GRANT AMT: $17,042,261

[FR Doc. 98–2271 Filed 1–29–98; 8:45 am]
BILLING CODE 4210–70–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–40]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: January 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: January 22, 1998.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 98–1940 Filed 1–29–98; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Recreational Activities Committee Meeting

AGENCY: Fish and Wildlife Service.

ACTION: Notice of meeting.

SUMMARY: This notice announces the initial meeting of the Recreational Activities Committee of the Aquatic Nuisance Species Task Force. The purposes of this organizing meeting of the Committee are to: (1) Provide background about requirements of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, the Aquatic Nuisance Species Task Force, and the Committee's mission; (2) discuss Committee structure and operating guidelines; (3) review nonindigenous aquatic species issues and problems and on-going activities relevant to Committee responsibilities; (4) begin development of the voluntary guidelines for recreational activities required by the Act; and (5) initiate other committee activities.

DATES: The Recreational Activities Committee will meet from 1 p.m., Tuesday, February 10, 1998 to 12 Noon on Thursday, February 12, 1998.

ADDRESSES: The meeting will be held in Room 800 of the U.S. Fish and Wildlife Service offices, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622.

FOR FURTHER INFORMATION CONTACT: Patricia Carter, Chair, Recreational Activities Committee, at 404–679–7108, or Bob Peoples, Executive Secretary, Aquatic Nuisance Species Task Force, at 703–358–2025.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Recreational Activities Committee of the Aquatic Nuisance Species Task Force. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990. Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 840, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and the Chair, Recreational Activities Committee, U.S. Fish and Wildlife Service, Room 240, 1875 Century Boulevard, Atlanta, Georgia 30345, and will be available for public inspection during regular business hours, Monday through Friday, within 30 days following the meeting.

Dated: January 23, 1998.

Gary Edwards,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries.

[FR Doc. 98–2352 Filed 1–29–98; 8:45 am]
BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Garrison Diversion Unit Federal Advisory Council Conference Call

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of conference call.

SUMMARY: This notice announces a conference call of the Garrison Diversion Unit Federal Advisory Council which was established under the authority of the Garrison Diversion Unit Reformulation Act of 1986 (Public Law 99–0294, May 12, 1986). The conference call is open to the public.

DATE: The Garrison Diversion Unit Federal Advisory Council will have a conference call, on Friday, February 6, 1998, from 1 p.m. to 3 p.m. Mountain Standard Time.

ADDRESSES: There will be a speaker phone in the conference room at the following address, which will provide an opportunity for the public to participate in the conference call: U.S. Bureau of Reclamation, Oakes Office, Highway 1 South, Oakes, North Dakota.

FOR FURTHER INFORMATION CONTACT: Dr. Grady Towns, Refuges and Wildlife, North Dakota/South Dakota, at (303) 236–8145, extension 644.

SUPPLEMENTARY INFORMATION: The Garrison Diversion Unit Federal Advisory Council will consider and discuss subjects such as the Kraft Slough status and acquisition, the Dakota Water Resources Act, North Dakota Wetland Trust, Wildlife Development Plan, National Wildlife Refuge-Wildlife Management Area Mitigation and Designation of Kraft Slough as a National Wildlife Refuge.

Dated: January 23, 1998.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 98–2321 Filed 1–29–98; 8:45 am]
BILLING CODE 4310–55–M

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DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request revising and extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Comments and suggestions on the requirement should be made directly to the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503 and to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192. As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;
2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The utility, quality, and clarity of the information to be collected; and,
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Portland and Masonry Cement.
Current OMB approval number: 1032–0038.
Abstract: Respondents supply the U.S. Geological Survey with data on cement production, shipments, and capacity, as well as consumption of raw materials. This information will be published as an annual report for use by Government agencies, industry, and the general public.
Bureau form number: 6–1214–A.
Frequency: Annual.
Description of respondents: Commerical producers and importers of portland and masonry cement.
Annual Responses: 130.
Anuual burden hours: 650.
Bureau clearance officer: John E. Cordyack, Jr., 703–648–7313.

Kenneth W. Mlynarski,
Acting Chief Scientist, Minerals Information Team.
[FR Doc. 98–2319 Filed 1–29–98; 8:45 am]
BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–040–1310–03]

Notice That the Tulsa District is Forming a Federal Spacing Unit for a Fractional Section on the Border Between Texas and Oklahoma in Beaver County, OK

AGENCY: Bureau of Land Management, Interior.
ACTION: Public notice.

SUMMARY: Pursuant to Bureau of Land Management Regulations (43 CFR parts 3160 and 3162) in accordance with the authority delegated by the Secretary of the Interior, this notice advises the public that the Tulsa District is forming a federal spacing unit for a fractional section on the border between Texas and Oklahoma in Beaver County, Oklahoma. The correlative rights of this mineral tract were not protected when spacing was established for the production of crude oil from the Upper Morrow Group, and for the production of natural gas from the Lower Morrow Group.

The fractional section consists of 15.75 acres described as: All of Section 06, Township 1 South, Ranger 21 East, Cimarron Meridian, Beaver County, Oklahoma.

This fractional section is in a rural area between 1.2 and 2.3 miles west of where U.S. Highway 83 crosses into Oklahoma, four miles south of Gray, Oklahoma. This federal spacing unit will be for all formations, for both oil and gas, and with full allowables for any production with no restrictions based upon acreage. The property will be offered for lease through the New Mexico State Office, Bureau of Land Management later this year. There will be stipulations that the mineral tract is subject to drainage and that a protective well is required to be drilled within one year of the effective date of the lease.

DATES: Comments by interested parties regarding this decision will be accepted by the District Manager at the address below for thirty days following publication of this notice.

ADDRESSES: Bureau of Land Management, District Manager, RE: Fractional Section/Federal Spacing Unit, 7906 East 33rd Street, Suite 101, Tulsa, OK 74145–1352.

Dated: January 26, 1998.

Jim Sims,
District Manager, Tulsa District Office.
[FR Doc. 98–2316 Filed 1–29–98; 8:45 am]
BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–956–98–1420–00]

Colorado: Filing of Plats of Survey

January 22, 1998.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., January 22, 1998. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The plat representing the dependent resurvey of a portion of the subdivisional lines, T. 51 N., R. 1 E., New Mexico Principal Meridian, Group 1179, Colorado, was accepted January 22, 1998.

The plat representing the dependent resurvey of a portion of the Third Standard Parallel South (south bdy.), a portion of the east boundary, and a portion of the subdivisional lines, T. 15 S., R. 85 W., Sixth Principal Meridian, Group 1179, Colorado, was accepted January 15, 1998.

The plat representing the dependent resurvey of a portion of the subdivisional lines, T. 50 N., R. 1 E., New Mexico Principal Meridian, Group 1179, Colorado, was accepted January 15, 1998.

These surveys were requested by the Colorado Department of Transportation for administrative purposes.

The plat representing the dependent resurvey of portions of the subdivisional lines, the subdivision of sections 18, 19, 20, 21, 27, 28, and 34, and the metes-and-bounds survey of Parcel A, section 20, T. 7 N., R. 84 W., Sixth Principal Meridian, Group 979, Colorado, was accepted December 2, 1997.

The plat representing the entire record of the corrective resurvey of the metes-and-bounds survey of Tracts 46 and 47, the correction of a portion of the

S. bdy. of Tract 48, and the supplemental plat creating Tracts 46 A and B from Tract 46, in protracted sections 10 and 11, in unsurveyed Township 2 S., R. 75 W., Sixth Principal Meridian, Group 1119, Colorado, was accepted November 4, 1997.

The plat representing the dependent resurvey of a portion of the line between sections 13 and 24, a portion of the subdivision of sec. 13, and a portion of the traverse of the high water line of Green Mountain Reservoir, and a metes-and-bounds survey between certain lots in section 13, T. 2 S., R. 80 W., Sixth Principal Meridian, Group 1180, Colorado, was accepted October 15, 1997.

The plat (in 2 sheets) representing the dependent resurvey of portions of the subdivision of section 9, and Homestead Entry Survey Nos. 105 and 238, and the metes-and-bounds survey of Public Land Tract Nos. 41 and 42, Public Land Lot 23, and portions of certain Public Land Lots, T. 4 S., R. 78 W., Sixth Principal Meridian, Group 1180, Colorado, was accepted October 27, 1997.

The plat representing the entire record of the dependent resurvey and a survey along the E. right-of-way of County Road 503, to divide former lot 24 into two lots (35 and 36), in section 6, T. 7 S., R. 77 W., Sixth Principal Meridian, Group 1180, Colorado, was accepted October 29, 1997.

The plat representing the dependent resurvey of a portion of the First Standard Parallel South, a portion of the subdivisional lines, a portion of the subdivision of section 35, a portion of the Frisco Townsite boundary, portions of certain mineral claims in sections 34 and 35, and survey of irregular lot lines in section 35, T. 5 S., R. 78 W., Sixth Principal Meridian, Group 1180, Colorado, was accepted October 29, 1997.

The plat representing the entire record of the dependent resurvey and survey to identify lots 45 and 46 in sec. 30, T. 6 S., R. 77 W., Sixth Principal Meridian, Group 1180, Colorado, was accepted October 30, 1997.

The plat representing a dependent resurvey and metes-and-bounds survey in T. 3 S., R. 79 W., Sixth Principal Meridian, Group 1180, Colorado, was accepted October 30, 1997.

The plat representing the entire record of the dependent resurvey and survey to create an irregular lot in section 30, T. 7 S., R. 77 W., Sixth Principal Meridian, Group 1180, was accepted October 15, 1997.

These surveys were requested by the USDA Forest Service for management purposes.

The plat representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, and the dependent resurvey of M.S. 114, Sunset Lode, and the subdivision of section 24, T. 22 S., R. 72 W., Sixth Principal Meridian, Group 1126, Colorado, was accepted December 1, 1997.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the dependent resurvey of certain mineral claims, and the subdivision of section 19, T. 22 S., R. 71 W., Sixth Principal Meridian, Group 1126, Colorado, was accepted December 1, 1997.

The plat representing the entire record of the segregation survey of certain claims in suspended T. 42 N., R. 7 W., New Mexico Principal Meridian, Group 1164, Colorado, was accepted December 3, 1997.

The plat representing the segregation survey of certain claims in suspended T. 42 N., R. 6 W., New Mexico Principal Meridian, Group 1164, Colorado, was accepted December 3, 1997.

The plat representing the mineral segregation survey necessary to define Tract 39 in suspended T. 42 N., R. 6 W., New Mexico Principal Meridian, Group 1164, Colorado, was accepted December 3, 1997.

The supplemental plat, creating new lot 100 in the NE¼SW¼ of section 6, T. 1 N., R. 71 W., Sixth Principal Meridian, Colorado, was accepted December 8, 1997.

The supplemental plat, creating new lot 95 in the SE¼ of section 19, T. 1 N., R. 71 W., Sixth Principal Meridian, Colorado, was accepted December 8, 1997.

The supplemental plat, creating new lots 117 and 118 from old lot 59 in the S½NW¼NE¼ of section 7, T. 1 N., R. 72 W., Sixth Principal Meridian, Colorado, was accepted January 21, 1998.

The supplemental plat, correcting lot 88 in section 5, to lot 96, and lot 179 in section 8, to lot 187, T. 1 N., R. 71 W., Sixth Principal Meridian, Colorado, was accepted October 15, 1997.

The supplemental plat, correcting the lot numbers for section 18, T. 35 N., R. 9 W., New Mexico Principal Meridian, Colorado, was accepted November 13, 1997.

The supplemental plat correctly showing the lotting and aliquot parts of sections 1 and 12, T. 5 S., R. 78 W., Sixth Principal Meridian, Colorado, was accepted November 13, 1997.

These surveys were requested by BLM for administrative purposes.

Darryl A. Wilson,
Chief Cadastral Surveyor for Colorado.
[FR Doc. 98–2337 Filed 1–29–98; 8:45 am]
BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Submission of Study Package to Office of Management and Budget; Review Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service, Cumberland Island National Seashore in Georgia, Jean Lafitte National Historical Park and Preserve in Louisiana, and Chattahoochee River National Recreation Area in Georgia.
ACTION: Notice and request for comments.

ABSTRACT: The National Park Service (NPS) Visitor Services Project and three parks (Cumberland Island National Seashore in Georgia, Jean Lafitte National Historical Park and Preserve in Louisiana, and Chattahoochee River National Recreation Area in Georgia) propose to conduct visitor surveys to learn about visitor demographics and visitor opinions about services and facilities in these three parks. The results of these studies will be used by park managers to improve the services they provide to visitors while better protecting park natural and cultural resources. Study packages that include the proposed survey questionnaires for these three proposed park studies have been submitted to the Office of Management and Budget for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the NPS invites public comment on these three proposed information collection requests (ICR). Comments are invited on: (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The purpose of the three proposed ICRs is to document the demographics of visitors to the three parks, to learn about the motivations and expectations these visitors have for their park visits, and to obtain their

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opinions regarding services provided by the three parks and the suitability of the visitor facilities maintained in the three parks. This information will be used by park planners and managers to plan, develop, and operate visitor services and facilities in ways that maximize use of limited park financial and personnel resources to meet the expectations and desires of park visitors.

There were no public comments received as a result of publishing in the **Federal Register** a 60 day notice of intention to request clearance of information collection for these three surveys.

DATES: Public comments will be accepted for thirty days from the date listed at the top of this page in the **Federal Register** (March 2, 1998).

SEND COMMENTS TO: Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for the Interior Department, Office of Management and Budget, Washington, DC 20530; and also to: Margaret Littlejohn; Cooperative Park Studies Unit; Department of Forest Resources; College of Forestry, Wildlife and Range Sciences; University of Idaho; Moscow, ID 83844–1133.

FOR FURTHER INFORMATION OR A COPY OF THE STUDY PACKAGES SUBMITTED FOR OMB REVIEW, CONTACT:
Margaret Littlejohn, phone: 208–885–7863, FAX: 208–885–4261, or email: littlej@uidaho.edu.

SUPPLEMENTARY INFORMATION:

Title: National Park Service (NPS) Visitor Services Project Visitor Surveys at Three Parks.

Bureau Form Number: Not applicable.

OMB Number: To be assigned.

Expiration Date: To be assigned.

Type of Request: Request for new clearance.

Description of Need: The National Park Service needs information concerning visitor demographics and visitor opinions about the services and facilities that the National Park Service provides in each of these three parks. The proposed information to be collected regarding visitors in these three parks is not available from existing records, sources, or observations.

Automated Data Collection: At the present time, there is no automated way to gather this information, since it includes asking visitors to evaluate services and facilities that they used during their park visit. The intrusion on visitors to the parks is minimized by only contacting visitors during one 7–9 day period at each park.

Description of Respondents: A sample of visitors to each of these three parks.

Estimated Average Number of Respondents: 400 at Cumberland Island National Seashore, 900 at Jean Lafitte National Historical Park and Preserve, and 800 at Chattahoochee River National Recreation Area.

Estimated Average Number of Responses: Each respondent will respond only one time, so the number of responses will be the same as the number of respondents.

Estimated Average Burden Hours Per Response: 12 minutes.

Frequency of Response: One time per respondent.

Estimated Annual Reporting Burden: 80 hours at Cumberland Island National Seashore, 180 hours at Jean Lafitte National Historical Park and Preserve, and 160 hours at Chattahoochee River National Recreation Area.

Diane M. Cooke,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 98–2331 Filed 1–29–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Death Valley National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Death Valley National Park Advisory Commission will be held February 11 and 12, 1998; assemble at 9:00 AM at Furnace Creek in Death Valley National Park, Death Valley, California.

The main agenda will include:

- Visitor Information
- Management of Feral Burros
- Grazing
- Items for Discussion at Upcoming Meetings
- Fee Demonstration Program Update
- NEMO Update
- Wilderness Update

The Advisory Commission was established by PL #03–433 to provide for the advice on development and implementation of the General Management Plan.

Members of the Commission are Janice Allen, Kathy Davis, Michael Dorame, Mark Ellis, Pauline Esteves, Stanley Haye, Sue Hickman, Cal Jepson, Joan Lolmaugh, Gary O'Connor, Alan Peckham, Michael Prather, Robert Revert, Wayne Schulz, and Gilbert Zimmerman.

This meeting is open to the public.

Richard H. Martin,

Superintendent, Death Valley National Park.

[FR Doc. 98–2332 Filed 1–29–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Citizen Advisory Commission Meeting

AGENCY: National Park Service; Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces two upcoming meetings of the Delaware Water Gap National Recreation Area Citizen Advisory Commission. Notice of these meetings is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Saturday, March 14, 1998 at 9:00 a.m.

Address: Bushkill School, Bushkill, PA 18324.

Meeting Date and Time: Thursday, June 11, 1998 at 7:00 p.m.

Address: Warren County Community College, Washington, NJ 07882.

Meeting Date and Time: Thursday, September 10, 1998 at 7:00 p.m.

Address: Bushkill Information Center, Bushkill, Pennsylvania 18324.

The agenda for the meeting consists of reports from Citizen Advisory Commission committees including: Natural Resources, Recreation, Cultural and Historical Resources, Intergovernmental and Public Affairs, Construction and Capital Project Implementation, and Interpretation, as well as Special Committee Reports. Superintendent William G. Laitner will give a report on various park issues.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizen Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

The meetings will be open to the public. Any member of the public may file a written statement concerning agenda items with the Commission. The statement should be addressed to The Delaware Water Gap National Recreation Area Citizen Advisory Commission, P.O. Box 284, Bushkill, PA 18324. Minutes of the meetings will be available for inspection several weeks after the meeting at the permanent headquarters of the Delaware Water Gap National Recreation Area located on River Road 1 mile east of U.S. Route 209, Bushkill, Pennsylvania.

FOR FURTHER INFORMATION CONTACT:
Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324, 717–588–2418.

Dated: January 16, 1998.

Bob Kirby,

Acting Superintendent.

Congressional Listing for Delaware Water Gap NRA

Honorable Frank Lautenberg, U.S. Senate, SH–506 Hart Senate Office Building, Washington, D.C. 20510–3002
Honorable Robert G. Torricelli, U.S. Senate, Washington, D.C. 20510–3001
Honorable Richard Santorum, U.S. Senate, SR 120 Senate Russell Office Bldg., Washington, D.C. 20510
Honorable Arlen Specter, U.S. Senate, SH–530 Hart Senate Office Bldg., Washington, DC 20510–3802
Honorable Paul McHale, U.S. House of Representatives, 511 Cannon House Office Bldg., Washington, D.C. 20515–3815
Honorable Joseph McDade, U.S. House of Representatives, 2370 Rayburn House Office Bldg., Washington, D.C. 20515–3810
Honorable Margaret Roukema, U.S. House of Representatives, 2244 Rayburn House Office Bldg., Washington, D.C. 20515–3005
Honorable Tom Ridge, State Capitol, Harrisburg, PA 17120
Honorable Christine Whitman, State House, Trenton, NJ 08625

[FR Doc. 98–2334 Filed 1–29–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Manzanar National Historic Site, Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Manzanar National Historic Site Advisory Commission will be held at 1:00 p.m. on Friday, February 13, 1998, at the Inyo County Administrative Center, Board of Supervisors' Chambers, 224 N. Edwards Street (U.S. Highway 395), Independence, California, to hear presentations on issues related to the planning, development, and management of Manzanar National Historic Site.

The Advisory Commission was established by Public Law 102–248, to meet and consult with the Secretary of the Interior or his designee, with respect to the development, management, and interpretation of the site, including preparation of a general management plan for the Manzanar National Historic Site.

Members of the Commission are as follows:

Sue Kunitomi Embrey, Chairperson
William Michael, Vice Chairperson
Keith Bright
Martha Davis
Ronald Izumita
Gann Matsuda
Vernon Miller
Mas Okui
Glenn Singley.
Richard Stewart

The main agenda items at this meeting of the Commission will include the following:

(1) Status report on the development of Manzanar National Historic Site by Superintendent Ross R. Hopkins.

(2) General discussion of miscellaneous matters pertaining to future Commission activities and Manzanar National Historic Site development issues.

(3) Public comment period.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Commission. A transcript will be available after March 31, 1998. For a copy of the minutes, contact the Superintendent, Manzanar National Historic Site, PO Box 426, Independence, CA 93526.

Dated: January 20, 1998.

Ross R. Hopkins,

Superintendent, Manzanar National Historic Site.

[FR Doc. 98–2333 Filed 1–29–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Upper Delaware Scenic and Recreational River Citizens Advisory Council

AGENCY: National Park Service, Interior.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the date of the 1998 installation and organizational meeting of the Upper Delaware Citizens Advisory Council.

The Upper Delaware Citizens Advisory Council will meet Monday, February 9, 1998. Among other items of discussion, the Upper Delaware Citizens Advisory Council will install new members and officers, set a slate of meetings, and plan agendas for 1998.

The meeting will convene at 7:00 p.m., at NPS Headquarters, River Road, Beach Lake, Pennsylvania.

Press Releases containing specific information regarding the subject of meetings and special informational programs, will be published in the following area newspapers:

The Sullivan County Democrat
The Times Herald Record
The River Reporter
The Tri-state Gazette
The Pike County Dispatch
The Wayne Independent
The Hawley News Eagle
The Weekly Almanac

Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, WJFF and WVOS.

FOR FURTHER INFORMATION, CONTACT:
Calvin F. Hite, Superintendent; Upper Delaware Scenic and Recreational River, RR2, Box 2428, Beach Lake, PA 18405–9737; 717–729–8251.

SUPPLEMENTARY INFORMATION:

The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95–625, 16 USC s1724 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation and implementation of the management plan, and on programs which relate to land and water use in the Upper Delaware Region.

All meetings are open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, NY 12764. Minutes of the meeting will be available for inspection four weeks after the meeting, at the permanent headquarters of the Upper Delaware Scenic and Recreational River; River Road, 1–3/4 miles north of Narrowsburg, New York; Damascus Township, Pennsylvania.

Dated: January 21, 1998.

Calvin F. Hite,

Superintendent, Upper Delaware Scenic & Recreational River.

[FR Doc. 98–2336 Filed 1–29–98; 8:45 am]

BILLING CODE 4310–70–P

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DEPARTMENT OF THE INTERIOR

National Park Service, Interior

National Wildlife and Scenic River System: Ohio; Big and Little Darby Creeks

AGENCY: National Park Service, Interior.
ACTION: Notice of correction.

SUMMARY: The **Federal Register** notice dated Tuesday, December 23, 1997, page 67092, was submitted prematurely. This notice is hereby cancelled.

FOR FURTHER INFORMATION CONTACT: Angie Tornes, Rivers, Trails, and Conservation Assistance Program, National Park Service, Midwest Field Office, 310 West Wisconsin Street, Suite 100E, Milwaukee, Wisconsin 53202; or telephone 414–297–3605.

Dated: January 15, 1998.

David N. Given,

Deputy Regional Director, Midwest Region.

[FR Doc. 98–2335 Filed 1–29–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council Meetings

AGENCY: Bureau of Reclamation, Interior.
ACTION: Notice of meetings.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will meet to discuss several issues including: review of the CALFED Programmatic EIR/EIS, a presentation by members of the Southern California business community on their perspective on CALFED, updates on proposals for further analysis of the Program, and updates on the progress of the BDAC Work Groups on Ecosystem Restoration, Water Transfers, Finances, and Assurances. The Ecosystem Roundtable (a subcommittee of the BDAC) will meet to discuss several issues including: additional proposals, designated actions, and focused grants for FY 98 funding, revised planning process, funding coordination, and other issues. These meetings are open to the public. Interested persons may make oral statements to the BDAC or to the Ecosystem Roundtable or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council meeting will be held from 9:30 a.m. to 5:00 p.m. on Thursday, March 19, 1998 and from 9:30 a.m. to 5:00 p.m. on Friday, March 20, 1998. The Ecosystem Roundtable meeting will be held from 9:30 a.m. to 3:30 p.m. on Wednesday, February 11, 1998.

ADDRESSES: The Bay-Delta Advisory Council will meet at the Burbank Airport Hilton, 2500 Hollywood Way, Burbank, CA. The Ecosystem Roundtable will meet at the State Water Resources Control Board, 901 P Street, Room 102, Sacramento, CA.

FOR FURTHER INFORMATION CONTACT: For the BDAC meeting, contact Mary Selkirk, CALFED Bay-Delta Program, at (916) 657–2666. For the Ecosystem Roundtable meeting, contact Cindy Darling, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as the Bay-Delta Advisory Council (BDAC) to advise CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: January 26, 1998.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 98–2315 Filed 1–29–98; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 95–49]

Singer-Andreini Pharmacy, Inc., Revocation of Registration

On June 13, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to singers-Andreini Pharmacy, Inc. (Respondent) of West New York, New Jersey, notifying the pharmacy of an opportunity to show cause as to why DEA should not revoke its DEA Certificate of Registration, AS0666757, and deny any pending applications for renewal of such registration as a retail pharmacy under 21 U.S.C 823(f), for reason that the pharmacy's continued registration would be inconsistent with the public interest pursuant to 21 U.S.C. 824(a)(4).

On July 10, 1995, Respondent filed a timely request for a hearing, and following prehearing procedures, a hearing was held in New York, New York on June 11 and 12, 1996, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, Government counsel submitted proposed findings of fact, conclusions of law and argument, and counsel for Respondent submitted a closing argument summation. On October 23, 1997, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her decision, and on December 12, 1997, Judge bittner transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds that Harry Richman is a registered pharmacist who has been involved with Respondent pharmacy for over 30 years. Mr. Richman has jointly owned Respondent with the Andreini family for a number of years, and during all relevant times to this case has been the pharmacist-in-charge, responsible for the day-to-day operation of the pharmacy.

In 1983, DEA conducted an inspection of Respondent after it received a report from a distributor that Respondent had purchased more than 88,000 dosage units of Tranxene, a Schedule IV controlled substance, between April 1, 1982 and February 15, 1983. As part of the inspection, DEA conducted an accountability audit covering the period April 1, 1982 to February 15, 1983, which revealed that Respondent could not account for approximately 4,000 dosage units of various strengths of Tranxene. This shortage was most likely understated since DEA used a zero beginning balance in conducting the audit, and as a result, Respondent was not held accountable for any Tranxene that it may have had on hand at the beginning of the audit period. In addition to the audit results, the inspection revealed the following violations of Federal regulations: numerous prescriptions lacked the patients' addresses, issuance dates and dates filled; several Schedule II prescriptions were not maintained separately from other controlled substance prescriptions; and several Schedule III through V prescriptions were refilled more than six months after the issuance date of the prescription. In a letter to DEA dated July 1, 1983, Respondent indicated that it would correct the alleged violations, however it did not mention the shortage of Tranxene.

In July 1985, the New Jersey Division of Consumer Affairs conducted a routine Board of Pharmacy inspection of Respondent. This inspection noted a number of deficiencies including: (1) A total of 177 outdated medications were found in the active stock inventory; (2) 12 medications were improperly stored; (3) stock shelves were extremely dirty and in some places liquid medications had spilled on the shelves and dried making it difficult to remove some containers; (4) Respondent failed to dispense generic alternatives for some brand name medications pursuant to state and Medicaid requirements; (5) patient addresses were missing from the Exempt Narcotic Register; (6) patient addresses were not written on some controlled substance prescriptions; (7) DEA numbers were not written on some controlled substance prescriptions; (8) Schedule IV controlled substance prescriptions were filed with other prescriptions for legend drugs without being marked with the required red letter "C"; (9) prescriptions received over the telephone failed to include the physician's address, the patient's address and/or the physician's DEA number; and (10) Respondent dispensed 13 oral emergency prescriptions for Schedule II substances without subsequently obtaining written prescriptions for these dispensations. As a result of this inspection, by letter dated March 6, 1987, the New Jersey Board of Pharmacy offered Respondent "the opportunity to settle this matter and avoid the initiation of formal disciplinary proceedings" by paying a civil penalty of $5,175.00. There is no evidence in the record to indicate whether Respondent paid this penalty.

On March 19, 1986, another Board of Pharmacy inspection was conducted of Respondent. This inspection revealed that Respondent: (1) Maintained 32 outdated medications in the active inventory; (2) failed to dispense formulary alternatives for popular brand name medications; (3) dispensed six emergency telephone prescriptions for Schedule II substances without subsequently obtaining a written prescription; and (4) dispensed Schedule II substances pursuant to nine prescriptions that did not include the patients' addresses. Like with the prior state inspection, by letter dated May 23, 1988, Respondent was offered the opportunity to avoid formal disciplinary proceedings by paying a $750.00 civil penalty. Again, there is no evidence in the record to indicate whether Respondent paid this penalty.

Subsequently, DEA was contacted by a postal employee who indicated that in September 1990 he had injured his arm at work. According to the employee, the postmaster encouraged him not to seek medical attention, and instead told the employee that he would get the employee any drug he wanted. The employee stated that he told the postmaster that he wanted Darvocet, a Schedule IV controlled substance, and that ultimately he was given an unlabeled vial containing approximately 10 to 12 pills inscribed "Darvocet N–100." DEA then interviewed the postmaster, who at first denied that he was involved in distributing controlled substances, but later admitted that he had obtained the Darvocet for the employee from Mr. Richman at Respondent without a physician's prescription for the medication. At the hearing in this matter, Mr. Richman asked, "how could anybody accuse me of that when there's no label on the bottle?"

DEA then conducted another inspection of Respondent in October 1990. As part of this inspection, DEA audited Respondent's handling of Darvocet and its generic equivalent, and various strengths of Dilaudid, a Schedule II controlled substance. The audit covered the period July 1 to October 30, 1990, and revealed a shortage of over 1,000 dosage units of Darvocet N–100, and over 300 dosage units of Dilaudid 4 mg. The shortage of Dilaudid was most likely understated since DEA used a zero beginning balance in conducting the audit, and as a result, Respondent was not held accountable for any Dilaudid 4 mg. that it may have had on hand at the beginning of the audit period. In addition to the audit discrepancies, the inspection of Respondent's records revealed other violations of controlled substance related regulations during the audit period. Respondent refilled some controlled substance prescriptions more than six months after the original prescription was issued and refilled some controlled substance prescriptions more than five times. On numerous occasions, Respondent dispensed controlled substances pursuant to prescriptions which did not bear a DEA number for the prescribing practitioner and dispend controlled substances on several occasions pursuant to prescriptions which contained incorrect DEA numbers. In addition, Respondent filled a Darvocet prescription even though the patient's address was not on the prescription, and Respondent failed to maintain some receiving records, including a copy of a DEA official order form.

Subsequent to this inspection, DEA investigators interviewed two physicians who had purportedly issued

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controlled substance prescriptions that were found in Respondent's records. In one instance, the prescription found in the pharmacy was dated May 31, 1990, however the dispensing log indicated that it was dated October 9, 1990. The physician told the investigators that while he had a patient by that name, a check of his records indicated that he had written a prescription for that patient on May 31, 1990, but had not authorized a prescription for the patient in October 1990. The investigators interviewed the second physician regarding a prescription that appeared to be either a photocopy and/or a forgery. The physician indicated that he had not seen the patient listed on the prescription on the date the prescription was supposedly issued; that he did not issue the prescription; and that he did not write the numeral "8" the way it looked on the prescription.

On July 20, 1992, DEA again inspected Respondent pharmacy and conducted an accountability audit covering the period October 30, 1990 to July 20, 1992, of the same controlled substances audited in October 1990. This audit revealed total shortages of over 8,000 dosage units. In addition, a review of Respondent's records during this period revealed that on a number of occasions, Respondent's dispensing logs did not list the prescribing physician's DEA number; a number of controlled substance telephone prescriptions did not contain required information such as the prescribing physician's DEA number, patient addresses, dates, physician's addresses, the number of authorized refills, or a stamped red "C" denoting that the prescription was for a controlled substance. Also, this inspection revealed that Respondent dispensed Schedule II controlled substances on numerous occasions pursuant to telephone prescriptions without subsequently obtaining any written prescriptions for these dispensations, and that several Schedule II prescriptions were found in the same files as prescriptions for Schedule III and IV substances. Further, the inspection revealed a prescription for a Schedule IV controlled substance that was refilled 12 times. The review of the records also revealed that several Schedule II order forms were missing from Respondent's files.

Following the inspection, DEA investigators interviewed several physicians who purportedly issued controlled substance prescriptions that were found in Respondent's files. One physician was asked about two prescriptions that appeared to be photocopies. The physician checked his records and determined that he did have a patient by the name listed on the prescriptions, but that he did not issue photocopied prescriptions. A second physician was asked about a prescription that had pertinent information such as the patient's name and address, the date, and part of the doctor's name covered with correction fluid, and other information written over those portions of the prescription. The physician stated that while she did have a patient by the name listed on the prescription, she had not seen the patient on the date noted on the prescription. Another physician was interviewed about a prescription where the date was covered with correction fluid and January 23, 1991 was written over it. The physician stated that he had treated that patient on May 26, 1990, but not on January 23, 1991. A DEA investigator testified that if the prescription is held up to the light, it appears that the original date under the correction fluid is May 26, 1990. A fourth physician was interviewed about a prescription for 25 Percocet, a Schedule II controlled substance. The physician indicated that she did not have a patient by the name listed on the prescription and that she would not issue a Percocet prescription unless a patient had undergone surgery. The investigators interviewed another physician about a telephone prescription for Darvocet Respondent's records of this prescription did not indicate the patient's or physician's address, the physician's DEA number, nor any indication as to whether refills were authorized. Nonetheless, Respondent's records showed that this prescription was refilled twice. The physician indicated that he did not have a patient by the name indicated on the prescription. Finally, a physician was interviewed about a prescription that she had purportedly issued for an individual for 40 dosage units of Percocet. It appeared that there was correction fluid on the prescription and that the quantity authorized had been altered from 10 to 40 dosage units. After checking her records, the physician confirmed that she had issued a prescription for the individual on the date listed, however she had only authorized 10 dosage units.

During the course of the investigation, DEA investigators interviewed a former employee of Respondent who alleged that the clerk/bookkeeper at Respondent would divert controlled substances from orders received at Respondent, then telephone the distributor telling it that it had forgotten to ship whatever she had taken, and then sell or trade the drugs. The former employee also told the investigators that when Mr. Richman would leave Respondent for whatever reason, he would leave a pharmacy intern in charge of the pharmacy, and that the pharmacy interns would divert controlled substances and distribute them without a prescription. At the hearing, Mr. Richman characterized the former employee as a "disgruntled person" who understood very little English.

The former employee's daughter had worked at Respondent as a clerk and she also was interviewed by the investigators. She stated that she saw Mr. Richman give controlled substances to customers without a prescription; that Mr. Richman's employees and friends took controlled substances from Respondent; and that she saw Mr. Richman and pharmacy interns exchange controlled substances for food with an individual who worked at a local food store. At the hearing, Mr. Richman testified that the former employee's daughter, "never, never worked the drug counter. * * * So she couldn't hear anything and she didn't have enough intelligence to sense anything." The former employee's son told the investigators that he sometimes ran errands for Respondent and that he has seen the owner of the business next door to Respondent go into Respondent's dispensing area and take medication. At the hearing, Mr. Richman testified that the son never worked for him and that "he was a special ed student."

On February 10, 1994, DEA investigators conducted another inspection of Respondent during which Respondent's prescription files were seized. Upon reviewing Respondent's records, the investigators determined that a number of prescriptions and 134 daily dispensing logs had not been provided by Respondent. Consequently, the investigators returned to Respondent on two other occasions in order to obtain from Respondent's computer the dispensing information necessary to conduct an accountability audit. DEA then conducted an audit of certain Schedule II controlled substances for the period May 4, 1993 through February 10, 1994, and of certain Schedule III through V controlled substances for the period May 7, 1993 to February 10, 1994. The audits revealed discrepancies in Respondent's recordkeeping, including a shortage of 3,351 dosage units of Fiorinal with codeine #3, a Schedule III controlled substance.

In addition to the audit results, the 1994 inspection revealed other violations of Federal regulations relating to controlled substances. A review of Respondent's dispensing logs disclosed a number of instances where an invalid DEA number was listed for the prescribing physician, and a number of occasions where Respondent dispensed Schedule II controlled substances pursuant to telephone prescriptions without subsequently obtaining any written prescriptions for these dispensations. A review of Respondent's prescription files revealed numerous prescriptions that did not contain required information such as the physician's name, the physician's DEA number, the patient's name, the patient's address, and/or the date issued. In addition, approximately 13 Schedule II controlled substance prescriptions were filed with prescriptions for Schedule III and IV substances instead of separately. Also, while conducting the inspection of Respondent, a DEA investigator observed a note taped to the wall in the dispensing area that appeared to be an "IOU" for Demerol, A Schedule II controlled substance, and Klonopin, a Schedule IV controlled substance. When asked about the note, Mr. Richman replied that another area pharmacy had loaned him the drugs, however the investigator found no order form or other record of this controlled substance transfer.

After reviewing records seized during the 1994 inspection, DEA sought to verify three controlled substance prescriptions found in Respondent's files that had purportedly been written by physicians working at a local hospital. The hospital's records indicated that none of these prescriptions were authorized, however the DEA investigator did not contact the physicians who purportedly issued the prescriptions to determine whether they had authorized them. In addition, the DEA investigator interviewed four physicians about a total of nine controlled substance prescriptions that were purportedly issued by them and found in Respondent's files. The physicians all indicated that they did not authorize the prescriptions attributed to them.

At the hearing in this matter, Mr. Richman did not offer any explanation for the audit discrepancies or recordkeeping violations discovered during the various inspections of Respondent. Respondent testified that no one at Respondent pharmacy ever forged a prescription. In addition, Mr. Richman testified that "[a]nytime we get a narcotic that's of a tremendous amount and quantity and we don't know who the patient is, especially from out of town New York, which we don't even fill, we always call a doctor." Further, Mr. Richman testified that the prescriptions with correction fluid found at Respondent were probably first brought to another pharmacy and not filled for some reason.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications, if he determines that the continued registration would be inconsistent with the public interest, Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one of combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See *Henry J. Schwarz, Jr., M.D.*, Docket No. 88–42, 54 F.R. 16,422 (1989).

As a preliminary matter, Respondent argues that its registration should not be revoked because most of the Government's case is based on hearsay and is therefore unreliable. The Acting Deputy Administrator disagree with Respondent's contention. ". . .[H]earsay is both admissible, and may, standing by itself, constitute substantial evidence in support of an administrative decision." *Klinestiver* v. *Drug Enforcement Administration, 606 F.2d 1128 (D.C. Cir. 1979).*

Regarding factor one, there is evidence in the record that the New Jersey Board of Pharmacy conducted inspections of Respondent in 1985 and 1986, both of which revealed numerous violations. In both instances the Board of Pharmacy offered Respondent the opportunity to pay civil penalties in order to avoid formal disciplinary action, however, there is no evidence in the record whether Respondent even paid these fines. There is also no evidence in the record to suggest that the Board of Pharmacy has restricted Respondent's pharmacy permit or Mr. Richman's license to practice pharmacy. But as Judge Bittner notes, "sate licensure is a necessary but not sufficient condition for DEA registration." Therefore, the fact that Respondent currently possesses and unrestricted state license is not dispositive of the issue of whether or not to revoke its DEA registration.

Factors two and four, Respondent's experience in dispensing controlled substances and its compliance with applicable laws and regulations relating to controlled substances, are extremely relevant in this proceeding. The record clearly establishes Respondent's long history of failure to comply with the laws and regulations relating to the dispensing of controlled substances. The state conducted inspections of Respondent in 1985 and 1986 and DEA conducted inspections, which included accountability audits, in 1983, 1990, and 1994. Each of these inspections revealed numerous recordkeeping deficiencies.

The state inspections revealed a number of violations of state requirements relating to controlled substances. The DEA inspections revealed Respondent's failure to keep complete and accurate records of its handling of controlled substances as required by 21 U.S.C. 827 and 21 CFR 1304.21, and as evidenced by the various audit results. In addition, Respondent dispensed controlled substances pursuant to both oral and written prescriptions found in its files that did not contain information required by 21 CFR 1306.05(a), such as the physician's DEA registration number, the patient's address, and/or the date of issuance. Also, oral prescriptions for Schedule II controlled substances were dispensed without subsequently obtaining a written prescription for the dispensation in violation of 21 CFR 1306.11, and Schedule II prescriptions were intermingled in Respondent's files with Schedule III and IV controlled substance prescriptions in violation of 21 CFR 1304.04(h)(1). Further, Respondent refilled substance prescriptions more than five times, and in some instances, more than six months after the original prescription was issued, both in violation of 21 CFR 1306.22(a).

In addition, Respondent dispensed controlled substances without a valid prescription in violating of 21 U.S.C. 829, as evidenced by the Darvocet given to the postal employee in 1990. The Acting Deputy Administrator further finds that the physician interviews conducted by DEA establish that Respondent dispensed controlled substances without a physician's authorization. As Judge Bittner notes, "although the evidence as to

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unauthorized dispensing is hearsay, Respondent offered no contraditory evidence." The Acting Deputy Administrator concurs with Judge Bittner's conclusion that "although it is possible that some of the physicians interviewed by investigators may have been mistaken, it strains credulity past the breaking point to find that all were."

Further, there is evidence in the record that Respondent dispensed controlled substances pursuant to prescriptions that appeared on their face to be forged and/or altered, and therefore not valid. Respondent argues that the Government did not prove that anyone at Respondent forged the prescriptions. The Acting Deputy Administrator finds that Respondent is correct, however the mere fact that Respondent dispensed controlled substances pursuant to clearly forged and/or altered prescriptions is evidence of Respondent's violation of its corresponding responsibility, as set forth in 21 CFR 1306.04, for the proper prescribing and dispensing of controlled substances.

Other violations noted during these inspections were: failure to maintain all its records of receipt, including DEA order forms, as required by 21 CFR 1304.04 and 21 CFR 1305.13; failure to maintain records in a readily retrievable manner as require by 21 CFR 1304.04(h)(2), and as evidenced by its inability to provide its dispensing records during the 1994 inspection; failure to use a DEA order form when transferring Schedule II controlled substances between registrants as required by 21 CFR 1305.03, and as evidence by the "IOU" for Demerol found at the pharmacy during the 1994 inspection.

The Acting Deputy Administrator concurs with Judge Bittner's conclusion that "Respondent has presented no evidence explaining its extraordinary history of noncompliance, nor did Mr. Richman provide any basis for me to conclude that Respondent would be more mindful of and compliant with applicable law and regulations in the future." Of particular concern to the Acting Deputy Administrator is that many of the same violations were discovered during each of the inspections. There is no evidence of any effort on Respondent's part to correct the deficiencies after each inspection. This cavalier attitude towards compliance with the Controlled Substances Act and its implementing regulations is extremely troubling. The Acting Deputy Administrator finds that these factors weigh in favor of a conclusion that Respondents continued registration would not be in the public interest.

Regarding factor three, there is no evidence that Respondent or Mr. Richman has ever been convicted under state or Federal laws relating to controlled substances. As to factor five, the Acting Deputy Administrator agrees with Judge Bittner and Government counsel that Mr. Richman's "recalcitrant" attitude evidences that he "is either unwilling or unable to accept the responsibility inherent in a DEA registration.

Judge Bittner concluded "that the record as a whole establishes that Respondent's registration with the DEA would be inconsistent with the public interest," and therefore recommended that its registration be revoked. The Acting Deputy Administrator agrees. Respondent's continued failure to abide by the laws and regulations in place to prevent the diversion of controlled substances clearly justifies the revocation of its DEA Certificate of Registration.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AS0666757, previously issued to Singers-Andreini Pharmacy, Inc., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective March 2, 1998.

Dated: January 20, 1998.

Peter F. Gruden,

Acting Deputy Administrator.

[FR Doc. 98–2374 Filed 1–29–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget

Janaury 16, 1998.

The Department of Labor has submitted the following (see below) emergency processing public information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). OMB approval has been requested by February 20, 1998. A copy of this ICR, with supporting documentation, may be obtained by calling the Department of Labor Departmental Clearance Officer, Todd Owen, at (202) 219–5096, Ext. 143.

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the U.S. Department of Labor, Employment and Training Administration, Office of Management and Budget, Room 10235, Washington, D.C. 20503 ((202) 395–7316). The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: Employment and Training Administration, Labor.

Title: Trade Adjustment Assistance and NAFTA Transitional Adjustment Assistance Program Performance Report.

OMB Number: 1205–New.

Frequency: Quarterly.

Affected Public: State government.

Total Respondents: 50.

Estimated Time per Respondent: 80 hours per quarter.

Estimated Total Burden Hours: 16,000.

Total Burden Cost (capital/startup): $500,000.

Total Burden Cost (operating/maintaining): $225,000.

Description: The Government Performance and Results Act (GPRA) of 1993 requires all federal benefits programs to report on the outcomes achieved for benefit recipients and how those outcomes can be continuously improved. In addition, public and Congressional awareness and concern regarding the effectiveness of assistance provided to U.S. workers displaced by imports has created a demand for more information on those receiving assistance from TAA and NAFTA–TAA.

The data currently collected by TAA does not provide sufficient information to adequately assess TAA program performance and participant outcomes, making it impossible to precisely evaluate program effectiveness. In order to comply with Federal law and respond to other concerns, the Office of Trade Adjustment Assistance (OTAA) is implementing a new system of collecting and reporting performance and outcomes data.

Each quarter, beginning with the quarter ending June 30, 1998, the States will provide the Department with reports on demographic data, benefits provided, and participant outcomes for each participant who has terminated from the TAA or NAFTA–TAA program during the reporting quarter. A conference of Regional and State TAA staff concluded that many States already collect most, if not all, of the proposed data items. Therefore, many State TAA coordinators will only need to access existing data and reformat it for submission to the Department, rather than creating an entirely new data collection and reporting system. States may also take this opportunity to begin to collect additional data items for their own program review and improvement purposes.

Dated: January 27, 1998.

Todd Owen,

Departmental Clearance Officer.

[FR Doc. 98–2353 Filed 1–29–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

None

Volume V

None

Volume VI

None

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the

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seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 22nd day of January 1998.

Carl L. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–2009 Filed 1–29–98; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 98–3]

Agency Informaton Collection Activities: Proposed Collection; Comment Request; 4,4′-Methylenedianiline in Construction

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Occupational Safety and Health Administration is soliciting comments concerning the proposed extension of the information collection request for the 4,4,′ Methylenedianiline Standard 29 CFR 1926.60.

A copy of the proposed information collection request (ICR) can be obtained by contacting the employee listed below in the addressee section of this notice. The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted by March 31, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR 98–3, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210, telephone number (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Adrian Corsey, Directorate of Health Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3718, telephone (202) 219–7075. A copy of the referenced information collection request is available for inspection and copying in the Docket Office and will be mailed immediately to persons who request copies by telephoning Adrian Corsey at (202) 219–7075 extension 105 or Barbara Bielaski at (202) 219–8076 extension 142. For electronic copies of the Information Collection Request on 4,4′-Methylenedianiline, contact OSHA's WebPage on the Internet at http://www.osha.gov/ and click on standards.

SUPPLEMENTARY INFORMATION:

I. Background

The 4,4′-Methylenedianiline standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to 4,4′-Methylenedianiline. The standard requires that employers establish a compliance program, including exposure monitoring and medical surveillance records. These records are used by employees, physicians, employers and OSHA to determine the effectiveness of the employers' compliance efforts. Also the standard requires that OSHA have access to various records to ensure that employers are complying with the disclosure provisions of the 4,4′-Methylenedianiline Standard.

Type of Review: Extension.

Agency: Occupational Safety and Health Administration.

Title: 4,4′—Methylenedianiline 29 CFR 1926.60.

OMB Number: 1218–0183.

Affected Public: Business or other for-profit, Federal government, State and Local governments.

Total Respondents: 66.

Frequency: On occasion.

Total Responses: 2,848.

Average Time per Response: Ranges from 5 minutes to maintain records to 2 hours to monitor employee exposure.

Estimated Total Burden Hours: 1,841.

Total Annualized capital/startup costs: 0.

Total initial annual costs (operating/maintaining systems or purchasing services): $59,120.

Comments submitted in responses to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request. The comments will become a matter of public record.

Dated: January 20, 1998.

Adam Finkel,

Director, Directorate of Health Standards Programs.

[FR Doc. 98–2354 Filed 1–29–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket Number ICR 98–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; 4,4′-Methylenedianiline in General Industry

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Occupational Safety and Health Administration is soliciting comments concerning the proposed extension of the information collection request for the 4,4′-Methylenedianiline Standard 29 CFR 1910.1050

A copy of the proposed information collection request (ICR) can be obtained by contacting the employee listed below in the addressee section of this notice. The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted by March 31, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR 98–4, U.S. Department of labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, telephone number (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Adrian Corsey, Directorate of Health Standards Programs, Occupation Safety and Health Administration, U.S. Department of Labor, Room N3718, telephone (202) 219–7075. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed immediately to persons who request copies by telephoning Adrian Corsey at (202) 219–7075 extension 105 or Barbara Bielaski at (202) 219–8076 extension 142. For electronic copies of the Information Collection Request on 4,4′-Methylenedianiline, contact OSHA's WebPage on the Internet at http://www.osha.gov/ and click on standards.

SUPPLEMENTARY INFORMATION:

I. Background

The 4,4′-Methylenedianiline standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupation

exposure to 4,4′-Methylenedianiline. The standard requires that employers establish a compliance program, including exposure monitoring and medical surveillance records These records are used by employees, physicians, employers and OSHA to determine the effectiveness of the employers' compliance efforts. Also the standard requires that OSHA have access to various records to ensure that employers are complying with the disclosure provisions of the 4,4′Methylenedianiline Standard.

Type of Review: Extension.

Agency: Occupational Safety and Health Administration.

Title: 4,4′-Methylenedianiline 29 CFR 1910.1050.

OMB Number: 1218–0184.

Affected Public: Business or other for-profit, Federal government, State and Local governments.

Total Respondents: 18.

Frequency: On occasion.

Total Responses: 1175.

Average Time per Response: Ranges from 5 minutes to maintain records to 2 hours to monitor employee exposure.

Estimated Total Burden Hours: 710.

Total Annualized capital/startup costs: 0.

Total initial annual costs (operating/maintaining systems or purchasing services): $26,616.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request. The comments will become a matter of public record.

Dated: January 22, 1998.

Adam Finkel,

Director, Directorate of Health Standards Programs.

[FR Doc. 98–2355 Filed 1–29–98; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection: Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collection under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: NRC Form 212, Qualifications Investigation, and NRC Form 212A, Qualifications Investigation Secretarial/Clerical.

2. Current OMB approval number: 3150–0033 for NRC 212, 3150–0034 for NRC 212A.

3. How often the collection is required: Whenever Human Resources' specialists determine qualification investigations are required in conjunction with applications for employment related to vacancies.

4. Who is required or asked to report: Supervisors, former supervisors, and/or other references of external applicants.

5. The number of annual respondents: NRC Form 212, 1400 annually, NRC Form 212A, 300 annually.

6. The number of hours needed annually to complete the requirement or request: NRC Form 212, 350 hours (15 minutes per response), NRC Form 212A, 75 hours (15 minutes per response).

7. Abstract: Information requested on NRC Forms 212 and 212A is used to determine the qualifications and suitability of external applicants for employment in professional and clerical or secretarial positions with the NRC. The completed form may be used to examine, rate and/or assess the prospective employee's qualifications. The information regarding the qualifications of applicants for employment is reviewed by professional personnel of the Office of Human Resources, in conjunction with other information in the NRC files, to determine the qualifications of the applicant for appointment to the position under consideration.

Submit, by March 31, 1998, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool

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bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC 20555–0001, or by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 27th day of January, 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–2323 Filed 1–29–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–282]

Northern States Power Company; Notice of Consideration of Issuance of Amendment to Facility Operating License No. DPR–42; Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–42 issued to Northern States Power Company (the licensee) for operation of the Prairie Island Nuclear Generating Plant, Unit 1, located in Goodhue County, Minnesota.

The proposed amendment would initiate a one-time only change for Prairie Island Unit 1 Cycle 19 that would allow the use of the moveable incore detector system for measurement of the core peaking factors with less than 75% and greater than or equal to 50% of the detector thimbles available.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve an increase in the probability of an accident previously evaluated. The moveable incore detector system is used only to provide confirmatory information on the neutron flux distribution and is not required for the daily safe operation of the core. The system is not a process variable that is an initial condition in the accident analyses. The only accident that the moveable incore detector system could be involved in is the breaching of the detector thimbles which would be enveloped by the small break loss of coolant accident (LOCA) analysis. As the proposed changes do not involve any changes to the system's equipment and no equipment is operated in a new or more harmful manner, there is no increase in the probability of such an accident.

The proposed [amendment] would not involve an increase in the consequences of an accident previously evaluated. The moveable incore detector system provides a monitoring function that is not used for accident mitigation (the system is not used in the primary success path for mitigation of a design basis accident). The ability of the reactor protection system or engineered safety features system instrumentation to mitigate the consequences of an accident will not be impaired by the proposed changes. The small break LOCA analysis (and thus its consequences) continues to bound potential breaching of the system's detector thimbles.

With greater than or equal to 50% and less than 75% of the detector thimbles available, core peaking factor measurement uncertainties will be increased, which could impact the core peaking factors and as a result could affect the consequences of certain accidents. However, any changes in the core peaking factors resulting from increased measurement uncertainties will be compensated for by conservative measurement uncertainty adjustments in the Technical Specifications to ensure that pertinent core design parameters are maintained. Sufficient additional penalty is added to the power distribution measurements such that this change will not impact the consequences of any accident previously evaluated.

Therefore, based on the conclusions of the above analysis, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed [amendment] would not create the possibility of a new or different kind of accident previously evaluated as [it] only affect[s] the minimum complement of equipment necessary for operability of the moveable incore detector system. There is no change in plant configuration, equipment or equipment design. No equipment is operated in a new manner. Thus the changes will not create any new or different accident causal mechanisms. The accident analysis in the Updated Safety Analysis Report remains bounding.

Therefore, based on the conclusions of the above analysis, the proposed changes will not create the possibility of a new or different kind of accident.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed changes will not involve a significant reduction in a margin of safety. The reduction in the minimum complement of equipment necessary for the operability of the moveable incore detector system could only impact the monitoring/calibration functions of the system. Reduction of the number of available moveable incore detector thimbles to the 50% level does not significantly degrade the ability of the system to measure core power distributions. With greater than or equal to 50% and less than 75% of the detector thimbles available, core peaking factor measurement uncertainties will be increased, but will be compensated for by conservative measurement uncertainty adjustments in the Technical Specifications to ensure that pertinent core design parameters are maintained. Sufficient additional penalty is added to the power distribution measurements such that this change does not impact the safety margins which currently exist. Also, the reduction of available detector thimbles has negligible impact on the quadrant power tilt and core average axial power shape measurements. Sufficient detector thimbles will be available to ensure that no quadrant will be unmonitored.

Based on these factors, the proposed changes in this license amendment will not result in a significant reduction in the plant's margin of safety, as the core will continue to be adequately monitored.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 2, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by close of business on the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 15, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

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Dated at Rockville, Maryland, this 26th day of January 1998.

For the Nuclear Regulatory Commission.

Beth A. Wetzel,

Senior Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–2325 Filed 1–29–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

Toledo Edison Company; Centerior Service Company; and the Cleveland Electric Illuminating Company; Davis-Besse Nuclear Power Station, Unit 1, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations with respect to Facility Operating License No. NPF–3, issued to Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit 1, located in Ottawa County, Ohio.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensees from the requirement to have an oil collection system for the reactor coolant pump (RCP) lube oil addition system, provided certain compensatory actions are taken, thus allowing the licensees to utilize remote lube oil fill lines at power. This requirement is contained in 10 CFR part 50, Appendix R, Section III.O, which provides that licensees shall have a collection system "capable of collecting lube oil from all potential pressurized and unpressurized leakage sites in the reactor coolant pump lube oil systems." It also specifies that "leakage points to be protected shall include lift pump and piping, overflow lines, lube oil cooler, oil fill and drain lines and plugs, flanged connections on oil lines, and lube oil reservoirs where such features exist on the reactor coolant pumps."

The proposed action is in accordance with the licensees' application for exemption dated November 18, 1997, as supplemented by facsimile dated December 9, 1997.

The Need for the Proposed Action

The proposed action is needed to reduce dose and personnel hazards to workers who periodically add oil to the RCP lube oil system during power operation.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed action involves features located entirely within the restricted area as defined in 10 CFR part 20.

The proposed action will not result in an increase in the probability or consequences of accidents or result in a change in occupational or offsite dose. Therefore, there are no radiological impacts associated with the proposed action. In addition, the proposed action will not result in a change in nonradiological plant effluents and will have no other nonradiological environmental impact.

Accordingly, the Commission concludes that there are no environmental impacts associated with this action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed exemption, the staff considered denial of the requested exemption. Denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to the operation of Davis-Besse dated October 1975.

Agencies and Persons Consulted

In accordance with its stated policy, on December 9, 1997, the staff consulted with the Ohio State official, Carol O'Claire, of the Ohio Emergency Management Agency, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensees' letter dated November 18, 1997, and facsimile dated December 9, 1997, which are available for public inspection at the Commission's Public Document Room located at the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Dated at Rockville, Maryland, this 26th day of January, 1998.

For the Nuclear Regulatory Commission.

Richard P. Savio,

Acting Director, Project Directorate III–3, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–2324 Filed 1–29–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission will convene a meeting of a sub-committee of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on February 12, and 13, 1998. The meeting will take place at the address provided below. All sessions of the meeting will be open to the public.

Topic of discussion will be the proposed rule text for the revision of 10 CFR Part 35 and associated guidance.

DATES: On February 12, 1998, the meeting will begin at 8:30 a.m. and end at 5:00 p.m. On February 13, 1998, the meeting will begin at 8:30 a.m. and end at 3:00 p.m.

ADDRESS: Leonard C. Ferguson Cancer Center, 1163 W. Stephenson Street, Freeport, IL 61032.

FOR FURTHER INFORMATION CONTACT: Patricia Vacherlon, U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, MS T8F5, Washington, DC 20555, Telephone (301) 415–6376.

Conduct of the Meeting

Dr. Judith Stitt will chair the meeting. Dr. Stitt will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following

procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit a reproducible copy to Patricia Vacherlon (address listed previously), by February 2, 1998. Statements must pertain to the topics on the agenda for the meeting.

2. At the meeting, questions from members of the public will be permitted at the discretion of the Chairman.

3. The transcript and written comments will be available for inspection, and copying, for a fee, at the NRC Public Document Room 2120 L Street, N.W., Lower Level, Washington, DC 20555, telephone (202) 634–3273, on or about April 1, 1998. Minutes of the meeting will be available on or about May 1, 1998.

4. Seating for the public will be on a first-come, first-served basis.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, *U.S. Code of Federal Regulations*, part 7.

Dated: January 26, 1998.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 98–2320 Filed 1–29–98; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request; OPM Form1203

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces a proposed extension of a form which collects information from the public. OPM Form 1203, Occupational Supplement Series—Form C, is an optical scan form designed to collect applicant information and qualifications in a format suitable for automated processing and to create basic applicant records for an automated examining system. OPM uses the form to carry out their responsibility for open competitive examining for admission to the competitive service in accordance with section 3304, 5 U.S.C.

"Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately *500,000* forms are completed each year with an average completion time of *27* minutes. For copies of this proposal, call James Farron on (202) 418–3208 or email to JMFARRON@OPM.GOV.

DATES: Comments on this proposal should be received on or before March 31, 1998.

ADDRESSES: Send or deliver comments to: Mrs. Crystal A. Wilson, U.S. Office of Personnel Management, Nationwide Examining Policy Office, 1900 E Street, NW, Room 2458, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Crystal A. Wilson, (202) 606–1010.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–2274 Filed 1–29–98; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of February 2, 1998.

A closed meeting will be held on Thursday, February 5, 1998, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Unger, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting schedule for Thursday, February 5, 1998, at 10:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: January 27, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–2417 Filed 1–27–98; 4:10 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39569; File No. SR–CHX–97–35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated, Relating to the Failure To Pay Fines for Minor Rule Violations

January 22, 1998.

Pursuant to Section 19(B)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 11, 1997, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change, and on January 14, 1998,[1] filed Amendment No. 1 to such proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change for interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add an interpretation to Article XII, Rule 9 of the Rules to clarify that failure to pay a fine imposed under the Minor Rule Violation Plan ("Plan") shall be deemed

[1] As submitted on December 11, 1997, this filing did not adequately describe the terms of the proposed rule change. The Commission requested that the Exchange amend this filing. This renders the filing effective on January 14, 1998.

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to be a waiver by the registered person of the right to a disciplinary proceeding or any right to review or appeal such fine. The text of the proposed rule change is below. Proposed new language is in italics.

Article XII, Rule 9

Interpretations and Policies

.01 With respect to subsection (d), a failure to pay a fine imposed pursuant to this Rule by the time it is due, without timely contesting the action upon which such fine was based pursuant to subsection (e), shall be deemed a waiver by the person against whom the fine is imposed of such person's right to a disciplinary proceeding under Article XII and any right to review or appeal.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and statutory basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify a provision of the Exchange's Plan relating to failure to pay or contest a fine imposed under the Plan. The Exchange adopted its Plan, Article XII, Rule 9 on May 30, 1996. The Exchange may impose a fine, not to exceed $2,500, for any violation of a rule under the Plan.[2] The Plan establishes procedures for imposing fines if the Exchange determines that a member, member organization, associated person, or registered or non-registered employee of a member or member organization (collectively "Member") has violated a rule under the Plan.[3] A Member is provided notice of a violation under the Plan and is provided not less than 15 days to make payment or to contest the Exchange's determination of violation.[4] A Member, upon payment of an assessed fine, waives the right to contest the Exchange's determination.[5] A Member, however, has the right to contest the Exchange's determination before payment is due, at which point the matter becomes a "Disciplinary Proceeding."[6]

The Exchange proposes to add an interpretation that would make it clear that failure to pay an assessed fine for a Plan violation when it becomes due and payable does not thereby extend the time allowed for a member to contest the determination. As with the failure to pay any debt, the Exchange may proceed with disciplinary action (including, but not limited to, suspension) pursuant to Article XIV, Rule 13 against any Member that fails to pay a fine, when due, imposed under the Plan.

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and , in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–97–35 and should be submitted by February 20, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–2290 Filed 1–29–98; 8:45 am]

BILLING CODE 8010–01–M

[2] See CHX Article XII, Rule 9(b) for a list of the Exchange rules and policies that are subject to the Plan.

[3] CHX Article XII Rule 9(b).

[4] CHX Article XII Rule 9(c).

[5] CHX Article XII Rule 9(d).

[6] CHX Article XII Rule 9(e).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Information Collection Activities: Proposed Collection Requests and Comment Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), as well as information collection packages submitted to OMB for clearance, in compliance with PL. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

I. The information collection(s) listed below require(s) extension(s) of the current OMB approval(s) or are proposed new collection(s):

1. Government Pension Questionnaire—0960–0160.—The Social Security Act and Regulations provide that an individual receiving spouse's benefits and concurrently receiving a Government pension, based on the individual's own earnings, may have the Social Security benefit amount reduced by two-thirds of the pension amount. The data collected on Form SSA–3885 is used by the Social Security Administration (SSA) to determine if the individual's Social Security benefit will be reduced, the amount of reduction, the effective date of the reduction and if one of the exceptions in 20 CFR 404.408a applies. The respondents are individuals who are receiving (or will receive) Social Security spouse's benefits and also receive their own Government pension.

Number of Respondents: 76,000.
Frequency of Response: 1.
Average Burden Per Response: 12.5 minutes.
Estimated Annual Burden: 15,833 hours.

2. Telephone Replacement Card Interview Script—0960–0570. SSA will conduct a pilot study by telephone to obtain information from individuals who need a duplicate Social Security Number (SSN) card. The information collected will be used to properly identify an individual prior to releasing a replacement SSN card, thus eliminating the need for the respondent to take or mail his/her identity documents to a Social Security office. The information provided, which should be known by the true Social Security number holder, will be compared to information available in our current electronic systems. The respondents are U.S. Citizens applying for a replacement SSN card.

Number of Respondents: 100,000.
Frequency of Response: 1.
Average Burden Per Response: 4 minutes.
Estimated Average Burden: 6,667 hours.

3. Reconsideration Report for Disability Cessation— 0960–0350. Form SSA–782-BK will be used by claimants and SSA field offices to document new developments on the claimant's condition (as perceived by the claimant), since the prior continuing disability interview was conducted. The form will also be used by the SSA interviewer to provide his/her observations of the claimant. The respondents are claimants for Old-Age, Survivors and Disability Insurance and Supplemental Security Income, who file a Request for Reconsideration—Disability Cessation.

Number of Respondents: 100,000.
Frequency of Response: 1.
Average Burden Per Response: 30 minutes.
Estimated Average Burden: 50,000 hours.

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the Agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

II. The information collection(s) listed below have been submitted to OMB:

1. Request to be Selected as Payee—0960–0014. The information collected on Form SSA–11–BK is used by SSA to determine the proper payee for a Social Security beneficiary, and it is designed to aid in the investigation of a payee applicant. The form will establish the applicant's relationship to the beneficiary, the justification, the concern for the beneficiary and the manner in which the benefits will be used. The respondents are applicants for selection as representative payee for Old-Age, Survivors and Disability Insurance (OASDI), Supplemental Security Income (SSI) and Black Lung benefits.

Number of Respondents: 1,709,657.
Frequency of Response: 1.
Average Burden Per Response: 10.5 minutes.
Estimated Annual Burden: 299,190 hours.

2. Application for Benefits Under the Federal Mine Safety and Health Act of 1977, as Amended; (Widow's Claim, Child's Claim and Dependent's Claim)—0960–0118.

Sections 402(g) and 412(a) of the Federal Mine Safety and Health Act provide that those widows, surviving children, and dependent parents, brothers or sisters who are not currently receiving benefits on the deceased miner's account must file the appropriate application within 6 months of the deceased miner's death, using Forms SSA–47, 48 and 49. This information is used by SSA to determine eligibility for benefits. The respondents are Black Lung widows, surviving children and dependents (parents, brothers or sisters) who were not currently receiving Black Lung benefits on the Deceased Miner's Account.

Number of Respondents: 1,800.
Frequency of Response: 1.
Average Burden Per Response: 11 minutes.
Estimated Annual Burden: 330 hours.

3. Work History Report—0960–0552. Form SSA–3369–BK is used by the State Disability Determination Services (DDS) to determine disability and to record information about the claimant's work history during the past 15 years. The respondents are claimants who live in Virginia and are applying for OASDI and SSI benefits.

Number of Respondents: 32,000.
Frequency of Response: 1.
Average Burden Per Response: 30 minutes.
Estimated Annual Burden: 16,000 hours.

4. Disability Report-Child—0960–0504. Form SSA–3820–BK is used by the State DDSs to record claimants' allegations and sources of evidence in determining eligibility for children filing for SSI disability benefits. The respondents are SSI claimants who live in Virginia and are applying for disabled child's benefits.

Number of Respondents: 10,900.
Frequency of Response: 1.
Average Burden Per Response: 40 minutes.
Estimated Annual Burden: 7,267 hours.

5. Work Incapacity and Reintegration Study—0960–0543. The purpose of this study is to identify those incentives and interventions that are most successful in assisting persons who are disabled due to a back condition to return to work. The information collected will be used primarily to complete a cross-national analysis of this issue. Data will also be gathered on subjects of particular importance in the U.S. The findings will provide policy makers with information that will be highly useful in establishing disability policy. The respondents are persons entitled to Social Security Disability Insurance, Supplemental Security Income or State Temporary Disability Insurance benefits due to a back condition.

Number of Respondents: 700.
Frequency of Response: 1.
Average Burden Per Response: 1 hour.
Estimated Annual Burden: 700 hours.

Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB)

Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503,

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(SSA)

Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4125 or write to him at the address listed above.

Date: January 22, 1998.

Nicholas E. Tagliareni,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 98–2199 Filed 1–29–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice 2657

Bureau for International Narcotics and Law Enforcement Affairs; Anti-Crime Training and Technical Assistance Program (ACTTA)

AGENCY: Office of Europe, NIS, and Training; Bureau for International Narcotics and Law Enforcement Affairs, State.

ACTION: Notice.

SUMMARY: State Department's Bureau for International Narcotics and Law Enforcement Affairs (INL) developed the Anti-Crime Training and Technical Assistance Program (ACTTA) in 1994 to bring U.S. Federal law enforcement agencies together to provide training and technical assistance in consultation with their counterparts in Russia, the NIS, and Eastern/Central Europe. Training continues to focus on combating international organized crime, financial crimes, and narcotics trafficking. The goal of the program is to increase professionalism and develop the technical capabilities of law enforcement institutions to combat organized crime and to assure that through international law enforcement cooperation, U.S. agencies and their foreign counterparts succeed in intercepting the movement of transnational organized criminal elements into the U.S.

The ACTTA program is being expanded to include the participation of non-Federal agencies (e.g., universities, state/local government agencies, private non-profit organizations, etc.) in the delivery of law enforcement training and technical assistance to Russia, and the Newly Independent States (NIS). This non-Federal component of the ACTTA program has a timeframe of 1998–1999.

DATES: Strict deadlines for submission to the FY 1998 process are: Letters of Intent must be received no later than Friday, February 27, 1998. Letters of Intent (LOI) are mandatory; full proposals will not be reviewed unless they are requested following the LOI review process. Projects deemed unsuitable during LOI review will not be encouraged to submit full proposals. Full proposals must be received at INL no later than Friday, April 10, 1998. Applicants who have not received a response to their letter of intent by Friday, March 13, 1998 should contact Linda Gower at 202–776–8774. We anticipate that review of full proposals will occur during late April 1998 and funding should begin during the spring of 1998 for most approved projects. July 1, 1998 should be used as the proposed start date on proposals, unless otherwise directed by a program manager. Applicants should be notified of their status within 6 months. All proposals must be submitted in accordance with the guidelines below. Failure to heed these guidelines may result in proposals being returned without review.

ADDRESSES: Propsals may be submitted to: U.S. Department of State, Bureau of International Narcotics and Law Enforcement Affairs, SA–44 South, Room 105, Washington, DC 20520, Attn: Linda Gower.

FOR FURTHER INFORMATION CONTACT: Linda Gower at above address, TEL: 202–776–8774, FAX: 202–776–8775.

SUPPLEMENTARY INFORMATION:

Funding Availability

This Program Announcement is for projects to be conducted by agencies/programs outside the Federal government, over a period of up to two years. Actual funding levels will depend upon the final FY 1998 budget appropriations, current plans are for up to a total of $5.0 million to be available for new (or renewing) ACTTA awards. The funding instrument for extramural awards will be a grant. Funding for non-U.S. institutions and contractual arrangements for services and products for delivery to INL are not available under this announcement. Matching share, though encouraged, is not required by this program.

Program Authority

Authority: Section 635(b) of the Foreign Assistance Act, as amended.

Program Objectives

The goal of the ACTTA program is to increase the technical capabilities of foreign country law enforcement institutions to control organized crime, combat corruption, institute democratic practices, and to assure that through international law enforcement cooperation, U.S. agencies succeed in intercepting the movement of transnational organized criminal elements into the U.S. and Eastern/Central Europe.

The ACTTA program has been designed to generate assistance to foreign governments which will complement that training and assistance provided by Federal agencies. All training and assistance of the ACTTA program should be focused on city or local police forces.

The program objectives of the ACTTA program are: (1) Combat the growing threat to U.S. national security posed by the broad range of organized crime activities, (2) help emerging democracies strengthen their national and law enforcement institutions to counter illegal criminal activities, (3) help emerging democracies develop laws and prosecutorial frameworks to counter organized crime activities, and (4) provide foreign law enforcement institutions with the skills to detect, arrest, and prosecute major transnational criminal offenders.

Program Priorities

The primary focus of this program is concentrated in Russia and the Newly Independent States.

All training conducted under this program must utilize a "training-of-trainers" format.

The FY 1998 ACTTA Program Announcement invites training and technical assistance program proposals in the following areas:

(1) Community policing methods,

(2) Curriculum development for national police training academies,

(3) Domestic violence/violence against women and children,

(4) Program evaluations (process and impact) of USG-funded international law enforcement training academies,

(5) Combating organized crime, and

(6) Anti-corruption measures.

Eligibility

Extramural eligibility is limited to non-Federal agencies and organizations, and is encouraged with the objective of developing a strong partnership with the state/local law enforcement community. Non-law enforcement proposers are urged to seek collaboration with state/local law enforcement institutions. State and local governments, universities, and non-profit organizations are included among entities for funding under this announcement. Funding for non-U.S. institutions is not available under this announcement.

Letters of Intent

Letters of Intent (LOI): (1) Letters should be no more than two pages in length and include the name and institution of project director, a statement of the problem, brief summary of work to be completed, and approximate cost of project. (2) Facsimile is acceptable for letters of intent only. (3) Letters of Intent are mandatory; full proposals will not be reviewed unless they are requested following the LOI review process. (4) Projects deemed unsuitable during LOI review will not be encouraged to submit full proposals.

Evaluation Criteria

Consideration for financial assistance will be given to those proposals which address one or more of the Program Priorities identified above and meet the following evaluation criteria:

(1) Relevance (20%): Importance and relevance to the goal and objectives of the ACTTA program identified above.

(2) Methodology (25%): Adequacy of the proposed approach and activities, including development of relevant training curricular, training methods proposed, evaluation methodology (for training academy evaluation proposals only), project milestones, and final products.

(3) Readiness (25%): Relevant history and experience in conducting program evaluations (for training academy evaluation proposals only) or training/technical assistance in the program priority areas identified above, strength of proposed training/technical assistance or evaluation teams, past performance record of proposers.

(4) Linkages (15%): Connections to existing law enforcement agencies in Russia and the NIS, in addition to previous training or related assistance experience in these countries.

(5) Costs (15%): Adequacy/efficiency of the proposed resources; appropriate share of total available resources; prospects for joint funding.

Selection Procedures

All proposals will be evaluated and ranked in accordance with the assigned weights of the above evaluation criteria by independent peer panel review composed of INL and other Federal USG agency law enforcement experts. Their recommendations and evaluations will be considered by the program managers in final selections. Those ranked by the panel and program as not recommended for funding will not be given further consideration and will be notified of non-selection. For the proposals rated for possible funding, the program managers; will: (a) Ascertain which proposals meet the objectives, fit the criteria posted, and do not duplicate other projects that are currently funded by INL, other USG agencies or foreign governments, or international organizations (note: proposals or elements that duplicate existing activities of USG agencies will not receive awards); (b) select the proposals to be funded; (c) determine the total duration of funding for each proposal; and (d) determine the amount of funds available for each proposal.

Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding.

Proposal Submission

The guidelines for proposal preparation provided below are mandatory. Failure to heed these guidelines may result in proposals being returned without review.

(a) Full Proposals

(1) Proposals submitted to INL must include the original and two unbound copies of the proposal. (2) Applicants are not required to submit more than 3 copies of the proposal, however, the normal review process requires 5 copies. Applicants are encouraged to submit sufficient proposal copies for the full review process if they wish all reviewers to receive color, unusually sized (not 8.5" × 11"), or otherwise unusual materials submitted as part of the proposal. Only three copies of the Federally required forms are needed. (3) Proposals must be limited to 30 pages (numbered), including budget, personnel vitae, and all appendices, and should be limited to funding requests for one to two year duration. Appended information may not be used to circumvent the page length limit. Federally mandated forms are not included within the page count. (4) Proposals should be sent to INL at the above address. (5) Facsimile transmissions of full proposals will not be accepted.

(b) Required Elements

(1) Signed title page: The title page should be signed by the Project Director (PD) and the institutional representative and should clearly indicate which project area is being addressed. The PD and insitutional representative should be identified by full name, title, organization, telephone number and address. The total amount of Federal funds being requested should be listed for each budget period.

(2) Abstract: An abstract must be included and should contain an introduction of the problem, rationale and a brief summary of work to be completed. The abstract should appear as a separate page, headed with the proposal title, insitution(s) name, investigator(s), total proposed cost and budget period.

(3) Prior training experience: A summary of prior law enforcement raining experience should be described, including training related to program priorities identified above and/or conducted in Russia and the NIS. Reference to each prior training award should include the title, agency, award number, period of award and total award. The section should be a brief summary and should not exceed two pages total.

(4) Statement of work: The proposed project must be completely described, including identification of the problem, project objectives, proposed training methodology, relevance to the goal and objectives of the ACTTA program, and the program priorities listed above. Benefits of the proposed project to U.S. law enforcement efforts should be discussed. A year-by-year summary of proposed work must be included clearly indicating that each year's proposed work is severable and can easily be separated into annual increments of meaningful work. The statement of work, including and excluding figures and other visual materials, must not exceed 15 pages of length.

(5) Budget: Applicants must submit a Standard form 424 (4–92) "Application for Federal Assistance," including a detailed budget using the Standard Form 424a (4–92), "Budget Information—Non-Construction Programs." The form is included in the standard INL application kit. The proposal must include total and annual budgets corresponding with the descriptions provided in the statement of work. Additional text to justify expenses should be included as necessary.

(6) Vitas: Abbreviated curriculum vitae are sought with each proposal. Vitae for each project staff person should not exceed three pages in length.

(c) Other Requirements

(1) Applicants may obtain a standard INL application kit from the Program Office.

Primary Applicant Certification—All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and

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Lobbying." Applicants are also hereby notified of the following:

1. Non procurement Debarment and Suspension—Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension," and the related section of the certification form prescribed above applies;

2. Drug Free Workplace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, Subpart F, "Government Wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. Anti-Lobbying—Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to aplications/bids for grants of more than $100,000; and

4. Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications

(1) Recipients must require applicants/bidders for subgrants or lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and disclosure Form SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to Department of State (DOS). SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOS in accordance with the instructions contained in the award document.

(2) Recipients and subrecipients are subject to all applicable Federal laws and Federal and Department of State policies, regulations, and procedures applicable to Federal financial assistance awards.

(3) Preaward Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been received, there is no obligation to the applicant on the part of Department of State to cover preaward costs.

(4) This program is subject to the requirements of OMB Circular No. A–110, "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," OMB Circular No. A–133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions," and 15 CFR part 24, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," as applicable. Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

(5) All non-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associate with the applicant have been convicted of, or are presently facing criminal charges such as fraud, theft, perjury, or other matters with significantly reflect on the applicant's management, honesty, or financial integrity.

(6) A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(7) No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(i) The delinquent account is paid in full,

(ii) A negotiated repayment schedule is established and at least one payment is received, or

(iii) Other arrangements satisfactory to the Department of State are made.

(8) Buy American-Made Equipment or Products—Applicants are encouraged that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible.

(9) The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct cost dollar amount in the application, whichever is less.

(d) If an application is selected for funding, the Department of State has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of State.

(e) In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin or disability shall be excluded from participation in, denied benefits of or be subjected to discrimination under any program or activity receiving assistance from the INL ACTTA program.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The standard forms have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB approval number 0348–0043, 0348–0044, and 0348–0046.

Classification: This notice has been determined to be not significant for purposes of Executive Order 12866.

Dated: January 20, 1998.

Thomas M. Browne Jr.,

Deputy Director, Office of Europe, NIS, and Training, Bureau for International Narcotics and Law Enforcement Affairs, U.S. Department of State.

[FR Doc. 98–2310 Filed 1–29–98; 8:45 am]

BILLING CODE 4710–17–M

DEPARTMENT OF STATE

[Public Notice 2717]

Advisory Committee on International Economic Policy; Notice of Closed Meeting

The Advisory Committee on International Economic Policy will meet from 9:00–1:00 pm on Thursday, February 5, 1998 in Room 1107, U.S. Department of State, 2201 C Street, NW Washington, DC 20520. The Closed Meeting will be hosted by Assistant Secretary of State for Economic and Business Affairs, Alan Larson.

Pursuant to Section 10(d) of the Federal Advisory Committee Act (FACA) and 5 U.S.C. 552b(c)(1), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(9)(B), it has been determined the meeting will be closed to the public. Matters relative to classified national security information as well as privileged commercial information will be discussed.

For further information, contact Sharon Rogers, ACIEP Secretariat, U.S. Department of State, Bureau of Economic and Business Affairs, Room 6828, Main State, Washington, DC 20520. She may be reached at telephone number (202) 647–5968 or fax number (202) 647–5713.

Dated: January 26, 1998.

Alan Larson,

Assistant Secretary for Economic and Business Affairs.

[FR Doc. 98–2347 Filed 1–29–98; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act 1995 (44 U.S.C. Chapter 35), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) to reinstate the information collection entitled Highway Safety and Improvement Program and Priorities. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published in 62 FR 58767, October 30, 1997.

DATES: Comments must be submitted on or before March 2, 1998.

FOR FURTHER INFORMATION CONTACT: All signed, written comments should refer to the docket number that appears below in this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address from 10:00 a.m. to 5:00 p.m., e.t., Monday through Friday, except Federal holidays.

FOR ADDITIONAL INFORMATION CONTACT: Mr. Kenneth Epstein, Office of Highway Safety, (202) 366–2157, 400 7th Street, SW., Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

SUPPLEMENTARY INFORMATION:

Federal Highway Administration (FHWA)

[FHWA Docket No. 2983]

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Affected Public: The overall annual reporting burden is shared by the 50 States and the District of Columbia.

Title: Highway Safety and Improvement Program and Priorities.

OMB No: 2125–0025.

Abstract: Each year all States and Territories are required to report to the Secretary of Transportation on the progress being made in implementing the Highway Safety Improvement Programs (Rail-Highway Crossings and Hazard Elimination) and the effectiveness of these programs. The Secretary is required to report annually to the Congress on the progress of the safety programs based upon the information reported by the States. The FHWA receives the program information from the States. Numerical data are processed and stored in the computerized Highway Safety Evaluation System. A report is then prepared for Congress providing the required information on the effectiveness of highway safety improvement projects. Congress uses the contents of this report when determining the level of funding for the Highway Safety Improvement Programs and when modifying these programs.

The information collected by the States in the survey of all public roads includes motor vehicle accident data, traffic volume data, and highway inventory data. This information is used by the States to identify hazards and to determine what safety improvements would be cost-effective when mitigating those hazards. Without this process fewer lives would be saved and fewer injuries averted by the Highway Safety Improvement Programs administered by the FHWA.

Estimated Total Annual Burden: The annual reporting burden is estimated to be 11,220 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention FHWA Desk Officer.

Your comments to OMB are best assured of having its full impact if OMB receives them within 30 days of publication. This does not affect the deadline for the public to comment on DOT proposed regulations.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on January 6, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–2301 Filed 1–29–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection(ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collection and their expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published in 62 FR 60117, November 6, 1997.

DATES: Comments must be submitted on or before March 2, 1998.

FOR FURTHER INFORMATION CONTACT: Scott A. Poyer, Chief Economist, Saint Lawrence Seaway Development Corporation, Office of Great Lakes Pilotage, United States Department of Transportation, 400 7th Street SW., Suite 5424, Washington, DC 20590, (800) 785–2779, or Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Suite 5424, Washington, DC 20590, (800) 785–2779.

SUPPLEMENTARY INFORMATION: Saint Lawrence Seaway Development Corporation, DOT.

Title: Great Lakes Pilotage Rate Methodology.

OMB Control Number: 2135–0501.

Type of Request: Extension of a currently approved collection.

Affected Public: Great Lakes Pilot Associations.

Affected Public: The Great Lakes Pilotage Act of 1960 authorizes the Director of Great Lakes Pilotage to

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prescribe a uniform system of accounts and to perform audits and inspections of Great Lakes pilot associations. The Director uses this information to carry out financial oversight of the Great Lakes pilot associations and to set pilotage rates. The specific information to be filed by respondents is set forth in 33 CFR parts 404–407.

Average Annual Burden on Respondents: 18 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention SLSDC Desk Officer.

Comments are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC on January 22, 1997.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–2302 Filed 1–29–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending January 23, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–3356
Date Filed: January 21, 1998
Parties: Members of the International Air Transport Association
Subject: Application of the International Air Transport Association, pursuant to Sections 41308 and 41309 of Title 49 of the U.S.C. Parts 303.03, 303.05 and 303.30(c) of Title 14 of the Code of Federal Regulations, file this petition to request DOT approval and immunity for third parties to participate as technical advisers on two sub-groups: the Data Interchange Sub-Group (DISG) and the BSPC Support Group (BSG).
Docket Number: OST–98–3254
Date Filed: January 21, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC12 NMS–ME 0033 dated December 17, 1997
Mail Vote 901 (Mid Atlantic-Mideast) r1–11
1st Amendment to Mail Vote 901
2nd Amendment to Mail Vote 901
PTC12 NMS–ME 0034 dated December 17, 1997
Mail Vote 902 (South Atlantic-Mideast) r12–22
Amendment to Mail Vote 902
Intended effective date: April 1, 1998
Docket Number: OST–98–3351
Date Filed: January 21, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC23 ME–TC3 0025 dated December 5, 1997
Middle East-TC3 Resos r1–50
Minutes—PTC23 ME–TC3 0029 dated January 16, 1998
Tables—PTC23 ME–TC3 Fares 0010 dated December 9, 1997
Corrections—PTC23 ME–TC3 0027 dated December 19, 1997 PTC23 ME–TC3 Fares dated December 23, 1997
Intended effective date: April 1, 1998
Docket Number: OST–98–3352
Date Filed: January 21, 1998
Parties: Members of the International Air Transport Association
Subject: PTC12 Telex Mail Vote 908
Jordan-U.S. fares r1–7
Intended effective date: April 1, 1998
Docket Number: OST–98–3353
Date Filed: January 21, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC3 Telex Mail Vote 907
Specification of Qingdao-Fukuoka fares
Intended effective date: February 25, 1998
Docket Number: OST–98–3377
Date Filed: January 23, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC12 USA–EUR Fares 0020 dated January 20, 1998
USA–UK add-on fares
Intended effective date: April 1, 1998

Paulette V. Twine,

U.S. D.O.T. Dockets.

[FR Doc. 98–2357 Filed 1–29–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Application for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending January 23, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–98–3363.
Date Filed: January 21, 1998.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 19, 1998.
Description: Application of Airbus Transport International S.N.C. pursuant to 49 U.S.C. Section 41302, Part 212 of the Economic Regulations and Subpart Q of the Procedural Regulations, applies for an initial foreign air carrier permit authorizing it to engage in on-demand foreign charter air transportation of property and mail between a point or points in France and a point or points in the United States of America, via intermediate and beyond points.

Paulette V. Twine,

U.S. D.O.T. Dockets.

[FR Doc. 98–2356 Filed 1–29–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Security of Aircraft and Safety of Passengers Transiting Port-Au-Prince, Haiti

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: The Department has found that Port-Au-Prince International Airport does not maintain and carry out effective security measures. The Department is requiring notice of that finding be given to passengers and posted at airports in accordance with statutory requirements.

FOR FURTHER INFORMATION CONTACT: Peter Bloch, Office of the General Counsel, U. S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590. Telephone (202) 366–9183.

Pursuant to 49 U.S.C. § 44907 D(1), on October 20, 1997, I notified the Haitian government that I had determined that Port-Au-Prince International Airport, Port-Au-Prince, Haiti, did not maintain and carry out effective security measures. 90 days have elapsed since my determination, and I have found that Port-Au-Prince International Airport still does not maintain and carry out effective security measures. My determination is based on Federal Aviation Administration assessments which reveal that security measures used at the airport do not meet the standards established by the International Civil Aviation Organization.

Notice

Pursuant to 49 U.S.C. § 44907 D(1), I have directed that a copy of this notice be published in the **Federal Register**, that my determination be displayed prominently in all U.S. Airports regularly being served by scheduled air carrier operations, and that the news media be notified of my determination. In addition, as a result of this determination, all U.S. and foreign air carriers (and their agents) providing service between the United States and Port-Au-Prince International Airport must provide notice of my determination to any passenger purchasing a ticket for transportation between the United States and Port-Au-Prince International Airport, with such notice to be made by written material included on or with such ticket.

Dated: January 23, 1998.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 98–2385 Filed 1–29–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 98–005]

Agency Information Collection Activities Under OMB Review

AGENCY: Coast Guard, DOT.

ACTION: Notice; request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to request approval of one new Information Collection Request (ICR) and renewal of one ICR. These ICRs include: 1. Recreational Boating Safety Survey and 2. Boating Statistics Questionnaire. Before submitting the ICR package to the Office of Management and Budget (OMB), the U.S. Coast Guard is asking for comments on the collection as described below.

DATES: Comments must be received on or before March 31, 1998.

ADDRESSES: You may mail comments to Commandant (G–SII–2), U.S. Coast Guard Headquarters, Room 6106 (Attn: Barbara Davis), 2100 Second St, SW, Washington, DC 20593–0001, or deliver them to the same address between 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–2326. The comments will become part of this docket and will be available for inspection and copying by appointment at the above address.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, U.S. Coast Guard, Office of Information Management, telephone (202) 267–2326.

SUPPLEMENTARY INFORMATION:

Request for Comments

The U.S. Coast Guard encourages interested persons to submit written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this Notice and the specific ICR to which each comment applies, and give reasons for each comment. The U.S. Coast Guard requests that all comments and attachments be submitted in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed post card or envelope.

Interested persons can receive copies of the complete ICR by contacting Ms. Davis where indicated under **ADDRESSES.**

Information Collection Requests

1. Title: Recreational Boating Safety Survey.

OMB Control No. 2115–New.

Summary: The U.S. Coast Guard has concerns with the number of deaths related to the lack of boating safety education and drownings due to not wearing personal flotation devices (PFDs). A survey has been developed to collect information from participants interested in recreational boating, to help determine whether or not to set Federal requirements for boaters to wear (PFDs) or for vessel operators to attend boating safety training.

Need: Under 33 U.S.C. 4302, the Coast Guard is authorized to issue regulations to establish minimum safety requirements for recreational vessels and to require the carriage or use of associated equipment.

Respondents: Voluntary participants interested in recreational boating.

Frequency: One time.

Burden Estimate: The estimated burden is 2,560 hours.

2. Title: Boating Statistics Questionnaire.

OMB Control No. 2115–0618.

Summary: The U.S. Coast Guard publishes a report, *Boating Statistics*, annually on recreational boating accidents. The report is distributed to approximately 7,000 people. The Coast Guard will conduct a survey to determine customer's information needs and measure their satisfaction with the *Boating Statistics*, report.

Need: Under 46 U.S.C. 6102(b), the Coast Guard is authorized to collect, analyze, and annually publish statistical information on recreational boating accidents.

Respondents: Recreational Boaters, Federal and State Officials, Safety Professional Boating Organizations and Boating Industry Representatives.

Burden Estimate: The estimated burden is 320 hours annually.

Dated: January 22, 1998.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Director of Information and Technology.

[FR Doc. 98–2299 Filed 1–29–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement/Joint Planning Advisory Group

AGENCY: Maritime Administration, DOT.

ACTION: Notice of meeting.

The Maritime Administration and United States Transportation Command announce a meeting of the Voluntary Intermodal Sealift Agreement (VISA) Joint Planning Advisory Group (JPAG) to: (1) review final VISA concepts of operations developed to date; (2) develop draft carrier commitments for VISA Stages I and II; (3) review VISA activation procedures; and (4) begin preparations for the Turbo Challenge JPAG sessions scheduled for April and June 1998. Due to the nature of the information and the need for a government-issued security clearance, participation at the meeting will be by

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invitation only. The meeting will be held in Room P1–1303, Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590 on February 10, 1998 from 12:30 p.m. to 4:15 p.m., on February 11, 1998 from 8:00 a.m. to 4:30 p.m. and Thursday, February 12, from 8:00 a.m. to 11:30 a.m. A synopsis of the meeting will be published following the meeting.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Raymond R. Barberesi, Director, Office of Sealift Support, (202) 366–2323.

By Order of the Maritime Administrator.

Dated: January 26, 1998.

Joel C. Richard,

Secretary.

[FR Doc. 98–2303 Filed 1–29–98; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–97–3176]

National Survey of Pedestrian and Bicyclist Attitudes, Knowledge and Behavior

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice and request for comments on data collection.

SUMMARY: The purpose for conducting this survey is to assist the agency in reducing injuries, fatalities, and economic loss resulting from motor vehicle crashes with pedestrians and bicyclists; and to support the Department of Transportation (DOT) Secretarial Initiative for Pedestrian and Bicycle Safety. More than 5,000 pedestrians and 800 bicyclists are killed each year in traffic crashes, and more than 140,000 are injured. Developing effective strategies to address this problem requires up-to-date information on such factors as exposure, awareness, safety practices, physical obstacles to safety, and perceptions of risk. By collecting these data, NHTSA will be able to determine where efforts should be targeted and where new strategies may be needed. In addition, the Secretary of Transportation has mobilized a national effort to promote walking and bicycling as safe, efficient, and healthy ways to travel. The survey will collect information to help assess progress in meeting the Secretarial Initiative, including the goal to double the national percentage of transportation trips made by bicycling and walking.

DATES: Written comments must be submitted on or before March 31, 1998.

ADDRESSES: Direct all written comments to U.S. Department of Transportation Dockets, 400 Seventh Street, S.W., Plaza 401, Washington, D.C. 20590. Docket # NHTSA–97–3176.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Block, Contracting Officer's Technical Representative, Office of Research and Traffic Records (NTS–31), National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Room 6240, Washington, D.C., 20590.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Highway Traffic Safety Administration (NHTSA) was established to reduce the mounting number of deaths, injuries and economic losses resulting from motor vehicle-related crashes on the Nation's highways. As part of this statutory mandate, NHTSA is authorized to conduct research as a foundation for the development of motor vehicle safety standards and traffic safety programs.

While not as much in the public eye as other traffic safety problems, motor vehicle crashes involving pedestrians and bicyclists exact a heavy toll. Pedestrians and bicyclists account for 15 percent of all traffic fatalities, and more than 140,000 injuries each year. Yet there are simple things that people can do to reduce these risks, provided that they are sufficiently aware and willing to take the appropriate steps. For example, a study published in the Journal of the American Medical Association found that the universal use of helmets by all bicyclists could have prevented as many as 2,500 deaths and 757,000 head injuries between 1984 and 1988. Despite this, only 18 percent of bicyclists age 16 and older usually wear a helmet when they ride. To effectively address this gap, a clear picture of bicyclists' knowledge of the effectiveness of helmet use, and the attitudes that prevent helmet use, is needed.

Efforts to address the problem have included training, public information and education, legislation, enforcement, and engineering. However, there is an absence of national data to tell us whether these efforts need to be modified or whether new types of interventions are needed. More specifically, there is a lack of data concerning the public's exposure to risk as pedestrians and bicyclists, their awareness of correct pedestrian and bicyclist safety practices, their perceptions of the responsibilities of other roadway users, and their perceptions of risks. Without this information, safety professionals are left with inadequate tools for determining if there are critical deficits in education or training that should be addressed, or whether interventions are efficiently targeted to where they are most needed. This in turn would pose severe constraints on the ability to meet the U.S. Secretary of Transportation's goal of reducing by 10 percent the number of injuries and fatalities occurring to bicyclists and pedestrians.

Besides reducing pedestrian/bicyclist injuries and fatalities, the U.S. Secretary of Transportation has called for a doubling in the national percentage of transportation trips made by bicycling and walking. Both goals are part of the DOT Secretarial Initiative for Pedestrian and Bicycle Safety. This is a national effort to promote walking and bicycling as safe, efficient, and healthy ways to travel. It involves partnering with numerous groups to foster the development of a more balanced transportation system. Yet while the Initiative calls for an increase in pedestrian and bicyclist activities, there are no exposure data to measure its progress. Moreover, there is a lack of information on the obstacles to walking and bicycling that would have to be addressed to meet the Secretarial goal; as well as information on how persons decide whether or not to walk, or to bike.

The proposed survey will collect data to meet the informational needs described above. The survey instrument will include items to measure exposure, knowledge, risk perception, community characteristics, and decision factors. The survey data will be used to assess the adequacy of present strategies to increase pedestrian and bicyclist safety, and to help guide policies aimed at encouraging these modes of transportation.

II. Method of Data Collection

The survey will be conducted by telephone among a national probability sample of 4,200 adults age 16 and older. Participation by respondents is voluntary. The survey instrument will contain questions appropriate to all members of the sample, as well as questions appropriate only to subgroups of pedestrians (as defined within the study) and bicyclists. The overall interview length for a respondent will average 20 minutes. The interviewers will use computer assisted telephone interviewing to reduce the interview length and minimize recording errors. A Spanish-language translation as well as multilingual interviewers will be used to minimize language barriers to participation. The survey will be anonymous and confidential.

III. Use of Findings

The findings of this study will assist NHTSA in addressing the pedestrian and bicyclist crash problem, and in formulating programs and recommendations to Congress. NHTSA will use the findings to: (a) Design more effective countermeasure programs; (b) develop policy recommendations that support increases in bicycling and walking; and (c) provide for measurement of the effectiveness of these efforts. The findings will also be used directly by State and local highway safety agencies in the development and implementation of effective programs to increase the levels of bicycling and walking among the public while simultaneously reducing the number of crash-related deaths and injuries.

IV. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular Submission.

Affected Public: The United States non-institutionalized population age 16 and older living in households with telephone service.

Estimated Number of Respondents: 4,200.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Burden: 1,400 hours.

Estimated Total Cost: $51.90 per survey respondent.

V. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including the hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for approval by the Office of Management and Budget (OMB) of this information collection. Copies of all comments will be placed in Docket NHTSA–97–3176, in the U.S. Department of Transportation Dockets, 400 7th Street, SW., Plaza 401, Washington, DC 20590, and will become a matter of public record.

Issued on: January 27, 1998.

James Nichols,

Acting Associate Administrator for Traffic Safety Programs.

[FR Doc. 98–2375 Filed 1–29–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33543]

Southern Pacific Transportation Company—Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP) has agreed to grant overhead trackage rights to Southern Pacific Transportation Company (SP) over UP's tracks known as the Los Angeles Subdivision from milepost 158.9 near Daggett to milepost 162.0 near Yermo, a distance of 3.1 miles in the vicinity of Los Angeles, CA. [1]

The transaction was expected to be consummated on or as soon as possible after January 21, 1998, the effective date of the exemption.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C.10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33543, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Joseph D. Anthofer, General Attorney, 1416 Dodge Street, #830, Omaha, NE 19381–0796.

Decided: January 22, 1998.

[1] SP states that it filed this notice of exemption to extend the trackage rights it received from UP in STB Finance Docket No. 33129, effective September 26, 1996 (STB served Oct. 8, 1996), which included, among others, trackage rights over UP's Los Angeles Subdivision.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33544]

Union Pacific Railroad Company; Trackage Rights Exemption; Southern Pacific Transportation Company

Southern Pacific Transportation Company (SP) has agreed to grant overhead trackage rights to Union Pacific Railroad Company over SP's Del Rio Subdivision from milepost 210.70, near Tower 105, to milepost 219.33, near Withers, in the vicinity of San Antonio, a distance of 8.63 miles in Bexar County, TX.

The earliest the transaction can be consummated is January 28, 1997, the effective date of the exemption (7 days after the notice of exemption was filed).

The purpose of the trackage rights is to permit UP to improve the efficiency of its train operations and to assist in avoiding rail traffic congestion in the vicinity of San Antonio.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33544, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Joseph D. Anthofer, Esq., 1416 Dodge Street, #830, Omaha, NE 68179.

Decided: January 23, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–2366 Filed 1–29–98; 8:45 am]

BILLING CODE 4915–00–P

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–2365 Filed 1–29–98; 8:45 am]

BILLING CODE 4915–00–P

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Federal Firearms and Ammunition Excise Tax Deposit.

DATES: Written comments should be received on or before March 31, 1998 to be assured of consideration.

ADDRESS: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Teri Byers, Tax Compliance Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8220.

SUPPLEMENTARY INFORMATION:

Title: Federal Firearms and Ammunition Excise Tax.

OMB Number: 1512–0509.

Form Number: ATF F 5300.27.

Abstract: A Federal excise tax is imposed by 26 U.S.C. 4181 on the sale of pistols and revolvers, other firearms, shells and cartridges sold by firearms manufacturers, producers, and importers. Sections 6001, 6301, and 6302 of Title 26 U.S.C. establish the authority for a deposit of excise tax to be made. The information on the form identifies the taxpayer and establishes the taxpayer's deposit.

Current Actions: The only change to this information collection is a decrease in burden hours due to a decrease of the number of respondents.

Type of Review: Extension.

Affected Public: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 283.

Estimated Time Per Respondent: 9 minutes.

Estimated Total Annual Burden Hours: 770.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 26, 1998.

John W. Magaw,

Director.

[FR Doc. 98–2291 Filed 1–29–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Tax Information Authorization.

DATES: Written comments should be received on or before March 31, 1998 to be assured of consideration.

ADDRESS: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Teri Byers, Tax Compliance Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8220.

SUPPLEMENTARY INFORMATION:

Title: Tax Information Authorization.

OMB Number: 1512–0033.

Form Number: ATF F 1534A (5000.19).

Abstract: ATF F 1534A (5000.19) is required by ATF to be filed when a respondent's representative, not having a power of attorney, wishes to obtain confidential information regarding the respondent. After proper completion of the form, information can be released to the representative.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 50.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 26, 1998.

John W. Magaw,

Director.

[FR Doc. 98–2292 Filed 1–29–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application For License or Permit Under 18 U.S.C. Chapter 40, Explosives.

DATES: Written comments should be received on or before March 31, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Gail H. Davis, Firearms, Explosives and Arson Programs Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8053.

SUPPLEMENTARY INFORMATION:

Title: Application For License or Permit Under 18 U.S.C. Chapter 40, Explosives.

OMB Number: 1512–0182.

Form Number: ATF F 5400.13/5400.16.

Abstract: Chapter 40, Title 18, U.S.C. provides that any person engaged in the business of explosive materials as a dealer, manufacturer, or importer shall be licensed. The information collected on the form is used to determine if the applicant is qualified to be a licensee or permittee under the provisions of the statute. There is no record retention requirement for the applicant.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, individuals or households, not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 2,100.

Estimated Time Per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 6,200.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 26, 1998.

John W. Magaw,

Director.

[FR Doc. 98–2293 Filed 1–29–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Inventories: Licensed Explosives Importers, Manufacturers, Dealers and Permitees.

DATES: Written comments should be received on or before March 31, 1998 to be assured of consideration.

ADDRESS: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Dottie Morales, Explosives and Arson Programs Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8051.

SUPPLEMENTARY INFORMATION:

Title: Inventories: Licensed Explosives Importers, Manufactures, Dealers, and Permittees.

OMB Number: 1512–0371.

Recordkeeping Requirement ID Number: ATF REC 5400/1.

Abstract: These records show the explosive material inventories of those persons engaged in various activities within the explosives industry and are used by the government as initial figures from which an audit trial can be developed during the course of a compliance inspection or criminal investigation. Licensees and permittees shall keep records on the business premises for five years from the date a transaction occurs or until discontinuance of business or operations by licenses or permittee.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 13,106.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 26,212.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the

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collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 26, 1998.

John W. Magaw,

Director.

[FR Doc. 98–2294 Filed 1–29–98; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning its proposed renewal without change of an information collection titled Uniform Form For Registration and Amendment to Registration as a Transfer Agent—Form TA–1.

DATES: Written comments should be submitted by March 31, 1998.

ADDRESSES: Direct all written comments to the Communications Division, Attention: 1557–0124, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874–5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection may be obtained by contacting Jessie Gates, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0124), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Title: Uniform Form for Registration and Amendment to Registration as a Transfer Agent—Form TA–1.

OMB Number: 1557–0124.

Form Number: TA–1.

Abstract: The OCC is requesting comment on its proposed renewal without change of the information collection titled Uniform Form for Registration and Amendment to Registration as a Transfer Agent—Form TA–1. Section 17A(c) of the Securities Exchange Act of 1934 (Act), as amended by the Securities Act Amendments of 1975, provides that all those authorized to transfer securities registered under Section 12 of the Act (transfer agents) shall register by filing with the appropriate regulatory agency an application for registration in such form and containing such information and documents as such appropriate regulatory agency may prescribe to be necessary or appropriate in furtherance of the purposes of this section. Form TA–1 was developed by the OCC, Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve to satisfy this statutory requirement. National bank transfer agents use Form TA–1 to register or amend registration as transfer agents. The OCC uses the information to determine whether to allow, deny, accelerate, or postpone an application. An amendment to Form TA–1 must be filed with the OCC within sixty calendar days following the date on which any information reported on Form TA–1 becomes inaccurate, misleading or incomplete. The OCC also uses the data to more effectively schedule and plan transfer agent examinations. Amendments to Form TA–1 are used by the OCC to schedule and plan examinations. The Securities and Exchange Commission maintains complete files on the registration data of all transfer agents registered pursuant to the Act. It utilizes the data to identify transfer agents and to facilitate development of rules and standards applicable to all registered transfer agents.

Type of Review: Renewal of OMB approval.

Affected Public: Businesses or other for-profit.

Number of Respondents: 105.

Total Annual Responses: 105.

Frequency of Response: Occasional.

Total Annual Burden: 46 burden hours.

Comments

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 23, 1998.

Karen Solomon,

Director, Legislative and Regulatory Activities Division.

[FR Doc. 98–2287 Filed 1–29–98; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning its proposed renewal without change of an information collection titled Community Reinvestment Act Regulation—12 CFR part 25.

DATES: Written comments should be submitted by March 31, 1998.

ADDRESSES: Direct all written comments to the Communications Division, Attention: 1557–0160, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874–5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection may be obtained by contacting Jessie Gates, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0160), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Title: Community Reinvestment Act Regulation—12 CFR Part 25.

OMB Number: 1557–0160.

Form Number: None.

Abstract: The OCC is requesting comment on its proposed renewal without change of the information collections contained in 12 CFR Part 25. The OCC uses this information to assess each national bank's record of meeting the credit needs of its community, as required by the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*). The Act requires the OCC to assess and evaluate the efforts of national banks to help meet the credit needs of their communities, including low- and moderate-income neighborhoods, consistent with safe and sound operations. These records are used in evaluating applications for mergers, branches, and other corporate activities. The collections of information are found in 12 CFR 25.25, 25.27, 25.29, 25.41, 25.42, and 25.43. The OCC uses the records in the examination process to evaluate a bank's CRA performance. The public uses the information to assess the bank's CRA performance and to participate meaningfully in the application process.

Type of Review: Renewal, without change, of OMB approval.

Affected Public: Businesses or other for-profit.

Number of Respondents: 3,076.

Total Annual Responses: 3,076.

Frequency of Response: Occasional.

Total Annual Burden: 57,044 burden hours.

Comments

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 23, 1998.

Karen Solomon,

Director, Legislative and Regulatory Activities Division.

[FR Doc. 98–2288 Filed 1–29–98; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–6: OTS Nos. 05056 and H–1958]

First Savings Brancshares, MHC, Woodbridge, New Jersey; Approval of Conversion Application

Notice is hereby given that on January 16, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Savings Bancshares, MHC, Woodbridge, New Jersey, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: January 22, 1998.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98–1897 Filed 1–29–98; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service Scientific Merit Review Board, Notice of Meeting

The Department of Veterans Affairs gives notice under Pub. L. 92–463 (Federal Advisory Committee Act) as amended, by section 5(c) of Pub. L. 94–409 that a meeting of the Rehabilitation Research and Development Service Scientific Merit Review Board will be held at the Westin City Hotel, 1400 "M" Street NW., Washington, DC on January 27 through January 29, 1998.

The session on January 27, 1998, is scheduled to begin at 6:30 p.m. and end at 9:30 p.m. The sessions on January 28 and January 29, 1998, are scheduled to begin at 8 a.m. and end at 5 p.m. The purpose of the meeting is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meeting will be open to the public up to the seating capacity of the room for the January 27 session for the discussion of administrative matters, the general status of the program, and the administrative details of the review process. On January 28–29, 1998 the meeting is closed during which the Board will be reviewing research and development applications.

This review, involves oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which could lead to the loss of these projects to third parties and thereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 552b (c)(6), and (c)(9)(B) and the determination of the Secretary of the Department of Veterans Affairs under Sections 10(d) of Pub. L. 92–463 as amended by Section 5(c) of Pub. L. 94–409.

Due to the limited seating capacity of the room, those who plan to attend the open session should write to Ms. Victoria Mongiardo, Program Analyst, Rehabilitation Research and Development Service, Department of Veterans Affairs, 103 South Gay Street, Baltimore, Maryland 21202 (Phone: 410–962–2563) at least five days before the meeting.

Dated: January 8, 1998.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98–2314 Filed 1–29–98; 8:45 am]

BILLING CODE 8320–01–M

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Corrections

Federal Register
Vol. 63, No. 20
Friday, January 30, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Parts 721 and 722

Removal of Rules on Standards of Conduct and Reporting Procedures on Defense Related Employment

Correction

Final rule document 98-1922 was inadvertently published in the Proposed Rules section of the issue of Tuesday, January 27, 1998 beginning on page 3860. It should have appeared in the Rules and Regulations section.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-110-000]

Garden Banks Gas Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

Correction

In notice document 98–1877 appearing on page 3886, in the issue of Tuesday January 27, 1998, make the following correction:

On page 3886, in the second column, the Docket No. should be as set forth above.

BILLING CODE 1505-01-D

Friday
January 30, 1998

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1000 et al.
Milk in the New England and Other Marketing Areas; Opportunity To File Comments, Including Written Exceptions, on Proposed Amendments to Marketing Agreements and Orders; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1002, 1004, 1005, 1006, 1007, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1106, 1124, 1126, 1131, 1134, 1135, 1137, 1138 and 1139

[DA–97–12]

Milk in the New England and Other Marketing Areas; Proposed Rule and Opportunity To File Comments, Including Written Exceptions, on Proposed Amendments to Marketing Agreements and Orders

7 CFR part	Marketing area
1000	General Provisions of Federal Milk Marketing Orders.
1001	New England.
1002	New York-New Jersey.
1004	Middle Atlantic.
1005	Carolina.
1006	Upper Florida.
1007	Southeast.
1012	Tampa Bay.
1013	Southeastern Florida.
1030	Chicago Regional.
1032	Southern Illinois-Eastern Missouri.
1033	Ohio Valley.
1036	Eastern Ohio-Western Pennsylvania.
1040	Southern Michigan.
1044	Michigan Upper Peninsula.
1046	Louisville-Lexington-Evansville.
1049	Indiana.
1050	Central Illinois.
1064	Greater Kansas City.
1065	Nebraska-Western Iowa.
1068	Upper Midwest.
1076	Eastern South Dakota.
1079	Iowa.
1106	Southwest Plains.
1124	Pacific Northwest.
1126	Texas.
1131	Central Arizona.
1134	Western Colorado.
1135	Southwestern Idaho-Eastern Oregon.
1137	Eastern Colorado.
1138	New Mexico-West Texas.
1139	Great Basin.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule consolidates the current 31 Federal milk marketing orders into 11 orders. This consolidation is proposed to comply with the 1996 Farm Bill which mandates that the current Federal milk orders be consolidated into between 10 to 14 orders by April 4, 1999. This proposed rule also sets forth two options for consideration as a replacement for the Class I price structure and proposes replacing the basic formula price with a multiple component pricing system. This proposed rule also establishes a new Class IV which would include milk used to produce nonfat dry milk, butter, and other dry milk powders; reclassifies eggnog and cream cheese; and addresses other minor classification changes. Part 1000 is proposed to be expanded to include sections that are identical to all of the consolidated orders to assist in simplifying and streamlining the orders.

DATES: Comments must be submitted on or before March 31, 1998.

ADDRESSES: Comments (two copies) should be submitted to Richard M. McKee, Deputy Administrator, Dairy Programs, USDA/AMS, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456. Comments also may be sent by fax to (202) 690–3410. Additionally, comments may be submitted via E-mail to: Milk_Order_Reform@usda.gov.

All comments should be identified with the docket number found in brackets in the heading of this document. To facilitate the review process, please state the particular topic(s) addressed, from the following list, at the beginning of the comment: consolidation, basic formula price, Class I price structure, other class prices, classification, provisions applicable to all orders, regional issues (please specify: Northeast, Southeast, Midwest, Western), and miscellaneous and administrative. If comments submitted pertain to a specific order, please identify such order.

Comments are also being requested on the Executive Order 12866 analysis, the Regulatory Flexibility Act analysis, and the Paperwork Reduction Act analysis.

Additionally, comments may be sent via E-mail to: Milk_Order_Reform@usda.gov.

All comments submitted in response to this proposal will be available for public inspection at the USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2968, South Building, 14th and Independence Ave., S.W., Washington, D.C., during normal business hours (7 CFR 1.27(b)). All persons wanting to view the comments are requested to make an appointment in advance by calling Richard M. McKee at (202) 720–4392.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Branch Chief, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274.

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I. Legislative and Background Requirements

Legislative Requirements

Section 143 of the Federal Agriculture Improvement and Reform Act of 1996. (Farm Bill), 7 U.S.C. 7253, requires that by April 4, 1999,[1] the current Federal milk marketing orders be consolidated into between 10 to 14 orders. The Secretary of Agriculture (Secretary) is also directed to designate the State of California as a Federal milk order if California dairy producers petition for and approve such an order. In addition, the Farm Bill provided that the Secretary may address related issues such as the use of utilization rates and multiple basing points for the pricing of fluid milk and the use of uniform multiple component pricing when developing one or more basic prices for manufacturing milk. Besides designating a date for completion of the required consolidation, the Farm Bill further requires that no later than April 1, 1997, the Secretary shall submit a report to Congress on the progress of the Federal order reform process. The report must cover three areas: a description of the progress made towards implementation, a review of the Federal order system in light of the reforms required, and any recommendations considered appropriate for further improvements and reforms. This report was submitted to Congress on April 1, 1997. Finally, the 1996 Farm Bill specifies that USDA use informal rulemaking to implement these reforms.[2]

[1] Section 143(b)(2) requires that a proposed rule be published by April 4, 1998 and Section 143(b)(3) provides that "in the event that the Secretary is enjoined or otherwise restrained by a court order from publishing or implementing the consolidation and related reforms under subsection (a), the length of time for which that injunction or other restraining order is effective shall be added to the time limitations specified in paragraph (2) thereby extending those time limitations by a period of time equal to the period of time for which the injunction or other restraining order is effective."

[2] Since this proceeding was initiated on May 2, 1996, the Black Hills, South Dakota and the Tennessee Valley orders have been terminated. Effective October 1, 1996, the operating provisions of the Black Hills were terminated (61 FR 47038), and the remaining administrative provisions were terminated effective December 31, 1996 (61 FR 67927). Effective October 1, 1997, the operating provisions of the Tennessee Valley order were terminated (62 FR 47923). The remaining administrative provisions of the Tennessee Valley order will be terminated before this consolidation process is completed.

Background

The authorization of informal rulemaking to achieve the mandated reforms of the Farm Bill has resulted in a rulemaking process that is substantially different from the formal rulemaking process required to promulgate or amend Federal orders. The formal rulemaking process requires that decisions by USDA be based solely on the evidentiary record of a public hearing held before an Administrative Law Judge. Formal rulemaking involves the presentation of sworn testimony, the cross-examination of witnesses, the filing of briefs, the issuance of a recommended decision, the filing of exceptions, the issuance of a final decision that is voted on by affected producers, and upon approval by producers, the issuance of a final order.

The informal rulemaking process does not require these procedures. Instead, informal rulemaking provides for the issuance of a proposed rule by the Agricultural Marketing Service, a period of time for the filing of comments by interested parties, and the issuance of a final rule by the Secretary, which would become effective if approved by the requisite number of producers in a referendum.

Full participation by interested parties is essential in the reform of Federal milk orders. The issues are too important and complex for this proposed rule to be developed without significant input from all facets of the dairy industry. The experience, knowledge, and expertise of the industry and public are integral to the development of the proposed rule. To ensure maximum public input into the process while still meeting the legislated deadline of April 4, 1999, USDA developed a plan of action and projected time line. The plan of action developed consists of three phases: *developmental, rulemaking,* and *implementation.*

The first phase of the plan was the *developmental* phase. The use of a *developmental* phase allowed USDA to interact freely with the public to develop viable proposals that accomplish the Farm Bill mandates, as well as related reforms. The USDA met with interested parties to discuss the reform progress, assisted in developing ideas or provided data and analysis on various possibilities, issued program announcements, and requested public input on all aspects of the Federal order program. The *developmental* phase began on April 4, 1996, and concludes with the issuance of this proposed rule.

The second phase of the plan is the *rulemaking* phase. The *rulemaking* phase begins with the issuance and publication of this proposed rule. This proposed rule provides the public 60 days to submit written comments on the proposal to USDA. These comments will be reviewed and considered prior to the issuance of a final rule.

The third and final phase of the plan is the *implementation* phase. The *implementation* phase will begin after the final rule is published in the **Federal Register**. This phase will consist of informational meetings conducted by Market Administrator personnel. The objective of the informational meetings is to inform producers and handlers about the newly consolidated orders and explain the projected effects on producers and handlers in the new marketing order areas. After informational meetings have been held, referendums will be conducted. Upon approval of the consolidated orders and related reforms by the required number of producers in each marketing area, a final order implementing the new orders will be issued and published in the **Federal Register**.

Although all of the issues regarding Federal milk order reform are interrelated, USDA has established several committees to address specific issues. The use of committees has allowed the reform process to be divided into more manageable tasks. The committees will work throughout the *developmental* and *rulemaking* phases. The committees that have been established are: Price Structure, Basic Formula Price, Identical Provisions, Classification, and Regional. The Regional committee is divided into four sub-committees: Midwest, Northeast, Southeast, and West. Committee membership consists of both field and headquarters Dairy Programs personnel. The committees have been given specific assignments related to their designated issue and have been meeting since May 1996.

In addition to utilizing USDA personnel, partnerships have been established with two university consortia to provide expert analyses on the issues relating to price structure and basic formula price options. Dr. Andrew Novakovic of Cornell University led the analysis on price structure and published a staff paper entitled "U.S. Dairy Sector Simulator: A Spatially Disaggregated Model of the U.S. Dairy Industry" and a research bulletin entitled "An Economic and Mathematical Description of the U.S. Dairy Sector Simulator"[3] Dr. Ronald Knutson of Texas A&M University led the analysis on basic formula price options and published two working papers entitled "An Economic Evaluation of Basic Formula Price (BFP) Alternatives" and "The Modified Product Value and Fresh Milk Base Price Formulas as BFP Alternatives."[4]

Actions Completed

USDA has maintained continual contact with the industry regarding the reform process. To begin, on May 2, 1996, the Agricultural Marketing Service (AMS) Dairy Division issued a memorandum to interested parties announcing the planned procedures for

[3] Copies of this report may be obtained by contacting Ms. Wendy Barrett, Cornell University, ARME, 348 Warren Hall, Ithaca, NY 14853–7801, (607) 255–1581.

[4] Copies of these reports may be obtained by contacting Dr. Ronald Knutson, Agricultural and Food Policy Center, Dept. of Ag. Economics, Texas A&M University, College Station, TX 77843–2124, (409) 845–5913.

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implementing the Farm Bill.[5] In this memorandum, all interested parties were requested to submit ideas on reforming Federal milk orders, specifically as to the consolidation and pricing structure of orders. Input was requested by July 1, 1996.

On June 24, 1996, USDA issued a press release announcing that a public forum would be held in Madison, Wisconsin, on July 29, 1996. The forum would address price discovery techniques for the value of milk used in manufactured dairy products. Thirty-one Senators, Congressmen, university professors, representatives of processor and producer organizations, and dairy farmers made presentations at the forum.

On October 24, 1996, AMS Dairy Division issued a memorandum to interested parties requesting input regarding all aspects of Federal milk order reform and specifically as to its impact on small businesses. USDA anticipates that the consolidation of Federal orders will have an economic impact on handlers and producers affected by the program, and USDA wants to ensure that, while accomplishing their intended purpose, the newly consolidated Federal orders will not unduly inhibit the ability of small businesses to compete.

On December 3, 1996, AMS Dairy Division issued a memorandum to interested parties announcing the release of the preliminary report on Federal milk order consolidation. The report recommends the consolidation of the current 32 Federal milk orders into ten orders. (See Appendix A for report summary.) The memorandum requested input from all interested parties on the recommended consolidated orders and on any other aspect of the milk marketing order program by February 10, 1997.

On March 7, 1997, AMS Dairy Division issued a memorandum to interested parties announcing the release of three reports that addressed the Class I price structure, the classification of milk, and the identical provisions contained in a Federal milk order. The price structure report consisted of a summary report and a technical report and discussed several options for modifying the Class I price structure. (See Appendix B for report summary.) The classification report recommended the reclassification of certain dairy products, including the removal of Class III–A pricing for nonfat dry milk. (See Appendix C for report summary.) The identical provisions report recommended simplifying, modifying, and eliminating unnecessary differences in Federal order provisions. (See Appendix D for report summary.) Comments on the contents of these reports, as well as on any other aspect of the program, was requested from interested parties by June 1, 1997.

On April 18, 1997, AMS Dairy Division issued a memorandum to interested parties announcing the release of the preliminary report on Alternatives to the Basic Formula Price (BFP). The report contained suggestions, ideas, and initial findings for BFP alternatives. Over eight categories of options were identified with four options recommended for further review and discussion. (See Appendix E for report summary.) The memorandum requested input from all interested parties on a BFP alternative and on any other aspect of the milk marketing order program by June 1, 1997.

On May 20, 1997, AMS Dairy Division issued a memorandum to interested parties announcing the release of a revised preliminary report on Federal milk order consolidation. The revisions were based on the input received from interested parties in response to the initial preliminary report on order consolidation. (See Appendix F for report summary.) Instead of recommending 10 consolidated orders as in the first report, the revised report recommended 11 consolidated orders and suggested the inclusion of some currently unregulated territory. The memorandum requested comments from all interested parties on the recommended consolidated orders and on any other aspect of the milk marketing order program by June 15, 1997.

To elicit further input on the role of the National Cheese Exchange price in calculating the basic formula price, on January 29, 1997, the Secretary sissued a press release announcing steps being taken by USDA to address concerns raised by dairy producers about how milk prices are calculated. In the press release, the Secretary requested further comments from interested parties about the use of the National Cheese Exchange in the determination of the basic formula price, which is the minimum price that handlers must pay dairy farmers for milk used to manufacture Class III products (butter and cheese) and the price used to establish the Class I and Class II prices. These comments were requested by March 31, 1997, and have been useful in analyzing alternatives to the basic formula price in context of the order reform process.

Public Interaction

As a result of these announcements and the forum, more than 1,600 individual comments have been received by USDA. In addition to the individual comments, more than 3000 form letters have been received. All comments were reviewed by USDA personnel and are available for public inspection at USDA. To assist the public in accessing the comments, USDA contracted to have the comments scanned and published on a CD. The use of this technology has allowed interested parties throughout the United States access to the information received by USDA.

USDA also made all publications and requests for information available on the Internet. A separate page under the Dairy Division section of the AMS Homepage was established to provide information about the reform process. To assist in transmitting correspondence to USDA, a special electronic mail account—Milk_Order_Reform@usda.gov—was opened to receive input on Federal milk order reforms.

USDA personnel met continually with interested parties from May 1996 through the issuance of this proposed rule to gather information and ideas on the consolidation of Federal milk orders. During this time period, USDA personnel addressed over 250 groups comprised of more than 22,000 individuals on various issues related to Federal order reform.

USDA personnel also conducted in-person briefings for both the Senate and House Agricultural Committees on the progress of Federal milk order reforms. Since May 1996, seven briefings were conducted for the committees. The briefings advised the committees of the plan of action for implementing the Farm Bill mandates; explained the preliminary report on the consolidation of Federal milk orders; explained the contents of the reports addressing Class I price structure, classification of milk, identical provisions and basic formula price; and discussed the congressional report.

Public Input

To ensure the involvement of all interested parties, particularly small businesses as defined in the following Initial Regulatory Flexibility Analysis, in the process of Federal order reform, three primary methods of contact have been used: direct written notification, publication of notices through various media forms, and speaking and meeting with organizations and individuals regarding the issue of Federal order

[5] Copies of this announcement and all subsequent announcements and reports can be obtained from Dairy Programs at (202) 720–4392, any Market Administrator office, or via the Internet at http://www.ams.usda.gov/dairy/.

reforms. In addition, information has been made available to the public via the Internet. USDA also made one written program announcement specifically requesting information from small businesses.

All announcements made by USDA have been mailed to over 20,000 interested parties, State Governors, State Department of Agriculture Secretaries or Commissioners, and the national and ten regional Small Business Administration offices. In addition, most dairy producers under the orders were notified through regular market service bulletins published by Market Administrators on a monthly basis. Press releases were issued by USDA for the May 2, 1996, December 3, 1996, January 29, 1997, March 7, 1997, and May 20, 1997, announcements, and for the July 31, 1996, public forum.[6] These press releases were distributed to approximately 33 wire services and trade publications and to each State Department of Agriculture Communications Officer. These methods of notification helped to ensure that virtually all identified small businesses were contacted.

Departmental personnel, both in the field and from Washington, actively met with interested parties to gather input and to clarify and refine ideas already submitted. Formal presentations, round table discussions, and individually scheduled meetings between industry representatives and Departmental personnel were held. Over 250 organizations and more than 22,000 individuals were reached through this method. Of these individuals, approximately 13,400 were identified as small businesses.

As a result of the requests for information, publication of informational reports, meetings with interested parties, and the comments, AMS has prepared this proposed rule which contains proposals addressing the following issues: the consolidation of marketing areas; basic formula price replacement and other class price issues; Class I price structure; classification of milk; provisions applicable to all orders; regional issues relating to the Northeast, Southeast, Midwest, and Western areas; and various other miscellaneous and administrative issues. Each proposal is discussed in detail following this preliminary statement that includes Executive Order 12988 and 12866 discussions, the Regulatory Flexibility Analysis, and the Paperwork Reduction Analysis.

[6] Copies of these press releases may be obtained from Dairy Programs at (202) 720–4392, or via the Internet at http://www.ams.usda.gov/news/newsrel.htm.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Executive Order 12866

The Department is issuing this proposed rule in conformance with Executive Order 12866. This proposed rule has been determined to be economically significant for the purposes of Executive Order 12866. When proposing a regulation which is determined to be economically significant, agencies are required, among other things, to: assess the costs and benefits of available regulatory alternatives; base regulatory decisions on the best reasonably-obtainable technical, economic, and other information; avoid duplicative regulations; and tailor regulations to impose the least burden on society consistent with obtaining regulatory objectives. Therefore, to assist in fulfilling the objectives of Executive Order 12866, the USDA prepared an initial Regulatory Impact Analysis (RIA). Information contained in the RIA pertaining to the costs and benefits of the revised regulatory structure are summarized in the following analysis. Copies of the RIA can be obtained from Dairy Programs at (202) 720–4392, any Market Administrator office, or via the Internet at http://www.ams.usda.gov/dairy.

This rule proposes the consolidation of the current 31 Federal milk marketing order areas into 11 marketing order areas. The proposed marketing areas are: Northeast, Mideast, Upper Midwest, Central, Appalachian, Southeast, Florida, Southwest, Arizona-Las Vegas, Western, and Pacific Northwest. The consolidated marketing areas consist primarily of territory that is in the current Federal order markets. In addition, they would include some previously unregulated territory. At this time, California is not proposed as a Federal order. This consolidation is proposed to comply with the 1996 Farm Bill that mandates the current Federal milk order marketing areas be consolidated into between 10 to 14 marketing areas by April 4, 1999. This proposed rule also sets forth two options for consideration as a replacement for the Class I price structure and proposes replacing the basic formula price with a multiple component pricing system. These changes are proposed to address concerns that the current system of pricing Class I milk may not adequately reflect the value of Class I milk at various locations or the value of milk used in manufacturing products. The 1996 Farm Bill identified these as related issues that may be addressed in the consolidation of milk marketing orders. The proposed rule further proposes changes to classification of milk by establishing a new Class IV which would include milk used to produce nonfat dry milk, butter, and other dry milk powders; the reclassification of eggnog and cream cheese; and other minor changes. These proposed changes should improve handler reporting and accounting procedures thereby providing for greater market efficiencies. Finally, this proposed rule expands Part 1000 to include provisions that are identical within each consolidated order to assist in simplifying the orders. These provisions include the definitions of route disposition, plant, distributing plant, supply plant, nonpool plant, handler, other source milk, fluid milk product, fluid cream product, cooperative association, and commercial food processing establishment. In addition, the milk classification section, pricing provisions, and most of the provisions relating to payments have been included in the General Provisions. These proposed changes adhere with the efforts of the National Performance Review—Regulatory Reform Initiative to simplify, modify,

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and eliminate unnecessary repetition of regulations. Unique regional issues or marketing conditions have been considered and included in each market's order provisions. Not all of these changes would be considered economically significant; however, changes dealing with marketing area consolidation, the basic formula price, and the Class I pricing structure may be significant and are described further in the following sections.

Economic Impacts of Consolidation

It is impossible to determine the economic effects of the proposed marketing area consolidation on handlers, producers and consumers without using assumptions about the specific order provisions contained in the consolidated order areas. The only effect consolidation, as a single factor, can have on the various market participants is its effect on the percentage of milk used in different classes within the proposed consolidated orders. Without assumptions that include the specific class prices and milk uses in different products, there are no means of quantifying the economic effects of consolidation.

Handlers would be affected by class prices, which would be determined by the Class I price surface option that is selected, and by the minimum prices contained in all of the orders for milk used in Classes II, III and IV. Handlers similarly located would be subject to the same minimum Class I, Class II, Class III and Class IV prices for milk. Such handlers would also be subject to the same minimum prices to be paid to producers.

Dairy farmers would be affected by the proposed consolidation of marketing areas because changes in utilization percentages would result in changes in blend prices. As in the case of effects on handlers, however, it is impossible to accurately determine a separate consolidation effect on producers, defined in monetary terms. The closest approximation to such an estimate would be the "weighted average utilization value" (WAUV). These "prices" reflect only the change in value that can be attributed to changes in utilization rates, with no assumptions about changes in the levels of the various class prices. Such estimates, of necessity, would reflect only anticipated *changes* in blend prices, using class prices that would no longer be in effect under the consolidated orders. To the extent that the WAUV computations reflect some of the effect of the effect of consolidation on producer prices, they are included in this analysis. It should be noted, however, that all producers in any given current area would be affected to an equal extent by the consolidation factor.

The following table shows the potential impact of three order consolidation options on producers who supply each of the current Federal milk marketing order areas via WAUV "prices". The three consolidated options are (1) the consolidated marketing areas suggested in the December 1996 initial Preliminary Report on Order Consolidation; (2) the consolidated marketing areas suggested in the May 1997 Revised Preliminary Report on Order Consolidation; and (3) the consolidated marketing areas suggested in this proposed rule.

WEIGHTED AVERAGE UTILIZATION VALUES (WAUV)

[Based on October 1995 information]

Consolidated Market	Marketing areas in Initial Consol. Report (Dec. 96) (Option 1)		Marketing Areas in Revised Consol. Report (May 97) (Option 2)		Marketing Areas in Proposed Rule (Option 3)	
	Consol. Mkt. WAUV ($/cwt)		Consol. Mkt. WAUV ($/cwt)		Consol. Mkt. WAUV ($/cwt)	
Current Markets	WAUV using Current Mkt. Utilization ($/cwt)	WAUV using Consol. Mkt. Utilization ($/cwt)	WAUV using Current Mkt. Utilization ($/cwt)	WAUV using Consol. Mkt. Utilization ($/cwt)	WAUV using Current Mkt. Utilization ($/cwt)	WAUV using Consol. Mkt. Utilization ($/cwt)
Northeast	.....	$13.46	.....	$13.48	.....	$13.47
New England (F.O. 1)	$13.50	13.48	$13.52	13.51	$13.52	13.49
NY-NJ (F.O. 2)	13.44	13.48	13.48	13.50	13.45	13.48
Middle Atlantic (F.O. 4)	13.45	13.39	13.45	13.41	13.44	13.40
Appalachian	.....	14.13	.....	13.96	.....	13.97
Carolina (F.O. 5)	14.23	14.21	14.23	14.19	14.23	14.20
Tenn. Valley (F.O. 11)	13.92	13.95	13.92	13.93	13.92	13.94
Lville-Lex-Evan (F.O. 46)	n/a	n/a	13.35	13.39	13.35	13.40
Florida	.....	15.05	.....	15.05	.....	15.05
Upper Florida (F.O. 6)	14.67	14.78	14.67	14.78	14.67	14.78
Tampa Bay (F.O. 12)	15.09	15.04	15.09	15.04	15.09	1504
SE Florida (F.O. 13)	15.42	15.31	15.42	15.31	15.42	15.31
Southeast	.....	14.26	.....	14.25	.....	14.24
Southeast (F.O. 7)	14.26	14.26	14.25	14.25	14.24	14.27
Mideast	.....	12.96	.....	12.94	.....	12.92
Ohio Valley (F.O. 33)	12.99	13.02	12.99	13.01	12.99	13.00
E. Ohio-W. PA (F.O. 36)	13.07	13.00	13.10	12.99	13.07	12.97
S. Michigan (F.O. 40)	12.75	12.86	12.75	12.84	12.75	12.83
MI Upper Penin. (F.O. 44)	12.81	12.62	12.81	12.62	12.81	12.61
Lville-Lex-Evan (F.O. 46)	13.35	13.06	n/a	n/a	n/a	n/a
Indiana (F.O. 49)	12.97	12.94	12.97	12.93	12.97	12.92
Upper Midwest	.....	12.60	.....	12.62	.....	12.60
Chicago Reg. (F.O. 30)	12.62	12.62	12.62	12.61	12.62	12.62
MI Upper Penin. (F.O. 44)	R	R	R	R	R	R
Neb.-W. Iowa (F.O. 65)	n/a	n/a	12.63	12.74	n/a	n/a
Upper Midwest (F.O. 68)	12.55	12.56	12.55	12.54	12.55	12.56
E. South Dakota (F.O. 76)	n/a	n/a	12.81	12.65	n/a	n/a
Iowa (F.O. 79)	n/a	n/a	12.69	12.67	n/a	n/a

WEIGHTED AVERAGE UTILIZATION VALUES (WAUV)—Continued

[Based on October 1995 information]

Consolidated Market	Marketing areas in Initial Consol. Report (Dec. 96) (Option 1)		Marketing Areas in Revised Consol. Report (May 97) (Option 2)		Marketing Areas in Proposed Rule (Option 3)	
	Consol. Mkt. WAUV ($/cwt)		Consol. Mkt. WAUV ($/cwt)		Consol. Mkt. WAUV ($/cwt)	
Current Markets	WAUV using Current Mkt. Utilization ($/cwt)	WAUV using Consol. Mkt. Utilization ($/cwt)	WAUV using Current Mkt. Utilization ($/cwt)	WAUV using Consol. Mkt. Utilization ($/cwt)	WAUV using Current Mkt. Utilization ($/cwt)	WAUV using Consol. Mkt. Utilization ($/cwt)
Central	.....	13.16	.....	13.21	.....	12.95
S. IL-E. MO (F.O. 32)	12.93	12.90	13.00	12.95	13.00	12.88
Central IL (F.O. 50)	13.03	12.74	13.03	12.78	13.03	12.72
Greater K. City (F.O. 64)	13.22	12.90	13.22	12.95	13.22	12.88
Neb.-W. Iowa (F.O. 65)	12.63	12.81	n/a	n/a	12.63	12.79
E. South Dakota (F.O. 76)	12.81	12.68	n/a	n/a	12.81	12.67
Iowa (F.O. 79)	12.71	12.71	n/a	n/a	12.71	12.70
SW Plains (F.O. 106)	13.31	13.33	13.31	13.41	13.08	13.29
E. Colorado (F.O. 137)	13.27	13.31	13.27	13.38	13.27	13.27
Southwest	.....	13.36	.....	13.39	.....	13.39
Texas (F.O. 126)	13.49	13.48	13.49	13.46	13.49	13.46
Central AZ (F.O. 131)	13.26	13.17	n/a	n/a	n/a	n/a
NM-W. Texas (F.O. 138)	13.00	13.09	13.00	13.07	13.00	13.07
Arizona-Las Vegas	.....	n/a	.....	13.26	.....	13.26
Central AZ (F.O. 131)	n/a	n/a	13.26	13.29	13.26	13.29
Western	.....	12.79	.....	12.78	.....	12.78
W. Colorado (F.O. 134)	13.41	12.84	13.41	12.82	13.41	12.82
SW ID-E. OR (F.O. 135)	12.63	12.68	12.63	12.68	12.63	12.68
Great Basin (F.O. 139)	12.83	12.81	12.81	12.79	12.81	12.79
Pacific Northwest	.....	12.45	.....	12.44	.....	12.44
Pacific NW (F.O. 124)	12.45	12.45	12.44	12.44	12.44	12.44

n/a: Not applicable
R: Restricted

For each option, a weighted average use value (WAUV) is computed for (a) the consolidated order; (b) the current order with current use of milk; and (c) the current order with projected use of milk in the consolidated order. The difference between the weighted average use values in (b) and (c) represents the potential impact on producers.

For example, in this proposed rule, the New England (F.O. 1) market's WAUV using its current utilization is $13.52 per cwt. When the three markets are consolidated and the new consolidated utilization is used to calculate the WAUV, New England's WAUV would be $13.49 per cwt. In this comparison, the potential impact on producers supplying the New England market area would be a decrease of three cents per cwt.

Each of the three options assumes the pool distributing plant standards suggested for each of the consolidated orders in this proposed rule; thus the calculated values in the preceding table are not directly comparable to the WAUV values published with either the initial or the revised reports on order consolidation.

Economic Impact of Basic Formula Price Proposal

A number of options for determining a basic formula price were considered and analyzed in the process of developing the proposed basic formula price (BFP). In addition to the proposed method of pricing components based on their value in manufactured products, other options examined by both the Agricultural Marketing Service's *Basic Formula Price Replacement Committee*[7] and the *University Study Committee* (USC), led by Dr. Ronald D. Knutson of Texas A & M University, were: economic formulas, futures markets, cost of production, competitive pay pricing, and pricing differentials only.

Descriptions of the two Committees' analyses, and results of their work are included in "A Preliminary Report on Alternatives to the Basic Formula Price," published in April 1997 by the Basic Formula Price Committee, Dairy Division, AMS;[8] and the following reports from the Agricultural and Food Policy Center, Texas A&M University System:

"An Economic Evaluation of Basic Formula Price (BFP) Alternatives," AFPC Working Paper 97–2, June 1997.

"Evaluation of Final Four Basic Formula Price Options," AFPC Working Paper 97–9, August 1997.[9]

The primary criterion used by the BFP Committee was that any replacement BFP option reflect the supply of and demand for milk used in manufactured dairy products. At the same time, one of the USC's critical criteria for a replacement BFP was that it reliably reflect market conditions for all manufactured products.

In trying to determine the most appropriate replacement for the current BFP, which uses a survey of prices paid by manufacturing plants for non-Grade A milk updated by a product price

[7] The Basic Formula Price Committee was established in May 1996 to consider replacements for the basic formula price during the Federal order reform process. This committee and others established are described further in the "Background" portion of this proposed rule.

[8] Copies of this report can be obtained from Dairy Programs at (202) 720–4392, any Market Administrator office, or via the Internet at http://www.ams.usda.gov/dairy/.

[9] Copies of these reports may be obtained by contacting Dr. Ronald Knutson, Agricultural and Food Policy Center, Dept. of Ag. Economics, Texas A&M University, College Station, TX 77843–2124, or (409) 845–5913.

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formula, the goal of both groups was a market-based alternative. The BFP Committee measured the extent to which each pricing option met its primary goal by tracking the options against the current BFP for a period of prior months.[10] The USC Committee used an econometric procedure to test the ability of the alternatives they considered to reflect supply and demand.

To the extent the goal of identifying a BFP that reflects the value of milk used in manufactured products is capable of attainment, all market participants—handlers, producers, and consumers—would be affected by the BFP replacement in the same manner as if they were operating in a free market, with no external impacts caused by regulation. Consumers can be assured that the prices generally charged for dairy products are prices that reflect, as closely as possible, the forces of supply and demand in the market.

Of the options considered and analyzed, both groups studying the issue determined that the option of pricing components of milk according to their value in manufactured products, as reflected by the sales prices of those products, best approximates the intersection of supply and demand for milk used in manufactured dairy products.

Economic Impact of Multiple Component Pricing Provisions

Seven of the 11 proposed orders provide for milk to be paid for on the basis of its components (multiple component pricing, or MCP). Five of the 7 MCP orders also provide for milk values to be adjusted according to the somatic cell count of producer milk. The equipment needed for testing milk for its component content can be very expensive to purchase, and requires highly-skilled personnel to maintain and operate. The cost of infra-red analyzers ranges from just under $100,000 to $200,000. The infra-red machines that are used by most laboratories will test for total solids and somatic cells at the same time the butterfat and protein tests are done.

Some additional information is necessary from handlers on their monthly reports of receipts and utilization to assure that producers are paid correctly. In particular, handlers would be required to report pounds of protein, pounds of other solids, and, in 5 of the orders, somatic cell information. This data would be required from each handler for all producer receipts, including milk diverted by the handler, receipts from cooperatives as handlers pursuant to § 1000.9(c), and, in some cases, receipts of bulk milk received by transfer or diversion.

Since producers would be receiving payments based on the component levels of their milk, the payroll reports that handlers supply to producers must reflect the basis for such payment. Therefore, the handler would be required to supply the producer not only with the information currently supplied, but also: (a) the pounds of butterfat, the pounds of protein, and the pounds of other solids contained in the producer's milk, as well as the producer's average somatic cell count; and (b) the minimum rates that are required for payment for each pricing factor and, if a different rate is paid, the effective rate also. It should be noted that handlers already are required to report information relative to pounds of production, butterfat, and rates of payment for butterfat and hundredweight of milk.

Of over 74,000 producers whose milk was pooled in December 1996 under 23 orders that would be part of consolidated orders providing for multiple component pricing, the milk of 52,500 of these producers was pooled under 13 orders that currently have MCP. Handlers in these markets already have incurred the initial costs of testing milk for its component content and have already made the needed transition to reporting the additional information required for component pricing of milk.

Of the remaining 21,750 producers who would be affected by MCP provisions under a Federal order, the milk of approximately 13,000 of these producers currently is received by handlers who test or have the capability of testing for multiple components and, in many cases, somatic cells. Many of these handlers also report component results to the producers with their payments. Almost all of the producers whose milk currently is not being tested or paid for on the basis of components are located in the New England and New York-New Jersey marketing areas, which would be consolidated with the Middle Atlantic area into the proposed Northeast order.

Accommodation has been made to ameliorate handlers' expenses of testing producer milk for component content. As component pricing plans have been adopted under a number of the present Federal milk orders since 1988, the component testing needed to implement these pricing plans has been performed by the market administrators responsible for the administration of the orders involved for handlers who are not equipped to make all of the determinations required under the amended orders. This policy would continue under this proposed rule. Thus, handlers who are unable to obtain the equipment and personnel needed to accomplish the required testing for component pricing would be able to rely on the market administrators to verify or establish the tests under which producers are paid.

Economic Impacts of Class I Price Changes

Several different options were considered for pricing fluid or Class I milk. These pricing options included using a market-driven basic formula price plus differentials based on location, differentials based on the ratio of milk used for fluid purposes compared to all other uses, flat differentials, flat differentials modified in high Class I use areas, and differentials based on the demand for fluid milk within a designated marketing area and the associated transportation costs. Other options considered would have decoupled Class I pricing from the basic formula price or pooled Class I differentials only (i.e., eliminated the basic formula price entirely). Finally, suggestions were considered to base Class I pricing on the cost of production and to base differentials on only regional supply and demand conditions. After analyzing these options and more than 1400 letters that were submitted from interested persons, the Department narrowed the pricing options to four and conducted extensive quantitative and qualitative analysis on them. The four options selected include location-specific differentials, relative value-specific differentials, and decoupled Class I prices with adjustors. Although four Class I price structure options are analyzed in the RIA, only two options are considered as viable replacements for the current Class I price structure in the proposed rule. However, comments are requested on all options prior to determining which option should be adopted.

Three of the four pricing options in the RIA assume that milk would be classified in the four classes of use detailed in the proposed rule. One option in the RIA has only two classes of milk and thus is not detailed in the proposed rule. For purposes of the RIA analysis, Class IV milk is priced using the proposed butter-nonfat dry milk product formula, but since the product prices proposed for use in the formula are not presently available, the Chicago Mercantile Exchange spot price for butter and the average nonfat dry milk wholesale price reported by USDA's Dairy Market News for the Western States are substituted. Also, Class III milk is priced using the proposed cheese product formula, and the Class II milk price for the month is equal to the Class IV price for the month plus 70 cents per hundredweight (cwt).

The initial RIA assesses costs and benefits for dairy farmers, fluid milk processors, dairy product manufacturers, and consumers. The impact of each of the four Class I pricing options is measured as a change from a baseline. The model baseline was adapted from the USDA dairy baseline estimate published as part of the President's Budget for Fiscal Year 1998.[11] That baseline, which is a national annual projection of the supply-demand-price situation for milk and dairy products, was the basis for the market-by-market baseline of the model. Both the President's Budget Baseline and the model baseline assume the same program assumptions: namely, that the price support program will be phased out by December 31, 1999, that the Dairy Export Incentive Program will continued to be utilized, and that the Federal Milk Order Program will be continued at the same level of class prices currently in existence. Assumptions also are made concerning the cost of production—especially feed, the commercial utilization of milk and dairy products, commercial inventories, and imports. All parameters, except those associated with the changes in the Federal Milk Order Program, are assumed to remain unchanged.

To evaluate the impacts on dairy farmers, fluid milk processors, and dairy product manufacturers of the four selected Class I pricing options, a baseline estimate was constructed assuming that the current 32 orders[12] would continue through the study period, 1999–2004. To make comparisons, proposed pricing points for the proposed 11 consolidated orders were identified to correspond with the base pricing zones of the 32 current marketing orders. For example, for the consolidated Appalachian Region order, which would have the city of Charlotte as its base pricing point, prices also were identified for Knoxville and Louisville. These 3 pricing points correspond with the base pricing points of the 3 markets that are to be combined into the Appalachian regional order.

Location-Specific Differentials (Option 1A) Analysis

This option would establish a nationally coordinated system of location-specific Class I price differentials reflecting the relative economic value of milk by location. An important feature of the option is that it would also include location adjustments that geographically align minimum Class I milk prices paid by fluid milk processors nationwide regardless of defined milk marketing area boundaries or order pooling provisions. It is based on the economic efficiency rationale presented in Cornell University research on the U.S. dairy sector.[13] A basic premise of this option is that the value of milk varies according to location across the United States. The concepts of spatial price value and relative price relationships together with marketing data and expert knowledge of local conditions and marketing practices and a review of supply and demand conditions are used to develop a national Class I price structure.

Overall, the magnitude of changes in price and income under this option compared to the baseline are small. The all-milk price for all Federal order markets combined during the 1999–2004 period is estimated to average 5 cents per cwt higher. For all of the U.S. the all-milk price is estimated to average 3 cents higher. The average all-milk price at the basing point of 18 current markets could experience increases of 1 to 29 cents per cwt. At the basing point of the 13 markets, the average all-milk price could decrease from 3 to 83 cents per cwt.

The 5 markets with the greatest increases in all-milk prices were Eastern Colorado ($0.29), New York-New Jersey ($0.28), Tampa Bay ($0.26), Southwest Plains ($0.25), and Upper Florida ($0.24). The market with the greatest reduction in price was Western Colorado (−$0.83), Central Illinois (−$0.66), Greater Kansas City (−$0.53), Eastern South Dakota (−$0.51), and Southern Illinois-Eastern Missouri (−$0.34). The annual average all-milk price in the previously-unregulated areas of New York and New England declined $0.87 per cwt.

Changes in gross cash receipts, as expected, moved in the same direction as the change in the all-milk price in a given market. Over the period 1999–2004, location-specific differentials raised gross receipts in 18 markets. It appears that the estimated average annual receipts for producers in the current New York-New Jersey market increased by $37.2 million. However, most of this increase was the result of adding to the all-milk price the current $0.15 reduction on all milk marketings for transportation. It is expected that this apparent increase in the all-milk price and dairy farmer income would be offset by a like amount by increased transportation costs paid by the producer. The markets with the greatest estimated increase in gross receipts for milk marketing were Southwest Plains ($11.8 million), Chicago Regional ($10.9 million), Southern Michigan ($10.7 million), New England ($7.4 million), and Eastern Colorado ($7.2 million). Gross receipts in the current Chicago Regional and Upper Midwest markets may have been expected to increase more since this option increased the Class I differentials at those points substantially. However, this option also envisions the expansion of transportation credits within the merged order to move milk which is expected to use 20 percent of the dollars generated by the higher Class I differentials. Over-order charges which currently fund transportation credits are expected to be reduced by a like amount.

The largest estimated decreases in cash receipts occur in the Southern Illinois-Eastern Missouri (−$8.5 million), Great Basin (−$4.1 million), Middle Atlantic (−$2.9 million), Texas (−$2.5 million), and Greater Kansas City (−$2.5 million) markets. Nine other current markets would lose average annual gross cash receipts during the period 1999–2004 of less than $2.0 million each. The previously unregulated areas of New York and New England would lose an estimated average of $16.9 million in annual gross receipts from milk marketings. Under location-specific differentials the estimated average annual gross receipts for all Federal order markets combined increased by $68.1 million and the entire US increased $53.1 million compared to the baseline for the 1999–2004 period.

Fluid processors in 21 of the 32 Federal order market areas face increased Class I differentials if this

[10] It was assumed that the current BFP successfully reflects the supply and demand for milk used in manufactured products.

[11] See *Agricultural Baseline Projections to 2005, Reflecting the 1996 Farm Act*, Interagency Agricultural Projections Committee, U.S. Department of Agriculture, Office of the Chief Economist, World Agricultural Outlook Board, Staff Report, WAOB–97–1 and "Budget of the United States Government, Fiscal Year 1998."

[12] The following analyses were completed prior to the termination of the Tennessee Valley marketing order and thus the results identify it as a pricing point. Most of the plants and milk of the former Tennessee Valley market have become regulated under either the Southeast order or the Carolina order.

[13] Bishop, Phillip, James Pratt, Eric Erba, Andrew Novakovic, and Mark Stephenson, An Economic and Mathematical Description of the U.S. Dairy Sector Simulator, Research Bulletin 97–09, A Publication of the Cornell Program on Dairy Markets and Policy, Department of Agricultural, Resource, and Managerial Economics, Cornell University, July 1997.

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option were adopted compared with Class I differentials under the baseline. Fluid processors in four of the Federal order markets and in the previously-unregulated areas of New York and New England would see no changes in Class I differentials. Fluid processors in the remaining seven Federal order markets would see decreases in Class I differentials compared with the baseline. The increases in differentials ranged from $0.01 per cwt in the New England and New York-New Jersey markets to $0.50 per cwt in the Upper Midwest. Decreases in Class I differentials would range from $0.03 per cwt in the Middle Atlantic to $0.25 per cwt in New Mexico-West Texas. Those fluid processors facing higher Class I differentials would see their monthly obligations to the markets' producer-settlement funds increase while those facing lower Class I differentials would see their obligations decrease.

With virtually no change in the amount of milk available for manufacturing, manufacturers of dairy products would face nearly the same supply and demand conditions that they now face when buying milk or selling dairy products. Manufacturers in the Southwest, where milk marketings are expected to decline, may have less milk to process while manufacturers in the Upper Midwest may find that they have slightly more milk for manufacturing.

Relative Value-Specific Differentials (Option 1B) Analysis

Like a location-specific differential structure, a relative value-specific differential structure would also establish a nationally coordinated system of Class I price differentials and adjustments that recognizes several low pricing areas. Option 1B relies on a least cost optimal solution from the USDSS model to develop a Class I price structure that is based on the most efficient assembly and shipment of milk and dairy products to meet all market demands for milk and its products. Option 1B relies more on the market and the negotiating ability of processors and producers to generate higher prices when needed to provide the necessary incentive to move milk in order to satisfy demand.

Three methods of phasing into the Class I differentials under Option 1B were evaluated. First, a 20-percent gradual phase-in was analyzed; then, a transitional phase-in that would offset any lost revenue was analyzed; and finally, a revenue-enhancement phase-in that would add additional revenue into the Class I price structure was analyzed.

Phase-in Method 1

With the gradual phase-in, the estimated all-milk price for all Federal order markets combined during the 1999–2004 period could average 8 cents per cwt lower than the baseline. The estimated average all-milk price at the basing point of 11 Federal order markets could increase from 1 to 32 cents per cwt. At the basing point of the other 21 Federal order markets, the all-milk price is estimated to decrease from 1 to 58 cents per cwt.

The 5 markets with the greatest estimated increases in average all-milk prices, for the 1999–2004 period are: New Mexico-West Texas ($0.32), Chicago Regional ($0.19), Tampa Bay ($0.19), Nebraska-Western Iowa ($0.17), and Southwest Idaho-Eastern Oregon ($0.15). The 5 Federal order markets with the greatest estimated reductions in price are: Eastern South Dakota (−$0.58), Michigan Upper Peninsula (−$0.55), Western Colorado (−$0.55), Greater Kansas City (−$0.53), and Carolina (−$0.46). The annual average all-milk price in the previously unregulated areas of New York and the New England states is estimated to decline by $0.96 per cwt compared to the baseline.

Over the period 1999–2004, 1B differentials could lower producer gross cash receipts from minimum order prices in 21 of the Federal order markets. The five current markets that would have the greatest decreases were: Texas (−$36.8 million), Middle Atlantic (−$26.2 million), Upper Midwest (−$15.9 million), Carolina (−$15.2 million), and Southeast (−$12.5 million). The annual average reduction in estimated gross receipts in the previously unregulated areas of New York and the New England states is estimated at $18.5 million from the baseline. Estimated gross receipts increased in 11 markets. The five markets that would have the greatest increases in gross receipts were: Chicago Regional ($31.5 million), New Mexico-West Texas ($9.1 million), Southern Michigan ($6.6 million), Southwestern Idaho-Eastern Oregon ($5.8 million), and New York-New Jersey ($5.3 million).

Phase-in Method 2

A possible modification to the relative value-specific differentials would be to initially raise Class I differentials by 55 cents per cwt above the level called for in the first year of transition. During the second year, Class I differentials would be set at 35 cents above the transition level; the third year, 20 cents above; and the fourth year, 10 cents above the called-for transition differentials. At the beginning of the fifth year, Class I differentials would be fully phased in and no assistance provided.

Under this phase-in method, the estimated all-milk price for all Federal order markets combined during the 1999–2004 period could average 4 cents per cwt lower than the baseline. The estimated average all-milk price at the basing point of 12 Federal order markets could increase from 3 to 36 cents per cwt. At the basing point of 20 Federal order markets, the all-milk price is estimated to decrease from 2 to 53 cents per cwt from the baseline.

The five markets with the greatest estimated increases in average all-milk prices, per cwt, for the 1999–2004 period are: New Mexico-West Texas ($0.36), Tampa Bay ($0.32), Nebraska-Western Iowa ($0.22), Upper Florida ($0.20), and Chicago Regional ($0.23). The five markets with the greatest estimated reductions in price are: Eastern South Dakota (−$0.53), Western Colorado (−$0.52), Michigan Upper Peninsula (−$0.49), Greater Kansas City (−$0.48), and Texas (−$0.34). The annual average all-milk price in the previously unregulated areas of New York and the New England states is estimated to decline by $0.93 per cwt compared to the baseline.

Over the period 1999–2004, this phase-in option would lower estimated producer gross cash receipts attributable to minimum order prices in 19 of the Federal order markets. The 5 markets with the greatest estimated decreases were Texas (−$32.6 million), Middle Atlantic (−$22.8 million), Upper Midwest (−$13.9 million), Carolina (−$10.7 million), and Arizona-Las Vegas (−$7.6 million). The annual average reduction in estimated gross receipts in the previously unregulated areas of New York and the New England states is $17.8 million lower than the baseline. Gross receipts from milk marketings could increase in the following markets: Chicago Regional ($34.4 million), New York-New Jersey ($11.7 million), Southern Michigan ($10.4 million), New Mexico-West Texas ($10.4 million), and Tampa Bay ($7.0 million). Total estimated cash receipts for the combined current Federal orders would average $40 million less for the 6-year period.

Phase-in Method 3

Another phase-in option would enhance prices during the transition period by $1.10 for first year phase-in differentials, $0.70 in the second year, $.40 in the third year, and $.20 in the fourth year. The additional price enhancement provided to dairy farmers under this method is intended to help producers make the necessary investments and other changes to compete in a more market-oriented economy. At the beginning of the fifth year, Class I differentials would be fully phased in at the Option 1B levels.

With the use of additional revenue under this phase-in option, the estimated all-milk price for all Federal order markets combined during the 1999–2004 period could be expected to be unchanged from the baseline. The estimated average all-milk price at the basing point of 15 Federal order markets would increase from 1 to 43 cents per cwt. At the basing point of the other 17 Federal order markets, the all-milk price is estimated to decrease from 3 to 52 cents per cwt.

The five markets with the greatest estimated increases in average all-milk prices, per cwt, for the 1999–2004 period were: Tampa Bay ($0.43) New Mexico-West Texas ($0.41), Upper Florida ($0.32), Nebraska-Western Iowa ($0.26), and South Eastern Florida ($0.26). The five markets with the greatest estimated reductions in price were: Western Colorado (−$0.52), Eastern South Dakota (−$0.49), Greater Kansas City (−$0.44), Michigan Upper Peninsula (−$0.43), and Texas (−$0.33). The annual average all-milk price in the previously unregulated areas of New York and the New England states is estimated to decline by $0.88 per cwt compared to the baseline. Total estimated cash receipts for the combined current Federal order markets would average $34.9 million higher for the 6-year period.

Over the period 1999–2004, this phase-in option could lower estimated producer gross cash receipts from milk marketings in 16 of the current markets. The five current markets with the greatest decreases were: Texas (−$28.2 million), Middle Atlantic (−$19.0 million), Upper Midwest (−$14.6 million), Carolina (−$6.5 million) and Arizona-Las Vegas (−$6.0 million). The annual average reduction in estimated gross receipts in the previously unregulated areas of New York and the New England states is estimated at $16.9 million from the baseline. Gross receipts from milk marketings increased in 16 markets. The five markets that would have the greatest increases were: Chicago Regional ($33.5 million), New York-New Jersey ($19.0 million), Southern Michigan ($14.4 million), New Mexico-West Texas ($11.7 million), and Tampa Bay ($9.8 million).

Decoupled Baseline Class I Price with Adjustors (Option 5) Analysis

A third option analyzed in the RIA would retain the current Class I differentials, but floor Class I prices in all markets at their 1996 average levels. Adjustments to this price would be made based on changes in fluid use rates and short term costs of production (i.e., feed costs). Under this option, the all-milk price for all Federal order markets combined would increase $0.07 per cwt and the U.S. is projected to increase $0.03 per cwt over the 6-year period. In 19 of the Federal order markets, the average all-milk price would be higher by $0.01 to $0.50 per cwt. In 12 Federal order markets, the average all-milk price would decrease from $0.03 to $0.82 per cwt.

Flooring the Class I prices at the average 1996 levels would result in higher Class I prices in all markets in 1999 and 2000 and higher all-milk prices in most markets when compared to the baseline. These increased incentives for milk production would result in greater volumes of milk for manufacturing and lower manufacturing prices.

Location-Specific Differentials (Option 6) Analysis

This option would establish minimum prices for milk used in Class I by adding market-specific Class I differentials to the proposed Class II price. Class II would contain all manufactured products and would be priced by a cheese product price formula using the National Agricultural Statistical Service surveyed 40-pound cheddar cheese price times 9.87 plus the Chicago Mercantile Exchange Grade A butter price times 0.238 less $1.80. The Class I differentials in this option would be phased in over a five-year period.

In general, the Class I differentials in the central section of the country would be reduced while those in the Northwest, New England and Florida are increased. After the proposed price surface is fully phased in, 20 markets would have Class I differentials that are reduced and 10 markets would have increases.

Under this option, the all-milk price for all Federal order markets combined would decline $0.10 per cwt over the six year period. In 23 of the Federal order markets, the average all-milk price would decline by less than $0.01 to $0.95 per cwt. In 9 orders, the all-milk price would increase $0.02 to $0.19 per cwt.

Gross cash receipts from milk marketings in the combined Federal orders would average $148.1 million less than the baseline for the 6-year period. Cash receipts would be lower in 23 markets and higher in 9 markets. Because of this decline in cash receipts and since it is inconsistent with the four-class system contained in the proposed rule, this Class I price option is not detailed in the Class I price structure section of the proposed rule. This two-class pricing system was found to be insufficient to recognize the different use-values of milk for reasons set forth in the Basic Formula Replacement and Classification portions of this proposed rule.

Other Impacts of Pricing Options

The potential impacts of the options analyzed in the initial RIA on retail prices, and thus consumers, is less certain than the impacts on other sectors of the dairy industry. In general, changes in farm milk prices and wholesale prices are passed onto consumers. However, the timing and the degree of these pass-throughs is uncertain. It is assumed that all changes in farm milk prices (fluid processor costs) and the wholesale costs of manufactured products would be passed on to the retail level without any changes in the farm-processor-retail or farm-wholesale-retail margins.

Because of the bulky and perishable nature of packaged fluid milk, all international trading of dairy products, with the exception of limited exports of fluid milk to Mexico, is in manufactured products. An appendix table in the initial RIA details USDA's baseline estimates of international and domestic prices for butter and nonfat dry milk.

Neither location-specific differentials nor relative value-specific differentials are expected to have a significant impact on domestic, wholesale dairy product prices and therefore little effect on international trade of manufactured dairy products.

Economic Impacts of Classification Changes

The classification of milk recommendations should not have a significant economic impact on any dairy industry participants. This proposed rule provides uniform milk classification provisions for the newly consolidated milk orders. The recommendations should improve reporting and accounting procedures for handlers and provide for greater market efficiencies.

Most of the changes regarding milk classification provisions proposed for the newly consolidated orders would simplify order language and remove obsolete language.

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This proposed rule contains a modified fluid milk product definition and recommends that certain products be reclassified. The revised fluid milk product definition proposed for the new orders should provide more consistency in determining the classification of products. The inclusion of eggnog to the list of fluid milk products and the reclassification of cream cheese from Class III to Class II will cause a nominal increase in the cost of the finished product. However, these changes, which will be applicable to all handlers regulated under the new orders, should not have a significant impact on the retail price of these products. Although producers will benefit from these products being reclassified into higher utilization classes, the impact of the product classification changes on the blend price to producers will be marginal.

Another modification includes the reclassification of butter and whole milk powder from Class III to Class IV. This change merely places these market-clearing products in the new Class IV with nonfat dry milk. The change promotes market efficiency and should have a minimal impact on producers' blend prices.

One recommendation with possible economic implications concerns the treatment of milk used to produce bulk sweetened condensed milk/skim milk. Some commenters argued that the wide price difference that sometimes exists between the Class II price and the Class III–A price has put manufacturers of sweetened condensed milk at a competitive disadvantage with manufacturers of nonfat dry milk, which can be substituted for bulk sweetened condensed milk and skim milk in some higher-valued products.

Although this proposed rule does not recommend a reclassification for milk used in bulk sweetened condensed milk, it does propose a change in the relationship between the Class II and IV prices which should eliminate the price disparity that now, at times, exists. As discussed in the "Class III and Class III–A (i.e., Class IV) Milk" section of this proposed rule, the proposed new Class II price will be equal to the Class IV price plus a 70-cent differential. The coupling of the Class II and Class IV prices will largely remove the incentive to substitute nonfat dry milk for bulk sweetened condensed milk.

The recommendations regarding shrinkage provisions should provide equity among handlers, improve market efficiencies, and facilitate accounting procedures. This proposed rule provides that shrinkage be assigned pro rata based on a handler's utilization. As discussed in the "Shrinkage and Overage" section of this proposed rule, this modification should result in a slight increase (i.e., one cent per cwt.) in the blend price paid to producers.

For the reasons stated above, the milk classification provisions proposed herein should have little economic impact on dairy industry participants.

The Regulatory Flexibility Act and the Effects on Small Businesses

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of the proposed rule on small entities and has prepared this initial regulatory flexibility analysis. The RFA provides that when preparing such analysis an agency shall address: the reasons, objectives, and legal basis for the proposed rule; the kind and number of small entities which would be affected; the projected recordkeeping, reporting, and other requirements; and federal rules which may duplicate, overlap, or conflict with the proposed rule. Finally, any significant alternatives to the proposal should be addressed. This initial regulatory flexibility analysis considers these points and the impact of this proposed regulation on small entities, and evaluates alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the dairy industry.

This regulatory action is being considered in accordance with Section 143 of the Federal Agriculture Improvement and Reform Act of 1996, 7 U.S.C. 7253, (the Farm Bill) which requires the Secretary of Agriculture (Secretary) to consolidate the existing 31 Federal milk marketing orders, as authorized by the Agricultural Marketing Agreement Act of 1937, into between 10 and 14 orders. The Secretary is also directed to designate the State of California as a Federal milk order if California dairy producers petition for and approve such an order. Finally, the Farm Bill specifies that the Department of Agriculture use informal rulemaking to implement these reforms. The Farm Bill requires that a proposed rule be published by April 4, 998, and all reforms of the Federal milk order program be completed by April 4, 1999.

In addition to these required mandates, the Farm Bill provides that the Secretary may address related issues such as the use of utilization rates and multiple basing points for the pricing of fluid milk and the use of uniform multiple component pricing when developing one or more basic formula prices for manufacturing milk. This proposed rule also sets forth two options for consideration as a replacement for the Class I price structure and proposes replacing the basic formula price with a multiple component pricing system. These changes are proposed to address concerns that the current system of pricing Class I milk may not adequately reflect the value of Class I milk at various locations or the value of milk used in manufacturing products. The 1996 Farm Bill identified these as related issues that may be addressed in the consolidation of milk marketing orders. The proposed rule further proposes changes to classification of milk by establishing a new Class IV which would include milk used to produce nonfat dry milk, butter, and other dry milk powders; the reclassification of eggnog and cream cheese; and other minor changes. These proposed changes should improve handler reporting and accounting procedures thereby providing for greater market efficiencies. Finally, this proposed rule expands Part 1000 to include provisions that are identical within each consolidated order to assist in simplifying the orders. These provisions include the definitions of route disposition, plant, distributing plant, supply plant, nonpool plant, handler, other source milk, fluid milk product, fluid cream product, cooperative association, and commercial food processing establishment. In addition, the milk classification section, pricing provisions, and most of the provisions relating to payments have been included in the General Provisions. These proposed changes adhere with the efforts of the National Performance Review—Regulatory Reform Initiative to simplify, modify, and eliminate unnecessary repetition of regulations. Unique regional issues or marketing conditions have been considered and included in each market's order provisions.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to the actions in order that small businesses would not be unduly or disproportionately burdened. To accomplish this purpose, it first is necessary to define a small business. According to the Small Business Administration's definition of a "small business," a dairy farm is a "small business" if it has an annual gross revenue of less than $500,00 and a handler is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy

farms are "small businesses," the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees. During the process of developing this proposed rule, USDA identified approximately 80,000 of the 83,000 dairy producers (farmers) that have their milk pooled under a Federal order as small businesses. Thus, small businesses represent approximately 96 percent of the producers in the United States. On the processing side, there are over 1,200 plants associated with Federal orders, and of these plants, approximately 700 qualify as "small businesses" representing about 55 percent of the total.

During August 1997, there were 524 fully regulated handlers (343 distributing and 181 supply plants), 134 partially regulated handlers and 111 producer-handlers submitting reports under the Federal milk marketing order program. During 1996, 83,012 dairy farmers delivered over 104.5 billion pounds of milk to handlers regulated under the milk orders. This volume represents 69 percent of all milk marketed in the U.S. and 72 percent of the milk of bottling quality (Grade A) sold in the country. The value of the milk delivered to Federal milk order handlers at minimum order blend prices was nearly $14.6 billion. Producer deliveries of milk used in Class I products (mainly fluid milk products) totaled 45.5 billion pounds—43.5 percent of total Federal order producer deliveries. More than 200 million Americans reside in Federal order marketing areas—77 percent of the total U.S. population.

The Federal milk order program is designed to set forth the terms of trade between buyers and sellers of fluid milk. A Federal order enforces the minimum price that processors (handlers) in a given marketing area must pay producers or farmers for milk according to how it is utilized. A Federal order further requires that the payments for milk be pooled and paid to individual dairy farmers or cooperative associations on the basis of a uniform or average price. It is important to note that a Federal milk order, including the pricing and all other provisions, only becomes effective after approval, through a referendum, by dairy farmers associated with the order.

Development of the proposed rule began with the premise that no additional burdens should be placed on the industry as a result of Federal order consolidation and reform. As a step in accomplishing the goal of imposing no additional regulatory burdens, a review of the current reporting requirements was completed pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). In light of this review, it was determined that this proposed rule would have little impact on reporting, recordkeeping, or other compliance requirements because these would remain almost identical to the current Federal order program. No new forms have been proposed; however, some additional reporting would be necessary in the proposed orders that would be adopting multiple component pricing if the current orders do not already have these provisions.

There are two principal reporting forms for handlers to complete each month that are needed to administer the Federal milk marketing orders. The forms are used to establish the quantity of milk used and received by handlers, the pooling status of the handler, the class-use of the milk used by the handler, and the butterfat content and amounts of other components of the milk. This information is used to compute the monthly uniform price paid to producers in each of the markets. Handlers in the marketing areas adopting multiple component pricing would be required to complete additional information regarding the components of the milk. This information would be necessary to enable their values of milk to be determined on the basis of these components and to assure that producers are paid correctly. Many handlers already collect and report this information.

This proposed rule does not require additional information collection that requires clearance by the OMB beyond the currently approved information collection. The primary source of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than industry average.

New territory, or pockets of unregulated territory within and between current order areas has been included in the proposed consolidated marketing areas where such expansion would not have the effect of fully regulating plants that are not now regulated. The addition can benefit regulated handlers by eliminating the necessity of reporting sales outside the Federal order marketing area for the purpose of determining pool qualification. Where such areas can be added to a consolidated area without having the effect of causing the regulation of any currently-unregulated handler, they are proposed to be added.

Handlers not currently fully regulated under Federal orders may become regulated for two main reasons: first, in the process of consolidating marketing areas, some handlers who currently are partially regulated may become fully regulated because their sales in the combined marketing areas would meet the pooling standards of a suggested consolidated order area. Second, previously unregulated area in New York, Vermont, New Hampshire and Massachusetts was added on the basis of requests and supporting information. As a result, previously unregulated handlers would become fully regulated. Because of these two reasons, 24 additional plants are expected to become fully regulated under the program. Of these 24 plants, it is estimated that 15 are small businesses that would need to comply with the reporting, recordkeeping, and compliance requirements. The completion of these reports would require a person knowledgeable about the receipt and utilization of milk and milk products handled at the plant. This most likely would be a person already on the payroll of the business such as a bookkeeper, controller or plant manager. The completion of the necessary reporting, recordkeeping, and compliance requirements would not require any highly specialized skills and should not require the addition of personnel to complete. In fact, much of the information that handlers report to the market administrator is readily available from normally maintained business records, and as such, the burden on handlers to complete these recordkeeping and reporting requirements is expected to be minimal. In addition, assistance in completing forms is readily available from market administrator offices. A description of the forms and a complete Paperwork Reduction Act analysis follows this section.

No other burdens are expected to fall upon the dairy industry as a result of overlapping Federal rules. This proposed regulation does not duplicate,

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overlap or conflict with any existing Federal rules.

To ensure that small businesses are not unduly or disproportionately burdened based on this proposed regulation, consideration was given to several options with the intention of mitigating negative impacts. Three options, including two suggested in the preliminary reports issued by AMS in December 1996 and May 1997, were considered with regard to the consolidation of Federal orders, five options were considered as replacements for the basic formula price, and seven options were considered with regard to the development of a new Class I price structure. The following options were considered by AMS prior to and during the development of the proposed regulation.

Consolidation Options

It is impossible to determine the economic effects of marketing area consolidation on handlers, producers and consumers without using assumptions about the specific order provisions contained in the consolidated order areas. The only effect consolidation, as a single factor, can have on the various market participants is through changes in the percentage of milk used in different classes within the proposed consolidated orders. Without assumptions that include the specific class prices and milk uses in different products, there are no means of quantifying the economic effects of consolidation.

Handlers would be affected by class prices, which would be determined by the Class I price surface option that is selected, and by the minimum prices contained in all of the orders for milk used in Classes II, III and IV. The Class I price surface options considered could have impacts on small handler entities, however, handlers similarly located would be subject to the same minimum Class I prices, regardless of the size of their operations, and all handlers would be subject to the same minimum prices for Class II, Class III and Class IV milk. Such handlers would also be subject to the same minimum prices to be paid to producers.

Producers may be somewhat more affected by consolidation of marketing areas because changes in utilization percentages would result in changes in blend prices. As in the case of effects on handlers, however, it is impossible to determine a separate consolidation effect on producers, defined in monetary terms. The closest approximation to such an estimate would be the "weighted average utilization value" (WAUV). These "prices" reflect only the change in value that can be attributed to changes in utilization rates, with no assumptions about changes in the levels of the various class prices. Such estimates, of necessity, reflect only anticipated changes in blend prices, using class prices that would no longer be in effect under the consolidated orders. To the extent that the WAUV computations reflect some of the effect of consolidation on producer prices, they are included in this analysis under each option discussion. It should be noted, however, that all producers in any given current area would be affected to an equal extent by the consolidation factor, with no disproportionate effect on small dairy farmer entities.

The following table shows the potential impact of three order consolidation options on producers who supply each of the current Federal milk marketing order areas via WAUV "prices". The three consolidated options are (1) the consolidated marketing areas suggested in the December 1996 initial Preliminary Report on Order Consolidation; (2) the consolidated marketing areas suggested in the May 1997 Revised Preliminary Report on Order Consolidation; and (3) the consolidated marketing areas suggested in this proposed rule.

WEIGHTED AVERAGE UTILIZATION VALUES (WAUV)

[Based on October 1995 information ($/cwt)]

Consolidated Market / Current Markets	Marketing Areas in Initial Consol. Report (Dec. 96) (Option 1)		Marketing Areas in Revised Consol. Report (May 97) (Option 2)		Marketing Areas in Proposed Rule (Option 3)	
	Consol. Mkt. WAUV ($/cwt)		Consol. Mkt. WAUV ($/cwt)		Consol. Mkt. WAUV ($/cwt)	
	WAUV using Current Mkt. Utilization ($/cwt)	WAUV using Consol. Mkt. Utilization ($/cwt)	WAUV using Current Mkt. Utilization ($/cwt)	WAUV using Consol. Mkt. Utilization ($/cwt)	WAUV using Current Mkt. Utilization ($/cwt)	WAUV using Consol. Mkt. Utilization ($/cwt)
Northeast		$13.46		$13.48		$13.47
New England (F.O. 1)	13.50	13.48	13.52	13.51	13.52	13.49
NY–NJ (F.O. 2)	13.44	13.48	13.48	13.50	13.45	13.48
Middle Atlantic (F.O.4)	13.45	13.39	13.45	13.41	13.44	13.40
Appalachian		14.13		13.96		13.97
Carolina (F.O. 5)	14.23	14.21	14.23	14.19	14.23	14.20
Tenn. Valley (F.O. 11)	13.92	13.95	13.92	13.93	13.92	13.94
Lville-Lex-Evan (F.O. 46)	n/a	n/a	13.35	13.39	13.35	13.40
Florida		15.05		15.05		15.05
Upper Florida (F.O. 6)	14.67	14.78	14.67	14.78	14.67	14.78
Tampa Bay (F.O. 12)	15.09	15.04	15.09	15.04	15.09	15.04
SE Florida (F.O. 13)	15.42	15.31	15.42	15.31	15.42	15.31
Southeast		14.26		14.25		14.24
Southeast (F.O. 7)	14.26	14.26	14.25	14.25	14.24	14.27
Mideast		12.96		12.94		12.92
Ohio Valley (F.O. 33)	12.99	13.02	12.99	13.01	12.99	13.00
E. Ohio-W. PA (F.O. 36)	13.07	13.00	13.10	12.99	13.07	12.97
S. Michigan (F.O. 40)	12.75	12.86	12.75	12.84	12.75	12.83
MI Upper Penin. (F.O. 44)	12.81	12.62	12.81	13.262	12.81	12.61
Lville-Lex-Evan (F.O. 46)	13.35	13.06	n/a	n/a	n/a	n/a
Indiana (F.O. 49)	12.97	12.94	12.97	12.93	12.97	12.92
Upper Midwest		12.60		12.62		12.60

WEIGHTED AVERAGE UTILIZATION VALUES (WAUV)—Continued

[Based on October 1995 information ($/cwt)]

Consolidated Market / Current Markets	Marketing Areas in Initial Consol. Report (Dec. 96) (Option 1)		Marketing Areas in Revised Consol. Report (May 97) (Option 2)		Marketing Areas in Proposed Rule (Option 3)	
	Consol. Mkt. WAUV ($/cwt)		Consol. Mkt. WAUV ($/cwt)		Consol. Mkt. WAUV ($/cwt)	
	WAUV using Current Mkt. Utilization ($/cwt)	WAUV using Consol. Mkt. Utilization ($/cwt)	WAUV using Current Mkt. Utilization ($/cwt)	WAUV using Consol. Mkt. Utilization ($/cwt)	WAUV using Current Mkt. Utilization ($/cwt)	WAUV using Consol. Mkt. Utilization ($/cwt)
Chicago Reg. (F.O. 30)	12.62	12.62	12.62	12.61	12.62	12.62
MI Upper Penin. (F.O. 44)	R	R	R	R	R	R
Neb.-W. Iowa (F.O. 65)	n/a	n/a	12.63	12.74	n/a	n/a
Upper Midwest (F.O. 68)	12.55	12.56	12.55	12.54	2.55	12.56
E. South Dakota (F.O. 76)	n/a	n/a	12.81	12.65	n/a	n/a
Iowa (F.O. 79)	n/a	n/a	12.69	12.67	n/a	n/a
Central		13.16		13.21		12.95
S. IL–E MO (F.O. 32)	12.93	12.90	13.00	12.95	13.00	12.88
Central IL (F.O. 50)	13.03	12.74	13.03	12.78	13.03	12.72
Greater K. City (F.O. 64)	13.22	12.90	13.22	12.95	13.22	12.88
Neb.-W. Iowa (F.O. 65)	12.63	12.81	n/a	n/a	12.63	12.79
E. South Dakota (F.O. 76)	12.81	12.68	n/a	n/a	12.81	12.67
Iowa (F.O. 79)	12.71	12.71	n/a	n/a	12.71	12.70
SW Plains (F.O. 106)	13.31	13.33	13.31	13.41	13.08	13.29
E. Colorado (F.O. 137)	13.27	13.31	13.27	13.38	13.27	13.27
Southwest		13.36		13.39		13.39
Texas (F.O. 126)	13.49	13.48	13.49	13.46	13.49	13.46
Central AZ (F.O. 131)	13.26	13.17	n/a	n/a	n/a	n/a
NW–W Texas (F.O. 138)	13.00	13.09	13.00	13.07	13.00	13.07
Arizona–Las Vegas		n/a		13.26		13.26
Central AZ (F.O. 131)	n/a	n/a	13.26	13.29	13.26	13.29
Western		12.79		12.78		12.78
W. Colorado (F.O. 134)	13.41	12.84	13.41	12.82	13.41	12.82
SW ID–E. OR (F.O. 135)	12.63	12.68	12.63	12.68	12.63	12.68
Great Basin (F.O. 139)	12.83	12.81	12.81	12.79	12.81	12.79
Pacific Northwest		12.45		12.44		12.44
Pacific NW (F.O. 124)	12.45	12.45	12.44	12.44	12.44	12.44

n/a: not applicable.
R: Restricted.

For each option, a weighted average use value (WAUV) is computed for (a) the consolidated order; (b) the current order with current use of milk; and (c) the current order with projected use of milk in the consolidated order. The difference between the weighted average use values in (b) and (c) represents the potential impact on producers.

For example, in this proposed rule, the New England (F.O. 1) market's WAUV using its current utilization is $13.52 per cwt. When the three markets are consolidated and the new consolidated utilization is used to calculate the WAUV, New England's WAUV would be $13.49 per cwt. In this comparison, the potential impact on producers supplying the New England market area would be a decrease of three cents per cwt.

Each of the three options assumes the pool distributing plant standards suggested for each of the consolidated orders in this proposed rule; thus the calculated values in the preceding table are not directly comparable to the WAUV values published with either the initial or the revised reports on order consolidation.

During the process of developing this proposed rule, AMS issued two reports suggesting 10 and 11 marketing area boundaries, respectively, to meet the requirements of the 1996 Farm Bill. The marketing areas defined in these reports were based primarily on an analysis of receipt and distributing data from fluid distributing plants in October 1995. Over 900 comments regarding consolidation issues received thus far in the development process also have been considered: almost 50 comments prior to the December 1996 release of the Preliminary Report on Order Consolidation (Option 1); an additional 60 comments prior to the May 1997 release of the Revised Preliminary Report on Order Consolidation (Option 2); and another 800 comments since release of the revised report. These comments were filed primarily by producers and handlers. Incorporated in the marketing area boundaries suggested in the revised report and in the proposed consolidation in this rule (Option 3) are both information contained in the comments as well as data gathered to update the information on which the earlier report(s) were based where questions were raised about the boundaries of suggested marketing areas and where marketing changes had occurred.

Option 1 (Preliminary Report on Order Consolidation, December 1996)

Based on seven criteria: ((1) Overlapping route disposition; (2) overlapping areas of milk supply; (3) number of handlers within a market; (4) natural boundaries; (5) cooperative association service areas; (6) features common to existing orders, such as similar multiple component pricing plans; and (7) milk utilization in common dairy products), 10 marketing areas (Northeast, Appalachian, Florida, Southeast, Mideast, Upper Midwest, Central, Southwest, Western and Pacific Northwest) were suggested in this

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report. Data were gathered relating to the receipts and distribution of fluid milk products for all known distributing plants located in the 47 contiguous States, not including the State of California, for the month of October 1995.

The current Federal orders that comprise the initially-suggested consolidated areas are as follows: NORTHEAST—current marketing areas of the New England, New York-New Jersey, and Middle Atlantic Federal milk orders; APPALACHIAN—current marketing areas of the Carolina and Tennessee Valley Federal milk orders, and a portion of the Louisville-Lexington-Evansville Federal milk order; FLORIDA—current marketing areas of the Upper Florida, Tampa Bay, and Southeastern Florida Federal milk orders; SOUTHEAST—current marketing areas of the Southeast Federal milk order, plus 1 county from the Louisville-Lexington-Evansville Federal milk order marketing area, 15 currently unregulated Kentucky counties, and 2 currently unregulated northeast Texas counties; MIDEAST—current marketing areas of the Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan, and Indiana Federal milk orders, plus most of the current marketing area of the Louisville-Lexington-Evansville Federal milk order, Zone 2 of the Michigan Upper Peninsula Federal milk order, and 12 counties of the Southern Illinois-Eastern Missouri Federal milk order; UPPER MIDWEST—current marketing areas of the Chicago Regional and Upper Midwest Federal milk orders, plus Zones I and I(a) of the Michigan Upper Peninsula Federal milk order and seven unregulated or partly regulated Wisconsin counties; CENTRAL—current marketing areas of the Southern Illinois-Eastern Missouri (less 12 counties included in the suggested Mideast marketing area), Central Illinois, Greater Kansas City, Nebraska-Western Iowa (less 11 currently-regulated counties suggested to be unregulated), Eastern South Dakota, Iowa, Southwest Plains, and Eastern Colorado Federal milk orders, plus 63 currently-unregulated counties in seven of the states; SOUTHWEST—current marketing areas of the Texas, New Mexico-West Texas, and Central Arizona Federal milk orders; WESTERN—current marketing areas of the Western Colorado, Southwestern Idaho-Eastern Oregon, and Great Basin Federal milk orders; and PACIFIC NORTHWEST—current marketing area of the Pacific Northwest Federal milk order plus 1 currently-unregulated county in Oregon.

Based on the WAUV calculations shown in the previous table, utilization rate changes due to consolidation could affect producer prices. The column labeled "Option 1" shows the WAUV for the consolidated order and each of the current orders suggested in the December 1996 report.

In the Northeast market, producers currently affiliated with the New England and Middle Atlantic would have negative impacts on their WAUV, respectively, while New York-New Jersey producers would be positively impacted. In the Appalachian market, Carolina producers should expect some negative impacts due to consolidation, while Tennessee Valley producers would experience positive effects from this consolidation. In the Florida market, Upper Florida producers would gain while Tampa Bay and Southeastern Florida producers would have a negative impact resulting from this consolidation. The Southeast market remains virtually the same as it does currently and thus, no or little impact on producer prices would be expected. In the Mideast market, producers affiliated with the Ohio Valley and Southern Michigan Federal orders would probably see increases in blend prices due to this consolidation, while producers affiliated with the Eastern Ohio-Western Pennsylvania, Michigan Upper Peninsula, Louisville-Lexington-Evansville and Indiana Federal orders would see decreases. In the Upper Midwest market, the Upper Midwest producers should see slight increases while Chicago Regional producers would probably have no impact due to this consolidation. Of all the consolidated markets, producers in the current Orders that compose the Central market probably would see the largest changes due to this consolidation: producers with the Nebraska-Western Iowa, Southwest Plains and Eastern Colorado markets may see increases, while producers affiliated with the Southern Illinois-Eastern Missouri, Central Illinois, Greater Kansas City, and Eastern South Dakota markets may see decreases. Producers with the Iowa market would probably have no impact due to this suggested Central market consolidation. In the Southwest market, producers affiliated with the New Mexico-West Texas would see increases due to this consolidation while Texas and Central Arizona producers would see decreases. In the Western market, Southwestern Idaho-Eastern Oregon producers would see increases but Western Colorado and Great Basin producers would see decreases. The Pacific Northwest market remains virtually the same as it does currently and thus, no or little impact on producer prices would be expected.

Of approximately 83,000 dairy producers delivering milk to handlers regulated under the milk orders, about 80,000 are considered to be small businesses under the production guideline of less than 326,000 pounds per month.

As stated above, handlers are impacted more significantly by class prices and minimum prices than by expected utilization changes resulting from consolidation. Of the 371 distributing plants expected to be fully regulated under this 10-market suggested configuration under the assumptions used in the December 1996 report, an estimated 193 plants are small businesses under the criteria provided by the SBA (under 500 employees).

Option 2 (Revised Preliminary Report on Order Consolidation, May 1997)

Eleven marketing areas were suggested in this second report. Because numerous comments indicated that the boundaries of some marketing areas should be re-evaluated, and also because regulatory shifts and distributing plant distribution areas had occurred, more detailed and updated data was obtained. The same seven criteria used in Option 1 were applied in this option as well. Modifications were made to the Northeast, Appalachian, Southeast, Mideast, Upper Midwest, Central, Southwest and Western regions, as follows (only the changes to these orders are noted): NORTHEAST—Addition of contiguous unregulated areas of New Hampshire, Vermont and New York; the western non-Federally regulated portion of Massachusetts, the Western New York State order area, and Pennsylvania Milk Marketing Board Areas 2 and 3 in northeastern Pennsylvania; APPALACHIAN—Addition of all of the Louisville-Lexington-Evansville Federal order (with the exception of one county included in the suggested Southeast market) and 26 currently-unregulated counties in Indiana and Kentucky; SOUTHEAST—Minus 2 currently-unregulated counties in northeast Texas (in the suggested Southwest market); MIDEAST—Addition of Pennsylvania Milk Marketing Board Area 6 (in western/central Pennsylvania) and 2 currently-unregulated counties in New York, and minus the Louisville-Lexington-Evansville Federal order area, 12 counties in Illinois, and unregulated counties in Indiana and Kentucky (in the suggested Appalachian market); UPPER MIDWEST—Addition of the Iowa, Eastern South Dakota, and most of the Nebraska-Western Iowa Federal order areas, plus currently-unregulated counties in Iowa and Nebraska; CENTRAL—Addition of 12 counties in the current Southern Illinois-Eastern Missouri Federal order that initially were suggested as part of the consolidated Mideast area, and minus the Eastern South Dakota, Iowa, and most of the Nebraska-Western Iowa Federal order marketing area; SOUTHWEST—Addition of 2 currently-unregulated northeast Texas counties that initially were suggested as part of the consolidated Southeast market and 47 currently-unregulated counties in southwest Texas, and minus the Central Arizona marketing area; ARIZONA-LAS VEGAS—this new eleventh marketing area composed of the current marketing area of the Central Arizona Federal order and the Clark County, Nevada, portion of the current Great Basin marketing area, plus eight currently-unregulated Arizona counties; and WESTERN—Minus Clark County, Nevada. The FLORIDA and PACIFIC NORTHWEST marketing areas did not change from the preliminary report.

Based on the WAUV calculations shown in the previous table, utilization rate changes due to consolidation could affect producer prices. The column labeled "Option 2" shows the WAUV for the consolidated order and each of the current orders suggested in the May 1997 report.

In the Northeast market, producers currently affiliated with the New England and Middle Atlantic orders would have negative impacts on their WAUV, respectively, while New York-New Jersey producers would remain unchanged. In the Appalachian market, Carolina producers should expect some negative impacts due to consolidation, while Tennessee Valley and Louisville-Lexington-Evansville producers would experience positive effects from this consolidation. In the Florida market, Upper Florida producers would gain while Tampa Bay and Southeastern Florida producers would have a negative impact resulting from this consolidation. The Southeast market remains virtually the same as it does currently and thus, little impact on producer prices would be expected. In the Mideast market, producers affiliated with the Ohio Valley and Southern Michigan Federal orders would probably see increases in blend prices due to this consolidation, while producers affiliated with the Eastern Ohio-Western Pennsylvania, Michigan Upper Peninsula, and Indiana Federal orders would see decreases. In the Upper Midwest market, the Nebraska-Western Iowa producers should see increases, while Chicago Regional, Upper Midwest, Eastern South Dakota, and Iowa producers would have a decrease in producer prices due to this consolidation. In the Central market, producers with the Southwest Plains and Eastern Colorado markets would see increases, while producers affiliated with Southern Illinois-Eastern Missouri, Central Illinois, and Greater Kansas City markets may see decreases. In the Southwest market, producers affiliated with New Mexico-West Texas would see increases due to this consolidation while Texas producers would see decreases. The added Arizona-Las Vegas market is virtually the same as the Central Arizona market but a positive impact on producer prices may result from an additional handler. In the Western market, Southwestern Idaho-Eastern Oregon producers would see increases but Western Colorado and Great Basin producers would see decreases. The Pacific Northwest market remains virtually the same as it does currently and thus, no or little impact on producer prices would be expected.

Of approximately 83,000 dairy producers delivering milk to handlers regulated under the milk orders, about 80,000 are considered to be small businesses under the production guideline of less than 326,000 pounds per month. In addition, it is estimated that about 13 percent of the total milk production in Pennsylvania is represented only by the Pennsylvania Milk Marketing Board. Under this option, this production would be added to the Federal order pool and affect an undetermined number of businesses which would include both small and large producers.

As stated above, handlers are impacted more significantly by class prices and minimum prices than by expected utilization changes resulting from consolidation. Of the 379 plants expected to be fully regulated under this 11-market suggested configuration under the assumptions used in the May 1997 report, 175 plants are estimated to be small businesses on the basis of fewer than 500 employees.

The preliminary consolidation report (Option 1) stated that the Farm Bill requirement to consolidate existing marketing areas did not specify expansion of regulation to previously non-Federally regulated areas where such expansion would have the effect of regulating handlers not currently regulated. However, on the basis of data, views and arguments filed by interested persons in response to the initial Preliminary Report (Option 1) requesting that currently non-Federally regulated areas be added to some consolidated marketing areas, the revised Preliminary Report (Option 2) suggests that such areas be added to several consolidated areas, the Northeast and Mideast market areas in particular. Approximately 20 handlers who would have been affected by the expansion of Federal order areas into currently non-Federally regulated areas were notified of the possible change in their status and encouraged to comment.

Handlers located in Pennsylvania Milk Marketing Board Areas 2, 3 and 6 are regulated under the State of Pennsylvania if they do not have enough sales in any Federal order area to meet an order's pooling standards. If such plants do meet Federal order pooling standards, the State continues to enforce some of its regulations in addition to Federal order regulations. As state-regulated handlers, they must pay a Class I price for milk used in fluid products which is often higher than the Federal order price would be. Inclusion of the Pennsylvania-regulated handlers in the consolidated marketing area would have little effect on handlers' costs of Class I milk (or might reduce them), while reducing producer returns.

Option 3: The Proposed Consolidation

The proposed consolidation is a result of extensive analysis of data as previously indicated and consideration of public comments submitted in response to Options 1 and 2. Extensive outreach, which is explained in the "Public Input" section, was completed. After compiling this information, the proposed order consolidation was developed to ensure industry integrity.

Eleven marketing areas are proposed in this rule, including modifications to some of the 11 marketing orders suggested in Option 2. Marketing data was further examined for some of the suggested consolidated marketing areas to determine the most appropriate configurations of the consolidated areas. Primary criteria continues to be the seven used in the two earlier reports on order consolidation. As a result of further analysis, the configurations of the Northeast, Mideast, Southeast, Upper Midwest and Central areas have changed significantly from those suggested in Option 2, and minor changes have been made to the Appalachian area. The modifications for these areas from the revised preliminary report (Option 2) are as follows: NORTHEAST—Minus some previously suggested area to be included in the Northeast (the southern tier of 3 western New York counties and Pennsylvania Milk Marketing Board Areas 2 and 3); APPALACHIAN—Minus five Kentucky counties that were part of the former

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Paducah order area, now suggested to be in the Southeast market;
SOUTHEAST—Addition of 11 northwest Arkansas and 22 entire and 1 partial Missouri counties currently part of the Southwest Plains Federal order, 6 Missouri counties currently part of the Southern Illinois-Eastern Missouri Federal order, 16 currently unregulated southeast Missouri counties, 20 currently unregulated Kentucky counties (were suggested to be in the Appalachian market); MIDEAST—Minus the current Pennsylvania Milk Marketing Board Area 6 and two southwestern New York counties, all currently non-Federally regulated; UPPER MIDWEST—Minus the Iowa, Eastern South Dakota, Nebraska-Western Iowa Federal order areas; CENTRAL—Addition of the Iowa, Eastern South Dakota, Nebraska-Western Iowa Federal order areas, 68 currently-unregulated counties in Kansas, Missouri, Illinois, Iowa, Nebraska and Colorado, and minus 11 northwest Arkansas and 22 entire and 1 partial Missouri counties currently part of the Southwest Plains Federal order, 6 Missouri counties currently part of the Southern Illinois-Eastern Missouri Federal order, and 16 currently unregulated southeast Missouri counties. The FLORIDA, SOUTHWEST, ARIZONA-LAS VEGAS, WESTERN and PACIFIC NORTHWEST marketing areas did not change from the revised preliminary report.

Based on the WAUV calculations shown in the previous table, utilization rate changes due to consolidation could affect producer prices. The column labeled "Proposed Rule" shows the WAUV for the consolidated order and each of the current orders suggested in this proposed rule.

In the Northeast market, for producers currently affiliated with the New York-New Jersey order, the proposed option would have positive impacts on their WAUV, while New England and Middle Atlantic producers would be negatively impacted. In the Appalachian market, Carolina producers should expect some negative impacts due to consolidation, while Tennessee Valley and Louisville-Lexington-Evansville producers would experience positive effects from this consolidation. In the Florida market, Upper Florida producers would gain while Tampa Bay and Southeastern Florida producers would have a negative impact resulting from this consolidation. With the addition of marketing area to the Southeast, the WAUV for Southeast producers may be expected to be positively impacted. In the Mideast market, producers affiliated with the Ohio Valley and Southern Michigan Federal orders would probably see increases in blend prices due to this consolidation, while producers affiliated with the Eastern Ohio-Western Pennsylvania, Michigan Upper Peninsula, and Indiana Federal orders would see decreases. In the Upper Midwest market, the Upper Midwest producers should see slight increases, while Chicago Regional producers would have no impact due to this consolidation. In the Central market, producers with the Nebraska-Western Iowa and Southwest Plains markets would see increases, producers affiliated with Southern Illinois-Eastern Missouri, Central Illinois, Greater Kansas City, Eastern South Dakota, and Iowa markets may see decreases, and Eastern Colorado producers would see no impact. In the Southwest market, producers affiliated with New Mexico-West Texas would see increases due to this consolidation while Texas producers would see decreases. Producers in the Arizona-Las Vegas market may receive a positive impact on producer prices due to an additional handler regulated in this order area. In the Western market, Southwestern Idaho-Eastern Oregon producers would see increases but Western Colorado and Great Basin producers would see decreases. The Pacific Northwest market remains virtually the same as it does currently and thus, no or little impact on producer prices would be expected.

Of approximately 83,000 dairy producers delivering milk to handlers regulated under the milk orders, about 80,000 are considered to be small businesses under the production guideline of less than 326,000 pounds per month. The additional estimated 13 percent of Pennsylvania's total milk production represented by the Pennsylvania Milk Marketing Board which would have been added in Option 2, would not be included under this option.

As stated above, handlers are impacted more significantly by class prices and minimum prices than by expected utilization changes resulting from consolidation. Of the 337 plants expected to be fully regulated under this 11-market proposed configuration, 164 plants are estimated to be small businesses on the basis of fewer than 500 employees.

Based on the comments received in response to the revised preliminary report (Option 2) it has been determined that consolidation of the existing orders does not necessitate expansion of the consolidated orders into areas in which handlers are subject to minimum Class I pricing under State regulation, especially when the states' Class I prices exceed or equal those that would be established under Federal milk order regulation. Such regulation would have the effect of reducing returns to producers already included under State regulation without significantly affecting prices paid by handlers who compete with Federally-regulated handlers.

In an effort to avoid extending Federal regulation to handlers whose primary sales areas are outside current Federal order marketing areas, but who already are subject to similar minimum uniform pricing under State regulation, the in-area Class I disposition percentage portion of the pool distributing plant definition is proposed to be 25 percent for the Northeast order and 30 percent for the Mideast order, instead of the 10 or 15 percent used in the other nine consolidated order areas. It is estimated that five plants in Pennsylvania, Maryland and Virginia that would have been fully regulated using 15 percent would remain partially regulated, as they currently are, using 25 and 30 percent, respectively. At least three of these five handlers meet the small business criteria.

Exempt Plants

Options 2 and 3 both recognize the Identical Provisions Committee [14] determination than a handler distributing less than 150,000 pounds per month of fluid milk products does not have a significant competitive effect on the market, and that handlers of such size should, therefore, be exempt from the pricing and pooling provisions of the orders. The level of route disposition required before an exempt plant becomes regulated varies in the current orders. As recommended, any plant with route disposition during the month of 150,000 pounds or less would be exempt in the consolidated orders. This limit reflects the maximum amount of fluid milk products allowed by an exempt plant in any current Federal milk order and ensures plants that are currently exempt from regulation would remain so. Under this proposed rule, it is expected that 36 distributing plants that otherwise would be identified as fully regulated plants are identified as exempt plants. Therefore under this provision, these plants would not be subject to the pricing and pooling provisions of their respective order.

Although 150,000 pounds of fluid milk disposition per month may represent a level at which exempting a distributing plant could be expected not to have a serious detrimental impact on the ability of a Federal milk order to provide for uniform pricing to handlers and producers, it would be quite difficult to select a higher level of exemption without compromising the purposes of the regulation. The under-500-employee definition of a small business assures that nearly all single-plant milk handlers would qualify as a small business. Many of the "small" businesses may be among the largest competitors in a particular market.

In addition, numbers of employees could be expected to vary greatly with the nature of a plant's operation. For instance, the number of persons employed by two plants processing and distributing equal volumes of fluid milk products could be very different if one plant contracts out its producer milk hauling, laboratory operations and packaged product distribution, while the other plant performs all of these operations with its own employees. For this reason alone, it would be inappropriate to exempt handlers from regulation, or to impose differing regulatory burdens, on the basis of their size beyond the minimal size determined to be less than a significant competitive force in the market.

Many current Federal orders also provide regulatory exemption for a plant operated by a state or Federal government agency. For example, some states have dairy farm and plant operations that provide milk for their prison populations. As recommended, regulatory exemption would be continued under the consolidated orders unless pool plant status is desired. Additionally, regulatory exemption is intended to include colleges, universities and charitable institutions because these institutions generally handle fluid milk products internally and have little or no impact in the mainstream commercial market. However, in the event that these entities do distribute fluid milk through commercial channels, route sales by such entities, including government agencies, would be monitored to determine if Federal regulations should apply. Under this proposed rule, it is expected that 18 distributing plants would be identified as exempt based on their institutional status.

Producer-handlers

Also exempt from full regulation would be those entities that operate as both a producer and a handler. A primary basis for exempting producer-handlers from the pricing and pooling provisions of a milk order is that these entities are customarily small businesses that operate essentially in a self-sufficient manner. During August 1997, 111 producer-handlers submitted reports under the Federal milk marketing order program.

Basic Formula Price Options

A number of options for determining a basic formula price were considered and analyzed in the process of developing the proposed basic formula price (BFP). In addition to the proposed method of pricing components based on their value in manufactured products, other options examined, by both the Agricultural Marketing Service's Dairy Division Basic Formula Price Replacement Committee and by the University Study Committee (USC), led by Dr. Ronald D. Knutson of Texas A & M University, were: economic formulas, futures markets, cost of production, competitive pay pricing, and pricing differentials only.

Descriptions of the two Committees' analyses, and results of their work are included in "A Preliminary Report on Alternatives to the Basic Formula Price," published in April 1997 by the Basic Formula Price Committee, Dairy Division, AMS; and the following reports from the Agricultural and Food Policy Center, Texas A&M University System:

"An Economic Evaluation of Basic Formula Price (BFP) Alternatives," AFPC Working Paper 97–2, June 1997.

"Evaluation of 'Final' Four Basic Formula Price Options," AFPC Working Paper 97–9, August 1997.[15]

The primary criterion used by the Dairy Division BFP Committee was that any replacement BFP option reflect the supply of and demand for milk used in manufactured dairy products. At the same time, one of the USC's critical criteria for a replacement BFP was that it reliably reflect market conditions for all manufactured products.

In trying to determine the most appropriate replacement for the current BFP, which uses a survey of prices paid by manufacturing plants for non-Grade A milk updated by a product price formula, the goal of both groups was a market-based alternative. The BFP Committee measured the extent to which each pricing option met its primary goal by tracking the options against the current BFP for a period of prior months, on the basis of the assumption that the current BFP successfully reflects the supply and demand for milk used in manufactured products. The USC Committee used an econometric procedure to test the ability of the alternatives they considered to reflect supply and demand.

To the extent the goal of identifying a BFP that reflects the value of milk used in manufactured products is capable of attainment, all market participants would be affected by the BFP replacement in the same manner as if they were operating in a free market, with no external impacts caused by regulation. To the extent the goal is achieved, then, there would be no uneven impact on market participants on the basis of size. All market participants, (handlers, producers and consumers), would be affected in the same manner as if there were no regulation. However, the existence of minimum order pricing serves to assure that small handlers pay no more for their milk than larger entities (unless the market allows higher prices to be exacted from small buyers), and that small producers receive the same minimum uniform price for the milk or components of milk they produce as large producers. Consumers can be assured that the prices generally charged for dairy products are prices that reflect, as closely as possible, the forces of supply and demand in the market.

Of the options considered and analyzed, both groups studying the issue determined that the option of pricing components of milk according to their value in manufactured products, as reflected by the sales prices of those products, best approximates the intersection of supply and demand for milk used in manufactured dairy products.

Manufacturing Allowances

Make allowances or manufacturing allowances, one of the factors incorporated in the formulas for determining component values, may reflect more closely the manufacturing costs of large firms than those of small firms. These manufacturing costs would be used to adjust the sales prices of dairy products to the value of milk purchased to make the products. To the extent these allowances fail to reflect the full cost of manufacturing, they may require handlers to pay more for milk than they can realize from the sale of their products. On the other hand, if the manufacturing allowances more than cover the cost of manufacturing, handlers may be assured of extra margins.

Although it may appear that the use of make allowances in the computation

[14] The Identical Provisions Committee was established in May 1996 to address uniformity in order provisions during the Federal order reform process. This committee and others established are described further in the "Background" portion of this proposed rule.

[15] These reports can be obtained from the Agricultural and Food Policy Center, Department of Agricultural Economics, Texas A&M University, College Station, Texas 77843–2124, telephone (409) 845–5913 or on the Internet at http://AFPC1.TAMU.EDU.

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of component prices would advantage large processors because of possible economies of scale, these economies exist regardless of whether they are recognized in price computations. If the assumption is made that economies of scale exist in dairy plants and that large plants are more efficient than small plants, a manufacturing allowance that fully covers a small handler's cost of making products would merely increase the profit margin of its larger competitors. At the same time, producers unfairly would be required to subsidize the manufacturing costs of handlers who use their milk, and consumers would pay more for their dairy products than the costs of production and processing would justify.

An attempt has been made, using Cornell University studies of manufacturing costs at a number of manufacturing plants distributed around the U.S., to arrive at economically defensible make allowances. Since it is difficult to distinguish the differential effects of market-based component pricing on small and large firms engaged in manufacturing dairy products, reliance would be placed on industry participants to comment on these facets of the proposed BFP replacement.

Impact of Multiple Component Pricing Provisions on Small Entities

Seven of the eleven proposed orders provide for milk to be paid for on the basis of its components (multiple component pricing, or MCP). Five of the seven MCP orders also provide for milk values to be adjusted according to the somatic cell count of producer milk. The equipment needed for testing milk for its component content can be very expensive to purchase, and requires highly-skilled personnel to maintain and operate. The cost of infra-red analyzers ranges from just under $100,000 to $200,000. The infra-red machines that are used by most laboratories would test for total solids and somatic cells at the same time the butterfat and protein tests are done.

No new report forms are needed under multiple component pricing; however, some additional reporting is necessary to enable handlers' values of milk to be determined on the basis of components, and to assure that producers are paid correctly. For the market administrators to compute the producer price differential, handlers would need to supply additional information on their currently-required monthly reports of receipts and utilization. In addition to the product pounds and butterfat currently reported, handlers would be required to report pounds of protein, pounds of other solids, and, in 5 of the orders, somatic cell information. This data would be required from each handler for all producer receipts, including milk diverted by the handler, receipts from cooperatives as 9(c) handlers (that is, the cooperative acts as a handler); and, in some cases, receipts of bulk milk received by transfer or diversion.

Since producers would be receiving payments based on the component levels of their milk, the payroll reports that handlers supply to producers must reflect the basis for such payment. Therefore the handler would be required to supply the producer not only with the information currently supplied, but also, (a) the pounds of butterfat, the pounds of protein, and the pounds of other solids contained in the producer's milk, as well as the producer's average somatic cell count, and (b) the minimum rates that are required for payment for each pricing factor and, if a different rate is paid, the effective rate also. Many handlers already report this additional information. It should be noted that handlers already are required to report information relative to pounds of production, butterfat and rates of payment for butterfat and hundredweight of milk to the appropriate Market Administrator.

Of over 74,000 producers whose milk was pooled in December 1996 under 23 of the current orders that would be part of consolidated orders providing for multiple component pricing, the milk of 52,500 of these producers was pooled under 13 current orders that have MCP. Handlers in these markets already have incurred the initial costs of testing milk for its component content, and have made the needed transition to reporting the component contents of milk receipts on their handler reports to the market administrators, and on their reports of what they have paid producers.

Of the remaining 21,750 producers who would be affected by MCP provisions under a Federal order (including an estimated 20,650 producers qualifying as small businesses), the milk of approximately 13,000, or 60 percent, currently is received by handlers who test or have the capability of testing for multiple components and, in many cases, somatic cells. Many of these handlers also report component results to the producers with their payments. Almost all of the producers whose milk currently is not being tested or paid for on the basis of components are located in the New England and New York-New Jersey marketing areas, which would be consolidated with the Middle Atlantic area into the proposed Northeast order.

Accommodation has been made to ameliorate handlers' expenses of testing producer milk for component content

As component pricing plans have been adopted under a number of the present Federal milk orders since 1988, the component testing needed to implement these pricing plans has been performed by the market administrators responsible for the administration of the orders involved for handlers who have not been equipped to make all of the determinations required under the amended orders. It has been made clear in the decisions under which these plans have been adopted that handlers who would find it unduly burdensome to obtain the equipment and personnel needed to accomplish the required testing may rely on the market administrators to verify or establish the tests under which producers are paid. As noted above, however, many handlers not now subject to MCP provisions under Federal orders have nevertheless already undertaken multiple component testing and payment programs.

Pricing Options

Several pricing options, as discussed below, were considered as replacements for the current Class I price structure. Five of the options were determined to have a negative impact on small businesses, albeit slight or significant. These options included relative use differentials, flat differentials, modified flat differentials, demand based differentials, and a decoupled baseline Class I price with adjustors. In addition to the impacts on small businesses, these options were not considered viable based on additional qualitative analysis contained in the findings and conclusions of the proposed rule.

Relative Use Differentials

The use of relative use differentials based on Class I utilizations was considered as an option for replacing the Class I price structure. Using this concept, the relative use Class I differential would equal $1.60 per hundredweight plus the relative use ratio times $1.00. A 25 percent limit would be applied so the new differential would not exceed 125 percent of the current differential nor fall to less than 75 percent of the current differential. A percentage limit was placed on the differential changes to temper adjustments based on market supply and demand conditions.

The advantages of the system are that it allows Class I differentials to adapt to supply and demand conditions within a given marketing area based on changes in the utilization. However, because the differentials would be allowed to change independently from neighboring areas, serious problems arise with order-to-order alignment.

The next table illustrates the Class I differentials under the proposed consolidated orders. These differentials are not location-specific within the applicable orders. For purposes of this analysis and to provide a basis for comparison within the proposed consolidated orders, a weighted average Class I differential has been calculated for each order, based on October 1995 data. This weighted average differential is computed by multiplying the percentage of Class I milk in each of the current orders that comprise the consolidated order by the applicable current order differential and adding the resulting amounts. This weighted average differential is not location specific for the consolidated order.

RELATIVE USE CLASS I DIFFERENTIALS IN PROPOSED ORDERS

[Based on October 1995 Data]

Proposed order [1]	Relative use ratio [2] (percent)	+ $1.60 = class I diff. ($/cwt)	Weighted average diff. ($/cwt) [3]	Maximum diff. range (75%–125%)	New diff ($/cwt)	Change in diff. ($/cwt)
Northeast	0.92	2.52	3.14	2.35–3.93	2.52	−0.62
Appalachian	4.60	6.20	2.79	2.09–3.49	3.49	0.70
Southeast	5.76	7.36	3.04	2.28–3.80	3.80	0.76
Florida	7.54	9.14	3.89	2.92–4.86	4.86	0.97
Mideast	1.26	2.86	1.91	1.43–2.39	2.39	0.48
Central	0.95	2.55	2.52	1.89–3.15	2.55	0.03
Up. Midwest	0.53	2.13	1.32	0.99–1.65	1.65	0.33
Southwest	0.93	2.53	3.01	2.26–3.76	2.53	−0.48
AZ-Las Vegas	1.04	2.64	2.46	1.85–3.08	2.64	0.18
Western	0.42	2.02	1.84	1.38–2.30	2.02	0.18
Pacific NW	0.55	2.15	1.90	1.43–2.38	2.15	0.25

[1] Based on the 11 proposed orders contained in this proposed rule.
[2] Relative use ratio = Class I ÷all other uses.
[3] Weighted average differential for the consolidated order is computed by summing the product of the percentage of Class I milk in each current order multiplied by the applicable current order differential.

The review of this option indicates that differentials would probably have a minimal impact on small businesses, both processors and producers. For a majority of the Federal order system, producers and processors would experience Class I price increases. However, due to offsetting factors impacts would be reduced.

Class I differentials are estimated to increase from $0.00 to $0.48 in the Central, Mideast, and Midwestern regions. Currently, over-order charges are significantly higher and would largely absorb these differential increases. Impacts on small producers and processors would be minimal.

The Northeastern marketing area could be affected significantly by the adoption of a relative use differential because of the decrease in Class I prices and because this area has a high concentration of small businesses, both producers and processors. There are approximately 18,860 small producers and 280 small processors located in this region. Processors would pay on average $0.62 less for Class I milk as compared to the current system. Producers would likely turn to over-order charges to try to make up for their lost revenue. If this were to occur, then small processors and producers would be placed at a competitive disadvantage to large businesses because often the small businesses do not maintain the resources needed to effectively negotiate for supplies of milk. However, historically this region has had difficulty maintaining a large over-order premium structure and assumptions are that this would continue. If so, then all producer income would decrease slightly possibly impacting the market's milk supplies.

Large increases in Class I differentials would occur in the orders located in the Southeast. There are approximately 4,000 small producers and 30 small handlers in the Florida and Southeast areas. Class I handlers would experience increased competition from lower cost handlers in nearby markets. This may have a greater impact on small processors because of their ability to compete based on available resources. Although higher differentials would be returned to producers through the Federal order uniform price, overall producers in the Southeast markets would probably not experience any significant gains from these increased differentials due to reduced over-order premiums being charged. However, this would benefit small producers who may not be able to negotiate as effectively for over-order prices.

The Southwest market is the other market to experience decreases in differentials. Approximately 1,400 small producers and 30 small handlers would be impacted by the decrease in Class I prices. Over-order charges currently are relatively small in this market and an attempt to increase the charges would likely occur. However, producer groups have had the same difficulty as the Northeast in maintaining an over-order structure. A $0.48 drop in the average differential in the Southwestern market would surely be felt by producers and accelerate the exodus of producers from the East Texas supply area, most likely smaller producers who may not have significant resources to adapt to the lowered prices or who would not be able to negotiate for higher over-order prices. Producers in New Mexico and West Texas would also be affected, but the impact may not be as severe.

Processors in this region may benefit from the decrease in Federal order prices. However, if there is an increase in the over-order prices that the processors must pay, then the amount gained from the decrease would be lessened. In fact, if over-order pricing is implemented then small processors may be at a disadvantage because they may not be able to compete for milk beyond the reduction in Class I prices.

In the Western regions, Class I differentials are expected to increase slightly. Over-order charges in these markets are not as great as in the Midwestern markets and would probably be unable to totally absorb the Class I price increase. Producer pay

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prices and Class I handler costs would increase slightly. All producers would benefit from the price increase, including about 690 small producers. However, about 50 small processors may be at a disadvantage. Small processors may not have the additional revenue necessary to adapt to the $0.18 to $0.25 per hundredweight increase in Class I prices.

Because of the limited effect of overall Class I differential changes within individual orders, relative use differentials would have a minimal effect on small businesses, both producers and processors. Areas that have decreases in Class I differentials would have a minimal negative impact on producer pay prices. Over 20,000 producers, or about 95 percent of all producers, in these regions are categorized as small businesses. On the other hand, handlers in areas with larger increases in the Class I differentials would experience increased competition from lower cost regions. Location advantages of some small handlers would disappear while others emerge. Handler equity in these competing markets could erode placing some small handlers under greater risk. Approximately 300 handlers in the Northeast and Southwest markets are categorized as small handlers, about half of the total number of handlers.

However, the adoption of a relative use differential could have a significant impact on small businesses, both producers and processors that are located in adjacent orders. Because Class I prices would be able to change independently from each other, significant Class I price variances may begin to exist. As Class I utilization changes, these changes may be significant. This lack of alignment between bordering orders would increase competition in areas where Class I price differences are significant having a greater impact on small businesses.

Flat Differentials

The use of flat differentials was considered as an option for replacing the Class I price structure. Under this system, all Class I differentials would be established at $1.60 regardless of the location. Establishing the differentials at an equal level throughout the United States does not recognize the location value associated with milk. Because this value would not be reflected in the minimum price under the Federal order program, flat differentials could affect small businesses, as shown by the following table.

FLAT CLASS I DIFFERENTIALS IN PROPOSED ORDERS

(Based on October 1995 Data)

Suggested consolidated order [1]	Flat differential ($/cwt)	Weighted average differential ($/cwt) [2]	Change ($/cwt)
Northeast	1.60	3.14	−1.54
Appalachian	1.60	2.79	−1.19
Southeast	1.60	3.04	−1.44
Florida	1.60	3.89	−2.29
Mideast	1.60	1.91	−0.31
Central	1.60	2.52	−0.92
Upper Midwest	1.60	1.32	0.28
Southwest	1.60	3.01	−1.41
AZ-Las Vegas	1.60	2.46	−0.86
Western	1.60	1.84	−0.24
Pacific NW	1.60	1.90	−0.30

[1] Based on the 11 proposed orders contained in this proposed rule.
[2] Weighted average differential for the consolidated order is computed by summing the product of the percentage of Class I milk in each current order multiplied by the applicable current order differential.

The review of this option indicates that flat differentials could change the competitive relationship between large and small processors and producers. Large processors could have a competitive advantage over small processors in negotiating with producers for supplies of milk at prices above the established minimum price. Likewise, large producers could have a better bargaining position when competing with small producers to supply a processor.

In all areas of the United States, with the exception of the Upper Midwest, producers and processors would experience significant decreases in the Class I price. The largest decrease would occur in the Florida order with the Class I price decreasing $2.29 per hundredweight. This would result in approximately a $2.06 decrease in the uniform price paid to producers. Although over-order pricing has been effective in Florida, it is unlikely that the over-order prices would be able to offset this total decrease. Data regarding over-order pricing are not published but an indication of the level is provided by comparing the Federal order Class I milk price to the announced cooperatives Class I price. In Miami, Florida, during 1996, the cooperatives announced price averaged $2.25 per hundredweight higher than the Southeastern Florida Federal order Class I price.[16]

Not only could producers suffer from a loss in the value of the Class I price reflected under the order, but inequity among processors could occur in the marketplace. More of the value of milk would be negotiated above the Federal order minimum. Because this value is outside of the regulatory minimum price, there is little that would ensure that processors are paying similar prices for milk. This could impact small processors more than larger processors because of their lack of resources needed to negotiate and obtain needed supplies of milk.

The results of implementing flat Class I pricing would be the same throughout the United States where decreases occur. Areas where flat differentials would have the greatest impact are located in the Northeast, Southeast, Southwest, and Central areas. Approximately 34,400 small producers and 480 small handlers are located in these regions of the United States.

[16] Table 35—1996 Annual Average Announced Cooperative Class I Prices in Selected Cities, Dairy Market Statistics, 1996 Annual Summary, USDA, AMS.

The Upper Midwest would experience a slight increase in Class I prices if a $1.60 flat differential were implemented. The Class I price would increase by $0.19 per hundredweight which would result in about a $0.04 increase in the uniform price. Although there are a substantial number of small producers located in this region, approximately 28,400, this increase would not impact the price that producers in this area receive for their milk. Over-order pricing is predominant in this region. Next to Florida, the Upper Midwest region has the highest announced cooperative Class I prices, between $1.19 to $1.79 [17] higher than the Federal order Class I price. Because the over-order prices are substantial in this area, the $0.19 increase in Class I prices would likely be offset by a slight decrease in over-order prices, thus the 180 small handlers and the 28,400 small producers would likely not see any increase in overall prices.

Although the use of flat differentials would require no additional reporting, recordkeeping, or compliance requirements it is not being considered as a viable replacement for the current Class I price surface because, in addition to other reasons addressed in the proposed rule, of the impact that flat differentials could have on a substantial number of small businesses both producers and processors. Flat differentials of $1.60 per hundredweight would negatively impact more than 52,000 total small businesses.

Modified Flat Differentials

The use of modified flat differentials was considered as an option for replacing the Class I price structure. This option is based on the flat Class I price concept modified by the relative use price concept. Under this system, an equal differential would be established in all orders and then, in orders that were determined to be deficit based on a Class I utilization percentage, an additional value would be added to the flat differential. Deficit orders were deemed to have a Class I utilization greater than 70 percent. If Class I use exceeds 70 percent, the Class I differential in an order would be $2.00 + $0.075 * (Class I use percent—70 percent). This option assumes that markets with Class I use equal to or below 70 percent have an adequate reserve supply of milk to meet fluid needs and that markets with Class I use about 70 percent require additional milk supplies to meet fluid demand.[18]

As with the relative use option (Option 2), the estimated Class I differentials presented in the table are not entirely location-specific within the consolidated order. To provide a basis for comparison, a weighted average differential has been calculated based on current differentials for the consolidated orders using October 1995 data, as shown in the following table. These differentials are also not location-specific.

MODIFIED FLAT CLASS I DIFFERENTIALS IN PROPOSED ORDERS

[Based on October 1995 Data]

Proposed order [1]	Class I use (percent)	Mod. flat diff. ($/cwt)	Weighted avg diff.[2] ($/cwt)	Change ($/cwt)
Northeast	47.9	2.00	3.14	−1.14
Appalachian	81.5	2.86	2.79	0.07
Southeast	85.2	3.07	3.04	0.03
Florida	88.3	3.37	3.89	−0.52
Mideast	55.8	2.00	1.91	0.09
Central	48.8	2.00	2.52	−0.52
Upper Midwest	34.5	2.00	1.32	0.68
Southwest	48.1	2.00	3.01	−1.01
AZ-Las Vegas	48.9	2.00	2.46	−0.46
Western	29.6	2.00	1.84	0.16
Pacific NW	35.6	2.00	1.90	0.10

[1] Based on the eleven proposed orders contained in this proposed rule.
[2] Weighted average differential for the consolidated order is computed by summing the product of the percentage of Class I milk in each current order multiplied by the applicable current order differential.

Like flat differentials, modified flat differentials do not recognize location values associated with milk. Because this value would not be reflected in the minimum price under the Federal order program, modified flat differentials could have a dramatic effect on small businesses because modified flat differentials would change the competitive relationship between large and small processors and producers. Just as with flat differentials, large processors could maintain a competitive advantage over small processors in negotiating with producers for supplies of milk at prices above the established minimum price. Likewise, large producers might retain strong bargaining positions when competing with small producers to supply a processor.

Under this modified flat differential, only three orders would meet the necessary requirement to have a differential established above the $2.00 flat portion, Appalachian, Southeast, and Florida. Basically, this system would be equivalent to adopting a flat Class I pricing system in most of the United States. Although in this example the impacts appear to be different, with five of the proposed orders reflecting differential increases, this is only because the flat portion of the Class I differential is established at $2.00 instead of $1.60.

As with the flat differential, the Upper Midwest producers and processors would experience Federal order Class I price increases. In this example, the estimated price would increase by $0.59 which would return approximately $0.12 to the producers in a higher uniform price. The largest decrease would occur in the Southwest and Northeast orders with a Class I price decrease of $1.01 and $1.13, respectively. The use of a modifier to the flat differential based on the Class I utilization would help to mitigate the price decreases in the Southeast orders.

[17] Table 35—1996 Annual Average Announced Cooperative Class I Prices in Selected Cities, Dairy Market Statistics, 1996 Annual Summary, USDA, AMS.

[18] The 70 percent figure was merely selected for illustrative purposes and no analysis has been conducted to determine if this is an appropriate percentage.

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With the use of the modifier, the three Southeast orders would not all experience decreases in Class I prices. The Appalachian order would have a $0.07 increase while the Florida order and the Southeast order would lose $0.52 and $0.01, respectively. Ultimately about 4,000 producers in the Southeast and Florida areas would experience a decline in the Class I price received under Federal orders, while nearly 4,200 producers in the Appalachian area would find their Class I price increasing.

The competitive position among processors could become altered under modified Class I differentials. More of the value of milk would be negotiated above the Federal order minimum. Because this value is outside of the regulatory minimum price, nothing would ensure that processors are paying similar prices for milk. This could impact small processors more than larger processors if the smaller processors lack the resources needed to negotiate and obtain needed supplies of milk. In addition, processors in areas where the modifier becomes effective would be placed at a disadvantage because the regulated minimum price would be allowed to fluctuate and their minimum costs would not be the same as those with the flat differential or where the Class I price is allowed to adjust. The use of $2.00 per hundredweight modified flat differentials would require no additional reporting, recordkeeping, or compliance requirements. However, up to 34,000 small businesses could be impacted by this proposal.

Demand Based Differentials

The use of demand based differentials was also considered as an option for the Class I price structure. Under this system, an equal differential would be applied to all orders, and in defined demand centers, an additional component would be added to reflect the costs of transporting milk from reserve supply areas to demand centers. This option would increase the regulatory burden on all businesses, both small and large, through additional reporting, recordkeeping, and compliance requirements. Small processors could be disadvantaged under this option.

This proposal involves establishing a fluid supply area for each market from which milk production around the major bottler locations is procured and a reserve supply area would be established that would be outside the fluid supply area from which milk production is sometimes supplied to fluid handlers in the major fluid bottling locations. The Class I differential for the reserve area under this proposal would be set at $1.00 per hundredweight. For fluid supply areas, the differential would be $1.00 plus transportation costs from the reserve area to the fluid demand area. Monies paid by Class I handlers through the second part of the Class I differential would be used to fund the order's system of transportation credits and balancing payments. These transportation credits and balancing payments would be provided to organizations that supply the order's fluid market.

To encourage movement of the nearest milk supply for fluid use, two restrictions would be needed. First, a handler's total transportation credits would be limited to the variable amount paid in by the handler for transportation. Second, a handler's total transportation credit would not exceed 80 percent of the handler's transportation bill on each Class I shipment or 2.8 cents per hundredweight per 10 miles (28 cents per 100 miles), whichever is less. Any residual left after paying transportation credits would be added to the $1.00 differential and paid to all producers in the pool.

The following table contains a few examples of differentials that would apply to specific locations. These differentials are based on the farthest distance that milk for fluid use is transported, using the USDSS [19] model to solve for each consumption point individually as a guide for establishing the differentials.

DEMAND-BASED CLASS I DIFFERENTIALS FOR SELECTED CITIES

Selected location	Current differential ($/cwt)	Demand-based differential ($/cwt)	Change ($/cwt)
Miami, FL	4.18	3.88	−0.30
Tampa, FL	3.88	2.05	−1.83
Orlando, FL	3.88	3.08	−0.80
New Orleans, LA	3.65	1.28	−2.37
Atlanta, GA	3.08	2.38	−0.70
New York City, NY	3.14	1.80	−1.34
Chicago, IL	1.40	1.49	−0.09
Minneapolis, MN	1.20	1.11	−0.09
Phoenix, AZ	2.52	1.00	−1.52
Dallas, TX	3.16	1.40	−1.76
Denver, CO	2.73	1.19	−1.54
Portland, OR	1.90	1.13	−0.77
Seattle, WA	1.90	1.31	−0.59
Boise, ID	1.50	1.06	−0.44

The review of this option from a producer viewpoint reveals that a demand based differential system is comparable to a flat differential option. Producers would only be ensured that the $1.00 portion of the differential would be returned through the blend price. Ultimately, this option could result in income losses for all producers, both large and small. Although additional money is generated by the demand based differential above the $1.00, this additional money would be used to fund transportation costs associated with servicing the Class I market. The differentials are established at a lower level that would negatively impact all 82,900 producers because of the decrease in the actual value of Class I revenue that is reflected in the Federal order minimum price. Thus, the disadvantages that producers, especially small producers, might experience under a flat or modified flat differential

[19] US Dairy Sector Simulator model developed and run by Cornell University to solve for the geographical spatial relationships of milk for particular uses of milk, primarily fluid.

system are applicable to demand based differentials.

Like the two previous options, small handlers also could be disadvantaged, because less of the actual value of Class I milk is reflected under the regulated price which may lead to both processors and producer inequity. The potential negative effects discussed under flat differentials and modified flat differentials also apply to demand based differentials. In addition, the adoption of demand-based differentials would result in a significant increase in reporting, recordkeeping, and compliance activities which would impact all 1,450 handlers, but is likely to be a greater burden on small handlers. To ensure reimbursement for a portion or all of a processors handling charges, complete and detailed transportation records must be kept. New forms would be required for submission, along with copies of all transportation invoices. The additional information could require more personnel, training, and technology to automatically keep track of such information. While the costs associated with this degree of recordkeeping are not available, they could be significant enough to disadvantage small businesses.

Because the use of demand-based differentials could result in a significant increase in regulatory burdens to all handlers as well as inequity among producers and processors, demand-based differentials are not considered a viable alternative.

Decoupled Baseline Class I Price with Adjustors

The use of a decoupled baseline Class I price with adjustors was considered as an option for replacing the Class I price structure. Under this system, the Class I price would be decoupled from the basic formula price, or the Class I price mover, and a base price would be established at a specified level. Adjustments to this base price would be made utilizing a supply/demand adjustor and possibly a cost of production indicator.

Under this option for Class I purposes the base price would be floored at $13.63 per hundredweight, the November 1995 to October 1996 average BFP. This price level would be used to establish Class I prices using current differentials. A supply/demand adjustor of $0.12 per hundredweight for each 2 percent change in the rolling average utilization would be used to change prices in each of the orders to reflect long-term trends. For example, a Class I utilization change from 44 percent to 46 percent in a market would result in a $0.12 per hundredweight gain in the market's Class I differential. Once the utilization level changes, the new utilization rate becomes the base for future changes. Thus, if a market falls from 44 percent to 42 percent, the new base for comparing a 2-percentage point change up or down is 42 percent.

In addition to the supply/demand adjustor, a cost of production indicator would be developed whereby Class I prices would be increased in a timely manner when input costs to dairy farmers are increasing. One such economic indicator might be feed costs. While one such adjustor was developed and submitted, it was received too late to be included in this analysis.

The following table illustrates the initial Class I differentials under the proposed consolidated orders. These differentials are not location-specific within the applicable orders. For purposes of this analysis and to provide a basis for comparison within the proposed consolidated orders, a weighted average Class I differential has been calculated for each order based on October 1995 data. This weighted average differential is computed by multiplying the percentage of Class I milk in each of the current orders that comprise the consolidated order by the applicable current order differential and adding the resulting amounts. The weighted average differential is not location-specific for the consolidated order.

Initially the differentials would be the same. However, as this option impacts production (supply) and use (demand), there would be a change in the utilization percentage, thereby causing the differentials to vary.

INITIAL CLASS I DIFFERENTIALS IN PROPOSED ORDERS BASED ON 1995 DATA UNDER DECOUPLED BASELINE CLASS I PRICE WITH ADJUSTORS SYSTEM

Proposed order	Weighted average differential ($/cwt) [1]	Initial class I differential ($/cwt)	Change in differential ($/cwt)
Northeast	3.14	3.14	0.00
Appalachian	2.79	2.79	0.00
Southeast	3.04	3.04	0.00
Florida	3.89	3.89	0.00
Mideast	1.91	1.91	0.00
Central	2.52	2.52	0.00
Up Midwest	1.32	1.32	0.00
Southwest	3.01	3.01	0.00
AZ-Las Vegas	2.46	2.46	0.00
Western	1.84	1.84	0.00
Pacific NW	1.90	1.90	0.00

[1] Weighted average differential for the consolidated order is computed by summing the product of the percentage of Class I milk in each current order multiplied by the applicable current order differential.

The review of this option indicates that the decoupled baseline Class I price with adjustors would create some disruption in inter-market price alignment because Class I differentials would be allowed to adjust independently from each other and may have a serious impact on producers and processors, particularly small producers and processors. If Class I differentials are allowed to adjust frequently, price alignments established between and among markets would disappear causing inequity among competing handlers. It is this inequity amongst handlers that would have a significant impact on a small business's ability to compete in the marketplace.

Analysis completed by the multi-regional ERS model [20] indicates that the increase in prices experienced would

[20] Economic Research Service multi-regional model of the dairy industry.

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not be sustainable. The results of the model analysis indicate that the higher floored Class I prices would impact the all milk price and after 3 years, producers would begin experiencing a decrease in the revenue initially generated by this option. This would occur because the higher blend prices (caused by higher Class I prices) would stimulate milk production which would then lead to lower manufacturing prices. Because it is the blend price that is paid to producers, the increase in the Class I prices would not be enough to offset the decrease in prices of the other classes of use and the changes in utilization which would affect the differential levels.

Initially Class I differentials would not change however, Class I prices would increase because of the inclusion of a higher floor price. With the use of a floor, the variability in Class I prices would be moderated. However, the use of the floor price may impact the 79,600 smaller producers differently than the 8,400 larger producers because the smaller producers may not have the necessary financial resources to endure such a transition.

The Proposed Class I Price Options

The options proposed in this rule are a result of extensive review of the current marketing structure and other pertinent information. Extensive outreach, as explained previously, resulted in substantial input from the public. After gathering the necessary information, two options were developed and are advanced in this proposed regulation as viable Class I price structures.

Currently, the Class I price structure recognizes that milk has value by location. By recognizing that milk has value by location, small businesses are placed more on the same competitive footing as large businesses in the minimum prices they pay for milk. The use of either location-specific differentials or relative-value differentials would provide the necessary recognition of the location value of milk but at different levels.

Location-Specific Differentials (Option 1A)

This option would establish a nationally coordinated system of location-specific Class I price differentials reflecting the relative economic value of milk by location. An important feature of the option is including location adjustments that geographically align minimum Class I milk prices paid by fluid milk processors nationwide regardless of defined milk marketing area boundaries or order pooling provisions. A basic premise of this option is that the value of milk varies according to location across the United States.

The level of the location-specific differentials proposed in this regulation are such that small businesses would experience minimal impacts if the regulations were implemented. The differentials are based on economic model results,[21] current marketing conditions, and the costs of obtaining alternative supplies of milk. Since a price is established for every county under this option, the following table sets forth examples of adjusted differentials at selected cities. Map 2 and General Provisions § 1000.52, as contained in the discussion on price structure, set forth the location adjusted differentials in every county.

COMPARATIVE LOCATION-SPECIFIC CLASS I DIFFERENTIALS AT SELECTED CITIES

City	Class I differential		Difference
	Current	Loc.-specific diff	
	Dollars Per Hundredweight		
New York City, NY	3.14	3.15	.01
Charlotte, NC	3.08	3.10	.02
Atlanta, GA	3.08	3.10	.02
Tampa, FL	3.88	4.00	.12
Cleveland, OH	2.00	2.00	.00
Kansas City, MO	1.92	2.00	.08
Minneapolis, MN	1.20	1.70	.50
Chicago, IL	1.40	1.80	.40
Dallas, TX	3.16	3.00	(.16)
Salt Lake City, UT	1.90	1.90	.00
Phoenix, AZ	2.52	2.35	(.17)
Seattle, WA	1.90	1.90	.00

Other than in the southwestern portions of the United States, this proposed option would have little impact on most producers both large and small. Likewise, processors should not experience any substantial changes in their abilities to compete for milk supplies. In fact, producers and processors should experience improvements because location-specific differentials provide improvements in areas under the current system that are not as well aligned. In addition processors would experience improvements in competing for milk because the price is established for each county regardless of where the milk is pooled. Because more of the actual value of Class I milk is reflected in the minimum regulated price, both small producers and processors can be assured of maintaining their ability to compete for a supply of milk.

A review of the six year average quantitative analysis conducted using the ERS model, assuming implementation of the consolidated orders, four classes of use, BFP as proposed, and using location-specific differentials would result in a decrease in Class I utilization but an increase of $0.03 in the all-milk price. Overall, this pricing option would result in $55 million increase in cash receipts.

The use of location-specific differentials would require no additional reporting, recordkeeping, or compliance requirements.

Relative-Value Specific Differentials (Option 1B).

A nationally coordinated system of relative-value specific Class I price differentials and adjustments that recognizes several low pricing areas is the second of two options proposed. These differentials rely on a least cost

[21] USDSS results using May and October 1996 data.

optimal solution from the USDSS Cornell model to develop a Class I price structure that is based on the most efficient assembly and shipment of milk and dairy products to meet all market demands for milk and its products. This option relies more on the market and the negotiating ability of processors and producers to generate higher prices when needed to provide the necessary incentive to move milk in order to satisfy demand.

Relative-value specific differentials are designed to move the dairy industry into more market-oriented environment by reducing reliance on Federal regulations in establishing actual Class I milk prices. By lowering the differentials in most of the United States, marketing practices would have a greater impact on Class I values in the form of over-order prices and only the producers who perform for the market would benefit. Hence, the adoption of relative-value differentials would move the dairy industry to rely on the negotiating abilities of both dairy farmers and processors to determine actual Class I values. Less efficient small businesses could be disadvantaged because of the lack of resources and knowledge necessary to effectively negotiate and maintain necessary price levels. Map 3 and General Provisions § 1000.52, as contained in the proposed rule, set forth the differentials in every county. The following table sets forth adjusted differentials at selected cities.

COMPARATIVE RELATIVE VALUE-SPECIFIC CLASS I DIFFERENTIALS AT SELECTED CITIES

City	Current diff.	Rel. value-specific diff.	Difference
	Dollars Per Hundredweight		
New York City, NY	3.14	2.07	(1.07)
Charlotte, NC	3.08	1.89	(1.19)
Atlanta, GA	3.08	2.46	(0.62)
Tampa Bay, FL	3.88	3.81	(0.07)
Cleveland, OH	2.00	1.54	(0.46)
Kansas City, MO	1.92	1.45	(0.47)
Minneapolis, MN	1.20	1.20	0.00
Chicago, IL	1.40	1.65	0.25
Dallas, TX	3.16	1.68	(1.48)
Salt Lake City, UT	1.90	1.08	(0.82)
Phoenix, AZ	2.52	1.14	(1.38)
Seattle, WA	1.90	1.00	(0.90)

The level of the relative value-specific differentials proposed in this rule are such that without a phase-in and a transitional program, small businesses, particularly producers, would experience significant economic impacts. Reviewing the change in Class I differentials on an individual order basis reveals that, with the exception of producers located in the Upper Midwest region, all producers would likely face reduced income due to lower minimum Class I prices if relative value-specific differentials were implemented immediately. Producers located in the Northeast and Southwest would experience the greatest decrease.

However, with the use of a phase-in together with one of the proposed transitional program alternatives, the impacts on small businesses could be mitigated during the transition period. The use of a transition program alternative would also allow both producers and processors the opportunity to adapt their marketing practices to adjust to a new level of Class I differentials. At the conclusion of the transition period, small businesses should have adjusted to lower regulated Class I differentials and be able to compete in a more market-oriented environment.

Three possible alternatives are presented for consideration of phasing in relative value-specific differentials to minimize the market disruption that may initially occur. Each utilizes the difference between the current differentials and the final relative value-specific differentials as the basis of the phase-in. This difference is then reduced by 20 percent during each phase-in year until the final relative value-specific differential price is achieved. The phase-in would begin in 1999 and be completed by 2003. The base differentials resulting from this transitional phase-in are set forth in the following table. The first alternative would be to phase-in to these differentials.

RELATIVE VALUE-SPECIFIC BASE DIFFERENTIALS FOR USE IN PHASE-IN PROGRAM OPTIONS

City	Current	Relative Value-Specific Base Differentials [1]				
		1999	2000	2001	2002	2003
	Dollars Per Hundredweight					
New York City	3.14	2.93	2.71	2.50	2.28	2.07
Charlotte	3.08	2.84	2.60	2.37	2.13	1.89
Atlanta	3.08	2.96	2.83	2.71	2.58	2.46
Tampa Bay	3.88	3.87	3.85	3.84	3.82	3.81
Cleveland	2.00	1.91	1.82	1.72	1.63	1.54
Kansas City	1.92	1.83	1.73	1.64	1.54	1.45
Minneapolis	1.20	1.20	1.20	1.20	1.20	1.20
Chicago	1.40	1.45	1.50	1.55	1.60	1.65
Dallas	3.16	2.06	2.57	2.27	1.98	1.68
Salt Lake City	1.90	1.74	1.57	1.41	1.24	1.08

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RELATIVE VALUE-SPECIFIC BASE DIFFERENTIALS FOR USE IN PHASE-IN PROGRAM OPTIONS—Continued

City	Current	Relative Value-Specific Base Differentials [1]				
		1999	2000	2001	2002	2003
Phoenix	2.52	2.24	1.97	1.69	1.42	1.14
Seattle	1.90	1.72	1.54	1.36	1.18	1.00

[1] Base differential obtained by taking the difference between the current differential and the final relative value-specific differential (year 2003) and multiplying by 20 percent. This value is then subtracted from the current differential to yield the 1999 base differential. This value is then deducted from each consecutive year's value until the relative value-specific differentials are achieved in 2003.

The second alternative for phasing-in to the relative value-specific differentials would consist of adding a decreasing "transitional payment" to the base differential. It would be equal to the decrease in revenue that would occur with the implementation of relative value-specific differentials during the four years of transitioning to these differentials (1999 to 2002). During this four-year period, it is projected that $388.6 million would be removed from the Federal order system through lowered Class I differentials in most markets. To provide the industry an opportunity to prepare for this change, a transitional payment would be added to the base differential for Class I milk. The payment would be higher in the first year and gradually be reduced thereafter to result in implementation of the relative value-specific differentials by 2003. The additional payment would equal $0.55 per hundredweight in 1999, $0.35 per hundredweight in 2000, $0.20 per hundredweight in 2001, and $0.10 per hundredweight in 2002. This offsetting of revenue is designed to temporarily reduce the impacts of implementing relative value-specific differentials, thus allowing producers an opportunity to adjust their marketing practices to adapt to more market-determined Class I pricing. The following table sets forth the adjusted Class I differentials under this revenue-neutral phase-in option for selected cities.

RELATIVE VALUE-SPECIFIC CLASS I DIFFERENTIALS WITH REVENUE NEUTRAL PHASE-IN PAYMENTS

City	Current	Class I diff. with revenue neutral phase-in				
		1999 [1]	2000 [2]	2001 [3]	2002 [4]	2003 [5]
	Dollars Per Hundredweight					
New York City, NY	3.14	3.48	3.06	2.70	2.38	2.07
Charlotte, NC	3.08	3.39	2.95	2.57	2.23	1.89
Atlanta, GA	3.08	3.51	3.18	2.91	2.68	2.46
Tampa Bay, FL	3.88	4.42	4.20	4.04	3.92	3.81
Cleveland, OH	2.00	2.46	2.17	1.92	1.73	1.54
Kansas City, MO	1.92	2.38	2.08	1.84	1.64	1.45
Minneapolis, MN	1.20	1.75	1.55	1.40	1.30	1.20
Chicago, IL	1.40	2.00	1.85	1.75	1.70	1.65
Dallas, TX	3.16	3.41	2.92	2.47	2.08	1.68
Salt Lake City, UT	1.90	2.29	1.92	1.61	1.34	1.08
Phoenix, AZ	2.52	2.79	2.32	1.89	1.52	1.14
Seattle, WA	1.90	2.27	1.89	1.56	1.28	1.00

[1] 1999 applicable base differential from the previous table plus $0.55.
[2] 2000 applicable base differential from the previous table plus $0.35.
[3] 2001 applicable base differential from previous table plus $0.20.
[4] 2002 applicable base differential from the previous table plus $0.10.
[5] Final relative value-specific differentials.

The use of a revenue-neutral phase-in program would decrease the amount of cash receipts removed from the Federal order system from $388.6 million during the four-year phase-in to a gain of $47.8 million with the offsetting compensation implementation and then effective relative-value differentials. The decrease in the all-milk price paid to producers would also be reduced from $0.04 per cwt to $0.02 per cwt for the six-year average.

In fact, during the first year of offsetting compensation implementation the Class I price would increase for all but one of the Federal orders. On average, for all markets, the Class I price would increase $0.39 per cwt, the all-milk price would increase an average of $0.13 per cwt, and total cash receipts would be increased by $193.0 million compared with the baseline. Although these values would be decreased by the sixth year, with Class I prices projected to decrease for all Federal order an average of $0.51, the all-milk prices projected to decrease an average of $0.09, and total cash receipts projected to decrease $128.5 million, all producers would benefit from the lessening of the impacts of moving towards the relative-value differentials.

The third approach to phasing in the relative value-specific differentials would consist of adding a decreasing "transitional payment" to the base differential that would enhance revenue beyond what the Class I system would have generated during the four years of transitioning to the relative value-specific differentials. During this four-year period, it is projected that $878.4 million would be added to the Federal order system through the revenue-enhanced payment. This would result in a net increase of $489.8 million added to the system once the projected decrease resulting from the relative value-specific differentials during this period is deducted. This additional money would not only provide producers with an opportunity to prepare for and restructure their marketing practices to adapt to more market determined Class I pricing but would also allow producers to obtain the education and resources necessary to become more effective in a more market-oriented environment. Again, the payment in the first year would be the highest with reductions occurring thereafter to result in implementation of the relative value-specific differentials by 2003. The additional payment would equal $1.10 per hundredweight of Class I in 1999, $0.70 per hundredweight in 2000, $0.40 per hundredweight in 2001, and $0.20 per hundredweight in 2002. The following table sets forth the adjusted Class I differentials under this revenue-enhancement phase-in option for selected cities.

RELATIVE VALUE-SPECIFIC CLASS I DIFFERENTIALS WITH REVENUE ENHANCEMENT PHASE-IN PAYMENTS

City	Current	Class I diff. with revenue enhancement				
		1999 [1]	2000 [2]	2001 [3]	2002 [4]	2003 [5]
	Dollars Per Hundredweight					
New York City, NY	3.14	4.03	3.41	2.90	2.48	2.07
Charlotte, NC	3.08	3.94	3.30	2.77	2.33	1.89
Atlanta, GA	3.08	4.06	3.53	3.11	2.78	2.46
Tampa Bay, FL	3.88	4.97	4.55	4.24	4.02	3.81
Cleveland, OH	2.00	3.01	2.52	2.12	1.83	1.54
Kansas City, MO	1.92	2.93	2.43	2.04	1.74	1.45
Minneapolis, MN	1.20	2.30	1.90	1.60	1.40	1.20
Chicago, IL	1.40	2.55	2.20	1.95	1.80	1.65
Dallas, TX	3.16	3.96	3.27	2.67	2.18	1.68
Salt Lake City, UT	1.90	2.84	2.27	1.81	1.44	1.08
Phoenix, AZ	2.52	3.34	2.67	2.09	1.62	1.14
Seattle, WA	1.90	2.82	2.24	1.76	1.38	1.00

[1] 1999 applicable base differential from the second previous table plus $1.10.
[2] 2000 applicable base differential from the second previous table plus $0.70.
[3] 2001 applicable base differential from the second previous plus $0.40.
[4] 2002 applicable base differential from the second previous plus $0.20.
[5] Final relative value-specific differentials.

The use of a revenue-enhancement phase-in program would increase the amount of cash receipts within the Federal order system by an average $34.9 million for a six-year period that includes implementing and then effective relative value-specific differentials. For the six-year average, the all-milk price would be unchanged. During the first year of implementation Class I prices would increase an average of $0.91 per cwt, all-milk prices would increase an average of $0.30 per cwt, and total cash receipts would increase $425 million. Although these values would decrease by the sixth year, with Class I prices down an average of $0.48, all-milk prices down $0.06, and total cash receipts down $80.5 million, all producers would benefit from the lessening of the impacts of moving towards relative value-specific differentials that are more market-oriented and less governmentally regulated.

Although producers would benefit from the initial increases in the Class I prices, this may put small businesses at a disadvantage because the cost of the raw product during the initial implementation years would be higher than the current regulated minimum prices. In areas such as the Upper Midwest and Southeast where over-order pricing has been effective in establishing the actual value of Class I milk, small processors may actually benefit from having more of the total cost of the milk reflected in the minimum price. This may increase the equity amongst the competing handlers in these regions. There are approximately 200 small handlers located most other places in the United States may find that the increase in the Class I price could change their competitive relationships.

No additional recordkeeping, reporting, or compliance requirements would be necessary to implement the relative value-specific differentials discussed above.

The Proposed Classification Options

The classification of milk recommendations should not have a significant economic impact on a substantial number of small businesses. This proposed rule provides uniform milk classification provisions for the newly consolidated milk orders. The recommendations should improve reporting and accounting procedures for handlers and provide for greater market efficiencies.

Most of the changes regarding milk classification provisions proposed for the newly consolidated orders would simplify order language and remove obsolete language.

This proposed rule contains a modified fluid milk product definition and recommends that certain products be reclassified. The revised fluid milk product definition proposed for the new orders should provide more consistency in determining the classification of products. The inclusion of eggnog to the list of fluid milk products and the reclassification of cream cheese from Class III to Class II will cause a nominal increase in the cost of the finished product. However, these changes, which will be applicable to all handlers regulated under the new orders, should not have a significant impact on the retail price of these products. Although producers will benefit from these products being reclassified into higher utilization classes, the impact of the product classification changes on the blend price to producers will be marginal.

Another modification includes the reclassification of butter and whole milk powder from Class III to Class IV. This change merely places these market-clearing products in the new Class IV with nonfat dry milk. The change promotes market efficiency and should have a minimal impact on producers' blend prices.

One recommendation with possible small business implications concerns the treatment of milk used to produced bulk sweetened condensed milk/skim milk. Some commenters argued that the wide price difference that sometimes exists between the Class II price and the

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Class III–A price has put manufacturers of sweetened condensed milk at a competitive disadvantage with manufacturers of nonfat dry milk, which can be substituted for bulk sweetened condensed milk and skim milk in some higher-valued products.

Although this proposed rule does not recommend a reclassification for milk used in bulk sweetened condensed milk, it does propose a change in the relationship between the Class II and IV prices which should eliminate the price disparity that now, at times, exists. As discussed in the "Class III and Class III–A (i.e., Class IV) Milk" section of this proposed rule, the proposed new Class II price will be equal to the Class IV price plus a 70-cent differential. The coupling of the Class II and Class IV prices will largely remove the incentive to substitute nonfat dry milk for bulk sweetened condensed milk.

The recommendations regarding shrinkage provisions should provide equity among handlers, improve market efficiencies, and facilitate accounting procedures. This proposed rule provides that shrinkage be assigned pro rata based on a handler's utilization. As discussed in the "Shrinkage and Overage" section of this proposed rule, this modification should result in a slight increase (i.e., one cent per cwt.) in the blend price paid to producers.

For the reasons stated above, the milk classification provisions proposed herein should have little economic and regulatory impact on small businesses.

Paperwork Reduction Act of 1995

The information collection requirements contained in this proposed rule previously were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0581–0032, through May 31, 1998. A notice of request for a three-year extension and revision of this currently approved information collection was published in the December 2, 1997, **Federal Register** (62 FR 63693), which invited comments from the public through February 2, 1998.

The amendments set forth in this proposed rule do not contain additional information collections that require clearance by the OMB under the provisions of 44 U.S.C. Chapter 35. Following is a general description of the reporting and recordkeeping requirements, reasons for these requirements and an estimate of the annual burden on the dairy industry.

Title: Report Forms Under Federal Milk Orders (From Milk Handlers and Milk Marketing Cooperatives).

OMB Control Number: 0581–0032.

Expiration Date of Approval: May 31, 1998.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Federal Milk Marketing Order regulations authorized under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), require milk handlers to report in detail the receipt and utilization of milk and milk products handled at each of their plants that are regulated by a Federal Order. The data are needed to administer the classified pricing system and related requirements of each Federal Order.

Rulemaking amendments to the orders must be approved in referenda conducted by the Secretary.

The terms of each of the current milk marketing orders are found at 7 CFR Parts 1001–1199; the terms of each of the proposed orders in this document are found at 7 CFR Parts 1001–1134. The authority for requiring reports is found at 8c (5) and (7) and 8d of the Act. The current authority for requiring records to be kept is found in the general provisions at 7 CFR Part 1000.5. In this proposed rule, this authority is found in the general provisions at 7 CFR Part 1000.27. The Act also provides for milk marketing agreements, but there are none in effect.

A Federal milk marketing order is a regulation issued by the Secretary of Agriculture that places certain requirements on the handling of milk in the area it covers. It requires that handlers of milk for a marketing area pay not less than certain minimum class prices according to how the milk is used. These prices are established under an order on the basis of evidence concerning the supply and demand conditions for milk in the market. A milk order requires that payments for milk be pooled and paid to individual farmers or cooperative associations of farmers of the basis on a uniform or average price. Thus, all eligible farmers (producers) share in the market wide use-values of milk by regulated handlers.

The Report of Receipts and Utilization and the Producer Payroll Report are completed by regulated milk handlers and milk marketing cooperatives and are the principal reporting forms needed to administer the 31 Federal milk marketing orders.

The orders also provide for the public dissemination of market statistics and other information for the benefit of producers, handlers, and consumers. Each milk order is administered by a market administrator who is an agent of the Secretary of Agriculture. Part of the market administrator's duties are to prescribe reports required of each handler, and to assure that handlers properly account for milk and milk products, and that such handlers pay producers and associations of producers according to the provisions of the order. The market administrator employs a staff that verifies handlers' reports by examining records to determine that the required payments are made to producers. Most reports required from handlers are submitted monthly to the market administrator. Confidentiality of information collection is assured through Section 608(d) of the Act, which imposes substantial penalties on anyone violating these confidentiality requirements.

The forms used by the market administrators are required by the respective milk orders that are authorized by the Act. The forms are authorized either in the general provisions (Part 1000) or in the sections of the respective orders. The forms are used to establish the quantity of milk received by handlers, the pooling status of handlers, the class-use of the milk used by the handler and the butterfat content and amounts of other components of the milk.

The frequency of performing these recordkeeping and reporting duties varies according to the form; the frequency ranges from "on occasion" to "annually" but "monthly" is perhaps most common. In general, most of the information that handlers report to the market administrator is readily available from normally maintained business records. Thus, the burden on handlers to complete these recordkeeping and reporting requirements is expected to be minimal. In addition, assistance in completing forms is readily available from market administrator offices.

Regarding the use of improved information technology to reduce the reporting and recordkeeping burden, the information requested is the minimum necessary to carry out the program. Since the type of information required to be collected and the certification and reporting of that information is required, no other alternative to the mode of information collection has been found. However, where possible, reported information is accepted using computer tapes or diskettes as alternatives to submitting the requested information on these report forms. Comments are requested to help assess the number of handlers using computers, word processors and other electronic equipment to create and store documents, as well as the extent to which the Internet is used to exchange information.

We are confident that the information we collect does not duplicate information already available. Dairy Programs has an ongoing relationship with many organizations in the dairy industry that also respond to other governmental agencies. Thus, we are aware of the reports dairy industry organizations are submitting to other government agencies.

Information collection requirements have been reduced to the minimum requirements of the order, thus minimizing the burden on all handlers—those considered to be small as well as large entities. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. The primary source of data used to complete the forms is routinely used in all business transactions. Thus, the information collection and reporting burden is relatively small. Requiring the same reporting requirements for all handlers does not significantly disadvantage any handler that is smaller than industry average.

If the collection of this information were conducted less frequently, data needed to keep the Secretary informed concerning industry operations would not be available. Timing and frequency of the various reports are such to meet the needs of the industry and yet minimize the burden of the reporting public.

The collection of the required information is conducted in a manner consistent with guidelines in 5 CFR 1320.6. The orders require that the market administrator compute monthly minimum prices to producers based on monthly information. Without monthly information, the market administrator, for example, would not have the information to compute each monthly price, nor to know if handlers were paying producers on dates prescribed in the order, such as the advance payment for milk received the first 15 days of the month and the final payment which is payable after the end of the month. The Act imposes penalties for order violations, such as the failure to pay producers not later than prescribed dates. The orders require payments to and from the producer-settlement fund to be made monthly. Also, class prices are based on the monthly Basic Formula price series.

Annual Reporting and Recordkeeping Burden

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.87 hours per response.

Respondents: Milk Handlers and Milk Marketing Cooperatives.

Estimated Number of Respondents: 772.

Estimated Number of Responses per Respondent: 35.

Estimated Total Annual Burden on Respondents: 23,850 hours.

Estimated annual cost to respondents for report preparation: $276,514 (23,858 hours at $11.59 per hour). Although hourly rates vary among handlers in various localities, the wage paid to clerical workers engaged in report preparation is estimated to be comparable to about a grade GS–7, step 1.

It is important to note that the burden being reported is an estimate of the amount of time that would be required of current program participants, as was published in the Notice of Request for Extension, referenced in the introductory text of this section.

It is expected that this proposed rule would have little impact on the reporting and recordkeeping burden on handlers regulated under the Federal milk marketing order program. In fact, as a result of the consolidation of Federal orders from 31 to 11 as proposed, an overall reduction in reporting and recordkeeping requirements may occur due to greater uniformity in forms used and fewer "special" forms that currently apply to one or a few orders.

Non-substantial changes would be necessary on the required reports and records to correctly identify the new Federal market order (e.g. the current—and separate—reports for the Upper Florida, Tampa Bay and Southeastern Florida marketing areas would be combined into one report for the Florida marketing area).

Request for Public Input

Comments on the Executive Order 12866 analysis, the initial regulatory flexibility analysis, and the paperwork reduction analysis are requested. Specifically, interested parties are invited to submit comments on the regulatory and informational impacts of this proposed rule on small businesses. Comments are requested within 60 days of publication of this proposed rule in the **Federal Register**. Comments should be mailed to USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, D.C. 20090–6456.

Preliminary Statement

The material issues in this proposed rule relate to:

1. Consolidation of marketing areas.
2. Basic formula price replacement and other class price issues.
3. Class I price structure.
4. Classification of milk and related issues.
5. Provisions applicable to all orders.
6. Regional issues:
   a. Northeast Region.
   b. Southeast Region.
   c. Midwest Region.
   d. Western Region.
7. Miscellaneous and administrative matters.
   a. Consolidation of the marketing service, administrative expense, and producer-settlement funds.
   b. Consolidation of the transportation credit balancing funds.
   c. Proposed general findings.

II. Discussion of Material Issues and Proposed Amendments to the Orders

A discussion and explanation of the material issues and proposals contained in this rule are as follows:

1. Consolidation of Marketing Areas

Subtitle D, Chapter 1 of the 1996 Farm Bill, entitled "Consolidation and Reform of Federal Milk Marketing Orders," requires, among other things, that the Federal milk marketing orders be limited to not less than 10 and not more than 14. Over 400 public comments have been received in response to requests from USDA for public input on the subject of order consolidation. Two preliminary reports on order consolidation have been issued by the Agricultural Marketing Service's Dairy Division. The initial Preliminary Report on Order Consolidation was issued in December 1996, and the Revised Preliminary Report was issued in May 1997. The December 1996 Report suggested that the 32 Federal milk marketing orders then in existence be consolidated to 10, and the May 1997 Report suggested 11. All comments received by the Department have been considered in the development of this proposed rule.

Although the Farm Bill specifically provides for the inclusion of California as a separate Federal milk order, the provision is contingent upon petition and approval by California producers. Interest in a Federal milk order has been expressed by some California producers, but the degree of interest expressed and the input provided by the producers has not been adequate to proceed with a proposed order for California.

The preliminary reports concerning order consolidation and this proposal were prepared using data gathered about receipts and distribution of fluid milk products by all known distributing

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plants located in the 47 contiguous states, not including the State of California. Data describing the sources and disposition of fluid milk products for the month of October 1995 was used to compile the initial Preliminary Report. In response to comments and questions about certain marketing area boundaries and changes in marketing conditions in some of the markets after publication of the initial Preliminary Report, data concerning these markets was updated to January 1997, and more detailed information was gathered regarding the geographic distribution of route sales by individual handlers and their specific sources of producer milk. Specifically, such information was gathered for all or parts of the initially-suggested Northeast, Appalachian, Southeast, Mideast, Central, and Western marketing areas.

The eleven marketing areas suggested in the Revised Preliminary Report on Order Consolidation have, in some cases, been modified for this proposed rule. Several of the suggested marketing areas were the subjects of numerous comments containing information that indicated that the boundaries of those areas should be re-evaluated. As a result of the comments received, marketing data was further examined and analyzed for some of the suggested consolidated marketing areas to determine the most appropriate configurations of the consolidated areas to be included in this proposed rule. The result of the examination and analysis was to modify significantly from the Revised Preliminary Report the marketing areas of the proposed Northeast, Mideast, Upper Midwest, Central, and Southeast orders, and to make minor modifications to the marketing area of the proposed Appalachian order.

As in the case of data referring to the operations of less than three handlers or producers in the initial and Revised Preliminary Consolidation Reports, some of the data used to arrive at the proposed consolidated areas is restricted from use by the public because it refers to individual fluid milk distributing plants and the origins of producer milk supply for those plants. However, the basis for the proposed marketing area boundaries is described as specifically as possible without divulging such proprietary information.

Seven primary criteria were used in determining which markets exhibit a sufficient degree of association in terms of sales, procurement, and structural relationships to warrant consolidation. These are the same criteria which were used in the two reports on order consolidation issued by the Dairy Division (November 1996 and May 1997). The criteria are as follows:

1. Overlapping Route Disposition

The movement of packaged milk between Federal orders indicates that plants from more than one Federal order are in competition with each other for Class I sales. In addition, a degree of overlap that results in the regulatory status of plants shifting between orders creates disorderly conditions in changing price relationships between competing handlers and neighboring producers. This criterion is considered to be the most important.

2. Overlapping Areas of Milk Supply

This criterion applies principally to areas in which major proportions of the milk supply are shared between more than one order. The competitive factors affecting the cost of a handler's milk supply are influenced by the location of the supply. The pooling of milk produced within the same procurement area under the same order facilitates the uniform pricing of producer milk. Consideration of the criterion of overlapping procurement areas does not mean that all areas having overlapping areas of milk procurement should be consolidated. An area that supplies a minor proportion of an adjoining area's milk supply with a minor proportion of its own total milk production while handlers located in the area are engaged in minimal competition with handlers located in the adjoining area likely do not have a strong enough association with the adjoining area to require consolidation.

For a number of the proposed consolidated areas it would be very difficult, if not impossible to find a boundary across which significant quantities of milk are not procured for other marketing areas. In such cases, analysis was done to determine where the minimal amount of route disposition overlap between areas occurred, and the criterion of overlapping route disposition generally was given greater weight than overlapping areas of milk supply. Some analysis also was done to determine whether milk pooled on adjacent markets reflects actual movements of milk between markets, or whether the variations in amounts pooled under a given order may indicate that some milk is pooled to take advantage of price differences rather than because it is needed for Class I use in the other market.

3. Number of Handlers Within a Market

Formation of larger-size markets is a stabilizing factor. Shifts of milk and/or plants between markets becomes less of a disruptive factor in larger markets. Also, the existence of Federal order markets with handlers too few in number to allow meaningful statistics to be published without disclosing proprietary information should be avoided.

4. Natural Boundaries

Natural boundaries and barriers such as mountains and deserts often inhibit the movement of milk between areas, and generally reflect a lack of population (limiting the range of the consumption area) and lack of milk production. Therefore, they have an effect on the placement of marketing area boundaries. In addition, for the purposes of market consolidation, large unregulated areas and political boundaries also are considered a type of natural barrier.

5. Cooperative Association Service Areas

While not one of the first criteria used to determine marketing areas, cooperative membership often may be an indication of market association. Therefore, data concerning cooperative membership can provide additional support for combining certain marketing areas.

6. Features or Regulatory Provisions Common to Existing Orders

Markets that already have similar regulatory provisions that recognize similar marketing conditions may have a head start on the consolidation process. With calculation of the basic formula price replacement on the basis of components, however, this criterion becomes less important. The consolidation of markets having different payment plans will be more dependent on whether the basic formula component pricing plan is appropriate for a given consolidated market, or whether it would be more appropriate to adopt a pricing plan using hundredweight pricing derived from component prices.

7. Milk Utilization in Common Dairy Products

Utilization of milk in similar manufactured products (cheese vs. butter-powder) was also considered to be an important criterion in determining how to consolidate the existing orders.

Comments on Consolidation Criteria

Most of the comments received relative to order consolidation criteria agreed that overlapping route disposition and milk procurement are the most important criteria to consider in the consolidation process. In addition, Class I use percentages and regulation on the basis of handler location were noted as criteria to consider. To some extent, the consolidated marketing areas included in this proposed rule do combine markets with similar Class I utilization rates rather than markets that would result in Class I use percentages being more uniform between markets. This result occurs because adjoining markets, where most of the sales and procurement competition takes place between handlers regulated under different orders, tend to have similar utilization rates rather than because the criterion is one that should be used to determine appropriate consolidations. Also, Class I utilization rates are a function of how much milk is pooled on an order with a given amount of Class I use. Differences in rates, to the extent they result in differences in blend prices paid to producers, provide an incentive for milk to move from markets with lower Class I utilization percentages to markets with higher Class I use.

Regulation of processors on the basis of their location rather than their sales areas has largely been incorporated in the proposed orders by a provision that would pool a handler under the order for the area in which the handler is located unless more than 50 percent of the handler's Class I route dispositions are distributed in another order area. This provision should help to assure that the order under which a distributing plant is pooled will change from month to month, and that a plant operator is subject to the same provisions, such as producer pay prices, as are its primary competitors.

The proposed orders also include a provision that locks plants processing primarily ultra-high temperature (UHT) milk into regulation under the order for the area in which the plant is located. Such plants often have widely dispersed route sales into a number of order areas, with sporadic deliveries to different areas. Without some type of lock-in provision, a UHT plant may be pooled in several different orders in as many months. At the same time, the plant's milk supply generally is procured from a given group of producers located in the same area as the UHT plant. Having the plant pooled under a succession of different orders with widely varying blend prices creates a disorderly condition for the producers involved.

On the basis of the distributing plant pooling standards included for all eleven orders in this proposed rule, there are only two distributing plants that would be fully regulated under an order other than the ones in which they are located. These plants are the Superbrand Dairy Products distributing plant in Greenville, South Carolina; and the Ryan Milk Company plant in Murray, Kentucky. The Superbrand plant likely will qualify for pooling under the proposed Southeast order, and the Ryan Milk Company plant, due to the nature of its extended shelf-life products, may qualify under any of several orders, depending on its dispositions in any particular month. Additional lock-in provisions are incorporated in both of these cases to assure that the plants are pooled in the area in which they compete for a producer milk supply and, in the case of the Ryan plant, that it will be pooled consistently under one order.

Several comments advocated that all of a state's territory should be included in one Federal order to assure that all producers in a state are paid on an equitable basis, or to make it easier to maintain state statistical data. One of the primary reasons for Federal milk orders is that milk marketing occurs readily across state boundaries, making state milk marketing regulation more difficult to enforce. It is important that Federal milk marketing areas continue to recognize the free interstate movement of milk to and from milk plants. There are cases where natural boundaries such as mountains or rivers may result in part of a state having a closer marketing relationship with an adjoining state than with other areas of the same state.

The initial Preliminary Report on Order Consolidation stated that the Farm Bill requirement to consolidate existing marketing areas does not specify expansion of regulation to previously non-Federally regulated areas where such expansion would have the effect of regulating handlers not currently regulated. However, on the basis of data, views and arguments filed by interested persons in response to the initial Preliminary Report requesting that currently non-Federally regulated areas be added to some consolidated marketing areas, the Revised Preliminary Report suggested that such areas be added to several of the consolidated areas. Handlers who would be affected by the expansion of Federal order areas into currently non-Federally regulated areas were notified of the possible change in their status, and encouraged to comment.

Handlers located in Pennsylvania Milk Marketing Board (PMMB) areas 2, 3, and 6 are regulated under the State of Pennsylvania if they do not have enough sales in any Federal order area to meet an order's pooling standards. (If such plants do meet Federal order pooling standards, the State of Pennsylvania continues to enforce some of its regulations in addition to Federal order regulations). As State-regulated handlers, they must pay a Class I price for milk used in fluid products, often higher than the Federal order price would be. Inclusion of the Pennsylvania-regulated handlers in the consolidated marketing area, as in the case of including Maine or Virginia, would have little effect on handlers' costs of Class I milk (or might reduce them), while reducing producer returns.

Based on the comments received in response to the Revised Preliminary Report on Order Consolidation it has been determined that consolidation of the existing orders does not necessitate expansion of the consolidated orders into areas in which handlers are subject to minimum Class I pricing under State regulation, especially when the states' Class I prices exceed or equal those that would be established under Federal milk order regulation. Such regulation would have the effect of reducing returns to producers already included under State regulation without significantly affecting prices paid by handlers who compete with Federally-regulated handlers.

In order to avoid extending Federal regulation to handlers whose primary sales areas are outside current Federal order marketing areas, but who already are subject to similar minimum uniform pricing under State regulation, the in-area Class I disposition percentage portion of the pool distributing plant definition is proposed to be 25 percent for the Northeast order and 30 percent for the Mideast order, instead of the 10 or 15 percent used in the other nine consolidated order areas. The higher level of in-area sales required for pool status under these proposed orders will allow State-regulated plants to operate at their current level of sales within Federal order areas without being subject to full Federal order regulation.

As in both the initial and revised preliminary reports, "pockets" of unregulated areas within and between current order areas are included in the proposed consolidated marketing areas. The addition of currently-unregulated areas to Federal milk order areas can benefit regulated handlers by eliminating the necessity of reporting sales outside the Federal order marketing area for the purpose of determining pool qualification. Where such areas can be added to a consolidated order area without having the effect of causing the regulation of any currently-unregulated handler, they are proposed to be added.

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Cornell University Study

In addition to AMS' analysis of the receipt and distribution data in the development of this proposal, researchers at Cornell University also provided input on potential consolidated marketing areas. This input was part of Cornell's partnership agreement with AMS to provide alternative analyses on Federal order reform issues. These researchers used an econometric model (the Cornell U.S. Dairy Sector Simulator, or USDSS), to determine 10–14 optimal marketing areas. Cornell's first options for 10–14 marketing areas were presented at an October 1996 invitational workshop for dairy economists and policy analysts held in Atlanta, Georgia. Based on USDSS model results, these options would result in minimum cost flows of milk using the known concentration of milk production and population, without considering the location of milk plants. The marketing area maps that were circulated using these first results were those referenced by interested persons who cited the Cornell results in their comments on the initial Preliminary Report on Order Consolidation.

A second set of options was presented by Cornell researchers in spring 1997. These options were generated with a further-developed USDSS model. In updating the model, the researchers enhanced the inputs to its model as a means of better reflecting the actual structure of the national market for fluid milk products. These model updates allowed for determination of the minimum cost flows of: milk, intermediate and final products from producers to plants; from plants to plants; and from plants to consumers on the basis of the locations of milk supplies, dairy product processing plants, and consumers. The enhanced model is intended to provide for geographic market definition on the basis of a resulting set of optimal, efficient simulated flows of milk and dairy products between locations.

Although the USDSS model considers important factors such as milk supply, processing, and demand locations and transportation constraints in determining the optimal consolidated marketing areas, it does not include several other important circumstances that influence dairy industry and Federal order participants or the movement of milk which must be considered in this reform process. The USDSS model does not recognize that large areas, such as California, Virginia, Maine, Montana, large portions of Pennsylvania, and Wyoming, currently are not included in Federal milk order regulation, and does not recognize the Farm Bill requirement that, if included as a Federal order, the State of California be brought in as one order confined to the borders of California. Although the USDSS model incorporates highway mileage between milk production areas and milk plants, and between milk plants and consumers, it does not recognize features such as mountain ranges that affect hauling costs and may inhibit milk from moving. By attempting to maximize efficiencies in milk marketing, the model also does not recognize the existence of competing handlers operating plants in the same city or having the extent of handlers' route dispositions influenced by the existence of plants operated by the same handler in other locations. In addition, the model does not recognize that movements of producer milk often are determined by supply contracts between cooperatives and handlers or by the location of a handler's nonmember supply.

AMS is unaware of any other analyses performed to determine or suggest consolidated marketing areas.

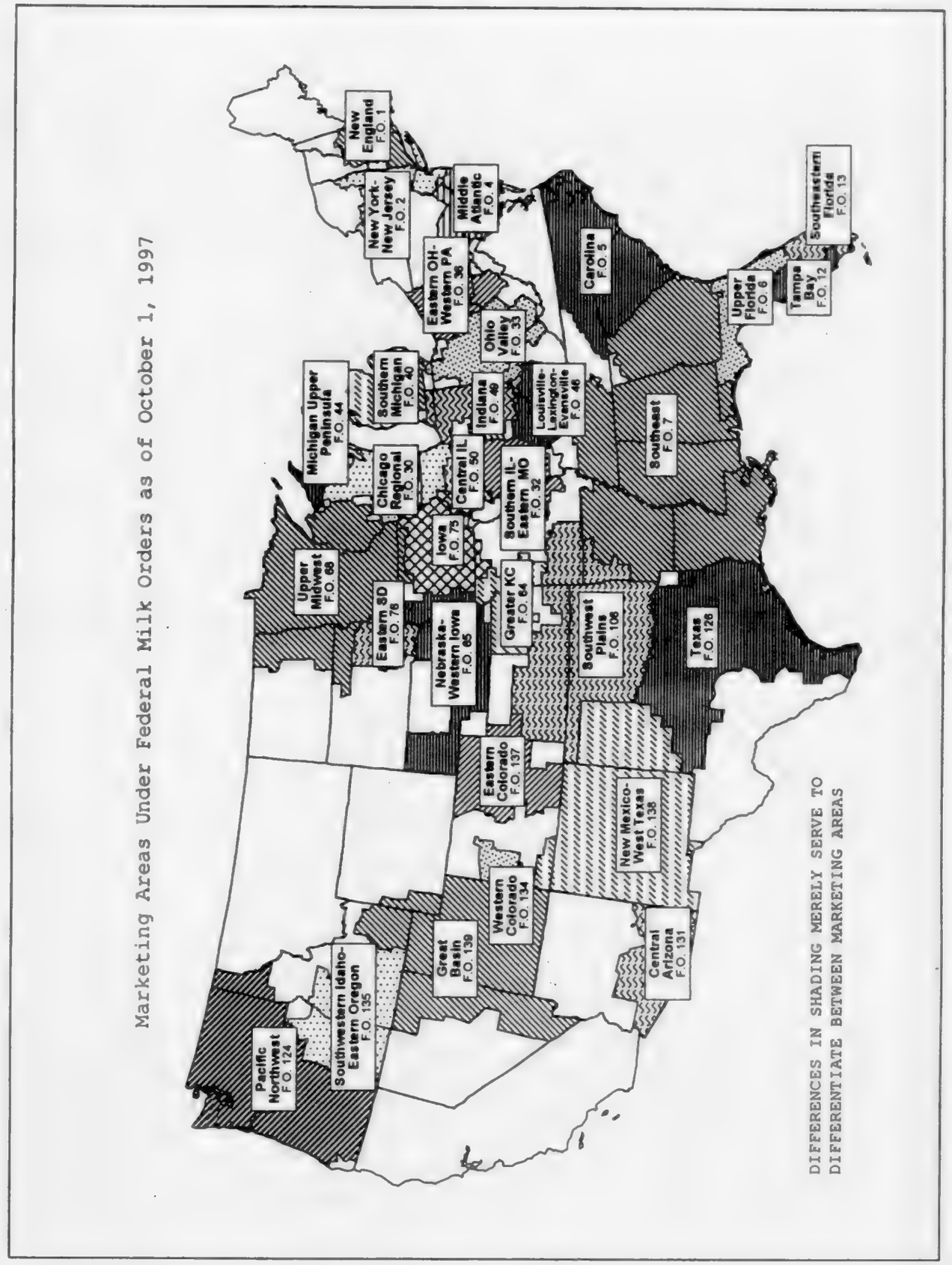
As noted before, AMS' analysis focused primarily on distributing plant receipts and distribution information for October 1995, with more current information used as needed for further analysis. The data gathered by the Dairy Division from Federal Milk Market Administrators reflects actual movements of milk, both from production areas to processing plants, and from processing plants to consumption areas. This proposal considers this data, the seven criteria described fully above, and the factors not recognized in the USDSS model. Use of the USDSS may be an excellent way of determining where processing plants should be located to maximize the efficiencies of milk assembly and distribution, but is a less accurate means of determining where existing handlers actually compete for milk supplies and sales. The consolidated marketing area options presented by Cornell are not adopted because the USDSS model does not adequately reflect issues or factors that strongly affect which current marketing areas are most closely related. For this reason, this proposed rule is based on data reflecting actual distribution and procurement by fluid milk processing plants.

Proposed Marketing Areas

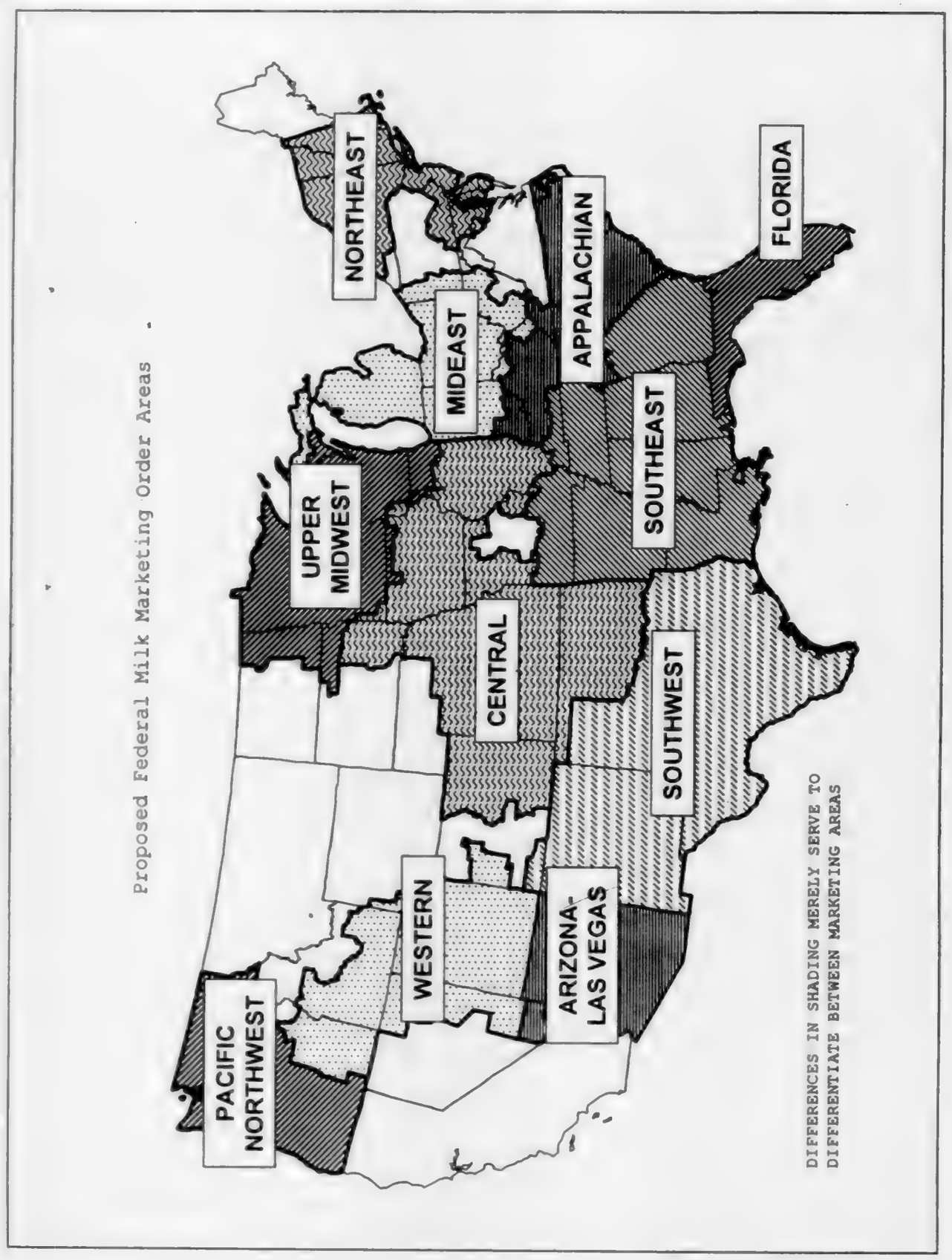
Following are maps of the current marketing areas and the 11 proposed marketing areas, followed by brief descriptions of the proposed areas (with those modified from the Revised Preliminary Report, and the modifications, marked by *) and the major reasons for consolidation. A more detailed description of each proposed consolidated order follows this summary.

At the end of the Order Consolidation portion of the proposed rule is appended a list of distributing plants associated with each proposed marketing area, with each plant's expected regulatory status.

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Proposed Eleven Marketing Areas

**1. Northeast*—current marketing areas of the New England, New York-New Jersey and Middle Atlantic Federal milk orders, with the addition of: the contiguous unregulated areas of New Hampshire, northern New York and Vermont; the non-Federally regulated portions of Massachusetts; and the Western New York State order area. * The areas previously suggested to be included in the expanded Northeast order area (the southern tier of 3 western New York counties and Pennsylvania Milk Marketing Board Areas 2 and 3) have not been included in the proposed Northeast marketing area. The handlers who would be added to those currently fully regulated under the three separate orders either have a sufficient percentage of their route disposition within the consolidated marketing area to meet the proposed pooling requirements or are those located in the area proposed to be added.

Reasons for consolidation include the existence of overlapping sales and procurement areas between New England and New York-New Jersey and between New York-New Jersey and Middle Atlantic. An important measure of association is evidenced by industry efforts to study and pursue consolidation of the three Federal orders prior to the 1996 Farm Bill.

**2. Appalachian*—current marketing areas of the Carolina and Louisville-Lexington-Evansville (minus Logan County, Kentucky) Federal milk orders plus the recently-terminated Tennessee Valley area, with the addition of * 21 currently-unregulated counties in Indiana and Kentucky. Five Kentucky counties that were part of the former Paducah order area and previously were suggested to be added to the Appalachian order area have been proposed for addition to the Southeast order instead.

Overlapping sales and procurement areas between these marketing areas are major factors for proposing this consolidation.

3. Florida—current marketing areas of the Upper Florida, ampa Bay, and Southeastern Florida Federal milk orders.

Natural boundary limitations and overlapping sales and procurement areas among the three orders are major reasons for consolidation, as well as a measure of association evidenced by cooperative association proposals to consolidate these three marketing areas. Further, the cooperative associations in this area have worked together for a number of years to accommodate needed movements of milk between the three Florida Federal orders.

**4. Southeast*—current marketing area of the Southeast Federal milk order, plus 1 county from the Louisville-Lexington-Evansville Federal milk order marketing area; * plus 11 northwest Arkansas counties and 22 entire and 1 partial Missouri county that currently are part of the Southwest Plains marketing area; * plus 6 Missouri counties that currently are part of the Southern Illinois-Eastern Missouri marketing area; * plus 16 currently unregulated southeast Missouri counties (including 4 that were part of the former Paducah marketing area); plus 20 currently-unregulated Kentucky counties (* including 5 from the former Paducah marketing area that previously had been suggested for inclusion with the Appalachian area).

Major reasons for this consolidation include sales and procurement area overlaps between the Southeast order and these counties. The proposed addition of the Kentucky portion of the former Paducah, Kentucky, order area to the Southeast is in the nature of a fine-tuning adjustment in order boundaries. The addition of the Arkansas and Missouri counties recognizes a number of industry comments.

**5. Mideast*—current marketing areas of the Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan and Indiana Federal milk orders, plus Zone 2 of the Michigan Upper Peninsula Federal milk order, and currently-unregulated counties in Michigan, Indiana and Ohio. * The current Pennsylvania Milk Marketing Board Area 6 and the two most western of the southern tier of counties in New York are not included in the proposed Mideast marketing area.

Major criteria for this proposed consolidation include the overlap of fluid sales in the Ohio Valley marketing area by handlers from the other areas proposed to be consolidated. With the consolidation, most route disposition by handlers located within the suggested Mideast order would be within the marketing area. Also, nearly all milk produced within the area would be pooled under the consolidated order. The portion of the Michigan Upper Peninsula marketing area proposed to be included in the Mideast consolidated area has sales and milk procurement areas in common with the Southern Michigan area and has minimal association with the western end of the current Michigan Upper Peninsula marketing area.

**6. Upper Midwest*—current marketing areas of the Chicago Regional, Upper Midwest, Zones I and I(a) of the Michigan Upper Peninsula Federal milk orders, and unregulated portions of Wisconsin. The * Iowa, * Eastern South Dakota and * Nebraska-Western Iowa Federal order areas suggested to be added to this consolidated area in the revised report are proposed instead to be included in the Central consolidated area.

Major consolidation criteria include an overlapping procurement area between the Chicago Regional and Upper Midwest orders and overlapping procurement and route disposition area between the western end of the Michigan Upper Peninsula order and the Chicago Regional order. A number of the same cooperative associations market member milk throughout the proposed area.

The overlapping of procurement between the Chicago Regional and Upper Midwest order areas and the Iowa, Eastern South Dakota and Nebraska-Western Iowa order areas is, it was pointed out in comments received in response to the Revised Preliminary Report, due largely to milk pooled on the more southern orders when advantageous because of price differences. As a result, the volume of milk pooled on the Iowa, Eastern South Dakota and Nebraska-Western Iowa orders from Minnesota and Wisconsin fluctuates greatly, without any discernable relationship to amounts of milk needed from those areas at plants in the more southern areas.

The other consolidation criteria mentioned in the Revised Preliminary Report as reasons for consolidating the Iowa, Eastern South Dakota and Nebraska-Western Iowa order areas with the Chicago Regional and Upper Midwest areas also are applicable to the combination of these areas with the consolidated Central area.

**7. Central*—current marketing areas of the Southern Illinois-Eastern Missouri, Central Illinois, Greater Kansas City, Southwest Plains, Eastern Colorado, * Nebraska-Western Iowa, * Eastern South Dakota and * Iowa Federal milk orders, minus * 11 northwest Arkansas counties and 22 entire and 1 partial Missouri county that are part of the current Southwest Plains marketing area, minus * 6 Missouri counties that are part of the current Southern Illinois-Eastern Missouri marketing area, plus * 54 currently-unregulated counties in Kansas, Missouri, Illinois, Iowa, Nebraska and Colorado, * plus 14 counties in central Missouri that are not considered to be part of the distribution area of an unregulated handler in central Missouri. This configuration would leave 25 unregulated counties in central Missouri

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that are intended to delineate the distribution area of Central Dairy at Jefferson City, Missouri.

Major criteria on which this proposed consolidation is based include overlapping route disposition and procurement between the current orders. The proposed consolidation would result in a concentration of both the sales and supplies of milk within the consolidated marketing area. The proposed consolidation would combine several relatively small orders and provide for the release of market data without revealing proprietary information. In addition, many of the producers in these areas share membership in several common cooperatives.

8. Southwest—current marketing areas of Texas and New Mexico-West Texas Federal milk orders, with the addition of two currently-unregulated northeast Texas counties and 47 currently-unregulated counties in southwest Texas.

Major criteria supporting this proposed consolidation include sales and procurement area overlaps and common cooperative association membership between the Texas and New Mexico-West Texas marketing areas, and similar marketing concerns with respect to trade with Mexico for both orders. Addition of the currently-unregulated Texas counties will result in the regulation of no additional handlers, and will reduce handlers' recordkeeping and reporting burden and the market administrator's administrative costs.

9. Arizona-Las Vegas—current marketing area of Central Arizona, plus the Clark County, Nevada, portion of the current Great Basin marketing area, plus eight currently-unregulated Arizona counties.

The major criterion on which the proposed consolidation is based is sales overlap between the sole Las Vegas, Nevada, handler and handlers regulated under the Central Arizona order in both Clark County, Nevada, and unregulated portions of northern Arizona. The Grand Canyon and sparsely populated areas in the northwest part of Arizona, and the sparsely populated desert region of eastern Arizona constitute natural barriers between this and adjacent marketing areas. In addition, significant volumes of bulk and packaged milk are exchanged between the Arizona-Las Vegas area and Southern California.

10. Western—current marketing areas of the Western Colorado, Southwestern Idaho-Eastern Oregon, and Great Basin Federal milk orders, minus Clark County, Nevada. The major criteria on which the proposed consolidation is based include overlapping sales between Southwestern Idaho-Eastern Oregon and Great Basin, as well as a significant overlap in procurement for the two orders in five Idaho counties. The two orders also have similar multiple component pricing plans. The Western Colorado order is included because it is a small market where data cannot be released without revealing confidential information unless combined with data pertaining to another marketing area, and has at least as great a relationship with the adjacent Great Basin market as with any other.

Collection of detailed data for individual handlers indicates that the strength of earlier relationships between the former Great Basin and Lake Mead orders that justified their 1988 merger have dwindled significantly, with the Las Vegas area now more closely related to southern California and competing most heavily with Central Arizona handlers.

11. Pacific Northwest—current marketing area of the Pacific Northwest Federal milk order plus 1 currently-unregulated county in Oregon. The degree of association with other marketing areas is insufficient to warrant consolidation.

TABLE 1.—MARKET INFORMATION: POPULATION, UTILIZATION, PRODUCER MILK AND WEIGHTED AVERAGE UTILIZATION VALUE (WAUV) IN PROPOSED MARKETING AREAS

Market	Population [1] (millions)	Class I utilization [2] (percent)	Producer milk [2] (1000 lbs.)	WAUV [2,3] (per cwt)
Northeast	51.3	47.7	2,031,976	$13.47
Appalachian	17.1	82.2	440,965	13.97
Florida	13.8	88.3	204,541	15.05
Southeast	26.7	85.2	486,301	14.24
Mideast	31.0	55.8	1,050,656	12.92
Upper Midwest	18.5	34.5	1,034,318	12.60
Central	21.0	48.8	859,405	12.95
Southwest	20.9	48.1	680,232	13.39
Arizona-Las Vegas	5.5	48.9	181,075	13.26
Western	3.3	29.6	293,714	12.78
Pacific Northwest	8.8	35.6	493,207	12.44
Total	216.0	N/A	7,756,390	N/A

[1] Based on July 1, 1996 estimates.
[2] Based on October 1995 information, for plants which would be fully regulated under assumptions used in this report.
[3] Not a blend price—shown solely for the purpose of showing impact of consolidation on utilization.

TABLE 2.—MARKET INFORMATION: NUMBER OF PLANTS IN PROPOSED MARKETING AREAS

Market	Distributing plants [1]			Manufacturing and supply plants [3]
	Fully regulated (FR)	Exempt [2]	FR small businesses	
Northeast	79	17	42	106
Appalachian	29	1	13	13
Florida	15	2	3	4
Southeast	36	1	20	37
Mideast	56	2	36	59
Upper Midwest	29	1	15	301

TABLE 2.—MARKET INFORMATION: NUMBER OF PLANTS IN PROPOSED MARKETING AREAS—Continued

Market	Distributing plants [1]			Manufacturing and supply plants [3]
	Fully regulated (FR)	Exempt [2]	FR small businesses	
Central	34	2	8	83
Southwest	23	3	7	17
Arizona-Las Vegas	5	1	2	3
Western	11	3	6	19
Pacific Northwest	20	3	12	27
Total	337	36	164	669

[1] Based on October 1995 information. Excludes: (1) out-of-business plants through May 1997; and (2) new plants since October 1995.
[2] Exempt based on size (less than 150,000 lbs. route distribution per month).
[3] Based on May 1997 information.

Descriptions of Proposed Consolidated Marketing Areas

Each of the proposed consolidated order areas is described in the text following this introduction. The criteria which were used to determine which areas should be consolidated are explained in detail. For each proposed area, the following information is included:

Geography. The political units (states, counties, and portions of counties) included in each area, the topography, and the climatic conditions are described for the purpose of delineating the territory to be incorporated in each proposed marketing area and describing its characteristics pertaining to milk production and consumption. This information was derived principally from Microsoft® Encarta® 96 Encyclopedia, and augmented by several U.S. atlases.

Population. The total population of each area and its distribution within the area is included for the purpose of identifying where milk is consumed. July 1, 1996, population estimates were obtained from "CO–96–8 Estimates of the Population of Counties and Demographic Population Change," Population Estimates Division of the U.S. Bureau of the Census.

Metropolitan Statistical Area (MSA) information is provided by the United States Office of Management and Budget (OMB), which defines metropolitan areas according to published standards that are applied to Census Bureau data. To be described as an MSA, an area (one or more counties) must include at least one city with 50,000 or more inhabitants, or a Census Bureau-defined urbanized area (of at least 50,000 inhabitants) and a total metropolitan population of at least 100,000 (75,000 in New England). Areas with more than 1 million population may be described as "consolidated metropolitan statistical areas" (CMSAs) made up of component parts designated as primary metropolitan statistical areas (PMSAs). For purposes of the marketing area descriptions in this proposed rule, the term "MSA" also includes CMSAs and PMSAs.

Per capita consumption. Available data pertaining to per capita consumption is discussed to help describe how much milk is needed to supply the fluid needs of the population of each proposed marketing area. Per capita consumption numbers were estimated by state using data from a report on "Per Capita Sales of Fluid Milk Products in Federal Order Markets," published in the December 1992 issue of Federal Milk Order Market Statistics, #391, issued May 1993.

Production. A description of the amount and sources of milk production for the market is included for the purpose of identifying the supply area for each proposed marketing area. Production data by state and county for each Federal milk order was compiled from information collected by the offices administering the current Federal milk orders (market administrators' offices).

Distributing plants-route disposition. For each marketing area the number and types of distributing plants are included, with the locations of plants by population centers, to identify where milk must be delivered. This information was collected by market administrators' offices.

Utilization. The utilization percentages of the current individual orders and the effect of consolidation on the proposed consolidated orders are described for each proposed marketing area, with an estimate of the effect of consolidation on each current individual order's blend price. The current utilization data is published each month for each Federal milk order market. Pool data was used to calculate the effects of consolidation on utilization.

Other plants. The presence of manufacturing and supply plants in and near the proposed order areas, and the products processed at these plants, are described for each proposed consolidated area. This information was collected by market administrators' offices.

Cooperative Associations. The number of cooperative associations pooling member milk under each of the current individual orders included in each consolidated area, and the number that pool milk in more than one of the areas. This information was obtained from market administrators' offices.

Criteria for Consolidation. The extent to which the criteria used in identifying markets to be consolidated are supported by the marketing conditions present in each of the proposed consolidated areas is discussed.

Discussion of comments and alternatives. Comments filed in response to the two preliminary reports on consolidation and alternatives to the proposed consolidation are summarized and discussed for each proposed consolidated area.

Northeast

The proposed consolidated Northeast marketing area is comprised of the current New England, New York-New Jersey, and Middle Atlantic Federal milk order marketing areas (Orders 1, 2, and 4), with currently-unregulated areas in western and northern New York and northern Vermont and New Hampshire added. The entire areas of the States of Connecticut (8 counties), Delaware (3 counties), Massachusetts (14 counties), New Hampshire (10 counties), New Jersey (21 counties), Rhode Island (5 counties), and Vermont (14 counties) would be contained within the proposed Northeast order area. In addition, the District of Columbia, 21 counties and the City of Baltimore in Maryland, 54 complete and 2 partial counties and New York City in New

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York, the 15 Pennsylvania counties currently included in the Middle Atlantic marketing area, and 4 counties and 5 cities in Virginia would be included in the consolidated order. There are 169 complete and 2 partial counties and 8 cities, including the District of Columbia, in the proposed Northeast marketing area.

Geography

The proposed Northeast marketing area extends from the Canadian border on the north, south to northern Virginia, eastern Maryland and Delaware, with its eastern edge along the western border of Maine at the northern end of the marketing area, and along the Atlantic Ocean for the remainder. The total northeast-southwest extent of the marketing area is approximately 600 miles. The marketing area extends westward to Lake Ontario and Lake Erie in New York State (about 450 miles east to west), goes only as far west as the northern part of New Jersey (about 60 miles), and expands westward again across the eastern half of southern Pennsylvania, taking in a small part of northeast Virginia, eastern Maryland, and Delaware (about 230 miles east to west). There would be a large State-regulated area in Pennsylvania just to the west of the Northeast marketing area; and most of the State of Virginia to the south of the marketing area also is regulated under a State order. The proposed Northeast marketing area is contiguous to no other proposed consolidated marketing areas, but parts of it, in western New York State and south central Pennsylvania, are very close to the proposed Mideast area.

The northern and northwestern parts of the Northeast area are large areas of coniferous forests that are somewhat mountainous. To the south and southeast of the forested areas are areas where dairy farming predominates as the primary type of agriculture. In fact, for 4 of the 10 states that are contained within the proposed Northeast marketing area (New Hampshire, New York, Pennsylvania and Vermont) dairy products were the number 1 agricultural commodity in terms of cash receipts during 1996. Principally along the Atlantic coastline is a flatter area where other agricultural activities, including greenhouse and nursery, fruit, truck and mixed farming, take place. A near-continuous strip along the east coast of the area, from northeast Massachusetts southwest to the Baltimore area, is a major industrial area and is heavily populated.

Population

According to July 1, 1996, population estimates, the total population in the proposed consolidated Northeast marketing area is 51.3 million. The area is very densely populated, especially along a coastal strip extending from Boston, Massachusetts, in the northeast to Washington, D.C., in the southwest. In this proposed marketing area of approximately 170 counties, 103 are included within Metropolitan Statistical Areas (MSAs). The 22 Metropolitan Statistical Areas in the proposed Northeast marketing area account for 91.7 percent of the total market area population.

Over half of the marketing area population is located in 6 interconnected MSAs in 48 counties, extending from central New Jersey to southern New Hampshire. The six MSAs are: Springfield, Massachusetts; Boston-Worcester-Lawrence, Massachusetts/New Hampshire/Maine/Connecticut; Providence-Fall River-Warwick, Rhode Island/Massachusetts; New London-Norwich, Connecticut/Rhode Island; Hartford, Connecticut; and New York-N. New Jersey-Long Island, New York/New Jersey/Connecticut/Pennsylvania. The population in this northeastern portion of the marketing area is concentrated most heavily at its northern and southern ends—the New York City area has a population of approximately 20 million, and the Boston area's population is approximately 5.5 million. Two of the other MSAs, Hartford and Providence, each have over 1 million population. Although each of these six MSAs is described as a separate area in the population data, many of the counties involved are divided between separate MSAs.

Just southwest of the New York City MSA is the Philadelphia-Wilmington-Atlantic City, Pennsylvania/New Jersey/Delaware/Maryland MSA, with a population of 6 million. Some counties of these two MSAs are adjacent. Southwest of the Philadelphia MSA and separated from it by only one county is the Washington, DC/Baltimore, Maryland/northern Virginia MSA, with a population in the proposed marketing area of 5.7 million.

Of the 14 other MSAs in the proposed marketing area, 8 are located in New York State, with an average population of nearly 600,000 each. Two are located in Pennsylvania, with populations of .6 and .45 million. One MSA in Vermont, 1 in Delaware, and 2 in Massachusetts have average populations of 160,000.

Fluid Per Capita Consumption

Fluid per capita consumption estimates vary within the Northeast from 16.7 pounds per month in the more southern parts of the region to 20 pounds per month in New England. These rates would result in a weighted average of 18 pounds per month, and an estimated total fluid milk consumption rate of 920 million pounds per month for the Northeast marketing area. Approximately 730 million pounds of this fluid milk consumption would be required along the heavily-populated coastal area extending from northeast Massachusetts southwest through Washington, D.C. and northern Virginia. Northeast handlers distributed 883.7 million pounds within the proposed marketing area during October 1995. Sales within the proposed marketing area by handlers that would be regulated by other orders totaled 9.3 million pounds, sales by partially regulated handlers within the area were 10.8 million, and an additional .8 million pounds were distributed by handlers who would be partially regulated under other orders. Sales in the marketing area by exempt and government plants, and by producer-handlers totaled 6.2 million pounds.

Milk Production

In December 1996, over 19,000 producers from 13 states pooled 1.9 billion pounds of milk on the three orders comprising the proposed Northeast order. With the addition of the Western New York State milk order and several currently-unregulated handlers, it is probable that the Northeast pool regularly will exceed 2 billion pounds of milk per month.

Eleven of the 13 states supplying milk to the three Federal order pools are at least partly in the marketing area, and 83 percent of the producer milk pooled under the three orders in December 1996 came from just 3 states—New York (41.5 percent), Pennsylvania (31.7 percent), and Vermont (10 percent). Over 10 million pounds of milk was produced in each of fifty-eight counties: 1 county in northeast Connecticut, 3 in the most northwestern of the Maryland portion of the marketing area, 31 spread over most of New York, 1 on the western edge of northern Virginia, and 22 in southeast to south central Pennsylvania and in the eastern part of the northern tier of Pennsylvania counties, with an additional Pennsylvania county, Lancaster, accounting for over 150 million pounds of milk. Eighty percent of the markets' total producer milk was produced within the proposed marketing area. In addition, of the 81.1 million pounds pooled under the Western New York State milk order, over 90 percent was produced within the proposed marketing area.

Less than 40 percent of the milk production for the consolidated market was produced within 100 miles of the heavily populated coastal corridor. Although the Northeast area contains two out of the top five milk-producing states in the U.S. (New York and Pennsylvania), the population of the proposed marketing area is 20 million more than the next most-populated proposed consolidated area (the Mideast area, with 31 million people). The Northeast, therefore, is a very significant milk production area with a very high demand for fluid milk and dairy products.

Distributing Plants—Route Disposition

Using distributing plant lists included in both the Preliminary and Revised Preliminary Reports, with the pooling standards used in the Revised Preliminary Report adjusted to 25 percent of route dispositions as in-area sales (as discussed previously in Comments on Consolidation), and updated for known plant closures through May 1997, 156 distributing plants would be expected to be associated with the Northeast marketing area. The plants associated would include 79 fully regulated distributing plants (64 currently fully regulated, 10 currently partially regulated, and 5 currently unregulated), 15 partially regulated (3 currently fully regulated, 11 currently partially regulated and 1 currently unregulated), 17 exempt plants having less than 150,000 pounds of total route disposition per month (2 currently fully regulated, 4 currently partially regulated, 2 currently exempt based on size, and 9 currently unregulated), 43 producer-handlers (42 currently producer-handlers and 1 currently unregulated), and 2 exempt plants based on institutional status (1 currently unregulated and 1 currently exempt based on institutional status).

Since October 1995, 10 distributing plants (3 in New York, 3 in Massachusetts, 3 in Pennsylvania, and 1 in Connecticut), have gone out of business.

Over half (88) of the Northeast distributing plants which were identified as being in business in October 1995 were located in the 8 Northeast MSAs that have over a million people each. This number includes 49 (or two-thirds) of the pool distributing plants. Under the proposed consolidation, it is anticipated that there would be 12 pool distributing plants in the Boston-Worcester-Lawrence area, 10 in the Philadelphia-Wilmington-Atlantic City area, and 11 in the New York-Northern New Jersey-Long Island area. The Hartford, Connecticut, area would have 3 pool distributing plants, Providence-Fall River-Warwick would have 3, and the Washington-Baltimore area would have 6 pool distributing plants. Three pool distributing plants would be located in the Buffalo-Niagara Falls area, and 1 in the Rochester, New York, area.

Of the remaining 70 distributing plants, 14 pool distributing plants were located in other MSAs as follows: 8 in New York; 5 in Pennsylvania; and 1 in Massachusetts. Thirty-nine of the remaining distributing plants, including 11 pool distributing plants, were not located in MSAs.

For the proposed Northeast order, the in-area route disposition standard has been adjusted to 25 percent of total route dispositions from the 15-percent standard that was common to all of the suggested consolidated areas in the Revised Preliminary Report. This adjustment has been made to assure that State-regulated plants in Virginia and Pennsylvania that have sales in the proposed marketing area will not be pooled under Federal order regulation.

Utilization

According to October 1995 pool statistics for handlers who would be fully regulated under this Northeast order, the Class I utilization percentages for the New England, New York-New Jersey, and Middle Atlantic markets were 51, 44, and 53 percent, respectively. Based on calculated weighted average use values for (1) the current order with current use of milk, and (2) the current order with projected use of milk in the consolidated Northeast order, the potential impact of this proposed rule on producers who supply the current market areas is estimated to be: New England, a 3-cent per cwt decrease (from $13.52 to $13.49); New York-New Jersey, a 3-cent per cwt increase (from $13.45 to $13.48); and Middle Atlantic, a 4-cent per cwt decrease (from $13.44 to $13.40). The weighted average use value for the consolidated Northeast order market is estimated to be $13.47 per cwt. For December 1996, combined Class I utilization for Orders 1, 2 and 4 was 44.4 percent based on 852.7 million pounds of producer milk used in Class I out of 1.919 billion total producer milk pounds.

The Northeast area is one of two proposed consolidated marketing areas that would have a significantly higher-than-average percentage of its milk used in Class II. Currently, all three of the orders have Class II utilization between 15 and 20 percent. When the markets are combined the average for the consolidated market will be approximately 17 percent.

Other Plants

Located within the proposed consolidated Northeast marketing area during May 1997 were 106 supply or manufacturing plants: 13 in Vermont (4 in the Burlington area), 1 in New Hampshire and 10 in Massachusetts (all in the Boston-Worcester-Lawrence area), 1 in Rhode Island (in the Providence-Fall River-Warwick area), 7 in Connecticut (3 in the Hartford area and 4 in the New York-Northern New Jersey-Long Island area), 12 in New Jersey (all in the New York-Northern New Jersey-Long Island area), 2 in Delaware (one in the Philadelphia-Wilmington-Atlantic City area), 7 in Maryland (four in the Washington-Baltimore area), 13 in Pennsylvania (5 in the Philadelphia-Wilmington-Atlantic City area), and 40 in New York (9 in the New York-Northern New Jersey-Long Island area, 6 in the Buffalo-Niagara Falls area and 2 in the Rochester area).

Seventeen of the 106 plants are pool plants. Of these pool plants, 9 are manufacturing plants—1 manufactures primarily Class II products, 5 manufacture primarily powder, 2 manufacture primarily cheese and 1 manufactures primarily other products. There are 8 pool supply plants—1 has no primary product, but ships only to distributing plants; 5 are supply plants that manufacture primarily Class II products, and 2 supply plants manufacture primarily cheese. Of the remaining 89 nonpool plants in the Northeast marketing area, 82 are manufacturing plants—41 manufacture primarily Class II products, 1 manufactures primarily butter, 1 manufactures primarily powder, 37 manufacture primarily cheese and 2 manufacture primarily other products. Seven of the remaining nonpool plants are supply plants—2 are supply plants that manufacture primarily Class II products and 5 are supply plants that manufacture primarily cheese.

A pool supply plant that manufactures primarily cheese and a nonpool cheese manufacturing plant are located in the currently-unregulated portions of Steuben County that are proposed to be added to the consolidated Northeast marketing area.

There are also four supply or manufacturing plants in the unregulated area of New York—one in the unregulated county of Chautauqua, one in the unregulated portion of

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Cattaraugus County, and two in the unregulated portion of Allegany County. One is a pool supply plant manufacturing primarily Class II products, and the remaining three are nonpool manufacturing plants—two manufacture primarily cheese and one manufactures primarily Class II products.

Cooperative Associations

During December 1995, 43 cooperative associations pooled their members' milk on the three Northeast orders. Three of the cooperatives pooled milk on all three orders, 2 pooled milk on both the New England and New York-New Jersey orders, and 2 others pooled milk on both the New York-New Jersey and Middle Atlantic orders. Sixty-eight percent of the milk pooled in the Northeast is cooperative association milk, with 79.3 percent of Federal Order 1 milk, 50.5 percent of Federal Order 2 milk, and 91.8 percent of Federal Order 4 milk pooled by cooperatives.

The 5 cooperatives that market milk only under Order 1 account for 25.5 percent of the milk marketed under that order by cooperative associations, and 20.2 percent of total milk marketed under Order 1. In Order 2, only 28 percent of cooperative association milk is marketed by the 27 co-ops that market milk only under Order 2. Milk marketed by these 27 cooperatives represent 14.1 percent of the total milk pooled for December 1995. Four cooperative associations marketed 45.4 percent of the milk marketed by cooperatives under Order 4. This amount of milk represented 41.7 percent of total milk pooled under Order 4 in December 1995.

Criteria for Consolidation

The current New England, New York-New Jersey, and Middle Atlantic Federal milk order marketing areas (Orders 1, 2, and 4) should be consolidated because of the interrelationship between Orders 1 and 2 and between Orders 2 and 4 regarding route disposition and milk supply. Ninety-four percent of fluid milk disposition by handlers who would be fully regulated under the consolidated order is distributed within the proposed marketing area. Fully regulated handlers account for 97 percent of the fluid milk products distributed within the proposed marketing area. The utilization of the three markets is similar, and several cooperative associations market their members' milk in all three markets. The three markets are surrounded by unregulated areas to the west and south, the Atlantic ocean to the east, and Canada to the north. The adjoining Maine State milk order also serves as somewhat of a barrier to milk marketing in the northeast by limiting the association of non-Maine milk with the Maine pool.

The merger of these markets has been previously proposed by interested parties. A committee comprised chiefly of Northeast region cooperatives was formed over two years ago to study a merger of the three Federal orders. In support of a Northeast consolidation, the committee and other interested parties, including handlers and regulatory agencies, have noted: overlapping sales and procurement areas; a trend toward consolidation of cooperative processors and handlers in the region (leaving the remaining handlers with larger distributing areas and volumes); and regulation of plants by an order in which they are not located. The proponents of consolidation have indicated that consolidation would tend to solve some of the presently existing inequities and would lead to greater efficiency for handlers and order administration.

Discussion of Comments and Alternatives

A large number of comments, primarily from producers and producer groups, supported expansion of the Northeast consolidated marketing area into non-federally regulated areas. Comments supported the suggestions in the Revised Preliminary Report on Order Consolidation that would have extended federal order marketing areas to non-federally regulated areas which are part of the same milksheds and fluid milk markets, arguing that the surrounding federal order pool(s) are carrying the necessary surplus for the Class I sales distributed by non-regulated handlers.

Comments favoring expansion into the non-federally regulated Northeast tended to include the unregulated areas of Pennsylvania, and sometimes the unregulated counties in Maryland and West Virginia. Among the comments supporting regulation of the entire state of Pennsylvania, there were differing opinions on whether the Pennsylvania Milk Marketing Board (PMMB) area 6 should be in the Northeast or the Mideast. Comments on behalf of the Association of Dairy Cooperatives in the Northeast (ADCNE), for example, supported including PMMB Area 6 in the Northeast. These comments also supported expansion to include Allegany and Garrett counties in western Maryland. Comments from the Pennsylvania State Grange supported regulating the entire state, but including all of it in the Northeast area.

Several comments suggested including currently-unregulated portions of Massachusetts in the Northeast marketing area. According to comments from a cooperative association, the "corridor" in Massachusetts that was suggested to remain unregulated has raised questions from handlers and producers regarding equity, since the handler within the corridor competes with regulated handlers. This association also stated that the wide dispersion of the towns suggested to remain unregulated would cause added expense to handlers in reporting Class I sales inside and outside the marketing area of the Northeast order. The Massachusetts Farm Bureau Federation, Inc., comments favored regulating all areas in the Federal order to protect Massachusetts dairy producers from the unfair marketing conditions created by current "pass-through" provisions of the New York-New Jersey order. In addition, a comment filed by the Commissioner of the Massachusetts Department of Food and Agriculture favored including all of Massachusetts in the consolidated order, stating that inclusion of the currently-unregulated "corridor" would not disadvantage any handlers currently located there. The letter stated that the dairy farmers of Massachusetts will be best served with uniform regulation, which would also foster fair competition.

A comment filed by the State of Vermont favored inclusion of the currently-unregulated portions of that State in the consolidated area on the basis that expansion creates cost equity between processors.

Maine has been and continues under this proposal to be excluded from Federal order regulation. Although limited support was expressed for Maine's inclusion in the Northeast consolidated order, approximately 5 comments supporting Maine's exclusion from Federal orders have been received. Comments filed by the Maine Milk Commission stated that Maine successfully regulates prices, resulting in Maine producers receiving higher prices than farmers whose milk is pooled under Federal orders. The comments further stated that consumer prices in Maine are lower than those in New England's states and counties. The American, New York and New Jersey Farm Bureaus all supported Maine's exclusion.

Over 115 comments, including petitions with numerous signatures, opposed expansion into Pennsylvania. Some of the comments cited the enjoyment by Pennsylvania producers of price stability for the more than 50

years during which the PMMB has been regulating milk marketing within the state. Comments from producers stated a desire to avoid additional government regulations and fees. Comments stated that the PMMB individual handler pools result in greater returns to producers, and producer returns would decline if handlers are required to pay the additional fluid value into the marketwide pool to subsidize cheese/powder plants.

As stated in the introduction to the consolidation discussion, it has been determined that consolidation of the existing orders does not necessitate expansion of the consolidated orders into areas in which handlers are subject to minimum Class I pricing under State regulation, especially when the states' Class I prices exceed those that would be established under Federal milk order regulation. Handlers located in PMMB areas 2, 3, and 6 are regulated under the State of Pennsylvania if they do not have enough sales in any Federal order area to meet an order's pooling standards. When such plants do meet Federal order pooling standards, the State of Pennsylvania continues to enforce some of its regulations in addition to Federal order regulations. As State-regulated handlers, they must pay a Class I price for milk used in fluid products that often is higher than the Federal order price would be. Inclusion of the Pennsylvania-regulated handlers in the consolidated marketing area, as in the case of including Maine, would have little effect on handlers' costs of Class I milk (or might reduce them), while reducing producer returns. In view of these situations, it appears that stable and orderly marketing conditions can be maintained without extending full Federal regulation to State-regulated handlers.

Regulated plants competing for Class I sales with unregulated distributing plants in northern Vermont and New York would be subject to a competitive disadvantage if the currently-unregulated handlers are not included within the consolidated marketing area. This result would occur because the "pass-through" provision of the current New York-New Jersey order, which exempts from minimum pricing a volume of milk equivalent to a regulated handler's sales in unregulated areas in competition with unregulated handlers, is not proposed for inclusion in the consolidated Northeast order. Inclusion of the currently unregulated areas of northern New York and Vermont in the consolidated Northeast order area will assure that distributing plant operators that currently are fully regulated would be placed on an equal competitive footing with handlers currently unregulated, while having no negative effect on the producers who would be affected.

The "corridor" cited in Massachusetts should be included in the consolidated order area, partly because the sole handler who would be affected by the regulation of that area has gone out of business. Inclusion of the area at this time would not have the negative effect of imposing regulation on a small handler, as was feared earlier, but would lighten handlers' reporting burden and the market administrator's administrative burden in keeping separate data on sales in this small unregulated area. In addition, the offshore Massachusetts counties of Dukes and Nantucket should be added to the marketing area. The only entity currently operating in those counties (a producer-handler on Martha's Vineyard) would be exempt from the pooling and pricing provisions of the order by virtue of its status as a producer-handler and by having fewer than 150,000 pounds of route disposition per month. Mainland handlers distributing milk in these two counties would find their reporting burden eased if these counties become part of the marketing area.

The Western New York State order area is proposed to be added to the consolidated Northeast area because the persons regulated under that order have so requested. Regarding New York State, only the southern tier of western New York counties should not be included in the consolidated area because their addition would make more likely the full regulation of PMMB-regulated distributing plants with sales in that small area of New York (1 full county and 2 partial counties).

Appalachian

The proposed Appalachian marketing area is comprised of the current Carolina (Order 5) and Louisville-Lexington-Evansville (Order 46) marketing areas (less one Kentucky county that is included in the proposed Southeast marketing area) as well as 64 counties and 2 cities formerly comprising the marketing area of the recently-terminated Tennessee Valley Federal Order (Order 11) and currently-unregulated counties in Indiana and Kentucky. There are 297 counties and 2 cities in this proposed marketing area.

Geography

The Appalachian market is described geographically as follows: 7 unregulated Georgia counties (formerly part of Order 11), 20 Indiana counties (17 currently in Order 46 and 3 currently unregulated), 81 Kentucky counties (47 currently in Order 46, 16 formerly part of Order 11, and 18 currently unregulated), all North Carolina and South Carolina counties (100 and 46, respectively, and all currently in Order 5), 33 Tennessee counties (formerly part of Order 11), 8 counties and 2 cities in Virginia (formerly part of Order 11), and 2 West Virginia counties (formerly part of Order 11).

The proposed Appalachian market reaches from the Atlantic coastline westward to southern Indiana and western Kentucky's border with Illinois. It is surrounded by Illinois on the west, Indiana, northeastern Kentucky, West Virginia and Virginia to the north, the Atlantic ocean on the east, and Georgia, Alabama, western Tennessee and southwestern Kentucky to the south. Measuring the extreme dimensions, this market extends about 625 miles from its northwest corner in Indiana to its southeastern corner on the South Carolina-Georgia border, about 300 miles south-to-north from the South Carolina-Georgia border to the North Carolina-Virginia border, about 500 miles west-to-east from the Appalachian-Southeast markets' border in Tennessee to eastern North Carolina, and about 375 miles west-to-east from the Illinois-Indiana border to West Virginia and Virginia.

The Appalachian market is contiguous to 3 proposed consolidated marketing areas: the Southeast area to the southwest and south, the Central area to the west and the Mideast area to the north. Unregulated counties in West Virginia and State-regulated area in Virginia also border this market to the north. North and South Carolina have almost 500 miles of coastline on the Atlantic Ocean.

In terms of physical geography, similarities exist across the states or areas included in this market. Southern Indiana and central Kentucky are in the Interior Low Plateau region where valleys and steep hillsides are typical. In this market, the Appalachian or Cumberland and Alleghany Plateaus are found in West Virginia, Virginia, Kentucky, Tennessee and northwestern Georgia on the western edge of the Appalachian Mountains. Eastern Tennessee and both western North and South Carolina are in the Blue Ridge region, which is part of the Appalachian Mountain range. Moving eastward toward the Atlantic Ocean, the central part of the Carolinas are in the Piedmont Plateau, with the Atlantic Coastal Plain covering approximately the remaining eastern half of both these states.

Climatic types in this region vary somewhat. Humid subtropical climates typical in most of North and South

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Carolina, as well as Virginia (which is affected by elevation differences) and southern Indiana. Humid continental climates are typical for northwestern Georgia, western North and South Carolina and southern West Virginia. Temperate climates are common in eastern Tennessee and central Kentucky.

Much of the proposed Appalachian area does not provide a hospitable climate or topography for dairy farming. As an agricultural pursuit, dairy farming is far down the list in the area, accounting for an average of less than five percent of all receipts from farm commodities for the states involved. Crops such as tobacco, corn and soybeans, and other livestock commodities such as cattle/calves, turkeys and broiler chickens are more prevalent in this region.

Population

According to July 1, 1996, population estimates, the total population in the proposed marketing area is 17.1 million. There are 24 Metropolitan Statistical Areas (MSAs) within the proposed marketing area, containing 62.3 percent of the area's population. The largest 17 contain 50 percent of the population of the market. Charlotte, North Carolina, is the largest MSA in the marketing area with a population of 1.3 million. Charlotte is located near the South Carolina border about at the mid point of the North and South Carolina border, and about 250 miles west of the Atlantic coast. Less than 100 miles to the north lies the second-largest MSA of Greensboro-Winston-Salem-High Point, North Carolina, with a population of 1.1 million. About 50 miles east of Greensboro is the third-largest MSA, Raleigh-Durham-Chapel Hill, with one million people. The Raleigh MSA abuts the Greensboro MSA. An additional four North Carolina MSAs are among the largest of the 17 MSAs containing 50 percent of the population of the proposed marketing area, for a combined population of one million. North Carolina is the most populous state in the proposed marketing area with 7.3 million; over half the population of North Carolina is located in these seven MSAs.

South Carolina is the second-most populous state in the proposed consolidated area, with 3.7 million people. The Carolinas contain two thirds of the proposed market's population. Greenville is the largest MSA in the state with a population of 900,000. Greenville is located in the northwest corner of the state. Charleston, the second-largest MSA in South Carolina, with half a million people, is approximately at the midpoint of South Carolina's coast.

The Tennessee portion of the proposed Appalachian market has a population of 2 million, with three MSA's that are included in the largest 17 in the market. These three areas contain 1.6 million, or over 80 percent of the population in that part of Tennessee that is proposed to be part of the Appalachian marketing area. The largest Tennessee MSA is Knoxville, which is in the eastern end of Tennessee near North Carolina. Six counties make up the Knoxville MSA with a combined population of 650,000. The Johnson City-Kingsport-Bristol area, the second-largest Tennessee MSA, is located in the northeastern tip of Tennessee along the Virginia and North Carolina border, and contains almost half a million people. Chattanooga, the third-largest MSA in Tennessee, is located on the Tennessee-Georgia border, and has a population of 446,000. The three MSAs run northeast to southwest just west of the North Carolina border.

The Kentucky portion of the proposed Appalachian market contains 2.7 million people. There are two MSAs within the state that are included in the largest 17 in the market. The largest is Louisville, which lies on the border with Indiana and has a population of one million. Lexington, the second-largest Kentucky MSA, is located in the center of the state and has just under half a million people. Generally, the Kentucky counties in the proposed Appalachian marketing area are not heavily populated. Only two have populations over 100,000. They are Jefferson county, where Louisville is located, and Fayette county, home to Lexington.

Indiana counties in the Appalachian market have a population of .8 million. Only Vanderburgh county has a population over 100,000. Evansville, the only MSA in the portion of Indiana included in the Appalachian market, is in Vanderburgh county. Evansville's MSA contains 289,000 and is located on the Indiana-Kentucky border, near the Illinois state line.

There are seven Georgia counties within the proposed Appalachian marketing area, with a total population of .3 million. Three of them, Catoosa, Dade, and Walker, are part of the Chattanooga MSA. These three counties have a combined population of 124,000. The 12 Virginia counties in the proposed Appalachian market have a population of .3 million. Three of the counties, Scott, Washington and Bristol City, are part of the Johnson City-Kingsport-Bristol MSA. The two West Virginia counties within the Appalachian market have a total population of .1 million.

Fluid Per Capita Consumption

Estimates of fluid per capita consumption within the proposed Appalachian marketing area vary from 15.8 per month for South Carolina to 20.4 pounds per month for Indiana. Use of 17 pounds per month as a weighted average results in an estimated 291 million pounds of fluid milk consumption for the Appalachian marketing area. Appalachian handlers' route disposition within the area during January 1997 totaled 290 million pounds, with another 18 million distributed by producer-handlers, partially regulated plants and other order plants.

Milk Production

In December 1996, over 4,000 producers from 359 counties in 15 states pooled 443.3 million pounds of producer milk on Orders 5, 11 and 46. Approximately 71 percent of the milk pooled on the three orders was produced within the proposed consolidated marketing area.

North and South Carolina are the only States that are located entirely within the proposed consolidated marketing area, and provided nearly all of their producers' milk to Order 5 (encompassing the entire States of North and South Carolina), with 103.7 and 34 million pounds, respectively. Neither of these states produces enough milk to meet even the fluid milk requirements of its population. Kentucky producers pooled 101.1 million pounds on the three orders, with 89 percent produced within the proposed marketing area. Tennessee producers pooled 69.9 million pounds on the three orders, principally on Order 11, with 84 percent produced within the proposed marketing area. Although Virginia is primarily outside the marketing area, producers from 40 Virginia counties supplied 68.5 million pounds of milk for the FO 11 and FO 5 markets in December 1996. Georgia producers pooled 27.6 million pounds and Indiana producers pooled 21 million pounds in December, with the balance of the milk pooled on the three orders originating in Alabama, Connecticut, Illinois, Maryland, Massachusetts, New Mexico, Pennsylvania, and West Virginia.

Thirty-four counties each supplied over 3 million pounds of milk to the three markets consolidated in this proposed area. One such county was located in New Mexico, and another in Pennsylvania. Eight were located in Kentucky, south and southwest of Lexington, and southeast of Louisville. Eleven were located in North Carolina west of the Raleigh-Durham area, with all but one located near Greensboro, Winston-Salem, Asheville, Charlotte or Durham. Of the two South Carolina counties that supplied over 3 million pounds each, one was located northwest of Columbia, and the other northwest of Charleston. The five Tennessee counties that pooled over 3 million pounds of milk on the three orders are located in northeast and southeast Tennessee; two in the Johnson City-Kingsport-Bristol area and three southwest of Knoxville. Only one of the six counties in Virginia that supplied over 3 million pounds to Orders 5 and 11 is located within the marketing area. Five of the six are located in southwest Virginia, with the other in the northwest part of the State.

Distributing Plants—Route Distribution

Using distributing plant lists included in both the Preliminary and Revised Preliminary Reports and the pooling standards used in the Revised Preliminary Report, updated for known plant closures through May 1997, 33 distributing plants would be expected to be associated with the Appalachian marketing area, including 29 fully regulated distributing plants (28 currently fully regulated and 1 currently partially regulated), 2 partially regulated (both currently partially regulated), 1 exempt plant, on the basis of having less than 150,000 pounds of total route disposition per month (currently fully regulated), and 1 government agency plant (currently a government agency plant). Four of the 33 distributing plants expected to be associated with the proposed area are not in the area but are located in Virginia, including 2 fully regulated plants (1 currently fully regulated and 1 currently partially regulated), and 2 partially regulated plants (both currently partially regulated). Since October 1995, 2 distributing plants in North Carolina have gone out of business.

Under the proposed Appalachian order, there would be 17 distributing plants in the largest Appalachian MSAs having distributing plants. There would be 3 pool distributing plants in the Greensboro-Winston-Salem-High Point area. The Charleston area would have 2 pool distributing plants. The Johnson City-Kingsport-Bristol, Tennessee, area would have 2 pool distributing plants. The Greenville-Spartanburg-Anderson, South Carolina, area would have 2 pool distributing plants. The Knoxville area would have 1 pool distributing plant and 1 exempt plant, with less than 150,000 pounds of total route disposition per month. The Charlotte, Chattanooga, Lexington, Louisville, and Evansville areas would each have 1 pool distributing plant. The Raleigh-Durham area would have one government agency plant.

Of the remaining 11 distributing plants located in the marketing area, one pool plant would be located in a North Carolina MSA and one pool plant would be located in a South Carolina MSA. The nine remaining distributing plants, all expected to be pool plants, would not be located in MSAs. Four would be in North Carolina, 3 in Kentucky, 1 in Indiana, and 1 in Tennessee.

The 27 fully regulated plants in the Appalachian marketing area had distribution totaling 362 million pounds in January 1997, with eighty percent within the proposed marketing area.

A South Carolina plant included above in the description of fully regulated distributing plants—Superbrand Dairy Products, Inc., in Greenville (about 140 miles northeast of Atlanta)—has a greater proportion of its sales in the Southeast market than in the Appalachian market. This plant currently is locked into regulation under the Carolina order based on its need to procure a milk supply in the Carolina order, although it has greater route disposition in the Southeast. This lock-in is included in the proposed Appalachian order provisions.

Utilization

According to October 1995 pool statistics for handlers who would be fully regulated under this Appalachian order, the Class I utilization percentages for the Carolina and Louisville-Lexington-Evansville markets and the former Tennessee Valley market were 84, 78, and 81 percent, respectively. Based on calculated weighted average use values for (1) the current order with current use of milk, and (2) the current order with projected use of milk in the consolidated Appalachian order, the potential impact of this proposed rule on producers who supply the current market areas is estimated to be: Carolina, a 3-cent per cwt decrease (from $14.23 to $14.20); Louisville-Lexington-Evansville , a 5-cent per cwt increase (from $13.35 to $13.40); and Tennessee Valley, a 2-cent per cwt increase (from $13.92 to $13.94). The weighted average use value for the consolidated Appalachian order market is estimated to be $13.97 per cwt. For December 1996, combined Class I utilization for Orders 5, 11 and 46 was 75.6 percent based on 335.2 pounds of producer milk used in Class I out of 443.5 million total producer milk pounds pooled.

Other Plants

Also located within the proposed consolidated Appalachian marketing area during May 1997 were 13 supply or manufacturing plants: 4 in Kentucky (1 in the Louisville area), 5 in North Carolina (1 in the Charlotte-Gastonia-Rock Hill area and one in the Greensboro-Winston-Salem-High Point area), 1 in Tennessee, and 3 nonpool cheese plants in Indiana (1 in the Lexington area and one in the Louisville area). Three of the 13 plants are pool plants, or have a "pool side." Two of the three pool plants (one in Kentucky and the one in Tennessee) are "split plants," that is, one side of a plant is a manufacturing facility, and the other side receives and ships Grade A milk, and accounting is done separately. Of these pool plants, the pool sides of the 2 split plants have no primary product, shipping only to distributing plants. The nonpool side of one of these plants manufactures cheese, while the nonpool side of the other manufactures powder. The other pool plant is a supply plant that manufactures primarily Class II products. Of the other nonpool plants in the proposed Appalachian marketing area, 5 manufacture primarily cheese and 5 manufacture primarily Class II products.

Cooperative Associations

In December 1995, there were ten cooperatives representing producers in the proposed Appalachian marketing area. One cooperative pooled milk on all three markets. The Tennessee Valley and Louisville-Lexington-Evansville Federal orders had two cooperatives in common, while the Tennessee Valley and Carolina Federal orders had one cooperative in common. For December 1995, 80 percent of the producer milk pooled on the three markets was associated with cooperatives, and 85 percent of the cooperative-marketed milk was pooled by the four cooperatives that marketed milk on more than one of the three orders.

Criteria for Consolidation

Overlapping route disposition and procurement are the primary criteria on which this proposed consolidation is based. There is a stronger relationship between the three marketing areas involved than between any one of them and any other marketing area on the basis of both criteria. There is also common cooperative association affiliation between the markets.

Discussion of Comments and Alternatives

A comment filed on behalf of Barber Pure Milk Company and Dairy Fresh

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Corporation, both in Alabama, proposed that the Florida orders and the Carolina and Tennessee Valley orders be merged with the Southeast. The commenter stated that evidence shows the Florida markets are vitally involved with other areas of the Southeast in Class I sales, obtaining milk supply, and in the disposition of surplus milk. A number of comments, including those filed by Mid-America Dairymen, Inc., and Carolina Virginia Milk Producers Association, urged that the Appalachian area be combined with the Southeast order area, primarily on the basis of milk procurement overlap in south central Kentucky. Several commenters, mainly producers, favored putting all of Kentucky in one order and most suggested adding it to the Southeast. Comments from Trauth Dairy, a Mideast pool plant under this proposed consolidation, did not specifically ask that Kentucky be put into one order, but that Trauth (at Newport, Kentucky) be placed in the same order (Appalachian) as the handlers Trauth described as its primary competition for producer milk and for retail sales in the marketplace.

As discussed under the description of the proposed consolidated Florida market, overlapping milk distribution and procurement involving the three current Florida markets is much greater within the Florida markets than between any of the Florida markets and any other market. As stated in the description of consolidation criteria, areas that supply a minor proportion of an adjoining area's milk supply with a minor proportion of their own total milk production while handlers located in the area are engaged in minimal competition with handlers located in the adjoining area do not necessarily have a strong enough association with the adjoining area to be consolidated with it. It is impossible to find a boundary across which significant quantities of milk are not procured for other marketing areas.

Consolidation of the Carolina and Tennessee Valley markets with the Southeast is not proposed because of the minor degree of overlapping route disposition and producer milk between these areas. Less than one-tenth of the milk produced in the Kentucky counties proposed to be in the Appalachian area would be pooled under the Southeast order, and approximately one-fifth of the production from the Kentucky portion of the Southeast area would be pooled under the Appalachian order.

With the exception of two Appalachian handlers who account for two-thirds of the disposition by Appalachian handlers in the Southeast order area, only a minor proportion of the route disposition of Appalachian handlers is distributed in the proposed Southeast area. In total, Appalachian handlers distribute 11 percent of their route dispositions in the Southeast area, while Southeast handlers distribute less than 3 percent of their route dispositions in the Appalachian area.

There would be very little basis for splitting the current Order 46 area (Louisville-Lexington-Evansville) to include northern Kentucky with the proposed Appalachian area. Only 3 percent of Appalachian handlers' route disposition is distributed within the Ohio Valley order area, while less than one million pounds of Class I sales moves from the Ohio Valley area into the Order 46 area.

Florida

The proposed Florida marketing area is comprised of the three current Federal order marketing areas contained wholly in the state of Florida: Upper Florida (Order 6), Tampa Bay (Order 12) and Southeastern Florida (Order 13). There are 63 counties in this proposed area (40 in Order 6, 13 in Order 12, and 10 in Order 13).

Geography

The proposed Florida marketing area is described geographically as all counties in the State of Florida, with the exception of the four westernmost counties in the Florida Panhandle. This proposed marketing area is a large peninsula, ranging from about 140 miles in width in the north to about 50 miles in width in the south, that extends south from the southeast U.S. about 400 miles between the Atlantic Ocean and the Gulf of Mexico. Also included in the Florida market is approximately 150 miles of the Panhandle, a narrow strip of land extending west along the Gulf of Mexico from the northern part of the peninsula. The water surrounding most of Florida's peninsula constitutes a natural boundary, as east-to-west travel is limited.

Almost all of Florida has a humid subtropical climate. The southern end of the state and the islands south of the peninsula have a tropical wet and dry climate. In general, the state's climate can and does affect levels of milk production negatively. Seasonal variation in production for this market typically is greater than for most other U.S. regions. The importance of dairy farming as an agricultural pursuit in Florida is relatively minor (7 percent of total receipts from agricultural commodities), with several crops contributing more total receipts to the State's income. However, no livestock commodity is as important in Florida as dairy farming.

Population

According to July 1, 1996, population estimates, the total population in the proposed Florida marketing area is 13.8 million. Ninety-three percent of the population of the marketing area is located in Metropolitan Statistical Areas (MSAs). The two largest MSAs are Miami-Fort Lauderdale (Miami) on the eastern side of the southern end of the peninsula, and Tampa-St. Petersburg-Clearwater (Tampa) midway on the western side of the peninsula. Broward and Dade Counties comprise the Miami population center (currently in Order 13) with a population of 3.5 million. The Tampa population center (currently in Order 12) is comprised of Hernando, Hillsborough, Pasco and Pinellas counties with a population of 2.2 million. The six counties in these two population centers represent about 41 percent of the total marketing area population.

Fluid Per Capita Consumption

Florida customarily is considered a deficit milk production state. For much of the year, milk needs to be imported from other states in order to meet the demand for fluid consumption. Based on the population figure of 13.8 million and an estimated per capita fluid milk consumption rate of 17 pounds of fluid milk per month, total fluid milk consumption in the Florida marketing area is estimated at 234.6 million pounds per month.

During October 1995, 205 million pounds of milk were disposed of in the proposed marketing area by all Florida distributing plants. Plants located outside the marketing area (mostly from the Southeast market (Order 7)) had route disposition within Florida of 20 million pounds. The discrepancy between the actual total route disposition of 225 million pounds and the estimated consumption level of 234.6 million pounds may be explained by the older than average population in Florida.

Milk Production

In December 1996, 222 million pounds of milk produced in Florida were pooled in four Federal orders; 98.5 percent of this milk was pooled on the three current Florida orders. About 370 producers located in Florida (96 percent of all Florida producers having association with Federal orders) had producer milk pooled on at least one of the three Florida markets. A small number of Florida producers had producer milk associated with Order 7,

while more than 100 Georgia producers had producer milk associated with the Florida markets. Additionally, 34 million pounds of Georgia milk was pooled on the three Florida markets; 85 percent of this milk went to Order 12.

There are 44 counties in Florida that pooled milk in at least one of the three current Florida orders. Seven of these counties produced 62.5 percent of the milk pooled.

Three counties (Gilchrist, Lafayette and Suwannee, about 75 miles west of Jacksonville) had 53.9 million pounds of producer milk. For these three counties, 85.5 percent of the December 1996 producer milk was pooled on the Tampa Bay order, which is located approximately 150 miles southeast of the counties.

More than 80 percent of Clay County's producer milk was pooled in Order 6. This county is in the Jacksonville MSA, which is the largest population center in Order 6.

About 20 million pounds of producer milk came from Hillsborough and Highland Counties, both part of the Order 12 market. However, this milk was pooled about evenly between Orders 12 and 13.

Okeechobee County, located in the Order 13 marketing area about 125 miles northwest of the Miami area, is by far the largest milk producing county in Florida. The county had 54.5 million pounds of producer milk in December 1996, almost all of which was pooled on Order 13.

Distributing Plants—Route Distribution

Using plant lists included in both the Preliminary and Revised Preliminary Reports and the pooling standards used in the Revised Preliminary Report, updated for known plant closures through May 1997, 15 plants would be expected to be fully regulated under the proposed Florida market. Five of these plants are located in the Miami MSA and three in the Tampa MSA. Three plants are located in mid-Florida, one in the Orlando area and two in the Lakeland-Winter Haven area. Three more are located in northeast Florida; two in the Jacksonville area, and one in Daytona Beach. Two plants having route disposition of less than 150,000—one in the Tampa MSA and the other in Citrus County (north of Tampa and west of Orlando)—would be exempt.

Slightly less than two-thirds of the proposed market's population is contained in the MSAs where fully regulated plants are located.

Utilization

According to October 1995 pool statistics for handlers who would be fully regulated under this Florida order, the Class I utilization percentages for the Upper Florida, Tampa Bay, and Southeastern Florida markets were 85, 90, and 91 percent, respectively. Based on calculated weighted average use values for (1) the current order with current use of milk, and (2) the current order with projected use of milk in the consolidated Florida order, the potential impact of this proposed rule on producers who supply the current market areas is estimated to be: Upper Florida, an 11-cent per cwt increase (from $14.67 to $14.78); Tampa Bay, a 5-cent per cwt decrease (from $15.09 to $15.04); and Southeastern Florida, an 11-cent per cwt decrease (from $15.42 to $15.31). The weighted average use value for the consolidated Florida order market is estimated to be $15.05 per cwt. For December 1996, combined Class I utilization for the three Florida markets was 83.9 percent based on 211,712,000 pounds of producer milk used in Class I out of 252,402,000 total producer milk pounds.

Other Plants

Also located within the Florida marketing area are four supply or manufacturing plants, three of which are not associated with the current markets' pools. Three ice cream plants are located in the Tampa area and one pool supply plant is in the Jacksonville area.

Cooperative Associations

Four cooperatives market milk in the Florida markets, and represent nearly 100 percent of the milk marketed. Florida Dairy Farmers Association is the only cooperative with membership in all three current markets. In December 1995, 60 percent of the producer milk associated with the three markets came from members of this cooperative. During this same month, Tampa Independent Dairy Farmers Association members were affiliated with the Tampa Bay and Southeastern Florida markets, while Mid-America Dairymen, Inc., and Select Milk Producers, Inc., members had producer milk on the Tampa Bay pool.

Criteria for Consolidation

As suggested in both the initial and Revised Preliminary Reports on Order Consolidation, the consolidated Florida market should encompass the current marketing areas of the Upper Florida, Tampa Bay and Southeastern Florida Federal milk orders. Natural boundary limitations and overlapping sales and procurement areas among the three orders are major reasons for consolidation, as well as a measure of association evidenced by cooperative association proposals to consolidate these three marketing areas. Further, the cooperative associations in this area have worked together for a number of years to accommodate needed movements of milk between the three Florida Federal orders, and into and out of the area.

Discussion of Comments and Alternatives

One comment, filed on behalf of two Alabama handlers, suggested that the order areas of Florida, the Carolinas and Tennessee Valley be merged with the Southeast. The comment stated that the Florida markets are vitally involved with other areas of the southeast in Class I sales, procurement of milk supplies, and disposition of surplus milk. Although there is some overlap in these functions between the Florida markets and the Southeast order area, it is not great enough to warrant the combination of these three order areas, which have a greater degree of affinity among themselves than with any other market, with the Southeast. Given the closeness of the relationship between the current Florida markets, and the lack of any significant overlap of sales or production with other order areas, no alternatives other than those discussed were considered with regard to this area.

Southeast

The proposed Southeast marketing area is comprised of the current Southeast (Order 7) marketing area, portions of the current Southwest Plains (Order 106) marketing area in northwest Arkansas and southern Missouri, and six southeastern Missouri counties from the current Southern Illinois-Eastern Missouri (Order 32) marketing area. Also included are 16 currently unregulated Missouri counties, 21 currently unregulated Kentucky counties, and 1 Kentucky county that currently is part of the Louisville-Lexington-Evansville (Order 46) marketing area. There are 572 whole counties and 1 partial county (Pulaski County, Missouri) in this proposed area.

Geography

The Southeast market is described geographically as follows: all counties in Alabama, Arkansas, Louisiana, and Mississippi (67, 75, 64 and 82 counties, respectively), 4 in Florida, 152 in Georgia, 44 whole and 1 partial in Missouri, 62 in Tennessee and 22 in Kentucky (one—Logan County—currently is in Order 46, and 21 currently are unregulated). Of these 21 counties, 14 were part of the former

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Paducah, Kentucky (Order 99) marketing area. Eleven Arkansas and 23 Missouri counties (including part of Pulaski County) are part of the current Order 106 marketing area. Six Missouri counties are part of the current Order 32 marketing area. Sixteen southeastern Missouri counties currently are unregulated (4 of these were part of the former Paducah Federal milk order).

The Southeast market spans the southeastern area of the United States from the Gulf of Mexico and the Alabama/Georgia-Florida border north to central Missouri, Kentucky, Tennessee and South Carolina, and from the Atlantic Ocean west to Texas, Oklahoma, and Kansas. Measuring the extreme dimensions, this market extends about 575 miles north to south from central Missouri to southern Louisiana and 750 miles west to east from Louisiana's border with Texas to the Atlantic Ocean coast in southern Georgia.

The Southeast marketing area is contiguous to 4 other proposed consolidated marketing areas: Florida to the southeast, the Southwest to the west, the Central to the northwest and the Appalachian to the northeast and east. Georgia's coastline on the Atlantic Ocean is about 100 miles in length, while western Florida, Alabama, Mississippi and Louisiana extend about 600 miles along the Gulf of Mexico coastline. Also contiguous to the current Southeast market are currently unregulated counties in Texas, Missouri, Kentucky (and as of October 1, 1997, the Tennessee Valley [Order 11] marketing area). The proposed consolidated marketing areas would encompass all of these counties into the Southwest, Central, Appalachian or Southeast marketing areas, with some currently-unregulated counties in central Missouri remaining unregulated under this proposal.

In terms of physical geography, the Southeast region is generally flat or gently rolling low-lying land. Relatively higher elevations which might potentially form natural barriers or obstruct easy transportation exist in northwest Arkansas and northeast Georgia.

Moving from the south to the north of the Southeast market, climates range from humid subtropical in coastal areas to warm and humid or humid continental to temperate in Tennessee and Kentucky. Warm, humid summers and mild winters are typical in the Southeast. These types of climates can severely limit the production level of dairy herds in the summer.

Population

According to July 1, 1996, population estimates, the total population in the proposed Southeast marketing area is 26.7 million. The 42 Metropolitan Statistical Areas (MSAs) in the proposed market account for 62 percent of the total marketing area population. Almost half of the Southeast population is located in the 17 most populous MSAs. Eight MSAs have populations greater than 500,000 each; their total population is about 35 percent of the Southeast population. Because of the large number of MSAs in the Southeast market and also because no large (i.e., greater than 500,000) population centers are added to this market under this proposal, only those areas with populations greater than 500,000 are described in greater detail.

Over 25 percent of the Southeast market's population is located in Georgia, the most populous of the Southeast market states, with 7.1 million people. Almost half of Georgia's population is concentrated in the Atlanta MSA, located about 60 miles south of the Southeast-Appalachian marketing area boundary in the northwest portion of the state. Atlanta is the largest city in the Southeast market with a population of 3.5 million.

With 4.3 million people, Alabama is the Southeast market area's third most populous state. Birmingham and Mobile, the state's two largest MSA regions, are among the top eight in population in the Southeast. The Birmingham area has a population of about 900,000 and ranks 5th in size among all Southeast area MSAs. Birmingham is located about 150 miles west of Atlanta in north central Alabama. The Mobile area is a Gulf of Mexico port city in southwestern Alabama. With a population of 520,000, Mobile is the 8th largest population center in the Southeast market area.

Louisiana is the second most populated state in the Southeast market area with 4.4 million people. Two of the Southeast's 8 largest MSAs are located in Louisiana—New Orleans, the second largest MSA with 1.3 million people and Baton Rouge, the 6th largest MSA with almost .6 million people. New Orleans is located in the state's "toe" in southeastern Louisiana. Baton Rouge also is located in Louisiana's "toe," about 80 miles west of New Orleans.

Arkansas has a total population of 2.5 million—2 million from the current Southeast marketing area and an additional 500,000 from the Arkansas portion of the Southwest Plains marketing area. The Little Rock-North Little Rock, Arkansas (Little Rock) MSA, in the center of Arkansas, has the 7th largest population concentration in the Southeast market area with 550,000.

The portion of Tennessee in the Southeast marketing area is the fourth most populated with 3.3 million people and is home to the third and fourth largest MSAs in the Southeast. The Nashville area, with a population of 1.1 million, is located in central Tennessee. The Memphis, Tennessee/Arkansas/Mississippi MSA, also with a population of 1.1 million, is located near these three states' borders.

Other states or portions of states in the Southeast marketing area do not have MSAs with greater than 500,000 population. Mississippi, the Southeast's 5th most populous state, has a total population of 2.7 million. The Missouri, Florida and Kentucky counties in the Southeast market have populations of 1.3 million, 590,000 and 520,000, respectively.

Fluid Per Capita Consumption

Fluid per capita consumption estimates vary throughout the Southeast market from a low of 16 pounds of fluid milk per month in Mississippi to a high of 19 pounds in Arkansas and Kentucky. Multiplying the individual states' consumption rates by their population results in an estimated fluid milk consumption rate of 467 million pounds of fluid milk per month for the Southeast marketing area. With route distribution from the current Southeast order handlers (not including the 3 Arkansas and Missouri plants) equaling 334 million pounds within the Southeast marketing area, route distribution from these handlers is approximately 100 million pounds less than the expected consumption.

In January 1997, Georgia had the greatest "deficit"—with route distribution from Order 7 handlers falling about 42 million pounds short of the 122 million pounds of expected consumption. The state's fluid needs were met by the route distribution of about 44 million pounds into Georgia by fully regulated handlers in the proposed Appalachian and Florida markets.

Other states' "deficits" generally ranged from 4 to 11 million pounds. It is likely that handlers regulated under other Federal orders had distribution into the Southeast area. Alabama is the only state in which the amount of route distribution by Order 7 handlers is about the same as the expected consumption level.

Milk Production

In January 1997, 4,180 producers from 388 counties pooled 477.4 million pounds of producer milk on the current

Southeast market. Over 85 percent of the Southeast's producer milk came from Southeast market area counties. Of the 388 counties, 19 pooled over 5 million pounds each, accounting for 39 percent of Order 7's producer milk. Of these 19 counties, 2 Texas counties are located outside the proposed Southeast market area. Because of the large number of counties, only the locations for those top 19 production counties are described in greater detail. However, the volume of producer milk, number of producers (farms) and number of counties is provided for each state within the market area.

Almost 73 million pounds of milk were pooled on the Southeast market from 581 producers in 28 Louisiana parishes in January 1997. Top production parishes are Tangipahoa, Washington and St. Helena, all located in the state's "toe," north of New Orleans and northeast of Baton Rouge, each bordering Mississippi. Another high production area is centered on De Soto Parish in northwestern Louisiana. These four parishes account for over 62 million pounds of producer milk, with 76 percent coming from Tangipahoa and Washington parishes.

Almost 67 million pounds of milk were pooled on the Southeast market from 331 producers in 68 Georgia counties in January 1997. Of this volume, 64 million came from 312 producers in 64 Georgia counties in the Order 7 marketing area. The balance is associated with Georgia producers located in the marketing area of the recently-terminated Order 11 (Tennessee Valley). Top production counties are Putnam, Morgan and Macon, which pooled 27 million pounds of producer milk on Order 7.

About 65 million pounds of milk were pooled on the Southeast market from 580 producers in 46 Tennessee counties in January 1997. Of this volume, 62 million came from 562 producers in 42 Tennessee counties in the Order 7 marketing area. The balance is associated with Tennessee producers located in the marketing area of the recently-terminated Federal Order 11. Two high production counties in the state are Marshall and Lincoln, located in south central Tennessee. These counties contributed over 12 million pounds of producer milk to the Order 7 pool in January 1997.

About 61 million pounds of milk were pooled on the Southeast market from 443 producers in 48 Mississippi counties in January 1997. Top production counties are Walthall and Pike, in southern Mississippi on the state's border with Louisiana. These two counties adjoin the heavy milk production area in Louisiana. The counties contributed 15 million pounds of producer milk to the Order 7 pool in January 1997.

About 32 million pounds of milk were pooled on the Southeast market from 408 producers in 19 Kentucky counties in January 1997. Additionally, 116 producers in 15 of these counties pooled almost 9 million pounds of producer milk on Orders 11 and 46 (Louisville-Lexington-Evansville). Two counties, Barren and Monroe, contributed over 13 million pounds of producer milk. These contiguous counties are in south central Kentucky about 80 miles northeast of Nashville, Tennessee.

Four Missouri counties—Wright, Texas, Laclede and Howell— pooled 33 million pounds of producer milk on Order 7. All of these counties currently are located in the Order 106 (Southwest Plains) marketing area in southern Missouri.

Other Southeast marketing area states or areas contribute producer milk to the Southeast marketwide pool. About 37 million pounds of milk were pooled on the Southeast market from 205 producers in 51 Alabama counties, and 25 million pounds were pooled from 343 producers in 39 Arkansas counties. Sixteen Florida producers from 6 counties (2 in the Southeast market area) pooled 3.5 million pounds on Order 7 in January 1997.

In January 1997, Order 7 producer milk also originated in Missouri counties not included in the Southeast marketing area, Texas, New Mexico, Indiana and Oklahoma. Large amounts of milk from Missouri (21 million pounds in addition to the 33 million described previously) and Texas (46 million pounds—20 million from Hopkins and Erath Counties) were associated with the Order 7 pool. It should be noted that milk does not need to be physically received at a Federal order plant regulated under the order in which the milk is pooled.

Distributing Plants—Route Distribution

Using distributing plant lists included in both the Preliminary and Revised Preliminary Reports and the pooling standards used in the Revised Preliminary Report, updated for known plant closures through May 1997, 47 distributing plants located in the proposed Southeast marketing area would be expected to be associated with the Southeast market (including the added territory in northwestern Arkansas and southern Missouri). These plants include 36 fully regulated distributing plants, 2 partially regulated, one exempt plant based on size, one producer-handler, and 7 government agency plants (including university and state prison plants). None of these plants' regulatory status is expected to change as a result of the consolidation process. Of the 36 fully regulated plants, 18 are located in the largest eight MSA regions. One distributing plant located in the proposed Appalachian marketing area that has more than half of its route disposition within the Southeast marketing area would be locked into regulation under the Appalachian order.

Since October 1995, it is known that 7 distributing plants (6 fully regulated and 1 exempt) have gone out of business. These plants were located in Alabama, Arkansas, Georgia, and Missouri (1 plant each), and Mississippi (3 plants). Also, one fully regulated distributing plant, Centennial Dairy Farms, Inc., in Atlanta, GA, began packaging and distributing products in October 1996. Information for this plant is included in route dispositions reported for January 1997, the month used in this analysis.

Of the 47 distributing plants, Georgia has 7; Louisiana, 12; Mississippi, 6; Alabama, 7; Arkansas, 6; Tennessee, 5; Missouri, 2; and Kentucky, 2. No distributing plants are located in the Florida counties included in the Southeast market area.

In January 1997, the 34 plants fully regulated under Order 7 at that time had route distributions totaling 372 million pounds. About 90 percent, or 334 million pounds, was distributed within the Order 7 marketing area. Route distribution volumes from the 11 nonpool distributing plants were relatively insignificant and are not included here. These data do not include distribution information from the 3 fully regulated plants in northwest Arkansas and southern Missouri that would be included in the proposed Southeast pool. All 3 plants are operated by one handler; thus this data is proprietary information and is restricted. These plants' information is included, however, in the market information presented in the Central market discussion.

In Georgia, three pool distributing plants are located in the Atlanta area, with 2 others elsewhere in the State. Georgia also has 1 partially regulated handler and 1 government agency (state prison) plant.

Nine of Louisiana's 12 distributing plants currently are and would continue to be fully regulated (pool plants) in this proposed marketing area. Five of these 9 are located in either the New Orleans or Baton Rouge areas (2 and 3, respectively). Four other pool distributing plants are located in Louisiana. The remaining three plants

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are affiliated with universities or the state prison.

Four of Mississippi's 6 currently operational distributing plants would be fully regulated pool plants in the Southeast market. Two universities also have plants.

All seven of Alabama's distributing plants are fully regulated. One is located in the Birmingham area and 2 are located in the Mobile area. Of the remaining four, 2 are in northern Alabama, one is in central Alabama, and one is in the state's southeastern corner.

Four of Arkansas' 6 currently operational distributing plants are fully regulated; two are in the Little Rock area, and the other 2 are located in northwest Arkansas. Also located within Arkansas are an exempt distributing plant and a state prison plant. All five of Tennessee's distributing plants are fully regulated. Three of the 5 are located in the Nashville area and the remaining two are in the Memphis area.

Two distributing plants that would be fully regulated under the Southeast market are located in the currently unregulated Kentucky counties that are proposed to be added to this marketing area. One is located in Fulton in the southwest corner of Kentucky on the Tennessee border, and the other about 30 miles east of Fulton.

Two Missouri plants are located in the counties proposed to be included in the Southeast area. One fully regulated plant is located in Springfield; a partially regulated plant based on October 1995 data, but exempt (by virtue of having less than 150,000 pounds of route dispositions) based on January 1997 data, is located northeast of Springfield.

Utilization

According to January 1997 pool statistics, the Class I utilization for the Southeast market was about 78 percent. Changes to this percentage are likely to occur with the addition of 3 pool plants or potential changes in plants' regulatory status. It is not expected that the addition of the plants would have a significant impact on producer returns in the Southeast as a result of consolidation. For December 1996, Class I utilization for the Southeast market was 73.4 percent based on 339,275,000 pounds of producer milk used in Class I out of 462,455,000 total producer milk pounds.

Other Plants

Also located within the Southeast marketing area during May 1997 are 37 supply or manufacturing plants: 1 in Kentucky, 5 in Alabama (including 1 in the Birmingham area), 5 in Arkansas (including 1 in the Little Rock area), 7 in Georgia (including 4 in the Atlanta area), 3 in Louisiana (including 1 in the Baton Rouge area), 11 in Missouri, 2 in Mississippi, and 3 in Tennessee (including 1 each in the Memphis and Nashville areas). Eight of the 37 plants are pool plants. Of these pool plants, 2 primarily ship to distributing plants, 3 manufacture cheese, 1 manufactures Class II products, 1 manufactures powder and 1 primarily manufactures other products. Of the Southeast marketing area's 28 nonpool plants, 13 manufacture primarily Class II products, 3 manufacture cheese, 10 manufacture primarily other products, and 1 each manufacture primarily butter and cheese. One plant is a "split plant," with one side serving as a manufacturing facility primarily for Class II products, while the other side receives and ships Grade A milk. Accounting is done separately.

Cooperative Associations

In December 1995, six cooperative associations represented members marketing 78 percent of the milk pooled on the Southeast market: Mid-America Dairymen, Inc.; Associated Milk Producers, Inc., Southern Region; Carolina-Virginia Milk Producers Association, Inc.; Arkansas Dairy Cooperative Association (ADCA); Vanguard Milk Producers Cooperative (VMPC); and National Farmers Organization, Inc. ADCA and VMPC members marketed milk only in the Southeast Federal order, while the other 4 cooperatives' members marketed milk in multiple Federal orders.

Criteria for Consolidation

Retention of the Southeast marketing area as a single area is based on overlapping route dispositions within the marketing area to a greater extent than with other marketing areas. Procurement of producer milk also overlaps between states within the market. The need for milk from outside the market is primarily seasonal, and is not as great as the volume of milk that is pooled from other areas. There is common cooperative association membership within the marketing area.

The addition of northwest Arkansas and southern Missouri to the marketing area is primarily in response to comments received during the public comment period. The association that exists between these 2 areas, the Southeast marketing area, and the proposed Central market should continue to be monitored throughout the reform process.

Discussion of Comments and Alternatives

Several commenters, primarily producers, favored putting Kentucky all in one order and most suggested adding it to the Southeast. In a comment that was considered in the Revised Preliminary Consolidation Report, Georgia Milk Producers had suggested dividing the Southeast Order on the state line between Mississippi and Alabama. Over 35 form letters opposed the separation of the Southeast marketing area between Mississippi and Alabama. A more recent Georgia Milk Producers comment rescinded this position.

A comment filed on behalf of Barber Pure Milk Company and Dairy Fresh Corporation, both in Alabama, suggested that the Florida orders and the Carolina and Tennessee Valley orders be merged with the Southeast. The comment stated that evidence shows the Florida markets are vitally involved with other areas of the Southeast in Class I sales, obtaining milk supply, and in the disposition of surplus milk. As discussed under the description of the proposed consolidated Florida market, the greatest overlap in sales distribution and milk supply involving the Florida markets occurs between the three current Florida markets. A discussion of the issue of consolidating the Carolina and Tennessee Valley markets with the Southeast can be found in the description of the proposed Appalachian market.

Approximately 10 commenters suggested that southern Missouri and/or northwest Arkansas should be included in the Southeast marketing area. Mid-Am supported making both areas part of the Southeast Federal order to correct the inequity perceived by the cooperative to be caused by southwest Missouri manufacturing plants balancing the Southeast without being able to pool, and inefficient milk movements caused by blend price discrepancies. AMPI concurred, suggesting that southern Missouri historically has been a supply source for the Southeast. The Director of the Missouri Department of Agriculture contended that southern Missouri has the largest concentration of milk production in the state and serves as the reserve supply for southeastern markets. The Missouri Farm Bureau Federation also suggested including some southern Missouri counties with the Southeast. One producer also supported including southern Missouri in the Southeast Marketing Area.

It appears that a substantial amount of the milk supply pooled under the Southeast order has been shifted from Texas to Missouri. Between December 1996 and May 1997 the percentage of milk pooled under the Southeast order that was produced in Texas declined from over 10 percent to under 7 percent. During the same time period, the Missouri share of the Southeast pool increased from 10 percent to 15 percent. This shift may reflect a change in the relative price relationships between the Southeast, Texas and Southwest Plains orders, which could be subject to change in the opposite direction in the future. While the percentage of southern Missouri milk pooled under the Southeast order increased from less than one-third to nearly one-half, less than one-half of the volume pooled on the Southeast order is actually delivered to Southeast plants, with over half of the volume being diverted to manufacturing plants in Missouri, Illinois, Minnesota and Wisconsin.

Production pooled under the Southeast order from the northwest Arkansas counties located in the current Southwest Plains marketing area increased from less than 10 percent of those counties' production in December 1996 to about 13 percent in May 1997. Arkansas milk represented 5 percent of the total milk pooled under the Southeast order in December 1996, and just under 6 percent in May 1997.

The commenters state that if the portions of Arkansas and Missouri that currently are in the Southwest Plains marketing area are shifted to the Southeast order area, the route disposition by distributing plants located within this area would become in-area dispositions from Southeast pool distributing plants. The most recent information available shows that more than half of the dispositions from the three plants in question would be within the Southeast marketing area if the area in which they are located were part of the Southeast area.

Several commenters also suggested that the proposed consolidated Appalachian order area (the current Carolina and Louisville-Lexington-Evansville areas and the former Tennessee Valley area) be combined with the Southeast marketing area because of a common procurement area in south central Kentucky for the Southeast and Tennessee Valley markets, causing different blend prices to exist. This issue is discussed in some detail under the description of the proposed consolidated Appalachian market.

A number of comments from east Texas suggested combining that portion of Texas with the Southeast marketing area to resolve inequities identified by the commenters. The commenters claimed that due to its heat, humidity and rainfall, milk production conditions in eastern Texas have more in common with the Southeast than with the Southwest area. The dry climate of Central Texas and New Mexico permits dairies to become much larger and produce 10–15% more milk per cow, at a lower cost than East Texas producers are able to achieve. This issue is discussed in detail under the description of the proposed consolidated Southwest market area.

Mideast

The proposed consolidated Mideast marketing area is comprised of the current Ohio Valley (Order 33), Eastern Ohio-Western Pennsylvania (Order 36), Southern Michigan (Order 40), part of the Michigan Upper Peninsula (Order 44), and Indiana (Order 49) marketing areas plus 6 currently unregulated Indiana counties, 2 whole and 3 partial currently unregulated Michigan counties, and 6 whole and 3 partial currently unregulated Ohio counties. There would be 304 whole and 2 partial counties in this proposed area.

Geography

The Mideast market is described geographically as follows:

Indiana—72 counties (64 currently in Order 49, 2 currently in Order 33, and 6 currently unregulated on the western edge of the State, just south of the northwest corner).

Kentucky—18 counties (all currently in Order 33).

Michigan—77 counties. Two whole and 3 partial counties currently are unregulated. The rest of the area currently is included in Orders 40, 44, 49, and 33. Of the total 83 Michigan counties, only 6 in the western end of the Upper Peninsula are not included in the proposed Mideast marketing area.

Ohio—all 88 counties. Six whole and 3 partial counties currently are unregulated. The rest of the State currently is included in Orders 33 and 36.

Pennsylvania—12 whole and 2 partial counties, currently in the Order 36 area.

West Virginia—37 counties; 20 currently in Order 33, 17 currently in Order 36.

The proposed Mideast marketing area lies directly south of the Great Lakes, with the State of Michigan enclosed on the east and west sides by Lakes Huron and Michigan. On the eastern border of the marketing area, between the proposed Mideast and Northeast marketing areas, is Pennsylvania State-regulated territory and the Allegheny and Appalachian Mountains.

The east-to-west distance across the proposed marketing area is approximately 450 miles, from locations on the eastern edge of the area in western Pennsylvania to the border of Indiana and Illinois. Northwest to southeast, from Marquette, Michigan, in the Upper Peninsula to the northeast area of Kentucky in the marketing area is just over 800 miles. From the northern tip of lower Michigan to southern Indiana the more direct north-south distance is 530 miles.

The proposed Mideast marketing area is contiguous to 3 other proposed consolidated marketing areas. The proposed Central marketing area would provide the western border of the Mideast marketing area along the Indiana-Illinois border, and the proposed Appalachian area would provide the southern boundary. The western end of Michigan's Upper Peninsula, part of the proposed Upper Midwest area, would adjoin the Mideast portion of the Upper Peninsula.

In terms of physical geography, most of the proposed Mideast marketing area is at low elevations, and relatively flat. The climate and topography are favorable to milk production, with dairy being the number one agricultural commodity in terms of financial receipts in the State of Michigan in 1996. Dairy also ranks high in terms of financial receipts in the rest of the area; 3rd in Ohio and West Virginia, and 5th in Indiana.

Population

According to July 1, 1996, population estimates, the total population in the proposed marketing area is 31 million. The 34 MSAs in the proposed Mideast marketing area include 79.2 percent of the area's population. Over 55 percent of the area's population is contained in the 8 most populous MSAs, which each have over 950,000 people. Two-thirds of the population is located in the states of Michigan and Ohio.

The Mideast area's largest and 7th largest of the 34 MSAs are located in Michigan. Detroit-Ann Arbor-Flint, with 5.1 million population, is the largest MSA, and is located in the southeast portion of the state between Lakes Huron and Erie. Grand Rapids-Muskegon-Holland is the 7th largest Mideast MSA, is located approximately 150 miles west-northwest of Detroit, and has a population of 1 million. These two MSAs contain two-thirds of the population of Michigan. There are 5 other MSAs in Michigan. Three have approximately 400,000 population each, and the other two average approximately 150,000 apiece. Eighty-four percent of the population of

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Michigan is located in these 7 MSAs, all in the lower half of southern Michigan.

Four of the 8 largest Mideast MSAs are located in the State of Ohio. These are: (1) Cleveland-Akron, the second-largest, with a population of 2.9 million, located on Lake Erie in northwestern Ohio; (2) Cincinnati-Hamilton, OH-KY-IN, the 4th largest, with a population of 1.9 million, located in the southwest corner of Ohio; (3) Columbus, the 6th largest, with a population of 1.4 million, located approximately midway between Cincinnati and Cleveland; and (4) Dayton, the 8th largest, with a population of .95 million.

There are 6 additional MSAs in Ohio, 2 with populations of approximately .6 million each, 1 with a population of .4 million, and 3 that average just over 150,000 each. Eighty-one percent of the population of Ohio is located in MSAs, most in the northern part of the State.

The third-largest MSA in the Mideast area is Pittsburgh, Pennsylvania, with a population of 2.4 million. Pittsburgh is 127 miles southeast of Cleveland. There are two smaller MSAs in the Pennsylvania portion of the proposed Mideast marketing area, having an average population of about 200,000 each. Eighty-seven percent of the population of the Pennsylvania portion of the Mideast area is located in MSAs.

Indianapolis, Indiana, is the 5th largest MSA in the proposed Mideast marketing area, with a population of 1.5 million. Indiana contains 9 additional MSAs, 2 with populations of .5 and .6 million, and 7 others that average 155,000 population. All but 2 of the 9 smaller MSAs are located north of Indianapolis. Seventy-four percent of the population of the portion of Indiana that is in the proposed Mideast area is located in MSAs.

The portion of West Virginia that is within the proposed Mideast area contains 4 MSAs, 3 of which are located on the West Virginia-Ohio border, along the Ohio River. The population of these MSAs averages just over 200,000. Forty-five percent of the population of the West Virginia portion of the proposed Mideast area is located in MSAs.

Fluid Per Capita Consumption

Estimates of fluid per capita consumption within the proposed Mideast area vary from 18.75 pounds per month for Michigan to 20.4 pounds per month for Indiana. Use of 19 pounds per month as a weighted average results in an estimated 588 million pounds of fluid milk consumption for the Mideast marketing area. Mideast handlers' route disposition within the area during October 1995 totaled 537 million pounds, with another 27 million distributed by 20 handlers fully regulated under other orders. An additional 1.9 million pounds was distributed by 8 handlers that would be partially regulated under the proposed Mideast order, 6 handlers that would be regulated under other consolidated orders and 2 under the proposed Mideast order. One million eight hundred thousand pounds was distributed by producer-handlers, and less than 1 million pounds by 2 handlers that would be exempt under this proposed rule on the basis of each having less than 150,000 pounds of route disposition per month.

Milk Production

In December 1996, over 12,000 producers from 376 counties in 11 states pooled 1.1 billion pounds of milk on Federal Orders 33, 36, 40, 44 and 49. Over 90 percent of this producer milk came from Mideast marketing area counties. The States of Indiana, Michigan, Ohio and Pennsylvania supplied 93 percent of the milk (13%, 37.9%, 30.4% and 11.6%, respectively), with 89 percent coming from counties that would be in the proposed Mideast area. Just over two-thirds of the milk pooled under these orders was produced in Michigan and Ohio counties located within the proposed consolidated marketing area.

Other states pooling milk on the orders proposed to be consolidated in the proposed Mideast area were Illinois (1.4%), Kentucky (0.5%), Maryland (0.4%), New York (2.5%), Virginia (0.1%), West Virginia (1.0%), and Wisconsin (1.2%). These states contributed a total of 7.2 percent of the milk pooled on the 5 orders.

Sixty-three of the counties that had production pooled under the five current orders supplied more than 5 million pounds of milk each during December 1996. Seven of the counties were in northern and northeast Indiana, over 100 miles from Indianapolis; 11 were in western Pennsylvania—7 of them within 100 miles of Pittsburgh, and the others, including those with the most production (10–25 million pounds), in the northwest corner of the state. Twenty-six Michigan counties pooled more than 5 million pounds each under the 5 orders, including 15 counties with more than 10 million pounds and 2 counties with more than 25 million pounds. All of these counties are located within 110 miles of Detroit or Grand Rapids, the two largest MSAs in Michigan. The heaviest milk production area of Ohio is the northeast quadrant of the State and within 50 miles of the Akron-Cleveland MSA, including 6 counties supplying over 10 million pounds each during December 1996, and 1 county pooling over 40 million pounds. A smaller production area in Ohio is located in the central portion of the western edge of the State within 80 miles of the Dayton MSA, and includes two counties with over 10 million pounds production and 1 county with over 20 million. The only population centers of the marketing area that do not appear to have adequate supplies of nearby milk are Indianapolis and Cincinnati, in the southern portion of the area.

Distributing Plants—Route Distribution

Using distributing plant lists included in both the Preliminary and Revised Preliminary Reports, with the pooling standards used in the Revised Preliminary Report adjusted to 30 percent of route dispositions as in-area sales, updated for known plant closures through May 1997, 78 distributing plants would be expected to be associated with the Mideast marketing area, including 56 fully regulated distributing plants (55 currently fully regulated, and 1 currently partially regulated), 4 partially regulated (all currently partially regulated), 2 exempt plants that would have less than 150,000 pounds of total route disposition per month (both currently fully regulated), and 16 producer-handlers (all currently producer-handlers). Four of these 78 distributing plants would not be in the marketing area, including 3 partially regulated plants (all currently partially regulated) and 1 producer-handler (currently a producer-handler). Since October 1995, 8 distributing plants (3 in Pennsylvania, 2 in Ohio, 1 in West Virginia, 1 in Indiana and 1 in Michigan), have gone out of business.

There would be 43 distributing plants in the 8 Mideast MSA's that each have over a million people (including Dayton-Springfield which has .95 million). Twenty-nine of these plants would be pool plants—6 in the Pittsburgh area, 6 in the Detroit area, 4 each in the Grand Rapids and Cleveland areas, 3 each in the Indianapolis and Cincinnati areas, 2 in Columbus and 1 in Dayton. Eleven of the plants in the large MSA areas would be producer-handlers, 2 would be exempt on the basis of having less than 150,000 pounds of milk per month in Class I route dispositions, and 1 partially regulated.

Of the remaining 31 distributing plants located in the marketing area, 19 would be located in other MSA's as follows: 5 pool plants and 1 producer-handler in Ohio; 5 pool plants in Indiana; 4 pool plants in Michigan; 2 pool plants in Pennsylvania; 1 pool plant in Kentucky; and 1 pool plant in West Virginia. Twelve of the remaining distributing plants would not be located in MSA's. Three of these pool plants and 2 producer-handlers would be located in Michigan, 4 pool plants would be located in Ohio; 2 pool plants would be located in Indiana; and 1 producer-handler would be located in West Virginia.

There are 4 distributing plants that would not be in the marketing area. These would be 2 partially regulated plants and 1 producer-handler in Pennsylvania, and 1 partially regulated plant in Virginia.

The in-area route disposition standard has been adjusted to 30 percent of total route dispositions from the 15 percent standard that was used for all of the suggested consolidated areas in the Revised Preliminary Report. This adjustment has been made to assure that State-regulated plants in Virginia and Pennsylvania that have sales in the proposed marketing area would not be pooled under Federal order regulation.

Utilization

According to October 1995 pool statistics for handlers who would be fully regulated under this Mideast order, the Class I utilization percentages for the Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan, Michigan Upper Peninsula, and Indiana markets were 59, 57, 48, 79, and 66 percent, respectively. Based on calculated weighted average use values for (1) the current order with current use of milk, and (2) the current order with projected use of milk in the consolidated Mideast order, the potential impact of this proposed rule on producers who supply the current market areas is estimated to be: Ohio Valley, a 1-cent per cwt decrease (from $13.00 to $12.99); Eastern Ohio-Western Pennsylvania, a 10-cent per cwt decrease (from $13.07 to $12.97); Southern Michigan, an 8-cent per cwt increase (from $12.75 to $12.83); Michigan Upper Peninsula, a 20-cent per cwt decrease (from $12.81 to $12.61); and Indiana, a 5-cent per cwt decrease (from $12.97 to $12.92). The large decrease for Michigan Upper Peninsula is because of its current individual handler pool provisions (very little reserve milk is pooled under Order 44—instead, it is pooled on the Southern Michigan order). For December 1996, combined Class I utilization for Orders 33, 36, 40, 44 and 49 was 52 percent based on 563.4 million pounds of producer milk used in Class I out of 1082 million total producer milk pounds pooled.

The Mideast is one of two proposed consolidated marketing areas that would have a significantly higher-than-average percentage of its milk used in Class II. Currently, the Southern Michigan, Ohio Valley and Indiana markets have Class II utilization over 20 percent. When the markets are combined the average for the consolidated market will be just under 20 percent.

Other Plants

Also located within the Mideast marketing area during May 1997 were 59 supply or manufacturing plants: 1 in Charleston, West Virginia, 4 in Pennsylvania, 18 in Michigan, 9 in Indiana and 27 in Ohio. Nine of the 59 plants are pool plants. Of these pool plants, 6 are supply plants—1 manufactures primarily Class II products, 3 manufacture primarily powder, and 2 have no primary product, only shipping to distributing plants. Three pool plants are manufacturing plants, manufacturing primarily cheese. Of the 50 nonpool plants in the Mideast marketing area, one is a supply plant that manufactures primarily cheese. The other 49 nonpool plants are manufacturing plants. In this area of high Class II use, 28 of the nonpool plants manufacture primarily Class II products. In addition, 1 manufactures primarily butter, 1 manufactures primarily powder, 27 manufacture primarily cheese, and 2 manufacture primarily other products.

There are also two manufacturing plants in the currently-unregulated area of Ohio—a nonpool plant that manufactures primarily Class II products in the unregulated county of Erie, Ohio and a nonpool plant that manufactures primarily cheese in the unregulated area of Sandusky, Ohio.

Cooperative Associations

In December 1995, 18 cooperative associations pooled member milk under the 5 orders proposed to be consolidated. One of the cooperatives pooled milk on the four principal orders, 4 cooperatives had member milk pooled on 3 of the orders, 2 cooperatives pooled milk on 2 of the orders, and 11 of the cooperatives pooled milk on only one of the orders. The percentage of cooperative member milk pooled on each of the orders varied from 43 percent under Order 36 to 86 percent under Order 40. Of the total milk pooled on the 5 orders in December 1995, 78 percent was marketed by cooperative associations.

Criteria for Consolidation

Overlapping route disposition, overlapping production areas, natural boundaries, and multiple component pricing are all criteria that support the consolidation of these current order areas into a consolidated Mideast marketing area. Handlers who would be fully regulated under the consolidated order distribute approximately 90 percent of their route dispositions within the proposed marketing area, and nearly 95 percent of the milk distributed within the marketing area is from handlers who would be regulated under the order.

Many of the counties from which milk was pooled on the individual orders supplied milk to three or four of those orders. For instance, milk from several of the same Michigan counties was pooled on the Ohio Valley, Eastern Ohio-Western Pennsylvania, Indiana and Southern Michigan orders; milk from a number of the same Indiana counties was pooled on the Ohio Valley, Southern Michigan and Indiana counties; and milk from some of the same Ohio counties was pooled on the Ohio Valley, Indiana, and Southern Michigan orders.

The Great Lakes serve as natural boundaries on the northern edge of the area and on the eastern and western sides of Michigan, as do the mountains in central Pennsylvania. All of the orders involved in the proposed consolidated Mideast area contain multiple component pricing provisions. Although the Southern Michigan component pricing plan is not the same as the plan common to the Indiana and the two Ohio orders, interest in adopting the Southern Michigan component pricing plan has been expressed by industry participants in the other orders.

Discussion of Comments and Alternatives

Comments regarding the Mideast region have been received from cooperatives, proprietary handlers, and individual producers throughout the developmental period of this rulemaking process, but responses to the Revised Preliminary Report on Order Consolidation focused mostly on the suggested addition of currently non-Federally regulated territory. Several comments supported the addition of Pennsylvania Milk Marketing Board (PMMB) Area 6 to the suggested Mideast order area, and one handler urged the addition of currently-unregulated areas of Maryland and West Virginia. However, a large number of producers whose milk currently is pooled at PMMB-regulated fluid milk plants, and the operators of some of those plants, argued strenuously that including PMMB Area 6 in the proposed Mideast

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order would reduce returns to Pennsylvania producers unnecessarily without reducing costs to handlers.

For the reasons discussed previously in reference to the Northeast market, PMMB Area 6 should not be added to the proposed Mideast order area. Consolidation of the existing orders does not necessitate expansion of the consolidated orders into areas in which handlers are subject to minimum Class I pricing under State regulation, especially when the states' Class I prices exceed those that would be established under Federal milk order regulation. Handlers located in PMMB areas 2, 3, and 6 are regulated under the State of Pennsylvania if they do not have enough sales in any Federal order area to meet an order's pooling standards. If such plants do meet Federal order pooling standards, the State of Pennsylvania continues to enforce some of its regulations in addition to Federal order regulations. As State-regulated handlers, they must pay a Class I price for milk used in fluid products, often higher than the Federal order price would be. Inclusion of the Pennsylvania-regulated handlers in the consolidated marketing area would have little effect on handlers' costs of Class I milk (or might reduce them), while reducing producer returns. In view of these situations, it appears that stable and orderly marketing conditions can be maintained without extending full Federal regulation to State-regulated handlers.

Comments from a large cooperative association and a fluid handler urged that southern Ohio and part of West Virginia be included in the proposed Appalachian order to assure that a large distributing plant located in Winchester, Kentucky, remains pooled under the consolidated Appalachian order. Both comments argued that order provisions should specify that plants be regulated according to their location rather than their fluid milk distribution area. The pooling provisions proposed herein would assure that plants are regulated where located unless their route disposition within another marketing area is over 50 percent. This provision should assure that the plant in question remains regulated under the proposed Appalachian order. If a plant's route disposition in a marketing area other than where it is located is over 50 percent, other handlers competing for sales with that handler should be assured that their competitor is paying a like amount for its milk.

Upper Midwest

The proposed Upper Midwest marketing area is comprised of the current Upper Midwest (Order 68) and Chicago Regional (Order 30) marketing areas, with the addition of the western portion of the Michigan Upper Peninsula (Order 44) marketing area. There are 205 counties in this proposed area.

Geography

The proposed consolidated Upper Midwest marketing area is described geographically as follows: 16 counties in Illinois (all currently in Order 30), 6 counties in Iowa (all currently in Order 68), 6 counties in Michigan (all currently in Zones I and IA of Order 44), 83 counties in Minnesota (all currently in Order 68), 16 counties in North Dakota (all currently in Order 68), 8 counties in South Dakota (all currently in Order 68), and 70 counties in Wisconsin (43 currently in Order 30, 20 currently in Order 68, and 7 currently unregulated). This market is about 600 miles east to west and about the same distance north to south.

The area described above is contiguous to the proposed Central market to the south, a small corner of the proposed Mideast market to the southeast, and the eastern portion of Michigan's Upper Peninsula, also part of the proposed Mideast market, to the northeast. North of the Upper Midwest market is Lake Superior and the Canadian border, and west of the market is a large sparsely-populated and unregulated area. Most of the eastern border of the marketing area is Lake Michigan.

The proposed Upper Midwest marketing area is generally low-lying, with some local differences in elevation in Wisconsin and the upper peninsula of Michigan. Natural vegetation in the western part of the area is tall-grass prairie, with the eastern two-thirds of the northern portion being broadleaf forest, coniferous forest, and mixed broadleaf and coniferous forest. Annual precipitation averages 30–35 inches per year. Most of the area experiences summer temperatures that average about 75 degrees; the northern and western portions average winter temperatures are in the low 'teens, while the southern and more eastern portions experience average winter temperatures in the 20's. The far western part of the market predominantly grows mixed field crops, with cattle and soybeans more to the southwest. Both Minnesota and Wisconsin are included in the top five milk-producing states, and dairy is the number 1 agricultural enterprise in Wisconsin, generating over half of the State's income derived from agricultural commodities.

Population

According to July 1, 1996, population estimates, the total population of the proposed Upper Midwest marketing area is approximately 18.5 million. Using Metropolitan Statistical Areas (MSAs), there are 3 population centers over 1 million. The Chicago-Gary-Kenosha area, primarily in northeastern Illinois, is the largest, with a 7.8 million population in the marketing area. The Minneapolis-St. Paul area, located mostly in Minnesota, is next with 2.8 million; and the third-largest MSA is Milwaukee-Racine, Wisconsin, with a population of 1.6 million. The Chicago area is located in the southeast corner of the marketing area, on the west side of the southern end of Lake Michigan, with Milwaukee approximately 85 miles north, also along Lake Michigan. Minneapolis is located 400 miles northwest of Chicago, along the Minnesota-Wisconsin border.

Approximately two-thirds of the population of the proposed marketing area is within the three largest MSA's, with over 80 percent of the population contained within the area's 17 MSA's (with the 14 smaller MSA's averaging 195,000 population).

Sixty percent of the population of the market is concentrated in the Illinois and southeast Wisconsin portion of the marketing area. In Wisconsin, nearly 90 percent of the population is located in the southern two-thirds of the state, and in Minnesota 85 percent of the population is in the southern half of the state.

Fluid Per Capita Consumption

Based on the population figure of 18.5 million and an estimated per capita fluid milk consumption rate of 20 pounds of fluid milk per month, total fluid milk consumption in the proposed Upper Midwest marketing area is estimated at 370 million pounds per month. Plants that would be fully regulated distributing plants under the Upper Midwest order had route disposition within the market of 321.5 million pounds in October 1995. The 3 producer handlers operating in the combined marketing areas during this month had a combined route disposition of .1 million pounds, 5 partially regulated handlers distributed 1.7 million pounds in the marketing area, and an additional .1 million pounds was distributed by unregulated handlers. Twenty handlers fully regulated under 10 other Federal orders, from New York-New Jersey to Great Basin, distributed 36.5 million pounds in the combined marketing areas during October 1995.

Milk Production

In December 1996, 2.2 billion pounds of milk were pooled in the proposed Upper Midwest market from more than 27,700 producers located in 10 states from Tennessee to Minnesota, and from South Dakota to Michigan. However, over 95 percent of the producer milk was produced within the proposed marketing area, and 93.4 percent was produced within the states of Wisconsin and Minnesota. As with population density and milk plant density, most milk production in Minnesota and Wisconsin occurs in the southern parts of these states. Over 82 percent of Wisconsin milk pooled under the combined Chicago Regional-Upper Midwest orders in December 1996 was produced in the southern two-thirds of the State, while 84 percent of the Minnesota milk pooled under the two orders was produced in the southern half of Minnesota.

Forty counties, 3 in Iowa, 12 in Minnesota, and 25 in Wisconsin supply pool milk to both the current Chicago Regional and Upper Midwest orders. The largest part of the common production area is in Wisconsin, where 25 counties supply 25 percent of the milk pooled under Order 30, and 27 percent of the milk pooled under Order 68. When data for the 40 counties is combined, 26 percent of the Chicago Regional pool and 39 percent of the Upper Midwest pool is supplied by this common production area.

Distributing Plants—Route Distribution

Using distributing plant lists included in both the Preliminary and Revised Preliminary Reports and the pooling standards used in the Revised Preliminary Report, updated for known plant closures through May 1997, 37 distributing plants would be expected to be associated with the Upper Midwest marketing area, including 29 fully regulated distributing plants (3 currently partially regulated and 26 currently pool plants), 4 partially regulated (3 currently partially regulated and 1 currently fully regulated), 1 unregulated (currently partially regulated), 2 producer-handlers, and 1 exempt plant (currently unregulated, with less than 150,000 pounds of total route disposition per month). Since October 1995, one distributing plant in Wisconsin has gone out of business.

There would be 7 distributing plants in the Chicago area (5 pool plants, 1 producer-handler, and 1 unregulated plant). The Milwaukee-Racine area would have 2 pool distributing plants. There would be 7 distributing plants in the Minneapolis-St. Paul area (6 pool plants and 1 partially regulated plant). Of the remaining 21 distributing plants, 14 are located in other MSAs as follows: 4 pool plants in Minnesota, 2 pool plants in North Dakota, 1 pool plant in Illinois, and 6 pool plants and 1 partially regulated plant in Wisconsin. Seven of the remaining distributing plants are not located in MSAs: 2 pool plants in Minnesota, 2 partially regulated plants in North Dakota, 1 producer-handler and 1 exempt plant (less than 150,000 pounds of total route distribution per month) in Wisconsin and 1 pool plant in Michigan.

Utilization

According to October 1995 pool statistics for handlers who would be fully regulated under this Upper Midwest order, the Class I utilization percentages for the Chicago Regional and Upper Midwest were 30 and 46 percent, respectively. Based on calculated weighted average use values for (1) the current order with current use of milk, and (2) the current order with projected use of milk in the consolidated Upper Midwest order, the potential impact of this proposed rule on producers who supply the current market areas is estimated to be: Chicago Regional, no change ($12.62 in both cases), and Upper Midwest, a 1-cent per cwt increase (from $12.55 to $12.56). However, a substantial amount of milk was omitted from both pools for October 1995 because of unusual class price relationships. Annual Class I utilization percentages may be considered more representative for these markets. For the year 1996, the annual Class I utilization percentage for the Chicago Regional market was 20.4, with 19.6 for the Upper Midwest. The Class I use percentage for the Michigan Upper Peninsula market, which has a individual handler pool and represents a very small portion of the producer milk that would be expected to be pooled under the proposed consolidated order, was 78.3 percent. It is estimated that the Class I use percentage for the consolidated order would be in the neighborhood of 20 percent.

Other Plants

Located within the proposed consolidated Upper Midwest marketing area during May 1997 were 301 supply or manufacturing plants: 1 in South Dakota, 3 in Iowa, 28 in Illinois (12 in the Chicago area), 39 in Minnesota (over three-quarters of which are located in the southeastern quarter of the State), and 230 in Wisconsin (over 90 percent of which are scattered throughout the southern three-quarters of the state). One hundred five of the plants are pool plants, or have a "pool side." Eighty-five of the 105 pool plants (1 in Iowa, 4 in Illinois, 16 in Minnesota and 64 in Wisconsin) are "split plants;" that is, one side of a plant is a manufacturing facility and the other side receives and ships Grade A milk, and accounting is done separately. In most cases, the nonpool portion of such a plant is a manufacturing operation, primarily cheese-making. Most of the other pool plants are pool supply plants, located primarily in Wisconsin, that ship milk to pool distributing plants.

The 196 nonpool plants in the proposed Upper Midwest marketing area are manufacturing plants—103 manufacture primarily cheese, 16 manufacture primarily Class II products, 15 manufacture primarily butter, 23 manufacture primarily milk powders, and 39 manufacture primarily other products.

Also associated with the Upper Midwest order, but not within the marketing area, are 2 pool supply plants and 6 manufacturing plants (3 manufacturing primarily cheese, 2 making Class II products, and 1 butter plant) in North Dakota.

Cooperative Associations

In December 1995, 67 cooperative associations pooled member milk on the Chicago Regional and Upper Midwest orders, providing 83 percent of the milk pooled under the two orders. Seventy-six percent of the milk pooled under Order 30 and 93.9 percent of the milk pooled under Order 68 was supplied by cooperative associations. Eight of the cooperatives marketed milk in both orders, accounting for nearly two-thirds of the milk pooled in the Upper Midwest (and 68.8 percent of the cooperative member milk), and 42.5 percent of the milk pooled in the Chicago Regional market (55.9 percent of total cooperative member milk). In the two markets, 15 cooperatives pooled milk only under Order 30, and 44 cooperatives pooled milk only under Order 68.

Criteria for Consolidation

As suggested in the initial Preliminary Report on Order Consolidation, the Chicago Regional and Upper Midwest marketing areas should be combined, with the addition of the western end of Michigan's Upper Peninsula, into a consolidated Upper Midwest Federal order marketing area. Although these areas do not have a considerable degree of overlapping fluid milk disposition, they do have an extensive overlapping procurement area. Handlers regulated under both of the principal markets distribute milk into more southern

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markets, and approximately 10 percent of the fluid milk distributed within the proposed area is distributed by handlers regulated under other orders. However, these other order areas are more closely related to markets to the south than to the proposed Upper Midwest order area. On that basis, it is more appropriate to include them in other consolidated marketing areas.

Other aspects of the proposed consolidation also fit the criteria set forth. The proposed Upper Midwest area is bounded on three sides by Lakes Michigan and Superior, the international border with Canada, and a large unregulated area. A significant portion of both markets' milk is supplied by the same cooperative associations. The markets have identical multiple component pricing plans, and both have large reserves of milk that normally is used in manufactured products, primarily cheese. Approximately 90 percent of the milk used in manufacturing in these markets is used to make cheese. The amount of cheese manufactured from milk pooled under these milk orders is enough to supply a population 3 times greater than that of the proposed consolidated marketing area. Fluid milk handlers in both markets must compete with cheese manufacturers for a milk supply, and marketing order provisions for both markets must provide for attracting an adequate supply of milk for fluid use.

Discussion of Comments and Alternatives

Comments received before issuance of the Revised Preliminary Report on Order Consolidation largely favored the consolidation of ten marketing areas—Federal orders 30, 32, 44, 49, 50, 64, 65, 68, 76, and 79. The Revised Report suggested the addition of 3 order areas (Eastern South Dakota, most of Nebraska-Western Iowa, and Iowa) to the earlier suggestion of consolidating the Chicago Regional and Upper Midwest areas. The revised configuration would have increased the population and Class I use of the consolidated Upper Midwest area. Any increase in a consolidated marketing area that would include the Chicago Regional and Upper Midwest order areas could not be justified on the basis of the criteria of overlapping sales and procurement areas beyond the addition of the three areas suggested to be added in the Revised Consolidation Report. Addition of the five orders advocated by the cementers is not supported on the basis of any data available.

After issuance of the Revised Report a number of objections were received, both to the addition of only 3 more areas, and to the inclusion of the 3 additional areas with the Upper Midwest. Producer organizations operating principally in the proposed Upper Midwest consolidated area argued that additional Class I use should be included in the area to enhance blend prices to producers. Producer organizations and handlers operating in the other 3 areas, particularly Iowa, argued that inclusion of those areas with the 2 upper midwest order areas would severely affect Iowa handlers' ability to attract a sufficient supply of milk, and that the milk pooled on those orders from Minnesota and Wisconsin is not needed to meet Iowa handlers' Class I needs, but is pooled on the Iowa market to obtain the higher blend price.

The addition to the consolidated Upper Midwest marketing area of marketing areas with higher Class I use for the sole purpose of increasing the Upper Midwest Class I utilization percentage and Upper Midwest producer returns is not consistent with the criteria examined to determine defensible order consolidations. The numerous markets recommended by upper midwest producer groups to be consolidated with the Chicago Regional and Upper Midwest order areas have very little distribution or procurement overlap with those areas, aside from occasional need for reserve milk supplies. When reserve supplies are needed by the other markets, upper midwest milk can be, and is, pooled on the more southern markets and shares in their pools. The potential gain of adding areas recommended by upper midwest producer groups would be much less than the loss to producers whose milk is pooled under orders proposed to be consolidated in the Central, Mideast and Appalachian marketing areas.

For example, if 9 nearby marketing areas were combined with the Upper Midwest and Chicago Regional areas, the combined utilization for the 11 markets would be about 10 percentage points higher than that for the 2 markets, and the blend price could be expected to increase by approximately 7 cents per hundredweight. At the same time, the percentage Class I utilization for the other markets that would be affected would be reduced by an average of 26 percentage points and by as many as 54 percentage points, resulting in an average reduction in the blend price of 27 cents, and as much as 54 cents, per hundredweight. These results occur because, with the addition of 9 other orders, the combined volume of milk pooled under the Upper Midwest and Chicago Regional markets would represent nearly three-quarters of the total that would be pooled under the 11 orders. Based on these considerations and comments received, the extent of the proposed Upper Midwest marketing area should be limited to the areas of the current Chicago Regional and Upper Midwest marketing areas, with the addition of the western part of the Michigan Upper Peninsula marketing area.

Central

The proposed Central order marketing area consolidates the current 8 Federal order marketing areas of Central Illinois, most of Southern Illinois-Eastern Missouri, most of Southwest Plains, Greater Kansas City, Iowa, Eastern South Dakota, Nebraska-Western Iowa, and Eastern Colorado (Federal orders 50, 32, 106, 64, 79, 76, 65, and 137, respectively). Moving to the proposed Southeast marketing area are 6 Missouri counties currently in Federal order 32 and, from Order 106, 11 northwest Arkansas counties and 22 whole and 1 partial (Pulaski County) southern Missouri counties. Order 106 counties in Kansas and Oklahoma would remain in the Central market, as suggested in the 2 preliminary reports. In addition, some counties in Colorado, Illinois, Iowa, Kansas, Missouri and Nebraska that currently are not part of any order area would be included in the proposed Central market. There are 565 whole counties and 3 partial counties in this proposed area.

Geography

The proposed Central marketing area would include the following territory:

Colorado—33 counties in eastern Colorado, including the 30 Colorado counties currently in the Eastern Colorado marketing area, and adding 3 currently-unregulated counties in the southeast corner of the state between the Eastern Colorado and Southwest Plains marketing areas.

Illinois—88 counties, including the 6 counties (4 entire and 2 partial) currently in the Iowa marketing area, the 19 counties currently in the Central Illinois marketing area, the 49 counties currently in the Southern Illinois-Eastern Missouri marketing area and 8 currently-unregulated adjacent counties in southern Illinois, and 6 currently-unregulated counties in western Illinois located between the current Central Illinois and Southern Illinois-Eastern Missouri order areas and the Mississippi River.

Iowa—93 counties and the City of Osage in Mitchell County; including the 68 counties and the City of Osage currently in the Iowa marketing area, the 17 counties currently in the Nebraska-Western Iowa marketing area, the 1 county currently in the Eastern South Dakota marketing area, 6 currently unregulated counties in the northwestern part of Iowa, and 1 currently unregulated county in the southeastern corner of Iowa.

Kansas—the entire State (105 counties).

Minnesota—the 4 southwestern Minnesota counties that currently are in the Eastern South Dakota marketing area.

Missouri—45 counties and 1 city, including 6 counties and 1 city that currently are in the Southern Illinois-Eastern Missouri marketing area, the 20 counties that currently are in the Greater Kansas City marketing area, the 5 counties that currently are in the Iowa marketing area; and 14 currently-unregulated counties distributed around the center area proposed to remain unregulated.

Nebraska—66 counties in the southern and eastern parts of Nebraska; omitting the 11 counties in the panhandle that currently are part of the Nebraska-Western Iowa marketing area, and adding 5 currently-unregulated counties in the southwest corner of the State between the Nebraska-Western Iowa and Eastern Colorado marketing areas and 3 currently-unregulated counties in the southeast corner of the State between the Nebraska-Western Iowa and Greater Kansas City marketing areas.

Oklahoma—the entire State (77 counties).

South Dakota—the 26 eastern South Dakota counties (including the portion of Union County that currently is in the Nebraska-Western Iowa marketing area) that currently are in the Eastern South Dakota marketing area.

Wisconsin—the 2 southwest Wisconsin counties that currently are in the Iowa marketing area.

The proposed Central marketing area is adjacent to the proposed Upper Midwest consolidated order area on the north and northeast, the proposed Mideast and Appalachian areas on the east, and the northwest corner of the Southeast order area and the proposed Southwest area on the south. The Rocky Mountains and some unregulated area form a natural barrier on the west between this proposed marketing area and the proposed Western area. The area north of approximately the western third of the proposed Central area also is unregulated. The north-south distance covered by the area is approximately 800 miles, from Watertown, South Dakota, to Ardmore, Oklahoma. The east-west extent of the area, from the Indiana-Illinois border to Denver, Colorado, is approximately 1,000 miles.

Geographically, the Central marketing area includes a wide range of topography and climate types, ranging from the foothills of the Rocky Mountains on the west to the central section of the Mississippi River Valley toward the eastern part of the area. Precipitation ranges from less than 15 inches per year in Denver, Colorado, to more than 30 inches at St. Louis, Missouri. Most of the area experiences fairly hot summer temperatures, while winter temperatures vary somewhat more than summer, with colder winter temperatures occurring in the northern part of the Central area. Much of the nation's cornbelt is included within the Central area, with significant wheat-growing areas in western Kansas. The natural vegetation ranges from short grass prairie in eastern Colorado through tall grass prairie in eastern South Dakota, Nebraska, Kansas and Oklahoma, and much of Illinois; to broadleaf forest on both sides of the Mississippi River.

Population

According to July 1, 1996, population estimates, the total population in the proposed Central marketing area is approximately 21 million. Using Metropolitan Statistical Areas (MSAs), there are four population centers over 1 million. The St. Louis, Missouri/Illinois, area is the largest, with over 2.5 million population, and the Denver-Boulder-Greeley, Colorado, area is next with approximately 2.3 million. Kansas City, Missouri/Kansas, has a population of 1.7 million, and Oklahoma City, Oklahoma, is just over 1 million. Approximately one-third of the population of the proposed marketing area is within these four largest MSAs, with nearly two-thirds of the population contained within the area's 31 MSA's (with the 27 smaller MSAs averaging 230,786 population). The Colorado portion of the proposed marketing area has 93.6 percent of its population concentrated in 4 MSA's. The Missouri portion has 89 percent.

Fluid Per Capita Consumption

Based on the population figure of 21 million and a per capita fluid milk consumption rate of 19 pounds of fluid milk per month (a weighted average based on state populations in the marketing area and fluid per capita consumption estimates for each state), total fluid milk consumption in the proposed Central marketing area would be approximately 400 million pounds per month, including 11.7 million pounds associated with the net population gain of the marketing area from the addition of previously-unregulated territory. Plants that would be fully regulated distributing plants in the Central order, including 3 plants operated by one handler that currently are fully regulated under the Southwest Plains order (Order 106) but are expected to be regulated under the proposed Southeast market pool, had route disposition within the eight marketing areas included in the consolidated Central area of 384.2 million in October 1995. It is likely that most of the milk distributed within formerly unregulated areas by Central order handlers would be distributed within the consolidated Central marketing area. The 10 producer-handlers operating in the Central market during October 1995 had a combined route disposition of 2.2 million pounds, partially regulated plants and plants that would be exempt distributed 3 million pounds in the marketing area, and other order plants distributed 22.2 million pounds during October 1995.

Milk Production

In December 1996, 1.1 billion pounds of milk were pooled under the orders consolidated in the proposed Central market (including all of the milk pooled under Orders 32 and 106) from more than 10,000 producers located in 21 states from Idaho to Tennessee, and from Texas to Minnesota. Seventy-four percent of the producer milk was produced within the proposed marketing area. The states contributing the most producer milk were, in descending order of volume, Iowa, Missouri, Colorado, Kansas, Oklahoma and Illinois. However, over 80 percent of the Missouri producer milk came from farms in counties which are included in the proposed consolidated Southeast marketing area. These 6 States accounted for 71 percent of the producer milk pooled under the eight current orders proposed to be consolidated. All of the states having substantial portions of their areas in the proposed Central market contribute producer milk to at least two of the current eight individual orders, with four of the states (Iowa, Kansas, Missouri, and Nebraska) supplying milk to five of the order areas each.

Distributing Plants—Route Distribution

Using distributing plant lists included in both the Preliminary and Revised Preliminary Reports and the pooling standards used in the Revised Preliminary Report, updated for known plant closures through May 1997, 54 distributing plants would be expected to be associated with the Central marketing

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area, including 34 fully regulated distributing plants (one currently unregulated and the remainder currently pool plants), 2 partially regulated (1 currently partially regulated and 1 currently unregulated), 2 exempt plants (both currently are pool plants but have less than 150,000 pounds of total route disposition per month), 11 producer-handlers (all currently producer-handlers), 1 unregulated (located in the unregulated central portion of Missouri), and 4 government agency plants (all currently government agency plants). Since October 1995, it is known that 4 distributing plants (all of which were fully regulated—2 in Illinois, 1 in Iowa, and 1 in Oklahoma) have gone out of business.

There would be 10 distributing plants in the Denver area (7 pool plants and 3 partially regulated plants). The Kansas City area would have 1 pool distributing plant. The St. Louis area would have 5 distributing plants (4 pool plants and 1 exempt plant). There would be 1 pool distributing plant and 1 partially regulated plant in the Oklahoma City area. Of the remaining 36 distributing plants, 16 are located in other MSAs as follows: 1 pool plant and 1 producer-handler in Colorado; 2 pool plants in Illinois; 4 pool plants, 1 producer-handler and 1 exempt plant in Iowa; 1 pool plant in Kansas; 3 pool plants in Nebraska; 1 producer-handler in Oklahoma; and 1 pool plant in South Dakota.

Twenty of the remaining distributing plants are not located In MSAs. They are: 1 government agency plant in Colorado; 4 pool plants and 1 government agency plant in Illinois; 1 pool plant and 1 producer-handler in Iowa; 1 pool plant and 1 government agency plant in Kansas; 1 unregulated and 2 producer-handlers in Missouri; 1 producer-handler in Nebraska; 2 pool plants in Oklahoma; 1 partially regulated and 1 government agency plant in South Dakota; and 1 pool and 1 partially regulated plant in Wyoming.

Utilization

According to October 1995 pool statistics for handlers who would be fully regulated under this Central order, the Class I utilization percentages for the individual markets ranged from 42 percent for the Nebraska-Western Iowa market to 73 percent for the Central Illinois, Greater Kansas City and Eastern South Dakota markets combined. Data for these three markets are combined because each of them has only one handler, and individual handler information cannot be released. Combined utilization for the eight markets would result in a Class I percentage of just over 50 percent (including the utilization of the 3 plants that would be included in the Southeast marketing area).

Based on calculated weighted average use values for (1) the current order with current use of milk, and (2) the current order with projected use of milk in the consolidated Central order, the potential impact of this proposed rule on producers who supply the current market areas is estimated to be: Southern Illinois-Eastern Missouri, a 12-cent per cwt decrease (from $13.00 to $12.88); Central Illinois, a 21-cent per cwt decrease (from $13.03 to $12.72); Greater Kansas City, a 34-cent per cwt decrease (from $13.22 to $12.88); Nebraska-Western Iowa, a 16-cent increase (from $12.63 to $12.79); Eastern South Dakota, a 14-cent decrease (from $12.81 to $12.67); Iowa, a 1-cent decrease (from $12.71 to $12.70); and Southwest Plains, a 21-cent increase (from $13.08 to $13.29). The weighted average use value for the consolidated Central order market is estimated to be $12.95 per cwt.

Other Plants

Also located within the Central marketing area during May 1997 were 83 supply or manufacturing plants: 7 in Colorado (4 in the Denver area), 15 in Illinois (2 in the Decatur area), 23 in Iowa (2 in the Des Moines area and 1 in the Dubuque area), 6 in Kansas, 7 in Missouri (5 in the St. Louis area), 7 in Nebraska, 7 in South Dakota (1 in the Sioux Falls area), 4 in Oklahoma (1 in the Tulsa area), and 7 in Wisconsin. Twenty-two of the 83 plants are pool plants, or have a "pool side." Twelve of the 22 pool plants (6 in Iowa, 1 in Nebraska, 2 in South Dakota, and 3 in Wisconsin) are "split plants;" that is, one side of a plant is a manufacturing facility, and the other side receives and ships Grade A milk, and accounting is done separately. In most cases, the nonpool portion of such a plant is a manufacturing operation, primarily cheese-making. Of the pool plants, 8 have no primary product, but are only shipping to distributing plants, and 6 are pooled manufacturing plants.

Of the 61 nonpool plants in the proposed Central marketing area, 58 are manufacturing plants—23 are plants that manufacture primarily Class II products, 3 manufacture primarily butter, 6 manufacture primarily powder, 25 manufacture primarily cheese, and 1 manufactures primarily other products.

Also associated with the proposed Central order, but not within the proposed marketing area, are 2 nonpool cheese plants and a nonpool supply plant located in South Dakota.

Cooperative Associations

Twenty-six cooperative associations pooled milk in December 1995 under the eight orders proposed to be consolidated in the proposed Central market. Of these cooperatives, 1 pooled milk under 6 of the orders, 1 under 5 orders, 3 cooperatives associated producer milk with 3 orders each, and 3 others pooled milk under 2 orders each. Eighteen of the 26 cooperatives pooled milk under only one order, and for 11 of these organizations that was the Iowa order.

The percentage of cooperative milk pooled under the eight orders was 93.6, with a range of 80.6 percent cooperative milk under the Southwest Plains order to 100 percent cooperative member milk under the Central Illinois, Greater Kansas City and Eastern South Dakota orders.

Criteria for Consolidation

Most of the criteria used in determining the optimum consolidation of order areas apply to the proposed Central marketing area. The Federal order markets proposed to be consolidated in the Central area are strongly related to each other through overlapping route disposition. The great majority of sales by handlers who would be regulated under the proposed Central order are distributed within the proposed marketing area, and the markets proposed to be consolidated have a greater relationship in terms of overlapping sales areas than with any other markets. In addition, sales within the currently-unregulated areas proposed to be included in the consolidated Central area are overwhelmingly from handlers that would be pooled under the proposed Central order. Inclusion of these areas would reduce handlers' burden of reporting out-of-area sales and take in pockets of currently-unregulated counties that occur between the current order areas. As discussed above, the milk procurement areas for the markets proposed to be combined also have a significant degree of overlap.

Some of the currently-unregulated counties in western Illinois and central Missouri have been added to the proposed Central marketing area. The omission from the proposed marketing area of the counties in central Missouri that are not included in the proposed Central marketing area are based on an estimation of the marketing area of Central Dairy, located in Jefferson City, Missouri. There is no intention of causing the regulation of this handler, but minimizing the extent of the unregulated counties in the middle of the proposed marketing area would help to reduce the reporting burden on handlers in determining which route dispositions are inside, and which are outside the marketing area. The administrative burden of verifying such reporting also would be eliminated.

Three of the current Federal order markets (Central Illinois, Greater Kansas City, and Eastern South Dakota) included in this proposed consolidated area have too few pool plants to be able to publish market data without revealing confidential information. In addition to these three markets, the number of handlers regulated under each of the Nebraska-Western Iowa, Iowa and Eastern Colorado orders is in the single digits. Consolidation of these markets will enable the market administrator's office to provide more informative market data.

Discussion of Comments and Alternatives

Although the Preliminary Report on Order Consolidation, issued in December 1996, suggested a Central marketing area that resembles the area proposed herein (but included the northwest Arkansas and southern Missouri counties that now are included in the proposed Southeast area), the Revised Preliminary Report, issued in May 1997, suggested that the Iowa, Nebraska-Western Iowa and Eastern South Dakota order areas would more appropriately be included with the Chicago Regional and Upper Midwest areas in a consolidated Upper Midwest order. A number of comments received after issuance of the Revised Report on Order Consolidation argued that the Iowa and the Nebraska-Western Iowa orders should, more logically, be consolidated with the Greater Kansas City marketing area, as in the November 1996 report.

Among others, the Upper Midwest Dairy Coalition, Mid-America Dairymen, Andersen-Erickson Dairy Company, and Swiss Valley Farms filed comments stating that the revised marketing areas would harm Iowa fluid milk processors competing for sales in Kansas City and St. Louis. The Iowa Dairy Foods Association and the Iowa Dairy Producers Association, representing all Iowa dairy processors, emphasized that Iowa must be included within the same order area as the Greater Kansas City, Central Illinois and Southern Illinois-Eastern Missouri areas because Iowa fluid processors would be financially disadvantaged due to the substantial competition within these areas for packaged route disposition and raw milk supply. Mid-America Dairymen suggested that the only portion of the Iowa area that might justifiably be added to the proposed Upper Midwest consolidated order area would be the northeastern portion of Iowa, containing Dubuque.

Comments from the National Farmers' Organization, Inc., supported the approach taken in the May 1997 Revised Report on Order Consolidation under which the consolidation of Iowa with the Upper Midwest was suggested. The comments stated that a large, integrated contiguous milkshed area in southwestern Wisconsin, northeast Iowa, and southeast Minnesota serves as a source of seasonal or year-round fluid supplies for several marketing areas, including Iowa. Lakeshore Federated Dairy Cooperative comments insisted that the revised area be expanded to include even more area to enhance the utilization percentage of the Upper Midwest order.

One commenter pointed out that the suggested consolidation was not supported by the criteria of overlapping sources of milk because the degree of competition for milk supplies cannot be judged properly on the basis of the source of milk pooled from an area. According to the comment, a significant portion of the Minnesota and Wisconsin milk pooled on the Iowa order is pooled on the basis of where it will return the most revenue to the supplying producers rather than whether the milk supply is needed in the market on which it is pooled. The same commenter, citing the difficulty Iowa handlers often have experienced in obtaining an adequate supply of milk, went on to state that the competition for supplies of producer milk between the Iowa and Central Illinois markets necessitates that these two markets be included in the same consolidated order.

Because of the strong objections in the comments that opposed the addition of the Iowa, Nebraska-Western Iowa and Eastern South Dakota order areas to the consolidated Upper Midwest marketing area and the slight preponderance of data upon which the suggestions of the initial Preliminary Report were changed to those of the Revised Preliminary Report, an even closer look was taken at destinations of route dispositions and sources of producer milk receipts, using data for individual handlers instead of * for the market as a whole. As with a number of other proposed consolidated order areas, it would be impossible to find a boundary across which significant quantities of milk are not procured for other marketing areas. As in some other cases, analysis was done to determine where the minimal amount of route disposition overlap between areas occurred, with the criterion of overlapping route disposition given greater weight than overlapping areas of milk supply.

For the most part, it was found that the principal relationship in terms of route disposition between Iowa handlers and the proposed consolidated Upper Midwest market is represented by one Iowa handler. That handler's sales in order areas that are proposed to comprise the Upper Midwest consolidated order marketing area represent a large majority of sales by Iowa handlers in marketing areas outside the proposed Central marketing area. This handler has many of its sales in the Chicago Regional marketing area. In fact, if the eastern edge of the Iowa marketing area were added to the proposed consolidated Upper Midwest order, this handler not only would have the majority of its sales and qualify regularly as a pool distributing plant under the consolidated Upper Midwest order (as it occasionally does now under the current Chicago Regional order on the basis of its sales in that area), but total inter-order sales between the two consolidated marketing areas would be reduced. This proposed rule does not include the division of the Iowa order, but comments on the desirability of such a division would be welcomed.

The other order area that demonstrates the strongest relationship with the proposed consolidated Upper Midwest order is the Eastern South Dakota area. Nearly one-fifth of the Eastern South Dakota handler's sales are distributed in the current Upper Midwest order, while a nearly equal amount is distributed in unregulated areas. However, route disposition in the Eastern South Dakota order area by the Eastern South Dakota handler and other handlers that would be regulated under the proposed Central order represents the total fluid milk disposition that would be estimated for the total population of the Eastern South Dakota marketing area, using an estimate of 265 pounds of fluid milk consumption per capita. Therefore, it would not be expected that Upper Midwest handlers would have significant amounts of fluid milk distributed into the Eastern South Dakota area.

Approximately 85 percent of the total fluid milk dispositions distributed by handlers regulated under the three order areas that were suggested to be included in the Central area in the initial Preliminary Report, and in the Upper Midwest area in the Revised Preliminary Report, are disposed of in the proposed Central market. The disposition by other Central marketing area handlers within the proposed

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Central area is somewhat greater than the proportion for the three more northern order areas.

The milk receipts at Iowa pool plants from sources in Minnesota and Wisconsin vary greatly from month to month, leaving a strong impression that these areas are not regular or reliable sources of milk for the Iowa market. As stated in the description of consolidation criteria, not all areas having overlapping areas of milk procurement should be consolidated. The volumes of Minnesota and Wisconsin milk pooled on the Iowa order represent a significant share of the total milk pooled there. In the first 9 months of 1997, 6 percent of the milk pooled on the Iowa order was from Minnesota, and 22 percent was from Wisconsin. However, the variation in the volume of Minnesota milk pooled was three times that of Iowa milk pooled, and the variation in the volume of Wisconsin milk was five times greater than that of Iowa milk. Less than five percent of either State's total pooled production is pooled under the Iowa order.

A number of commenters suggested that southern Missouri and/or northwest Arkansas should be included in the Southeast Marketing Order. Mid-America Dairymen, Inc.; Associated Milk Producers, Inc.; Carolina-Virginia Milk Producers Association, and several other producer groups supported removing both areas from the current Southwest Plains order area and making them a part of the Southeast Federal order. The commenters stated that the reason for such a change would be to correct inequities they claim are caused by southwest Missouri manufacturing plants balancing the Southeast without being able to pool, and inefficient milk movements caused by blend price discrepancies between orders. Several commenters added that southern Missouri historically has been a source of reserve milk supply for the Southeast. This recommended change, of territory currently in the Southwest Plains marketing area to the proposed Southeast marketing area instead of the proposed Central marketing area, has been adopted in the proposed rule and is discussed further under the description of the Southeast marketing area.

Several comments supported the position of Gillette Dairy, Rapid City, South Dakota, that 14 counties in Nebraska proposed to be included in the proposed Central order area be excluded. Five of these counties are currently unregulated, while the other nine are in the present Nebraska-Western Iowa Federal order. The comments contended that excluding Nebraska counties in which Gillette is the majority distributor of fluid milk would follow the Department's intent not to regulate currently unregulated handlers. These 14 counties would be in addition to the 11 western Nebraska counties of the current Nebraska-Western Iowa order area that the two preliminary reports had suggested be omitted from the Central order. The 14 counties are located between the current Nebraska-Western Iowa and Eastern Colorado marketing areas, which are proposed to be consolidated as part of the proposed Central market. Handlers regulated under both of those orders have sales in the counties in question, and there is no data reliably indicating that Gillette Dairy distributes milk there, or in what amounts relative to regulated handlers. Therefore, these counties continue to be included in the proposed Central marketing area.

After considering all the comments and other relevant information, it was determined that the territory encompassed in the proposed Central marketing area best meets the criteria used.

Southwest

The proposed Southwest marketing area is comprised of the current Texas (Order 126) and New Mexico-West Texas (Order 138) marketing areas as well as 49 currently unregulated Texas counties. There are 290 counties in this proposed area.

Geography

The proposed Southwest market is described geographically as follows: three counties in Colorado (currently in Order 138), all New Mexico counties (33, currently in Order 138) and all 254 Texas counties (162 currently in Order 126, 43 currently in Order 138, and 49 currently unregulated). Two currently unregulated counties are located in northeast Texas, while the remaining 47 are in southwest Texas.

The Southwest market spans the south central area of the United States. It is surrounded by Arizona on the west, Colorado and Oklahoma on the north, Arkansas, Louisiana and the Gulf of Mexico in the northeast, east, and southeast, and Mexico to the south. Measuring the extreme dimensions, this market extends about 800 miles north to south from southern to northern Texas and about 875 miles east to west from Texas' border with Louisiana and Arkansas to New Mexico's border with Arizona.

The Southwest market is contiguous to 3 proposed consolidated marketing areas: Arizona-Las Vegas to the west, Central to the north and Southeast to the east. Unregulated counties in Colorado also form a relatively small border in the northwest corner of the market. Texas has over 350 miles of coastline on the Gulf of Mexico, while Texas and New Mexico share about 970 miles of boundary with northern Mexico.

In terms of physical geography, diverse topographic relief exists in the Southwest market area, particularly in New Mexico (ranging from deserts to high mountain ranges). Northwest New Mexico is part of the Colorado Plateau, an area of broad valleys and plains as well as deep canyons and mesas. The Rocky Mountains extend into the north central area of the state. The Basin and Range region, generally characterized by ranges or isolated mountains interspersed with valleys, desert basins or high plains, is located in central and southwestern New Mexico, as well as western Texas. The Great Plains cover the eastern third of New Mexico and extend through the Texas Panhandle in north Texas and much of central Texas. This area is characteristically dry and treeless and also encompasses Texas hill country and the Edwards Plateau. The Osage Plains covers area in Texas from the Oklahoma-Texas border into the south central part of the state and the low and flat West Gulf Coastal Plain covers the eastern two-fifths of the state.

Climates in this region also vary. The western part of the region, including New Mexico, southwest Texas and the Texas Panhandle, is semi-arid to arid with wide ranges in both daily and annual temperatures. The southern tip of Texas and the Gulf coast are more humid and subtropical. For some of the area there are few agricultural uses other than dairy farming. Dairy products were the 2nd and 3rd highest revenue-producing agricultural commodities in New Mexico and Texas, respectively, in 1996, accounting for nearly one-third of agricultural receipts in New Mexico, but less than 10 percent in Texas.

Population

According to July 1, 1996, population estimates, the total population in the proposed marketing area is 20.9 million. The 26 Metropolitan Statistical Areas (MSAs) in the proposed Southwest market account for about 82 percent of the total market area population. About 54 percent of the Southwest population is located in the 4 most populous MSAs. Six MSAs have populations greater than 500,000; their total population is about 61 percent of the Southwest population. Because of the large number of MSAs in the Southwest market, only those areas with populations greater than 500,000 are described in detail.

Almost 92 percent of the Southwest market's population is located in Texas, which has 19.1 million people. 23 of the 26 Southwest market MSAs are in Texas. About 63 percent of Texas' population is concentrated in 5 areas, which are also the Southwest area's top 5 population centers: the Dallas-Fort Worth (Dallas) MSA in northeastern Texas, with a population of 4.6 million; the Houston-Galveston-Brazoria (Houston) MSA in southeastern Texas near the Gulf of Mexico, with a population of 4.3 million; the San Antonio MSA in south central Texas, with a population of 1.5 million; the Austin-San Marcos (Austin) MSA in central Texas, with a population of 1 million; and the El Paso MSA located in the far western corner of Texas on the Texas-New Mexico-Mexico border, with a population of 680,000.

New Mexico's population is about 1.7 million. The remaining 3 of the 26 Southwest market MSAs are located in New Mexico. About 39 percent of the state's population is located in the Albuquerque area, just northwest of central New Mexico.

In the remainder of the Southwest marketing area, the 3 Colorado counties have a population of about 70,000.

Fluid Per Capita Consumption

Estimates of fluid per capita consumption vary from 17.1 pounds of fluid milk per month per person in Texas to 17.5 in New Mexico to 18.8 in Colorado. Multiplying the individual states' consumption rate by its population in the proposed marketing area results in a fluid milk consumption rate of 358 million pounds of fluid milk per month for the proposed Southwest marketing area. With Southwest handlers' (fully regulated and producer-handlers) route distribution of 322 million pounds within the Southwest marketing area, route distribution from these handlers is 36 million pounds less than the expected consumption. Even with the addition of 23 million pounds from other Federal order handlers, the Southwest market area had 13 million pounds less than the expected consumption rate during October 1995.

Production

In December 1996, 1,838 producers from 180 counties in 8 states pooled 746 million pounds of producer milk on Orders 126 and 138. Nearly 99 percent of this producer milk came from counties proposed to be included in the proposed Southwest marketing area. About 55 percent of the combined market's producer milk was provided by producers in six counties.

About 455 million pounds of milk were pooled on either Order 126 or 138 from 1,566 producers in 131 Texas counties in December 1996. Three Texas counties were among the top 6 in volume pooled: Erath (1st), Hopkins (4th) and Comanche (6th). Erath County—located about 75 miles west of Dallas—pooled 111 million pounds on Order 126 (and an additional 10 million pounds on 3 other Federal orders). Hopkins County—located about 50 miles east of Dallas—pooled 52 million pounds on Order 126 and another 12 million pounds on 2 other Federal orders. Contiguous to and lying southwest of Erath County, Comanche County pooled 34 million pounds on Order 126 and about 3 million pounds on 2 other Federal orders.

Of the 283 million pounds of milk pooled on either Order 126 or 138 from 179 producers in 16 New Mexico counties, 75 percent was produced in the following three counties, all among the top 6 in volume pooled: Chaves (2nd), Dona Ana (3rd) and Roosevelt (5th). Chaves County—located about 200 miles southeast of Albuquerque—pooled 107 million pounds on Orders 126 and 138 in December 1996 and an additional 6 million pounds on 3 other Federal orders. Dona Ana County, located over 200 miles south of Albuquerque, contiguous to El Paso County, TX, and the U.S.-Mexico border, pooled 64 million pounds of producer milk on Order 138. Contiguous to and lying northeast of Chaves County, Roosevelt County pooled 39 million pounds on Orders 126 and 138 and another 3 million on another Federal order.

In December 1996, producer milk for Orders 126 and 138 also originated in one of the Colorado counties in the Southwest marketing area, and in counties in Arkansas, Louisiana, Mississippi, Missouri and Oklahoma. However, the combined amount of producer milk pooled from these areas is less than 2 percent of the total producer milk pooled in these Orders.

Distributing Plants—Route Distribution

Using distributing plant lists included in both the Preliminary and Revised Preliminary Reports and the pooling standards used in the Revised Preliminary Report, updated for known plant closures and openings through May 1997, 33 distributing plants located in the proposed Southwest marketing area would be expected to be associated with the Southwest market, including 23 fully regulated distributing plants, 1 partially regulated, 3 exempt and 6 producer-handlers. With one exception, none of these plants' regulatory status is expected to change as a result of the consolidation process. Of the 23 fully regulated plants, 17 are located in the top six MSA regions.

Since October 1995, it is known that 5 plants (4 fully regulated and 1 producer-handler) have gone out of business. The four fully regulated plants were located in Corpus Christi, Lubbock and Lufkin (all in Texas), and in Clovis, New Mexico. The producer-handler was located in Decatur, Texas. One fully regulated distributing plant, Promised Land Dairy in Floresville, Texas, began packaging and distributing products in March 1996. Because market analysis for this area is based on October 1995 information, Promised Land Dairy information is not included in route dispositions reported; however, the route dispositions for the non-operational plants are included.

Of the 33 distributing plants that would be located in the proposed Southwest marketing area, 24 are in Texas, and 9 are in New Mexico. Twenty-one of the Texas plants would be fully regulated. They are as follows: 6 in the Dallas area, 3 in the Houston area, 2 in the San Antonio area, 1 in the Austin area, and 3 in the El Paso area, and 6 located throughout the state. One of the Texas distributing plants was associated with Order 30 (Chicago Regional) in October 1995, and is expected to be partially regulated in the Southwest market. Two producer-handlers are located in Texas, one in the El Paso area and the other in the central part of the state.

Over half of New Mexico's 9 distributing plants are located in the Albuquerque area. Two fully regulated handlers, 1 exempt plant and 2 producer-handlers are located in this population center. Of the remaining 4 plants located in New Mexico, there are 2 exempt plants (both located in southeastern New Mexico) and 2 producer-handlers (one located southeast and the other northeast of Albuquerque).

In October 1995, the fully regulated plants in Orders 126 and 138 had route distribution totaling 320 million pounds. Almost 98 percent, or 313 million pounds, was distributed within the proposed Southwest marketing area. The nonpool handlers (i.e. producer-handlers) in the Southwest area are larger than in most other marketing areas; these handlers had about 9 million pounds of route distribution in the Southwest marketing area for October 1995. Additionally, handlers fully regulated under other Federal orders had about 23 million pounds of route distribution into the Southwest market area.

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Utilization

According to October 1995 pool statistics for handlers who would be fully regulated under this Southwest order, the Class I utilization percentages for the Texas and New Mexico-West Texas markets were 50 and 42 percent, respectively. Based on calculated weighted average use values for (1) the current order with current use of milk, and (2) the current order with projected use of milk in the consolidated Southwest order, the potential impact of this proposed rule on producers who supply the current market areas is estimated to be: Texas, a 3-cent per cwt decrease (from $13.49 to $13.46), and New Mexico-West Texas, a 7-cent per cwt increase (from $13.00 to $13.07). The weighted average use value for the consolidated Southwest order market is estimated to be $13.39 per cwt. For December 1996, combined Class I utilization for Orders 126 and 138 was 42.7 percent based on 318,664,000 pounds of producer milk used in Class I out of 745,890,000 total producer milk pounds.

Other Plants

Also located within the Southwest marketing area during May 1997 are 17 manufacturing plants: 11 in Texas (2 in the Dallas MSA and 1 in the El Paso MSA) and six in New Mexico. Six of the 17 plants are pool plants. All of these pool plants are manufacturing plants—one manufactures primarily Class II products, two manufacture primarily powder, two manufacture primarily cheese and one manufactures primarily other products. Of the 11 nonpool plants in the Southwest marketing area, all are manufacturing plants—one manufactures primarily powder, four manufacture primarily cheese, one manufactures primarily other products and five manufacture primarily Class II products.

Cooperative Associations

In December 1995, three cooperative associations marketed nearly 99 percent of the milk pooled under the two orders proposed to be consolidated in the Southwest area: Associated Milk Producers, Inc., Southern Region (AMPI); Mid-America Dairymen, Inc. (Mid-Am); and Select Milk Producers, Inc. (Select). AMPI and Mid-Am members marketed milk in both Orders 126 and 138, while Select producers were affiliated only with Order 126. Although all three cooperatives marketed milk in other Federal orders as well during this particular month, Select producers' milk was affiliated with fewer Federal orders than Mid-Am's and AMPI's.

Criteria for Consolidation

Nearly all of the route disposition by Order 126 and 138 handlers is distributed within these two current marketing areas, and within the currently unregulated portions of Texas proposed to be added. In addition, nearly all of the milk production for the proposed consolidated area originates within the marketing area. Two cooperatives market the vast majority of cooperative milk within the proposed area.

Discussion of Comments and Alternatives

A number of comments from east Texas suggested combining that portion of Texas with the Southeast marketing area to resolve inequities identified by the commenters. The commenters claimed that due to its heat, humidity and rainfall, milk production conditions in eastern Texas have more in common with the Southeast than with the Southwest area. According to the comments, the dry climate of Central Texas and New Mexico permits dairies to become much larger and produce 10–15% more milk per cow at a lower cost than East Texas producers are able to achieve.

Alternatives listed by the commenters include developing pricing mechanisms within the proposed consolidated Southwest order that would compensate East Texas producers at a price midway between those of the Southeast and the Southwest markets, or using Atlanta, Georgia, as a price basing point with a zone differential that would decrease the price of milk, based on transportation costs, from Atlanta to Roswell,New Mexico.

There is very little overlap of either fluid milk product disposition or producer milk movements between the Texas and Southeast marketing areas. The amount of route disposition overlap that exists is, not surprisingly, generally found between eastern Texas and Louisiana, and represents approximately three percent of each order's total route disposition. In terms of milk production, only 19 of the 57 counties suggested by the commenters to become part of the Southeast order area had milk production pooled under theSoutheast order in either December 1996 or May 1997. All of these 19 counties were located in the northernmost of 3 sections of Texas proposed by commenters to be added to the Southeast area, and less than 20 percent of the milk production from these counties was pooled under the Southeast order. This limited association does not support including east Texas in the Southeast marketing area.

Arizona-Las Vegas

As suggested in the Revised Preliminary Report on Order Consolidation, the proposed Arizona-Las Vegas marketing area is comprised of the current Central Arizona (Order 131) marketing area, one county in Nevada which currently is in the Great Basin (Order 139) marketing area, and currently unregulated counties in Arizona. There are 16 counties in this proposed area.

Geography

The Arizona-Las Vegas market is described geographically as follows: All counties (15) in Arizona (6 whole and 1 partial currently are part of Order 131, and 8 whole and 1 partial currently are unregulated) and Clark County, Nevada, which currently is part of the Great Basin marketing area. The market extends about 400 miles north to south from Arizona's border with Utah (and Nevada's southernmost county) to the U.S.-Mexico border. The market ranges from 300 to 375 miles east to west from the Arizona-New Mexico border to theArizona/southern Nevada-California border.

The Arizona-Las Vegas marketing area is contiguous to two proposed consolidated marketing areas, the Great Basin portion of the proposed Western area to the north and the New Mexico-West Texas portion of the Southwest area to the east. California, not currently part of the Federal order system, lies to the west and Mexico is south of this marketing area.

Arizona can be divided into three geographic regions—the Sonoran Desert, in the southwest; the Colorado Plateau, in the north; and the Mexican Highland, mainly in the central and southeastern parts of the state. With each of these regions, three distinct climatic zones exist: the Sonoran Desert is hot in the summer but can experience frost in the winter; the Colorado Plateau is hot and dry in the summer and cold and windy in the winter; and the Mexican Highland receives significant precipitation in both summer and winter. This region is cooler in both summer and winter than the Sonoran Desert region.

These topographical and climatic conditions apparently are conducive to milk production. Dairy products represent one of the principal agricultural commodities (2nd and 3rd) in the States of Arizona and Nevada, respectively, representing 16.6 and 21.7 percent of total agricultural receipts of the two States in 1996.

Population

Arizona is one the fastest-growing states in the United States. According to July 1, 1996, population estimates, the total population in the proposed marketing area is 5.5 million. Using Metropolitan Statistical Areas (MSAs), the largest population center is the Phoenix-Mesa (Phoenix) area, located in central Arizona approximately 125 miles north of the U.S.-Mexico border in the Sonoran Desert region. About 250 miles to the northwest of Phoenix is the Las Vegas, Nevada, area, the second-largest population center in this marketing area. The Las Vegas MSA is comprised of three counties: Clark and Nye counties in Nevada and Mohave County in Arizona. Half of this market's population is in the Phoenix area, and over 70 percent is accounted for when Las Vegas is added.

Fluid Per Capita Consumption

Based on the population figure of 5.5 million and an estimated per capita fluid milk consumption rate of 20 pounds of fluid milk per month, total fluid milk consumption in the Arizona-Las Vegas marketing area is estimated at 110 million pounds per month. Plants that would be fully regulated distributing plants in the Arizona-Las Vegas order had route disposition within the market of approximately 96 million pounds in January 1997. Another 3.3 million pounds of milk was sold in the Las Vegas area, all by handlers fully regulated under the Great Basin Federal order (Order 139).

Milk Production

In December 1996, almost 201 million pounds of milk was pooled in the Central Arizona market, supplied by over 100 producers located in fewer than 10 counties in Arizona and California. Over 90 percent of the Central Arizona milk was produced within the marketing area. Further, over 90 percent of the producer milk produced within the Order 131 area was produced in Maricopa County, Arizona, where Phoenix, this market's largest city, also is located. With 181 million pounds of producer milk for December 1996, Maricopa County produces almost twice the amount of milk required to meet the fluid milk needs of the entire marketing area. Arizona producers did not supply milk to any other Federal order; however, it is known that producer milk moves from both Arizona and Clark County, Nevada, to southern California. These figures do not reflect the producer milk associated with Anderson Dairy, the Las Vegas handler who has been pooled on Order 139. There is only one producer located in Clark County, Nevada. The portion of Anderson's milk supply that is not supplied by the single Clark County producer comes from southern California.

Distributing Plants—Route Distribution

Using distributing plant lists included in both the Preliminary and Revised Preliminary Reports and the pooling standards used in the Revised Preliminary Report, updated for known plant closures through May 1997, 9 distributing plants would be expected to be associated with the proposed Arizona-Las Vegas marketing area, including 5 fully regulated distributing plants (all currently pool plants), 1 exempt plant and 3 producer-handlers. Two distributing plants (1 pool plant and 1 producer-handler, both located in the Phoenix area) that were operating in October 1995 are now out of business. There are 4 distributing plants in the Phoenix area (all pool plants). Located in the Las Vegas MSA are one pool plant and a producer-handler located in a currently-unregulated Arizona county. This producer-handler has no sales into either the Order 131 or 139 marketing area, but would meet the producer-handler definition upon order consolidation and market area expansion. Two other producer-handlers are located in the Yuma, Arizona, MSA (located in southwestern Arizona on the California-Arizona-Mexico border). The exempt plant is located in a currently-unregulated Arizona county with no sales into the current Central Arizona marketing area, and with total route disposition of less than 150,000 pounds. All of the plants that are expected to be fully regulated under this proposed order are located in areas that contain over 70 percent of the proposed market's population.

Utilization

According to October 1995 pool statistics, the Class I utilization for the Central Arizona market was about 49 percent. Due to restricted information, this calculation excludes receipts for the Las Vegas handler who currently is regulated under Order 139. Because the degree of consolidation proposed for this market is very minor, little change in the Class I utilization percentage, and thus little change in producer returns, is expected in the Arizona-Las Vegas area as a result of the proposed consolidation. For December 1996, Class I utilization for the Central Arizona market was 41.7 percent based on the use of 83,757,000 pounds of producer milk in Class I out of 200,939,000 total pounds of producer milk.

Other Plants

For May 1997, 3 supply or manufacturing plants were located within the Arizona-Las Vegas marketing area: 2 in Arizona (both in the Phoenix area) and 1 in Nevada (in the Las Vegas area). One Arizona plant is a pool plant operated by the cooperative, manufacturing primarily cheese, while the other plants are nonpool plants manufacturing primarily Class II products.

Cooperative Associations

For December 1995, the only cooperative having membership in the Arizona-Las Vegas marketing area was United Dairymen of Arizona, which represented approximately 90 percent of the milk pooled under the Central Arizona order.

Criteria for Consolidation

Market data indicate that there are extensive sales into the Las Vegas area by Central Arizona pool plants, and sales by both Phoenix and Las Vegas handlers into the unregulated areas along the southern part of the Nevada-Arizona border. Rapid population growth in the area between the two areas has greatly increased competition between the handlers in Phoenix and Las Vegas. In addition, both areas exchange significant volumes of bulk and packaged milk with Southern California. At the same time, the strength of the earlier relationship between the Las Vegas area and Utah clearly has declined since the merger of the Lake Mead and Great Basin order areas in 1988, which was based on data compiled up to 1986.

The Grand Canyon serves as a natural barrier in northwestern Arizona between this area and Great Basin. Although the actual proposed order area extends to the Utah border, the portion of Arizona between the Grand Canyon and Utah is very sparsely populated, and is included in the proposed marketing area primarily for the purpose of simplifying the marketing area description and easing handlers' burden of reporting out-of-area sales. The Colorado River forms much of the western boundary with California and Nevada. A north-south strip along the eastern edge of Arizona constituting approximately 30 percent of the State's territory is very sparsely populated, containing just over 5 percent of the population of the proposed marketing area. This lightly populated desert area can be seen as another form of natural

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barrier to the movement of bulk and packaged milk.

Discussion of Comments and Alternatives

Two comments filed in response to the Revised Preliminary Report on Order Consolidation recommended that Clark County, Nevada, be returned to the Western marketing area, with the Great Basin, Western Colorado and Southeastern Idaho-Eastern Oregon marketing areas. Anderson Dairy, the handler located in Las Vegas, Nevada, requested that the Western marketing order remain as it was in the initial Preliminary Report. Anderson stated that its major competition comes from southern California and northern Utah, and that one or the other of these areas could gain a significant advantage if Anderson becomes an island between these two powerful competitive areas with different marketing systems. Comments from Darigold also supported the original proposed Western marketing area. Darigold stated that because Class I sales in Las Vegas historically have been associated with the Great Basin producer pool rather than with the Phoenix market, shifting those sales would be controversial and should be reviewed carefully.

Comments from a California cooperative indicated support for the proposed Arizona-Las Vegas order. The cooperative referenced its earlier concern about milk moving between southern California and both the State of Arizona and Clark County, Nevada, on a daily basis.

The increase in sales by Central Arizona pool plants into the Las Vegas area, and increased sales by both Phoenix and Las Vegas handlers into the unregulated area of rapidly-increasing population along the southern part of the Nevada-Arizona border, are factors that have greatly increased overlapping route distribution in these two areas. In addition, both areas exchange significant volumes of bulk and packaged milk with Southern California. The Las Vegas area's earlier relationship with southern Utah was based primarily on Utah as an important milk supply area for Las Vegas at the time of the merger of the Lake Mead and Great Basin order areas in 1988. That relationship clearly has ceased to exist. Therefore, the proposal by cementers that the Las Vegas, Nevada, area continue to be included in the same marketing area with Utah does not reflect current marketing conditions.

Western

The proposed Western marketing area is comprised of the current Western Colorado (Order 134), Southwestern Idaho-Eastern Oregon (Order 135), and Great Basin (Order 139) marketing areas, less one Nevada county (Clark) in Order 139 that is proposed to be in the Arizona-Las Vegas marketing area. There are 71 counties in this proposed area.

Geography

The Western market is described geographically as follows: 4 counties in western Colorado (all currently in Order 134), 28 in Idaho (18 currently in Order 135 and 10 in Order 139), 3 in eastern Nevada (all currently in Order 139), 5 in eastern Oregon (all currently in Order 135), all counties (29) in Utah (currently in Order 139) and 2 in the southwest corner of Wyoming (currently in Order 139). Measuring the extreme dimensions, this market extends about 625 miles north to south from Oregon and Idaho to Utah's boundary with Arizona, ranging from 125 miles in Colorado to 475 miles from Idaho to the Utah-Arizona border. Similarly, this market's extreme east-to-west dimension is 650 miles from the westernmost edge in central/eastern Oregon to the easternmost edge in west/central Colorado.

The proposed Western marketing area is contiguous to three of the proposed consolidated marketing areas, the Pacific Northwest to the west and north of the Oregon portion of this market, Arizona-Las Vegas to the south and the Southwest to the extreme southeast corner. Non-Federally regulated territory borders the Western market on the west-southwest (Nevada) and the north-northeast (Idaho and Wyoming). To the east lie the Rocky Mountains in central Colorado, serving as a natural barrier between the Western market and the Central market, whose westernmost edge begins in eastern Colorado. The Continental Divide lies just to the east of the Western market.

In terms of physical geography, the Western marketing area has several regions: the Columbia Plateau in southern Idaho and northeastern Nevada, characterized by fertile soils; the Great Basin in southeast Idaho, nearly all of Nevada and the western third of Utah, described by ranges and parallel valleys; and the Colorado Plateau in the eastern half of Utah and western part of Colorado, characterized by gorges in Utah and canyons, mesas and valleys in Colorado. In general, the Western market is quite dry, with temperatures tending to be extreme and affected by elevation.

Population

According to July 1, 1996, population estimates, the total population in the proposed marketing area is 3.3 million. Using Metropolitan Statistical Areas (MSAs), the largest population center is the Salt Lake City-Ogden, Utah area (Salt Lake City). Salt Lake City is located in north central Utah. The Boise City, Idaho, area (Boise), the second largest population center in this marketing area, is located about 300 miles to the northwest of Salt Lake City. Provo-Orem, Utah, (Provo) the third largest population center, lies 40 miles south of Salt Lake City. Grand Junction, Colorado, (Grand Junction), located about 290 miles southeast of Salt Lake City, is the fourth largest population center in the Western market; but is less than 10 percent the size of Salt Lake City. Slightly over one-third of the market's population is in the Salt Lake City area, and over 60 percent is accounted for when Boise, Provo and Grand Junction are added.

Fluid Per Capita Consumption

Based on the population figure of 3.3 million and an estimated per capita fluid milk consumption rate of 23 pounds of fluid milk per month, total fluid milk consumption in the Western marketing area is estimated at 75.9 million pounds per month. Plants that would have been fully regulated distributing plants in the Western order had route disposition within the market of 76.5 million pounds in October 1995; almost 75 percent of this total is from Order 139 pool plants. The 10 producer handlers operating during this month had a combined route disposition of 1.7 million pounds. Additionally, 2.8 million pounds of route disposition came from handlers outside the market.

Milk Production

In December 1996, nearly 450 million pounds of milk was pooled in the proposed Western market from more than 1,000 producers located in more than 70 counties in California, Colorado, Idaho, Oregon and Utah. Over 95 percent of the producer milk was produced within the marketing area. Four counties produced 50 percent of the milk pooled. The three top producing counties in Idaho, Jerome, Gooding and Twin Falls counties, are all located in southwestern Idaho, about 130 miles southeast of Boise and 230 miles northwest of Salt Lake City. Jerome and Gooding counties each provided twice as much producer milk as Twin Falls County, the third-largest county in terms of producer milk in the Western market. The fourth-largest production county was Cache County in northeastern Utah, located about 80 miles north of Salt Lake City.

The three Idaho counties provided producer milk for both Order 135 and Order 139 in December 1996. Specifically, Jerome County producers had the greatest amount of producer milk on both Order 135 and Order 139. Gooding and Twin Falls counties were in the top four for volume in Order 139 and were second and third for volume in Order 135.

Distributing Plants—Route Distribution

Using distributing plant lists included in both the Preliminary and Revised Preliminary Reports and the pooling standards used in the Revised Preliminary Report, updated for known plant closures through May 1997, 28 distributing plants would be expected to be associated with the Western marketing area, including 11 fully regulated distributing plants (all currently pool plants), 1 partially regulated (currently partially regulated), 3 exempt plants based on size (2 currently are pool plants but have less than 150,000 pounds of total route distribution and the other is currently unregulated), 9 producer-handlers, and 4 exempt plants based on institutional status (all were exempt as defined under current federal orders). Since October 1995, it is known that 1 distributing plant (a producer-handler) in Utah has gone out of business.

There would be 11 distributing plants in the Salt Lake City area (5 pool plants, 3 producer-handlers and 3 exempt plants). The Boise area would have 2 pool distributing plants, the Provo area would have 1 producer-handler and the Grand Junction area would have 1 exempt plant. The remaining 14 distributing plants are located in Colorado (1 plant, fully regulated); Idaho (4 plants: 2 pool, 1 exempt, and 1 producer-handler), Nevada (2 plants, both unregulated), and Utah (7 plants: 1 pool, 1 partial, 1 exempt, 4 producer-handlers).

Fully regulated distributing plants are located in MSAs containing about half of the proposed market's population, including the Pocatello, Idaho, MSA, with 2.2 percent of this market's population.

Utilization

According to October 1995 pool statistics, the Class I utilization percentages for the individual markets ranged from 18 percent for Southwestern Idaho-Eastern Oregon to 35 percent for Great Basin. Information for Western Colorado is restricted due to fewer than three handlers in the market. Based on calculated weighted average use values for (1) the current order with current use of milk, and (2) the current order with projected use of milk in the consolidated Western order, the potential impact of this proposed rule on producers who supply the current market areas is estimated to be: Western Colorado, a 59-cent per cwt decrease (from $13.41 to $12.82); Southwestern Idaho-Eastern Oregon, a 5-cent per cwt increase (from $12.63 to $12.68); and Great Basin, a 3-cent per cwt decrease (from $12.81 to $12.79). The weighted average use value for the consolidated Western order market is estimated to be $12.78 per cwt. For December 1996, combined Class I utilization for Orders 135 and 139 (Western Colorado information is restricted) was 19.9 percent based on 87.7 million pounds of producer milk used in Class I out of 440.1 million total producer milk pounds.

Other Plants

Nineteen supply or manufacturing plants were located within the proposed Western marketing area during May 1997: 1 in Colorado (in the Grand Junction area), 8 in Idaho (3 in the Boise area), 9 in Utah (2 in the Salt Lake City area) and 1 in Wyoming. Two of the 19 plants were pool plants; both manufacture primarily cheese. Of the 17 nonpool plants, 12 manufacture primarily cheese and 5 manufacture primarily soft or Class II products (including ice cream). Of the 8 Idaho plants, all but one manufacture cheese, while of the 9 Utah plants, 6 manufacture cheese and 3 manufacture soft products.

Cooperative Associations

For December 1995, four cooperatives representing 56 percent of the milk pooled under the three orders had membership in the proposed Western marketing area. Western Dairymen Cooperative, Inc., had membership in Western Colorado, Southwestern Idaho-Eastern Oregon and Great Basin; Magic Valley Quality Milk Producers, Inc., had membership in Orders 135 and 139; Darigold Farms had membership in Order 135, and Security Milk Producers' Association had membership in Order 139.

Criteria for Consolidation

As suggested in the Revised Report on Order Consolidation, the consolidated Western market should be composed of the current marketing areas of the Western Colorado, Southwestern Idaho-Eastern Oregon and Great Basin markets (minus the Clark County, Nevada, portion of the Great Basin area). Sales overlap exists between Southwestern Idaho-Eastern Oregon and Great Basin, as well as a significant overlap in procurement for the two orders in Idaho. The two orders also share similar multiple component pricing plans. The Western Colorado order has some route disposition within the Great Basin order, and must be included in a consolidated order area because it is a small market for which data cannot be released without revealing confidential information unless combined with the adjacent Great Basin order.

Discussion of Comments and Alternatives

Several comments opposed consolidating the Southwestern Idaho-Eastern Oregon order area with the Great Basin marketing area. A primary basis for opposition to the consolidation is the disparity in the two regions' utilization of Class I fluid milk: the Southwestern Idaho-Eastern Oregon order has a very low percentage of Class I use, while the Great Basin order's Class I use percentage is higher at about 35 percent, and Western Colorado's is higher still. Commenters fear that the consolidation of these orders would result in lower returns to producers who currently are pooled under the Great Basin and Western Colorado orders. Some comments suggest that the Southwestern Idaho-Eastern Oregon marketing area should remain under a separate order, with the Great Basin market consolidated with markets such as Arizona, Western Colorado, or Eastern Colorado. One comment supported keeping both the Southwestern Idaho-Eastern Oregon and Great Basin marketing areas separate because of the differences in Class I use.

Comments filed by Western Colorado producers and their cooperative state that the Western Colorado area should be combined with the Central market because: (1) It's data has always been combined with that for Eastern Colorado, (2) the Eastern Colorado blend price to producers is higher than Great Basin's, (3) Colorado is a milk import state, whereas Utah is a milk export state, (4) the Western and Eastern Colorado order areas operate under quota plans, while the Great Basin area does not, and (5) Western Colorado is a milk surplus area "with a freight history."

The effects of the proposed order consolidation on returns to producers pooled under the current Southeastern Idaho-Eastern Oregon and Great Basin marketing areas are not expected to be substantial. However, the proposed consolidation would reduce the blend price to be paid to producers whose

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milk is currently pooled under the Western Colorado order. This market must be included in a consolidated order because it currently has too few pooled handlers to allow market data to be published without revealing confidential data. The Western area is the most logical. The adjoining Great Basin marketing area represents the closest reserve supply of milk and the closest available manufacturing outlets for surplus production; and the largest cooperative association in the Great Basin area is the same cooperative representing the Western Colorado producers. Small amounts of packaged fluid milk products are exchanged between Eastern and Western Colorado handlers, some packaged milk is distributed on routes in the Western Colorado area by Eastern Colorado handlers, and bulk cream regularly moves from Western Colorado plants to the Eastern Colorado area. A volume of route dispositions similar to that distributed by Eastern Colorado handlers in Western Colorado is distributed by Western Colorado handlers in the Great Basin area. In addition, movements of bulk milk from Western Colorado to Great Basin plants occur in volumes about 3 times those distributed on routes from Eastern into Western Colorado, and from Western Colorado into the Great Basin area. The Rocky Mountains represent a very large natural barrier between Western Colorado and the more eastern marketing areas.

Data for the Eastern and Western Colorado orders have been reported on a combined basis for a number of years as a matter of administrative convenience because of the restricted nature of Western Colorado data, rather than on the basis of any close affinity between the two markets. While Colorado may be a net import state, that assertion does not apply to the western portion of the State. Milk production data for December 1996 and May 1997 show no milk from other states pooled under the Western Colorado order. Surplus production from the western Colorado counties generally is shipped to Utah manufacturing plants rather than across the Rocky Mountains (except for very minor volumes during 7 of 32 months in 1995–97). The issue raised by the Western Colorado producers of quota in the Colorado orders is not related to Federal milk order provisions; there are no quota provisions in any of the Federal orders. The quota referred to apparently is a pooling plan operated by the producers' cooperative, and certainly can be continued by the cooperative association under the proposed consolidated orders. For the foregoing reasons, the rationale is stronger for including the Western Colorado marketing area in the Western consolidated order area than in the Central area.

Pacific Northwest

The proposed Pacific Northwest marketing area is comprised of the current Pacific Northwest (Order 124) marketing area and one currently-unregulated county in southwest Oregon. There are 75 counties in this proposed area.

Geography

The proposed Pacific Northwest market is described geographically as follows: All counties (39) in Washington, 30 counties in Oregon (29 currently are part of Order 124 and one, Curry County, is unregulated) and six counties in northwestern Idaho. The market extends about 490 miles north-to-south from Washington's northern border with the Canadian province of British Columbia to Oregon's southern border with California and Nevada. East-to-west, the market ranges from about 450 miles in the northern half of the market (covering territory from Washington's western boundary with the Pacific Ocean to the eastern border of Idaho with Montana) to about 250 miles in the southern half of the market (covering approximately two-thirds of Oregon from the state's western border with the Pacific Ocean to central Oregon).

The proposed Pacific Northwest marketing area is contiguous to the proposed consolidated Western Federal order marketing area in eastern Oregon. The remainder of the marketing area is surrounded by currently non-Federally regulated areas (California and northwestern Nevada to the south and Montana, Idaho, and one northeastern Oregon county to the east), political boundaries (Canada to the north), and the Pacific Ocean to the west.

Along the Oregon and Washington coasts lies the Coast Range. The Cascade Range is located further inland in both states. Both ranges are north-south in direction, and the Cascade Range effectively divides both states into two distinct climates: a year-round mild, humid climate with abundant precipitation predominates in the western part of the states, and a dry climate with little precipitation but greater temperature extremes prevails east of the Cascade Range. The mild climate of the western portion results in longer growing seasons. The Columbia River flows south through eastern Washington, turns west, and becomes the western two-thirds of the border between Oregon and Washington. The portion of Idaho included in the current and proposed Pacific Northwest marketing area is within the Rocky Mountains. This area has a generally continental climate with the higher elevations having long and severe winters.

Much of the area is conducive to the production of milk and many other agricultural commodities. Although dairy products ranked 2nd among receipts of agricultural commodities in the State of Washington in 1996, and 4th in Oregon, they accounted for only 13.8 percent and 7.9 percent, respectively, of such receipts. Apples (in Washington) and greenhouse/nursery, wheat, and cattle and calves (in Oregon) ranked ahead of dairy, accounting for 19.8 percent and 33.8 percent, respectively, of agricultural commodity receipts.

Population

According to July 1, 1996, population estimates, the total population in the proposed marketing area is 8.8 million. Seventy-seven percent of the marketing area population is located in Metropolitan Statistical Areas (MSAs). The two largest MSAs are located on the western side of the Cascade Range. The Seattle-Tacoma-Bremerton (Seattle) area, with a population of 3.3 million (37.5% of the marketing area population), is in northwestern Washington. Over seventy percent of the population of the State of Washington is located west of the Cascade Mountains, in the western third of the State. Another 14.5% of the State's population is contained in 3 MSA's east of the Cascades.

The Portland-Salem (Portland) area in northwestern Oregon is located on the Oregon-Washington border, with Portland just south of the Columbia River. The population of this MSA is 2.1 million, or 23.5% of the marketing area population. Ninety percent of the population of Oregon is concentrated in the western one-third of the State, or in the western half of the Oregon portion of the marketing area.

Fluid Per Capita Consumption

Based on the population figure of 8.8 million and an estimated per capita fluid milk consumption rate of 22 pounds of fluid milk per month, total fluid milk consumption in the Pacific Northwest marketing area is estimated at 193.6 million pounds per month. For October 1995, plants that would be fully regulated distributing plants under the proposed Pacific Northwest order had

route disposition within the market of 170 million pounds. In addition, the 18 producer-handlers operating during this month had a combined route disposition of 18 million pounds. Additionally, slightly over 1 million pounds of route disposition (less than one percent of total route disposition in the marketing area) came from handlers outside the market. Because the handlers associated with this market are able to fulfill the market's Class I or fluid needs, and because of the somewhat geographic isolation of the market, maintaining the current Pacific Northwest order as a separate market is appropriate.

Milk Production

In December 1996, the 540 million pounds of milk pooled in the Pacific Northwest market were produced by 1,280 producers located in 57 counties in California, Oregon, Idaho and Washington. Four counties produced 50 percent of the milk pooled. Three of these counties are in Washington State. They are Whatcom and Skagit counties, which are less than 100 miles north of Seattle; and Yakima County, which is located in central Washington about 100 miles southeast of Seattle on the eastern side of the Cascade Range. The fourth county is in Oregon. It is Tillamook County, which is located on the Pacific Ocean, about 60 miles west of the Portland area on the western side of the Coast Range. Less than two percent of the milk pooled in the Pacific Northwest was produced outside of the marketing area, in Idaho and California. The largest portion is from producers in two northern California counties who pooled 6 million pounds of milk or 89.6 percent of the pooled milk produced outside the Pacific Northwest marketing area.

Distributing Plants—Route Distribution

Using distributing plant lists included in both the initial Preliminary and Revised Preliminary Reports and the pooling standards used in the Revised Preliminary Report, updated for known plant closures through May 1997, 39 distributing plants would be expected to be associated with the Pacific Northwest market, including 20 fully regulated distributing plants, 1 partially regulated plant, 3 exempt plants (below 150,000 pounds in total route disposition), and 15 producer-handlers. It is known that 4 distributing plants (1 pool plant and 3 producer handlers) have gone out of business since the initial report.

There are 11 distributing plants within the Portland area, including 7 pool plants, 2 exempt plants and 2 producer-handlers. The Seattle area has 4 pool plants and 7 producer-handlers. In addition to these two main population centers, the Spokane, Washington, MSA, located in the eastern area of the state near the Idaho border with a population of 405,000, has 3 pool plants. One of these plants, Wilcox Farms, Cheney, Washington, began packaging and distributing products in the spring of 1997 and is not included in the market's route disposition data for October 1995, the month used for analysis.

Of the 9 distributing plants that would be operating in Oregon, 5 would be fully regulated. Four are located in western Oregon, and the fifth in central Oregon. Of the 4 Oregon plants anticipated to be non-pool distributing plants, one would be partially regulated (but currently is fully regulated), one would be exempt, and two would be producer-handlers. Two other producer-handlers have gone out of business since October 1995.

Of the 6 distributing plants in Washington that would be in operation, one was and will continue to be a pool plant, one would be exempt (that currently is a pool plant), and 4 would be producer-handlers. Two other distributing plants (one pool plant and one producer-handler) have gone out of business since October 1995.

Distributing plants fully regulated under the proposed Pacific Northwest order are located in MSAs where 71 percent of the proposed market's population is concentrated.

Utilization

According to October 1995 pool statistics, the Class I utilization percentage for the Pacific Northwest market was about 36 percent. Because this market is proposed to remain separate, expected utilization changes due to the reform process result only from potential changes in plants' regulatory status; thus very little change in producer returns under the Pacific Northwest order is expected as a result of consolidation. For December 1996, Class I utilization for the Pacific Northwest market was 32.5 percent based on 175,712,000 pounds of producer milk used in Class I out of 540,334,000 total producer milk pounds.

Other Plants

Also located within the proposed Pacific Northwest marketing area in May 1997 were 27 supply or manufacturing plants; 12 in Oregon (5 in the Portland area), 15 in Washington (7 in the Seattle area) and none in Idaho. Two of the 27 plants (both in Oregon) are Order 124 pool supply plants, one of which manufactures primarily cheese, and the other nonfat dry milk. Of the 10 nonpool manufacturing plants located in Oregon, 8 manufacture primarily Class II products (including ice cream), 1 manufactures butter, and the other makes cheese.

The 15 manufacturing/supply plants located in the State of Washington are all nonpool plants. Three manufacture primarily Class II products, 3 manufacture primarily butter, 2 manufacture primarily powder, and 7 manufacture primarily cheese.

Cooperative Associations

Five cooperative associations have members in the Pacific Northwest market. Darigold Farms is the largest, and the only cooperative that had membership affiliated with another order (Order 135) in December 1995. Other cooperatives in this market are Farmers Cooperative Creamery, Tillamook County Creamery Association, and Northwest Independent Milk Producers Association. These five cooperatives pooled 78 percent of the total producer milk pooled under the Pacific Northwest order in December 1995.

Criteria for Consolidation

As suggested in both the initial and Revised Preliminary Reports on Order Consolidation, the consolidated Pacific Northwest market should add one currently unregulated Oregon county to the Pacific Northwest milk order. The degree of association of this market with other Federal order marketing areas is insufficient under any criteria to warrant consolidation with any other order areas.

Discussion of Comments and Alternatives

Several comments on the Pacific Northwest marketing area suggested in the 2 preliminary reports were filed by cooperative associations operating in the area. Darigold, the area's largest cooperative, commented that there is strong justification for the order boundaries of the current Pacific Northwest order area. Two other cooperatives had earlier supported a broader consolidation, including at least the Southwestern Idaho-Eastern Oregon and, perhaps, the Great Basin order areas. However, as discussed in the two preliminary reports on order consolidation, there is virtually no relationship with regard to either overlapping route dispositions or overlapping milk procurement between the Pacific Northwest and Southwestern Idaho-Eastern Oregon milk marketing areas.

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LIST OF PLANTS AND REGULATORY STATUS

Plant name	City	State	October 1995 order	Status [1]	Expected status [1]
NORTHEAST					
ALDRICH DAIRY	FREDONIA	NY		5	3B
ARRUDA, GEORGIANNA (ESTATE OF)	TIVERTON	RI	New England	4	4
BANGMA, LEONARD & DONALD	UXBRIDGE	MA	New England	4	4
BECHTEL DAIRIES, INC	ROYERSFORD	PA	Mid Atlantic	1	1
BOICE BROS. DAIRY (RICHARD P. BOICE).	KINGSTON	NY	NY–NJ	1	1
BOOTH BROTHERS DAIRY, INC	BARRE	VT	New England	2	1
BRIGGS, ROBERT A	WEST MEDWAY	MA	New England	4	4
BROOKSIDE DAIRY	FITCHBURG	MA	New England	4	4
BYRNE DAIRY, INC	SYRACUSE	NY	NY–NJ	1	1
CAMPHILL VILLAGE	KIMBERTON	PA		5	3B
CHARLAP DAIRY FARMS, INC	HAMBURG	NY		5	1
CHRISTIANSEN DAIRY CO., INC	NO. PROVIDENCE	RI	New England	1	1
CHROME DAIRY FARMS	OXFORD	PA	Mid Atlantic	1	1
CIENIEWICZ, JOSEPH	BERLIN	CT	New England	4	4
CLIFFORD W. & MARIE B. MOYER	DUBLIN	PA		5	3B
CLINTON MILK CO	NEWARK	NJ	NY–NJ	1	1
CLOVER FARMS DAIRY COMPANY	READING	PA	NY–NJ	1	1
CLOVERLAND/GREEN SPRING DAIRY	BALTIMORE	MD	Mid Atlantic	1	1
CLOVERLAND/GREEN SPRING DAIRY	BALTIMORE	MD	Mid Atlantic	1	1
COOPER'S HILLTOP DAIRY FARM	ROCHDALE	MA	New England	4	4
CORBY, CHARLES	PITTSFORD	NY		5	3B
CORNELL UNIVERSITY	ITHACA	NY		5	6B
CRESCENT RIDGE DAIRY, INC	SHARON	MA	New England	4	4
CROWLEY FOODS, INC	BINGHAMTON	NY	NY–NJ	1	1
CROWLEY FOODS, INC	ALBANY	NY	NY–NJ	1	1
CROWLEY FOODS, INC	CONCORD	NH	New England	1	1
CUMBERLAND DAIRY, INC	BRIDGETON	NJ	Mid Atlantic	1	2
CUMBERLAND FARMS, INC	EAST GREENBUSH	NY	NY–NJ	1	1
CUMBERLAND FARMS, INC	CANTON	MA	New England	1	1
CUMBERLAND FARMS, INC	FLORENCE	NJ	Mid Atlantic	1	1
DAIRY MAID DAIRY, INC	FREDERICK	MD	Mid Atlantic	1	1
DAVID F. ARMSTRONG (SUNSET DAIRY).	WHITESBORO	NY	NY–NJ	1	1
DAVID NICHOLS	CHESTERFIELD	MA			3B [2]
DELLWOOD FOODS, INC. (TUSCAN DAIRY FARMS, INC.).	YONKERS	NY	NY–NJ	1	OOB
DUNAJSKI DAIRY, INC	PEABODY	MA	New England	4	4
DUTCH VALLEY FOOD CO., INC	SUNBURY	PA	Mid Atlantic	1	1
DUTCH WAY FARM MARKET	MYERSTOWN	PA	Mid Atlantic	4	4
EDWARDS, CHARLES (& KURT & KEITH—MODEL DAIRY FARM).	GLOVERSVILLE	NY	NY–NJ	4	4
ELMHURST DAIRY, INC	JAMAICA	NY	NY–NJ	1	1
EMBASSY DAIRY, INC	WALDORF	MD	Mid Atlantic	1	1
EMMONS WILLOW BROOK FARM, INC	PEMBERTON	NJ	Mid Atlantic	4	4
FAIRDALE FARMS, INC	BENNINGTON	VT	New England	2	1
FARMERS COOP. DAIRY, INC	HAZELTON	PA		5	5
FARMLAND DAIRIES, INC. &/OR FAIRDALE MILK COMPANY, INC.	WALLINGTON	NJ	NY–NJ	1	1
FISH FAMILY FARM, INC	BOLTON	CT	New England	4	4
FREDDY HILL FARM DAIRY	LANSDALE	PA	Mid Atlantic	4	4
FREDRICK HINE	ORANGE	CT		5	3B
FRIENDSHIP DAIRIES, INC	FRIENDSHIP	NY	NY–NJ	1	2
GARELICK FARMS, INC	FRANKLIN	MA	New England	1	1
GIANT FOOD, INC	LANDOVER	MD	Mid Atlantic	1	1
GRATERFORD STATE	GRATERFORD	PA	Mid Atlantic	6A	6B
GUERS DY., INC	POTTSVILLE	PA	Mid Atlantic	2	2
GUIDA-SEIBERT DAIRY CO	NEW BRITAIN	CT	New England	1	1
HALO FARM, INC	TRENTON	NJ	Mid Atlantic	1	1
HARBY, JOSEPH F	WALTON	NY	NY–NJ	1	OOB
HARRISBURG DAIRIES	HARRISBURG	PA	Mid Atlantic	1	1
HERITAGE'S DAIRY, INC	THOROFARE	NJ	Mid Atlantic	1	1
HERMANY FARMS, INC	BRONX	NY	NY–NJ	1	1
HIGHLAWN FARM	LEE	MA		5	3B
HILL FARM OF VERMONT	PLAINFIELD	VT		5	3B
HILLCREST DAIRY, INC. (MICHAEL J. JANAS).	MORAVIA	NY	NY–NJ	4	4
HOGAN, FRANCIS J. (& ANDREW J. & SEAN P.—HOGAN'S DAIRY).	HUDSON FALLS	NY	NY–NJ	4	4
HOMESTEAD DAIRIES, INC	MASSENA	NY		5	1
HOOVER DAIRY	SANBORN	NY		5	3B
HOWARD HATCH	N. HAVERHILL	NH	New England	1	1
HUDAK, RUDOLPH	SHELTON	CT	New England	4	OOB
HY POINT DAIRY FARMS, INC	WILMINGTON	DE	Mid Atlantic	1	1
H.E.A., INC	CRANSTON	RI	New England	1	1
H.P. HOOD, INC	NEWINGTON	CT	New England	2	2
H.P. HOOD, INC	PORTLAND	ME	New England	1	1
H.P. HOOD, INC	AGAWAM	MA	New England	1	1

LIST OF PLANTS AND REGULATORY STATUS—Continued

Plant name	City	State	October 1995 order	Status [1]	Expected status [1]
H.P. HOOD, INC	CHARLESTON	MA	New England	1	OOB
H.P. HOOD, INC	BURLINGTON	VT	New England	2	1
H.P. HOOD, INC	ONEIDA	NY	NY–NJ	2	1
KEMPS FOODS, INC	LANCASTER	PA	Mid Atlantic	1	1
KOLB'S FARM STORE	SPRING CITY	PA	Mid Atlantic	4	4
KREIDER DAIRY FARMS, INC	MANHEIM	PA	NY–NJ	2	1
KRISCO FARMS, INC. (KRISCO FARMS)	CAMPBELL HALL	NY	NY–NJ	4	4
LAPP VALLEY FARM	NEW HOLLAND	PA	Mid Atlantic	4	4
LEHIGH VALLEY DAIRIES, INC	FORT WASHINGTON	PA	Mid Atlantic	1	OOB
LEHIGH VALLEY DAIRIES, INC	LANSDALE	PA	NY–NJ	1	1
LEHIGH VALLEY DAIRIES, INC	SCHUYKILL HAVEN	PA	NY–NJ	2	2
LEWES DAIRY, INC	LEWES	DE	Mid Atlantic	1	1
LEWIS COUNTY DAIRY CORP	LOWVILLE	NY	NY–NJ	1	1
LONGACRE'S MODERN DAIRY, INC	BARTO	PA	Mid Atlantic	2	2
LUNDGREN & JONAITIS DAIRY FARMS, INC. (WHITTIER CREAMERY CO., INC.).	SHREWSBURY	MA	New England	1	1
MANINO, ROSE (DARI-DELL)	FRANKFORT	NY	NY–NJ	2	3B
MAPLE HILL FARMS, INC	BLOOMFIELD	CT	New England	1	1
MAPLEDALE DAIRY, INC	ROME	NY	NY–NJ	1	OOB
MAPLEHOFE DAIRY, INC	QUARRYVILLE	PA	Mid Atlantic	4	4
MARCUS DAIRY, INC	DANBURY	CT	NY–NJ	1	1
MASON-DIXON FARM DAIRY	GETTYSBURG	PA	Mid Atlantic	1	OOB
MEADOW BROOK FARMS, INC	POTTSTOWN	PA	Mid Atlantic	1	1
MERCERS DAIRY, INC	BOONVILLE	NY	NY–NJ	2	3B
MERRYMEAD FARM	LANSDALE	PA	Mid Atlantic	4	4
MOHAWK DAIRY (Z & R CORP.)	AMSTERDAM	NY	NY–NJ	1	1
MONUMENT FARMS, INC	MIDDLEBURY	VT		5	1
MOUNT WACHUSETT DAIRY, INC	W. BOYLSTON	MA	New England	1	1
MOUNTAINSIDE FARMS, INC	ROXBURY	NY	NY–NJ	1	1
MUNROE, A B DAIRY, INC	EAST PROVIDENCE	RI	New England	1	1
NEW ENGLAND DAIRIES, INC	HARTFORD	CT	New England	1	1
NICASTRO, JOSEPH & CROSS (RIVERSIDE FARMS) (NICASTRO FARMS, INC.).	FRANKFORT	NY	NY–NJ	4	4
NIP N TUCK FARMS	VINEYARD HAVEN	MA		5	4
OAK TREE FARM DAIRY, INC	EAST NORTHPORT	NY	NY–NJ	1	1
OAKHURST DAIRY	PORTLAND	ME	New England	2	2
OREGON DAIRY FARM MKT	LITITZ	PA	Mid Atlantic	4	4
PARKER, A C & SONS, INC	CLINTON	MA	New England	1	OOB
PARMALAT WEST DAIRIES, INC	SPRING CITY	PA	Mid Atlantic	2	3B
PATRICK MCNAMARA	WEST LEBANON	NH	New England	4	4
PAYNES DAIRY	KNOXVILLE	PA		5	5
PEACEFUL MEADOWS ICE CREAM, INC	WHITMAN	MA	New England	4	4
PEARSON, ROBERT L	WEST MILLBURY	MA	New England	4	4
PECORA'S DAIRY	DRUMS	PA		5	5
PEDRO, JOSEPH	FALL RIVER	MA	New England	4	4
PENNVIEW FARMS	PERKASIE	PA	Mid Atlantic	4	4
PERRYDELL FARMS	YORK	PA	Mid Atlantic	4	4
PETER FLINT	CHELSEA	VT	New England	1	1
PINE VIEW ACRES, INC	LANCASTER	PA	Mid Atlantic	4	4
PIONEER DAIRY, INC	SOUTHWICK	MA	New England	1	1
PLEASANT VIEW FARMS DAIRY	ST THOMAS	PA	Mid Atlantic	4	OOB
POTOMAC FARMS DAIRY, INC	CUMBERLAND	MD	Mid Atlantic	2	2
PULEO'S DAIRY	SALEM	MA	New England	1	3B
QUALITY MILK, INC	WARE	MA		5	1
QUEENSBORO FARM PRODUCTS, INC	CANASTOTA	NY	NY–NJ	1	2
READINGTON FARMS, INC	WHITEHOUSE	NJ	NY–NJ	1	1
READY FOODS, INC	PHILADELPHIA	PA	Mid Atlantic	2	2
RICHARDSON FARMS, INC	MIDDLETON	MA	New England	4	4
RICHARDSONS G. H. DAIRY	DRACUT	MA	New England	3A	3B
RIDGE VIEW FARMS	ELIZABETHTOWN	PA	Mid Atlantic	4	4
RITCHEY'S DAIRY	MARTINSBURG	PA	Mid Atlantic	2	2
RONNYBROOK FARM DAIRY, INC	ANCRAMDALE	NY	NY–NJ	4	4
ROSENBERGER'S DAIRY, INC	HATFIELD	PA	Mid Atlantic	1	1
RUDOLPH STEINER EDUCATION & FARMING ASSOC., INC.	GHENT	NY	NY–NJ	4	4
RUSSELL SEARS	CUMMINGTON	MA	New England	4	OOB
RUTTER BROS. DAIRY, INC	YORK	PA	Mid Atlantic	1	1
SALEM VALLEY FARMS, INC	SALEM	CT	New England	4	4
SARATOGA DAIRY, INC. (STEWART'S PROCESSING CORP.).	SARATOGA SPRINGS	NY	NY–NJ	1	1
SCHNEIDER/VALLEY FARMS, INC	WILLIAMSPORT	PA	NY–NJ	2	1
SEWARD DAIRY, INC	RUTLAND	VT	New England	2	1
SHAW FARM DAIRY, INC	DRACUT	MA	New England	4	4
SHENANDOAH'S PRIDE DAIRY	SPRINGFIELD	VA	Mid Atlantic	1	1
STEARNS, WILLARD J. & SONS, INC	STORRS	CT	New England	4	4
STEWART J. LEONARD	NORWALK	CT	New England	1	1
STOP & SHOP COMPANIES, INC	READVILLE	MA	New England	1	1
STUMP ACRES DAIRY FARMS	YORK	PA		5	3B

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LIST OF PLANTS AND REGULATORY STATUS—Continued

Plant name	City	State	October 1995 order	Status [1]	Expected status [1]
SULOMAN'S MILK	GILBERTSVILLE	PA	Mid Atlantic	4	4
SUNNYDALE FARMS, INC	BROOKLYN	NY	NY–NJ	1	1
SYNAKOWSKI WALTER J (VALLEY SIDE FARM).	REMSEN	NY	NY–NJ	4	4
TANNER BROS. DAIRY	WARMINSTER	PA	Mid Atlantic	4	4
THOMAS, ORIN & SONS, INC	RUTLAND	VT	New England	2	1
TRINITY FARM	ENFIELD	CT	New England	3A	3B
TURKEY HILL DAIRY, INC	CONESTOGA	PA	Mid Atlantic	1	1
TURNER'S DAIRY, INC	SALEM	NH	New England	1	1
TUSCAN DAIRY FARMS, INC	UNION	NJ	NY–NJ	1	1
TUSCAN DAIRY FARMS, INC	FRASER	NY	NY–NJ	2	2
UPSTATE MILK COOPERATIVES, INC	JAMESTOWN	NY		5	2
UPSTATE MILK COOPERATIVES, INC	ROCHESTER	NY	NY–NJ	2	1
UPSTATE MILK COOPERATIVES, INC	BUFFALO	NY	NY–NJ	2	1
VALLEY OF VIRGINIA COOP	MT. CRAWFORD	VA	Mid Atlantic	2	2
VAN WIE, CHARLES F. (MEADOWBROOK FARMS DAIRY).	CLARKSVILLE	NY	NY–NJ	4	4
WAWA DAIRY FARMS	WAWA	PA	Mid Atlantic	1	1
WAY-HAR FARMS	BERNVILLE	PA	NY–NJ	2	3B
WELSH FARMS, INC	LONG VALLEY	NJ	NY–NJ	1	1
WENDTS DAIRY DIV NIAGARA CO	NIAGARA FALLS	NY		5	1
WENGERTS DAIRY, INC	LEBANON	PA	Mid Atlantic	1	1
WEST LYNN CREAMERY, INC	LYNN	MA	New England	1	1
WILLIAM WALSH	SIMSBURY	CT	New England	4	4
WINSOR, S. B. DAIRY, INC	JOHNSTON	RI	New England	1	3B
WRIGHT'S DAIRY FARM, INC	NORTH SMITHFIELD	RI	New England	4	4
APPALACHIAN					
BROADACRE DAIRIES	POWELL	TN	Tenn Valley	1	1
CAROLINA DAIRIES	KINSTON	NC	Carolina	1	1
COBURG DAIRY, INC	N. CHARLESTON	SC	Carolina	1	1
DAIRY FRESH, LP	WINSTON-SALEM	NC	Carolina	1	1
DEAN MILK CO	LOUISVILLE	KY	Louis-Lex-Evans	1	1
FLAV-O-RICH, INC	WILKESBORO	NC	Carolina	1	1
FLAV-O-RICH, INC	LONDON	KY	Tenn Valley	1	1
FLAV-O-RICH, INC	BRISTOL	VA	TennValley	1	1
FLAV-O-RICH, INC	FLORENCE	SC	Carolina	1	1
FLAV-O-RICH, INC	GOLDSBORO	NC	Carolina	1	OOB
GOLDEN GALLON, INC	CHATTANOOGA	TN	Tenn Valley	1	1
HOLLAND DAIRIES, INC	HOLLAND	IN	Louis-Lex-Evans	1	1
HUNTER FARMS	HIGHPOINT	NC	Carolina	1	1
HUNTER FARMS	CHARLOTTE	NC	Carolina	1	1
IDEAL AMERICAN DAIRY	EVANSVILLE	IN	Louis-Lex-Evans	1	1
JACKSON DAIRY	DUNN	NC	Carolina	1	1
JERSEY RIDGE DAIRY, INC	KNOXVILLE	TN	Tenn Valley	1	3B
LAND-O-SUN DAIRIES, INC	KINGSPORT	TN	Tenn Valley	1	1
LAND-O-SUN DAIRIES, INC	PORTSMOUTH	VA	Mid Atlantic	2	2
LAND-O-SUN DAIRIES, INC	SPARTANBURG	SC	Carolina	1	1
MAOLA MILK & ICE CREAM CO	NEW BERN	NC	Carolina	1	1
MAPLEVIEW FARMS	HILLSBORO	NC			1 [2]
MARVA MAID DAIRY	NEWPORT NEWS	VA	Mid Atlantic	2	2
MAYFIELD DAIRY FARMS, INC	ATHENS	TN	Tenn Valley	1	1
MILKCO, INC	ASHEVILLE	NC	Carolina	1	1
NORTH CAROLINA ST. UNIV	RALEIGH	NC	Carolina	6A	6B
PEELER JERSEY FARMS, INC	GAFFNEY	SC	Carolina	1	1
PINE STATE CREAMERY CO	RALEIGH	NC	Carolina	1	OOB
REGIS MILK CO	CHARLESTON	SC	Carolina	1	1
RICHFOOD DAIRY	RICHMOND	VA	Mid Atlantic	2	1
SOUTHERN BELLE DAIRY, INC	SOMERSET	KY	Tenn Valley	1	1
SUPERBRAND DY. PRODS., INC	GREENVILLE	SC	Southeast	1	1
SUPERBRAND DAIRY, INC	HIGHPOINT	NC	Carolina	1	1
U C MILK CO	MADISONVILLE	KY	Louis-Lex-Evans	1	1
WESTOVER DAIRIES	LYNCHBURG	VA	Carolina	1	1
WINCHESTER FARMS DAIRY	WINCHESTER	KY	Louis-Lex-Evans	1	1
FLORIDA					
BORDEN, INC.(TRI-STATE DAIRY)	MIAMI	FL	Southeast Florida	1	1
FARMS STORES, INC. (REW JB DAIRY PLANT ASSOCIATES dba FARM STORES).	MIAMI	FL	Southeast Florida	1	1
GOLDEN FLEECE DAIRY	LECANTO	FL	Tampa Bay	1	3B
GUSTAFSON'S DAIRY, INC	GREEN COVE	FL	Upper Florida	1	1
LIFE STYLE/DIV TG LEE FOODS (T.G. LEE FOODS).	ORANGE CITY	FL	Upper Florida	1	1
LONGLIFE DAIRY PRODUCTS, INC	JACKSONVILLE	FL	Southeast	1	1
M & B DAIRY PRODUCTS, INC	TAMPA	FL	Tampa Bay	1	3B
MCARTHUR DAIRY, INC	PLANTATION	FL	Southeast Florida	1	1
MORNINGSTAR FOODS, INC. (VELDA, INC.).	WINTER HAVEN	FL	Tampa Bay	1	1

LIST OF PLANTS AND REGULATORY STATUS—Continued

Plant name	City	State	October 1995 order	Status [1]	Expected status [1]
MORNINGSTAR FOODS, INC. (VELDA, INC.).	MIAMI	FL	Southeast Florida	1	1
PUBLIX SUPER MKTS., INC	DEERFIELD BEACH	FL	Southeast Florida	1	1
PUBLIX SUPER MKTS., INC	LAKELAND	FL	Upper Florida	1	1
SKINNERS DAIRY, INC	JACKSONVILLE	FL	Upper Florida	1	OOB
SUPERBRAND DAIRY PRODUCTS, INC	PLANT CITY	FL	Tampa Bay	1	1
SUPERBRAND DAIRY PRODUCTS, INC	MIAMI	FL	Southeast Florida	1	1
T.G. LEE FOODS, INC	ORLANDO	FL	Tampa Bay	1	1
VELDA FARMS, LP (VELDA, INC.)	ST. PETERSBURG	FL	Tampa Bay	1	1
WIGGINS DAIRY PRODUCTS, INC	PLANT CITY	FL	Tampa Bay	1	1
SOUTHEAST					
ALCORN STATE UNIVERSITY	LORMAN	MS	Southeast	6A	6B
ARKANSAS DEPT. OF CORREC	GRADY	AR	Southeast	6A	6B
AVENT'S DAIRY NC	OXFORD	MS	Southeast	1	1
BAKER & SONS DAIRY, INC	BIRMINGHAM	AL	Southeast	1	OOB
BARBER PURE MILK CO	BIRMINGHAM	AL	Southeast	1	1
BARBER PURE MILK CO	MOBILE	AL	Southeast	1	1
BARBER PURE MILK CO	TUPELO	MS	Southeast	1	OOB
BARBE'S DAIRY, INC	WESTWEGO	LA	Southeast	1	1
BORDEN DAIRY	LITTLE ROCK	AR	Southeast	1	OOB
BORDEN, INC	MONROE	LA	Southeast	1	1
BORDEN, INC	BATON ROUGE	LA	Southeast	1	1
BORDEN, INC	MACON	GA	Southeast	1	OOB
BORDEN, INC	LAFAYETTE	LA	Southeast	1	1
BORDEN, INC	JACKSON	MS	Southeast	1	OOB
BROOKSHIRE DAIRY PRODUCTS	COLUMBUS	MS	Southeast	1	OOB
BROWNS VELVET DY. PRODUCTS (SOUTHERN FOODS GROUP, LP dba BROWN'S VELVET).	NEW ORLEANS	LA	Southeast	1	1
CENTENNIAL FARMS DAIRY, INC	ATLANTA	GA			1 [2]
COLEMAN DAIRY, INC	LITTLE ROCK	AR	Southeast	1	1
COLLEGE OF THE OZARKS	POINT LOOKOUT	MO	Southwest Plains	1	OOB
DAIRY FRESH CORP	COWARTS	AL	Southeast	1	1
DAIRY FRESH CORP	HATTIESBURG	MS	Southeast	1	1
DAIRY FRESH CORP	PRICHARD	AL	Southeast	1	1
DAIRY FRESH OF LA	BAKER	LA	Southeast	1	1
DASI PRODUCTS, INC	DECATUR	AL	Southeast	2	1
ETOWAH MAID DAIRIES, INC	CANTON	GA	Southeast	4	4
FLAV-O-RICH, INC	CANTON	MS	Southeast	1	1
FOREMOST DAIRY, INC	SHREVEPORT	LA	Southeast	1	1
FOREST HILL DAIRY	MEMPHIS	TN	Southeast	1	1
GEORGIA STATE PRISON	REIDSVILLE	GA	Southeast	6A	6B
GOLD STAR DAIRY	LITTLE ROCK	AR	Southeast	1	1
HERITAGE FARMS DAIRY	MURFREESBORO	TN	Southeast	1	1
HERSHEY CHOCOLATE U.S.A	SAVANNAH	GA	Tampa Bay	2	2
HILAND DAIRY CO	FAYETTEVILLE	AR	Southwest Plains	1	1
HILAND DAIRY CO	FORT SMITH	AR	Southwest Plains	1	1
HILAND DAIRY CO	SPRINGFIELD	MO	Southwest Plains	1	1
HUMPHREY DAIRY	HOT SPRINGS	AR	Southeast	3A	3B
KINNETT DAIRIES, INC	COLUMBUS	GA	Southeast	1	1
KLEINPETER DAIRY, INC	BATON ROUGE	LA	Southeast	1	1
LOUISIANA STATE PEN	ANGOLA	LA	Southeast	6A	6B
LOUISIANA TECH	RUSTON	LA	Southeast	6A	6B
LUVEL DAIRY PRODUCTS, INC	KOSCIUSKO	MS	Southeast	1	1
MALONE & HYDE DAIRY/FLEMING COMPANIES, INC.	NASHVILLE	TN	Southeast	1	1
MEADOW GOLD DAIRIES, INC. (TRI-STATE DAIRY).	HUNTSVILLE	AL	Southeast	1	1
MID-AMERICA DAIRYMEN, INC	LEBANON	MO	Southwest Plains	1	2
MISSISSIPPI STATE UNIVERSITY	MISS. STATE	MS	Southeast	6A	6B
NEW ATLANTA DAIRIES, INC	ATLANTA	GA	Southeast	1	1
PEELER JERSEY FARMS, INC	ATHENS	GA	Southeast	1	1
PUBLIX SUPERMARKETS, INC	LAWRENCEVILLE	GA	Southeast	1	1
PURITY DAIRIES, INC	NASHVILLE	TN	Southeast	1	1
RYAN MILK COMPANY	MURRAY	KY	Southeast	2	1
SOUTHERN UNIVERSITY	BATON ROUGE	LA	Southeast	6A	6B
SUPERBRAND DY. PRODUCTS, INC	MONTGOMERY	AL	Southeast	1	1
SUPERBRAND DY. PRODS., INC	HAMMOND	LA	Southeast	1	1
TURNER DAIRIES, INC	COVINGTON	TN	Southeast	1	1
TURNER DAIRIES, INC	FULTON	KY	Southeast	1	1
MIDEAST					
ALBERT MIHALY AND SON DAIRY	LOWELLVILLE	OH	E Ohio-W Penn	4	4
ARPS DAIRY, INC	DEFIANCE	OH	Ohio Valley	1	1
BAREMAN DAIRY, INC	HOLLAND	MI	Southern Michigan	1	1
BARKER'S FARM DAIRY, INC	PECKS MILL	WV	Ohio Valley	4	4
BORDEN, INC	YOUNGSTOWN	OH	E Ohio-W Penn	1	OOB
BROUGHTON FOODS CO	MARIETTA	OH	Ohio Valley	1	1

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LIST OF PLANTS AND REGULATORY STATUS—Continued

Plant name	City	State	October 1995 order	Status [1]	Expected status [1]
BRUNTON DAIRY	ALIQUIPPA	PA	E Ohio-W Penn	4	4
BURGER DAIRY CO	NEW PARIS	IN	Indiana	1	1
BURGER, C.F., CREAMERY, INC	DETROIT	MI	Southern Michigan	2	2
CALDER BROTHERS DAIRY	LINCOLN PARK	MI	Southern Michigan	1	1
COLTERYAHN DAIRY, INC	PITTSBURGH	PA	E Ohio-W Penn	1	1
CON-SUN FOOD INDUSTRIES, INC.	ELYRIA	OH	E Ohio-W Penn	1	1
COOK'S FARM DAIRY, INC	ORTONVILLE	MI	Southern Michigan	4	4
COUNTRY DAIRY	NEW ERA	MI	Southern Michigan	4	4
COUNTY FRESH, INC	GRAND RAPIDS	MI	Southern Michigan	1	1
CROOKED CREEK FARM DAIRY	ROMEO	MI	Southern Michigan	4	4
DEAN DAIRY PRODUCTS CO	SHARPSVILLE	PA	E Ohio-W Penn	1	1
DEAN FOODS COMPANY	ROCHESTER	IN	Indiana	1	1
DIXIE DAIRY CO	GARY	IN	Indiana	1	1
EASTSIDE JERSEY DAIRY, INC	ANDERSON	IN	Indiana	1	1
ELMVIEW DAIRY	COLUMBUS	PA	E Ohio-W Penn	4	4
EMBEST, INC	LIVONIA	MI	Southern Michigan	1	1
FIKE, R BRUCE & SONS DAIRY	UNIONTOWN	PA	E Ohio-W Penn	1	1
FISHER'S DAIRY, R.V. FISHER	PORTERSVILLE	PA	E Ohio-W Penn	4	4
FLEMINGS DAIRY	UTICA	OH	Ohio Valley	1	1
GALLIKER DAIRY CO	JOHNSTOWN	PA	E Ohio-W Penn	2	2
GLEN EDEN FARM-DIANNE TEETS	ROCHESTER	PA	E Ohio-W Penn	4	4
GOSHEN DAIRY COMPANY	NEW PHILADELPHIA	OH	E Ohio-W Penn	1	1
GREEN VALE FARM	COOPERSVILLE	MI	Southern Michigan	4	4
GREEN VALLEY DAIRY	GEORGETOWN	PA	E Ohio-W Penn	4	4
GUERNSEY FARMS DAIRY	NORTHVILLE	MI	Southern Michigan	1	1
HARTZLER FAMILY DAIRY	WOOSTER	OH	3B	2	
HILLSIDE DAIRY CO	CLEVELAND HGHTS	OH	E Ohio-W Penn	1	1
HUTTER FARM DAIRY	MT. PLEASANT	PA	E Ohio-W Penn	4	4
INVERNESS DAIRY, INC	CHEBOYGAN	MI	Michigan U P	1	1
JACKSON ALL STAR DAIRY	JACKSON	MI	Southern Michigan	1	OOB
JACKSON FARMS	NEW SALEM	PA	E Ohio-W Penn	4	4
JILBERT DAIRY, INC	MARQUETTE	MI	Michigan U P	1	1
JOHNSON'S DAIRY, INC	ASHLAND	KY	Ohio Valley	1	1
KERBER'S DAIRY	N. HUNTINGDON	PA	E Ohio-W Penn	1	3B
KROGER COMPANY, THE	INDIANAPOLIS	IN	Indiana	1	1
LANSING DAIRY, INC. (MELODY FARMS, INC.).	LANSING	MI	Southern Michigan	1	1
LIBERTY DAIRY CO	EVART	MI	Southern Michigan	1	1
LONDON'S FARM DAIRY, INC	PORT HURON	MI	Southern Michigan	1	1
MAPLEHURST FARMS, INC	INDIANAPOLIS	IN	Indiana	1	1
MARBURGER FARM DAIRY, INC	EVANS CITY	PA	E Ohio-W Penn	1	1
MCDONALD DAIRY COMPANY	FLINT	MI	Southern Michigan	1	1
MCMAHONS DAIRY, INC	ALTOONA	PA		5	5
MEADOW BROOK DAIRY	ERIE	PA	E Ohio-W Penn	1	1
MEYER H & SONS DAIRY	CINCINNATI	OH	Ohio Valley	1	1
MICHIGAN DAIRY	LIVONIA	MI	Southern Michigan	1	1
MILLER CORPORATION	CAMBRIDGE CITY	IN	Indiana	1	OOB
MONG DAIRY CO	SENECA	PA	E Ohio-W Penn	1	OOB
MURPHY'S DAIRY	JAMESTOWN	PA	E Ohio-W Penn	4	OOB
NICOL'S FARM DAIRY	BEAVER	PA	E Ohio-W Penn	4	OOB
OBERLIN FARMS DAIRY, INC	CLEVELAND	OH	E Ohio-W Penn	1	1
OSBORN DAIRY	SAULT STE MARIE	MI	Michigan U P	4	4
PLEASANT VIEW DAIRY CORP	HIGHLAND	IN	Indiana	1	1
PRAIRIE FARMS DAIRY, INC	FT. WAYNE	IN	Indiana	1	1
QUALITY CREAMERY, INC	COMSTOCK PARK	MI	Southern Michigan	1	1
QUALITY DAIRY CO B.T.U	LANSING	MI	Southern Michigan	1	1
RAEMELTON FARM DAIRY	MANSFIELD	OH	Ohio Valley	4	OOB
REITER DAIRY CO	SPRINGFIELD	OH	Ohio Valley	1	1
REITER DAIRY, INC	AKRON	OH	E Ohio-W Penn	1	1
ROELOF DAIRY	GALESBURG	MI	Southern Michigan	1	1
SANI DAIRY	JOHNSTOWN	PA	E Ohio-W Penn	2	2
SCHENKEL'S ALL-STAR DAIRY, INC	HUNTINGTON	IN	Indiana	1	1
SCHIEVER FARM DAIRY	HARMONY	PA	E Ohio-W Penn	1	3B
SCHNEIDERS DAIRY, INC	PITTSBURGH	PA	E Ohio-W Penn	1	1
SMITH DAIRY PRODUCTS CO	ORRVILLE	OH	Ohio Valley	1	1
SMITH'S DAIRY PRODUCTS CO	RICHMOND	IN	Ohio Valley	1	1
STERLING MILK CO	WAUSEON	OH	Ohio Valley	1	1
SUPERIOR DAIRIES, INC	SAGINAW	MI	Southern Michigan	1	1
SUPERIOR DAIRY, INC	CANTON	OH	E Ohio-W Penn	1	1
TAMARACK FARMS	NEWARK	OH	Ohio Valley	1	1
TAYLOR MILK CO., INC	AMBRIDGE	PA	E Ohio-W Penn	1	1
THE SPRINGHOUSE	EIGHTY FOUR	PA	E Ohio-W Penn	4	4
TOFT DAIRY INC	SANDUSKY	OH	Ohio Valley	2	1
TOLEDO MILK PROCESSING, INC. (COUNTRY FRESH OF OHIO).	MAUMEE	OH	Ohio Valley	1	1
TRAUTH, LOUIS DAIRY	NEWPORT	KY	Ohio Valley	1	1
TURNER DAIRY FARMS, INC	PITTSBURGH	PA	E Ohio-W Penn	1	1
UNITED DAIRY FARMERS	CINCINNATI	OH	Ohio Valley	1	1
UNITED DAIRY, INC	MARTINS FERRY	OH	E Ohio-W Penn	1	1
UNITED DAIRY, INC	CHARLESTON	WV	Ohio Valley	1	1

LIST OF PLANTS AND REGULATORY STATUS—Continued

Plant name	City	State	October 1995 order	Status [1]	Expected status [1]
VALEWOOD FARMS	CRESSON	PA		5	5
VALLEY RICH DAIRY	ROANOKE	VA	Ohio Valley	2	2
WEST VIRGINIA UNIVERSITY DAIRY	MORGANTOWN	WV	E Ohio-W Penn	4	OOB
WHITE KNIGHT PACKAGING CORP. (PARMALAT WHITE KNIGHT PACKAGING CORP.).	WYOMING	MI	Southern Michigan	1	1
YOUNG'S JERSEY DAIRY, INC	YELLOW SPRINGS	OH	Ohio Valley	4	4
UPPER MIDWEST					
ASSOC. MILK PRODUCERS, INC. (FOREMOST FARMS COOPERATIVE).	DEPERE	WI	Chicago Regional	1	1
AYSTA DAIRY, INC	VIRGINIA	MN	Upper Midwest	1	1
CASS-CLAY CREAMERY, INC	GRAND FORKS	ND	Upper Midwest	1	1
CASS-CLAY CREAMERY, INC	FARGO	ND	Upper Midwest	1	1
CASS-CLAY CREAMERY, INC	MANDAN	ND	Upper Midwest	2	2
CENTRAL MINNESOTA	SAUK CENTRE	MN	Upper Midwest	1	1
COUNTRY LAKE FOODS, INC. (LAND O'LAKES, INC.).	BISMARCK	ND	Upper Midwest	2	2
COUNTRY LAKE FOODS, INC. (LAND O'LAKES, INC.).	THIEF RIVER	MN	Upper Midwest	1	1
COUNTRY LAKE FOODS, INC. (LAND O'LAKES, INC.).	WOODBURY	MN	Upper Midwest	1	1
DEAN FOODS CO	HUNTLEY	IL	Chicago Regional	1	1
DEAN FOODS CO	HARVARD	IL	Chicago Regional	1	1
FOREMOST FARMS USA	WAUKESHA	WI	Chicago Regional	1	1
FOREMOST FARMS USA	WAUSAU	WI	Chicago Regional	1	1
FRANKLIN FOODS	DULUTH	MN	Upper Midwest	1	1
HANSENS DAIRY, INC	GREEN BAY	WI	Chicago Regional	2	1
HASTINGS COOPERATIVE	HASTINGS	MN	Upper Midwest	1	1
KOHLER MIX SPECIALITIES, INC	WHITE BEAR	MN	Upper Midwest	2	2
KWIK TRIP DAIRY	LA CROSSE	WI	Chicago Regional	1	1
LAMERS DAIRY, INC	KIMBERLY	WI	Chicago Regional	2	1
LIFEWAY FOODS, INC	SKOKIE	IL	Chicago Regional	2	1
MARIGOLD FOODS, INC	ROCHESTER	MN	Upper Midwest	1	1
MARIGOLD FOODS, INC	CEDARBURG	WI	Chicago Regional	1	1
MARIGOLD FOODS, INC	MINNEAPOLIS	MN	Upper Midwest	1	1
MEYER BROTHERS DAIRY	WAYZATA	MN	Upper Midwest	1	1
MULLER-PINEHURST, INC	ROCKFORD	IL	Chicago Regional	1	1
NORTH BRANCH DAIRY, INC	NORTH BRANCH	MN	Upper Midwest	1	1
OAK GROVE DAIRY	NORWOOD	MN	Upper Midwest	1	1
OBERWEIS DAIRY, INC	AURORA	IL	Chicago Regional	1	1
POLLARD DAIRY, INC	NORWAY	MI	Michigan U P	1	1
ROCK I FARMS	OSWEGO	IL	Chicago Regional	4	4
SCHROEDER MILK CO., INC	ST PAUL	MN	Upper Midwest	1	1
STAR SPECIALTY FOODS, INC. (MORNINGSTAR FOODS, INC.).	MADISON	WI	Chicago Regional	1	2
STOER DAIRY FARMS, INC	TWO RIVERS	WI	Chicago Regional	4	OOB
SWISS VALLEY FARMS CO	CHICAGO	IL	Chicago Regional	1	1
TETZNER DAIRY	WASHBURN	WI	Upper Midwest	4	4
UNITED WORLD IMPORTS	CHICAGO	IL	Chicago Regional	2	5
VERIFINE DAIRY PRODUCTS CO	SHEBOYGAN	WI	Chicago Regional	1	1
WEBERS, INC	MARSHFIELD	WI		5	3B
CENTRAL					
ANDERSON-ERICKSON DAIRY CO	DES MOINES	IA	Iowa	1	1
ASHER DAIRY	MARCELINE	MO		4	4
BAKER'S DAIRY COMPANY	MOLINE	IL	Iowa	1	OOB
BRAUM'S ICE CREAM AND DAIRY (W.H. BRAUM, INC.).	TUTTLE	OK	Southwest Plains	1	1
CENTRAL DAIRY & ICE CREAM	JEFFERSON CITY	MO		5	5
CHESTER DAIRY CO	CHESTER	IL	S Ill-E Missouri	1	1
COUNTRY LAKE FOODS, INC. (LAND O'LAKES, INC.).	SIOUX FALLS	SD	E South Dakota	1	1
DAIRY GOLD FOODS CO	CHEYENNE	WY		5	1
DEPT. OF CORRECTIONS	CANON CITY	CO	Eastern Colorado	6A	6B
DILLON DAIRY CO	DENVER	CO	Eastern Colorado	1	1
ELDON MOSS	IOWA CITY	IA	Iowa	4	4
FARM FRESH DAIRY, INC	CHANDLER	OK	Southwest Plains	1	1
GALESBURG CORR. CENTER	GALESBURG	IL	Central Illinois	6A	6B
GILLETTE DAIRY OF BLACK HILLS	RAPID CITY	SD	Black Hills	1	2
GRAVES GRADE A DAIRY	BELLVUE	CO	Eastern Colorado	4	4
HILAND DAIRY CO	NORMAN	OK	Southwest Plains	1	1
HILAND DAIRY CO	WICHITA	KS	Southwest Plains	1	1
JACKSON ICE CREAM CO	HUTCHINSON	KS	Southwest Plains	1	1
KANSAS STATE UNIV	MANHATTAN	KS	Greater Kansas City	6A	6B
KARL'S FARM DAIRY, INC	EASTLAKE	CO	Eastern Colorado	4	4
LAESCH DAIRY CO	BLOOMINGTON	IL	S Ill-E Missouri	1	1
LAND-O-SUN DAIRIES, INC	O'FALLON	IL	S Ill-E Missouri	1	1
LENZ DAIRY	PRAIRIE HOME	MO	Greater Kansas City	4	4

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LIST OF PLANTS AND REGULATORY STATUS—Continued

Plant name	City	State	October 1995 order	Status [1]	Expected status [1]
LONGMONT DAIRY FARM	LONGMONT	CO	Eastern Colorado	4	4
LOWELL-PAUL DAIRY, INC	GREELEY	CO	Eastern Colorado	4	4
MEADOW GOLD DAIRIES, INC	GREELEY	CO	Eastern Colorado	1	1
MEADOW GOLD DAIRIES, INC	ENGLEWOOD	CO	Eastern Colorado	1	1
MEADOW GOLD DAIRIES, INC. (MODERN DAIRY OF CHAMPAIGN, INC.).	CHAMPAIGN	IL	S Ill-E Missouri	1	OOB
MEADOW GOLD DAIRIES, INC. (MODERN DAIRY OF CHAMPAIGN, INC.).	TULSA	OK	Southwest Plains	1	OOB
MEADOW GOLD DAIRY, INC	LINCOLN	NE	Nebraska-W Iowa	1	1
MID-STATES DAIRY COMPANY	HAZELWOOD	MO	SIII-E Missouri	1	1
PATKE FARM DAIRY	WASHINGTON	MO	SIII-E Missouri	1	3B
PEVELY DAIRY CO	ST LOUIS	MO	SIII-E Missouri	1	1
PRAIRIE FARM DAIRIES, INC	CARLINVILLE	IL	SIII-E Missouri	1	1
PRAIRIE FARMS DAIRY, INC	GRANITE CITY	IL	SIII-E Missouri	1	1
PRAIRIE FARMS DAIRY, INC	OLNEY	IL	SIII-E Missouri	1	1
PRAIRIE FARMS DAIRY, INC	PEORIA	IL	Central Illinois	1	1
PRAIRIE FARMS DAIRY	QUINCY	IL	SIII-E Missouri	1	1
RADIANCE DAIRY	FAIRFIELD	IA	Iowa	4	4
ROBERTS DAIRY CO	DES MOINES	IA	Iowa	1	1
ROBERTS DAIRY CO	IOWA CITY	IA	Iowa	1	1
ROBERTS DAIRY CO. (FAIRMONT-ZARDA DAIRY, DIVISION OF ROBERTS DAIRY CO.).	KANSAS CITY	MO	Greater Kansas City	1	1
ROBERTS DAIRY CO	OMAHA	NE	Nebraska-W Iowa	1	1
ROBINSON DAIRY, INC	DENVER	CO	Eastern Colorado	1	1
ROYAL CREST DAIRY, INC	DENVER	CO	Eastern Colorado	1	1
SAFEWAY STORES, INC., MK PLNT	DENVER	CO	Eastern Colorado	1	1
SCHRANT ROADSIDE DAIRY (ROADSIDE DAIRY).	WINSIDE	NE	Nebraska-W Iowa	4	4
SHOENBERG FARMS, INC	ARVADA	CO	Eastern Colorado	1	1
SINTON DAIRY FOODS CO., LLC	COLORADO SPRINGS	CO	Eastern Colorado	1	1
SOUTH DAKOTA STATE UNIV	BROOKINGS	SD	E South Dakota	6A	6B
SWAN BROS. DAIRY, INC	CLAREMORE	OK	Southwest Plains	4	4
SWISS VALLEY FARMS CO	CEDAR RAPIDS	IA	Iowa	1	3B
SWISS VALLEY FARMS CO	DUBUQUE	IA	Iowa	1	1
TEGELERS DAIRY	DYERSVILLE	IA	Iowa	1	OOB
WELLS DAIRY, INC	LE MARS	IA	Nebraska-W Iowa	1	1
WELLS DAIRY, INC	OMAHA	NE	Nebraska-W Iowa	1	1
WESTERN DAIRYMEN COOP, INC	RIVERTON	WY	Eastern Colorado	2	2
WILD'S BROTHER'S DAIRY	EL RENO	OK	Southwest Plains	4	4
SOUTHWEST					
BELL DAIRY PRODUCTS, INC	LUBBOCK	TX	New Mex-W Texas	1	1
BORDEN, INC	CORPUS CHRISTI	TX	Texas	1	OOB
BORDEN, INC	EL PASO	TX	New Mex-W Texas	1	1
BORDEN, INC	DALLAS	TX	Texas	1	1
BORDEN, INC	ALBUQUERQUE	NM	New Mex-W Texas	1	1
BORDEN, INC	LUBBOCK	TX	New Mex-W Texas	1	OOB
BORDEN, INC	CONROE	TX	Texas	1	1
CREAMLAND DAIRIES	ALBUQUERQUE	NM	New Mex-W Texas	1	1
DAVID'S SUPERMARKETS, INC	GRANDVIEW	TX	Texas	1	1
DEAN DAIRY PRODUCTS	CLOVIS	NM	New Mex-W Texas	1	OOB
FARMERS DAIRIES	EL PASO	TX	New Mex-W Texas	1	1
HOBBS DRIVE IN DAIRY	HOBBS	NM	New Mex-W Texas	3A	3B
HYGEIA DAIRY	CORPUS CHRISTI	TX	Texas	1	1
H. E. BUTT GROCERY CO	HOUSTON	TX	Texas	1	1
H. E. BUTT GROCERY CO	SAN ANTONIO	TX	Texas	1	1
JERSEYLAND	DECATUR	TX	Texas	4	OOB
LAND O' PINES	LUFKIN	TX	Texas	1	1
LANE'S DAIRY	EL PASO	TX	New Mex-W Texas	4	4
LILLY DAIRY PRODUCTS, INC	BYRAN	TX	Texas	1	1
LOS LUNAS PRISON DAIRY	ALBUQUERQUE	NM	New Mex-W Texas	3A	3B
MICKEY'S DRIVE IN DAIRY	ALBUQUERQUE	NM	New Mex-W Texas	4	4
MIDWEST MIX CO	SULPHUR SPRINGS	TX			2 [2]
MORNINGSTAR SPECIALTY	SULPHUR SPRINGS	TX	Chicago Regional	1	2
MOUNTAIN GOLD DAIRY	CARRIZOZO	NM	New Mex-W Texas	3A	3B
NATURE'S DAIRY, INC	ROSWELL	NM	New Mex-W Texas	4	4
OAK FARMS DAIRIES	HOUSTON	TX	Texas	1	1
OAK FARMS DAIRIES	SAN ANTONIO	TX	Texas	1	1
OAK FARMS DAIRIES	DALLAS	TX	Texas	1	1
PLAINS CREAMERY	AMARILLO	TX	New Mex-W Texas	1	1
PRICES CREAMERY, INC	EL PASO	TX	New Mex-W Texas	1	1
PROMISED LAND DAIRY	FLORESVILLE	TX			4 [2]
PURE MILK CO (OAK FARMS DAIRY)	WACO	TX	Texas	4	4
RANCHO LAS LAGUNAS	SANTA FE	NM	New Mex-W Texas	4	4
RASBAND DAIRY	ALBUQUERQUE	NM	New Mex-W Texas	4	4
SCHEPPS DAIRY, INC	DALLAS	TX	Texas	1	1
SOUTHWEST DAIRY	TYLER	TX	Texas	1	1
SUPERBRAND DAIRY PRODS, INC	FT WORTH	TX	Texas	1	1
SUPERIOR DAIRIES (BORDEN, INC.)	AUSTIN	TX	Texas	1	1

LIST OF PLANTS AND REGULATORY STATUS—Continued

Plant name	City	State	October 1995 order	Status [1]	Expected status [1]
VANDERVOORTS DAIRY	FT WORTH	TX	Texas	1	1
ARIZONA-LAS VEGAS					
ANDERSON DAIRY, INC	LAS VEGAS	NV	Great Basin	1	1
ETHINGTON DAIRY	GILBERT	AZ	Central Arizona	4	OOB
GOLDEN WEST DAIRIES	WELLTON	AZ	Central Arizona	4	4
HEIN & ELLEN HETTINGA	YUMA	AZ	Central Arizona	4	4
JACKSON ICE CREAM CO., INC	PHOENIX	AZ	Central Arizona	1	1
MEADOWWAYNE DAIRY	COLORADO CITY	AZ	Central Arizona	4	4
SAFEWAY STORES, INC	TEMPE	AZ	Central Arizona	1	1
SHAMROCK FOODS, INC	PHOENIX	AZ	Central Arizona	1	1
SMITH'S FOOD & DRUG CENTERS, INC	TOLLESON	AZ	Central Arizona	1	1
SUNRISE DAIRY	TAYLOR	AZ		5	3B
SUNSTREET DAIRY, INC	PHOENIX	AZ	Central Arizona	1	OOB
WESTERN					
BROWN DAIRY, INC	COALVILLE	UT	Great Basin	4	4
CHURCH OF JESUS CHRIST OF LATTER-DAY.	OGDEN	UT	Great Basin	3A	6B
CHURCH OF JESUS CHRIST OF LATTER-DAY.	SALT LAKE CITY	UT	Great Basin	3A	6B
COUNTRY BOY DAIRY	OGDEN	UT	Great Basin	4	4
CREAM O'WEBER DAIRY, INC	SALT LAKE CITY	UT	Great Basin	1	1
DALE BARKER	MOUNT PLEASANT	UT	Great Basin	4	4
DARIGOLD, INC	BOISE	ID	SW Idaho-E Oregon	1	1
DESERET MILK PLANT	SALT LAKE CITY	UT	Great Basin	3A	6B
FARM FRESH	SALEM	UT	Great Basin	4	4
GOSSNER FOODS, INC	LOGAN	UT	Great Basin	1	1
GRAFF DAIRY	GRAND JCT	CO	W Colorado	1	3B
IDEAL DAIRY, INC	RICHFIELD	UT	Great Basin	4	4
JOHNNY'S DAIRY	SOUTH WEBER	UT	Great Basin	4	4
JONES DAIRY & HEALTH FOODS	TAYLORSVILLE	UT	Great Basin	4	4
KDK, INC	DRAPER	UT	Great Basin	1	1
MEADOW GOLD DAIRIES, INC	POCATELLO	ID	Great Basin	1	1
MEADOW GOLD DAIRIES, INC	DELTA	CO	W Colorado	1	1
MEADOW GOLD DAIRIES, INC	BOISE	ID	SW Idaho-E Oregon	1	1
MEADOW GOLD DAIRIES, INC	SALT LAKE CITY	UT	Great Basin	1	1
REEDER SHADY BROOK DAIRY	BRIGHAM CITY	UT	Great Basin	4	OOB
REED'S DAIRY, INC	IDAHO FALLS	ID	Great Basin	4	4
ROSEHILL DAIRY	MORGAN	UT	Great Basin	4	4
SMITH FOOD&DRUG CENTERS, INC	LAYTON	UT	Great Basin	1	1
SMITH'S DAIRY	BUHL	ID	SW Idaho-E Oregon	1	3B
STOKER WHOLESALE, INC	BURLEY	ID	SW Idaho-E Oregon	1	1
UTAH STATE UNIVERSITY	LOGAN	UT	Great Basin	3A	6B
VALLEY DAIRY, INC	YERINGTON	NV		5	3B
WESTERN QUALITY FOOD PRODUCTS	CEDAR CITY	UT	Great Basin	2	2
WINDER DAIRY	SALT LAKE CITY	UT	Great Basin	1	1
PACIFIC NORTHWEST					
ALLISON HARDY	ELMA	WA	Pacific Northwest	4	4
ALPENROSE DAIRY	PORTLAND	OR	Pacific Northwest	1	1
ANDERSEN DAIRY, INC	BATTLE GROUND	WA	Pacific Northwest	1	1
BILLANJO DAIRY	EAGLE POINT	OR	Pacific Northwest	4	OOB
CAL-WASH INVESTMENTS, INC	COLLEGE PLACE	WA	Pacific Northwest	1	OOB
CURLY'S DAIRY, INC	SALEM	OR	Pacific Northwest	1	1
DARIGOLD, INC	MEDFORD	OR	Pacific Northwest	1	1
DARIGOLD, INC	SPOKANE	WA	Pacific Northwest	1	1
DARIGOLD, INC	PORTLAND	OR	Pacific Northwest	1	1
DARIGOLD, INC	SEATTLE	WA	Pacific Northwest	1	1
DEPT. OF CORRECTIONS STATE OF OREGON.	SALEM	OR	Pacific Northwest	1	3B
EBERHARD CREAMERY, INC	REDMOND	OR	Pacific Northwest	1	1
ECHO SPRING DAIRY, INC	EUGENE	OR	Pacific Northwest	1	1
EDWARD & AILEEN BRANDSMA	LYNDEN	WA	Pacific Northwest	4	4
EVERGREEN DAIRY, INC. (WEIKS)	OLYMPIA	WA	Pacific Northwest	4	4
FAITH DAIRY, INC	TACOMA	WA	Pacific Northwest	4	4
FOREMAN'S DAIRY	GRANTS PASS	OR	Pacific Northwest	4	OOB
FRED MEYER, INC	PORTLAND	OR	Pacific Northwest	1	1
GARY & MARGO WINEGAR	ELLENSBURG	WA	Pacific Northwest	1	3B
GERALD GILBERT, ET AL	OTHELLO	WA	Pacific Northwest	4	4
GRAAFSTRA DAIRY, INC	ARLINGTON	WA	Pacific Northwest	4	4
INLAND NORTHWEST DAIRIES, INC	SPOKANE	WA	Pacific Northwest	1	1
LOCHMEAD FARMS, INC	JUNCTION CITY	OR	Pacific Northwest	4	4
MALLORIE'S DAIRY, INC	SILVERTON	OR	Pacific Northwest	4	4
MIKE HARVEY	VANCOUVER	WA	Pacific Northwest	4	4
PACIFIC FOODS OF OREGON, INC	CLACKAMAS	OR	Pacific Northwest	1	3B
PALMER ZOTTOLA	GRANTS PASS	OR	Pacific Northwest	1	1
RICHARD AND LINDA KLINE	CHEWELAH	WA	Pacific Northwest	4	OOB

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LIST OF PLANTS AND REGULATORY STATUS—Continued

Plant name	City	State	October 1995 order	Status [1]	Expected status [1]
ROY KROPF	HALSEY	OR	Pacific Northwest	4	4
SAFEWAY '86, INC	MOSES LAKE	WA	Pacific Northwest	1	1
SAFEWAY STORES, INC	CLACKAMAS	OR	Pacific Northwest	1	1
SAFEWAY STORES, INC	BELLEVUE	WA	Pacific Northwest	1	1
SMITH BROTHERS FARMS, INC	KENT	WA	Pacific Northwest	4	4
SPRINGFIELD CREAMERY	EUGENE	OR		5	1
STATE OF WASHINGTON	MONROE	WA	Pacific Northwest	4	4
SUNSHINE DAIRY, INC	PORTLAND	OR	Pacific Northwest	1	1
TILLAMOOK COUNTY CREAMERY ASSN.	TILLAMOOK	OR	Pacific Northwest	1	2
UMPQUA DAIRY PRODUCTS CO	ROSEBURG	OR	Pacific Northwest	1	1
VITAMILK DAIRY, INC	SEATTLE	WA	Pacific Northwest	1	1
WALTER DE JONG	MONROE	WA	Pacific Northwest	4	4
WAYNE STRATTON	PULLMAN	WA	Pacific Northwest	4	4
WILCOX FARMS, INC	CHENEY	WA			1 [2]
WILCOX FARMS, INC	ROY	WA	Pacific Northwest	1	1
WILLIAM VENN (TIMOTHY BERNDT)	NORTH BEND	WA	Pacific Northwest	4	4

[1] DISTRIBUTING PLANT STATUS:
1: POOL
2: PARTIALLY REGULATED
3: EXEMPT BASED ON SIZE:
A. AS DEFINED UNDER CURRENT FEDERAL ORDERS
B. AS DEFINED UNDER PROPOSED RULE; WITH ROUTE DISPOSITION LESS THAN 150,000 LBS. PER MONTH.
4: PRODUCER-HANDLER
5: UNREGULATED
6: EXEMPT BASED ON INSTITUTIONAL STATUS:
A. AS DEFINED UNDER CURRENT FEDERAL ORDERS
B. AS DEFINED UNDER PROPOSED ORDERS (GOVERNMENT, UNIVERSITY, AND CHARITABLE)
[2] NEW SINCE OCT. 95: INFORMATION NOT INCLUDED IN ANALYSIS.

2. Basic Formula Price Replacement and Other Class Price Issues

This proposed rule would replace the basic formula price (BFP) with a multiple component pricing system that would determine butterfat prices for milk used in Class II, Class III and Class IV products from a butter price; protein and other solids prices for milk used in Class III products from cheese and whey prices; and nonfat solids prices for milk used in Class IV products from nonfat dry milk product prices. Prices for Class I and Class II would be determined on the basis of skim milk prices for Class III and Class IV, computed from the respective component prices. A Class I skim milk price for each order would be determined by computing a six month declining average of the higher of the Class III or Class IV skim milk prices for the second preceding month and adding a fixed Class I differential to the result. The Class I butterfat price would be determined by adding the fixed Class I differential to the six month declining average of the butterfat price used for Class II, Class III and IV butterfat for the second preceding month. The Class II skim milk price, on a current month basis, would be computed by adding $0.70 to the Class IV skim milk price. A table showing current and proposed prices for the period 1994 through 1997 appears at the end of this discussion of the proposed BFP replacement.

Provisions for Federal milk orders regulating the handling of milk in areas for which no support for a multiple component pricing system has been expressed would maintain a hundredweight skim/butterfat pricing system instead of the component pricing plan. The hundredweight prices would be determined by using the component price formulas contained in this decision and computing an appropriate hundredweight price using standard component levels. In addition, the proposed Mideast order area, for which a multiple component pricing plan similar to that now in effect in the Southern Michigan order has been supported (containing a "fluid carrier" component instead of an "other solids" component), would be modified to incorporate such provisions.

Background

In the early years of the Federal milk order program, prices that served the function of the present BFP were determined primarily from evaporated milk prices or condensery pay prices. Some markets developed formulas to determine the basic price for milk used in manufactured products and fluid milk prices. These, however, did not always reflect the actual relationship between supply and demand. Furthermore, when adjacent markets priced milk using different formulas, price disparities occurred between competing handlers regulated under different orders.

The Minnesota-Wisconsin manufacturing grade milk price series (M–W) was adopted in the early 1960s. The M–W was a competitive pay price obtained from a survey of payments made by manufacturing plants in Minnesota and Wisconsin to producers of Grade B (manufacturing grade) milk. Approximately 50 percent of total U.S. Grade B milk marketings were accounted for by these two states when the M–W was adopted. The base month M–W was updated using a second survey of a sub-sample of the plants in the base month survey. This sub-sample of plants reported pay prices for the first half, and an estimate of pay prices for the last half, of the month following the base month.

Over time the production of Grade B milk has declined steadily. In 1970, 46 percent of Wisconsin milk marketings and 71 percent of Minnesota milk marketings were Grade B. By 1989, these shares had declined to 17 and 26 percent, respectively. Around this time (1989) USDA's National Agricultural Statistics Service (NASS), which conducts the survey, considered the number of plants eligible for the smaller updating survey to be too few to be statistically reliable as an indicator of the value of milk.

Therefore, in June of 1992, a national hearing was held to consider changes to the M–W price series. The result was the current BFP, which replaced the M–W in 1995. The current BFP uses the same base month competitive pay price as the M–W, but updates the base month price with a formula that uses changes from the base month to the next month in prices paid for butter, nonfat dry milk, and cheese. An updating process is necessary to attempt to capture current supply and demand conditions, since the base month survey price is not available until a month after the milk has already been marketed.

The problem of using a declining volume of Grade B milk to accurately represent the value of milk used for manufacturing was not solved with the implementation of the current BFP. By 1995, the percentage of milk marketed as Grade B milk had fallen to 8 percent of total Wisconsin marketings and 11 percent of total Minnesota marketings. Nationally, Grade B milk constituted less than 5 percent of total U.S. milk marketings in 1995, compared with 9 percent in 1989—a decline of 45 percent. Minnesota and Wisconsin accounted for 2.9 billion pounds, or about 42 percent of the national Grade B milk marketed in 1995; but this was less than 2 percent of all milk marketed in the U.S. that year. In fact the decision based on the basic formula price hearing recognized that "the adoption of the base month M–W price, or any Grade B milk series, is only a short term solution, since the amount of Grade B milk production is expected to continue declining."

The 1996 Farm Bill, enacted in early April 1996, requires consolidation of the Federal milk marketing orders into between 10 and 14 orders, and, among other provisions, authorizes the Secretary to implement the use of uniform multiple component pricing when developing one or more basic formula prices for manufacturing milk. As part of the process of implementing the provisions of the Farm Bill, several committees were formed to deal with specific issues involved in restructuring the Federal milk order system, and public comments were requested.

Basic Formula Price Replacement Committee

One of the committees formed to assist in the restructuring process was the Basic Formula Price Replacement Committee. This committee hosted a public forum on dairy price discovery techniques in Madison, Wisconsin, in late July 1996, considered numerous comments submitted by interested persons, established criteria for a new BFP, conducted extensive study and analysis, and issued a preliminary report on BFP replacement in April 1997. The report generated additional comments, and the committee studied, incorporated, and developed responses to these comments, as well as those received earlier, in the development of this proposed new basic formula price.

The Committee began with a set of goals to be met by a replacement for the basic formula price. These goals are: (a) the replacement must meet the supply and demand criteria set forth in the Agricultural Marketing Agreement Act of 1937 (the Act), (b) the replacement price should not deviate greatly from the general level of the current BFP, and (c) the replacement should demonstrate the ability to change in reaction to changes in supply and demand.

To achieve the basic goals of BFP replacement, a set of criteria was established to evaluate the various alternatives. The criteria were: (a) stability and predictability; (b) simplicity, uniformity, and transparency; (c) sound economics—e.g., consistency with market conditions; and (d) reduced regulation.

Stability refers to a moderation of month-to-month fluctuations in the basic formula price. A price that fluctuates less than the current BFP would improve the wholesale and retail pricing structure in the industry and facilitate an improved planning horizon for both producers and processors. A predictable basic formula price would allow the industry to improve long-range planning, thereby contributing to economic efficiency.

The new basic formula price should be simple to derive and easy for the dairy industry to understand, since it would be used in all Federal milk orders. The BFP also should be transparent. That is, it should be possible to see and understand the derivation of the BFP, even if a complex formula is used to determine the price. Further, the new basic formula price should be applied uniformly within orders and on a national basis.

The most important criterion is sound economics—the ability of the BFP to reflect the supply and demand for raw milk. Currently, the BFP is intended to represent the interaction of supply and demand for manufacturing milk and thereby, the supply and demand for fluid milk at a minimum level. A replacement that fits this traditional role suggests that the supply and demand for manufacturing milk should be reflected in the new price.

Sound economics also implies that minimum prices for milk used in manufactured products will be market-clearing. The use of two classes to price milk used in traditional "surplus" products of butter, nonfat dry milk, and cheese (that is, milk in excess of that amount needed to fill fluid demand), helps assure that only one product will have to be priced at a level that clears the market. The market-clearing product in most cases is butter/nonfat dry milk.

The criterion of sound economics is sufficiently important that it may override other criteria. For instance, supply and demand factors that result in significant price fluctuations may come at the expense of stability; simplicity may conflict with the need to incorporate important supply and demand factors reflecting market conditions for milk. A degree of complexity may be necessary to accommodate sound economics.

Finally, reduced regulation is a desirable trait of a new basic formula price, to the extent that it does not come at the expense of sound economics. One function of the BFP is to represent a market-clearing price for milk used in manufactured dairy products. Reducing regulation should be attempted while discovering such a price, but the goal of reduced regulation is of less importance than accurately reflecting the market forces of supply and demand.

A replacement for the BFP could affect regulation in two ways. In reporting price information to determine the basic formula price, many plants currently report payroll information on a monthly basis. A revised method for determining the BFP could entail reporting manufactured product transaction prices, manufacturing costs and yields, and additional auditing to assure data accuracy. Second, a system of pricing milk used in manufactured dairy products based on components might require increased reporting and accounting to determine component usage.

University Study Committee

In recognition of the expertise available within the academic community, a University Study Committee (USC) was commissioned to conduct objective analyses of the performance of numerous alternatives to the current basic formula price. The ten members of the USC represent six land grant universities around the country.

The USC established its own criteria for screening potential replacements for the basic formula price. Alternatives that met the USC's threshold criteria were then subjected to further analysis. The USC's first level criteria were: (a) a long life—alternatives that were expected to have a useful life of less than 10 years were eliminated; (b) understandable and transparent—the procedure of deriving a price must be easy to see and understand; (c) geographic uniformity—the same basic formula price would serve as the minimum price across the country; and (d) reflect the manufactured milk market—the values of milk used in butter, powder, and cheese would be combined into a single formula price.

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For its second level of criteria, the USC used a form of time-series analysis called vector autoregression (VAR), to test whether the proposed basic formula price replacements would satisfy the following: (a) reflect national market conditions for manufactured dairy products—the price for milk used in manufacturing should reflect the supply and demand for milk used in those products, measured by simulating a change in the level of stocks of the products and observing the impact on prices generated by each basic formula price option; (b) reflect changes in the value of milk used in manufacturing—observing how well each option responds to changes in the prices of butter, powder, and cheese; and, (c) provide price stability—as reflected by low standard deviations and low price variation in response to a change in stocks.

Comments

Over 1,600 comments were received relative to the basic formula price in response to the invitation to comment under Federal Order Restructuring. The comments ranged from one-page letters from dairy producers to lengthy discussions of a particular alternative to the BFP from trade associations or cooperatives. Most of the comments may be grouped into five categories representing alternatives to the current BFP. These five alternatives are: economic formulas, futures markets, cost of production, competitive pay price, and product price and component formulas. In addition, numerous comments were received relative to the use of National Cheese Exchange prices in particular and exchange prices in general in the determination of a basic formula price.

Economic Formulas

Economic formulas are mathematical or statistical formulas that incorporate factors reflecting the supply and demand for a particular commodity or product. Typically, economic formulas include factors such as consumer income, production, prices of competing products, population levels or per capita consumption, and inventories. Several comments were received supporting the use of an economic formula for determining the BFP. Two parties submitted specific formulas. One formula included the cost of milk production and a commodity reference price, plus consumer prices to reflect the demand side of the supply/demand equation. A second formula included such factors as disposable per capita income, a dairy parity index, and an index of manufactured dairy product prices. This formula also included a productivity index to allow the formula to automatically adjust for changes in productivity over time.

Proponents of economic formulas expressed the view that since these formulas incorporate both the supply side and the demand side, economic formulas would truly represent the value of milk, and would therefore be appropriate for use in determining the BFP. Additionally, proponents expressed the view that economic formulas would diminish price volatility and reduce the effect of the cheese market on prices, which proponents viewed as a positive outcome.

Opponents of economic formulas expressed the view that since economic formulas do not react to changing conditions, particularly technology, the formulas would not yield a value of milk that represented the true supply and demand for milk. Since many economic formulas have a tendency to be static rather than dynamic, the formulas do not react to changing economic conditions as rapidly as may be necessary. Opponents went on to explain that economic formulas are difficult to adjust; in many cases the only people who understand them are the people who constructed them in the first place.

Economic formulas can, if properly constructed, have a tendency to reflect the supply and demand for milk used in manufactured dairy products, at least in the short run. Stability of economic formulas depends on the variables used in the formula and the weight they receive. Since agricultural commodity markets can be relatively unstable because of inherent characteristics such as seasonality, weather, perishability, etc., the more weight a commodity price has in a formula the more unstable the formula is likely to be. Thus, a formula that attributes less weight to commodity prices will be somewhat more stable than a formula that attributes greater weight to such prices. The trade-off, of course, is that higher commodity-weighted formulas react more quickly to changes in market conditions. By contrast, factors such as cost of production, per capita consumption, population, and income tend to be more stable in periods of little or no inflation, and thus have a more stabilizing influence on formula-driven price series.

Changing technology should lead to reevaluating the weights of various cost components, but this subjects the formula to legitimate debate and scrutiny that in turn diminish the simplicity, transparency, and stability of a formula-derived BFP. Thus, there is a significant risk in using methodology to develop formulas that result in a price announced on the basis of data that is not publicly known, with only those announcing the price knowing the specific details of the derivation of the price. Further, when the methodology is unveiled, further debate and scrutiny are invited.

Additionally, data availability can be a problem. Some data may be available only on an annual basis, whereas the BFP must be established monthly. Substituting or estimating data is very likely to introduce a bias into the formula. The developer must exercise considerable judgment in constructing the formula price, and a major criticism of economic formulas is that they are difficult to understand, with the developer frequently being the only one to fully understand its intricacies.

The USC divided economic formulas into three categories: (1) cost of production formulas, which will be discussed later, (2) econometric models, and (3) formulas which included either a feed cost snubber or a stock snubber. The USC dismissed econometric models on the basis of the first level criteria, as being too difficult to understand and in constant need of maintenance, re-specification, re-estimation, etc. The formulas which included the feed cost snubber or the stocks snubber passed the first level criteria, but did not perform as well as other alternatives when subjected to the level two analysis.

Futures Markets

A number of comments were received proposing that the futures market be used to replace the basic formula price. One proponent proposed using a monthly weighted average of milk futures transactions on the Coffee, Sugar, and Cocoa Exchange (CSCE) computed on a daily basis. Proponents explained that since the commodity exchange allows free and open trading the price established would represent the national supply and demand for milk. A proponent went on to explain that open trading on a daily basis on the commodity exchange allows everyone in the dairy industry to track the established prices on a daily basis rather than under the current system where the price is just announced.

Opponents to the use of the futures market in establishing the BFP explained that the futures markets for dairy, and milk in particular, have not been trading for a sufficient period of time to determine what the exchange price represents. Opponents also expressed a concern that the volume and open interest, at least for the present, are relatively small, and questioned the future viability of the dairy futures markets. Several opponents also expressed a lack of faith in having the BFP established by commodity traders rather than by the dairy industry although many, if not most, agricultural commodity prices are determined on futures markets.

Both proponents and opponents of futures markets agreed that once a solid history of trading dairy futures is available, it may be feasible to use the futures market to establish a BFP.

There are currently two different futures contracts for pricing milk. The Coffee, Sugar, and Cocoa Exchange (CSCE) has a fluid milk contract. In addition, the CSCE and the Chicago Mercantile Exchange have basic formula price contracts, which are cash settlement contracts using the current basic formula price. The cash settlement contract would not make a viable alternative to the current basic formula price because it is settling against an announced price that will not continue to be announced.

The fluid milk contract has behaved somewhat erratically when compared to the basic formula price, leading economists to question what market the fluid milk contract is pricing. Early research indicates that the fluid milk futures market is reflecting the spot value of Grade A milk rather than the value of milk used in manufactured products. Since the BFP is intended to represent the value of milk used for manufacturing, use of the futures market in its determination would not be appropriate.

Futures markets are not necessarily stable, nor are they intended to be. Futures prices fluctuate on a daily basis, reflecting changes in expectations about supply and demand. A weighted monthly average would introduce more stability, but the commodity influence would still drive the BFP and introduce significant variation into the price series.

The use of futures markets to derive the BFP could generate a price that is applied nationally. However, the futures basic formula price, although conceptually global in terms of participation, must be heavily influenced by supply and demand conditions in the upper Midwest region, since this region is the defined delivery area in the contracts.

There is a significant lack of familiarity, particularly at the producer level, with futures markets. Thus, transparency would not be a feature of a futures-driven BFP. Since most people do not understand futures markets it would be difficult to convince individuals that a futures-derived BFP is simple or predictable.

Finally, futures markets are not, and were not intended to be, cash price-setting mechanisms. They were established to transfer price risk. There is no reason to expect them to be suitable in serving a price-setting function for which they were not intended. There are also questions about the long term viability of the milk futures contract. Although volumes traded increased last summer, they have since declined, even more after the opening of the basic formula price cash settlement contract. Even if the milk futures markets continue to operate, they are very thin. Their use in establishing Federal order prices would result in a very small amount of trading setting prices across the nation.

The USC rejected use of the futures market to replace the basic formula price for many of the same reasons discussed above. The USC expressed particular concern about what is priced by milk futures contracts, and about the future viability of the milk futures market.

Cost of Production

A considerable number of comments received, predominantly from dairy producers, supported determining the basic formula price on the basis of the cost of producing milk. Proponents explained that the minimum price for milk should be no less than the cost to produce the milk, and many proponents expressed the opinion that a profit should also be included in the cost of production figure. Other proponents suggested a yearly adjustment or updater to account for inflation. Some proponents suggested the implementation of a quota system in addition to using the cost of production to determine the BFP, realizing that a guaranteed cost of production would undoubtedly lead to over-production. Very few of the proponents discussed what cost of production figures should be used or how to implement a cost of production basis across an industry with substantially different costs, even within the same region.

Very few comments opposed the use of cost of production to establish the BFP. Those filing opposing comments pointed out that cost of production represents only the supply factor for milk, including no demand factor. The opponents also observed that there are great difficulties in determining a cost of production regionally, let alone nationally, because cost of production varies greatly across regions.

Cost of production would be more stable than the current BFP, and more stable than other options based heavily on commodity market prices. Stability is due to the fact that many of the input values do not change rapidly or as rapidly as commodity prices. In fact, some cost factors may move in opposite directions, reducing the net effect of any one input factor. This is also one of the drawbacks to a cost of production-based BFP. The cost of production may not respond quickly enough, or sufficiently to reflect changes in supply conditions if, indeed, there is any observable link between cost of production and levels of milk production.

A basic formula price based on cost of production would be more complicated than many other options suggested, since considerably more data would be needed to accurately estimate cost of production. And, although a uniform price could be calculated if national averages are used, there is a wide range of cost differences by region, which would introduce problems of uniformity in prices.

The most serious drawback with using cost of production to replace the BFP, and the reason the USC dropped cost of production from consideration based on their level one criteria, is that cost of production represents only the supply side of the market, ignoring factors underlying demand or changes in demand for milk and milk products.

Competitive Pay Price

A number of producer groups and cooperative associations submitted comments supporting the use of a competitive pay price to establish the basic formula price. These proponents expressed the view that a competitive pay price is a good indicator of the national supply and demand for milk and would provide a simple, economically defensible method of calculating the true value of milk used in manufactured dairy products. Many of the proponents suggested adding additional states to the competitive pay price survey of purchasers of manufacturing grade milk in Minnesota and Wisconsin. Some of these proponents also suggested that a competitive pay price be adjusted for hauling subsidies, that premiums be removed, and that adjustments be provided for any unique payments that would not necessarily reflect true supply/demand conditions. Several proponents suggested including a competitive pay price for Grade A milk, with some adjustments, as a way to improve the size and representativeness of the competitive pay price.

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Some of the comments favoring a competitive pay price addressed the issue of adjusting the competitive pay price to the current month. For the most part, proponents were opposed to using a formula containing a cheese price established on the National Cheese Exchange or the Chicago Mercantile Exchange, but supported the use of the NASS cheese survey price for such a purpose.

Opponents of a competitive pay price expressed the view that the current BFP, which uses a competitive pay price determined in Minnesota and Wisconsin, does not represent the national supply and demand for milk used in manufacturing but represents the value of such milk in Minnesota and Wisconsin. These comments stated that supply/demand situations in other regions of the country may vary significantly from Minnesota and Wisconsin, with regional price distortions resulting from the use of prices from a specific region.

A competitive pay price results from open market negotiation between dairy farmers (or their cooperatives) and milk processors. Competition requires sufficient numbers of buyers and sellers so that no one participant or group of participants can unduly influence the price. In addition, the price can not be a Federal- or State-regulated price, such as the price for Grade A milk currently priced under Federal milk orders.

Identifying a competitive pay price in today's dairy industry, where 70 percent of the milk is currently covered under Federal milk marketing orders, is a challenge. After accounting for state regulations, only about two percent of Grade A milk is unregulated, and it is unlikely that even this small amount of milk is not affected by regulated prices. Only about five percent of the total milk marketed in the U.S. is Grade B or unregulated, and 42 percent of that milk is located in Minnesota and Wisconsin. The remainder is scattered among 23 states in amounts too small and delivered to too few processing plants to generate a competitive pay price. In areas where alternative markets exist, the price for unregulated milk likely will not be below the price paid for regulated milk, since producers would prefer to sell their milk to regulated handlers to receive the higher regulated price. Thus, unregulated handlers are compelled to meet the regulated price in order to attract sufficient supplies of milk. The circular result is that the regulated price ultimately becomes the competitive price. This process does not lead to a representative competitive pay price for milk.

Most competitive pay price alternatives are not structurally different from the current BFP and will not yield a price series any more stable than the current BFP. Some improvement in stability might be possible with a more stable "updater" to adjust the competitive pay price. However, the updater may then result in a competitive price that fails to reflect the current value of milk used in manufacturing.

Competitive pay prices may have problems associated with uniformity, simplicity, and sound economics. With regard to simplicity, an updater would be necessary in conjunction with a method to determine premiums and federal order payments to deduct from the competitively set price. These adjustment mechanisms are neither very simple nor transparent. A competitive pay price may be uniformly applied, but as the competitive pay price often reflects the use of prices in just one region, the derived price may not be fully applicable across regions.

The concept of a competitive pay price has appeal from the standpoint of sound economics. But the submitted proposals, as well as the current basic formula price construction, raise concerns about the degree of competition reflected in a price based on the declining volume of Grade B milk produced and purchased, or the introduction of Grade A milk that, even if unregulated, is significantly influenced by minimum order prices and therefore suspect as a "competitive" price.

The addition of a Grade A price to a competitive pay price survey has been considered likely to raise the level of the BFP significantly above the level of the current basic formula price. The Minnesota-Wisconsin Grade A/B price currently collected by NASS has averaged about $0.75 per hundredweight above the BFP over the past five years. While the proposal to exclude performance premiums and the need for adjustment for the current month may help to minimize problems associated with the regulated price serving as the competitive price, serious issues are raised by this proposal. More data would be necessary, increasing the burden of reporting premiums paid to producers, the basis for such premiums, hauling subsidies, and hauling cost data.

The changes in market conditions and limited information would reduce the predictability of the new basic formula price, and transparency would not be assured, particularly if the price is based on a survey. The current BFP suffers from these same shortcomings, particularly as the price support program has declined in importance in the market.

In response to comments concerning the declining base of manufacturing milk in Minnesota and Wisconsin from which to draw survey information and the limited geographical area encompassed by the current survey, Grade A manufacturing milk data was gathered to analyze alternatives to the Minnesota-Wisconsin base month price. A Grade A pay price series was then computed. The price series included nine states' pay prices for Grade A milk that is used in manufacturing. These nine states, California, Idaho, Iowa, Minnesota, New Mexico, New York, Pennsylvania, Washington, and Wisconsin, account for approximately 75% of the Grade A milk used for manufacturing in the U.S. The Grade A pay prices were adjusted for protein content, performance premiums, over-order premiums, and hauling subsidies. The Grade A competitive pay price was below the current BFP base month price in 27 of the 35 months included in the study. When the product price formula updater was included, the Grade A pay price averaged $0.11 per hundredweight below the current BFP.

The determination that a Grade A pay price is lower than the current BFP conflicts with the hypothesis presented earlier. However, further analysis indicates that the result is not surprising when one considers the relative pay price and the quantity of milk used for manufacturing in each of the states that were included. Also, the 5-percent weighting of butter/powder versus 95 percent cheese production in the current BFP updating formula changed significantly, to approximately 30 percent butter/powder and 70 percent cheese with the use of national production data rather than the Minnesota-Wisconsin production data.

The reduced price level that would result from this study certainly provides justification for discarding a competitive pay price as a replacement for the basic formula price. One reason for the lower price level is the inclusion of prices from western states, especially California. California has become the nation's largest milk-producing state, and a major percentage of California milk is used in manufactured products. California has its own State milk order regulation, and maintains prices for milk used in manufactured products at levels below those in other areas of the nation, largely through use of very generous manufacturing allowances in computing milk prices from product prices. Handlers in other western states, even those under Federal order price regulation, must compete with California handlers to sell their manufactured products. As a result, pay prices to producers in these areas tend to be lower than in the rest of the United States.

The USC evaluated several different competitive pay price series. Two of these price series, an A/B series and an adjusted A/B series, passed the level one criteria, but even these two series were questionable in their ability to reflect the manufactured milk market. Neither one of these two price series performed well when tested using the level two criteria and therefore were dropped from further consideration.

Product Price Formulas and Component Pricing

In comments supporting the use of a product price formula to replace the current basic formula price, proponents expressed the opinion that a price determined from the national finished product markets more accurately reflects the value of milk for manufacturing than other methods of determining a milk price. Proponents explained that the price handlers can afford to pay for milk is determined by the price for which the finished product can be sold. Therefore, a pricing system that translates finished product prices to a price for raw milk would result in the most representative raw milk price for both producers and handlers. Proponents of product price formulas explained that component pricing, with prices determined for butterfat, protein, nonfat solids, etc., would best be accomplished through product price formulas, to reflect the value of each component in finished product prices. Proponents also explained that product price formulas are relatively easy to use and understand, and that the value of milk may be computed on an on-going basis by everyone in the dairy industry by following commodity markets.

Proponents of multiple component pricing (MCP) explained that since the components of milk are what give milk its value, particularly in manufactured products, it is the components that should be priced; particularly butterfat and protein, and to a lesser extent the other solids contained in the milk.

Opposition to product price formulas was directed at the need for product yields and make allowances in determining a milk price or component prices. Opponents expressed the view that yields and make allowances would not reflect the true results in manufacturing plants, and therefore would not yield an accurate price for milk. Opponents further explained that when yields and make allowances are determined, they would be difficult to adjust and would not react to changes in manufacturing conditions. Opponents also argued that when an incorrect make allowance is established, plants are guaranteed a return, or profit, to the detriment of dairy farmers. Other opponents explained that an incorrect yield or make allowance may force payment for milk at a level that would not allow a return to the manufacturing plant.

The USC tested several product price formulas, including a one-class multiple component pricing formula and a set of formulas similar to the formulas recommended in this decision. Based on the results of the USC analysis measured against their level two criteria, the multiple component pricing formulas had the best overall performance of any of those alternatives reaching the level two testing.

Commodity Prices

A considerable number of comments were received concerning the use of commodity prices in determining a basic formula price. Most of the comments were directed at the use of National Cheese Exchange prices in the computation of the current BFP. Commenters expressed the view that the prices were being manipulated by the big cheese companies in order to keep milk prices low so that the cheese companies could make a larger profit.

Proposed Basic Formula Price Replacement

Application of the BFP and USC Committees' criteria for BFP replacement to the various BFP alternatives resulted in the determination that the proposed component pricing product price formulas best meet the stated goals and criteria.

Prices derived from product price formulas that use commodity prices as the basis for the computed price are subject to the same problems of stability as the underlying commodity prices. For the most part product price formulas do not include a factor to improve stability.

Product price formulas are relatively simple to compute and understand, and may be applied uniformly, or on a regional basis, accommodating differences in yields or make allowances. Product prices established in a relatively free and open interaction between supply and demand directly translate the value of the finished products to the value of milk and its components. Therefore, they have a sound economic underpinning. Arguably, product price formulas reflect the supply and demand for the manufactured product, rather than for raw milk used to produce the product, and therefore may be criticized for not adequately representing market conditions for milk used in manufacturing. They should, however, reflect accurately the market values of the products made from such milk.

Product price formulas can require increased data collection, particularly if industry insists on audited make allowances and actual transaction prices to be used in the formulas.

The predictability of prices computed from product price formulas should be reasonably good, or at least no worse than predictability of the underlying commodity prices. Short run predictability should even improve since all information needed to compute prices is reported on an ongoing basis, unless survey information is used. This contrasts with the present BFP computation in which a major part of the formula, the base month Minnesota-Wisconsin price, is not available until the actual basic formula price is announced.

Product price formulas are transparent, since the information to compute the price is available, and the effect of a change in commodity prices or one of the other factors may be observed and quantified.

This proposed rule recommends that the BFP be replaced with a multiple component pricing system which will determine butterfat, protein, and other solids prices for milk used in Class III products and butterfat and nonfat solids prices for milk used in Class IV products.

Numerous comments were received concerning whether the revised orders should keep Class III–A (i.e. a four class market) or whether all hard manufactured products should be priced in Class III. The opposition to Class III–A centered around two issues: (1) the integrity of the classified pricing system, and (2) the perception that a butter/nonfat dry milk class would reduce producer pay prices. The supply/demand for butter and nonfat dry milk is sufficiently different from the supply/demand for cheese to justify separate classification and pricing. In addition, the recommendation to use the higher of the Class III or Class IV price for determining the Class I price, and base the Class II price on the Class IV price, should more accurately reflect the value of these different categories of use.

Changes in the cheese markets have a major impact on the dairy industry. The cheese industry has evolved from cheese production being a means of surplus milk storage and removal to a competitive consumer demand-driven

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industry. Currently, more milk is used in cheese production than is used in Class I. The nonfat dry milk industry is now one which balances surplus milk storage and removals. This category is also evolving, with increasing commercial uses for nonfat dry milk, and dry milk products formulated for specific needs. Increasing quantities of nonfat dry milk are being produced for use in other dairy products and the food and pharmaceutical industries.

The separation of manufacturing milk into two classes will assure that shifts in demand for any one manufactured product will not lower the prices for milk used in all other classifications, including Class I prices. Recent milk price increases have been attributed to increased cheese values. Many people expect that per capita cheese consumption will continue to grow. However, some warn of impending market saturation as more cheese plant capacity materializes and consumer tastes and preferences change. Cheese consumption patterns are based on many factors outside the dairy industry's control. Health concerns relating to changing demographics, changes in pizza consumption and income growth, as well as retail and wholesale inventory decisions, etc., will impact consumption and prices. A recent report by the Food and Agricultural Policy Research Institute noted that "anything that results in demand weakness for cheese will likely result in a markedly different outlook for the entire dairy sector . . ." The proposed pricing system will allow other manufactured products (i.e. Class IV) to move Class I prices, helping to reduce the volatility in milk prices.

Over the last six years cheese prices, and to a lesser extent butter prices, have shown considerable fluctuation while the nonfat dry milk price remained relatively stable. Price changes for these finished products are indicative of various supply/demand situations over time. The stable nonfat dry milk prices and the butter prices prior to the fall of 1995 were a reflection of large stocks being carried in storage and flat demand. Prices for nonfat dry milk and butter became more volatile once government inventories were depleted and were no longer a factor in stabilizing prices. Butter prices increased during May and June of 1997 in response to demand for cream, while both cheese and nonfat dry milk prices remained relatively flat. These differences in price movements indicate separate supply and demand balances for different manufactured dairy products.

The different supply and demand characteristics for the cheese and butter/nonfat dry milk market segments warrant separate classification and prices. Research by Emmons (discussed in the BFP Committee Preliminary Report) concluded that no single pricing system is appropriate for all classes of milk and, in fact, that multiple pricing formulas are appropriate. Each product would be allowed to achieve its market clearing level independent of the other products. Dairy farmers will be paid a price which is more representative of the level at which the market values their milk.

The current BFP serves two functions: (1) a fixed differential is added to the current BFP to establish the Class I and Class II prices; and (2) the current BFP serves as the Class III price, or the price for milk used in manufactured products. In some Federal milk orders a seasonal adjuster is added to the BFP to determine the Class III price. The proposed replacement would function in a similar fashion, using component prices. Class IV (butter/nonfat dry milk) would be priced on a butterfat and nonfat solids basis. Class III (hard cheese) would be priced on a butterfat, protein, and other solids basis. The price of butterfat would be the same in Class II, Class III, and Class IV. Payments to producers under MCP would be based on the Class III prices for butterfat, protein, and other solids in addition to a producer price differential computed from the value differences between other classes and Class III components and from differences in butterfat and other solids values between classes. Producer pay prices also would be adjusted for the somatic cell count of producers' milk under orders with MCP.

Because nonfat dry milk may be substituted for fresh milk or wet solids in the production of many Class II products, the Class II price should be determined using Class IV butterfat and nonfat solids prices plus a fixed per hundredweight differential of $0.70 over the Class IV skim price. The $0.70 differential represents the cost of converting concentrated milk to dry solids, plus rehydration. Class II would be priced on a current basis rather than in advance to enable the Class II price to be aligned with the Class IV price. This alignment should also reduce perceived problems in the use of nonfat dry milk to make Class II products. Tying the Class II price to the Class IV price by this fixed differential should reduce the incentive to produce nonfat dry milk for use in Class II products.

The Class I price should consist of a Class I butterfat price and a Class I skim milk price. The Class I butterfat price would be determined by adding a fixed Class I differential to a 6-month declining average of the second preceding month's butterfat price (used in Classes II, III, & IV). The Class I skim milk price would be determined by adding a Class I differential to a 6-month declining average of the second preceding month's skim milk price (using the higher of Class III or Class IV skim prices). The calculation of Class I prices would be the same for both MCP and non-MCP markets.

Announcement of Class I butterfat and skim milk prices in advance eliminates current problems caused by butterfat differential fluctuations. Handlers would have true advance Class I pricing. There would be two different butterfat prices each month but no butterfat differential. The separate Class I butterfat price should integrate easily since Class I butterfat testing and reporting currently exists.

The prices for butterfat, protein, and other solids used in Class III would be computed as follows:

Butterfat price=(NASS AA Butter survey price − 0.079)/0.82)

Protein price=((NASS block cheese survey price − 0.127)x1.32)+((((NASS block cheese survey price − 0.127)x1.582) − butterfat price)x1.20)

Other solids price=((NASS dry whey survey price − .10)/0.968).

The butterfat price for Class IV products is the same as for Class III while the nonfat solids price is computed as follows:

Nonfat solids price=((NASS nonfat dry milk survey price − 0.125)/0.96)

This system of pricing best fits the three established goals and criteria, discussed previously, for a replacement to the BFP.

The first goal, that a replacement for the basic formula price meet the supply/demand criteria set forth in the Act, may be the most difficult to evaluate definitively since the Act specifically mentions minimum prices to producers. The BFP, as part of a classified pricing system, does contribute to minimum prices to producers. However, the basic formula price does not need to be set at a level to "assure an adequate supply of wholesome milk." The proposed BFP replacement meets the supply and demand criteria for milk used in butter/nonfat dry milk and cheese even though they are established from finished product commodity prices. The commodity prices are based on a competitive marketplace and reflect the supply and demand for those products (Class III and Class IV) that utilize approximately 50% of the Grade A milk supply.

The supply and demand for Grade A milk is not limited to one category of products. The same milk may be used for fluid or soft manufactured products as well as the Class III and Class IV products used to determine the BFP. As a result, the minimum prices established for Class III and Class IV reflect supply and demand not only for finished products but for the milk used to make them.

The second goal is that a BFP replacement should not deviate greatly from the price level of the current BFP. Several comparisons of this proposed basic formula price replacement were made to the current BFP to determine whether the proposed formulas resulted in a price level for milk used in manufactured products that is reasonably close to the current BFP.

Protein, butterfat, and other solids values were combined to compute a Class III hundredweight price using standard factors of 3.15 for protein and 5.5 for other solids. The resulting price averaged $0.26 or 2 percent above the current BFP for the 69-month period of September 1991 through May 1997. The Class IV hundredweight price, computed from the butterfat price and the nonfat solids price using a constant 8.65 for nonfat solids, averaged $0.22 or 2 percent below the current BFP during the same period. The proposed Class III and Class IV prices were both highly correlated with the current basic formula price. The Class III price had a .963 correlation coefficient while the Class IV price had a .749 correlation coefficient.

The proposed basic formula price replacement also meets the third primary goal. The proposed formulas have the ability to respond to supply/demand changes. The Class III and Class IV prices should respond appropriately since the formulas use NASS-surveyed commodity prices that reflect the supply and demand for these commodities.

Overall, the proposed BFP replacement formulas (for Class III and Class IV) meet the established criteria necessary for a BFP replacement. The formulas are relatively simple to use and can be applied uniformly. The formulas are transparent and the Class III and Class IV formulas meet the sound economics criterion.

The proposed use of NASS survey prices may reduce the ability to predict prices, at least in the near term, since there is a limited history of using NASS survey prices for computing Federal order prices. Predictability should improve over time as the relationship between the survey prices and easily-tracked exchange prices becomes apparent to industry observers. Regulation should be reduced since NASS is collecting the weekly cheese survey, and the manufacturing plant survey would no longer be required. Regulation could increase, however, make allowances are audited.

The proposed formulas used in the basic formula price replacement may result in prices that are less stable than the current BFP. Unlike the current BFP, in which commodity updates are used to adjust the producer pay price survey, changes in product prices would be the sole determinant of changes in component prices. The current BFP is based primarily on the base month survey price, which does not move as rapidly as the commodity markets (as noted by many respondents). As a result, the current BFP reacts more slowly to changes in the commodity markets than does the proposed commodity-driven price series.

There has been considerable criticism of the use of exchange prices (particularly cheese) in determining the basic formula price. This criticism ranged from inaccurate representation of commodity values to accusations of market manipulation. The National Cheese Exchange eventually closed and the Department decided to use a new NASS Cheddar cheese price survey in the computation of the basic formula price and in federal milk order component pricing plans. Cheese transactions occurring during the week are surveyed and released by NASS on the following Friday. From the weekly price and sales volume a monthly weighted average price is determined.

The BFP Committee recommended using NASS cheese survey prices and having NASS develop a price survey for butter. This survey would have to be expanded and data released more often. Nonfat dry milk and dry whey prices are currently surveyed and published, but will need to be published on a more timely basis if they are used in component price computations.

Several alternatives to a NASS price survey were considered. There is a cash butter market at the Chicago Mercantile Exchange (CME). These prices are currently used to determine the butterfat differential and butterfat price in all federal milk orders. Dairy Market News (DMN) publishes a wholesale butter price. Both of these price series have been criticized due to the "thinness" of trading. There is no exchange trading of dry milk products. Alternatives to a NASS survey are limited to prices published by Dairy Market News or a California survey. The prices reported by DMN are generally considered to be representative of the dry product markets. However, the prices are reported as a range. A simple average of the prices is used to compute a monthly price and may not reflect the weighted average price at which the product moved. In many instances multiple heat treatment products are involved, and a substantial number of forward contracts are included. The DMN prices are not intended to establish prices but are provided for market information.

NASS data traditionally have been collected via a survey with voluntary participation. The price information in the current cheese price survey, like most NASS data, is not audited. NASS applies various statistical techniques and cross-checking with other sources to provide the most reliable information available.

Alternatives and comments regarding exchange trading and the use of NASS survey prices are invited. This decision proposes the use of NASS survey prices for computing the component values used in the BFP replacement.

Make Allowances

Several characteristics of Federal milk orders should be kept in mind concerning make allowances. First, federal milk order prices are minimum prices. Second, the BFP and its replacement should price milk used in what have been considered surplus products. The BFP is not intended to represent the total value of all milk. Third, most dairy manufacturing plants are not required to participate in the federal milk order pool and are not required to pay federal milk order prices.

An economic engineering approach to determine appropriate make allowances was investigated. Neither the time nor the resources are available to construct models for determining appropriate make allowances at this time. As an alternative, various sources were used to determine appropriate make allowances for the basic formula price replacement. Research by Stephenson and Novakovic of Cornell University indicates that results obtained by using an economic engineering approach can be comparable to a survey of plants. Resources may need to be devoted to developing an economic engineering model, a survey, or a combination of the two.

The proposed butter make allowance of $0.079 per pound and the nonfat solids make allowance of $0.125 per pound were developed from an analysis of several sources. Research by Stephenson and Novakovic on surveyed data from butter and nonfat dry milk manufacturing plants resulted in

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equations for estimating the long-run average cost per pound of producing butter and nonfat dry milk.

Applying these equations to national average nonfat dry milk production resulted in make allowances ranging from $0.1166 to $0.1561 per pound. These values are in alignment with the seven-year average, $0.1392 per pound, based on audited cost of production data published by the California Department of Food and Agriculture. This California average included a return on investment. These computed costs straddle the proposed $0.125 make allowance. The proposed $0.125 make allowance is approximately 90 percent of the California production costs. The $0.125 make allowance is appropriate, as it covers the costs of most plants but does not cover the costs of all manufacturing plants. Several comments in support of product price formulas also suggested that a make allowance of $0.125 for nonfat dry milk was appropriate.

The determination of the $0.079 butter make allowance is also based on research by Stephenson and Novakovic. However, applying the long run cost equations to national production results in national make allowances ranging from $0.1318 to $0.1013. These values are considerably higher than the seven-year average of $0.0879 reported by California. Variation in plant size, or capacity, is the main reason for the differences between the computed values and the average for California butter plants. Many plants produce small quantities of butter, resulting in an understated average plant size and overstated cost figures. This rapidly becomes apparent when comparing California data to the national average data. California produces approximately three times more butter per plant than the national average at a lower cost. The $0.079 make allowance is set at 90 percent of the California audited cost of production. This make allowance should allow an efficient butter plant to operate.

The other solids make allowance is based on research conducted by Hurst, Aplin, and Barbano of Cornell University. Their research indicated a make allowance range of $0.079 to $0.259 per pound of whey powder, depending on plant size. The $0.10 used in the other solids price computation corresponds to the area of the manufacturing cost curve at which manufacturing costs per unit, that diminish as volume of production increases, begin to level off. This part of the cost curve would appear to be the most appropriate to use for determination of the other solids make allowance.

As in the case of the other solids make allowance, the proposed $0.127 per pound protein make allowance reflects the point where the long-run average cost curve begins to level off for Cheddar cheese production. This cost curve was developed by Mesa-Dishington, Barbano, and Aplin of Cornell University. The combination of the cheese and other solids (dry whey) make allowances result in a total Class III make allowance approximately $0.10 below the reported California audited make allowance.

The proposed make allowances used in computing the component prices for Class III and Class IV result in per hundredweight prices which did not deviate greatly on average from the current BFP over the period analyzed, one of the criteria for a basic formula price replacement. During the September 1991 through May 1997 period on which this analysis is based, Class III prices would average $0.26 per hundredweight above the current BFP, with Class IV prices averaging $0.22 per hundredweight below.

Changes in make allowances will affect component prices and per hundredweight milk values. A one-cent per pound change in the butter make allowance will affect the butterfat price in the opposite direction by $0.0122 per pound. This would be $0.0427 per hundredweight for milk at 3.5 percent butterfat. The butterfat price also is used in the computation of the protein price. The protein price will change inversely to the butter make allowance by $0.0146 per pound or $0.046 per hundredweight for milk with 3.15 percent protein. A positive make allowance change for nonfat dry milk will result in a decline in the nonfat solids price. A one-cent change in the nonfat dry milk make allowance will result in a $0.0104 per pound or $0.094 per hundredweight opposite change in the nonfat solids price. A one-cent change in the cheese make allowance will cause an opposite change in the protein price by $0.0322 per pound or $0.1014 per hundredweight for milk with 3.15 percent protein. Finally, a one-cent change in the other solids (dry whey) make allowance will change the other solids price by $0.0103 per pound or $0.0567 per hundredweight in the opposite direction.

The factors used in the proposed formulas to compute component prices are determined by the quantity of the component in the commodity, except for protein, for which the Van Slyke yield formula is used. In the protein formula, the 1.32 and 1.582 are yield factors derived from the Van Slyke cheese yield formula. The 1.32 factor times the cheese price is used in the protein price formulas in many current Federal order component pricing plans. Both the 1.32 and 1.582 are determined by calculating the change in cheese yield if an additional tenth of a pound of protein or butterfat is contained in the milk, holding everything else constant. Accounting for the additional value of butterfat in cheese is necessary. This additional value is included with the protein price calculation as a means of quantifying the amount by which the value of butterfat in cheese exceeds the value of butterfat in butter, and because it is the casein in protein that forms the molecular matrix that retains the butterfat in cheese. The ratio of butterfat to protein is calculated from the protein and butterfat yield factors of 1.32 and 1.582.

The nonfat solids formula uses the 0.96 factor as the percent or quantity of nonfat solids in a pound of nonfat dry-milk. The 0.82 in the butterfat formula represents the percent or quantity of butterfat in one pound of butter. The 0.968 factor in the other solids formula represents the percentage of other solids in whey powder.

This proposed pricing system eliminates the need for regional yields based on regional differences in milk composition. The value of milk would be adjusted automatically based on the level of components contained in the milk in each order even though the component prices are the same nationally. This automatic adjustment means that handlers would pay the same price per pound of component but have differing per hundredweight values based on the milk component levels, creating equity in the minimum cost of milk used for manufacturing purposes.

An analysis of the basic formula price replacement requires several assumptions. Historic commodity price surveys are not available for all of the commodities. Prices used as substitutes for historic price survey data in this analysis include: the National Cheese Exchange 40-pound block prices for computing protein prices; the Chicago Mercantile Exchange Grade AA butter prices for computing butterfat prices; and the Dairy Market News Central States dry whey price for computing the other solids prices. Available survey prices used were nonfat dry milk prices published monthly by NASS in "Dairy Products".

One of the requirements of a basic formula price replacement, based on the assumption that the current basic formula price reflects the national supply and demand for manufacturing milk, is that the price level not deviate greatly from the current basic formula price. All comparisons are thus made to the current basic formula price.

Three different comparisons were examined. First, standard component levels were used to compute a hundredweight price that was compared to the current basic formula price. The standards for computing Class III prices were 3.5 percent butterfat, 3.15 percent protein, and 5.5 percent other solids. The standards for computing Class IV prices were 3.5 percent butterfat and 8.65 percent nonfat solids. The second comparison computed a per hundredweight price using actual component tests to determine an "at test" value. A third comparison computed hundredweight prices at 3.5 percent butterfat with protein and other solids adjusted to reflect the change in skim milk that occurs as the butterfat is changed from "at test" to 3.5 percent. The latter two comparisons: (1) eliminate any bias occurring from the use of "standard" component levels, and (2) address seasonality of component levels. These latter two comparisons require tests for protein and other solids and were only performed for months in which test data was available (September 1991 through May 1997).

Statistically, the Class III hundredweight price and the Class IV hundredweight price did not equal the current basic formula price for all comparisons. However, in absolute terms, the average differences were relatively small. When compared to the Class III and Class IV prices computed using the constants, the current basic formula price averaged $0.26 per hundredweight below the Class III price and $0.22 per hundredweight above the Class IV price during the September 1991 through May 1997 period. Comparing the Class III and Class IV prices at test to the current basic formula price at test, the Class III price averaged $0.35 per hundredweight above the current basic formula price while the Class IV price averaged $0.19 below the current basic formula price. The third comparison, in which the Class III and Class IV prices are adjusted to 3.5 percent butterfat, had the Class III price averaging $0.32 per hundredweight above the current BFP, while the Class IV price averaged $0.22 per hundredweight below the current BFP.

In addition to comparing the absolute Class III and Class IV prices to the current BFP, it is important to compare the relationship between the Class III and Class IV prices and the current basic formula price. Correlation coefficients were computed to statistically test the relationships between the Class III and Class IV prices and the current basic formula price. Statistically, the correlation coefficients are positive and significant, indicating positive relationships between the current basic formula price and the Class III and Class IV prices. The correlation coefficient between the Class III price and the current basic formula price is generally above .95 while the correlation coefficient between the Class IV price and the current basic formula price is approximately .75. These relationships are expected since the current basic formula price is weighted more heavily on milk used for the manufacture of cheese than on the value of milk used in the manufacture of butter and nonfat dry milk.

The proposed Class III and Class IV formulas are computed from product prices representing the use of milk in each class. That is, the Class III price would be derived from the value of cheese while the Class IV price would be derived from the value of butter and nonfat dry milk. Therefore the Class III and Class IV prices could, and would, vary significantly from the current BFP in individual months, reflecting the economic (supply and demand) conditions for cheese, butter, and nonfat dry milk. This situation is particularly true of the Class IV price. For example, during 1993 and 1994 the price of butter and nonfat dry milk was relatively low and stable compared to the price of cheese. The degree of variability of individual months' prices from the average for the year is expressed by a standard deviation. A lower standard deviation indicates that individual observations (in this case, monthly product prices) vary less from the mean than would be indicated by higher standard deviations. These statistical descriptions indicate the difference in variability of prices between butter/powder and cheese in 1993 and 1994. Further examples are included in the attached table.

During 1993 the proposed Class IV price would have averaged $11.51 with a standard deviation of .15, compared to the 1993 BFP average of $11.80 with a standard deviation of .72, and the average Class III price of $11.99 with a standard deviation of .83. In 1994, the proposed Class IV price would have averaged $11.15 with a standard deviation of .13, compared to the 1994 BFP average of $12.00 with a standard deviation of .57, and the average proposed Class III price of $12.18 with a standard deviation of .65. For 1996, when the economic conditions for butter and nonfat dry milk had changed, and the prices become more volatile, the proposed Class IV price averaged $13.82 with a standard deviation of 2.19 versus the 1996 BFP average of $13.39 with a standard deviation of 1.26, and the proposed Class III average price of $14.04 with a standard deviation of 1.33.

The Class III and Class IV prices clearly reflect the value of the milk used in the respective manufactured products, whereas the current basic formula price reflects primarily the value of milk used to manufacture cheese. Therefore, to the extent the proposed Class III and Class IV formulas deviate from the present level of the BFP, they may be more appropriate indicators of the value of milk used in those products than the current BFP.

Class I

The basic formula price replacement also will act as a mover for the Class I price in addition to establishing prices for milk used in Class III and Class IV. Several comments were filed relative to the use of the basic formula price replacement to establish the Class I price. These comments ranged from continuing the current system to establishing the Class I price independently of the basic formula price(s) for milk used in manufactured products. One comment suggested eliminating the basic formula price and pooling only the Class I and Class II differentials.

In comments suggesting that the Class I price not be computed from the basic formula price, commenters expressed the opinion that the Class I price should not be based on prices for milk used in manufactured products because these prices do not reflect the market for Class I milk. The comments noted that fluctuations in the Class I price do not result in corresponding changes in the retail price for fluid milk, particularly when the Class I price is declining. These commenters suggested including the retail milk price, as well as other factors, in computing the Class I price. The result would be to determine the Class I price from an economic formula.

Other commenters expressed the opinion that the Class I price should be more stable, and that with advance pricing it is very difficult to price fluid milk products because of large fluctuations in the butter market. (It is the Class I hundredweight price at 3.5 percent butterfat that is announced in advance. Fluctuations in the butterfat differential, which is not announced in advance, result in corresponding fluctuations in the skim price, which is predominately applicable to Class I

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milk.) Other commenters suggested that if the current basic formula price reflects the demand for fluid milk, the basic formula price and the Class I price should at least move in the same direction, rather than in opposite directions as they have done at times over the past several years. In addition, commenters expressed the opinion that the elasticity of demand for fluid milk products is significantly different from the elasticity of demand for manufactured products, justifying separate pricing of Class I and the basic formula price.

Proponents of eliminating the BFP and pooling only the Class I and Class II differentials explained that this proposal would eliminate the need and controversy of determining a basic formula price while still distributing the proceeds of the Class I and Class II markets to producers. The remainder of the producer value of milk would be determined directly by the market rather than from an administratively-established value for milk used in manufacturing.

The concept of pooling differentials only would eliminate the need to determine a basic formula price. However, the Act states that the Secretary shall establish minimum prices for milk and classify milk in accordance with the purpose for which it is used. The differential milk value would not be the minimum value nor differentiate between classes as specified in the Act. As interpreted herein, the Act does not provide for pooling differentials only and new legislative authority would be required in order to do so.

There certainly are some reasons for partially breaking the direct link between Class I prices and the BFP. This proposed rule includes a method for pricing Class I based on a six-month declining average of the higher of the Class III or Class IV prices. A complete separation should not occur since handlers compete for the same undifferentiated milk to use in Class I fluid milk products as well as in cheese and other manufactured dairy products. Therefore, an appropriate price relationship must be maintained between Class I and the manufacturing classes to assure an adequate supply of milk for Class I uses.

Partially breaking the direct link between Class I prices and the basic formula price replacement would reduce the volatility in producer prices. This rule proposes that the fixed Class I differential for each order be added to a 6-month declining average of the higher of Class III or Class IV skim prices and a 6-month declining average of the butterfat price. The skim milk price is determined for Class III by combining the result of multiplying 3.3 by the protein price and 5.7 by the other solids price, and for Class IV by multiplying the nonfat solids price by 9. These factors represent the quantities of the respective components in 100 pounds of skim milk. The use of a 6-month declining average would significantly decrease monthly Class I price volatility while minimally affecting the long-run price. Application of the 6-month declining average of the higher of the Class III or Class IV prices to the computation of Class I prices for the period February 1992 through May 1997 would have resulted in prices which averaged only two cents below the average price computed by adding a fixed differential to the higher of the Class III or Class IV skim milk price for the second preceding month.

The Class I butterfat price computation adds the Class I differential to the 6-month declining average of the butterfat price. Application of the Class I differential to both the skim and butterfat pounds rather than to total product pounds achieves true Class I advance pricing. A Class I handler consequently would know both the skim milk and butterfat prices in advance.

Several options were analyzed with respect to selecting the appropriate Class I price mover. The options included using the second preceding month's prices, using a moving average, and using a declining average. A declining average weights the current price most heavily, with the next most current price receiving a smaller weight, and so forth for the number of months included. For example, a three month declining average would weight the most current price by three, the next most current by 2, and the third price by 1, with the resulting sum divided by 6 to determine the average.

All options were evaluated on the ability to improve price stability while maintaining appropriate producer price signals. A Class I price mover using the higher of the Class III and Class IV skim milk prices for the second preceding month (most resembling the current mover) was the least stable option, with a standard deviation of 1.3188. A 12-month moving average of the higher of the Class III and Class IV skim milk prices resulted in the most price stability with a standard deviation of .8840. However, a 12-month moving average tends to react more slowly to economic signals since the most current month, which most nearly reflects current economic conditions, has a weight of only 8.3 percent. The 6-month declining average contributes a weight of 28.6 percent of the price to the most current month, while a 6-month moving average reflects only 16.7 percent of the current month's price in the average. By reflecting current economic conditions more rapidly than the longer moving averages, the 6-month declining average strikes an acceptable balance between responsiveness to current market values and the goal of stability.

The combination of advanced butterfat and skim milk pricing and a 6-month declining average will allow Class I handlers true advanced Class I pricing and increased price stability. Increased producer pay price stability as a result of increased Class I price stability will remain dependent on the Class I utilization of each market.

Improving price stability has other advantages. Dairy processors, consumers, and producers will benefit from less month-to-month variation in prices than is experienced under the current pricing mechanisms. Increased Class I price stability may result in lower prices to consumers.

As discussed previously, the price link between Class I use and Grade A milk used to manufacture Class III and Class IV products should be maintained since Grade A milk can be used for fluid uses as well as for manufacturing uses. Because handlers compete for the same milk for different uses, Class I prices should exceed Class III and Class IV prices to assure an adequate supply of milk for fluid use. Federal milk orders traditionally have viewed fluid use as having a higher value than manufacturing use. The proposed Class I price mover reflects this philosophy by using the higher of the Class III or Class IV price for computing the Class I price.

In some markets the use of a simple or even weighted average of the various manufacturing values would inhibit the ability of Class I handlers to procure milk supplies in competition with those plants that make the higher-valued of the manufactured products. Use of the higher of the Class III or Class IV price will make it more difficult to draw milk away from Class I uses for manufacturing. For example, if the Class IV price were used as the Class I mover there would be months in which the Class III price would be more than two dollars above the Class IV price. As a result, the Class I differential would have to be well over two dollars for the Class I price to remain above the Class III price. Certainly, in this scenario the economic decision would be to sell milk for Class III manufacturing, at least in those markets with a Class I differential below two dollars, since the price is above the Class I price. If the Class III price is used as the Class I price mover, the reverse situation of having the Class IV price well above the Class III price would result in the same problem. The potential of having a Class III or IV price in excess of the Class I price is not entirely eliminated by using the higher of the Class III or Class IV price because of the advance Class I pricing feature, and, to some extent, because of the effect of using a 6-month declining average on which to base the Class I price. However, use of the higher of the two manufacturing prices for each of the months averaged and weighting the average toward the most recent month should reduce the popential considerably, allowing Class I handlers to compete more effectively with manufacturing plants for fluid milk.

Class II

Under this proposed rule, the value of Class II milk would be determined by multiplying the pounds of nonfat solids in producer milk allocated to Class II by the nonfat solids price, the pounds of butterfat by the butterfat price, and the hundredweight of Class II skim milk by $0.70. Generally, the source of inputs alternative to producer milk for the manufacture of Class II products is dry milk products and butterfat. Basing the price of milk used to make Class II products on these alternative ingredients should help considerably to remedy a situation in which it is perceived that a separate product class for dry milk (Class III–A) has a competitive advantage over producer milk used to produce Class II products. The 70-cent differential between the Class IV and Class II skim milk prices is an estimate of the cost of drying condensed milk and re-wetting the solids to be used in Class II products. One commenter suggested that there should be a $1.00 difference between Class IV and Class II. Additional comments on the appropriate level of this differential, with supporting data, are encouraged.

The proposed rule would not provide for advance pricing on Class II milk, for several reasons. First, although the current Class II price is announced in advance on the basis of the second preceding month's BFP, it is announced as a hundredweight price for milk containing 3.5% butterfat. When the butterfat price changes between the time the price is announced and the month to which the price applies, the 3.5% hundredweight price is still applicable, but the balance between the skim milk price and the butterfat price may have shifted significantly. This phenomenon effectively eliminates the advance announcement feature of Class II pricing. For example, on July 3rd the June basic formula price was announced, establishing the August Class II price for milk containing 3.5 percent butterfat at $11.04 per hundredweight. The June butterfat differential was $0.114, which if applied to the $11.04 would have resulted in a butterfat price of $1.2105 per pound of butterfat and $0.0705 per pound of skim milk. However, the August butterfat differential was $0.106. The actual butterfat price would therefore have been $1.11333 per pound, and the actual skim milk price would have been $0.0733. This example illustrates that even though the Class II price is announced in advance, the price of the skim milk and butterfat used in Class II currently is not known in advance. The further a product varies from a 3.5 percent butterfat content, the greater will be the effect of the butterfat price changes between the announcement date and the month in which the milk is used.

Second, although advance pricing would be possible under the proposed component plan, a problem occurs in accounting for the skim milk and butterfat, particularly butterfat, in Class II products. Additional finished product testing and accountability, and therefore increased regulation, would be needed to account properly for butterfat used in Class II since it would have to have a different price than the butterfat, priced on a current basis, used in other manufacturing classes.

Third, pricing Class II on a current basis would allow the price relationship between the nonfat solids and butterfat in Class IV and Class II to remain constant from month to month. With a constant price relationship between these two classes, competition and substitution between milk and the Class IV products used to make Class II products will be based on the relative merit of the alternative inputs rather than on regulated price relationships. The use of product price formulas, for Class II and well as for Class IV, should allow industry participants to track price trends throughout the month, enabling them to estimate changes in price.

Quality Adjustments

This proposed rule would adjust producer payments for the somatic cell count of producers' milk under orders using multiple component pricing. Payments made by handlers for milk used in Class II, Class III, and Class IV should also be adjusted on the basis of the somatic cell count of the milk. A somatic cell adjustment is appropriate for several reasons. First, somatic cell levels are not only an indicator of general milk quality, but also are an indicator of the potential yield of milk in cheese and other products that require casein for their structure and body. Research has shown a direct link between increased somatic cell counts and decreased cheese yields. Milk with the same protein content but different somatic cell counts has different values due to the difference in cheese yields caused by varying somatic cell counts.

Second, many producers currently are subject to some type of multiple component pricing plan or quality premium program that adjusts their pay prices for somatic cell levels even if the order in which their milk is pooled does not incorporate such adjustments. Although many producers' returns are affected by the somatic cell count of the milk, there is little, if any, oversight of the testing for somatic cells if the order does not include pricing adjustments. Fair and accurate testing can be assured by incorporating multiple component pricing and somatic cell adjustments into Federal orders. Third, somatic cell counts have taken on greater importance in the world dairy market, as evidenced by the recent debate between the European Community and the United States over allowable somatic cell counts in milk used to make exported dairy products. It is now more important that the somatic cell level of producer milk be verifiable.

The somatic cell adjustment should apply on a hundredweight basis and be computed by subtracting the somatic cell count (in thousands) from 350 and multiplying the result by the product of .0005 times the monthly average cheese price. This level of adjustment has worked well in orders currently containing somatic cell adjustments, and is supported by data and research contained in Federal order milk hearing records.

Application of the Proposed Basic Formula Price

Under this proposed rule, producers in most Federal order markets would be paid on a multiple component basis since the basic formula price replacement is based on individual milk component prices. Producers will be paid for the pounds of butterfat, pounds of protein, pounds of other solids, a per hundredweight price known as the producer price differential, and a per hundredweight somatic cell adjustment. The producer price differential returns to producers their pro rata share of the proceeds of the classified pricing system. The butterfat price for producers would be the same butterfat price computed for Class III and Class

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IV butterfat. The protein and other solids prices would be the same protein and other solids prices computed for Class III.

Handler obligations and producer payments under the orders that are not proposed to have component pricing provisions would be based on hundredweight prices computed from these component prices.

All of the Federal milk orders will require changes to accommodate replacement of the current BFP with the proposed multiple component pricing plan or with its hundredweight price equivalent. There would no longer be a butterfat differential under any order, but a butterfat price. The same butterfat price would be used for butterfat in Class II, Class III, and Class IV, while a separate butterfat price, announced in advance, would apply to butterfat used in Class I.

For purposes of allocation of producer receipts the assumption will be made that the protein and other solids (nonfat solids) can not be separated easily from the skim milk. The protein and other solids will therefore be allocated proportionately with the skim milk based on the percentage of protein and other solids in the skim milk received from producers. Accordingly, the pounds of protein and other solids will be determined by multiplying the percent protein or percent other solids in the skim milk of the total producer milk received by the handler times the pounds of skim milk allocated to each class. The assumption that the nonfat components follow the skim milk may need to be revisited as the fractionation technology of milk continues to improve and the pricing system falls short of meeting the needs of marketing practices. At the present time such a problem is not apparent.

For the Market Administrator to compute the producer price differential, handlers will need to supply additional information on their monthly reports of receipts and utilization. Handlers that are filing reports in orders that currently have multiple component pricing and a somatic cell adjustment will see little or no change in their reporting requirements. Under orders that would be adopting component pricing for the first time, the pounds of protein, the pounds of other solids, and somatic cell information will be needed in addition to the product pounds and the butterfat currently reported. This data will be required from each handler for all producer receipts, including milk diverted by the handler, receipts from cooperatives as 9(c) handlers and, in some cases, receipts of bulk milk received by transfer or diversion.

Payments by handlers to cooperative associations for Class I milk would be calculated on the basis of Class I skim pounds times the Class I skim price plus the pounds of Class I butterfat times the Class I butterfat price. Payment for Class II milk would be paid for based on the Class II differential times the hundredweight of producer skim milk in Class II, the pounds of nonfat solids in Class II times the nonfat solids price, and the pounds of butterfat in Class II times the butterfat price. Class III milk will be paid for based on the pounds of protein in Class III times the protein price, the pounds of other solids in Class III times the other solids price, and the pounds of butterfat in Class III times the butterfat price. The pounds of nonfat solids in Class IV times the nonfat solids price, and the pounds of butterfat in Class IV times the butterfat price would be used to calculate obligations for Class IV milk. The appropriate somatic cell adjustment will apply to milk in Class II, Class III, and Class IV.

The Class I value of milk to handlers would be calculated by multiplying the skim pounds of producer milk in Class I times the Class I skim price plus the pounds of Class I butterfat times the Class I butterfat price. Class II milk value would be computed on the basis of the Class II differential times the hundredweight of producer skim milk allocated to Class II, the pounds of nonfat solids in Class II times the nonfat solids price, and the pounds of butterfat in Class II times the butterfat price. Class III milk value would be computed based on the pounds of protein in Class III times the protein price, the pounds of other solids in Class III times the other solids price, and the pounds of butterfat in Class III times the butterfat price. The pounds of nonfat solids in Class IV times the nonfat solids price, and the pounds of butterfat in Class IV times the butterfat price would comprise the value of Class IV producer milk. Also included would be the appropriate somatic cell adjustment applied to milk in Class II, Class III, and Class IV, the value of overage, the value of inventory reclassification, the value of other source receipts and receipts from unregulated supply plants allocated to Class I, and the value of handler location adjustments.

The handler's obligation to the producer settlement fund will be determined by subtracting from the handler's value of milk the following values: (a) the total pounds of producer milk times the producer price differential adjusted for location, (b) the total pounds of butterfat times the butterfat price, (c) the total pounds of protein times the protein price, (d) the total pounds of other solids times the other solids price, (e) the total value of the somatic cell adjustments to the producer milk, and (f) the value of other source milk at the producer price differential with any applicable location adjustment at the plant from which the milk was shipped deducted from the handler's value of milk.

Payments to producers traditionally have been made in two payments, a partial payment based, in most cases, on the prior month's Class III price and a final payment at the uniform price. This traditional payment system will continue, with any exceptions for local marketing practices noted in the regional discussions. The partial payment will be paid on a per hundredweight basis with the price equaling the combined value of the skim and butterfat prices for the lowest-priced class in the previous month. By computing the partial payment on a hundredweight basis, confusion about the use of partial month component test averages will be eliminated and handler's partial payroll processing costs should not be affected. Final payments to producers and for 9(c) milk will be based on: (a) the hundred weight of milk times the producer price differential adjusted for location, (b) the pounds of protein times the protein price, (c) the pounds of other solids times the other solids price, (d) the pounds of butterfat times the butterfat price, and (f) the somatic cell adjustment rate times the hundredweight of milk.

Since producers will be receiving payments based on the component levels of their milk, the payroll reports that handlers supply to producers and to the Market Administrator must reflect the basis for such payment. Therefore the handler will be required to supply the producer not only with the information currently supplied, but also: (a) the pounds of butterfat, protein, and other solids in the producer's milk, as well as the average somatic cell count of the producer's milk, and (b) the minimum rates that are required for payment for each pricing factor and, if a different rate is paid, the effective rate also. The requirement that payment factors be reported to producers when producers are paid currently exists in all of the orders. Addition of the component information is purely a conforming change. Administration of these provisions should not be changed from current practices.

With advance pricing of Class I and the inherent instability of the commodity markets there may be occasions when the computation of the producer price differential results in a value of zero or below. In such a situation, the producer price differential will be as computed.

The following table is of actual and proposed class prices and the proposed Class I price mover for the period of January 1994 through December 1997. The proposed prices are shown for information purposes only. These prices result from the strict application of the proposed formulas using current market situations. These prices should not be interpreted as prices that would have actually occurred throughout the data period because industry participants likely would have reacted differently to the proposed price levels than they reacted to the actual price levels.

Although the proposed formulas for calculating the Class III and Class IV prices resulted in prices fairly close to the BFP for the period over which data was collected and analyzed (September 1991 through May 1997), the price differences during the last six months of 1997 have been considerably greater. The proposed Class II price has averaged 83 cents over the BFP during July through December 1997, with a range of 63 cents to $1.00 more than the BFP. Over the same period the proposed Class IV price has averaged $1.01 more than the BFP, with differences ranging from 3 cents under to $1.97 over. Comments on this failure of the more recent data to fit the relationship between the BFP and the proposed Class III and IV prices observed over the earlier and longer period are invited.

A feature of the relationships between the proposed class prices that should be pointed out is that there is no assurance that the class prices will retain the relative values that their designations might imply. Because of the advance pricing feature for Class I, and because the Class I price would be based on a declining average of former months' prices, there is some possibility that the Class I price level for some markets may fall below the levels of one or more of the other classes. At the same time, basing the Class II price on the Class IV component values might, at times, result in the Class II price falling below the level of the Class III price. Comments on whether such changing price relationships are appropriate and, if not, how they might be avoided, are welcome.

The pricing formulas contained in this proposed rule are suggested as viable replacements for the current basic formula price for use in establishing minimum prices for milk and the components of milk. Comments should address whether the formulas suggested are appropriate or whether other pricing methods would be preferable. In addition, comments are welcomed on the specific details of the suggested pricing formulas. This would include comments on the appropriate commodity prices from which component prices are to be calculated, the method of obtaining such prices, the content of each component to be priced in the relevant commodity, the appropriate make allowance to be used in the determination of each component price, the optimum method of determining the Class I price mover, as well as the appropriate level of the Class II skim milk differential. Such comments should incorporate relevant data and rationale to support the adoption of factors that differ from those proposed herein.

ACTUAL CLASS PRICES, PROPOSED CLASS PRICES, AND PROPOSED CLASS I PRICE MOVER, BY MONTH

[January 1994 through December 1997]

Year and month	Basic formula price	Proposed Class I price mover *	Proposed Class III price	Class III-A price	Proposed Class IV price	Class II price	Proposed Class II price
	Dollars per cwt						
1994:							
January	$12.41	$12.55	$12.36	$10.22	$11.00	$13.25	$11.67
February	12.41	12.55	12.43	10.23	11.01	12.26	11.68
March	12.77	12.69	13.09	10.32	11.22	12.61	11.90
April	12.99	12.88	13.36	10.34	11.31	13.19	11.99
May	11.51	12.57	11.69	10.24	11.08	13.88	11.75
June	11.25	12.16	11.15	10.09	11.02	12.18	11.70
July	11.41	12.01	11.85	10.13	11.08	10.35	11.76
August	11.73	11.96	12.08	10.38	11.21	11.84	11.88
September	12.04	12.03	12.44	10.35	11.25	12.95	11.92
October	12.29	12.16	12.55	10.36	11.29	12.15	11.97
November	11.86	12.14	11.88	10.40	11.29	12.53	11.97
December	11.38	11.94	11.31	10.17	10.99	12.24	11.67
Average	12.00	12.30	12.18	10.27	11.15	12.45	11.82
1995:							
January	11.35	11.78	11.44	10.06	10.83	11.02	11.51
February	11.79	11.78	11.96	10.12	11.05	11.35	11.72
March	11.89	11.85	12.17	10.22	11.14	12.20	11.81
April	11.16	11.72	11.42	10.27	11.17	12.09	11.84
May	11.12	11.62	11.36	10.21	11.19	12.19	11.87
June	11.42	11.64	11.69	10.37	11.28	11.46	11.96
July	11.23	11.65	11.70	10.61	11.49	11.42	12.17
August	11.55	11.83	12.36	10.82	11.72	11.72	12.40
September	12.08	12.24	13.22	10.90	11.82	11.53	12.50
October	12.61	12.74	13.69	11.66	12.45	11.85	13.12
November	12.87	13.18	13.89	12.40	12.89	12.38	13.56
December	12.91	13.54	14.01	11.24	11.99	12.91	12.66
Average	11.83	12.13	12.41	10.74	11.58	11.84	12.26
1996:							
January	12.73	13.62	13.43	11.16	11.95	13.17	12.63
February	12.59	13.59	13.31	10.39	11.54	13.21	12.21
March	12.70	13.54	13.41	10.32	11.40	13.03	12.07

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ACTUAL CLASS PRICES, PROPOSED CLASS PRICES, AND PROPOSED CLASS I PRICE MOVER, BY MONTH—Continued

[January 1994 through December 1997]

Year and month	Basic formula price	Proposed Class I price mover *	Proposed Class III price	Class III-A price	Proposed Class IV price	Class II price	Proposed Class II price
April	13.09	13.61	13.88	10.52	11.55	12.89	12.23
May	13.77	13.80	14.32	11.90	12.66	13.00	13.34
June	13.92	14.23	14.18	15.12	15.24	13.39	15.91
July	14.49	14.91	14.86	16.01	16.33	14.07	17.01
August	14.94	15.46	15.71	15.82	16.33	14.22	17.00
September	15.37	16.10	16.31	15.85	17.17	14.79	17.84
October	14.13	16.21	15.04	14.94	15.91	15.24	16.58
November	11.61	15.42	12.45	12.18	13.12	15.67	13.80
December	11.34	14.56	11.59	11.75	12.67	14.43	13.34
Average	13.39	14.59	14.04	13.00	13.82	13.93	14.50
1997:							
January	11.94	13.77	11.92	11.50	12.48	11.91	13.16
February	12.46	13.36	12.36	12.36	13.18	11.64	13.86
March	12.49	13.25	12.47	12.78	13.73	12.24	14.40
April	11.44	13.12	11.51	12.10	13.06	12.76	13.73
May	10.70	12.97	10.69	11.56	12.49	12.79	13.17
June	10.74	12.98	10.76	12.22	12.98	11.74	13.66
July	10.86	12.93	11.51	12.06	12.83	11.00	13.50
August	12.07	* 12.94	13.07	11.88	12.69	11.04	13.36
September	12.79	13.06	13.42	11.87	12.76	11.16	13.43
October	12.83	13.43	13.71	13.50	14.27	12.37	14.95
November	12.96	13.89	13.88	14.01	14.79	13.09	15.47
December	13.29	14.08	14.23	12.46	13.53	13.13	14.20
Average	12.05	13.32	12.46	12.36	13.23	12.07	13.91
48-Month Avg	12.32	13.09	12.77	11.59	12.45	12.58	13.12

* To be used to calculate Class I price for second succeeding month.

3. Class I Pricing Structure

Although not required by the 1996 Farm Bill, the legislation provided authorization for the Secretary to review the Class I (fluid milk) price structure (as part of the consolidation of the orders) including the consideration of utilization rates and multiple basing points for developing a pricing system. In any event, the consolidation of orders requires the review of the pricing system because historically Class I pricing provisions, as well as other Federal order provisions, have been reviewed on an individual market basis.

The 1996 Farm Bill suggested two possible methods for establishing a Class I price structure, and USDA also specifically requested input from the public on this issue. As a result of these requests, more than 1400 letters were received that addressed Class I pricing. The ideas submitted were divided into several categories including: basic formula price (market driven) plus a differential established on location, demand-based, or flat; decoupling Class I pricing from the basic formula price; pooling Class I differentials only; basing Class I pricing on the cost of production; end product pricing for all classes of milk; and various other ideas including farm point pricing, a two-class milk system, and differentials reflecting only regional supply and demand conditions.

To assist in analyzing and developing a Class I price structure, USDA established a partnership with Cornell University (Cornell). Cornell's analysis, in part, was based on the U.S. Dairy Sector Simulator Model (USDSS). The USDSS is used to evaluate the geographic or 'spatial' value of milk and milk components across the U.S. under the assumption of globally efficient markets. Using 240 supply locations, 334 consumption locations, 622 dairy processing plant locations, 5 product groups, 2 milk components (fat and solids-not-fat) and transportation and distribution costs among all locations, USDSS determines mathematically consistent location values for milk and milk components. The model uses data from May and October 1995.

The supply and consumption at the county level are aggregated to geographic points-cities central to a multi-county farm or population density-to simplify a very complex problem. The production of milk and the consumption of dairy products are fixed at the various supply and consumption points used. Plant locations are restricted to those presently processing products but plant processing locations were not constrained with respect to the volume processed. Processing costs are assumed to be uniform between locations and across plant volumes (no economies of scale). Therefore, processing is allowed to move among available locations to find the least cost solution in terms of assembly from supply points through distribution to consumption points.

Transportation costs are categorized by raw milk assembly, interplant bulk shipments, refrigerated and non-refrigerated finished products. Transportation costs among regions reflect not only distance traveled, but also differences in wage rates and actual highway weight limit restrictions. While assembly costs and interplant bulk shipments are calculated using a linear cost function, the refrigerated and non-refrigerated finished product functions are non-linear. In fact, refrigerated costs (e.g., packaged milk) fell below raw milk assembly costs on an equivalent unit basis in many cases at distances more than 900 miles. Previous spatial modeling at Cornell had assumed constantly higher finished product transportation costs versus raw milk assembly costs for all distances.[22]

[22] Earlier research that has been reported elsewhere was based on an older version of the model. Present revisions have made substantial changes to the various transportation cost functions. In particular, distribution costs for refrigerated products were reduced substantially and now are on par with bulk milk assembly costs.

The output from the USDSS model provides information as to optimal processing locations and volumes at those locations, milk assembly, and intermediate and finished product distribution flows. It represents a least cost, or 'efficient' organization of the industry. Importantly for the research, the model provides the marginal values (i.e., the value of one more unit) of milk at each location. These values, technically known as shadow prices, are indicative of values that are consistent with the optimized solution. A shadow price on one unit of milk at any processing location can be interpreted as follows: If the processor at a particular location had one more unit of milk, the entire pattern of milk assembly, and product transportation could be reorganized in such a way that marketing costs, equal to the shadow price, could be saved. This notion of marginal value is consistent with economic theory on how prices are determined in a competitive market.

The significance of the shadow value in terms of milk price regulation may be stated. If the regulated price, or cost of milk, is arbitrarily set higher than the shadow price at a particular processing location, a lower cost solution could be found by processing more milk at other locations. This would imply higher transportation costs for either raw milk assembly, finished product distribution, or both. Such a result clearly leads to a higher cost, less efficient system. It is also contrary to what is generally thought of as "orderly" marketing of milk which is a fundamental reason for the existence of federal milk marketing orders.

It should be stressed that for the purposes of looking at Class I values, the calculated shadow prices provide information regarding the relationship of the prices between geographic locations. They do not provide guidance regarding the overall level of Class I price or differential values. That is, the model does not help us understand whether the Class I prices should be $14 in Minneapolis and $15 in New York City, or $15 in Minneapolis and $16 in New York City. However, it does tell us that the Class I price difference between the two locations should be about one dollar.

A relative merit of the USDSS model is the degree of detail available in the output. This detail is achieved through the careful assembly of spatially disaggregated data. However, it should be remembered that by its construction the USDSS is a 'model' and thus a simplification of a complex dairy industry. In actuality, both the level and relative values between locations would change virtually daily and would reflect a host of influences not represented in the model. That notwithstanding, the USDSS model provides an objective guidepost from which to compare current federal order differentials and to consider possible alternatives.

Several factors must be considered when selecting a replacement for the current [23] Class I price structure. First, a Class I price structure must be considered from a national, as well as a local or regional, perspective. As expected, many comments from industry address Class I pricing issues from a local or regional perspective. These comments provide valuable information about particular markets but do not consider the feasibility or impact of a local or regional issue on a national basis. While remaining mindful of local and regional concerns, USDA has also evaluated structures from a national perspective.

Second, a Class I price structure must recognize the location value of milk. Results from the USDSS model confirm that milk has value at location. As described earlier, the model provides shadow prices reflecting the relative values of milk and milk components at geographic locations. While shadow prices do not suggest Class I differentials for specific locations, they do provide a means to evaluate price relationships among locations.

Third, a Class I price structure must recognize all uses of milk. The classified pricing system contained in the Federal milk order program values milk for fluid use higher than milk used for soft or hard manufactured products. The higher Class I price encourages all milk to be used first to satisfy Class I needs. At the point where the cost of moving milk from an alternate location for Class I use is equal to the cost to supply milk for manufactured products, demand for manufactured products influences a market's ability to procure milk for Class I needs. Thus, all uses of milk must be considered when evaluating a national Class I pricing structure.

Finally, a Class I price structure must meet the requirements of the AMAA. The broad tenet of the AMAA is to establish and maintain orderly marketing conditions. For the Federal milk order program this is achieved primarily through classified pricing and pooling. With regard to pricing, it is recognized that the objective of the AMAA is to stabilize the marketplace with minimum prices, not to set market prices. In evaluating a national Class I pricing structure, consideration was given to whether the proposed prices reflect enough of the milk value to maintain sufficient revenue for producers to maintain an adequate supply of milk and provide equity to handlers with regard to raw product costs.

Of the numerous Class I price proposals submitted, seven broad categories of proposals were selected for further evaluation. These seven categories of proposals are all based on a basic formula price plus a differential. The seven categories of proposals were selected because they basically adhered to these four standards. The seven options considered in further detail are location specific differentials, flat differentials, relative use differentials, demand-based differentials, and decoupled baseline with adjusted differentials. These options will be explained in more detail later.

Several comments were received that suggested pooling only Class I differentials as a replacement for the current Class I price structure. This proposal was eliminated from further analysis because it would require new legislative authority to implement since the AMAA requires the Secretary to establish minimum prices for milk. This proposal would result in the elimination of all manufacturing milk classes. Processors and manufacturers would compete for available milk supplies providing producers with a basic competitive price for their milk.

The AMAA requires in 7 U.S.C. 608c(5)(A) that the Department classify "* * * milk in accordance with the form in which or the purpose for which it is used * * *" and establish "* * * minimum prices for each such use of classification." If the Department did not differentiate between the uses of milk as suggested in this proposal, it is difficult to determine how this would be accomplished. Moreover, Section 8c(5)(B) provides "* * * for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handlers to whom it is delivered * * *." This further indicates that the intent of the authorizing legislation is the classification and pricing of all producer deliveries. Otherwise, it would be difficult to pay producers a uniform price for all of their milk "* * * irrespective of the uses made of such milk by the individual handler to whom it is delivered."

Several proposals were submitted supporting "decoupling" Class I prices

[23] Any references to the "current" system of Class I prices or the "current" price structure are to be interpreted as those established in or after the final decision based on the 1990 national hearing issued March 5, 1993 (58 FR 12634).

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from Class III prices. The term "decoupling" has been construed in a number of ways; however, a review of the proposals indicates that the primary concern is about how the BFP influences Class I prices. The purist definition of decoupling is to determine Class I prices without relating them to the Class III price through differentials. This approach implies no relationship between the value of milk for fluid use and milk used for manufacturing. With this in mind, in general, decoupled prices could be determined in two ways: (1) Set Class I prices administratively; or (2) Set Class I prices based on a relationship that does not include the Class III price.

While it is true that milk for fluid use and milk for manufacturing use have different values, the realities of the characteristics of milk supply and demand, and the AMAA mandate "to provide an adequate supply of milk" for fluid use, suggests the necessity of a relationship between the price of milk for fluid use and milk used for manufacturing. Adopting a Class I price based on the purist definition of decoupling would not provide a relationship between fluid and manufacturing uses. In this context, decoupling Class I prices from Class III prices has been eliminated. However, the use of a "decoupled" price based on the Class III price is considered in further detail later.

Some comments were received recommending the use of end product pricing. One comment specifically recommended it on all classes of milk while others were unclear if end product pricing should apply to all classes of milk. Under end product pricing, milk components would be priced according to their value in the product mix.

A number of questions arise with the recommendation of end product pricing. Mathematically it is relatively easy to take commodity prices and work backward on the average. However, where is the appropriate "end" to work backward from? Nonfat dry milk, for example, is not an end product at the consumption level. Likewise, sweet butter can be used for ice cream, etc. Other questions raised by this option include: Is a Class I milk value properly discovered based on component value in manufacturing products? Do make allowances protect inefficiencies in the manufacturing sector and thereby transfer costs to the other sectors?

At this point in time there is no need to price Class I milk on end product components. The market system has limited ability to value additional nonfat solids in fluid milk sales. However, technology is on the horizon that may substantially change milk composition. If it results in a consumer acceptable product at some point in the future, end product pricing to establish fluid milk prices may need to be revisited.

Several comments supported the adoption of a cost of production factor in the determination of a Class I price. Milk prices are a result of the supply and demand conditions in the marketplace. The cost of producing milk is obviously a factor in the supply function. However, many other factors affect the price of milk. Demand influences such as household income levels, prices of substitutes or complements, and availability all have a significant impact on the price. Pricing milk solely on the cost of production lacks economic justification.

Numerous other Class I pricing proposals were presented to the Department. At this time they are not being further considered primarily because they are regionally based and are not feasibly adaptable on a nationwide basis, do not adhere to the requirements of the AMAA, do not recognize the location value of milk, or do not recognize all class uses of milk.

Of the seven categories of options selected for further review, six options were contained in the pricing reports issued by AMS Dairy Programs in March 1997. Based on the feedback received from these reports, another pricing option was submitted for consideration by USDA and has been included for further review. In addition, further analysis and development of the modified location-specific differentials (Option 1B), presented in the March pricing reports, has resulted in a revision of this proposal and it is now referred to as relative value-specific differentials. The seven options analyzed in further detail, representing a broad spectrum of views expressed by interested parties, are as follows:

Option 1A: Location-Specific Differentials—$1.60 per hundredweight fixed differential for three surplus zones (Upper Midwest, West, and Southwest) within a nine-zone national price surface, plus for the other six zones, an added component that reflects regional differences in the value of fluid and manufacturing milk.

Option 1B: Relative Value-Specific Differentials—Class I differentials are established based on a relationship between prices and geographic location. This option establishes the differential levels by equating the relative value-specific differential in Minneapolis, Minnesota, to current Class I differential level at this location of $1.20 per hundredweight. A location adjusted price differential for every county is established by evaluating differences between nearby Class I differential pricing points generated by the USDSS model.

Option 2: Relative Use Differentials—$1.60 per hundredweight fixed differential plus a formula-based differential driven by the ratio of Class I milk to all other uses of milk.

Option 3A: Flat Differentials—$1.60 per hundredweight flat differential, uniformly applied across all orders to generate an identical minimum Class I price at all locations.

Option 3B: Flat Differentials Modified by Class I Use—$2.00 per hundredweight differential in markets where Class I utilization is less than 70 percent on an annual basis and a differential equal to $2.00+$0.075 (Class I use % − 70%) in markets where the Class I utilization is equal to or exceeds 70 percent.

Option 4: Demand-based Differentials—$1.00 per hundredweight fixed differential plus a transportation credit based on location of reserve milk supplies.

Option 5: Decoupled Baseline Class I Prices with Adjustors—Baseline 1996 Class I prices adjusted by a supply/demand adjustor that uses a 12-month rolling average utilization to determine a 2 percent change that results in a $0.12 per hundred weight price adjustment. A short-term cost of production adjustor may also be applied to this option.

Evaluation Criteria

In order to evaluate the Class I pricing options, nine performance criteria, based upon the regulatory objectives and limitations of the AMAA, were developed. Economic principles of efficiency and equity were used to describe market performance. These evaluation criteria established an initial framework for analysis of the Class I pricing options. The nine evaluation criteria were divided into two categories, objective and administrative. Six objective criteria were identified and defined as follows:

1. Ensure an adequate supply of milk for fluid use. Class I price levels need to provide a sufficient price signal to maintain an adequate supply of milk for fluid use. This supply level can be achieved through either the movement of milk to where it is needed, increased production, or some combination of both.

2. Recognize quality (Grade A) value of milk. Grade A milk is required for fluid use. Additional costs of obtaining and maintaining Grade A status need to be reflected in Class I prices.

3. Provide appropriate market signals. A Class I price should send timely signals to the market regarding supply/demand conditions.

4. Recognize value of milk at location. Basic economic theory, validated by actual market observations and University-based research, affirms that milk for Class I use has a different value at different locations. This value needs to be reflected in the Class I price in order for the system to recognize and resemble the market rather than interfere with the market.

5. Facilitate orderly marketing with coordinated system of prices. A system of Class I prices needs to be coordinated on a national level. Appropriate levels of prices will provide alignment both within and among marketing areas. This coordination is necessary for the efficient and orderly marketing of milk.

6. Recognize handler equity with regard to raw product costs. Appropriate levels of Class I prices provide known and visible prices at all locations thereby ensuring that handlers are able to compete for available milk supplies on an equitable basis.

Three administrative criteria were identified and described as follows:

1. Minimize regulatory burden. The Class I price structure should not significantly increase the burden on handlers, particularly small businesses. This would include increased reporting requirements and recordkeeping, as well as possible increases in administrative assessment should Market Administrators be required to manage a more complex regulatory system.

2. Minimize impact on small businesses. The Class I price should be set at a level that does not disadvantage small businesses in competition with large businesses.

3. Provide long-term viability. The Class I price structure should be expected to operate for an extended time period without major modifications.

The nine evaluation criteria listed above were used to qualitatively evaluate each of the seven options. Each option was evaluated based on how the option performed compared to the current system, either better than, worse than, or the same as, for each performance criterion. The results of the qualitative analysis provided a preliminary framework from which to identify options that would be analyzed quantitatively using a multi-regional model developed by the Economic Research Service of the Department.

Based on the qualitative analysis, four of the seven options were eliminated from further analysis. These options were: Option 2—Relative Use Differentials, Option 3A—Flat Differentials, Option 3B—Modified Flat Differentials, and Option 4—Demand-Based Differentials. These options were eliminated for various reasons including failure to adhere to AMAA, creation of disorderly marketing conditions, and impacts on small businesses. A discussion of the four eliminated options, including the evaluation against the evaluation criteria follows.

Option 2: Relative Use Differential. Utilization-based differentials were discussed extensively during the Farm Bill debate and have been discussed by the industry for several years. The 1996 Farm Bill specifically authorizes the Secretary to consider utilization rates when establishing Class I differentials. This is perceived to be based on an order's marketwide utilization. A utilization-based differential would allow Class I differentials to adjust automatically with changing market supply and demand conditions. An increased demand for fluid milk relative to supply would generate an increase in the Class I differential. Hence an incentive is provided to increase local production or attract alternate supplies. Likewise, if milk supplies increase in relation to fluid sales, the differential would adjust downward signaling to producers and handlers that milk is more than adequate to meet the local needs.

One possible option of a utilization-based differential is relative use. Under this concept, a marketing area's differential would be determined by a formula based on the ratio of Class I milk to milk in all other classes. In order to prevent widely fluctuating prices, a percentage limit could be placed on differential changes to temper adjustments based on market supply and demand conditions. For this analysis, a limit of 25 percent has been applied. The relative use ratio could be computed on a monthly, quarterly, or annually moving average basis.

Using this concept, the relative use Class I differential would equal $1.60 per hundredweight plus the relative use ratio times $1.00. A 25 percent limit would be applied so the new differential would not exceed 125 percent of the current differential nor fall to less than 75 percent of the current differential. The $1.60 base differential was selected to be comparable with other options considered in this rule such as Option 1A, location-specific differentials. Further discussion of the $1.60 base differential will be addressed under the discussion of Option 1A later in this proposed rule.

The table below illustrates the Class I differentials under the proposed consolidated orders. These differentials are not location-specific within the applicable orders. For purposes of this analysis and to provide a basis for comparison within the proposed consolidated orders, a weighted average Class I differential for each order has been calculated, based on October 1995 data. This weighted average differential is computed by multiplying the percentage of Class I milk in each of the current orders that comprise the consolidated order by the applicable current order differential and adding the resulting amounts. This weighted average differential is not location-specific for the consolidated orders.

TABLE 1.—CLASS I DIFFERENTIALS IN PROPOSED ORDERS BASED ON OCTOBER 1995 DATA UNDER OPTION 2—RELATIVE USE

Proposed order [1]	Relative use ratio [2] (%)	+ $1.60=Class I diff. ($/cwt) [3]	Weighted average diff. ($/cwt) [3]	Maximum diff. range (75%–125%)	New diff. ($/cwt)	Change in diff. ($/cwt)
Northeast	0.92	2.52	3.14	2.35–3.93	2.52	−0.62
Appalachian	4.60	6.20	2.79	2.09–3.49	3.49	0.70
Southeast	5.76	7.36	3.04	2.28–3.80	3.80	0.76
Florida	7.54	9.14	3.89	2.92–4.86	4.86	0.97
Mideast	1.26	2.86	1.91	1.43–2.39	2.39	0.48
Central	0.95	2.55	2.52	1.89–3.15	2.55	0.03
Upper Midwest	0.53	2.13	1.32	0.99–1.65	1.65	0.33
Southwest	0.93	2.53	3.01	2.26–3.76	2.53	−0.48
AZ-Las Vegas	1.04	2.64	2.46	1.85–3.08	2.64	0.18

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TABLE 1.—CLASS I DIFFERENTIALS IN PROPOSED ORDERS BASED ON OCTOBER 1995 DATA UNDER OPTION 2—RELATIVE USE—Continued

Proposed order [1]	Relative use ratio [2] (%)	+ $1.60=Class I diff. ($/cwt) [3]	Weighted average diff. ($/cwt) [3]	Maximum diff. range (75%–125%)	New diff. ($/cwt)	Change in diff. ($/cwt)
Western	0.42	2.02	1.84	1.38–2.30	2.02	0.18
Pacific NW	0.55	2.15	1.90	1.43–2.38	2.15	0.25

[1] Based on the 11 proposed orders contained in this proposed rule.
[2] Relative use ratio = Class I÷all other uses.
[3] Weighted average differential for the consolidated order is computed by summing the product of the percentage of Class I milk in each current order multiplied by the applicable current order differential.

Analysis Based on Evaluation Criteria

In one of the nine criteria, Option 2 may perform slightly better than the current system. In five of the nine criteria, Option 2 performs poorer than the current system, while in the remaining three criteria, it performed about the same as the current system.

Option 2 was evaluated against the objective criteria as follows:

1. Ensure an adequate supply of milk for fluid use. In terms of ensuring an adequate supply of milk for the fluid market, Option 2 provides for the appropriate minimum price levels necessary to bring forth adequate milk supplies to meet the needs of the fluid market. Based on the comparisons of weighted average current differentials versus the relative use ratio differentials, eight of the proposed orders would receive moderate to significant increases while three markets would have slight to significant decreases. Differential changes of these magnitudes could have some effect on milk supplies in some regions. However, the availability of milk for fluid use would not be significantly different from what exists today.

2. Recognize quality (Grade A) value of milk. Option 2 does recognize the quality value (Grade A) of milk with the $1.60 base differential.

3. Provide appropriate market signals. One of the benefits of a self-adjusting system is to provide producers with a better signal of the market conditions. In theory, when supplies increase in relation to fluid demand, the Class I utilization would decrease precipitating a downward adjustment in the differential thereby signaling producers to decrease production. Likewise, if supplies decrease relative to demand, the Class I utilization would increase precipitating an upward adjustment in the differential signaling producers to increase production and/or signaling processors of the need to reach further for the milk supply. Option 2 provides for a faster market signal than the current system of simply pooling the various classes of milk.

Option 2 does not recognize that utilization percentages may be affected by factors such as decisions to pool or not pool manufacturing plants, shifting supplies among markets, market incentives or disincentives such as transportation credits, and pool plant and producer definitions. These may or may not be appropriate factors to consider in determining supply/demand conditions accurately but these factors will directly impact the relative use ratio.

4. Recognize value of milk at location. Cornell's economic research indicates that milk has different values based on location and use. The relative use concept suggests that a market has only some average value and not a value at any specific location. Markets such as the Arizona-Las Vegas and Southwest would have similar utilizations but are quite different in size and in the distance milk must be hauled to provide sufficient supplies for the fluid market. Phoenix, Arizona handlers receive milk from relatively close supplies, less than 50 miles, whereas the San Antonio, Texas handlers must reach out 200–500 miles and Houston, Texas handlers must reach out 270–650 miles to adequately supply their total needs. The relative use concept does not take this into account. Location adjustments could not overcome this deficiency since they would create disorderly marketing conditions at points where they bordered on neighboring orders. Market structure with regard to supply areas and demand centers must be considered, thus Option 2 performs worse than the current system.

5. Facilitate orderly marketing with coordinated system of prices. The need for coordination of prices between and among markets is not recognized under the relative use concept. Markets with high Class I utilization could be adjacent to low utilization markets. Prices in adjacent markets need to be aligned to facilitate orderly marketing conditions. If utilization is the primary criteria for establishing Class I differentials, price alignment may not exist between adjacent markets creating handler inequity and disorderly marketing conditions.

6. Recognize handler equity with regard to raw product costs. Markets can adjust rapidly depending on pooling decisions of cooperatives. In 1996, the New Mexico-West Texas Order had a Class I utilization high of 52.1% in May falling to a low of 23.9% in December. Heavy manufacturing markets regularly have larger volumes of milk depooled during periods of rapidly increasing prices. If Class I differentials were allowed to adjust too frequently, price alignments established between and among markets would disappear causing inequity among competing handlers. To prevent extreme differential changes, percentage limits are proposed to limit differential changes. However when a change is warranted, a significant price adjustment could occur requiring realignment of zones between adjacent markets. Thus, the main attraction of this concept, the self-adjustment of differentials, actually creates problems with price alignment and handler equity between orders.

Option 2 was evaluated against the administrative criteria as follows:

1. Minimize regulatory burden. Option 2 would not likely increase the regulatory burden on handlers. Differentials would be set until market conditions warranted a change. No additional reporting would be necessary to implement such a system.

2. Minimize impact on small businesses. Small handlers in markets where Class I differentials are decreasing might be somewhat disadvantaged since over-order charges would probably increase. This tends to affect small and large handlers disproportionately. Small milk producers in these markets could also experience a small decline in their pay prices.

3. Provide long-term viability. As supply and demand conditions in markets adjust to the point where differentials need to be changed, administrative input may be required to align markets and maintain handler equity. Thus, the system becomes an administered system such as we have today rather than a self-adjusting procedure. This fact, as well as the other shortcomings, mentioned tends to negate its appeal as a viable long-term option.

Although Option 2 appears to perform better than the current system in providing appropriate market signals to producers, this becomes a major obstacle with this proposal. In fact, it is because of this self-adjustment that Option 2 performs poorer than the current system in five of the criteria. Even though independent of other factors Option 2 provides more appropriate price signals, it does so in a way that will have significant impacts on certain regions of the country. The projected impacts of Option 2 by region are discussed below:

Central, Mideast, and Upper Midwest. Class I differentials are estimated to increase from $0.00–$0.48 in the Central, Mideast, and Midwestern regions. Currently, over-order charges are significantly higher and likely would largely absorb these differential increases. Impacts on producers and processors would be minimal.

Northeast. The Northeastern marketing area would be affected significantly by the adoption of a relative use differential. Processors would pay on average $0.58 less for Class I milk as compared to the current system. Producers would likely turn to over-order charges to try to make up for their lost revenue. Historically, this region has had difficulty maintaining a large over-order premium structure and assumptions are that this would continue. Producer incomes would decrease possibly impacting the total market's milk supplies.

Southeast. Large increases in Class I differentials would occur in the orders located in the Southeast. Class I handlers would experience increased competition from lower cost handlers in nearby markets. Producers in these markets would probably not experience any significant gains from these increased differentials due to the over-order premiums that are currently being charged.

Southwest. The Southwest market is the only other market to experience decreases in differentials. Over-order charges currently are relatively small in this market and an attempt to increase the charges would likely occur. However, producer groups have had the same difficulty as the Northeast in maintaining an over-order structure. A $0.48 drop in the average differential in the Southwestern market would surely be felt by producers and accelerate the exodus of producers from the East Texas supply area. Producers in New Mexico and West Texas would also be affected, but the impact may not be as severe.

Arizona-Las Vegas, Western, and Pacific Northwest. In the Western regions, Class I differentials are expected to increase slightly. Over-order charges in these markets are not as great as in the Midwestern markets and would probably be unable to totally absorb any significant Class I price increase. Producer pay prices and Class I handler costs would increase slightly.

Because of the limited effect of overall Class I differential changes, Option 2 would have a minimal effect on small businesses, both producers and processors. Areas that have decreases in Class I differentials would have a minimal negative impact on producer pay prices. The majority of producers impacted in these regions are categorized as small businesses. On the other hand, handlers in areas with larger increases in the Class I differentials would experience increased competition from lower cost regions. Location advantages of some small handlers would disappear while others emerge. Handler equity in these competing markets could erode placing some small handlers under greater risk.

It is difficult to quantify the impact to consumers under this option. Federal Order Class I differentials around the country would likely increase slightly. Over-order charges may decline to offset this increase. It is expected that overall handler costs would change slightly under this option resulting in little change to consumer prices.

Although this option would provide more appropriate and timely market signals to producers, setting Class I differentials based solely on utilization presents price alignment problems. Because Class I differentials would be allowed to change independently from adjacent markets, this would result in significant equity problems among competing handlers thus impacting small businesses on a continual basis. Consequently, this proposal would lead to disorderly marketing conditions throughout the Federal order program and is not given further consideration as a possible Class I price structure.

Option 3A: Flat Differential. Under this option, an equal differential would be applied in all orders resulting in an identical minimum Class I price at all locations. For example, the Class I differential in Atlanta, Georgia, would be the same as the Class I differential in Minneapolis, Minnesota. For comparison to other Class I price options discussed in this proposed rule, a flat $1.60 differential level has been evaluated even though some public comments proposed flat differentials of $2.00 or more per hundredweight.

The concept of flat Class I differentials across all orders is largely predicated on the view that current Class I differential levels are too high in many parts of the country. Accordingly, regionally differentiated Class I prices are generally unwarranted and have led to or have not been properly adjusted to reflect changes in milk production. The most recent consideration of a flat Class I price plan was considered during a National Hearing held in Fall 1990.

Proponents of flat Class I pricing maintain that the marketplace should establish more of the value required to draw milk to fluid outlets than is reflected in the minimum prices established by the current Class I system. Increased reliance on the marketplace in determining a price has appeal because the competitive normal marketplace, where there are many buyers and sellers with equal market knowledge and power, is generally viewed as the most efficient determinant of values and prices.

The following table illustrates the differential-level impact on the suggested consolidated orders based on October 1995 data assuming a flat differential level of $1.60. As indicated in the table, a flat $1.60 differential level is significantly less than the calculated weighted average differential level in most marketing areas, except for the suggested Upper Midwest regional order.

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TABLE 2.—CLASS I DIFFERENTIALS IN PROPOSED ORDERS BASED ON OCTOBER 1995 DATA UNDER OPTION 3A—FLAT DIFFERENTIALS

Suggested consolidated order [1]	New differential ($/cwt)	Weighted average differential ($/cwt) [2]	Change ($/cwt)
Northeast	1.60	3.14	−1.54
Appalachian	1.60	2.79	−1.19
Southeast	1.60	3.04	−1.44
Florida	1.60	3.89	−2.29
Mideast	1.60	1.91	−0.31
Central	1.60	2.52	−0.92
Up Midwest	1.60	1.32	0.28
Southwest	1.60	3.01	−1.41
Arizona-Las Vegas	1.60	2.46	−0.86
Western	1.60	1.84	−0.24
Pacific NW	1.60	1.90	−0.30

[1] Based on the 11 proposed orders contained in this proposed rule.
[2] Weighted average differential for the consolidated orders is computed by summing the product of the percentage of Class I milk in each current order multiplied by the applicable current order differential.

Analysis Based on Evaluation Criteria

In two of the nine evaluation criteria, the concept of a flat Class I price structure performs equal to the current Class I system. In all the other criteria, a flat Class I price structure performs worse than the current Class I price system.

Option 3A was evaluated against the objective criteria as follows:

1. Ensure an adequate supply of milk for fluid use. A flat Class I price structure performs worse than the current Class I price structure in ensuring an adequate supply of milk for fluid use because it ignores the fundamental fact that Class I milk has different values depending on its location. As a result, the marketplace would have to establish all of the appropriate values of milk within and between markets. The current method of establishing Class I differentials reflects the sufficiency and availability of local milk supplies together with valuing alternative milk supplies. Because some milk is produced just about everywhere, a Class I differential needs only to be high enough to bring forth enough milk—"local" and milk from alternative and more distant supply areas—at any location to meet Class I demand. The cost of transporting alternative milk supplies into an area places an upper limit constraint on the value of milk at that location and thus provides a measure by which to evaluate whether or not the differential level established is reasonable.

Under a flat Class I price plan, the assumption is made that the minimum differential value of Class I milk is the same at all locations. Reforming the Class I price structure should continue to recognize the observable and measurable fact that Class I milk has a location value. At all locations, the Class I differential value needs to represent a reasonable sum of such factors that, taken as a whole, accomplish the goal of assuring an adequate supply of milk to meet demands. In this context, there does not appear to be a sufficient economic rationale to apply a flat Class I differential value that may be appropriate to one market and apply it to all other markets. Doing so would not reflect the important and measurable characteristic that fluid milk takes on different relative value depending on where it is located and where it needs to go to satisfy demand. Therefore, the Class I milk pricing plan needs to establish a price level that provides sufficient economic incentives for the movement of Class I milk. Such a basis is consistent with the supply and demand pricing criteria of the AMAA.

2. Recognize quality (Grade A) value of milk. A flat Class I price structure does recognize the quality value (Grade A) of milk with the $1.60 flat differential.

3. Provide appropriate market signals. Because a flat Class I price option does not recognize the observable fact that milk has differing location values, it cannot provide the appropriate price signals to ensure that, in all markets, the differential level is sufficiently high enough to bring forth the amount of milk needed to satisfy demand. Additionally, a flat Class I price option does not provide appropriate market signals on how a deficit market can obtain needed supplemental milk supplies. For example, if the Class I price in Chicago is the same as Atlanta, where supplemental supplies are often needed, a flat Class I price provides no economic incentive to absorb the producer-incurred cost of moving milk to Atlanta. In this example, the total price incentives that would encourage milk to move must come from outside the pricing structure.

The following real-world intra-market example demonstrates problems with flat Class I pricing. In Texas, the cities of Dallas and Houston are major milk consumption centers. Dallas is located nearly equidistant (about 70 miles) from two major milk supply areas to the east and south. Houston is located much further (about 255 miles) from the same two milk supply areas and, like Dallas, relies on the same two milksheds for satisfying its Class I demands. A flat Class I price surface applicable to both cities does not, in and of itself, provide the price difference necessary to cause producers to deliver their milk to Houston. The additional dollars (value) that would need to attach to milk to cause it to be delivered to Houston would fall outside of the regulated price. Producers might not share in the value above the minimum regulated price if handlers have the market power to play one producer against another to lower prices. Because this additional value is not represented in a regulated price charged to handlers, a degree of market power is returned to handlers. Those producers located nearer to Houston would have no marketing alternative since they could only haul their milk greater distances to a manufacturing outlet for surplus disposal. Additionally, handlers at Houston would also be less certain of the price their competitors were paying for milk than they were with a regulated price that more adequately reflected different location values of milk. Location adjustments, which address such problems, could not be used under a flat differential option since they would create disorderly marketing conditions at points where they bordered on neighboring orders.

Examining an inter-market example moves the analysis to one that is more regional and national in scope. Using prevailing Class I utilization rates between the Ohio and Carolina markets at an assumed flat Class I differential of $2.00 results in nearly no change in the blend price to producers in the Ohio market. However, in the higher Class I use Carolina market, producer blend prices are reduced by 81 cents, changing the blend price differences between the two markets from $1.27 (current blend price difference) to only 46 cents. Since the blend price provides the price signal to producers in a market to alter production, and should provide the incentive to move milk from the Ohio market to the Carolina market, the 46-cent price difference is simply not enough of a price signal difference to achieve this outcome.

4. Recognize value of milk at location. Flat Class I pricing does not fully recognize that milk has value at location. Instead, it assumes that all Class I milk has the same value at any location. To the extent that milk would take on additional value above a specified flat differential, that additional value would be determined by the marketplace and be outside of the minimum regulated value which is shared with producers. Research conducted by Cornell University suggests that Class I prices would vary in the absence of regulation on the basis of supply and demand conditions under assumptions of a rational, competitive market. Results of the USDSS model conclude that there is a location value for milk used in fluid uses and that value does not resemble a flat Class I price surface. Because flat Class I pricing does not fully recognize the value of milk at location, it can only be concluded that it does not perform as well as the current Class I price system.

5. Facilitate orderly marketing with a coordinated system of Class I prices. Flat Class I pricing does not assure orderly marketing with a coordinated system of Class I prices. Flat Class I pricing sets an equal value on Class I milk in all markets even when such a price is not warranted. Flat Class I pricing does not provide for coordination of Class I milk value on a national scale because the location value is not reflected in the regulated price but left for the producers and processors to individually negotiate.

6. Recognize handler equity with regard to raw product costs. Class I values that are location-based assure that handlers' costs for milk are more equitable and uniform. Because differential levels largely represent location value, adjusting the level by location relative to all other locations from the lowest point level (price alignment), assures that all handlers are paying the same relative price for their milk supply. The need or incentive for handlers to compete on the basis of the cost of a milk supply, otherwise a burden borne by dairy farmers, is mitigated because of the location adjustments on the minimum procurement prices paid by their competitors. Mitigated also is the possible disorder from price uncertainty for both handlers and producers. Because milk is valued on an equitable basis, handlers compete with each other on the basis of plant operations and on the basis of service to their customers.

Option 3A was evaluated against the administrative criteria as follows:

1. Minimize regulatory burden. The flat differential price structure performs equal to the current system in minimizing the regulatory burden on handlers because no additional information would be required under this option than is currently required.

2. Minimize the impact on small businesses. Flat Class I pricing can impact small businesses, both producers and handlers. Flat Class I pricing changes the competitive relationship between large and small handlers. Under the current Class I pricing system all handlers, regardless of size, compete equally on the cost of their milk supply. Under a flat pricing system, a large handler could have a greater competitive advantage in procuring a milk supply because it may be able to, in the short run, offer producers a price somewhat above the flat minimum level or above what a small handler is able to pay. Over a longer time period, the small handler might not be able to procure a supply of milk.

3. Provide long-term viability. An important objective in the reform of the Class I price structure is that the resulting price structure be viable for a longer period of time. Given the potential competitive problems associated with flat Class I pricing addressed above, a flat Class I price structure would seem to fail the criterion of offering an alternative that would endure.

Flat Class I pricing performs worse than the current system, raising a number of issues regarding its impact on dairy farmers. As Table 2 suggests, there is significantly less Class I revenue that could be shared with producers resulting in a lowering of producer blend prices everywhere. Only in the proposed Upper Midwest order would there be an increase, all other areas would lose revenue. However, even with the increase in the Class I differential in the Upper Midwest, given the relatively low Class I utilization of this market the actual change in producer blend prices would be much smaller than the change in the differential.

As discussed earlier, flat Class I pricing could effect small businesses, both producers and handlers, depending on where they are located and the magnitude of change in the Class I differential. Plants located further from significant surplus regions would experience losses. Similarly producers more distantly located would also experience significant revenue losses. Apparent advantages of a flat Class I price plan are the initial equity among all producers regardless of their location and the short-run potential for lower prices to consumers in areas that would experience a lowering of Class I prices. The long-run effect on producers in distant and generally milk deficit markets is unclear.

Because flat Class I pricing does not ensure an adequate supply of milk for fluid uses as well as the current system, it is unclear that over the long run consumers would actually enjoy lower milk prices. Should a flat Class I price structure negatively affect producer income, there is diminished certainty that the order program would ensure consumers with an adequate supply of milk at reasonable prices.

A problem in employing a flat Class I differential was demonstrated in the intra-market example discussed previously. Producers might not share in the value above the minimum regulated prices which more fully represents the value of Class I milk because handlers have the market power to obtain price concessions from producers. Likewise, those producers who are located more distant from the primary milk sheds could have reduced market power since the alternative would be to haul their milk greater distances to a manufacturing outlet for surplus disposal. Handlers at greater distances from the milkshed would be less certain of the price their competitors are paying for their milk supply than they were with a regulated price that more fully reflected the value of milk at location.

In the inter-market example also discussed earlier, flat Class I pricing introduces another variable, Class I utilization rates, into the increased market power transferred from the producer to the handler. Flat Class I pricing combined with Class I

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utilization rates results in an insignificant change in the blend price paid to producers in an adequately supplied market. However, in higher Class I utilization and deficit markets, producer blend prices are significantly reduced. Since the blend price provides the price signal to producers in a market to alter production based on demand, and provides the incentive to move needed milk between two markets, the narrower price difference may not provide an adequate price difference for more adequately supplied markets to ship needed milk to deficit markets.

There are few real experiences on what might happen under a system of flat Class I differentials. The Mississippi milk order was voted out during May 1973 (38 FR 8751) through March 1976. In the absence of the order, "flat" pricing replaced classified pricing. Sharp variations in prices paid to producers by individual handlers developed as sales shifted from handler to handler within the market. Producers shifted from handler to handler, and milk that would otherwise have been used for manufacturing purposes was brought in from outside the state at lower prices and displaced the Class I marketings of local producers.

Finally, adoption of a flat Class I pricing plan was rejected by the Secretary in the recommended and final decisions of the 1990 National Hearing because it did not meet the supply and demand pricing standard of the AMAA, namely § 608c(18). In light of this statutory requirement that Federal milk order prices be established based on economic conditions that affect supply and demand, flat Class I pricing has no legal foundation.

Option 3B: Flat Differential Modified by Class I Use.

Under this option, an equal differential of $2.00 per hundredweight would apply in an order if the Class I use is less than or equal to 70 percent. If Class I use exceeds 70 percent, the Class I differential in an order would be $2.00 + $0.075* (Class I use percent—70 percent). This option is based on the flat Class I price concept modified by the relative use price concept. This option assumes that markets with Class I use equal to or below 70 percent have an adequate reserve supply of milk to meet fluid needs and that markets with Class I use above 70 percent require additional milk supplies to meet fluid demand. This 70 percent figure was merely selected for illustrative purposes and no analysis has been done to determine if this is an appropriate percentage.

A level of $2.00 per hundredweight for the flat portion of the differential was selected because such a level has been suggested in comments concerning the flat Class I price concept.

The differentials resulting from this option are listed in the table below. As with the relative use option (Option 2), the estimated Class I differentials presented in the table are not entirely location-specific within the consolidated order. To provide a basis for comparison, a weighted average differential for each order has been calculated based on current differentials for the consolidated orders using October 1995 data. These differentials are also not location-specific for the consolidated orders.

TABLE 3.—CLASS I DIFFERENTIALS IN PROPOSED ORDERS BASED ON OCTOBER 1995 DATA UNDER OPTION 3B—FLAT DIFFERENTIAL MODIFIED BY CLASS I USE

Proposed order [1]	Class I use (percent)	New differential ($/cwt)	Weighted avg diff [2] ($/cwt)	Change ($/cwt)
Northeast	47.9	2.00	3.14	−1.14
Appalachian	81.5	2.86	2.79	0.07
Southeast	85.2	3.07	3.04	+0.03
Florida	88.3	3.37	3.89	−0.52
Mideast	55.8	2.00	1.91	0.09
Central	48.8	2.00	2.52	−0.52
Upper Midwest	34.5	2.00	1.32	0.68
Southwest	48.1	2.00	3.01	−1.01
AZ-Las Vegas	48.9	2.00	2.46	−0.46
Western	29.6	2.00	1.84	0.16
Pacific NW	35.6	2.00	1.90	0.10

[1] Based on the 11 proposed orders contained in this proposed rule.
[2] Weighted average differential for the consolidated order is computed by summing the product of the percentage of Class I milk in each current order multiplied by the applicable current order differential.

Analysis Based on Evaluation criteria.

Of the nine evaluation criteria developed to evaluate Class I pricing options, the concept of a modified flat Class I price structure performs equal to the current system in two of the criteria and worse than the current system in the rest of the criteria. However, this option does perform marginally better than Option 3A in the three proposed southern orders. Nevertheless, Option 3B would still perform worse than the current system because the remainder of the proposed orders retain a purely flat differential.

Option 3B was evaluated against the objective criteria as follows:

1. Ensure an adequate supply of milk for fluid use. The concept of a modified flat Class I price structure performs poorer than the current Class I price structure in ensuring an adequate supply of milk for fluid use for the same reasons articulated in Option 3A. In three of the suggested orders with over 70% Class I utilization, this option does give marginal increased recognition to the inherent location value of milk by relying on Class I utilization to trigger price incentives for attracting Class I milk. However, a majority of the suggested new orders continue to employ a lower and purely flat differential because Class I utilization does not exceed 70 percent. It is unlikely that an adequate supply of milk for fluid use would be ensured.

2. Recognize quality (Grade A) value of milk. A modified flat Class I price structure does recognize the quality (Grade A) value of milk with the $2.00 base differential.

3. Provide appropriate market signals. The concept of a modified flat Class I price structure that changes based on Class I utilization appears to provide marginally superior market signals in three of the proposed new orders than does the purely flat option. The modified flat Class I price structure offers the potential for being self-adjusting in both deficit and adequately supplied markets as relative use changes. However, a majority of markets would maintain a purely flat differential and likely would experience the same problems that a flat Class I price structure presents. While the modified flat Class I price structure may provide more appropriate market signals by establishing economic incentives that will encourage milk to move to more deficit markets, it fails to provide appropriate market signals for a majority of the orders.

4. Recognize the value of milk at location. A modified flat Class I price structure, like Option 3A, does not fully recognize the location value of milk. As discussed in Option 3A and Option 2, the relative use adjustor to the flat differential only recognizes that a market with a certain utilization has an average value above markets that are more deficit and does not recognize the value of milk at location. In fact Option 3B assumes that milk has the same value in a majority of the orders. Because Option 3B does not fully recognize the value of milk at location, it does not perform as well as the current system.

5. Facilitate orderly marketing with coordinated system of Class I prices. Independently, both a flat Class I price structure and a relative use Class I price structure fail to provide a coordinated system of Class I prices. Hence, when the two price structures are combined in the modified flat Class I price structure it can be concluded that the combined price structure will not facilitate orderly marketing with a coordinated system of Class I prices. The flat differential portion imposes an equal value on Class I milk in all markets with less than a specified Class I utilization, in this example 70 percent, even when such a differential level is not warranted. Producers and processors are left to negotiate the real value of the milk resulting in an uncoordinated system of Class I prices. Then, when the relative use factor is utilized to adjust the prices, problems arise because of a lack of alignment between orders.

6. Recognizes handler equity with regards to raw product costs. Since both Option 3A and Option 2 do not adequately recognize handler equity with regards to raw product costs as well as the current system, this modified flat Class I price structure option similarly cannot recognize handler equity for raw product costs for the same reasons discussed in the analysis of the other individual options.

Option 3B was evaluated against the objective criteria as follows:

1. Minimize regulatory burden. The flat differential modified by Class I use concept performs equal to the current system in minimizing the regulatory burden on handlers because no additional information than what is currently required would be requested under this option.

2. Minimize the impact on small businesses. As with Option 3A a modified flat Class I pricing structure could have dramatic impacts on small businesses, both producers and handlers. Like Option 3A, the modified flat pricing concept changes the competitive relationship between large and small handlers. Large handlers in areas where the differential is flat would have a competitive advantage in procuring milk supplies over small handlers because they may be able to pay more than the flat price. In markets where the relative use modifier becomes effective, small handlers could further be at a competitive disadvantage to neighboring handlers merely required to pay the flat portion of the differential. Price variances between large and small producers are likely to increase as well. The analysis for this option is fundamentally the same as discussed previously in Option 3A and Option 2.

3. Provide long-term viability. Given the difficulties associated with Option 3A and Option 2, a system that combines the two into a Class I pricing structure would perform worse than the current Class I price structure.

Because a modified flat Class I pricing option performs worse than the current system and is so similar in application to a purely flat pricing structure, it too raises a number of issues regarding its impact on dairy farmers. These issues are nearly identical to those applicable to purely flat pricing. Using October 1995 data, almost 87 percent of all milk would have been in the eight markets with a flat price under this option. In the consolidated markets with utilization above 70 percent (Appalachian, Southeast, and Florida), this option, based on October 1995 data, would still lower Class I differentials in two of the three markets.

As with Option 3A, Option 3B would have a significant economic impact on a substantial number of small businesses depending on where they are located and the magnitude of the change from the current Class I differential. The estimated impact on consumers for this modified flat Class I pricing option is nearly identical to that presented in the Option 3A analysis.

The same problems presented and discussed in the analysis of Option 3A using both inter- and intra-market examples are applicable to Option 3B. These problems are exhibited for this modified flat pricing option. Using an intra-market example, producers would not likely share in the value above the minimum regulated prices that more fully represents the value of Class I milk because handlers would have the greater degree of market power. In the inter-market example, blend price differences would not provide adequate price differences for more adequately supplied markets to ship needed milk to deficit markets, although the modified flat option may perform marginally better than a purely flat differential structure.

Option 4: Demand-based Differential. Under this option, an equal differential would be applied in all orders and in defined demand centers an additional component would be added to reflect the cost of transporting milk from reserve supply areas to demand centers. The differentials would be adjusted periodically to reflect changes in supply/demand conditions.

One possible option of a demand-based differential concept was proposed by the Upper Midwest Dairy Coalition (UMDC). Under this proposal, a fluid supply area would be established for each market from which milk production around the major bottler locations is procured. Also, for each market, a reserve supply area would be established that would be outside the fluid supply area from which milk production is generally supplied to fluid handlers in the major fluid bottling locations.

The Class I differential for the reserve area under this proposal would be set at $1.00 per hundredweight. For fluid supply areas, the differential would be $1.00 plus transportation costs from the reserve area to the fluid demand area. Fluid handlers in the fluid supply area would pay the higher differential, and transportation and balancing credits would be drawn from the market order pool.

Using this demand-based option, a market with a 100-mile supply area would have a differential of $1.00 + ($0.35*1) = $1.35 (if the cost of transportation is 35 cents per hundredweight per 100 miles). A market with a 700-mile supply area, on the other hand, would have a differential of $1.00 + ($0.35*7) = $3.45. Monies paid by Class I handlers through the second part of the Class I differential would be used to fund the order's system of transportation credits and balancing payments. These transportation credits and balancing payments would be provided to organizations that supply the order's fluid market.

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To encourage movement of the nearest milk supply for fluid use, two restrictions would be implemented. First, a handler's total transportation credits would be limited to the variable amount paid in by the handler for transportation. Secondly, a handler's total transportation credit would not exceed 80% of the handler's transportation bill on each Class I shipment or 2.8 cents per hundredweight per 10 miles (28 cents per 100 miles), whichever is less. Any residual left after paying transportation credits would be added to the $1.00 differential and paid to all producers in the pool.

While Class I handlers would be required to pay the established Class I price ($1.00 + transportation), from a producer point of view, this option is in essence a flat differential proposal. No amount over the $1.00 is guaranteed to return to producers in a blend price. Thus, this option suffers from the shortcomings of a flat differential option.

The table below contains a few examples of differentials that would apply to specific locations. These differentials are based on the furthest distance milk for fluid use is transported using the USDSS model solving for each consumption point individually. Such demand-based differentials would be established at every fluid milk processing location. UMDC has suggested that the USDSS model be used as a guide in establishing differentials and that expert judgment will be employed to adjust for proper alignment in pricing relationships.

TABLE 4.—CLASS I DIFFERENTIALS FOR SELECTED CITIES UNDER OPTION 4: DEMAND-BASED DIFFERENTIALS

Selected location	Current differential ($/cwt)	Demand-based differential ($/cwt)	Change ($/cwt)
Miami, FL	4.18	3.88	−0.30
Tampa, FL	3.88	2.05	−1.83
Orlando, FL	3.88	3.08	−0.80
New Orleans, LA	3.65	1.28	−2.37
Atlanta, GA	3.08	2.38	−0.70
New York City, NY	3.14	1.80	−1.34
Chicago, IL	1.40	1.49	0.09
Minneapolis, MN	1.20	1.11	−0.09
Phoenix, AZ	2.52	1.00	−1.52
Dallas, TX	3.16	1.40	−1.76
Denver, CO	2.73	1.19	−1.54
Portland, OR	1.90	1.13	−0.77
Seattle, WA	1.90	1.31	−0.59
Boise, ID	1.50	1.06	−0.44

Analysis Based on Evaluation Criteria

In eight of the nine criteria, Option 4 performs poorer than the current system. In the remaining criterion, Option 4 performs about the same as the current system.

Option 4 was evaluated against the objective criteria as follows:

1. Ensure an adequate supply of milk for fluid use. In terms of ensuring an adequate supply of milk for the fluid market, proponents argue that the package of Class I differentials and pool structure established under this option would produce an adequate supply of milk for the fluid market. It is apparent, however, that the Class I differentials on their own would not. This is a prime function of Federal milk marketing orders. While Class I differentials should be set at the minimum level necessary to bring forth adequate milk supplies, Option 4 would not result in differentials that would perform this function. Substantial over-order values would be required in many areas to attract adequate milk supplies for fluid purposes plus a reserve. Over-order prices are useful tools for allowing the market to find the final value of Class I milk; however, it is Federal order Class I prices that must meet the basic tenets of the AMAA.

2. Recognize quality (Grade A) value of milk. As with all of the seven options, Option 4 does recognize the quality (Grade A) value of milk with the $1.00 base differential.

3. Provide appropriate market signals. The net result of Option 4 failing to provide Class I differentials that recognize an appropriate price level for milk at location is that appropriate market signals are not sent to market participants. Federal orders should provide known and visible prices to market participants at all locations. The net effect of Option 4 would be to provide frequently shifting prices to market participants that fail to provide appropriate market signals.

Currently, blend prices and changes in blend prices provide signals to producers to make production adjustments. Under this option, the transportation portion of the Class I differential (the amount above $1.00) would be paid to those responsible for transporting milk, while producers would be guaranteed only $1.00 on Class I milk. Thus, the option by design could send distorted price signals to producers in blend prices. At times when milk supply is plentiful, local fluid handlers may need to go a relatively short distance to procure milk. Thus, there may be residual transportation credit revenues in the pool to be paid to producers in the blend price signaling that supplies are short and more production is needed. However, when handlers bring milk in from long distances, all transportation credit revenue would be used up and producers would only share in the $1.00 differential indicating to producers that there are ample supplies of milk. Thus, blend prices could be lower when local supplies are tight than when local supplies are plentiful.

4. Recognize value of milk at location. Option 4 would result in differing Class I levels at different locations that may significantly underrepresent the true Class I value at many locations. This would force a greater portion of the true Class I value outside of the order structure. Moreover, higher or lower price levels for fluid milk in an area may not be reflected in Federal order blend prices to producers in the area due to transportation costs. In terms of blend prices, producers in all areas would share in $1.00 plus potentially a variable residual of their respective differential. Hence, Option 4 performs worse than the current system.

5. Facilitate orderly marketing with coordinated system of prices. Another problem with Option 4 is that resulting Class I differentials are not coordinated across wide areas and thus do not facilitate orderly marketing. Milk, both packaged and bulk, moves long distances. Class I differentials should encourage milk to move in directions indicated by underlying economics, essentially from areas that have relative surpluses of milk to areas that are relatively deficit. Option 4 performs worse than the current system in this area.

6. Recognize handler equity with regard to raw product costs. Processor equity suffers under Option 4 because Class I over-order charges would need to increase in many areas. While it may be desirable for the market to set the final Class I price charged to bottlers, when a large portion of this price occurs outside of regulation, Federal orders cannot assure a reasonable degree of handler equity concerning prices paid for Class I milk. Additionally, the net effect of the Class I price paid by handlers less the transportation credits received would likely create inequity among handlers.

Option 4 was evaluated against the administrative criteria as follows:

1. Minimize regulatory burden. Option 4 would increase the regulatory burden on handlers as compared to the present system. Additional reporting on sources of milk and transportation costs would be required. Fluid handlers would be required to report, and Market Administrators to verify, hauling cost information on each load of bulk milk received. This additional regulatory requirement may also result in an increase in administrative assessments to handle the additional record verifications.

2. Minimize impact on small business. It is likely that small handlers might be disadvantaged by this option. With demand-based differentials, a substantial part of the Class I value needed to attract adequate milk supplies would likely come from over-order payments. Federal order Class I prices are mandatory and should affect handlers in an area equally. Over-order pricing is not mandatory and may or may not affect different handlers equally. The potential exists under Option 4 for large handlers to have an advantage over small handlers in competing for milk for Class I purposes because they will be able to outbid smaller handlers for a supply of milk.

3. Provide long-term viability. Option 4 would involve Class I differentials that could change over time as milk supply/demand conditions change. As such, the system could remain viable for a long period of time if the problems outlined above did not jeopardize the viability of this proposal. There is a certain attractiveness to a system which is self-adjusting. The difficulty is in deriving a system where the self-adjusting feature stays current over time.

This proposal could have a significant impact on various sectors of the dairy industry. The impact would likely vary by region, with large impacts on regions where Class I differentials would change significantly and lesser impacts in regions with small changes in Class I differentials. The impacts by region are discussed below:

Midwest. Class I differentials in the Midwest would be similar to current differentials under Option 4. In addition, the vast majority of milk produced in the Midwest is used for manufactured products, not for Class I. As such, the impact on producers and processors would be expected to be relatively small. Producer groups and cooperatives in this area fully recognize that, due to low Class I utilization in this area, changes in Class I differentials will have relatively less impact here than in other areas which have higher rates of Class I utilization.

Northeast. In the Northeast, Class I differentials would be substantially reduced from current levels under Option 4. For example, the Class I differential in New York City would be $1.34 less than the current differential, while the Class I differential in Baltimore would be $1.80 less than under the current system. Producer organizations in the Northeast have historically had a difficult time enforcing Class I over-order charges significantly above Federal order minimums. Cooperatives have depended heavily upon Federal order minimums, and more recently upon the Northeast Dairy Compact, to try to maintain revenues from Class I sales.

Processors in this area have historically had significant marketing power over cooperatives. Substantial drops in Class I differentials would likely increase processor marketing power and prevent cooperatives from establishing over-order prices that would reflect the full Class I value thus, dairy farmers would see a decline in their revenue.

Producer income levels in this area would be expected to decrease with a resulting decline in producer numbers, milk production and, eventually, manufacturing capacity. The decline in manufacturing capacity, over time, would likely be the most significant impact on the processing side of the industry in the Northeast.

Southeast. In the Southeast, Class I differentials would be substantially reduced from current levels under Option 4 in many areas. For example, the Class I differential in Atlanta would be set at $0.70 less than the current system, while the Class I differential in New Orleans would be $2.37 less than under the current system. It is unclear if over-order charges in most parts of the Southeast could be increased enough to compensate for the drop in Federal order Class I differentials. Thus, producer income and milk production would be expected to decrease in total in this area. Much of this area is deficit of milk production and, at certain times of the year, for fluid needs. Dropping the Class I differentials substantially would likely increase this deficit and make it increasingly difficult to meet the AMAA requirements for meeting the needs of the fluid market.

Southwest. In the Southwest, Class I differentials would be substantially reduced from current levels under Option 4. For example, the Class I differential in Dallas would be set at $1.76 less than the current system, while the Class I differential in Denver would be $1.54 less than under the current system. It is unlikely that over-order charges in most parts of the Southwest could be increased enough to compensate for the drop in Federal order Class I differentials. Thus, producer income and milk production would be expected to decrease in total in this area. The impacts would likely vary within this region as lower production costs in West Texas and New Mexico could offset the drop in Class I revenues, but higher production cost areas (e.g., East Texas) would likely show substantial drops in milk production.

Pacific Northwest. In the Pacific Northwest, Class I differentials would be reduced from current levels under Option 4 in many areas. For example, the Class I differential in Portland, Oregon, would be set at $0.77 less than the current system, while the Class I differential in Seattle would be $0.59 less than under the current system. It is unlikely that over-order charges in most parts of the Pacific Northwest could be increased enough to compensate fully for the drop in Federal order Class I differentials.

This proposal would, all else being equal, result in lower blend prices to producers in most parts of the country. It is expected that mailbox prices to producers would also decline in most regions. The vast majority of producers pooled on Federal orders are considered

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as small businesses. Thus, this proposal would have a negative impact on small business producers through a loss of income.

In addition, it is expected that in regions that are deficit of milk for some or all uses, an increased reliance on over-order prices would result from this proposal. Experience has shown that in an unregulated or partially-regulated environment, such as where substantial over-order premiums are paid, large producers often have greater leverage with milk buyers than small producers. This advantage can take many forms including volume premiums, lower hauling rates, and the ability to negotiate individually with handlers in a manner difficult for small producers.

This proposal could likely increase the regulatory burden on handlers that are small businesses. Maintenance of transportation credit records and increased verification that may be required could burden small business handlers. Moreover, setting Class I differentials at levels significantly below the full economic value of Class I milk at location has the impact of deregulating the effective price of Class I milk. As such, small handlers would be competing for milk supplies with large handlers with no assurance of similar prices. Equity among handlers is one of the benefits of the Federal order system. By setting Class I differentials at a level well under the full economic value, some of the handler equity is lost. It is expected that such a scenario would provide a greater burden on small business handlers than on large business handlers.

It is difficult to quantify the impact to consumers under this option. Federal order Class I differentials around the country would likely be lower than under the current system at many locations. Increased over-order charges may make up part of the difference, at least at locations with strong supply organization cooperation. It is expected that the overall impact on consumer prices would be slight.

Option 4 presents certain attractive provisions when viewed as a theoretical model for establishing Class I differentials. While it is intellectually appealing to have frequently adjusting Class I differentials, this type of proposal contains significant challenges to actual implementation. A substantial set of calculations would be necessary, together with strong assumptions regarding transportation costs, to determine Class I differentials under this option. The proponents of Option 4 utilized the USDSS model to estimate their Class I differentials. Proponents were unclear as to the specific points for calculating transportation. Arguably, the distance from each farm to each distributing plant that the farm supplies, as well as the distance from each supply plant or reserve processing plant to each distributing plant, would need to be determined.

Option 4 is not a pure pricing concept, but an allocation of costs. It proposes "Class I differentials" at location, thereby intimating value of milk at location. However, such a surface conclusion is erroneous when it becomes operational. It essentially becomes a flat price proposal insofar as milk value (price) is concerned.

This option in essence proposes that regulators intervene in the contractual relationships among producers, processors and haulers. Rather than creating a system whereby producers are paid a price for a product (valued to include all costs of producing and delivering the product to market), this proposal seeks to administratively isolate transportation cost and reimburse that cost at a fixed rate. To attempt to intervene in marketplace relationships in this way, particularly under the umbrella of price, does not seem appropriate.

As a result of this analysis, it is concluded that Option 4 would merely result in a greater degree of regulation with less money returned to producers. Thus, based on the issues discussed, Option 4 is not further considered as a replacement for the Class I price structure.

Based on the qualitative analysis, three pricing options were selected for further quantitative analysis. The Department determined that the three options selected represented a broad spectrum of possible Class I price structures. These three options are Option 1A, Option 1B, and Option 5.

To further analyze these options, beyond the evaluation criteria and basic quantitative analyses, a multi-regional model of the U.S. dairy sector, developed by the Economic Research Service of USDA, was used to generate both the "model baseline" results and analysis of the three pricing options. The model has been specified to generate a long-term outlook that is consistent with the Department's official baseline forecast for the dairy sector. The model baseline serves as a benchmark for comparing price and income changes of an option. For example, price impacts are reported as differences from the baseline for each of six years (1999–2004) and from the 6-year average. A more detailed explanation of the model and the economic impact results are included in the initial regulatory impact analysis.[24]

Based on this analysis, Option 5 was eliminated from further consideration as a viable replacement for the Class I price structure. Although Option 5 appeared appealing in the qualitative analysis, the quantitative analysis revealed that Option 5 would create an unsustainable situation, based on the degree of increased price levels, given the dynamics of milk marketing. The analysis of Option 5 follows:

Option 5: Decoupled Baseline Class I Price with Adjustors. Option 5, as proposed by Mid-America Dairymen, Inc. (Mid-Am), is a price structure that would decouple Class I prices from the volatility of the commodity markets. Since the Class I price would be decoupled from the basic formula price, the proponents suggest that 1996 average Class I prices become the base, with adjustments made utilizing changes in fluid use rates and short term costs of production (i.e., feed costs). Thus, for Class I purposes the BFP would be floored at $13.63 per hundredweight, the 1996 annual average BFP. This price level would be used to establish Class I prices using current differentials.

A supply/demand adjustor would be used to change prices in each of the orders to reflect long-term trends. Proponents suggest using a 12-month rolling average Class I utilization, rounded to the nearest full percentage. Class I prices would be adjusted by $0.12 per hundredweight for each 2 percent change in the rolling average utilization. For example, a Class I utilization change from 44 percent to 46 percent in a market would result in a $0.12 per hundredweight gain in the market's Class I differential. Once the utilization level changes, the new utilization rate becomes the base for future changes. Thus, if a market falls from 44 percent to 42 percent, the new base for comparing a 2-percentage point change up or down is 42 percent.

In addition to the supply/demand adjustor, a cost of production indicator would be developed whereby Class I prices would be increased in a timely manner when input costs to dairy farmers are increasing. One such economic indicator might be feed costs.

The table below illustrates the initial Class I differentials under the proposed consolidated orders. These differentials are not location-specific within the applicable orders. For purposes of this analysis and to provide a basis for comparison within the proposed consolidated orders, a weighted average Class I differential for each order has been calculated for each order based on October 1995 data. This weighted average differential is computed by multiplying the percentage of Class I milk in each of the current orders that comprise the consolidated order by the applicable current order differential and adding the resulting amounts. The weighted average differential is not location-specific for the consolidated orders. Initially the differentials will be the same. However, as Option 5 impacts production and utilization, and when an economic indicator (such as feed costs) is calculated, the differentials will vary.

[24] Copies of this analysis can be obtained from Dairy Programs at (202) 720–4392, any Market Administrator office, or via the Internet at http://www.ams.usda.gov/dairy/.

TABLE 5.—INITIAL CLASS I DIFFERENTIALS IN PROPOSED ORDERS BASED ON 1995 DATA UNDER OPTION 5: DECOUPLED BASELINE CLASS I PRICE WITH ADJUSTORS

Proposed order [1]	Weighted average differential ($/cwt) [2]	Initial differential ($/cwt)	Change in differential ($/cwt)
Northeast	3.14	3.14	0.00
Appalachian	2.79	2.79	0.00
Southeast	3.04	3.08	0.00
Florida	3.89	3.89	0.00
Mideast	1.91	1.92	0.00
Central	2.52	2.41	0.00
Up Midwest	1.32	1.41	0.00
Southwest	3.01	3.01	0.00
AZ-Las Vegas	2.46	2.46	0.00
Western	1.84	1.84	0.00
Pacific NW	1.90	1.90	0.00

[1] Based on the 11 proposed orders contained in this proposed rule.
[2] Weighted average differential for the consolidated order is computed by summing the product of the percentage of Class I milk for each current order multiplied by the applicable current order differential.

Analysis Based on the Evaluation Criteria

Option 5 performs about equal to the current system in five of the nine evaluation criteria. The option performs poorer than the current system in the other four evaluation criteria.

Option 5 was evaluated against the objective criteria as follows:

1. Ensure an adequate supply of milk for fluid use. With a high baseline and a supply/demand adjustor (and possibly an economic adjustor), Option 5 performs on a national level about the same as the current system, particularly in the short term.

2. Recognize quality (Grade A) value of milk. As with all of the options, Option 5 does recognize the quality (Grade A) value of milk. Use of the current differentials to achieve the Class I price recognizes this value.

3. Provide appropriate market signals. Option 5 decouples the Class I price from the basic formula price and thus the commodity market. A rolling average Class I utilization is proposed as the appropriate measure of supply/demand. A rolling average further delays any market signal sent by Class I utilization. Moreover, the option proposes to change the Class I price only when the rolling average utilization changes by 2 percent or more. Option 5 essentially freezes prices, albeit, at a historically high level. In fact, it appears to suggest that the market signal for fluid use milk should be fairly static.

Proponents have suggested an economic indicator (feed cost adjustor) of some kind be used to adjust prices short term. While it is likely true that inclusion of such an index would mute declines in milk prices when feed costs are rising, market driven declines in milk prices also could be accelerated if feed costs were declining at the same time. Thus, even combined with a supply/demand adjustor, this option would not perform as well in providing appropriate market signals as the current system.

4. Recognize value of milk at location. Option 5 would include the current system of differentials. Therefore, this option does recognize the value of milk at location and performs as well as the current system.

5. Facilitate orderly marketing with coordinated system of Class I prices. As long as no adjustment is made to the baseline prices, alignment would be maintained fairly well. However, Option 5 has no provision to align prices when price changes occur. A possible $0.24 price spread between two markets within one month could exist. Moreover, misaligned prices could create disorderly conditions as industry participants between and among the markets seek other measures to regain alignment in prices. Hence, Option 5 performs worse than the current system because it would lead to disorderly marketing conditions.

6. Recognize handler equity with regard to raw product costs. As long as no adjustment is made to the baseline prices, handler equity would be maintained fairly well. Option 5 does ignore the relationship of handlers in adjacent markets. If prices are increased or decreased in a market, the handler regulated in an adjacent market may be affected by the misalignment of prices. Misaligned prices could create disorderly conditions as industry participants between and among the markets seek other measures to regain alignment in prices.

Option 5 was evaluated against the administrative criteria as follows:

1. Minimize regulatory burden. Option 5 is not likely to increase the regulatory burden on handlers when compared to the current system. The addition of adjustors would create some additional burden on regulators; however, this would not be substantial.

2. Minimize impact on small business. Option 5 performs worse than the current system with regards to small businesses. It is likely that the individual market supply/demand adjustor will create some disruption in inter-market price alignment over time. Such a system may result in the need for over-order charges in some markets. Small handlers would likely be affected in their ability to compete with large handlers for a raw milk supply.

3. Provide long-term viability. The use of a historic baseline price as the major portion of a price fails to factor into the

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competitive price of milk any of the influences of the national milk market. It ignores advances in technology and increased efficiencies. In addition, it fails to recognize trends in the overall economy such as inflation and interest rates. Thus, this option does not provide long-term viability.

Upon implementation, all Class I differentials would be equal to current differentials. With the baseline utilizations established at 1996 levels, producers would experience Class I price increases since 1996 was a record high year for milk prices. Every existing order area would see increases in Class I prices of $0.85 per hundredweight above the baseline in the initial year. However, even with this increase, some producers may see declines in blend prices as a result of the proposed consolidation of orders contained in this proposed rule.

Initially, Option 5 would not have a significant impact on the competitiveness of small businesses, producers, or processors because prices would remain relatively the same. However, as the supply/demand adjustor modifies the differentials based on changes in Class I utilization, price alignment between markets will become an issue that would affect a small business' ability to compete. This option would increase the retail cost of fluid milk in the initial year or two but would lower the cost of manufactured dairy products.

This option appears attractive on the surface since higher Class I prices will help most producers. If utilization and feed costs do not move abruptly, or if the feed cost formula is designed in such a way as to moderate any abrupt price movements, then variability in Class I prices would be moderated. However, it seems likely that milk prices will be increasing or decreasing in the same direction as feed prices (i.e., higher feed prices means less milk production thus higher milk prices, lower feed prices means more milk production thus lower milk prices.)

Another attractive feature of this option is that the use of a feed cost adjustor would adhere to requirements of the AMAA that the Department consider such costs and other economic conditions in the establishment of prices. In addition, an automatic utilization adjustor could reduce the need to have hearings to change Class I differentials if changes in production or consumption in an area make the existing differentials inappropriate.

Although attractive on the surface, further analyses of Option 5 reveals significant problems. First, analysis completed by the multi-regional ERS model indicates that the increase in prices experienced will not be sustainable. The results of the model analysis indicate that the higher floored Class I prices will impact the all-milk price, and after 3 years, producers will begin seeing a decrease in the revenue initially generated by Option 5. This will occur because the higher Class I prices will stimulate milk production, which will then lead to lower manufacturing prices. Because it is the blend price that is paid to producers, the increase in the Class I prices will not be enough to offset the decrease in prices of the other classes of use and the changes in utilization which will affect the differential level. Further details of the model results are included in the economic impact analysis published in conjunction with this proposed rule.

Next, Option 5 may cause disorderly marketing with the introduction of inter-market disparities based on temporary changes in use. Producers in high Class I markets would benefit at the expense of producers in low Class I markets. In addition, flooring the Class I price will shift volatility to milk prices in manufacturing markets. If the feed cost adjustor only affects Class I prices, high utilization markets will gain relative to producers in lower Class I use markets, who would also bear the higher feed costs.

Finally, Option 5 uses current differentials to establish Class I prices. Although, the 1990 hearing resulted in changes to many of the current Class I differentials, many of the current differentials are similar to those that were prescribed in the 1985 Farm Bill. Thus, arguments could be made that using the current 1996 Class I differentials as a base for a new Class I pricing surface runs counter to the 1996 Farm Bill mandate that the new Class I differentials cannot be based on the differentials described in the 1985 Farm Bill.

As discussed, Option 5 will create several problems if implemented as a Class I price structure. Furthermore, questions arise as to whether or not Option 5 is legal as it may violate the mandates of the 1996 Farm Bill. Finally, proponents may no longer be actively supporting this option as a viable replacement for the Class I price structure. Thus, based on this qualitative and quantitative analysis, Option 5 is eliminated from further consideration as a Class I price structure replacement.

With the elimination of Option 5, only two Class I price structure options remain as possible replacements for the current Class I price structure, Option 1A and Option 1B. These two options present national price structures developed utilizing the USDSS model. The options vary in their reliance and application of the USDSS model but both are based on economic principles contained within the model. Both price structures have been evaluated qualitatively against the evaluation criteria and quantitatively utilizing the multi-regional ERS model discussed earlier. In addition to analysis conducted by the multi-regional ERS model, a static Federal order pool analysis has been conducted for Option 1A and Option 1B to provide an estimate of how the options would have impacted producer prices during October 1996. The results of the pool analyses will be addressed in a discussion comparing the two price structures.

It should be noted that both Option 1A and Option 1B may require additional fine-tuning of the Class I differentials and adjustments for location when actual implementation of the selected price structure occurs within the Federal order program. However, this fine-tuning would only slightly alter the impacts of either option. The price surfaces presented provide a reasonable indication of the level of Class I differentials that may result under each price surface.

Option 1A: Location-Specific Differentials. Option 1A would establish a nationally coordinated system of location-specific Class I price differentials reflecting the relative economic value of milk by location. An important feature of the option is that it would also include location adjustments that geographically align minimum Class I milk prices paid by fluid milk processors nationwide regardless of defined milk marketing area boundaries or order pooling provisions. It is based on the economic efficiency rationale presented in Cornell University research on the U.S. dairy sector.[25] A basic premise of Option 1A, confirmed by the Cornell research, is that the value of milk varies according to location across the United States. Option 1A combines these concepts of spatial price value and relative price relationships together with marketing data and expert knowledge of local conditions and marketing practices to develop a national Class I price structure.

[25] Pratt, James E., Phillip M. Bishop, Eric M. Erba, Andrew M. Novakovic, and Mark W. Stephenson, "A Description of the Methods and Data Employed in the U.S. Dairy Sector Simulator, Version 97.3," Research Bulletin 97–09, A Publication of the Cornell Program on Dairy Markets and Policy, Department of Agricultural, Resource, and Managerial Economics, Cornell University, July 1997.

Compared to other Class I price structure options which have been proposed by interested parties and/or are under consideration by the Department, this option reflects the current Class I pricing surface more than the others. Although similar to the current Class I price surface, there are distinct differences.

Under Option 1A, Class I differentials are lowest in geographical areas evidencing the largest supplies of milk relative to local/regional fluid milk needs. The differentials become progressively higher as they move from these areas to markets with less production relative to demand for fluid milk. Nine differential zones provide the basis for establishing the price structure. These zones were established based on results of the USDSS model, knowledge of current supply and demand conditions, and recognition of other marketing conditions such as fluid versus manufacturing markets, urban versus rural areas, and surplus versus deficit markets.

Class I differentials under this option range from a low of $1.60 per hundredweight in the base zones of the Upper Midwest, Southwest, and West, where there are abundant supplies of milk in excess of fluid milk use, to a high of $4.30 per hundredweight in Florida, where there are deficit supplies of milk for fluid use, thus reflecting the location value of milk for fluid use. The nine zones, differential ranges, and basis for establishing the Class I differential levels are as follows:

Zone 1. The suggested differentials within Zone 1 range from $1.60 to $1.90 per hundredweight. Geographically this zone is very large and encompasses the entire Northwestern United States. It consists of Washington, Oregon, Montana, Idaho, Northern and Central California, Northern and Western Nevada, Northern and Western Wyoming, and Northern Utah.

The area defined includes the top milk production state as well as two more of the top ten milk producing states. Milk production in this region has grown and continues to do so. Milk production in this zone tends to be concentrated in three areas: Western Washington and Oregon, the Southern Valley of Idaho and Northern Utah, and the Central Valley of California. Due to the numerous mountain ranges it encompasses, much of the zone is rural and sparsely populated. The exception is the heavily populated Western Coastal areas.

Class I utilization for this zone is fairly low and a significant amount of manufacturing is required to balance the markets. Manufacturing facilities are readily accessible in the milk producing areas. Zone 1 has excess supplies of milk, and therefore, could be an additional source of milk for other regions of the country.

It is expected that Zone 1 will continue to maintain adequate supplies of milk for the Northwestern United States. The supplies of milk are within relatively short distances of plants thus not requiring significant location adjustments within the zone.

Zone 2. The suggested differentials within Zone 2 would range from $1.60 to $2.65 per hundredweight. Zone 2 is a large region encompassing the Southwestern United States. It consists of Arizona, New Mexico, Colorado, Southern California, Southeastern Nevada, Southern Utah, Southeastern Wyoming, Southwestern Kansas, West Texas, and the Panhandle of Oklahoma.

The area defined includes portions of two of the top ten states in milk production as well as two more in the top twenty. Milk production in this zone has grown significantly over the last several years, but has recently slowed. Milk production in this zone tends to be concentrated in five areas: the Southern Valley of California, the Phoenix area of Arizona, North Central Colorado, the El Paso area of Texas and New Mexico, and the Roswell area of New Mexico. Much of this region is rural and sparsely populated due to the mountainous and arid terrain. The only heavily populated area is the Coastal region of Southern California. For the rest of the zone, populated areas tend to congregate around the capital cities of the Southwestern states.

Class I utilization for this area is slightly greater than the average for the United States. Manufacturing is needed to balance these markets; however, only a limited number of plants are located within the zone. Milk supplies in the zone are ample for Class I demand, but not always within a short distance of these needs. Distant manufacturing facilities are used at times for balancing. Other regions of the country have relied on this zone as a supplemental supply source. However, a slight change in the manufacturing capacity of this zone could change milk availability for other regions. Some location adjustments are needed for alignment purposes with the more deficit markets to the East.

Zone 3. The suggested differentials within Zone 3 would range from $1.60 to $1.80 per hundredweight. Geographically this zone encompasses the Upper Midwest region including the states of Minnesota, Wisconsin, Iowa, and North Dakota, the Michigan Upper Peninsula, and parts of South Dakota, Nebraska, Missouri, and Illinois.

This zone includes two of the nation's top five milk producing states, Wisconsin and Minnesota, as well as the substantial milk supplies available in parts of surrounding states. The vast majority of milk in Zone 3 is used for manufacturing purposes throughout the year. In addition, as was readily apparent in the fall of 1996, this area provides large quantities of milk to distant markets at times of shortages for fluid purposes in those markets. The $1.60 differential equates to the Class I differential in base zones to the Southwest and West that also use substantial quantities of milk for manufacturing purposes throughout the year. The 20-cent range provides some flexibility in setting Class I differentials that align with neighboring zones and in encouraging shipments to high Class I demand areas within the zone.

In addition, a Class I differential of $1.60 to $1.80 in this zone will provide a greater incentive for manufacturing organizations in this zone to pool milk. Historically, there have been small pool draws (that at times fluctuate between positive and negative) and negative location adjustments. Generally, over-order charges have been required to ensure adequate milk supplies for fluid purposes. Hence, the additional revenue generated in this region will be used to move some of these over-order charges under the Federal order program in the form of transportation credits. As a result, the $1.60 to $1.80 Class I differentials will help to establish higher pool draws and enable more market participants to share in the benefits of servicing the fluid market.

For a number of years, prevailing over-order charges in this zone have resulted in effective Class I prices to fluid milk processors that are well above the Federal order minimums herein proposed. Thus, Class I processors should see no increase in their milk procurement costs, but would likely only see a partial redistribution of their costs from over-order charges to Federal order obligations.

Zone 4. The suggested differentials within Zone 4 would range from $2.65 to $3.65 per hundredweight. Geographically, this zone is fairly small and primarily covers two states: Louisiana, west of the Mississippi River, and central and east Texas.

The zone defined has a significant amount of milk production and population. Texas ranks as the sixth largest milk-producing state and is the second most populated. Milk production in this zone is concentrated in two areas: East of Dallas and

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Southwest of Dallas. Population centers are spread throughout the region with significant population along the Gulf Coast of Texas and Louisiana.

Class I utilization is moderately high and the zone has primarily been considered a fluid market. Much of the manufacturing in this zone is based on weekly and seasonal balancing. Excesses tend to be limited to Spring flush periods while Fall usually brings a deficit. Local demand along the Southern Coastal area requires supplies to travel significant distances to meet fluid demands. Seasonal deficits are handled by various other regions of the country.

The differential range proposed is needed to move milk supplies south and east to align with Southeastern deficit markets. Zone 4 may depend increasingly on milk suppliers from other regions of the country. However, the range of differentials suggested should be adequate to maintain a local milk supply.

Zone 5. The suggested differentials within Zone 5 range from $2.00 to $3.00 per hundredweight. Geographically, this zone ranges from Maine in the east to Oklahoma and southeastern Kansas in the west. The zone encompasses parts of the milk-producing areas of New York and Pennsylvania and the more dispersed production in the eastern mountains, the Ohio and mid-Mississippi River basins, and reaches into the southwestern United States. This zone is populated with a mix of rural areas plus a number of medium-sized metropolitan areas. The suggested price flow is generally from north to south and from west to east within this long narrow zone.

The range of differentials from $2.00 to $3.00 provides a transition from the surplus areas of the North and West to the deficit areas of the Southeast.

Zone 6. The suggested differentials within Zone 6 range from $3.00 to $3.75 per hundredweight. Geographically this zone encompasses all of South Carolina, most of the states of North Carolina, Georgia, Alabama, Mississippi, and parts of Louisiana and Florida.

This is a zone of deficient milk supplies and declining milk production. This zone contains many rural areas with a heavy concentration of population along a corridor from Raleigh, North Carolina, to Atlanta, Georgia. It is a zone which currently has a high Class I utilization and little access to manufacturing milk facilities.

The differentials increase moving toward the south and southeastern parts of Zone 6. The Atlantic and Gulf Coast areas are also in the higher end of the range because these areas are not heavy milk production areas. Zone 6 may depend increasingly on milk supplies from outside the areas; however, the differential range proposed should be adequate to provide a milk supply to meet the fluid demand in the zone.

Zone 7. The proposed differentials within Zone 7 range from $3.75 to $4.30 per hundredweight. Geographically it encompasses all of the lower two-thirds of Florida. Annual milk production in the zone does not meet Class I needs or provide an adequate volume. Milk supplies needed to meet the demand in this zone are procured from distant areas of the country. The price increases as the surface moves from north to south allowing milk to move to the deficient areas of Florida. Population density relative to viable milk-producing areas within this zone is creating increasing land-use pressure. The differentials proposed should be adequate to attract necessary milk supplies to meet the fluid demand.

Zone 8. The suggested differentials within Zone 8 range from $1.80 to $2.00. The zone covers parts of 12 states ranging from the southwest corner of South Dakota to the western corner of New York. This zone, together with parts of Zone 5, form an intermediate area between Zone 3, where milk is used primarily for manufacturing purposes, and Zones 4, 6, 7, and 9, where milk is used primarily for Class I purposes.

The price range in this zone would provide for alignment with markets to the north, south, and east, and set differentials at a level that would recognize the supply/demand conditions in this area. Alignment of Zone 8 with neighboring zones, particularly to the east and south, minimizes disruptions to the existing competitive relationships for Class I handlers in these areas.

Zone 9. The proposed differentials in Zone 9 range from $3.00 to $3.25 per hundredweight. Geographically Zone 9 encompasses the north Atlantic coastal area of the United States. The zone includes the major cities of Boston, New York, Philadelphia, Baltimore, and Washington, D.C. The differentials in Zone 9 allow for recognition of the need to move milk to major metropolitan areas on the Atlantic coast. The 25-cent range will provide the pool structure to compensate for individual locations within a narrow geographic area.

Zone 9 represents a major consumption area. The zone will need to look to the milk production areas north and west of the cities for milk supplies. The differentials proposed for this zone should allow the area to maintain adequate milk supplies relative to fluid demand.

This price variance in Class I differentials across the country presented in Option 1A is less than the range in relative values for milk (i.e., shadow prices) determined through the USDSS model and lower than the difference in the current price structure. The range of differentials developed by the USDSS model is $3.60 based on October 1995 data, typically a more deficit month, and $3.40 based on May 1995 data, typically a more surplus month. The price spread for Option 1A is $2.70. The ranges discussed above are set forth in Map 1. The differentials adjusted for location established for each county are set forth in Maps 2A, 2B, and 2C. Table 6 sets forth examples of differentials adjusted for location at selected cities.

TABLE 6.—COMPARATIVE CLASS I DIFFERENTIALS ADJUSTED FOR LOCATION AT SELECTED CITIES UNDER OPTION 1A—LOCATION-SPECIFIC DIFFERENTIALS

City	Class I differential		Difference
	Current	Option 1A	
	Dollars per hundredweight		
New York City, NY	3.14	3.15	.01
Charlotte, NC	3.08	3.10	.02
Atlanta, GA	3.08	3.10	.02
Tampa, FL	3.88	4.00	.12
Cleveland, OH	2.00	2.00	.00
Kansas City, MO	1.92	2.00	.08
Minneapolis, MN	1.20	1.70	.50

TABLE 6.—COMPARATIVE CLASS I DIFFERENTIALS ADJUSTED FOR LOCATION AT SELECTED CITIES UNDER OPTION 1A—LOCATION-SPECIFIC DIFFERENTIALS—Continued

City	Class I differential		Difference
	Current	Option 1A	
Chicago, IL	1.40	1.80	.40
Dallas, TX	3.16	3.00	(.16)
Salt Lake City, UT	1.90	1.90	.00
Phoenix, AZ	2.52	2.35	(.17)
Seattle, WA	1.90	1.90	.00

Analysis Based on Evaluation Criteria

Option 1A performs equal to or better than the current Class I system in each of the evaluation criteria. This is largely explained by the adjustments made to the current system based on current marketing conditions and USDSS model results. However, Option 1A leaves essentially unchanged the role of market forces and the Federal government, in determining Class I prices and the incentives to move milk to deficit areas.

Option 1A was evaluated against the objective criteria as follows:

1. Ensure an adequate supply of milk for fluid use. Option 1A performs essentially the same as the current price structure in ensuring an adequate supply of milk for fluid use. Proposed changes from current differential levels by region or locality to more accurately reflect current milk supply-demand conditions and inter-market price alignment contributes to more appropriate market by market supply adjustments. Option 1A will have minimal impacts on farm level milk prices and should continue to ensure adequate supplies of milk for fluid use.

2. Recognize quality (Grade A) value of milk. Option 1A does recognize the quality value (Grade A) of milk through the addition of a differential that begins at $1.60 per hundredweight in the base zone.

3. Provide appropriate market signals. Option 1A adjusts and refines the existing Class I price structure to more accurately reflect recent prices. In some geographical areas, Class I differentials would be modestly increased. In certain other areas, Class I differentials would be lowered somewhat, suggesting that they now exceed levels necessary to adequately supply the associated markets with their fluid milk needs.

4. Recognize value of milk at location. The spatial values of milk as reflected in Option 1A recognize the value of milk at location more accurately than the current system for two principal reasons. First, in structuring the differentials in Option 1A, the effect of current Class I differential levels on milk supplies, demand, and dairy farmer returns regionally during the past decade were reviewed. Second, the results of the USDSS model, explained previously, that obtained the relative values of milk and milk components at geographic locations throughout the United States, were used. Together, the results of these studies provided the basis to construct the Option 1A price surface.

5. Facilitate orderly marketing with coordinated system of prices. A primary element of Option 1A is the coordination of Class I differential levels and location adjustments within and among regional marketing areas. As such, Option 1A is an improvement over the current price structure which evolved in a piecemeal fashion. The Class I differentials and location adjustments in Option 1A will facilitate orderly marketing of milk for fluid use through the nationwide coordination of prices.

6. Recognize handler equity with regard to raw product costs. Class I differentials proposed under Option 1A reflect differences in economic costs of procuring and marketing milk depending upon geographic location. This coordination and alignment of prices based upon cost differences and current marketing conditions better ensures handlers of equity in competing for available milk supplies and sales of fluid milk products.

Option 1A was evaluated against the objective criteria as follows:

1. Minimize regulatory burden. Option 1A would not change the regulatory burden of the Federal order program. Because Option 1A is similar to the current Class I pricing structure, it would not result in increased reporting, record keeping, compliance, or administrative costs to handlers. The role of regulation in influencing Class I prices would also be about the same as the current system.

2. Minimize impact on small businesses. In regions where more of the actual value of fluid milk would be reflected in the differentials than is currently reflected, small businesses may have a marginal improvement in their relative competitive bargaining position vis-a-vis large businesses. This is based on the concept that large businesses (producers, cooperatives or handlers) are better able to negotiate premiums above minimum order prices due to advantages attained from size. Overall, this option is not expected to materially impact small businesses differently than the current price structure.

3. Provide long-term viability. To the extent the proposed location adjusted Class I differentials under Option 1A will correct instances of price misalignment and more accurately reflect the economic value of milk by location, the long-term viability of Option 1A is expected to exceed that of the current price structure.

Option 1A utilizes the USDSS model results as a basis for development. All results, including the preliminary results based on 1993 annual data and the preliminary results based on May 1995 and October 1995 data, were used. However, the variance of price differentials under Option 1A are somewhat less than the range in relative values of milk (shadow prices) determined through the USDSS model. There are several explanations for the differences, including the fact that the model generates value differences between geographic locations, not actual prices. That is, it computes the marginal value of an additional hundredweight of milk supplied to a plant at a specific location for fluid use. This approach results in a pricing or value surface for Class I milk but does not take into account marketwide pooling and other factors affecting the supply of and demand for milk.

Since the USDSS model only determines the spatial value differences for fluid milk between location and not the price level, Option 1A utilizes $1.60 as the minimum price in the three base zones. Currently, the lowest differential in Federal orders is $1.04 ($1.20 in Minneapolis) in the Upper Midwest order.

A review of current marketing practices has revealed that the $1.04 per

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hundredweight base zone differential may not be established at a level high enough to ensure adequate milk supplies for fluid use. First, a portion of the Class I differential must reflect the value associated with maintaining Grade A milk supplies since this is the only milk available for fluid use. Originally the differential needed to be established at a level that would encourage conversion from Grade B to Grade A status. With approximately 96 percent of all milk already converted to Grade A,[26] this value now needs to reflect the cost of maintaining Grade A milk supplies. Although it may be difficult to quantify the cost to maintain Grade A status, there are specific associated costs, as described below.

There are several requirements for producers to meet to convert to a Grade A dairy farm and then maintain it. A Grade A farm requires an approved water system (typically one of the greatest conversion expenses), specific facility construction and plumbing requirements, certain specifications on the appearance of the facilities, and specific equipment. After achieving Grade A status, producers must maintain the required equipment and facilities, and adhere to certain management practices.[27] Often, this will require additional labor, resource, and utility expenses. It has been estimated that this value may be worth approximately $0.40 per hundredweight.[28]

Traditionally, the additional portion of the Class I differential reflects the marketing costs incurred in supplying the Class I market. These marketing costs include such things as seasonal and daily reserve balancing of milk supplies, transportation to more distant processing plants, shrinkage, administrative costs, and opportunity or "give-up" charges at manufacturing milk plants that service the fluid Class I markets. This value has typically represented approximately $0.60 per hundredweight.

Originally recognizing these two factors in the base zone was sufficient to bring forth enough milk to meet Class I demands given the abundant volumes of milk and the abundance of manufacturing plants. However, recognizing just these two factors at the values specified may no longer be adequate to ensure sufficient supplies of Class I milk in the Upper Midwest region.

The Upper Midwest region is considered a surplus market for fluid use because its average Class I utilization is only approximately 20 percent.[29] However, as a result of the abundance of manufacturing facilities that require milk, the Upper Midwest region is actually a highly competitive area in which to procure Grade A milk. Because of this competitiveness, manufacturing facilities are willing to pay more than the Federal order minimum price, the basic formula price (BFP), for Grade A milk used in manufactured products. For example, during 1995, Minnesota manufacturing plants paid, on average, $0.77 per hundredweight more than the BFP for Grade A milk; price premiums in excess of the BFP ranged from $0.38 per hundredweight in June to $1.24 per hundredweight in December. In 1996, the average pay price for Grade A manufacturing milk in Minnesota was $0.94 per hundredweight more than the BFP, ranging from $0.68 per hundredweight in October to $1.18 per hundredweight in November. Similar pay price patterns occur in Wisconsin for Grade A milk used in manufactured products. In 1995, the average pay price for Grade A milk used in manufacturing was $0.85 per hundredweight more than the BFP, with pay prices ranging from $0.55 per hundredweight above the BFP in July to $1.22 per hundredweight in December. During 1996, the average pay price for Grade A milk used in manufacturing was $0.93 per hundredweight more than the BFP, ranging from $0.82 per hundredweight (January) to $1.10 per hundredweight (September). Table 7 sets forth specific data for pay prices for Grade A milk used in manufacturing for 1995 and 1996.

TABLE 7.—COMPARISON OF PRICES PAID FOR GRADE A MILK USED IN MANUFACTURING PRODUCTS IN MINNESOTA AND WISCONSIN TO THE BASIC FORMULA PRICE

Year/Month	Basic formula price	Minnesota		Wisconsin	
		Grade A pay price @ 3.5%[1]	Diff. between BFP and grade A pay price	Grade A pay price @ 3.5%[1]	Diff. between BFP and grade A pay price
	$/hundredweight				
1995:					
January	11.35	12.13	0.78	12.24	0.89
February	11.79	12.56	0.77	12.63	0.84
March	11.89	12.52	0.63	12.64	0.75
April	11.16	11.77	0.61	11.92	0.76
May	11.12	11.67	0.55	11.79	0.67
June	11.42	11.80	0.38	12.07	0.65
July	11.23	11.81	0.58	11.78	0.55
August	11.55	12.14	0.59	12.14	0.59
September	12.08	12.95	0.87	13.04	0.96
October	12.61	13.66	1.05	13.74	1.13
November	12.87	14.11	1.24	14.09	1.22
December	12.91	14.12	1.21	14.13	1.22

[26] Milk Production, Disposition and Income: 1996 Summary, National Agricultural Statistics Service, USDA, DA 1-2 (97).

[27] References: *Grade "A" Pasteurized Milk Ordinance*, 1993 Revision, U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration and *General Instructions for Performing Farm Inspections According to the USDA Recommended Requirements for Manufacturing Purposes and Its Production and Processing For Adoption by State Regulatory Agencies*, USDA, AMS, Dairy Division, August 1, 1976.

[28] This is the value associated with Class I milk. The amount of this value actually returned to a producer is dependent upon a marketing order's Class I utilization and is reflected in the blend price. For example, in the proposed Upper Midwest order approximately $.06/hundredweight would be returned to producers to cover the costs associated with maintaining Grade A milk supplies.

[29] Federal Milk Order Statistics, 1996 Annual Summary, USDA, Marketing and Regulatory Programs, Agricultural Marketing Service, Dairy Division, Statistical Bulletin 938.

TABLE 7.—COMPARISON OF PRICES PAID FOR GRADE A MILK USED IN MANUFACTURING PRODUCTS IN MINNESOTA AND WISCONSIN TO THE BASIC FORMULA PRICE—Continued

Year/Month	Basic formula price	Minnesota		Wisconsin	
		Grade A pay price @ 3.5%[1]	Diff. between BFP and grade A pay price	Grade A pay price @ 3.5%[1]	Diff. between BFP and grade A pay price
Average	11.83	12.60	0.77	12.68	0.85
1996:					
January	12.73	13.78	1.05	13.55	0.82
February	12.59	13.56	0.97	13.44	0.85
March	12.70	13.68	0.98	13.72	1.02
April	13.09	14.01	0.92	14.11	1.02
May	13.77	14.57	0.80	14.65	0.88
June	13.92	14.71	0.79	14.78	0.86
July	14.49	15.32	0.83	15.39	0.90
August	14.94	16.00	1.06	15.96	1.02
September	15.37	16.33	0.96	16.47	1.10
October	14.13	14.81	0.68	15.06	0.93
November	11.61	12.79	1.18	12.47	0.86
December	11.34	12.39	1.05	12.18	0.84
Average	13.39	14.33	0.94	14.32	0.93

[1] Fluid Grade A pay price for milk used in all manufacturing products in Minnesota and Wisconsin as reported by the National Agricultural Statistic Service adjusted by butterfat differential used under Federal milk orders.

Because manufacturing facilities are willing to pay these values above the BFP to ensure adequate supplies of milk into their plants, fluid processors must pay at least these values to attract the necessary supplies of fluid milk to the bottling plants. Although data indicating the exact value that fluid plants are willing to pay to ensure this supply is not published, an indication of the market value of this milk can be obtained from the announced cooperative Class I prices.[30] Other than in Miami, Florida, which is a deficit Class I market with a 1996 annual average Class I utilization of nearly 90 percent,[31] the announced cooperative Class I prices are the highest in the Upper Midwest region. These prices range from $1.19 per hundredweight above the minimum Class I price in Minneapolis, Minnesota, to $1.79 per hundredweight above the minimum Class I price in Milwaukee, Wisconsin, and Chicago, Illinois.

Option 1A presumes that the $1.04 per hundredweight minimum Class I differential is no longer adequate to ensure a sufficient supply of milk due to the competitive nature of the manufacturing facilities in this region. Thus, Option 1A establishes an additional competitive factor into the development of the base zone Class I differential. Option 1A values this competitive factor to be worth about $0.60 per hundredweight. This value reflects approximately two-thirds of the actual competitive costs incurred by fluid plants to simply compete with manufacturing plants for a supply of milk.

An additional benefit of establishing the minimum Class I differential at a level that more accurately reflects the actual value of milk for fluid purposes is the added monies generated in the Federal order pool. Class I milk provides the vast majority of pool value in Federal orders. If an order has a low Class I differential and a low Class I utilization, it frequently does not have enough pool value to provide proper price signals to pool participants. In these orders, the Class I price is established by the suppliers of milk at levels above the Federal order minimums. When these over-order markets dictate substantially higher prices than the order minimums there is a risk that handlers may not face equal raw product costs for various reasons. Thus, having a larger proportion of the actual value of Class I milk in the market order pool in these areas, than is now the case, should promote pricing equity among market participants. The $1.60 minimum differential level proposed is perceived to be the lowest value necessary under present supply and demand conditions to maintain stable and viable pools of milk for Class I use in markets that are predominantly manufacturing oriented. Applying this minimum differential to each of the three low pricing areas will ensure that low utilization and surplus markets will have similar differentials. However, having a larger portion of Class I value pooled could mute price signals to producers more than prices determined strictly by market forces. If the blend price exceeds the marginal value of milk in manufacturing, there would be an incentive to overproduce for fluid needs.

Quantitative analysis using the ERS multi-regional model which assumed the eleven market order consolidation, four classes of utilization, and the BFP as proposed, suggests that most producers for the 6-year average would see little to modest changes in revenue due to Class I price increases resulting from Option 1A when compared to the baseline. However, some producers would experience Class I price decreases. Producers located in the following Federal milk markets would experience revenue reductions due to average Class I price decreases: New Mexico-West Texas—($0.19/cwt), Eastern Colorado—($0.12/cwt), Central Arizona—($0.11/cwt), Southwest Plains—($0.11/cwt), and Texas—($0.10/cwt). All other orders for the 6-year average would have a Class I price increase. The Chicago Regional, Michigan Upper Peninsula, and Upper Midwest orders would experience the largest increases: $0.46, $0.51, and $0.56 per hundredweight, respectively.

Overall, the magnitude of price and income changes under Option 1A is small when compared to the baseline. Option 1A results in a 10-cent increase in the average Class I price for all current Federal orders. Further details

[30] Table 35—1996 Annual Average Announced Cooperative Class I Prices in Selected Cities, Dairy Market Statistics, 1996 Annual Summary, USDA, AMS.

[31] Federal Milk Order Statistics, 1996 Annual Summary, USDA, Marketing and Regulatory Programs, Agricultural Marketing Service, Dairy Division, Statistical Bulletin 938.

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of the impact of these Class I price changes on the all-milk price and cash receipts based on the model results are available in the economic analysis statement.

Option 1B—Relative Value-Specific Differentials. Option 1B establishes a nationally coordinated system of relative value-specific Class I price differentials and adjustments that recognizes several low pricing areas. Option 1B relies on a least cost optimal solution from the USDSS Cornell model to develop a Class I price structure that is based on the most efficient assembly and shipment of milk and dairy products to meet all market demands for milk and its products.

The results of the USDSS model provide information regarding the relationship of prices between geographic locations but do not determine the level of Class I differentials. Option 1B utilizes geographic relationships as its foundation and maintains the current Class I differential of $1.20 at Minneapolis, Minnesota. A location adjusted price differential for every county is established by evaluating differences between nearby Class I differential pricing points generated by the model. The marginal values (shadow prices) are used to determine the price structure because they reflect the value of additional milk supplied to a plant at a specific location for fluid use. This price surface recognizes several low pricing areas located primarily in the Upper Midwest and Western regions.

Option 1B would move the dairy industry into a more market-oriented system. By establishing differentials on the basis of optimal milk movements, market conditions will play a greater role in determining Class I prices. To the extent that higher Class I prices are needed and negotiated to attract milk supplies, the higher prices will accrue to those producers who service the fluid market. Hence, Option 1B places more emphasis on negotiations between dairy farmers and processors to determine actual Class I prices. The location adjusted differentials established for each county are set forth in Maps 3A, 3B, and 3C and in General Provisions § 1000.52. Table 8 sets forth the location adjusted differentials at selected cities.

TABLE 8.—COMPARATIVE CLASS I DIFFERENTIALS AT SELECTED CITIES UNDER OPTION 1B-RELATIVE VALUE-SPECIFIC DIFFERENTIALS

City	Current	Option 1B	Difference
	Dollars per hundredweight		
New York City, NY	3.14	2.07	(1.07)
Charlotte, SC	3.08	1.89	(1.19)
Atlanta, GA	3.08	2.46	(0.62)
Tampa Bay, FL	3.88	3.81	(0.07)
Cleveland, OH	2.00	1.54	(0.46)
Kansas City, MO	1.92	1.45	(0.47)
Minneapolis, MN	1.20	1.20	0.00
Chicago, IL	1.40	1.65	0.25
Dallas, TX	3.16	1.68	(1.48)
Salt Lake City, UT	1.90	1.08	(0.82)
Phoenix, AZ	2.52	1.14	(1.38)
Seattle, WA	1.90	1.00	(0.90)

Because Option 1B would involve changes in both the level of Class I differentials and the method for establishing them, it is proposed that they be implemented through a transitional phase-in program. The use of a phase-in program would provide dairy farmers and processors the opportunity to adjust marketing practices to adapt to more market-determined Class I prices.

Three possible alternatives are presented for phasing in Option 1B. Each utilizes the difference between the current differentials and the Option 1B differentials as the basis of the phase-in over a 5-year period, beginning in 1999 and being completed by 2003. The first transitional option simply spreads the phase-in over the 5-year period, with 20 percent of the adjustment in 1999, 40 percent in 2000 and so forth. The base differentials resulting from this transitional phase-in are set forth in Table 9. The first alternative would be to phase-in to these differentials as shown in Table 9.

TABLE 9.—OPTION 1B BASE DIFFERENTIALS

City	Current	Option 1B—Base differentials [1]				
		1999	2000	2001	2002	2003
	Dollars per hundredweight					
New York City, NY	3.14	2.93	2.71	2.50	2.28	2.07
Charlotte, NC	3.08	2.84	2.60	2.37	2.13	1.89
Atlanta, GA	3.08	2.96	2.83	2.71	2.58	2.46
Tampa Bay, FL	3.88	3.87	3.85	3.84	3.82	3.81
Cleveland, OH	2.00	1.91	1.82	1.72	1.63	1.54
Kansas City, MO	1.92	1.83	1.73	1.64	1.54	1.45
Minneapolis, MN	1.20	1.20	1.20	1.20	1.20	1.20
Chicago, IL	1.40	1.45	1.50	1.55	1.60	1.65
Dallas, TX	3.16	2.86	2.57	2.27	1.98	1.68
Salt Lake City, UT	1.90	1.74	1.57	1.41	1.24	1.08
Phoenix, AZ	2.52	2.24	1.97	1.69	1.42	1.14

TABLE 9.—OPTION 1B BASE DIFFERENTIALS—Continued

City	Current	Option 1B—Base differentials [1]				
		1999	2000	2001	2002	2003
Seattle, WA	1.90	1.72	1.54	1.36	1.18	1.00

[1] Base differential obtained by taking the difference between the current differential and the final Option 1B differential (year 2003) and multiplying by 20 percent. This value is then subtracted from the current differential to yield the 1999 base differential. This value is then deducted from each consecutive year's value until the Option 1B differentials are achieved in 2003.

The second alternative for phasing-in Option 1B would consist of adding a decreasing "transitional payment" to the base differential. It would be equal to the decrease in revenue that would otherwise occur during the phase-in period of Option 1B. Over this four-year period, it is projected that $388.6 million would be removed from the Federal order system through the lowered Class I differential. To provide the industry an opportunity to prepare for the changed pricing structure under Option 1B, a transitional payment would be added to the base differential for Class I milk. The payment would be higher in the first year and gradually be reduced thereafter to result in implementation of the Option 1B differentials in 2003. The additions to the base differential would equal $0.55 per hundredweight in 1999, $0.35 per hundredweight in 2000, $0.20 per hundredweight in 2001, and $0.10 per hundredweight in 2002. This offsetting of revenue is designed to temporarily reduce the impacts of implementing Option 1B, thus allowing producers an opportunity to adjust their marketing practices to adapt to more market-determined pricing. Table 10 sets forth the location adjusted Class I differentials under this revenue-neutral phase-in alternative for selected cities.

TABLE 10.—OPTION 1B CLASS I DIFFERENTIALS WITH REVENUE NEUTRAL PHASE-IN PAYMENTS

City	Current	Class I diff. with revenue neutral				
		1999 [1]	2000 [2]	2001 [3]	2002 [4]	2003 [5]
	Dollars per hundredweight					
New York City, NY	3.14	3.48	3.06	2.70	2.38	2.07
Charlotte, NC	3.08	3.39	2.95	2.57	2.23	1.89
Atlanta, GA	3.08	3.51	3.18	2.91	2.68	2.46
Tampa Bay, FL	3.88	4.42	4.20	4.04	3.92	3.81
Cleveland, OH	2.00	2.46	2.17	1.92	1.73	1.54
Kansas City, MO	1.92	2.38	2.08	1.84	1.64	1.45
Minneapolis, MN	1.20	1.75	1.55	1.40	1.30	1.20
Chicago, IL	1.40	2.00	1.85	1.75	1.70	1.65
Dallas, TX	3.16	3.41	2.92	2.47	2.08	1.68
Salt Lake City, UT	1.90	2.29	1.92	1.61	1.34	1.08
Phoenix, AZ	2.52	2.79	2.32	1.89	1.52	1.14
Seattle, WA	1.90	2.27	1.89	1.58	1.28	1.00

[1] 1999 applicable base differential from Table 9 plus $0.55.
[2] 2000 applicable base differential from Table 9 plus $0.35.
[3] 2001 applicable base differential from Table 9 plus $0.20.
[4] 2002 applicable base differential from Table 9 plus $0.10.
[5] Final Option 1B differentials.

The third approach to phasing in Option 1B would consist of adding a decreasing "transitional payment" to the base differential that would enhance revenue beyond what the current Class I system would have generated during the four years of transitioning to Option 1B. During this four-year period, it is projected that $878.4 million would be added to the Federal order system through the revenue-enhanced payment. This would result in a net increase of $489.8 million added to the system once the projected decrease resulting from Option 1B phased in during this period is deducted. This additional money would not only provide producers with an opportunity to prepare and restructure their marketing practices to adapt to more market-determined pricing but would also allow them to obtain the education and resources necessary to become more effective in a more market-oriented environment. Again, the payment in the first year would be the highest with reductions occurring thereafter to result in implementation of the Option 1B differentials by 2003. The addition to the base differential would equal $1.10 per hundredweight in 1999, $0.70 per hundredweight in 2000, $0.40 per hundredweight in 2001, and $0.20 per hundredweight in 2002. Table 11 sets forth the location adjusted Class I differentials under this revenue-enhanced alternative for selected cities.

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TABLE 11.—OPTION 1B CLASS I DIFFERENTIALS WITH REVENUE ENHANCED PAYMENTS

City	Current	Class I diff. with revenue enhancement				
		1999[1]	2000[2]	2001[3]	2002[4]	2003[5]
	Dollars Per Hundredweight					
New York City, NY	3.14	4.03	3.41	2.90	2.48	2.07
Charlotte, NC	3.08	3.94	3.30	2.77	2.33	1.89
Atlanta, GA	3.08	4.06	3.53	3.11	2.78	2.46
Tampa Bay, FL	3.88	4.97	4.55	4.24	4.02	3.81
Cleveland, OH	2.00	3.01	2.52	2.12	1.83	1.54
Kansas City, MO	1.92	2.93	2.43	2.04	1.74	1.45
Minneapolis, MN	1.20	2.30	1.90	1.60	1.40	1.20
Chicago, IL	1.40	2.55	2.20	1.95	1.80	1.65
Dallas, TX	3.16	3.96	3.27	2.67	2.18	1.68
Salt Lake City, UT	1.90	2.84	2.27	1.81	1.44	1.08
Phoenix, AZ	2.52	3.34	2.67	2.09	1.62	1.14
Seattle, WA	1.90	2.82	2.24	1.76	1.38	1.00

[1] 1999 applicable base differential from Table 9 plus $1.10.
[2] 2000 applicable base differential from Table 9 plus $0.70.
[3] 2001 applicable base differential from Table 9 plus $0.40.
[4] 2002 applicable base differential from Table 9 plus $0.20.
[5] Final Option 1B differentials.

Analysis Based on Evaluation Criteria

Option 1B performs equal to or better than the current system when combined with a phase-in program option because it provides the industry time to adapt to a more market-oriented system.

Option 1B was evaluated against the objective criteria as follows:

1. Ensure an adequate supply of milk for fluid use. Option 1B suggests lower differentials than current levels in most of the proposed markets when using a $1.20 differential at Minneapolis, Minnesota. Option 1B relies more on the use of over-order premiums in many areas to attract adequate milk supplies for fluid purposes. Over-order prices are useful tools for allowing the market to find the final value of Class I milk, and Option 1B would ensure an adequate supply of milk for fluid use by rewarding those producers who service the Class I market needs. The use of "transitional payment" alternatives would ensure an adequate supply of milk for fluid purposes by providing the industry time to adapt to adjust their marketing practices in adapting to more market-determined pricing.

2. Recognize quality (Grade A) value of milk. Option 1B recognizes the quality (Grade A) value of milk through the use of a differential added to the basic formula price.

3. Provide appropriate market signals. Under Option 1B, greater reliance is placed on market forces to establish prices which will allow for clearer transmission of supply and demand signals between producers and consumers than does the current system.

4. Recognize value of milk at location. Option 1B does recognize the value of milk at location. Option 1B is based on the least cost movement of milk and dairy products based on the May 1995 results of the USDSS model. Thus the resulting price structure reflects the most efficient assembly and transportation of milk and dairy products and performs better than the current system.

5. Facilitate orderly marketing with coordinated system of prices. Like Option 1A, Option 1B also establishes a coordinated system of differentials and location adjustments that sets a minimum value for Class I milk in every county. Prices will be aligned within and among orders, thereby facilitating orderly marketing of milk.

6. Recognize handler equity with regard to raw product costs. Class I differentials proposed under Option 1B reflect differences in economic costs of procuring and marketing milk depending on geographic location. This coordination and alignment of minimum prices provides an equitable foundation upon which handlers can compete for available milk supplies and sales of fluid products in a more market-oriented environment.

Option 1B was evaluated against the administrative criteria as follows:

1. Minimize regulatory burden. Option 1B would not change the regulatory burden of the Federal order program in terms of reporting, recordkeeping, compliance, and administrative costs to handlers. The role of regulation in determining minimum prices would be reduced, as more responsibility would be placed on market forces.

2. Minimize impact on small businesses. Under Option 1B, a substantial part of the Class I value needed to attract adequate milk supplies would likely come from over-order payments negotiated outside the Federal order system.

Smaller, less efficient businesses would likely have a greater responsibility under Option 1B to bargain with processors for over-order premiums that adequately cover their costs. With processors less likely to face similar raw product costs, less efficient small processors may have to negotiate and/or sustain over-order price levels necessary to attract and maintain a sufficient supply of milk, while efficient large businesses may be in a better competitive position to do this. The use of a transitional payment program would help provide less efficient small businesses make the needed investments to move to a more competitive position in the market.

3. Provide long-term viability. When Option 1B is combined with one of the transitional phase-in program options, the long-term viability of Option 1B is increased and is expected to exceed that of the current price structure. Gradually moving from a regulated system to one that is less regulated will require adaptation of all entities within the dairy industry. A transitional period will allow market participants to make necessary adjustments in marketing practices to continue in the industry for years to come.

Option 1B would establish a market-oriented approach to Class I pricing, by reducing the traditional role the Federal order program has maintained with regards to Class I pricing. Historically the Class I price established under Federal orders represented the minimum value of Class I milk in the marketplace based on the cost of maintaining Grade A milk and additional marketing costs with the cost of alternative milk supplies placing an upper limit on this value. Option 1B provides an opportunity for free-market conditions to determine more of the value of fluid milk, but prices would still be undergirded by minimum prices based on the best available estimates of milk transportation costs. Ultimately, Option 1B should promote more market efficiencies; however, adjustments will be required by both producers and processors.

Quantitative Analysis

Using ERS multi-regional model analyses of the 11 order consolidations, four classes of utilization, and a Class I price mover as proposed, suggests that most producers would experience lower prices, when compared to the baseline, if Option 1B were phased-in with no transition assistance. The 6-year average Class I price in all current Federal order markets would decline $0.37 per hundredweight. However, producers located in the Chicago Regional, Upper Midwest, Iowa, Central Illinois, Tampa Bay and Southeastern Florida orders would benefit from Class I price increases ranging from $0.07 to $0.28 per hundredweight. Producers in all other current orders would experience losses of revenue because of Class I price decreases ranging from $0.03 to $1.07 per hundredweight. The smallest decline occurs in the Upper Florida order with the greatest declines occurring in the current Carolina ($−0.68), Middle Atlantic ($−0.72), Southwest Plains ($−0.76), Central Arizona ($−0.80), Texas ($−0.87) and Eastern Colorado ($−1.07) orders.

Both the increases and decreases are mitigated somewhat by the amount of milk used in Class I. Thus no market would see declines in the all-milk price in excess of $0.60 per hundredweight. Further details of the impact of these Class I price changes on the all-milk price and cash receipts based on the model results are available in the economic analysis statement.

Because current Federal order producers and processors have developed and designed their marketing practices based on the existing Class I price structure which has been in place for several years, moving immediately to a more market-oriented system could be disruptive for some producers and handlers. To reduce this marketplace disruption, Option 1B has been analyzed by the ERS multi-regional model in conjunction with transitional phase-in program alternatives from the current differentials.

The revenue-neutral phase-in alternative from current differentials to Option 1B differentials would minimize the impact of Option 1B during the phase-in period. Through a gradual phase-in, both producers and processors would be given time to adjust their marketing practices in preparing for the new minimum Class I price levels. Results of the model analysis indicate that almost all producers would experience increased revenue because of Class I price increases during the first revenue-neutral phase-in year when compared to the baseline. In fact, the Class I price would be higher in all but one of the current Federal order markets. The price increases range from $0.25 per hundredweight to $0.59 per hundredweight and for all 32 Federal order markets the average first year Class I price would be up $0.39 per hundredweight. In year two, producers located in 25 of the Federal order markets would continue to experience increased revenue because of Class I price increases compared with the baseline ranging from $0.01 per hundredweight to $0.48 per hundredweight. In year three, 17 orders would experience Class I price increases compared with the baseline. By year four, only the Florida, Upper Midwest, and parts of the Central areas would remain with price increases from the baseline.

Like the revenue-neutral phase-in, the revenue-enhancement phase-in would provide producers and processors a period of time to adjust their marketing practices in preparing for the new minimum price levels by initially providing payment assistance. The use of the revenue-enhancement phase-in option would provide producers with additional income to adjust their operations and obtain necessary education and resources to prepare for a more market-oriented system.

Results of the ERS multi-regional model indicate that during the first year, all current orders would experience Class I price increases over the baseline. In year two, all but one order would have increased Class I prices. By year three, 21 orders would continue to experience increases. During year four, 11 orders would maintain a Class I price increase over the baseline, while 21 orders would have price decreases of between $0.01 per hundredweight and $1.05 per hundredweight. Further details of the model results for both transitional payment program options are available in the economic analysis statement.

Comparison of Options 1A and 1B

Option 1A and Option 1B have similarities but rely on differing methods to establish a Class I price structure. First, both options recognize that milk has a location value. Secondly, both options establish a price surface that assigns a price to every county in the United States. Currently, a price at any particular location may vary depending upon the order under which the milk is pooled. Finally, both options utilized the USDSS model results to establish the price surface.

Although similar in these respects, the two pricing options differ on several issues. First, the options differ on the level at which Class I differentials are established. Option 1A is based on the premise that Class I differentials be established at a minimum price that reflects more closely the current value of the Class I milk based on local supply and demand conditions and agency judgement on the costs of obtaining alternative supplies of milk. Option 1B relies on the premise that a lower minimum price should be established strictly on the basis of the best available estimates of transportation costs to provide for a more market-oriented structure that allows dairy farmers and processors more freedom to negotiate fluid milk price levels.

Second, the two options differ in how the price surface should be established regardless of the level. Option 1A provides for a surface that is smoother and flows primarily from north to south and west to east. Option 1B establishes a price surface that is flatter throughout a majority of the United States and then increases significantly in the deficit milk production areas of the Southeast. A comparison of the price surfaces established under Options 1A and 1B from Minneapolis to Miami demonstrates this difference.

The total distance from Minneapolis to Miami is approximately 1775 miles. Since Atlanta is the first major metropolitan center located in the Southeast order, and is considered a deficit area, a review of the two price surfaces between Minneapolis and Atlanta and Atlanta and Miami highlights the differences in the price surface pattern. The distance between Minneapolis and Atlanta is about 1110 miles, or 63 percent of the total distance. The distance between Atlanta and Miami is approximately 665 miles, or 37 percent of the total distance.

Under Option 1A the differential established in Minneapolis is $1.70 per hundredweight and $1.20 per hundredweight under Option 1B. The Option 1A differential in Atlanta is

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$3.10 per hundredweight and under Option 1B, the differential is $2.50 per hundredweight. The Class I differential in Miami under both options is about $4.30 per hundredweight. The difference in differentials between Minneapolis and Atlanta under Option 1A is $1.40 per hundredweight and $1.30 per hundredweight under Option 1B. The difference in differentials between Atlanta and Miami under Option 1A is $1.20 per hundredweight and $1.80 per hundredweight under Option 1B. The total difference between Minneapolis and Miami under Option 1A is $2.60 per hundredweight and $3.10 per hundredweight under Option 1B.

Under Option 1A, the change in differentials from Minneapolis to Atlanta represents 54 percent of the total $2.60 differential change with the differential changes from Atlanta to Miami representing 46 percent of the change. This helps to demonstrate that Option 1A results in a smoother, more evenly dispersed Class I price surface from north to south.

Under Option 1B, the change in differentials from Minneapolis to Atlanta represents about 42 percent of the change whereas between Atlanta and Miami, 58 percent of the differential change is reflected in only 37 percent of the total distance. As demonstrated, Option 1B results in a price surface that is flatter over a greater portion of the United States and significantly steeper in the deficit areas of the Southeast.

Third, the options differ in their reliance on the USDSS model results. Option 1A recognizes the value associated with the model results but incorporates judgement on existing specific marketing conditions and practices to make adjustments to the model results. Option 1B, on the other hand, utilizes the most recently available USDSS model results to reflect optimal values for fluid milk at different locations that will promote market efficiencies within the dairy industry.

To further compare and analyze the impacts of Options 1A and 1B on producers and processors, static Federal order pool analyses were completed. The pool analyses, although static, provide some indication on how the revenue will be distributed in the newly consolidated pools given the pricing structure. The pool analyses are based on October 1996 data. The analyses utilized all producer milk in each of the current Federal milk order pools. The classification of producer milk, including Class III–A milk, remained as it is currently classified under each order. The data were collected for all plants and prices and were adjusted for location. These data were then combined into the 11 proposed orders, and the pools were re-computed to reflect the impacts on the uniform price of consolidation only and then to reflect the impacts of consolidation combined with Option 1A and Option 1B price surfaces. Class II, Class III, and Class III–A and the basic formula price were held at the actual prices for October 1996. Table 12 sets forth the results of the analysus.

TABLE 12.—CONSOLIDATION PLUS OPTION 1A AND OPTION 1B PRICE STRUCTURE IMPACTS ON PROPOSED ORDERS' ESTIMATED UNIFORM PRICES—OCTOBER 1996

Proposed order	Estimated uniform price			Difference between pool impacts of consolidation plus options 1A & 1B and consolidation	
	Consolidation only (Col. 1)	Cons. plus option 1A (Col. 2)	Cons. plus option 1B (Col. 3)	Col. 2 – Col. 1	Col. 3 – Col. 1
	$/hundredweight				
Northeast	16.55	16.60	16.07	0.05	(0.48)
Appalachian	17.27	17.57	16.53	0.30	(0.74)
Southeast	17.12	17.12	16.69	0.00	(0.43)
Florida	18.52	18.55	18.37	0.03	(0.15)
Mideast	15.95	16.01	15.64	0.06	(0.31)
Upper Midwest	14.78	14.85	14.79	0.07	0.01
Central	15.69	15.68	15.44	(0.01)	(0.25)
Southwest	16.54	16.45	15.66	(0.09)	(0.88)
Western	15.01	14.94	14.54	(0.07)	(0.47)
AZ-Las Vegas	15.91	15.82	15.28	(0.09)	(0.63)
Pacific NW	15.35	15.34	14.98	(0.01)	(0.37)

Table 12 provides an indication of the impacts of the two Class I pricing surfaces when combined with the proposed orders. This pool analysis does not reveal the impacts of the three possible alternatives for phasing-in Option 1B.

Conclusion

As previously indicated, the Department, based on the evidence and arguments currently before it, does not believe Options 2–5 or the other ideas discussed with less detail are viable options. But this proceeding is still a proposal. Therefore, commenters may still present evidence or arguments regarding any of the Options or ideas.

All of the provisions of Federal milk marketing orders continue, in addition to a pricing surface as proposed under Options 1A or 1B. Thus, recordkeeping, prompt payment provisions, auditing plant receipts and utilization, and verification of farm weights and tests still continues. Both Option 1A and 1B also recognize that milk used for fluid purposes should be valued higher than milk used in other products. The two options differ in their approach for establishing minimum values for fluid milk. Option 1A focuses on establishing a minimum price that reflects existing marketing conditions and the current value of milk used for fluid purposes. Option 1B focuses on reducing government intervention, to provide more room for market forces to determine the actual value of Class I milk.

At this time Option 1B is preferred for several reasons. First, this option is based on model results that reflects the best available estimates of least cost assembly and shipment of milk and dairy products to meet all dairy product demands. By promoting market efficiencies, it would be expected to result in the most preferable allocation of resources over time.

Option 1B would move the dairy industry into a more market-determined pricing system. By lowering differentials, marketing conditions will have a greater impact on actual Class I prices in the form of higher prices that are provided to those producers who service the Class I market. In this way, the revenue necessary to obtain milk for fluid use may be minimized since the Class I value is not shared marketwide with those producers that do not service the fluid market.

U.S. agriculture is transitioning to a more market-determined environment, relying less on traditional government involvement typified by price and income support programs. This transition is emphasized in the 1996 Farm Bill, which specifically provided for the gradual phase-out of traditional price and income support programs, including the dairy price support program that has existed since 1950. Because Option 1B is more market oriented and reduces the government presence in establishing minimum Class I prices, three methods of transitioning to Option 1B are offered. One variation is a gradual phase-in to lower Class I differentials with no transition assistance to offset any lower revenue to dairy farmers that may occur. This variation would reduce Class I differentials in market order areas by 20 percent each year until the final Class I differentials under Option 1B are reached in 2003.

A second variation provides transition assistance at increases Class I differentials initially to offset reduced revenue that may occur to producers due to the decline in Class I differentials. In this variation, the Class I differentials in all market order areas would be increased by $0.55 per hundredweight in the first year of the phase-in, $0.35 per hundredweight in the second year, $0.20 in the third year, and $0.10 per hundredweight in the fourth year of phase-in. This level of assistance would restore income to dairy farmers that might be lost in the transition, and if the market generates additional premiums, these assistance levels would more than make up for lower producer revenue due to lower minimum Class I prices.

A third variation offers transition assistance that initially increases the Class I differentials even more, while still phasing toward a more market-oriented price surface by 2004. Under this variation, all Class I differentials in all market order areas would be increased by $1.10 per hundredweight in the first year of phase-in, $0.70 in the second year, $0.40 in the third year, and $0.20 in the fourth year before reaching the final Class I differentials described by Option 1B. The assistance provided by this variation would enable dairy farmers to make the adjustments necessary to succeed in a more market-oriented environment.

While Option 1B is preferred at this time, Option 1A and other pricing options are still under consideration. Therefore, comments should address at least the following questions:

—Should the Class I price structure be designed to move the dairy industry towards a more market-oriented system that relies less on government regulation in establishing the pricing terms of trade between handlers and dairy farmers or should the Class I price structure be established at the estimated current value of Class I milk?

—What is the appropriate Class I differential level in surplus areas? How low can a Class I differential be established to ensure an adequate supply of fluid milk? What Class I differential level is necessary for producers to maintain sufficient revenue for ensuring an adequate supply of milk? Is that level $1.00, $1.60, or is it another value and why?

—Option 1B has been presented with three phase-in programs; which of these phase-in programs would be preferred and why? Is five years a sufficient time period for the industry to make necessary adjustments to move towards a more market-oriented, less governmentally regulated system?

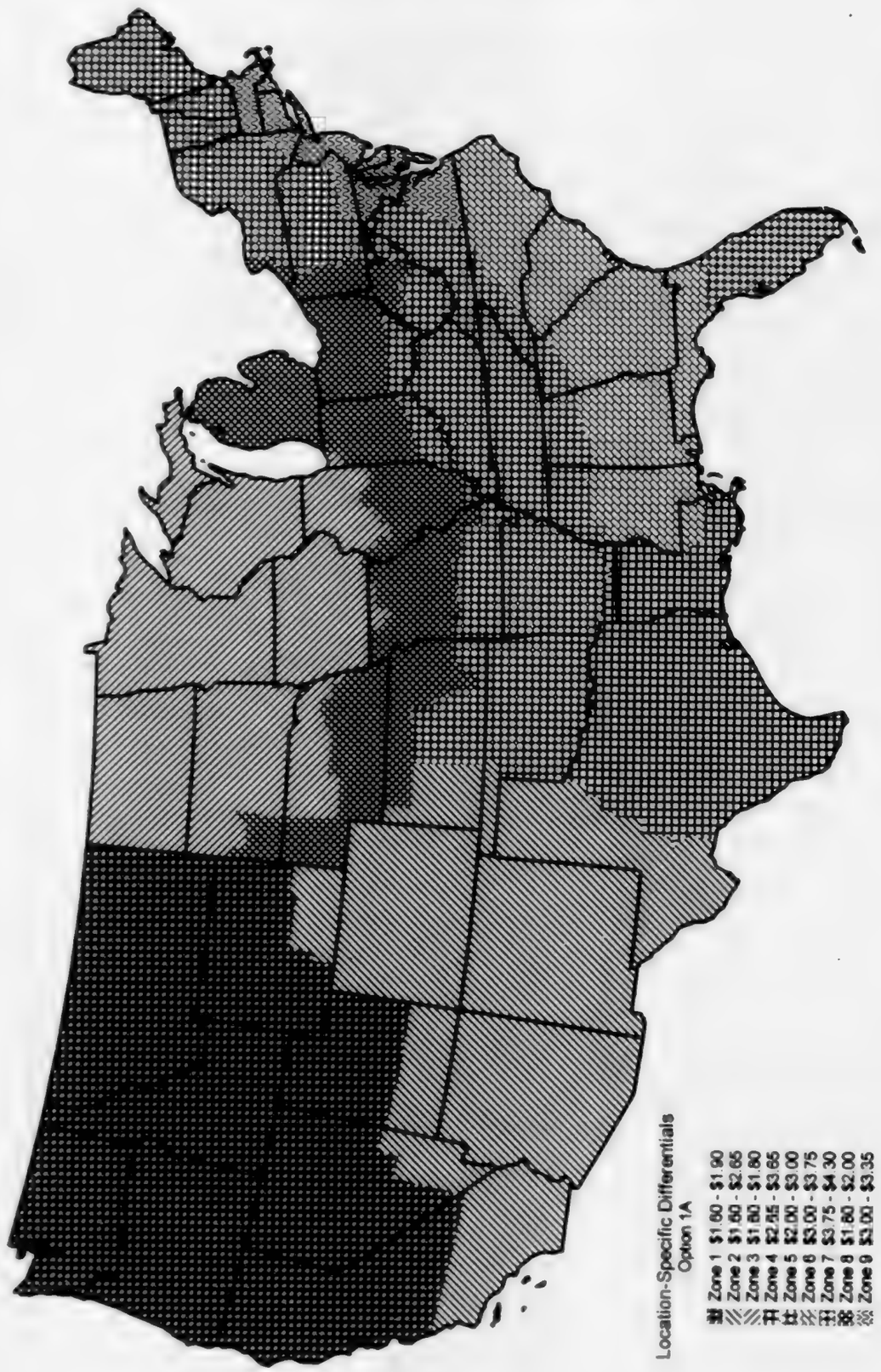
—How will the California state program interact with either Option 1A or Option 1B?

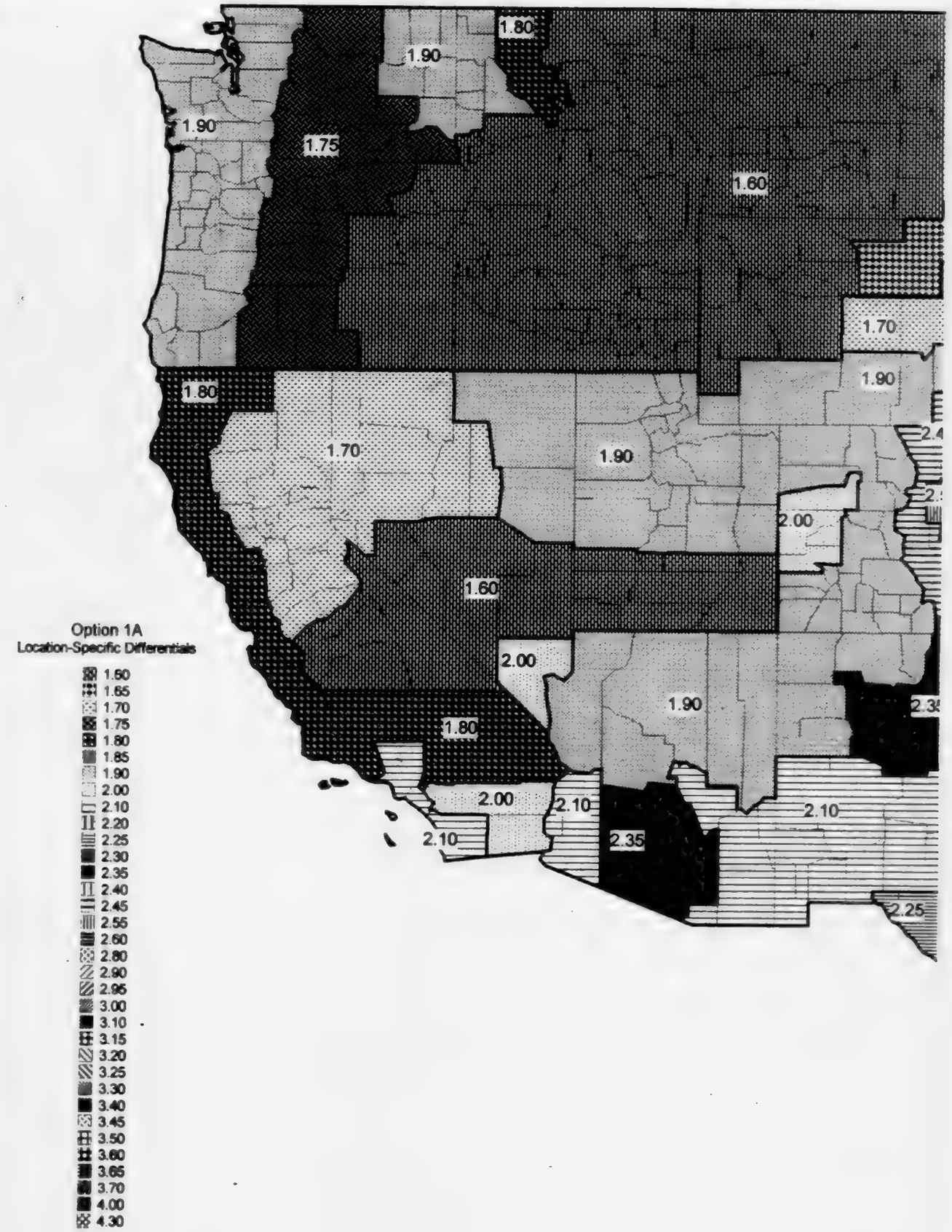
—To what extent would consumers benefit from reduced differentials under Option 1B versus Option 1A?

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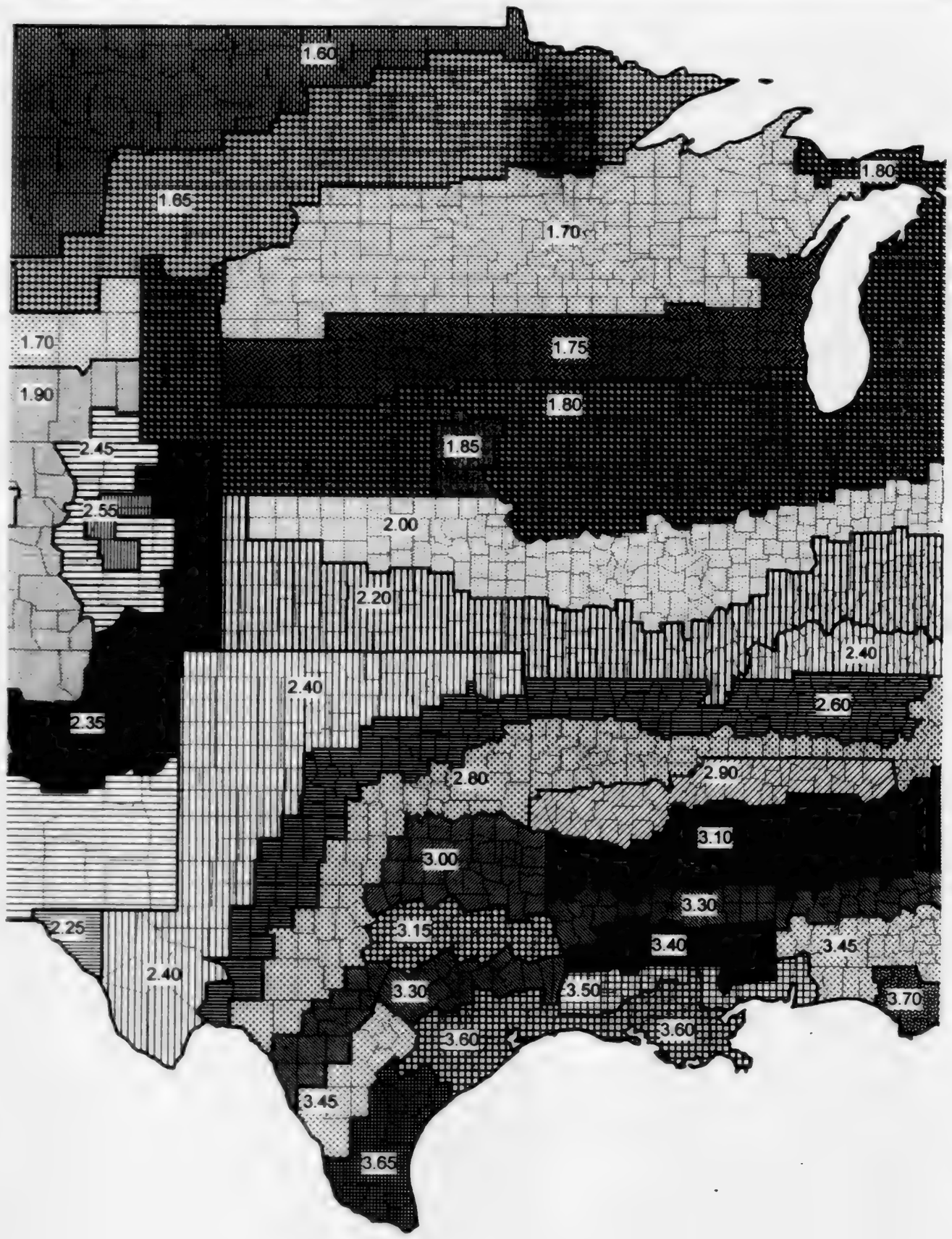
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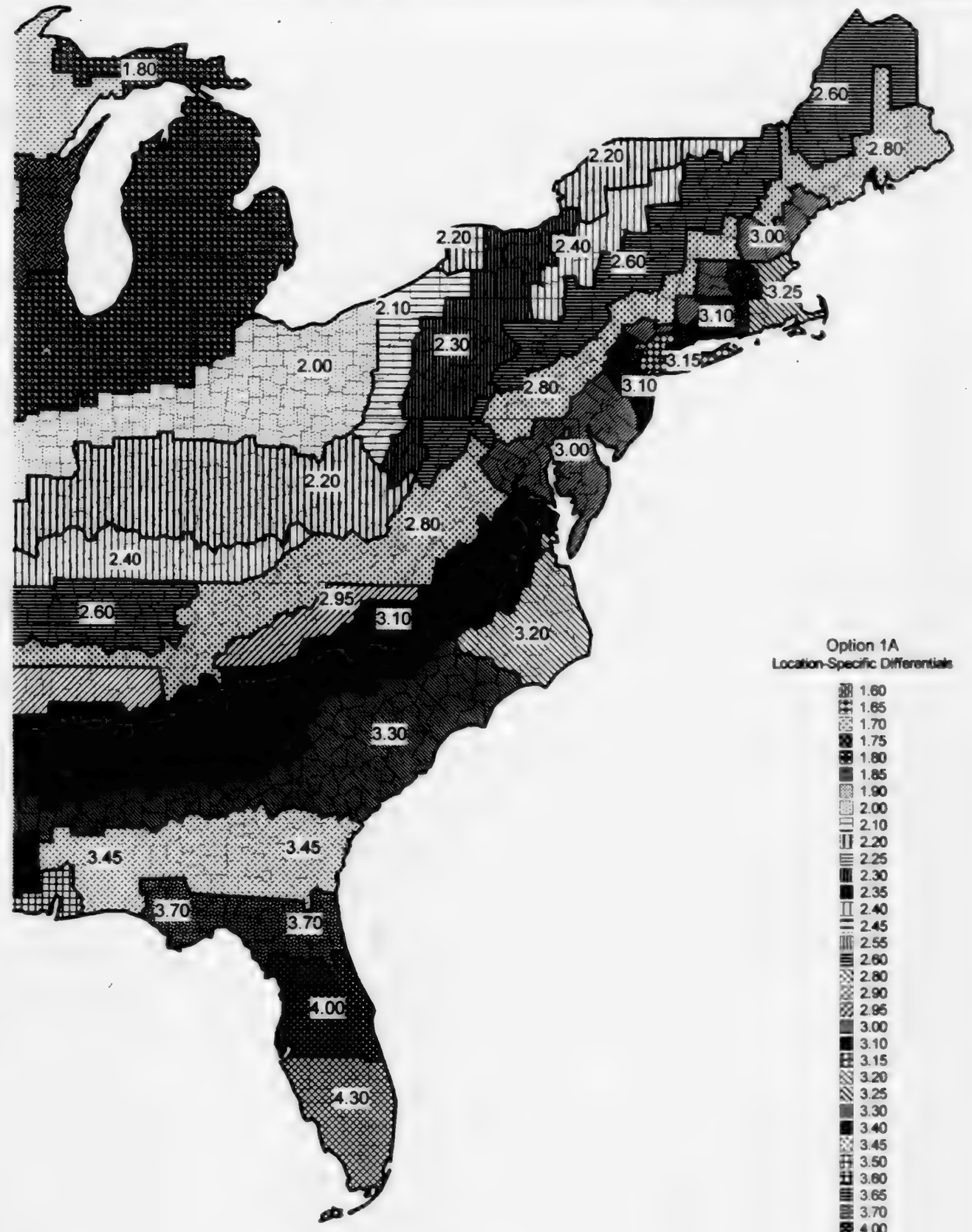
Option 1A - Location-Specific Differential Ranges Map 1



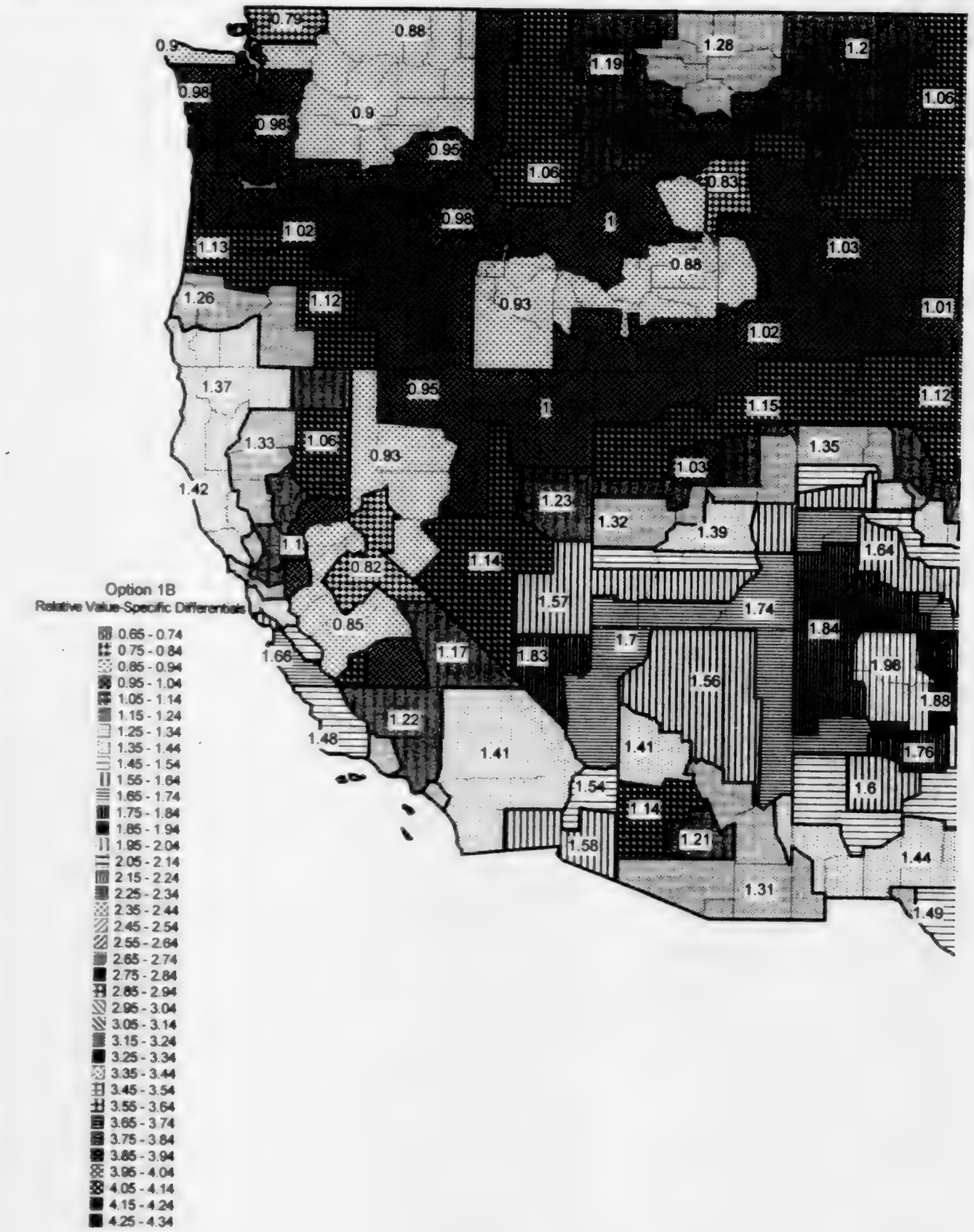


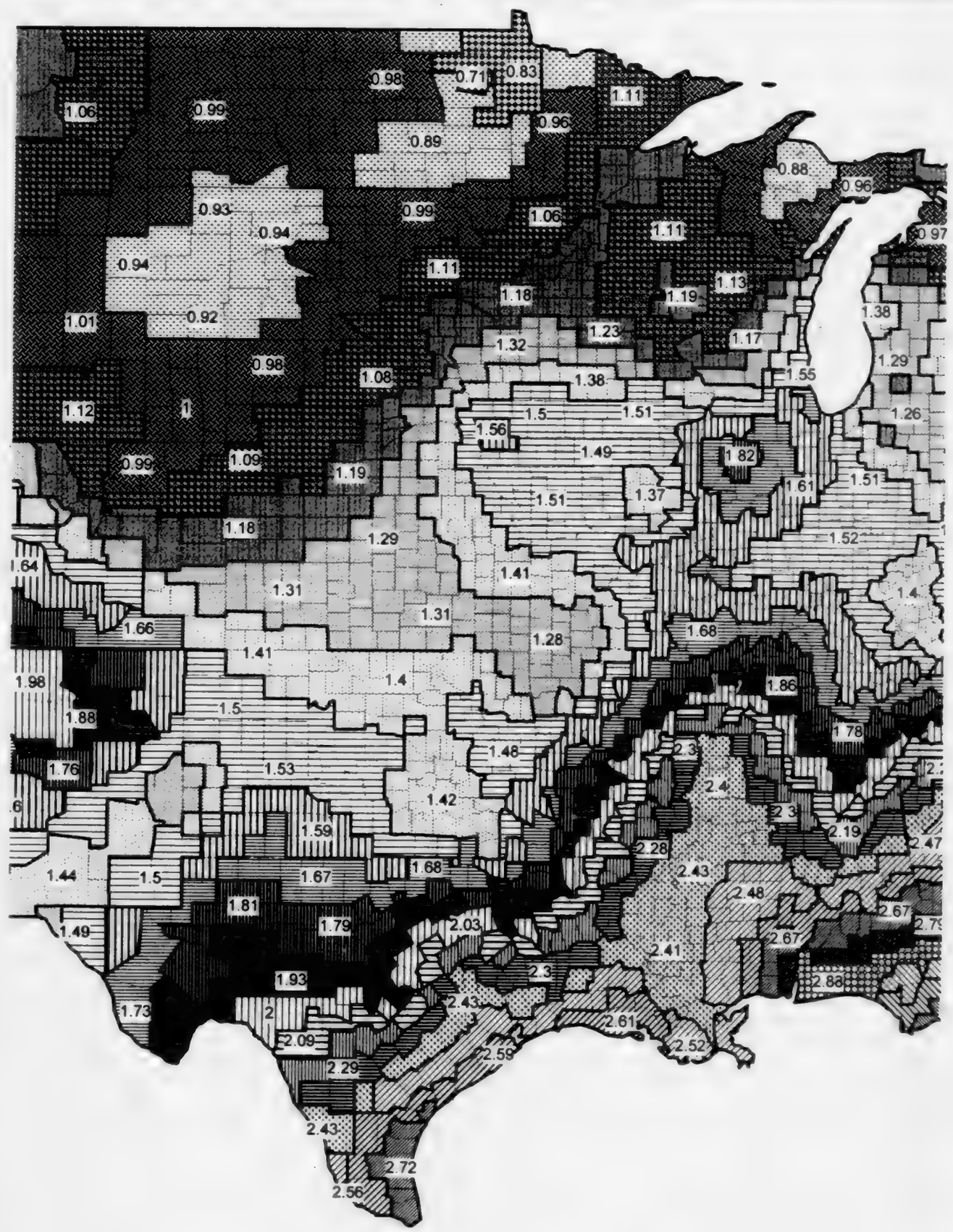
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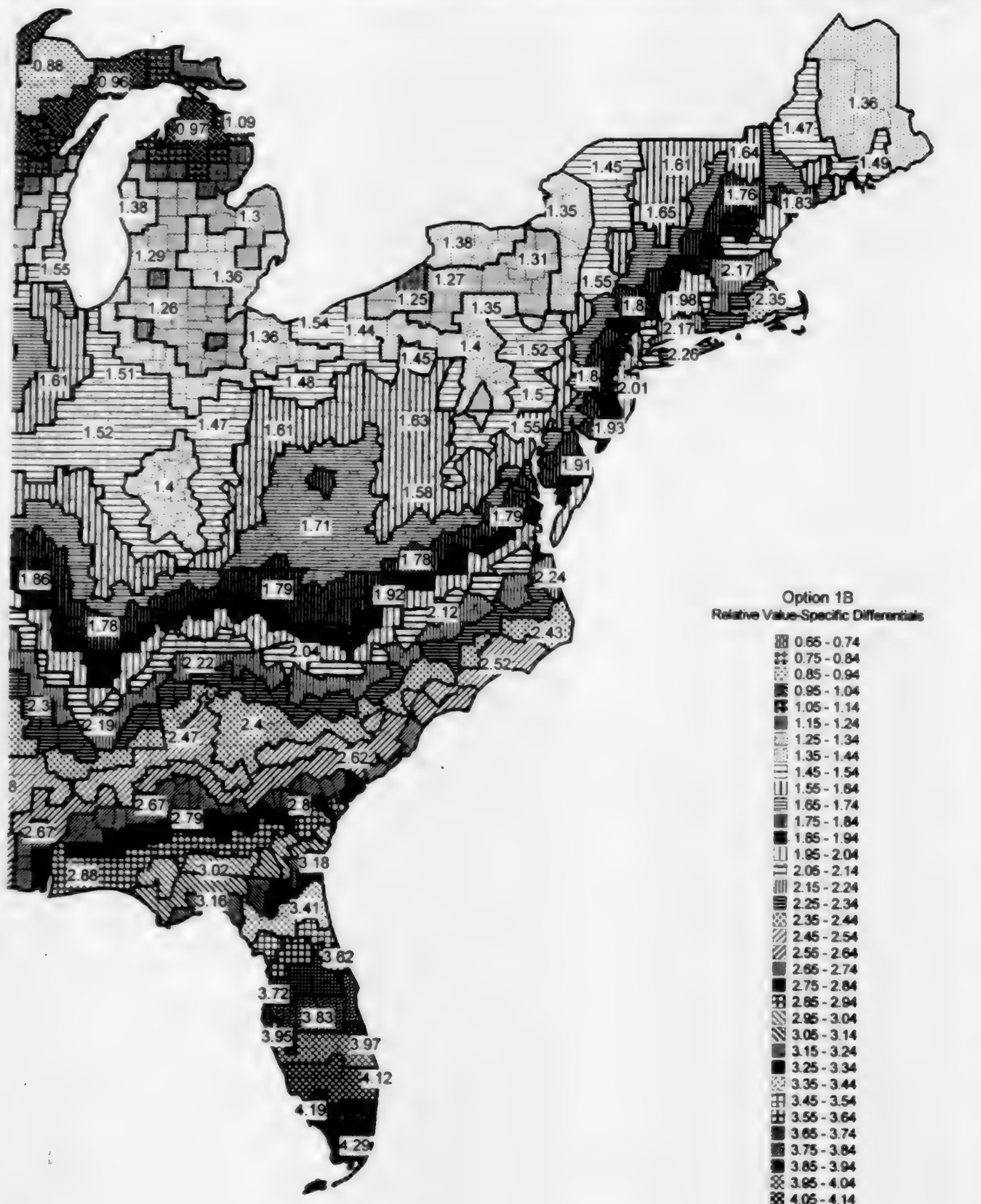


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4. Classification of Milk

Under this proposal, the Federal milk order system would continue to contain uniform classification provisions, but with some modification. The proposed modifications would be consistent with the Agricultural Marketing Agreement Act of 1937, which requires that milk must be classified "in accordance with the form in which or the purpose for which it is used."

The proposed uniform provisions would provide for 4 classes of use. They are similar to the uniform classification provisions contained in the current orders. The purpose and application of the current classification and classification-related provisions are contained in the Department's final decisions that were issued February 19, 1974 (39 FR 9012), July 17, 1975 (40 FR 30119), February 5, 1993 (58 FR 12634), and October 20, 1993 (58 FR 58112). The differences in this proposal from the current classification system are discussed herein and are the result of a thorough review of Federal order classification provisions since passage of the 1996 Farm Bill.

Major proposed changes from the current classification plan include the formation of a new Class IV which includes milk used to produce nonfat dry milk (currently in Class III–A) and milk used to produce butter and other dry milk powders (currently in Class III). Other classification changes include reclassifying eggnog as a fluid milk product, moving cream cheese from Class III to Class II, broadening the Class II classification for infant formulas and meal replacement to include all such formulas meeting redefined criteria for such products regardless of the type of container they come in, removing the words "dietary use" from the fluid milk product definition and eliminating the term "filled milk."

In addition to the class uses of milk, consideration has been given in this proposal to a number of modifications related to order definitions and provisions that are necessary to administer an effective classified pricing plan. Related definitions include the definitions of fluid milk, filled milk, and commercial food processing establishments. Also, modifications have been considered for administrative rules related to the classification of milk. These include rules for classifying skim milk and butterfat that is transferred or diverted between plants, general rules pertaining to the classification of producer milk (including the determination of shrinkage and overage), rules describing how to allocate a handler's receipts of skim milk and butterfat to the handler's utilization of such receipts, and provisions concerning the market administrator's reports and announcements concerning classification. The classification and classification-related provisions are proposed to be restructured and redrafted to achieve part of the goal of standardizing and simplifying the regulatory program.

In response to a Classification Committee draft report released during the developmental stage for this proposed rule, comments letters were received regarding the classification of milk. The comments ranged from suggestions that the entire classification system be revised by providing 2, 4, or 5 classes of milk to suggestions regarding the classification of individual products. Some comments supported the classification method the California state order provides and recommended a review of that method. The comments will be discussed according to each issue.

4a. Fluid Milk Product (§ 1000.15)

The new orders would include a modified *fluid milk product* definition in § 1000.15. The proposed changes to the fluid milk product definition include eliminating the term *filled milk*, including eggnog in the list of specified fluid milk products, and revising the word *buttermilk* to read *cultured buttermilk*. The revised fluid milk product definition would read "any milk products in fluid or frozen form containing less than 9 percent butterfat and more than 6.5% nonfat milk solids that are intended to be used as beverages. Such products include, but are not limited to, milk, skim milk, lowfat milk, milk drinks, eggnog, and cultured buttermilk, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids, sterilized, concentrated (to not more than 50% total milk solids), or reconstituted."

The term "buttermilk," as used in the fluid milk product definition, would be changed to read "cultured buttermilk." The revised term clearly distinguishes the "beverage" buttermilk product from the buttermilk byproduct which is produced from a continuous churning operation.

The fluid milk product definition also would be modified to exclude "filled milk" and to include eggnog in its list of products. Although it is apparent that eggnog is a beverage milk product and clearly meets many of the criteria for being considered a fluid milk product, it is not now included in the list of products identified as fluid milk products. The proposed addition of eggnog to the list of fluid milk products results in a change of the product's classification from a Class II product to a Class I product. The elimination of the term "filled milk" from the fluid milk product definition is discussed later.

Section 15(b)(1) of the fluid milk product definition would be modified to exclude any product from the fluid milk product definition if the product is a formula especially prepared for infant feeding or a meal replacement without regard to the type of container used to package the product. The reference to "dietary use," which is an imprecise term, would be deleted as a standard for classifying milk products.

At present, "formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed containers" are not "fluid milk products" but the exact same formula packaged in a conventional container may be considered to be a fluid milk product if it otherwise meets the standards for such products. This possible difference in classification of these formulas would be eliminated.

The consolidated orders would continue to exclude from the fluid milk product definition formulas designed as "meal replacements" but, as noted above, any reference to "dietary use" should be removed as a classification standard. The words "dietary use" have not been helpful in distinguishing the products that are really beverages from other products that are meant to be much more than just beverages.

As intended for the consolidated orders, the words "meal replacement" would pertain to the type of specialty product that one might find in a hospital or nursing home for people who have a swallowing disability, some type of digestive impairment, or other health or medical problems. Such products include those that are thickened with a thickening agent, such as waxy maize starch, which make them consumable for a person with special dietary needs. Such products do not compete with fluid milk products as a beverage. They are prepared for a limited market and are not sold as milk to the general public.

The term "meal replacement" would not include various types of shake products that are designed for people who are trying to gain or lose weight. Neither would the term apply to products that are advertised as "protein supplements," "instant breakfasts," or "high in fibre." These products clearly may be consumed as beverages and are sold to the general public. Therefore, like other fluid milk products, it is

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proposed that they be classified as Class I.

The meal replacement standard proposed for the consolidated orders is more stringent than the one that is currently applied. At the present time, for instance, products such as "Sportshake," "Powergetic," "Carnation Instant Breakfast," "Resource Dairy Thick," "ReadyCare Thickened Dairy Drink," and "Ultra Slim-Fast" are classified as "meal replacements." As redefined in this proposal, however, only "Resource Dairy Thick," "ReadyCare Thickened Dairy Drink," and similar products would fall within the meaning of "meal replacement," as described above.

Fluid milk products that contain less than 6.5% nonfat milk solids are excluded from the current and proposed fluid milk product definition. Consideration was given to eliminating or lowering this standard because there are some products that resemble fluid milk products but are excluded from the fluid milk product category because their nonfat solids content falls slightly below the 6.5% standard.

Several comment letters were received opposing any adjustment of the 6.5% standard. Some interested parties pointed out that elimination of the 6.5% nonfat milk solids standard would greatly expand the fluid milk product category to include many essentially non-milk products that contain very little milk in them. This could greatly increase market administrator auditing costs in following these products and could regulate several new facilities that would not reasonably be considered to be milk plants. In addition, several dairy product manufacturers argued that their products would be detrimentally affected as other shelf-stable competitive products would gain a substantial economic advantage. The letters stated that the increase in cost associated with the Class I price would force manufacturers to reformulate their products so that no fluid milk or substantially less fluid milk would be used.

After carefully weighing these arguments, it is concluded that any competitive problems that may now exist as a result of the 6.5% standard are very minor and that no change in the standard is warranted at this time.

4b. Fluid Cream Product (§ 1000.16)

No change would be made to the *fluid cream product* definition. The current definition is uniform under all the orders and should be used in the newly merged orders. No comment letters were received which suggested changing the current *fluid cream product* definition; however, several comments were received in support of the current definition.

4c. Filled Milk

It is proposed that the definition of *filled milk* be eliminated and the term be removed from the fluid milk product definition and other provisions within the orders. Filled milk is a product that contains a combination of nonmilk fat or oil with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids). Filled milk was first produced and marketed in the 1960s. In 1968, the orders were amended to provide a definition of filled milk. Currently, there is little or no filled milk being produced under Federal orders. The term filled milk is used 18 times in a milk order. It serves little purpose today except to complicate and lengthen the regulatory language. For this reason, the definition of filled milk would be eliminated and the term removed from the fluid milk product definition and other provisions within the orders.

The form of filled milk and purpose for which it is used are the same as the form and purpose for which whole milk is used. Filled milk is marketed by handlers in the same types of packages and in the same trade channels as whole milk, and is mainly intended to be used as a beverage substitute for milk. Whether made from vegetable fat and fresh or reconstituted skim milk, or any combination thereof, the resulting product resembles whole milk in appearance. Therefore, any filled milk produced and marketed in the future would be classified as a Class I product under the revised fluid milk product definition.

One cooperative association submitted a comment supporting the suggestion to eliminate the definition of filled milk. No comments were received in opposition to this idea.

4d. Commercial Food Processing Establishment (§ 1000.19)

The definition of *commercial food processing establishment* (CFPE) is proposed to be revised by removing the filled milk reference, for the reasons previously discussed, and by removing the word "bulk" from the definition. The removal of the word "bulk" would allow a CFPE to receive fluid milk products and fluid cream products for Class II use in certain sized packages as well as in bulk.

Presently, the CFPE definition prohibits the receipt of fluid milk products for Class II use in relatively small pre-measured packages that might reduce the CFPE's production costs. Although there were no comment letters directed specifically to this point, this problem has come to the attention of market administrator personnel. While proposing that packaged fluid milk products be permitted to be transferred to a CFPE in any size, it is also proposed that only milk which is shipped in larger-than-consumer-sized packages (i.e., larger than one gallon) should be eligible for a Class II classification. If milk is received in gallon containers or smaller, the milk should be priced as Class I milk since there is no way of guaranteeing that such products will not be sold for fluid use. Permitting milk in any sized container to be sold to a CFPE for Class II use if the container had a special label, such as "for commercial food processing use only," was considered, but such a provision would be impractical and it would be prohibitively expensive for a handler to prepare specially labeled products for small accounts. The current restriction barring a CFPE from having any disposition of fluid milk products other than those in consumer-sized packages (one gallon or less) should be retained under the new orders.

These two restrictions are based upon practical considerations. The integrity of the classified pricing system would be much more difficult to maintain if the market administrator were forced to audit every CFPE on a regular basis. By prohibiting the sale of fluid milk products in consumer-sized packages to a CFPE for anything but Class I use, there would be less need to regularly audit CFPE's to be sure that such products are not being sold to the public. Similarly, since packaged fluid milk products in containers larger than one gallon are rarely, if ever, found in retail outlets, it is unlikely that such products will be sold for fluid use. By restricting fluid milk product disposition by CFPE's to packaged products not larger than one gallon in size, there is reasonable assurance that milk priced as Class II will not be disposed of as fluid milk sold by the glass from a bulk dispenser.

One handler submitted a comment in support of the Committee's suggestions regarding the commercial food processing establishment definition; none were received in opposition to these suggestions.

4e. Classes of Utilization (§ 1000.40)

Historically, the fluid or beverage uses of milk have been classified in the highest-priced class (Class I), and soft or spoonable products, those from which some of the moisture has been removed, have been classified in the intermediate class of milk (Class II). The final

decision issued on February 5, 1993 (58 FR 12634) provided 3 uniform classes of milk for all orders. Classes I and II continued the traditional classification of milk, while the lowest-priced class (Class III) contained the hard, storable products. In a final decision that became effective December 1993, a fourth class—Class III–A (actually a sub-section of Class III)—was established for most orders for milk used to produce nonfat dry milk.

It is recommended that the fluid and beverage uses of milk continue to be the highest-priced class of milk, Class I. Soft or spoonable products, or those used in the manufacture of other food products or sweetened condensed milk, would be classified as Class II products. Class III would contain primarily the hard cheeses, but also such storable products as plain or sweetened evaporated or sweetened condensed milk (or skim milk) in a consumer-type package. Finally, a new Class IV would contain all skim milk and butterfat used to produce butter or any milk product in dried form.

Comments filed regarding the number of classes of utilization for the proposed merged orders varied from supporters of one class, which would eliminate all manufacturing classes, to supporters of 5 classes of milk. Comments concerning the addition of an export class were also received. Some comments urged the immediate suspension or termination of Class III–A, while others recommended a thorough review of Class III–A.

Many commenters suggested that there be one class of milk. A dairy farmer stated that dry milk powder can be used for making cheese or fluid milk and could be easily stored, and later dumped on the market again which could influence the milk price. A large cheese manufacturer maintains that multiple classes of utilization for competing manufactured product uses create market distortion and regulatory adjustments, and argues that a single, market-clearing price for all non-fluid uses would allow competitive forces to determine supply and demand.

Another commenter, also a dairy producer, stated that manufacturing Class II and Class III products is the only means of storing excess milk. According to the producer, at one time much of the country's milk was produced at Grade B standards and, consequently, at a lower cost of production. However, he contends, this is not true today. The producer asserts that the current Federal order system of milk classification is the reason why the dairy industry is not unified and unable to come to a consensus and that milk is the only commodity in the country that is priced according to its use.

A major dairy foods association suggested that there be two classes of milk (i.e., Class I and all other). However, if multiple classes of milk are maintained, the association proposed that some products be reclassified to Class III and that Class III–A be discontinued. The association also stated that no new milk classifications should be established such as an export class of milk. Another commenter suggested that more than one class of non-fluid utilization of milk is unnecessary and does little to enhance producer income.

A manufacturer of shelf-stable products also supported a two-class system for clarification and simplification reasons, and stated that such a system would also eliminate the need for future hearings to determine the classification of new products. The commenter strongly opposed the reclassification of Class II products in aseptic containers to Class I and argued that these products do not compete with current Class I products, but rather compete in the juice market.

Another handler stated that it supported 3 classes of milk, but stated that many products that are currently in Class III should be reclassified as Class II. The handler contended that classification should be based upon demand elasticity and suggested that the criteria for placing various products into classes should be expanded. Very few products are processed to utilize true surplus supplies of milk, it stated.

A major cooperative association's comment letter supported a 4-class system where Class IV would include butter and nonfat dry milk products, thus serving as the class for market-clearing products. The cooperative stated that a 3-class system would not provide enough differentiation for market clearing. It stated that a distorted market may result when pooled handlers must pay the same prices for milk used in nonfat dry milk as for milk used in cheese. Another cooperative also supported the separate classification for cheese (Class III) and butter and powder (Class IV).

Two trade associations recommended 5 classes of milk for the merged orders. One association recommended that the 5 classes be divided into Classes I, II, III, IVA, and IVB and that products be classified on the basis of product yields. The other association stated that the 5 classes of milk should consist of Classes I, IIA, IIB, IIIA, and IIIB, and that Classes IIA and IIB should be classified on the basis of protein and butterfat, whereas Classes IVA and IVB should be classified on the basis of solids not-fat and butterfat.

A few comments addressed the issue of an export class. One comment letter supported the concept of continuing to develop export markets and providing for Class III–A or Class IV to compete in the international marketplace. A Missouri dairy farmer wrote that an export class is needed so that the cost of clearing the U.S. market can be shared across Federal order and state order lines.

Another commenter, a dairy products manufacturer, recommended an export class be established for Class I products. The handler stated it is engaged in the packaging and selling of UHT (i.e., ultra high temperature) processed shelf-stable dairy products sold within the United States and abroad. According to the handler, its inability to compete with the price offered by its competitors is the principal reason it has been unable to increase its volume of business in the international market. The handler contends that changes in the Federal order system are needed to allow the American dairy industry to become competitive in the international market.

The handler suggested that the export class price be established just above the Class III level because it would allow milk to flow into either the cheese market or export markets, whichever provides the greater opportunity. The handler claims that the addition of an export-oriented, value-added, product class would yield greater returns to producers than exporting skim or whole milk powder (i.e., currently Class III-A products).

A northwest cooperative association also recommended that consideration be given to establishing an export-oriented class to facilitate the development of export markets and to promote fair trade. Products produced for the world market would be included in a class with a price that reflects "world market" levels. With such a class, according to the cooperative, the dairy industry would be in a better position to promote exports and contribute to the U.S. balance of trade. The commenter contends that processors with exporting potential will benefit from an export class and that producers also will benefit because expanded exports will lead to reduced dairy surpluses.

After careful consideration of the comments and arguments, 4 classes of utilization are proposed for the consolidated orders, as described below. Inclusion of an export class is not proposed because classification is based on form and use without regard to sales area. In addition, it would be difficult to support a concept of dual pricing of a

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product—one price for domestic use and a lower price for export. Moreover, to adopt such dual pricing would be inconsistent with the principles of the World Trade Organization.

4f. Class I Milk

Under this proposal, Class I milk would be all skim milk and butterfat contained in milk products that are intended to be consumed in fluid form as beverages. Class I should include all the products included in Class I in the 1993 uniform classification decision plus eggnog.

The 1974 uniform classification decision classified eggnog as a Class II product. The decision recognized that eggnog was prepared to be consumed as a beverage and that it was classified in 9 of the 32 orders as a Class I product. However, the decision stated that eggnog was a highly seasonal product with limited sales. It was also estimated that approximately 40% of the sales of this product was in the form of imitation eggnog. The decision stated that a Class II classification would enhance the competitive position of the product in the marketplace.

In 1991, the recommended decision of the national hearing changed the classification of eggnog from its historical Class II classification to Class I. However, the 1993 final decision for the proceeding reversed the recommended decision classification. The primary reason for the change in the product's Class I classification back to the historical Class II classification was based on exceptions to the recommended decision. At the same time, however, the final decision left low-fat eggnog as a fluid milk product with a Class I classification, as it was prior to the 1990 national hearing.

Class I products are generally classified on the basis of their fluid form and intended use. Eggnog, a highly seasonal product, is clearly intended to be consumed as a beverage. Since this product is manufactured, packaged and distributed to the consumer as a drinkable beverage, it is proposed to be classified as a Class I product. The modest change in the ingredient cost of the finished product should have little or no effect on its sales in the marketplace. Comments received regarding the reclassification of eggnog were generally in support of its reclassification into Class I.

A western producer organization supports the recommendation to include all milk consumed in beverage form in Class I. The organization rejects a two-class system as proposed by processor groups, arguing that such a system makes no economic sense since not all non-fluid uses of milk are market-clearing in nature and thus should not be placed in the same class. A shift to a two-class system would benefit processors and manufacturers at the expense of producers, according to this commenter.

Class I Used-to-Produce. In order to simplify the accountability for milk products classified as Class I that may contain nonmilk ingredients and/or previously processed and priced skim milk and butterfat, we recommend adding a "used-to-produce" category to Class I. The used-to-produce accountability method would preclude the need to develop and maintain nonstandard conversion factors and non-milk credits (i.e., salt, flavoring, stabilizers) for milk product accountability. This method should improve the accuracy of handler reporting and minimize audit corrections without sacrificing any statistical information, pricing considerations, or classification criteria. No comments were received in response to the recommendation that this category be added to the proposal.

4g. Class II Milk

Most of the products included in Class II as a result of the 1993 uniform classification amendments would continue to be classified as Class II products under the new orders, with 3 exceptions. The exceptions include: (1) Cream cheese, which would be reclassified from a Class III product to a Class II product; (2) eggnog, as discussed already, which would be reclassified as a Class I product; and (3) any fluid product in a hermetically-sealed, all-metal container which would be classified as a Class II product.

The 1993 national hearing decision included cream cheese in Class III. The decision placed spreadable cheeses and cheeses that can be crumbled into separate pieces in Class III, while other more liquid "spoonable" products were placed in Class II. The decision stated that cream cheese is used as a substitute for butter because it functions as a spread and, thus, classified cream cheese in Class III.

The classification of cream cheese should be changed from Class III to Class II. The milk used in Class II products, generally described as "soft" products, is used to process or manufacture products for which handlers know a consumer demand exists. Generally, these products have some of the water removed from producer milk or contain a high enough butterfat content that they will not be used as beverages. Products included in Class II are those that are neither as perishable as fluid products nor perform a balancing function for the market. Many Class II products have longer shelf-lives than fluid milk products, while being less storable than markets' surplus uses of milk.

The primary distinction between Class II products and the products used to balance the market is existing consumer demand. Although cream cheese may be used as a substitute for butter, it is not made to be stored when no other outlets are available, as is butter. It is a consumer convenience product that is produced to meet consumer demand and not to utilize surplus supplies of milk. Handlers do not process milk into perishable or semi-perishable dairy products if they do not have a consumer market for those products. Accordingly, it is proposed that cream cheese be reclassified from its current Class III classification to Class II.

Three comment letters stated that there is no basis for reclassifying cream cheese into Class II and it should remain with other cheeses in Class III. At least 2 comment letters supported the revised classification of cream cheese. One commenter argued that cream cheese competes for consumer market share with butter, which is currently a Class III product, and should be classified according to its "use" which supersedes any "form" criterion argument. The letter stated that while the reclassification will have no appreciable effect on the blend price, it may be financially detrimental to plants that produce cream cheese.

Some comments addressed the classification of cottage cheese and ricotta cheese, in addition to cream cheese. A national manufacturer of cheese products supports the reclassification of milk used to produce cottage cheese and ricotta cheese from Class II to Class III. The handler states that due to falling demand for cottage cheese, it should be placed with other cheeses in Class III. Another cottage cheese manufacturer made the same suggestion.

These suggestions should not be incorporated in this proposal. Great care should be taken in reclassifying dairy farmers' milk to any class below Class I. Such reclassification may occur when it is necessary to dispose of surplus milk or to allow intermediate dairy products to compete with a nondairy substitute to the benefit of dairy farmers. Neither of these reasons would appear to fit the situation facing milk used in cottage cheese.

The declining market for cottage cheese is likely the result of several factors besides its price. Some of these factors may be the substitution of newer or improved dairy products for cottage cheese, changing consumer tastes, or consumer preference for lower fat products. There is no indication that reducing the ingredient cost of this product by a fraction of a cent per container would do much to stimulate consumer preference for it.

As discussed above, the phrase in §§ 1000.15(b)(1) and 40(b)(v), "or dietary use (meal replacement)" would be removed and any fluid product packaged in a hermetically-sealed, all-metal container would be reclassified as a Class II product. Formulas especially prepared for infant feeding should continue to be classified as Class II products without regard to the type of container in which they are packaged.

Although no change is intended for the present classification of buttermilk for drinking purposes and buttermilk for baking purposes, some changes are needed to clarify the distinction between the 2 products. First, as noted previously, drinking buttermilk should be labeled as "cultured buttermilk." In addition, some changes are needed to distinguish this product, which is a Class I product, from buttermilk biscuit mix, buttermilk for baking, or simply baking buttermilk, which is a Class II product.

Currently, the criteria used to distinguish drinking buttermilk from buttermilk for baking is that the latter product must contain food starch in excess of 2% of the total solids in the product. However, this criteria is not specified in the orders themselves, but rather in administrative guidelines that have been issued. This guideline should be formalized by stating the standard in the general provisions that will contain the classification section for the consolidated orders. As now specified in Section 1000.40(b)(2)(v), the Class II classification is limited to "buttermilk biscuit mixes and other buttermilk for baking that contain food starch in excess of 2% of the total solids, provided that the product is labeled to indicate the food starch content." It should be emphasized that the proposed standard not only requires buttermilk for baking or buttermilk biscuit mix to contain the required amount of food starch but, in addition, the label must indicate the food starch content of the product.

Class II Used-to-Produce. The 1993 uniform classification amendments changed the accountability method of several products from a disposition basis to a used-to-produce basis. Except for some fluid cream products, all products were moved to the used-to-produce category. The change resulted in simplification and improved accuracy in the reporting and auditing of these products. This method should be extended to the remaining Class II products that are currently accounted for on a disposition basis, specifically creamers, light cream, milk and cream mixtures, and heavy cream.

4h. Class III and Class III–A (i.e., Class IV) Milk

The July 1993 national hearing decision provided that hard, storable products be included in Class III. Class III–A became effective in 3 Federal orders in November 1992 and was implemented in 27 Federal orders in December 1993. The amendments established a Class III–A milk class that included only nonfat dry milk. It is recommended that the products currently included in Class III continue to be classified in that class with two exceptions. As discussed under the Class II section, the classification of cream cheese should be changed from Class III to Class II. Also, butter and all milk powders that are currently in Class III should be moved to Class IV.

The 1993 Class III–A decision stated that the separate class for milk used to produce nonfat dry milk (NFDM) was needed to allow handlers to recover the cost of producing NFDM. The Class III–A price is calculated from a product price formula, which provides a make allowance, to arrive at a price for milk used to produce NFDM.

There has been a good deal of criticism of Class III–A. Some of the arguments made by critics of III–A are that:

- Class III–A has resulted in lower uniform prices under Federal milk orders;
- A significant amount of milk was not pooled when the Class III–A price exceeded the uniform price adjusted for location;
- The wide gap between the Class II price and the Class III–A price was destroying the market for bulk sweetened condensed milk; and
- The Class III–A pricing system was undermining the Class II and Class III price by allowing milk that is manufactured into NFDM at a lower price to be utilized in increasingly large quantities to make soft products and cheese.

Supporters of Class III–A argue that it should be retained for several reasons. One argument that appeared in several letters was the need to remain competitive with butter/powder plants under California's 4a pricing program.

The Pennsylvania Farm Bureau noted that as the dairy industry moves toward the elimination of support prices and more into the international market, Class III–A pricing will offer a way to capture changing price relationships between cheese, butter, and powder.

Michigan Milk Producers Association (MMPA) and Independent Cooperative Milk Producers Association (ICMPA) argued that the elimination of Class III–A will competitively disadvantage those parties who currently provide market balancing services. They note that as long as California remains outside of the Federal order program, the West Coast nonfat dry milk price, plus a transportation differential, will continue to effectively establish a price ceiling for Midwest nonfat dry milk. This product, according to MMPA and ICMPA, is still a market-clearing product for Michigan, Indiana, Kentucky, and parts of Ohio.

A major Northeast cooperative association, Agri-Mark, also opposed any suggestion to eliminate Class III–A. According to Agri-Mark, arguments that Class III–A pricing has encouraged unneeded nonfat dry milk production are false. Class III–A pricing, in Agri-Mark's view, has allowed nonfat dry milk manufacturers to resume their role of efficiently balancing Class I markets and disposing of reserve supplies. While vigorously supporting the retention of Class III–A pricing, Agri-Mark also stated that it is necessary to modify Class III–A pricing in two primary areas. The first modification involves the replacement of the Central states price with a Class III–A price calculation using a California nonfat dry milk price announced each week. The second modification involves including milk used to manufacture buttermilk powder in the Class III–A definition.

Agri-Mark contends that Class III–A should be continued in all Federal marketing areas in order to allow their nonfat dry milk manufacturing plants to remain competitive with California and therefore be available to balance Class I needs and facilitate the handling of reserve milk supplies in each market. It is also Agri-Mark's view that the current Class III–A pricing formula has worked well and has not given an advantage to nonfat dry milk manufacturers relative to cheese manufacturers.

Agri-Mark acknowledges that the problem of using nonfat dry milk to replace fresh milk in traditional dairy uses when Class III–A prices are significantly below Class II and III prices does exist; however, it argues that the elimination of Class III–A pricing will not alleviate this problem because low-priced nonfat dry milk manufactured in California will still be available to replace local fresh milk. In the absence of Class III–A, local fresh milk may be unable to find a nearby outlet, particularly on a seasonal basis,

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resulting in disorderly marketing conditions.

Another commenter, the Alliance of Western Milk Producers (AWMP), stated that separate butter/powder and cheese milk pricing classes would not be detrimental to producers, but rather that a single price class would cause producers economic disaster. The AWMP supports a two-class system for manufactured products. It recommends that Class III include cheese and Class IV include butter, nonfat dry milk, and whole milk powder.

Darigold, a cooperative association based in Seattle, Washington, submitted a comment in support of separate classes for butter/powder (Class III–A) and for cheese (Class III) and offered several arguments why separate classes for butter, powder, and cheese should be adopted. Darigold states that the reconstitution of nonfat dry milk should be viewed as a means to economic efficiency rather than a pricing disruption or distortion. Darigold points out that it is inefficient to have milk transported several hundred miles if cheaper solids could be transported at a lower cost. Darigold also states that reconstitution is actually consistent with the purposes of Federal orders because it promotes the goal of making adequate supplies of milk solids available within a deficit market.

Darigold also states that reconstitution of nonfat dry milk into higher-classed dairy products is much more demand-driven than price-driven and that the increased use of nonfat dry milk in the processing of higher-valued products may be explained by the shortages of milk and continuing declines in milk production that have occurred in some regions, not by price incentives associated with Class III–A. The cooperative also states that milk movements in recent years to the Upper Midwest would have occurred even without Class III–A because milk production was decreasing in the Upper Midwest but growing in the West.

Darigold maintains that concerns about "artificial drying" (i.e., drying milk just to be able to obtain nonfat dry milk solids as a substitute for fresh milk in Class II products) overstate the problem and should be kept in perspective. In addition to acknowledging that such practice would be inconsistent with Federal order program goals, the cooperative points out that it would also be inconsistent with economic efficiency. Darigold states that only a limited amount of nonfat dry milk reconstitution has been driven by a price difference between Class III and III–A sufficient to offset the costs of drying and reconstitution. Furthermore, it is argued that suggestions to increase the Class III–A price to make it closer to the Class III price is unsound policy. The commenter argues that it makes no economic sense to artificially increase the lowest class price which typically clears the market.[32]

Dairylea, a cooperative association with members in the Northeast, also supports continuation of Class III–A for milk used to produce nonfat dry milk stating that the incorporation of this class allowed for a more equitable sharing of costs among all producers in balancing weekly and seasonal supplies of a market via nonfat dry milk production. While acknowledging that the substitution of nonfat dry milk for fresh milk in Class II and III products decreases producer blend prices, Dairylea contends that this would continue to occur in the absence of Class III–A pricing because lower-priced powder from California would be available.

Some commenters, while supporting Class III–A, urged the Department to broaden the class to include more products, such as dry whole milk. In addition, several comments were received urging the reclassification of sweetened condensed milk from Class II to Class III or to the same class which includes nonfat dry milk. The commenters explained that sweetened condensed milk is primarily used in commercial food processing establishments and in the confections industry and that it is interchangeable with powdered milk products and sugar in ingredient markets for processed foods and candy. They argued that manufacturers of sweetened condensed milk are currently at a competitive disadvantage with manufacturers of nonfat dry milk. Another commenter also stated that it was losing business because nonfat dry milk is substantially cheaper than fluid dairy ingredients.

A major dairy manufacturer stated that product classifications should not create price discrimination among milk products used for similar purposes. Therefore, it supports the same classification for nonfat dry milk, sweetened condensed milk, and condensed skim milk, which are largely interchangeable. According to the commenter, the current system of classification places sweetened condensed milk at a significant disadvantage and has virtually destroyed the market for sweetened condensed milk. The commenter also stated that other products that compete with nonfat dry milk, including evaporated milk, should be placed in the same class as nonfat dry.

A great deal of consideration was given to the argument that bulk sweetened condensed milk/skim milk should be reclassified to be in the same class as nonfat dry milk, i.e., Class IV in the proposed new orders. In fact, such a change was recommended in a preliminary Dairy Program Classification Committee report. With the change in class pricing formulas proposed for the new orders, however, the problems leading to this recommendation will be removed. Consequently, bulk sweetened condensed milk and skim milk should remain in Class II.

Bulk sweetened condensed milk/skim milk is used as an intermediate product in ice cream, candy, and other manufactured products. However, these manufactured products can also be made from powdered milk. When powder prices are low relative to the Class II price, there is an economic incentive for powder to be substituted for bulk sweetened condensed milk. As a result, there must be an economic relationship between the Class II price and the cost of using alternative dry or concentrated products to make Class II products. Under current pricing provisions, the Class II price can be excessive relative to using nonfat dry milk since the Class II price is a measure of the value of milk in cheese (the Class III price) plus a differential.

As proposed in this rule, the Class II price for the new orders would be based upon the Class IV price plus a differential of 70 cents. This fixed difference precludes the much wider price differences that have existed at times between Class II and Class III–A prices. Consequently, sweetened condensed milk should continue to be classified as a Class II use.

4i. Shrinkage and Overage

The shrinkage provisions of the new orders should be modified to reflect a pro rata assignment of shrinkage based on handler utilization. In other words, each handler's "shrinkage" or lost milk should be classified according to the handler's use of milk that was not lost in transit or processing. Adoption of such modification will simplify both order language and accounting procedures.

Shrinkage is experienced by handlers in milk processing operations and in the receipt of farm bulk tank milk at receiving stations and processing plants. Milk is unavoidably lost as it remains in pipe lines, adheres to tanker walls and/

[32] See Issue Number 3 of this proposed rule for a comprehensive discussion of Class III and IV prices.

or other plant equipment, and is washed away in the cleaning operations. In addition, unexpected losses, including spillage or leaking packages, also contribute to shrinkage.

A shift from the current shrinkage allowance provisions to a pro rata assignment of shrinkage based on utilization would improve market efficiencies, create a more equitable situation among handlers, and facilitate accounting procedures involving shrinkage and overage assignment. Over time, changing conditions within milk markets have led to the adoption of a rather complex shrinkage provision. This provision can be both modified and simplified without compromising the objectives of the Federal milk marketing program. The proposed provision should meet the goals of simplification and improvement of Federal milk marketing orders.

Arguments in support of the proposal illustrate the advantages of a shift to pro rata shrinkage assignment as opposed to either continuation of the current shrinkage class assignment and allocation system or adoption of other alternatives. Several of the major cooperative associations expressed support for the suggestion to prorate shrinkage based on plant utilization. According to one commenter, plants should account to the pool at a price that is the intended use for milk processed at that plant. The commenter added that this will encourage and assure plant efficiency.

Simplification of order language was one of the more frequent comments received in response to the preliminary reports on classification. The shrinkage provision undoubtedly falls within this category. As pointed out earlier, the shrinkage provision has become rather complex. A comment letter submitted by one industry member argues that the retainment of the shrinkage provision is unnecessary and that any milk which is not accounted for should be classified as Class I. While this suggestion seems to provide an incentive to inefficient plant operators to minimize the amount of milk loss by placing a higher value on shrinkage than presently exists in the current system, a more equitable method is to assign shrinkage pro rata based on a handler's utilization. This will prevent any handler with solely Class III utilization from being responsible to the pool for shrinkage assigned to Class I.

Other comment letters suggested that shrinkage should be eliminated, along with some other order provisions, because it reduces income to dairy farmers. Some commenters argued that the costs associated with record keeping, reporting and auditing plant loss has little value to the producer, consumer, or handler. One cooperative association expressed support for the elimination of accounting for animal feed and dumped products; no opposing comments were received.

One handler proposed that shrinkage be assigned all at the lowest classification or all Class I with a monetary credit. The monetary credit would be based on a fixed allowance depending on where the handler's loss is assumed. The handler stated that this would eliminate a substantial number of words from the order language. This handler also suggested expanding the shrinkage rules to allow for aseptic packaging because shrinkage in aseptic packaging is far greater than in a plant processing milk in containers, according to the handler. The handler suggested a 4% shrinkage allowance for aseptic packaging.

In Section 30 of each order, pool plant operators and certain other handlers are required to report their total receipts and disposition of skim milk and butterfat. In Section 40, the total reported receipts are classified according to usage. Any positive difference between receipts and utilization is referred to as *shrinkage* and any negative difference is called *overage*. The proposed orders would provide that for each pool plant and each cooperative association bulk tank handler, the market administrator would determine the shrinkage or overage by subtracting the handler's utilization of milk from its receipts of milk, and then prorate the shrinkage to the respective quantities of skim milk and butterfat in each class by using the handler's total reported utilization. In contrast to the current lengthy provision for assigning shrinkage, the new shrinkage provision would remove the necessity for computing shrinkage allowances on various sources of receipts.

Currently, the shrinkage provision maintains allowances for various sources of receipts. Milk that a handler receives at its plant on the basis of weights determined from its measurement at the farm and butterfat tests determined from bulk tank samples (farm weights and test) receives a 2 percent allowance to be classified as Class III. If the handler receives milk on other than farm weights and tests from a cooperative bulk tank handler or another pool plant, a 1.5 percent allowance is given to the receiving handler and a 0.5 percent shrinkage allowance is given to the bulk tank handler or other pool plant selling the milk. Any shrinkage assigned to pooled milk is assigned to Class III up to this allowance.

If a handler receives fluid *other source milk*, it receives a pro rata share of the total loss which is assigned to Class III without limit. Any shrinkage exceeding the total of these two assignments is assigned to Class I.

When comparing the dairy industry to other industries, there is a difference in how waste, or shrinkage, is handled. A non-dairy manufacturing plant has a certain amount of waste, and it pays the same for wasted material as that going into the product made. It does not pay less or assign a lower value for the "shrinkage" as is done in the dairy industry. Although some may argue that shrinkage should be assigned to the lowest class because handlers receive no return on milk losses experienced in the receiving and processing operations, a pro rata assignment should result in handlers' limiting milk loss throughout the dairy process. In a bottling plant, shrinkage would be assigned to Class I in a larger proportion than the current method. This would have the effect of creating more costs for a Class I handler. In other words, placing a higher value on shrinkage by having milk assigned pro rata to all classes, as is recommended, would encourage a handler to reduce costs associated with shrinkage, resulting in more efficient dairy operations. Also, as proposed here, shrinkage would be assigned to Class II for the first time. This would also encourage less shrinkage, hence, greater efficiency.

Pro-rata shrinkage assignment would more closely reflect the nature of the plant's operation. If milk is to be classified on the basis of form and use, it would appear logical that any loss associated with a particular use should be classified the same as the usage. If a handler has a high Class I utilization, it seems appropriate that the same utilization percentage would apply to its loss/shrinkage. A handler with a multi-class operation would have shrinkage prorated to all classes of utilization based on the percentage used in each class. If a handler has only Class III utilization, all shrinkage would be assigned to Class III.

In doing its cost accounting for Class I fluid milk, a handler would have to factor in the extra cost for shrinkage as part of its calculations. The handler would feel secure knowing that its competition is going to have the same method of prorating shrinkage applied to its operation. The benefit of greater uniformity is apparent. Class I handlers would have a greater incentive to operate more efficiently if they are to account for milk lost at the higher class

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value; hence, greater consideration would be given to minimizing shrinkage to reduce costs.

The additional money paid into the pool by handlers operating pool distributing plants with high Class I utilization would not be offset by a lesser amount paid into the pool by handlers operating plants that manufacture primarily Class II and III products. Therefore, the blend price to producers would be enhanced by this change in the shrinkage rules, but it is estimated that it would be less than an average of one cent per cwt.

Historically, overage has been allocated pursuant to Section 44 (Classification of producer milk) starting with Class III. Since shrinkage would be assigned pro rata based on the utilization in each class, it would appear logical to assign overage on the same basis. Utilization would be adjusted to arrive at gross utilization. The references to overage and shrinkage would be removed from Section 44. In computing a handler's value of milk, the method of pricing overage in Section 60(b) would not change. However, the reference to Sections 44(a)(14) and 44(b) would be replaced with Section 43. Also, as explained under the discussion of "General classification rules," Section 41 would be removed entirely and the remaining shrinkage provision would be incorporated in Section 43.

There would be minimal impact on the blend price by assigning overage before allocation begins rather than in the current step 14 of Section 44. The total value of milk classified plus the overage value would be the same using either method. However, if a handler had receipts from an unregulated supply plant or a plant regulated under another Federal order, the assignment of such receipts may be slightly different than the current assignment method.

Animal feed and dumped products should be removed from Class III in Section 40 and included in shrinkage. This would place less of a regulatory burden on handlers who are required to file reports regarding these types of disposition. It would also simplify market administrator auditing procedures considerably.

The suggestion to include a dollar credit at the difference between Class III and Class I prices for unaccounted milk was also considered. This alternative would result in additional time and resource allocation, and would not simplify the orders, but rather complicate them.

4j. Classification of Transfers and Diversions (§ 1000.42)

Certain changes should be made to the classification of transfers and diversions section of the orders to simplify and clarify order language. At the present time, in many orders if any milk that is diverted from one order to another for requested Class II or III use is assigned to Class I, the dairy farmer who shipped that milk is defined as a producer under the order receiving the milk with respect to that portion of the milk assigned to Class I. In other orders under similar conditions, the dairy farmer becomes a producer on the receiving order for all of the milk diverted even though only a portion of the milk was classified as Class I. When this type of adjustment is necessary, the diverting handler is informed by the market administrator's office that there is not enough Class II or III use remaining in the receiving plant to absorb all of the milk diverted. In such case, the diverting handler may pick which load or loads of diverted milk will become producer milk under the receiving order.

Since the orders are not precisely clear on how inter-order diverted milk should be handled, some modification is needed in the order language. Under most orders, and as provided in this proposed rule, milk may be diverted from one order to another for a requested use other than Class I. However, if there is not enough Class II, III, or IV utilization in the receiving plant to be assigned to the diverted milk, some milk may have to be assigned to Class I. When this happens, the practical administrative problems involve determining which milk of which dairy farmers and which loads of milk will be shifted as producer milk from one order to another.

Market administrators should be given some flexibility to handle these administrative problems on a market-by-market and case-by-case basis. As a practical matter, most milk diverted between orders is diverted by cooperative associations that reblend proceeds to their members. In most cases, it makes little difference to a cooperative association whether a dairy farmer is a producer on one order or another order; any differences in blend prices between the orders will be washed out in the reblending process. In the case of nonmember producers diverted inter-order, however, differences could arise in a producer's net proceeds for the month depending upon how much milk was pooled in each order. Therefore, these situations should be handled in such a way as to be least disruptive to individual dairy farmers.

A market administrator does not know until handlers' reports have been received that some portion of milk reported as diverted to another order cannot be absorbed by the amount of non-Class I utilization in the receiving order's plant. In such case, the diverting handler should be given the option of designating the entire load of diverted milk as producer milk at the plant physically receiving the milk. Alternatively, if the diverting handler wishes, it may designate which dairy farmers on the diverted load of milk will be designated as producers under the order physically receiving the milk. As a last resort, the market administrator would prorate the portion of diverted milk among all the dairy farmers whose milk was received from the diverting handler on the last day of the month, then the second-to-last day, and continuing in that fashion until the diverted milk that is in excess of Class II, III, and IV use has been assigned as producer milk under the receiving order.

A conforming change that should be made in each order relates to milk that is transferred or diverted for Class II or III use. Presently, milk may be transferred or diverted on a requested Class II or III basis. However, with 4 classes of utilization recommended for the new orders, milk could be diverted for requested Class IV use also. Rather than specifying "Class II, III, or IV," however, the orders should simply state "other than Class I" to accommodate a system of more than 3 classes. This language is simpler, shorter, and accomplishes the same end.

Comments received from interested parties involving transfers and diversions suggested general simplification and clarification of order language, as well as some suggestions on how to facilitate the administration of these provisions. Generally, the comment letters suggest that the orders be amended so that inter-market transfers are allocated to Class I in the same manner as transfers within markets. These letters state that, otherwise, a barrier to the movement of milk is created. It was argued that such modification would help to assure distributing plants an adequate supply of milk for fluid use whenever and wherever it is needed. Other comments argued that if a shipment between orders is designated as Class I, it is only logical and fair that the entire shipment should be Class I, rather than be subject to current pro rata allocation procedures. Proponents of this view argued that this would lead to a more equitable situation in the treatment of inter- and intra-order transfers, allow for greater equity among handlers, and contribute to the simplification and reduction of administrative procedure and cost.

A cooperative association and a handler filed comments endorsing a prelimary suggestion of allowing milk to be diverted inter-order for any use, but a dairy farmer association submitted one comment critical of the idea. The association which opposed the idea implied that milk received on a diverted basis from another order would get a priority Class I assignment over local producer milk. This was not the intention behind this suggesion. Any milk that was diverted from one market to another would have been assigned based upon the lower of the receiving plant's Class I utilization or the receiving market's Class I utilization. In view of the concern about the possible impact of permitting milk to be diverted for any use between orders, no change in this regard is proposed for the consolidated orders.

Inter-order transfers would continue to be allocated based on the lower of the receiving plant's or receiving market's utilization rate. Preference should not be given to such other order bulk milk in the manner suggested by various commenters. Even within markets with high Class I utilization rates, there are times when milk is used in surplus products, and classified as other than Class I. There is no reason why milk from an other order should be classified as completely Class I when local milk inevitably is classified other than Class I. Both types of receipts should share equally in the Class I and surplus utilization.

In § 1000.42(d)(2)(i), the phrase, "excluding the milk equivalent of both nonfat milk solids and concentrated milk used in the plant during the month," is proposed to be added to this sub-paragraph to more directly arrive at transfer and diversion classification on the basis of the assignment of a nonpool plant's utilization to its receipts. The recommended modification will prevent unnecessary accounting steps which serve no purpose in verifying the utilization at the nonpool plant. In classifying receipts of fluid milk and cream products at nonpool plants from Federal order plants, an accounting balance function serves no purpose.

In § 1000.42(d)(2)(vi), the allocation process for bulk fluid milk transferred from pool plants to nonpool plants is proposed to be modified such that any remaining unassigned receipts of bulk fluid products be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization and then to all other utilization, in sequence beginning with the lowest class at the nonpool plant. This change returns the order language to the assignment sequence that was adopted in the Uniform Classification Decision of 1974. Receipts from pool plants should not be given preference by assigning such milk to the available Class II use before assigning receipts from dairy farmers who constitute the regular source of milk for such nonpool plant. Generally, milk transferred or diverted from pool plants to nonpool plants is surplus milk and would be used in storable manufactured products, such as nonfat dry milk and butter. By assigning transferred or diverted milk to a nonpool plant's Class II utilization first, the pool plant operator is forced to account for this milk at the Class II price, even though the nonfat dry milk or other surplus product that was made with the milk is of a lesser value. This process will prevent the assignment of receipts at a higher utilization than the actual utilization.

Receipts of bulk fluid cream products at nonpool plants from pool plants and plants regulated under other Federal orders, similarly, would be assigned to the lowest class utilization first. Generally, a plant operator will use its regular source of supply in the highest valued uses before using alternative supplies. Thus, if a nonpool plant receives cream from a pool plant or a plant regulated under another Federal order, it is likely that the regulated plants were trying to dispose of their excess cream. The nonpool plant receiving the cream will most likely use it for manufacturing purposes; therefore, it should be assigned to the lowest class first. The priority given to regular source supplies is recognized and the provision modified to reflect this.

4k. General Classification Rules (§ 1000.43)

For classification purposes, the milk of a cooperative bulk tank handler—i.e., "a 9(c) handler"—should be treated as "producer milk" of a pool plant operator. This change will shorten and simplify the allocation section. Accordingly, paragraph (a) of Section 43, as revised, no longer contains a reference to the classification of producer milk with respect to a handler described in Section 9(c).

The computation and classification of shrinkage and overage have been added to this section. This will eliminate Section 41, the section previously used for this purpose. Also, the last paragraph of Section 43 should be removed because milk for Class IV use now would be classified in Section 44 of the orders.

4l. Classification of Producer Milk (§ 1000.44)

A handler may receive milk from a producer, a cooperative association acting as a handler on bulk tank milk, by transfer from another pool plant, or from "other sources" such as nonpool plants, partially regulated plants, and plants that are regulated under other orders. Because of this diversity in sources of receipt, it is necessary in a milk order to go through an allocation sequence to determine which source of milk gets priority to a particular class of utilization and to determine how producer milk was used. In some orders, this allocation sequence is done on a system-wide basis; in others, it is done for each plant receiving producer milk.

Section 44 is one of the most complicated and difficult-to-understand sections in a milk order. Consequently, an attempt has been made to simplify and shorten it. Part of this task was made easier by proposed changes to other sections (e.g., elimination of filled milk, elimination of individual handler pools, and modification of the treatment of inter-order transfers and diversions). Also, because shrinkage and overage are prorated to a handler's gross utilization, these items do not have to be allocated.

All orders are not now uniform in the classification of producer milk. For example, some orders (e.g., Chicago Regional) provide for system allocation while others allocate receipts on a plant-by-plant basis for a multiple plant handler.

Under the consolidated orders, milk would be allocated on a plant-by-plant basis, as modified to reflect the other changes proposed herein. The system allocation method that is found in some orders is based upon a set of marketing conditions concerning the locations of handlers' plants and the market's available milk supply in relation to those plants. These provisions were intended to stop abuses that occurred when milk was imported from one market to another. Rather than permit an inter-order transfer to be assigned at a handler's high Class I utilization plant, while the handler's producer milk was assigned to lower use value at another of its plants, the system allocation provisions assigned the transfers on the basis of the handler's utilization at all plants combined. The objective was to prevent more distant other order milk from being assigned to Class I use at the expense of producers who were located nearer to the city markets and who represented the normal source of supply for the markets' fluid milk needs.

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The 11 new orders proposed here do not fit within the parameters of the classical model where a major consumption area is surrounded by production areas. The marketing areas proposed for the consolidated orders span several states and have a number of major population centers. They also have pockets of milk production that, in a number of cases, are in higher-priced areas than some of the fluid milk plants within the marketing area. This milk may not be economically available to a fluid milk plant several hundred miles away. In fact, it may be that a plant near the periphery of a multi-state market may find its closest and cheapest source of supply from outside the market rather than from within the marketing area. Accordingly, the foundation on which the system allocation rules are based does not support current marketing conditions. Therefore, all orders are proposed to be modified to allocate milk only on a plant-by-plant basis rather than on a system basis.

Another change that should be made in the allocation section concerns the "98/2" rule. At the present time, only 98 percent of the packaged fluid milk products transferred between orders is allocated to Class I; the remaining 2 percent is allocated to Class III. This provision, originating from the June 19, 1964, "compensatory payment" decision, was adopted to provide an allowance for "route returns." According to that decision, "it is reasonable to expect some route returns will be associated with inter-market transfers just as there are in connection with milk locally processed in the receiving market * * * a small allowance of 2 percent for such returns, which must fall into surplus use, should be included to avoid such over-assignment in Class I." (29 FR 9120).

The 2 percent Class III allowance on inter-market packaged transfers would be eliminated. As explained above in connection with the proposed changes to the shrinkage provisions, animal feed and dumped products would no longer receive an automatic Class III classification, but instead would be treated as shrinkage and prorated to the plant's utilization. Similarly, inter-order packaged transfers would no longer receive an automatic Class III classification for 2 percent of those transfers but instead should be allocated 100 percent to Class I utilization.

In § 1000.44(a)(3)(iv), some new language to most, but not all, orders is proposed to be added to make it clear that *any* fluid milk products received by a regulated handler from a producer-handler will be assigned to the receiving handler's lowest utilization available whether such products are physically received at the regulated handler's plant or whether they are "acquired for distribution" at some other location. The additional words, "acquired for distribution," would clarify the application of this provision in those orders that do not now contain this language.

A key basis for exempting producer-handlers from regulation rests on the presumption that producer-handlers will be responsible for disposing of their surplus milk. This is why milk received from a producer-handler is down-allocated to the lowest possible utilization. If this were not done, a producer-handler could undercut the minimum order Class I price by selling its surplus milk to regulated handlers for fluid use.

In some isolated cases, producer-handlers have avoided lowest-class pricing of their surplus milk by selling their packaged fluid milk products to regulated handlers at a non-plant location, such as a warehouse, from which it is then distributed on routes by the regulated handler. Under some orders, this milk would not be considered a receipt from a producer-handler and thus would not be priced. As proposed herein, however, such fluid milk products that are acquired at the non-plant location will nevertheless be treated as if they had been received at the regulated handler's plant and will be priced accordingly.

In addition to the changes discussed above, Section 44 is proposed to be shortened and simplified by removing unnecessary references that serve to confuse the language rather than make it easier to understand. Where possible, simpler language has been used to replace lengthy section references.

4m. Conforming Changes to Other Sections (§§ _____.14, _____.41, and _____.60)

Paragraph (b) of § _____.14 should be removed to reflect the fact that all packaged fluid cream products now would be accounted for on a used-to-produce basis. Also, as previously noted, the simpler and shorter treatment for shrinkage shortens the existing provision to the point where it is no longer necessary to keep a separate section for it. Therefore, Section 41 should be eliminated and the revised contents of that section should be incorporated as a new paragraph (b) in Section 43. Finally, conforming changes should be made to Section 60 (Handler's value of milk for computing the uniform price) to reflect the elimination of filled milk from the order, and to reflect changes in references due to other modifications such as the changes in the treatment of shrinkage and overage.

4n. Organic Milk

During the development stage of the order reform process, a proposal was received from Horizon Foods to exempt organic milk from pricing and pooling under Federal milk orders.

In 1990, Congress passed, and the President signed into law, the *Organic Food Production Act of 1990* (7 U.S.C. 6501 *et seq.*), establishing the first Federal standards for organic food products. A proposed rule was issued on December 5, 1997, and published in the **Federal Register** on December 16, 1997 (62 FR 65849), to implement the National Organic Program.

Organic dairy products can now be found in many, if not most, major grocery chains in metropolitan areas. The retail price of organic dairy products is well above non-organic products. For example, in one Washington-area supermarket a half-gallon of regular 1% milk sells for $1.59, while a half-gallon of Horizon Organic 1% milk sells for $2.29. In addition to carrying organic milk, many supermarkets now also carry organic yogurt, sour cream, butter, and other organic dairy products. All of these products are priced well above their non-organic counterparts.

Processors of organic milk have asked for exemption from Federal regulation. In a May 20 letter to the Department, Horizon Foods argued that (1) organic milk is a different commodity; (2) the market for organic dairy products is a niche market; and (3) Federal order regulation of organic milk is contrary to the intent of the Organic Foods Production Act because it does not "facilitate interstate commerce in fresh and processed food that is organically produced." Horizon's proposed solution is to exempt organic milk from the producer milk definition if the milk is produced on a certified organic farm and if the broker pays the producer at least 110% of the month's Class I price for such milk.

The proposal to exempt organic milk from Federal order pricing should be denied for several reasons. First, contrary to the assertions of Horizon Foods that all organic milk is priced at 110% of the Class I price, regardless of how the milk is used, there is evidence that some organic milk is pooled and priced as non-organic milk under some orders, including the Chicago Regional and Southern Michigan orders, for example. Second, if special treatment is provided for organic milk, a "Pandora's box" would be opened for special treatment for other kinds of milk as well. Third, although the retail price of organic milk is well above non-organic milk, many people believe that organic milk competes with the regulated market and, therefore, also must be fully regulated. Fourth, if Congress wished to exempt organic milk from Federal milk order regulation, they could have done so either in the Organic Foods Production Act or in the 1996 Federal Agricultural Improvement and Reform Act; but they did not. Fifth, there is no indication that all processors of organic milk price their receipts the same way as Horizon Foods. Even if they did, however, the one class/one price system currently used by Horizon could be a temporary phenomenon due to the rapidly expanding market for organic products. The day may come when the organic market becomes saturated and milk in excess of fluid needs must be disposed at competitive prices. If and when this happens, it is likely that some form of classified pricing will be implemented. Finally, the Act provides for classifying and pricing milk on the basis of its form and use. As a result, different costs that may be associated with producing organic milk or other types of milk are not relevant. For these reasons, it would be inappropriate at this time to exempt organic milk from pooling or to provide any other type of special treatment for it under the guise of Federal order reform.

4o. Allocation of Location Adjustment Credits

A provision that is now common to most orders is not suggested for the proposed consolidated orders. This provision, which allocates location adjustment credits that are applied to transfers of bulk fluid milk products between pool plants, is commonly found in Section 52 of most current orders (See, for example, §§ 1001.53(h), 1007.52(b), 1030.52(c), or 1079.52(d)).

Under most orders, intra market shipments of milk between handlers are assigned to Class I use, unless both handlers agree on a lower classification. Milk that is assigned to Class I use is priced at the receiving plant subject to a location adjustment credit that may apply if it is demonstrated that such milk is actually needed for Class I use. If the credit is applied, the milk is priced at the transferring plant. This assignment of location adjustment credits is intended to prevent the use of pool proceeds to pay the hauling cost for the transfer of bulk milk between pool plants when the intended use of the milk is for other than Class I use.

To carry out this concept, the provision typically assigns a pool distributing plant's Class I use first to its milk receipts directly from producers, then to bulk milk received from a cooperative bulk tank handler, then to milk received by diversion from another pool plant, and then to packaged fluid milk products received from other pool plants. The remaining Class I use in the distributing plant is then assigned to bulk milk received by transfer from other pool plants. In some orders, this remaining Class I use is assigned pro rata to all of the pool plants from which bulk milk was obtained. In other orders, the remaining Class I milk is first assigned to pool plants with the same Class I price and then, in sequence, to pool plants with progressively lower Class I prices.

This provision has varying usage in orders today. Some orders use it; but most orders never use it. Accordingly, it is not clear whether it should be included in the consolidated orders.

This proposed rule is based on the premise that Class I milk does not have the same value at every location. For this reason, Class I differentials have been established for each order with location adjustments that result in establishing a unified Class I price structure that applies to every county and city in the contiguous 48 states. Given this approach, it may no longer be necessary to classify a bulk movement of milk as Class I milk in one section of the order and then in another section of the order depart from the principle of pricing such Class I milk at the plant where it was physically received.

Some of the proposed orders have transportation credit provisions that provide for hauling credits on bulk milk received by transfer from a plant regulated under another Federal order and assigned to Class I use at the receiving plant. To arrive at the classification of such milk, the milk is assigned to the lower of the receiving plant's or the receiving market's Class I utilization. With the long distances exhibited by milk movements today and the use of transportation credit provisions that help defray the costs for such movements, it may not be appropriate to continue location adjustment credit provisions that could discourage milk from being transferred from pool plants located closer to distributing plants needing supplemental supplies of milk.

In actual practice, a distributing plant does not receive a fixed amount of milk each day of the week. Some days are heavy bottling days when more milk is needed for Class I use. On such days, a distributing plant may not be able to obtain enough local milk to meet its Class I needs and may have to import plant milk from more distant locations. At the end of the month, however, when the allocation of location adjustment credits takes place, it may appear that there was more than enough local milk to meet the distributing plant's fluid needs, even though this was not the case when recapped on a daily basis. Nevertheless, the allocation provision allocates location adjustment credits based on monthly volumes of milk, not daily volumes, so the supply plant could be in a position where it receives no Class I location adjustment credit even though the milk was indeed shipped for Class I use.

Finally, the current application of the provision in question can result in a situation where there is more incentive to receive bulk milk transferred from a plant regulated under another Federal order than from a plant regulated under the same order, whether or not any other transportation credits are involved. Should this occur, it can result in a transfer of Class I sales to the transferring plant's Federal order market.

5. Provisions Applicable to All Orders

In addition to the terms and conditions of milk orders previously described, there are a number of other provisions that need to be contained in milk orders that describe and define those affected by the regulatory plan of the program and that provide for common descriptions of entities, persons, terms of measurement, pooling, and other administrative needs so that an order can be administered effectively. Many of these provisions can be uniform across all proposed consolidated orders. However, different marketing conditions in the consolidated areas, together with institutional factors, do not lend themselves to an entirely uniform set of provisions for all orders. Consequently, in each of the proposed consolidated orders there are provisions that are unique to each order.

As part of the reform process, an Identical Provisions Committee (IPC) was established to investigate and recommend needed order provisions that could be uniformly applied across the consolidated system of Federal milk orders. The IPC was formed with a three point purpose: to develop Federal order provisions that can or should be uniform among orders, to explain why the adoption of the recommended provisions are needed, and to simplify and streamline proposed order provisions where feasible. While the previously discussed issues such as classification, the basic formula price, and Class I milk pricing lend themselves to uniform applicability across all

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orders, the IPC mission tended to focus on other aspects of milk order provisions such as uniform definitions, pooling criteria, reporting requirements and handler payment obligations.

This part of the proposed rule discusses the nature of the proposed consolidated order provisions, explains why they are needed, and details whether or not a provision can be uniformly applied in all consolidated orders. When a provision does not lend itself to uniform application, the provision is described in subsequent sections of this proposed rule where the provisions unique to each of the individual orders are discussed.

To the extent that provisions can be uniformly applicable across all of the proposed consolidated orders, they are included in Part 1000, the General Provisions of Federal Milk Marketing Orders which are, by reference, already a part of each milk order. Thus, as proposed here, the General Provisions includes the definitions of *route disposition, plant, distributing plant, supply plant, nonpool plant, handler, other source milk, fluid milk product, fluid cream product, cooperative association,* and *commercial food processing establishment.* In addition, the General Provisions include the milk classification section of the order, pricing provisions, and most of the provisions relating to payments. These additions to the General Provisions should make milk order provisions more understandable to the general public by removing the differences that now exist and by consolidating uniform provisions in one place. Thus, an interested person would only have to read one "nonpool plant" section, for instance, to understand how that term is applied to all orders. By contrast, at the present time, "nonpool plant" is defined in every order and there are slight differences in the definition from one order to the next.

Pooling Issues

How producers share in the additional revenue that is derived from classified pricing is one of the most important features of a milk marketing order. How milk is pooled sets the basis for returning a blend price to producers by accounting for the use-value, or classified value, of milk charged to handlers. Marketwide pooling is the method advocated for distributing these returns as indicated by an overwhelming majority of public participants. It is the prevailing method employed in the current system of milk orders, and should continue to be employed in the consolidated orders.

There were a number of proposals and public comments considered in determining how Federal milk orders should pool milk and which producers would be eligible to have their milk pooled in the consolidated orders. In the broadest sense, most public comments and proposals advocated a policy of liberal pooling, thereby allowing the greatest number of dairy farmers the ability to share in the economic benefits that arise from the classified pricing of milk. While there were also a number of public comments supporting identical pooling provisions in all orders, other proposals voiced comments on the need to have pooling provisions reflect the unique and prevailing supply and demand conditions in each marketing area. Fundamental to most pooling proposals and comments was the notion that the pooling of producer milk should be *performance oriented* in meeting the needs of the fluid market. The pooling provisions proposed for the consolidated orders provide a balance between reasonable and needed performance criteria and a liberal pooling policy.

The pooling provisions for the consolidated orders are overall less restrictive in the movement of milk between orders and make it easier for producers to become associated with and pooled on a market. Additionally, the provisions are more "market oriented" because they allow milk to become pooled and priced where the greatest needs are exhibited for satisfying fluid demands. Additionally, there is enhanced flexibility in how plants can be pooled without diminishing the ability of the regulatory plan to satisfy the fluid demands of a market. For example, this decision recognizes that in some markets, fluid milk processors handle a significant volume of milk for Class II uses. Much of the time this milk may be processed in a separate processing plant. To accommodate this, *unit pooling* is an option if at least one plant of the unit qualified as a pool distributing plant and the other plants of the pool unit are located in the marketing area and process only Class I or Class II products. The separate processing plant would also need to be located in the same or lower price zone than the qualifying pool distributing plant. For supply plants, *system pooling* offers flexibility where handlers operate more than one supply plant. Further, the consolidated orders have identical performance requirements for pooling cooperative and proprietary handlers alike, thereby making plant ownership irrelevant for pooling purposes.

Pool plant eligibility continues to be dependent upon plant operators and handlers meeting certain performance standards geared to satisfying the fluid demands of the market. Because of differences between the consolidated markets, mainly the level of Class I demand and the seasonality of milk production, a uniform standard for pool plants for the consolidated markets is not recommended. Such standards need to be specific to each of the consolidated orders. Additionally, the market administrator should be authorized to react to changing market conditions if there is a need to change performance standards and to promote the efficient movement of milk and in satisfying expected demands of the fluid market. These needs are reflected and accommodated in the definitions of the types of pool supply plants in the consolidated orders. Providing for differences between markets ensures more equitable distribution of the benefits and burdens of marketwide pooling.

Taken as a whole, the pooling provisions also are designed to properly specify which producers are associated with the marketwide pool, thereby assuring their ability to share in the economic benefits that accrue from classified pricing. Orders do require some criteria for determining when a producer has an association with a market under which their milk will be pooled and priced. In this context, a minimal "touch-base" requirement for producer milk is called for in most consolidated orders for pooling qualification. This provision allows a producer's milk to be received at a pool plant a minimum number of times to be eligible for diversion to nonpool plants thereby ensuring that the milk is available for fluid use if needed.

The producer and producer milk provisions for the consolidated orders also recognize that disorderly marketing conditions can arise from the actions of handlers that seek to pool milk on an order only when more favorable alternatives are not otherwise available. Reasonable measures are provided to prevent producers who are not regularly a part of a marketwide pool from deriving the benefits of the marketwide pool if certain performance criteria are not met. Similarly, it is recognized that producer milk might not be pooled because of changes in class-price relationships in any given month. Public comments and proposals offered to address these issues included "lock-in" or "lock-out" provisions that, as proposed, would have the effect of regulating producers. They are not recommended. The provisions

presented for both the producer and producer milk definitions provide reasonable measures and safeguards for determining conditions where producers and their milk should participate in a marketwide pool without causing producers to become regulated in their capacity as producers.

A suggestion for "open pooling," where milk can be pooled anywhere, is not provided for in the consolidated orders. There are two reasons for this. First, open pooling is not based on performance, that is, open pooling provides no reasonable assurance that milk will be made available in satisfying the fluid demand of a market. Second, advocates of open pooling have presented this pooling option in the context of a "package" of other order provisions, including Class I pricing, that conflict with the method of Class I pricing recommended in this decision. For this reason open pooling is unworkable. For this reason also, proposals to create and fund "stand-by" pools are similarly rejected.

Where a handler's plants are regulated continues to be based primarily on the basis of where sales are made, rather than where plants are physically located, with only minor exceptions. The change in where a distributing plant will be regulated will require a reasonable measure of at least three consecutive months of more sales in another market area before the regulatory status of a plant and producer milk associated with the plant will shift to another milk order. Supply plants will be regulated under the order in which the greatest portion of its qualifying shipments have been made.

The proposed definition of an exempt plant recognizes that some handler operations are too small to have a significant impact on the competitive relationship of competing fluid processors in the market. In recognition of this, the amount of milk for an exempt plant has been liberalized without references to daily average deliveries criteria that are currently applicable in some orders.

Route Disposition

Route disposition is a measurement of sales used to determine a distributing plant's association with a marketing area. It is defined to mean the amount of milk delivered by a distributing plant to a retail or wholesale outlet (except a plant), either directly or through any distribution facility (including disposition from a plant store, vendor or vending machine), of a fluid milk product in consumer-type packages or dispenser units that is classified as Class I milk.

The recommended route disposition definition differs from the definition contained in some current orders. Presently, the route disposition definition of several orders makes reference to plant movements of packaged fluid milk products between distributing plants with respect to determining if such transfers should be considered "route disposition" of the transferring or receiving plant. As proposed here, however, this issue is addressed in the pool plant section, which deals with the pooling standards applicable to a distributing plant.

Plant

A plant definition is included in all orders to specify what constitutes an operating entity for pricing and regulatory purposes. As provided in § 1000.4 of the General Provisions, a *plant* is the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products are received, processed, or packaged. This is meant to encompass all departments, including those where milk products are stored, such as a cooler. The plant definition does not include a physically separate facility without stationary storage tanks that is used only as a reload point for transferring bulk milk from one tank to another, or a physically separate facility that is used only as a distribution point for storing packaged fluid milk products in transit for route disposition.

To account for regional differences and practices in transporting milk, some orders provide for the use of reload points for transporting bulk milk that do not have stationary storage tanks.

Farm-Separated Milk

With the advent of new technology for on-farm separation of milk into its components, some additional regulatory language is needed to specify who is the responsible handler for the milk or milk components leaving the farm and how these components will be classified and priced. This determination will be based, in part, on whether the farm processing facility is a plant.

Ultrafiltration (UF) is a membrane process that transfers water and low-molecular weight compounds through a membrane while retaining suspended solids, colloids, and large organic molecules. It selectively fractionates some milk solids components and selectively concentrates other solids components of milk.

When a UF membrane is used, water, lactose, uncomplexed minerals and other low-molecular-weight organic compounds pass through the membrane. For example, if unaltered milk containing 3.5 percent fat, 3.1 percent protein, and 4.9 percent lactose is run through a UF membrane until half of the original volume is eliminated, the remaining product not passing through the membrane (i.e., *retentate*) will contain all of the fat and protein but only half of the lactose. The *permeate* (i.e., that part of the original milk that does pass through the membrane) will contain water, lactose, non-protein nitrogen, and about one-sixth of the minerals.

Reverse osmosis (RO) is also a membrane process, but the membranes have much smaller pores than UF membranes, allowing only the water to pass through. The end product essentially is concentrated milk.

At the present time, both reverse osmosis and ultrafiltration systems are being utilized on some farms, principally large farms in the southwestern United States. The product shipped from these farms (i.e., the *retentate*) currently is sent to processing plants for use in manufactured products but it could be used in a range of milk products.

The retentate received from a farm with a UF or RO system will be treated as producer milk at the pool plant at which the milk is physically received or, if the retentate is shipped to a nonpool plant, as producer milk diverted to a nonpool plant. In either case, the milk or milk components will be priced at the pool plant or nonpool plant where the milk is physically received.

To be considered a farm and a producer, as opposed to a plant and a handler, an RO or UF unit must be under the same ownership as the farm on which it is located and only milk from that farm or other farms under the same ownership may be processed through the unit. The producer operating the unit shall be responsible for providing records of the daily weights of the milk going through the unit. Also, the producer must provide samples for each load of milk going through the unit and must furnish the receiving plant with a manifest on each load of retentate showing the scale weight along with samples of the retentate. Finally, the producer operating the RO or UF unit must maintain records of all transactions which must be available to the Market Administrator upon request. If the producer does not meet these recordkeeping and reporting requirements, the unit will be considered to be a plant.

RO and UF retentate will be considered to be producer milk at the plant which receives it. The pounds of

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RO and UF retentate received will be priced according to the skim-equivalent pounds of such milk. The skim-equivalent pounds for RO retentate will be determined by dividing the solids-not-fat pounds in the retentate by the average producer solids-not-fat in the skim portion of the producer milk used in the product. The butterfat pounds would then be added to this number to arrive at the product skim-equivalent pounds.

In computing the fluid equivalent of UF retentate, the fluid equivalent factor should be computed by dividing the true protein test in the skim milk portion of the retentate by the true protein test in the skim milk portion of the producer milk used in the product. Adding the butterfat pounds to this computation will yield the product equivalent pounds.

In addition to having UF and RO equipment, some farms today may have a separator to separate skim milk from cream before they leave the farm. Rules must also be established for this type of operation.

Skim milk and cream going through a farm separator also should be treated as producer milk if received at a pool plant or diverted to a nonpool plant. The producer will be required to obtain scale weights and tests on each load of skim and cream shipped along with samples of each. The same ownership, recordkeeping, sampling and reporting requirements that apply to RO and UF units will also be applicable.

In formulating a policy for the treatment of RO and UF retentate, it is important to recognize that the milk produced on a farm with RO or UF equipment is fully available to meet the needs of the fluid market, either before or after passing through such units. Therefore, there should be no question concerning the propriety of pooling this milk along with other producers' milk.

At this writing, the Food and Drug Administration (FDA) has not yet decided whether UF retentate can be reconstituted and sold as fluid milk. However, FDA has approved the use of UF retentate in certain cheese products on a trial basis. Therefore, before receiving UF retentate for use in any product, handlers should be certain that such use has been approved by the FDA.

Distributing Plant

A *distributing plant* is defined as a plant that is approved by a duly constituted regulatory agency to handle Grade A milk and at which fluid milk products are processed or packaged and from which there is route disposition. The time and location of route disposition are included in the distributing plant definition in some current orders. However, whether route disposition occurred during the month or, within the marketing area, are more appropriately determined to be pooling issues. Therefore, they are discussed and included in each consolidated order's pool plant definition.

Supply Plant

A *supply plant* is a regular or reserve supplier of bulk milk for the fluid market that seasonally contributes to coordinating the supply of milk with the demand for milk in a market. As defined in this decision, a supply plant is a plant other than a distributing plant that is approved by a duly constituted regulatory agency to handle Grade A milk and at which fluid milk products are received or from which fluid milk products are transferred or diverted.

Pool Plant

The *pool plant* definition of each proposed consolidated order provides standards to distinguish between those plants engaged in serving the fluid needs of the marketing area and those plants that do not. Pool plants serve the market to a degree that warrants their producers sharing in the added value that derives from the classified pricing of milk. While the pool plant definition in every consolidated order provides for a set of common principles, the definition is specific and unique to each consolidated order.

Each type of pool plant can be generically described to share certain common characteristics. However, to the extent that marketing conditions and other related factors vary across the country, the proposed consolidated orders need differing terms of applicability and performance standards in order to determine the regulatory status of a plant.

All *pool distributing plants* in the consolidated orders will base pool plant status on two performance measures: (1) the proportion of its route disposition to bulk receipts, and (2) the proportion of route disposition in the marketing area. If a pool distributing plant operates in more than one market, the plant's primary association with a marketing area generally will be determined on the basis of where the majority of fluid sales occur. In the event that a plant is not primarily associated with any marketing area, it will be regulated in the marketing area in which it is located provided the plant meets the order's pooling standards. If it is not located within any marketing area, it will be regulated wherever it has the most route disposition.

Performance standards for *pool supply plants* are designed to attract an adequate supply of milk to meet the demands for fluid milk in a market. Historically, a pool supply plant did not include any portion of a plant that was not approved for handling Grade A milk and that was physically separated from a portion of the plant that had approval. Currently, inspection agencies most commonly render only one type of approval for an operation, but provision is made to designate a physically separated portion of the plant as a "nonpool plant."

Types of Pool Plants and Pool Qualifications Pool Distributing Plant

Many orders presently refer to Grade A milk in defining a pool distributing plant. However, a distributing plant, by definition, can only handle Grade A milk, so this qualification is redundant and has been removed from the structure of the pool plant section. Also, as proposed here, the proportion of route disposition to receipts is derived from a divisor of receipts of bulk fluid milk products as opposed to receipts of total fluid milk products.

The recommended ratio of route disposition to total receipts of bulk fluid milk products for *pool distributing plant* qualification will vary among orders, but for most orders it will be at least 25 percent. This is the lowest ratio currently used among all orders, and will prevent depooling of plants that presently enjoy pool plant status. To the extent this percentage is found to be too low for certain milk "deficit" regions, higher percentages are provided in those proposed consolidated orders.

Performance standards are also needed to establish a minimum threshold of market participation, as measured by route dispositions in a marketing area, which when met or surpassed, cause a distributing plant to be fully regulated in that market. Currently, the proportion of route disposition in the marketing area is expressed in some orders as a percentage of total route disposition and in other orders as a percentage of total receipts of fluid milk products. A percentage of total route disposition is recommended for the consolidated orders.

Some current orders require a daily average minimum of route disposition in the marketing area. This standard has been removed because it is covered under the exempt distributing plant definition described below. The recommended ratio of 15–25 percent of a plant's route disposition in the marketing area provides a reasonable measure of a distributing plant's

association with a marketing area, while, at the same time, precluding a change in the regulatory status of plants that are currently partially regulated or regulated by a state regulatory program.

To facilitate proper administration and accounting, all orders currently provide that packaged fluid milk products transferred from one handler to another be treated as interhandler transfers, with each transaction properly identified and specifically reported to affected market administrators. This should continue in the consolidated orders. However, for the single purpose of qualifying a plant as a pool distributing plant, a subsection in each consolidated order is included to address the transfer of packaged fluid milk products to a distributing plant. Packaged fluid milk products that are transferred to a distributing plant shall be considered as route disposition from the transferring plant rather than the receiving plant. In addition to transfers that occur for sales in the marketing area, this subsection is also meant to address the concern of properly pooling a plant with sales outside of the marketing area that are made through another plant. This is necessary to preclude a plant from becoming partially regulated if the plant shipped significant quantities of packaged fluid milk products to another distributing plant.

Pool Supply Plant

Currently, pool supply plants are generally defined by their association with a marketing area and their ability to move milk to pool distributing plants that service the marketing area. Pool supply plants should continue to be defined in this way. However, the pool supply plant definition does not lend itself to uniform application in all consolidated orders. Therefore, pool supply plant performance standards should be established according to regional needs. The specific standards adopted in each order are described in the pool plant section of each new order. For orders outside the southeastern United States, provisions are provided for two types of supply plants: a *pool supply plant* and *pool reserve supply plant*. Pool reserve supply plants are generally defined as plants located within the marketing area that are involved primarily in manufacturing nonfluid milk products. They nevertheless serve to balance the market by providing a ready supply of fluid milk when needed and a manufacturing alternative when milk for fluid uses is not needed. By contrast, pool supply plants are generally defined as plants involved predominately in the assembly of raw milk supplies at the farm and shipment of these supplies to distributing plants. There are proposed marketing areas where just a pool supply plant provision would be adequate, without the additional distinction of a pool reserve supply plant. For those marketing areas where it is preferable to distinguish between plants located in and out of the marketing area, different performance requirements are recommended to fit the needs of the consolidated order.

Pool Reserve Supply Plant

A pool reserve supply plant is defined as a plant capable of handling the reserve milk required for a marketing area that also stands ready to make milk available to meet the fluid needs of the market. Such a plant must be approved to handle Grade A milk, and must be located in the marketing area. In addition, the plant must provide milk in fluid use to pool distributing plants certain month of the year when milk production declines. Finally, a *reserve supply plant* must apply for, and receive, formal acknowledgment of pool status by the market administrator. Because deliveries of a pool reserve supply plant to a distributing plant will specify seasonal performance standards, they cannot be uniform across all orders. Therefore, each proposed consolidated order having a pool reserve supply plant definition will differ with respect to the level and timing of performance required.

In qualifying a supply plant's milk receipts for pooling, several current orders allow direct milk shipment from farms to distributing plants, while other current orders require all of the milk, or at least some of it, to be transferred through a plant. Transferring deliveries through a plant may often be uneconomical and inefficient when compared to the direct delivery of milk from farms. Therefore, for most of the consolidated orders, both supply plants and reserve supply plants are allowed the flexibility to meet delivery requirements by direct deliveries from farms to distributing plants if the supply plant operator deems that to be the most efficient means of moving milk.

A number of orders currently provide for special pool status for supply plants located in the marketing area but such status is generally limited to cooperatives. Several of the orders which have this provision will retain it under the consolidated orders. In other orders, however, especially those with many manufacturing plants operated by proprietary handlers, ownership distinction as a condition for pool reserve supply plant status has been removed. This should promote increased handler equity in the ability for plants to compete for milk supplies and for producers associated with such plants to have their milk priced and pooled under the order. Additionally, there are manufacturing plants located in some marketing areas that are currently designated as pool plants. This provision will ensure the retention of pool status of such plants.

Location in the marketing area should also be a requirement for pool reserve supply plant status. This is recommended because it will preclude the pooling of a plant that is outside the marketing area and not in a position to economically supply the market with supplemental milk or to efficiently handle its reserve supplies. In addition, it will preclude the pooling of milk on a market when such milk has no real association with the market at all and only serves to lower a market's Class I utilization, thereby making it more difficult to attract milk needed for fluid use. When a distributing plant needs more milk, a reserve supply plant located in the marketing area can most rapidly and economically route milk directly to where it is needed.

For those orders providing for reserve supply plants, pool plant status will be conveyed by the market administrator after notification is filed in writing by the plant operator. The notification should be filed no later than June 15 of each year. Pool status would begin on July 1 of the same year and continue for the remainder of the year unless: (1) the plant operator later requests nonpool plant status; (2) the plant subsequently fails to meet the specified performance standards, or; (3) the plant qualifies as a pool plant under another Federal order. If a plant operator requests nonpool status for any month, such nonpool status should remain in effect until the following June, when the cycle of notification for pool reserve supply plant status begins anew. Notification to the market administrator serves to demonstrate a commitment to the market and to act as a deterrent to temporary changes in pooling status to the detriment of the market.

Pooling Options

Unit pooling. Unit pooling allows two or more plants located in the marketing area and operated by the same handler to qualify for pool status as a *unit* by meeting the total and in-area route disposition standard as if they were a single pool distributing plant. To qualify as a *unit*, at least one of the plants in the *unit*—i.e., the primary plant— must qualify as a pool distributing plant on its own standing and the other plants in

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the unit must process only Class I or Class II milk products.

Unit pooling serves to accommodate and provide a flexible regulatory approach in addressing the specialization of plant operations. It also minimizes unintended regulatory effects that may cause the uneconomical and inefficient movement of milk for the sole purpose of retaining pool status. However, some conditions need to be satisfied for unit pooling. The "other" plant(s) of the pool unit—i.e., the plants that would not qualify for pool status as a single plant—must be located in an equivalent or a lower price zone than the primary pool distributing plant. This condition is required to assure that the transportation of milk for Class II uses will not be subsidized through the marketwide pool and to assure pricing equity to all handlers processing Class II products that do not use unit pooling. Unit pooling arrangements status must be requested in writing and approved by the market administrator for its proper implementation and administration.

System pooling. As previously discussed, supply plants and reserve supply plants provide a benefit to the market because they are required to meet certain performance standards in supplying the needs of the fluid market. They also serve to balance the market. Because handlers often operate more than one supply plant within the market, they should be afforded flexibility in meeting the performance standards for pooling. *System pooling* can provide this flexibility. A system of plants can be established if the plants meet applicable performance standards in the same manner as any single plant. A system may consist of two or more supply plants, or two or more reserve supply plants, operated by the same handler or by one or more cooperative associations.

System pooling should be declared by a handler in writing to the market administrator so that pooling of the system can be properly administered. If a handler causes one of the plants to become ineligible for system pooling, that plant will not be part of the system for the duration of the calendar year. Likewise, plants, except for the proposed Upper Midwest consolidated marketing area, cannot be added to the system after the written request for system pooling is acknowledged by the market administrator.

Adjustment of Pooling Standards

The consolidated orders should provide the market administrator with authority to adjust various pooling standards, including pool plant shipping standards in most consolidated orders. Such a provision would replace the "call" provision that is now included in some orders. This change allows all market administrators to adjust the shipping standards for pool supply and pool reserve supply plants if they find that such revision is necessary to encourage needed shipments or to prevent uneconomic shipments of milk. For most consolidated orders, it is also recommended that the market administrator be authorized to adjust the total and in-area route disposition requirements for pool distributing plants. This flexibility could be particularly beneficial during a plant breakdown, a labor strike, the sudden loss or change in accounts, or some other conditions that would otherwise result in regulatory instability or market disruption.

A finding by the market administrator that adjustments are warranted would follow an investigation conducted on the market administrator's own initiative or at the request of interested parties. This provision allows the market administrator to respond promptly to changes in local marketing conditions. Granting the authority for the market administrator to make needed adjustments in the manner specified currently exists in some Federal orders and has proven to be responsive, efficient, effective, and commensurate with the authorities already delegated by the Secretary to the market administrator.

Nonpool Plant

A definition is provided in all orders describing plants which receive, process or package milk, but which do not satisfy the standards for being a pool plant. While providing for such a definition may appear redundant, this provision is useful to more clearly define the extent of regulation applicable to plants. *Nonpool plants* should include a plant that is fully regulated under another Federal order, a producer-handler plant, a partially regulated distributing plant, an unregulated supply plant and an exempt plant. The definitions for these nonpool plants are not materially different than those provided in the current orders with the possible exception of an "exempt plant."

A number of Federal orders exempt from regulation small distributing plants which, because of their size, do not significantly impact competitive relationships among handlers in the market. The level of route disposition required before an exempt plant becomes regulated varies in the current orders. As recommended, any plant with route disposition during the month of 150,000 pounds or less would be exempt in the consolidated orders. This limit reflects the maximum amount of fluid milk products allowed by an exempt plant in any current Federal milk order and ensures plants that are currently exempt from regulation will remain so.

Many current Federal orders also provide regulatory exemption for a plant operated by a state or Federal governmental agency. For example, some states have dairy farm and plant operations that provide milk for their prison populations. As recommended, regulatory exemption would be continued under the consolidated orders unless pool plant status is desired. Additionally, regulatory exemption is intended to include colleges, universities and charitable institutions because these institutions generally handle fluid milk products internally and have no impact in the mainstream commercial market. However, in the event that these entities do distribute fluid milk through commercial channels, route sales by such entities, including government agencies, will be monitored for determining if Federal regulation should apply.

The determination and verification of exempt plant status will, from time to time, necessitate the need for the market administrator to require reports and information deemed appropriate for the sole purpose of making this determination. Such authority is currently provided in orders and should continue.

Handler

Federal milk orders regulate those persons who buy milk from dairy farmers. Such persons are called *handlers* under the order. These persons have a financial responsibility for payments to dairy farmers for milk in accordance with its classified use. They must file reports with the market administrator detailing their receipts and utilization of milk. As recommended, the handler definition includes the operator of a pool plant, a cooperative association that diverts milk to nonpool plants or delivers milk to pool plants for its account, and the operator of a "nonpool plant," which would encompass a producer-handler, a partially regulated distributing plant, a plant fully regulated under another Federal order, an unregulated supply plant, and an exempt plant.

In addition, "third party" organizations that are not otherwise regulated under provisions of an order are included in the handler definition.

This category includes any person who engages in the business of receiving milk from any plant for resale and distribution to wholesale and retail outlets, brokers or others who negotiate the purchase or sale of fluid milk products or fluid cream products from or to any plant, and persons who, by purchase or direction, cause the milk of producers to be picked up at the farm and/or moved to a plant. Such intermediaries provide a service to the dairy industry. These persons are not, however, recognized or regulated as entities required to make minimum payments to producers. The expanded marketing chain brought about by such intermediaries has made it increasingly difficult for the market administrator to track the movement of milk from farms to consumers. The recommended handler definition enables the market administrator to more readily identify those entities for the information needed to properly administer an order.

Producer-Handler

It has been a long-standing policy to exempt from full regulation many of those entities that operate as both a producer and a handler. Generally, a *producer-handler* is any person who provides satisfactory proof to the market administrator that the care and management of the dairy farm and other resources necessary for own-farm production and the management and operation of the processing plant are the personal enterprise and risk of such person. A primary basis for exempting producer-handlers from the pricing and pooling provisions of a milk order is that these entities are customarily small businesses that operate essentially in a self-sufficient manner. Also, during the history of producer-handler exemption from full regulation there has been no demonstration that such entities have an advantage as either producers or handlers so long as they are responsible for balancing their fluid milk needs and cannot transfer balancing costs, including the cost of disposing of reserve milk supplies, to other market participants.

The current orders have varying producer-handler definitions that address specific marketing conditions and circumstances. For example, they specify different limits on the amount of milk that producer-handlers may purchase and retain their exempt status. Some modifications are being made to the producer-handler provisions in the consolidated orders for standardization. However, these changes are not intended to fully regulate any producer-handler that is currently exempt from regulation.

As proposed, any handler, including a producer-handler, is exempt from the pooling and pricing provisions of an order during any month in which route disposition is less than 150,000 pounds. Thus, the producer-handler exemption only applies to producer-handlers with route disposition of 150,000 pounds or more. Since such producer-handlers are not subject to the pricing and pooling provisions of an order as are fully regulated handlers, it is appropriate to continue to require producer-handlers to rely on their own-farm production in meeting their fluid sales and to independently market their surplus milk production without participation in the marketwide pool. However, a producer-handler should be allowed some marginal flexibility on supplemental milk purchases provided they are from regulated sources. Relatively small supplemental purchases do not undermine the concepts of classified pricing and marketwide pooling. As proposed, producer-handlers are allowed to purchase some specified amount of supplemental fluid milk products each month from pool sources. As is currently the case, any supplemental requirements of fluid milk products by a producer-handler will continue to be limited to receipts from regulated sources, thus insuring that producers associated with the marketwide pool share in the economic benefit of all Class I sales over and above what a producer-handler's own production may not have satisfied.

It is appropriate to continue requiring producer-handlers to rely primarily on their own-farm production to balance their fluid sales and to find outlets for their surplus production. Producer-handlers must also rely upon their own distribution system to find outlets for their milk. A producer-handler will be allowed to distribute milk to the plant of a fully regulated handler. However, disposal of surplus milk production by a producer-handler to the plant of a fully regulated handler, whether in bulk or packaged form, will be allocated at the pool plant to the lowest class-use of the receiving plant, thereby preserving the Class I share of the market for producers who bear the burden of balancing a market's surplus disposal. Disposal of packaged fluid milk products by a producer-handler to a distribution facility operated by a fully regulated handler should not be permitted. It would allow a producer-handler to dispose of its surplus production by capturing a greater share of the Class I market thereby receiving an unearned economic benefit not accorded to producers pooled on the market. This restriction also prevents a fully regulated handler from purchasing Class I milk at less than the minimum order price that other fully regulated handlers must pay. Accordingly, a producer-handler will not be allowed to dispose of fluid milk products using the distribution system of another handler, nor through any other channel, division, or department of a pool handler and retain exemption from full regulation under an order. Since a producer-handler must control its own distribution, it will not be allowed to have disposed of milk to any independent distributor. Route disposition to retail stores (owned by any entity and not located in a regulated plant) or to a distribution facility owned by retail stores (and not by a regulated plant or independent entity) would be allowed.

Notwithstanding the exemption of producer-handlers from regulation, there may be instances where it is to the advantage of the person who is both a producer and a handler to operate such businesses as two distinct entities. The proposed new orders provide the producer-handler with the flexibility to realize this advantage. Upon request by a producer-handler to the market administrator, the plant portion of the operation would be a fully regulated distributing plant while the farm portion of the operation would be accorded producer status.

Public comments were received regarding the extent of regulation that should apply to producer-handlers. The majority of public comments supported the status-quo regarding the regulatory treatment of producer handlers, emphasizing that they should remain exempt from regulation in accordance with current order provisions and that the provisions should be regional in nature so as not to affect or change the current regulatory status of producer-handlers. One of the public comments received proposed that the exemption of producer-handlers from the regulatory plan of milk orders be eliminated. This proposal is denied. In the legislative actions taken by the Congress to amend the AMAA since 1965, the legislation has consistently and specifically exempted producer-handlers from regulation. The 1996 Farm Bill, unlike previous legislation, did not amend the AMAA and was silent on continuing to preserve the exemption of producer-handlers from regulation. However, past legislative history is replete with the specific intent of Congress to exempt producer-handlers from regulation. If it had been the intent of Congress to remove the exemption, Congress would

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likely have spoken directly to the issue rather than through omission of language that had, for over 30 years, specifically addressed the regulatory treatment of producer-handlers.

Since producer-handlers are intended to be exempt from most regulation, some means must be provided to determine and to verify producer-handler status. Accordingly, the market administrator is provided with the authority to require reports and other information deemed appropriate to determine that an entity satisfies the requirements of producer-handler status. Such authority is currently provided in the orders and should continue.

Producer

Under all orders, *producers* are dairy farmers that supply the market with milk for fluid use or who are at least capable of doing so if necessary. Producers are eligible to share in the revenue that accrues from marketwide pooling of milk. The producer definitions of the individual orders are described under the regional discussions later in this document. Responding to regional needs, producer definitions will differ by order with respect to the degree of association that a dairy farmer must demonstrate with a market.

A dairy farmer may not be considered a producer under two Federal milk orders with respect to the same milk. If a dairy farmer's milk is diverted by a handler regulated under one Federal order to a plant regulated under another Federal order, and the milk is allocated at the receiving plant (by request of the diverting handler) to Class II, III or IV, the dairy farmer will maintain producer status in the original order from which milk was diverted.

Since producer-handlers and exempt plants are specifically exempt from Federal order pricing provisions, the term producer should not include a producer-handler as defined in any Federal order. Likewise, the term producer should not apply to any person whose milk is delivered to an exempt plant, excluding producer milk diverted to such exempt plant.

It would not be appropriate to share the economic benefits that arise from classified pricing through marketwide pooling with dairy farmers whose milk is not regularly associated with the market. For example, a dairy farmer may decide to deliver milk to a market's pool plants only when a more favorable unregulated market is not available, or an unregulated plant may attempt to move its surplus milk to a market's pool plant only to derive an economic benefit from the marketwide pool.

An unregulated plant operator, often a cooperative association, may receive all of a dairy farmer's milk at its plant when milk supplies are tight and, during such times, not share the higher-use value of such milk with other dairy farmers through the marketwide pool. On the other hand, during a period of flush production, the same plant may seek to dispose of surplus milk through a market's pool plants to pass the cost of balancing milk supplies to dairy farmers that regularly supply the fluid market through the mechanism of the marketwide pool. Under such circumstances, producer status should not be accorded to those dairy farmers under an order. Doing so would place producers who regularly fulfill a market's fluid milk needs with the burden of carrying the surplus costs of balancing unregulated fluid markets without the benefit of sharing in the additional revenue that is derived from those markets when circumstances are more favorable.

Another circumstance can also arise when it may be advantageous not to pool milk, a practice commonly referred to as "depooling." When manufacturing class prices for a month are higher than an order's uniform, or blend price, milk at manufacturing plants is often depooled because the operators of such plants otherwise would be required to pay into the marketwide producer-settlement fund. Such payments would benefit the marketwide pool but would be disadvantageous to those having to make them. This practice is generally disruptive to the marketwide pool and is not conducive to maintaining orderly market conditions. In instances involving depooled milk, it is a handler's decision in moving milk that impacts producers and pool milk value. It is also a handler's action that determines whether a farmer retains producer status or becomes associated with another marketing area.

The proposed orders that are vulnerable to this type of abuse contain a provision to deter handlers from moving milk in a manner that is disadvantageous to the market's regular producers. Handlers who choose to regularly supply nonpool plants as their primary market, and handlers who move milk in and out of the regulated market, should not consistently enjoy the benefits of equalization payments from the marketwide pool. However, this should not apply in the event that a handler moves milk supplied by a producer under one Federal order to another Federal order, nor are these provisions intended to overlap with order provisions for the diversion of milk. Should a handler exceed specified diversion limits, only the over-diverted milk is removed from the pool; the producer should maintain "producer" status for other milk delivered that month.

The recommended method for determining when a dairy farmer is not properly associated with a market is commonly referred to as a "dairy farmer for other markets" provision, which is a component of the producer definition in some of the consolidated orders. Under this type of provision, milk deliveries to nonpool plants that are not reported by handlers as diversions from pool plants would result in the loss of producer status for a dairy farmer's milk for some fixed time period. While the receipt of, or diversion by, a pool handler of other milk from the same producer during that fixed time period is not restricted, the minimum payment obligation of the handler for that milk would not be regulated under the Federal milk marketing orders. Such milk would be treated as "other source milk," and the dairy farmer's milk would not be included in the pool.

Where this provision is provided, the loss of producer status would remain in effect for the current month and for the following two months. Exception is made to accommodate the market demands for milk during the "short" season. If milk is depooled during the "short" season, the loss of producer status should remain in effect for the current month only; otherwise, it would discourage the pooling of milk during the remainder of the "short" season. Once the short season ends, however, the dairy farmer should not be eligible for producer status during the subsequent flush production season. Producer status will be lost until the beginning of the following "short" season. The relevant time periods that describe which months are applicable in defining the "short" season are described in each of the consolidated orders.

Producer Milk

All orders currently provide for defining and identifying the milk of producers which is eligible for inclusion in a particular marketwide pool and should continue to do so. However, this definition is specific to each consolidated order and is therefore not uniform across all orders.

In general, the definition of *producer milk* for all consolidated orders continues to include the milk of a producer which is received at a pool plant or which is received by a cooperative association in its capacity as a handler. Most current orders consider milk to be "received" when it is physically unloaded at the plant and the proposed orders would continue that treatment. However, to ensure that producers are promptly paid for their milk, milk picked up from the producer's farm, but not received at a plant until the following month, will be considered as having been received by the handler during the month in which it is picked up at the producer's farm. In this situation, milk will be priced under an order at the location of the plant where it is physically received in the following month.

In order to promote the efficient movement of milk, all orders currently allow a handler to move producer milk, within certain specified limits, from a producer's farm to a plant other than the handler's own plant. This is referred to as a "diversion" of milk. As proposed for the consolidated orders, the definition of producer milk allows unlimited diversions to other pool plants, thereby providing maximum flexibility in efficiently supplying the fluid market.

Under some orders, unlimited diversions to nonpool plants would also be allowed once a dairy farmer has become associated with a particular order. Under other orders, however, a producer would be required to "touch base" at a pool plant one or more times each month and, in addition, aggregate diversion limits may be applied to a handlers' total diversions.

For pool distributing plants, route disposition as a percent of total receipts of bulk milk automatically limits diversions by those plants. With respect to pool supply plants and pool reserve supply plants, the specific shipping standards will ensure that a sufficient quantity of milk is available for the fluid market. Since some orders may allow for unlimited diversions, the maximum quantity of milk that a pool plant would be able to divert and still maintain its pool plant status would be 100% less the pool plant shipping standards for the month. This will mitigate the need for suspending order diversion limitations, an action that is quite common in some of the current orders. Unlimited diversions would also allow for maximum efficiency in balancing the market's milk supply. The market administrator's ability to adjust shipping percentages for pool supply plants and pool reserve supply plants will further ensure that an adequate supply of milk is available for the fluid market without the imposition of diversion limits.

While it is expected that a one time producer "touch base" standard and virtually unlimited diversions would be appropriate for most of the consolidated Federal orders, it is recognized that it may not be appropriate for certain "deficit" markets. In these cases, the order may provide for diversion limits to ensure an adequate supply of fluid milk for that particular market. In these cases, the alternate standards for diversion privileges specify the minimum number of days that milk of a producer must be physically received at a pool plant and the percent of total producer receipts that may be diverted by the handler. The months during which such minimums must be met are also identified in both cases.

In order to provide regulatory flexibility and marketing efficiencies, all of the proposed orders having diversion limits allow the market administrator to increase or decrease the delivery requirements for producers and the aggregate diversion limits applicable to handlers. Granting the authority for the market administrator to make needed adjustments in the manner specified currently exists in some Federal orders and has proven to be a responsive, efficient, and effective way to deal with rapidly changing marketing conditions.

Cooperative Association

All current orders provide a definition for dairy farmer cooperative associations that market milk on behalf of their dairy farmer members and should continue to do so in the consolidated orders. Providing for a uniform definition of a cooperative association facilitates the administration of the various order provisions as they apply to such producer organizations and recognizes the unique standing granted to dairy farmer cooperatives under the Capper-Volstead Act. Moreover, dairy farmer cooperatives are responsible for marketing the majority of the milk supplied to regulated handlers under the Federal order system.

As provided herein, a cooperative association means any cooperative marketing association of producers which the Secretary determines, after application for such recognition by the cooperative, is qualified as such under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act". Additionally, most orders currently require that a cooperative association have full authority in the sale of the milk of its members and that it be engaged in making collective sales or marketings of milk or milk products for its dairy farmer members. This should continue. The cooperative association definition provides for universal applicability in all consolidated orders.

Several current orders also provide a definition for a federation of two or more cooperative associations. As recommended herein, all consolidated orders would recognize a federation of cooperatives as satisfying the cooperative definition for the purposes of determining milk payments and pooling. Individual cooperatives of a federation of cooperatives must also meets the criteria as set forth for individual cooperative associations and their federations as incorporated under state laws.

Handler Reports

Reports of receipts and utilization, payroll and other reports. All current orders require handlers to submit monthly reports detailing the sources and uses of milk and milk products so that market average use values, or blend prices, can be determined and administered. Payroll reports and other reports required by the market administrator are also provided for in the orders. The proposed language for the consolidated orders for handler reports is similar to that contained in current orders. The dates when reports are due in the market administrator's office differ slightly by order according to custom and industry practice.

Announcements by the Market Administrator

Public announcements by market administrators. Four sections of each consolidated order provide for requiring the market administrator to make certain announcements in the course of order administration. These include: § 100__.45, Market administrator's reports and announcements concerning classification; § 100__.53, Announcement of class prices and component prices; § 100__.54, Equivalent price; and § 100____.62, Announcement of producer prices, or in orders without component pricing, Announcement of uniform price, uniform butterfat price, and uniform skim milk price. These announcements are currently required by market administrators in all orders and should continue. As proposed, these provisions are uniform to all consolidated orders and are nearly identical to current order provisions. However, § 100____.62, is unique to each order and is described in each of the consolidated orders.

Payments for Milk

Producer-settlement fund. All of the current orders provide for minimum payment terms and obligations by regulated handlers and such provisions should continue to be part of the consolidated orders. Handlers are

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charged with minimum class prices. However, producers are returned a uniform, or blend, price through the marketwide pooling of milk. The mechanism for the equalization of a handler's use value of milk is the producer-settlement fund. It is established and administered by the market administrator for each order.

The producer-settlement fund ensures that all handlers are able to return the market blend price to producers whose milk was pooled under the order. Payments into the producer-settlement fund are made each month by handlers whose total classified use-value of milk exceeds the value of such milk calculated at the uniform price or at component prices for those orders with component pricing. Similarly, payments out of the producer-settlement fund are made each month to any handler whose use-value is below the value of milk at the uniform price or component prices, as the case may be. The transfer of funds enables handlers with a use-value below the average for the market to pay their producers the same uniform price as handlers whose Class I utilization exceeds the market average. This provision is uniform for all consolidated orders.

Payments to and from the producer-settlement fund. The current orders vary with respect to dates for payments to the producer-settlement fund, due largely to industry practices and how certain orders evolved over time to reflect those practices. Each consolidated order provides for payment dates, and they are specific for each consolidated order. Also, as proposed, payment to the producer-settlement fund would be considered made upon receipt by the market administrator. In view of the need to make timely payment to handlers from the producer-settlement fund, it is essential that money due the fund be received by the due date. Additionally, payment cannot be received on a nonbusiness day. Therefore, if the due date is a Saturday, Sunday, or national holiday, payment would not be due until the next business day. This is specified in § 1000.90 of the General Provisions.

Payments from the producer-settlement fund provide for payments to those handlers whose milk use-value is below the value of milk at the uniform price. As proposed, this section is similar to those contained in current orders. As with payments to the producer-settlement fund, the payments from the fund are specific to each consolidated order. Generally, payments from the producer-settlement fund would be required one day after the required date for payments into the fund. This goal is consistent with the average time lapse between payment into the producer-settlement fund and payments from the fund in existing orders. As in the prior section, payments would be made on the next business day when the required payment date falls on a Saturday, Sunday, or national holiday.

Payments to producers and to cooperative associations. The AMAA provides that handlers must pay to all producers and producer associations the uniform price. The existing orders generally allow proper deductions authorized by the producer in writing. Proper deductions are those that are unrelated to the minimum value of milk in the transaction between the producer and handler. Producer associations are allowed by the statue to "reblend" their payments to their producer members. The Capper Volstead Act and the AMAA make it clear that cooperative associations have a unique role in this regard.

The payment provisions to producers and cooperatives vary greatly among the current Federal orders, particularly in regard to partial payment frequency, timing, and amount. The proposed provisions are consistent with the needs of the consolidated orders. Each order currently requires handlers to make at least one partial payment to producers in advance of the announcement of the applicable uniform prices. The partial payment varies across orders by the required payment date, rate of payment, and volume of milk for which payment is made. This provision continues to require partial payments, although they will vary by consolidated order. Full payment is required to be made so that it is received by producers no later than two days after the required pay-out date of monies from the producer-settlement fund.

Cooperatives will be paid by handlers for bulk milk and skim milk on the terms described for individual producers except that required receipt of payment will be one day earlier. Providing for an earlier payment date for cooperative associations is warranted because it will permit the cooperative association the time needed to distribute payments to individual producer-members. The cooperative payment language in each of the consolidated orders has been expanded to include bulk milk and skim sold by cooperative pool plants as well as by cooperatives acting as a handler.

All of the payment dates are receipt dates. Since payment cannot be received on a non-business day, payment dates that fall on a Saturday, Sunday, or national holiday will be delayed until the next business day. While this has the effect of delaying payment to cooperatives and producers, the delay is offset by the shift from "date of payment" to "date of payment receipt."

Minimum payments to producers. In a proceeding involving the current Carolina, Southeast, Louisville-Lexington-Evansville, and the former Tennessee Valley Federal milk orders (Orders 5, 7, 46, and 11), a proposal was made to clarify what constitutes a minimum payment to producers. The proposal was recommended by Hunter Farms (Hunter) and Milkco Inc. (Milkco), two handlers regulated under the current Carolina order. Under the proposal, a handler (except a cooperative acting in its capacity as a handler pursuant to paragraph 9(b) or 9(c)) may not reduce its obligations to producers or cooperatives by permitting producers or cooperatives to provide services which are the responsibility of the handler. According to the Hunter/Milkco proposal, such services include: (1) Preparation of producer payroll; (2) conduct of screening tests of tanker loads of milk; and (3) any services for processing or marketing of raw milk or marketing of packaged milk by the handler.

At the May 1996 hearing, representatives of Hunter and Milkco testified that both handlers receive milk from cooperative associations and Piedmont Milk Sales, a marketing agent handling the milk of non-member producers. The Hunter representative explained, due to competitive marketing conditions in the Southeast in late 1994 and early 1995, handlers were able to purchase milk supplies at Federal order minimum prices without any over-order premiums being charged. As a result of the absence of over-order premiums, the representative stated, Hunter received underpayment notices from the market administrator on milk that it had received from Piedmont Milk Sales.

Hunter contends the problem of what constitutes a minimum payment to producers should be clarified in the event that premiums again disappear in the future. If this issue is not resolved, according to Hunter, it will suffer a loss of milk sales and its producers will receive lower prices. Hunter argues that the current policy is discriminatory and unfair and that everyone would benefit from a clarification of the rules defining Federal order minimum prices.

Milkco supported Hunter's position and stated that it also received underpayment notices from the market administrator for the December 1994 through October 1995 period on milk received from independent dairy farmers, but did not receive underpayment notices on milk received under the same or similar conditions from cooperative associations.

Carolina-Virginia Milk Producers Association offered qualified support for the Hunter/Milkco proposal. The cooperative suggested expanding handlers' responsibilities to cover tanker washing and tagging, supplying milk to handlers on an irregular delivery schedule, field work, disposing of surplus milk during months when the supply is above local needs, and importing supplemental milk for Class I use during periods of short production.

Mid-America Dairymen, Inc. (Mid-Am) testified and filed a post-hearing brief strongly objecting to the Hunter/Milkco proposal. Mid-Am argued that the issue of minimum payments to producers is national in scope and suggested that the issue be addressed on a national basis within the context of the Federal order reform as required by the 1996 Farm Bill. Furthermore, Mid-Am stated that clearly the costs for butterfat testing are borne by all producers, and the costs of testing milk in tankers for antibiotics are borne by all handlers, regardless of their source of supply. According to Mid-Am, no confusion exists as to who is responsible for these tests and, therefore, they should not be included in the proposed amendments.

Several handlers either supported the Milkco/Hunter proposal or stated the proposal should be considered by the Secretary for all Federal milk marketing orders within the context of Federal milk order reform.

Based on the testimony presented at the public hearing and comments received, the Department's recommendation issued on July 17, 1997 (62 FR 39470), was to consider this issue as part of Federal order reform. The decision stated that no changes were being recommended for the 4 southeastern orders involved in the proceeding because this issue is central to all Federal milk orders and should not be interpreted differently from one order to another. The decision also noted the conceptual differences among market participants concerning what constitutes minimum prices to producers. The record was not extensive in detailing the particular services to be assigned to each party, nor in providing guidance concerning the cost of these services which appeared to vary considerably from organization to organization.

Hunter and Milkco, Inc., filed an exception to the Department's partial recommended decision and urged adoption of their proposal. These handlers stated that their proposal would specify the responsibility of all handlers with respect to producer milk and thereby rectify any inconsistency that may currently exist in order language concerning this issue.

Hunter and Milkco also stated that any disagreement within the industry concerning which services are the responsibility of the handler is secondary to the issue under review and does not warrant the denial of their proposal. The commenters contend that the central principle surrounding this issue is uniformity in the treatment of handlers purchasing milk supplies from cooperatives or independent producers. The precise list of services is of secondary importance, they state, and industry disagreement concerning these services should not prevent the Department from embracing the central thrust of their proposal.

Regardless of the short-term outcome in the pending rulemaking, there is a long-term issue that transcends individual orders and should be uniformly applied in the interpretation and administration of all Federal milk orders if possible. Accordingly, interested parties are invited to submit comments concerning this issue.

Payments by a handler operating a partially regulated distributing plant. All current and consolidated orders provide a method for determining the payment obligations due to producers by handlers that operate plants which are not fully regulated under any Federal order. These unregulated handlers are not required under the scope of Federal milk order regulation to account to dairy farmers for their milk at classified prices or in returning a minimum uniform price to producers who have supplied the handler with milk. However, such handlers may sell fluid milk on routes in a regulated area in competition with handlers who are fully regulated.

Therefore, the regulatory plan of Federal milk orders needs to provide a minimum degree of regulation to all handlers who enjoy routes sales of fluid milk in a regulated marketing area. This is necessary so that classified pricing and pooling provisions of an order can be maintained. It is also necessary so that orderly marketing conditions can be assured with respect to handlers being charged the classified value under an order for the milk they purchase from dairy farmers. Without this provision, milk prices in an order would not be uniform among handlers competing for sales in the marketing area, a milk pricing requirement of the AMAA. There are 3 regulatory options that are available at the option of the partially regulated handler.

It is recognized under current orders that the purchase of Class I milk by a partially regulated handler of milk that is priced under a Federal order in an amount equal to, or in excess of, quantities sold by partially regulated handlers in the marketing area ensures that price equality is maintained between these entities. In these circumstances, a partially regulated handler will not be required to make payments to the producer-settlement fund so that the use-value of milk has been equalized between fully regulated and partially regulated handlers.

For those instances in which a partially regulated handler purchases no milk from fully regulated handlers, or where purchases are less than the quantity of route disposition in the marketing area by the partially regulated handler, a payment may be made by the partially regulated handler into the producer-settlement fund of the regulated market at a rate equal to the difference between the Class I price and the uniform price of the regulated market.

Many current orders also allow the operator of a partially regulated plant to demonstrate that the payment for its total supply of milk received from dairy farmers was in an amount equal to the amount which the partially regulated plant would have been required to pay if the plant were fully regulated. This amount may be paid entirely to the dairy farmers that supplied the handlers, or in part to those dairy farmers with the balance paid into the producer-settlement fund of the regulated market. This should be adopted in all orders.

All of the current orders also provide, under certain circumstances, for payment options by partially regulated handlers relating to reconstituted milk. All of the payment options available to a partially regulated handler are retained under the consolidated orders. This provision is now found in § 1000.76 of the General Provisions.

Adjustment of accounts. All current orders provide for the market administrator to adjust, based on verification of a handler's reports, books, records, or accounts, any amount due to or from the market administrator, or to a producer or a cooperative association. This provision continues to be included in the consolidated orders. The provision requires the market administrator to provide prompt notification to a handler of any amount so due and requires payment adjustment to be made on or before the next date for making payments as set forth in the provisions under which the error(s) occurred.

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Charges on overdue accounts. All current orders provide for an additional charge to handlers who fail to make required payments to the producer-settlement fund when due. Such payments include payments to the producer-settlement fund, payments to producers and cooperative associations, payments by a partially regulated distributing plant, assessments for order administration, and marketing service and certain other payment obligations in orders with specialized provisions such as transportation credits. This should continue to be provided for in the consolidated orders.

In order to discourage late payments, it is proposed that a 1.0 percent charge per month be incorporated in the consolidated orders. This rate represents the mid-point in the range of charges by all orders presently. Overdue charges shall begin the day following the date an obligation was due. Any remaining amount due will be increased at the rate of 1.0 percent on the corresponding day of each month until the obligation is paid in full.

As proposed, all overdue charges would accrue to the administrative assessment fund. The late-payment charge is to be a penalty that is meant to induce compliance with the payment terms of the order. If late-payment charges for monies due on producer milk were to accrue to the balance owed to either producers, cooperatives or producers/cooperatives via the producer-settlement fund, it could result in such producers and cooperatives being less concerned whether they are paid on time, thus being counterproductive to the purpose of late payment provisions. Under the provision recommended, cooperatives and producers would not be placed in a position where they would prefer to be paid several days late so that they would receive the late-payment charges or increase the level of producer prices due to late payment fee accrual to the producer-settlement fund. This is of particular concern in markets with a single dominant cooperative. Additionally, by having late-payment fees accrue to the administrative fund, monies are made available to enforce late-payment provisions that would otherwise have to be generated through handlers' administrative assessments.

Assessment for Order Administration

The AMAA provides that the cost of order administration shall be financed by an assessment on handlers. All current orders provide for proportionate per hundredweight assessments of varying rates. As proposed, a maximum rate of 5 cents per hundredweight is provided. The assessment would apply to all of a handler's receipts pooled under the order.

Deduction for Marketing Services

As in most current orders, the consolidated orders should provide for the furnishing of marketing services to producers for whom cooperative associations do not perform services. Such services should include providing market information and establishing or verifying weights, samples and tests of milk received from such producers. In accordance with the Act, a marketing services provision must benefit all nonmember producers under the order. They are not uniform in the consolidated orders.

The market administrator may contract with a qualified agent including a cooperative association to provide such services. The cost of such services should be borne by the producers for whom the services are provided. Accordingly, it is proposed that each handler be required to deduct a maximum of 7 cents per hundredweight from amounts due each producer for whom a cooperative association is not providing such services. All amounts deducted should be paid to the market administrator not later than the due date for payments to the producer-settlement fund.

6a. Northeast Region

The Northeast Marketing Area

The recommended consolidated Northeast order differs significantly from other consolidated orders. In addition to merging three existing Federal milk orders, the proposed Northeast order also recommends expansion in the western and northern regions of New York state, and all currently unregulated areas of the New England states (except Maine).

While the current New England (Order 1) and Middle Atlantic (Order 4) order have similar pricing provisions for adjusting producer blend prices in a manner identical to how plant prices are charged, the current New York-New Jersey (Order 2) order employs a "farm-point" pricing method. This decision recommends that the pricing of milk should employ a plant-point pricing methodology in the consolidated Northeast order. This method is used in every other current marketing area and in every recommended consolidated marketing area. This represents a considerable change in how milk will be priced for those handlers and producers who currently are priced under the provisions of the New York-New Jersey order.

In addition to the different pricing provisions of the three existing orders, other important differences and related provisions need to be addressed in recommending a complete Northeast regional order that will accomplish the goals of the AMAA. These include what is commonly referred to in the New-York-New Jersey order as the "pass through" provision, the need for providing marketwide service payments in the form of cooperative service payments and balancing payments that currently exist in the New York-New Jersey order and do not exist in either the current New England or Middle Atlantic orders. Additionally, the three current northeast orders also provide for seasonal adjustments to the Class III and IIIA price, which may no longer be necessary in light of the replacement being recommended for the BFP.

It is fair to observe that the current order most affected by the recommended consolidation is the New York-New Jersey order. In addition to the differences already described, certain terms and provisions of the recommended Northeast order are also different in how they are described and presented but are nevertheless consistent with existing provisions that accomplish the goals of the AMAA. This is less of an issue for those entities that are accustomed to the terminology of provisions used in the New England and Middle Atlantic orders. The following presents a discussion of the recommended order provisions and issues that are unique to the consolidated Northeast order.

Plant

The plant definition for the proposed consolidated Northeast order should differ from that of the other consolidated orders by allowing stationary storage tanks to be used as reload points. This exception to the plant definition is warranted for the consolidated Northeast order due to certain unique conditions that affect the ability of producers to assemble milk in an efficient manner and subsequently transport it to a plant that actually processes milk into finished dairy products, including fluid milk products. This exception would not consider the reload point or facility as a point from which to price producer milk. Rather, milk once assembled would be shipped to a processing plant where it would be priced.

A portion of the Northeast milk supply is derived from some 200 small dairy farms located in Maine. Because much of this state is serviced by secondary and rural winding roads, the current New England order has provided for reload points as a workable solution to the inherent hauling difficulties in transporting relatively small loads of milk from the countryside to reload points and facilities with stationary storage tanks that do not serve as a pricing point. This should continue to be provided for in the consolidated Northeast order. Not to provide this accommodation would adversely affect a substantial number of small producers and the milk haulers that service them.

Pool Plant

The *pool distributing* and *pool supply plant* definitions of the proposed consolidated Northeast order should use the standard order language format used in other orders, combined with performance standards that are adapted to marketing conditions in the Northeast.

The proposed pool distributing plant definition specifies that a pool distributing plant must have 25 percent or more of its total physical receipts of bulk fluid milk distributed as route disposition and that route disposition within the marketing area be at least 25 percent. The 25 percent level of total receipts distributed on routes is a reasonably high enough level to establish a distributing plant's association with the marketing area. The in-area route distribution performance requirement of 25 percent is recommended for two reasons. First, as one of the intents of Federal milk order reform was to adopt liberal pooling standards, a 25 percent level provides a level of association with the market that is liberal yet sufficiently high enough to assure pooling standards that are performance oriented. Second, it tends to minimize changing the regulatory status of handlers from their current regulatory status by the Federal order program through the consolidation of existing orders. This also seems a reasonable standard in light of individual state regulatory plans currently in place in Maine, Pennsylvania, and Virginia are applicable.

As already discussed, the recommended consolidated Northeast order and other nearby consolidated marketing orders do not recommend expansion to include currently unregulated areas. This includes areas in the states of Pennsylvania, Virginia, and the entire state of Maine. Some distributing plants in these areas are not currently regulated, or are only partially regulated to the extent they enjoy Class I sales in regulated areas. A 25 percent in-area route distribution level will serve to ensure or minimize any change in their current regulatory status under the Federal program that result from consolidation of the three northeast marketing areas into a single new order.

Unit pooling, wherein two or more plants operated by the same handler located in the marketing area can qualify for pooling as a unit by meeting the total and in-area route distribution requirements of a pool distributing plant, is recommended for inclusion in the consolidated Northeast order. Providing for unit pooling provides a degree of regulatory flexibility for handlers by recognizing specialization of plant operations.

Due primarily to positions offered by many of the major Northeast dairy cooperatives and their recommendations on appropriate pool supply plant performance requirements, the consolidated Northeast order supply plant performance requirements initially should be set to require that in the months of August and December, at least 10 percent of the total quantity of bulk milk that is physically received at a supply plant be shipped to distributing plant. For the months of September through November, such shipments by pool supply plants should be at least 20 percent. To the extent that a supply plant has met these performance requirements, no performance requirement is recommended for the months of January through July. However, a supply plant that has not met these performance requirements will need to meet a 10 percent performance requirement in each of the months of January through July in order to qualify as a pool supply plant.

While this decision has recommended providing for pool reserve supply plants, it is not recommended for inclusion in the provisions for the consolidated Northeast order. However, providing for a system of supply plants is recommended for the consolidated Northeast order and this provision is sufficiently self-explanatory in the proposed order language.

Producer-Handler

The producer-handler definition for the consolidated Northeast order should conform to the limitations on receipts at its plant or acquiring for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This should cause no change in the regulatory status of any known producer-handler currently in operation in the proposed consolidated Northeast order region.

Producer

The producer definition of the proposed consolidated Northeast order should be defined as described in the proposed order language for the order. This definition describes those dairy farmers who are properly associated with the Northeast marketing area and who should share in the benefits that accrue from the marketwide pooling of milk in this area.

The months specified in the producer definition for defining when a dairy farmer would not be considered a producer under the order are so indicated because they tend to accurately reflect the seasonality of supply for meeting the market demands for milk during the "short" season in the proposed Northeast marketing area. Accordingly, the producer definition should not include dairy farmers who's milk during any month of December through June is received as producer milk at a pool plant or by a cooperative association handler if the operator of the pool plant or the cooperative association caused the milk from such producer's farm to be delivered to any plant as other than producer milk as defined in the producer milk provision of the proposed Northeast order, or any other Federal milk order during the same month, in either of the two preceding months, or during any of the months of July through November.

Similarly a dairy farmer would not be considered a producer under the order, for any month of July through November, any dairy farmer whose milk is received as producer milk at a pool plant or by a cooperative association handler if the pool plant operator or the cooperative association caused the dairy farmer's milk to be delivered to any plant as other than producer milk, as defined in this proposed order, or in any other Federal milk order during the same month.

Producer Milk

The producer milk definition of the consolidated Northeast order should follow the general structure and format of other consolidated orders. It differs from other consolidated orders in that it requires cooperative handlers to organize reports of producer receipts that are outside of the states included in the marketing area, or that are outside of the states of Maine or West Virginia, into state units with each unit separately reporting receipts.

As previously discussed, not all consolidated orders set diversion limits for producer milk. For the proposed Northeast order, no diversion limits are established as they are, for example in

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the proposed Florida order. However, diversions are limited in functional terms. The maximum quantity of milk that a pool plant would be able to divert and still maintain pool plant status would be 100 percent minus the applicable shipping standard.

Component Pricing

The consolidated Northeast order should employ a component pricing plan in the classified pricing of milk under the order as previously discussed in the BFP section of this recommended decision. This recommendation is consistent with positions taken and proposals offered by major cooperative groups in the Northeast who supply a large percentage of the milk needs of the market. This also conforms with the recommendations discussed earlier in this decision on replacing the BFP.

Farm-Point vs. Plant Point Pricing

At issue in the suggested merging of the three northeast marketing areas is the use of two distinct pricing methods. The Middle Atlantic and New England marketing area employ a system of plant-point pricing. This pricing method is also employed in every other marketing area in the Federal order system. Only the New York-New Jersey marketing area uses what is called "farm-point" pricing. This decision recommends the adoption of plant point pricing as the pricing method for the consolidated Northeast order.

Plant-point pricing of milk that is pooled under an order prices milk f.o.b. the plant of first receipt. The cost of hauling from the farm to the plant is the responsibility of the producer. When the receiving handler is also the hauler, orders permit the handlers in making payments to each producer to deduct hauling costs up to the full amount authorized in writing by the producer.

As originally employed in the New York-New Jersey order (Order 2), farm-point pricing establishes the price for milk by the zone (distance from market computed the nearer of the basing points) of the township in which a producer's milkhouse is located. While termed "farm-point" farms are grouped by their township location. However, this is the nearest practicable proxy for farm location. In functional terms, when a handler picks up milk at a producer's farm, the handler takes title of the milk at the time and point of pickup. Accordingly, there are no adjustments in payments to producers to cover any part of the cost of pickup or hauling in moving milk to the handler's plant. Farm-point pricing fundamentally shifts the cost of transporting milk from the producer to the handler. Farm-point pricing has been in effect in Order 2 since 1961. While the fundamental concept of farm-point pricing has been retained with respect to its overall structure of mileage zones, other order provisions were adopted subsequent to its establishment and modified over time so that farm-point pricing could remain viable.

In the decision that established farm-point pricing (25 FR 8610, Sept. 7, 1960), prevailing marketing conditions served to warrant this type of pricing system. At that time, the emergence of bulk-tank milk began to take on a degree of prominence in the milk supply of Order 2. Prior to the adoption of farm-point pricing (1959), about 8 percent of the producers had bulk tanks, accounting for at least 14 percent of the volume of milk associated with the market. About 92 percent of producers delivered their milk at their own expense directly to plants in 40 quart cans. Most of the milk can-delivered was from farms within a radius of not more than 15 miles from the plant. The milk of producers who had converted to bulk tanks, in some instances, had been hauled more than 200 miles from farm to city plants, but the majority of bulk tank milk was moved much shorter distances to country receiving plants. The decision cited that in October, 1959, milk was received from 49,719 producers at 691 plants.

When milk was delivered in cans to a handler's plant, the plant was the location of where milk was weighed, sampled for butterfat and quality, and where cans were washed. It was at the plant that milk was accepted or rejected. It was the place where milk was cooled and co-mingled with other individual producer's milk. More importantly, it was the place where control of the milk passed from producer to the plant operator or moved by the plant to other plants for fluid or manufacturing uses. Minimum prices required by the order to be paid by handlers were adjusted for the location of the plant at which milk was received from dairy farmers.

Bulk tank milk brought a set of new factors. When milk is transferred from a producer's bulk tank to the hauler, the point of transfer is also the point where several functions are performed. Milk in a producer's bulk tank has already been cooled, and therefore not subject to the early delivery deadlines. The weight of milk is determined at the bulk tank and is also the place where samples are taken for butterfat and quality. It is also here that the individual producer's milk is accepted or rejected and loses its identity by being co-mingled with other milk.

Numerous problems arose in regulating the handling of bulk tank milk in an order where pooling depended upon direct delivery from the farm to a pool plant and under which minimum class prices and the uniform prices to be paid to producers was reflective of the location of the plant where delivery was made:

1. Administrative problems associated with bulk tank handling arose, particularly where and when milk was regarded to have been received. Bulk tank milk provided the opportunity to deliver milk to different plants, some pool and some nonpool. Where a given tank load of milk was unloaded if it went to two or more plants of the same or different handlers on the same day was difficult to determine.

2. The incentive arose (because of the administrative difficulty of determining when and where milk was received) for handlers to behave in a way that would result in the maximum exclusion of milk from the pool for fluid use outside the marketing area.

3. The incentive arose for the maximum inclusion in the pool of milk in fluid and manufacturing uses.

4. The incentive and opportunity arose for handlers to select one of several plants for receipt of bulk tank milk, with or without manipulation of hauling charges. This distorted and impinged upon the effectiveness of the minimum price provisions of the order, especially in the case of relatively long hauls of bulk tank milk.

The 1961 decision that established farm-point pricing provided 8 scenarios that demonstrated how handlers behaved so as to minimize their pricing obligations to producers. Most of the scenarios arose from the inability to determine when milk was received at a plant. In order to mitigate such circumstances, several things were done. Foremost, was the establishment of farm-point pricing on the basis of bulk tank units and the designation of each bulk tank unit as either a pool or nonpool unit and defining the circumstances under which designations could be changed.

The pricing of milk at the farm eliminated the incentive for handlers to attempt to make it appear that the plant of receipt was other than the plant where milk is actually received and handled. It was made crystal clear that delivery and receipt of bulk milk takes place at the farm. Once acquired by the handler, the plant or plants to which the milk may be delivered depended on the decision of the handler, not the producer. Under these circumstances, where the milk is actually used is not a factor to be reflected in the minimum producer price. The operator of the bulk tank unit was defined as the handler and the point of receipt of milk. This entity was responsible for establishing the unit, and the entity held the responsibility for reporting, accounting, pooling and paying producers. Additionally, the decision concluded that the price at which the farm bulk tank is accounted for to the pool should be the minimum class price adjusted for location of the farm, that payments by handlers directly to producers be adjusted to reflect all location differentials based on where farms are located and where bulk tank milk is received.

A proposal that would have allowed a tank truck service charge authorized by the producer but not in excess of 20 cents per hundredweight (cwt.), and payments to cooperatives which serve as handlers operating a bulk tank unit should be at the price reflecting transportation and (the then existing) direct delivery differential applicable at the handler's plant where milk is delivered by the cooperative was not incorporated into the order. At that time, it was found that plant hauling charges averaged nearly 20 cents per cwt. This was offered as rationale for a negotiable 20 cent per cwt. charge by handlers for hauling. Arguments notwithstanding, the underlying concepts embodied in farm-point pricing caused the Department to not allow for any hauling deduction by handlers.

Shortly after the implementation of farm-point pricing, the need to amend the order to keep farm-point pricing viable arose. The first occurrence was in 1963. In the 1963 decision (28 FR 11956, Oct. 31, 1963), it was noted that there had been significant changes in marketing conditions that arose from establishing farm-point pricing in 1961. These included the reduction in premiums to bulk tank producers in general; the reluctance of proprietary handlers to receive bulk tank milk from individual producers in order to avoid the hauling costs; the differences in pricing can and bulk tank milk; and a slowdown in the trend of conversion from can milk to bulk tank milk. The 1963 decision, in acknowledging changing marketing conditions, incorporated into the Order, an authorized 10-cent per cwt. charge for hauling, provided that producers authorize this maximum level in writing.

In the 1963 decision the Secretary found that allowing for a limited authorized service charge for hauling bulk tank milk at a maximum rate of 10 cents per cwt. was sufficient. This was largely based on the fact that handlers were not then charging for bulk tank pickup and hauling, but rather were paying premiums for bulk tank milk. Additionally, can milk direct delivered by producers to plants was still very much the norm. While bulk tank milk was growing, it had not yet accounted for a majority of milk pooled on the order. The 10-cent negotiable hauling charge was found to provide the needed flexibility for handlers to receive bulk tank milk from individual producers.

This decision raised, for the first time with respect to farm-point pricing, the maintenance of orderly conditions and the uniform pricing to handlers on all milk priced and pooled under the order. Because bulk tank milk is priced by township zone (the best proxy for a farm's location) all farms in any particular township have the same value assigned to their milk. However, the decision found it necessary to reflect appropriate uniform pricing of bulk tank milk because it has differing value dependent on the accessibility and relative location of individual farms within the township. With this finding, it was determined that responsibility for hauling to the township pricing point should be borne by the producer with appropriate safeguards to protect the producer. Therefore, a maximum negotiable hauling charge from handlers of 10 cents per cwt. was brought under the order.

By 1970, marketing conditions in the New York-New Jersey market had changed to the point where handlers were authorized to receive a full 10-cent hauling credit for each cwt. of bulk tank milk which was disposed of for manufacturing uses. Additionally, the negotiable 10-cent hauling charge to producers for a handler's cost offset established by the 1963 decision was retained. However, the 10-cent negotiable limit was limited to manufacturing milk. Can milk at this time represented about 25 percent of the total amount of milk pooled in Order 2, with the balance being bulk tank milk.

Proponents supporting this change to the order claimed, and the decision affirmed, that the manufacturing price for milk in Order 2 was not properly aligned with manufacturing class prices in adjacent Federal orders. In this decision (35 FR 15927, Oct. 9, 1970) the Secretary found that to the extent that Order 2 handlers had borne the transportation costs associated with the pickup and movement of bulk tank milk used in manufacturing from the farm to the plant, Order 2 handler costs exceeded the price which handlers in adjacent order markets were required to pay for milk used in manufacturing. By adopting this transportation credit for handlers, there was no need to adopt other proposals that would have lowered the manufacturing price for milk under the other northeastern orders or lower the Class I price for milk in Order 2 as had been proposed and denied.

By 1977, some 16 years since the adoption of farm-point pricing, marketing conditions had changed again and the issue of providing for more equitable competition both within the Order 2 market and between other orders took on primary importance. By this point in time, can milk was about 3 percent of the market, with the balance represented by bulk tank milk, the near inverse of the marketing conditions prevailing in 1961. The transportation credit that had been established for handlers in the 1970 decision for manufacturing milk was now extended to *all milk* received by handlers. The transportation credit was increased to 15 cents per cwt., plus an additional 15-cent maximum negotiable credit above the "automatic" 15 cents because total average transportation costs was found to be about 30 cents per cwt. For reasons nearly identical to the 1963 and 1970 decisions, "formalizing" the negotiable hauling charge was not adopted because of the need of flexibility in accounting for milk movements from the farm to the township pricing point (42 FR 41582, Aug. 17, 1977). In that decision the Secretary also raised the direct delivery differential from 5 cents to 15 cents per cwt. in the 1–70 mile zone for can milk delivered by farmers to plants within this zone, changed the transportation adjustment rate from 1.2 cents per cwt. for each 10 miles to 1.5 cents per cwt. for each 10-mile zone beyond the 201–210 zone, and 1.8 cents per cwt. for each 10-mile zone within the 201–210 mile zone.

Cooperatives were of the strong opinion that the cost of milk assembly and transportation are the marketing costs of the handler and not by producers. However, they also indicated that changes are warranted in the order because of the failure of neighboring markets to adopt farm-point pricing.

Comparative examples of handler price inequities with respect to their cost of milk was amply demonstrated for both intra and inter market situations. With respect to inappropriate price alignment between orders, the competitive relationships between Order 2 and Order 4 (then known as the Delaware Valley Order) were closely examined. On intra-order movements of milk, it was shown that Class I handlers in New York City had a significantly

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lower procurement cost for direct-ship over bulk tank milk because bulk tank milk from "distant" supply plants had higher transfer and over-the-road hauling costs. Supply plant milk at the city represented about 80 percent of milk receipts at city plants. The inter-market situation demonstrated that handlers in Philadelphia accounted for milk at prices lower than New York handlers. Order 4 handlers were in a position to establish lower resale prices for fluid milk than their competitors in the New York market because the burden of increased hauling costs fell largely on Order 2 handlers. As in 1970, other proposals were denied in light of adopting the 15-cent hauling credit for handlers. These other proposals included lowering Class I and the manufacturing price for milk in the order by 15 cents per cwt.

By 1981, bulk tank milk accounted for nearly the entire milk supply pooled on Order 2—about 99.6 percent. As the result of a hearing held in June 1980, in the final decision (FR 46 33008, June 25, 1981) the Secretary again amended the transportation credit provisions of the order. The 15 cents per cwt credit for handlers was retained, however, the 15-cent negotiable transportation service charge was modified to allow handlers to negotiate with producers for any farm-to-first plant hauling cost in excess of the 15-cent transportation credit, plus "the amount that the class use value of the milk at the location of the plant of first receipt was in excess of its class use value at the location where milk was received in the bulk tank unit from which the milk was transferred." According to the 1981 decision, this amendment would adjust hauling allowances for handlers to more closely relate the location value of milk to the costs incurred in transporting milk from farms and country plants to distributing plants in the major consuming markets of the market. Additionally, the decision indicated that this change was necessary to reflect current marketing conditions and permit a more equitable competitive situation for regulated handlers, both on an intra market and inter market basis. The decision also applied a 15-cent direct delivery differential for bulk tank milk from New York City out to the 61–70 mile price zone, on the basis that direct delivery differential is applicable to milk received in cans at a plant in the 1–70 mile zone.

In the 1981 decision the Secretary found that the majority of milk moved to distributing plants in 1979 from the 1–70 mile zone moved directly from farms, accounting for about 58 percent of plants in this zone with 48 percent being reloaded. Moreover, the decision found that Order 2 plants located in northern New Jersey received direct shipped milk as did handlers located in Order 4. Thus, inter market price alignment needed to be structured primarily on the basis of handlers obtaining direct shipped milk.

A federation of cooperative associations representing Order 4 producers proposed that Order 2 be amended to return to plant-point pricing, with the direct delivery differential being reduced to 10 cents per cwt, and that the Class I differential at the base zone of Order 2 be increased from the $2.25 level then in effect, to $2.40. This federation of cooperatives believed that this "package" of order modifications would provide for proper price alignment between Order 2 and Order 4. While the decision did apply different transportation rates at a rate of 1.8 cents per cwt. outside the base zone of the Order (201–210) and a rate of 2.2 cents per cwt. inside the base zone, it did not provide for a return to plant-point pricing.

While the decision did not adopt plant point pricing, the decision does acknowledge that the amendments adopted tended to establish plant pricing with respect to the classified prices to handlers. However, farm-point pricing was retained with respect to uniform prices to producers. With this being the case, the basic substantive difference between the amendments and plant pricing is the impact on the movement of milk to higher-priced zones for manufacturing use. Under plant pricing, the minimum uniform price payable to producers applies at the location of the plant of first receipt and handlers receive a credit from the producer settlement fund at such uniform price. The decision also concluded that plant-point pricing for producers would provide a greater incentive to haul direct-shipped milk to city plants for manufacturing uses, since there would be a credit from the pool for the full amount that the uniform price transportation differential at the city plant exceeds the transportation differential for the zone of the bulk tank unit. Adopting plant-point pricing for producers would have had the effect of encouraging milk to move long distances to city plants for manufacturing uses when transportation savings could be realized if such milk stayed nearer to manufacturing plants generally located in the milkshed.

Farm-point pricing has undergone many evolutionary changes from its inception in 1961. The original rationale for farm-point pricing, free hauling and the administrative difficulty of determining when milk from bulk tank units was received seems far removed from present-day marketing conditions and the rationale for continuing it. There were a number of years that hearings were necessary to first recognize that the burden of transportation costs rested with handlers. This resulted in handlers being able to successfully argue that with this burden, it becomes much more difficult for the order to establish and maintain uniform prices to handlers as required by § 608(5)(c) of the AMAA. This is evidenced by the nature of the decisions of 1963, 1970, 1977, and 1981. Much "repair" to other order provisions was also needed to retain farm-point pricing. Accordingly, farm-point pricing has outlived its intended purpose and the Secretary proposes that it should not be retained in a consolidated Northeast order.

The Need for a Producer-Price Mechanism

As discussed above, farm-point pricing for producers did provide some rational pricing incentives to promote efficiency within the Order 2 marketing area. This can reasonably be summed up by concluding that farm-point pricing would not provide, as plant-point pricing would, incentives to haul direct-shipped milk to city plants for manufacturing uses, since there would not be a credit from the pool for the full amount that a uniform price transportation differential at the city plant exceeds the transportation differential for the zone of the bulk tank unit. Adopting plant pricing would have had the effect of encouraging milk to move long distances to city plants for manufacturing uses when transportation savings could be realized if such milk stayed nearer to manufacturing plants generally located in the milkshed.

In an effort to address the dairy industry structures that have evolved over the past four decades in the three current northeast marketing areas, efforts were undertaken by a major group of dairy farmer cooperatives in the northeast to address what the pricing implications are to producers and handlers as the region moves to a unified plant-point pricing method. This has resulted in a proposal by the Association of Dairy Cooperatives in the Northeast (ADCNE) that include St. Albans Cooperative Creamery, Inc., Land O'Lakes, Upstate Farms Cooperative, Inc., Agri-Mark, Inc., Milk Marketing Inc., Dairylea Cooperative Inc., and Maryland & Virginia Milk Producers Cooperative Association Inc. These dairy farmer cooperatives account for well over half of the milk that would be pooled and priced under the proposed consolidated Northeast order. Their proposal calls for establishing a producer differential structure that would "overlay" the Class I differential structure that would apply in the consolidated Northeast order.

The structure proposed is a county-based plant-point price structure, providing for 14 zones that accommodate the need to reflect existing and longstanding competitive price relationships among plants, while integrating the farm and plant point pricing systems currently used in Order 1, 2, and 4 and with currently state-regulated areas that fall outside of the proposed marketing area. Further, the ADCNE proposed prices at the major cities in the Northeast, including Boston, New York City, Philadelphia, Baltimore, and Washington, D.C. to have specific Class I differential levels that are somewhat different from those recommended in the Option 1A Class I price surface. For example, this decision recommends a New York City Class I differential of $3.15, while ADCNE proposes $3.20. In general, the ADCNE proposal assumes that the Class I differential structure that will be adopted is Option 1A, is the Class I pricing option they strongly support, and is also the Class I pricing option overwhelmingly supported in public comments received from interested parties from the northeast.

With respect to a producer differential surface, the ADCNE proposed that a debit of 5 cents per cwt. be made to the blend price applicable at non-distributing plants in certain zones. The need for the debit, according to the ADCNE proposal, is to make deliveries to distributing plants somewhat more attractive to producers, while decreasing the amount by which manufacturing plants draw on the marketwide pool for transportation values, offering also that such a debit is economically justified and authorized by the AMAA. According to ADCNE, it is distributing plants that provide the revenue, in the form of Class I values which form the blend price paid to producers. Deliveries to manufacturing plants do not contribute to increasing the value to the marketwide pool. The debit, according to ADCNE, is a reflection in part of the Order 2 system, which has priced some 50 percent of the milk in the northeast region, and which does not provide location-based transportation payments for movements from farms to manufacturing plants. The ADCNE proposal provides that deliveries to Class I plants are rewarded under this system with an additional 5-cent payment from the pool for the marketwide benefit conferred a distributing plant's utilization.

For the Western New York State order area of the order, ADCNE also proposed a broad area in which a producer differential of $2.40 per cwt. to producers would be payable on deliveries of producer milk at all plant locations in this area. This portion of the price surface proposed by ADCNE purports to be reflective of the major historical movements of milk from east to west in the region which returned the eastern farm point price to dairy farmers under Order 2's farm-point price system, and that the Western New York State order has not had any location differentials, thereby establishing a "flat" price surface in the area. If those plants, for producer pricing purposes, were zoned lower in value reflecting the westerly and northerly distance from New York City or Philadelphia, ADCNE is of the view that the ability of both distributing and supply plants of plants to attract an adequate supply of milk could be in jeopardy. Furthermore, the expectation that Class I utilization of the proposed Mideast order will be nearly 10 percent higher than the Class I utilization in the Northeast order was also offered in support of ADCNE-proposed producer differential level in this area.

The ADCNE proposal also recommends producer differential levels in areas that they believed should be included in either the consolidated Northeast order or the Mideast order through expansion that this proposed rule does include for consideration. Additionally, the ADCNE proposal also addresses producer differential levels at other locations outside of the Northeast region.

Additional supporting and amplifying comments were also provided by Dairylea. These comments supported the major themes offered in the ADCNE proposal for a producer differential overlay to Class I differential levels. Dairylea states that moving directly to a plant-point pricing method would accentuate "existing inequities and market dysfunctions." Dairylea further commented that a plant-point differential schedule would maintain current inter-plant price differences in the current New England and Middle Atlantic orders, but would worsen them for New York manufacturing plants, many of which are cooperatively owned. Their view of the ADCNE pricing proposal is that it maintains economic incentives for milk to move to Class I distributing plants, would provide for more balanced procurement equity among competing manufacturing plants, maintain equitable producer pricing when milk is marketed by transporting it from a higher priced zone to a lower priced zone, and provides a structure that allows for adequate blend price levels in all areas of the Northeast milkshed.

Dairylea further comments that in addressing adopting plant-point pricing, existing "near-in" manufacturing plants (plants located in a relatively high differential location) would enjoy a procurement advantage relative to their competitors that are located in a lower priced location. Dairylea recommends narrowing the price difference between manufacturing plants that compete for producer milk and/or finished dairy product sales. To do this, Dairylea supports lowering producer differentials for manufacturing plants that are located in high-valued locations and increasing those differentials at manufacturing plants in areas that have lower location values. Dairylea advocates the ADCNE proposal for a producer differential that is 5-cents lower than those of Class I plants when such plants are located in the same pricing zones. Dairylea's view of this design results in maintaining, or slightly increasing, producer differentials applicable at Class I plants and reducing those applicable at "near-in" manufacturing plants. At the same time this would provide for increasing producer differentials at manufacturing plants in central, western, and northern New York. According to Dairylea, this producer pricing surface would present a more equitable marketing environment than strict plant-point pricing currently employed in Orders 1 and 4, while at the same time not threatening the viability of manufacturing plants in those areas of a consolidated Northeast marketing area.

A major theme of Dairylea is its view that Federal milk orders and their provisions should foster an environment under which manufacturing plants are provided equal cost and procurement ability, and not to disfavor such manufacturing plants located in high milk production areas where Class I differentials are lower. This view, as expressed, seems a departure from the intent of Class I differentials serving to attract an adequate supply of milk at locations to satisfy fluid demands. Dairylea also states that the final rule of 1991 that realigned intra-order prices in Order 2 resulted in harm to producers in northern and western New York. While it is not appropriate to specifically revisit this issue and decision here, official notice is taken of the final decision (55 FR 50934, December 11, 1990) that realigned Class

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I differentials in the three existing northeast marketing areas.

Comments supporting the ADCNE proposal for a producer pricing surface were also offered by Upstate Farms Cooperative, Inc. The Upstate Farms views served to reiterate the major themes developed in the ADCNE proposal.

Agri-Mark, a part of ADCNE, filed separate and dissenting views on the ADCNE proposal. Conceptually, Agri-Mark notes that plant and farm-point pricing are different, but notes further that the differences are not always unfavorable. Agri-Mark submits that under plant-point pricing, all producers shipping to the same plant receive the same minimum order blend price regardless of where their farm is located. Under farm-point pricing, farmers shipping to the same plant receive different prices under the order depending on where their farm is located. Farms closer to New York City, Agri-Mark notes, receive a higher price than farms farther from the city, even though their milk ends up in the same place.

As to the efficiency arguments touted to be derived from farm-point pricing, Agri-Mark notes that most manufacturing plants, especially cheese plants, were built in the northeast prior to the adoption of farm-point pricing and not in response to it. Rather, says Agri-Mark, these plants were built at their present locations because of their proximity to abundant milk supplies. The procurement problems for manufacturing plants that Order 2 entities alert us to, did not arise in New England manufacturing plants under plant-point pricing even though these plants were located as far north as possible within the milkshed for New England.

Simply put, Agri-Mark believes that rather than decreasing the differential between manufacturing plants and city distributing plants, an increase is justified. They are also of the opinion that manufacturing plants located far from higher-priced zones will maintain an advantage even with the adoption of strict plant-point pricing because this milk does not need to travel long distances to reach manufacturing plants. The ADCNE proposal would cause Agri-Mark producers to receive lower prices that competitive price relationships do not warrant.

The Agri-Mark view of Federal milk marketing orders differs substantially from the views expressed by Dairylea. Agri-Mark states that the role of Federal milk marketing orders is to treat all producers equitably relative to how their milk is used and not to weaken price integrity by promoting or causing producers to compete for Class I sales. This is best accomplished, according to Agri-Mark, with appropriate pooling requirements and Class I differentials to satisfy the Class I demands of the market. Agri-Mark fears that if the regulatory pricing plan gives a distributing plant an advantage over a cooperative manufacturing/balancing plant in the same zone, that plant can use this advantage for itself instead of passing it along to farmers to offset transporting their milk to market. A 5-cent debit to the Class I differential schedule is, in the view of Agri-Mark, significant. If so set, Agri-Mark submits, pressure will come from distributing plants to see this 5-cent price difference grow.

Lastly, in their opposition to the ADCNE proposal, Agri-Mark notes that no manufacturing plant has been built in any city zone for decades, noting that the only significant plants in such areas for the northeast are older plants producing nonfat dry milk and butter and serve to balance the Class I needs of city markets, concluding that such plants are there for common sense and efficiency reasons. In support of this observation, Agri-Mark notes that existing Class I differentials have not been adjusted to more fully account for increases in hauling costs.

A recommendation on whether or not to adopt a producer pricing differential structure that differs from a Class I differential cannot be made in this proposed rule. The issue before the Department is to examine the impact of the change from farm-point to plant-point pricing on producers as part of recommending the adoption of plant-point pricing for the new consolidated order. The change to plant-point pricing will affect approximately one-half of the producers in the consolidated marketing area and is a significant departure from historical methods of distributing the revenue that accrues from classified pricing to producers. Plants will not experience significant change since plants currently regulated under Order 2 already account to the marketwide pool at the Class I location differential value. The issue then, tends to focus on how to pool and distribute the revenue as equitable as possible to producers.

There are significant differences between Option 1A and Option 1B that may result in price relationships never before experienced by either producers or handlers in the northeast. This, in and of itself, may cause both proponents for and against a producer price differential to reconsider their position in the need for and development of a producer price surface founded on the pricing structure of Option 1A. Nevertheless, under either Option 1A or Option 1B, further analysis is needed in determining the need for adjusting producer blend prices by a method that differs from that currently applied to all orders, including the development of appropriate order language.

Competitive equity between manufacturing plants is already ensured by the classified prices applicable to handlers who operate such plants. In fact, this proposed rule suggests a uniform Class III and Class IV price be applicable for all locations. The more appropriate issue this proposal seems to address is that manufacturing plants are often cooperatively owned. All entities, including cooperatives in their capacity as handlers, account to the marketwide pool at the manufacturing price for milk received at their plants. The price paid to producers is the blend price for all milk pooled on the market and that was priced according to its use. Cooperatively owned manufacturing plants located in higher priced areas will pay a higher blend price to producers who deliver milk to that location provided they meet the performance requirements for being pooled thereby demonstrating the appropriate degree of association with the market. In this regard, it is worthy to note that not all manufacturing plants in the high-valued zones in the New York marketing area are pool plants. Blend prices are adjusted everywhere according to the location value of the plant. Adjusting producer blend prices on the basis of whether or not milk was delivered to a distributing plant or to a manufacturing plant seems to create a form of producer price discrimination that classified pricing and the mechanism of marketwide pooling and its related provisions attempt to mitigate. Such pooling provisions provide a degree of equity to producers in the form of a uniform blend price adjusted only for the location value on all milk pooled on the market. Classified pricing and marketwide pooling have served well to mitigate the price competition between producers seeking preferred higher-valued outlets for their milk, while at the same time ensuring handlers uniform prices, adjusted only for location, in the prices they pay for milk. This proposal, as currently developed, seems to take a step backward in that it may be inadvertently creating a degree of price competition between producers that classified pricing and marketwide pooling sought to minimize.

As Dairylea commented, the 1991 rule that realigned prices in the three current northeast orders may not have gone far enough is establishing a Class I differential structure and indeed may have resulted in harm to producers located in northern and western New York. Prior to the 1991 final rule, the price difference between the New York base zone and New York City was 59 cents. The 1991 final rule increased this to 72 cents, but in doing so, the differential at the base zone was lowered by 13 cents. This resulted in a lowering of blend prices to producers in the far reaches of the milkshed. This observation may provide the basis for further examination of the Class I differential structure presented under Option 1A. Specifically, a 5-cent increase in the New York Class I differential and a similar increase in the Class I differential at Philadelphia, together with appropriate location adjustments between these pricing points, may accomplish what a producer price differential schedule does not seem to accomplish at its current state of development.

A submission from New York State Dairy Foods, Inc., (NYSDF) a trade association representing dairy product manufacturers and retailers voiced the need for raising the New York City Class I differential. NYSDF proposed an 8-cent per cwt. increase to reflect the reality of higher hauling rates. If this proposal is accepted, this would raise the Class I differential in New York City from the current $3.14 to $3.22. According to NYSDF, the 8-cent increase may not be sufficient depending on the length of time needed to implement milk order reforms. NYSDF also commented on their support for retaining farm-point pricing, but offered no compelling arguments for doing so.

Marketwide Service Payments

Cooperative Service Payments. The Secretary proposes that cooperative service payments as part of a marketwide service payment provision for the consolidated Northeast order should not be included in a consolidated Northeast order. As proposed by ADCNE a 2-cent per cwt. payment would be made out of the marketwide pool to cooperatives and non-cooperative entities for funding "information and policy services" that would be of marketwide benefit. Cooperative service payments of this sort currently are provided for under terms of the New York-New Jersey order, but are not provided for in either the New England or Middle Atlantic orders. However, under the New York-New Jersey order, cooperative service payments are made only to qualified cooperatives that meet the conditions specified under the order and does not provide for such payments to non-cooperative entities.

Rationale offered in support for a cooperative service type payment to cooperatives and non-cooperative entities were based on recognizing that in a regulatory pool structure, private parties provide important services that are of benefit to everyone involved in the marketwide pool, including the promulgation, amendments to, and administration of the order. Not to provide a mechanism for the recovery of a portion of the expense involved in providing such services would disadvantage those incurring these expenses while everyone in the market benefits as a result of these services.

Qualification criteria presented for entities eligible to receive this payment included a demonstration to the market administrator that it provides information with respect to market order prices and marketing conditions, that it has retained legal and economic staff or consulting personnel available to participate in marketing order amendatory proceedings, to consult with the market administrator with respect to marketing order issues, and that the entity pool at least 2.5 percent of the order's total milk volume.

As presently presented there is not a compelling reason to adopt this sort of compensatory plan to reimburse those entities that incur these costs. Market administrators and their staffs make themselves available to meet with, discuss, and aid in formulating positions that are reflective of the need of the marketing area as a normal part of their duties. Additionally, there are numerous provisions in the order that require as a matter of course, the issuance of reports, prices, and other information that affect all marketing order participants and to provide service to the entities affected by the regulatory plan of the order. Finally, no other current or recommended consolidated order recommends providing for such cost compensation. Cooperative and proprietary handlers in the New England and Middle Atlantic marketing areas included in the consolidated Northeast order, as well as entities in all other marketing areas have not experienced or have demonstrated any of the harm or "disadvantage" that arises, or may arise, if such costs are not shared by the entire pool of producers in the marketing area. This proposed rule can only assume that industry participants that have an interest in developing the promulgation and amendments to marketing orders would be willing to do so at their own expense. The positions and arguments offered are largely issues of the self-interest of entities. As such, self-interest may or may not be of marketwide benefit.

Balancing Payments. The Secretary proposes that a marketwide service payment plan offered for inclusion in the consolidated Northeast order includes a 4-cent per cwt. marketwide service payment to qualified handlers that perform market balancing from the marketwide pool should not be included in the consolidated Northeast order.

The proposal for balancing payments from the marketwide pool is intended to reflect that there are costs that handlers incur in balancing the Class I needs of the market and in providing for clearing the market of temporary surpluses. According to the proponents, these balancing costs are not fully recoverable from Class I handlers, however the benefit that results from this service being provided is a benefit of all producers in the market.

Handlers that incur the costs would be those handlers that would receive partial cost reimbursement. Cooperatives would be eligible to form common marketing agencies or federations for purposes of qualifying for balancing payments. Such handlers would include those who: (1) demonstrate ownership or operation of a balancing plant with the capacity to process a million pounds of milk per day into storable products such as cheese, butter, and nonfat dry milk and that such handler also represent at least 2.5 percent of the total volume of milk pooled under the order; (2) have under contract and the obligation to pool on a year-round basis at least 8 percent of the market's milk volume; (3) own a balancing plant that must be made available to other handlers or cooperatives at the request of the market administrator; (4) qualify to provide pool producers with a temporary market for their milk for up to 30 days at the request of the market administrator; and (5) demonstrate to the market administrator that their utilization of milk in Class I uses is greater than the minimum shipments required for pool plant qualification under the order.

There are several reasons for not recommending balancing payments for the consolidated Northeast order. First, the proposed Northeast order consolidates two current orders, New England and the Middle Atlantic, that do not currently provide for balancing cost offsets to handlers for such purposes and that these markets have not experienced any undue harm or disadvantage by not providing for this sort of cost offset. Secondly, and in addition to expressed opposition to

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compensate handlers for balancing the market, an appropriate class price has been provided for market clearing purposes—the Class III—A price. It is a price that is applicable in all current Northeast orders, and is continued in this proposed rule as the Class IV price. While these two class prices are not the same (as explained in the BFP section of this decision), they are conceptually similar in that handlers have been provided with a market clearing price and further compensation beyond this is not warranted. Lastly, the proposed 4-cent per cwt. level is unexplained with respect to how adequately it tends to offset balancing costs.

The "Pass-Through" Provision

Currently, the New York order provides for what is commonly referred to as the "pass-through" provision. The intent of this provision is to provide for a degree of competitive equity for handlers that pay the order's Class I price for milk so that they can compete with handlers in unregulated areas that do not. This provision has been in place in the New York order since 1957 and is a part of how the order allocates and classifies milk. In functional terms, the pass-through provision removes the amount of milk distributed outside of the marketing area from the full Class I allocation provisions of the order, thereby providing a degree of price relief to handlers who compete with other handlers who are not held to the pricing provisions of the order in unregulated areas. Regulated New York handlers currently compete with unregulated handlers in the unregulated areas of Pennsylvania and other areas in the Northeast region.

The current provisions of the New England and Middle Atlantic orders do not have this provision although they too adjoin similar non-federally regulated areas. Handlers regulated by these two orders also compete with these same handlers for Class I sales. The merging and expansion of these three Northeast orders continue to result in areas that adjoin the recommended Northeast order that would not be regulated.

While there were proposals both for and against retaining a pass-through provision in the consolidated order, the need for it was expresses on the basis of the extent the Northeast consolidated order would be expanded to include currently unregulated areas. Generally, handlers support continuing to provide for a pass-through provision. and this position can only be considered reinforced given the limited degree of expansion of the consolidated Northeast order. If the entire Northeast region would fall under Federal milk order regulation, the need for the pass-through would be moot.

The Secretary proposes that a pass through provision, even in light of the limited expansion suggested for the consolidated Northeast order, should not be included. Class I prices charged to handlers that compete within the marketing area for fluid sales are determined by the location value of their plants. The Class I differential structure recommended by either Option 1A or Option 1B both recognize the location value of milk for Class I uses and are both designed to establish Class I differential values to cause milk to be delivered to bottling plant to satisfy fluid demands. Accordingly, any handler located in high-valued pricing areas will be charged for the location value of Class I milk at their plant location regardless of whether or not they compete with other handlers for fluid sales in areas where the location value of Class I milk at these plant locations are lower. This location value pricing principle should be extended to address handlers competing for sales with handlers who do not pay the same price for Class I milk in unregulated areas.

Seasonal Adjustments to the Class III and Class IV Prices

The three northeast orders to be consolidated into a single Northeast order currently provide for a seasonal adjustor on Class III and Class IIIA milk prices. These provisions have been a part of these three orders for more than 30 years. Prior to the adoption of the Minnesota-Wisconsin (M–W) price series in the mid-1970's, these markets established the equivalent of the modern Class III price on the basis of what was known as the U.S. Average Manufacturing Grade Milk-Price Series (U.S. average price).

The U.S. average price series was a competitive pay price series, but differed from the M–W in that it recorded price averages consistently below the M–W that was rapidly being adopted elsewhere in the country as the appropriate price for surplus uses of milk and used as a price mover for higher-valued class prices. Given the national marketplace in which surplus diary products compete for sales, a mechanism was needed to align these two differing price series. Accordingly, seasonal adjustments to the Class III price were developed and made a part of these orders. These seasonal adjustors were found not only to be warranted for better price coordination between these two price series, but also served to encourage handlers to dispose of the maximum amount of milk in Class I uses.

By the mid-1970's, the M–W was adopted to replace the US. average price series and the seasonal adjustors were retained. The reason for retaining these adjustments were indicated to encourage handlers to make more milk readily available for fluid use in the short production months and to facilitate the orderly disposition of excess reserve milk supplies in flush production months. Although some regional price disparity was acknowledged to result from retaining these adjustments, they were nevertheless retained because there was no evidence that providing for such adjustment had led to any interregional problems in the marketing of the reserve milk supply.

Agri-Mark, a major cooperative in the northeast, has proposed that seasonal adjustments continue in the consolidated Northeast order. The main thrust of their proposal is that markets with relatively high Class I use create a burden on the manufacturing sector in their areas. They view seasonal adjustments as also assisting in sending the proper economic signal to manufacturers. This is important, according to Agri-Mark because the seasonal adjustment provides an economic "disincentive" for Class III and Class IV manufacturers to use milk in the fall when less producer milk is available and additional supplies are needed for Class I uses.

The Secretary proposes that as presently formulated, seasonal adjustors to the Class III and Class IV prices should not be incorporated into the provisions of the consolidated Northeast order. This proposed rule proposes a much more permanent replacement for the current BFP. If the suggested BFP is adopted in all new consolidated orders, there is no compelling reason offered at this time to contemplate continuing seasonal adjustments to Class III and Class IV prices in light of how these prices would be derived. They are also not proposed for orders that are expected to have Class I utilizations similar to those anticipated in the consolidated Northeast order and who similarly have important manufacturing activity in such markets.

6b. Southeast Regional Issues

The 3 proposed orders for the Southeastern United States—Florida, Southeast, and Appalachian—are faced with a different set of marketing conditions than other orders. The Southeastern United States is one of the fastest growing areas of the country but the most deficit area in terms of milk

production per capita. From 1988 to 1995, the population of the 12 Southeastern states rose from 57.9 million to 63.5 million. By the year 2000, the population is expected to reach 66.8 million people.

While population increases in the Southeast, milk production in the 12 Southeast states (i.e., Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia) has been decreasing—from 15.4 billion pounds in 1988 to 13.7 billion pounds in 1996. The net result of these opposite trends is a widening gap between the local supply of milk for fluid use and the demand for such milk.

Unlike other parts of the country, the Southeast has few facilities for handling surplus milk. Consequently, surplus production during the months of January through June must, in some cases, be shipped hundreds of miles for processing at manufacturing plants generally to the north. For this reason, the provisions in these orders must be aimed at the twin goals of encouraging supplemental milk to move to these markets during the short production months—generally July through December—but they must also discourage supplemental milk to move to these markets when it is not needed in the flush production months—generally January through June—because such milk would simply displace local milk and increase cooperative organizations' costs to dispose of the milk.

Transportation Credits

As a result of the need to import milk to the Southeast from many areas outside the Southeast during certain months of the year, transportation credit provisions were incorporated in the Carolina, Southeast, Tennessee Valley, and Louisville-Lexington-Evansville orders in August 1996. These provisions provide credits to handlers that import supplemental milk for fluid use to the market during the short production months of July through December. The provisions restrict credits to producers and plants outside of the marketing areas. The credits are also restricted to producers who supply the markets during the short season and are not applicable to producers who are on the market throughout the year.

Following the initial implementation of transportation credits in August 1996, the provisions were modified in a final decision issued on May 12, 1997. The amendments became effective on August 1, 1997, in 3 of the 4 orders.[33]

The Secretary proposes that transportation credit provisions should be retained in the new Southeast and Appalachian orders but should not be included in the Florida order. Written comments received in response to the advance notice of proposed rulemaking indicate that producers in the Southeast favor retention of these provisions for these two orders. The Secretary proposes that the provisions should not be included in the Florida order, however, because that market is largely supplied by 2 cooperative associations which are able to recoup their costs of supplying the market with supplemental milk.

With the consolidation of orders, the Secretary proposes that some conforming changes should be made to the transportation credit provisions of the Southeast and Appalachian orders. Section 82(c)(1) of the present orders limits transportation credits on transferred bulk milk to plants that are regulated under orders other than the southeast orders that currently have the provisions, and section 82(c)(2)(ii) limits the area where farms may be located to be eligible for transportation credits on milk shipped directly from producers' farms. In §§ 1005.82(c)(1), 1007.82(c)(1), 1005.82(c)(2)(ii), and 1007.82(c)(2)(ii), the references to "1011 and 1046" should be removed.

The addition of northwest Arkansas and southern Missouri to the Southeast marketing area will make those 2 areas ineligible for transportation credits. This change in the application of the credits would naturally follow from the logic for incorporating these 2 areas in the Southeast marketing area. Specifically, northwest Arkansas and southern Missouri are regular sources of supply for handlers in the Southeast marketing area and, in addition, include plants that compete for sales with handlers regulated under the Southeast order. Accordingly, the producers in these 2 areas should, and will, regularly share in the pool proceeds of the Southeast market. Of course, since transportation credits are designed to attract supplemental milk to the market for fluid use from producers who are not regularly associated with the market, transportation credits should not, and will not, apply to a farm or a plant in northwest Arkansas or that portion of southern Missouri that is to be included in the Southeast marketing area.

[33] The Tennessee Valley order, as amended, was not approved by producers. The order was terminated effective October 1, 1997.

Pooling Standards

A number of comments were submitted regarding the issue of pooling standards in the southeast region. The Southeast Dairy Farmers Association (SDFA) recommended that pooling standards be maintained at levels that are as strict or stricter than current regulations and that southeastern milk marketing orders contain pooling requirements that reflect the deficit nature of these markets. SDFA argued that such provisions would discourage the movement of milk into and out of a Federal marketing area that does not normally serve the area unless the milk was actually needed. The association stated that performance requirements for plants are an important element in ensuring that southeastern fluid markets are adequately supplied on a year-round basis and in ensuring that only those plants that have as their principle purpose the supplying of the markets' fluid milk requirements receive the benefits of higher uniform prices. Currently, pooling standards vary between markets and regions, and the association believes that these varying standards should be maintained. SDFA supports a 50% route disposition requirement for pool distributing plants and recommends that the in-area route disposition requirement be standardized at 15% and the 1500-pound daily average exemption be changed to 150,000 pounds per month.

The National Farmers Organization (NFO), recommends that pooling standards for all of the orders recognize and accommodate the pooling on a year-round basis of milk supplies which are actually required for that market's Class I needs on a seasonal basis. NFO suggests that each order should be viewed separately in determining the standards and urges the Department to carefully evaluate pooling provisions to assure equity throughout the system. Another commentor, Middlefield Cheese of Ohio (Middlefield), recommends that all orders have the same pooling requirements. Middlefield states that varying pooling standards between orders create great difficulty in procuring milk for small businesses. It argues that uniformity would allow milk to be economically and efficiently marketed to where it is needed as opposed to a "large co-op dictating control over the milk market."

One of the major cooperatives operating within the Southeast, Mid-America Dairymen, Inc. (Mid-Am), recommends that the pooling standard for distributing plants in high utilization markets should be 50% Class I. Mid-Am also recommends that market

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order would reduce returns to Pennsylvania producers unnecessarily without reducing costs to handlers.

For the reasons discussed previously in reference to the Northeast market, PMMB Area 6 should not be added to the proposed Mideast order area. Consolidation of the existing orders does not necessitate expansion of the consolidated orders into areas in which handlers are subject to minimum Class I pricing under State regulation, especially when the states' Class I prices exceed those that would be established under Federal milk order regulation. Handlers located in PMMB areas 2, 3, and 6 are regulated under the State of Pennsylvania if they do not have enough sales in any Federal order area to meet an order's pooling standards. If such plants do meet Federal order pooling standards, the State of Pennsylvania continues to enforce some of its regulations in addition to Federal order regulations. As State-regulated handlers, they must pay a Class I price for milk used in fluid products, often higher than the Federal order price would be. Inclusion of the Pennsylvania-regulated handlers in the consolidated marketing area would have little effect on handlers' costs of Class I milk (or might reduce them), while reducing producer returns. In view of these situations, it appears that stable and orderly marketing conditions can be maintained without extending full Federal regulation to State-regulated handlers.

Comments from a large cooperative association and a fluid handler urged that southern Ohio and part of West Virginia be included in the proposed Appalachian order to assure that a large distributing plant located in Winchester, Kentucky, remains pooled under the consolidated Appalachian order. Both comments argued that order provisions should specify that plants be regulated according to their location rather than their fluid milk distribution area. The pooling provisions proposed herein would assure that plants are regulated where located unless their route disposition within another marketing area is over 50 percent. This provision should assure that the plant in question remains regulated under the proposed Appalachian order. If a plant's route disposition in a marketing area other than where it is located is over 50 percent, other handlers competing for sales with that handler should be assured that their competitor is paying a like amount for its milk.

Upper Midwest

The proposed Upper Midwest marketing area is comprised of the current Upper Midwest (Order 68) and Chicago Regional (Order 30) marketing areas, with the addition of the western portion of the Michigan Upper Peninsula (Order 44) marketing area. There are 205 counties in this proposed area.

Geography

The proposed consolidated Upper Midwest marketing area is described geographically as follows: 16 counties in Illinois (all currently in Order 30), 6 counties in Iowa (all currently in Order 68), 6 counties in Michigan (all currently in Zones I and IA of Order 44), 83 counties in Minnesota (all currently in Order 68), 16 counties in North Dakota (all currently in Order 68), 8 counties in South Dakota (all currently in Order 68), and 70 counties in Wisconsin (43 currently in Order 30, 20 currently in Order 68, and 7 currently unregulated). This market is about 600 miles east to west and about the same distance north to south.

The area described above is contiguous to the proposed Central market to the south, a small corner of the proposed Mideast market to the southeast, and the eastern portion of Michigan's Upper Peninsula, also part of the proposed Mideast market, to the northeast. North of the Upper Midwest market is Lake Superior and the Canadian border, and west of the market is a large sparsely-populated and unregulated area. Most of the eastern border of the marketing area is Lake Michigan.

The proposed Upper Midwest marketing area is generally low-lying, with some local differences in elevation in Wisconsin and the upper peninsula of Michigan. Natural vegetation in the western part of the area is tall-grass prairie, with the eastern two-thirds of the northern portion being broadleaf forest, coniferous forest, and mixed broadleaf and coniferous forest. Annual precipitation averages 30–35 inches per year. Most of the area experiences summer temperatures that average about 75 degrees; the northern and western portions average winter temperatures are in the low 'teens, while the southern and more eastern portions experience average winter temperatures in the 20's. The far western part of the market predominantly grows mixed field crops, with cattle and soybeans more to the southwest. Both Minnesota and Wisconsin are included in the top five milk-producing states, and dairy is the number 1 agricultural enterprise in Wisconsin, generating over half of the State's income derived from agricultural commodities.

Population

According to July 1, 1996, population estimates, the total population of the proposed Upper Midwest marketing area is approximately 18.5 million. Using Metropolitan Statistical Areas (MSAs), there are 3 population centers over 1 million. The Chicago-Gary-Kenosha area, primarily in northeastern Illinois, is the largest, with a 7.8 million population in the marketing area. The Minneapolis-St. Paul area, located mostly in Minnesota, is next with 2.8 million; and the third-largest MSA is Milwaukee-Racine, Wisconsin, with a population of 1.6 million. The Chicago area is located in the southeast corner of the marketing area, on the west side of the southern end of Lake Michigan, with Milwaukee approximately 85 miles north, also along Lake Michigan. Minneapolis is located 400 miles northwest of Chicago, along the Minnesota-Wisconsin border.

Approximately two-thirds of the population of the proposed marketing area is within the three largest MSA's, with over 80 percent of the population contained within the area's 17 MSA's (with the 14 smaller MSA's averaging 195,000 population).

Sixty percent of the population of the market is concentrated in the Illinois and southeast Wisconsin portion of the marketing area. In Wisconsin, nearly 90 percent of the population is located in the southern two-thirds of the state, and in Minnesota 85 percent of the population is in the southern half of the state.

Fluid Per Capita Consumption

Based on the population figure of 18.5 million and an estimated per capita fluid milk consumption rate of 20 pounds of fluid milk per month, total fluid milk consumption in the proposed Upper Midwest marketing area is estimated at 370 million pounds per month. Plants that would be fully regulated distributing plants under the Upper Midwest order had route disposition within the market of 321.5 million pounds in October 1995. The 3 producer handlers operating in the combined marketing areas during this month had a combined route disposition of .1 million pounds, 5 partially regulated handlers distributed 1.7 million pounds in the marketing area, and an additional .1 million pounds was distributed by unregulated handlers. Twenty handlers fully regulated under 10 other Federal orders, from New York-New Jersey to Great Basin, distributed 36.5 million pounds in the combined marketing areas during October 1995.

case of the Appalachian order only, a balancing plant also may be located in the State of Virginia. This provision has been in the Carolina order and should be continued in the Appalachian order. The performance standards for a balancing plant should be 60 percent of producer receipts under each of the orders every month of the year.

There is no necessity to seasonally adjust the supply plant and balancing plant shipping requirements for the three southeast orders because the standards proposed are flexible enough to accommodate the disposal of surplus milk during the flush production season. In addition, the Secretary proposes that each of the three orders should contain a provision to allow the market administrator to increase or decrease shipping requirements and other pooling standards by up to 10 percentage points. This provision also should be included in the producer milk section of all three orders with respect to the percentage of milk that may be diverted and the number of days in which a producer's milk must be received at a pool plant.

In addition to the provisions described above, the Secretary proposes that each of the southeast orders should contain a provision to allow unit pooling of distributing plants operated by the same handler. The proposed rule is based upon the provision that has been in the Southeast order since 1995.

Some distributing plants may meet the pooling standards of more than one order. Consequently, the Secretary proposes that it is necessary to specify the rules for determining where a plant will be regulated. Under the southeast orders, if a plant meets the pooling standards of the order and is located in the order's respective marketing area, the plant should be regulated under that order even if it has greater sales in some other order's marketing area. This provision has evolved as a result of several price alignment problems in the Southeast involving a plant located in one marketing area but regulated under another order. In every such case, a plant's supply of milk was put in jeopardy as a result of a lower blend price under the order in which it became regulated based on its sales. Notwithstanding the merging of several of the smaller markets in the Southeast, the Secretary proposes that this provision should be retained for the southeast orders to preclude a repetition of this problem. There was widespread support in comment letters for retention of this provision.

In the case of a distributing plant that is not located within any order's marketing area, the Secretary proposes that a different standard should apply. Since, in this case, it cannot be presumed with certainty that a plant is most closely associated with the market in which it is located, its association with a market should be determined based upon where it has the most sales.

Producer-Handler

The Secretary proposes that the producer-handler provisions for the three southeast orders should be very similar to the current provisions. To qualify as a producer-handler, a dairy farmer would have to have route disposition in excess of 150,000 pounds per month; otherwise, the producer's plant would be exempt from regulation pursuant to a provision that has been uniformly adopted for all orders.

To qualify as a producer-handler, a dairy farmer may receive no fluid milk products from sources other than his or her farm and may dispose of no fluid milk products using the distribution system of another handler. Finally, the dairy farmer must provide proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled, and the processing, packaging, and distribution operations, are his/her own enterprise and are operated at his/her own risk.

At the present time, there are three or four producer-handlers operating in the southeast markets. None of these operations would lose their status as producer-handlers under the provision recommended for new southeast orders.

Producer/Producer Milk

The Secretary proposes that the producer and producer milk definitions recommended for the three southeast orders should be nearly identical to the provisions now in the individual orders. These provisions define which dairy farmers are eligible to share in the proceeds of the marketwide pool.

A *producer* should be defined as a dairy farmer whose milk is received at a pool plant, diverted to a nonpool plant, or received by a cooperative association acting as a bulk tank handler. It excludes a producer-handler, a dairy farmer whose milk is delivered to an exempt plant, or a dairy farmer whose milk is reported as diverted milk under the provisions of another Federal order.

The proposed diversion limits that are specified in the producer milk section should be slightly different among the three southeast orders. To qualify for diversion to a nonpool plant, a minimum amount of a producer's milk should be received at a pool plant during the month (i.e., this is called a "touch-base" requirement). Under the Appalachian order, six days' production should be received at a pool plant during each of the months of July through December, and two days' production should be received at a pool plant during each of the other months of the year. Under the Southeast order, ten days' production should be required to be delivered to a pool plant during each of the months of July through December to qualify a producer's milk for diversion to a nonpool plant. During the months of January through June, 4 days' production should be required to be delivered to a pool plant.

Under the proposed Florida order, which will have a higher Class I utilization and less need to divert milk, a producer should be required to deliver at least ten days' production to a pool plant during every month of the year in order to be eligible for diversion to a nonpool plant. These proposed standards are comparable to those required under the separate Florida orders.

The total quantity of milk which may be diverted by a pool plant operator or cooperative association during the month also should vary by market as well as by month. Under the Appalachian order, a pool plant operator or cooperative association should be permitted to divert 25 percent of their producer milk during the months of July through November, January and February. During the months of December and March through June, the total diversion limit should increase to 40 percent of producer milk receipts. The Secretary proposes that the Southeast order should provide a total diversion limit of 33 percent during the months of July through December, and 50 percent during the other months. The proposed diversion limits under the Florida order should be 20 percent during the months of July through November, 25 percent during the months of December through February, and 40 percent during all other months.

The proposed "touch base" requirements and gross diversion limits described above should be adjustable by the market administrator to assure orderly marketing and/or efficient handling of milk in the marketing area. This procedure is described in §§ 1005.13(d)(7), 1006.13(d)(6), and 1007.13(d)(7).

Although a "dairy farmer for other markets" provision was requested for the new orders by some producer organizations, it was opposed by others. The Secretary does not propose inclusion of this provision in the three southeast orders at this time. Such a

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provision would restrict the free movement of milk as needed between market. The proposed diversion limits and touch-base requirements in the southeast orders should preclude the association of milk with these markets when such milk is not needed at pool plants.

Report of Receipts and Utilization

The Secretary proposes that to accommodate the payment schedule desired for the three southeast orders, the handler's report of receipts and utilization must be in the market administrator's office no later than the 7th day of the month. The producer payroll report will be required by the 20th day of the month. The information to be included in these proposed reports is essentially identical to the current order provisions.

Payments for Milk

The Secretary proposes that the southeast orders should provide uniform payment schedules for payments to and from the producer-settlement fund and to producers and cooperative associations. Payment to the producer-settlement fund should be made by the 12th day of the month and payment from the producer-settlement fund should be made one day later.

In the case of payments to producers and cooperative associations, the Secretary proposes that the merged Florida order should maintain the longstanding three-payment schedule that has been part of the present Florida orders for many years. The partial payments to producers under the new Florida order should be made on the 20th day of the month for milk received during the first 15 days of the month and on the 5th day of the following month for milk received during the remainder of the month. The rate of payment should be at not less than 85 percent of the preceding month's uniform price, adjusted for plant location and for proper deductions authorized in writing by the producer. The final payment for milk received during the previous month should be made on or before the 15th day of the month.

The Secretary proposes that the Appalachian and Southeast orders should have identical payment schedules. The partial payment for milk received during the first 15 days of the month should be made on the 26th day of the month. The rate of payment should be 90 percent of the preceding month's uniform price. The final payment should be required to be received by the producer on or before the 15th day of the following month. The rate of final payment for all 3 orders should be the preceding month's uniform price adjusted for butterfat, plant location, partial payments, marketing services, and proper deductions authorized in writing by the producer.

Each order now requires payment to a cooperative association to be made one day earlier than the payment to an individual producer. The Secretary proposes that this practice should continue under the new orders.

6c. Midwest Region

Upper Midwest Order

Pool Plant

The Secretary proposes that the pool distributing and pool supply plant definitions of the proposed consolidated Upper Midwest order should use the standard order language used in other orders, adapted to marketing conditions in the Upper Midwest.

The proposed *pool distributing plant* definition specifies that for a plant to be a pool distributing plant, it must have 15 percent or more of its total receipts of bulk fluid milk distributed as route disposition. This percentage is considerably lower than the percentage used in the Chicago Regional order, which varies from 30 percent to 45 percent depending on the month. However, the current Upper Midwest order uses a percentage based on the marketwide Class I percentage for the same month of the previous year. During "normal" months this percentage is approximately 15 percent. When some milk is held off the pool for economic reasons (primarily unusual price differences between classes), the percentage may vary considerably, ranging from the "normal" 15 percent to over 50 percent. Use of a constant percentage at approximately the market Class I percentage will reduce the current opportunities available to distributing plants to become partially regulated by manipulating their reported receipts and diversions of milk. In addition, the proposed language should eliminate month-to-month uncertainty caused by basing handlers' regulatory status on the market's fluctuating utilization percentage.

In addition to specifying the route disposition percentage at 15 percent, the proposed percentage would be calculated on the basis of the total receipts of bulk fluid milk products physically received at the distributing plant. Currently both the Chicago Regional and Upper Midwest orders include milk diverted from the distributing plant in the total bulk receipts used to compute the route disposition percentage.

The Identical Provisions Committee recommended that the in-area distribution criteria for pool distributing plants be 15 percent of total route disposition. The Committee explained that use of total route disposition rather than bulk receipts as the denominator would reduce opportunities for handlers to manipulate the manner in which they may report their operations to avoid regulation. Currently in the Chicago Regional and Upper Midwest orders the in-area route disposition standard is computed using the same basis (bulk receipts, including diversions) as is used to determine whether a plant meets the definition of a pool distributing plant.

The Secretary proposes that provision be made for a single handler to form a unit of distributing plants and manufacturing plants, all of which must be located within the marketing area. The unit would have to meet the requirements for a pool distributing plant and at least one of the plants in the unit would be required to meet the pool distributing plant requirements as a separate plant. Plants not meeting the pool distributing plant definition would be required to have disposition of packaged fluid milk products, packaged fluid cream products, or cottage cheese and other soft manufactured products of at least half of their receipts of Grade A bulk fluid milk products, including milk diverted by the plant operator.

Manufacturing plants traditionally have been included in units with distributing plants because the manufacturing plants produced products such as packaged fluid cream, sour cream, and cottage cheese that are marketed in conjunction with bottled fluid milk products. In addition, some of these plants produce a limited quantity of fluid milk products. Handlers have argued that the operator of a free-standing manufacturing plant that manufactures these complementary products should be able to pool its milk supply for both (or for several) plants as if all of the products were made in the bottling plant.

Both the Chicago Regional and Upper Midwest orders contain a provision for a distributing plant unit. Although the current Chicago Regional order does not specify the types of products that may be manufactured at plants in the unit, the Upper Midwest order does. The Secretary proposes that it is reasonable to place restrictions on the types of products that are disposed of from the manufacturing plants in the unit, since these plants would receive the benefits reserved for pool distributing plants and

shipments from supply plants to the plants in the unit would be considered in determining pool supply plant qualifications.

A *pool supply plant* operator should ship as qualifying shipments at least 10 percent of the plant's receipts of milk from producers, including milk diverted by the handler, each month. As in the current Chicago Regional order, it is proposed that such shipments may be made to pool distributing plants, pool distributing plant units, plants of producer-handlers, partially regulated distributing plants, or distributing plants fully regulated by other Federal milk orders. The extent of shipments to partially regulated distributing plants to be used for qualification would be limited to the quantity classified as Class I. Qualifying shipments to distributing plants regulated by other Federal milk orders should be limited to the quantity shipped to pool distributing plants, and may not be agreed-upon Class II, Class III or Class IV utilization. Shipments directly from farms to pool distributing plants and to plants contained in pool distributing plant units should be included as shipments that help to meet the percentage qualification standard.

The proposed 10 percent shipping requirement is approximately 5 percentage points less than the anticipated Class I percentage for the proposed consolidated Upper Midwest order. The 10 percent shipping standard is greater than the current individual supply plant shipping standard and equal to the maximum shipping percentage required of pool units during the qualifying period in the current Chicago Regional order. The standard under the current Upper Midwest order, which uses the Class I use percentage of the same month in the previous year as the supply plant shipping percentage, would exceed the proposed percentage. Also under the current Upper Midwest order, a reserve supply plant must ship 10 percent of its receipts to pool distributing plants during January through June, and the marketwide Class I percentage for the same months of the preceding year for the months of July through December.

Although the proposed shipping percentage is below the estimated Class I percentage for the proposed Upper Midwest order, the 10 percent shipping standard should be appropriate, in view of the fact that many distributing plants have a supply of milk from their own producers. In September 1997, approximately 27 percent of the milk pooled or received at distributing plants in the Chicago Regional order was pooled as producer milk with the distributing plant operators as the handlers, rather than as producer milk pooled by cooperatives and other handlers. The milk pooled by distributing plant handlers accounted for approximately 12 percent of the total milk pooled in September 1997 (or approximately 5 percent of the total milk that would have been pooled if all of the milk eligible to be pooled in September 1997 had been pooled). Approximately 7 percent of the Class I producer milk, or approximately 2 percent of the total producer milk, pooled under the Upper Midwest order is pooled by distributing plant operators. The combination of the supply plant shipping percentage and the percentage of milk pooled directly by distributing plant handlers would appear sufficient to meet anticipated Class I needs in the proposed Upper Midwest order. The proposed 10 percent supply plant shipping percentage also should be appropriate to avoid unnecessary and uneconomic shipments.

The proposed rule would allow the market administrator to increase or decrease the required shipping percentage on a marketwide or selected area basis if deemed necessary to assure an adequate supply of milk to pool distributing plants or to prevent uneconomic shipments of milk. If the shipping percentage is increased by the market administrator, shipments made for the purpose of meeting the increased percentage may be made only to pool distributing plants or plants contained in pool distributing plant units.

Groups of two or more supply plants should be allowed to form *systems of supply plants* for the purpose of meeting the shipping requirements, by shipping the same percentage as that required for individual pool supply plants that are not part of such a system. These pool supply plant systems may consist of plants of the same handler, more than one handler, and may contain both proprietary and cooperative handlers. The only requirement affecting an individual plant within the unit is that the plant must be physically located within the marketing area. This restriction is necessary to prevent distant plants from receiving the benefits of participating in the marketwide pool without having an actual association with the market.

Several plants located outside the boundaries of the proposed marketing area currently are included in supply plant units by a "grandfather clause" in the Upper Midwest order. The proposed order provides that these plants may continue to be included in a supply plant unit if they so desire as long as they maintain continuous pool plant status.

The Secretary proposes that handlers may form supply plant systems by filing a written request by July 15, listing the plants to be in the system. The system would remain in effect from August 1 through July 31 of the following year. These dates deviate from those proposed for other orders because of the difference in seasonal production variations between this and other orders. The handler or handlers establishing the system may also delete a plant from the system or dissolve the system by submitting a written request to the market administrator. Any plant deleted from a system, or plants that were part of a system that was discontinued, may not be part of a system until the following August.

Provisions that allow handlers to add plants to a system under certain circumstances and to allow systems to reorganize in the event a plant changes ownership or in the event of a business failure by a handler are also incorporated in the proposed order.

A system failing to meet pooling standards would be allowed to drop plants from the system until the system does qualify. The handler responsible for assuring that the system qualifies should notify the market administrator of which plants are to be deleted from the system. If the handler does not notify the market administrator, the market administrator would exclude plants from the system beginning with the plant at the bottom of the list of plants submitted by the handler responsible for qualifying the system, and continuing up the list until the system qualifies.

The provisions for supply plant systems are very similar to the provisions currently contained in both the Chicago Regional and Upper Midwest orders. Unlike the Chicago Regional and the Upper Midwest orders, however, the proposed order does not contain a specific shipping requirement for individual plants within a supply plant system. In the current Chicago Regional order, pool supply plant systems have twice the percentage shipping standard of individual supply plants, with individual plants within the systems required to ship 47,000 pounds or three percent of their producer receipts, whichever is less, in five of the six months of August through January. The current Upper Midwest order requires handlers with supply plants in a supply plant system to ship five percent of each handler's Grade A receipts, including milk diverted by the handler to nonpool plants, during one of

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the months of August through December.

This proposed rule does not propose providing for the category of supply plants referred to as reserve supply plants. Reserve supply plants ceased to be included in the Chicago Regional order in 1987, while the Upper Midwest continues to provide for them. With year-round shipping requirements, the unlimited ability of the market administrator to change shipping percentages both in level and in area, and the ability of supply plants to form systems, it is proposed that there is no compelling reason to have two categories of supply plants.

A provision to allow plants to remain qualified for up to two consecutive months due to unavoidable circumstances, such as a natural disaster, fire, breakdown of equipment, or work stoppage is included in this proposed order. The provision is contained in the Chicago Regional order and has worked quite well in giving handlers some administrative relief in the face of certain unavoidable circumstances.

Producer Milk

The definition of producer milk determines which milk will be eligible to participate in the Federal order pool. The proposed order provides that milk received at a pool plant directly from producers or from a cooperative association acting as a handler should be eligible to be producer milk. Milk for which the operator of a pool plant is the handler that is delivered directly from the farm to another pool plant should also be considered producer milk. Under certain circumstances, milk delivered to a nonpool plant may also be considered producer milk. Milk delivered directly from a farm to a nonpool plant may be considered producer milk if at least one day's production is received at a pool plant during the dairy farmer's first month as a producer.

In order to qualify as producer milk the milk pooled by a cooperative association acting as a handler described in § 1030.9(c), the cooperative must deliver at least 10 percent of the milk for which it is the handler pursuant to § 1030.9(c) to pool distributing plants, units of pool distributing plants, plants of producer-handlers, partially regulated distributing plants, or distributing plants fully regulated by other Federal milk orders. The shipments to partially regulated distributing plants are limited to the quantity classified as Class I. Qualifying shipments to distributing plants regulated by other Federal milk orders are limited to the same quantity shipped to pool distributing plants and may not be shipped as agreed-upon Class II, Class III or Class IV utilization. These are the same performance requirements that would apply to supply plants. Likewise, the same performance requirements that apply to supply plants would apply to cooperative associations acting as handlers if the market administrator adjusts the shipping percentages.

The Secretary proposes that there would be no significant differences in the treatment of milk received at pool plants under the proposed order and under the Chicago Regional or Upper Midwest orders. There are, however, several differences relating to diverted milk. The proposed order would allow the operator of a pool plant to divert, or ship milk directly from the farm to another pool plant, the milk of producers for which it is the handler, and account for the milk as producer milk at the shipping plant. Allowing either a proprietary pool plant or a cooperative pool plant to divert milk to another pool plant is consistent with the Chicago Regional order. In the Upper Midwest order, milk that is received at a pool plant and for which a cooperative association is the handler is considered producer milk at the receiving plant. The Upper Midwest order specifies that a proprietary handler may divert milk to another pool plant and that such milk will be considered producer milk of the diverting proprietary handler. The proposed language leaves to the discretion of the cooperative association the option of diverting milk to another pool plant from its own pool plant or delivering the milk to the pool plant in its capacity as a handler of producer milk pursuant to § 1030.9(c).

The proposed Upper Midwest order would require that a new producer or a producer who has broken association with the market have at least one day's production received at a pool plant during the first month in which the producer's milk is reported as producer milk. Currently the Chicago Regional order requires a new producer on the market or a producer who has broken association with the market to have at least one day's production received at the pool plant at which the milk is reported during the first month in which the producer's milk is considered to be producer milk eligible for diversion to a nonpool plant. In addition, at least one day's production of a producer's milk must be received at a pool plant in each of the months of August through January to be eligible for diversion to a nonpool plant. The current Upper Midwest order requires that a new producer or a producer who has broken association with the market be received at a pool plant prior to the milk being diverted to a nonpool plant.

There is little or no justification for forcing producer milk to be received at a pool plant to maintain or prove association with the market. Supply plants and cooperatives would be required to ship a fixed percentage of their total milk supply, not just that portion received at their plants, to the fluid market. Since both cooperatives and proprietary handlers can move milk directly from the farm to the fluid market there is little reason to force milk into a pool plant for regulatory purposes only. Certainly the extra cost to the handler of moving milk for regulatory purposes does not enhance economic efficiency or milk quality and in fact decreases economic efficiency and milk quality to the detriment of the entire market.

The proposed order provides that producer milk be priced in the month in which it is picked up at the farm and at the location of the plant at which the milk is physically unloaded into processing facilities or a storage tank. In the current Chicago Regional order milk is priced where milk is pumped within the confines of a plant. The proposed order would eliminate the pricing of milk where it is pumped from truck to truck and price the milk where it is eventually unloaded into processing facilities or a storage tank.

Location Adjustments and Transportation Credits

To help move milk to the fluid market a transportation credit and a procurement credit to be applied to Class I milk are contained in the proposed Upper Midwest order. The *transportation credit* would be computed by multiplying the hundredweight of Class I milk contained in transfers of bulk fluid milk from pool plants to pool distributing plants by the value obtained by multiplying .0028 times the number of miles between the shipping plant and the receiving plant. The transportation credit should be paid to the shipping handler, since the milk would be priced at the location at which it is first received.

The proposed transportation credit is similar to the transportation credit currently contained in the Chicago Regional order. Both the proposed transportation credit and the current credit, which use the same .0028 rate, are applied to Class I milk only. However, in the current Chicago Regional order the credit is based on 110 percent of the Class I milk received at the pool distributing plant, rather than on the Class I milk delivered by the shipping handler, as proposed. Since the transportation credit is computed on the basis of milk classified as Class I at the shipping plant, the credit would be paid to the shipping handler.

Unlike the transportation credit, which is based on mileage and paid only on transfers of bulk milk to pool distributing plants, the *procurement credit* would be paid at the rate of 8 cents per hundredweight of Class I milk transferred or diverted by a pool plant to a pool distributing plant. A procurement credit also will be applied to milk received from producers and from cooperative associations acting as handlers pursuant to § 1030.9(c) based on the pro rata share of producer milk delivered to a pool distributing plant and allocated to Class I.

A transportation credit and procurement credit would be incorporated in the proposed order to assist handlers in supplying the Class I market. These transportation and procurement credits, to be paid on Class I milk only in combination with the Class I price surface discussed elsewhere in this proposed rule, will help handlers move milk to the fluid market by distributing the cost of supplying the fluid market to all market participants who share in the marketwide pool. Handlers and producers who supply the Class I market on a regular basis should not be expected to bear the entire cost of supplying the Class I market while handlers and producers who meet only the minimum requirements derive the benefits of marketwide pooling. Incorporation of a transportation credit and procurement credit on Class I milk in the marketwide pool will assure that at least some of the cost of supplying the Class I market is shared among all market participants.

Mideast Order

Many of the provisions of the proposed Mideast order are explained in the "Identical Provisions" portion of this proposed rule, and need not be addressed here. The provisions that deviate somewhat from those proposed for other order areas are the provisions dealing with standards for determining the pool status of producers and handlers, and those describing the pricing of milk under a component pricing plan that differs slightly from that common to the other orders with proposed multiple component pricing provisions. For the most part, pooling provisions have less effect on the current Michigan Upper Peninsula market than on the 4 other markets included in this consolidated order because Michigan Upper Peninsula is the only remaining individual handler pool in the current Federal order system. Therefore, pooling provisions are discussed in relation to the 4 principal markets included in the proposed Mideast order.

Pool Plant

The proposed Mideast *pool distributing plant* definition would differ from that contained in most of the other proposed orders to make less likely the full Federal regulation of three State-regulated plants, two in Pennsylvania and one in Virginia, that currently are partially regulated under one or more of these orders. These State-regulated handlers must pay a minimum Class I price for milk used in fluid products, often a higher price than would be applied under Federal order regulation. At the same time, Federal regulation of the Pennsylvania and Virginia-regulated handlers under the consolidated order would reduce producer returns while having little effect on handlers' costs of Class I milk.

Specifically, the percentage of a handler's total route dispositions distributed within the marketing area that would result in the handler being fully regulated under the Mideast order should be 30 percent under this order rather than the 15-percent standard proposed for all but one of the other 10 orders. This level of sales in the marketing area can be compared to the current pooling standards for distributing plants in the Eastern Ohio-Western Pennsylvania and Indiana orders. These orders currently have variable (30–50 percent) pooling standards for the percentage of a distributing plant's receipts distributed on routes, combined with a 10–15 percent standard for receipts distributed within the marketing area. Plants that meet the total dispositions standard at the lower end of the range (35 or 40 percent) and distribute only 10 or 15 percent of their receipts on routes in the marketing area would actually distribute approximately 30 percent of their route dispositions on routes in the marketing area. At the same time, it would be difficult to justify establishing a pooling standard so high that the significant role played in a market by a handler having more than 30 percent of its route disposition in the marketing area would fail to be recognized by inclusion in the marketwide pool.

In addition to specifying the in-area route disposition percentage at 30 percent of total routes, the total and in-area route disposition percentages would be calculated on the basis of the total receipts of bulk fluid milk products physically received at the distributing plant. Currently all four of the larger orders to be included in the consolidated Mideast order include milk diverted from the distributing plant in the total bulk receipts used to compute the route disposition percentages.

To assure continued pool qualification for all of the handlers who currently are associated with the Mideast markets, the *pool supply plant* definition of the consolidated Mideast order would provide for all of the types of supply plants that currently qualify for pooling under the 4 principal orders. The Eastern Ohio-Western Pennsylvania pool plant provision includes a plant operated by a cooperative if the cooperative association delivers to distributing plants at least 35 percent of the milk for which it is the handler during the current month or over the preceding 12 months. The Southern Michigan order includes as pool supply plants: (a) a plant that has been a pool plant for 12 consecutive months and has a marketing agreement with a cooperative association, and (b) a system of supply plants operated by one or more handlers. Order 40 also includes some shipments to other Federal order plants and partially regulated distributing plants, in addition to pool distributing plants, as qualifying shipments by supply plants.

The percentage of receipts as qualifying shipments to distributing plants currently ranges from 30 to 40 percent for these orders, with direct deliveries from farms rather than plant transfers limited to half of the required deliveries under three of the orders. All four of the orders require performance of pooling standards by supply plants for the months of September through February, followed by a "free ride" period during which shipping percentages need not be met by supply plants that met the shipping standards during the required period. The Indiana order contains a provision allowing the continued pooling of a plant that fails to meet pooling standards because of circumstances beyond the handler's control.

The proposed shipping standards for pool supply plants are 35 percent for all months, with plants meeting the standard for the months of September through February being allowed to retain their pool status for the immediately following months of March through August. For the purpose of making the 35 percent level of shipping standard less burdensome, up to 90 percent of required shipments should be allowed to be made directly from farms

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to distributing plants. The cooperative association plant provided for in the Eastern Ohio-Western Pennsylvania order would be retained, as would the supply plant provisions peculiar to the Southern Michigan order.

Producer Milk

The *producer* and *producer milk* provisions of the orders to be consolidated in the Mideast order are quite similar and differ little from those to be incorporated in the other consolidated orders. The principal difference between some of the individual orders and the consolidated order would be the limit on the percentage of a handler's pooled producer milk that may be diverted to nonpool plants. The Ohio Valley, Indiana and Eastern Ohio-Western Pennsylvania orders all contain 50 percent diversion limits for the months of September through November, January and February and a 60 percent limit for the month of December, with no diversion limit for the months of March through August. The Southern Michigan order contains a 60-percent diversion limit for the months of September through February, with no limit for the months of March through August. In order to assure that all of the milk that has been pooled under these orders continues to qualify for pooling, the diversion limit proposed for the Mideast order is 60 percent for the months of September through February, with no limit for the March through August period. At the same time, the market administrator would be authorized to increase or reduce the diversion limit as needed to maintain orderly marketing and efficient handling of milk in the marketing area.

Multiple Component Pricing

The reporting and payment provisions of the proposed consolidated Mideast order differ somewhat from those of the other consolidated orders that provide for multiple component pricing (MCP) by retaining the current Southern Michigan component pricing plan. The Southern Michigan multiple component pricing plan is very similar to that proposed for the other MCP orders, but prices "fluid carrier" instead of "other solids." The Mideast order language is changed accordingly. This difference appears to be favored by market participants in the Mideast, and would result in very little difference in total payments, either by handlers or to producers whose milk is pooled under the differing provisions.

Central Order

Many of the provisions of the proposed Central order are explained in the "Identical Provisions" portion of this proposed rule, and need not be addressed here. The provisions that deviate somewhat from those proposed for other order areas are the provisions dealing with standards for determining the pool status of producers and handlers. An effort is made to explain significant differences between the pooling provisions of the 8 individual orders included in this consolidation and those of the consolidated order.

Pool Plant

The proposed Central *pool distributing plant* definition should follow closely the provisions contained in most of the other proposed orders. The proposed provisions would make no difference in the pool status of distributing plants currently pooled under the individual orders.

Specifically, the percentage of a handler's total route disposition distributed within the marketing area that would result in the handler being fully regulated under the Central order should be the 15-percent standard proposed for most of the other 10 orders. The minimum percentage of a pool distributing plant's actual physical receipts of bulk fluid milk products that would have to be distributed on route is proposed to be 25. Currently most of the orders to be included in the consolidated Central order include milk diverted from the distributing plant in the total bulk receipts used to compute the route disposition percentages.

The proposed order would provide that a single handler be allowed to form a unit of distributing plants and Class II manufacturing plants, all of which must be located within the marketing area. The unit would have to meet the requirements for a pool distributing plant, and at least one of the plants in the unit would be required to meet the pool distributing plant requirements as a separate plant. Plants in the unit that do not meet the pool distributing plant definition would be required to have disposition of packaged fluid milk products, packaged fluid cream products, or cottage cheese and other Class II products of at least half of their receipts of Grade A bulk fluid milk products, including milk diverted by the plant operator.

The proposed inclusion of Class II manufacturing plants in units with distributing plants is supported because the manufacturing plants produce products such as packaged fluid cream, sour cream, and cottage cheese that are marketed in conjunction with bottled fluid milk products. In addition, some of these plants produce a limited quantity of fluid milk products. Handlers have argued that the operator of a free-standing manufacturing plant that manufactures these complementary products should be able to pool its milk supply for both (or for several) plants as if all of the products were made in the bottling plant.

The *pool supply plant* definition of the consolidated Central order would contain provisions that assure continued pool qualification for any handlers or milk currently associated with the markets consolidated into the proposed Central market. The Iowa order contains no limit on the amount of direct-shipped milk that can be used to qualify a supply plant, and several of the other orders allow such deliveries to make up a portion of qualifying shipments. The proposed order allows direct-shipped milk to be counted as pool qualifying shipments without limit.

The Greater Kansas City, Nebraska-Western Iowa, Southern Illinois-Eastern Missouri, and Southwest Plains orders contain cooperative balancing plant provisions, allowing cooperative-operated plants to be pooled if the cooperative delivers a given percentage of the milk for which it is the handler to pool distributing plants. The proposed Central order also contains such a provision, including in the pool plant definition a cooperative association plant that supplies at least 35 percent of the milk for which it is the handler to pool distributing plants, either during the current month or for the immediately preceding 12-month period. The deliveries to pool distributing plants may include deliveries directly from the farms of producers for whom the co-op is the handler, as well as transfers from the cooperative's plant.

Cooperative association "balancing plants" serve the market as the outlet of last resort. When surplus milk has no other place to go on weekends, holidays, or during months of surplus production, it moves to cooperative association "balancing plants" where it is manufactured into storable products. When production decreases, these plants operate at minimal capacity or may be shut down completely. Cooperative members assume the burden and cost of processing surplus milk through such plants.

Most of the Central orders allow a period during which supply plants do not have to meet shipping percentages if they have done so for the months during which milk production levels are low and demand for fluid milk is high. The Iowa order has reduced shipping standards for such months. The proposed order should include a period during which supply plants that have served the needs of the market when milk supplies are tight are not required to meet shipping standards, but it is reduced from the 5–7 month period existing in the current orders to a 3-month period from May through July.

The percentage of receipts as qualifying shipments to distributing plants currently ranges from 30 to 50 percent for these orders, the Iowa percentage reduced to 20 for the months of December through August.

The proposed shipping standards for pool supply plants under the proposed consolidated order are 35 percent for the months of September through November and January and 25 percent for all other months, with plants meeting the percentage standard for the months of August through April being allowed to retain their pool status for the immediately following months of May through July.

Groups of two or more supply plants should be allowed to form systems of supply plants for the purpose of meeting the shipping requirements, by shipping the same percentage as that required for individual pool supply plants that are not part of such a system. These pool supply plant systems may consist of plants of the same handler or more than one handler, and may contain both proprietary and cooperative handlers. The only requirement affecting each plant within the system is that the plant must be physically located within the marketing area. This restriction is necessary to prevent distant plants from receiving the benefits of participating in the marketwide pool without having an actual association with the market.

As in the other proposed consolidated orders, the market administrator would have the authority to increase or reduce the order's pooling provisions as marketing conditions change for the purpose of assuring that an adequate supply of milk will be available for fluid use, or to assure that the order does not require handlers to undertake uneconomic movements of milk to maintain the pool status of their plants.

Producer Milk

The *producer* and *producer milk* provisions of the orders to be consolidated in the Central order are quite similar to each other and differ little from those to be incorporated in the other consolidated orders. The principal difference between some of the individual orders and the consolidated order would be the limit on the percentage of a handler's pooled producer milk that may be diverted to nonpool plants. The percentage of a handler's milk that may be diverted to nonpool plants varies under the individual orders from 20 percent of milk received at pool plants during some months under the Eastern Colorado order to 70 percent for some months under the Nebraska-Western Iowa and Iowa orders. Most of the orders require each producer's milk to be received at a pool plant at least once each month.

In order to assure that all of the milk that has been pooled under these orders continues to qualify for pooling, the diversion limit proposed for the Central order is 65 percent for the months of September through November and January, and 75 percent for the months of February through April and December. Allowable diversions for the months of May through July would be unlimited. There would be no requirement that each producer's milk be received at pool plants for a minimum number of days per month. At the same time, the market administrator would be authorized to increase or reduce the diversion limit as needed to maintain orderly marketing and efficient handling of milk in the marketing area.

Multiple Component Pricing

The reporting and payment provisions of the proposed consolidated Central order would include those common to other orders with multiple component pricing. These markets have a significant amount of milk used in manufactured products, and component pricing will enable producers to be paid according to the valuable components of their milk.

6d. Western Region

Southwest Order

The proposed consolidated Southwest marketing area is comprised principally of the current Texas and New Mexico-West Texas marketing areas. With regard to milk production and population (consumption), these areas are both in the process of change, but in different ways. Texas has one of the fastest-growing populations in the U.S., and until recently has been able to maintain milk production on a per capita basis. After a significant increase in milk production during the 1988–1994 period, Texas milk production has been declining somewhat, accompanied by the exit of approximately 29 percent of the State's Grade A dairy farmers. If the current trend continues, the Texas market could come to resemble more closely those of the Southeast portion of the U.S., relying significantly on more distant milk supplies to meet the market's Class I and II needs. This scenario currently is true for the southern parts of Texas.

The State of New Mexico has experienced relatively slow population growth, but dramatic increases in milk production—from 1.099 billion pounds in 1988 to an estimated 4.020 billion pounds in 1997. With the declining production in Texas, the New Mexico milkshed will be drawn upon more often to supply Class I and II needs in the Texas demand centers, 500–600 miles distant. Procurement costs would be expected to increase dramatically. In light of these circumstances, proposed provisions in the proposed Southwest order would provide flexibility to handlers supplying the market to prevent inefficient movements of milk and unnecessary costs of operation incurred for the purpose of participating in the marketwide pool.

Prior to enactment of the 1996 Farm Bill, cooperatives operating in the Southwestern Markets had determined that the two milk orders in the region were being operated as one and should be merged. Much discussion took place and proposed order provisions were developed by the principal cooperatives involved. These comments, with numerous others, were considered in the development of this proposed rule for the Southwest marketing area.

Pooling Standards

Most of the pooling standards in the Texas and New Mexico-West Texas orders have been suspended for some time. The rapid expansion of milk production in the region during the late 1980's created a situation in which handlers operating in the region could no longer meet the provisions of the orders while pooling all of their milk supplies.

Pool Distributing Plant. The identical provisions committee recommended that a pool distributing plant distribute as route disposition at least 25% of its bulk fluid milk receipts at the plant, and distribute at least 15% of its total route disposition within the marketing area. One partially regulated plant located in the Texas marketing area would become fully regulated under this provision. The plant has been partially regulated under the Texas order and, periodically, fully regulated under the Chicago Regional order. The proposed percentages for pool distributing plants will cause this plant to become fully regulated under the Southwest order and alleviate the disorderly conditions caused by its shifts between orders. There should be no change in the

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plant's costs, since their supply of milk comes from Southwest pool sources.

Pool Supply Plant. The Texas and New Mexico-West Texas orders currently contain a 50% pool supply plant shipping percentage during the Fall months, with a lower percentage or an automatic pooling provision for the remaining months. Currently there are no pool supply plants regulated under either of the Southwest orders, but provision is made for such an operation if it should meet the proposed order's definition. A provision defining cooperative plants located in the marketing area would base pool qualification on total cooperative performance in delivering at least 30 percent of the cooperative's milk supply pooled under this order to pool distributing plants.

Although neither the Texas nor New Mexico-West Texas orders currently have provisions for split-plant operations (plants that have both pool and nonpool portions) or the authority for the Market Administrator to adjust shipping requirements, these provisions are included in the proposed order, as recommended by the identical provisions committee.

Producer Milk

The current Texas and New Mexico-West Texas orders have provisions that require a producer's milk to be received at a pool plant, or touch base, before milk of the producer is eligible to be diverted. Based on comments received, the order would limit diversions of producer milk on the basis of a portion of a handler's total milk supply. At least fifty percent of the milk pooled by a handler should be received at pool plants for the handler's entire milk supply to be pooled. Milk produced by producers located in the marketing area should be eligible for pooling without a particular percentage or number of days' production being required to be received at a pool plant. For producers located outside the marketing area, however, the currently-suspended "touch-base" provision of 15% delivered to pool plants during the month (rather than before diversions are allowed), is continued in this proposed rule.

Diversion limits are suggested to be 50% of a handler's total milk supply. The current Texas order allows an amount equal to one-third of the milk delivered to pool plants to be diverted (this provision is currently suspended), while the (currently suspended) New Mexico-West Texas provision allows 50% of a handler's total milk supply to be diverted. The current Texas order provisions base allowable diversions on deliveries to individual pool plants, greatly exacerbating the time and effort required to keep track of milk movements. The total performance standard will allow handlers to meet diversion limits more easily with more efficient movements of milk. In addition, the increased percentage of allowable diversions will assure that all of the producers whose milk would qualify for pooling under either of the two orders being consolidated would continue to meet pooling qualifications.

Transportation Credits for Surplus Milk

The Texas order currently has a market-wide service payment provision that gives credits for hauling surplus milk located in certain zones in Texas to nonpool plants outside the State for use in manufactured products. The provision has not been included in the proposed Southwest order language because of declining production and increasing balancing plant capacity in the affected areas of Texas.

Payment Provision

The Texas order is one of only a few marketing orders that require handlers to submit the full classified value during the month to the market Administration. In turn, the Market Administrator acts as a clearing house and forwards these proceeds on to the respective organizations. Interested persons have expressed an interest in retaining these provisions, not only for the proposed Southwest order, but for all other orders.

The current Texas payment provision was found necessary because of problems encountered in assuring timely payments by pooled handlers. The provision has been in the Texas order since 1979, and the earlier payment problems have been remedied. Such a provision involves a rather large degree of regulatory intervention between milk processors and their suppliers that should be shown to be necessary to correct existing problems. There is no indication that such problems currently exist, or would exist in the absence of the provision. Nearly all of the milk that will be pooled under the consolidated Southwest order is produced by cooperative members and pooled by the cooperatives. These large, business-oriented organizations should be able to assure that they receive full payment for their members' milk in a timely manner.

Arizona-Las Vegas Order

Many of the provisions of the proposed Arizona-Las Vegas order are explained in the "Identical Provisions" portion of this proposed rule and need not be addressed here. Those provisions that deviate to some extent from the "Identical Provisions" are addressed in this discussion.

Pool Plant

The proposed *pool distributing plant* definition is similar to that contained in most of the other proposed orders. The minimum percentage of a pool distributing plant's physical receipts of bulk fluid milk products that are disposed of as route disposition is proposed to be 25%. The percentage of a handler's total route disposition into the marketing area that would result in a distributing plant becoming fully regulated under the Arizona-Las Vegas order is proposed to be 15%. While this definition differs slightly from the current order language, it provides uniformity with other proposed orders and should result in no additional distributing plants being pooled under the proposed order or any change in the pool status of distributing plants currently pooled.

The proposed *pool supply plant* definition would require a supply plant to ship 50% of its physical receipts of milk from dairy farmers to pool distributing plants during the month in order to be a pool supply plant. This definition would provide for easy, effective order administration and would result in no additional handlers being regulated under the order. There are currently no pool supply plants in the proposed marketing area.

The current Central Arizona order permits a manufacturing plant located in the marketing area that is operated by a cooperative association to be a pool plant, provided that the cooperative ships at least 50% of its member milk to pool plants of other handlers during the current month or the previous 12-month period ending with the current month. This percentage requirement is currently suspended. The proposed order would reduce this percentage to 35%. In conjunction with the market administrator being authorized to increase or reduce the percentage in response to market conditions, the reduced performance standard should enable the continued pooling of producer milk that currently is pooled without resulting in uneconomic handling or disorderly marketing.

The proposed Arizona-Las Vegas order should provide that a single handler be allowed to form a unit of distributing plants and Class II manufacturing plants provided each plant is located within the marketing area. The unit in total would be required to meet the requirements for a pool distributing plant and at least one of the plants in the unit would be required to meet the pool distributing plant definition individually. This provision would provide uniformity with other federal orders and would not change the status of any plants currently pooled. Class II manufacturing plants are included for unit pooling with distributing plants operated by the same handler because such plants produce products that are marketed in conjunction with fluid milk products.

A provision permitting the market administrator to adjust the percentages specified in the pool plant definition will provide the flexibility to respond in a timely manner to changing marketing conditions without the need for a formal hearing process.

Producer

The proposed order contains a *dairy farmer for other markets* definition. A producer could not be pooled under the proposed Arizona-Las Vegas order unless all of the milk from the same farm was pooled under this or some other federal order or unless such nonpooled milk went to a plant with only Class III or Class IV utilization. This differs slightly from the current definition in the Central Arizona Order. Such a provision is needed in the proposed order to prevent dairy farmers whose milk is regularly used for fluid disposition in other markets from pooling the surplus portion of their production under the proposed order.

Producer Milk

The percentage of a handler's pooled milk that may be diverted to nonpool plants is proposed to be 20% in any month. Currently, diversions under the Central Arizona order are limited to eight days' production of a producer during four months of the year, with unlimited diversions the remainder of the year. The 20% diversion limit would result in the amount of milk eligible for diversion being approximately equivalent to eight days' production and would be easier to administer. The 20% limit year round will assure that pooled milk will have a close association with the market's fluid processing plants.

Component Pricing

The proposed Arizona-Las Vegas order does not provide for multiple component pricing. There are six plants that are expected to be regulated under the proposed order: five proprietary distributing plants, and one manufacturing plant operated by a cooperative association. The Class I utilization for the proposed order is expected to be less than 50 percent, a level that would, in some other orders, be an indication that component pricing would be appropriate. However, the Class I utilization at the five distributing plants is more than 80 percent. With the exception of the one cooperative balancing plant, the handlers to be regulated constitute predominantly a Class I market. They have expressed no interest in component pricing, and the fluid nature of much of the market would not seem to warrant multiple component pricing at this time.

Western Order

Many of the provisions of the proposed Western order are explained in the "Identical Provisions" portion of this proposed rule and need not be addressed here. Those provisions that differ from those explained in the "Identical Provisions," or those currently contained in the orders to be consolidated, are discussed below.

Pool Plant

The proposed *pool distributing plant* definition is similar to that contained in most of the other proposed orders. The minimum percentage of a pool distributing plant's physical receipts of bulk fluid milk products that are disposed of as route disposition is proposed to be 25%. The percentage of a handler's total route disposition distributed into the marketing area that would result in a distributing plant becoming fully regulated under the Western order is proposed to be 15%. While this definition differs slightly from the current language of the orders involved in this proposed consolidation, it provides uniformity with other proposed orders and should result in no additional distributing plants being pooled under the proposed order or any change in the pool status of distributing plants currently pooled.

The proposed *pool supply plant* definition would require a supply plant operator to ship 35% of the milk pooled at the supply plant, either by transfer or diversion, to pool distributing plants during the month in order to qualify for pooling. This definition would provide for more efficient order administration and would result in no additional handlers being regulated under the order. The proposed percentage is slightly higher than that contained in the current Southwest Idaho-Eastern Oregon order and slightly lower than that contained in the current Great Basin and Western Colorado orders. This change should result in no milk that is currently associated with any of the three orders losing such association.

The proposed pool supply plant definition includes provision for a March through August period during which a supply plant that has met the order's shipping percentages for the preceding months of September through February to be able to continue to be a pool plant without meeting the shipping standards. As with other proposed orders, the market administrator would have the authority to increase or decrease the order's supply plant pooling standards as marketing conditions change.

The proposed order contains a provision that would permit a manufacturing plant operated by a cooperative association and located in the marketing area to be a pool plant if 35% of the milk for which the cooperative is the handler is received at pool distributing plants during the month or during the immediately preceding 12-month period. This provision is similar to one currently contained in the Great Basin order and in some of the other proposed orders. The proposed order retains the "bulk tank handler" provision that is currently in the Southwestern Idaho-Eastern Oregon order, permitting a handler other than a cooperative association to divert milk to nonpool plants for the handler's account based on shipments of milk to pool plants of other handlers.

Although the three current orders proposed to be consolidated do not contain such a provision, the proposed Western order would provide that a single handler be allowed to form a unit of distributing plants and Class II manufacturing plants provided each plant is located within the marketing area, as suggested by the Identical Provisions committee. The unit in total would be required to meet the requirements for a pool distributing plant and at least one of the plants in the unit would be required to meet the pool distributing plant definition individually. This provision would provide uniformity with other federal orders and would not change the status of any plants currently pooled. Class II manufacturing plants are proposed to be included for unit pooling with distributing plants operated by the same handler because such plants produce products that are marketed in conjunction with fluid milk products.

Producer

The proposed order contains a *dairy farmer for other markets* definition. A producer would not qualify for pooling under the proposed Western order unless all of the milk from the same farm was pooled under this or some other federal order or unless such nonpooled milk went to a plant with only Class III or Class IV utilization.

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This differs slightly from the current definition in the Great Basin order. Such a provision is proposed for the consolidated order to prevent dairy farmers whose milk is regularly used for fluid disposition in other markets from pooling the surplus portion of their production on the proposed order.

Producer Milk

The percentage of a handler's pooled milk that may be diverted to nonpool plants is proposed to be 80% in any month. This is identical to the percentage currently included in the Southwestern Idaho-Eastern Oregon order and is only slightly higher than that for the present Great Basin order, which is 75% for cooperatives and 70% for proprietary handlers. The 80% limit on movements of pooled milk to nonpool plants should permit all milk associated with the market that is not needed at pool plants during the month to be pooled and priced under the order. These percentages are higher than those contained in the Western Colorado order, but should not have the effect of encouraging additional amounts of unneeded milk to be pooled in that area.

Reports of Receipts and Utilization and Payroll Reports

The proposed order requires pool handlers to file a "report of receipts and utilization" on or before the seventh day after the end of the month. This is identical to the current reporting date in the Western Colorado and Great Basin orders but two days earlier than the same provision in the Southwestern Idaho-Eastern Oregon order. Almost all handlers currently file reports by FAX or some other form of electronic data transfer, which eliminates delays due to mail handling. A seven-day reporting period should allow adequate time for handlers to prepare reports and will allow the computation and release of producer price information to occur on or before the 12th day after the end of the month.

The date on which the report of payments to producers is proposed to be due to the market administrator under the Western order is on or before the 21st day after the end of the month. This is the same date as that under the Great Basin order, but one day earlier than under the Southwestern Idaho-Eastern Oregon order and two days earlier than the Western Colorado order. The earlier reporting date and announcement of producer prices should assure that an earlier payroll reporting date would not be burdensome.

Multiple Component Pricing

Both the Great Basin order and the Southwestern Idaho-Eastern Oregon order currently have multiple component pricing based on protein; the Western Colorado order does not. The multiple component pricing provisions of the proposed Western order should be the same as those for other proposed orders that provide for multiple component pricing based on protein. The proposed Western order has a significant amount of milk used in manufactured products, especially cheese, and component pricing will enable producers to be paid according to the value of the components of their milk. However, the somatic cell adjustment included in most of the rest of the orders for which component pricing is proposed is not warranted by marketing conditions under the Western order, and such an adjustment is not included.

Payments to and From the Producer Settlement Fund

Payments to the producer settlement fund under the proposed order are due on or before the 14th day after the end of the month. This is two days after the announcement of uniform producer prices, which is an identical time period to that which exists in the three current orders proposed to be consolidated.

Payments from the producer settlement fund under the proposed order would be due on or before the 15th day after the end of the month. This is the same date as under the current Great Basin order, three days earlier than under the Southwestern Idaho-Eastern Oregon order, and one day later than the Western Colorado order. This payment date should be practicable given the use of current banking and transmission techniques.

Payments to Producers and Cooperative Associations

Under the proposed order, partial payments would be due from handlers to producers who are not members of cooperative associations on or before the 25th day of the month in an amount not less than 1.2 times the lowest class price for the preceding month multiplied by the hundredweight of milk received from such producers during the first 15 days of the month. Final payments would be due on or before the 17th day after the end of the month.

Partial payments to cooperative associations would be due on or before the 24th day of the month at the same rate as above, with final payments due on or before the 16th day after the end of the month. These final payment dates represent very little or no change from the orders' present payment dates. The proposed partial payment dates are earlier than those required under the current orders, but are very close to those suggested by the Identical Provisions committee, and compliance should present no hardship to handlers who would already have had the use of the producers' milk for 9 to 23 days.

Pacific Northwest Order

Many of the provisions of the proposed Pacific Northwest order are explained in the "Identical Provisions" portion of this proposed rule, and need not be addressed here. The provisions that deviate somewhat from those proposed for other order areas are the provisions dealing with standards for determining the pool status of producers and handlers, the definition of producer-handlers, the factors upon which payments to producers are calculated, and reporting and payment dates. Because this order is not proposed to be consolidated with any other orders, there is little reason for changing the substance of many of the provisions that are not included in the General Provisions.

Pool Distributing Plant

The pool distributing plant provisions of the proposed Pacific Northwest Order would be changed from the current definition to one that more closely resembles the definition suggested in the identical provisions report. Rather than basing the identification of a pool distributing plant on only 10 percent of the plant's receipts as in-area route dispositions, the order should specify that such a plant have at least 25 percent of its physical receipts distributed as route disposition, and at least 15 percent of its route disposition distributed within the marketing area.

It is not expected that the proposed pooling standard will affect the pool status of any plant that currently does or does not meet the pooling standard of the Pacific Northwest order. In addition, it would remedy a provision that could result in fully regulating a plant that has minimal association with the marketing area.

Pool Supply Plant

For the most part, the current pool supply plant definition of the Pacific Northwest order is appropriate to the marketing conditions in the area. However, the provision that currently *requires* a handler to include producer milk moved directly to pool distributing plants in the shipments on which pool plant performance is calculated would be changed to *allow* the handler to include such movements if the handler wants to qualify its plant for pooling. A plant operator who receives milk at a plant only for manufacturing use also would be able to supply producer milk directly to distributing plants without a requirement that the manufacturing plant be a supply plant.

The Pacific Northwest order's current pool supply plant performance standard of 20 percent of milk receipts shipped to distributing plants should continue to be appropriate for this market. The current March through August period during which supply plants do not have to ship the minimum percentage to distributing plants if they have done so during the previous September through February period would continue to be included in the pool supply plant definition.

As in the other proposed consolidated orders, the market administrator is proposed to have the authority to increase or decrease the order's pooling provisions as marketing conditions change for the purpose of assuring that an adequate supply of milk will be available for fluid use, or to assure that the order does not require handlers to undertake uneconomic movements of milk to maintain: (1) the pool status of their plants, or (2) the pooling of producers who have historically been associated with the market and who help serve Class I needs.

Nonpool Plant

The current definition and exemption for milk produced and processed by state institutions, as contained in the present order's producer-handler definition, would be expanded and moved to be included in the "Nonpool plant" definition contained in the General Provisions. Such entities, along with colleges and universities and charitable organizations, would not be subject to the orders' pricing and pooling provisions as long as they have no sales in commercial channels.

The present Pacific Northwest order provisions allow a state institution to avoid any regulation on the portion of its milk that is used only within the institution, and apply some pricing regulation to that portion that is distributed in commercial channels. In some respects, this arrangement is similar to the situation of partially regulated distributing plants. However, partially regulated distributing plant operators, to avoid obligations under Federal orders, must show that they pay the dairy farmers who ship milk to them at a rate at least commensurate with that paid to producers whose milk is pooled under the order. In any case, they must procure a milk supply in the competitive market. State institutions may have any number of cost advantages over regulated handlers in the production and processing of milk, such as not having to pay a minimum wage and not having to pay property taxes. It would be unjust to allow such institutions to compete with fully regulated handlers in regular commercial channels as if the playing field were level. Therefore, state and other institutions that compete with regulated handlers in regular commercial channels, such as bids for school milk programs, would also be fully regulated.

Producer-Handler

The current Pacific Northwest producer-handler provisions should remain essentially untouched. Some of the "Identical Provisions" features of the producer-handler definition, such as the 150,000-pound thresholds for route dispositions, own farm production, and receipts from pool plants; and the ability to request to operate as both a pool plant and a producer, would be adopted. The rest of the current producer-handler provisions would remain in effect for administrative purposes.

Producer-handlers represent a much larger portion of the Class I dispositions in the Pacific Northwest marketing area than in most other Federal order areas. In many marketing areas, producer-handlers supply 1 percent or less of the Class I sales. In the Pacific Northwest area, however, they furnish almost 10 percent of the market's Class I dispositions. The larger average size of the dairy farmers in the western United States makes more likely the existence of a producer-handler that is a significant factor in the market.

The current order's producer-handler provisions are based on the history of producer-handler operations in this marketing area, reflecting difficulties encountered in order administration, attempts to circumvent order provisions, and court challenges.

In addition to the current order provisions, the producer-handler definition would also contain language clarifying that milk received by the producer-handler at a location other than the producer-handler's processing plant for distribution on routes will be included as a receipt from another handler.

Reserve Supply Unit

The Pacific Northwest order would continue to provide for a cooperative reserve supply unit. The existing provision has many similarities to a reserve supply plant, which is not provided in this order but which is included in several of the proposed consolidated orders.

Under the terms of the present provision, the cooperative members of the reserve supply unit must be located near a pool distributing plant, as a reserve supply plant must be located in the marketing area. Both the reserve supply unit and the reserve supply plant provisions require that the plant or unit operator request prior approval of the market administrator to initiate and cancel their status, both require long-term association with the market, and both provide substantial penalties for failing to meet all required conditions. Although the cooperative unit does not have monthly qualification requirements, it is subject to a call by the market administrator after the market administrator's investigation of the need for supplemental supplies of milk. Because of the current existence of this provision, based on the need shown at a public hearing, and its similarities to a pooling mechanism suggested for other orders, provision for the cooperative reserve supply unit would continue to be included in the proposed Pacific Northwest order.

Producer and Producer Milk

The proposed Pacific Northwest order would contain a "dairy farmer for other markets" provision for each month of the year. The large volume of milk production in California and California's quota system give dairy farmers an incentive to pool production in a volume equal to their quota pounds on the California order, and then attempt to share in the Pacific Northwest Class I market with their over-quota production, for which returns under the California order are much less. At the same time, none of the California Class I returns would be shared with Pacific Northwest producers. Similarly, the reserve supplies for the State-regulated markets of Western Nevada and Montana should not be allowed to share in returns from the Pacific Northwest order's higher classes of utilization while enjoying the benefits of the State orders' Class I returns.

The current provisions of the Pacific Northwest order do not require that a producer's milk be received at pool plants for the producer's first pooled delivery on the market or for any specified period. If a handler meets its overall performance requirements for supplying milk to the market, it should make no difference which individual producer's milk is actually delivered to pool plants as long as the milk of each

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producer participating in the pool is Grade A and available to the market if and when needed. It is expensive, inefficient, and unnecessary to move milk from areas close to nonpool manufacturing plants to bottling plants in the city markets when that milk is not needed for bottling. For the above reasons and the physical fact that there are often great distances and mountainous terrain between plants and farms in the more sparsely populated West, no "touch base" requirements should be included.

This order and other western orders have allowed producers to pool milk on more than one order during the same month. Because of the locations of a number of dairy farmers, their milk may be used by pool plants regulated under more than one order in a single month. These producers also represent a reserve supply for more than one market. Large, multi-market handlers should be given the flexibility to market and transport their milk to fulfill the needs of their customers in the most efficient way possible.

The small degree of change from the current provisions necessary in the pooling provisions of the proposed Pacific Northwest results in very little change proposed for the order's diversion limits. The limit of 80% of the handler's supply of producer milk should remain unchanged, with the months during which the percentage is effective changed from September through April to September through February. These months will correspond to the months during which supply plants must ship 20 percent of their receipts to pool distributing plants. There would be no limit on diversions of producer milk for the months of March through August. These delivery standards have not been overly restrictive nor associated unneeded supplies with the market and should be allowed to continue without change.

Payments to Producers and Cooperative Associations

Although the current Pacific Northwest order contains a multiple component pricing plan very like that proposed to be standard for the consolidated orders, it does not now and would not under this reform process contain a somatic cell adjustment provision. The level of somatic cells in the western U.S. is generally lower than in the east, with an overall average of approximately 250,000 instead of 350,000. This lower somatic cell count would seem to reduce the need for such a provision. Historically, the principal argument for a somatic cell adjuster has been the negative effect of somatic cells on the cheese yields. Although cheese manufacturing in the Northwest is increasing, most cheese manufacturing is done by cooperative associations who have expressed the opinion that an adjustment for somatic cells is a quality issue best dealt with internally. The somatic cell adjustments in the proposed consolidated orders are not incorporated in the proposed Pacific Northwest order.

Announcement of Producer Prices

The dates on which handler reports, market administrator's announcement of producer prices, and payment to producers would remain unchanged from those of the current order.

8. Miscellaneous and Administrative

(a) Consolidation of the Marketing Service, Administrative Expense, and Producer-Settlement Funds

To complete the proposed consolidation of the present 31 Federal orders effectively and equitably, the reserve balances in the marketing service, administrative expense, and producer-settlement funds that have resulted under the individual orders would be combined.

The balances in these three funds should be combined on the same basis that the marketing areas are consolidated into regional orders herein. For instance, the Texas and New Mexico-West Texas marketing areas are merged into a new regional Southwest order. Accordingly, the reserve balances in the marketing service, administrative expense and producer-settlement funds of the two individual orders likewise should be combined into three separate funds established under the consolidated Southwest order.

The marketing areas of the proposed 11 consolidated orders essentially represent the territory covered by the 31 individual orders plus the territory included in the former Tennessee Valley marketing area. Because of this, the handlers and producers servicing the milk needs of the individual markets will continue to furnish the milk needs of the applicable regional market for the most part.

In that regard, the reserve balances in the funds that have resulted under the 31 individual orders should be combined on a marketing area basis into the appropriate separate fund established for each of the 11 regional orders. Any liabilities of such funds under the individual orders would be paid from the appropriate newly established fund of the applicable regional order. Similarly, obligations that are due the separate funds under the individual orders would be paid to the appropriate combined fund of the applicable consolidated order.

In most cases, the entire marketing area of an order or orders is included in the proposed consolidated marketing area of one of the 11 regional orders. Three present marketing areas would be split between two consolidated orders. One county of the present Louisville-Lexington-Evansville (Order 46) marketing area would be included in the Southeast order, and the rest of the territory in the Order 46 marketing area would be included under the Appalachian order. Even though one Order 46 county is included in the proposed Southeast order, all of the present Order 46 producers and handlers are expected to be covered under the proposed consolidated Appalachian order. Accordingly, the balances in the Order 46 marketing service, administrative expense, and producer settlement funds should be consolidated into the three separate funds established for the consolidated Appalachian market.

Different regulatory situations, however, will occur in the other two instances where a current marketing area is divided between two proposed consolidated orders. One county of the current Great Basin (Order 139) marketing area would be included in the consolidated Arizona-Las Vegas order and the rest of the Order 139 marketing area would be included in the consolidated marketing area for the West. Some of the present Order 139 producers and handlers would become regulated under the Arizona-Las Vegas consolidated order and others would become regulated under the regional order for the West. Similarly, two zones of the Michigan Upper Peninsula (Order 44) marketing area would be included in the consolidated Upper Midwest marketing area and the other zone of the Order 44 marketing area would be included in the marketing area for the Mideast regional order. Accordingly, any reserve balances in the marketing service, administrative expense and producer-settlement funds of these two individual orders should be divided equitably among the applicable consolidated orders.

The money accumulated in the marketing service funds of the individual orders is that which has been paid by producers for whom the market administrators are performing such services. Since the marketing areas of the proposed 11 regional orders encompass the territory covered by the individual orders, for the most part, the producers who have contributed to the marketing service funds of the individual orders are expected to continue supplying milk for the consolidated orders. Since marketing service programs will be continued for these producers under the regional orders, it would be appropriate to combine the reserve balances in the marketing service funds of the order or orders that are represented in the consolidation of each of the proposed 11 regional orders.

When the proposed consolidated marketing area includes the marketing area of one or more individual orders, any remaining balance in the marketing service fund of the individual order or orders should be combined in the marketing service fund established for the applicable consolidated order. If a current marketing area is split between two consolidated markets and the regulatory status of producers and handlers is divided between the two regional orders, as is the case with the Michigan Upper Peninsula and Great Basin orders, any balance in the marketing service fund of the individual order should be prorated between the two consolidated orders on the basis of the amount of milk subject to the marketing service deduction that will be covered by each respective regional order (using producer deliveries in the last month the individual orders are in effect but assuming that the marketing areas had been consolidated).

The money paid to the administrative expense fund is each handler's proportionate share of the cost of administering the order. For the most part, handlers currently regulated under the individual orders will continue to be regulated under the proposed consolidated orders. In view of this, it would be an unnecessary administrative and financial burden to allocate the reserve funds of the individual orders back to handlers and then accumulate an adequate reserve for each of the consolidated orders. It would be as equitable and more efficient to combine the remaining administrative monies accumulated under the individual orders in the same manner as the marketing areas are proposed to be combined.

For the orders where the proposed consolidated marketing area includes the regulated territory of one or more of the individual orders, any remaining balance in the administrative expense fund of the individual order or orders would be combined into the administrative expense fund established for the applicable consolidated order. In the situations where the current individual marketing area is split and the regulatory status of producers and handlers is divided (as in the case of the Michigan Upper Peninsula and Great Basin orders) between two consolidated marketing areas, the remaining balance in the administrative expense fund should be prorated between the two regional orders on the basis of the amount of milk that would be pooled and priced under each respective consolidated order (using producer milk deliveries during the last month the individual orders are in effect but assuming that the orders had been consolidated).

Likewise, the producer-settlement fund balances of the individual orders should be combined. They should be combined on the same basis as the marketing areas are consolidated herein. This will enable the producer-settlement funds of the consolidated orders to continue without interruption.

The producers currently supplying the individual markets are expected to supply milk for the proposed consolidated markets. Thus, monetary balances in the producer-settlement funds of the individual orders now would be reflected in the pay prices of the producers who will benefit from the applicable consolidated orders. The combined fund for each proposed consolidated order also would serve as a contingency fund from which money would be available to meet obligations (resulting from audit adjustments and otherwise) occurring under the individual orders.

The same procedure used in combining the remaining balances in the marketing service and administrative expense funds of the individual orders should be followed in combining the producer-settlement fund balances when the individual orders are consolidated. For orders where the consolidated marketing area includes the marketing area of one or more orders, any remaining balance in the producer-settlement fund of the individual order or orders would be combined into the producer-settlement fund established for the applicable consolidated order. In the two situations (Michigan Upper Peninsula and Great Basin) where the marketing area of a current order is split between two proposed consolidated orders and some of the individual market's producers and handlers would be regulated under one consolidated order and others would be regulated under another consolidated order, the balance in the producer-settlement fund should be divided equitably between the two consolidated orders. Since the Michigan Upper Peninsula order is an individual-handler pool market, no producer-settlement fund is provided. The remaining balance in the producer-settlement fund of the Great Basin order should be prorated between the consolidated Arizona-Las Vegas order and the regional order for the West on the basis of the amount of milk that will be pooled and priced under each respective proposed consolidated order (using producer milk deliveries during the last month the individual orders are in effect but assuming that the orders had been consolidated).

(b) Consolidation of the Transportation Credit Balancing Funds

To complete the consolidation process, the reserve balances in the transportation credit balancing funds that are in effect now under three Southeast orders (Carolina, Order 5; Southeast, Order 7; and Louisville-Lexington-Evansville, Order 46) should be consolidated also. These funds should be combined on a marketing area basis. In that regard, the reserve balances in the transportation credit balancing funds of the Carolina and Louisville-Lexington-Evansville orders should be consolidated into a newly established transportation credit balancing fund for the Appalachian order, which also includes the current marketing areas of these two orders with the exception of one county. Similarly, the reserve balance in the transportation credit balancing fund of the present Southeast order should be transferred to the consolidated Southeast order, which includes all of the marketing area of the present Southeast order. These procedures will enable the transportation credits to continue without interruption under these two proposed consolidated orders.

(c) Proposed General Findings

The proposed findings and determinations hereinafter set forth supplement those that were made when the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(1) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in each of the aforesaid marketing areas, and the minimum

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prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in the marketing agreements;

(4) All milk and milk products handled by handlers, as defined in the tentative marketing agreements and the orders as hereby proposed to be amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1000.85 of the General Provisions.

Proposed Marketing Agreements and Order Amending the Orders

The proposed marketing agreements are not included in this proposed rule because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders regulating the handling of milk in the respective marketing areas of these orders is proposed as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Chapter X

Milk marketing orders.

For the reasons set forth in the preamble and under the authority of 7 U.S.C. 601–674, Title 7, chapter X, CFR parts 1002, 1004, 1012, 1013, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1106, 1135, 1137, 1138, and 1139 are proposed to be removed, and Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1134 are proposed to be revised as follows:

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

Subpart A—Scope and Purpose

Sec.
1000.1 Scope and purpose of Part 1000.

Subpart B—Definitions

1000.2 General definitions.
1000.3 Route disposition.
1000.4 Plant.
1000.5 Distributing plant.
1000.6 Supply plant.
1000.8 Nonpool plant.
1000.9 Handler.
1000.14 Other source milk.
1000.15 Fluid milk product.
1000.16 Fluid cream product.
1000.17 [Reserved]
1000.18 Cooperative association.
1000.19 Commercial food processing establishment.

Subpart C—Rules of Practice and Procedure Governing Market Administrators

1000.25 Market administrator.

Subpart D—Rules Governing Order Provisions

1000.26 Continuity and separability of provisions.

Subpart E—Rules of Practice and Procedure Governing Handlers

1000.27 Handler responsibility for records and facilities.
1000.28 Termination of obligations.

Subpart F—Classification of Milk

1000.40 Classes of utilization.
1000.41 [Reserved]
1000.42 Classification of transfers and diversions.
1000.43 General classification rules.
1000.44 Classification of producer milk.
1000.45 Market administrator's reports and announcements concerning classification.

Subpart G—Class Prices

1000.50 Class prices and component prices.
1000.51 [Reserved]
1000.52 Adjusted Class I differentials.
1000.53 Announcement of class prices and component prices.
1000.54 Equivalent price.

Subpart H—Payments for Milk

1000.70 Producer-settlement fund.
1000.71 Payments to the producer-settlement fund.
1000.72 Payments from the producer-settlement fund.
1000.76 Payments by a handler operating a partially regulated distributing plant.
1000.77 Adjustment of accounts.
1000.78 Charges on overdue accounts.

Subpart I—Administrative Assessment and Marketing Service Deduction

1000.85 Assessment for order administration.
1000.86 Deduction for marketing services.

Subpart J—Miscellaneous Regulations

1000.90 Dates.
1000.91–1000.92 [Reserved]
1000.93 OMB control number assigned pursuant to the Paperwork Reduction Act.

Authority: 7 U.S.C. 601–674.

Subpart A—Scope and Purpose

§ 1000.1 Scope and purpose of Part 1000.

This part sets forth certain terms, definitions, and provisions which shall be common to and part of each Federal milk marketing order in 7 CFR, chapter X except as specifically defined otherwise, or modified, or otherwise provided, in an individual order in 7 CFR, chapter X.

Subpart B—Definitions

§ 1000.2 General definitions.

(a) *Act* means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*).

(b) *Order* means the applicable part of Title 7 of the Code of Federal Regulations issued pursuant to Section 8c of the Act as a Federal milk marketing order (as amended).

(c) *Department* means the U.S. Department of Agriculture.

(d) *Secretary* means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(e) *Person* means any individual, partnership, corporation, association, or other business unit.

§ 1000.3 Route disposition.

Route disposition means a delivery to a retail or wholesale outlet (except a plant), either directly or through any distribution facility (including disposition from a plant store, vendor, or vending machine) of a fluid milk product in consumer-type packages or dispenser units classified as Class I milk.

§ 1000.4 Plant.

(a) Except as provided in paragraph (b) of this section, *plant* means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products are received, processed, or packaged, including a facility described in paragraph (b)(2) of this section if the facility receives the milk of more than one dairy farmer.

(b) Plant shall not include:

(1) A separate building without stationary storage tanks that is used only as a reload point for transferring bulk milk from one tank truck to another or a separate building used only as a distribution point for storing packaged fluid milk products in transit for route disposition; or

(2) An on-farm facility operated as part of a single dairy farm entity for the separation of cream and skim or the removal of water from milk.

§ 1000.5 Distributing plant.

Distributing plant means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and at which fluid milk products are processed or packaged and from which there is route disposition.

§ 1000.6 Supply plant.

Supply plant means a plant, other than a distributing plant, that is approved by a duly constituted regulatory agency for the handling of Grade A milk and at which fluid milk products are received or from which fluid milk products are transferred or diverted.

§ 1000.8 Nonpool plant.

Nonpool plant means any milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) *A plant fully regulated under another Federal order* means a plant that is fully subject to the pricing and pooling provisions of another Federal order.

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined under any Federal order.

(c) *Partially regulated distributing plant* means a nonpool plant that is not a plant fully regulated under another Federal order, a producer-handler plant, or an exempt plant, from which there is route disposition in the marketing area during the month.

(d) *Unregulated supply plant* means a supply plant that does not qualify as a pool supply plant and is not a plant fully regulated under another Federal order, a producer-handler plant, or an exempt plant.

(e) *An exempt plant* means a plant described in this paragraph that is exempt from the pricing and pooling provisions of any order provided that the operator of the plant files reports as prescribed by the market administrator to enable determination of the handler's exempt status:

(1) A plant that is operated by a governmental agency that has no route disposition in commercial channels;

(2) A plant that is operated by a duly accredited college or university disposing of fluid milk products only through the operation of its own campus with no route disposition in commercial channels;

(3) A plant from which the total route disposition is for individuals or institutions for charitable purposes without remuneration; or

(4) A plant that has route disposition of 150,000 pounds or less during the month.

§ 1000.9 Handler.

Handler means:

(a) Any person who operates a pool plant or a nonpool plant.

(b) Any person who receives packaged fluid milk products from a plant for resale and distribution to retail or wholesale outlets, any person who as a broker negotiates a purchase or sale of fluid milk products or fluid cream products from or to any pool or nonpool plant, and any person who by purchase or direction causes milk of producers to be picked up at the farm and/or moved to a plant. Persons who qualify as handlers only under this paragraph under any Federal milk order in 7 CFR, chapter X are not subject to the payment provisions of §§ ____.70, ____.71, ____.72, ____.73, ____.76, and ____.85 of that order.

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer and delivers to pool plants or diverts to nonpool plants pursuant to § __.13 of the order. The operator of a pool plant receiving milk from a cooperative association may be the handler for such milk if both parties notify the market administrator of this agreement prior to the time that the milk is delivered to the pool plant and the plant operator purchases the milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples.

§ 1000.14 Other source milk.

Other source milk means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, handlers described in § 1000.9(c), or pool plants;

(b) Products (other than fluid milk products, fluid cream products, and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(c) Receipts of any milk product (other than a fluid milk product or a fluid cream product) for which the handler fails to establish a disposition.

§ 1000.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, *fluid milk product* means any milk products in fluid or frozen form containing less than 9 percent butterfat that are intended to be used as beverages. Such products include, but are not limited to: Milk, fat-free milk, lowfat milk, light milk, reduced fat milk, milk drinks, eggnog and cultured buttermilk, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids, sterilized, concentrated (to not more than 50 percent total milk solids), or reconstituted.

(b) The term fluid milk product shall not include:

(1) Plain or sweetened evaporated milk/skim milk, sweetened condensed milk/skim milk, formulas especially prepared for infant feeding or meal replacement, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk equivalent in any modified product specified in paragraph (a) of this section that is greater than an equal volume of an unmodified product of the same nature and butterfat content.

§ 1000.16 Fluid cream product.

Fluid cream product means cream (other than plastic cream or frozen cream), including sterilized cream, or a mixture of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1000.17 [Reserved]

§ 1000.18 Cooperative association.

Cooperative association means any cooperative marketing association of producers which the Secretary determines is qualified under the provisions of the Capper-Volstead Act, has full authority in the sale of milk of its members, and is engaged in marketing milk or milk products for its members. A federation of two or more cooperatives incorporated under the laws of any state will be considered a cooperative association under any Federal milk order if all member cooperatives meet the requirements of this section.

§ 1000.19 Commercial food processing establishment.

Commercial food processing establishment means any facility, other than a milk plant, to which fluid milk products and fluid cream products are

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disposed of, or producer milk is diverted, that uses such receipts as ingredients in food products and has no other disposition of fluid milk products other than those received in consumer-type packages (1 gallon or less). Producer milk diverted to commercial food processing establishments shall be subject to the same provisions relating to diversions to plants, including, but not limited to, §§ ____.13 and ____.52 of each Federal milk order in 7 CFR, chapter X.

Subpart C—Rules of Practice and Procedure Governing Market Administrators

§ 1000.25 Market administrator.

(a) *Designation.* The agency for the administration of the order shall be a market administrator selected by the Secretary and subject to removal at the Secretary's discretion. The market administrator shall be entitled to compensation determined by the Secretary.

(b) *Powers.* The market administrator shall have the following powers with respect to each order under his/her administration:

(1) Administer the order in accordance with its terms and provisions;

(2) Maintain funds outside of the United States Department of the Treasury for the purpose of administering the order;

(3) Make rules and regulations to effectuate the terms and provisions of the order;

(4) Receive, investigate, and report complaints of violations to the Secretary; and

(5) Recommend amendments to the Secretary.

(c) *Duties.* The market administrator shall perform all the duties necessary to administer the terms and provisions of each order under his/her administration, including, but not limited to, the following:

(1) Employ and fix the compensation of persons necessary to enable him/her to exercise the powers and perform the duties of the office;

(2) Pay out of funds provided by the administrative assessment, except expenses associated with functions for which the order provides a separate charge, all expenses necessarily incurred in the maintenance and functioning of the office and in the performance of the duties of the office, including the market administrator's compensation;

(3) Keep records which will clearly reflect the transactions provided for in the order, and upon request by the Secretary, surrender the records to a successor or such other person as the Secretary may designate;

(4) Furnish information and reports requested by the Secretary and submit office records for examination by the Secretary;

(5) Announce publicly at his/her discretion, unless otherwise directed by the Secretary, by such means as he/she deems appropriate, the name of any handler who, after the date upon which the handler is required to perform such act, has not:

(i) Made reports required by the order;

(ii) Made payments required by the order; or

(iii) Made available records and facilities as required pursuant to § 1000.27;

(6) Prescribe reports required of each handler under the order. Verify such reports and the payments required by the order by examining records (including such papers as copies of income tax reports, fiscal and product accounts, correspondence, contracts, documents or memoranda of the handler, and the records of any other persons that are relevant to the handler's obligation under the order), by examining such handler's milk handling facilities, and by such other investigation as the market administrator deems necessary for the purpose of ascertaining the correctness of any report or any obligation under the order. Reclassify skim milk and butterfat received by any handler if such examination and investigation discloses that the original classification was incorrect;

(7) Furnish each regulated handler a written statement of such handler's accounts with the market administrator promptly each month. Furnish a corrected statement to such handler if verification discloses that the original statement was incorrect; and

(8) Prepare and disseminate publicly for the benefit of producers, handlers, and consumers such statistics and other information concerning operation of the order and facts relevant to the provisions thereof (or proposed provisions) as do not reveal confidential information.

Subpart D—Rules Governing Order Provisions

§ 1000.26 Continuity and separability of provisions.

(a) *Effective time.* The provisions of the order or any amendment to the order shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

(b) *Suspension or termination.* The Secretary shall suspend or terminate any or all of the provisions of the order whenever he/she finds that such provision(s) obstructs or does not tend to effectuate the declared policy of the Act. The order shall terminate whenever the provisions of the Act authorizing it cease to be in effect.

(c) *Continuing obligations.* If upon the suspension or termination of any or all of the provisions of the order there are any obligations arising under the order, the final accrual or ascertainment of which requires acts by any handler, by the market administrator or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination.

(d) *Liquidation.* (1) Upon the suspension or termination of any or all provisions of the order, the market administrator, or such other liquidating agent designated by the Secretary, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his/her possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition; and

(2) If a liquidating agent is so designated, all assets and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

(e) *Separability of provisions.* If any provision of the order or its application to any person or circumstances is held invalid, the application of such provision and of the remaining provisions of the order to other persons or circumstances shall not be affected thereby.

Subpart E—Rules of Practice and Procedure Governing Handlers

§ 1000.27 Handler responsibility for records and facilities.

Each handler shall maintain and retain records of its operations and make such records and its facilities available to the market administrator. If adequate records of a handler, or of any other persons, that are relevant to the obligation of such handler are not maintained and made available, any

skim milk and butterfat required to be reported by such handler for which adequate records are not available shall be considered as used in the highest-priced class.

(a) *Records to be maintained.* (1) Each handler shall maintain records of its operations (including, but not limited to, records of purchases, sales, processing, packaging, and disposition) as are necessary to verify whether such handler has any obligation under the order, and if so, the amount of such obligation. Such records shall be such as to establish for each plant or other receiving point for each month:

(i) The quantities of skim milk and butterfat contained in, or represented by, products received in any form, including inventories on hand at the beginning of the month, according to form, time, and source of each receipt;

(ii) The utilization of all skim milk and butterfat showing the respective quantities of such skim milk and butterfat in each form disposed of or on hand at the end of the month; and

(iii) Payments to producers, dairy farmers and cooperative associations, including the amount and nature of any deductions and the disbursement of money so deducted.

(2) Each handler shall keep such other specific records as the market administrator deems necessary to verify or establish such handler's obligation under the order.

(b) *Availability of records and facilities.* Each handler shall make available all records pertaining to such handler's operations and all facilities the market administrator finds are necessary to verify the information required to be reported by the order and/or to ascertain such handler's reporting, monetary or other obligation under the order. Each handler shall permit the market administrator to weigh, sample, and test milk and milk products and observe plant operations and equipment and make available to the market administrator such facilities as are necessary to carry out his/her duties.

(c) *Retention of records.* All records required under the order to be made available to the market administrator shall be retained by the handler for a period of 3 years to begin at the end of the month to which such records pertain. If, within such 3-year period, the market administrator notifies the handler in writing that the retention of such records, or of specified records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such records, or specified records, until further written notification from the market administrator. The market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

§ 1000.28 Termination of obligations.

The provisions of this section shall apply to any obligation under the order for the payment of money:

(a) Except as provided in paragraphs (b) and (c) of this section, the obligation of any handler to pay money required to be paid under the terms of the order shall terminate 2 years after the last day of the month during which the market administrator receives the handler's report of receipts and utilization on which such obligation is based, unless within such 2-year period, the market administrator notifies the handler in writing that such money is due and payable. Service of such written notice shall be complete upon mailing to the handler's last known address and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) on which such obligation is based; and

(3) If the obligation is payable to one or more producers or to a cooperative association, the name of such producer(s) or such cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under the order, to make available to the market administrator all records required by the order to be made available, the market administrator may notify the handler in writing, within the 2-year period provided for in paragraph (a) of this section, of such failure or refusal. If the market administrator so notifies a handler, the said 2-year period with respect to such obligation shall not begin to run until the first day of the month following the month during which all such records pertaining to such obligation are made available to the market administrator.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under the order to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Unless the handler files a petition pursuant to section 8c(15)(A) of the Act and the applicable rules and regulations (7 CFR 900.50 *et seq.*) within the applicable 2-year period indicated below, the obligation of the market administrator:

(1) To pay a handler any money which such handler claims is due under the terms of the order shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claim were received; or

(2) To refund any payment made by a handler (including a deduction or offset by the market administrator) shall terminate 2 years after the end of the month during which payment was made by the handler.

Subpart F—Classification of Milk

§ 1000.40 Classes of utilization.

Except as provided in § 1000.42, all skim milk and butterfat required to be reported pursuant to § ____.30 of each Federal milk order in 7 CFR, chapter X shall be classified as follows:

(a) *Class I milk* shall be all skim milk and butterfat:

(1) Disposed of in the form of fluid milk products, except as otherwise provided in this section;

(2) Used to produce fluid milk products modifed in volume by the addition of nonmilk ingredients and/or previously processed and priced skim milk and butterfat, including milkshake and milkshake drinks sold in containers less than one half-gallon;

(3) In packaged fluid milk products in inventory at the end of the month, exclusive of skim milk and butterfat accounted for in paragraph (a)(2) of this section; and

(4) In shrinkage assigned pursuant to § 1000.43(b).

(b) *Class II milk* shall be all skim milk and butterfat:

(1) In fluid milk products in containers larger than 1 gallon and fluid cream products disposed of or diverted to a commercial food processing establishment if the market administrator is permitted to audit the records of the commercial food processing establishment for the purpose of verification. Otherwise, such uses shall be Class I;

(2) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, dry curd cottage cheese, ricotta cheese, pot cheese, Creole cheese, cream cheese and any similar soft, high-moisture cheese resembling cottage cheese in form or use;

(ii) Milkshake and ice milk mixes (or bases), frozen desserts, and frozen dessert mixes distributed in half-gallon containers or larger and intended to be used in soft or semi-solid form;

(iii) Aerated cream, frozen cream, sour cream, sour half-and-half, sour cream

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mixtures containing nonmilk items, yogurt, and any other semi-solid product resembling a Class II product;

(iv) Custards, puddings, pancake mixes, coatings, batter, and similar products;

(v) Buttermilk biscuit mixes and other buttermilk for baking that contain food starch in excess of 2% of the total solids, provided that the product is labeled to indicate the food starch content;

(vi) Formulas especially prepared for infant feeding or meal replacement;

(vii) Candy, soup, bakery products and other prepared foods which are processed for general distribution to the public, and intermediate products, including sweetened condensed milk, to be used in processing such prepared food products;

(viii) A fluid cream product or any product containing artificial fat or fat substitutes that resembles a fluid cream product, except as otherwise provided in paragraph (c) of this section;

(ix) Any product not otherwise specified in this section; and

(3) In shrinkage assigned pursuant to § 1000.43(b).

(c) *Class III milk* shall be all skim milk and butterfat:

(1) Used to produce:

(i) Spreadable cheeses (other than cream cheese) and hard cheese of types that may be shredded, grated, or crumbled and that are not included in paragraph (b)(2)(i) of this section;

(ii) Plastic cream, anhydrous milkfat, and butteroil; and

(iii) Evaporated or sweetened condensed milk/skim milk in a consumer-type package;

(2) In inventory at the end of the month of fluid milk products and fluid cream products in bulk form;

(3) In any products classified pursuant to paragraphs (a) or (b) of this section that are destroyed or lost by a handler in a vehicular accident, flood, fire, or in a similar occurrence beyond the handler's control, to the extent that the quantities destroyed or lost can be verified from records satisfactory to the market administrator;

(4) In the skim milk equivalent of nonfat milk solids used to modify a fluid milk product that has not been accounted for in Class I; and

(5) In shrinkage assigned pursuant to § 1000.43(b).

(d) *Class IV milk* shall be all skim milk and butterfat:

(1) Used to produce:

(i) Butter; and

(ii) Any milk product in dried form; and

(2) In shrinkage assigned pursuant to § 1000.43(b).

§ 1000.41 [Reserved]

§ 1000.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification shall be subject to the following conditions:

(1) The skim milk and butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the receiving plant after the computations pursuant to § 1000.44(a)(9) and the corresponding step of § 1000.44(b);

(2) If the transferring plant received during the month other source milk to be allocated pursuant to § 1000.44(a)(3) or the corresponding step of § 1000.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferring handler received during the month other source milk to be allocated pursuant to § 1000.44(a)(8) or (9) or the corresponding steps of § 1000.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the receiving plant.

(b) *Transfers and diversions to a plant regulated under another Federal order.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant to a plant regulated under another Federal order shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from a plant regulated under another Federal order of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1) or (2) of this section:

(1) As Class I milk, if transferred as packaged fluid milk products;

(2) If transferred or diverted in bulk form, classification shall be in the classes to which allocated under the other order:

(i) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers in bulk form shall be classified as other than Class I to the extent that such utilization is available for such classification pursuant to the allocation provisions of the other order;

(ii) If diverted, the diverting handler must request a classification other than Class I. If the plant receiving the diverted milk does not have sufficient utilization available for the requested classification and some of the diverted milk is consequently assigned to Class I use, the diverting handler shall be given the option of designating the entire load of diverted milk as producer milk at the plant physically receiving the milk. Alternatively, if the diverting handler so chooses, it may designate which dairy farmers whose milk was diverted during the month will be designated as producers under the order physically receiving the milk. If the diverting handler declines to accept either of these options, the market administrator will prorate the portion of diverted milk in excess of Class II, III, and IV use among all the dairy farmers whose milk was received from the diverting handler on the last day of the month, then the second-to-last day, and continuing in that fashion until the excess diverted milk has been assigned as producer milk under the receiving order; and

(iii) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be Class I, subject to adjustment when such information is available.

(c) *Transfers and diversions to producer-handlers and to exempt plants.* Skim milk or butterfat that is transferred or diverted from a pool plant to a producer-handler under any Federal order in 7 CFR, chapter X or to an exempt plant shall be classified:

(1) As Class I milk if transferred or diverted to a producer-handler;

(2) As Class I milk if transferred to an exempt plant in the form of a packaged fluid milk product; and

(3) In accordance with the utilization assigned to it by the market administrator if transferred or diverted in the form of a bulk fluid milk product or transferred in the form of a bulk fluid cream product to an exempt plant. For this purpose, the receiving handler's utilization of skim milk and butterfat in each class, in series beginning with Class IV, shall be assigned to the extent possible to its receipts of skim milk and butterfat, in bulk fluid cream products, and bulk fluid milk products, respectively, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not a plant regulated under another order in 7 CFR, chapter X, an exempt plant, or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or transferred in the form of a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i)(A) and (B) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization, excluding the milk equivalent of both nonfat milk solids and concentrated milk used in the plant during the month, to its receipts as set forth in paragraphs (d)(2)(ii) through (viii) of this section:

(A) The transferring handler or diverting handler claims such classification in such handler's report of receipts and utilization filed pursuant to § ____.30 of each Federal milk order in 7 CFR, chapter X for the month within which such transaction occurred; and

(B) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order in 7 CFR, chapter X from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(B) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from plants regulated under other Federal orders in 7 CFR, chapter X;

(C) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(D) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from plants regulated under other Federal orders in 7 CFR, chapter X;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and plants regulated under other Federal orders in 7 CFR, chapter X;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant regulated under any Federal order in 7 CFR, chapter X, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the receiving plant, shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(B) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from plants regulated under other Federal orders in 7 CFR, chapter X;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(A) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(B) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal order in 7 CFR, chapter X which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and plants regulated under other Federal orders in 7 CFR, chapter X shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization and then to all other utilization, in sequence beginning with Class IV at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and plants regulated under other Federal orders in 7 CFR, chapter X shall be assigned, pro rata among such plants, to the extent possible to any remaining utilization, in sequence beginning with Class IV at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal order in 7 CFR, chapter X shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

§ 1000.43 General classification rules.

In determining the classification of producer milk pursuant to § 1000.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § ____.30 of each Federal milk order in 7 CFR, chapter X and shall compute separately for each pool plant, and for each cooperative association with respect to milk for which it is the handler pursuant to § 1000.9(c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1000.40 and 1000.42, and paragraph (b) of this section.

(b) For purposes of classifying all milk reported by a handler pursuant to § ____.30 of each Federal milk order in 7 CFR, chapter X, the market administrator shall:

(1) Determine the shrinkage or overage of skim milk and butterfat for each pool plant and for each handler described in § 1000.9(c) by subtracting total utilization from total receipts. Any positive difference would be shrinkage, and any negative difference would be overage;

(2) Prorate the shrinkage or overage computed in paragraph (b)(1) of this section to the respective quantities of skim milk and butterfat reported in each class. In the case of a handler described in § 1000.9(c), the proration of shrinkage shall be based upon the utilization of the plants to which the milk was delivered; and

(3) Add the prorated shrinkage to, or subtract the prorated overage from, the handler's reported utilization. The results shall be known as the gross utilization in each class.

(c) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by the handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids.

(d) Skim milk and butterfat contained in receipts of bulk concentrated fluid milk and nonfluid milk products that are reconstituted for fluid use shall be assigned to Class I use, up to the reconstituted portion of labeled reconstituted fluid milk products, on a pro rata basis (except for any Class I use

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of specific concentrated receipts that is established by the handler) prior to any assignments under § 1000.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under § 1000.44 on a pro rata basis, unless a specific use of such receipts is established by the handler.

§ 1000.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in § 1000.9(a) for each pool plant of the handler separately and for each handler described in § 1000.9(c) the classification of producer milk by allocating the handler's receipts of skim milk and butterfat to the gross utilization of such receipts pursuant to § 1000.43(b)(3) by such handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the pounds of skim milk in Class I the pounds of skim milk in:

(i) Receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal order in 7 CFR, chapter X is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order in 7 CFR, chapter X;

(ii) Packaged fluid milk products in inventory at the beginning of the month. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal order in 7 CFR, chapter X in the immediately preceding month;

(iii) Fluid milk products received in packaged form from plants regulated under other Federal orders in 7 CFR, chapter X;

(iv) Any remaining receipts of skim milk shall be allocated pursuant to paragraph (a)(3)(iv) of this section.

(2) Subtract from the pounds of skim milk in Class II the pounds of skim milk in the receipts of skim milk in bulk concentrated fluid milk products and in other source milk (except other source milk received in the form of an unconcentrated fluid milk product or a fluid cream product) that is used to produce, or added to, any product in Class II (excluding the quantity of such skim milk that was classified as Class III milk pursuant to § 1000.40(c)(4)). Any remaining receipts of skim milk shall be allocated pursuant to paragraph (a)(3)(iv) of this section.

(3) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class IV, the pounds of skim milk in:

(i) Receipts of bulk concentrated fluid milk products and other source milk (except other source milk received in the form of an unconcentrated fluid milk product);

(ii) Receipts of fluid milk products and bulk fluid cream products for which appropriate health approval is not established and from unidentified sources;

(iii) Receipts of fluid milk products and bulk fluid cream products from an exempt plant;

(iv) Fluid milk products and bulk fluid cream products received, or acquired for distribution, from a producer-handler as defined under this order or any other Federal order in 7 CFR, chapter X; and

(v) Any receipts not subtracted pursuant to paragraphs (a)(1) and (a)(2) of this section.

(4) Subtract from the pounds of skim milk remaining in all classes other than Class I, in sequence beginning with Class IV, the receipts of fluid milk products from an unregulated supply plant that were not previously subtracted in this section for which the handler requests classification other than Class I, but not in excess of the pounds of skim milk remaining in these other classes combined.

(5) Subtract from the pounds of skim milk remaining in all classes other than Class I, in sequence beginning with Class IV, receipts of fluid milk products from an unregulated supply plant that were not subtracted in previous paragraphs, and which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(5)(i) through (iii) of this section;

(i) Multiply by 1.25 the pounds of skim milk remaining in Class I at this allocation step;

(ii) Subtract from the above result the pounds of skim milk in receipts of producer milk and fluid milk products from pool plants of other handlers; and

(iii) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants remaining at this pool plant is of all such receipts remaining pursuant to this allocation step.

(6) Subtract from the pounds of skim milk remaining in all classes other than Class I, in sequence beginning with Class IV, the pounds of skim milk in receipts of bulk fluid milk products from a handler regulated under another Federal order in 7 CFR, chapter X that are in excess of bulk fluid milk products transferred or diverted to such handler, if other than Class I classification is requested, but not in excess of the pounds of skim milk remaining in these classes combined.

(7) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III (or Class IV if the plant had only Class IV utilization), the pounds of skim milk in fluid milk products and bulk fluid cream products in inventory at the beginning of the month that were not previously subtracted in this section.

(8) Subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in all other classes combined, and in sequence beginning with Class IV, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not previously subtracted in this section and that were not offset by transfers or diversions of fluid milk products to the unregulated supply plant from which fluid milk products to be allocated at this step were received.

(9) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from a handler regulated under another Federal order in 7 CFR, chapter X that are in excess of bulk fluid milk products transferred or diverted to such handler that were not subtracted in paragraph (a)(6) of this section;

(i) Such subtraction shall be pro rata to the pounds of skim milk in Class I and in all other classes combined, with the quantity prorated to all classes combined being subtracted in sequence beginning with Class IV, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(A) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1000.45(a); or

(B) The total pounds of skim milk remaining in each class at this allocation step.

(ii) [Reserved]

(10) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1000.42(a).

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraphs (a) and (b) of this section.

§ 1000.45 Market administrator's reports and announcements concerning classification.

(a) Whenever required for the purpose of allocating receipts from other Federal order plants pursuant to § 1000.44(a)(9) and the corresponding step of § 1000.44(b), the market administrator shall estimate and publicly announce the utilization (to the nearest whole percentage) in Class I during the month of skim milk and butterfat, respectively, in producer milk of all handlers. The estimate shall be based upon the most current available data and shall be final for such purpose.

(b) The market administrator shall report to the other Federal order market administrators, as soon as possible after the handlers' reports of receipts and utilization are received, the class to which receipts from other Federal order plants are allocated pursuant to §§ 1000.43(d) and 1000.44 (including any reclassification of inventories of bulk concentrated fluid milk products), and thereafter any change in allocation required to correct errors disclosed on the verification of such report.

(c) The market administrator shall furnish each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to a plant fully regulated under another Federal order in 7 CFR, chapter X the class to which the shipments were allocated by the market administrator of the other Federal order in 7 CFR, chapter X on the basis of the report by the receiving handler and, as necessary, any changes in the allocation arising from the verification of such report.

(d) The market administrator shall report to each cooperative association which so requests, the percentage of producer milk delivered by members of the association that was used in each class by each handler receiving the milk. For the purpose of this report, the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by the handler.

Subpart G—Class Prices

§ 1000.50 Class prices and component prices.

Subject to the provisions of § 1000.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:

(a) *Class I price.* The Class I price shall be .965 times the Class I skim milk price plus 3.5 times the Class I butterfat price.

(b) *Class II price.* The Class II price shall be .965 times the Class II skim milk price plus 3.5 times the month's butterfat price.

(c) *Class III price.* The Class III price shall be .965 times the Class III skim milk price plus 3.5 times the month's butterfat price.

(d) *Class IV price.* The Class IV price shall be .965 times the Class IV skim milk price plus 3.5 times the month's butterfat price.

(e) *Class I differential price.* The Class I differential price shall be the difference between the current month's Class I and Class III prices (this price may be negative).

(f) *Class II differential price.* The Class II differential price shall be the difference between the current month's Class II and Class IV prices.

(g) *Class I skim milk price.* The Class I skim milk price per hundredweight, rounded to the nearest cent, shall be the adjusted Class I differential effective at the location of the plant as specified in § 1000.52(a) plus a six month declining average computed by totaling the value of the higher of Class III or Class IV skim milk price for each month, starting with the second preceding month, multiplied by a factor of six and reducing the factor by one for each preceding month and dividing the sum by 21.

(h) *Class II skim milk price.* The Class II skim milk price per hundredweight shall be the Class IV skim milk price for the month plus 70 cents.

(i) *Class III skim milk price.* The Class III skim milk price per hundredweight, rounded to the nearest cent, shall be the protein price per pound times 3.3 pounds of protein plus the other solids price per pound times 5.7 pounds of other solids;

(j) *Class IV skim milk price.* The Class IV skim milk price per hundredweight, rounded to the nearest cent, shall be the nonfat solids price per pound times 9 pounds of nonfat solids.

(k) *Class I butterfat price.* The Class I butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the adjusted Class I differential effective at the location of the plant as specified in § 1000.52(a) divided by 100, plus a six month declining average computed by totaling the value of the butterfat price for each month, starting with the second preceding month, multiplied by a factor of six and reducing the factor by one for each preceding month and dividing the sum by 21.

(l) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the National Agricultural Statistical Service (NASS) AA Butter survey price as reported by the Department less .079 (make allowance), with the result divided by 0.82.

(m) *Nonfat solids price.* The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the NASS nonfat dry milk survey price as reported by the Department less $0.125 (make allowance), with the result divided by 0.96.

(n) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent shall be the total of:

(1) The NASS 40-lb block cheese survey price as reported by the Department less 12.7 cents, with the result multiplied by 1.32; and

(2) Multiply by 1.20 an amount computed as follows: The NASS 40-lb block cheese survey price as reported by the Department less 12.7 cents, with the result multiplied by 1.582 then reduced by the butterfat price.

(o) *Other solids price.* The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the NASS dry whey survey price as reported by the Department minus 10 cents, with the result divided by 0.968.

(p) *Somatic cell adjustment.* (1) The somatic cell adjustment rate, per 1,000 somatic cells, rounded to five decimal places, shall be computed by multiplying .0005 times the monthly NASS 40-pound block cheese survey price;

(2) The somatic cell adjustment, per hundredweight, shall be determined by subtracting from 350 the somatic cell count (in thousands) of the milk, multiplying the difference by the somatic cell adjustment rate, and rounding to the nearest full cent.

§ 1000.51 [Reserved]

§ 1000.52 Adjusted Class I differentials.

The Class I differential adjusted for location to be used in § 1000.50(g) and (k) shall be as follows, except that:

(1) Under the Option 1B Revenue-Enhancement Phase-In, the differential shall be increased by $1.10 in 1999, $.70 in 2000, $.40 in 2001, and $.20 in 2002; and

(2) Under the Option 1B Revenue Neutral Phase-In, the differential shall be increased by $.55 in 1999, $.35 in 2000, $.20 in 2001, and $.10 in 2002:

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COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
AUTAUGA	AL	3.30	3.12	2.96	2.79	2.63	2.47
BALDWIN	AL	3.50	3.43	3.29	3.14	3.00	2.85
BARBOUR	AL	3.45	3.27	3.14	3.00	2.87	2.74
BIBB	AL	3.10	2.93	2.78	2.63	2.48	2.33
BLOUNT	AL	3.10	2.80	2.62	2.45	2.27	2.09
BULLOCK	AL	3.30	3.16	3.04	2.91	2.79	2.67
BUTLER	AL	3.45	3.26	3.11	2.97	2.82	2.68
CALHOUN	AL	3.10	2.92	2.75	2.59	2.42	2.26
CHAMBERS	AL	3.10	3.05	2.92	2.79	2.66	2.53
CHEROKEE	AL	3.10	2.82	2.66	2.51	2.35	2.19
CHILTON	AL	3.10	3.02	2.86	2.71	2.55	2.39
CHOCTAW	AL	3.30	3.23	3.06	2.90	2.73	2.56
CLARKE	AL	3.45	3.25	3.10	2.94	2.79	2.64
CLAY	AL	3.10	2.94	2.80	2.65	2.51	2.37
CLEBURNE	AL	3.10	2.93	2.78	2.63	2.48	2.33
COFFEE	AL	3.45	3.28	3.16	3.05	2.93	2.81
COLBERT	AL	2.90	2.67	2.50	2.34	2.17	2.01
CONECUH	AL	3.45	3.27	3.13	3.00	2.86	2.73
COOSA	AL	3.10	3.02	2.86	2.71	2.55	2.39
COVINGTON	AL	3.45	3.28	3.15	3.03	2.90	2.78
CRENSHAW	AL	3.45	3.26	3.12	2.97	2.83	2.69
CULLMAN	AL	3.10	2.79	2.60	2.41	2.22	2.03
DALE	AL	3.45	3.28	3.16	3.05	2.93	2.81
DALLAS	AL	3.30	3.13	2.98	2.82	2.67	2.52
DE KALB	AL	2.90	2.68	2.53	2.38	2.23	2.08
ELMORE	AL	3.30	3.12	2.96	2.81	2.65	2.49
ESCAMBIA	AL	3.45	3.28	3.16	3.04	2.92	2.80
ETOWAH	AL	3.10	2.81	2.65	2.48	2.32	2.15
FAYETTE	AL	3.10	2.83	2.68	2.54	2.39	2.24
FRANKLIN	AL	2.90	2.68	2.53	2.39	2.24	2.09
GENEVA	AL	3.45	3.29	3.19	3.08	2.98	2.87
GREENE	AL	3.10	3.03	2.88	2.72	2.57	2.42
HALE	AL	3.10	3.03	2.88	2.73	2.58	2.43
HENRY	AL	3.45	3.28	3.17	3.05	2.94	2.82
HOUSTON	AL	3.45	3.29	3.19	3.08	2.98	2.87
JACKSON	AL	2.90	2.66	2.50	2.33	2.17	2.00
JEFFERSON	AL	3.10	2.90	2.72	2.55	2.37	2.19
LAMAR	AL	3.10	2.84	2.70	2.55	2.41	2.27
LAUDERDALE	AL	2.90	2.65	2.48	2.30	2.13	1.95
LAWRENCE	AL	2.90	2.66	2.49	2.31	2.14	1.97
LEE	AL	3.30	3.06	2.95	2.83	2.72	2.60
LIMESTONE	AL	2.90	2.64	2.44	2.25	2.05	1.86
LOWNDES	AL	3.30	3.14	2.99	2.85	2.70	2.56
MACON	AL	3.30	3.14	3.01	2.87	2.74	2.60
MADISON	AL	2.90	2.64	2.44	2.25	2.05	1.86
MARENGO	AL	3.30	3.13	2.98	2.83	2.68	2.53
MARION	AL	3.10	2.81	2.65	2.48	2.32	2.15
MARSHALL	AL	2.90	2.66	2.49	2.33	2.16	1.99
MOBILE	AL	3.50	3.43	3.27	3.12	2.96	2.81
MONROE	AL	3.45	3.26	3.12	2.97	2.83	2.69
MONTGOMERY	AL	3.30	3.13	2.99	2.84	2.70	2.55
MORGAN	AL	2.90	2.65	2.47	2.30	2.12	1.94
PERRY	AL	3.10	3.03	2.89	2.74	2.60	2.45
PICKENS	AL	3.10	2.93	2.78	2.64	2.49	2.34
PIKE	AL	3.45	3.26	3.12	2.98	2.84	2.70
RANDOLPH	AL	3.10	2.95	2.82	2.69	2.56	2.43
RUSSELL	AL	3.30	3.16	3.05	2.93	2.82	2.70
SHELBY	AL	3.10	2.91	2.75	2.58	2.42	2.25
ST. CLAIR	AL	3.10	2.90	2.72	2.54	2.36	2.18
SUMTER	AL	3.10	3.04	2.90	2.75	2.61	2.47
TALLADEGA	AL	3.10	2.92	2.76	2.61	2.45	2.29
TALLAPOOSA	AL	3.10	3.04	2.90	2.76	2.62	2.48
TUSCALOOSA	AL	3.10	2.92	2.76	2.61	2.45	2.29
WALKER	AL	3.10	2.81	2.65	2.48	2.32	2.15
WASHINGTON	AL	3.45	3.25	3.11	2.96	2.82	2.67
WILCOX	AL	3.30	3.14	3.00	2.86	2.72	2.58
WINSTON	AL	3.10	2.80	2.61	2.43	2.24	2.06
ARKANSAS	AR	2.90	2.71	2.59	2.46	2.34	2.22
ASHLEY	AR	3.10	2.92	2.76	2.60	2.44	2.28
BAXTER	AR	2.60	2.36	2.17	1.97	1.78	1.59

COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
BENTON	AR	2.60	2.30	2.04	1.79	1.53	1.28
BOONE	AR	2.60	2.33	2.11	1.88	1.66	1.44
BRADLEY	AR	2.90	2.82	2.66	2.50	2.34	2.18
CALHOUN	AR	2.90	2.80	2.62	2.45	2.27	2.09
CARROLL	AR	2.60	2.31	2.07	1.82	1.58	1.34
CHICOT	AR	3.10	2.93	2.78	2.64	2.49	2.34
CLARK	AR	2.90	2.64	2.45	2.27	2.08	1.89
CLAY	AR	2.60	2.42	2.30	2.17	2.05	1.92
CLEBURNE	AR	2.80	2.53	2.36	2.18	2.01	1.84
CLEVELAND	AR	2.90	2.81	2.63	2.46	2.28	2.11
COLUMBIA	AR	3.10	2.86	2.64	2.42	2.20	1.98
CONWAY	AR	2.80	2.56	2.36	2.15	1.95	1.74
CRAIGHEAD	AR	2.60	2.58	2.46	2.33	2.21	2.09
CRAWFORD	AR	2.80	2.51	2.26	2.00	1.75	1.49
CRITTENDEN	AR	2.80	2.69	2.61	2.53	2.45	2.37
CROSS	AR	2.80	2.67	2.57	2.46	2.36	2.26
DALLAS	AR	2.90	2.78	2.58	2.39	2.19	1.99
DESHA	AR	2.90	2.84	2.70	2.56	2.42	2.28
DREW	AR	2.90	2.83	2.68	2.53	2.38	2.23
FAULKNER	AR	2.80	2.59	2.41	2.22	2.04	1.86
FRANKLIN	AR	2.80	2.52	2.27	2.01	1.76	1.51
FULTON	AR	2.60	2.38	2.20	2.03	1.85	1.68
GARLAND	AR	2.80	2.58	2.39	2.19	2.00	1.81
GRANT	AR	2.90	2.66	2.50	2.33	2.17	2.00
GREENE	AR	2.60	2.44	2.33	2.23	2.12	2.01
HEMPSTEAD	AR	2.90	2.75	2.51	2.28	2.04	1.81
HOT SPRING	AR	2.90	2.64	2.45	2.27	2.08	1.89
HOWARD	AR	2.90	2.60	2.38	2.15	1.93	1.70
INDEPENDENCE	AR	2.60	2.54	2.38	2.22	2.06	1.90
IZARD	AR	2.60	2.39	2.23	2.07	1.91	1.75
JACKSON	AR	2.60	2.57	2.44	2.30	2.17	2.04
JEFFERSON	AR	2.90	2.69	2.55	2.41	2.27	2.13
JOHNSON	AR	2.80	2.47	2.24	2.02	1.79	1.56
LAFAYETTE	AR	3.10	2.84	2.60	2.35	2.11	1.87
LAWRENCE	AR	2.60	2.43	2.30	2.18	2.05	1.93
LEE	AR	2.80	2.68	2.58	2.49	2.39	2.30
LINCOLN	AR	2.90	2.82	2.66	2.51	2.35	2.19
LITTLE RIVER	AR	2.90	2.72	2.46	2.20	1.94	1.68
LOGAN	AR	2.80	2.53	2.30	2.06	1.83	1.59
LONOKE	AR	2.80	2.62	2.46	2.31	2.15	2.00
MADISON	AR	2.60	2.32	2.08	1.85	1.61	1.38
MARION	AR	2.60	2.34	2.13	1.93	1.72	1.51
MILLER	AR	3.10	2.82	2.57	2.31	2.06	1.80
MISSISSIPPI	AR	2.60	2.59	2.48	2.37	2.26	2.15
MONROE	AR	2.80	2.66	2.55	2.45	2.34	2.23
MONTGOMERY	AR	2.80	2.57	2.37	2.16	1.96	1.76
NEVADA	AR	2.90	2.77	2.55	2.34	2.12	1.91
NEWTON	AR	2.60	2.38	2.15	1.93	1.70	1.48
OUACHITA	AR	2.90	2.79	2.59	2.40	2.20	2.01
PERRY	AR	2.80	2.57	2.38	2.18	1.99	1.79
PHILLIPS	AR	2.90	2.73	2.63	2.52	2.42	2.32
PIKE	AR	2.90	2.62	2.40	2.19	1.97	1.76
POINSETT	AR	2.60	2.59	2.49	2.38	2.28	2.17
POLK	AR	2.80	2.54	2.31	2.07	1.84	1.61
POPE	AR	2.80	2.49	2.28	2.06	1.85	1.64
PRAIRIE	AR	2.80	2.64	2.52	2.39	2.27	2.14
PULASKI	AR	2.80	2.61	2.45	2.28	2.12	1.96
RANDOLPH	AR	2.60	2.41	2.27	2.12	1.98	1.84
SALINE	AR	2.80	2.60	2.43	2.26	2.09	1.92
SCOTT	AR	2.80	2.54	2.31	2.07	1.84	1.61
SEARCY	AR	2.60	2.40	2.19	1.99	1.78	1.58
SEBASTIAN	AR	2.80	2.53	2.28	2.04	1.79	1.55
SEVIER	AR	2.90	2.59	2.35	2.11	1.87	1.63
SHARP	AR	2.60	2.41	2.26	2.12	1.97	1.83
ST. FRANCIS	AR	2.80	2.68	2.58	2.49	2.39	2.30
STONE	AR	2.60	2.43	2.26	2.08	1.91	1.74
UNION	AR	3.10	2.89	2.70	2.51	2.32	2.13
VAN BUREN	AR	2.80	2.50	2.31	2.11	1.92	1.72
WASHINGTON	AR	2.60	2.31	2.07	1.82	1.58	1.34
WHITE	AR	2.80	2.61	2.46	2.30	2.15	1.99

COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
WOODRUFF	AR	2.80	2.64	2.51	2.39	2.26	2.13
YELL	AR	2.80	2.55	2.33	2.12	1.90	1.68
APACHE	AZ	1.90	2.25	2.11	1.96	1.82	1.67
COCHISE	AZ	2.10	2.20	1.98	1.75	1.53	1.31
COCONINO	AZ	1.90	2.24	2.07	1.90	1.73	1.56
GILA	AZ	2.10	2.18	1.95	1.73	1.50	1.28
GRAHAM	AZ	2.10	2.28	2.03	1.79	1.54	1.30
GREENLEE	AZ	2.10	2.21	2.00	1.80	1.59	1.38
LA PAZ	AZ	2.10	2.23	2.06	1.88	1.71	1.54
MARICOPA	AZ	2.35	2.24	1.97	1.69	1.42	1.14
MOHAVE	AZ	1.90	2.10	2.00	1.90	1.80	1.70
NAVAJO	AZ	1.90	2.18	2.02	1.87	1.71	1.56
PIMA	AZ	2.35	2.37	2.10	1.82	1.55	1.28
PINAL	AZ	2.35	2.26	2.00	1.73	1.47	1.21
SANTA CRUZ	AZ	2.10	2.28	2.04	1.79	1.55	1.31
YAVAPAI	AZ	1.90	2.20	2.00	1.81	1.61	1.41
YUMA	AZ	2.10	2.25	2.08	1.92	1.75	1.58
ALAMEDA	CA	1.80	1.69	1.59	1.48	1.38	1.27
ALPINE	CA	1.70	1.53	1.36	1.20	1.03	0.86
AMADOR	CA	1.70	1.54	1.39	1.23	1.08	0.92
BUTTE	CA	1.70	1.72	1.60	1.47	1.35	1.23
CALAVERAS	CA	1.70	1.54	1.37	1.21	1.04	0.88
COLUSA	CA	1.70	1.62	1.54	1.46	1.38	1.30
CONTRA COSTA	CA	1.80	1.68	1.57	1.45	1.34	1.22
DEL NORTE	CA	1.80	1.73	1.65	1.58	1.50	1.43
EL DORADO	CA	1.70	1.55	1.39	1.24	1.08	0.93
FRESNO	CA	1.60	1.59	1.41	1.24	1.06	0.89
GLENN	CA	1.70	1.63	1.55	1.48	1.40	1.33
HUMBOLDT	CA	1.80	1.73	1.66	1.58	1.51	1.44
IMPERIAL	CA	2.00	1.92	1.84	1.77	1.69	1.61
INYO	CA	1.60	1.51	1.43	1.34	1.26	1.17
KERN	CA	1.80	1.68	1.57	1.45	1.34	1.22
KINGS	CA	1.60	1.50	1.39	1.29	1.18	1.08
LAKE	CA	1.80	1.71	1.63	1.54	1.46	1.37
LASSEN	CA	1.70	1.57	1.44	1.32	1.19	1.06
LOS ANGELES	CA	2.10	2.03	1.82	1.61	1.40	1.19
MADERA	CA	1.60	1.45	1.30	1.15	1.00	0.85
MARIN	CA	1.80	1.71	1.62	1.53	1.44	1.35
MARIPOSA	CA	1.70	1.52	1.34	1.16	0.98	0.80
MENDOCINO	CA	1.80	1.72	1.65	1.57	1.50	1.42
MERCED	CA	1.70	1.54	1.39	1.23	1.08	0.92
MODOC	CA	1.70	1.59	1.48	1.38	1.27	1.16
MONO	CA	1.60	1.45	1.30	1.14	0.99	0.84
MONTEREY	CA	1.80	1.77	1.74	1.72	1.69	1.66
NAPA	CA	1.80	1.69	1.59	1.48	1.38	1.27
NEVADA	CA	1.70	1.57	1.44	1.30	1.17	1.04
ORANGE	CA	2.10	1.93	1.76	1.60	1.43	1.26
PLACER	CA	1.70	1.56	1.41	1.27	1.12	0.98
PLUMAS	CA	1.70	1.58	1.45	1.33	1.20	1.08
RIVERSIDE	CA	2.00	1.88	1.76	1.65	1.53	1.41
SACRAMENTO	CA	1.70	1.58	1.46	1.34	1.22	1.10
SAN BENITO	CA	1.80	1.74	1.69	1.63	1.58	1.52
SAN BERNARDINO	CA	1.80	1.72	1.64	1.57	1.49	1.41
SAN DIEGO	CA	2.10	2.07	1.91	1.74	1.58	1.41
SAN FRANCISCO	CA	1.80	1.74	1.64	1.53	1.43	1.33
SAN JOAQUIN	CA	1.70	1.56	1.42	1.29	1.15	1.01
SAN LUIS OBISPO	CA	1.80	1.73	1.66	1.60	1.53	1.46
SAN MATEO	CA	1.80	1.72	1.64	1.56	1.48	1.40
SANTA BARBARA	CA	1.80	1.74	1.67	1.61	1.54	1.48
SANTA CLARA	CA	1.80	1.73	1.65	1.58	1.50	1.43
SANTA CRUZ	CA	1.80	1.75	1.70	1.65	1.60	1.55
SHASTA	CA	1.70	1.74	1.64	1.53	1.43	1.33
SIERRA	CA	1.70	1.57	1.44	1.31	1.18	1.05
SISKIYOU	CA	1.80	1.71	1.63	1.54	1.46	1.37
SOLANO	CA	1.80	1.68	1.56	1.45	1.33	1.21
SONOMA	CA	1.80	1.71	1.63	1.54	1.46	1.37
STANISLAUS	CA	1.70	1.53	1.36	1.20	1.03	0.86
SUTTER	CA	1.70	1.61	1.52	1.42	1.33	1.24
TEHAMA	CA	1.70	1.63	1.55	1.48	1.40	1.33
TRINITY	CA	1.80	1.72	1.65	1.57	1.50	1.42

COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
TULARE	CA	1.60	1.48	1.37	1.25	1.14	1.02
TUOLUMNE	CA	1.70	1.52	1.35	1.17	1.00	0.82
VENTURA	CA	1.80	1.71	1.61	1.52	1.42	1.33
YOLO	CA	1.70	1.60	1.50	1.39	1.29	1.19
YUBA	CA	1.70	1.60	1.50	1.39	1.29	1.19
ADAMS	CO	2.55	2.40	2.07	1.75	1.42	1.09
ALAMOSA	CO	1.90	2.35	2.20	2.05	1.90	1.75
ARAPAHOE	CO	2.55	2.42	2.11	1.79	1.48	1.17
ARCHULETA	CO	1.90	1.73	1.76	1.80	1.83	1.86
BACA	CO	2.35	2.29	2.08	1.86	1.65	1.44
BENT	CO	2.35	2.35	2.11	1.86	1.62	1.37
BOULDER	CO	2.45	2.31	2.01	1.72	1.42	1.13
CHAFFEE	CO	1.90	2.31	2.12	1.92	1.73	1.54
CHEYENNE	CO	2.35	2.25	2.00	1.74	1.49	1.24
CLEAR CREEK	CO	2.45	2.33	2.06	1.78	1.51	1.24
CONEJOS	CO	1.90	2.29	2.18	2.06	1.95	1.84
COSTILLA	CO	1.90	2.35	2.20	2.04	1.89	1.74
CROWLEY	CO	2.45	2.47	2.20	1.94	1.67	1.41
CUSTER	CO	2.45	2.39	2.18	1.98	1.77	1.56
DELTA	CO	2.00	1.95	1.89	1.84	1.78	1.73
DENVER	CO	2.55	2.41	2.09	1.78	1.46	1.14
DOLORES	CO	1.90	1.80	1.80	1.80	1.80	1.80
DOUGLAS	CO	2.55	2.43	2.13	1.83	1.53	1.23
EAGLE	CO	1.90	1.72	1.64	1.56	1.48	1.40
EL PASO	CO	2.45	2.43	2.13	1.83	1.53	1.23
ELBERT	CO	2.55	2.45	2.18	1.90	1.63	1.35
FREMONT	CO	2.45	2.38	2.16	1.94	1.72	1.50
GARFIELD	CO	2.00	1.92	1.83	1.75	1.66	1.58
GILPIN	CO	2.45	2.32	2.04	1.76	1.48	1.20
GRAND	CO	1.90	2.25	2.00	1.74	1.49	1.24
GUNNISON	CO	1.90	1.77	1.74	1.70	1.67	1.64
HINSDALE	CO	1.90	1.79	1.78	1.78	1.77	1.76
HUERFANO	CO	2.45	2.40	2.21	2.01	1.82	1.62
JACKSON	CO	1.90	2.24	1.98	1.72	1.46	1.20
JEFFERSON	CO	2.55	2.43	2.13	1.82	1.52	1.22
KIOWA	CO	2.35	2.34	2.08	1.83	1.57	1.31
KIT CARSON	CO	2.35	2.24	1.97	1.71	1.44	1.18
LA PLATA	CO	1.90	2.29	2.08	1.87	1.66	1.45
LAKE	CO	1.90	1.73	1.76	1.78	1.81	1.84
LARIMER	CO	2.45	2.30	2.00	1.69	1.39	1.09
LAS ANIMAS	CO	2.35	2.41	2.22	2.04	1.85	1.66
LINCOLN	CO	2.45	2.33	2.06	1.78	1.51	1.24
LOGAN	CO	2.35	2.21	1.91	1.62	1.32	1.03
MESA	CO	2.00	1.95	1.89	1.84	1.78	1.73
MINERAL	CO	1.90	1.71	1.73	1.74	1.76	1.77
MOFFAT	CO	1.90	1.71	1.62	1.53	1.44	1.35
MONTEZUMA	CO	1.90	1.72	1.74	1.77	1.79	1.81
MONTROSE	CO	2.00	1.96	1.91	1.87	1.82	1.78
MORGAN	CO	2.35	2.29	1.98	1.66	1.35	1.04
OTERO	CO	2.45	2.47	2.21	1.95	1.69	1.43
OURAY	CO	1.90	1.80	1.80	1.79	1.79	1.79
PARK	CO	2.45	2.35	2.10	1.85	1.60	1.35
PHILLIPS	CO	2.35	2.13	1.87	1.60	1.34	1.07
PITKIN	CO	1.90	1.74	1.68	1.63	1.57	1.51
PROWERS	CO	2.35	2.27	2.04	1.80	1.57	1.34
PUEBLO	CO	2.45	2.48	2.23	1.99	1.74	1.49
RIO BLANCO	CO	1.90	1.73	1.66	1.60	1.53	1.46
RIO GRANDE	CO	1.90	2.27	2.15	2.02	1.90	1.77
ROUTT	CO	1.90	1.70	1.60	1.50	1.40	1.30
SAGUACHE	CO	1.90	1.69	1.67	1.66	1.64	1.63
SAN JUAN	CO	1.90	1.80	1.80	1.80	1.80	1.80
SAN MIGUEL	CO	1.90	1.80	1.80	1.80	1.80	1.80
SEDGWICK	CO	2.35	2.13	1.85	1.58	1.30	1.03
SUMMIT	CO	1.90	2.27	2.04	1.80	1.57	1.34
TELLER	CO	2.45	2.46	2.20	1.93	1.67	1.40
WASHINGTON	CO	2.35	2.30	1.99	1.69	1.38	1.08
WELD	CO	2.45	2.28	1.96	1.63	1.31	0.99
YUMA	CO	2.35	2.22	1.95	1.67	1.40	1.12
FAIRFIELD	CT	3.10	2.91	2.72	2.54	2.35	2.17
HARTFORD	CT	3.10	2.92	2.70	2.47	2.25	2.03

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COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
LITCHFIELD	CT	3.00	2.91	2.68	2.44	2.21	1.98
MIDDLESEX	CT	3.10	2.97	2.77	2.58	2.38	2.18
NEW HAVEN	CT	3.10	2.95	2.75	2.56	2.36	2.17
NEW LONDON	CT	3.10	2.99	2.80	2.62	2.43	2.25
TOLLAND	CT	3.10	2.97	2.76	2.54	2.33	2.11
WINDHAM	CT	3.10	3.00	2.80	2.61	2.41	2.22
DISTRICT OF COLUMBIA	DC	3.00	2.74	2.45	2.17	1.88	1.59
KENT	DE	3.00	2.69	2.47	2.25	2.03	1.81
NEW CASTLE	DE	3.00	2.81	2.53	2.24	1.96	1.68
SUSSEX	DE	3.00	2.68	2.49	2.29	2.10	1.91
ALACHUA	FL	3.70	3.55	3.52	3.50	3.47	3.44
BAKER	FL	3.70	3.52	3.47	3.41	3.36	3.30
BAY	FL	3.70	3.47	3.37	3.26	3.16	3.05
BRADFORD	FL	3.70	3.54	3.51	3.47	3.44	3.40
BREVARD	FL	4.00	3.86	3.84	3.83	3.81	3.79
BROWARD	FL	4.30	4.19	4.20	4.20	4.21	4.22
CALHOUN	FL	3.70	3.47	3.36	3.26	3.15	3.04
CHARLOTTE	FL	4.30	3.91	3.95	3.98	4.02	4.05
CITRUS	FL	4.00	3.82	3.77	3.71	3.66	3.60
CLAY	FL	3.70	3.55	3.51	3.48	3.44	3.41
COLLIER	FL	4.30	3.94	4.00	4.07	4.13	4.19
COLUMBIA	FL	3.70	3.52	3.47	3.41	3.36	3.30
DADE	FL	4.30	4.20	4.22	4.25	4.27	4.29
DE SOTO	FL	4.30	3.91	3.93	3.96	3.98	4.01
DIXIE	FL	3.70	3.54	3.50	3.45	3.41	3.37
DUVAL	FL	3.70	3.54	3.49	3.45	3.40	3.36
ESCAMBIA	FL	3.45	3.44	3.30	3.16	3.02	2.88
FLAGLER	FL	4.00	3.81	3.74	3.68	3.61	3.54
FRANKLIN	FL	3.70	3.50	3.42	3.35	3.27	3.19
GADSDEN	FL	3.70	3.48	3.37	3.27	3.16	3.06
GILCHRIST	FL	3.70	3.54	3.50	3.47	3.43	3.39
GLADES	FL	4.30	4.16	4.14	4.11	4.09	4.07
GULF	FL	3.70	3.49	3.40	3.30	3.21	3.12
HAMILTON	FL	3.70	3.50	3.42	3.35	3.27	3.19
HARDEE	FL	4.30	3.89	3.91	3.92	3.94	3.95
HENDRY	FL	4.30	4.17	4.15	4.14	4.12	4.11
HERNANDO	FL	4.00	3.84	3.80	3.77	3.73	3.69
HIGHLANDS	FL	4.30	3.90	3.92	3.94	3.96	3.98
HILLSBOROUGH	FL	4.00	3.87	3.85	3.84	3.82	3.81
HOLMES	FL	3.70	3.45	3.31	3.18	3.04	2.91
INDIAN RIVER	FL	4.00	4.13	4.07	4.02	3.96	3.91
JACKSON	FL	3.70	3.46	3.33	3.21	3.08	2.96
JEFFERSON	FL	3.70	3.49	3.40	3.32	3.23	3.14
LAFAYETTE	FL	3.70	3.55	3.52	3.48	3.45	3.42
LAKE	FL	4.00	3.84	3.80	3.75	3.71	3.67
LEE	FL	4.30	3.92	3.97	4.01	4.06	4.10
LEON	FL	3.70	3.49	3.39	3.30	3.20	3.11
LEVY	FL	4.00	3.80	3.72	3.64	3.56	3.48
LIBERTY	FL	3.70	3.48	3.39	3.29	3.20	3.10
MADISON	FL	3.70	3.49	3.40	3.30	3.21	3.12
MANATEE	FL	4.30	3.89	3.91	3.92	3.94	3.95
MARION	FL	4.00	3.81	3.75	3.68	3.62	3.55
MARTIN	FL	4.30	4.15	4.12	4.09	4.06	4.03
MONROE	FL	4.30	4.21	4.23	4.26	4.28	4.31
NASSAU	FL	3.70	3.51	3.45	3.38	3.32	3.25
OKALOOSA	FL	3.45	3.44	3.30	3.17	3.03	2.89
OKEECHOBEE	FL	4.30	4.14	4.11	4.07	4.04	4.00
ORANGE	FL	4.00	3.85	3.82	3.78	3.75	3.72
OSCEOLA	FL	4.00	3.87	3.86	3.84	3.83	3.82
PALM BEACH	FL	4.30	4.17	4.16	4.14	4.13	4.12
PASCO	FL	4.00	3.85	3.82	3.78	3.75	3.72
PINELLAS	FL	4.00	3.87	3.85	3.84	3.82	3.81
POLK	FL	4.00	3.87	3.86	3.85	3.84	3.83
PUTNAM	FL	3.70	3.57	3.55	3.54	3.52	3.51
SANTA ROSA	FL	3.45	3.44	3.30	3.16	3.02	2.88
SARASOTA	FL	4.30	3.90	3.93	3.95	3.98	4.00
SEMINOLE	FL	4.00	3.84	3.80	3.77	3.73	3.69
ST. JOHNS	FL	3.70	3.55	3.53	3.50	3.48	3.45
ST. LUCIE	FL	4.30	4.14	4.10	4.05	4.01	3.97
SUMTER	FL	4.00	3.83	3.79	3.74	3.70	3.65

COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
SUWANNEE	FL	3.70	3.51	3.45	3.38	3.32	3.25
TAYLOR	FL	3.70	3.51	3.44	3.37	3.30	3.23
UNION	FL	3.70	3.53	3.49	3.44	3.40	3.35
VOLUSIA	FL	4.00	3.83	3.78	3.72	3.67	3.62
WAKULLA	FL	3.70	3.50	3.41	3.33	3.24	3.16
WALTON	FL	3.45	3.45	3.32	3.20	3.07	2.94
WASHINGTON	FL	3.70	3.46	3.33	3.21	3.08	2.96
APPLING	GA	3.45	3.28	3.17	3.05	2.94	2.82
ATKINSON	GA	3.45	3.31	3.22	3.12	3.03	2.94
BACON	GA	3.45	3.30	3.20	3.11	3.01	2.91
BAKER	GA	3.45	3.30	3.19	3.09	2.98	2.88
BALDWIN	GA	3.10	3.03	2.88	2.72	2.57	2.42
BANKS	GA	3.10	2.93	2.77	2.62	2.46	2.31
BARROW	GA	3.10	2.94	2.81	2.67	2.54	2.40
BARTOW	GA	3.10	2.85	2.72	2.58	2.45	2.32
BEN HILL	GA	3.45	3.28	3.16	3.03	2.91	2.79
BERRIEN	GA	3.45	3.31	3.22	3.12	3.03	2.94
BIBB	GA	3.30	3.02	2.86	2.70	2.54	2.38
BLECKLEY	GA	3.30	3.13	2.98	2.84	2.69	2.54
BRANTLEY	GA	3.45	3.33	3.26	3.20	3.13	3.06
BROOKS	GA	3.45	3.33	3.26	3.18	3.11	3.04
BRYAN	GA	3.45	3.29	3.18	3.07	2.96	2.85
BULLOCH	GA	3.30	3.16	3.04	2.93	2.81	2.69
BURKE	GA	3.30	3.05	2.91	2.78	2.64	2.51
BUTTS	GA	3.10	2.95	2.82	2.70	2.57	2.44
CALHOUN	GA	3.45	3.29	3.18	3.06	2.95	2.84
CAMDEN	GA	3.45	3.36	3.31	3.27	3.22	3.18
CANDLER	GA	3.30	3.16	3.04	2.93	2.81	2.69
CARROLL	GA	3.10	2.95	2.82	2.68	2.55	2.42
CATOOSA	GA	2.80	2.64	2.51	2.38	2.25	2.12
CHARLTON	GA	3.45	3.36	3.32	3.27	3.23	3.19
CHATHAM	GA	3.45	3.30	3.20	3.09	2.99	2.89
CHATTAHOOCHEE	GA	3.30	3.16	3.05	2.93	2.82	2.70
CHATTOOGA	GA	2.80	2.65	2.53	2.42	2.30	2.18
CHEROKEE	GA	3.10	2.86	2.73	2.61	2.48	2.36
CLARKE	GA	3.10	2.94	2.80	2.67	2.53	2.39
CLAY	GA	3.45	3.28	3.16	3.04	2.92	2.80
CLAYTON	GA	3.10	2.96	2.84	2.72	2.60	2.48
CLINCH	GA	3.45	3.34	3.27	3.21	3.14	3.08
COBB	GA	3.10	2.95	2.82	2.69	2.56	2.43
COFFEE	GA	3.45	3.30	3.19	3.09	2.98	2.88
COLQUITT	GA	3.45	3.31	3.21	3.12	3.02	2.93
COLUMBIA	GA	3.10	3.02	2.86	2.71	2.55	2.39
COOK	GA	3.45	3.31	3.22	3.13	3.04	2.95
COWETA	GA	3.10	2.96	2.84	2.71	2.59	2.47
CRAWFORD	GA	3.30	3.04	2.90	2.77	2.63	2.49
CRISP	GA	3.45	3.17	3.06	2.95	2.84	2.73
DADE	GA	2.80	2.64	2.50	2.37	2.23	2.10
DAWSON	GA	3.10	2.85	2.71	2.58	2.44	2.31
DE KALB	GA	3.45	3.32	3.24	3.15	3.07	2.99
DECATUR	GA	3.10	2.96	2.83	2.71	2.58	2.46
DODGE	GA	3.45	3.15	3.02	2.89	2.76	2.63
DOOLY	GA	3.45	3.15	3.02	2.89	2.76	2.63
DOUGHERTY	GA	3.45	3.29	3.17	3.06	2.94	2.83
DOUGLAS	GA	3.10	2.95	2.82	2.70	2.57	2.44
EARLY	GA	3.45	3.30	3.19	3.09	2.98	2.88
ECHOLS	GA	3.45	3.34	3.29	3.23	3.18	3.12
EFFINGHAM	GA	3.30	3.17	3.06	2.95	2.84	2.73
ELBERT	GA	3.10	2.92	2.77	2.61	2.46	2.30
EMANUEL	GA	3.30	3.14	3.01	2.87	2.74	2.60
EVANS	GA	3.45	3.18	3.08	2.97	2.87	2.77
FANNIN	GA	2.80	2.65	2.53	2.42	2.30	2.18
FAYETTE	GA	3.10	2.96	2.84	2.72	2.60	2.48
FLOYD	GA	3.10	2.84	2.69	2.55	2.40	2.26
FORSYTH	GA	3.10	2.94	2.79	2.65	2.50	2.36
FRANKLIN	GA	3.10	2.92	2.76	2.59	2.43	2.27
FULTON	GA	3.10	2.96	2.83	2.71	2.58	2.46
GILMER	GA	3.10	2.71	2.59	2.46	2.34	2.22
GLASCOCK	GA	3.10	3.03	2.88	2.74	2.59	2.44
GLYNN	GA	3.45	3.34	3.28	3.22	3.16	3.10

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COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
GORDON	GA	3.10	2.83	2.68	2.54	2.39	2.24
GRADY	GA	3.45	3.32	3.24	3.15	3.07	2.99
GREENE	GA	3.10	2.94	2.81	2.67	2.54	2.40
GWINNETT	GA	3.10	2.95	2.82	2.69	2.56	2.43
HABERSHAM	GA	3.10	2.83	2.68	2.54	2.39	2.24
HALL	GA	3.10	2.93	2.78	2.64	2.49	2.34
HANCOCK	GA	3.10	3.03	2.88	2.72	2.57	2.42
HARALSON	GA	3.10	2.93	2.79	2.64	2.50	2.35
HARRIS	GA	3.30	3.06	2.95	2.83	2.72	2.60
HART	GA	3.10	2.92	2.75	2.59	2.42	2.26
HEARD	GA	3.10	2.96	2.83	2.71	2.58	2.46
HENRY	GA	3.10	2.96	2.84	2.71	2.59	2.47
HOUSTON	GA	3.30	3.12	2.96	2.81	2.65	2.49
IRWIN	GA	3.45	3.28	3.17	3.05	2.94	2.82
JACKSON	GA	3.10	2.94	2.79	2.65	2.50	2.36
JASPER	GA	3.10	2.95	2.82	2.68	2.55	2.42
JEFF DAVIS	GA	3.45	3.28	3.16	3.05	2.93	2.81
JEFFERSON	GA	3.30	3.04	2.90	2.76	2.62	2.48
JENKINS	GA	3.30	3.14	3.00	2.87	2.73	2.59
JOHNSON	GA	3.30	3.13	2.99	2.84	2.70	2.55
JONES	GA	3.10	3.02	2.86	2.71	2.55	2.39
LAMAR	GA	3.10	3.04	2.90	2.75	2.61	2.47
LANIER	GA	3.45	3.33	3.26	3.18	3.11	3.04
LAURENS	GA	3.30	3.14	3.00	2.85	2.71	2.57
LEE	GA	3.45	3.28	3.15	3.03	2.90	2.78
LIBERTY	GA	3.45	3.30	3.20	3.09	2.99	2.89
LINCOLN	GA	3.10	2.93	2.79	2.64	2.50	2.35
LONG	GA	3.45	3.30	3.20	3.09	2.99	2.89
LOWNDES	GA	3.45	3.33	3.26	3.18	3.11	3.04
LUMPKIN	GA	3.10	2.84	2.70	2.55	2.41	2.27
MACON	GA	3.10	3.02	2.87	2.71	2.56	2.40
MADISON	GA	3.45	3.32	3.24	3.15	3.07	2.99
MARION	GA	3.30	3.15	3.01	2.88	2.74	2.61
MCDUFFIE	GA	3.10	2.93	2.79	2.64	2.50	2.35
MCINTOSH	GA	3.30	3.16	3.03	2.91	2.78	2.66
MERIWETHER	GA	3.10	3.05	2.92	2.79	2.66	2.53
MILLER	GA	3.45	3.30	3.20	3.11	3.01	2.91
MITCHELL	GA	3.45	3.30	3.20	3.11	3.01	2.91
MONROE	GA	3.10	3.03	2.88	2.73	2.58	2.43
MONTGOMERY	GA	3.45	3.17	3.05	2.94	2.82	2.71
MORGAN	GA	3.10	2.95	2.82	2.68	2.55	2.42
MURRAY	GA	2.80	2.66	2.54	2.43	2.31	2.20
MUSCOGEE	GA	3.30	3.08	2.98	2.87	2.77	2.67
NEWTON	GA	3.10	2.95	2.82	2.70	2.57	2.44
OCONEE	GA	3.10	2.94	2.81	2.67	2.54	2.40
OGLETHORPE	GA	3.10	2.94	2.79	2.65	2.50	2.36
PAULDING	GA	3.10	2.94	2.81	2.67	2.54	2.40
PEACH	GA	3.30	3.12	2.97	2.81	2.66	2.50
PICKENS	GA	3.10	2.84	2.70	2.57	2.43	2.29
PIERCE	GA	3.45	3.32	3.24	3.15	3.07	2.99
PIKE	GA	3.10	3.04	2.91	2.77	2.64	2.50
POLK	GA	3.10	2.92	2.77	2.61	2.46	2.30
PULASKI	GA	3.45	3.14	3.01	2.87	2.74	2.60
PUTNAM	GA	3.10	2.95	2.81	2.68	2.54	2.41
QUITMAN	GA	3.45	3.27	3.14	3.02	2.89	2.76
RABUN	GA	3.10	2.81	2.65	2.48	2.32	2.15
RANDOLPH	GA	3.45	3.28	3.16	3.03	2.91	2.79
RICHMOND	GA	3.30	3.03	2.88	2.72	2.57	2.42
ROCKDALE	GA	3.10	2.95	2.83	2.70	2.58	2.45
SCHLEY	GA	3.30	3.16	3.03	2.91	2.78	2.66
SCREVEN	GA	3.30	3.15	3.02	2.88	2.75	2.62
SEMINOLE	GA	3.45	3.31	3.22	3.12	3.03	2.94
SPALDING	GA	3.10	2.96	2.84	2.72	2.60	2.48
STEPHENS	GA	3.10	2.91	2.75	2.58	2.42	2.25
STEWART	GA	3.45	3.17	3.06	2.95	2.84	2.73
SUMTER	GA	3.45	3.16	3.05	2.93	2.82	2.70
TALBOT	GA	3.30	3.06	2.94	2.81	2.69	2.57
TALIAFERRO	GA	3.10	2.94	2.81	2.67	2.54	2.40
TATTNALL	GA	3.45	3.18	3.09	2.99	2.90	2.80
TAYLOR	GA	3.30	3.06	2.94	2.82	2.70	2.58

COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
TELFAIR	GA	3.45	3.17	3.07	2.96	2.86	2.75
TERRELL	GA	3.45	3.28	3.15	3.03	2.90	2.78
THOMAS	GA	3.45	3.32	3.25	3.17	3.10	3.02
TIFT	GA	3.45	3.29	3.18	3.08	2.97	2.86
TOOMBS	GA	3.45	3.17	3.06	2.94	2.83	2.72
TOWNS	GA	3.10	2.70	2.56	2.43	2.29	2.16
TREUTLEN	GA	3.30	3.15	3.02	2.88	2.75	2.62
TROUP	GA	3.10	3.05	2.91	2.78	2.64	2.51
TURNER	GA	3.45	3.28	3.16	3.03	2.91	2.79
TWIGGS	GA	3.30	3.04	2.90	2.75	2.61	2.47
UNION	GA	3.10	2.70	2.57	2.45	2.32	2.19
UPSON	GA	3.10	3.05	2.91	2.78	2.64	2.51
WALKER	GA	2.80	2.64	2.51	2.39	2.26	2.13
WALTON	GA	3.10	2.95	2.82	2.68	2.55	2.42
WARE	GA	3.45	3.32	3.25	3.17	3.10	3.02
WARREN	GA	3.10	3.03	2.87	2.72	2.56	2.41
WASHINGTON	GA	3.30	3.04	2.90	2.75	2.61	2.47
WAYNE	GA	3.45	3.31	3.21	3.12	3.02	2.93
WEBSTER	GA	3.45	3.17	3.06	2.96	2.85	2.74
WHEELER	GA	3.45	3.16	3.05	2.93	2.82	2.70
WHITE	GA	3.10	2.84	2.70	2.55	2.41	2.27
WHITFIELD	GA	2.80	2.65	2.53	2.42	2.30	2.18
WILCOX	GA	3.45	3.17	3.05	2.94	2.82	2.71
WILKES	GA	3.10	2.94	2.79	2.65	2.50	2.36
WILKINSON	GA	3.30	3.03	2.89	2.74	2.60	2.45
WORTH	GA	3.45	3.29	3.18	3.06	2.95	2.84
ADAIR	IA	1.80	1.55	1.54	1.54	1.53	1.53
ADAMS	IA	1.80	1.55	1.55	1.54	1.54	1.54
ALLAMAKEE	IA	1.75	1.23	1.21	1.18	1.16	1.13
APPANOOSE	IA	1.80	1.54	1.53	1.51	1.50	1.49
AUDUBON	IA	1.80	1.54	1.53	1.53	1.52	1.51
BENTON	IA	1.80	1.48	1.48	1.47	1.47	1.47
BLACK HAWK	IA	1.75	1.37	1.36	1.36	1.35	1.34
BOONE	IA	1.80	1.53	1.51	1.49	1.47	1.45
BREMER	IA	1.75	1.33	1.31	1.29	1.28	1.26
BUCHANAN	IA	1.75	1.38	1.37	1.35	1.34	1.32
BUENA VISTA	IA	1.75	1.50	1.46	1.41	1.37	1.32
BUTLER	IA	1.75	1.38	1.37	1.35	1.34	1.32
CALHOUN	IA	1.75	1.52	1.49	1.46	1.43	1.40
CARROLL	IA	1.80	1.53	1.51	1.49	1.47	1.45
CASS	IA	1.80	1.71	1.67	1.62	1.58	1.54
CEDAR	IA	1.80	1.48	1.49	1.49	1.50	1.50
CERRO GORDO	IA	1.75	1.30	1.28	1.27	1.25	1.24
CHEROKEE	IA	1.75	1.66	1.57	1.48	1.39	1.30
CHICKASAW	IA	1.75	1.29	1.27	1.24	1.22	1.20
CLARKE	IA	1.80	1.54	1.54	1.53	1.53	1.52
CLAY	IA	1.75	1.22	1.24	1.26	1.27	1.29
CLAYTON	IA	1.75	1.29	1.24	1.20	1.16	1.12
CLINTON	IA	1.80	1.47	1.46	1.46	1.45	1.44
CRAWFORD	IA	1.80	1.69	1.63	1.56	1.50	1.44
DALLAS	IA	1.80	1.54	1.53	1.52	1.51	1.50
DAVIS	IA	1.80	1.54	1.52	1.51	1.49	1.48
DECATUR	IA	1.80	1.54	1.54	1.53	1.53	1.52
DELAWARE	IA	1.75	1.34	1.31	1.29	1.26	1.24
DES MOINES	IA	1.80	1.55	1.54	1.54	1.53	1.53
DICKINSON	IA	1.75	1.20	1.21	1.23	1.24	1.25
DUBUQUE	IA	1.75	1.34	1.31	1.29	1.26	1.24
EMMET	IA	1.75	1.22	1.22	1.23	1.24	1.25
FAYETTE	IA	1.75	1.33	1.29	1.25	1.20	1.16
FLOYD	IA	1.75	1.31	1.29	1.27	1.25	1.23
FRANKLIN	IA	1.75	1.35	1.35	1.34	1.34	1.33
FREMONT	IA	1.85	1.71	1.67	1.62	1.58	1.54
GREENE	IA	1.80	1.53	1.51	1.49	1.47	1.45
GRUNDY	IA	1.75	1.40	1.40	1.39	1.38	1.37
GUTHRIE	IA	1.80	1.54	1.53	1.52	1.51	1.50
HAMILTON	IA	1.75	1.42	1.41	1.41	1.40	1.39
HANCOCK	IA	1.75	1.33	1.32	1.31	1.29	1.28
HARDIN	IA	1.75	1.41	1.40	1.39	1.39	1.38
HARRISON	IA	1.80	1.70	1.65	1.60	1.55	1.50
HENRY	IA	1.80	1.54	1.53	1.52	1.51	1.50

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			1999	2000	2001	2002	2003 & beyond
HOWARD	IA	1.75	1.19	1.18	1.17	1.16	1.15
HUMBOLDT	IA	1.75	1.34	1.34	1.34	1.34	1.34
IDA	IA	1.75	1.67	1.60	1.52	1.45	1.37
IOWA	IA	1.80	1.49	1.49	1.50	1.50	1.51
JACKSON	IA	1.80	1.38	1.38	1.38	1.38	1.38
JASPER	IA	1.80	1.54	1.52	1.51	1.49	1.48
JEFFERSON	IA	1.80	1.54	1.53	1.51	1.50	1.49
JOHNSON	IA	1.80	1.49	1.49	1.50	1.50	1.51
JONES	IA	1.80	1.47	1.45	1.44	1.42	1.41
KEOKUK	IA	1.80	1.48	1.49	1.49	1.50	1.50
KOSSUTH	IA	1.75	1.22	1.23	1.25	1.26	1.28
LEE	IA	1.80	1.53	1.52	1.50	1.49	1.47
LINN	IA	1.80	1.48	1.49	1.49	1.50	1.50
LOUISA	IA	1.80	1.49	1.50	1.50	1.51	1.52
LUCAS	IA	1.80	1.54	1.53	1.53	1.52	1.51
LYON	IA	1.75	1.44	1.39	1.33	1.28	1.22
MADISON	IA	1.80	1.54	1.54	1.53	1.53	1.52
MAHASKA	IA	1.80	1.54	1.53	1.52	1.51	1.50
MARION	IA	1.80	1.54	1.53	1.52	1.51	1.50
MARSHALL	IA	1.80	1.47	1.47	1.46	1.46	1.45
MILLS	IA	1.85	1.71	1.67	1.64	1.60	1.56
MITCHELL	IA	1.75	1.20	1.19	1.19	1.18	1.18
MONONA	IA	1.80	1.68	1.61	1.54	1.47	1.40
MONROE	IA	1.80	1.54	1.53	1.51	1.50	1.49
MONTGOMERY	IA	1.80	1.71	1.67	1.64	1.60	1.56
MUSCATINE	IA	1.80	1.49	1.50	1.51	1.52	1.53
O'BRIEN	IA	1.75	1.45	1.41	1.36	1.32	1.27
OSCEOLA	IA	1.75	1.43	1.38	1.34	1.29	1.24
PAGE	IA	1.80	1.71	1.67	1.63	1.59	1.55
PALO ALTO	IA	1.75	1.27	1.27	1.28	1.28	1.29
PLYMOUTH	IA	1.75	1.50	1.44	1.38	1.32	1.26
POCAHONTAS	IA	1.75	1.30	1.31	1.32	1.33	1.34
POLK	IA	1.80	1.54	1.53	1.52	1.51	1.50
POTTAWATTAMIE	IA	1.85	1.71	1.67	1.64	1.60	1.56
POWESHIEK	IA	1.80	1.48	1.48	1.49	1.49	1.49
RINGGOLD	IA	1.80	1.55	1.54	1.54	1.53	1.53
SAC	IA	1.75	1.68	1.61	1.54	1.47	1.40
SCOTT	IA	1.80	1.49	1.50	1.52	1.53	1.54
SHELBY	IA	1.80	1.70	1.65	1.61	1.56	1.51
SIOUX	IA	1.75	1.65	1.55	1.44	1.34	1.24
STORY	IA	1.80	1.53	1.51	1.49	1.47	1.45
TAMA	IA	1.80	1.47	1.46	1.46	1.45	1.44
TAYLOR	IA	1.80	1.55	1.55	1.54	1.54	1.54
UNION	IA	1.80	1.55	1.54	1.54	1.53	1.53
VAN BUREN	IA	1.80	1.53	1.51	1.50	1.48	1.46
WAPELLO	IA	1.80	1.54	1.53	1.51	1.50	1.49
WARREN	IA	1.80	1.54	1.53	1.53	1.52	1.51
WASHINGTON	IA	1.80	1.49	1.49	1.50	1.50	1.51
WAYNE	IA	1.80	1.54	1.53	1.52	1.51	1.50
WEBSTER	IA	1.75	1.48	1.46	1.44	1.42	1.40
WINNEBAGO	IA	1.75	1.20	1.21	1.21	1.22	1.22
WINNESHIEK	IA	1.75	1.19	1.18	1.16	1.15	1.14
WOODBURY	IA	1.75	1.55	1.49	1.44	1.38	1.32
WORTH	IA	1.75	1.20	1.20	1.20	1.20	1.20
WRIGHT	IA	1.75	1.37	1.36	1.35	1.34	1.33
ADA	ID	1.60	1.31	1.21	1.12	1.02	0.93
ADAMS	ID	1.60	1.16	1.12	1.07	1.03	0.99
BANNOCK	ID	1.60	1.52	1.39	1.25	1.12	0.99
BEAR LAKE	ID	1.60	1.52	1.39	1.27	1.14	1.01
BENEWAH	ID	1.90	1.72	1.54	1.35	1.17	0.99
BINGHAM	ID	1.60	1.47	1.34	1.20	1.07	0.94
BLAINE	ID	1.60	1.39	1.28	1.17	1.06	0.95
BOISE	ID	1.60	1.39	1.28	1.16	1.05	0.94
BONNER	ID	1.90	1.72	1.53	1.35	1.16	0.98
BONNEVILLE	ID	1.60	1.46	1.32	1.19	1.05	0.91
BOUNDARY	ID	1.90	1.72	1.55	1.37	1.20	1.02
BUTTE	ID	1.60	1.39	1.27	1.16	1.04	0.93
CAMAS	ID	1.60	1.39	1.28	1.16	1.05	0.94
CANYON	ID	1.60	1.27	1.19	1.10	1.02	0.94
CARIBOU	ID	1.60	1.51	1.38	1.24	1.11	0.97

COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
CASSIA	ID	1.60	1.52	1.38	1.25	1.11	0.98
CLARK	ID	1.60	1.42	1.29	1.15	1.02	0.89
CLEARWATER	ID	1.60	1.73	1.57	1.40	1.24	1.07
CUSTER	ID	1.60	1.39	1.28	1.18	1.07	0.96
ELMORE	ID	1.60	1.35	1.24	1.14	1.03	0.93
FRANKLIN	ID	1.60	1.52	1.40	1.27	1.15	1.02
FREMONT	ID	1.60	1.46	1.31	1.17	1.02	0.88
GEM	ID	1.60	1.27	1.19	1.10	1.02	0.94
GOODING	ID	1.60	1.39	1.28	1.17	1.06	0.95
IDAHO	ID	1.60	1.61	1.47	1.34	1.20	1.06
JEFFERSON	ID	1.60	1.46	1.32	1.18	1.04	0.90
JEROME	ID	1.60	1.39	1.28	1.18	1.07	0.96
KOOTENAI	ID	1.90	1.71	1.53	1.34	1.16	0.97
LATAH	ID	1.90	1.72	1.54	1.35	1.17	0.99
LEMHI	ID	1.60	1.40	1.30	1.20	1.10	1.00
LEWIS	ID	1.60	1.61	1.46	1.32	1.17	1.03
LINCOLN	ID	1.60	1.47	1.34	1.21	1.08	0.95
MADISON	ID	1.60	1.46	1.32	1.17	1.03	0.89
MINIDOKA	ID	1.60	1.47	1.35	1.22	1.10	0.97
NEZ PERCE	ID	1.60	1.60	1.45	1.31	1.16	1.01
ONEIDA	ID	1.60	1.52	1.39	1.27	1.14	1.01
OWYHEE	ID	1.60	1.29	1.21	1.12	1.04	0.95
PAYETTE	ID	1.60	1.23	1.16	1.09	1.02	0.95
POWER	ID	1.60	1.52	1.38	1.25	1.11	0.98
SHOSHONE	ID	1.90	1.73	1.56	1.39	1.22	1.05
TETON	ID	1.60	1.36	1.25	1.13	1.02	0.90
TWIN FALLS	ID	1.60	1.45	1.33	1.20	1.08	0.96
VALLEY	ID	1.60	1.40	1.30	1.19	1.09	0.99
WASHINGTON	ID	1.60	1.22	1.16	1.09	1.03	0.96
ADAMS	IL	1.80	1.68	1.61	1.54	1.47	1.40
ALEXANDER	IL	2.20	2.03	1.97	1.90	1.84	1.77
BOND	IL	2.00	1.85	1.78	1.70	1.63	1.56
BOONE	IL	1.75	1.32	1.33	1.35	1.36	1.37
BROWN	IL	1.80	1.70	1.66	1.61	1.57	1.52
BUREAU	IL	1.80	1.61	1.62	1.62	1.63	1.63
CALHOUN	IL	2.00	1.86	1.79	1.73	1.66	1.60
CARROLL	IL	1.80	1.78	1.68	1.58	1.48	1.38
CASS	IL	1.80	1.61	1.61	1.62	1.62	1.62
CHAMPAIGN	IL	1.80	1.72	1.69	1.67	1.64	1.61
CHRISTIAN	IL	2.00	1.86	1.80	1.75	1.69	1.63
CLARK	IL	2.00	1.84	1.76	1.68	1.60	1.52
CLAY	IL	2.00	1.84	1.75	1.67	1.58	1.50
CLINTON	IL	2.00	1.84	1.77	1.69	1.62	1.54
COLES	IL	2.00	1.85	1.77	1.70	1.62	1.55
COOK	IL	1.80	1.45	1.50	1.55	1.60	1.65
CRAWFORD	IL	2.00	1.84	1.76	1.67	1.59	1.51
CUMBERLAND	IL	2.00	1.84	1.76	1.69	1.61	1.53
DE KALB	IL	1.80	1.35	1.39	1.42	1.46	1.50
DE WITT	IL	1.80	1.74	1.74	1.73	1.73	1.72
DOUGLAS	IL	2.00	1.72	1.68	1.65	1.61	1.58
DU PAGE	IL	1.80	1.44	1.49	1.53	1.58	1.62
EDGAR	IL	2.00	1.71	1.67	1.63	1.59	1.55
EDWARDS	IL	2.20	1.85	1.77	1.70	1.62	1.55
EFFINGHAM	IL	2.00	1.84	1.76	1.69	1.61	1.53
FAYETTE	IL	2.00	1.84	1.77	1.69	1.62	1.54
FORD	IL	1.80	1.62	1.63	1.65	1.66	1.67
FRANKLIN	IL	2.20	1.93	1.85	1.77	1.69	1.61
FULTON	IL	1.80	1.63	1.65	1.66	1.68	1.70
GALLATIN	IL	2.20	2.01	1.93	1.84	1.76	1.67
GREENE	IL	2.00	1.85	1.79	1.72	1.66	1.59
GRUNDY	IL	1.80	1.62	1.63	1.64	1.65	1.66
HAMILTON	IL	2.20	1.93	1.85	1.76	1.68	1.60
HANCOCK	IL	1.80	1.69	1.64	1.58	1.53	1.47
HARDIN	IL	2.20	2.02	1.94	1.87	1.79	1.71
HENDERSON	IL	1.80	1.55	1.55	1.56	1.56	1.56
HENRY	IL	1.80	1.51	1.53	1.56	1.58	1.61
IROQUOIS	IL	1.80	1.61	1.61	1.60	1.60	1.60
JACKSON	IL	2.20	1.94	1.86	1.79	1.71	1.64
JASPER	IL	2.00	1.84	1.75	1.67	1.58	1.50
JEFFERSON	IL	2.00	1.85	1.78	1.70	1.63	1.56

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			1999	2000	2001	2002	2003 & beyond
JERSEY	IL	2.00	1.86	1.80	1.73	1.67	1.61
JO DAVIESS	IL	1.75	1.50	1.44	1.39	1.33	1.28
JOHNSON	IL	2.20	2.02	1.95	1.87	1.80	1.72
KANE	IL	1.80	1.43	1.46	1.50	1.53	1.56
KANKAKEE	IL	1.80	1.61	1.61	1.62	1.62	1.62
KENDALL	IL	1.80	1.44	1.48	1.53	1.57	1.61
KNOX	IL	1.80	1.62	1.64	1.65	1.67	1.68
LA SALLE	IL	1.80	1.43	1.46	1.49	1.52	1.55
LAKE	IL	1.80	1.62	1.63	1.65	1.66	1.67
LAWRENCE	IL	2.00	1.84	1.76	1.67	1.59	1.51
LEE	IL	1.80	1.31	1.35	1.40	1.45	1.50
LIVINGSTON	IL	1.80	1.63	1.65	1.66	1.68	1.70
LOGAN	IL	1.80	1.75	1.75	1.75	1.75	1.75
MACON	IL	1.80	1.60	1.59	1.59	1.58	1.57
MACOUPIN	IL	1.80	1.37	1.40	1.42	1.45	1.48
MADISON	IL	1.80	1.75	1.75	1.74	1.74	1.74
MARION	IL	1.80	1.73	1.71	1.70	1.68	1.66
MARSHALL	IL	2.00	1.86	1.80	1.73	1.67	1.61
MASON	IL	2.00	1.93	1.85	1.78	1.70	1.62
MASSAC	IL	2.00	1.84	1.76	1.68	1.60	1.52
MCDONOUGH	IL	1.80	1.64	1.67	1.70	1.73	1.76
MCHENRY	IL	1.80	1.63	1.65	1.68	1.70	1.72
MCLEAN	IL	2.20	2.03	1.96	1.89	1.82	1.75
MENARD	IL	1.80	1.74	1.73	1.71	1.70	1.69
MERCER	IL	1.80	1.50	1.52	1.54	1.56	1.58
MONROE	IL	2.00	1.94	1.87	1.79	1.72	1.65
MONTGOMERY	IL	2.00	1.86	1.79	1.73	1.66	1.60
MORGAN	IL	1.80	1.72	1.69	1.67	1.64	1.61
MOULTRIE	IL	2.00	1.72	1.69	1.66	1.63	1.60
OGLE	IL	1.80	1.28	1.31	1.34	1.36	1.39
PEORIA	IL	1.80	1.65	1.69	1.74	1.78	1.82
PERRY	IL	2.00	1.93	1.85	1.76	1.68	1.60
PIATT	IL	1.80	1.73	1.71	1.69	1.67	1.65
PIKE	IL	1.80	1.70	1.66	1.61	1.57	1.52
POPE	IL	2.20	2.02	1.95	1.87	1.80	1.72
PULASKI	IL	2.20	2.03	1.96	1.89	1.82	1.75
PUTNAM	IL	1.80	1.63	1.65	1.66	1.68	1.70
RANDOLPH	IL	2.00	1.93	1.86	1.78	1.71	1.63
RICHLAND	IL	2.00	1.83	1.74	1.66	1.57	1.48
ROCK ISLAND	IL	1.80	1.50	1.52	1.53	1.55	1.57
SALINE	IL	2.20	1.94	1.87	1.80	1.73	1.66
SANGAMON	IL	1.80	1.73	1.71	1.69	1.67	1.65
SCHUYLER	IL	1.80	1.71	1.68	1.64	1.61	1.57
SCOTT	IL	1.80	1.71	1.68	1.64	1.61	1.57
SHELBY	IL	2.00	1.85	1.78	1.71	1.64	1.57
ST. CLAIR	IL	2.00	1.94	1.87	1.79	1.72	1.65
STARK	IL	1.80	1.63	1.66	1.68	1.71	1.73
STEPHENSON	IL	1.75	1.25	1.26	1.27	1.28	1.29
TAZEWELL	IL	1.80	1.66	1.70	1.75	1.79	1.84
UNION	IL	2.20	2.02	1.94	1.87	1.79	1.71
VERMILION	IL	1.80	1.72	1.68	1.65	1.61	1.58
WABASH	IL	2.20	1.85	1.78	1.70	1.63	1.56
WARREN	IL	1.80	1.61	1.61	1.60	1.60	1.60
WASHINGTON	IL	2.00	1.85	1.77	1.70	1.62	1.55
WAYNE	IL	2.20	1.84	1.77	1.69	1.62	1.54
WHITE	IL	2.20	1.93	1.85	1.78	1.70	1.62
WHITESIDE	IL	1.80	1.25	1.30	1.36	1.42	1.48
WILL	IL	1.80	1.45	1.50	1.54	1.59	1.64
WILLIAMSON	IL	2.20	1.94	1.87	1.79	1.72	1.65
WINNEBAGO	IL	1.75	1.31	1.31	1.32	1.32	1.32
WOODFORD	IL	1.80	1.65	1.69	1.74	1.78	1.82
ADAMS	IN	1.80	1.71	1.62	1.52	1.43	1.34
ALLEN	IN	1.80	1.71	1.61	1.52	1.42	1.33
BARTHOLOMEW	IN	2.20	1.82	1.73	1.65	1.56	1.48
BENTON	IN	1.80	1.75	1.71	1.66	1.62	1.57
BLACKFORD	IN	1.80	1.72	1.64	1.56	1.48	1.40
BOONE	IN	2.00	1.83	1.75	1.68	1.60	1.53
BROWN	IN	2.20	1.82	1.74	1.66	1.58	1.50
CARROLL	IN	1.80	1.74	1.68	1.61	1.55	1.49
CASS	IN	1.80	1.73	1.66	1.58	1.51	1.44

COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
CLARK	IN	2.20	1.97	1.83	1.68	1.54	1.40
CLAY	IN	2.00	1.82	1.75	1.67	1.60	1.52
CLINTON	IN	1.80	1.82	1.74	1.67	1.59	1.51
CRAWFORD	IN	2.20	1.99	1.86	1.74	1.61	1.49
DAVIESS	IN	2.20	1.99	1.87	1.76	1.64	1.52
DE KALB	IN	2.20	1.98	1.85	1.71	1.58	1.45
DEARBORN	IN	2.20	1.81	1.73	1.64	1.56	1.47
DECATUR	IN	1.80	1.62	1.54	1.45	1.37	1.29
DELAWARE	IN	2.00	1.81	1.72	1.63	1.54	1.45
DUBOIS	IN	2.20	1.99	1.87	1.76	1.64	1.52
ELKHART	IN	1.80	1.61	1.53	1.44	1.36	1.27
FAYETTE	IN	2.00	1.81	1.72	1.64	1.55	1.46
FLOYD	IN	2.20	1.97	1.83	1.69	1.55	1.41
FOUNTAIN	IN	1.80	1.83	1.76	1.69	1.62	1.55
FRANKLIN	IN	2.00	1.81	1.72	1.64	1.55	1.46
FULTON	IN	1.80	1.72	1.64	1.56	1.48	1.40
GIBSON	IN	2.20	2.01	1.90	1.80	1.69	1.59
GRANT	IN	1.80	1.80	1.70	1.61	1.51	1.41
GREENE	IN	2.20	1.82	1.74	1.67	1.59	1.51
HAMILTON	IN	2.00	1.82	1.74	1.67	1.59	1.51
HANCOCK	IN	2.00	1.82	1.74	1.66	1.58	1.50
HARRISON	IN	2.20	1.98	1.84	1.71	1.57	1.44
HENDRICKS	IN	2.00	1.83	1.76	1.68	1.61	1.54
HENRY	IN	2.00	1.81	1.73	1.64	1.56	1.47
HOWARD	IN	1.80	1.81	1.72	1.64	1.55	1.46
HUNTINGTON	IN	1.80	1.71	1.62	1.54	1.45	1.36
JACKSON	IN	2.20	1.89	1.78	1.68	1.57	1.46
JASPER	IN	1.80	1.66	1.63	1.59	1.56	1.52
JAY	IN	1.80	1.72	1.64	1.55	1.47	1.39
JEFFERSON	IN	2.20	1.89	1.77	1.66	1.54	1.43
JENNINGS	IN	2.20	1.89	1.78	1.68	1.57	1.45
JOHNSON	IN	2.00	1.82	1.75	1.67	1.60	1.52
KNOX	IN	2.20	1.99	1.87	1.76	1.64	1.52
KOSCIUSKO	IN	1.80	1.61	1.52	1.42	1.33	1.24
LA PORTE	IN	1.80	1.61	1.52	1.44	1.35	1.26
LAGRANGE	IN	1.80	1.55	1.55	1.56	1.56	1.56
LAKE	IN	1.80	1.65	1.60	1.54	1.49	1.44
LAWRENCE	IN	2.20	1.90	1.80	1.69	1.59	1.49
MADISON	IN	2.00	1.82	1.73	1.65	1.56	1.48
MARION	IN	2.00	1.83	1.75	1.68	1.60	1.53
MARSHALL	IN	1.80	1.63	1.56	1.49	1.42	1.35
MARTIN	IN	2.20	1.99	1.87	1.74	1.62	1.50
MIAMI	IN	1.80	1.72	1.64	1.56	1.48	1.40
MONROE	IN	2.20	1.82	1.74	1.66	1.58	1.50
MONTGOMERY	IN	2.00	1.83	1.76	1.68	1.61	1.54
MORGAN	IN	2.00	1.83	1.75	1.68	1.60	1.53
NEWTON	IN	1.80	1.67	1.64	1.62	1.59	1.56
NOBLE	IN	1.80	1.62	1.53	1.45	1.36	1.28
OHIO	IN	2.20	1.98	1.84	1.71	1.57	1.44
ORANGE	IN	2.20	1.99	1.86	1.74	1.61	1.49
OWEN	IN	2.00	1.82	1.75	1.67	1.60	1.52
PARKE	IN	2.00	1.83	1.76	1.68	1.61	1.54
PERRY	IN	2.20	1.99	1.87	1.75	1.63	1.51
PIKE	IN	2.20	2.00	1.89	1.78	1.67	1.56
PORTER	IN	1.80	1.54	1.53	1.51	1.50	1.49
POSEY	IN	2.20	2.02	1.92	1.83	1.73	1.64
PULASKI	IN	1.80	1.65	1.60	1.56	1.51	1.46
PUTNAM	IN	2.00	1.83	1.75	1.68	1.60	1.53
RANDOLPH	IN	2.00	1.80	1.71	1.61	1.52	1.42
RIPLEY	IN	2.20	1.89	1.78	1.67	1.56	1.45
RUSH	IN	2.00	1.82	1.73	1.65	1.56	1.48
SCOTT	IN	1.80	1.63	1.55	1.48	1.40	1.33
SHELBY	IN	2.20	1.89	1.77	1.66	1.54	1.43
SPENCER	IN	2.00	1.82	1.74	1.66	1.58	1.50
ST. JOSEPH	IN	2.20	2.00	1.90	1.79	1.69	1.58
STARKE	IN	1.80	1.65	1.60	1.54	1.49	1.44
STEUBEN	IN	1.80	1.62	1.53	1.45	1.36	1.28
SULLIVAN	IN	2.20	1.82	1.74	1.67	1.59	1.51
SWITZERLAND	IN	2.20	1.89	1.78	1.66	1.55	1.44
TIPPECANOE	IN	1.80	1.83	1.75	1.68	1.60	1.53

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COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
TIPTON	IN	1.80	1.82	1.73	1.65	1.56	1.48
UNION	IN	2.00	1.81	1.72	1.63	1.54	1.45
VANDERBURGH	IN	2.20	2.01	1.92	1.82	1.73	1.63
VERMILLION	IN	2.00	1.83	1.76	1.69	1.62	1.55
VIGO	IN	2.00	1.83	1.75	1.68	1.60	1.53
WABASH	IN	1.80	1.71	1.63	1.54	1.46	1.37
WARREN	IN	1.80	1.83	1.76	1.70	1.63	1.56
WARRICK	IN	2.20	2.01	1.91	1.82	1.72	1.62
WASHINGTON	IN	2.20	1.98	1.85	1.71	1.58	1.45
WAYNE	IN	2.00	1.81	1.72	1.63	1.54	1.45
WELLS	IN	1.80	1.71	1.63	1.54	1.46	1.37
WHITE	IN	1.80	1.74	1.68	1.61	1.55	1.49
WHITLEY	IN	1.80	1.62	1.54	1.46	1.38	1.30
ALLEN	KS	2.20	2.11	1.92	1.72	1.53	1.34
ANDERSON	KS	2.00	1.81	1.70	1.58	1.47	1.36
ATCHISON	KS	2.00	1.83	1.74	1.64	1.55	1.46
BARBER	KS	2.20	2.11	1.92	1.72	1.53	1.34
BARTON	KS	2.20	2.10	1.89	1.69	1.48	1.28
BOURBON	KS	2.20	2.11	1.92	1.72	1.53	1.34
BROWN	KS	2.00	1.83	1.74	1.64	1.55	1.46
BUTLER	KS	2.20	2.10	1.90	1.71	1.51	1.31
CHASE	KS	2.20	1.80	1.69	1.57	1.46	1.34
CHAUTAUQUA	KS	2.20	2.11	1.92	1.74	1.55	1.36
CHEROKEE	KS	2.20	2.10	1.90	1.70	1.50	1.30
CHEYENNE	KS	2.20	2.15	1.91	1.66	1.42	1.17
CLARK	KS	2.20	2.27	2.04	1.81	1.58	1.35
CLAY	KS	2.00	1.80	1.69	1.57	1.46	1.34
CLOUD	KS	2.00	1.80	1.68	1.57	1.45	1.33
COFFEY	KS	2.00	1.81	1.69	1.58	1.46	1.35
COMANCHE	KS	2.20	2.11	1.92	1.73	1.54	1.35
COWLEY	KS	2.20	2.11	1.92	1.72	1.53	1.34
CRAWFORD	KS	2.20	2.10	1.90	1.71	1.51	1.31
DECATUR	KS	2.00	1.91	1.73	1.54	1.36	1.17
DICKINSON	KS	2.00	1.80	1.68	1.56	1.44	1.32
DONIPHAN	KS	2.00	1.83	1.74	1.66	1.57	1.48
DOUGLAS	KS	2.00	1.82	1.72	1.62	1.52	1.42
EDWARDS	KS	2.20	2.10	1.90	1.70	1.50	1.30
ELK	KS	2.20	2.11	1.92	1.72	1.53	1.34
ELLIS	KS	2.00	2.09	1.88	1.68	1.47	1.26
ELLSWORTH	KS	2.00	2.10	1.89	1.69	1.48	1.28
FINNEY	KS	2.20	2.26	2.02	1.79	1.55	1.31
FORD	KS	2.20	2.27	2.03	1.80	1.56	1.33
FRANKLIN	KS	2.00	1.81	1.71	1.60	1.50	1.39
GEARY	KS	2.00	1.80	1.69	1.57	1.46	1.34
GOVE	KS	2.20	2.25	2.00	1.74	1.49	1.24
GRAHAM	KS	2.00	1.92	1.75	1.57	1.40	1.22
GRANT	KS	2.20	2.27	2.04	1.82	1.59	1.36
GRAY	KS	2.20	2.27	2.03	1.80	1.56	1.33
GREELEY	KS	2.20	2.26	2.01	1.77	1.52	1.28
GREENWOOD	KS	2.20	2.11	1.91	1.72	1.52	1.33
HAMILTON	KS	2.20	2.27	2.03	1.80	1.56	1.33
HARPER	KS	2.20	2.11	1.91	1.72	1.52	1.33
HARVEY	KS	2.20	2.10	1.90	1.69	1.49	1.29
HASKELL	KS	2.20	2.27	2.03	1.80	1.56	1.33
HODGEMAN	KS	2.20	2.26	2.02	1.77	1.53	1.29
JACKSON	KS	2.00	1.82	1.72	1.63	1.53	1.43
JEFFERSON	KS	2.00	1.82	1.72	1.63	1.53	1.43
JEWELL	KS	2.00	1.93	1.76	1.60	1.43	1.26
JOHNSON	KS	2.00	1.82	1.73	1.63	1.54	1.44
KEARNY	KS	2.20	2.27	2.03	1.80	1.56	1.33
KINGMAN	KS	2.20	2.10	1.90	1.70	1.50	1.30
KIOWA	KS	2.20	2.10	1.91	1.71	1.52	1.32
LABETTE	KS	2.20	2.10	1.91	1.71	1.52	1.32
LANE	KS	2.20	2.25	2.01	1.76	1.52	1.27
LEAVENWORTH	KS	2.00	1.83	1.73	1.64	1.54	1.45
LINCOLN	KS	2.00	2.10	1.90	1.69	1.49	1.29
LINN	KS	2.00	1.81	1.71	1.60	1.50	1.39
LOGAN	KS	2.20	2.13	1.91	1.68	1.46	1.24
LYON	KS	2.00	1.81	1.69	1.58	1.46	1.35
MARION	KS	2.20	2.10	1.90	1.69	1.49	1.29

COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
MARSHALL	KS	2.20	2.10	1.90	1.71	1.51	1.31
MCPHERSON	KS	2.00	1.81	1.71	1.60	1.50	1.39
MEADE	KS	2.20	2.27	2.04	1.82	1.59	1.36
MIAMI	KS	2.00	1.82	1.72	1.61	1.51	1.41
MITCHELL	KS	2.00	1.94	1.78	1.61	1.45	1.29
MONTGOMERY	KS	2.20	2.11	1.92	1.73	1.54	1.35
MORRIS	KS	2.00	1.80	1.69	1.57	1.46	1.34
MORTON	KS	2.20	2.28	2.06	1.84	1.62	1.40
NEMAHA	KS	2.00	1.82	1.73	1.63	1.54	1.44
NEOSHO	KS	2.20	2.11	1.91	1.72	1.52	1.33
NESS	KS	2.20	2.25	2.01	1.76	1.52	1.27
NORTON	KS	2.00	1.92	1.74	1.55	1.37	1.19
OSAGE	KS	2.00	1.81	1.70	1.60	1.49	1.38
OSBORNE	KS	2.00	1.93	1.76	1.59	1.42	1.25
OTTAWA	KS	2.00	1.80	1.68	1.55	1.43	1.31
PAWNEE	KS	2.20	2.10	1.90	1.69	1.49	1.29
PHILLIPS	KS	2.00	1.92	1.74	1.56	1.38	1.20
POTTAWATOMIE	KS	2.00	1.81	1.71	1.60	1.50	1.39
PRATT	KS	2.20	2.10	1.90	1.71	1.51	1.31
RAWLINS	KS	2.00	1.91	1.72	1.53	1.34	1.15
RENO	KS	2.20	2.10	1.90	1.69	1.49	1.29
REPUBLIC	KS	2.00	1.80	1.68	1.55	1.43	1.31
RICE	KS	2.20	2.10	1.89	1.69	1.48	1.28
RILEY	KS	2.00	1.81	1.70	1.59	1.48	1.37
ROOKS	KS	2.00	1.93	1.75	1.58	1.40	1.23
RUSH	KS	2.20	2.09	1.89	1.68	1.48	1.27
RUSSELL	KS	2.00	2.09	1.89	1.68	1.48	1.27
SALINE	KS	2.00	1.80	1.67	1.55	1.42	1.30
SCOTT	KS	2.20	2.26	2.01	1.77	1.52	1.28
SEDGWICK	KS	2.20	2.10	1.90	1.69	1.49	1.29
SEWARD	KS	2.20	2.27	2.05	1.82	1.60	1.37
SHAWNEE	KS	2.00	1.82	1.71	1.61	1.50	1.40
SHERIDAN	KS	2.00	1.92	1.74	1.56	1.38	1.20
SHERMAN	KS	2.20	2.16	1.91	1.67	1.42	1.18
SMITH	KS	2.00	1.93	1.75	1.58	1.40	1.23
STAFFORD	KS	2.20	2.10	1.90	1.69	1.49	1.29
STANTON	KS	2.20	2.27	2.05	1.82	1.60	1.37
STEVENS	KS	2.20	2.27	2.05	1.82	1.60	1.37
SUMNER	KS	2.20	2.11	1.91	1.72	1.52	1.33
THOMAS	KS	2.00	1.92	1.74	1.55	1.37	1.19
TREGO	KS	2.20	2.25	2.00	1.75	1.50	1.25
WABAUNSEE	KS	2.00	2.20	1.99	1.79	1.58	1.38
WALLACE	KS	2.20	2.25	2.00	1.74	1.49	1.24
WASHINGTON	KS	2.00	1.81	1.70	1.58	1.47	1.36
WICHITA	KS	2.20	2.26	2.01	1.77	1.52	1.28
WILSON	KS	2.20	2.11	1.91	1.72	1.52	1.33
WOODSON	KS	2.20	2.11	1.92	1.72	1.53	1.34
WYANDOTTE	KS	2.00	1.83	1.73	1.64	1.54	1.45
ADAIR	KY	2.40	1.98	1.85	1.72	1.59	1.46
ALLEN	KY	2.40	2.12	1.98	1.85	1.71	1.57
ANDERSON	KY	2.20	1.97	1.83	1.69	1.55	1.41
BALLARD	KY	2.40	2.27	2.15	2.03	1.91	1.79
BARREN	KY	2.40	2.11	1.97	1.82	1.68	1.53
BATH	KY	2.20	2.00	1.89	1.78	1.67	1.56
BELL	KY	2.40	2.30	2.15	1.99	1.84	1.69
BOONE	KY	2.20	1.98	1.85	1.71	1.58	1.45
BOURBON	KY	2.20	1.99	1.86	1.74	1.61	1.49
BOYD	KY	2.20	2.02	1.93	1.85	1.76	1.67
BOYLE	KY	2.20	1.97	1.83	1.69	1.55	1.41
BRACKEN	KY	2.20	1.99	1.87	1.74	1.62	1.50
BREATHITT	KY	2.20	2.28	2.11	1.94	1.77	1.60
BRECKINRIDGE	KY	2.20	1.99	1.87	1.74	1.62	1.50
BULLITT	KY	2.20	1.97	1.83	1.69	1.55	1.41
BUTLER	KY	2.40	2.00	1.90	1.79	1.69	1.58
CALDWELL	KY	2.40	2.15	2.05	1.94	1.84	1.73
CALLOWAY	KY	2.40	2.28	2.18	2.07	1.97	1.86
CAMPBELL	KY	2.20	1.98	1.85	1.72	1.59	1.46
CARLISLE	KY	2.40	2.28	2.17	2.05	1.94	1.83
CARROLL	KY	2.20	1.97	1.84	1.70	1.57	1.43
CARTER	KY	2.20	2.01	1.92	1.82	1.73	1.63

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COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
CASEY	KY	2.40	1.97	1.83	1.69	1.55	1.41
CHRISTIAN	KY	2.40	2.15	2.04	1.92	1.81	1.70
CLARK	KY	2.20	1.99	1.87	1.74	1.62	1.50
CLAY	KY	2.40	2.28	2.11	1.93	1.76	1.59
CLINTON	KY	2.40	2.00	1.89	1.78	1.67	1.56
CRITTENDEN	KY	2.40	2.15	2.04	1.94	1.83	1.72
CUMBERLAND	KY	2.40	2.00	1.89	1.77	1.66	1.55
DAVIESS	KY	2.20	2.01	1.91	1.81	1.71	1.61
EDMONSON	KY	2.40	1.99	1.87	1.76	1.64	1.52
ELLIOTT	KY	2.20	2.01	1.92	1.82	1.73	1.63
ESTILL	KY	2.20	1.99	1.87	1.76	1.64	1.52
FAYETTE	KY	2.20	1.98	1.85	1.72	1.59	1.46
FLEMING	KY	2.20	2.00	1.89	1.77	1.66	1.55
FLOYD	KY	2.20	2.09	1.98	1.88	1.77	1.67
FRANKLIN	KY	2.20	1.97	1.84	1.70	1.57	1.43
FULTON	KY	2.40	2.29	2.19	2.10	2.00	1.90
GALLATIN	KY	2.20	1.98	1.84	1.71	1.57	1.44
GARRARD	KY	2.20	1.97	1.84	1.70	1.57	1.43
GRANT	KY	2.20	1.98	1.85	1.71	1.58	1.45
GRAVES	KY	2.40	2.28	2.17	2.07	1.96	1.85
GRAYSON	KY	2.40	1.99	1.87	1.75	1.63	1.51
GREEN	KY	2.40	1.98	1.85	1.71	1.58	1.45
GREENUP	KY	2.20	2.01	1.92	1.82	1.73	1.63
HANCOCK	KY	2.20	2.00	1.89	1.77	1.66	1.55
HARDIN	KY	2.20	1.98	1.85	1.72	1.59	1.46
HARLAN	KY	2.40	2.30	2.15	2.00	1.85	1.70
HARRISON	KY	2.20	1.98	1.86	1.73	1.61	1.48
HART	KY	2.40	1.98	1.86	1.73	1.61	1.48
HENDERSON	KY	2.20	2.02	1.92	1.83	1.73	1.64
HENRY	KY	2.20	1.97	1.83	1.70	1.56	1.42
HICKMAN	KY	2.40	2.28	2.18	2.07	1.97	1.86
HOPKINS	KY	2.40	2.15	2.03	1.92	1.80	1.69
JACKSON	KY	2.20	2.26	2.07	1.89	1.70	1.51
JEFFERSON	KY	2.20	1.97	1.82	1.68	1.53	1.39
JESSAMINE	KY	2.20	1.98	1.85	1.71	1.58	1.45
JOHNSON	KY	2.20	2.08	1.97	1.87	1.76	1.65
KENTON	KY	2.20	1.98	1.85	1.72	1.59	1.46
KNOTT	KY	2.40	2.29	2.14	1.98	1.83	1.67
KNOX	KY	2.40	2.28	2.11	1.95	1.78	1.61
LARUE	KY	2.20	1.98	1.84	1.71	1.57	1.44
LAUREL	KY	2.40	2.27	2.08	1.90	1.71	1.53
LAWRENCE	KY	2.20	2.09	1.98	1.88	1.77	1.67
LEE	KY	2.20	2.27	2.09	1.91	1.73	1.55
LESLIE	KY	2.40	2.29	2.13	1.98	1.82	1.66
LETCHER	KY	2.40	2.30	2.15	1.99	1.84	1.69
LEWIS	KY	2.20	2.00	1.90	1.79	1.69	1.58
LINCOLN	KY	2.20	1.97	1.83	1.70	1.56	1.42
LIVINGSTON	KY	2.40	2.26	2.13	2.01	1.88	1.75
LOGAN	KY	2.40	2.13	2.00	1.88	1.75	1.62
LYON	KY	2.40	2.16	2.06	1.97	1.87	1.77
MADISON	KY	2.40	2.27	2.15	2.03	1.91	1.79
MAGOFFIN	KY	2.40	2.27	2.09	1.92	1.74	1.56
MARION	KY	2.20	2.02	1.92	1.83	1.73	1.64
MARSHALL	KY	2.20	1.98	1.85	1.73	1.60	1.47
MARTIN	KY	2.20	2.08	1.97	1.85	1.74	1.63
MASON	KY	2.20	1.97	1.83	1.70	1.56	1.42
MCCRACKEN	KY	2.40	2.27	2.15	2.04	1.92	1.80
MCCREARY	KY	2.20	2.09	1.99	1.89	1.79	1.69
MCLEAN	KY	2.20	1.99	1.88	1.76	1.65	1.53
MEADE	KY	2.20	1.98	1.85	1.73	1.60	1.47
MENIFEE	KY	2.20	2.00	1.89	1.79	1.68	1.57
MERCER	KY	2.20	1.97	1.83	1.69	1.55	1.41
METCALFE	KY	2.40	1.99	1.87	1.74	1.62	1.50
MONROE	KY	2.40	2.00	1.89	1.77	1.66	1.55
MONTGOMERY	KY	2.20	1.99	1.88	1.76	1.65	1.53
MORGAN	KY	2.20	2.07	1.96	1.84	1.73	1.61
MUHLENBERG	KY	2.40	2.14	2.01	1.89	1.76	1.64
NELSON	KY	2.20	1.97	1.83	1.70	1.56	1.42
NICHOLAS	KY	2.20	1.99	1.87	1.76	1.64	1.52
OHIO	KY	2.40	2.01	1.90	1.80	1.69	1.59

COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
OLDHAM	KY	2.20	1.97	1.83	1.68	1.54	1.40
OWEN	KY	2.20	1.98	1.84	1.71	1.57	1.44
OWSLEY	KY	2.20	2.27	2.10	1.92	1.75	1.57
PENDLETON	KY	2.20	1.98	1.86	1.73	1.61	1.48
PERRY	KY	2.40	2.29	2.13	1.97	1.81	1.65
PIKE	KY	2.40	2.09	1.99	1.89	1.79	1.69
POWELL	KY	2.20	2.00	1.88	1.77	1.65	1.54
PULASKI	KY	2.40	2.24	2.03	1.83	1.62	1.41
ROBERTSON	KY	2.20	1.99	1.87	1.74	1.62	1.50
ROCKCASTLE	KY	2.20	2.25	2.05	1.86	1.66	1.46
ROWAN	KY	2.20	2.01	1.90	1.80	1.69	1.59
RUSSELL	KY	2.40	1.98	1.85	1.73	1.60	1.47
SCOTT	KY	2.20	1.98	1.85	1.71	1.58	1.45
SHELBY	KY	2.20	1.97	1.83	1.68	1.54	1.40
SIMPSON	KY	2.40	2.01	1.91	1.80	1.70	1.60
SPENCER	KY	2.20	1.97	1.83	1.68	1.54	1.40
TAYLOR	KY	2.40	1.97	1.84	1.70	1.57	1.43
TODD	KY	2.40	2.14	2.02	1.90	1.78	1.66
TRIGG	KY	2.40	2.16	2.07	1.97	1.88	1.78
TRIMBLE	KY	2.20	1.97	1.83	1.70	1.56	1.42
UNION	KY	2.20	2.02	1.94	1.85	1.77	1.68
WARREN	KY	2.40	2.00	1.89	1.78	1.67	1.56
WASHINGTON	KY	2.20	1.97	1.83	1.69	1.55	1.41
WAYNE	KY	2.40	1.99	1.88	1.76	1.65	1.53
WEBSTER	KY	2.40	2.02	1.94	1.85	1.77	1.68
WHITLEY	KY	2.40	2.28	2.11	1.94	1.77	1.60
WOLFE	KY	2.20	2.07	1.95	1.83	1.71	1.59
WOODFORD	KY	2.20	1.97	1.84	1.70	1.57	1.43
ACADIA	LA	3.50	3.43	3.21	3.00	2.78	2.56
ALLEN	LA	3.50	3.36	3.13	2.91	2.68	2.46
ASCENSION	LA	3.60	3.40	3.16	2.91	2.67	2.42
ASSUMPTION	LA	3.60	3.41	3.18	2.94	2.71	2.47
AVOYELLES	LA	3.40	3.21	3.01	2.82	2.62	2.43
BEAUREGARD	LA	3.50	3.35	3.12	2.88	2.65	2.42
BIENVILLE	LA	3.30	2.97	2.76	2.56	2.35	2.14
BOSSIER	LA	3.10	2.94	2.69	2.45	2.20	1.96
CADDO	LA	3.10	2.93	2.68	2.42	2.17	1.92
CALCASIEU	LA	3.50	3.42	3.19	2.97	2.74	2.51
CALDWELL	LA	3.30	3.10	2.91	2.73	2.54	2.36
CAMERON	LA	3.60	3.43	3.21	3.00	2.78	2.56
CATAHOULA	LA	3.40	3.20	3.00	2.80	2.60	2.40
CLAIBORNE	LA	3.10	2.96	2.75	2.53	2.32	2.10
CONCORDIA	LA	3.40	3.20	3.00	2.81	2.61	2.41
DE SOTO	LA	3.30	3.04	2.79	2.55	2.30	2.06
EAST BATON ROUGE	LA	3.60	3.40	3.15	2.90	2.65	2.40
EAST CARROLL	LA	3.10	3.02	2.86	2.70	2.54	2.38
EAST FELICIANA	LA	3.50	3.34	3.11	2.87	2.64	2.40
EVANGELINE	LA	3.50	3.36	3.14	2.91	2.69	2.47
FRANKLIN	LA	3.30	3.10	2.92	2.75	2.57	2.39
GRANT	LA	3.40	3.19	2.97	2.76	2.54	2.33
IBERIA	LA	3.60	3.44	3.22	3.01	2.79	2.58
IBERVILLE	LA	3.60	3.41	3.16	2.92	2.67	2.43
JACKSON	LA	3.30	3.00	2.82	2.63	2.45	2.27
JEFFERSON	LA	3.60	3.41	3.16	2.92	2.67	2.43
JEFFERSON DAVIS	LA	3.50	3.43	3.20	2.98	2.75	2.53
LA SALLE	LA	3.60	3.44	3.23	3.01	2.80	2.59
LAFAYETTE	LA	3.60	3.41	3.18	2.94	2.71	2.47
LAFOURCHE	LA	3.40	3.19	2.98	2.78	2.57	2.36
LINCOLN	LA	3.10	2.99	2.79	2.60	2.40	2.21
LIVINGSTON	LA	3.60	3.40	3.15	2.90	2.65	2.40
MADISON	LA	3.30	3.10	2.93	2.75	2.58	2.40
MOREHOUSE	LA	3.10	3.01	2.84	2.67	2.50	2.33
NATCHITOCHES	LA	3.30	3.17	2.94	2.70	2.47	2.24
ORLEANS	LA	3.60	3.41	3.17	2.93	2.69	2.45
OUACHITA	LA	3.10	3.01	2.84	2.66	2.49	2.32
PLAQUEMINES	LA	3.60	3.43	3.21	2.99	2.77	2.55
POINTE COUPEE	LA	3.50	3.35	3.12	2.90	2.67	2.44
RAPIDES	LA	3.40	3.20	2.99	2.79	2.58	2.38
RED RIVER	LA	3.30	3.05	2.82	2.58	2.35	2.12
RICHLAND	LA	3.10	3.02	2.86	2.70	2.54	2.38

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COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
SABINE	LA	3.30	3.16	2.92	2.68	2.44	2.20
ST. BERNARD	LA	3.60	3.41	3.18	2.94	2.71	2.47
ST. CHARLES	LA	3.60	3.41	3.16	2.92	2.67	2.43
ST. HELENA	LA	3.50	3.35	3.11	2.88	2.64	2.41
ST. JAMES	LA	3.60	3.41	3.17	2.92	2.68	2.44
ST. JOHN THE BAPTIST	LA	3.60	3.41	3.16	2.92	2.67	2.43
ST. LANDRY	LA	3.50	3.36	3.14	2.93	2.71	2.49
ST. MARTIN	LA	3.60	3.43	3.21	3.00	2.78	2.56
ST. MARY	LA	3.60	3.43	3.21	3.00	2.78	2.56
ST. TAMMANY	LA	3.50	3.36	3.14	2.91	2.69	2.47
TANGIPAHOA	LA	3.60	3.40	3.16	2.91	2.67	2.42
TENSAS	LA	3.30	3.10	2.93	2.75	2.58	2.40
TERREBONNE	LA	3.60	3.42	3.20	2.97	2.75	2.52
UNION	LA	3.10	2.99	2.80	2.61	2.42	2.23
VERMILION	LA	3.60	3.44	3.23	3.03	2.82	2.61
VERNON	LA	3.40	3.18	2.97	2.75	2.54	2.32
WASHINGTON	LA	3.50	3.36	3.13	2.91	2.68	2.46
WEBSTER	LA	3.10	2.94	2.70	2.46	2.22	1.98
WEST BATON ROUGE	LA	3.60	3.40	3.16	2.91	2.67	2.42
WEST CARROLL	LA	3.10	3.02	2.85	2.69	2.52	2.36
WEST FELICIANA	LA	3.50	3.35	3.12	2.88	2.65	2.42
WINN	LA	3.30	3.08	2.88	2.69	2.49	2.29
BARNSTABLE	MA	3.25	3.06	2.87	2.69	2.50	2.32
BERKSHIRE	MA	2.80	2.71	2.49	2.28	2.06	1.85
BRISTOL	MA	3.25	3.07	2.89	2.72	2.54	2.37
DUKES	MA	3.25	3.06	2.88	2.71	2.53	2.35
ESSEX	MA	3.25	3.04	2.83	2.63	2.42	2.22
FRANKLIN	MA	3.00	2.80	2.58	2.36	2.14	1.92
HAMPDEN	MA	3.00	2.90	2.68	2.45	2.23	2.01
HAMPSHIRE	MA	3.00	2.91	2.67	2.44	2.20	1.97
MIDDLESEX	MA	3.25	3.04	2.84	2.64	2.44	2.24
NANTUCKET	MA	3.25	3.06	2.88	2.69	2.51	2.33
NORFOLK	MA	3.25	3.05	2.87	2.68	2.50	2.31
PLYMOUTH	MA	3.25	3.06	2.88	2.71	2.53	2.35
SUFFOLK	MA	3.25	3.06	2.87	2.69	2.50	2.32
WORCESTER	MA	3.10	2.99	2.78	2.58	2.37	2.17
ALLEGANY	MD	2.60	2.58	2.33	2.09	1.84	1.60
ANNE ARUNDEL	MD	3.00	2.75	2.47	2.18	1.90	1.62
BALTIMORE	MD	3.00	2.73	2.44	2.14	1.85	1.55
BALTIMORE CITY	MD	3.00	2.74	2.45	2.15	1.86	1.57
CALVERT	MD	3.00	2.77	2.50	2.24	1.97	1.71
CAROLINE	MD	3.00	2.78	2.53	2.28	2.03	1.78
CARROLL	MD	2.80	2.72	2.41	2.10	1.79	1.48
CECIL	MD	3.00	2.80	2.51	2.22	1.93	1.64
CHARLES	MD	3.00	2.78	2.48	2.21	1.93	1.66
DORCHESTER	MD	3.00	2.68	2.46	2.24	2.02	1.80
FREDERICK	MD	2.80	2.72	2.41	2.10	1.79	1.48
GARRETT	MD	2.60	2.55	2.32	2.09	1.86	1.63
HARFORD	MD	3.00	2.74	2.45	2.15	1.86	1.57
HOWARD	MD	3.00	2.73	2.44	2.14	1.85	1.55
KENT	MD	3.00	2.75	2.48	2.20	1.93	1.65
MONTGOMERY	MD	3.00	2.73	2.44	2.14	1.85	1.55
PRINCE GEORGE'S	MD	3.00	2.75	2.47	2.19	1.91	1.63
QUEEN ANNE'S	MD	3.00	2.76	2.49	2.23	1.96	1.69
SOMERSET	MD	3.00	2.77	2.52	2.26	2.01	1.75
ST. MARY'S	MD	3.00	2.64	2.46	2.27	2.09	1.91
TALBOT	MD	3.00	2.78	2.52	2.27	2.01	1.76
WASHINGTON	MD	2.80	2.71	2.39	2.08	1.76	1.44
WICOMICO	MD	3.00	2.66	2.47	2.28	2.09	1.90
WORCESTER	MD	3.00	2.65	2.48	2.30	2.13	1.96
ANDROSCOGGIN	ME	2.80	2.67	2.43	2.18	1.94	1.69
AROOSTOOK	ME	2.60	2.09	1.91	1.72	1.54	1.35
CUMBERLAND	ME	3.00	2.76	2.53	2.29	2.06	1.83
FRANKLIN	ME	2.60	2.37	2.16	1.96	1.75	1.54
HANCOCK	ME	2.80	2.26	2.07	1.87	1.68	1.49
KENNEBEC	ME	2.80	2.37	2.18	1.98	1.79	1.59
KNOX	ME	2.80	2.38	2.19	1.99	1.80	1.61
LINCOLN	ME	2.80	2.47	2.27	2.08	1.88	1.68
OXFORD	ME	2.80	2.42	2.24	2.05	1.87	1.69
PENOBSCOT	ME	2.80	2.25	2.03	1.80	1.58	1.36

COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
PISCATAQUIS	ME	2.60	2.24	2.03	1.81	1.60	1.39
SAGADAHOC	ME	2.80	2.70	2.46	2.23	1.99	1.75
SOMERSET	ME	2.60	2.33	2.12	1.90	1.69	1.47
WALDO	ME	2.80	2.32	2.12	1.91	1.71	1.51
WASHINGTON	ME	2.80	2.16	1.98	1.79	1.61	1.42
YORK	ME	3.00	2.87	2.65	2.42	2.20	1.98
ALCONA	MI	1.80	1.58	1.47	1.37	1.26	1.16
ALGER	MI	1.80	1.28	1.21	1.14	1.07	1.00
ALLEGAN	MI	1.80	1.62	1.54	1.45	1.37	1.29
ALPENA	MI	1.80	1.57	1.46	1.34	1.23	1.12
ANTRIM	MI	1.80	1.55	1.42	1.29	1.16	1.03
ARENAC	MI	1.80	1.59	1.50	1.40	1.31	1.22
BARAGA	MI	1.70	1.27	1.19	1.10	1.02	0.94
BARRY	MI	1.80	1.62	1.53	1.45	1.36	1.28
BAY	MI	1.80	1.66	1.56	1.47	1.37	1.28
BENZIE	MI	1.80	1.58	1.48	1.38	1.28	1.18
BERRIEN	MI	1.80	1.64	1.57	1.51	1.44	1.38
BRANCH	MI	1.80	1.62	1.53	1.45	1.36	1.28
CALHOUN	MI	1.80	1.62	1.54	1.46	1.38	1.30
CASS	MI	1.80	1.62	1.53	1.45	1.36	1.28
CHARLEVOIX	MI	1.80	1.55	1.41	1.28	1.14	1.01
CHEBOYGAN	MI	1.80	1.55	1.42	1.30	1.17	1.04
CHIPPEWA	MI	1.80	1.32	1.30	1.27	1.25	1.22
CLARE	MI	1.80	1.60	1.52	1.44	1.36	1.28
CLINTON	MI	1.80	1.68	1.62	1.55	1.49	1.42
CRAWFORD	MI	1.80	1.55	1.42	1.30	1.17	1.04
DELTA	MI	1.70	1.11	1.07	1.04	1.00	0.96
DICKINSON	MI	1.70	1.09	1.03	0.98	0.92	0.86
EATON	MI	1.80	1.64	1.57	1.51	1.44	1.38
EMMET	MI	1.80	1.55	1.42	1.28	1.15	1.02
GENESEE	MI	1.80	1.67	1.59	1.51	1.43	1.35
GLADWIN	MI	1.80	1.59	1.50	1.41	1.32	1.23
GOGEBIC	MI	1.70	1.12	1.09	1.07	1.04	1.01
GRAND TRAVERSE	MI	1.80	1.57	1.46	1.35	1.24	1.13
GRATIOT	MI	1.80	1.67	1.59	1.52	1.44	1.36
HILLSDALE	MI	1.80	1.66	1.57	1.49	1.40	1.31
HOUGHTON	MI	1.70	1.27	1.19	1.12	1.04	0.96
HURON	MI	1.80	1.66	1.56	1.47	1.37	1.28
INGHAM	MI	1.80	1.68	1.61	1.55	1.48	1.41
IONIA	MI	1.80	1.63	1.56	1.49	1.42	1.35
IOSCO	MI	1.80	1.58	1.48	1.39	1.29	1.19
IRON	MI	1.70	1.10	1.04	0.99	0.93	0.88
ISABELLA	MI	1.80	1.61	1.54	1.46	1.39	1.32
JACKSON	MI	1.80	1.67	1.59	1.52	1.44	1.36
KALAMAZOO	MI	1.80	1.61	1.51	1.42	1.32	1.23
KALKASKA	MI	1.80	1.56	1.44	1.33	1.21	1.09
KENT	MI	1.80	1.62	1.53	1.45	1.36	1.28
KEWEENAW	MI	1.70	1.28	1.20	1.13	1.05	0.98
LAKE	MI	1.80	1.61	1.54	1.48	1.41	1.34
LAPEER	MI	1.80	1.67	1.59	1.50	1.42	1.34
LEELANAU	MI	1.80	1.56	1.45	1.33	1.22	1.10
LENAWEE	MI	1.80	1.71	1.62	1.53	1.44	1.35
LIVINGSTON	MI	1.80	1.67	1.60	1.52	1.45	1.37
LUCE	MI	1.80	1.30	1.25	1.21	1.16	1.11
MACKINAC	MI	1.80	1.30	1.25	1.21	1.16	1.11
MACOMB	MI	1.80	1.68	1.60	1.53	1.45	1.38
MANISTEE	MI	1.80	1.60	1.52	1.43	1.35	1.27
MARQUETTE	MI	1.80	1.27	1.18	1.10	1.01	0.93
MASON	MI	1.80	1.62	1.56	1.49	1.43	1.37
MECOSTA	MI	1.80	1.61	1.54	1.48	1.41	1.34
MENOMINEE	MI	1.70	1.11	1.07	1.03	0.99	0.95
MIDLAND	MI	1.80	1.60	1.53	1.45	1.38	1.30
MISSAUKEE	MI	1.80	1.59	1.49	1.40	1.30	1.21
MONROE	MI	1.80	1.72	1.63	1.55	1.46	1.38
MONTCALM	MI	1.80	1.63	1.56	1.48	1.41	1.34
MONTMORENCY	MI	1.80	1.55	1.42	1.29	1.16	1.03
MUSKEGON	MI	1.80	1.63	1.57	1.50	1.44	1.37
NEWAYGO	MI	1.80	1.61	1.55	1.48	1.42	1.35
OAKLAND	MI	1.80	1.67	1.59	1.50	1.42	1.34
OCEANA	MI	1.80	1.62	1.56	1.50	1.44	1.38

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COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
OGEMAW	MI	1.80	1.58	1.47	1.37	1.26	1.16
ONTONAGON	MI	1.70	1.12	1.08	1.05	1.01	0.98
OSCEOLA	MI	1.80	1.61	1.53	1.46	1.38	1.31
OSCODA	MI	1.80	1.56	1.44	1.33	1.21	1.09
OTSEGO	MI	1.80	1.54	1.40	1.25	1.11	0.97
OTTAWA	MI	1.80	1.62	1.54	1.46	1.38	1.30
PRESQUE ISLE	MI	1.80	1.56	1.44	1.33	1.21	1.09
ROSCOMMON	MI	1.80	1.57	1.46	1.35	1.24	1.13
SAGINAW	MI	1.80	1.67	1.59	1.50	1.42	1.34
SANILAC	MI	1.80	1.66	1.57	1.49	1.40	1.31
SCHOOLCRAFT	MI	1.80	1.29	1.22	1.16	1.09	1.03
SHIAWASSEE	MI	1.80	1.68	1.61	1.53	1.46	1.39
ST. CLAIR	MI	1.80	1.68	1.60	1.53	1.45	1.38
ST. JOSEPH	MI	1.80	1.61	1.52	1.44	1.35	1.26
TUSCOLA	MI	1.80	1.66	1.57	1.48	1.39	1.30
VAN BUREN	MI	1.80	1.62	1.54	1.45	1.37	1.29
WASHTENAW	MI	1.80	1.67	1.59	1.52	1.44	1.36
WAYNE	MI	1.80	1.67	1.60	1.52	1.45	1.37
WEXFORD	MI	1.80	1.59	1.50	1.42	1.33	1.24
AITKIN	MN	1.65	1.13	1.13	1.12	1.12	1.11
ANOKA	MN	1.70	1.15	1.15	1.16	1.16	1.17
BECKER	MN	1.65	1.09	1.04	0.98	0.93	0.88
BELTRAMI	MN	1.65	1.13	1.05	0.98	0.90	0.83
BENTON	MN	1.70	1.13	1.12	1.12	1.11	1.10
BIG STONE	MN	1.70	1.11	1.08	1.05	1.02	0.99
BLUE EARTH	MN	1.70	1.20	1.19	1.19	1.18	1.18
BROWN	MN	1.70	1.19	1.19	1.18	1.18	1.17
CARLTON	MN	1.65	1.15	1.17	1.18	1.20	1.21
CARVER	MN	1.70	1.15	1.15	1.16	1.16	1.17
CASS	MN	1.65	1.10	1.07	1.03	1.00	0.96
CHIPPEWA	MN	1.70	1.12	1.11	1.09	1.08	1.06
CHISAGO	MN	1.70	1.14	1.14	1.15	1.15	1.15
CLAY	MN	1.65	1.13	1.06	1.00	0.93	0.86
CLEARWATER	MN	1.65	1.13	1.05	0.98	0.90	0.83
COOK	MN	1.65	1.17	1.13	1.10	1.06	1.03
COTTONWOOD	MN	1.70	1.20	1.19	1.19	1.18	1.18
CROW WING	MN	1.65	1.12	1.10	1.08	1.06	1.04
DAKOTA	MN	1.70	1.14	1.15	1.15	1.16	1.16
DODGE	MN	1.70	1.14	1.13	1.13	1.12	1.12
DOUGLAS	MN	1.70	1.10	1.07	1.03	1.00	0.96
FARIBAULT	MN	1.70	1.20	1.20	1.21	1.21	1.21
FILLMORE	MN	1.70	1.14	1.14	1.13	1.13	1.13
FREEBORN	MN	1.70	1.20	1.19	1.19	1.18	1.18
GOODHUE	MN	1.70	1.14	1.13	1.13	1.12	1.12
GRANT	MN	1.70	1.10	1.06	1.03	0.99	0.95
HENNEPIN	MN	1.70	1.20	1.20	1.20	1.20	1.20
HOUSTON	MN	1.70	1.15	1.15	1.16	1.16	1.17
HUBBARD	MN	1.65	1.09	1.05	1.00	0.96	0.91
ISANTI	MN	1.70	1.14	1.14	1.15	1.15	1.15
ITASCA	MN	1.65	1.16	1.12	1.09	1.05	1.01
JACKSON	MN	1.70	1.20	1.20	1.21	1.21	1.21
KANABEC	MN	1.70	1.14	1.14	1.14	1.14	1.14
KANDIYOHI	MN	1.70	1.13	1.11	1.10	1.08	1.07
KITTSON	MN	1.60	1.13	1.06	1.00	0.93	0.86
KOOCHICHING	MN	1.65	1.14	1.09	1.03	0.98	0.92
LAC QUI PARLE	MN	1.70	1.17	1.14	1.10	1.07	1.04
LAKE	MN	1.65	1.18	1.16	1.15	1.13	1.11
LAKE OF THE WOODS	MN	1.60	1.12	1.05	0.97	0.90	0.82
LE SUEUR	MN	1.70	1.15	1.15	1.16	1.16	1.17
LINCOLN	MN	1.70	1.33	1.27	1.22	1.16	1.11
LYON	MN	1.70	1.19	1.17	1.16	1.14	1.13
MAHNOMEN	MN	1.70	1.14	1.14	1.14	1.14	1.14
MARSHALL	MN	1.65	1.13	1.05	0.98	0.90	0.83
MARTIN	MN	1.65	1.12	1.05	0.97	0.90	0.82
MCLEOD	MN	1.70	1.20	1.20	1.21	1.21	1.21
MEEKER	MN	1.70	1.13	1.12	1.12	1.11	1.10
MILLE LACS	MN	1.70	1.13	1.13	1.12	1.12	1.11
MORRISON	MN	1.70	1.12	1.10	1.08	1.06	1.04
MOWER	MN	1.70	1.19	1.18	1.16	1.15	1.14
MURRAY	MN	1.70	1.19	1.19	1.18	1.18	1.17

COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
NICOLLET	MN	1.70	1.15	1.15	1.16	1.16	1.17
NOBLES	MN	1.70	1.37	1.33	1.28	1.24	1.20
NORMAN	MN	1.65	1.13	1.07	1.00	0.94	0.87
OLMSTED	MN	1.70	1.18	1.16	1.14	1.12	1.10
OTTER TAIL	MN	1.65	1.10	1.05	1.01	0.96	0.92
PENNINGTON	MN	1.65	1.10	1.00	0.91	0.81	0.71
PINE	MN	1.70	1.15	1.16	1.16	1.17	1.18
PIPESTONE	MN	1.70	1.36	1.31	1.25	1.20	1.15
POLK	MN	1.65	1.13	1.06	0.99	0.92	0.85
POPE	MN	1.70	1.11	1.08	1.06	1.03	1.00
RAMSEY	MN	1.70	1.20	1.20	1.20	1.20	1.20
RED LAKE	MN	1.65	1.11	1.02	0.93	0.84	0.75
REDWOOD	MN	1.70	1.19	1.18	1.16	1.15	1.14
RENVILLE	MN	1.70	1.14	1.13	1.13	1.12	1.12
RICE	MN	1.70	1.14	1.15	1.15	1.16	1.16
ROCK	MN	1.70	1.41	1.36	1.30	1.25	1.20
ROSEAU	MN	1.60	1.12	1.03	0.95	0.86	0.78
SCOTT	MN	1.65	1.18	1.16	1.15	1.13	1.11
SHERBURNE	MN	1.70	1.15	1.15	1.16	1.16	1.17
SIBLEY	MN	1.70	1.14	1.14	1.13	1.13	1.13
ST. LOUIS	MN	1.70	1.14	1.15	1.15	1.16	1.16
STEARNS	MN	1.70	1.12	1.11	1.09	1.08	1.06
STEELE	MN	1.70	1.14	1.14	1.15	1.15	1.15
STEVENS	MN	1.70	1.11	1.08	1.04	1.01	0.98
SWIFT	MN	1.70	1.12	1.10	1.07	1.05	1.03
TODD	MN	1.70	1.11	1.08	1.05	1.02	0.99
TRAVERSE	MN	1.70	1.10	1.07	1.03	1.00	0.96
WABASHA	MN	1.70	1.13	1.12	1.12	1.11	1.10
WADENA	MN	1.65	1.10	1.06	1.02	0.98	0.94
WASECA	MN	1.70	1.15	1.15	1.16	1.16	1.17
WASHINGTON	MN	1.70	1.19	1.18	1.17	1.16	1.15
WATONWAN	MN	1.70	1.20	1.20	1.19	1.19	1.19
WILKIN	MN	1.65	1.09	1.05	1.00	0.96	0.91
WINONA	MN	1.70	1.14	1.14	1.15	1.15	1.15
WRIGHT	MN	1.70	1.14	1.14	1.14	1.14	1.14
YELLOW MEDICINE	MN	1.70	1.18	1.16	1.13	1.11	1.09
ADAIR	MO	1.80	1.67	1.61	1.56	1.50	1.45
ANDREW	MO	1.80	1.84	1.75	1.67	1.58	1.50
ATCHISON	MO	1.80	1.84	1.76	1.68	1.60	1.52
AUDRAIN	MO	2.00	1.84	1.76	1.68	1.60	1.52
BARRY	MO	2.20	2.01	1.82	1.64	1.45	1.27
BARTON	MO	2.20	2.10	1.90	1.71	1.51	1.31
BATES	MO	2.00	1.81	1.71	1.60	1.50	1.39
BENTON	MO	2.00	1.82	1.71	1.61	1.50	1.40
BOLLINGER	MO	2.20	1.95	1.89	1.83	1.77	1.71
BOONE	MO	2.00	1.85	1.78	1.71	1.64	1.57
BUCHANAN	MO	1.80	1.83	1.75	1.66	1.58	1.49
BUTLER	MO	2.20	2.11	2.04	1.96	1.89	1.81
CALDWELL	MO	1.80	1.83	1.75	1.66	1.58	1.49
CALLAWAY	MO	2.00	1.85	1.78	1.70	1.63	1.56
CAMDEN	MO	2.00	2.03	1.87	1.72	1.56	1.40
CAPE GIRARDEAU	MO	2.20	1.95	1.89	1.84	1.78	1.72
CARROLL	MO	1.80	1.67	1.63	1.58	1.54	1.49
CARTER	MO	2.20	2.10	2.00	1.91	1.81	1.72
CASS	MO	2.00	1.82	1.72	1.63	1.53	1.43
CEDAR	MO	2.20	2.02	1.84	1.67	1.49	1.32
CHARITON	MO	1.80	1.84	1.75	1.67	1.58	1.50
CHRISTIAN	MO	2.20	2.02	1.84	1.67	1.49	1.32
CLARK	MO	1.80	1.66	1.60	1.55	1.49	1.43
CLAY	MO	1.80	1.83	1.74	1.65	1.56	1.47
CLINTON	MO	1.80	1.83	1.75	1.66	1.58	1.49
COLE	MO	2.00	1.84	1.76	1.69	1.61	1.53
COOPER	MO	2.00	1.84	1.76	1.69	1.61	1.53
CRAWFORD	MO	2.00	1.92	1.84	1.75	1.67	1.58
DADE	MO	2.20	2.01	1.83	1.65	1.47	1.29
DALLAS	MO	2.20	2.01	1.84	1.66	1.49	1.31
DAVIESS	MO	1.80	1.84	1.76	1.67	1.59	1.51
DE KALB	MO	1.80	1.84	1.75	1.67	1.58	1.50
DENT	MO	2.00	2.06	1.94	1.81	1.69	1.56
DOUGLAS	MO	2.20	2.03	1.88	1.72	1.57	1.41

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COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
DUNKLIN	MO	2.20	2.44	2.32	2.21	2.09	1.98
FRANKLIN	MO	2.00	1.93	1.85	1.77	1.69	1.61
GASCONADE	MO	2.00	2.07	1.94	1.82	1.69	1.57
GENTRY	MO	1.80	1.84	1.76	1.68	1.60	1.52
GREENE	MO	2.20	2.01	1.84	1.66	1.49	1.31
GRUNDY	MO	1.80	1.54	1.53	1.52	1.51	1.50
HARRISON	MO	1.80	1.54	1.54	1.53	1.53	1.52
HENRY	MO	2.00	1.82	1.72	1.61	1.51	1.41
HICKORY	MO	2.00	2.02	1.85	1.69	1.52	1.35
HOLT	MO	1.80	1.84	1.75	1.67	1.58	1.50
HOWARD	MO	2.00	1.84	1.77	1.69	1.62	1.54
HOWELL	MO	2.20	2.07	1.95	1.84	1.72	1.60
IRON	MO	2.00	2.08	1.97	1.87	1.76	1.65
JACKSON	MO	2.00	1.83	1.74	1.64	1.55	1.46
JASPER	MO	2.20	2.10	1.89	1.69	1.48	1.28
JEFFERSON	MO	2.00	1.94	1.87	1.79	1.72	1.65
JOHNSON	MO	2.00	1.82	1.73	1.63	1.54	1.44
KNOX	MO	1.80	1.66	1.60	1.54	1.48	1.42
LACLEDE	MO	2.20	2.03	1.86	1.70	1.53	1.37
LAFAYETTE	MO	2.00	1.83	1.74	1.66	1.57	1.48
LAWRENCE	MO	2.20	2.01	1.83	1.64	1.46	1.28
LEWIS	MO	1.80	1.65	1.58	1.51	1.44	1.37
LINCOLN	MO	2.00	1.85	1.78	1.72	1.65	1.58
LINN	MO	1.80	1.67	1.62	1.58	1.53	1.48
LIVINGSTON	MO	1.80	1.68	1.63	1.59	1.54	1.50
MACON	MO	2.20	2.01	1.82	1.64	1.45	1.27
MADISON	MO	1.80	1.67	1.62	1.56	1.51	1.46
MARIES	MO	2.20	2.09	1.99	1.88	1.78	1.68
MARION	MO	2.00	2.05	1.92	1.78	1.65	1.51
MCDONALD	MO	1.80	1.65	1.59	1.52	1.46	1.39
MERCER	MO	1.80	1.54	1.53	1.53	1.52	1.51
MILLER	MO	2.00	1.83	1.74	1.65	1.56	1.47
MISSISSIPPI	MO	2.20	2.28	2.17	2.05	1.94	1.83
MONITEAU	MO	2.00	1.84	1.77	1.69	1.62	1.54
MONROE	MO	1.80	1.67	1.62	1.57	1.52	1.47
MONTGOMERY	MO	2.00	1.85	1.78	1.70	1.63	1.56
MORGAN	MO	2.00	1.83	1.74	1.64	1.55	1.46
NEW MADRID	MO	2.20	2.29	2.19	2.09	1.99	1.89
NEWTON	MO	2.20	2.09	1.89	1.68	1.48	1.27
NODAWAY	MO	1.80	1.84	1.76	1.69	1.61	1.53
OREGON	MO	2.20	2.09	1.99	1.90	1.80	1.70
OSAGE	MO	2.00	1.85	1.77	1.70	1.62	1.55
OZARK	MO	2.20	2.05	1.91	1.77	1.63	1.49
PEMISCOT	MO	2.20	2.44	2.33	2.21	2.10	1.99
PERRY	MO	2.20	1.94	1.87	1.79	1.72	1.65
PETTIS	MO	2.00	1.83	1.74	1.65	1.56	1.47
PHELPS	MO	2.00	2.05	1.92	1.78	1.65	1.51
PIKE	MO	2.00	1.68	1.64	1.59	1.55	1.51
PLATTE	MO	1.80	1.83	1.74	1.65	1.56	1.47
POLK	MO	2.20	2.01	1.83	1.66	1.48	1.30
PULASKI	MO	2.20	2.04	1.90	1.75	1.61	1.46
PUTNAM	MO	1.80	1.54	1.52	1.51	1.49	1.48
RALLS	MO	2.00	1.66	1.61	1.55	1.50	1.44
RANDOLPH	MO	1.80	1.84	1.76	1.67	1.59	1.51
RAY	MO	1.80	1.67	1.63	1.58	1.54	1.49
REYNOLDS	MO	2.20	2.08	1.97	1.87	1.76	1.65
RIPLEY	MO	2.20	2.11	2.03	1.96	1.88	1.80
SALINE	MO	2.00	1.93	1.85	1.78	1.70	1.62
SCHUYLER	MO	1.80	1.53	1.51	1.50	1.48	1.46
SCOTLAND	MO	1.80	1.66	1.61	1.55	1.50	1.44
SCOTT	MO	2.20	2.27	2.15	2.02	1.90	1.78
SHANNON	MO	2.20	2.08	1.96	1.85	1.73	1.62
SHELBY	MO	1.80	1.66	1.60	1.55	1.49	1.43
ST. CHARLES	MO	2.00	1.93	1.85	1.78	1.70	1.62
ST. CLAIR	MO	2.00	1.81	1.70	1.58	1.47	1.36
ST. FRANCOIS	MO	2.00	1.94	1.86	1.79	1.71	1.64
ST. LOUIS	MO	2.00	1.94	1.87	1.80	1.73	1.66
ST. LOUIS CITY	MO	2.00	1.94	1.87	1.81	1.74	1.67
STE. GENEVIEVE	MO	2.00	1.94	1.86	1.79	1.71	1.64
STODDARD	MO	2.20	2.11	2.04	1.96	1.89	1.81

COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
STONE	MO	2.20	2.01	1.84	1.66	1.49	1.31
SULLIVAN	MO	1.80	1.67	1.63	1.58	1.54	1.49
TANEY	MO	2.20	2.03	1.86	1.70	1.53	1.37
TEXAS	MO	2.20	2.05	1.91	1.77	1.63	1.49
VERNON	MO	2.20	2.11	1.92	1.73	1.54	1.35
WARREN	MO	2.00	1.93	1.84	1.76	1.67	1.59
WASHINGTON	MO	2.00	1.93	1.85	1.78	1.70	1.62
WAYNE	MO	2.20	2.10	2.01	1.92	1.83	1.74
WEBSTER	MO	2.20	2.01	1.83	1.64	1.46	1.28
WORTH	MO	1.80	1.84	1.76	1.69	1.61	1.53
WRIGHT	MO	2.20	2.03	1.87	1.70	1.54	1.38
ADAMS	MS	3.40	3.20	3.00	2.81	2.61	2.41
ALCORN	MS	2.90	2.70	2.57	2.43	2.30	2.17
AMITE	MS	3.40	3.20	3.01	2.81	2.62	2.42
ATTALA	MS	3.10	2.95	2.82	2.70	2.57	2.44
BENTON	MS	2.90	2.72	2.61	2.50	2.39	2.28
BOLIVAR	MS	3.10	2.85	2.72	2.60	2.47	2.34
CALHOUN	MS	3.10	2.86	2.74	2.63	2.51	2.39
CARROLL	MS	3.10	2.95	2.82	2.68	2.55	2.42
CHICKASAW	MS	3.10	2.85	2.73	2.60	2.48	2.35
CHOCTAW	MS	3.10	2.95	2.82	2.68	2.55	2.42
CLAIBORNE	MS	3.30	3.11	2.94	2.76	2.59	2.42
CLARKE	MS	3.30	3.13	2.98	2.84	2.69	2.54
CLAY	MS	3.10	2.94	2.80	2.65	2.51	2.37
COAHOMA	MS	2.90	2.74	2.64	2.55	2.45	2.36
COPIAH	MS	3.30	3.11	2.94	2.78	2.61	2.44
COVINGTON	MS	3.40	3.22	3.04	2.87	2.69	2.51
DE SOTO	MS	2.90	2.75	2.66	2.58	2.49	2.41
FORREST	MS	3.40	3.23	3.06	2.90	2.73	2.56
FRANKLIN	MS	3.40	3.20	3.01	2.81	2.62	2.42
GEORGE	MS	3.40	3.41	3.23	3.06	2.88	2.71
GREENE	MS	3.40	3.25	3.10	2.95	2.80	2.65
GRENADA	MS	3.10	2.87	2.75	2.64	2.52	2.41
HANCOCK	MS	3.50	3.37	3.16	2.96	2.75	2.54
HARRISON	MS	3.50	3.39	3.20	3.02	2.83	2.64
HINDS	MS	3.30	3.11	2.94	2.78	2.61	2.44
HOLMES	MS	3.10	2.95	2.82	2.68	2.55	2.42
HUMPHREYS	MS	3.10	2.95	2.81	2.68	2.54	2.41
ISSAQUENA	MS	3.10	3.02	2.86	2.71	2.55	2.39
ITAWAMBA	MS	2.90	2.71	2.59	2.46	2.34	2.22
JACKSON	MS	3.50	3.41	3.24	3.08	2.91	2.74
JASPER	MS	3.30	3.13	2.98	2.82	2.67	2.52
JEFFERSON	MS	3.40	3.20	3.01	2.81	2.62	2.42
JEFFERSON DAVIS	MS	3.40	3.22	3.04	2.85	2.67	2.49
JONES	MS	3.40	3.23	3.06	2.88	2.71	2.54
KEMPER	MS	3.10	3.03	2.89	2.74	2.60	2.45
LAFAYETTE	MS	2.90	2.74	2.65	2.55	2.46	2.37
LAMAR	MS	3.40	3.23	3.05	2.88	2.70	2.53
LAUDERDALE	MS	3.30	3.12	2.96	2.81	2.65	2.49
LAWRENCE	MS	3.40	3.21	3.02	2.84	2.65	2.46
LEAKE	MS	3.10	3.04	2.89	2.75	2.60	2.46
LEE	MS	2.90	2.72	2.60	2.49	2.37	2.26
LEFLORE	MS	3.10	2.94	2.81	2.67	2.54	2.40
LINCOLN	MS	3.40	3.21	3.02	2.82	2.63	2.44
LOWNDES	MS	3.10	2.93	2.79	2.64	2.50	2.35
MADISON	MS	3.10	3.03	2.88	2.74	2.59	2.44
MARION	MS	3.40	3.22	3.04	2.85	2.67	2.49
MARSHALL	MS	2.90	2.74	2.64	2.55	2.45	2.36
MONROE	MS	3.10	2.84	2.71	2.57	2.44	2.30
MONTGOMERY	MS	3.10	2.95	2.82	2.68	2.55	2.42
NESHOBA	MS	3.10	3.04	2.89	2.75	2.60	2.46
NEWTON	MS	3.30	3.12	2.96	2.80	2.64	2.48
NOXUBEE	MS	3.10	2.95	2.81	2.68	2.54	2.41
OKTIBBEHA	MS	3.10	2.94	2.81	2.67	2.54	2.40
PANOLA	MS	2.90	2.74	2.66	2.57	2.49	2.40
PEARL RIVER	MS	3.40	3.37	3.16	2.94	2.73	2.52
PERRY	MS	3.40	3.24	3.08	2.92	2.76	2.60
PIKE	MS	3.40	3.21	3.02	2.82	2.63	2.44
PONTOTOC	MS	2.90	2.73	2.63	2.53	2.43	2.33
PRENTISS	MS	2.90	2.70	2.57	2.44	2.31	2.18

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			1999	2000	2001	2002	2003 & beyond
QUITMAN	MS	2.90	2.74	2.65	2.57	2.48	2.39
RANKIN	MS	3.30	3.12	2.95	2.79	2.62	2.46
SCOTT	MS	3.30	3.12	2.96	2.79	2.63	2.47
SHARKEY	MS	3.10	3.02	2.87	2.71	2.56	2.40
SIMPSON	MS	3.30	3.12	2.96	2.79	2.63	2.47
SMITH	MS	3.30	3.12	2.96	2.81	2.65	2.49
STONE	MS	3.40	3.38	3.19	2.99	2.80	2.60
SUNFLOWER	MS	3.10	2.86	2.74	2.62	2.50	2.38
TALLAHATCHIE	MS	3.10	2.86	2.75	2.63	2.52	2.40
TATE	MS	2.90	2.74	2.66	2.57	2.49	2.40
TIPPAH	MS	2.90	2.71	2.60	2.48	2.37	2.25
TISHOMINGO	MS	2.90	2.69	2.54	2.40	2.25	2.11
TUNICA	MS	2.90	2.74	2.65	2.57	2.48	2.39
UNION	MS	2.90	2.72	2.61	2.51	2.40	2.29
WALTHALL	MS	3.40	3.21	3.02	2.84	2.65	2.46
WARREN	MS	3.30	3.11	2.94	2.76	2.59	2.42
WASHINGTON	MS	3.10	2.94	2.80	2.65	2.51	2.37
WAYNE	MS	3.40	3.24	3.08	2.91	2.75	2.59
WEBSTER	MS	3.10	2.95	2.81	2.68	2.54	2.41
WILKINSON	MS	3.40	3.20	3.00	2.81	2.61	2.41
WINSTON	MS	3.10	2.95	2.82	2.69	2.56	2.43
YALOBUSHA	MS	3.10	2.86	2.75	2.63	2.52	2.40
YAZOO	MS	3.10	3.03	2.88	2.73	2.58	2.43
BEAVERHEAD	MT	1.60	1.47	1.34	1.21	1.08	0.95
BIG HORN	MT	1.60	1.50	1.40	1.31	1.21	1.11
BLAINE	MT	1.60	1.53	1.45	1.38	1.30	1.23
BROADWATER	MT	1.60	1.48	1.36	1.24	1.12	1.00
CARBON	MT	1.60	1.49	1.38	1.26	1.15	1.04
CARTER	MT	1.65	1.48	1.35	1.23	1.10	0.98
CASCADE	MT	1.60	1.54	1.48	1.42	1.36	1.30
CHOUTEAU	MT	1.60	1.54	1.48	1.41	1.35	1.29
CUSTER	MT	1.60	1.49	1.38	1.28	1.17	1.06
DANIELS	MT	1.60	1.50	1.41	1.31	1.22	1.12
DAWSON	MT	1.60	1.49	1.38	1.28	1.17	1.06
DEER LODGE	MT	1.60	1.50	1.40	1.29	1.19	1.09
FALLON	MT	1.65	1.48	1.36	1.25	1.13	1.01
FERGUS	MT	1.60	1.52	1.43	1.35	1.26	1.18
FLATHEAD	MT	1.60	1.52	1.43	1.35	1.26	1.18
GALLATIN	MT	1.60	1.44	1.28	1.11	0.95	0.79
GARFIELD	MT	1.60	1.51	1.42	1.34	1.25	1.16
GLACIER	MT	1.60	1.53	1.46	1.38	1.31	1.24
GOLDEN VALLEY	MT	1.60	1.50	1.41	1.31	1.22	1.12
GRANITE	MT	1.60	1.52	1.43	1.35	1.26	1.18
HILL	MT	1.60	1.53	1.47	1.40	1.34	1.27
JEFFERSON	MT	1.60	1.48	1.36	1.25	1.13	1.01
JUDITH BASIN	MT	1.60	1.52	1.44	1.36	1.28	1.20
LAKE	MT	1.60	1.52	1.44	1.35	1.27	1.19
LEWIS AND CLARK	MT	1.60	1.52	1.44	1.35	1.27	1.19
LIBERTY	MT	1.60	1.54	1.47	1.41	1.34	1.28
LINCOLN	MT	1.60	1.50	1.40	1.29	1.19	1.09
MADISON	MT	1.60	1.50	1.40	1.30	1.20	1.10
MCCONE	MT	1.60	1.45	1.31	1.16	1.02	0.87
MEAGHER	MT	1.60	1.49	1.38	1.26	1.15	1.04
MINERAL	MT	1.80	1.51	1.42	1.32	1.23	1.14
MISSOULA	MT	1.60	1.52	1.44	1.37	1.29	1.21
MUSSELSHELL	MT	1.60	1.51	1.42	1.33	1.24	1.15
PARK	MT	1.60	1.45	1.29	1.14	0.98	0.83
PETROLEUM	MT	1.60	1.51	1.43	1.34	1.26	1.17
PHILLIPS	MT	1.60	1.52	1.44	1.36	1.28	1.20
PONDERA	MT	1.60	1.54	1.47	1.41	1.34	1.28
POWDER RIVER	MT	1.60	1.49	1.37	1.26	1.14	1.03
POWELL	MT	1.60	1.51	1.42	1.34	1.25	1.16
PRAIRIE	MT	1.60	1.49	1.39	1.28	1.18	1.07
RAVALLI	MT	1.60	1.52	1.44	1.37	1.29	1.21
RICHLAND	MT	1.60	1.49	1.38	1.27	1.16	1.05
ROOSEVELT	MT	1.60	1.50	1.39	1.29	1.18	1.08
ROSEBUD	MT	1.60	1.50	1.40	1.31	1.21	1.11
SANDERS	MT	1.80	1.51	1.41	1.32	1.22	1.13
SHERIDAN	MT	1.60	1.50	1.39	1.29	1.18	1.08
SILVER BOW	MT	1.60	1.49	1.37	1.26	1.14	1.03

COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
STILLWATER	MT	1.60	1.48	1.36	1.24	1.12	1.00
SWEET GRASS	MT	1.60	1.47	1.34	1.21	1.08	0.95
TETON	MT	1.60	1.54	1.48	1.42	1.36	1.30
TOOLE	MT	1.60	1.54	1.47	1.41	1.34	1.28
TREASURE	MT	1.60	1.51	1.41	1.32	1.22	1.13
VALLEY	MT	1.60	1.51	1.42	1.34	1.25	1.16
WHEATLAND	MT	1.60	1.50	1.39	1.29	1.18	1.08
WIBAUX	MT	1.60	1.49	1.37	1.26	1.14	1.03
YELLOWSTONE	MT	1.60	1.51	1.42	1.33	1.24	1.15
YELLOWSTONE NATIONAL PARK	MT	1.60	1.45	1.30	1.15	1.00	0.85
ALAMANCE	NC	3.10	2.86	2.63	2.41	2.18	1.96
ALEXANDER	NC	2.95	2.70	2.48	2.25	2.03	1.80
ALLEGHANY	NC	2.95	2.69	2.45	2.22	1.98	1.74
ANSON	NC	3.10	2.88	2.68	2.49	2.29	2.09
ASHE	NC	2.95	2.69	2.45	2.22	1.98	1.74
AVERY	NC	2.95	2.70	2.47	2.24	2.01	1.78
BEAUFORT	NC	3.20	3.06	2.90	2.73	2.57	2.40
BERTIE	NC	3.20	3.03	2.84	2.64	2.45	2.25
BLADEN	NC	3.30	3.07	2.91	2.76	2.60	2.44
BRUNSWICK	NC	3.30	3.11	2.99	2.86	2.74	2.62
BUNCOMBE	NC	2.95	2.72	2.51	2.29	2.08	1.87
BURKE	NC	2.95	2.71	2.49	2.26	2.04	1.82
CABARRUS	NC	3.10	2.84	2.61	2.37	2.14	1.90
CALDWELL	NC	2.95	2.70	2.47	2.25	2.02	1.79
CAMDEN	NC	3.20	3.03	2.84	2.64	2.45	2.25
CARTERET	NC	3.20	3.09	2.95	2.81	2.67	2.53
CASWELL	NC	3.10	2.84	2.60	2.36	2.12	1.88
CATAWBA	NC	3.10	2.83	2.58	2.33	2.08	1.83
CHATHAM	NC	3.10	2.88	2.68	2.48	2.28	2.08
CHEROKEE	NC	2.95	2.77	2.60	2.44	2.27	2.11
CHOWAN	NC	3.20	3.03	2.83	2.64	2.44	2.24
CLAY	NC	2.95	2.77	2.61	2.46	2.30	2.14
CLEVELAND	NC	3.10	2.84	2.61	2.37	2.14	1.90
COLUMBUS	NC	3.30	3.09	2.95	2.82	2.68	2.54
CRAVEN	NC	3.20	3.08	2.93	2.79	2.64	2.49
CUMBERLAND	NC	3.30	3.04	2.84	2.65	2.45	2.26
CURRITUCK	NC	3.20	3.03	2.83	2.64	2.44	2.24
DARE	NC	3.20	3.05	2.88	2.70	2.53	2.35
DAVIDSON	NC	3.10	2.85	2.62	2.38	2.15	1.92
DAVIE	NC	3.10	2.83	2.59	2.34	2.10	1.85
DUPLIN	NC	3.30	3.07	2.91	2.75	2.59	2.43
DURHAM	NC	3.10	2.87	2.66	2.46	2.25	2.04
EDGECOMBE	NC	3.20	3.03	2.83	2.64	2.44	2.24
FORSYTH	NC	3.10	2.84	2.59	2.35	2.10	1.86
FRANKLIN	NC	3.10	2.88	2.68	2.49	2.29	2.09
GASTON	NC	3.10	2.84	2.60	2.35	2.11	1.87
GATES	NC	3.20	3.02	2.81	2.60	2.39	2.18
GRAHAM	NC	2.95	2.76	2.58	2.41	2.23	2.06
GRANVILLE	NC	3.10	2.86	2.65	2.43	2.22	2.00
GREENE	NC	3.20	3.05	2.87	2.70	2.52	2.34
GUILFORD	NC	3.10	2.85	2.62	2.38	2.15	1.92
HALIFAX	NC	3.10	2.89	2.70	2.51	2.32	2.13
HARNETT	NC	3.30	3.02	2.81	2.59	2.38	2.17
HAYWOOD	NC	2.95	2.73	2.54	2.34	2.15	1.95
HENDERSON	NC	2.95	2.74	2.54	2.35	2.15	1.96
HERTFORD	NC	3.20	3.02	2.81	2.59	2.38	2.17
HOKE	NC	3.30	3.03	2.83	2.64	2.44	2.24
HYDE	NC	3.20	3.07	2.91	2.75	2.59	2.43
IREDELL	NC	3.10	2.83	2.58	2.33	2.08	1.83
JACKSON	NC	2.95	2.75	2.57	2.40	2.22	2.04
JOHNSTON	NC	3.20	3.03	2.82	2.62	2.41	2.21
JONES	NC	3.20	3.08	2.93	2.77	2.62	2.47
LEE	NC	3.10	2.89	2.70	2.50	2.31	2.12
LENOIR	NC	3.20	3.07	2.91	2.75	2.59	2.43
LINCOLN	NC	3.10	2.83	2.59	2.34	2.10	1.85
MACON	NC	2.95	2.71	2.49	2.27	2.05	1.83
MADISON	NC	2.95	2.76	2.59	2.42	2.25	2.08
MARTIN	NC	2.95	2.71	2.50	2.28	2.07	1.85
MCDOWELL	NC	3.20	3.04	2.86	2.67	2.49	2.30
MECKLENBURG	NC	3.10	2.84	2.60	2.37	2.13	1.89

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COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
MITCHELL	NC	2.95	2.70	2.48	2.25	2.03	1.80
MONTGOMERY	NC	3.10	2.87	2.66	2.44	2.23	2.02
MOORE	NC	3.10	2.89	2.69	2.50	2.30	2.11
NASH	NC	3.10	2.90	2.72	2.54	2.36	2.18
NEW HANOVER	NC	3.30	3.11	2.98	2.86	2.73	2.61
NORTHAMPTON	NC	3.10	2.88	2.69	2.49	2.30	2.10
ONSLOW	NC	3.30	3.09	2.95	2.80	2.66	2.52
ORANGE	NC	3.10	2.87	2.65	2.44	2.22	2.01
PAMLICO	NC	3.20	3.08	2.93	2.78	2.63	2.48
PASQUOTANK	NC	3.20	3.03	2.84	2.64	2.45	2.25
PENDER	NC	3.30	3.09	2.95	2.81	2.67	2.53
PERQUIMANS	NC	3.20	3.04	2.84	2.65	2.45	2.26
PERSON	NC	3.10	2.85	2.62	2.38	2.15	1.92
PITT	NC	3.20	3.05	2.88	2.70	2.53	2.35
POLK	NC	3.10	2.85	2.63	2.40	2.18	1.95
RANDOLPH	NC	3.10	2.86	2.64	2.42	2.20	1.98
RICHMOND	NC	3.10	2.90	2.72	2.53	2.35	2.17
ROBESON	NC	3.30	3.05	2.88	2.70	2.53	2.35
ROCKINGHAM	NC	2.95	2.71	2.50	2.28	2.07	1.85
ROWAN	NC	3.10	2.84	2.60	2.37	2.13	1.89
RUTHERFORD	NC	3.10	2.84	2.60	2.37	2.13	1.89
SAMPSON	NC	3.30	3.05	2.87	2.70	2.52	2.34
SCOTLAND	NC	3.30	3.03	2.83	2.64	2.44	2.24
STANLY	NC	3.10	2.86	2.64	2.41	2.19	1.97
STOKES	NC	2.95	2.70	2.47	2.25	2.02	1.79
SURRY	NC	2.95	2.70	2.47	2.23	2.00	1.77
SWAIN	NC	2.95	2.75	2.57	2.39	2.21	2.03
TRANSYLVANIA	NC	2.95	2.75	2.56	2.38	2.19	2.01
TYRRELL	NC	3.20	3.05	2.87	2.70	2.52	2.34
UNION	NC	3.10	2.86	2.65	2.43	2.22	2.00
VANCE	NC	3.10	2.86	2.64	2.43	2.21	1.99
WAKE	NC	3.10	2.89	2.70	2.50	2.31	2.12
WARREN	NC	3.10	2.86	2.65	2.43	2.22	2.00
WASHINGTON	NC	3.30	3.05	2.87	2.69	2.51	2.33
WATAUGA	NC	2.95	2.70	2.46	2.23	1.99	1.76
WAYNE	NC	3.20	3.05	2.87	2.68	2.50	2.32
WILKES	NC	2.95	2.70	2.47	2.24	2.01	1.78
WILSON	NC	3.20	3.03	2.83	2.62	2.42	2.22
YADKIN	NC	3.10	2.71	2.49	2.26	2.04	1.82
YANCEY	NC	2.95	2.71	2.49	2.26	2.04	1.82
ADAMS	ND	1.65	1.15	1.10	1.05	1.00	0.95
BARNES	ND	1.65	1.15	1.10	1.05	1.00	0.95
BENSON	ND	1.60	1.15	1.11	1.06	1.02	0.97
BILLINGS	ND	1.60	1.16	1.12	1.09	1.05	1.01
BOTTINEAU	ND	1.60	1.16	1.12	1.07	1.03	0.99
BOWMAN	ND	1.65	1.15	1.11	1.06	1.02	0.97
BURKE	ND	1.60	1.16	1.13	1.09	1.06	1.02
BURLEIGH	ND	1.65	1.15	1.10	1.06	1.01	0.96
CASS	ND	1.65	1.14	1.08	1.01	0.95	0.89
CAVALIER	ND	1.60	1.15	1.10	1.06	1.01	0.96
DICKEY	ND	1.65	1.15	1.10	1.05	1.00	0.95
DIVIDE	ND	1.60	1.17	1.14	1.10	1.07	1.04
DUNN	ND	1.60	1.16	1.12	1.07	1.03	0.99
EDDY	ND	1.65	1.16	1.11	1.07	1.02	0.98
EMMONS	ND	1.65	1.15	1.10	1.05	1.00	0.95
FOSTER	ND	1.65	1.15	1.11	1.06	1.02	0.97
GOLDEN VALLEY	ND	1.60	1.16	1.13	1.09	1.06	1.02
GRAND FORKS	ND	1.65	1.16	1.12	1.08	1.04	1.00
GRANT	ND	1.65	1.15	1.10	1.05	1.00	0.95
GRIGGS	ND	1.65	1.15	1.11	1.06	1.02	0.97
HETTINGER	ND	1.65	1.15	1.10	1.06	1.01	0.96
KIDDER	ND	1.65	1.15	1.11	1.06	1.02	0.97
LA MOURE	ND	1.65	1.15	1.10	1.05	1.00	0.95
LOGAN	ND	1.65	1.15	1.10	1.05	1.00	0.95
MCHENRY	ND	1.60	1.16	1.11	1.07	1.02	0.98
MCINTOSH	ND	1.65	1.15	1.10	1.05	1.00	0.95
MCKENZIE	ND	1.60	1.17	1.13	1.10	1.06	1.03
MCLEAN	ND	1.60	1.16	1.11	1.07	1.02	0.98
MERCER	ND	1.60	1.16	1.11	1.07	1.02	0.98
MORTON	ND	1.65	1.15	1.10	1.06	1.01	0.96

COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
MOUNTRAIL	ND	1.60	1.16	1.12	1.09	1.05	1.01
NELSON	ND	1.65	1.16	1.11	1.07	1.02	0.98
OLIVER	ND	1.60	1.15	1.11	1.06	1.02	0.97
PEMBINA	ND	1.60	1.14	1.09	1.03	0.98	0.92
PIERCE	ND	1.60	1.15	1.11	1.06	1.02	0.97
RAMSEY	ND	1.60	1.16	1.11	1.07	1.02	0.98
RANSOM	ND	1.65	1.14	1.09	1.03	0.98	0.92
RENVILLE	ND	1.60	1.16	1.12	1.08	1.04	1.00
RICHLAND	ND	1.65	1.14	1.08	1.03	0.97	0.91
ROLETTE	ND	1.60	1.16	1.11	1.07	1.02	0.98
SARGENT	ND	1.65	1.15	1.09	1.04	0.98	0.93
SHERIDAN	ND	1.60	1.15	1.11	1.06	1.02	0.97
SIOUX	ND	1.65	1.15	1.10	1.05	1.00	0.95
SLOPE	ND	1.65	1.16	1.12	1.07	1.03	0.98
STARK	ND	1.60	1.16	1.12	1.07	1.03	0.99
STEELE	ND	1.65	1.15	1.11	1.06	1.02	0.97
STUTSMAN	ND	1.65	1.15	1.10	1.05	1.00	0.95
TOWNER	ND	1.60	1.15	1.11	1.06	1.02	0.97
TRAILL	ND	1.65	1.15	1.10	1.05	1.00	0.95
WALSH	ND	1.60	1.15	1.10	1.06	1.01	0.96
WARD	ND	1.60	1.16	1.12	1.07	1.03	0.99
WELLS	ND	1.65	1.15	1.11	1.06	1.02	0.97
WILLIAMS	ND	1.60	1.17	1.13	1.10	1.06	1.03
ADAMS	NE	1.80	1.65	1.54	1.44	1.33	1.23
ANTELOPE	NE	1.75	1.54	1.44	1.33	1.23	1.12
ARTHUR	NE	1.80	1.22	1.17	1.12	1.07	1.02
BANNER	NE	1.80	1.72	1.54	1.37	1.19	1.01
BLAINE	NE	1.75	1.37	1.29	1.22	1.14	1.07
BOONE	NE	1.80	1.64	1.52	1.41	1.29	1.18
BOX BUTTE	NE	1.80	1.72	1.53	1.35	1.16	0.98
BOYD	NE	1.75	1.45	1.35	1.25	1.16	1.06
BROWN	NE	1.75	1.42	1.32	1.22	1.13	1.03
BUFFALO	NE	1.80	1.63	1.51	1.40	1.28	1.16
BURT	NE	1.80	1.68	1.61	1.53	1.46	1.39
BUTLER	NE	1.80	1.67	1.59	1.50	1.42	1.34
CASS	NE	1.85	1.70	1.66	1.61	1.57	1.52
CEDAR	NE	1.75	1.56	1.46	1.35	1.25	1.14
CHASE	NE	1.80	1.62	1.49	1.35	1.22	1.09
CHERRY	NE	1.75	1.39	1.29	1.19	1.08	0.98
CHEYENNE	NE	1.80	1.72	1.55	1.37	1.20	1.02
CLAY	NE	1.80	1.65	1.55	1.46	1.36	1.26
COLFAX	NE	1.80	1.66	1.57	1.48	1.39	1.30
CUMING	NE	1.80	1.59	1.52	1.44	1.37	1.29
CUSTER	NE	1.80	1.62	1.49	1.37	1.24	1.11
DAKOTA	NE	1.75	1.65	1.56	1.46	1.37	1.27
DAWES	NE	1.80	1.71	1.52	1.34	1.15	0.96
DAWSON	NE	1.80	1.62	1.50	1.37	1.25	1.12
DEUEL	NE	1.80	1.73	1.55	1.38	1.20	1.03
DIXON	NE	1.75	1.64	1.53	1.42	1.31	1.20
DODGE	NE	1.80	1.68	1.61	1.54	1.47	1.40
DOUGLAS	NE	1.85	1.70	1.66	1.61	1.57	1.52
DUNDY	NE	1.80	1.62	1.50	1.37	1.25	1.12
FILLMORE	NE	1.80	1.66	1.57	1.49	1.40	1.31
FRANKLIN	NE	1.80	1.64	1.54	1.43	1.33	1.22
FRONTIER	NE	1.80	1.62	1.50	1.37	1.25	1.12
FURNAS	NE	1.80	1.62	1.50	1.37	1.25	1.12
GAGE	NE	1.85	1.68	1.61	1.54	1.47	1.40
GARDEN	NE	1.80	1.72	1.54	1.37	1.19	1.01
GARFIELD	NE	1.75	1.46	1.37	1.28	1.20	1.11
GOSPER	NE	1.80	1.63	1.51	1.38	1.26	1.14
GRANT	NE	1.75	1.23	1.17	1.11	1.05	0.99
GREELEY	NE	1.80	1.63	1.52	1.40	1.29	1.17
HALL	NE	1.80	1.64	1.53	1.43	1.32	1.21
HAMILTON	NE	1.80	1.65	1.55	1.45	1.35	1.25
HARLAN	NE	1.80	1.64	1.53	1.41	1.30	1.19
HAYES	NE	1.80	1.62	1.49	1.37	1.24	1.11
HITCHCOCK	NE	1.80	1.63	1.50	1.38	1.25	1.13
HOLT	NE	1.75	1.51	1.40	1.29	1.19	1.08
HOOKER	NE	1.75	1.29	1.22	1.14	1.07	1.00
HOWARD	NE	1.80	1.63	1.52	1.40	1.29	1.17

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COUNTY/PARISH	STATE	OPTION 1A DIFFEREN-TIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
JEFFERSON	NE	1.80	1.67	1.59	1.51	1.43	1.35
JOHNSON	NE	1.85	1.69	1.63	1.57	1.51	1.45
KEARNEY	NE	1.80	1.64	1.53	1.41	1.30	1.19
KEITH	NE	1.80	1.61	1.47	1.32	1.18	1.04
KEYA PAHA	NE	1.75	1.42	1.32	1.22	1.13	1.03
KIMBALL	NE	1.80	1.72	1.55	1.37	1.20	1.02
KNOX	NE	1.75	1.62	1.49	1.36	1.23	1.10
LANCASTER	NE	1.85	1.68	1.61	1.54	1.47	1.40
LINCOLN	NE	1.80	1.61	1.48	1.34	1.21	1.07
LOGAN	NE	1.80	1.32	1.26	1.20	1.15	1.09
LOUP	NE	1.75	1.43	1.35	1.26	1.18	1.10
MADISON	NE	1.80	1.27	1.22	1.16	1.11	1.05
MCPHERSON	NE	1.80	1.64	1.53	1.41	1.30	1.19
MERRICK	NE	1.80	1.65	1.54	1.44	1.33	1.23
MORRILL	NE	1.80	1.72	1.54	1.36	1.18	1.00
NANCE	NE	1.80	1.64	1.54	1.43	1.33	1.22
NEMAHA	NE	1.85	1.70	1.65	1.60	1.55	1.50
NUCKOLLS	NE	1.80	1.65	1.56	1.46	1.37	1.27
OTOE	NE	1.85	1.70	1.65	1.59	1.54	1.49
PAWNEE	NE	1.85	1.69	1.62	1.56	1.49	1.43
PERKINS	NE	1.80	1.61	1.47	1.33	1.19	1.05
PHELPS	NE	1.80	1.63	1.52	1.40	1.29	1.17
PIERCE	NE	1.75	1.57	1.46	1.35	1.24	1.13
PLATTE	NE	1.80	1.65	1.55	1.46	1.36	1.26
POLK	NE	1.80	1.66	1.56	1.47	1.37	1.28
RED WILLOW	NE	1.80	1.63	1.51	1.40	1.28	1.16
RICHARDSON	NE	1.85	1.70	1.64	1.59	1.53	1.48
ROCK	NE	1.75	1.43	1.34	1.24	1.15	1.05
SALINE	NE	1.80	1.67	1.59	1.52	1.44	1.36
SARPY	NE	1.85	1.71	1.67	1.62	1.58	1.54
SAUNDERS	NE	1.85	1.69	1.63	1.56	1.50	1.44
SCOTTS BLUFF	NE	1.80	1.72	1.54	1.37	1.19	1.01
SEWARD	NE	1.80	1.67	1.59	1.51	1.43	1.35
SHERIDAN	NE	1.80	1.71	1.53	1.34	1.16	0.97
SHERMAN	NE	1.80	1.63	1.51	1.39	1.27	1.15
SIOUX	NE	1.80	1.71	1.53	1.34	1.16	0.97
STANTON	NE	1.80	1.65	1.54	1.44	1.33	1.23
THAYER	NE	1.80	1.66	1.58	1.49	1.41	1.32
THOMAS	NE	1.75	1.32	1.24	1.17	1.09	1.02
THURSTON	NE	1.75	1.66	1.57	1.48	1.39	1.30
VALLEY	NE	1.80	1.63	1.51	1.38	1.26	1.14
WASHINGTON	NE	1.85	1.70	1.64	1.59	1.53	1.48
WAYNE	NE	1.75	1.64	1.53	1.42	1.31	1.20
WEBSTER	NE	1.80	1.65	1.55	1.44	1.34	1.24
WHEELER	NE	1.75	1.52	1.42	1.32	1.23	1.13
YORK	NE	1.80	1.66	1.57	1.47	1.38	1.29
BELKNAP	NH	2.80	2.80	2.58	2.36	2.14	1.92
CARROLL	NH	2.80	2.76	2.52	2.29	2.05	1.82
CHESHIRE	NH	2.80	2.82	2.60	2.38	2.16	1.94
COOS	NH	2.60	2.41	2.22	2.02	1.83	1.64
GRAFTON	NH	2.60	2.49	2.31	2.12	1.94	1.76
HILLSBOROUGH	NH	3.00	2.95	2.72	2.50	2.27	2.05
MERRIMACK	NH	3.00	2.86	2.63	2.41	2.18	1.95
ROCKINGHAM	NH	3.00	2.96	2.75	2.54	2.33	2.12
STRAFFORD	NH	3.00	2.86	2.65	2.44	2.23	2.02
SULLIVAN	NH	2.80	2.74	2.51	2.28	2.05	1.82
ATLANTIC	NJ	3.00	2.73	2.53	2.33	2.13	1.93
BERGEN	NJ	3.15	2.92	2.69	2.47	2.24	2.02
BURLINGTON	NJ	3.00	2.82	2.58	2.35	2.11	1.88
CAMDEN	NJ	3.00	2.84	2.59	2.34	2.09	1.84
CAPE MAY	NJ	3.00	2.71	2.52	2.33	2.14	1.95
CUMBERLAND	NJ	3.00	2.72	2.49	2.27	2.04	1.82
ESSEX	NJ	3.15	2.91	2.67	2.44	2.20	1.97
GLOUCESTER	NJ	3.00	2.83	2.57	2.32	2.06	1.80
HUDSON	NJ	3.15	2.92	2.69	2.47	2.24	2.02
HUNTERDON	NJ	3.10	2.82	2.57	2.31	2.06	1.81
MERCER	NJ	3.10	2.86	2.62	2.39	2.15	1.92
MIDDLESEX	NJ	3.10	2.87	2.64	2.42	2.19	1.97
MONMOUTH	NJ	3.10	2.83	2.63	2.42	2.22	2.01
MORRIS	NJ	3.10	2.85	2.62	2.38	2.15	1.91

COUNTY/PARISH	STATE	OPTION 1A DIFFEREN-TIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
OCEAN	NJ	3.10	2.74	2.56	2.37	2.19	2.00
PASSAIC	NJ	3.15	2.90	2.66	2.43	2.19	1.95
SALEM	NJ	3.00	2.82	2.55	2.29	2.02	1.75
SOMERSET	NJ	3.10	2.84	2.61	2.37	2.14	1.91
SUSSEX	NJ	3.10	2.77	2.53	2.30	2.06	1.83
UNION	NJ	3.15	2.91	2.67	2.44	2.20	1.97
WARREN	NJ	3.10	2.79	2.53	2.28	2.02	1.77
BERNALILLO	NM	2.35	2.25	2.16	2.06	1.97	1.87
CATRON	NM	2.10	2.18	2.01	1.84	1.67	1.50
CHAVES	NM	2.10	2.04	1.89	1.73	1.58	1.42
CIBOLA	NM	1.90	2.23	2.11	1.99	1.87	1.75
COLFAX	NM	2.35	2.24	2.12	2.01	1.89	1.78
CURRY	NM	2.10	2.13	1.92	1.70	1.49	1.27
DE BACA	NM	2.10	2.17	1.99	1.81	1.63	1.45
DONA ANA	NM	2.10	2.15	1.95	1.76	1.56	1.36
EDDY	NM	2.10	2.06	1.92	1.78	1.64	1.50
GRANT	NM	2.10	2.16	1.96	1.77	1.57	1.38
GUADALUPE	NM	2.35	2.21	2.06	1.92	1.77	1.63
HARDING	NM	2.35	2.20	2.05	1.90	1.75	1.60
HIDALGO	NM	2.10	2.15	1.94	1.74	1.53	1.33
LEA	NM	2.10	2.07	1.94	1.80	1.67	1.54
LINCOLN	NM	2.10	2.18	2.01	1.84	1.67	1.50
LOS ALAMOS	NM	2.35	2.29	2.23	2.16	2.10	2.04
LUNA	NM	2.10	2.15	1.95	1.76	1.56	1.36
MCKINLEY	NM	1.90	2.23	2.11	1.99	1.87	1.75
MORA	NM	2.35	2.25	2.16	2.06	1.97	1.87
OTERO	NM	2.10	2.17	1.99	1.80	1.62	1.44
QUAY	NM	2.35	2.17	1.99	1.81	1.63	1.45
RIO ARRIBA	NM	1.90	2.28	2.20	2.13	2.05	1.98
ROOSEVELT	NM	2.10	2.13	1.91	1.69	1.47	1.25
SAN JUAN	NM	2.35	2.27	2.19	2.12	2.04	1.96
SAN MIGUEL	NM	1.90	2.13	2.06	1.98	1.91	1.84
SANDOVAL	NM	2.35	2.26	2.16	2.07	1.97	1.88
SANTA FE	NM	2.35	2.28	2.22	2.15	2.09	2.02
SIERRA	NM	2.10	2.17	1.99	1.82	1.64	1.46
SOCORRO	NM	2.10	2.20	2.05	1.90	1.75	1.60
TAOS	NM	1.90	2.27	2.18	2.10	2.01	1.93
TORRANCE	NM	2.35	2.23	2.11	2.00	1.88	1.76
UNION	NM	2.35	2.19	2.04	1.88	1.73	1.57
VALENCIA	NM	2.35	2.23	2.11	2.00	1.88	1.76
CARSON CITY	NV	1.70	1.16	1.08	0.99	0.91	0.83
CHURCHILL	NV	1.70	1.22	1.14	1.05	0.97	0.88
CLARK	NV	2.00	1.65	1.69	1.74	1.78	1.83
DOUGLAS	NV	1.70	1.15	1.08	1.00	0.93	0.85
ELKO	NV	1.90	1.72	1.54	1.36	1.18	1.00
ESMERALDA	NV	1.60	1.24	1.20	1.15	1.11	1.06
EUREKA	NV	1.70	1.49	1.39	1.28	1.18	1.07
HUMBOLDT	NV	1.70	1.42	1.30	1.19	1.07	0.95
LANDER	NV	1.70	1.43	1.32	1.22	1.11	1.00
LINCOLN	NV	1.60	1.59	1.59	1.58	1.58	1.57
LYON	NV	1.70	0.97	0.94	0.90	0.87	0.84
MINERAL	NV	1.60	1.17	1.10	1.04	0.97	0.90
NYE	NV	1.60	1.47	1.39	1.30	1.22	1.14
PERSHING	NV	1.70	1.39	1.27	1.16	1.04	0.93
STOREY	NV	1.70	1.15	1.06	0.98	0.89	0.81
WASHOE	NV	1.70	1.16	1.09	1.02	0.95	0.88
WHITE PINE	NV	1.90	1.77	1.63	1.50	1.36	1.23
ALBANY	NY	2.60	2.42	2.24	2.06	1.88	1.70
ALLEGANY	NY	2.30	2.08	1.89	1.70	1.51	1.32
BRONX	NY	3.15	2.93	2.71	2.50	2.28	2.07
BROOME	NY	2.60	2.31	2.07	1.84	1.60	1.36
CATTARAUGUS	NY	2.10	1.93	1.77	1.60	1.44	1.27
CAYUGA	NY	2.30	2.14	1.93	1.73	1.52	1.31
CHAUTAUQUA	NY	2.10	1.86	1.70	1.55	1.39	1.23
CHEMUNG	NY	2.40	2.18	1.96	1.74	1.52	1.30
CHENANGO	NY	2.40	2.28	2.06	1.84	1.62	1.40
CLINTON	NY	2.20	2.07	1.94	1.82	1.69	1.56
COLUMBIA	NY	2.80	2.52	2.34	2.17	1.99	1.81
CORTLAND	NY	2.40	2.22	2.00	1.77	1.55	1.32
DELAWARE	NY	2.60	2.35	2.15	1.95	1.75	1.55

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			1999	2000	2001	2002	2003 & beyond
DUTCHESS	NY	2.80	2.59	2.43	2.26	2.10	1.94
ERIE	NY	2.20	1.93	1.79	1.64	1.50	1.36
ESSEX	NY	2.40	2.17	2.02	1.87	1.72	1.57
FRANKLIN	NY	2.20	2.00	1.88	1.75	1.63	1.51
FULTON	NY	2.60	2.31	2.13	1.94	1.76	1.58
GENESEE	NY	2.20	2.01	1.85	1.70	1.54	1.38
GREENE	NY	2.60	2.51	2.31	2.12	1.92	1.73
HAMILTON	NY	2.40	2.24	2.06	1.89	1.71	1.53
HERKIMER	NY	2.40	2.27	2.07	1.88	1.68	1.48
JEFFERSON	NY	2.20	2.04	1.88	1.73	1.57	1.41
KINGS	NY	3.15	2.92	2.70	2.48	2.26	2.04
LEWIS	NY	2.20	2.14	1.96	1.78	1.60	1.42
LIVINGSTON	NY	2.30	2.01	1.84	1.68	1.51	1.35
MADISON	NY	2.40	2.19	1.99	1.78	1.58	1.37
MONROE	NY	2.30	2.02	1.86	1.71	1.55	1.40
MONTGOMERY	NY	2.60	2.36	2.17	1.97	1.78	1.59
NASSAU	NY	3.15	2.94	2.73	2.53	2.32	2.12
NEW YORK	NY	3.15	2.92	2.70	2.47	2.25	2.03
NIAGARA	NY	2.20	1.94	1.80	1.67	1.53	1.40
ONEIDA	NY	2.40	2.18	1.98	1.79	1.59	1.40
ONONDAGA	NY	2.40	2.14	1.93	1.73	1.52	1.31
ONTARIO	NY	2.30	2.09	1.90	1.72	1.53	1.35
ORANGE	NY	3.00	2.81	2.58	2.34	2.11	1.88
ORLEANS	NY	2.20	2.02	1.86	1.71	1.55	1.40
OSWEGO	NY	2.30	2.11	1.92	1.73	1.54	1.35
OTSEGO	NY	2.60	2.30	2.10	1.91	1.71	1.51
PUTNAM	NY	3.00	2.84	2.64	2.44	2.24	2.04
QUEENS	NY	3.15	2.93	2.71	2.50	2.28	2.07
RENSSELAER	NY	2.60	2.43	2.26	2.09	1.92	1.75
RICHMOND	NY	3.15	2.92	2.69	2.47	2.24	2.02
ROCKLAND	NY	3.15	2.91	2.68	2.46	2.23	2.00
SARATOGA	NY	2.60	2.35	2.17	2.00	1.82	1.65
SCHENECTADY	NY	2.60	2.41	2.22	2.04	1.85	1.66
SCHOHARIE	NY	2.60	2.40	2.20	2.01	1.81	1.61
SCHUYLER	NY	2.30	2.16	1.94	1.73	1.51	1.30
SENECA	NY	2.30	2.08	1.89	1.70	1.51	1.32
ST. LAWRENCE	NY	2.20	1.99	1.85	1.72	1.58	1.45
STEUBEN	NY	2.30	2.12	1.92	1.72	1.52	1.32
SUFFOLK	NY	3.15	2.96	2.79	2.61	2.44	2.26
SULLIVAN	NY	2.80	2.50	2.30	2.10	1.90	1.70
TIOGA	NY	2.40	2.28	2.03	1.79	1.54	1.30
TOMPKINS	NY	2.40	2.24	2.00	1.77	1.53	1.30
ULSTER	NY	2.80	2.56	2.37	2.18	1.99	1.80
WARREN	NY	2.60	2.25	2.09	1.92	1.76	1.59
WASHINGTON	NY	2.60	2.31	2.14	1.98	1.81	1.65
WAYNE	NY	2.30	2.09	1.91	1.72	1.54	1.36
WESTCHESTER	NY	3.15	2.93	2.71	2.50	2.28	2.07
WYOMING	NY	2.20	2.01	1.85	1.68	1.52	1.36
YATES	NY	2.30	2.12	1.92	1.72	1.52	1.32
ADAMS	OH	2.20	2.00	1.89	1.78	1.67	1.56
ALLEN	OH	2.00	1.77	1.65	1.52	1.40	1.27
ASHLAND	OH	2.00	1.88	1.76	1.64	1.52	1.40
ASHTABULA	OH	2.00	1.88	1.77	1.65	1.54	1.42
ATHENS	OH	2.00	2.01	1.91	1.81	1.71	1.61
AUGLAIZE	OH	2.00	1.78	1.66	1.55	1.43	1.31
BELMONT	OH	2.00	1.92	1.84	1.75	1.67	1.59
BROWN	OH	2.20	1.99	1.87	1.75	1.63	1.51
BUTLER	OH	2.00	1.92	1.80	1.69	1.57	1.45
CARROLL	OH	2.00	1.90	1.80	1.70	1.60	1.50
CHAMPAIGN	OH	2.00	1.93	1.81	1.70	1.58	1.47
CLARK	OH	2.00	1.92	1.81	1.69	1.58	1.46
CLERMONT	OH	2.20	1.98	1.86	1.73	1.61	1.48
CLINTON	OH	2.00	1.93	1.82	1.72	1.61	1.50
COLUMBIANA	OH	2.00	1.90	1.80	1.69	1.59	1.49
COSHOCTON	OH	2.00	1.93	1.82	1.70	1.59	1.48
CRAWFORD	OH	2.00	1.80	1.69	1.59	1.48	1.38
CUYAHOGA	OH	2.00	1.91	1.82	1.72	1.63	1.54
DARKE	OH	2.00	1.80	1.70	1.61	1.51	1.41
DEFIANCE	OH	1.80	1.69	1.59	1.48	1.38	1.27
DELAWARE	OH	2.00	1.93	1.82	1.70	1.59	1.48

COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
ERIE	OH	2.00	1.73	1.65	1.58	1.50	1.43
FAIRFIELD	OH	2.00	1.95	1.86	1.76	1.67	1.58
FAYETTE	OH	2.00	1.94	1.84	1.74	1.64	1.54
FRANKLIN	OH	2.00	1.95	1.85	1.76	1.66	1.57
FULTON	OH	1.80	1.70	1.61	1.51	1.42	1.32
GALLIA	OH	2.20	2.02	1.93	1.84	1.75	1.66
GEAUGA	OH	2.00	1.90	1.79	1.69	1.58	1.48
GREENE	OH	2.00	1.93	1.82	1.70	1.59	1.48
GUERNSEY	OH	2.00	1.94	1.84	1.73	1.63	1.53
HAMILTON	OH	2.20	1.98	1.85	1.71	1.58	1.45
HANCOCK	OH	2.00	1.69	1.59	1.48	1.38	1.27
HARDIN	OH	2.00	1.79	1.68	1.56	1.45	1.34
HARRISON	OH	2.00	1.91	1.82	1.74	1.65	1.56
HENRY	OH	1.80	1.69	1.58	1.48	1.37	1.26
HIGHLAND	OH	2.20	1.99	1.88	1.76	1.65	1.53
HOCKING	OH	2.00	1.95	1.86	1.78	1.69	1.60
HOLMES	OH	2.00	1.89	1.77	1.66	1.54	1.43
HURON	OH	2.00	1.72	1.64	1.57	1.49	1.41
JACKSON	OH	2.20	2.01	1.91	1.82	1.72	1.62
JEFFERSON	OH	2.00	1.92	1.84	1.76	1.68	1.60
KNOX	OH	2.00	1.92	1.80	1.69	1.57	1.45
LAKE	OH	2.00	1.90	1.80	1.69	1.59	1.49
LAWRENCE	OH	2.20	2.02	1.93	1.85	1.76	1.67
LICKING	OH	2.00	1.94	1.84	1.73	1.63	1.53
LOGAN	OH	2.00	1.80	1.70	1.59	1.49	1.39
LORAIN	OH	2.00	1.89	1.79	1.68	1.58	1.47
LUCAS	OH	1.80	1.72	1.64	1.55	1.47	1.39
MADISON	OH	2.00	1.94	1.83	1.73	1.62	1.52
MAHONING	OH	2.00	1.89	1.79	1.68	1.58	1.47
MARION	OH	2.00	1.80	1.70	1.60	1.50	1.40
MEDINA	OH	2.00	1.89	1.78	1.67	1.56	1.45
MEIGS	OH	2.00	2.02	1.93	1.83	1.74	1.65
MERCER	OH	2.00	1.79	1.68	1.57	1.46	1.35
MIAMI	OH	2.00	1.92	1.79	1.67	1.54	1.42
MONROE	OH	2.00	1.92	1.84	1.75	1.67	1.59
MONTGOMERY	OH	2.00	1.92	1.80	1.69	1.57	1.45
MORGAN	OH	2.00	1.95	1.86	1.76	1.67	1.58
MORROW	OH	2.00	1.80	1.71	1.61	1.52	1.42
MUSKINGUM	OH	2.00	1.94	1.84	1.73	1.63	1.53
NOBLE	OH	2.00	1.94	1.85	1.75	1.66	1.56
OTTAWA	OH	2.00	1.72	1.64	1.56	1.48	1.40
PAULDING	OH	1.80	1.69	1.59	1.48	1.38	1.27
PERRY	OH	2.00	1.95	1.85	1.76	1.66	1.57
PICKAWAY	OH	2.00	1.95	1.85	1.76	1.66	1.57
PIKE	OH	2.20	2.01	1.90	1.80	1.69	1.59
PORTAGE	OH	2.00	1.89	1.78	1.68	1.57	1.46
PREBLE	OH	2.00	1.92	1.80	1.69	1.57	1.45
PUTNAM	OH	1.80	1.68	1.56	1.45	1.33	1.21
RICHLAND	OH	2.00	1.80	1.70	1.59	1.49	1.39
ROSS	OH	2.00	2.00	1.90	1.79	1.69	1.58
SANDUSKY	OH	2.00	1.72	1.63	1.55	1.46	1.38
SCIOTO	OH	2.20	2.01	1.91	1.82	1.72	1.62
SENECA	OH	2.00	1.71	1.62	1.54	1.45	1.36
SHELBY	OH	2.00	1.80	1.69	1.59	1.48	1.38
STARK	OH	2.00	1.88	1.76	1.64	1.52	1.40
SUMMIT	OH	2.00	1.89	1.79	1.68	1.58	1.47
TRUMBULL	OH	2.00	1.89	1.78	1.66	1.55	1.44
TUSCARAWAS	OH	2.00	1.89	1.79	1.68	1.58	1.47
UNION	OH	2.00	1.81	1.71	1.62	1.52	1.43
VAN WERT	OH	1.80	1.78	1.66	1.54	1.42	1.30
VINTON	OH	2.00	2.01	1.91	1.81	1.71	1.61
WARREN	OH	2.00	1.93	1.81	1.70	1.58	1.47
WASHINGTON	OH	2.00	2.01	1.90	1.80	1.69	1.59
WAYNE	OH	2.00	1.88	1.76	1.65	1.53	1.41
WILLIAMS	OH	1.80	1.70	1.59	1.49	1.38	1.28
WOOD	OH	2.00	1.71	1.61	1.52	1.42	1.33
WYANDOT	OH	2.00	1.79	1.68	1.57	1.46	1.35
ADAIR	OK	2.60	2.35	2.11	1.86	1.62	1.38
ALFALFA	OK	2.40	2.35	2.10	1.86	1.61	1.37
ATOKA	OK	2.80	2.69	2.37	2.06	1.74	1.43

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COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
BEAVER	OK	2.40	2.35	2.11	1.88	1.64	1.40
BECKHAM	OK	2.40	2.37	2.15	1.92	1.70	1.48
BLAINE	OK	2.40	2.36	2.12	1.89	1.65	1.42
BRYAN	OK	2.80	2.68	2.37	2.05	1.74	1.42
CADDO	OK	2.60	2.51	2.25	1.98	1.72	1.46
CANADIAN	OK	2.60	2.51	2.24	1.98	1.71	1.45
CARTER	OK	2.80	2.69	2.37	2.06	1.74	1.43
CHEROKEE	OK	2.60	2.35	2.11	1.88	1.64	1.40
CHOCTAW	OK	2.80	2.69	2.38	2.06	1.75	1.44
CIMARRON	OK	2.40	2.37	2.15	1.92	1.70	1.48
CLEVELAND	OK	2.60	2.51	2.24	1.98	1.71	1.45
COAL	OK	2.80	2.50	2.23	1.97	1.70	1.43
COMANCHE	OK	2.60	2.69	2.38	2.08	1.77	1.46
COTTON	OK	2.80	2.69	2.39	2.08	1.78	1.47
CRAIG	OK	2.40	2.34	2.09	1.84	1.59	1.34
CREEK	OK	2.60	2.36	2.14	1.91	1.69	1.46
CUSTER	OK	2.40	2.36	2.13	1.90	1.67	1.44
DELAWARE	OK	2.40	2.34	2.09	1.83	1.58	1.33
DEWEY	OK	2.40	2.36	2.13	1.89	1.66	1.43
ELLIS	OK	2.40	2.35	2.12	1.88	1.65	1.41
GARFIELD	OK	2.40	2.35	2.11	1.88	1.64	1.40
GARVIN	OK	2.60	2.50	2.24	1.97	1.71	1.44
GRADY	OK	2.60	2.51	2.24	1.98	1.71	1.45
GRANT	OK	2.40	2.34	2.10	1.85	1.61	1.36
GREER	OK	2.60	2.70	2.40	2.09	1.79	1.49
HARMON	OK	2.60	2.70	2.40	2.11	1.81	1.51
HARPER	OK	2.40	2.35	2.11	1.86	1.62	1.38
HASKELL	OK	2.80	2.51	2.25	2.00	1.74	1.48
HUGHES	OK	2.60	2.51	2.24	1.98	1.71	1.45
JACKSON	OK	2.60	2.70	2.40	2.10	1.80	1.50
JEFFERSON	OK	2.80	2.69	2.38	2.07	1.76	1.45
JOHNSTON	OK	2.80	2.68	2.37	2.05	1.74	1.42
KAY	OK	2.40	2.35	2.10	1.86	1.61	1.37
KINGFISHER	OK	2.40	2.36	2.12	1.89	1.65	1.42
KIOWA	OK	2.60	2.70	2.39	2.09	1.78	1.48
LATIMER	OK	2.80	2.51	2.25	2.00	1.74	1.48
LE FLORE	OK	2.80	2.52	2.27	2.03	1.78	1.53
LINCOLN	OK	2.60	2.51	2.24	1.98	1.71	1.45
LOGAN	OK	2.40	2.36	2.13	1.89	1.66	1.43
LOVE	OK	2.80	2.69	2.37	2.06	1.74	1.43
MAJOR	OK	2.60	2.50	2.24	1.97	1.71	1.44
MARSHALL	OK	2.80	2.71	2.42	2.13	1.84	1.55
MAYES	OK	2.60	2.51	2.25	1.98	1.72	1.46
MCCLAIN	OK	2.40	2.35	2.11	1.87	1.63	1.39
MCCURTAIN	OK	2.80	2.68	2.37	2.05	1.74	1.42
MCINTOSH	OK	2.40	2.35	2.11	1.86	1.62	1.38
MURRAY	OK	2.80	2.69	2.37	2.06	1.74	1.43
MUSKOGEE	OK	2.60	2.36	2.13	1.91	1.68	1.45
NOBLE	OK	2.40	2.35	2.12	1.88	1.65	1.41
NOWATA	OK	2.40	2.34	2.10	1.85	1.61	1.36
OKFUSKEE	OK	2.60	2.51	2.24	1.98	1.71	1.45
OKLAHOMA	OK	2.60	2.51	2.24	1.98	1.71	1.45
OKMULGEE	OK	2.60	2.36	2.14	1.91	1.69	1.46
OSAGE	OK	2.40	2.35	2.11	1.88	1.64	1.40
OTTAWA	OK	2.40	2.33	2.07	1.82	1.56	1.30
PAWNEE	OK	2.40	2.36	2.13	1.90	1.67	1.44
PAYNE	OK	2.40	2.36	2.13	1.90	1.67	1.44
PITTSBURG	OK	2.80	2.51	2.25	1.98	1.72	1.46
PONTOTOC	OK	2.80	2.50	2.23	1.97	1.70	1.43
POTTAWATOMIE	OK	2.60	2.51	2.24	1.98	1.71	1.45
PUSHMATAHA	OK	2.80	2.69	2.39	2.08	1.78	1.47
ROGER MILLS	OK	2.40	2.36	2.14	1.91	1.69	1.46
ROGERS	OK	2.40	2.35	2.11	1.88	1.64	1.40
SEMINOLE	OK	2.60	2.51	2.24	1.98	1.71	1.45
SEQUOYAH	OK	2.80	2.51	2.26	2.00	1.75	1.49
STEPHENS	OK	2.80	2.69	2.38	2.07	1.76	1.45
TEXAS	OK	2.40	2.35	2.12	1.88	1.65	1.41
TILLMAN	OK	2.60	2.70	2.40	2.09	1.79	1.49
TULSA	OK	2.60	2.36	2.14	1.91	1.69	1.46
WAGONER	OK	2.60	2.36	2.13	1.89	1.66	1.43

COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
WASHINGTON	OK	2.40	2.35	2.11	1.86	1.62	1.38
WASHITA	OK	2.40	2.36	2.14	1.91	1.69	1.46
WOODS	OK	2.40	2.35	2.10	1.86	1.61	1.37
WOODWARD	OK	2.40	2.35	2.11	1.88	1.64	1.40
BAKER	OR	1.60	1.40	1.29	1.19	1.08	0.98
BENTON	OR	1.90	1.73	1.57	1.40	1.24	1.07
CLACKAMAS	OR	1.90	1.71	1.52	1.34	1.15	0.96
CLATSOP	OR	1.90	1.72	1.54	1.35	1.17	0.99
COLUMBIA	OR	1.90	1.71	1.53	1.34	1.16	0.97
COOS	OR	1.90	1.71	1.60	1.50	1.39	1.28
CROOK	OR	1.75	1.61	1.46	1.32	1.17	1.03
CURRY	OR	1.90	1.73	1.64	1.55	1.46	1.37
DESCHUTES	OR	1.75	1.61	1.48	1.34	1.21	1.07
DOUGLAS	OR	1.90	1.77	1.64	1.52	1.39	1.26
GILLIAM	OR	1.75	1.59	1.44	1.28	1.13	0.97
GRANT	OR	1.60	1.40	1.30	1.19	1.09	0.99
HARNEY	OR	1.60	1.40	1.30	1.21	1.11	1.01
HOOD RIVER	OR	1.90	1.71	1.53	1.34	1.16	0.97
JACKSON	OR	1.90	1.73	1.64	1.56	1.47	1.38
JEFFERSON	OR	1.75	1.60	1.46	1.31	1.17	1.02
JOSEPHINE	OR	1.90	1.74	1.65	1.57	1.48	1.40
KLAMATH	OR	1.75	1.65	1.55	1.46	1.36	1.26
LAKE	OR	1.75	1.62	1.50	1.37	1.25	1.12
LANE	OR	1.90	1.75	1.59	1.44	1.28	1.13
LINCOLN	OR	1.90	1.74	1.58	1.41	1.25	1.09
LINN	OR	1.90	1.73	1.56	1.39	1.22	1.05
MALHEUR	OR	1.60	1.39	1.28	1.18	1.07	0.96
MARION	OR	1.90	1.72	1.54	1.36	1.18	1.00
MORROW	OR	1.75	1.59	1.44	1.28	1.13	0.97
MULTNOMAH	OR	1.90	1.71	1.52	1.33	1.14	0.95
POLK	OR	1.90	1.73	1.55	1.38	1.20	1.03
SHERMAN	OR	1.75	1.59	1.44	1.28	1.13	0.97
TILLAMOOK	OR	1.90	1.72	1.54	1.37	1.19	1.01
UMATILLA	OR	1.75	1.59	1.44	1.28	1.13	0.97
UNION	OR	1.60	1.40	1.29	1.19	1.08	0.98
WALLOWA	OR	1.60	1.60	1.45	1.29	1.14	0.99
WASCO	OR	1.75	1.60	1.44	1.29	1.13	0.98
WASHINGTON	OR	1.90	1.71	1.52	1.34	1.15	0.96
WHEELER	OR	1.75	1.60	1.45	1.30	1.15	1.00
YAMHILL	OR	1.90	1.72	1.54	1.36	1.18	1.00
ADAMS	PA	2.80	2.70	2.38	2.05	1.73	1.40
ALLEGHENY	PA	2.10	1.91	1.81	1.72	1.62	1.53
ARMSTRONG	PA	2.30	1.89	1.78	1.67	1.56	1.45
BEAVER	PA	2.10	1.90	1.81	1.71	1.62	1.52
BEDFORD	PA	2.30	2.23	2.05	1.88	1.70	1.52
BERKS	PA	2.80	2.55	2.30	2.05	1.80	1.55
BLAIR	PA	2.30	2.18	2.01	1.83	1.66	1.49
BRADFORD	PA	2.40	2.37	2.11	1.84	1.58	1.32
BUCKS	PA	3.00	2.83	2.57	2.32	2.06	1.80
BUTLER	PA	2.10	1.89	1.78	1.66	1.55	1.44
CAMBRIA	PA	2.30	2.51	2.27	2.04	1.80	1.56
CAMERON	PA	2.30	1.87	1.74	1.62	1.49	1.36
CARBON	PA	2.80	2.55	2.32	2.08	1.85	1.61
CENTRE	PA	2.30	2.14	1.95	1.77	1.58	1.40
CHESTER	PA	3.00	2.80	2.51	2.21	1.92	1.63
CLARION	PA	2.30	1.88	1.75	1.63	1.50	1.38
CLEARFIELD	PA	2.30	2.16	1.98	1.79	1.61	1.42
CLINTON	PA	2.30	2.19	2.01	1.82	1.64	1.45
COLUMBIA	PA	2.60	2.46	2.23	1.99	1.76	1.52
CRAWFORD	PA	2.10	1.87	1.74	1.61	1.48	1.35
CUMBERLAND	PA	2.80	2.71	2.39	2.06	1.74	1.42
DAUPHIN	PA	2.80	2.48	2.23	1.97	1.72	1.47
DELAWARE	PA	3.00	2.81	2.53	2.25	1.97	1.69
ELK	PA	2.30	1.87	1.74	1.61	1.48	1.35
ERIE	PA	2.10	1.87	1.73	1.60	1.46	1.33
FAYETTE	PA	2.30	1.92	1.84	1.77	1.69	1.61
FOREST	PA	2.30	1.86	1.72	1.59	1.45	1.31
FRANKLIN	PA	2.80	2.58	2.26	1.95	1.63	1.31
FULTON	PA	2.60	2.59	2.30	2.01	1.72	1.43
GREENE	PA	2.10	1.92	1.85	1.77	1.70	1.62

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COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
HUNTINGDON	PA	2.30	2.21	2.02	1.82	1.63	1.44
INDIANA	PA	2.30	2.18	2.01	1.85	1.68	1.51
JEFFERSON	PA	2.30	1.88	1.76	1.65	1.53	1.41
JUNIATA	PA	2.60	2.55	2.27	1.98	1.70	1.41
LACKAWANNA	PA	2.60	2.45	2.22	2.00	1.77	1.55
LANCASTER	PA	2.80	2.61	2.33	2.06	1.78	1.50
LAWRENCE	PA	2.10	1.89	1.78	1.67	1.56	1.45
LEBANON	PA	2.80	2.62	2.34	2.05	1.77	1.49
LEHIGH	PA	2.80	2.80	2.51	2.21	1.92	1.63
LUZERNE	PA	2.60	2.43	2.21	1.98	1.76	1.54
LYCOMING	PA	2.60	2.30	2.11	1.91	1.72	1.53
MCKEAN	PA	2.30	1.98	1.80	1.63	1.45	1.28
MERCER	PA	2.10	1.88	1.75	1.63	1.50	1.38
MIFFLIN	PA	2.60	2.21	2.01	1.80	1.60	1.40
MONROE	PA	2.80	2.73	2.47	2.20	1.94	1.67
MONTGOMERY	PA	3.00	2.81	2.53	2.26	1.98	1.70
MONTOUR	PA	2.60	2.46	2.23	1.99	1.76	1.53
NORTHAMPTON	PA	2.80	2.61	2.38	2.16	1.93	1.70
NORTHUMBERLAND	PA	2.60	2.46	2.22	1.99	1.75	1.51
PERRY	PA	2.60	2.58	2.29	2.01	1.72	1.43
PHILADELPHIA	PA	3.00	2.83	2.56	2.30	2.03	1.77
PIKE	PA	2.80	2.74	2.48	2.23	1.97	1.71
POTTER	PA	2.30	2.09	1.90	1.72	1.53	1.35
SCHUYLKILL	PA	2.80	2.51	2.26	2.02	1.77	1.53
SNYDER	PA	2.60	2.43	2.19	1.96	1.72	1.49
SOMERSET	PA	2.30	2.20	2.05	1.91	1.76	1.61
SULLIVAN	PA	2.60	2.33	2.10	1.88	1.65	1.43
SUSQUEHANNA	PA	2.60	2.44	2.19	1.93	1.68	1.42
TIOGA	PA	2.30	2.16	1.96	1.77	1.57	1.38
UNION	PA	2.60	2.42	2.19	1.97	1.74	1.51
VENANGO	PA	2.10	1.87	1.74	1.62	1.49	1.36
WARREN	PA	2.10	1.85	1.70	1.55	1.40	1.25
WASHINGTON	PA	2.10	1.92	1.84	1.75	1.67	1.59
WAYNE	PA	2.60	2.47	2.25	2.02	1.80	1.57
WESTMORELAND	PA	2.30	1.91	1.83	1.74	1.66	1.57
WYOMING	PA	2.60	2.39	2.16	1.92	1.69	1.46
YORK	PA	2.80	2.72	2.40	2.09	1.77	1.46
BRISTOL	RI	3.25	3.07	2.89	2.72	2.54	2.37
KENT	RI	3.25	3.06	2.89	2.71	2.54	2.36
NEWPORT	RI	3.25	3.07	2.89	2.72	2.54	2.37
PROVIDENCE	RI	3.25	3.06	2.87	2.69	2.50	2.32
WASHINGTON	RI	3.25	3.06	2.88	2.70	2.52	2.34
ABBEVILLE	SC	3.10	2.92	2.75	2.59	2.42	2.26
AIKEN	SC	3.30	3.07	2.90	2.74	2.57	2.41
ALLENDALE	SC	3.30	3.10	2.96	2.83	2.69	2.56
ANDERSON	SC	3.10	2.90	2.73	2.55	2.38	2.20
BAMBERG	SC	3.30	3.09	2.94	2.80	2.65	2.51
BARNWELL	SC	3.30	3.08	2.93	2.78	2.63	2.48
BEAUFORT	SC	3.30	3.14	3.05	2.95	2.86	2.77
BERKELEY	SC	3.30	3.11	2.98	2.86	2.73	2.61
CALHOUN	SC	3.30	3.06	2.90	2.73	2.57	2.40
CHARLESTON	SC	3.30	3.12	3.01	2.89	2.78	2.67
CHEROKEE	SC	3.10	2.86	2.63	2.41	2.18	1.96
CHESTER	SC	3.10	2.88	2.68	2.47	2.27	2.07
CHESTERFIELD	SC	3.30	3.02	2.81	2.61	2.40	2.19
CLARENDON	SC	3.30	3.08	2.92	2.77	2.61	2.46
COLLETON	SC	3.30	3.11	2.99	2.86	2.74	2.62
DARLINGTON	SC	3.30	3.05	2.86	2.68	2.49	2.31
DILLON	SC	3.30	3.06	2.89	2.72	2.55	2.38
DORCHESTER	SC	3.30	3.11	2.98	2.86	2.73	2.61
EDGEFIELD	SC	3.30	3.05	2.87	2.69	2.51	2.33
FAIRFIELD	SC	3.30	3.02	2.81	2.59	2.38	2.17
FLORENCE	SC	3.30	3.07	2.90	2.74	2.57	2.41
GEORGETOWN	SC	3.30	3.11	3.00	2.88	2.77	2.65
GREENVILLE	SC	3.10	2.88	2.68	2.49	2.29	2.09
GREENWOOD	SC	3.10	2.94	2.75	2.58	2.42	2.25
HAMPTON	SC	3.30	3.11	2.99	2.88	2.76	2.64
HORRY	SC	3.30	3.11	2.98	2.86	2.73	2.61
JASPER	SC	3.30	3.13	3.03	2.94	2.84	2.74
KERSHAW	SC	3.30	3.03	2.83	2.62	2.42	2.22

COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
LANCASTER	SC	3.10	2.88	2.68	2.48	2.28	2.08
LAURENS	SC	3.10	2.90	2.72	2.53	2.35	2.17
LEE	SC	3.30	3.05	2.87	2.68	2.50	2.32
LEXINGTON	SC	3.30	3.04	2.85	2.66	2.47	2.28
MARION	SC	3.10	2.93	2.78	2.63	2.48	2.33
MARLBORO	SC	3.30	3.08	2.92	2.77	2.61	2.46
MCCORMICK	SC	3.30	3.04	2.84	2.65	2.45	2.26
NEWBERRY	SC	3.30	3.02	2.81	2.61	2.40	2.19
OCONEE	SC	3.10	2.90	2.72	2.55	2.37	2.19
ORANGEBURG	SC	3.30	3.07	2.92	2.76	2.61	2.45
PICKENS	SC	3.10	2.89	2.70	2.51	2.32	2.13
RICHLAND	SC	3.30	3.04	2.85	2.66	2.47	2.28
SALUDA	SC	3.30	3.04	2.85	2.65	2.46	2.27
SPARTANBURG	SC	3.10	2.87	2.66	2.46	2.25	2.04
SUMTER	SC	3.30	3.06	2.89	2.71	2.54	2.37
UNION	SC	3.10	2.88	2.68	2.47	2.27	2.07
WILLIAMSBURG	SC	3.30	3.10	2.96	2.83	2.69	2.56
YORK	SC	3.10	2.86	2.64	2.41	2.19	1.97
AURORA	SD	1.70	1.41	1.32	1.22	1.13	1.04
BEADLE	SD	1.70	1.41	1.31	1.22	1.12	1.03
BENNETT	SD	1.70	1.39	1.27	1.16	1.04	0.93
BON HOMME	SD	1.75	1.42	1.34	1.26	1.18	1.10
BROOKINGS	SD	1.70	1.34	1.28	1.22	1.17	1.11
BROWN	SD	1.70	1.15	1.11	1.06	1.02	0.97
BRULE	SD	1.70	1.40	1.31	1.21	1.12	1.02
BUFFALO	SD	1.70	1.29	1.22	1.15	1.07	1.00
BUTTE	SD	1.65	1.14	1.08	1.03	0.97	0.91
CAMPBELL	SD	1.65	1.08	1.05	1.01	0.98	0.95
CHARLES MIX	SD	1.75	1.41	1.32	1.24	1.15	1.06
CLARK	SD	1.70	1.41	1.31	1.22	1.12	1.03
CLAY	SD	1.75	1.43	1.37	1.30	1.24	1.17
CODINGTON	SD	1.70	1.41	1.32	1.22	1.13	1.04
CORSON	SD	1.65	1.08	1.04	1.01	0.97	0.94
CUSTER	SD	1.80	1.82	1.59	1.36	1.13	0.90
DAVISON	SD	1.70	1.41	1.33	1.24	1.16	1.07
DAY	SD	1.70	1.16	1.12	1.07	1.03	0.99
DEUEL	SD	1.70	1.41	1.32	1.24	1.15	1.06
DEWEY	SD	1.65	1.12	1.08	1.03	0.99	0.94
DOUGLAS	SD	1.75	1.41	1.32	1.24	1.15	1.06
EDMUNDS	SD	1.70	1.15	1.10	1.05	1.00	0.95
FALL RIVER	SD	1.80	1.83	1.60	1.38	1.15	0.93
FAULK	SD	1.70	1.21	1.15	1.09	1.02	0.96
GRANT	SD	1.70	1.16	1.13	1.09	1.06	1.02
GREGORY	SD	1.75	1.40	1.31	1.21	1.12	1.02
HAAKON	SD	1.70	1.11	1.06	1.01	0.97	0.92
HAMLIN	SD	1.70	1.29	1.23	1.18	1.12	1.06
HAND	SD	1.70	1.27	1.20	1.13	1.07	1.00
HANSON	SD	1.70	1.42	1.33	1.25	1.16	1.08
HARDING	SD	1.65	1.71	1.52	1.33	1.14	0.95
HUGHES	SD	1.70	1.20	1.14	1.08	1.02	0.96
HUTCHINSON	SD	1.75	1.42	1.34	1.26	1.18	1.10
HYDE	SD	1.70	1.24	1.18	1.12	1.05	0.99
JACKSON	SD	1.70	1.38	1.27	1.15	1.04	0.92
JERAULD	SD	1.70	1.41	1.31	1.22	1.12	1.03
JONES	SD	1.70	1.21	1.15	1.08	1.02	0.95
KINGSBURY	SD	1.70	1.41	1.33	1.24	1.16	1.07
LAKE	SD	1.70	1.42	1.34	1.27	1.19	1.11
LAWRENCE	SD	1.80	1.82	1.59	1.36	1.13	0.90
LINCOLN	SD	1.75	1.44	1.38	1.31	1.25	1.19
LYMAN	SD	1.70	1.23	1.17	1.10	1.04	0.98
MARSHALL	SD	1.70	1.42	1.35	1.27	1.20	1.12
MCCOOK	SD	1.70	1.15	1.10	1.05	1.00	0.95
MCPHERSON	SD	1.70	1.15	1.10	1.06	1.01	0.96
MEADE	SD	1.65	1.78	1.56	1.33	1.11	0.89
MELLETTE	SD	1.70	1.39	1.28	1.16	1.05	0.94
MINER	SD	1.70	1.42	1.33	1.25	1.16	1.08
MINNEHAHA	SD	1.70	1.44	1.37	1.31	1.24	1.18
MOODY	SD	1.70	1.43	1.36	1.28	1.21	1.14
PENNINGTON	SD	1.80	1.81	1.58	1.34	1.11	0.87
PERKINS	SD	1.65	1.71	1.51	1.32	1.12	0.93

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COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
POTTER	SD	1.70	1.20	1.14	1.08	1.01	0.95
ROBERTS	SD	1.70	1.15	1.11	1.06	1.02	0.97
SANBORN	SD	1.70	1.41	1.32	1.23	1.14	1.05
SHANNON	SD	1.80	1.82	1.60	1.37	1.15	0.92
SPINK	SD	1.70	1.40	1.30	1.20	1.10	1.00
STANLEY	SD	1.70	1.20	1.13	1.07	1.00	0.94
SULLY	SD	1.70	1.18	1.12	1.07	1.01	0.96
TODD	SD	1.70	1.39	1.28	1.18	1.07	0.96
TRIPP	SD	1.70	1.40	1.30	1.19	1.09	0.99
TURNER	SD	1.75	1.43	1.36	1.30	1.23	1.16
UNION	SD	1.75	1.44	1.38	1.32	1.26	1.20
WALWORTH	SD	1.70	1.15	1.10	1.04	0.99	0.94
YANKTON	SD	1.75	1.42	1.34	1.27	1.19	1.11
ZIEBACH	SD	1.65	1.42	1.30	1.17	1.05	0.92
ANDERSON	TN	2.80	2.58	2.39	2.21	2.02	1.83
BEDFORD	TN	2.60	2.44	2.27	2.11	1.94	1.78
BENTON	TN	2.60	2.46	2.31	2.17	2.02	1.88
BLEDSOE	TN	2.60	2.46	2.32	2.18	2.04	1.90
BLOUNT	TN	2.80	2.61	2.45	2.29	2.13	1.97
BRADLEY	TN	2.80	2.64	2.50	2.37	2.23	2.10
CAMPBELL	TN	2.80	2.56	2.35	2.15	1.94	1.73
CANNON	TN	2.60	2.43	2.26	2.09	1.92	1.75
CARROLL	TN	2.60	2.47	2.34	2.20	2.07	1.94
CARTER	TN	2.80	2.57	2.37	2.17	1.97	1.77
CHEATHAM	TN	2.60	2.37	2.20	2.02	1.85	1.67
CHESTER	TN	2.80	2.49	2.38	2.28	2.17	2.06
CLAIBORNE	TN	2.80	2.57	2.37	2.16	1.96	1.76
CLAY	TN	2.60	2.36	2.17	1.98	1.79	1.60
COCKE	TN	2.80	2.59	2.42	2.24	2.07	1.89
COFFEE	TN	2.60	2.45	2.30	2.14	1.99	1.84
CROCKETT	TN	2.60	2.49	2.38	2.28	2.17	2.06
CUMBERLAND	TN	2.80	2.58	2.39	2.20	2.01	1.82
DAVIDSON	TN	2.60	2.37	2.19	2.01	1.83	1.65
DE KALB	TN	2.60	2.47	2.34	2.22	2.09	1.96
DECATUR	TN	2.60	2.43	2.25	2.08	1.90	1.73
DICKSON	TN	2.50	2.39	2.23	2.06	1.90	1.74
DYER	TN	2.50	2.49	2.38	2.26	2.15	2.04
FAYETTE	TN	2.50	2.67	2.57	2.48	2.38	2.28
FENTRESS	TN	2.60	2.37	2.20	2.02	1.85	1.67
FRANKLIN	TN	2.80	2.59	2.42	2.24	2.07	1.89
GIBSON	TN	2.60	2.48	2.36	2.23	2.11	1.99
GILES	TN	2.80	2.58	2.39	2.21	2.02	1.83
GRAINGER	TN	2.80	2.58	2.39	2.21	2.02	1.83
GREENE	TN	2.80	2.58	2.40	2.21	2.03	1.84
GRUNDY	TN	2.60	2.47	2.33	2.20	2.06	1.93
HAMBLEN	TN	2.80	2.58	2.40	2.21	2.03	1.84
HAMILTON	TN	2.80	2.64	2.50	2.37	2.23	2.10
HANCOCK	TN	2.80	2.57	2.37	2.16	1.96	1.76
HARDEMAN	TN	2.80	2.65	2.53	2.42	2.30	2.18
HARDIN	TN	2.80	2.62	2.47	2.33	2.18	2.03
HAWKINS	TN	2.80	2.58	2.38	2.19	1.99	1.80
HAYWOOD	TN	2.60	2.59	2.48	2.37	2.26	2.15
HENDERSON	TN	2.60	2.48	2.35	2.23	2.10	1.98
HENRY	TN	2.60	2.41	2.27	2.14	2.00	1.86
HICKMAN	TN	2.60	2.44	2.28	2.11	1.95	1.79
HOUSTON	TN	2.60	2.40	2.25	2.09	1.94	1.79
HUMPHREYS	TN	2.60	2.45	2.29	2.14	1.98	1.83
JACKSON	TN	2.50	2.37	2.19	2.00	1.82	1.64
JEFFERSON	TN	2.60	2.59	2.41	2.24	2.06	1.88
JOHNSON	TN	2.80	2.56	2.36	2.15	1.95	1.74
KNOX	TN	2.80	2.59	2.42	2.24	2.07	1.89
LAKE	TN	2.60	2.43	2.31	2.19	2.07	1.95
LAUDERDALE	TN	2.60	2.59	2.48	2.36	2.25	2.14
LAWRENCE	TN	2.80	2.59	2.41	2.24	2.06	1.88
LEWIS	TN	2.60	2.45	2.30	2.14	1.99	1.84
LINCOLN	TN	2.80	2.58	2.39	2.21	2.02	1.83
LOUDON	TN	2.80	2.60	2.44	2.27	2.11	1.94
MACON	TN	2.80	2.62	2.47	2.33	2.18	2.03
MADISON	TN	2.80	2.63	2.50	2.36	2.23	2.09
MARION	TN	2.60	2.36	2.17	1.97	1.78	1.59

COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
MARSHALL	TN	2.60	2.49	2.39	2.28	2.18	2.07
MAURY	TN	2.80	2.62	2.46	2.31	2.15	2.00
MCMINN	TN	2.60	2.44	2.27	2.11	1.94	1.78
MCNAIRY	TN	2.60	2.44	2.27	2.11	1.94	1.78
MEIGS	TN	2.80	2.61	2.45	2.30	2.14	1.98
MONROE	TN	2.80	2.62	2.47	2.32	2.17	2.02
MONTGOMERY	TN	2.60	2.38	2.21	2.05	1.88	1.71
MOORE	TN	2.80	2.58	2.39	2.21	2.02	1.83
MORGAN	TN	2.80	2.57	2.37	2.18	1.98	1.78
OBION	TN	2.60	2.42	2.30	2.17	2.05	1.92
OVERTON	TN	2.60	2.37	2.20	2.02	1.85	1.67
PERRY	TN	2.60	2.46	2.32	2.18	2.04	1.90
PICKETT	TN	2.60	2.36	2.17	1.97	1.78	1.59
POLK	TN	2.80	2.64	2.51	2.38	2.25	2.12
PUTNAM	TN	2.60	2.42	2.24	2.06	1.88	1.70
RHEA	TN	2.80	2.60	2.44	2.27	2.11	1.94
ROANE	TN	2.80	2.59	2.42	2.24	2.07	1.89
ROBERTSON	TN	2.60	2.37	2.19	2.00	1.82	1.64
RUTHERFORD	TN	2.60	2.42	2.24	2.07	1.89	1.71
SCOTT	TN	2.80	2.41	2.23	2.04	1.86	1.67
SEQUATCHIE	TN	2.80	2.61	2.45	2.29	2.13	1.97
SEVIER	TN	2.80	2.60	2.43	2.27	2.10	1.93
SHELBY	TN	2.80	2.69	2.61	2.54	2.46	2.38
SMITH	TN	2.60	2.37	2.19	2.01	1.83	1.65
STEWART	TN	2.60	2.40	2.25	2.10	1.95	1.80
SULLIVAN	TN	2.80	2.57	2.37	2.16	1.96	1.76
SUMNER	TN	2.60	2.36	2.18	1.99	1.81	1.62
TIPTON	TN	2.80	2.61	2.52	2.42	2.33	2.24
TROUSDALE	TN	2.60	2.36	2.18	1.99	1.81	1.62
UNICOI	TN	2.80	2.58	2.39	2.19	2.00	1.81
UNION	TN	2.80	2.58	2.39	2.19	2.00	1.81
VAN BUREN	TN	2.60	2.45	2.30	2.16	2.01	1.86
WARREN	TN	2.60	2.44	2.28	2.13	1.97	1.81
WASHINGTON	TN	2.80	2.57	2.38	2.18	1.99	1.79
WAYNE	TN	2.80	2.60	2.44	2.27	2.11	1.94
WEAKLEY	TN	2.60	2.42	2.29	2.17	2.04	1.91
WHITE	TN	2.60	2.43	2.27	2.10	1.94	1.77
WILLIAMSON	TN	2.60	2.42	2.24	2.05	1.87	1.69
WILSON	TN	2.60	2.37	2.19	2.02	1.84	1.66
ANDERSON	TX	3.15	3.04	2.77	2.50	2.23	1.96
ANDREWS	TX	2.40	2.70	2.46	2.21	1.97	1.72
ANGELINA	TX	3.15	3.10	2.86	2.61	2.37	2.13
ARANSAS	TX	3.65	3.49	3.29	3.08	2.88	2.68
ARCHER	TX	2.80	2.63	2.35	2.07	1.79	1.51
ARMSTRONG	TX	2.40	2.29	2.10	1.90	1.71	1.51
ATASCOSA	TX	3.45	2.70	2.60	2.51	2.41	2.31
AUSTIN	TX	3.60	3.44	3.18	2.93	2.67	2.41
BAILEY	TX	2.40	2.26	2.03	1.80	1.57	1.34
BANDERA	TX	3.30	2.66	2.52	2.37	2.23	2.09
BASTROP	TX	3.30	3.20	2.93	2.67	2.40	2.14
BAYLOR	TX	2.60	2.64	2.37	2.10	1.83	1.56
BEE	TX	3.65	3.45	3.21	2.98	2.74	2.50
BELL	TX	3.15	3.05	2.79	2.52	2.26	2.00
BEXAR	TX	3.45	3.30	3.03	2.75	2.48	2.20
BLANCO	TX	3.30	2.63	2.46	2.29	2.12	1.95
BORDEN	TX	2.40	2.70	2.45	2.19	1.94	1.69
BOSQUE	TX	3.15	3.02	2.73	2.45	2.16	1.87
BOWIE	TX	3.00	2.79	2.51	2.22	1.94	1.65
BRAZORIA	TX	3.60	3.48	3.26	3.03	2.81	2.59
BRAZOS	TX	3.30	3.16	2.96	2.77	2.57	2.37
BREWSTER	TX	2.40	2.13	2.06	1.99	1.92	1.85
BRISCOE	TX	2.40	2.30	2.11	1.91	1.72	1.53
BROOKS	TX	3.65	3.59	3.36	3.12	2.89	2.66
BROWN	TX	2.80	2.72	2.48	2.25	2.01	1.78
BURLESON	TX	3.30	3.14	2.93	2.71	2.50	2.28
BURNET	TX	3.30	3.15	2.84	2.52	2.21	1.90
CALDWELL	TX	3.45	3.29	3.00	2.70	2.41	2.12
CALHOUN	TX	3.65	3.47	3.25	3.04	2.82	2.60
CALLAHAN	TX	2.80	2.70	2.46	2.21	1.97	1.72
CAMERON	TX	3.65	3.67	3.43	3.19	2.95	2.71

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COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
CAMP	TX	3.00	2.85	2.54	2.23	1.92	1.61
CARSON	TX	2.40	2.29	2.10	1.90	1.71	1.51
CASS	TX	3.00	2.81	2.54	2.27	2.00	1.73
CASTRO	TX	2.40	2.28	2.07	1.85	1.64	1.43
CHAMBERS	TX	3.60	3.46	3.23	2.99	2.76	2.52
CHEROKEE	TX	3.15	3.03	2.76	2.48	2.21	1.93
CHILDRESS	TX	2.40	2.30	2.11	1.91	1.72	1.53
CLAY	TX	2.80	2.62	2.34	2.05	1.77	1.48
COCHRAN	TX	2.40	2.27	2.05	1.83	1.61	1.39
COKE	TX	2.60	2.72	2.48	2.25	2.01	1.78
COLEMAN	TX	2.80	2.72	2.49	2.25	2.02	1.79
COLLIN	TX	3.00	2.84	2.51	2.19	1.86	1.54
COLLINGSWORTH	TX	2.40	2.29	2.10	1.90	1.71	1.51
COLORADO	TX	3.60	3.44	3.18	2.92	2.66	2.40
COMAL	TX	3.45	3.29	2.99	2.70	2.40	2.11
COMANCHE	TX	2.80	3.00	2.69	2.37	2.06	1.75
CONCHO	TX	2.80	2.45	2.29	2.14	1.98	1.83
COOKE	TX	3.00	2.82	2.48	2.13	1.79	1.45
CORYELL	TX	3.15	3.03	2.75	2.47	2.19	1.91
COTTLE	TX	2.40	2.31	2.12	1.94	1.75	1.57
CRANE	TX	2.40	2.13	2.05	1.98	1.90	1.83
CROCKETT	TX	2.60	2.30	2.20	2.11	2.01	1.91
CROSBY	TX	2.40	2.31	2.14	1.96	1.79	1.61
CULBERSON	TX	2.40	2.08	1.95	1.83	1.70	1.58
DALLAM	TX	2.40	2.29	2.10	1.90	1.71	1.51
DALLAS	TX	3.00	2.86	2.57	2.27	1.98	1.68
DAWSON	TX	2.40	2.70	2.45	2.19	1.94	1.69
DE WITT	TX	2.40	2.28	2.07	1.85	1.64	1.43
DEAF SMITH	TX	3.00	2.81	2.46	2.10	1.75	1.40
DELTA	TX	3.00	2.84	2.51	2.19	1.86	1.54
DENTON	TX	3.60	3.34	3.11	2.87	2.64	2.40
DICKENS	TX	2.40	2.34	2.19	2.03	1.88	1.73
DIMMIT	TX	3.45	2.70	2.60	2.49	2.39	2.29
DONLEY	TX	2.40	2.30	2.10	1.91	1.71	1.52
DUVAL	TX	3.65	3.57	3.32	3.08	2.83	2.58
EASTLAND	TX	2.80	2.70	2.45	2.21	1.96	1.71
ECTOR	TX	2.40	2.72	2.49	2.25	2.02	1.79
EDWARDS	TX	2.80	2.49	2.37	2.26	2.14	2.03
EL PASO	TX	3.00	2.89	2.62	2.35	2.08	1.81
ELLIS	TX	2.25	2.15	1.95	1.75	1.55	1.35
ERATH	TX	3.00	2.99	2.68	2.36	2.05	1.73
FALLS	TX	3.15	3.07	2.82	2.58	2.33	2.09
FANNIN	TX	3.00	2.81	2.46	2.12	1.77	1.42
FAYETTE	TX	3.60	3.42	3.14	2.86	2.58	2.30
FISHER	TX	2.60	2.70	2.45	2.21	1.96	1.71
FLOYD	TX	2.40	2.30	2.12	1.93	1.75	1.56
FOARD	TX	2.60	2.67	2.39	2.12	1.84	1.56
FORT BEND	TX	3.60	3.46	3.23	2.99	2.76	2.52
FRANKLIN	TX	3.00	2.83	2.50	2.16	1.83	1.50
FREESTONE	TX	3.15	3.05	2.80	2.54	2.29	2.03
FRIO	TX	3.45	2.70	2.60	2.49	2.39	2.29
GAINES	TX	2.40	2.31	2.13	1.95	1.77	1.59
GALVESTON	TX	3.60	3.48	3.25	3.03	2.80	2.58
GARZA	TX	2.40	2.32	2.16	1.99	1.83	1.66
GILLESPIE	TX	3.30	2.63	2.46	2.30	2.13	1.96
GLASSCOCK	TX	2.60	2.72	2.49	2.27	2.04	1.81
GOLIAD	TX	3.65	3.45	3.21	2.98	2.74	2.50
GONZALES	TX	3.45	3.32	3.06	2.79	2.53	2.27
GRAY	TX	2.40	2.29	2.09	1.90	1.70	1.50
GRAYSON	TX	3.00	2.82	2.47	2.13	1.78	1.44
GREGG	TX	3.00	2.89	2.62	2.34	2.07	1.80
GRIMES	TX	3.30	3.16	2.97	2.77	2.58	2.38
GUADALUPE	TX	3.45	3.29	3.01	2.72	2.44	2.15
HALE	TX	2.40	2.30	2.10	1.91	1.71	1.52
HALL	TX	2.40	2.30	2.11	1.91	1.72	1.53
HAMILTON	TX	3.15	3.01	2.71	2.42	2.12	1.82
HANSFORD	TX	2.40	2.28	2.07	1.87	1.66	1.45
HARDEMAN	TX	2.60	2.63	2.36	2.08	1.81	1.53
HARDIN	TX	3.60	3.44	3.19	2.93	2.68	2.42
HARRIS	TX	3.60	3.46	3.22	2.99	2.75	2.51

COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
HARRISON	TX	3.00	2.89	2.63	2.36	2.10	1.83
HARTLEY	TX	2.40	2.29	2.09	1.90	1.70	1.50
HASKELL	TX	2.60	2.68	2.42	2.15	1.89	1.62
HAYS	TX	3.45	3.27	2.95	2.64	2.32	2.01
HEMPHILL	TX	2.40	2.28	2.08	1.87	1.67	1.46
HENDERSON	TX	3.00	3.02	2.73	2.43	2.14	1.85
HIDALGO	TX	3.65	3.66	3.40	3.15	2.89	2.64
HILL	TX	3.15	3.02	2.73	2.45	2,16	1.87
HOCKLEY	TX	2.40	2.29	2.10	1.90	1.71	1.51
HOOD	TX	3.00	2.87	2.58	2.29	2.00	1.71
HOPKINS	TX	3.00	2.81	2.47	2.12	1.78	1.43
HOUSTON	TX	3.15	3.09	2.84	2.58	2.33	2.08
HOWARD	TX	2.40	2.71	2.48	2.24	2.01	1.77
HUDSPETH	TX	2.25	2.18	2.01	1.83	1.66	1.49
HUNT	TX	3.00	2.86	2.56	2.27	1.97	1.67
HUTCHINSON	TX	2.40	2.29	2.09	1.89	1.69	1.49
IRION	TX	2.60	2.29	2.18	2.08	1.97	1.86
JACK	TX	2.80	2.66	2.38	2.09	1.81	1.52
JACKSON	TX	3.60	3.37	3.16	2.95	2.74	2.53
JASPER	TX	3.30	3.14	2.94	2.73	2.53	2.33
JEFF DAVIS	TX	2.40	2.09	1.99	1.88	1.78	1.67
JEFFERSON	TX	3.60	3.46	3.22	2.97	2.73	2.49
JIM HOGG	TX	3.65	2.83	2.76	2.70	2.63	2.56
JIM WELLS	TX	3.65	3.58	3.34	3.09	2.85	2.61
JOHNSON	TX	3.00	2.88	2.60	2.31	2.03	1.75
JONES	TX	2.60	2.69	2.44	2.18	1.93	1.67
KARNES	TX	3.65	3.43	3.17	2.91	2.65	2.39
KAUFMAN	TX	3.00	2.87	2.58	2.29	2.00	1.71
KENDALL	TX	3.30	2.65	2.50	2.35	2.20	2.05
KENEDY	TX	3.65	3.60	3.38	3.16	2.94	2.72
KENT	TX	2.60	2.69	2.43	2.18	1.92	1.66
KERR	TX	3.30	2.64	2.48	2.33	2.17	2.01
KIMBLE	TX	2.80	2.47	2.33	2.20	2.06	1.93
KING	TX	2.60	2.68	2.41	2.14	1.87	1.60
KINNEY	TX	3.30	2.66	2.52	2.37	2.23	2.09
KLEBERG	TX	3.65	3.60	3.38	3.15	2.93	2.71
KNOX	TX	2.60	2.68	2.41	2.13	1.86	1.59
LA SALLE	TX	3.00	2.81	2.46	2.12	1.77	1.42
LAMAR	TX	2.40	2.28	2.07	1.85	1.64	1.43
LAMB	TX	3.15	3.02	2.74	2.45	2.17	1.88
LAMPASAS	TX	3.45	2.71	2.62	2.52	2.43	2.34
LAVACA	TX	3.60	3.34	3.09	2.85	2.60	2.36
LEE	TX	3.30	3.21	2.95	2.70	2.44	2.19
LEON	TX	3.15	3.10	2.86	2.63	2.39	2.15
LIBERTY	TX	3.60	3.45	3.19	2.94	2.68	2.43
LIMESTONE	TX	3.15	3.06	2.81	2.55	2.30	2.05
LIPSCOMB	TX	2.40	2.28	2.07	1.85	1.64	1.43
LIVE OAK	TX	3.65	3.46	3.22	2.99	2.75	2.52
LLANO	TX	3.30	2.62	2.44	2.25	2.07	1.89
LOVING	TX	2.40	2.09	1.98	1.88	1.77	1.66
LUBBOCK	TX	2.40	2.31	2.13	1.96	1.78	1.60
LYNN	TX	2.40	2.32	2.15	1.97	1.80	1.63
MADISON	TX	2.80	2.45	2.29	2.14	1.98	1.83
MARION	TX	3.15	3.05	2.79	2.52	2.26	2.00
MARTIN	TX	3.45	2.72	2.64	2.57	2.49	2.41
MASON	TX	3.30	3.14	2.92	2.69	2.47	2.25
MATAGORDA	TX	3.00	2.88	2.60	2.33	2.05	1.77
MAVERICK	TX	2.40	2.71	2.47	2.24	2.00	1.76
MCCULLOCH	TX	2.80	2.46	2.32	2.18	2.04	1.90
MCLENNAN	TX	3.60	3.38	3.19	2.99	2.80	2.60
MCMULLEN	TX	3.30	2.67	2.55	2.42	2.30	2.17
MEDINA	TX	3.30	2.68	2.56	2.43	2.31	2.19
MENARD	TX	2.80	2.46	2.32	2.17	2.03	1.89
MIDLAND	TX	2.40	2.72	2.49	2.27	2.04	1.81
MILAM	TX	3.30	3.12	2.87	2.63	2.38	2.14
MILLS	TX	2.80	3.01	2.71	2.41	2.11	1.81
MITCHELL	TX	2.60	2.71	2.47	2.23	1.99	1.75
MONTAGUE	TX	2.80	2.62	2.33	2.03	1.74	1.45
MONTGOMERY	TX	3.60	3.45	3.19	2.94	2.68	2.43
MOORE	TX	2.40	2.29	2.09	1.90	1.70	1.50

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COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
MORRIS	TX	3.00	2.85	2.55	2.24	1.94	1.63
MOTLEY	TX	2.40	2.31	2.12	1.94	1.75	1.57
NACOGDOCHES	TX	3.15	3.07	2.81	2.54	2.28	2.01
NAVARRO	TX	3.15	3.03	2.75	2.47	2.19	1.91
NEWTON	TX	3.30	3.14	2.94	2.75	2.55	2.35
NOLAN	TX	2.60	2.71	2.47	2.22	1.98	1.74
NUECES	TX	3.65	3.59	3.37	3.14	2.92	2.69
OCHILTREE	TX	2.40	2.28	2.07	1.86	1.65	1.44
OLDHAM	TX	2.40	2.29	2.09	1.88	1.68	1.48
ORANGE	TX	3.60	3.46	3.22	2.97	2.73	2.49
PALO PINTO	TX	2.80	2.69	2.43	2.16	1.90	1.64
PANOLA	TX	3.00	2.92	2.68	2.43	2.19	1.95
PARKER	TX	3.00	2.85	2.54	2.23	1.92	1.61
PARMER	TX	2.40	2.26	2.03	1.80	1.57	1.34
PECOS	TX	2.40	2.13	2.05	1.98	1.90	1.83
POLK	TX	3.30	3.13	2.92	2.70	2.49	2.28
POTTER	TX	2.40	2.29	2.10	1.90	1.71	1.51
PRESIDIO	TX	2.40	2.11	2.01	1.92	1.82	1.73
RAINS	TX	3.00	2.84	2.52	2.20	1.88	1.56
RANDALL	TX	2.40	2.29	2.09	1.90	1.70	1.50
REAGAN	TX	2.60	2.29	2.18	2.08	1.97	1.86
REAL	TX	3.30	2.65	2.51	2.36	2.22	2.07
RED RIVER	TX	3.00	2.83	2.49	2.16	1.82	1.49
REEVES	TX	2.40	2.09	1.99	1.88	1.78	1.67
REFUGIO	TX	3.65	3.47	3.26	3.04	2.83	2.61
ROBERTS	TX	2.40	2.29	2.09	1.88	1.68	1.48
ROBERTSON	TX	3.30	3.13	2.90	2.68	2.45	2.22
ROCKWALL	TX	3.00	2.85	2.54	2.24	1.93	1.62
RUNNELS	TX	2.80	2.72	2.49	2.25	2.02	1.79
RUSK	TX	3.00	2.91	2.66	2.40	2.15	1.90
SABINE	TX	3.15	3.12	2.89	2.67	2.44	2.22
SAN AUGUSTINE	TX	3.15	3.11	2.87	2.64	2.40	2.17
SAN JACINTO	TX	3.30	3.43	3.15	2.88	2.60	2.33
SAN PATRICIO	TX	3.65	3.58	3.35	3.11	2.88	2.64
SAN SABA	TX	2.80	2.45	2.30	2.14	1.99	1.84
SCHLEICHER	TX	2.80	2.46	2.32	2.17	2.03	1.89
SCURRY	TX	2.60	2.70	2.45	2.20	1.95	1.70
SHACKELFORD	TX	2.80	2.69	2.44	2.18	1.93	1.67
SHELBY	TX	3.15	3.09	2.83	2.58	2.32	2.07
SHERMAN	TX	2.40	2.29	2.08	1.88	1.67	1.47
SMITH	TX	3.00	2.90	2.64	2.38	2.12	1.86
SOMERVELL	TX	3.00	2.88	2.60	2.33	2.05	1.77
STARR	TX	3.65	2.83	2.76	2.70	2.63	2.56
STEPHENS	TX	2.80	2.69	2.43	2.18	1.92	1.66
STERLING	TX	2.60	2.72	2.49	2.27	2.04	1.81
STONEWALL	TX	2.60	2.69	2.43	2.17	1.91	1.65
SUTTON	TX	2.80	2.47	2.33	2.20	2.06	1.93
SWISHER	TX	2.40	2.29	2.09	1.89	1.69	1.49
TARRANT	TX	3.00	2.86	2.57	2.27	1.98	1.68
TAYLOR	TX	2.60	2.71	2.46	2.22	1.97	1.73
TERRELL	TX	2.60	2.30	2.20	2.11	2.01	1.91
TERRY	TX	2.40	2.31	2.13	1.95	1.77	1.59
THROCKMORTON	TX	2.80	2.68	2.41	2.15	1.88	1.61
TITUS	TX	3.00	2.84	2.52	2.20	1.88	1.56
TOM GREEN	TX	2.80	2.73	2.50	2.28	2.05	1.83
TRAVIS	TX	3.30	3.16	2.85	2.55	2.24	1.94
TRINITY	TX	3.30	3.11	2.88	2.64	2.41	2.18
TYLER	TX	3.30	3.13	2.92	2.72	2.51	2.30
UPSHUR	TX	3.00	2.87	2.58	2.29	2.00	1.71
UPTON	TX	2.40	2.13	2.06	2.00	1.93	1.86
UVALDE	TX	3.30	2.66	2.53	2.39	2.26	2.12
VAL VERDE	TX	2.80	2.48	2.36	2.24	2.12	2.00
VAN ZANDT	TX	3.00	2.88	2.59	2.31	2.02	1.74
VICTORIA	TX	3.65	3.46	3.22	2.99	2.75	2.52
WALKER	TX	3.30	3.15	2.94	2.74	2.53	2.32
WALLER	TX	3.60	3.45	3.19	2.94	2.68	2.43
WARD	TX	2.40	2.11	2.02	1.94	1.85	1.76
WASHINGTON	TX	3.30	3.43	3.16	2.90	2.63	2.36
WEBB	TX	3.45	2.73	2.65	2.58	2.50	2.43
WHARTON	TX	3.30	3.37	3.15	2.94	2.72	2.51

COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
WHEELER	TX	2.40	2.29	2.09	1.89	1.69	1.49
WICHITA	TX	2.80	2.63	2.35	2.06	1.78	1.50
WILBARGER	TX	2.60	2.63	2.35	2.08	1.80	1.52
WILLACY	TX	3.65	3.67	3.42	3.18	2.93	2.69
WILLIAMSON	TX	3.30	3.16	2.87	2.57	2.28	1.98
WILSON	TX	3.45	3.32	3.06	2.81	2.55	2.29
WINKLER	TX	2.40	2.10	2.01	1.91	1.82	1.72
WISE	TX	3.00	2.83	2.50	2.16	1.83	1.50
WOOD	TX	3.00	2.85	2.54	2.24	1.93	1.62
YOAKUM	TX	2.40	2.30	2.10	1.91	1.71	1.52
YOUNG	TX	2.80	2.67	2.39	2.12	1.84	1.56
ZAPATA	TX	3.65	2.82	2.75	2.67	2.60	2.52
ZAVALA	TX	3.30	2.68	2.56	2.45	2.33	2.21
BEAVER	UT	1.60	1.58	1.56	1.54	1.52	1.50
BOX ELDER	UT	1.90	1.73	1.55	1.38	1.20	1.03
CACHE	UT	1.90	1.73	1.56	1.38	1.21	1.04
CARBON	UT	1.90	1.78	1.66	1.53	1.41	1.29
DAGGETT	UT	1.90	1.77	1.64	1.50	1.37	1.24
DAVIS	UT	1.90	1.74	1.58	1.41	1.25	1.09
DUCHESNE	UT	1.90	1.76	1.62	1.49	1.35	1.21
EMERY	UT	1.90	1.80	1.70	1.59	1.49	1.39
GARFIELD	UT	1.60	1.60	1.60	1.60	1.60	1.60
GRAND	UT	1.90	1.84	1.79	1.73	1.68	1.62
IRON	UT	1.60	1.60	1.61	1.61	1.62	1.62
JUAB	UT	1.90	1.75	1.60	1.46	1.31	1.16
KANE	UT	1.60	1.62	1.63	1.65	1.66	1.68
MILLARD	UT	1.90	1.78	1.67	1.55	1.44	1.32
MORGAN	UT	1.90	1.74	1.57	1.41	1.24	1.08
PIUTE	UT	1.60	1.58	1.56	1.54	1.52	1.50
RICH	UT	1.90	1.73	1.56	1.39	1.22	1.05
SALT LAKE	UT	1.90	1.74	1.57	1.41	1.24	1.08
SAN JUAN	UT	1.60	1.63	1.66	1.68	1.71	1.74
SANPETE	UT	1.90	1.77	1.64	1.52	1.39	1.26
SEVIER	UT	1.90	1.81	1.72	1.62	1.53	1.44
SUMMIT	UT	1.90	1.74	1.58	1.41	1.25	1.09
TOOELE	UT	1.90	1.74	1.57	1.41	1.24	1.08
UINTAH	UT	1.90	1.79	1.68	1.57	1.46	1.35
UTAH	UT	1.90	1.73	1.55	1.38	1.20	1.03
WASATCH	UT	1.90	1.73	1.56	1.39	1.22	1.05
WASHINGTON	UT	1.60	1.63	1.65	1.68	1.70	1.73
WAYNE	UT	1.60	1.59	1.57	1.56	1.54	1.53
WEBER	UT	1.90	1.73	1.57	1.40	1.24	1.07
ACCOMACK	VA	3.00	2.98	2.73	2.49	2.24	1.99
ALBEMARLE	VA	2.80	2.66	2.38	2.11	1.83	1.56
ALEXANDRIA CITY	VA	3.00	2.75	2.46	2.18	1.89	1.61
ALLEGHANY	VA	2.80	2.67	2.41	2.14	1.88	1.62
AMELIA	VA	3.10	2.82	2.56	2.30	2.04	1.78
AMHERST	VA	2.80	2.68	2.43	2.18	1.93	1.68
APPOMATTOX	VA	2.80	2.69	2.45	2.20	1.96	1.72
ARLINGTON	VA	3.00	2.74	2.45	2.17	1.88	1.59
AUGUSTA	VA	2.80	2.66	2.39	2.12	1.85	1.58
BATH	VA	2.80	2.67	2.41	2.14	1.88	1.62
BEDFORD	VA	2.80	2.68	2.43	2.17	1.92	1.67
BEDFORD CITY	VA	2.80	2.68	2.43	2.17	1.92	1.67
BLAND	VA	2.80	2.68	2.43	2.19	1.94	1.69
BOTETOURT	VA	2.80	2.67	2.41	2.14	1.88	1.62
BRISTOL CITY	VA	2.80	2.56	2.35	2.15	1.94	1.73
BRUNSWICK	VA	3.10	2.86	2.64	2.42	2.20	1.98
BUCHANAN	VA	2.80	2.56	2.35	2.13	1.92	1.71
BUCKINGHAM	VA	2.80	2.80	2.52	2.24	1.96	1.68
BUENA VISTA CITY	VA	2.80	2.67	2.41	2.16	1.90	1.64
CAMPBELL	VA	2.80	2.69	2.45	2.20	1.96	1.72
CAROLINE	VA	3.10	2.80	2.53	2.25	1.98	1.70
CARROLL	VA	2.80	2.69	2.45	2.20	1.96	1.72
CHARLES CITY	VA	3.10	2.84	2.60	2.37	2.13	1.89
CHARLOTTE	VA	3.10	2.83	2.57	2.32	2.06	1.81
CHARLOTTESVILLE CITY	VA	2.80	2.66	2.38	2.11	1.83	1.56
CHESAPEAKE CITY	VA	3.20	3.02	2.80	2.59	2.37	2.16
CHESTERFIELD	VA	3.10	2.83	2.58	2.33	2.08	1.83
CLARKE	VA	2.80	2.77	2.46	2.15	1.84	1.53

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COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
CLIFTON FORGE CITY	VA	2.80	2.67	2.41	2.15	1.89	1.63
COLONIAL HEIGHTS CITY	VA	3.10	2.84	2.60	2.35	2.11	1.87
COVINGTON CITY	VA	2.80	2.67	2.41	2.14	1.88	1.62
CRAIG	VA	2.80	2.67	2.41	2.15	1.89	1.63
CULPEPER	VA	2.80	2.78	2.48	2.17	1.87	1.57
CUMBERLAND	VA	2.80	2.80	2.53	2.25	1.98	1.70
DANVILLE CITY	VA	2.80	2.71	2.49	2.26	2.04	1.82
DICKENSON	VA	2.80	2.56	2.35	2.13	1.92	1.71
DINWIDDIE	VA	3.10	2.84	2.61	2.37	2.14	1.90
EMPORIA CITY	VA	3.00	2.87	2.66	2.45	2.24	2.08
ESSEX	VA	3.10	2.94	2.65	2.36	2.07	1.78
FAIRFAX	VA	3.00	2.74	2.45	2.17	1.88	1.59
FAIRFAX CITY	VA	3.00	2.74	2.45	2.16	1.87	1.58
FALLS CHURCH CITY	VA	3.00	2.74	2.45	2.16	1.87	1.58
FAUQUIER	VA	3.00	2.78	2.47	2.17	1.86	1.56
FLOYD	VA	2.80	2.68	2.43	2.19	1.94	1.69
FLUVANNA	VA	2.80	2.79	2.50	2.21	1.92	1.63
FRANKLIN	VA	2.80	2.68	2.43	2.19	1.94	1.69
FRANKLIN CITY	VA	3.00	2.74	2.45	2.16	1.87	1.58
FREDERICK	VA	3.00	2.74	2.45	2.16	1.87	1.58
FREDERICKSBURG CITY	VA	2.80	2.79	2.50	2.22	1.93	1.64
GALAX CITY	VA	2.80	2.69	2.45	2.21	1.97	1.73
GILES	VA	2.80	2.68	2.43	2.17	1.92	1.67
GLOUCESTER	VA	3.20	2.98	2.73	2.48	2.23	1.98
GOOCHLAND	VA	3.10	2.80	2.52	2.25	1.97	1.69
GRAYSON	VA	2.80	2.69	2.45	2.21	1.97	1.73
GREENE	VA	2.80	2.65	2.38	2.10	1.83	1.55
GREENSVILLE	VA	3.10	2.87	2.65	2.44	2.22	2.01
HALIFAX	VA	3.10	2.71	2.49	2.28	2.06	1.84
HAMPTON CITY	VA	3.20	3.00	2.77	2.54	2.31	2.08
HANOVER	VA	3.10	2.82	2.55	2.29	2.02	1.76
HARRISONBURG CITY	VA	2.80	2.65	2.38	2.10	1.83	1.55
HENRICO	VA	3.10	2.82	2.56	2.30	2.04	1.78
HENRY	VA	2.80	2.82	2.55	2.29	2.02	1.76
HIGHLAND	VA	2.80	2.67	2.40	2.14	1.87	1.61
HOPEWELL CITY	VA	3.10	2.84	2.60	2.37	2.13	1.89
ISLE OF WIGHT	VA	3.20	3.00	2.76	2.53	2.29	2.06
JAMES CITY	VA	3.10	2.98	2.72	2.47	2.21	1.96
KING AND QUEEN	VA	3.10	2.95	2.67	2.39	2.11	1.83
KING GEORGE	VA	3.10	2.80	2.53	2.25	1.98	1.70
KING WILLIAM	VA	3.10	2.82	2.56	2.31	2.05	1.79
LANCASTER	VA	3.10	2.96	2.69	2.42	2.15	1.88
LEE	VA	2.80	2.56	2.36	2.15	1.95	1.74
LEXINGTON CITY	VA	2.80	2.67	2.41	2.15	1.89	1.63
LOUDOUN	VA	3.00	2.71	2.41	2.12	1.82	1.53
LOUISA	VA	2.80	2.79	2.50	2.21	1.92	1.63
LUNENBURG	VA	3.10	2.84	2.59	2.35	2.10	1.86
LYNCHBURG CITY	VA	2.80	2.69	2.45	2.20	1.96	1.72
MADISON	VA	2.80	2.77	2.47	2.16	1.86	1.55
MANASSAS CITY	VA	3.00	2.72	2.43	2.15	1.86	1.58
MANASSAS PARK CITY	VA	3.00	2.78	2.48	2.18	1.88	1.58
MARTINSVILLE CITY	VA	2.80	2.70	2.46	2.23	1.99	1.76
MATHEWS	VA	3.20	2.98	2.73	2.48	2.23	1.98
MECKLENBURG	VA	3.10	2.85	2.62	2.38	2.15	1.92
MIDDLESEX	VA	3.10	2.96	2.70	2.43	2.17	1.90
MONTGOMERY	VA	2.80	2.68	2.42	2.17	1.91	1.66
NELSON	VA	2.80	2.67	2.41	2.14	1.88	1.62
NEW KENT	VA	3.10	2.83	2.59	2.34	2.10	1.85
NEWPORT NEWS CITY	VA	3.20	2.99	2.75	2.52	2.28	2.04
NORFOLK CITY	VA	3.20	3.01	2.79	2.56	2.34	2.12
NORTHAMPTON	VA	3.00	2.99	2.75	2.52	2.28	2.04
NORTHUMBERLAND	VA	3.10	2.80	2.57	2.33	2.10	1.87
NORTON CITY	VA	2.80	2.56	2.35	2.15	1.94	1.73
NOTTOWAY	VA	3.10	2.83	2.59	2.34	2.10	1.85
ORANGE	VA	2.80	2.78	2.48	2.18	1.88	1.58
PAGE	VA	2.80	2.77	2.47	2.16	1.86	1.55
PATRICK	VA	2.80	2.69	2.46	2.22	1.99	1.75
PETERSBURG CITY	VA	3.10	2.84	2.61	2.37	2.14	1.90
PITTSYLVANIA	VA	2.80	2.70	2.47	2.24	2.01	3.00
POQUOSON CITY	VA	3.20	2.99	2.75	2.52	2.28	2.04

COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
PORTSMOUTH CITY	VA	3.20	3.01	2.79	2.56	2.34	2.12
POWHATAN	VA	3.10	2.81	2.54	2.27	2.00	3.10
PRINCE EDWARD	VA	3.10	2.82	2.55	2.29	2.02	1.76
PRINCE GEORGE	VA	3.10	2.85	2.61	2.38	2.14	1.91
PRINCE WILLIAM	VA	3.00	2.72	2.44	2.15	1.87	1.59
PULASKI	VA	2.80	2.68	2.43	2.18	1.93	1.68
RADFORD CITY	VA	2.80	2.68	2.43	2.17	1.92	1.67
RAPPAHANNOCK	VA	2.80	2.77	2.47	2.16	1.86	1.55
RICHMOND	VA	3.10	2.95	2.66	2.38	2.09	1.81
RICHMOND CITY	VA	3.10	2.82	2.56	2.30	2.04	1.78
ROANOKE	VA	2.80	2.67	2.41	2.14	1.88	1.62
ROANOKE CITY	VA	2.80	2.67	2.41	2.15	1.89	1.63
ROCKBRIDGE	VA	2.80	2.67	2.41	2.15	1.89	1.63
ROCKINGHAM	VA	2.80	2.65	2.38	2.10	1.83	1.55
RUSSELL	VA	2.80	2.56	2.35	2.13	1.92	1.71
SALEM CITY	VA	2.80	2.79	2.50	2.20	1.91	1.62
SCOTT	VA	2.80	2.57	2.37	2.16	1.96	1.76
SHENANDOAH	VA	2.80	2.77	2.47	2.16	1.86	1.55
SMYTH	VA	2.80	2.69	2.44	2.20	1.95	1.71
SOUTH BOSTON CITY	VA	3.10	2.70	2.48	2.25	2.03	1.80
SOUTHAMPTON	VA	3.10	2.88	2.67	2.47	2.26	2.06
SPOTSYLVANIA	VA	2.80	2.79	2.50	2.21	1.92	1.63
STAFFORD	VA	3.00	2.79	2.50	2.21	1.92	1.63
STAUNTON CITY	VA	2.80	2.66	2.39	2.11	1.84	1.57
SUFFOLK CITY	VA	3.20	3.01	2.79	2.56	2.34	2.12
SURRY	VA	3.10	2.86	2.64	2.42	2.20	1.98
SUSSEX	VA	3.10	2.87	2.65	2.44	2.22	2.01
TAZEWELL	VA	2.80	2.56	2.34	2.13	1.91	1.70
VIRGINIA BEACH CITY	VA	3.20	3.01	2.80	2.58	2.37	2.15
WARREN	VA	2.80	2.77	2.46	2.16	1.85	1.54
WASHINGTON	VA	2.80	2.56	2.35	2.14	1.93	1.72
WAYNESBORO CITY	VA	2.80	2.66	2.39	2.11	1.84	1.57
WESTMORELAND	VA	3.10	2.82	2.56	2.29	2.03	1.77
WILLIAMSBURG CITY	VA	3.10	2.86	2.63	2.41	2.18	1.96
WINCHESTER CITY	VA	2.80	2.77	2.46	2.15	1.84	1.53
WISE	VA	2.80	2.56	2.35	2.15	1.94	1.73
WYTHE	VA	2.80	2.68	2.44	2.19	1.95	1.70
YORK	VA	3.20	2.98	2.74	2.49	2.25	2.00
ADDISON	VT	2.60	2.38	2.19	1.99	1.80	1.61
BENNINGTON	VT	2.80	2.52	2.32	2.13	1.93	1.73
CALEDONIA	VT	2.60	2.41	2.22	2.03	1.84	1.65
CHITTENDEN	VT	2.60	2.34	2.16	1.97	1.79	1.61
ESSEX	VT	2.60	2.36	2.18	1.99	1.81	1.62
FRANKLIN	VT	2.40	2.24	2.07	1.91	1.74	1.58
GRAND ISLE	VT	2.40	2.21	2.05	1.90	1.74	1.58
LAMOILLE	VT	2.60	2.34	2.16	1.97	1.79	1.61
ORANGE	VT	2.60	2.42	2.24	2.06	1.88	1.70
ORLEANS	VT	2.40	2.32	2.14	1.95	1.77	1.59
RUTLAND	VT	2.60	2.44	2.24	2.03	1.83	1.62
WASHINGTON	VT	2.60	2.37	2.19	2.01	1.83	1.65
WINDHAM	VT	2.80	2.76	2.53	2.30	2.07	1.84
WINDSOR	VT	2.60	2.69	2.45	2.20	1.96	1.71
ADAMS	WA	1.75	1.58	1.41	1.25	1.08	0.91
ASOTIN	WA	1.75	1.60	1.45	1.29	1.14	0.99
BENTON	WA	1.75	1.59	1.43	1.27	1.11	0.95
CHELAN	WA	1.75	1.58	1.41	1.23	1.06	0.89
CLALLAM	WA	1.90	1.58	1.41	1.24	1.07	0.90
CLARK	WA	1.90	1.71	1.52	1.33	1.14	0.95
COLUMBIA	WA	1.75	1.59	1.43	1.27	1.11	0.95
COWLITZ	WA	1.90	1.71	1.53	1.34	1.16	0.97
DOUGLAS	WA	1.75	1.58	1.40	1.23	1.05	0.88
FERRY	WA	1.90	1.70	1.49	1.29	1.08	0.88
FRANKLIN	WA	1.75	1.59	1.43	1.26	1.10	0.94
GARFIELD	WA	1.75	1.59	1.43	1.28	1.12	0.96
GRANT	WA	1.75	1.58	1.41	1.24	1.07	0.90
GRAYS HARBOR	WA	1.90	1.72	1.53	1.35	1.16	0.98
ISLAND	WA	1.90	1.70	1.50	1.29	1.09	0.89
JEFFERSON	WA	1.90	1.59	1.43	1.27	1.11	0.95
KING	WA	1.90	1.72	1.54	1.36	1.18	1.00
KITSAP	WA	1.90	1.72	1.54	1.36	1.18	1.00

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			1999	2000	2001	2002	2003 & beyond
KITTITAS	WA	1.75	1.59	1.43	1.26	1.10	0.94
KLICKITAT	WA	1.75	1.59	1.43	1.28	1.12	0.96
LEWIS	WA	1.90	1.72	1.53	1.35	1.16	0.98
LINCOLN	WA	1.90	1.70	1.49	1.29	1.06	0.88
MASON	WA	1.90	1.72	1.54	1.35	1.17	0.99
OKANOGAN	WA	1.75	1.57	1.39	1.22	1.04	0.86
PACIFIC	WA	1.90	1.72	1.54	1.35	1.17	0.99
PEND OREILLE	WA	1.90	1.71	1.51	1.32	1.12	0.93
PIERCE	WA	1.90	1.72	1.54	1.36	1.18	1.00
SAN JUAN	WA	1.90	1.57	1.38	1.20	1.01	0.83
SKAGIT	WA	1.90	1.68	1.46	1.24	1.02	0.80
SKAMANIA	WA	1.90	1.71	1.52	1.34	1.15	0.96
SNOHOMISH	WA	1.90	1.70	1.50	1.31	1.11	0.91
SPOKANE	WA	1.90	1.70	1.50	1.29	1.09	0.89
STEVENS	WA	1.90	1.70	1.50	1.29	1.09	0.89
THURSTON	WA	1.90	1.72	1.54	1.35	1.17	0.99
WAHKIAKUM	WA	1.90	1.72	1.54	1.35	1.17	0.99
WALLA WALLA	WA	1.75	1.59	1.43	1.27	1.11	0.95
WHATCOM	WA	1.90	1.63	1.42	1.21	1.00	0.79
WHITMAN	WA	1.90	1.71	1.52	1.32	1.13	0.94
YAKIMA	WA	1.75	1.59	1.43	1.27	1.11	0.95
ADAMS	WI	1.70	1.11	1.11	1.12	1.12	1.13
ASHLAND	WI	1.70	1.10	1.10	1.10	1.10	1.10
BARRON	WI	1.70	1.11	1.11	1.12	1.12	1.13
BAYFIELD	WI	1.70	1.11	1.12	1.14	1.15	1.16
BROWN	WI	1.75	1.14	1.16	1.19	1.21	1.23
BUFFALO	WI	1.70	1.10	1.11	1.11	1.12	1.12
BURNETT	WI	1.70	1.14	1.15	1.15	1.16	1.16
CALUMET	WI	1.75	1.17	1.20	1.24	1.27	1.30
CHIPPEWA	WI	1.70	1.10	1.10	1.11	1.11	1.11
CLARK	WI	1.70	1.05	1.06	1.08	1.09	1.10
COLUMBIA	WI	1.75	1.15	1.15	1.16	1.16	1.17
CRAWFORD	WI	1.75	1.14	1.14	1.14	1.14	1.14
DANE	WI	1.75	1.20	1.19	1.19	1.18	1.17
DODGE	WI	1.75	1.17	1.21	1.24	1.28	1.31
DOOR	WI	1.75	1.10	1.11	1.11	1.12	1.12
DOUGLAS	WI	1.70	1.16	1.18	1.19	1.21	1.23
DUNN	WI	1.70	1.10	1.10	1.10	1.10	1.10
EAU CLAIRE	WI	1.70	1.10	1.11	1.11	1.12	1.12
FLORENCE	WI	1.70	1.09	1.03	0.98	0.92	0.86
FOND DU LAC	WI	1.75	1.17	1.20	1.24	1.27	1.30
FOREST	WI	1.70	1.07	1.03	1.00	0.96	0.93
GRANT	WI	1.75	1.15	1.15	1.16	1.16	1.17
GREEN	WI	1.75	1.21	1.22	1.22	1.23	1.23
GREEN LAKE	WI	1.70	1.15	1.16	1.18	1.19	1.20
IOWA	WI	1.75	1.14	1.14	1.15	1.15	1.15
IRON	WI	1.70	1.13	1.11	1.09	1.07	1.05
JACKSON	WI	1.70	1.06	1.08	1.10	1.12	1.14
JEFFERSON	WI	1.75	1.31	1.30	1.30	1.29	1.29
JUNEAU	WI	1.70	1.11	1.11	1.12	1.12	1.13
KENOSHA	WI	1.75	1.34	1.38	1.41	1.45	1.48
KEWAUNEE	WI	1.75	1.13	1.16	1.20	1.23	1.26
LA CROSSE	WI	1.70	1.12	1.14	1.15	1.17	1.19
LAFAYETTE	WI	1.75	1.15	1.17	1.18	1.20	1.21
LANGLADE	WI	1.70	1.03	1.02	1.00	0.99	0.98
LINCOLN	WI	1.70	1.03	1.03	1.02	1.02	1.01
MANITOWOC	WI	1.75	1.19	1.24	1.29	1.34	1.39
MARATHON	WI	1.70	1.04	1.05	1.05	1.06	1.06
MARINETTE	WI	1.70	1.04	1.02	1.01	0.99	0.98
MARQUETTE	WI	1.70	1.11	1.12	1.13	1.14	1.15
MENOMINEE	WI	1.70	1.04	1.03	1.03	1.02	1.02
MILWAUKEE	WI	1.75	1.34	1.37	1.41	1.44	1.47
MONROE	WI	1.70	1.11	1.12	1.13	1.14	1.15
OCONTO	WI	1.70	1.04	1.05	1.05	1.06	1.06
ONEIDA	WI	1.70	1.03	1.02	1.00	0.99	0.98
OUTAGAMIE	WI	1.75	1.10	1.11	1.11	1.12	1.12
OZAUKEE	WI	1.75	1.21	1.28	1.35	1.42	1.49
PEPIN	WI	1.70	1.10	1.10	1.10	1.10	1.10
PIERCE	WI	1.70	1.13	1.12	1.12	1.11	1.10
POLK	WI	1.70	1.14	1.14	1.14	1.14	1.14

COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
PORTAGE	WI	1.70	1.05	1.06	1.06	1.07	1.08
PRICE	WI	1.70	1.05	1.05	1.06	1.06	1.07
RACINE	WI	1.75	1.34	1.37	1.39	1.42	1.45
RICHLAND	WI	1.75	1.14	1.14	1.14	1.14	1.14
ROCK	WI	1.75	1.30	1.29	1.29	1.28	1.27
RUSK	WI	1.70	1.10	1.10	1.11	1.11	1.11
SAUK	WI	1.75	1.14	1.14	1.13	1.13	1.13
SAWYER	WI	1.70	1.11	1.11	1.12	1.12	1.13
SHAWANO	WI	1.70	1.04	1.04	1.05	1.05	1.05
SHEBOYGAN	WI	1.75	1.21	1.29	1.36	1.44	1.51
ST. CROIX	WI	1.70	1.13	1.13	1.12	1.12	1.11
TAYLOR	WI	1.70	1.05	1.06	1.06	1.07	1.08
TREMPEALEAU	WI	1.70	1.11	1.12	1.13	1.14	1.15
VERNON	WI	1.75	1.14	1.15	1.15	1.16	1.16
VILAS	WI	1.70	1.08	1.05	1.03	1.00	0.98
WALWORTH	WI	1.75	1.32	1.33	1.35	1.36	1.37
WASHBURN	WI	1.70	1.11	1.12	1.14	1.15	1.16
WASHINGTON	WI	1.75	1.19	1.25	1.30	1.36	1.41
WAUKESHA	WI	1.75	1.33	1.34	1.36	1.37	1.39
WAUPACA	WI	1.75	1.10	1.09	1.09	1.08	1.08
WAUSHARA	WI	1.70	1.10	1.11	1.11	1.12	1.12
WINNEBAGO	WI	1.75	1.15	1.16	1.16	1.17	1.18
WOOD	WI	1.70	1.05	1.06	1.08	1.09	1.10
BARBOUR	WV	2.30	1.93	1.86	1.79	1.72	1.65
BERKELEY	WV	2.60	1.85	1.76	1.66	1.57	1.47
BOONE	WV	2.20	2.10	2.01	1.93	1.84	1.75
BRAXTON	WV	2.20	1.94	1.87	1.81	1.74	1.68
BROOKE	WV	2.10	1.92	1.85	1.77	1.70	1.62
CABELL	WV	2.20	2.09	1.99	1.90	1.80	1.70
CALHOUN	WV	2.20	2.02	1.94	1.85	1.77	1.68
CLAY	WV	2.20	2.09	2.00	1.90	1.81	1.71
DODDRIDGE	WV	2.10	1.93	1.86	1.78	1.71	1.64
FAYETTE	WV	2.20	2.09	2.00	1.90	1.81	1.71
GILMER	WV	2.20	2.02	1.93	1.85	1.76	1.67
GRANT	WV	2.60	1.92	1.84	1.76	1.68	1.60
GREENBRIER	WV	2.20	2.55	2.33	2.10	1.88	1.66
HAMPSHIRE	WV	2.60	1.91	1.83	1.74	1.66	1.57
HANCOCK	WV	2.10	1.92	1.84	1.75	1.67	1.59
HARDY	WV	2.60	1.92	1.83	1.75	1.66	1.58
HARRISON	WV	2.10	1.93	1.86	1.79	1.72	1.65
JACKSON	WV	2.20	2.09	1.99	1.88	1.78	1.68
JEFFERSON	WV	2.60	1.90	1.80	1.70	1.60	1.50
KANAWHA	WV	2.20	2.10	2.02	1.93	1.85	1.76
LEWIS	WV	2.10	1.93	1.86	1.80	1.73	1.66
LINCOLN	WV	2.20	2.10	2.01	1.91	1.82	1.73
LOGAN	WV	2.20	2.10	2.00	1.91	1.81	1.72
MARION	WV	2.80	2.56	2.35	2.13	1.92	1.71
MARSHALL	WV	2.10	1.93	1.86	1.78	1.71	1.64
MASON	WV	2.10	1.92	1.85	1.77	1.70	1.62
MCDOWELL	WV	2.20	2.09	1.98	1.88	1.77	1.67
MERCER	WV	2.80	2.55	2.34	2.12	1.91	1.69
MINERAL	WV	2.60	1.92	1.84	1.76	1.68	1.60
MINGO	WV	2.20	2.09	2.00	1.90	1.81	1.71
MONONGALIA	WV	2.10	1.93	1.85	1.78	1.70	1.63
MONROE	WV	2.20	2.55	2.32	2.10	1.87	1.65
MORGAN	WV	2.60	1.82	1.74	1.66	1.58	1.50
NICHOLAS	WV	2.20	2.09	1.99	1.89	1.79	1.69
OHIO	WV	2.10	1.92	1.84	1.77	1.69	1.61
PENDLETON	WV	2.60	1.92	1.84	1.76	1.68	1.60
PLEASANTS	WV	2.20	2.01	1.91	1.80	1.70	1.60
POCAHONTAS	WV	2.20	2.54	2.32	2.09	1.87	1.64
PRESTON	WV	2.30	1.93	1.86	1.78	1.71	1.64
PUTNAM	WV	2.20	2.10	2.01	1.91	1.82	1.73
RALEIGH	WV	2.20	2.09	2.00	1.90	1.81	1.71
RANDOLPH	WV	2.30	1.93	1.85	1.78	1.70	1.63
RITCHIE	WV	2.20	2.01	1.92	1.82	1.73	1.63
ROANE	WV	2.20	2.09	1.99	1.89	1.79	1.69
SUMMERS	WV	2.20	2.55	2.33	2.11	1.89	1.67
TAYLOR	WV	2.30	1.93	1.86	1.79	1.72	1.65
TUCKER	WV	2.30	1.92	1.85	1.77	1.70	1.62

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COUNTY/PARISH	STATE	OPTION 1A DIFFERENTIAL	OPTION 1B DIFFERENTIAL (Per Year)				
			1999	2000	2001	2002	2003 & beyond
TYLER	WV	2.10	1.93	1.85	1.78	1.70	1.63
UPSHUR	WV	2.30	1.93	1.86	1.79	1.72	1.65
WAYNE	WV	2.20	2.09	1.99	1.89	1.79	1.69
WEBSTER	WV	2.20	1.93	1.86	1.80	1.73	1.66
WETZEL	WV	2.10	1.93	1.85	1.78	1.70	1.63
WIRT	WV	2.20	2.02	1.93	1.84	1.75	1.66
WOOD	WV	2.20	2.01	1.91	1.82	1.72	1.62
WYOMING	WV	2.20	2.10	2.00	1.91	1.81	1.72
ALBANY	WY	1.90	1.86	1.68	1.49	1.31	1.12
BIG HORN	WY	1.60	1.65	1.49	1.34	1.18	1.03
CAMPBELL	WY	1.65	1.84	1.63	1.41	1.20	0.99
CARBON	WY	1.90	1.67	1.53	1.40	1.26	1.13
CONVERSE	WY	1.70	1.84	1.63	1.43	1.22	1.01
CROOK	WY	1.65	1.83	1.61	1.38	1.16	0.94
FREMONT	WY	1.60	1.49	1.37	1.26	1.14	1.03
GOSHEN	WY	1.90	1.85	1.64	1.44	1.23	1.03
HOT SPRINGS	WY	1.60	1.48	1.36	1.25	1.13	1.01
JOHNSON	WY	1.65	1.64	1.48	1.33	1.17	1.01
LARAMIE	WY	2.45	1.86	1.67	1.48	1.29	1.10
LINCOLN	WY	1.60	1.49	1.37	1.26	1.14	1.03
NATRONA	WY	1.70	1.65	1.49	1.34	1.18	1.03
NIOBRARA	WY	1.70	1.84	1.62	1.41	1.19	0.98
PARK	WY	1.60	1.47	1.34	1.21	1.08	0.95
PLATTE	WY	1.90	1.85	1.65	1.46	1.26	1.06
SHERIDAN	WY	1.60	1.65	1.50	1.35	1.20	1.05
SUBLETTE	WY	1.60	1.48	1.37	1.25	1.14	1.02
SWEETWATER	WY	1.90	1.51	1.42	1.33	1.24	1.15
TETON	WY	1.60	1.46	1.33	1.19	1.06	0.92
UINTA	WY	1.90	1.50	1.40	1.31	1.21	1.11
WASHAKIE	WY	1.60	1.64	1.49	1.33	1.18	1.02
WESTON	WY	1.70	1.82	1.59	1.36	1.13	0.90

§ 1000.53 Announcement of class prices and component prices.

On or before the 5th day of the month, the market administrator shall announce for each Federal milk marketing order in 7 CFR, chapter X the following applicable prices:

(a) For the following month:
(1) The Class I price;
(2) The Class I skim milk price;
(3) The Class I butterfat price;
(b) For the preceding month:
(1) The Class II price;
(2) The Class III price;
(3) The Class IV price;
(4) The Class II skim milk price;
(5) The Class III skim milk price;
(6) The Class IV skim milk price;
(7) The butterfat price;
(8) The nonfat solids price;
(9) The protein price;
(10) The other solids price; and
(11) The somatic cell adjustment rate.

§ 1000.54 Equivalent price.

If for any reason a price or pricing constituent required for computing class prices or for other purposes is not available as prescribed in any Federal milk order, the market administrator shall use a price or pricing constituent determined by the Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to be equivalent to the price or pricing constituent that is required.

Subpart H—Payments for Milk

§ 1000.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the producer-settlement fund into which the market administrator shall deposit all payments made by handlers pursuant to §§ ____.71, ____.76, and ____.77 of each Federal milk order in 7 CFR, chapter X, and out of which the market administrator shall make all payments pursuant to §§ ____.72 and ____.77 of each Federal milk order in 7 CFR, chapter X. Payments due any handler shall be offset by any payments due from that handler.

§ 1000.71 Payments to the producer-settlement fund.

Each handler shall make a payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the date specified in § ____.71 of each order in 7 CFR, chapter X. Payment shall be the amount, if any, by which the amount specified in (a) of this section exceeds the amount specified in (b) or (c) of this section:

(a) The total value of milk of the handler for the month as determined pursuant to § ____.60 of the order; and

(b) For orders in 7 CFR, chapter X with component pricing, the sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential, adjusted pursuant to § ____.75 of the order;

(2) An amount obtained by multiplying the pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices, respectively;

(3) The total value of the somatic cell adjustment to producer milk; and

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § ____.60(i) of the order by the producer price differential as adjusted pursuant to § ____.75 of the order for the location of the plant from which received; or

(c) For orders in 7 CFR, chapter X with skim milk and butterfat pricing, the sum of the value at the uniform prices for skim milk and butterfat, adjusted for plant location, of the handler's receipts of producer milk; and the value at the uniform price as adjusted pursuant to § ____.75 of the order applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § ____.60(e) of the order.

§ 1000.72 Payments from the producer-settlement fund.

No later than one day after the date of payment receipt required under § 1000.71, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1000.71(b) or (c), as the case may be, exceeds the amount computed pursuant to § 1000.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1000.76 Payments by a handler operating a partially regulated distributing plant.

On or before the 25th day after the end of the month, the operator of a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section or, if the handler submits the information specified in §§ ____.30(b) and ____.31(b) of the order, the handler may elect to pay the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be an amount resulting from the following computations:

(1) From the plant's route disposition in the marketing area:

(i) Subtract receipts of fluid milk products classified as Class I milk from pool plants and plants fully regulated under other Federal orders in 7 CFR, chapter X, except that subtracted under a similar provision of another Federal milk order in 7 CFR, chapter X;

(ii) Subtract receipts of fluid milk products from another nonpool plant that is not a plant fully regulated under another Federal order in 7 CFR, chapter X to the extent that an equivalent amount of fluid milk products disposed of to the nonpool plant by handlers fully regulated under any Federal order in 7 CFR, chapter X is classified and priced as Class I milk and is not used as an offset for any payment obligation under any order; and

(iii) Subtract the pounds of reconstituted milk made from nonfluid milk products which are then disposed of as route disposition in the marketing area;

(2) For orders in 7 CFR, chapter X with multiple component pricing, multiply the remaining pounds by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant except that neither the adjusted Class I differential price nor the adjusted producer price differential shall be less than zero;

(3) For orders in 7 CFR, chapter X with skim milk and butterfat pricing, multiply the remaining pounds by the amount by which the Class I price exceeds the uniform price, both prices to be applicable at the location of the partially regulated distributing plant except that neither the adjusted Class I price nor the adjusted uniform price differential shall be less than the lowest announced class price; and

(4) Add the amount obtained from multiplying the pounds of labeled reconstituted milk included in paragraph (a)(1)(iii) of this section by any positive difference between the Class I price applicable at the location of the partially regulated distributing plant less $1.00 and the Class IV price. For any reconstituted milk that is not so labeled, the Class I price shall not be reduced by $1.00. Alternatively, for such disposition, payments may be made to the producer-settlement fund of the order regulating the producer milk used to produce the nonfluid milk ingredients at the positive difference between the Class I price applicable under the other Federal order in 7 CFR, chapter X at the location of the plant where the nonfluid milk ingredients were processed and the Class IV price. This payment option shall apply only if a majority of the total milk received at the plant that processed the nonfluid milk ingredients is regulated under one or more Federal orders in 7 CFR, chapter X and payment may only be made to the producer-settlement fund of the order pricing a plurality of the milk used to produce the nonfluid milk ingredients. This payment option shall not apply if the source of the nonfluid ingredients used in reconstituted fluid milk products cannot be determined by the market administrator.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § ____.60 of the order for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the plant from a pool plant or a plant fully regulated under another Federal order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or a plant fully regulated under another Federal order in 7 CFR, chapter X shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be computed to the extent possible to those receipts at the partially regulated distributing plant from the pool plant and plants fully regulated under other Federal orders in 7 CFR, chapter X that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are in Class I and for which a value is computed pursuant to § ____.60 of the order for the partially regulated distributing plant shall be priced at the statistical uniform price or uniform price, whichever is applicable, of the respective order regulating the handling of milk at the receiving plant, with such statistical uniform price or uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest announced class price of the respective order); and

(iii) If the operator of the partially regulated distributing plant so requests, the handler's value of milk determined pursuant to § ____.60 of the order shall include a value of milk determined for each nonpool plant that is not a plant fully regulated under another Federal order in 7 CFR, chapter X which serves as a supply plant for the partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of Section 7(c) of the order, subject to the following conditions:

(A) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§ ____.30(b) and ____.31(b) of the order similar reports for each such nonpool supply plant;

(B) The operator of the nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at the plant which are made available if requested by the market administrator for verification purposes; and

(C) The value of milk determined pursuant to § ____.60 for the

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unregulated supply plant shall be determined in the same manner prescribed for computing the obligation of the partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of the partially regulated distributing plant for milk received at the plant during the month that would have been producer milk had the plant been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another Federal order in 7 CFR, chapter X under which the plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

(c) Any handler may elect partially regulated distributing plant status for any plant with respect to receipts of nonfluid milk ingredients assigned to Class I use under § 1000.43(d). Payments may be made to the producer-settlement fund of the order regulating the producer milk used to produce the nonfluid milk ingredients at the positive difference between the Class I price applicable under the other order at the location of the plant where the nonfluid milk ingredients were processed and the Class IV price. This payment option shall apply only if a majority of the total milk received at the plant that processed the nonfluid milk ingredients is regulated under one or more Federal orders in 7 CFR, chapter X and payment may only be made to the producer-settlement fund of the order pricing a plurality of the milk used to produce the nonfluid milk ingredients. This payment option shall not apply if the source of the nonfluid ingredients used in reconstituted fluid milk products cannot be determined by the market administrator.

§ 1000.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts, or other verification discloses errors resulting in money due the market administrator from a handler, or due a handler from the market administrator, or due a producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which the error(s) occurred.

§ 1000.78 Charges on overdue accounts.

Any unpaid obligation due the market administrator, producers, or cooperative associations from a handler pursuant to the provisions of the order shall be increased 1.0 percent each month beginning with the day following the date such obligation was due under the order. Any remaining amount due shall be increased at the same rate on the corresponding day of each succeeding month until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation and shall include any unpaid charges previously computed pursuant to this section. The late charges shall accrue to the administrative assessment fund. For the purpose of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

Subpart I—Administrative Assessment and Marketing Service Deduction

§ 1000.85 Assessment for order administration.

On or before the payment receipt date specified under § ____.71 of each Federal milk order in 7 CFR, chapter X, each handler shall pay to the market administrator its pro rata share of the expense of administration of the order at a rate specified by the market administrator that is no more than 5 cents per hundredweight with respect to:

(a) Receipts of producer milk (including the handler's own production) other than such receipts by a handler described in § 1000.9(c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1000.9(c);

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1000.43(d) and other source milk allocated to Class I pursuant to § 1000.44(a)(3) and (8) and the corresponding steps of § 1000.44(b), except other source milk that is excluded from the computations pursuant to § ____.60(d) and (e) of Parts 1005, 1006, and 1007 or § ____.60(h) and (i) of Parts 1001, 1030, 1032, 1033, 1124, 1126, 1131, and 1134 in 7 CFR, chapter X; and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1000.76(a)(1)(i)and (ii).

§ 1000.86 Deduction for marketing services.

(a) Except as provided in paragraph (b) of this section, each handler in making payments to producers for milk (other than milk of such handler's own production) pursuant to § ____.73 of each Federal milk order in 7 CFR, chapter X, shall deduct an amount specified by the market administrator that is no more than 7 cents per hundredweight and shall pay the amount deducted to the market administrator not later than the payment receipt date specified under § ____.71 of each Federal milk order in 7 CFR, chapter X. The money shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and provide market information for producers who are not receiving such services from a cooperative association. The services shall be performed in whole or in part by the market administrator or an agent engaged by and responsible to the market administrator;

(b) In the case of producers for whom the market administrator has determined that a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make deductions from the payments to be made to producers as may be authorized by the membership agreement or marketing contract between the cooperative association and the producers. On or before the 15th day after the end of the month, such deductions shall be paid to the cooperative association rendering the services accompanied by a statement showing the amount of any deductions and the amount of milk for which the deduction was computed for each producer. These deductions shall be made in lieu of the deduction specified in paragraph (a) of this section.

Subpart J—Miscellaneous Provisions

§ 1000.90 Dates.

If a date required for a report, payment, or announcement contained in a Federal milk order in 7 CFR, chapter X falls on a Saturday, Sunday, or national holiday, such report, payment, or announcement will be on the next day that the market administrator's office is open for public business.

§§ 1000.91—1000.92 [Reserved]

§ 1000.93 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of Title 44 U.S.C. chapter 35 and have been assigned OMB control number 0581–0032.

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Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1001.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order.

Definitions

§ 1001.2 Northeast marketing area.

The marketing area means all the territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Connecticut, Delaware, Massachusetts, New Hampshire, New Jersey, Rhode Island, Vermont and District of Columbia

All of the States of Connecticut, Delaware, Massachusetts, New Hampshire, New Jersey, Rhode Island, Vermont and the District of Columbia.

Maryland Counties and City

All of the State of Maryland except the counties of Allegany and Garrett.

New York Counties and Cities

All counties within the State of New York except Chautauqua, Allegany (except the township Hume) and Cattaraugus (except the township Yorkshire).

Pennsylvania Counties

Adams, Bucks, Chester, Cumberland, Dauphin, Delaware, Franklin, Fulton, Juniata, Lancaster, Lebanon, Montgomery, Perry, Philadelphia, and York.

Virginia Counties and Cities

Counties of Arlington, Fairfax, Loudoun, and Prince William, and cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

§ 1001.3 Route disposition.

See § 1000.3 of this chapter.

§ 1001.4 Plant.

(a) Except as provided in paragraph (b) of this section, plant means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products are received, processed, or packaged, including a facility described in paragraph (b)(2) of this section if the facility receives the milk of more than one dairy farmer.

(b) Plant shall not include:

(1) A separate building without stationary storage tanks that is used only as a reload point for transferring bulk milk from one tank truck to another or a separate building used only as a distribution point for storing packaged fluid milk products in transit for route disposition; or

(2) An on-farm facility operated as part of a single dairy farm entity for the separation of cream and skim milk; or

(3) Bulk reload points where milk is transferred from one tank truck to another while en route from a dairy farmer's farms to a plant. If stationary storage tanks are used for transferring milk at the premises, the operator of the facility shall make an advance written request to the market administrator that the facility shall be treated as a reload point. The cooling of milk, collection of samples, and washing and sanitizing of tank trucks at the premises shall not disqualify it as a bulk reload point.

§ 1001.5 Distributing plant.

See § 1000.5 of this chapter.

§ 1001.6 Supply plant.

See § 1000.6 of this chapter.

§ 1001.7 Pool plant.

Pool plant means a plant, unit of plants, or a system of plants as specified in paragraphs (a) through (f) of this section. The pooling standards described in paragraphs (c) and (f) of this section are subject to modification pursuant to paragraph (g) of this section:

(a) A distributing plant from which during the month total route disposition is equal to 25 percent or more of the total quantity of bulk fluid milk products physically received at the plant; and route disposition in the marketing area is at least 25 percent of total route disposition. For purposes of this section, packaged fluid milk products that are transferred to a distributing plant shall be considered as route disposition from the transferring plant, rather than the receiving plant,

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for the single purpose of qualifying the transferring plant as a pool distributing plant.

(b) A distributing plant located in the marketing area at which the majority of milk received is processed into aseptically packaged fluid milk products unless there are no sales from the plant into any marketing area and the plant operator in writing requests nonpool plant status for the plant for the month.

(c) A supply plant from which fluid milk products are transferred or diverted to plants described in paragraph (a) or (b) of this section subject to the following additional conditions:

(1) During the months of August through December, such shipments must equal not less than 10 percent of the total quantity of bulk milk that is physically received at the plant during the month;

(2) During the months of September through November, such shipments must equal not less than 20 percent of the total quantity of bulk milk that is physically received at the plant during the month;

(3) A plant which meets the shipping requirements of this paragraph during each of the months of August through December shall be a pool plant during the following months of January through July unless the milk received at the plant fails to meet the requirements of a duly constituted regulatory agency, the plant fails to meet a shipping requirement instituted pursuant to paragraph (f) of this section, or the plant operator requests nonpool status for the plant. The shipping requirement for any plant which has not met the requirements of paragraphs (c)(1) and (c)(2) of this section must equal not less than 10 percent of the total quantity of bulk milk that is physically received at the plant during each of the months of January through July in order for the plant to be a pool plant in each of those months; and

(4) If milk is delivered directly from producers' farms that are located outside of the states included in the marketing area or outside Maine or West Virginia, such producers must be grouped by state into units and each such unit must independently meet the shipping requirements of this paragraph.

(d) [Reserved]

(e) Two or more plants operated by the same handler and located in the marketing area qualified for pool status as a unit by meeting the total and in-area route distribution requirements specified in paragraph (a) of this section and subject to the following additional requirements:

(1) At least one of the plants in the unit qualifies as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit; and

(3) A written request to form a unit, or to add or remove plants from a unit, or to cancel a unit, must be filed with the market administrator prior to the first day of the month for which unit formation it is to be effective.

(f) Two or more supply plants operated by the same handler, or by one or more cooperative associations, qualified for pooling as a system of supply plants by meeting the applicable percentage requirements of paragraph (c) of this section in the same manner as a single plant and subject to the following additional requirements:

(1) A written notification to the market administrator listing the plants to be included in the system prior to the first day of August that a system of supply plants will be effective for the period of September 1 through August 31 of the following year. The listed plants included in the system shall also be in the sequence in which they shall qualify for pool plant status based on the minimum deliveries required. If the deliveries made are insufficient to qualify the entire system for pooling, the last listed plant shall be excluded from the system, followed by the plant next-to-last on the list, and continuing in this sequence until remaining listed plants have met the minimum shipping requirements; and

(2) Each plant that qualifies as a pool plant within a system shall continue each month as a plant in the system through the following August unless the plant subsequently fails to qualify for pooling, the handler submits a written notification to the market administrator prior to the first day of the month that the plant be deleted from the system, or that the system be discontinued. Any plant that has been so deleted from the system, or that has failed to qualify as a pool plant in any month, will not be part of the system for the remaining months through August. No plant may be added in any subsequent month through the following August to a system that qualifies in September.

(g) The applicable shipping percentages of paragraphs (c) and (f) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. If the market administrator determines that an adjustment to the shipping percentages is necessary, the market administrator shall notify the industry within one day of the effective date of such adjustment.

(h) The term pool plant shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant qualified pursuant to paragraph (a) of this section that is located within the marketing area if the plant also meets the pooling requirements of another Federal order and more than 50 percent of its route distribution has been in such other Federal order marketing area for three consecutive months;

(4) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area that meets the pooling requirements of another Federal order and has had greater sales in such other Federal order's marketing area for 3 consecutive months;

(5) A plant qualified pursuant to paragraph (a) of this section that is located in another Federal order marketing area if the plant meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this order, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a pool plant designated as a "nonpool plant" that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in writing by the handler and must be approved by the market administrator.

§ 1001.8 Nonpool plant.

See § 1000.8 of this chapter.

§ 1001.9 Handler.

See § 1000.9 of this chapter.

§ 1001.10 Producer-handler.

Except as provided in paragraph (g) of this section, *producer-handler* means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in excess of 150,000 pounds during the month;

(b) Receives no fluid milk products from sources other than own farm production, pool handlers, and plants fully regulated under another Federal order.

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month.

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own-farm production or pool handlers;

(e) Disposes of no fluid milk products using the distribution system of another handler except for direct deliveries to retail outlets or to a pool handler's plant;

(f) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing, packaging, and distribution operations are the producer-handler's own enterprise and at its own risk; and

(g) Producer-handler shall not include any producer who also operates a distributing plant if the producer-handler so requests that the two be operated as separate entities with the distributing plant regulated under § 1001.7(a) and the farm operated as a producer under § 1001.12.

§ 1001.11 [Reserved]

§ 1001.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1001.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1001.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I;

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order; and

(5) For any month of December through June, any dairy farmer whose milk is received at a pool plant or by a cooperative association handler described in § 1000.9(c) if the pool plant operator or the cooperative association caused milk from the same farm to be delivered to any plant as other than producer milk, as defined under this order or any other Federal milk order, during the same month, either of the 2 preceding months, or during any of the preceding months of July through November; and

(6) For any month of July through November, any dairy farmer whose milk is received at a pool plant or by a cooperative association handler described in § 1000.9(c) if the pool plant operator or the cooperative association caused milk from the same farm to be delivered to any plant as other than producer milk, as defined under this order or any other Federal milk order, during the same month.

§ 1001.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk) and butterfat contained in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or from a handler described in § 1000.9(c). Any milk picked up from the producer's farm tank in a tank truck under the control of the operator of a pool plant or a handler described in § 1000.9(c) but which is not received at a plant until the following month shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants subject to the following conditions:

(1) The producers whose farms are outside of the states included in the marketing area or outside of Maine or West Virginia shall be organized into state units and each such unit shall be reported separately; and

(2) For pooling purposes, each state unit so reported must satisfy the shipping standards specified for a supply plant pursuant to § 1001.7(c);

(c) Diverted by a proprietary pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or by a handler described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless milk of such dairy farmer was physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under this order (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion until milk of the dairy farmer has been physically received as producer milk at a pool plant;

(2) [Reserved]

(3) Diverted milk shall be priced at the location of the plant to which diverted; and

(4) [Reserved]

§ 1001.14 Other source milk.

See § 1000.14 of this chapter.

§ 1001.15 Fluid milk product.

See § 1000.15 of this chapter.

1001.16 Fluid cream product.

See § 1000.16 of this chapter.

§ 1001.17 [Reserved]

§ 1001.18 Cooperative association.

See § 1000.18 of this chapter.

§ 1001.19 Commercial food processing establishment.

See § 1000.19 of this chapter.

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Handler Reports

§ 1001.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 9th day after the end of the month, in the detail and on prescribed forms, as follows:

(a) Each pool plant operator and each handler described in § 1000.9(c), shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of nonfat solids other than protein (other solids), and the value of the somatic cell adjustment contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler; and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products; and

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler not specified in paragraphs (a) or (b) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1001.31 Payroll reports.

(a) On or before the 22nd day after the end of each month, each handler described in § 1000.9(a) and (c) shall report to the market administrator its producer payroll for the month, in detail prescribed by the market administrator, showing for each producer the information specified in § 1001.73(e);

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1001.32 Other reports.

In addition to the reports required pursuant to §§ 1001.30 and 1001.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1001.40 Classes of utilization.

See § 1000.40 of this chapter.

§ 1001.41 [Reserved]

§ 1001.42 Classification of transfers and diversions.

See § 1000.42 of this chapter.

§ 1001.43 General classification rules.

See § 1000.43 of this chapter.

§ 1001.44 Classification of producer milk.

See § 1000.44 of this chapter.

§ 1001.45 Market administrator's reports and announcements concerning classification.

See § 1000.45 of this chapter.

Class Prices

§ 1001.50 Class prices and component prices.

See § 1000.50 of this chapter.

§ 1001.51 Class I differential and price.

The Class I differential shall be the differential established for Suffolk County, Massachusetts, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Suffolk County, Massachusetts.

§ 1001.52 Adjusted Class I differentials.

See § 1000.52 of this chapter.

§ 1001.53 Announcement of class and component prices.

See § 1000.53 of this chapter.

§ 1001.54 Equivalent price.

See § 1000.54 of this chapter.

Producer Price Differential

§ 1001.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) as follows:

(a) *Class I value.* (1) Multiply the pounds of skim milk in Class I as determined pursuant to § 1000.44(a) by the applicable Class I skim milk price; and

(2) Add an amount obtained by multiplying the total pounds of butterfat in Class I as determined pursuant to § 1000.44 (b) by the Class I butterfat price.

(b) *Class II value.* (1) Add an amount obtained by multiplying the hundredweight of milk in Class II as determined pursuant to § 1000.44(a) by 70 cents;

(2) Add an amount obtained by multiplying the pounds of skim milk in Class II as determined pursuant to § 1000.44(a) by the average nonfat solids content of producer skim milk received by the handler, and multiplying the resulting pounds of nonfat solids by the nonfat solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class II as determined pursuant to § 1000.44(b) by the butterfat price.

(c) *Class III value.* (1) Add an amount obtained by multiplying the pounds of skim milk in Class III as determined pursuant to § 1000.44(a) by the average protein content of producer skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price;

(2) Add an amount obtained by multiplying the pounds of skim milk in Class III as determined pursuant to § 1000.44(a) by the average other solids content of producer skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III as determined pursuant to § 1000.44(b) by the butterfat price.

(d) *Class IV value.* (1) Add an amount obtained by multiplying the pounds of skim milk in Class IV as determined pursuant to § 1000.44(a) by the average nonfat solids content of producer skim milk received by the handler, and multiplying the resulting pounds of nonfat solids by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV as determined pursuant to § 1000.44(b) by the butterfat price.

(e) Add an adjustment for somatic cell content as determined by multiplying the value reported pursuant to § 1001.30(a)(1) by the percentage of the total producer milk allocated to Class II, Class III, and Class IV pursuant to § 1000.44(c).

(f) Add the amounts obtained from multiplying the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.43(b)(2) by the respective class skim milk prices and the respective class butterfat prices (Class I butterfat price for Class I and the butterfat price for all other classes) applicable at the location of the pool plant;

(g) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(h) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (iii) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plant;

(i) Add the amount obtained from multiplying the difference between the Class I price and the Class III price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to §§ 1000.43(d) and 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(j) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d); and

(k) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(5) or (c).

§ 1001.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. If the unreserved balance in the producer-settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made payments required pursuant to § 1001.71 for the preceding month shall not be included in the computation of the producer price differential. The report of such handler shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1001.60 for all handlers required to file reports prescribed in § 1001.30;

(b) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1001.60 by the protein price, other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1001.60(e);

(c) Add an amount equal to the sum of the location adjustments computed pursuant to § 1001.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1001.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result, rounded to the nearest cent, shall be known as the *producer price differential* for the month.

§ 1001.62 Announcement of producer prices.

On or before the 13th day after the end of the month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The somatic cell adjustment rate;

(f) The average butterfat, nonfat solids, protein, and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat.

Payments for Milk

§ 1001.70 Producer-settlement fund.

See § 1000.70 of this chapter.

§ 1001.71 Payments to the producer-settlement fund.

The payments to the producer-settlement fund specified in § 1000.71 are due no later than the 15th day after the end of the month.

§ 1001.72 Payments from the producer-settlement fund.

See § 1000.72 of this chapter.

§ 1001.73 Payments to producers and to cooperative associations.

(a) Each pool plant operator that is not paying a cooperative association for producer milk shall pay each producer as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 23rd day of the month, payment shall be made so that it is received by the producer on or before the 26th day of the month for milk received during the first 15 days of the month at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer;

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the day after the payment date required in § 1000.72 in an amount computed as follows:

(i) Multiply the hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1001.75;

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(ii) Multiply the pounds of butterfat received times the butterfat price for the month;

(iii) Multiply the pounds of protein received times the protein price for the month;

(iv) Multiply the pounds of other solids received times the other solids price for the month;

(v) Multiply the hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Add the amounts computed in paragraph (a)(2)(i) through (v) of this section, and from that sum:

(A) Subtract the partial payment made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) One day before partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association.* For bulk milk/skimmed milk received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be equal to the hundredweight of milk received multiplied by the lowest announced class price for the preceding month;

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk milk/skimmed milk products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available, adjusted for butterfat value and plant location;

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* Following the classification of bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment for such receipts shall be determined as follows:

(i) Multiply the hundredweight of Class I skim milk by the Class I skim milk price for the month;

(ii) Multiply the pounds of Class I butterfat by the Class I butterfat price for the month;

(iii) Multiply the hundredweight of Class II skim milk by the Class II differential price for the month;

(iv) Multiply the pounds of nonfat solids received in Class II and Class IV milk times the nonfat solids price for the month;

(v) Multiply the pounds of butterfat in Class II, III, and IV milk times the butterfat price for the month;

(vi) Multiply the pounds of protein received in Class III milk times the protein price for the month;

(vii) Multiply the pounds of other solids received in Class III milk times the other solids price for the month;

(viii) Multiply the hundredweight of Class II, Class III, and Class IV milk received times the somatic cell adjustment;

(ix) Add together the amounts computed in paragraph (b)(3)(i) through (viii) of this section and from that sum deduct any payment made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1001.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce payments pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and the payroll number of the producer;

(2) The month and dates that milk was received from the producer, including the daily and total pounds of milk received;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) The somatic cell count of the producer's milk;

(5) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(6) The rate used in making payment if the rate is other than the applicable minimum rate;

(7) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(8) The net amount of payment to the producer or cooperative association.

§ 1001.74 [Reserved]

§ 1001.75 Plant location adjustments for producer milk and nonpool milk.

(a) The producer price differential for producer milk shall be adjusted according to the location of the plant at which the milk was physically received by subtracting from the price the amount by which the Class I price specified in § 1001.50 exceeds the Class I price at the plant's location. If the Class I price at the plant location exceeds the Class I price specified in § 1001.50, the difference shall be added to the producer price differential; and

(b) The producer price differential applicable for other source milk shall be adjusted following the procedure specified in paragraph (a) of this section, except that the adjusted producer price differential shall not be less than zero.

§ 1001.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76 of this chapter.

§ 1001.77 Adjustment of accounts.

See § 1000.77 of this chapter.

§ 1001.78 Charges on overdue accounts.

See § 1000.78 of this chapter.

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See § 1000.85 of this chapter.

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See § 1000.86 of this chapter.

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

Subpart—Order Regulating Handling

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Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1005.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order.

Definitions

§ 1005.2 Appalachian marketing area.

The marketing area means all the territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Georgia Counties

Catoosa, Chattooga, Dade, Fannin, Murray, Walker, and Whitfield.

Indiana Counties

Clark, Crawford, Daviess, Dubois, Floyd, Gibson, Greene, Harrison, Knox, Martin, Orange, Perry, Pike, Posey, Scott, Spencer, Sullivan, Vanderburgh, Warrick, and Washington.

Kentucky Counties

Adair, Anderson, Bath, Bell, Bourbon, Boyle, Breathitt, Breckinridge, Bullitt, Butler, Carroll, Carter, Casey, Clark, Clay, Clinton, Cumberland, Daviess, Edmonson, Elliott, Estill, Fayette, Fleming, Franklin, Gallatin, Garrard, Grayson, Green, Hancock, Hardin, Harlan, Hart, Henderson, Henry, Hopkins, Jackson, Jefferson, Jessamine, Knott, Knox, Larue, Laurel, Lee, Leslie, Letcher, Lincoln, Madison, Marion, McCreary, McLean, Meade, Menifee, Mercer, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Ohio, Oldham, Owen, Owsley, Perry, Powell, Pulaski, Rockcastle, Rowan, Russell, Scott, Shelby, Spencer, Taylor, Trimble, Union, Washington, Wayne, Webster, Whitley, Wolfe, and Woodford.

North Carolina and South Carolina

All of the States of North Carolina and South Carolina.

Tennessee Counties

Anderson, Blount, Bradley, Campbell, Carter, Claiborne, Cocke, Cumberland, Grainger, Greene, Hamblen, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, and Washington.

Virginia Counties and Cities

Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, Washington, and Wise, and cities of Bristol and Norton.

West Virginia Counties

McDowell and Mercer.

§ 1005.3 Route disposition.

See § 1000.3 of this chapter.

§ 1005.4 Plant.

See § 1000.4 of this chapter.

§ 1005.5 Distributing plant.

See § 1000.5 of this chapter.

§ 1005.6 Supply plant.

See § 1000.6 of this chapter.

§ 1005.7 Pool plant.

Pool plant means a plant specified in paragraphs (a) through (d) of this section, or a unit of plants as specified in paragraph (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (a), (c), and (d) of this section are subject to modification pursuant to paragraph (f) of this section:

(a) A distributing plant from which during the month the total route disposition is equal to 50 percent or more of the total quantity of fluid milk products physically received at such plant and route disposition in the marketing area is at least 10 percent of such receipts. Packaged fluid milk products that are transferred to a distributing plant shall be considered as route disposition from the transferring plant, rather than the receiving plant, for the purpose of determining the transferring plant's pool status under this paragraph.

(b) Any distributing plant located in the marketing area which during the month processed a majority of its milk receipts into aseptically packaged fluid

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milk products. If the plant had no route disposition in the marketing area during the month, the plant operator may request nonpool status for the plant.

(c) A supply plant from which 50 percent of the total quantity of milk that is physically received during the month from dairy farmers and handlers described in § 1000.9(c) is transferred to pool distributing plants.

(d) A plant located within the marketing area or in the State of Virginia that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month at least 60 percent of the producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product from the cooperative's plant.

(e) Two or more plants operated by the same handler and that are located within the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements specified in paragraph (a) of this section and the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit, or to add or remove plants from a unit, must be filed with the market administrator prior to the first day of the month for which it is to be effective.

(f) The applicable percentages in paragraphs (a), (c), and (d) of this section may be increased or decreased up to 10 percentage points by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the date for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area, meets the pooling requirements of another Federal order, and has had greater route disposition in such other Federal order marketing area for 3 consecutive months;

(4) A plant qualified pursuant to paragraph (a) of this section which is located in another Federal order marketing area, meets the pooling standards of the other Federal order, and has not had a majority of its route disposition in this marketing area for 3 consecutive months or is locked into pool status under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(5) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under such other order than are made to plants regulated under this order, or such plant has automatic pooling status under such other order; and

(6) That portion of a pool plant designated as a "nonpool plant" that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in writing by the handler and must be approved by the market administrator.

§ 1005.8 Nonpool plant.

See § 1000.8 of this chapter.

§ 1005.9 Handler.

See § 1000.9 of this chapter.

§ 1005.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in excess of 150,000 pounds per month, unless the person requests that the two be operated as separate entities with the distributing plant regulated under § 1005.7(a) and the farm operated as a producer under § 1005.12;

(b) Receives no fluid milk products, and acquires no fluid milk products for route disposition, from sources other than own farm production;

(c) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production;

(d) Disposes of no fluid milk products using the distribution system of another handler; and

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled, and the processing, packaging, and distribution operations, are the producer-handler's own enterprise and are operated at the producer-handler's own risk.

§ 1005.11 [Reserved]

§ 1005.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1005.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1005.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1005.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk) and butterfat contained in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). Any milk picked up from the producer's farm tank in a tank truck under the control of the operator of a pool plant or a handler described in § 1000.9(c) but which is not received at a plant until the following month shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a handler described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) In any month of July through December, not less than 6 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(2) In any month of January through June, not less than 2 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 25 percent during the months of July through November, January, and February, and 40 percent during the months of December and March through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 25 percent during the months of July through November, January, and February, and 40 percent during the months of December and March through June, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1005.7(d)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9(c);

(5) Any milk diverted in excess of the limits prescribed in paragraphs (d)(3) and (4) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that will not be producer milk, no milk diverted by the handler or cooperative association shall be producer milk;

(6) Diverted milk shall be priced at the location of the plant to which diverted; and

(7) The delivery day requirements and the diversion percentages in paragraphs (d)(1) through (4) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1005.14 Other source milk.

See § 1000.14 of this chapter.

§ 1005.15 Fluid milk product.

See § 1000.15 of this chapter.

§ 1005.16 Fluid cream product.

See § 1000.16 of this chapter.

§ 1005.17 [Reserved]

§ 1005.18 Cooperative association.

See § 1000.18 of this chapter.

§ 1005.19 Commercial food processing establishment.

See § 1000.19 of this chapter.

Handler Reports

§ 1005.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on prescribed forms, as follows:

(a) With respect to each of its pool plants, the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the plant operator to other plants;

(2) Receipts of milk from handlers described in § 1000.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Receipts of bulk milk from a plant regulated under another Federal order, except Federal Order 1007, for which a transportation credit is requested pursuant to § 1005.82;

(6) Receipts of producer milk described in § 1005.82(c)(2), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to that paragraph and the date that such milk was received;

(7) For handlers submitting transportation credit requests, transfers of bulk milk to nonpool plants, including the dates that such milk was transferred;

(8) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products; and

(9) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers;

(2) The utilization or disposition of all such receipts; and

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1005.82, all of the information required in paragraph (a)(5), (a)(6), and (a)(7) of this section.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1005.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1000.9(a) and (c) shall report to the market administrator its producer payroll for the month, in detail prescribed by the market administrator, showing for each producer the information specified in § 1005.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

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§ 1005.32 Other reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1000.9(a) and (c) shall report to the market administrator any adjustments to transportation credit requests as reported pursuant to § 1005.30(a)(5), (6), and (7).

(b) In addition to the reports required pursuant to §§ 1005.30, 31, and 32(a), each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1005.40 Classes of utilization.

See § 1000.40 of this chapter.

§ 1005.41 [Reserved]

§ 1005.42 Classification of transfers and diversions.

See § 1000.42 of this chapter.

§ 1005.43 General classification rules.

See § 1000.43 of this chapter.

§ 1005.44 Classification of producer milk.

See § 1000.44 of this chapter.

§ 1005.45 Market administrator's reports and announcements concerning classification.

See § 1000.45 of this chapter.

Class Prices

§ 1005.50 Class prices, component prices, Class I differential and price.

Class prices and component prices are described in § 1000.50. The Class I differential shall be the differential established for Meklenburg County, North Carolina, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Meklenburg County, North Carolina.

§ 1005.51 [Reserved]

§ 1005.52 Adjusted Class I differentials.

See § 1000.52 of this chapter.

§ 1005.53 Announcement of class prices and component prices.

See § 1000.53 of this chapter.

§ 1005.54 Equivalent price.

See § 1000.54 of this chapter.

Uniform Price

§ 1005.60 Handler's value of milk.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) as follows:

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.43(b)(2) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (iii) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(e) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(f) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(e); and

(g) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(5) or (c).

§ 1005.61 Computation of uniform price, uniform butterfat price and uniform skim milk price.

(a) *Uniform price.* For each month the market administrator shall compute the uniform price per hundredweight. If the unreserved balance in the producer-settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made payments required pursuant to § 1005.71 for the preceding month shall not be included in the computation of the uniform price. The report of such handler shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the uniform price in the following manner:

(1) Combine into one total the values computed pursuant to § 1005.60 for all handlers required to file reports prescribed in § 1005.30;

(2) Add an amount equal to the sum of the location adjustments computed pursuant to § 1005.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Add or subtract, as the case may be, to obtain an all-producer milk test of 3.5 percent butterfat, the value of the required pounds of butterfat times the uniform butterfat price computed in paragraph (b) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1005.60(f); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result, rounded to the nearest cent, shall be known as the "uniform price" for the month.

(b) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be obtained by multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices (Class I butterfat price for Class I and the butterfat price for all other classes) and dividing the sum of such values by the total pounds of such butterfat.

(c) *Uniform skim milk price.* The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be the uniform price for the month pursuant to pursuant to paragraph (a) of this section less the uniform butterfat price for the month pursuant to paragraph (b) of this section multiplied by 3.5 pounds of butterfat, with the result divided by .965.

§ 1005.62 Announcement of uniform price, uniform butterfat price and uniform skim milk price.

On or before the 11th day after the end of the month, the market administrator shall announce the following prices and information:

(a) The uniform price pursuant to § 1005.61 for such month;

(b) The uniform butterfat price pursuant to § 1005.61(b) for such month; and

(c) The uniform skim milk price pursuant to § 1005.61(c) for such month.

Payments for Milk

§ 1005.70 Producer-settlement fund.

See § 1000.70 of this chapter.

§ 1005.71 Payments to the producer-settlement fund.

The payments to the producer-settlement fund specified in § 1000.71 are due no later than the 12th day after the end of the month.

§ 1005.72 Payments from the producer-settlement fund.

See § 1000.72 of this chapter.

§ 1005.73 Payments to producers and to cooperative associations.

(a) Each pool plant operator that is not paying a cooperative association for producer milk shall pay each producer as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 23rd day of the month, payment shall be made so that it is received by the producer on or before the 26th day of the month for milk received during the first 15 days of the month at not less than the 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1005.75 and proper deductions authorized in writing by the producer;

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer one day after the payment date required in § 1000.72 an amount computed as follows:

(i) Multiply the hundredweight of producer milk received times the uniform price for the month as adjusted pursuant to § 1005.75;

(ii) Multiply the hundredweight of producer skim milk received times the uniform skim milk price for the month;

(iii) Multiply the pounds of butterfat received times the uniform butterfat price for the month;

(iv) Add the amounts computed in paragraph (a)(2)(i), (ii), and (iii) of the section, and from that sum:

(A) Subtract the partial payment made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) One day before partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association.* For bulk milk/skimmed milk received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be equal to the hundredweight of milk received multiplied by 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1005.75;

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available, adjusted for butterfat value and plant location;

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment shall be the classified value of such milk as determined by multiplying the pounds of milk assigned to each class pursuant to § 1000.44 by the class prices for the month, adjusted for plant location and butterfat value, and subtracting from this sum the partial payment made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1005.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce payments pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a handler described in § 1000.9(a) or (c), a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and the payroll number of the producer;

(2) The month and dates that milk was received from the producer, including the daily and total pounds of milk received;

(3) The total pounds of butterfat in the producer's milk;

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(4) The minimum rate at which payment to the producer is required pursuant to this order;

(5) The rate used in making payment if the rate is other than the applicable minimum rate;

(6) The amount, or rate per hundredweight, and nature of each deduction claimed by the handler; and

(7) The net amount of payment to the producer or cooperative association.

§ 1005.74 [Reserved]

§ 1005.75 Plant location adjustments for producer milk and nonpool milk.

(a) The uniform price for producer milk shall be adjusted according to the location of the plant at which the milk was physically received by subtracting from the price the amount by which the Class I price specified in § 1005.50 exceeds the Class I price at the plant's location. If the Class I price at the plant location exceeds the Class I price specified in § 1005.50, the difference shall be added to the uniform price; and

(b) The uniform price applicable for other source milk shall be adjusted following the procedure specified in paragraph (a) of this section, except that the adjusted uniform price shall not be less than the lowest announced class price.

§ 1005.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76 of this chapter.

§ 1005.77 Adjustment of accounts.

See § 1000.77 of this chapter.

§ 1005.78 Charges on overdue accounts.

See § 1000.78 of this chapter.

Marketwide Service Payments

§ 1005.80 Transportation credit balancing fund.

The market administrator shall maintain a separate fund known as the *Transportation Credit Balancing Fund* into which shall be deposited the payments made by handlers pursuant to § 1005.81 and out of which shall be made the payments due handlers pursuant to § 1005.82. Payments due a handler shall be offset against payments due from the handler.

§ 1005.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month, each handler operating a pool plant and each handler specified in § 1000.9(a) and (c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1005.44 by $0.065 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June-January period. In the event that during any month of the June-January period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(b) The market administrator shall announce publicly on or before the 5th day of the month the assessment pursuant to paragraph (a) of this section for the following month.

§ 1005.82 Payments from the transportation credit balancing fund.

(a) Payments from the transportation credit balancing fund to handlers and cooperative associations requesting transportation credits shall be made as follows:

(1) On or before the 13th day after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1005.30(a)(5), bulk milk transferred from a plant fully regulated under another Federal order as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1005.30(a)(6), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the transportation credit balancing fund by reducing payments prorata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (a)(2) of this section;

(2) The market administrator shall accept adjusted requests for transportation credits on or before the 20th day of the month following the month for which such credits were requested pursuant to § 1005.32(a). After such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of transportation credit payments for the preceding month pursuant to paragraph (a) of this section. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments to or from the transportation credit balancing fund will be made on or before the next payment date for the following month;

(3) Transportation credits paid pursuant to paragraph (a)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1000.77. Adjusted payments to or from the transportation credit balancing fund will remain subject to the final proration established pursuant to paragraph (a)(2) of this section; and

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1005.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) The market administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to the months of January and June if a written request to do so is received 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the market administrator shall notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) Transportation credits shall apply to the following milk:

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Orders 1007, and allocated to Class I milk pursuant to § 1000.44(a)(12); and

(2) Bulk milk received directly from the farms of dairy farmers at pool distributing plants subject to the following conditions:

(i) The quantity of such milk that shall be eligible for the transportation credit shall be determined by multiplying the total pounds of milk received from producers meeting the conditions of this paragraph by the lower of:

(A) The marketwide estimated Class I utilization of all handlers for the month pursuant to § 1000.45(a); or

(B) The Class I utilization of all producer milk of the pool plant operator receiving the milk after the computations described in § 1000.44;

(ii) The dairy farmer was not a "producer" under this order during more than 2 of the immediately preceding months of January through June and not more than 50 percent of the production of the dairy farmer during those 2 months, in aggregate, was received as producer milk under this order during those 2 months. However, if January and/or June are months in which transportation credits are disbursed pursuant to paragraph (a) of this section, these months shall not be included in the 2-month limit provided in this paragraph; and

(iii) The farm on which the milk was produced is not located within the specified marketing area of this order or the marketing area of Federal Order 1007.

(d) Transportation credits shall be computed as follows:

(1) The market administrator shall subtract from the pounds of milk described in paragraphs (c)(1) and (2) of this section the pounds of bulk milk transferred from the pool plant receiving the supplemental milk if milk was transferred to a nonpool plant on the same calendar day that the supplemental milk was received. For this purpose, the transferred milk shall be subtracted from the most distant load of supplemental milk received, and then in sequence with the next most distant load until all of the transfers have been offset;

(2) With respect to the pounds of milk described in paragraph (c)(1) of this section that remain after the computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the shipping plant and the receiving plant;

(ii) Multiply the number of miles so determined by 0.35 cent;

(iii) Subtract the other order's Class I price applicable at the shipping plant's location from the Class I price applicable at the receiving plant as specified in § 1005.53;

(iv) Subtract any positive difference computed in paragraph (d)(2)(iii) of this section from the amount computed in paragraph (d)(2)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(2)(iv) of this section by the hundredweight of milk described in paragraph (d)(2) of this section.

(3) For the remaining milk described in paragraph (c)(2) of this section after computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine an origination point for each load of milk by locating the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant. Alternatively, the milk hauler that is transporting the milk of producers described in paragraph (c)(2) of this section may establish an origination point following the last farm pickup by stopping at the nearest independently-operated truck stop with a certified truck scale and obtaining a weight certificate indicating the weight of the truck and its contents, the date and time of weighing, and the location of the truck stop;

(ii) Determine the shortest hard-surface highway distance between the receiving pool plant and the truck stop or city, as the case may be;

(iii) Subtract 85 miles from the mileage so determined;

(iv) Multiply the remaining miles so computed by 0.35 cent;

(v) If the origination point determined pursuant to paragraph (d)(3)(i) of this section is in a Federal order marketing area, subtract the Class I price applicable at the origination point pursuant to the provisions of such other order (as if the origination point were a plant location) from the Class I price applicable at the distributing plant receiving the milk. If the origination point is not in any Federal order marketing area, determine the Class I price at the origination point based upon the provisions of this order and subtract this price from the Class I price applicable at the distributing plant receiving the milk;

(vi) Subtract any positive difference computed in paragraph (d)(3)(v) of this section from the amount computed in paragraph (d)(3)(iv) of this section; and

(vii) Multiply the remainder computed in paragraph (d)(3)(vi) by the hundredweight of milk described in paragraph (d)(3) of this section.

Administrative Assessment and Marketing Service Deduction

§ 1005.85 Assessment for order administration.

See § 1000.85 of this chapter.

§ 1005.86 Deduction for marketing services.

See § 1000.86 of this chapter.

PART 1006—MILK IN THE FLORIDA MARKETING AREA

Subpart—Order Regulating Handling

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1006.85 Assessment for order administration.
1006.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1006.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order.

Definitions

§ 1006.2 Florida marketing area.

The marketing area means all the territory within the State of Florida, except the counties of Escambia, Okaloosa, Santa Rosa, and Walton., including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions.

§ 1006.3 Route disposition.

See § 1000.3 of this chapter.

§ 1006.4 Plant.

See § 1000.4 of this chapter.

§ 1006.5 Distributing plant.

See § 1000.5 of this chapter.

§ 1006.6 Supply plant.

See § 1000.6 of this chapter.

§ 1006.7 Pool plant.

Pool plant means a plant specified in paragraphs (a) through (d) of this section, or a unit of plants as specified in paragraph (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (a), (c), and (d) of this section are subject to modification pursuant to paragraph (f) of this section:

(a) A distributing plant from which during the month the total route disposition is equal to 50 percent or more of the total quantity of fluid milk products physically received at such plant and route disposition in the marketing area is at least 10 percent of such receipts. Packaged fluid milk products that are transferred to a distributing plant shall be considered as route disposition from the transferring plant, rather than the receiving plant, for the purpose of determining the transferring plant's pool status under this paragraph.

(b) Any distributing plant located in the marketing area which during the month processed a majority of its milk receipts into aseptically packaged fluid milk products. If the plant had no route disposition in the marketing area during the month, the plant operator may request nonpool status for the plant.

(c) A supply plant from which 60 percent of the total quantity of milk that is physically received during the month from dairy farmers and handlers described in § 1000.9(c) is transferred to pool distributing plants.

(d) A plant located within the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month 60 percent of the producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product from the cooperative's plant.

(e) Two or more plants operated by the same handler and that are located within the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements specified in paragraph (a) of this section and the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit, or to add or remove plants from a unit, must be filed with the market administrator prior to the first day of the month for which it is to be effective.

(f) The applicable percentages in paragraphs (a), (c), and (d) of this section may be increased or decreased up to 10 percentage points by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the date for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area, meets the pooling requirements of another Federal order, and has had greater route disposition in such other Federal order marketing area for 3 consecutive months;

(4) A plant qualified pursuant to paragraph (a) of this section which is located in another Federal order marketing area, meets the pooling standards of the other Federal order, and has not had a majority of its route disposition in this marketing area for 3 consecutive months or is locked into pool status under such other Federal order without regard to its route disposition in any other Federal order marketing area; and

(5) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under such other order than are made to plants regulated under this order, or such plant has automatic pooling status under such other order.

§ 1006.8 Nonpool plant.

See § 1000.8 of this chapter.

§ 1006.9 Handler.

See § 1000.9 of this chapter.

§ 1006.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in excess of 150,000 pounds per month, unless the person requests that the two be operated as separate entities with the distributing plant regulated under § 1006.7(a) and the farm operated as a producer under § 1006.12;

(b) Receives no fluid milk products, and acquires no fluid milk products for route disposition, from sources other than own farm production;

(c) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production;

(d) Disposes of no fluid milk products using the distribution system of another handler; and

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled, and the processing, packaging, and distribution operations, are the producer-handler's own enterprise and are operated at the producer-handler's own risk.

§ 1006.11 [Reserved]

§ 1006.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1006.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1006.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1006.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk) and butterfat contained in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). Any milk picked up from the producer's farm tank in a tank truck under the control of the operator of a pool plant or a handler described in § 1000.9(c) but which is not received at a plant until the following month shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a handler described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) In any month, not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(2) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 20 percent during the months of July through November, 25 percent during the months of December through February, and 40 percent during all other months, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month;

(3) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 20 percent during the months of July through November, 25 percent during the months of December through February, and 40 percent during all other months, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1006.7(d)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9(c);

(4) Any milk diverted in excess of the limits prescribed in paragraphs (d)(3) and (4) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that will not be producer milk, no milk diverted by the handler or cooperative association shall be producer milk;

(5) Diverted milk shall be priced at the location of the plant to which diverted; and

(6) The delivery day requirements and the diversion percentages in paragraphs (d)(1) through (3) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1006.14 Other source milk.

See § 1000.14 of this chapter.

§ 1006.15 Fluid milk product.

See § 1000.15 of this chapter.

§ 1006.16 Fluid cream product.

See § 1000.16 of this chapter.

§ 1006.17 [Reserved]

§ 1006.18 Cooperative association.

See § 1000.18 of this chapter.

§ 1006.19 Commercial food processing establishment.

See § 1000.19 of this chapter.

Handler Reports

§ 1006.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on prescribed forms, as follows:

(a) With respect to each of its pool plants, the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the plant operator to other plants;

(2) Receipts of milk from handlers described in § 1000.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products; and

(6) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been

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fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1006.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1000.9 (a) and (c) shall report to the market administrator its producer payroll for the month, in detail prescribed by the market administrator, showing for each producer the information specified in § 1006.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1006.32 Other reports.

(a) In addition to the reports required pursuant to §§ 1006.30 and 1006.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

(b) [Reserved]

Classification of Milk

§ 1006.40 Classes of utilization.

See § 1000.40 of this chapter.

§ 1006.41 [Reserved]

§ 1006.42 Classification of transfers and diversions.

See § 1000.42 of this chapter.

§ 1006.43 General classification rules.

See § 1000.43 of this chapter.

§ 1006.44 Classification of producer milk.

See § 1000.44 of this chapter.

§ 1006.45 Market administrator's reports and announcements concerning classification.

See § 1000.45 of this chapter.

Class Prices

§ 1006.50 Class prices, component prices, Class I differential and price.

Class prices and component prices are described in § 1000.50.

The Class I differential shall be the differential established for Hillsborough County, Florida, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Hillsborough County, Florida.

§ 1006.51 [Reserved]

§ 1006.52 Adjusted Class I differentials.

See § 1000.52 of this chapter.

§ 1006.53 Announcement of class prices and component prices.

See § 1000.53 of this chapter.

§ 1006.54 Equivalent price.

See § 1000.54 of this chapter.

Uniform Price

§ 1006.60 Handler's value of milk.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) as follows:

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) **by the applicable skim milk and butterfat prices, and add the resulting amounts;**

(b) Add the amounts obtained from multiplying the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.43 (b)(2) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3) (i) through (iii) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(e) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(f) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(e); and

(g) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(5) or (c).

§ 1006.61 Computation of uniform price, uniform butterfat price and uniform skim milk price.

(a) *Uniform price.* For each month the market administrator shall compute the uniform price per hundredweight. If the unreserved balance in the producer-settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made payments required pursuant to § 1006.71 for the preceding month shall not be included in the computation of the uniform price. The report of such handler shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the uniform price in the following manner:

(1) Combine into one total the values computed pursuant to § 1006.60 for all handlers required to file reports prescribed in § 1006.30;

(2) Add an amount equal to the sum of the location adjustments computed pursuant to § 1006.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Add or subtract, as the case may be, to obtain an all-producer milk test of 3.5 percent butterfat, the value of the required pounds of butterfat times the uniform butterfat price computed in paragraph (b) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1006.60(f); and

(6) Subtract not less than 4 cents not more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result, rounded to the nearest cent, shall be known as the "uniform price" for the month.

(b) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be obtained by multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices (Class I butterfat price for Class I and the butterfat price for all other classes) and dividing the sum of such values by the total pounds of such butterfat.

(c) *Uniform skim milk price.* The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be the uniform price for the month pursuant to pursuant to paragraph (a) of this section less the uniform butterfat price for the month pursuant to paragraph (b) of this section multiplied by 3.5 pounds of butterfat, with the result divided by .965.

§ 1006.62 Announcement of uniform price, uniform butterfat price and uniform skim milk price.

On or before the 11th day after the end of the month, the market administrator shall announce the following prices and information:

(a) The uniform price pursuant to § 1006.61 for such month;

(b) The uniform butterfat price pursuant to § 1006.61(b) for such month; and

(c) The uniform skim milk price pursuant to § 1006.61(c) for such month.

Payments for Milk

§ 1006.70 Producer-settlement fund.

See § 1000.70 of this chapter.

§ 1006.71 Payments to the producer-settlement fund.

The payments to the producer-settlement fund specified in § 1000.71 are due no later than the 12th day after the end of the month.

§ 1006.72 Payments from the producer-settlement fund.

See § 1000.72 of this chapter.

§ 1006.73 Payments to producers and to cooperative associations.

(a) Each pool plant operator that is not paying a cooperative association for producer milk shall pay each producer as follows:

(1) *Partial payments.* (i) For each producer who has not discontinued shipments as of the 15th day of the month, payment shall be made so that it is received by the producer on or before the 20th day of the month for milk received during the first 15 days of the month at not less than the 85 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1006.75 and proper deductions authorized in writing by the producer; and

(ii) For each producer who has not discontinued shipments as of the last day of the month, payment shall be made so that it is received by the producer on or before the 5th day of the following month for milk received from the 16th to the last day of the month at not less than the 85 percent of the preceding month's uniform price, adjusted for plant location pursuant to 1006.75 and proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer one day after the payment date required in § 1000.72 an amount computed as follows:

(i) Multiply the hundredweight of producer milk received times the uniform price for the month as adjusted pursuant to § 1006.75;

(ii) Multiply the hundredweight of producer skim milk received times the uniform skim milk price for the month;

(iii) Multiply the pounds of butterfat received times the uniform butterfat price for the month;

(iv) Add the amounts computed in paragraph (a)(2)(i), (ii), and (iii) of the section, and from that sum:

(A) Subtract the partial payment made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) One day before partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association.* For bulk milk/skimmed milk received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be equal to the hundredweight of milk received multiplied by 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1006.75;

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available, adjusted for butterfat value and plant location;

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment shall be the classified value of such milk as determined by multiplying the pounds of milk assigned to each class pursuant to § 1000.44 by the class prices for the month, adjusted for plant location and butterfat value, and subtracting from this sum the partial payment made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator

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pursuant to § 1006.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce payments pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a handler described in § 1000.9(a) or (c), a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and the payroll number of the producer;

(2) The month and dates that milk was received from the producer, including the daily and total pounds of milk received;

(3) The total pounds of butterfat in the producer's milk;

(4) The minimum rate at which payment to the producer is required pursuant to this order;

(5) The rate used in making payment if the rate is other than the applicable minimum rate;

(6) The amount, or rate per hundredweight, and nature of each deduction claimed by the handler; and

(7) The net amount of payment to the producer or cooperative association.

§ 1006.74 [Reserved]

§ 1006.75 Plant location adjustments for producer milk and nonpool milk.

(a) The uniform price for producer milk shall be adjusted according to the location of the plant at which the milk was physically received by subtracting from the price the amount by which the Class I price specified in § 1006.50 exceeds the Class I price at the plant's location. If the Class I price at the plant location exceeds the Class I price specified in § 1006.50, the difference shall be added to the uniform price; and

(b) The uniform price applicable for other source milk shall be adjusted following the procedure specified in paragraph (a) of this section, except that the adjusted uniform price shall not be less than the lowest announced class price.

§ 1006.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76 of this chapter.

§ 1006.77 Adjustment of accounts.

See § 1000.77 of this chapter.

§ 1006.78 Charges on overdue accounts.

See § 1000.78 of this chapter.

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See § 1000.85 of this chapter.

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See § 1000.86 of this chapter.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

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Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1007.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order.

Definitions

§ 1007.2 Southeast marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part

thereof is within any of the listed states or political subdivisions:

Alabama, Arkansas, Louisiana, and Mississippi

All of the States of Alabama, Arkansas, Louisiana, and Mississippi.

Florida Counties

Escambia, Okaloosa, Santa Rosa, and Walton.

Georgia Counties

All of the State of Georgia except for the counties of Catoosa, Chattooga, Dade, Fannin, Murray, Walker, and Whitfield.

Kentucky Counties

Allen, Ballard, Barren, Caldwell, Calloway, Carlisle, Christian, Crittenden, Fulton, Graves, Hickman, Livingston, Logan, Lyon, Marshall, McCracken, Metcalfe, Monroe, Simpson, Todd, Trigg, and Warren.

Missouri Counties

Barry, Barton, Bollinger, Butler, Cape Girardeau, Carter, Cedar, Christian, Crawford, Dade, Dallas, Dent, Douglas, Dunklin, Greene, Howell, Iron, Jasper, Laclede, Lawrence, Madsion, McDonald, Mississippi, New Madrid, Newton, Oregon, Ozark, Pemiscot, Perry, Polk, Pulaski, Reynolds, Ripley, Scott, Shannon, St. Francois, Stoddard, Stone, Taney, Texas, Vernon, Washington, Wayne, Webster, and Wright.

Tennessee Counties

All of the State of Tennessee except for the counties of Anderson, Blount, Bradley, Campbell, Carter, Claiborne, Cocke, Cumberland, Grainger, Greene, Hamblen, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, and Washington.

§ 1007.3 Route disposition.

See § 1000.3 of this chapter.

§ 1007.4 Plant.

See § 1000.4 of this chapter.

§ 1007.5 Distributing plant.

See § 1000.5 of this chapter.

§ 1007.6 Supply plant.

See § 1000.6 of this chapter.

§ 1007.7 Pool plant.

Pool plant means a plant specified in paragraphs (a) through (d) of this section, or a unit of plants as specified in paragraph (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (a), (c), and (d) of this section are subject to modification pursuant to paragraph (f) of this section:

(a) A distributing plant from which during the month the total route disposition is equal to 50 percent or more of the total quantity of fluid milk products physically received at such plant and route disposition in the marketing area is at least 10 percent of such receipts. Packaged fluid milk products that are transferred to a distributing plant shall be considered as route disposition from the transferring plant, rather than the receiving plant, for the purpose of determining the transferring plant's pool status under this paragraph.

(b) Any distributing plant located in the marketing area which during the month processed a majority of its milk receipts into aseptically packaged fluid milk products. If the plant had no route disposition in the marketing area during the month, the plant operator may request nonpool status for the plant.

(c) A supply plant from which 50 percent of the total quantity of milk that is physically received during the month from dairy farmers and handlers described in § 1000.9(c) is transferred to pool distributing plants.

(d) A plant located within the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month at least 60 percent of the producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product from the cooperative's plant.

(e) Two or more plants operated by the same handler and located within the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements specified in paragraph (a) of this section and the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit, or to add or remove plants from a unit, must be filed with the market administrator prior to the first day of the month for which it is to be effective.

(f) The applicable percentages in paragraphs (a), (c), and (d) of this section may be increased or decreased up to 10 percentage points by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the date for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area, meets the pooling requirements of another Federal order, and has had greater route disposition in such other Federal order marketing area for 3 consecutive months;

(4) A plant qualified pursuant to paragraph (a) of this section which is located in another Federal order marketing area, meets the pooling standards of the other Federal order, and has not had a majority of its route disposition in this marketing area for 3 consecutive months or is locked into pool status under such other Federal order without regard to its route disposition in any other Federal order marketing area; and

(5) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under such other order than are made to plants regulated under this order, or such plant has automatic pooling status under such other order.

§ 1007.8 Nonpool plant.

See § 1000.8 of this chapter.

§ 1007.9 Handler.

See § 1000.9 of this chapter.

§ 1007.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in excess of 150,000 pounds per month, unless the person requests that the two be operated as separate entities with the distributing plant regulated under § 1007.7(a) and

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the farm operated as a producer under § 1007.12;

(b) Receives no fluid milk products, and acquires no fluid milk products for route disposition, from sources other than own farm production;

(c) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production;

(d) Disposes of no fluid milk products using the distribution system of another handler; and

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled, and the processing, packaging, and distribution operations, are the producer-handler's own enterprise and are operated at the producer-handler's own risk.

§ 1007.11 [Reserved]

§ 1007.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1007.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1007.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1007.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk) and butterfat contained in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). Any milk picked up from the producer's farm tank in a tank truck under the control of the operator of a pool plant or a handler described in § 1000.9(c) but which is not received at a plant until the following month shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a handler described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) In any month of January through June, not less than 4 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(2) In any month of July through December, not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 33 percent during the months of July through December, and 50 percent during the months of January through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 33 percent during the months of July through December, or 50 percent during the months of January through June, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1007.7(e)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9(c);

(5) Any milk diverted in excess of the limits prescribed in paragraphs (d)(3) and (4) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that will not be producer milk, no milk diverted by the handler or cooperative association shall be producer milk;

(6) Diverted milk shall be priced at the location of the plant to which diverted; and

(7) The delivery day requirements and the diversion percentages in paragraphs (d)(1) through (4) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1007.14 Other source milk.

See § 1000.14 of this chapter.

§ 1007.15 Fluid milk product.

See § 1000.15 of this chapter.

§ 1007.16 Fluid cream product.

See § 1000.16 of this chapter.

§ 1007.17 [Reserved]

§ 1007.18 Cooperative association.

See § 1000.18 of this chapter.

§ 1007.19 Commercial food processing establishment.

See § 1000.19 of this chapter.

Handler Reports

§ 1007.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on prescribed forms, as follows:

(a) With respect to each of its pool plants, the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the plant operator to other plants;

(2) Receipts of milk from handlers described in § 1000.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Receipts of bulk milk from a plant regulated under another Federal order, except Federal Order 1005, for which a transportation credit is requested pursuant to § 1007.82;

(6) Receipts of producer milk described in § 1007.82(c)(2), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to that paragraph and the date that such milk was received;

(7) For handlers submitting transportation credit requests, transfers of bulk milk to nonpool plants, including the dates that such milk was transferred;

(8) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products; and

(9) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a)(1), (a)(2), (a)(3), (a)(4), and (a)(8) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers;

(2) The utilization or disposition of all such receipts; and

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1007.82, all of the information required in paragraph (a)(5), (a)(6), and (a)(7) of this section.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1007.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1000.9(a) and (c) shall report to the market administrator its producer payroll for the month, in detail prescribed by the market administrator, showing for each producer the information specified in § 1007.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1007.32 Other reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1000.9(a) and (c) shall report to the market administrator any adjustments to transportation credit requests as reported pursuant to § 1007.30(a)(5), (6), and (7).

(b) In addition to the reports required pursuant to §§ 1007.30, 31, and 32(a), each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1007.40 Classes of utilization.

See § 1000.40 of this chapter.

§ 1007.41 [Reserved]

§ 1007.42 Classification of transfers and diversions.

See § 1000.42 of this chapter.

§ 1007.43 General classification rules.

See § 1000.43 of this chapter.

§ 1007.44 Classification of producer milk.

See § 1000.44 of this chapter.

§ 1007.45 Market administrator's reports and announcements concerning classification.

See § 1000.45 of this chapter.

Class Prices

§ 1007.50 Class prices, component prices, Class I differential and price.

Class prices and component prices are described in § 1000.50. The Class I differential shall be the differential established for Fulton County, Georgia, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Fulton County, Georgia.

§ 1007.51 [Reserved]

§ 1007.52 Adjusted Class I differentials.

See § 1000.52 of this chapter.

§ 1007.53 Announcement of class prices and component prices.

See § 1000.53 of this chapter.

§ 1007.54 Equivalent price.

See § 1000.54 of this chapter.

Uniform Price

§ 1007.60 Handler's value of milk.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) as follows:

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.43(b)(2) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (iii) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(e) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(f) Subtract, for reconstituted milk made from receipts of nonfluid milk

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products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(e); and

(g) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(5) or (c).

§ 1007.61 Computation of uniform price, uniform butterfat price and uniform skim milk price.

(a) *Uniform price.* For each month the market administrator shall compute the uniform price per hundredweight. If the unreserved balance in the producer-settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made payments required pursuant to § 1007.71 for the preceding month shall not be included in the computation of the uniform price. The report of such handler shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the uniform price in the following manner:

(1) Combine into one total the values computed pursuant to § 1007.60 for all handlers required to file reports prescribed in § 1007.30;

(2) Add an amount equal to the sum of the location adjustments computed pursuant to § 1007.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Add or subtract, as the case may be, to obtain an all-producer milk test of 3.5 percent butterfat, the value of the required pounds of butterfat times the uniform butterfat price computed in paragraph (b) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1007.60(f); and

(6) Subtract not less than 4 cents not more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result, rounded to the nearest cent, shall be known as the "uniform price" for the month.

(b) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be obtained by multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices (Class I butterfat price for Class I and the butterfat price for all other classes) and dividing the sum of such values by the total pounds of such butterfat.

(c) *Uniform skim milk price.* The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be the uniform price for the month pursuant to paragraph (a) of this section less the uniform butterfat price for the month pursuant to paragraph (b) of this section multiplied by 3.5 pounds of butterfat, with the result divided by .965.

§ 1007.62 Announcement of uniform price, uniform butterfat price and uniform skim milk price.

On or before the 11th day after the end of the month, the market administrator shall announce the following prices and information:

(a) The uniform price pursuant to § 1007.61 for such month;

(b) The uniform butterfat price pursuant to § 1007.61(b) for such month; and

(c) The uniform skim milk price pursuant to § 1007.61(c) for such month.

Payments for Milk

§ 1007.70 Producer-settlement fund.

See § 1000.70 of this chapter.

§ 1007.71 Payments to the producer-settlement fund.

The payments to the producer-settlement fund specified in § 1000.71 are due no later than the 12th day after the end of the month.

§ 1007.72 Payments from the producer-settlement fund.

See § 1000.72 of this chapter.

§ 1007.73 Payments to producers and to cooperative associations.

(a) Each pool plant operator that is not paying a cooperative association for producer milk shall pay each producer as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 23rd day of the month, payment shall be made so that it is received by the producer on or before the 26th day of the month for milk received during the first 15 days of the month at not less than the 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1007.75 and proper deductions authorized in writing by the producer;

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer one day after the payment date required in § 1000.72 an amount computed as follows:

(i) Multiply the hundredweight of producer milk received times the uniform price for the month as adjusted pursuant to § 1007.75;

(ii) Multiply the hundredweight of producer skim milk received times the uniform skim milk price for the month;

(iii) Multiply the pounds of butterfat received times the uniform butterfat price for the month;

(iv) Add the amounts computed in paragraph (a)(2)(i), (ii), and (iii) of the section, and from that sum:

(A) Subtract the partial payment made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) One day before partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association.* For bulk milk/skimmed milk received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be equal to the hundredweight of milk received multiplied by 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1007.75;

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available, adjusted for butterfat value and plant location;

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment shall be the classified value of such milk as determined by multiplying the pounds of milk assigned to each class pursuant to § 1000.44 by the class prices for the month, adjusted for plant location and butterfat value, and subtracting from this sum the partial payment made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1007.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce payments pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a handler described in § 1000.9 (a) or (c), a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and the payroll number of the producer;

(2) The month and dates that milk was received from the producer, including the daily and total pounds of milk received;

(3) The total pounds of butterfat in the producer's milk;

(4) The minimum rate at which payment to the producer is required pursuant to this order;

(5) The rate used in making payment if the rate is other than the applicable minimum rate;

(6) The amount, or rate per hundredweight, and nature of each deduction claimed by the handler; and

(7) The net amount of payment to the producer or cooperative association.

§ 1007.74 [Reserved]

§ 1007.75 Plant location adjustments for producer milk and nonpool milk.

(a) The uniform price for producer milk shall be adjusted according to the location of the plant at which the milk was physically received by subtracting from the price the amount by which the Class I price specified in § 1007.50 exceeds the Class I price at the plant's location. If the Class I price at the plant location exceeds the Class I price specified in § 1007.50, the difference shall be added to the uniform price; and

(b) The uniform price applicable for other source milk shall be adjusted following the procedure specified in paragraph (a) of this section, except that the adjusted uniform price shall not be less than the lowest announced class price.

§ 1007.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76 of this chapter.

§ 1007.77 Adjustment of accounts.

See § 1000.77 of this chapter.

§ 1007.78 Charges on overdue accounts.

See § 1000.78 of this chapter.

Marketwide Service Payments

§ 1007.80 Transportation credit balancing fund.

The market administrator shall maintain a separate fund known as the *Transportation Credit Balancing Fund* into which shall be deposited the payments made by handlers pursuant to § 1007.81 and out of which shall be made the payments due handlers pursuant to § 1007.82. Payments due a handler shall be offset against payments due from the handler.

§ 1007.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month, each handler operating a pool plant and each handler specified in § 1000.9 (a) and (c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1000.44 by $0.07 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June–January period. In the event that during any month of the June–January period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(b) The market administrator shall announce publicly on or before the 5th day of the month the assessment pursuant to paragraph (a) of this section for the following month.

§ 1007.82 Payments from the transportation credit balancing fund.

(a) Payments from the transportation credit balancing fund to handlers and cooperative associations requesting transportation credits shall be made as follows:

(1) On or before the 13th day after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1007.30(a)(5), bulk milk transferred from a plant fully regulated under another Federal order as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1007.30(a)(6), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the transportation credit balancing fund by reducing payments prorata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (a)(2) of this section;

(2) The market administrator shall accept adjusted requests for transportation credits on or before the 20th day of the month following the month for which such credits were requested pursuant to § 1007.32(a). After

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such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of transportation credit payments for the preceding month pursuant to paragraph (a) of this section. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments to or from the transportation credit balancing fund will be made on or before the next payment date for the following month;

(3) Transportation credits paid pursuant to paragraphs (a)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1000.77. Adjusted payments to or from the transportation credit balancing fund will remain subject to the final proration established pursuant to paragraph (a)(2) of this section; and

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1007.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) The market administrator may extend the period during which transportation credits are in effect (*i.e.*, the transportation credit period) to the months of January and June if a written request to do so is received 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the market administrator shall notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) Transportation credits shall apply to the following milk:

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Orders 1005, and allocated to Class I milk pursuant to § 1000.44(a)(12); and

(2) Bulk milk received directly from the farms of dairy farmers at pool distributing plants subject to the following conditions:

(i) The quantity of such milk that shall be eligible for the transportation credit shall be determined by multiplying the total pounds of milk received from producers meeting the conditions of this paragraph by the lower of:

(A) The marketwide estimated Class I utilization of all handlers for the month pursuant to § 1000.45(a); or

(B) The Class I utilization of all producer milk of the pool plant operator receiving the milk after the computations described in § 1000.44;

(ii) The dairy farmer was not a "producer" under this order during more than 2 of the immediately preceding months of January through June and not more than 50 percent of the production of the dairy farmer during those 2 months, in aggregate, was received as producer milk under this order during those 2 months. However, if January and/or June are months in which transportation credits are disbursed pursuant to paragraph (a) of this section, these months shall not be included in the 2-month limit provided in this paragraph; and

(iii) The farm on which the milk was produced is not located within the specified marketing area of this order or the marketing area of Federal Order 1005.

(d) Transportation credits shall be computed as follows:

(1) The market administrator shall subtract from the pounds of milk described in paragraphs (c)(1) and (2) of this section the pounds of bulk milk transferred from the pool plant receiving the supplemental milk if milk was transferred to a nonpool plant on the same calendar day that the supplemental milk was received. For this purpose, the transferred milk shall be subtracted from the most distant load of supplemental milk received, and then in sequence with the next most distant load until all of the transfers have been offset;

(2) With respect to the pounds of milk described in paragraph (c)(1) of this section that remain after the computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the shipping plant and the receiving plant;

(ii) Multiply the number of miles so determined by 0.35 cent;

(iii) Subtract the other order's Class I price applicable at the shipping plant's location from the Class I price applicable at the receiving plant as specified in § 1007.53;

(iv) Subtract any positive difference computed in paragraph (d)(2)(iii) of this section from the amount computed in paragraph (d)(2)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(2)(iv) of this section by the hundredweight of milk described in paragraph (d)(2) of this section.

(3) For the remaining milk described in paragraph (c)(2) of this section after computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine an origination point for each load of milk by locating the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant. Alternatively, the milk hauler that is transporting the milk of producers described in paragraph (c)(2) of this section may establish an origination point following the last farm pickup by stopping at the nearest independently-operated truck stop with a certified truck scale and obtaining a weight certificate indicating the weight of the truck and its contents, the date and time of weighing, and the location of the truck stop;

(ii) Determine the shortest hard-surface highway distance between the receiving pool plant and the truck stop or city, as the case may be;

(iii) Subtract 85 miles from the mileage so determined;

(iv) Multiply the remaining miles so computed by 0.35 cent;

(v) If the origination point determined pursuant to paragraph (d)(3)(i) of this section is in a Federal order marketing area, subtract the Class I price applicable at the origination point pursuant to the provisions of such other order (as if the origination point were a plant location) from the Class I price applicable at the distributing plant receiving the milk. If the origination point is not in any Federal order marketing area, determine the Class I price at the origination point based upon the provisions of this order and subtract this price from the Class I price applicable at the distributing plant receiving the milk;

(vi) Subtract any positive difference computed in paragraph (d)(3)(v) of this section from the amount computed in paragraph (d)(3)(iv) of this section; and

(vii) Multiply the remainder computed in paragraph (d)(3)(vi) by the hundredweight of milk described in paragraph (d)(3) of this section.

Administrative Assessment and Marketing Service Deduction

§ 1007.85 Assessment for order administration.

See § 1000.85 of this chapter.

§ 1007.86 Deduction for marketing services.

See § 1000.86 of this chapter.

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

Subpart—Order Regulating Handling

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Administrative Assessment and Marketing Service Deduction

1030.85 Assessment for order administration.
1030.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1030.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter apply to and are hereby made a part of this order.

Definitions

§ 1030.2 Upper Midwest marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Illinois Counties

Boone, Carroll, Cook, De Kalb, Du Page, Jo Daviess (except the city of East Dubuque), Kane, Kendall, Lake, Lee, McHenry, Ogle, Stephenson, Whiteside (the townships of Caloma, Hahnaman, Hopkins, Hume, Jordan, Montmorency, Sterling, and Tampico only), Will, and Winnebago.

Iowa Counties

Howard, Kossuth, Mitchell (except the city of Osage), Winnebago, Winneshiek, and Worth.

Michigan Counties

Delta, Dickinson, Gogebic, Iron, Menominee, and Ontonagon.

Minnesota

All counties except Lincoln, Nobles, Pipestone, and Rock.

North Dakota Counties

Barnes, Cass, Cavalier, Dickey, Grand Forks, Griggs, La Moure, Nelson, Pembina, Ramsey, Ransom, Richland, Sargent, Steele, Traill, and Walsh.

South Dakota Counties

Brown, Day, Edmunds, Grant, Marshall, McPherson, Roberts, and Walworth.

Wisconsin Counties

All counties except Crawford and Grant.

§ 1030.3 Route disposition.

See § 1000.3 of this chapter.

§ 1030.4 Plant.

See § 1000.4 of this chapter.

§ 1030.5 Distributing plant.

See § 1000.5 of this chapter.

§ 1000.6 Supply plant.

See § 1000.6 of this chapter.

§ 1030.7 Pool plant.

Pool plant means a plant, unit of plants, or a system of plants as specified in paragraphs (a) through (f) of this section. The pooling standards described in paragraphs (a), (c), (d), (e), and (f) of this section are subject to modification pursuant to paragraph (g) of this section:

(a) A distributing plant from which during the month:

(1) Total route disposition is equal to 15 percent of more of the total quantity of bulk fluid milk products physically received at the plant;

(2) Route disposition in the marketing area is at least 15 percent of total route disposition; and

(3) For purposes of this section, packaged fluid milk products that are transferred to a distributing plant shall be considered as route disposition from the transferring plant, rather than the receiving plant, for the single purpose of qualifying the transferring plant as a pool distributing plant.

(b) A distributing plant located in the marketing area at which the majority of milk received is processed into aseptically packaged fluid milk products unless there are no sales from the plant into any marketing area and the plant operator in writing requests nonpool plant status for the plant for the month.

(c) A supply plant from which the quantity of bulk fluid milk products shipped to, received at, and physically unloaded into plants described in paragraph (a) or (b) of this section as a percent of the Grade A milk received at the plant from dairy farmers (except dairy farmers described in § 1030.12(b)) and handlers described in § 1000.9(c), as reported in § 1030.30(a), is not less than 10 percent of the milk received from dairy farmers, including milk diverted pursuant to § 1030.13, subject to the following conditions:

(1) Qualifying shipments pursuant to this paragraph may be made to the following plants, except whenever the authority provided in paragraph (g) of this section is applied to increase the shipping requirements specified in this section, only shipments to pool plants described in § 1030.7(a) and (b), and units described in § 1030.7(e) shall count as qualifying shipments for the purpose of meeting the increased shipments:

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(i) Pool plants described in § 1030.7(a), (b) and (e);
(ii) Plants of producer-handlers;
(iii) Partially regulated distributing plants, except that credit for such shipments shall be limited to the amount of such milk classified as Class I at the transferee plant; and
(iv) Distributing plants fully regulated under other Federal orders, except that credit for shipments to such plants shall be limited to the quantity shipped to pool distributing plants during the month and credits for shipments to other order plants shall not include any such shipments made on the basis of agreed-upon Class II, Class III, or Class IV utilization.

(2) The operator of a supply plant may include as qualifying shipments deliveries to pool distributing plants and deliveries to plants described in § 1030.7(e) directly from farms of producers pursuant to § 1030.13(c).

(d) [Reserved]

(e) Two or more plants operated by the same handler and located in the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements of a pool distributing plant specified in paragraph (a) of this section and subject to the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process Class I or Class II products, using 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator in Class I or Class II products; and

(3) The operator of the unit has filed a written request with the market administrator prior to the first day of the month for which such status is desired to be effective. The unit shall continue from month-to-month thereafter without further notification. The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

(f) A system of supply plants may be qualified for pooling by the association of two or more supply plants operated by one or more handlers by meeting the applicable percentage requirements of paragraph (c) of this section in the same manner as a single plant and subject to the following additional requirements:

(1) Each plant in the system is located within the marketing area, or was a pool supply plant pursuant to § 1068.7(b) for each of the three months immediately preceding the effective date of this paragraph so long as it continues to maintain pool status. Cooperative associations may not use shipments pursuant to § 1000.9(c) to qualify plants located outside the marketing area;

(2) The handler(s) establishing the system submits a written request to the market administrator on or before July 15 requesting that such plants qualify as a system for the period of August through July of the following year. Such request will contain a list of the plants participating in the system in the order, beginning with the last plant, in which the plants will be dropped from the system if the system fails to qualify. Each plant that qualifies as a pool plant within a system shall continue each month as a plant in the system through the following July unless the handler(s) establishing the system submits a written request to the market administrator that the plant be deleted from the system or that the system be discontinued. Any plant that has been so deleted from a system, or that has failed to qualify in any month, will not be part of any system for the remaining months through July. The handler(s) that established a system may add a plant operated by such handler(s) to a system, if such plant has been a pool plant each of the six prior months and would otherwise be eligible to be in a system, upon written request to the market administrator no later than the 15th day of the prior month. In the event of an ownership change or business failure of a handler that is a participant in a system, the system may be reorganized to reflect such changes by submitting a written request to file a new marketing agreement with the market administrator; and

(3) If a system fails to qualify under the requirements of this paragraph, the handler responsible for qualifying the system shall notify the market administrator which plant or plants will be deleted from the system so that the remaining plants may be pooled as a system. If the handler fails to do so, the market administrator shall exclude one or more plants, beginning at the bottom of the list of plants in the system and continuing up the list as necessary until the deliveries are sufficient to qualify the remaining plants in the system.

(g) The performance standards of paragraphs (a), (c), (d), (e) and (f) of this section may be increased or decreased, for part or all of the marketing area, by the market administrator if found necessary to obtain needed shipments or to prevent uneconomic shipments. Before making a finding that a change is necessary the market administrator shall investigate the need for revision, either on such person's own initiative or at the request of interested persons. If such investigation shows that a revision might be appropriate, a notice shall be issued stating that a revision is being considered and inviting data, views, and arguments. If the market administrator determines that an adjustment to the shipping percentages is necessary, the market administrator shall notify the industry within one day of the effective date of such adjustment:

(h) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) or (e) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for three consecutive months;

(4) A plant located outside the marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater sales in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this order, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

(i) Any plant that qualifies as a pool plant in each of the immediately preceding three months pursuant to paragraph (a) of this section or the shipping percentages in paragraph (c) of this section that is unable to meet such performance standards for the current month because of unavoidable circumstances determined by the market administrator to be beyond the control of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood), fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than two consecutive months.

§ 1030.8 Nonpool plant.

See § 1000.8 of this chapter.

§ 1030.9 Handler.

See § 1000.9 of this chapter.

§ 1030.10 Producer-handler.

Except as provided in paragraph (g) of this section, *producer-handler* means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in excess of 150,000 pounds during the month;

(b) Receives no fluid milk products from sources other than own farm production, pool handlers, and plants fully regulated under another Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month.

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production or pool handlers;

(e) Disposes of no fluid milk products using the distribution system of another handler except for direct deliveries to retail outlets or to a pool handler's plant;

(f) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing, packaging, and distribution operations are the producer-handler's own enterprise and at its own risk; and

(g) Producer-handler shall not include any producer who also operates a distributing plant if the producer-handler so requests that the two be operated as separate entities with the distributing plant regulated under § 1030.7(a) and the farm operated as a producer under § 1030.12.

§ 1030.11 [Reserved]

§ 1030.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1030.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1030.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1030.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). Any milk picked up from the producer's farm tank in a tank truck under the control of the operator of a pool plant or a handler described in § 1000.9(c) but which is not received at a plant until the following month shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least one day's production of such dairy farmer is physically received as producer milk at a pool plant during the first month the dairy farmer is a producer. If a dairy farmer loses producer status under this order (except as a result of a temporary loss of Grade A approval or as a result of the handler of the dairy farmer's milk failing to pool the milk under any order), the dairy farmer's milk shall not be eligible for diversion unless at least one day's production of the dairy farmer has been physically received as producer milk at a pool plant during the first month the dairy farmer is re-associated with the market;

(2) The quantity of milk delivered to plants described in § 1030.7(c)(1) as a percentage of the total milk accounted for by the cooperative association described in § 1000.9(c) must be at least 10 percent, subject to § 1030.7(g);

(3) Diverted milk shall be priced at the location of the plant to which diverted.

§ 1030.14 Other source milk.

See § 1000.14 of this chapter.

§ 1030.15 Fluid milk product.

See § 1000.15 of this chapter.

§ 1030.16 Fluid cream product.

See § 1000.16 of this chapter.

§ 1030.18 Cooperative association.

See § 1000.18 of this chapter.

§ 1030.19 Commercial food processing establishment.

See § 1000.19 of this chapter.

Handler Reports

§ 1030.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 9th day after the end of the month, in the detail and on the prescribed forms, as follows:

(a) Each handler that operates a pool plant pursuant to § 1030.7 and each handler described in § 1000.9(c) shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in or represented by:

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(i) Receipts of producer milk, including producer milk diverted by the handler; and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information, as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1030.31 Payroll reports.

(a) On or before the 22nd day after the end of each month, each handler that operates a pool plant pursuant to § 1030.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1030.73(f).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1030.32 Other reports.

In addition to the reports required pursuant to §§ 1030.30 and 1030.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1030.40 Classes of utilization.

See § 1000.40 of this chapter.

§ 1030.42 Classification of transfers and diversions.

See § 1000.42 of this chapter.

§ 1000.43 General classification rules.

See § 1000.43 of this chapter.

§ 1000.44 Classification of producer milk.

See § 1000.44 of this chapter.

§ 1000.45 Market administrator's reports and announcements concerning classification.

See § 1000.45 of this chapter.

Class Prices

§ 1030.50 Class prices and component prices.

See § 1000.50 of this chapter.

§ 1030.51 Class I differential and price.

The Class I differential shall be the differential established for Cook County, Illinois, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Cook County, Illinois.

§ 1030.52 Adjusted Class I differentials.

See § 1000.52 of this chapter.

§ 1030.53 Announcement of class prices and component prices.

See § 1000.53 of this chapter.

§ 1030.54 Equivalent price.

See § 1000.54 of this chapter.

§ 1030.55 Transfer credits and assembly credits on Class I milk.

(a) For bulk milk transferred from a pool plant to a pool distributing plant, and which is classified as Class I milk, the shipping handler shall receive a transportation credit computed by multiplying the pounds of Class I milk by the product of .0028 times the number of miles between the transferor plant and the transferee plant.

(b) For each handler who transfers or diverts bulk fluid milk from a pool plant to a pool distributing plant a procurement credit shall be determined by multiplying the hundredweight of milk classified as Class I at the pool plant by 8 cents.

(c) For each handler described in § 1000.9(c), a procurement credit for bulk fluid milk received as producer milk at a pool distributing plant shall be determined by prorating the producer milk classified as Class I at the pool distributing plant, and multiplying by 8 cents per hundredweight.

(d) For each handler operating a pool distributing plant pursuant to § 1030.7(a) or (b), a procurement credit for bulk fluid milk received shall be calculated by multiplying the producer milk classified as Class I at the pool distributing plant by 8 cents per hundredweight.

(e) For purposes of this section, the distances to be computed shall be determined by the market administrator using the shortest available state and/or Federal highway mileage. Mileage determinations are subject to redetermination at all times. In the event a handler requests a redetermination of the mileage pertaining to any plant, the market administrator shall notify the handler of such redetermination within 30 days after the receipt of such request. Any financial obligations resulting from a change in mileage shall not be retroactive for any periods prior to the redetermination by the market administrator.

Producer Price Differential

§ 1030.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of its pool plants, and of each handler described in § 1000.9(c) as follows:

(a) Class I value.

(1) Multiply the hundredweight of skim milk in Class I as determined pursuant to § 1000.44(a) by the Class I skim milk price applicable at the handler's location; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I as determined pursuant to § 1000.44(b) by the Class I butterfat price applicable at the handler's location.

(b) Add the Class II value, computed as follows:

(1) Multiply the hundredweight of skim milk in Class II as determined pursuant to § 1000.44(a) by 70 cents;

(2) Add an amount obtained by multiplying the pounds of skim milk in Class II as determined pursuant to § 1000.44(a) by the average nonfat solids content of producer skim milk received by the handler, and multiply the resulting pounds of nonfat solids by the nonfat solids price;

(3) Add an amount obtained by multiplying the pounds of butterfat in Class II as determined pursuant to § 1000.44(b) by the butterfat price;

(c) Add the Class III value computed as follows:

(1) Multiply the pounds of skim milk in Class III as determined pursuant to § 1000.44(a) by the average protein content of producer skim milk received by the handler, and multiply the resulting pounds of protein by the protein price;

(2) Add an amount obtained by multiplying the pounds of skim milk in Class III as determined pursuant to § 1000.44(a) by the average other solids content of producer skim milk received by the handler, and multiply the resulting pounds of other solids by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III as determined pursuant to § 1000.44(b) by the butterfat price;

(d) Add the Class IV value computed as follows:

(1) Multiply the pounds of skim milk in Class IV as determined pursuant to § 1000.44(a) by the average nonfat solids content of producer skim milk received by the handler, and multiply the resulting pounds of nonfat solids by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV as determined pursuant to § 1000.44(b) by the butterfat price;

(e) Add an adjustment for somatic cell content of producer milk determined by multiplying the value reported pursuant to § 1030.30(a)(1) by the percentage of the total producer milk allocated to Class II, Class III, and Class IV pursuant to § 1000.44(c);

(f) Add the amounts obtained from multiplying the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.43(b)(2) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(g) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(h) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (iii) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(i) Add the amount obtained from multiplying the difference between the Class I price and the Class III price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(j) Subtract an amount equal to any credits applicable pursuant to § 1030.55;

(k) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I pursuant to § 1000.43(d); and

(l) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1000.76(a)(5) or (c).

§ 1030.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. If the unreserved balance in the producer-settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made payments required pursuant to § 1030.71 for the preceding month shall not be included in the computation of the producer price differential. The report of such handler shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1030.60 for all handlers required to file reports prescribed in § 1030.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1030.60 by the protein price, the other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1030.30(a)(1);

(c) Add an amount equal to the sum of the location adjustments computed pursuant to § 1030.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1030.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

§ 1030.62 Announcement of producer prices.

On or before the 13th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The somatic cell adjustment rate;

(f) The average butterfat, protein and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1030.70 Producer-settlement fund.

See § 1000.70 of this chapter.

§ 1030.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the

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funds by the market administrator no later than the 15th day after the end of the month. Payment shall be the amount, if any, by which the amount specified in (a) of this section exceeds the amount specified in (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1030.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1030.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

(3) The total value of the somatic cell adjustment to producer milk; and

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1030.60(i) by the producer price differential as adjusted pursuant to § 1030.75 for the location of the plant from which received.

§ 1030.72 Payments from the producer-settlement fund.

No later than the 16th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1030.71(b) exceeds the amount computed pursuant to § 1030.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1030.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the date of this partial payment, payment shall be made so that it is received by each producer on or before the 26th day of the month for milk received during the first 15 days of the month from the producer at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer; and

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 17th day after the end of the month in an amount equal to not less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1030.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments to such producer; and

(viii) Less deductions for marketing services pursuant to § 1000.86.

(b) *Payments for milk received from cooperative association members.* On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section, each handler shall pay to a cooperative association for milk from producers who market their milk through the cooperative association and who have authorized the cooperative to collect such payments on their behalf an amount equal to the sum of the individual payments otherwise payable for such producer milk pursuant to paragraphs (a)(1) and (a)(2) of this section.

(c) *Payment for milk received from cooperative association pool plants or from cooperatives as handlers pursuant to § 1000.9(c).* On or before the day prior to the dates specified in paragraph (a)(1) and (a)(2) of this section, each handler who receives fluid milk products at its plant from a cooperative association in its capacity as the operator of a pool plant or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1000.9(c), including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, shall pay the cooperative for such milk as follows:

(1) For bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant and for milk received from a cooperative association in its capacity as a handler pursuant to § 1000.9(c) during the first 15 days of the month, at not less than the lowest announced class price per hundredweight for the preceding month;

(2) For the total quantity of bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant, at not less than the total value of such products received from the association's pool plants, as determined by multiplying the respective quantities assigned to each class under § 1000.44, as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I price to be used shall be that price effective at the location of the shipping plant;

(ii) The hundredweight of Class II skim milk times $ .70;

(iii) The pounds of nonfat solids received in Class II and Class IV milk times the nonfat solids price for the month;

(iv) The pounds of butterfat received in Class II, Class III, and Class IV milk times the butterfat price for the month;

(v) The pounds of protein received in Class III milk times the protein price for the month;

(vi) The pounds of other solids received in Class III milk times the other solids price for the month;

(vii) The hundredweight of Class II, Class III, and Class IV milk received times the somatic cell adjustment; and

(viii) Add together the amounts computed in paragraphs (c)(2)(i) through (vii) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section.

(3) For the total quantity of milk received during the month from a cooperative association in its capacity as a handler under § 1000.9(c) as follows:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1030.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month; and

(vi) Add together the amounts computed in paragraphs (c)(3)(i) through (v) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section.

(d) If a handler has not received full payment from the market administrator pursuant to § 1030.72 by the payment date specified in paragraph (a), (b) or (c)(2) of this section, the handler may reduce pro rata its payments to producers or to the cooperative association (with respect to receipts described in paragraph (b), prorating the underpayment to the volume of milk received from the cooperative association in proportion to the total milk received from producers by the handler), but not by more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(e) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(f) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) The somatic cell count of the producer's milk;

(5) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(6) The rate used in making payment if the rate is other than the applicable minimum rate;

(7) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(8) The net amount of payment to the producer or cooperative association.

§ 1030.74 [Reserved]

§ 1030.75 Plant location adjustments for producer milk and nonpool milk.

(a) The producer price differential for producer milk shall be adjusted according to the location of the plant at which the milk was physically received by subtracting from the price differential the amount by which the Class I price specified in § 1030.51 exceeds the Class I price at the plant's location. If the Class I price at the plant location exceeds the Class I price specified in § 1030.51, the difference shall be added to the producer price differential price; and

(b) The producer price differential applicable to other source milk shall be adjusted following the procedure specified in paragraph (a) of this section, except that the adjusted producer price differential shall not be less than zero.

§ 1030.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76 of this chapter.

§ 1030.77 Adjustment of accounts.

See § 1000.77 of this chapter.

§ 1030.78 Charges on overdue accounts.

See § 1000.78 of this chapter.

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See § 1000.85 of this chapter.

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PART 1032—MILK IN THE CENTRAL MARKETING AREA

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Subpart—Order Regulating Handling

General Provisions

§ 1032.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter apply to and are hereby made a part of this order.

Definitions

§ 1032.2 Central marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations,

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installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

(a) In the State of Colorado, the counties of: Adams, Arapahoe, Baca, Bent, Boulder, Clear Creek, Cheyenne, Crowley, Custer, Denver, Douglas, El Paso, Elbert, Gilpin, Huerfano, Jefferson, Kiowa, Kit Carson, Larimer, Las Animas, Lincoln, Logan, Morgan, Otero, Park, Phillips, Prowers, Pueblo, Sedgwick, Teller, Washington, Weld, and Yuma.

(b) In the State of Illinois, the counties of:

(1) Adams, Alexander, Bond, Brown, Bureau, Calhoun, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Grundy, Hamilton, Hancock, Hardin, Henderson, Henry, Iroquois, Jackson, Jasper, Jefferson, Jersey, Johnson, Kankakee, Knox, La Salle, Lawrence, Livingston, Logan, McDonough, McLean, Macon, Macoupin, Madison, Marion, Marshall, Mason, Massac, Menard, Mercer, Monroe, Montgomery, Morgan, Moultrie, Peoria, Perry, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Rock Island, Saline, Sangamon, Schuyler, Scott, Shelby, St. Clair, Stark, Tazewell, Union, Vermilion, Wabash, Warren, Washington, Wayne, White, Williamson, and Woodford;

(2) In Jo Daviess County, the city of East Dubuque; and

(3) In Whiteside County, the townships of Fulton, Ustick, Clyde, Genesee, Mount Pleasant, Union Grove, Garden Plain, Lyndon, Fenton, Newton, Prophetstown, Portland, and Erie.

(c) In the State of Iowa:

(1) All of the counties except: Howard, Kossuth, Mitchell (except the city of Osage), Winnebago, Winneshiek, and Worth; and

(2) In Mitchell County the city of Osage.

(d) All of the State of Kansas.

(e) In the State of Minnesota, the counties of: Lincoln, Nobles, Pipestone, and Rock.

(f) In the State of Missouri: (1) The counties of:

Andrew, Atchison, Bates, Buchanan, Caldwell, Carroll, Cass, Clark, Clay, Clinton, Daviess, De Kalb, Franklin, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Jackson, Jefferson, Johnson, Knox, Lafayette, Lewis, Lincoln, Livingston, Marion, Mercer, Nodaway, Pettis, Platte, Putnam, Ray, Saline, Schuyler, Scotland, Shelby, St. Charles, St. Clair, Ste. Genevieve, St. Louis, Sullivan, Warren, and Worth; and

(2) The city of St. Louis.

(g) In the State of Nebraska, the counties of: Adams, Antelope, Boone, Buffalo, Burt, Butler, Cass, Cedar, Chase, Clay, Colfax, Cuming, Custer, Dakota, Dawson, Dixon, Dodge, Douglas, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Gosper, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Howard, Jefferson, Johnson, Kearney, Keith, Knox, Lancaster, Lincoln, Madison, Merrick, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Saline, Sarpy, Saunders, Seward, Sherman, Stanton, Thayer, Thurston, Valley, Washington, Wayne, Webster, and York.

(h) All of the State of Oklahoma.

(i) In the State of South Dakota, the counties of: Aurora, Beadle, Bon Homme, Brookings, Clark, Clay, Codington, Davison, Deuel, Douglas, Hamlin, Hanson, Hutchinson, Jerauld, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Spink, Turner, Union, and Yankton.

(j) In the State of Wisconsin, the counties of: Crawford and Grant.

§ 1032.3 Route disposition.

See § 1000.3 of this chapter.

§ 1032.4 Plant.

See § 1000.4 of this chapter.

§ 1032.5 Distributing plant.

§ 1000.5 of this chapter.

§ 1032.6 Supply plant.

§ 1000.6 of this chapter.

§ 1032.7 Pool plant.

Pool plant means a plant, unit of plants, or a system of plants as specified in paragraphs (a) through (f) of this section. The pooling standards described in paragraphs (a), (c), (d), (e), and (f) of this section are subject to modification pursuant to paragraph (g) of this section:

(a) A distributing plant from which during the month:

(1) Total route disposition is equal to 25 percent of more of the total quantity of bulk fluid milk products physically received at the plant; and

(2) Route disposition in the marketing area is at least 15 percent of total route disposition.

(3) For purposes of this section, packaged fluid milk products that are transferred to a distributing plant shall be considered as route disposition from the transferring plant, rather than the receiving plant, for the single purpose of qualifying the transferring plant as a pool distributing plant.

(b) A distributing plant located in the marketing area at which the majority of milk received is processed into aseptically packaged fluid milk products unless there are no sales from the plant into any marketing area and the plant operator in writing requests nonpool plant status for the plant for the month.

(c) A supply plant from which the quantity of bulk fluid milk products transferred or diverted to plants described in paragraph (a) or (b) of this section during each of the months of September through November and January is 35 percent or more of the total Grade A milk received at the plant from dairy farmers (except dairy farmers described in § 1032.12(b)) and handlers described in § 1000.9(c), including milk diverted by the plant operator, and 25 percent for all other months, subject to the following conditions:

(1) A supply plant that has qualified as a pool plant during each of the immediately preceding months of August through April shall continue to so qualify in each of the following months of May through July, unless the plant operator files a written request with the market administrator that such plant not be a pool plant, such nonpool status to be effective the first month following such request and thereafter until the plant qualifies as a pool plant on the basis of milk shipments;

(2) A pool plant operator may include as qualifying shipments milk diverted to pool distributing plants pursuant to § 1032.13(c);

(3) The operator of a supply plant may include as qualifying shipments transfers of fluid milk products to distributing plants regulated under any other Federal order, except that credit for such transfers shall be limited to the amount of milk, including milk shipped directly from producers' farms, delivered to distributing plants qualified as pool plants pursuant to paragraphs (a) or (b) of this section;

(4) No plant may qualify as a pool plant due to a reduction in the shipping percentage pursuant to paragraph (g) of this section unless it has been a pool supply plant during each of the immediately preceding three months.

(d) A plant located in the marketing area and operated by a cooperative association if, during the month or the immediately preceding 12-month period, 35 percent or more of the producer milk of members of the association (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products at

plants specified in paragraph (a) or (b) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b) or (c) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area:

(e) Two or more plants operated by the same handler and located in the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements of a pool distributing plant specified in paragraph (a) of this section and subject to the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process Class I or Class II products, using 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator in Class I or Class II products, and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) The operator of the unit has filed a written request with the market administrator prior to the first day of the month for which such status is desired to be effective. The unit shall continue from month to month thereafter without further notification. The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

(f) A system of supply plants may be qualified for pooling by the association of two or more supply plants operated by one or more handlers by meeting the applicable percentage requirements of paragraph (c) of this section in the same manner as a single plant, subject to the following additional requirements:

(1) Each plant in the system is located within the marketing area;

(2) The handler(s) establishing the system submits a written request to the market administrator on or before September 1 requesting that such plants qualify as a system for the period of September through August of the following year. Such request will contain a list of the plants participating in the system.

(3) Each plant included within a pool supply plant system shall continue each month as a plant in the system through the following August unless the handler(s) establishing the system submits a written request to the market administrator that the plant be deleted from the system or that the system be discontinued. Any plant that has been so deleted from a system, or that has failed to qualify in any month, will not be part of any system for the remaining months through August. No plant may be added in any subsequent month through the following August to a system that qualifies in September.

(4) If a system fails to qualify under the requirements of this paragraph, the handler responsible for qualifying the system shall notify the market administrator which plant or plants will be deleted from the system so that the remaining plants may be pooled as a system. If the handler fails to do so, the market administrator shall exclude one or more plants, beginning at the bottom of the list of plants in the system and continuing up the list as necessary until the deliveries are sufficient to qualify the remaining plants in the system;

(g) The applicable shipping percentages of paragraphs (a), (c), (d), and (f) of this section may be increased or decreased by the market administrator if found necessary to obtain needed shipments or to prevent uneconomic shipments. Before making a finding that a change is necessary the market administrator shall investigate the need for revision, either on the market administrator's own initiative or at the request of interested persons. If such investigation shows that a revision might be appropriate, a notice shall be issued stating that a revision is being considered and inviting data, views, and arguments. If the market administrator determines that an adjustment to the shipping percentages is necessary, the market administrator shall notify the industry within one day of the effective date of such adjustment.

(h) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) or (e) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for three consecutive months. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the market administrator is to be effective, the market administrator may determine that the route disposition in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions;

(4) A plant located outside the marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater sales in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this order, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

§ 1032.8 Nonpool plant.

See § 1000.8 of this chapter.

§ 1032.9 Handler.

See § 1000.9 of this chapter.

§ 1032.10 Producer-handler.

Except as provided in paragraph (g) of this section, *producer-handler* means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in excess of 150,000 pounds during the month;

(b) Receives no fluid milk products from sources other than own farm production, pool handlers, and plants

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fully regulated under another Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month.

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production or pool handlers;

(e) Disposes of no fluid milk products using the distribution system of another handler except for direct deliveries to retail outlets or to a pool handler's plant;

(f) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing, packaging, and distribution operations are the producer-handler's own enterprise and at its own risk; and

(g) Producer-handler shall not include any producer who also operates a distributing plant if the producer-handler so requests that the two be operated as separate entities with the distributing plant regulated under § 1032.7(a) and the farm operated as a producer under § 1032.12.

§ 1032.11 [Reserved]

§ 1032.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1032.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1032.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1032.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). Any milk picked up from the producer's farm tank in a tank truck under the control of the operator of a pool plant or a handler described in § 1000.9(c) but which is not received at a plant until the following month shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least one day's production of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under this order (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion until milk of the dairy farmer has been physically received as producer milk at a pool plant;

(2) Of the quantity of producer milk received during the month (including diversions, but excluding the quantity of producer milk received from a handler described in § 1000.9(c)) the handler diverts to nonpool plants not more than 65 percent during the months of September through November and January, and not more than 75 percent during the months of February through August and December;

(3) Diverted milk shall be priced at the location of the plant to which diverted;

(4) Any milk diverted in excess of the limits prescribed in (d)(2) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler or cooperative association during the month to a nonpool plant shall be producer milk; and

(5) The applicable diversion limits in paragraph (d)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1032.14 Other source milk.

See § 1000.14 of this chapter.

§ 1032.15 Fluid milk product.

See § 1000.15 of this chapter.

§ 1032.16 Fluid cream product.

See § 1000.16 of this chapter.

§ 1032.17 [Reserved]

§ 1032.18 Cooperative association.

See § 1000.18 of this chapter.

§ 1032.19 Commercial food processing establishment.

See § 1000.19 of this chapter.

Handler Reports

§ 1032.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on the prescribed forms, as follows:

(a) Each handler that operates a pool plant pursuant to § 1032.7 and each handler described in § 1000.9(c) shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handler; and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information, as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1032.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1032.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1032.73(f).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1032.32 Other reports.

In addition to the reports required pursuant to §§ 1032.30 and 1032.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1032.40 Classes of utilization.

See § 1000.40 of this chapter.

§ 1032.41 [Reserved]

§ 1032.42 Classification of transfers and diversions.

See § 1000.42 of this chapter.

§ 1032.43 General classification rules.

See § 1000.43 of this chapter.

§ 1032.44 Classification of producer milk.

See § 1000.44 of this chapter.

§ 1032.45 Market administrator's reports and announcements concerning classification.

See § 1000.45 of this chapter.

Class Prices

§ 1032.50 Class prices and component prices.

See § 1000.50 of this chapter.

§ 1032.51 Class I differential and price.

The Class I differential shall be the differential established for Jackson County, Missouri, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Jackson County, Missouri.

§ 1032.52 Adjusted Class I differentials.

See § 1000.52 of this chapter.

§ 1032.53 Announcement of class prices and component prices.

See § 1000.53 of this chapter.

§ 1032.54 Equivalent price.

See § 1000.54 of this chapter.

Producer Price Differential

§ 1032.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of its pool plants, and of each handler described in § 1000.9(c) as follows:

(a) Class I value.

(1) Multiply the hundredweight of skim milk in Class I as determined pursuant to § 1000.44(a) by the Class I skim milk price applicable at the handler's location; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I as determined pursuant to § 1000.44(b) by the Class I butterfat price applicable at the handler's location.

(b) Add the Class II value, computed as follows:

(1) Multiply the hundredweight of skim milk in Class II as determined pursuant to § 1000.44(a) by 70 cents;

(2) Add an amount obtained by multiplying the pounds of skim milk in Class II as determined pursuant to § 1000.44(a) by the average nonfat solids content of producer skim milk received by the handler, and multiply the resulting pounds of nonfat solids by the nonfat solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class II as determined pursuant to § 1000.44(b) by the butterfat price;

(c) Add the Class III value computed as follows:

(1) Multiply the pounds of skim milk in Class III as determined pursuant to § 1000.44(a) by the average protein content of producer skim milk received by the handler, and multiply the resulting pounds of protein by the protein price;

(2) Add an amount obtained by multiplying the pounds of skim milk in Class III as determined pursuant to § 1000.44(a) by the average other solids content of producer skim milk received by the handler, and multiply the resulting pounds of other solids by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III as determined pursuant to § 1000.44(b) by the butterfat price;

(d) Add the Class IV value computed as follows:

(1) Multiply the pounds of skim milk in Class IV as determined pursuant to § 1000.44(a) by the average nonfat solids content of producer skim milk received by the handler, and multiply the resulting pounds of nonfat solids by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV as determined pursuant to § 1000.44(b) by the butterfat price;

(e) Add an adjustment for somatic cell content of producer milk determined by multiplying the value reported pursuant to § 1032.30(a)(1) by the percentage of the total producer milk allocated to Class II, Class III, and Class IV pursuant to § 1000.44(c);

(f) Add the amounts obtained from multiplying the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.43(b)(2) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(g) Add the amount obtained from multiplying the difference between the

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Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(h) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (iii) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(i) Add the amount obtained from multiplying the difference between the Class I price and the Class III price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(j) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I pursuant to § 1000.43(d); and

(k) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1000.76(a)(5) or (c).

§ 1032.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. If the unreserved balance in the producer-settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made payments required pursuant to § 1032.71 for the preceding month shall not be included in the computation of the producer price differential. The report of such handler shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1032.60 for all handlers required to file reports prescribed in § 1032.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1032.60 by the protein price, the other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1032.30(a)(1);

(c) Add an amount equal to the sum of the location adjustments computed pursuant to § 1032.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1032.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

§ 1032.62 Announcement of producer prices.

On or before the 11th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The somatic cell adjustment rate;

(f) The average butterfat, protein and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1032.70 Producer-settlement fund.

See § 1000.70 of this chapter.

§ 1032.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 14th day after the end of the month. Payment shall be the amount, if any, by which the amount specified in (a) of this section exceeds the amount specified in (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1032.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1032.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

(3) The total value of the somatic cell adjustment to producer milk; and

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1032.60(i) by the producer price differential as adjusted pursuant to § 1032.75 for the location of the plant from which received.

§ 1032.72 Payments from the producer-settlement fund.

No later than the 15th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1032.71(b) exceeds the amount computed pursuant to § 1032.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1032.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the date of this partial payment, payment shall be made so that it is received by each producer on or before the 26th day of the month for milk received during the first 15 days of the month from the producer at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer; and

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 17th day after the end of the month in an amount equal to not less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1032.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments to such producer; and

(viii) Less deductions for marketing services pursuant to § 1000.86.

(b) *Payments for milk received from cooperative association members.* On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section, each handler shall pay to a cooperative association for milk from producers who market their milk through the cooperative association and who have authorized the cooperative to collect such payments on their behalf an amount equal to the sum of the individual payments otherwise payable for such producer milk pursuant to paragraphs (a)(1) and (a)(2) of this section.

(c) *Payment for milk received from cooperative association pool plants or from cooperatives as handlers pursuant to § 1000.9(c).* On or before the day prior to the dates specified in paragraph (a)(1) and (a)(2) of this section, each handler who receives fluid milk products at its plant from a cooperative association in its capacity as the operator of a pool plant or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1000.9(c), including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, shall pay the cooperative for such milk as follows:

(1) For bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant and for milk received from a cooperative association in its capacity as a handler pursuant to § 1000.9(c) during the first 15 days of the month, at not less than the lowest announced class price per hundredweight for the preceding month;

(2) For the total quantity of bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant, at not less than the total value of such products received from the association's pool plants, as determined by multiplying the respective quantities assigned to each class under § 1000.44, as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I price to be used shall be that price effective at the location of the shipping plant;

(ii) The hundredweight of Class II skim milk times $.70;

(iii) The pounds of nonfat solids received in Class II and Class IV milk times the nonfat solids price for the month;

(iv) The pounds of butterfat received in Class II, Class III, and Class IV milk times the butterfat price for the month;

(v) The pounds of protein received in Class III milk times the protein price for the month;

(vi) The pounds of other solids received in Class III milk times the other solids price for the month;

(vii) The hundredweight of Class II, Class III, and Class IV milk received times the somatic cell adjustment; and

(viii) Add together the amounts computed in paragraphs (c)(2)(i) through (vii) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section.

(3) For the total quantity of milk received during the month from a cooperative association in its capacity as a handler under § 1000.9(c) as follows:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1032.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month; and

(vi) Add together the amounts computed in paragraphs (c)(3)(i) through (v) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section.

(d) If a handler has not received full payment from the market administrator pursuant to § 1032.72 by the payment date specified in paragraph (a), (b) or (c) of this section, the handler may reduce pro rata its payments to producers or to the cooperative association (with respect to receipts described in paragraph (b), prorating the underpayment to the volume of milk received from the cooperative association in proportion to the total milk received from producers by the handler), but not by more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(e) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(f) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

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(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) The somatic cell count of the producer's milk;

(5) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(6) The rate used in making payment if the rate is other than the applicable minimum rate;

(7) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(8) The net amount of payment to the producer or cooperative association.

§ 1032.74 [Reserved]

§ 1032.75 Plant location adjustments for producer milk and nonpool milk.

(a) The producer price differential for producer milk shall be adjusted according to the location of the plant at which the milk was physically received by subtracting from the price differential the amount by which the Class I price specified in § 1032.51 exceeds the Class I price at the plant's location. If the Class I price at the plant location exceeds the Class I price specified in § 1032.51, the difference shall be added to the producer price differential; and

(b) The producer price differential applicable to other source milk shall be adjusted following the procedure specified in paragraph (a) of this section, except that the adjusted producer price differential shall not be less than zero.

§ 1032.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76 of this chapter.

§ 1032.77 Adjustment of accounts.

See § 1000.77 of this chapter.

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See § 1000.78 of this chapter.

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§ 1032.85 Assessment for order administration.

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See § 1000.86 of this chapter.

PART 1033—MILK IN THE MIDEAST MARKETING AREA

Subpart—Order Regulating Handling

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1033.85 Assessment for order administration.
1033.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1033.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter apply to and are hereby made a part of this order.

Definitions

§ 1033.2 Mideast marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Ohio

All of the State of Ohio.

Indiana Counties

Adams, Allen, Bartholomew, Benton, Blackford, Boone, Brown, Carroll, Cass, Clay, Clinton, Dearborn, Decatur, De Kalb, Delaware, Elkhart, Fayette, Fountain, Franklin, Fulton, Grant, Hamilton, Hancock, Hendricks, Henry, Howard, Huntington, Jackson, Jasper, Jay, Jefferson, Jennings, Johnson, Kosciusko, Lagrange, Lake, La Porte, Lawrence, Madison, Marion, Marshall, Miami, Monroe, Montgomery, Morgan, Newton, Noble, Ohio, Owen, Parke, Porter, Pulaski, Putnam, Randolph, Ripley, Rush, Shelby, St. Joseph, Starke, Steuben, Switzerland, Tippecanoe, Tipton, Union, Vermillion, Vigo, Wabash, Warren, Wayne, Wells, White, and Whitley.

Kentucky Counties

Boone, Boyd, Bracken, Campbell, Floyd, Grant, Greenup, Harrison, Johnson, Kenton, Lawrence, Lewis, Magoffin, Martin, Mason, Pendleton, Pike, and Robertson.

Michigan Counties

All counties except Delta, Dickinson, Gogebic, Iron, Menominee, and Ontonagon.

Pennsylvania Counties

Allegheny, Armstrong, Beaver, Butler, Crawford, Erie, Fayette, Greene, Lawrence, Mercer, Venango, and Washington.

In Clarion County only the townships of Ashland, Beaver, Licking, Madison, Perry, Piney, Richland, Salem, and Toby.

All of Westmoreland County except the townships of Cook, Donegal, Fairfield, Ligonier, and St. Clair, and the boroughs of Bolivar, Donegal, Ligonier, New Florence, and Seward.

West Virginia Counties

Barbour, Boone, Brooke, Cabell, Calhoun, Doddridge, Fayette, Gilmer, Hancock, Harrison, Jackson, Kanawha, Lewis, Lincoln, Logan, Marion, Marshall, Mason, Mingo, Monongalia, Ohio, Pleasants, Preston, Putnam, Raleigh, Randolph, Ritchie, Roane, Taylor, Tucker, Tyler, Upshur, Wayne, Wetzel, Wirt, Wood, and Wyoming.

§ 1033.3 Route disposition.

See § 1000.3 of this chapter.

§ 1033.4 Plant.

See § 1000.4 of this chapter.

§ 1033.5 Distributing plant.

See § 1000.5 of this chapter.

§ 1033.6 Supply plant.

See § 1000.6 of this chapter.

§ 1033.7 Pool plant.

Pool plant means a plant, unit of plants, or a system of plants as specified in paragraphs (a) through (f) of this section. The pooling standards described in paragraphs (a), (c), (d), (e), and (f) of this section are subject to modification pursuant to paragraph (g) of this section:

(a) A distributing plant from which during the month:

(1) Total route disposition is equal to 30 percent or more of the total quantity of bulk fluid milk products physically received at the plant;

(2) Route disposition in the marketing area is at least 30 percent of total route disposition.

(3) For purposes of this section, packaged fluid milk products that are transferred to a distributing plant shall be considered as route disposition from the transferring plant, rather than the receiving plant, for the single purpose of qualifying the transferring plant as a pool distributing plant.

(b) A distributing plant located in the marketing area at which the majority of milk received is processed into aseptically packaged fluid milk products unless there are no sales from the plant into any marketing area and the plant operator in writing requests nonpool plant status for the plant for the month.

(c) A supply plant from which the quantity of bulk fluid milk products shipped to, received at, and physically unloaded into plants described in paragraph (a) or (b) of this section as a percent of the Grade A milk received at the plant from dairy farmers (except dairy farmers described in § 1033.12(b)) and handlers described in § 1033.9(c), as reported in § 1033.30(a), is not less than 30 percent of the milk received from dairy farmers, including milk diverted pursuant to § 1033.13, subject to the following conditions:

(1) Qualifying shipments pursuant to this paragraph may be made to the following plants, except whenever the authority provided in paragraph (g) of this section is applied to increase the shipping requirements specified in this section, only shipments to pool plants described in § 1033.7(a) and (b), and units described in § 1033.7(e) shall count as qualifying shipments for the purpose of meeting the increased shipments:

(i) Pool plants described in § 1033.7(a), (b) and (e);

(ii) Plants of producer-handlers;

(iii) Partially regulated distributing plants, except that credit for such shipments shall be limited to the amount of such milk classified as Class I at the transferee plant; and

(iv) Distributing plants fully regulated under other Federal orders, except that credit for transfers to such plants shall be limited to the quantity shipped to pool distributing plants during the month. Qualifying transfers to other order plants shall not include transfers made on the basis of agreed-upon Class II, Class III, or Class IV utilization.

(2) The operator of a supply plant may include deliveries to pool distributing plants directly from farms of producers pursuant to § 1033.13(c) as up to 90 percent of the supply plant's qualifying shipments;

(3) A supply plant that meets the shipping requirements of this paragraph during each of the immediately preceding months of September through February shall be a pool plant during the following months of March through August unless the milk received at the plant fails to meet the requirements of a duly constituted regulatory agency, the plant fails to meet a shipping requirement instituted pursuant to paragraph (f) of this section, or the plant operator requests nonpool status for the plant. Such nonpool status shall be effective on the first day of the month following the receipts of such request and thereafter until the plant again qualifies as a pool plant on the basis of its deliveries to a pool distributing plant(s).

The automatic pool qualification of a plant can be waived if the handler or cooperative requests in writing to the market administrator the nonpool status of such plant. The request must be made prior to the beginning of any month during the March through August period. The plant shall be a nonpool plant for such month and thereafter until it requalifies under paragraph (c) of this section on the basis of actual shipments therefrom. To requalify as a pool plant under paragraph (d), (e) or (f) of this section, such plant must first have met the percentage shipping requirements of paragraph (c) of this section for 6 consecutive months; and

(4) A supply plant that does not meet the minimum delivery requirements specified in this paragraph to qualify for pool status in the current month because a distributing plant to which the supply plant delivered its fluid milk products during such month failed to qualify as a pool plant pursuant to paragraph (a) or (b) of this section shall continue to be a pool plant for the current month if such supply plant qualified as a pool plant in the three immediately preceding months.

(d) A plant operated by a cooperative association if, during the month, 35 percent or more of the producer milk of members of the association is delivered to a distributing pool plant(s) or to a nonpool plant(s), and classification other than Class I is not requested. Deliveries for qualification purposes may be made directly from the farm or by transfer from such association's plant, subject to the following conditions:

(1) The cooperative requests pool status for such plant;

(2) The 35-percent delivery requirement may be met for the current month or it may be met on the basis of deliveries during the preceding 12-month period ending with the current month;

(3) The plant is approved by a duly constituted regulatory authority to handle milk for fluid consumption; and

(4) The plant does not qualify as a pool plant under (a), (b), or (c) of this section or under the similar provisions of another Federal order applicable to a distributing plant or supply plant.

(e) A plant located inside the marketing area which has been a pool plant under this order or its predecessor orders for twelve consecutive months, but is not otherwise qualified under this paragraph, if it has a marketing agreement with a cooperative association and it fulfills the following conditions:

(1) The aggregate monthly quantity supplied by all parties to such an agreement as a percentage of the producer milk receipts included in the unit during the month is not less than 35 percent; and

(2) Shipments for qualification purposes shall include both transfers from supply plants to plants described in paragraph (c)(1) of this section, and deliveries made direct from the farm to plants qualified under paragraph (a) of this section.

(f) A system of supply plants may be qualified for pooling by the association of two or more supply plants operated

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by one or more handlers by meeting the applicable percentage requirements of paragraph (c) of this section in the same manner as a single plant and subject to the following additional requirements:

(1) Each plant in the system is located within the marketing area, or was a pool supply plant for each of the three months immediately preceding the effective date of this paragraph so long as it continues to maintain pool status. Cooperative associations may not use shipments pursuant to § 1033.9(c) to qualify plants located outside the marketing area;

(2) A written notification to the market administrator listing the plants to be included in the system and the handler that is responsible for meeting the performance requirements of this paragraph under a marketing agreement certified to the market administrator by the designated handler and any others included in the system, and the period during which such consideration shall apply. Such notice, and notice of any change in designation, shall be furnished on or before the fifth working day following the month to which the notice applies. The listed plants included in the system shall also be in the sequence in which they shall qualify for pool plant status based on the minimum deliveries required. If the deliveries made are insufficient to qualify the entire system for pooling, the last listed plant shall be excluded from the system, followed by the plant next-to-last on the list, and continuing in this sequence until remaining listed plants have met the minimum shipping requirements; and

(3) Each plant that qualifies as a pool plant within a system shall continue each month as a plant in the system unless the plant subsequently fails to qualify for pooling, or the responsible handler submits a written notification to the market administrator prior to the first day of the month that the plant is to be deleted from the system, or that the system is to be discontinued. In any month of March through August, a system shall not contain any plant which was not qualified under this paragraph, either individually or as a member of a system, during the previous September through February.

(g) The performance standards of paragraphs (a), (c), (d), (e) and (f) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision, either on the market administrator's own initiative or at the request of interested persons. If such investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that a revision is being considered and inviting data, views, and arguments. If the market administrator determines that an adjustment to the shipping percentages is necessary, the market administrator shall notify the industry within one day of the effective date of such adjustment.

(h) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for three consecutive months;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater sales in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) or (d) of this section that also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this order, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

(i) Any plant that qualifies as a pool plant in each of the immediately preceding three months pursuant to paragraph (a) of this section or the shipping percentages in paragraph (c) of this section that is unable to meet such performance standards for the current month because of unavoidable circumstances determined by the market administrator to be beyond the control of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood), fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than two consecutive months.

§ 1033.8 Nonpool plant.

See § 1000.8 of this chapter.

§ 1033.9 Handler.

See § 1000.9 of this chapter.

§ 1033.10 Producer-handler.

Except as provided in paragraph (g) of this section, *producer-handler* means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in excess of 150,000 pounds during the month;

(b) Receives no fluid milk products from sources other than own farm production, pool handlers, and plants fully regulated under another Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month.

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production or pool handlers;

(e) Disposes of no fluid milk products using the distribution system of another handler except for direct deliveries to retail outlets or to a pool handler's plant;

(f) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing, packaging, and distribution operations are the producer-handler's own enterprise and at its own risk; and

(g) Producer-handler shall not include any producer who also operates a distributing plant if the producer-handler so requests that the two be operated as separate entities with the distributing plant regulated under § 1033.7(a) and the farm operated as a producer under § 1033.12.

§ 1033.11 [Reserved]

§ 1033.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1033.13; or

(2) Received by a handler described in § 1033.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1033.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1033.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). Any milk picked up from the producer's farm tank in a tank truck under the control of the operator of a pool plant or a handler described in § 1000.9(c) but which is not received at a plant until the following month shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or by a cooperative association described in § 1033.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion until milk of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under this order (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion until milk of the dairy farmer has been physically received as producer milk at a pool plant;

(2) The equivalent of at least one day's production is caused by the handler to be physically received at a pool plant in each of the months of September through November;

(3) Of the total quantity of producer milk received during the month (including diversions but excluding the quantity of producer milk received from a handler described in § 1000.9(c)), the handler diverted to nonpool plants not more than 60 percent during the months of September through February;

(4) Diverted milk shall be priced at the location of the plant to which diverted;

(5) Any milk diverted in excess of the limits set forth in paragraph (d)(3) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to designate the dairy farmer deliveries which are ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and

(6) The delivery day requirements and the diversion percentages in paragraphs (d)(2) and (d)(3) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1033.14 Other source milk.

See § 1000.14 of this chapter.

§ 1033.15 Fluid milk product.

See § 1000.15 of this chapter.

§ 1033.16 Fluid cream product.

See § 1000.16 of this chapter.

§ 1033.17 [Reserved]

§ 1033.18 Cooperative association.

See § 1000.18 of this chapter.

§ 1033.19 Commercial food processing establishment.

See § 1000.19 of this chapter.

Handler Reports

§ 1033.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on the prescribed forms, as follows:

(a) Each handler that operates a pool plant pursuant to § 1033.7 and each handler described in § 1000.9(c) shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler; and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, and somatic cell information as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been

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producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1033.31 Payroll reports.

(a) On or before the 22nd day after the end of each month, each handler that operates a pool plant pursuant to § 1033.7 and each handler described in § 1033.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1033.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1033.32 Other reports.

In addition to the reports required pursuant to §§ 1033.30 and 1033.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1033.40 Classes of utilization.

See § 1000.40 of this chapter.

§ 1033.41 [Reserved]

§ 1033.42 Classification of transfers and diversions.

See § 1000.42 of this chapter.

§ 1033.43 General classification rules.

See § 1000.43 of this chapter.

§ 1033.44 Classification of producer milk.

See § 1000.44 of this chapter.

§ 1033.45 Market administrator's reports and announcements concerning classification.

See § 1000.45 of this chapter.

Class Prices

§ 1033.50 Class prices and component prices.

See § 1000.50 of this chapter.

§ 1033.51 Class I differential and price.

The Class I differential shall be the differential established for Cuyahoga County, Ohio which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Cuyahoga County, Ohio.

§ 1033.52 Adjusted Class I differentials.

See § 1000.52 of this chapter.

§ 1033.53 Announcement of class prices and component prices.

See § 1000.53 of this chapter.

§ 1033.54 Equivalent price.

See § 1000.54 of this chapter.

Producer Price Differential

§ 1033.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of its pool plants, and of each handler described in § 1033.9(c) as follows:

(a) Class I value.

(1) Multiply the hundredweight of skim milk in Class I as determined pursuant to § 1000.44(a) by the Class I skim milk price applicable at the handler's location; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I as determined pursuant to § 1000.44(b) by the Class I butterfat price applicable at the handler's location;

(b) Add the Class II value computed as follows:

(1) Multiply the hundredweight of skim milk in Class II as determined pursuant to § 1000.44(a) by 70 cents;

(2) Add an amount obtained by multiplying the pounds of skim milk in Class II as determined pursuant to § 1000.44(a) by the average nonfat solids content of producer skim milk received by the handler, and multiply the resulting pounds of nonfat solids by the nonfat solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class II as determined pursuant to § 1000.44(b) by the butterfat price;

(c) Add the Class III value computed as follows:

(1) Multiply the pounds of skim milk in Class III as determined pursuant to § 1000.44(a) by the average protein content of producer skim milk received by the handler, and multiply the resulting pounds of protein by the protein price;

(2) Add an amount obtained by subtracting from the pounds of skim milk in Class III as determined pursuant to § 1000.44(a) the pounds of protein determined in § 1033.60(c)(1) and multiplying the resulting pounds of fluid carrier by a price determined by multiplying 5.7 times the other solids price and dividing the result by 91 (the resulting price, rounded to the 4th decimal place, shall be known as the fluid carrier price); and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III as determined pursuant to § 1000.44(b) by the butterfat price;

(d) Add the Class IV value computed as follows:

(1) Multiply the pounds of skim milk in Class IV as determined pursuant to § 1000.44(a) by the average nonfat solids content of producer skim milk received by the handler, and multiply the resulting pounds of nonfat solids by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV as determined pursuant to § 1000.44(b) by the butterfat price;

(e) Add an adjustment for the somatic cell content of producer milk determined by multiplying the value reported pursuant to § 1033.30(a)(1) by the percentage of the total producer milk allocated to Class II, Class III, and Class IV pursuant to § 1000.44(c);

(f) Add the amounts obtained from multiplying the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.43(b)(2) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(g) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(h) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (iii) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from plants regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(i) Add the amount obtained from multiplying the difference between the Class I price and the Class III price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(j) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I pursuant to § 1000.43(d); and

(k) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1000.76(a)(5) or (c).

§ 1033.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. If the unreserved balance in the producer-settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made payments required pursuant to § 1033.71 for the preceding month shall not be included in the computation of the producer price differential. The report of such handler shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1033.60 for all handlers required to file reports prescribed in § 1033.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, fluid carrier, and butterfat contained in the milk for which an obligation was computed pursuant to § 1033.60 by the protein price, the fluid carrier price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1033.30(a)(1);

(c) Add an amount equal to the sum of the location adjustments computed pursuant to § 1033.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1033.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

§ 1033.62 Announcement of producer prices.

On or before the 13th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The fluid carrier price;

(d) The butterfat price;

(e) The somatic cell adjustment rate;

(f) The average butterfat and protein content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1033.70 Producer-settlement fund.

See § 1000.70 of this chapter.

§ 1033.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 15th day after the end of the month. Payment shall be the amount, if any, by which the amount specified in (a) of this section exceeds the amount specified in (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1033.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1033.75;

(2) An amount obtained by multiplying the total pounds of protein and butterfat contained in producer milk by the protein and butterfat prices, respectively;

(3) An amount obtained by multiplying the total hundredweight of fluid carrier contained in producer milk by the fluid carrier price computed pursuant to § 1033.60(c)(2);

(4) The total value of the somatic cell adjustment to producer milk; and

(5) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1033.60(i) by the producer price differential as adjusted pursuant to § 1033.75 for the location of the plant from which received.

§ 1033.72 Payments from the producer-settlement fund.

No later than the 16th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1033.71(b) exceeds the amount computed pursuant to § 1033.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1033.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the date of this partial payment, payment shall be made so that it is received by each producer on or before the 26th day of the month for milk received during the first 15 days of the month from the producer at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer; and

(2) *Final payment.* For milk received during the month, payment shall be

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made so that it is received by each producer no later than the 17th day after the end of the month in an amount equal to not less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1033.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The hundredweight of fluid carrier received times the fluid carrier price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments to such producer; and

(viii) Less deductions for marketing services pursuant to § 1000.86.

(b) *Payments for milk received from cooperative associations.* On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section, each handler shall pay to a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association.* For bulk fluid milk/skimmed milk received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the partial payment shall be equal to the hundredweight of milk received multiplied by the lowest announced class price for the preceding month;

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk milk/skimmed milk products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available, adjusted for butterfat and plant location;

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* Following the classification of bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment for such receipts shall be not less than an amount computed by multiplying the respective quantities assigned to each class under § 1000.44 by the value calculated pursuant to § 1033.60(a) and location adjustments pursuant to § 1033.75, minus the amount of the payment made to the association pursuant to paragraph (a)(1) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1033.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce payments pursuant to paragraphs (a) and (b) of this section, but not by more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(e) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and fluid carrier contained in the producer's milk;

(4) The average somatic cell count of the producer's milk;

(5) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(6) The rate used in making payment if the rate is other than the applicable minimum rate;

(7) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(8) The net amount of payment to the producer or cooperative association.

§ 1033.74 [Reserved]

§ 1033.75 Plant location adjustments for producer milk and nonpool milk.

(a) The producer price differential for producer milk shall be adjusted according to the location of the plant at which the milk was physically received by subtracting from the price differential the amount by which the Class I price specified in § 1033.51 exceeds the Class I price at the plant's location. If the Class I price at the plant location exceeds the Class I price specified in § 1033.51, the difference shall be added to the producer price differential; and

(b) The producer price differential applicable to other source milk shall be adjusted following the procedure specified in paragraph (a) of this section, except that the adjusted producer price differential shall not be less than zero.

§ 1033.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76 of this chapter.

§ 1033.77 Adjustment of accounts.

See § 1000.77 of this chapter.

§ 1033.78 Charges on overdue accounts.

See § 1000.78 of this chapter.

Administrative Assessment and Marketing Service Deduction

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See § 1000.85 of this chapter.

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PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

Subpart—Order Regulating Handling

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Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1124.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter apply to and are hereby made a part of this order.

Definitions

§ 1124.2 Pacific Northwest marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Washington

All of the State of Washington.

Idaho Counties

Benewah, Bonner, Boundary, Kootenai, Latah, and Shoshone.

Oregon Counties

Benton, Clackamas, Clatsop, Columbia, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Hood River, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Wasco, Washington, Wheeler, and Yamhill.

§ 1124.3 Route disposition.

See § 1000.3 of this chapter.

§ 1124.4 Plant.

See § 1000.4 of this chapter.

§ 1124.5 Distributing plant.

See § 1000.5 of this chapter.

§ 1124.6 Supply plant.

See § 1000.6 of this chapter.

§ 1124.7 Pool plant.

Pool plant means a plant, unit of plants, or a system of plants as specified in paragraphs (a) through (f) of this section. The pooling standards described in paragraphs (a), (c), (d), (e), and (f) of this section are subject to modification pursuant to paragraph (g) of this section:

(a) A distributing plant from which during the month:

(1) Total route disposition is equal to 25 percent of more of the total quantity of bulk fluid milk products physically received at the plant; and

(2) Route disposition in the marketing area is at least 15 percent of total route disposition.

(3) For purposes of this section, packaged fluid milk products that are transferred to a distributing plant shall be considered as route disposition from the transferring plant, rather than the receiving plant, for the single purpose of qualifying the transferring plant as a pool distributing plant.

(b) A distributing plant located in the marketing area at which the majority of milk received is processed into aseptically packaged fluid milk products unless there are no sales from the plant into any marketing area and the plant operator in writing requests nonpool plant status for the plant for the month.

(c) A supply plant from which during any month not less than 20 percent of the total quantity of milk that is physically received at such plant from dairy farmers eligible to be producers pursuant to § 1124.12 (excluding milk received at such plant as diverted milk from another plant, which milk is classified in Class III under this order and is subject to the pricing and pooling provisions of this or another order issued pursuant to the Act) or diverted as producer milk to another plant pursuant to § 1124.13, is shipped in the form of a fluid milk product to a pool distributing plant or is a route disposition in the marketing area of fluid milk products processed and packaged at such plant;

(1) A supply plant that has qualified as a pool plant during each of the immediately preceding months of September through February shall continue to so qualify in each of the following months of March through August, unless the plant operator files a written request with the market administrator that such plant not be a pool plant, such nonpool status to be effective the first month following such request and thereafter until the plant qualifies as a pool plant on the basis of milk shipments;

(2) A cooperative association that operates a supply plant may include as qualifying shipments its deliveries to pool distributing plants directly from farms of producers pursuant to § 1000.9(c);

(3) A pool plant operator may include as qualifying shipments milk diverted to pool distributing plants pursuant to § 1124.13(c);

(4) No plant may qualify as a pool plant due to a reduction in the shipping percentage pursuant to paragraph (g) of this section unless it has been a pool supply plant during each of the immediately preceding three months.

(d)–(f) [Reserved]

(g) The applicable shipping percentages of paragraphs (a) and (c) of this section may be increased or decreased by the market administrator if found necessary to obtain needed shipments or to prevent uneconomic shipments. Before making a finding that a change is necessary the market administrator shall investigate the need for revision, either on the market administrator's own initiative or at the request of interested persons. If such

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investigation shows that a revision might be appropriate, a notice shall be issued stating that a revision is being considered and inviting data, views, and arguments. If the market administrator determines that an adjustment to the shipping percentages is necessary, the market administrator shall notify the industry within one day of the effective date of such adjustment.

(h) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for three consecutive months;

(4) A plant located outside the marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater sales in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area; and

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this order, or the plant has automatic pooling status under the other Federal order.

§ 1124.8 Nonpool plant.

See § 1000.8 of this chapter.

§ 1124.9 Handler.

See § 1000.9 of this chapter.

§ 1124.10 Producer-handler.

Except as provided in paragraph (f) of this section, *producer-handler* means a person who operates a dairy farm and a distributing plant from which there is monthly route disposition within the marketing area in excess of 150,000 pounds during the month and who has been so designated by the market administrator upon determination that all of the requirements of this section have been met, providing that none of the conditions therein for cancellation of such designation exists.

(a) *Requirements for designation.* The producer-handler provides proof satisfactory to the market administrator that:

(1) In its capacity as a dairy farmer, the care and management of the dairy animals and other resources and facilities (designated as such pursuant to paragraph (b)(1) of this section) necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order); and

(2) In its capacity as a handler, the plant operation at which it processes and packages and from which it distributes its own milk production (designated as such pursuant to paragraph (b)(2) of this section) are under the complete and exclusive control and management of the producer-handler and are at its own enterprise and at its sole risk.

(3) The producer-handler neither receives at its designated milk production resources and facilities nor receives, handles, processes or distributes at or through any of its designated milk handling, processing or distributing resources and facilities other source milk products for reconstitution into fluid milk products, or fluid milk products derived from any source other than:

(i) Its designated milk production resources and facilities (own farm production);

(ii) Pool handlers and plants regulated under any Federal order within the limitation specified in paragraph (c)(2) of this section; or

(iii) nonfat milk solids which are used to fortify fluid milk products.

(4) The producer-handler is neither directly nor indirectly associated with the business control or management of, nor has a financial interest in, another handler's operation; nor is any other handler so associated with the producer-handler's operation.

(5) Designation of any person as a producer-handler following a cancellation of its prior designation shall be preceded by performance in accordance with paragraph (a)(1) through (4) of this section for a period of 1 month.

(b) *Designation of resources and facilities.* Designation of a person as a producer-handler shall include the determination and designation of the milk production, handling, processing and distributing resources and facilities, all of which shall be deemed to constitute an integrated operation, as follows:

(1) As milk production resources and facilities. All resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for the production of milk:

(i) Which are directly, indirectly or partially owned, operated or controlled by the producer-handler;

(ii) In which the producer-handler in any way has an interest, including any contractual arrangement; and

(iii) Which are directly, indirectly or partially owned, operated or controlled by any partner or stockholder of the producer-handler. However, for purposes of this paragraph, any such milk production resources and facilities which the producer-handler proves to the satisfaction of the market administrator do not constitute an actual or potential source of milk supply for the producer-handler's operation as such shall not be considered a part of the producer-handler's milk production resources and facilities.

(2) As milk handling, processing and distributing resources and facilities. All resources and facilities (including store outlets) used for handling, processing and distributing any fluid milk product:

(i) Which are directly, indirectly or partially owned, operated or controlled by the producer-handler; or

(ii) In which the producer-handler in any way has an interest, including any contractual arrangement, or with respect to which the producer-handler directly or indirectly exercises any degree of management or control.

(3) All designations shall remain in effect until canceled pursuant to paragraph (c) of this section.

(c) *Cancellation.* The designation as a producer-handler shall be canceled upon determination by the market administrator that any of the requirements of paragraph (a)(1) through (4) of this section are not continuing to be met, or under any of the following conditions:

(1) Milk from the milk production resources and facilities of the producer-handler, designated in paragraph (b)(1) of this section is delivered in the name of another person as producer milk to another handler;

(2) The producer-handler handles fluid milk products derived from sources other than the milk production facilities and resources designated in paragraph (b)(1) of this section, except that it may receive at its plant or acquire for route disposition fluid milk products from fully regulated plants and handlers under any Federal order if such receipts do not exceed 150,000 pounds monthly. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month; or

(3) The producer-handler disposes of fluid milk products using the distribution system of another handler, except for direct deliveries by the producer-handler to retail outlets or to a pool handler's plant.

(4) Cancellation of a producer-handler's status pursuant to this paragraph shall be effective on the first day of the month following the month in which the requirements were not met, or the conditions for cancellation occurred.

(d) *Public announcement.* The market administrator shall publicly announce the name, plant location and farm location(s) of persons designated as producer-handlers, of those whose designations have been canceled, and the effective dates of producer-handler status or loss of producer-handler status for each. Such announcements shall be controlling with respect to the accounting at plants of other handlers for fluid milk products received from any producer-handler.

(e) *Burden of establishing and maintaining producer-handler status.* The burden rests upon the handler who is designated as a producer-handler to establish through records required pursuant to § 1000.5 that the requirements set forth in paragraph (a) of this section have been and are continuing to be met, and that the conditions set forth in paragraph (c) of this section for cancellation of designation do not exist.

(f) *Producer-handler* shall not include any producer who also operates a distributing plant if the producer-handler so requests that the two be operated as separate entities with the distributing plant regulated pursuant to § 1124.7(a) and the farm operated as a producer pursuant to § 1124.12.

§ 1124.11 Cooperative reserve supply unit.

Cooperative reserve supply unit means any cooperative association or its agent that is a handler pursuant to § 1000.9(c) that does not own or operate a plant, if such cooperative has been qualified to receive payments pursuant to § 1124.73 and has been a handler of producer milk under this or its predecessor order during each of the 12 previous months, and if a majority of the cooperative's member producers are located within 125 miles of a pool distributing plant. A cooperative reserve supply unit shall be subject to the following conditions:

(a) The cooperative shall file a request with the market administrator for cooperative reserve supply unit status at least 15 days prior to the first day of the month in which such status is desired to be effective. Once qualified as a cooperative reserve supply unit pursuant to this paragraph, such status shall continue to be effective unless the cooperative requests termination prior to the first day of the month that change of status is requested, or the cooperative fails to meet all of the conditions of this section;

(b) The cooperative reserve supply unit supplies fluid milk products to pool distributing plants located within 125 miles of a majority of the cooperative's member producers in compliance with any announcement by the market administrator requesting a minimum level of shipments as further provided below:

(1) The market administrator may require such supplies of bulk fluid milk from cooperative reserve supply units whenever the market administrator finds that milk supplies for Class I use are needed for plants defined in § 1124.7(a) or (b). Before making such a finding, the market administrator shall investigate the need for such shipments either on the market administrator's own initiative or at the request of interested persons. If the market administrator's investigation shows that such shipments might be appropriate, the market administrator shall issue a notice stating that a shipping announcement is being considered and inviting data, views and arguments with respect to the proposed shipping announcement.

(2) Failure of a cooperative reserve supply unit to comply with any announced shipping requirements, including making any significant change in the unit's marketing operation that the market administrator determines has the impact of evading or forcing such an announcement, shall result in immediate loss of cooperative reserve supply unit status until such time as the unit has been a handler pursuant to § 1000.9(c) for at least 12 consecutive months.

§ 1124.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1124.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1124.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I;

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order; and

(5) A dairy farmer whose milk, at any time during the month, has been pooled under a State milk order.

§ 1124.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). Any milk picked up from the producer's farm tank in a tank truck under the control of the operator of a pool plant or a handler described in § 1000.9(c) but which is not received at a plant until the following month shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Of the quantity of producer milk received during the month (including diversions, but excluding the quantity of producer milk received from a handler described in § 1000.9(c)) the handler diverts to nonpool plants not more than 65 percent during the months of

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September through November and January, and not more than 75 percent during the months of February through August and December;

(3) Diverted milk shall be priced at the location of the plant to which diverted;

(4) Any milk diverted in excess of the limits prescribed in paragraph (d)(2) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler or cooperative association during the month to a nonpool plant shall be producer milk; and

(5) The applicable diversion limits in paragraph (d)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments.

Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1124.14 Other source milk.

See § 1000.14 of this chapter.

§ 1124.15 Fluid milk product.

See § 1000.15 of this chapter.

§ 1124.16 Fluid cream product.

See § 1000.16 of this chapter.

§ 1124.17 [Reserved]

§ 1124.18 Cooperative association.

See § 1000.18 of this chapter.

§ 1124.19 Commercial food processing establishment.

See § 1000.19 of this chapter.

Handler Reports

§ 1124.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 9th day after the end of the month, in the detail and on the prescribed forms, as follows:

(a) Each handler that operates a pool plant pursuant to § 1124.7 and each handler described in § 1000.9(c) shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, and pounds of solids-not-fat other than protein (other solids) contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handler; and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, and other nonfat solids, as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1124.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1124.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1124.73(f).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1124.32 Other reports.

In addition to the reports required pursuant to §§ 1124.30 and 1124.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1124.40 Classes of utilization.

See § 1000.40 of this chapter.

§ 1124.41 [Reserved]

§ 1124.42 Classification of transfers and diversions.

See § 1000.42 of this chapter.

§ 1124.43 General classification rules.

See § 1000.43 of this chapter.

§ 1124.44 Classification of producer milk.

See § 1000.44 of this chapter.

§ 1124.45 Market administrator's reports and announcements concerning classification.

See § 1000.45 of this chapter.

Class Prices

§ 1124.50 Class prices and component prices.

See § 1000.50 of this chapter.

§ 1124.51 Class I differential and price.

The Class I differential shall be the differential established for King County, Washington, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for King County, Washington.

§ 1124.52 Adjusted Class I differentials.

See § 1000.52 of this chapter.

§ 1124.53 Announcement of class prices and component prices.

See § 1000.53 of this chapter.

§ 1124.54 Equivalent price.

See § 1000.54 of this chapter.

Producer Price Differential

§ 1124.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of its pool plants, and of each handler described in § 1000.9(c) as follows:

(a) Class I value.

(1) Multiply the hundredweight of skim milk in Class I as determined pursuant to § 1000.44(a) by the Class I skim milk price applicable at the handler's location; and

(2) Add an amount obtained by multiplying the pounds of butterfat in

Class I as determined pursuant to § 1000.44(b) by the Class I butterfat price applicable at the handler's location.

(b) Add the Class II value, computed as follows:

(1) Multiply the hundredweight of skim milk in Class II as determined pursuant to § 1000.44(a) by 70 cents;

(2) Add an amount obtained by multiplying the pounds of skim milk in Class II as determined pursuant to § 1000.44(a) by the average nonfat solids content of producer skim milk received by the handler, and multiply the resulting pounds of nonfat solids by the nonfat solids price;

(3) Add an amount obtained by multiplying the pounds of butterfat in Class II as determined pursuant to § 1000.44(b) by the butterfat price;

(c) Add the Class III value computed as follows:

(1) Multiply the pounds of skim milk in Class III as determined pursuant to § 1000.44(a) by the average protein content of producer skim milk received by the handler, and multiply the resulting pounds of protein by the protein price;

(2) Add an amount obtained by multiplying the pounds of skim milk in Class III as determined pursuant to § 1000.44(a) by the average other solids content of producer skim milk received by the handler, and multiply the resulting pounds of other solids by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III as determined pursuant to § 1000.44(b) by the butterfat price;

(d) Add the Class IV value computed as follows:

(1) Multiply the pounds of skim milk in Class IV as determined pursuant to § 1000.44(a) by the average nonfat solids content of producer skim milk received by the handler, and multiply the resulting pounds of nonfat solids by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV as determined pursuant to § 1000.44(b) by the butterfat price;

(e) Add the amounts obtained from multiplying the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.43(b)(2) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(f) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(g) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (iii) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(h) Add the amount obtained from multiplying the difference between the Class I price and the Class III price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(i) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicale at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I pursuant to § 1000.43(d); and

(j) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1000.76(a)(5) or (c).

§ 1124.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. If the unreserved balance in the producer-settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made payments required pursuant to § 1124.71 for the preceding month shall not be included in the computation of the producer price differential. The report of such handler shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1124.60 for all handlers required to file reports prescribed in § 1124.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1124.60 by the protein price, the other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the sum of the location adjustments computed pursuant to § 1124.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1124.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

§ 1124.62 Announcement of producer prices.

On or before the 14th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The average butterfat, protein and other solids content of producer milk; and

(f) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

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Payment for Milk

§ 1124.70 Producer-settlement fund.

See § 1000.70 of this chapter.

§ 1124.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 16th day after the end of the month. Payment shall be the amount, if any, by which the amount specified in (a) of this section exceeds the amount specified in (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1124.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1124.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively; and

(3) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1124.60(i) by the producer price differential as adjusted pursuant to § 1124.75 for the location of the plant from which received.

§ 1124.72 Payments from the producer-settlement fund.

No later than the 18th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1124.71(b) exceeds the amount computed pursuant to § 1124.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1124.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 18th day of the month, partial payment shall be made so that it is received by each producer on or before the last day of the month for milk received during the first 15 days of the month from the producer at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer; and

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 19th day after the end of the month in an amount equal to not less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1124.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) Less any payment made pursuant to paragraph (a)(1) of this section;

(vi) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments to such producer; and

(vii) Less deductions for marketing services pursuant to § 1000.86.

(b) *Payments for milk received from cooperative association members.* On or before the 2nd day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section, each handler shall pay to a cooperative association for milk from producers who market their milk through the cooperative association and who have authorized the cooperative to collect such payments on their behalf an amount equal to the sum of the individual payments otherwise payable for such producer milk pursuant to paragraphs (a)(1) and (a)(2) of this section.

(c) *Payment for milk received from cooperative association pool plants or from cooperatives as handlers pursuant to § 1000.9(c).* On or before the 2nd day prior to the dates specified in paragraph (a)(1) and (a)(2) of this section, each handler who receives fluid milk products at its plant from a cooperative association in its capacity as the operator of a pool plant or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1000.9(c), including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, shall pay the cooperative for such milk as follows:

(1) For bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant and for milk received from a cooperative association in its capacity as a handler pursuant to § 1000.9(c) during the first 15 days of the month, at not less than the lowest announced class price per hundredweight for the preceding month;

(2) For the total quantity of bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant, at not less than the total value of such products received from the association's pool plants, as determined by multiplying the respective quantities assigned to each class under § 1000.44, as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I price to be used shall be that price effective at the location of the shipping plant;

(ii) The hundredweight of Class II skim milk times $ .70;

(iii) The pounds of nonfat solids received in Class II and Class IV milk times the nonfat solids price for the month;

(iv) The pounds of butterfat received in Class II, Class III, and Class IV milk times the butterfat price for the month;

(v) The pounds of protein received in Class III milk times the protein price for the month;

(vi) The pounds of other solids received in Class III milk times the other solids price for the month; and

(vii) Add together the amounts computed in paragraphs (c)(2)(i) through (vi) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section.

(3) For the total quantity of milk received during the month from a cooperative association in its capacity as a handler under § 1000.9(c) as follows:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1124.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month; and

(v) Add together the amounts computed in paragraphs (c)(3)(i) through (iv) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section.

(d) If a handler has not received full payment from the market administrator pursuant to § 1124.72 by the payment date specified in paragraph (a), (b) or (c) of this section, the handler may reduce pro rata its payments to producers or to the cooperative association (with respect to receipts described in paragraph (b), prorating the underpayment to the volume of milk received from the cooperative association in proportion to the total milk received from producers by the handler), but not by more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(e) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(f) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(5) The rate used in making payment if the rate is other than the applicable minimum rate;

(6) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(7) The net amount of payment to the producer or cooperative association.

§ 1124.74 [Reserved]

§ 1124.75 Plant location adjustments for producer milk and nonpool milk.

(a) The producer price differential for producer milk shall be adjusted according to the location of the plant at which the milk was physically received by subtracting from the price differential the amount by which the Class I price specified in § 1124.51 exceeds the Class I price at the plant's location. If the Class I price at the plant location exceeds the Class I price specified in § 1124.51, the difference shall be added to the producer price differential; and

(b) The producer price differential applicable to other source milk shall be adjusted following the procedure specified in paragraph (a) of this section, except that the adjusted producer price differential shall not be less than zero.

§ 1124.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76 of this chapter.

§ 1124.77 Adjustment of accounts.

See § 1000.77 of this chapter.

§ 1124.78 Charges on overdue accounts.

See § 1000.78 of this chapter.

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See § 1000.85 of this chapter.

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PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

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1126.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1126.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order.

Definitions

§ 1126.2 Southwest marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part

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thereof is within any of the listed states or political subdivisions:

New Mexico and Texas

All of the States of New Mexico and Texas.

Colorado Counties

Archuleta, LaPlata, and Montezuma.

§ 1126.3 Route disposition.

See § 1000.3 of this chapter.

§ 1126.4 Plant.

See § 1000.4 of this chapter.

§ 1126.5 Distributing plant.

See § 1000.5 of this chapter.

§ 1126.6 Supply plant.

See § 1000.6 of this chapter.

§ 1126.7 Pool plant.

Pool plant means a plant specified in paragraphs (a) through (d) of this section, or a unit of plants as specified in paragraph (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (a), (c), and (d) of this section are subject to modification pursuant to paragraph (f) of this section:

(a) A distributing plant from which during the month the total route disposition is equal to 25 percent or more of the total quantity of fluid milk products physically received at such plant and route disposition in the marketing area is at least 15 percent of total route distribution. Packaged fluid milk products that are transferred to a distributing plant and which are classified as Class I milk shall be considered as route disposition from the transferring plant, rather than the receiving plant, for the single purpose of determining the transferring plant's pool status under this paragraph.

(b) A distributing plant located in the marketing area at which the majority of milk received is processed into aseptically packaged fluid milk products unless there are no sales from the plant into any marketing area and the plant operator in writing requests nonpool status for the plant for the month.

(c) A supply plant from which 50 percent of the total quantity of milk that is physically received during the month from dairy farmers and handlers described in § 1000.9(c) is transferred to pool distributing plants.

(d) A plant located within the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month at least 30 percent of the producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product from the cooperative's plant.

(e) Two or more plants operated by the same handler and located within the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements specified in paragraph (a) of this section and the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit, or to add or remove plants from a unit, must be filed with the market administrator prior to the first day of the month for which it is to be effective.

(f) The applicable percentages in paragraphs (a), (c), and (d) of this section may be increased or decreased up to 10 percentage points by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the date for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant qualified pursuant to paragraph (a) of this section that is located within the marketing area if the plant also meets the pooling requirements of another Federal order, and more than 50 percent of its route distribution has been in such other Federal order marketing area for 3 consecutive months;

(4) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area that meets the pooling requirements of another Federal order and has had greater sales in such other Federal order's marketing area for 3 consecutive months;

(5) A plant qualified pursuant to paragraph (a) of this section that is located in another Federal order marketing area if the plant meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) or (d) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this order, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a pool plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in writing by the handler and must be approved by the market administrator.

§ 1126.8 Nonpool plant.

See § 1000.8 of this chapter.

§ 1126.9 Handler.

See § 1000.9 of this chapter.

§ 1126.10 Producer-handler.

Except as provided in paragraph (g) of this section, *producer-handler* means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in excess of 150,000 pounds during the month;

(b) Receives no fluid milk products from sources other than own farm production, pool handlers, and plants fully regulated under another Federal order.

(c) Receives no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order, including such products received at a location other than the producer-handler's processing plant for distribution on routes. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month.

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production or pool handlers;

(e) Disposes of no fluid milk products using the distribution system of another handler except for direct deliveries to retail outlets or to a pool handler's plant;

(f) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing, packaging, and distribution operations are the producer-handler's own enterprise and at its own risk; and

(g) Producer-handler shall not include any producer who also operates a distributing plant if the producer-handler so requests that the two be operated as separate entities with the distributing plant regulated under § 1126.7(a) and the farm operated as a producer under § 1126.12.

§ 1126.11 [Reserved]

§ 1126.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1126.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1126.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and the milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1126.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat contained in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). Any milk picked up from the producer's farm tank in a tank truck under the control of the operator of a pool plant or a handler described in § 1000.9(c) but which is not received at a plant until the following month shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator for the account of the handler operating such plant to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a handler described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a producer whose dairy farm is located outside the marketing area shall not be eligible for diversion unless at least 15% of the producer's milk is physically received at a pool plant during the month;

(2) The total quantity of milk so diverted during the month by a cooperative association shall not exceed the total quantity of producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month;

(3) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to this paragraph. The total quantity of milk so diverted during the month shall not exceed the total quantity of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1126.7(e)) during the month;

(4) Any milk diverted in excess of the limits prescribed in paragraphs (d)(2) and (3) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that will not be producer milk, no milk diverted by the handler or cooperative association shall be producer milk;

(5) Diverted milk shall be priced at the location of the plant to which diverted; and

(6) The delivery day requirements in paragraph (d)(1) and the diversion percentages in paragraphs (d)(2) and (3) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1126.14 Other source milk.

See § 1000.14 of this chapter.

§ 1126.15 Fluid milk product.

See § 1000.15 of this chapter.

§ 1126.16 Fluid cream product.

See § 1000.16 of this chapter.

§ 1126.17 [Reserved]

§ 1126.18 Cooperative association.

See § 1000.18 of this chapter.

§ 1126.19 Commercial food processing establishment.

See § 1000.19 of this chapter.

Handler Reports

§ 1126.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 8th day after the end of the month, in the detail and on prescribed forms, as follows:

(a) Each pool plant operator and each handler described in § 1000.9(c), shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of nonfat solids other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p) contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler; and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

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(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products; and

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information, as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler not specified in paragraphs (a) or (b) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1126.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1126.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information specified in § 1126.73(e);

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1126.32 Other reports.

In addition to the reports required pursuant to §§ 1126.30 and 1126.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1126.40 Classes of utilization.

See § 1000.40 of this chapter.

§ 1126.41 [Reserved]

§ 1126.42 Classification of transfers and diversions.

See § 1000.42 of this chapter.

§ 1126.43 General classification rules.

See § 1000.43 of this chapter.

§ 1126.44 Classification of producer milk.

See § 1000.44 of this chapter.

§ 1126.45 Market administrator's reports and announcements concerning classification.

See § 1000.45 of this chapter.

Class Prices

§ 1126.50 Class prices and component prices.

See § 1000.50 of this chapter.

§ 1126.51 Class I differential and price.

The Class I differential shall be the differential established for Dallas County, Texas, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Dallas County, Texas.

§ 1126.52 Adjusted Class I differentials.

See § 1000.52 of this chapter.

§ 1126.53 Announcement of class prices and component prices.

See § 1000.53 of this chapter.

§ 1126.54 Equivalent price.

See § 1000.54 of this chapter.

Producer Price Differential

§ 1126.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) as follows:

(a) Class I value.

(1) Multiply the hundredweight of skim milk in Class I as determined pursuant to § 1000.44(a) by the Class I skim milk price applicable at the handler's location; and

(2) Add an amount obtained by multiplying the total pounds of butterfat in Class I as determined pursuant to § 1000.44(b) by the Class I butterfat price applicable at the handler's location.

(b) Add the Class II value, computed as follows:

(1) Multiply the hundredweight of milk in Class II as determined pursuant to § 1000.44(a) by 70 cents;

(2) Add an amount obtained by multiplying the pounds of skim milk in Class II as determined pursuant to § 1000.44(a) by the average nonfat solids content of producer skim milk received by the handler, and multiplying the resulting pounds of nonfat solids by the nonfat solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class II as determined pursuant to § 1000.44(b) by the butterfat price.

(c) Add the Class III value, computed as follows:

(1) Multiply the pounds of skim milk in Class III as determined pursuant to § 1000.44(a) by the average protein content of producer skim milk received by the handler, and multiply the resulting pounds of protein by the protein price;

(2) Add an amount obtained by multiplying the pounds of skim milk in Class III as determined pursuant to § 1000.44(a) by the average other solids content of producer skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III as determined pursuant to § 1000.44(b) by the butterfat price.

(d) Add the Class IV value, computed as follows:

(1) Multiply the pounds of skim milk in Class IV as determined pursuant to § 1000.44(a) by the average nonfat solids content of producer skim milk received by the handler, and multiply the resulting pounds of nonfat solids by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV as determined pursuant to § 1000.44(b) by the butterfat price.

(e) Add an adjustment for somatic cell content of producer milk as determined by multiplying the value reported pursuant to § 1126.30(a)(1) by the percentage of the total producer milk allocated to Class II, Class III, and Class IV pursuant to § 1000.44(c).

(f) Add the amounts obtained from multiplying the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.43(b)(2) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(g) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(h) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (iii) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(i) Add the amount obtained from multiplying the difference between the Class I price and the Class III price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(j) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d); and

(k) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(5) or (c).

§ 1126.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. If the unreserved balance in the producer-settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made payments required pursuant to § 1126.71 for the preceding month shall not be included in the computation of the producer price differential. The report of such handler shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1126.60 for all handlers required to file reports prescribed in § 1126.30;

(b) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1126.60 by the protein price, other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1126.30(a)(1);

(c) Add an amount equal to the sum of the location adjustments computed pursuant to § 1126.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1126.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

§ 1126.62 Announcement of producer prices.

On or before the 13th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The somatic cell adjustment rate;

(f) The average butterfat, nonfat solids, protein, and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1126.70 Producer-settlement fund.

See § 1000.70 of this chapter.

§ 1126.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 16th day after the end of the month. Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1126.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1126.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

(3) The total value of the somatic cell adjustment to producer milk; and

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1126.60(i) by the producer price differential as adjusted pursuant to § 1126.75 for the location of the plant from which received.

§ 1126.72 Payments from the producer-settlement fund.

No later than the 17th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1126.71(b) exceeds the amount computed pursuant to § 1126.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1126.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 23rd day of the

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month, payment shall be made so that it is received by the producer on or before the 26th day of the month for milk received during the first 15 days of the month at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer; and

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 18th day after the end of the month in an amount computed as follows:

(i) Multiply the hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1126.75;

(ii) Multiply the pounds of butterfat received times the butterfat price for the month;

(iii) Multiply the pounds of protein received times the protein price for the month;

(iv) Multiply the pounds of other solids received times the other solids price for the month;

(v) Multiply the hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Add the amounts computed in paragraph (a)(2)(i) through (v) of this section, and from that sum:

(A) Subtract the partial payment made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) On or before the day prior to the dates specified for partial and final payments pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association.* For bulk milk/skimmed milk received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be equal to the hundredweight of milk received multiplied by the lowest announced class price for the preceding month;

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk milk/skimmed milk products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available, adjusted for butterfat value and plant location;

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* Following the classification of bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment for such receipts shall be determined as follows:

(i) Multiply the hundredweight of Class I skim milk by the Class I skim milk price for the month applicable at the location of the shipping plant;

(ii) Multiply the pounds of Class I butterfat by the Class I butterfat price for the month applicable at the location of the shipping plant;

(iii) Multiply the hundredweight of Class II skim milk by $.70;

(iv) Multiply the pounds of nonfat solids received in Class II and Class IV milk by the nonfat solids price for the month;

(v) Multiply the hundredweight of butterfat in Class II, III, and IV milk by the butterfat price for the month;

(vi) Multiply the pounds of protein received in Class III milk by the protein price for the month;

(vii) Multiply the pounds of other solids received in Class III milk by the other solids price for the month;

(viii) Multiply the hundredweight of Class II, Class III, and Class IV milk received times the somatic cell adjustment;

(ix) Add together the amounts computed in paragraph (b)(3)(i) through (viii) of this section and from that sum deduct any payment made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1126.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce pro rata its payments to producers or to cooperative associations pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and the payroll number of the producer;

(2) The month and dates that milk was received from the producer, including the daily and total pounds of milk received;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) The somatic cell count of the producer's milk;

(5) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(6) The rate used in making payment if the rate is other than the applicable minimum rate;

(7) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(8) The net amount of payment to the producer or cooperative association.

§ 1126.74 [Reserved]

§ 1126.75 Plant location adjustments for producer milk and nonpool milk.

(a) The producer price differential for producer milk shall be adjusted according to the location of the plant at which the milk was physically received by subtracting from the price differential the amount by which the Class I price specified in § 1126.51 exceeds the Class I price at the plant's location. If the Class I price at the plant location exceeds the Class I price specified in § 1126.51, the difference shall be added to the producer price differential; and

(b) The producer price differential applicable for other source milk shall be adjusted following the procedure specified in paragraph (a) of this section, except that the adjusted producer price differential shall not be less than zero.

§ 1126.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76 of this chapter.

§ 1126.77 Adjustment of accounts.

See § 1000.77 of this chapter.

§ 1126.78 Charges on overdue accounts.

See § 1000.78 of this chapter.

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§ 1126.85 Assessment for order administration.

See § 1000.85 of this chapter.

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See § 1000.86 of this chapter.

PART 1131—MILK IN ARIZONA-LAS VEGAS MARKETING AREA

Subpart—Order Regulating Handling

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Subpart—Order Regulating Handling

General Provisions

§ 1131.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter apply to and are hereby made a part of this order.

Definitions

§ 1131.2 Arizona-Las Vegas marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Arizona

All of the State of Arizona.

Nevada Counties

Clark.

§ 1131.3 Route disposition.

See § 1000.3 of this chapter.

§ 1131.4 Plant.

See § 1000.4 of this chapter.

§ 1131.5 Distributing Plant.

See § 1000.5 of this chapter.

§ 1131.6 Supply Plant.

See § 1000.6 of this chapter.

§ 1131.7 Pool plant.

Pool Plant means a plant or unit of plants specified in paragraphs (a) through (e) of this section. The pooling standards described in paragraphs (a), (c), and (d) of this section are subject to modification pursuant to paragraph (f) of this section.

(a) A distributing plant from which during the month there is route disposition equal to 25 percent or more of the total quantity of bulk fluid milk products physically received at such plant; and route disposition in the marketing area of at least 15 percent of total route disposition. For purposes of this section, packaged fluid milk products that are transferred to a distributing plant shall be considered as route disposition from the transferring plant, rather than the receiving plant, for the single purpose of qualifying the transferring plant as a pool distributing plant.

(b) A distributing plant located in the marketing area which during the month processes a majority of its receipts of milk products into aseptically packaged fluid milk products. If during the month the plant had no route disposition into any federal milk order the plant operator may request nonpool status for such plant for the month.

(c) A supply plant from which 50% or more of the total quantity of milk that is physically received at such plant from dairy farmers and handlers described in § 1000.9(c) is transferred to pool distributing plants.

(d) A plant located within the marketing area and operated by a cooperative association if, during the month, or the immediately preceding 12-month period, 35 percent or more of the producer milk of members of the association (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products at plants specified in paragraph (a) or (b) of this section either directly from farms or by transfer from supply plants operated by the cooperative association

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and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b) or (c) or this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(e) Two or more plants operated by the same handler and located in the marketing area may qualify for pool plant status as a unit by together meeting the requirements specified in paragraph (a) of this section and subject to all of the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process Class I or Class II products, using 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator in Class I or Class II products, and must be located in a pricing zone providing the same or lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section;

(3) A written request to form a unit must be filed by the handler with the market administrator prior to the first day of the month for which such status is desired to be effective. The unit shall continue from month to month thereafter without further notification. The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

(f) The applicable percentages in paragraphs (a), (b), (c), and (d) of this section may be increased or decreased by the market administrator if found necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision, either on the market administrator's own initiative or at the request of interested parties. If such investigation shows that a revision might be appropriate, a notice shall be issued stating that a revision adjustment is being considered and inviting data, views, and arguments. If the market administrator determines that an adjustment to the shipping percentages is necessary, the market administrator shall notify the industry within one day of the effective date of such adjustment.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in § 1000.8(e).

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) or (e) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for three consecutive months.

(4) A plant located outside the marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order or a State order providing for marketwide pooling, and has had greater sales in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this order, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

§ 1131.8 Nonpool plant.

See § 1000.8 of this chapter.

§ 1131.9 Handler.

See § 1000.9 of this chapter.

§ 1131.10 Producer-handler.

Except as provided in paragraph (g) of this section, *producer-handler* means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in excess of 150,000 pounds during the month;

(b) Receives no fluid milk products from sources other than own farm production, pool handlers, and plants fully regulated under another Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month.

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production or pool handlers;

(e) Disposes of no fluid milk products using the distribution system of another handler except for direct deliveries to retail outlets or to a pool handler's plant;

(f) Does not distribute fluid milk products to a wholesale customer who also is serviced by a handler described in § 1000.9(a) or (d) that supplied the same product in the same-sized package with a similar label to the wholesale customer during the month;

(g) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing, packaging, and distribution operations are the producer-handler's own enterprise and at its own risk; and

(h) Producer-handler shall not include any producer who also operates a distributing plant if the producer-handler so requests that the two be operated as separate entities with the distributing plant regulated under § 1131.7(a) and the farm operated as a producer under § 1131.12.

§ 1131.11 [Reserved]

§ 1131.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1131.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1131.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I;

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order; and

(5) A dairy farmer whose milk is received at a pool plant if during the month milk from the same farm is received at a nonpool plant (except a nonpool plant that has no utilization or milk products in any class other than Class III or Class IV) other than as a diversion under this or some other Federal order.

§ 1131.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk) and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). Any milk picked up from the producer's farm tank in a tank truck under the control of the operator of the pool plant or a handler described in § 1000.9(c) but which is not received at a plant until the following month shall be considered as having been received by the handler during the month in which it was picked up at the producer's farm. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received.

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants.

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least one day's production of such dairy farmer is physically received at a pool plant during the month;

(2) The total quantity of milk diverted by a handler in any month shall not exceed 20 percent of the total producer milk caused by the handler to be received at pool plants or diverted;

(3) Diverted milk shall be priced at the location of the plant to which diverted;

(4) Any milk diverted in excess of the limits prescribed in (d)(2) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler or cooperative association during the month to a nonpool plant shall be producer milk. In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by such producer as producer milk during the month will not be subject to § 1131.12(b)(5); and

(5) The applicable diversion limits in paragraph (d)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1131.14 Other source milk.

See § 1000.14 of this chapter.

§ 1131.15 Fluid milk product.

See § 1000.15 of this chapter.

§ 1131.16 Fluid cream product.

See § 1000.16 of this chapter.

§ 1131.17 [Reserved]

§ 1131.18 Cooperative association.

See § 1000.18 of this chapter.

§ 1131.19 Commercial food processing establishment.

See § 1000.19 of this chapter.

Handler Reports

§ 1131.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office received the report on or before the 7th day after the end of the month, in the detail and on the forms prescribed by the market administrator, as follows:

(a) With respect to each of its pool plants, the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the plant operator to other plants;

(2) Receipts of milk from handlers described in § 1000.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products; and

(6) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler described in § 1131.10 shall report:

(1) The pounds of milk received from each of the handler's own-farm production units, showing separately the production of each farm unit and the number of dairy cows in production at each farm unit;

(2) Fluid milk products and bulk fluid cream products received at its plant or acquired for route disposition from pool plants, other order plants, and handlers described in § 1000.9(c);

(3) Receipts of other source milk not reported pursuant to paragraph (d)(2) of this section;

(4) Inventories at the beginning and end of the month of fluid milk products and fluid cream products; and

(5) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

(e) Each handler not specified in paragraphs (a) through (d) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1131.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler

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described in § 1000.9(a) and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) The producer's name and address;

(2) The total pounds of milk received from the producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1131.32 Other reports.

In addition to the reports required pursuant to § 1131.30 and § 1131.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1131.40 Classes of utilization.

See § 1000.40 of this chapter.

§ 1131.41 [Reserved]

§ 1131.42 Classification of transfers and diversions.

See § 1000.42 of this chapter.

§ 1131.43 General classification rules.

See § 1000.43 of this chapter.

§ 1131.44 Classification of producer milk.

See § 1000.44 of this chapter.

§ 1131.45 Market administrator's reports and announcements concerning classification.

See § 1000.45 of this chapter.

Class Prices

§ 1131.50 Class prices, component prices, Class I differential and price.

Class prices and component prices are described in § 1000.50. The Class I differential shall be the differential established for Maricopa County, Arizona, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Maricopa County, Arizona.

§ 1131.51 [Reserved]

§ 1131.52 Adjusted Class I differentials.

See § 1000.52 of this chapter.

§ 1131.53 Announcement of class prices and component prices.

See § 1000.53 of this chapter.

§ 1131.54 Equivalent price.

See § 1000.54 of this chapter.

Uniform Price

§ 1131.60 Handler's value of milk.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) as follows:

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) by the applicable skim milk and butterfat prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.43(b)(2) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (iii), and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(e) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding steps of § 1000.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(f) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d);

(g) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1000.76(a)(5) or (c).

§ 1131.61 Computation of uniform price, uniform butterfat price and uniform skim milk price.

(a) For each month the market administrator shall compute the uniform price per hundredweight. If the unreserved balance in the producer-settlement fund to be included in the computation is less than two cents per hundredweight of producer milk on all reports, the report of any handler who has not made payments required pursuant to § 1131.71 for the preceding month shall not be included in the computation of the uniform price. The report of such handler shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the uniform price in the following manner:

(1) Combine into one total the values computed pursuant to § 1131.60 for all handlers required to file reports prescribed in § 1131.30;

(2) Add an amount equal to the sum of the location adjustments computed pursuant to § 1131.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Add or subtract, as the case may be, to obtain an all-producer milk test of 3.5% butterfat, the value of the required pounds of butterfat times the uniform butterfat price computed pursuant to paragraph (b) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk;

(ii) The total hundredweight for which a value is computed pursuant to § 1131.60(f); and

(6) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the uniform price for milk received from producers during the month.

(b) *Uniform butterfat price.* The Uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be obtained by multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices (Class I butterfat price for Class I and the butterfat price for all other classes) and dividing the sum of such values by the total pounds of such butterfat.

(c) *Uniform skim milk price.* The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be the uniform price for the month computed pursuant to paragraph (a) of this section, less the uniform butterfat price for the month computed pursuant to paragraph (b) of this section multiplied by 3.5, with the result divided by .965.

§ 1131.62 Announcement of uniform price, uniform butterfat price and uniform skim milk price.

On or before the 11th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The uniform price computed pursuant to § 1131.61 for such month;

(b) The uniform butterfat price computed pursuant to § 1131.61(b) for such month; and

(c) The uniform skim milk price computed pursuant to § 1131.61(c) for such month.

Payments for Milk

§ 1131.70 Producer-settlement fund.

See § 1000.70 of this chapter.

§ 1131.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 13th day after the end of the month. Payments due the market administrator shall be deemed not to have been made until the money owed has been received at the market administrator's office, or deposited into the market administrator's bank account. Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1131.60.

(b) The sum of:

(1) The value at the uniform prices for skim milk and butterfat, adjusted for plant location, of the handler's receipts of producer milk; and

(2) The value at the uniform price as adjusted pursuant to § 1131.75 applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1131.60(e).

§ 1131.72 Payments from the producer-settlement fund.

No later than the 14th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1131.71(b) exceeds the amount computed pursuant to § 1131.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1131.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraphs (b) and (c) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) *Partial Payment.* For each producer who has not discontinued shipments as of the 25th day of the month, payment shall be made so that it is received by the producer on or before the 27th day of each month to each producer who did not discontinue shipping milk to such handler before the 25th day of the month, for milk received from such producer during the first 15 days of the month at not less than 1.3 times the lowest class price for the preceding month, adjusted for plant location pursuant to § 1131.75 and proper deductions authorized in writing by the producer; and

(2) *Final Payment.* On or before the 15th day of the following month, not less than an amount computed by the sum of the following:

(i) The hundredweight of producer milk received times the uniform price for the month as adjusted pursuant to § 1131.75;

(ii) The hundredweight of producer skim milk received times the uniform skim milk price for the month;

(iii) The pounds of producer butterfat received times the uniform butterfat price for the month;

(iv) Less payments made pursuant to paragraph (a) of this section;

(v) Less deductions made for marketing service pursuant to § 1000.86;

(vi) Plus or minus adjustments for errors made in previous payments to such producer; and

(vii) Less proper deductions authorized in writing by such producer.

(b) Two days prior to the dates on which partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association.* On or before the 25th day of the month each handler shall pay to a cooperative association that the market administrator determines is authorized by its members to collect payment for their milk, an amount not less than 1.3 times the lowest class price for the preceding month multiplied by the hundredweight of milk received during the first 15 days of the month from such cooperative association, including the milk of producers not members of such cooperative association who the market administrator determines have authorized the cooperative association to collect payment for their milk;

(2) *Final Payment to a cooperative association.* On or before the 13th day of the following month, each handler shall pay to a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk not less than an amount computed pursuant to paragraph (a)(2) of this section for milk received from such cooperative association during the month, including the milk of producers not members of such cooperative association who the market administrator determines have authorized the cooperative association to collect payment for their milk;

(c) If a handler has not received full payment from the market administrator pursuant to § 1131.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce pro rata his payments pursuant to such paragraphs, but by not more than the amount of such underpayment. Payments to producers shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made

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because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund. In the event the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or the lawful claimant, as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a handler described in § 1000.9(a) or (c), a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month, and identity of the producer;

(2) The daily and total pounds and the total pounds of butterfat content of producer milk;

(3) The minimum rate at which payment to the producer is required pursuant to this order;

(4) The rate used in making payments if the rate is other than the applicable minimum rate;

(5) The amount, rate per hundredweight, and nature of each deduction claimed by the handler; and

(6) The net amount of payment to the producer.

§ 1131.74 [Reserved]

§ 1131.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk shall be adjusted according to the location of the plant at which the milk was first physically received by subtracting from the price the amount by which the Class I price specified in § 1131.50 exceeds the Class I price at the plant's location. If the Class I price at the plant location exceeds the Class I price specified in § 1131.50, the difference shall be added to the uniform price; and

(b) The uniform price applicable to other source milk shall be adjusted following the procedure specified in paragraph (a) of this section, except that the adjusted uniform price shall not be less than the lowest announced class price.

§ 1131.76 Payments by handler operating a partially regulated distributing plant.

See § 1000.76 of this chapter.

§ 1131.77 Adjustment of accounts.

See § 1000.77 of this chapter.

§ 1131.78 Charges on overdue accounts.

See § 1000.78 of this chapter.

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See § 1000.85 of this chapter.

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See § 1000.86 of this chapter.

PART 1134—MILK IN THE WESTERN MARKETING AREA

Subpart—Order Regulating Handling

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Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1134.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter apply to and are hereby made a part of this order.

Definitions

§ 1134.2 Western marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Utah

All of the State of Utah.

Colorado Counties

Delta, Garfield, Mesa, and Montrose.

Idaho Counties

Ada, Adams, Bannock, Bear Lake, Bingham, Blaine, Boise, Bonneville, Camas, Canyon, Caribou, Cassia, Elmore, Franklin, Gem, Gooding, Jefferson, Jerome, Lincoln, Madison, Minidoka, Oneida, Owyhee, Payette, Power, Twin Falls, Valley, and Washington.

Nevada Counties

Elko, Lincoln, and White Pine.

Oregon Counties

Baker, Grant, Harney, Malheur, and Union.

Wyoming Counties

Lincoln and Uinta.

§ 1134.3 Route disposition.

See § 1000.3 of this chapter.

§ 1134.4 Plant.

See § 1000.4 of this chapter.

§ 1134.5 Distributing plant.

See § 1000.5 of this chapter.

§ 1134.6 Supply plant.

See § 1000.6 of this chapter.

§ 1134.7 Pool plant.

Pool Plant means a plant or unit of plants specified in paragraphs (a) through (e) of this section. The pooling standards described in paragraphs (a), (c), and (d) of this section are subject to modification pursuant to paragraph (f) of this section.

(a) A distributing plant from which during the month there is route disposition equal to 25 percent or more of the total quantity of bulk fluid milk products physically received at such plant and there is route disposition in the marketing area of at least 15 percent of total route disposition. For purposes of this section, packaged fluid milk products that are transferred to a distributing plant shall be considered as route disposition from the transferring plant, rather than the receiving plant, for the single purpose of determining the pool status of the transferring plant under this section.

(b) A distributing plant located in the marketing area which during the month processes a majority of its receipts of milk products into aseptically packaged fluid milk products. If during the month the plant had no route disposition into any federal milk order the plant operator may request nonpool status for such plant for the month.

(c) A supply plant from which during the month the quantity of bulk fluid milk products transferred or diverted to plants described in paragraph (a) or (b) of this section is 35 percent of more of the total Grade A milk received at the plant from dairy farmers (except dairy farmers described in § 1134.12(b)) and handlers described in § 1000.9(c), including milk diverted by the plant operator, subject to the following conditions:

(1) A supply plant that has qualified as a pool plant during each of the immediately preceding months of September through February shall continue to so qualify in each of the following months of March through August unless the plant operator files a written request with the market administrator that such plant not be a pool plant, such nonpool status to be effective the first month following such request. A plant withdrawn from pool supply plant status may not be reinstated for any subsequent month of the March through July period unless it qualifies as a pool plant on the basis of milk shipments;

(2) A pool plant operator may include as qualifying shipments milk diverted to pool distributing plants pursuant to § 1134.13(c);

(3) No plant may qualify as a pool plant due to a reduction in the shipping percentage pursuant to paragraph (f) of this section unless it has been a pool supply plant during each of the immediately preceding three months.

(d) A milk manufacturing plant located within the marketing area that is operated by a cooperative association if, during the month or the immediately preceding 12-month period ending with the current month, 35% or more of such cooperative's member producer milk (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products at plants specified in paragraph (a) or (b) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b) or (c) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(e) Two or more plants located in the marketing area and operated by the same handler may qualify for pool plant status as a unit by together meeting the requirements specified in paragraph (a) of this section and subject to the following additional requirements:

(1) At least one of the plants in the unit must individually qualify as a pool plant pursuant to paragraph (a) of this section.

(2) Other plants in the unit must process Class I or Class II products, using 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator in Class I or Class II products, and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit must be filed by the handler with the market administrator prior to the first day of the month for which such status is to be effective. The unit shall continue from month to month thereafter without further notification. The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

(f) The applicable percentages in paragraphs (a), (c), and (d) of this section may be increased or decreased by the market administrator if found necessary to obtain needed shipments or to prevent uneconomic shipments. Before making a finding that a change is necessary, the market administrator shall investigate the need for revision, either on the market administrator's own initiative or at the request of interested persons. If such investigation shows that a revision might be appropriate, a notice shall be issued stating that such a revision is being considered and inviting written data, views, and arguments. If the market administrator determines that an adjustment to the shipping percentages is necessary, the market administrator shall notify the industry within one day of the effective date of such adjustment.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in 1000.8(e).

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) or (e) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for three consecutive months;

(4) A plant located outside the marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater sales in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this order, or the plant

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has automatic pooling status under the other Federal order; and

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

§ 1134.8 Nonpool plant.

See § 1000.8 of this chapter.

§ 1134.9 Handler.

See § 1000.9 of this chapter.

§ 1134.10 Producer-handler.

Except as provided in paragraph (g) of this section, *producer-handler* means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in excess of 150,000 pounds during the month;

(b) Receives no fluid milk products from sources other than own farm production, pool handlers, and plants fully regulated under another Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month.

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production or pool handlers;

(e) Disposes of no fluid milk products using the distribution system of another handler except for direct deliveries to retail outlets or to a pool handler's plant;

(f) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing, packaging, and distribution operations are the producer-handler's own enterprise and at its own risk; and

(g) Producer-handler shall not include any producer who also operates a distributing plant if the producer-handler so requests that the two be operated as separate entities with the distributing plant regulated under § 1134.7(a) and the farm operated as a producer under § 1134.12.

§ 1134.11 Proprietary bulk tank handler.

(a) Any person, except a cooperative association, with respect to milk that it receives for its account from the farm of a producer in a tank truck owned and operated by, or under the control of, such person and which is delivered during the month for the account of such person to the pool plant of another handler or diverted pursuant to § 1134.13, subject to the following conditions:

(1) Such person (who, if qualified pursuant to this paragraph, shall be known as a *proprietary bulk tank handler*) must operate a plant located in the marketing area at which milk is processed only into Class II, Class III, or Class IV products; and

(2) Prior to operating as a handler pursuant to this paragraph, such person must submit to the marker administrator a statement signed by the applicant and the operator of the pool plant to which the milk will be delivered specifying that the applicant will be the responsible handler for the milk.

§ 1134.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1134.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is delivered to an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1134.13(d);

(3) A dairy farmer whose milk is diverted to a pool plant by a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

(5) A dairy farmer whose milk was received at a pool plant if during the month milk from the same farm was received at a nonpool plant (except a nonpool plant that has no utilization of milk products in any Class other than Class III or Class IV) other than as a diversion under this or some other Federal order.

§ 1134.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer, by a handler described in § 1000.9(c), or by a handler described in § 1134.11. Any milk picked up from the producer's farm tank in a tank truck under the control of the operator of the pool plant or a handler described in § 1000.9(c) but which is not received at a plant until the following month shall be considered as having been received by the handler during the month in which it was picked up at the producer's farm. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) or in § 1134.11 in excess of the quantity delivered to pool plants.

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant, a cooperative association described in § 1000.9(c), or a proprietary bulk tank handler described in § 1134.11, to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least one day's milk production of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under this order (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion until milk of the dairy farmer has been physically received as producer milk at a pool plant;

(2) Of the quantity of producer milk received during the month (including diversions) the handler diverts to nonpool plants not more than 80 percent;

(3) Diverted milk shall be priced at the location of the plant to which diverted;

(4) Any milk diverted in excess of the limits prescribed in (d)(2) of this section shall not be producer milk. If the diverting handler, cooperative association, or proprietary bulk tank handler fails to designate the dairy farmers' deliveries that are not to be

producer milk, no milk diverted by the handler, cooperative association, or proprietary bulk tank handler during the month to a nonpool plant shall be producer milk. In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by such producer as producer milk during the month will not be subject to § 1134.12(b)(5); and

(5) The applicable diversion limits in paragraph (d)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1134.14 Other source milk.

See § 1000.14 of this chapter.

§ 1134.15 Fluid milk product.

See § 1000.15 of this chapter.

§ 1134.16 Fluid cream product.

See § 1000.16 of this chapter.

§ 1134.17 [Reserved]

§ 1134.18 Cooperative association.

See § 1000.18 of this chapter.

§ 1134.19 Commercial food processing establishment.

See § 1000.19 of this chapter.

Handler Reports

§ 1134.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator receives the report on or before the 7th day after the end of each month, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler that operates a pool plant pursuant to § 1134.7, and each handler described in § 1000.9(c) or in § 1134.11, shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, nd pounds of solids-not-fat other than protein (other solids), contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handler; and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, and other nonfat solids, as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1134.31 Payroll reports.

(a) On or before the 21st day after the end of each month, each handler that operates a pool plant pursuant to § 1134.7 and each handler described in § 1000.9(c) and in § 1134.11 shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1134.73(f).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1134.32 Other reports.

In addition to the reports required pursuant to §§ 1134.30 and 1134.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1134.40 Classes of utilization.

See § 1134.40 of this chapter.

§ 1134.41 [Reserved]

§ 1134.42 Classification of transfers and diversions.

See § 1000.42 of this chapter.

§ 1134.43 General classification rules.

See § 1000.43 of this chapter.

§ 1134.44 Classification of producer milk.

See § 1000.44 of this chapter.

§ 1134.45 Market administrator's reports and announcements concerning classification.

See § 1000.45 of this chapter.

Class Prices

§ 1134.50 Class prices and component prices.

See § 1000.50 of this chapter.

§ 1134.51 Class I differential and price.

The Class I differential shall be the differential established at Salt Lake County, Utah, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Salt Lake County, Utah.

§ 1134.52 Adjusted Class I differentials.

See § 1000.52 of this chapter.

§ 1134.53 Announcement of class prices and component prices.

See § 1000.53 of this chapter.

§ 1134.54 Equivalent price.

See § 1000.54 of this chapter.

Producer Price Differential

§ 1134.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of its pool plants, and of each handler described in § 1000.9(c) and § 1134.11 as follows:

(a) Class I value.

(1) Multiply the hundredweight of skim milk in Class I as determined pursuant to § 1000.44(a) by the Class I skim milk price applicable at the handler's location; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I as determined pursuant to § 1000.44(b) by the Class I butterfat price applicable at the handler's location.

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(b) Add the Class II value, computed as follows:

(1) Multiply the hundredweight of skim milk in Class II as determined pursuant to § 1000.44(a) by 70 cents;

(2) Add an amount obtained by multiplying the pounds of skim milk in Class II as determined pursuant to § 1000.44(a) by the average nonfat solids content of producer skim milk received by the handler, and multiply the resulting pounds of nonfat solids by the nonfat solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class II as determined pursuant to § 1000.44(b) by the butterfat price;

(c) Add the Class III value computed as follows:

(1) Multiply the pounds of skim milk in Class III as determined pursuant to § 1000.44(a) by the average protein content of producer skim milk received by the handler, and multiply the resulting pounds of protein by the protein price;

(2) Add an amount obtained by multiplying the pounds of skim milk in Class III as determined pursuant to § 1000.44(a) by the average other solids content of producer skim milk received by the handler, and multiply the resulting pounds of other solids by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III as determined pursuant to § 1000.44(b) by the butterfat price;

(d) Add the Class IV value computed as follows:

(1) Multiply the pounds of skim milk in Class IV as determined pursuant to § 1000.44(a) by the average nonfat solids content of producer skim milk received by the handler, and multiply the resulting pounds of nonfat solids by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV as determined pursuant to § 1000.44(b) by the butterfat price;

(e) [Reserved]

(f) Add the amounts obtained from multiplying the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.43(b)(2) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(g) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(h) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (iii) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(i) Add the amount obtained from multiplying the difference between the Class I price and the Class III price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(j) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I pursuant to § 1000.43(d); and

(k) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1000.76(a)(5) or (c).

§ 1134.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. If the unreserved balance in the producer-settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made payments required pursuant to § 1134.71 for the preceding month shall not be included in the computation of the producer price differential. The report of such handler shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1134.60 for all handlers required to file reports prescribed in § 1134.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1134.60 by the protein price, the other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the sum of the location adjustments computed pursuant to § 1134.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1134.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

§ 1134.62 Announcement of producer prices.

On or before the 12th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) [Reserved]

(f) The average butterfat, protein and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1134.70 Producer-settlement fund.

See § 1000.70 of this chapter.

§ 1134.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 14th day after the end of the month. Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1134.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1134.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

(3) [Reserved]

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1134.60(i) by the producer price differential as adjusted pursuant to § 1134.75 for the location of the plant from which received.

§ 1134.72 Payments from the producer-settlement fund.

No later than the 15th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1134.71(b) exceeds the amount computed pursuant to § 1134.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1134.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) and (c) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) *Partial Payment.* On or before the 25th day of each month to each producer an amount not less than 1.2 times the lowest class price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph; and

(2) *Final Payment.* On or before the 17th day of the following month, not less than an amount computed by the sum of the following:

(i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1134.75;

(ii) The pounds of butterfat in producer milk received times the butterfat price for the month;

(iii) The pounds of protein in producer milk received times the protein price for the month;

(iv) The pounds of other solids in producer milk received times the other solids price for the month;

(v) [Reserved]

(vi) Less any payments made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments to such producer; and

(viii) Less deductions made for marketing service pursuant to § 1000.86;

(b) *Partial payment to a cooperative association.* On or before the 24th day of each month each handler shall pay to a cooperative association, which the market administrator determines is authorized by its members to collect payment for their milk, an amount not less than 1.2 times the lowest class price for the preceding month multiplied by the hundredweight of milk received during the first 15 days of the month from such cooperative association, including the milk of producers not members of such cooperative association who the market administrator determines have authorized the cooperative association to collect payment for their milk;

(c) *Final Payment to a cooperative association.* On or before the 16th day of the following month, each handler shall pay to a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk not less than an amount computed pursuant to paragraph (a)(2) of this section for milk received from such cooperative association during the month, including the milk of producers not members of such cooperative association who the market administrator determines have authorized the cooperative association to collect payment for their milk;

(d) If a handler has not received full payment from the market administrator pursuant to § 1134.72 by the payment date specified in paragraph (a), (b), or (c) of this section, the handler may reduce pro rata its payments to producers or to the cooperative association by not more than the amount of such underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(e) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer settlement fund, and in the event the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(f) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) [Reserved];

(5) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(6) The rate used in making payment if the rate is other than the applicable minimum rate;

(7) The amount, or rate per hundredweight, or rate per pounds of component, and the nature of each deduction claimed by the handler; and

(8) The net amount of payment to the producer or cooperative association.

§ 1134.74 [Reserved]

§ 1134.75 Plant location adjustments for producer milk and nonpool milk.

(a) The producer price differential for producer milk shall be adjusted according to the location of the plant at

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which the milk was first physically received by subtracting from the price differential the amount by which the Class I price specified in § 1134.51 exceeds the Class I price at the plant's location. If the Class I price at the plant location exceeds the Class I price specified in § 1134.51, the difference shall be added to the producer price differential; and

(b) The producer price differential applicable to other source milk shall be adjusted following the procedure specified in paragraph (a) of this section, except that the adjusted producer price differential shall not be less than zero.

§ 1134.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76 of this chapter.

§ 1134.77 Adjustment of accounts.

See § 1000.77 of this chapter.

§ 1134.78 Charges on overdue accounts.

See § 1000.78 of this chapter.

Administrative Assessment and Marketing Service Deduction

§ 1134.85 Assessment for order administration.

See § 1000.85 of this chapter.

§ 1134.86 Deduction for marketing services.

See § 1000.86 of this chapter.

Dated: January 21, 1998.

Michael V. Dunn,

Assistant Secretary for Marketing and Regulatory Programs.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A: Summary of Preliminary Suggested Order Consolidation Report

Ten marketing areas are suggested in the preliminary consolidation report. As a means of determining where interrelationships among the current marketing areas are strongest, data relating to the receipts and distribution of fluid milk products by distributing plants were gathered for all known distributing plants located in the 47 contiguous States, not including the State of California, for the month of October 1995. At this time, California is not included as a suggested order area. The 1996 Farm Bill allows for the inclusion of a California Federal milk order if California producers petition for and approve an order. If a California order were included in the suggested Federal order structure at a later time, it would encompass the entire State and would include no area outside the State of California. Although interest in a Federal order has been expressed by some California producer groups, no definite action has been taken.

An analysis of the distribution and procurement patterns of the fluid processing plants, along with other factors, was used to determine which order areas were most closely related. Proposals submitted by the public were also taken into account. The primary criteria used in determining which markets exhibit a sufficient degree of association in terms of sales, procurement, and structural relationships to warrant consolidation were:

1. Overlapping route disposition.
2. Overlapping areas of milk supply.
3. Number of handlers within a market.
4. Natural boundaries.
5. Cooperative association service areas.
6. Features common to existing orders, such as similar multiple component pricing payment plans.
7. Milk utilization in common dairy products.

The requirement to consolidate existing marketing areas does not specify expansion of regulation to previously nonfederally regulated areas where such expansion would have the effect of regulating handlers not currently regulated. However, a number of the current marketing areas enclose unregulated areas. These "pockets" are included in the suggested merged marketing areas only if their inclusion does not change the current regulatory status of a plant. In the process of consolidating marketing areas, some handlers who currently are partially regulated may become fully regulated because their sales in a combined marketing area will likely meet the pooling standards of a suggested consolidated order. Further expansion of the marketing areas, which would result in regulating additional handlers, is an issue that should be addressed by the industry. Proposals to take such action should be accompanied by supporting data, views, and arguments concerning the need and basis for any such expansion.

The 10 suggested consolidated marketing areas and the major reasons for consolidation are:

1. Northeast

Current marketing areas of the New England, New York-New Jersey, and Middle Atlantic Federal milk orders. Reasons for consolidation include the existence of overlapping sales and procurement areas between New England and New York-New Jersey and between New York-New Jersey and Middle Atlantic. The orders are also surrounded by nonfederally regulated territory. A further measure of association is evident by industry efforts to study and pursue consolidation of the three Federal orders, as well as some of the nonfederally regulated territory, prior to the 1996 Farm Bill.

2. Appalachian

Current marketing areas of the Carolina and Tennessee Valley Federal milk orders, and a portion of the Louisville-Lexington-Evansville Federal milk order. Overlapping sales and procurement areas between these marketing areas are major factors for supporting such a consolidation.

3. Florida

Current marketing areas of the Upper Florida, Tampa Bay, and Southeastern Florida Federal milk orders. Natural boundary limitations and overlapping sales and procurement areas among the three orders are major reasons for consolidation, as well as a measure of association evidenced by cooperative association proposals to consolidate these three marketing areas. Further, the cooperative associations in this area have worked together for a number of years to accommodate needed movements of milk between the three Florida Federal orders.

4. Southeast

Current marketing area of the Southeast Federal milk order, plus 1 county from the Louisville-Lexington-Evansville Federal milk order marketing area, 15 currently unregulated Kentucky counties, and 2 currently unregulated northeast Texas counties. Major reasons for this consolidation include sales and procurement area overlaps between the Southeast order and the Kentucky and Texas counties suggested for inclusion. There is minimal sales area overlap with handlers regulated under other Federal orders.

5. Mideast

Current marketing areas of the Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan, and Indiana Federal milk orders, plus most of the current marketing area of the Louisville-Lexington-Evansville Federal milk order, Zone 2 of the Michigan Upper Peninsula Federal milk order, and 12 counties of the Southern Illinois-Eastern Missouri Federal milk order. Major criteria suggesting this consolidation include the overlap of fluid sales in the Ohio Valley marketing area by handlers from the other areas suggested to be consolidated. With the consolidation, most route disposition by handlers located within the suggested Mideast order would be within the marketing area. Also, nearly all milk produced within the area would be pooled under the consolidated order. The portion of the Michigan Upper Peninsula marketing area suggested to be included in the Mideast consolidated area has sales and milk procurement areas in common with the Southern Michigan area and has minimal association with the western end of the current Michigan Upper Peninsula marketing area.

6. Upper Midwest

Current marketing areas of the Chicago Regional and Upper Midwest Federal milk orders, plus Zones I and I(a) of the Michigan Upper Peninsula Federal milk order and seven unregulated or partly unregulated Wisconsin counties. Major consolidation criteria include an overlapping procurement area between the Chicago Regional and Upper Midwest orders, overlapping procurement and route disposition area between the western end of the Michigan Upper Peninsula order and the Chicago Regional order, natural boundary limitations, and the prevalence of cheese as a major manufactured product for the substantial reserve milk supplies that exceed fluid milk needs.

7. Central

Current marketing areas of the Southern Illinois-Eastern Missouri (less 12 counties included in the suggested Mideast marketing area), Central Illinois, Greater Kansas City, Nebraska-Western Iowa (less 11 currently-regulated counties suggested to be unregulated), Eastern South Dakota, Iowa, Southwest Plains, and Eastern Colorado Federal milk orders, plus 63 currently-unregulated counties in seven of the states. Major criteria suggesting this consolidation include the overlapping procurement and route disposition between the current orders. The suggested consolidation would result in a concentration of both the sales and supplies of milk within the consolidated marketing area. The suggested consolidation would combine several relatively small orders and provide for the release of market data without revealing proprietary information. In addition, most of the producers in these areas share membership in several common cooperatives.

8. Southwest

Current marketing areas of the Texas, New Mexico-West Texas, and Central Arizona Federal milk orders. Major criteria suggesting consolidation include sales and procurement area overlaps and common cooperative association membership between the Texas and New Mexico-West Texas marketing areas, and similar marketing concerns with respect to trade with Mexico for all three orders. In addition, there is some route disposition by Central Arizona handlers into the New Mexico-West Texas marketing area, and the Central Arizona market contains a small number of handlers.

9. Western

Current marketing areas of the Western Colorado, Southwestern Idaho-Eastern Oregon, and Great Basin Federal milk orders. Major criteria suggesting consolidation include overlapping sales between Southwestern Idaho-Eastern Oregon and Great Basin, as well as a significant overlap in procurement for the two orders in five Idaho counties. The two orders also share a similar multiple component pricing plan. The Western Colorado order is included because it is a small market where data cannot be released without revealing confidential information unless combined with the adjacent Great Basin order.

10. Pacific Northwest

Current marketing area of the Pacific Northwest Federal milk order plus 1 currently-unregulated county in Oregon. The degree of association with other marketing areas is insufficient to warrant consolidation.

Following is a table summarizing relevant data for the consolidated markets:

CONSOLIDATED MARKET SUMMARY

[Based on October 1995 data]

Consolidated order	Total producer milk (1,000 lbs.)	Number of fully regulated distributing plants	Combined class I utilization (percent)
Northeast	1,934,833	85	46.7
Appalachian	320,198	25	82.5
Florida	200,397	18	88.3
Southeast	443,921	38	84.3
Mideast	[1] 1,140,952	68	57.8
Upper Midwest	[2] 1,046,539	[4] 27	34.2
Central	[3] 932,929	42	50.6
Southwest	861,307	31	48.3
Western	304,793	14	[5] 31.7
Pacific Northwest	501,257	23	36.3
Total	7,687,126	371	n/a

[1] Producer milk for F.O. 44 is included. Producer milk for a F.O. 32 handler who would be pooled under the suggested Mideast market is included in the Central consolidated market.
[2] Producer milk for F.O. 30 and F.O. 68 only.
[3] Producer milk for a F.O. 32 handler that would be in the Mideast consolidated market is included.
[4] A significant amount of producer milk was not pooled in October 1995. Estimated total producer milk would result in a 15.3% combined Class I utilization.
[5] A significant amount of producer milk was not pooled in October 1995. Estimated total producer milk would result in a 21.8% combined Class I utilization.

Appendix B: Summary of Pricing Options

Several options for modifying Class I pricing under the Federal milk market order program, representing a spectrum of views, are discussed in this summary report. The accompanying technical report summarizes all of the comments and proposals received by the Department related to Class I pricing under Federal orders.

Most Class I pricing concepts that were suggested would continue to employ a market-driven basic formula price (BFP) with an added differential. Differentials are a composite of one or more of the following elements: (1) A fixed component, (2) a location adjustment, (3) an adjustor relating to utilization, or (4) the cost of balancing the market. Based on the pricing concepts received, the following options were developed:

Option 1A: Location-Specific Differential

$1.60 per hundredweight fixed differential for three surplus regions (Upper Midwest, West, and Southwest) within a nine-zone national price surface, plus for the other six zones an added component that reflects regional differences in the value of fluid and manufacturing milk.

Option 1B: Modified Location-Specific Differential Option

$1.00 per hundredweight fixed differential plus an added component that reflects the cost of moving bulk milk to deficit markets.

Option 2: Relative Use Differential

$1.60 per hundredweight fixed differential plus a formula-based differential driven by the ratio of Class I milk to all other uses of milk.

Option 3A: Flat Differential Option

$1.60 per hundredweight flat differential, uniformly applied across all orders to generate an identical minimum Class I price.

Option 3B: Flat Differential Modified by Class I Use—

$2.00 per hundredweight differential in markets where Class I utilization is less than 70 percent on an annual basis and a differential equal to $2.00 + $0.075(Class I use %—70%) in markets where the Class I utilization is equal to or exceeds 70 percent.

Option 4: Demand-Based Differential—

$1.00 per hundredweight fixed differential plus a transportation credit based on location of reserve milk supplies.

Estimated Class I differentials are presented for each option to provide a preliminary basis for determining impacts that may occur. The report provides estimated differentials for the suggested 10

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consolidated orders and for the current 32 Federal milk marketing orders.

The report concludes by soliciting comments on the options presented and poses a series of questions for the public to address when submitting comments back to the Department on the issue of Class I pricing.

Appendix C: Summary of Classification Report

The Agricultural Marketing Agreement Act of 1937 provides that all milk should be classified "in accordance with the form in which or the purpose for which it is used." This has resulted in a system of uniform classification provisions that places milk used for fluid purposes in the highest use class, Class I, and other manufactured products in lower classes, Classes II, III, and III–A.

Currently products packaged for fluid consumption such as whole milk, skim milk, buttermilk, and flavored milk drinks are classified as Class I products. Class II products include ice cream, yogurt, cottage cheese, and cream. Class III and Class III–A products include cheese, butter, and nonfat dry milk.

Among the changes in classification recommended in the technical report are the following:

- Eggnog would be reclassified from Class II to Class I.
- Any fluid beverage having less than 6.5 percent nonfat milk solids would be reclassified from Class II to Class I.
- Cream cheese would be reclassified from Class III to Class II.

The technical report recommends changing the classification of milk used in nonfat dry milk from Class III–A to Class III. The report recommends that if Class III–A pricing is not eliminated, the following four alternatives be considered:

- Place a floor beneath the Class III–A price;
- Restrict III–A pricing to certain months or to certain markets;
- Provide an up-charge for nonfat dry milk used in higher-valued products; or
- Provide for a combination of these options.

Maintaining the classification of milk used to make nonfat dry milk in Class III–A is also an option, although not discussed in the technical report.

The technical report addresses Class III–A pricing because of industry concerns about the substitution of nonfat dry milk for fluid milk in Class II and III uses when the Class III–A price is substantially below the Class III price.

Appendix D: Summary of Identical Provisions Report

Federal milk marketing orders contain numerous provisions that establish the regulations for the operation of the orders. Over the years, the orders have been individualized to account for specific situations associated with a given marketing area. However, there are several provisions within the orders that are similar or that could be similar and still provide for efficient and orderly marketing of milk.

The technical report does the following:

- Suggests a model for establishing the consolidated orders and provides suggestions on the order language that can be adopted uniformly throughout all orders.
- Reviewed, simplified, modified, and eliminated differences in order provisions that:
  - Define various terms used in the orders
  - Establish regulatory standards for plants and handlers
  - Provide for uniform reporting dates of milk receipts and utilization
  - Provide for uniform dates for payment of milk
  - Provide for computation of a uniform price
- Reduces performance standards to make it easier for producers to associate with a market.

At this time, it is impossible to determine if there would be any financial impact on producers, handlers, or consumers as a result of any of these suggested provision revisions. It is projected that there will be little impact on the overall program because the changes primarily provide for uniformity. There may be minimal impact on selected individual producers, handlers, or consumers, but this cannot be determined until more specific information is developed regarding the orders (i.e., marketing area and pricing). The suggested identical provisions will be applied to each of the suggested consolidated orders and determinations will be based on the marketing conditions of the given region.

One suggested change in the report that may stimulate some debate is the definition of a producer-handler. The technical report suggests applying the most liberal standard to the producer-handler definition to prevent any producer-handler from becoming regulated as a result of milk order reform. Producer-handlers have been exempt from full regulation because they assume the full risks associated with being a producer and a distributor of milk produced with only occasional and small volumes of milk being purchased from other dairy farmers.

Appendix E: Summary of Basic Formula Price Report

The basic formula price (BFP) is used to determine Federal order prices for milk used in manufactured products and, with the addition of differentials, to determine minimum Class I and II prices for milk pooled under the Federal orders. The current BFP is based on a survey of prices paid for manufacturing grade (Grade B) milk by plants in Minnesota and Wisconsin, updated by month-to-month changes in commodity prices (especially cheese). The continuing decline in the volume of Grade B milk produced in the upper Midwest and nationally is an indication that, in the near future, the M–W price series may not be statistically reliable as an indicator of the value of milk used in manufactured products.

The BFP Committee has received input provided during a public BFP Forum held in Madison, Wisconsin, and from over 200 written public comments, and conducted a survey of transaction prices for manufactured dairy products. The Committee also has sponsored analysis by a group of university researchers, and conducted extensive study and analysis of its own. The BFP Committee evaluated alternatives to the BFP against the criteria of stability, predictability, simplicity, uniformity, transparency, sound economics and reduced regulation. Options identified by the Committee were grouped into the following categories:

Options Considered: Economic formulas, Product price and component formulas, Futures markets, California pricing, Cost of production, Informal rulemaking, Competitive pay price, Pooling differentials only.

At this time, the Committee has identified four options for further discussion and debate:

- A four-class, multiple component pricing plan to price butterfat, protein and lactose used in cheese (Class III), and butterfat and nonfat solids used in butter/powder (Class IV).
- A three-class, multiple component pricing plan to price protein used in cheese, butterfat used in butter, and other nonfat solids used in powder (Class III—one manufacturing class).
- A product price formula computed from the butter, powder and cheese shares of U.S. production, using seasonal product yields and a California cost-based make allowance; and
- A competitive pay price series using a national weighted average price paid for Grade A milk used in manufactured products, updated by a product price formula. The price series would contain an adjuster to attempt to remove the effect of current regulation and to reduce it to a level more comparable to the current BFP.

As a basis for Class I prices, the BFP could be made more stable by using an economic formula or using a moving average of a manufacturing price. Class II prices could be based on components or continue to include a differential from the manufacturing price level.

The BFP Committee is continuing to study and analyze alternatives in response to public comments.

Appendix F: Summary of Revised Preliminary Suggested Order Consolidation Report

The ten marketing areas suggested in the initial preliminary consolidation report have increased to eleven and been modified to some extent in this revised preliminary report. Several of the initially suggested marketing areas were the subjects of numerous comments containing information that indicated that the boundaries of those areas should be re-evaluated. In addition, shifts in regulation and distributing plant distribution areas were known to have occurred. As a result, more detailed and updated (January 1997) data was obtained relating to the receipts of producer milk and distribution of fluid milk products by distributing plants in a number of the initially-suggested order marketing areas. As a result, changes were made in the suggested marketing areas of the Northeast, Appalachian, Southeast, Mideast, Upper Midwest, Central, Southwest, and Western

regions, and a new Arizona-Las Vegas area was added.

An analysis of the distribution and procurement patterns of the fluid processing plants, along with other factors, was used to determine which order areas were most closely related. Proposals submitted by the public were also taken into account. The primary criteria used in determining which markets exhibit a sufficient degree of association in terms of sales, procurement, and structural relationships to warrant consolidation continued to be:

1. Overlapping route disposition.
2. Overlapping areas of milk supply.
3. Number of handlers within a market.
4. Natural boundaries.
5. Cooperative association service areas.
6. Features common to existing orders, such as similar multiple component pricing plans.
7. Milk utilization in common dairy products.

In the initial preliminary report, it was observed that the Farm Bill requirement to consolidate existing marketing areas does not specify expansion of regulation to previously non-Federally regulated areas where such expansion would have the effect of regulating handlers not currently regulated. This revised preliminary report suggests that some currently non-Federally regulated area be added on the basis of comments supported by data, views and arguments filed by interested persons. Specifically, unregulated areas contiguous to the initial suggested consolidated Northeast and Mideast marketing areas are suggested for inclusion in those suggested order areas. Some handlers currently not subject to full Federal order regulation would become pool plants if the suggested areas are added. Handlers who would be affected will be notified of the possible change in their status, and encouraged to comment.

As in the initial preliminary report, "pockets" of unregulated areas enclosed in the current marketing areas are included in the suggested consolidated marketing areas if their inclusion does not change the current regulatory status of a plant. However, in the process of consolidating marketing areas, some handlers who currently are partially regulated may become fully regulated because their sales in a combined marketing area will meet the pooling standards of a suggested consolidated order area. As a result, this report suggests that some unregulated areas contiguous to currently-regulated areas be added to Federal order areas where additional handlers would be affected.

The 11 modified suggested marketing areas (with those modified from the initial preliminary report, and the modifications, marked by *) and the major reasons for consolidation are:

***1. Northeast**

Current marketing areas of the New England, New York-New Jersey, and Middle Atlantic Federal milk orders, **with the addition of:* contiguous unregulated areas of New Hampshire, Vermont and New York; the western non-Federally regulated portion of Massachusetts, the Western New York State order area, and Pennsylvania Milk Marketing Board Areas 2 and 3 in northeastern Pennsylvania.

Reasons for consolidation include the existence of overlapping sales and procurement areas between New England and New York-New Jersey and between New York-New Jersey and Middle Atlantic. In several cases, handlers who would become regulated because their total sales in the combined areas would meet pooling standards are located in areas where they compete with handlers who would not be similarly regulated. Handler equity suggests that these handlers, too, should become regulated. Another important measure of association is evidenced by industry efforts to study and pursue consolidation of the three Federal orders, as well as some of the nonfederally regulated territory, prior to the 1996 Farm Bill.

Sixteen additional distributing plants would be pooled as a result of the expansion of the consolidated area. Nine of these plants currently are partially regulated.

***2. Appalachian**

Current marketing areas of the Carolina and Tennessee Valley Federal milk orders, **with the addition of:* all of the Louisville-Lexington-Evansville Federal order area (except one county—in the suggested Southeast area) and 26 currently-unregulated counties in Indiana and Kentucky.

More detailed and updated data showing overlapping sales and procurement areas between these marketing areas are major factors for supporting such a consolidation.

3. Florida

Current marketing areas of the Upper Florida, Tampa Bay, and Southeastern Florida Federal milk orders.

Natural boundary limitations and overlapping sales and procurement areas among the three orders are major reasons for consolidation, as well as a measure of association evidenced by cooperative association proposals to consolidate these three marketing areas. Further, the cooperative associations in this area have worked together for a number of years to accommodate needed movements of milk between the three Florida Federal orders.

***4. Southeast**

Current marketing area of the Southeast Federal milk order, plus 1 county from the Louisville-Lexington-Evansville Federal milk order marketing area, plus 15 currently-unregulated Kentucky counties, **minus* 2 currently-unregulated counties in northeast Texas (in the suggested Southwest area).

Major reasons for this consolidation include sales and procurement area overlaps between the Southeast order and this county. There is minimal sales area overlap with handlers regulated under other Federal orders. Collection of additional data showed greater disposition in the two Texas counties from Texas handlers than from Southeast handlers. There are no handlers in these two counties that would be affected.

***5. Mideast**

Current marketing areas of the Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan, and Indiana Federal milk orders, plus Zone 2 of the Michigan Upper Peninsula Federal milk order, and currently-unregulated counties in Michigan, Indiana, and Ohio **with the addition of:* Pennsylvania Milk Marketing Board Area 6 (in western/central Pennsylvania) and 2 currently-unregulated counties in New York, and **minus* the Louisville-Lexington-Evansville order area, 12 counties in Illinois, and unregulated counties in Indiana and Kentucky that are being suggested for inclusion in the Appalachian area.

Major criteria suggesting this consolidation include the overlap of fluid sales in the Ohio Valley marketing area by handlers from the other areas suggested to be consolidated. With the consolidation, most route disposition by handlers located within the suggested Mideast order would be within the marketing area. Also, nearly all milk produced within the area would be pooled under the consolidated order. The portion of the Michigan Upper Peninsula marketing area suggested to be included in the Mideast consolidated area has sales and milk procurement areas in common with the Southern Michigan area and has minimal association with the western end of the current Michigan Upper Peninsula marketing area.

Collection of additional data and recent changes in marketing patterns indicate that the relationship between the Louisville-Lexington-Evansville (L-L-E) area and the order areas initially included in the suggested Appalachian area is closer than relationship between L-L-E and the Mideast area.

Seven distributing plants that would not have been pool plants as a result of the initially-suggested consolidation would become pool plants due to the suggested expansion of the consolidated area into Pennsylvania and New York. The number of pool plants also is affected by a shift of pool plants from one consolidated area to another because of the shift of territory from the initially-suggested Mideast area to the revised suggested Appalachian area.

***6. Upper Midwest**

Current marketing areas of the Chicago Regional, Upper Midwest, Zones I and I(a) of the Michigan Upper Peninsula Federal milk orders, and unregulated portions of Wisconsin, **with the addition of:* the Iowa, Eastern South Dakota, and most of the Nebraska-Western Iowa Federal order areas, plus currently-unregulated counties in Iowa and Nebraska.

Major consolidation criteria include an overlapping procurement area between the Chicago Regional and Upper Midwest orders and overlapping procurement and route disposition area between the western end of the Michigan Upper Peninsula order and the Chicago Regional order. More-detailed and updated information revealed more significant overlapping procurement and route disposition areas between the Iowa, Eastern South Dakota and Nebraska-Western orders and Chicago Regional and Upper Midwest orders than had been observed in the initial study. In addition, a common pricing plan for producers, natural boundary

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limitations, and the prevalence of cheese as a major manufactured product for the substantial reserve milk supplies that exceed fluid milk needs exist in these orders. Some of the western Nebraska area is more closely associated with the Eastern Colorado area, however, and is suggested to remain with the Central consolidated area.

Eleven additional handlers that would have been pooled under the consolidated Central order in the initial Preliminary Report would be pooled under a consolidated Upper Midwest order under this revised report.

***7. Central**

Current marketing areas of the Southern Illinois-Eastern Missouri, Central Illinois, Greater Kansas City, Southwest Plains, and Eastern Colorado Federal milk orders, 10 counties currently in the Nebraska-Western Iowa Federal order area, plus 55 currently-unregulated counties in Kansas, Missouri, Illinois, Nebraska and Colorado, **plus* the 12 counties in the current Southern Illinois-Eastern Missouri area that initially were suggested as part of the consolidated Mideast area, **minus* the Eastern South Dakota, Iowa and most of the Nebraska-Western Iowa Federal order marketing areas.

Major criteria suggesting this consolidation include the overlapping procurement and route disposition between the current orders. The suggested consolidation would result in a concentration of both the sales and supplies of milk within the consolidated marketing area. The suggested consolidation would combine several relatively small orders and provide for the release of market data without revealing proprietary information. In addition, most of the producers in these areas share membership in several common cooperatives.

***8. Southwest**

Current marketing areas of Texas and New Mexico-West Texas Federal milk orders, **with the addition of:* two northeast Texas counties previously suggested to be added to the Southeast marketing area, and 47 currently-unregulated counties in southwest Texas, and **minus* the Central Arizona marketing area.

Major criteria suggesting consolidation include sales and procurement area overlaps and common cooperative association membership between the Texas and New Mexico-West Texas marketing areas, and similar marketing concerns with respect to trade with Mexico for both orders. Addition of the currently-unregulated Texas counties will result in the regulation of no additional handlers, and will reduce handlers' recordkeeping and reporting burden and the market administrator's administrative costs. In the initial consolidation report, the Central Arizona area was found to have a minimal association with the New Mexico-West Texas and Texas order areas. Further analysis showed that it has a much more significant degree of association with the Clark County, Nevada, portion of the current Great Basin order area.

The revised suggested consolidated Southwest area would include 4 fewer fully regulated pool plants as a result of the removal of the Central Arizona area.

***9. Arizona-Las Vegas**

*An eleventh marketing area composed of the current marketing area of the Central Arizona order and the Clark County, Nevada, portion of the current Great Basin marketing area, plus eight currently-unregulated Arizona counties.

The major criterion suggesting consolidation is sales overlap between the sole Las Vegas, Nevada, handler and handlers regulated under the Central Arizona order in both Clark County, Nevada, and unregulated portions of northern Arizona. In addition, both areas exchange significant volumes of bulk and packaged milk with Southern California.

The suggested Arizona-Las Vegas marketing area would include five fully regulated handlers, with no additional handlers regulated because of the addition of the currently-unregulated northern Arizona area.

***10. Western**

Current marketing areas of the Western Colorado, Southwestern Idaho-Eastern Oregon, and Great Basin Federal milk orders, **minus* Clark County, Nevada. Major criteria suggesting consolidation include overlapping sales between Southwestern Idaho-Eastern Oregon and Great Basin, as well as a significant overlap in procurement for the two orders in five Idaho counties. The two orders also share a similar multiple component pricing plan. The Western Colorado order is included because it is a small market where data cannot be released without revealing confidential information unless combined with the adjacent Great Basin order.

Collection of more-detailed data indicates that the strength of earlier relationships between the former Great Basin and Lake Mead orders that justified their 1988 merger have dwindled significantly, with the Las Vegas area now more closely related to southern California and competing most heavily with Central Arizona handlers.

11. Pacific Northwest

Current marketing area of the Pacific Northwest Federal milk order plus 1 currently-unregulated county in Oregon. The degree of association with other marketing areas is insufficient to warrant consolidation.

Following is a table summarizing relevant data for the consolidated markets.

CONSOLIDATED MARKET SUMMARY
[Based on October 1995 Data]

Consolidated order	Number of fully regulated distributing plants		Total producer milk (1000 lbs.)		Combined class I use (percent)		Weighted average utilization value	
	Initial report	Revised report	Initial report	Revised report [1]	Initial report	Revised report	Initial report	Revised report
Northeast	85	92	1,934,833	2,102,620	46.7	49.0	$13.44	$13.49
Appalachian	25	29	320,198	[2] 412,813	82.5	81.5	$14.11	$13.94
Florida	18	16	[3] 200,397	204,541	88.3	88.3	$15.05	$15.05
Southeast	38	40	[4] 443,921	442,705	84.3	84.3	$14.26	$14.25
Mideast	68	68	[5] 1,140,952	1,103,366	57.8	57.2	$12.96	$12.94
Upper Midwest	27	39	[6] 1,046,539	1,354,209	[7] 34.2	[8] 37.6	$12.59	$12.62
Central	42	30	[9] 932,929	599,334	50.6	53.5	$13.15	$13.21
Southwest	31	26	861,307	680,232	48.3	48.1	$13.36	$13.39
Arizona—Las Vegas	N/A	7	N/A	[10] 181,075	N/A	48.9	N/A	$13.26
Western	14	11	304,793	293,714	[11] 31.7	[12] 29.6	$12.79	$12.78
Pacific Northwest	23	21	501,257	493,207	36.3	35.6	$12.45	$12.44
Total	371	379	7,687,126	7,867,816	N/A	N/A	N/A	N/A

[1] Initial report producer deliveries, adjusted to include only those handlers who would be fully regulated (i.e. Status = 1) in the revised suggested marketing area, unless otherwise noted. When applicable, producer deliveries for currently non-Federally regulated plants which would be fully regulated in a revised suggested consolidated order are included in the appropriate suggested consolidated order.
[2] Includes producer milk for one currently fully regulated plant which would be exempt (i.e. Status = 3B) in the Appalachian market in the revised preliminary report.
[3] Excludes producer milk for one currently fully regulated F.O. 7 plant which would be regulated in the Florida market in the initial preliminary report.
[4] Includes producer milk for one currently fully regulated F.O. 7 plant which would be regulated in the Florida market in the initial preliminary report.
[5] Producer milk for F.O. 44 is included. Producer milk for a F.O. 32 handler who would be pooled under the initially-suggested Mideast market is included in the initially-suggested Central market.
[6] Producer milk for F.O. 30 and F.O. 68 only.
[7] A significant amount of producer milk was not pooled in October 1995. Estimated total producer milk would result in a 15.3% combined Class I utilization.
[8] A significant amount of producer milk was not pooled in October 1995. Estimated total producer milk would result in a 19.7% combined Class I utilization.
[9] Includes producer milk for a F.O. 32 handler that would be in the initially-suggested Mideast market.

[10] Excludes producer milk for one currently fully regulated F.O. 139 plant and one currently unregulated plant which would be regulated in the Arizona-Las Vegas market in the revised preliminary report.
[11] A significant amount of producer milk was not pooled in October 1995. Estimated total producer milk would result in a 21.8% combined Class I utilization.
[12] A significant amount of producer milk was not pooled in October 1995. Estimated total producer milk would result in a 21.6% combined Class I utilization.

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Part III

Department of State

Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates; Final Rule

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DEPARTMENT OF STATE

22 CFR Parts 22, 51, and 53

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Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates

AGENCY: Bureau of Consular Affairs, State Department.

ACTION: Final rule.

SUMMARY: This final rule sets forth the fees for consular services to take effect on February 1, 1998, and makes appropriate implementing and other related changes in affected portions of Title 22 of the Code of Federal Regulations. Specifically, the rule makes changes in the Schedule of Fees for Consular Services ("Schedule of Fees" or "Schedule") published in 22 CFR 22.1 and makes technical changes to 22 CFR part 51 (concerning passport fees) and 22 CFR part 53. The changes to the Schedule of Fees include adjustments to existing fees and the new processing fee for diversity visa applicants (see 22 CFR 42.33(i)), which took effect on October 1, 1997. The primary objective of the adjustments to the Schedule of Fees is to ensure that the costs of consular services are recovered through user fees to the maximum extent appropriate and permitted by law. As a result of new data on the cost of services, the passport fee is being lowered while most other fees are being increased. In addition, the Schedule of Fees is being restructured and streamlined. Fees for antiquated services no longer performed are being removed and fees for other services are being consolidated or more appropriately located, making the Schedule easier to read and understand. Consular services that will be performed for no fee are being added to the Schedule to facilitate tracking these services and to inform the public of all significant consular services provided by the Department.

The revised Schedule of Consular Fees was published as a proposed rule in the **Federal Register** on December 1, 1997 (62 FR 63478–85). During the 30-day public comment period, a small number of comments were received from the general public. Those comments are addressed under Supplementary Information below. For the reasons explained, the Department is setting consular fees as originally proposed, but will be making some changes in its crew list visa procedures to address concerns raised by some members of the shipping industry. Minor technical changes are being made in the wording of the Schedule for purposes of clarification.

DATES: The effective date for these changes is February 1, 1998.

FOR FURTHER INFORMATION CONTACT: Sally Light, Office of the Executive Director, Bureau of Consular Affairs, telephone (202) 647–1148; telefax (202) 647–3677.

SUPPLEMENTARY INFORMATION: The public comments received by the Department focused on three of the proposed changes in the Schedule of Consular Fees: the imposition of the nonimmigrant visa processing fee on each individual covered by a crew list visa; the increase in visa fees; and the increase in the notarial fee. One commentator also objected as a general matter to the increases in fees, noting particularly, in addition to the notarial fee, the citizenship adjudication fee and immigrant visa fees. The Department's response to the comments received is described below.

Crew List Visas

The Department received comments from four foreign shipping associations and four foreign shipping companies expressing concern about the proposal to charge the nonimmigrant visa processing fee for each person listed on a crew list for purposes of obtaining a crew list visa. These commentators generally expressed concern about the perceived increase in costs that would result from the proposed fee and noted the special status of alien crewmen and the special function of the crew list visa. The Department recognizes that the crew list visa serves a special function and is conceptually different from an individual nonimmigrant visa application. Central and common to consular processing of both the crew list and the individual visa application, however, is the automated namecheck that must be done for each person in question. This is the single largest cost factor in determining an individual alien's eligibility. Moreover, changes in nonimmigrant visa processing have led to a situation where it is often cheaper to process 50 individual visa applications than a crew list with 50 names. For example, a travel agency might submit 50 individual applications with machine readable passports under a post's mail-in program. To review those applications, the post would scan the passports and obtain the namecheck results quickly and efficiently. In the case of the crew list, in contrast, the names of all 50 crew generally would have to be manually entered before the namecheck could be performed. The process in either case would be essentially the same, but the processing of the crew list would be more costly.

These similarities create a strong presumption in favor of charging the same fee for each person on a crew list as is charged for processing a nonimmigrant visa application. While some nonimmigrant visa applications may entail documentation and interviews not generally required in the context of crew list visa processing, the same is true of crew list visas, which may take very little time or a great deal of time to process. Also, while a crew list visa is valid only for six months and a single entry, some nonimmigrant visas are similarly single-entry short-duration visas (sometimes as short as one month). While the Department could establish separate fees for each kind of visa, it instead decided to average the costs of all nonimmigrant visa applications into a single, uniform fee and to include crew list visas in this average. Establishing a single uniform fee vastly simplifies and improves the efficiency of the Department's fee collection procedures, a goal that is particularly important given the large number of countries in which the Department has consular operations and the challenge of reconciling millions of visa issuances with collections. In many countries, banks are now collecting the nonimmigrant visa processing fee from applicants who must go to the bank and obtain a payment voucher before applying at the consulate; having a single fee makes this banking function simpler and the Department's bank contracts easier to administer. Conversely, to attempt to establish different fees for different services within the general class of nonimmigrant visa services would create administrative and operational issues that would in themselves impose additional costs on the Department.

These considerations have prompted the Department to adhere to its original decision to charge for crew list visas on the same basis that it charges for nonimmigrant visas generally. The Department has decided, however, to make some changes in its crew list practices that will help mitigate the cost of this service for the shipping industry and ensure that ship owners receive maximum possible value each time the fee is paid. At present, to obtain a crew list visa, a ship owner pays the crew list fee, which varies by size of crew (and which at present is well below cost). The owner also pays the MRV fee once, since one machine readable visa is placed on the list. The crew list with its visa is given by the shipper to INS at the ship's port of entry. If the ship plans to enter at a second U.S. port, it must obtain a second visaed crew list, paying the crew list and MRV fees a second time. The more ports are entered, the more costly this procedure. Under the Department's new procedures, when the crew list visa is originally requested, the shipper will be able to submit multiple copies of the crew list, one for each U.S. port of entry anticipated within six months of visa issuance. When the namechecks are completed, each copy of the crew list will be visaed. The $45 per name fee will be paid only once for each name checked, there will be no separate fee for the visa itself (since that cost is covered by the $45), and there will be no additional charge for the visas placed on multiple copies. This procedure will ensure that the Department recovers its costs for the work actually done and maintains its simplified fee collection process while also maximizing the value received by the ship owner. The Department anticipates working closely with the shipping industry and the Immigration and Naturalization Service (INS) on these and related arrangements to ensure that the crew list visa process works smoothly and efficiently.

Notarials

The Department received comments from two overseas American citizens associations and six Americans residing abroad protesting the increase in the notarial fee from $10 to $55. Some commentators took the view that the proposed fee must be exorbitant because notarials in their experience do not take long to perform—one commentator thought a "few" minutes, another five, another ten. One organization representing Americans abroad assumed that the proposed fee of $55 was based on "what the market will bear". The Department inferred from some of these comments that it had not adequately explained the basis for the proposed fee and that it may inadvertently have caused readers to infer, wrongly, that the fee was being set above cost in order to discourage persons from seeking notarial services from our consulates instead of from local notaries. In fact, the $55 proposed fee is based on the actual cost of services, averaged worldwide. On a worldwide basis, while some notarials are very time-consuming because they involve complex documents, the average notarial takes four minutes of foreign service national employee (FSN) time and ten minutes of consular officer time. The hourly cost of an FSN, again on a worldwide average, when "full loaded"—i.e., when direct and indirect costs are included, is $164. The comparable figure for a consular officer is $393. Using these hourly rates and applying them to the four and ten minutes required, on average, results in a cost of $27 of FSN and $26 of consular officer time per notarial service, or a total of $53, which is the primary consideration behind the $55 fee.

Thus, the fee reflects the simple reality that it is very expensive for the United States to maintain consular facilities abroad to provide notarial and other consular services. Once the cost of service has been determined, the question is whether the actual user of the service should bear the cost or whether the cost should be subsidized by non-users. As explained when the fee was proposed, the key consideration for the Department is the conclusion that having the actual users of notarial services bear the cost of service is more appropriate than having the user of the service pay less than cost and allocating the costs not paid by the user to passport applicants, as has been done in the past to hold the fee for notarial services well below costs. Allocating the cost to passport applicants creates two anomalies: first, most passport applicants never use notarial services; second, the actual user of notarial services may be a non-U.S. citizen or a business entity or representative and not a U.S. passport holder. In addition, as the Department noted in the proposed rule, the practice of pricing notarial services well below cost has had an adverse impact on consular workload. This is certainly an appropriate factor for the Department to consider in deciding whether to set the cost of notarial services at cost or below costs. (The Department emphasizes, however, that it is not setting the fee at "market price" or otherwise above cost.)

The Department further notes that it is allocating to the passport fee a variety of emergency and citizenship services that it believes are appropriately borne by all passport holders and that it is setting a single passport fee, which will result in domestic passport applicants subsidizing the cost of providing passport processing services abroad. (It costs $205 to issue a passport overseas.) The Department believes it is in the public interest for all passport applicants to subsidize the costs of some services performed for American citizens overseas. One low worldwide passport fee furthers the public interest of documenting Americans overseas. Thus, for example, while the cost of issuing a Report of Birth overseas is $160, most of that cost is included in the passport fee. The cost of registration of American citizens at our embassies and consulates overseas to ensure their protection in the event of a crisis also is included in the passport fee. Finally, the passport fee includes the costs of performing all death, arrest, welfare and whereabouts, and other unpredictable emergency services for Americans overseas.

Notarial services, in contrast, are not emergency services performed for Americans in distress or citizenship documentation services. There is no public interest in requiring passport applicants to subsidize private business or legal transactions for Americans and non-Americans overseas. Thus, this is a consular service for which the Department believes it is appropriate to expect the actual user to pay the full cost. Having reviewed and considered the comments received, the Department will establish the fee as previously proposed.

Other Comments

One organization representing Americans abroad also expressed concern that the citizenship adjudication fee could discourage some individuals from verifying their citizenship. The Department recognizes an affirmative policy interest in having American citizens documented as such, and has relied upon this policy consideration to allocate some citizenship documentation costs to the worldwide passport fee (e.g., consular reports of birth abroad and passports issued overseas). In setting the fee for citizenship adjudication, however, the Department was faced with additional considerations. As explained previously, this service is generally required in complex, time-consuming cases in which the citizen was not documented prior to age 18. The delay in documenting contributes to making these cases more difficult and is most often the responsibility of the applicant and/or the applicant's parents. Setting the fee at cost ensures that the actual user pays and may, in the long term, encourage persons with citizenship claims to seek documentation at an earlier time, when documentation will be easier. In addition, INS provides the same service. If the Department's fee is lower than the INS fee, as has been the case, there will be some incentive for this work to shift from INS to State. For the Department to set its fee for this service below cost would invariably contribute to any such incentive—an undesirable result given the existing strains on overseas consular resources. The Department continues to believe that these countervailing considerations counsel in favor of setting the fee at cost, and having the actual user of the service pay for it in full, rather than setting the fee below cost with the

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balance of the cost reallocated elsewhere.

Regulatory Findings

This rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 605(b). This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35. This rule has been reviewed as required by E.O. 12988 and determined to be in compliance therewith. This rule is exempt from E.O. 12866 but has been reviewed internally by the Department to ensure consistency with the objectives thereof and by OMB in light of its public policy implications. OMB has determined that the rule would in any event not constitute a significant regulatory action under E.O. 12866.

Effective Date—Good Cause Exception

The new Schedule of Consular Fees will take effect February 1, 1998, as originally indicated when the proposed rule was published. Pursuant to 5 U.S.C. 553(d), there is good cause not to delay the effective date past February 1. Delaying the effective date could cause distortions in the Department's workload and strain already strained resources, if the Department's customers sought to time their use of services in light of anticipated increases or decreases in the applicable fees. One of the most significant changes is the reduction in the passport fees, and it is in the public interest to pass that savings on to the public immediately. In this connection, the Department notes that February 1 is when it begins to see an increase in passport applications associated with planned spring and summer travel. The Department estimates that putting the new passport fee into effect February 1, rather than March 1, will save passport applicants over $4 million, and that roughly $1 million will be saved in the first week of February alone. On the other hand, to the extent fees are being increased to reflect actual costs, it is clearly in the government's interest to begin collections under the new schedule as soon as possible. Beginning collections as soon as possible will minimize the extent to which the taxpayer is subsidizing services that should be paid for by the user. A substantial portion will be retained by the Department for its border security program. The Department has previously noted the high priority placed on upgrading and otherwise improving its border security program, particularly since the World Trade Center bombing, and the program could be adversely affected by the loss of revenues that would result from delaying the effective date. Finally, notice of the Department's proposal was first given on December 1, 1997, and no changes are being made in the fees as originally proposed.

List of Subjects

22 CFR Part 22

Consular services, Fees, Schedule of fees for consular services, Passports and visas.

22 CFR Part 51

Passports, fees.

22 CFR Part 53

Passport requirement and exceptions.

Accordingly, parts 22, 51, and 53 are amended as follows:

PART 22—[AMENDED]

1. The authority citation for part 22 is revised to read as follows:

Authority: 8 U.S.C. 1153 note, 1351, 1351 note; 10 U.S.C. 2602(c); 22 U.S.C. 214, 2504(a), 4201, 4206, 4215, 4219; 31 U.S.C. 9701; E.O. 10718, 22 FR 4632, 3 CFR, 1954–1958 Comp., p. 382; E.O. 11295, 31 FR 10603, 3 CFR, 1966–1970 Comp., p. 570.

2. Section 22.1 is revised to read as follows:

§ 22.1 Schedule of fees.

Item No.	Fee
Passport and Citizenship Services	
1. Passport Services:	
(a) Execution. Required for first-time applicants and renewals under age 16	$15.00.
(b) First-time issuance:	
(1) Applicants age 16 or over	$45.00 plus expedited processing fee if applicable.
(2) Applicants under age 16	$25.00 plus expedited processing fee if applicable.
(c) Subsequent issuance (renewal):	
(1) Applicants age 16 or over	$40.00 plus expedited processing fee if applicable.
(2) Applicants under age 16	$25.00 plus expedited processing fee if applicable.
(d) Expedited service (exclusive of express mail charges) not applicable overseas:	
(1) Requested guaranteed 3-day service	$35.00.
(2) In-person service at a U.S. Passport Agency, unless the Department has determined that the applicant is required to apply at a U.S. Passport Agency.	$35.00.
2. Exemptions: The following applicants are exempted from passport fees:	
(a) Officers or employees of the United States proceeding abroad or returning to the United States in the discharge of their official duties, or their immediate family members (22 U.S.C. 214).	No fee.
(b) American seamen who require a passport in connection with their duties aboard an American flag vessel (22 U.S.C. 214).	No fee.
(c) Widows, children, parents, or siblings of deceased members of the Armed Forces proceeding abroad to visit the graves of such members (22 U.S.C. 214).	No fee.
(d) Employees of the American National Red Cross proceeding abroad as members of the Armed Forces of the United States (10 U.S.C. 2602(c)).	No fee.
(e) Peace Corps and Volunteer Leaders deemed to be employees of the United States for purposes of exemption from passport fees (22 U.S.C. 2504(a)).	No fee.
3. File search and verification of U.S. citizenship when applicant has not presented evidence of citizenship and previous records must be searched. (This fee will not be charged when the applicant's passport was stolen or lost overseas or when one of the exemptions in item 38 is applicable.).	$15.00.

Item No.	Fee
4. Determination or adjudication of U.S. citizenship for applicants born overseas who have not presented a U.S. passport, Report of Birth Abroad of a Citizen of the United States, or Certificate of Naturalization or Citizenship from the Immigration and Naturalization Service.	$100.00.
5. Passport amendments, to add current or new information, change a name, extend a previous passport time limitation, correct an administrative error, validate a passport for travel to restricted countries, or add extra pages.	No fee.
6. Passport waiver (22 CFR 53.2(h), Passport requirement and exceptions)	No fee.
7. Registration of a U.S. Citizen at a U.S. Embassy or Consulate when documentary proof of U.S. citizenship has been presented.	No fee.
8. Report of Birth Abroad of a Citizen of the United States (includes new no. 4)	$40.00.
9. Issuance of Replacement Report of Birth Abroad of a Citizen of the United States by the Department of State in Washington. For fees relating to obtaining documents from passport files and related records, see Documentary Services, item 35 and succeeding.	$40.00.
(Item nos. 10 through 14 vacant.)	
Overseas Citizens Services	
General Overseas Assistance:	
15. Arrest visits	No fee.
16. Assistance regarding the welfare and whereabouts of a U.S. Citizen, including child custody inquiries.	No fee.
17. Loan processing:	
(a) Repatriation loans	No fee.
(b) Emergency dietary assistance loans	No fee.
(Item Nos. 18–20 vacant.)	
Death and Estate Services:	
21. Identification of remains and consultation with family members of a U.S. Citizen	No fee.
22. Assistance to the next-of-kin in making arrangements for shipping or other disposition of remains of a U.S. Citizen.	No fee.
23. Affidavit attesting to preparation and packing of remains of a U.S. Citizen	No fee.
24. Issuance of consular mortuary certificate on behalf of a U.S. Citizen	No fee.
25. Assistance in transshipment of remains of a foreign national to or through the United States, including documentation covered by items 23 and 24.	$700.00.
26. Preparation of Report of Death of an American Citizen Abroad, including sending copies to legal representative and closest known relative or relatives.	No fee.
27. Acting as a provisional conservator of estates of U.S. Citizens (other than U.S. Government employees), by taking possession of, making an inventory, and placing the official seal.	No fee.
28. Acting as a provisional conservator of estates of U.S. Citizens (other than U.S. Government employees), by overseeing the appraisal, sale, and final disposition of the estate, disbursing funds, forwarding securities, etc.:	
(a) Estates under $10,000	No fee.
(b) Estates $10,000 or more, for rendering services additional to taking possession, inventorying, and placing the official seal.	Consular time (item 70) and costs.
(Item no. 29 vacant.)	
Services Relating to Vessels and Seamen	
30. Shipping and seamen services, including recording of bill of sale of vessel purchased abroad, taking of application for certificate of American ownership, and investigation.	Per service, $80.00.
31. Documentary services related to shipping, including issuance of certificate of American ownership	Per service, $650.00 plus costs incurred.
32. Services provided for an American vessel (a vessel with a certificate of American ownership) or American seamen. (22 U.S.C. 4206).	No fee.
(Items nos. 33–34 vacant.)	
Documentary Services	
35. Notarials	$55.00.
36. Certifications:	
(a) Certifying under official seal that a copy or extract made from an official or a private document is a true copy.	$20.00; each additional copy $10.00.
(b) Certifying under official seal a statement or extract from official files or a statement that no record of an official file can be located.	$20.00; each additional copy $10.00.
(c) Certifying the fact of issuance of a Report of Birth Abroad of a Citizen of the United States and certifying copies of documents relating to births, marriages, and deaths of citizens abroad issued by a U.S. Embassy or Consulate (obtainable from the Department of State, Washington, D.C.).	$20.00; each additional copy $10.00.
37. Authentications:	
(a) Certifying to official character of a foreign notary or other official (i.e., authenticating a document).	$32.00.
(b) Authenticating a federal, state, or territorial seal, or certifying to the official status of an officer of the United States Department of State or of a foreign diplomatic or consular officer accredited to or recognized by the United States Government, or any document submitted to the Department for that purpose.	$32.00.

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Item No.	Fee
38. Exemptions: Notarial, certification, and authentication fees (items 35, 36, and 37) or passport file search fees (item 3) will not be charged when the service is performed:	
(a) At the direct request of any federal government agency (unless substantial costs would be incurred).	No fee.
(b) At the direct request of any state or local government, the District of Columbia, or any of the territories or possessions of the United States (unless substantial costs would be incurred).	No fee.
(c) With respect to documents to be presented by claimants, beneficiaries, or their witnesses in connection with obtaining federal, state, or municipal monetary benefits.	No fee.
(d) For American citizens outside the United States preparing ballots for any public election in the United States or any of its territories.	No fee.
(e) At the direct request of a foreign government or an international agency of which the United States is a member if the documents are for official noncommercial use.	No fee.
(f) At the direct request of a foreign government official when appropriate or as a reciprocal courtesy.	No fee.
(g) At the direct request of U.S. Government personnel, Peace Corps volunteers, or their dependents stationed or travelling officially in a foreign country.	No fee.
(h) With respect to documents whose production is ordered by a court of competent jurisdiction	No fee.
(i) With respect to affidavits of support for immigrant visa applications	No fee.
39. Executing commissions to take testimony in connection with foreign documents for use in criminal cases when the commission is accompanied by an order of federal court on behalf of an indigent party.	No fee.
40. Providing seal and certificate for return of letters rogatory executed by foreign officials	$455.00.
41. Taking depositions or executing commissions to take testimony	Per hour, $200.00 plus costs incurred.
(Items nos. 42–49 vacant.)	
Visa Services	
50. Immigrant visa application processing fee	$260.00.
51. Immigrant visa application surcharge for Diversity Visa Lottery	$75.00.
52. Immigrant visa issuance fee	$65.00.
53. Refugee case preparation and processing	No fee.
54. Nonimmigrant visa application processing fee	$45.00.
55. EXEMPTIONS from nonimmigrant visa application processing fee:	
(a) Applicants for A, G, C–2, C–3, and NATO visas	No fee.
(b) Applicants for J visas participating in official U.S. Government (USIA or USAID) sponsored educational and cultural exchanges.	No fee.
(c) Persons issued replacement machine readable visas when the original machine readable visa has not adhered to the passport or other travel document through no fault of the applicant.	No fee.
(d) Persons exempted by international agreement as determined by the Department	No fee.
(e) Persons travelling to participate in charitable activities as determined by the Department	No fee.
56. Nonimmigrant visa issuance fee, including border crossing cards	RECIPROCAL.
57. EXEMPTIONS from nonimmigrant visa issuance fee:	
(a) An official representative of a foreign government or an international or regional organization of which the U.S. is a member.	No fee.
(b) An applicant transiting to and from the United Nations headquarters	No fee.
(c) An applicant participating in a U.S. Government sponsored program	No fee.
(d) Persons travelling to participate in charitable activities as determined by the Department	No fee.
58. Visa fingerprinting	$25.00.
59. Special visa processing services for aliens:	
(a) Returning resident status	$50.00.
(b) Transportation letter (unless waived in significant public benefit parole cases)	$120.00.
(c) Waiver of immigrant visa ineligibility (collected for INS; subject to change)	$95.00.
60. Filing immigrant visa petition (collected for INS; subject to change)	$80.00.
(Items nos. 61–64 vacant.)	
Administrative Services	
65. Non-emergency telephone calls	Local long distance rate plus $10.00.
66. Setting up and maintaining a trust account for 1 year or less to transfer funds to or for the benefit of an American in need in a foreign country.	$20.00.
67. Transportation charges incurred in the performance of fee and no-fee services when appropriate and necessary.	Costs incurred.
68. Emergency passport photo service overseas	No fee.
69. Return check processing fee (only in the United States)	$25.00.
70. Consular time charges as required by this schedule or for fee services performed away from the office or after-duty-hours.	Per hour, $180.00 plus costs incurred.
71. Photocopies (provided other than pursuant to 22 CFR Part 171 or order of a court of competent jurisdiction).	Per page, $1.00.
(Item nos. 72–80 vacant.)	

§ 22.8 [Removed]

3. Section 22.8 is removed.

PART 51—[AMENDED]

4. The authority citation for part 51 is revised to read as follows:

Authority: 22 U.S.C. 211a, 212, 213, 214, 214a, 216, 217a, 2671(d); 31 U.S.C. 9701; Sec. 129, Pub. L. 102–138, 105 Stat. 661; E.O. 11295, 36 FR 10603, 3 CFR, 1966–1970 Comp., p. 570.

5. Section 51.61 is revised to read as follows:

§ 51.61 Passport fees.

Fees, including execution fees, shall be collected for the following passport services in the amounts prescribed in the Schedule of Fees for Consular Services (22 CFR 22.1):

(a) A fee for each passport issued, which fee shall vary depending on whether the passport is issued to a first-time applicant or a renewal applicant and on the age of the applicant. The passport issuance fee shall be paid by all applicants at the time of application, except as provided in § 51.62(a).

(b) A fee for execution of the passport application, except as provided in § 51.62 (b), when the applicant is required to execute the application in person before a person authorized to administer oaths for passport purposes. This fee shall be collected as part of the passport issuance fee at the time of application and is not refundable (see 22 CFR 51.65). When execution services are provided by an official of a state or local government or of the United States Postal Service, the fee may be retained by that entity to cover the costs of service, pursuant to an appropriate agreement with the Department of State.

(c) A fee for expedited services, if any, provided pursuant to 22 CFR 51.66.

6. Section 51.62 is removed and §§ 51.63 through 51.66 are redesignated as §§ 51.62 through 51.65, respectively.

7. Newly redesignated § 51.63 is amended in paragraph (a) by changing "§ 51.63" to read "§ 51.62", and in paragraph (f) by changing "§ 51.67" to read "§ 51.66".

8. Newly redesignated § 51.66 is amended by revising paragraphs (a) and (c) to read as follows:

§ 51.66 Expedited passport processing.

(a) Within the United States, an applicant for a passport service (including issuance, amendment, extension, or the addition of visa pages) may request expedited processing by a Passport Agency. All requests by applicants for in-person services at a Passport Agency shall be considered requests for expedited processing, unless the Department has determined that the applicant is required to apply at a U.S. Passport Agency.

* * * * *

(c) A fee shall be collected for expedited processing service in the amount prescribed in the Schedule of Fees for Consular Services (22 CFR 22.1). This amount will be in addition to any other applicable fee and does not include urgent mailing costs, if any.

PART 53—PASSPORT REQUIREMENT AND EXCEPTIONS

9. The title of Part 53 is revised to read as set forth above.

10. The authority citation for part 53 is revised to read as follows:

Authority: 8 U.S.C. 1185; Proc. 3004, 18 FR 489, 3 CFR, 1949–1953 Comp., p. 180.

Dated: January 22, 1998.

Bonnie M. Cohen,

Under Secretary for Management.

[FR Doc. 98–1996 Filed 1–29–98; 8:45 am]

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Part IV

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 413

Medicare and Medicaid Programs; Salary Equivalency Guidelines for Physical Therapy, Respiratory Therapy, Speech Language Pathology, and Occupational Therapy Services; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[HCFA–1808–F]

RIN 0938–AG70

Medicare and Medicaid Programs; Salary Equivalency Guidelines for Physical Therapy, Respiratory Therapy, Speech Language Pathology, and Occupational Therapy Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule sets forth revisions to the salary equivalency guidelines for Medicare payment for the reasonable costs of physical therapy and respiratory therapy services furnished under arrangements by an outside contractor. This final rule also sets forth new salary equivalency guidelines for Medicare payment for the reasonable costs of speech language pathology and occupational therapy services furnished under arrangements by an outside contractor. The guidelines do not apply to inpatient hospital services and hospice services. The guidelines will be used by Medicare fiscal intermediaries to determine the maximum allowable cost of those services.

EFFECTIVE DATE: This rule is effective April 1, 1998. The rule is applicable for services furnished on or after April 1, 1998. This rule is a major rule as defined in Title 5, United States Code, section 804(2). Pursuant to 5 U.S.C. section 801(a)(1)(A), we have submitted a report to Congress on this rule.

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FOR FURTHER INFORMATION CONTACT: Jackie Gordon, (410) 786–4517.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1861(v)(5) of the Social Security Act (the Act) requires the Secretary to determine the reasonable cost of services furnished to Medicare beneficiaries "under an arrangement" with a provider of services, by therapists or other health-related personnel. The Health Care Financing Administration (HCFA) pays the provider directly for these services, rather than paying the therapist or supplying organization. Under section 1861(w)(1) of the Act, this payment discharges the beneficiary from liability to pay for the services. Section 1861(v)(5) of the Act also specifies that the reasonable costs for these services may not exceed an amount equal to the salary that would reasonably have been paid for the services (together with any additional costs that would have been incurred by the provider or other organization) to the person performing them if they had been performed in an employment relationship with a provider or other organization (rather than under such arrangement), plus allowances for certain expenses that may be incurred by the contracting therapy organization in furnishing the services as the Secretary in regulations determines to be appropriate.

These statutory requirements are implemented in existing regulations at 42 CFR 413.106. The regulations apply to the services of physical, occupational, speech language pathologists, and other therapists and services of other health specialists (other than physicians) furnished under arrangements with a provider of services, a clinic, a rehabilitation agency, or a public health agency. The regulations provide for:

- Hourly salary equivalency amounts comprised of:

—A prevailing hourly salary rate based on the 75th percentile of the range of salaries paid to full-time employee therapists by providers in the geographic area, by type of therapy.

—Fringe benefit and expense factors to take into account fringe benefits generally received by an employee therapist, as well as expenses (such as maintaining an office, insurance, etc.) that a therapist or therapist organization might incur in furnishing services under arrangements.

- A standard travel allowance to recognize time spent in traveling to the provider's site or the patient's home.
- As provided for in existing regulations at § 413.106(e) and explained in section 1412 of the Provider Reimbursement Manual, the following are additional allowances for costs incurred for services furnished by an outside supplier. In addition to the guidelines established for the adjusted hourly salary equivalency amount and the travel allowance, the following costs incurred for services furnished by an outside supplier are recognized, provided the services are properly documented as having been received by the provider.

—Overtime, if an outside supplier utilizes the services of its employees (including the services of aides and assistants) at an individual provider in excess of the provider's standard workweek. Several commenters stated that there should be no limits on overtime compensation. The proposed rule did not specifically introduce new limits on payment for overtime. The proposed rule provided that a provider would receive payment for overtime but if the therapist worked over 40 hours it would not receive the expense factor portion of the hourly salary equivalency guideline amount.

—Administrative and supervisory duties, if an outside supplier provides more than one therapist and at least one therapist spends more than 20 percent of his or her time supervising other therapists and performing administrative duties.

—Depreciable or leased equipment, including maintenance costs of equipment remaining at the provider's site, that the outside supplier uses in furnishing direct services to the provider's patients (may also include equipment that is transported from one provider site to another but excludes equipment owned by the provider).

—Supplies furnished by the supplier for direct patient care (e.g., gases and sprays for respiratory therapy), excluding items such as envelopes, stamps, and typewriters that are reimbursed as overhead expenses and included in the fringe benefit and expense factor.

—Travel expenses, based on 10 times the General Services Administration mileage rate for each day an outside supplier travels to a provider site.

—Aides, who are paid as an add-on. Several commenters requested that we pay aides as a function of the hourly salary equivalency amount at 50 percent of these amounts.

—Assistants, who are paid as a function of the hourly salary equivalency amount at 75 percent of these amounts. (All therapy types use assistants except respiratory therapists.)

The provider must supply the intermediary with documentation that supports these additional costs to the intermediary's satisfaction. These are the only additional costs that will be recognized.

The regulations at 42 CFR 431.106 (b)(5) and (c) also provide for an exemption for limited part-time or intermittent services if the provider required the services of an outside supplier for a particular type of therapy service and the total hours of services performed for the provider, by type of service, average less than 15 hours per week for those weeks in the cost reporting period during which services were furnished by nonemployee therapists. (Travel time is not counted in the computation, even if the actual time is used.) If a provider qualifies for this exemption, the reasonable cost of such services is evaluated on a reasonable rate per unit of service basis, except that payment for these services in the aggregate, during the cost reporting period, may not exceed the amount that would be allowable had the provider purchased these services on a regular part-time basis for an average of 15 hours per week for the number of weeks in which services were furnished. Where the contract provides for a method of payment other than rate per unit of service (e.g., hourly rate or percentage of charges), payment cannot exceed the guideline adjusted hourly amounts plus other allowable costs, even though the services are performed on a limited or intermittent part-time basis.

In addition, the existing regulations at § 413.106(f)(1) have provided for an exception because of binding contract. An exception was granted to a provider that entered into a written binding contract with a therapist or contracting organization prior to the date the initial guidelines are published for a particular type of therapy. Before the exception was granted, however, the provider was required to submit the contract to its intermediary, subject to review and approval by the HCFA regional office. This exception may be granted for the contract period, but no longer than 1 year from the date that the guidelines for the particular therapy are published. During the period in which a binding contract exception was in effect, the cost of the services was evaluated under the prudent buyer concept. (Section 1414.1 of the Provider Reimbursement Manual contains instructions on this exception.) This exception did not apply to providers who entered into a contingency contract with a therapist or contracting organization or another provider. In a contingency contract, the provider and contractor agree that if Medicare does not reimburse the provider for the rate at which the contract is set, the provider and contractor agree that the contractor will make up the difference. We do not consider a contingency contract a binding contract. (We are eliminating this exception in this final rule. See Section II. On responses to public comments on proposed rule for further discussion.)

Also, the existing regulations at § 413.106(f)(2) provide for an exception for unique circumstances or special labor market conditions. An exception may be granted when a provider demonstrates that the costs for therapy services established by the guidelines are inappropriate to a particular provider because of some unique circumstances or special labor market conditions in the area. As explained in section 1414.2 of the Provider Reimbursement Manual, exceptions will be granted only in extraordinary circumstances. Before the exception may be granted, the provider must submit appropriate evidence to its intermediary to substantiate its claim. The provider's request for an exception, together with substantiating documentation, must be submitted to the intermediary each year, no later than 150 days after the close of the provider's cost reporting period. Because providers had been required to submit cost reports to intermediaries no later than 90 days after the close of their cost reporting periods, we had required that the provider's request for an exception, together with substantiating documentation, also be submitted to the intermediary no later than 90 days after the close of its cost reporting period. On June 27, 1995 (60 FR 33137), we changed the due date for submission of cost reports to 150 days after the close of the provider's cost reporting period. Accordingly, as explained under Section II.F. of this preamble, we are revising the time period for a provider's request for an exception, together with substantiating documentation, to 150 days after the close of its cost reporting period. If the circumstances giving rise to the exception remain unchanged from a prior cost reporting period, however, the provider need only submit evidence to the intermediary 150 days after the close of its cost reporting period to establish that fact.

In order to establish an exception for unique circumstances, the provider must submit evidence to establish that it has some unique method of delivering therapy or other services, which affects its costs, that is different from the other providers in the area. The exception will be effective no earlier than the onset of the unique circumstances.

In order to substantiate an exception for special labor market conditions, the provider must submit evidence enabling the intermediary to establish that the going rate in the area for a particular type of service is higher than the guideline limit and that such services are unavailable at the guideline amounts. It is the duty of the provider to prove to the satisfaction of the intermediary that it has reasonably exhausted all possible sources of this service without success.

The intermediary collects information on the rates that other providers in the area generally pay therapists or other health care specialists. Once this information is collected, the intermediary will determine whether other providers in the area, in comparison to the provider requesting the exception, generally pay therapists or other health care specialists higher rates than the guideline amounts.

Under existing § 413.106(b)(6), HCFA issues guidelines establishing the hourly salary equivalency amounts in geographical areas for therapy services furnished to Medicare beneficiaries under arrangements. These guidelines apply only to the amount of payment the Medicare program makes to a provider for therapy services obtained under arrangements. The guidelines are not intended to dictate or otherwise interfere in the terms of a contract that a provider may wish to enter into with a therapist or therapist organization. The guidelines do not apply to services furnished by employees of a hospital or employees of other providers. There is also an exception to the guidelines for inpatient hospital services provided by hospitals paid under the prospective payment system or subject to rate-of-increase limits (§ 413.106(f)(4)), in which case the services are evaluated under the Medicare program's reasonable cost provisions as described at § 413.5). The salary equivalency guidelines also will not be applied to skilled nursing facilities (SNFs) that are paid under the prospective payment system for therapy services provided under arrangements for cost reporting periods beginning on or after July 1, 1998. (This includes low volume SNFs currently electing prospective payment under section 1888(d) of the Act.) In addition, the salary equivalency guidelines will not be applied to HHAs who are paid under the prospective payment system for therapy services provided under arrangements for cost reporting periods beginning on or after October 1, 1999. The salary equivalency guidelines also will not apply for outpatient therapy services provided by a SNF or an outpatient rehabilitation

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provider for services provided to SNF patients on or after July 1, 1998 when payment for those services is made on a fee schedule basis. (Providers of Part B outpatient therapy services provided to Medicare beneficiaries whose nursing home stays are not paid by Medicare will be paid on a fee schedule basis for services furnished on or after July 1, 1998.) The guidelines also will not apply to an outpatient rehabilitation provider, a comprehensive outpatient rehabilitation facility (CORF), an HHA providing outpatient rehabilitation services to patients who are not homebound, or the outpatient department of a hospital when payment for those services is made on a fee schedule basis beginning on January 1, 1999. Shown below is a chart outlining the provisions of the Balanced Budget Act of 1997. The salary equivalency guidelines will cease to apply to the enumerated provider types once the Balanced Budget Act provisions become effective.

Provider type	BBA provision	Effective date
Hospital Outpatient Therapy Services	Payment on a fee schedule basis	Calendar year 1999.
SNF Inpatient Services (Includes therapy services and applies to free-standing and hospital-based providers).	Payment on a Prospective Payment System basis.	Cost reporting periods beginning on or after July 1, 1998.
SNF Outpatient Therapy Services	Fee Schedule	For services beginning July 1, 1998.
CORFs (applies to free-standing and hospital-based providers).	Fee schedule	Calendar year 1999.
Outpatient Rehabilitation Providers	Fee schedule	Calendar year 1999.
CMHCs	Payment under the outpatient hospital Prospective System Payment basis.	Calendar year 1999.
Outpatient Therapy Services Provided by HHA But Not Under HHA benefit.	Fee Schedule	Calendar year 1999.
HHA Services (Includes therapy services and applies to free-standing and hospital-based providers).	Payment on a Prospective System Payment basis.	Cost reporting periods beginning on or after October 1, 1999.

* A $1500 annual limitation on services provided to Medicare beneficiaries will be applied beginning January 1, 1999 where therapy services are provided by providers under the outpatient physical therapy benefit (which includes speech language pathology services) and occupational therapy benefit.

However, we are establishing regulations that provide that the salary equivalency guidelines will apply in situations where compensation, at least in part, to a therapist employed by the provider is based on a fee-for-service or on a percentage of income (or commission). The entire compensation will be subject to the guidelines in cases where the nature of the arrangements are most like an under "arrangement" situation, although technically the provider may treat the therapists as employees. The guidelines will be applied in this situation so that an employment relationship is not being used to circumvent the guidelines.

The guidelines apply to SNFs providing therapy services under arrangements that elect prospective payment under section 1888(d) of the Act because that prospective payment system (PPS) only applies to routine and capital services and does not apply to ancillary services which include therapy services.

Section 413.106(d) provides that, prior to the beginning of a period to which a guideline will be applied, HCFA will publish a notice in the **Federal Register** establishing the guideline amounts to be applied to each geographical area by type of therapy. We have issued schedules of salary equivalency guidelines for the reasonable costs of physical therapy services since 1975, and for respiratory therapy services since 1978. On September 30, 1983, we published a final notice (48 FR 44922) that revised the methodology used to establish the schedules, as well as the guidelines themselves. The guidelines continue to apply to physical therapy and respiratory therapy services provided under arrangements, as set forth in § 413.106, with hospitals, home health agencies (HHAs), SNFs, hospital-based HHAs, hospital-based SNFs, CORFs, and outpatient rehabilitation providers (ORPs). (Since we are issuing guidelines for occupational therapists, the guidelines also will apply to community mental health centers (CMHCs) that provide occupational therapy services furnished under arrangements. However, because CMHC therapy services will be paid under the outpatient hospital prospective payment system beginning with services furnished during calendar year 1999, at that time the guidelines will no longer apply to those occupational therapy services).

The September 30, 1983 final notice provided that, for providers with cost reporting periods beginning after October 1, 1982, the published guidelines would be revised upward by the projected 0.6 percent monthly inflation rate, not compounded. It also provided that, if for any reason we did not publish a new schedule of guidelines to be effective for cost reporting periods beginning on or after October 1, 1983 or did not announce other changes in the existing schedule, the existing guidelines would remain in effect, increased by the projected 0.6 percent monthly inflation rate, not compounded, until a new schedule of guidelines was issued. This monthly inflation rate was based on a Data Resources Incorporated (DRI) forecast of the annual rate of increase in each component of the salary equivalency amounts (that is, salary, fringe benefits, rent, and other expenses), with each component weighted to form a composite rate of increase for the 12-month period ending March 31, 1984.

II. Provisions of the March 28, 1997 Proposed Rule

On March 28, 1997 we published in the **Federal Register** a notice of proposed rulemaking (62 FR 14851) that proposed changes in the methodology used to establish the salary equivalency guidelines. We proposed to establish salary equivalency guidelines for occupational therapy and speech-language pathology services that are contracted by providers. We also proposed to revise the guidelines that were currently in place for contracted physical therapy and respiratory therapy services. In the proposed rule:

- The prevailing hourly salary rates were derived:

—From the 75th percentile of hourly therapist salaries of blended data from several sources of hospital and SNF wage rate data (weighted by relative employment levels in hospitals and nursing homes) to develop a national "best estimate" of prevailing salary levels as a basis for the guidelines.

—We calculated guideline levels for fourth quarter 1995 and trended forward to April 1998.

- We computed fringe benefits as a percent of total compensation using fiscal year 1994 Medicare cost reports for hospitals under the prospective payment system.
- The expense component was based on an estimate of the costs of maintaining a therapy services office.
- The standard travel allowance was set at 50 percent of the hourly salary equivalency amount.
- The published amounts were to be adjusted to take into account projected rates of inflation that occurred after the initial effective date.

The proposal provided for a 60-day period for public comment. The proposed rule also provided that the guidelines would not be effective until at least 60 days after the date of publication of the final rule.

We received 409 pieces of correspondence on the proposed guidelines. A significant number of comments focused on major aspects of the proposed methodology that required us to perform an extensive evaluation of the methodology before revised guidelines could be issued. A summary of the public comments and our responses follow.

III. Summary of Public Comments and Departmental Responses

A. Data Sources for Salary Equivalency Guidelines

We proposed to use the latest available Bureau of Labor Statistics (BLS) hospital occupational/industry wage survey data along with data from several other sources of hospital and nursing home data to develop the salary equivalency guidelines. This was the first time that we had proposed using data sources in addition to the BLS data in issuing the salary equivalency guidelines. We based this decision on the following:

First, BLS carried out its last hospital occupational/industry wage surveys in 1989 and 1991 and for budgetary reasons has discontinued conducting this survey. Accordingly, even if we had chosen to use BLS survey data as our primary source for the proposed rule, we would have needed to investigate other rehabilitation therapy survey data sources for projecting the 1989 and 1991 data to a current base period such as 1995 and for use in future guidelines. In addition, although the 1989 and 1991 BLS survey data continue to meet the rigorous publication standards of BLS and provide the only statistically reliable national/regional data for wages by occupation of which we are aware, questions have been raised as to whether the BLS data meet the Senate Committee on Finance's recommendation on timeliness. We took this concern into consideration explicitly in the proposed rule. Furthermore, the BLS hospital occupational/industry wage surveys of 1989 and 1991 include only hospital data. The last BLS nursing home occupational/industry wage survey was conducted in 1985. We believed it was reasonable to use combined hospital and SNF wages in the determination of the guidelines as was done previously because therapist wage levels are primarily determined in occupational labor markets, not in separate or isolated industry labor markets. We also needed to review the SNF therapist data so that we could determine the wage levels in SNFs holding all other factors constant (including local labor market conditions, and working conditions).

Comment: We received numerous comments regarding the strengths and weaknesses of the various data sources that we proposed to use to determine the guidelines.

Response: We intend to utilize five additional data sources for hospital wages and two additional data sources for freestanding SNF wages, each of which we discuss in detail below. We acknowledge the commenters observations of strengths and weaknesses present in several of the data sources. However, to delete any one data source would give more weight to the remaining data sources, which have their own strengths and weaknesses. To delete any data source with any weakness relating to statistical reliability would leave only the BLS data which are not as timely as we would have preferred. Although we received many comments about the strengths and weaknesses of the various data sources that we did use, we did not receive compelling evidence to either add or delete any data source or change the equal weight given to each data source.

A summary of the different data sources appears below the summaries of the public comments we received and our responses to those comments.

1. BLS Data—General

BLS collected average hourly earnings (AHE) data for all four types of therapists in 1989. However, the January 1991 BLS survey included only the average hourly earnings for full-time physical and respiratory therapists (BLS January 1991 average hourly earnings for full-time physical and respiratory therapists were found in the BLS *Occupational Wage Survey: Hospitals*, January 1991, pp. 36–119). The hospitals in this survey employed 50 or more workers. We therefore needed to estimate 1991 average hourly wages for speech language pathologists and occupational therapists at the full labor market rate. To do so, we started with the BLS 1989 survey of all four types of therapists as a baseline (*BLS Industry Wage Survey: Hospitals*, March 1989 (the latest previous survey), pp. 33–118). The hospitals in the 1989 survey employed 100 or more workers. Our analysis of the University of Texas survey data for U.S. hospitals indicated that the wages for speech language pathologists and respiratory therapists increased at similar rates between 1989 and 1993. Wages for occupational therapists also increased at rates similar to that for physical therapists during that period. Therefore, we determined that we could employ the 1991 to 1989 growth rates of respiratory therapist wages and of physical therapist wages in order to estimate 1991 wage levels for speech language pathologists and occupational therapists, respectively.

To update the data for the four therapist types from 1991 to later periods, we derived rates of increase for the period from January 1991 through January 1994 (the period which predates the additional data sources that HCFA used) and based 50 percent on American Hospital Association Panel wage data and 50 percent on the average hourly earnings for hospital workers published by the BLS Current Employment Statistics Survey, SIC Code 806 (Hospitals). The additional industry data sources, detailed below, that HCFA used were surveyed in 1994–1995.

For the period from January 1994 through October 1995, we updated the BLS occupational industry wage data for the four therapy types using the BLS Current Employment Statistics Survey for hospital worker hourly earnings. By incorporating the American Hospital Association data, which had a higher rate of increase than the BLS data during the January 1991–January 1994 period, HCFA captured the relatively faster growth in therapist wages during the period, resulting in wage levels that reflected current market conditions in January 1994. As mentioned above, we used the BLS Current Employment Statistics Survey to trend therapist wage increases from 1994 to 1995.

Comment: One commenter stated that most data sources that HCFA used, especially BLS and Mutual of Omaha, were not statistically valid. Specifically, the commenter argued that the BLS data were biased and the extrapolation of the BLS survey to non-surveyed areas was

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not a valid statistical procedure, especially since there was no known relationship between surveyed areas and non-surveyed areas. Several commenters noted that the National Association for the Support of Long-Term Care (NASL) and the American Health Care Association (AHCA) surveys provide timely and accurate data and should be the only data sources used for the salary equivalency guidelines in SNFs. One commenter concluded that the BLS survey had a "high response rate" and the data were reliable.

Response: We agree that no available data source is ideally suited for all purposes. The data sources used may contain biases that we were unable to remove using standard statistical editing routines. We believe that the biases go in both directions and tend to offset each other. Given that the mean hourly wages of therapists generally cluster in rather small ranges, we believe that an average of the various sources, including any inherent biases, fairly represents the national wage rate for each of the four therapist types. We agree that the NASL and AHCA databases are timely, but each has shortcomings regarding representativeness. We address specific comments concerning the Mutual of Omaha data and the issue of separate salary equivalency guidelines for each setting later.

Comment: One commenter stated that Congress does not want HCFA to use the BLS data because Congress discontinued funding for these surveys in 1992.

Response: Congress discontinued funding for these surveys for reasons unrelated to the salary equivalency guidelines. The BLS surveys were replaced by the Occupational Compensation Survey (OCS). We could not use the OCS because it did not contain the level of detail by occupation required for use in establishing salary equivalency guidelines.

2. National Association for the Support of Long-Term Care (NASL)

In March 1996, NASL, representing a portion of the rehabilitation therapy industry, submitted an October 1995 sample survey of salaried therapists in hospitals and nursing homes to HCFA, as allowed under our regulations. This survey did not meet the requirements of the regulations at § 413.106(b)(6), since the survey design, questionnaires, and instructions were not approved by HCFA prior to the start of the survey. The survey did provide data that were current in SNFs and hospitals, and some documentation was furnished. We, therefore, conducted a special analysis of this NASL survey data, including a limited audit of the survey records. Based on this analysis and limited audit, we determined that the survey was not adequate as a sole or primary source of data in determining the guidelines, but could be useful in combination with other data sources. There were several reasons for this determination:

- The data were not audited or certified by an independent party. We were permitted to conduct an audit of the survey records only under stringent restrictions designed to protect the confidentiality of the survey respondents. Those restrictions made it impossible for us to verify the survey results. For example, we were unable to compare submitted survey data with data from other sources.
- The verification survey, conducted to determine the reliability of data submitted by mail, did not appear to be adequate. Only five providers were included in the verification survey. Specifically, we were not satisfied that the verification sample was either sufficiently large or adequately representative.
- The survey is not sufficiently representative. There were variable response rates for hospitals and SNFs. The response rate for hospitals was 10.8 percent and the response rate for SNFs was 29.9 percent. In addition, the sample seemed to include an overrepresentation of large hospitals and chain-affiliated SNFs.

Because there is an underrepresentation of small hospitals and non-chain SNFs in the NASL survey, we cannot be assured with this small response rate that the large hospitals and chain-affiliated SNFs will adequately represent the small hospitals and non-chain SNFs not included in the survey. (The GAO stated in its report, "Medicare Early Resolution of Overcharges for Therapy in Nursing Homes is Unlikely", August 16, 1996, p. 7, regarding the NASL survey data, "However, the survey response rate was low (10 percent for hospitals and 30 percent for SNFs), which raises questions about how representative the data are." In a footnote on that page, GAO points out, "Official government surveys generate a much higher response rate. The BLS White Collar Pay Survey (one component of which was the hospital salary data survey on which the draft guidelines were based) has an overall response rate of 82 percent. Typically, BLS response rates exceed 80 percent)."

- Despite requests for the raw unedited data file, the file was not provided to us.
- We have questions about the validity of certain edits.
- We were also concerned that supervisory time and compensation in lieu of benefits were not consistently reported. Additionally, we were concerned that the supervisory time included in the NASL survey was above a certain threshold that we use in developing the guidelines.

Comment: Some commenters challenged HCFA's characterization of the NASL data and felt that HCFA should give greater weight to the NASL data for a variety of reasons.

Response: In general, the mean wages from the various data sources we used were rather tightly clustered. None of the commenters offered compelling evidence that NASL data should be weighted preferentially. Therefore, we did not change the weighting of any of the data sources used.

Comment: One commenter stated that the NASL data have response rates comparable to those achieved in unspecified BLS studies, hospital industry studies, and long-term care studies. The same commenter pointed out that the NASL data consisted of responses from 711 institutions while the BLS data were from 628 institutions. Another commenter stated that the NASL survey suffered from a low response rate.

Response: The NASL surveyed hospitals, hospital-based SNFs, and freestanding SNFs while the BLS surveyed hospitals only. The response rate of the BLS survey was 84 percent, in contrast to the response rate of the NASL survey, which was 20 percent in the aggregate (10 percent for hospitals and 29 percent for SNFs). We agree with the comment that the response rate for the NASL data was low with respect to statistical sampling theory. While, the validity and reliability of a sample survey depends primarily upon the representativeness of the sample, not on the number of responses (assuming an adequate sample size), we have concerns about the representativeness of the NASL survey. These concerns, along with the low response rate to the survey, lead us to believe that the NASL data should be given no greater weight than the data from other sources.

Comment: One commenter asserted that the NASL survey followed a rigorous statistical design in consultation with HCFA and that the NASL data were as good as the data HCFA used.

Response: HCFA did comment and make suggestions on some aspects of the statistical design. NASL did not, however, implement all of the suggestions that HCFA felt were necessary for a valid statistical design. Nevertheless, we are using the NASL data in conjunction with data from several other sources, giving it the same weight as all other data sources.

Comment: One commenter defended the quality of the NASL data by stating that HCFA performed an audit of the data, although limited by conditions set by NASL.

Response: The restrictions set by NASL were such that essentially all that HCFA was able to perform during its on-site visit to NASL was a review. The data were not audited or certified by an independent party. We were permitted to review the survey records only under stringent restrictions designed to protect the confidentiality of the survey respondents. Those restrictions made it impossible for us to verify the survey results. For example, we were unable to compare submitted survey data with data from other sources.

Comment: One commenter noted that the NASL survey benefitted from a verification survey.

Response: We concur that verification surveys are beneficial, but our review of the NASL survey disclosed that the number of provider verifications actually conducted was extremely limited. As stated earlier, there were only 5 verifications on 711 responses, a number too small to give statistical significance to the result.

Comment: Several commenters recommended that HCFA use only the NASL and/or AHCA data from SNFs to develop rates for SNFs.

Response: As stated above, HCFA has blended SNF and hospital data in our previous notice and we see no valid reason not to do so again. In addition, we found a number of shortcomings with the NASL data and the AHCA data, which we found to be biased toward SNF chains and to include some supervisory data. We edited the data as much as possible to improve data quality, but did not use either data source alone to develop rates for SNFs. We address the issue of separate salary equivalency guidelines for each provider setting later in this final rule.

Comment: Several commenters pointed out that the NASL data were the most timely data available.

Response: We agree that the NASL data were the most timely data available, but, as discussed earlier, timeliness alone does not sufficiently meet the criterion for validity and reliability.

Comment: One commenter noted that the NASL data were skewed toward larger hospitals.

Response: We concur that the sample responses were skewed toward larger hospitals as well as larger SNF chains but, as stated earlier, some of the other data sources are biased in other ways as well. The extent of response bias within the reweighted data is not possible to quantify without some additional survey work. Again, by combining data sources with different biases, we believe that the biases tend to offset each other as evidenced by the clustering of means.

3. Texas National Hospital Survey (1994 National Survey of Hospital and Medical School Salaries, University of Texas Medical Branch, Galveston, TX, 1994, pp. 15–19)

The University of Texas National Hospital Survey data are from October 1994. This annual survey of hospitals is voluntary. The survey has been conducted for many years for hospitals in various regions of the country to use as a benchmark of regional wage levels for specific health professional occupations. While there are data from all regions of the United States, the survey was not designed to meet the rigorous BLS standards for representativeness or statistical validity at the regional level. It does, however, give reasonable levels at the national level when compared to other data sources.

Comment: One commenter stated that it was inappropriate for HCFA to use the University of Texas survey of hospitals in the United States because the data "includes medical schools with a low wage bias to establish rates of pay for therapists that are working primarily in SNFs."

Response: The commenter's assertion is incorrect because the mean wages from the University of Texas data clustered with the mean wages from other data sources. Specifically, the University of Texas mean hourly wage ranged from being $0.19 higher to $0.83 lower than the mean hourly wage for the four therapy types using all the data sources—a range well within reasonable boundaries associated with statistical variation. For physical therapists, the University of Texas mean wage was $20.29; the mean wage from all sources of hospital wage data was $21.00, a difference of 3 percent. For occupational therapists, the University of Texas mean wage was $19.28; the mean wage from all sources of hospital wage data was $19.73, a difference of 2 percent. For speech language pathologists, the University of Texas mean wage was $18.58; the mean wage from all sources of hospital wage data was $18.67, a difference of less than one percent. For respiratory therapists, the University of Texas mean wage was $15.74; the mean wage from all sources was $15.58, a difference of negative one percent.

4. American Health Care Association (AHCA) Data

The AHCA report includes data on both SNFs and hospitals. The SNF data for January 1995 are both current and industry-specific. However, the data are unevenly edited and appear to include some supervisors and additional salary in lieu of benefits. The sample is heavily weighted by large chains that are members of the Association. The SNF data, unlike BLS data, appear as both employee-weighted and facility-weighted averages and, therefore, do not permit computation of a median or 75th percentile levels for individual workers.

Comment: One commenter objected to HCFA's observations concerning the 1994 and 1995 AHCA survey data and indicated that HCFA's criticisms were unreasonable, given the lack of alternative sources and the constant enhancement of the AHCA database since 1987. In particular, the commenter objected to HCFA's observations that the AHCA data were "unevenly edited and appear to include supervisors and additional salary in lieu of benefits," stating that HCFA fails to acknowledge discussions addressing these issues. The same commenter suggested that HCFA give the AHCA data greater weight because they were both timely and accurate, noting that: (a) AHCA data are exhaustively and consistently screened and cleaned with participants and the database is certified by Buck Consultants as being representative; (b) Buck Consultants has taken steps to insure that supervisory data are excluded from the data; (c) there are no wages or salary in lieu of benefits in the data; and (d) this is an annual study, given the same scrutiny each year and, therefore, should increase the degree of confidence that HCFA has in the data. Other commenters acknowledged the bias in the AHCA data toward large chains and indicated that HCFA could correct the AHCA survey for large company bias as well as individual data point analysis and exclusion of supervisory rates.

Response: We acknowledge the steps taken to improve the quality of the AHCA data over time, and agree that the quality of the data has improved. Our analyses of the 1994 and 1995 AHCA survey indicate that the survey is still not representative of Medicare-certified facilities; it represents primarily large chains that are members of AHCA. We

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made the same observations as did some commenters regarding AHCA data deficiencies and took steps to exclude supervisory data. HCFA did not have the necessary information to correct for large company bias. We believe that the biases tend to offset the data as evidenced by the clustering of mean wages. Further, individual worker data are not available to validate the reasonableness of the means for each institution. For these reasons, it would not be appropriate for HCFA to modify the weights given to the AHCA data, or to use these data as the sole source in developing the salary equivalency guidelines.

Comment: Another commenter asserted that the NASL and AHCA data probably contained more responses from therapists than were contained in the BLS studies and that the occupational nature of therapists should outweigh the industry focus created by counting numbers of institutions.

Response: The 1989 and 1991 BLS samples had responses from 536 and 628 hospitals, respectively. The 1989 and 1991 BLS data that we used contained responses from 12,672 certified therapists as follows: 3,668 in physical therapy (1991); 1,742 in occupational therapy (1989); 668 in speech language pathology (1989); and 6,594 in respiratory therapy (1991). The post-edit NASL survey had responses from 191 hospitals, 50 hospital-based SNFs, and 351 freestanding SNFs. The post-edit NASL survey contained responses from 5,741 registered/certified therapists as follows: 1,720 in physical therapy; 1,204 in occupational therapy; 680 in speech language pathology; and 2,137 in respiratory therapy. The AHCA data contained responses from 3,515 certified therapists: 1,806 physical therapists; 1,405 occupational therapists; and 304 speech language pathologists. The commenter was apparently seeking to give more weight to the NASL and AHCA data because "the number of therapists reported in the NASL and AHCA survey probably exceeds the numbers reported in the BLS studies * * *" implying that the two industry data bases are more reliable for that reason. In fact, the BLS studies (12,672 therapists) we used contained 37 percent more therapists than the NASL and AHCA data combined (5,741 and 3,515, respectively).

5. Maryland Health Services Cost Review Commission Data

The Maryland Health Services Cost Review Commission conducts an annual census of occupational wage rates for all Maryland hospitals. We analyzed data from the 1995 census. While this is a complete census covering over 50 hospitals, it is for Maryland only. In addition, speech-language pathologists are not included as a separate occupational category.

Comment: One commenter noted that the Maryland Health Services Cost Report Commission's database is not representative of the United States because the data are from only one State. Further, the commenter noted that speech language pathologists are not separately identified in the data.

Response: Despite its shortcomings, the strengths of the Maryland census are that it is timely, accurate, and contains data from providers of various sizes in geographically diverse urban and rural areas. It is a rich data source for variations in occupational wage levels by degree of urbanization. In fact, the mean hourly wage for physical therapists in the Maryland data was $20.78; the mean wage from all sources of hospital wage data was $21.00, a difference of only 1 percent. The mean hourly wage for occupational therapists in the Maryland data was $20.60; the mean wage from all sources of hospital wage data was $19.73, a difference of 4 percent. The mean hourly wage for respiratory therapists in the Maryland data was $16.20; the mean wage from all sources of hospital wage data was $15.58, a difference of four percent. We used the data because we concluded that its strengths outweighed its weaknesses for our specific purpose.

6. 1995 American Rehabilitation Association (ARA) Salary Survey

The ARA collected July 1994 data from its members that are medical and residential rehabilitation providers. Among ARA members are CORFs that provide physical therapy, respiratory therapy, speech language pathology, and occupational therapy services to Medicare and Medicaid beneficiaries. The response rate was low and the Association indicated in its report that these data cannot be presumed to represent the full population of rehabilitation facilities. However, this survey appears to give reasonable wage levels at the national level when compared to other data sources. Information on SNFs was not reported due to an inadequate sample size.

Comment: One commenter noted that the ARA survey had a low response rate and that it could not be assumed to be representative. Another commenter noted that despite the low response rate, the results appeared to yield reasonable wage levels nationally.

Response: We agree with the observations of both commenters. Although the data could not be assumed to be representative, they were reasonable and fairly close to the other data sources we used. In fact, the mean hourly wage for physical therapists in the ARA freestanding hospital data was $20.82; the mean wage from all sources of hospital wage data was $21.00, a difference of less than 1 percent. The mean hourly wage for occupational therapists in the ARA freestanding hospital data was $18.90; the mean wage from all sources of hospital wage data was $19.73, a difference of only 4 percent. Similarly, the mean hourly wage for physical therapists in the ARA rehabilitation unit data was $21.12; the mean wage from all sources of hospital wage data was $21.00, a difference of less than one percent. The mean hourly wage for occupational therapists in the ARA rehabilitation unit data was $19.82; the mean wage from all sources of hospital wage data was $19.73, a difference of less than one percent. As is the case with the other data sources, we used the ARA data because we concluded that its strengths outweighed its weaknesses.

7. Mutual of Omaha Data

Mutual of Omaha, an HCFA intermediary, conducted a survey of about 2,000 Medicare SNF providers in 1995. Data were collected on contract therapy prices and salary rates for occupational therapy and speech language pathology.

Comment: Several commenters stated that the Mutual of Omaha survey was not statistically valid because of inadequate sample design, no analysis of respondents vs. nonrespondents, too small a sample size, overrepresentation of hospital-based SNFs and contract therapists, no physical therapist or respiratory therapist data, and data that were limited to aggregate facility data as opposed to data points for each employee. The weight of many comments is reflected in their assertions that the average wage rates of occupational therapists and speech language pathologists reflected in the Mutual of Omaha data are out of line with other data sources.

Response: We agree that the Mutual of Omaha survey does not meet the rigorous sample design requirements of the BLS survey data included in our estimates. However, we did use it in combination with the other described data sources. The Mutual of Omaha data are similar to other data sources such as AHCA and the American Rehabilitation Association (ARA) that reflect universes other than the national. The Mutual of Omaha estimate of the mean hourly wage level of occupational therapists in SNFs in October 1995 that we used in the salary computation was $22.90, compared to the mean wage rate of all SNF data sources of $20.33. The Mutual of Omaha mean wage rate for occupational therapy is thus 13 percent above the mean wage rate of all data sources. The Mutual of Omaha mean wage rate for speech language pathologists in SNFs in October 1995 was $20.34 compared to the mean wage rate of $19.26. The Mutual of Omaha mean wage rate for speech language pathologists is thus 6 percent above the mean wage rate of all SNF data sources.

8. Unused Data Source—"A Study of Respiratory Care Human Resources in Hospitals 1992"

This survey was conducted by the American Association of Respiratory Care's (AARC) Task Force on Professional Direction in conjunction with consultants from Arthur Andersen & Co. The AARC surveyed 2,732 of 4,900 hospitals having respiratory care departments and received 858 responses (31 percent response rate), comprising 17 percent of all hospitals with respiratory care departments.

Comment: One commenter inquired as to why HCFA did not use this study by AARC in conjunction with consultants from Arthur Andersen & Co.

Response: HCFA used data from academic (e.g., University of Texas), government and industry-wide surveys for hospitals, SNFs, etc. that included occupational specific data. HCFA did not use data sources specific to one occupational category from its own professional association, e.g., American Occupational Therapy Association data. Using specific occupational data from a particular association may have biased the results relative to the other occupational categories, given the wide discretion used in defining wages, income, and statistical design among the four occupational groups.

B. Methodology

In order to establish the proposed hourly salary equivalency amounts, we determined the "best estimate" of wages for both hospitals and SNFs. We first found mean wage rates for each of the data sources listed above.

BLS surveyed average hourly earnings (AHE) for all four therapies in 1989. However, their January 1991 survey included the average hourly earnings only for full-time physical and respiratory therapists. (BLS January 1991 average hourly earnings for full-time physical and respiratory therapists were found in the BLS Occupational Wage Survey: Hospitals, January 1991, pp. 36–119. The hospitals in this survey employed 50 or more workers.) We, therefore, needed to estimate 1991 average hourly wages for speech language pathology and occupational therapy. To do so, we started with the BLS 1989 survey of all four therapies as a baseline (BLS Industry Wage Survey: Hospitals, March 1989 (the latest previous survey), pp 33–118). The hospitals in the 1989 survey employed 100 or more workers. Our analysis of the University of Texas data for U.S. hospitals indicated that the wages for speech language pathology and respiratory therapy increased at a similar rate between 1989 and 1993. Wages for occupational therapy and physical therapy also increased at a similar rate during that period. Therefore, we determined that we could employ the 1989 ratios of speech language pathology to respiratory therapy, and of occupational therapy to physical therapy, in order to estimate 1991 wage levels for speech language pathology and occupational therapy. Specifically, multiplying the ratio of 1989 average hourly occupational therapy wages to 1989 average hourly physical therapy wages by 1991 physical therapy wages yielded estimated 1991 occupational therapy wages. The following formula summarizes the computation (all values are average hourly wages):

[(March 1989 AHE, OT) / (March 1989 AHE, PT)] × (January 1991 AHE, PT) = (estimated January 1991 AHE, OT).

Similarly, multiplying the ratio of 1989 average hourly speech language pathology wages to 1989 average hourly respiratory therapy wages by the 1991 average hourly respiratory therapy wages yielded estimated 1991 average hourly speech language pathology wages. Again, the following formula summarizes the computation (all values are average hourly wages):

[(March 1989 AHE, speech language pathology) / (March 1989 AHE, respiratory therapy)]×(January 1991 AHE, respiratory therapy) = estimated January 1991 AHE, speech language pathology.

The American Health Care Association data provided facility-weighted mean wage rates for SNFs. The Association has estimated that 5 percent of the SNF wage rates represented supervisors and additional wages paid in lieu of fringe benefits. We used that estimate to reduce the Association survey wage data to a nonsupervisory, no additional salary in lieu of benefits basis.

We converted annual data in the American Rehabilitation Association and University of Texas surveys to hourly wages using a divisor of 2080 hours, which represents a standard work year.

The Maryland Health Services Cost Review Commission census data provided wage data, paid hours, and numbers of personnel for each hospital. We eliminated data for employees who worked less than 35 hours or more than 40 hours a week to restrict the computation to full-time employees only. We then determined the average hourly wage for each hospital by dividing aggregate wages by the number of paid hours. Finally, we computed the average hourly wages across all hospitals, weighted by the number of employees in each hospital.

NASL data were first divided by 52 to arrive at weekly salary, then divided by the number of hours worked per week which were also given in the survey, to obtain hourly wage rates. As in the case of the Maryland census data, we eliminated data for employees who worked less than 35 hours, or more than 40 hours a week to restrict the computation to full-time employees only.

We trended all data to the 1995 fourth quarter as described in detail in the March 1997 proposed rule. We then determined the salary equivalency guideline amounts for 1998 in five steps. Those five steps were: (1) Determine average wages by therapy type, separately for hospitals and nursing homes; (2) blend the hospital and nursing home average wages by therapy type, to yield average wages by therapy type for the four occupational markets; (3) approximate the 75th percentile of wages by therapy type; (4) calculate salary equivalency guideline levels for fourth quarter 1995, by adding amounts for fringe benefits, rent, etc.; and (5) update these guideline amounts to April 1, 1998, the proposed effective date.

In the first step, we determined the mean wage levels, by therapy type, for hospitals in each of the available data sources. (Data sources used for hospitals were: BLS, Industry Wage Survey: Hospitals, March 1989 and

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Occupational Wage Survey: Hospitals, January 1991; University of Texas *1994 National Survey of Hospital and Medical School Salaries;* American Rehabilitation Association's surveys of freestanding hospitals and of rehabilitation units, *1995 Salary Survey;* Maryland Health Services Cost Review Commission's census of hospitals; American Health Care Association hospital report's data profile, *1994 AHCA Survey;* and NASL 1995 survey of hospitals). We similarly determined the mean wage levels, by therapy type, for nursing homes in each of the available data sources. (Data sources used for SNFs were: 1995 NASL survey of SNFs; American Health Care Association survey of SNFs, *1995 AHCA Survey;* and the 1996 survey of SNFs by Mutual of Omaha). We then averaged the mean wage levels from the available data sources by therapy type, separately for hospitals and nursing homes.

In the second step, we blended the hospital and nursing home average wage levels, by therapy, to yield average wage levels by therapist type across the four occupational markets. We employed a blending process used in the previous salary equivalency guidelines notice (48 FR 44922, September 30, 1983), to weight the occupational averages by relative employment levels in hospitals and nursing homes, respectively. To establish appropriate weights, we used employment of therapists in nursing homes (Standard Industrial Classification (SIC) Code 805) and in hospitals (SIC Code 806), as found in the BLS Occupational Employment Statistics survey (OES). (The most recent available survey of employment in nursing homes is for 1993, while the most recent survey data of employment in hospitals is for 1995.) We applied these weights to the mean hospital and SNF wage rates by the four therapist types as determined in the first step. The BLS Occupational Employment Statistics survey shows that the hospital industry is a major employer of therapists of all types, while SNFs employ fewer salaried therapists. The weights for hospitals and nursing homes, respectively, are: for physical therapy, 85 percent and 15 percent; for occupational therapy, 85 percent and 15 percent; for speech language pathology, 82 percent and 18 percent; and for respiratory therapy, 99 percent and 1 percent.

In the third step we approximated the 75th percentile of the blended wage rates for each therapy occupation. It was necessary to approximate the 75th percentile because, unlike our previous computations of the guidelines, in this proposal we could not determine percentile values directly from each of the sources. We have observed in the BLS data and a regression analysis we performed on NASL data that the 75th percentile was approximately 110 percent of the mean. We, therefore, proposed to increase each of the four blended wage averages by 10 percent to approximate the 75th percentile of wages in each discipline across the occupational market. (In response to comments on the proposed rule, however, we have increased the factor to estimate the 75th percentile from 110 percent of the mean to 112 percent of the mean to reflect inherent variations that we were not able to quantify.) The inherent variations are due to estimating national rates for each of the four rehabilitation therapies, then using the GPCI to approximate wage and fringe levels in all geographic areas of the United States. Data does not exist to verify that, for each of the four therapies, every local labor market in the United States is accurately portrayed by the GPCI.

Salary equivalency guidelines are based on the therapists' time in the facility. Adjustments to average hourly earnings data were necessary to include a reasonable allowance for vacation, sick leave, and administrative time. In order to convert the average hourly earnings from an hours paid basis to an hours worked basis, we applied a factor of total paid hours divided by hours worked (2,080 ÷ 1,808) to the average hourly earnings determined thus far, which is the same methodology used in the previous notice. The 1,808 figure was computed based on 2,080 hours (40 hours/week × 52 weeks; a standard work year) less 15 vacation days, 10 sick leave days and 9 holidays equal to 34 days, or 272 hours. Data on leave benefits come from the BLS Employee Benefits Survey. (U.S. Department of Labor, Bureau of Labor Statistics: *Employee Benefits in Small Private Establishments, 1992,* Bulletin 2441, U.S. Government Printing Office, May 1994, pp. 10–20.)

In the fourth step, we added fringe benefit and expense factors to the prevailing salary rates determined for each therapy type. The fringe benefit and expense factors are intended to recognize fringe benefits that are received by an employee therapist, as well as overhead expenses that a therapist or therapist organization might incur in furnishing services under arrangements. These factors are expressed as percentages of the prevailing hourly rate and are applied to every hour of service furnished at the provider site. Fringe benefits may include vacation and sick pay, insurance premiums, pension payments, allowance for job-related training, meals, severance pay, bonuses, etc.

We computed fringe benefits as a percent of total compensation using fiscal year 1994 Medicare cost reports for hospitals under the prospective payment system. We believe these data are the best proxy for therapist fringe benefit information, which is not available for SNFs. We used the Medicare cost reports for prospective payment system hospitals to obtain fringe benefit information because these data are carefully scrutinized; they are used to adjust the labor portion of hospital payments under the prospective payment system. Also, the BLS Employment Cost Index (ECI) for March 1994 showed that fringe benefits for professional and technical workers in hospitals and nursing homes were similar. In the proposed rule, the fringe benefit component was about 14 percent of the total salary equivalency guideline amount. In the final rule, we have, instead, added the amount determined from the adjustment to average hourly earnings for vacation, sick leave, and administrative time to the fringe benefit amount excluding leave determined from the hospital cost reports. By including paid leave in fringe benefits rather than in salary, the final weight for fringe benefits is about 20 percent of the guideline amount or about 28 percent of total compensation.

The expense component takes into account expenses a therapist or therapist organization might have, such as maintaining an office, purchasing insurance, etc. We based the expense component of the guidelines on an estimate of the costs of maintaining a therapy services office. The general methodology for computing the expense component is similar to that used in the September 30, 1983 notice (48 FR 44922) but the factors have been revised. This component has rental and non-rental portions.

To determine the rental portion of the expense component, we used the 1995 rental rate data compiled by the Building Owners and Managers Association International (BOMA) and published in the 1996 BOMA Experience Exchange Report for Downtown and Suburban Office Buildings. (Building Owners and Managers Association International: *1996 BOMA Experience Exchange Report,* Washington, DC, 1996, p. 17.) BOMA reported a national rent average, excluding utility cost, of $18.37 per square foot per year. We applied an occupancy factor of .887 to take into account the space used for rental building hallways, elevators, etc., that are included in the BOMA rent figure, but are not part of the area rented for an office. We then added the BOMA utilities cost of $1.82 per square foot. We determined total rental cost, assuming a rental area of 250 square feet, the same rental area used in prior schedules of guidelines. The total 1995 rental cost was divided by 1,808 (the hours factor applied to average hourly earnings) to compute rental cost per hour worked in 1995.

The expense component includes costs of maintaining an office, such as wages and salaries of administrative and clerical help, insurance, telephones, etc. Medicare pays for services at their reasonable cost. It has been reported to HCFA that an effective and efficient rehabilitation therapy firm incurs overhead expenses of about 25 percent. We estimate this component, including rent, to be within a reasonable cost range of 28.2 percent of total expenses in 1995. The 1995 rent per square foot amount and the other expenses amount were constant across the four therapy types, implying that the share of these costs vary by therapy type (the share for rent is lowest for physical therapy since the physical therapy wage rates are the highest).

As described in detail in the proposed rule, we added the fourth quarter 1995 dollar values of the "blended" wages, fringe benefits, rent, and the remainder of the other expenses factors to obtain salary equivalency guideline amounts for fourth quarter 1995. We updated the resultant fourth quarter 1995 salary equivalency guideline amounts to April 1998, using a Standard & Poor's DRI 1997:4 forecast.

1. Occupational Labor Market

In calculating the salary equivalency guidelines proposed on March 28, 1997, HCFA used a blend of hospital and SNF therapist wages. We also used a blend of hospital and SNF therapist wages in the establishment of salary equivalency guidelines for physical and respiratory therapy in the September 30, 1983 notice. The use of a blended wage reflects the influence of occupational labor market conditions on rehabilitation therapist wages, given the substantial degree of mobility between the settings. In the proposed rule, the labor market for therapists was characterized as an integrated occupational market in which therapists working in hospitals and SNFs have the potential to migrate between the two settings with relatively little difficulty resulting from differences in job requirements. We noted, however, that wage levels across settings for the same occupation may differ due to reasonable compensating wage differentials associated with working conditions, risk of injury, and geographic location. Wage differentials may also be associated with differences in worker characteristics, such as experience and skill. When these factors are taken into account, the ability to move across settings should ensure that the wage levels between these settings bear a reasonable relationship over time.

Comment (general): Many of the comments on the proposed rule have focused on the issue of compensating wage differentials, asserting that HCFA should not blend wages of hospital and SNF therapists in the establishment of salary equivalency guidelines. These comments maintain that wage differentials that exist between the two settings can be fully explained by a combination of higher skill requirements and a less agreeable work setting in SNFs. For this reason, commenters claim that the full difference in wages should be recognized by HCFA.

Response: The assertion that differences in skills and work environment fully explain current differences in wage rates rests on the assumption that compensating wage differentials between hospitals and SNFs are equivalent to the actual wage differentials observed at a point in time. However, there are a number of factors which may cause actual wage differentials to vary from those associated solely with differences in skills or environment. These factors include adjustments to short-term shifts in demand, entrance barriers to the therapy professions which have slowed adjustment to these shocks, and distortions to the operation of markets for therapy services and labor within the SNF sector caused by the inflation of prices and wages by Rehabilitation Therapy Firms (RTFs) to quickly gain market share as well as the lack of sufficient efforts to minimize costs by SNFs.

HCFA contracted with Standard & Poor's DRI to study this issue. Their data indicate that HCFA's proposed salary equivalency rates, incorporating the adjustment to the 75th percentile of the wage distribution, are more than sufficient to cover legitimate compensating wage differentials for skills and work environment in SNFs, as well as the wage differential which would result from increases in demand for therapy services in SNFs given cost-minimizing behavior by SNFs and RTFs.

Comment: Some commenters stated that there is no legal foundation for using a blended wage rate for hospitals and skilled nursing facilities to set salary equivalency rates.

Response: We do not believe that the statute prohibits use of a blended wage rate. We used a methodology based on blending wages from therapists in hospitals and SNFs in the September 30, 1983 notice which revised salary equivalency guidelines for physical and respiratory therapists. In that notice, HCFA established the prevailing salary component based on a blended hourly wage for hospitals and nursing home hourly wage at the 75th percentile of the wage distribution. As discussed in more detail in the Statutory Issues section below, we believe that this approach comports with Congressional intent as expressed in the relevant legislative history.

Comment: One commenter stated that the growing wage differential between therapists in the SNF setting and those in the hospital setting implies that the labor markets for therapists in these two settings are separate and distinct. According to the commenter, this indicates that the concept of an occupational labor market cannot be used as the basis for establishing salary equivalency rates based on a blend of hospital and SNF wages.

Response: The key factor involved in determining the extent to which an occupational labor market is integrated is the substitutability of professional skills across settings. This determines the potential for mobility between the two settings. If workers can flow relatively freely across industry settings, and markets are functioning competitively, this means that wage rates in different settings will be influenced by the supply and demand conditions for that occupation in all settings. This does not mean that wages will be equivalent. Compensating wage differentials for differing skills and environments will result in a reasonable relationship of wages across all settings.

The term "occupational labor market" implies some range of shared, and, therefore, substitutable skills. The question then becomes whether the extent to which skills required in the two settings are overlapping, whether the educational requirements are similar, and whether substantial retraining is required in order for therapists to move from one setting to another. An examination of these issues for therapists in hospitals versus SNFs indicates that the required educational qualifications and skills are extremely similar. All therapists complete the same accredited education programs and substantive retraining for individuals moving between these two settings is not standard. For therapists

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employed in hospitals and SNFs, it is clear that, while not identical, the skills needed to perform their jobs are highly substitutable. This is evidenced in commenters' observations by the shift in employment of roughly a quarter of physical therapists and speech language pathologists formerly employed in hospitals who have been moved to SNFs or HHAs without substantive retraining. In addition, both hospitals and SNFs routinely hire occupational therapists, physical therapists, and speech language pathologists directly out of college, indicating that the body of required skills is covered by the general educational programs completed by all accredited therapists.

The existence of actual wage differentials between two settings does not indicate that an integrated occupational labor market does not exist. These differences are not solely those associated with different skill requirements or working conditions. Short-term differentials may reflect disequilibrium in response to rapid shifts in employment in the presence of transaction costs, costs of information, and lags in the adjustment of the occupational labor supply. These are reasonable wage differentials that are consistent with cost minimizing behavior. Differentials may also reflect differences in incentives to minimize costs between the two settings.

The fact that SNFs may have little economic incentive to minimize costs, beyond the point where they are subject to risk of audit, will likely result in higher relative prices for therapy and higher therapist wages in the SNF sector. Rehabilitation therapy firms may take advantage of this incentive structure to push prices and wages beyond prudent buyer rates. Because SNFs have little incentive to switch suppliers unless the price is far above their current rates, higher prices will not cause the rehabilitation therapy firm to lose market share. There is no market pressure to push prices down and less pressure for rehabilitation therapy firms to minimize costs than would be the case in competitive cost-minimizing markets.

Comment: Some commenters were concerned that therapists attracted to SNFs and HHA settings are different from those attracted to hospitals and, therefore, do not compete in the same labor market. The wage differential between hospitals and SNFs is a reasonable compensating wage differential associated with these differences in skills and work environment. These differences make it harder for SNFs to recruit qualified therapists. Specific differences between hospitals and SNFs cited by commenters were:

(a) Therapists in SNFs must work independently with less supervision. For this reason, SNFs require a more experienced workforce.

(b) The work environment in SNFs is less appealing than that in hospitals.

—There is less variety in the case mix,

—Smaller therapy departments in SNFs mean less collegiality, less potential for advancement, and fewer opportunities for training; and

—Patients in SNFs are more difficult to work with.

Response: We agree that compensating wage differentials potentially exist between different work settings for therapists. In using a blended hospital/SNF wage rate as the basis for salary equivalency rates, the question is the magnitude of these differentials and whether they are covered by the use of the blended wage rate at the 75th percentile of the wage distribution.

In response to industry requests for additional statistical research on this issue, we contracted with Standard & Poor's DRI to estimate the magnitude of justifiable wage differentials for physical and occupational therapists, and speech-language pathologists. The resulting data presents estimates of compensating wage differentials associated with skills and work environment across industry settings for 1979–89, wage differentials associated with short-term labor market disequilibrium under conditions of cost-minimization, and wage premiums resulting from the failure of many SNFs to behave as cost-minimizers.

The DRI data estimated a net compensating wage differential associated with education, experience, and work environment which is very small in comparison to the actual disparity in wages between the two sectors in 1995. The conclusion of this study was that our proposed salary equivalency rates, based on the blended wage approach, were more than sufficient to cover reasonable compensating wage differentials between hospitals and SNFs and an additional positive short-term differential for SNF therapist wages associated with the estimated increase in the relative demand for therapists in SNFs under the condition that SNFs behave as cost-minimizers.

The commenters maintained that the current disparity of wages is solely reflective of compensating wage differentials associated with the underlying fundamentals of skills and work environment. However, the actual wage differential will be equal to the compensating wage differential only in cases where product and labor markets are competitive (i.e. suppliers, providers and consumers are cost minimizers) and in equilibrium. Neither of these assumptions are met in the case of the labor market for therapists in rehabilitation therapy firms and SNFs.

The nursing home reform requirements of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), which took effect in 1990, caused a rapid increase in the relative demand for therapist labor in SNFs. The continued shift of employment from hospitals, educational institutions, and other settings towards SNFs, which is associated with the current observed wage differential, means that the occupational labor market has not yet reached equilibrium. This indicates that some part of the wage disparity between hospitals and SNFs is reflective of continued efforts to sharply increase the share of the pool of therapists who are employed in SNFs over a fairly short period of time.

In the presence of costs associated with changing jobs and costs of information about available positions and associated wage rates, these efforts can be expected to result in a temporary wage differential even with cost minimizing behavior. This effect is heightened by constraints on the number of new graduates from accredited therapy programs, since job mobility is less costly for new graduates than established therapists. Long queues for entry into accredited therapy programs indicate that current occupational wages are well above the level needed to attract new entrants to the professions. This suggests that difficulties in expanding the capacity of educational programs is contributing to the cross-sectoral adjustment process. These effects on therapist wages in SNFs are beyond the control of the SNFs in minimizing costs, and should therefore be covered by salary equivalency guidelines.

DRI also has shown that the market for therapy services in SNFs does not function in the normal parameters of a cost minimization framework. This analysis relied on a model framework originally developed by Joseph Newhouse (1978)[1] for the analysis of the behavior of medical cost increases under conditions where cost-sharing requirements for consumers vary. This model has the implication that the

[1] Newhouse, Joseph P. The Erosion of the Medical Marketplace, R–2141–1–HEW, The Rand Corporation, Santa Monica, California, December 1978.

supply of medical services will exhibit increasing inefficiency as the coverage of costs approaches 100 percent, resulting in higher volumes, prices, and wages than would otherwise be the case.

Therapy services provided under arrangement in SNFs represent a service that closely approximates 100 percent coverage. Medicare Part A, which accounts for 58 percent of such services, requires zero cost-sharing for the first 20 days. The daily coinsurance rate that beneficiaries must pay for days 21 through 100 for 1998 is $95.50. Medicare pays for all costs over this coinsurance rate. However, because the daily rate in a SNF is usually higher than the coinsurance rate (in 1995, the latest year for which data is available, the average daily rate in a nursing home was $127.16), beneficiaries will pay the full coinsurance amount whether they receive therapy services or not. The extra cost of therapy services is usually paid for by Medicare. Medicare Part B coverage, which begins after 100 days and accounts for 32 percent of therapy services provided in SNFs, requires a 20 percent copayment which is primarily covered by Medigap policies.[2] An additional 5 percent of services are covered by Medicaid, again with zero cost-sharing. While 5 percent of contract therapy services are covered by private insurance (and therefore may be subject to some cost-sharing), this fraction of the market is too small to introduce any significant sensitivity to price into this market.

In many cases, higher contract therapy costs result in higher relative reimbursement from Medicare for allocated overhead as well as for the direct costs of contract therapy services. This reimbursement methodology and market structure has implications for the behavior of firms that supply contract therapy services to SNFs. Cost-effective therapy firms will have little advantage in this market and will not tend to gain any substantial market share compared to the case of freely functioning market. In this situation, Newhouse argues that a competitive cost minimizing supply curve for the industry does not exist. This invalidates claims that prices, input and output quantities, and wages in this setting are at cost-minimizing rates that reflect freely functioning markets.

The Standard & Poor's DRI data produced estimates of hospital/SNF wage differentials associated with reasonable compensating wage differentials based on worker and job characteristics as well as reasonable differentials based on short-term disequilibrium associated with increases in demand, given cost-minimization by SNFs. The estimated differentials associated with characteristics of the workforce and work environment were produced by the estimation of wage equations relating the hourly wages of individual employees throughout the U.S. economy with human capital variables such as education and experience, as well as the systematic differences across occupations and industry groups that are associated with work environment. This estimation was based on regression analysis using pooled cross-sectional data from the 5 percent Public Use Microdata Samples from the 1980 and 1990 decennial census. The census sample incorporates information for therapists in all settings with information on salary, hours worked, educational attainment, demographic characteristics, and location. These data were carefully screened for potential inaccuracies associated with self-reporting and reviewed for consistency with licensure requirements and consistency with other available data sources. The estimation period ended before the implementation of OBRA '87 in 1990. This indicates that wage differentials associated with the resulting unanticipated increase in demand, and those associated with failure to minimize costs in an environment with little restraint on volume and prices, will not bias the estimated compensating wage differentials.

DRI data show that in 1989 SNFs were actually able to hire similarly qualified therapists for a slightly lower wage than could hospitals, holding skills and environment constant. While it is not possible to obtain comparable multivariate estimates based on other data sources because of the lack of available information on skill variables and other occupational groups, we note that several other sources from 1989 and surrounding years confirm that actual wage differentials for SNFs relative to hospitals were small positives or negatives. The American Speech-Language Hearing Association (ASHA) reported a negative differential for SNFs relative to hospitals in 1989, while the American Occupational Therapy Association (AOTA) reports a small positive differential for 1990 (1989 is not available). The differentials reported by ASHA and AOTA are close to those seen in the Census wage data without adjustment for skills and work environment.

Data from the 1990 decennial census indicates that, on average, physical and occupational therapists working in SNFs do have more experience than physical and occupational therapists in hospitals, possibly because some therapists in SNFs need to work more independently or with less supervision. The estimated wage differential associated with the greater degree of experience, however, was small (in both cases less than 5 percent.) The reason for the small differential appears to be that the greater degree of experience is usually past the point where additional experience results in a substantial increase in wages. Rapid increases in wages associated with experience occur during the first decade of practice with wage increases for additional years of experience adding little in the terms of wage gains. Thus, additional years of experience past this point add relatively little to the wages these therapists can demand. On the other hand, speech language pathologists in the census sample reported slightly less experience on average than those employed in hospitals.

However, since the compensating differential resulting from the Census wage equations applies to the year 1989 (1990 Census), it is important to analyze how these conditions might have changed between 1989 and 1995. The principle reason why more experienced therapists might be required in the SNF environment, according to comments, was the relative lack of supervision for these therapists, when compared to hospitals, which have larger, more established therapy departments. The key issue becomes the determination of the direction of changes in the level of supervision since the year 1989 on which our estimates are based.

Given the rapid expansion in the volume of therapy services provided in SNFs, and the larger number of therapists practicing within a given SNF, it follows that the opportunity to consult supervisory personnel has actually grown over the past 6 years. This suggests that, while a gap in the average years of work experience may exist, the size of the gap is likely to be smaller than was the case in 1989.

Comments on the unappealing work environment in SNFs focused on two areas: (1) The nature of the work, that is there is less variety in the case mix, and (2) the lack of collegiality, potential for career advancement, and training opportunities associated with smaller therapy departments in SNFs relative to hospitals.

[2] Weiner and Zeid, Comparing Current Cost with Salary Equivalency Reimbursement for Physical Therapy, Occupational Therapy, and Speech-Language Pathology, Washington DC, April 1995.

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To apply these estimates to the later period, we must analyze how these conditions that contribute to the less appealing work environment would have changed between 1989 and 1995. It would appear that there would actually be more variety in case mix in 1995 than in 1989 due to the expansion of therapy services in the SNF setting and the trend towards discharging hospital patients to SNFs earlier. With the significant increases in therapy programs in SNFs, it is likely that career advancement, training opportunities, and the opportunity to work with other therapists would have grown similar to that of hospitals.

Given the changes in the SNF and hospital environments over the past 6 years, these environments are likely to have grown more similar, on average, than otherwise. It, therefore, appears unlikely that the relative appeal of the two settings would be far different than in 1989. DRI's estimates of compensating wage differentials can therefore be applied to the later period.

Comment: Several commenters stated that, by combining hospital and SNF wages, HCFA was not recognizing the full compensating wage differential for therapists in SNFs.

Response: Our salary equivalency rates cover the full compensating wage differential for therapists in SNFs (which, as explained above, is very small), and a reasonable wage differential for the estimated costs of the increased demand that would have occurred after OBRA '87, under the condition that all SNFs behaved as cost-minimizers.

The observed relative wages for therapists in SNF settings have become distorted by the lack of cost minimization efforts in the provision of therapy supply services in SNFs. Blending hospital and SNF wage rates, as we have done in the past, provides a methodology that covers compensating differentials associated with skills and work environment, while avoiding the validation of increases associated with the absence of sufficient cost minimization efforts. As hospitals and educational institutions adjusted wages upwards at a rate slower than rehabilitation therapy firms and SNFs to retain staff, access to therapy services in these settings would decrease, while the volume of services available in SNFs continued to increase beyond the point where the benefits conveyed to patients justified the costs incurred.

2. Trending Old Data To Reflect Current Conditions

Comment: HCFA should use the percent increases in physical therapy wages to update speech language pathology wages from 1989 BLS speech language pathology data to 1991 rather than using the percent changes in respiratory therapy wages.

Response: The University of Texas data source was the only source that had all four therapy types over time with relatively consistent definitions and methodology. The University of Texas data indicated that the speech language pathology wage growth from 1989 to 1991 correlated better with respiratory therapy wage growth than with physical therapy wage growth. Therefore, we used the same percentage growth for speech language pathology wages as existed for respiratory therapy wages from 1989 to 1991.

Comment: One commenter suggested that the use of 6 -and 8- year-old BLS hospital data is inappropriate and does not satisfy the Senate Finance Committee's recommendation for timely and accurate data. This commenter also suggested that trending forward does not mitigate distortions of using old data and does not capture the significant changes in the marketplace over the past several years. Other commenters stated that because the BLS data were relatively old, HCFA should give a lesser weight to the BLS data or not use these data at all.

Response: We believe that our methodology for aging the baseline BLS data is consistent with Congressional intent. We used the most recent BLS data available on therapists employed in hospitals and trended it forward using the best data sources of which we were aware. If the commenter's assertion that trending forward does not capture the significant changes in the therapy marketplace were correct, then the BLS hospital data for therapists trended forward to 1995, would be substantially different from the best industry data sources for 1995. In fact, the trended BLS data tend to be at the center of the clustered industry data sources for 1995. For physical therapists, the trended BLS mean wage was $20.90; the mean wage from all sources was $21.00, a difference of less than one percent. For occupational therapists, the trended BLS mean wage was $19.67; the mean wage from all sources was $19.73, a difference of less than one percent. For speech language pathologists, the trended BLS mean wage was $19.30; the mean wage from all sources was $18.67, a difference of 3 percent. For respiratory therapists, the trended BLS mean wage was $15.48; the mean wage from all other sources was $15.58, a difference of less than one percent. Therefore, we do not think it would be appropriate to give the BLS data a smaller weight or remove BLS from the mix of data sources.

3. Blending Hospital and SNF Data for Occupational Labor Market Wage

Comment: Many commenters believed that use of hospital data in the blend was (1) inappropriate because only SNF data should have been used; (2) irrelevant because the rule applies exclusively to nonhospital settings; (3) flawed because there are problems with the sources of hospital data that HCFA used; and (4) incorrect because of the large difference in wage levels between hospitals.

Response: Hospital wage levels by therapy type were used, in part, because hospital therapists constitute a large part of the therapist labor market. In addition, hospitals are a major source of therapists hired by SNFs and rehabilitation therapy firms that contract with SNFs to furnish therapy services. Also, the salary equivalency guidelines do apply to contracted therapy services provided in the outpatient departments of hospitals. Following traditional labor market theory for professional services, we believe that there is an occupational labor market for therapists, with compensating differentials for workers for worker characteristics and job requirements. Had we used only SNF wage data, the result would have reflected the relatively higher rates that the rehabilitation therapy firm can afford to pay to bid therapists away from other sectors that operate in a more financially constrained contract environment. With respect to commenters' assertion that hospital data are irrelevant in determining wages for therapists that work primarily in nonhospital settings, our analyses supports our position that an occupational labor market exists. We discussed these issues in more detail in Section III.B.1 the Occupational Labor Market of this final rule.

We believe that our "best estimate" approach incorporated the BLS occupational/industry data in a reasonable way with other data from less statistically reliable but more current sources. Each set of data has equal weight in developing the "best estimate" for therapist wages in hospitals and in SNFs. Each of the data sources we used is discussed more fully in section III.A, Data Sources for Salary Equivalency Guidelines of this final rule.

Comment: Many commenters challenged our blending of hospital and SNF wage levels, but offered various blending recommendations in the event that we use blending in the final rule. Many commenters agreed that the employment weights as proposed for respiratory therapy wages (99 percent hospital and 1 percent SNF) were correct. These same commenters, however, offered a wide range of alternative employment weights for use in blending hospital and SNF wages for physical and occupational therapists and speech language pathologists. Some of these commenters offered alternative employment weights which included HHAs as well as SNFs and hospitals.

Response: We believe that an occupational labor market, with compensating differentials, exists and that blending is required to achieve equitable wage levels across settings as indicated in the discussion above.

We also believe that the proposed blending method is reasonable. When we blended the wages for each type of therapy, we used hospital therapist employment and SNF therapist employment to develop the relative shares. For SNFs, we used BLS' 1993 Occupational Employment Statistics survey data, the latest and most complete employment data for SNFs available from a government source. For hospitals, we used BLS' 1995 Occupational Employment Statistics survey data, also the latest and most complete employment data for hospitals available from a government source. Some commenters preferred that employment data for both settings be for the same year. We agree. Data on a same-year basis, however, are not yet available. Based on industry discussions, we believe that, as contract therapy services to SNFs have grown, there has been a corresponding drop in the relative share of employed therapists in SNFs. Without new data to substantiate this hypothesis, we felt that the most appropriate option was to use the 1993 Occupational Employment Statistics survey for employment of therapists in SNFs, by therapy type, as we did in the proposed rule (Occupational Employment Statistics SNF data were collected for 1990 and 1993). This approach may overstate SNF employment relative to hospitals in 1995, and therefore the blended wage may also be slightly overstated.

One reason for the discrepancy between BLS Occupational Employment Statistics and commenters' suggested shares of employment in SNFs and hospitals is that commenters have included contract therapists in their employment count for SNFs and hospitals. Using employment setting (contract and employed) rather than employer to determine the share in SNFs and hospitals increases the SNF share and decreases the hospital share to use in blending. As rehabilitation therapy firms have hired therapists away from SNFs and hospitals to work as contract therapists, it is likely that the percentage of employed therapists in SNFs relative to employed therapists in hospitals has decreased. As indicated earlier, the SNF employment weights that we use may be too high.

Comment: One commenter believed the blend is invalid because SIC codes (806 for hospitals, 805 for SNFs) do not differentiate between registered therapists, therapy assistants, and therapy aides. In addition, a few commenters noted that audiologists are included in the OES survey figures for speech language pathologists.

Response: The BLS Occupational Employment Statistics survey has a separate occupational category for registered therapists. Therapy aides and assistants are in a separate category and are excluded from therapist employment numbers. Regarding the audiologist data included with speech language pathology data in the Occupational Employment Statistics survey, we believe that including audiologist data will not significantly skew the employment shares in hospitals and SNFs for speech language pathologists.

Comment: Another commenter proposed using total wages (wage bill share of costs) rather than employment shares in blending hospital and SNF wages.

Response: Using wage bill shares of costs for weights would double the weight given to wages. The wage bill share is the number of hours of service times the hourly wage for each therapy type in each setting. The wage bill approach would, in effect, use SNF and hospital wage levels twice in the calculation rather than once as is appropriate.

Comment: Several commenters were concerned that in the blending methods we used we have not shown the difference in wage levels between hospital and SNF, and that we have not proven the statistical validity of combining these two wage values (hospital and SNF) to arrive at the wage portion of the salary equivalency guidelines.

Response: In this final rule, we followed the same procedure that we used in the 1983 rebasing of the salary equivalency guidelines for physical and respiratory therapy, as published in the September 30, 1983 **Federal Register** (48 FR 44924). The industry requested a statistical analysis of our blending therapist wages by relative employment. We commissioned a complete statistical analysis of therapist wage differentials under contract with Standard & Poor's DRI. A full discussion of the results of this study appears in Section III.B.1., the Occupational Labor Market of this final rule.

4. 75th Percentile

Comment: Commenters indicated that HCFA has significantly underestimated the 75th percentile differential. Some want therapy-specific differentials applied to each therapy type and many offered alternatives to the 10 percent that HCFA used to approximate the 75th percentile differential.

Response: HCFA estimated the 75th percentile differential using several different data sources. We did not use the data sources that did not have the 75th percentile available. The 75th percentile differential in hospitals varied from 6.9 percent to 14.7 percent depending on the data source and therapy type. The 75th percentile differential in SNFs varied from 9.7 percent to 26.9 percent depending on the data source and therapy type. None of the SNF sample surveys met the sample design criterion of the Federal Government, resulting in wider variation than would otherwise be the case.

When we ran regressions on the NASL data for hospitals and SNFs with adjustments for region, ownership, and chain or individual establishment, the 75th percentile for hospitals ranged from 9 to 11 percent, depending upon therapy type, while the 75th percentile for SNFs ranged from 12 to 14 percent, again depending upon therapy type.

The 75th percentile differential varies so widely because if two samples with the same means are compared, one meeting the BLS sample design standard and the other below the BLS standard, the 75th percentile differential will tend to be smaller for the BLS-type sample than for the other sample. The alternatives offered by commenters come from samples that do not meet BLS sample design standards.

We proposed a 10-percent differential to approximate the 75th percentile for all therapy types because we believed that we had selected a reasonable estimate for the range of average 75th percentile differentials for the various therapy types. We have increased the differential from 10 percent to 12 percent to allow for factors that we may not have quantified previously. In choosing 12 percent for all therapy types, we believe that we have selected

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a reasonable estimate of the 75th percentile differential.

5. Calculations

Comment: Some commenters suggested that HCFA use BLS' 1991 Employee Benefits for Medium and Large Private Establishments rather than its 1992 Small Establishments survey. As an adjunct to this comment, some commenters indicated that the number of productive hours HCFA used was too high, and that HCFA should make adjustments for breaks and lunches, family leave, jury duty, funeral leave, and military leave.

Response: The average number of employees per establishment in SIC Code 805, Nursing and Personal Care Facilities, calculated from the BLS ES–202 survey in 1995, was fewer than 100. The average number of employees per facility in the AHCA survey's sample data for 1995 was fewer than 100, despite the fact that this data source is skewed toward larger SNF chains. These figures support our decision that employee benefits for small firms should be used in determining the number of productive hours with which to adjust the hourly wage from hours paid to hours worked.

The 1994 Small Private Firms survey reports even fewer paid leave days (vacation, sick leave, and holidays) than did the 1992 survey. For 5-year employees, subtracting paid leave and 2 days for continuing education from the standard work year (2,080 hours), still brings the number of productive hours very near to our 1,808 productive hours figure.

When data from the BLS Employment Cost Index Employer Costs for Employee Compensation for March 1995 or March 1996 are used, only State and Local Government Health Services and one of its subcategories, State and Local Hospitals, have employees who work fewer productive hours than the 1,808 hours used in HCFA's hours adjustment. All other white collar, professional and technical occupations, as well as the Health Services and Service Producing industries, work more productive hours than we used in this calculation. (The calculation to reach productive hours is 2,080 hours—272 hours of paid leave = 1,808 productive hours. Paid leave days numbered 33.7 (rounded to 34 days) and multiplied by 8 hours per day to equal 272 hours of paid leave. This adjustment equals approximately 15 percent of therapist hourly wages.)

Data from both the recent BLS Employee Benefits Survey and the BLS Employer Costs for Employee Compensation Survey support our choice of number of productive hours worked per year. It is our policy to limit paid leave to vacation, sick leave, and holidays.

Comment: Many commenters believed that HCFA's estimate of the fringe benefit share of compensation is too low. Most commenters mentioned about 30–31 percent of salary for a fringe benefits share, while another mentioned 27 percent of salary for the standard fringe benefit factor. Some commenters indicated that our proposed fringe benefit share of 14 percent was too low; others asked that the ECI for fringe benefits be used to determine fringe benefit share.

Response: For our fringe benefits calculation, HCFA used Health Care Provider Cost Report Information System (HCRIS) prospective payment system hospital cost reports to determine the share of compensation other than leave that fringe benefits constitute. The amount determined was 19.5 percent of total compensation excluding leave, or about 24.2 percent of salary. Adding the fringe benefit of paid leave (15 percent of salary associated with the productive hours adjustment) to the fringe benefits determined from the cost reports results in an overall fringe benefit rate of 39.2 percent of salary. Thus, fringe benefits, including paid leave, constitute 28.2 percent of total compensation, which is similar to the shares recommended by commenters.

Comment: A few commenters stated that the allowed rental space of 250 square feet for office space was not sufficient to meet direct and indirect space requirements. These commenters suggested that greater allowance should be made for human resources management, program support, compliance, and general business support.

Response: Contract therapists work in office space outside of the rehabilitation therapy firm for which HCFA pays as part of Medicare payments to providers. We believe that the 250 square feet for each contract therapist allowed for rehabilitation therapy firm office space is more than adequate to allow for human resources management, program support, and general business support as well as space for individual therapists.

Comment: Commenters offered what they termed "technically justifiable corrections" that would have added between $5.20 and $13.38 to the proposed guidelines, depending on the therapy type. Others suggested salary equivalency guidelines somewhat closer to HCFA's proposed guideline amounts. Several commenters stated that speech language pathology guidelines should be as high or higher than those for physical therapy. The commenters pointed out that speech language pathologists have greater education requirements than do the other types of therapists for whom salary equivalency guidelines were proposed. In addition, commenters indicated that the services speech language pathologists perform merit higher guidelines than we proposed.

Other commenters indicated that if salary equivalency guidelines do not reflect accurately contract rates in the RTF industry, SNFs and other providers will be unable to obtain medically necessary services for Medicare beneficiaries. Some commenters believed that, in addition to having difficulty in procuring therapy services, SNFs may find their profit margins depressed to the point where some may close.

Commenters reported that some rehabilitation therapy firms pay therapists sign-on bonuses and offer cruises as special incentives.

Response: We carefully analyzed all the industry "technically justifiable correct" alternative levels for salary equivalency guidelines and made modifications where we believed them to be appropriate. We carefully reviewed recommended changes to employment weights, fringe benefit shares, rental space, overhead shares, and 75th percentile differentials. Modifications were made where they were justified by the data, as stated in other sections of this rule. We recognize that sign-on bonuses and other incentives such as cruises, noted by some commenters, increase the operating costs of rehabilitation therapy firms and result in higher wages than cost conscious purchasers can afford to pay. This regulation requires HCFA to set the salary equivalency guidelines at levels reasonably close to costs that providers would incur for their own employees. These bonuses and other incentives have contributed to distorting the therapist market. We do not believe that Medicare should recognize these extraordinary costs, which may not be considered to be related to patient care, as part of its salary equivalency guidelines. Finally, we believe that the therapist market, including rehabilitation therapy firms, will adjust to these new guidelines without disrupting access to care. Indeed, because of provisions in the Balanced Budget Act of 1997, the new guidelines will not be the only change controlling provider behavior.

C. One Schedule for Respiratory Therapists

We proposed to use one schedule of guidelines for respiratory therapists, in contrast to the three schedules that we issued in the September 30, 1983 notice. This decision was based on the fact that HCFA does not differentiate in covering respiratory therapists by different levels. Therefore, to make coverage conform with payment for respiratory therapy services, we proposed one schedule for respiratory therapists. Information from fiscal intermediaries and the American Association for Respiratory Care indicates that industry practice is to use only one schedule. For respiratory therapists in 1991, BLS showed two wage classes and a summary wage level. The summary level was the consistent category present for all metropolitan statistical areas (MSAs) and encompassing all nonsupervisory levels of responsibility. This final rule includes one schedule of guidelines for all therapy types.

Comment: One commenter was concerned that the American Hospital Association (AHA) and BLS data do not distinguish between wages for a Certified Respiratory Therapy Technician and a Registered Respiratory Therapist and fail to take the salary differentials of the two levels into consideration. The commenter felt this was important for two reasons. First, SNFs usually require the more experienced registered respiratory therapists. Second, with a single rate, HCFA would introduce an incentive for SNFs "to contract for the less costly, yet less experienced and less trained CRTT, rather than the more advanced registered respiratory therapist to provide respiratory care services to the medically acute SNF patient," raising questions about the delivery of appropriate quality patient care.

Response: We used the AHA and BLS data for trending purposes only and assumed that certified respiratory therapy technician and registered respiratory therapist wages rose at the same rate. This rule implements one schedule of guidelines for respiratory therapists, regardless of whether services are rendered by a certified respiratory therapy technician or a registered respiratory therapist. We developed a single respiratory therapy wage rate that includes wages for certified respiratory therapy technicians and registered respiratory therapists, weighted for the various levels in respiratory therapy. The single wage rate for the BLS data aged to 1995 was $15.48 per hour, compared to $15.58 per hour for all data sources, a difference of less than one percent.

Regarding the commenter's concern of introducing an incentive to SNFs to use "less experienced and less trained" certified respiratory therapy technicians rather than registered respiratory therapists, we believe that as long as the therapist is qualified to provide respiratory therapy services, then the provider will furnish quality care. Therefore, both a certified respiratory therapy technician or a registered respiratory therapist should be qualified to provide respiratory therapy services.

D. Geographic Adjustment Factors

1. Use of Urban Portions of the Prospective Payment System Hospital Area Wage Index for Geographic Adjustment

We proposed using the urban portion of the prospective payment system hospital area wage index to adjust the guideline amounts for local labor-related cost variations. We chose the urban portions of the prospective payment system hospital area wage index because we felt that SNFs compete in the same labor markets as hospitals, HHAs, and other health care providers. There was also precedent for using the hospital area wage index since two other long-term care Medicare benefit programs, SNF and HHA care, use it to adjust for local labor cost variation.

Comment: Several commenters stated that using the hospital area wage index to adjust the salary equivalency guidelines for geographic variation exaggerates the market variances both within and across States. The commenters suggested that the geographic wage variation in rehabilitation therapist labor markets is less than the geographic variation in hospital industry labor markets. Therefore, they concluded that using the hospital area wage index creates variations among localities that are much too large. The commenters offered suggestions that they believed would more adequately reflect the actual geographic variations in therapist wages. One of these suggestions was the Geographic Practice Cost Index (GPCI) used under the Resource-Based Relative Value Scale (RBRVS) of the Physician Fee Schedule. Other suggestions included aggregating data into State or regional rates similar to those under the existing guidelines, or creating State guideline amounts close to the national average with exceptions for markets that have extreme variations. Commenters also suggested using the hospital area wage index, but applying it to a smaller portion of the labor-related costs to reduce distortions within and across states. Another commenter suggested using the reclassified prospective payment system hospital area wage index, instead of the pre-reclassified area wage index. That would give SNFs and therapy suppliers the same advantages that prospective payment system hospitals receive since SNFs compete in the same labor markets as hospitals.

Response: As recommended by commenters, we are using the GPCI contained in the Physician Fee Schedule (62 FR 59052, October 31, 1997) instead of the hospital area wage index. We will use the Work, Practice Expense, and Malpractice GPCIs, and apply them to therapist compensation and overhead shares. Therapist compensation and overhead shares come from the therapy-specific input price indexes as developed by HCFA. There was no direct source of data on therapist malpractice cost shares. To estimate a malpractice share, we analyzed the malpractice shares from relevant rehabilitation therapy Current Procedural Terminology (CPT) codes under the Physician Fee Schedule. We determined that, on average, malpractice represents roughly 3.0 percent of total expenses for these therapy CPT codes. We used 3.0 percent for the malpractice share of the GPCI and subtracted 3.0 percentage points from the overhead share of the GPCI to avoid accounting for malpractice twice. The shares for these therapy-specific input price indexes are presented in the table below.

Therapist cost category	GPCI	Cost shares from therapy-specific input price indexes			
		Physical therapist	Occupational therapist	Speech language pathologist	Respiratory therapist
Therapist Compensation	Work	0.74	0.72	0.71	0.67
Therapist Practice Expense	Practice Expense	0.23	0.25	0.26	0.30

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Therapist cost category	GPCI	Cost shares from therapy-specific input price indexes			
		Physical therapist	Occupational therapist	Speech language pathologist	Respiratory therapist
Therapist Malpractice	Malpractice	0.03	0.03	0.03	0.03
Total		1.00	1.00	1.00	1.00

The guideline amounts are calculated by the following equation:

Locality SEG amount
=
National SEG amount
×
[(Work GPCI × Therapy-Specific Compensation share)
+
(Practice Expense GPCI × Therapy-specific Overhead share)
+
(Malpractice GPCI × Therapy-specific Malpractice share)]

The GPCIs and guideline amounts for each therapy type for each GPCI locality are in Table I under section V of this final rule.

We decided to use the GPCI for several reasons. The Balanced Budget Act of 1997 mandates that many therapy services that are now reimbursed based on the salary equivalency guidelines will be shifted to the physician fee schedule, and, thus, therapist wages will be indexed by the GPCI as early as July 1, 1998. We, therefore, saw that using the GPCI was the direction for future therapy wage adjustments. We assessed the appropriateness of using the GPCI and found that, of the available indexes, the GPCI most accurately reflects the local labor costs of therapists. Using the GPCI produces a less widespread geographic distribution of guideline amounts. Also, many commenters asked us to provide statewide rates as opposed to MSA rates provided in prior salary equivalency guideline notices.

We decided to apply the GPCI to the therapist compensation share as determined by the therapy-specific input price index. We then used the practice expense GPCI to approximate the relative cost differences by geographic area of practice expenses (clerical and managerial compensation, office costs, and other costs) used to provide therapy services. In addition, we use the malpractice expense GPCI to approximate the relative cost differences by geographic area for malpractice expenses incurred in providing therapy services. The application of these GPCIs is analogous to the methods used under the Physician Fee Schedule.

As mandated by section 4541 of the Balanced Budget Act of 1997, many services presently covered under the therapy guidelines will be paid under the physician fee schedule beginning in January 1999. Since the physician fee schedule is adjusted for geographic variation by the GPCI, both the current and future payment systems will reflect similar geographic wage adjustments providing a smoother transition from the salary equivalency guidelines to the physician fee schedule.

Comment: Commenters suggested that the hospital area wage index in the proposed rule did not reflect the known geographic differences in therapist wages in different settings, specifically, hospital-employed therapists as compared to SNF-employed therapists. Many commenters suggested that until HCFA can demonstrate that the geographic variation in the wages in other settings are comparable, the use of the PPS hospital area wage index should be abandoned.

Response: We responded to the variation in wage levels among different settings in our responses to comments on the occupation labor market for therapists under section III.B. of this final rule. We have no data that indicate that the geographic adjustment needs to be done by setting if the national baseline amounts by setting are appropriately handled.

Comment: A commenter recommended that HCFA use nursing home employed therapist wage data, and that the recent revision to the SNF Medicare cost report would be useful in this regard. The commenter suggested this as a long-term option and was willing to accept modification of the hospital area wage index as a short-term solution for reducing the influence of the geographic adjuster.

Response: We have decided to use the GPCI from the physician fee schedule as the geographic adjuster. Currently, however, therapist wage data are not available on the Medicare SNF cost reports. Also, the Balanced Budget Act of 1997 provides for payment for outpatient rehabilitation services on a fee schedule basis which uses the GPCI as the wage index. Since we will only have salary equivalency guidelines for a short period of time, we have not developed a separate wage index for therapy services using nursing home employed therapist wage data.

2. Methodology for Determining Rural Rates Under Salary Equivalency

We proposed to calculate the guidelines in rural (non-urban) areas in a given State as the weighted average of the prospective payment system hospital wage index for MSAs within a State's boundaries. We proposed this method because our analyses indicated that the therapy market for rural areas tends to reflect the prevailing compensation conditions of the surrounding urban areas in the region. By weighing the urban areas in a state by the amount of hours associated with the delivery of PPS hospital care, the rural rate would reflect the larger weight given to MSAs with the most hospital hours. These urban areas with most of the hospital hours also tend to have higher wage index values.

Comment: Several commenters were concerned that rates in some rural areas may be set too low. Some commenters indicated that this would impede access to quality health care by Medicare beneficiaries because it would be difficult to recruit and retain therapists in rural areas. These commenters offered no recommendation on how to mitigate this potential problem.

Response: Since we have decided, based on industry comments and HCFA analyses, to use the work, practice expense, and malpractice GPCIs from the physician fee schedule, we analyzed rural rates using the GPCI. Unlike the hospital area wage index, the GPCI provides no distinction between rural and urban areas. Instead, certain localities have separate GPCIs based on their unique characteristics. The rest of the areas in a state use the state GPCI. The localities given separate index values are usually the larger urban areas and have been separated because they have unique labor cost characteristics. Using the GPCI essentially creates a geographic cost adjustment for the unique areas and a different geographic cost adjustment for the rest of the state. Under this methodology, a rural area would have a similar guideline amount to any other area in the state (urban and non-urban), except those areas that have unique cost markets. The 1990 Census data showed that therapist wages in rural areas were close to therapist wages in other rural and urban areas while therapist wages in the largest urban areas were distinctly higher than the national averages. Using the work GPCI produces a local labor adjustment that mirrors the actual geographic wage variations for therapists as determined from the 1990 Census data.

Because of the resulting distribution created by using the GPCI, we do not feel that rural areas will have difficulty recruiting and retaining therapists. Since only those areas that have shown unique costs would have a different guideline amount, rural areas would receive effectively the same rate as most nonrural areas in the State. Thus, there would be no incentive to diminish services in rural areas or compromise access to quality health care by Medicare beneficiaries due to relatively lower wage levels. We do not believe that a local labor cost adjustment (work GPCI) that mirrors the actual geographic wage distributions for therapists will create shortages in rural areas.

Comment: Several commenters were concerned that the guideline amounts would force SNFs in rural areas to use on-call therapists rather than contract therapists. The commenters stated that the only reason rural areas can currently attract contract therapists is that therapy companies can offer bonuses to their employees. If the rates in rural areas are set too low, contract therapy companies could not hire as many therapists and, therefore, could not provide services in rural areas. Thus, rural nursing homes would have to use on-call therapists who are less qualified than contract therapists.

Response: Since we are using the GPCI to adjust the guidelines for relative cost differences by geographic area, we believe that we have addressed the concerns of these commenters. As explained above, most areas in a State, including rural areas, are adjusted by the same GPCI. Only those areas that have shown unique characteristics would have a different adjustment factor under the GPCI. In fact, there are 33 states that have statewide rates only. We feel this methodology more accurately reflects the current labor market for therapists for two reasons: First, therapy companies can attract therapists under these guidelines because the guidelines more accurately reflect the relative costs of an hour of therapy patient-time for a given therapy type. Second, using the work GPCI to adjust the guidelines provides a more accurate reflection of the geographic distribution of therapist wages. Therefore, we see no reason for therapy companies to be unable to attract therapists nor do we see any reason for rural areas to be unable to attract contract therapists under these guidelines.

The use of on-call therapists is a decision to be made by the individual nursing home. While some commenters believed that on-call therapists were not as qualified as contract therapists, other commenters seemed to imply that on-call therapists came from the same group of therapists as contract therapists. As far as we know, there is no difference in education, training, or credentialling between the two. Commenters also alluded to rural areas using on-call therapists because that was the nature of their caseload. We do not feel that these new salary equivalency guidelines disadvantage rural areas, particularly regarding on-call therapists.

Comment: One commenter believed that HCFA's proposed methodology for computing the rural rates is incorrect because it should be based on the cost of employing labor in a rural area or weighted by other data representative of labor costs of speech language pathologists in rural areas. The commenter suggested using either rural area speech language pathology wage data, state average speech language pathology wage data, rural area hospital wage data, or state average hospital wage data. The commenter also suggested applying the prospective payment system hospital wage index to one-third of the guideline amounts instead of 83.378 percent as proposed.

Response: There are no available data or index for speech language pathology wages in rural areas or state areas that could be used to adjust the guidelines. Because there are no available geographic data on speech language pathology wages and because the hospital wage distribution does not reflect therapist wage distribution, we have decided, based on industry comments and HCFA analyses, to use the work GPCI for the therapist compensation portion of the therapy-specific input price indexes. We will also apply the practice expense GPCI to the practice expense portion and the malpractice GPCI to the malpractice expense portion. Based on our analysis of the different data surveys of therapist wages by geographic region, the work GPCI provides a close approximation of the distribution of therapist wages.

Comment: One commenter recommended that HCFA have a special adjustment for rural providers that contract for more than 40 percent of any specific therapy services.

Response: This comment implied that the adjustment should increase the guideline amounts for rural providers that contract for large amounts of therapy services because contracting for these services in rural areas is more costly. We feel that, by using the GPCI to adjust the guideline amounts for geographic variation, we have adequately determined rural rates. The guideline amounts in rural areas are consistent with the guideline amounts in nonrural areas that have not displayed unique labor costs. The distribution of rural guideline amounts as they compare with guideline amounts in other areas is consistent with the geographic distribution patterns of therapist wages shown in other surveys.

Comment: One commenter suggested that HCFA continue, as in the proposed rule, to apply a blended MSA rate as a substitute for rural calculations.

Response: We are not blending urban rates to determine rural rates in this final rule because we are not using the hospital area wage index to adjust the guideline amounts for local labor cost variations. Instead, we are using the GPCI from the physician fee schedule to adjust the guideline amounts for relative cost differences by geographic area. The work GPCI more accurately reflects the geographic distribution of therapist wages and produces a rural area amount that is consistent with nonrural areas in a state that has not shown unique cost characteristics.

3. Local Labor Market Theory

We proposed to adjust the salary equivalency guideline amounts for local labor cost variations because the labor market theory suggests that payment amounts reflect the costs of providing services in a given area. Many other Medicare payment systems such as hospital prospective payment system, SNF and HHA cost limits, and the physician fee schedule, adjust payments for geographic variation. Adjusting the guidelines for local labor cost variations is consistent with the adjustments made under these other payment systems. The only difference is that the salary equivalency guidelines are established for a single type of occupation (therapists) whereas costs in these other programs include all occupations in the industry. Because of this difference, there is no available adjustment factor that is completely accurate for therapist wage variations by geographic area. Instead, we use the adjustment index that best reflects the observed geographic distribution in therapist wages. The most appropriate adjustment index HCFA has been able to find was

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the work GPCI from the physician fee schedule.

Comment: One commenter believed that it was inconsistent for HCFA to simultaneously recognize and adjust for differences in therapist wages among geographic regions while, at the same time, insisting that the much greater wage differentials among sites of employment within the same geographic region are not also worthy of adjustment.

Response: We believe that the adjustment to therapist wages for local labor cost variation is a different issue than the compensation of wage differentials among sites of employment within the same geographic area. We discuss our logic and the reasoning behind our decisions on wage differentials by employment setting in our responses to comments on the occupational labor market for therapists under Section III.B. of this final rule. We have concluded that the observed wage differentials by employment setting result from compensating differences in working conditions, skills required, short-run market disequilibrium, and different degrees of cost-minimizing behavior in different settings. The relative cost differentials by geographic area are simply variations caused by local market conditions and are not designed to replace the compensating differentials that HCFA incorporates in the guideline amounts. Relative cost differences by geographic area are captured in both the PPS hospital area wage index and the GPCI. However, for specific occupations, this differential can be smaller or larger than the average for all occupations. For therapists, we have found that local labor cost variation is smaller than the variation for all hospital occupations. The GPCIs and guideline amounts for each therapy type for each GPCI locality are in Table I under section V. of this final rule.

E. Salary Equivalency Amount Updates

In the March 28, 1997 proposed rule, we discussed the development of the Rehabilitation Therapist Input Price Index needed to update guideline levels from the base period to the implementation period (62 FR 14868). The rehabilitation therapist input price index would also be used to adjust the guidelines in future periods, using forecasts by Standard & Poor's DRI.

1. Rehabilitation Therapist Input Price Index and Related Issues

As discussed at 62 FR 14868, we proposed that the therapist input price index would be a fixed-weight, or Laspeyres-type, index. The index would be consistent with other HCFA input price indexes used to update Medicare payment rates. HCFA input price indexes are normative indexes measuring the pure price change of a fixed market basket of inputs to provide specific services. A normative index is designed to measure pure price changes under normal competitive conditions, conditions that may not exist in health care markets given the extensive presence of third-party payers. The rehabilitation therapist input price index consists of two parts for each cost category: (1) base weights that are determined from the same data sources as used to produce the guideline payment levels, and (2) price proxies that show price changes reflective of cost-minimizer market forces impacting a given cost category.

Comment: One commenter suggested that changes be made to correct the fringe benefit factor and to adjust the rental cost share to reflect what the commenter believes to be more realistic space needs. The commenter recommended using the ECI data on fringe benefits for hospital workers and increasing the rental area to 750 square feet.

Response: As explained in the section on methodology, we have modified the fringe benefits factor to include the productive hours adjustment. The productive hours adjustment had previously been added to wages rather than fringe benefits. Reclassifying the productive hours adjustment to the fringe benefits factor increases its share of total compensation to more than 28 percent. This share which we calculated using the hospital Medicare Cost Reports and the productive hours adjustment, is consistent with the ECI data on fringe benefits for hospital workers. The consistency supports our view that the hospital Medicare Cost Reports are the most accurate source of fringe benefit data since they are carefully scrutinized for use under hospital prospective payment system. Therefore, we believe that this is an accurate estimate of the fringe benefit share for the rehabilitation therapist input price index.

We also believe that the 250 square feet allowed as office space in the proposed rule is sufficient for efficient and effective therapy services as was explained in section III.B., Methodology, of this final rule. We will continue to use the cost associated with 250 square feet as the rent share in the rehabilitation therapist input price index.

Comment: One commenter recommended using internal proxies for wages and fringe benefits consistent with the hospital and SNF blend used in determining wage levels for the guideline amounts.

Response: The hospital and SNF blend uses rehabilitation therapy wage levels for physical therapy, occupational therapy, speech language pathology, and respiratory therapy to reflect occupational market wage levels for the nation. The rehabilitation therapy input price index is used to update the base wage levels for inflation and is analogous to our market baskets for prospective payment system hpsitals and HHAs. In both of these market baskets, rehabilitation therapists are included as part of professional-technical occupations with a 50/50 blend of the ECI for civilian hospital workers and the ECI for private professional-technical workers. The rehabilitation therapy input price index uses this same blend of ECIs.

Comment: One commenter proposed an alternative method of escalation which, for the time period tested, actually would project lower monthly increases than would the 96:3 forecast of the rehabilitation therapist input price index.

Response: The escalation method proposed by the commenter used a market basket that differed slightly from the one we derived. The commenter's market basket blended the ECI for nursing homes with the ECI for hospitals to create a blended internal wage proxy. Our rehabilitation therapist input price index is consistent with the 50/50 blend of ECI for hospitals and the ECI for Professional and Technical used in the hospital PPS and HHA input price indexes. We believe this methodology most closely measures relevant buyer price inflation even if it results in projected monthly increases that are higher than the alternative proposal.

Comment: One commenter suggested using the CPI plus an additional percentage, determined by HCFA, while another commenter suggested using the CPI plus 3 percent as the update factor if updates are not applied within a certain time limit.

Response: Our rehabilitation therapy input price index updates are conceptually superior for adjusting the salary equivalency guidelines because they are specific to the cost structure of rehabilitation therapy. We use weights that reflect the mixture of costs appropriate for efficiently providing contract rehabilitation therapy services. The rehabilitation therapist input price index includes proxies for wages and benefits of health sector and professional and technical workers as well as wages and benefits for administrative support and managerial personnel, office costs, and other costs. These proxies are conceptually closer to changes in the actual cost of rehabilitation therapy supply services than is a broad measure like the CPI.

HCFA has currently produced updates through the year 2000. The Balanced Budget Act of 1997 shifts most services covered by salary equivalency guidelines to SNF PPS or to the physician fee schedule well before the year 2000.

2. Timing of Rebasing Rates and Market Basket

Comment: Some commenters believed that HCFA should establish a schedule for adjusting inflation assumptions and provide that schedule in the final rule. These commenters also felt that HCFA should explain when and how rebasing would be done. Some commenters requested it be rebased at least every 3 years. One commenter recommended we update for inflation annually.

Response: The Balanced Budget Act of 1997 included some provisions that we believe will implement more effective and simpler controls over providers' costs of contracting for therapy services and that appear to make revised salary equivalency guideline regulations unnecessary in the future. The Balanced Budget Act of 1997 provided prospective payment systems for SNFs, HHAs, and Community Mental Health Centers, which ultimately will eliminate the need for salary equivalency price restraints in those venues. In addition, the Balanced Budget Act of 1997 contained various provisions which will move therapy payment from a cost basis to using the physician fee schedule for therapy provided in CORFs and outpatient rehabilitation facilities and by other providers furnishing Part B outpatient therapy service. This includes the therapy provided under Part B to nursing home patients, outpatient hospital services, and outpatient therapy services provided by an HHA to patients not under the HHA benefit. The Balanced Budget Act of 1997 also provided a $1,500 annual limitation per Medicare beneficiary where therapy services are provided under the outpatient physical therapy benefit (which includes outpatient speech language pathology services) or occupational therapy benefit. We believe that these new prospective payment systems, application of the physician fee schedules, and the $1,500 annual limitation per Medicare beneficiary, when they are implemented, will override limiting payment of contracted therapy services to the salary equivalency guidelines because they will limit payment for contracted therapy services and should offer a strong incentive for providers to control costs. Therefore, we almost certainly will not be revising the salary equivalency guidelines in the future. Until the new payment systems are implemented for the different providers, this rule provides a monthly adjustment factor for May 1998 through April 2001 (Table IV). Also, for cost reporting periods beginning on or after May 2001, the schedules would remain in effect, increased by the appropriate adjustment factor.

F. Other Technical and Policy Issues

1. Travel Allowance

Comment: Several commenters requested clarification regarding payment of the standard travel allowance. Many commenters requested that we revise the current policy, which permits only one standard travel allowance per supplier traveling to a provider site. Some commenters suggested that we should permit a standard travel allowance for each therapist traveling to the provider site. Some commenters believed that the standard travel allowance is inadequate, especially for HHAs, and another commenter believed that the standard travel allowance may discourage therapists contracting with providers in rural areas. One commenter stated that it should be noted that a salaried therapist is not subjected to a reduced compensation allowance for time spent traveling to a patient's home. Another commenter recommended an alternative of one travel allowance for each discipline or therapy type that performs services at each provider site each day.

Response: We have not found any evidence that the standard travel allowance has discouraged therapists from contracting with rural providers in rural areas. Also, our longstanding policy authorizes HHAs to receive payment under the optional travel allowance policy if they document their time spent in traveling and, if they choose, their travel mileage. We have decided to adopt the recommendation made by one commenter to provide a travel allowance for each discipline or therapy type that performs services at each provider site each day.

Comment: We asked for comments in the proposed rule on extending the optional travel allowance established for home health agencies to all providers. We received a large amount of comments requesting that we adopt this provision. In addition, one commenter stated that a salaried employee is not subjected to reduced compensation when he/she travels to a patient's home. A salaried employee who receives a set compensation is paid for all duties of his job including travel time within an 8 hour day. This is in contrast to a person who is being paid on a contractual basis.

Response: After consideration of the comments, we decided to expand the optional travel allowance. In this rule, we are permitting the optional travel allowance for all providers who furnish therapy services in areas in which geographic distance creates unique labor markets, e.g., rural areas. Under this optional travel allowance, each therapy type or discipline traveling to either the patient's home or provider site may claim this optional travel allowance. However, the provider must maintain documentation of the therapist's travel time and mileage. This optional travel allowance will help providers who are disadvantaged by one standard travel allowance per supplier. We believe that the standard travel allowance is adequate.

2. Data Sources for Future Salary Equivalency Guidelines

This topic is now obsolete because, as a result of the Balanced Budget Act of 1997 provisions, we are not publishing revised guidelines in the future.

3. Application of Guidelines

Comment: We received three comments regarding application of the guidelines in situations where compensation to a therapist employed by the provider is based (at least in part) on a fee-for-service or on a percentage of income (or commission) and that was of particular concern to the home health industry. One commenter pointed out that this issue is in litigation and should not be resolved through regulations. In addition, this commenter stated that, based on the law, HCFA could not apply salary equivalency guidelines to employees paid on a fee-for-service basis and that this proposal is only one step away from applying guidelines to the allowable costs of all therapy services whether salaried employees, hourly compensated employees, "fee-for-service" employees, or outside contractors. Another commenter felt that this proposal needs to be considered more carefully. The third commenter was in favor of this provision and felt that it was a good safety measure.

Response: We are establishing regulations that will allow that the salary equivalency guidelines to apply in situations where at least partial compensation to a therapist employed by the provider is provided on a fee-for-

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service basis or on a percentage of income (or commission). The entire compensation will be subject to the guidelines in cases where the nature of the arrangements are most like an "under arrangement" situation, although the provider may technically treat the therapists as employees. The guidelines will be applied in this situation so that an employment relationship is not being used to circumvent the guidelines. Since June 1977, our longstanding policy on this issue has been contained at section 1403 of the Provider Reimbursement Manual. We are now establishing this provision in regulations that further the statutory purpose of cost control as reflected in the legislative history of the guidelines. HCFA recognizes that certain employment relationships would effectively circumvent the guidelines, has provided for these circumstances in instructions in section 1403 of the Provider Reimbursement Manual, and now provides for them in regulations at 42 CFR § 413.106(c). The guidelines will only be applied in such cases, not to all salaried employees. We do not believe that the fact that there is litigation on this issue prevents us from establishing this longstanding policy in regulations.

4. Limiting Contracted Services to 40 Hours

In the proposed rule, we had stated that, while we were evaluating the data used in developing the guideline amounts, we became aware of a tendency for contracted therapy hours in some cases to exceed 40 hours per therapist a week, the amount of hours a full-time employee would generally work (62 FR 14872). We proposed to eliminate the expense factor where the hours of therapy services per therapist exceed 40 hours.

Comment: An overwhelming amount of commenters requested that we not eliminate the expense factor for therapy hours per therapist that exceed 40 hours. Several commenters said that in rural areas, where it is hard to obtain therapists' services, the therapists must sometimes work over 40 hours.

Response: We have decided to retain the expense factor in cases where the therapist provides services to the provider exceeding 40 hours per week. We believe that this may be burdensome for the intermediaries and as stated by the commenters, there may be some providers who do appropriately utilize services in this manner.

5. Outcomes Based Systems

Comment: Several commenters stated that they used the Functional Independence Measurements in SNFs. They also stated that they wanted payment outside of the expense factor for this service which should be reimbursed based on the prudent buyer policy.

Response: Events have superseded our allowing an additional payment for outcomes-based systems. OBRA '87 required that the SNF must complete a comprehensive resident assessment which is the minimum data set. The Balanced Budget Act of 1997 also mandates, for purposes of the SNF prospective payment system, that SNFs complete the MDS for collecting information for payment under prospective payment system for therapy and other services. SNFs are and will be reimbursed for completing the minimum data set. We will not be able to permit an additional payment outside of the salary equivalency guidelines for other outcomes based systems.

6. Exception for Binding Contract

We proposed to eliminate the exception for binding contract.

Comment: Several commenters requested that we not eliminate the exception for binding contract and that it continue in the manner that it is currently provided for in the regulations. Other commenters believed that therapy contractors and nursing home providers should not be subject to rates that were not yet published at the time a contract was negotiated.

Response: We continue to believe that providers should have been prudent buyers of therapy services at the time they negotiated the contracts. Therefore, elimination of the exception for binding contract and applying the salary equivalency guidelines to these services where a binding contract is in effect should not yield a different result than what a prudent buyer should pay. Accordingly, we are eliminating the binding contract exception in § 413.106(f)(1).

7. Exceptions Process for Unique Circumstances or Special Labor Market Conditions Including Time Period for Submission of Requests

We received several comments on the substantiating requirements and the process.

Comment: One commenter asked that we establish a new exceptions process that would include specific requirements for a provider qualifying as having unique circumstances or a special labor market condition. The commenter also requested that we have specific time limits on intermediary, HCFA Regional Office, and Central Office review of the exception request. Several other commenters also made similar requests. Several commenters said that the exceptions process was adequate but recommended a deadline of 90 to 120 days from receipt of application for fiscal intermediary response.

Response: At this time, we will not be establishing a new exceptions process. The Balanced Budget Act of 1997 introduces new payment systems which, for a large portion of the providers, will override the salary equivalency guidelines in the next year. We also believe that the current exceptions process provides sufficient latitude for submission of provider documentation to support either an exception request for unique circumstances or special labor market conditions. Also, with the 60 day increase in time that the provider has to submit documentation, the providers should have enough time to provide documentation to the fiscal intermediaries. Regulations at § 413.106(f)(4) now reflect the increase from 90 to 150 days. We encourage providers to do so and, as suggested in the comments, we will require that the intermediaries process the exception requests within 180 days after receiving the exception request which is the same time frame required for SNF and HHA exception requests to routine cost limits. Because this has never been a HCFA Central Office responsibility, we do not want to make it so now, since the salary equivalency guidelines will shortly be phased out for all providers. However, we believe the 180 days will give the intermediary enough time to conduct their own review of the documentation and, if necessary, enough time to consult with the Regional Office.

Although we did not ask for comments in the proposed rule on payment for supervisory services, we received several comments on the issue of supervisory pay.

Comment: Several commenters asked that payment for these services be made at 135 percent of the hourly salary equivalency guideline amount.

Response: Because there was no evidence to substantiate these comments, we will continue to have the fiscal intermediaries pay for these services based on the intermediaries' knowledge of the differential between physical therapists', respiratory therapists', occupational therapists', and speech language pathologists' supervisors' salaries and physical therapists', respiratory therapists', occupational therapists', and speech language pathologists' salaries in similar provider settings in the area.

Comment: Several commenters asked for a definition of a supervisor and an administrator. Several commenters asked if one supervisor could supervise all types of therapy. One commenter asked if there could be a different supervisory rate per discipline.

Response: In the past, the Medicare program has not defined these terms. However, section 1412.5 of the Provider Reimbursement Manual permits an additional payment for a chief therapist and those therapists who spend at least 20 percent of their time supervising other therapists or in administrative duties. Supervising other therapists is distinguished from simply being expected, as a staff therapist, to direct trainees, aides, and assistants in performing therapy services. Administrative responsibility is the performance of those duties that normally fall within the purview of a department head or other supervisor. Because the provider department head or supervisor is not providing direct patient care, it would not be necessary for this person to hold the credentials for the particular type of department he is heading. For that reason, we are not asking intermediaries to determine different administrative/supervisory rates for each discipline.

Comment: Several commenters requested that we pay aides as a function of the hourly salary equivalency amount at 50 percent of these amounts. Some commenters suggested that aides be paid at one third of the hourly salary equivalency amount. Another commenter asked that HCFA conduct a study of the classification and compensation of rehabilitation therapy aides and establish a set of salary standards specific to respiratory therapy aides.

Response: Because the commenters did not supply any substantiating evidence in the comments to support their request for paying aides as a function of the hourly slary equivalency amount at 50 percent, we will continue our policy of having the intermediary look at a comparable position, e.g., the nurses aide in order to determine the reimbursement amount. Because there are no educational requirements for coverage of aides' services and we continue to believe that their services are comparable to nurses aides, we do not feel that it is necessary to conduct a study of the classification and compensation of therapy aides.

Although we did not request comments on payment for assistant services, we did receive several comments on this issue.

Comment: Several commenters asked that we increase payment to 85 percent of the hourly salary equivalency amounts for assistants.

Response: Because there was no evidence to substantiate the commenters' request, we will continue with payment at 75 percent of the hourly salary equivalency amount.

Comment: Several commenters were concerned that we were limiting payment for overtime.

Response: The proposed rule did not specifically introduce new limits on payment for overtime. The proposed rule states that a provider would receive payment for overtime; however, if the therapist worked over 40 hours he/she would not receive the expense factor portion of the hourly salary equivalency guideline amount. As stated previously, we are not limiting the expense factor if a therapist works over 40 hours. We are also not revising the overtime policy. Section 1412.4 of The Provider Reimbursement Manual contains our longstanding policy for overtime reimbursement.

Comment: Several commenters asked that HCFA add a provision to the regulations that recognizes a 12.5 percent shift differential for weekend and second shift services.

Response: We continue to believe that it is not customary for therapists to provide services on shifts that would not be part of a normal day-time shift. Therefore, we suggest, for those cases where a provider is paying a shift differential, that the provider apply for an exception as a unique circumstance. The fiscal intermediary will determine if the amount paid is reasonable and justifiable as a unique circumstance.

Comment: One commenter suggested that HCFA use the HHA per visit limits for the salary equivalency guideline amounts instead of the proposed rule.

Response: We cannot use the HHA per visit limits because they do not represent hourly wage rates for employees. They are visit costs which do not necessarily represent an hour's worth of service and do not represent hourly wage rates for therapists.

Comment: One commenter felt that HCFA should exempt from the salary equivalency guidelines those facilities participating in Phase I of the Multi-State Case Mix Demonstration project.

Response: In Phase I and Phase II of the Multi-State Came Mix Demonstration project, the therapy services were paid on a reasonable cost basis and therefore, payment was limited to the salary equivalency guidelines. Under Phase III, therapy services are paid on a prospective payment rate. However, the providers will have to continue to complete a Medicare cost report reflecting the salary equivalency guidelines. Ultimately, the salary equivalency guidelines will not effect the payment the providers receive because payment for therapy is on a prospective rate. As SNFs participating in the demonstration project are paid under the prospective payment system, they will no longer be paid under the demonstration project. They will be subject to prospective payment system for cost reporting periods beginning on or after July 1, 1998.

Comment: One commenter recommended that a variety of costs should be reimbursed for contract therapists working in SNFs: (1) Education, (2) training, (3) attendance at professional meetings, (4) licensing and credentialing, and (5) liability insurance.

Response: We believe that because these costs are the type of costs that an employee may incur, they are reimbursed under the hourly salary equivalency amount as part of the fringe benefit and expense factor.

Comment: Several commenters supported an exception for certain diagnostic services, such as video fluoroscopies, and recommended that such procedures be exempt from the salary equivalency guidelines.

Response: We do not believe that there should be an exception for these services. We believe that if qualified speech language pathologists are permitted to perform those services, then they are speech language pathology services that should be paid for in the same manner as other speech language pathology services. We want to point out that any special equipment that is required for these services will be reimbursed as an additional allowance to the hourly salary equivalency guideline amounts. Also, if these services take longer to perform than some other therapy services, the provider will be reimbursed for the additional hours.

Comment: One commenter suggested that HCFA study the impact that the Medicare transfer agreement requirement has on the cost of providing respiratory therapy services to SNFs. The commenter stated that the transfer agreement creates another layer of costs.

Response: Because the Balanced Budget Act of 1997 provides that, for respiratory therapy services furnished by a SNF on or after July 1, 1998, there will no longer be a requirement for SNFs to provide respiratory therapy services to SNF patients through a transfer agreement hospital, we do not believe it is necessary to perform the suggested study.

Comment: One commenter wanted HCFA to clarify which rate may be charged when a rehabilitation facility

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bills for services using contracted employees in several sites that cross geographic wage index lines (*i.e.*, charge geographic rates based on central office location or site location?)

Response: We do not interfere with the provider's charging practices as long as it is consistently applied to all patients. However, the guidelines would limit provider's costs to the central office location guideline amount because the salary equivalency guidelines limit the costs of the provider who incurs the costs and does the billing. In addition, we do not have any site-of service-billing requirements for therapy services.

Comment: One commenter stated that HCFA was deficient in not developing data for HHAs, CORFs, and outpatient rehabilitation facilities.

Response: We did not have the database resources to perform the types of studies and surveys that are necessary for the salary equivalency guidelines. As pointed out in other sections of this final rule, we are unable to use the cost report as a data source for wage rates because it does not collect information on hourly wages for employees. Moreover, no outside sources submitted reliable data for these individual provider types that were consistent with the type of data described in the Senate Committee on Finance Report (S. Rept. No. 1230, 92nd cong., 2nd sess. 251 (1972)).

Comment: One commenter wanted HCFA to develop salary equivalency guidelines for HHAs, rehabilitation agencies, and CORFs using relevant data from those settings.

Response: As pointed out in the previous comment, we did not have the resources to develop this data, nor could we use the cost report for this purpose. In addition, we did not receive this type of data from outside sources. We also do not believe that the statutory language under section 1861(v)(5) of the Act requires that we develop individual salary equivalency guidelines for each provider type.

Comment: One commenter stated that HCFA should continue to include professional associations in discussions concerning future payment methodologies.

Response: Because we have no plans to publish revised salary equivalency guidelines in the future, we cannot address this issue in the context of further discussions of the salary equivalency guidelines. However, we have included, and will continue to include, professional associations in discussions of the new payment methodologies that are provided in the Balanced Budget Act of 1997.

Comment: One commenter wanted HCFA to clarify its position regarding application of the salary equivalency guidelines as Medicare providers move to prospective payment systems.

Response: The Balanced Budget Act of 1997 provided prospective payment systems for SNFs, HHAs, and community mental health centers and payment on a fee schedule basis for outpatient rehabilitation services. When providers go under these systems, the salary equivalency guidelines will no longer apply, as stated previously, because these prospective payment systems and fee schedules will limit payment for therapy services and should provide a strong incentive for providers to control costs.

Comment: One commenter suggested that in place of salary equivalency guidelines, HCFA should develop a uniform method for payment of therapy services regardless of setting.

Response: In the Balanced Budget Act of 1997, Congress enacted a uniform method for payment of therapy services regardless of setting and employee or contractor arrangements for services. This legislation provides for prospective payment systems for inpatient rehabilitation hospitals, skilled nursing facilities, home health agencies, and community mental health centers. It also provides for payment on a fee schedule basis for all outpatient rehabilitation services regardless of setting.

Comment: One commenter suggested that HCFA reimburse the contractors' costs associated with therapists' 9 month clinical training program.

Response: We can only reimburse the provider for services related to patient care. If the therapist will be providing services to Medicare patients, during the therapist's 9 month clinical trial, then we may reimburse the provider for some of those services as an aide.

Comment: One commenter stated that HCFA should pay for in-service training and utilization review services that are contracted out by the SNF.

Response: The Provider Reimbursement Manual section 1412.5, describes a therapist's professional services, as serving on utilization review and other appropriate committees and participating in training. Because this section is part of the instructions for salary equivalency guidelines which relate to contracted services, we are recognizing that a provider could contract out for these services.

Comment: One commenter stated that calculation of the guideline amount for each metropolitan statistical area for each individual provider would take some time for each individual fiscal intermediary. The commenter also suggested that funding be provided to the maintainers of the STAR programs (formerly Aetna, now Mutual of Omaha) to provide a computer program to each fiscal intermediary that would automatically calculate the therapy limitations for each provider.

Response: In the final rule, we used the GPCI as our wage index, we did not develop as many local rates as we did in the proposed rule. Therefore, it should be easier for the intermediaries to calculate the providers' guideline amounts.

Comment: One commenter stated that there are a number of outpatient rehabilitation providers who have established branch offices. Therefore, HCFA should clarify the application of the proposed guidelines for providers with branch offices.

Response: We do not have a policy which mandates that an outpatient rehabilitation provider bill for their services at the site of service. The guideline amounts have been based and will continue to be based on the central office address of the provider.

Comment: One commenter wanted to know if the guidelines are finalized during a provider's cost reporting year, will the provider be subject to two sets of limits.

Response: This has happened in previous schedules of guidelines. The intermediary will pro rate the different guideline amounts for the different parts of the cost reporting year to which they apply.

G. Statutory Issues

Comment: One commenter was concerned that the proposed rule would violate section 1861(v)(5) of the Act that says: "reasonable cost for these services may not exceed an amount equal to the salary that would reasonably have been paid for services to the person performing them * * *" for several reasons. One commenter felt that HCFA must include data from all settings, while another commenter believed that the statute requires setting-specific rates. A third commenter stated that contract therapist wages should have been included.

Response: HCFA has broad legal authority to determine reasonable cost. HCFA has implemented section 1861(v)(5) of the Act through regulations that authorize the establishment of salary equivalency guidelines. The Senate Finance Committee Report accompanying PL 92–603, section 251(c), discusses the methodology for developing the initial salary equivalency guidelines and revisions. The Senate Finance

Committee Report stated that guideline amounts should be set at the 75th percentile of the range of salaries paid in the area (by type of therapy) to full-time employee therapists. The Report specifically mentioned the use of salary data compiled by the BLS in determining the 75th percentile level of salaries in an area to the extent feasible, timely, and accurate. Thus, the committee report sets forth a detailed plan describing the measure of reasonableness (prevailing salary), the parameters (75th percentile), and the preferred data source (Bureau of Labor Statistics) which does not specify that HCFA set rates for each setting nor that we use data for each provider type. Until the publication of the proposed rule, we have always relied on the BLS hospital and nursing home wage data. Because there was some concern as to the timeliness of the 1989 and 1991 BLS hospital wage survey data which was the latest BLS survey data available, we felt that we could not use this data as our sole source for the salary equivalency guidelines. We decided to use the "best estimate" methodology combining a number of data sources.

Comment: One commenter stated that lumping together data from different provider types to determine the reimbursement of all provider types does not meet the statutory and regulatory requirements.

Response: We do not believe that the statute or regulations prohibit us from combining different provider type data for developing the salary equivalency guidelines. In fact, in 1983, where BLS had provided both hospital and nursing home wage data, we did combine the different types of provider type data. Again, the legislative history supports this approach. We believe that the word "provider" was used in the statute to include all types of entities that meet the definition of that term in the statute.

Comment: One commenter stated that it would be appropriate to include salary data from rehabilitation agencies and other providers in developing salary equivalency guidelines, as these settings represent significant segments of the occupational market for therapy services. The commenter believes that the statutory language in stating, "* * * with such provider or other organization" refers to section 1861(p) of the Act where "other organization" includes rehabilitation agencies.

Response: We did not receive nor did we have available this type of data. Moreover, as mentioned earlier, the Senate Committee on Finance Report endorsed the use of the BLS survey as the primary data source. Because the language in section 1861(p) of the Act regarding "other organizations" existed in the statute at the time the Report was written, we believe that the Report supports the use of the BLS provider data in establishing guidelines to be applied to these other organizations as well.

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IV. Schedules of Guidelines

TABLE I: 1998 GEOGRAPHIC PRACTICE COST INDICES AND SALARY EQUIVALENCY GUIDELINE AMOUNTS BY LOCALITY

Locality Name	GPCI			SEQ			
	Work	Practice Expense	Mal-practice	PT	OT	SLP	RT
NATIONAL				50 65	48 06	46 23	40 01
ALABAMA	0 979	0 871	0 902	48 19	45 66	43 86	37 77
ALASKA	1 064	1 164	1 575	55 85	53 06	51 09	44 40
ARIZONA	0 996	0 984	1 255	50 46	47 86	46 02	39 77
ARKANSAS	0 954	0 854	0 415	46 32	43 88	42 16	36 31
ANAHEIM/SANTA ANA, CA	1 037	1 198	0 799	54 06	51 41	49 53	43 16
LOS ANGELES, CA	1 056	1 203	0 799	54 83	52 13	50 22	43 73
MARIN/NAPA/SOLANO, CA	1 015	1 171	0 632	52 67	50 08	48 26	42 04
OAKLAND/BERKLEY, CA	1 041	1 206	0 632	54 05	51 40	49 53	43 16
SAN FRANCISCO, CA	1 063	1 315	0 632	56 35	53 64	51 72	45 20
SAN MATEO, CA	1 048	1 287	0 632	55 27	52 61	50 73	44 33
SANTA CLARA, CA	1 063	1 276	0 632	55 70	53 00	51 09	44 60
VENTURA, CA	1 028	1 162	0 702	53 16	50 53	48 67	42 37
REST OF CALIFORNIA*	1 008	1 046	0 563	51 02	48 43	46 61	40 40
COLORADO	0 988	0 961	0 811	49 45	46 91	45 11	38 99
CONNECTICUT	1 050	1 182	1 027	54 71	52 00	50 09	43 58
DELAWARE	1 020	1 030	0 826	51 49	48 86	47 01	40 70
DC + MD/VA SUBURBS	1 051	1 177	1 006	54 65	51 94	50 03	43 53
FORT LAUDERDALE, FL	0 997	1 031	1 825	52 16	49 51	47 65	41 30
MIAMI, FL	1 016	1 082	2 403	54 35	51 61	49 68	43 12
REST OF FLORIDA	0 976	0 946	1 372	49 68	47 12	45 31	39 16
ATLANTA, GA	1 007	1 032	0 927	51 18	48 58	46 74	40 50
REST OF GEORGIA	0 971	0 896	0 927	48 23	45 71	43 93	37 89
HAWAII/GUAM	0 999	1 202	0 938	52 91	50 34	48 52	42 36
IDAHO	0 961	0 887	0 577	47 22	44 75	43 01	37 09
CHICAGO, IL	1 028	1 084	1 538	53 50	50 81	48 90	42 42
EAST ST. LOUIS, IL	0 988	0 930	1 345	49 90	47 31	45 48	39 25
SUBURBAN CHICAGO, IL	1 007	1 080	1 262	52 25	49 63	47 78	41 48
REST OF ILLINOIS	0 964	0 885	0 906	47 80	45 31	43 54	37 54
INDIANA	0 982	0 917	0 382	48 06	45 56	43 79	37 78
IOWA	0 959	0 880	0 664	47 19	44 72	42 98	37 06
KANSAS*	0 984	0 895	1 041	48 13	45 62	43 85	37 82
KENTUCKY	0 971	0 871	0 813	47 76	45 25	43 48	37 45
NEW ORLEANS, LA	0 998	0 948	1 075	50 11	47 51	45 68	39 44
REST OF LOUISIANA	0 969	0 876	0 972	47 99	45 47	43 69	37 64
SOUTHERN MAINE	0 980	1 032	0 734	49 88	47 36	45 59	39 55
REST OF MAINE	0 982	0 925	0 734	47 94	45 48	43 71	37 77
BALTIMORE/SURR. CNTYS, MD	1 020	1 038	1 107	52 01	49 36	47 49	41 13
REST OF MARYLAND	0 984	0 989	0 864	49 48	46 94	45 14	39 04
METROPOLITAN BOSTON	1 040	1 205	0 846	54 33	51 67	49 78	43 38
REST OF MASSACHUSETTS	1 011	1 089	0 846	51 88	49 28	47 44	41 20
DETROIT, MI	1 043	1 030	3 060	55 74	52 88	50 86	43 99
REST OF MICHIGAN	0 997	0 937	1 836	51 06	48 41	46 54	40 17
MINNESOTA	0 990	0 966	0 551	49 19	46 66	44 87	38 79
MISSISSIPPI	0 957	0 845	0 724	46 79	44 33	42 58	36 65
METROPOLITAN KANSAS CITY, MO	0 989	0 949	1 202	49 94	47 36	45 54	39 34
METROPOLITAN ST. LOUIS, MO	0 995	0 944	1 203	50 11	47 51	45 68	39 44
REST OF MISSOURI*	0 946	0 831	1 162	46 88	44 41	42 66	36 71
MONTANA	0 952	0 871	0 744	46 95	44 49	42 75	36 86
NEBRASKA	0 950	0 873	0 444	46 44	44 01	42 30	36 47
NEVADA	1 006	1 030	0 942	51 14	48 54	46 71	40 46
NEW HAMPSHIRE	0 988	1 034	0 965	50 55	48 00	46 19	40 06
NORTHERN NJ	1 058	1 203	0 779	54 88	52 17	50 26	43 76
REST OF NEW JERSEY	1 029	1 104	0 779	52 63	49 99	48 12	41 78
NEW MEXICO	0 974	0 907	0 754	48 21	45 70	43 92	37 89
MANHATTAN, NY	1 094	1 356	1 500	59 28	56 42	54 41	47 56
NYC SUBURBS/LONG I., NY	1 068	1 234	1 846	57 24	54 42	52 44	45 88
POUGHKPSIE/N NYC SUBURBS, NY	1 011	1 083	1 272	52 45	49 82	47 96	41 64
QUEENS, NY	1 058	1 237	1 763	56 77	53 99	52 03	45 35
REST OF NEW YORK	1 000	0 957	0 807	49 85	47 27	45 45	39 26
NORTH CAROLINA	0 971	0 921	0 466	47 82	45 34	43 59	37 64
NORTH DAKOTA	0 951	0 869	0 637	46 72	44 28	42 55	36 88
OHIO	0 991	0 940	1 062	49 70	47 12	45 30	39 12
OKLAHOMA	0 969	0 881	0 437	47 23	44 76	43 01	37 06
PORTLAND, OR	0 997	1 011	0 612	50 08	47 53	45 72	39 60
REST OF OREGON	0 962	0 934	0 612	47 86	45 40	43 65	37 73
METROPOLITAN PHILADELPHIA, PA	1 025	1 090	1 261	53 04	50 37	48 49	42 08

REST OF PENNSYLVANIA	0.990	0.928	0.687	48.95	46.41	44.61	38.49
PUERTO RICO	0.883	0.734	0.314	42.10	39.84	38.25	32.84
RHODE ISLAND	1.019	1.072	1.379	52.79	50.12	48.24	41.85
SOUTH CAROLINA	0.976	0.902	0.321	47.56	45.08	43.33	37.37
SOUTH DAKOTA	0.936	0.865	0.439	45.81	43.42	41.73	35.99
TENNESSEE	0.976	0.899	0.536	47.86	45.36	43.59	37.59
AUSTIN, TX	0.987	0.993	0.838	49.84	47.29	45.49	39.38
BEAUMONT, TX	0.993	0.896	1.407	49.78	47.17	45.32	39.05
BRAZORIA, TX	0.993	0.972	1.407	50.68	48.07	46.23	39.97
DALLAS, TX	1.011	1.014	0.912	51.09	48.48	46.64	40.37
FORT WORTH, TX	0.988	0.972	0.912	49.74	47.18	45.38	39.24
GALVESTON, TX	0.989	0.988	1.407	50.48	47.88	46.05	39.82
HOUSTON, TX	1.021	1.006	1.423	52.15	49.47	47.58	41.15
REST OF TEXAS	0.986	0.884	0.855	47.79	45.29	43.52	37.52
UTAH	0.978	0.900	0.619	48.07	45.56	43.78	37.75
VERMONT	0.974	0.986	0.500	48.75	46.27	44.51	38.55
VIRGIN ISLANDS	0.986	1.006	1.028	49.49	46.99	45.22	39.21
VIRGINIA	0.986	0.940	0.538	48.72	46.19	44.41	38.35
SEATTLE (KING CNTY), WA	1.006	1.079	0.745	51.42	48.84	47.02	40.82
REST OF WASHINGTON	0.983	0.969	0.745	49.26	46.73	44.95	38.87
WEST VIRGINIA	0.984	0.852	1.055	47.64	45.13	43.35	37.32
WISCONSIN	0.982	0.930	1.001	49.15	46.60	44.80	38.68
WYOMING	0.988	0.888	0.758	47.76	45.27	43.50	37.51

* Payment locality is serviced by two carriers.

NOTE: Work GPCI is the 1/4 work GPCI required by Section 1848(e)(1)(A)(iii) of the Social Security Act. GPCIs rescaled by the following factors to assure budget neutrality: Work = 1.00027; Practice expense = 1.00057; Malpractice = 1.03174.

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TABLE II: THERAPY-SPECIFIC ADJUSTED HOURLY SALARY EQUIVALENCY INPUT PRICE INDEXES
(BASE PERIOD: FOURTH QUARTER 1995=100.000)

	Base Period Weights by Therapy Type (1)					
	Physical Therapy	Occupational Therapy	Speech Language Pathology	Respiratory Therapy	Composite Therapy Index	Price Proxies
Total	100.000	100.000	100.000	100.000	100.000	
A. Therapist Compensation	73.672	72.250	71.157	66.670	71.824	
Wages	52.884	51.864	51.079	47.858	51.557	50% ECI Civilian Hospital Workers and 50% ECI Private Professional & Technical Workers' Wages.
Benefits	20.788	20.386	20.078	18.812	20.267	50% ECI Civilian Hospital Workers and 50% ECI Private Professional & Technical Workers' Fringe Benefits.
B. Overhead	26.328	27.750	28.843	33.330	28.176	
Other Wages	8.248	8.694	9.036	10.442	8.828	
Clerical Wages	4.124	4.347	4.518	5.221	4.414	ECI Wages Private Administrative Support Including Clerical. (2)
Managerial Wages	4.124	4.347	4.518	5.221	4.414	ECI Wages Private Executive, Administrative, & Managerial. (2)
Other Benefits	0.898	0.948	0.984	1.138	0.962	
Clerical Benefits	0.449	0.474	0.492	0.569	0.481	ECI Benefits Private Administrative Support Including Clerical. (2)
Managerial Benefits	0.449	0.474	0.492	0.569	0.481	ECI Benefits Private Executive, Administrative, & Managerial. (2)
Office Costs	7.555	7.962	8.276	9.563	8.084	CPI-U Housing.
Other Costs	9.627	10.148	10.547	12.187	10.302	CPI-U All Items Less Food & Enegy.
Composite Index Share (3)	0.416	0.264	0.172	0.148	1.000	

1/ Base year weights were developed for each type of therapy offered under arrangement. These weights are multiplied by price index levels to measure composite price change over time.

2/ ECI = Employment Cost Index. ECIs are fixed-weight indexes which track labor cost, free from the influence of employment shifts among occupations and industries.

3/ The composite index share represents the proportion that each therapy index type represents of the composite index. These shares were derived from estimates of the 1998 shares of therapy services offered under arrangement by therapy type.

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TABLE III.—REHABILITATION THERAPY INPUT PRICE INDEXES FOR FORECASTING THE INCREASE IN THE COST OF THERAPY SERVICES, CY 1991–2000

Calendar year	Physical therapist index	Occupational therapist index	Speech language pathologist index	Respiratory therapist index	Composite therapist index [1]
Historical					
1991	4.9	4.9	4.9	4.9	4.9
1992	4.2	4.2	4.2	4.1	4.2
1993	3.6	3.6	3.6	3.5	3.6
1994	3.1	3.1	3.1	3.1	3.1
1995	2.6	2.6	2.6	2.6	2.6
1996	2.7	2.8	2.8	2.8	2.8
Forecast [2]					
1997	2.4	2.4	2.4	2.4	2.4
1998	2.9	2.9	2.9	2.9	2.9
1999	3.2	3.2	3.2	3.2	3.2
2000	3.4	3.4	3.4	3.4	3.4

Released By: HCFA, OACT, National Health Statistics Group.

[1] The estimated outlays for services rendered in 1998 were used to develop the outlays-weighted composite rehabilitation therapy input price index.

[2] Source: Standard & Poor's DRI HHC 3rd QTR 1997; @USSIM/Trend25yr0897@CISSIM/CONTROL973.

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Table IV: Adjusted Hourly Salary Equivalency Amount Monthly Inflation Factors Using Outlay Weighted Composite Rehabilitation Therapy Input Price Index

Salary Equivalency Period		Period Inflation
Month	Year	Factors
1 April	1998	1.00000
2 May	1998	1.00274
3 June	1998	1.00549
4 July	1998	1.00825
5 August	1998	1.01101
6 September	1998	1.01379
7 October	1998	1.01656
8 November	1998	1.01935
9 December	1998	1.02215
10 January	1999	1.02495
11 February	1999	1.02776
12 March	1999	1.03058
13 April	1999	1.03340
14 May	1999	1.03624
15 June	1999	1.03908
16 July	1999	1.04193
17 August	1999	1.04479
18 September	1999	1.04765
19 October	1999	1.05052
20 November	1999	1.05340
21 December	1999	1.05629
22 January	2000	1.05919
23 February	2000	1.06209
24 March	2000	1.06500
25 April	2000	1.06792
26 May	2000	1.07085
27 June	2000	1.07379
28 July	2000	1.07673
29 August	2000	1.07969
30 September	2000	1.08265
31 October	2000	1.08561
32 November	2000	1.08859
33 December	2000	1.09158
34 January	2001	1.09457
35 February	2001	1.09757
36 March	2001	1.10058

Source: Standard & Poor's DRI HHC 3rd QTR 1997: @USSIM/Trend25YR 0897@CISSIM/CONTROL973

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V. Provisions of the Final Rule

In this final rule, we are revising the methodology for establishing the schedules for the maximum payment for physical therapy and respiratory therapy services. We are revising the determination of reasonable cost for physical therapy and respiratory therapy furnished under arrangements by an outside contractor by rebasing the guideline amounts.

We are also establishing salary equivalency guidelines for speech language pathology and occupational therapy services furnished under arrangements by an outside contractor using the same methodology as we are using for determining reasonable cost for physical therapy and respiratory therapy services.

In addition, we are: (1) Eliminating the exception to the salary equivalency guidelines for a provider that entered into a written binding contract with a therapist or contracting organization prior to the date the initial guidelines are published; (2) applying the salary equivalency guidelines in situations where compensation, at least in part, to a therapist employed by the provider is based on a fee-for-service or on a percentage of income (or commission).

VI. Summary of Changes in Methodology in the Final Rule

Item description	Proposed rule	Final rule
Estimate of the 75th percentile	10 percent of the mean wage used to estimate the 75th percentile.	12 percent of the mean wage used to estimate the 75th percentile. This accounts for the underlying variability that may not have been quantified in preliminary notice.
Market Basket shares for wages and fringes.	The wage share was developed based on total paid hours rather than actual worked hours. The fringe benefit cost share excluded paid hours not worked due to vacation leave, sick leave, etc.	The wage share was recalculated to include only worked hours. The fringe benefits cost share was allocated paid hours not worked due to vacation leave, sick leave, etc.
Market Basket: Office wages and benefits expense share of costs.	Source: IRS Statistics of Income—1991 cost share.	Source: IRS Statistics of Income—1994 cost share.
Market Basket: Rental space converted to hourly cost of therapy.	Source: Building and Owners' Management Association (BOMA)—1991 aged to 1995 using CPI rental.	Source: BOMA—1995.
Geographic Adjustment Factor	Pre-Reclassified urban portion of Hospital Wage Index.	Geographic Practice Cost Indexes (GPCI) used for physician fee schedule.

VII. Regulatory Impact

A. Background

We have examined the impacts of this final rule as required by Executive Order 12866, the Unfunded Mandate Reform Act, and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354).

1. Executive Order 12866 and RFA

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). We have determined that this final rule is an economically significant rule under this Executive Order, as discussed in detail under section VII.B below. The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered small entities. All therapists, however, are treated as small entities.

This final rule (1) revises the methodology for determining salary equivalency guidelines for physical therapy and respiratory therapy services furnished under arrangement; (2) applies the revised methodology for payment of physical therapy and respiratory therapy services to speech language pathology and occupational therapy services; and (3) establishes revised schedules of salary equivalency guidelines for physical and respiratory therapy services and initial schedules of salary equivalency guidelines for speech language pathology and occupational therapy services. These final guidelines will be used by Medicare fiscal intermediaries to determine the maximum allowable payment for therapy services furnished under arrangements.

As we indicated earlier in the preamble of this final rule, the salary equivalency guidelines for physical and respiratory therapy services furnished under arrangements were last revised in 1983, with provisions for yearly adjustments for inflation. In addition, although the law gives us explicit authority to establish salary equivalency guidelines for speech language pathology and occupational therapy services furnished under arrangements, we have never previously done so. We have, instead, paid for these services using reasonable cost methodologies. We now believe that, if we continue to use these methods to pay for speech language pathology and occupational therapy services furnished under arrangements, we will be paying for costs that are in excess of what Congress intended under section 1861(v)(5) of the Act.

We estimate that a large number of therapists, especially suppliers of rehabilitation therapy services, will be affected by these revised guidelines, and a substantial number of these entities may be required to make changes in their operations. However, we do not have sufficient available data to estimate how many of each type of entity will be affected. The analysis under section VII.B. below, in combination with the remainder of this preamble, is consistent with the standards for analysis set forth by the RFA and the Executive Order 12866.

2. Congressional Review

Section 804(2) of Title 5, United States Code (as added by section 251 of Public Law 104–121), specifies that a "major rule" is any rule that the Office of Management and Budget finds is likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-

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based enterprises in domestic and export markets.

We estimate that the impact of this final rule will be an overall savings from fiscal years 1998 to 2000 of $260 million. Therefore, this rule is a major rule as defined in Title 5, United States Code, section 804(2).

Because this final rule is considered a major rule, and is required by law, this final rule is subject to congressional review. Therefore, this final rule is being forwarded to Congress for a 60-day review period.

3. Unfunded Mandate

The Unfunded Mandate Reform Act of 1995 also requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits for any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by both the private sector, of $100 million. The final rule has no consequential effect on State, local, or tribal governments. We believe the private sector costs of this rule fall below the threshold, as well.

4. Rural Hospital Impact

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer that 50 beds. We are not preparing a rural hospital impact statement because we have determined, and we certify, that this final rule will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

B. Anticipated Effects

1. Effects on the Medicare Trust Funds

The final guidelines are based upon a provider's reasonable cost for an employee therapist furnishing therapy services. This cost includes the prevailing salary levels for therapists, prevailing market area fringe benefits, as well as a share of the other expenses that could be attributed to an employee therapist. The estimated savings to the Medicare Trust Funds result from the differences in the final guidelines relative to current rates of payment after behavioral offsets for increased add-ons, volume, intensity, mix of services, and other revenue enhancement behaviors have occurred.

We developed an estimate on the effect of the revised guidelines on the Medicare Trust Funds using all available data. We had limited data sources with which to develop hourly salary rates and other expense factors as well as to develop a projection of the effect of the revised guidelines on the Medicare Trust Funds for revised versus existing levels. We are limited because the Medicare cost reports and claims data do not furnish us with data on hourly rates paid to therapists and other relevant expense and net revenue data. Therefore, we based the hourly salary rates and the effect of the revised guidelines on the Medicare Trust Funds on the best data available to us from HCFA sources and the therapy industry. The hourly salary rates were based on a blend of hospital and SNF survey data sources. The impact analysis was based on billing data from HCFA's Decision Support Access Facility (DSAF) files and SNF cost report data from the Hospital Cost Reporting Information System file as well as industry sources.

Based upon various data sources for 1993, 1994, and 1995, we formed a baseline in order to project the volume of services in future years for each of the four therapy types. For each therapy type, we then found the difference between the current rate and the revised rate, and multiplied that difference by the projected volume in order to estimate the savings or additional outlays that this proposed rule would have.

When trend factors from the DRI/McGraw Hill third quarter 1997 forecast of the HCFA rehabilitation therapist input price index are used, we estimate the revised guidelines for April 1998 will increase the current national or aggregate guidelines per hour for physical therapy by about 35 percent and the national or aggregate guidelines for respiratory therapy by about 10 percent. At the same time, the guidelines for occupational therapy and speech language pathology will decrease estimated current aggregate rates by about 40 percent and about 25 percent, respectively.

Our projected savings per year are based on the difference between current and estimated total costs after a standard behavioral adjustment is applied for lower proposed prices relative to current payments under current payment rules.

We followed the Office of the Actuary (OACT) standard practice of allowing an offset of 35 to 50 percent for behavioral changes when we estimated the savings resulting from lowered prices. In recent years, suppliers of therapy services have bundled physical therapy, occupational therapy, and speech language pathology (but not respiratory therapy) when they have contracted to furnish therapy services to SNFs. The 35 percent behavioral offset allows for changes in behavior that generate increased revenue to the suppliers at the lower average price for the bundle of services. The behavioral offset was not applied to respiratory therapy services because revised prices are higher than current regulation prices and the respiratory therapy industry contracts separately with the SNF industry. We chose the lower end of the range because services are provided in the facility based on time in facility, not fee-for-service, thus there are substantially fewer opportunities for revenue enhancing behavior. Suppliers are estimated to compensate for about one-third of the reduction in prices by a combination of increased add-ons, volume, intensity, change in mix, and a shift in the site of service or a change in options for reimbursement. Suppliers might shift from being suppliers where payment is controlled by salary equivalency guidelines to being providers where payment is on a reasonable cost basis not subject to guidelines (unless as providers they also contract for therapy services); or they may increase the volume of services in physical therapy where guideline amounts are higher; or they may use less experienced and, therefore, lower salaried therapists. Other revenue enhancement practices may emerge which cannot be fully anticipated. Using this offset, the 3 year impact of the guidelines for 1998 through 2000 for therapy services under arrangements is estimated to be a savings of $170 million for Medicare Part A and $90 million for Medicare Part B.

Although we moved from using the hospital wage index in the proposed rule to the GPCI in the final rule, there was a negligible effect on the savings estimate in making this change. Because of the Balanced Budget Act of 1997 provisions, we revised our savings estimates from the proposed rule. These estimates are presented in the table below.

Due to the Balanced Budget Act of 1997, these guidelines become obsolete as new payment methodologies are implemented for the various providers of services. By the end of fiscal year 2000, these guidelines will have no effect, as all providers will be subject to new payment methodologies. In other words, as a result of the statutory provisions in the Balanced Budget Act of 1997, the salary equivalency guidelines will no longer be in effect by the end of fiscal year 2000.

SALARY EQUIVALENCY: SAVINGS ESTIMATES

Federal fiscal year	Estimated savings after offset (in millions, rounded)		
	Part A	Part B	Total
1998	$90	$50	$140
1999	60	40	100
2000	20	0	20
Totals	170	90	260

The savings include coinsurance and are before the Part B premium offset.
This applies the 35 percent offset to physical therapy, occupational therapy, and speech language pathology only and no offset to respiratory therapy.
Estimates are based on an effective date of April 1, 1998.

2. Effects on Providers

We expect that these salary equivalency guidelines will provide adequate payments for all classes of efficient providers. It is possible that certain inefficient therapy suppliers may be unwilling to contract with providers at the salary equivalency rates, expanding the market for more efficient therapy suppliers. We also understand that certain therapy suppliers were requiring providers to purchase a bundled package of physical therapy, occupational therapy, and speech language pathology services. By requiring this bundling of services, suppliers were able to make substantial profits because, even though there was an hourly payment limit on the physical therapy services, there were no guidelines for the speech-language pathology and occupational therapy services. Consequently, the suppliers marked up the speech-language pathology and occupational therapy services. The guidelines for speech-language pathology and occupational therapy services may eliminate suppliers profiting from excessively high prices for occupational therapy and speech language pathology. We expect that providers will continue to provide therapy services at the published rates. We expect that providers will be able to furnish the same array of beneficiary services they furnish under current guidelines amounts or payment on a reasonable cost basis.

3. Effects on Beneficiaries

We believe that the impact of these guidelines on Medicare beneficiaries will be minimal. Beneficiaries may be slightly affected by the guidelines for physical therapy, speech language pathology, and occupational therapy services. With respect to physical therapy services, the Medicare Part B coinsurance amounts associated with these services that must be paid by beneficiaries (20 percent of the provider's charges to the beneficiary) may increase if providers increase charges for those services. The charges may increase because physical therapy hourly amounts recognized by Medicare fiscal intermediaries to determine the maximum allowable cost of those services will increase in this final rule over the previous schedules of guidelines. However, the Medicare program does not dictate a provider's charge structure. We do expect charges to be reasonably related to cost. Conversely, beneficiary coinsurance will be reduced for speech language pathology and occupational therapy services because Medicare payment rates for these services will be reduced by the establishment of guidelines in this final rule and the provider's charges to the beneficiary may also decrease. Because respiratory therapy provided in comprehensive outpatient rehabilitation facilities under arrangements is a Part B service, Medicare Part B coinsurance amounts related to those services that must be paid by beneficiaries may increase if providers increase charges for those services. This may also occur because respiratory therapy hourly amounts recognized by Medicare fiscal intermediaries to determine the maximum allowable cost of those services will increase in this final rule over the previous schedules of guidelines. We believe that the guideline amounts are adequate so that therapy suppliers should continue to contract with providers to furnish services to beneficiaries. Since we are now introducing new guideline amounts for occupational therapy and speech language pathology, if providers are passing along the therapy companies higher charges, then we would expect providers' charges may be lower for those services.

4. Effects on Therapists and Therapist Companies

These salary equivalency guidelines will have varying impacts on the four categories of therapists. Speech language pathologists and occupational therapists working for contract suppliers should be minimally affected, since the suppliers typically bundle all therapy services when negotiating rates (including overhead) with providers. Physical therapists acting as suppliers or employed by supplying therapy companies may be affected positively because physical therapy hourly rates recognized by Medicare fiscal intermediaries to determine the maximum allowable cost of those services will increase in this final rule and, therefore, providers may contract with physical therapists at a higher amount. Also, providers may contract with therapy companies at a higher amount and they, in turn, may pay the therapists higher salaries. Similarly, respiratory therapists acting as therapy suppliers or employed by therapy suppliers may be positively affected because respiratory therapy hourly amounts recognized by Medicare fiscal intermediaries to determine the maximum allowable cost of those services will increase in this final rule and, therefore, providers may contract with respiratory therapy suppliers at a higher amount. Also providers may contract with therapy companies at a higher amount and they, in turn, may pay the therapists higher salaries.

We recognize that a large percentage of providers have contracts with therapy companies that may dominate a market area. We understand that because the contracted physical therapy services have been limited by the guidelines, some of these therapy companies have been requiring providers to sign up for three therapy services, that is, physical, occupational and speech language pathology services, but were overcharging providers for speech language pathology and occupational therapy services. These therapy companies may incorrectly claim that the introduction of these guidelines for contracted speech language pathology and occupational therapy services may

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put them out of business. Our rates are designed to reflect adequate rates for all classes of efficient suppliers. Even though we do not pay contracted therapy companies directly, unless they also act as providers, and (with the exception of independent physical therapists and occupational therapists) contracted therapy services are one of the few Medicare services that have not been targeted in earlier deficit reduction laws.

Other changes in behavior might include a change in the type of therapy offered (perhaps substituting physical therapy for occupational therapy and increasing the volume of services furnished in physical therapy, which has a higher guideline amount), use by suppliers of less experienced (and therefore lower salaried) therapists, a shift by suppliers from furnishing therapy services under arrangements to furnishing therapy services under agreement, in which the therapy company bills Medicare directly as a provider under Part B. In the latter case, the providers are paid under Part B on a reasonable cost basis and are not subject to salary equivalency guidelines unless they contract for therapy services.

Inefficiently run rehabilitation therapy companies may cut expenses and become more efficient, as is happening in much of the rest of the economy. More efficient companies may expand or enter the market, picking up the therapy services volume which less efficient suppliers may leave unserved. Therapists' productivity could increase. Overhead is a likely candidate for expense reduction. In addition, profit margins may be reduced, but still be at or above competitive rates for efficient firms. Individual therapy suppliers may already have lower overhead than corporate suppliers. Multi-therapy companies may adjust their service mix away from therapy types for which they are inefficient producers and expand the therapy types for which they are efficient producers.

Due to these salary equivalency guidelines, some therapists who work for inefficient rehabilitation therapy suppliers may have compensation levels above competitive rates and may find that their yearly salary and fringe benefit increases lag those of therapists employed in other more competitive settings of the local therapist labor market. A deceleration in wage increases for workers with excessively high compensation levels will continue until wages in various settings, after compensating non-wage differences, are roughly comparable for each therapy type. Those therapists whose employers curtail furnishing services under arrangements with providers may either furnish therapy for those same employers as employees of rehabilitation agencies that will bill Medicare directly as providers, change employers to those efficiently run companies that expand their contracted therapy services, or become self-employed and contract directly with providers to furnish therapy services under arrangements. Therapists who are employed by efficient rehabilitation therapy suppliers where salaries are in line with those of other therapists (after adjustments for compensating non-wage differentials) in the local labor market should notice no substantial effect. The expected effects described above result in a better functioning, more efficient health care system.

C. Alternatives Considered

Section 1861(v)(5) of the Act requires HCFA to determine the reasonable cost of services furnished to Medicare beneficiaries "under an arrangement" with a provider of services by therapists or other health-related personnel. Other alternatives to implementing the salary equivalency program are to continue paying for therapy services, furnished under arrangements, using current reasonable cost methodologies or to use alternative data sources to establish the salary equivalency guidelines in this final rule.

We rejected the first alternative because, if we continue to pay for speech language pathology and occupational therapy services furnished under arrangements using reasonable cost methodologies, we will be paying for costs that are in excess of what Congress intended under section 1861(v)(5) of the Act, to the detriment of the Medicare Trust Funds. In the case of physical therapy and respiratory therapy services, current salary equivalency guidelines may reflect less than a provider's reasonable costs in furnishing these services.

As we indicated in our discussion of data sources we used to establish the guidelines (see section III.B. of this final rule), we were unable to find a sole or primary source of data on hourly rates paid to therapists by providers that is timely and statistically valid. Because the BLS hospital wage industry surveys were not timely, we were unable to use that data as our sole source as in prior guideline notices. The rehabilitation therapy industry submitted survey data to HCFA that they believe support higher guideline amounts than are in the final rule. Although the survey data were submitted to HCFA in order to determine new guideline amounts as provided in § 413.106(b)(6), it did not meet the requirements in the final rule. Nevertheless, we evaluated the data. As indicated in Section II.A. of this preamble, we decided to blend select hospital and SNF data sources so that the wages and salary parts of this final rule have been determined using a "best estimate" approach, giving equal weight, but not preferential status to each data source. We decided on the "best estimate" approach because we were unable to find a sole or primary source that met our criteria of reliability, validity, and representativeness.

D. Conclusion

Federal Medicare expenditures have grown at an extraordinary rate in recent years. A study commissioned by the National Association for Support of Long-Term Care indicates that 75 percent of all therapy services under arrangements were furnished in SNFs. We also project that the 65 and over population will nearly double by the year 2025. We believe that the salary equivalency guidelines in this final rule are in the public interest since they balance the needs of Medicare program beneficiaries, taxpayers, providers of therapy services, and suppliers who furnish therapy services under arrangements.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

VIII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

However, the information collection requirements referenced in this rule as outlined in §§ 413.106(e) and 413.106(f) are currently approved under the PRA: In particular, these requirements are currently captured in each of HCFA's provider cost report information collections.

Section 413.106(e) requires a provider of therapy services to supply its intermediary with documentation that supports additional costs incurred for services furnished by an outside supplier.

Section 413.106(f) requires that before an exception to the application of the guidelines may be granted, the provider must submit appropriate evidence, in accordance with instructions issued in section 1414 of the Provider Reimbursement Manual, to its intermediary to substantiate its claim.

Organizations and individuals desiring to submit comments on any of these information collection and recordkeeping requirements, should direct them directly to the following:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850. ATTN: HCFA–1808–F

and

Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10235, New Executive Office Building, Washington, DC 20503, ATTN.: Allison Herron Eydt, HCFA Desk Officer

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR part 413 is amended as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

2. Section 413.106(c)(5) is redesignated as (c)(6) and republished, a new paragraph (c)(5) is added, paragraph (f)(1) is removed and paragraphs (f)(2), (3), and (4) are redesignated as (f)(1), (2), and (3) and republished to read as follows:

§ 413.106 Reasonable cost of physical and other therapy services furnished under arrangements.

* * * * *

(c) *Application.* * * *

(5) If therapy services are performed in situations where compensation to a therapist employed by the provider is based, at least in part, on a fee-for-service or on a percentage of income (or commission), the guidelines will apply. The entire compensation will be subject to the guidelines in cases where the nature of the arrangements is most like an under "arrangement" situation, although technically the provider may treat the therapists as employees. The intent of this section is to prevent an employment relationship from being used to circumvent the guidelines.

(6) These provisions are applicable to individual therapy services or disciplines by means of separate guidelines by geographical area and apply to costs incurred after issuance of the guidelines but no earlier than the beginning of the provider's cost reporting period described in paragraph (a) of this section. Until a guideline is issued for a specific therapy or discipline, costs are evaluated so that such costs do not exceed what a prudent and cost-conscious buyer would pay for the given service.

* * * * *

(f) *Exceptions:* The following exceptions may be granted but only upon the provider's demonstration that the conditions indicated are present:

(1) *Exception because of unique circumstances or special labor market conditions.* An exception may be granted under this section by the intermediary if a provider demonstrates that the costs for therapy services established by the guideline amounts are inappropriate to a particular provider because of some unique circumstances or special labor market conditions in the area. The provider's request for an exception, together with substantiating documentation, must be submitted to the intermediary each year, no later than 150 days after the close of the provider's cost reporting period. If the circumstances giving rise to the exception remain unchanged from a prior cost reporting period, however, the provider need only submit evidence of the intermediary 150 days after the close of its cost reporting period to establish that fact.

(2) *Exception for services furnished by risk-basis HMO providers.* For special rules concerning services furnished to an HMO's enrollees who are Medicare beneficiaries by a provider owned or operated by a risk-basis HMO (see § 417.201(b) of this chapter) or related to a risk-basis HMO by common ownership or control (see § 417.205(c) of this chapter).

(3) *Exception for inpatient hospital services.* Effective with cost reporting periods beginning on or after October 1, 1983, the costs of therapy services furnished under arrangements to a hospital inpatient are excepted from the guidelines issued under this section if such costs are subject to the provisions of § 413.40 or part 412 of this chapter. The intermediary will grant the exception without request from the provider.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 16, 1998.

Nancy-Ann Min Deparle,

Administrator, Health Care Financing Administration.

Dated: January 22, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–2154 Filed 1–29–98; 8:45 am]

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Federal Register

Friday
January 30, 1998

Part V

Library of Congress

Copyright Office

Copyright Restoration of Works in Accordance With the Uruguay Round Agreements Act; Notice

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LIBRARY OF CONGRESS

Copyright Office

[Docket No. 97–3C]

Copyright Restoration of Works In Accordance With the Uruguay Round Agreements Act; List Identifying Copyrights Restored Under the Uruguay Round Agreements Act for Which Notices of Intent to Enforce Restored Copyrights Were Filed in the Copyright Office

AGENCY: Copyright Office, Library of Congress.

ACTION: Publication of Seventh List of Notices of Intent to Enforce Copyrights Restored Under the Uruguay Round Agreements Act.

SUMMARY: The Copyright Office is publishing its seventh list of restored copyrights for which it has received and processed Notices of Intent to Enforce a copyright restored under the Uruguay Round Agreements Act. Publication of the lists creates a record for the public to identify copyright owners and works whose copyright has been restored for which Notices of Intent to Enforce have been filed with the Copyright Office. This list includes NIEs filed by copyright owners whose eligibility to file in the Office expired December 31, 1997. Copyright Office processing continues for the remainder of NIEs received on or before December 31, 1997.

EFFECTIVE DATE: January 30, 1998.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Assistant General Counsel, or Charlotte Douglass, Principal Legal Advisor to the General Counsel, Copyright GC/I&R, Post Office Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

I. Background

The Uruguay Round General Agreement on Tariffs and Trade and the Uruguay Round Agreements Act (URAA) (Public Law No. 103–465; 108 Stat. 4809 (1994)) provide for the restoration of copyright in certain works that were in the public domain in the United States. Under section 104A of title 17 [1] of the United States Code as provided by the URAA, copyright protection was restored on January 1, 1996, in certain works by foreign nationals or domiciliaries of World Trade Organization (WTO) or Berne countries that were not protected under the copyright law for the reasons listed below in (2). Specifically, for restoration of copyright, a work must be an original work of authorship that:

(1) is not in the public domain in its source country through expiration of term of protection;

(2) is in the public domain in the United States due to:

(i) noncompliance with formalities imposed at any time by United States copyright law, including failure of renewal, publishing the work without a proper notice, or failure to comply with any manufacturing requirements;

(ii) lack of subject matter protection in the case of sound recordings fixed before February 15, 1972; or

(iii) lack of national eligibility (e.g., the work is from a country with which the United States did not have copyright relations at the time of the work's publication); and

(3) has at least one author (or in the case of sound recordings, rightholder) who was, at the time the work was created, a national or domiciliary of an eligible country. If the work was published, it must have been first published in an eligible country and not published in the United States within 30 days of first publication. *See* 17 U.S.C. 104A(h)(6).

A work meeting these requirements is protected "for the remainder of the term of copyright that the work would have otherwise been granted in the United States if the work never entered the public domain in the United States." 17 U.S.C. 104A(a)(1)(B).

Under the URAA, copyright in restored works vests automatically on the date of restoration. 17 U.S.C. 104A(a)(1)(A). That date is January 1, 1996, if the particular nation was already a member of the World Trade Organization (WTO) or the Berne Convention. Otherwise, the effective date of restoration is the date of a particular nation's adherence to the WTO or the Berne Convention or the date when the President issues a proclamation extending copyright restoration to that nation.

Although the copyright owner may immediately enforce the restored copyright against individuals who infringe his or her rights on or after the effective date of restoration, the copyright owner's right to enforce the restored copyright is delayed against reliance parties. Typically, a reliance party is one who was already using the work before December 8, 1994, the date the URAA was enacted. *See* 17 U.S.C. 104A(h)(4). Before a copyright owner can enforce a restored copyright against a reliance party, the copyright owner must file a Notice of Intent (NIE) with the Copyright Office or serve an NIE on such a party.

An NIE may be filed in the Copyright Office within 24 months of the date of restoration of copyright. Alternatively, an owner may serve an NIE on an individual reliance party at any time during the term of copyright; however, such notices are effective only against the party served and those who have actual knowledge of the notice and its contents. NIEs appropriately filed with the Copyright Office and published herein serve as constructive notice to all reliance parties.

II. Administrative Processing

Pursuant to the URAA, the Office is publishing its seventh four-month list identifying restored works for notices of intent to enforce a restored copyright filed with the Office. 17 U.S.C. 104A(e)(1)(B). The earlier lists were published between May 1, 1996, and December 19, 1997. 61 FR 19372 (May 1, 1996), 61 FR 46134 (Aug. 30, 1996), 61 FR 68454 (Dec. 27, 1996), 62 FR 20211 (April 25, 1997), 62 FR 44842 (Aug. 22, 1997), and 62 FR 66766 (Dec. 19, 1997). To allow for processing this NIE information, the Office closed the record for publication approximately three working days before forwarding this record for publication. Accordingly, the NIEs listed herein are those entered into the public records of the Office between December 5, 1997, and January 21, 1998. NIEs not processed by January 21, 1998, will appear on the eighth four-month list, to be published on April 17, 1998.

NIEs for works restored to copyright on January 1, 1996, must have been postmarked on or before December 31, 1997, to be accepted in the Copyright Office for publication in the **Federal Register**. *See* 17 U.S.C. 104A(d)(2). NIEs that were received in the Office too late for **Federal Register** publication will be returned to the remitter unrecorded, and the fee will be refunded. On the other hand, owners of works that are still within their eligible filing period may continue to file such notices with the Copyright Office and receive constructive notice, and the Office will continue to publish a list of eligible NIEs in the **Federal Register**.

III. Correction of Previously Filed NIEs

Correction NIEs for major errors (essentially, major errors in title and owner information) on any NIE filed must be submitted within the eligibility period. 37 CFR 201.34 (d)(6)(i). Minor errors may be corrected at any time without regard to eligibility for filing, pursuant to the interim regulation on Correction NIEs, published at 62 FR 55736 (Oct. 28, 1997).

IV. On-line Availability of NIE Lists

Using the information provided herein, one may search the Office's database to obtain additional information about a particular NIE. NIEs are located in what is known as the Copyright Office History Documents (COHD) file, which is available from computer terminals located in the Copyright Office itself or from terminals located in other parts of the Library of Congress through the Library of Congress Information System (LOCIS). Alternative ways to connect through Internet are: (i) The World Wide Web (WWW), using the Copyright Office Home Page at: http://www.loc.gov/copyright; or (ii) connecf directly to LOCIS through the telnet address at locis.loc.gov. WWW is available 24 hours a day. LOCIS is available 24 hours a day Monday through Friday, U.S. Eastern Time; Saturday until 5 p.m.; and Sunday after 11 a.m.[2]

Information available online includes: the title or brief description if untitled; an English translation of the title; the alternative titles if any; the name of the copyright owner or owner of one or more exclusive rights, the date of receipt of the NIE in the Copyright Office; the date of publication in the **Federal Register**; and the address, telephone and telefax number of the copyright owner. If given on the NIE, the online information will also include the author, the type of work, and the rights covered by the notice. *See* 37 CFR 201.33(f). For the purpose of researching the full Office record of NIEs on the Internet, the Office has made online searching instructions accessible through the Copyright Office Home Page. Researchers can access them through the Library of Congress Home Page on the World Wide Web by selecting the copyright link. Select the menu item "Copyright Office Records" and/or "URAA, GATT Amends U.S. law." In addition to online records, images of the complete NIEs as filed are on optical disc and available from the Copyright Office.

V. Seventh List of Notices of Intent to Enforce

The following restored works are listed alphabetically by copyright owner; multiple works owned by a particular copyright owner are listed alphabetically by title. Works having more than one copyright proprietor are listed under the first owner and cross-referenced to the succeeding owner(s). A cross-reference to the composite owner (e.g., Title I owned by "A B & C") will state, "SEE A B & C" at the listing for each individual owner (e.g., for Owner A, for Owner B and for Owner C).

ADAGP. SEE Societe Civile Succession Richard Guino & ADAGP (Societe de Auteures des Arts Graphiques et Plastiques).
Anguru. SEE Art Theatre Guild of Japan Company, Ltd. & Anguru.
Apple Corps., Ltd.
  Angus McBean Beatles photographs.
  Bruce McBroom Beatles photographs.
  Dezo Hoffmann Beatles photographs.
  Dick Matthews Beatles photographs.
  Ethan Russell Beatles photographs.
  Iain Macmillan Beatles photographs.
  John Kelly Beatles photographs.
  Monty Fresco Beatles photographs taken at Titenhurst Park, 1969.
  Peter Kaye Beatles photographs.
  Robert Freeman Beatles photographs.
  Robert Whitaker Beatles photographs.
  Stephen Goldblatt Beatles photographs.
  Terence Spencer black and white Beatles photographs.
  Tony Bramwell Beatles photographs from "The mad day out", 1968.
Argos Films SARL.
  Hiroshima, mon amour.
Ariane. SEE Cogelda & Ariane.
Ariane. SEE Cogelda, Ariane & Pretoria.
Aries Cinematografica Argentina, SA.
  A puerta cerrada.
  Abierto dia y noche.
  Amante para dos.
  El ano del conejo.
  Argentinisima.
  Argentinisima 2.
  El arreglo.
  Atraccion peculiar.
  Buenos Aires rock.
  Los caballeros de la cama redonda.
  El candidato.
  El canto cuenta su historia.
  Los colimbas al ataque.
  Los columbas se divierten.
  Con gusto a rabia.
  Cuando los hombres hablan de mujeres.
  De quienes son las mujeres.
  Dios los cria.
  Los doctores las prefieren desnudas.
  En mi casa mando yo.
  Los extraterrestres.
  La fiaca.
  Los fierecillos indomables.
  Los fierecillos se divierten.
  Flor de piolas.
  Galeria del terror.
  La gran ruta.
  La guerra gaucha.
  La guita.
  Hasta que se ponga el sol.
  Hay que romper la rutina.
  Un hombre hasta la muerte.
  Los hombres pienssas solo en eso.
  Hotel alojamiento.
  Jacinta pichimahuida se enamora.
  El jefe.
  Las locas del conventillo.
  El macho de America.
  Maridos en vacaciones.
  Mi novia el travesti.
  Mirame la palomita.
  El muerto.
  Las mujeres son cosa de guapos.
  Los neuroticos.
  No exit.
  No habra mas penas ni olvido.
  La noche de los lapices.
  Pasajeros de una pesadilla.
  La patagonia rebelde.
  Paula cautiva.
  Plata dulce.
  Primero yo.
  El profesor hippie.
  El profesor Patagonico.
  El profesor punk.
  El profesor tirabombas.
  Psexoanalisis.
  Rambito y rambon l'mision.
  Los reyes del sablazo.
  Sabado a la noche cine.
  Salves quien pueda.
  Sobredosis.
  Tacuara y chamorro, pichones de hombre.
  Te rompo el rating.
  Un terceto peculiar.
  Tiempo de revancha.
  Triangulo de cuatro.
  Ultimos dias de la victima.
  Los vampiros los prefieren gorditos.
  Las venganzas de Beto Sanchez.
  Viaje de una noche de verano.
  Los viernes de la eternidad.
Armstrong, Michael. SEE Lobbenberg, John Peter & Michael Armstrong.
Art Theatre Guild of Japan Co., Ltd. & Hyogensha.
  Shinju tennoamijima.
Art Theatre Guild of Japan Co., Ltd. & Katsudoya.
  Matatabi.
Art Theatre Guild of Japan Co., Ltd. & Kodosha Co., Ltd.
  Sonezaki shinju.
Art Theatre Guild of Japan Co., Ltd. & Saito Koichi Productions.
  Tsugaru jongarabush.
Art Theatre Guild of Japan Company, Ltd, Gentosha, Ltd.
  Third.

[1] The URAA's amendment of 17 U.S.C. 104A replaced section 104A under the North American Free Trade Agreement Implementation Act (Public Law No. 103–182, 107 Stat. 2057, 2115 (1993)). The Uruguay Round Trade Agreements, Texts of Agreements, Implementing Bill, Statement of Administrative Action, and Required Supporting Statements, H.R. Doc. No. 316, 103d Cong., 2d Sess. 324 (1994). *See* 60 FR 50414 (Sept. 29, 1995).

[2] Not all files are available after 9:30 p.m. on weekdays. On Sundays, all files may not be available from 5 p.m.–8 p.m.

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Art Theatre Guild of Japan Company, Ltd. & Anguru.
Mo hoozue wa tsukanai.
Art Theatre Guild of Japan Company, Ltd. & Cinemahaute Company, Ltd.
Kaze no uta o kike.
Art Theatre Guild of Japan Company, Ltd., Directors Company, Inc., Kokusai Hoei Company, Ltd.
Gyakufunsha kazoku.
Art Theatre Guild of Japan Company, Ltd., Gendaieigasha.
Kaigenrei.
Art Theatre Guild of Japan Company, Ltd., Hycgensha.
Himiko.
Art Theatre Guild of Japan Company, Ltd., Imamura Productions.
Seishun no satsujinsha.
Art Theatre Guild of Japan Company, Ltd., Jinrikihikokisha.
Denen ni shisu.
Art Theatre Guild of Japan Company, Ltd., Kihachi Productions.
Tokkan.
Art Theatre Guild of Japan Company, Ltd., Nikkatsu Studio, New Century Producers.
Enrai.
Kazoku geimu.
Art Theatre Guild of Japan Company, Ltd., Playguide Journal Sha.
Gaki teikoku.
Asahi Tsushinsha. SEE Toho Company, Ltd., Fuji Television, Asahi Tsushinsha, Shogakukan & O B Kikaku.
Authors Rights Restoration Corporation, Inc.
24 horas de placer.
800 leguas por el Amazonas.
96 horas de amor (en la vida de guty cardenas).
A calzon quitado.
A donde van nuestros hijos.
A garrote limpio.
A gozar, a gozar que el mundo se va a acabar.
A la orilla de un palmar.
A la prima se le arrima.
A lo macho.
A media luz los tres.
A paso de cojo.
A que le tiras cuando suenas Mexicano.
A ritmo de salsa.
A ritmo de twist.
A sablazo limpio.
A tiro limpio.
A volar joven.
Abajo el telon.
Las abandonadas.
El abanico de lady windermere.
Abismos de pasion.
Abnegacion.
Los aboneros del amor.
Abrigo de mink.
Una abuelita atomica.
La abuelita.
Aca las tortas.
Acapulco a go go.
Acapulco gigolo.
Acapulco.
Acapulquena.
Accion sobre ruedas.
Acorralado.
Acorralados.
Acuerdate de vivir.
Adan y Eva.
Adan, Eva y el diablo.
Adios cunado.
Adios juventud.
Adios mi chaparrita.
Adios nicanor.
Adorables criminales.
Adriana Del Rio, actriz.
El aduanal.
La adultera.
Agapito no me las des.
Agarrando parejo.
El agente 00-sexy.
Agente viajero.
Agnte secretisimo.
La agonia de ser madre.
La agonia del ser madre.
El aguila descalza.
El aguila negra en la ley de los fuertes.
Aguila negra vs. enmascarados de la muerte.
El aguila negra vs. los diablos de la pradera.
El aguila negra.
El aguila real.
Aguilas de acero.
Aguilas de America.
Ahi esta el detalle.
Ahi madre.
Ahi viene Martin Corona.
Ahi viene Vidal Tenorio.
Ahi vienen los argumedo.
Ahi vienen los gorrones.
El ahijado de la muerte.
Ahora es cuando chile verde.
Ahora mis pistolas hablan.
Ahora soy rico.
El ahorcado.
Al cabo que ni queria.
Al compas del rock'n roll.
Al diablo con la musica.
Al diablo las mujeres.
Al fin a solas.
Al fin solos.
Al margen de la ley.
Al rojo vivo.
Al son de la metralleta.
Al son del Mambo (El rey del Mambo).
Aladino y la lampara maravillosa.
Alarma.
Alas doradas.
El alazan y el rosillo.
Alazan y enamorado.
Los albaniles.
Albur de amor.
Los albureros.
Albures rancheros.
La alegre casada.
Los alegres aguilares.
La alegria de vivir.
Alejandra.
Algo flota sobre el agua.
Alguien tiene que morir.
Alias el rata.
Alicia en ldel el pais del dolar.
Alla en el Bajio.
Alla en el rancho de las flores (Alla en el ranch).
Alla en el rancho grande (36).
Alla en el rancho grande (48).
Alla en el tropico.
Alla en la plaza garibaldi.
Alla en la plaza garibaldi II.
Alma de acero.
Alma grande en el desierto.
Alma grande, el yaqui justiciero.
Alma Jarocha.
Alma llanera.
Alma Nortena.
Amanda, levantate y anda.
Amanecer ranchero.
Amaneci en tus brazos.
Un amante anda suelto.
La amante perfecta.
Los amantes.
Los amantes frios.
Amar fue su pecado.
Amargo destino.
La amargura de mi raza.
Ambicion mortal.
Ambicion sangrienta.
Ambicion sangrienta (67).
Ambiciosa.
Amigo.
Amigos maravilla en el mundo.
Los amigos.
Los amigos maravilla.
Las amiguitas de los ricos.
Amok.
Amor a balazo limpio.
Amor a la Mexicana.
Amor a rimo de go-go.
Amor con amor se paga.
Amor de adolescente.
Amor de adolescentes.
Amor de la calle.
Amor de lejos.
Amor de locura.
El amor de los amores.
El amor de Maria Isabel.
El amor de mi vida.
Amor de mis amores.
Amor del bueno.
Amor en cuatro tiempos.
Amor en la sombra.
Amor en las nubes.
Un amor extrano.
El amor las vuelve locas.
El amor llego a Jalisco.
El amor loco.
El amor no es negocio.
El amor no es pecado.
Amor prohibdo.
El amor tiene cara de mujer.
Amor vendido.
El amor y esas cosas.
Amor y pecado.
Amor y sexo.

Amorcito corazon.
Amore entre nubes.
Amores de ayer.
Los amores de Chucho El Roto.
Amores de Juan Charrasqueado.
Los amores de Marieta.
Amores de Satanas.
Los amores de una viuda.
Anacleto se divorcia.
El analfabeto.
Anatomia de una violacion.
Andante.
Andante (vertigo de amor en la oscuridad).
Ando volando bajo.
Andres de barba azul.
Angeitos negros.
Angel del barrio.
Angel del infierno.
El angel del silencio.
El angel exterminador.
Angel negro.
Angel river.
El angel y yo.
Angeles de arrabal.
Los angeles de la tarde.
Los angeles de puebla.
Angeles y querubines.
Angelica.
Angelitos del trapecio.
Angelitos negros.
Anillo de compromiso.
El anima de sayula.
El anima del ahorcado.
El anima del ahorcado contra el latigo negro.
Animas trujano.
Anita De Montemar.
Anonimo mortal.
Los anos han pasado.
Los anos vacios.
Los anos verdes.
Ansia de matar.
Ansiedad.
Ante el cadaver de un lider.
Antesala de la silla electrica.
El apenitas.
Aprendiendo a vivir.
Apsionada.
Apuesta contra la muerte.
Los apuro de dos gallos.
Los apuros de mi ahijada.
Los apuros de un mafios.
Aquel famoso remington.
Aquella Rosita Alvirez.
Aqui esta Heraclio Bernal.
Aqui estan los villalobo.
Aqui llego el valenton.
Aquiesta tu enamorado.
Aranas infernales (cerebros diabolicos).
Los arboles mueren de pie.
El ardiente deseo.
Arizona.
Arma infernal.
Arrabalera.
Arriba el norte.
Arriba el telon (los parperos).
Arriba las manos texano.
Arriba las mujers.
Arriba Michoacan.
Arrullo de dios.
Arruza.
El arte de enganar.
El as de oros.
El as negro.
Asalto en Tijuana.
El asalto.
Ases de contrabando.
Asesinato en la plaza garibaldi.
Asesinato en los estudios.
El asesino de metro.
Asesino de tontos.
El asesino enimascarado.
Asesino invisible.
Asesino nocturno.
Asesino por instinto.
El asesino.
El asesino se embarca.
El asesino X.
Los asesinos.
Asesinos de la lucha libre.
Asesinos de otros mundos.
Asesinos en la noche.
Asesion a sueldo.
Asi amaron nuestors padres.
Asi era pancho villa.
Asi era Pedro infante.
Asi es mi Mexico.
Asi se quiere en jalisco.
Asi son ellas.
Los astronautas.
Atacan las brujas (Santo en la casa de las brujas).
El ataud del vampiro.
ATM (A today maquina).
Los atracadores.
Atras de las nubes.
Auandar Anapu.
Audaz bravero.
La ausente.
Los automatas de la muerte.
El automovil gris.
Autopsia de un fantasma.
Ave sin nido (Anita de montemar).
Ave sin rumbo.
Aventura en el centro de la tierra.
Las aventuras de Carlos Lacroix.
Aventuras de chucho el roto.
Aventuras de chucho roto.
Aventuras de Juliancito.
Aventuras de la pandilla.
Las aventuras de las hermanas X.
Las aventuras de Pito Perez.
Aventuras de un caballo blanco y un nino.
Aventuras de un nuevo rico.
Aventuras en Rio.
Aventureas de joselito y pulgarcito.
Aventurera.
Los aventureros.
El aviador fenomeno.
El aviso inoportuno.
Ay amor como me has puesto!
Ay chabela!
Ay chaparros como abundan!
Ay jalisco cuanto apache.
Ay Jalisco no te rajes! (46).
Ay Jalisco no te rajes! (64).
Ay que rechulo es Puebla.
Ay que tiempos, senor Don Simon.
Azahares para tu boda.
Azahares rojos.
Baila conmigo.
Baila mi amor.
Bailando cha-cha-cha.
Baile de graduacion.
Baile mi rey.
Baileras, palabras tristes.
Bajo el cielo de Mexico.
Bajo el imperio del hampa.
Bajo la influencia del miedo.
Bajo la mertralla.
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Bala de plata.
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Bala perdida.
Balum canan.
Baname mi amor.
Bancazo en los mochis.
La banda de la sotana negra.
Banda de los contrabandistas.
La banda del acordeon.
La banda del carro rojo.
La banda del fantasma negro.
Banda del polvo maldito.
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La banda dela sotana negra.
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La bandida.
Los bandidos (66).
Los bandidos (77).
Bandidos de rio frio.
Bang, bang..al hoyo.
El bano de afrodita.
El barba azul.
Los barbaros del norte.
El barbero prodigioso.
La barca de oro.
El baron del terror.
Barrack's coup.
La barranca de la muerte.
Barranca sangrienta.
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Barrio bajo.
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Barrio salvaje.
Baru, el hombre de la selva.
Bashful.
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El bastardo (65) (Rancho solo II).
Bataclan Mexicano.
La batalla de los pasteles.
Bellas de noche.
El bello durmiente.
Bendito entre las mujeres.
Benjamin Argumedo.
Besame mucho.
Besito a papa.
El beso de ultratumba.
Un beso en la noche.
El beso mortal.
Besos en la arena.
Besos prohibidos.
Besos, besos y mas besos.
La bestia negra.

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Bestia nocturna.
Bestias jovenes.
Los Beverly de Peralvillo.
La bien amada.
La bienamada.
Bikinis y rock.
Blanca nieves y sus siete amantes.
Blessed among women.
Bloody Marlene.
Blue demon contra el poder.
Blue Demon contra las diabolicas.
Blue Demon contra las invasoras.
Blue Demon contra los cerebros infernales.
Blue demon el demonio azul (El demonio azul).
Blue demon en pasaporte a la muerte.
Blue demon y la mafia amarilla.
Blue Demon y Zovek.
Blue demon, el destructor de espias.
Bodas de fuego.
Bodas de oro.
Bodas tragicas.
Bohemio de aficion.
El bolero de Raquel.
Bolero inmortal.
El bomero atomico.
Bonitas las tapatias.
Las borrachas.
Borrasca en las almas.
Borrasca humana.
El boxeador.
Braceras y mojados.
Las braceras.
El bracero delano.
Las bravuconas.
El brazo fuerte.
El bronco.
El bronco reynosa.
The brothel.
La bruja.
El bruto.
El buen ladron.
El buena suerte.
La buena, la mala y la golfa.
Buenas noches, ano nuevo.
Buenas y con movidas.
Bueno para nada.
Buenos dias Acapulco.
Bugambilia.
Burdel.
Burlada.
Burlesque.
En busca de un muro.
El buscabullas.
Buscando la muerte.
Buscando un campeon.
Buscando una sonrisa.
Cabalgando a la luna.
El caballito volador.
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Caballo alazan lucero.
El caballo bayo.
El caballo blanco.
El caballo del diablo.
Caballo prieto afamado.
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Caballo que canta.
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Caballos de acero (amor sobre ruedas).
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La cabeza viviente.
Cabo de hornos.
Caceria de traficantes.
Caceria humana.
Caceria implacable.
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Los cachorros.
Los caciques.
Cada hijo una cruz.
Cada loco con su tema.
Cada oveja con su pareja.
Cada quien su lucha.
Cada quien su musica.
Cada quien su vida.
Cada voz lleva su angustia.
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Cain, Abel Y el otro.
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Camino al infierno.
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Camino de infierno.
Camino de la horca.
El camino de la vida.
El camino de los espantos.
El camino de los gatos.
Camino del mal.
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Campanas rojas.
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Campeon olimpico.
Los campeones justicieros.
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El cantor de la mafia.
Caperucita y pulagarcito contra los monstruous.
Caperucita y sus tres amigos.
Capitan de rurales.
El capitan Mantaraya.
La captura de chucho el roto.
Captura de Gabino Barrera.
Capulina chisme caliente.
Capulina speedy Gonzales.
Capulina vs. los monstruos.
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Caras nuevas.
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Carcel de mujeres.
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Cargamento prohibido (fuego infernal).
Cargamento prohibido.
Cargando el muerto.
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Las carinosas.
El carinoso.
Carita de cielo.
El carita.
Carnaval en mi barrio.
Carne de horca.
Carne de presido.
La carne manda.
Carperucita roja.
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Casa de citas.
La casa de las muchachas.
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Casa de munecas.

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La casa de Troya.
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La casa del ogro.
La casa del rencor.
La casa del sur.
La casa del terro.
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El caso de la mujer asesinadita.
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El castillo de los monstruos.
El Casto Susano.
Caundo habla el corazon.
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Cazadores de cabezas.
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El centauro del norte.
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Chabelo y Pepito detectives.
Los chacales.
El chacharas.
La chamaca.
Chanco y el tesoro de los mayas.
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El chanfle.
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Chanoc (adventuras de mar y selva).
Chanoc en el circo union.
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Chanoc vs. el tigre el vampiro.
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Chanoc y el tesoro de los mayas.
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Chicano karateca.
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Chico Ramos (un hombre llamado muerte).
Un chico valiente.
Los Chiflados del rock'n roll.
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El Chile.
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El ciclon del caribe.
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Cinco de chocolate y uno de fresa.
Cinco en la carcel.
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Cinco nacos asaltan Las Vegas.
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Una cita de amor.
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La ciudad perdida.
Click, fotografo de modelos.
El club de los suicidas.
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La cobarde.
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Como atrapar marido.
Como burro sin mecate.
Como enfriar a mi marido.
Como gallos de pelea.
Como hay gente sinverguenza.
Como Mexico no hay dos.
Como perros.
Como perros y gatos.
Como perros.
Como pescar marido.
Como te quedo el ojo.
Como todas las madres.
Como tu ninguna.
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El coyote y la bronca.
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De que color es el viento?
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Del can can al mambo.
Del diablo a caballo.
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Del suelo no paso.
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Marihuana (el monstruo verde).
Marina.
La marquesa del barrio.
Martin Santos, el llanero.
La Martina.
El martir del calvario.
Mas alla de amor.
Mas alla de la muerte.
Mas alla de la violencia.
Mas alla del amor.
Mas alla del deseo.
Mas buenas quel el pan.
Mas negro que la noche.
Mas vale pajaro en mano.
El mas valiente del mundo.
Masajistas de senoras.
La mascara de carne.
Mascara de hierro.
La mascara de hierro.
La mascara de jade.
La mascara de la muerte.
La mascara roja.
Mascara vs. bikini.
Matar es facil.
Matar o morir.
Matar of morir.
Mataron a Camelia la Texana.
Maten al fugitivo.
Maten al leon.
Matenme porque me muero.
Mater nostra.
Maternidad imposible.
Matinee.
Maton de rancho.
El matrimonio es como el demond.
Matrimonios juveniles.
Me cai de la nube.
Me canse de rogarle.
Me dicen el asesino.
Me dicen el consentido.
Me gustan valentones.
Me ha besado un hombre.
Me ha gustado un hombre.
Me he de comer esa tuna (44).
Me he de comer esa tuna (70).
Me importa poco.
Me llaman el cantaclaro.
Me llaman la Chata Aguayo.
Me llaman violencia.
Me lleva el tren.
Me lleva la tristeza.
Me persigue una mujer.
Me quiero casar.
Me traes de un ala.
El medallon de crimen.
Medianoche.
El medico de las locas.
El medico modico.
El medio pelo.
Los mediocres.
Melodias involvidables.
Las memorias de mi general.
Memorias de un Mexicano.
Memorias de un visitador medico.
Menores de edad.
El mensaje de la muerte.
El mensaje de las estrellas.
La mentira.
Mercado de ninos.
Meridano 100.
Los meses y los dias.
El metiche.
Mexic de mi corazon.
El Mexicano.
El Mexicano feo.
Mexicanos al grito de guerra.
Mexico de mi corazon.
Mexico de mis recuerdos.
Mexico de noche.
Mexico lindo y querido.
Mexico nunca duerme.
Mi adarada Clementina.
Mi alma por un amor.
Mi aventura en Puerto Rico.
Mi caballo.
Mi caballo el cantador.
Mi caballo prieto rebelde.
Mi campeon.
Mi cancion eres tu.
Mi candidato.
Mi compadre capulina.
Mi corazon canta.
Mi desconocida esposa.
Mi esposa busca novio.
Mi esposa me comprende.
Mi esposa y la otra.
Mi guitarra y mi caballo.
Mi heroe.
Mi influyente mujer.
Mi lupe y mi caballo.
Mi madre es culpable.
Mi mesera.
Mi mino tizoc.
Mi mino, mi caballo y yo.
Mi mujer no es mia.
Mi mujer tiene amante.
Mi nino, mi caballo y yo.
Mi noche de bodas.
Mi nombre es gatillo.
Mi novio es un salvaje.
Mi padrino.
Mi papa tuvo la culpa.
Mi pistola y tus esposas.
Mi querido capitan.
Mi querido viejo.
Mi Reino por un torero.
Mi revolvre es la ley.
Mi vida es una cancion.
Mi viuda alegre.
El miedo llego a Jalisco.
El miedo no anda en burro.
La miel se fue de la luna.
Mientras el cuerpo aguante.
Mientras Mexico duerme.
Mientras Mexico duerme (38).
Mientras Mexico duerme (83).
Miercoles de ceniza.
Miguel Strogoff.
El mil abusos.
El mil amores.
Mil caminos tiene la muerte.
El mil hijos.
Mil mascaras.
Mil millas al sur.
La mil y una noches.
Un milagro de amor.
Milagro en el barrio.
Milagros de San Martin de Porres.
El ministro y yo.
Miradas que mantan.
Mis abuelitas ... nomas.
Mis hijos.
Mis manos.
Mis padres se divorcian.
Mis secretarias privadas.
Mis tres viudas alegres.
Los miserables.
Mision cumplida.
Mision sangrienta.
Mision suicida.
Mister barrio.
Misterio.
El misterio de Huracan Ramirez.
Misterio de la cobra.
Misterio de los hongos alucinantes.
El misterio de los mayas.
El misterio del carro express.
El misterio del latigo negro.
Misterio en las Bermudas.
Misterios de la magia negra.
Misterios de ultratumba.
Los misterios del hampa.
Misterioso Senor Maquim.
El misterioso Senor Marquina.
Las modelos.
Modisto de senoras.
El mofles en Acapulco.
Mofles y canek en mascara vs. cabellera.
El mofles y los mecanicos.
Mojado de nacimiento.
Mojados.
Mojados de corazon.
La momia Azteca.
Momias de Guanajuato.
Las momias.
El monasterio de los buitres.
La moneda rota.
La monja Alfarez.
El monje blanco.
El monstruo.
El monstruo de la montana hueca.
El monstruo de los volcanes.
El monstruo en la sombra.
El monstruo resucitado.
La montana del diablo.
Monte escondido.
Morelos ciervo de la nacion.
Morenita clara.
Morir de madrugada.
Morir de pie.
Morir mil muertes.
Morir para vivir.
El moro de cumpas.
Motin en la carcel.
Una movida chueca.
Las movidas del mofles.
Mr. Doctor.

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Muchachas de uniforme.
Muchachas, muchachas, muchachas.
Muchanchas que trabajan.
Muelle rojo.
Muero de risa.
La muerte de un gallero.
La muerte del federal de caminos.
Muerte del Palomo.
La muerte en bikini.
Muerte en la feria.
Muerte en Tijuana.
La muerte enamorada.
La muerte es mi pareja.
La muerte es puntual.
La muerte llora de risa.
La muerte pasa lista.
Muertes anunciadas.
El muerto al hoyo.
El muerto murio.
Muertos de miedo.
Muertos de risa.
Los muertos hablan.
Los muertos no hablan.
La mugrosita.
Mujer.
La mujer carcada.
Una mujer con pasado.
Mujer contra mujer.
Mujer de a seix litros.
La mujer de dos caras.
La mujer de nadie.
La mujer de oro.
La mujer de todos.
Una mujer decente.
La mujer del diablo.
La mujer del puerto.
La mujer del puerto (33).
La mujer desnuda.
La mujer do otro.
Mujer en condominio.
Una mujer en la calle.
Mujer Mexicana.
La mujer murcielago.
Mujer o fiera.
Una mujer para los sabados.
La mujer policia.
Una mujer que no miente.
La mujer que no tuvo infancia.
La mujer que se vendio.
La mujer que tu quieres.
La mujer que yo perdi.
La mujer sin alma.
La mujer sin cabeza.
Una mujer sin destino.
La mujer sin lagrimas.
Una mujer sin precio.
La mujer X.
La mujer y la bestia.
Mujeres de hoy.
Mujeres de medianoche.
Las mujeres de mi general.
Mujeres de teatro.
Mujeres en mi vida.
Mujeres enganadas.
Las mujeres panteras.
Mujeres que trabajan.
Mujeres sacrificadas.
Mujeres salvajes.
Mujeres sin alma.
Mujeres, mujeres, mujeres.
La mulata de Cordoba.
Mulata.
Mulato.
El mundo de los aviones.
El mundo de los vampiros.
Mundo loco de los jovenes.
El mundo salvaje de baru.
Mundo, demonio y carne.
La muneca perversa.
Munecas de medianoche.
Las munecas infernales.
Munecas peligrosas.
Murallas de pasion.
Los murcilagos.
El museo del crimen.
El museo del horror.
Musica en la noche.
Musica y dinero.
Musica, espuelas y amor.
Musica, mujeres y amor.
Musico, poeta y loco.
Nacida para amar.
Nacidos para morir.
Nadie muere dos veces.
Nadie te querra como yo.
La nalgada de ora.
Nana.
El nano.
Napoleoncito.
Narcosecta satanica.
Narcoterror.
Narda o el verano.
Naufragio.
Los naufragos de liguria.
Nave de los dioses.
La nave de los monstruos.
Necesito dinero.
Necesito un marido.
El negocio del odio.
Negra consetida.
Lo negro del negro.
Negro es mi color.
Neutron contra el doctor Caronte.
Neutron contra los asesinos del karate.
Neutron el enmascarado negro.
Ni de aqui ni de alla.
Ni hablar del peluquin.
Ni modeo, asi somos.
Ni pobres, ni ricos.
Ni sangre, ni arena.
Ni solteros, ni casados.
Nido de aguilas.
Nido de fieras.
El nieto del Zorro.
Nimifaldas con espuelas.
La nina de la mochila azul (2da. version).
La nina de la mochila azul.
La nina popoff.
Nine pobre nino rico.
El nino fidencio.
El nino y la niebla.
No basta ser charro.
No desearas la mujer de tu hijo.
No hay cruces en el mar.
No jalen que descobijan.
No juzgaras a tus padres.
No mataras.
No me defiendas compadre.
No me olvides nunca.
No me platiques mas.
No niego mi pasado.
No soy monedita de oro.
No te ofendas Beatriz.
No tiene la culpa el indio.
No val nada la vida.
Nobleza ranchera.
Nobleza ranchera (38).
La noche avanza.
La noche avanza (yo soy el amo).
Una noche bajo la tormenta.
La noche de gavilan.
Noche de juerga.
La noche de los mayas.
La noche de los mil gatos.
Noche de muerte.
Noche de perdicion.
Noche de ronda.
La noche del halcon.
La noche del jueves.
La noche del Ku Kux Klan.
La noche del pecado.
Una noche embarazosa.
La noche es nuestra.
La noche violenta.
Noche y tu, la (el caballero varona).
Noches de cabaret.
La noches de califas.
Las noches del blanquita.
Nomas las mujers quedan.
La nortena de mi amores.
Nos dicen las intocables.
Nos lleva la tristeza.
Nos veremos en el Ceilo.
Nosotros.
Nosotros dos.
Nosotros los feos.
Nosotros los jovenes.
Nosotros los pelados.
Nosotros los pobres.
Nosotros los rateros.
Nostradamus el genio de las tinieblas.
Nostradamus, el destructor de nonstruos.
Nostradamus.
Nostradamus: el destructor.
Nostradamus: el genio de.
Nostradamus: la maldicion de.
Nostradamus: la sangre de.
La novia del mar.
Las novias del lechero.
Novias impacientes.
Un novio para dos hermanas.
Los novios de mi hijas.
Los novios.
Novios y amantes.
Nuestras vidas.
Nuestros odiosos maridos.
Nuetron contra el criminal sadico.
Nuevo amanecer.
Un nuevo modo de amar.
Nuevo mundo.
Los nuevos pistoleros famosos.
Nunca debieron amarse.
Nunca es tarde para amar.
Nunca me hagan eso.

La obligacion de asesinar.
Obsesion venganza.
La odalisca numero 13.
Odio.
Oficio mas antiguo del mundo.
El ojo de vidrio.
Ojo por ojo.
Ojos de juventud.
Ojos tapatios.
OK Cleopatra.
OK Mister Pancho.
Okay, Mister Pancho.
Olimpiada en Mexico.
Los olvidados de dios.
Ondina.
Ontono y primavera.
Operacion 67.
Operacion carambola.
Operacion contraespionaje.
Or es cuando chile verde.
Ora ponciano.
Oreja rajada.
El organillero.
Orgullo de mujer.
Orlak, el infierno de Frankestain.
Oro y plata.
Orquideas para mi esposa.
La otra ciudad.
La otra mujer.
Otra primavera.
La otra.
La otra virginidad.
El otro.
La oveja negra.
Las ovejas descarriadas.
Oye salome.
Pa'que me sirve la vida.
Pablo y Carolina.
Pachucos y muy machos.
Pacto de sangre.
Pacto diabolico.
Padra nuestro que estas en la tierra.
Un padre a toda maquina.
Padre de mas de cuatro.
El padre diablo.
El padre pistolas.
El padrecito.
Pafnucio santo.
Palabras de mujer.
Palenque sangriento.
Palo dado.
Paloma brava.
Paloma herida.
La palomilla.
La palomilla al rescate.
La panchita.
Pancho Lopez.
Pancho pistolas.
Pancho pistolas (episodio no. 4).
Pancho Tequila.
Pancho Villa y la valentina.
Pandilla en accion.
Pandilla en el misterio del jaguar.
La pandilla se divierte.
El pandillero.
Pandilleros.
Pandilleros olor a muerte.
Panico.
El pantano de las animas.
La pantera negra.
Papa en onda.
Papacito lindo.
El papelerito.
Papito querido.
Los paquetes de paquita.
Un par de robachicos.
Un para a todo dar.
Para morir iguales.
Para siempre amor mio.
Para toda la vida.
Para todos hay.
Paraiso robado.
Uno paro la horca.
Los parranderos.
El pasajero diez mil.
Pasaporte a la muerte.
Una pasion me domina.
Pasion oculta.
Pasion por el peligro.
La pasion segun Berenice.
Pasionaria.
Pasiones tormentosas.
Paso a la juventud.
Pata de palo.
Patched faced (79).
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La paz.
La pearla.
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Pecado (61).
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Pecado de juventud.
El pecado de Laura.
El pecado de quererte.
El pecado de ser pobre.
El pecado de una madre.
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Pecadora.
Las pecadoras.
Pecados de amor.
Pedro Paramo (66).
Pedro y el capitan.
Pegando con tubo.
Pegando cont tubo.
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Los pelotones de Juan Camaney II.
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El penal de la loma.
Penita pena.
El penon de las animas.
Pension de artistas.
Penthouse de la muerte.
Peor que las fieras.
Peor que los buitres.
Pepe el toro.
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Pepito as del volante.
Pepito y el monstruo.
Pepito y los robachicos.
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La pequena senora de perez (70).
El pequeno Robin Hood.
Los pequenos privilegios.
Perdida.
El perdon de la hija de nadie.
Perdoname mi vida.
Peregrina.
Las perfumadas.
Perico el de los palotes.
La perla.
Los perros de dios.
Perros de presa.
La persecucion y muerte de Pancho Villa.
Perseguido por la ley.
Persiguelas y alcanzalas.
Los perturbadores.
La perversa.
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Pesadilla mortal.
Pescadores de perlas.
La picara Susana.
Picardia Mexicana II.
Un picaro aventurero.
Picaro con suerte.
El picaro.
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Piernas de oro.
Las piernas del millon.
Pies de gato.
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Pilotos de combate.
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Pina madura.
La pintada.
Pintame angelitos blacos.
Las piranas aman en cuaresma.
El pirata a negro.
Un pirata de doce anos.
Pistolas invencibles.
La pistolera.
El pistolero del diablo.
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Pistoleros de la frontera.
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Pobre corazon.
Pobre del pobre.
Pobre diablo.
Pobre huerfanita.
Las pobres ilegales.
Pobres millonarios.
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El poder Negro.
Poker de ases.

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Poker de reinas.
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Policias y ladrones.
Policica Aduanal Federal.
El polvo maldito.
Pompeyo el conquistador.
Por el mismo camino.
Por ellas, aunque mal paguen.
Por eso.
Por la puerta falsa.
Por mis pistolas.
Por que naci mujer.
Por que peca la mujer.
Por querer a una mujer.
Por ti aprendi a querer.
Por tu maldito amor.
Por un vestido de novia.
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Primero el dolar.
Primero soy mexicano.
El primo basilio.
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El proceso de las senoritas Vivanco.
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Pueblo quieto.
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La Puerta falsa.
La puerta y la mujer del carnicero.
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Puerto maldito.
Pulgarcito.
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La pulqueria II.
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Punos de roca.
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Una pura y dos con sal.
Que bonito amor.
Que bonito es querer.
Que bravas son las costenas.
El que con ninos se acuesta.
Que dios me perdone.
Que familia tan cotorra.
Que haremos con papa?
Que hombre tan simpatico.
Que hombre tan sin embargo.
Que lindo cha cha cha.
Que lindo es michoacan.
Que me entierren con la banda.
Que me maten en tus brazos.
Que me maten en tus brazos (los barbaros del no).
Que me siga la tambora.
El que murio de amor el.
El que no corre vuela.
Que no me bese el mariachi.
Que noche aquella.
Que padre tan padre.
Que perra vida.
Que seas feliz.
Que te ha dado esa mujer?
Que viva Tepito! mi barrio.
Los que volvieron.
Quein mato al abuelo?
El queno corre vuela.
Quien mato a Eva.
Quien mato al abuelo.
Quien te quiere a ti.
Quiereme porque me muero.
Quiero ser artista.
Quiero vivir.
Quiero vivir (la muerte es mi paareja).
Quiero vivir mi vida!
Quietos todos.
Un quijote sin mancha.
Quinceanera.
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Reto a la vida (historia de un amor impossible).
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El Revolver sangriento.
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El rey de la pistola.
El rey de los albures.
El rey de los caminos.
El rey de los gorilas.
El rey de los ladrones.
El rey de los Tahures.
El rey de Mexico.

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Los reyes magos.
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El rincon de las virgenes.
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Rio Grande.
Rio hondo.
Rio salvaje.
El rio y la muerte.
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Rosa de la frontera.
Rosa de las nieves.
Rosa de Xochimilco.
Rosa del caribe.
El rosal bendito.
Rosalba.
Rosario.
Rosas blancas para mi hermana negra.
Rosauro castro.
Rosenda.
Rosita.
Rosita Alvirez.
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Rostros olvidados.
Rubi.
La ruletera.
Ruletero a toda marcha.
Rumba caliente.
Rumbera caliente.
Rumbo a Brasilia.
Rutilo el forastero.
S.A. Asesino.
Sablazo limpio.
Sabras que te quiero.
Sabvado negro.
Sagrario.
Salon Mexico.
Salto al vacio.
La salvaje ardiente.
Los salvajes.
San Felipe de Jesus.
San Miguel el alto.
San Simon de los magueyes.
Los Sanchez deben morir.
Sangre de Nostradamus.
Sangre de nuestra raza.
La sangre derramada.
Sangre en el rio bravo.
Sangre en la barranca.
La sangre enemiga.
La sangre manda.
Sangre torera.
Sangrey y fuego.
Santa (68).
Santa Claus.
La santa del barrio.
Santo contra la invasion de los.
Santo el enmascarado de plata vs.
Santo en el hotel de la muerte.
Santo en el misterio de la perla negra.
El Santo en el museo de cera.
Santo en el tesoro de Dracula.
Santo en la frontera del terror.
Santo en la venganza de la momia.
Santo en la venganza de las mujeres vampiro.
El Santo la tigresa.
Santo mantequilla Napoles en la venganza.
Santo mision suicida.
El santo oficio.
Santo va. las momias de Guanajuato.
Santo vs. Capulina.
Santo vs. el asesino de la television.
El Santo vs. las mujeres vampiro.
Santo vs. blue demon en la atlantida.
Santo vs. el cerebro diabolico.
Santo vs. el espectro.
Santo vs. el estrangulador.
Santo vs. el hotel de la muerte.
Santo vs. el rey del crimen.
Santo vs. la hija de Frankestein.
Santo vs. la Mafia del vicio.
Santo vs. las lobas.
Santo vs. los asesinos de otros mundos.
Santo vs. los cazadores de cabezas.
Santo vs. los jinetes del terror.
El Santo vs. los zombies.
Santo y blue demon contra los monstruos.
Santo y blue demon en el mundo.
Santo y blue demon en la Atlantida.
Santo y blue demon vs. Dracula y el hombre lo.
Santo y blue demon vs. doctor.
Santo y el aguila real.
Santo y la invasion.
Santo y los cazadores de cabezas.
Santo, blue demon y mil mascaras.
Los santos reyes.
Santos vs. el rey del crimen.
Santos vs. los zombies.
El Sargento Capulina.
La satanica.
Satanico pandemonium.
El satiro.
Se alquila marido.
Se la llevo el remington.
Se la llevo el Remington.
Se los chupo la bruja.
Se solicitan modelos.
Secreto de confesion.
El secreto de Juan Palomo.
El secreto de la monja.
El secreto de la soltrerona.
El secreto de Pancho Villa.
El secreto del texano.
Secreto profesional.
Los secretos del sexo debil.
El secuestro de Camarena.
El secuestro de Lola.
El secuestro de un policia.
Secuestro en acapulco (60).
Secuestro en acapulco (83).
Sed de amor.
Seda sangre y sol.
La seduccion.
El seductor.
Seguire tus pasos.
La segunda mujer.
Seis dias para morir.
El seite leguas.
La selva de fuego.
Semana Santa entre los coras.
El semental de palo alto.
El seminarista.
Senda prohibida.
Sendas del destino.
El Senor Alcalde.
El senor director.
El senor doctor.
El senor fotografo.
El Senor Gobernador.
El senor tormenta.
La senora de enfrente.
Una senora movida.
La senora muerte.
Senora tentacion.
Las senoritas vivanco.
Senoritas.
Sensualidad.
La sentecia.
Sentenciado a muerte.
Sentenciado por la mafia (natifas de la muerte).
Ser charro es ser Mexicano.
Serenata en Acapulo.
Serenata en noche de luna.
Serenata macabra.
Servicio secreto.
Sexo contra sexo.
El sexo de los pobres.
El sexo me da risa.
El sexo me divierte.
El sexo sentido.
Sexo vs. sexo.
Sexo y crimen.
El sexologo.
The shadow.
Los sherifs de la frontera.
Si adelita se fuera con otro.
Si ella volviera.
Si fuera una cualquiera.
Si me han de matar manana.
Si mi cama hablara.
Si quiero.

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Si volvieras a mi.
Si yo fuera diputado.
Si yo fuera millonario.
Siempre en domingo.
Siempre estare contigo.
Siempre hay un manana.
Siempre tuya.
Sierra de sangre.
La sierra del terro.
El siete copas.
Las siete cucas.
Siete en la mira.
Siete Evas para Adan.
El siete machos.
Siete muertes para el texano.
Los siete ninos de ecija.
Siete pecados.
Los siete proscritos.
El siete vidas.
Sigueme corazon.
Siguiendo pistas.
Silencio de muerte.
El silencioso.
The silvermansked saint.
Simbad, el mareado.
El simio blanco.
Simitrio.
Simon del desierto.
Simon del desirto.
Simon el estilista.
Simplemente un crimen.
Simplemente vivir.
Sin fortuna.
La sin ventura.
El sinaloense.
Sindicato de telemirones.
Sinverguenza pero honrado.
El sinverguenza.
Sobre el muerto las coronas.
Sobre las olas.
Sobre las olas (32).
El socio.
Sol en llamas.
El sol sale para todos.
Sol y sombra.
Solamente una vez.
La soldadera.
Soledad..
El solitario indomable.
Solo de noche vienes.
Solo para ti.
Solo veracruz es bello.
Los solterones.
La sombra de cruz diablo.
La sombra de los hijos.
La sombra de un pasado.
La sombra del caudillo.
La sombra del mano negra.
La sombra del murcielago.
La sombra del otro.
La sombra del sol.
La sombra en defensa de la juventud.
La sombra siniestra.
Sombra verde.
Sombra vs. La mano negra.
La sombra.
El sombrero de tres picos.
Somos del otro laredo.
Son tus perjumenes mujer.
Sonata.
La sonrisa de la virgen.
La sonrisa de los pobres.
Sor alegria.
Sor Juana Ines de la Cruz.
Sor tequila.
El sordo.
La sotana del reo.
Soy charro de Levita.
Soy charro de rancho grande.
Soy chicano y Mexicano.
Soy madre soltera.
The stone book.
Su excelencia.
Su gran ilusion.
Su precio unos dolares.
Su primer amor.
Su ultima aventura.
Su usted no puede yo si.
El suavecito.
Sube y baja.
Sublime melodia.
Sucedio en Garibaldi.
Sucedio en jalisco.
Sucedio en Mexico.
Sucesion de las brujas.
Un sueno de amor.
Suenos de amor.
Suenos de oro.
Suerte te de dios.
Suicidate mi amor.
El sultan descalzo.
Supeerolicia ocho ochenta.
El superhombre.
El supermacho.
El superman ... Dilon.
El superman ... Dilon II.
Los supervivientes de los andes.
Superzam.
Suprema ley.
Susana.
Tabare.
Tacos al carbon.
El tahur.
Tal para cual.
Los tales for cuales.
Tambien de dolor se canta.
Tampico.
Tan bueno el giro como el colorado.
Las tapatias nunca pierden.
Tarahumara.
Tarde de agosto.
Tarjeta verde.
Te besare en la boca.
Te odio y te quiero.
Te quiero.
Te sigo esperando.
Te solte la rienda.
Te vi en T.V.
Teatro del crimen.
Teatro follies.
Tehuantepec.
El temerario.
Los temibles.
Las tendatora.
Tengo que matarlos.
La tercera palabra.
Teresa.
Terremoto en Guatemala.
El terrible gigante de las nieves.
El terror de la frontera.
Terror en los barrios.
Terror, sexo y brujeria (cautivo del mas alla).
El tesoro de Atahualpa.
El tesoro de chucho el roto.
Tesoro de la Isla de Pino.
El tesoro de la muerte.
Tesoro de mentiras.
El tesoro de Moctezuma.
El tesoro de Pancho Villa.
El tesoro del indito.
El tesoro del rey Salomon.
El testamento del vampiro.
El testamento.
Testigo silencioso.
El Texano.
Thaimi, la hija del pescador.
Thanatos.
La tia Alejandra.
La tia de las muchachas.
Tiburon.
Tiburon (33).
Tiburoneros.
Tiempo y destiempo.
Tierra baja.
La tierra de fuego se apaga.
Tierra de hombres.
Tierra de pasiones.
Tierra de rencores.
Tierra de sangre.
Tierra de valientes.
Tierra de violencia.
Tierra muerta.
La tierra prometida.
El tigre de guanajuato.
El tigre de Jalisco.
El tigre de la frontera.
El tigre de yautepec.
El tigre enmascarado.
El tigre negro.
Los tigres del desierto.
Tigres del ring III.
Los tigres del ring.
La tigresa.
La tijera de oro.
Timoteo, el incomprendido.
Tin tan en la habana.
Tin-tan y las modelos.
Tinieblas.
Tintanson cruzoe.
Tio de mi vida.
Un tipo a todo dar.
Un tipo dificil de matar.
Tirando a gol.
Tirando a matar.
Tizoc.
Tlayucan.
Los toda la vida (machos destrampados).
Toda maquina.
Todo el horizonte para morir.
Todo por nada.
Todo un caballero.
Todo un hombre (82).
Todos los Mexicanos somos mujeriegos.
Todos son mis hijos.

Tonta tonta pero no tanto.
Torero por un dia.
Tormenta en el ring.
Tormenta en la cumbre.
Un toro me llama.
El toro negro.
La torre de los suplicios.
La tortola del ajusco.
Traficantes de ninos.
El tragabalas.
Tragedia en michoacan.
Traicionera.
Traiganlos vivos o muertos.
Traigo mi 45.
Las traigo muertas.
El trampa.
La trampa mortal.
Trampa para un cadaver.
Trampas de amor.
Los tre huastecos.
Los tre salvajes.
Treinta segundos para morir.
Tren que corria.
La trenza.
Las tres alegres comadres.
Los tres alegres compadres.
Los tres amores de Lola.
Tres angelitos negros.
Tres balas perdidas.
Los tres bohemios.
Tres bribones.
Los tres calaveras.
Tres citas con el destino.
Los tres compadres.
Tres contra el destino.
Las tres coquetonas.
Tres corneados apaleados.
Tres de la vida airada.
Tres de presidio.
Los tres Garcia.
Tres hermanos.
Tres hombres malos.
Los tres huastecos.
Tres lecciones de amor.
Las tres magnificas.
Tres melodias de amor.
Tres mil kilometros de amor.
Los tres mosqueteros de dios.
Tres mosqueteros y medio.
Los tres mosqueteros.
Tres Muchachasde Jalisco.
Tres mujeres en la hoguera.
Tres noches de locura.
Tres palamas alborotadas.
Las tres pelonas.
Las tres perfectas casadas.
Tres romeos y una julieta.
Tres trinqueteros en Acapulco.
Tres tristes tigres.
Las tres tumbas.
Tres valientes camaradas.
Los tres villalobos.
Las tres viudas alegres.
Los tres vivales.
Tribu.
Tribunal de justicia.
La trinchera.
El trinquetero.
Un trio de tres.
Trio y cuarteto.
Triste recuerdo.
Triunfa la pandilla.
Los triunfadores.
El triunfo del lobo.
Tropicana.
Trotacalles.
Tu hijo debe nacer.
Tu mujer es la mia.
Tu vida contra mi vida.
Tu vida entre mis manos.
Tu vida entre mis manos (mi vida entre tus manos).
Tu y las nubes.
La tumba de matias.
La tumba del mojado.
Tumba para un narco.
La tumba.
El tunel seis.
Tuya para siempre.
Tuyo hasta que la migra nos separe.
Twist, locura de juventud.
La ultima aventura de chaflan.
La ultima lucha.
La ultima noche.
El ultimo cartucho.
El ultimo dispara.
El ultimo disparo.
El ultimo Mexicano.
El ultimo pistolero.
El ultimo round.
El ultimo tunel.
Los ultimos dias de pompeyo.
Ultraje al amor.
Un alma pura.
Un sabado mas.
Una cancion para recordar.
Uno para la horca.
Uno y medio contra el mundo.
Ustedes los ricos.
Vacaciones en Acapulco.
Vacaciones misteriosas.
Vagabunda.
Vagabundo en la lluvia.
Vagabundo y millonario.
El vagabundo.
Un vago sin oficio.
El vagon de la muerte.
Valente quintero.
Valentin armienta.
Valentin de la sierra.
La valentina.
El valiente vive hasta que el cobarde quiere.
Los valientes no mueren.
El valle de los meserables.
El valor de vivir.
Valses venian de Viena y los nino de paris.
Vamonos con pancho villa.
Vamonos para la feria.
Las vampiras.
Vampiro sangriento.
El vampiro.
El vampiro teporocho.
Vanessa.
Vanilla bronce y morir.
Variedades de medianoche.
Vaya tipos.
Vecindario.
Vecindario II.
Ven a cantar conmigo.
Veneno para las hadas.
La venenosa.
Veng nza sangrienta.
El vengador de sinaloa.
El vengador solitario.
Vengadoras enmascaradas.
Venganza apache.
Venganza de Gabino Barrera.
La venganza de Huracan Ramirez.
La venganza de la coyota.
La venganza de la sombra.
La venganza de los villalobos.
La venganza de ramona.
Venganza del diablo.
Venganza del resucitado.
La venganza del rojo.
Venganza en el circo.
La venus maldita.
Verano ardiente.
Verano salvaje.
Verano violento.
La verdad de la lucha.
La verdadera vocacion de Magdalena.
El verdugo de sevilla.
Verdugo de traidores.
Los verduleros III.
El vergonzoso.
Vertigo.
Vestidas y alborotadas.
El vestido de novia.
El vestido de novia.
Una vez en la noche.
El viaje (L.S.D. viaje).
Un viaje a la luna.
Viaje al paraiso.
Viaje fantastico en globo.
El viaje.
Las viboras cambian de piel.
Victimas de la pobreza.
Victimas de un asesino.
Victimas del divorcio.
Victimas del pecado.
La vida cambia.
La vida de agustin lara.
La vida de chucho el roto.
Vida de pedro infrante.
La vida intima de Marco Antionio y Cleopatra.
La vida no vale nada.
Vidita negra.
La vidua negra.
Viejo nido.
Los viejos somos asi.
Vienticuatro horas de vida.
Viento distante.
Viento Negro.
Viento salvaje.
La vinida del rey olmos.
Vino el remolino y nos alevanto.
Violacion.
Violada y bandonada.
El violadar infernal.
El violetero.
La virgen de Guadalupe.
La virgen de la calle.
La virgen de la sierra.

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Virgen de medianoche.
La virgen del cielo.
La virgen desnuda.
La virgen que forjo una patria.
Las virgenes locas.
Una virgin moderna.
La virtud desnuda.
La visita que no toco el timbre.
Las visitaciones del diablo.
Vistete Cristina.
Una viuda sin sosten.
Viva benito canales!
Viva chihuahua.
Viva el amor.
Viva Jalisco que es mi tierra.
Viva la juventud.
Viva la parranda.
Viva Mexico!
Viva mi desgracia.
Viva quien sabe querer.
Vive como sea.
El vividor.
Vivillo desde chiquillo.
Vivir a todo dar.
Vivir de suenos.
Vivir del cuento.
Vivir para amar.
Vivire orta vez.
Vivire otra vez.
Vivo o muerto.
El vizconde de Montecristo.
Voces de primavera.
Volver, volver.
La voragine.
Voy de gallo.
Voz de la sangre.
El vuelo 701.
El vuelo de la ciguena.
El vuelo de la muerte.
Vuelta al paraiso.
La vuelta del latigo negro.
La vuelta del Mexicano.
Vuelva el sabado.
Vuelve el Dr. Satan.
Vuelve el lobo.
Vuelve el ojo de vidrio.
Vuelve el sabado.
Vuelve el Texano.
Vuelve en norteno.
Vuelven los cinco halcones.
Vuelven los Garcia.
Vuelvne los argumedo.
Xoxontla.
Y dios la llamo tierra.
Y la mujer hizo al hombre.
Y llego la paz.
Y manana seran mujeres.
Ya llegaron los gorrones.
Ya somos hombres.
Ya tengo a mi hijo.
Yanco.
El yaqui.
Yegua colorada.
Yesenia.
Yo amo, tu amas, nosotros.
Yo baile con don porfiro.
Yo dormi con un fantasma.
Yo fui novio de Rosita Alvirez.
Yo fui una callejera.
Yo mate a Juan Charrasqueado.
Yo mate a Rosita Alvirez.
Yo no creo en los hombres.
Yo no me caso compadre.
Yo pecador.
Yo quiero ser mala.
Yo sabia demasiado.
Yo soy gallo dondequiera.
Yo soy la ley.
Yo soy muy macho.
Yo soy tu padre.
Yo soy usted.
Yo tambien soy de Jalisco.
Yo y mi marichi.
Yo, el aventurero.
Yo, el mujeriego.
Yo, el valiente.
Zacazonapan.
La zandunga.
Zangano.
Zapata en chinameca.
Las zapatillas verdes.
El zarco.
Zindy, el nino de los pantanos.
La zona del silencio.
Zona roja.
Zonga.
Zorina.
El Zorro blanco.
El Zorro vengador.
El Zurdo.

Baron, Joseph Alexander a.k.a. Alexander Baron.
  The victors.

BECTU.
  The final test.

Berger, Diamant. SEE Pathe, Diamant Berger & Rene Clair.

Bruselas, Ltd.
  El brazo de oro.
  El ultimo tunel.

Bryanston Films, Ltd.
  The boy who stole a million.
  The change of wind.
  Cone of silence.
  The impersonator.
  Light up the sky.
  Panic.

Bulgari, SPA.
  Parenthesis bracelet mod. 270.
  Project for MODI parenthesis.

Calderon, SA, Cinematografica.
  Cenicienta del circo.
  La corista.
  Han robado una estrella.
  Heroes de blanco.
  La momia azteca vs. robot humano.
  Su alteza la nina.

Camargo, SA, Cinematografica.
  Dos esposas en mi cama.
  La llamada del sexo.
  Mision suicida.
  Mojados de corazon.
  Primero el dollar.
  Santo en oro negro.
  El sexo de los pobres.

Canal+. SEE Progefi, TF1 Films Production, Canal+, Hachette Premiere & Productions Fox Europa.

Carlton Film Distributors, Ltd.
  City of play.
  Downhill.
  Journey's end.
  Sunshine Susie.
  Take my tip.
  The upturned glass.

Carlton Film Distibutors, Ltd. (formerly known as Rank Film Distributors Limited), & Columbia Pictures Industries, In
  A matter of life and death.

CEIAD. SEE Columbia Tristar Films Italia, SRL formerly known as CEIAD.

Chilovkaia, Elena Evuenievna.
  Adam i Eva.
  Bagovys Ostrov.
  Beg.
  Belaia gvardiia.
  Benefis Lorda Kerzona.
  Bogena.
  Bulgakov: six plays.
  Cetyre portreta.
  D'Javoliada.
  Dana Zoyka.
  Diaboliad & other stories.
  Dni Turbinyh.
  The early days of Mikhail Bulgakov.
  The Elpit-Rabkommun building.
  Flight & bliss.
  Kabala sviatos.
  Kiev gorod.
  Kitaiskaia istoriia.
  The Komarov case.
  Krasnaia korona.
  Master i Margarita.
  Moskovskie sceny.
  Moskva Krasnokamnaia.
  The night of the third.
  Noskva krasnoka menaia.
  Noskva-zokh godov.
  Notes on the cuff & other stories.
  Pohozdenda cicikova.
  Povesti.
  Psalom.
  Pushkin.
  Ranniaia proza.
  Rokovye jajca.
  Sobac'e serdce.
  Traktat o zicisce.
  Travel notes.
  Zapiski na marzeta.
  Zizn gospodina de nolera.
  Zizn gospodinade nol era.
  Zoikina kvartira.

Chukovskaya, Elena Tsezarevna.
  Aibolit.
  Barmalei.
  Bibigon.
  Chudo-derevo.
  Criticheskie rasskasy.
  Critícheskie Statyi 1908–1968.
  Crocodile.
  Doctor Aibolit.
  Fedorino Gore.
  Kradenoye solntse.
  Moidodyr.
  Mukha-zokotukha.

Ot dvuch do pyati.
Putanitza.
Serebryani gerb.
Sovremenniki.
Tarakanishche.
Telephone.
Toptygin i Lisa.
Vysokoe iskusstvo.
Zakalyaka.

Cima Films, S.A. de C.V.
  Adios amore.
  Alerta auta tension.
  Arrullo de dios.
  El caballo del diablo.
  La cama.
  Las cautivas.
  Confesiones de una adolescente.
  Los corrompidos.
  Cronica de un amor.
  Elena y Raquel.
  En estas camas nadie duerme.
  Los enamorados.
  La endemoniada.
  Fin de fiesta.
  La hermanita dinamita.
  Mujeres de media noche.
  Nadie te querra como yo.
  El oficio mas antiguo del mundo.
  Operacion 67.
  La otra mujer.
  Que hombre tan sin embargo.
  El quelite.
  Santo contra el estrangulador.
  El secuestro.
  El tesoro de Moctezuma.
  Verano ardiente.
  La viuda blanca.

Cine Phonic. SEE Cogelda, SGGC & Cine Phonic.

Cineproducciones Internacionales, SA de CV, Producciones EGA, SA de CV, Producciones Rosas Priego, SA de CV & Gazcon Fil.
  El hijo de Pedro Navaja.
  Pedro Navaja.

Cineproducciones Internacionales, SA de CV, Producciones Rosas Prieco, SA de CV, Producciones EGA, SA de CV, Gazcon Film.
  Conexion criminal.

Cite Films. SEE Pathe & Cite Films.

City Entertainment Corporation.
  Green grow the rushes.
  Mikres Aphrodites.
  Pygmalion.
  La vie conjugale: Francoise.
  La vie conjugale: Jean-Marc.

Clair, Rene. SEE Pathe, Diamant Berger & Rene Clair.

Cogelda.
  Le bateau d'Emile.
  Les cino gentuemen maudits.
  En effeuillant la marguerite.
  Huis clos.
  Maxime.
  Ombre et lumiere.
  Retour de manivelle.
  La tete d'un homme.

COGELDA. SEE Films Vendome (A.Osso & COGELDA) co-producers.

Cogelda & Ariane.
  Le diable et les dix commandments.

Cogelda & Regina.
  Marianne de ma jeunesse.

Cogelda & Vandal.
  David Golder.

Cogelda & Vera.
  Les espions.

Cogelda, Ariane & Pretoria.
  Une parisienne.

Cogelda, Plazza & Victoria.
  La loi du nord.

Cogelda, SGGC & Cine Phonic.
  Rue de l'estrapade.

Columbia Pictures Corporation, Ltd.
  Toi qui m'amais.

Columbia Pictures Corporation. SEE Columbia Pictures Industries, Inc., successor by mesne mergers to Columbia Pictures.

Columbia Pictures Industries, Inc.
  Africa segreta.
  Agent nr. 1.
  Anastasia mio fratello.
  Bell bottom George.
  Il caso Pisciotta.
  Conserje en condominio.
  Decameron nights.
  Don Quijote cabalga de nuevo.
  Fantasia chez les ploucs.
  George in Civvy Street.
  Get cracking.
  Il gioco delle spie.
  He snoops to conquer.
  I didn't do it.
  Mihai viteazul.
  El ministro y yo.
  Much too shy.
  El patrullero 777.
  Por mis pistolas.
  El profe.
  South American George.
  Uppdraget.
  La verite.
  Winnetou.
  Zbehova a eutnici.

Columbia Pictures Industries, Inc. SEE Carlton Film Distibutors Limited, (formerly known as Rank Film Distributors Limi.

Columbia Pictures Industries, Inc. & Columbia TriStar Films (France) SA.
  Les dimanches de ville d'Avray.

Columbia Pictures Industries, Inc. (assignee of Tele-Hachette & Mondex Films, SA) & Vides Cinematografica, SaS (Rome).
  Pourquoi l'Amerique?

Columbia Pictures Industries, Inc. (successor to Columbia Pictures Corporation).
  Bande a part.
  Une femme mariee.

Columbia Pictures Industries, Inc. (successor to Columbia Pictures Corporation) & Columbia TriStar Films (France), SA (formerly known as Columbia Films, SA, successor-in-interest to Orsay Films, SA).
  L'imprevista.
  Vaghe stelle dell'orsa.

Columbia Pictures Industries, Inc. (successor-in-interest to Columbia Pictures Corporation, assignee of Documento Film.
  Come quando perche.

Columbia Pictures Industries, Inc., as successor by mesne mergers to Columbia Pictures Corporation, assignee of author.
  La resa dei conti.

Columbia Pictures Industries, Inc., assignee of Documento Film, SRL.
  Amore mio aiutami.

Columbia Pictures Industries, Inc., assignee of Documento Films, SRL, and Columbia Tristar Films (France) SA, f.k.a. Col.
  Le fate.

Columbia Pictures Industries, Inc., assignee of Hammer Film Productions, Ltd.
  Never take sweets from a stranger.

Columbia Pictures Industries, Inc., assignee of Vera Film, SPA.
  Indagine su un cittadino al di sopra di ogni sospetto.

Columbia Pictures Industries, Inc., Columbia TriStar Films (France) SA & Vides Cinematografica, SAS.
  La poudre d'escampette.

Columbia Pictures Industries, Inc., succcessor by mesne mergers to Columbia Pictures Corporation, assignee of Telcia Fil.
  A quelque jours pres.

Columbia Pictures Industries, Inc., succcessor by mesne mergers to Columbia Pictures Corporation, & Columbia Pictures Co.
  Idle on parade.
  In the nick.

Columbia Pictures Industries, Inc., succcessor by mesne mergers to Columbia Pictures Corporation, assignee of Produzioni.
  La panne.

Columbia Pictures Industries, Inc., successor by mesne mergers to Columbia Pictures Corporation, assignee of Vides Cinem.
  La cina e vicina.

Columbia Pictures Industries, Inc., successor by mesne mergers to Columbia Pictures Corporation, assignee of Vides Cine.
  Colpo di stato.

Columbia Pictures Industries, Inc., successor by mesne mergers to Columbia Pictures Corporation, assignee of Fair Film.
  La congiuntura.

Columbia Pictures Industries, Inc., successor by mesne mergers to Columbia Pictures Corporation, assignee of authors.
  Der schatz im silbersee.
  Do you know this voice?

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Don't panic chaps.
The hi-jackers.
Columbia Pictures Industries, Inc., successor by mesne mergers to Columbia Pictures Corporation.
Na garganta do diabo.
Odissea nuda.
Requiem per un agente segreto.
Columbia Pictures Industries, Inc., successor by mesne mergers to Columbia Pictures Corporation, assignee of Vides Cinem.
Una rosa per tutti.
Columbia Pictures Industries, Inc., successor by mesne mergers to Columbia Pictures Corporation, assignee of Zebra Film.
Senilita.
La steppa.
Columbia Pictures Industries, Inc., successor by mesne mergers to Columbia Pictures Corporation.
To koritsi me ta mavra.
Columbia Pictures Industries, Inc., successor by mesne mergers to Columbia Pictures Corporation, assignee of Vides Cinem.
Toh, e morta la nonna.
Columbia Pictures Industries, Inc., successor by mesne mergers to Columbia Pictures Corporation, assignee of Fair Film.
Una vergin e per il prineipe.
Columbia Pictures Industries, Inc., successor by mesne mergers to Columbia Pictures Corporation, assignee of author.
The virgin goddess.
Wanpaku oji no orochitaiji.
Columbia Pictures Industries, Inc., successor-in-interest to Columbia Pictures Corporation, assignee of author.
Cabriola.
Columbia Pictures Industries, Inc., successor-in-interest to Columbia Pictures Corporation, assignee of Vides Cinematogr.
Fai in fretta ad uccidermi, ho fredd.
Columbia Pictures Industries, Inc., successor-in-interest to Documento Film, SRL and Columbia Tristar Films (France) SA.
Bambole!
Columbia Pictures International Corporation. SEE Columbia Tristar Film Distributors International, Inc., f.k.a. Columbi.
Columbia Tristar Film Distributors International, Inc., f.k.a. Columbia Pictures International Corporation.
Der letzte akt.
Reich mir die Hand mein Leben.
Columbia Tristar Films (France) SA, formerly known as Columbia Films SA, & Columbia Pictures Industries, Inc.
Juste avant la nuit.
Columbia TriStar Films (France) SA.
Bande a part.
Une femme mariee.
Raphael ou le debauche.
Columbia Tristar Films (France) SA. SEE Columbia Pictures Industries, Inc., successor-in-interest to Documento Film, SR.
Columbia TriStar Films Distributors International, Inc., (formerly known as Columbia Pictures International Corporation).
O cangaceir.
Columbia Tristar Films Italia, srl formerly known as CEIAD.
Nene.
Columbia TriStar Films Italia, SRL.
La verite.
Columbia Tristar Films Italia, SRL. SEE Columbia Pictures Industries, Inc. (successor-in-interest to Columbia Pictures).
Compton Film Productions.
That kind of girl.
CPT Holdings, Inc., successor by mesne mergers to Screen Gems, Inc, assignee of author.
Pampa salvaje.
Crystal Pictures, Inc.
Adventures de gil blas de santillane.
Doctor des grandes.
The mongols.
One step to eternity.
Tamango.
Danvalley Film, AG.
Il giardino dei Finzi Contini.
DEG Sale Company, BV.
Zulu.
Denver Film Productions, Inc.
Io sto con gli.ippopotami.
Diana Internacional Films, SA de CV.
Cartas a eufemia.
La casa del ogro.
El dinero no es la vida.
Ella, lucifer y yo.
Eugenia grandet.
Martes trece.
Retorno al quinto patio.
Salon de belleza.
Secretaria particular.
Tacos joven.
La tienda de la esquina.
Un divorcio.
Directors Company, Inc. SEE Art Theatre Guild of Japan Company, Ltd., Directors Company, Inc., Kokusai Hoei Company, Lt.
Douglas, Norman, Estate of.
Birds and beasts of the Greek anthology.
In the beginning.
Late harvest.
Looking back.
E.M. Films, CA.
Con el corazon en la mano.
Macho y hembra.
La maxima felicidad.
EC Investments Ltd., Inc.
Una cruz en el infierno.
Don Juan.
Fata morgana.
La llama.
Ello Productions.
The traitors.
ELP Communications.
La decima vittima.
La donna scimmia.
L' eroe di Babilonia.
Goliath e la schiava ribelle.
I crudeli.
L' idea fissa.
Ieri, oggi, domani.
Italiani brava gente.
Lo scatenato Italian.
Maciste, Il galdiatore di Sparta.
Le mepris.
Le monachine.
La noia.
Risate di gioia.
Sfida e sangue.
Spade senza bandiera.
Spara forte piu fore ... non capisco.
Ti ho sposato per allegria.
Il tigre.
Gli uomini del passo pesante.
L'ultimo gladiatore.
Zulu.
Enoch & Cie.
Symphonie concertante, op. 8 pour violoncello et piano.
Ergo Media, Inc.
Hill 24 doesn't answer.
Faber Music, Ltd.
Death in Venice.
Fair Film, SPA. SEE Columbia Pictures Industries, Inc., successor by mesne mergers to Columbia Pictures Corporation, as.
Filmadora Mexicana, S.A.
La adultera.
Alejandra.
Alla en eu bajio.
As negro.
El bano afrodita.
Bel ami.
Club verde.
Un corazon burlado.
Cuando se quiere se quiere.
Dios nos manda vivir.
El embajador.
La esquina de mi barrio.
Infierno de almas.
El ladron.
Lo que el viento trajo.
Magdalena.
Maria Montecristo.
Medianoche.
La mujer que enganamos.
No soy monedita de oro.
Pecado.
La picara Susana.
El que murio de amor.
El secreto profesional.
Yo soy tu padre.
Filmadora Mexicana, SA.
Cinco minutos de amor.
Con todo el corazon.
Las dos herfanas.
Duena y senora.

Enredate y veras.
Lagrimas de sangre.
Quien te quiere a ti?
El regreso del monstruo.
El secreto de Pancho Villa.
La sin ventura.
La sombra vengadora.
La sombra vengadora contra la mano negra.
El tesoro de Pancho Villa.
Tinieblas.
Una piedra en el zapato.
La vida intima de marco antonio y cleopatra.
Una virgen moderna.
Yo fui una ursupadora.
El zorro escarlata.
Films A2. SEE Pathe, Gefirex & Films A2.
Films de la Pleiade.
L'affaire du courrier de Lyon.
Ballerina.
Bestiaire d'amour.
De l'amour.
Denonciation.
Etes-vous financee a un marin grec oua un pilote de ligne?
Olivia.
Le temps du ghetto.
Films du Jeudi.
Attention les yeux.
Emilienne.
Monsieur la Souris.
Sophie et la crime.
Voyage sans espoir.
Films Vendome (A. Osso and UGC DA) co-producers.
La maison dans la dune.
Films Vendome (A. Osso & COGELDA) co-producers.
La table aux creves.
Films Vendome (Adolphe Osso) producer.
Les amours finissent a l'aube.
La demande en mariage.
Le grand rendez-vous.
Rue des Saussaies.
FR3 Cinema. SEE Progefi, FR3 Cinema & UGC/Pathe.
G. Schirmer, Inc.
Adagio.
Allegretto.
Allegro disperato.
Andante.
Five etudes.
Largo.
Galindo, SA de CV, Grupo.
El abandonado.
Aguilas de acero.
Al diablo las mujeres.
Amaneci en tus brazos.
Asesinos en la noche.
Ay! que reschula eas Puebla.
El beisbolista fenomeno.
Bendito entre las mujeres.
Buscando una sonrisa.
Caceria de un criminal.
Cara sucia.
Carabina 30–30.
La carrera del millon.
Cascabelito.
Los cinco halcones.
La ciudad perdida.
Cuando los hijos se van.
Cuentos coloracdos.
Cuna de valientes.
De tal palo tal astilla.
Debieron ahorcarlos antes.
El desalmado.
Dicen que soy hombre malo.
La diligencia de la muerte.
Dos locos en aprietos.
Dos tontos y un loco.
En cada puerto un amor.
En la hacienda de la flor.
Espuelas de oro.
Estafa de amor.
El fantasma de la casa roja.
El fronterizo.
Gatilleros del Rio Bravo.
Los gavilanes negros.
Horas de agonia.
El ladron fenomeno.
Lanza tus penas al viento.
Limosnero con garrote.
El llanto de los pobres.
El mar y tu.
Mi revolvers es la ley.
Mi ultimo fracaso.
No me platiques mas.
Nosotros los pelados.
Pancho Tequila.
Perdoname mi vida.
Pesadilla fatal.
Por que ya no me quieres.
Que padre tan padre.
Rayito de luna.
El regreso del carro rojo.
El rey de los albures.
El rey del tomate.
Romeo contra Julieta.
Ruletero a toda marcha.
Se los chupo la bruja.
Secreto de confesion.
Serenata en noche de luna.
La sexta carrera.
Siete en al mira II.
El terror de la frontera.
Traiganlos vivos o muertos.
Los tres salvajes.
Tu recuerdo y yo.
Vacaciones de terro II.
Vestidas y alborotadas.
Las viudas del cha cha cha.
Yo no me caso compadre.
Yo y mi mariachi.
Zacazonapan.
Gaumont.
Absences repetees.
Accroche-toi y a du vent.
Action immediate.
Les actualites Eclair Journal (1923–1969).
Les actualites Gaumont (1923–1969).
Allo Mademoiselle.
Les amants du Tage.
Amour de poche.
L'anglais te qu'on parle.
Les aristocrates.
Arlette et l'amour.
Arretez le massacre.
L'assassin est dans l'annuaire.
L'assassin n'est pas coupable.
Atout coeur a Tokyo pour OSS 117.
L'aventure du ciel.
Banco a Bangkok pour OSS 117.
La bande a bouboule.
Bande a part.
Le beau voyage.
La belle et la bete.
Belle et Sebastien.
Belle etoile.
La belle image.
Blondine.
Le bossu.
Bouboule 1er, roi negre.
British sounds.
Les cadets de l'ocean.
La cage aux rossignols.
Le capitaine pantoufle.
Carambolages.
Les carnets du Major Thompson.
Les casse-pieds.
Le cavalier noir.
Ce joli monde.
Ce n'est pas moi.
Le chemin des ecoliers.
Chourinette.
Le ciel sur la tete.
Cinematomobile.
Clerambard.
Cocagne.
Coeur de coq.
Comme un pot de fraises.
Comment ca va?
Le Comte de Monte Cristo.
Coplan prend des risques.
Couleur chair.
Courrier d'asie.
Le cri du cormoran le soir au-dessus des jonques.
La croisee des chemins.
Croisiere pour l'inconnu.
La dame de Chez Maxim.
Le defroque.
Les demon's de l'aube.
Le deserteur.
Deux sous de violettes.
Le distrait.
Les dossiers noirs.
Dracula pere et fils.
Elle bois pas, elle fume pas, elle drague pas mais elle cause.
En avant la musique.
En legitime defense.
Les enqueteurs associes.
Escalier de service.
Estouffade a la caraibe.
Et ta soeur.
Eugenio.
Eve memoire.
F. comme Fairbanks.
La famille Fenouillard.
Famille nombreuse.
Fantomas.
Fantomas contre Scotland yard.
Fantomas se dechane.

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La femme enfant.
Une femme mariee.
Les femmes sont folles.
Les femmes sont marrantes.
Feu sacre.
La fiancee des tenebres.
Le fil a la patte.
Florence est folle.
La folie des grandeurs.
Folles de leur corps.
Les Franciscains de Bourges.
Fripouillards et compagnie.
Furia a Bahia pour OSS 117.
Le gang des otages.
Gangster malgre lui.
Le gentleman de Cocody.
Le glaive et la balance.
Le gout de la violence.
Le grand blond avec une chaussure noire.
Grand bluff.
La grande Paulette.
Les gueux aux paradis.
Hardi les gars.
Hardi Pardaillan.
Les heritieres.
L' homme de Londres.
L' homme orchestre.
Horizons sans fin.
Ici et ailleurs.
L' illustre Maurin.
Ils etaient cinq permissionnaires.
L' inevitable Monsieur Dubois.
L' invite de la onzieme heure.
L' invite du mardi.
Je l'aiete trois fois.
Je reviendrais a Kandara.
Jeannou.
Le jeune Fabre.
Le journal d'une femme en blanc.
La jument verte.
Jusqu'au bout du monde.
Kung fu wu-su.
Laisse aller, c'est une valse.
Lecon de conduite.
Lettre a Freddy Buache.
La lumiere d'en face.
Mademoiselle Beatrice.
Le majordome.
Malefices.
Les malheurs D'Alfred.
Marcel Pagnol et son temps.
Marguerite de la nuit.
Le mariage du figaro.
Marie la misere.
Marie-Martine.
Le masque de fer.
Maurin des maures.
Mefiez-vous mesdames.
La menace.
Une mere, une fille.
Metiers de fous.
Le miroir a deux faces.
Mission a Tanger.
Mon premier amour.
Monsieur Brotonneau.
Le monte-charge.
Moulin Rouge.
Les mysteres de Paris.
Napoleon.
Nathalie.
Ne le criez pas sur les toits.
Nord Atlantique.
Notes sur le film "Federico Fellini—la cite des femmes."
Nous ne vieillirons pas ensemble.
Les nouvelles aventures de Vidocq.
Nu comme un ver.
La nuit des espions.
La nuit des traques.
Numero deux.
OSS 117 se dechaine.
Le paria.
Pas de pitie pour les femmes.
Pas de roses pour OSS 117.
Passeport 13.444.
Les patates.
La peau de l'ours.
La pelle (la peau).
La petite de Montparnasse.
La petite vertu.
La plus belle fille du monde.
Le pont de singe.
Le puits aux trois verites.
Quai des blondes.
Quai Notre-Dame.
Quatre du moana.
La rage au corps.
Razzia sur la chnouf.
Le refuge.
Relaxe-toi cherie.
Rendez-vous a Paris.
Les revoltes de Lomanach.
Le rideau rouge.
Romance a l'inconnue.
Le rosaire.
Le rouge est mis.
Les saintes nitouches.
La salamandre d'or.
Salut l'artiste.
Sauve qui peut (la vie).
Scenario de je vous salue Marie.
Scenario de sauve qui peut (la vie).
Sebastien et la Mary-Morgane.
Sebastien parmi les hommes.
Sebastien parmi les hommes 1.
Sebastien parmi les hommes 2.
Sept hommes et une garce.
Un seul amour.
Si Paris nous ete conte.
Si tu veux.
Si Versailles m'etait conte.
Sortilege exotique.
La souriciere.
Tant d'amour perdu.
Un taxi pour Tobrouk.
Taxi, roulotte et corrida.
Un temoin dans la ville.
Tendre et violente Elisabeth.
Touchons du bois.
Tous les trains du monde.
Tout va bien.
Train d'enfer.
Transit a Saigon.
Trente et quarante.
Les truands.
Va voir maman, papa travaille.
Vacances.
Les veces etaient fermes de l'interieur.
Vent d'est.
La verte moisson.
Le vice et la vertu.
Vidocq.
La vie chantee.
La vie de Paul Gauguin.
Les vingt-huit jours de Clairette.
Vive Henri IV, vive l'amour.
Le voyageur sans bagage.
Week-end.

Gaumont. SEE Progefi & Gaumont.

Gazcon Films SA de CV.
El nino y la estrella.
El nino y la estrella.
Perro callejero I.
Perro Callejero I.

Gazcon Films, SA de CV, Producciones Rosas Priego, SA de CV, Producciones EGA, SA de CV & Productora Filmica Real SA de.
Buenaas y con . . . movidas.
Escuela de placer.

Gazcon Films, SA de CV. SEE Cineproducciones Internacionales, SA de CV, Producciones Rosas Prieco, SA de CV, Produccion.

Gendaieigasha.
Eros + gyakusatsu.

Gendaieigasha. SEE Art Theatre Guild of Japan Company, Ltd., Gendaieigasha.

Gordon Films, Inc.
Fiend without a face [trailer].
Green grow the rushes. The man and the snake.
Return to Glennascaul.
The return.

Gorky Film Studio.
Ah zori zdes tikhiye.
Alenkiy tsvetochek.
Alitet ukhodit v gory.
Alyoshkina okhota.
Anna na sheye.
Balamut.
Ballada o Beringe i yego druzyakh.
Begushchaya po volnam.
Bela (Geroy nashego vrjemeni).
Beliy bim chyornoye ukho.
Bessonnaya notch.
Bezbiletnaya passazhirka.
Bolshiye I malenkiye.
Bolshoye kosmicheskoye puteshestviye.
Budyonovka.
Cariera Dimy Gorina.
Chelovek s drugoy storony.
Chelovek s planety zemlya.
Chelovek v zelyonoy pertchatke.
Chempion mira.
Chestnoye volshebnoye.
Chetvertaya vysota.
Chto s toboy proiskhodit?
Chudak iz pyatogo "B".
Chuk I guek.
Dai lapu, drug.
Dalniye strany.
Den I vsya zhizn.
Derevensky detektiv.

Derevnya utka.
Derzhis za oblaka (2 parts).
Desyat tysyach malchikov.
Devichya vesna.
Dnevnik Karlosa Espinoly.
Dobrota.
Dobrovoltsy.
Dochki-matyeri.
Dom v kotorom ya zhivu.
Donetskiye shakhtyory.
Dostoyaniye respubliki.
Dozhivyem do ponedelnika.
Dragotsenniy podarok.
Druzhok.
Dva dnya chudes.
Dva druga.
Dvye ulybki (almanac).
Dvye zhizni (2 parts).
Esli ty prav.
Eta trevozhnaya zima.
Eto bylo v razvedke.
Eto my ne prokhodili.
Eto nachinalos tak.
Eto sluchilos v Penkove.
Fantazyory.
Finist-yasniy sokol.
Foma Gordeyev.
Georgy Sedov.
Geroy nashego vrjemeni (Maxim Maximych, Taman).
Giperboloid inginera Garina.
Gorozhane.
Hura! u nas kanikuly.
I togda ya skazal nyet.
Im pokoryaetsa nebo.
Ishchu chelovyeka.
Istoki (2 parts).
Ivan Brovkin na tzeline.
Ivan da Marya.
Ivanov kater.
Izcheznoveniye.
K novomu beregu.
Kak stat muzhchinoy (almanac, 2 novelettes) 1. Zhenya 2. Buba.
Kakoye ono, morye.
kaplya v morye:
Khomut dlya markiza.
Khotyite verte, khotyite nyet.
Khrustalniy boshmatchyok.
Khutorok v stepi.
Knyazhna Mary.
Kogda derevya bili bolshimi.
Kogda ya stanu velikanom.
Koltsa Almanzora.
Kolybelnaya dlya muzhchin.
Komandirovka.
Komissar.
Konets imperatora Taigi.
Konets Staroy Beryozovki.
Konets svyeta.
Korol-olen.
Korolevstvo krivyh zerkal.
Kosolapiy drug.
Krasniy chernozyom.
Krasniy galstuk.
Krasnoye I chernoye (4 parts).
Krestyansky syn.
Kuznechik.
Leon Garros ishet druga.
Lubit cheloveka (2 parts).
Lyana.
Lyegkaya zhizn.
Lyudi I zveri (2 parts).
Malchik i los.
Malchik S okrayini.
Malenkiy beglets.
Maria iskussnitsa.
Marka strany Gondelupy.
Mayaya notch ile utoplennitsa.
Mayskiye zvezdy.
Menyayu sobaku na parovoz.
Mimoletniye vstrechi.
Minuta molchaniya.
Mishka, Seryoga i ya.
Molodaya gvardiya.
Morozko.
Morye studyonoye.
Moskva-Kassiopeya.
Moy papa kapitan.
Mramorniy dom.
Muzhskoy razgovor.
My vas lubim.
Myatezhnaya barrikada.
Na gore stoit gora.
Na semi vetrah.
Nadezhda.
Nashi znakomiye.
Ne samiy udachniy den.
Nedopyosok Napoleon III.
Neobiknovenniy gorod.
Neobiknovenniye priklutcheniya Mishki Strekacheva.
Nesovershennoletniye.
Neytralniye vody.
Ni slova o futbolye.
Nochnoy patrul.
Novenkaya.
Noviye pokhozhdeniya kota v sapogakh.
Novye priklyucheniya Kapitana Vrungelya.
O chom molchala tayga.
O chyom ne uznayut tribuny.
O lyubvi.
Ob etom zabyvat nelzya.
Obelisk.
Obyknovennoye chudo.
Odnazhdy lyetom (almanac, 2 parts) 1. Ty prikhodi K nam, prikhodi. 2. Zhenikh I nevesta.
Ofitsery.
Ognennoye detstvo.
Ogni na reke.
Ogon, voda I medniye truby.
Ogonki.
Okh uzh eta nastya.
Oleko Dundich.
Oni byli pervymi.
Orlyata chapaya.
Osennie kolokola.
Oshibka rezidenta (2 parts).
Ostrov sokrovishch.
Otchiy dom.
Otroki vo vselennoy.
Otryad trubacheva srazhaetsa.
Pamyat serdtsa.
Parol ne nuzhen (2 parts).
Passajir s ekvatora.
Perekhodniy vozrast.
Perestupi porog.
Perviy den mira.
Perviy snyeg.
Perviy trolleybus.
Pervoklasnitsa.
Pismo iz yunosti.
Plata za istinu.
Podarok chernogo kolduna.
Poka byut chasy.
Pole pereyti.
Ponedelnik—den tyazheliy.
Poseydon speshit na pomoshch.
Posledniy shans.
Poslednyaya dvoyka.
Poslednyaya vstryecha.
Potryasayushiy Berendeyev.
Poyedinok v Tayge.
Predatelnitsa.
Prestupleniye I nakazaniye (2 parts).
Pri ispolneniyi sluzhebnyh obyazannostey.
Prijezhajte na Baikal.
Priklucheniya Krosha.
Priklucheniya toli klukvina.
Priklyucheniya zholtogo chemodanchika.
Printsessa na goroshine.
Prisovyit zvaniye geroya.
Prizvaniye.
Probuzdeniye.
Propal I nashelsa.
Propavshaya expeditsiya (2 parts).
Prostaya istoriya.
Prosto devochka.
Pryamaya liniya.
Pryzhok na zare.
Ptitsy nad gorodom.
Pust on ostanetsya s nami.
Puteshestvennik s bagazhom.
Rano utrom.
Razbudite Mukhina.
Razniye sudby.
Raznotsvetniye kameshki.
Risk-blagorodnoye dyelo.
Rusalochka.
Ryadovoy Alexander Matrosov.
Ryzhik.
Sadis ryadom, Mishka!
Samiy krasiviy kon.
Schitayte menya vzroslym.
Selskaya uchitelnitsa.
Selskiy vratch.
Seraya bolezn.
Serdtse druga.
Serebryaniye truby.
Sertse materi, vernost materi (dilogy).
Shkolniy vals.
Shla sobaka po royalyu.
Shtorm na sushe.
Shtrafnoy udar.
Sinyaya tetrad.
Slutchay v tayge.
Smyateniye chuvstv.
Soldat Evan Brovkin.
Sombrero.
Spasennoye pokoleniye.
Spasite utopayushego.
Stariy dom.

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Steklyannye busy.
Stranniye lyudi.
Stuchis v lubuyu dver.
Sudba barabanshika.
Sudba rezidenta (2 parts).
Suprugi Orlovy.
Svistat vsekh na verkh.
Svoy paren.
Svoya golova na plechakh.
Svoyimi rukami.
Tak nachinalas legenda.
Takoy bolshoy maltchik.
Talanty I poklonniki.
Tam za gorizontom (2 parts).
Tatyanin den.
Tayna gornogo podzemelya.
Tayna zheleznoy dvery.
Techyot Volga.
Tikchiy Don (3 parts).
Tovarish Arseny.
Tree tpolya na plushchikhe.
Tri dnya Victora Chernyshova.
Tri plyus dva.
Tropy altaya.
Troye.
Tryener.
Tsentrovoy iz podnebesya.
U krutogo yara.
U nikh yest Rodina.
U ozera (2 parts).
Udivityelnoye voskresenye.
Ukradenniy poezd.
Unga syevernogo flota.
Usatiy nyan.
V dobriy chas.
V Moskve proyezdom.
V ozhidaniyi chuda.
V styepi.
V trudniy tchas.
Valera.
Varvara krasa-dlinnaya kosa.
Vash syn I brat.
Vasyok Trubachev i yego tovarishchi.
Vchyera, segodnya I vsegda.
Velikiye golodrantsy.
Verte mnye lyudi.
Vesenniy prizyv.
Vesyoliye istoriyi.
Vesyoliye Rasplyuyevskiye dni.
Vesyoloye volshebstvo.
Vetchera na khutore bliz dikanki.
Veter nadezhdy.
Veter stranstviy.
Vkus khalvy.
Volshebnaya lampa Alladina.
Vooruzhon I ochyen opasyen.
Vperedi den.
Vsadnik nad gorodom.
Vsadnik S molniyey v ruke.
Vsye delo v bratye.
Vsye dlya vas.
Vzorvanniy ad.
Ya kupil papu.
Ya vas lubil.
Yekaterina Voronina.
Yeshyo mozhno uspet.
Yesli eto sluchitsya s toboy.
Yest ideya!
Yevdokiya.
Yunost (almanac, 2 parts).
Yunost nashikh otsov.
Za oblakami-nyebo.
Za vlast sovyetov.
Zakrytiye sezona.
Zamurovannye v stekle.
Zapasnoy aerodrom.
Zasekrechenniy gorod.
Zastava ilyicha.
Zdrastvuyte dyeti.
Zdravstvuy, reka.
Zemlya do vostrebovaniya (2 parts).
Zemlya i lyudi.
Zhenshchiny.
Zhivyet takoy paren.
Zhrebiy.
Zhurnalist (2 parts).
Zloy dukh Yambuya.
Zolotaya rechka.
Zolotiye roga.
Zolotoy eshelon.
Zosya.
Zvezda ekrana.

Gray Film Sipirs, SA.
Barnabe.
Le chanteur inconnu.
Confidential report.
Conflit.
Demain il sera trop tard.
Les enfants de l'amour.
Le fruit defendu.
L' homme de la Tour Eiffel.
Les hommes veulent vivre.
Ignace.
Le long des trottoirs.
Le mioche.
Narcisse.
Operation Cinderella.
Parade.
Paris by night.
Prison sans barreaux.
La revanche de Roger la Honte.
Roger la Honte.
Les roi des resquilleurs.
Les rois du sport.
Terrain vague.
Two by two.

Gray Films. SEE Pathe, Gray Films & Progefi.

Greenwich Film Production.
Ave Maria.Cent francs l'amour.
Une corde, un colt.
Les cousines.
Le dix septieme ciel.
Le dos an mur.
Le fil a la patte.
Le grand bidule.
Liebelei.
La loi du nord.
Les longues annees 39–45.
Les mal partis.
Un millard dans un billard.
Ouvert contre X.
La peau de torpedo.
Le reflux.
Les revoltes de Lomanach.
Le rideau rouge.
Sabra.
Le soleil des voyous.
Le tonnerre de Dieu.
Un veuve en or.
Vanina.
Le voie lactee.
Le voyage du pere.

Hachette Premiere et Cie. SEE Progefi, TF1 Films Production, Hachette Premiere & Hachette Premiere et Cie.

Hani Productions/Art Theatre Guild for Japan Company, Ltd.
Hatsukoi: jigokuhen.

Harcourt Brace & Company.
Books and characters.
Characters and commentaries.
Portraits in miniature.

HarperCollins Publishers Inc. SEE Lewis (C.S.) PTE Limited & HarperCollins Publishers Inc., by license.

Hartley, Annie Norah, Estate of.
The boat.
The hireling.
My fellow devils.
A perfect woman.
Two for the river.
The white wand and other stories.

Heywood, Anne.
The flesh is weak.
Hell is sold out.
The man who watched trains go by.
Rough shoot.
Star of India.
Tall headlines.
Vengeance.
The very edge.

Hyogensha. SEE Art Theatre Guild of Japan Co., Ltd. & Hyogensha.

Ina, Masaharu.
No regrets for our youth.

Ina. SEE Progefi & Ina.

Independent-International Pictures Corporation.
L' altra.
Un Americano a Roma.
Amor non ho. pero' * * * pero'!
Anema e core.
Arrivano i nostri.
Le avventure di Pinocchio.
Ball at Savoy.
Bella non piangere!
Biraghin.
La bisbetica domata.
Blonde captive.
Il canto della vita.
Cavalleria rusticana.
Congolaise.
Il conte di Montecristo.
La corona di ferro.
Il Cristo proibito.
Davanti a lui tremava tutta Roma.
Der tiger akbar.
Il diavolo va in collegio.
Die verschleierte Maja.
Domani e'un altro giorno.
La donna del fiume.
Dopo divorzieremo.
Due notti con Cleopatra.
E'arrivato Il cavaliere!
Era lei che lo voleva!

Eugenia Grandet.
Fangelse.
Fiacre no. 13 (1st episode: The crime).
Fiacre no. 13 (2nd episode: The punishment).
La fiammata.
Il fidanzato di mia moglie.
La figlia del diavolo.
Finisce sempre cosi'.
Fratelli d'italia.
Gabriela.
Gelosia.
Giorni felici.
La grande speranza.
Herz der welt.
I cadetti di Guascogna.
I due orfanelli.
I maracoli non si repetono.
Il Sacco di Roma.
Le infedeli.
Jag-en Oskuld.
Knock-out.
Koenigsmark.
Lo sai che i papaveri.
Londra chiama polo nord.
M.A.S.
A man and a maid.
La marca del hombre lobo.
Miseria e nobilta.
Musik I morker.
Natale at campo 119.
La nave delle donne malledette.
Noi cannibali.
Orphan of the wilderness.
Pagliacci.
Peppino e violetta.
La portatrice di pane.
La Presidentessa.
Ragazze Dooggi.
The rats of Tobruk.
La Regine di Saba.
La resa di titi'.
Rigoletto.
La risaia.
La rivincita di Montecristo.
Roma citta aperta.
La Romana.
Senza una donna.
The throne of the gods.
Toto all'inferno.
La tratta delle bianche.
Two white arms.
Ubangi.
Gli ultimi cinque minuti.
Un giorno in pretura.
Vendetta * * * Sarda.
Victor Frankenstein.
Virgins of Bali.
La vispa Teresa.
La vita ricomincia.
Voice of Syama.
Wanted!

Initial Groupe.
Roi blanc dame rouge.

Jalisco. S.A. de C.V., Cinematografica.
El desconocido.
La furia de los karatecas.
Muerte a sangre fria.
El puno de la muerte.
Ser charro es ser Mexicano.
Tampico.

Jellicoe, Ann.
The knack.

Jinrikihikokisha. SEE Art Theatre Guild of Japan Company, Ltd., Jinrikihikokisha.

Kindai Eiga Kyokai & Art Theatre Guild of Japan Co., Ltd.
Kosatsu.

Kindai Eiga Kyokai.
Akuto.
Hadaka no shima.

Kodosha Co., Ltd. SEE Art Theatre Guild of Japan Co., Ltd. & Kodosha Co., Ltd.

Kokusai Hoei, legal successor to Shin Toho.
Tokaido Yotsuya kaidan.
Yukifujin ezu.

Kokusai Hoei.
Jigoku.

Lalique, SA.
2 dancers.
2 fish.
2 swans oval.
Apple.
Cactus.
Capucines.
Champs Elysees.
Champs Elysees jardiniere.
Chene.
Concarneau.
Dampierre.
Danseuse arms out.
Danseuse arms up.
Diane.
Double doves.
Double swans.
Dove of peace.
Ermenonville.
Faune.
Ganymede.
Gregoire (toad).
Honfleur.
Horse head.
Ingrid.
Ispahan.
Leda.
Lion head.
Nogent.
Ondines.
Paquerettes.
Reverie.
Rosine.
Seville.
St. Nicholas.
Swan head down.
Swan head up.
Swan.
Sylvie.
Tang.
Two swans.
Verone.
Virgin, hands clasped.

Laydu, Christiane. SEE Laydu, Claude and Christiane Laydu.

Laydu, Claude and Christiane Laydu.

Nounours, Oscar, Primrose, Nicholas, and the Sandman characters.

Lenfilm Studios.
(Blokada) Leningradsky metronom.
(Blokada) Operatsiya "iskra."
(Blokada) pulkovsky meridian.
20-e Dekabrya.
713-y prosit posadku.
72 gradusa nizhe nulya.
A krepost byla nepristupnaya.
A vy lyubily kogda-nibud?
Afrikanych.
Akademik Ivan Pavlov.
Aktyer Nikolay Cherkasov.
ALeko.
Alexander Popov.
Alyesha Ptitsyin vyirabatyivaet kharakter.
Anafema.
Andreika.
Anyuta.
Asya.
Avariya.
Baltiyskaya slava.
Baltiyskoe nebo.
Barbos v gostyakh u Bobika.
Baryer neizvesnosti.
Baryshnya i khuligan.
Beda.
Belinsky.
Belyi flyuger.
Bereg yunosti.
Bessmertnaya pesnya.
Bez semyi.
Biletik na vtoroy seans.
Blagochestivaya Marta.
Blokada, luzhsky rubezh.
Boba i slon.
Bolshaya semya.
Bolyshaya igra.
Braslet-2.
Bratya Komarovyi.
Budni i prazdniki.
Chapliniana.
Chelovek amfibiya.
Chelovek s budushim.
Chelover, kotoromu vezlo.
Cheryemushki.
Chesty tovarischa.
Chetyre stranitsky odnoy molody zhizni.
Chiornye sukhari.
Cholpin-utrennyaha fvezda.
Chto by ty vybral?
Chuzhaya.
Chuzhaya beda.
Chuzhaya rodnya.
Chuzhaya zhena i muzh pod krovatyu.
Chuzhiye pisma.
Chyernaya chayka.
Dauriya.
Delo.
Dela davno minuvshikh dney.
Delo Rumyantseva.
Den pervyi.
Den priyoma po lichnym voprosam.
Den schastuya.
Den solntsa i dozhdya.
Deti kak deti.

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Devochka i krokodil.
Devochka, khochesh snimatsya v kind?
Devochka, s kotoroyi ya druzhil.
Dikaya sobaka Dingo.
Dikiy Gavrila.
Dlinnoye, dlinnoye delo.
Dnevnik direktora shkoly.
Do budu schey vesny.
Doker.
Dolgaya schastlivaya zhizn.
Dom naprotiv.
Dom stroitsya.
Domoy.
Don Kikhot.
Don Sezar de Bazan.
Donskaya povest.
Doroga na ryubetsal.
Doroga pravdy.
Doroga ukhodit vdaly.
Dorogoy mdy chelovek.
Dosledivie dni Pompei.
Dostigaev i drugie.
Doverie.
Dozhit do rassveta.
Dragotsennyie Ziorna.
Drama iz starinnoy zhizni.
Druzyya i gody.
Dusha zovyet.
Dva bileta na dnevnoyi seans.
Dva kapitana.
Dva voskreseniya.
Dvadisatyi vek nachinaetsya.
Dvadtsat dney bez viony.
Dvde v novom dome.
Dvenhdtshtaya noch.
Dvennadtsat mesyatsev.
Dver bez zamka.
Dzhek Vosymyerkin-Amerikanets.
Edinstvennaya.
Ego vremya pridiot.
Ego zvali Robert.
Eiyo imya-vesna.
Ekskursant.
Esli pozovyet tovarasch.
Esop.
Eti nevinnye zabavy.
Evgeniy Onegin.
Ezcho ne vecher.
Ezhik.
Faantazii Faryatieva.
Ferentc Liszt.
Filipp Traum.
Fro.
Gaamlet.
Gde etovidano, gde eto slykhano?
Gde ty, lyubov Dunyasheva?
Geroi Shipki.
Golos.
Goluboy liod.
Gonschiki.
Gori, gori yasno.
Gorizont.
Gorod shzhigaet ogni.
Gorod. Osen. Ritm.
Goryachaya dlisha.
Goryachee serdtse.
Gosudarrstvennyi prestupnik.
Goya, ill tyazhky put poznaniya.
Greshny angel.
Grossmeyster.
Groza nad beloy.
Gryaduschemu veku.
Guschak iz Rio-De-Zhaneyro.
Gvozd programmiy.
I drugie ofitsianye litsa.
I snova utro.
Iapasnoya igrok.
Idu na grozu.
Igra.
Igrok.
Ihma s sobachkoy.
Iskaneli.
Ispolnyayuschii obyazannosti.
Istochnik.
Ivan i Kolombina.
Iz Nyu-Yorka v Yasnuyu Polyanu.
Izhorsky Batalion.
Jobache serdtse.
Kadkina vsyakiy znaet.
Kain XVIII.
Kak Ivanushka durachok za chudom khodil.
Kak vereyvochka ni vyetsya.
Kapitan.
Kapronovaya yelochka.
Karpukhin.
Katerina Izmailova.
Khanuma.
Khleb-imya suschestvitelnoe.
Khod beloy korolevy.
Kholodno-goryacho.
Khoreograficheskie miniatyuryi.
Khoristka.
Khozyain.
Khronika pikiruyuschego bombardirovschika.
Kino i vremya.
Knyaz Igor.
Kochubeyi.
Kogda pesnya ne konchaetsya.
Kogda razvodyat mosty.
Kolovraschenie Zhizni.
Kolye sharlotty.
Komediya oshibok.
Komissiya po rassledovaniyu.
Konchina.
Kontsert masterov iskustv.
Korol Lir.
Kortik.
Krakh inzhinera garina.
Krasny diplomat.
Krasnye pchioly.
Krepostnaya aktrisa.
Krik o pomoschi.
Krotkaya.
Krug.
Krutye gorki.
Kseniya, Lyubimaya zhena Fiodora.
Kto pridumal koleso.
Kyluch bez prava peredachi.
La vetlugoy rekoy.
Lavina.
Lebedinaya pesnya.
Lebedinoy ozero.
Lenfilm.
Les.
Letnyaya poesdka k moryu.
Letuchaya mysh.
Liberal.
Lichnaya Zhizn direktora.
Lichnaya Zhiznkuzyaeva Valentina.
Lichnde delo.
Lubov s pervoga vzglyada.
Lyalka-Ruslan i ego drug Sanka.
Lyublyu tebya zhizny!
Lyubov yarovaya.
Lyudi golubykh rek.
Makar-sledopyt.
Maksim perepelitsa.
Malchik i devochka.
Malchik s konkamo.
Malchishki. Eto imenno ya.
Malchishki. Novenky.
Mama vyshla zamuzh.
Mandat.
Maritsa.
Mastera Russkoga baleta.
Maty i machekha.
Mechenyi atom.
Medovyi mesyats.
Menya eto ne kasaetsya.
Meschane.
Mesto deystviya.
Mesyats Avgust.
Mif.
Mikhayilo Lomonosov.
Miortvyi sezon.
Mir Nickolaya Simonova.
Mishel i Mishutka.
Missiya v Kabule.
Mister Iks.
Mladshiyi nauchnyiyi sotrudnik.
Moabitskaya tetrad.
Moiya zhizn.
Moladaya zhena.
Monolog.
Most pereyati nelyzya.
Moy dobry papa.
Musorgsky.
Musykanty odnogo polka.
Myatezhnaya zastava.
Na beregarh plenitelnoy Nevy.
Na dikom brege.
Na odnoyi planete.
Na ostrove dalnem.
Na perelome.
Na puti v Berlin.
Na voine kak na voine.
Nachalnik Chukotki.
Nachalo.
Nad nemanom rassvet.
Naidi menya, Lyonya.
Nash korrespondent.
Navstrechu Zhizni.
Ne bolit golova u dyatla.
Ne imey sto rubley.
Ne zabud...stantsiya Lugovaya.
Nebesnyie lastochki.
Neobyknovennoye leto.
Neobyknovennye ppikllyucheniya khrikaivali.
Neokonchennaya povest.
Neoplachennyi dolg.
Neveroyatny leegudil Khlamida.
Nevesta.
Nevskie melodu.

Neznakomyi naslednik.
Nikkold Paganini.
Nikudyshnaya.
Noch na 14-y paralleli.
Nochnaya smena.
Nochnoy gost.
Novogodniye priklyucheniya Mashi i Viti.
O tekh, kogo pomnyu i nyublyu.
Ob yasnenie v lyubvi.
Obratnaya svyaz.
Obychny mesyats.
Obyknovennaya arktika.
Odinnadtsat nadezhd.
Odinozhdy odin.
Odna noch.
Ogni Baku.
Ona vas lyubit.
Opoznaniye.
Oshibki yunosti.
Ostorozhno, Babushka!
Ostrov pogibshikh korabley.
Ostrov sokrovisch.
Otkrytaya kniga.
Otpusk v Sentyabre.
Ottsy i deti.
Ovod.
Pamyat.
Pavlovsk.
Pered sudom istorii.
Perikola.
Perv yi posetitel.
Pervaya Bastilya.
Pervorossiyane.
Pervyi myach.
Pervyi reis.
Pervyie radosti.
Peystryie rasskazzyi.
Phkhita.
Pikovaya dama.
Pirogov.
Plokhaya primeta.
Plokhov khokoshiy chelovek.
Plyvi, korablik.
Pobeditel.
Pod kamennym nebom.
Pod stuk kolyes.
Poddubenskiye Chastushki.
Podnyataya tselina.
Podzornaya truba.
Poezd miloserdiya.
Poka front v oborone.
Poka stoyat gory.
Poka zhiv chelover.
Polkovnik v otstavke.
Polosatya reyas.
Pomni, Kaspar.
Poputnogo vetra, "sinyaya ptitsa."
Porozhniy reys.
Posledniy dyuym.
Posledny den zimy.
Povesty o molodozhena.
Poymanny monakh.
Pozhar vo fligele.
Poznavaya belyi svet.
Praktikant.
Premiya.
Pri otkryitikh dveryakh.
Priklyucheniya Artyomki.
Priklyucheniya Printsa Florizelya.
Priklyucheniya Sherlocka Holmsa.
Prinimayu boy.
Prints i nizchiy.
Pristan na tom beregu.
Privatny syurpriz.
Prizvanie.
Proishestviyi, kotorogo nikto.
Proshlym letom.
Proshu slova.
Prostranstvo dlya manevra.
Protivostoyanie.
Prozchaniye S Peterburgom.
Pryizhok s kryishyi.
Puchina.
Pusle svadby.
Pyat dnei.
Pyataya chetvert.
Pyatero sneba.
Pyatiorka za leto.
Rabochiy posyelok.
Rafferti.
Raslom.
Rasskaz o prostoy vezchi.
Rasskazhi mne o sebe.
Razdumya.
Razreshite vzliot.
Razvyazka.
Rebyachiy patrul.
Rebyata s Kanonerskoga.
Respublika Shkid.
Rimsky-Korsakov.
Rodnaya krov.
Rokirovka v dlinnuyu storonu.
Rudolfio.
Ry tsar iz knyazh-Gorodka.
Ryadom s drugom.
Ryadom s nami.
The salt of the Earth.
Salyut, Mariya!
Samye peystrye.
Schastie Anny.
Schastlivogo plavaniya.
Schastye Andrusa.
Seas odnovremennoy igry.
Sedmoy sputnik.
Segodnya ili nikogda.
Segodnya-novyi attraktsion.
Sekundomer.
Sem nevest efreirona Zbrueva.
Sem not v tishine.
Sem schastlivyrh not.
Sentimentalny roman.
Seryi volk.
Serzhant militsii.
Shag navstrechu.
Shapka monomakha.
Shelmenko-denschik.
Sherlock Holms i Doktor Watson.
Shofyer ponevole.
Shopeniana.
Shtorm.
Shutite? 1. Shutite.
Shutite? 2. Vanderbulle bezhitza gorizont.
Shutite? 3. Inache my propali.
Shyinel.
Silva.
Siniye zaitsy.
Sinyaya ptitsa.
Skrepki.
Sladkaya zhenschina.
Sled na lemle.
Sled rosomakhi.
Sledynasnegu.
Slomannaya podkova.
Sluchayinyie dassazhiryi.
Sluga dvukh gaspot.
Smert Pazukhina.
Snegurochka.
Snegurochku vyzyvali?
Snezhnaya koroleva.
Sobaka Baskerviley.
Sobaka na sene.
Sobirayshchni oblaku.
Sofia Kovalevskaya.
Sokrovizcha agry.
Sol zemli.
Soldaty.
Solionyi pios.
Solomennaya shlyadka.
Spyaschaya krasavitsa.
Ssora v Lukashakh.
Staraya, staraya skazka.
Starik Khottabych.
Starozhil.
Starshiy syn.
Staryie steny.
Stepan Kolchligin.
Stepanova pamyatka.
Stepen riska.
Strannyie vzroslye.
Strogaya muzhskaya zhizn.
Strogovy.
Sud.
Sumka inkassatora.
Svadba Krechinskogo.
Svadba v Malinovke.
Svet v kordi.
Svet v okne.
Syn Iristona.
Tabachny kapitan.
Talanty i poklonniki.
Tambu-Lambu.
Ten.
Tent.
Trassa.
Tretyya molodosty.
Tri tolstyaka.
Trostinka naavetru.
Troye v lodke, ne schitaya sobakt.
Truffaldino 12 bergamd.
Tsarevich prosha.
Tsement.
Tyetya Lusha.
U tebya est ya.
Ubit pri ispolnenii.
Uchitel peniya.
Udar! escho edar!
Udivitelny zaklad.
Ugol padeniya.
Ukhodya-ukhodi.
Ukrotitelnitshatigrov.
Ulitsa hyyutona dom 1.
Ulitsa polna neozhidannostey.
Umnyie vezchi.
V chiornykh peskas.
V den svadby.

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V dni Oktyabrya.
V gorde S.
V ogne broda net.
V to daliokoie leto.
V tvoikh rukakh zhizny.
Vasyka.
Vdovy.
Vedyma.
Velikaya sila.
Versiya.
Vesennie khlopoty.
Vesennie pereviortyshi.
Vesioloye snovideniye, ila smekh i sliozy.
Vesna v moskve.
Vezuchiy chelovek.
Viktoriya.
Virineya.
Vodyanoyi.
Volnyi veter.
Volshebnaya sila.
Vozdukhoplavatel.
Vozvraschenie s pobedoy.
Vozvraschyennaya muzyka.
Vozvrazchionny god.
Vracha vyzyvali?
Vragi.
Vsadnik bez golovy.
Vsegda so mnoyu.
Vsego dorozhe.
Vsego odna zhizn.
Vsye ostaaaayetsya lyudyam.
Vsye reshaet mgnovenie.
Vtoraya popyitka viktora krokhina.
Vysokaya proba.
Vzryvniki.
Ya sluzhu na granitse.
Yardsslavna, Koroleva Frantsii.
Yavlenie Venery.
Za ichik.
Za tekh, kto v more.
Zagadka N.F.I.
Zalp avrory.
Zavtra, tretiego Aprelya.
Zavtrashnie zaboty.
Zdes nash dom.
Zdravstvui i proschai.
Zelionaya karet.
Zelionye tsepochki.
Zelyeniy dol.
Zhavoronok.
Zhdite menya, ostrova.
Zhenitba.
Zhenityba Balyzaminova.
Zhenya, Zhenechka i "Katyusha."
Zherebyenok.
Zhiteiskoye delo.
Zhivoy trup.
Zhizn Berlioza.
Zhizn v tsitadeli.
Zhizny klima samgina.
Zimnee utro.
Znak vechnosti.
Znakdmytes, Baluev.
Znoyinyyi iyul.
Zolotaya mina.
Zolotaya pugovitsa.
Zoloushka.
Zvannyi uzhin.
Zveda plenitelnogo schastiya.
Zvezda.

Les Films Du Losange.
- La feme de l'aviateur.
- La marquise d'o.
- Perceval.

Les Productions J. Roitfeld.
- Cause toujours mon lapin.
- Nana.

Lewis (C.S.) PTE Limited & HarperCollins Publishers Inc., by license.
- A grief observed.

Linaje, Rogelio Agrasanchez.
- A la orilla de un palmar.
- A lo macho.
- A los cuatro vientos.
- Abismos de pasion.
- Aca las tortas.
- Adan Eva y el diablo.
- Adios cunado.
- Adios Mariquita Linda.
- Adios Nicanor.
- Agente 00 Sexy.
- La agonia de ser madre.
- Ahi viene Vidal Tenorio.
- Ahi vienen los gorrones.
- Al caaer la tarde.
- Al fin solos.
- Al son del Charleston.
- Alazan y enamorado.
- Albur de amor.
- Alla en el rancho de las flores.
- Alla en el rancho grande.
- Alma grand (Jaqui justiciero).
- Alma grande en el desierto.
- Alma jarocha.
- Alma nortena.
- Amapola del camino.
- Amor a ritmo de go-go.
- Amor Chinaco.
- Amor de lejos.
- El amor de los amores.
- Amor de mis amores.
- El amor no es negocio.
- Amor y pecado.
- Amorcito corazon.
- El andariego.
- El angel negro.
- Angeles de la calle.
- Los angeles de Puebla.
- Anillo de compromiso.
- Los anos verdes.
- Aqui esta los villalobos.
- Aqui esta tu enamorado.
- El as de oros.
- Atacan las brujas.
- La ausente.
- Aventuras del guardian las (yanco guardian de la selva).
- Ay calipso no te rajes.
- Bailando cha-cha (cien muchachas).
- Bajo el cielo de Mexico.
- Bala de plata en pueblo maldito.
- Bala de plata.
- Balaju.
- La banda del polvo maldito.
- Los bandidos de Rio Frio.
- Los bandidos de Rio Frio 2a. version.
- El barbero prodigioso.
- La barraca.
- Barrio de pasiones.
- El bartardo.
- El baul macabro.
- Bello amanecer.
- El beso de ultratumba.
- Beso mortal.
- La bestia magnifica.
- La bestia negra.
- La bien amada.
- Billetero el.
- Blue demon (el demonio azul).
- Blue demon vs. poder satanico.
- Bodas de fuego.
- Las borrachas.
- Las braceras.
- Braceras y mojados.
- El bronco de Reynosa.
- Bruja la.
- Bruto el.
- El buen ladron.
- Buena suerte el.
- Burlada.
- Caballo alazan lucero.
- Caballo prieto afamado.
- La cabeza de Pancho Villa.
- Cada quien su musica.
- Cadetes de la naval.
- Cafe Concordia.
- Cain y Abel.
- Calaveras del terror.
- La calle de los amores.
- Calumnia.
- Calvario de una madre.
- Camino de Guanajuato.
- El camino de la vida.
- Los campheones justicieros.
- Canasta de cuentos Mexicanos.
- Cancion del alma.
- Canciones unidas.
- Candelaria.
- Cantaclaro.
- Capitan de rurales.
- El Capitan Mantarraya.
- Caras nuevas.
- Carcel de mujeres.
- Caribena (amores de fuego).
- Carnaval en el tropico.
- Carne de cabaret.
- Carne de presidio.
- La carne manda.
- La casa de los espantos.
- La casa del ogro.
- Casa embrujada.
- Case de mujeres.
- El castillo de las momias de Guanajuato.
- Cazadores de espias.
- Chanoc.
- El Chicano justiciero.
- Un chico valiente.
- China hilaria.
- Chiquidracula.
- Chismoso de la ventana el.
- Chucho el roto (1a. version).
- Cien gritos de terror.
- El circo tragico.
- Club de senoritas.

El cobarde.
El comandante furia.
Como yo te queria.
El compadre mas padre.
Con amor de muerte.
Con la division del norte (los de abajo).
Con licencia para matar.
Concurso de belleza.
Confidencias de un ruletero.
Confidencias matrimoniales.
Conozco a los dos.
Contrabando por amor.
El corazon y la espada.
Corazones de Mexico.
Corazones en derrota.
Corona de un campeon.
Las coronelas.
El Cristo de los milagros.
El Cristo negro.
Cristo te ama.
Cronica de un cobarde.
Cruel destino.
Cruz diablo.
Cuando levanta la niebla.
Cuando los hijos odian.
Cuando los hijos pecan.
Cuando los hijos pierden.
Cuando Mexico canta.
Cuando tu me quieras.
Cuarto de hotel.
Cuatro contra el mundo.
El cuatro copas.
Cuernavaca en primavera.
El cuerpazo del delito.
La culpable.
La culta dama.
Curvas peligrosas.
De Cocula es el mariachi.
De Nueva York a Huapanguillo.
De pecado en pecado.
De tequila su mezcal.
Las del talon.
El derecho a la vida.
La desconocida.
Los desheredados.
Desnudate Lucrecia.
Despues de la tormenta (Isla de lobos).
Un dia de vida.
Diario de una mujer.
Los dias del amor.
Dicen que soy comunista.
Dile que la quiero.
Dios no lo quiera.
Disotec fin de semana.
Doctor satan vs. la magia negra.
Doctor satan.
Don Juan Tenorio.
Donde estas corazon.
Dos almas en el mundo.
Dos caminos.
Dos caras tiene el destino.
Dos corazones y un tango.
Dos pesos dejada.
Dos tenorios de barrio.
La duda.
Dulce madre mia.
Durazo la verdadera historia.
Edad peligrosa.
Ella y yo.
En busca de la muerte.
En cada feria un amor.
En la mitad del mundo.
En los altos de jalisco.
En un burro tres baturros.
Encrucijada.
Enemigos (viva la revolucion).
Ensayo de una noche de bodas.
Ensename a besar.
Entre tu amor y el cielo.
El escapulario.
Escondida la (viva la revolucion).
Esos de penjamo.
Espaldas mojadas.
Esposas infieles.
El esqueleto de la Sra. Morales.
Este amor si es amor.
Estos anos violentos.
Estoy casado ja-ja.
Estoy tan enamorada.
Extrana cita.
Fallaste corazon.
Los falsos heroes.
Los fanfarrones.
Fantasia ranchera.
El Fantasma de media noche.
Fantasma del convento.
El fantasma se enamora.
Felicidad.
Flor marchita.
El forastero vengador.
La fuerza de los humildes.
La fuga.
La fuga de Carrasco.
Furia en el Eden (Furia en el Paraiso).
Furia en el paraiso.
El fusilamiento.
Los galleros de Jalisco.
Un gallo en corral ageno.
Garra de leopardo.
El gato.
Gendarme de punto (gendarme de la esquina).
El genial detective Peter Perez.
La gitana blanca.
El globero.
Las golfas del talon.
La Golondrina.
La gota de sangre.
La gran cruz.
Gregorio y su angel.
Una gringuita en Mexico.
El grito de la carne.
Un grito en la noche.
Guadalajara en verano.
Guadalajara es Mexico.
Guadalupe la chinaca.
Guardian el perro salvador.
La guerra de las monjas.
Guitarras de media noche.
El hacedor del miedo.
El hacha diabolica.
El hambre nuestra de cada dia.
Hasta el viento tiene miedo.
Hay angeles con espuelas.
Hay un nino en su futuro.
La herencia macabra.
Las hermanas Karambazo.
Los hermanos Centella.
Hermoso ideal.
El heroe de Nacozari.
La hija de la otra.
El hijo de alma grande.
El hijo de cruz diablo.
Hijos de la mala vida.
Los hijos del divorcio.
Historia de un amor.
Historia de un corazon.
Historia de un marido infiel.
El hombre de la furia.
El hombre que me gusta.
El hombre que quiso ser pobre.
Honraras a tus padres.
La hora de la verdad.
Hoy comienza la vida.
Huapango.
La huella de unos labios.
El impostor.
El increible Profesor Zovek.
India bonita la.
El indio.
El insurgente.
Intimidades de una secretaria.
La isla de la pasion.
Jalisco nunca pierde.
Janitzio.
El jinete fantasma.
El jinete negro.
Jorge Garcia Besne.
La joven mancornadora.
Juan Pistolas.
El juego de la guitarra.
La justicia de los villalobos.
Kid Tabaco.
Laberinto de pasiones.
Ladron de Cadaveres.
La Ladrona.
Ladronzuela.
Lagrimas robadas.
Un largo viaje hacia la muerte.
El latigo.
Lazos de fuego.
Leyendas macabras de la colonia.
Las limpias.
Lio de faldas.
La llorona.
Lluvia de abuelos.
El Lobo blanco.
Luna Criolla.
Luponini de Chicago.
Una luz en mi camino.
Madre a la fuerza.
Madres solteras.
La mafia del crimen.
Maniatico pasional.
Manicomio.
Mansion de las siete momias.
Los mantenidos.
Maravillas del toreo.
La marchanta.
Maria.
Maria del mar.
Maria Elena.
Un marido infiel.
Martin Garatuza.
Martin Santos el llanero.
Mas alla de la muerte.

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Mas fuerte que el amor.
La mascara de hierro.
La mascara de la muerte.
Los matones del norte.
Matrimonios juveniles.
Me cai de la nube.
Me caiste del cielo.
Me dicen el consentido.
Me persigue una mujer.
Los mediocres.
Lo mejor de Teresa.
Las memorias de mi general.
Menores de edad.
El Mexicano.
Mexico de noche.
Mexico lindo y querido.
Mi influyente mujer.
Mi lupe y mi caballo.
Mi madrecita.
Mi nino, mi caballo y yo.
Mi novio es un salvaje.
Mi reyno por un torero.
Mientras Mexico duerme.
Un milagro de amor.
Mis abuelitas nomas.
Mis hijos.
Los miserables.
Mision cumplida.
Mision Seoul.
Misterio de la magia negra.
El misterio del rostro palido.
Misterio en las Bermudas.
Mojados.
Las momias de san angel.
Monja casada virgen y martir.
El monstruo de la sombra.
El Monstruo de los volcanes.
El monstruo resucitado.
La morena de mi copla.
Morir de pie.
Morir para vivir.
Muchachas inpacientes.
La muerte en este jardin.
La muerte enamorada.
Los muertos hablan.
Una mujer con pasado.
Mujer de media noche.
La mujer de nadie.
La mujer del minstro.
La mujer del puerto.
Mujer en condominio.
Mujer o fiera.
La Mujer que se vendio.
Mujeres en trabajan.
Las mujeres mandan.
Mujeres y toros.
Los mujeriegos.
Mundo demonio y carne.
El mundo loco de los jovenes.
Las munecas de King-Kong.
Munecas peligrosas.
Murallas de pasion.
El muro del silencio.
El museo del crimen.
Music, mujeres y amor.
Ni hablar de Peluquin.
El nino de las monjas.
El nino y la niebla.
El nino y las monjas.
No basta ser madre.
Nobleza ranchera.
La noche de la bestia.
La noche del halcon.
La noche del jueves.
La noche violenta.
La nortena de mis amores.
El norteno enamorado.
Nos dicen las intocables.
Nos veremos en el cielo.
Nosotros.
La novia del mar.
Novias impacientes.
Nuestros maridos.
Nunca debieron amarse.
El organillero.
Oro y plata.
La pachanga.
Padre de mas de cuatro.
Padre mercader.
Palillo Vargas Heredia.
Paloma brava.
Pancho Lopez.
Panico.
Papa en onda.
Papa mama y problemas.
El Papelerito.
Pasion Jarocha.
Patrulla de valientes.
Payasadas de la vida.
Pecado de juventud.
El Pecado de quererte.
Pecado de ser pobre.
Pecados de amor.
Pepito y los robachicos.
Las perfumadas.
La Perversa.
Pescadores de perlas.
Pies de gato.
Pistolas de oro.
Pistoleros famosos II.
Los pistolocos.
El Plagiario.
Pobre corazon.
Poker de ases.
Policia judicial federal.
Por culpa de una mujer.
Por el mismo camino.
Por ellas aunque mal paguen.
Por mis pistolas.
Por querer a una mujer.
Porfirio Diaz.
Porque naci mujer?
La Posada sangrienta.
La posesion.
Presagio.
Prestame tu cuerpo.
Prision de suenos.
El Proceso de las senoritas Vivanco.
Pueblito.
Las puertas del presidio.
Pura vida.
Que bonito amor.
Que haremos con Papa?
Los que no debieron nacer.
Que seas feliz.
Quien mato a Eva?
Quiero ser torero.
Radio patrulla.
El raton.
La rebelion de los adolecentes.
La rebelion de los colgados.
La rebelion de los fantasmas.
Las recien casadas.
Refugiados en Madrid.
Regalo de reyes.
El regreso de los Villalobos.
El regreso del guardian.
El rencor de la tierra.
Requiem de un canalla.
Los resbalosos.
El rescate.
Revolver en guardia.
El rey de los detalles.
El rey de Mexico.
Reyna de Mexico.
Los robachicos.
Robinson Crusoe.
El robo de las momias de Gto.
Romance sobre ruedas.
Rondalla.
Rosa de las nieves.
Rosa del Caribe.
Una rosa sobre el ring.
El rosal bendito.
Rosalba y los llaveros.
El rosario de Amozoc.
Rosauro Castro.
El ruisenor del barrio.
Rumbo a Brasilia.
Sabado negro.
Sagrario.
Los salvajes.
Los Sanchez deben morir.
Sangre en las montanas.
La sangre manda.
Sangre torera.
Santa (2 degree version).
Santa y pecadora.
Santo frente a la muerte.
Santo vs. cerebro del mal.
Santo vs. los hombres infernales.
Santo vs. hacha diabolica.
Se acabaron las mujeres.
Se alquila marido.
Secreto de la monja.
Secreto entre mujeres.
Secreto eterno (corazon de mujer).
Los secretos del sexo debil.
Seda sangre y sol.
Seis meses de vida.
El senor alcalde.
Las Senoritas Vivanco.
Sentenciados a muerte.
Siempre estare contigo.
Siempre tuya.
Los siete proscritos.
El siete vidas.
Siguiendo pistas.
Silencio sublime.
El Sinaloense.
Sitiados por la muerte.
El sol sale para todos.
Solamente una vez.
Solo para damas.
Soltera y con gemelos.
Los solterones.
La Sombra blanca.

La sombra de cruz diablo.
Sor algeria.
Soy Chicano y Mexicano.
Su adorable majadero.
Su ultima aventura.
Sublime melodia.
El superflaco.
Superzan el invencible.
Superzan y el nino del espacio.
Susana (carne o demonio).
Te besare en la boca.
Teatro follies.
Terremoto en Guatemala.
El terrible gigante de las nieves.
El tesoro de la Isla de Pinos.
El tesoro de mentiras.
Tierra brava.
Tierra muerta.
Tigre.
El tigre de Santa Julia.
El tigre de Yautepec.
Tigre enmascarado.
Tintanson Crusoe.
La torre de los suplicios.
Torre de marfil.
Traigo mi 45.
Trampa mortal.
Los tres compadres.
Tres melodias del amor.
Tres mil kilometros de amor.
Tres noches de locura.
Tres Romeos y una Julieta.
El triunfo de los campeones justicieros.
Tu hijo.
Tu y la mentira.
La ultima aventura del chaflan la.
El ultimo cartucho.
Un dia de diciembre.
Un mundo nuevo.
Una cita de amor.
Una familia de tantas.
Una golfa.
Una mujer en venta.
Una mujer sin amor (destino de una mujer).
Una vida por otra.
La valentina.
Los valientes de Guerrero.
El valor de vivir.
Vamonos con Pacho Villa.
El venganza de la sombra.
Venganza suprema (mujeres sin alma).
La venus de fuego.
Verano violento.
La vida en broma.
La vida inutil de Pito Perez.
La vida no vale nada.
Viejo nido.
Viento negro.
Las virgenes locas.
La visita que no toco el timbre.
La viuda celosa.
Viva Benito Canales.
Vuelven las calaveras del terror.
Vuelven las campeones justicieros.
Vuelven los pistoleros famosos 3.
Vuelven los pistoleros famosos II.
Vuelven los pistoleros famosos 3.
Vuelven los pistoleros famosos II.
Y dios la llamo tierra.
Y manana seran mujeres.
Y si ella volviera (guantanamera).
Yanco guardian de la selva.
Yanco.
Yo dormi con un fantasma.
Yo fui una callejera.
Yo fui una usurpadora.
Yo quiero ser hombre.
Yo soy el asesino.

Lindgren, Astrid.
- Pippi Langstrump.
- Pippi Langstrump gar ombord.
- Pippi Langstrump I soderhavet.

Literary Trustees of Walter DeLaMare.
- A beginning and other stories.
- Inward companion.
- O lovely England.
- Pleasures and speculations.
- The wind blows over.
- Winged chariot.

LM Productions. SEE Pathe & LM Productions.

Lobbenberg, John Peter & Michael Armstrong.
- Awakening of Rollo.
- Bill the conqueror.
- Buried treasure.
- Came the dawn.
- Cocktail time.
- Enter Psmith.
- French leave.
- Jeeves makes an omelette.
- Luck of the Bodkins.
- The mating season.
- Mike and Psmith.
- Mike at Wrykyn.
- Over seventy.
- Podmarsh.
- The right approach.
- The story of Otis.
- To.
- Uncle Dynamite.
- The world of Jeeves.

Lujan Rodriguez, Rosa Elena.
- El barco de la muerte.
- Die Baumwollpflucker.
- Die Brucke im Dschungel.
- Der bush.
- Dodsskeppet.
- Der Karren.
- Land des fruhlings.
- Der Marsch ins Reich der Caoba.
- Regierung.
- Sierra Madre Skatt.
- El tesoro de la Sierra Madre.
- Das Toten Schieff.
- Die weisse Rose.

Lumiere & Teledis.
- Signe Arsene Lupin.

Lumiere.
- Une affaire d'hommes.
- Amici piu di prima.
- L'amour en douce.
- L'antechrist.
- Argoman.
- Assaut sur la ville.
- Les aventures d'Arsene Lupin.
- La bande a papa.
- Un caprice de Caroline cherie.
- Caroline cherie.
- Un cave.
- La chute d'un corps.
- Conduite a gauche.
- La coupe a dix francs.
- Crazy capo.
- Cyclo.
- De l'enfer a la victoire.
- La derniere bourree a Paris.
- Les deux filleuls du parrain.
- Dis bonjour a la dame.
- Django tire le premier.
- Due deputati.
- Due mafiosi.
- Due mafiosi nel far west.
- Due sergenti del General Custer.
- Et qu'ca saute.
- Fais-moi mal mais couvre-moi de baisers.
- Faut s'les faire... ces legionnaires.
- Fernand clochard.
- Fernand cow-boy.
- La fille au fouet.
- La fille au violoncelle.
- Une fille nommee amour.
- La fils de Caroline cherie.
- Les fils du parrain.
- Four marmittoni alle grandi manovre.
- France, societe anonyme.
- Fureur sur le Bosphore.
- La gloire des canailles.
- Le grand delire.
- Les gros bras.
- La grosse pagaille.
- Hard sensation.
- Un homme en or.
- Les hommes ne pensent qu'a ca.
- Incognito.
- Les intrus.
- Les joyeux lurons.
- Kakkientruppen.
- Lavie a l'envers.
- Le lien de parente.
- Les malabars sont au parfum.
- Maman colibri.
- La mort d'un tueur.
- La mort de la belle.
- Nous les femmes.
- L'oeil ecarlate.
- Operation jaguar.
- Operation Lady Chaplin.
- Operation Lotus bleu.
- Pas de panique.
- Paulina 1880.
- Les petites allees.
- Pomme d'amour.
- Poupees nazies.
- Les predateurs du futur.
- Pulsion cannibal.
- Qui chauffe le lit de ma femme?
- Qui etes-vous Inspecteur Chandler?
- Les rangers defient les Karatekas.
- Le roi des Mirmidous.
- Le Roquevillard.
- Salut Berthe.
- Si elle dit oui ... je dis non!
- Un solo grande amore.

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La soupe aux poulets.
La soupe froide.
Special magnum.
Una sull'altra.
Tabarin.
Themroc.
Tornavara.
Touche-a tout.
La triple mort du troisieme personnage.
Trique, gamin de Paris.
Troika sur la piste blanche.
Trois pour cent.
Tuez-les tous et revenez seul.
Les vacationists.
Vices prives et vertus publiques.
Voila que le nonnes dansent le tango.
Y'a un os dans la moulinette.
Les zozos.

Mackenzie, Lilian.
Literature in my time.
Realms of silver.

Madeleine Films, Ets.
Island of terror.
A time to kill.

McCartney, Michael.
Mike Mac's white and blacks plus one colour.

Medusa Film. SEE Progefi, Iduna Film, France2 Cinema & Medusa Film.

Merchant Ivory Productions, Inc. & Sony Pictures Classics Inc.
Aparajito.
Apur sansar.
Charulata.
Devi.
Jalsaghar.
Jana aranya.
Mahanagar.
Pather panchali.
Teen kanya.

Merchant Ivory Productions.
Ghatbar.

Metro-Goldwyn Mayer, Inc.
Appointment in London.
The betrayal.
Canasta de cuentos Mexicanos.
Captain blackjack.
Checkpoint.
Child and the killer.
Compelled.
Copacabana palace.
Crash drive.
Dangerous exile.
Depraved.
Doctor blood's coffin.
Feet of clay.
Gang war.
Innocent meeting.
It happened here.
It happened in Rome.
Large rope.
Lemon popsicle.
Man accused.
Mexican trio.
Middle course.
Moment of indiscretion.
Operation murder.
The possessed.
Rebellion of the hanged.
Revolt of the slaves.
The secret place.
Sentenced for life.
She always get their man.
Son of a stranger.
Spanish gardener.
Spanish sword.
Take it all.
Taste of money.
They who dare.
Three crooked men.
Three spare wives.
Three Sundays to live.
The trails of Oscar Wilde.
Transatlanic.
Triple deception.
Twist of fate.
Woman of mystery.
A woman possessed.
Your past is showing.

Metro-Goldwyn-Mayer Studios, Inc.
Le dernier des justes.

MGM. SEE Progefi & MGM.

Mifune Productions.
Akage.

Million Dollar Video Corporation.
30 segundos para morir.
Bajo el cielo de Mexico.
Botas negras, latigo de cuero.
El carro de la muerte.
Como una perra caliente.
Corazon de nino.
Las coronelas.
Cuando corrio el alazan.
Destrampados en Los Angeles.
La estrella vacia.
Un gallo en corral ajeno.
Habia una vez un marido.
Los lavaderos.
Mafiosos manosos.
Mojado power.
Muerte en el Caribe.
Mulato.
Los penitentes del PUP.
La sangre enemiga.
Si mi vida.
Tequileros del Rio Grande.
Traigo mi 45.
La tumba del mojado.
La venganza del rojo.
La vida no vale nada.
Viento negro.
Yanco.
El zorro de Jalisco.

Mondex Films, SA. SEE Columbia Pictures Industries, Inc., (assignee of Tele-Hachette & Mondex Films, SA) & Vides Cinema.

Murry, John Middleton, Estate of.
The betrayal of Christ by the churches.
Countries of the mind: essays in literary criticism, 2nd series.
Keats.
Studies in Keats.
Things to come.
William Blake.

Mushi Productions Kabushiki Kaisha.
Janguru taitei.
Shin Janguru taitei susume leo.
Tetsuwan atom.

National Film Board of Canada.
A is for architecture.
Angotee: story of an Eskimo boy.
The discovery of insulin.
How to build an igloo.
An introduction of jet engines.
Sky.
The story of Cinderella.

New Century Producers. SEE Art Theatre Guild of Japan Company, Ltd., Nikkatsu Studio, New Century Producers.

Nikudan O-Tsukuru-Kai/Art Theatre Guild for Japan Company, Ltd.
Nikudan.

Nippon TV Hosomou. SEE Toho Company, Ltd., Nippon TV Hosomou, Yomiuri TV Hoso & Tokyo Movie Shinsha.

Ordo Templi Orientis.
The book of Thoth.
Confessions of Aleister Crowley, vols. 1 & 2.
Magick in theory and practice.

Orex Films.
Le septieme jure.

OroFilms, SA de CV.
El cristo del oceano.
La duda.
Marianela.
La muralla.
Pepa Doncel.
Susana y yo.
Valentina.

OroFilms, SA. SEE Cineproducciones Internacionales, SA de CV, Producciones Rosas Prieco, SA de CV, Producciones EGA, SA.

Orphee & Cogelda.
Le chant du monde.

Orsay Film, SA. SEE Columbia Pictures Industries, Inc., successor-in-interest to Documento Film, SRL and Columbia Trist.

Our Lady Queen of Peace House of Prayer.
Matrix medal.

Pathe & Cite Films.
Parole de flic.
La vie conjugale.

Pathe & Films Agiman.
Voici le temps des assassins.

Pathe & LM Productions.
Le passage.

Pathe & UGC.
Flic story.

Pathe Televison & UGC DA.
Les trois mosquetaires.

Pathe, Diamant Berger & Rene Clair.
Paris qui dort.

Pathe, Gefirex & Films A2.
Le toubib.

Pathe, Gray Films & Progefi.
La femme et le pantin.

Pathe.
Bobosse.

Les cinq tulipes rouges.
L' equipage.
Faubourg montmartre.
Les femmes s'en balancent.
Fortune carree.
Les gaietes de l'escadron.
Le gang.
Gringalet.
L' impossible monsieur Pipelet.
Je suis a vec toi.
Justin de Marseille.
Lemmy pour les dames.
Ma femme est formidable.
Maison de danses.
La malibran.
Marie-octobre.
La mariee est trop belle.
Massacre en dentelles.
Mathias Sandorf.
Les mauvais coups.
Mefiez-vous des blondes.
Memoires d'un flic.
Milionnaires d'un jour.
Le miracle des loups.
Les miserables.
La mome vert-de-gris.
Mon mari est merveilleux.
Le monde tremblera.
Le monocle noir.
Monsieur taxi.
Mort d'un pourri.
Mort ou vif.
Nous les gosses.
Obsession.
L' oeil du monocle.
Opera musette.
Parade en sept nuits.
Paradis perdu.
Partir.
Le petit chose.
La petite lise.
Le poignard malis.
Pontcarral, colonel d'empire.
Port d'attache.
Les portees de la nuit.
Pour la peau d'un flic.
Premier de cordee.
Le revolte.
Romance de Paris.
Secrets.
Seul dans la nuit.
Si ca peut vous faire plaisir.
Suivez-moi jeune homme.
Tartarin de Tarascon.
Theodore et compagnie.
Tout ca ne vaut pas l'amour.
Les trois mosquetaires.
Une si jolie petite plage.

Pathe. SEE Progefi & Pathe.

Pedraza, Salvador E. Celis.
El que espera en la oscuridad.

Peliculas Rodriguez, SA de CV.
A.T.M.
Amores de ayer.
Angelitos negros.
Animas trujano.
Apuesta contra la muerte.
Arriba las mujeres.
Asi era Pancho Villa.
Asi era Pedro Infante.
Autopsia de un fantasma.
Las aventuras de Bozo.
Ay jalisco no te rajes.
Baile mi rey.
Blanca nieves y sus siete amantes.
Borrasca en las almas.
Burdel.
Cada quien su vida.
El Capitan Mala Cara.
Chachita la de Triana.
Los chicles.
Como Mexico no hay dos.
Corrupcion.
Cuando lloran los valientes.
Cuando viva villa es la muerte.
La cucaracha.
Cuernos debajo de la cama.
Cupido pierde a Paquita.
Del rancho a la television.
Dicen que soy mujeriego.
Las dos huerfanitas.
Dos tipas de cuidado.
Ellos trajeron la violencia.
En el camino andamos.
Escandalo de estrellas.
Faltas a la moral.
El gran premio.
La hiena humana.
La hija del payaso.
Los hijos de la calle.
El hombre de papel.
Huracan Ramirez.
Las Islas Marias.
Llanto, risas y nocaut.
Maldita ciudad.
Mama nos quita los novios.
Masacre en el Rio Tula.
Matenme porque me muero.
Mexicanos al grito de guerra.
Mi guitarra y mi caballo.
Mi nino Tizoc.
El monstruo de la montana hueca.
Morenita clara.
Moriras con el sol.
La mujer que yo perdi.
Las mujeres de mi general.
No desearas la mujer de tu hijo.
Noche de buitres.
Nostros los feos.
Obsesion de matar.
El ogro.
Olor a muerte.
La oveja negra.
Pancho Villa y la valentina.
Pandilleras.
Pandilleros.
Los paquetes de Paquita.
Pasaporte a la muerte.
Pepel el toro.
La pequena madrecita.
Prefiero a tu papa.
La puerta y la mujer del carnicero.
Que lindo es michoacan.
Que te ha dado esa mujer.
Queverde era mi padre.
Ratero.
Romance de fieras.
El secreto del sacerdote.
La secta de la muerte.
El secuestro de los cien millones.
El seminarista.
Sobre las olas.
Solicito marido para enganar.
Somos del otro laredo.
Los tes Huastecos.
Tierra de hombres.
El tigre de la frontera.
Todos son mis hijos.
Traficantes de ninos.
Trampa para una nina.
Trebol negro.
Los tres Garcia.
Una calle entre tu y yo.
Ustedes los ricos.
Viva mi desgracia.
Vivire otra vez.
Vuelven los Garcia.
Ya tengo a mi hijo.
Yebra sangrienta.
Yo soy galo donde quiera.

Pereda Films, SA.
Carnaval en Brasil.
El ciclon del caribe.
Un cuerpo de mujer.
El herrero.
Jesus de Nazareth.
Los olvidados de dios.
La reina del mambo.

Perez Padilla, Juan Jose.
El 30-30.
Blue demon contra el poder satanico.
Blue demon el demonio azul.
Conozco a los dos.
La gallera.
El hacha diabolica.
El jugador.
Kid tabaco.
La novia del mar.
Sur violento.

Playguide Journal Sha. SEE Art Theatre Guild of Japan Company, Ltd., Playguide Journal Sha.

Ploquin, Raoul.
L'entraineuse.
L'heritier des mondesir.

Pretoria. SEE Cogelda, Ariane & Pretoria.

Producciones Aguila, SA de CV.
El anima de sayula.
Benjamin Argomedo.
El chivo.
Contrabando y muerte.
Domingo Corrales.
Don Herculano enamorado.
Emiliano Zapata.
Los gemelos alborothdos.
La Guera Chabela y Jesus Cadenas.
El hijo de Lamberto Quintero.
Lamberto Quintero.
Los marcados.
Mi aventura in Puerto Rico.
Mi caballo el caxitador.
El moro de cumpas.
La muerte de Pancho Villa.
La muerte de un gallero.
Noche de carnaval.
Las noches del blanquita.

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El ojo de vidrio.
Peregrina.
Pesecusion y muerte de Benjamin Argumedo.
Que viva Tepito.
El rey.
El rey de oros.
La sangre de un valiente.
Simon Blanco.
Soy el hijo del gallero.
Triste recuerdo.
Los triunfadores.
Valente Quintero.
Viva el chubasco.
Viva Mexico y sus corridos.
Volver, volver, volver.
Vuelve el ojo de vidrio.
La yegua colorada.
Zapata en chinameca.

Producciones EGA, S.A. de C.V.
Mexiccano hasta las cachas.
Traigo la sangre caliente.

Producciones Galubi, S.A.
Agarrando parejo.
Agarrando parejo.
El agente viajero.
Al son del mambo.
La alegria de vivir.
Los amores de Juan Charrasqueado.
La bandida.
Barridos y regados.
Caballos de acero.
Cafe colon.
Camino del mal.
Cantando nace el amor.
Cielito lindo.
Como perros y gatos.
Como si fueramos novios.
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Los desalmados.
Los desaraigados.
La doncella de piedra.
Los dos carnales.
La golfa del barrio.
El gran campeon.
Gritenme piedras del campo.
El halcon solitario.
El hijo de los pobres.
El hijo del palenque.
Impaciencia del corazon.
Los invisebles.
Juan charrasqueado.
Ladron que roba a ladron.
Ladrones de ninos.
El luchador fenomeno.
Magnum 357.
La malaguena.
Manos de seda.
Me quiero casar.
Mi preferida.
La muerte del soplon.
La muerte enamorada.
Muertos de miedo.
La mugrosita.
La mujer de dos caras.
Nido de fieras.
La nina de la mochila azul.
No me quieras tanto.
La noche del Ku Kux Klan.
Nostras las sirvientas.
Orgullo de mujer.
Un padre a toda maquina.
Un par a todo dar.
Pecado mortal.
Pegando con tubo.
Pilotos de combate.
El pistolero del diablo.
Pistoleros bajo el sol.
El plebeyo.
Pobre del pobre.
Que perra vida.
El rey de la selva.
Santo vs los asesionos de otros mundos.
Se solicitan modelos.
Serenata en Acapulco.
La sombra en defensa de la juventud.
El Sr. Gobernador.
Sucedio en acapulco.
Un sueno de amor.
Los tales por cuales.
Ventarron.
Vuelven los cinco halcones.
Yo fui novio de Rosita Alvirez.
El zarco.

Producciones Matouk, SA.
La calle de los amores.
Crisol.
Cruces sobre el yermo.
Cuanto vale tu hijo.
Division narcoticos.
Encrucijada.
Guantes de oro.
El hombre del Alazan.
Luciano Romero.
Mi heroe.
El senor tormenta.
El toro Negro.
Tu vida entre mis manos.

Producciones Pereda, SA.
Acapulquena.
Cana brava.
Casa de perdicion.
El centauro del norte.
Las cuatro milpas.
Flor de canela.
Maria Cristina.
Mi noche de bodas.
Necesita un marido.
La nina Popof.
Nuestras vidas.
Romance en Puerto Rico.
Sucedio en Mexico.
Una estrella y dos estrellados.
Vamonos para la feria.
Viva Jalisco que es mi tierra.
Voy de gallo.

Producciones Ramirez, SA de CV.
Alguien tiene que morir.
El cabaretero y sus golfas.
La carinosa morotizada.
El cornudo soy yo.
Cuando los hijos no vienen.
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Dos mundos y un amor.
El gran autor.
El gran relajo Mexicano.
Ilegales y mojados.
La isla de Rarotonga.
Juan el enterrador.
Malditos polleros.
Mecanicos ardientes.
El Mexicano feo.
Mi querida vecindad.
La mujer del diablo.
El muro de la tortilla.
Ninos sobre pedido.
Penthouse de la muerte.
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La salvaje ardiente.
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Una mujer en la calle.
El vendedor de munecas.
Vuelven los mecanicos ardientes.
Zapatero bailarin.

Producciones Raul de Anda, SA de CV.
Ardiente deseo el.
La gran aventura del Zorro.
El hombre.
Jugandose la vida.
Servicio secreto.
Sucedio en jalisco.

Producciones Rosas Priego, SA de CV.
Acorralados.
El aguila negra.
El aguila negra en el tesoro de la muerte.
El aguila negra en la ley de los fuertes.
El aguila negra vs. el vengador solitario.
El aguila negra vs. los diablos de la pradera.
El aguila negra vs. los enmascarados de la muerte.
Ambiciosa.
Amor con amor se paga.
Amor del bueno.
Azahares rojos.
La bien pagada.
La comezon del amor.
Como gallos de pelea.
Cortesana.
Crucifijo de piedra.
Cuando habla el corazon.
El dia de las madres.
Los dos apostoles.
Dos corazones y un cielo.
Dos maridos baratos.
En carne viva.
Especialista en senoras.
Estrella sin luz.
Eterna agonia.
La fiera.
Fiesta en el corazon.
Gallo corriente, gallo valiente.
Gatillo veloz.
Hijos de tigre.
Humo en los ojos.
Los indomables.
El juez de la soga.
El juicio de los hijos.
Llamas vs. el viento.
Los novios de mis hijas.

Los malditos.
El marido de mi novia.
Me lleva la tristeza.
Melodias inolvidables.
Musica, espuelas y amor.
Noche de perdicion.
Novia a la medida.
Pueblo quieto.
Quinceanera.
La segunda mujer.
Tan bueno el giro como el colorado.
Traicionera.
Las tres coquetonas.
Una mujer sin precio.
Uno para la horca.
La Venus maldita.
La virgen de coromoto.

Producteurs associes.
Le vol du sphinx.

Production Belles Rives. SEE Progefi, FR3 Films Production & Production Belles Rives.

Production Marcel Dassault.
Le maestro.
Oublie moi Mandoline.

Profanadores de Authors Rights Restoration Corporation, Inc.
Amor en las nubes.

Progefi.
L' affaire d'une nuit.
Les amities particulieres.
Les aveux les plus doux.
Bruno, l'enfant du dimanche.
Le canard en fer blanc.
Le concierge.
Le gorille a mordu l'archeveque.
Un mari a prix fixe.
Le protecteur.
La sentence.
Le tigre aime la chair fraiche.
Le tigre se parfume a la dynamite.

Progefi. SEE Pathe, Gray Films & Progefi.

Progefi & Gaumont.
L'amant de poche.

Progefi & Iduna Film.
Martha et moi.

Progefi & Ina.
La confusion des sentiments.

Progefi & MGM.
Vie privee.

Progefi & Pathe.
24 heures de la vie d'une femme.

Progefi, FR3 Cinema & UGC/Pathe.
L' ironie du sort.

Progefi, FR3 Films Production & Production Belles Rives.
Le faux cul.

Progefi, Iduna Film, France2 Cinema & Medusa Film.
Soleil.

Progefi, TaurusFilm & France2.
Clarissa.
En desespoir de cause.
Le doigt de dieu.
La marche de Radetzky.
Meurtre sur rendez-vous.
Les temoines de l'oubli.

Progefi, TaurusFilm, Canal & TFI.
Des enfants dans les arbres.

Progefi, TaurusFilm & France3.
La derrniere fete.

Progefi, TaurusFilm & TFI.
La femme de l'amant.

Progefi, TaurusFilm, Canal & France2.
Les cahiers bleus.

Progefi, TF1 Films Production, Canal+, Hachette Premiere & Productions Fox Europa.
Train d'enfer.

Progefi, TF1 Films Production, Hachette Premiere & Hachette Premiere et Cie.
La rumba.

Progefi, TFI & Taurus.
Au bon beurre.
Ce que savait Maisie.
La femme abandonne.
La femme abandonnee.
L'ivresse de la metamorphose.
La pitie dangereuse.

Progefi, UGC/Alpes Cinema & TF1 Films Production.
Une chambre en ville.

Progress Film-Verleih GmbH.
Affaire blum.
Berlin um die ecke.
Dein unbekannter bruder.
Ehe im schatten.
Der fall Gleiwitz.
Der geteilte Himmel.
Goya.
Ich war neunzehn.
Jahrgang 45.
Jakob, der lugner.
Das kaninchen bin ich.
Die legende von Paul und Paula.
Lissy.
Die morder sind unter uns.
Der nackte mann auf dem sportplatz.
Rotation.
Die schauspielerin.
Solo Sunny.
Sonnensucher.
Spur der steine.
Sterne.
Der untertan.
Die verlobte.
Wenn du grob bist, lieber Adam.
Winter ade.

Pynn, Barbara, Estate of.
Excellent women.

RA, SA, Cinematgrafica.
El angel y yo.
Asi amaron nuestros padres.
Blue demon vs. las invasoras.
Blue demon vs. cerebros infernales.
Blue demon vs. las diabolicas.
Bonitas las tapatias.
Chantaje al desnundo.
El charro immortal.
El chicano vengador.
Done las dan las toman.
Historia de un hogar.
Los derechos de los hijos.
Los hijos de rancho grande.
Los valses venian de viena y los ninos de Paris.
Marcelo y Maria.
Mexico de mis recuerdos.
Ramorp Sierra.
Rutilo el forastero.
El ultimo Mexicano.
Una pasion me domina.

Rachmaninoff, Alexander.
Aleko.
Piano concerto no. 1 in F sharp minor.
Symphony no. 1 (full score).
Symphony no. 1 (full score-rev. percussion).
Symphony no. 1 (piano duet arr. by composer).

Rachmaninoff, Alexandre.
Four improvisations for piano solo.

Rank Film Distributors Limited. SEE Carlton Film Distibutors Limited, (formerly known as Rank Film Distributors Limited.

Renn Productions.
A gauche en sortant de l'ascenseur.
L'africain.
Banzai.
Les charlots font l'espagne.
Le chaud lapin.
Le cinema de papa.
Le corps de Diane.
La course a l'echalote.
Deux heures moins le quart avant Jesus Christ.
Les enrages.
La femme de mon pote.
Le fou de guerre.
Les fous du stade.
Garcon.
Une histoire simple.
Hotel de France.
Inspecteur la bavure.
Je vous aime.
Jean de Florette.
Le jouet.
Le maison.
Le maitre d'ecole.
Le male du siecle.
Manon des sources.
Le mariage ou Mazel Tov.
Un moment d'egarement.
L'ours.
Pleure pas la bouche pleine.
Le poeme de l'eleve Mikovsky.
Le poulet.
La premiere fois.
Un sac de billes.
Sex shop.
Tchao pantin.
Tess.
Trois places pour le 26.
Vas-y maman.
La vengeance du serpent a plumes.
Le vieil homme et l'enfant.
Vous n'aurez pas l'Alsace et la Lorraine.
Zig zig.

Renn Productions & Columbia TriStar Films (France) SA.
L'oeuf.

Republic Entertainment, Inc.
Sands of Beersheba.

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Rigma America Corporation.
"Poseidon" is rushing to the rescue.
"SOS" nad taigoy.
100 soldat I dve devuskki.
20 dney bez voini.
34-i skoriy.
40:0 v pol'zu BG.
713-iy prosit posadku.
A bil il Karotin?
A shto yesli eto lyubov.
A u nas byla tishina.
A-un!
Aborigen.
Adam i heva.
Adam zhenitsya na Yeve.
Admiral Nakhimov.
Admiral Ushakov.
Aelita.
Aelita, ne pristavay k muzhchinam.
Aerograd.
Aeroport so sluzhebnogo vkhoda.
Afonya.
Afrikanich.
Agoniya.
Ai-Gul'.
Aibolit—66.
Akademik iz Askaniyi.
Akseleratka.
Aktrisa.
Aktsiya.
Akvanavti.
Al'bidum.
Aleksandr Nevskiy.
Aleksandr Popov.
Alitet ukhodit v gori.
Aliy kamyen'.
Aliye parusa.
Almazi dlya Mariyi.
Alyonka.
Alyosha Ptytsin virabativayet kharakter.
Alyoshkina lyubov.
Alyoshkina ohkota.
Amulanga.
Ana Karenina.
Andrey Rublyov.
Anna na sheye.
Anna Pavlova.
Annushka.
Antorr Ivanovich serditsya.
Antosha Rybkin.
Antratsit.
Apassionata.
Aplodismenti, aplodismenti.
Aram Khachaturyan.
Arena.
Arena smelykh.
Artistka iz Gribova.
Asaf Messerer.
Assa.
Ataka.
Atlantida.
Attestat zrelosti.
Auktsion.
Avariya—couch menta.
Avtomobil, skripka i sobaka klyaksa.
Babiye tsarstvo.
Babyi log.
Bahby ryazanskiye.
Bahby.
Baika.
Bal gospoden'.
Balamut.
Balerina (poema o tantse).
Ballad about old weapon.
Ballada o Beringye i yego druzyakh.
Ballada o doblestnom ritsare aivengo.
Ballada o sokole i zvezde.
Ballada o soldate.
Ballada o sporte.
Balladi batki Knisha.
Baltiyskaya slava.
Baltiyskoye nebo.
Barkhatniy sezon.
Bash sin i brat.
Beg.
Beg inokhodtsa.
Begstvo mistera McKinley.
Beguni.
Bei, Baraban!
Bela.
Beleyet parus odinokiy.
Beliy bim chyornoye ukho.
Beliy oryol.
Beliy sneg rossiyi.
Beliy voron.
Beliye golubi.
Beliye nochi.
Belorusskiy vokzal.
Beloye solntse pustini.
Ben vini vinovatiye.
Bereg.
Berega.
Berega v tumane.
Beregis' avtomobilya.
Berequite muzhchin.
Bermen iz "Zolotogo yakorva."
Besheniye den'gi.
Beshenoye zoloto.
Beskriliy utyonok.
Bespokoinoye khozyaistvo.
Bespredel.
Bespridannitsa.
Besprizorniy sportsmen.
Bessmertniy garnozon.
Bessonnaya noch.
Besstrashniy ataman.
The best.
Bez prava na oshibku.
Bez semyi.
Bez solntsa.
Bez sroka davnosti.
Bez strakha i upryoka.
Bez svideteley.
Bez tryokh minut rovno.
Bez vidimikh prichin.
Bezhin lug.
Bezimyannaya visota.
Bezottsovshchina.
Bezotvetnaya lyubov.
Bezumniy den.
Bill mesyats may.
Bistreye sobstvennoy teni.
Bitva v puti.
Bitva za moskvu.
Bkus khleba.
Blastelin mira.
Blistayushchiy mir.
Blizkaya dal'.
Bliznetsi.
Blokada.
Blondinka za uglom.
Boina i mir.
Bol'shaya semya.
Bol'shaya zizn'.
Bol'shiye limalen'kiye.
Bol'shoye kosmicheskoye puteshestbiye.
Bolotniye soldati.
Bolshaya doroga.
Bolshaya ruda.
Bolshaya zemlya.
Bolshoy attraktsion.
Bolshoy kontsert.
Bombist.
Bomzh.
Bor'ba prodolzhayetsya.
Borets i kloun.
Boris Godunov.
Boris Livanov.
Bortsi.
Boy pod sokolom.
Boy posle pobedi.
Boy s tenyu.
Boyevoy kinosbornik #1.
Boyevoy kinosbornik #3.
Boyevoy kinosbornik #4.
Boyevoy kinosbornik #5.
Boyevoy kinosbornik #6.
Boyevoy kinosbornik #10.
Boyevoy kinosbornik #12.
Brat geroya.
Bratya Karamazovi.
Bratya Vasilyevi.
Bravo lyubit'.
Brelok s sekretom.
Brilliantovaya ruka.
Brizgi shampanskogo.
Brod.
Bronenosets potyomkin.
Budni.
Budte moim muzhem.
Budyonovka.
Buket fialok.
Bukhta smerti.
Bulat-Batyr.
Bumazhniye glaza Prishvina.
Bursa.
Byelaya tsaplya.
Byez osobogo riska.
Byez prava na proval.
Byezbiletnaya passazhirka.
Captain's daughter.
Chaika.
Chapayev.
Chaplinina.
Charodeiy.
Chasha terpeniya.
Chastnaya zhizn'.
Chastnaya zhizn' Petra Vinogradova.
Chastniy detektiv ili operatsiya "Kooperatsiya."
Chegemskiy detektiv.
Chelovek iz restorana.
Chelovek rodilsya.
Chelovek s planeti Zemlya.
Chelovek s ruzhyom.

Chelovek v zelyonoy perchatke.
Chelovyek #217.
Chelovyek byez pasporta.
Chelovyek chelovyeku.
Chelovyek na svoyom meste.
Chelovyek niotkunda.
Chelovyek rodilsya.
Chelovyek s akkordeonom.
Chelovyek s bul'vara Kaputsinov.
Chelovyek v shtadskom.
Chelovyek, kotoriy somnevayetsya.
Chelovyek, kotoriy zakril gorod.
Chelovyek, kotorogo ya lyublyu.
Chelovyek-nevidimka.
Chempion mira.
Cherez Gobi i Khingan.
Cherez terniyi k zvyozdam.
Cherez vsye godi.
Chest tovariscca.
Chest'.
Chestniy, umniy, nezhenatiy.
Chestnoye volshebnoye.
Chetireh vizita Samuelya Wolfa.
Chetirye i pyat'.
Chetvero.
Chetvyorka druzye.
Chetvyortaya visota.
Chetvyortiy.
Chini i lyudi.
Chipollino.
Chistiye prudi.
Chistoye nyebo.
Chlen pravitel'stva.
Chornaya kuritsa.
Chto s toboy proiskhodit?
Chuchelo.
Chudak iz pyatogo "B".
Chudesnitsa.
Chudesniy kharakter.
Chudesnoye yabloko.
Chudo s kosichkami.
Chudootvornaya.
Chuk i Gek.
Chuzhaya belaya i ryaboy.
Chuzhaya kompaniya.
Chuzhaya rodnya.
Chuzhaya shuba.
Chuzhaya.
Chuzhiye pis'ma.
Chyormaya roza—emblema pechanli, krasnaya roza—emblema lyubvi.
Chyornaya strela.
Chyorniy biznes.
Chyorniy koridor.
Chyorniy monakh.
Chyorniy prints.
Chyort s portfelyem.
Columb i Leonardo.
Contsert v Rossii.
Contsert.
Da zdravstvuyet Meksika!
Dacha.
Dachniki.
Dai lapu, drug!
Daite zhalobnuyu knigu.
Dal'niye strani.
Daleko na zapade.
Daleko ot Moskvi.
Dama s sobachkoy.
Dami priglashayut kavalerov.
Damskoye tango.
Dauriya.
Dav-bul'di'va.
David Oistrakh.
Dedushkina dudochka.
Deena-Dza-Dzu.
Dela i lyudi.
Dela serdechniye.
Delay-raz!
Delo #306.
Delo artamonovikh.
Delo pyostrikh.
Delo rumyantseva.
Deloviye lyudi.
Den' gneva.
Den' i vsya zhizn'.
Den' komandira diviziyi.
Den' molodogo chelovekha.
Den' priyoma po lichnim voprosam.
Den' rozhdeniya.
Den' svad'bi pridyotsya utochnit'.
Deputat baltiki.
Derevenskiy detektiv.
Dersu Uzala.
Desyat' tisyach mal'chkov.
Deti Don Kikhota.
Deti kapitana granta.
Deti Vanyushina.
Detskiy mir.
Detskiy sad.
Detstvo Gor'kogo. V lyudyakh.
Detstvo Nikiti.
Devchata.
Devichya vesna.
Deviy gori.
Devochka i del'fin.
Devochka na share.
Devushka bez adresa.
Devushka s guitaroy.
Devushka s Kamchatki.
Devushka s kharakterom.
Devushka s korobkoy.
Devyat' dney odnogo goda.
Dezetir.
Dikaya sobaka dingo.
Dikiy khmel'.
Dikiy myod.
Direktor.
Ditya gostsirka.
Dlinnoye, dlinnoye leto.
Dlja tekh tko svalilsja s luny.
Dnevnik direktora shkoli.
Dnevnik Karlosa Espinoli.
Dnevniye zvyozdy.
Dni i nochi.
Do budushchei vesni.
Do pervoy krovy.
Do svidaniya, malchiki.
Dobro pozhalovat', ili postoronnim vkhod vospreshchyon.
Dobrota.
Dobrovol'tsi.
Dobroye utro.
Dobryaki.
Doch isterzannoy Pol'shi.
Dochki-materi.
Dodumalsya, pozdravlyayu!
Dokot Vera.
Doktor Aibolit.
Dolgi nashi.
Dolgiv put'.
Dolina slyoz.
Doloy kommertsiyu na lyubovnom fronte.
Dom l khozyain.
dom na Trubnoy.
Dom s privideniyami.
Dom, kotoriy postrovil swift.
Dom, v kotorom ya zhivu.
Domovoy i khozyaika.
Domovyonok Kuzya.
Domoy!
Don Diego i Pelageya.
Donetskyiye shakhtyori.
Donskaya povest'.
Doroga.
Doroga domoy.
Doroga k schstyu.
Dorogaya Yelena Sergeyevna.
Dorogoy malchik.
Dorogoy moy chelovyek.
Dorogoye udovolstviye.
Dostoyaniye respubliki.
Dosye cheloveka v "Mersedesye."
Doveriye.
Dozhdi.
Dozhivyom do ponedel'nika.
Dragotsenniy podarok.
Droga k moryu.
Drug.
Drug my Kol'ka.
Drushok.
Druzya iz tabora.
Druzya moyi.
Dublyor nachinayet deistvovat.
Dubrovskiy.
Duel.
Duenya.
Duma na Kavkazye.
Dusha.
Dva berega.
Dva bileta na dnevnoy seans.
Dva chasa s bardami.
Dva dnya trevogi.
Dva druga, model' i podruga.
Dva druga.
Dva dyna chudes.
Dva kapitna.
Dvadtsat' bakinskikh komissarov.
Dvadtsat' shest' dney iz zhizni dostoyevskogo.
Dvazhdi rozhdyonniy.
Dve glavi iz semeynoy khroniki.
Dve materi.
Dve sterli.
Dve zhizni.
Dvenadtsat' stulyev.
Dvenadtsataya noch.
Dvoryanskoye gnezdo.
Dvoye I odna.
Dvoye na goloy zemly.
Dvoye v stepi.
Dvoynoy obgon.
Dvye dorogi.
Dvye ulibki.
Dvye vstrechi.
Dvye zhizni.

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Dyadya Vanya.
Dyadyushkin son.
Dzhamilya.
Dzhentl'meni udachi.
Dzhulbars.
Ego no mozhet bit'.
Ei, na tom beregu.
Ekh, yablochko.
Ekho dalyokikh snegov.
Ekipazh.
Ekzamen na bessmertiye.
Eskadron gusar letuchikh.
Eta trevozhnaya zima.
Eto bilo v Donbasse.
Eto bilo v razvedke.
Eto mi ne prokhodili.
Eto nachinalos' tak.
Eto sil' neye myenya.
Eto sladkoye slovo svoboda.
Fakti minuvshego dnya.
Fantaziya na tyemu lyubvi.
Fantaziyi Faryatyeva.
Fantazyor.
Fantazyori.
Faxhizm budyet razbit.
Fevral'skiy vetyer.
Filippok.
Fokusnik.
Foma Gordeyev.
Fontan.
Frak dlya shalopaya.
Frantsuz.
Front byez flangov.
Front v tilu vraga.
Front za liniyei fronta.
Furtuna.
Gaichy.
Gamlyet.
Garazh.
Garmon'.
Garry zanimayetsya politikoy.
Gavosh.
Gde nakhoditsya nofelet?
Gde ti tyeper', Maksim?
Gde-to plachet ivolga.
Gdye vash sin?
Georgyi Sedov.
Georgyi Sviridov.
Geroy nashego vremeni.
Geroy yeyo romana.
Gibel "Orla."
Gibel' Marini Tsvetayevoy.
Gibel' sensatsiyi.
Giperboloyid inzhenera Grina.
Glinka.
Glush povolzhskaya.
Glvniy svidetel'.
Gobsek.
God, kak zhizn'.
Golos.
Golova Gorgoni.
Golubaya strela.
Goluboy myach.
Goluboy ogonyok.
Goluboy portret.
Gonka veka.
Gonki bez finisha.
Gonshchiki.
Gori, gori, moya zvezda.
Gorizont.
Gorod na zarye.
Gorod nevest.
Gorod pervoy lyubvi.
Gorod pod udarom.
Gorod prinyal.
Gorod zero.
Goroda i godi.
Gorodskiye pogrobnosti.
Gorozhane.
Goryachaya dusha.
Goryachiy sneg.
Goryachiye denyochki.
Goryanka.
Gospoda skotininy.
Gospodin gimnazist.
Gospodin oformitel.
Gospodin velikiy Novgorod.
Gost's Kubani.
Gosudarstvenniy chinovnik.
Govorit Moskva.
Grafinya Sheremetyeva.
Granatoviy braslet.
Granitsa na zamke.
Grazhdane vselennoy.
Grazhdanin lyoshka.
Grekh i iskupleniye.
Greshnitsa.
Grozniy vek.
Grunya Kornakova.
Guards.
Gulyashchiye luydi.
Gusarskaya ballada.
Guttapercheviy mal'chik.
Gvadtsat' let spustya.
Hodga Nasreddin.
I bil vecher, i bilo utro.
I drugiye ofitsial'niye litsa.
I na tikhom okeane.
I togda ya skazal—nyet!
I vsya lyubov'.
I vsyo-taki ya veryu.
I zhizn', i slyozi i lyubov'.
Iban Grosniy.
Ideal'noye prestupleniye.
Idealniy muzh.
Idi l smitri.
Idiot.
Idushchiy sledom.
Ilya muromets.
Imenem revolyutsii.
Improvizatsiya na temu biografiyi.
Imya.
Inache nelzya.
Incognito iz Petarburga.
Inoplanetyanka.
Inspektor GAYI.
Interdevochka.
Interventsiya.
Ischeznoveniye.
Ishchitye zhenschchinu.
Ishchu cheloveka.
Iskrenne vash.
Iskusheniye.
Ispahiya.
Ispitaniye vernosti.
Ispitatel'.
Ispitatel'niy srok.
Ispolneniye zhelaniy.
Ispoved'. Khronika otchuzhdeniya.
Istoki.
Istoriya Asi Klyachinoy kotoraya lyubila da ne vishia zamuzh.
Istoriya odnoy bilyardnoy komandi.
Ivan Brovkin na tselinye.
Ivan Nikulin--pusskiy matros.
Ivan Rybakov.
Ivan Vasiliyevich menyayet professiyu.
Ivan Velikiy.
Ivanov katyer.
Ivanov, Petrov, Sidorov.
Ivanovo detstvo.
Iz zhizni Fedora Kuz'kina.
Iz zhizni nachal'nika ugolovnogo rozisha.
Iz zhizni otdikhayushchikh.
Iz zhizni Potapoa.
Izbranniye.
Izbrannoe.
Izhorskiy batalyon.
Izmennik Rodini.
Izyashchnaya zhizn'.
Ja ne Rafael.
Jubilejnyj kontsert.
K novomu beregu.
Kabare moyey zhizni.
Kadkina vsyakiy znayet.
Kafe "Izotop."
Kak doma, kak dela?
Kak Ivanushka-durachok za schastyem khodil.
Kak Petyun'ka yezdil k Ilyichu.
Kak possorilis' Ivan Ivanovich s Ivanom Nikiforovichem.
Kak starik korovu prodaval.
Kak stat' muzhuchinoy.
Kak stat' schastlivim.
Kak stat' zvezdoy.
Kakoye ono, morye?
Kalina krasnaya.
Kaliostro.
Kalle i Buka.
Kamenniy gost'.
Kamenniy tsvetok.
Kamishoviy ray.
Kapitan Pronin—vnuk mayora Pronina.
Kapitanskaya dochka.
Kaplya.
Kaplya v moye.
Kapronomiye seti.
Karantin.
Karatel'.
Karnaval.
Karnaval'naya noch.
Karusel' na bazarnoy ploshchadi.
Karyera Dimi Gorina.
Karyera Ruddy.
Kashchey bessmertniy.
Katala.
Katyenka.
Kayin 18.
Kazhdiy desyatiy.
Kazyonniy dom.
Kentavri.
Kerepostnaya aktrisa.
Keshka i boroda.

Keshka i Freddy.
Keshka i frukti.
Keshka i gangsteri.
Keshka i gumanoid.
Keshka i mag.
Keshka i spetsnaz.
Keshka i terroristi.
Khleb i rozi.
Khleb, zoloto, nagan.
Khmuroye utro.
Khochu bit' ministrom.
Khochu, chtob on prishol.
Khod konyom.
Khod slonom.
Khokkeyisti.
Kholodnoye leto pyat'desyat tretyego.
Khomut dlya Markiza.
Khorosho sidim!
Khotite ver'te—khotite—net.
Khovanshchina.
Khozhdeniye za tri morya.
Khozyain taigi.
Khozyayeva Geoni.
Khromoy barin.
Khronika pikiruryushchego bombardirobshchika.
Khrozyaika gostinitsi.
Khrustal'niy bashmachok.
Khutorok v stepi.
Kin-Dza-Dza!
Kino za dvadtsat' lyet.
Kinoal'manakh "Molodost" (vipusk vtoroy).
Kinoal'manakh "Molodost" (vipusk tretiy).
Kinoal'manakh "Molodost" (vipusk chetvyortiy).
Kinokontsert k 25-letiyu Krasnoy Armiyi.
Kirk delfina.
Kirk dushi.
Kirpihiki.
Kish i dva prtfelya.
Klad.
Kletka dlya kanareyek.
Klyatva Timura.
Klyuch bez prava peredachi.
Knyaz' Udacha Andreyevich.
Knyazhna Mary.
Ko mnye, Mukhtar!
KOAPP.
Kogda derevya bili bol'shimi.
Kogda nastupayet sentyabr'.
Kogda raskhoditsya tuman.
Kogda ya stanu velikanom.
Kogda zyemlya drozhit.
Kol'chuga velikogo Davida.
Kolibel'naya dlya brata.
Kolibelnaya dlya muzhchin.
Kollegi.
Kollezhskiy registrator.
Kolokol svyashchennoy kuzni.
Koloniya Lanfier.
Koltso iz Amsterdama.
Kolye Sharlotti.
Komandir stchastivoy shchuki.
Komandirovka.
Komediya davno minuvshikh dney.
Komediya o Lisistrate.
Komendant ptichyego ostrova.
Kometa.
Komitet devyatnadtsati.
Kommentariy k prosheniyu o pomolovaniyi.
Kommunist.
Kompositor Glinka.
Kompozitor Shostakovich.
Kompozitor Sviridov.
Komu na Rusi zhit'.
Konets deryagina.
Konets i nachalo.
Konets imperatora taigy.
Konets Lyubavinikh.
Konets operatsiyi "Rezident."
Konets polustanka.
Konets Sankt-Peterburga.
Konets Saturna.
Konets Staroy Beryozovki'.
Konets sveta.
Konets vechnosti.
Koney na perepravye ne manyayut.
Kontsert dlya dvukh skripok.
Kontsert-val's.
Konveiyer smerti.
Konyok-gorbunok.
Korabl' prishel'tsev.
Korabl'.
Korabli shturmuyut bastioni.
Korel' Leer.
Korol' manezha.
Korolevskaya regata.
Korona Rossiyskoy imperiyi.
Korona Rossiyskoy imperiyi ili sonova neulovimiye.
Korotkoye leto v gorakh.
Korpus generala Shubnikova.
Kortik.
Kosmicheskiy reis.
Kosolapiy drug.
Kostyor v beloy nochy.
Kot v meshkye.
Kotovskyi.
Krakh.
Krakh inzhenera Garina.
Krakh operatsiyi "Terror."
Krasavets-muzhchina.
Krasavitsa Kharita.
Krashniy galstuk.
Krasivo zhit' na zpretish.
Krasnaya palatka.
Krasnaya ploshchad'.
Krasniy chernozyom.
Krasniye kokokola.
Krasnoye i chornoye.
Kreiser "Veryag."
Kreitserova sonata.
Kremlyovskiye kuranti.
Krepkiy oreshek.
Krest i mauzer.
Krestyanskiy sin.
Krilya kholoda.
Krilya.
Kriminalniy kvartet.
Krotkaya.
Krug.
Krusheniye emirata.
Krutoye polye.
Kruzhevah.
Kshka l biznes.
Kto rasskazhet nebilitsu.
Kto silneye yego.
Kto stuchitsya v dver' ko mnye.
Kto tam?
Kto ti takoy?
Kto zaplatit za udachu.
Kubanskiye kazaki.
Kukla s millionami.
Kulkolka.
Kurier.
Kutuzov.
Kuvirok cherez golovu.
Kuznechik.
Larets Mariyi Medichi.
Lavina s gor.
Lebedev protiv lebedeva.
Lebedi.
Lebedinoye ozero.
Ledi Makbet Mtsenskogo uyezda.
Ledolom.
Ledyanoy dom.
Legenda.
Legenda o ledyanom serdtse.
Legenda o Tilye.
Lenin v 1918 godu.
Lenin v oktyabrye.
Lenin v Parizhe.
Lenin v Pol'she.
Leon Garros ishchet druga.
Lermontov.
Lestnitsa.
Letargiya.
Letniye sni.
Letyat zhuravli.
Lgushchiye bogu.
Lichnoye delo sudyi Ivanovoy.
Lichnoye delo.
Lider.
Liloviy shar.
Lisa.
Lishniy bilet.
Litso vraga.
Litsom k litsu.
Liven'.
Lnchnoye delo Anni Akhmatovoy.
Lobtsi gubok.
Loskutik i yabloko.
Lovkachi.
Luch smetri.
Lunnaya raduga.
Lunniye nochi.
Lyana.
Lyogkaya zhizn'.
Lyotchiki.
Lyubimaya devushka.
Lyubimaya zhenschchina mekhanika Gavrilova.
Lyubit' cheloveka.
Lyublyu. Zhudu. Lena.
Lyubov Yarovaya.
Lyubov' i golubi.
Lyubov' i nenavist'.
Lyubov' moya vechnaya.
Lyubov' moya, pechal' moya.
Lyubov' Orlova.
Lyubov' Serfima Frolova.
Lyubov' zemnaya.
Lyubov'—predvectiye pechali.

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Lyubovyu za lyubov'.
Lyubushka.
Lyudi i manekeni.
Lyudi i zveri.
Lyudi na mostu.
Lyudi na Nile.
Lyudi v okeane.
Lyudmila.
M.
Machekha.
Maiskaya noch ili Utoplennitsa.
Maiskiye zvyozdi.
Maksima perepelitsa.
Mal'chik i devorchka.
Mal'chik i los'.
Mal'chik s okrayini.
Mal'chiki.
Malen'kiy rizhik.
Malinovka i medved'.
Mama.
Mama vishla zamuzh.
Marionetki.
Marite.
Marka strani Gondelupi.
Mart-aprel'.
Marusina karusel'.
Mary Poppins, do svidaniya.
Mashen'ka.
Masoni.
Mat'.
Mat' Mariya.
Mat'i machekha.
Mater' chelovecheskaya.
Matros s "Kometi."
Matveyeva radost'.
Maya Plisetskaya—znakomaya i neznakomaya.
Mayakovskyi smeyotsya.
Mayor Vikhr.
Mechta.
Mechtateli.
Medniy angel.
Mednoy gori khozyaika.
Medoviy mesyats.
Medvezhya svad'ba.
Mekhanicheskiy predatel'.
Meksikanets.
Melodiyi beloy nochi.
Melodiyi Dunayevskogo.
Menyayu sobaku na parovoz.
Mesta tut tikhiye.
Metel'.
Mi iz dzhaza.
Mi iz Kronshtadta.
Mi russkiy narod.
Mi s Urala.
Mi s vami gde-to vstrechalis'.
Mi smerti smotreli v litso.
Mi vas lyubim.
Mi veseli, schastlivi, talantivi.
Mi za mir.
Mi zhili po sosedstvu.
Michman Panin.
Michurin.
Miliy, dorogoy, lyubimiy, yedinstvenniy.
Million priklyucheniy.
Mimino.
Mimo okon iddut poyezda.
Minin i Pozharskyi.
Minuta molchaniya.
Mir domu tvoyemu.
Mir Ulanovoy.
Mir v tryokh izmereniyakh.
Mir vkhodyashchemy.
Mishelovka.
Mishka na severye.
Mishka, Seryoga i ya.
Miss Mend.
Miss Millionersha.
Missiya v Kabule.
Mnogo shuma iz nichego.
Molchaniye doktora Ivensa.
Molitva Sergiyu.
Molodaya gvardiya.
Molodiye.
Molodiye kapitani.
Molodiye lyudi.
Molodo-zeleno.
Molodost's nami.
Moneta.
Monolog.
Monolog o Pushkine.
Moonzund.
More v ogne.
Moroka.
Morozko.
Morskiye rasskasi.
Morskoy kharakter.
Morskoy okhotnik.
Morye studyonoye.
Mosfilmu—50 let.
Moskva slezam ne verit.
Moskva v Oktyabrye.
Moskva—Cassiopeya.
Moskva—lyubov' moya.
Motilyok.
Moy dom—teatr.
Moy drug.
Moy izbrannik.
Moy laskoviy i nezhniy zver'.
Moy lyubimiy kloun.
Moy mladshiy brat.
Moy nezhno lyubimiy detektiv.
Moy papa-idealllist.
Moy pappa—kapitan.
Moy perviy drug.
Moya Anfisa.
Moyi universiteti.
Mramorniy dom.
Mumu.
Mushketyori dvadtsat' let spystya.
Muzh i doch Tamari Aleksandrovni.
Muzhiki!
Muzhskiye portreti.
Muzhskoy razgovor.
Muzikal'naya istoriya.
Muzikal'naya smena.
Myatezhnaya barrikada.
Myortviy dom.
Myortviy sezon.
Myortviye dushi.
Na boikom mestye.
Na dal'nem vostoke.
Na dne.
Na dorogakh voini.
Na gorye stoyit gora.
Na grafskikh razvalinakh.
Na granatovikh ostrovakh.
Na iskhode nochi.
Na krai sveta.
Na novom mestye.
Na okrayine, gde-to v gorode.
Na podmostkakh stseni.
Na pomoshch, bratsi!
Na puti k Leniny.
Na puty v Berlin.
Na Rusi.
Na semy vetrakh.
Na severe, na yuge, na vostoke, na zapade.
Na uglu Arbata i ulitsi Bubulinas.
Na voine kak na voine.
Na yasniy ogon'.
Na zavrtashney ulitse.
Na zlatom kril'tse sideli.
Nabat na rassvetye.
Nachal'nik.
Nachalo nevedomogo veka.
Nachalo.
Nachni s nachala.
Nad Tissoy.
Nadezhda i opora.
Nadezhda.
Nagradit' (posmertno).
Nakanunye.
Nakhalyonok.
Nakhlebnik.
Nakoval'nya ili molot.
Nam ne dano predugadat'.
Nam nekogda zhdat'.
Narodniye talanti.
Nas venchali ne v tserkvi.
Nash dom.
Nash obshchiy drug.
Nashe serdtse.
Nashestviye.
Nashi znakomiye.
Naslednitsa po pryamoy.
Nasledstvo.
Nasten'ka Ustinova.
Nastoyashchiy muhchina.
Navazhdeniye.
Ne bilo pechali.
Ne khochu bit' vzroslim.
Ne khoditye, dyevky, zamuzh.
Ne mozhet bit'!
Ne pokiday.
Ne stav'tye leshenu kapkani.
Ne strelyaite v belikh lebedey.
Ne uletay, Zemlyanin.
Nebesniy tihokod.
Nebesniye lastochki.
Nebival'schina.
Nebo I zemlja.
Nebo Moskvi.
Nebo so mnoy.
Nedopyosok Napoleon treity.
Negasimoye plamya.
Neilson 100%.
Neispravimiy lgun.
Neitral'niye vodi.
Neizvestniye stranitsi iz zhizni razvedchika.
Nemnogo ljubvi.
Neobichainiye priklyucheniya mistera vesta v strane bol'shevikov.

Neobiknovenniy gorod.
Neobiknovenniye priklyucheniya Karika i Valy.
Neobiknovennoye leto.
Neobiknovennoye priklyuheniye Mishky Strekatchova.
Neokonchennaya povest.
Neokonchennaya pyesa dlya mekhaniheskogo piaino.
Neoplachennoye pis'mo.
Neotpravlennoye pis'mo.
Nepobedimiy.
Nepoddayushchiyesya.
Nepodsuden.
Nepovtorimaya vesna.
Nepridumannaya istoriya.
Neprikayanniy.
Neproshennaya lyubov'.
Neskol'ko dnei iz zhini L. L. Oblomova.
Neskol'ko moyikh zhizney.
Nesovershennoletniye.
Net i da.
Neudobniy chelovek.
eulovimiye mstiteli.
Neveroyatniye prokluycheniya italyantsev v Rossiyi.
Nevesta.
Nevezhi.
Nezabivayemaya zhenshchina.
Nezabivayemiy 1919 god.
Nezhdanniy gost'.
Nezhdanno-negadanno.
Nezhniy vozrast.
Nezvanniy drug.
Ni slova o futbolye.
Nicolo Paganini.
Nihei.
Nikolai Bauman.
Nikolai Podvoiskiy.
Nizami.
No goryuy.
Noch bez miloserdiya.
Noch nad Chili.
Noch rozhdeniya.
Noch v sentyabre.
Nochnoy ekipazh.
Nochnoy gost.
Nochnoy patrul'.
Nochnoye proyisshestviye.
Normandia—Neman.
Noven'kaya.
Noviy Guliver.
Noviye pokhozhdeniya Shveika.
Noviye priklyucheniya kapitana Vrungelya.
Noviye priklyucheniya kota v sapogakh.
Noviye priklyucheniya neulovimikh.
Novoselye u bratsa krolika.
Novoye platye korolya.
Nye samiy udachniy den'.
Nyurkina zhizn'.
O bednom gusare zamolvite slovo.
O chyom molchala taiga.
O chyom ne uznayut tribuni.
O druzyakh-tovarishchakh.
O lyubvi.
O sport, ti-mir!
O strannostyakh sud'bi.
O, noche volshebnaya, polnaya negi.
Ob etom zabivat' nel'zya.
Obelisk.
Obeshchayu bit'!
Obida.
Obiknovenniy chelovek.
Obiknovenniy fashizm.
Obiknovennoye chudo.
Obyaseniye v lyubvi.
Ochen' strashnaya istoriya.
Ochen' vazhnaya persona.
Ochnaya stavka.
Odin iz nas.
Odinochnoye plavaniye.
Odinokim predostavlyayetsya obshhezhitiye.
Odnazhdi letom.
Odnazhi dvadtsat' let spustya.
Odnolyubi.
Ofitseri.
Ogaryova, 6.
Oglasheniyu ne podlezhit.
Oglyanis'.
Ognenniye vyorsti.
Ognennoye detstvo.
Ogni na rekye.
Ogon'kyi.
Oh uzh eta Nastya!
Ohen' sinyaya boroda.
Oinnadtsatiy patriarkh.
Okean.
Okhota na lis.
Okraina.
Oktyabr'.
Olenya okhota.
Ona s metloy, on v chyornoi shlyapye.
Ona vas lyubit.
Ona zaschishchayet rodinu.
Oni bili aktyorami.
Oni bili pervimi.
Oni ne poidut.
Oni shli na vostok.
Oni srazhalis' za Rodinu.
Oni vstretilis' v puti.
Oni zhivut ryadom.
Opasniye druzya.
Opasniye tropi.
Opasno dlya zhizni!
Opekun.
Operatsiya "Yl" i drugiye priklyucheniya Shurika.
Optimisticheskaya tragediya.
Orlyata Chapaya.
Os'minozhki.
Osen', Chertanovo.
Osen'.
Osenniye kolokola.
Osenniye korabli.
Osenniye svad'bi.
Oshibka inzhenera Kohina.
Oshibka rezidenta.
Oslinaya shkura.
Osobikh primet net.
Osobnyak Golobinikh.
Osobo vazhnoye zadaniye.
Osoboye podrazdeleniye.
Ossenniy marafon.
Ostanovilsya poyezd.
Ostavit' sled.
Ostayus' s vami.
Ostorozhno—Vasilyok!
Ostov sokrovishch.
Ostrov.
Ostrov Koldun.
Ostrov sokrovishch.
Osvobozhdeniye (film 1—Ognennaya duga).
Osvobozhdeniye (film 2—Proryv).
Osvobozhdeniye (film 3 Napravleniye glavnogo udara).
Osvobozhdeniye (film 4—Bitva za Berlin).
Osvobozhdeniye (film 5—Posledniy shturm).
Ot aimi do zimi.
Ot semi do dvenadtsati.
Ot tebya oni slyozi.
Ot zari do zari.
Ot zarplati do zarplati.
Otche nash.
Otchy dom.
Otello.
Otets i sin.
Otets Sergiy.
Otkritoye okno.
Otkritoye serdtse.
Otlkloneniye—nol'.
Otpusk v sentyabre.
Otroki vo vselennoy.
Otryad Trubatachyova srazhayetsya.
Otsi.
Otsi i dedi.
Otsi i deti.
Otstavnoy kozi barabanshchik.
Otvetniy khod.
Ovod.
Ozhidaniye.
Padal proshlogodniy sneg.
Padeniya Kondora.
Padeniye Berlina.
Padeniye dinastiyi Romanovikh.
Palata.
Palle—odin na svete.
Pamyat.
Pamyat' setdtsa.
Papirosnitsa ot Mossel'proma.
Parad planet.
Parashutisti.
Paren'iz nashego goroda.
Paren'iz taigi.
Parol' ne nuzhen.
Partiyniy bilet.
Passazhir s "Ekvatora."
Passkazhite skazku, doktor.
Passledovaniye.
Pastukh i tsar'.
Patsani.
Pavlukha.
Paznotsvetniye kamushki.
Pena.
Peppy—dinniy chulok.
Peraya konnaya.
Perekhodniy vozrast.
Perekhvat.
Perestupy porog.
Pervaya devushka.
Pervaya perchatka.

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Perviy den' mira.
Perviy eshelon.
Perviy kurier.
Perviy sneg.
Perviy trolleibus.
Perviy uchitel'.
Perviye radosti.
Perviye stranitsi.
Pervoklassnitsa.
Pervopechtnik Ivan Fyodorov.
Pervoye svidaniye.
Pesni molodosti.
Pesni morya.
Pesnya o Kol'tsove.
Pesnya rodnoy strani.
Pesnya tabunshchika.
Pesochniye chasi.
Peter Pan.
Petersburgskaya noch.
Petrovka, 38.
Petta.
Pikhod luni.
Piklyucheniya printsa Florizelya.
Pil' pod solntsem.
Pilayushchiy kontinent.
Piloti.
Pingvinyonok.
Pis'mo iz yunosti.
Pishka.
Plata za istinu.
Plenniki udachi.
Plikh i Plyukh.
Plokhoy khoroshiy chelovek.
Plyumbum ili opasnaya igra.
Po dannim ugolovnogo roziska.
Po doroge s oblakami.
Po glavnoi ulitse s orkestrom.
Po shchuchyemu veleniyu.
Po sledam fil'ma "Molodaya gvardiya."
Po sledam geroya.
Po sledu vlastelina.
Po sobstvennomu zhelaniyu.
Po tonkomu l'du.
Po trave bosikom.
Po zakonam voyennogo vremeni.
Po zakonu.
Pobeda.
Pobeda zhenshchini.
Pobeditel'.
Pochti nevidumannaya istoriya.
Pochti rovesniki.
Pod kupolom tsirka.
Pod odnim nebom.
Pod severnim siyaniyem.
Pod znakom odnorogoi korovi.
Podarok dlya slona.
Podaryonka.
Podkidish.
Podnyataya tselina.
Podranki.
Podrugi.
Podzhigateli.
Poema o more.
Poema of krilyakh.
Poet.
Pogranichniy pyos aily.
Pohkishcheniye.
Poka bezumstvuyet mechta.
Pokhishcheniye veka.
Pokhititely vodi.
Pokhozhdeniya zubnogo vracha.
Pokhozhhdeniya grafa Nevzorova.
Pokoleniye pobedieteley.
Pokrovskiye vorota.
Polevaya gvardiya mozzhukhina.
Polikushka.
Polin'—trava gor'kaya.
Polosa prepyatstviy.
Polosa vezeniya. Kinoalmanakh "Moloost."
Polosatiy reis.
Polovodye.
Polshchad' Vosstaniya.
Polustanok.
Polye pereity.
Polyot s kosmonavtom.
Polyushko-polye.
Pomni imya svoyo.
Ponedel'nik—den' tyazholiy.
Poprigunya.
Poputchik.
Porokh.
Portret madmuazel' Tarzhi.
Portret s dozhdyom.
Portret zheni khudozhnika.
Poruchit' generalu Nesterovu.
Poshchyochina, kotoroi ne bilo.
Poshekhonskaya starina.
Posiednij kontsert.
Posilayu vam pyesu.
Poslanniki vechnosti.
Posledniy attraktsion.
Posledniy dom.
Posledniy god.
Posledniy shans.
Posledniy tabor.
Posledniy vistrel.
Posledniye kanikuli.
Posledniye zaipi.
Poslednyaya doroga.
Poslednyaya dvoika.
Poslednyaya okhota.
Poslednyaya vstrecha.
Poslednyaya zhertva.
Posleslovive.
Poslye dozhdichka v chetverg.
Poslye togo, kak.
Posmotri mne v graza.
Posol Sovetskogo Soyuza.
Postaraisya ostat'sya zhivim.
Potomok Chingiz-Khana.
Potryasayushchiy Berendeyev.
Potseluy Mary Pikford.
Povest' o chelovecheskom serdtse.
Povest' o nastoyashchem cheloveke.
Povest' o neistovom.
Povest' o neyizvestnom aktyore.
Povest' plamennikh let.
Povorot.
Povtornaya svad'ba.
Poy pesnyu, poet..
Poyedinok.
Poyedinok v taige.
Poyezd idyot na vostok.
Poyezd v zavtrashniy den'.
Poyezdka v Visbaden.
Poyezdki na starom avtomobilye.
Pozdnyaya yagoda.
Pozovi myenya v dal' svetluyu.
Ppslednyaya noch.
Pravda leitenanta Kilmova.
Pravo na vistrel.
Pravo no prizhok.
Pravo pervoy podpisi.
Prazdnik neposlushaniya.
Prazdnik Svyatogo Yirgena.
Prazdniki detstva.
Predatel'.
Predatel'nitsa.
Predchuvstviye lyubvi.
Predel zhelanity.
Predisloviye k bitve.
Predsedatel'.
Predvaritel'noye rassledovaniye.
Preferans po pyatnitsam.
Premiya.
Prestupleniye i nakazaniye.
Prestupleniye Ivana Karavayeva.
Prestupleniye.
Prezhde, chem rasstat'sya.
Prezhdevremenniy chelovek.
Prezhevalskyi.
Prezumptsiya nevinivnosti.
Pri ispolneniyi sluzhebnikh obyazannostey.
Prichali.
Prigovoryonniy.
Prikaz: ogon' ne otkrivat'.
Prikaz: pereiti granitsu.
Prikazano vzyat' zhivim.
Prikhodi svobodnim.
Priklucheniya porosyonka Funtika.
Priklyuchaniya Kventina Dorvarda, strelka korolesvskoy armiyi.
Priklyucheniya Elektronika.
Priklyucheniya Krosha.
Priklyucheniya malen'kihk druzey.
Priklyucheniya malen'kogo papi.
Priklyucheniya Sherloka Holmes doktora Varsona.
Priklyucheniya sorvantsa.
Priklyucheniya Toli Klyukvina.
Priklyucheniya zheltogo chemodanchika.
Priklyucheniye stingrey.
Prilelal marsianin v osennyuyu noch.
Prilyuchaniya Travki.
Prinimayu na sebya.
Prints i nishchiy.
Prishla i govoryu.
Prishol sodat s fronta. .
Pristupit' k likvidatsiyi.
Prisvoyit' zvaniye gerova.
Prival stannikov.
Privideniye, kotoroye ne vozvrashchayetsya.
Priyezhaite na Baikal.
Priyezzhaya.
Prizhok na zarye.
Priznat' vinovnim.
Prizvaniye.
Pro chudesa chelovecheskiye.
Pro Dzhirtdana-verlikana.
Pro lyubov', druzhbu i sud'bu.
Probuzhdeniye.
Prodelki v starinnom dukhe.

Professiya—kinoaktyor.
Professiya—kompozer.
Proisshestviye v Utinoozyorske.
Prokhindiada ili beg na mestya.
Prolog.
Propal i nashelsya.
Propalo leto.
Propavshaya ekspeditsiya.
Propavshiye sredi zhivikh.
Propazha svidetelya.
Proschal'naya gastrol' "Artista."
Proshchai, shpana zamoskvoretskaya.
Proshchaniye.
Prosperity.
Prostaya istoriya.
Prosti menya, Alyosha.
Prosti.
Prosto devochka.
Prostoy sluchay.
Protsess.
Protsess o tryokh millionakh.
Proverka na dorogakh.
Pryamaya liniya.
Psevdonim "lukach."
Ptitsi nad gorodom.
Publikatsiya.
Pugalo.
Pust' on ostanetsya s nami.
Pust' ya umru, Gospodi.
Put' k medalyam.
Put' k prichalu.
Put' slavi.
Put' v "Saturn."
Put' v Daamask.
Puteshestvennik s bagazhom.
Puteshestviye.
Putyovka v zhizn'.
Puzir'ki.
Pyad' semli.
Pyadovoy Alexandr Matrosov.
Pyat' dney otdikha.
Pyat' dney, pyat' nochey.
Pyat' minut strakha.
Pyat' pokhishchennikh monakhov.
Pyat' vecherov.
Pyat'desyat na pyat'desyat.
Pyatnadtsatilentiy kapitan.
Pygmalion.
Pyotr Martynovich godi bolshoy zhini.
Pyotr Ryabinkin.
Pyutr perviy.
Pzatoye vremya goda.
Raba lyubvi.
Rano utrom.
Rasplata.
Rasskazy o Lenineh.
Rasstavaniya.
Rauskiye yablochki.
Ravnopraviye.
Raz na raz ne prikhoditsya.
Raz, dva—gorye ne beda!
Razborvhiviy zhenikh.
Razbuditye mukhina.
Razdumya.
Razershite vilet.
Razlom.
Razniye sud'bi.
Razorvanniy krug.
Razvlecheniye dlya starichkov.
Rebro Adama.
Rel'si gudyat.
Reportazh s liniyi ognya.
Respublika SHKID.
Retsept yeyo molodosti.
Revizor.
Ripkina lyubov'.
Ris' vozvrashchayetsya.
Rish—blagorodnoye delo.
Rishad—vnuk Zifi.
Rodina zovyot.
Rodini soldat.
Roditeley ne vibirayut.
Rodnaya krov'.
Rodnik.
Rodniye polusa.
Rodnya.
Rokovaya ozhibka.
Romans o vlyublyonnikh.
Romantiki.
Romeo i Julieta.
Romka, Fomka i Artos.
Roveshik veka.
Rozhdyonniye burey.
Rozigrish.
Rudin.
Ruf'.
Ruki vverkh!
Rus' iznachal'naya.
Ruslan i Lyudmila.
Russkiy les.
Russkiy suvenir.
Russkiy vopros.
Russkoye polye.
Rvaniye bashmaki.
Ryadom s vami.
Ryzhik.
S lyubimini ne rasstavaytes'.
S lyubovyu popolam.
S neba na zemluy.
S toboy i bez tebya.
S veselyem i otvagoy.
Sad zhelaniy.
Sadis' ryadom, Mishka!
Sadko.
Salamandra.
Salavat Yulayev.
Salon krasoti.
Saltanat.
Samaya obayatelnaya i privlekatelnaya.
Samiy krasiviy kon'.
Samiy posledniy den'.
Samiy zharkiy mesyats.
Samootverzhenniy zayats.
Sampo.
Santa-Esperansa.
Sasha vstupayet v zhizn'.
Sashka.
Schastivchik.
Schastliviy chrevonets.
Schastliviy reis.
Schastye.
Schitaite menya vzroslim.
Schlit i myech.
Schot chelovecheskiy.
Scjastilaya, Zhen'ka!
Sdayotsya kvartira s rebyonkom.
Sdelka.
Sed'moye nebo.
Sekret uspekha.
Sekretar' obkoma.
Sekretar' raikoma.
Sekretnaya missiya.
Sekunda na podvig.
Sel'skaya uchite'nitsa.
Sel'skiy vrach.
Sem' chasov do gibeli.
Sem' krikov v okeane.
Sem' nyanek.
Sem' stikhiy.
Sem'nevest yefreitora.
Semero smelikh.
Semero soldatikov.
Semeynoye schastye.
Semiklassniki.
Semnadtsat' mgnoveniy vesni.
Semya Ivanovikh.
Semya Oppengeim.
Semya Ulyanovikh.
SER (Svoboda eto ray).
Serafim Polubes i drugiye zhiteli zemli.
Seraya druga.
Serdtsa chetiryokh.
Serdtse byotsya vnov'.
Serdtse Korvalana.
Serdtse materi.
Serdtse Rossiyi.
Serebristaya pil'.
Serebryanniye Ozyora.
Serebryanniye trubi.
Serebryannoye rivue.
Seryozha.
Sestra muzikanta.
Severnaya povest'.
Severnaya rapsodiya.
Shag.
Shakhmatnaya goryachka.
Shakhtyori.
Shaltai-boltai.
Shans.
Shantazhist.
Shapka.
Shazka o starom Ekho.
Shazki Shekherezadi.
Shel chetvyortiy god voini.
Sherlock Holmes i Dr. Watson.
Shestoy.
Shestoye iyulya.
Shestviye zolotikh koney.
Shivorot-navivorot.
Shkol'niy bal's.
Shkola muzhestva.
Shkola zlosloviya.
Shli soldati.
Shlyapa.
Shol soldat s fronta.
Sholkovaya kistochka.
Shotormovoye preduprezhdeniye.
Shtorm na sushe.
Shtorm.
Shtrafnoy udar.
Shula sobaka po royalyu.
Shumniy dyen'.
Shura i Prosvirnyal.
Shurochka.

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Shut.
Shutki v storonu.
Shvatka v purge.
Shvedskaya spichka.
Sibiriada.
Sibirskaya atamanasha.
Sibiryachka.
Sibiryaki.
Sil'neye vsekh inikh veleniy.
Sin.
Sin polka.
Sinegoriya.
Sinyaya ptitsa.
Sinyaya tetrad'.
Sirano De Bererack.
Sishchik.
Skakal kazak cherez dolinu.
Skal'pirovanniy trup.
Skaz pro to, kak tsar' Pyotr arapa zhenil.
Skazaniye o zemie sibirskoy.
Skazhi sontsu: Da!
Skazka o poteryannom vremeni.
Skazka o tsare Saltane.
Skazka o volshebnom granate.
Skazka starogo Usto.
Skazka stranstviy.
Skazka-nebilitsi deda Yegora.
Skazky . . . skazky . . . skazky Starogo Arbata.
Skoriy poyezd.
Skorost.
Skveniy anekdot.
Skvorets i lira.
Skvoz' ogon.
Sladkaya zhanshchina.
Sledopit.
Slepoy muzikant.
Slomannya podkova.
Slon i veryovochka.
Slovo dlya zashchiti.
Sluchai na mel'nitse.
Sluchai na shakhte 8.
Sluchai s Polininim.
Sluchai v kvadrate 36–80.
Sluchai v taige.
Sluchai y vulkane.
Sluchainaya vstrecha.
Sluga.
Sluga dvukh gospod.
Slushaite!
Slushaite, na toy storone.
Sluzhebniy roman.
Sluzhili dva tovatishcha.
Slyozi kapali.
Smeliye lyudi.
Smert' na vslyote.
Smertniy vrag.
Smeshniye lyudi.
Smotri v oba.
Smyateniye chuvstv.
Snezhnaya koroleva.
Snezhnaya skazke.
Sobaka Baskerviley.
Sofia Perovskaya.
Sointse svetit vsyem.
Sokhranit' gorod.
Sokolovo.
Sokrovishcha Agri.
Soldat Ivan Brovkin.
Soldati svibidi.
Soldati.
Solnechniy veter.
Solnechnye dni.
Solntse v karmane.
Solntse, snova solntse.
Solo dlya slona s orkestrom.
Solovey.
Solyaris.
Solyoniy pyos.
Sombrero.
Sonata.
Sopbstvennoye mneniye.
Sopernitsi.
Sorok dney bez voyni.
Sorok perviy.
Soroka-vorovka.
Sotrudnit Chk.
Souchastiye v ubiystve.
Souchastniki.
Sovershenno seryozno.
Sovest'.
Sovsem propashchiy.
Spartak.
Spasatel'.
Spasitye nashi dushi.
Spasitye utopayushchego.
Spasyonnomu—ray.
Spasyonnoye pokoleniye.
Spokoiniy den' v kontse voini.
Spokoistviye otmenyayetsya.
Sport, sport, sport.
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Spyashchaya krasavitsa.
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Srochniy vizov.
Srochno . . . sekretno . . . GUBChKa.
Srok davnosti.
SSSR glazami Italyantsev.
SSSR s otkritim serdsem.
Ssuda na brak.
Stachka.
Stalingrad.
Stalingradskaya bitva.
Stalker.
Stanitsa dal'nyaya.
Staraya azbulka.
Staraya, staraya, skazka.
Starets Vasilyi Gryaznov.
Starik Khottabich.
Stariki-razboiniki.
Starinniy vodevil'.
Stariy dom.
Stariy kuvshin.
Stariy nayezdnik.
Stariy znakomiy.
Stariye dolgi.
Stariye steni.
Staromodnaya komediya.
Staroye i novoye.
Starshaya sestra.
Starshina.
Starshiy sin.
Stazhor.
Steklyaniy labirint.
Steklyanniy glaz.
Steklyanniye busi.
Step'.
Stepan Razin.
Stepnaya eskadrilya.
Stepniye zori.
Stidno skazat'.
Sto dnei posle detstva.
Sto gram dlya khrabrosti.
Sto sluchilos' v militsiyi.
Stoyanka tri chasa.
Strakh visoti.
Strannaya istoriya doktora Dzelika i mistera Haida.
Strannaya zhenshchina.
Strannik.
Stranniye lyudi.
Stroitsya most.
Stryapukha.
Stseni iz semeynoi zhizni.
Stuchis' v lyubuyu dver'.
Stuk v dver'.
Sud.
Sud chesti.
Sud sumasshedshikh.
Sud'ba barabanshchika.
Sud'ba cheloveka.
Sud'ba rezidenta.
Sud'ba.
Sumka inkassatora.
Sunduk.
Suprugi Orlovi.
Suvorov.
Suyeta suyet.
Svad'ba.
Svad'ba s priannim.
Svad'ba v Maliinovke.
Svertstnitsi.
Svet dalyokoy zvesdi.
Svetliy put'.
Svictat' vsekh naverkh.
Svidaniye s molodostyu.
Svinarka i pastukh.
Svobodnoye padeniye.
Svoy.
Svoy sredi chuzhikh, chuzhoy sredi svoyikh.
Svoya golova na plechakh.
Svoyimi rukami.
Syostri.
Syuda ne zalitali chaiki.
Syuzhet dlya dvukh rasskazov.
Syuzhet dlya nebol'shogo rasskaza.
Tabachniy kapitan.
Tabor ukhodit v nebo.
Taina "Chyornikh drozdov."
Taina gornogo podzemelya.
Taina vechnoy nochi.
Taina villi "Greta."
Taina zapisnoy knizhki.
Taina zolotogo bregeta.
Tainaya progulka.
Taini semyi de Granshan.
Tainstvennaya stena.
Tainstvenniy monakh.
Tak nachinalas' legenda.
Tak zhit' nel'zya.
Takaya zhestokaya igra—khokkei.
Takiye visokiye gori.

Takiye zhe kakmi!
Takoy bol'shoy mal'chik.
Taktika bega na dlinnuyu distantsiyu.
Talanti i poklonniki.
Talisman.
Talisman lyubvi.
Tam' gde dlinnaya zima.
Tam, gde nas nyet.
Tam, za gorizontom.
Tamozhnya.
Tan'ka-traktirshchitsa.
Tanets dyavola.
Tankisti.
Tansploshchadka.
Tantsi na krishe.
Tasskaz neizvestnogo cheloveka.
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Ten'.
Territoriya.
Theatr.
Ti i ya.
Ti inogda vspominay.
Ti mnye—ya tyebye.
Ti moy vostorg, moyo muchenye.
Tikhiy don.
Tikhiye vodi gluboki.
Timur i yego komanda.
Tishina.
To leave a mark.
Tochka, tochka, zapyataya.
Tol'ko tri nochi.
Tommy.
Torgovka i poet.
Torgovtsi slavoy.
Torpedonostsi.
Tour Istael (Aguzarova meets Bravo).
Tovarishch general.
Tovatishch Arsenyi.
Tragediya.
Traktir na Pyatnitskoy.
Traktoristi.
Trener.
Tretiy taim.
Tretya meshchanskaya.
Tretye pokoleniye.
Trevozhniy vilyet.
Trevozhnoye voskresenye.
Tri dnya Victor Tchernyshova.
Tri plyus dva.
Tri sestri.
Tri sinikh ozera malinovogo tsveta.
Tri solntsa.
Tri topolya na Plyushchikhe.
Tri tovarshcha.
Tri vremeni goda.
Tri vstrechi.
Tridtsat' tri.
Trin—Trava.
Trinadtsat'.
Trizhdi voskresshiy.
Tropi Altaya.
Troye.
Troye na shosse.
Troye s odnoy ulitsi.
Troye v lodke ne schitaya sobaki.
Troye vishli iz lesa.
Trudnoye schastye.
Tryam, zdravstvuyte!
Tryasina.
Tsarevich Prosha.
Tsel' yego zhizni.
Tseluyutsya zori.
Tsement.
Tsena bistrikh sekund.
Tsentrovoi iz podnebesya.
Tsepnaya reaktsiya.
Tsigan.
Tsiganskoye schastye.
Tsirk.
Tsirkachonok.
Tsveti zapozdaliye.
Tuchi nad Borskom.
Tuman iz Londona.
Tunnel.
Tvoy sovremennik.
Tvoya bol'shaya sibir'.
Tye, kotoriye prozreli.
Tyema.
Tyeper' pust' ukhodit.
Tyoplaya kompaniya.
Tyuk.
U Krutogo Yara.
U matrosov net voprosov.
U nas na zavode.
U nikh yest' Rodina.
U opasnoy cherti.
U ozera.
U samogo sinego morya.
U tikhoi pristani.
U tvoyego poroga.
Ubit' drakona.
Ubiystovo na ulitse Dante.
Ubiytsi vakhodyat na dorogu.
Uchenik lekarya.
Uchitel'.
Uchitel' tantsev.
Udachi van, gospoda.
Udivitel'naya bochka.
Uh ti, govoryashchaya riba.
Ukhodya-ukhodi.
Ukradenniy poyezd.
Ukroshcheniye ognya.
Ukroshcheniye stroptivoy.
Ukrotitel'nitsa togrov.
Ulibnis', rovesnik!
Umirat' ne strashno.
Umnaya sobachka Sonya.
Unikum.
Unizhenniye l oskorblyonniye.
Ura! U nas kanikuli.
Uragan prikhodit neozhidanno.
Urok istoriyi.
Urok literaturi.
Urok zhizni.
Usatiy nyan'.
Ushchelye Altamasov.
Uspekh.
Utenniy obkhod.
Utenniye poyezda.
Utoli moyi pechali.
Utomlyonoe solntse.
Utro bez otmetok.
Utro obrechonnogo priyiska.
Uvol'neniye na bereg.
Uzniki Yamagiri-Maru.
V chetverg i bolshe nikogda.
V den' prazdnika.
V dobriy chas!
V gorakh Yugoslaviyi.
V gorod vkhodit' nel'zya.
V kvadrate 45.
V lazorevoy stepi.
V mire tantsa.
V Moskve proyezdom.
V moyey smerti proshu vinit Klavu K.
V nachale veka.
V nachalye igri.
V nebye "nochniye e'mi."
V noch na novoluniye.
V odno prekrasnoye detstvo.
V ogne broda nyet.
V ozhidaniyi chuda.
V poiskakh kaitana Granta.
V poiskakh radosti.
V poslednyuyu ochered.
V prazdnichniy vecher.
V rasputitsu.
V shest' chasov vechera posle voiny.
V stepnoy tishi.
V styepi.
V tilu vraga.
V trudniy chas.
V tvoykh rukakh zhizn.
V yedinom stroyu.
V zone osobogo vnimaniya.
Vakansiya.
Valentin i Valentina.
Valentina.
Valera.
Vam chto, nasha vlast' ne nravitsya?
Vam i nye snilos'.
Vampiri Geoni.
Van'ka-vstan'ka.
Vardevar--prazdnik roz.
Variant "Zombi."
Vas ozhidayet grazhdanka Nikanorova.
Vasilisa Prekrasnaya.
Vasilyi Buslayev.
Vasilyi i Vasilisa.
Vasilyi Surikow.
Vassas.
Vasyok Trubatchyov i yego tovarishchi.
Vchera, segodnya i vsegda.
Vechera na khutorye bliz Dikan'ki.
Vecherniy labirint.
Ved'ma.
Velikiy samoyed.
Velikiy uteshitel'.
Velikiye golorantsi.
Velikliy voyin Albaniyi Skanderbeg.
Velikly put'.
Velikolepniy gosha.
Ver'te mnye, lyudi.
Vera.
Vera i Anfisa znakomyatsya.
Vera, Nadezhda, Lyubov.
Vernimi ostanemsya.
Verniye druzya.
Vernost' materi.

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Veroy i pravdoy.
Versiya polkovnika Zorina.
Veruyu v lyubov'.
Veruyu v radugu.
Vesenniy priziv.
Vesenniye golosa.
Vesennya olimpiada, ili Nachal'nik khora.
Vesinniy potok.
Vesna.
Vesna na odere.
Vesyolaya kanareika.
Vesyoliye istoriyi.
Vesyoliye rasplyuyevskyie dni.
Vesyoliye rebyata.
Vesyoliye zvyozdi.
Veter.
Vetyer "Nadezhdi."
Vetyer stranstviy.
Vezuchaya.
Vi mne pisali.
Vibor.
Vibor tseli.
Victor Vasnetsov. Vospominaniya.
Vid na zhitelstvo.
Vihkri vrazhdebniye.
Vikup.
Virineya.
Virita zastupom yama glubokaya.
Vishnyoviy omut.
Visokosniy god.
Visokoye zvaniye.
Visota.
Vistral v tumane.
Vistrel.
Vistrel v spinu.
Vitya glushakov—drug apachey.
Viyigrish odnogo kommersanta.
Vizit dami.
Vizit k minotavru.
Vizit verhivosti.
Vkus khalvi.
Vladivostok, god 1918.
Vlast' Solovetskaya.
VlyublIyon po sobstvennomu zhelaniyu.
Vlyudyakh.
Vnimaniye! Vsyem postam.
Vnimaniye: cherepahka.
Vo imya rodini.
Voichonok sredi lyudei.
Vokzal dlya dovikh.
Volga-Volga.
Volnitsa.
Volniy veter.
Volshebnaya laka.
Volshebnaya serna.
Volshebnoye zerno.
Vooruzhen i ochen' opasen.
Vorobey na l'du.
Vorota v nebo.
Vos'moye chudo sveta.
Vosemnadtsatiy god.
Voskhozhdeniye.
Voskreseniye.
Vosokaya nagrada.
Vospitaniye zhestokosti u zhenshchin i sobak.
Vosstaniye ribakov.
Vozdushnaya pochta.
Vozdushniy izvozchik.
Vozle etikh okon.
Vozmezdiye.
Voznesen iye.
Vozvracheniye Khadzhi Nasreddina.
Vozvrashcheniye "Svyatogo Luki."
Vozvrashcheniye Budulaya.
Vozvrashcheniye chuvstv.
Vozvrashcheniye k zhizni.
Vozvrashcheniye rezidenta.
Vozvrashcheniye vasiliya Bortnikova.
Vozvrata net.
Vperedi dyen'.
Vperviye zamuzhem.
Vragi.
Vratar.
Vrazhyi tropi.
Vremya i semya Konvey.
Vremya letat.
Vremya letnikh otpuskov.
Vremya otykha s subboti do ponedel' nika.
Vremya schastilikh nakhodok.
Vremya sinovey.
Vremya zhelaniy.
Vremya, vperyod!
Vsadnik bez golovi.
Vsadnik na zolotom konye.
Vsadnik nad gorodom.
Vsadnik s molniyei v ruke.
Vsem spasibo.
Vspominaya Ranevskuyu.
Vstrecha na Elbe.
Vstrechi na rassvete.
Vstrechi s Igorem Ilyinskim.
Vstupleniye.
Vsyo delo v bratye.
Vsyo dlya vas.
Vsyo nachinayetsya s dorogi.
Vsyo naoborot.
Vsyo ostayotsya lyudyam.
Vtoroy raz v Krimu.
Vyi.
Vzbesivshiysya avtobus.
Vzlyot.
Vzorvanniy ad.
Vzrosliy sin.
Vzrosliye deti.
XX vyek zakanchivayetsya.
Ya kupil papu.
Ya nauchu vas mechtat'.
Ya sdelal vsyo, chto mog.
Ya shagayu po Moskve.
Ya slyzhil v okhrane Stalina ili opit dok. mifologiyi.
Ya soldat, mama.
Ya tebya nikogda ne zabudu.
Ya v polnom poryadke.
Ya vas dozhdus'.
Ya vas lyubil.
Ya yego nevesta.
Ya za tebya otvechayu.
Ya—Kuba.
Ya—Tyanshan.
Yabloko razdora.
Yad.
Yaguar.
Yaroslav Dombrovskyi.
Yaroslavna, the Queen of France.
Yedinstvennay.
Yedinstvennaya doroga.
Yedokiya Rozhnovskaya.
Yegor Bulychev i drugiye.
Yegorka.
Yekaterina Voronina.
Yel'.
Yelovoye yabloko.
Yemelyan Pugachev.
Yeshcho lyublyu, yeshcho nadeyuss'.
Yeshcho moshno uspet'.
Yeshcho raz pro lyubov'.
Yesi bi ya bil nachal'nikom.
Yesli eto sluchitsya s toboy.
Yesli khochesh bit' schastivim.
Yesli ti muzhchina.
Yesli ti prav.
Yesli zavtra bila voina.
Yest' ideya!
Yevdokiya.
Yevgeniy onegin.
Yevgeniy Urbansky.
Yevgeniya Grande.
Yevreyskoye schastye.
Yevropeyskaya istoriya.
Yeyo put'.
Yim pokoryayetsya nebo.
Ykov Sverdlov.
Yolki-Palki.
Yubiley.
Yuliya Vrovskaya.
Yunga severnogo flota.
Yuniye kommunari.
Yunost' komandirov.
Yunost' masksima.
Yunost' nashikh ottsov.
Yunost'.
Za devyat' let do kontsa voini.
Za oblakami—nebo.
Za pretnaya zona.
Za spichkami.
Za vitrinoy univermaga.
Za vlast' Sovyetov.
Za vsyo v otvete.
Za yavnim preimushchestyom.
Zabavi molodikh.
Zabitaya melodiya dlya fleiti.
Zacharovannaya desna.
Zacharovannaya vesna.
Zachitnik sedov.
Zagadka endhauza.
Zagadka Kal'mana.
Zagadochniy naslednik.
Zagon.
Zagovor obrechyonnikh.
Zaklyuchyonnive.
Zakon.
Zakon zhizni.
Zakonniy brak.
Zakritiye sezona.
Zakroishchik iz Torzhka.
Zamurovanniye v steklye.
Zapasnoy aerodrom.
Zapasnoy igrok.
Zapiski pirata.
Zapomnitye ikh litsa.
Zarye navstrechyu.
Zasekrechenniy gorod.

Zastava Ilyitcha.
Zastava v gorakh.
Zatyanuvshiysya ekzamen.
Zaveshchaniye doktora douelya.
Zaveshchaniye.
Zavtra bila voyna.
Zavtrak u predvoditelya.
Zdes' mogot vodit'sya tigri.
Zdes', na moyey zemie.
Zdravstvuitye, ya vasha tyotya.
Zdravstvuy i proshchai.
Zdravstvuy, Moskva.
Zdravstvuy, ryka.
Zdravstvuytye, dety!
Zechem cheloveku krilya.
Zeena, Zinulya.
Zelyoiy ostrov.
Zelyoniy furgon.
Zelyoniy ogonyok.
Zelyoniye tsepochki.
Zemlya i luydi.
Zemlya Sannikova.
Zemlya v plenu.
Zemlya, do vostrebovamiya.
Zemlyaki.
Zemlyanichniy dozhdik.
Zenikh s togo sveta.
Zerkalo.
Zharkoye leto v Kabule.
Zhazhda nad ruchyom.
Zhdi menya.
Zhelayu uspekha.
Zheleznіy potok.
Zhena.
Zhena kerosinchchika.
Zhena predrevkoma.
Zhena ushla.
Zhenatiy kholostyak.
Zhenit'ba.
Zhenit'ba Bal'zaminova.
Zhenit'ba Balzaminova.
Zhenshchina.
Zhenshchina, kotoraya poyot.
Zhenskaya astrologiya.
Zhenskiye radosti.
Zhenya, Zhenechka, and Katyusha.
Zhestokiy romans.
Zhestokost'.
Zhiboy trup.
Zhil otvazhniy kapitan.
Zhila-bila devochka.
Zhili-ili starik so starukhoy.
Zhit' po-svoyemu.
Zhiteyskoye delo.
Zhivaya glina.
Zhivaya raduga.
Zhivite v radosti.
Zhiviye i myortviye.
Zhivoy trup.
Zhivyot takoy paren'.
Zhizn' i smert' Ferdinanda Lyusa.
Zhizn' moya—armiya.
Zhizn' na greshnoy zemlye.
Zhizn' po limitu.
Zhizn' posle smerti.
Zhizn' prekrasna.
Zhizn' proshia mimo.
Zhizn' snachala.
Zhizn'odna.
Zhrebiy.
Zhukovskyi.
Zhuravl' v nebe.
Zhuravushka.
Zhurnalist.
Zigzag udachi.
Zimnyaya skazka.
Zimnyaya vishnaya.
Zinmiy vecher v Gagrakh.
Zlovrednoye voskresenye.
Zloy dukh Yambuya.
Zmeyelov.
Znamenitiy i iskusneishiy Matvey Kazakov.
Zodchiy Moskvi Osip Bove.
Zolotaya rechka.
Zolotiye vorota.
Zolotiye yabloki.
Zoloto.
Zolotoy dom.
Zolotoy eshelon.
Zolotoy klyuchik.
Zolotoy telyonok.
Zolotoye ozero.
Zolushka.
Zontik dlya novobrachnikh.
Zori parizha.
Zoya.
Zudov, vi uvoleni!
Zvezda ekrana.
Zvezda i smert' Khoakina Murieti.
Zvezda nadezhdy.
Zvezda plenitel'nogo schastya.
Zvezdopad.
Zvonyat, otkroite dver'!
Zvyozdniy inspektor.
Zvyozdniy mal.
Zvyozdy i soldaty.
Zvyozdy ne gasnut.
Zvyozdy vstrechayutsya v Moskve.
Riverside Productions, Ltd.
The first of the few.
Rolnikaite, Maria.
Ya dolshna rasskazat.
Rosas Films, SA.
Ambicion sangrienta.
El amor llego a Jalisco.
El angel de la traicion.
El asalto.
El asesino enmascarado.
La banda del automovil gris.
La banda del fantasma negro.
La barranca de la muerte.
Chicas casaderas.
El cocinero de mi mujer.
Cuando el diablo sopla.
Cuatro hombres marcados.
La fierecilla del puerto.
El Gavilan Vengador.
La guarida del buitre.
La huella del chacal.
La justicia del Gavilan Vengador.
Los laureles.
La ley del Gavilan.
La maestra inolvidable.
La maldicion del oro.
La mancornadora.
La mano de Dios.
Me dicen el cantaclaro.
Los muertos no hablan.
Nos lleva la tristeza.
Pa'que me sirve la vida.
La pantera negra.
El pueblo del terror.
Quiero vivir.
El rancho de la discordia.
El rayo justiciero.
El rostro de la muerte.
La sierra del terror.
Sol en llamas.
Yo el aventurero.
Saito Koichi Productions. SEE Art Theatre Guild of Japan Co., Ltd. & Saito Koichi Productions.
Salomon (Charlotte) Foundation.
Leven? of theater?
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Tarthr wedding dance (1937).
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minor, for symphony orchestra and chorus, op. 22.
Three songs of revolutionary Cuba, op. 73, for voice and piano.
Trio pour clarinette, violon et piano.
Tsar korikh.
Schubert, Bernard L.
The man who watched trains go by.
Schuetz, Alfred.
Czerwone maki na Monte Cassino.
Dorotka.
Warszawo!
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Serraillier, Anne.
Ahmet the woodseller.
The ballad of Saint Simeon.
Beowulf the warrior.
The Bishop and the devil.
The challenge of the green knight.
Chaucer and his world.
The clashing rocks.
Creatures.
The crooked man.
The enchanted island.
A fall from the sky: the story of Daedalus.
First foot.
Flight to adventure.
Florina and the wild bird.
The Franklin's tale.
Going steady.
The Gorgon's head.
Havelok the dane.
Heracles the strong.
The ivory horn.
Marko's wedding.
The mouse in the wainscot.
My kitten (Miss Tibbles).
A pride of lions.
A puffin quartet of poets.
Robin and his merry men.
Robin in the greenwood.
Suppose you met a witch.
The tale of the three landlubbers.
There's no escape.
The turtle drum.
Two rhymes.
The way of danger.
SGAE. SEE Sociedad General de Autores y Editores (SGAE).
Sindicato de Trabajadores Tecnicos y Mauales de Estudios y Laboratorios de la Produccion Cinematografica S.Y.C. de la Re.
Corazon de nino.
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Sociedad General de Autores y Editores (SGAE).
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A mi novio no le gusta.
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De Miami a Chicago.
De nina aquellos juegos.
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Eclipse de luna.
Ecos de machado.
Ecos primaverales.
Educando a papa.
Edurne.
Einstein.
Ejercicios de terror.
Elephants ivres.
Eligeme a mi.
Elisa.
Elisa vida mia.
Elizabeth.
Ella aparecio un atardecer.
Ella ellos y la ley.
Ella tu y yo.
Ella y tu.
Ellos dos.
Elvis la pelvis.
Emigrado.
Emigrantes Almontenos.
Emma.
En Andalucia nacio el amor.
En broma.
En cada instante solo tu.
En el cami.
En el cuarenta y nueve.
En el jardin de la noche.
En el juego de tu amor.
En el medio de los dos.
En el oeste se puede hacer amigo.
En el quicio de mi puerta.
En el Rocio.
En el viejo Buenos Aires.
En este mundo frio.
En estos dias.
En la frontera.
En la fuente del querer.
En la planta 14.
En la red.
En San Juan.
En un asilo.
En un cuartel de milicias.
En un pueblo de castilla.
El enano saltarin.
Encuentro.
El enemigo brutal.
Enganame orta vez.
El engano.
L'enigma de L'estel.
Ensayo general para un siglo de oro.
La ensena.
Ensenar a un sinverguenza.
Entre dos amores.
Entre tu y yo.
Las entretenidas.
Epitafio para Joaquin Pasos.
La era esta pariendo un corazon.
Era que no era un principe azul.
Era.
Eramos de nuestra America.
Erase una vez el and dos mil.
Erase una vez.
Eres tu mi amor.
Es demasiado tarde.
Es fa llarg es fa llarg esperar.
Es muy duro ser una chica Bond.
Es pecado pero me gusta.
Es rubia el cabello suelto.
Es tu pais.
Es una fiera.
Es usted mi padre.
Esa balada de amor.
Esa leyenda.
Esa pareja feliz.
Esas sensaciones.
Escala en Tenerife.
Escalofrio.
Escampla neblina.
Escandalo.
Escribeme tu nombre.
Escuadra hacia la muerte.
Ese dia llegara.
Ese estupido que llama.
Ese ninato se cree.
Ese panuelito blanco.
Eso no es amor.
Espacio sagrado.
Espana debe saber.
Espana en marcha.
Espana sabor 82.

Espana siglo XX.
Espanola abanicame.
Espejo desierto.
Espera.
Esperame.
Esperando el 19.
Esperanza de Triana.
La esperanza.
Espontaneo.
Esta noche me quiero descolgar.
Esta noche quiero brandy.
Esta primavera Vi.
Estaba distraida.
Estaba el senor Don Gata.
Estambul 65.
Estampas.
Estanquera de Vallecas.
Estas jugando con mi amor.
Estas lejos.
Este verano estoy muy bien acompanado.
Esto no es una cancion.
Esto no es una elegia.
Estrella.
Estrella mia.
La estrella perdida.
Estrellas a mis pies.
Un estudiante a una nina.
Estudio amueblado 2 p.
Estudio loco.
Estudio sin luz.
Estudios.
Eternamente amor.
Eterno secreto.
Eterno tuy.
Eugenia de Montijo.
Europa canta.
Europa ha muerto.
Euskadiko ereserkia.
Existen.
Extrano mundo del profesor.
Los extremenos se tocan.
Fabula de los tres hermanos.
Falso amigo.
Fama del tartanero.
La fama del tartanero.
La familia la propiedad privada y el amor.
Familia Marti.
Fandango y la Jarana.
Fandangos de huelva.
Los fanfarrones.
Fango.
Fantasia amorosa.
Fantasia ciclica en tres movimientos.
Fantasia en scala.
Los fantasmas.
Fantastico mundo del Dr. Coppelius.
Farola de Santa Cruz.
Favareta.
Fea y congracia.
Federica de Bramante.
Fedra West.
Felices pascuas.
Felices vacaciones.
La felicidad.
Felicidades.
Feria en Sevilla.
La festa.
El festin de Baltasar.
Festival en Benidorm.
Fet a posta.
Fiel conserje.
Fierecilla domada.
La fiesta de los cantantes.
Fiesta en Benidorm.
Fiesta en la caleta.
Fiesta en la playa.
Fin de un largo viaje.
Final de viaje.
Find the cool line.
Fins que cal dir se adeu.
Los flamencos.
Flor roja.
Floreal.
Las flores de tu apellio.
Flores del miedo las.
Folias parranderas.
Ford Garantias.
Fortunata y Jacinta.
Fortunato.
Fox del clarinete.
Francisco Guayabal.
Francisquita la Maleva.
Francotirador.
Frente a palacio.
Frontera al sur.
Fruta madura.
Los frutos de El Dorado var I.
Los frutos de El Dorado var II.
Los frutos de El Dorado var III.
Los frutos Del Dorado.
Fue tu nombre.
Fuenlabrada 2 1.
Fuente magica.
Fuimos un grupo vigues.
Fulano y Mengano.
Fumancho y el beso de la muerte.
Furia del hombre lobo.
Fusil contra fusil.
Gabriel de Espinosa.
Gabriel y Galan.
El gaitero de Gijon.
Un galan norteamericano.
El galgo.
Galicia de mis amores.
Galicia sitio distinto.
Galicia sitio distinto 1 parte.
Gallardo Espanol.
Gallego.
Ganas de renir.
Un ganster llegao de Brooklin.
Garbanza negra que en paz descanse.
El garrotin.
Gaseosa revoltosa.
Gasolina.
Gato con botas.
Gaur Belenera.
Los gavilanes.
La gaviota.
Gemelas de teaatro.
Generaciones.
La generala.
El genio alegre.
Gente sin importanica.
Geraldine.
Geyper juegos reunidos.
Gigantes y cabezudos.
Gigantes.
Giron preludio.
Gitana gitana.
Gitana y el charro.
Una gitana.
Gitano moro.
Gloria.
Golde de mano.
El golfo.
Gorilas bailarines.
Una gota de sangre para moria amando.
Goya.
Grado treinta y tres.
Un gran amor.
Gran aventura de los gnomos.
Gran Final.
Un gran hombre.
El gran minue.
Gran Via.
La gran via.
Granada mia.
En Granada.
Granadeno.
Grandes amigos.
Graziella.
El grillo.
Gringo.
Gris.
Gritos en la noche.
Gritos y susurros.
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La guapa.
Guardafronteras primera.
Guardando fronteras.
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La guerra empieza en Cuba.
Guerrilleros.
Guillermo Hotel.
Guillermo Tell tiene los ojos tristes.
Guitarra.
La guitarra.
Guitarra mia.
Gutemberg.
Habanera imposible.
Habaneras de Sevilla.
Habitacion para tres.
Hala Madrid.
Hamelin.
Hare un lecho de algas.
Harem.
Hasta el dia en que vuelva.
Hasta manana.
Havemos de voltar.
Hay amores.
Hay que bailar.
Hay que rimar.
He mirat aquesta terra.
Hechizo.
Un hecho violento.
Heil Hitler.
Hemeroscopium.
Herbania.
Hermano bebe.
Hermanos Reyes.
Heroes de la Union Sovietica.
Heroes del patibulo.
Heroes el 36.
Hicieron partes.

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Hija de Juan Simon.
Hija de Pepa Cale.
Hija del capitan.
Hijo que vas creciendo.
Hijos de.
Hijos del dia y de la noche.
Himno a Valencia.
Himno al sol.
Himno galego.
Himno regional.
Hipnosis.
Una historia de amor.
Historia de la humanidad.
Historia de un adulterio.
Historia de una chica sola.
Historia de una muneca abandonada.
Historias intimas del paraiso.
Histories.
Ho Chi Min.
Hoja roja.
Hola manocete.
Hollywood.
Hombre de la oreja rota.
El hombre de Maisinicu.
Hombre de Rio Malo.
Hombre del seiscientos.
Hombre del valle maldito.
Hombre preso que mira a su hijo.
Hombre que supo amar.
Hombre que vas creciendo.
Un hombre se levanta.
Hombre solitario.
El hombre y la tierra.
Un hombre y una mujer.
El hombrecito.
Home dibuixat L.
Homenaje a la Seguidilla.
Homenaje a sor.
Hora de partir.
Horas de ronda.
Una horita antes.
Hot sun.
Hoy es mi dia.
Hoy es un dia especial.
Hoy la vi.
Hoy llego la primavera.
Hoy me voy.
Hoy mi deber.
Hoy no quiero estar lejos de la casa y el arbol.
Hoy para mi.
Huellas.
Huellas que se van.
Hueso.
El huesped del sevillano.
La huevera la lechera y la pollera.
I beg your pardon.
I come for you.
I need somebody to love tonight.
El ibas con.
Idiota.
Illeta.
Imaginate.
Immensidad.
Inca taqui.
El inclusero.
Indesinenter.
Indianapolis.
Indiferencia.
Indulto.
Infants.
Los infieles.
Inici de campana.
Inici de Cantic en el temple.
Inocentes.
Inor ezda.
Las insaciables.
Insula barataria.
Intentalo.
Los intereses creados.
Invitation au voyage.
Iparragirre tar Joshe Ma.
Irene.
Ironia del dinero.
Irresistible Mister Pink.
Isa.
Isa del vino.
Isabel y Fernando.
Isabel y Maria.
Isidoro Maiquez Espanol y actor.
Isla misteriosa.
Islas del Caribe Barbados.
Isolina.
Itxapopena Elkartearen Kalejira.
Ivanna.
Jaleo real.
Jamas.
Jarabo.
Jardi tancat.
Jardin de las delicias.
Jardines de Granada.
Javiera la cangrejera.
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Jesucristo Superstar.
Jetztzeit.
Jivaro.
Joaquin Murrieta.
Joc partit.
Joca I joguines.
John is gonna break your heart.
Jose Zorrilla.
Jota vasca numero uno.
Joven Picasso (1881–1907) 1.
Joven Picasso (1881–1907) 2.
Joven Picasso (1881–1907) 3.
Joven Picasso (1881–1907) 4.
Joven rico y caradura.
Juan De Avila.
Juan Gaviota.
Juan Lucero.
Judas.
Juega sucio.
Juego de la oca.
Juego de ninos.
Juego del desprecio.
Juegos de socidad.
Juegos para mayores.
Juegos y juguetes.
Jugando a vivir.
Jugando por jugar.
Jugines.
Juguetes para un matrimonio.
Julieta y el hombre herido.
Junta de Andalucia servicio de salud.
Justo.
La juventud.
Katiusca.
Kid Rodelo.
Ko.
Kryptonita.
Kukulcan.
Kwaidan.
La ra la la.
Laberinto de fortuna.
El labrador.
Un labrador en la ciudad.
La labradora.
Ladron de chatarra.
Lady veneno.
Lagrimas amargas.
Lagunzane.
El lando de sis cavalls.
Larga espera.
Latidos.
Lau teilatu.
Lavelacialalacio suite.
Lawrence S Heart.
Lazos azules y rosas.
Leandras.
Lecciones de buen amor.
La lechera.
Leia.
Lelia Doura.
Lena al fuego.
Lerele.
Let me be your love.
Letters for you.
Levante.
Ley del mar.
La leyenda de los mundos.
Leyenda de San Borondon.
Leyenda del Caballero y la muerte.
Libre quiero ser.
Libro profetico.
Limon revoltosa.
Lingo.
Lis.
Lissa.
Llagrimes.
Llama cuando quieras.
Llanero.
La llave.
Llega la Navidad.
Llega sartana.
Llegada a Frankfurt.
Llegara el amor.
Llegaron los franceses.
Llego merce.
Llevame a Paris.
Un llop de mar.
Llorando y riendo.
Lloraras por el.
Lo egin.
Lo lamento cuanto lo siento.
Lo mas valiente.
Lo nuestro.
Lo que me gusta de ti.
Lo siento papa.
Locos vecinos del segundo.
Locura.
Lorce muerte de un poeta (generico).
Lord Arthur Laville.
Loteria nacional aniversario.
Loterial nacional el nino.
Love feroz.
Loza lozana.
Lucky el intrepido.

Luis Pasteur.
Luisa Fernanda.
Un lujo a tu alcance.
Luna de abril.
Luna de dia.
Luna de mayo.
Luna llena estival.
Luna y sol.
Lying on the sand.
Ma/ana de Domingo.
Made in Spain.
Madre Alegria.
Madre ciudad.
Madre comprame un Negro.
Madre comprame un vestio.
Madre coraje.
Madre guapa.
Madre.
Madrid 1840.
Madrid 1955.
Madrid amanece.
Madrid costa fleming.
Madrid.
Madriguera.
Madronos.
Maestro Campanone.
La magia del sol primera parte.
La magia del sol segunda parte.
Magic.
Magica aventura.
Maite.
Maitecu.
Mala cabeza.
Mala racha.
Mala sangre.
Malaga.
Malaga virgen.
Maletilla.
La malquerida (1913).
Malquerida (1940).
Malvaloca.
Mama con nina.
Mama cumple cien anos.
Mama Lola.
Mambru se va a la guerra.
Manana de sol.
El manantial.
Mania depresiva.
Los maniaticos.
Manifiesto de Diciembre.
Mano rapida.
Manolo de mis amores.
Las manos son inocentes.
Manos sucias.
Mansion de la niebla.
Manuel Raquel.
Manuela Garcia.
Maravilla.
Maravilloso soller.
Marcada por los hombres.
Marcas.
Marcelino.
Marcha real fusilera.
Mare dejame usted ir.
Marea gora.
Marejada.
Margarita.
Maria.
Maria Belen.
Maria de la o.
Maria Del Mar.
Maria enamorada.
Maria Fernandez.
Maria Gimenez.
Maria Hipolita.
Maria la mosca.
Maria la tabernera.
Maria Manuela.
Maria Morena.
Maria moreno.
Maria Sabina.
Marianela.
Mariano.
Maribel y la extrana familia.
Marihuana.
La marimorena.
Marinerias.
Marinero cantor.
Mariola.
Mariposa que volo sobre el mar.
Mariposa.
Mariposas.
Mariquilla Terremoto.
Marisma y luz.
Maruja.
Maruxa.
Mas fabuloso golpe del far west.
Mas y mas 1.
Masa.
Mascara de cuero.
Mascara de Scaramouche.
Maspalomas y tu.
Matalo.
Matalos y vuelve.
Maya.
La Mazurca Azul.
Me duele tu amor.
Me enamore como nunca.
Me enamoro.
Me estoy muriendo de sed.
Me gusta como andas.
Me gusta el rock.
Me gusta el vino.
Me gusta tu cara.
Me gustaria.
Me ha dicho el carretero.
Me ilusionabas tu.
Me ire.
Me lo decia mi abuelito.
Me refugio en ti.
Me sueltan manana.
Me toco perder.
Me voy a morder la lengua.
Me voy Al Rocio.
Me voy sin ti.
Mecia a los romeros.
Meciendo al nino.
La medida del tiempo.
Megaton ye ye.
La meiga.
Melancolia.
Melancolico formentor 1.
Melancolico formentor 2.
Melita papel filtro.
Melocoton en almibar.
Melodia de Andraitx 1.
Melodia de Andraitx 2.
Mendigo Evaristo.
Mensaje.
Mentiras.
Menudo menu.
Merce.
Mestizo.
Metamorfosis de concierto para guitarra y orquesta.
La metamorfosis.
Metralleta Stein.
El meu poble i jo.
Meus armans.
Meva Valencia.
Mi adorado Juan.
Mi amazona.
Mi amigo Cleofas.
Mi barca se llama Lola.
Mi caballo murio.
Mi calle.
Mi carretera.
Mi ciudad es una chica de ahora.
Mi hermano.
Mi marido y sus complejos.
Mi noche de bodas.
Mi primer amor.
Mi pueblo.
Mi refugio son tus ojos.
Mi Rita bonita.
Mi robot.
Mi ruisenor.
Mi senor es un senor.
Mi sombra.
Mi verso es como un punal.
Mi viejo Madrid.
Micky Micky.
Microrapsodia.
Microsuite.
Miedo.
Mientras llegue la hora.
Miguel Servet la sangre y la ceniza MSV.
Mil ojos del asesino.
Milagro en casa de los Lopez.
Miles avenue.
Millon de te quieros.
Un millon en la basura.
Millones de vidas.
Millones del difunto James Gloucester.
Mimi Pinson.
Minetras mi corazon sufre.
Mini amor.
La minifalda.
Mirame bien.
Miriada.
Mis razones.
Mis veintidos anos.
Misa basica.
Misa cantada en castellano.
Miserables.
Miserere para medio fraile.
Mision en Ginebra.
Miss Cuple.
Miss Muerte.
Mister X.
Las mocitas toledanas.
Las modas.
La molinera de Arcos.
Molinos de viento.
La momia de Hamalahi.

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Una moneda le di.
Monje misterioso.
Los monos calvos.
Monte Carmelo.
Montecarlo a nuestros pies.
Montecarlo Beach.
La monteria.
Monumento.
La mordaza.
Morenina.
La Moreria.
Morir de amor.
El Morito Ben Ali.
La morralla.
Morrina.
La moto.
El motocarro.
La movida del sur.
La moza vieja.
Muchacha corazon de madera.
La muchacha del sombrerito rosa.
Una muchachiga de Valladolid.
La muchachita.
Muchas felicidades.
La muerte.
Muerte busca un hombre.
La muerte de Manolete.
Muerte de un ciclista.
Muerte del hombre.
Muerte en el barrio.
La muerte llama a las diez.
Muerte se llama Myrian.
Muerte viaja demasiado.
El muerto al hoyo.
Muerto hace las maletas.
Mujer.
Mujer de la tierra caliente.
Mujer del ministro.
Mujer Espanola.
Mujer mujer.
Mujer Portuguesa.
Mujer y barca.
Mujer y guitara.
Mujeres.
Las mujeres sabias.
Los muleros van.
Mumer del juez.
Un mundo de desilusiones.
Un mundo para mi.
Muralla.
La muralla.
Murga los currelantes.
Musica de ayer.
Musica de la clave.
Musica para quinteto de.
Musicas de camara.
Musiquero.
Muxima.
My bravo Spanisch man.
My son.
Mysteria.
Nace un hidalgo.
Nada.
Nada mas.
Nadie le tema a la muerte.
Nadie oyo gritar.
Nadie puede juzgarme.
Nadie te espera.
La nana de la adultera.
Nana para Victor G. Leon.
Nanay.
La naturaleza.
Navaja de papel.
Navajeros.
Navidad con el quando.
Navidad con paz.
Nazarena.
Necesito un amigo.
Necronomicon.
Nelson Mandela sus dos amores.
Neron.
Nerva.
Nestle cereales.
Neuvas gentes.
Never mention my name.
Never say you love me.
Never want to dream again.
Ni pobre ni rico sino todo lo contario.
Ni poeta ni pintor.
Niebla y sol.
La nieve.
Nina de La Venta.
Nina de luto.
La nina de Punta Umbria.
La nina del amo.
Nina soltera.
La nina y el amor.
Nina y los besos.
Nine dios el.
Ninette.
Ninette y un senor de Murcia (1964).
Ninette y un senor de Murcia (1987).
Ninguna piel despues de ti.
El nino Judio.
El nino lobo.
El nino que ya no soy.
Ninos no somos tan tonto.
No aguanto a tu prima.
No dejes pasar tu vida en blanco.
No despertarla.
No es nada mama solo un juego.
No estas sola.
No hay carretera sin barro.
No hay sirenas.
No hemos inventado nada.
No me acaricies el pelo.
No me olvides.
No me pidas.
No me pongas conferencia.
No me preguntes.
No pido mucho.
No profanar el suc/o de los muertos.
No pude quitar mis ojos de ti.
No se si el cielo es tan alto.
No seras nunca el flautista de Hamelin.
No te aguanto mas.
No te tardes que me muero.
No te vayas de tu Espana.
No te vayas.
No temas a la noche.
No tengo no tengo.
No tiene importancia.
No trobaras la mar.
No vayas sola.
No vivo en una sociedad perfecta.
No, no, no.
Nobleza obliga.
Noche de boda.
Noche de los asesinos.
La noche de los cien pajaros.
La noche de los diablos.
Noche de Simon Pedro.
Noche de verano.
Una noche embarazosa.
Una noche en Calatayud.
Noche en palacio.
Una noche en Paris.
Noche y el alba.
Noches de Casablanca.
Noches de magaluf.
Nocturno n 2.
Nocturno.
Nofres.
El noi de la mare.
Noia de porcellana.
Noia que s ha posat a ballar.
Norma Jean.
Nous cants de llibertat.
Noventa y nueve mujers.
Novia ensangrentada.
Novia mora.
Novicia rebelde.
Novio a las vista.
Nuba.
Nuestro aniversario.
Nuestro mundo.
Nueva Marilyn.
Nueva York insolito.
Nuevas aventuras del Zorro.
Nuevo centro centrolandia.
El nuevo servidor.
Un nuevo tono.
Numero uno.
Numeros pares.
Nunca en horas de clase.
Nunca pasa nada.
Obertura.
Obsesion.
Obsesiones de Armando.
Ocho preludios.
Octavario.
Oda fur Marisa.
La oficina.
Oh general en tu Pentagono.
Oh uh oh.
Oh un anec sinfonic.
Ojo del huracan.
Ojos bonitos.
Ojos en las manos.
Ojos siniestros del Doctor Orloff.
Ojos vendados.
Oklahoma John.
Olatuak.
Ole flamenca.
Oleo de mujer con sombrero.
Olvidate de mi.
Ones.
Onofre.
Opera flamenca.
Operacion boda.
Oracion militar.
Una oracion rociera.
Oratorio de fuenterrabia.
Ordizzia.
La organizacion.
Orgia de los muertos.

Orilla.
Os tres Galleguinos.
Oscuros sue/os de Agosto.
Otra alcoba.
La otra orilla.
Otra vuelta de tuerca.
La oveja negra.
Pa Belen.
Pa la candelaria.
Pa que tus hijos comieran.
Padres e hijos.
El paisano.
Los pajaros.
Palabras fundamentales.
Palabras para Julia.
El palmero.
Paloma herida.
Paloma planidera.
Palomas intrepidas.
Pan amor y Andalucia.
Pan y toros.
El panadero.
Panico en el Transiberiano.
Panico en Torrejon.
Pantalones.
Panuelo blanco.
Panuelo.
Papa denirte que te quiero.
El papalote se fue a Bolina.
Paquito chocolatero.
Para Huelva.
Para quererte.
Para sentirme viva.
Para un homenaje a Miguel Hernandez.
Para un nino.
Para verte reir.
Parafernalia.
Un paraguas baja la lluvia.
Paraiso mecanico.
Una pareja distinta.
Paris.
Parranda canaria.
Parto del sinor honoro.
Partos de charanga.
Pasan dias.
El paseo.
Paso a dos.
Paso de la novicia ingenua y la abadesa prudente.
Pastor que tas en el monte.
Patio de vecindad.
El patito feo.
Los patitos.
Patria chica.
Patricia mia.
Paula.
Pecados conyugales.
Pecar en Madrid.
Peina y mantilla.
El peine de los vientos.
La pell de brau.
Pena de muerte.
Pena Vinaza.
Penamariana.
Peon de confianza.
Pepa doncel.
Pepe sera papa.
Pepita Romero.
Pepito Piscinas.
Peppermint frappe.
Pequena comedia.
Per a Frederic.
Per que la gent s avorreix tant.
Perdidas blancas.
Perdido.
Perdido por las calles.
Perdona Otelo.
Perdoname.
Pero amanecio.
Pero en la sequedat arrela elpi.
Pero no ves.
Perro.
Perros callejeros.
Perseguidos.
Persuasion.
Perversion.
El pescador de Morenas.
Petita canco de la teva mort.
Piano loco.
Pianos mecanicos.
Picara molinera.
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La picara molinera.
Piccolo concerto.
Pico.
Pico dos.
Los Piconeros.
Piel de terciopelo.
Piensa en mi.
Piensas.
Pimpinela donde estas.
El pino y el almendro.
Los pintores.
Pioneros.
Pirata.
El Pirate i les Sirenes.
Piropos a Cordoba.
Pisito.
Pistoleros de Paso Ilravo.
Placeres ocultos.
Placido.
Planton.
Platero y yo.
Playa prohibida.
Playas de Espana.
Plaza de La Maestranza.
Plaza de Oriente.
Pluma de oro.
Pobre del cantor.
Pobre desiderio.
Pobre juventud.
Poca cosa.
Poder del deseo.
Poesias.
Poetica.
Polifantic.
El polizon.
El pollero.
Ponen tu cara.
Por el camino de mieres.
Por eso vuelve por favor.
Por la calle abajo.
Por la playa.
Por las paredes.
Por los caminos.
Por primera vez te canto.
Por que te amo.
Por que yo no puedo.
Por salir de dudas.
Porque se apago la vela.
Porque te quiero.
Las porteras.
Portocristo 1.
Pot ser arran de l alba.
Precio de un hombre.
Precisamente tu.
Pregaria.
Pregon de bodas.
Pregon de semana santa.
El pregon del naranjero.
El pregon del Riojano.
Pregonera de Espana.
Pregonera de sal.
Prelude.
Preludes n 1st 2nd 3rd.
Preludio.
El previo de los suenos.
Prima Angelica.
Primavera en la plaza de Paris.
El primer amor.
La primera mentira.
La Princesa Alala.
La Princesa Olalla.
Princesita.
Principe de la marisma.
El principe enano.
Principio y fin de un amor.
Problema sexual.
Proceso a una estrella.
El proceso de Arzobispo Carranza.
Proclamacion de la copla.
Procura hablarle tu.
Programa especial.
Prohibido en otono.
Prohibido enamorarse.
Prohibido suicidarse en primavera.
Prologo.
Promesa rota a Manuel.
Promesas.
Proposiciones.
Proposiciones para explicar la muerte de Ana.
Proscrito del rio Colorado.
Protegidas.
Protocristo 2.
La proxima estacion.
Pruebame y veras.
Puebla de las mujeres.
Pueblo gitano.
Pueblos del mundo extinguios.
Puedes quedartelo.
Puente.
El puente de los suicidas.
Puerto de Cabras.
Puerto de Pollenca 1.
Puerto de Pollenca 2.
Pulgarcito.
Punto y final.
Puse tu nombre.
Qualsevol nit pot sortir el sol.
Quando.
Quando de los reyes.
Quando del amor.
El que baila en tu ventana.
Que bonito es Badalona.
Que bonito es querer.

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Que bonito es vivir.
Que corra la nicotina.
Que cuentas puedes pedir.
Que Dios reparta suerte.
Que hace una chica domo tu en un sitio c.
Que lastima de carino.
La que llaman Soledad.
Que loco estoy por ti.
Que me da la vida.
Que no me despierte nadie.
Que no que no.
Que no se extinga la llama.
Que pena de mi nino.
Que quieres tu.
Que se puede hacer con el amor.
Que sera que todos piden.
Que seria de Colombia.
Que solo me dejas.
Que te voy a dar.
Que tengo yo que hablarte.
Las que tienen que servir.
Que viva el jefe.
Que ya vivi que te vas.
Quedate a desayunar.
Quedate no te vayas hoy.
Queixumes.
Querer tener riendas.
Quererte hasta la ceguera.
Questions and replies.
Quien ha pensado en mi.
Quien me tiende la mano al pasar.
Quiereme.
Quieres mas suerte.
Quiero amarte hasta el fondo de mi corazon.
Quiero decirtelo.
Quiero ser de nuevo el que te amo.
Quiero ver Brasil.
Quiero vivir de amor.
Quiero y no puedo.
La quilla de tu navio.
Quina grua el meu estel.
Quiniela.
Quinto cantar.
Quisiera saber.
Quisiera ser luna.
Quizas manana.
Radio 80 sintonias.
Raices.
Rancho de pollos.
Raphael en Raphael.
Rapsodia velenciana.
Raska yu.
La ratita presumida.
Ratita resumida.
Raton ratoncito.
Rayma pulsera magneticas.
Una razon para vivir una razon para mori.
Razones para seguir.
Rebeldia.
Rebelion de Gutierrez.
La rebelion de los bucaneros.
Rebelion del cuerpo.
Rebelion en el retablo.
Recluta recluta.
Recomendado.
Recordando a Chopin 1.
Recordando a Chopin 2.
Recorramos este tunel.
Recuerdos.
Recuerdos del porvenir.
Recuerdos del viejo carnaval.
Recuerdos Rocieros.
Reflexus obertura.
El regalo.
Regresa un desconocido.
Regresaras.
Regreso a Mexico.
La reina de la fiesta.
Reina del Caribe.
Reina del Chantecler.
La Reina del Tabarin.
Reina Juana.
Reina Mora.
Rejas de amores.
Rejon de muerte.
Repelente nino Vicente.
Requiem para un gringo.
Requiem per un agente secreto.
Requiem por un amor.
Res no es mesqui.
Residencia para espias.
Responde tu.
Resultado final.
Resumen de noticias.
Retablo jovial.
El retaule del flautista.
Retorne de D Artacan, uno para todos y.
Retrato de familia.
Retrato de gorrion.
Retrato de Mister Murphy.
Retrato del poeta.
Retrato.
Revolta de bruixes.
Rey de Africa.
El rey de la carretera.
El rey de las flores.
El rey del optimismo.
El Rey del pop.
Reynolds papel aluminio.
Reza.
Reza por mi.
La rica heredera.
Ricardo DeFabra.
Rie y bosteza.
Rincon de los chicos.
Rio.
Rio de ausencia.
Un rio de pasion.
Rio de suenos.
Rio de usted.
Rio Grande 2.
Rio manso.
Rio que no cesa el.
Rio rebelde.
Risa.
Risa segun Cassen.
El ritmo de apostar.
Ritz Hotel.
Riu de agost.
Robert Koch.
Roberto amor mio.
Roberto Krull, the wandering Jew.
Rock animal.
Rock de la legalizacion.
El rock de una noche de verano.
Romance a Floreal.
Romance de Dona Ximena.
Romance de viento y quena.
Romance de Villamediana.
Romance del fantasma y Dona Juanita.
Romanico y romantico.
Romantica Moscu.
El ron caliente.
Rosa colora.
Rosa de ojal.
La rosa del Azafran.
Rosa la China.
Una rosa roja.
Rosa Rosae.
Rosa se esta buscando en el espejo.
Rosalia de Castro.
La Rosario o la rambla de fin de siglo.
Rosas de otono (1905).
Rosas de otono (1943).
Roseta.
Rosita.
La rosso.
La rubia del far west.
Rueda del amor.
Rumba del Bambu.
La rumba del gitanito.
La rumba del pai pai.
Ruta de los narcoticos.
Sabada chica y motel que lio angel.
Sabeline.
Saber que me necesitas.
Sabio tonto.
Sabor de amor.
Sabor de la venganza.
Sabrosita.
Sacerdote.
Sacredotes de amon.
Saeta rubia.
Safari.
Saharas.
Salir de aqui.
Saltonas tartamudas.
Salvaje.
Samba.
San Antonio Aurrera.
San Jose de Arimatea.
San Marcial.
San Rosendo.
Sandokan.
Sangre azul.
La sangre de Dios.
Sangre gorda.
Santiago de Chile.
Santos inocentes.
Sara.
Sardana.
Sardinas en filetes.
Sasibil baserria.
Satanik.
Se acabo el negocio.
Se acabo lo que se daba.
Se bambolea.
Se busca un corazon.
Se fue con el agua.
Se siempre feliz.
Se vende salud.
Secret lover.
Secreto.

Secreto de los astros.
Secreto de los hombres azules.
Secreto del Doctor Orloff.
Secreto inconfesable de un chico bien.
Secretos de alcoba.
Secuestro.
Seguidillas.
Segunda sonata.
Segundo poder.
Seis piezas caracteristicas (v a).
Seis piezas caracteristicas.
Selector de frecuencias.
Semana del asesino.
Semillas de olvido.
La senal.
Seneca.
Senor de villemer.
Senor Esteve.
Senor Garcia.
Senor Pandolfo.
Senora ama (1908).
Senora ama (1955).
Una senora estupenda.
Senora maestra.
Senorita de Cormeilles.
Senorita.
Senoritas de uniforme.
Sentado en la bahia.
Sentado junto al rio.
Sentiments.
El senyor de les pedres.
Septiembre.
Septimo de caballeria.
Ser dios.
Ser o no ser.
Sera esta noche.
El serafino.
La serranilla.
Sete cel el.
La severa.
Sevilla lleva el compas.
Sevilla mambo.
Sevilla me esta llamando.
Sevilla y Triana.
Sevillanas de colores.
Sevillanas de la marisma.
Sevillanas de la romeria.
Sevillanas del cante.
Sevillanas del enamorado.
Sevillanas del grillo.
Sevillanas del rastro.
Sevillanas del transito.
Sevillanas en versos.
Sexo chungo.
El sheriff de tus labios rojos.
El show.
Si el nino hubiera nacico.
Si esto no es amor.
Si la despullava.
Si las piedras hablaran.
Si me ves volar.
Si no us sap greu.
Si preguntan por mi.
Si tu lo quisieras.
Si tu no estas que poco tengo.
Si tu quisieras.
Si un dia miras a los ojos de la patria.
Si ves un monte of espumas.
Si yo tuviera.
Sicania.
Siempre en Domingo.
Siempre hay que mentir.
Sierra de Ronda.
Siesta.
Siete colores.
Siete dias de enero.
Siete rosas.
Un silencio de tumba.
Sillon de mis entretelas.
Simbad el marino.
Sin aliento.
Sin la sonrisa de dios.
Sin tenerte cerca.
Sin ti por ti.
Sin tu amor.
Sinfonietta.
Sintonia no do.
Sintonia programa buenos dias.
Sir Alexander Fleming.
Una sirena en la Alhambra.
Sitiados en la ciudad.
Sobre el surco.
Sobre Madrid.
Sobrenatural.
Sol bajo la tierra.
Sol de verano.
Sol en Triana.
El sol no da de beber.
Sola triste y callada.
Soldadito espanol.
El soldado con cara de nino.
Soleares.
Soleda.
Soledad mia.
Soledad.
Soliloquios de Dracula.
Solituds.
Sollievo.
Solo de flauta.
Solo dos palabras.
Solo el amor y la luna traen fortuna.
Solo estoy.
Solo pienso en ti.
Solo te pido hablame.
Solo tu.
Solo una madre.
Solo yo.
Solos los dos.
La soltera.
Sombra del arpa.
La sombra del pilar.
Sombras de ayer.
Sombrero Andaluz.
Un sombrero de paja.
Sombrero en mano.
Somos.
Somos choqueros.
Somos diferentes.
Somos dos fugitivos.
Son de Cuba a Puerto Rico.
Son mas en una mazorca.
Son para despertar a una negrita.
Sonando nuevo futuro.
La sonata de Grieg.
Sonata en re.
Sonatas.
Sonate, op. 61.
Sonatina.
Sonatina para guitarra y orquesta.
Sones de triunfo.
Sonja.
Sor Narcisa.
Sor ye ye.
Sospecha.
Soy como soy.
Soy de Espana y nada mas.
Soy del Caribe.
Soy del sur.
Soy el cafe.
Soy el que vende mas barato.
Soy mujer.
Soy un bollito.
Soy un guason.
Soy un sinverguenza.
Soy y no soy el mismo.
Spanish shuffle.
Stop.
Stress es tres tres.
Su mirada.
Suave carino muy suave.
Sublime decision.
Suena la margarita.
Suenan Campanas.
Sueno de amor.
Sueno de Andalucia.
El sueno de una noche de verano.
Suenos del maletilla.
La suerte.
Suite Alicantina.
Suite Castellana (v a).
Suite Castellana.
Suite en la.
Sukalde cocina.
Super chica.
Superficie no. 1.
Supon.
Suspenso en comunismo.
Suspiro del moro.
Los suspiros mios.
T sport.
La taberna fantastica
La tabernera del puerto.
Tablao de gala.
Taconeando.
Talisman.
Tambor de sequias.
Tambor y cascabel.
Tan raro.
Tandy 1.
Tango de las madres locas.
Tango de los gay.
Tanto, tanto.
Tarde de poetas.
Tarots.
Tartarin de Tarascon.
Tartessos.
Tarzan en las minas del rey Salomon.
Tarzan y Jane.
Tatuaje.
Te amare.
Te de los detectives.
Te di una flor.
Te entregare gare gare gare mi amor.
Te estas pasando.
Te fuistes.
Te odio y te amo.
Te quiero.

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Te quiero gitana.
Te quiero mucho.
Te recorde.
Te regalo una fiesta.
Tea party.
Techo de cristal.
Tecnica para un sabotaje.
Tecnocratas.
Telefonista.
La television.
El televisor asesino.
Tema candido uno.
Tema dandido dos.
Tema de Candido.
Temporalia.
Temps era temps.
Ten cuidado.
Ten trinaranjus.
Tenemos dieciocho anos.
Tengamos la guerra en paz.
Tengo el mio Xuan en la cama.
Tengo en el pecho una jaula.
Tengo un anillo.
Tengo un novio marinero.
Tengo un te quiero.
Tengo una chica.
Tentaciones.
La tercera palabra.
Tercio de quites.
Teresa De Avila.
La ternura del caiman.
Terror en la noche.
Terrorista de tu corazon.
Tesoro de la isla.
Testamento.
Testamento.
Texas kid.
Tia Tula.
Tic tac.
Tiempos nuevos tiempos salvajes.
Tiene usted algo que alegar.
Tierno furor.
Tierra.
Tierra de nadie.
Tierra es una bola de color.
Tierra firme.
Tierra y cielo.
Tierras de Valladolid.
Tierras llanas.
Tigres de papel.
Tiita Rufa.
Timanfaya.
El tintero.
Tio Julio.
Tio, tio, tio.
Tipo duro.
Titigua.
To como yo.
Todas las cosas van hacia ti.
Todo a su favor.
Todo lo que soy.
Todo por el aire.
Todos los paletos fuera de Madrid.
Todos rien de mi.
Todos tenemos un precio.
Toloveo Largavista.
Tom Sawyer detective.
Tongo.
Too young to be a pharaoh.
Toque en La Palangana.
Torbellino de colores.
Tordos y caracoles.
Toreros gitanos.
Tormenta a las 10.
Toro y caballo.
Toros y coplas.
Trae la escoba Pepe.
Tragedia fantastica de la gitana Celestina.
Tragicomedia del ilustrisimo senor.
La traicion.
Trampa para un forajido.
Trampero.
Transfiguracion.
Transmediterrani Expres.
Trapecio de dios.
Trasnochados espineles.
Trastienda.
Travelling on Sagitarius Two.
Travesuras de Morucha.
Tremolina.
El tren de madera.
Tren especial para Hitler.
Tres cancons sentimental.
Los tres etceteras de Don Simon.
Tres etceteras del coronel.
Tres hombres van a morir.
Tres interludis.
Tres punales.
Tres semanas.
Tres solteros inocentes.
Tres sombreros de copa (1952).
Tres sombreros de copa (1963).
Triana mia.
Triangulito.
Trio concertante n 1.
Trio numero uno.
Trio para instrumentos de viento.
Triptico.
Truchas.
El truquito.
El trust de los tenorios.
Tu al monte yo al mar.
Tu amor.
Tu amor a medias no me interesa.
Tu conciencia.
Tu confidente.
Tu Cupido.
Tu eres la llave.
Tu eres mi verdad.
Tu ingratitud.
Tu me juraste.
Tu me prometiste volver.
Tu mirado.
Tu no eres eso.
Tu no lo sabes.
Tu no sabe ingle.
Tu nombre.
Tu nombre en el agua.
Tu persona.
Tu rio yo puente.
Tu sombra en el suelo.
Tu y yo.
El tuerto es el rey.
Tus ojos de ole con ole.
Tus ojos nina.
Two catalan song.
Uh que calor.
Ulls clucs lamor.
Ultima aventura del Zorro.
Ultima mujer.
Ultima Senora Anderson.
Ultimas verdades.
El ultimo bolero.
Ultimo caballo.
Ultimo cafe.
Ultimo cuple.
Ultimo de los Kyber.
Ultimo dia de la guerra.
Ultimo Mohicana.
El ultimo tren.
Ultimo verano.
Ultimo viaje.
Los ultimos dias de Emmanuel Kant contados por E. T. A. Hoffman.
Ultramarina.
Un dos tres responda otra vez.
Un, dos, tres.
Una mujer para Marcelo.
Underground vibrations no. 2.
Uno mas.
Urbanizacion pinar de garaita.
Urdina txiki.
Usted puede ser un asesino.
Va de pastora.
Va por ellos.
Los vagabundos.
Valencianeta.
Valiente.
Valldemosa en la bemol.
Vamos a andar.
Vamos a contar mentiras.
Vamos a la cama.
Vamos a tocar en las esquinas.
Vamos pa lante.
Vamos que nos vamos.
El vaquero rockero.
Variaciones sobre un tema castellano.
Variaciones sobre un tema de Mozart.
Varietes.
Vas a mentirme una vez mas.
Vaya mentira.
Vaya tronio.
Vaya un lio.
Ve con el.
Las Vegas 500 millones.
Veinte y cuarenta.
Una vela para el diablo.
Velazquez.
Ven a jugar conmigo.
Ven a mi fiesta.
Ven que te llamo.
Ven Y sigueme.
Vencidos.
La venda en los ojos.
Veneno.
Veneracion.
Vengador del sur.
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Venganza del Doctor Mabuse.
Venganza del Zorro.
Venganza gitana al galope.
Venimos en desafio.
La venta de los gatos.
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Vente.
Vente a La Manta.

Vente al Rocio.
Vente conmigo.
Ventolera.
Vera.
El veraneo.
El verano llegara.
Un verano para matar.
El verano se acerca.
Verde esperanza.
Verde, verde.
Verdugo.
Veremos a Dolores.
El veri del teatre.
Versos por sevillana numero dos.
Versos sencillos.
El vestir d en Pasqual.
Viajando en Scala.
Viaje al pais cubist.
Viaje infinito de Sancho Panza.
Vicente.
Vicente Gerardo.
Vicio y la virtud.
Vida en un hilo.
La vida no vale nada.
Vida nos va cambiando.
Vida pasajera.
La vida privada de mama.
Vida privada de una senorita bien.
Vida serena.
Vida sigue igual.
Las viejas dificiles.
La viejecita.
Viene la macarena.
Viernes.
Viernes instrumental.
Vieron los pastores.
Vierte corazon tu pena.
Vil seduccion.
La villana.
Villancico de Madrid.
Vino de mi pueblo el.
Violetas imperiales.
Violetera.
Virgen de la caridad del cobre.
La virgin llora.
Virilidad a la Espanola.
Vision profetica.
Visita de los libres al recluso.
Vispera de domingo.
Visto para sentencia.
Vitral.
Viuda.
Viva el verano.
Viva lo imposible.
Viva Madrid.
Vivan los novios.
Viviane.
Viviendo en la era pop.
Vivir es formidable.
Vivir sin trabajar.
Vivo penando.
El vivo retrato.
El vol de l home ocell.
El vol de la gavina.
Volveremos junto al mar.
Vortex.
Voy a pintar las paredes con tu nombre.
Voy por todo tu cuerpo.
Vuelo al infierno.
La vuelta al corazon en 80 segundos.
Vuelta al mondo de Willy Fog.
Vuelve.
Vuelve a mi.
Vuelve a sacudirse el continente.
Vuelve querida Nati.
Vuelven los pescadores.
Vuelvo a casa.
Vuelvo de Disneyworld.
Walter Wilding.
The way you smiled at me.
What happens now?
Whisky.
Wild is the wind.
Wlly Fog 20000 leguas viaje submarino.
Willy Fog viaje al centro de la tierra.
Xiringuelu.
Y al final esperanza.
Y en todos los caminos.
Y la lluvia seguia cayendo en la ciudad.
Y no tiene solucion.
Y tu buscando una mujer.
Ya llegan al Ajol.
Ya no hay quien baile.
Ya no te amo mas.
Ya no te espero.
Ya se escuchan las panderetas.
Ya se que tienes novio.
Ya viene.
Yankee.
Yenka triste.
Yeren Don Guajes.
Yo era feliz.
Yo era un estanque de paz.
Yo he perdido.
Yo le llevare un potrito.
Yo naci en el cuarenta.
Yo no me voy.
Yo no quiero pensar.
Yo no quiero ser torero.
Yo no se rezar.
Yo pisare las calles nuevamente.
Yo quisiera ser muy libre.
Yo se que no es Cristiano.
Yo se que tu vendras.
Yo solo.
Yo solo se que te quiero.
Yo soy asi.
Yo soy quien espia los juegos de los ninos.
Yo te quiero.
Yo tenia un novio que tocaba en una orquesta beat.
Yo tuve un gran caballo de carton.
You can say to everybody.
You que viva amando.
Yumas 2.
Yuyu Ankawa.
El zagalejo.
Zalacain el Aventurero.
Zamba para un amor lejano.
Zampo y yo.
Zarabanda bing bing.
La Zarzuela del Maestro Serrano.
Zigor.
Zobel.
Un zombie dos zombies tres zombies.
Zor encendedores.
Zorro Caballero de la Justicia.
Zorro de Monterrey.
Zumisol 2.
Zwei nummern zu gross.

Sociedad General de Autores y Editores.
A jota de pontevedra.
Abril en Sevilla.
Adios Lalin.
Aguila de blason.
El artista.
Ay mi sombrero.
Baila el colibri.
Barrio la vina.
La cabeza del bautista.
La cabeza del dragon.
Campanas de Santiago.
Canastera.
Cancion de la que no queria mentir.
Canta Rianxo.
Cantan las alondras.
Cantare.
Cara de plata.
Carretas del Rocio.
Una casa de campo.
Cepa Andaluza.
Cholito.
Claveles de la maresma.
Cocorito.
El concierto de San Ovidio.
Costa Casares.
Cuando duerme la ciudad.
Cuando tu no estas.
Las cuatro Marias.
Cuento de Abril.
Los cuernos de Don Friolera.
D D T chas.
De madruga.
Divinas palabras.
Doblan campanas.
Ella y el miedo.
El embrujado.
En la ardiente oscuridad.
En la caleta.
En Portugal y en primavera.
La enamorada del rey.
Enfermeras.
Es mejor asi.
Escenas Galecas.
Espacio es infantil.
Esquilache.
Farolillo de feria.
Farruca de Lucia.
Figuritas de papel.
Fuente nueva.
Las galas del difunto.
La gallina Papanatas.
Gitanos trianeros.
Un globo dos globos tres globos.
Gracias a ti.
La guitarra flamenca y orquesta de Paco de Lucia.
Han herido al herido.
La hija del capitan.
Historia de una escalera.
Homage to Pobo da Golada (1980).
Homenaje a Salceda de Caselas.
Homenaxe o Pobo da Golada.

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Hoy es fiesta.
Jerezana.
Lalin.
Lerele gitano.
Ligazon.
Llanto a Cadiz.
LLora la seguiriya.
Luces de Bohemia.
Madrugada.
Mamma mamma.
La manzana.
El Marques de Brandomin.
La marquesa de Rosalinda.
Me llamo Antonio Buero Vallejo.
Meninas.
Las meninas.
Metropolis.
El mundial.
Noche de duda.
O Galeguino.
Omni Padmeum.
Peligro de la riqueza.
Pepa.
Los pinares.
Plaza de San Juan.
Plazuela.
Please think of me.
Por fin manana.
Por que te quiero.
Por tierras viguesas.
Punta del faro.
Que tiene ese Madrid?
Que viene el coco.
Recuerdo a Patino.
Reduccion.
Reflejo de luna.
La reina castiza.
Retablo de la avaricia la lujuria y la muerte.
Rolandito.
Romance de Fabiola.
Romance de lobos.
La rosa de papel.
Rumba improvisada.
Sacrilegio.
Saludo a Moscoxo.
San Campio.
Senora senora.
Sensible.
Serrania de Malaga.
La sin par Dulcinea.
Solera.
Solo tu solo yo.
El suendo de la razon.
Tajo.
Teatro de la juventud.
Temas del pueblo.
Tientos del mentidero.
Tirano banderas.
Tolvanera.
Torres de Cadiz.
El tragaluz.
Triangle.
Vals de las debutantes.
Venimos de lejos.
Viva la union.
Voces de gesta.
Vote Johnny 23.
El yermo de las almas.
Yo los mato y tu cobras la recompensa.
Yo te quiero dar.

Societe Cinema du Pantheon.
Don Quichote.
Julietta.

Societe Civile Succession Richard Guino & ADAGP (Societe de Auteures des Arts Graphiques et Plastiques).
Buste de Madame Renoir.
Le forgeron.
La grande laveuse.
La laveuse (moyenne).
La laveuse (petite).
La maternite.
Medaillon Cezanne.
Medaillon Monet.
Medaillon Rodin.
Moyen jugment de Paris.
Paris arec barbe.
Paris sans barbe.
Pendule (triomphe de l'amour).
Petite maternite.
Petite tete de Venus.
Petite venus debout.
Torse de venus.
Variante petit.
Venus vitrix.

Societe de Auteures des Arts Graphiques et Plastiques. See Societe Civile Succession Richard Guino & ADAGP (Societe de Auteureo des Arts Graphiques et Plastiques).

Sony Pictures Classics, Inc.
El giardino dei Finzi Contini.

Succession Picasso.
A los toros.
Adam.
Affiche Barcelone, Avril 1961.
Affiche chevaux de minuit.
Affiche Dans l'argile de Picasso, poemes de Henri-Dante Aiberti.
Affiche de l'exposition 1952 Vallauris.
Affiche des recits de Nestor sur la guerre de Troie.
Affiche exposition 1958 Vallauris.
Affiche exposition ceramiques Vallauris, Paques 1958.
Affiche exposition de vallauris.
Affiche femme au balcom-affiche-oeuvre grave-1960.
Affiche livres de Picasso realises par PAB 18 juin-2 juillet 1966.
Affiche Musee municipal d'art moderne Ceret Picasso ceramiques et pates blanches, empreientes originales.
Affiche originales.
Affiche portrait de Jacqueline.
Affiche pour l'exposition 1957.
Affiche pour l'exposition hispano-americaine.
Affiche toros en Vallauris 1954.
Affiche toros en Vallauris 1955.
Affiche toros en Vallauris 1957.
Affiche toros en Vallauris 1960.
Affiche Vallauris 1956 toros.
Affiche Vallauris-1956 exposition.
Affiches exposition 1960.
Alceando a un toro.
L' amoureuse ou Aretusa.
Amours de Jupiter et de Semele.
Animal form jug with handle and four feet 35×1×30 cm.
Animal form vase with handling and height 36 cm.
Another version of above.
Apollinaire blesse.
Apollinaire.
Apres la pique.
Arlequin a la baatte (I a XI).
Arlequin et femme avec collier.
El arrastre.
Arrastre. Black decoration on ochre earthenware, diameter 42 cm.
Arrastre. Polychrome decoration on white earthenware, diameter 42 cm.
Au bain.
Aubergine and knife on a tartan ground, 31×38.5 cm.
Bacchanale au hibou.
Bacehanale au taureau noir.
Badadakharida.
Badaldima.
Les baigneuses surprises.
Banderillas. Black decoration on ochre earthenware, diameter 42 cm.
Banderillas. Polychrome decoration on white earthenware, diameter 42 cm.
Bearded face. White earthenware, diameter 24 cm.
Bird and flowers, 32×38 cm.
Bird. White earthenware, 20×28 cm.
Black mask, diameter 31 cm.
Black owl roosting, diameter 42.5 cm.
Black pudding and eggs, 31×37 cm.
Le bouquet.
Bouquet with apple. White earthenware, diameter 24 cm.
Brown bird on a green ground, 32×38.5 cm.
Bull on beige ground 31×38.5 cm.
Bull on pink earth ground, 37×23×37 cm.
Bull's head. White earthenware, diameter 42 cm.
Bullfight scene. Banderilleros on light colored ground, 31×38.5 cm.
Bullfight scene. Picador on beige ground, 31×38.5 cm.
Bullfight scene. Picador on blue ground, 31×38.5 cm.
Bullfight scene. Picador on green ground, 31×38.5 cm.
Bullfight scene. Picador on grey ground, 31×38.5 cm.
Bullfight, diameter 15.5 cm.
Bullfighting scenes, 20×39×4 cm.
Bust of a woman, 26.5×22.5 cm.
Buste de femme au chapeau.
Busts of women in matt paint, 25×14 cm.
C'est Jesus Christ.
Los cabestros retiran al toro manso.

La cage aux oiseaux.
Carnaval.
Carte de voeux, Galerie Madoura.
Catulino Jabalon Cenizo.
Ceci est mon coeur.
Centaurs fighting and faun playing pipes, 59×33 cm.
Centaurs fighting, on a cream ground, 31×38.5 cm.
Cephale tue par megarde sa femme Procris.
Le chapeau a fleurs.
La chevre.
Le chien de David.
Chute de Phaeton avec le char de soleil.
Cieux sculpteur au travail.
Circus scene, height 35 cm., diameter at base 10 cm.
Circus scenes, 35×18 cm.
Le cirque.
Citando a banderillas.
Citando a matar.
Citando al toro a banderillas sentado en una silla.
Citando al toro con el rejon.
Citando al toro conla capa.
Clavando un par de banderillas.
La cogida.
Cogida. Black decoration on ochre earthenware, diameter 42 cm.
Colombe a l'arc en ciel.
La colombe a l'arc-en-ciel.
Colombe blanche.
Colombe bleue.
Colombe de l'avenir.
Colombe du festival de la jeunesse.
La colombe.
Coloured variant on no. 62.
Combat pur Andromede entre Persee et Phinee.
Le coq.
Corps perdu-illustration pour Aime Cesaire.
Couverture.
Crowned female head. Ochre earthenware, 33×25 cm.
Cuadro Flamenco, 1921 projects pour le rideau de scene, les decors, costumes (Oeuvres du Musee Picasso, Paris).
Cubist face. White earthenware, diameter 42 cm.
La dame a la collerette.
La dame.
La danse.
Dark Neptune. Ochre earthenware 21.5×21.5 cm.
De D. H. portrait Kahnweiler I.
De D. H. portrait Kahnweiler II.
De D. H. portrait Kahnweiler III.
Decorated with faces. Height 61 cm., diameter at base 16 cm.
Decoration based on bullfighting themes, done in April of 1953. Diameter: 16 cm. (min.) and 17.6 cm. (max.).
Decoration painted on patinated ground, 29.5×24 cm.
Decoration painted on patinated ground, 40×23.5 cm.
Le dejeuner sur l'herbe.
Le dejeuner sur l'herbe.
Despues de la estocada el torero senala la muerte del toro.
Deucalion et Pyrrha creent un nouveau genre humain.
Deux femmes.
Deux femmes nues.
Deux femmes pres de la fenetre.
Deux hommes sculptes.
Deux lutteurs observes par trois femmes nues.
Deux modeles se regardant.
Deux sculpteurs devant une statue.
Deux tetes de femme.
Deuxieme affiche Vallauris.
Diomedes, le fort acheen.
Don Bob.
Don Quichotte.
Dona Aseguda.
Dove on bed of straw, 32.5×38.5 cm.
Echan perros al toro.
Entre la colere et la mort.
Erotic scene.
Erotic scene, 16.5×19 cm.
Erotic scene, 16.5×19 cm.
L' espagnole.
Especioso Zalamea y Ruiz-Cipolleta.
Estocada. Black decoration on ochre earthenware, diameter 42 cm.
Estocada. Polychrome decoration on white earthenware, diameter 42 cm.
Eurycide piquee par un serpent.
Eve.
Face framed in a square. White earthenware, diameter 42 cm.
Face in thick relief. White earthenware, diameter 42 cm.
Face on grid. White earthenware, diameter 42 cm.
Face painted in relief on blue ground, 31×38.5 cm.
Face surrounded by ringlets. Ochre earthenware, 21.5×21.5 cm.
Face surrounded by ringlets. Ochre earthenware, 31×31 cm.
Face with green nose. Ochre earthenware, 21.5×21.5 cm.
Face with leaves. White earthenware, diameter 42 cm.
Face with lowered eyes. Decoration decoration in relief, 31×38.5 cm.
Face with round nose and four potter's marks on ochre earthenware, 31.5×27 cm.
Face with slanting features. Ochre earthenware 21.5×21.5 cm.
Face with tie. White earthenware, diameter 25 cm.
Face, 14×13 cm.
Face, 15×15 cm.
Face, height 13 cm.
Face, height 19 cm.
Face.
Famille de saltimbanques.
Faunes et chevre.
Faun's head 38×34 cm.
Faun's head with broad strokes on a beige ground, 38.5×31 cm.
Faun's head, 38×38 cm.
Faun's head, 39×32 cm.
Faun. White earthenware, diameter 42 cm.
Fauns dancing on an ivory ground, 37×38.5 cm.
Female nude, height 35.5 cm.
Femme accoudee, sculpture de dos et tete barbue.
La femme accoudee.
Femme assise au chapeau et femme debout drappee.
Femme assise dans un fauteuil rouge.
Femme assise et cheval.
Femme assise et femme de dos.
La femme au chapeau (avee fraise).
Femme au chapeau (I a VI).
Femme au chapeau a fleurs.
La femme au collier.
Femme aux cheveux flous.
Femme aux epis (visage paix).
Femme et l'oiseau (visage paix).
Femme nue a la jambe pliee.
Femme nue a la source.
Femme nue assise.
Femme nue assise devant un rideau.
Femme nue assise et trois tetes barbues.
Femme nue assise, la tete appuyee sur la main.
Femme nue couronnee de fleurs.
Femme nue devant une statue.
Femme nue eueillant des fleurs (I a V).
Femme nue se couronnant de fleurs.
Femme torero II.
Femme torero III.
Femmes se reposant.
Figure.
Figure de la Minotauromachie: Cheval.
Figure with curves and eight potter's marks on ochre earthenware, 31.5×27 cm.
Figures and heads in relief on pink earthenware. Four different sides.
La fille Rosengart.
Les filles de minyas.
Fish and birds. White earthenware, height 51 cm., diameter at bulge 50 cm.
Fish in profile. White earthenware, 25×33 cm. Original print. Edition.
Fish in relief, 31×31 cm.
Fleurs.
Floral decoration in black and ivory on patinated ground, 60×30 cm.
Flutiste et jeune fille au tambourin.
Flutiste et trois femmes nues.
Foulard du festival de la jeunesse.
Four elements in the form of a bird, 71×18×35 cm.
Fragments de corps de femme.
Frontispice pour-le pere Goriot.
Garcon et dormeuse a la chandelle.
Glass under lamp. Ochre earthenware, height 33 cm.

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Goat's head in profile, 31×51 cm.
Goat's head in profile, diameter 40.5 cm.
Goat, diameter 26.2 cm.
Le grand orateur.
Grand plat round, visage en relief et grave, diametre 42 cm.
Grand tete de femme an chapeau orne.
Grande tete rouge, bleue, jaune.
Green floral motifs and white enamel, 24×10 cm.
Le gros pigeon.
Le guerrier fatigue.
Le guerrier fou ou Aretusa.
Hands on fish. Pink earthenware, diameter 31.5 cm.
Hercule tue le centaure Nessus.
L' homme a la fraise.
L' homme au baton.
Homme barbu couronne de feuillalge.
Homme barbu couronne.
Homme devoilant une femme.
Homme en proie a la paix (poesie d'eluard).
Homme et femme nue tenant un linge.
L' horloge de fleurs.
Hortensia et Juan.
Illustration-buffon-l'autruche.
Incised bird, 32×38 cm.
Jacqueline de profil.
Jacqueline in a hat, 26.5×22.5 cm.
Jacqueline in a pink dress, 26.5×22.5 cm.
Jacqueline Lisant.
Jacqueline on russet background, 26.5×22.5 cm.
Jacqueline with a grey bandeau 26.5×22.5 cm.
Jacqueline with long neck, 26.5×22.5 cm.
Jagged fragment of brick.
Jaime.
Jeune couple accroupi, l'homme avec un tamboourin.
Jeune fille selon Cranach le jeune.
Jeune homme couronne.
Jeune sculpteur au travail.
Joueurs de flute.
Juan, le petit piegon veuf.
Jug decorated with a goat and a piper in matt patina, 25×13 cm.
Jug decorated with figures dancing the sardana, height 22.9 cm., diameter at base 11 cm.
Jug with handle height 31.5 cm., diameter at base 12 cm.
Kappha.
Kid, decoration painted in engobe, 32×15×28 cm.
Lady wearing mantilla, 47×11.5×7 cm.
Lance-thrust, diameter 38 cm.
Landscape decoration height 31.5 cm., diameter at base 12.5.
Landscape, height 31 cm.
Large bird with two handles decorated with superimposed faces, 49×30×33 cm.
La Lavandiere.
Lutte entre Teree et sa belle soeur Philomele.
Madoura.
Les mains liees I.
Les mains liees II.
Les mains liees III.
Les mains liees IV.
Man with long hair, 26.5×22.5 cm.
Man's head incised on black ground, 38.5×32 cm.
Man's head with long hair. White earthenware, 31×31 cm.
El matador brinda la muerte del toro.
Maternite.
Max Jacob.
Meleagre tue le sangllier de Calydon.
Melon on a blue tartan ground, 32×38.5 cm.
Mercure, 1924 projects pour le rideau de scene, les decors, costumes (Oeuvres du Musee Picasso, Paris).
Minotaure attaquant una amazone.
Minotaure aveugle guide par une fillette I.
Minotaure aveugle guide par une fillette II.
Minotaure aveugle guide par une fillette III.
Minotaure blesse VI.
Minotaure caressant une femme.
Minotaure endormi contemple par un femme.
Minotaure et femme derriere un rideau.
Minotaure mourant.
Minotaure vaincu.
Minotaure, un coupe a la main, et jeune femme.
Modele accoude sur un tabouret.
Modele accroupi, sculpture de dos et tete barbue.
Modele contemplant un groupe sculpte.
Modele et grande sculpture de dos.
Modele et grande tete sculptee.
Modele et sculpture surrealiste.
Modele nu et sculptures.
Mort d'Orphee.
Morte au soleil IV.
Mottled, fish. White earthenware, 34×41.5 cm. Several versions. Original print. Edition.
Muerto del toro.
La muse et la riviere ou Terpsicore.
Nature morte a la bouteille.
Nature morte a la pasteque.
Nature morte a la pasteque, decomposition du tirage.
La nourrice.
Nouvelle ronde de la jeuneese.
Numa suit les cours de Pythagore.
Oeillet.
One handle and two sprouts.
One handle with two spouts 21×24×15 cm.
Owl incised on a beige ground, 32×38.5 cm.
Owl incised on a brown ground, 31×38.5 cm.
Owl, with eyes in relief, in yellow sulphide glazing, 22×12×25 cm.
Owl's head. Ochre earthenware, 21.5×21.5 cm.
Painted face, 32×38 cm.
Painted nudes, height 34 cm.
The painter and two models, 27×33 cm.
Parade, 1917 projets pour le rideau de scene, les decors, costumes (oeuvres du musee Picasso, Paris).
Pasa de muleta. Polychrome decoration on white earthenware, diameter 42 cm.
Pase de capa. Polychrome decoration on white earthenware, diameter 42 cm.
Pase de Muleta. Black decoration on ochre earthenware, diameter 42 cm.
Paseo. Black decoration on ochre earthenware, diameter 42 cm.
Paseo. Polychrome decoration on white earthenware, diameter 42 cm.
Le peintre a la palette.
Le peintre et son modele.
Pere Noel.
Personnages masques et femme oiseau.
Petit bouquet.
Petit buste de femme.
La petite bacchanale.
Petite tete de femme couronnee.
Photo rehaussee de Picasso et Manual Pallares.
Picador et torero.
Picador in bullring, 32×38 cm.
Picador incised in thick relief, diameter 24 cm.
El picador obligando al toro con su pica.
Picador returning on a blue ground, 31×38.5 cm.
Picador with brown-white decoration, diameter 22 cm.
Picador, diameter 18 cm.
Picador, diameter 42 cm.
Picador, femme et cheval.
Picador, incised and painted, diameter 42 cm.
Picador. Black decoration on ochre earthenware, diameter 42 cm.
Picador. Polychrome decoration on white earthenware, diameter 42 cm.
Piero Crommelynek de profil.
Pigeon au fond gris.
Le pigeon aux petits pois.
Pigeon blanc fond noir.
Pigeon, incised and painted, 13×23 cm.
La pigeon.
Pique.
La pique cassee.
La Pithonisse.
La plante aux toritos.
Plat rectangulaire, deux poissons bleus sur fond ivoire.
Polychrome bird, 32×38 cm.
Polychrome decoration with woman and flowers.
Polychrome face, 32×38 cm.

Polychrome picador, diameter 24 cm.
Polyxene, fille de Priam est egotgee sur la tombe d'Achille.
Portrait d'Andre Brenton.
Portrait d'Helene Rubinstein (I of XIX).
Portrait de Delacroix.
Portrait de Joliot-Curie.
Portrait de Leon Tolstoi.
Portrait de Manuel de Falla.
Portrait de Max Jacob.
Portrait de Nusch Eluard.
Portrait de Paul Eluard, frontiscipe pour-Les yeux fertiles.
Portrait de Paul Eluard.
Portrait de Paul Valery.
Portrait de Raymond Radiguet.
Portrait de Shakespeare.
Portrait de Vollard.
Portrait de Vollard III.
Portrait de Vollard IV.
Portraits de Balzac.
La poule.
Pour la ville, et non pour Helene on Victor.
Premiere affiche Vallauris.
Priamo, le noble Vieillard.
Profil et tete de femme.
Profile of Jacqueline on a light ground. White earthenware, diameter 18.5 cm.
Profile of Jacqueline. White earthenware, 41.5×41 cm.
La puce.
Puicinella, 1920 projects pour le rideau de scene, les decors, costumes (Oeuvres du Musee Picasso, Paris).
Quatre femmes en fuite.
Quatre femmes nues et tetes sculptees.
Quatre hommes nus assis.
Quatre tetes d'hommes.
Rebrandt a la palette.
Rembrandt et deux femmes.
Rembrandt et femme au voile.
Rembrandt et tetes de femme.
Le repos du sculpteur devant des chevaux et us taureau.
Le repos du sculpteur devant je jeune cavalier.
Le repos du sculpteur devant le petit torse.
Le repos du sculpteur devant nn nu a la draperie.
Le repos du sculpteur devant un centaure et une femme.
Le repos du sculpteur devant une Bacchanale au taureau.
Le repos du sculpteur et la sculpture surrealiste.
Le repos du sculpteur et le modele au masques.
Le repos du sculpteur I.
Le repos du sculpteur II.
Le repos du sculpteur III.
Le repos du sculpteur IV.
Ronde de la jeunesse.
Russet and brown condor, 39×15×41 cm.
Salto con la Garrocha.
Scene bachique an Minotaure.
Sculpteur a mi-corps an T.
Sculpteur avec coupe et modele accroupi.
Sculpteur d'un jeune homme a la coupe.
Sculpteur et deux tetes sculptees.
Sculpteur et modele admirant une tete sculptee.
Sculpteur et son modele devant une fenetre.
Sculpteur et trois danseuses sculptees.
Sculpteur, modele accroupi et tete sculptee.
Sculpteur, modele couche et sculpture.
Sculpteur, modele et sculpture assise.
Sculpteur, modeles et sculpture.
Sculpteurs et modele debout.
Sculptuer, modele couche et buste sculpte.
Sculptures et vase de fleurs.
Small incised face, 32×38 cm.
Soeur Fanny Price.
Spotted face, 32×38 cm.
Still life with candlestick on black and white ground, 32×38.5 cm.
Still life with glass and apple, 32×38.5 cm.
Still life with grapes and scissors on a beige and brown ground, 32×38.5 cm.
Still life with grapes on a reddish-brown ground, 32×38.5 cm.
Still life with spoon. White earthenware, 33×33 cm. Origina print. Edition.
Still life with tomatoes on a reddish-brown ground, 32×38.5 cm.
Suerte de muleta.
Suerte de varas.
Suerte ilamada de Don Tancredo.
Sun (in pastel crayon), 33×26 cm.
Le taureau (epreuve du premier etat).
Taureau aile contemple par quatre enfants.
Taureau et chevaux dans l'arene.
Le taureau.
La tauromaquia.
Tete d'Histrion.
Tete d'homme.
Tete d'un homme et d'une femme voilee.
Tete de faune (I a VI) head of fawn.
Tete de faune.
Tete de femme-paysage aux baigneuses et au pecheur.
Tete de femme.
Tete.
Tetes et figures emmelees.
Three black fish, diameter 43 cm.
Three fish in black and blue, diameter 41 cm.
Toreando a la Veronica.
El torero sale en hombros de los aficionados.
El toro sale del toril.
Toros en el Campo.
Toros en Vallauris.
Tortured face, surrounded by palm leaves. White earthenware, diameter 42 cm.
Tortured faun's face. White earthenware, diameter 42 cm.
Trande tete de femme au chapeau orne.
Tres femmes nues.
Le tricorne, 1919 projets pour le rideau de scene, les decors, costumes (Oeuvres du Musee Picasso, Paris).
Trois acteurs.
Trois femmes.
Trois femmes nues pres d'une fenetre.
Trois fragments de tetes.
Trois tetes d'hommes.
Troisiene affiche Vallauris.
Two fish, incised, ivory with green accents, 31×38.5 cm.
Two fish, one blue and one beige, on an ivory ground, 31×38.5 cm.
Two fish, one reddish-brown and one blue, in relief, 31×38.5 cm.
Two fried eggs and a piece of black pudding on a grey ground, 31×38.5 cm.
Two-handled vase height 19.5 cm., diameter at base 16 cm.
Vase decorated with brushstrokes, 24×28 cm.
Vase with goats height 23 cm., diameter at top 12 cm., diameter at bulge 20 cm.
Vase with three masks 24.5×28 cm.
Le verre sous la lampe.
Vertumne poursuit Pomone de son amour.
Le viol.
Le viol II.
Le viol IV.
Le viol V.
Le viol VII.
Le viol sous la fenetre.
Visage.
Visage de femme (visage paix).
Visage de la paix.
Vive la paix.
Watermelon with knife and fork, 30 × 37 cm.
White earthenware, 32 × 38.5 cm.
White earthenware, diameter 42 cm.
White earthenware, height 38 cm., diameter at the top 10 cm., diameter at the bulge 45 cm.
Woman in ivory and brown under glaze, 35 × 11 × 11 cm.
Woman with a long neck in pink and black clay, 28 × 9 cm.
Woman with amphora, emgobe decoration on natural ground, 45 × 32 × 14 cm.
Woman with flowered hat. Ochre earthenware, 33 × 25 cm.
Woman's face and five potter's marks on ochre earthenware, 31.5 × 27 cm.

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Woman's face, 22 × 12 × 8 cm.
Woman's head 32 × 38 cm.
Woman's head painted. Variation on No. 190.
Woman's head, painted, height 24 cm., total width 19 cm.
Woman, 29 × 9 × 7 cm.
Woman, engobe decoration under beige-brown glaze, 30 × 13 × 13 cm.
Tamaris, Cine.
Les parapluies de Cherbourg.
TaurusFilm. SEE Progefi, TaurusFilm & France2.
TaurusFilm Gmbh & Company.
'38 Heim ins Reich.
Die groben Geschaefte.
Hallo, hier ist Berlin.
Das heimliche Urteil.
Im Labyrinth.
Jetzt dreht die Welt sich nur um dich.
Ein Kaisergetreuer.
Rommel ruft Kairo.
Der Transport.
Wallenstein.
Wo die alten walder rauschen.
TaurusFilm, GmbH & Company (a Kirch Gruppe Company)
08/15 in der Heimat.
08/15, 2. Teil.
08/15.
Alvorada—Aufbruch in Brasilien.
Arzt aus Leidenschaft.
Der Arzt von Stalingrad.
Un bambino di nome Gesu.
Der Bauer vom Brucknerhof.
Blond mub man sein auf Capri.
Botschaft der Goetter—Neufassung.
Der Brave Sunder.
Carlos.
De fyv i fedtefadet.
Dein Leben gehort mir.
Des Teufels General.
Don Carlos.
Drillinge an Bord.
Du bist mein Gluck.
Emil I Loenneberga.
Emil oche Grisaknoen.
Englands Weg nach Europa.
Erinnerungen an die Zukunft—Neufassung.
Eskapade.
Die Feuerzangenbowle.
Flic-Flac.
Die Foersterbuben.
Fruhling in Berlin.
Funf Millionen suchen einen Erben.
Das Geheimnis der roten Katze.
Heidi 2.
Das heilige erbe.
Herzblatt oder wie sag ich's meiner Tochter.
Die Hexe.
Hilfe, mich liebt eine Jungfrau.
Der Himmel ist nie ausverkauft.
Himmel ohne Sterne.
Hohe Tannen.
El hombre que vino de ummo.
Hoppla, jetzt kommt Eddie.
Hunde wollt ihr ewig leben.
Ich bin kein Casanova.
Ich denke oft an Piroschka.
Ich war ein haessliches Maedchen.
Im Namen des Teufels.
Im Ozean der Sehnsucht.
Im weissen Roessl (1952).
In jenen Tagen.
Intime Liebschaften.
Ja, ja, die Liebe in Tirol.
Der Jaeger von Fall.
Jedermann.
Johannisnacht.
Jonathan.
Journey to the lost city.
Die junge Suenderin.
Kali Yug, I: Die Goettin der Rache.
Kali Yug, II: Aufruhr in Indien.
Kampf.
Kauf Dir einen bunten Luftballon.
Kirmes.
Klassenverhaeltnisse.
Die kleine Stadt will schlafen gehen.
Koenigliche Hoheit.
Kohlhiesels Toechter.
Komm nur, mein liebstes Voegelein.
Der Kongress amuesiert sich.
Konsul Strotthoff.
Das Kunstseidene Maedchen.
Das Land des Laechelns.
Ein Leben fuer Do.
Das Leben von Adolf Hitler.
Legge di guerra.
Letti sbagliati.
Letzte Fubganger.
Der letzte Mann.
Der letzte Zeuge.
Die letzten drei der Albatros.
Liebe in 3 Dimensionen.
Liebe ist nur ein Wort.
Liebe will gelernt sein.
Liebesbeichte junger Ausreisserinnen.
Die Lindenwirtin vom Donaustrand.
Liselotte von der Pfalz.
Ludwig II.-Glanz und Ende eines Koenigs.
Der lugner.
Lumpazivagabundus.
Madame und ihre Nichten.
Ein Maedchen aus Flandern.
Maedchen beim Frauenarzt.
Maedchen in uniform.
Maedchen mit Zukunft.
Das Maedchen Rosemarie.
Maedchen, die nach Muenchen kommen.
Maedchenjahre einer Koenigin.
Der Maedchenkrieg.
Die Magd von Heiligenblut.
Der Mann im Schilf.
Manoeverzwilling.
Mariandl.
Mariandls Heimkehr.
Martin Roumagnac.
Mayerling.
Mein Herz ruft nach Dir.
Mein Mann, das Wirtschaftswunder.
Der Meineidbauer.
Der Meisterdetektiv.
Menschen, Tiere, Sensationen.
Mikosch im Geheimdienst.
Mitsubachi maja no boken.
Der Moerder mit dem Seidenschal.
Der Moerderclub von Brooklyn.
Mohn ist auch eine Blume.
Momo.
Monnaie de singe.
Monpti.
Mordnacht in Manhattan.
Morgens um sieben ist die Welt noch in Ordnung.
Mub man sich gleich scheiden lassen.
Musik im Blut.
Nachts im Gruenen Kakadu.
Nachts, wenn der Teufel kam.
Das Netz.
Der neue Schulmaedchen-report.
Die Niklashauser Fahrt.
Nils Holgersson.
Nya hyss av Emil i Loenneberga.
Oase.
Oh Jonathan-Oh Jonathan.
Ohne Nachsicht.
Operacion Estambul.
Opernball.
Ossessione.
Panamericana.
Der Pauker.
Perrak.
Peter Voss, der Held des Tages.
Peter Voss, der Millionendieb.
Piggies.
Pioniere in Ingolstadt.
Der postmeister.
Premiere.
Prostitution heute.
Der Prozess.
Puenktchen und Anton.
Pygmalion.
Radetzkymarsch.
Der Raecher.
Die Rechnung eiskalt serviert.
Regine.
Der Rest ist Schweigen.
Robinson soll nicht sterben.
Roma citta'aperta.
Romanze in Venedig.
Rosen fuer den Staatsanwalt.
Roter Mohn.
Salem Aleikum.
Salzburger Geschichten.
Schachnovelle.
Der Schandfleck.
Der Schatz im Silbersee.
Der Schinderhannes.
Schlag auf Schlag.
Die Schlangengrube und das Pendel.
Schloss Gripsholm.
Schloss Hubertus.
Schluesselloch-Report.
Die Schoene Luegnerin.
Schrammeln.
Schueler-Report—Junge, Junge, was die Maedchen alles von uns wissen wollen.
Schuesse aus dem Geigenkasten.
Schulmaedchen-Report 3. Teil.
Schulmaedchen-Report 4. Teil.
Schulmaedchen-Report 5. Teil.

Schulmaedchen-Report 6. Teil.
Schulmaedchen-Report 7. Teil.
Schulmaedchen-Report 8. Teil.
Schulmaedchen-Report 9. Teil.
Schulmaedchen-Report 10. Teil.
Schulmaedchen-Report 11. Teil.
Schulmaedchen-Report 12. Teil.
Schwarz auf weib.
Der schwarze Panther von Ratana.
Schwarzwaelder Kirsch.
Schwarzwaldmaedel.
Das Schweigen im Walde.
Schwejks Flegeljahre.
Sebastian Kneipp-Der Wasserdoktor.
Sein bester Freund.
Die Sennerin von St. Kathrein.
Sensation in San Remo.
Sergio Mendes - Brazil 70.
Le sette sfide.
Sieben Jahre Pech.
Sieben Tage Frist.
Sinbad the sailor.
Sissi—die junge Kaiserin.
Sissi—Schicksalsjahre einer Kaiserin.
So endete eine Liebe.
Solang'es huebsche Maedchen gibt.
Solange noch die Rosen bluehn.
Gli specialisti.
Spion fuer Deutschland.
Das Spukschloss im Spessart.
Spur eines Maedchens.
Die Staerkere.
Stardivari.
Ein Stern faellt vom Himmel.
Der Stern von Afrika.
Der Sternsteinhof.
Die stimme des Herzens.
Der Stoff, aus dem die Traeume sind.
Strasse der Verheissung.
Der Student von Prag.
Surcouf-Le tigre des sept mers.
Das Susse Leben des Grafen Bobby.
Das tanzende Herz.
Tendre voyou.
La terra trema.
Der Tiger von Eschnapur (1938).
Der Tiger von Eschnapur (1959).
Der tod des Empedokles.
Der Tod im roten Jaguar.
Der Tod ritt Dienstags.
Todesschuesse am Broadway.
Die Toteninsel.
Die Trapp-Familie.
Die Trapp-Familie in Amerika.
Traumstadt.
Traumstrasse der Welt—Teil I.
Traumstrasse der Welt—Teil II.
Traumulus.
Tromba.
Trotta.
Um Null Uhr schnappt die Falle zu.
Und der Regen verwischt jede Spur.
Und ewig singen die Waelder.
Und Jimmy ging zum Regenbogen.
Der unfried.
Ungarische Rhapsodie.
Unheimliche Geschichten.
Unsere tollen Tanten.
Unsterblicher Mozart.
Unsterblicher Walzer.
Unter geiern.
Urlaubsreport—Woruber Reiseleiter nicht sprechen.
Vater sein dagegen sehr.
Vergiss beim Sex Liebe nicht.
Vergiss mein nicht.
Verites et mensonges.
Der verlorene.
Das vermachtnis des Inka.
Die verschwundene miniatur.
Versprich mir nichts!
Via Mala.
Der vogelhandler.
Vor Gott und den Menschen.
Der Waldbauernbub.
Waldrausch.
Was Manner nicht fur moglich halten.
Weisse fracht fur Hongkong.
Die weisse holle vom Piz Palue.
Weisser Hollunder.
Das Weite Land.
Weltrekord im Seitensprung.
Wen die Gotter lieben.
Wenn am Sonntagabend die Dorfmusik spielt.
Wenn der Vater mit dem Sohne.
Wenn die glocken hell erklingen.
Wenn die Heide bluht.
Wenn die prallen Mopse hupfen.
Wenn suss das Mondlicht auf den Hugeln schlaft.
Whity.
Der Wilderer vom Silberwald.
Winnetou I.
Winnetou II.
Winnetou und das Halbblut Apanatschi.
Winternachtstraum.
Wir haun den Hauswirt in die Pfanne.
Das Wirtshaus im Spessart.
Witwer mit funf Tochtern.
Das Wunder des Malachias.
Der Zigeunerbaron.
Zinksarge fur die Goldjungen.
Zucker fur den Morder.
Die Zurcher Velobung.
Zwei Herzen und ein Thron.
Die Zwillinge vom Zillertal.
Zwischen Shanghai und St. Pauli.
Taurusfilm. SEE Progefi, Taurusfilm & France2.
Teledis Company, Ltd.
14-18.
A mirage de Rome.
Les abysses.
Accroche coeur.
L' affaire des poisons.
L' affaire Maurizius.
L' alibi.
Allemagne annee zero.
L' amour a vingt ans.
Les amoureuse du France.
Andalousie.
Annette et la dame blonde.
L' appel du destin.
Les armants de la villa Borghese.
Atoll K.
Au coeur de la vie.
Au service du Tsar.
Aux deux colombes.
Avec le sourire.
Les aventuriers de l'air.
Bataille de France (1939–1940).
Les bateliers de la volga.
Belle de cadix.
Le ble en herbe.
Un calner de bal.
Caprices.
Cartes sur table.
Cartouche roi de Paris.
La cavalcade des heures.
Cecile est morte.
Cette vieille canaille.
Chateau de verre.
Ciboulette.
Le Colonel Chabert.
Comme un cheveu sur la soupe.
Comme un poisson dans l'eau.
Contre-enquete.
Courrier sud.
Crime et chatiment.
Un dejeuner de soleil.
Le dernier des size.
Les derniers jours ete Pompei.
Le desert de pigalle.
Les deuse orphelines.
Deux hommes dans Manhattan.
Diabolique Docteur Z.
Le dialogue des Carmelites.
Dossier noir.
Douce.
Du mouron pour les petits oiseaux.
Ennemis intimes.
Escadrille amoureuse.
Escalier sans fin.
Etes vous jalouse.
Etrange Monsieur Steve.
Etrange rendez-vous.
Fabiola (2 epoques).
Le farceur.
Fausse maitresse.
La femme du bout du monde.
La ferme auae loups.
Le feu sacre.
Fleur d'oseille.
Francois Villon.
Fric frac en dentelles.
Les gaites du palace.
Galia.
Gibraltar.
La glu.
Grain de sable.
Le grand jeu.
La guerre des gosses.
Guerre secrete.
Les guerriers.
L' habit vert.
Hercule.
Histoire immortelle.
Un homme a abattre.
L' homme du jour.
L' homme sans coeur.
Horace 62.
L' impasse.
Impossible Isabelle.
J'accuse.
J'ai choisis l'amour.

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J'etais une aventuriere.
Je chante.
Jeanne ace bucher.
Jenny.
Les jeux de l'amour.
Le justicier du Minnesota.
Katia.
Lady Paname.
Les lions sont laches.
La lou ve.
Ma pomme.
Mademoiselle de Paris.
Mademoiselle Mozart.
Les magiciennes.
La main du diable.
La maison d'en face.
La maison du maltais.
Mam'zelle Bonaparte.
Une manche et la belle.
Mari et femme.
Le mariage de chiffon.
Le mariage.
Les maudits.
Les memoires de la vache Yolande.
La minute de verite.
Mollenard.
La mort du cygne.
La neige etait sale.
Neuf garcons, un coeur.
Ni vu ni connu.
Normandie niemen.
Les nous venitiennes.
La nuit est mon royaume.
Nuits de Decembre.
Nuits de Paris.
Oh que mambo.
L' oiseau de paradis.
Ophelia.
L' or dans la rue.
Pantins d'amour.
Papa maman la bonne et moe.
Papa maman ma femme et moi.
Paris secret.
Paris top secret.
La part de l'ombre.
Les patres du desordre.
Le patriote.
Pechis de jeunesse.
Le petit garcon de l'ascenseur.
Pierre et Jean.
Pirates du rail.
Les plaisirs de Paris.
Les plus belles escroqueries du monde.
Port Arthur.
Pourquoi viens-tu si tard?
Premier rendez vous.
Quand lu lirae cette lettre.
Raphael le tatoue.
Le rat d'amerique.
Rencontres a Paris.
Rends moi la cle.
Roger le horte.
Sabotage en mer.
Le sang dis martyrs.
Sans famille.
Sept hommes en or.
Septieme ciel.
Serenade.
Le silence de la mer.
Le soleil a toujours raison.
Strip tease.
La symphonie fantastique.
Taxi roulotte et corrida.
Toni.
Val d'enfer.
Valse brillante.
La verite sur bebe Donge.
Le visiteur.
Le voyageur de la toussaint.

Teledis Company, Ltd. & Rene Chateau.
Une fille pour l'ete.
Les grandes personnes.
Sheherazade.

Teledis Company, SA.
Adhemar.
Le beau Serge.
Le chagrin et la pitie.
Les cousins.
Desire.
Destin fabuleux de Desiree Clary.
Faisons un reve.
Mon pere avait raison.
Le mot de Cambronne.
Nouveau Testament.
Les perles de la couronne.
Quadrille.
Remontons les Champs Elysees.
Le tresor de Cantenac.

Teledis Company.
L' album de famille de Jean Renoir.
L' amour d'une femme.
Destin execrable de Guillemette Babin.
Monte cassino.
Paris coquin.
Prelude a la gloire.
Premier bal.
Proces a la ville.
La promenade.
Les requins de Gibraltar.
Les revoltes de l'albatros.
Le Roi.
Sa majeste Monsieur DuPont.
Saint-Tropez blues.
Les salauds vont en enfer.
Scenes de menage.
Signe picpus.
Sur le banc.
Symphonie inachevee.
Tam tam mayumbe.
Les teenagers.
Terreur sur Rome.
Toi le venin.
Tonneau d'or.
Le travail c'est la liberte.
Trois chambres a Manhattan.
Les vaincus.
Les vierges.
Les vignes du seigneur.
Vingt quatre heures de permission.
Virgile.

Teledis. SEE Lumiere & Teledis.

Televisa, S.A. de C.V.
Amarus a tu projmo.
El amor tiene cara de mujer.
Ana del aire.
Arriba el telon.
Baja una estrella.
Bartolo.
Caras y gestos.
El chofer.
Las Compadres.
Corazon salvaje II.
La criada bien criada.
Domingo a domingo.
Dos a quererse.
En tela de juicio.
Ensalada de locos.
Entre brumas.
Esp. Silvia Pinal.
Estra noche con Manolo Fabregas.
La familia Burron.
Los grande sanas del rock.
Guitarras.
Ha llegado una intrusa.
La hiena.
El Honorable Sr. Valdes.
El juicio.
El juramento.
Lo imperdonable II.
Lo impredonable.
La maestra Mendez.
Manana sera otro dia.
El manantial.
Marcha nupcial.
Mejor de los Polivoces.
Mi hermana la nena.
Mi rival.
El milagro de vivir.
Muchacha italiana viene AC.
Mundo de juguete.
Mundos opuestos.
Musica espectacular.
Muy agradecido.
Noches tapatias.
Nosotros los pobres.
Pacto de amor.
Paloma.
Penthouse.
Pobre Clara.
Las pulgas.
Los que ayudan a Dios.
Quien.
Rina.
El show del Loco Valdez.
Siempre en domingo.
Siempre havra un manana.
Teatro de la familia.
Topo gigio.
Triangulo la tierra.
Variedades de media noches.
Ven con migo.
La venganza.
Visitando a las estrellas.
Yo no pedi vivir.

Televisa, SA de CV.
A sesino de embarca.
Las abandonadas.
Acapulco 12–22.
Ahi esta el detalle.
Al son de la marimba.
Los albaniles.
Alma llanera.
Amok.
Amor, amor, amor.
Amor en las nubes.

El amor no es ciego.
El amor tiene cara de mujer.
Angel negro.
Angeles infernales.
Angelica (un dia de lluvia).
Anonimo mortal.
Aquella Rosita Alvirez.
Aquellos anos.
Aqui estan los Aguiares.
Aranas infernales.
Asesinato a sangre fria.
Asi se quiere en Jalisco.
El asisino X.
Auquellos ojos verdes.
Ave sin nido.
Ayudame compadre.
Balum Canan.
Los bienamados.
Blue Demon Destructor de espias.
Blue Demon frente a la muerte.
Bugambilia.
Caballo a cabella.
Cala bacitas tiernas.
La camara del terror.
Caminos de Michoacan.
Canto y no llores.
El cara parchada.
Un carazon para dos.
Carita de primavera.
Carnada.
Carvana de la muerte.
La casa de Troya.
La casa del pelicano.
La casa prohibida.
Cayo de la Gloria el diablo.
El charro de las calaveras.
El charro del misteria.
Cinco en la carcel.
La cobarde.
El complot mongol.
Con quien andan nuestras hijas.
Contacto chicano.
El contrabando del Paso.
Coqueta.
Coranacion.
Cosa facil.
La coyota.
Crespuscolo.
El Criollo.
Cronica roja.
Cuando tejan las aranas.
Cuando viajen las estrellas.
Cuba baila.
El cumpleanos del perro.
La Dama de Alba.
La dama sel velo.
Del brazo y por la calle.
Del otro lado del puente.
Delincuente.
Derecho de asilo.
El deseo llega de noche.
Dias de ontono.
Dinamita Kid.
Los dineros del diablo.
La diosa arrotillada.
Distindo amanecer.
La divina garza.
Divinas palabras.
Dona Barbara.
Dona macabra.
Dos caras tiene el destino.
Dos hijos desobedientes.
Dos tigos de cuidado.
En tiempos de don porfiro.
Enamorada.
Encadendada.
Los endemoniados del ring.
Las enganadas.
Enigma de muerte.
Los enredos de una gallega.
Esa mujer me vuelve loco.
Extrana pasajera.
Flor silvestre.
Flores de papel.
Frida, naturaleza viva.
Fruto de tentacion.
La furia de un Dios.
El gavilan o paloma.
La generala.
Gigantes planetarios.
El globo de cantoya.
Las glorias del gran puas.
El gran calavera.
El granador.
Los guaruras.
La guerra de los pas teles.
La guerra de los pasteles, segunda version.
Habia una vez una estrella.
La hermana impura.
Las hermanos Barragan.
La hija de nadie.
La hija del engano.
La hija del penal.
La hija del regimiento.
El hijo del viente.
Historia de un abrigo de mink.
Historia de un gran amor.
Los homberes no deben llorar.
Hubia una vez un murido.
Huellas del pasado.
I Tara el guardian de la muerte.
La ilusion viajaen tranvia.
El imperio de Dracula.
Las in fieles.
La India blanca.
La insaciable.
El intruso.
Invasion de los vampires.
Invasion siniestra.
Los Japoneses no esperan.
El jinete justiciero.
El jinete solitario.
El jorobado.
El joven Juarez.
Juan Guerrero.
Juego de pasiones.
Juventud sin dies.
Kung fu mortal.
Lastima de ropa.
La liga de las muchachas.
La llamada de la muerte.
Lo mejor de teresa.
Macario.
Majada de nacimiento.
Los malvivientes.
Mama soy Paquito.
La mano que aprieta.
El mar.
La marejada.
Maria Candelaria.
Maria Eugenia.
Mariposas discadas.
El mas valiente del mundo.
Me ha gusado un hombre.
El medallon del crimen.
Medias de seda.
Mercenarios de la muerte.
El Mexicano.
Mexico de mis amores.
Mexico norte.
Mi querido capitan.
La miel se fue a la luna.
Miente y seras feliz.
El mil mascaras.
Mina, viento de libertad.
Un minuto de bondad.
La monja alferez.
El monje blanco.
La mujer ajena.
Una mujer para los sabados.
La mujer perfecta.
La mujer sin la grimas.
Un mulato llamado Martin.
Las Musiqueras.
Natacha.
Nazarin.
Neutron vs. el Dr. Caronte.
Neutron vs. los asesinos karate.
Neutron, el enmascardo negro.
Nino pobre nino rico.
No mataras.
Noches de Paloma.
Nosostras las taquigrafas.
Ochocientas leguas por les Amazonas.
Ojo por ojo.
Los olvidados.
Orinoco.
Otra primavera.
El otro.
Padre contra hijo.
La pajarera.
Paloma herida.
La panchita.
Pandilleros de la muerte.
Para usted jefa.
Paraiso robado (Marcela).
Pata de pala.
Pecado.
Pedro Paramo.
Pelea de perros.
El penon de las animas.
Pepita Jimenez.
Los pequenos gigantes.
La perla.
Pero sigo siendo el rey.
Peron de la hija de nadie.
El planeta de las mujeres invasasores.
Presos sin culpa.
El profeta Mimi.
Pueblerina.
Pueblo sin Dios.
Que bravas son las solteras.
Que hombre ten simpatico.
El que tenga un amor.
Que viene mi marido.
Quiere porque muero.

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Raices.
El rapido de las 9:15.
El rapto.
El rebelde.
El revention.
El rio y la muerte.
Roba chicos.
Rocambole vs. la Mujeres Arios.
Rocambole vs. la Secta del Escorpion's.
El ropavejero.
La rosa blanca.
Rosenda.
Rostros olvidados.
Sabre las olas.
Salon Mexico.
San Felipe de Jesus.
San Miguel el Alto.
San Simon de lo Magueyes.
La sangre de nuestra raza.
Sangre sobre el ring.
El santo vs. la Tigresa.
Santo vs. las lobas.
El satanico.
Secreto eterno.
La seduccion.
Semana Santa en Acapulco.
La senora de enfrente.
La Senora Muerto.
La sentencia.
Si mi vida.
La silla vacia.
Simitrio.
La sobrina del senor cura.
El socio.
Soledad.
La sombra del mano negra.
La sombra del murcielago.
Sonatas.
Subida al cielo.
La sucesion.
Tequila.
El tesoro de Morgan.
El testamento.
Tierra brava.
Tierra de valientes.
La trepadora.
Los tres calaveras.
Tres contra el destino.
Las tres tumbas.
Tu, yo, nosotros.
El tuerto Angustias.
Un sabado mas.
Uno y media contra el mundo.
Vainilla, bronce y morir.
Valle de los desaparecidos.
Vals sin fin.
El vampiro sangriento.
La venenosa.
La verdadera vocacion de Magdalena.
El verdugo de Sevilla.
Vertigo.
Vi vidores de mujeres.
El viaje.
Viajera.
La vida dificil deuna mujer.
Viento salvaje.
La virfen que ferjo una partia.
Xoxontla, tieria que arde.
Yo baile con Don Porfiro.
Yo quiero ser hombre.

Tezuka Production. SEE Toho Company, Ltd. & Tezuka Production.

Tezuka Productions Company, Ltd.
Janguru taitei.
Tetsuwan atom.

TF1 Films Production. SEE Progefi, TF1 Films Production, Canal+, Hachette Premiere & Productions Fox Europa.

Theatrecraft, Ltd.
Jungle street.

Toho Co., Ltd.
Aabare goemon.
Akatsuki no dasso.
Ankokugai no dankon.
Ishinaka sensei Gyojoki.
Kage gari.
Kare gari hoero.
Kuroigashu kanryu.
Munekata kyoudai.
Sengoku yaro.
Yato kaze no nakao hashiru.

Toho Co., Ltd. & Hyogensha.
Cinmoku silence.

Toho Company, Ltd.
Aa bakudan.
Aki tachinu.
Ankokugai no kaoyaku.
Ankokugai no taiketsu.
Anzukko.
Arakure.
Arashi no nakano otoko.
Asunaro monogatari.
Buraikan.
Deso ningen.
Dobunezumi sakusen.
Doburoku no tatsu.
Dokuritsu gurentai nishi e.
Dokuritsu gurentai.
Fumochitai.
Garakuta.
Ginrei no hate.
Hiatari ryoko! yume no nakani kimiga ita.
Honoo no gotoku.
Iwashigumo.
Jakoman and tetsu.
Jujin yukiototko.
Keiji monogatari kuroshio no uta.
Keiji monogatari ringo no uta.
Keiji monogatari yamabiko no uta.
Kubi.
Kunisada chuji.
Kuroigashu aru sarariman no shogen.
Kyomo ware oozora ni ari.
Meoto zenzai.
Meshi.
Musashino fujin.
Musume, tsuma, haha.
Nine 2 Koibito Sengen.
Nine.
Okaasan.
Onna goroshi aburajigoku.
Pu-san.
Saikaku ichidai onna.
Sengoku guntoden.
Sogeki.
Subarashiki nichiyobi.
Taiheiyo no washi.
Tsuma.
Ukigumo.
White love.
Yagyu bugeicho soryu hiken.
Yagyu bugeicho.
Yaju shisubeshi.
Yasha.
Yoru no nagare.
Yukiguni.
Zatoichi goyotabi.
Zatoichi royaburi.

Toho Company, Ltd. & Ashi Productions.
Makyogaiden ladius.

Toho Company, Ltd. & Tezuka Production.
Hinotori 2772 ai no cosumo zoon.

Toho Company, Ltd., Fuji Television, Asahi Tsushinsha, Shogagukan, O. B. Kikaku.
Touch 3 kimiga torisugita atoni.

Toho Company, Ltd., Fuji Television, Asahi Tsushinsha, Shogakukan & O B Kikaku.
Touch 2 sayonara no okurimono.

Toho Company, Ltd., Fuji Television, Asahi Tsushinsha.
Touch sebango no nai ace.

Toho Company, Ltd., Nippon TV Hosomou, Yomiuri TV Hoso & Tokyo Movie Shinsha.
Lupin Sansei Babylon no ogondensetsu.

Toho/Mifune Productions.
Furinkazan.

Tokyo Eiga Shinsha, legal successor to Tokyo Eiga.
Kuroi gashu aru sonan.
Neko to shozo to futari no onna.

Tokyo Eiga Shinsha.
Bokuot kitan.
Robo no ishi.

Tokyo Eiga. SEE Tokyo Eiga Shinsha, legal successor to Tokyo Eiga.

Top Entertainment Products, Inc.
Buenas noches ano nuevo.
Cri-Cri el grillito cantor.
La edad de la inocencia.
Morir en el golfo.
La pecadora, el cura y la santa.

Tovey, Doreen.
Cats in the belfry.

Toyko Eiga Shinska (legal successor to Tokyo Eiga).
Anya koro.

Tri-Star Pictures, Inc. SEE TriStar Pictures, Inc., f.k.a. Tri-Star Pictures, Inc.

TriStar Pictures, Inc., f.k.a. Tri-Star Pictures, Inc.
I miei primi 40 anni.
Russicum.

Trustees of the Society of Authors Pension Fund.
Dogs in an omnibus.
Pelican walking.

Smoke rings.

Turnus Film AG.
Bonditis.

UGC. SEE Pathe & UGC.

UGC DA. SEE Films Vendome (A. Osso and UGC DA) co-producers.

UGC DA International (UGC DAI).
A nous les petites anglaises.
Accroche-tol, y'a du vent!
Adorables demons.
Ainsi finit la nuit.
Alerte au deuxieme bureau.
Alerte en mediterranee.
Un aller simple.
Allo...je t'aime.
L' ambitieuse.
Un ami viendra ce sour.
Un amour de pluie.
L' animal.
L' appel du silence.
Apres l'orage.
Apres vous Duchesse.
L' Auberge rouge (black and white version).
L' Auberge tragique.
L' aventurier de Seville.
Bal de nuit.
Une balle suffit.
Les bleus de la marine.
Une blonde comme ca.
Le bon dieu sans confession.
Le bossu.
Le bourgeois gentilhomme.
Les branches a Saint-Tropez.
Brelan d'as.
Les bresiliennes du bois de boulogne.
Breves amours.
C'est la faute d'Adam.
La cage.
Canal grande.
Canet rock.
Cargaison clandestine.
Cargo pour la reunion.
Carrefour des passions.
Le carroussel fanstastique.
Casse tete chinois pour un judoka.
Catherine, il suffit d'un amour.
Un certain Monsieur Jo.
Cet homme est dangereux.
Chantage.
Chaque jour a son secret.
Chaste et pure.
Chateaux en espagne.
Le cheik blanc.
Cheri fais-moi peur.
Un clair de lune a Maubeuge.
Les clandestines.
Les clandestins.
Coincidences.
Les compagnes de la nuit.
Compartiment de dames seules.
Le coq de regiment.
Coup de bambou.
Coup dur chez les mous.
Le couteau sous la gorge.
Crainquebille.
Le crime de David Levinstein.
Croisieres siderales.
La cuisine au beurre.
La cuisine au beurre (black & white version).
La danseuse nue.
La danseuse rouge.
Demain l'afrique.
Le dernier tournant.
Derniere aventure.
Les dernieres vacances.
Des garcons et des filles.
Des quintuples au pensionnat.
Le desir mene les hommes.
Desnuda inquietud.
Deux de l'escadrille.
Les deux gamines.
Deuxieme bureau contre inconnu.
Le diable souffle.
Le dindon.
Les distractions.
Un divorce heureux.
Domenica.
Don Pasquale.
Une drole de bourrique.
Dupont-Barbes.
Les duraton.
L' ecole des cocottes.
L' ecole des journalistes.
L' ecole est finie.
L' eden et apres.
Embraye ... bidasse ca fume.
L' emigrante.
Les enfants du soleil.
Les enfants ne sont pas a vendre.
L' escadron blanc.
L' escapade.
Et dix de fer.
Et ta soeur.
Eternel conflit.
La faile.
La famille pont-biquet.
Les fausses confidences.
La femme fatale.
La femme nue.
Une fille cousue de blanc.
Fils de France.
La foire aux femmes.
Fortune de Marseille.
Franco DePort.
Fumee blonde.
Funny boy.
Le garcon sauvage.
Georges braque ou le temps different.
Gisele.
La grande marniere.
Les grands moyens.
Le guerisseur.
Guinguette.
Hallucinations sadiques.
Histoires interdites.
Hitler...connais pas.
L' homme a femmes.
L' homme de mykonos.
L' homme qui cherche la verite.
L' homme qui ment.
L' homme qui revient de loin.
L' homme qui valait des milliards.
L' homme sans nom.
Ils ont tue jaures.
L' increvable.
Jamais deux sans trois.
Je prends la chose du bon cote.
Le jeu avec le feu.
Les jeunes maris.
Un jour avec vous.
Le journal d'un fou.
Les joyeuses colonies de vacances.
Le judoka, agent secret.
King and country.
La seconde verite.
La lecon particuliere.
Leguignon guerisseur.
Les aventures de Gil Blas de santillane.
Il letto in piazza.
Lettre ouverte.
La loi.
La louve solitaire.
Lucrece borgia.
Lucrece.
Les lumieres du soir.
Ma femme, ma vache et moi.
Ma femme, mon gosse et moi.
Ma petite folie.
Ma tante dictateur.
Macao, l'enfer du jeu.
Mademoiselle Josette, ma femme.
La main a couper.
La main chaude.
La maison dans la dune.
Les maitres nageurs.
Le mandai d'amener.
Mannon 70.
Le marchand de filles.
Les marchandes d'illusions.
Match contre la mort.
Mayerling 1.
Mefiez-vous fillettes.
La megere apprivoisee.
Mensonges.
Mermoz.
Message chiffre.
Mieux vautetre riche et bien portant que pauvre et mal fichu.
Mission speciale a Caracas.
Le mome.
Mon ami le cambrioleur.
Le monde est comme ca.
Monsieur De Pourceaugnac.
Monsieur Leguignon lampiste.
Monsieur personne.
Mont-dragon.
Les mordus.
Les mordus de Paris.
La morte saison des amours.
La moucharde.
Moumou.
N'a pris les des.
Napoleon Bonaparte, empereur des francais.
Les naufrageurs.
Neige.
Nick Carter is breaking everything.
Nina.
Une nuit aux Baleares.
Une nuit de folies.
La nuit des suspectes.
La nuit obscure.
Les nuits blanches de Saint-Petersbourg.

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Obsession.
Ou est passe Tom?
Le pain des jules.
Les parias de la gloire.
Pas de vacances pour monsieur le maire.
Pas si bete.
Le passager clandestin.
Le passe muraille (black and white version).
Le peleton d'execution.
Pension Jonas.
Le pere lampion.
Les petits chats.
Picasso.
Plus de vacances pour le bon dieu.
Le plus heureux des hommes.
Police judiciaire.
La porteuse de pain.
Portrait robot.
Pouic-pouic (black and white vesion).
Pour une nuit d'amour.
Pour une poignee de diamants.
La prisonniere.
Proces du vatican.
Promesse a l'inconnue.
La provocation.
La punition.
Quai de Grenelle.
Quai du point du jour.
Quand sonnera midi.
Que les gros salaires levent le doigt.
Quelques pas dans la vie.
Quitte ou double.
Raft au deuxieme bureau.
Rak.
Rendez-vous avec la chance.
Requiem pour un caid.
Rien be va plus.
Rires de Paris.
Robinson Crusoe.
Robinson et le triporteur.
Le roi des camelots.
RPZ ... appelle Berlin.
Sacre leonce.
Le Saint mene la danse.
Salut les frangines.
San Antonio ne pense plus qu'a ca.
Le sang des tropiques.
La saut de l'ange.
Le secret de Madame Clapain.
Senso.
Serenade au Texas.
Service de nuit.
Sidi-Birahim.
Signe Charlotte.
Simplet.
Un soir a Marseille.
Un soir sur la plage.
Soldat Duroc, ca va etre ta fete.
Le solitaire passe a l'attaque.
La sonnette d'alarme.
La sorciere.
Sortileges.
Le souffle du desir.
Souis la griffe.
Soupcons.
Soyez les bienvenus.
Stella.
Stress.
Il suffit d'aimer.
Il suffit d'une fois.
Sur un arbre perche.
Surprise party.
Tamango.
Tapage nocturne.
La taverne du poisson couronne.
Telephone public.
Tempo di Roma.
Le temps des loups.
La tete dans le sac.
La tete du client.
Therese Martin.
Le toubib prend du galon.
Touchez pas aux blondes.
Tourbillon.
Trans-europ-express.
Un tresor de femme.
Les tricheurs.
Tricoche et cacolet.
Le triomphe de Michel Strogoff.
Les trois cousines.
Trois dans un moulin.
Trois de Saint-Cyr.
Trois femmes.
Ursule et Grelu.
Vacances Portugaises.
La vache et le prisonnier.
La valse de Paris.
Les veinards.
La vengeance du Doge.
Veronique.
Veronique ou l'ete de mes 13 ans.
Le Vicomite de Bragelonne.
Une vie de garcon.
La vie en rose.
La vie est belle.
La vie normale.
La vierge du Rhin.
Les vilaines manieres.
Le village magique.
Violence Charnelle.
Violettes imperiales.
Virginie.
Le visage des Dieux.
Vive la liberte.
Vive la sociale.
Voir Venise et crever.
Le voleur de crime.
Voleur malgre lui.
Les voraces.
Vous interessez-vous a la chose?
Vous pigez?
Le voyage de noces.
Le voyage en douce.
Le vrai coupable.

UGC DA International (UGC DAI) & Teledis.
Quand minuit sonnera.
Les sept peches capitaux.

UGC DAI. SEE UGC DA International (UGC DAI).

UGC De International (UGC DAI).
La parte du feu.
Pas de pitie pur les caves.
Passion.
La plus joli peche du monde.
Poker.
Pourvu qu'on ait l'ivresse.
Le route de salina.
Le route napoleon.

UGC De International (UGC DAI) & Teledis.
Lordinateur des pompes funebres.
Les parisiennes.
Le pays d'ouje viens.
Le plus vieux metier du monde.
La rendez-vous.
La tour prend garde.

Varda, Agnes.
Le bonheur.
Cleo de 5 a 7.
Les creatures.
Daguerreotypes.
La pointe courte.

Vera Film, SPA. SEE Columbia Pictures Industries, Inc., assignee of Vera Film, SPA.

Very.
Goupi mains rouges.

Victoria. SEE Cogelda, Plazza & Victoria.

Video Universal, S.A. de C.V.
El amor de mi bohio.
Amor salvaje.
Antesala de la silla electrica.
Bajo el manto de la noche.
Cabaret Shanghai.
El calvario de una esposa.
El charro del arrabal.
Contrabandistas del caribe.
Crimen en la hacienda.
Cruell destino.
El derecho y el deber.
La Diosa de Thaiti.
Duelo en la Canada.
Embrujo antillano.
Eterna martir.
El fantastico mundo de los hippies.
El farol en la ventana.
Gangsterns contra charros.
Historia de un gangster.
Hombres sin alma (serie percal).
Honraras a tus padres.
El infierno de los pobres.
Madre querida (2da version).
Madre querida (Ira version).
La maldicion de mi raza.
La mesera del cafe del Puerto.
Los mister ios del hampa.
Mujeres sin alma.
Organizacion criminal.
Pasiones infernales.
Pasiones tormentosas.
Perdicion de mujeres (serie percal).
Plazos traisioneros.
Que idiotas son los hombres!
Quiereme con musica.
El reino de los gangsters.
Sagrario.
Sandra.
Secretaria peligrosa.
Siboney.
El sindicato del crimen.
Tania la bella salvaje.
Te odio y te quiero.
Thaimi, la hija del pescador.
La tortola del Ajusco.

Una mujer de oriente.
La virgen de la calle.
Zonga, el angel diabolico.

Vides Cinematografica, SaS (Rome). SEE Columbia Pictures Industries, Inc., (assignee of Tele-Hachette & Mondex Films, S.

WAC World Audiovisual Corporation, BV.
A cavallo della tigre.
Africa sotto i mari.
Alvaro piuttosto corsaro.
Le amiche.
Angelo bianco.
L'assassino.
Attanasio cavallo vanesio.
Audace colpo dei soliti ignoti.
Baleari operazione oro.
Banditi ad orgosolo.
La Bella mugnaia.
Belle ma povere.
Una bellissima estate.
Il bidone.
Bufere.
La bugiarda.
Cafe Chantant.
La Calandria.
Camorra.
Il camorrista.
Catene.
La cento kilometri.
Chi e senza peccato.
Classe di ferro.
Come perdere moglie e trovare.
Delitto al circolo di tennis.
Demoni.
Demoni 2.
Il demonio.
Di tresette ce n'e uno tutti.
Difendo il mio amore.
Il disordine.
E permesso maresciallo.
L'emigranite.
Er piu ... storia d'amore e di.
L' eredita ferramonti.
Estate violenta.
Farfalla dalle ali insanguinate.
Fate largo ai moschettieri.
Il figlio di Django.
Gambre d'oro.
La gang del parigino.
Gente felice.

Wac World Audiovisual Corporation, BV.
Giorno per giorno disperatamente.

WAC World Audiovisual Corporation, BV.
Il giorno piu corto.
Grande rakett.
I dolci inganni.
I due colonnelli.
I fidanzati.
I figli di nessuno.
I magliari.
Io chiara e lo scuro.
Io la conoscevo bene.
Io mammeta e tu.
John il bastardo.
John Travalto da un insolito.
Luna di miele in tre.
Macchie solari.
Malinconico autunno.
Menzogna.
Mi permette Babbo.
Mio figlio Nerone.
Mystere.
Napoli si Ribella.
La nipote Sabella.
Noi peccatori.
La nonna Sabella.
Ombrellone.
Operazione S. Gennaro.
Pane amore e.
Pane, amore, e fantasia.
Pane, amore, e gelosia.
Pathos un sapore di paura.
Phenomena.
Pianeta degli uomini spenti.
Piedone a Hong Kong.
Piedone d'Egitto.
Piedone l'Africano.
Piedone lo sbirro.
Policarpo dei tappeti uff scrit.
Poliziotto sprint.
Porci con le ali.
Il posto.
Poveri ma belli.
Poveri milionari.
Preparati la bara.
Presentimento.
Il profeta.
La proprieta non e piu un furto.
Quel maledetto ponte sull'elba.
La ragazza con la valigia.
Rugantino.
Savana violenta.
La sbandata.
Scipione detto anche l'africano.
La sculacciata.
Se lo scopre Gargiulo.
Shock.
Signore e signori buonanotte.
Soldato di ventura.
Sorriso uno schiaffo un bacio.
Space man.
Speed cross.
La spiaggia.
Squadra antifurto.
Squadra antigangster.
Squadra antimafia.
La stanza del vescovo.
Il tempo si e fermato.
Tenebre.
Le tigri di Mompracem.
La tosca.
Ultime grida dalla savana.
Uomini e lupi.
Uomo avvisato parola spirito.
La venexiana.
Venezia la luna e tu.
Veruschka.
La via della droga.
Vivo per la tua morte.

Walerstein, D., Mauricio.
Cronicu de un subersivo latinoamericano.
Cuando quiero llorar no lloro.
La empresa perdona un momento de locura.
Eva, Julia y Perla.

Walerstein, Gregorio.
A media luz los tres.
Acuerdate de vivir.
Aladino y la lampara maraavillosa.
Amar fue su pecado.
Amor de adolescente.
Amor de la calle.
Amor de locura.
Amor en cuatro tiempos.
Amor vend ido.
Apasionada.
Arrabalera.
Los baarbaros del norte.
El caballo bayo.
Callejera.
Camelia.
El carinoso.
Casa de munecas.
Como pescar marido.
El corrido de maria pistolas.
La emboscada mortal.
El enmascarado de plata.
La entrega.
Especialista en chamacas.
La estatua de carne.
Los fenomenos de futbol.
Las figuras de arena.
Gutierritos.
He matado a un hombre.
Los hermanos del hierro.
El hijo de Gabino Barrera.
El joven del carrito.
Los jovenes.
El justicieron vengador.
Lupe balazos.
El medio pelo.
El mensaje de la muerte.
El Mexicano.
Mi madre es culpable.
Mi papa tuvo la culpa.
El misterio del carro express.
La mujer desnuda.
La mujer que yo ame.
Napoleoncito.
No se mande profe.
Orquideas para mi esposa.
Pasionaria.
El picaro.
Piernas de oro.
Reventa de esclavas.
Si fuera una cualquiera.
Si volvieras a mi.
Sobre el muerto las coronas.
Te sigo esperando.
Las tres pelonas.
La ultima lucha.
Una movida chueca.
Vuelve el Norteno.
Vuelven los argumedo.
Yo soy muy macho.

Weisweiller, Canale.
Les enfants-terribles.

Williams, Wade.
Devil girl from Mars.
House of darkness.
Stolen identity.
Trollenberg terror.

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World Audiovisual Corporation, BV.
SEE WAC World Audiovisual Corporation, BV.

Dated: January 26, 1998.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 98–2262 Filed 1–29–98; 8:45 am]
BILLING CODE 1410–30–P

federal register

Friday
January 30, 1998

Part VI

Department of Justice

Bureau of Prisons

28 CFR Parts 541 and 551
Institutional Management; Editorial Amendments; Final Rule

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 541 and 551

[BOP–1074–F]

RIN 1120–AA70

Institutional Management; Editorial Amendments

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its regulations relating to institutional management to update an organizational reference, to make a stylistic correction, and to adjust codification. There is no change in the intent of any of the amended regulations.

EFFECTIVE DATE: January 30, 1998.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Rules Unit, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on marriage of inmates (28 CFR part 551, subpart B). A final rule on this subject was published in the **Federal Register** on April 30, 1984 (49 FR 18385) and was amended on October 29, 1993 (58 FR 58248). When first promulgated, § 551.10 consisted of two undesignated paragraphs. In conformance with Office of Federal Register recommendations, these two undesignated paragraphs are being combined into one paragraph. More specifically, the two sentences of the second undesignated paragraph are being designated as the second and third sentences of the remaining paragraph.

The Bureau is also making two editorial amendments to its procedures for handling HIV-positive inmates who pose a danger to others (28 CFR part 541, subpart E). A final rule on this subject was published on March 17, 1989 (54 FR 11323) and was amended on April 27, 1989 (54 FR 18198) and on July 10, 1991 (56 FR 31530). These regulations are being amended to update the references to the organization and procedures of the Administrative Remedy Program in §§ 541.65(c) and 541.67(e) and to use the singular rather than the plural form of a noun in § 541.63(a).

Because these amendments are editorial in nature, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), does not have a significant economic impact on a substantial number of small entities, within the meaning of the Act. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

List of Subjects

28 CFR Part 541

Prisoners.

28 CFR Part 551

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), parts 541 and 551 in subchapter C of 28 CFR, chapter V are amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

1. The authority citation for 28 CFR part 541 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§ 541.63 [Amended]

2. In § 541.63(a), the word "recommendations" in the second sentence is revised as "recommendation".

3. In § 541.65, paragraph (c) is revised to read as follows:

§ 541.65 Regional Director review and appeal.

* * * * *

(c) An inmate may appeal a decision of the Regional Director, through the Administrative Remedy Program, directly to the National Inmate Appeals Administrator, Office of General Counsel, within 30 calendar days of the Regional Director's decision (see 28 CFR 542.15).

4. In § 541.67, paragraph (e) is revised to read as follows:

§ 541.67 Review of controlled housing status.

* * * * *

(e) An inmate may appeal a decision of the Regional Director, through the Administrative Remedy Program, directly to the National Inmate Appeals Administrator, Office of General Counsel, within 30 calendar days of the Regional Director's decision (see 28 CFR 542.15).

PART 551—MISCELLANEOUS

4. The authority citation for 28 CFR part 551 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 1512, 3621, 3622, 3624, 4001, 4005, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; Pub. L. 99–500 (sec. 209); 28 CFR 0.95–0.99; Attorney General's August 6, 1991 Guidelines for Victim and Witness Assistance.

§ 551.10 [Amended]

5. In § 551.10, designate the text of the undesignated second paragraph as the second and third sentences of the first paragraph.

[FR Doc. 98–2289 Filed 1–29–98; 8:45 am]

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federal register

Friday
January 30, 1998

Part VII

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development; Notice of Funding for Fiscal Year 1997: Capacity Building for Community Development and Affordable Housing; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4289–N–01]

Office of the Assistant Secretary for Community Planning and Development; Funding for Fiscal Year 1997: Capacity Building for Community Development and Affordable Housing

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding for fiscal year 1997.

SUMMARY: A recently enacted appropriation transfers $30.2 million in Fiscal Year 1997 funds to section 4 of the HUD Demonstration Act of 1993 and amends it to provide this assistance through The Enterprise Foundation, the Local Initiatives Support Corporation (LISC), Habitat for Humanity, and Youthbuild, USA. The funds are to be used for capacity building for community development and affordable housing—provided that at least $10,000,000 of the funding is used in rural areas, including tribal areas—as required by section 4 of the 1993 Act.

Section 4 authorizes the Secretary to establish by notice such requirements as may be necessary to carry out its provisions. This notice, which takes effect upon issuance, indicates that HUD will equally divide the $30.2 million appropriated for this capacity building initiative among the four organizations cited above. Each organization will match the HUD assistance provided with resources from private sources in an amount equal to three times its share, as required by section 4 of the 1993 Act. Each organization will use at least $2.5 million of its $7.55 million share for activities in rural areas, including tribal areas.

This notice also provides details regarding administrative and other requirements which shall apply to this program.

FOR FURTHER INFORMATION CONTACT: Phyllis Amon, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7216, Washington DC 20410. Telephone Number (202) 708–3176 Ext. 4380, TTY Number: (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

1. Authority

The 1997 Emergency Supplemental Appropriations Act for Recovery from Natural Disasters, and for Overseas Peacekeeping Efforts, including Those in Bosnia, Pub.L. 105–18, 111 Stat. 198 and 201, June 12, 1997, (1997 Emergency Supplemental Appropriations Act) transfers $30.2 million from the Homeownership and Opportunity for People Everywhere (HOPE) program account to section 4 of the HUD Demonstration Act of 1993, 41 U.S.C. 9816 note, (1993 Act) and amends it to provide this assistance through Enterprise, LISC, Habitat for Humanity; and Youthbuild "to develop the capacity and ability of community development corporations and community housing development organizations to undertake community development and affordable housing projects and programs."

2. Background

In Fiscal Year 1994, HUD provided $20 million to Enterprise and LISC through The National Community Development Initiative (NCDI) as authorized by section 4 of the HUD Demonstration Act of 1993. An additional $10 million for NCDI was authorized by section 12(b)(3) of the Housing Opportunity Program Extension Act of 1996, Pub. L. 104–120, 110 Stat. 845, March 28, 1996. In accordance with these statutes, HUD divided both appropriations equally between Enterprise and LISC. HUD published a notice on March 30, 1994, at 59 FR 14988, which sets forth the requirements for these funds.

Today's notice contains requirements for the newly authorized $30.2 million. These funds, however, may be allocated by Enterprise and LISC to continue NCDI activities which received funding under the notice dated March 30, 1994 and grant agreements pursuant to it. Those activities will continue to be governed by the requirements of the **Federal Register** funding notice dated March 30, 1994.

Today's notice does not apply to the $30 million in funds previously made available for NCDI under section 4 of the HUD Demonstration Act of 1993 or any additional HUD funds allocated by Enterprise and LISC for NCDI activities. The use of such funds will continue to be governed by the requirements of the March 30, 1994, **Federal Register** funding notice.

3. Allocation and Form of Awards

The 1997 Emergency Supplemental Appropriations Act provides $30.2 million for Section 4 activities. In accordance with congressional intent, Enterprise, LISC, Habitat for Humanity, and Youthbuild will each be awarded 7.55 million. The accompanying Conference Report stated in part:

> The language makes a technical change to include certain participating intermediary organizations * * *. It is the intent of the conferees that funds available shall be equally divided among participating intermediary organizations. (H.R. Conf. Rep. No. 105–119, 105th Cong., 1st Sess. 115 (1997))

Each organization will use $2.5 million of its share for activities in rural areas, including tribal areas.

4. Eligible Activities

Eligible activities under this award include:

(a) Training, education, support, and advice to enhance the technical and administrative capabilities of community development corporations (CDCs) and community housing development organizations (CHDOs);

(b) Loans, grants, development assistance, predevelopment assistance, or other financial assistance to CDCs/CHDOs to carry out community development and affordable housing activities that benefit low-income families and persons, including the acquisition, construction, or rehabilitation of housing for low-income families and persons, and community and economic development activities which create jobs for low-income persons; and

(c) Such other activities as may be determined by Enterprise, LISC, Habitat for Humanity, and Youthbuild in consultation with the Secretary or his designee.

5. Matching Requirements

As required by section 4 of the 1993 Act, this $30.2 million appropriation is subject to each award dollar being matched by three dollars in cash or in-kind contributions to be obtained from private sources. Each of the organizations receiving these funds will document its proportionate share of matching resources, including resources committed directly or by a third party to a grantee or subgrantee after June 12, 1997 to conduct activities in approved work plans.

In-kind contributions shall conform to the requirements of 24 CFR 84.23.

6. Administrative and Other Requirements

The award will be governed by 24 CFR part 84 (Uniform Administrative Requirements), A–122 (Cost Principles for Nonprofit Organizations), and A–133 (Audits of Institutions of Higher Education and other Nonprofit Institutions) as implemented at 24 CFR part 45.

Other requirements will be detailed in the terms and conditions of the grant agreement provided to grantees, including the following:

(a) Each grantee will submit to HUD a specific work and funding plan for each community showing when and how the federal funds and non-federal matching resources will be used. The work plan must be sufficiently detailed for monitoring purposes and must identify the performance goals and objectives to be achieved. Within 30 days after submission of a specific work plan, HUD will approve the work plan or notify the grantee of matters which need to be addressed prior to approval, or the work plan shall be construed to be approved. Work plans may be developed for less than the full dollar amount and term of the award, but no HUD-funded costs may be incurred for any activity until the work plan is approved by HUD. All activities are also subject to the environmental requirements in paragraph 6.(f) of this notice.

(b) The grantees shall submit to HUD an annual performance report due 90 days after the end of each calendar year, with the first report due on March 31, 1999. Performance reports shall include reports on both performance and financial progress under work plans including reports on the commitment and expenditure of private matching resources utilized through the end of the reporting period. Reports shall conform to the reporting requirements of 24 CFR part 84. Additional information or increased frequency of reporting, not to exceed twice a year, may be required by HUD any time during the grant agreement if HUD finds such reporting to be necessary for monitoring purposes.

To further the consultation process and share the results of progress to date, the Secretary may require grantees to present and discuss their performance reports at annual meetings in Washington, DC during the life of the award.

(c) The performance reports must contain the information required under 24 CFR part 84, including a comparison of actual accomplishments with the objectives and performance goals of the work plans. In the work plans each grantee will identify performance goals and objectives established for each community in which it proposes to work and appropriate measurements under the work plan such as: the number of housing units and facilities each CDC/CHDO produces annually during the grant period and the average cost of these units. Provided, however, that when the activity described in a work plan is not to be undertaken in a single community that a report indicating the areas in which the activity will be undertaken, along with appropriate goals and objectives, will be provided when that information is available. The performance reports will also include a discussion of the reasonableness of the unit costs; the reasons for slippage if established objectives and goals are not met; and additional pertinent information.

(d) A final performance report, in the form described in paragraph (c) above, shall be provided to HUD by each grantee within 90 days after the completion date of the award.

(e) Financial status reports (SF–269A) shall be submitted semiannually.

(f) Environmental review. Individual projects to be funded by these grants may not be known at the time the overall grants are awarded and also may not be known when some of the individual subgrants are made. Therefore, in accordance with 24 CFR 50.3(h), the application and the grant agreement must provide that no commitment or expenditure of HUD or local funds to a HUD-assisted project may be made until HUD has completed an environmental review to the extent required under applicable regulations and has given notification of its approval in accordance with 24 CFR 50.3(h).

8. Application Content

Grantees will be required to file an application containing the following:

(a) Application for Federal Assistance (OMB Standard Form 424), Non-construction Assurances (SF–424B), Certification Regarding Drug-Free Workplace Requirements, Certification Regarding Lobbying and the Fair Housing and Equal Opportunity certification described in section 9(f) of this notice;

(b) A Summary Budget for the amount of funds being requested as described in section VI (10) of the "NOFA for Consolidated Technical Assistance for Community Planning and Development (CPD) Programs; Notice," published at 59 FR 33842, 33848, on June 30, 1994 and specifying any amounts to be committed to NCDI activities under the notice dated March 30, 1994 and grant agreements pursuant to it.

9. Other Matters

(a) *Environmental Impact.* A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

(b) *Wage Rates.* Unless triggered by other Federal funds for a project under this grant, the requirements of the Davis-Bacon Act do not apply.

(c) *Relocation.* The Uniform Relocation Act applies to anyone who is displaced as a result of acquisition, rehabilitation, or demolition, for a HUD-assisted activity.

(d) *Federalism.* The General Counsel, as the Designated Official under section 7(a) of the Executive Order 12612, *Federalism*, has determined that the policies contained in this funding notice will not have substantial direct effects on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government. Specifically, this notice makes funds available through specific entities for specific activities, as required by statute, and does not impinge upon the relationships between the Federal government, and State and local governments.

(e) *Prohibition against lobbying activities.* Applicants for funding under this notice are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995, Pub. L. 104–65 (December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal Executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment or modification. The Byrd Amendment applies to the funds that are the subject of this notice. Therefore, applicants must file with their application a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes have been made, a form SF–LLL disclosing such payments must be submitted.

The Lobbying Disclosure Act of 1995, Pub. L. 104–65 (December 19, 1995), which repealed section 112 of the HUD Reform Act and resulted in the elimination of the regulations at 24 CFR

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part 86, requires all persons and entities who lobby covered Executive or Legislative Branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

(f) *Fair Housing and Equal Opportunity.* Applications must contain a certification that the applicant will comply with the requirements of the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and will affirmatively further fair housing.

Authority: Section 4 of the HUD Demonstration Act of 1993, Pub. L. 103–120, 42 U.S.C. 9816 note, as amended and Pub. L. 105–18, 111 Stat 198.

Dated: January 23, 1998.

Saul N. Ramirez, Jr.,

Assistant Secretary for Community Planning and Development.

[FR Doc. 98–2270 Filed 1–29–98; 8:45 am]

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LIST OF PUBLIC LAWS

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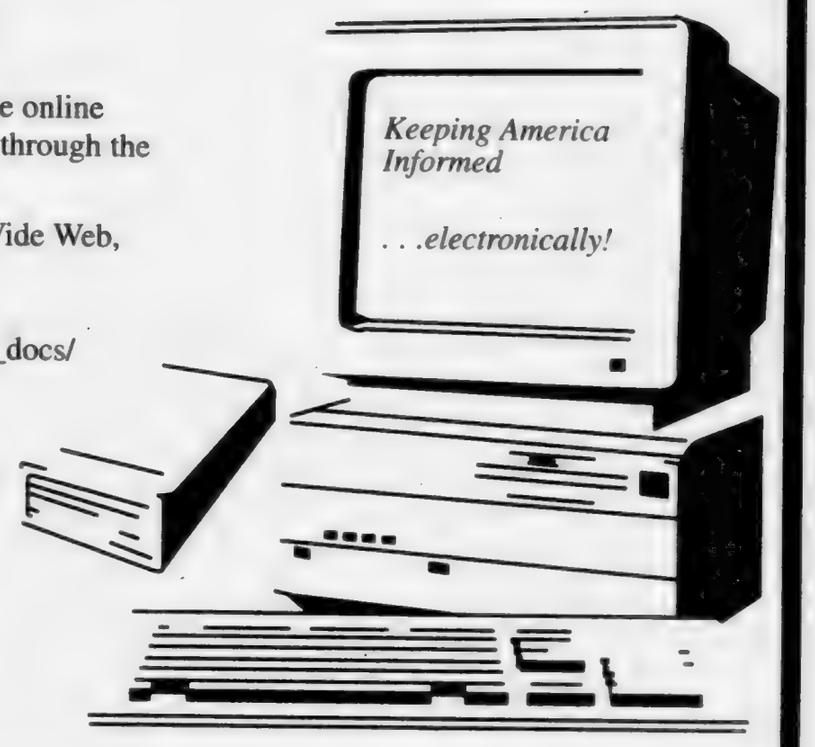
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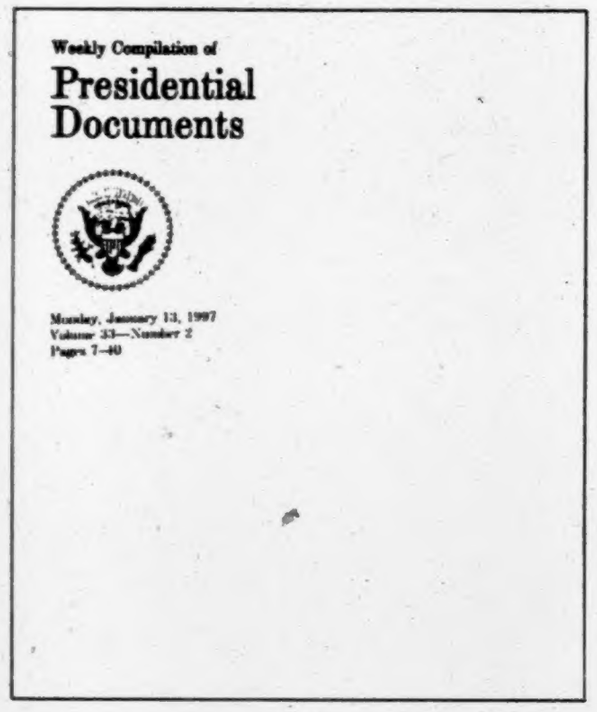
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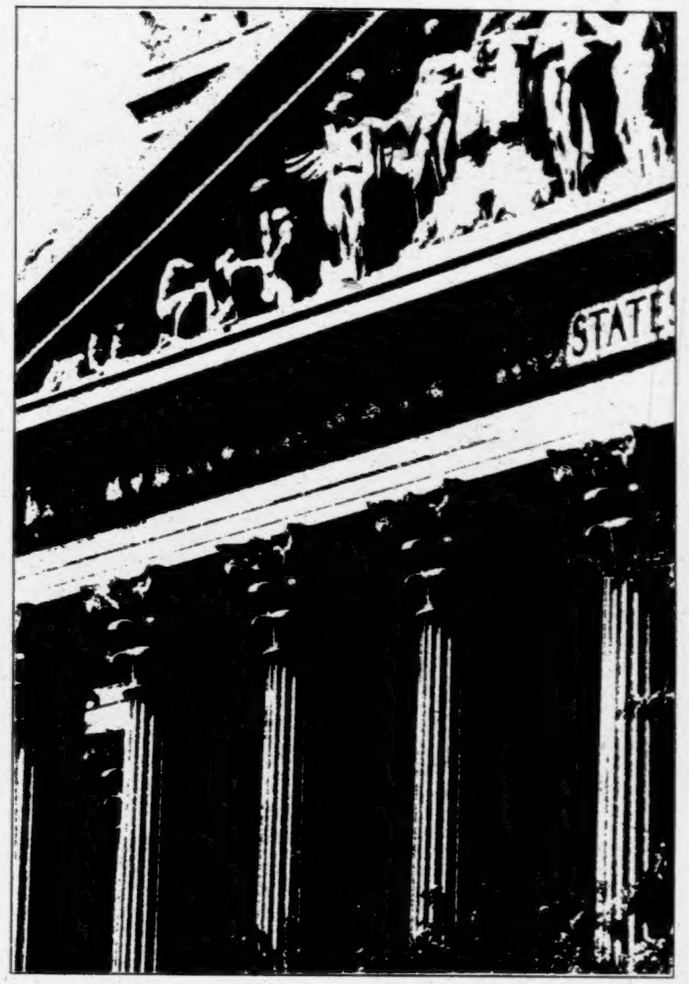
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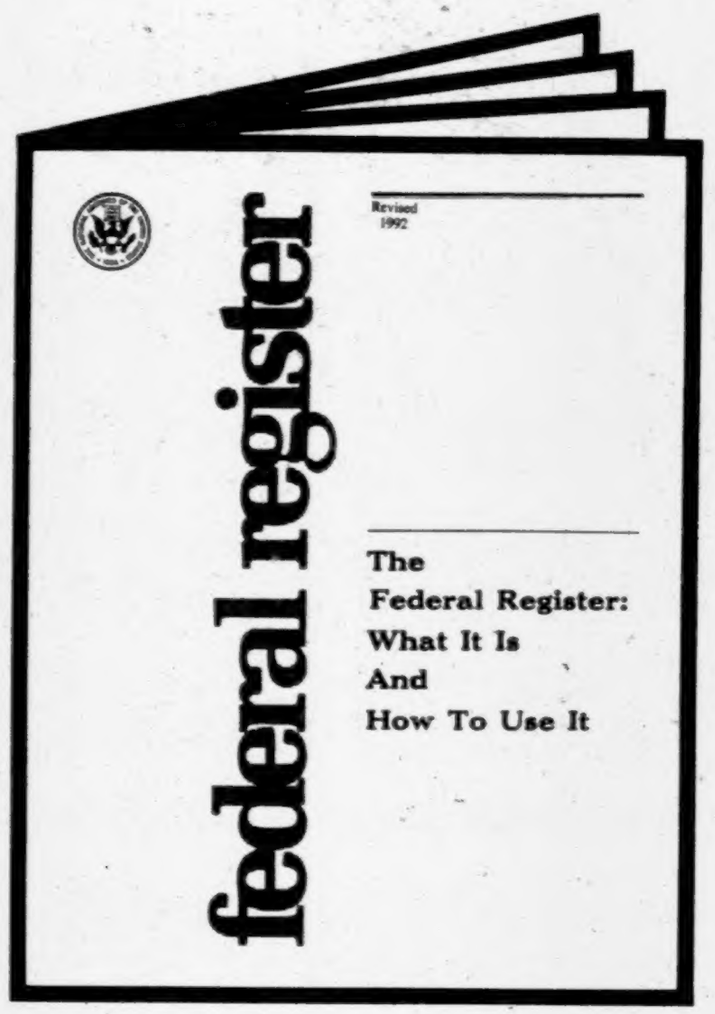
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105th Congress, 2nd Session, 1998

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